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Crl.A.No.1277 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2024

PRONOUNCED ON : 12.04.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Murugesan

... Appellant/Accused
(A2 in the final report)

v.

State represented by
Inspector of Police
Ulundurpet Police Station,
Villupuram District.
(Crime No.550 of 1997)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.168 of 1999 dated 05.10.2009, on the file of the learned Principal District and Sessions Judge, Villupuram and set aside the conviction and sentence imposed in judgment dated 05.10.2009 and acquit the appellant.



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For Appellant : Mr.M.Mohamed Saifulla
for Mr.C.D.Vivekanandan

For Respondent : Mr.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal has been filed by the accused challenging the conviction and sentence imposed upon him vide judgment dated 05.10.2009 in S.C.No.168 of 1999 on the file of the learned Principal District and Sessions Judge, Villupuram.

2(i) It is the case of the prosecution that the appellant along with four other accused with the intention to commit dacoity were in the habit of stopping vehicles in the highways, threatening the passengers and committing dacoity; that on 02.05.1997 the appellant along with four other accused armed with knives and machetes stopped a lorry bearing Regn.No.TN21 X 3178 transporting 113 bags of cashew nuts and caused the death of the driver and the cleaner of the lorry by smothering as they resisted the act of the accused; that thereafter they took away the 113 bags



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of cashew nuts and 5 tyres of the lorry, valued at Rs.2.75 lakhs in all.

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(ii) It is the further case of the prosecution that the owner of the lorry did not hear back from the driver and the cleaner after 30.04.1997 and he had no information about the whereabouts of the lorry; that he came to know later that the driver and the cleaner had without his permission taken the lorry to Rajamundhry to bring goods unauthorisedly; that he came to Chennai on 10.05.1997 and that in the meantime the Village Administrative Officer of Olaiyanur found the vehicle abandoned on the Ulundurpet-Salem road and lodged a complaint to the local police on 11.05.1997 which was registered in Cr.No.550 of 1997 under Section 102 Cr.P.C.; that the police found the financier's contact number and informed him, who in turn informed the complainant's brother-in-law, who later informed the complainant (PW3); that PW3 saw the abandoned lorry and found that the RC book and other records, tarpaulin, jockey and other tools and tyres, were removed from the lorry and that he lodged a complaint; and that on receipt of the said complaint the investigating officer altered the offence to Section 381 of the IPC.



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(iii) PW17 took up the investigation, went to the scene of the occurrence and seized the lorry in the presence of witnesses under Seizure Mahazar [Ex.P10]. He seized the trip sheet and examined a few witnesses. On 13.5.1997 he went in search of the deceased and he found the dead bodies of the driver [D1-Selaiyanadar] and the cleaner [D2-Manikandan] of the lorry near Sirupakkam forest area. On the special report given by the Village Administrative Officer of Sirupakkam, he altered the offences to Sections 302 and 379 of the IPC and sent the altered report Ex.P26 to the Court.

(iv) On 14.05.1997 at about 5.30 a.m., PW17 went to the place where the dead body of the driver of the lorry viz., Selaiyanadar [D1] was found and prepared the Observation Mahazar [Ex.P12] and Rough Sketch [Ex.P27] and between 6.00 a.m. and 8.00 a.m. he conducted an inquest in the presence of the panchayatars and prepared the inquest report [Ex.P28]. Thereafter he went to the place where the dead body of the cleaner of the lorry viz., Manikandan [D2] was found and prepared the Observation



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Mahazar [Ex.P13] and Rough Sketch [Ex.P29] and he conducted an inquest in the presence of the panchayatars and prepared the inquest report [Ex.P30].

