



WEB COPY



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2024

PRONOUNCED ON : 20.02.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

**Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018,
402 of 2019 and 46 of 2021**

and Crl.M.P.Nos.1549 of 2018, 999 of 2021 and 5149 of 2023

Crl.A.No.807 of 2017

Babblu @ Muhammed Hussain

... Appellant/A7

v.

State by:

The Inspector of Police,
B-1, Town Police Station,
Salem City.

(Cr.No.309 of 2014)

... Respondent/Complainant

Crl.A.No.69 of 2018

Lattu @ Shabeer Ahamad

... Appellant/A2

v.

State by:

The Inspector of Police,
Salem Town Police Station,



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

Salem District.
(Cr.No.309 of 2014)

... Respondent/Complainant

Crl.A.No.10 of 2018

1. Satha @ Mubarak
2. Mummy @ Yasin

... Appellants/A5 & A6

v.

State by:
The Inspector of Police,
Salem Town Police Station,
Salem District.
(Cr.No.309 of 2014)

... Respondent/Complainant

Crl.A.No.716 of 2018

Siva @ Sivabalan

... Appellant/A4

v.

State by:
The Inspector of Police,
Salem Town Police Station,
Salem District.
(Cr.No.309 of 2014)

... Respondent/Complainant

Crl.A.No.402 of 2019

Aman @ Ammanulla

... Appellant/A1

v.

State by:
The Inspector of Police,
Salem Town Police Station,



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

Salem District.
(Cr.No.309 of 2014)

... Respondent/Complainant



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

Crl.A.No.46 of 2021

Jeeya

... Appellant/A3

v.

State by:

The Inspector of Police,
Salem Town Police Station,
Salem.

(Cr.No.309 of 2014)

... Respondent/Complainant

Common Prayer: 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.273 of 2015 dated 08.12.2017, on the file of the learned III Additional Sessions Judge, Salem and set aside the conviction and sentence imposed in judgment dated 08.12.2017 and acquit the appellants.

For Appellant(s)

in Crl.A.No.807/2017 : Mr.R.Nalliyappan

in Crl.A.Nos.402/2019

& 69/2018 : Mr.S.Jayakumar

in Crl.A.No.716/2018 : Mr.D.Mario Johnson

in Crl.A.No.46/2021 : Mr.C.Prabakaran

in Crl.A.No.10/2018 : Mr.K.S.Karthik Raja

For Respondent

in all Crl.As.

: Mr.A.Gokulakrishnan

Additional Public Prosecutor



WEB COPY



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

COMMON JUDGMENT

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

These Criminal Appeals have been filed by Accused Nos.1 to 7, challenging the conviction and sentence imposed upon them vide judgment dated 08.12.2017 in S.C.No.273 of 2015 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) It is the case of the prosecution that A2 had married the sister of the deceased-Azaruddin, against the wishes of the deceased and other family members; that one Kutti @ Mehaboob, the brother of A2 had taken active part in getting the marriage arranged, which enraged the deceased; that the deceased therefore committed the murder of the said Kutti @ Mehaboob, as result of which, A2 and other accused had developed enmity against the deceased and they conspired to do away with the deceased; that



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

in pursuance of the said conspiracy on 30.07.2014 at about 3.30 p.m., when the deceased received a call from someone and went out of the house, at about 5.45 p.m., all the accused (7 persons) attacked the deceased; and that A1 to A3, who were armed with knives indiscriminately attacked the deceased all over the body and caused the death of the deceased.

(ii) PW1, wife of the deceased, on coming to know of the occurrence, went to the scene of the occurrence. She came to know through one Anwar Hussain [PW3] that A1, A2, and a person whose name was not known and could be identified, attacked the deceased and fled away. PW1 therefore lodged a complaint [Ex.P1] to the Sub Inspector of Police [PW17], who in turn registered the FIR [Ex.P21] in Cr.No.309 of 2014 for the alleged offences under Sections 120(B) and 302 of the IPC on 30.07.2014 at about 8.00 p.m. The express FIR reached the learned Magistrate at 8.45 p.m., on the same day.

