

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24.10.2019

JUDGMENT DELIVERED ON : 10.01.2020

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH  
and  
THE HON'BLE Mr. JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.637 of 2017

Veeradurai  
Appellant

.. Vs ..

State Rep. by  
Station House Officer,  
Rishivandiyam Police Station,  
Villupuram District.  
(Crime No.121 of 2012)  
Respondent

Appeal filed under Section 374 (2) of Cr.P.C.  
against the judgment dated 01.04.2016 passed by the  
learned III Additional District and Sessions Judge,  
Villupuram at Kallakurichi, in S.C.No.63 of 2013.

For Appellant .. Mr.S.N.Arunkumar  
For Respondent .. Mr.K.Prabhakar,  
Additional Public Prosecutor

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JUDGMENT

RMT.TEEKAA RAMAN, J.

Challenge is made to the judgment passed by the  
learned III Additional District and Sessions Judge,  
Villupuram at Kallakurichi, in S.C.No.63 of 2013, dated  
01.04.2016, whereby, the sole accused/appellant stood  
charged and tried under Sections 452, 294(b), 302 and 506  
(ii) IPC and on trial, he was found guilty under Sections

302 and 506 (ii) IPC and convicted for the offence under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo further period of six months Simple Imprisonment and also convicted for the offence under Section 506(ii) IPC and sentenced to undergo six months Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo further period of 15 days Simple Imprisonment. Seeking to set aside the said conviction and sentence rendered by the learned III Additional District and Sessions Judge, Villupuram at Kallakurichi, the present appeal is filed.

## 2.CASE OF THE PROSECUTION IN BRIEF:

[2.1]. The respondent police filed final report against the accused for the offences under Sections 294 (b), 452, 506(ii) and 302 IPC alleging that the accused is the nephew of the deceased. The accused prevented the brother of the deceased from building his house and when the same was questioned by the deceased, there arose a quarrel between the accused and the deceased. Due to the enmity, on 04.04.2012 at 12.00 noon, when the deceased was lying down on the veranda of his house, the accused with an intention to do away with the deceased, trespassed into the house of the deceased and abused him with unparliamentary words and stabbed him with knife on the right side cheek, middle of the neck, right neck, face and on his shoulders. When the witnesses trying to prevent the same, the accused threatened them that he will do away with them also. The deceased succumbed to the injuries on the same place. Hence, charges were framed against the accused for the offences under Sections 294(b), 452, 506(ii) and 302 IPC.

[2.2]. The case was taken on file by the learned Judicial Magistrate, Tirukoilur, and numbered as P.R.C.No.58 of 2012 and after observing the formalities, the case was committed to the Court of Sessions and re-numbered as S.C.No.63 of 2013 and made over to the learned III Additional District and Sessions Judge, Kallakurichi.

[2.3]. After the case was committed to the Court of Sessions, necessary charges were framed. In order to substantiate the charges levelled against the accused, the prosecution examined 17 witnesses as P.Ws.1 to 17 and marked 15 exhibits as Exs.P.1 to P.15 and also produced 4 Material Objects as M.Os.1 to 4. However, the appellant has not chosen to mark any document nor let in evidence.

[2.4]. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. procedurally as to the incriminating circumstances found in the prosecution witnesses and he denied them as false.

[2.5]. On hearing the arguments advanced on either side, the trial Court found not guilty under Sections 452 and 294(b) IPC and acquitted the accused from the said charges. But the trial Court found the accused guilty under Sections 302 and 506(ii) IPC and convicted for the offence under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo further period of six months Simple Imprisonment and also convicted for the offence under Section 506(ii) IPC and sentenced to undergo six months Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo further period of 15 days Simple Imprisonment and both the sentences were ordered to run concurrently. As against the said conviction and sentence passed by the trial Court, the present appeal is preferred by the appellant/accused.