(v) PW17 made arrangements for the conduct of postmortem at the place where the dead body was found and seized the clothes of the deceased. He took steps to find out the accused and apprehend them. On 25.05.1997 at about 4.00 p.m., he arrested one Ayyappan arraigned as A3 in the final report and obtained his confession. On 09.06.1997 he learnt that one Esakki, arraigned as A1 in the final report and the appellant-Murugesan, who was arraigned as A2 in the final report, surrendered before the learned Judicial Magistrate, Nagercoil. He made a requisition and took them into police custody. On 09.06.1997 on the confession of the appellant, the admissible portion of which is marked as Ex.P16, PW17 seized a Machete [வீச்சுருவாள்] [M.O.1] and a hunter knife [தூரி கத்தி] under Seizure Mahazar [Ex.P19]. He seized the driving licence of the deceased from the house of the said Esakki. He thereafter arrested the other accused arraigned as A4 and A5 in the final report and seized certain



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articles from them. After examination of witnesses and collection of other evidence, PW17 filed a final report against the accused for the offences under sections 392, 396 r/w 402 of the IPC, before the learned Judicial Magistrate No.1, Ulundurpet.

(vi) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, the case against A1, A2 and A4 was split up and A3 and A5 were tried separately in SC No.193 of 1997 and were convicted by the trial court vide judgment dated 25.08.2020. The appellant herein was absconding and was secured later and hence, the case against appellant/A2 was committed to the Court of Session in S.C.No.168 of 1999 and was made over to the learned Principal District and Sessions Judge, Villupuram, for trial. The trial Court framed charges against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(vii) To prove the case, the prosecution examined 17 witnesses as P.W.1 to P.W.17, marked 32 exhibits as Exs.P1 to P32, and marked 7 Material Objects as M.O.1 to M.O.11. When the appellant was questioned,



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u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused did not examine any witnesses or mark any documents.

(viii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant/A2 in the final report, guilty of offence under Sections 392, 396 r/w 402 of the IPC. The appellant/A2 in the final report was convicted and sentenced as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
392 IPC	To undergo RI for 10 years.
396 r/w 402 IPC	To undergo life imprisonment.

Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.M.Mohamed Saifulla, learned counsel appearing for the appellant, and Mr. Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State.



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4. (i) The learned counsel for the appellant earlier requested for an early hearing stating that the appellant is in custody for nearly 16 years and he did not have any means to engage a lawyer and file an appeal; and that the instant appeal has been filed with a delay of 13 years at the instance of the Tamil Nadu State Legal Services Authority.

(ii) The learned counsel submitted that though several incriminating material objects were recovered from the co-accused, except for the knives and Machete [வீச்சுருவாள்], no other material object was seized from the accused; that even the said recovery has not been properly established; and that PW9 who was a witness to the alleged recovery falsifies the prosecution case regarding recovery.

(iii) The learned counsel further submitted that the case is based on circumstantial evidence and the chain of circumstances is not complete and in any case do not point out to the guilt of the accused and he prayed for the



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acquittal of the appellant.

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5. (i) The learned Additional Public Prosecutor *per contra* submitted that the co-accused viz., A3 and A5 who were convicted by the trial Court in a separate Sessions Case viz. SC No.193 of 1997 had challenged their conviction before this Court in Crl.A.No.1042 of 2000 and this Court confirmed the conviction.

(ii) The learned Additional Public Prosecutor therefore submitted that in the light of the judgment of this Court in the said appeal, it cannot be said that the prosecution has not established its case beyond reasonable doubt and submitted that the instant appeal also deserves to be dismissed.

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

7. It is seen from the judgement of this Court in Crl.A.No.1042 of 2000 that the accused who were arraigned as A3 and A5 in the final report



were found guilty of the offences charged against them. It is further seen that the evidence in the said case and the role played by the accused in the said case are different. In any case, we have to examine the evidence adduced in this case qua the appellant.

8. (i) PW1 was the Village Administrative Officer of Olaiyanur Village at the relevant point of time, who had given the complaint [Ex.P1] when he found the abandoned lorry; PW2 is the postmortem doctor who conducted the postmortem of both the deceased at the place where the body was found and issued postmortem certificates i.e. Ex.P3 in respect of D1-Selaiyanadar and Ex.P5, in respect of D2-Manikandan. He had opined that both the deceased died of Traumatic Asphyxia due to smothering compression and compression injury in the chest.

(ii) PW3 is the owner of the lorry who gave a complaint [Ex.P6] pursuant to which the investigating officer altered the offence to Section 381 of the IPC. PW4 is the brother-in-law of PW3 who came to know through the Village Administrative Officer about the lorry being abandoned.



