

**Ganeshan Vs. State Rep. By**

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**SooperKanoon Citation :** [sooperkanoon.com/66008](http://sooperkanoon.com/66008)

**Court :** Chennai

**Decided On :** Sep-03-2015

**Judge :** S.Nagamuthu

**Appellant :** Ganeshan

**Respondent :** State Rep. By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

03. 09.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CrI.A(MD)No.283 of 2013 Ganeshan .. Appellant/ Single Accused Vs. State rep. By The Inspector of Police, Vachakarapatti Police Station, Virudhunagar District. (Crime No.124 of 2012) .. Respondent/Complainant PRAYER Criminal Appeal filed under Section 374 of Cr.P.C. praying this Court, to call for the records in S.C.No.187 of 2012 dated 25.07.2013 on the file of the learned Additional District Judge, Virudhunagar and to set aside the same and acquit the appellant / accused herein and thus render justice. For Appellant : Mr.N.Mohideen Basha For Respondent : Mr.C.Ramesh, Additional Public Prosecutor assisted by Mr.P.Santhosh Kumar, Advocate :

**JUDGMENT**

(Judgment of the Court was made by V.S.RAVI,J.) The appellant is the sole accused in Crime No.124 of 2012, in S.C.No.187 of 2012 on the file of the learned

Additional District Judge, Virudhunagar. He stood charged for the offences under Sections 449, 307 and 302 I.P.C. The trial Court, by judgment dated 25.07.2013, convicted him and sentenced him under Section 449 I.P.C, to undergo five years Rigorous Imprisonment and also imposed fine of Rs.5,000/- and, in default, to undergo further six months Rigorous Imprisonment and for the offence under Section 302 I.P.C., sentenced to undergo Life Imprisonment and also imposed fine of Rs.10,000/- and, in default, to undergo further one year Rigorous Imprisonment and for the offence under Section 307I.P.C., sentenced to undergo seven years Rigorous Imprisonment and also imposed fine of Rs.5,000/- and, in default, to undergo further six months Rigorous Imprisonment and the total fine amount is Rs.20,000/-. Challenging the said judgment passed in S.C.No.187 of 2012, the appellant/accused in Crime No.124 of 2012 is before this Court with this present appeal and he is, right now, in Central Prison, Madurai, undergoing the imprisonment. 2.The brief case of the prosecution is as follows; The deceased Rajarajeswaran has worked as Deputy General Manager of Ramco Cement Factory at R.R.Nagar, Virudhunagar and the accused Ganeshan has also worked as Fitter of the said factory and thereafter, the appellant/accused has been suspended by the management of the said Factory and hence, he has thought that the deceased is the root cause for his suspension. On 12.04.2012 at 8.15P.M, the accused has gone to the deceased house, in his two wheeler and at that time, when the deceased and P.W.1 Anandhi, namely, the wife of the deceased are there, the accused has assaulted the deceased Rajarajeswaran with the help of Aruval and also he has assaulted the P.W.1, who has prevented the deceased from assaulting the deceased and the accused has assaulted the deceased grievously on his head and various parts of his body and the deceased died, when he has been taken to the hospital and thereby, the appellant / accused committed the offences liable for punishment under Sections 449, 302 and 307 I.P.C. 2.1. In order to prove the case of the prosecution, the prosecution has examined 27 witnesses as P.W.1 to P.W.27 and also marked 29 exhibits as Ex.P.1 to Ex.P.29 and also Material Objects as M.O.1 to M.O.10. 2.2. P.W.1, Anandhi has stated that she is wife of the deceased Rajarajeswaran and on 12.04.2012 at 8.15P.M, the accused Ganeshan came to their house with a white gunny bag and also engaged with the husband of the P.W.1 with heated arguments, regarding the disciplinary

action taken against the accused Ganeshan, who has worked as a Fitter of Ramco Cement Factory and at that time, the husband of the P.W.1, the Deputy General Manager of the said Factory has directed the accused to come to the office and talk about the disciplinary proceedings initiated against the accused and however, the accused has assaulted the deceased with M.O.1 Aruval in various parts of the body and P.W.1 has gone to rescue the husband from the brutal assault caused by the accused and the accused has also assaulted the P.W.1 and she has also sustained grievous injuries and P.W.4 Ramaraj and his son and certain other persons have taken the deceased to the Virudhunagar Government Hospital by Ambulance and the Doctor in the said hospital has informed that the deceased has already expired. Further, P.W.1 has stated that she has got first aid treatment for her grievous injuries in Virudhunagar Government Hospital and she has been taken to Meenakshi Mission Hospital, Madurai for further medical treatment, and at that time, the Inspector of Police, Vachakarapatti has come to the hospital and she has given the statement for a complaint as per Ex.P.1 and thereafter she has taken treatment at Chennai Right Hospital and on 1.6.2012, she has identified the accused in the Test Identification Parade conducted by the learned Judicial Magistrate No.2, Virudhunagar and M.O.1 is the Aruval, used by the accused, M.O.2 and M.O.3 are the dresses of the deceased, M.O.4 and M.O.5 are the dresses of the accused, M.O.6 is the white colour gunny bag, used by the accused to carry the Aruval and M.O.7 is the bloodstained Tray taken from the house of the P.W.1 by the police and she has also narrated about the incident to the police. 2.3. P.W.2, Raghavendran has stated that the deceased Rajarajeswaran is the father of P.W.2 and P.W.1 is his mother and on 12.04.2012 at 8.20P.M, P.W.1 has informed him about the incident and he came to the place of occurrence and also, seen his father, fallen down on the floor and his mother suffered injuries and thereafter, they have taken the deceased to Virudhunagar Government Hospital and the Doctor has informed that the deceased has already expired and the P.W.1 has been taken to Meenakshi Mission Hospital, Madurai for further treatment after getting first aid treatment at Virudhunagar Government Hospital, and he has received the dead body of the deceased after conducting the Postmortem. P.W.3, Ramadass has stated that he is working as Assistant Officer in the said Factory and he knows the deceased and on the date of occurrence, he has heard the

