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Crl.A.No.922 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.04.2024

PRONOUNCED ON : 05.04.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.922 of 2022

and Crl.MP.Nos.18595 & 18597 of 2023

1.Nirmalkumar

2.Vicky @ Vigneshkumar

3.Saranraj

... Appellants/A1 to A3

v.

State represented by

Inspector of Police,

Vellore North Police Station,

Vellore.

(Cr.No.194/2021)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellants and sentence in S.C. No.184 of 2021 dated 12.07.2022, on the file of the learned I Additional District and Sessions Judge, Vellore and set aside the conviction and sentence imposed in judgment dated 12.07.2022 and acquit the



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appellants.

For Appellants : Mr.Abudu Kumar Rajarathinam, Sr. Counsel
for Mrs.Logeshwari (for A1 and A2) and
for Mr.M.Sathish Kumar (for A3)

For Respondent : Mr.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal has been filed by Accused Nos.1 to 3, challenging the conviction and sentence imposed upon them vide judgment dated 12.07.2022 in S.C.No.184 of 2021 on the file of the learned I Additional District and Sessions Judge, Vellore.

2(i) The case of the prosecution is that A1 and A2 owned certain shops in the market and had let out those shops to PW8 one Halis Devi; that since PW8 was irregular in payment of rents, A1 and A2 had asked PW8 to vacate the shops; that PW8 complained to the deceased; that deceased had questioned A1 and A2 and they both were aggrieved by the conduct of the deceased and wanted to do away with the deceased; that on 31.03.2021 at about 9.30 p.m., A1 to A3 called the deceased and asked him to come to Masthan Briyani stall at Ambedkar Nagar, Makkan, Vellore; that at about



9.45 p.m., the accused abused the deceased in filthy language for having intervened in PW8's issue and attacked him with knives; that A3 caught hold of the deceased; that A1 cut the deceased on the neck; and that A2 also cut the deceased on the neck, which was witnessed by PW1 and PW2.

(ii) It is the further case of the prosecution that PW1 and PW2 took the deceased for treatment to CMC Hospital, Vellore; that inspite of the treatment, the deceased succumbed to the injuries on 02.04.2021 at about 7.20 p.m.; that PW1 thereafter went to the police station and gave a complaint, which was registered by PW17 in Cr.No.194 of 2021 for the offence under Sections 294 (b) and 307 of the IPC; that the complaint was marked as Ex.P1 and the FIR was marked as Ex.P11.

(iii) PW18, took up the investigation. On 01.04.2021 at about 7.00 a.m., he went to the scene of the occurrence and prepared the Observation Mahazar (Ex.P15) and Rough Sketch (Ex.P16). He seized the bloodstained earth [M.O.3] and the earth that was not bloodstained [M.O.4] under Seizure Mahazar [Ex.P17]. He thereafter examined the eyewitnesses PW1 to PW3 and one Babu. On 01.04.2021, the accused surrendered before the



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learned Judicial Magistrate. On 02.04.2021 at about 7.20 p.m., he received the death intimation from CMC Hospital, Vellore and altered the offences to Sections 294(b) and 302 of the IPC and sent the alteration report Ex.P18 to the Court. On 03.04.2021, between 8.00 a.m. and 10.00 a.m., he conducted the inquest in the presence of Panchayathars and prepared the inquest report [Ex.P19]. He thereafter sent a requisition for conducting postmortem, which was conducted by PW15, who issued a postmortem certificate [Ex.P11] and the final opinion [Ex.P12].

(iv) On 09.04.2021, PW18 filed a petition before the learned Judicial Magistrate, Katpadi, seeking police custody of the surrendered accused. Thereafter, he took the accused to police custody . On the confession given by the accused, the admissible portion of which were marked as Ex.P21 to Ex.23 respectively, he seized the material objects viz., knives [M.O.1 & M.O.2] under Seizure Mahazar [Ex.P24]. He examined the other witnesses, the Assistant Director of the Forensic Science Department and filed the final report before the learned Judicial Magistrate No.IV, Vellore, against the accused for the offences under Sections 294(b) and 302 r/w 34 of the IPC.



