



Crl.A.No.708 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.06.2024
Pronounced on	02.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.708 of 2019
and
Crl.M.P.No.14399 of 2022

Sridhar

...Appellant

Vs.

State by Inspector of Police,
Chrompet Police Station,
Chengalpet District.

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of the learned Additional District and Sessions Judge, Chengalpattu made in S.C.N.No.398 of 2006 dated 10.09.2019 and acquit the appellant/accused-1 from the charges.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor



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JUDGMENT

M.S.RAMESH,J.

Heard Mr.R.C.Paul Kanagaraj, learned counsel for the appellant and Mr.E.Raj Thilak, learned Additional Public Prosecutor, for the respondent.

2. The brief facts of the case are that the appellant, along with 5 others, had a grudge against the deceased Ethiraj and his brother, since they had been informing the Police about the mamool being collected by the accused persons from the owners of the leather business at Chrompet. With this motive, on 10.10.2002 at about 07.30 P.M., all the 6 accused had trespassed into the cable television office of witness Ramesh Babu and with an intention to murder Ethiraj and Ramesh Babu, had used deadly weapons and inflicted several cut injuries on them. The injured witness Ramesh Babu had given a complaint to the Police, which was initially registered in Crime No.434/2002 for the offences under Sections 148, 324 and 307 IPC. Thereafter, on 11.10.2002, the said Ethiraj had succumbed to injuries at Government General Hospital, Chennai and the offences in Crime No.434/2002 was altered to Sections 148, 324 and 302 IPC. On completion



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of the investigation, a final report came to be passed against all the 6 accused of having committed the offences under Sections 148, 450, 307 and 302 IPC.

3. After perusal of the documentary evidences before it, the trial Court had framed charges against A1 for the offences under Sections 148, 450, 307 and 302 IPC. When these charges were read over and explained to the accused, he pleaded that he was “not guilty” of the charges. Pending the case before the trial Court, the accused 2 to 6 had expired and hence, the criminal charges against them were declared to have abated.

4. Before the trial Court, the prosecution had examined 15 witnesses P.W.1 to P.W.15 and marked 35 documents Exs.P.1 to P.35, apart from the material objections M.O.1 to M.O.10. No witness or documents were marked on the side of the accused.

5. The evidences let in by the prosecution before the trial Court are as follows:-

5.1. P.W.1, namely Ramesh Babu, is the brother of the deceased, who



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is also an injured eye witness. According to P.W.1, on 10.10.2002, at about 07.30 P.M., when he, along with his brother Ethiraj, were at the first floor of the cable television office at No.15, G.H.Road, Chrompet, A1, along with 5 others, had come inside the office and by claiming that P.W.1 has been informing the Police about the accused receiving mamool and attempted to indulge in roadblock protest against the accused, A1 had inflicted cut injuries above his right eyes. The other accused had also inflicted cut injuries with knives. At that point of time, when his brother Ethiraj went to stop them, A1, along with the other accused, had caused several cut injuries on his head, neck and several other places. At that point of time, his employees, Suresh (P.W.3) and Jagan (P.W.4) and his another brother, namely Janakiraman, (P.W.2) had come inside, when all the accused ran away from the scene. Thereafter, Ethiraj was taken to the Chrompet Hospital and in another auto rickshaw, P.W.1 and his brother went to the same hospital. The doctors at Chrompet Hospital had advised Ethiraj to be taken to the Government General Hospital at Chennai and accordingly, he was shifted there. P.W.1, along with P.W.2, had then given a complaint (Ex.P.1) to the Police at 08.45 P.M. of 10.10.2002 by naming the 1st accused, since he knew



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him through the cable television business. P.W.2, however, succumbed to injuries at about 12.40 A.M. on 11.10.2002. He also stated that on 30.10.2002, a test identification parade was conducted at the Central Prison, Puzhal, Chennai, where he had identified 3 of the accused. The knives used by the accused were marked as M.O.1 and M.O.2 through him.

