

Ayyakutty Vs. State

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Court : Chennai

Decided On : Jan-24-2014

Judge : V. Dhanapalan

Appellant : Ayyakutty

Respondent : State

Judgement :

Before the Madurai Bench of Madras High Court Date:

24. 01/2014 Coram The Hon'ble Mr. Justice V. Dhanapalan and The Hon'ble Mr. Justice M. Duraiswamy Criminal Appeal(MD)No.261 of 2012 Ayyakutty S/o. Kudirai Vandi Thevar @ Vel Thevar Thalaiyuthu Tirunelveli District. ... Appellant vs State rep. by The Inspector of Police Tirunelveli Town Police Station Tirunelveli District. ... Respondent Criminal appeal under Section 374 of Cr. P.C. against the judgment of the learned Additional District Sessions Judge -cum- Fast Track Court No:

1. Tirunelveli, made in S.C. No:

479. of 2008 dated 28.09.2010 convicting the appellant under Section 302 I.P.C. and sentencing him to undergo life imprisonment and also to pay a fine of Rs. 5,000/- and in default to undergo one month simple imprisonment and convicting the appellant under Section 506 (ii) I.P.C. and sentencing him to undergo one year rigorous imprisonment and also to pay a fine of Rs. 1,000/- and in default to

undergo three months simple imprisonment. !For appellant ... Mr. S. Durairaj ^For respondent ... Mr. K.S. Duraipandian Additional Public Prosecutor :JUDGEMENT (Judgment of the Court was delivered by V. Dhanapalan, J.) The appellant, who is the sole accused was tried by the learned Additional District Sessions Judge -cum- Fast Track Court No:

1. Tirunelveli, in S.C. No:

479. of 2008 for offences under Sections 302 and 506 (ii) I.P.C. and by a judgment dated 28.09.2010 the trial Judge found the appellant guilty of both the charges and convicted and sentenced him to undergo life imprisonment for the offence under Section 302 I.P.C. and also to pay a fine of Rs. 5,000/- and in default to undergo one month simple imprisonment and for the offence under Section 506 (ii) I.P.C. convicted the appellant and sentenced him to undergo one year rigorous imprisonment and also to pay a fine of Rs. 1,000/- and in default to undergo three months simple imprisonment. Challenging the said judgment, the appellant is before this Court in this appeal.

2. The case of the prosecution in brief is as follows : ". (i) P.W.1 Selvakumar is the father of the deceased Gandhi @ Ganthimathinathan. He was having a shop in Bose Market in Tirunelveli Town and was doing banana business. He has taken Shop No:

51. for a daily rent of Rs. 25/- from P.W.5 Vasu and was doing business in that shop. P.W.5 has taken the said shop on lease from one Subbulakshmi, w/o. Boothalinga Achari by paying a sum of Rs.19,000/-. P.W.2 Manikandan is a relative of P.W.1 Selvakumar. The accused Ayyakutty used to visit P.W.1's shop for loading and unloading Banana load. P.W.1 used to pay the appellant wages for it. During loading and unloading of the banana load, often the deceased Gandhimathinathan and the appellant Ayyakutty used to fight with each other and P.W.1 used to pacify them. The deceased Gandhimathinathan used to consume alcohol. Fifteen days prior to the date of occurrence, on a Saturday, P.W.1 and the appellant returned to the shop of P.W.1 around 3.00 p.m. after having ".Mutton Briyani". at Kasi Vilas Hotel. The deceased asked them from where they are coming ?. P.W.1 replied by stating that they are coming from Kasi Vilas Hotel after