noise from the house of the deceased and at that time, the accused has come out from the house of the deceased with bag and thereafter, he and P.W.1 and P.W.2 have taken the deceased to Virudhunagar Government Hospital for treatment and the Doctor has informed that the deceased has already died. P.W.4, Ramaraj has stated that he is working as Mechanic in the said factory and he has heard the noise from the house of the deceased and also, he has seen the Rajarajeswaran with brutal injuries and thereafter, he and P.W.3 and other persons have taken the deceased and his wife to the Virudhunagar Government Hospital and the Doctor has examined the deceased and informed that the deceased has expired. P.W.5, Jesuraj has stated that he is working as Ambulance driver and on 12.04.2012 at 8.30P.M, he has taken the deceased Rajarajeswaran in the Ambulance to Virudhunagar Government Hospital and thereafter, he has taken the P.W.1 to Meenakshi Mission Hospital, Madurai for further treatment, after getting first aid treatment at Virudhunagar Government Hospital. P.W.6, Kannan has stated that he is working as Fitter in the said factory and he knows the accused and also the deceased and on 12.04.2012, at 8.10P.M, when he has gone in the two wheeler, in the opposite direction, the accused has also gone in the two wheeler and after the occurrence, he has also gone in the Ambulance and in the Virudhunagar Government Hospital, the doctor has informed that the deceased Rajarajeswaran has already expired and they have taken the P.W.1 to Meenakshi Mission Hospital, Madurai for further treatment, after getting first aid treatment at Virudhunagar Government Hospital. P.W.7, Sethuraj has stated that he is working as Security in the said Factory and he knows the accused and also the deceased and on 13.04.2012 at 10 hours, the Inspector of Police has visited the place of occurrence and prepared Observation Magazar as per Ex.P.2 and he and one Manickavasagam have signed in the said Magazar and the police have recovered the tray and they have recovered bloodstained cloth as per M.O.8 and sample earth as per M.O.9 and he has also signed in the Athatchi as per Ex.P.3. 2.4. P.W.8, Shanthi has stated that she knows the accused and also the deceased Rajarajeswaran and her husband is also working as Fitter in the said Factory and on 12.04.2012 at 8.45P.M, the accused has come to her house and informed her that he met with an accident and also requested her to permit him to take bath in the bathroom and accordingly, she has allowed the accused to take bath in the

bath room and also provided dresses and the accused has removed his bloodstained dresses and kept in the bathroom of the P.W.8 and she has also provided food for the accused, and when she has enquired about the details of the accident, the accused has requested her, not to disturb him, as he is not feeling well and thereafter at the request of the police, she has handed over the dresses of the accused, left in the bathroom of the P.W.8. P.W.9, Gnanasambantham has stated that he is working in the Electrical Section in the said factory and he knows both the deceased and the accused and on 12.04.2012 at 8.15P.M, electric power supply is available in the area of the place of occurrence. P.W.10, Shankareswaran has stated that he is working as Time Keeper in the said Factory and on 12.04.2012 at 11.00P.M, the accused has come with the two wheeler and the accused has threatened the P.W.10 and escaped in the Splender Plus two wheeler bearing Registration No.TN67AB-7158. P.W.11, Suresh has stated that he is working as Chemist and he knows both the accused and also the deceased and he has worked as incharge of second shift of the said Factory and he has enquired, about the late operation of the machine, from the accused at 8.30 hours and the accused has in an angry mood, directed him to ask one Senay and he has also used filthy language and therefore he has lodged a complaint against the accused to the Senior Manager as per Ex.P.4. P.W.12, Iyyappan has stated that he is working as Assistant Manager in the said Factory and P.W.11 has lodged a complaint against the accused and he has sent message through Telephone regarding the said complaint and also he has issued Show Cause Notice to the accused on 11.04.2012 and the accused has refused to receive the said notice and on 12.04.2012 at 10.00A.M, the deceased Rajarajeswaran has come to the office behind, the accused and the deceased has asked the accused whether he has going to receive the notice or not and the accused has refused to receive the Show Cause Notice and regarding the refusal of the accused to receive the memo, one Ganesan and one Innasimuthu, have put their signatures as per Ex.P.5 and Ex.P.6 is the suspension order issued to the accused by the deceased. P.W.13, Subburam has stated that he is working as Crusher Operator in the said Factory and P.W.11 Suresh has asked about the explanation, regarding the late operation of the machine, from the accused, and due to that, dispute arose between the accused and P.W.11 and he has separated both of them. 2.5. P.W.14,

