

**1.Murugesan Vs. State Represented By**

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**SooperKanoon Citation :** [sooperkanoon.com/63360](http://sooperkanoon.com/63360)

**Court :** Chennai

**Decided On :** Aug-10-2015

**Judge :** S.Nagamuthu

**Appellant :** 1.Murugesan

**Respondent :** State Represented By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

10. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL (MD).No.151 of 2013 1.Murugesan S/o.Pitchai 2.Bhoopasthy S/o.Viswanathan 3.Siva S/o.Senthil : Appellants Vs. State represented by the Inspector of Police E3 Anna Nagar Police Station in Crime No.1944 of 2009 Madurai District. : Respondent PRAYER Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the IV Additional District and Sessions Judge, Madurai, in S.C.No.23 of 2011 dated 08.04.2013. !For Appellants : Mr.K.Nagarajan ^For Respondent : Mr.A.Ramar Additional Public Prosecutor :

**JUDGMENT**

(Judgment of the Court was delivered by S.NAGAMUTHU, J.) The appellants are the accused 1,3 and 4 in S.C.No.23 of 2011 on the file of the learned IV Additional District and Sessions Judge, Fast Track Court No.I, Madurai. Including these

accused, there were totally six accused in the case. There were as many as two charges framed against them. The first charge was under Section 120(B) IPC against all the 6 accused. The 2nd charge was against all the 6 accused under Section 302 IPC. By judgment dated 08.04.2013, the trial Court acquitted the accused 5 and 6. The trial Court convicted the accused 1 to 4 as follows: Accused Conviction under Section Sentence imposed A1 120(B) IPC 6 months rigorous imprisonment 302 IPC Imprisonment for life and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment A2 120(B) IPC 6 months rigorous imprisonment 302 IPC Imprisonment for life and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment A3 120(B) IPC 6 months rigorous imprisonment 302 IPC Imprisonment for life and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment A4 120(B) IPC 6 months rigorous imprisonment 302 IPC Imprisonment for life and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment Challenging the said conviction and sentence, the accused 1,3 and 4 have come up with this appeal. The 2nd accused filed CrI.A.No.129 of 2013. During the pendency of the same, since the 2nd accused Mr.Suresh @ Vinodh died, that appeal in CrI.A.No.129 of 2013 was dismissed as abated. Thus, the present appeal is concerned only with the accused 1,3 and 4/appellants herein.

2. The case of the prosecution in brief is as follows: The deceased in this case was one Mr.Prabhakaran. He was a resident of South street, Karumbalai, Madurai ?.

20. All the 6 accused also hail from the same village. The alleged occurrence in this case was on 07.09.2009. 10 days prior to the date of occurrence, it is alleged that there was a wordy quarrel between the accused 1 to 4 and the deceased, which resulted in exchange of blows, more precisely, it is stated that the deceased had attacked the third accused. The villagers separated them and pacified them. According to the case of the prosecution, enraged over the said occurrence, the third accused took the accused 1 and 4 to his house, where the other accused were present. It is alleged that at the house of the third accused, all the 6 accused conspired to commit murder of the deceased. It is further alleged that on 07.09.2009, at 7.00 a.m., in pursuance of the said conspiracy, the 6th accused

