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Crl.A.(MD) Nos.531, 536 & 537 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	30.11.2023
Pronounced on	19.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.A.(MD) Nos.531, 536 & 537 of 2021

Mariyappan
S/o.Thirumalaiyandy

... Appellant in
Crl.A.(MD)No.531 of 2021

Manikandan
S/o.Thirumalaiyandy

... Appellant in
Crl.A.(MD)No.536 of 2021

Thirumalaiyandy
S/o.Madasamy

... Appellant in
Crl.A.(MD)No.537 of 2021

Vs.

The Inspector of Police,
Shencottai Police Station,
Tenkasi District.
Crime No.14/2015

... Respondent in all Crl.As.

Common Prayer:- Criminal Appeals filed under Section 374 of the Code of Criminal Procedure, 1973 [Act No.2 of 1974] praying to call for the



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records pertaining to the Judgment dated 22.10.2021 in S.C.No.510 of 2015 on the file of the Additional District and Sessions Judge (FTC), Tenkasi and set aside the same as illegal.

For Appellant in all Crl.As.	: Mr.R.Vinoth Bharathi assisted by Mr.M.Pon Vijayakumar
For Respondent in all Crl.As.	: Mr.R.Meenakshi Sundaram Additional Public Prosecutor assisted by Mr.A.Chinna Karuppaiya

COMMON JUDGMENT

R.SAKTHIVEL, J.

By this common Judgment, the following criminal appeals are being disposed of.

- i. Crl.A.(MD) No.536 of 2021 preferred by 'Accused No 1-Manikandan'
- ii. Crl.A.(MD) No.531 of 2021 preferred by 'Accused No.2-Mariyappan'
- iii. Crl.A.(MD) No.537 of 2021 preferred by 'Accused No.3-Thirumalaiyandy'



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2. The aforementioned Criminal Appeals are preferred by the respective accused assailing the 'Judgment dated 22.10.2021' [henceforth 'impugned Judgment' for the sake of brevity] passed by 'Additional District & Sessions Judge (FTC), Tenkasi' [henceforth 'Trial Court' for the sake of brevity] in Sessions Case No.510 of 2015 in which all the appellants [henceforth 'A1', 'A2' and 'A3' respectively as per Trial Court's description for the sake of clarity and convenience] were convicted for the offences punishable under Sections 452, 294(b) & 302 of 'The Indian Penal Code' 1860 (Act No.45 of 1860) [henceforth 'IPC' for the sake of brevity] and sentenced as follows:-

A. Nos.	Crl.A. (MD) No.	Sentence		
		u/s. 302 of IPC	u/s. 452 of IPC	u/s.294(b) of IPC
A1	536/2021	To undergo Imprisonment for Life each and to pay a fine of Rs.2,000/- each, in default thereof, to undergo Rigorous Imprisonment for a further period of 2 years each.	To undergo Rigorous Imprisonment for 3 years each and to pay a fine of Rs.2,000/- each, in default thereof, to undergo Simple Imprisonment for a further period of 1 year each.	To pay a fine of Rs.2,000/- each, in default thereof, to undergo Simple Imprisonment for one month each.
A2	531/2021			
A3	537/2021			
Note: The period of sentences was ordered to run concurrently. The period of imprisonment already undergone was ordered to be set off under Section 428 of Criminal Procedure Code, 1973 (Act No.2 of 1974) [henceforth 'Cr.P.C.' for the sake of brevity].				



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

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3.1. The deceased-Murugesh Kumar was residing in Anna Street, Melur, Shengkottai and A1 to A3 were residing in Pandiyan North Street, Melur, Shengkottai. A1-Manikandan and A2-Mariyappan are brothers, and A3-Thirumalaiyandi is their father. On the evening of January 9th of 2015 at 17.30 hours, A1 assaulted Ruben (deceased's friend) near Government Hospital. In response, on the aforementioned date at 19.00 hours, the deceased questioned A1 as to why he assaulted Ruben and pushed A1 into drain, at Pump House Road. Enraged by this, A1 to A3 conspired and resolved to kill the deceased. At 21.15 hours on the aforementioned date, A1 and A2 carrying a Knife each, along with A3 carrying a wooden log trespassed into the deceased's house. Upon learning that the deceased was not there but at the deceased's brother-Maari Selvam's house, A1 to A3 went there and hurled abuses. Alarmed by this, the deceased came out of Maari Selvam's house and started running towards west on the Anna Street. A1 to A3 chased the deceased threatening and hurling abuses and as the deceased approached one Kali's house at 22.30 hours, A1 intentionally stabbed the deceased with knife at his back twice, A3 blew at the deceased's head with the wooden log and then A2 intentionally stabbed the deceased with knife in midaxillary line



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near the chest. The deceased died instantly. Thereafter, on the aforementioned day at 23.45 hours, Sollamadathi (P.W.1) who is none other than the mother of the deceased, along with her son-in-law Thiru.Murugan (P.W.2) preferred an oral complaint at Shengkottai Police Station which the Sub Inspector of Police (P.W.28) reduced into writing and registered a case in Crime No.14/2015 under Sections 294(b) and 302 of IPC.

