

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

Reserved on : 08.12.2017

Pronounced on : 31-01-2018

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal (MD) Nos. 413 and 457 of 2016

and

Crl.M.P. Nos. 10639, 11846 and 11845 of 2016

Crl.M.P. No. 4271 of 2017

--

1. Sathish @ Sathishkumar

2. Selvakumar .. Appellants/Accused No.1&3
in Crl.A. No.413/16

1. Jeyapandi

2. Vignesh

3. Vivek

4. Saravanakumar .. Appellants/Accused Nos.2,4 to 6
in Crl.A. No.457/16

Versus

1. State represented by

The Assistant Commissioner of Police

Thallakulam Police Station

Madurai City.

2. The Inspector of Police

Sellur Police Station

Madurai District

<https://hcservices.ecourts.gov.in/hcservices/>
(Crime No.1135/2011)

.. Respondents/Complainants
in Crl.A.413/16



State through
The Assistant Commissioner of Police
Thallakulam, Madurai
in Sellur Police Station.
(Crime No.1135/2011)

.. Respondent/Complainant
in Crl.A.457/16

Appeals filed under Section 374 of Code of Criminal Procedure against the Judgment dated 05.10.2016 passed in Special SC No. 57 of 2012 on the file of the III Additional District and Sessions Judge (PCR) Madurai.

For Appellants : Mr. N. Anantha Padmanaban
for Mr. A. Joel Paul Antony
for 1st Appellant in Crl. A. No. 413/16

Mr. N. Anantha Padmanaban
for 3rd Appellant in Crl. A. No. 413/16
Mr. N. Anantha Padmanaban
for Appellants in Crl.A. No. 457 of 2016
A2, R4 to R6

For Respondent : Mr. C. Ramesh
Additional Public Prosecutor
in both the appeals

COMMON JUDGMENT

R. SUBBIAH, J

Criminal Appeal (MD) No. 413 of 2016 is filed by the Accused Nos. 1 and 3 in Special S.C. No. 57 of 2012, on the file of the learned III Additional District and Sessions Judge (PCR), Madurai, while Criminal Appeal (MD) No. 457 of 2016 is filed by the accused Nos. 2, 4, 5 and 6 in the very same Special SC No. 57 of 2012. All the accused/appellants were tried jointly and after conclusion of



trial, they were found guilty of the offence complained of and sentenced to undergo imprisonment for various terms. The details of the sentence imposed on the accused are as detailed below:-

Charge	Period of sentence	Fine amount
<u>1st & 2nd</u> <u>Accused</u>		
Section 148	To undergo Rigorous Imprisonment for a period of one year	Rs.500/- in default to undergo rigorous imprisonment for a period of two months
Section 341	To undergo simple imprisonment for a period of one month	Rs.500/- in default to undergo one week simple imprisonment
Section 506 (2) r/w 149	To undergo rigorous imprisonment for a period of one year	Rs.1,000/- in default to undergo two months rigorous imprisonment
Section 302 r/w 149 of IPC	To undergo imprisonment for life	Rs.5,000/- in default to undergo rigorous imprisonment for a period of one year
<u>3rd</u> <u>Accused</u>		
Section 148	To undergo Rigorous Imprisonment for a period of one year	Rs.500/- in default to undergo rigorous imprisonment for a period of two months
Section 341	To undergo simple imprisonment for a period of one month	Rs.500/- in default to undergo one week simple imprisonment
Section 506 (2) r/w 149	To undergo rigorous imprisonment for a period of one year	Rs.1,000/- in default to undergo two months rigorous imprisonment
Section 302 of IPC	To undergo imprisonment for life	Rs.5,000/- in default to undergo rigorous imprisonment for a period of one year



