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Crl.A.Nos.218, 511 and 378 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2023

PRONOUNCED ON : 05.01.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.Nos.218, 511 and 378 of 2020

Crl.A.No.218 of 2020

R.Vinay

.. Appellant / A4

v.

State:

The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.

Crime No.27/2009

.. Respondent

Crl.A.No.511 of 2020

Manju @ Manjunath

.. Appellant / A2

v.

State:

The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.

Crime No.27/2009

.. Respondent



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Crl.A.No.378 of 2020

1. Sunil @ Sunil Kumar
2. Jekka @ Jegadeesan

.. Appellants / A3 & A5

v.

State:

The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.
Crime No.27/2009

.. Respondent

Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records in S.C.No.114 of 2009, on the file of the learned Additional District and Sessions Judge, Hosur dated 23.01.2020 and set aside the judgment dated 23.01.2020.

For Appellant(s)

in Crl.A.No.218/2020 : Mr.V.Karthick, Sr. Counsel
for Mr.Saibaba

in Crl.A.No.511/2020 : Mr.B.Mohan
for Mr.R.Selladurai

in Crl.A.No.378/2020 : Mr.B.M.Subash

For Respondent
in all Crl.As.

: Mr.A.Gokulakrishnan
Additional Public Prosecutor



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COMMON JUDGMENT

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

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These appeals have been filed by Accused Nos.2, 3, 4 and 5, challenging the conviction and sentence imposed upon them vide judgment dated 23.01.2020 in S.C.No.114 of 2009, on the file of the learned Additional District and Sessions Judge, Hosur.

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 on 30.01.2009 at about 4.00pm, the accused to commit robbery trespassed into the house of one Shakila Banu (the deceased), situated at Kalukondapalli Village near Hosur Thali Road; that A1 and A4 took the deceased to her bedroom and tied her in a chair and thereafter, gagged her mouth and her nose with a plaster, knowing fully well that it is likely to cause death; that A1 and A4 tied the hands of the deceased; that A2, A3 and A5 shared the common intention with A1 and A4 in the said offence; that all the accused thereafter took away



the gold and silver articles and Rs.3,000/- cash from the cupboard of the deceased; and that since the mouth and nose of the deceased-Shakila Banu were plastered, she died due to suffocation.

(ii) It is the further case of the prosecution that PW1 and PW2, the daughters-in-law of the deceased were in the house when the alleged occurrence took place; that PW1 gave a complaint to the police at about 6.30pm on 30.01.2009; and that on the complaint marked as Ex.P1, PW11- Investigation Officer registered an FIR-Ex.P22.

(iii) The further prosecution case is that on 28.01.2009, two unknown persons came to the house of the deceased and represented that they were from HDFC Bank; that again, on 29.01.2009, four other persons came and asked for one 'Sevaal', and when the deceased told the accused that there was no one by the name 'Sevaal' in the house, they left the place; and that all the above mentioned six persons joined together and came on the fateful day i.e., 30.01.2009 to the house of the deceased.



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(iv) On receipt of the complaint, PW11, took up the investigation, and went to the scene of the occurrence, prepared the observation mahazar [Ex.P2] and the rough sketch [Ex.P25], and examined the witnesses. Since the witnesses were not conversant with Tamil language, he took the help of constable Madheshan [PW7] to translate the statements of the witnesses; that on 31.01.2009, PW11 went to Hosur Government Hospital, where the body of the deceased was kept and conducted an inquest in the presence of witnesses, and prepared the inquest report [Ex.P26]. Thereafter, PW11 is said to have made a request to conduct postmortem on 31.01.2009 and sent the body for postmortem through PW8-Constable. He examined further witnesses and seized the dress of the deceased [M.O.34 to M.O.37] on 31.01.2009.

(iv) PW11, while he was in search of the accused in the instant case, apprehended A1 and A6 at Nallur check post on suspicion. A1 and A6 had given a confession statement, and pursuant to the confession statement of A1, the investigation officer seized the knife [M.O.3], under the seizure mahazar [Ex.P6] on 26.02.2009 at 7.30pm. The admissible portion of the



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confession of A1 is marked as Ex.P4.