3.2. On receiving the case files, the Investigation Officer (P.W.29) went to the scene of occurrence at 01.00 hours on January 10th of 2015 and prepared Rough Sketch (Ex.P.20) and Observation Mahazar (Ex.P.3) in the presence of the witnesses Nalliah (P.W.17) and Chellapa (L.W.19). Then he collected blood-stained Cement Floor (M.O.4) and sample Cement Floor with no blood stains (M.O.5) from the scene of occurrence under Seizure Mahazar (Ex.P.4) in the presence of the same witnesses.

3.3. Then he examined the witnesses and recorded their statements. Thereafter, he conducted inquest over the dead body from 02.30 hours to 04.30 hours on January 10th of 2015 and prepared Inquest Report (Ex.P.21). Then, he sent the body for post-mortem.



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WEB COPY 3.4. At 11.30 hours on January 10th of 2015, the Investigation Officer (P.W.29) arrested A1 near Shengkottai Vishwanathapuram Bus Stop in the presence of the witnesses Mani (P.W.18) and Karuppasamy, S/o.Eswaran (P.W.21). Then A1 voluntarily gave a confession, the admissible portion of which is marked as Ex.P.22 and led them to a thorny bush located near '*Iratikulam Bridge*' from where the Investigation Officer (P.W.29) seized two blood-stained Iron Knives with wooden handle marked as M.O.1 & M.O.2 and one blood-stained Wooden Log marked as M.O.3. He then received deceased's blood-stained T-Shirt marked as M.O.6, blood-stained black and white checked blue Lungi marked as M.O.7 and blue colour brief (Jatti) marked as M.O.8 after post-mortem from Head Constable (P.W.23). He then sent all the Material Objects (M.O.1 to M.O.8) to the 'District Munsif cum Judicial Magistrate, Shencottah' under Form 91 (Ex.P.24). He then altered the Sections from 294(b) and 302 of IPC to 452, 294(b) and 302 of IPC. The Alteration Report is marked as Ex.P.25.

3.5. The Investigation Officer (P.W.29), at 09.30 hours on January 11th of 2015, arrested A2 and A3 at State Express Transport Corporation



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Bus Depot, Sengcottai and sent them to the 'District Munsif cum Judicial Magistrate, Shencottah' for remand.

3.6. The Investigation Officer (P.W.29) then sent a requisition to the 'District Munsif cum Judicial Magistrate, Shencottah' for sending the properties for chemical examination (*vide* Ex.P.16) and for viscera examination (*vide* Ex.P.17) to Regional Forensic Science Lab, Tirunelveli [henceforth 'RFSL' for the sake of brevity]. The Chemical Report and the Serology Report are marked as Ex.P.10 and Ex.P.11 respectively.

3.7. The Investigation Officer (P.W.29) then confirmed with Wireman (P.W.26) and Junior Engineer, Sub Station, Shengcottai (P.W. 27) that there was no power cut in Melur between 19.00 hours to 22.30 hours on January 09th of 2015 and obtained Certificate (Ex.P18) from P.W.27 to that effect. After completion of investigation, he filed Final Report under Sections 452, 294(b) and 302 of IPC against A1 to A3 before the 'District Munsif cum Judicial Magistrate, Shencottah'.

4. The Judicial Magistrate registered the case on file as P.R.C.No. 46/2015. After furnishing copies under Section 207 of Cr.P.C to the A1 to



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A3, he committed the case file to the Principal District and Sessions Court, Tirunelveli under Section 209(a) of Cr.P.C since the offence under Section 302 of IPC is exclusively triable by Sessions Court.

5. The learned Principal District and Sessions Judge, Tirunelveli after receiving the case file, assigned Sessions Case No.510 of 2015 and made over the case file to the III Additional Sessions Court, Tirunelveli on October 9th of 2015. The III Additional Sessions Court, Tirunelveli framed charges under Sections 452, 294(b) and 302 of IPC against A1 to A3, read over and explained the charges to the A1 to A3 in Tamil. Since the A1 to A3 pleaded not guilty, trial was ordered.

6. Thereafter, since the case comes under the territorial jurisdiction of the Trial Court, as per the order in A.No.40 of 2017 dated January 24th of 2017, the case was transferred to the Trial Court i.e., 'Additional District & Sessions Court (FTC), Tenkasi'.

7. Before the Trial Court, to prove its case, the prosecution examined P.W.1 to P.W.29 (Witnesses) and marked Ex.P.1 to Ex.P.26 (Documents) and M.O.1 to M.O.8 (Material Objects). The defence side



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examined D.W.1 and D.W.2 (Witnesses) and marked no Documents or Material Objects.

8. The Trial Court after hearing either sides and perusing the case file, concluded that the prosecution has proved the offence under Sections 452, 294(b), and 302 of IPC against A1 to A3. Accordingly, the Trial Court convicted and sentenced A1 to A3 as stated *supra* in paragraph no.2.