3. The prosecution version in a nutshell is as follows :

[3.1]. P.W.1, who is the wife of the deceased, had deposed in her evidence that the accused and her husband's younger brother had a dispute regarding to a plot. Two years back, at about 9.00 p.m., her husband, the accused and the younger brother of her husband P.W.3 were quarreling with each other. The deceased questioned the accused as to why he is picking up a quarrel with his brother P.W.3. The accused replied that since the deceased is supporting his brother P.W.3 he will do away with the deceased. On the date of occurrence, when her husband was lying down in corridor and she was in the Northern side corridor, at about 12.00 noon, the accused came to the house of the deceased and the accused uttered at the deceased that you are supporting P.W.3/Venkatachalam, and stabbed the deceased with knife on his right, left and centre of the neck and right side cheek. When P.W.1 raised alarm, her son and daughter-in-law came to the spot and on seeing them, the accused threatened them that he will do away with them and he ran away. When the deceased was taken to Kallakurichi Government Hospital, the Doctor, after examining the deceased, declared as brought dead.

[3.2]. P.W.2 is the son of the deceased. In his

evidence, he had deposed that on 03.04.2012 at 9.00 p.m. due to previous dispute regarding the house site, the accused has been picking up quarrel with P.W.3 and when his father intervened and supported P.W.3, the accused told that he will do away with the deceased, since his father is supporting P.W.3. On 04.04.2012 at 12.00 noon, when his father was lying down in the varanda of his house, the accused came to his house and stabbed him with knife on his right, left and centre of the neck. On hearing the noise of his mother-P.W.1, and his sister-in-law-P.W.4 and P.W.3, P.W.2 rushed to the scene of occurrence. The accused on seeing them, threatened them with dire consequences and fled away. P.W.2 took the deceased to hospital where the Doctor has declared as brought dead.

[3.3]. P.W.3 is the brother of the deceased. P.W.3, in his evidence, had deposed that on 03.04.2012, the accused picked up quarrel with him with regard to the house site and the deceased supported P.W.3 stating that he is constructing a house in his land. the accused told the deceased that he will do away with him and left the place. On 04.04.2012 at 12.00 noon, when he was in the house of the deceased, the accused there and attacked him with knife on his right and left neck and right cheek and also around his neck. On hearing the noise, when he along with P.W.2 came to the spot, the accused threatened him with dire consequences and left the place.

[3.4]. P.W.4 is the daughter-in-law of the deceased and she had deposed in her evidence that on the date of occurrence, when she was in the house of the deceased, at about 12.00 noon, the accused came to the house of the deceased and stabbed him with knife on the left side of his neck and on his cheek and also threatened them with dire consequences.

[3.5]. P.W.5 is the another daughter-in-law of the deceased. She in her evidence, had deposed that two years prior to the date of occurrence, the accused picked up quarrel with P.W.3-Venkatachalam and her father-in-law/deceased questioned the accused as to why he is picking up quarrel with P.W.3, since he is constructing house in his land. On the date of occurrence at 12.00 noon, since her mother-in-law was not doing well, P.W.4 along with her husband came to the house of the deceased and at that time, the accused came to the scene of occurrence and attacked the deceased indiscriminately with knife on his neck and cheek and when they tried to intervene, the accused threatened them with dire consequences and ran away. However, P.W.5, in her cross

examination, has stated that on the date of occurrence, P.W.9, her husband has gone for work and P.W.2 on getting the information rushed to the house of the deceased and took the deceased to hospital.

[3.6]. P.W.6, is a driver and he had deposed in his evidence that on 04.04.2012, while he along with one Dhanakodi were talking near City Union Bank, he has seen the accused running with knife and he has seen the deceased struggling for his life. However, in his cross-examination has stated that he does not have the knowledge about the occurrence.