(v) 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.184 of 2021 and was made over to the learned I Additional District and Sessions Judge, Vellore, for trial. The trial Court framed charges against the accused, and when questioned, the accused pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 18 witnesses as P.W.1 to P.W.18, marked 28 exhibits as Exs.P1 to P28, and marked 6 Material Objects as M.O.1 to M.O.6. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witnesses, nor marked any documents.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellants/A1 to A3 guilty of offences charged against them and accordingly convicted and sentenced the accused/A1 to A3 as follows:



<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1 to A3	294(b) IPC	Each of them to undergo SI for one month.
	302 r/w 34 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.5000/-, in default to undergo RI for six months
The above sentences were ordered to run concurrently.		

Hence, A1 to A3 have preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.Abudu Kumar Rajarathinam, learned senior counsel appearing for the appellants/A1 to A3, and Mr. Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State.

4. (i) Mr.Abudu Kumar Rajarathinam, learned senior counsel appearing for the appellants/A1 to A3 submitted that the presence of PW1 to PW3 is improbable and none of them could have witnessed the occurrence; that PW1 who gave the complaint at 00.30 hours on 01.04.2021 had stated that two persons attacked the deceased; that she had not stated about the involvement of A3 or the presence of PW3 in the occurrence; and that however, in her deposition and in the deposition of the eyewitnesses, the involvement of all three accused, is stated which is an afterthought and a



material improvement.

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(ii) The learned senior counsel further submitted that the FIR reached the learned Magistrate only at 3.30 p.m., on 01.04.2021 with a delay of 15 hours though the Court is situated within 2kms from the police station; that the motive projected by the prosecution viz., that A1 and A2 were aggrieved since the deceased intervened when they asked PW8 to vacate the shops, cannot be believed as PW8 and PW9, who were examined by the prosecution to establish the said fact, turned hostile.

(iii) The learned senior counsel also pointed out that the police were present at the hospital and had recorded the statements of witnesses, much before the FIR was registered and also took us through the evidence of PW1 and PW2, to impress upon us that the complaint cannot be said to be the first information and the earliest version has been suppressed by the prosecution. The learned senior counsel further submitted that the Accident Register has not been marked by the prosecution, which would make the prosecution case doubtful. He also pointed out to some of the documents said to have been prepared on 01.04.2021, which referred to the alteration of the offence to Section 302 of the IPC, though the alteration took place only



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on 02.04.2021 after the death of the deceased. Therefore, he submitted that the seizures made by the investigating officers did not happen at the time and place mentioned in the Seizure Mahazars and the Mahazars were prepared at the police station later and prayed for acquittal of the appellants.

5.(i) The learned Additional Public Prosecutor *per contra* submitted that PW1 and PW3 are eyewitnesses and there is no reason for them to falsely implicate the accused and those witnesses would be interested in prosecuting the actual assailants involved in the attack on the deceased, who is closely related to them.

(ii) The learned Additional Public Prosecutor submitted that the defence has not been able to shake the credibility of any of the eyewitnesses in the cross examination and submitted that merely because PW2 had stated that the police were present at the hospital, would not falsify the version of PW1. The learned Additional Public Prosecutor further pointed out to the evidence of prosecution witnesses, PW1 to PW3, PW15-postmortem doctor and the evidence of the investigating officers, to show that the prosecution has proved its case beyond reasonable doubt and prayed for dismissal of the



appeal.

