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Crl.A.No.217 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.09.2024
Pronounced on	05.12.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

Crl.A.No.217 of 2019

1. Kaliyamurthy
2. Murugan
3. Jagan
4. Abinesh
5. Jaya
6. Vijayalakshmi

... Appellants/Accused

Vs.

State through
Inspector of Police,
Cuddalore Old Town Police Station,
Cuddalore.
(Crime No.515/2015)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records in SC.No.130/2016 on the file of the Mahila Court, Cuddalore dated 14.03.2019 and set aside the conviction and sentences passed against the appellants.

For Appellants : Mr.V.Lakshmanan



Crl.A.No.217 of 2019

WEB COPY

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

J U D G M E N T

C.KUMARAPPAN, J.

The instant Criminal Appeal has been filed against the order of conviction passed by the learned Sessions Judge, Mahila Court, Cuddalore in SC.No.130 of 2016 vide order dated 14.03.2019.

2. The facts in brief, barring unnecessary details and leading to the filing of this appeal, are as under:-

(a). One Pakkirisamy and Kamala [PW5] are husband and wife. PW1-Venkatachalapathi, PW4-Dhamayanthi and the deceased Vijaya are their children. The accused are their neighbours. There was a long drawn grudge between the accused and Pakkirisamy family on account of stagnation of the Sewerage water flowing from the first accused residence. In this regard, on 14.08.2015, when PW1's father Pakkirisamy had questioned the first accused, he got enraged and assaulted Pakkirisamy and his wife Kamala [PW5] on 15.08.2015. Consequently, a police complaint was given by PW1. Immediately after the occurrence, Pakkirisamy and Kamala [PW5] were



Crl.A.No.217 of 2019

admitted in the hospital as inpatients and their accident registers were marked as Exs.P4 and P5. While so, on the next day on 15.08.2015 at about 6.00 a.m, when the deceased Vijaya proceeded to collect water from a nearby pump, the first and second accused berated the deceased Vijaya with filthy language, and the first accused assaulted the deceased with iron pipe, owing to which, she fell down on the floor. Thereafter, the 2nd accused has assaulted her on the stomach with a brick. The 3rd and 4th accused also assaulted her indiscriminately with bricks, on her chest and mouth. When PW1 to PW4 intervened to protect the deceased, the accused also assaulted and abused them in filthy language.

(b). It is the case of the prosecution that PW1, PW3 and PW4 are the injured witnesses. These witnesses were also admitted at the Cuddalore Government Hospital, as inpatients. The AR copy issued by PW15 in favour of PW3, PW-1 and PW4 were marked as Exs.P9, P10 and P11 respectively. The AR copy of the deceased Vijaya was marked as Ex.P12. After they were admitted in the hospital, intimation was given to the police and PW16- Mr.Dhanapal, the Special Sub Inspector of Police attached to Cuddalore OT Police station, recorded the statement of PW1 at the hospital and registered an FIR in Crime No.515 of 2015 at about 9.00.am on the very same day



Crl.A.No.217 of 2019

[15.08.2015] for the offences under Sections 147, 148, 294(b), 341, 323, 324 and 506(ii) IPC.

(c). After registration, he forwarded the FIR to the concerned jurisdictional Magistrate, which reached the Court at about 6.30.p.m on the same day. Further, he forwarded the FIR to the Investigation Officer [PW17]. On receipt of the copy of FIR, he proceeded to the scene of occurrence on 15.08.2015 at about 10.15.a.m and prepared the Observation Mahazar [Ex.P2], and Rough Sketch [Ex.P14], in the presence of witnesses PW6-Raji and PW3-Sivalingam. He has also seized the iron pipe and broken bricks from the scene of occurrence. He then recorded the statements of those who witnessed the occurrence, and proceeded to the Government Hospital, Cuddalore and recorded the statement of Venkatachalapathi [PW1], Sivakumar [PW2], Sivalingam [PW3], Dhamayanthi [PW4], Pakkirisamy and Kamala [PW5].

