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Crl.A.Nos.476 of 2018 and 546 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.476 of 2018 and 546 of 2019

- | | |
|-----------------------|------------------------------------|
| 1. Palanisamy | ... Appellant in Crl.A.No.476/2018 |
| | /Accused No.2 |
| 2. Puttan @ Arthanari | ... Appellant in Crl.A.No.546/2018 |
| | /Accused No.1 |

v.

State represented by	
The Inspector of Police	
Poolampatty Police Station,	
Edapadi Circle, Salem District.	
(Crime No.19 of 2016)	... Respondent/Complainant
	in both cases.

Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellants and sentence in S.C. No.327 of 2016 dated 30.11.2017, on the file of the learned III Additional Sessions Judge, Salem and set aside the conviction and sentence



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imposed in judgment dated 30.11.2017 and acquit the appellant.

For Appellant
in Crl.A.476/2018 : Mr.M.Rajkumar
for Mr.T.Muruganantham
in Crl.A.No.546/2019 : Mr.Philip Ravindran Jesudoss
For Respondent : Mr.A.Gokulakrishnan
in both cases Additional Public Prosecutor

COMMON JUDGMENT

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

These Criminal Appeals have been filed by Accused Nos.1 and 2 challenging the conviction and sentence imposed upon them vide judgment dated 30.11.2017 in S.C.No.327 of 2016 on the file of the learned III Additional Sessions Judge, Salem.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3(i) The case of the prosecution is that A1 and A2 are brothers; that A1 was involved in several criminal cases and therefore, the villagers were against A1; that A1 was involved in the murder of his cousin one Saravanan and that the villagers deposed against A1 in the said case; that in order to



create fear in the minds of the villagers, A1 decided to cause the death of two of the villagers by name Annadurai (hereinafter referred to as 'D1') and Mani (hereinafter referred to as 'D2') and told A2 about the plan for which A2 agreed and pursuant to the said conspiracy, on 17.01.2016, A1 and A2 called the two deceased D1 and D2 at about 7.00 a.m., for consuming liquor along with them and mixed organo phosphorus compound in the liquor viz., beer and brandy, which was consumed by the deceased, who died immediately; that thereafter in the night at about 11.00 p.m., threw the body of the deceased in the land belonging to one Kunjupaiyan-PW9 and thereafter buried the bodies in the said place.

(ii) It is the further case of the prosecution that PW1, the son of D1, lodged a complaint [Ex.P1] on 19.01.2016 to the Sub Inspector of Police [PW19], who in turn registered an FIR in Cr.No.19 of 2016 on the same day, i.e., 19.01.2016 at 13.00 hours under the caption 'man missing'. In the said complaint, the son of D1 has stated that D2 and A1 came to the house in the morning and took D1 for the purpose of drinking.



(iii) PW20-Inspector of Police, took up the investigation and went to the scene of the occurrence. He examined PW1 and came to know that both the deceased were taken by A1, and he went to the place of occurrence and in the presence of witnesses viz., PW5 and one Gopal prepared the Observation Mahazar [Ex.P2] and the Rough Sketch [Ex.P24] and examined other witnesses. Thereafter, on 20.01.2016, based on information, he called A2 to the police station and since A2 confessed that he and A1 caused the death of the deceased, he altered the offence under Sections 302 (2 counts) and 201 of the IPC and sent it to the learned Magistrate.

(iv) Thereafter, on the confession of A2, PW20 exhumed the bodies of the deceased from the land of PW9 and prepared the Observation Mahazar (Ex.P14) and Rough Sketch (Ex.P26) in the said place. He took photographs (M.O.15) and seized the dress materials of D1 viz., shirt [M.O.1] and lungi [M.O.2] under the seizure mahazar (Ex.P15). He seized the dress materials of D2 viz., shirt [M.O.6] and dhoti [M.O.7] under the seizure mahazar (Ex.P16) and conducted an inquest over the dead



bodies of D1 and D2 and prepared the inquest reports, which were marked as Ex.P27 and Ex.P28 respectively. Thereafter, PW20 made a request to conduct a postmortem on both the deceased. PW12 and PW13 are the doctors who conducted a postmortem on the dead bodies of D2 and D1, respectively and issued postmortem certificates [Ex.P8 and Ex.P11] and final opinions [Ex.P9 and Ex.P12].