[3.7]. P.W.7 is the mahazar witness and he had deposed in his evidence that he has been residing in Rishivandiyam and he is the neighbour of the deceased. P.W.7 also deposed about the preparation of Observation Mahazar-Ex.P.2 and Rough Sketch-Ex.P.3 by the police. He further deposed that in his presence bloodstained earth along with bloodstained cement plaster, which was marked as M.O.2, Sample cement plaster-M.O.3 and bloodstained bed-sheet, which was marked as M.O.4 were recovered under a cover of seizure mahazar-Ex.P.4. In his cross-examination, when he was questioned as to whether he has signed any blank paper, he has replied in negative.

[3.8]. P.W.8 is one another mahazar witness and in his evidence, he had deposed that the police has prepared Observation Mahazar and Rough Sketch in his presence and also in the presence of P.W.7 and he has also signed in the observation mahazar. He had also deposed about the recovery of Material Objects.

[3.9]. P.W.9 is the son of the deceased and in his evidence, he had deposed that on 03.04.2012 at 9.00 p.m., due to previous dispute regarding the house site, the accused has been picking up quarrel with P.W.3 and when his father (the deceased) intervened and supported P.W.3, the accused told that, he will do away with the deceased, since he is supporting P.W.3. On 04.04.2012 at 12.00 noon, when his father was lying down in the Veranda of his house, the accused came to his house and stabbed him with knife on his right, left and centre of the neck. P.W.9 further deposed that on hearing the noise of his mother-P.W.1, he and his sister-in-law-P.W.4 and P.W.3 rushed to the scene of occurrence. The accused on seeing them, threatened them with dire consequences and ran away. In his cross-examination, P.W.9 had admitted that he came to know about the occurrence and he went to the hospital directly and he has not witnessed the occurrence.

[3.10]. P.W.11 is the Village Administrative Officer, Pallakacherry and he had deposed in his evidence that while he was holding additional charge of VAO at Rishivandiyam, received information from the Inspector of Rishivandiyam police station to identify the accused. Thereafter, he along with P.W.12-Village Assistant went to the forest area and found the accused in Periyayee Temple and in his presence, the accused has given a confession and the admissible portion of the confession statement has been marked as Ex.P.5. He had further deposed that in his presence, the police recovered knife from the accused under the seizure mahazar-Ex.P.6.

[3.11]. P.W.12-Village Assistant, in his evidence, had deposed about the identification of the accused by the Village Administrative Officer-P.W.11 and also about the confession statement given by the accused and the recovery of knife.

[3.12]. P.W.13, Sub-Inspector of Police attached to Thiruppalapandal police station had deposed that while he was functioning as Sub-Inspector of Police, Rishivandiyam police station, on 04.04.2012, P.W.1 has given a complaint and on receiving the same, he has registered a case in Crime No.121/2012 for the offences under Sections 294(b), 302 and 452 IPC and also prepared the printed FIR-Ex.P.7.

[3.13]. P.W.14 is the Doctor attached to Government Hospital, Kallakurichi, who conducted autopsy on the dead body of the deceased on 05.04.2012 at 1.00 a.m. and issued Ex.P.11/Post-Mortem Report. P.W.14 opined that the deceased would appear to have died of shock and hemorrhage, due to the injuries sustained. Hyoid bone report has been marked as Ex.P.8, in which it is stated that the hyoid bone was not intact and there was fracture of greater horn of the right side of hyoid bone. In his cross-examination, he has stated that the injuries on the deceased are incised wounds, and not cut injuries.

[3.14]. P.W.15 is the Investigating Officer. It is his evidence that on 04.04.2012 at 2.00 p.m., while he was discharging his duty as Circle Inspector at Tirukoilur police station, took up the case for investigation and went to the scene of occurrence at 2.45 p.m., and prepared Observation Mahazar and Rough Sketch in the presence of P.W.7 and P.W.8. He also recovered bloodstained earth, sample earth and bloodstained bed-sheet under Form 95. Thereafter, he conducted inquest on the dead body of the deceased in the presence of