(iii) After registration of the FIR, PW18, the Inspector of Police, took up the investigation, went to the scene of the occurrence, prepared the



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

Observation Mahazar (Ex.P22) and Rough Sketch (Ex.P23) in the presence of the witnesses. Thereafter, he seized the bloodstained earth [M.O.11] and the earth without bloodstain [M.O.12] under the Seizure Mahazar [Ex.P24]. He examined PW1, wife of the deceased, and, in the presence of the panchayatars, conducted an inquest on 31.07.2014 between 8.00 a.m., and 10.45 a.m., and prepared the inquest report [Ex.P25].

(iv) Thereafter, on getting information that A1 and A2 surrendered before the learned Judicial Magistrate-I, Salem, and were confined in Salem Central Prison, PW18 filed a petition seeking police custody and, on permission, took A1 and A2 into police custody on 01.08.2014 and examined them in the presence of PW11-Village Administrative Officer and his assistant, one Saravanan. On admissible portion of the confession given by A1, which was marked as Ex.P11, PW18 seized the weapon (M.O.1) viz., the Billhook Machete (வீச்சுறுவாள்), and the dress materials worn by A1 at the time of occurrence, i.e., bloodstained pants [M.O.3] and shirt [M.O.4], under the Seizure Mahazar [Ex.P13] in the presence of the same witnesses.



WEB COPY

(v) Thereafter, on the confession given by A2, the admissible portion of which is marked as Ex.P12, PW18 seized the knife [M.O.2], and the dress materials worn by A2 at the time of occurrence, i.e., bloodstained shirt [M.O.5] and pants [M.O.6], under the Seizure Mahazar [Ex.P14], in the presence of the same witnesses.

(vi) Thereafter, PW18 arrested A3 on 02.08.2014 at about 11.30 a.m., and examined him and on the admissible portion of the confession given by A3, which was marked as Ex.P15, PW18 seized the knife [M.O.7] and a shirt [M.O.8] under the Seizure Mahazar [Ex.P16] in the presence of the same witnesses.

(vii) Thereafter, PW18 arrested A6 and A7 on 04.08.2014 at about 13.00 hours, examined them in the presence of the same witnesses and recorded their statements. PW18 arrested A5 and on his confession, seized a mobile phone and SIM card [M.O.9] under the seizure mahazar [Ex.P17]. He thereafter altered the offences to 147, 148, 120(B), and 302 of the IPC



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

on 04.08.2014 and the alteration report was marked as Ex.P26.

WEB COPY

(viii) PW18 thereafter, filed a petition to take A4 into police custody who was already in judicial custody in connection with Cr.No.206 of 2013, and on his confession, the admissible portion of which is marked as Ex.P18, he seized the knife [M.O.10] under seizure Mahazar [Ex.P19]. After examination of all witnesses, he filed a final report against all the accused for the offences under Sections 120(B), 147, 148, 302, and 302 r/w 149 of the IPC on 25.02.2015, before the learned Judicial Magistrate No.1, Salem.

(ix) 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.273 of 2015 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'.

(x) To prove the case, the prosecution examined 18 witnesses as P.W.1 to P.W.18, marked 36 exhibits as Exs.P1 to P36, and marked 16



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

Material Objects as M.O.1 to M.O.16. 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.

(xi) 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 A7 guilty of offences charged against them. The appellants herein/A1 to A7 are convicted and sentenced as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1 to A3	147 IPC	Each of them to undergo RI for two years.
	148 IPC	Each of them to undergo RI for three years.
	302 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.1000/-, in default to undergo RI for six months.
A4 to A7	147 IPC	Each of them to undergo RI for two years.
	302 r/w 149 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.1000/-, in default to undergo RI for six months.
Sentences were ordered to run concurrently.		

