

**BAIL SLIP**

Murugan, S/o.Vellaichamy (Sole Accused) is released on bail vide the order of this Court, dated 18.11.2016 made in CRL.MP. (MD).No.10647/2016 in CrI.A. (MD) No.416 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
22.11.2017	13.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A. (MD) No.416 of 2016

Murugan

... Appellant / Accused

-vs-

State, rep.by
The Inspector of Police
Cantonment Police Station
Tiruchirappalli
(Crime No.1099 of 2014)

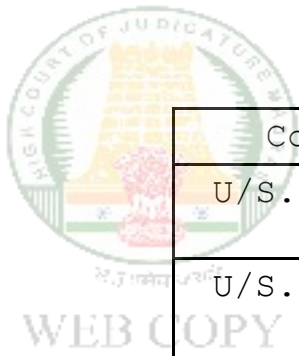
... Respondent / Complainant

Criminal appeal is filed under Section 374 Cr.P.C., to call for the records pertaining to the Judgment rendered by the learned Principal Sessions Judge, Trichirappalli, in S.C.No.166 of 2015, dated 26.09.2016 and set aside the same.

For Appellant : Mr.M.R.R.Siva Subramanian
For Respondent : Mr.C.Ramesh
Addl. Public Prosecutor

J U D G M E N TA.D.JAGADISH CHANDIRA, J.,

This criminal appeal has been directed by the appellant / accused challenging the Judgment, dated 26.09.2016, passed in S.C.No.166 of 2015, by the learned Principal Sessions Judge, Trichirappalli, convicting and sentencing him as follows:



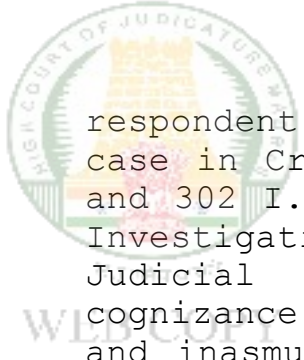
Conviction	Sentence
U/S. 323 I.P.C.	One Year R.I. + Fine of Rs.1,000/-, i/d 3 Months R.I.
U/S. 302 I.P.C.	Life Imprisonment + Fine of Rs.2,000/-, i/d 3 Years R.I.

Further, the learned Principal Sessions Judge ordered the substantive sentences to run concurrently.

2. The case of the prosecution in brief is that the appellant / accused - Murugan and the deceased - Kavitha are husband and wife and they have been blessed with three daughters and two sons. P.W.9 and P.W.10, namely, Asaithambi and Karunanithi respectively are the brothers of the deceased Kavitha. After marriage, the appellant / accused and the deceased were living happily only for two years and due to the misunderstandings, quarrel ensued between them very often. About one year prior to the occurrence, the deceased had quarreled with her husband, namely, appellant / accused and thereafter, she went to her mother/ P.W.1's house and stayed there itself. On 02.12.2014, at about 12.00 noon, when P.W.1 was sitting in a cot in her house at Samathuvapuram First Street, Karumandapam and the deceased was preparing meals in kitchen, the appellant/ accused came to the house of P.W.1 and asked P.W.1 about his wife / deceased and punched on the back of P.W.1 with his hands and pushed her down from the cot. Further, by proclaiming that he will not leave that place without killing his wife / deceased and holding a knife in his hand, the appellant / accused went inside the kitchen and stabbed his wife / deceased with the knife on her chest, stomach and left side of the hip. When P.W.1 / mother of the deceased pulled the appellant / accused by holding his shirt, he pushed P.W.1 down and ran away with the knife.

3. On hearing the noise raised by P.W.1, the neighbours came to the place of occurrence. P.W.4-Padmavathy, who is one of the neighbours, had seen the appellant / accused running away from the house of P.W.1 with the blood stained knife (M.O.2). P.W.8-Soosaiammal @ Mary, who is also a neighbour of P.W.1, heard the noise from the house of P.W.1 and seen the appellant/ accused getting away from the house of P.W.1 holding a blood stained knife (M.O.2) dripping with blood. Thereafter, P.W.1 took her daughter / deceased with the help of others in the Auto of P.W.11-Malairaja to the Hospital and the Doctors, who examined the deceased, had declared that the deceased was brought dead.

