

Alagar Vs State

C.A. 637 of 1987

Court: Madras High Court

Date of Decision: July 1, 1992

Acts Referred:

Penal Code, 1860 (IPC) & Section 302

Citation: (1993) LW(Cri) 175

Hon'ble Judges: K.M. Natarajan, J; Arumugham, J

Bench: Division Bench

Advocate: A.A. Selvam, for the Appellant; S. Shanmughavelayutham, for the Respondent

Judgement

Arumugam, J.

The Appellant was tried by the learned first Additional Sessions Judge, Madurai in S.C. No. 5 of 1987 for an offence

punishable u/s 302 I.P.C. for having caused the death of one Sivasamy at or about 4 P.M. on 13.5.1986 at Vadipatti Village in front of his house,

situated within the jurisdiction of the Respondent police and found guilty for the said offence, convicted and sentenced to undergo rigorous

imprisonment for life.

2. The case of the prosecution as projected before the learned trial Judge is as follows:

At or about 4 P.M. on a day about 11/4 years prior to the evidence given by P.W.1 (13.5.1986), while P.W.1 Pandiammal, along with her

husband Sivasamy was in their house, they received death message of her mother at Thondaneri which was about 9 miles away from her house. As

they were in need of money for the condolence expenses, Sivasamy proceeded to Vadipatti to the house of the Appellant to get back the sum of

Rs. 200/- which was due to him. After waiting for sometime as her husband did not turn up, P.W.1 went to house of the accused to see her

husband. When she reached the house of the Appellant at Vadipatti which is about a furlong away from her house, she saw her husband and the

Appellant grappling with each other. The time was 4'o Clock in the evening. Then, she separated them. At that time, the Appellant was in a

drunken mood. The Appellant went inside his house, came out with an aruval and gave a severe cut on the right side neck of her husband. On

receipt of the cut by aruval, her husband fell to the ground, followed by her cry, for which the Appellant warned her to go away, otherwise, he

would cut her also. Fearing for her life, she went to some place nearby from the scene of the occurrence. Then the Appellant negotiated two cuts

on each of the thighs of Sivasamy., holding the head of the deceased by the tuft with his left hand, the Appellant cut his neck like a butcher of goat

and severed his head from the body. The Appellant took the head to the nearby foundation basement of one Vel-Asari and placed it on the south

western portion and there also cut the face of the deceased on his eyes, cheek and face with the said aruval. On hearing the alarm, neighbours

assembled there. Threatening them that he would do away with them the Appellant ran away from the scene of occurrence with the said weapon of

offence. Weeping, P.W.1 Pandiammal, left to the Vadipatti Police Station which is about one furlong away from the scene of occurrence, gave an

oral report to P.W.10 Kandasamy, the then Sub-Inspector of Police, who reduced the same into writing on her narration. P.W.1 subscribed her

signature to the first information Ex. PI at 4:15 P.M. on the same day. P.W.1 handed over her bloodstained saree and bloodstained jacket M.O.1

and M.O.3 to the Sub Inspector of Police, P.W.10, who recovered them under mahazar Ex.P4.

3. P.W.10, the then Sub Inspector of Police, registered the complaint given by P.W.1 in Vadipatti P.S. Cr. No. 138/1986 u/s 302 I.P.C. against

the Appellant and prepared Express Report Ex. P11 and sent it to the authorities concerned and the concerned Court through P.C.1377

Santhanam. Then, he recovered M.O.1 and M.O.2 blood stained saree and jacket from P.W.1 at 4:50 P.M. on the same day under the cover of

Mahazar at the Police Station in the presence of village Administrative Officer of Bodinaickanpatti, Palanimuthu, P.W. 5 and Thalaiyari Pitchai,

P.W.6, and sent the said properties to the Court. Then, he proceeded to the scene of occurrence and assisted the Inspector of Police.P.W. 11 in

further investigation of the case.

4. P.W.11, the Inspector of Police, Vadipatti Police Station, while he was at his house at Vadipatti, at or about 4:50 P.M. on 13.5.1986, received

the Express First Information Report through P.C.1377 of the said station and took up investigation. He proceeded to the scene of occurrence at 5

P.M. on the same day, and prepared the Observation Mahazar Ex. P2 in the presence of P.W. 5 and P.W. 6. Then, he prepared the rough sketch

of the scene of occurrence, Ex. P12. He summoned the panchayatdars and conducted the inquest on the dead body of the deceased Sivasamy

between 6 P.M. and 8 P.M. on 13.5.1986 and prepared Inquest Report Ex. P13. He examined P.W.1 Pandiammal, and M. Muthuraja, P.W.2,

during the inquest and recorded their statements. After completing inquest, he sent the dead body with a requisition to the Medical Officer,

Thirumangalam Government Hospital, through P.C. 949 for the conduct of autopsy.