5.2. P.W.2 is also the brother of the deceased, who had seen the accused going to the cable television office on the upper floor, where the deceased and P.W.1 were present and when he heard a loud commotion, he rushed upstairs, when he saw A1 rushing out with a blood stained knife in his hand. He then took P.W.1 to the Government Hospital at Chrompet, where Dr.N.D.Kumari had issued the accident register (Ex.P.28).

5.3. Suresh (P.W.3) and Jagan (P.W.4) are the employees of the cable television office run by the deceased and his brothers, who were the eye witnesses to the occurrence. According to both of them, they had seen all the accused going to the cable television office in the first floor, whom they thought were customers of the business. When they heard a loud commotion from the office, where the deceased and P.W.1 were present, they rushed to the first floor, where they saw A1, inflicting injuries with a knife on both the



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deceased and P.W.1.

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5.4. Prakashkumar (P.W.5) and Gopal (P.W.6) are the witnesses to the arrest and confession of A1 and A4. The admitted portion of the confession statement of A4 was marked as Ex.P.2 and in the seizure mahazar as Ex.P.3. The admitted portion of the confession statement of A1 was marked as Ex.P.4 and in the seizure mahazar as Exs.P.5 and P.6.

5.5. P.W.7 is the Judicial Magistrate, who had conducted the test identification parade at the Central Prison, Puzhal. The order of the Additional District and Sessions Judge cum Chief Judicial Magistrate, Chengalpattu, permitting for test identification parade, was marked as Ex.P.7. The requisition by the Investigating Officer for conducting test identification parade was marked as Ex.P.8 and the proceedings of the Judicial Magistrate on the test identification parade was marked as Ex.P.9.

5.6. P.W.8 is the Inspector of Police, who had registered the FIR (Ex.P.10) in Crime No.434/2002.

5.7. P.W.9 is the Inspector of Police, who had conducted the initial investigation. According to him, he had gone to the scene of occurrence on 10.10.2002 itself and prepared a rough sketch (Ex.P.11) and an observation



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mahazar (Ex.P.12). In the presence of the witnesses, he had then seized mosaic floor pieces with blood stains (M.O.3 series), a knife cover (M.O.4) and 5 pairs of chappals (M.O.5 series) under seizure mahazar (Ex.P.13). When Ethiraj had died at Government General Hospital, Chennai, he had filed an alteration report (Ex.P.14), by including the offence under Section 302 IPC. He had then conducted an inquest over the body of the deceased on 11.10.2002 and prepared an inquest report (Ex.P.15). Through a seizure mahazar (Ex.P.16), he had seized two blood stained light green colour pant and a red underwear (M.O.6 series). Thereafter, on receiving a secret information on 17.10.2002, he had arrested A2 at 11 A.M., who had given his voluntary confession. Based on the confession, he had recovered the knife used by him under Ex.P.17. Under seizure mahazar (Ex.P.18), he had seized the knife (M.O.1). He had then prepared a rough sketch (Ex.P.19) of the knife used by A2. He then recorded his confession statement, the admitted portion of which are Exs.P.20 and P.21. He also identified the knife (M.O.2) seized by him. The rough sketch of M.O.2 drawn by him was marked as Ex.P.22. On 22.10.2002, he had arrested A3 and obtained his confession statement, the admitted portion of which is marked as Ex.P.23.



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Based on the confession, he had seized a knife under Ex.P.24, the sketch of which is marked as Ex.P.25. He was thereafter transferred to Tambaram Police Station on 26.11.2002.

5.8. P.W.10 is the doctor at Government General Hospital, Chennai, to whom the deceased was initially brought on 10.10.2002 at 09.25 P.M. and he had recorded the accident register (P.26). According to him, the deceased was claimed to have been attacked by 4 known persons with knives.

5.9. P.W.11 is the doctor, who had issued the wound certificate (Ex.P.27) of the deceased, as well as P.W.1's accident register (Ex.P.28).

