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Crl.A.No.490 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2024

PRONOUNCED ON : 10.07.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.490 of 2021

and

Crl.MP.Nos.1415 and 3829 of 2023

1. Manikandan @ Poosari Mani
2. Anandraj @ Happy Anandraj
3. Naveenkumar @ Naveen
4. Sasimohan
5. Mohanbabu @ Mohan ... Appellants/A1 to A5

v.

State represented by
Inspector of Police,
E-2, Peelamedu Police Station,
Coimbatore District.
(Cr.No.1414/2018)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellants and sentence in S.C. No.138 of 2019 dated 22.09.2021, on the file of the learned I Additional District and Sessions Judge, Coimbatore and set aside the conviction and sentence imposed in judgment dated 22.09.2021 and acquit



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the appellants.

For Appellants : Mr.Kingston Jerald (for A2)
Mr.John Sathyan, Sr. Counsel
for Mr.P.Srinivasan (for A2)
Mr.B.M.Subash (for A3 and A4)
Mr.M.Ezhilarasan (for A5)

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal has been filed by Accused Nos.1 to 5, challenging the conviction and sentence imposed upon them vide judgment dated 22.09.2021 in S.C.No.138 of 2019 on the file of the learned I Additional District and Sessions Judge, Coimbatore.

2(i) The case of the prosecution is that all the accused were friends; that they were habitual offenders who committed robberies; that on 22.08.2018, A1 along with two of his friends threatened PW18 by wielding a knife and took away his Pulsar Bike bearing Regn.No.TN37-CK-1302 and participated in the ear-boring function of A5's daughter; that they decided to do away with one Unnikrishnan of Gandhimanagar and went to TASMACH shop and purchased liquor; that they consumed liquor near SIHS Colony



Road and they were short of money; that on their way to home, near SIHS Colony, they stopped for attending nature's call; that A1 to A3 came in PW18's bike and A4 and A5 came subsequently; that all of a sudden, A2 put his hand in PW1-defacto complainant's pocket, who was standing there with the deceased Babu, and asked him to give money; that since PW1 refused to do so, the accused attacked him; that A1 took a knife and threatened PW1; at that time, one Manian (not examined) and PW2 came there and tried to support PW1 and the deceased; that A1 and A3 threatened the said Manian and PW2; that A2 attacked the deceased with a Bill Hook by using the reverse side of the weapon; that A4 and A5 caught hold of the hands of the deceased; that A1 took the knife and stabbed the deceased on his backside; that A3 took the Bill Hook from A2 and assaulted the deceased on the backside and thus, caused the death of the deceased.

(ii) PW19, the Sub-Inspector of Police examined PW1 at 7.00 a.m., on the basis of the written complaint [Ex.P1] and registered the FIR [Ex.P18] in Cr.No.1414 of 2018 for the offences under Sections 394, 397 and 302 of the IPC.



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(iii) PW25, the Inspector of Police, took up the investigation and went to the scene of the occurrence at about 8.30 a.m. and prepared the

Observation Mahazar [Ex.P4] and Rough Sketch [Ex.P33]. He seized the bloodstained earth [M.O.3 & M.O.4] under the Seizure Mahazar [Ex.P5]. He went to the hospital and conducted the inquest in the presence of panchayatars between 11.00 a.m. and 1.00 p.m. and prepared the inquest report [Ex.P34]. He examined the witnesses, including PW1 and made a request for the conduct of a postmortem, which was done by PW20, who issued the postmortem certificate [Ex.P22] and the final opinion [Ex.P24]. After the postmortem, the bloodstained dress materials of the deceased were seized by PW25 and sent to the Court under Form-91. Thereafter, on 24.08.2018 at about 7.00 a.m., PW25 arrested all the accused and recorded their confession. On the basis of the confession of A1, the admissible portion of which is marked as Ex.P6, PW25 seized the folded knife [M.O.1] under Seizure Mahazar [Ex.P8]. The dress materials of A1 [M.O.7 and M.O.8] were seized in the presence of the witnesses under Seizure Mahazar [Ex.P11].



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(iv) On the basis of the confession of A2, the admissible portion of which is marked as Ex.P7, PW25 seized the Bill Hook [M.O.2] under Seizure Mahazar [Ex.P9]. He also seized the knife [M.O.6] on the confession of A3 under Seizure Mahazar [Ex.P10]. After examination of all other witnesses, he altered the offences from Sections 394 r/w 397, 302 of the IPC to Sections 147, 148, 394 r/w 397 and 302 of the IPC. The alteration report was marked as Ex.P38. Thereafter, on receipt of reports from the Forensic Sciences Laboratory and after examining the remaining witnesses, PW25 filed a final report before the learned Judicial Magistrate No.II, Coimbatore, against the accused for the offences under Sections 394 r/w 398, 302 and 506 (ii) of the IPC.

(v) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.138 of 2019 and was made over to the learned I Additional District and Sessions Judge, Coimbatore, for trial. The trial Court framed charges against the accused, and when questioned, the accused pleaded 'not guilty'.