9. Feeling aggrieved with the conviction recorded and sentence imposed by the Trial Court, A1 to A3 have preferred these Criminal Appeals under Section 374(2) of Cr.P.C.

Arguments:

10. Mr.R.Vinoth Bharathi, the learned counsel for the accused argued that the alleged offence took place at 22.30 hours on January 9th of 2015, the same was allegedly reported at 23.45 hours on the same day, but, the First Information Report [FIR] (Ex.P.19) was received by the Judicial Magistrate at about 03.00 hours on January 10th of 2015 and hence there was a delay in handing over the FIR (Ex.P.19) to the Judicial



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Magistrate; that P.W.1 & P.W.2 are close relatives and P.W.3 is the friend of the deceased and hence they are interested witnesses and evidences of them have to be scrutinized carefully; that the Trial Court failed to consider the fact that independent witnesses have not supported the case of the prosecution; that P.W.3 examined by the prosecution to establish the alleged motive between the deceased and A1, contradicts the evidence of P.W.1 and hence, the prosecution failed to establish the alleged motive between the deceased and A1; that the presence of P.W.1 & P.W.2 in the place of occurrence is highly doubtful; that no independent witness identified or deposed implicating A1 to A3; that the prosecution has not proved the recovery of M.O.1 to M.O.3; that the arrest, confession and recovery are false and fabricated by the prosecution; that there are contradictory informations between the evidence of P.W.1 & P.W.2; that the Trial Court failed to appreciate the prosecution's witnesses as per law and that the prosecution failed to prove the case beyond the reasonable doubt. Accordingly, he prayed to allow these Appeals, set aside the impugned Judgment and acquit A1 to A3.

11. In response to the above arguments made by the learned counsel for the accused, Mr.R.Meenakshi Sundaram, learned Additional Public



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Prosecutor for the respondent State submitted that the prosecution examined P.W.3 and P.W.10 to prove the motive behind the crime; that the evidence of P.W.3 and P.W.10 clearly establishes the motive between the deceased and A1; that P.W.1, P.W.2 and P.W.7 are ocular witnesses and their evidences are clear, cogent and believable and there is no reason to disbelieve the evidence of ocular witnesses; that the prosecution proved the case beyond reasonable doubt; that the Trial Court believed the testimony of the ocular witnesses and motive-witnesses and after perusing the entire evidences and materials has concluded that the prosecution proved the charges levelled against A1 to A3 beyond reasonable doubt. Accordingly, he prayed to dismiss these Appeals and sustain the Trial Court's Judgment.

12. This Court has perused the case file and heard either side. The following points arose for consideration:-

- i. Whether the evidences of P.W.1, P.W.2 and P.W.7 inspire the confidence of this Court?
- ii. Whether the prosecution has proved the charges levelled against A1 to A3 under Sections 452, 294(b) & 302 of IPC?
- iii. Whether there exist any reason to interfere with the Impugned Judgement?



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Discussion and Decision for Point Nos.(i), (ii) and (iii)

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13. In this case, the Investigation Officer (P.W.29) filed Rough Sketch (Ex.P.20) and Observation Mahazar (Ex.P.3) and he collected blood-stained Cement Floor (M.O.4) from the scene of occurrence under Seizure Mahazar (Ex.P.4). The blood stains found in M.O.4 matches with the blood stains found in the clothes worn by the deceased ie., blood-stained T-Shirt marked as M.O.6, blood-stained black and white checked blue Lungi marked as M.O.7 and blue colour brief (Jatti) marked as M.O. 8 [*vide* Ex.P10 and Ex.P.11-FSL Reports]. Hence, the prosecution proved the place of occurrence.

13.1. According to the prosecution, the occurrence took place between 21.15 hours and 22.30 hours on January 9th of 2015. As per Rough Sketch (Ex.P.20), the place of occurrence is Anna Nagar East-West Street which is a residential area. Street lights have been shown in the Rough Sketch. Wireman (P.W.26) has deposed that there was no power cut in Melur between 19.00 hours to 22.30 hours on January 09th of 2015 and that the street lamp was illuminated. The Junior Engineer, Sub Station, Shengkottai (P.W.27) has also deposed that there was no power cut in Melur between 19.00 hours to 22.30 hours on January 09th of 2015



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and issued Certificate (Ex.P.18) to that effect. Hence, the prosecution has proved that the occurrence took place in an illuminated environment.

13.2. Further, in and around the place of occurrence, 17 houses, including the houses of the ocular witnesses Palaniyachi (P.W.5), Kaali (P.W.8), Noor Jahan (P.W.15), Sulaihalal Beevi (P.W.16), have been shown in the Rough Sketch. However, the ocular witnesses Palaniyachi (P.W.5), Kaali (P.W.8), Noor Jahan (P.W.15), Sulaihalal Beevi (P.W.16) have not supported the case of the prosecution.