4. Subsequently, on the same day, P.W.1 - mother of the deceased / de facto complainant lodged a complaint before the respondent - Police with regard to the said incident and the



respondent - Police, based on the said complaint, had registered a case in Crime No.1099 of 2014 on the same day under Sections 323 and 302 I.P.C. After completion of a thorough investigation, the Investigation Officer had laid a final report before learned Judicial Magistrate No.II, Tiruchirappalli, who had taken cognizance of the final report filed by the Investigation Officer and inasmuch as the alleged offence being exclusively triable by the Court of Sessions, the learned Judicial Magistrate had furnished the copy of the documents relied on by the prosecution side to the appellant/ accused under Section 207 Cr.P.C., and committed the case to the file of the learned Principal Sessions Judge, Tiruchirappalli, who had taken the same on file in S.C.No.166 of 2015. Subsequently, the Trial Court had framed charges under Sections 323 and 302 I.P.C., against the appellant/ accused and when he was explained and questioned about the charges framed against him, he had denied the charges framed against him and sought for trial to prove his case and accordingly, trial was conducted.

5. During the course of trial, on the side of the prosecution, P.Ws.1 to 24 were examined and Exs.P1 to P30 were marked and M.Os.1 to 11 were produced and marked.

6. P.W.1 - Nallammal / mother of the deceased, in her evidence, had deposed that she is residing at Samathuvapuram First Street, Karumandapam, Trichy and she has three children, namely, Aasaithambi, Karunanidhi/ P.Ws.9 and 10 and Kavitha (deceased). About fifteen years prior to the date of deposition, she had given her daughter - Kavitha (deceased) in marriage to the appellant / accused and they were blessed with five children (two sons and three daughters). However, they were leading a happy married life only for two years and thereafter, difference of opinion had arisen between them. Further, she had deposed that on 02.12.2014, at about 12.00 noon, when she was sitting in a cot in her house and her daughter - deceased was preparing meals in kitchen, the appellant / accused came there and asked her about the deceased and punched on the back of P.W.1 with hands and pushed her down from the cot. By proclaiming that he will not leave that place without killing her daughter and holding a knife in his hand, the appellant / accused went inside the kitchen and stabbed the deceased with the knife on her chest, stomach and left side of the hip. When P.W.1 pulled the accused by holding his shirt, he pushed her and ran away with the blood stained knife dripping with blood. On hearing the noise, the neighbours came to the place of occurrence. Subsequently, on receipt of information, 108 ambulance came to the place of occurrence. However since her daughter had died, they refused to take the deceased. Thereafter, she took the deceased to the Government Hospital, wherein the Doctor declared that the deceased was brought dead. Thereafter, she went to the Police Station and lodged a complaint to take action against the appellant/ accused. She had accepted



the left thumb impression found in the complaint / Ex.P1. Then, she produced the blood stained rose colour blouse / M.O.1 worn by the deceased at the time of occurrence to the Police, they received the same under Form-95, wherein she had signed. She had also identified the knife / M.O.2 shown in the Court by which the appellant / accused had stabbed the deceased and ran away. Since the appellant / accused had pushed P.W.1 down, she suffered pain and therefore, she took treatment in Government Hospital, Trichy, wherein, the Doctors advised P.W.1 to take treatment as inpatient. However, since the funeral rituals of the deceased were to be conducted, P.W.1 was not inclined to take treatment as inpatient and got discharged from the Hospital.

7. Since P.Ws.2, 3, 4, 6, 7, 12, 13, 14 and 22 had not supported the case of the prosecution, they had been treated as hostile witnesses. P.W.5 - Rajeshkumar, Village Administrative Officer, had deposed in his evidence that the appellant / accused was arrested, in his presence, by the Investigation Officer and M.O.2/ blood stained knife, M.O.3/ shirt and M.O.4/ pant were seized from the appellant/ accused under Ex.P5 - Mahazar. P.W.8 - Soosaiammal @ Mary, in her evidence, had deposed that on 02.12.2014, at about 12.00 noon, there was a quarrel between the appellant/ accused and the deceased in the house of P.W.1 and when she had gone there, she saw the appellant / accused coming with the blood stained knife dripping with blood and when she had seen the deceased lying near the door. P.W.9 - Aasaithambi/ brother of the deceased, in his evidence, had deposed about the signing as a witness to the seizure mahazar / Ex.P8 for the seizure of M.O.5 / blood stained cement mortar piece, M.O.6/ sample cement mortar piece and M.O.7 / one pair of chappal. P.W.10 - Karunanidhi / brother of the deceased, in his evidence, had deposed about seeing the deceased in the Hospital. P.W.11 - Malairaja, who was an Auto Driver, in his evidence, had deposed that at about 11.00 a.m., he heard some noise and reached the place of occurrence with Auto and he was called by P.W.1 to take the victim / Kavitha to the hospital. Initially he had refused, thereafter, on compulsion he had taken the victim / Kavitha and two others, and dropped them at the hospital and gone away. During his cross-examination, P.W.11 had admitted that 108 Ambulance had come between 11.00 a.m., and 12.00 noon and that he had also stated that Police personnel were present at the scene of occurrence.

