



Crl.A.(MD)Nos.583 and 622 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
13.02.2023	22.02.2023

CORAM:

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

Crl.A.(MD)Nos.583 and 622 of 2019

Crl.A.(MD)No.583 of 2019:-

1.Latha Selvi, W/o.Amirtham
2.Subbulakshmi, W/o.Thangaraj

... Appellants / A3 & A4

vs.

State Rep. by
The Inspector of Police,
Kayatharu Police Station,
Thoothukudi District.
(Crime No.67 of 2015)

... Respondent / Complainant

Prayer :- Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records relating to the judgment passed in S.C.No.441 of 2015, dated 11.11.2019, on the file of the Mahalir Neethimandram (Fast Track Court), Thoothukudi, set aside the same and acquit the appellants/accused from all the charges leveled against them.

For Appellants

: Mr.Gopalakrishna Lakshmana Raju
Senior Counsel
for Mr.R.Venkateswaran

For Respondent

: Mr.R.Meenakshisundaram
Additional Public Prosecutor



Crl.A.(MD)Nos.583 and 622 of 2019

Crl.A.(MD)No.622 of 2019:-

1.Thanga Pandi, S/o.Murugan
2.Thanga Marimuthu, S/o.Murugan

... Appellants / A1 & A2

vs.

State Rep. by
The Inspector of Police,
Kayatharu Police Station,
Thoothukudi District.
(Crime No.67 of 2015)

... Respondent / Complainant

Prayer :- Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records relating to the judgment passed in S.C.No.441 of 2015, dated 11.11.2019, on the file of the Mahalir Neethimandram (Fast Track Court), Thoothukudi, set aside the same and acquit the appellants/accused from all the charges leveled against them.

For Appellants : Mr.Gopalakrishna Lakshmana Raju
Senior Counsel
for Mr.R.Venkateswaran

For Respondent : Mr.R.Meenakshisundaram
Additional Public Prosecutor

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

These two Criminal Appeals are directed against the judgment, dated 11.11.2019, passed in S.C.No.441 of 2015, on the file of the Mahalir Neethimandram (Fast Track Court), Thoothukudi.

2. In connection with murder of one Karpagam, W/o.Thangapandi, five persons were prosecuted on completion of investigation in Crime No.67 of 2015, on



the file of Kayathar Police Station, Thoothukudi District. The Fast Track Mahila Court, Thoothukudi, framed the following charges:-

- 1) u/s 120B r/w 302 IPC as against A-1 to A-5.
- 2) u/s 341 IPC as against A-1 to A-5.
- 3) u/s 294(b) IPC as against A-1 and A-5
- 4) u/s 302 IPC as against A-5 and
- 5) u/s 302 r/w 115 of IPC as against A-1 to A-4.

3. Pending trial, the fifth accused Saravanakumar absconded, hence, the case against him got split up, S.C.No.127 of 2017 assigned and same is still pending. Thus, A-1 to A-4 alone faced the trial. To prove the charges, the prosecution has examined 18 witnesses, marked 29 exhibits and 9 material objects. On behalf of the defence, one witness, by name, Narayanasamy and Ex.D-1 marked during the cross-examination of PW-2. The trial Court acquitted all the accused from charge under Section 341 IPC. Rest of the charges against respective accused were held proved. They were convicted and sentenced to undergo imprisonment as under:-

Thangapandi (A-1) Thangamarimuthu (A-2) Latha Selvi (A-3) Subbulakshmi (A-4)	(i) Section 120B r/w 302 IPC. (ii) Section 302 r/w 115 IPC.	Imprisonment for life. Fine of Rs.2000/-. In default 3 months RI. 5 years RI. Fine of Rs.2000/-. In default 3 months RI.
Thangapandi (A-1)	Section 294(b) IPC	Fine Rs.1000/-. In default 2 weeks SI.



4. Being aggrieved, Thangapandi (A-1) and Thangamarimuthu (A-2) have preferred Crl.A.(MD)No.622 of 2019 and Latha Selvi (A-3) and Subbulakshmi (A-4) have preferred Crl.A.(MD)No.583 of 2019. Since both the appeals are directed against one and the same judgment of conviction and sentence passed in S.C.No.441 of 2015, dated 11.11.2019, on the file of the Fast Track Mahila Court, Thoothukudi, both appeals are taken up together and common judgment is passed.

5. Before advertng to the factual and legal aspect of the appeals, it is relevant to record the relationship between the accused, deceased and the key witnesses, since serious doubt been raised that the witnesses are interested witnesses being closely related.

