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CRL A Nos. 735 & 894 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30-07-2026

PRONOUNCED ON: 18-08-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A Nos. 735 & 894 of 2019

and CRL MP No. 16636 of 2022

Crl.A.No.735 of 2019

1.Rajarathinam @ Rathinam

S/o. Raji, No.5, 2nd Street, Sakthi Nagar,
Kallikuppam, Ambattur, Chennai-53.

2.Rajesh @ Thaj

S/o. Veerakumar, No.6, Abirami Street, Varmathi
Nagar, Oragadam, Ambattur, Chennai-53.

3.Barco @ Bargov @ Bujji

S/o. Prabakaran, No.5, Anna Street, Oragadam,
Ambattur, Chennai-53.

..Appellants/A2 to A4

Vs

State Rep. By Its

Inspector Of Police, T.1 Ambattur Police Station,
Chennai-53.

..Respondent(s)

CRL A No. 894 of 2019

Vinoba @ Appu

S/o.Jayamani, No.3/218, Thomas Street, Aka
Nagar, Orakadam, Ambattur, Chennai-600 053.

..Appellant/A1



CRL A Nos. 735 & 894 of 2019

Vs

State Rep.By

The Inspector Of Police, T-1 Ambattur Police
Station, Ambattur, Chennai-600 053.

Cr.No.1286/2013.

..Respondent(s)

Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, against the conviction of the appellants/A1 to A4 and sentence imposed on them in S.C.No.223 of 2016 dated 30.07.2019 on the file of the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee and set aside the conviction and sentence and allow these appeals.

In Crl.A.No.735/19

for 1st Appellant/A2
for 2nd & 3rd Appellants
/A3 & A4)

Mr. B.Maheswaran
Mr.P.Prince Premkumar

In Crl.A.No.894/19

for Appellant/A1

Mr.R.C.Paul Kanagaraj

In both cases
for Respondent(s)

Mr. C.R.Malarvannan
Counsel for Government of Tamil Nadu
(Crl. Side)

Common Judgment

(Judgment of the Court was delivered by Sunder Mohan J.)

These Criminal Appeals have been filed by A1 to A4, challenging the judgment dated 30.07.2019 in S.C.No.223 of 2016, on the file of the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee.



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2 (i) CrI.A.No.735 of 2019, has been filed by A2 to A4, who were convicted by the trial Court for the offence under Section 302 r/w 34 of the IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for six months.

(ii) CrI.A.No.894 of 2019, has been filed by A1 who was convicted by the trial Court for the offence under Sections 302 of the IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for six months.

3(i) The gist of the prosecution case is that the deceased-Niranjan and the accused/appellants herein, had prior enmity on account of a wordy altercation that took place earlier; that Venkatesh had teased PW11, who is the aunt of PW2; that when PW2 questioned Venkatesh, he along with his friends (A1 & A2) had beaten up PW2; that on the night of 06.08.2013, when the deceased questioned the accused, a wordy altercation took place; that thereafter, the accused known to the said Venkatesh decided to do away with the deceased; that on the night intervening 06.08.2013 and 07.08.2013, at about 12.30 a.m, the accused



went to the house of the deceased, met PW1 and enquired about the deceased; that PW1 informed the deceased about the enquiries made by the accused; that therefore, PW1 and the deceased went to a place where the accused were waiting i.e., at No.1/7, Marriamman Koil Street, Oragadam; that the deceased had sent back PW1 and thereafter, a quarrel arose between the accused and the deceased; that the appellants/A2, A3 and A4 caught hold of the deceased and A1 attacked the deceased with a stone; that A2, cut the neck of the deceased with a knife; and thus, caused the death of the deceased.

(ii) On the morning of 07.08.2013, when PW1 woke up he found that his brother was missing in the house and a few neighbours informed him that his brother was lying dead. He went to the scene of occurrence. At that time, PW2 informed PW1 that he witnessed the attack of the accused on the deceased. PW1 hence, lodged a complaint [Ex.P1] on 07.08.2013 at about 7.15 a.m. against all the accused which was registered as an FIR [Ex.P24] in Cr.No.1286 of 2013 by PW13, the Inspector of Police.



