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Crl.A(MD)No.369 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.11.2022

DELIVERED ON : 17.11.2022

CORAM :

**THE HONOURABLE MR. JUSTICE M.S.RAMESH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

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1.Jakkamma @ Jebakumar

2.Lakshmanan

3.Dharmaraj

4.Benjamin

.. Appellants/ Accused Nos.1 to 4

Vs.

State represented by,
The Inspector of Police,
Nanguneri Police Station,
Tirunelveli District.
(Crime No.95/2016)

.. Respondent/Complainant



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PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order, dated 13.10.2020 in S.C.No.765 of 2016 passed by the learned IV-Additional District Judge, Tirunelveli District.

For Appellants : Mr.V.Kathirvelu
Senior Counsel for
Mr.K.Navaneetharaja

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

N.ANAND VENKATESH, J.

The appellants have filed this criminal appeal against the judgement and order passed by the IV-Additional Sessions Court, Tirunelveli, in S.C.No.765 of 2016, dated 13.10.2020, convicting and sentencing the appellants in the following manner:



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S.No.	Rank of the accused	Provision under which conviction was made	Sentence/Punishment
1.	A1 to A4	Section 120B IPC	Life Imprisonment and fine of Rs.5000/-, in default, to undergo three years Rigorous Imprisonment.
2.		Section 341 IPC	
3.	A1	Section 294 (b) IPC	Three months Simple Imprisonment and a fine of Rs.1,000/-, in default, to undergo one month Simple Imprisonment.
4.		Section 302 IPC	
5.	A2 to A4	Section 302 r/w 34 IPC.	Life Imprisonment and fine of Rs.5000/-, in default, to undergo three years Rigorous Imprisonment.



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2. The case of the prosecution is that A1 is the elder brother of A4 and the younger brother of A3 and A2 is the uncle of A1. Angeline is the wife of A1 and they had a child aged about two years. One week prior to the incident, one Johnson is said to have met the said Angeline in her house when she was alone and the deceased (Sathrakutti) along with four others locked the house from outside and opened it after an hour. This incident was informed to A1 and A1 is said to have conspired with A2 to A4 to do away with the deceased.

3. On 14.04.2016 at about 07.15 a.m, when the deceased was coming near Zear Kanmoi, he was waylaid by the accused persons and he was abused in filthy language and A1 is said to have attacked the deceased indiscriminately with M.O.1.

4. The above incident was witnessed by P.W-1, who is none other than the brother of the deceased, who came to this place in his bike



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on his way to work. P.W-1 gave a complaint (Ex.P1) to P.W-14 at 09.00 a.m, and an FIR came to be registered in Crime No.95 of 2016, marked as Ex.P16. The investigation was taken up by P.W-15 and he went to the scene of occurrence at about 10.30 a.m. and prepared the observation mahazar (Ex.P2) and sketch (Ex.P17) in the presence of the witness (P.W-5). The Investigation Officer seized the material objects from the scene of crime under Ex.P3 and which were marked as M.O.4, M.O.7 and M.O.8. The inquest over the dead body was conducted in the presence of the local people between 01.00 p.m. to 03.00 p.m. and the inquest report (Ex.P18) was prepared.

5. The dead body was sent for postmortem through P.W-11 and the postmortem was conducted by P.W-6. The postmortem certificate (Ex.P8) was marked through P.W-6 and the following injuries were noted:

“1)Vertical gapping heavy cut injury seen over



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right side of back of lower part of head and back side of neck. It measures 18 x 2 cm x Muscle deep. It extends from 5cm to the back of right ear to the top of right shoulder. It cuts underlying soft tissues and muscles.

2) Horizontal heavy cut injury of size 4 x 1cm x 3.5 cm seen over left side of lower jaw. It measures 4cm below chin. It cuts underlying soft tissues, vessels, nerve.

3) Horizontal heavy cut injury of size 12 x 20 cm x 4 cm seen over the upper part of neck. This injury measuring 2cm below previous injury. It extends from 4cm from the right side of midline of neck to 8 cm to the left of midline of neck. It measures 2cm below left ear. It cuts underlying soft tissues, vessels, nerves.

4) Horizontal heavy cut injury of size 18 x 2 x 5cm seen over upper part of neck. It extends from 3cm below right ear lobe to 2 cm below left ear lobe. It cuts underlying soft issues, muscles, vessels, nerves, windpipe, oesophagus, cervical vertebra at C3 level.