8. P.W.15 - Dr.Saravanan, in his evidence, had deposed about conducting of postmortem and finding out the following injuries on the dead body:

1. Oblique stab injury 3 cm x 0.5 cm x 11.4 cm on left side of abdomen 5 cm left from the midline. Its lower end was sharp and on left side. Its upper end was blunt and on right side. The

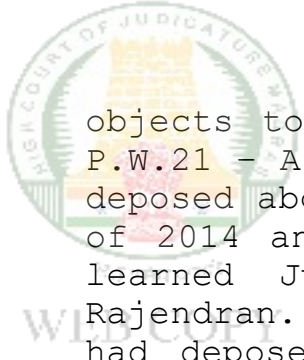


margins were regular and gaping. The injury further penetrated the front of right lobe of liver and produced perforated injury. Dark red fluid and clotted blood 980 ml in abdominal cavity. On cross section liver was pale;

2. Oblique stab injury 3 x 0.5 x 8.4 cm on outer aspect of lower part of left breast, 13 cm left to midline. Its lower end was sharp and right side. Its upper end was blunt and on left side. The margins were regular and gaping. Complete cut fracture of (L) 5th cartilage with underlying perforated stab injury front of (R) ventricle of heart. On cross section of heart all the chambers empty. Both lungs intact, shrunken and on cross section found pale.
3. Oblique stab injury 3 x 0.5 x 5.8 cm on outer aspect of left hip 6 cm below to the (L) anterior, superior iliac spine. Its direction was upwards and to the right.
4. Oblique gapping cut injury 2 x 0.5 x 0.2 cm on left side of abdomen on its lower part. Its head end was on left and tail end was on right. Its lower end was on right and upper end was on left.

After completion of postmortem, P.W.15 had issued postmortem report / Ex.P10 and after verifying the viscera report / Ex.P11, he had issued final opinion / Ex.P12 opining that the deceased appears to have died of shock and haemorrhage due to multiple injuries.

9. P.W.16 - Arumugam, Head Constable, in his evidence, had deposed about the handing over of a sealed box containing the material objects involved in the present case to the Forensic Science Lab at Trichy. P.W.17 - Rajendran, Head Constable, in his evidence, had deposed about the handing over of Express F.I.R., to the learned Judicial Magistrate No.II, Trichy. P.W.18 - Sornambigai, Constable, in her evidence, had deposed about the seizure of M.Os.8, 9 and 10, namely, blue colour saree, blue colour jacket and in-skirt respectively from the dead body and handing over of the same to the Investigation Officer under Form-95 / Ex.P13, handing over of the dead body in the Mortuary, Government Hospital, Trichy, handing over of the viscera of the deceased in the Forensic Science Lab, Trichy, and handing over of the body to the relatives after postmortem. P.W.19 - Dr.Kalpana, in her evidence, had deposed about the treatment given to P.W.1 and also about issuance of Ex.P14 / Accident Register to her. P.W.20 - Scientific Officer, in her evidence, had deposed about the examination of material objects, issuance of Ex.P15 / Serological / Biological Report and forwarding the material



objects to the Forensic Science Lab, Chennai, for grouping test. P.W.21 - Azhagammal, Sub-Inspector of Police, in her evidence, had deposed about the registration of F.I.R. / Ex.P20 in Crime No.1099 of 2014 and forwarding the complaint / Ex.P1 and F.I.R., to the learned Judicial Magistrate No.II, Trichy, through P.W.17 - Rajendran. P.W.23 - Sheela / Inspector of Police, in her evidence, had deposed about the investigation and inspection conducted by her at the occurrence place on 02.12.2014 in the presence of P.Ws.7 and 9, preparation of Exs.P9 and P21, namely, observation mahazar and rough sketch respectively, seizure of M.Os.5 and 6 sample cement mortar piece and sample cement mortar piece from the occurrence place under Ex.P8/ mahazar, forwarding of the seized material objects to the Court along with Ex.P22 - Form-95, inquest conducted by her in the dead body in the presence of Panchayatars at the Government Hospital and preparation of Ex.P23 - Inquest Report. P.W.24 - Umashankar / Inspector of Police, in his evidence, had deposed about the verification of the investigation conducted by P.W.23, examination of the Postmortem Doctor, P.W.20 / Jaya, Scientific Officer, P.W.19/ Kalpana, who gave treatment to P.W.1, alteration of the case into Sections 323 and 302 I.P.C., and filing of final report before the Court concerned.