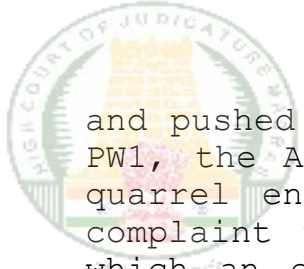
WEB COPY

<u>4th</u> <u>Accused</u>		
Section 148 of IPC	To undergo Rigorous Imprisonment for a period of one year	Rs.500/- in default to undergo rigorous imprisonment for a period of two months
Section 341 of IPC	To undergo simple imprisonment for a period of one month	Rs.500/- in default to undergo one week simple imprisonment
Section 506 (2) of IPC	To undergo rigorous imprisonment for a period of one year	Rs.1,000/- in default to undergo two months rigorous imprisonment
Section 302 r/w 149 of IPC	To undergo imprisonment for life	Rs.5,000/- in default to undergo rigorous imprisonment for a period of one year
<u>5th and 6th</u> <u>Accused</u>		
Section 148 of IPC	To undergo Rigorous Imprisonment for a period of one year	Rs.500/- in default, undergo rigorous imprisonment for a period of two months
Section 341 of IPC	To undergo simple imprisonment for a period of one month	Rs.500/- in default to undergo one week simple imprisonment
Section 506 (2) of IPC	To undergo rigorous imprisonment for a period of one year	Rs.1,000/- in default to undergo two months rigorous imprisonment
Section 302 r/w 149 of IPC	To undergo imprisonment for life	Rs.5,000/- in default to undergo rigorous imprisonment for a period of one year

2. The sentences imposed on the accused/appellant by the trial Court, were, however, ordered to run concurrently.

3. The case of the prosecution, as could be inferred from Ex.P1, complaint dated 18.04.2011, given by PW1 is as follows:-

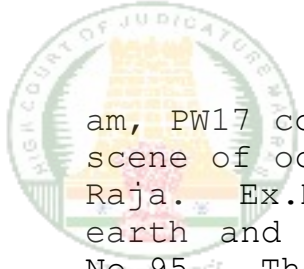
<https://hcservices.ecourts.gov.in/hcservices/> deceased in this case is Saravanan. PW1 is the father of the deceased. According to PW1, one year prior to the date of occurrence, a two wheeler parked in front of his house was knocked



and pushed down by A-1 to A-6 and others. When it was questioned by PW1, the Accused 1 to 6 hurled abuses on him, pursuant to which a quarrel ensued between the accused and PW1. In this context, a complaint was given by PW1 to the local police station based on which an enquiry was conducted. During the enquiry, the accused were warned by the Police officials who instructed them not to indulge in such offence. In spite of such a warning, the accused have continuously threatened PW1 and his son, the deceased in this case, with dire consequences to get rid of them. Thereafter, according to PW1, there were frequent quarrel between the accused and the deceased and therefore PW1 asked the deceased to be cautious. Furthermore, there was a dispute between the accused and the deceased in connection with collection of funds for the temple festival.

(ii) While so, on 17.04.2011, when the deceased was playing Cricket along with his friends, the first accused quarrelled with the deceased and at that time, the first accused gave an ultimatum to the deceased to wait and see as to what is going to happen that night. The deceased also informed about such threat given by A-1 to his father, PW1 and hence the deceased was instructed by PW1 to be cautious. While so at about 11.45 pm on 17.04.2011, PW1 heard the alarm of his son and his friends and on hearing the same, he rushed out of his house and saw the deceased being lifted by the accused 1 to 6 and going towards Periyasamy Konar Cross Street, Opposite to Senthil Tea Stall. On seeing the accused lifting the deceased, PW1 shouted at them to leave the deceased and rushed towards them. At that time, Muthu Marudhu (PW3), Marudhupandiarajan and Mariappan (PW5) have attempted to relieve the deceased from the clutches of A-1 to A-6 but the trio were prevented by A-4 to A-6 from making such attempt. At the same time, A-1 and A-2 held the hands of the deceased which facilitated A-3 to stab the deceased on his abdomen with a knife. On seeing this, PW1, Muthu Marudhu (PW3), Marudhupandiarajan and Mariappan (PW5) have raised an alarm. On raising such alarm, the accused 1 to 6 fled from the scene of occurrence leaving the deceased in a pool of blood. Immediately, PW1 and his another son Balasubramaniam (PW2) have taken the deceased to Government Rajaji Hospital, Madurai in an auto. When the deceased was examined by the Doctor, he declared the deceased as brought dead. Thereafter, PW1 has given the complaint, Ex.P1, to PW16, Inspector of Police, based on which he registered the case in Crime No. 1135 of 2011 on 18.04.2011 at 02.15 am for the offences punishable under Sections 147, 148, 341 and 302 of Indian Penal Code and Section 3 (2) (v) of the Prevention of Atrocities to Schedule Caste and Schedule Tribes Act, 1989. Ex.P13 is the First Information Report which was forwarded by him to the Court through PW12 and copies of the same were forwarded to higher officials.