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(iii) On registration of the FIR, PW13 took up the investigation, went to the scene of occurrence, and prepared the Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P25]. He seized the bloodstained earth [M.O.4] and the earth which was not bloodstained [M.O.5] and a stone made of cement [M.O.1]. At about 10.30 a.m., he conducted inquest in presence of the panchayatars, examined the witnesses and prepared the inquest report [Ex.P26]. He sent the body for postmortem and after postmortem, handed over the cadaver to the relatives. He seized the bloodstained black-coloured shirt [M.O.3], Maroon-coloured lungi [M.O.2] and under garments [M.O.11 and M.O.12] of the deceased and sent the same under Form-95 [Ex.P27] to the Court. He arrested all the accused at about 7.45 a.m., on 08.08.2013 at Avadi Bus Stand.

(iv) Thereafter, on the confession of A1, PW13 seized a red-black-white-yellow striped full shirt [M.O.6] under the Seizure Mahazar [Ex.P8]. On the confession given by A2, he seized a knife with bloodstains [M.O.7], which was found behind the office of the Tahsildar, Ambattur and bloodstained black & white striped half-hand shirt [M.O.8] under Seizure Mahazar [Ex.P9]. On the confession of A3, he seized the



white-cement coloured striped T-shirt [M.O.9] under the Seizure Mahazar [Ex.P10]. On the confession of A4, he seized a bloodstained baniyan with words 'Jack & Jill' [M.O.10] under the Seizure Mahazar [Ex.P11].

(v) Thereafter, after examining all the witnesses and after obtaining the postmortem report [Ex.P19], filed a final report against the accused for the offence under Section 302 r/w 34 of the IPC before the learned Judicial Magistrate, Ambattur.

(vi) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with. The case was committed to the Court of Sessions, i.e., Principal Sessions Court, Tiruvallur and was made over to the learned III Additional District and Sessions Judges, Tiruvallur at Poonamallee, for trial, which was taken on file as S.C.No.223 of 2016. The trial Court framed charges against A1 for the offence under Section 302 of the IPC; against A2 for the offence under Sections 302 and 341 of the IPC; and against A3 and A4, for the offence under Sections 341 and 302 r/w 34 of the IPC and when questioned, the accused pleaded 'not guilty'.



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(vii) To prove its case, the prosecution had examined 13 witnesses as P.W.1 to P.W.13 and marked 38 exhibits as Ex.P1 to Ex.P38, besides 12 material objects, viz., 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. Though none were examined on the side of the accused, 5 documents were marked as Ex.D1 to Ex.D5.

(viii) The trial Court found A2 to A4 not guilty of the offence under Section 341 of the IPC and convicted them for the offence under Section 302 r/w 34 of the IPC. A1 was found guilty of the offence under Section 302 of the IPC. The accused were sentenced as stated in para 2 (i) and (ii) of this judgment. Hence, the accused have preferred the instant appeals challenging the said conviction and sentence.

4. The learned counsels for the appellants would submit that the evidence of PW1 and PW2 do not inspire confidence; that the conduct of both the witnesses discredit them; that apart from PW2, there is no other evidence to connect the appellants to the crime; that the motive has not



been established as PW11 who was examined to prove the motive is of no avail to the prosecution; that PW2 had not informed about the alleged occurrence to anyone till the deceased was found by PW1 at 7.00 a.m; that the medical evidence does not corroborate the ocular testimony; that the FIR was sent to the learned Magistrate only at 5.00 p.m. on 07.08.2013; that the recoveries based on the alleged confession are highly doubtful; that even at the time of arrest, the material objects were recovered and hence, there is no discovery of fact to make it admissible under Section 27 of the Indian Evidence Act; and hence, prayed for acquittal of the appellants.

5. The learned counsel for Government of Tamil Nadu (Crl. Side) *per contra* submitted that the delay in reporting the offence would not discredit PW1 and PW2; that PW2 was threatened by the appellants and hence, there was justification for his non-reporting earlier; that the trial Court after considering the evidence adduced has rightly convicted the appellants; that there is no reason to interfere with the judgment; and hence, prayed for dismissal of the appeals.



