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Crl.A(MD)No.561 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2022

CORAM :

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

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The State represented through

The Inspector of Police,

Karivalam Vantha Nallur Police Station,

Tirunelveli District.

Crime No.134/2016

.. Appellant/ Complainant

Vs.

1.Karuthai @ Selvaraj

2.Immanuvel

3.Ramesh

4.Muthuvalhzi

5.Tamilarasan

.. Respondents/A1 to A5



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PRAYER: Criminal Appeal filed under Section 378(1) of Criminal Procedure Code, 1973, against the judgment and order, dated 13.12.2018 in S.C.No.258 of 2017 passed by the learned IV-Additional Sessions Judge, Tirunelveli District.

For Appellant : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
For Respondents : Mr.P.Samuel Guna Singh

JUDGMENT

M.S.RAMESH,J.
and
N.ANAND VENKATESH, J.

This appeal has been filed by the State against the judgment and order passed by the IV-Additional Sessions Judge, Tirunelveli, in S.C.No.258 of 2017, dated 13.12.2018, acquitting the accused persons from all the charges.



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2. The case of the prosecution is that P.W-1 had constructed a house in a vacant site and in front of the house, the E.B. line of A1 to A4 was crossing the house site of P.W-1 which was causing disturbance. P.W-1 is said to have asked A1 to A4 to remove the E.B. line. This resulted in an incident that took place on 21.02.2016, wherein P.W-1 was assaulted by one Muthuvalhzi, who is the mother of A1 and A3, along with her sons and one Lakshmi. Hence, according to the prosecution, there was a prior enmity between the parties before the incident took place.

3. On 10.05.2016 at about 06.00 a.m, the deceased was restrained by A1 to A3 and he was abused in filthy language and he was attacked by A1 to A3 with M.O.6, M.O.9 and M.O.12, as a result of which, the deceased died on the spot. A4 and A5 are said to have instigated the crime.



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4. A complaint (Ex.P1) was given by P.W-1 and an FIR (Ex.P13) came to be registered by P.W-18. The investigation was taken up by P.W-20 and on completion of the investigation, a final report came to be laid before the Judicial Magistrate, Sankarankovil. After the accused persons were served with the copies, the case was committed to the file of the Principal District and Sessions Court, Tirunelveli and it was made over to the Court below.

5. The Court below framed the following charges against the accused persons:

Sl.No.	Rank of the accused	Charges
1.	A1 to A3	Sections 294(b), 341, 302 and 120B IPC



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2.	A4 , A5	Sections 302 r/w 109 and 120B IPC.
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6. The prosecution examined P.W-1 to P.W-20 and marked Exhibits P1 to P27 and identified and marked M.O.1 to M.O.14. The defence examined D.W-1 and marked Exhibits D1 and D2. The Court below questioned the accused persons under Section 313(1)(b) of Cr.P.C. by putting the incriminating materials that were collected during the course of investigation and the same was denied as false.

7. The Court below after considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the prosecution failed to prove the case beyond reasonable doubts and acquitted the accused persons from all the charges. Aggrieved by the same, the State has filed this Criminal Appeal.

8. Heard Mr.A.Thiruvadi Kumar, learned Additional Public



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Prosecutor appearing for the appellant/State and Mr.P.Samuel Guna Singh, learned counsel appearing for the respondents/A1 to A5.

9. The learned Additional Public Prosecutor appearing on behalf of the State mainly focused his arguments on the evidence of P.W-1 and submitted that P.W-1 had categorically stated about the occurrence and there was nothing to discredit her evidence. Insofar as appreciation of the evidence of eyewitness is concerned, the learned Additional Public Prosecutor relied upon the judgment of the Apex Court in *Shahaja alias Shahajan Ismail Mohd. Shaikh v. State of Maharashtra* reported in **2022 SCC OnLine SC 883**.

10. The Court below while considering the evidence of P.W-1, who is the only eyewitness in this case, who supported the case of the prosecution, came to a conclusion that the evidence of P.W-1 cannot be believed. To come to such a conclusion, the Court below took into consideration the S.164 Cr.P.C statement that was recorded from P.W-1



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and which was marked as Ex.P2. The Court below found that there were totally two different versions given by P.W-1 about the incident, in the S. 164 Cr.P.C statement and when P.W-1 deposed before the Court. This was sufficiently contradicted by the defence by showing S.164 Cr.P.C statement to P.W-1 during cross examination. It is quite strange that P.W-1 did not even state that A1 to A3 attacked the deceased with aruval in her S.164 Cr.P.C statement and whereas, she gives a graphic description about the overtact of each accused persons at the time of evidence. The Court below considered this issue in detail and came to a conclusion that P.W-1 could not have seen the incident.

11. The Court below doubted the genuineness of the complaint in the present case. To come to such a conclusion, the Court below considered the evidence of P.W-1 and found that the police were present in the scene of crime even before the complaint was formally given at 07.30 a.m. and in view of the same, the complaint itself was



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deliberated to suit the needs of the prosecution. In other words, the investigation had started even before the complaint was given.

12. The Court below also found that the FIR reached the Court only on 10.05.2015 at 03.05 p.m., after sufficient delay, which also remained unexplained. This only strengthened the finding of the Court below to the effect that the complaint was a deliberated one.

13. In the present case, the recovery witness turned hostile and hence, the so called arrest and recovery was not proved by the prosecution.

14. The Court below was not able to reconcile two inconsistent versions of the occurrence as described by P.W-1. Insofar as an appeal against acquittal is concerned, the Court must bear in mind that the presumption of innocence gets strengthened when the accused is acquitted by the Trial Court and the High Court should not lightly



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To

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

2. The Inspector of Police,
Karivalam Vantha Nallur 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

**Judgment made in
Crl.A.(MD)No.561 of 2019**

08.11.2022