eating ".Mutton Briyani".. Deceased shouted at P.W.1 by stating that when his own son is here, he is buying Mutton Briyani for a prostitute's son. The appellant reacted sharply by asking the deceased as to, ".whom are you referring as son of a prostitute ?".. P.W.1 and P.W.3 Ramalingam - neighbour of P.W.1's shop, pacified the appellant. At that time, the appellant shouted at the deceased by stating that, ". I won't leave you without murdering you; your death is in my hands ". and went from that place. The next week, i.e. on 27.07.2008 Sunday, P.W.1 was sitting in his shop. At that time Gandhi had gone out. The appellant came there with an aruval and asked for the whereabouts of the deceased by stating that the deceased had spoken ill about him in public and that he will not leave the deceased without killing him. P.W.1 pleaded with the appellant to forgive him by stating that the deceased had spoken without knowing about the appellant and that he would beat the deceased in front of the appellant. The appellant did not compromise and left the place by saying that today the deceased is not there, but one day or the other he will kill him. This incident was witnessed by P.W.3 Ramalingam, Karthik, Kali, Kumar and other shopkeepers. Lastly on 03.8.2008, Sunday, around 1.00 p.m., P.W.1 woke up his son Gandhi who was sleeping in the shop. Gandhi refused to get up and asked P.W.1 to help himself and arrange the bananas and continued with his sleep. At that time, P.W.3 was present in his shop. P.W.2 came to P.W.1's shop incidentally. Both P.Ws. 1 and 2 were arranging the bananas in the shop. At that time, around 1.30 p.m., through the side entrance, the appellant came inside the shop with aruval and attacked Gandhi, who was sleeping, by cutting him at his neck. Again, he caused another cut injury near the ears. This was witnessed by P.Ws. 1, 2, 3 and others, who were speechless. The appellant shouted at the witnesses present in a filthy language by stating that if anyone dare to come near him, they will also be killed. By so stating, the appellant ran away from the place of occurrence. When P.W.1 went near his son, he saw blood ousung out of the neck and Gandhi was dead. He asked his another son Karthick and P.W.2 Ramalingam to stay near the dead body and rushed, along with Manikandan, to his house at the Big Street. P.W.1 informed his wife about the occurrence and then went to the Town Police Station. The Sub Inspector of Police at the Town Police Station took the complaint. The complaint was read over to P.W.1 and then P.W.1 signed in it, which is marked as Ex.P.1 in

this case. P.W.2 Manikandan had signed the complaint as a witness. (ii) In support of its case, prosecution had examined 15 witnesses, marked 17 exhibits and 9 material objects. (iii) P.W.1, Selvakumar, is the father of the deceased Gandhi @ Gandhimathinathan. He is a resident of Big Street at Tirunelveli Town. He has been doing business in banana at the Bost Market at Tirunelveli Town. He had a son and a daughter through his first wife Subbulakshmi. After the demise of Subbulakshmi, P.W. 1 married Valliammal and they have a daughter. The son born to P.W.1 through his first wife is Gandhi @ Gandhimathinathan, who was also involved in banana business along with P.W.1. Gandhi is unmarried. The accused used to come to P.W.1's shop for loading and unloading bananas. P.W.1 used to pay him wages. Vasayapuram at Tuticorin District is the native place of the accused. He is now residing at C.N. Village. His father's name is Veluthevar @ Kudiraivandi Thevar. The deceased and accused used to quarrel often while loading and unloading the bananas. The deceased used to consume alcohol. P.W.1 used to pacify both the deceased and the accused over their quarrel. Two weeks prior to the date of occurrence, on a Saturday, P.W.1 and the accused returned to the shop around 3.00 p.m. after having ".Mutton Briyani". at Kasi Vilas Hotel. At that time, the deceased was present at the shop. He asked them as to where from they are coming ?. They replied that they are returning from Kasii Vilas Hotel after having ".Mutton Briyani".. The deceased shouted at P.W.1 by stating that leaving the own son, P.W.1 is buying Mutton Briyani to a son of the prostitute. The accused got angry and asked the deceased as to, ".whom are you referring as son of a prostitute?..". P.W.1 and P.W.3 Ramalingam - neighbour of P.W.1's shop, pacified the accused. At that time, the accused shouted at the deceased by stating that, ". I won't leave you without murdering you; your death is in my hands ". and went from that place. The next week, i.e. on 27.07.2008 Sunday, when P.W.1 was sitting in his shop, Gandhi had gone out. The accused came there with an aruval and asked for the whereabouts of the deceased by stating that the deceased had spoken ill about him in public and that he will not leave the deceased without killing him. P.W.1 pleaded with the accused to forgive him by stating that the deceased had spoken without knowing about him and that he would beat the deceased in front of the accused. The accused did not compromise and left the place by saying that today the deceased is not there, but one day or the other he will kill him. This

