



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM

and

THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

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**Crl.A.(MD)Nos.439 and 442 of 2016**

M.Kasimayan ... Appellant/A4 in Crl.A.No.439/2016

S.Kasimayan ... Appellant/A1 in Crl.A.No.442/2016

Vs.

The Inspector of Police,  
C5-Karimedu Police Station,  
Madurai.(in Crime No.235 of 2009)

... Respondent/Complainant in both Crl.As.

**COMMON PRAYER:** Criminal Appeals filed under Section 374(2) Cr.P.C., against the judgment in S.C.No.12 of 2011 dated 15.11.2016 passed by the IV Additional District and Sessions Court, Madurai.

For Appellant :Mr.N.Mohideen Basha for  
Mr.M.Karunanithi in Crl.A.(MD)No.439/2016  
Mr.R.Shanmugasundaram, S.C.for  
Mr.M.S.Jeyakarthik in Crl.A.(MD)No.442/2016  
For Respondent : Mr.S.Chandrasekar, APP

**COMMON JUDGMENT**

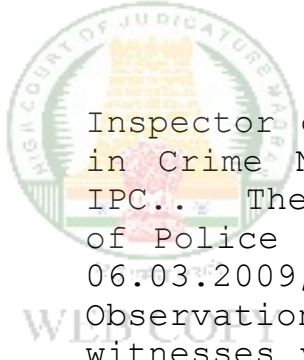
**(Common Judgment of the Court was delivered by C.T.SELVAM,J.)**

These appeals arise against judgement of learned IV Additional District and Sessions Court, Madurai in S.C.Nos.12 of 2011 on 15.11.2016.

2. The case of the prosecution is that Tamilselvi is the sister of deceased Selvi (D1) as also appellant (A1). Deceased Karikalan (D2) is the husband of deceased Selvi (D1). Another appellant (A4) is coaccused. Accused A1 to A6 armed with weapons, on 06.03.2009 at about 10.00 p.m., had trespassed into the house of the deceased and attacked D1 and D2 indiscriminately and thereby caused their death. They were tried for offences under Section 120(b), 449, 302 (2 counts) of IPC in S.C.No.12 of 2011 by the IV Additional District and Sessions Court, Madurai.

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3.P.W.1, sister of the deceased D1, preferred Ex.P1, written complaint, on the day of occurrence at 10.30 p.m., P.W.27, Sub



Inspector of Police, C5-Karimedu Police Station, registered a case in Crime No.235 of 2009 under Sections 147, 148, 448, 307, 302 IPC... The printed FIR is Ex.P.23. P.W.28, K.Ashokan, Inspector of Police at C5 Karimedu Police Station, took up investigation on 06.03.2009, visited the place of occurrence, prepared Ex.P2 - Observation Mahazar and Ex.P24 Rough Sketch in the presence of witnesses viz., P.W.8 & P.W.6. He seized M.Os.1 to 4 blood stained mosaic and samples of mosaic. He conducted inquest over the bodies of deceased and prepared Ex.P26, inquest report of Karikalan and Ex.P.27, inquest report of Selvi and sent the bodies to Madurai Government Rajaji Hospital through Head Constable for post-mortem. The Post-mortem Report of deceased Karikalan is Ex.P.17 and post-mortem report of deceased Selvi is Ex.P.18. He examined PWs.1 to 30 and recorded their statements. Upon completion of investigation, he filed a charge sheet informing commission of offence u/s.120(b), 449 and 302 (2 counts) IPC. The case was tried in S.C.No.235 of 2009 by the IV Additional District and Sessions Court, Madurai.

4.Before the Trial Court, prosecution has examined PWs.1 to 30 and marked Exs.P1 to 36 and 14 Material Objects. None were examined on behalf of the defence and Ex.D1 was marked. C.W.1 was examined on behalf of Court and Exs.C1 to 3 were marked. Section 164 Cr.P.C., statements of prosecution witnesses were marked. On questioning u/s.313 Cr.P.C., the accused denied charges.

5.Learned Trial Judge, on appreciation of evidence, under judgment dated 15.11.2016 in S.C.No.12 of 2011, convicted Accused No.1 under Section 302 IPC (1 count) and sentenced him to undergo imprisonment for life and to pay fine amount of Rs.10,000/- i/d 6 months S.I.; for the offence under Section 302 IPC (2 counts) sentenced him to undergo imprisonment for life and to pay fine amount of Rs.10,000/- i/d 6 months S.I. Accused No.4 is convicted for the offence under Section 302 IPC (1 count) and sentenced him to undergo imprisonment for life and imposed a fine amount of Rs.10,000/- i/d to undergo 6 months S.I.; under Section 302 IPC (2 counts) sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- i/d to undergo 6 months S.I. There against, the present appeals.

