



*Crl.A.No.759 of 2019, Crl.A.No.494 of 2020
and Crl.A.No.560 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2024

PRONOUNCED ON : 04.04.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.759 of 2019, 494 of 2020 and 560 of 2021
and
Crl.M.P.No.3369 of 2023

Crl.A.No.759 of 2019

Elangovan
report/

... Appellant/A2 as per Final

A1 in S.C.No.16/2017

vs.

1.State rep by,
The Inspector of Police,
Paravakottai Police Station,
Tiruvarur.

2.G.Seguttuvan

... Respondents

Criminal Appeal filed under Section 374(2) of Code of Criminal
Procedure, to call for the records in S.C.No.16 of 2017 on the file of the



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learned Sessions Judge, Special Court for Trial of Bomb Blast Cases,
Poonamallee and set aside the judgment dated 30.09.2019.

For Appellant : Mr.N.R.Elango
Senior Counsel
for
M/s.A.S.Aswin Prasanna

For Respondents : Mr.M.Babu Muthumeeran
Additional Public Prosecutor
for R1
Mr.P.Vijendran for R2

Crl.A.No.494 of 2020

Amutharasan

...Appellant/A9 as per Final report/
A5 in S.C.No.16/2017

vs.

State rep by,
The Inspector of Police,
Paravakottai Police Station,
Paravakottai,
Thiruvarur - District.
(Crime No. 204 of 2005)

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to allow the criminal appeal by setting aside the judgment made in Session Case No.16 of 2017 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamalli, Chennai – 56 dated 30.09.2019.

For Appellant : M/s.D.Veerasekharan
For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



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Poyyamozi

...Appellant/A1 as per Final report/
Accused in S.C.No.7/2019

vs.

1.State of Tamil Nadu rep by,
The Inspector of Police,
Paravakottai Police Station,
Paravakottai Post
Tiruvarur District
Crime No.204 of 2005.

2.G.Senguttuvan

...Respondents

**Second respondent
impleaded as per order dated
20.07.2022 in Crl.M.P.No.8489
of 2022 in Crl.A.No.560 of
2021*

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to call for the entire records comprising in S.C.No.7 of 2019 and set aside the judgment and sentence dated 17.09.2021 made by the Sessions Court for the Exclusive Trial of Bomb Blast and (NIA) cases, at Poonamallee, Chennai.

For Appellant
For Respondents

: M/s.M.Vimal Bobby Crimson
: Mr.M.Babu Muthumeeran
Additional Public Prosecutor
for R1

Mr.P.Vijendran for R2



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COMMON JUDGMENT

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

These appeals have been filed by the accused/A1, A2, A9 (as per the Final Report) challenging the conviction and sentences imposed upon them vide judgments dated 30.09.2019 and 17.09.2021 in S.C.Nos.16 of 2017 and 7 of 2019 on the file of the Session's Court for the Exclusive Trial of Bomb Blast and (NIA) cases at Poonamallee, Chennai.

2. We are referring to the accused as per the rank assigned to them in the Final Report, for the sake of convenience, as we are taking up the appeals filed by the accused who had been tried in two different Sessions Cases i.e., S.C.No.16 of 2017 and S.C.No.7 of 2019 and their rank before the trial Court in the said Sessions Cases would be different.

3. (a) It is the case of the prosecution that the deceased one Tamilselvan and one Asaithambi [A3] in the Final Report had a boundary dispute as they had owned adjacent lands; that A1 [Poyyamozhi, appellant



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in Crl.A.No.560 of 2021] attempted to settle the dispute on 16.12.2005; that during the mediation talks, the deceased is said to have abused Poyyamozhi and caught hold of his shirt and questioned him as to how, he being a stranger to the village and a resident of another village by the name Ullikkottai could intervene in the said dispute; that the said Poyyamozhi informed his mother [A5, Padmavathi], wife [A7, Kayalvizhi] and sister [A6, Kanimozhi] about the incident and they had asked the said Poyyamozhi to chop the hands of the deceased; that all the accused entered into a conspiracy and pursuant to the conspiracy, on 25.12.2005 at about 09.30 a.m., the accused about four in number namely Poyyamozhi [A1] and Elagovan [A2] [appellant in Crl.A.No.759 of 2019] and two other absconding accused came out of the house of one Asaithambi [A3] and attacked the deceased indiscriminately; that Poyyamozhi is said to have cut the right arm of the deceased until it got severed; that Elangovan is said to have attacked the lower right torso of the deceased, the absconding accused Asaithambi is said to have cut at the right thigh of the deceased, the absconding accused one Selvam, is said to have cut at the right elbow of the deceased; and that after the occurrence, they fled away in a mini door



