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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH  
and  
The Honourable Mr. Justice R.PONGIAPPAN

Crl.A.No.550 of 2018

A.Rajaveni .. Appellant/Pw4  
Vs.  
1.State represented by  
The Inspector of Police,  
Kiliyanur Police Station,  
Villupuram District.  
(Crime No.311 of 2008) .. Respondent/Complainant  
2.M.Rajini  
3.M.Mani  
4.M.Palani  
5.M.Ravi  
6.T.Anandan  
7.M.Varadharajan .. Respondents/Accused 1 to 6

Criminal Appeal filed under Sections 397 and 401 Cr.P.C.  
against the judgment and order dated 31.12.2009 passed in  
S.C.No.131 of 2009 on the file of the Additional District and  
Sessions Court (Fast Track Court No.I), Tindivanam and set aside  
the same.

For Appellant : Mr.C.S.S.Pillai  
For R1 : Mr.Hasan Mohamed Jinnah  
Public Prosecutor  
For RR 2 to 7 : Mr.E.Kannadasan



## JUDGMENT

[Order of the Court was made by P.N.PRAKASH, J.]

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This criminal appeal has been filed by Rajaveni (PW4), widow of the deceased Anbu @ Venkatachalam, under the proviso to Section 372 Cr.P.C., challenging the judgment and order dated 31.12.2009 passed in S.C.No.131 of 2009 on the file of the Additional District and Sessions Court, (Fast Track Court No.I), Tindivanam, acquitting the accused/respondents nos.2 to 7 herein.

### 2. The prosecution story runs thus:

2.1 On account of animosity during the local body elections and in the administration of the local temple festival, one Kothandam was murdered sometime in the year 2007 by Anbu @ Venkatachalam (deceased herein) and others, in which, a case was registered by the police and Anbu, Kanniyappan (PW1), Ramu (PW9) and others were shown as accused. As a retaliation for the murder of Kothandam, it is alleged that the brothers of Kothandam viz., Rajini (A1), Mani (A2), Palani (A3) and Ravi (A4), along with Anandan (A5) and Varadharajan (A6), had committed the murder of Anbu on 01.10.2008 around 6.45 p.m.

2.2 It is the specific case of the prosecution that Anbu was riding a Hero Honda bike bearing Registration No.PY-01-AE-3772 (M.O.12) belonging to Ramu (PW9) along with Kanniyappan (PW1) as pillion on 01.10.2008 around 6.45 p.m. Behind the motorbike of Anbu, Sankar (PW2) and Veerappan (PW3) were following in their bike. At that time, the accused came by a TATA Sumo car bearing Registration No.TN-23-D-4257 (M.O.4) and dashed behind the motorbike of Anbu, on account of which, Anbu fell down and thereafter, they belaboured him with deadly weapons resulting in his death.

2.3 On a complaint (Ex-P1), given by Kanniyappan (PW1), the police registered a case in Kiliyanur Police Station Crime No.311 of 2008 on 01.10.2008 at 8.00 p.m., for the offences under Sections 147, 148 and 302 IPC against six named accused and nine unnamed, but, identifiable accused and took up investigation of the case. The printed FIR was marked as Ex-P26.

2.4 The complaint (Ex-P1) and the printed FIR (Ex-P26) reached the jurisdictional Magistrate only on 02.10.2008 at 7.40 a.m.

2.5 Thereafter, the Investigating Officer went to the place of occurrence and prepared Observation Mahazar (Ex-P21) and Rough Sketch (Ex-P31).



2.6 Inquest was conducted over the body of Anbu and the inquest report was marked as Ex-P30. Thereafter, the body of Anbu was sent to the Government Hospital for postmortem, where Dr.Manimeghalai (PW13) performed autopsy on the body of Anbu and issued postmortem certificate (Ex-P19), wherein, she has stated as follows:

“Opinion as to cause of death - The deceased would appear to have died of irreversible shock and haemorrhage to injuries to the skull and brain and multiple incised wounds sustained by him about 16-24 hours prior to autopsy”

2.7 While that being so, Kanniyappan (PW1), who is said to have been injured in that incident, was sent with a police memo to the hospital, where, he was examined by Dr.P.T.Valavan (PW19) and the copy of the Accident Register of Kanniyappan (PW1) was marked as Ex-P20.

2.8 The police arrested the accused and effected recoveries of the weapons and vehicles.

2.9 After completing the investigation, the Investigating Officer filed a final report in P.R.C.No.33 of 2008 before the Judicial Magistrate Court, Vanur, for the offences under Sections 120-B r/w 302, 307, 148, 149, 294-B and 506 (II) IPC only against six accused/respondents 2 to 7.

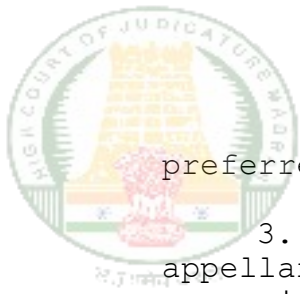
2.10 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.131 of 2009 and was made over to the Additional District and Sessions Court, (Fast Track Court No.I), Tindivanam, for trial.

