

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 12.07.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**CRL.A.(MD).Nos.138 and 139 of 2017 &
Crl.M.P.(MD).Nos.3863 and 3864 of 2017**

Alaguthai

:Appellant in Crl.A.(MD).No.138/2017/A3

Alagammal

:Appellant in Crl.A.(MD).No.139/2017/A2

Vs.

State rep. By
The Inspector of Police,
Sedapatti Police Station,
Sedapatti,
Madurai District.
(Crime No.74 of 2012)

: Respondent in both the Appeals

PRAYER: Appeals filed under Section 374 Cr.P.C. to call for the judgment, dated 27.02.2017 made in S.C.No.198 of 2013 on the file of I Additional District and Sessions Judge, Madurai and set aside the same.

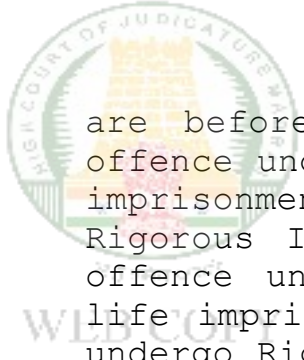
For Appellants : Mr.J.Lawarance in Crl.A.(MD).No.138/2017
Mr.P.Mahendran in Crl.A.(MD).No.139/2017

For Respondent in both appeals : Mr.R.Ramachandran,
Additional Public Prosecutor.

Orders Reserved on	05.07.2017
Orders Pronounced on	12.07.2017

COMMON JUDGMENT

These two appeals have been filed challenging the conviction and sentence passed by the learned I Additional District and Sessions Judge, Madurai. Altogether there are 3 accused in this case and only two accused namely Alagammal/A-2 and Alaguthai/A-3



are before this Court. The Trial Court convicted A-2 for the offence under Section 302 r/w 34 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.25,000/-, in default to undergo Rigorous Imprisonment for a period of one year and A-3 for the offence under Section 302 r/w 109 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.25,000/-, in default to undergo Rigorous Imprisonment for a period of one year. Since both appeals are arising out of the trial in S.C.No.198 of 2013, these appeals are disposed of by this common judgment.

2. The brief case of the prosecution is as follows:-

i) The deceased Muthu is the husband of PW-1. A-1 is the younger brother of the deceased. A-2 is the wife of A-1. A-3 is the daughter-in-law of PW-1 and deceased. The deceased Muthu, PW-1 to PW-3 are the resident of Andipatti.

ii) The deceased Muthu had another brother apart from A-1 and one sister Chellammal. Since the brother of the deceased Muthu Kannan was not well, he was maintained by PW-3/Chellammal and Muthu Kannan's property was allotted to Chellammal/PW-3 by A-1. In view of that there arose enmity between the deceased and A-1. Similarly, when A-3 contested election, PW-1 and the deceased did not support A-3 in the election. A-3 lost in the election. As a result also, there was enmity between A-3 and deceased and PW-1.

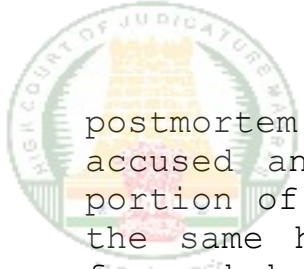
iii) Thereafter, when the matter stood thus, three days prior to the occurrence, there was an altercation between one Alagumalai, son of A-1's brother-in-law and son of PW-3 and deceased. Both PW-3 and the deceased intervened and pacified them.

iv) On the date of occurrence, i.e. 13.06.2012, PW-1, PW-2 and one Selvaraj were standing near the drama stage at Andipatti and at that time all the accused came to the place of occurrence, wherein A-3 instigated A-1 by saying kill him, immediately A-2 caught hold the deceased and A-1 caused stab injury with knife (MO1) on the left side of the neck, as a result the deceased fell down. PW-1 and others went to the hospital and PW-1 lodged First Information Report Ex.P-1.

v) PW-11, the Sub Inspector of Police at the relevant time, on 13.06.2012, received the complaint Ex.P-1 and registered a crime in Crime No.74 of 2012 for the offence punishable under Sections 302 and 109 IPC and Ex.P-6 is the First Information Report and immediately forwarded the First Information to the Court through PW-10 Vasan.

vi) PW-16, the Inspector of Police at the relevant time took up the case for investigation and went to the place of occurrence at 21.30 hrs and immediately removed the dead body from the place of occurrence and sent the same to the Government Hospital. Thereafter, he came to the place of occurrence and prepared Observation Mahazar/Ex.P-16 and Rough Sketch/Ex.P-17 and also seized blood stained earth and ordinary earth under Ex.P-18.

