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Crl.A.Nos.627 and 670 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.01.2024

PRONOUNCED ON : 30.01.2024

CORAM :

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

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.Nos.627 and 670 of 2019
and Crl.M.P.Nos.10733 & 11710 of 2023

1. Kumar .. Appellant in Crl.A.No.627 of 2019
/ Accused No.2
2. Ashok Kumar .. Appellant in Crl.A.No.670 of 2019
/ Accused No.3

v.

State:

The Inspector of Police,
Koradacheri Police Station,
Thiruvarur District.

Crime No.17/2014 .. Respondent/Complainant
in both Appeals

Common Prayer: Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records in S.C.No.123 of 2015, on the file of the learned Principal District and Sessions Judge, Thiruvarur dated



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30.07.2019 and set aside the judgment dated 30.07.2019.

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For Appellants

in Crl.A.No.627/2019 : Mr.P.Bharath

in Crl.A.No.670/2019 : Mr.N.Manoharan

For Respondent

: Mr.Babu Muthu Meeran

in both cases

Additional Public Prosecutor

COMMON JUDGMENT

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

These appeals have been filed by Accused Nos.2 and 3, challenging the conviction and sentence imposed upon them vide judgment dated 30.07.2019 in S.C.No.123 of 2015 on the file of the learned Principal District and Sessions Judge, Thiruvaur.

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/Krishnaraja was a notorious criminal and had several cases against him; that A1 wanted to do away with the



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deceased, whom he thought was a police informer; that on 12.01.2014, A1 along with the appellants, went to the house of the deceased Selvaraj at 6.30pm and the deceased was standing near his compound gate; that A1 attacked the deceased with a sickle on the head of the deceased; that A2/appellant in Crl.A.No.627 of 2019 attacked the deceased on his left shoulder; that A3/appellant in Crl.A.No.670 of 2019 attacked the deceased on the left leg; and that the deceased died due to the head injury suffered.

(ii) It is the further case of the prosecution that PW14 while he was working as a Special Sub Inspector of Police at Koradacheri Police Station received an information around 6.20pm that three persons were causing disturbance in a house near the Veterinary Hospital situated at ONGC Road, Koradacheri and on receipt of information, PW14 along with PW15, who was also a Special Sub Inspector of Police in the same police station rushed to the place of occurrence and witnessed three persons attacking the deceased and when they shouted, all the accused ran away; that the appellants ran on the eastern side and when PW14 chased them, the appellants escaped in a two-wheeler; that A1 ran on the western side and PW15 chased him; that when



PW15 attempted to get hold of A1, he had attacked him on his left ear with a sickle and thereafter, escaped from the place; and that PW15, gave a complaint which was registered in a different crime number in the same police station.

(iii) PW1, the wife of the deceased, is said to have made a complaint at about 9.30p.m., on 12.01.2014 [Ex.P1], and on receipt of the complaint, PW18 registered the FIR [Ex.P13] for the offences under Sections 341, 302, and 506 (ii) of the IPC.

(iv) PW19 took up the investigation on the same day, i.e., on 12.01.2014. At about 10.00p.m., he went to the scene of the occurrence and in the presence of PW3 and PW4, prepared an Observation Mahazar [Ex.P15] prepared a Rough Sketch [Ex.P14] and seized the bloodstained earth [M.O.3] and the earth that was not blood stained [M.O.4] under Seizure Mahazar [Ex.P6].

(v) At about 10.45p.m., PW19 seized the two wheeler [M.O.5] which was not registered, under Seizure Mahazar [Ex.P7]. Thereafter, he examined the other witnesses and seized the bloodstained saree of PW1 [M.O.2] and the lungi



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and shirt of PW9 and PW10, respectively. He conducted an inquest and prepared the inquest report.

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(vi) Thereafter, on 12.01.2014, PW19 arrested the appellants. On 17.01.2014, he produced A1 under PT warrant before the learned Judicial Magistrate-III, Tanjore, and took him into police custody. On the confession given by A1, the admissible portion, which was marked as Ex.P16, PW19 seized M.O.1, a bloodstained knife under Seizure Mahazar [Ex.P17]. Thereafter, he sent the bloodstained articles for examination to the Forensic Sciences Laboratory. After examination of the experts, he filed the final report against the 1st accused under Sections 449, 294(b), 302, and 506(ii) of the IPC and against the appellants/accused 2 and 3, for the offences under Sections 449, 294(b), 302, and 506(ii) r/w 34 of the IPC, before the learned Judicial Magistrate, Thiruvaur.

(vii) 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.123 of 2015 and was made over to the Principal District and Sessions Court, Thiruvarur, for trial. Even before the charges were framed, A1 died. The trial Court framed charges under Sections 449 and 302 r/w 34 of the IPC as against the appellants/A2 and A3; and when questioned, the appellants pleaded



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'not guilty'.

(viii) To prove the case, the prosecution examined 19 witnesses and marked 19 exhibits and 13 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 was any document marked.