Sankareswaran has stated that he is working as Power Plant Operator in the said Factory and he knows about the incident at 9.00P.M on the date of occurrence and he has gone to Virudhunagar Government Hospital and at that time, the police have enquired him. P.W.15, Chandra has stated that she is working as Village Administrative Officer and on 24.04.2012 at 3.30P.M, the accused has given the confession statement before herself and the Village Assistant Palani and she and the Village Assistant Palani have signed in the Athatchi for the recovery of Aruval and the police have recovered the M.O.10 two wheeler bearing Registration No.TN67AB-7158 in the Athatchi as per Ex.P.9 and the admissible portion of the confession statement is Ex.P.7 and Ex.P.8 is the Athatchi for the recovery of Aruval and white colour gunny bag. P.W.16, Saundirarajan has stated that he is doing pipeline work in the Water Board in the said Factory and he has gone to the hospital and seen the dead body of the deceased Rajarajeswaran. P.W.17, Dr.Shyam Anandh has stated that he is working as Doctor in Virudhunagar Government Hospital and on 13.04.2012, he has conducted the Postmortem on the dead body of the deceased and issued Postmortem Certificate as per Ex.P.10. P.W.18, Dr.Arunkumar has stated that he is working as Ward In-charge Medical Officer in Chennai Right Hospital and on 13.04.2012, he has given medical treatment to the P.W.1, Anandhi and issued Discharge Summary as per Ex.P.11. P.W.19, Thiru.Ramesh has stated that he is working as Head Clerk in Judicial Magistrate Court No.1, Virudhunagar and on 7.5.2012, the police have handed over the M.O.Nos.1 to 11 and he has sent requisition letter for Chemical Examination as per Ex.P.13. P.W.20, Thiru.Shanmugaraj has stated that he has worked as Head Constable in Sniffer Dog Branch, Virudhunagar and he has gone with the Sniffer Dog, by name Rani, to the place of occurrence and the said dog has gone from the place of occurrence up to the house with the Door No.30 and stopped and he has submitted the report to the Higher Officials. P.W.21, Thiru.Azen Ali Sikandhar has stated that he is working as Head Constable and he has submitted the Express F.I.R to the learned Judicial Magistrate No.1 and other Higher Officials. 2.6. P.W.22, Dr.Dheenadhayabaran has stated that he is working in Meenakshi Mission Hospital, and on 12.04.2012 at 10.33P.M, he has given treatment to the P.W.1 Anandhi and Ex.P.14 is the Certificate of Discharge. P.W.23, Thiru.Janakiraman has stated that he is working as Deputy Director of

Regional Forensic Science Laboratory, Madurai and on 17.05.2012, he has examined M.O.Nos.1 to 10 and submitted the Ex.P.15 Report to the learned Judicial Magistrate No.1, Virudhunagar and Ex.P.16 is the Serology Report. P.W.24, Tmt.Sasi Rekha has stated that she has served as Judicial Magistrate No.2 of Virudhunagar and she has conducted Test Identification Parade and issued Identification Parade Report as per Ex.P.21. P.W.25, Thiru.Jose Raja Monsingh has stated that he is working as Grade-I Constable and as per the direction of the Inspector of Police, he has handed over the dead body of the deceased Rajarajeswaran for conducting Postmortem to the hospital and after conducting the Postmortem, he has handed over the dead body of the deceased to the relatives and as per the direction of the Inspector of Police, the photos have been taken on the dead body of the deceased, before the Postmortem and the Photo(8 series) is the Ex.P.22 and the Ex.P.23 is the C.D. P.W.26, Dr.Ayishakani, Virudhunagar Government Hospital has stated that on 12.04.2012 at 9.10P.M, P.W.1 has been brought to the hospital and she has examined the P.W.1 and the P.W.1 has told her that one known person has assaulted her with Aruval and she has issued Accident Register as per Ex.P.24. P.W.27, Thiru.N.Thangadurai, Inspector of Police has stated that on 12.04.2012 at 23 hours, the statement from the P.W.1 at Madurai Meenakshi Mission Hospital, has been recorded, as P.W.1 has taken medical treatment in the said hospital and thereafter, the case in Crime No.124 of 2012 under Sections 452, 302 and 307 I.P.C has been registered and the Ex.P.25 in the F.I.R and he has also prepared the Inquest Report and Rough Sketch as per Ex.P.26 and Ex.P.27 and he has recovered the M.O.7 Tray from the house of P.W.1 and he has also recovered the dresses of the accused in the Athatchi as per Ex.P.28 and he has also submitted the dresses of the deceased to the Court and on 24.04.12 at 7.00A.M, he has recorded the confession statement given by the accused and he has also recovered the M.O.1 Aruval and M.O.6 the white colour gunny bag in the Athatchi and also he has also recovered the M.O.10 two wheeler with Registration No.TN67AB-7158 in the Athatchi and he has enquired the Postmortem Doctor and thereafter, he has recorded the statement of witnesses and on 01.06.2012, he has received the Ex.P.21 Test Identification Parade Report and also filed the alteration report as per Ex.P.29 and thereafter filed the Final Report on 15.06.2012.

