

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.A.No.278/2017

Josiyakara Murugesan @ Murugesan

..

Appellant /
Accused

Vs.

State rep. by,
The Inspector of Police
Mettur Police Station
Salem District.

..

Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code calling for the records in connection with judgment dated 15.04.2016 in SC.No.215/2014 on the file of the learned III Additional Sessions Judge, Salem and set aside the same and acquit the appellant from the charge level against him.

For Appellant : Mr.H.Maruthiraj

For Respondent : Mr.V.Arul, APP

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant is arrayed as the sole accused, in the case tried in SC.No.218/2014 on the file of the Court of III Additional District and Sessions Judge, Salem, for offences u/s.436, 449, 302 and 506[ii] IPC. The Trial Court, under impugned Judgment dated 15.04.2016, found the appellant / accused guilty of the above said offences and awarded sentence, as follows:-

<i>Rank of the Accused</i>	<i>Conviction under section</i>	<i>Sentence Awarded</i>
Sole Accused	436 IPC	To undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- with a default sentence of 6 months simple imprisonment.
	449 IPC	To undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- with a default sentence of 6 months simple imprisonment.
	302 IPC	To undergo imprisonment for life and to pay a fine of Rs.1000/- each, with a default sentence of 6 months simple imprisonment.
	506[ii] IPC	To undergo 3 years rigorous imprisonment and to pay a fine of Rs.500/- with a default sentence of 6 months simple imprisonment.

The sentences were ordered to run concurrently. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/accused.

2 The brief facts of the prosecution case, are as follows:-

[a] The deceased **Munichetty** was a resident of Ramnagar, Mettur. He was doing "**Awning Business**" [ge;jy; bjhHpy;]. **P.W.1-Dhandapani** is his son. P.W.1 also used to help his father/deceased during weekends. The appellant / accused **Josiyakara Murugesan @ Murugesan** worked with the deceased for 10 to 15 years and he is a drunkard and used to demand money from the deceased frequently. Due to this character of the appellant / accused, the deceased sacked him from the work. Even after dismissal from work, the appellant / accused used to go to the deceased and demand money.

[b] On **14.03.2012** at about **4.00 p.m.**, while P.W.1 and the deceased were having a talk, the appellant / accused came and demanded money from the deceased. Refusing to accede the demand made by the appellant / accused, P.W.1 and deceased scolded the appellant / accused and drove away him from that place. The appellant / accused, thereafter went towards the Godown of P.W.1. Five minutes thereafter, P.W.1 heard a sound from the Godown. When

P.W.1 went to terrace to see as to what had happened, he saw a fire had engulfed in the Godown. When P.W.1 came down to go to the Godown, he saw the appellant / accused pushing his father down from the cot and stabbed him with the **knife [M.O.1]** repeatedly. **P.W.2-** Pugazhenth, **P.W.3-**Prasannakumar, **P.W.4-**Arumugam, Annapoorani and Annadurai were present at that time and they also witnessed the appellant / accused repeatedly stabbing the deceased with knife. On seeing P.Ws.1 to 4 and others, the appellant / accused threatened them with dire consequences and thereafter, left the scene of crime. Thereafter, P.W.1 took his father in an Ambulance to the hospital, where the doctor declared him dead. Immediately, P.W.1 left for police station and lodged the complaint under **Ex.P.1** with P.W.16-Kesavan, Inspector of Police.

[c] P.Ws.5 to 8 had deposed about their seeing of the Godown of P.W.1 and their respective houses were destroyed in the fire. **P.W.10-Manickam**, Fireman attached to Mettur Thermal Fire Service Station had deposed the receipt of information about the engulfing of fire in the houses of P.Ws.5 to 8 and the "Pandhal Nilayam" run by the deceased and about the extinguishing of the same.