5.10. The doctor, who conducted the postmortem on the deceased, was examined as P.W.12 and the postmortem certificate issued by him was marked as Ex.P.29. As per the said certificate, the following injuries were found in the body of the deceased.

“காயங்கள்: 1) சிராய்ப்பு காயங்கள் 6 x 3 செ.மீ அளவில் மார்பிலும், 5 x 2 செ.மீ அளவில் வலது பக்க இருப்பிலும், 3 x 2 செ.மீ அளவில் இடது தோள்பட்டையிலும் காணப்பட்டன.

வெட்டுக்காயங்கள்:- ஒரு சாய்வான வெட்டுக்காயம் 6 x 0.5 செ.மீ x தோள் ஆத்திற்கு வலது முழங்கையில் முட்டியின் கீழ்



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காணப்பட்டது.

ஒரு சின்ன வெட்டுக்காயம் 10 x 1 செ.மீ அளவில் தசை ஆத்திற்கு வலதுகையில் காணப்பட்டது, ஒரு வெட்டுக்காயம் 7 x 1 செ.மீ x எலும்பு ஆத்திற்கு வலது தோள்பட்டையின் மேல்பாகத்தில் காணப்பட்டது, ஒரு வெட்டுக்காயம் x 1 செ.மீ x எலும்பு ஆத்திற்கு வலது தோள்பட்டையின் முதுகு புறத்தில் காணப்பட்டது.

பல நீளமான சிராய்ப்பு காயங்கள் 10 செ.மீ அளவில் வலது தோள்பட்டையில் பின் பக்கத்தில் காணப்பட்டது. ஒரு வெட்டுக்காயம் 12 x 1 செ.மீ தசை ஆத்திற்கு இடது முழங்கையில் இடது மணிக்கட்டில் காணப்பட்டது.

தலையில் காணப்பட்ட காயங்கள்:- ஒரு சாய்வானதையல் இடப்பட்ட வெட்டுக்காயம். 6 செ.மீ இடது கன்னுக்கு மேல் நெற்றியில் காணப்பட்டது. ஒரு செங்குத்தான தையல் இடப்பட்ட வெட்டுக்காயம் 11 செ.மீ நீளத்திற்கு இடது பக்க இடது கண் மேல் 4 செ.மீ அளவில் காணப்பட்டது. ஒரு சாய்வான வெட்டுக்காயம் தையல் இடப்பட்ட 4 செ.மீ நீளத்திற்கு தலையில் வலது பக்கத்தில் வலது காதுக்கு மேல் 3 செ.மீ அளவில் காணப்பட்டன. ஒரு வளைந்த தையல் இடப்பட்ட வெட்டுக்காயம் 13 செ.மீ நீளத்திற்கு தலையில் பின்பக்கத்தில்



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காணப்பட்டது.

ஒரு சிறிய வெட்டுக்காயம் தலையின் வலது பக்கத்தில் 18 x 16 செ.மீ அளவுக்கு காணப்பட்டது. பல வெட்டுக்காயங்கள் குறக்கும் நெடுக்குமாக தலையின் பின் பக்கத்தில் காணப்பட்டன. அவர் தலையை கூறு செய்து பார்த்ததில் கபால ஓட்டுக்கு மேல் உள்ள திசுக்கள் எல்லாம் சிகப்பு நிறத்தில் தண்ணீர் கோர்த்து கபாலத்தின் மேல் உள்ள எலும்புகள் எல்லாம் வெட்டப்பட்டு நொறுங்கி காணப்பட்டது.”

5.11. P.W.13 is the Judicial Magistrate, who had recorded the statement of P.W.1, P.W.4 and two others on 10.01.2003, the statements of which were marked as Ex.P.30.

5.12. P.W.14 is the Village Administrative Officer, who was a witness to the confession statement of A2. Based on the confession, the knife used by him was recovered under a seizure mahazar (Ex.P.18). The sketch of the knife was marked as Ex.P.19.

