



Crl.A.No.196 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2024

PRONOUNCED ON : 20.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Karthik

... Appellant/A3

v.

State represented by

Inspector of Police

Thiruchengodu Rural Police Station,

Namakkal District.

(Crime No.320 of 2003)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.24 of 2010 dated 31.08.2017, on the file of the learned Additional Sessions Judge, Namakkal and set aside the conviction and sentence imposed in judgment dated 31.08.2017 and acquit the appellant.

For Appellant

: Mr.T.Muruganantham

For Respondent

: Mr.A.Gokulakrishnan



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Additional Public Prosecutor

JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon him vide judgment dated 31.08.2017 in S.C.No.24 of 2010 on the file of the learned Additional District and Sessions Judge, Namakkal.

2. In S.C.No.41 of 2004, the final report was filed originally against three accused. Since A1 was a minor, the case against him was split up and referred to the Juvenile Justice Board. Since A3, the appellant herein, was absconding, the case against him was split up, and trial was conducted for A2 in the said Sessions Case; and A2 was convicted by the trial Court, and he had challenged the same before this Court in CrI.A.No.400 of 2012. This Court, by judgment dated 19.12.2018 acquitted A2. The case against this appellant was thereafter tried in S.C.No.24 of 2010 and was convicted by the trial Court. Hence, challenging the said conviction, the accused has preferred this appeal.



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3. For the sake of convenience, hereinafter the appellant is referred to as appellant/A3, as he was originally arraigned as A3 in the mother case SC.No.41 of 2004.

4. (i) It is the case of the prosecution that one year prior to the occurrence, the deceased borrowed a sum of Rs.2000/- from A1; that A1 demanded repayment on several occasions but they were of no avail; that there was a quarrel between A1 and the deceased two days prior to the occurrence on this score; that on 30.07.2003 at about 8.15 p.m., while the deceased and his brother were coming near 'Chithra Textiles Powerloom Factory' in separate two wheelers, all three accused, with an intention to murder the deceased intercepted the deceased and assaulted him using aruval and knives, as a result of which, the deceased died; that A1 is said to have stabbed the deceased on the left side of forehead and neck using an aruval; that A2 is said to have stabbed the deceased on his stomach using a knife; and that appellant/A3 is said to have stabbed the deceased on his back



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and near the left ear using a knife.

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(ii) It is the further case of the prosecution that the brother of the deceased Raja gave a complaint, which was registered by PW10-Inspector of Police in Cr.No.320 of 2003 on 30.07.2003 at 9.00 p.m., for the offences under Sections 341 and 302 of the IPC.

(iii) PW10 thereafter conducted an investigation, went to the scene of the occurrence, prepared the Observation Mahazar [Ex.P1] and the Rough Sketch and conducted an inquest over the body of the deceased and prepared an inquest report. Thereafter, he arrested the accused on 01.08.2003 at about 6.00 a.m., and on the confession of A3, he seized the knife from A3 in the presence of witnesses, and thereafter, he sent the seized articles to the Court under Form-95. He sent the dead body for a postmortem, which was conducted by PW7, who issued a postmortem certificate [Ex.P4]. PW10 filed the final report against the appellant/A3 for the offence under Sections 341 and 302 r/w 34 of the IPC, before the learned Judicial Magistrate, Thiruchengode.



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(iv) On the appearance of the appellant/A3, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.24 of 2010 and was made over to the learned Additional District and Sessions Judge, Namakkal, for trial. The trial Court framed charges against the appellant/A3, and when questioned, the appellant/A3 pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 10 witnesses as P.W.1 to P.W.10, marked 8 exhibits as Exs.P1 to P8, and marked 7 Material Objects as M.O.1 to M.O.7. When the appellant/A3 was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/A3 did not examine any witnesses or mark any documents.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant/A3 guilty of offence under Sections 341 and 302 of the IPC. The appellant/A3 was convicted and sentenced as follows:



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<i>Offence under Section</i>	<i>Sentence imposed</i>
341 IPC	To undergo SI for one month.
302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo RI for one year
Sentences are ordered to run concurrently.	

