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*Crl.A.Nos.155 of 2019 and
709 & 747 of 2018*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2024

PRONOUNCED ON : 16.07.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.155 of 2019

and

Crl.A.Nos.709 and 747 of 2018

Crl.A.No.155 of 2019

1. Raja	... Appellant in Crl.A.No.155 of 2019/A2
2. Manikandan	... Appellant in Crl.A.No.709 of 2018/A4
3. Stephan @ Deepanraj	... Appellant in Crl.A.No.747 of 2018/A3
	vs.

State represented by its,
The Inspector of Police,
Veeranam Police Station,
Salem District.

(Crime No.176 of 2015) ... Respondents/Complainants in all cases.

Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, to call for records relating to the Judgment and sentence passed



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in S.C.No.54 of 2016 dated 03.10.2018 on the file of the learned II Additional District & Sessions Judge, Salem and set aside the same by allowing these Criminal Appeals.

For Appellant

in Crl.A.No.155 of 2019 : Mr.Om Sai Ram

in Crl.A.No.709 of 2018 : Mr.R.Sankarasubbu
for Mr.Dr.S.Manoharan

in Crl.A.No.747 of 2018 : Mr.R.Nalliyappan

For Respondent : Mr.E.Raj Thilak
in all cases Additional Public Prosecutor

COMMON JUDGMENT

(Order of the Court was delivered by ***SUNDER MOHAN, J.***)

These criminal appeals have been filed by A2 to A4 challenging the conviction and sentence imposed upon them vide judgment dated 03.10.2018 passed in SC.No.54 of 2016 on the file of learned II Additional District and Sessions Judge, Salem.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.



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3. (i) It is the case of the prosecution that A1 was daughter of the deceased viz.Thoppagounder; that the deceased was suffering from Tuberculosis and therefore, he was living in a separate house; that the wife of the deceased was living with her daughter/A1 in another rented house; that ten days before the occurrence, the deceased went to A1's house and asked his wife to go with him; that however she refused and therefore the deceased scolded his wife; that the deceased also questioned A1 about her illicit relationship with A2; that on 11.08.2015 at about 06.00 p.m., a meeting was held amongst the family members including A1, deceased, and the wife of the deceased to sort out all their domestic issues; that at that time, the deceased showed his chappal to A1 and A1 is said to have picked up a stone and threatened to attack the deceased; that P.W.1, the brother of the deceased and his neighbour witnessed this incident; and that thereafter, at about 9.30 p.m., on the same day, A2 and others attacked the deceased indiscriminately with Koduval and A1 was standing near the entrance of the house and that the deceased succumbed to the injuries.



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(ii) P.W.1 lodged a complaint at about 11.00 p.m., which was registered by P.W.16/the Sub-Inspector of Police in Cr.No.176 of 2016. The complaint was marked as Ex.P1 and FIR was marked as Ex.P22. P.W.17/the Inspector of Police, took up the investigation on receipt of the FIR and proceeded to the scene of occurrence. He prepared the Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P23]. He conducted an inquest over the dead body of the deceased in the presence of panchayatars and prepared the inquest report [Ex.P24]. He made a request for the conduct of a postmortem, which was done by PW15, who issued the postmortem certificate [Ex.P20] and the final opinion [Ex.P21]. He recovered the clothes of the deceased and sent it to Court under Form 91.

(iii) On 13.08.2015, at about 10.00 a.m., P.W.17, the Investigating Officer arrested A1, A3 & A4. P.W.18, thereafter took over the investigation and took A2 into police custody, who was then in judicial custody. He recorded the confession of A2 and seized the Material Objects such as Koduval [M.O.6] and shirt [M.O.7] in the presence of witnesses, under the



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Seizure Mahazar [Ex.P9]. After receiving the reports from the forensic science laboratory, post-mortem certificate and the examination of other witnesses, he filed the final report against the accused for offences under Sections 449, 302 r/w 34 and 506 (ii) of the IPC, before the learned Judicial Magistrate No.4, Salem.