4. On receipt of a copy of the first information report, PW17, Assistant Commissioner of Police, went to the police station and accompanied PW16 to the place of occurrence at 3.15 am where he drew an Observation Mahazar and also a rough sketch. Ex.P2 is the Observation Mahazar and Ex.P14 is the rough sketch. At about 4.00



am, PW17 collected the blood stained earth and sample earth from the scene of occurrence in the presence of witness Vadivel (PW8) and one Raja. Ex.M10 is the blood stained earth and Ex.MO11 is the sample earth and they were sent to the Court by PW17 by preparing Form No.95. Thereafter, at about 8.30 am in the morning of 18.04.2011, PW17 proceeded to Rajaji Government Hospital where he conducted an inquest over the dead body of the deceased in the presence of Panchayatars. Ex.P16 is the inquest report. Thereafter, the dead body was sent for postmortem through Head Constable, PW13 with a requisition letter, Ex.P17. PW17 thereafter recorded the statement of witnesses Thavamani (PW1), Balasubramanian (PW2), Muthumarudhu (PW3), Pandiarajan, Mariappan (PW5), Vadivel (PW8) and Raja separately. At that time, based on a tip-off, PW17 rushed to Goodshed Road leading to Koodal Nagar where he arrested the accused Nos. A-2, A-4, A-5 and A-6. On such arrest, the A-2 gave a voluntary confession statement in the presence of witnesses Arumugam and Karuppusamy, based on which, PW17 recovered the knife in the presence of the same witnesses, which was used in the commission of offence, at 12.20 pm from the bushes situated at Railway Line on the Eastern side of Ganeshapuram Channel, Thathaneri. The admitted portion of the confession statement of A-2 was marked as Ex.P18 and the Mahazar under which the knife was recovered from him was marked as Ex.P19. Similarly, a confession statement was given by A-4 and on the basis of the same, in the same place, PW17 recovered another knife in the presence of same witnesses. The admitted portion of the confession statement of A-4 was marked as Ex.P20. Subsequently, at the same place, on being identified by A-5 and A-6, PW17 has recovered two knives and they were recovered under a Mahazar, Ex.P21 and P22. Thereafter, PW17 has sent the accused A-2, A-4, A-5 and A-6 to the Court for remand.

5. In continuation of the investigation in the case, PW17 recorded the statement of Arumugam and Karuppusamy. On 20.04.2011 at 12.00 noon, when PW17 was in the police Station, Mr. Muneeswaran, PW10, Village Administrative Officer, Madurai South and his Village Assistant Ganesan came to the police station and handed over A-3. PW17 caused arrest of A-3 and on such arrest, A-3 gave a voluntary confession statement in the presence of PW10 and his assistant and it was recorded by PW17. As per the confession statement of A-3, the knife which was concealed near the bush opposite to Padmam Apartment, Vaigai Vadakarai Rajan Bearing was recovered in the presence of PW10 and his assistant and thereafter, A-3 was sent for remand through Court. All the material objects recovered from accused Nos. A-2, A-4, A-5, A-6 and A-3 were sent to Judicial Magistrate Court under form No.95. Thereafter, on 21.04.2011, PW17 recorded the statement of witnesses Devi (PW4), Thangaraj (PW7), Dharmaraj (PW6), Ramaraj, Ramalingam, Rajendran, Muniyandi, Sekar, Senthilkumar, Dr. Venkatakrishnan, Dr. Natarajan, PW11. After such examination, PW17 received the postmortem report from the Doctor. PW11 and it was marked as Ex.P11 wherein it was stated as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

Appearances found at the postmortem:

Moderately nourished body of a male aged about 18



years. Finger & toe nails are pale.