5.13. The subsequent investigation was conducted by P.W.15 on 17.12.2002. He had recorded the confession statement of A5, the admitted portion of which was marked as Ex.P.31. He had seized a Yamaha two wheeler (M.O.7), a Hero Honda two wheeler (M.O.8) under Ex.P.32. The



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chemical analysis report (Ex.P.33) and the serology report (Ex.P.34) were also marked by him. The requisition letter sent by him to the expert was marked as Ex.P.35.

6. When A1 was questioned about the incriminating circumstances from the evidences put forth by the prosecution under Section 313(1)(b) Cr.P.C., he had denied the circumstances and claimed that a false case has been foisted against him.

7. The Trial Court, on appreciation of the oral evidences before it in general and the evidences of P.W.1, P.W.3 and P.W.4 in particular, who are the eyewitnesses, as well as the documentary evidences, had come to the conclusion that A1 was guilty of having committed the offences under Sections 148, 450 and 302 IPC. Insofar as the charge for the offence under Section 307 IPC is concerned, A1 was found guilty of having committed the offence under Section 324 IPC and accordingly, had acquitted him from the charge of the offence under Section 307 IPC. Accordingly, A1 was sentenced to undergo the following imprisonment:-



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- (a) For the offence under Section 148 IPC, he was convicted and sentenced to undergo 3 years rigorous imprisonment and a fine of Rs.1,000/-, in default of which to undergo 6 months simple imprisonment;
- (b) For the offence under Section 450 IPC, he was convicted and sentenced to undergo 10 years rigorous imprisonment and a fine of Rs.3,000/-, in default of which to undergo 2 years simple imprisonment;
- (c) For the offence under Section 324 IPC, he was convicted and sentenced to undergo 3 years rigorous imprisonment and a fine of Rs.1,000/-, in default of which to undergo 6 months simple imprisonment;
- (d) For the offence under Section 302 IPC, he was convicted and sentenced to undergo life imprisonment and a fine of Rs.5,000/-, in default of which to undergo 2 years rigorous imprisonment.

All the aforesaid sentences were ordered to run concurrently. The period of remand already undergone by A1 was ordered to be set off under Section



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428 Cr.P.C.

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8. The learned counsel appearing on behalf of A1 submitted that, though the occurrence took place on 10.10.2002 at 07.30 P.M. and the FIR was registered at 08.45 P.M. on the same day, it was belatedly sent to the Judicial Magistrate's Court on 11.10.2002 at 10.30 A.M. only and hence, this delay in dispatching the FIR to the Court would be fatal to the prosecution. He further submitted that the overt act attributed to A1 with regard to the infliction of injuries, does not match with the medical evidences and most of the injuries found on the body of the deceased were not inflicted by A1, but rather by all the other accused, whose cases stood abetted and therefore, the trial Court ought not to have convicted A1. He also pointed out to certain small discrepancies in the statements made by P.W.1, P.W.3 and P.W.4 and submitted that in view of these contradictions, it is unsafe to place reliance on their respective testimonies.

9. On the contrary, the learned Additional Public Prosecutor submitted that this is a case where the occurrence was witnessed by P.W.1, P.W.3 and



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P.W.4, whose statements are cogent and the defence could not discredit any of the statements of these eyewitnesses. He also submitted that P.W.1 is an injured eye witness, whose testimony carries lot of weightage and also fixes the presence of P.W.1 and the time of occurrence. In the absence of any strong evidence to discredit his oral statements, the minor contradictions in the investigation or in the statements made by the witnesses are not material contradictions.

10. In this case, the prosecution have projected P.W.1, P.W.3 and P.W.4 as eye witnesses to the incident that occurred on 10.10.2002 at 07.30 P.M. Among these three witnesses, P.W.1 was an injured eye witness. The coherent statements of all these three witnesses is that on 10.10.2002 at 07.30 P.M., A1, along with five others, had entered the cable television office belonging to the deceased and his brothers and by claiming that the deceased had been an informer to the Police with regard to mamool being collected by A1, had first inflicted two injuries on P.W.1 with a long knife (M.O.1). Thereafter, when the deceased, who is the brother of P.W.1, intervened, A1 inflicted a knife injury on the head of the deceased and



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thereafter, the other accused also had inflicted cut injuries on him on several places.

