



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

Crl.A.(MD)Nos.183, 217, 249 and 254 of 2017

Crl.A.(MD)No.183 of 2017:

Mariamammal ... Appellant / A10

Crl.A.(MD)No.217 of 2017:

1.Velladurai

2.Kumar

3.Udayar

4.Subramani

5.Sekar

6.Manikandan

... Appellant / A1 to 5 & 8

Crl.A.(MD)No.249 of 2017:

Natarajan ... Appellant / A9

Crl.A.(MD)No.254 of 2017:

1.Madasamy

2.Elango

... Appellant / A6 and A7

Vs.

State Rep.by

Inspector of Police,

Uthumalai Police Station,

Tirunelveli District.

Crime No.129 of 2011

... Respondent /
Complainant in all Crl.As.

COMMON PRAYER: These Criminal Appeals are filed under Section 374 (2) of Cr.P.C. against the order of conviction & sentence dated 07.06.2017 made in S.C.No.68 of 2012 by the Additional District Sessions Judge(Fast Track), Tenkasi.

For Appellant : Mr.V.Kathirvelu, S.C. for
Mr.S.Ravi in Crl.A.(MD)No.183 of 2017
Mr.V.Kathirvelu, S.C. for
Mr.S.Ravi in Crl.A.(MD)No.217 of 2017
V.Kathirvelu, S.C. for
Mr.K.Prabhu in Crl.A.(MD)No.249 of 2017
Mr.A.Thiruvadikumar
in Crl.A.(MD)No.254 of 2017

**COMMON JUDGMENT**

(Judgment of the Court was delivered by C.T.SELVAM,J.)

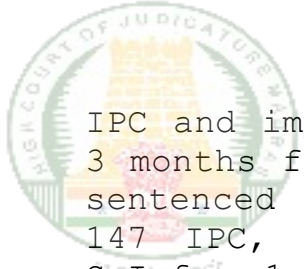
These appeals arise against judgement of learned Additional Sessions Judge, Thenkasi passed in S.C.No.68 of 2012 on 07.06.2017.

2.The case of the prosecution is that appellants / A1 to A10 conspired to murder one Selvaraj and his wife Thangamani to avenge the murder of the husband of A10. On 10.05.2011 at 13.00 hours, A1 and A3, came in an Omni van to the scene, a road, attacked the deceased Selvaraj on middle, front and back of his head as also on his right cheek with iron rods, A4 and A5 kicked the legs of the deceased; A1, A3, A4 and A5 threw the deceased into the Omni van and kicked his left thigh, right leg and threw him out of the vehicle near a road. Appellants were tried for offence under Sections 147, 148, 149, 120(b), 341, 109 and 302 IPC in S.C.No.68 of 2012 on the file of the Additional Sessions Judge, Thenkasi.

3.PW.1, brother-in-law of the deceased Selvaraj, preferred Ex.P1, oral complaint, on 19.05.2011. PW.7, Sub Inspector of Police, registered a case in Crime No.129 of 2011 on the file of respondent u/s.174 Cr.P.C. The Printed First Information Report is Ex.P13. PW.10, Inspector of Police, taking up investigation on 19.05.2011, visited the place of occurrence, prepared Ex.P.20 Observation Mahazar and Ex.P.21 Rough Sketch in the presence of witnesses P.Ws.2 & 3. He conducted inquest on the same day. Inquest report is Ex.P.22. He recovered earth and blood stained earth in the presence of witnesses P.Ws.2 and 3 in M.O.4. M.Os.5 is Athachi for recovery of two wheeler, M.O.6 for Hero Honda motor cycle. The alteration report is Ex.P.25. He arrested A2 to A10 on 21.05.2011 at 11.30 hours and recording the confession of A3 recovered Omni van M.O.7, in the presence of P.W.5. Athachi for recovery of Omni van is Ex.P.27. He examined PWs.1 to 11 and recorded their statements. Upon completion of investigation, a charge sheet was filed, informing commission of offence under Sections 147, 148, 149, 120(b), 341, 109 and 302 IPC. The case was tried in S.C.No.68 of 2012 on the file of the Additional Sessions Judge, Thenkasi.

4.Before the trial Court, prosecution examined PWs.1 to 11 and marked Exs.P1 to P33 and 10 Material Objects. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied charges.