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(vi) To prove the case, the prosecution examined 25 witnesses as P.W.1 to P.W.25, marked 39 exhibits as Exs.P1 to P39, and marked 11 Material Objects as M.O.1 to M.O.11. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused did not examine any witness, however, marked three documents, viz., Ex.D1 to Ex.D3.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellants/A1 to A5 guilty of offences charged against them and accordingly, convicted and sentenced them as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1 and A3	395 r/w 398 IPC	Each of them to undergo RI for 7 years and to pay a fine of Rs.1000/- in default to undergo SI for 3 months.
	396 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.1000/-, in default to undergo SI for 3 months.
	506(ii) IPC	Each of them to undergo RI for 2 years and to pay a fine of Rs.500/- in default to undergo SI for 3 months.
A2, A4 & A5	395 r/w 398 IPC	Each of them to undergo RI for 7 years and to pay a fine of Rs.1000/- in default to undergo SI for 3 months.



<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
	396 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.1000/-, in default to undergo SI for 3 months.
The above sentences were ordered to run concurrently.		

Hence, A1 to A5 have preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.John Sathyan, learned senior counsel appearing for the 2nd appellant/A2; Mr.S.Kingston Jerald, learned counsel appearing for the 1st appellant/A1, Mr.B.M.Subash, learned counsel appearing for 3rd and 4th appellants/A3 and A4; Mr.M.Ezhilarasan, learned counsel appearing for the 5th appellant/A5; and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

4. Mr.John Sathyan, the learned senior counsel appearing for A2 and the learned counsels appearing for other accused, submitted that the presence of PW1 is highly doubtful; that PW2 had not seen the accused near the place of occurrence; and that PW2 is not a reliable witness and had not informed anyone about the occurrence, until he went to the police station on 24.08.2018 at about 9.00 p.m.



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(ii) The learned senior counsel further submitted that PW1-complainant in any case has referred to the involvement of only three persons in his complaint and had attributed *overt acts* to two of them; that Section 164 Cr.P.C., statement of PW1 also is to the same effect; that however, in his deposition PW1 had named five accused and had attributed specific *overt acts* to all the five accused, which shows that his evidence suffers from material improvement and is tutored; that the complaint itself is lodged belatedly; that all the accused were arrested on the same day and their arrest was reported in the newspaper on 23.08.2018 and 24.08.2018, which is contrary to the prosecution case; that therefore, the recovery is also doubtful; and that the Accident Register of both the deceased and the victim-PW1 would show that their first information is that they were attacked by three unknown persons. Hence, the learned counsels submitted that the prosecution has not established its case and prayed for acquittal of the appellants.

5. The learned Additional Public Prosecutor *per contra* submitted that the FIR is not an encyclopaedia and merely because some allegations are left



out in the FIR, the substantial evidence in Court, cannot be disbelieved; that the arrest and recovery of the material objects from the accused and other circumstances relied upon by the prosecution would show that the prosecution had established its case beyond reasonable doubt; and hence, prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions and have perused all the relevant records.

7.(i) The prosecution had examined 25 witnesses to prove its case, as stated earlier. PW1 is the injured eyewitness, according to the prosecution. PW2 is also an eyewitness, however, he had identified A1 alone. PW3 was working in a TASMAC shop and stated that he saw all the five accused, who came to buy liquor on 22.08.2018 and that they were consuming liquor near the shop. PW4 is the mother of the deceased, who speaks about the information given by PW1 about the occurrence and about going to the hospital to give consent for conducting a surgery on the deceased. PW5 is the wife of PW1 and is a hearsay witness. She has stated that PW1 came to the house at about 10.30 p.m.; that he was tensed and informed them about



the occurrence and took them to the place of occurrence, where the deceased, who was then alive, was found.

(ii) PW6 was examined as an eyewitness. However, he turned hostile. PW7 is a hearsay witness. PW8 is the Taxi-driver, who had taken the deceased along with Nelson-PW1 to the hospital. PW9 is the witness who speaks about the ear-boring ceremony conducted for A5's daughter. PW10, turned hostile. PW11 runs a Tea Shop and has signed as a witness in the Observation Mahazar and Rough Sketch. PW12 is the Village Administrative Officer, who speaks about the arrest and confession of the accused. PW13 is the Constable who handed over the body to the mother of the deceased after postmortem examination. PW14 is the Assistant Executive Engineer of the Electricity Department, who had stated that there was power supply between 6.00 p.m., and 11.00 p.m. on 22.08.2018 near SIHS Colony. PW15 is the Assistant Director in the Forensic Sciences Laboratory, who had examined the two wheeler bearing No.TN37 CK 1302 and took the sample [M.O.10 & M.O.11].

(iii) PW16 is the Doctor who had made entries in the Accident



Register [Ex.P15] of the deceased and had given intimation [Ex.P16] to the police Ex.P16. She had spoken to the deceased, who had informed her that three unknown persons had attacked him near SIHS Colony. PW17 is the Sub-Inspector of Police, who registered the FIR in Cr.No.707 of 2018 for the offence under Section 379 of the IPC on the complaint given by PW18 from whom the accused is said to have taken the bike. PW18 is the person from whom the accused is said to have taken the bike bearing Regn.No.TN37 CK 1302, which according to the prosecution was used by A1 to A3 to go to the occurrence place.