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6.(i) As stated earlier, the prosecution had examined 13 witnesses.

PW1 is the brother of the deceased and is the defacto complainant, who lodged the complaint at 7.15 a.m., on 07.08.2013 on the information given by PW2. PW2 and the deceased were closely related to each other. It is PW2's version that he witnessed the occurrence while he returned from a theatre after watching a movie. According to him, he did not complain about the occurrence immediately out of fear. PW2 is the only eyewitness to the occurrence. PW3 came to know of the occurrence from PW2 and is a hearsay witness. PW4 is the witness to the Observation Mahazar [Ex.P2] and Seizure Mahazar [Ex.P3] which was prepared at the place of occurrence. PW5 is the witness to the confession and the seizures made from the appellants. PW6 is the Magistrate, who had recorded the Section 164 Cr.P.C. statement of PW2. The learned Magistrate had marked the requisition letter [Ex.P12] and the Section 164 Cr.P.C. Statement of PW2 [Ex.P17].

(ii) PW7 is the Doctor, who had conducted the postmortem and had stated that he had not seen any injury that could have been caused by a



knife on the neck of the deceased. The postmortem report was marked as Ex.P19. PW8 is the Scientific Officer of the Forensic Science Laboratory and had marked the Viscera report [Ex.P20]. PW9 is the Assistant Director of Forensic Science Laboratory, who had issued the Biology Report [Ex.P21].

(iii) PW10 is the Constable who had handed over the cadaver to the family of the deceased and had sent the clothes of the deceased to the Magistrate under Form-95. PW11 is the aunt of PW2, who was examined to establish the motive for the occurrence. The motive according to the prosecution is that one Venkatesh while riding his two-wheeler had dashed PW11; that PW2 questioned the said Venkatesh, who along with his friend attacked PW2 with hands; and that PW2, in turn, informed the deceased that Venkatesh and his friend had beaten him up. The evidence of PW11, is of no avail to the prosecution, as she has not implicated any of the accused.

(iv) PW12 is the Scientific Officer, who had issued the Serology Reports [Ex.P22 & Ex.P23]. She found 'O' group blood in a few articles



viz., shirt and lungi of the deceased and from the clothes said to have been seized from some of the accused. PW13 is the investigating officer, who had filed the final report.

7. The prosecution has established that the deceased was lying in a pool of blood on the morning of 07.08.2013 opposite to a house bearing the address, No.1/7 Mariamman Kovil Street, Oragadam. He was taken to the hospital, where postmortem was conducted. PW7 is the postmortem doctor, who had issued Ex.P19-postmortem certificate. He found the following injuries on the deceased:

- “1. Crush injury of right side of the face 12x9-3xcavity deep over right frontal region of the scalp, right side of the face with underlying comminuted fracture of right side of mandible, maxilla and frontal bone.
2. Laceration of 6x4x0.5cm on centre of frontal region of scalp.
3. Oblique incised wound of 5x2x0.5cm on left temporal region of the scalp.
4. Diffuse subdural and subarachnoid haemorrhage all over the brain surface. Cut section of brain normal.
5. Laceration of 7x4x3 cm on right frontal lobe of the brain.”

PW7 opined that the deceased died of ‘**shock and haemorrhage due to crush injury to head**’. The evidence of the doctor [PW7] suggests that the death of the deceased was homicidal. This has not been seriously



disputed by the defence. Therefore, the prosecution has established that the deceased suffered a homicidal death.

8. The prosecution had examined three witnesses to prove the involvement of the appellants in the alleged occurrence. PW3 as stated above is a hearsay witness. PW1, the defacto complainant had stated that the appellants came to the house in the night intervening 06.08.2013 and 07.08.2013 at about 12.30 a.m. looking for the deceased; that thereafter, he called the deceased and both of them went to the place where the appellants were waiting viz., outside the house at No.1/7, Marriamman Koil Street, Orgadam; and that thereafter, he was sent back by the deceased and he did not look for the deceased after that.