incident was witnessed by P.W.3 Ramalingam, Karthik, Kali, Kumar and other shopkeepers. On 03.8.2008, Sunday, around 1.00 p.m., Gandhi was sleeping in the shop. P.W.1 woke up him up. Gandhi refused to get up and asked P.W.1 to help himself and arrange the bananas and continued with his sleep. At that time, P.W.3 was present in his shop. P.W.2 came to P.W.1's shop incidentally. Both P.Ws. 1 and 2 were arranging the bananas in the shop. At that time, when it was around 1.30 p.m., through the side entrance, the accused came inside the shop with aruval and attacked Gandhi, who was sleeping, by cutting him at his neck. Again, he caused another cut injury near the left ear. This was witnessed by P.Ws. 1, 2, 3 and others, who were speechless. The accused shouted at the witnesses present in a filthy language by stating that if anyone dare to come near him, they will also be killed. By so stating, the accused ran away from the place of occurrence. When P.W.1 went near his son, he saw blood ousing out of the neck and Gandhi was dead. He asked his another son Karthick and P.W.2 Ramalingam to stay near the dead body and rushed, along with Manikandan, to his house at the Big Street. P.W.1 informed his wife about the occurrence and then went to the Town Police Station and gave the complaint, Ex.P.1. (iv) P.W.2 Manikandan is a resident of Thayumanavar Street in Palayamkottai Town. He is a auto driver by profession. He knows both P.W.1 and the accused. P.W.1 is his cousin brother. P.W.1 and the deceased Gandhimathinathan were doing business in banana in Bose Market. On 03.08.2008 Sunday, P.W.2 did not ply his auto. Around 1.00'o clock, he went to Bose Market to see P.W.1. He saw Gandhimathinathan sleeping in the floor in the shop. P.W.1 told the deceased to keep the bananas in line. The deceased told him he cannot do that. So, both P.Ws.1 and 2 were arranging the bananas in the shop. The accused Ayyadurai came to the shop with an aruval in his hands. It was around 1.30 p.m.. The accused, shouting in a filthy language attacked the deceased by causing one injury on his throat and another near his ears. This was witnessed by P.Ws. 1, 2, 3, Karthick Murugan and Kali. The accused also threatened the witnesses with dire consequences and ran from that place through the entry at the eastern side. When P.W.1 went near Gandhimathinathan, he was found dead. By leaving the other witnesses near the dead body P.W.2 accompanied P.W.1 to his house and then went to the police station to lodge a complaint. P.W.2 signed as a witness in the complaint lodged by

P.W.1 in the police station. (v) P.W.3 Ramalingam had deposed that he is a resident of Tamizhsangam at Tirunelveli Town and is a banana seller in Bose Market. He knows P.Ws. 1 and 2 as also the accused. Near his shop, his son Karthick also sells banana and P.W.1 Selvakumar is also a seller of bananathar. P.W.1's son Gandhi @ Gandhimathinathan was also doing business along with his father. Gandhi used to consume alcohol. The accused used to load and unload bananathar at P.W.1's shop and used to take daily wages. During loading and unloading the stock, often the accused and the deceased used to fight. P.W.3 and P.W.1 used to pacify them. Two weeks prior to the date of occurrence, P.W.1 and the accused came back from Kasi Vilas Hotel after eating mutton briyani. It was around 3.00 p.m. then. The deceased, who was present in the shop, scolded at his father about the accused in filthy language. The accused replied by stating that, "I won't leave without killing you".. P.W.3 and his son Karthick pacified the accused and sent him from that place. However, when leaving that place, the accused again said he won't leave without killing Gandhimathinathan. On 27.07.2008 around 3.00 p.m. the accused came to P.W.1's shop. The deceased was not present at that time. The accused told P.W.1 that he won't leave his son as he has scolded him. P.W.1 told the accused that he will scold and control his son. But the accused was not satisfied with that answer. On 03.08.2008 around 1.30 p.m. P.W.3 was in his shop. At that time, P.W.3's son Karthick, Murugan and Kali were also present in his shop. Gandhimathinathan was sleeping on a towel in his shop lying east to west. From the east entrance, the accused came with an aruval on his hands, to the place where Gandhimathinathan was sleeping and cut him once on his throat and another blow on his left ear and left the place through the same east entrance. The witnesses who were present at that place namely P.W.1, P.W.2, P.W.3, Kali, Murugan and Karthick were shell shocked. The accused threatened all the witnesses by stating that, if any one dare to come near him would have the same fate as that of Gandhimathinathan and left that place. Gandhimathinathan was lying dead in a pool of blood. P.W.1 asked this witness and Karthick to take care of Gandhimathinathan and left along with P.W.2 to lodge a police complaint. Around 5.30 p.m., the Inspector from Town Police Station conducted inquest at the place of occurrence in the presence of Panchayatdars and enquired P.W.3. (vi) P.W.4 is the witness who attested the seizure mahazars