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

7. PW1 to PW3 are eyewitnesses; PW1 is the wife of the deceased; PW2 is the brother-in-law of the deceased; PW3 is the neighbour of the deceased and also speaks about the motive; PW4 is the father of the deceased and a hearsay witness; PW5 is the father-in-law of the deceased and a hearsay witness; PW6 is the brother of the deceased, who is also a hearsay witness; PW7 is another relative and is a hearsay witness; PW8 for whom the deceased is said to have quarrelled with the accused turned hostile; PW9, who is a resident of the same village, turned hostile; PW10 is the brother-in-law of the deceased, who is also a hearsay witness and is said to have gone to the hospital on hearing that the deceased was admitted there; PW11 is the Assistant Director of the Forensic Science Laboratory, who issued Ex.P3 certificate; PW12 is the Village Administrative Officer, who had signed as a witness in the confession, recovery and the seizure mahazars; PW13 was working with the deceased and had signed as a witness in the Seizure Mahazar [Ex.P8] and the Observation Mahazar [Ex.P9]; PW14 is the Doctor who was working at CMC Hospital and had



first treated the deceased and given intimation to the police [Ex.P10] about the Medico Legal Case; PW15 is the postmortem Doctor who had issued the postmortem certificate [Ex.P11] and final opinion [Ex.P12] as stated earlier; PW16 is the Constable who assisted the investigation; PW17 is the Sub Inspector of Police, who registered the FIR; and PW18 is the investigating officer.

8. PW14, the Doctor who first treated the deceased at CMC hospital issued Ex.P10-Intimation to the police wherein he has stated that the deceased was assaulted and on arrival was “gasping and had got neck laceration”. PW15, the postmortem Doctor, found abrasions and cut injuries on the deceased which were ante mortem and issued Ex.P11-postmortem certificate. After obtaining the viscera report, PW15 gave the final opinion [Ex.P12] on 05.07.2021, in which he had stated as follows:

“1. The deceased would appear to have died of shock and heemorrhage due to cut injury to the neck.

2. He would have died about 12 to 24 hrs prior to autopsy.”

The above evidence suggests that the deceased suffered homicidal death.



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9. As regards the involvement of the accused, the prosecution seeks to rely upon the evidence of PW1 to PW3 and the motive of the accused to do away with the deceased.

(i) It is PW1's version that on the morning of 31.03.2021 there was a quarrel between the accused and the deceased with regard to the issue of vacating PW8 from the shops belonging to A1 and A2; that at 9.30 pm, the deceased received a phone call from both A1 and A2 asking him to come to Masthan Briyani Stall; that PW1 asked the deceased not to go and inspite of PW1's request, the deceased went out of the house; that since the deceased did not return PW1 came out of the house and she saw PW2 her brother-in-law standing in the bus stop and she went along with him in a bike to the Briyani stall where she saw all the three accused sitting and abusing the deceased in filthy language; that she saw all the three attacking the deceased; that A1 and A2 attacked with knives on the neck of the deceased; and that thereafter, she took the deceased to the hospital.

(ii) PW2's evidence is also similar. PW3 according to the prosecution also witnessed the occurrence. In the FIR, PW1 has not referred to the presence of PW3 at the scene of the occurrence. Further, PW1 and PW2



during their depositions also have not mentioned about the presence of PW3, in the scene of occurrence. PW3 admits that he had not assisted PW1 and PW2 in taking the deceased in an autorickshaw and he left for work immediately. This conduct also makes his presence highly doubtful.

(iii) Be that as it may. PW1 has made a substantial improvement as regards the number of accused involved in the occurrence. Likewise, PW2 would state in his deposition that A3 was also present and in fact named him. In the FIR, PW1 would state that only A1 and A2 were involved in the occurrence. However in her deposition, she would state that A3 was also present, which in our view is a material improvement. That apart, we find from Ex.P10-intimation given by PW14 to the Sub Inspector of Police that the information was given by one Kamaraj [PW10], who is another brother-in-law of the deceased. There is no reference to either PW1 or PW2 bringing the deceased to the hospital. That apart, the prosecution has suppressed the Accident Register maintained at the hospital which would reveal the earliest version. The non-filing of the said document and the improvement made by PW1 and PW2, coupled with the fact that the deceased was brought by PW10 to the hospital, would raise a substantial



doubt with regard to the veracity of PW1 and PW2.