to Mettur Police Station, on receipt of Ex.P.1 from P.W.1 on 14.03.2012 at about 6.00 p.m., registered the crime in **Cr.No.119/2012** u/s.436, 302 IPC. The **Printed FIR** is marked as **Ex.P.12**. He despatched the originals of Ex.P.1 and Ex.P.12 to the jurisdictional Court. He took the case for investigation and at about 7.45 p.m., he arrested the appellant / accused near Kamarajar Statue at Mettur Chinnapark in the presence of **P.W.11-Kalaiyarasan, VAO** and Seenivasan and recorded the voluntary confession statement of the appellant / accused, the admissible portion of which is marked as **Ex.P.6**. In pursuant to the same, the Investigating Officer seized **M.O.7-Match Box** under **Ex.P.7-Seizure Mahazar ; M.O.1-Sooriknife** under **Ex.P.8-Seizure Mahazar**. He also seized **M.O.8-Kerosene Stove** under **Ex.P.9-Seizure Mahazar**. The appellant / accused was sent for judicial remand. He seized **blood stained shirt – M.O.14** from the appellant / accused under **Ex.P.13-Form 95**. P.W.16, on 15.03.2012, went to the place of occurrence at about 06.30 a.m. and prepared the **Observation Mahazar [Ex.P.2]** and **Rough Sketch [Ex.P.14]** in the presence of P.W.3 and one Arivazhagan @ Kumar. He also seized burnt wooden log **[M.O.3]** and ashes **[M.O.4]** under **Ex.P.3**. On the same day, he went to the place where the deceased was done to death and prepared the **Observation Mahazar [Ex.P.4]** and **Rough Sketch [Ex.P.15]**. He seized the blood-stained cot **[M.O.2]** ; blood-stained

earth **[M.O.5]** ; sample earth **[M.O.6]** under **Ex.P.5**. He went to the Government Hospital, Mettur and held inquest on the dead body of the deceased in the presence of the villagers and panchayatdars between 10.15 a.m. and 1.30 p.m. and prepared **Ex.P.16-Inquest Report**. He sent the body for postmortem along with a requisition under **Ex.P.17**.

He went to hospital on 28.04.2016 and held inquest on the body of the deceased between 9.00 a.m. and 11.00 a.m. in the presence of witnesses and Panchayatdars and prepared **Ex.P.21-Inquest Report**. He forwarded the dead body for postmortem.

[e] P.W.13-Dr.Subha, Assistant Surgeon attached to the Government Hospital, Mettur, on receipt of requisition, commenced the postmortem on 15.03.2012 at 13.05 hours and found the following injuries:-

“External Injuries:-

[1] *Stab injury present on the middle aspect of left nipple size about 5x2x1cm.*

[2] *Stab injury present between two nipples size 4x2x13cm.*

[3] *Stabe injury present on the lower aspect of sternum 3x1x15cm.*

[4] *A stab injury present on right hypochondria below 12th rib size about 6x2x15cm. Intestine bulged through the injury.*

[5] *A stab injury 8 cm above lower side umbilical cord size 2x1/2x10cm.*

[6] *Stab injury 2x0.5x10cm in the lateral aspect of the above injury."*

Ex.P.10 is the **Postmortem Certificate** issued by him and the Viscera was preserved for Chemical Analysis. **Ex.P.11** is the **Viscera Report**, wherein it was observed that there was no detection of poison and that P.W.13 had opined that *"the deceased would appear to have died about 12-16 hours prior to autopsy ; due to shock and hemorrhage due to stab injury and injury to vital organs."*

[f] P.W.16, in continuation of investigation, also availed the services of **P.W.12-Seenivasan**-Photographer, who took photographs of the burnt houses. **M.O.9 series [9 nos]** is the photographs. Thereafter, P.W.12 went to Mortuary and took the photographs of the deceased, marked as **M.O.10 series [3 nos]**. **P.W.15-Constable**, handed over the dead body of the deceased to the relatives after postmortem ; he seized **M.Os.11 to 13 [Trouser, Dhoti and Full hand shirt]** and handed over the same to the police, who in turn, had sent all the material objects through Court to the Forensic Lab for Chemical Analysis. **Ex.P.21** is the Serology Report and

Ex.P.22 is the Biology Report. The Investigating Officer also sent

requisition to the Judicial Magistrate to record the statements of the witnesses u/s.164 Cr.P.C. He examined the witnesses, Medical Officers ; recorded their statements ; collected various documents relating to the case including the Medical Reports and on completion of investigation, filed the Final Report **u/s.436, 449, 302 and 506[ii] IPC** against the accused on 09.05.2012 before the learned Judicial Magistrate No.1, Mettur, who took it on file in PRC.No.20/2012 and issued summons to the accused and on his appearance, furnished him copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Salem u/s.209 Cr.P.C., who in turn had made over the case to the learned III Additional District and Sessions Judge, Salem, who took it on file in SC.No.216/2014 and on appearance of the appellant / accused, had framed the charges u/s.436, 449, 302 and 506[ii] IPC and questioned him. The appellant / accused pleaded not guilty to the charge framed against him.