The following ante-mortem injuries are noted on the body:

1. An oblique stab injury measuring 5 cms X 1 cm X peritoneal cavity deep noted on right side of upper abdomen 2 cms below the costal margin. On dissection, the wound passes obliquely downwards and backwards piercing the underlying muscles, vessels and nerves and piercing the right lobe of liver measuring 3 cms X 1 cm X 1 cm and ends as a point. Peritoneal cavity contains 1000 ml of fluid blood with clots.

Note :

The Stab injury is having regular margins and both ends are pointed.

Other findings:

Peritoneal cavity - described in injury column; pleural cavities - empty; Pericardium - contains 15 ml of straw colour fluid; Heart - both chambers empty; Coronaries - patent; Lungs - cut section pale; Larynx & trachea - normal; Hyoid bone - intact; Stomach - contains 150 gms of partially digested cooked food materials, nil specific smell; mucosa - pale; Liver - described in injury column; cut section pale; Spleen & Kidneys - cut section pale; Small intestine - contains 20 ml of bile stained fluid, nil specific smell, mucosa pale; Bladder - empty; Brain - surface vessels pale, cut section pale.

Opinion

The deceased would appear to have died of shock & haemorrhage due to stab injury to abdomen, 8 - 12 hours prior to postmortem."

6. During the course of his investigation, on 22.04.2011, PW17 proceeded to examine the witnesses Vendasamy (PW9), Ayyanar, Pothiraj (PW12), Thilagar (PW13), Mr. Arunachalam, Inspector of Police (PW16) and recorded their statements. At the same time, PW17 gave a requisition to the Tahsildar, North to furnish the community certificate of the deceased.

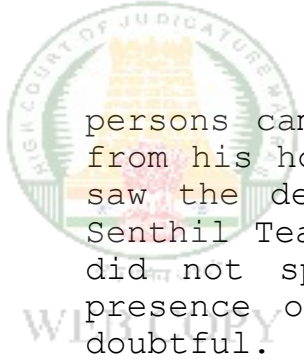
7. On 26.04.2011, PW17 had taken police custody of A-1 after submitting necessary petition before the Judicial Magistrate No.2. Accordingly, police custody of A-1 was granted and at about 05.30 pm on that day, in the presence of PW10 and his assistant the first accused has given a voluntary confession statement and on the basis of the same, at about 8 pm, a knife was recovered from the bushes beneath Arukalam Bridge leading to Vaigai Thenkarai Road. Thereafter, PW17 sent the first accused for judicial custody. On 28.04.2011, PW17 had sent the material objects recovered during the course of investigation for scientific examination. On 29.04.2011, PW17 had examined Arujunan (PW14) and recorded his statement. PW17 also received the community certificate of the deceased from the Tahsildar. Thereafter, on the same day, PW17 received the personal belongings of the deceased such as blood stained full hand shirt and



brown colour dhoti from PW13, Head Constable and sent them to the Court by preparing Form No.95. PW17 also collected the Accident Register, Ex.P17 received from Dr. Venkatakrishnan and sent it to the Court. After completing all the formalities, PW17 has filed final report against the accused 1 to 6 for the offences punishable under Sections 147, 148, 341, 302 read with Section 3 (2) (5) of The Prevention of Atrocities to Schedule Caste and Schedule Tribes Act.

8. After completing the formalities contemplated under Section 207 of the Code of Criminal Procedure, charges were framed against the accused. The accused denied the charges. In order to prove the charges as against the accused 1 to 6, the prosecution has examined as many as 17 witnesses as Pws 1 to 17 and marked Exs. P1 to P30 besides producing Mos.1 to 11. On behalf of the defence, Exs.D1 and D2 were marked to disprove the case of the prosecution. When the accused were questioned under Section 313 of Cr.P.C. with respect to the incriminating materials made available against them, they pleaded not guilty. The trial court, upon analysing the oral and documentary evidence, convicted and sentenced the accused 1 to 6 for various offences which are set out in the preceding paragraph of this judgment.