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

Sl.No.	Offence under Section	Sentence imposed
A2 & A3	302 r/w 34 of IPC	Each to undergo life imprisonment and pay fine of Rs.1000/- in default to undergo RI for six months.
	449 IPC	Each to undergo RI for two years and pay fine of Rs.500/- in default to undergo RI for three months.
The sentences imposed were directed to run concurrently.		

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

4. Heard, Mr.P.Bharath, learned counsel for A2/appellant in Crl.A.No.627 of 2019; Mr.N.Manoharan, learned counsel for the A3/appellants in



Crl.A.No.670 of 2019; and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State.

5. (i) Mr.N.Manoharan, learned counsel for A2/appellant in Crl.A.No.670 of 2019, submitted that the prosecution had examined PW1, PW2, PW14 and PW15 as eyewitnesses to the occurrence and that none of them can be believed with regard to the involvement of the appellants in the alleged offence.

(ii) Learned counsel further submitted that the complaint itself is doubtful. PW1 would admit that the complaint was given by the relatives and that the police examined her only the next day morning. The learned counsel therefore submitted that since the genesis of the prosecution case has been suppressed, the entire fabric of the prosecution case would collapse. He would further submit that PW1 and PW2 have admitted that they could not identify the witnesses at the Test Identification Parade, which was conducted after the arrest of the accused. However, the prosecution suppressed the said proceedings in Court.

6. The learned Additional Public Prosecutor *per contra* submitted that the



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eyewitnesses to the occurrence, viz., PW1, PW2, and Special Sub Inspectors of Police i.e., PW14 and PW15, who had witnessed the occurrence, are reliable and there is no reason to disbelieve their version. PW1 lodged a complaint immediately after the occurrence and there has been no delay in lodging the FIR. The other circumstance of motive has been established by the prosecution, and therefore, the trial Court has rightly convicted the appellants, and there is no reason to interfere with the judgment of the trial Court.

7. We have carefully considered the rival submissions and perused the record.

8. It is seen from the evidence of postmortem Doctor PW17 that the deceased sustained the following three external injuries

- “1. Cut injury of size 10x6x5 cm over right parietal bone
2. Cut injury of size 6x5x5cm over anterior aspect of left forearm exposing the underlying radius and ulna is present.
3. Cut injury of size 6x5x5cm present over left foot exposing the underlying muscles, blood vessels, nerves. On dissection fracture of underlying calcaneum is present.”

In his final opinion, PW17 has opined that the deceased appear to have died due



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to complications of head injury and therefore, the fact that the deceased died due to homicidal violence has been established by the prosecution.

9. The occurrence is said to have taken place in the house of the deceased, where PW1, the wife of the deceased, and PW2, the daughter-in-law of the deceased, were present. PW14 and PW15 were the Special Sub Inspectors of Police, attached to Koradacheri Police Station and it is the prosecution case that at 6.20p.m., on 12.01.2014, they received information that three persons were causing trouble in a house near a veterinary hospital on the ONGC Road, and they both went to the said house, which happened to be the house of the deceased. It is the case of the prosecution that PW14 and PW15 saw the three accused at the scene of the occurrence, and on seeing PW14 and PW15, all the accused ran away. PW14 is said to have chased the appellants, and PW15 is said to have chased the deceased accused/A1, who in turn is said to have attacked PW15 and caused injuries to him. It is also the case of the prosecution that a separate FIR was lodged by PW15. PW15 had admitted that the said case was quashed by this Court. However, no records were marked.



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10. Be that as it may. PW1 in her complaint has named A1/Krishnaraja and stated that two others attacked her husband with sickles. It is the specific case of PW1 and PW2 who claim to be eyewitnesses, that the appellants (A2 and A3) were not known to them. PW1 in the chief examination stated that she saw the accused at the police station on 13.01.2014 at about 10.45p.m., based on the intimation given by the police. PW1 had also admitted in the cross examination that the test identification parade was conducted 10 days after the occurrence at Trichy Central Prison and that she had not identified the accused in the test identification parade conducted during the investigation. The relevant portion reads as follows:

“சம்பவம் நடந்த 10 நாட்களுக்குள்ளேயே திருச்சி மத்திய சிறைச்சாலையில் எதிரிகளின் அடையாள அணிவகுப்பு நடத்தியபோது எதிரிகளை நான் அடையாளம் காட்டவில்லை என்றால் சரிதான்.”

11. Likewise, PW2 also admits that the appellants were not known to her and that she came to know of the names of the appellants from her mother-in-law (PW1) later. Her evidence with regard to identity in the Test Identification Parade reads as follows:



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“நான் திருச்சி மத்திய சிறைச்சாலையில் எதிரிகளை அடையாளம் காண்பித்தபோது சரியாக அடையாளம் காண்பித்தேனா என்று தெரியவில்லை. ஆஜர் எதிரிகளை முதன் முதலில் திருச்சி மத்திய சிறைச்சாலையில் பார்த்த பிறகு தற்போதுதான் நீதிமன்றத்தில் பார்க்கிறேன் என்றால் ஆம்.”