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(v) Pursuant to the confession of A6, PW11 seized the motorcycle Yamaha RX 100 bearing Regn.No.KA35H3155 [M.O.5] and a knife [M.O.4] under the seizure mahazar (Ex.P7) on 26.02.2009 at 7.00pm. The admissible portion of the confession of A6 is marked as Ex.P5.

(vi) On 26.02.2009, at about 8.15pm, PW11 arrested A2-Manju, A3-Sunil @ Sunil Kumar and A4-R.Vinay.

(vii) On the confession given by A2, PW11 seized a two-wheeler viz., Bajaj Pulsar (M.O.6) bearing Regn.No.KA51H2052, knife (M.O.7), at about 11.30pm., under the seizure mahazar Ex.P9 on 26.02.2009 at 11.30pm. The admissible portion of the confession of A2 is marked as Ex.P8.

(viii) On the confession given by A3, PW11 seized a knife, plaster, rope, and a black colour bag [M.O.8 to M.O.11] at about 12.30am on 27.02.2009, under the seizure mahazar (Ex.P11). The admissible portion of the confession of A3 is marked as Ex.P10.



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(ix) On the confession given by A4, PW11 seized a two-wheeler viz., a grey-coloured Pulsar (M.O.12) bearing Regn.NoKA 51E189, knife (M.O.13), at about 1.00am., under the seizure mahazar Ex.P13 on 27.02.2009 at 1.00am. The admissible portion of the confession of A4 is marked as Ex.P12.

(x) Thereafter, PW11 is said to have seized certain gold jewels (M.O.14 to M.O.20) at A1's residence in Bangalore on the confession given by A1 at about 3.30am on 27.02.2009. Thereafter, on the confession of A6, PW11 seized gold Aaram (M.O.28) weighing 41 grams at his house in Bangalore;

(xi) PW12, the second investigation, officer took up the investigation thereafter, and he arranged for the conduct of Test Identification Parade on 25.03.2009. Thereafter, he examined the other witnesses and sent the material objects for examination by the Forensic Science Laboratory, and after completion of the investigation, he filed a final report on 20.04.2009 for the offence under Section 449, 395, 396, and 395 r/w 397 IPC, before



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the learned Judicial Magistrate No.II, Hosur.

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(xii) On the appearance of the appellants, 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.114 of 2009 and was made over to the Additional District and Sessions Court, Hosur, for trial. The trial Court framed charges u/s.449, 396, and 395 r/w 397 IPC as against A1 and A4 and; u/s.449, 396 r/w 34 and 395 r/w 397 as against A2, A3, and A5; and when questioned, the appellants pleaded 'not guilty'.

(xiii) To prove the case, the prosecution examined 12 witnesses and marked 31 exhibits and 37 material objects. When the appellants were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined on the side of the appellants, nor any document marked.

(xiv) During the course of trial, since A6 absconded the case against him was split up and A1 to A5 were tried. Subsequently, A1 also died



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during the trial.

(xv) The Trial Court on appreciation and evaluation of oral and documentary evidence, convicted the other accused viz., the appellants/A2, A3, A4 and A5 and sentenced them as follows:

Sl.No.	Offence under Section	Sentence imposed
A2, A3 and A5	449 IPC	Each of them to undergo RI for ten years and pay fine of Rs.1000/- in default to undergo SI for six months.
	396 r/w 34 IPC	Each of them to undergo life imprisonment and pay fine of Rs.1000/- in default to undergo SI for six months.
	395 r/w 397 IPC	Each of them to undergo life imprisonment and pay fine of Rs.1000/- in default to undergo SI for six months.
A4	449 IPC	To undergo RI for ten years and pay fine of Rs.1000/- in default to undergo SI for six months.
	396 IPC	To undergo life imprisonment and pay fine of Rs.1000/- in default to undergo SI for six months.
	395 r/w 397 IPC	To undergo life imprisonment and pay fine of Rs.1000/- in default to undergo SI for six months.
The sentences imposed were directed to run concurrently.		