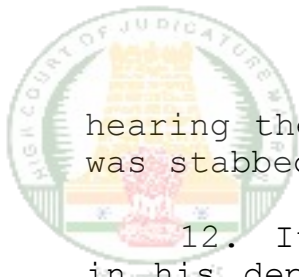
9. The learned counsel for accused/appellants would contend that the prosecution has not proved the case against the accused/appellants beyond reasonable doubt and therefore, the trial court ought not to have convicted and sentenced the accused. It is further contended that there are lot of contradictions and inconsistencies in the deposition of the witnesses and they go to the root of the case, but, the trial court simply brushed aside those contradictions and sentenced the accused. It is mainly contended by the learned counsel for the accused/ appellants that as per the written complaint, Ex.P1, said to have been given by PW1, at about 11.45 pm on 17.04.2011, he heard the alarm raised by the deceased and his friends and immediately, he woke up. It is further stated by PW1 in his complaint, Ex.P1 that when he came out of the house, he saw A-1 to A-6 lifting the deceased towards Periyasamy Konar Cross Lane and PW1 shouted at the accused to leave his son. It is alleged that at that time, Maruthumuthu (PW3), Pandiarajan and Mariappan (PW5) have also shouted along with PW1 to leave the deceased and inspite of the same, A-1 and A-2 held the deceased which facilitated A-3 to stab the deceased in his abdomen with a knife. According to the learned counsel for the accused/appellant, PW3, Muthu Maruthu is one of the friends of the deceased and PW5, Mariappan is also yet another friend of the deceased. However, both PW3 and PW5 have turned hostile during trial. Further, one Pandiaraja, who was also a friend of the deceased and who was allegedly present at the time of occurrence, was not examined by the prosecution for the reasons best known. PW3, PW5 and Pandiaraja are the best witnesses available to the prosecution who were alleged to have been present at the time of occurrence, but both PW3 and 5 have turned hostile. In fact, PW5 would depose that when he was standing in front of Senthil Tea Stall along with PW3 and Pandiaraja, six



persons came there running and on seeing them, he went to call PW2 from his house. When he returned from the house along with PW2, he saw the deceased Saravanan lying in a pool of blood 4 feet from Senthil Tea Stall. However, PW5 did not identify A-1 to A-6 and he did not speak about the presence of PW1. Therefore, even the presence of PW1 or PW2 at the scene of occurrence is very much doubtful. In fact, PW1 could not have witnessed the accused 1 to 6 lifting the deceased or the third accused stabbing the deceased in his abdomen. The prosecution failed to prove the presence of PW1 at the time of occurrence and this is fatal to the case of the prosecution.

10. The learned counsel appearing for the accused/appellant would further contend that PW9, an Auto Driver was examined and he has stated that at about 10.30 pm, PW2 and 2 others approached him to engage his autorickshaw to take the deceased to the hospital for treatment. Even PW9 did not say about the presence of PW1 at the time when his autorickshaw was sought to be engaged by PW2 and two others to take the deceased to the hospital for treatment. On the contrary, in Ex.P1, complaint, it was stated by PW1 that at about 11.40 pm on 17.04.2011, he heard the alarm of his son and his friends and he saw the accused lifting the deceased from Senthil Kumar Tea Stall towards Periyasamy Konar Cross Street. Therefore, there is glaring inconsistency with regard to the time at which the alleged occurrence had taken place and it was not proved by the prosecution beyond reasonable doubt.

