



Crl.A.(MD)Nos.584 of 2019 and 208 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
13.02.2023	27.02.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

Crl.A.(MD)Nos.584 of 2019 and 208 of 2020

Crl.A.(MD)No.584 of 2019:-

Pandian, S/o.Thanuskodi

... Appellant / A2

vs.

State through the
Inspector of Police,
Cinnamanor Police Station,
Theni District.
(Crime No.265 of 2013)

... Respondent / Complainant

Prayer :- Criminal Appeal filed under Section 374 of Cr.P.C., to call for the records from the Court below, hear the counsel for the appellant/accused, allow this appeal and set aside the conviction and sentence passed by the learned Additional District and Sessions Judge (Fast Track Court), Theni, made in S.C.No.104 of 2014, dated 27.08.2019 and refund the fine amount.

For Appellant : Ms.A.S.Rajeswari

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



Crl.A.(MD)Nos.584 of 2019 and 208 of 2020

Crl.A.(MD)No.208 of 2020:-

Palpandi, S/o.Muthalappan

... Appellant / A1

vs.

State through the
Inspector of Police,
Cinnamanur Police Station,
Chinnamanur,
Theni District.
(Crime No.265 of 2013)

... Respondent / Complainant

Prayer :- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed in S.C.No.104 of 2014, dated 27.08.2019, on the file of the learned Additional District and Sessions Judge (Fast Track Court), Theni, and acquit the appellant/first accused.

For Appellant	: Mr.S.Deenadhayalan
For Respondent	: Mr.A.Thiruvadikumar Additional Public Prosecutor

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

These two Criminal Appeals are directed against the conviction and sentence passed in S.C.No.104 of 2014, dated 27.08.2019, on the file of the learned Additional District and Sessions Judge (Fast Track Court), Theni.

2. On 10.09.2013 at about 04.00 a.m., based on the complaint given by Alageswari [P.W.1], Nanjilkumar [P.W.23], Sub-Inspector of Police, Chinnamanur



Police Station has registered a case in Crime No.265 of 2013 under Section 302

I.P.C. As per the complaint, one Muthiah, husband of Alageswari [the informant] while sleeping on the Porch of the Tea shop owned by one Muthulakshmi, two persons, by name, Palpandi, S/o.Muthalappan and Pandian, S/o.Thanuskodi, the residents of Muthusamipuram Village attacked Muthiah and pushed him down, took a stone, covering the drainage hole near the house of Prabhu [P.W.16] and crushed the head of Muthiah, causing his death. On hearing the scream, his wife Alageswari [P.W.1] and daughter Santhiya [P.W.2] rushed to the spot, saw the assailants throwing the stone on the head of Muthiah and causing crush injury. This incident alleged to have occurred at 01.30 a.m. in the morning.

2.1. In the course of investigation, the Police has reached the spot after registering the F.I.R. and prepared Observation Mahazar [Ex.P.2] in the presence of P.Mani [P.W.9] and K.Pandian [P.W.14]. The swap of blood stain found on the stone and dhoti of the deceased with blood stain were recovered from the spot. The accused persons were arrested on the next day at about 13.00 hours. The stone was recovered under Mahazar witnessed by P.Mani [P.W.9] and K.Pandian [P.W.14]. The body of the deceased Muthiah was removed to the Government Hospital for postmortem through Head Constable Ramkumar [P.W.18]. Dr.Uma Maheshwaran [P.W.21] conducted postmortem and given his Certificate, which is marked as Ex.P.13. Rough Sketch [Ex.P.17] drawn and photographs and videograph of the scene of crime were taken by Palanisami [P.W.15] and marked as Ex.P.12.



2.2. On completion of investigation, final report was filed before the Judicial Magistrate, Uthamapalayam. The copies of documents relied on by the prosecution was served to the accused as per Section 207 Cr.P.C. P.R.C.No.58 of 2013 was committed to the Sessions Court, Theni, since the offence is triable by the Court of Sessions. The Principal Sessions Court, Theni, took up the case on file in S.C.No. 104 of 2014, framed charge under Section 302 read with Section 34 I.P.C. against the accused Palpandi, S/o.Muthalappan and Pandian, S/o.Thanuskodi and made over the case to the learned Additional District and Sessions Judge (Fast Track Court), Theni.

2.3. To prove the charges, the prosecution has examined 24 witnesses, marked 19 exhibits and 9 material objects. On the side of the defence, no evidence let in.

2.4. The incriminating evidence against the accused were put in question to the accused persons under Section 313 Cr.P.C. Their response duly recorded.

2.5. The trial Court, thereafter, on appreciation of evidence held that both the accused guilty of causing death of Muthiah by throwing stone on his head and thereby, committed the offence under Section 302 read with Section 34 I.P.C. Both the accused were sentenced to undergo life imprisonment and pay a fine of Rs. 5,000/-, in default, to undergo six months simple imprisonment for the offence under Section 302 read with Section 149 I.P.C. The said judgment of conviction is



challenged by Palpandi [first accused] in Crl.A.(MD)No.208 of 2020 and Pandian [second accused] in Crl.A.(MD)No.584 of 2019.