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van driven by one Amutharasan [appellant in Crl.A.No.494 of 2020]
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(b) It is the further case of prosecution that the deceased was first taken to the Government Hospital, Mannargudi, Tiruvarur District, at 10.00 a.m., and since he was advised to take treatment at the Government Tanjore Medical College, he was taken from the said Hospital, and thereafter, instead of going to the Government Tanjore Hospital was admitted at Vinodhagan Hospital at Tanjore, and an intimation was sent from the Vinodhagan Hospital to the police.

(c) On receipt of intimation one, Thiru. Annamalai, the then Inspector of Police, Paravakottai Police Station, Paravakottai, Thiruvarur District, went to the Vinodhagan Hospital at Tanjore and recorded the statement of P.W.1 (G.Senguttuvan) and registered the First Information Report in Crime No.204 of 2005 [Ex.P33] for the offences under Sections 302 and 307 of the Indian Penal Code.



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(d). He thereafter went to the Tanjore Government Hospital and conducted the inquest between 2.45 p.m. and 4.15 p.m. and prepared the inquest report [Ex.P.34]. He sent the body for a post-mortem, which was conducted by P.W.34, who had issued a post-mortem certificate [Ex.P36]. He examined other witnesses and went to the scene of the occurrence at 6.00 p.m. and prepared the Observation Mahazar [Ex.P20] and Rough Sketch [Ex.P35]. He collected the blood-stained earth [M.O.6] and earth that was not blood stained [M.O.7] under the Seizure Mahazar [Ex.P9]. He thereafter seized the underwear of the deceased [M.O.8]. On 26.12.2005, he arrested Padmavathi [A5], Kanimozhi [A6], and Kayalvizhi [A7] and recorded their confessions. He thereafter arrested Amutharasan [A9] and the other accused on various dates. Some of the accused also surrendered before the learned Judicial Magistrate, Alangudi.

(e) On 04.01.2006, Annamalai handed over the investigation to P.W.43. [The investigation done by Annamalai has been spoken to by



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P.W.43 as Annamalai has passed away] P.W.43 took A1 and A4 under the police custody after obtaining orders from the learned Judicial Magistrate and seized the material object, i.e., aruval. He took A3 under police custody and seized aruval on his confession.

(f) After the examination of relevant witnesses, P.W.43 handed over the investigation to P.W.44. P.W.44 took up the investigation on 25.07.2006 and filed the Final Report on 11.08.2008 against the accused for the offences under Sections 302, 109, 120 (b) r/w 34 r/w 4(1)(b), Section 6 of the Explosive Act, 1908 before the learned Judicial Magistrate – II, Mannargudi.

(g) On the appearance of the appellants, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session.

(h) (i) The Investigating Officer had filed a Final Report



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against the following nine accused: (i) Poyyamozhi (ii) Elangovan (iii) Asaithambi (iv) Selvam (v) Thilagavadi (vi) Kanimozhi (vii) Kayalvizhi (viii) Elangovan (ix) Amutharasan. A3 and A4 were absconding and the case against them was split up. A8 died before the charges were framed. During the trial, A1-Poyyamozhi absconded and the case against him was split up, and he was tried separately in S.C.No.7 of 2019 by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee, Chennai. The trial Court framed charges against the accused/A1-Poyyamozhi for the offences under Sections 120B, 302, 201 of the IPC, and Section 6 of the Explosive Substances Act, 1908, and when questioned, the accused/A1-Poyyamozhi pleaded 'not guilty'.