5. Then at or about 8 P.M. on the same day, the bloodstained shirt removed from the dead body M.O. 6, and chappals M.O. 3, bloodstained

earth M.O. 4 sample earth M.O. 5 were recovered under mahazar attested by P.W. 5 and P.W. 6. The Inspector then examined P.W. 3

Rajagopal, Raman, Dhatchinamoorthi P.W. 4, Vellaichamy, Sakkarai, Soodammal, Andal, Tamilarasi and other neighbours of the scene of

occurrence as well as P.W. 5 and P.W. 6, the village Administrative Officer and Thalaiyari.

6. Then he searched for the accused. He was not available. Then on 16.5.1986, he came to know that the accused had surrendered before the

Judicial Second Class Magistrate, Sivaganga.

7. On 17.5.1986, he examined the Medical Officer Dr. Prabakar Sundaralingam, P.W. 7 and the Police Constable 949, P.W. 8. Then on

3.7.1986, he gave requisition to the Judicial Second Class Magistrate, Nilakottai to send the blood stained material objects for chemical

examination. On examining the Sub Inspector of Police of his station, he completed his investigation on 5.10.1986 and filed the final report.

8. P.W. 2, Muthuraja, a close relative of P.W.1 to whom the deceased was the uncle, was employed as a cleaner in Pandiselvam Lorry Service

would claim that at or about 4 P.M. on 13.5.1986, while he proceeded to take bath in the motor pumpset situated behind the Lala Theatre at

Vadipatti, heard the alarm of P.W.1 in front of the house of the accused. When he ran to that place he saw the accused Appellant holding the head

of the deceased by the tuft who was lying on the ground with cut injuries, cutting his neck with aruval. The Appellant after severing the head of the

deceased from the body, took the head to the foundation basement of Vel Asari building and placed it on the South Western Corner and then he

gave cut to the said face two times with the same aruval and on approach by the neighbours, the Appellant threatened to cut them also if they come

near him and ran away with the weapon of offence. He was there along with others in the scene of occurrence. Within a short time, Police came

and examined him.

9. One Rajagopal and another Dhatchinamoorthi both belonging to Bodinaickanpatti were examined by the prosecution as P.W.s. 3 and 4 but they

were treated as hostile by the prosecution.

10. P.W. 5 Thiru Palanimulhu, Village Administrative Officer of Bodinaickanpatti in whose jurisdiction the scene village is situated along with his

menial Thalaiyari Pitchai were examined as P.W.s. 5 and P.W.s. 6. But, they were also treated as hostile by the prosecution since they did not

support the prosecution version.

11. The Medical Officer Thiru. Prabakar Sundaralingam, P.W. 7, who was working at the Government Hospital, Thirumangalam received the

requisitions Ex. P.5 sent by the Inspector of Police for the conduct of autopsy on the corpse of the deceased, at or about 1:15 A.M. on

14.5.1986. He commenced the autopsy over the corpse at 11:00 A.M. on 14.5.1986.

12. According to P.W. 7, the condition of the dead body when he commenced autopsy at about 11 A.M. was that rigor mortis passed off in upper

limb; passing off in the lower limb. He found the following external injuries. HEAD:

1) An incised wound over right occipital region 6 cm x 3 cm bone deep.

2) Vertical incised wound over right ear and in the scalp cutting the pinna of ear vertically into the middle and extends downwards upto posterior

angle of mandible 12 x 2 x Bone deep with fracture of sphenoid bone.

3) Incised wound over the right cheek 10 x 4 cutting the deep fascia exposing the deeper muscles.

All the above injuries are post-mortem. They are dry and no blood spotting.

4) An incised wound running from the floor of mouth to the neck severing the muscles, vessels, oesophagus, trachea at the level of the thyroid

cartilage and severing the body of 3rd cervical vertebra and head is decapitated from body.

5) The corresponding incised wound is found in the trunk in neck region, the W. No. 4 and 5 fits with each other.

Trunk:

6) An incised wound over the root of neck above and left of supra sternal notch 4 x 3 cm x deeper muscles and vessels severed.

7) An incised wound over the right side chest over collar bone horizontal, and 12 x 3 bone deep with cut at the medial end of collar bone.

8) An horizontal incised wound over the left thigh antero medial aspect 12x4 bone deep severing the muscles of anterior aspect of thigh.