(d). He would further state that since the deceased Vijaya was unconscious, her statement was not recorded. On the very same day at about 16.00 hours, he arrested the accused 1 to 3 viz., Kaliyamurthy, Murugan and Jagan, and remanded them to judicial custody. In the meanwhile, on 16.08.2015 at about 4.30.a.m, when he had received the information from



Crl.A.No.217 of 2019

WEB COPY

JIPMER hospital about the death of Vijaya, he altered the charge to the offence under Section 302 IPC and forwarded the file to the Inspector of Police, for further investigation.

(e). Thereafter, Mr.Seeni Babu [PW18] took up the further investigation and proceeded to the scene of occurrence at about 10.30.a.m on 16.08.2015, and verified the Observation Mahazar and Rough Sketch prepared by the PW17-Kaviyarasan. He also conducted inquest upon the body of the deceased, and made arrangements for the postmortem of the deceased. He once again recorded the statements of PW1 to PW5 and Pakkirisamy on 17.08.2015. He also recorded the statement of other occurrence witnesses. On 27.08.2015, he recorded the statement from the Doctors, who recorded the Accident Registers of PW1, PW3 and PW4. Since the accused 4 to 6 were granted anticipatory bail, he did not arrest them. He also recorded the statements of forensic expert, and the postmortem Doctor. Eventually on completing the investigation, he laid the charge sheet against all the accused.

3. Before the Trial Court, the prosecution relied as many as 18 witnesses as PW1 to PW18 and marked 16 documents as Exs.P1 to P16 and 2



Crl.A.No.217 of 2019

Material Objects to prove their case. On behalf of the accused, neither documents nor material objects were marked and no witness was examined.

4. The Trial Court, after having considered the oral and documentary evidence, has convicted all the accused and sentenced them as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Punishment</i>
A1	148 IPC	To undergo simple imprisonment for a period of 2 years and fine of Rs.500/- in default, 3 months simple imprisonment.
	294 (b) IPC	To undergo one month simple imprisonment and fine of Rs.500/- in default, 15 days simple imprisonment.
	323 [3 counts] IPC	To undergo simple imprisonment for a period of 3 months for each count and fine of Rs.500/- for each count in default of payment for each count, 15 days simple imprisonment.
	506 (ii) IPC	To undergo simple imprisonment for a period of 2 years and fine of Rs.500/- in default, 3 months simple imprisonment.
	302 r/w 149 IPC	To undergo Rigorous Imprisonment for Life and fine of Rs.5000/- in default, 2 years simple imprisonment.
A2 to A6	147 IPC	To undergo simple imprisonment for a period of one year and fine of Rs.500/- in default, 3 months simple imprisonment.
	294 (b) IPC	To undergo one month simple imprisonment and fine of Rs.500/- in default, 15 days simple imprisonment.
	323 [3 counts] IPC	To undergo simple imprisonment for a period of 3 months for each count and fine of Rs.500/- for each count in default of payment for each count, 15 days simple imprisonment.



Crl.A.No.217 of 2019

<i>Accused</i>	<i>Offence</i>	<i>Punishment</i>
	506 (ii) IPC	To undergo simple imprisonment for a period of 2 years and fine of Rs.500/- in default, 3 months simple imprisonment.
	302 r/w 149 IPC	To undergo Rigorous Imprisonment for Life and fine of Rs.5000/- in default, 2 years simple imprisonment.

5. Assailing the above order of conviction, the accused/appellants preferred the instant Criminal Appeal.

6. The learned counsel for the appellants would vehemently contend that there are no definite version among the eyewitnesses with regard to number of the accused involved, and that though there were immediate presence of police at the scene of occurrence, the earliest information was suppressed. It is the further contention of the appellant that there are no documentary evidence to prove the treatment provided to the deceased Vijaya at JIPMER hospital. It is also contended by the learned counsel for the appellants that, there were wild contradictions between the ocular evidence, as well as the Doctor's evidence. It was also further contended that there are no proof to connect the weapon with the occurrence. Besides, the learned counsel would further contend that there is a delay in dispatching the FIR and other documents, and that the charge under Section 149 IPC against the appellants was not proved. The learned counsel for the appellants would also



