



Crl.A.No.545 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2024

PRONOUNCED ON : 01.02.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Karthik

... Appellant/A1

v.

State represented by
Inspector of Police
Annamalai Nagar,
Killai Police Station,
Cuddalore District.

(Crime No.268 of 2016)

... 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.127 of 2017 dated 16.12.2020, on the file of the learned II Additional District and Sessions Judge, Chidambaram and set aside the conviction and sentence imposed in judgment dated 16.12.2020 and acquit the appellant.

For Appellant

: Ms.Sindhuja
for Mr.P.Vijendran

For Respondent

: Mr.Babu Muthu Meeran
Additional Public Prosecutor



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JUDGMENT

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

This Criminal Appeal has been filed by Accused No.1, challenging the conviction and sentence imposed upon him vide judgment dated 16.12.2020 in S.C.No.127 of 2017 on the file of the learned II Additional District and Sessions Judge, Chidambaram.

2(i) It is the case of the prosecution that the appellant/A1 had illegal intimacy with the wife of PW10; that PW1 and PW3 were closely related to PW10; that whenever the appellant visited the village of PW1 and PW3, the deceased/father of PW1 and other witnesses, questioned the accused; that enraged by the said conduct, the appellant and the other accused decided to do away with the deceased; that on 24.09.2016 at about 8.00 p.m., when the deceased and PW3 were talking in a public place, the appellant along with the other accused came in a Tata Indica car and attacked the deceased with iron rods and wooden logs; that PW3 sustained grievous injuries and the deceased died at the scene of the occurrence.



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(ii) It is also the case of the prosecution that PW1/son of the deceased was an eyewitness; that besides PW1 and PW3, PW1's friends viz., PW4 and PW5, were also eyewitnesses; that the witnesses took the deceased to the hospital, and PW3 also got himself admitted to the hospital; that PW1 lodged a complaint on 25.09.2016, which was registered by PW15, the Sub Inspector of Police, at 5.00 a.m., in Crime No.268 of 2016 for the offences under Sections 147, 148, 294(b), 324, 307, and 302 of the IPC against the appellant and five other accused. The complaint was marked as Ex.P1, and the printed FIR was marked as Ex.P7.

(iii) Thereafter, on receipt of the FIR, PW20 took up the investigation and went to the scene of the occurrence on 25.09.2016 at about 6.00 a.m., and prepared the Observation Mahazar [Ex.P3] and Rough Sketch [Ex.P15]; he seized two wooden logs measuring 83cms and 90cms, respectively [M.O.2] and samples of bloodstained earth and earth without bloodstain under Ex.P5-Seizure Mahazar; thereafter, he conducted an inquest in the



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presence of panchayatars and prepared the Inquest report [Ex.P16]; he sent the dead body of the deceased for a postmortem through PW14; PW11 conducted a postmortem and issued postmortem certificate [Ex.P6].

(iv) On the same day, PW20 examined the other witnesses and, at about 1.30 p.m., arrested all the accused i.e., A1 to A6 and on the admissible portion of the confession made by A1, a Tata Indica car bearing Regn.No.TN04 T 7171 was seized along with an iron rod measuring 79 cms from the appellant, and the other M.O.'s/weapons were seized on the confession of the other accused. After examination of all other witnesses, he filed a final report on 29.12.2016 against all the accused for the offence under Sections 120-B, 147, 148, 294(b), 324, 326, 307 and 302 r/w 149 of the IPC before the learned Judicial Magistrate No.I, Chidambaram.

(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.127 of 2017 and was made over to the learned II Additional District and Sessions Judge, Chidambaram, for trial. The



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trial Court framed charges against the accused, and when questioned, the

accused pleaded 'not guilty'. The case against A2-Kathirvel was tried separately in S.C.No.52 of 2019.