9) An horizontal incised wound over the left medial aspect of left thigh 5 cm. below the wound No. 8, 15 x 4 cm x bone depth severing the vessels

and muscles.

10) An horizontal incised wound over medial aspect of thigh 15 x 5 cm bone deep with severing the vessels and muscles.

11) A horizontal incised wound 2 cm below the wound No. 10, 10 cm x 3 bone deep cutting the muscles.

13. On internal examination it was found that the 3rd cervical vertebra was cut resulting in the fracture of the same in the vertebral column on its

upper portion in the head portion as well as lower in the trunk. Wound No. (7) shows fracture of medial end of collar bone cut. Symptoms were

noted by this witness. According to him, stomach contained fully digested food to the extent of 50 grams and intestines found distended with gas.

He was of the opinion that the deceased would have died of shock and haemorrhage due to the injuries sustained by him during antemortem and

death would have occurred about 18 to 24 hours prior to the autopsy. He issued the Post-Mortem certificate Ex. P6.

14. According to P.W.7 injuries 1, 2 and 3 could have been caused by cut with an aruval after the head was severed from the body and the

corresponding injuries 4 and 5 could have been caused by cutting the neck while separating the same from the head by holding the tuft of the

deceased and during the said process injury No. 6 could have been caused. Injuries Nos. 7 to 11 could have been caused by cutting with a

weapon like aruval.

15. P.W.7, the Medical Officer opines that injury Nos. 4, 5, 6, 9 and 10 are individually sufficient to cause instantaneous death. The internal injury

to vertebral column corresponds to external injuries 4 and 5. The internal injury in the chest corresponds with the external injury No. 7. External

injuries 4 to 11, internal injuries 4, 5, internal injury corresponding to external injury No. 7 were all ante-mortem injuries. He further opines that the

deceased would have died of injury 4, 5, 6, 9 and 10 with the corresponding internal injuries of the external injuries 4 and 5 found on the cervical

vertebra. He was examined by the Inspector of Police, P.W. 11.

16. P.W.8, Sivagnanapandian attached to Vadipatti Police station, on 13.5.1986 escorted the dead body of the deceased after inquest at about 8

P.M. on 13.5.1986 to the Government Hospital, Thirumangalam with a requisition given by P.W. 11 to conduct autopsy over the dead body. He

handed over the same to P.W. 7 the doctor, and escorted during the post-mortem examination. Then after the autopsy, he recovered the blood

stained Dhoti M.O. 7 from the dead body and handed over the dead body to his relatives and handed over M.O. 7 to the Vadipatti Police.

17. P.W.9 Thiru. Venkatachalam, the then Head Clerk of Judicial Second Class Magistrate Court, Nilakottai, would have it that on 15.5.1986

M.O's. 1 to 7 were received in Court but returned. Then again on 21.5.1986 received all the M.O.s. 1 to 7. Then on the receipt of requisition from

P.W. 11, the Inspector of Police on 17.7.1986, it was returned. The requisition Ex. P7 was again received on 18.7.1986 M.O Section 1, 2, 4, 6,

and 7 were sent for chemical examination. Ex. P-8 office copy of the letter of Magistrate on 24.7.1986. The report of the Chemical Examiner Ex.

P9 was received on 6.10.1986, and the serologist's report Ex. P10, was received on 10.12.1986.

18. When the accused was examined with regard to the incriminating circumstances appearing against him on the basis of evidence of the

prosecution witnesses with reference to his complicity, he denied the entire occurrence in toto. He added further that on 13.5.1986, he went to

Kancharankulam to inform his brother about his pilgrimage to Sabarimalai and returned to Vadipatti only by 8 P.M. on that day. He was told in the

bus- stand that he was wanted by the police in connection with a corpse which was lying in front of his house and that therefore the police were

searching for him on suspicion. Then he went to Sivaganga, where his relatives surrendered him before Court. He would further add that he was

doing business in tender coconut in Vadipatti and that Head Constable Rajendran demanded 50 coconuts and accordingly he supplied him. But the

Head Constable did not pay the cost of the same as he promised. When questioned subsequently, he refused to give any money. Then he took the

Appellant to the station and foisted a false case before the Court at Nilakottai. He further submits that in the election held for the Vadipatti Union,

deceased Sivasamy worked for A.I.A.D.M.K. and he worked for D.M.K and due to the tussel both the deceased and the Appellant were not in

talking terms. The Appellant claims that he did not know anything about this murder.