(ii) To prove the case, the prosecution examined 30 witnesses as P.W.1 to P.W.30, marked 50 exhibits as Exs.P1 to P50, and marked 14 Material Objects as M.O.1 to M.O.14. When the accused/A1-Poyyamozhi, was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused/A1-



Poyyamozhi, neither examined any witnesses nor marked any documents.

(ii) On analysis of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the accused/A1-Poyyamozhi, guilty of the offences charged against him and vide judgment dated 17.09.2021, convicted and, sentenced him as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1- Poyyamozhi	120B IPC	To undergo life imprisonment and to pay a fine of Rs.25,000/- in default to undergo RI for six months.
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.25,000/- in default to undergo RI for six months.
	201 IPC	To undergo RI for seven years and to pay a fine of Rs.25,000/- in default to undergo RI for six months.
	6 of the Explosive Substances Act, 1908	To undergo RI for seven years and to pay a fine of Rs.25,000/- in default to undergo RI for six months.
	Sentences were directed to run concurrently.	

Hence, the accused/A1-Poyyamozhi has filed Crl.A.No.560 of 2021 challenging the said Judgment.

(i) (i) Similarly, A2-Elangovan along with A5, A6, A7 and A9-Amutharasan were tried in S.C.No.16 of 2017 by the learned Sessions



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Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee, Chennai. The trial Court framed charges against the accused/A2-Elangovan for the offences under Sections 120(B) and 302 of the IPC and against the accused/A5, A6, A7, and A9-Amutharasan, for the offences under Sections 120(B) and 302 r/w 109 of the IPC, and when questioned, the accused pleaded 'not guilty'.

(ii) To prove the case, the prosecution examined 44 witnesses as P.W.1 to P.W.44, marked 51 exhibits as Exs.P1 to P51, and marked 14 Material Objects as M.O.1 to M.O.14. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused, though examined by one witness – DW1, did not mark any documents.

(iii) On analysis of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held accused/A2-Elangovan and accused/A9-Amutharasan, who were arrayed as A1 and A5, respectively in S.C.No.16/2017, guilty of the offences



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charged against them. Further, the trial Court found accused/A5, A6 and A7 (A2 to A5) not guilty of the offences charged against them and accordingly acquitted them vide judgment dated 30.09.2019.

The accused/A2 and A9, were sentenced as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A2-Elangovan A1 in S.C.No.16 of 2017	120B IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo RI for six months.
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo RI for six months.
	Sentences were directed to run concurrently.	

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A9- Amutharasan A5 in S.C.No.16 of 2017	120B IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo RI for six months.
	302 r/w 109 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo RI for six months.
	Sentences were directed to run concurrently.	

Hence, challenging the above conviction and sentence, A2-Elangovan has preferred Crl.A.No.759 of 2019 and A9-Amutharasan has preferred Crl.A.No.494 of 2020.



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4. We propose to deal with the appellants together, though the evidence in the two appeals are different. However, Mr.M.Babu Muthumeeran, the learned Additional Public Prosecutor, would submit that the substance of the evidence of the key witnesses is the same, and therefore, all these appeals can be taken up together.

5. Mr.N.R.Elango, the learned Senior Counsel appearing for A2-Elangovan, the appellant in Crl.A.No.759 of 2019, broadly made the following submissions:

(a) The deceased was first taken to the private Hospital by the name of Vinodhagan Hospital, Tanjore, wherein the intimation was sent to the police [Ex.P23], in which the doctor stated that the deceased was attacked by four unknown persons; and that the accident register issued by the Government Doctor [Ex.P8] at Mannargudi Government Hospital is doubtful and pointed out that the Doctor was closely related to one Divakaran who was close to the family of the deceased.



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(b) The FIR was not registered in the manner alleged, and the reading of it would show that the recording of the statement of P.W.1, registration of the FIR, and subsequent conduct of the inquest could not have been done at the time mentioned in the documents. Therefore, the genesis and origin of the occurrence are themselves in doubt, and when the FIR is fabricated, the entire fabric of the prosecution case would collapse.

