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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.184, 220, 252 and 255 of 2017
CRL M.P.(MD) Nos.2834 of 2018, 7942 of 2017 and 1629 and 1630 of
2018

Mariammal	... Appellant/Accused No.10 in Cr1.A.(MD) No.184 of 2017
1.Velladurai	
2.Kumar	
3.Udayar	
4.Subramani	
5.Sekar	
6.Manikandan	... Appellants/Accused Nos.1 to 5 and 8 in Cr1.A.(MD) No.220/2017
Natarajan	... Appellant/Accused No.9 in Cr1.A.(MD) No.252 of 2017
1.Madasamy	
2.Elango	... Appellants/Accused Nos.6 & 7 in Cr1.A.(MD) No.255 of 2017
Vs.	
State by Inspector of Police, Uthumalai Police Station, Tirunelveli District. (Crime No.130 of 2011)	... Respondent/Complainant in all the appeals

Common Prayer: Appeals filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the Judgment and Conviction dated 07.06.2017, by learned Additional Sessions Judge (Fast Track), Tenkasi, in S.C.No.69 of 2012.

For Appellants in : Mr.V.Kathirvelu, Senior Counsel
Cr1.A.(MD) Nos. for M/s.S.Ravi & M/s.K.Prabhu
184, 220, 252/2017

For Appellants in : Mr.A.Thiruvadikumar
Cr1.A.(MD) No.



For Respondent in : Mr.S.Chandrasekar
all the appeals Additional Public Prosecutor

COMMON JUDGMENT

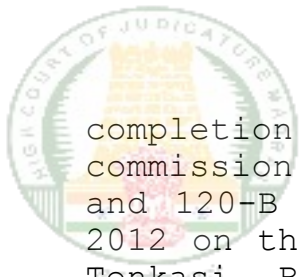
(The Judgment of the Court was delivered by C.T.SELVAM, J.)

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The appellants/accused Nos.1 to 10 have filed these Criminal Appeals, challenging the judgment, dated 07.06.2017, in S.C.No.69 of 2012 on the file of Additional Sessions Judge (Fast Track), Tenkasi, in and by which, A1 to A5 and A7 to A9 were convicted under Sections 147, 120-B 148, 452, 302 r/w 149 I.P.C. and A6 and A10 were convicted under Sections 147, 120-B r/w 149 and 302 r/w 109 I.P.C. and A1 to A10 were sentenced to undergo 2 months simple imprisonment under Section 147 I.P.C. and A1 to A5 and A7 to A9 were sentenced to undergo 4 months simple imprisonment for offence Section 148 I.P.C. and sentenced to undergo 6 months simple imprisonment and fine of Rs.300/- each, in default, 1 month simple imprisonment for offence under 452 I.P.C. and A1 to A5 & A7 to A10 and A6 & A10 were sentenced to undergo Life Imprisonment with fine of Rs.500/- each for each offence, in default, 3 months simple imprisonment for offences under Sections 120-B & 302 r/w 149 and 120-B r/w 149 and 302 r/w 109 I.P.C. respectively.

2.The prosecution case is that owing to the previous enmity between the family members of accused and deceased consequent upon the murder of A10's husband Subramani, on 13.05.2011 at 18.30 hours all the accused conspired to murder the deceased Thangamani and her husband Selvaraj and in pursuance of the same on 14.05.2011, A10 gave Rs.65,000/- to A6 to purchase Omni Van bearing Reg.No.TN 01 J 8514 and on 19.05.2011 at 13.00 hours they murdered the said Selvaraj and at 13.45 hours A1 to A5 and A7 to A9 entered into the house of Thangamani, while A6 remained in the Omni Van. A2 attacked deceased with Iron Pipe, while A4 attacked her with wooden stick and A1, A3, A5, A7 to A9 kicked her with their legs and murdered her.

3.P.W.1, brother of the deceased, preferred a complaint before Special Sub Inspector of Police at Uthumalai Police Station on 19.05.2011 at 18.00 hours. P.W.10, Special Sub Inspector of Police registered the complaint in Crime No.130 of 2011 under Sections 147, 148, 452, 302 and 109 I.P.C. and prepared Ex.P.8 FIR. P.W.16, Inspector of Police took up the investigation, went to the scene, prepared observation mahazar Ex.P.16, as also rough sketch Ex.P.17, examined witnesses and deceased and recorded their statements. He conducted inquest over the body of the deceased and prepared Ex.P.19 - Inquest Report and sent the body for post-mortem. The Post-mortem Report is Ex.P.11. Then he altered the F.I.R. from 147, 148, 452, 302 and 109 I.P.C. to Sections 147, 148, 452, 302, 109, 120(b) I.P.C. and prepared alteration report Ex.P.20. He arrested A4 and recorded his confessional statement in the presence of P.W.7 and another and recovered M.Os.1 and 2. After his transfer, P.W.17 - Inspector of Police, took up the case for further investigation, examined the witnesses and recorded their statements. Upon



completion of investigation, P.W.15 filed a charge sheet informing commission of offences under Sections 147, 148, 149, 352, 302, 109 and 120-B I.P.C. On committal, the case was tried in S.C.No.69 of 2012 on the file of learned Additional Sessions Judge (Fast Track), Tenkasi. Before trial Court, prosecution examined 17 witnesses and marked 22 exhibits and 6 material object. None were examined on behalf of defence. However, one document each was marked on behalf of the defence and the Court.

4. When the accused were examined under Section 313 Cr.P.C. on the incriminating materials against them, they denied their complicity and stated that they had been falsely implicated.