6. The first accused is the husband of the deceased Karpagam. The 2nd accused is brother of A-1. The 3rd and 4th accused are sisters of A-1. The absconding fifth accused is son of 4th accused. PW-1 is the mother of the deceased. PW-2 and PW-3 are the brothers of the deceased. PW-5 is the minor daughter of the deceased and A-1.

7. The case of the prosecution as found from the evidence:

7.1. Thangapandi (A-1) and Karpagam were married for 8 years. They had two daughters. The family members of Thangapandi (A-1) wanted a male child.



His sister, the 4th accused was ready to give her daughter in marriage to Thangapandi (A-1). So, the accused persons conspired to murder Karpagam. In pursuant to the said conspiracy, the first accused Thangapandi, who used to frequently drive away his wife Karpagam to her parents house demanding money. Two days prior to the incident, he drive out his wife Karpagam to bring Rs.50,000/- from her parents. On 08.02.2015 at about 06.30 p.m., Pushpam (PW-1) along with her sons Gnanamani (PW-2), Karuppasamy (PW-3) and Daughter Karpagam (since deceased) went to the house of Thangapandi (A-1), but they were not allowed to enter the house by Thangapandi (A-1) and his family members Thangamarimuthu (A-2), Latha Selvi (A-3), Subbulakshmi (A-4) and Saravanakumar (A-5 – absconding accused. His case split up and pending in S.C.No.127 of 2017). Thangapandi (A-1) scolded them with filthy language for not bringing money as demanded and hit Karpagam with a stick. He also incited A-5 to stab Karpagam. On the instigation of A-1, A-5 stabbed Karpagam with knife M.O.1 on her head, shoulders, forehead, hip and cheek. Karpagam died on the spot. PW-1 along with her sons (PW-2 and PW-3) came to the Police Station at about 22.00 hours and gave the complaint Ex.P-1.

7.2. Mr.Jesuraj Durai Pandian, Sub Inspector of Police (PW-17) attached to Kayathar Police Station received the complaint and registered F.I.R. in Crime No.67 of 2015. The printed copy of the F.I.R. is Ex.P-11. The investigation was taken up by PW-18, Mr.Udayasuriyan, Inspector of Police. He visited the scene of crime in the



presence of one Jeyamurugan (PW-10) and Venkitasamy, prepared observation mahazar Ex.P-12 and the rough sketch Ex.P-13. From the scene of crime, collected soil (with blood stain and without blood stain) under mahazar Ex.P-14.

7.3. On the next day, the accused were arrested. The knife M.O.1, lungi M.O.2 and shirt M.O.3 were recovered from a bush based on the confession statement of A-5 which is marked as Ex.P-17. A wooden stick was recovered based on the confession statement of A-1 which is marked as Ex.P-19. The Material Objects sent to the State Forensic Lab for serology test, concluded that the saree (M.O.7) and blouse (M.O.8) of the deceased found presence of human blood group 'B'. Likewise, the shirt M.O.3 recovered from A-5 found presence of human blood group 'B'. The body of Karpagam sent to the Government Hospital for autopsy. PW-12 Dr.Ashok conducted autopsy on the body of Karpagam. The postmortem certificate is Ex.P-9. The postmortem doctor has noticed 19 external injuries all over the body. Corresponding internal injuries on the skull exposing brain and in the lungs were noticed.

8. The learned Senior Counsel for the appellants submitted that the case of the prosecution is that the murder of Karpagam occurred on 08.02.2015 at about 06.30 p.m. in front of A-1's house. Two different motives projected by the prosecution, one, the accused demanded Rs.50,000/- from PW-1. Since she refused, they killed her daughter. The other motive is that the deceased gave birth to two female children,