11. The further inconsistency in the case of the prosecution, according to the learned counsel for the accused/appellants, is that PW1 in his complaint has stated that on hearing the noise of his son, he came out of his house and saw the deceased being lifted and dragged by A-1 to A-6 and therefore he shouted towards the accused to leave his son. At that time, the friends of the deceased namely PW2, 3 and one Pandiaraja attempted to retrieve the deceased from the clutches of the accused, but they could not succeed. However, contrary to such complaint, in his deposition, PW1 stated that when Pws 2, 3 and the said Pandiaraja attempted to relieve the deceased, the accused have wielded knife and the trio ran away from the scene of place. It was further stated that before PW1 and his son, PW2 could reach the scene of occurrence, A-3 stabbed the deceased with a knife. Even when PW1 and 2 went to rescue the deceased, A-3 to A-6 wielded the knife in their hands and thereafter, they ran away from the scene of occurrence. This portion of the deposition of PW1 is nothing but an exaggerated version, which runs contrary to the complaint, Ex.P1. Further, in the cross-examination, PW1 would depose that immediately when he came out of the house, he heard the noise of the friends of the deceased that the deceased was stabbed, however, they have informed PW1 that six persons dragged the deceased towards Periyasamy Konar Cross Lane. Thus, according to the learned counsel for the accused/appellants, PW1 could not have witnessed the occurrence and his presence in the scene of occurrence is highly doubtful. PW1 himself went out of the house only after



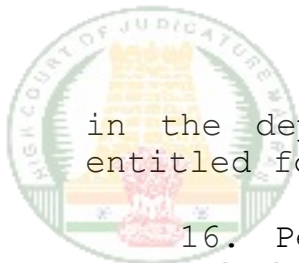
hearing the scream of the friends of the deceased that the deceased was stabbed.

12. It is further contended that PW2, brother of the deceased, in his deposition would state that on 17.04.2011 in the night, he heard the noise of the deceased and his friends. On hearing such noise, PW1 and PW2 went out of the house and saw all the accused had a knife in their hands and they lifted the deceased from Senthil Tea Stall towards Periyasamy Konar Cross Street. He further deposed that when he went near the accused, A-4 to A-6 brandished a knife and threatened him. However, even before he could react, A-1 as well as A-3 stabbed the deceased on the right side without mentioning the portion of the body in which such stab was made. This evidence of PW2 runs contrary to the deposition of PW1, who has stated that A-3 alone gave a single stab in the abdomen of the deceased. Further, even in his deposition, PW2 did not say anything about the presence of PW3, PW5 and Pandiaraja, friends of the deceased. Further, in the statement given by PW2 under Section 161 (3) of Cr.P.C. he has only stated that on hearing that his brother was stabbed, he reached the scene of occurrence. Thus, the presence of both PW1 and PW2 in the scene of occurrence is very much doubtful.

13. The learned counsel for the appellants would further contend that on the date of occurrence viz., 17.04.2011, admittedly, there was a temple festival in the locality and PW17 was on duty in connection with the said festival. As per Ex.D1, PW17 was leading a team of police officials in connection with the Security arrangements to be made for the temple festival. Therefore, there is no scope for PW17 to have visited the scene of occurrence at the time indicated by PW17 in his deposition. In other words, the entire investigation was not conducted by PW17, as alleged by the prosecution and this would vitiate the case of the prosecution.

14. Above all, it is contended that the alleged occurrence, even according to the prosecution witnesses, took place on 17.04.2011 at 11.45 pm, but the complaint was given by PW1 on 18.04.2011 at 02.15 am. There was delay of more than 2 hours in registering the complaint and this delay has not been properly explained by the prosecution. Further, PW1, PW2, PW4, PW6, PW7 and PW8 are relatives of the deceased and they are interested witnesses. Even PW3 and 4, who have said to have witnessed the occurrence, have turned hostile and therefore, in the absence of any independent witnesses, the case projected by the prosecution cannot be accepted. Therefore, the learned counsel for the accused/appellants would pray for setting aside the Judgment of the trial court.

15. The learned counsel for the accused/appellant has placed further reliance on the decision of the Honourable Supreme Court in the case of **(Gowrishankara Swamigalu vs. State of Karnataka and others)** reported in **(2008) 14 Supreme Court Cases 411** to contend that if there are contradictions, inconsistencies and exaggerations



in the deposition of the prosecution witnesses, the accused are entitled for acquittal.