scolded the mother of the deceased and told her that the deceased would be soon killed. Out of fear, the mother of the deceased took the deceased to the house of P.W.4 and kept there. It is the further case of the prosecution that in pursuance of the said conspiracy, the 5th accused handed over a knife to the first accused and a steel rod to the 4th accused. Then, all the 6 accused came to the house of P.W.4 ? Mrs.Karpagam. At that time, the deceased was sitting on the steps of the main entrance at the house of P.W.4. It was 12.10 p.m. On reaching the place of occurrence, all the 6 accused surrounded the deceased. The 2nd accused held the hands of the deceased behind so as to prevent him from escaping. The first accused stabbed him twice on his chest. P.W.4 and other eye witnesses tried to rescue the deceased. Leaving the deceased in a pool of blood, all the six accused escaped from the scene of occurrence. P.W.1 immediately took the deceased to the Government Rajaji Hospital, but the Doctor declared him as dead. The body was, therefore, taken to the mortuary of the Government Rajaji Hospital at Madurai. 2.1. On receiving the intimation from the Hospital Authorities, P.W.18 went to the Government Rajaji Hospital at Madurai at 01.30 p.m. He found the deceased declared dead already. P.W.1 at that time presented a written complaint to him in the hospital itself. On returning to the police station, at 2.15 p.m., he registered a case in Crime No.1944 of 2009 under Sections 341, 506(ii) and 302 IPC. Ex.P1 is the complaint and Ex.P11 is the FIR. Then, he forwarded both the documents to the Court and handed over the case diary to the Inspector of Police for investigation. 2.2. P.W.19 the Inspector of Police took up the case for investigation at 2.15 p.m. itself, proceeded to the place of occurrence and held inquest on the body of the deceased at 3.15 p.m., during which, he examined P.Ws.1 to 7 and recorded their statements. Ex.P12 is the inquest report. Then, he forwarded the body for postmortem. 2.3. P.W.17 ?. Dr.Natarajan, conducted autopsy on the body of the deceased on 08.09.2009 at 10.40 a.m. He found two external injuries on the body of the deceased as follows: ? 1.An oblique stab injury 3 cm x 1 cm x pleural cavity deep noted on the front of left side of chest 1 cm lateral to left nipple. On dissection, the wound passes obliquely downwards, backwards piercing the underlying muscles, vessels, nerves into 5th intercostal space and piercing the pericardium and left ventricle measuring 3 cm x 0.5 cm x entering into left ventricle of heart. 2.An oblique stab injury 3 cm x 1 cm x pleural

cavity deep noted on the front of left side of chest 5 cms below x the injury no.1 On dissection, the wound passes obliquely downwards and backwards piercing the underlying muscles, vessels and nerves in the 7th intercostal space and piercing the pleura and lower lobe of left lung measuring 2.5 cm x 0.5 cm x 1.5 cm and ends as a point. Left pleural cavity contains 750 ml of fluid blood with clot. Right pleural cavity empty. Right lung cut section pale.?. On internal examination, he found fluid blood in the thoracic cavity. On dissecting the lungs, he found fluid blood inside the same. According to him, the death was due to shock and hemorrhage due to the above two stab injuries found on the chest, there was no other injury found on the body of the deceased. 2.4. Continuing the investigation, P.W.19 arrested all the accused, namely, Murugesan, Suresh @ vinodh, Bhoopathy, Siva and Gnanavalli, on 09.09.2009, at 11.30 a.m. near Madurai Ring Road in the presence of witnesses, except the 5th accused. On such arrest, the first accused gave a voluntary confession, in which, he disclosed that he had hidden a knife near Aavin Milk Depot. In pursuance of the said disclosure statement, he took the police and the witnesses to the said place and produced a knife stained with blood. P.W.18 recovered the same under a mahazar. Then, he forwarded all the accused to the Court for judicial remand and forwarded the material objects to the place of occurrence. Earlier, he had prepared an observation mahazar and a rough sketch showing the place of occurrence in the presence of witnesses and he has also recovered the bloodstained earth and sample earth from the place of occurrence. He forwarded these two documents to Court. On his request, these material objects were sent for chemical analysis. 2.5. The chemical analyst report under Ex.P8 shows that there were human bloodstains on all the material objects including the knife. On completing the investigation, P.W.19 laid charge sheet against all the 6 accused. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. 2.6. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined, 15 documents were exhibited and 8 material objects were marked. Out of the said witnesses, P.Ws.1,4,5,6 and 7 are the eye witnesses. They have all vividly stated about the entire occurrence. P.W.1 has stated about the involvement of all the 6 accused and also the overt acts of each accused. P.Ws.4,5, and 7 have also

