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Crl.A.Nos.625, 763 & 811 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.625, 763 & 811 of 2018

1. B.Saravanan @ City Saravanan ...Appellant in Crl.A/625/2018/
Accused no.4
2. Siva Saravanan @ Koodaikal Saravanan ... Appellant in Crl.A/763/2018
Accused no.3
3. Dhillip @ Dhillipkumar ...Appellant in Crl.A/811/2018
Accused No.1

vs.

State represented by,
The Inspector of Police,
V-1, Villivakkam Police Station,
Villivakkam, Chennai – 600 049,
(Crime No 802/2010)

...Respondent/Complainant
in all Crl.A's

Common Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., 1973, to call for the records and to set aside the judgment and sentence dated 04.07.2018 imposed in S C No.200 of 2013 on the file of the learned XVII Additional sessions Judge, at Chennai.



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In Crl.A's:

For Appellants : Mr.R.Vivekananthan

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

COMMON JUDGMENT

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

These Criminal Appeals have been filed by the accused 1, 3 & 4, challenging the conviction and sentences imposed upon them vide judgment dated 04.07.2018 in S.C.No.200 of 2013 on the file of the learned XVII Additional Sessions Judge, Chennai

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the trial Court.

3 (i).It is the case of the prosecution that the deceased Murali Krishnan and one Gopi Krishnan, were sons of PW1 and PW2; that the deceased and the accused were friends and one month before the occurrence, A3 attacked the deceased, which was questioned by his brother Gopi Krishnan, as a result of which, there was a quarrel and enmity between



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the accused and the deceased; that in order to avoid the accused, the deceased and his brother Gopi Krishnan shifted their residence; that on 10.09.2010, the deceased along with PW3 (his brother-in-law) came to the house of PW1 and PW2 (his parents) to take a gas cylinder and after taking the cylinder, while they were returning to his house around 8.30 a.m. in a motor cycle, A1 and A4 wrongfully restrained the deceased and PW3 pushed them down; that the other accused attacked the deceased with deadly weapons, which resulted in the death of the deceased.

(ii) It is further the case of the prosecution that PW1 and PW2, who witnessed the occurrence, admitted the deceased in the hospital and thereafter, gave a complaint Ext.P1 to the police. The said complaint was received by PW14, the Investigation Officer at 11.00 a.m. who registered the FIR (Ext.P.20) in Crime No.802 of 2010 for the offences under Section 341, 147, 148, 149 & 302 IPC. PW14, went to the scene of occurrence and prepared Observation Mahazar, Ext.P21 and rough sketch, Ext.P.22 and examined other witnesses. Thereafter, he seized the bike (M.O.1) ridden by the deceased at the time of occurrence and the gas cylinder (M.O.2) under



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Seizure Mahazar Ext.P.23. At 4.00 p.m he conducted inquest in the presence of Panchayatars and prepared Inquest Report, Ext.P.24. He thereafter, made a requisition for conducting post-mortem and the post-mortem was conducted by the Doctor, P.W.13, who issued the post-mortem certificate, Ext.P.19.

(iii) on 14.09.2010, PW14 came to know that the accused had surrendered before the Judicial Magistrate, Gingee. He filed a petition seeking police custody. He took the accused under police custody between 20.09.2010 and 23.09.2010 and on the confession of the accused recovered the material objects M.O.3 to M.O.7. He seized the blood strained clothes of some of the accused under Seizure Mahazar and after obtaining reports from the experts in the forensic science laboratories, Ext.P.29 and Ext.P.30, he filed the final report before the X Metropolitan Magistrate, Egmore, Chennai - 08, for the offences under Section 147, 148, 149, 341, 302 r/w 34 IPC against 10 accused.



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(iv) 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.200 of 2013 and was made over to the learned XVII Additional Sessions Judge, Chennai -01, for trial. The trial Court framed charges u/s. 148 & 302 of IPC as against the accused, and when questioned, the accused pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 14 witnesses as P.W.1 to P.W.14, marked 30 exhibits as Exs.P1 to P30, and marked twelve Material Objects as M.O.1 to M.O.12. 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.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt, convicted and sentenced the accused as follows:



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<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1	302 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo 1 year rigorous imprisonment.
A3	302 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo 1 year rigorous imprisonment.
A4	302 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo 1 year rigorous imprisonment.

