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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2020
Pronounced on : 27.02.2020

C O R A M

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.705 of 2017

Siva @ Siva Kumar ... Appellant/A1

vs.

State, by
The Inspector of Police,
Mettupalayam Police Station,
Coimbatore District.
(Crime No.573 of 2012)

... Respondent/complaint

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 20.11.2015 passed by the learned Sessions Judge, Special Court for Bomb Blast Cases, Coimbatore, in S.C.No.8 of 2014.

For Appellant : Mr.T.Muruganantham
For Respondent : Mrs.M.Prabhavathi,
Additional Public Prosecutor.

J U D G M E N T

R.PONGIAPPAN, J.

The appellant in this appeal is the first accused in Sessions Case No.8 of 2014, on the file of the learned Sessions Judge, Special Court for Bomb Blast Cases, Coimbatore. There are two accused in this case. They stood charged as detailed below:-

Sl.N o.	Charge(s) framed against	Charge(s) framed under
1.	First Accused	U/s. 302 and 506(ii) IPC
2.	Second Accused	U/S. 302 r/w 34 IPC



2. The trial Court, by Judgment dated 20.11.2015, convicted the accused and sentenced them as detailed below:-

Rank of the accused	Penal provision (s) under which convicted	Sentence
1 st Accused	U/s. 302 IPC	Imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for six months.
	U/s.502(ii) IPC	Rigorous Imprisonment for three years and no fine amount was imposed.
2 nd Accused	U/s.302 r/w 34 IPC	Imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for six months.

The sentences were ordered to run concurrently. Challenging the above said conviction and sentence, the appellant/A1 is before this Court with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:

(i) The deceased, in this case, one Mahendran, is the son of P.W.1. Appellant in this case is son of one Mani and they are residing behind the house of the deceased. There was a dispute between the deceased and appellant's family regarding the common pathway. Due to the same, there were frequent quarrels between the deceased and accused family. Four months prior to the occurrence, the deceased beaten the father of the appellant. In order to take revenge, on 06.08.2012 at about 5.00 p.m., both appellant and A2 came in a motor cycle, A2 riding the motor cycle and the appellant was sitting in the pillion. At that time, the deceased was standing near a shop and after seeing the deceased, appellant got down from the motor cycle, scolded the deceased, taken empty beer bottle found near by a shop and attacked the deceased on his neck. On such attack, the deceased fell down. Once again appellant attacked the deceased on the right side of the neck. P.W.1, the mother of the deceased was also standing there and she raised alarm. On hearing it, the people in and around the scene of occurrence rushed to the place and after seeing them, appellant tried to escape and fell down. The public gathered there caught hold of the appellant. However, A2, who was sitting in the motor cycle fled away from the scene of occurrence. Then, P.W.1 went to the police station along with P.W.8 and her relatives and lodged a complaint [Ex.P1].



(ii) P.W.15, Sub Inspector of Police attached to the respondent police station, on receipt of the complaint, registered a case in Crime No.573 of 2012 under Section 302 IPC, prepared first information report[Ex.P23] and sent the same to the learned Judicial Magistrate, Mettupalayam and copies of the same to the higher officials.

(iii) P.W.18, Inspector of Police, working in the respondent police station, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared an observation mahazar [Ex.P4], drew rough sketch [Ex.P30] and arranged the photographer for taking photographs of the dead body of the deceased [M.Os.6 to 15, 23 and 24]. Then, P.W.18 recovered blood stained earth [M.O.16], sample earth [M.O.17], broken beer bottle [M.O.1] in the presence of witnesses. P.W.18, then conducted inquest over the dead body of the deceased between 08.15 pm and 10.15 pm., in the presence of panchayatdars and prepared inquest report [Ex.P31]. After inquest, he sent the dead body to the Government Medical Collage Hospital, Coimbatore for conducting postmortem autopsy through P.W.15 Head Constable. Since the appellant in this case was caught hold by the public and beaten up, he suffered some minor injuries and was admitted in the Government Hospital, Mettupalayam. On 06.08.2012, at about 6.30 p.m., P.W.18 arrested the appellant. On such arrest, he has voluntarily given a confession, and based on the disclosure statement[Ex.P6], P.W.18 recovered blue colour jeans Pant [M.O.18], Brown colour full hand shirt[M.O.19], White colour banyan [M.O.20], under mahazar [Ex.P7] in the presence of witnesses. On 07.08.2012 at about 1.00 p.m., appellant identified A2 and P.W.18 arrested the A2. On such arrest, the A2 has voluntarily given confession and based on the disclosure statement[Ex.P8], P.W.18 recovered Pulser Motor Cycle bearing Registration No.TN-39-AJ-1116 [M.O.2], under mahazar [Ex.P9]. He examined some witnesses and recorded their statements. P.W.18 sent the blood stained material objects to the Judicial Magistrate Court for forwarding the same to the Forensic Department for chemical examination.