19. Though he cited defence witnesses on his side, he did not choose to examine them.

20. On assessing the entire evidence let in by the prosecution and the documents relied on and examining the Appellant with the answers above

referred and various established circumstances and arguments advanced on behalf of both the parties and Material Objects, the learned trial Judge

found that the prosecution has fully established the guilt of the accused beyond all reasonable doubt. He found the accused/Appellant guilty for the

offence u/s 302 I.P.C. After hearing the accused on the sentence to be imposed, as the accused pleaded leniency, the learned trial Judge convicted

the accused and sentenced to undergo rigorous imprisonment for life as referred earlier, against which the present appeal is being canvassed in this

Court.

21. We have heard the submissions advanced by Mr. A. A. Selvam, the learned Counsel appearing for the Appellant on the basis of the grounds

urged in the grounds of appeal. On the other hand, it was countered by the learned Additional Public Prosecutor Mr. S. Shanmughavelayutham on

behalf of the state.

22. Mr. A. A. Selvam the learned Counsel for the Appellant projected his main plank of attack about the legal credibility of the occurrence.

Witnesses P.W.s. 1 and 2 as they are very close relatives of the deceased viz. P.W.1 is the wife and P.W. 2 is the nephew of the deceased and

that in the context of P.W.1 not having mentioned the presence of P.W. 2 in the scene of occurrence while she deposed in the witness box, the

learned Counsel contends that P.W. 2 is to be deemed as a chance witness and that her testimony cannot be relied on. While emphasising the

above said contention, the learned Counsel drew our attention that the occurrence itself happened at 10'o Clock in the morning on that day of

occurrence, and that during that time P.W.1 was not present and that she was available at Thondaneri attending her mother's ceremony and that,

therefore, on coming to know of the murder of the deceased, she was brought to the scene village and the whole case has been foisted with the

twisted version as if the entire occurrence happened in the presence of P.W.1 and P.W. 2 at 4 P.M. on 13.5.1986 and that, therefore, the

evidence of P.W.s.1 and 2 are liable to be rejected.

23. Then the learned Counsel for the Appellant contended that inasmuch as the other witnesses who belong to the same village namely P.W. 3 and

P.W. 4 claiming to be the supporting witnesses as well as the evidence of the village Administrative Officer and Thalayari, P.W. 5 and P.W. 6

were treated as hostile, no purpose will be served for the proof of prosecution case and that under the said circumstances of the recovery mahazar

attested by P.W. 5 and P.W. 6 claimed to have been prepared for the recovery of the material objects are to be rejected in this case.

24. The learned trial Judge on considering the reliability of the testimonies of P. Ws. 1 and 2 the ocular witnesses to the occurrence accepted the

same as totally trustworthy, natural and true. We have perused meticulously and scrutinised the testimonies of P. Ws. 1 and 2. P.W. 1

Pandiammal, the wife of the deceased claims during the end of cross examination that at about 6 months prior to the occurrence, both her husband

and the Appellant were quarrelling with each other by consuming arrack and that even so, they were friends and were in talking terms and that the

distance between her house at Thondaneri and the house of the Appellant is about a furlong and that on the day of occurrence while she along with

her husband were in her house, at about 2 P.M. she got the condolence message of her mother at Thodaneri and to meet the expenses, she claims

that her husband went to the Appellant to get the return of Rs. 200/- which the Appellant owed to him and that on that score, she was waiting for

her husband with the money. As he did not come for about 1 1/2 hours, she went to the house of the Appellant to see as to what happened. On

her reaching, she saw her husband and the Appellant grappling with each other but she separated them. At that time, the Appellant was in a

drunken mood. Immediately, according to P.W. 1 the Appellant went into his house, brought an aruval and cut her husband on his right side of the

neck. Upon the said cutting the deceased tottering with bleeding injury, slumped down. It was followed by the cutting of the Appellant with the

same aruval two times on each of his thighs indiscriminately and then having the tuft of the deceased on his left hand, the Appellant cut the neck of

the deceased like the butcher cutting the goat and thereby severed the head of Sivasamy from his body. Then, according to P.W. 1, the Appellant

took the severed head of the deceased to the South Western part of the basement of Vel Asari's house and placed it there and then, he cut the

said head on cheek, eyes and face with the same aruval. On the arrival of the neighbours, the Appellant ran away with the weapon of offence.

25. While the first cut with the aruval was given to the deceased by the Appellant on his right side neck and when her husband fell down, P.W.1

lifted her husband by weeping followed by the threatening by the Appellant. During the said sojourn, her saree and jacket were stained with blood

of her husband which she handed over to P.W. 10 at Vadipatti Police Station after she gave the first information Ex.P1. and recovered by P.W.