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(iii) PW5 is the observation mahazar witness. PW6 is the Village Administrative Officer, who gave the complaint-Ex.P11 after he found the dead bodies of the deceased at the forest area in Sirupakkam. PW7 is the witness to the observation mahazar prepared at the place where the body of D1-Selaiyanadar was found.

(iv) PW8 deposed that A1 had paid an advance of Rs.40,000/- for purchase of a lorry from one Mohandas and took possession of the lorry; that A1 did not pay the balance sale consideration; and that later he came to know that the lorry was seized by the financiers.

(v) PW9 is a witness to the confession and recovery of the Machete [வீச்சுருவாள்] and hunter knife [தூரி கத்தி] from the appellant. PW10 speaks about the sale of 10 bags of cashew nuts by A1-Essaki at the rate of Rs.500 per bag. Likewise, PW11 also purchased 12 bags of cashew nuts from the said Essaki. PW12 and PW13 are the corpse Constables. PW14 is



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the Sub Inspector of Police, who registered the FIR [Ex.P24] on the complaint given by the Village Administrative Officer [PW1].

(vi) PW15 is the son of the driver of the lorry viz., D1-Selaiyanadar and speaks about the deceased transporting the Cashew nuts bags from Rajahmundry to Chennai and he came to know of it when he was on the way to Vijayawada in another lorry. PW16 is the Village Administrative Officer, who has signed as a witness in the observation mahazar prepared at the place where the bodies of the deceased were found. PW17 is the investigating officer

9. This is a case which is sought to be established by circumstantial evidence. From the above narrative, it could be seen that the only evidence adduced by the prosecution as against the appellant is the recovery of the Machete [வீச்சுருவாள்] and hunter knife [தூரி கத்தி], spoken to by PW9.



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10. The postmortem report suggests that both the deceased died due to smothering and suffered homicidal deaths. The prosecution has established that both the deceased were transporting cashew nuts from Rajahmundry to Chennai, which is spoken to by PW15, the son of the deceased-Selaiyanadar, though the owner of the lorry was not aware of the same. The prosecution had also established that the said Essaki arraigned as A1 in the final report has sold certain cashew nuts to PW10 and PW11.

11. As stated earlier, the involvement of the appellant in the alleged crime is sought to be established only by the recovery of the Machete [வீச்சுருவாள்] and hunter knife [தூரி கத்தி] spoken to by PW9. Even this circumstance of recovery is highly doubtful as could be seen from the reading of the evidence of PW9. As per Ex.P19-Seizure Mahazar, the appellant was remanded on 10.06.1997 at about 4.00 p.m. However, PW9 would state that he had signed in the confession on 09.06.1997 and did not go to the police station thereafter. In the cross examination, he would further add that the police took his signature on six blank papers. That apart, it is not the case of the prosecution that the weapons seized by the



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accused were used for the occurrence. As stated earlier, both the deceased died due to smothering and no cut injuries were found in their bodies. It is the case of the prosecution that these weapons were used to threaten the deceased. However, there is no evidence for such threats as well.

12. In light of the above, we are of the view that the appellant cannot be convicted on the basis of the evidence adduced in the present case, though the co-accused were convicted in another Sessions Case i.e. S.C.No.193 of 2000, as they stood on a different footing. Therefore, we are of the considered view that the judgment of conviction and sentence cannot be sustained and are liable to be set aside.



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13. Accordingly, the Criminal Appeal is allowed, and the appellant/A2 in the final report is acquitted of all the charges. The conviction and sentence imposed upon the appellant in S.C. No.168 of 1999 dated 05.10.2009, on the file of the learned Principal District and Sessions Judge, Villupuram, are set aside. Bail bond, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
12.04.2024

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
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Issue order copy on 12.04.2024



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M.S.RAMESH,J.
AND
SUNDER MOHAN,J.
ars

To

1. The Principal District and Sessions Judge,
Villupuram.
2. The Inspector of Police,
Ulundurpet Police Station,
Villupuram District.
3. The Superintendent,
Central Prison, Cuddalore.
4. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
Crl.A.No.1277 of 2022

12.04.2024