Hence, A3 has preferred the appeal challenging the said conviction and sentence.

5. Heard, Mr.T.Muruganantham, learned counsel appearing for the appellant/A3, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

6 (i) Mr.T.Muruganantham, learned counsel for the appellant/A3, submitted that the eyewitnesses PW1 and PW2 both turned hostile in the earlier trial in S.C.No.41 of 2004, wherein A2 was tried and therefore, their evidence cannot be believed. That apart, the complainant, who was an eyewitness, passed away, and therefore, he was not examined in both trials; and that PW4, who went to the scene of the occurrence, has not spoken about the presence of PW1 and PW2 at the occurrence, which falsifies the



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prosecution case that PW1 and PW2 were eyewitnesses.

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(ii) The learned counsel for the appellant/A3 further submitted that there is no other evidence connecting the appellant with the crime, and in view of the acquittal of A2 by the Sessions Court and A1 by the Juvenile Justice Court, the appellant/A3 also may be acquitted.

7. The learned Additional Public Prosecutor *per contra* submitted that though PW1 and PW2 had turned hostile in the previous trial, they speak about the involvement of the appellant/A3 and in the instance case, since the charge against the appellant/A3 has been proved, the trial Court was right in convicting the appellant/A3 and prayed for dismissal of the appeal

8. We have carefully considered the rival submissions and have perused all the relevant records.

9. PW1 and PW2 are eyewitnesses to the occurrence; PW3 is the wife of the deceased and a hearsay witness; PW4 is another hearsay witness,



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who went to the scene of the occurrence on coming to know of the death of the deceased; PW5 is the employee working under the complainant/brother of the deceased and came to know about the death of the deceased from his employer Raja; PW6 is the observation mahazar witness; PW7 is the postmortem Doctor; PW8 is the Village Administrative Officer, who signed as a witness in the observation mahazar and the seizure mahazar; PW9 is the corpse constable; and PW10 is the investigating officer.

10. The complainant, as stated earlier, Mr.Raja, was not available during trial, as he passed away. There is no dispute with regard to the fact that the deceased died due to homicidal violence, as could be seen from the final opinion of the postmortem doctor [PW7] in the postmortem certificate [Ex.P4]. The case therefore rests on the evidence of PW1 and PW2. Both the witnesses have spoken about the *overt acts* of all three accused. Both of these witnesses were also witnesses (PW1 and PW2) in S.C.No.41 of 2004, wherein A2 was tried.

11. While appreciating the evidence of these two witnesses in the



other case, this Court in CrL.A.No.400 of 2012 filed by A2 had observed as follows:

“6....PWs.1 and 2 have been examined initially on 10.05.2010 when they have spoken to having witnessed the occurrence. Pursuant to orders passed in C.M.P.No.406 of 2011 on 09.09.2011 both of them have been subjected to further cross-examination on 28.09.2011 when they have spoken to not having direct knowledge of the occurrence and of having earlier deposed in keeping with the instructions of the police. Hence, they have been treated hostile. Given the time lag between their initial deposition on 10.05.2010 and subsequent one on 28.09.2011, suspicion necessarily would arise on whether they have been won over by the accused. Such is one possibility. The other is that it is their later deposition that is true. The second is more likely if we keep in mind the fact that PW-6, who also according to the prosecution, had witnessed the occurrence and who is none other than the father of PW-1, has not supported the prosecution case in the course of his examination on 11.05.2010 and had hence been treated hostile...”

12. From the above extract, it could be seen that many witnesses were examined in S.C.No.41 of 2004. In the instant case, only PW1 and PW2 were examined as eyewitnesses. Since the names of PW1 and PW2 have not been mentioned in the above extract, we called for the record in CrL.A.No.400 of 2012 and found from the record that PW1 (Subramani)



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and PW2 (Thangaraj) in SC No.41 of 2004, were examined as PW1 and PW2 in S.C.No.24 of 2010 also.