16. Per contra, the learned Additional Public Prosecutor would contend that merely because the prosecution witnesses happened to be relatives, their testimony cannot be brushed aside. In the present case, PW1, father of the deceased has categorically stated even in his cross-examination that he had witnessed the occurrence. PW1 has specifically narrated about the manner in which his son, the deceased, was stabbed by the third accused. The prosecution has also clearly proved the motive for the murder and it was also clearly stated by PW1 in his complaint as well as in his deposition. The entire evidence of PW1, if read as a whole, would clinchingly prove the participation of the accused in the murder of the deceased. Apart from PW1, the prosecution has also examined PW2 and PW4, brother and sister of the deceased, who have also deposed about the motive for the crime. PW2 also specifically deposed that at 11.00 am on 17.04.2011, when he was playing cricket in the field along with the deceased, A-1 confronted him and the deceased with respect to a dispute over collecting donation for the temple. He further deposed that at the time of occurrence, when he along with PW1 went near the accused, they have brandished knife and threatened to stab them. Even in the cross-examination, PW2 has clearly stated that on hearing his brother being lifted by the accused, he raised an alarm and at that time, the deceased was stabbed and left in a pool of blood. Even though PW3, sister has admitted that she has heard from her father, PW1 that the deceased was done to death by the accused and she being a hear-say witness, at the best, her deposition can be treated only as a corroborative evidence to corroborate the testimony of Pws 1 and 2.

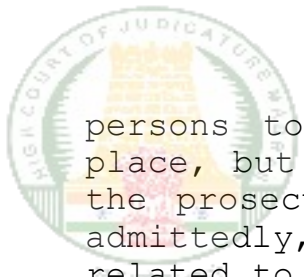
17. As regards the defence raised by the appellants by producing Ex.D1, it is contended by the learned Additional Public Prosecutor that though PW17, Assistant Commissioner of Police was deputed for security duty, on receipt of First Information Report, he rushed to the scene of occurrence and taken up investigation in the case. Therefore, Ex.D1 will not lend support to the defence raised by the accused/appellants or it will vitiate the case of the prosecution in any manner. The learned Additional Public Prosecutor would therefore pray this Court to dismiss the Criminal Appeal by confirming the judgment of the trial Court.

18. We have given our anxious consideration to the rival submissions made and perused the materials placed on record. The case of the prosecution is that due to previous enmity, the accused have committed the murder of the deceased and their guilt was proved by the prosecution beyond reasonable doubt by examining PW1 and 2. On the other hand, it is the case of the defence that the presence of Pws 1 and 2 at the time of occurrence is very much doubtful or in other words, they have not witnessed the occurrence at all. It is also further contended on behalf of the defence that the prosecution witnesses are interested witnesses whose testimony need not be believed.



19. Keeping the above submissions, we analyse the deposition of PW1. PW1 is the father of the deceased and PW2 and PW4. PW3 and PW5 are friends of the deceased. According to PW1, on 17.04.2011, at about 11.45 pm, he heard the alarm of his son and his friends and on hearing the same, he came out of the house and saw the deceased being lifted by A-1 to A-6. On seeing the same, PW1 shouted at them by saying "leave him". On perusal of the testimony of PW1, it could be inferred that according to PW1, the deceased left the house on 17.04.2011 at 7.00 p.m. At that time, the third son of the PW1, who was recently married was in the house and at 7.45 pm, they have gone to the temple festival and came back to the house. It is the further deposition of PW1 that at about 11.45 pm, he heard the noise of his son and his friends. However, strangely, it is PW1 who alone came out of the house and the other three inmates did not venture to come out of the house. Further, in the cross-examination of PW1, a specific question was put to him as to whether he enquired with the friends of the deceased as to what had happened, on coming out of the house, for which PW1 replied that after hearing the screams "stabbed" "stabbed" raised by the friends of the deceased, he came out of the house. Therefore, PW1 himself has stated that he came out of the house only after hearing the screams of the friends of the deceased that the deceased was stabbed. This only shows that there was a contradiction in between the contents of complaint, Ex.P1 given by PW1 and his deposition in chief examination and cross-examination, which gives rise to an inference that the presence of PW1 in the scene of occurrence is very much doubtful. Similarly, PW2, brother of the deceased, in his deposition has stated that he went out of the house by 7.00 pm to attend the temple festival. He further stated that when he was in the house, he heard the alarm of his brother and his friends. Immediately, his father woke up and went out of the house and he followed his father and he saw his brother (deceased) was lifted by six persons. When he along with his friends went near them, the accused 4 to 6 have brandished a knife and threatened them with dire consequences. PW2 further stated that A-1 gave a stab with the knife on the right side abdomen of the deceased and A-3 gave such a blow in the left side. However, in his cross-examination, PW2 has stated that the occurrence spot is 400 meter away from his residence. He further stated that on hearing the alarm of his brother, his father left the house and subsequent to the exit of his father, PW1 he came out of the house and enquired with the friends of the deceased. When PW1 himself has stated that he came out of the house after hearing the screams "stabbed" "stabbed" raised by the friends of the deceased, PW2, who, left the house following, PW1 could not have witnessed the occurrence.