10 under cover of Mahazar Ex.P4 attested by P.W. 5 and P.W. 6.

26. P.W.2, the nephew of the deceased claims that at or about 4 P.M. on 13.5.1986 when he was going to take bath at the pumpset situated

behind the Lala Theatre at Vadipatti, he heard the alarm of P.W. 1 in front of the house of the Appellant. He ran to the house of the Appellant and

he saw the Appellant having the tuft of Sivasamy on his left hand, who was lying in front of his house with cut injuries and cutting his neck with

aruval. After severing the head of the deceased, the Appellant took the head to the house of Vel Asari and placed it at the South Western portion

of the basement and gave two cuts on his face and that on seeing the neighbours coming to the place, the accused ran away with the weapon of

offence. He remained there till the Police came there and he was examined.

27. Both P. Ws. 1 and 2 withstood the meticulous cross- examination on behalf of the Appellant. They admit that they are relatives. They did not

say that they were not related. P.W. 2 admits the fact that he was taking food in the house of P.W. 1. The testimonies of P.W. 1 has been fully

corroborated and supported by the version of P.W. 2. P. Ws. 1 and 2 are the eye witnesses. They have narrated the over acts of the Appellant

herein in its fullest compliment. P.W. 1 is the wife of the deceased. As was rightly observed by the learned trial Judge, the evidence of P.W.s. 1

and 2 appears to be very natural, convincing and cogent. We do not find any reason for P.W.s. 1 and 2 to falsely implicate the Appellant in this

heinous crime perpetrated on the deceased on the day of occurrence. Both the witnesses do not claim any false motive against the Appellant to

commit the occurrence above referred. There is no substance or reason pointed out or available to suspect the version of P.W.s. 1 and 2 except

their distant relationship. Merely because P.W.s. 1 and 2 happen to be the distant relatives, their version cannot be rejected or suspected regarding

the occurrence proper. On a careful scrutiny of their version, we feel totally convinced with the accounting of P.W.s. 1 and 2 about the occurrence

proper and the complicity of the Appellant.

28. To entertain suspicion over the testimony of P.W. 1, the learned Counsel for the Appellant drew our attention that the prosecution has not

placed any evidence nor placed any records to show that the Appellant owed money to the deceased and that for which the deceased was

claimed to have been in the house of the Appellant on the day of occurrence for the purpose of getting return of the said money. Though P.W. 1

admits that there was nothing on record to show the loan amount due by the Appellant to her husband, she, denied the suggestion emphatically that

she was telling falsehood. Then, the learned Counsel for the Appellant contends that on the day of occurrence, the claim that the mother of P.W.1

never expired so as to enable her to get the information at or about 2 P.M. and that on the other hand, her mother who was residing at Thodaneri

village about 9 miles away from her house expired on 5.5.1986 and that under the circumstances, P.W. 1 was not available at her house on the

day of occurrence and that only on hearing the murder of her husband by 10 A.M. on that day, she came to the scene village from Thodaneri and

subsequently with the help of Police the prosecution has been foisted against the Appellant herein. On considering the entire evidence and records,

we are able to find that there is no substance in the contentions advanced by the learned Counsel on behalf of the Appellant. There is not even a

suggestion to P.W.s. 1 and 2 on behalf of the Appellant pertaining to the abovesaid contentions. Therefore, we are constrained to reject the said

contention. But on the other hand, we believe and accept the evidence of P.W.s. 1 and 2 as natural and cogent and that reliability of their version

cannot be suspected to any extent as was contended.

29. The next aspect of the prosecution case is the medical evidence given by P.W. 7 Dr. Prabakar Sundaralingam which corroborates into to the

accounting of P.W.s. 1 and 2 about the occurrence proper and the complicity of the Appellant. P.W. 7 on receipt of requisition from P.W. 11

through P.C. 949 received the body and the head of the deceased separately and commenced the autopsy over the dead body and the head at

about 11 A.M. on 14.5.1986. The doctor has noted as many as 11 cut injuries found on the dead body and the head of the deceased Sivasamy

which could have been caused by a weapon like aruval. Injury number 4 and 5 are likely to cause instantaneous death as well as injury number 6.

Injury number 9 and 10, he claims are likely to cause death. He gave Post-Mortem Certificate Ex.P6. He opines that the deceased would have

died of shock and haemorrhage 18 to 24 hours prior to the autopsy. This portion of his claim renders total corroboration to the evidence of P.W.s.