She could not say definitely that she identified the appellants in the Test Identification Parade. However, we find that the prosecution has suppressed the proceedings of the Test Identification Parade. There is no explanation by the prosecution as to why the said proceedings were not filed by the prosecution.

12. It is well settled that if the witnesses have seen the accused at the police station, the identification in the Test Identification Parade has no value, and further identification in the dock would become meaningless. The law on this aspect is well settled.

13. 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 are 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



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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.....”.

14. 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 suspects or their photographs”.

15. 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”.



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16. Further, the evidence of PW14 and PW15, who claim to have witnessed the occurrence and chased the accused, do not inspire confidence. PW14 and PW15 also do not claim that the appellants were known to them. No Test Identification Parade was conducted to identify the appellants. PW14 is stated to have chased the appellants and PW15 is stated to have chased A1. PW14 has admitted that he had not stated about the identification features of the accused/appellants whom he had chased and could not apprehend. The relevant portion reads as follows:

“கிழக்கு பக்கமாக ஓடிய இரண்டு நபர்களின் அங்க அடையாளங்கள், உயரம், உருத்திருந்த ஆடைகளின் நிறம் குறித்து என்னை விசாரித்தபோது சொல்லியுள்ளேனா என்றால் பெயர் மட்டும் தான் சொன்னேன், மற்ற தகவல் எதுவும் சொல்லவில்லை.

17. PW15 speaks about chasing A1 and the attack made by A1 on him. He also claims to have seen the appellants at the scene of the occurrence. Both PW14 and PW15 claim that they received the information at 6.20p.m., that three persons were causing nuisance at the house of the deceased. However, no contemporaneous documents or entries made in the registers of the police station, were produced to substantiate the said fact.



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18. Be that as it may, PW14 would say that he came to know the names of the appellants subsequently from persons who were at the scene of the occurrence, and he would add that he did not know who told him about the names of the appellants. The relevant portion reads as follows:

“சம்பவம் நடந்த உடனே அக்கம் பக்கம் உள்ளவர்களிடம் செல்வராஜ், கிருஷ்ணராஜ், குமார் மற்றும் அசோக்குமார் ஆகியோர்களின் பெயர்களை கேட்டு தெரிந்து கொண்டேன். எதிரிகளின் பெயர்களை யார் குறிப்பிட்டு சொன்னார்கள் என்று தற்போது என்னால் சொல்லமுடியாது.”

PW15 also does not explain how, he came to know the names of the appellants who had allegedly accompanied A1-Krishnaraja.

19. That apart, PW1, even in her chief examination, would state that she did not go to the police station and the complaint was given by her relatives. PW1 also admits that she did not tell the police about the names of the appellants in the complaint and that she did not tell the police that the appellants had abandoned two motorcycles at the scene of the occurrence and ran away from the scene.



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20. Strangely, we find that PW14 and PW15, who claimed to be the eyewitnesses, have not lodged any complaints immediately after the occurrence. There was no reason to wait for a complaint from PW1, which is said to have been given at 21.00 hours on 12.01.2014. Further though PW15 claims that he was attacked by A1, neither the FIR lodged by him nor his wound certificate were filed by the prosecution. This also raises a doubt with regard to the version of the prosecution that PW14 and PW15 witnessed the occurrence. From the above evidence, we are of the view that the evidence of PW1, PW2, PW14, and PW15 cannot be relied upon to hold that the appellants are guilty of the offence of causing the death of the deceased.

21. Thus to sum up, PW1 and PW2 have not identified the appellants in the Test Identification Parade; Test Identification Parade proceedings have not been produced by the prosecution; PW1 admits seeing the appellants at the police station; though PW14 and PW15 were strangers to the appellants, no Test Identification Parade was conducted for identification of the accused; the conduct of PW14 and PW15 of not lodging a complaint though they claim to be



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an eyewitness; PW14 has not explained as to how he came to know the names of the appellants; and the prosecution has neither marked the FIR nor the wound certificate of PW15 to prove the injury caused to him. All the above would go to show that the evidence of PW1, PW2, PW14 and PW15, cannot be accepted. The prosecution has therefore failed to prove its case beyond reasonable doubt, and therefore, we are of the view that the judgment of conviction and sentence passed in S.C.No.123 of 2015, dated 30.07.2019 on the file of the learned Principal District and Sessions Judge, Tiruvarur, is liable to be set aside.



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22. In the result, both the Criminal Appeals are allowed. The conviction and sentence passed in S.C.No.123 of 2015 on the file of the learned Principal District and Sessions Judge, Tiruvarur, *vide* judgment dated 30.07.2019, are set aside. The appellants/accused 2 and 3, are acquitted of all charges and they are directed to be released forthwith unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petitions are closed.

(M.S.R.,J.) (S.M.,J.)
30.01.2024

Index : yes

Neutral citation : yes

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To

1. The Principal District and Sessions Judge,
Thiruvarur, Thiruvarur District.

2. The Inspector of Police,
Koradacheri Police Station, Thiruvarur District.

3. The Superintendent,
Central Prison, Trichy.



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4. The Public Prosecutor,
High Court, Madras

M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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Pre-delivery common judgment in
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