(v) On 21.01.2016 at about 06.00 a.m., PW20 went to the place of occurrence, which is near a cemetery in Pudur and on the identification made by A2 at 6.30 a.m., he prepared the Observation Mahazar and the Rough Sketch [Ex.P31] at the scene of the occurrence and seized 3 nos. of plastic tumblers [M.O.9]; a Brandy bottle with a label reading 'SNJ 2000 SUPER STRONG BEER 650ML' [M.O.5] containing Beer Brandy; and a pair of chappals [M.O.3] under the Seizure Mahazar [Ex.P18]. Thereafter, took pictures [M.O.15] at the scene of the occurrence and sent the seized articles under Form-95 to the Court. He examined all witnesses and handed over the investigation to PW21.



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(vi) PW21-Inspector of Police conducted further investigation and on 19.03.2016 arrested A1 and seized the 180ml brandy bottle [M.O.4] which had poisonous substances; a blanket [M.O.10] which was used to cover all these articles; and a pink coloured plastic bag [M.O.14], on the confession of A1 under Seizure Mahazar [Ex.P21]. Thereafter, he sent the articles seized from A1 to the Court under Form-95 and made a request to the Court to send the articles to the forensic science laboratory for analysis. After examination of all the officers of the Forensic Science Laboratory, PW21 filed the final report on 09.08.2016 against the accused for the offences under Sections 120(B), 302 (2 counts) r/w 34 and 201 of the IPC, before the learned Judicial Magistrate No.1, Sangagiri.

(vii) On the appearance of the accused, 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.327 of 2016 and was made over to the learned III Additional Sessions Judge, Salem, for trial. The trial Court framed charges against the accused, and when questioned, the accused pleaded 'not guilty'.



(viii) To prove the case, the prosecution examined 21 witnesses as P.W.1 to P.W.21, marked 35 exhibits as Exs.P1 to P35, and marked 15 Material Objects as M.O.1 to M.O.15. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. Though no one was examined on the side of the accused, two documents were marked as Ex.D1 and Ex.D2.

(ix) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the accused guilty of offences charged against them. The accused are convicted and sentenced as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1 & A2	302 r/w 34 IPC (2 counts)	Each of them to undergo life imprisonment and to pay a fine of Rs.2000/-, in default to undergo imprisonment for six months, for each count
	201 IPC	Each of them to undergo RI for seven years and to pay a fine of Rs.1000/-, in default to undergo RI for three months.
	Sentences were ordered to run concurrently.	

Hence, A1 and A2 have preferred these appeals challenging the said conviction and sentence.



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4. Heard, Mr.Philip Ravindran Jesudoss, learned counsel appearing for the appellant/A1 in Crl.A.No.546 of 2019; Mr.M.Rajkumar, learned counsel appearing for the appellant/A2 in Crl.A.No.476 of 2018; and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the appellants submitted that the case is based on circumstantial evidence; that the motive has not been established by the prosecution; that the motive suggested by the prosecution is flimsy and improbable; that the evidence of the appellants taking both the deceased for drinking is an afterthought; that the police had suppressed the original complaint that was registered and replaced it with another version that has been exposed by the defence by marking Ex.D1-Complaint and Ex.D2-FIR. The learned counsels therefore submitted that in view of the fabrication of the FIR, the entire prosecution case has to be disbelieved and prayed for acquittal of the appellants.