1 and 2. The cross- examination perpetrated to P.W. 7 did not succeed in eliciting any point to suspect the evidence of the Medical Officer with

regard to autopsy and the injuries found on the corpse. Therefore, we are inclined to place full reliance on the evidence of P.W. 7 with reference to

its corroboration of the accounting of eye witnesses P.W.s. 1 and 2.

30. With regard to the complaint claimed to have been given by P.W. 1 to Sub Inspector of Police, Vadipatti, at or about 16.15 hours on

13.5.1986 is concerned, we may observe that immediately after the occurrence, P.W. 1, the wife of the deceased went to Vadipatti Police Station

which is situated about a furlong away from the scene of crime and gave report to P.W. 10. On her narration, it was reduced into writing by P.W.

10 and after verifying the correctness of the same P.W. 1 subscribed her signature to Ex.P1 in this case. P.W. 10 registered the same in Vaidpatti

P.S. Cr. No. 138/1986 against the Appellant u/s 302 I.P.C. and prepared the express first information upon report Ex.P11 and sent the same to

the higher authorities concerned as well as the Court through Police Constable 1377 immediately. Then at about 16.50 hours on the same day,

P.W. 10 recovered the blood stained saree and jacket M.O.1 and M.O.2 from P.W. 1 under the cover of mahazar Ex.P4 attested by P.W. 5 and

P.W. 6, the Village Administrative Officer and his Thalaiyari. Then went to the scene of occurrence and assisted the Inspector of Police who did

further investigation. It is found that the original First Information Report was received by the Judicial Second Class Magistrate at about 8 P.M. on

13.5.1986 as per the endorsement and signature found in Ex. PI as well as Ex.P11. It appears from the case records, that the original inquest

report and the statements recorded from P.W. Section 1 and 2 during inquest by P.W. 11 the Inspector of Police were all received in Court in the

morning of 14.5.1986. From the evidence of P.W. 10, it appears that Nilakottai where the Judicial Second Class Magistrate's Court is situate,

about 20 Kilometers away from the second village Vadipatti, but having bus facilities. In this context, we are able to see that there is no delay of

any kind in giving the complaint to the Police by P.W. 1 and setting the law in motion or any laches on the part of the investigation staff in

completing the investigation. Within half an hour from the occurrence, the law was set in motion and the Police started their investigation,

conducted the inquest over the dead body and the head, prepared the observation mahazar and so on and sent the First Information Report to the

learned Magistrate and all the papers reached the court by 11 A.M. the next day morning. On considering the above said records in detail, we see

that there is no delay of any kind in setting the law in motion and the investigation in this case. In this regard though a faint argument was advanced

by the learned Counsel for the Appellant that there was a delay in giving the F.I.R. as well as the case properties reaching the court, there is no

substance in the same. Accordingly, we are inclined to reject the same in toto.

31. The next corroborative aspect of the prosecution case is available through the evidence of P.W. 9, Head Clerk of Judicial Second Class

Magistrate, Nilakottai. According to him, Material Objects 1 to 7 recovered under the cover of mahazars by P.W. 10 and P.W. 11 attested by

P.W. 5 and P.W. 6 were received by the Court immediately and that after the returns were being attended, sent to the chemical examination with

the requisition Ex.P7 and received the Chemical Examiner's Report Ex.P9 on 6.10.1986 an serolonist's report Ex.P10 on 10.12.1986, As per

Ex.P9 the Chemical Examiner's Report, the bloodstained shirt, banian and dhoti from the dead body of the deceased Sivasamy and the

bloodstained saree and jacket recovered from P.W. 1 with bloodstained saree and jacket recovered from P.W. 1 with blood stains with the blood

stained earth taken from the place where the dead body was found recovered under cover of mahazars were all detected with blood and that the

said blood was found to be AB group on the shirt, dhoti and banian recovered from the dead body of the deceased and the group of the blood

found on the saree and blouse recovered from P.W. 1 were not able to be detected. This part of the documentary and independent, evidence

clinches the conclusive corroboration for the accounting of the eye witnesses P.W.s. 1 and 2 about the occurrence proper and the complicity of the

Appellant in this case.