(iv) P.W.9, Assistant Surgeon, working in the Government Medical College and Hospital, Coimbatore, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

(1) Cut like laceration 9 x 4 cm x muscle deep noted over lower part of right side neck in its front and right side. The medial end is 3 cm above the sternal notch and the lateral end is 4 cm above the right clavicle. On dissection the wound irregularly cutting the underlying muscle, nerves and vessels include the carotid sheath and its content.



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(2) Cut like laceration 7 x 2 cm x muscle deep noted over right side neck. The lateral end is 1.5 cm above wound No.1 and medial end is 3 cm above medial end of wound No.1. On dissection the wound irregularly cutting the underlying muscles nerves and vessels.

(3) Cut like laceration 7 x 1 cm x muscle deep noted over front of neck, 0.5 cm above wound No.1. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(4) Cut like laceration 3 x 2 cm x muscle deep noted over front of neck, 0.5 cm above wound No.3. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(5) Cut like laceration 8 x 2 cm x muscle deep noted over right side neck and mastoid region. The medial end is 2 cm below and lateral to angle of mandible and outer and upper end is 3 cm posterior to upper part of penne. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(6) Cut like laceration 1.5 x 0.5 x 0.5 cm noted over right cheek. The outer end is 7 cm medial to the tragus and 2 cm below to outer canthus of right eye. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(7) Cut like laceration 1.5 x 0.5 cm x scalp deep noted over right frontal region. The outer end is 3 cm above to right ear and inner and is 6 cm above lateral to right eyebrow.

(8) Cut like laceration 5 x 1 x 0.5 cm noted over left side neck, 8 cm lateral to midline of neck at the level of thyroid. On dissection the wound irregularly cutting the underlying muscles.

(9) Cut like laceration 2 x 0.5 x 0.5 cm noted over left side upper part of neck, 2 cm lateral to angle of mandible and 4 cm medial to angle of mandible. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(10) Cut like laceration 1 x 1 cm x cartilage deep noted over right ear lobule.

(11) Cut like laceration 4 x 1 cm exposing tendons noted over dorsum of left hand, 6 cm from the below wrist, lower end is at the level of meta carpal phalange joint. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(12) Cut like laceration 3 x 0.5 cm x scalp



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deep noted over mid posterior parietal region.

(13) A stab wound with finely lacerated margins 5 x 2 x 4 cm noted over back of left side chest, 2 cm from midline at the level of T3 vertebra and 3 cm medial to the scapular prominence. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels and the wound passes downwards inwards along the muscle plane.

(14) A stab wound with finely lacerated margins 2 x 0.5 cm x muscle deep noted over back of left side chest, 1 cm outer to the previous wound at the level of medial border of the left scapula. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(15) Cut like laceration 2 x 0.5 x 0.5 cm noted over back of left side neck. The medial end is at the level of vertebral level. On dissection the wound irregularly cutting the underlying muscles, nerves and vessels.

(16) Reddish abrasion 11 x 0.5 cm noted over left shoulder and scapular region and 9 x 1 noted over right side of neck, 7 x 0.5 cm and 5 x 0.5 noted over right side neck and back of neck.

(17) Multiple small reddish abrasions of varying sizes and shapes noted over back of neck.

He opined that the deceased would appear to have died of Shock and Haemorrhage due to multiple injuries and he issued Postmortem Certificate[Ex.P12].

(v) P.W.18 continued the investigation, examined the Doctor, who conducted postmortem on the dead body, and other witnesses and recorded their statements. After completion of investigation, he laid the charge sheet against the accused.

4. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 18 witnesses were examined, 31 documents and 15 material objects were marked.