20. It is further seen that PW3 and 5 are friends of the deceased. PW3, 5 and one Pandiaraja were said to have witnessed the occurrence. However, PW3 and 5 turned hostile and the other person Pandiaraja was not at all examined by the prosecution. If PW3 and 5 were really present at the time of occurrence, they are the best



persons to narrate the manner in which the occurrence had taken place, but they have turned hostile and did not support the case of the prosecution. Further, PW3 is the sister of the deceased and admittedly, she is a hear-say evidence. Similarly, PW6 and 7 are related to PW1 and their evidence is also hear say evidence and they have not witnessed the occurrence. Thus, the prosecution witnesses, in our opinion, could not have witnessed the occurrence. There was no independent witness examined by the prosecution to bring home the guilt of the deceased.

21. As regards the evidence of PW10, Village Administrative Officer, he has deposed that on 20.04.2011, when he along with his Village Assistant were in the office, A-3 approached them and confessed to have committed the murder of the deceased. Such confession of A-3 was reduced into writing by PW10. After recording his confession statement, PW10 and 11 have handed over A-3 to the police station. Ex.P5 is the confession statement of A-3 recorded by PW10. However, in the cross-examination of PW10, he has stated that the confession statement of A-3 was prepared by him as advised by PW17, investigation officer in this case, which means, the confession statement has been prepared as instructed by PW17. Therefore, Ex.P5 cannot be taken into account to hold that the prosecution has proved the charges as against the accused

22. On a cumulative reading of the evidence recorded before the trial Court, we are of the view that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that the accused are entitled for acquittal by giving them the benefit of doubt.

23. In the result, we set aside the Judgment dated 05.10.2016 passed in Special SC No. 57 of 2012 on the file of the III Additional District and Sessions Judge (PCR) Madurai. The Criminal Appeals are allowed. The bail bond if any, executed by the accused shall stand cancelled and the fine amount, if any, paid by them shall be refunded.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1.The III Additional District and Sessions Judge (PCR)
Madurai.

2.The Principal District Judge,
Madurai.



3. The Judicial Magistrate No.II,
Madurai.

4. The Chief Judicial Magistrate,
Madurai.

5. The District Collector,
Madurai.

6. The Director General of Police, Mylapore.

7. The Superintendent of Police,
Central Prison, Madurai.

8. The Assistant Commissioner of Police,
Thallakulam Police Station, Madurai City.

9. The Inspector of Police,
Sellur Police Station,
Madurai Police Station,
Madurai City.

10. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 cc TO Mr.A.Joel Paul Antony , Advocate in SR No. 45482

+ 1 cc TO Mr.N.Ananthapadmanaban , Advocate in SR No. 45441

rsh

AE/KK/SAR3/09.03.2018/14P/13C

Common Judgment in
Crl.A. Nos. 413 and 457 of 2016
31-01-2018