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Hence, the accused/A2, A3, A4 and A5 have preferred these three appeals challenging the above conviction and sentence.

4. Heard, Mr.V.Karthick, learned senior counsel for the appellant/A4 in Crl.A.No.218 of 2020; Mr.B.Mohan, learned counsel for the appellant/A2 in Crl.A.No.511 of 2020 and for appellants/A3 and A5 in Crl.A.No.378 of 2020, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/state.

5. Mr.V.Karthick, learned senior counsel for the appellant/A4, led the arguments on behalf of all the appellants. The learned senior counsel made the following submissions.

(i) that the Test Identification Parade (TIP) suffers from several infirmities, and hence, the identification said to have been made by PW1 and PW2 in the TIP proceedings and in the dock cannot be believed. The witnesses PW1 and PW2 have not stated the identifying features of the accused while giving the complaint, and therefore, the identification, even assuming it was made at the



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TIP proceedings, would not have evidentiary value.

(ii) the learned Magistrate [PW10] who conducted the TIP had stated that the TIP was conducted at Central Prison, Salem, and that PW1 and PW2 gave statements in Tamil. However, the proceedings reveal that the TIP was conducted at Sub Jail, Paramathi, Vellore, and the witnesses PW1 and PW2, were not conversant with Tamil language. Hence, their statements were translated by one Pappu (not examined). The learned senior counsel also pointed out the violation of the guidelines issued by the Hon'ble Supreme Court for the conduct of the TIP.

(iii) PW1 and PW2, whose version that initially, two persons came on 28.01.2009; that four others came to the house on 29.01.2009; and that they spoke with the deceased, cannot be believed. Admittedly, the deceased knew only Urdu, Bengali, and Hindi, whereas, the accused were not conversant with those languages.



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(iv) The recovery made from A1's house is not pursuant to A1's confession, and hence, it cannot be attributed to A1. Further, there is nothing to show how and on what information the investigation officer went to A1's house in Bangalore, and that it was really A1's house.

(v) The recoveries of the weapons cannot be believed, as PW5-VAO himself admitted that his signatures were obtained at the police station.

(vi) Though PW1 had admitted that he had called the services of the finger print expert and the sniffer dog squad, the reports of both the finger print expert and the sniffer dog squad have been suppressed by the prosecution.

6. The learned counsel for A2 and the learned counsel appearing for A3 and A5, adopted the submissions made by the learned senior counsel for



A4. In addition, the learned counsel appearing for A3 and A5 submitted that the seizure said to have been made on the confession given by A5 cannot be believed, as PW5, who is said to have signed as a witness in the Seizure mahazar (Ex.P17) dated 09.04.2009 had stated that he had not signed any documents after 26.02.2009. Therefore, the learned counsel prayed to set aside the judgment of conviction and sentence passed by the trial Court and to acquit the appellants/accused.

7. The learned Additional Public Prosecutor *per contra* submitted that PW1 and PW2 are reliable witnesses and there is no reason why they should falsely implicate the accused. The recovery of jewels from A1 and A6 would confirm the fact that the accused were involved in the occurrence that took place at the house of the deceased. Minor inconsistencies in the evidence and witnesses would not affect the prosecution case as a whole. The defect in the investigation, if any, would also not affect the prosecution case, which is otherwise established through the evidence of eyewitnesses. The defence had not elicited any answers in the cross examination, which would make the versions of the witnesses unreliable. The learned



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Additional Public Prosecutor therefore, submitted that the judgment of conviction rendered by the trial Court is in accordance with the law and there is no reason to interfere with the same.

8. We have carefully perused the materials available on record.

9. It is a case of murder for gain. The prosecution case rests on the evidence of eyewitnesses who identified the accused in the dock and the recovery of certain material objects from the accused. It is the case of the prosecution that A1 and A6 were initially arrested on suspicion, and on their confession, the weapons used by those two accused and certain gold articles were seized. A1 died during the trial. A6 absconded and therefore, the case against him was split up. Accused Nos.2, 3, 4, and 5 are the appellants who have filed the above three appeals.