5. Out of the above said witnesses examined, P.W.1 is the mother of the deceased. She has spoken about the motive for the occurrence and she is also an eye witness to the occurrence. According to her, at the time of occurrence, A2 is riding the motor cycle and appellant is sitting in the pillion. After seeing the deceased, appellant got down from the motor cycle and attacked the deceased with empty beer bottle available near by a



shop. She raised alarm. On hearing her hue and cry, public near by rushed to the scene of occurrence and caught hold the appellant.

6. P.W.2 is another eye witness to the occurrence. According to him, he saw the appellant while attacking the deceased and at that time A2 was sitting in the motor cycle. After the occurrence, the public caught hold the appellant. On the other hand A2 went away from the scene of occurrence in his motor cycle. P.W.3 is also another eye witness to the occurrence. He has also reiterated the evidence of P.W.2. P.W.4 is also another eye witness to the occurrence. He has also reiterated the evidence of P.Ws.2 and 3.

7. P.W.5 is working as a Sales Man in No.26, Bharathi Nagar Ration shop. According to him, after hearing the noise, he came out from the Ration shop and saw the deceased lying on the road with stab injuries. P.W.6 was working as medical technician in 108 ambulance. After receipt of the information, he visited the scene of occurrence and found the deceased dead. P.W.7 is the witness to the observation mahazar and also recovery of broken beer bottle. P.W.8 is the close relative of P.W.1. According to him, he accompanied the P.W.1 and lodged a complaint before the respondent police. P.W.9, is the Assistant Surgeon, who conducted postmortem autopsy on the dead body of the deceased and issued postmortem certificate [Ex.P12]. P.W.10 is the Doctor working in the Government Medical College & Hospital, Coimbatore. She has spoken about the receiving of the dead body, issuance of Accident Information Report and about the sending of dead body to the mortuary. P.W.11 is the photographer. He took photographs of the dead body. P.W.12 was working as Head Clerk in the Judicial Magistrate Court, Mettupalayam. He has sent the material objects to the Forensic Department for chemical examination. P.W.13 was working as Head Constable in the respondent police station. He has submitted the material objects to the Forensic Department for chemical examination.

8. P.W.14, is the Sub Inspector of Police, working in the respondent police station. On receipt of the complaint, he registered a case and then sent the first information report to the Judicial Magistrate Court. Further he has sent the copies of the same to the higher officials. P.W.15 is the Head Constable attached to the respondent police. According to him, he accompanied the dead body to the Government Hospital for postmortem. P.W.16, is the learned Judicial Magistrate No.I, Coimbatore, who conducted the test identification parade. P.W.17, is the Doctor, working in the Government Hospital, Mettupalayam, who gave treatment to appellant/A1. P.W.18, is the Inspector of Police attached to the respondent police station.



On receipt of the first information report, he conducted the investigation and examined the witnesses. Further he has arrested the accused and recovered the material objects. After completion of investigation, he laid the charge sheet against the accused.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused did not examine any witnesses nor marked any documents.

10. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in 2nd paragraph of this judgement. Challenging the above conviction and sentence, the appellant/A1 is before this Court.

11. We have heard Mr.T.Muruganantham, learned counsel appearing for the appellant and Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. The learned counsel appearing on behalf of the appellant would contend that in respect to the preparation of complaint, PW1 has stated that after the occurrence, she called PW8-Gurusamy and thereafter, the said PW8 prepared the complaint. The very same PW1 has further stated that she does not know the mobile number of the said Gurusamy. So it is impossible to prepare the complaint as alleged by PW1.

13. Secondly, learned counsel appearing on behalf of the appellant would contend that PW2 to PW4, the alleged eye witnesses to the occurrence, all have stated before the trial Court that they reached the scene of occurrence, after some time from the time, at which the occurrence has happened. Therefore, it cannot be said that they are eye witnesses to the occurrence.

14. Further, the learned counsel appearing on behalf of the appellant would submit that in the report given by PW13, who is the handwriting expert in respect to the investigation, in Ex.P27, time 2.30pm was altered to 5.30pm, which would create a doubt as to whether the alleged occurrence had happened as stated by the prosecution or not. More than that, in the FIR, it was mentioned that the deceased sustained two injuries. On the other hand, in the inquest report prepared by the investigation officer, he has mentioned that the deceased sustained 8 injuries. Since the author of the First Information Report is mother of the deceased, in respect to the number of injuries sustained by the deceased, hence, the case of the prosecution differs and also create a doubt whether PW1 was



present at the time of occurrence place or not. Further, in respect to the arrest, the investigation officer, has admitted that there was a mistake found in the arrest card. Therefore, in the above circumstances, the learned trial Judge, without appreciating the case of prosecution with perspective manner, convicted the appellant which is erroneous in law. Accordingly, he prayed to allow the appeal.