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(iv) In fact, PW14, the doctor would state that it was PW10, who brought the deceased to the hospital. However, strangely, PW10 would deny the said fact and would state that he came to know that the deceased was attacked and went and saw the deceased in the hospital. Interestingly, when questioned as to who informed PW10 that the deceased was attacked by three persons, he does not name PW1 and PW2 and would state that the persons at the scene of the occurrence told him.

(v) PW2 would also state that immediately after the deceased was admitted to the hospital, the Inspector of Police had come to the hospital. He would further add that it would be around 10.45 p.m, and thereafter correct it by saying that he did not see the time and he also stated that the Inspector took a statement and obtained his signature at the hospital. The relevant portion reads as follows:

“நானும் நந்தினியும் மருத்துவமனைக்கு சென்றவுடன் காவல் ஆய்வாளர் அங்கு வந்துவிட்டார். 10 நிமிடத்தில் மருத்துவமனைக்கு சம்பவம் நடந்ததாக சொல்லும் இடத்திலிருந்து சென்றுவிடலாம். 10.45 மணிக்கு மருத்துவமனைக்கு ஆய்வாளர் வந்துவிட்டார். டைம்



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பார்க்கவில்லை. கையெழுத்து வாங்கினார். மருத்துவரிடம் நடந்த விஜயத்தை சொன்னேன். வெட்டிவிட்டார்கள், கழுத்தை அறுத்துவிட்டார்கள் என்று சொன்னேன்.”

(vi). This would establish the presence of the police who commenced their investigation even before the FIR was registered at 00.30 hours on 01.04.2021. That apart, PW2 would state that he went to the police station and gave another complaint along with PW1 and both PW1 and PW2 signed the complaint. However in the complaint [Ex.P1] marked by the prosecution, the signature of PW2 is not found. More importantly, the FIR which was registered at 00.30 hours reached the learned Magistrate only at 3.30 p.m., on 01.04.2021, though, PW17, the Sub Inspector of Police, who registered the FIR, would admit that the Court is 2kms away from the police station. The relevant portion of his evidence is as follows:

“01.04.2021ல் பதிவு செய்யப்பட்ட முதல் தகவல் அறிக்கை நீதிமன்றத்தில் மாலை 3.30 மணிக்கு பெறப்பட்டுள்ளது என்றால் சரி. கோர்ட்டிற்கும் போலீஸ் ஸ்டேஷனுக்கும் எவ்வளவு தூரம் என்றால் 2கி.மீ இருக்கும். 10 நிமிடத்தில் நீதிமன்றத்தை அணுகிவிடலாம் என்றால் சரி.”

10. Though it is the prosecution case that the deceased went after A1 and A2 called him over the phone, the prosecution has not chosen to seize



the call detail records of either the deceased or the accused. The relevant portion of the cross examination of PW18 reads as follows:

“என்னுடைய புலன் விசாரணையில் கூறப்பட்டுள்ள போனை நான் கைப்பற்றவில்லை என்றால் சரி. புகாரில் செல் நெம்பர், சிம் நம்பர் என்ற விவரத்தையும் புகாரில் கூறவில்லை என்றால் சரி. நான் விசாரணையில் அதை தெரிந்துகொண்டேனா என்றால் கண்ணால் பார்த்த சாட்சி இருந்ததால் அதை வேண்டாம் என விட்டுவிட்டேன். நான் செல்போனை கைப்பற்றினேன் என்றாலும், அதற்கான கால் விவரங்களை பார்த்தேன் என்றாலும் அதில் எதிரிகளின் பெயர் மற்றும் தொடர்பு இல்லாத காரணத்தால் நான் அதை தாக்கல் செய்யாமல் விட்டுவிட்டேன் என்றால் சரியல்ல.”