evidencing the seizure of M.Os. 2 to 4 from the place of occurrence. P.W.5 is not an eye witness but only a hearsay witness. P.W.6 was the Village Administrative Officer of Tirunelveli Town, from 09.10.2006 to 04.12.2008. On 08.08.2008, he received a request from the Inspector of Tirunelveli Town Police station, by stating that he has brought the accused in Crime No:

744. of 2008 to the Police Station for enquiry and asked the V.A.O. to come to the police station along with his assistant Baskaran @ Shanmuga Sudalaimuthu. P.W.4 went to the police station along with his assistant. Around 9.30 p.m. on that day, the Inspector enquired the accused in the presence of the witnesses and recorded the confession statement, which was attested by this witness and his assistant. The said confession statement is Ex.P.4 pursuant to which M.O.5 came to be recovered in the presence of witnesses including P.W.4. (vii) P.W.7 turned hostile. P.W.8 is the police photographer who speaks about the photographs taken on the dead body of Gandhimathinathan which are marked as M.Os. 5 and 6 series. P.W.9 was the police dog trainer, who went to the scene of occurrence on the instructions on the investigating officer along with sniffer dog. His report is marked as Ex.P.6 in this case. P.W. 10 is the police constable who delivered the express First Information Report to the Judicial Magistrate. (viii) P.W.11 is the Doctor who conducted autopsy on the dead body of the deceased Gandhimathinathan. During autopsy the Doctor has noted the following: ".
APPEARANCE FOUND AT THE POSTMORTEM : Moderately nourished body of a male. Finger and toe nails pale. Injuries noted :

1. Transversely placed gaping cut injury left side of neck, 6 x 4 cm x bone deep, 3 cm above the left collarbone, 7 cm below the angle of jawbone. Underlying soft tissues, greater vessels of the neck found clean-cut. 2.Cut injury 10 x 3 cm x muscle deep below the left ear from the mandible to the hairline on the back of left ear. Underlying muscles and portion of left ear is found cut. On dissection of neck : Cervical vertebra C4 C5 and C6 found cut. Peritoneal and pleural cavities : Empty. Heart : Normal. Coronaries : Patent. Hyoid bone : Intact. Lungs : Congested. Stomach : Contains 100 gms of partly digested cooked food particles with nil specific smell. Mucosa : Pale. Liver, spleen and kidneys : Pale. Small intestine : Contains 20 ml of bile-stained fluid with nil specific smell. Mucosa : Pale. Bladder :

Empty. Brain : Pale. VISCERA PRESERVED FOR CHEMICAL ANALYSIS. OPINION AS TO CAUSE OF DEATH RESERVED PENDING REPORT OF CHEMICAL EXAMINER. ". The post report issued by P.W.11 is marked as Ex.P.9 in this case. ". (ix) P.W.12 is the Magisterial Clerk in the Court of Judicial Magistrate No:

4. Tirunelveli. He speaks about the receipt of the case properties along with the requisition given by the investigating officer; sending the case properties to laboratory as an enclosure to Court's letter Ex.P.11 and receipt of Ex.P.12, the Chemical Examiner's report and Ex.P.13, the viscera report. P.W.13 is the constable who was present during post mortem and after post mortem he handed over the dead body to the relatives. He also removed M.Os. 7 to 9 from the dead body after post mortem and handed over the same to the investigating officer. (x) P.W.14 was the Sub Inspector of Police, who was on duty, at Town Police Station on 03.08.2008. On that day, at 14.15 hours, P.W.1 Selvakumar along with P.W.2 Manikandan appeared before him and gave a complaint which was reduced into writing. The said complaint, Ex.P.1 was registered as Crime No:

744. of 2008 for offences under Sections 302 and 506 (ii) I.P.C. P.W.14 sent the express First Information Report to the higher officials and to Court. The printed First Information Report is Ex.P.15. (xi) P.W. 15 is the Inspector of Police at the relevant point of time at the Town Police Station. On receipt of information over telephone about registration of a crime in Crime No:

744. of 2008 around 2.30 p.m. on 03.08.2008, he advised P.W.14 to send word for police photographer and sniffer dog to reach the scene of occurrence. Around 4.15 p.m. he received the first information report and started the investigation. He went to the place of occurrence and prepared the Observation Mahazar, Ex.P.2 and rough sketch Ex.P.16 in the presence of witnesses. From 5.30 p.m. to 8.00 p.m., he conducted inquest over the dead body in the presence of Panchayatdars. During inquest, he recorded the statements of P.Ws. 1, 2, 3 and others. The inquest report is Ex.P.17. He sent the requisition for conduct of post mortem on the dead body and sent the inquest report to higher officials. Around 8.30 p.m. P.W.14 recovered blood stained white and violet colour checked towel, blood

stained cement surface numbering 5 and also sample cement surface numbering 5 under a cover of mahazar. He enquired the witnesses Kali, Bharathan, Murugan, Duraisingh, Natarajan, Sudalaimuthu, Valliammal, Baskaran @ Sudalaimuthu and Ganesh, who belong to Tirunelveli Town and recorded their statements. On 04.08.2008, the accused in this case Ayyakutty surrendered before the Sri Vaikundam Judicial Magistrate. On 05.08.2008, P.W.14 sent the material objects in this case namely, the blood stained white banian, blood stained brown colour half shirt, blood stained blue and brown dotted lungi under a cover of mahazar and sent the same to the Court. On 06.08.2008 P.W.14 enquired the police photographer and recorded his evidence. He also enquired the police constables and Sub Inspector of Police and recorded their statements. On 08.08.2008, P.W.14 took the accused into police custody through Court and enquired him at the Tirunelveli Town Police Station in the presence of witnesses P.W.6, the Village Administrative Officer, and others. At that time, the accused gave a voluntary confession statement, the admissible portion of which is marked as Ex.P.4 in this case. During confession, the accused had stated that he had hidden the aruval at the backside of Isaikiammal Koil situated at Thachanallur Nainarkullam Market Road and agreed to produce the same. On the same day, at 12 in the night, P.W.14 took the accused to that place along with witnesses wherein, from the bushes, he produced the weapon of offence namely the Aruval M.O.1. On 09.08.2008, P.W.14 sent the accused to judicial custody and also sent the material objects to the Court for subjecting them for chemical examination. He enquired the witnesses and recorded their statements. On 10.08.2008, P.W.14 examined P.W.9, the Head Constable incharge for the sniffer dog and recorded his statement. On 21.08.2008, P.W.14 sent the material objects which were seized in this case to the Court for Chemical Examination. On 08.09.2008, P.W.14 received the post mortem certificate of the deceased and examined the post mortem Doctor. Finally, on 16.09.2008, P.W.14 laid the final report before the Court against the accused for offences under Sections 302 and 506 (ii) I.P.C.

3. When the accused was questioned under Section 313 of Cr. P.C. on the incriminating materials made available against him by the prosecution, he denied each and every circumstance as false and contrary to facts. Neither any oral evidence nor any documentary evidence was produced on the side of the

accused.

4. Mr. S.Durairaj, learned counsel appearing for the appellant would strenuously contend that on the established facts the offence under Section 302 IPC is not made out and according to him the case of the prosecution has to be disbelieved on three counts viz. (1)there was delay in lodging the F.I.R. which is fatal to the prosecution's case, (2) the sniffer dog brought to the place of occurrence had not yielded any result and (3) the evidence of P.Ws. 1 to 3 cannot be accepted in toto as their evidence is unnatural and artificial. In elaborating his argument, learned counsel appearing for the appellant would submit that the occurrence is said to have taken place at 1.30p.m. on 03.08.2008 but the First Information Report, Ex.P.15 had reached the Court only at 06.00 p.m. thereby there was delay in lodging the F.I.R. which is fatal the case of the prosecution. On the next contention, the learned counsel, by taking us through Ex.P.6 - the report submitted as to the work done by the sniffer dog, submits that the name of the accused finds a place in the said report and that there is a correction as to the time at which the sniffer dog was brought to the place of occurrence and these two things creates a strong doubt as to role played by the sniffer dog in pointing out the guilt of the accused in the commission of offence and the benefit of doubt must be given to the accused. Lastly, learned counsel for the appellant would also request us not to believe the entire case of the prosecution as all the prosecution witnesses are interested witnesses. He would particularly submit that as P.W.1 is the father of the deceased, his evidence cannot be completely believed to arrive at a conclusion that it is the accused who committed the crime.