9. It is the version of PW1 that the neighbours informed him that his brother was lying dead; that he went to the place of occurrence; and that thereafter, PW2 informed him that the appellants had caused his death. PW1 named all the accused in the FIR which was registered at 7.15 a.m., on 07.08.2013. The accused were all arrested on 08.08.2013. According to PW1, four persons came in search of the deceased the



previous night. He had not seen the appellants earlier. According to him, he had identified the appellants at the police station. The prosecution had not chosen to conduct any test identification parade to check the authenticity of his version. In any case, his version is based on what PW2 told him.

10. According to PW2, on 07.08.2013 at about 2.00 a.m., while he was returning home, after watching a movie, he witnessed the occurrence wherein appellants 2, 3 and 4 are said to have caught hold of the deceased and 1st appellant/A1 is said to have thrown a stone on the head of the deceased and thereafter, 2nd appellant/A2 had cut the neck of the deceased with the knife. After witnessing the occurrence, he is said to have gone to his residence. He did not inform any of his relatives or PW1 about the occurrence. He neither went to the police station. Even according to him, he was closely related to the deceased. The relevant admissions in the cross-examination reads as follows:

“நடந்த சம்பவம் குறித்து மறுநாள் காலை வரை நான் யாரிடமும் சொல்லவில்லை என்றால் சொல்லியுள்ளேன். இரவு சொல்லவில்லை காலையில் தான் தீபனிடம் சொன்னேன். சம்பவத்தை பார்த்தவுடன் நான் அவசர போலிஸ் 100ற்கு போன் செய்தேனா என்றால் இல்லை. அவர்கள் என்னை பயமுறுத்திவிட்டார்கள்.”



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11. Even as regards, motive PW2 admits that he had not lodged any complaint. The relevant portion, reads as follows:

“ அத்தையை கிண்டல் செய்தது குறித்து நானோ என்
அத்தையோ போலிசில் புகார் தரவில்லை. எதிரிகளை
கேட்ட போது, இரத்தினம், விநோபா என்னை தாடையில்
அடித்ததாக கூறியுள்ள விவரத்திற்கு என்னை அடித்தது
குறித்து நான் புகார் கொடுத்துள்ளேனா என்றால் இல்லை.”

He had also not produced any evidence to show that he watched a movie and his presence at the scene of the occurrence at the odd hours was natural.

12. All the above infirmities and the conduct of PW2 in not informing anyone about the alleged occurrence of murder of his close relative raises a serious doubt with regard to his version. It is well settled that while appreciating the evidence of eyewitnesses, conduct and prompt reporting are relevant factors to be considered. Firstly, the presence of PW2 at the time of occurrence at that odd hour is highly doubtful. Secondly, it is opposed to common sense to believe that one would not inform anyone immediately about the occurrence of murder that he had witnessed. The lame excuse for the delay, viz., that he was threatened by



the accused is hard to believe as there is nothing to suggest as to what emboldened him to inform PW1 about the occurrence later. In any case, his conduct does not inspire confidence. Therefore, it is highly unsafe to rely upon his testimony to hold the appellants guilty of the offence.

13. Be that as it may, it is the version of PW2 that A2 had cut the neck of the deceased with a knife. However, there is no corresponding injury noted by the Doctor in the postmortem report. As stated above, the doctor had noted five injuries. None of the injuries correspond to the *overt act* attributed to A2 by PW2. The doctor [PW7] had specifically stated as follows in the cross-examination.

“நான் உடற் கூராய்வு செய்த பிரேதத்தில் கழுத்தில்
கத்தியால் குத்தப்பட்ட காயம் காணப்படவில்லை என்றால்
சரிதான். கழுத்தில் கத்தியால் குத்தப்பட்ட
காயம் இருந்திருந்தால் நான் அதனை என்னுடைய சான்றில்
குறிப்பிட்டிருப்பேன் என்றால் சரிதான்.”