13.3. This Court deems fit to extract the Post-mortem Report (Ex.P. 7) hereunder:

Regarding the body of a Male aged about 24 years, named Mr.MURUGESH KUMAR requisition received at 11.30 A.M./P.M. on 10.1.15 from the Inspector of police, Shencottai P.S with his letter No.14/15 U/s. 294(b), 302 IPC dated 10.1.15 in-charge of Police Constable No.1224 named Tr.PERUMAL.

Identification and caste marks:

(1) A scar over (R) thigh



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(2) A scar over (R) leg

(3) A black mole over anterior chest wall on (R) side

The body was first seen by the undersigned at 11.30 A.M. on 10.1.15 Condition then was Body lying on its back, Rigor morties present Postmortem commenced at 1.00 P.M. on 10.1.15.

Appearance found at the postmortem: Body of a male lying on its back with hands by the side. Rigor morties present in all 4 limbs. Eyes closed. Pupils dilated & fixed. Mouth closed. Tongue inside mouth. No bleeding/discharge from ears, nose.

EXTERNAL INJURIES: (1) Laceration 3x1x0.5cm (L) Parietal region of scalp. (2) Stab wound of size 5x2x11cm at the level of left 6th intercostal space in midaxillary line, facing downwards, forwards & medically sharp edge facing Anteriorly. (3) Stab wound of size 5x2x10cm in left side of back at the level of the left 4th intercostal space 10cm from midline facing downwards forwards & laterally & having sharp outer edge. (4) Stab wound of size 2x2x1cm in (R) scapular region, 8cm from midline & 10cm from shoulder, facing forwards, upwards & laterally sharp edge facing outer side (laterally) (5) Stab wound of



size 3x2x1.5cm (R) infrascapular region 7cm from midline, facing forwards, upwards & laterally sharp edge laterally.

INTERNAL EXAM: Stomach contains – 50ml of partially digested food. Appears pale. Intestine - appears pale found empty Liver, Spleen, Kidney-pale. Heart-pale, all 4 chambers empty (R) lung-pale, 3x2x2cm stab wound in lateral aspect of upper lobe of (L) lung. 2X1x1cm stab wound in posterior aspect of upper lobe of (L) lung. Hyoid bone intact. Brain-Normal size, Cut section normal. No fracture found. vault of skull – intact PM concluded, at 2 pm on 10.1.15 Time between death & pm is 14-18 hrs.

Opinion: Deceased would appear to have died of cardiorespiratory arrest due to hemorrhagic shock due to injury of (L) lung (Injury No.2, 3), pending chemical analysis report of viscera.

The prosecution proved the post-mortem report by examining its author Doctor Soundarya (P.W.19). From the above post-mortem report and the evidence of P.W.19, it is clear that the deceased died due to homicidal death.



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Ocular Witnesses

WEB COPY 14. Among the ocular witnesses, only P.W.1, P.W.2 and P.W.7 have supported the case of the prosecution.

15. Sollamadathi (P.W.1) is none other than the mother of the deceased. She deposed in her chief examination that she is acquainted with the A1 to A3; that on January 09th of 2015, when the deceased's friend, Ruben (P.W.3), spat while walking along the road, it accidentally splashed onto A1 due to which A1 assaulted Ruben (P.W.3); that when the deceased learnt about the said incident, he questioned A1 about his act and a scuffle ensued between the deceased and A1 at 19.00 hours on the aforementioned date following which A1 pushed the deceased into drain; that then on the night of the aforementioned date, A1 to A3 came to her house searching for the deceased and left to the deceased's brother-Maari Selvam's house in search of the deceased; that she, her husband and her son-in law Murugan (P.W.2) followed A1 to A3; that A1 and A2 were armed with knives and A3 with a wooden log; that they threatened the deceased to come out hurling abuses; that on seeing A1 to A3 armed, the deceased started running; that A1 stabbed the deceased using Knife (M.O. 1) at his back thrice, A3 blew at his head with the Wooden Log (M.O.3)



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and then A2 stabbed him with Knife (M.O.2); that the deceased died instantly; that A1 to A3 ran away; that herself and her son-in-law (P.W.2) went to the Police Station and preferred a complaint; that the complaint was written by P.W.2.

15.1. She in her cross examination deposed that her house and Mari Selvam's house are 2 furlong away; that Thirumalaiyachi's (P.W.14) house is situate to the eastern side of her house; that '*Sanglimaadan Temple*' is opposite to her house; that police would come to the temple for beat in the nights regularly; that on the western side of the temple, one Muslim Individual has constructed a new house, west to which is T. Murugiah's (aged 50/2015) house who is the *Naatamai* (நாட்டாண்ட-Headman) of their area; that there exist no enmity between her and her neighbours; that P.W.7 resides at Kathiravan Street which is two kilometers away from Anna Street (the street where the incident occurred); that P.W.7 has no house in Anna Street; that her son-in-law's house is 30 kilometers far away from her house; that she and P.W.2 bore blood stains of the deceased in their clothes. P.W.1 denied the suggestion put by the accused side that the deceased had political rivalry owing to setting up cut outs and had relationships with women.