6.(i) The learned Additional Public Prosecutor *per contra* submitted that the wife of D1 viz., PW2 and wife of D2 viz., PW6 have both stated that A1 took the deceased on the fateful day under the guise of consuming alcohol; that PW4 who was also called by the accused to consume alcohol, had left the place immediately and he had spoken about the consumption of alcohol by the deceased and about the presence of A1 and A2 in the place of the occurrence.

(ii) The learned Additional Public Prosecutor submitted that A1 is a history-sheeter and he had a strong motive to cause harm to the villagers who had deposed against him in another criminal case faced by him and therefore, he submitted that since the circumstances had been established, the trial Court was right in convicting the appellants and prayed for dismissal of the appeals.

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



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8(i). PW1 is the son of D1, who lodged a complaint stating that A1 along with D2 came to pick up his father for consuming alcohol; PW2 is the wife of D1, who also states that A1 came along with D2 in the morning 6.00 a.m., for taking D1 for consuming alcohol; PW3 is the elder brother of D1, who states that D1 asked for Rs.100/- and thereafter A1 and D2 took his brother; PW4 is related to D1, i.e., brother of D1's wife [PW2] and he would state that he went along with D1, D2 and A1 to the cemetery for consuming alcohol and that he told both the deceased not to drink liquor and when D1 asked him to go and bring more money, he left the place and deposed that thereafter both the deceased did not return to their houses; PW5 is another brother of D1 and speaks about the missing of his brother and had signed as witness in Ex.P2-Observation Mahazar; PW6 is the wife of D2 and she speaks about A1 taking her husband D2 to D1's house; PW7 speaks about seeing the deceased at 10.00am lying on the side of the road and about his informing PW6 about the same; PW8 's evidence is similar to PW7's evidence; PW9 is the owner of the land where both the deceased were said to have been buried; PW10 is the owner of the vehicle who



speaks about taking the police persons to the place of occurrence on 20.01.2016 to the land of PW9; and PW11 is the forensic science expert, who gave Ex.P6-report. He found poisonous substances in the stomach and intestine of D1 and D2 as well.

(ii) PW12 conducted the postmortem on the dead body of D2 and issued a postmortem certificate [Ex.P8]. In his final report [Ex.P9], PW12 had opined that D2 died due to the consumption of pesticide. PW13 is the postmortem doctor who conducted the postmortem on the dead body of D1 and issued a postmortem certificate [Ex.P11]. In his final report [Ex.P12] , PW13 has stated that D1 would have died due to the consumption of pesticide.

(iii) PW14, is the Village Administrative Officer, who accompanied the police officers when the dead bodies of the deceased were exhumed on the confession of A2; PW15 is the witness to the confession and recovery from A1; PW16 is the constable who handed over the alteration report to the Court; PW19 is the Sub Inspector who registered the FIR; and PW20



and PW21 are the investigation officers.

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9. PW12 and PW13 the postmortem doctors, have both opined that the deceased died due to the consumption of pesticides. There is no dispute with regard to the said fact. However, the question is whether the said pesticide was administered by the accused.

10. PW1, PW2 and PW3 are the son, wife and brother of D1, respectively, who have stated that on the fateful day, A1 came along with D2 to take D1 for consuming alcohol. Similarly, PW6, PW7, PW8 and PW9 i.e., the wife, son, brother and daughter of D2 respectively, would all state that A1 came to pick up D2 and both went to D1's house. PW4 is the brother-in-law of D1, whose evidence is that he went along with A1, D1 and D2, to the place where they consumed liquor and he returned without consuming liquor as D1 asked him to get more money. The question is whether these witnesses could be believed regarding the fact that A1 and A2 took the deceased in the morning on 17.01.2016 to consume alcohol.