(iv) On the appearance of the accused, the provisions of Section 207 of the Criminal Procedure Code were complied with, and the case was committed to the Court of Sessions in S.C.No.54 of 2016 and was made over to the learned II Additional District and Sessions Judge, Salem, for trial. The Trial Court framed charges under Sections 449, 302 r/w 34 and 506 (ii) of the IPC, as against A1 and under Sections 449, 302 and 506(ii) against A2 to A4/appellants herein, and when questioned, the accused pleaded 'not guilty'.

(v) The prosecution examined 18 witnesses viz., P.W.1 to P.W.18, marked 29 documents viz., Ex.P.1 to Ex.P.29 and marked 11 material objects viz., M.O.1 to M.O.11 . The accused neither examined any witness,



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nor marked any document.

(vi) The Trial Court, after considering the oral and documentary evidence, found the appellants/A2 to A4 guilty of the offences under Sections 449 and 302 of the IPC and sentenced them as below:-

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
<i>A2 to A4</i>	<i>Section 449</i>	<i>Each of them to undergo RI for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo SI for 1 year.</i>
	<i>Section 302</i>	<i>Each of them to undergo imprisonment for Life and to pay a fine of Rs.1,000/-, in default, to undergo RI for 1 year.</i>
<i>The above sentences were directed to run concurrently</i>		

Hence, A2 to A4 have preferred these appeals challenging the said conviction and sentence.

4. (i) The learned counsels for the appellants stated that A1 had filed Crl.A.No.653 of 2018 and died pending appeal and was dismissed as abated on 04.04.2024. The learned counsels for the appellants submitted that the wife and son of the deceased PW5 and PW7, though had turned hostile, their evidence would show that the evidence of P.W.1 is not reliable.



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(ii) The learned counsels further submitted that P.W.1 and the deceased had a partition dispute and in order to grab the property, he made false allegations against A1; that since he was not on talking terms with the deceased, his version that he came to the house of the deceased to give food to his brother (deceased) is false; that the postmortem of the deceased suggests that the deceased had dinner and therefore, the version of P.W.1 that he came to give food, also cannot be believed.

(iii) The learned counsel for A4 submitted that A4's name was not found in the FIR and in any case, though P.W.1 had attributed *overt acts* against A4, there was no Test Identification Parade conducted for the witnesses to identify A4, who were not known to A4 and that in any case, A4 was not identified in Court either. Hence, he prayed for the acquittal of the appellants.

5. The learned Additional Public Prosecutor for the respondent, *per contra*, submitted that the evidence of P.W.1 is cogent and convincing; that



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P.W.1 had lodged a complaint immediately and FIR was despatched to the learned Magistrate within three hours; that the motive attributed by the defence for P.W.1 to implicate A1 defies logic inasmuch as even if A1 is punished, P.W.1 would not gain in the alleged partition dispute with the deceased; and that in any case, P.W.1 had denied all the suggestions put to him that he had a dispute with the deceased.

6. We have carefully considered the rival submissions and perused the materials available on record.

7. As stated earlier, the prosecution examined 18 witnesses to prove its case. P.W.1 is the eye witness and the brother of the deceased. He had lodged the complaint, which was registered as the FIR. P.W.2, who is the neighbour of the deceased and according to the prosecution, an eyewitness, had turned hostile. P.W.3 was known to the deceased, A1, and other family members, who speaks about the mediation talks held between the family members, just before the occurrence and about the quarrel between them. P.W.4 is another neighbour, who turned hostile. P.W.5 is the son of the



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deceased and brother of A1, who also turned hostile. He would add in his evidence that he, along with P.W.1, went to the scene of the occurrence after the crime. Therefore, he was treated as hostile by the prosecution. P.W.6 is the witness to the Observation Mahazar. P.W.7 is the wife of the deceased and turned hostile. P.W.8 is the relative of the deceased and was a witness to the confession and seizure made from A1, A3 and A4. P.W.9 was a witness to the Observation Mahazar and P.W.10 is the villager who had gone for the mediation talks on the request of P.W.7, the wife of the deceased.