Panchayatars on the same day at 3.30 p.m. and issued Inquest Report-Ex.P.13. Thereafter, P.W.15 examined the witnesses P.Ws.1 to 10 and recorded their statements. On 05.04.2012 at 5.00 a.m., P.W.15 arrested the accused in Periyayee Temple at Rishivandiyam forest area and recorded his confession statement in the presence of P.W.11 and P.W.12 and recovered the knife-M.O.1 and also sent the accused to judicial custody. It is his further evidence that on 06.09.2012, he recorded the statement of Post-mortem doctor-P.W.14 and after completing the investigation, filed charge sheet against the accused under Sections 294(b), 449, 506(ii) and 302 IPC.

[3.15]. P.W.16 is the Junior Analyst, Forensic Science Department has analysed the viscera of the deceased and she has given the Viscera Report-Ex.P.9, wherein, it is stated that no alcohol or poison was detected in the viscera of the deceased. The bloodstained cement plaster and sample cement plaster have been examined by the Forensic Science Department, Chennai and it has been stated that both the samples are found to be similar to each other and the Chemical Report was marked as Ex.P.14.

[3.16]. P.W.17 is the Chemical Analyst attached to Chennai Forensic Science Laboratory and in her evidence, she has stated that she has analysed bloodstained cement plaster, knife and dhoti and in cement plaster and dhoti, human blood is detected and as per Ex.P.12, blood is detected in the knife and the Serology Report was marked as Ex.P.15.

4. After considering the rival submissions, the learned III Additional Sessions Judge, Kallakurichi, has laid the conviction and awarded the sentence as stated in the first paragraph of this judgment. As against the judgment of conviction and sentence passed by the learned Sessions Judge, the present criminal appeal is preferred by the convicted accused/appellant.

5. Learned counsel for the appellant/accused could contend that there is an inordinate unexplained delay of seven hours in reaching the FIR to the Judicial Magistrate's Court and there is a material contradiction between the ocular witness and the evidence of the Doctor. It is further contended that the presence of P.W.2 is doubtful and there is an insertion in Ex.P.1-complaint and the same creates doubt of origin of the complaint. The next contention of the learned counsel for the appellant/accused is that there was a correction in the time of the occurrence.

6. Per contra, the learned Additional Public Prosecutor could contend that the scene of the crime has been proved in the manner known to law. The scene of the crime is the veranda of the house of the deceased and the accused had premeditated for committing the crime of murder and went to the house of the deceased and inside the veranda, the accused had committed the crime and the same had been witnessed by the private prosecution witnesses and the other materials also have been proved in the manner known to law and hence, the learned Additional Public Prosecution made submissions for subsistence of the conviction and sentence passed by the learned Sessions Judge.

7. The case of the prosecution, in brief, is that the appellant/accused had prevented the brother of the deceased from constructing his house and when the same was questioned by the deceased, a wordy quarrel between the accused and the deceased has arisen. Due to previous enmity, on 04.04.2012 at 12.00 noon, while the deceased was lying down on the veranda of his house, the appellant/accused went to the house of the deceased and inflicted fatal injuries on the body of the deceased with 'Suri Knife' and also threatened the other witnesses with dire consequences and hence, necessary charges have been framed by the learned Sessions Judge.

8. P.W.6 and P.W.7, who said to have seen the accused running from the scene of the crime with knife. However, in the cross-examination, they have given a dilution of their version.

Homicide :-

9. Based upon the oral evidence of P.W.14-Dr.Rajendran coupled with the documentary evidence of Ex.P.11/Post-mortem Report and Ex.P.8-Hyoid bone Report, it is seen that the deceased would appear to have died of shock and hemorrhage due to the injuries sustained by him. Accordingly, we find that the deceased died due to homicidal violence due to the injuries sustained by him on 04.04.2012 inside his house.