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5) 14 x 2 x 5cm seen over lower part of neck. It extends from 4cm below right ear lobe to 5cm below left ear lobe. It cuts underlying soft tissues, muscles, vessels, nerves, wind pipe, oesophagus.

6) 20 x 2 x 5cm seen over lower part of neck. It extents 1 cm from back of middle of neck to 2cm from middle of neck on left side and 1 cm above Supra sternal notch. Bit of tag of skin attached to the back of neck it cuts underlying soft tissues, vessels, nerves.

7) Horizontal gapping injury of size 3 x 2 x 1cm over top of left shoulder. 0.5cm tailing over inner aspect of Injury”

6. The clothes-M.O.2, M.O.3, M.O.9 and M.O.10 recovered from the dead body were sent to the Court under Form-95 through P.W-13. A1 was arrested on 15.04.2016 at about 08.00 a.m, and based on the admissible portion of the confession given by A1, M.O.1 and M.O.6



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were seized under Ex.P4 in the presence of P.W-5.

7. A2 to A4 were arrested on the same day at about 03.00 p.m and all of them were produced before the Magistrate and they were remanded to judicial custody. The Investigation Officer recorded the statements of the witnesses and had sought for the opinion of the scientific experts and on receipt of the same, the final report came to be filed before the Judicial Magistrate, Nanguneri and after serving the copies of the documents to the accused persons under Section 207 Cr.P.C., the case was committed to the file of the Principal District and Sessions Judge, Tirunelveli and the same was made over to the Court below.

8. The Court below framed the following charges against the accused persons.



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Sl. No.	Rank of the accused	Charges
1.	A1 to A4	Section 120B IPC & Section 341 IPC
2.	A1	Section 294 IPC & Section 302 IPC
3.	A2 to A4	Section 302 r/w 34 IPC.

9. The prosecution examined P.W-1 to P.W-16 and marked Ex.P1 to Ex.P23 and identified and marked M.O.1 to M.O.10. The incriminating materials that emerged during the course of trial were put to the accused persons under Section 313(1)(b) Cr.P.C. and they denied the same as false. The Court below, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and convicted and sentenced the accused persons in the manner stated supra. Aggrieved by the same, the present criminal appeal has



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been filed before this Court.

10. Heard Mr.V.Kathirvelu, Senior Counsel for Mr.K.Navaneetharaja, learned counsel appearing on behalf of the appellants and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing on behalf of the respondent.

11. This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the judgment and order passed by the Court below.

12. The main thrust of the case of the prosecution lies in the eyewitness account of P.W-1 to P.W-3. The prosecution has also relied upon the evidence of P.W-1 in order to establish the previous enmity between A1 and the deceased.



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13. P.W-1 is the brother of the deceased. Before appreciating the evidence of P.W-1, it is relevant to take note of the complaint given by him which is marked as Ex.P1. In the complaint, he states about one Johnson meeting the wife of A1 when she was alone and about the deceased and others locking the door from outside and opening it after one hour. It is further stated in the complaint that the deceased had gone to water a new construction that was put up by one Sahayam (brother of P.W-1 and not examined by the prosecution) at about 07.15 a.m, and he was coming in a cycle near Gear Kanmoi. At that point of time, the deceased was waylaid by the accused persons and he was attacked with M.O.1 by A1. Thereafter, the accused persons escaped from the scene of crime in two wheelers.

14. During the chief examination of P.W-1, he had almost reiterated whatever was said in the complaint except the fact that he did not mention about the presence of P.W-2 and P.W-3 when the occurrence



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took place. In the complaint, it had been stated that apart from P.W-1, there were others, who also witnessed the occurrence.

15. The learned Senior Counsel appearing on behalf of the appellants submitted that the presence of P.W-1 in the scene of crime is highly doubtful. To substantiate this submission, the learned Senior Counsel brought to the notice of this court the observation mahazar marked as Ex.P2 and the rough sketch, which was marked as Ex.P17. By pointing out to these two documents, the learned Senior Counsel submitted that there was absolutely no mention about the house of Sahayam to which the deceased is said to have gone for watering the construction. It was also pointed out that P.W-1 at the best can be called as a chance witness and it is not known as to why he came to the place of occurrence early in the morning. This doubt gets strengthened since he is an interested witness and none other than the brother of the deceased. The learned Senior Counsel also pointed out to the fact that the presence



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of police in the scene of occurrence was admitted by P.W-1 even at 08.00 a.m. and this had taken place even before the complaint was given at 09.00 a.m.