(c) The learned Senior Counsel also pointed out the distance between the Vinodhagan Hospital and Paravakottai Police Station to impress upon us that the timings mentioned in the documents cannot be true; and that the delay in sending the FIR to the learned Judicial Magistrate would make it doubtful. Though an explanation is sought to be given the same cannot justify the delay.

(d) The learned Senior Counsel further submitted that the defacto



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complainant was an influential person, which had prompted the Investigation Officer to implicate all the family members of A1 for the charge of conspiracy; and that the Trial Court disbelieved the evidence of conspiracy, which would prove the defence case that the prosecution evidence cannot be believed.

(e) The learned Senior Counsel also pointed out certain other circumstances to show that P.W.1 who is said to have brought the deceased to the Hospital, could not be an eye witness, as even according to P.W.28, the Doctor at Government Hospital, Mannargudi, he had handed over the accident register copy to P.W.3 and not to P.W.1.

6. Mr.D.Veerasekharan, the learned counsel for the accused/A9-Amutharasan, the appellant in Crl.A.No.494 of 2020, submitted that it is the case of the prosecution that A9 had taken the accused in a mini door van after the occurrence, and none of the witnesses had stated in their statements before the police that they saw the accused driving the mini door van and



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fled from the scene of the occurrence.

7. Mr.M.Vimal Bobby Crimson, the learned counsel for the accused/A1-Poyyamozhi, the appellant in Crl.A.No.560 of 2021, adopted the arguments made by the learned Senior Counsels and submitted that the evidence of the chief examination of all the eye witnesses examined in S.C.No.16 of 2017 and in S.C.No.7 of 2019, are the same; that the evidence of the witnesses are parrot like in nature, does not inspire confidence, and none of the witnesses can be believed; that the witnesses had suppressed the real motive for the occurrence, and none of the witnesses had supported the prosecution case with regard to the motive for occurrence.

8. Mr.M.Babu Muthumeeran, the learned Additional Public Prosecutor, submitted that merely because there were certain lapses in the investigation, the evidence of eye witnesses cannot be disbelieved; that the evidence of eye witnesses has to be independently appreciated, and the defence has not elicited any fact in the cross examination so as to discredit



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them.

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9. We have heard the rival submissions on either side and perused the evidence on record placed before us.

10. As stated earlier, 44 witnesses were examined in S.C.No.16 and 2017. P.W.1 is the brother of the deceased and an eye witness. P.W.2 is the wife of P.W.1. P.W.3 to P.W.6 are the eye witnesses and relatives of the deceased. P.W.7 speaks about seeing five accused leave in a mini door van and about the previous enmity. P.W.8 and P.W.9 are hearsay witnesses. P.W.10 is the father of the deceased, who went to the house on coming to know that the deceased was done to death. P.W.11 is the relative of the deceased, who speaks about seeing the accused going in a mini door van. P.W.12, P.W.14 to P.W.19, P.W.29, and PW.32 are either mahazar witnesses or witnesses to the confession of the accused. P.W.13 speaks about the accused in a mini door van, after the occurrence. P.W.18, the mahazar witness, was examined in part, and since some of the documents that were sought to be marked through him were already marked, his



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examination was dispensed with thereafter by the prosecution. P.W.20 is a

witness to the conspiracy said to have taken place on 24.05.2012 at about 5.00 p.m.

11. P.W.21 is the photographer, who took pictures of the deceased. P.W.22 is the Court Clerk who speaks about Ex.P2 report issued by him for having inspected the house of A3 [Asaithambi] and finding two ball-shaped items that were covered with a green thread. P.W.23/Assistant at the Collectorate Office, speaks about the sanction for prosecution under the Explosives Act. P.W.24 is the RTO, Mayiladuthurai, who speaks certifying about the mini door van and issuing Ex.P3 certificate. P.W.25 is the Forensic Analyst who had found explosives in one sample of mud and issued Ex.P4 certificate. P.W.26 and P.W.27 are the Forensic Science experts who examined the MO'S and issued report Ex.6. P.W.28 is a Doctor at the Mannargudi, Government Hospital, who issued Ex.8, Accident Register _in respect of the deceased. P.W.30 is a villager, who speaks about