Crl.A.No.217 of 2019

contend that the mere presence of some of the accused at the scene of occurrence cannot be the basis to rope them under Section 149 IPC, as there is no proof for common object. It was also further contended that the judgment of the Trial Court is based upon assumptions and presumptions, and that no independent witness has supported the prosecution case. He thus submitted that the reliance of the testimonies of interested witnesses is highly unsafe and that there are reasonable doubts to the prosecution's case and hence, prayed to interfere with the order of conviction by allowing the instant Criminal Appeal.

7. Per contra, the learned Additional Public Prosecutor would vehemently contend that the witnesses, who relied by the prosecution are not only eyewitnesses, but were also injured in the very same occurrence, which reinforce their presence. It was further contended that the other independent witnesses, though turned hostile, had spoken about the assault against the deceased, as well as the presence of the injured witnesses and the involvement of the accused, however without any specificity. It was further contended that the mere variance in the accident register cannot be a ground to disbelieve the evidence of the injured witnesses. It was the further



Crl.A.No.217 of 2019

contention of the learned Additional Public Prosecutor that the Trial Court has rightly appreciated all the material evidences and arrived at a right conclusion. Therefore, contended that there are no ground to interfere with the order of the Trial Court. Hence, prayed to dismiss the appeal.

8. We have given our anxious consideration to the submission on either side.

9. The first and foremost contention raised by the learned counsel for the appellant is that, there are contradictions regarding the nature of injury between the ocular evidence and the medical evidence. It is settled principle of law that if the witnesses are wholly reliable witnesses, and the occurrence was spoken through the eyewitness account, then the variance between the oral evidence and medical evidence would loose its significance. The other defence is, focusing the trustworthiness of the occurrence witnesses PW1 to PW4. In such view of the matter, there is a duty cast upon this Court to find out whether the witnesses relied by the prosecution [PW1 to PW4] are reliable witnesses.

10. It is pertinent to mention here that, the occurrence dated 15.08.2015



Crl.A.No.217 of 2019

was not a sudden occurrence, but even on the previous day viz., 14.08.2015, there was a diatribe between the deceased family and the accused family. In furtherance thereof, on 14.08.2015, the accused 1 and 2 assaulted the father and mother of PW1, namely Pakkirisamy and Kamala [PW5] and both of them were admitted as inpatients at Cuddalore Government Hospital. Hence, Pakkirisamy and Kamala [PW5] could not have been in the scene of occurrence.

11. The other witness PW2 is one of the brother-in-law of PW1. On knowing that his in-laws were assaulted and admitted in the hospital, he visited them there and returned to PW1's residence at about 9.00.p.m on 14.08.2015 and stayed there. Therefore, the presence of PW2 in the scene, appears to be natural. Even the presence of PW3 [another son in-law of PW5] and PW4 [sister of the deceased and wife of PW3] appears natural, since on coming to know about the previous day occurrence and the admission of PW5 and her husband as inpatient at hospital, they visited them, and thereafter, returned to the scene of occurrence and stayed along with the deceased and PW1. Though PW2 to PW4 are residents of the neighboring village, their presence at the scene of occurrence, that too at the time of the



Crl.A.No.217 of 2019

occurrence, is quiet natural and this Court could not find any material to disbelieve their presence at the scene of occurrence. Thus, we may safely conclude that PW1 to PW4, though closely related to the deceased, their presence at the scene of occurrence on 15.08.2015, has been established beyond reasonable doubts.

12. Furthermore, the independent witnesses viz., PW8 to PW10, though did not refer anything about the presence of PW1 to PW4, had in unison mentioned about the occurrence and the assault made against the deceased Vijaya. Notably, except the omnibus suggestion that there was no occurrence at all at the scene of occurrence, nothing elicited through these witnesses about the presence or otherwise of PW1 to PW4. This further reinforces our conclusion about the presence of PW1 to PW4 at the scene of occurrence. According to the prosecution, the presence of PW1 to PW4 stands reinforced and fortified through the Accident Registers [Exs.P9 to P12]. However, the appellant doubted their presence by relying upon the above accident registers.