11. P.W.1's statement, witnessing the occurrence in this regards, are as follows:

“ஸ்ரீதர் கையில் கத்திவைத்திருந்தான். வந்தவுடனே என்னை போலிஸ்மாட்டி உடரியாய் மாமூல் என்று சொல்தாயாமே சாலை மறியல் செய்து என்னை பிடித்து உள்ள வக்கிற பாக்கிறாயா என்று என்னை கேட்டார் நான் அதுமாதிரி செய்கிற ஆள் இல்லை என்று சொல்ல உடனே கத்தி எடுத்து என்னை வலது கை தோள் பட்டையில் வெட்டினார். என்னுடைய வலது கண் மேல்பகுதியில் வெட்டினான்.

.....

என்னுடைய தம்பி இதைப்பார்த்து கத்திக்கொண்ட ஓடிவந்தான். உடனே ஸ்ரீதர் தம்பியை தலையிலே கழுத்திலேயே என் தம்பியை வெட்டினான்.”

12. Likewise P.W.3 narrating the incident which he had witnessed in the following manner:



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“திடீரென்று சத்தம்கேட்ட உடனே நானும், ஜெகனும் மாடியில் போய் பார்த்தோம். அப்போது ஸ்ரீதர் என்பவர் கையில் கத்தியை கொண்டு ரமேஷ் வெட்ட ஓங்கினார். அவர் தலையை நகர்த்திவிடவே ஷோல்டரில் வெட்டினார் எந்த ஷோல்டர் என்று தற்போது ஞாபகமில்லை. ரமேஷுக்கு கை. மற்றும் காலில் அடிபட்டது. பிறகு ரமேஷன் தம்பி எத்திராஜ் அதை ஓடினான். ஸ்ரீதர் முதலில் அவரோட தம்பியை மாமூல் ஸ்டேசனில் சொல்லபோறியா என்று ஸ்ரீதர் எத்திராஜை கழுத்திலும் வெட்டினார்.”

13. So also, P.W.3 recollects his witness to the occurrence in the following manner:

“நான் கேபிள் டி.வி ஆப்ரேட்டர் வாசலில் நின்றிருந்தபோது சத்தம்கேட்டபோது நான் போய் பார்த்தேன். ஸ்ரீதர் என்பவர் கத்தியால் ரமேஷ் தலையிலும், சோல்டரிலும் வெட்டினார். ஆஜர் எதிரி தான் ஸ்ரீதர்.

.....

ஸ்ரீதர் மறுபடியும் எத்திராஜை தலையில் 2 வெட்டு வெட்டியவுடன் பின்பு 4 பேரும் சேர்ந்து எத்திராஜை வெட்டினார்கள்.”



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14. Apart from these three witnesses, P.W.2 was also present in the ground portion of the building along with P.W.3 and P.W.4. According to him when they heard loud commotion in the upper portion, they rushed upstairs and he then went to the first floor of his office. At that time, he had seen A1 coming out with a blood stained long knife, followed by the other accused. When he had went inside he see the deceased lying in a pool of blood. His narration about this is as follows:

“சம்பவத்தன்று நானும் என்னுடைய இன்னொரு சகோதரனும், அங்கு கேபிள் நடத்தும் ஆபிசிக்கு கீழே பேசிக்கொண்டிருந்தோம். ரமேஷம், எத்திராஜ்-ம் அங்கு இருந்தார்கள். கேபிள் டி.வியில் சுரேஷம், ஜெகனும் மேலே பேசிக்கொண்டிருந்தார்கள். திடீரென்று கூச்சல் அதிகமாக கேட்டது. அந்த சத்தத்தை கேட்டு நாங்கள் ஓடிப்போனபோது முதலில் ஸ்ரீதர் என்பவர் இரத்தத்தோட ஒரு பெரிய கத்தியை எடுத்துஓடிவந்தார். அவர் பின் தொடர்ந்து 4, 5 பேர் மற்றவர்களும் கத்தி வைத்துக்கொண்டு ஓடிவந்தார்கள். அவர் அன்றையதினம் எங்களை தாண்டி ஓடியவர்கள் ஆஜரில் உள்ளார். அதில் முதலாவது நபர் ஸ்ரீதர்.”