5.Heard learned counsel for appellants and learned Additional Public Prosecutor appearing for respondent. Perused the records.

6.These appeals succeed for the following reasons:  
 Learned Senior Counsel appearing for appellant in CrI.A.(MD)No.442 of 2016 has submitted that the evidence on record indeed does reveal animosity between P.W.1 and A1, her brother. He has also submitted that according to P.W.1, she saw A1 coming down the steps of the deceaseds home and making a get away in a car. It was unlikely that if so A1 would have spared her. We do not



accept such submission since nowhere in the evidence of P.W.1 is there any indication that she was seen by the accused persons. P.W.1 herself is a resident of Jaihindpuram about 3 kms away from her sister's house and even as per her evidence, it would take 15 minutes by auto rickshaw to reach her sister's house. She claims of having gone to the house of her sister D1 at 9.00 p.m. of having left the house to buy sweets for her infant child just immediately before and that after the occurrence she saw the accused making a get away. If true, prosecution would have been well advised to examine as a witness the shop keeper from whom she purchased sweets for her infant child.

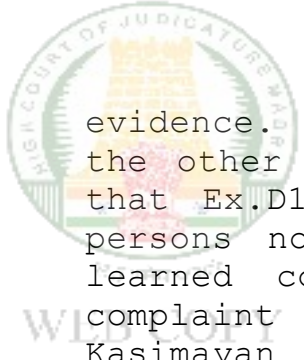
7. Keeping beside such consideration, we find that P.W.1 has, in cross, admitted to the presence of a sniffer dog as also a finger print expert. If indeed, P.W.1 had seen the accused, all of whom were known persons, there would have been no need for engagement of either the dog squad or the finger print expert. The topo-sketch reveals that there are several residential houses in the immediate proximity of the house of the deceased. The deceased was living on the first floor, where there was an adjacent residential portion. None of the neighbours excepting P.W.9 has been examined and P.W.9 has turned hostile.

8. In the light of the above, the delay in lodging Ex.P.1 complaint and the printed FIR, Ex.P.23, reaching the Judicial Magistrate is significant. As against alleged occurrence of at 10.00 p.m. and registration of FIR at 10.30 p.m., both have reached the Judicial Magistrate only at 6.00 a.m. the next morning although the distance between the police station and the Judicial Magistrate's residence is 2 kms. We are bound to discard the evidence of P.W.1 as also genuineness of Ex.P.1 complaint in the afore stated circumstances.

9. The Trial Court has disbelieved the evidence of the other alleged eye witnesses viz., P.Ws.2 to 4. P.Ws.5 to 7, who had been examined to speak to conspiracy between A1 and others towards doing away with the deceased on the date prior to the occurrence have been disbelieved by the Trial Court. The Trial Court has also disbelieved P.W.7, who deposed to having seen the accused with blood stained weapons after the occurrence.

10. Learned Additional Public Prosecutor for the respondent has impressed upon us that a strong motive to do away with the deceased existed as the accused was angered by a Will to property drawn up by the mother in favour of D1, who had refused to hand over the property to him despite his demand. Ex.P.5 and Ex.P.6 prior complaints, one having been preferred by Parthiban another brother of A1 and the other by P.W.1 both of which have been spoken to by P.W.12, P.W.13, P.W.14 is further proof of the motive.

<https://hcservices.ecourts.gov.in/hcservices/> 11. Motive by itself is a very weak piece of evidence and the same can only be used in support of other substantive



evidence. This Court does not consider it necessary to go into the other submission of learned Senior Counsel for the appellant that Ex.D1, the case sheet of D1 informs an attack by unknown persons nor the question of wrong identity of A4 canvassed by learned counsel for A4 / Kasimayan, who submitted that the complaint Ex.P.1 did not inform the father's name of Kasimayan whereas, P.W.1 has admitted that very many members of the family as also two other persons answered to the name of Kasimayan.

12. In the result, these Criminal Appeals shall stand allowed. The conviction and sentence passed by learned IV Additional District and Sessions Court, Madurai in S.C.No.12 of 2011 on 15.11.2016 is set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bond(s), if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The IV Additional District and Sessions Court, Madurai.
2. The Inspector of Police,  
C5-Karimedu Police Station,  
Madurai.
3. The Additional Public Prosectuor,  
Madurai Bench of Madras High Court,  
Madurai.
4. The Superintendent, Central Prison,  
Madurai.

Copy to

The Section Officer, (2 copies)  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to Mr.M.S.Jeyakarthik, Advocate Sr.No.76272

NBJ