The above contradiction between the evidence of PW2 and the medical evidence also falsifies the version of PW2 and makes his presence at the scene of occurrence, highly doubtful.



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14. It may also be noted that though the FIR is said to have been registered on 07.08.2013 at 7.15 a.m., it had reached the Court only at about 5.00 p.m. on the same day. No explanation has been offered by the prosecution for the delay in despatching the FIR to the learned Magistrate. It is needless to say that the delay in despatch of express FIR would raise a considerable doubt as regards the time at which the FIR was actually registered. In fact PW13, the investigating officer had admitted in his cross-examination that the Court is at 5 to 10 minutes walking distance from the police station. Therefore, the unexplained delay, also suggests that the FIR could not have been registered at the time it is said to have been registered and deliberation cannot be ruled out before registering it.

15. (i) The serology reports [Ex.P22 & Ex.P23] suggests that 'O' blood group was found in the clothes of the deceased as well as in some of the clothes that were seized from the accused. The defence had marked the arrest memos of the accused as Ex.D2 to Ex.D5 to probabalise their defence that the recoveries were not made pursuant to the confession of the accused.



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(ii) Ex.D2 is the arrest memo of A1. He was arrested on 08.08.2013 at about 7.45 hours. A bloodstained full-hand shirt was seized when he was arrested. However, the seizure mahazar pertaining to this shirt marked as Ex.P8 pursuant to the confession of A1, suggests as if the seizure was made at 12.30 p.m. on 08.08.2013. If the said shirt had already been seized at the time of the alleged arrest in the morning, the seizure of the shirt would not amount to discovery of any fact within the meaning of Section 27 of the Indian Evidence Act and would be of no avail to the prosecution.

16. Similarly, a blood stained shirt was seized from A2 under Seizure Mahazar – Ex.P9 at 13.00 hours on 08.08.2013, while A2 was arrested on 08.08.2013 at 7.45 hours, as could be seen from Ex.D3. Even as regards the seizure of bloodstained T-shirt of A3 and bloodstained baniyan of A4 under Seizure Mahazars Ex.P10 at 13.30 hours and Ex.P11 at 14.00 hours respectively, they appear to have been seized from A3 and A4 at the time of their arrest at 7.45 hours, as per Ex.D4 and Ex.D5, respectively.



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17. Therefore, the recoveries said to have been made are not pursuant to the confession of the accused and hence, there are no discoveries of facts making them admissible under Section 27 of the Indian Evidence Act. In any case, the prosecution had suppressed the entries made in the arrest memos, and the seizure memos have been falsified by the said entries in the arrest memos marked by the defence. For all these reasons, we are of the view that the recoveries are of no avail to the prosecution and consequently, any comparison of the blood group in the dress materials of the accused with the blood group in the seized dress materials of the deceased, is inconsequential.

18. In the light of the above discussion, we are of the view that the evidence of PW2 does not inspire confidence for the reasons aforesaid; that the medical evidence and the ocular evidence do not corroborate each other; and that PW1's version is highly doubtful, as even according to him, he had identified the accused at the police station and no test identification parade was conducted. Further, the discrepancy that we had pointed out in the alleged recoveries and the other infirmities in the



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prosecution case suggests that the prosecution had not established its case beyond reasonable doubt.

19. In the result, the Criminal Appeals are allowed. The conviction and sentence imposed upon the appellants/accused vide judgment dated 30.07.2019 in S.C.No.223 of 2016, on the file of the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee, are set aside. The appellants/accused are acquitted of the charge. The fine amount paid, if any, shall be refunded to the appellants/accused. Bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition is closed.

(A.S.M.,J.) (S.M.,J.)
18-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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CRL A Nos. 735 & 894 of 2019

**DR.ANITA SUMANTH J.
AND
SUNDER MOHAN J.**

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To

1. The III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.

2. The Inspector of Police,
T.1 Ambattur Police Station,
Chennai-53.

3. The Superintendent of Prisons,
Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

**Pre-delivery Common Judgment in
CRL A Nos. 735 & 894 of 2019
and CRL MP No. 16636 of 2022**

18-08-2026