10. Admittedly, the accused are strangers to PW1 and PW2. The identification of the accused by PW1 and PW2 therefore assumes



significance. It is also the prosecution case that A5, one of the appellants in Crl.A.No.378 of 2020, was not identified by PW1 and PW2 in TIP, and he was identified for the first time in Court. All the appellants, barring A5, were arrested at 8.15pm on 26.02.2009. On A3's confession, a plastic knife and a jute rope were recovered. On A2's confession, a knife was recovered. Similarly, on the confession of A4, another knife was recovered. Earlier on the same day A1 and A6 were arrested. But, the next day morning at about 3.00am, according to the prosecution, the investigation officer had been to the house of A1 at Bangalore and seized gold jewels and certain silver articles.

11. On 16.03.2009, the TIP was conducted to identify A1 to A4 and A6. There was a delay of 18 days in conducting the TIP. We find that the learned Magistrate [PW10], who conducted the TIP, had stated at least in two places during her examination that she went to Salem Central Prison for conducting the TIP. However, the record of proceedings for TIP (Ex.P24) reveals that the TIP was conducted at Sub Jail, Paramathi, Vellore. Even assuming that this by itself would not affect the prosecution case in any



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manner as it could be a genuine mistake by the learned Magistrate while deposing, however, we find another aspect that might be of some relevance.

PW10, the learned Judicial Magistrate had stated in her cross-examination that PW1 and PW2 made their statements in Tamil language. The relevant portion reads as follows:

“அல்லியாபானு, பரிதாபானு இருவரும் தமிழ் மொழியில் பேசினார்கள்”

She also asserts during further cross-examination that there were no translators when she recorded the statements of PW1 and PW2. The relevant portion reads as follows:

“மொழி பெயர்ப்பாளர் இருந்தாரா என்றால் இல்லை”

12. However, both PW1 and PW2 have deposed that they were not conversant with Tamil language and their statements were translated by one Pappu, who was their neighbour, while they were examined in TIP proceedings. The relevant portion reads as follows:

“ஜெயிலில் அடையாள அணிவகுப்பு நடத்தியபோது நாங்கள் அடையாளம் காட்டியபோது நாங்கள் உறிந்தியில் சொன்னதை தமிழில் நீதிபதிக்கு மொழி



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பெயர்த்து சொன்னவர் பப்பு என்பவர் பக்கத்து
வீட்டுக்காரர்.”

13. It is seen that Pappu has not been examined by the prosecution. Above all, we find that PW2 admitted in the cross-examination that the jewels were shown to her at the police station. She had also submitted that the police had also shown the photographs of the accused. The relevant portion reads as follows:

“போலீசார் என்னிடம் எப்பொழுது நகையைக்
காட்டினார்கள் என்று தெரியாது. நகைகளை
போலீசார் காவல்நிலையத்தில் காட்டும்போது ஆஜர்
எதிரிகளும் அங்கு இருந்தார்கள். போலீசார்
எதிரிகளின் புகைப்படங்களை என்னிடம்
காட்டினார்கள் என்றால் சரிதான்.”

14. Though PW1 had denied the suggestion that she saw the accused at the police station, she would admit in the cross examination that she saw one of the accused at the police station on 09.04.2009.

15. Going by the admission of PW1 and PW2 and the infirmities that we have pointed out in the evidence of the learned Magistrate [PW10], it is



highly unsafe to believe that PW1 and PW2 had identified the correct suspects in the TIP. Once the identification in the TIP becomes suspect, the identification of the witness in Court becomes meaningless. In this regard, we would like to refer to the observations of the Hon'ble Supreme Court in ***Shaik Umar Ahmed Shaikh and another Vs State of Maharashtra*** reported in **1998 (5) SCC 103**, which is extracted hereunder.