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16. Murugan (P.W.2) who is none other than the brother-in-law of the deceased deposed in line with P.W.1 however he deposed that himself and P.W.1 gave an oral complaint and the same was reduced into writing as complaint (Ex.P.1) by the Police.

17. P.W.1 and P.W.2 cited as ocular witnesses are interested witnesses in this case. It is a settled position of law that evidence of interested witnesses have to be scrutinized with much care and caution. Except P.W.1 and P.W.2, the other witnesses have deposed neither about the presence of A1 to A3 near the deceased's house at 21.15 hours, nor about presence of A1 to A3 near Maari Selvam's house at 22.30 hours. Further, importantly, none of the independent witnesses has deposed about the presence of P.W.1, P.W.2 and P.W.7 in the scene of occurrence. Moreover, P.W.1 in her evidence has deposed that she and P.W.2 bore blood stains of the deceased in their clothes. The said fact has not been established through any witness or material evidence. Hence, the presence of P.W.1 and P.W.2 in the scene of occurrence is doubtful. Therefore, corroboration is required to believe the evidence of P.W.1 and P.W.2. Since, the evidence of P.W.1 and P.W.2 have not been corroborated, they do not inspire the confidence of this Court.



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18. The prosecution examined P.W.7-Murugiah, S/o.Thangiah, (aged 47/2016) said to be an ocular witness. The defence side disputed that P.W.7-Murugiah (aged 47/2016) is not the person, examined by the Investigation Officer and shown in the list of witnesses as L.W.6. In short, according to the defence side, P.W.7-Murugiah (aged 47/2016) is an impersonated witness and not L.W.6. Therefore, this Court considers the evidence of P.W.7-Murugiah (aged 47/2016) cautiously and carefully.

18.1. One Murugiah (aged 50/2015), S/o.Thangiah, Anna Street, Melur, Sengkottai has been cited as L.W.6 in the list of witnesses annexed along with the Charge Sheet. The said witness' statement has been recorded under Section 161(3) of Cr.P.C wherein it has been stated that the witness is residing in Anna Street and is the *Oor Naatamai* (ஓர்நாட்டாமை-Headman of Village); that on January 9th, 2015 at 20.30 hours, he and Essaki (P.W.4) who resides in the same street (Anna Street) were engaged in a conversation in front of P.W.4's house under the glow of the street lamp.

18.2. P.W.4 in his evidence has deposed that he resides in Anna Nagar, Melur, Shengkottai and that he knows the deceased but not A1 to



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A3. In his Section 161(3) of Cr.P.C. Statement, it has been recorded that on January 9th, 2015 at 20.30 hours, he and Murugiah (L.W.6) who resides in the same Street (Anna Street) were engaged in a conversation in front of his house under the glow of the street lamp.

18.3. P.W.1 has deposed that '*Sanglimaadan Temple*' is situate opposite to her house; that on the western side of the temple one Muslim Individual has constructed a new house, west to which is T.Murugiah's (L.W.6) house who is the *Naatamai* (நாட்டாமை-Headman) of their area.

18.4. The defence side examined Murugiah, aged 54 as on February 2nd, 2020 (day of examination before Trial Court), as D.W.1. He deposed that he is residing in Anna Street, Melur; that he is an agricultural labour and that he did not know the Murugiah (P.W.7) residing at Kathiravan Street.

18.5. The learned Sessions Judge who recorded the evidence of D.W.1 has observed that D.W.1 has a tattoo reading 'T.Murugiah M.Nallammal' in Tamil on his right hand under the wrist. To be noted, P.W.1 in her evidence admitted that Murugiah's wife is Nallammal. It is



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apposite to reproduce the relevant portion of the deposition of P.W.1 and

WEB COPY P.W.7 in this regard below:

P.W.1's deposition

“ ... எனது வீட்டிலிருந்து சுமார் 2 பர்லாங் தூரத்தில் மாரி செல்வம் வீடு மேற்கே உள்ளது என்றால் சரிதான். அவர் வீட்டிலிருந்து 100 அடி மேற்கே சாட்சி காளியம்மாள் வீடு உள்ளது என்றால் சரிதான். எனது வீட்டிற்கு கீழ்புறம் சாட்சி திருமலையாச்சி வீடு என்றால் சரிதான். அவர் எனக்கு நாத்தனார், எனது கணவரின் உடன் பிறந்த சகோதரி என்றால் சரிதான். எனது வீட்டுக்கு எதிர்புறம் சங்கிலி மாடன் கோவில் உள்ளது என்றால் சரிதான். அந்த கோவிலுக்கு அடுத்த மேல்புறம் புதிதாக ஒரு முஸ்லீம் வீடு கட்டியுள்ளார் என்றால் சரிதான். செங்கோட்டை போலீசார் இரவு ரோந்துக்காக மேற்படி சங்கிலி மாடன் கோவிலுக்கு வருவார்கள் என்றால் சரிதான். பாய் வீட்டுக்கு மேல்புறம் தா.முருகையா வீடு உள்ளது என்றால் சரிதான். சம்பவ காலத்தில் அவர் தான் எங்கள் பகுதி நாட்டாண்மை என்றால் சரிதான். தற்போது இல்லை. நான் 13.7.16ல் சாட்சி சொல்வதற்கு 10 நாளைக்கு முன்பு தா.முருகையா தகப்பனார் இறந்து போனார் என்றால் சரிதான். எனக்கும் பக்கத்து வீட்டுக்காரர்களுக்கும் எந்தவித விரோதமும் இல்லை என்றால் சரிதான். ...