(iv) PW19 is the Sub-Inspector of Police, who recorded the statement of PW1 and registered the FIR. PW20 is the Doctor who conducted postmortem and had marked the postmortem certificate [Ex.P22] and the final opinion [Ex.P24]. She had also marked the serological report [Ex.P25] and the Viscera report [Ex.P23]. PW21 is the Magistrate who recorded the Section 164 Cr.P.C. statement of PW1. PW22 is the Doctor who treated PW1 and had made entries in the Accident Register-Ex.P27. PW23 is the Magistrate who had conducted the Test Identification Parade. PW24 is the Doctor who treated the deceased and speaks about the death of the deceased



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inspite of the treatment given to him. PW25 is the investigating officer.

8. From the above narrative, it could be seen that the prosecution relies upon the evidence of PW1, PW2 and PW3 to prove the involvement of the accused in the occurrence. The other witnesses viz., PW4, PW5, PW7 and PW8 speak about the fact that the deceased was found injured in the place of occurrence. PW8 is the call taxi driver and has spoken about the fact that, at the request of PW1, he had gone to the place of occurrence and taken the deceased along with other witnesses PW1 and PW5 to the hospital. The Doctor PW16 also confirms the fact that the deceased was brought to the hospital at 10.40 p.m. on 22.08.2018. PW20 also confirms that there were several external injuries on the deceased and in the postmortem certificate [Ex.P22] had opined that the deceased would appear to have died of shock and haemorrhage due to stab injury of back of abdomen and its corresponding internal organ injuries. The final opinion suggests that the viscera of the deceased did not contain alcohol or poison. The above would show that the prosecution had established that the deceased suffered a homicidal death.



9. As regards the involvement of the accused, it is seen that PW1, PW2 and PW6 were examined by the prosecution as eyewitnesses. PW6 turned hostile. PW2 who had allegedly seen A1 and others threatening the defacto complainant and the deceased with a knife had not informed the occurrence to anyone. He went to the police station on 24.08.2018 at about 9.00 p.m., after seeing the pictures of the accused in the evening newspaper. He had seen the accused at the police station. Though he had seen all the accused, he could identify only A1 in his deposition. However, in his deposition, he would say that there were two or three persons along with A1. PW1 in his complaint would state that three unknown persons attacked and he had attributed *overt acts* to two of them. In the Accident Register, pertaining to the deceased, Ex.P15, the Doctor [PW16] had stated, “h/o. assault by three unknown persons and the patient was under the influence of the alcohol”. The information was given by the deceased himself as could be seen from the evidence of PW16.

10. Similarly, in the Accident Register [Ex.P27] pertaining to PW1 it is stated that he was assaulted by three unknown persons using knife and hand. However, in the deposition, he would state that all five accused were



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present and has attributed specific *overt acts* to each of the accused, as stated earlier while narrating the prosecution case. The earliest version which only accuses of three unknown person is different from his deposition. That apart, the *overt acts* that were attributed only to two of three persons in the complaint, is now attributed to all five accused. Further more, the *overt acts* mentioned in the FIR does not match with the *overt acts* attributed to any of the accused in the evidence. The evidence of PW1 if at all , can only be believed to the extent that three persons were involved.

11. In the light of these material improvement, it would be highly unsafe to single out two or three of the five accused. It is also impossible to pick and choose as to which of the three accused out of the five accused were involved. This is a case where we cannot separate the chaff from the grain. The falsity cannot be removed from PW1's evidence so as to believe a portion of his evidence to convict the accused. Besides that, we also find that the conduct of PW1 also appears to be strange, which also makes his presence, highly doubtful. Admittedly, he had a mobile phone with him. There was no necessity for him to go back to his house after the attack and bring his wife along with the Taxi driver to pick up the deceased. The



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complaint also has been lodged belatedly, the next day early morning. PW2's conduct also does not inspire confidence as his evidence appears to be an afterthought. All these infirmities, in our view, make it highly unsafe to convict the appellants on the basis of the available evidence. Hence, we are of the considered view that the judgment of conviction and sentence cannot be sustained and liable to be set aside.

12. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed upon the appellants/A1 to A5 in S.C. No.138 of 2019 dated 22.09.2021, on the file of the learned I Additional District and Sessions Judge, Coimbatore, are set aside. Appellants/A1 to A5 are acquitted of all the charges and are directed to be released forthwith unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants shall be refunded. Bail bonds, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petitions are closed.

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

10.07.2024



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Index : yes/no

Neutral citation : yes/no

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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

To

1. The I Additional District and Sessions Judge,
Coimbatore.

2. The Inspector of Police,
E-2, Peelamedu Police Station,
Coimbatore District.

3. The Superintendent,
Central Prison, Coimbatore.

4. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
Crl.A.No.490 of 2021

10.07.2024