10. After examining the prosecution witnesses, when the incriminating materials and circumstances were put to the appellant / accused, under Section 313 Cr.P.C., he had denied the evidence of the prosecution side as false and on his side one Dr.Rajalakshmi was examined as D.W.1 and xerox copies of seizure mahazar for M.O.2 and accident register of the deceased were marked as Exs.D1 and D2.

11. D.W.1-Dr.Rajalakshmi, in her evidence, had deposed about sending the dead body to mortuary for postmortem and issuance of Ex.D2 / Accident Register.

12. After hearing both sides and perusing the oral and documentary evidence adduced, the learned Trial Judge, by Judgment dated 26.09.2016, found the appellant / accused guilty for the offence under Sections 323 and 302 I.P.C., and convicted and sentenced him as stated above. Challenging the said conviction and sentence, the appellant / accused has preferred the present criminal appeal.

13. Heard the arguments of Mr.M.R.R.Siva Subramanian, learned counsel appearing for the appellant / accused and Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the State.

14. The learned counsel for the appellant / accused contended that the prosecution has failed to prove its case beyond all reasonable doubts against the appellant / accused, since there are several contradictions between the evidence of P.W.1 before Court and her statements given to the Police at the time of



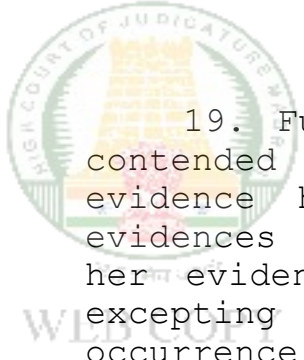
investigation, making her evidence tainted with doubts and suspicion, which is fatal to the prosecution case.

15. Further, the learned counsel for the appellant/ accused contended that the evidence of P.W.1 is contrary to the evidence of P.W.21, who registered the case. P.W.21 had deposed that P.W.1 brought the written complaint along with her when she came to the Station whereas, P.W.1 had deposed that she gave oral complaint and somebody had written the same and that she was not aware of the contents of the complaint, thereby creating a doubt with regard to the origin of the complaint/ Ex.P1 making out an inference that an earlier complaint had been given and that it was suppressed.

16. The learned counsel for the appellant / accused further contended that the evidence of P.W.1 is contrary to the evidence of P.W.4 with regard to the time of complaint. P.W.4 had deposed that immediately after the occurrence within half an hour, Police came to the occurrence place and prepared observation mahazar. It was also supported by P.W.11 / Auto Driver, who had spoken about the presence of the Police at the scene of occurrence when he had taken the deceased in the Auto Rickshaw to the hospital. Further, the counsel for the appellant / accused contended that P.W.10, who is one of the brothers of the deceased had deposed that at about 12.30 hours, when he went to the hospital, the Police were present there and when such being the position, the complaint could have been given earlier and not given at 13.45 hours as deposed by the witnesses and thereby, this aspect creates doubt regarding the genuineness of the complaint and registration of F.I.R.

17. Further, the learned counsel for the appellant/ accused contended that there had been an inordinate delay in the F.I.R., reaching the Court. Though F.I.R., was stated to be registered at 13.45 hours, it has reached the Court only at 17.15 hours and that the inordinate delay of about four hours in sending the F.I.R., to the Court which was nearer to the police station is fatal to the prosecution case, that when especially no explanation has been given by the Police with regard to the delay. There is every possibility of the prosecution concocting the F.I.R.

18. The learned counsel for the appellant / accused further contended that there are lot of contradictions in the evidence of P.W.1 and P.W.23 since P.W.1 had not specifically stated as to where and when the appellant / accused stabbed the deceased and the specific time was also not mentioned and that in such circumstances the Trial Court ought not to have believed the evidence of the prosecution with regard to the recovery and confession, since M.O.2 / knife was recovered by the Police from an open place and therefore, reliance cannot be placed in respect of evidence concerning arrest, recovery and confession.