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15. After the accused had left the scene of occurrence P.W.1 had taken his brother who was alive at that point of time to Chromepet General Hospital. Therein he was referred to the Government General Hospital, Chennai, where he died at 12.30 A.M. on 11.10.2002.

16. On an overall appreciation of the evidences of P.W.1, P.W.3 and P.W.4, it is clearly seen that when A1, along with others, had attacked the deceased and P.W.1, all the three of them were present in the scene of occurrence. When these three witnesses had narrated the incident in a cogent manner, without any iota of contradiction, with regard to the manner in which A1 had entered the room where the deceased and P.W.1 were present and after accusing him of being an informer to the Police about the mamool being collected by A1 from the leather manufacturers, he had first assaulted P.W.1 on his right shoulder and on the top of his right eye with M.O.1. Likewise, when the deceased intervened, he was also attacked by A1 on the head and neck with the same weapon. Thereafter, all the other accused joined him and inflicted cut and stab injuries indiscriminately on the



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deceased.

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17. In a case where oral testimony is rendered by an injured eye witness, the same has a greater evidential value than that of the regular eye witnesses. In the case of ***Jarnail Singh Vs. State of Punjab*** reported in ***(2009) 9 SCC 719***, the Hon'ble Supreme Court had placed reliance on ***Shivalingappa Kallayanappa Vs. State of Karnataka*** reported in ***(1994) SCC (Cri.) 1694*** and held that the deposition of the injured witness, should be relied upon, unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established, in case it is proved that he suffered the injury during the said incident.

18. Likewise, in the case of ***State of Uttar Pradesh Vs Kishan Chand*** reported in ***(2004) 7 SCC 629***, a similar view was taken by holding that the witness, who sustained injury at the time and place of occurrence, lends support to his testimony that he was present during the occurrence and unless nothing can be elucidated to discard his testimony, it should be relied



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upon. Following the aforesaid decisions, in ***Abdul Sayeed Vs. State of Madhya Pradesh*** reported in **(2010) 10 SCC 259**, the Hon'ble Supreme Court had held that the testimony of an injured witness should be placed in a higher pedestal. The relevant portion of the order reads as follows:

“30.The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

19. In a very recent judgment of the Hon'ble Supreme Court in the case of ***Balu Sudam Khalde and another Vs. The State of Maharashtra*** reported in **2023 SCC OnLine SC 355**, the aforesaid principles were summed up in the following manner:



“26. When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies



which normally creep due to loss of memory with passage of time should be discarded.”

20. The learned counsel appearing on behalf of A1 attempted to discredit the statement of P.W.1, by pointing out certain very minor contradictions in his statement. According to us, these minor contradictions cannot be termed as material facts, so as to ignore the other vital narrations of the incident with regard to the attack caused by A1 on P.W.1, as well as on the deceased. Thus, by applying the ratio laid down in the aforesaid decisions, we have no hesitation to come to the conclusion that the accused could not discredit the evidence of the injured eye witness P.W.1.

21. Likewise, when the oral testimonies of P.W.3 and P.W.4 were analysed, we find that from the major portion of the cogent and coherent manner in which they had narrated the assault caused by A1 on P.W.1 and the deceased, it establishes that both of them were present at the scene of occurrence. We did find certain very minor contradictions between the statements statements of P.W.3 and P.W.4. But, we cannot lose sight of the fact that both these witnesses were the employees of the deceased and P.W.1,



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who were standing in the ground portion of the building and had rushed to the scene of occurrence, after they had heard a loud commotion on the upper portion of the building. When they had entered the room, both of them had seen A1 attacking P.W.1 and thereafter, the deceased. Apparently, they would have been in a great shock when such an occurrence took place wherein, six persons armed with deadly weapons caused indiscriminate attack on their owners and may not have recollected every minute overt acts of the accused.

