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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2022
PRONOUNCED ON : 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Crl.A.Nos.355 of 2018 and 295 of 2020

1.Paraman @ Paramasivam

...Appellant/A2-Crl.A.355/2018

2.Syed @ Syed Abdul Kader

...Appellant/A3-Crl.A.295/2020

Vs

State by the Inspector of Police
Sulur Police Station,
Coimbatore

....Respondent in both Crl.As / Complainant

Prayer:- These Criminal Appeals have been filed, under Section 374(2) of Cr.PC, against the judgement of conviction and sentence, dated 28.09.2017, made in SC.No.232 of 2015, by the Special Sessions Court, Bomb Blast Cases (FAC) Coimbatore.

For Appellants : Mr.I.Abdul Basith-Crl.A.355 of 2018
Mr.C.Prabakaran-Crl.A.295 of 2020

For Respondent : Mr.M.Babu Muthu Meeran, APP

JUDGMENT

(Judgment of the Court was made by A.A.NAKKIRAN, J.)

1.These Criminal Appeals have been filed, against the judgement of conviction and sentence, dated 28.09.2017, made in SC.No.232 of 2015, by the Special Sessions Court, Bomb Blast Cases (FAC) Coimbatore, thereby convicting and sentencing



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each of the Appellants/A2 and A3, for the offence under Section 449 of IPC to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment and for the offence under Section 302 (2 counts) read with 34 of IPC to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment and for the offence under Section 307(2 counts) read with 34 of IPC to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months Simple Imprisonment and ordering the sentences to run consecutively.

2. The case of the Prosecution is that one Rakkiappan and his family member were running a power loom industry at Kaliasman Koil Street, Kumarapalayam and also residing in the same compound. Sarojini is the wife of Rakkiappan. They were blessed with two children, namely, Vanitha and Usha. Before the incident, Rakkiappan engaged a labour, namely, Udayakumar through one Kanmani. The said Udayakumar was also permitted to stay in the labour quarters. Within a week, the said Udayakumar demanded Rs.50,000/- as advance and the same was refused by Rakkiappan. Further, he assured that he will give the amount after three months. Within two days, Udayakumar brought one Syed Abdul Kader without the knowledge of Rakkiappan. The same was questioned by Rakkiappan, for which, Udayakumar replied that he was only a trainee and hence he need not pay him anything. Rakkiappan also allowed Syed Abdul Kader to stay with Udayakumar in the quarters. One week before the incident, the elder daughter came to Rakkiappan House with her child.
3. On 23.12.2014, Udayakumar brought one Paramasivam/A2 to the power loom industry without the permission of Rakkiappan, which was objected by him. Immediately, Udayakumar scolded Rakkiappan and left the place by threatening him that they will do away with his entire family. On 24.12.2014 at about 8.15 p.m. A1 to A3 trespassed into the power loom industry with an intention to murder Rakkiappan and his family. At that time, Rakkiappan and his two daughters questioned them and asked them to quit the place. On hearing the noise, Sarojini came to the place of occurrence at about 8.45 p.m. and at that time, Udayakumar threatened Rakkiappan and demanded an advance amount of Rs.50,000/-, which was refused by him. Then, Udayakumar stabbed Rakkiappan on the neck and the other parts of the body indiscriminately. The elder daughter Vanitha attempted to save him. Further A2 stabbed her indiscriminately on the neck and back side of the body. Younger daughter Usha attempted to save her father and her sister. Udayakumar/A1 instigated Syed Abdul Kader/A3 to do away the life of Usha also. Immediately, Syed Abdul Kader caught hold of Usha and stabbed her indiscriminately all over the body. When PW.1 attempted to



save her husband and two daughters, Syed Abdul Kader caught hold of her and Udayakumar stabbed her with a knife. At that time, to save her life, Usha escaped from that place and shouted for help.