Motive :-

10. Previous enmity is attributed as a motive for the crime and the same is a double edged weapon. Both P.W.1 and P.W.3 and other prosecution witnesses have specifically deposed regarding the previous enmity to the effect that the accused had prevented the brother of the deceased from constructing a house in his plot and at that time, in support of his brother, the deceased came

and questioned the accused as to how he can prevent his brother from constructing house in his plot and the same has developed into quarrel between the appellant/accused and the deceased. P.W.2, who is the son of the deceased, has categorically stated in his evidence that there is an enmity between the accused and the deceased. In view of the clear and cogent evidence of P.W.1, P.W.2, P.W.3 and P.W.6, we are of the considered view that the motive alleged by the prosecution has been proved in the manner known to law. Though P.W.1-Arunthathi is an occurrence witness, who had witnessed the occurrence, she had deposed in support of the case of the prosecution.

Crime :-

11. P.W.1 is the wife of the deceased and P.W.2 is the son while P.W.3 is the brother of the deceased. P.Ws.4 and 5 are the daughter-in-laws of the deceased. P.Ws.6 and 7 are the neighbours. P.W.9 is the another son of the deceased who admitted the deceased in the hospital.

12. After going through the private prosecution witnesses viz., P.W.1, P.W.2, P.W.4, P.W.5 and P.W.9 they are the wife, son, daughter-in-laws and another son of the deceased respectively, in view of the admission in the cross-examination by P.W.1, P.W.2, P.W.4, P.W.5 and P.W.9 that only after hearing the alarm and screaming voice of P.W.1, they came to the scene of occurrence, the trial Court has rightly held that their evidence does not advance the alleged act of the accused on the body of the deceased. However, on a close scanning and scrutiny of the version of P.W.1, we find that her evidence is clear and cogent and in the cross-examination, nothing is elicited to discredit her evidence. On a combined reading of the chief and cross-examination of P.W.1 coupled with the evidence of P.W.15, Investigating Officer, the evidence of P.W.1 inspires the confidence of this Court as to the act of the accused on the body of the deceased and her ocular evidence as to the occurrence and the act of the accused in causing injury on the neck and shoulder of the deceased found to be duly corroborated by the medical evidence of P.W.14-Dr.Rajendran and stands duly corroborated by Ex.P.11-Post-mortem Report coupled with Ex.P.9-Viscera Report and thus, we find that the version of the private prosecution witness P.W.1, which is found to be clear and cogent, does not suffer from any material contradiction much less any contradiction.

13. On a combined reading with the evidence of P.W.15-Investigating Officer and his evidence is found to be duly corroborated with the evidence of P.W.11, Post-mortem Doctor, we find that the act of the accused in causing injuries with knife (weapon of the crime) has been duly proved and as the same inspires the confidence of the Court and held to be reliable and trustworthy and hence, on a different analysis from that of the discussion by the Sessions Court, we are of the considered view that the charge under Section 302 IPC in respect of the alleged act of the accused on the body of the deceased is proved beyond reasonable doubt.

14. It is the specific case of the prosecution that the incident has taken place in the veranda of the house of the deceased. P.W.7 and P.W.8, who are the attestors of the observation mahazar, could depose regarding the preparation of Ex.P.2-Observation Mahazar and Ex.P.3-Rough Sketch. Sample soil was taken from the scene of the crime and the same is found to be similar in nature as per the Chemical Analysis Report under Ex.P.14. The bloodstained plaster and sample cement plaster were stated to be of similar in nature and hence, the scene of the crime projected by the prosecution has been proved in the manner known to law.

15. As stated supra, the scene of the crime is inside the house viz., veranda of the house of the deceased. It is the specific version of P.W.1, P.W.2, P.W.6 and P.W.9 that there was a previous enmity between the deceased and the accused and when so, under the normal human behavior and conduct, a person, who said to have strained relationship with the deceased could not go to the house of the deceased. However, in the instant case, the accused has entered into the house and hence, the accused has entered into the house of the deceased with preplanned mind viz. premeditation to commit the act of murder of the deceased also assumes significance. Even in the cross-examination, P.W.2, son of the deceased, has categorically stated that the relationship between the deceased and the accused strained for over many number of years and it erupted again in the incident relating to construction of house by P.W.3.