5. We heard Mr.K.S. Durai Pandian, learned Additional Public Prosecutor on all the above points. Ex.P.17 is the post mortem report. P.W. 11 is the Doctor who did post mortem on the dead body of Gandhimathinathan. The medical evidence leaves no room at all to doubt that the deceased died due to homicidal violence. The case of the prosecution is that the deceased suffered his end only at the hands of the accused. Besides causing the death of Gandhimathinathan, the accused is also charged of for threatening the witnesses present at the place of occurrence. The prosecution wants to fix the accused as the assailant and, therefore, we have to see whether the oral evidence let in by the prosecution

establishes the guilt of the accused beyond all reasonable doubt.

6. To decide this issue, we have the evidence of three witnesses and they are examined in this case as P.Ws. 1 to 3. It is no doubt true that P.W.1 is the father the deceased. It must be noticed that the accused is also known to him and in fact, P.W.1 was very close to the accused as well that he used to have lunch with him, which is not liked by his own son. Both P.Ws.2 and 3 were also doing their business in Bose Market next to the shop where P.W.1 has his business. When we go through the evidence of these three witnesses, we could see that their evidence is consistent and uniform as far as the occurrence proper is concerned.

7. The main contention of the learned counsel for the appellant is that the witnesses are very close to the deceased, having moved with him daily in their business and therefore, their evidence cannot be accepted in toto. It is no doubt true that Courts must have caution in mind when interested and related witnesses give evidence in Court. Mere relationship or interested witnesses cannot lead the Court to straightaway ignore the evidence of those witnesses. On going through the evidence of P.Ws.1 to 3, we do find that there is uniformity and all of them spoke very clearly about the crime committed by the accused on the deceased. Absolutely no answer, worth mentioning, is elicited in cross as to why this Court should disbelieve their evidence. It is not as though all the witnesses are related to the deceased. Though P.W.1 is the father of the deceased and P.W.2 is the cousin brother of P.W.1, however, P.W. 3 is an independent witness. We find absolutely no material even to infer that the prosecution witnesses have a vengeance against the accused and, therefore, they are falsely deposing against him. The evidence of P.Ws.1 to 3 looks so very natural and impressive that we are unable to persuade ourselves to disbelieve the same. Under these circumstances, we are in entire agreement with the learned Sessions Judge in believing the evidence of P.Ws.1 to 3 about the occurrence proper resulting in the death of Gandhimathinathan.

8. The Hon'ble Division Bench of this Court also in the case of Murugesan and Others vs. The Inspector of Police, Eriyodu Police Station, Dindigul District (Criminal Appeal (MD) No.7 of 2012 decided on 16.12.2013, in pursuance of the

principles laid down by the Hon'ble Supreme Court, has been pleased to observe as under: ".29. It is seen from the evidence of P.W.1 to P.W.4 that they not only witnessed the occurrence but also specified the overt acts of each accused particularly, A1 and A2. Among these four persons, P.W.2 and P.W.3 sustained injuries. In such circumstances, on a perusal of their entire testimonies, we are of the view that there is no reason to reject the evidences of P.W.1 to P.W.4. On the other hand, the trial court has rightly accepted their testimonies. The Hon'ble Supreme Court also held that the evidence of an interested witness cannot be discarded, if the same is otherwise found to be consistent and corroborated by medical evidence and that their testimonies have to be scrutinized carefully and if there is no infirmity, there is nothing wrong in accepting their statement. This proposition has been laid down by the Hon'ble Supreme Court in the following Judgments:- (i)2013(1) SCC (Cri) 404 (Laxman v. State of Maharashtra) (ii)2007(9) SCC (Abdul Rashid Abdul Rahiman Patel and others v. State of Maharashtra)". Therefore, merely because they are relatives their evidence cannot be discarded and if there is a live link and cogent reasons pointing the guilt of the accused, then it could be believed.