for want of a male child, A-1 intended to marry the daughter of A-4, so, they all conspired to murder Karpagam. But, neither of the motives proved. The Investigating Officer PW-18 admits that on receipt of information from Village Thalaiyari Appannasamy, he reached the spot at 07.45 p.m. along with V.A.O. Tmt.Guruvu and the Village Thalaiyari Appannasamy. Neither the V.A.O. nor the Thalaiyari examined as witnesses for prosecution. The information from Appannasamy burked and the complaint Ex.P-1 was created belatedly. The reason for delay in lodging the complaint as explained by PW-1 to PW-3 is unnatural of any human conduct, who has witnessed the murder of their kin. The delay in registering the F.I.R. after taking up the investigation is obviously due to the time taken for prosecution to introduce PW-1 to PW-3 as eyewitnesses. Admittedly, the Investigating Officer has reached the spot at 07.45 p.m. and commenced investigation. On his instruction, at 08.00 p.m., PW-16 Ravindran, Special Sub-Inspector of Police has shifted the dead body of Karpagam in the Ambulance and went to the Kovilpatti Government Hospital for postmortem. PW-13 Andrews, Ambulance driver has deposed that he reached Kovilpatti Government Hospital at about 10.15 p.m. While so, the complaint Ex.P-1 after nearly 4 hours of the occurrence and after commencement of investigation renders the content of Ex.P-1 highly doubtful. The contradiction among the evidence of PW-1 to PW-3 about the incident and events after the incident falsifies the case of the prosecution that PW-1 to PW-3 were present in the scene of crime and witnessed the occurrence.



9. The learned Senior Counsel further submitted that except PW-1 to PW-3 who are interested witnesses, other witnesses for prosecution does not support the prosecution case. The residents of the Village, namely, Radhakrishnan PW-4, Ponnuthai PW-6 and Jayakumar PW-7 turned hostile to prosecution. The minor daughter of the deceased, PW-5 also does not support the case of the prosecution. According to prosecution, PW-4 to PW-7 were witnesses to occurrence. Likewise, PW-8 Chellappa, witness to confession and recovery mahazar, turned hostile. The trial Court ignoring the fact that no independent witness has supported the prosecution wholly relying upon the interested witnesses whose presence not proved beyond doubt, had convicted A-1 to A-4 on surmises, hence, sought for interference.

10. Per contra, the learned Additional Public Prosecutor submitted that PW-18 who investigated the case, has clearly deposed before the Court the sequence of events and the circumstances, which warranted him to reach the spot, soon after receiving information from the Village Thalaiyari about the law and order problem due to the murder of a dalit lady. The said information was received over phone when PW-16 and PW-18 were on patrol duty. On reaching the spot at about 07.45 p.m., they found public gathered in large number and tensed. To avoid disturbance to public peace, PW-18 removed the dead body and sent it for postmortem. Meanwhile, PW-1 along with PW-2 and PW-3, who fled from the scene of crime, fearing attack by A-5, reached the Police Station at about 10.00 p.m. and gave the complaint



Ex.P-1. The complaint, which has disclosed cognizable offence and the offenders, was taken up for investigation by registering F.I.R. The copy of the printed F.I.R. Ex.P-11 along with passport Ex.P-10 was sent to the Judicial Magistrate through PW-15 Mr.Ananda Amalraj, Head Constable. He delivered the F.I.R. copy to the Judicial Magistrate on 09.02.2015 at 06.30 a.m. The acknowledgment for receipt of the F.I.R. with time is mentioned in Ex.P-10 as well as Ex.P-11. There is no delay in registering the F.I.R. or in forwarding it to the Judicial Magistrate. Therefore, the contention of the learned Senior Counsel for the appellants that there was inordinate delay in registering the F.I.R. is unfounded. The trial Court after due appreciation of the above defence, negated it since it is baseless.

11. The learned Additional Public Prosecutor further submitted that the testimony of PW-1 to PW-3 are natural and wholly reliable. They went to the first accused's house to leave the deceased, who was sent out to get money from her parents. The motive not to take her back established through the evidence of PW-1 to PW-3. However, when the fact that the deceased was attacked by the absconding accused on the instigation of A-1 is established through the evidence of the eyewitnesses PW-1 to PW-3, the need to prove motive is not of much significance. The other witnesses, who have turned hostile, belong to the accused Village and have reasons to protect their Village members by turning hostile. Whereas PW-1 the mother, PW-2 and PW-3 the brothers of the deceased have no reason to testify



against their in-law. The plea of alibi for A-1 sought to be proved through DW-1, in fact, fatal to the defence since the defence not produced any evidence to show that A-1 after receiving a phone call after 07.30 p.m. left to his house from the field.

12. As far as the non-examination of the V.A.O. and the Menial (Thalaiyari), it is contended by the learned Additional Public Prosecutor that it is not fatal to the case of the prosecution, since the evidence of other witnesses sufficiently prove that the death of Karpagam is due to homicide and it was caused by the absconding accused (A-5). The presence of V.A.O. and Thalaiyari at the scene of crime by 07.45 p.m. not denied by the prosecution. The Investigating Officer has cogently explained that the law and order situation warranted him to remove the body immediately after drawing the rough sketch. The soil from the scene of crime collected under Mahazar and inquest was conducted thereafter from 11.15 p.m. to 00.15 hours. Therefore, there is no reason to doubt about the case of the prosecution that the F.I.R. registered manipulating the facts.