13. According to PW3-Sivalingam, he had stated before the Doctor that



Crl.A.No.217 of 2019

he was assaulted by 4 persons. However, PW1 had told to the Doctor that he was assaulted by 5 persons. Similarly, PW4-Dhamayanthi told the Doctor, that she was assaulted by 7 persons. Likewise, the deceased Vijaya had told to the Doctor that it was by 6 persons. Through which the learned counsel for the appellants would vehemently contend that had these witnesses been at the scene of occurrence, they would have referred the exact number of assailants, since they were all neighbours. The difference in number of accused between one witness to another, is an obvious proof to show their absence at the scene of occurrence.

14. In this regard, learned counsel relied upon the Division Bench judgment of this Court in *Veerapathiran and others Vs. State rep. by The Inspector of Police* reported in (2016) 2 MLJ (Crl) 239. The above reported judgment, though has referred that the reference of different number of assailants may raise a reasonable doubt, the facts of the present case in hand, is at tangent. In *Veerapathiran's* case [supra], when the statement given before the Doctor, being a former statement, was contradicted under Section 145 of the Indian Evidence Act, it was held that the mere statement given before the Doctor cannot be treated as the substantive piece of evidence.



Crl.A.No.217 of 2019

Therefore, whenever the parties want to contradict the maker of the previous statement, under Section 145 of The Indian Evidence Act, such statement has to be put forth before the concerned witnesses.

15. However, in the cross examination of PW1, PW3 and PW4 in the present case, the so called previous statement, namely their reference about the number of assailants, was not brought to their attention and those writings were not shown to them. In such a scenario, the statement given before the Doctors cannot be construed as a substantive piece of evidence. Furthermore, whenever the Doctors treat their patients, it was not expected from them to get to know about the nature of the occurrence. Therefore, a mere reference in the accident register about the number of assailants, cannot be a vital ground to totally disbelieve their statements. While looking at Exs.P9 to P11, these witnesses have sustained injuries at the same time, when the deceased Vijaya was attacked and there is no serious objection regarding the injuries sustained by these witnesses. Therefore, we are of the firm view that the prosecution has established beyond reasonable doubt that PW1, PW3 and PW4 are the injured, occurrence witnesses and hence, their trustworthiness must be kept in a high pedestal as they being the injured witnesses, would



Crl.A.No.217 of 2019

never allow an innocent to be brought under book and would be more specific to implicate the real culprit to the book.

16. While looking at the evidence of PW1, PW3 and PW4, they had categorically spoken about the involvement of these accused. To put it differently, the witnesses had spoken about the overtact of each of the accused in the occurrence. Though there may be a variation in respect of seat of attack, we must keep in mind that in a group assault, more specifically an assault by an unlawful assembly, there is a possibility for variation in the narration of the incident, as the assault comes from various directions. Therefore, the contradictions of seat of attack cannot be a material contradiction. What is essentially to be seen is to whether all the accused were present at the scene of occurrence to achieve the common object or not? In this case, all the witnesses had spoken about the presence, overtact and sharing of the common object by all the accused.

17. The learned counsel, in support of his contention, relied upon the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Sanjiv Kumar and Others*** reported in ***AIR 2007 SC 2430*** on the issue of Sections 141 and 149 IPC. As per the above judgment, mere presence in an unlawful



Crl.A.No.217 of 2019

assembly cannot render a person liable unless there was a common object.

There can no second opinion over the above settled legal principle. But, in the case in hand, by examining PW1 to PW4, PW7, PW8 to PW10, the prosecution had demonstrated that the ingredients of Section 149 IPC has been attracted. More specifically, PW1, PW3 and PW4, who are the injured witnesses, had spoken about the specific overt acts of these accused. The learned counsel has also relied upon the judgment of this Court in ***Thalapathi Vs. State Rep. by The Inspector of Police*** reported in ***2019 (1) TLNJ 257*** and would submit that the delay in sending the statement recorded under Section 161 Cr.P.C is a reasonable doubt. Though the statements of the witnesses under Section 161 Cr.P.C, reached the Court in the month of October, it was recorded during August. However, the delay may not be of much significance, since all the accused were named in the FIR, which reached the Court on the very same day. Therefore, there is no occasion arises for this Court to apply the above ratio.