(vi) To prove the case, the prosecution examined 20 witnesses as P.W.1 to P.W.20 and marked 17 exhibits as Exs.P1 to P17, and marked 7 Material Objects as M.O.1 to M.O.7. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused did not examine any witnesses or mark 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 appellant/A1 guilty of offence under Sections 294(b), 307 and 302 of the IPC. However, the trial Court acquitted the other accused, viz., A3, A4, A5, and A6. The appellant herein/A1 was convicted and sentenced as follows:



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<i>Offence under Section</i>	<i>Sentence imposed</i>
294 (b) IPC	To pay fine of Rs.100/-, in default to undergo SI for one week.
307 IPC	To undergo RI for five years and to pay a fine of Rs.1,000/-, in default to undergo SI for three months
302 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo SI for six months

Hence, A1 has preferred the appeal challenging the said conviction and sentence.

3. Heard, Ms. Sindhuja, learned counsel appearing for the appellant/A1, and Mr. Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.

4. (i) Ms.Sindhuja, the learned counsel for the appellant submitted that the FIR is fabricated and was lodged belatedly; that though the occurrence took place at 8.00 p.m., on 24.09.2016, the complaint was lodged only on 25.09.2016 at 5.00am; that the witnesses have stated that the police had come to the scene of the occurrence and had examined all the witnesses much before a complaint was lodged; that therefore, the complaint



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was lodged after deliberation and it cannot be treated as a first information;
that the other accused were acquitted by the trial court on the

ground that the witnesses have not clearly spelt out the *overt acts*; and that
the trial Court had disbelieved the prosecution case relating to conspiracy.

(ii) The learned counsel for the appellant submitted that the version of
witnesses therefore cannot be believed, and the same reason assigned by the
trial Court for disbelieving their version as against A3 to A6 would be
applicable to the appellant/A1 as well, and prayed for acquittal of the
appellant.

5. The learned Additional Public Prosecutor *per contra* submitted that
in the instant case, the trial Court found that there was no evidence against
the other accused and rightly found the appellant guilty of the offence as all
the witnesses have uniformly stated that the appellant/A1 had the motive
and had caused the fatal blow on the deceased and therefore 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. The occurrence is stated to have taken place at 8.00 p.m., on 24.09.2016. PW1 an eyewitness, and the son of the deceased had made a complaint at 5.00 a.m., on 25.09.2016. In the complaint, he has made allegations against six accused, alleging that all of them were armed with iron rods and wooden logs and that they attacked the deceased and PW3. The trial Court acquitted A3 to A6. The case against A2 was split up and he was tried separately in S.C.No.52 of 2019. The learned Additional Public Prosecutor submitted that A2 was also acquitted by the trial Court vide judgment dated 16.12.2020. We find that in the complaint, no specific *overt act* is attributed to any of the accused. However, the witnesses, during their deposition in Court, made improvements, alleging specific *overt acts* against each of the accused. The judgment of acquittal as against the other accused has not been challenged by the prosecution. If the witnesses cannot



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be believed as regards the role of the other accused, their version with regard to the role of A1 also has to be discarded. However, we propose to analyse their evidence independent of the fact that the prosecution had not challenged the finding of the trial Court acquitting A2 to A6.

8. PW5, one of the eyewitnesses to the occurrence, stated in the cross-examination that the police came to the hospital on the same night after the occurrence, and he was examined by the police. This would show that the police came to know of the occurrence even before the FIR was lodged, and they had commenced the investigation in the hospital on the same night after the occurrence.

9. PW3, who is an injured eyewitness, stated that A1 first attacked him with an iron rod, and thereafter A2 and A4 attacked with iron rod; and that he fainted after the attack, and thereafter he saw the other accused attacking the accused. His evidence is self contradictory. Having stated that he had fainted after the attack made on him, his version that he saw the deceased being attacked thereafter is improbable.



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10. PW1 also confirms that all the accused first attacked PW3, and he fainted, and when the deceased went to prevent the attack on PW3, he was attacked. The relevant portion reads as follows:

“சம்பவம் 2 இடத்தில் நடந்தது. முதல் சம்பவம் அண்ணாசிலை அருகில் நடந்தது. அப்போது தண்டபானியை அடித்தார்கள், அப்போது என் அப்பா விளக்க போனார், அப்போது என் அப்பாவையும் அடித்தார்கள். எதிரிகள் 6 பேரும் முதலில் தண்டபானியை அடித்தார்கள். தண்டபானி மயங்கிவிட்டார். அதை பார்த்து என் அப்பா அடிக்காதீர்கள் என என் அப்பா போன போது என் அப்பாவையும் ஒரு அடி அடித்தார்கள், அப்போது என் அப்பா வலி தாங்க முடியாமல் எம்.ஜி.ஆர் சிலை அருகே வந்தார். அப்போதும் 6 எதிரிகள் வந்து அடித்தார்கள். என் அப்பாவிற்கு தலையில் அடிபட்ட போது ரத்தம் வழிந்தது.”