Hence, A1 to A7 have preferred the above appeals challenging the said conviction and sentence.



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

4. Heard, Mr.R.Nalliyappan, learned counsel appearing for A7/appellant in Crl.A.No.807 of 2017; Mr.S.Jayakumar, learned counsel appearing for A1 & A2/appellants in Crl.A.Nos.402 of 2019 and 69 of 2018, respectively; Mr.D.Mario Johnson, learned counsel appearing for A4/appellant in Crl.A.No.716 of 2018; Mr.C.Prabakaran, learned counsel appearing for A3/appellant in Crl.A.No.46 of 2021; Mr.Karthik Raju, learned counsel appearing for A5 and A6/appellants in Crl.A.No.10 of 2018; and Mr. A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.

5. The learned counsel for the appellants submitted that the independent eyewitnesses turned hostile; that PW5 the paternal uncle of the deceased alone supported the prosecution case and his evidence cannot be believed to sustain the conviction; that neither PW1 nor PW2 had spoken about the presence of PW5 in the occurrence; that it is the version of PW1 that she came to know of the occurrence only through PW3, who ultimately turned hostile; that therefore, there is no evidence to connect the appellants



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

with the crime and hence, prayed for acquittal.

WEB COPY

6 (i) The learned Additional Public Prosecutor submitted that though PW5 is the relative of the deceased, his evidence cannot be disregarded as the defence has not discredited his evidence. Since the accused in this case had several other cases and were history-sheeters; the independent witnesses were won-over; and therefore, the conviction, which is based on the evidence of PW5, who is the sole eyewitness, cannot be faulted.

(ii) The learned Additional Public Prosecutor further submitted that the accused had a strong motive against the deceased, which has not been disputed by the defence, and therefore, prayed for dismissal of the appeals.

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

8. PW1 is the wife of the deceased, and PW2 is the mother of the deceased. Both the witnesses would state that they went to the scene of the



occurrence on coming to know that the deceased was done to death. They have further stated that they came to know about the occurrence through PW3.

9. PW3 and PW4, who were examined as eyewitnesses, turned hostile; PW5 is the uncle of the deceased and an eyewitness who supported the prosecution case; PW6 is the doctor who made entries in the Accident Register (Ex.P2); PW7 is the forensic science expert, who marked Ex.P5-report; PW8 is the Assistant Director of Forensic Science Department, who deposed that no poison or alcohol are detected in the internal organs of the deceased; PW9 is the postmortem doctor who issued postmortem certificate [Ex.P8] and final opinion [Ex.P9]; PW10 is the mahazar witness, who turned hostile; PW11 the Village Administrative officer, is the witness to the confession and recovery from the accused; PW12 is the Constable, who handed over the FIR to the Magistrate at 8.45 p.m., on 30.07.2014; PW13 is the corpse constable; PW14 is the constable who speaks about the recording of confession of Shiva (A4) in the presence of Village Administrative Officer [PW11] and his assistant; PW15 is the record clerk



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

in the office of the Judicial Magistrate -I, Salem; PW16 is the Sub Inspector of Police, who assisted the investigation officer; PW17 is the Inspector, who registered the FIR; and PW18 is the investigation officer, who conducted the investigation, examined the witnesses and filed the final report.

10. It is seen from the postmortem certificate [Ex.P8] and the evidence of the PW9-postmortem doctor that the deceased sustained nearly 15 cut injuries, which are grievous in nature. The doctor had opined in Ex.P9-Final opinion, that the deceased would appear to have died of shock and haemorrhage due to multiple cut and stab injuries. Further, PW9, the doctor, had stated that injuries could have been caused by the attack with the weapons shown to her.

11. From the above evidence, it is evident that the prosecution has established that the deceased died due to homicidal violence.