Hence, the accused/appellants have preferred the appeals challenging the said conviction and sentences.

4.Heard Mr.R.Vivekananthan, learned counsel appearing for the appellants, and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

5.(i) Mr.R.Vivekananthan, the learned counsel for the appellants (A1, A3 & A4) submitted that all the eye witnesses, and PW3, (the brother-in-law of the deceased), except PW1 and PW2, turned hostile; that PW1 and



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PW2's evidence cannot be relied upon, since both of them admitted that on the day of occurrence, they were there in the hospital, as PW1 was treated as an inpatient for a piles surgery.

(ii)The learned counsel further submitted that PW1 and PW2 were disbelieved by the trial Court with regard to the involvement of the other accused and therefore, the evidence of PW1 and PW2, in so far as the role played by the appellants alone cannot be accepted.

(iii)The learned counsel further submitted that though the occurrence took place at 08.30 a.m., the complaint was made belatedly at 11.00 a.m., which reached the Judicial Magistrate only at 03.00 p.m on the same day. Even in the complaint, the names of 8 accused were mentioned. However, in the deposition, both P.W.1 and P.W2 have attributed specific overt act to all the 10 accused, which is tutored and unnatural.

6.(i)The learned Additional Public Prosecutor per contra, submitted that PW1 and PW2 are natural witnesses and they had explained their



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presence at the scene of occurrence. They had come out of the house to send off the deceased and PW3, who had come to take the gas cylinder and the occurrence took place within a distance of 40 feet from the house. The learned counsel further submitted that though the version of PW1 and PW2 was disbelieved by the trial Court in respect of the role played by some of the accused, there is no infirmity in the trial Court accepting the evidence of PW1 and PW2 as regards the role played by the appellants.

(ii)The learned counsel further submitted that the arrest and seizures and the motive further corroborates the evidence of PW1 and PW2 and therefore, submitted that the Judgement of the trial Court does not call for any interference.

7.We have carefully considered the rival submissions and perused all the relevant materials available on record.

8.PW1 and PW2 are the parents of the deceased, who supported the prosecution case and are eye witnesses to the occurrence. PW3 is the



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brother-in-law, who is said to have gone with the deceased, turned hostile.

PW4, PW5, PW6 & PW7, who were examined as eye-witnesses, turned hostile. PW8, PW9, PW10 and PW11 are witnesses to the confession and recovery and Mahazar turned hostile. PW12 is the Deputy Tahsildar, who had signed as a witness in the confession statement of the accused. PW13 is the post-mortem Doctor. PW14, is the Investigating Officer.

9.Ext.P.13, the Doctor who issued Ext.P19, post-mortem certificate had noted the external of injuries, all of which were cut wounds. He had opined that

“The deceased would appear to have died of shock & Haemorrhage due to Stab Injury on the Chest & Multiple Cut Injuries on the body.”

Thus, the prosecution has established that the deceased suffered a homicidal death.

10.As regards the involvement of the accused, most of the eye witnesses turned hostile. The prosecution relies upon the evidence of PW1 and PW2. As stated earlier though PW1 had named 8 accused in the



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complaint and had stated that certain others were also involved in the occurrence, in the complaint no specific overt act is attributed to any of the accused. However, in the deposition, specific overt acts have been attributed by PW1 and PW2, to each of the accused. Though FIR is not an encyclopaedia and all the details need not be mentioned, the manner in which both PW1 and PW2 have narrated the overt acts in their deposition appears to be tutored and artificial.

11.Be that as it may, it is the version of PW1, that they went to the hospital and the police came to the hospital and directed them to go to the police station to give a complaint, which again appears to be improbable.