“8. But, the question arises: what value could be attached to the evidence of identity of accused by the witnesses in the court when the accused were possibly shown to the witnesses before the identification parade in the police station. The Designated Court has already recorded a finding that there was strong possibility that the suspects were shown to the witnesses. Under such circumstances their identification in the court by the witnesses was meaningless.....”.

16. In ***Ravindra Vs State of Maharashtra*** reported in **(1998) 6 SCC 609**, the Hon'ble Supreme Court has held as follows:

“8.....The identification parades belong to the investigation stage and they serve to provide the investigating authority with materials to assure themselves if the investigation is proceeding on the right lines. In other words, it is through these identification parades that the investigating agency is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits—and not by showing the



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suspects or their photographs”.

17. The same view was reiterated in ***Krishnan Kumar Malik Vs State of Haryana*** reported in **(2011) 7 SCC 130**, wherein the Hon'ble Supreme Court has observed as follows;

“26.....Admittedly, she was already shown the appellant and the other accused at the police station after they were arrested. Thus, her dock identification in the court had become meaningless”.

18. Further, identification features were not stated. Though PW1 would state in her evidence that she informed the police about the identification features, however we find no such features in the complaint, except stating that two of the accused were tall. In this regard, our Hon'ble Supreme Court in ***Md.Sajjad @ Raju @ Salim Vs. State of West Bengal***, reported in **(2017) 11 SCC 150**, stated that where the witnesses are not known to the accused, the identification features have to be stated, without which the identification in the Test Identification Parade will lose its significance, particularly when there is a delay in the conduct of Test Identification Parade. The relevant portion is extracted hereunder:



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“16. In the case in hand, apart from the fact that there was delay in holding the Test Identification Parade, one striking feature is that none of the concerned prosecution witnesses had given any identification marks or disclosed special features or attributes of any of those four persons in general and the accused in particular. Further, no incident or crime had actually taken place in the presence of those prosecution witnesses nor any special circumstances had occurred which would invite their attention so as to register the features or special attributes of the concerned accused. Their chance meeting, as alleged, was in the night and was only for some fleeting moments.

17. In *Subash Vs. State of U.P.* ((1987) 3 SCC 331), the aspects of delay as well as absence of any special features for identification and the effect thereof were considered by this court in paragraphs 8 and 9 as under:-

“8. Apart from this infirmity we further find that Shiv Shankar was not put up for test identification parade promptly. The identification parade has been held three weeks after his arrest and no explanation has been offered for the delay in holding the test identification parade. There is, therefore, room for doubt as to whether the delay in holding the identification parade was in order to enable the identifying witnesses to see him in the police lock-up or in the jail premises and make a note of his features.

9. Over and above all these things there remains the fact that a sufficiently long interval of time had elapsed between the date of occurrence when the witnesses had seen Shiv Shankar for a few minutes and the date of the test identification parade. It is, no doubt, true that all the three witnesses had correctly identified



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Shiv Shankar at the identification parade but it has to be borne in mind that nearly 4 months had elapsed during the interval. It is relevant to mention here that neither in Exhibit Kha-1 nor in their statements during investigation, the eyewitnesses have given any descriptive particulars of Shiv Shankar. While deposing before the Sessions Judge they have stated that Shiv Shankar was a tall person and had “sallow” complexion. If it is on account of these features the witnesses were able to identify Shiv Shankar at the identification parade, they would have certainly mentioned about them at the earliest point of time because their memory would have been fresh then. Thus in the absence of any descriptive particulars of Shiv Shankar in Ex. Kha-1 or in the statements of witnesses during investigation, it will not be safe and proper to act upon the identification of Shiv Shankar by the three witnesses at the identification parade and hold that he was one of the assailants of Ram Babu. As pointed out in *Muthuswami v. State of Madras* (AIR 1954 SC 4=1954 Cri LJ 236)where an identification parade was held about 2½ months after the occurrence it would not be safe to place reliance on the identification of the accused by the eyewitnesses. In another case *Mohd. Abdul Hafeez v. State of A.P.* (AIR 1983 SC 367). It was held that where the witnesses had not given any description of the accused in the first information report, their identification of the accused at the sessions trial cannot be safely accepted by the court for awarding conviction to the accused. In the present case there was a long interval of nearly 4 months before the test identification parade was held and it is difficult to



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accept that in spite of this interval of time the witnesses were able to have a clear image of the accused in their minds and identify him correctly at the identification parade.”