15. Per contra, the learned Additional Public Prosecutor would contend that the lapses and discrepancies now indicated by the appellant are all minor in nature and therefore, the same cannot be taken into account, for allowing the appeal. She prayed for dismissal of the appeal.

16. Now, on considering the rival submissions made by the counsel appearing on either side, initially, before the trial Court, the copy of the FIR, was marked as Ex.P23. As per the averments stated in the said First Information Report, the occurrence had happened on 06.08.2012 at about 17.30 hours. Subsequently, the police has received the information on 18.00 hours on the same day. Thereafter, the said FIR was received by the Judicial Magistrate at about 19.00 hours on the same day. So according to the endorsement made by the learned Judicial Magistrate, the First Information Report is received by him within one hour from the time of first information report. In the said circumstances, in respect to the lodging of complaint before the police station, the defacto complainant has stated that immediately after the occurrence, she dictated the occurrence to one Gurusamy (PW8) and the same was written by him in accordance with the version of PW1.

17. Though, in respect to the preparation of complaint, PW1 has stated above, during the time of cross examination, she has stated that she does not know the mobile number of Gurusamy [PW8]. In this regard, when at the time of giving evidence the said Gurusamy [PW8], has stated that during the time of occurrence he has been in some other place. So now, the question arises how the said Gurusamy came to the occurrence place and prepared the complaint.

18. In this respect, PW2, who is one of the eye witness to the occurrence has stated in his evidence that after reaching the occurrence place, he only gave the mobile number of Gurusamy to PW1. In this regard, PW2 has specifically stated that since he was working under the said Gurusamy as painter, he know his mobile number. So the said evidence given by PW2 is clarifying the contradiction, which arise in respect to the presence of Gurusamy [PW8], in the occurrence place and about the preparation of the complaint.



19. More than that, in the complaint, the said Gurusamy [PW8] has put his signature as a witness and mentioned his address. Further the same has been marked as Ex.P10. Therefore, we are not in a position to doubt the presence of the Gurusamy [PW8], in the occurrence place. Therefore, the submission made by the learned counsel appearing on behalf of the appellant, in respect to the preparation of complaint, did not create a doubt over the case of the prosecution.

20. In this case, except PW1, PW2 to PW4 are all examined as eye witnesses to the occurrence. According to the appellant, they have all reached the scene of occurrence only after the occurrence and thereby they cannot be treated as eye witness.

21. In this regard, PW2 has stated before the trial Court that before the occurrence, when he was walking near to Bharathi Nagar Bottle Godown, both the deceased and PW1 are also walking in front of him. Only at that time, both the appellant and A2 came in a motorcycle and committed the offence. PW3 has stated that at the time of occurrence i.e., on 06.08.2012 at about 5.30 hours, when he was riding in his two wheeler viz., TVS XL, both appellant and 2nd accused overtook his vehicle and after reaching the place, where PW1 and the deceased were walking, appellant got down from his vehicle in which he travelled and committed the offence. Likewise, PW4 has also stated that when he was travelling in his two wheeler viz. Star City TVS motor bike, both appellant and A2 came in a two wheeler viz., black colour Pulser, and after overtaking him, the appellant got down from the motorcycle and committed the offence.

22. So, in respect to the presence of PW2 to PW4, all of them have clearly stated that before the occurrence, they were also present near to the place where the occurrence had happened. In other words, the said evidence cannot create any contradiction over their presence. Further, going through the entire evidence given by them, will clearly reveal the fact that during the time of occurrence, 2nd accused, now acquitted, was riding the pulser motorcycle, in which the present appellant has travelled as a pillion rider. At that time, both the appellant and PW1 are walking on the road side. Near to the occurrence place both the accused came and after getting down from the vehicle, the appellant/A1 made threat to the deceased and after picking up a beer bottle from the place in which the glass pieces are stored, had committed the offence. So in respect to the offence, the evidence given by PW2 to PW4 is clear, narrow and also inspires confidence of this Court. Therefore, the second submission made by the learned counsel appearing for the appellant is also not in his favour.