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4. After hearing the hue and cry, nearby neighbours, Balasubramanian and Sureshkumar (PW3) rushed into the power loom industry. On seeing them, all the accused escaped from the scene of occurrence with the blood stained knife. The neighbours, who were present at the scene of occurrence, engaged an ambulance and had taken the injured persons to the Coimbatore Medical Centre Hospital. Rakkiappan and Vanitha died on the way to Hospital. Usha and Sarojini were admitted as inpatients at Coimbatore Medical College and Hospital and the Hospital sent an intimation through phone to Sullur Police Station. On receipt of the intimation at about 12.00 a.m from the hospital, Sub Inspector of Police (PW14) reached the hospital at about 2.00 a.m. and recorded the statement of PW.1, which was marked as Ex.P1 and registered the First Information Report in Cr.No.905 of 2014 under Section 307, 302 (2 counts) which was marked as Ex.P28. Sub Inspector of Police (PW.14) dispatched the originals of Ex.P1 and Ex.P28 to the Jurisdiction Court. The Inspector of Police (PW15) received the First Information Report and went to the place of occurrence on 25.12.2014 and prepared observation mahazar Ex.P2 and rough sketch Ex.P29 in the presence of the witnesses, Ganesan and Mayilsamy and enquired the witnesses and recorded their statements and recovered soil with blood stains and soil without blood stains of Rakkiappan in the presence of the witnesses under Ex.P3 mahazar and recovered soil with blood stains and soil without blood stains of Vanitha in the presence of the witnesses under Ex.P4 mahazar. He examined Balasubramanian and Sureshkumar and recorded their statements on the same day and he went to the KMC Hospital and recorded further statement of Sarojini.

5. On 25.12.2014, he conducted inquest on the body of the deceased Rakkiappan and Vanitha in the presence of the witnesses and prepared inquest reports, Ex.P30 and Ex.P31 respectively. Then, he forwarded the dead bodies for autopsy. Dr.Jaisingh, Medical Officer in the Government Medical College Hospital, commenced the post mortem on 25.12.2014. He found 28 injuries on the body of Rakkiappan and he issued the postmortem certificate (Ex.P21), opining that the deceased would appear to have died of shock and haemorrhage due to multiple stab injuries and its corresponding internal injuries and that the death would have occurred 12 to 14 hours prior to autopsy.



6. On the same day, he commenced the post mortem of the dead body of Vanitha and found 5 injuries and he issued the postmortem certificate (Ex. P23), opining that the deceased would appear to have died of shock and haemorrhage due to multiple stab injuries and its corresponding internal injuries and that the death would have occurred 12 to 24 hours prior to autopsy.

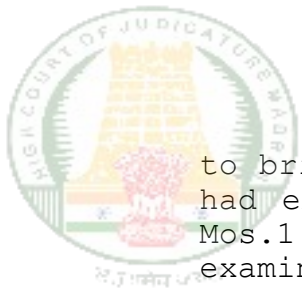
7. Dr. Kesavamurthy, PW.8, attached to KMC Hospital examined PW.2 on 24.12.2014 and issued a wound certificate on the same day and he examined PW.1 and issued a wound certificate Ex.P12.

8. The Investigating Officer (PW.15), in continuation of his investigation on 26.12.2014 at about 20.30 hours was conducting vehicle search along with the witness Suresh Kumar. At that time at 23.00 hours, 3 persons in a two wheeler were proceeding from South to North. After seeing the police party, they attempted to escape and they were subsequently identified by the witness Suresh Kumar, and the accused A1 to A3 were arrested.

9. A1 came forward to give confession statement voluntarily and the admissible portion of it was marked as Ex.P5. Pursuant to the same, the Investigating Officer seized the knife and blood stained cloth under the cover of a mahazar. After the arrest of A2, he came forward to give confession statement voluntarily and the admissible portion of it was marked as Ex.P6. In pursuant of the same, the Investigating Officer seized the knife and blood stained clothes under the cover of a mahazar. After the arrest of A3, at about 2.00 a.m. he came forward to give confession statement voluntarily and the admissible portion of it was marked as Ex.P7 and pursuant to the same, the Investigating Officer seized the knife and blood stained clothes under the cover of a mahazar.

10. The Investigating Officer enquired with the Doctor, attached to KMC Hospital and recorded his statement and the accident register copy relating to Udayakumar was marked as Ex.P35 and the accident register copy relating to Paramasivam was marked as Ex.P36. Further, he recorded the statement of Usha who took treatment in the hospital and examined Dr. Jayasingh who conducted autopsy on the dead bodies of the deceased Rakkiappan and Vanitha and recorded his statement. Further, he examined Dr. Kesavamurthy, who treated Sarojini and Usha and recorded his statement. After completion of the investigation, he filed the final report against A1 to A3.

11. The case was taken on file in SC.No.232 of 2015, by the Special Sessions Court, Bomb Blast Cases (FAC) Coimbatore and necessary charges were framed against both the accused. The accused had denied the charges and sought for trial. In order



to bring home the charges against the accused, the Prosecution had examined PW.1 to PW.16 and also marked Exs.P1 to P38 and Mos.1 to 30. On the side of the Defence, DW.1 and DW.2 were examined and Ex.D1 to D3 were examined.