[g] The prosecution examined P.Ws.1 to 16 and marked

Exs.P.1 to 23 besides marking M.O.1 to M.O.14.

[h] The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. No witness was examined and no documentary evidence was marked on the side of the appellant/accused.

[i] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellant/accused as above stated and hence, this appeal.

3 Mr.H.Maruthiraj, learned counsel for the appellant would submit that the eyewitnesses, viz., P.Ws.1 to 4, are interested witnesses and are closely related to the deceased and as such, their evidence cannot be relied upon. Admittedly, there was a fire incident near the place of occurrence and hence, the appellant / accused stabbing the deceased at the relevant point of time is highly improbable. Therefore, their evidence cannot be given credence and due weightage and prayed for allowing of this appeal.

Prosecutor submitted that P.Ws.1 to 3 are natural witnesses as they happened to be the son, grandson and son-in-law of the deceased and their presence in the house at the relevant point of time, cannot be doubted and their presence is natural and their evidence cannot be discarded, merely because they are relatives. P.W.4 is an independent eyewitness and he also worked with the deceased and his evidence also clearly prove the specific overt act of repeated stabbing by the appellant / accused on the deceased. The evidence of P.W.11-VAO and P.W.16-Investigating Officer also prove the seizure of M.O.1-Knife. The evidence of P.W.13-Doctor who conducted autopsy coupled with the medical evidence in the form of Ex.P.10-Postmortem Certificate clearly show that there are several stab injuries on the body of the deceased. The Serology Report proves the detection of human blood on the material objects and in fact, the knife and shirt of the appellant / accused also tainted with blood group "B" which tallies with the blood group of the deceased. Hence, the learned Additional Public Prosecutor submitted that the prosecution had proved the guilt of the appellant / accused beyond all reasonable doubt. The Trial Court has also taken into consideration the seizure of kerosene stove and match box and came to the conclusion that it was only the appellant / accused who had set fire to the Godown and resulted in the destruction of the neighbouring houses also. P.Ws.5 to 8, in their evidence, have also

spoken about the destruction of their respective houses and hence, submitted that the impugned judgment of the Trial Court warrants no interference at the hands of this Court and prayed for dismissal of the appeal.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, we have to analyse whether the prosecution was able to prove the charges against appellant/accused beyond all reasonable doubt?

7 The specific charge of the prosecution is that the appellant/accused was sacked by the deceased from work and agitated over the same, the appellant/accused frequently visited the deceased and demanded money. On 14.03.2012, at 4.00 p.m., the appellant/accused came there and demanded money. When deceased declined the same, the appellant/accused set fire to the Godown of P.W.1 and thereafter, trespassed into the house of the deceased and pulled the deceased from the cot and stabbed repeatedly with M.O.1-knife. The prosecution examined as many as 16 witnesses, exhibited

the eyewitnesses to the occurrence. P.W.1 is the son ; P.W.2 is the grandson and P.W.3 is the son-in-law of the deceased. P.W.4 is the employee of the deceased. P.Ws.1 to 4 in an unison voice had spoken about the occurrence. They have stated in their evidence about the repeated stabbing on the deceased by the appellant/accused with M.O.1 and the threatening meted out by them at the hands of the appellant/accused. Their entire evidence, when carefully analysed and scanned, reveals that there is no motive whatsoever for them to falsely implicate the appellant/accused. All the eyewitnesses without any inconsistency in their evidence, had clearly spoken about the specific overt act of the appellant/accused as to his entry in the house of the deceased and repeated stabbing on the deceased with M.O.1. The presence of P.Ws.1 to 3 in the house is very normal since the occurrence itself took place inside the house of the deceased. The presence of P.W.4 is also natural. In fact, he is not a relative of the deceased and he has no motive to implicate the appellant/accused in this case. P.W.4 in his evidence, has clearly spoken about the specific overt act of the appellant/accused stabbing the deceased 5 or 6 times. The evidence of P.W.13-Medical Officer and the Postmortem Certificate issued by her reveals the presence of six stab injuries over the chest and the body of the deceased.