3. On completion of the evidences on the side of the prosecution, the accused has been questioned under Section 313 Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and he has stated that he is an innocent and he is not involved in the case.

4. Having considered all the above materials on record, the trial Court has convicted the accused, as mentioned in the beginning of this judgment and challenging the said judgment, the appellant has come forward with the present appeal.

5. It is stated in the Grounds of Appeal, that the Lower Court ought to have seen that even according to the prosecution, the Investigation Officer has obtained 2 complaints from P.W.1 and the original has been suppressed. Even according to the allegation, if at all, there is any motive for the accused, it could be only against P.W.11 Suresh and not against the deceased. The Lower Court has failed to see that the P.W.1 could not be present at the time of occurrence and she came only after the occurrence. P.W.10 has not given the complaint on the same night and the evidence of the P.W.8 witness has not supported the case of the prosecution. Further, the Lower Court has failed to see that the Sniffer Dog has been pressed into service which creates the doubt in entire case of the prosecution. The Test Identification Parade has not been properly conducted and therefore, the Test Identification Parade Report cannot be accepted. Further, the Lower Court has failed to give the benefit of doubt to the accused as per the criminal jurisprudence.

6. The points that arise for consideration in the present Criminal Appeal are as follows:- i) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?. ii) Whether the Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant?.

7. Analysis, discussions and findings with regard to the above mentioned points:- The learned counsel appearing for the appellant has pointed out that the whole case has been filed on the evidences of the interested witnesses only and it is totally unsafe to rely on the testimony of the highly interested witnesses and hence

the evidences may be discarded. Further, he has submitted that there are improvements in the case of the prosecution and also in the evidences of the prosecution. Further, he has submitted that the direct enmity between the deceased and the accused has not been, properly, established on behalf of the prosecution. Further, the prosecution has not established the enmity to the extent to commit murder and the reasons furnished by the prosecution are unbelievable. The motive part of the prosecution is not established, properly. The possibilities of developing the case of the prosecution can not be ruled out. Further, the learned counsel for the appellant has submitted that the case of the prosecution has not been substantiated beyond reasonable doubt as against the accused and therefore, the judgment of the Trial Court is liable to be set aside.

8. Per contra, the learned Additional Public Prosecutor has submitted that the evidences of P.W.1 to P.W.8 are natural and trustworthy and can not be discarded. Further, in a case of this nature, one cannot expect the third parties or persons available in the said place to come forward and give evidence. P.W.1 and P.W.2 are the natural witnesses and also in fact P.W.1 is the injured eyewitness for the occurrence. Their evidences are consistent and corroborative with Ex.P.1 complaint and the same cannot be brushed aside. Further, the prosecution witness evidences have substantiated the case of the prosecution beyond reasonable doubt and their evidences are also corroborated by the medical evidences. Further, it is submitted on behalf of the prosecution that the reasons assigned by the Trial Court for convicting and sentencing the appellant, is well found and hence there is no valid ground for interference.

9. P.W.1, Anandhi has evidently deposed in her evidence that she is wife of the deceased Rajarajeswaran and the deceased has worked as Deputy General Manager in Ramco Cement Factory, R.R. Nagar, Virudhunagar and the accused has also worked as Fitter in the said Factory and on 12.04.2012 at 8.15P.M, the accused Ganeshan has come to their house with the white gunny bag and entered into the heated argument with the deceased for taking disciplinary action as against the accused, and the deceased has directed the accused to come to the office and talk about the disciplinary proceedings initiated against the accused and after that, the accused has taken M.O.1 Aruval from the white gunny bag and

brutally assaulted the deceased and the P.W.1 has tried to save the life of the deceased from the brutal assault caused by the accused and at that time, the accused has also assaulted the P.W.1 with the said Aruval and she has also sustained grievous injuries and P.W.4 Ramaraj and other persons have taken the deceased and P.W.1 to the Virudhunagar Government Hospital by Ambulance and the Doctor in the said hospital has examined the deceased and informed that the deceased has already expired and also, the first aid treatment has been given to the P.W.1, for her grievous injuries in Virudhunagar Government Hospital and she has been taken to Meenakshi Mission Hospital, Madurai for further medical treatment, and at that time, the Inspector of Police, Vachakarapatti has come to the hospital and she has given the statement as per Ex.P.1 and thereafter, she has taken further medical treatment in Chennai Right Hospital for her grievous injuries and on 1.6.2012, she has identified the accused in the Identification Parade conducted by the learned Judicial Magistrate No.2, Virudhunagar and she has also identified the M.O.1 Aruval used by the accused to assault the deceased and also P.W.1, and M.O.2 and M.O.3 are the dresses of the deceased and M.O.4 and M.O.5 are the dresses of the accused, M.O.6 is the white colour gunny bag, wherein the accused has hidden the M.O.1 Aruval and M.O.7 is the bloodstained Tray taken from the place of occurrence by the police. Further, in Ex.P.1 also, P.W.1 has categorically stated about the said occurrence on 13.04.2012 at 3 hours itself and based upon the Ex.P.1 complaint, a case in Crime No.124 of 2012 has been registered and also F.I.R has been prepared as per Ex.P.25 and the Express F.I.R. has been received by the learned Judicial Magistrate on 13.04.2012 at 5.00A.M, itself. Further, in the Ex.P.27, Rough Sketch, the Inspector of Police has clearly mentioned about the place of occurrence.