<https://hcservices.in/hcservices/>
 The police conducted inquest over the dead body in the hospital in the presence of witnesses and panchayatdars and prepared inquest report/Ex.P-19 and also forwarded requisition/Ex.P-10 for



postmortem. On the same day at 5.30 a.m., he arrested all the accused and recorded their voluntary confession. The admissible portion of confession of A-1 is marked as Ex.P-20 and pursuant to the same he seized MO-1/knife under Ex.P-21 seizure mahazar and forwarded the property to the Court under Form 85, examined the witnesses and recorded their statements on 27.06.2012 and forwarded all the material objects to the Court for chemical examination.

vii) PW-12, scientific officer from the forensic laboratory, has examined the material sent to the office through Court/Ex.P-7, and issued Biological Report/Ex.P-8 and Serology Report/Ex.P-9.

viii) PW-13 conducted autopsy over the dead body on 14.06.2012 and found the following injuries:-

" There was a stab injury about 2.5 cm x 2cm x 7.5 cm depth in the left side of neck extending 4 cm away and lateral to suprasternal notch. On dissection there was a punctured wound in the left carotid artery and trachea."

and found that the deceased would have died due to the injury on the left carotid artery and trachea and due to the hemorrhagic shock prior at about 12 to 20 hours prior to autopsy. Ex.P-11 is the postmortem report.

ix) PW-17, the Inspector of Police, took up further investigation and examined the other witnesses and finally laid a charge sheet against all the accused.

3. Based on the above materials, the trial Court framed charges as narrated in the earlier paragraph of the judgment. All the accused pleaded innocence and therefore, they were put on trial. During trial, on the side of prosecution as many as 17 witnesses were examined and 25 documents were exhibited besides 4 material objects. Having considered the above materials, the trial Court found all these accused guilty as detailed in the first paragraph of this judgment and accordingly, punished them and that is how the appellants are before this Court with these appeals.

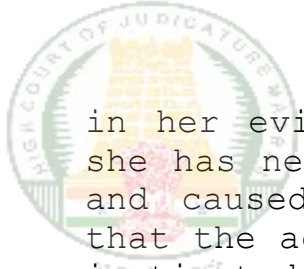
4. Heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the State and also carefully perused the records.

5. The appellant/A-2 was convicted in the Trial with the aid of Section 34 IPC, who is none other than the wife of A-1. The motive alleged by the prosecution against the appellant, namely A-2 is that the property of Muthu Kannan, the brother of A-1, who is said to be insane and not doing well, was given to PW-3, sister of A-1. Agitated with the said arrangement, the deceased questioned the same. Hence there was an enmity, between them.

<https://hcservices.courts.gov.in/hcservices/> 6. The appellant/A-3 is none other than the younger daughter-in-law of PW-1 and the motive alleged against her is that when she contested election in the year 2001, PW-1 and her husband did not

charges u

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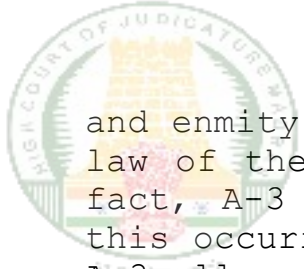
in her evidence that all the accused coming with some speed and she has never stated about A-1 had taken the knife from his waist and caused injury. Similarly PW-1 never stated in her evidence that the accused namely A-3 showing her finger at the deceased and instigated A1 to stab, whereas PW-2 in his evidence has stated these facts and PW-3's presence in the place of occurrence also creates some doubt. Ex.P-1/First Information Report said to have been lodged by PW-1 does not disclose anything about PW-3's presence.

13. Similarly Selvaraj, who stated to have been present in the place of occurrence along with PW-1 and PW-2 is not examined by the prosecution. PW-1 to PW-3 were also cross-examined on 25.02.2015 after a gap of more than one year of their chief examination. In the subsequent examination they have been treated as hostile by the prosecution. In fact they cleverly gave evidence in favour of the accused, of course, such delay in examination gives rise to an inference that such witnesses would have been won over by the defence side. At the same time in this case, taking into consideration the relationship of the parties and the nature of the dispute exists between them also clearly indicate that PW-1 to PW-3's evidence require more scrutiny. As far as the charges under Section 302 r/w 34 IPC and 302 r/w 109 IPC is concerned, such allegation can be levelled against any body in order to settle the personal score.