13. Both PW1 and PW2, who initially supported the prosecution case in the other trial, turned hostile in the cross-examination. In the instant trial against the appellant/A3, they did not turn hostile. However, when a specific question was put to them as to whether they turned hostile in the earlier case, they stated that they did not remember. The relevant portion of the cross-examination of PW1 reads as follows:

“10.05.2010, 09.09.2011 ஆகிய 2 நாட்கள் இந்நீதிமன்றத்தில் முன்னிலையாகி சாட்சியம் அளித்துள்ளேன் என்றால் சரி. 10.3.2014 தேதி சிறுவர் குழுமம் முன்பு ஆஜராகி சாட்சியம் அளித்துள்ளேன் என்றால் சரி. நான் இந்த திறந்த நீதிமன்றத்தில் ஆஜராகி சம்பவம் நடந்த போது இருட்டாக இருந்ததாகவும், யார் யார் வெட்டினார்கள், குத்தினார் என்று தெரியாது என்று சாட்சியமளித்துள்ளேன் என்றால் ரூபகம் இல்லை.”

Likewise, the relevant portion of the cross-examination of PW2 reads as follows:

“இவ்வழக்கு சம்பந்தமாக வேறு நீதிமன்றத்தில் சாட்சியம் அளித்துள்ளேனா என்றால் ரூபகம் இல்லை. நான் ஏற்கனவே



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சொன்ன சாட்சியத்திற்கும் இப்போது சொல்லும் சாட்சியத்திற்கு முற்றிலும் முரண்பாடு உள்ளது என்றால் இல்லை. 10.05.2010, 09.09.2011 ஆகிய தேதிகளில் இந்த நீதிமன்றத்தில் வாக்குமூலம் கொடுத்துள்ளேன் என்றால் ரூபகம் இல்லை. சிறார் நீதிமன்ற வழக்கு எண்.1/2012 வழக்கில் 17.3.2014 தேதி இவ்வழக்கு சம்பந்தமாக சாட்சியம் அளித்துள்ளேன் என்றால் ரூபகம் இல்லை.”

14. In respect of the same incident, PW1 and PW2 have deposed differently. It is also reported by the learned counsel for the appellant/A3 that both PW1 and PW2 also turned hostile before the Juvenile Justice Court, where A1 was tried. However, we could not verify the said fact.

15. Be that as it may, from the fact that PW1 and PW2 have given different versions at different stages and the fact that they were disbelieved in the earlier case against A2, we are of the view that we cannot place reliance on PW1 and PW2 to hold that the appellant/A3 is guilty of the charges levelled against him. As stated earlier, there is no other evidence, and the other observations made by this Court in CrL.A.No.400 of 2012 with regard to the discrepancies in the investigation would apply on all fours to this appellant/A3 as well, and therefore, the judgment of conviction and



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sentence against this appellant/A3, is liable to be set aside.

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16. Accordingly, the Criminal Appeal is allowed. The judgment of conviction and sentence imposed upon the appellant/A3 in S.C. No.24 of 2010 dated 31.08.2017, on the file of the learned Additional District and Sessions Judge, Namakkal, is set aside. The appellant/A3 is acquitted of all the charges and is directed to be released forthwith unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant/A3 shall be refunded. Bail bonds, if any, executed shall stand discharged.

Index : Yes/No
Neutral citation : Yes/No
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(M.S.R.,J.) (S.M.,J.)
20.02.2024



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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

To

1. The Additional District and Sessions Judge,
Namakkal.

2. The Inspector of Police,
Vellore Taluk Police Station,
Vellore, Vellore District.

3. The Superintendent,
Central Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
CrL.A.No.196 of 2018

20.02.2024



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