2.11 The trial Court framed the aforesaid charges against the accused and when questioned, they pleaded “not guilty”.

2.12 To prove the prosecution case, the police examined twenty six witnesses and marked thirty six exhibits and seventeen materials objects.

2.13 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. From the side of the accused, one witness viz., Saravanan (DW1) was examined and four exhibits (Exs-D1 to D4) were marked.

2.14 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 31.12.2009 in S.C.No.131 of 2009, has acquitted the accused of all the charges, aggrieved by which, the present appeal has been



preferred by the widow of the deceased, as stated above.

3. Heard Mr.C.S.S.Pillai, learned counsel for the appellant, Mr.Hasan Mohamed Jinnah, learned Public Prosecutor appearing for the first respondent/State and Mr.E.Kannadasan, learned counsel for the accused/respondents 2 to 7 herein.

4. The entire case revolves around the evidence of Kanniyappan (PW1), Sankar (PW2) and Veerappan (PW3), who were said to be the eyewitnesses and whose evidence, the trial Court has disbelieved.

5. It is the specific case of Kanniyappan (PW1), Sankar (PW2) and Veerappan (PW3) that, while they were going along with Anbu in their motorbikes around 6.45 p.m. on 01.10.2008, the accused came in a TATA Sumo Car, banged from behind the two wheeler of Anbu, on account of which, Anbu fell down along with his pillion Kanniyappan (PW1), after which, the accused attacked Anbu indiscriminately.

6. The motive for the attack is that Anbu was involved in the murder of Kothandam, brother of Rajini (A1), Mani (A2), Palani (A3) and Ravi (A4). However, from the evidence of the witnesses, it was found that even before Kanniyappan (PW1) could lodge the complaint (Ex-P1), message had reached the police and they had come to the place of occurrence and had examined some witnesses. Only thereafter, on the complaint given by Kanniyappan (PW1), FIR (Ex-P26) in this case was registered on 01.02.2008 at 8.00 p.m., whereas, the complaint (Ex-P1) and the FIR (Ex-P26) reached the jurisdictional Magistrate only on 02.10.2008 at 7.40 a.m.

7. A reading of the FIR (Ex-P26) shows as if Kanniyappan (PW1) had given the complaint (Ex-P1), whereas, the evidence of the witnesses show that one Elumalai, who was involved in several criminal cases, had written the complaint, based on which, the complaint (Ex-P1) was registered.

8. To cap it all, in column no.7 of the printed FIR (Ex-P26), which contains the details of the accused, apart from the names of six accused, it is also stated that nine known others were involved in the offence. This means, around fifteen persons were involved in the offence, whereas, only six accused, of whom, four of them belonging to the same family, have been arrayed as accused.

9. Be that as it may, it is seen that Kanniyappan (PW1), who is said to have been injured in the occurrence, was sent with a police memo to the hospital, where, he was examined by Dr.P.T.Valavan (PW19). Dr.P.T.Valavan (PW19), in his evidence as



well in the Accident Register (Ex-P20), has stated that Kanniyappan (PW1) told him that he was assaulted by unknown persons using unknown weapons.

10. If really the FIR (Ex-P26) had been registered on 01.10.2008 at 8.00 p.m. as projected by the prosecution, Kanniyappan (PW1) would not have stated to Dr.P.T.Valavan (PW19) subsequently viz., on 02.10.2008 at 1.30 a.m. that he was attacked by unknown persons with unknown weapons.

11. Yet another aspect noticed by the trial Court is that, the two wheeler bearing Registration No.PY-01-AE-3772 (M.O.12), which was driven by Anbu, had not suffered even a scratch after it was banged by a heavy vehicle viz., TATA Sumo car bearing Registration No.TN-23-D-4257 (M.O.4).

12. All these aspects had weighed in the mind of the trial Court for acquitting the accused in this case.

13. The trial Court has had the opportunity to see the witnesses and note their demeanor while they were under examination for appreciating their evidence, which privilege, we do not have.

14. Trite it is that when two views are possible from a given set of evidence, the view that favours the accused merits acceptance.

In the result, we find no merit in this criminal appeal warranting interference and consequently, this criminal appeal is dismissed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nsd

To

1.The Additional District and Sessions Judge,  
(Fast Track Court No.I),  
Dindivanam.

2.The Inspector of Police,  
Kiliyanur Police Station,  
Villupuram District.

3.The Public Prosecutor,  
Madras High Court, Chennai - 600 104.



+1cc to Mr.C.S.S.Pillai,Advocate, SR No. 31873  
+1cc to Mr.E.Kannadasan,Advocate, SR No. 32288

Cr1.A.No.550 of 2018

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PVS (CO)  
B.VC (03/08/2021)