18. Even the other ruling in ***Allarakha Habib Memon etc., Vs. State of Gujarat*** reported in ***2024 SAR (Cri) 934*** relied by the learned counsel for the appellants is not useful as it relates to the circumstantial evidence.



Crl.A.No.217 of 2019

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19. The learned counsel for the appellants has also relied upon the judgment of the Hon'ble Supreme Court in ***Lakshmi Singh and others etc., Vs. State of Bihar*** reported in ***AIR 1976 SC 2263***, for the proposition that non-explanation of injuries sustained by accused, would be fatal to the prosecution's case. But, in the case on hand, the defence of the accused is that there was no occurrence at all, and that the deceased died somewhere else due to injuries sustained in an accident at the construction site, or while shifting her to the JIPMER hospital. Hence, the question of non-explanation of injury of the accused does not arise.

20. The learned counsel also relied upon the judgment of Hon'ble Supreme Court in ***Raja Naykar Vs. State of Chhattisgarh*** reported in ***2024 SAR (Cri) 346*** and the judgment of Patna High Court in ***Manoj Mehtar and another Vs. State of Bihar*** reported in ***2019 (1) Crimes 548 (Pat.)***, wherein it has been held that the non recovery of blood stained soil and the blood stained weapon are the doubtful circumstances. It is pertinent to mention here that, the weapon used in this occurrence are blunt weapon such as iron pipe and bricks. The accident register does not refer to any cut injuries, but only



Crl.A.No.217 of 2019

records abrasions. Therefore, the argument about the absence of collecting blood stained weapon and soil, is irrelevant.

21. Another judgment of the Hon'ble Supreme Court in ***Bannareddy and others Vs. State of Karnataka and others*** reported in ***(2018) 2 MLJ (Crl) 357 (SC)*** relied upon by the appellants, wherein, the Hon'ble Supreme Court held that, when there are material contradictions, then the same would be fatal to the prosecution's case. In the case on hand, the assault on the head was consistently reiterated by all the witnesses, with variations only in respect of the seat of attack. As already mentioned, such variations are not material variations, which may go to the root of the matter. Besides, the reported case relied by the appellants arises from an order of acquittal. Therefore, the facts of the reported case is distinguishable from the facts of the case in hand.

22. Similarly, the facts involved in the judgment of the Hon'ble Supreme Court in ***Bhaskarro and Others Vs. State of Maharashtra*** reported in ***(2018) 3 MLJ (Crl) 289 (SC)*** are also different from the facts of the present case, as in the reported case, it was a fight between two villages. Therefore, the discrepancies coupled with improvement and contradictions



Crl.A.No.217 of 2019

WEB COPY

that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.”

In the above judgment, the Hon'ble Supreme Court has given a word of caution while appreciating the witness coming from same family. But, in the case in hand, apart from the relatives of the deceased, the independent witnesses had also spoken about the occurrence. Therefore, there was a corroboration to the statement of the relative injured witnesses and hence, the above judgment may not help the defence.

25. The prosecution raised a defence that the injured witnesses are the close relatives and there was also a strong motive between the two families and contended that the possibility of implicating the innocents by their mere mute presence is writ large. While looking at the evidence of PW1, PW3 and PW4, which was further supported by PW7 [daughter of the deceased] has implicated all the accused with specific overtact. Though there was slight variation in the seat of attack, each one of them are liable for the attack of others. More pertinently, an independent witness, who was examined as PW10 and who is related to both the accused, as well as the deceased family, had stated as follows:-



Crl.A.No.217 of 2019

WEB COPY

“15.08.2015 அன்று காலை 5.30 மணிக்கு நான் எனது கொல்லைக்கு செல்வதற்காக வீட்டிலிருந்து கிளம்பினேன். நான் கிளம்பி வெளியே வந்து பார்த்தபோது தெருவில் எதிரிகள் கலியமூர்த்தியும், முருகனும், முருகன் மகன்களும் விஜயாவை அடித்து கீழே தள்ளிவிட்டார்கள். நானும் சபாபதியும் நான்கைந்து பேரும் எதிரிகளை விலக்கிவிட்டோம்.”