11. The above evidence further suggests that the occurrence took place in two places. First, the attack on PW3, and thereafter, the attack on the deceased at a different place. The first attack on PW3 was near an “Anna statue” which was 30 feet away from an “MGR statue”, where the second occurrence took place. Therefore, PW3's version that the accused attacked the deceased also cannot be believed.



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12. PW1 is closely related to the deceased. PW4 and PW5 are close friends of PW1. There is nothing in the evidence to suggest that they had taken efforts to prevent the alleged attack on PW3 and the deceased, which is said to have taken place in two different places. Further, we find that, as stated earlier, the police were present at the hospital even before the FIR was lodged. The FIR was lodged at 5.00 a.m., the next morning. No explanation has been offered by the prosecution for the delay in lodging the complaint except for a vague attempt made by PW1 that he was present in the hospital and therefore could not go to the police station. It is a matter of common sense that when the deceased and PW3 were brought to the hospital, the hospital authorities would have informed the police, which is also confirmed by the evidence of PW5. Therefore, the defence case that the FIR came into existence long after the occurrence after much deliberation is probable.

13. 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



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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 observed as follows:

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

14. That apart, we also find that though the mahazar relating to the seizure of an iron rod [Ex.P9] on A1's confession shows that it was blood stained, the report of the expert Ex.P12 issued by PW19, the Assistant Director of Forensic Science Laboratory, shows that no bloodstains were found in any of the iron rods sent for analysis. This has also not been explained by the prosecution.

15. It is the further case of the prosecution that A1 attacked the deceased with an iron rod [M.O.1] on the head. However, the postmortem of the deceased reveals that he sustained three external injuries, viz.,



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- (i) cut injury (R) side scalp (R) parietal region 4x2x bone depth;
- (ii) contusions (R) shoulder 3 x 2 cm; and
- (iii) swelling (R) Shoulder.

The postmortem Doctor PW11, though in the chief examination, stated that the Injury No.(i) i.e., the head injury, could have been caused by the weapons like M.Os.1 and 2, however in the cross-examination, she stated that the head injury is a cut injury and therefore it could not have been caused by M.O.1 or M.O.2. The relevant portion reads as follows:

“என்னிடம் காட்டப்படும் ச.பொ.1 இரும்பு கம்பிகள் மற்றும்
ச.பொ.2 உருட்டு கட்டைகளால் தாக்கப்படும் போது
வெட்டுக்காயம் ஏற்பட வாய்ப்பு இல்லை.”

There is inconsistency between the ocular evidence and the medical evidence. This has also not been explained by the prosecution.

16. Considering all the above facts and circumstances, we are of the view that it is highly unsafe to place reliance on the evidence of PW1, PW3, PW4, and PW5 to hold the appellant guilty of the offence. As stated earlier, the very same witnesses were disbelieved by the trial Court as regards the involvement of other accused. The rest of the witnesses are either scientific witnesses or witnesses who assisted the investigating officer. PW10, who is



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the husband of Lakshmi, with whom A1 is stated to have had illicit intimacy, admits that he has no personal knowledge about the occurrence.

Therefore, we are of the considered view that the judgment of conviction and sentence cannot be sustained and liable to be set aside.

17. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant in S.C. No.127 of 2017 dated 16.12.2020, on the file of the learned Additional District and Sessions Judge No.II, Chidambaram, are set aside. The appellant/A1 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 shall be refunded. Bail bonds, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
01.02.2024

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

AND

SUNDER MOHAN,J.

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To

1. The Additional District and Sessions Judge No.II,
Chidambaram.

2. The Inspector of Police,
Annamalai Nagar,
Killai Police Station,
Cuddalore District.

3. The Superintendent,
Central Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
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