23. Now, in respect to the number of injuries sustained by



the deceased, it is true that in Ex.P1, the defacto complainant has stated that during the time of occurrence the appellant, by using a broken beer bottle attacked the deceased on his neck for two times. On the other hand, on going through the evidence given by the PW9, the doctor who conducted the post mortem, the deceased sustained 17 injuries. Therefore, it is clear that in respect to the number of injuries sustained by the deceased, the evidence given by PW1 is fully contradictory in nature when comparing her evidence with the evidence of doctor who conducted the postmortem.

24. In this regard, the learned Additional Public Prosecutor would contend that though the Doctor has stated that 17 injuries were found in the dead body of the deceased, only the first four injuries are found in the neck of the deceased. More than that, since the alleged occurrence has happened immediately without any expectation, we cannot expect the entire happening from the mouth of PW1.

25. It is true as per the evidence given by PW9, only four injuries are found in the neck of the deceased. In the said circumstances though, there is a contradiction, in respect to the number of injuries sustained by the deceased, since, all the four eye witnesses have corroborated the evidence of PW1, we cannot hold that the said contradiction leads and creates a doubt over the case of the prosecution.

26. In this regard, it is relevant and necessary to see the judgment in Sachin Kumar Singhraha Vs. State of Madhya Pradesh, reported in (2019) 8 SCC 371, wherein our Hon'ble Apex Court, has held as follows:

"12. The Court will have to evaluate the evidence before it keeping in mind the rustic nature of the depositions of the villagers, who may not depose about exact geographical locations with mathematical precision. Discrepancies of this nature which do not go to the root of the matter do not obliterate otherwise acceptable evidence. It need not be stated that it is by now well settled that minor variations should not be taken into consideration while assessing the reliability of witness testimony and the consistency of the prosecution version as a whole. In this view of the matter, in our considered opinion, the evidence of PW5 fully supports the evidence of PW4 and the case of the prosecution."

27. Further, in respect to the value of the FIR, in Prabhu Dayal Vs. State of Rajasthan, reported in (2018) 8 SCC 127, our Hon'ble Apex Court has held as follows:

"16. A witness' testimony need not be disbelieved



only because it did not find mention in the FIR. In State of M.P. v. Dhirendra Kumar, (1997) 1 SCC 93, this Court discussed and applied the principle as follows:

"11. It was very emphatically contended by Shri Gambhir that as in the first information report (FIR) there is no mention about the dying declaration, we should discard the evidence of PW 1 and PW 2 regarding dying declaration, because of what has been pointed out by this Court in Ram Kumar Pandey v. State of M.P. [(1975) 3 SCC 815 : 1975 SCC (Cri) 225 : AIR 1975 SC 1026] We do not, however, agree with Shri Gambhir, for the reason that what was observed in Ram Kumar case [(1975) 3 SCC 815 : 1975 SCC (Cri) 225 : AIR 1975 SC 1026] after noting the broad facts, was that material omission in the FIR would cast doubt on the veracity of the prosecution case, despite the general law being that statements made in the FIR can be used to corroborate or contradict its maker. This view owes its origin to the thinking that if there be material departure in the prosecution case as unfolded in the FIR, which would be so if material facts not mentioned in the FIR are deposed to by prosecution witnesses in the court, the same would cause dent to the edifice on which the prosecution case is built, as the substratum of the prosecution case then gets altered. It is apparent that prosecution cannot project two entirely different versions of a case. This is entirely different from thinking that some omission in the FIR would require disbelieving of the witnesses who depose about the fact not mentioned in the FIR. Evidence of witnesses has to be tested on its own strength or weakness. While doing so, if the fact deposed be a material part of prosecution case, about which, however, no mention was made in the FIR, the same would be borne in mind while deciding about the credibility of the evidence given by the witness in question." (emphasis supplied)"

So, applying the above said principles set out by our Hon'ble



Apex Court in the earlier two judgments, discrepancies found between the FIR and the eye witnesses do not create a suspicion over the case of the prosecution.

28. As a general rule, court can and may act on the testimony of a single witness though uncorroborated, that unless corroboration is insisted upon by statute, the court should not insist upon corroboration except in cases where the nature of the testimony of a single witness itself requires the same as a rule of prudence, e.g. in the case of a child witness, or of a witness in a position analogous to that of an accomplice, and that whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case. There may be three classes of witnesses, viz., (a) wholly reliable, (b) wholly unreliable and (c) neither wholly reliable nor wholly unreliable. The question of corroboration arises only in the case of the witnesses of the last category in which the Court is called upon to be circumspect. Witness when is neither reliable nor unreliable, it needs corroboration. In otherwise, conviction on the testimony of solitary witness is legal, if he is wholly reliable.