14. On a careful scrutiny of the entire evidence of PW-1 to PW- 3, would go to show that in fact it is improved with regard to A-2 and A-3. PW-1 evidence show as if after stab injury caused by A-1, all the accused had removed the knife from the body of the deceased and left, this aspect is not even stated by PW-2 and PW-3.

15. Evidence of PW-2 that A-3 shown her finger and identified the deceased and shouted at A-1 to do away him, is also not supported by PW-1 and PW-3. Presence of PW-3 not spoken by PW-1 and PW-2 at the relevant time. Therefore, the evidence of PW-1 to PW-3 as against A-2 and A-3 for the charges framed as against A-2 and A-3 for the offence under Section 302 r/w 34 IPC and 302 r/w 109 IPC is highly doubtful. Though their evidence is in one voice, especially with regard to the stab injury caused by A-1, their evidence in respect of other aspect is highly doubtful. It is also well settled that witnesses disbelieved in certain aspect need not be disbelieved in other aspect in criminal trial. The doctrine of Falsus in uno, falsus in omnibus cannot be applied in the criminal trial in India.

16. The Prosecution has not even established the pre arranged ~~https://hcrs.ecrindia.org/~~ evidence against A-1 and A-2 to do away the deceased. The motive as against A-1 is spoken to by witnesses. There was no evidence whatso ever as against A-2 for such enmity. Similarly, the motive



and enmity as against A-3, who is none other than the daughter-in-law of the PW-1 and the deceased is also highly unbelievable. In fact, A-3 contested in the election in the year 2011, whereas this occurrence was allegedly took place in the year 2013, wherein A-3 allegedly instigated A-1, is also highly doubtful. The case of the prosecution that A-3 already shared common intention and had a pre arranged plan with other accused at the relevant time and abetted A-1 is highly shaky and doubtful. Therefore, this court is of the view that merely on the basis of evidence of PW-1 to PW-3, which is also not established, the pre arranged plan between A-2 and A-3 and other accused, charge under Section 302 r/w 34 IPC and 302 r/w 109 IPC cannot be inferred. Accordingly on the basis of some interested witnesses, who have some strong motive as against A-2 and A-3, as already discussed as motive is a double edged weapon it can be used either for false implication and also to prove the offence, every case has to be decided on its own facts and circumstances. Further, the evidence also clearly establish that A-3 married the son of PW-1, as against the wishes of the deceased and PW-1. In fact PW-1 to PW-3 also have grievance in that aspect. Hence, we are inclined to hold that the evidence adduced by the prosecution as against A-2 and A-3 to the charges under Section 302 r/w 34 IPC and 302 r/w 109 IPC is shaky and doubtful. The above evidence is not sufficient to establish the common intention of A-2 and A-3 for abetment.

17. In view of the above, we find that the appellants/A-2 and A-3 are entitled for acquittal. In the result, the appeals are allowed and the conviction and sentence imposed by the learned I Additional District and Sessions Judge, Madurai are set aside as against the appellants alone namely Alagammal/A-2 and Alaguthai/A-3 and the appellants, are acquitted from the charges. The Bail bond executed by the appellants shall stand cancelled. Fine amount if any paid by the appellants shall be refunded. Connected Crl.M.Ps. are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The I Additional District and Sessions Judge, Madurai.

2.The Judicial Magistrate, No.2, Usilampatti, Madurai District.

3.The Chief Judicial Magistrate, Madurai.



4.The Inspector of Police, Sedapatti Police Station,
Sedapatti, Madurai District.

5.The Superintendent, Special Prison for Women, Madurai.
(In duplicate for communicate to the Appellant)

6.The District Collector, Madurai.

7.The Superintendent of Police, Madurai.

8.The Director General of Police, Mylapor, Chennai.

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S. P.MAHENDRAN, Advocate, SR.No.64813.

+1cc to M/S. J.LAWRANCE, Advocate, SR.No.64812.

Common Judgement made in
CRL.A.(MD).Nos.138 and 139 of 2017
12.07.2017

jikr

SDS/SKN:RSK/SAR 3/13.07.2017/7P/14C