16. After perusal of the original complaint-Ex.P.1 and the F.I.R.-Ex.P.7, and also the explanation given by the Investigating Officer in reaching the FIR to the Judicial Magistrate's Court with a delay of seven hours, it cannot be fatal to the prosecution having regard to the distance between the two places and the explanation of the Investigating Officer. Furthermore, we find that the overwriting is merely an error caused in a regular

witting which does not cause any suspicion over the coming into the existence of the complaint consequently FIR as the same is very trivial in nature.

17. On perusal of the original records, we find that the cross-examination has been taken after one month on recall and from this, we find the reason that there is a dilution of the statement of the version of the said witnesses P.W.6 regarding the presence of the accused viz., who saw the accused running from the scene of the crime. Hence, we find that it is only after recall, that too after a months' time and hence, we are constrained to hold that the version of P.W.6 at the first instance holds and the presence of the accused running from the house of the deceased with knife in the hand is also proved in the manner known to law. Furthermore, it is the specific evidence of P.W.7 that on hearing the noise of P.W.1, he rushed to the house of the deceased and at that time, he saw the accused running away from the scene of the crime with knife in his hand. P.W.7 has further stated that the deceased was struggling for life and he had informed P.W.9 and taken the deceased to the hospital for treatment and hence, all the points raised by the learned counsel for the appellant/accused on the above analysis stands negatived.

18. Yet another point is that based upon the admissible portion of the confession statement Ex.P.5 said to have been given by the accused in the presence of P.W.11 and P.W.12, M.Os.1 and 4 were recovered. Further, it is seen from Ex.P.14-Chemical Analysis Report and Ex.P.15-Serology Report, the same contained blood and in the absence of any discrepancy in the evidence of P.W.11 and P.W.12 regarding the recovery made in pursuance of the disclosure statement relating to the fact of recovery of M.O.1 which is found to have blood as per Ex.P.14-Chemical Analysis Report, we find that the same also lend credence to the prosecution theory. Accordingly, we holds that the prosecution has proved the charges framed against the appellant/accused in the manner known to law. Hence, the findings rendered by the Trial Court regarding the charges under Sections 302 and 506 (ii) IPC, on re-appreciation of the evidence of P.Ws.1 to 5, we holds that the said findings do not suffer from any irregularity or illegality warranting interference at this appellate stage. The prosecution has proved its case beyond reasonable doubt and hence, the conviction and sentence passed by the learned Sessions Judge for the offences under Sections 302 and 506(ii) IPC are confirmed.

19. In view of the discussion in the preceding paragraphs about the mental status of the person, who committed the act of the crime, we find that the sentence awarded by the trial Court is just and proper which cannot be termed as excessive. In this view of the matter, the sentence awarded by the Trial Court for the offences under Sections 302 and 506(ii) IPC also hereby confirmed.

20. In the result, this Criminal Appeal is dismissed and the conviction and sentence passed by the learned III Additional District and Sessions Judge, Villupuram at Kallakurichi, in S.C.No.63 of 2013, dated 01.04.2016 are confirmed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Jrl  
To

1. III Additional District and Sessions Judge,  
Villupuram at Kallakurichi.
2. The Superintendent, Central prison, cuddalore.
3. The Station House Officer,  
Rishivandiyam Police Station,  
Villupuram District.
4. The Public Prosecutor, High Court, Madras - 104.
5. The Judicial Magistrate, Thirukoilur.
6. The District collector, cuddalore
7. The Director General of Police ,  
Mylapore, chennai 4
8. The Superintendent of Police, Cuddalore.

Copy to:

The Section Officer,  
Criminal Section,  
High Court, Madras

CRL.A.No.637 of 2017

A.SK(21/02/2020)