13. Heard the learned counsels. Records perused.

14. In the appeals, serious doubt has been raised about the genesis of the case as propounded by the prosecution. Further, the reliability of ocular evidence of PW-1 to PW-3 is impeached. The reason for doubting the case of the prosecution emanates from the alleged delay in registering the F.I.R. at 10.00 p.m. based on the statement



given by PW-1, even though the respondent Police had received information about the murder through the Village Menial as early as 07.45 p.m. Further, there is contradiction between the evidence of PW-1, PW-2 and PW-3 regarding their conduct after witnessing the alleged occurrence. Therefore, it is necessary to analysis the evidence of the prosecution to ensure whether Ex.P-1, which is the basis for registering the F.I.R. [Ex.P-11], is not embellished with falsehood and manipulation.

15. The consistent case of the prosecution is that the occurrence took place at about 06.30 p.m. on 08.02.2015. The place of occurrence as spoken by the prosecution witnesses and as per the rough sketch [Ex.P-13], is just in front of the first accused's house. It should be bear in mind that the deceased is the wife of the first accused. Her body found lying in front of the first accused's house with several wounds all over the body. The postmortem certificate, which is marked as Ex.P-9, reveals that the deceased has sustained 19 external injuries mostly on her upper part of the body starting from head. PW-1, the mother of the deceased has deposed that her daughter was sent to parental home by her husband [the first accused] demanding Rs.50,000/-. To pacify him and to get some breathing time, PW-1 along with her sons PW-2 and PW-3 gone to the house of the first accused. PW-1, PW-2 and PW-3 have consistently deposed that when they went to the house of the first accused, the other four accused were present along with the first accused. They did not allow Karpagam [the deceased] to enter the house. At that time, A-1 instigated A-5 to kill Karpagam. Accordingly, A-5 caused multiple injury to Karpagam causing her death.



16. The weapon used is identified by all the three accused, which was marked as M.O.1. The reason for leaving the slain body of Karpagam and the delay in reporting the matter to the Police at 10.00 p.m., has been stated in the complaint Ex.P-1. According to Ex.P-1, after the incident, when they raised an alarm and tried to leave Karpagam, A-1 to A-4 intimidated them that they will also be done to death in a similar way. Therefore, they fled from the scene. They took the bus, reached Kayathar Police Station to give the complaint. The endorsement in Ex.P-1 indicates that the complaint was received on 08.02.2015 at 22.00 hours by PW-17, Sub-Inspector of Police, attached to Kayathar Police Station. Though the witnesses PW-1, PW-2 and PW-3 in the chief-examination have not stated anything about the reason for the alleged delay in giving the complaint, extensive cross-examination has been done to all these three witnesses as well as the Investigating Officer PW-18. In the cross-examination, PW-1 admits that from the Village, where the incident took place, to reach Kayathar by bus, it will take 20 minutes. She has answered in affirmative to the question in the cross-examination that the complaint was prepared only on 09.02.2015 at 04.00 a.m. in the morning. Likewise, she has stated that out of fear, after seeing the incident, they all run about one kilometer. Thereafter, came back to the scene of occurrence at about 08.00 p.m., then, went to the Police Station to give the complaint.



17. PW-2, who is the son of PW-1 and the brother of the deceased is the scribe of the complaint. In the cross-examination, he has stated that the complaint was given at 10.00 p.m. The corrections in the complaint were done by him and at the time of reducing the oral complaint of his mother in writing, he was tensed. PW-2 also admits that after fleeing from the scene of crime out of fear, he came back to the scene of crime at 08.00 p.m. and saw her sister's body at the scene of crime.

18. PW-3, the other eyewitness, who claims to have witnessed the occurrence alleged to have happened at 06.30 p.m., also in the cross-examination states that he along with PW-1 and PW-2 ran away from the scene of crime, out of fear and thereafter, returned to the scene of crime before proceeding to Police Station. A combined reading of the ocular evidence of PW-1, PW-2 and PW-3 clearly indicates that they were present at the time of occurrence, when they all went to the house of A-1 to leave Karpagam. The recovery of the deceased body in front of A-1's house and the evidences of these three witnesses put together prove beyond doubt that Karpagam was done to death by causing severe injuries all over her body and that was done by A-5, the absconding accused.