3. The learned counsel appearing for the appellants at the outset submitted that while the charge against the accused persons was for the offence under Section 302 read with Section 34 I.P.C., the sentence imposed on them by the trial Court for the offence under Section 302 read with Section 149 I.P.C., which is *per se* illegal and reflection of non-application of mind by the trial Court. That apart, the learned counsel for the appellants submitted that P.W.1, the wife and P.W.2, the daughter of the deceased claim to be the eyewitnesses to the occurrence. However, through the cross-examination, it has been elicited that on the date of occurrence, the Village was celebrating Vinayagar Chaturthi festival and the entire Village was bubbling with activity. While so, P.W.1 and P.W.2, who were residing in a far off place, could not have heard the scream. The alleged occurrence has occurred at 01.30 a.m. during wee hours.. The complaint registered at 04.00 a.m. Whereas the express F.I.R. [Ex.P. 16] reached the learned Judicial Magistrate only at 12.20 p.m. When the distance between Chinnamanur Police Station and the Judicial Magistrate Court is only seven kilometers, the delay of more than eight hours to forward the express F.I.R. is inordinate and unexplained. Ex.P.1 complaint stated to have been reduced into writing by Selvakumar [P.W.13] on the dictation of Alageswari [P.W.1]. Selvakumar [P.W.13], who has affixed his signature in the complaint, identified it as his signature



in Ex.P.7. Selvakumar [P.W.13], who is a Teacher by profession, who wrote the complaint, in his chief-examination has categorically stated that he went to the spot between 06.30 a.m. and 08.00 a.m. on 10.09.2013 on hearing the death of Muthiah. At that time, Alageswari [P.W.1] was weeping and asked him to write the complaint. Hence, on her dictation, he wrote the complaint and affix his signature as witness. In the cross-examination, he has reiterated that the complaint [Ex.P.1] was written by him on 10.09.2013 between 06.30 a.m. and 08.00 a.m. While so, it is contended by the learned counsel for the appellants that the case of the prosecution that Alageswari [P.W.1] went to the Police Station at 04.00 p.m. and gave the complaint [Ex.P.1] is highly improbable.

4. The learned counsel for the appellants further submitted that there are fundamental contradictions in the prosecution case regarding the time of occurrence and the time of complaint. It is also canvassed by the learned counsel appearing for the appellants that except the evidence of P.W.1 and P.W.2, who claims to be the eyewitnesses to the occurrence, there is no other independent witness to support the case of the prosecution. As far as the alleged presence of P.W.1 and P.W.2 and witnessing the occurrence is highly improbable, since their house was nearly two kilometers away from the scene of occurrence and therefore, their testimony that they rushed to the scene of occurrence on hearing the noise that too when the entire Village was in festival mood and bubbling with the activity is unbelievable and unnatural.



5. The learned counsel for the appellants submitted that the owner of the Tea shop Muthulakshmi [P.W.19], where the deceased was allegedly sleeping on the Pyol of the shop, has turned hostile. The other independent witness [P.W.9] had also turned hostile and not supported the case of the prosecution.

6. The learned counsel for the appellants further submitted that strangely, the Temple Poosari of the nearby Paarvathi Parameswaran Temple, viz., Ayyamani [P.W.10], for the first time, has deposed that he was also attacked by the accused persons when he came out of the Temple and saw the occurrence. Likewise, P.W.11 Vigneswaran, who claims to be resting inside the Paarvathi Parameswaran Temple, had deposed that on 10.09.2013 in the early morning between 1 a.m. and 2 a.m., he heard the beating of the Temple gate and when he came out, he saw Palpandi [A-1] was smashing the gate with Aruval, he called the Police over phone and informed about it. These new facts introduced only during the course of examination of witnesses P.W.10 and P.W.11, which renders the prosecution case unbelievable.

7. Per contra, the learned Additional Public Prosecutor submitted that the prosecution has examined 24 witnesses, out of which, P.W.1 - Alageswari and P.W.2 - Santhiya had spoken about witnessing the occurrence. P.W.3 -Prakash and P.W.4 - Siva are the brothers of P.W.1. They reached the spot on hearing the murder of their brother-in-law Muthiah. P.W.5 - Vijaya is the sister of P.W.1. P.W.6 – Rajammal is



the mother of the deceased. They have come to the scene of occurrence immediately after the occurrence, on hearing the noise. P.W.9 - Mani and P.W.14 - Pandian are the witnesses to the confession and recovery. Though P.W.9 has turned hostile, P.W.14 has supported the case of the prosecution. The cotton swap containing the blood stain on the stone used by the accused to murder the deceased and blood stain on the dhothi and shirt were sent for serology test. The Lab Report has disclosed that it contain human blood 'A' group. Thus, it is clear that the stone [M.O.1] was used by the accused persons to murder the deceased Muthiah. Just because P.W.1 and P.W.2 are closely related to the deceased Muthiah, their evidence cannot be discredited as unreliable when their evidence is cogent, clear and without any embellishment.