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12. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, had found the Appellants/A2 and A3 guilty and awarded punishments, as referred to above, which is challenged in these Criminal Appeals by the Appellant/A2 and A3.
13. This court heard the submissions of the learned counsel on either side.
14. The learned counsel for the Appellants submitted that there are lot of contradictions in the evidence of the Prosecution and that the Trial Court omitted to appreciate the same. He further submits that the Appellants have been falsely implicated in the above case and that the eye witnesses to the occurrence are interested witnesses and their testimonies are not consistent. There are material discrepancies in the evidence and therefore, it is highly unjust to convict the accused based on the witnesses testimonies. The learned counsel would further submit that there was a delay in the First Information Report reaching the Court.
15. The learned Additional Public Prosecutor for the Respondent would submit that the evidence of the Prosecution witnesses is cogent, clear and trustworthy and the report of the Doctor who conducted the post mortem and material objects seized from the accused would also connect the accused to the occurrence. He further submitted that the Trial Court has appreciated the evidence correctly and convicted the accused.
16. This Court considered the submissions of the learned counsel on either side and also the entire evidence available on record.
17. The point that arises for consideration is whether the impugned judgement of conviction and sentence, passed against the accused for the offence under Sections 449, 302 (2 counts) read with 34 of IPC and 307 (2 counts) read with 34 of IPC is fair and proper?



18.PW.1 Sarojini is the wife of the deceased. She deposed that they were blessed with two daughters viz., Vanitha/D2 and Usha. The deceased Rakkiappan and his family members were running a power loom Industry in Kalliamman Koil Street, Kumarapalayam and his family members were residing in the same compound. The said power loom Industry was managed by PW.1 husband Rakkiappan. One month prior to the occurrence, he engaged a labour namely Udayakumar through Kanmani PW.6, who is a labour contractor. A sum of Rs.600/- was fixed as daily wages to the said Udayakumar and he was permitted to stay in the labour quarters. Within one week, the Accused Udayakumar demanded Rs.50,000/- as advance and the same was refused by Rakkiappan. Further, he undertook to return the said amount after three months. However, the said Udayakumar within two days brought one Syed Abdul Kader. The accused Udayakumar informed Rakkiappan that Syed Abdul Kader was only a trainee and no salary need to be paid to him and hence Rakkiappan allowed him to stay along with Udayakumar. One week before the occurrence, Rakkiappan's elder daughter came to the house of PW.2 along with her child. On 23.12.2014 at about 8.00 a.m., the said Udayakumar brought another person Paramasivam to the Industry. This was questioned by Rakkiappan. Thereafter, Udayakumar also scolded Rakkiappan and left the place by threatening that he will do away the entire family. On the next day, i.e. on 24.12.2014 at about 08.15 p.m., all the accused viz., A1 to A3 trespassed into the power loom Industry of Rakkiappan with an intention to murder Rakkiappan and his family. At that time, Rakkiappan and his two daughters questioned the accused and asked them to quit the place. On hearing the noise, Sarojini came to the place of occurrence at 08.45 p.m. After that, Udayakumar threatened Rakkiappan and demanded to be given an advance amount of Rs.50,000/- and the same was refused. Udayakumar stabbed Rakkiappan on the neck and other parts of the body indiscriminately. When his elder daughter Vanitha attempted to save her father, Paramasivam stabbed her indiscriminately on the neck and backside of her body. When her younger daughter viz., Usha attempted to save her father and her sister, Udayakumar instigated Syed Abdul Kader, who caught hold of Usha and stabbed her indiscriminately all over the body. When PW1 attempted to save her husband and two daughters, Syed Abdul Kader caught hold of her and Udayakumar stabbed her with the knife. At that time, Usha escaped from the scene and shouted for help. On hearing the noise of Usha, the nearby neighbours, namely, Balasubramanian and Suresh Kumar, rushed to the power loom Industry and on seeing them, all the accused escaped from the scene of occurrence with knives. The neighbours present at the scene of occurrence had engaged an ambulance and had taken the injured persons to the KMC Hospital. Rakkiappan and Vanitha died on the way to the Hospital. Usha and Sarojini were admitted as



inpatients at the KMC Hospital and the hospital authorities sent an intimation through phone to the Sulur Police Station. On receipt of an intimation at 12.00 p.m., from the Hospital, the Sub-Inspector of Police reached the hospital at 02.00 a.m., and recorded the statement of PW2 which was marked as Ex.A1 and registered an FIR in Cr.No.905 of 2014. PW.1 also identified the knives as M.O.1 to M.O.3 and stated that the knives were used by the accused during the occurrence and also identified the accused before the Court.