32. Then the learned Counsel Mr. Selvam dwells his attack upon the non corroborative portion of evidence of P.W.s. 3 to 6 more particularly

P.W.s. 5 and 6 who are the Village Administrative Officer and Thalaiyari, who happened to be mahazar attestors of Ex.P3, Ex.P4 and so on. It is

true that P.W. Section 3 and 4 Mr. Rajagopal and Dhatchinamoorthi were examined by the prosecution for the supporting evidence of P.W.s. 1

and 2 but happened to treat them hostile since they were not speaking in support of the prosecution case but they admit that they were examined

by the police in connection with the case, Pertinent at this stage to refer the version of the hostile witnesses P.W. 5 and P.W. 6 in this case. P.W. 5

is the Village Administrative Officer and P.W. 6 in his menial. Both were treated as hostile. Though P.W. 5 was treated as hostile, he claims that he

had given a report with regard to the murder to the Vadipatti Police at about 5 P.M. and that during that time, he admits that P.W. 1 was present

in the Police Station and P.W. 10 showed him the blood stained saree of P.W. 1. Then, he claims that after giving the report, he returned to the

scene of occurrence and they were there till the dead body was removed. He further admits the preparation of the observation mahazar Ex.P2 by

the Police as well as recovery of one shirt by the Police and that he and P.W. 6 attested the observation mahazar.

33. During cross-examination by the learned Public Prosecutor P.W. 5 admits that after the inquest was over, the Inspector of Police has

recovered two chappels of the deceased under mahazar and his having attested Ex.P3 with his Thalaiyari for the recovery of M.O. 4 bloodstained

earth, M.O. 5 sample earth.

34. Likewise, P.W. 6 though treated as hostile corroborates the evidence of P.W. 5 by admitting that Police prepared observation mahazar Ex.P2

and that in which he and P.W. 5 attested the same and that further recovery of chappals, blood stained earth, sample earth under the cover of

Ex.P3 were made as attested by him. Thus, P.W. 6 admits that M.O. 3, 4, 5, 6 were recovered under the cover of Ex.P3 on 13.5.1986 in which

he and P.W. 5 have attested.

35. When P.W. 6 was further cross-examined on behalf of the Appellant, he admits that when he reached the Police Station at about 4:45 P.M.

on that day Police were getting the complaint from P.W. 1 and that at the same time he claims that Police were recovering M.O. 1 and M.O. 2

from P.W. 1. Then he also admits that he and P.W. 5 attested Ex.P2 and Ex.P3 in the scene of occurrence.

36. Thus the recovery of M.O Section 1 to 7 viz. the bloodstained saree, jacket and the clothes of the deceased with blood stains, earth etc. were

all recovered by Police immediately under the cover of mahazars duly attested by P.W. 5 and P.W. 6 though treated as hostile but corroborated

the said aspect of the investigation. Considering that portion of evidence leading to the corroboration, it was contended on behalf of the Appellant

that since P.W. 5 and P.W. 6 were treated as hostile, their evidence cannot be relied on for any purpose and emphasizing the said aspect, the

learned Counsel Mr. Selvam, wanted us to reject the recoveries of the material objects claimed by the prosecution.

37. We are unable to accept the above proposition. It is well settled law that the evidence of a witness, declared hostile, is not wholly effaced from

the record and that part of the evidence which is otherwise acceptable can be acted upon. In this connection, we wish to lay emphasis on the

following case Bhagwan Singh Vs. The State of Haryana, Shri Rabindra Kumar Dey Vs. State of Orissa, Syad Akbar Vs. State of Karnataka,

where in all the above cases it was held that

the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined

him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent

their version is found to be dependable on a careful scrutiny thereof.

Keeping the ratio of the said legal norm to the facts of the present case, it is seen, that the evidence of P.W. 5 and P.W. 6 elicited during cross-

examination to the extent of their attesting the recovery mahazars and the presence of P.W. 1 to give the first information Ex.P1 in the Police

Station and the recovery of M.O. 1 and M.O. 2 and the recovery of other Material Objects during inquest though challenged by the Appellant, we

are thoroughly satisfied to rely their evidence to the above extent, and accordingly, we are constrained to hold that the recovery of the material

objects were duly proved and established by the prosecution in this case. Therefore, in the light of the above legal ratio, we reject the contention of

the learned Counsel for the Appellant about the evidence of the hostile witnesses.