26. On perusal of the above evidence, the presence of Kaliyamurthy [A1], Murugan [A2], Jagan [A3] and Abinesh [A4] during the incident is established. It is further stated that it was PW10 and others, who pacified the fighting groups. Therefore, the presence of the above accused is not by chance, but they participated in the occurrence with the prosecution of the common object.

27. Furthermore, PW9 had spoken about the presence of Kaliyamurthi, Murugan and Vijayalakshmi.

28. The other witness PW8 has stated that there was an issue between the accused, as well as the deceased family. Though PW8 to PW10 turned hostile, they had spoken about the occurrence in material particulars, such as the presence of all the accused at the scene of occurrence, though not about their individual specific overtact. This part of the evidence was not seriously



Crl.A.No.217 of 2019

challenged by the accused, except for a suggestion that there was no occurrence at all on 15.08.2015. When the evidence of PW1 to PW4 and PW7, along with the statements of the hostile witnesses [PW8 to PW10] are looked into, we can safely come to the conclusion that all the accused had unlawfully assembled at the scene of occurrence, in prosecution of the common object. Thus, this Court is of the view that the involvement of the accused in the occurrence has been proved beyond reasonable doubts.

29. The Doctor [PW13], who conducted the postmortem, had opined that the deceased died due to shock and hemorrhage, due to multiple injuries as a result of blunt force impact. From his evidence, it is amply clear that only because of the assault made by these accused, the witnesses PW1, PW3 and PW4 had sustained injuries and the deceased Vijaya had succumbed to the injuries. The Trial Court has elaborately gone into all these aspects. Though the learned counsel for the appellants contended that there is a variation between the ocular evidence and the eyewitness account, as we already stated, the eyewitnesses are the trustworthy and their statements were corroborated by the independent witnesses. Even if there is any variation, it will not loom large as a reasonable doubt. More pertinently, the deceased has



Crl.A.No.217 of 2019

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stated before the Doctor that she was assaulted by 6 persons. Therefore, such statement given before the Doctor and recorded in the Accident Register [Ex.P23] would definitely a statement given by the deceased about the cause of her death, which would amount to a dying declaration of the deceased, implicating 6 persons. Therefore, though there is a slight variation in respect of number of assailant in the accident register, the same cannot be given undue weightage against the creditworthy injured witnesses.

30. It is also pertinent to mention here that there were two suggestions put forth to the Investigating Officer as to the cause of death. One is, the fall of the deceased from the building while she was attending a building work. The other one is, theory of accident while shifting her from Cuddalore hospital to JIPMER hospital. But, both the suggestions have not been established through any material witnesses. On the other hand, the prosecution has proved the charge against the accused by examining the eyewitnesses and through the medical evidences. Therefore, this Court is of the firm view that the prosecution has proved the charge beyond reasonable doubts and hence, there are no grounds to interfere with the findings of conviction and punishment imposed by the Trial Court.



Crl.A.No.217 of 2019

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31. In the result, this Criminal Appeal stands dismissed.

[M.S.R., J.] [C.K., J.]
05.12.2024

Index: Yes

Speaking order

Neutral Citation: Yes
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To

1. The Sessions Judge,
Mahila Court, Cuddalore.
2. The Inspector of Police,
Cuddalore Old Town Police Station, Cuddalore.
3. The Public Prosecutor,
High Court, Chennai-104.



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Crl.A.No.217 of 2019

M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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Pre-delivery judgment made in
Crl.A.No.217 of 2019

05.12.2024