



Crl.A(MD)No.581 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 31.01.2023

Pronounced on : 03.02.2023

CORAM

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

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1.Peria Mariappan @ Mariappan

2.Chinnamariappan

3.Sekar

4.Ilaiyaraja

....Appellants/Accused Nos.1 to 4

vs.

State represented by the
Inspector of Police,
Manoor Police Station,
Tirunelveli District.
Crime No.385 of 2015.

....Respondent / Complainant

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code to call for the records from the lower court in S.C.No.599 of 2016, on the file of the IV Additional Sessions Judge, Tirunelveli, Tirunelveli District and set aside the judgment dated 19.11.2019 by acquitting the appellants by allowing the appeal.



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

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

JUDGMENT

SUNDER MOHAN, J.

Challenging the judgment of conviction and sentence imposed by the learned IV Additional Sessions Judge, Tirunelveli, the appellants have preferred the above appeal. The appellants 1 and 4 were found guilty for the offence under Section 302 r/w 109 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5000/-, in default to undergo two years rigorous imprisonment. The appellants 2 and 3 were found guilty for the offence under Section 302 IPC and sentenced to life imprisonment and directed to pay a fine of Rs.5000/-, in default to undergo two years rigorous imprisonment. All the appellants were found guilty for the offence under Section 341 IPC and sentenced to one month simple imprisonment and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one week.



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2. It is the case of the prosecution that on 30.10.2015 at about 6.00 PM, when the deceased by name, Ramakrishnan @ Raman, was walking towards Alagiyapandiyapuram bus stand, the accused followed him and the second and third appellants caused his death by indiscriminately attacking him with aruvals. The appellants 1 and 4 are said to have instigated the appellants 2 and 3 to cause death. It is the case of the prosecution that the appellants 1 to 3 are brothers and the fourth appellant is their father. The third appellant was married to P.W.3. He refused to live with P.W.3 since P.W.3 did not give dowry of 10 sovereigns of gold as demanded by him. Thereafter, the family members of P.W.3 managed to give 10 sovereigns of gold and even thereafter, the third appellant refused to live with P.W.3. Enraged by this attitude of the third appellant, the deceased, who was the brother of P.W.3, questioned the appellants and frequently fought with them. The appellants being unhappy with the conduct of the deceased decided to do away with the deceased and caused his death. The prosecution examined P.W.1 to P.W.3, P.W.7 and P.W.10 to P.W.15 as eye witnesses. P.W.1 is the wife of the deceased. P.W.2 and P.W.3 are the sisters of the deceased. It is the case of the prosecution that P.W.1 came to know that the appellants were following the deceased to the



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bus stand and apprehending danger to his life, she informed P.W.2 and P.W.

3. All of them followed the appellants and when they neared the bus stand at Alagiyapandiyapuram, they saw the appellants 2 and 3 attacking the deceased with aruvals in the presence of the appellants 1 and 4. They had informed the ambulance and had taken the deceased to Tirunelveli Highground Hospital, where he was declared dead. P.W.1 had lodged the complaint at 9.30 PM on the same day. The said complaint was attested by P.W.2. The appellants were arrested on the next day, namely, on 31.10.2015.

3. It is the case of the prosecution that A3 was wearing a blood stained lungi when he was arrested at Kattarangulam bus stop and the said lungi was seized. In the meanwhile, on 30.10.2015 at about 23.45 hours, the driving license of the second appellant was seized from the scene of occurrence by Ex.P9, seizure mahazar, along with the lungi of the deceased Raman and blood stained earth. P.W.8, Doctor, who conducted postmortem on the deceased, found 45 injuries, most of which were cut injuries on the body of the deceased and issued a certificate marked as Ex.P3, wherein, he had opined as follows:



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“The deceased would appear to have died of shock and haemorrhage due to heavy cut injuries to the region of left side of neck.”

The Investigating Officer examined other witnesses and filed a final report as against all the appellants.

4. Before the Trial Court, the prosecution had examined 22 witnesses and marked 26 exhibits. The defence did not examine any witness nor marked any documents on their side. The appellants denied the incriminating circumstances put against them under Section 313 CrPC. The learned Sessions Judge convicted and sentenced the appellants as stated above.

5. Mr.V.Kathirvelu, learned Senior Counsel for the appellants submitted that the evidence of P.W.1 to P.W.3 cannot be believed and they could not have been the eye witnesses. Their version that they followed the appellants to the bus stand is highly improbable. There is no evidence to show as to how P.W.1 came to know that the appellants were following the deceased and as to when she informed P.W.2 and P.W.3 about the same.