19. Further, the learned counsel for the appellant/ accused contended that P.W.1 is the sole eye-witness and when her evidence had not been corroborated by cogent and convincing evidences of independent witnesses reliance cannot be placed on her evidence to convict the appellant/ accused. Furthermore, excepting P.W.1, no other witness is alleged to have seen the occurrence and in such circumstances, it is highly unsafe to convict the appellant / accused based on the sole uncorroborated testimony of P.W.1, who is totally inimical in terms with the appellant / accused. P.Ws.2, 3, 4, 6, 7 and 8 being neighbours of P.W.1 have not supported the case of the prosecution and thereby, the conviction based on the evidence of P.W.1 is not proper. As per the evidence of P.W.1 / mother of the deceased, she had deposed in chief that while she was sitting in a cot in the house, the appellant / accused entered into the house of P.W.1 and abused and assaulted her and entered into the kitchen and stabbed the deceased with knife and went out of the place of occurrence and that after hearing the cry of P.W.1, the neighbours entered the house and called the 108 Ambulance and the Ambulance came there and having found the victim dead, they had refused to take the body and thereafter, with the help of P.W.11 / Auto Driver, the deceased was taken to the hospital, where she was declared dead. Though P.W.1, in her chief-examination, had deposed that she had submitted a written complaint, during cross-examination, she had deposed that she has no knowledge of what was written in the complaint. Further, she had deposed that the complaint was recorded by the Police at the hospital and that she did not know the contents of Ex.P1. Ex.P20 - F.I.R., was registered at about 13.45 hours and the same had reached the Court at 05.15 p.m., delay of about four hours. Though the Court is situated just opposite to the Police Station, there had been inordinate delay in the F.I.R., reaching the Court. Moreover, as per the evidence of P.W.1, P.Ws.2 to 4 were present at the time of occurrence, whereas they have turned hostile and not supported the case of the prosecution. Further, in respect of the evidence of P.W.5 / Rajeshkumar, the case of the prosecution is doubtful inasmuch as he has not stated anything about the appellant / accused being identified to him and that he was not aware of the person, who recorded the confession. Further, P.Ws.6 and 7, who are stated to be the neighbours of P.W.1 have turned hostile and they have not supported the prosecution case.

20. Further, the learned counsel for the appellant submitted that as per the evidence of P.W.11 / an independent witness, the 108 Ambulance had come between 11.00 a.m., and 12.00 noon and that the Police were present at the scene of occurrence, thereby inferring that the alleged occurrence had not happened at the time and manner as alleged by the prosecution witnesses, whereas the

<https://hccasecourts.com/hccases/> examined witnesses in a manner to suit their convenience.



21. The learned counsel for the appellant further contended that taking into consideration the evidence of the witnesses in entirety, it creates a doubt with respect to the time of occurrence and thereby creating a strong impression that the complaint was subsequently made ready and concocted to suit the convenience of the prosecution. P.W.21 / S.I. of Police had deposed that the Police got the knowledge of the crime only after Ex.P1 came into existence, whereas P.W.11 / an independent witnesses, had deposed that the Police were available at the place of occurrence by 11.00 a.m., itself and further, there is absolutely, no clear cut evidence with regard to the recording of Ex.P1 / complaint and no particulars have been stated by the prosecution about the person, who wrote the complaint and where it was written.

22. The learned counsel for the appellant / accused further contended that the motive for the occurrence is stated to be a matrimonial dispute and that the victim had left her husband and children and she was living with her mother and if that be so, none of the children have been examined to prove the motive for the occurrence and thereby the non-examination of the children creates grave suspicion with regard to the motive projected by the prosecution making the case of the prosecution doubtful. To sum up his arguments, the learned counsel for the appellant / accused contended that when the case of the prosecution being tainted with several material discrepancies and contradictions, the Trial Court ought not to have convicted the appellant / accused based on the solitary testimony of P.W.1, who is the mother of the deceased and interested in the prosecution case and inimical to the appellant / accused and prayed for allowing the appeal and set aside the order of conviction.

23. Further, while completing his arguments, the learned counsel for the appellant / accused contended that as an alternate plea he would submit that it is a case where the appellant / accused was deserted by his wife / deceased leaving five minor children with him and that she did not bother about the minor children, thereby the appellant / accused was having a sustained provocation against his wife / deceased and that he had come to the house of P.W.1 on the birth day of his wife / deceased with an intention and hope of taking her back to the matrimonial home and admittedly, there was a quarrel as spoken by P.W.8 and inasmuch as no evidence has been let in by the prosecution to show that the appellant / accused had carried the knife with an intention to cause death and that out of frustration and sudden provocation, which ensued in the quarrel, there is a chance that the appellant / accused could have inflicted the injuries on her by the knife from the kitchen where the deceased was engaged in cooking and that there was no premeditation or intention to cause the death of the deceased and prayed for a lesser sentence taking



into consideration the mitigating circumstances that the five minor children are abandoned without their father and mother.

24. The learned Additional Public Prosecutor contended that the prosecution had examined 24 witnesses and out of them P.W.1 / mother of the deceased had deposed that on the fateful day, when she was in her house, at about 12.00 noon, the appellant / accused entered into her house and assaulted her on the back and pushed her down went inside the kitchen and stabbed the deceased with knife and since PW1 raised alarm the appellant ran away. The evidence of P.W.15/ Postmortem Doctor also corroborated the evidence of P.W.1 with regard to the injuries sustained by the deceased and as such, the medical evidence corroborated with the evidence of ocular witness / P.W.1.