10. Further, P.W.2, Raghavendran has specifically deposed that the deceased Rajarajeswaran is his father and P.W.1 is his mother and on 12.04.2012 at 8.20P.M, P.W.1 has informed him about the incident and he came to the place of occurrence and thereafter, they have taken both the deceased and P.W.1 to Virudhunagar Government Hospital by the Ambulance and the Doctor has informed him about the death of the deceased. P.W.3, Ramadass has clearly deposed that he is working as Assistant Officer in the said Factory and he knows the deceased and also the accused, and on the date of occurrence, he has heard

the noise from the house of the deceased and at that time, the accused has come out from the house of the deceased with the bag and thereafter, he has gone inside the house of the deceased and P.W.1 to P.W.3 have taken the deceased to Virudhunagar Government Hospital for treatment and the Doctor has informed that the deceased has already died. P.W.4, Ramaraj has manifestly deposed that he is working as Mechanic in the said factory and he has heard the noise from the house of the deceased and he has seen the Rajarajeswaran with brutal injuries and thereafter, he and P.W.3 and other persons have taken the deceased and P.W.1 to the Virudhunagar Government Hospital and the Doctor has examined the deceased and informed that the deceased has expired. P.W.5, Jesuraj has undeniably deposed that he is working as Ambulance driver and on 12.04.2012 at 8.30P.M, he has taken the deceased Rajarajeswaran and P.W.1 in the Ambulance to Virudhunagar Government Hospital and the Doctor has informed him about the death of the said Rajarajeswaran and thereafter, he has taken the P.W.1 to Meenakshi Mission Hospital, Madurai for further medical treatment. P.W.6, Kannan has plainly deposed that he is working as Fitter in the said factory and he knows the accused and also the deceased and on 12.04.2012, he has seen the accused coming in the opposite direction in the two wheeler and he has also gone with the ambulance and the doctor has informed that the deceased Rajarajeswaran has already expired and they have taken the P.W.1 to Meenakshi Mission Hospital, Madurai for further medical treatment. P.W.7, Sethuraj has evidently deposed that he is working as Security in the said Factory and he knows the accused and also the deceased and on 13.04.2012 at 10 hours, the Inspector of Police has visited the place of occurrence and prepared Observation Magazar as per Ex.P.2 and he and one Manickavasagam have signed in the said Magazar and the police have recovered bloodstained cloth as M.O.8 and sample earth as M.O.9 and he has also signed in the Athatchi as per Ex.P.3.

11. P.W.8, Shanthi has undoubtedly deposed that she knows the accused and also the deceased Rajarajeswaran and her husband is also working as Fitter in the said Factory and on 12.04.2012 at 8.45P.M, the accused has come to her house and informed her that he met with an accident and also requested her to permit him to take bath in the bathroom and accordingly, she has allowed the accused to take bath in the bath room and also provided one Lungi and towel to him and the

accused has removed the bloodstained dresses and kept in the bathroom of the P.W.8 and she has provided food for the accused and when she has enquired about the details of the accident, the accused has told her that he is not well to give the details. Further, P.W.8 has also manifestly deposed that after the enquiry of the police, she has handed over the dresses of the accused, left in her bathroom to the police. P.W.9, Gnanasambantham has undeniably pointed out that he is working in the Electrical Section in the said factory and he knows both the deceased and the accused and on 12.04.2012 at 8.15P.M, the electric power supply is available in the area of the place of occurrence.

12. Further, P.W.10, Shankareswaran has undoubtedly deposed that he is working as Time Keeper in the said Factory and on 12.04.2012 at 11.00P.M, the accused has come with the two wheeler and threatened the P.W.10 to assault with Aruval, if the P.W.10 has come nearer to him and thereafter the accused has escaped in Splender Plus two wheeler, bearing Registration No.TN67AB-7158. Further, in this case, the P.W.27, Investigation Officer has specifically pointed out that he has recovered the said bike with Registration No.TN67AB-7158 as per the Athatchi in the presence of the witnesses and the said bike has been marked as M.O.10. Further, P.W.11, Suresh has distinctly pointed out that he knows both the accused and also the deceased and he has worked as in-charge of second shift of the said Factory and he has enquired about the late operation of the machine at 8.20 hours, to the accused and the accused has directed him to ask one Senay in angry mood and he has also used filthy language and also the accused has tried to assault him and therefore he has lodged a complaint against the accused to the Senior Manager as per Ex.P.4. Further, on perusal of Ex.P.4 also, it is found that the said P.W.11 Suresh has lodged a complaint to the Senior Manager about the accused on 11.04.2012 itself. Based upon that a Show Cause Notice, as per Ex.P5 has been issued to the accused and the accused has refused to receive the Show Cause Notice, and therefore, an endorsement has been made to the effect that the accused has refused to receive the said Show Cause Notice. Further, P.W.12, Iyyappan has manifestly deposed that he is working as Assistant Manager in the said Factory and P.W.11 has lodged a complaint against the accused and he has sent telephone message to the Higher Officials and he has prepared Show Cause Notice to the accused and the accused refused to come