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That apart, P.W.1 had turned hostile stating that she had not seen the occurrence. In view of the evidence of P.W.1, P.W.2 and P.W.3, who are said to have gone along with P.W.1 following the appellants at the instance of P.W.1, cannot be believed. Hence P.W.1 to P.W.3's evidence has to be discarded.

(ii) The learned Senior Counsel for the appellants further submitted that amongst the other witnesses examined by the prosecution, namely, P.W.7 and P.W.10 to P.W.15, P.W.7, P.W.10, P.W.13, P.W.14 and P.W.15 turned hostile.

(iii) P.W.11 and P.W.12, who were not treated hostile, also did not support the case as projected by the prosecution. They had only implicated the third appellant and categorically stated that the other appellants were not present at the scene of occurrence. They were also examined belatedly during investigation and their statements reached the Court after a long delay and therefore, their evidence also has to be discarded. Since there is a doubt with regard to the genesis and origin of the occurrence, the entire prosecution case has to collapse and the evidence of P.W.11 and P.W.12 have to be discarded for this reason also.



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(iv) The recovery of lungi from the third appellant is also highly doubtful, since the witness to the seizure mahazar, namely, P.W.18, had stated that he saw the third appellant at the Police Station and also found the aruvals, two wheeler and the lungi of the third appellant at the Police Station.

(v) The learned Senior Counsel further submitted that the Police were present at the scene of occurrence much before the lodging of the complaint by P.W.1. Therefore, the complaint lodged by P.W.1 cannot be said to be the first information and it is highly probable that the said complaint was manipulated one.

6. (i) Mr.S.Ravi, the learned Additional Public Prosecutor for the respondent submitted that P.W.2 had supported the prosecution case and she had signed as an attesting witness in Ex.P1 complaint lodged by P.W.1. There is no reason to disbelieve the evidence of P.W.2. He further submitted that the postmortem certificate reveals that the deceased suffered 45 injuries and unless two accused, namely, the appellants 2 and 3 are involved, the deceased would not have been subjected to so many injuries.



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The seizure of the driving license of the second appellant at the scene of occurrence by Ex.P9, seizure mahazar, on 30.10.2015 at about 23.45 hours establishes the presence of the second appellant.

(ii) The learned Additional Public Prosecutor also fairly submitted that even if the evidence of P.W.1 to P.W.3 is discarded, the evidence of P.W.11 and P.W.12, who speak about the attack on the deceased by the third appellant, cannot be disbelieved. They were independent witnesses and there was no reason for them to depose falsely against the third appellant. That apart, P.W.10, though had turned hostile, had supported the prosecution case to the extent of stating that four people ran into his shop stating that the third appellant had attacked the deceased. The learned Additional Public Prosecutor further submitted that the seizure of blood stained lungi further strengthens the prosecution case about the involvement of the third appellant.

7. Heard the learned Senior Counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondent.



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8. It is the case of the prosecution that P.W.3 was married to the third appellant. The deceased, who was P.W.3's brother, had fought with the appellants, since the third appellant refused to live with P.W.3 in spite of giving dowry as demanded by them. The appellants had this motive in mind to do away with the deceased. It is further stated that P.W.1, who was the wife of the deceased, came to know that the appellants were following the deceased towards the bus stand and she had informed P.W.2 and P.W.3, the sisters of the deceased and all of them went towards the bus stand following them. It is further their case that the appellants 1 to 3 went in a motorcycle and the fourth appellant was following them by walk and P.W.1 to P.W.3 followed him. It is also stated that P.W.1 to P.W.3 witnessed the occurrence, wherein, the appellants 2 and 3 indiscriminately cut P.W.1's husband with aruvals and the appellants 1 and 4 instigated them to do so. The complaint was lodged by P.W.1 at about 9.30 PM on 30.10.2015. The FIR was registered by P.W.19 in Crime No.385 of 2015 for the offences under Section 341 and 302 IPC at 10.30 PM on 30.10.2015. The FIR was sent to the jurisdictional Magistrate at 11.50 PM on the same day.