25. Further, the learned Additional Public Prosecutor contended that the prosecution has proved the arrest, confession and recovery of weapon from the appellant/ accused through the evidence of P.W.5 and therefore, the recovery of weapon being one under Section 27 of the Act corroborates the evidence of P.W.1 and Medical evidence that M.O.2 was used in the occurrence and it was used by the appellant / accused for committing the offence.

26. The learned Additional Public Prosecutor further contended that the scientific report relating to blood grouping also corroborates the evidence of P.W.1 and the blood group in M.Os.2, 3 and 4/ knife, shirt and pant worn by the appellant / accused contains 'O' group human blood, which tallied with the blood group of the deceased.

27. The learned Additional Public Prosecutor further contended that though P.W.2 did not support the prosecution case, the nighty worn by P.W.2 was recovered by the Police, since there were blood stains in her nighty when she lifted the injured and the blood group in the nighty also tallies with that of the deceased. Furthermore, though P.Ws.2 to 4 have been treated as hostile, P.Ws.3 and 4 had admitted their signatures in the seizure mahazar for the recovery of M.O.11 / blood stained nighty worn by P.W.2 while she had attempted to lift the deceased. So the presence of P.W.2 cannot be totally disbelieved. P.W.4 though treated as hostile, she has corroborated the evidence of P.W.8 with regard to the aspect of seeing the accused while he was getting away from the house of P.W.1 holding M.O.2-blood stained knife dripping with blood and thereby, their evidence cannot be rejected in toto, since the evidence of P.Ws.4 and 8 confirms the presence of the appellant / accused at the scene of occurrence.

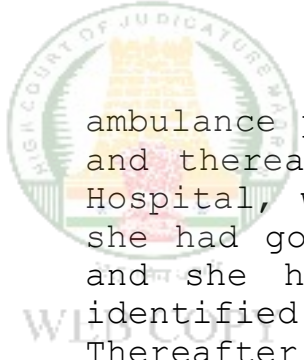
28. Further, the learned Additional Public Prosecutor contended that it is a settled principle that conviction can be based on the single witness if it is found to be trustworthy and inspires confidence of the Court and that no one else other than



P.W.1 can be expected to be in her house so as to speak about the occurrence and in this case, the evidence of P.W.1, who is an injured witness, is trustworthy, believable and inspires confidence. The learned Additional Public Prosecutor further contended that though there is some delay in respect of the first information report reaching the Court, the evidence of P.W.1 is cogent and convincing regarding the involvement of the appellant / accused in the occurrence and thereby, the delay in sending F.I.R., to the Court cannot be treated as fatal to the prosecution case, inasmuch as nothing has been elicited by the defence to prove that by such a delay, the prosecution has concocted and foisted a false case on the appellant/ accused.

29. The learned Additional Public Prosecutor further submitted that the prosecution had categorically proved the case beyond all reasonable doubts and that the appellant/ accused had entered into the house of P.W.1 and assaulted and pushed P.W.1 causing injury to her and thereafter, committed the murder of the victim / Kavitha by stabbing her with knife and that she was taken to the Hospital, where she had been declared brought dead and the evidence of the Doctor / P.W.15, who conducted postmortem and the injuries on the victim tallied with M.O.2 / knife seized based on the confession of the appellant / accused and that P.W.1 being an injured witness had also taken treatment in the hospital her evidence cannot be disbelieved. Further, P.W.8 in her evidence in chief, had deposed that she had seen the appellant / accused getting away from the house holding M.O.2/blood stained knife dripping with blood and that when she had gone to the house of P.W.1, she had seen the victim lying dead. P.W.1 being an illiterate and rustic lady could not be expected to say the accurate time and the conduct of the witnesses. The manner in which the victim was taken to the hospital and the complaint given to the Police seem to be very natural and cogent thereby, there is no reason for disbelieving the case of the prosecution.