5.Learned trial Judge, on appreciation of evidence, under judgment dated 07.06.2017, convicted accused for offences u/s. 147, 120B, 341, 148, 302 r/w 149 IPC and sentenced A1 to A5 and A8 & A9 to S.I.for 2 months for offence under Section 147, S.I.for 4 months for offence under Section 148 IPC, imprisonment of 1 month for offence under Section 341 IPC imprisonment for life and a fine of Rs.500/- i/d to S.I. of 3 months for offence under Section 120B



IPC and imprisonment for life and fine of Rs.500/- i/d to S.I. of 3 months for offence under Section 302 r/w 149 IPC. A6 & A7 were sentenced to undergo S.I. for 2 months for offence under Section 147 IPC, S.I. for 4 months for offence under Section 148 IPC, S.I. for 1 month for offence under Section 341 IPC, imprisonment for life and fine of Rs.500/- i/d to S.I. of 3 months for offence under Section 120B IPC and imprisonment for life and fine of Rs.500/- i/d S.I. of 3 months for offence under Section 302 r/w 109 IPC. A10 were sentenced to undergo S.I. for 2 months for offence under Section 147 IPC, imprisonment for life and fine of Rs.500/- i/d S.I. of 3 months for offence under Section 120B IPC r/w 149 IPC and imprisonment for life and fine of Rs.500/- i/d S.I. of 3 months for offence under Section 302 r/w 109 IPC. There against, the present appeals.

6. Heard learned counsel for appellants and learned Additional Public Prosecutor for respondent. Perused the records.

7. These appeals succeed for following reasons:

The present case is in respect of occurrence, which took place allegedly at 1.00 p.m. The husband was the victim. There is another occurrence of murder, which took place allegedly at 1.45 p.m. The wife was the victim. Investigating Officer would admit that P.W.1 was arrayed as an eye witness to the occurrence of 1.45 pm., in charge sheet in such case. If so, it follows that in preferring the complaint in this case at 2.30 p.m., P.W.1 necessarily would have informed also of the occurrence in the other case. Therefore, the presence of P.W.1 at the scene of occurrence is highly doubtful. Further, P.W.1 has spoken to having informed Sub Inspector of Police, P.W.7 orally, but P.W.7 would state that a written complaint was given.

8. The prosecution case is that pursuant to a conspiracy, A1, A3 to A6, A8 & A9, travelled to the scene using a green colour Omni van, while A2 & A7 did so on a two wheeler. The prosecution version is that the deceased was set upon with iron rods resulting in grievous injuries to his head and thereafter, the accused threw him into the Omni van where he was kicked and beaten. The postmortem report of the deceased informs the injuries suffered to the head as follows:

"1. A vertical gapping incised like laceration of size 12 x 3 cm x cavity deep over top of head. On dissection. Underlying skull bone found broken and through the rent remains brain matter protruded out.

2. An oblique gapping incised like laceration of size 5 x 3 cm x cavity deep over occipital region. On dissection underlying skull bone found broke and



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through the rent remains of brain protruded out.

3. An oblique gapping incised like laceration of size 10 x 3 cm x cavity deep over occipital region. It lies 3 cm below injury No.2 On dissection underlying bones found broken and through the rent remains of brain protruded out.

4. A horizontal gapping incised like laceration of size 14 x 3 cm x cavity deep over lower part of occipital region. It lies 2 cm below injury No.3 On dissection underlying skull bone found in multiple pieces and remains of brain protruded out."

Given such injuries, it is highly improbable, may impossible that the deceased would have survived to be thrown into the Omni van alive and then be thrashed about.

9.P.W.10 Investigating Officer has, in cross, asserted that blood stains were present in the Omni van. He has admitted that the court records would not reveal that blood stains indeed were found inside the Omni van. The prosecution's case is rendered all the more doubtful as P.Ws.2 to 5 alleged eye witnesses, have turned hostile.

10. Recovery of blood stains from within the Omni van would have lent much support to the case of the prosecution that the accused arrived at the scene using the same. This Court finds highly unbelievable the evidence of P.W.10 that despite noticing blood strains inside the Omni van, no Athatchi or recovery was effected. Further, the prosecution suggestion of the deceased having been thrown into the Omni van used by them to arrive at the occurrence, the absence of blood stains renders highly unlikely the usage of the vehicle by the accused and consequently, the presence of the accused at the scene.

11. Considering the glaring infirmities, in the prosecution case, these appeals succeed and accordingly, they are allowed. The conviction and sentence passed by learned Additional Sessions Judge, Thenkasi in S.C.No.68 of 2012 on 07.06.2017 are set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bond(s), if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CS-I)

/True Copy/



To

1. The Additional District Sessions Judge,
Fast Track, Thenkasi, Tirunelveli District.

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2. -Do- Thro the Principal District Judge, Tirunelveli.

3. The Judicial Magistrate, Tenkasi.

4. -Do- Thro The Chief Judicial Magistrate, Tirunelveli.

5. The District Collector, Tirunelveli District.

6. The Director General of Police, Mylapore, Chennai.

7. The Superintendent, Central Prison, Palayamkottai,
Tirunelveli.

8. The Superintendent, Central Prison (Women), Madurai.

9. The Inspector of Police,
Uthumalai Police Station,
Tirunelveli District.

10. The Additional Public Prosecuor,
Madurai Bench of Madras High Court,
Madurai.

11. The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. K.Prabhu, Advocate Sr.No.77091

+1cc to A.Thiruvadikumar, Advocate SR.No.77047

NBJ

VB/RP/SAR1/20.09.2018/5P/15C

Cr1.A. (MD) Nos.183, 217, 249 and 254 of 2017
31.08.2018