spoken about the involvement of all the 6 accused. P.Ws.2 and 3 have spoken about the motive. P.W.1 has stated that after the occurrence, he went to the hospital, where he was asked to attest his signature on Ex.P1 by P.W.18. He did accordingly. P.W.7 is the witness, in whose presence on 09.09.2009, at 11.30 a.m., except A5 all the other accused were arrested and in whose presence, the first accused gave a confession and out of the same, a knife was recovered from the hide out. He has spoken about all the above facts. P.W.10 is the witness for the preparation of the observation mahazar, rough sketch and recovery of bloodstained earth and sample earth from the place of occurrence. He has supported the case of the prosecution in full. 2.7. P.W.11 is the Head Constable, who carried the FIR from the police station and handed over the same to the learned Magistrate. According to him, he received the FIR from the Sub Inspector of Police at 3.15 p.m. on 07.09.2009, and handed over the same to the learned Magistrate at 5.30 p.m. itself on the same day. P.W.12 is the Grade-I Constable, who carried the body of the deceased for postmortem. He has spoken about the same. P.W.14 is the Head Clerk of the learned Magistrate Court, who, as per the order of the learned Magistrate, forwarded the material objects for chemical examination. P.W.5 is the Chemical Analyst, who examined all the material objects, has stated that in all the material objects including the knife and the bloodstained earth, there was human blood. But the grouping was inconclusive. P.W.16 has again spoken about the motive. P.W.17 is the Doctor, who conducted autopsy and he has given his final opinion regarding the cause of death. P.W.18 registered the case. P.W.19 the Inspector of Police, who has spoken about the investigation of the case. 2.8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, three documents were marked as Exs.D1 to D3. Ex.D1 is the general diary of the police station concerned for 07.09.2009. Ex.D2 is the requisition letter given by the Inspector of Police to the Doctor for holding postmortem and Ex.D3 is the register maintained in the police station regarding the search of persons, who are kept in the police station. Having considered all the above, the trial Court convicted the accused 1 to 4 alone as detailed in the earlier paragraph of this judgment. That is how, these appellants are before this Court with this appeal.

3. We have heard the learned counsel for the appellants, the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

4. The first and foremost ground raised by the learned counsel for the appellants is that the original FIR, in this case, has been suppressed and in its place, Ex.P1 has been substituted and therefore, the entire case of the prosecution is to be doubted and rejected. In order to substantiate this contention, the learned counsel would submit that P.W.18 the Sub Inspector of Police has stated that on receiving the intimation from the hospital, he went to the hospital, where he found P.W.1 and received the written complaint Ex.P1 from P.W.1. But, according to P.W.1 during cross examination, he has stated that after 1+ hours of the occurrence, he went to the police station, where he made a written complaint in the presence of 10 of his people. The learned counsel would next contend that the trial Court has acquitted the accused 5 and 6 disbelieving the evidences of P.Ws.1 to 7 and therefore, applying the same yardstick, all the accused should also be acquitted. The learned counsel would next contend that the medical evidence also does not corroborate the eye witness account. Finally, he would contend that the occurrence would not have happened, as it is alleged by the prosecution, as the narration of occurrence is unnatural. For these reasons, the learned counsel would pray for acquittal.

5. The learned Additional Public Prosecutor would, however, oppose this appeal. According to him, though there are some contradictions in respect of the origin of the FIR, on that score, the entire case of the prosecution cannot be rejected. He would submit that due to loss of memory, P.W.1 would have stated that the complaint was given at the police station, whereas, the fact remains that the complaint was given only at the hospital, when P.W.18 has visited the hospital. The learned counsel would further submit that the medical evidence fully corroborated the eye witness account. So far as the participation of the accused 2 to 4 are concerned, the learned Additional Public Prosecutor would submit that though it is alleged that the fourth accused attacked the deceased with an iron rod, there was no injury found. The learned Additional Public Prosecutor would further submit that so far as the accused 3 to 4 are concerned, their presence have been duly spoken by all the eye witnesses and therefore, the conviction and sentence

imposed on any of these appellants do not require any interference at the hands of this Court.