22. What would be material in such a situation is, when certain major contradictions like the weapons held by the accused or the overt act of who attacked whom, are not cogently spoken to. In this case, both P.W.3 and P.W.4 speak of the two injuries caused by A1 on P.W.1 on his right shoulder and above the right eye with a long knife, as well as the subsequent knife blow on the neck of the deceased. The statements of P.W.3 and P.W.4 are also corroborated by the statement of P.W.1, who was closely following them to the scene of occurrence, when he had witnessed A1 and others coming out of the room armed with blood stained deadly weapons. Thus, in our considered view, the minor contradictions, which are found in the oral



testimonies of P.W.3 and P.W.4, may not be fatal to the case of the prosecution, as held in several decisions of the Hon'ble Supreme Court, including the case in ***Rammi Alias Rameshwar Vs. State of M.P.*** reported in ***1999 8 SCC 649***, wherein, it was held as follows:-

“24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is



not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

“155.Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—

*(1)-(2) * * **

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;”

26. *A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be “contradicted” would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to “contradict” the witness the cross-examiner is enjoined to comply with*



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the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to “contradict” the witness.”

23. The learned counsel appearing for A1 submitted that the injuries found on the top of the deceased does not match with the statements made by P.W.1, P.W.3 and P.W.4 in their oral testimonies. When the oral testimony of P.W.12, who is the doctor who had conducted the postmortem on the body of the deceased was looked into, we find that apart from several other cut injuries, there was a cut injury measuring 6 cms on the forehead on the top of the left eye; a cut injury measuring 11 cms on top of the left eye; a cut injury measuring 4 cms on top of the right ear; another cut injury measuring 13 cms behind the head and a long cut injury measuring 18x16 cms on the right side of the head. This apart, P.W.12 also speaks about several cut injuries on the back head of the deceased. Though, there is no specific injury above the right eye, which is an overt act attributed by the eye witnesses on A1, we cannot lose sight of the fact that the injuries spoken to by the doctor found on the head of the deceased were several and the minute mis-



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description of the portion of the forehead where A1 had caused the cut injuries, may not be material enough to totally discard his evidence.

24. In the case of ***Rameshji Amarsing Thakor Vs. State of Gujarat*** reported in **2023 SCC OnLine SC 1321**, it was held that the doctor's evidence cannot eclipse ocular evidence and that the contradiction in the number of injuries was not fatal to the prosecution's case.

25. In view of the consistent statement of the eye witnesses with regard to the attack caused by A1 and others on the deceased and P.W.1 and also their narration of the post-occurrence events of witnessing the accused leaving the scene of occurrence and thereafter, the deceased being taken to the Chromepet General Hospital by P.W.1 and his brother, who was again referred to Government General Hospital, Chennai, where he died, we hold that the cogent and coherent narration of these three witnesses can be safely relied upon, which exercise the Trial Court had undertaken and found A1 guilty of having committed the murder of the deceased.



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26. The learned counsel for the appellant also submitted that though the FIR was registered on 10.10.2002 at 08.45 P.M., it was sent to the Judicial Magistrate's Court only at 10.30 A.M. on 11.10.2002 and hence, the delay would be fatal to the prosecution's case. When the FIR (Ex.P.10) was registered, the offence, among others, for which the accused was charged, was under Section 307 IPC, in which A1's name was found. Thereafter, during the commencement of the Judicial Magistrate Court's working hours, the FIR was received at 10.30 A.M. The intervening night hours alone has been projected as an inordinate and unexplained delay by the defence. Between 08.45 P.M. of 10.10.2002 and 10.30 A.M. of the next day, it cannot be said to be an inordinate delay, more particularly, due to the intervening night hours. Moreover, the prosecution has produced several other evidences, including the statement of three eye witnesses, for establishing their presence in the scene of occurrence. It would be highly reprehensible if the trial Court was to throw out the evidence of these ocular witnesses, merely because there was an alleged unexplained delay. Thus, the ground of delay of despatching the FIR to the Court, taken by the learned counsel for the appellant, does not deserve consideration.