19.PW.2, Usha who is the daughter of PW1, Rakkiappan and sister of Vanitha, is an injured eye-witness. She deposed that on 24.12.2014 at about 08.15 p.m., all the accused/A1 to A3 trespassed into the power loom Industry of Rakkiappan with an intention to murder Rakkiappan and his family and at that time, Rakkiappan and his two daughters questioned them and asked them to quit the place. On hearing the noise, Rakkiappan's wife came to the place at about 08.45 p.m. At that time, Udayakumar threatened Rakkiappan and demanded an advance amount of Rs.50,000/- When the same was refused, Udayakumar stabbed Rakkiappan on the neck and other parts of the body indiscriminately. When his elder daughter Vanitha attempted to save her father, Paramasivam stabbed her indiscriminately on the neck and backside of the body of Vanitha. The younger daughter Usha attempted to save her father and her sister. Udayakumar instigated Syed Abdul Kader to do away the life of Usha. Immediately Syed Abdul Kader caught hold of Usha and stabbed her indiscriminately all over the body. When P.W.1 attempted to save her husband and two daughters, Syed Abdul Kader caught hold of her and Udayakumar, stabbed her with the knife. At that time, Usha, to save her life, escaped from the scene of occurrence and shouted for help. On hearing the noise of Usha, the nearby neighbours, namely, Balasubramanian and Suresh Kumar rushed to the power loom industry, on seeing them, all the accused escaped from the scene of occurrence with blood stained knives. The neighbours who were present at the scene of occurrence had engaged an ambulance and taken the injured persons to KMC Hospital. Rakkiappan and Vanitha died on the way to the Hospital. Usha and Sarojini were admitted as inpatients in the KMC Hospital. PW.2 also identified the knives as MOs.1 to 3 and she stated that the knives were used by the accused during the occurrence and also identified the accused before the court.

20.PW3 Sureshkumar is the friend of Balasubramanian. He deposed that on 24.12.2014, at 08.15 p.m., they went to Kumarapalayam to meet his friend Balasubramanian. Rakkiappan's house is situated adjacent to the Balasubramanian's house and he heard the noise raised by somebody for help from Rakkiappan's power loom godown. Immediately, he along with Balasubramanian rushed



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to the place and at that time, all the accused hurriedly came out from the godown with blood stained knives and identified Mos.1 to 3 and also further stated that the weapons consisted of blood stain and found Rakkiappan and his daughter Vanitha in a pool of blood and PW.1 was also found with injuries. Immediately, they came out of the godown and shouted for help and they engaged an ambulance and went to the KMC Hospital, Coimbatore. Rakkiappan and Vanitha were declared dead and Sarojini and her younger daughter were admitted as inpatients in the Hospital.

21.PW.4 Ganesan also corroborated the evidence of PW.3 and he has also attested the observation mahazar Ex.P2 and seizure mahazar Ex.P3 and Ex.P4. PW.5 Sasikumar is running a power loom industry and A1 worked under him and two months prior to the occurrence, he received an advance of Rs.50,000/- and thereafter he never turned up. PW.6 is Mahalingam, who accompanied the police when the accused were arrested and also stood as a witness for the confession given by the accused and subsequent recovery of the weapons from the accused.

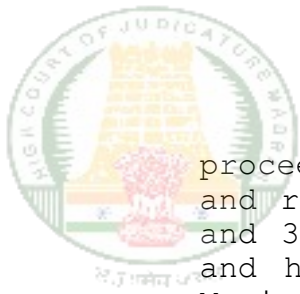
22.PW.7 Kanmani is a resident of Pallapalayam and he is a labour contractor. He deposed that the deceased Rakkiappan requested him to bring a labour for his power loom Industry and he arranged for the same. A1 Udayakumar was appointed as a labour in Rakkiappan's Powerloom Industry 15 days prior to the incident.

23.PW.8 Kesavamoorthy, who is a doctor attached to the KMC Hospital on 24.12.2014 at about 10.20 p.m., treated Yasodha and found 7 injuries. He stated that the injuries 1 to 3 were grievous injuries and the wound certificate was marked as Ex.P11. She has been admitted as an in-patient. In the wound certificate, it is also noted that "Assault by three known persons using the knife, at her home, about 8.30 p.m., on 24.12.2014." On the same day, he examined Sarojini and found three injuries. The said injuries are simple in nature and the same has been marked as Ex.P12. In the wound certificate, he also noted as follows:

"Assault by three known persons using knife, at her home
Kumarapalayam, about 8.30 p.m., on 24.12.14"

24.PW10. Doctor Jayasingh conducted autopsy on the body of the deceased Rakkiappan and Vanitha and issued post mortem certificates Ex.P21 and Ex.P22 respectively.