38. Then the learned Counsel for the Appellant Mr. Selvam dwells his attack about the absence of motive for the crime failed to be established by

the prosecution. P.W. 1 claims that with a view to get back the money of Rs. 200/- from the Appellant which was due, her husband went to the

house of the Appellant on the day of occurrence. But, she did not pretend to claim anything further about what happened between the deceased

and the accused when her husband reached the house of the Appellant. She claims that on her reaching the scene of occurrence at about 4 P.M.

both the Appellant and her husband were found grappling with each other and the Appellant was found in a drunken mood, and that she separated

them and thereafter followed by the occurrence proper according to this witness. We have already observed that the reliability of the versions of

P.W.1 and P.W.2 cannot be suspected and questioned as they are true, cogent and convincing. The evidence of P.W. s.1 and 2 fully accounted

the complicity of the Appellant in causing the death of the deceased. They are the ocular witnesses. Of course, so far as the motive for the

prosecution case is concerned, though it is lacking in full details but in view of the truthful and reliable version of P.W.s.1 and 2 viz. the accounting

of the eye witnesses, the motive portion in our firm view does not occupy any important aspect or stand in the way of the prosecution case.

39. At this stage, it has become relevant to refer Section 3 of the Indian Evidence Act for the definition of "Evidence" and the meaning for the

aspect "Proved" which runs as follows:

Evidence" means and includes :

(1) all statements which the Court permits or required to be made before it by witnesses, in relation, to matters of fact under inquiry; such

statements are called oral evidence;

(2) all document produced for the inspection of the court; such documents are called documentary evidence.

Proved" - A fact is said to be proved when after considering the matters before it, the Court either believes it to exist, or considers its existence so

probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

40. Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the

emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a

murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain

undiscoverable.

41. We are fully conscious of the fact from the experience of Criminal Courts that atrocious crimes of this sort have been committed even from

very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage and to drive off for time pressing difficulties. As

such, we are inclined to hold that though it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such

criminal act can be presumed unless motive is proved for the simple reason that motive is a psychological phenomenon. Mere fact that prosecution

failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the

assailant. In *Atley Vs. State of Uttar Pradesh*, it was held as follows:

that is true, and where there is clear proof of motive for the crime, that lends additional support to the finding of the Court that the accused was

guilty but absence of clear proof of motive does not necessarily lead to the contrary conclusion.

42. We are fully aware that in some cases it may not be difficult to establish motive through direct evidence, while in some other cases, inferences

from circumstances may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to

disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of

the accused worked in a particular situation. Sometimes it may appear that the motive established is a weak one. That by itself is insufficient to lead

to any inference adverse to the prosecution.

43. Thus, in the light of the above accepted legal norm, while considering the evidence, though the prosecution was not able to establish the actual

motive for this heinous crime committed on the deceased Sivasarny, accounting of the eye witnesses viz. P.W.s 1 and 2 as fully corroborated by

the recoveries made by the investigating agency, following the setting the law in motion immediately after the occurrence with no laches of any kind,

fully supported by the medical evidence though the weapon of offence has not been able to be recovered since the accused surrendered before

Court of law on the third day of occurrence, we do not find any reason to dissent with the learned trial Judge in finding the accused guilty u/s 302

I.P.C. for having brutally murdered Sivasamy and for the reasons and circumstances set out by him, awarding life imprisonment against the

Appellant.

44. It was further contended by the learned Counsel for the Appellant that the non examination of the neighbours to the scene of occurrence was

fatal to the prosecution case; in the absence of any evidence by the neighbours in support of the prosecution, the oral testimony of 2 P. W.s 1 and

2 assumes no credibility. In the context of the reliability of the oral accounting of P.W.s 1 and 2, the ocular witnesses, as we have already

observed, the above contention of the learned Counsel is of no consequence, and that, therefore, we are totally unable to persuade ourselves to

accept the said contention. Hence, we reject the same.

45. Thiru S. Shanmughavelayutham, the learned Additional Public Prosecutor counters every one of the arguments advanced by the learned

Counsel for the Appellant by stating, that while the complicity of the Appellant has been fully established by the accounting of the ocular witnesses,

failure to establish cogent motive by the prosecution is immaterial; and that there was nothing on record or elicited from the prosecution witnesses

that the death of the mother of P.W.I was on 5.5.1986; however that on the day of occurrence both the deceased and P.W.1 were found at 2

P.M. in their house and everything happened and followed as claimed by the prosecution. In short, the contentions raised by the Appellant assailing

the prosecution case was merely on the basis of conjectures and not based on any materials and that the absence of any documents to show the

amount due from the Appellant to the deceased will not impair the prosecution case to any extent.

46. Thus having given our anxious consideration for all the contentions raised on behalf of the Appellant as well as the oral testimony and document

placed by the prosecution, we are inclined to hold that the prosecution had fully established the guilt and the complicity of the Appellant beyond the

realm of any doubt. As such, we do not find any reason to interfere with the findings and sentence awarded by the learned trial Judge. In the result,

we confirm the conviction and sentence awarded by the trial court and hereby dismiss the appeal.