19. The point now for consideration is whether the said crime was done by the absconding accused [A-5] on his own or at the instigation of the other accused, particularly, A-1, who alleged to have uttered the insisting word to the absconding accused [A-5] to kill the daughter of bitch.



20. The trial Court has framed charge for conspiracy against all the accused to cause death of Karpagam and charge of abetment under Section 115 I.P.C. against A-1 to A-4. Regarding the theory of conspiracy propounded by the prosecution, this Court finds no evidence that there was a meeting of minds between all the accused prior to the occurrence. The evidence relied on by the prosecution does not support their case that A-1 to A-5 met together and conspired to murder Karpagam. No doubt, conspiracy is normally hatched in secrecy and only the unbroken chain of circumstances, will lead to inference of conspiracy. Whereas, in this case, it is not even established that the accused persons were waiting for Karpagam and her family members to come to their house at the said time. The presence of A-2, A-3 and A-4, who are residing elsewhere, in the scene of crime is only co-incidence and not proved to be a pre-planned one. Since the witnesses, who are supposed to speak about the prior meeting of minds of the accused, have not supported the prosecution, this Court disbelieves the case of the prosecution regarding conspiracy.

21. The other charge framed against the accused is under Section 115 I.P.C. Section 115 I.P.C. reads as below:-

"115. Abetment of offence punishable with death or imprisonment for life—if offence not committed.- Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made



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by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if act causing harm be done in consequence. - and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine."

22. The evidence of PW-1, PW-2 and PW-3 proves the fact that the absconding accused A-5 attacked Karpagam soon after A-1 uttered a word "புண்டமகளை கொல்லு இவளை". Therefore, at the instigation of A-1, A-5 has attacked Karpagam. The postmortem report indicates that Karpagam has sustained 19 external injuries from head to leg.

23. Section 107 I.P.C. defines abetment as under:-

"107. Abetment of a thing.- A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal



omission, the doing of that thing."

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So, it is a case of instigation of A-1 to murder Karpagam. As a consequential to the said abetment, A-5 has caused the death of Karpagam, using M.O.1. The recovery of M.O.1 is based on the confession statement given by A-5 [Ex.P.17].

24. A reading of Section 109 I.P.C., which prescribes punishment of abetment, shows that whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Under the Penal Code, abetment to commit an offence is also an offence. Section 107 I.P.C. defines what is abetment. Section 109 I.P.C. prescribes punishment for abetment in cases no express provision is made under the Code for the punishment of such abetment. Under Section 109 I.P.C., if no express provision is made in the Code, then, the punishment for such abetment is the same as the punishment for the offence committed.

25. In case of offences punishable with death or life imprisonment, Section 115 I.P.C. contemplates two eventualities.

(i) No offence committed consequence of the abetment, then, the punishment prescribed is upto seven years and also liable to fine.



(ii) If the offence committed consequence to abetment, then, the punishment prescribed is upto 14 years and also liable to fine.

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26. In this case, the prosecution has proved Karpagam found dead in front of A-1's house with multiple injuries, which have caused her death. PW-1 to PW-3 have seen A-5 [absconding accused] caused those injuries, but has unable to prove that the offence committed pursuant to the conspiracy between the accused. It is unfortunate to note that, the trial Court in the charge, has nowhere mentioned about the instigation of A-1, which is the substance of accusation required to attract Section 115 I.P.C. The said omission cannot be saved under Section 464 Cr.P.C. since it has prejudiced the accused.

27. Therefore, this Court conclude that the prosecution having failed to prove conspiracy between the accused, and the omission in the charge, the substance of accusation to attract offence of abetment cannot sustain the judgment of conviction.

28. As a result, Crl.A.(MD)Nos.583 of 2019 and 622 of 2019 are allowed. The conviction and sentence imposed by the learned Judge, Mahalir Neethimandram (Fast Track Court), Thoothukudi, in S.C.No.441 of 2015, dated 11.11.2019, is hereby



Crl.A.(MD)Nos.583 and 622 of 2022

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.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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[G.J., J.] [K.K.R.K., J.]
22.02.2023

To

- 1.The Judge,
Fast Track Mahila Court,
Thoothukudi.
- 2.The Inspector of Police,
Kayathar Police Station,
Thoothukudi 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.



Crl.A.(MD)Nos.583 and 622 of 2019

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

SMN2

PRE-DELIVERY COMMON JUDGMENT MADE IN
Crl.A.(MD)Nos.583 and 622 of 2019

DATED : 22.02.2023