11. Ex.P8, which is also marked as Ex.P17 is the Seizure Mahazar said to have been prepared on 01.04.2021 at 7.30 a.m., pertaining to the seizure of bloodstained earth [M.O.3] and the earth that was not bloodstained [M.O.4]. However, it is seen that in the said document there is a reference that the offence was altered to Sections 294 (b) and 302 of the IPC in Column No.5. The deceased died only on 02.04.2021 and only thereafter, the offence was altered. To a specific question on this aspect, the investigating officer [PW18] was unable to give any plausible explanation. Similarly, as regards Form-91, which was said to have been prepared on



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01.04.2021 also there is a reference to the alteration to Sections 204(b) and 302 of the IPC, which is admitted by PW18 the investigating officer and the relevant portion of his evidence reads as follows:

“1ம் தேதி தயார் செய்த படிவம் 91ல் 3வது காலத்தில் வேலூர் வடக்கு காவல் நிலைய குற்ற எண்.194/2021 u/s.294(b), 307 IPC @ 294(b), 302 IPC வழக்கின் சொத்தாகும் என காணப்படுகிறது. 1ம் தேதிக்கான இந்த ஆவணத்திலும் 302 ஐபிசி போடப்பட்டுள்ளது என்றால் சரிதான்.”

The above would show that the investigating officer has created the documents at the police station subsequently and not contemporaneously as claimed by him.

12. Though PW1 had stated that there was a CCTV camera opposite the Masthan Briyani stall, the investigating officer denies the same. It is also pertinent to point out that though PW2 claimed that his dress became bloodstained, the investigating officer had asked him to remove it and come to the police station after taking bath. This appears artificial and it is not known as to why the investigating officer had not seized the bloodstained clothes of PW2, if his clothes were really bloodstained. The relevant portion of PW2's evidence reads as follows:

“நான் போட்டிருந்த ரத்தக்கறை படிந்த டிரஸ்சை போலீசார்



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வாங்கவில்லை. காவல்நிலையத்தை தாண்டிதான் மருத்துவமனைக்குச் சென்றோம். ரத்தக்கறை படிந்த டிரஸை கழட்டிவிட்டு குளித்துவிட்டு வா என்றது காவல் ஆய்வாளர் சொன்னார்.”

13. Thus, the delay in despatching the FIR to the learned Magistrate; the fact that the Accident Register was suppressed by the prosecution though PW14 admits that such a record was maintained at their hospital; the improvement made by PW1 and PW2 as regards the number of accused involved in the offence, their presence at the scene of the occurrence, being doubtful; the records created by the investigating officer subsequently; the fact that PW8 did not support the prosecution case with regard to motive; the fact that PW14, the doctor had stated that it was PW10 who brought the deceased to the hospital; the fact that PW2 had stated about the presence of police and signing a complaint which was not produced by the prosecution; and the fact that the blood stained clothes of PW2 were not seized by the police, all would raise a reasonable doubt in the prosecution case and it is highly unsafe to record a conviction of guilt on such evidence. Hence, we are of the considered view that the judgment of conviction and sentence cannot be sustained and liable to be set aside.



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14. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed upon the appellants/A1 to A3 in S.C. No.184 of 2021 dated 12.07.2022, on the file of the learned I Additional District and Sessions Judge, Vellore, are set aside. Appellants/A1 to A3 are acquitted of all the charges and are directed to be released forthwith unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants shall be refunded. Bail bonds, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petitions are closed.

(M.S.R.,J.) (S.M.,J.)
05.04.2024

Index : yes/no
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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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To

1. The I Additional District and Sessions Judge,
Vellore.

2. The Inspector of Police,
Vellore North Police Station,
Vellore.

3. The Superintendent,
Central Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
Crl.A.No.922 of 2022

05.04.2024