... தா.முருகையாவின் மனைவி நல்லம்மாள் என்றால் சரிதான். அவர்களுக்கு பத்மா தேவி என்ற மகள், மணிகண்டன், சிவா என்ற பையன்கள் உண்டு என்றால் சரிதான். எங்கள் அண்ணா தெரு, செங்கோட்டை நகராட்சியில் 17-வது வார்டு என்றால் சரிதான். தா.முருகையாவிற்கு குடும்ப ஓட்டுக்கள் வாக்காளர் எண்.257, 258, 260, 262 என்றால் சரிதான்., மூன்று வாய்க்கால்



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தெரு, இரட்டைக்குளம் எங்கள் தெருவிலிருந்து 4 கி.மீ தொலைவு இருக்கும். அது செங்கோட்டை புதாரை சேர்ந்தது. அ.சா.7 சாட்சி முருகையாவின் மனைவி பெயர் தெரியாது. அவர்கள் கதிரவன் தெருவில் வசித்து வருகிறார்கள். அந்த தெருவிற்கும் அண்ணா தெருவிற்கும் 2 கி.மீ தொலைவு இருக்கும். போன வாய்தாவில் சாட்சியம் அளிப்பதற்கு 10 நாளைக்கு முன்னர் இறந்து போனவரின் மகனான தா.முருகையா இந்த வழக்கின் சாட்சி என்றும், அவர் தந்தை இறந்து போனதால் அ.சா.7 முருகையாவை இந்த வழக்கில் ஆள்மாறாட்டம் செய்து சாட்சி சொல்ல வைத்துள்ளோம் என்று சொன்னால் சரியல்ல. அ.சா.7 முருகையாவிற்கு எங்கள் அண்ணா தெருவில் வீடு கிடையாது என்றால் சரிதான். அவர் சம்பவ நாளில், சம்பவ நேரத்தில் எங்கள் தெருவிற்கு எதற்கு வந்தார் என்று எனக்கு தெரியாது என்றால் சரிதான்.”

P.W.7's deposition

“ ... என்னிடம் நீதிமன்றத்தில் காண்பிக்கப்படும் 22.3.16 தேதியிட்ட சம்மன் ஆவணங்களில் உள்ள முருகையா என்ற கையெழுத்து என்னுடையது இல்லை. நான் செங்கோட்டை மேலூரில் கடந்த 20 ஆண்டுகளாக வசித்து வருகிறேன். அதற்கு முன்னால் கற்குடியில் வசித்து வந்தேன். எனக்கு 37 வயது ஆகிறது. எங்கள் சமுதாய நாட்டாண்மை பேர் முருகையா, அவரின் அப்பா பெயர் தங்கையா. எனது அப்பா பெயரும் தங்கையா தான். அவர் தான் குற்றப்பத்திரிகையில் உண்மையான சாட்சி என்றும், நான் உண்மையான சாட்சி இல்லை என்றும் சொன்னால் சரியல்ல. சாட்சி பட்டியலில் உள்ள நபரின் வயது 50 என்று குறிப்பிடப்பட்டுள்ளது என்றால் அதுபற்றி தெரியாது. ...”



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18.6. The defence side examined one Venkatesh (D.W.2) who served as the Head Constable of Shengkkottai Police Station during the material point of time. He deposed that on July 7th, 2016, he produced the witnesses before the Court including P.W.7-Murugiah; that on July 7th, 2016, he did not produce D.W.1-Murugiah at the Court and that he was not along with Investigation Officer (P.W.29) while Investigation Officer (P.W.29) recorded the Section 161(3) of Cr.P.C. Statement of the witnesses.

18.7. From the foregoing narrative, it is discernible that there are two persons in the name of Murugiah in this case. The Murugiah aged 50/2015, S/o.Thangiah, residing in Anna Street, examined as D.W.1, who was the *Oor Naatamai* (Headman of their Area) and husband of Nallammal is L.W.6 and the other Murugiah, aged 47/2016, S/o.Thangiah, residing in Kathiravan Street is P.W.7.

18.8. It is further discernible that the former ie., D.W.1-Murugiah aged 50/2015, found in the list of witnesses as L.W.6 is not examined as a prosecution witness. The latter ie., Murugiah aged 47/2016, examined as P.W.7 is not the person examined under Section 161(3) of Cr.P.C by the Investigation Officer (P.W.29) and his name is not found in the list of witnesses.