30. We have heard the learned counsels and carefully perused the Judgment of the Trial Court and the materials placed on record. Out of the 24 witnesses examined on the side of the prosecution, P.Ws.1 and 2 were projected as eye-witnesses. P.W.1 had categorically stated that at 12.00 noon, while she was sitting in a cot and her daughter was cooking inside the kitchen, the appellant / accused had entered into the house, abused her and asked for her daughter and had beaten her with hands on the back and pushed her and proclaiming that today is her daughter's birthday and he will not leave without killing her and went inside the kitchen with the knife and stabbed the victim on her chest, stomach and left side hip and when P.W.1 had attempted to catch him by holding his shirt, the appellant / accused had pushed her down and ran away from the place with the blood stained knife dripping with blood. Thereafter, P.W.1 had raised her voice and the neighbours came there and they called the ambulance and the

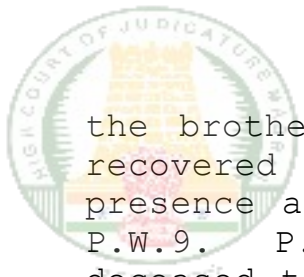


ambulance people having found the victim dead refused to take her and thereafter, the victim was taken in an Auto Rickshaw to the Hospital, where the victim was declared brought dead. Thereafter, she had gone to the Police Station and given a complaint / Ex.P1 and she had identified the light pink colour blouse and also identified the knife / M.O.2 used by the appellant / accused. Thereafter, she had gone to the Government Hospital for treatment, wherein though she was admitted as an inpatient, she got discharged since she wanted to proceed for the final rites of her daughter. Though P.W.1 had been subjected to a lengthy cross-examination by the counsel for the appellant / accused, no material has been elicited to discredit the evidence of P.W.1.

31. P.Ws.2, 3, 4, 6, 7, and 22, who are neighbours of P.W.1, turned hostile. However, P.W.8, one of the neighbours of P.W.1 had stated that she knows the appellant / accused and that she had seen him around 12.00 noon going opposite to her with the blood stained knife dripping with blood. It is quite natural that the neighbours may not support the prosecution case in a case of murder, but, the evidence of P.W.8 is clear that she heard the noise of P.W.1 from her house and that she had seen the appellant / accused getting away holding M.O.2- blood stained knife dripping with blood. Further, though P.W.4 had been treated hostile, she had deposed about seeing the appellant / accused near the house of P.W.1 getting away with the blood stained knife dripping with blood. Though she has not supported the prosecution case in full, her evidence in respect of seeing the appellant / accused near the place of occurrence and leaving the house of P.W.1 with blood stained knife corroborates the evidence of P.W.1. The evidence of P.Ws.4 and 8 seeing the appellant / accused getting away from the house of P.W.1 with the blood stained knife, dripping with blood, satisfies the rules of res gestae.

32. The prosecution case is that when P.W.1 was sitting in a cot in her house, the appellant/ accused entered into the house and enquired about her daughter - Kavitha and beaten P.W.1 on her back with hands and pushed her down and entered into the kitchen, where her daughter was cooking, and stabbed her with the knife on the left side of the chest, abdomen and hip. The said injuries were corroborated through the evidence of P.W.15 - Doctor, who conducted postmortem, who had deposed that there were four stab injuries on the dead body. Further, immediately after the occurrence, P.W.1 had taken her injured daughter to the Hospital, wherein she was declared dead. When a person is in panic, she cannot be expected to give all the particulars in the complaint.

33. P.W.8 had deposed that immediately prior to the occurrence, there was quarrel between the deceased and the appellant/ accused and thereby, the evidence of P.W.8 also corroborates the evidence of P.W.1 in respect of the presence of the appellant / accused at the scene of occurrence. P.W.9, who is

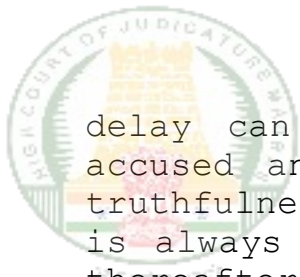


the brother of the deceased, had deposed that M.Os.5 to 7 were recovered by the Police from the scene of occurrence in his presence and that recovery of M.Os.5 to 7 proves the evidence of P.W.9. P.W.11 / Auto Driver had spoken about having taken the deceased to the hospital in his Auto and his evidence would prove that the occurrence took place inside the house of P.W.1 and that after the occurrence, he had taken the deceased to the hospital in his Auto.