18. Similarly the issue of delay weighed with this court in *Musheer Khan vs. State of M.P.*((2010) 2 SC 748) in discarding the evidence regarding test identification as under:

“28. Insofar as the identification of A-5 is concerned that has taken place at a very delayed stage, namely, his identification took place on 24-1-2001 and the incident is of 29-11-2000, even though A-5 was arrested on 22-12-2000. There is no explanation why his identification parade was held on 24-1-2001 which is after a gap of over a month from the date of arrest and after about 3 months from the date of the incident. No reliance ought to have been placed by the courts below or the High Court on such delayed TI parade for which there is no explanation by the prosecution.”

19. In the instant case none of the witnesses had disclosed any features for identification which would lend some corroboration. The identification parade itself was held 25 days after the arrest. Their chance meeting was also in the night without there being any special occasion for them to notice the features of any of the accused which would then register in their minds so as to enable them to identify them on a future date. The chance meeting was also for few minutes. In the circumstances, in our considered view such identification simplicitor cannot form the basis or be taken as the fulcrum for the entire case of prosecution. The suspicion expressed by PW 8 Saraswati Singh was also not enough to record the finding of guilt against the appellant. We therefore grant benefit of doubt to the appellant and hold that the



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prosecution has failed to establish its case against the appellant.”

19. We may point out another aspect in this case with regard to the evidence of PW1. PW1 had stated that she had seen the accused on all the three days viz., on 28.01.2009 that two of them visited the house; on 29.01.2009 that four of them came; and on 30.01.2009, when all the six came. However, in the cross-examination, she would state that she had not seen the accused, who came to the house on the 2nd day. The relevant portion reads as follows:

“இரண்டாவது நாள் வந்தவர்களை நான் யாரையும் பார்க்கவில்லை”

20. Be that as it may, PW5-VAO, who said to have signed as a witness for the recovery of jewels on the confession of A1 and the recovery of knives on the confession of the other accused, had stated that he had not gone along with the police for seizure and that he had signed the documents at the police station. The relevant portion reads as follows:

“நான் போலீசாருடன் செல்லவில்லை,
ஏதிரிகளை ஏற்கனவே கைது செய்து
காவல்நிலையத்தில் வைத்து, ஆவணங்கள்



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அனைத்தும் தயார் செய்து வைத்திருந்ததில்
என்னையும் உதவியாளரையும் காவல்நிலையத்திற்கு
வரச்சொல்லி கையொப்பம் பெற்றுக்கொண்டார்கள்
என்றால் சரிதான்”

21. Strangely, we find that none of the Material Objects, which is alleged to have been taken from the house of the deceased, viz., M.O.14 to M.O.28, have been specifically shown to witnesses PW1 and PW2 for identification. These Material Objects were marked through PW5-VAO. PW1 and PW2 make a general statement that the jewels shown to them were taken from their house. Though it is the case of the prosecution that jewels were recovered from the house of A1 in Bangalore, there is no further evidence to show on what basis the investigation officer went to Bangalore, and there is no evidence further to confirm that it was A1's house. The admissible portion of the confession of A1 does not refer to the pointing of jewels. In any case, we find that no jewels have been recovered from the appellants herein. The jewels were admittedly recovered only at the instance of A1 or A6 or at the residence of A1. Though certain jewels are said to have been recovered on the confession of A5 by the seizure



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Mahazar-Ex.P17, we find that the jewels have not been identified by PW1 and PW2. A5 has also not been identified by the witnesses in the TIP proceedings. PW5-VAO further stated that he had not signed any documents after 26.02.2009. However, he is said to be a witness in the mahazar for the seizure of jewels at A5's instance, which took place on 09.04.2009.