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the compromise between the deceased and A3 attempted by A1. P.W.31 is the son of the deceased and eye witness to the occurrence. P.W.33 is the Doctor at Vinodhagan Hospital Tanjore, who issued Accident Register [Ex.P22] and had given police an intimation [Ex.P23] besides the letter [Ex.P24]. P.W.34 is the post-mortem Doctor, Government Hospital, Tanjore, who issued Ex.P26. P.W.35 belongs to the bomb squad and speaks about issuing Ex.P27 report, defusing the country bombs and taking samples. P.W.36 is the Sub Inspector of Police who handed over the FIR to the learned Judicial Magistrate. P.W.37 and P.W.38 are the constables who assisted the investigation. P.W.39 is the Inspector of Police, who had sent the materials to Forensic Science Lab and made a request for sanction from the District Collector under the Explosives Act. P.W.40 is the Judicial Magistrate - I, Mannargudi, who recorded the 164 statements of the eye-witnesses. P.W.41 is the District Collector, Tiruvallur, who granted sanction under the Explosives Act. P.W.42 is the Head Constable who gave the death intimation to Paravakottai Police. P.W.43 and P.W.44 are the Investigating Officers.



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12. D.W.1 is a friend of A2 and has stated that he was compelled by the Police to depose against A2.

13. The entries made in the accident registers maintained at the Government Hospital Mannargudi [Ex.P8] and at the Vinodhagan Private Hospital [Ex.P22] revealed that the deceased was assaulted by four persons. The post-mortem report issued by P.W.34 [Ex.P26] reveals that the deceased had sustained the following external injuries:

“1. Oblique cut wound 5x2½ cm x ½ cm over the anterior aspect of upper 3rd of right arm situated 20 cm above from the exposed lower end of humerus.

2. Cut wound 8x5cms – bone deep obliquely placed seen over the outer aspect of middle 3rd of right arm situated 15cms above the exposed lower end of humerus.

3. Horizontally placed cut wound 8x2cm-bone deep over the front and lateral aspect of lower 3rd of right arm situated 8cms above the exposed lower end of humerus.

4. A cut wound 26 cms in circumference and 7cms in diameter severing the whole of right forearm and hand exposing the lower end of right humerus on examination of the wound margin are seen along with another cut end suggesting the severing of right forearm from



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the elbow was made by more than one cut. On examination of the lower end of humerus superficial cut – Fracture 5cm in length noted on the anterior surface of the humerus.

5. Horizontally placed cut wound 9x3cm – bone deep noted over the antero-lateral aspect of right side of abdomen involving the posterior axillary line situated 11cm to the right of midline and 9cm above the level of umbilicus. On examination, a partial cut noted on the 10th rib at that level.

6. Vertically oblique cut wound 7x3cm – muscle deep noted over the front and medial aspect of middle 3rd of right thigh.”

The doctor had further opined as follows:

“The deceased would appear to have died of shock and haemorrhage due to multiple cut injuries involving severing of right forearm and hand.”

14. The above aspects conclusively establish that the deceased suffered a homicidal death. The main witnesses, namely the eye witnesses, and the other witnesses who speak about the accused fleeing away are the same in both S.C.Nos.16 of 2017 and 7 of 2019. Therefore, it would suffice if the evidence let in by the prosecution in S.C.No.16 of 2017, which is the mother case is examined. P.W.1 to 6, and P.W.31 are the eye witnesses and



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it is pertinent to point out that all of them are closely related to the deceased.

P.W.7 and P.W.13 speak about the accused going away in a mini door van.

All the eye witnesses have spoken about the overt acts of each of the accused and are parrot like in nature. Strangely, though they were all closely related to the deceased and belonged to the same village, the Investigating Officers had chosen to record their statements under 164 of Cr.P.C. for the reasons best known to them.