16. On carefully going through the cross examination of P.W-1, it is seen that the police were available in the scene of crime even at about 07.30 a.m. and there were nearly 100 to 150 people, who had gathered at that time. He further states that the police got the signature of P.W-1 at about 8.30 a.m and the body was taken in an ambulance and was kept in the police station for nearly one hour and thereafter, the complaint was taken from P.W-1. Even though this witness speaks about the presence of P.W-2 and P.W-3 in the scene of crime, there was absolutely no mention about the same in the complaint.

17. On an overall appreciation of the evidence of P.W-1, it is seen that the nature of evidence tendered by P.W-1 is neither wholly



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reliable nor wholly unreliable. Therefore, this Court has to necessarily look for corroboration.

18. This takes us to the evidence of P.W-2 and P.W-3. These two witnesses claim that they know the deceased and P.W-1 and about the incident that took place one week prior to the date of occurrence. Even though these two witnesses parroted the same version as spoken to by P.W-1, their conduct assumes significance. Both these witnesses after witnessing the incident, neither attempted to help in taking the dead body nor went to the police and they just left the scene of crime. Section 8 of the Indian Evidence Act makes conduct as a relevant fact. During the process of appreciation of evidence, the Court is expected to look at the conduct of the witnesses since it is a relevant fact. The law on this issue has been discussed in *Vellankani v. State* reported in **2019 (4) MLJ (Crl) 746**. In the present case, the conduct of P.W-2 and P.W-3 is very unnatural and hence their presence at the time of the incident is highly



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doubtful. That apart, there is a discrepancy in the number of injuries sustained by the deceased. P.W-2 says that the deceased sustained two injuries and P.W-3 states that the deceased sustained 4 injuries and whereas the postmortem report says that the deceased totally sustained 7 injuries. Hence, the evidence of P.W-2 and P.W-3 does not really corroborate or strengthen the evidence of P.W-1.

19. An Investigation Officer is expected to perfectly note down the scene of crime while drawing the rough sketch. The definite case of the prosecution is that the deceased had gone to water the new constriction put up by Sahayam and while returning, he was waylaid and attacked. The Investigation Officer is duty-bound to first visit the house of Sahayam and show it in the sketch and in the observation mahazar. If that is not done, from which direction the deceased was coming in the cycle and from where the accused persons waylaid and attacked him, becomes highly confusing. If the eyewitness account is totally reliable,



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all these factors may not assume significance since it can be taken to be deficiencies of an Investigation Officer. But if the eyewitness account is shaky, these factors assume importance. The chance witness in this case is P.W-1, who is the brother of the deceased and was all of a sudden planted in the scene of crime and there is no explanation as to how and why he was in the scene of occurrence and from where he came to the scene of occurrence. While these questions looms large, the observation mahazar and sketch prepared by the Investigation Officer assumes significance. It also becomes a relevant fact under Section 7 of the Indian Evidence Act.

20. The incident is said to have taken place at about 7.15 a.m and the postmortem was conducted by P.W-6 at about 04.50 p.m on 14.04.2016. In the postmortem certificate, the rigor-mortis was appearing all over the body. In medical jurisprudence, rigor-mortis will start at 3 hours after the death and it will be present all over the body



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mention about M.O.6 and the material objects that matched with the blood group ('B') of the deceased were only the clothes recovered from the deceased.

22. In view of the above discussion, this Court comes to a categorical conclusion that the prosecution did not prove the case beyond reasonable doubt. In view of the same, the findings rendered by the Court below are liable to be interfered with by this Court and the accused persons are entitled to be acquitted from all charges.

23. In the result,

(i) This Criminal Appeal stands allowed.

(ii) The conviction and sentence passed by the learned IV-Additional District Judge, Tirunelveli District, against the appellants in S.C.No.765 of 2016 dated 13.10.2020, is hereby



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set aside and the appellants/A1 to A4 are acquitted of all charges.

(iii) The bail bond executed by A2 to A4 shall stand cancelled and fine amount, if any paid by them shall be refunded to them.

(iv) Since the first appellant/A1 is in jail, he is directed to be released forthwith, if his custody is not required in any other case.

[M.S.R., J.] & [N.A.V., J.]

17.11.2022

Index : Yes/No
Internet : Yes/No
PJL

To

1.The IV-Additional District Judge,
Tirunelveli District.



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2. The Inspector of Police,
Nanguneri Police Station,
Tirunelveli District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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**M.S.RAMESH, J
AND
N.ANAND VENKATESH, J**

PJL

Pre-delivery Judgment made in
Crl.A.(MD)No.369 of 2020

17.11.2022