8. P.W.11 is the Assistant Director of the Forensic Science Department who had issued the report Ex.P11. P.W.12 is another Assistant Director of the Forensic Department who had issued the reports-Ex.P13 and Ex.P14. P.W.13 is the witness to the confession and recovery from A2. P.W.14 is the constable who had assisted the investigation. P.W.15 is the Doctor who conducted post-mortem and had issued postmortem report-Ex.P20 and final opinion-Ex.P21. P.W.16 is the Sub-Inspector of police who registered the FIR. P.W.17 and P.W.18 are the Investigating Officers.



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9. The evidence of the postmortem doctor-P.W.15 and his reports Ex.P20 & Ex.P21 would show that the deceased suffered the following external injuries:-

1. *A HORIZONTAL CUT INJURY SEEN ON THE UPPER ASPECT OF THE OCCIPITAL REGION M-12CMSX0.5CMSXBONEDEEP.*
2. *ANOTHER CUT INJURY 3 CMS BELOW THE RIGHT SIDE OF THE OCCIPITAL REGION M-5CMSX 2CMSX BONEDEEP WITH UNDERLYING CUT INJURY OF THE OCCIPITAL BONE.*
3. *ANOTHER CUT INJURY ON THE LEFT SIDE OF THE OCCIPITAL REGION M-7CMSX1CMSXBONEDEEP WITH UNDERLYING CUT FRACTURE WITH EXTRAVASATION OF BLOOD.*
4. *ANOTHER CUT INJURY SEEN OVER BEHIND RIGHT EAR M-6CMSX1CMSXBONEDEEP WITH UNDERLYING CUT FRACTURE OF THE VAULT BONE.*
5. *ANOTHER CUT INJURY LOWER ASPECT OF THE OCCIPITAL REGION M-7CMSX1CMSXBONEDEEP UNDERLYING CUT FRACTURE OF VAULT BONE.*
6. *LACERATION OVER THE LEFT PARIETAL REGION M-4CMSX1CMSXBONEDEEP.*
7. *CUT INJURY SEEN OVER THE BACK OF RIGHT SHOULDER M-6X2X2CMS.*
8. *2CMS BELOW THE ANOTHER CUT INJURY M-2.5X0.5X0.5CMS.*
9. *CUT INJURY TOP OF THE RIGHT SHOULDER M-2.5X0.5X0.5CMS.*
10. *CUT INJURY LOWER ASPECT OF THE BACK OF THE RIGHT HAND M-5X0.5X0.5CMS.*

10. In Ex.P21, final opinion, the doctor had stated that the deceased



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would appear to have died of shock and haemorrhage due to multiple injuries on head. The evidence of the Doctor and his report therefore confirms the fact that the deceased suffered a homicidal death.

11. As to the involvement of the appellants, it is the prosecution's case that A1 had a motive to do away with her father, which is spoken to by P.W.3 and P.W.10. According to the prosecution, PW10 went for the mediation talks on the request of P.W.7, the wife of the deceased. According to him, the deceased was constantly troubling her. P.W.10 speaks about the discussion and about the quarrel between A1 and the deceased, a few hours before the occurrence when A1 threatened her father (deceased). We find that the evidence of P.W.10 is cogent and convincing and nothing has been elicited in the cross examination to discredit his testimony. PW3 corroborates PW10's version.

12. P.W.1, is the brother of the deceased and he also participated in the mediation talks. He would state that there was a Panchayat on 11.08.2015 to mediate the disputes between the deceased, on the one hand



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and P.W.7 and A1 on the other hand. P.W.1's version also corroborates the evidence of P.W.3 and P.W.10, as regards the motive of A1.

13. That apart, we find that P.W.1 lives next to the house of the deceased. According to P.W.1, since there was nobody to take care of the deceased, he took food for the deceased around 9.30 p.m. At that time, he had witnessed the occurrence. In our view, the evidence of P.W.1, does not suffer from any infirmity and nothing has been elicited in the cross-examination to reject his testimony, except for making a few suggestions. According to P.W.1, A3 had attacked the deceased with wooden log and A2 and A4 had attacked him with Koduval and A1 was standing near the entrance of the house. P.W.1, after witnessing the occurrence, had immediately gone to the police station and lodged a complaint at about 11.00 p.m. In his complaint, he had mentioned the names of A1, A2 and A3 and stated that another unknown person, who could be identified, was also involved in that occurrence.