and to receive the said notice and on 12.04.2012 at 10.00A.M, the deceased Rajarajeswaran has come to the office behind, the accused and the deceased has asked the accused whether he has going to receive the notice or not and the accused has refused to receive the Show Cause Notice and regarding the refusal of the accused to receive the memo, one Ganesan and one Innasimuthu, have signed as the witnesses in the Ex.P.5 notice and Ex.P.6 is the suspension order issued to the accused by the deceased. P.W.13, Subburam has clearly stated that he is working as Crusher Operator in the said Factory and on 10.04.12, there arose a dispute between P.W.11 and the accused, regarding the late operation of the machine by the accused, and he has separated both of them.

13. P.W.14, Sankareswaran has stated that he is working as Power Plant Operator in the said Factory and he knows about the incident only at 9.00P.M, on the date of occurrence and he has gone to Virudhunagar Government Hospital and at that time, the police have enquired him and P.W.16, Saundirarajan has deposed that he is doing pipeline work in the Water Board in the said Factory and he has gone to the hospital and seen the dead body of the deceased Rajarajeswaran. Both the P.W.14 and P.W.16 have been treated as hostile witnesses, as they have not fully supported the case of the prosecution. However, the main case of the prosecution has not been affected as the material evidences of the above mentioned witnesses and exhibits and material objects, have established the case of the prosecution beyond reasonable doubt. P.W.15, Chandra has undoubtedly deposed that she is working as Village Administrative Officer and on 24.04.2012 at 3.30P.M, the accused has given the confession statement before herself and the Village Assistant Palani and she and the Village Assistant Palani have signed in the Athatchi for the recovery of Aruval and the police have recovered the M.O.10 two wheeler bearing Registration No.TN67AB-7158 in the Athatchi as per Ex.P.9 and the admissible portion of the confession statement is Ex.P.7 and Ex.P.8 is the Athatchi for the recovery of Aruval and white colour gunny bag.

14. P.W.17, Dr.Shyam Anandh has manifestly deposed that he is working as Doctor in Virudhunagar Government Hospital and on 13.04.2012, he has conducted the Postmortem on the dead body of the deceased and issued

Postmortem Certificate as per Ex.P.10 and in the Ex.P.10 Postmortem Certificate, he has distinctly pointed out the following injuries:- ?External Injuries:

1. Laceration of 7 x 2 x 1.5cm in right side of forehead 3.5cm above right eyebrow with regular border with underlying frontal bone was fractured.
- 2) A laceration of 14 x 3 x 3cm in right temporal region which extends into right side of forehead up to 1cm above lateral border of right eyebrow with underlying muscle was incised with regular border with underlying right fronto temporal bones fracture 1cm.
- 3) An oblique laceration of 18.5 x 4 x 3cm left side of anterior chest wall extending from left mid clavicular line to epigastric region.
- 4) Left upper arm was found to be separated from rest of the body except for skin bridge medially at the level of 28 cm from left acromian process left humerus was fracture at the join of middle and lower 1/3.
- 5) Right little finger was dysarticulated at the level of right 5th MCP joint.
- 6) Right ring finger was dysarticulated at right 4th PIP joint level.
- 7) A laceration of 5 x 1.5 x 1cm in distal part of right middle finger.
- 8) An abrasion of 9 x 4cm in ulnar aspect of right forearm.
- 9) A laceration of 6.5 x 2.5 x 3.5 cm in right upper arm lateral aspect with regular border.
- 10) An oblique laceration of 18 x 9 x 8cm in medial aspect of right lower thigh 4cm above patella with regular border with underlying incised muscle.
- 11) An oblique laceration of 16 x 7 x 4cm in right half region extending into medial aspect of leg with underlying muscle incised.
- 12) A laceration of 20 x 8 x 8cm in lateral & posterior aspect of left middle and lower thigh with underlying muscle was incised.

13) A laceration of 11 x 8 x 4 cm present in medial aspect of left thigh.

14) A laceration of 6 x 3 x 2cm in anterior aspect of left knee.

15) A laceration of 5 x 1.5 x 1cm below wound

14.

16) A Y-shaped laceration of right scapular region extending into right shoulder and right UL transversely it measures 28 x 5 x 5cm obliquely 8 x 2.5 x 3 with underlying muscles incised with regular border.

15. Further, P.W.18, Dr.Arunkumar has distinctly deposed that he is working as Ward In-charge Medical Officer in Chennai Right Hospital and on 13.04.2012, he has given medical treatment to the P.W.1, Anandhi and issued Discharge Summary as per Ex.P.11 and also he has given his opinion in the said Ex.P.11, about the injuries suffered by the P.W.1, as follows:- Injury sustained by Mrs.R.Anandi aged 44/F is grievous in nature. Further, the P.W.1 has categorically deposed that the accused has assaulted the deceased with M.O.1 Aruval, at that time, she has tried to stop the accused from assaulting the deceased and the accused has also assaulted the P.W.1 and therefore, she has suffered grievous injuries as pointed out by the P.W.18 in the said Ex.P.11.