29. In the given case, as rightly pointed out by the learned Additional Public Prosecutor, the evidence given by PW1 is fully corroborated through the evidence of PW2 to PW4. It is the case of prosecution that after completing the occurrence, the appellant herein attempted to escape from the place of occurrence. Only the people, who are present at that place caught hold the appellant and tied him with rope to electric post present there. In fact, attempt to abscond is a relevant circumstance under Section 9 of the Indian Evidence Act. More than that, evidence referring to threats given by the accused to the deceased is also admissible. The threat constitutes motive and explains his antecedent conduct. The presence of motive is relevant under the section as it goes to show the mens rea of a crime.

30. In a given case, as per the evidence given by PW1 to PW4, it is very clear and narrow that before committing the offence, the appellant uttering the words that "he is going to kill him", would show the conduct of the appellant, is also a relevant fact to prove the motive of the accused. Therefore, the submission made by the learned Additional Public Prosecutor is in support of the prosecution and it will reveal the fact that only with the intention to murder the deceased, the appellant came to the occurrence place and after committing the offence, he attempted to escape from the scene of occurrence.

31. Further, as per the evidence given by the occurrence witnesses, the appellant/A1 has also sustained injuries during



the time when he was attempting to escape from the scene of occurrence. In this regard, PW17, the doctor has given the evidence that on the same day, he treated the appellant/A1 and found that he has sustained few injuries, which are superficial in nature. Though, the said doctor has stated that the said injuries are due to the attack made by unknown persons, over the appellant, since the injuries sustained by the appellant/A1 is superficial in nature, it is not necessary to find out whether the deceased has also participated in the occurrence.

32. In respect to the alteration of time, as per the evidence given by the handwriting expert, he himself has admitted that the time was altered. It is settled position that the evidence given by the expert is only a corroborative piece of evidence and not otherwise. In the said circumstances, though the evidence given by the handwriting expert is not in accordance with the case of prosecution, considering the fact that the evidences given by the ocular witnesses is fully corroborated through the evidence of post mortem Doctor, it is unnecessary to find out the genuineness of the evidence given by the handwriting expert.

33. More than that, it is not in dispute that as per the evidence given by the investigation officer, the dresses worn by the appellant and the deceased were recovered and the same were sent to Forensic Science Department, for chemical examination. In this regard, on going through the report of the Assistant Director of Forensic Science Department, which were marked as Ex.P17 and P18, all the dresses referred above are having human blood and all belongs to 'O' group. If really the appellant has not participated in the alleged occurrence, it is impossible to trace the 'O' group blood found in the dresses worn by the appellant. So, the evidence given by the expert is also in support of the ocular witnesses.

34. Yet another circumstances necessary to decide the issue is, before the trial Court the rough sketch drawn by the investigation officer was marked as Ex.P30. In respect to the said document, there was no denial on the side of the appellant that the said document is a fabricated one. Now, on going through the said document, near to the occurrence place, there was a bottle godown and ration shop. The case of the prosecution is that while at the time of occurrence, the appellant took one empty liquor bottle and attacked the deceased. So, the said circumstances create a confidence over the case of the prosecution.

35. More than that, the Sales Man working in the ration shop has also given evidence as PW5 and he has stated about the dead body of the deceased, which was found in the occurrence place



and about the tying of the appellant/A1 to the electric post. So absolutely, the submissions made by the learned counsel appearing on behalf of the appellant, do not create any doubt over the case of the prosecution. Therefore, we are of the considered opinion that the trial Court has appreciated the evidence of prosecution witnesses in a perspective manner and rightly come to the conclusion that the appellant/A1 is guilty of offence under Section 302 IPC.

36. Further, as per the evidence of PW1, before the occurrence, in respect to the assault made by the deceased towards the father of the appellant, appellant is having enmity with the accused. Only after four months from the said occurrence, the alleged occurrence had happened. So, it cannot be said that the appellant is not having any intention, motive and premeditation.

37. Now, we have to examine whether the act of accused would fall within the ambit of any one of the Exceptions to Section 300 of the Indian Penal Code.