8 P.W.16-Investigating Officer upon receipt of Ex.P.1 from P.W.1, registered the case at 6.00 p.m. on 14.03.2012 ; despatched the FIR to the Court concerned immediately and commenced the investigation at 7.45 p.m. itself. It is to be noted that the occurrence itself had taken place at 4.00 p.m. and after taking the deceased to the hospital, where he was declared dead, P.W.1, without any delay had approached the Police Station to lodge the complaint. On the same day, the Investigating Officer had arrested the accused in the presence of P.W.11-VAO and one Seenivasan and also seized M.Os.1, 7 and 8 and also seized the blood stained shirt worn by the appellant/accused [M.O.14] under Mahazars. The clothes worn by the deceased along with the material objects seized, were sent for chemical examination to the Forensic Lab. In Ex.P.21-Serology Report and Ex.P.22-Biology Report, except in the Plaster pieces and cot, presence of human blood was detected and it Group was "B". The knife-M.O.1 also contained human blood with Group "B". Similarly, the shirt seized by the Investigating Officer also contained human blood with "B" Group. These reports coupled with the evidence of P.Ws.1 to 4 and P.W.16-Investigating Officer, clinchingly establish the fact that it was the appellant/accused who had caused the stab injuries on the deceased.

injuries caused by the appellant/accused, it is to be noted that when the witnesses encounters such a drastic attack unexpectedly, one cannot expect them to give the minute details as to the number and nature of injuries caused by the assailant. Whereas, P.W.4 had clearly spoken about the number of injuries caused by the appellant/accused and the same tallies with the medical evidence, viz., the Postmortem Certificate – Ex.P.10. Merely because all the witnesses have not given the graphic details about the number of injuries, that itself cannot be a ground to disbelieve the evidence of P.Ws.1 to 4. Each witness has his/her own reaction on seeing the unexpected ghastly attack. Therefore, such minor discrepancy in the evidence of the eyewitnesses would not affect the entire prosecution case and on that ground, their evidence cannot be disbelieved. P.Ws.1 to 4 also have clearly spoken that when they tried to go near the deceased to save him, the appellant/accused threatened them by brandishing the knife [M.O.1] and thereafter, fled away from the scene of crime. When the assailant threatens the witnesses after causing serious injuries on the deceased, it is the normal conduct of the witnesses to desist themselves from going near the place. Therefore, that circumstance alone cannot be a ground to disbelieve the version of the eyewitnesses. Merely because P.Ws.1 to 3 are closely related to the deceased, their evidence cannot be discarded. Normally the relatives would be most reluctant to spare

the real assailant. The presence of the family members while the occurrence took place in the house of the deceased, is quite natural and their evidence cannot be jettisoned merely on the ground of interestedness. Therefore, on going through the evidence of P.Ws.1 to 4 ; P.W.11-Mahazar witness and P.W.16-Investigating Officer coupled with the seizure of the material objects, we are of the view that it was the appellant/accused who had caused severe stab injuries on the deceased, which resulted in his death. The medical evidence also corroborate the said fact. **Hence, we have no hesitation to hold that the appellant/accused is guilty of the offence u/s.302 IPC.**

9 Similarly, FIR prepared by the Investigating Officer at 6.00 p.m., reached the jurisdictional court on the same day at 7.00 p.m. and these facts would clearly establish that the prosecution version is true and there is no material even to have a slightest doubt in the prosecution case with regard to the charge of 302 IPC. Ex.P.4-Observation Mahazar prepared at the house of the deceased and the evidence of the Investigating Officer and the eyewitnesses clearly reveal that the occurrence took place in front of P.W.1's house below the asbestos shed/tent, where the deceased was sitting on the cot. The cot was also seized with blood stains and the same was detected as human blood with "B" group and this fact also shows that the

appellant/accused had in fact, trespassed into the house of the deceased to commit the murder. **Therefore, we hold that the ingredients of the offence u/s.449 IPC is also made out in this case as against the appellant/accused.**

10 Further, the evidence of P.Ws.1 to 4 also shows that the appellant/accused had threatened them with dire consequences by showing the knife [M.O.1]. **Hence, the ingredients of the offence u/s.506[ii] IPC is also attracted and is made out.**

11 As far as the charge u/s.436 IPC is concerned, though it is the contention of the prosecution that before causing stab injuries on the deceased, the appellant/accused had set fire to the Godown of P.W.1 which is situate near the house of the deceased and he is said to have destroyed the godown and also the neighboring houses of P.Ws.5 to 8. Though P.W.1, in his evidence has stated that the appellant/accused went towards Godown, he did not specifically state as to whether the appellant/accused was carrying any materials to set fire. In fact, P.W.1 did not see the accused setting fire to the Godown. So also the evidence of P.Ws.2 to 4 is silent about their witnessing the appellant/accused setting fire to the Godown. Though