22. We may also note another aspect in this case, that may be relevant. It is the version of PW1 that the deceased was taken to the hospital after the neighbours came and opened the door, which was locked from outside by the accused. It is the prosecution case that the deceased was taken to Hosur, Government Hospital and was declared dead at 5.25pm by the doctor, as could be seen from the inquest report. However, the said doctor has not been examined by the prosecution. The examination of the doctor at the Government Hospital would have disclosed the information given by the Doctor to the police about the medico-legal case. However, the prosecution projects as if the complaint was given by PW1 at the police station at 6.30pm. The genesis has been suppressed by the prosecution.



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23. We also find that PW1 stated that the Fingerprint Expert had examined the cupboard and other places and lifted chance finger prints. PW11, the investigation officer, also stated that a fingerprint expert was summoned. However, we find that the report of the expert, has not been furnished by the prosecution. We therefore have to necessarily draw the inference that the said report is not favourable to the prosecution. Further, PW1 had stated that a police sniffer dog was brought to the place of occurrence, which is admitted by PW11. The report of the Sniffer Dog Squad has also been suppressed by the prosecution.

24. That apart, the plaster with bloodstains, said to have been used by the accused to gag the mouth and nose of the deceased, and jute ropes (2 nos.), were seized at the place of occurrence under the seizure mahazar [Ex.P3]. According to the investigation officer, at A3's confession, plaster and jute ropes (5 nos.) measuring 1½ meters were recovered under Seizure Mahazar[Ex.P11]. However, there is absolutely no evidence for comparing the plaster seized at the scene of the occurrence with the plaster recovered



from A3. We are of the view that this cannot be brushed aside as mere infirmities, which do not affect the prosecution case. The cumulative effect of all the infirmities that we have pointed out above throws serious doubt on the prosecution case.

25. To sum up, from the above discussion of the evidence, it would be clear that the identification of the accused in the TIP cannot be accepted as witnesses had seen the accused at the police station and also their photographs. The TIP was conducted nearly 18 days after the date of the arrest of the accused. A5 was not identified in the TIP. The witnesses have not given any identifying features in the complaint or in their statements recorded during investigation except for stating that two of them were tall. No articles said to have been taken from the house were recovered from the appellants except from A5. The jewels alleged to have been seized by the respondent were not identified by PW1 and PW2, and the jewels allegedly seized from A1 and A6 were not marked by PW1 and PW2, and they made a general statement in Court that the jewels shown to them were taken from their house. Material Objects were marked only through PW5-VAO, whose



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evidence is unreliable as he admits that he had signed all the documents at the police station. Further, PW5 would also admit that he had not signed any document after 26.02.2009 pertaining to A5. Whereas A5 was arrested only on 09.04.2009. Therefore, the recovery of jewels from A5 also becomes doubtful.

26. In the above circumstances, the identification of the accused only in the dock 2 ½ years after the occurrence is meaningless, and it is highly unsafe to convict the appellants only on that basis. The recovery of the knives and other articles from the accused, which is doubtful as stated earlier does not lead to any interference in favour of the prosecution. Therefore, the conviction and sentence imposed upon the appellants by the trial Court are liable to be set aside.

27. In the result, this Criminal Appeals are allowed and the appellants, viz., A2, A3, A4 and A5, are acquitted of all charges, and they are directed to be set at liberty forthwith unless their custody is required in connection with any other case. The conviction and sentence passed in



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S.C.No.114 of 2009 on the file of the learned Additional District and Sessions Judge, Hosur, *vide* judgment dated 23.01.2020, are set aside. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

Index : yes/no
Neutral citation : yes/no
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(S.S.S.R.,J.) (S.M.,J.)
05.01.2024



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To

1. The Additional District and Sessions Judge,
Hosur.
2. The Inspector of Police,
Mathigiri Police Station,
Krishnagiri District.
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court, Madras



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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

ars

Pre-delivery common judgment in
Crl.A.Nos.218, 511 & 378 of 2020

05.01.2024