38. The learned counsel appearing on behalf of the appellant would submit that the act of the accused would fall within the First Exception to Section 300 of Indian Penal Code. He would further submit that four months ago, the deceased had attacked the father of the appellant/A1. This was also a provocation for the appellant. Only after that occurrence, on seeing the deceased, 1st appellant/accused got provoked further and out of the said sustained provocation, the 1st appellant/accused had caused the death of the deceased.

39. In our considered view, there is no force in the said argument advanced by the learned counsel appearing on behalf of the appellant, since, before the occurrence, both the appellant and another one accused came in a motorbike and after chasing the deceased, the appellant herein committed the offence.

40. The learned counsel appearing on behalf of the appellant/A1 would rely on the judgment of a Division Bench of this Court in Suyambukkani Vs. State, reported in CDJ 1989 MHC 253 and submits that the entire circumstances found in and around the case of prosecution reveals the fact that only due to the sustained provocation the appellant committed the offence.

41. Now, on considering the said submission, it is true the said judgment is considered to be a landmark Judgment and a great contribution made by this Court in the development of the Criminal Law. In the said case, Hon'ble Dr. Justice David Annoussamy, while speaking for the Bench, analyzed the entire



Indian Scenario and held that the Indian Courts have added one more Exception to Section 300 of the Indian Penal Code, known as "sustained provocation". The Division Bench took into account K.M.Nanavati's case [K.M.Nanavati Vs. State of Maharashtra, reported in AIR 1962 SC 605] and held that the said decision is not the first one to take into consideration the situation of sustained provocation. The Division Bench further went on to say on sustained provocation as follows:-

"Though there has been seen here and there attempts, in those decisions to bring the sustained provocation under Exception 1 to Sec.300, IPC, there is a cardinal difference between provocation as defined under Exception I and sustained provocation. The only word which is common is 'Provocation'. What exception I contemplates is a grave and sudden provocation whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking the camel's back may even be a very trifling one. We are therefore far from grave and sudden provocation contemplated under Exception 1 to Sec.300, IPC. Sustained provocation is undoubtedly an addition by Courts as anticipated by the architects of the IPC.

42. But, in this case, assuming that the appellant/A1 had sustained the provocation for the past four months, according to the evidences available on record, the deceased has attacked the father of appellant/A1 before 4 months from the date of occurrence. Thereafter, there was a continuous quarrel happening between the family of the accused and deceased. The very fact that both of the accused had gone to the occurrence place, jointly, would go to show that the first accused had gone there only with a clear intention to murder the deceased. Only because of the said reason after the occurrence, the appellant/A1, attempted to escape from the scene of occurrence. Thus, it has been proved that the appellant/A1, is having the motive to kill the deceased.

43. Therefore, absolutely, there is no material to accept the contention of the learned counsel appearing on behalf of the appellant that the appellant/A1 had acted on account of the loss of self-control due to sustained provocation. Thus, the act of the appellant/A1 was not either out of grave and sudden or out of sustained provocation. Thus, the appellant/A1 is liable to be punished under Section 302 of the Indian Penal Code.



44. Accordingly, in the light of the above submissions, we are of the considered opinion that the trial Court had perspectively considered the evidence given by the prosecution witnesses and has rightly come to the conclusion that the appellant/A1 committed the offence under Section 302 IPC. Therefore, the interference of this Court is not necessary.

45. In the result, this Criminal Appeal is dismissed. The conviction and sentence imposed upon the appellant/A1, by Judgment dated 20.11.2015, made in S.C.No.8 of 2014, on the file of the learned Sessions Judge, Special Court for Bomb Blast Cases, Coimbatore, is confirmed. The Trial Court shall take steps to secure the appellant/A1 to commit him in prison to serve out the remaining period of sentence. The period of sentence already undergone by the accused shall be set off under Section 428 of the Code of Criminal Procedure.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Munsif-cum-Judicial Magistrate, Mettupalayam.
 - 2.The Chief Judicial Magistrate, Coimbatore.
 - 3.The Superintendent, Central Prison, Coimbatore.
 - 4.The Sessions Judge, Special Court for Bomb Blast Cases, Coimbatore.
 - 5.The Inspector of Police, Mettupalayam Police Station, Coimbatore District.
 - 6.The Public Prosecutor, High Court, Madras.
- +1cc to Mr.T.Muruganantham, Advocate, S.R.No.17310

judgment in
Criminal Appeal No.705 of 2017

vgII(CO)
jrs(29/05/2020)