5. On appreciation of materials before it, trial Court, under judgment dated 07.06.2017, convicted A1 to A5 and A7 to A9 under Sections 147, 120-B 148, 452, 302 r/w 149 I.P.C. and convicted A6 and A10 under Sections 147, 120-B r/w 149 and 302 r/w 109 I.P.C. and A1 to A10 were sentenced to undergo 2 months simple imprisonment under Section 147 I.P.C. and A1 to A5 and A7 to A9 were sentenced to undergo 4 months simple imprisonment for offence Section 148 I.P.C. and sentenced to undergo 6 months simple imprisonment and fine of Rs.300/- each, in default, 1 month simple imprisonment for offence under 452 I.P.C. and A1 to A5 & A7 to A10 and A6 & A10 were sentenced to undergo Life Imprisonment with fine of Rs.500/- each, in default, 3 months simple imprisonment for each offence under Sections 120-B & 302 r/w 149 and 120-B r/w 149 & 302 r/w 109 I.P.C. respectively. Against such finding, the present appeals have been filed.

6. Advancing arguments on behalf of the appellants, learned Senior Counsel for the appellants would submit that though P.Ws.1, 2 and 15 are stated to be eye witnesses and claimed to have accompanied the deceased to hospital in ambulance, P.W.1 is a chance witness and P.Ws.2 and 15 minor children of the deceased died not even touched their mother and Ex.D1, accident register of deceased informs that she was brought by one Subramaniam, which disprove their presence as eyewitness as also of their accompanying the deceased. The Ambulance driver or the said Subramaniam was not examined. While P.W.2 deposed that police enquired him in the hospital prior to complaint, P.W.15 deposed that police arrived at the hospital prior to registration of the case. The alleged occurrence is said to have taken place on 19.05.2011, but the statements of P.Ws.2 and 15 under Section 161(3) Cr.P.C. reached the Court only on 16.08.2011. While the eyewitnesses deposed that they lodged a oral complaint, P.W.10, Sub-Inspector of Police deposed that he received a written complaint. There is a delay of 4.30 hours in the complaint reaching the Court.

7. Learned Additional Public Prosecutor for the respondent submits that considering the evidence of P.Ws.1, 2 and 15, the trial Court has rightly rendered the conviction on A1 to A10 and no interference is required.



8. We have considered the rival submissions.

9. The appeal succeeds for the following reasons:

(i) P.W.1 is the complainant. He has spoken to having seen the accused entering the house of the deceased when he was standing outside. According to the prosecution, P.W.1 and P.Ws.2 and 15, minor sons of the deceased, accompanied the deceased to hospital in an ambulance having used the 108 services. No ambulance driver has been examined.

(ii) The prosecution has not brought on record the accident register pertaining to the deceased but the defence has marked the same as Ex.D1. Ex.D1 reveals that the deceased was brought to hospital by one Subramanian, who has not been examined.

(iii) The evidence of P.W.15, minor, is to the effect that they were inside the house and witnessed the occurrence. The occurrence took place when the deceased was preparing sweet meat. Evidence of P.Ws.2 and 15 becomes unreliable since their 161(3) statements reached the Court only on 16.08.2011 i.e., 3 months after the occurrence.

(iv) As per the charge sheet in the case, one Muthuramalingam, who was the complainant in respect of the case relating to the death of the husband of the deceased in the present case and in the occurrence alleged at 1.00 p.m. was informed to be an eye-witness in this case. But the said Muthuramalingam has not been examined.

(v) As against the evidence P.W.1 that he made oral statement before P.W.10, Ex.P.1 is a written complaint.

(vi) The deceased is the wife of Selvaraj, who was done to death at an alleged occurrence of 1.00 p.m. he having been out on bail in the case relating to the death of A10's husband, in a gruesome incident six months prior. P.W.2 has spoken to implicating A10, owing to previous enmity.

10. When there is absolutely no material to support the prosecution case, the conviction and sentence stands wrongly arrived at by the trial Court and the same is liable to be set aside.

11. In the result, the Criminal Appeals are allowed. The conviction and sentence imposed on the appellants/A1 to A10 by learned Additional District and Sessions Judge, (Frack Track), Tenkasi in S.C.No.69 of 2012, dated 07.06.2017, are set aside. The appellants are acquitted of the charges levelled against them. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bonds executed by first appellant in CrI.A.(MD) No.255 of 2017/A6 shall stand set aside. The other appellants/A1 to A5 and A7 to A10 are directed to be set at liberty forthwith, if they are not required for detention in connection with any other case.

Sd/-

Assistant Registrar(CO)



To

1. The Additional District Sessions Judge,
(Fast Track) Tenkasi.
- 2.-Do- Through The Principal District Judge,
Tirunelveli.
3. The Judicial Magistrate,
Tenkasi.
- 4.-Do- Through The Chief Judicial Magistrate,
Tirunelveli.
5. The District Collector,
Tirunelveli.
6. The Director General of Police, Mylapore, Chennai.
7. The Superintendent,
Central Prison,
Palayamkottai.
8. The Superintendent,
Central Prison (Women),
Madurai.
9. The Inspector of Police,
Uthumalai Police Station,
Tirunelveli District.
10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.K.Prabhu, Advocate SR.No. 77092
+1cc to M/S.A.Thiruvadikumar, Advocate SR.No. 77048

Judgment made in
CRL A(MD)Nos.184, 220, 252 and 255 of 2017
03.08.2018