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27. In a recent decision of the Hon'ble Supreme Court in the case of ***Chotkau Vs. State of Uttar Pradesh*** reported in (2023) 6 SCC 742, the effect of delay in transmitting the FIR to the Court was dealt with in detail. Therein, reliance was placed in the case of ***Bhajan Singh Alias Harbhajan Singh and Others Vs. State of Haryana*** reported in (2011) 7 SCC 421, wherein it was held that every delay in sending the report to the Magistrate would not necessarily lead to the inference that the FIR has not been lodged at the time stated and would not be fatal, unless prejudice to the accused is shown. With such a reference to ***Bhajan Singh's case (supra)***, it was held that while every delay in forwarding the FIR may not be fatal to the case of the prosecution, Courts may be duty bound to see the effect of delay on the investigation and even the creditworthiness of the investigation. In the same judgment, reliance was placed on the case of ***Balram Singh and Another Vs. State of Punjab*** reported (2003) 11 SCC 286 and took into account the observations therein that, while considering the complaint with regard to the delay in FIR reaching the jurisdictional Magistrate, the Court will have to bear in mind the creditworthiness of the ocular witness adduced by the



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prosecution and when such ocular witness is worthy of acceptance, the limitation of delay in sending the complaint to the jurisdictional Magistrate by itself would not weaken the prosecution's case.

28. The first accused is previously known to P.W.1, P.W.3 and P.W.4 during the course of the Cable TV business activities, as spoken to by them and is not claimed to be stranger to them. In the complaint (Ex.P.1) given by P.W.1 on 10.10.2002, he had specifically referred the name of A1 of having attacked P.W.1 and the deceased. During the course of investigation, a test identification parade was conducted, wherein P.W.1 had identified A1. This apart, even during the time of trial, all the three witnesses have identified A1 and affirmed that he had caused the attack. Thus, the identity of the accused stands well established in this case. P.W.2, who had also accompanied P.W.1, when giving the complaint, had named A1, since he knew him through the Cable Television business. On an overall appreciation of these oral statements, it cannot be safely concluded that the identity of A1 was well established before the Trial Court.



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29. Though, motive may not be a necessary ingredient to be established in a case of ocular evidence, the prosecution has put forth the theory that A1 had a grudge against the deceased, since it was alleged that he had been an informant to the Police on the activities of A1 receiving 'mamool' from the leather manufacturers. At the time of occurrence, A1 is said to have attacked the deceased, holding him responsible for passing on the information to the Police about his demand of mamool activities. This aspect was spoken about by all the eye witnesses and the defence was not able to discredit such statements. Hence, we have no hesitation to come to the conclusion that owing to the grudge A1 had against the deceased in this regard, he had caused his death.

30. The Trial Court had analysed the oral testimonies of all the eye witnesses, as well as the medical evidences and has come to the irresistible conclusion of establishing the guilt of A1. We do not find any infirmities in such findings of the Trial Court.

31. Accordingly there are no merits in the grounds raised in this



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appeal and hence, the Criminal Appeal stands dismissed. Consequently,
connected miscellaneous petition is closed.

[M.S.R.,J.] [S.M.,J.]
02.08.2024

Index:Yes
Neutral Citation:Yes
Speaking order
hvk



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To
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- 1.The Additional District and Sessions Judge,
Chengalpattu.
- 2.The Inspector of Police,
Chrompet Police Station,
Chengalpet District.
- 2.The Public Prosecutor,
High Court of Madras.



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

hvk

Pre-delivery judgment made in
Crl.A.No.708 of 2019

02.08.2024