16. P.W.19, Thiru.Ramesh has undoubtedly deposed that he is working as Head Clerk in Judicial Magistrate Court No.1, Virudhunagar and on 7.5.2012, he has received the M.O.Nos.1 to 11 and he has sent requisition letter for Chemical Examination as per Ex.P.13. P.W.20, Thiru.Shanmugaraj has undeniably deposed that he is working as Head Constable in Sniffer Dog Branch, Virudhunagar and he has gone with the Sniffer Dog, by name Rani, to the place of occurrence and the said dog has gone from the place of occurrence, to the house with Door No.30 of the colony, of the said Factory and stopped and he has submitted the report to the Higher Officials. Further, P.W.8, Shanthi has specifically admitted in her evidence that her husband also has worked as Fitter in the said Factory and she knows the accused and during the time of the occurrence, she has resided in R.R.Nagar Colony, with Door No.30. On that ground only, the prosecution has undoubtedly

pointed out that after committing the offence, the accused has gone to the house of P.W.8 and as deposed by the said Shanthi in her evidence, the accused has taken bath and left his dresses in the bathroom of P.W.8 and changed the dresses and taken food and thereafter, he left in the said house with two wheeler and also escaped from the area of the occurrence.

17. P.W.21, Thiru.Azen Sikandhar Ali has distinctly deposed that he is working as Head Constable and on 13.04.2012, he has submitted the Express F.I.R to the learned Judicial Magistrate No.1 and other Higher Officials. P.W.22, Dr.Dheenadhayabaran has undoubtedly deposed that he is working in Meenakshi Mission Hospital, and on 12.04.2012 at 10.33P.M, he has given treatment to the P.W.1 Anandhi and issued the Ex.P.14, namely, the certificate of Discharge. On a perusal of Ex.P.14, it is seen that the said P.W.1 Anandhi has been admitted on 12.04.2012 and the said P.W.1 has been admitted as in-patient in the department of ORTHOPAEDICS from 12.04.2012 to 13.04.2012 and thereafter only the P.W.1 has been taken to Chennai Right Hospital and she has been given further medical treatment from 13.04.2012 to 22.04.2012, as per the Ex.P.11, namely, the Discharge Summary issued by P.W.18, Doctor. P.W.23, Thiru.Janakiraman has stated that he is working as Deputy Director of Regional Forensic Science Laboratory, Madurai and on 17.05.2012, he has examined M.O.Nos.1 to 10 and submitted Ex.P.15 Report to the learned Judicial Magistrate No.1, Virudhunagar and Ex.P.16 is the Serology Report. Hence, the said records have also supported the case of the prosecution. Further, P.W.24, Tmt.Sasi Rekha has evidently deposed that she has served as Judicial Magistrate of Virudhunagar and she has conducted Test Identification Parade and issued Test Identification Parade Report as per Ex.P.21. Also, P.W.1 has clearly deposed that she has identified the accused at the time of Test Identification Parade.

18. P.W.25, Thiru.Jose Raja Monsingh has clearly stated that he is working as Grade-I Constable and as per the direction of Inspector of Police, he has handed over the dead body of the deceased Rajarajeswaran for conducting Postmortem to the hospital and after conducting the Postmortem, he has handed over the dead body of the deceased to the relatives and as per the direction of the Inspector of Police, the photos have been taken on the dead body of the deceased, before the

Postmortem and the Photo(8 series) is the Ex.P.22 and the Ex.P.23 is the C.D. P.W.26, Dr.Ayishakani, Virudhunagar Government Hospital has specifically stated that on 12.04.2012 at 9.10P.M, the P.W.1, Anandhi has been brought to the hospital and she has examined the P.W.1 and issued Accident Register as per Ex.P.24. Further, the P.W.1 has also particularly deposed that she has taken treatment at Virudhunagar Government Hospital and then, at Madurai Meenakshi Mission Hospital and later on, at Chennai Right Hospital. P.W.27, Thiru.Thangadurai, Inspector of Police has undeniably deposed that on 12.04.2012 at 23 hours, he has recorded the statement from the P.W.1 at Madurai Meenakshi Mission Hospital, as P.W.1 has taken the medical treatment in the said hospital and thereafter, the case in Crime No.124 of 2012 under Sections 452, 302 and 307 I.P.C has been registered and the F.I.R as per Ex.P.25 has been prepared and he has also prepared the Inquest Report and Rough Sketch as per Ex.P.26 and Ex.P.27 and he has recovered the M.O.7 Tray from the house of P.W.1 and he has also recovered the dresses of the accused as per Ex.P.28 Athatchi and he has also submitted the dresses of the deceased to the Court and on 24.04.12 at 15.30 hours, he has recorded the confession statement given by the accused and he has also recovered the M.O.1 Aruval and M.O.6 the white colour gunny bag as per the Athatchi and also he has recovered the M.O.10 two wheeler with Registration No.TN67AB-7158 in the Athatchi and he has also enquired the Postmortem Doctor and thereafter, he has recorded the statement of witnesses and on 01.06.2012, he has received the Ex.P.21 Test Identification Parade Report and after completing the investigation, he has filed the Final Report as against the appellant herein.