25.PW.14 the Sub-Inspector of Police, Sulur Police Station deposed that at the time of occurrence, he received a phone message from the KMC Hospital on 25.02.2014 at 12.00 a.m., and



proceeded to the hospital and received a statement from PW.1 and registered a case in Cr.No.905 of 2014 under Sections 307 and 302 (2 counts) of IPC and the FIR was marked as Ex.P.28 and he despatched the FIR and the complaint to the Judicial Magistrate No.VII, Coimbatore. PW.15 Investigation Officer took up the case for investigation and after completion of the investigation, he filed the charge sheet against the accused.

26.It is a case on the evidence of eye witnesses. PW.1 is an injured eye witness, wife of deceased Rakkiappan and the mother of the deceased Vanitha. She has stated about the motive for murder and her evidence is cogent and consistent and she has no motive to falsely implicate the accused and the cross-examination also did not demolish her chief-examination and she also identified the weapons and the accused before the Court. We find no reason to reject her evidence.

27.PW2 is also an injured eye witness and the deceased Rakkiappan is her father and the deceased Vanitha is her elder sister and PW.1 is her mother. She also narrated the entire incident and also stated about the motive for murder. She also identified the weapons used for the commission of offence and also identified the accused before the court and she has given a clear account of the entire occurrence. Her evidence is cogent and consistent and she has no motive to falsely implicated the accused and the lengthy cross-examination of the defence also did not demolish the chief-examination. We find no reason to reject her evidence also.

28.PW.3's evidence also corroborated the evidence of PW.1 and PW.2. He deposed that on hearing the noise, he rushed to the scene of occurrence. At that time, all the three accused came from the scene of occurrence with blood stained knives.

29.In so far as the argument of the learned counsel for the Appellants that there was a delay in registering the FIR and also in reaching the court is concerned, in the instant case, the incident had occurred at about 08.45 p.m., on 24.12.2014 and the injured persons were taken to the Kovai Medical Centre Hospital, where the injured were first seen by the Doctor at 10.20 p.m. and treated them and the hospital authorities sent an intimation through phone to the Sulur Police Station and on receipt of the intimation at about 12.00 a.m. from the Hospital, PW.14 Sub-Inspector of Police reached the Hospital at 2.00 a.m. and recorded the statement from PW.1 and registered the FIR at 02.40 a.m. and the same had reached the Court on the very same day. As such, there was no delay either in registering the FIR or reaching the Court.



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30. The second point of arguments is that there are lot of contradictions in the evidence of the prosecution witness and the testimonies are not consistent. Further, there are material discrepancies in their evidences and therefore, it is highly unsafe to convict the accused based on the testimony.

31. The evidence of PW.1 and PW.2 are cogent, natural and consistent and they are injured witnesses. Just because the witnesses are related, it cannot be the basis to discard their evidences. It is natural and truthful and the lengthy cross-examination also did not demolish the chief-examination.

32. In 2017 14 SCC 614 (The State of Uttar Pradesh Vs. Ramkumar), it was held that the minor discrepancies in the statement of the witnesses of trivial nature cannot be a ground to reject the evidence.

33. In this case, chief examination of PW.1 was taken on 16.06.2016 and she was not cross examined on that day. The accused person filed a petition to recall the witnesses and she was cross examined only on 09.09.2016. Similarly, the chief examination of PW.2 on 16.06.2016 and she was cross examined on 20.09.2016. Similarly, PW.3 also examined herself in chief on 16.06.2016 and cross-examination on 22.09.2016. In this case, the cross examination had taken place after three months.

34. In 2015 3 SCC 220 (Vinodh Kumar Vs. State of Punjab), the Honourable Supreme Court, while referring to several earlier Judgments, had held as follows:-

" In the instant case, the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witnesses and to gain over her by adopting all kinds of tactics. In fact, it is not at all appreciable to call witnesses for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of witness continues till date, how the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

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The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite services of Judgment



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<https://hcservices.ecourts.gov.in/hcservices/>



2. The Special Sessions Judge,
Bomb Blast Cases (FAC)
Coimbatore.

3. The Superintendent,
Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.25805

+lcc to Mr.I.Abdul Basith, Advocate, S.R.No.25610

Cr1.A.No.355 of 2018 and 295 of 2020

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