15. Be that as it may. The earliest version given by the witnesses to the Doctor and the manner in which the FIR was registered would have a bearing on how to appreciate the evidence of these closely related witnesses. Though it is the case of the prosecution that the deceased was admitted initially at Mannargudi Government Hospital, no intimation was sent to the Police by the Doctor [P.W.28]. No explanation has been offered by P.W.28 for not sending the intimation to the police. P.W.33 is the Doctor who examined the deceased at the Vinodhagan Hospital. He had sent the intimation to the police, which was marked as Ex.P23. In the said



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intimation, the Doctor stated that “four unknown persons” had attacked the deceased. The entries in the accident register [Ex.P8] made by P.W.28 at Mannargudi Hospital and the entries in the accident register made by P.W.33 [Ex.P22] at Vinodhagan Hospital would reveal that the deceased was attacked by “four known persons.” To the very specific question about the intimation marked as Ex.P23, and the entries made therein, the Doctor confirmed it. The relevant portion of the cross examination of P.W.33 reads as follows:

''காயம்பட்ட நபரை அன்பழகன் என்பவர் தான் எங்கள் மருத்துவமனைக்கு சிகிச்சைக்கு அழைத்து வந்தார் என்றால் சரிதான். அ.சா.ஆ.23ல் அடையாளம் தெரியாத நான்கு நபர் அறிவாளால் வெட்டி காயம் அடைந்து இங்கு வந்து சிகிச்சைக்கு சேர்ந்து சிகிச்சை பலனின்றி இறந்துவிட்டார் என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்.''

The Prosecution has not offered any explanation or suggested that the entries made by P.W.33 were due to a mistake or for any other reason. Therefore, the entries in Ex.P23 and the evidence of P.W.33 cannot be ignored.



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16. P.W.28, the Government Doctor would state that he is closely related to one Divakaran, who, according to the defence was instrumental in foisting the case against the accused. The relevant portion of the cross examination of P.W.28 reads as follows:

"மன்னார்குடியை சேர்ந்த திவாகரன் என்பவர்
எனக்கு உறவினார் என்றால் சரிதான். மேற்படி திவகாரன்
மனைவி எனக்கு மாமன் வேண்டும் என்றால் சரிதான்."

The case of the defence is that the accused were implicated due to political enmity. This would not normally assume significance unless it is proved by preponderance of probability. At the same time, the prosecution case must be established beyond reasonable doubt. P.W.28's evidence that "four known persons" attacked the deceased appears to be doubtful. The entries made by the Government Doctor in the accident register cannot be ordinarily doubted. However, in this case, P.W.28 had not given any



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intimation to the police. Secondly, P.W.33 has not explained why, in the police intimation, he stated that “four unknown persons” attacked the deceased. Thirdly, Ex.P25, the letter written by the deceased/Investigating Officer to the Tanjore Government Hospital, would state that the deceased was admitted at the Vinodhagan Hospital, Tanjore. There is no reference to the deceased being admitted to the Government Hospital in Mannargudi. All the above facts raises a doubt as to whether the witnesses had stated in their earliest version that four known persons had attacked the deceased.

17. P.W.42, the Head Constable attached to the Tanjore, Government Hospital Police Station, stated that he gave an intimation to the Paravakottai Police Station at about 12 noon. P.W.15 would state that he went to the Vinodhagan Hospital, Tanjore, at 12 noon and the police were present at the Hospital at 12 noon. P.W.21, the photographer would also state that the police called by 1.00 p.m on 25.12.2005 to take pictures and he went to the hospital at about 2.30 p.m. P.W.6 and P.W.10 also speak about the presence of Police immediately after the occurrence. The above evidence



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would show the presence of police even before the FIR was said to have been registered.