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9. P.W.1, who lodged Ex.P1 complaint, turned hostile. She had stated that she went to the scene of occurrence on information received through phone from a person who was in the bus stand. She could also not disclose the name of the person who called her. She went to the scene of occurrence along with P.W.2 and P.W.3 and found that her husband was being shifted to an ambulance. She would further state that she had not seen as to who attacked the deceased. In the light of this evidence, it is highly unsafe to believe the evidence of P.W.2 and P.W.3, who went along with P.W.1. It is their case that they were called by P.W.1 and thereafter, they went to the scene of occurrence. If P.W.1 had not seen the occurrence, P.W.2 and P.W.3's version that they saw the occurrence cannot be believed. Further, the version that they followed the appellants to the bus stand appears to be highly artificial and improbable. For the above reasons, we discard the evidence of P.W.1 to P.W.3.

10. Amongst the other eye witnesses, we find that except for P.W.11 and P.W.12, all other eye witnesses have turned hostile. However, P.W.11 and P.W.12 have clearly stated that they saw the deceased being attacked by the third appellant. There was no reason for P.W.11 and P.W.12 to make a



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false statement against the third appellant. It is their case that they were examined by the Police immediately after the occurrence. The appellants have not elicited anything either from their evidence or from the Investigating Officer to establish that they were examined belatedly and their evidence has to be therefore discarded. Nothing has been elicited in the cross-examination of P.W.11 and P.W.12 to discard their evidence. P.W.10, though was declared hostile, would state about what he heard from the passersby at the relevant point of time. This would also support the evidence of P.W.11 and P.W.12 that the third appellant attacked the deceased.

11. It is the case of the learned Additional Public Prosecutor that the presence of the second appellant in the scene of occurrence cannot be ruled out since the deceased suffered 45 injuries and a single person cannot inflict so many injuries. In order to establish the presence of the second appellant, as we have held earlier, we cannot rely upon the evidence of P.W.1 to P.W.3. We are left with only the evidence of P.W.11 and P.W.12, who do not speak about the presence of the second appellant. The learned Additional Public Prosecutor would submit that the seizure of the second



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appellant's driving license would establish his presence. However, we find that the seizure of the license also is highly doubtful, since P.W.16, who was working as a Village Assistant in Alagiyapandiyapuram and was a witness to Ex.P9, seizure mahazar, had stated even in the chief examination that the driving license of the second appellant was not seized from the place of occurrence. The prosecution had not treated him hostile. In the light of this evidence, the seizure of driving license cannot be taken as a circumstance against the second appellant.

12. The learned Senior Counsel for the appellants though had submitted that the entire prosecution case has to be disbelieved, since the genesis and origin of the occurrence is doubtful, the presence of Police much before the lodging of Ex.P1 complaint has been admitted by P.W.19, the Sub Inspector of Police, who registered the First Information Report, marked as Ex.P16. However, in the facts and circumstances of the case, we discard the evidence of P.W.1 to P.W.3 not only because P.W.1 turned hostile, but also because there is a possibility of manipulation of FIR, since the presence of the Police is admitted. However, we cannot discard the evidence of P.W.11 and P.W.12, who had no axe to grind as against the



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third appellant. P.W.10 in a way corroborates P.W.11 and P.W.12's evidence with regard to the presence of the third appellant. The defence have not elicited anything as stated earlier in their cross-examination of P.W.11 and P.W.12 to discard their evidence. We are inclined to separate the chaff from the grain in the facts and circumstances of the case and hold that the prosecution case insofar as the involvement of the third appellant alone has to be accepted and rejected in respect of the involvement of the other accused. Though it is contended by the learned Additional Public Prosecutor that a single accused cannot inflict 45 injuries, we give the benefit of doubt to the other appellants. If we have to believe P.W.11 and P.W.12 for the purpose of holding the third appellant guilty, then their evidence which rules out the presence of the other accused also has to be believed. We cannot believe P.W.11 and P.W.12 partly for the purpose of the third appellant's involvement and discard their evidence as regards the absence of the second appellant in the scene of occurrence.

13. For the above said reasons, we confirm the conviction and sentence imposed by the Trial Court on the third appellant Sekar alone.



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14. In respect of the appellants 1, 2 and 4, the conviction and sentence imposed by the Trial Court is set aside and they are directed to be set at liberty. Bail bonds, if any executed by them, shall be cancelled. Fine, if any paid by them, shall be refunded.

15. Accordingly, the Criminal Appeal is partly allowed only in respect of the appellants 1, 2 and 4. The Trial Court is directed to secure the third appellant Sekar for serving the remaining period of sentence.

[G.J.,J.] [S.M.,J]
03.02.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Lm

To

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

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

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



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Lm

Pre-delivery Judgment made in
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