9. Next, we shall consider the other two contentions. The submission of the learned counsel for the appellant that there is delay in lodging the F.I.R. cannot hold good because it is seen from materials made available on record that the F.I.R. had reached the Court at 06.00 p.m. on 03.08.2008 when the occurrence is reported to have taken place around 1.30 p.m. on that day. If at all it could be stated that there is delay, it is only 1.30 hours delay. This delay of 1.30 hours cannot be held to be fatal to the case of prosecution when no other material evidence was brought forth by the defence to prove that the F.I.R. could not have come into existence in the manner as spoken to by the prosecution witnesses. In fact, it is seen from Ex.P.1 that the complaint was recorded from P.W.1 from 14.15 hours to 15.15 hours on 03.08.2008.

10. The last contention is that there is some correction in Ex.P.6 and that the name of the accused finds a place in that document. It is no doubt true that the accused is mentioned by his name in Ex.P.6. Nowhere it is the case of the prosecution that the deceased was attacked by an unknown person. P.W.1 is an

eye witness to the occurrence and he is the complainant as well. Obviously, when he lodged the complaint about the occurrence proper, he had stated the name of the accused in Ex.P.1 complaint as the person who attacked his son. Therefore, when the sniffer dog was pressed into service on the request made by the police authorities, the name of the accused was surfaced and is found mentioned in Ex.P.6. The correction mentioned by the learned counsel appearing for the appellant is a small correction as to the time in which the sniffer dog reached the spot. This small correction, cannot be held to be so very serious to doubt the entire case of the prosecution.

11. In this case, what all we can gather from the evidence available on record as already stated, is that the deceased and the accused used to often fight while loading and unloading the bananathars and particularly, 15 days prior to the date of occurrence, the deceased questioned the act of P.W.1 in taking the accused along with him to Kasi Vilas Hotel and both of them having ".Mutton Briyani". together and the deceased uttering filthy words at the accused on their return. Nothing more is available on record. The accused, in our considered opinion, on such flimsy matter, ought not have lost his power of self-control at all. In other words, the exchange of words, assuming it was there, was of a very trivial nature. More over, one week after the first incident, viz. on 27.07.2008, the accused had reportedly come to P.W.1's shop, armed with a weapon, in search of the deceased. At that time, the accused had told P.W.1 that the deceased had spoken ill about him in public and that he is going to kill him today. It is the further evidence of P.W.1 that the deceased was not available in the shop at that time and that he tried to pacify the accused. Even after this incident, the accused had not cooled down and had carried out the crime on 03.08.2008. Therefore, it is not possible for us to hold that as a result of the exchange of words the accused would have lost his power of self-control. It is not as though the accused was armed with a weapon at the time when exchange of words took place. But on the other hand, the evidence is, he visited P.W.1's shop one week later with a weapon in search of the deceased, could not find him there and again after a week he came armed with a weapon and then attacked the deceased. This itself clearly shows that attack on the victim is a planned one and was made with an intention to see the end of the deceased. More over, as could be seen from the post mortem report,

the accused had given only one cut in the neck of the deceased and that one cut is so deep that it caused the death instantaneously. The only other cut is on the ear of the deceased and there are no other injuries. Thus, the vital organ so chosen by the accused viz. the neck, to cut the deceased shows his intention to kill the deceased instantaneously, that too when he was sleeping. As a continued act, the accused is reported to have threatened the witnesses present there so as to attract the offence under Section 506 (2) I.P.C.

12. Thus, when we look at the overall background and the evidence brought forth by the prosecution, we have no doubt at all in our mind that the prosecution had definitely proved the guilt of the accused in committing the crime on the deceased. Therefore, the conviction of the accused under both the Sections, Sec. 302 and 506 (2) I.P.C. has to be necessarily maintained and accordingly, it is maintained. The appeal is dismissed. gp To 1. The Inspector of Police, Tirunelveli Town Police Station Tirunelveli.

2. The Additional District and Sessions Judge, Fast Track Court - 1 Tirunelveli.

3. The Additional Public Prosecutor High Court Bench at Madurai. Madurai.

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