spreading of fire from the Godown and the same was extinguished by P.W.9-Fireman, there was no direct eyewitness to substantiate the charge as to the appellant/accused setting fire on the Godown. Further, only P.W.1 had spoken about the appellant/accused setting fire ; but he did not speak about the appellant/accused carrying kerosene stove with him ; whereas the Investigating Officer allegedly seized kerosene stove from the appellant/accused as an incriminating material under Mahazar. When there is no evidence to show that the appellant/accused had carried the kerosene stove, such recovery appears to be an artificial one. Therefore, we are of the view that charge u/s.436 IPC cannot be inferred against the appellant/accused merely on the basis of such recovery alone, when the evidence of the witnesses is silent about the use of such material object by the appellant/accused at the relevant point of time. Therefore, we hold that the **prosecution has failed to prove the charge u/s.436 IPC.**

12 Therefore, we **set aside** the **conviction and sentence** imposed on the appellant/accused for the offence **u/s.436 IPC** and **maintain the conviction and sentence** awarded by the Trial Court for the offences **u/s.449, 302 and 506[ii] IPC.**

13 In the result, the criminal appeal is **dismissed with the**

above modification.

14 It is reported that the appellant / accused is in jail. He is directed to undergo the remaining period of sentence. The period of sentence already undergone by him, shall be given set-off u/s.428 Cr.P.C.

[CTSJ]

[NSKJ]

02.02.2018

Internet: Yes

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To

- 1.The III Additional District and Sessions Judge
Salem.
- 2.The Principal District and Sessions Judge
Salem.
- 3.The Judicial Magistrate No.1,
Mettur.
- 4.The Chief Judicial Magistrate,
Salem District.
- 5.The Inspector of Police
Mettur Police Station,
Salem District.
- 6.The District Collector
Salem District.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The Superintendent of Prison
Central Prison, Salem.
9. The Public Prosecutor,
High Court, Madras.



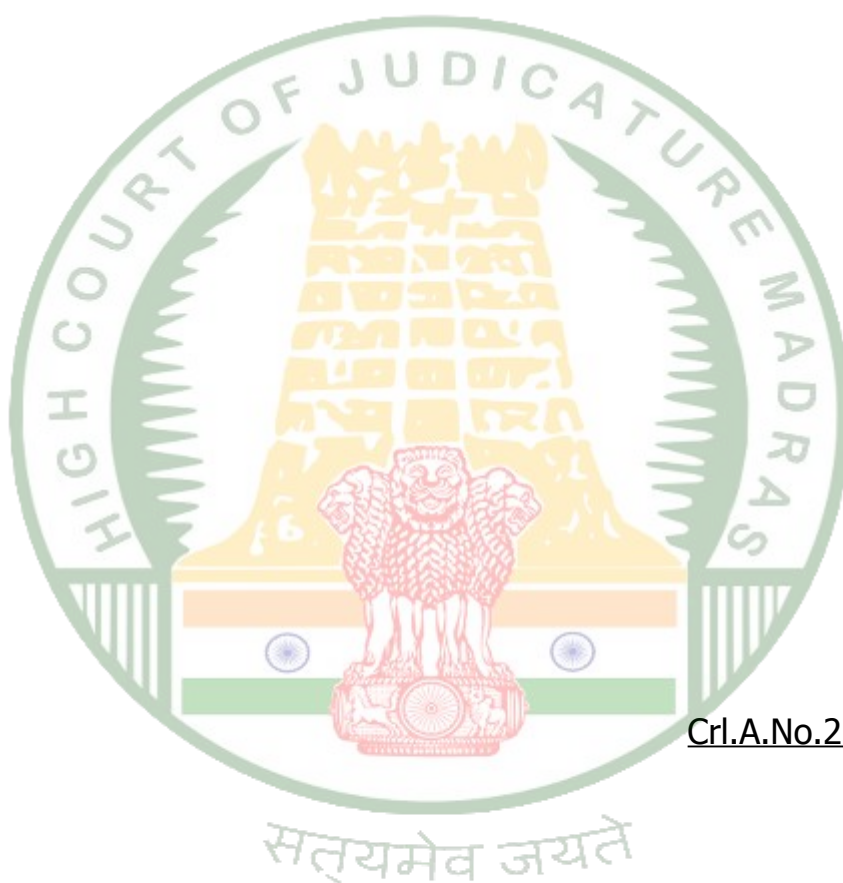
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C.T.SELVAM, J.,

AND

N.SATHISH KUMAR, J.,

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