19. Further, on a careful perusal of Ex.P.5 Show Cause Notice, it is found that the said notice has been issued to the accused and he has refused to receive the same and after that, the suspension order has been issued to the accused and thereafter, only he has come to the house of the deceased, namely, Rajarajeswaran, Deputy General Manager of the said Factory and entered into a heated argument with him and also, brutally assaulted the deceased with M.O.1 Aruval, hidden in the white colour gunny bag and also P.W.1 has tried to stop the accused, attacking the deceased and therefore, the accused has also assaulted the P.W.1 and the P.W.1 has also suffered injuries and as per Ex.P.6, the accused

has been placed under suspension, pending enquiry by the Madras Cements Ltd., Virudhunagar on 12.04.2012 at 7.00P.M and thereafter, only the accused has done the brutal assault on the deceased and also injured the P.W.1.

20. Further, in the decision of Honourable Supreme Court, reported in (2007) 15 SCC760 in the case of Tika Ram V. State of Madhya Pradesh, it is clearly observed as follows:- ?. Held, evidence of a sole witness can be relied upon to base a conviction if that evidence is reliable and acceptable. On facts held, evidence of P.W.48, an eyewitness, had been rightly relied upon by the Courts below which specifically establishes the role of the appellant in the offence.?. In the present case also, it is found that the evidence of injured eyewitness P.W.1 is clear, cogent and consistent with the above mentioned evidences of other prosecution material witnesses and prime documents and supportive material objects.

21. Further, it is also seen that the conduct of the eyewitness of the P.W.1 is natural and also the evidence of the Doctor and other prosecution witnesses and exhibits and materials on record have clearly established that only the accused has caused death to the deceased and also caused grievous injuries to the P.W.1, with the help of M.O.1 Aruval. Further, it is found that the behaviour of the eyewitness of P.W.1 is clear and cogent and there is no strong circumstances to doubt the said eyewitness.

22. Further, the learned counsel appearing for appellant has vehemently contended that all circumstances are inconsistent with the appellant/accused and the evidences of prosecution witnesses and materials are very doubtful. However, on a cumulative consideration of the above mentioned entire evidences of the prosecution and also exhibits and material objects, it is found that the prosecution has established the allegation made against the appellant by producing the reliable, trustworthy and credible witnesses, documents and materials on record, in the present case. Further, the learned counsel appearing for the appellant has repeatedly contended that there is no positive and supportive evidence with regard to the allegations made by the prosecution as against the appellant. However, it is seen that the prosecution has produced cogent, natural and trustworthy evidences

and material objects and exhibits to establish the crime committed by the accused/appellant.

22. Further, the prosecution case cannot be turned out on the basis of minor defect in the investigation. Further, the Lower Court has rightly taken into consideration, the motive projected against the accused. The reasons given by the Lower Court, for convicting the accused/appellant, is reasonable. Further, the evidences of prosecution witnesses and exhibits and documents are clinching and cogent to establish the above mentioned offence committed by the appellant in the present case.

23. On a careful scrutiny of entire material records, it is found that the prosecution has proved the nexus of the accused with crime. Further, the various grounds taken on behalf of the appellant have to be negated for the above mentioned natural, convincing and acceptable evidences of the prosecution. Further, this Court is unable to discard the clear testimony of the eyewitness of the P.W.1, simply, on the ground that she is the wife of the deceased person. Further, the prosecution has established the brutal attack made by the accused, on the deceased and also grievous injuries caused to the P.W.1 with the deadly weapon of M.O.1 Aruval, with the clinching evidences of prosecution witnesses and materials on record. Further, the Lower court has not convicted the appellant / accused solely based on recoveries and in fact, there are other relevant circumstances and materials on records as mentioned above and also the chain of events, suggesting involvement of accused in committing the above mentioned crime.

24. Further, in the case on hand, on a careful scrutiny of the materials available on record, it is found that the reasons given by the Lower Court for the conviction of the accused, are fairly sound. Further, the finding given by the Lower Court is in accordance with the proper appreciation of evidence and also the view taken by the Trial Court is reasonable. Apart from that, it is seen that the relevant and reliable evidences on record have been taken into proper consideration by the Lower Court. Further, it is seen that the Lower Court has recorded the good and valid reasons for accepting the evidences of prosecution witnesses and therefore,

the judgment of the Lower Court has to be confirmed. Further, in the present case, the Lower Court has passed the Judgment on proper appreciation of evidences and also furnished cogent reasons for convicting the accused herein. Therefore, there is no good reason for this Court to interfere with the Judgment of the Lower Court.

25. In the result, the conviction and sentence imposed on the accused / appellant / Ganeshan in Crime No.124 of 2012 passed in S.C.No.187 of 2012, dated 25.07.2013 on the file of the learned Additional Sessions Judge, Virudhunagar is confirmed and the Criminal Appeal is dismissed. To 1.The Additional Sessions Judge, Virudhunagar.

2. The Inspector of Police, Vachakarapatti Police Station, Virudhunagar District.

3. The Central Prison, Madurai.

4. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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