The relevant portion of the evidence reads as follows;

“என்னுடைய மகனை வெட்டிக்கொண்டிருந்த சமயத்தில் அரை கிலோ மீட்டர் எல்லைக்குள் இருந்த காவல்நிலையத்திற்கு நான் ஓடிச்சென்று தகவல் கொடுவித்த போது அவர்கள் உதவி ஆய்வாளரை அணுகும்படி கூறினார்கள். நான் திரும்பவும் சம்பவ இடத்திற்கு வந்தபோது இரண்டு காவலர்கள் நிற்குகொண்டிருந்தார்கள். அவர்கள் யார் என்றும் அவர்களுடைய பதவி என்னவென்றும் எனக்கு தெரியாது. ஆனால் அவர்கள்



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எந்தவித உதவியும் அப்போது செய்யவில்லை. மருத்துவமனைக்கு போலீசார் வந்தனர். அவர்கள் என்னை காவல்நிலையத்தில் சென்று புகார் கொடுக்கச் சொன்னார்கள்.”

12.Further, to a specific question as to whether PW1 was taking treatment as an inpatient between 05.09.2010 and 13.09.2010, both PW1 and PW2 answered in the affirmative. The relevant portions read as below;

PW1 evidence

“10.09.2010ல் நான் வீட்டில் தான் இருந்தேன் பைல்ஸ் ஆபரேஷனுக்கு மருத்துவமனை சென்றிருந்தேன். 05.09.2010 முதல் 13.09.2010 வரை மருத்துவமனையில் சிகிச்சையில் இருந்தேன் என்றால் சரிதான்.”

PW2 evidence

“07.09.2010 முதல் 13.10.2010 வரை என் கணவர் பைல்ஸ் ஆபரேஷிக்காக மருத்துவமனையில் இருந்தார் நான் அவருடன் மருத்துவமனையில் தான் இருந்தேன்.”

13.Though PW1 and PW2 have said that they were there in their residence on the date of occurrence, the above admissions elicited by the



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defence in the cross-examination raises a substantial doubt with regard to their version. Another aspect which we may note is that it is the prosecution case that the deceased went from the house of PW1 and PW2 along with PW3, his brother-in-law. PW3, however did not support the prosecution case. PW3 would further state that he saw a few people attacking the deceased and that he was not aware as to who attacked the deceased. Therefore, he was treated as hostile. It is the case of the prosecution that the accused were originally friends of the deceased and hence, PW3 ought to have known them. The fact that he could not identify the accused also raises a suspicion with regard to the evidence of PW1 and PW2.

14.Above all, we see that the trial Court had disbelieved the evidence of PW1 and PW2 with regard to the involvement of the other acquitted accused. The trial Court had observed that PW1 and PW2 gave inconsistent versions with regard to the involvement of A2, A5 to A10. The prosecution has not filed any appeal against the said finding of the trial Court.



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15. On a reading of the evidence of PW1 and PW2, it is seen that there are several infirmities with regard to overt acts attributed to each of the accused, who were acquitted. As stated earlier, in the complaint, no specific overt act were attributed to any of the accused. It is only in the deposition specific overt acts have been attributed to the accused. When the version of PW1 and PW2 cannot be disbelieved in respect of certain accused and in view of their admission that they were in the hospital at the relevant time, it is highly unsafe to convict the appellants on the basis of their evidence. It is no doubt true that *falsus in uno, falsus in omnibus* is not applicable in India. However, in the instant case, in the light of the evidence discussed above, we cannot hold that PW1 and PW2's evidence is reliable as regards the involvement of the appellants alone and convict them. Hence, we are of the view that the Judgement of conviction based on such evidence cannot be sustained, and therefore, the conviction and sentences imposed on the accused are liable to be set aside.

16. Accordingly, the Criminal Appeals are allowed and the appellants are acquitted of the charges. The conviction and sentence imposed upon



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them in S.C.No.200 of 2013 dated 04.07.2018, on the file of the learned XVII Additional Sessions Judge, Chennai, are set aside, and the appellants are directed to be set at liberty 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 bond, if any, executed shall stand discharged.

(M.S.R.,J) (S.M.,J)
04.04.2024

Index : yes/no
Neutral citation : yes/no
Tsg

Copy to:

- 1.The XVII Additional Sessions Judge,
Chennai.
- 2.The Inspector of Police,
V-1, Villivakkam Police Station,
Villivakkam, Chennai – 600 049,
(Crime No 802/2010)
- 3.The Public Prosecutor,
High Court, Madras



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