6. We have considered the above submissions.

7. At the outset, we should say that the FIR being the foundation in a criminal case should be beyond any doubt. If there are doubts in the origin of the FIR, certainly it is a point in favour of the accused, which requires the case of the prosecution to be scrutinised very closely. In our considered opinion, when there are overwhelming evidences of as many as five eye witnesses together with the other witnesses, who have spoken about the motive, solely based on the doubt in the FIR, we are not inclined to reject the entire case of the prosecution and instead, we venture to closely scrutinise the evidences so as to separate the grain from the chaff.

8. P.W.4 is the one, in whose house the occurrence had taken place. Her presence cannot be doubted. Her evidence is so cogent and convincing, wherein, she has spoken about the involvement of all the 6 accused. Similarly, P.Ws.1,5,6 and 7 have also spoken about the very presence and also overt acts of all the 6 accused. But the trial Court has acquitted the accused 5 and 6 disbelieving their evidences. Because there was no active involvement of accused Nos.5 and 6. Even according to the case of the prosecution, the accused 5 and 6 were only present and they do not cause any injury on the deceased. It is only on that score, though according to the evidences of the eye witnesses, the accused 5 and 6 were present, the trial Court acquitted them holding that there was no common intention among the accused. Applying the same yardstick, if we look into the evidences of the eye witnesses, absolutely, there is no part played by the accused 2 to 4 in the case, except the fact that they were present, there is no other overt act attributed to them. Insofar as the accused No.4 is concerned, though P.W.1 had stated that he attacked the deceased with iron rod, there was no corresponding injury found as per the medical evidence. Apart from that the other eye witnesses have not stated anything that the fourth accused attacked the deceased with iron rod. Thus, it is clear that these accused 2 to 4 would not present at the time of occurrence, but their presence would not automatically go to presume that they had common

intention with the first accused. Applying the same yardstick for acquitting the accused 5 and 6 by the trial Court, we are inclined to acquit the accused 3 and 4 also, as there is no overt act attributed to them.

9. Now, turning to the case against the first accused, all the 5 eye witnesses in a convincing manner stated that it was the first accused, who stabbed the deceased twice on the chest. P.W.1 alone had taken the deceased to the hospital immediately, which is evident from the records. The Doctor declared him as dead and thereafter, a complaint was made in the presence of all the eye witnesses to the occurrence. Thus, we do not find any reason to reject the evidence of the eye witnesses, more particularly, the evidence of P.W.4, in whose house, the occurrence had taken place. So far as the motive is concerned, P.Ws.2 and 3 have categorically stated about the same and there are no reasons to reject it. Thus, it is crystal clear that the first accused, who had enough motive, had gone to the place of occurrence, stabbed the deceased twice and caused his death. The act of the accused is intentional and the said intention was only to cause the death of the deceased. Thus, the act of the first accused clearly falls within the first limb of Section 300 IPC and he is liable for punishment under Section 302 IPC.

10. But so far as the conspiracy is concerned, since we are acquitting all the other accused, the first accused is also entitled for acquittal from the charge under Section 120(B) IPC. Similarly, he is entitled for acquittal from the charge under Section 341 IPC, as there is no evidence to prove the said conspiracy also.

11. In the result, this criminal appeal is allowed in part in the following terms: (1) The conviction and sentence imposed on the accused 3 and 4/appellants 2 and 3, namely, Bhoopathy and Siva, are set aside and they are acquitted of all the charges. The fine amount, if any paid by them, shall be refunded to them. The bail bond shall stand terminated; (2) The conviction and sentence imposed on the first accused/first appellant, viz., Murugesan for the offence under Section 302 IPC is confirmed and the sentence of imprisonment for life, fine and the default sentence imposed on him are all confirmed; and (3) The conviction and sentence imposed on the first accused/first appellant for the offences under Section 120(B) IPC and Section 341 IPC are set aside and he is acquitted from these charges. To 1.The IV

Additional District and Sessions Judge, Madurai 2.The Inspector of Police Anna Nagar Police Station Madurai District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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