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WEB COPY 19. Criminal trial is a journey of discovery, with truth being the ultimate goal. Every investigation and trial is designed not only to administer justice but also to reveal the truth. This aim can only be accomplished through a fair, just, and proper investigation and trial, in accordance with spirit of Article 21 of the Constitution of India.

19.1. Notably, the Investigation Officer (P.W.29) is the competent person to identify the witness before the Court and resolve any confusion, particularly in cases of alleged witness impersonation, as in the present case. But the Investigation Officer (P.W.29) miserably failed to identify the witness and clarify the identity of the witness in this case. In view of evidence of P.W.1, P.W.4, P.W.7 and D.W.1, this Court finds that the L.W.6 is D.W.1 and not P.W.7.

19.2. As stated *supra*, Investigation Officer (P.W.29) has not examined and recorded Section 161(3) of Cr.P.C. Statement of Murugiah who lives in Kathiravan Street during his investigation. However, the said Murugiah who lives in Kathiravan Street, deposed before Trial Court as P.W.7. It is a settled law that as per Section 311 of Cr.P.C, the Court can



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summon any person whose evidence is essential to arrive at a just decision in a particular case. This power is conferred on the Court in the general provision as to enquiries and trials in Chapter XXIV of Cr.P.C. Whereas Sections 231, 242, 244 and 254 of Cr.P.C relate to the procedure of taking evidence during trial conducted by a Court of Sessions or a Magistrate. In this case, if prosecution considered P.W.7 as a material witness, it ought to have filed an application seeking leave to examine P.W.7. But, the prosecution has not obtained such leave from the Trial Court. The violation of the principles of fair trial is evident in this case.

20. Be that as it may, this Court has evaluated the evidence of P.W. 7 and finds it apposite to extract a portion of his deposition below:

... மாரிசெல்வம் வீட்டிற்கு முன் இசக்கி வீடு உள்ளது எனக்கு தெரியாது. நான் சம்பவத்தன்று தா.முருகையா வீட்டிற்கு இருமுடிக்கட்டு கட்டுவதற்காக அங்கு சென்றிருந்தோம். போலீசார் என்னை விசாரித்தார்கள். நடந்த விவரத்தை சொன்னேன். விசாரணையில் கட்டு கட்டுவதற்காக தான் தா.முருகையா வீட்டிற்கு சென்றதாக சொன்னேனா என்றால் சொன்னேன். போலீசார் தான் எனக்கு சம்மன் கொடுத்து என்னை சாட்சியாக போட்டுள்ளதாக சொன்னார்கள் என்றால் சரிதான். எனது மனைவி பெயர் லெட்சுமி. எனக்கு மேலூர் முகவரியில் தான் ரேசன் கார்டு உள்ளது என்றால் சரிதான். எங்களுக்கு ரேசன் கார்டில் கதிரவன் காலனி என்று தான் உள்ளது என்றால் சரிதான்.



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கதிரவன் தெருவிற்கும் அண்ணா தெருவிற்கும் இடையே ஒரு கி.மீ தொலைவு இருக்கும் என்றால் சரிதான். அண்ணா தெரு 17-வது வார்டு என்றால் சரிதான். நான் இருக்கும் பகுதி கடையநல்லூர் சட்டமன்ற பகுதியில் இருக்கிறது என்றால் சரிதான். நான் இந்த வழக்கின் சாட்சி இல்லை என்றும், 50 வயதுள்ள முருகையா தான் இந்த வழக்கு சாட்சி என்றால் சரியல்ல. அண்ணா தெருவில் இருக்கக் கூடிய முருகையா தான் இந்த வழக்கின் சாட்சி என்றும், நான் போலீசாரின் ஏற்பாட்டின் பேரில் பொய்யாக சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல. நான் ஆள்மாறாட்டம் செய்து பொய் சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல. ...”

20.1. Further, none of the witnesses including P.W.1 has deposed about the presence of P.W.7 in the scene of occurrence. Keeping in mind the above narratives, this Court is of the view that the evidence of P.W.7 requires corroboration. However, evidence of P.W.7 has not been corroborated. Therefore, evidence of P.W.7 does not inspire confidence of this Court.

20.2. To sum up, the evidence of P.W.1, P.W.2 and P.W.7 does not inspire confidence of this Court for the reasons alluded to *supra*.

21. According to the prosecution, A1 to A3 in search of the deceased, trespassed into the deceased's house at 21.15 hours on January



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9th of 2015 and then went to Maari Selvam's house and hurled abuses at 22.30 hours on the aforementioned date. Except P.W.1 and P.W.2, the other witnesses have not deposed about the presence of A1 to A3 near the deceased's house at 21.15 hours. Further, none of the witnesses other than P.W.1, P.W.2 and P.W.7 has deposed about the presence of A1 to A3 near Maari Selvam's house at 22.30 hours. The evidence of P.W.1, P.W.2 and P.W.7 does not inspire confidence of this Court as alluded to *supra*. Therefore, this Court is of the view that the presence of A1 to A3 in the scene of occurrence is doubtful and has not been established by the prosecution beyond reasonable doubt.