11. PW1 is the son of the deceased, who had lodged a complaint before the respondent police which was registered for 'man missing'. No complaint has been lodged by the relatives of D2. There are two FIRs marked in the instant case i.e., one marked by the prosecution as Ex.P23 and the other marked by the defence as Ex.D2. We found to our shock that both the FIRs, bear 'SL.No.C5686860' and both were registered for 'man missing' on the complaint of PW1. The crime number stated in both FIRs is 19 of 2016. However, the contents of the two FIRs are different. Likewise, the prosecution has marked Ex.P1 the complaint lodged by PW1 and the defence has marked Ex.D1, which is also a complaint lodged by PW1.

12. In the complaint, which was marked as Ex.D1, and signed by PW1, he had stated that his father D1 was taken by D2 for having tea and that both of them did not return home. This complaint was lodged on 19.01.2016, two days after the alleged incident of D2 taking D1. This FIR was sent to the Court and was received by the learned Magistrate on 22.01.2016 at 11.30 a.m.



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13. The FIR marked by the prosecution, which, as stated earlier has the same serial number and crime number, contained a different version. In that FIR it is stated that A1 took both D1 and D2 for consuming liquor and that D2 was found unconscious and lying on the road on 17.1.2016 and thereafter, neither D1 nor D2 could be located.

14. PW19 the Sub Inspector of Police, who had registered the FIR, when specifically asked about this discrepancy, would state that it is a fact that two complaints were received and both were registered and also accept that Ex.D2 was also registered by him. He also confirmed that in Ex.D1-complaint and Ex.D2-FIR, there is no reference to A1; that both the FIRs were sent to Court; and that both the FIRs contained the same serial number. For better appreciation, we would like to extract the relevant portion in the cross examination of PW19, which reads as follows:

“இந்த வழக்கின் விசாரணைக்கு ஆய்வாளர்களுக்கு உறுதுணையாக இருந்தேன். இந்த வழக்கில் இரண்டு புகார்கள் பெறப்பட்டது என்றால் சரிதான். அதன் அடிப்படையில் இரண்டு முதல்தகவல் அறிக்கை பதிவு செய்யப்பட்டது என்றும் என்னிடம் காட்டப்படும் அந்த முதல்



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தகவல் அறிக்கை என்னால் பதியப்பட்டது என்று சொன்னால் சரிதான். அந்த சான்றிட்ட முதல் தகவல் அறிக்கை எதசாஆ.2. இரண்டு புகார்களும் பெறப்பட்டபிறகு வழக்கு பதிவு செய்தது சம்பந்தமாக மேற்குறிப்பு செய்துள்ளேன் என்றால் சரிதான். அசாஆ 23ல் எப்ஐஆரில் வாதியால் காலதாமதம் என்று எழுதப்பட்டது என்றால் சரிதான். எசாஆ 2ல் தாமதம் எதுவும் குறிப்பிடவில்லை. அசாஆ1 மற்றும் 23ல் 1ம் எதரியும் இறந்துபோன நபர்களும் குரிமேட்டிலிருந்து கோவாட்டர் பாட்டில் எடுத்துக்குடித்துக்கொண்டிருந்தார்கள் என்று வாசகம் உள்ளது என்றால் சரிதான். எசாஆ1 மற்றும் 2ல் அவ்வாறான வாசகம் எதுவும் இல்லை என்று சொன்னால் சரிதான். அசாஆ 23 பின்னிட்டு வழக்கை அனுசரித்து தயாரிக்கப்பட்ட ஆவணம் என்றால்கரியல்ல. பிரேதங்கள் கண்டுபிடிக்கப்பட்டபிறகு 1ம் எதரிக்கு ஏற்கனவே குற்றப்பின்னனி இருப்பதால் அவரது பெயரைச்சேர்த்து காவல் நிலையத்தில் வைத்து ஆவணங்கள் தயாரிக்கப்பட்டது என்றால்கரியல்ல. சங்ககிரி நீதிமன்றத்தில் 20.1.2016ல் காலை 10.30 மணிக்கு அசாஆ1 மற்றும் 23 தாக்கல் செய்யப்பட்டுள்ளது என்றால் சரிதான். எசாஆ1, 2 நீதிமன்றத்திற்கு 22.1.2016 தேதியில்தான் அனுப்பப்பட்டுள்ளது என்று சொன்னால் சரிதான். தங்களால் குறியீடு செய்யப்பட்ட ஆவணங்கள் எதிராகளை பழிவாங்கும் நோக்கத்திற்காக தயாரிக்கப்பட்ட ஆவணங்கள் என்றால் சரியல்ல. முதல் தகவல் அறிக்கை பொதுவாக முன்று நகல்கள் எடுப்போம். அசாஆ 23 மற்றும் எதசாஆ2 இரண்டும் ஒரே வரிசை எண்ணில் பதிவு செய்யப்பட்டுள்ளது என்றால் சரிதான். முறையாக எப்ஐஆர் பதிவு செய்யப்படவில்லை என்றும் அதை முறையாக உயர் அதிகாரிகளுக்கு அனுப்பப்படவில்லை என்றால் சரியல்ல.”