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14. The FIR that was registered at 11.00 p.m., on 11.08.2015 was sent to the learned Magistrate immediately, who received it at 3.30 a.m., on 12.08.2015. Therefore, there was no delay in sending the FIR to the learned Magistrate. It is suggested by the defence that PW1 saw the occurrence at a distance of 20 ft., and therefore, his version that he saw the occurrence that took place inside the house is unbelievable.

15. We are of the view that P.W.1's presence cannot be disbelieved. P.W.1 is the brother of the deceased and he was living in the next house. We see no reason to disbelieve his testimony. It is also suggested by the defence that P.W.1 and the deceased did not get along very well. They relied upon the testimony of P.W.5 and P.W.7, the son and wife of the deceased, respectively, in support of the said stand. As stated earlier, both P.W.5 and P.W.7 turned hostile to the prosecution case. It is quite natural for both P.W.5 and P.W.7 who were upset with the deceased, had supported A1 and they did not support the prosecution case. Therefore, PW5 and PW7's evidence who were treated hostile cannot be used to disbelieve the evidence of P.W.1 whose evidence is otherwise cogent and convincing.



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16. However, as regards the involvement of A4, we find that his name is not found in the FIR. No Test Identification Parade was conducted to identify him. Though P.W.1 had attributed *overt acts* to A4 in his deposition, he had not identified him in Court. A1, A2 and A3 were known to P.W.1 and therefore there was no necessity for a Test Identification Parade to identify them. In such circumstances, we are of the view that it would be highly unsafe to convict A4 on the basis of such evidence. Though we believe P.W.1 on all other aspects, we are unable to accept his evidence as regards the involvement of A4. It is well settled that *Falsus in uno, falsus in omnibus* is not applicable in our country. There is no other evidence as regards A4 to connect him with the crime. The recovery of bloodstained clothes and bloodstained billhook would not be of any significance as the blood group could not be compared with the blood group of the deceased, since the same could not be ascertained, as per the



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Serological report [Ex.P13] issued by PW12, the Scientific Officer of Salem Regional Forensic Science Laboratory. Therefore, we are of the view that the evidence of P.W.1 to PW3 in so far as the involvement of A2 and A3, is concerned is cogent and convincing and there is no reason to disbelieve their testimony. From their evidence and the other evidence on record, we are of the view that the prosecution has established its case beyond reasonable doubt, as against A2 and A3. **Hence Criminal Appeal Nos. 155 of 2019 and 747 of 2018 , filed by A2 and A3, respectively, stand dismissed.**

17. The prosecution has not established the involvement of A4 beyond reasonable doubt, for the reasons stated earlier and therefore, A4 is entitled to acquittal. **Accordingly, Crl.A.No.709 of 2018 filed by A4 is allowed.** The conviction and sentence imposed on A4 alone in S.C.No.54 of 2016 dated 03.10.2018 on the file of the learned II Additional District and Sessions Judge, Salem, are set aside. The appellant/A4 is acquitted of all charges.



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18. Perusal of the record shows that A2 to A4, the appellants in the above appeals, were granted suspension of sentence by this Court vide orders made in Crl.M.P.Nos.10602 of 2019 and 14872 & 13492 of 2019, respectively. Hence, consequent to the dismissal of the appeals filed by A2 and A3, they are directed to be secured forthwith to serve the remaining period of sentence.

(M.S.R.,J.) (S.M.,J.)
16.07.2024

Neutral citation : yes/no
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Copy to:

1. The II Additional District and Sessions Judge,
Salem.
2. The Inspector of Police,
Veeranam Police Station,
Salem District.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
4. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



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**Crl.A.Nos.155 of 2019 and
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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

Pre-delivery Common Judgment in
Crl.A.Nos.155 of 2019
and
709 & 747 of 2018

Dated: 16.07.2024