34. P.W.15 / Doctor, who had conducted autopsy over the dead body, in his evidence, had deposed that the injury No.1 is a stab injury on the left side of the abdomen, injury No.2 is a stab injury on the left side chest and the injury No.3 is a stab injury on the left side hip. The evidence of P.W.15 also corroborates the evidence of P.W.1 regarding the overtact and the number of injuries found on the dead body. P.W.15 had also deposed that the injuries found on the deceased could have been caused by M.O.2 / knife. The evidence of P.Ws.1, 4, 5 and 15 clearly establishes that the occurrence took place inside the house of P.W.1 and the accused had stabbed the deceased with M.O.2 / knife, on her left side chest, left side abdomen and left side hip. P.W.5 / V.A.O., had deposed about the arrest of the appellant / accused in his presence and the recovery of M.Os.3 and 4 / shirt and pant from the appellant/ accused under Ex.P5 / seizure mahazar. He had also deposed that M.O.2 / knife was recovered from a hidden place on the confession of the appellant / accused and that the recovery had been proved through the evidence of P.W.5. Further, the sample of blood of the deceased matched with the blood stains detected in M.O.2 / knife, M.O.3 / shirt, M.O.4 / pant, M.O.5/ blood stained cement mortar piece, M.O.7 / pair of chappal, M.O.8 / saree, M.O.9 / blouse and M.O.10 / inskirt. Further, human "O" group blood was detected in M.Os.8 and 9/ saree and blouse worn by the deceased and thereby, the blood group of the deceased tallied with the blood group in the material objects. After completion of postmortem, P.W.15 had issued postmortem report / Ex.P10 and after verifying the viscera report / Ex.P11, he had issued final opinion / Ex.P12 opining that the deceased appears to have died of shock and haemorrhage due to multiple injuries.

35. Though a suggestion had been put to the witness with regard to the illicit intimacy, which the deceased stated to have developed with one Mosaic Murugan, no material has been elicited from any of the witnesses to prove the same.

36. Now, coming to the aspect of delay, the Hon'ble Apex Court in a recent decision in Mukesh vs. State (NCT of Delhi), reported in (2017) 6 SCC 1, has held that Courts normally view delay with suspicion, because there is possibility of concoction of evidence against the accused. Whether delay throws such suspicion depends upon a variety of factors. Even a long



delay can be condoned, if there is no motive for implicating accused and a prompt F.I.R. need not necessarily guarantee its truthfulness, only a commonsense view has to be taken. Endeavour is always to take the injured person to hospital immediately and thereafter, report the incident to the Police.

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37. In this case also, we feel that the delay is not that vast so as to create a doubt regarding the prosecution case. It is seen from the deposition of the witnesses that steps had been taken to move the victim to the hospital immediately. And nothing material had been elicited from the witnesses to prove that by the delay the prosecution had concocted the case against the appellant / accused. Admittedly, though D.W.1-Dr.Rajalakshmi had been examined and Ex.D2 has been marked through her on the side of the defence, to discredit the evidence of P.W.1 with regard to the time of occurrence, nothing worthwhile has been elicited from her evidence, whereas the evidence of D.W.1 and Ex.D2 supported the prosecution case with regard to the time, the number of injuries sustained by the deceased and the weapon used.

38. In view of the above discussions, we find no ground to disbelieve the case of the prosecution and we are of the view that the appellant / accused had caused the murder of the deceased Kavitha and the prosecution has proved its case beyond all reasonable doubts by the above evidence.

39. Having come to the above said conclusion, now, taking into consideration the alternate plea of the appellant / accused, the questions which lie before us are (i) What is the offence committed by the appellant / accused by his act, and (ii) Whether the act of the appellant / accused would fall within the Exception to Section 300 I.P.C., or not.

40. With regard to the above questions, while analyzing the facts and evidence in support of the case on hand, it is the categorical evidence of P.W.1 that the appellant / accused had come to her house with the soori knife with an intention to murder the deceased and that he had questioned P.W.1 where her daughter was and that he had proclaimed that he will not leave the house without killing her daughter and by saying so, he had entered into the kitchen and caused repeated stab injuries on the deceased. The act of the appellant / accused entering the house of P.W.1 with the soori knife, a weapon, proves the intention of the appellant / accused to cause the death of the deceased. It is not a case of a single stab injury, whereas it is a case where repeated stab injuries which are grievous in nature have been inflicted on the vital parts of the deceased. It is clearly not a case which falls within the parameters of the exception clause to Section 300 I.P.C. The prosecution has proved its case by cogent and convincing evidence beyond all reasonable doubts.



41. In the result, the criminal appeal is dismissed and the conviction and sentence imposed by the Trial Court are confirmed.

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Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To:

1. The Principal Sessions Judge,
Trichirappalli.
 2. The Judicial Magistrate No. II,
Karur.
 3. The Chief Judicial Magistrate, Karur.
 4. The Superintendent, Central Prison,
Trichy.
 5. The Inspector of Police,
Cantonment Police Station,
Tiruchirappalli.
 6. The District Collector, Trichy.
 7. The Director General of Police, Mylapore, Chennai-9.
 8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 9. The Section Officer,
(Criminal Section Record),
Madurai Bench of Madras High Court, Madurai.
- +1cc to M/S.T.A.EBENEZAR, Advocate SR.No. 92528

JUDGMENT

IN

Crl.A. (MD) No. 416 of 2016

13.12.2017

KRK/GR

JM/MR KKR/SAR 1/18.12.2017/15P/11C