8. This Court has considered the rival submissions and perused the records. The evidence is re-appreciated in the light of the submissions made by the respective learned counsels.

9. The case of the prosecution is that, P.W.1 and P.W.2 saw the accused persons throwing stone [M.O.1] on Muthiah, who was sleeping at the Pyol of Muthulakshmi's shop. According to these two witnesses, the occurrence took place at about 01.30 a.m. in the morning. Their case is that on hearing the commotion near the Muthulakshmi's shop, they woke up and went to the shop.



10. P.W.16 - Prabhu, who is a resident next to Muthulakshmi shop, had deposed that between 05.00 a.m. and 05.15 a.m., while he was in his house, he heard screaming voice. When he woke up and came out of his house, he found Muthiah lying dead. He, in the cross-examination, has stated that the house of P.W.1 is two kilometers away from the spot, where Muthiah found dead. We also find that P.W.13 - Selvakumar, who wrote the complaint Ex.P.1, deposed that it was written between 06.30 a.m. and 08.30 a.m. on 10.09.2013 at P.W.1's house. Whereas, P.W.1 has stated that she went to the Police Station and gave the complaint Ex.P.1 at 04.00 a.m. The F.I.R. [Ex.P.16] indicates that the complaint was received at the Police Station at 04.00 a.m. The copy of the F.I.R. has reached the Magistrate at 12 noon on that day, *i.e.*, eight hours after registration of the complaint.

11. P.W.23 - Nanjilkumar, who registered the complaint, has forwarded the express F.I.R. to the Judicial Magistrate through P.W.17 – Manikandan, Head Constable, which reached the Court only at 12.20 p.m. Thus, there is grave doubt about the time of receiving the complaint and the place of receipt of the complaint. That apart, the evidence of P.W.1 and P.W.2, who were living two kilometers away from the spot, claiming that they heard the scream and went to the spot and saw the occurrence is highly doubtful. P.W.1 and P.W.2 does not inspire the confidence of this Court to take them as reliable witnesses. The best witnesses for the occurrence could have been Prabhu [P.W.16] and the shop owner Muthulakshmi [P.W.19], where



the dead body of Muthiah was found. But, both Prabhu [P.W.16] and Muthulakshmi [P.W.19] have not supported the case of the prosecution. It is also to be noted that the witnesses P.W.9 – Mani, who is the signatory to the Mahazar and confession statement of the accused has turned hostile. P.W.10 - Ayyamani has deposed that he has witnessed the occurrence and Palpandi [A-1] attacked him with Aruval and in the attack, he lost his eyesight. This new version, which not even the prosecution has canvassed. In the cross-examination, he admits that the Police has not enquired him and he has not given any statement to them. Likewise, P.W.11 - Vigneswaran, who had deposed that on 10.09.2013 in the night between 01.00 a.m. and 02.00 a.m., he heard somebody knocking the gate of the Temple. When he came out, he saw Palpandi [A-1] hit the gate with Aruval and immediately, he informed the same to the Police over phone. There is no record from the prosecution to show that there was a complaint received over phone from Vigneswaran [P.W.11] regarding Palpandi [A-1] knocking the Temple gate with Aruval. Corroborating the evidence of P.W.11- Vigneswaran, P.W.12 - Anandan has spoken about Palpandi [A-1] knocking the gate of the Temple with Aruval. If really these two witnesses have seen Palpandi [A-1] with Aruval and knocking the gate of the Temple and complaint over phone to the Police, then, the same should have form part of their final report and this should have been the first information of the occurrence. Unfortunately, the prosecution relied upon Ex.P.1, but the time and the place where Ex.P.1 was prepared, there is contradiction between the complainant [P.W.1] and the person, who wrote the



complaint [P.W.13]. Thus, for the fundamental facts, there is no consistency in the prosecution case.

12. In the considered view of this Court, the evidence of Selvakumar [P.W.13], who has written the complaint Ex.P.1 has demolished the case of prosecution in total.

13. For the above said reasons, we hold that the prosecution has filed to prove the case against the accused persons beyond reasonable doubt. It is not prudent to convict the accused based on the evidence of P.W.1 and P.W.2, which is tainted with embellishment and falsehood. Therefore, the judgment of conviction and sentence passed by the learned Additional District and Sessions Judge (Fast Track Court), Theni, made in S.C.No.104 of 2014, dated 27.08.2019, is hereby set aside. Bail bonds, if any, executed by the accused shall stand cancelled. Fine amount, if any, paid by the accused shall be refunded to them.

NCC : Yes
Index : Yes / No
Internet : Yes / No
SMN2

[G.J., J.] [K.K.R.K., J.]
27.02.2023

To

1.The Additional District and Sessions Judge
(Fast Track Court),
Theni.



Crl.A.(MD)Nos.584 of 2019 and 208 of 2020

2.The Inspector of Police,
Cinnamanur Police Station,
Chinnamanur,
Theni District.

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

4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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Crl.A.(MD)Nos.584 of 2019 and 208 of 2020

DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
Crl.A.(MD)Nos.584 of 2019 and 208 of 2020

DATED : 27.02.2023