18. Further, the FIR [Ex.P33] reveals that the statement of P.W.1 was recorded at Vinodhagan Hospital at 2.30 p.m. and thereafter, the FIR was registered and Crime No.204 of 2005 was assigned. The travel time between Paravakottai and Vinodhagan Hospital, Tanjore, according to P.W.43, would be 1.30 hours by bus. Therefore, the averments in the FIR that the Investigating Officer recorded the statement of P.W.1 at 2.30 p.m. and immediately thereafter, registered the FIR appears to be improbable. The time of registration of the FIR is not mentioned. Interestingly, the inquest is said to have been conducted at Tanjore Government Hospital, which was also at a distance that would be covered in one and a half hours. The inquest was between 2.45 p.m. and 4.15 p.m., in which, the crime number is mentioned. Therefore, after the registration of the FIR one could not have gone back to the Tanjore Medical Hospital immediately. Therefore,



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the time mentioned in the documents raises substantial doubt with regard to the actual time of registration of the FIR. Further, the FIR reached the learned Judicial Magistrate – I, Mannargudi, at 9.30 p.m. Though the explanation sought to be offered was that the FIR was first taken to the learned Judicial Magistrate, Mannargudi, and since the Judicial Magistrate, Mannargudi was not available, it was taken to the learned Judicial Magistrate, Thiruvarur, we are of the view that the explanation offered is not satisfactory.

19. Therefore, we are of the view that considering the fact that the entry in Ex.P23 reveals that “four unknown persons” were attacked and the admission of the deceased at the Government Hospital Mannargudi is not mentioned in any of the contemporaneous documents, such as Ex.P25, Ex.P36/the alteration report, the entries made in Ex.P8 are doubtful. The statement of P.W.1 could not have been recorded at 2.30 p.m. at the Hospital, when it is the case of the Investigating Officer that, after recording, he travelled to Paravakottai police station, which is 1.30 hours drive, to register the FIR and went back to Tanjore Hospital, which is also 1.30 hours



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drive away from the police station to conduct an inquest at 2.45 p.m. The presence of the police at the Hospital before the registration of the FIR and the enmity between the parties would make the defence case probable that the FIR was registered after deliberation. It is settled law that if FIR is held to be fabricated or brought into existence long after its occurrence, the entire fabric of the prosecution case would collapse. The Hon'ble Supreme Court in ***Marudanal Augusti vs State Of Kerala*** reported in (1980) 4 SCC 425 held that if the FIR is held to be fabricated, the entire fabric of the prosecution case collapses. The relevant portion reads as follows:

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could be added without there being anything to check the authenticity of their eviden

20. Further, it is seen that none of the eye witnesses have stated



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during the investigation that the accused, after attacking the deceased left, in a mini door van, driven by A9. The relevant portion of evidence of P.W.1. reads as follows:

"சம்பவ சமயத்தில் ச.பொ,1 ஆன மினிடோர் வேனை அமுதரசன் என்பவர் தான் ஓட்டிச் சென்றார் என்ற விவரத்தை பற்றி அ.சா.ஆ.10 புகாரில் நான் குறிப்பிடுள்ளேனா என்றால் போலீஸார் அதுபற்றி கேட்கவில்லை அதனால் நான் அது பற்றி சொல்லவில்லை."

The other eye witnesses would also admit that they had not stated anything about the mini door van during the police investigation. The Investigating Officer [P.W.43] also admitted in his cross examination that none of the eye witnesses had spoken about the mini door van in their 161 statements. This is an afterthought. Though P.W.7 and P.W.13 have stated that they saw the accused in a vehicle, we are of the view that considering the improvements made by the other witnesses, they also cannot be believed. In view of the doubt, with regard to the manner in which the FIR was registered, the other circumstances indicating that the genesis and origin have been suppressed by the prosecution, and the improvements made by



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the eyewitnesses, we are of the view that it is highly unsafe to rely upon the evidence of the interested witnesses, who claim to be eyewitnesses, to hold the accused guilty of the offence.

21. The conspiracy was sought to be established through the evidence of P.W.20, who is said to have over heard a conversation between the accused on 24.12.2005. He is closely related to the deceased. While so, there is no explanation by him as to why he did not inform the police about the alleged conspiracy immediately thereafter. Even otherwise, he gave a statement only on 26.12.2005. There is no explanation by the prosecution as to how they discovered P.W.20 as a witness to the conspiracy. Further, it is not the case of P.W.20, that he himself went to the police station. The evidence of P.W.20 has been introduced, in our view, to implicate the ladies in the family. Though P.W.20 has been rightly disbelieved by the Trial Court, however, in our view, it would have a bearing, as regards the involvement of the other accused, as well as the tendency of the prosecution to falsely implicate the family members as revealed through this particular evidence.