Arrest, recovery and confession

22. According to the prosecution, at 11.30 hours on January 10th of 2015, the Investigation Officer (P.W.29) arrested A1 near Shengkottai Vishwanathapuram Bus Stop in the presence of the witnesses Mani (P.W. 18) and Karuppasamy (P.W.21). Then A1 voluntarily confessed following which the Investigation Officer seized M.O.1, M.O.2 and M.O.3. However, P.W.18 and P.W.21 have not supported the above said aspect. It is true that as far as arrest, confession and recovery are concerned, independent witnesses are not mandatory if the evidence of the



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Investigation Officer inspires confidence of the Court. In this case, the prosecution failed to prove the presence of A1 to A3 in the place of occurrence beyond reasonable doubt as stated *supra*. Since the presence of A1 to A3 in the crime scene is itself not established beyond reasonable doubt, evidence of Investigation Officer pertaining to arrest, confession and recovery does not inspire the confidence of this Court.

Motive

23. According to the prosecution case, on the evening of January 9th of 2015 at 17.30 hours, A1 assaulted Ruben (P.W.3) [deceased's friend] near Government Hospital. In response, on the aforementioned date at 19.00 hours, the deceased questioned A1 as to why he assaulted Ruben and pushed A1 into drain, at Pump House Road. Enraged by this, A1 to A3 conspired and resolved to kill the deceased.

23.1. Ruben (P.W.3) deposed that on the evening of January 9th of 2015 at 17.00 hours, while walking along the road near the Government Hospital, Shengkottai, he spat due to cold; that his spit accidentally splashed onto A1; that consequently A1 assaulted him; that he then informed the said incident to the deceased; that he later learnt that the



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deceased questioned A1 as to why he assaulted Ruben following which a scuffle ensued and the deceased pushed A1 into drain, at Pump House Road; that he did not witness the above-mentioned incident.

23.2. Arumugam (P.W.10) in his evidence corroborates the evidence of Ruben (P.W.3) with respect to the incident where Ruben's spit splashed onto A1 and A1 assaulted Ruben. Hence, the prosecution proved the said incident and thus established the motive.

23.3. In general, motive is a thing primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited the accused to commit a particular crime. It is a settled legal position that even if the absence of motive as alleged is accepted, it is of no consequences and it pales into insignificance when direct evidence establishes the crime. Likewise, if motive is however strong, in the absence of convincing ocular-witnesses, the accused can not be convicted. [*Vide State of U.P. v. KishanPal* reported in (2008) 16 SCC 73]

23.4. In this case, as discussed in the paragraphs above, there is no



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convincing ocular witnesses. Therefore, motive, though established, pales into insignificance.

24. In a nutshell,

- i. The evidence of the ocular witnesses examined by the prosecution do not inspire confidence of this Court.
- ii. Alleged arrest of A1, Confession and Recovery are not proved beyond reasonable doubt.
- iii. The evidence available on record is not sufficient to connect the A1 to A3 with the alleged crime.
- iv. Hence, the benefit of doubt shall be given to A1 to A3.

25. In view of the above reasons, this Court is of the opinion that the prosecution has not proved the charges under Sections 452, 294(b) and 302 of IPC levelled against A1 to A3. The Trial Court has not appreciated the evidence of P.W.1, P.W.2, P.W.7 and P.W.29 in a right perspective. Therefore, the conviction recorded and sentence imposed are incorrect and liable to be interfered with by this Court. The points (i), (ii) and (iii) are answered accordingly.

26. This Court was informed that the sentence of A3 was suspended



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and A3 was granted bail *vide* order dated 30.11.2022 in Crl.M.P.(MD)

No.11919 of 2022 in Crl.A.(MD) No.537 of 2021 and A1 & A2 remain

incarcerated in pursuance of the Trial Court's Judgment.

27. Resultantly,

- i. These Criminal Appeals are allowed.
- ii. The impugned Judgment dated 22.10.2021 passed by Additional District & Sessions Judge (FTC), Tenkasi in Sessions Case No.510 of 2015 is hereby set aside and A1 to A3 (appellants) are acquitted from the charges levelled against them.
- iii. A1 & A2 shall be released forthwith if their custody is not required in any other case/cases.
- iv. The bail bond if any, executed by A1 to A3 (appellants) shall stand discharged. The fine amount if any paid by A1 to A3 (appellants) shall be refunded to them.

(M.S., J.) (R.S.V., J.)
19.12.2023

Index: Yes
Neutral Citation: Yes
Internet: Yes
Speaking order
JEN



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To

- 1.The Inspector of Police,
Shencottai Police Station,
Tenkasi District.
- 2.The Additional District and Sessions Judge (FTC),
Tenkasi.
- 3.The Superintendent,
Central Prison, Palayamkottai.
- 4.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

JEN

Pre-Delivery Common Judgment made
in
Crl.A.(MD) Nos.531, 536 & 537 of 2021

19.12.2023