The above deposition, to say the least, is shocking.



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15. PW21 the investigating officer when specifically asked about two FIRs had admitted about the different versions in two FIRs and about the registration of both the FIRs with the same serial number. The earliest version given by PW1 has been altered, a new version has been obtained and by using the same serial number, another FIR was registered in order to cover up the suppression of the earliest version. We record our disapproval of the above conduct of the investigating officers in suppressing an earlier version unmindful of the consequences and the adverse effect it would have on the life and liberty of the accused.

16. It is evident that the FIR has been fabricated. It is well settled that if the FIR is held to be fabricated, the entire fabric of the prosecution case would collapse. This Court is reminded of the observations of the Hon'ble Supreme Court in this regard in *Marudanal Augusti vs. State Of Kerala* reported in (1980) 4 SCC 425 wherein, the Hon'ble Supreme Court had observed as follows:

“The High Court seems to have overlooked the fact that the entire



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fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could be added without there being anything to check the authenticity of their evidence.”

17. Therefore, we are of the view that no credibility can be given to any of the witnesses who state that A1 took the deceased for consuming alcohol. PW4's evidence that he went along with the deceased to consume alcohol also cannot be believed for the same reason. That apart, when the family members were searching for both the deceased, he had not stated that the deceased were drinking along with A1 and A2 and has not lodged any complaint. Thus, his conduct is unnatural and therefore, makes his version unreliable. PW7's evidence that he saw the 2nd deceased unconscious lying on the road on 17.01.2016 at about 10.00am also makes the alleged recovery of dead bodies on the confession of A2 unbelievable.

18. To top it all, the prosecution has not established the motive. The motive alleged by the prosecution is that the villagers deposed against A1 in



an earlier criminal case. It is not the case of the prosecution that the deceased deposed against him. Admittedly, the deceased and the accused were all friends. That apart, even assuming that some of the villagers deposed against A1, the prosecution has not stated as to why A1 and A2 decided to do away with the deceased. None of the witnesses have spoken about the motive.

19. Considering all the above facts and the nature of the evidence let in by the prosecution, we are of the view that the prosecution has failed to establish the circumstances against the appellants. Hence, the judgment of conviction and sentence cannot be sustained and is liable to be set aside.

20. Accordingly, the Criminal Appeal is allowed, and the appellants/A1 and A2 are acquitted of all the charges. The conviction and sentence imposed upon the appellants in S.C. No.327 of 2016 dated 30.11.2017, on the file of the learned III Additional Sessions Judge, Salem, are set aside. The fine amount, if any, paid by the appellants shall be refunded. Bail bonds, if any, executed shall stand discharged.



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(M.S.R.,J.) (S.M.,J.)
15.02.2024

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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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To

1. The III Additional Sessions Judge,
Salem.

2. The Inspector of Police,
Poolampatty Police Station,
Edapadi Circle, Salem District.

3. The Superintendent,
Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras

Common Judgment
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