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Further, it is also seen that P.W.40, the learned Judicial Magistrate who recorded the Section 164 of Cr.P.C statements of the witnesses, stated in the cross examination that P.W.1 and P.W.3 had stated that the deceased was taken on a bike by P.W.3 [Kovai.Anbalagan] and P.W.30 [Arunachalam] to Mannargudi in a two wheeler and neither of them stated that there were bloodstains on their dresses. The presence of P.W.1 is therefore doubtful. Further, if P.W.30 and P.W.3 had taken the deceased on a bike, they would have bloodstains on their dresses. Their versions, therefore, cannot be accepted. This also makes the prosecution case that the deceased was first taken to the Government Hospital in Mannargudi doubtful.

22. The learned Senior Counsel for the second accused submitted that since A2 was a lawyer, the representatives of the Bar gave a representation and subsequently filed a petition for transfer of investigation and pursuant to the orders of this Court, the investigation was also sought to be transferred and at this stage, the defacto complainant filed a writ petition before this Court, which had set aside the order transferring the investigation; that the



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above sequence of events would show that the Government felt that further investigation was required though it was struck down by this Court in a Writ Petition; and that this fact itself would raise a reasonable doubt in the prosecution case. However, we find that none of the earlier proceedings are part of the record. Therefore, we do not propose to comment on the various orders and proceedings relied upon by the learned Senior Counsel.

23. The motive, according to the prosecution, is that A1 intervened in a dispute between A3 and the deceased, when the deceased is said to have caught hold of the shirt of A1, which prompted A1 to cut the hand of the deceased. However, strangely, this aspect of motive has not been spoken to by any of the eye witnesses. P.W.20, the witness who overheard the conspiracy, is an unreliable witness, as stated earlier. P.W.30 was examined by the prosecution to prove that there was a fight between A3 and the deceased four days prior to the occurrence, had stated that he was not personally aware of the said fight and in any case, he had not stated to the Investigating Officer about the said quarrel between A3 and the deceased.



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Therefore, his evidence is of no use to the prosecution.

24. Though the facts of the case lead to a grave suspicion with regard to the involvement of A1, we are of the view that suspicion, howsoever high, cannot take the place of proof. In view of the several infirmities in the prosecution case that we have noted, it is impossible to separate the grain from the chaff and to accept the evidence of the witnesses, even as regards the involvement of “A1-Poyyamozi”. The manner in which the family members have been roped in, the doubt with regard to the entries in the accident register, the doubt with regard to the manner and time in which the FIR was registered, the parrot like nature of the evidence of eye witnesses who are all closely related to the deceased, all make it highly unsafe to convict the accused/appellants on the basis of the evidence let in by the prosecution and therefore, the Judgement of the Trial Court is liable to be set aside and accordingly, the same is set aside.

25. As a result, **Crl.A.Nos.759 of 2019, 494 of 2020 and 560 of 2021** are allowed. The conviction and sentence imposed on the appellants



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alone in S.C.Nos.16 of 2017 and S.C.No.of 7 of 20 2019 on the file of the learned Sessions Judge, Special Court for Trial of Bomb Blast Cases, Poonamallee and the judgment dated 30.09.2019 and 17.09.2021 are set aside. The appellants [A1 A2 and A9], are acquitted of all charges, and they 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 bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition is closed.

(M.S.R.,J.) (S.M.,J.)
04.04.2024

Neutral citation : yes/no

dk/ars

Copy to:

- 1.The Sessions Judge,
Special Court for Trial of Bomb Blast Cases,
Poonamallee.
- 2.The Inspector of Police,
Paravakottai Police Station,
Tiruvarur.
3. The Superintendent of Prisons



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Central Prison, Puzhal, Chennai.

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4. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

dk/ars

Pre-delivery Common Judgment in
Crl.A.Nos.759 of 2019, 494 of 2020 and 560 of 2021
and
Crl.M.P.No.3369 of 2023

Dated: 04.04.2024