12. PW1 and PW2 are the hearsay witnesses. PW1 is the complainant,



and in her earliest version, she stated that she came to know through PW3, who according to the prosecution was an eyewitness, that A1, A2, and one unknown person who could be identified were involved in the attack on the deceased. In the complaint, the names of all seven accused are mentioned based on PW1's perception that the other accused were also involved because her husband, viz., the deceased, had told her that these persons would cause his death. PW1 has not mentioned the presence of PW5 and about his witnessing the occurrence.

13. PW2 is the mother of the deceased, who went along with PW1 to the scene of the occurrence on coming to know of the incident. She would also state that she came to know through PW3 about the attack on the deceased by A1, A2, and one more unknown person.

14. PW3, turned hostile. PW4 also turned hostile. Therefore, the only evidence now relied upon by the prosecution is the evidence of PW5, the uncle of the deceased. As stated earlier, both PW1 and PW2 have not spoken about the presence of PW5 after the occurrence. If PW5 was present



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

in the place of occurrence, they would have got information only from PW5, who is related to them, and not from PW3. That apart, in the inquest, PW5 was not examined. The Investigating officer [PW18] in the cross-examination would state as follows:

“பிரேத விசாரணை என்பது பஞ்சாயத்தார் மற்றும் சாட்சிகள் முன்னிலையில் அவர்களை விசாரித்து தயாரிக்கப்படும் ஆவணம் என்றால் சரிதான். பிரேத விசாரணை அறிக்கையில் சலாவுதின் சாட்சியாக இல்லை என்றால் சரிதான்.”

15. That apart, PW5 had admitted that the police examined him only the next day, which again falsifies his version that he witnessed the occurrence. It is needless to say if PW5 had really witnessed the occurrence the police would have examined him immediately after the occurrence. Though PW5 states that he took the deceased to the hospital, the Accident Register [Ex.P2] does not reveal that he was brought by PW5. The column in the Accident Register-Ex.P2, which relates to the person who brought the deceased to the hospital, is blank. Further, it is stated that he was attacked by eight unknown persons, whereas it is the case of the prosecution that the accused were known to the deceased. Therefore, the presence of PW5 at the scene of the occurrence is highly improbable and the reason given by PW5



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

for his presence at the scene is not acceptable. In our view his examination projecting him as an eyewitness is an afterthought. Therefore, it is highly unsafe to rely on his evidence alone to convict the accused/appellants, when the other eyewitnesses have turned hostile.

16. Though it is argued on behalf of the State that other witnesses were won-over, there is nothing to indicate that fact, and we cannot make such an inference. In the circumstances, therefore, the arrest and recovery of material objections by themselves cannot be a circumstance against the accused. Further, the blood group in the knives could not be ascertained as the result was inconclusive. Hence, we are of the considered view that the prosecution has not proved its case beyond reasonable doubt, and the accused are therefore, entitled to acquittal.

17. Accordingly, all six Criminal Appeals are allowed, and the appellants/A1 to A7 are acquitted of all the charges. The conviction and sentence imposed upon the appellants in S.C. No.273 of 2015 dated 08.12.2017, on the file of the learned III Additional Sessions Judge, Salem,



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

are set aside. The fine amounts, 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.

Index : yes/no
Neutral citation : yes/no
ars

(M.S.R.,J.) (S.M.,J.)
20.02.2024

Issue order copy by 21.02.2024



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

WEB COPY

To

1. The III Additional Sessions Judge,
Salem.

2. The Inspector of Police,
Salem Town Police Station,
Salem District.

3. The Inspector of Police,
B-1, Town Police Station,
Salem City.

4. The Superintendent,
Central Prison, Coimbatore / Salem.

5. The Public Prosecutor,
High Court, Madras



WEB COPY



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021

M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

**Pre-delivery common Judgment in
Crl.A.Nos.807 of 2017,
69, 10 and 716 of 2018,
402 of 2019 and 46 of 2021**

20.02.2024



WEB COPY



Crl.A.Nos.807 of 2017, 69, 10 and 716 of 2018, 402 of 2019 and 46 of 2021