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Crl.A.Nos.778 and 779 of 2019 & 546 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.08.2024
Pronounced on	06.09.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**

AND

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**Crl.A.Nos.778 and 779 of 2019 & 546 of 2020

Sridhar

... Appellant/A5 in Crl.A.778/2019

Suresh Kumar @ Suresh

... Appellant/A1 in Crl.A.779/2019

1. Pravinkumar @ Pravin @ Kumar
S/o.Muthulingam

2. Rajkumar @ Raj

3. Pravinkumar @ Pravin
S/o.Joseph... Appellants/A2 to A4 in Crl.A.546/2020
Vs.State represented by
Inspector of Police,
Ambattur Estate Police Station,
Thiruvallur District.
Crime No.439/2015

... Respondent/Complainant in all Crl.Appeals

Common Prayer: Criminal Appeals filed under Section 374(2) of the
Criminal Procedure Code to set aside the conviction and sentence imposed



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against the appellant/accused passed by the learned III Additional District Sessions Judge at Poonamallee in S.C.No.241/2016 dated 13.09.2019.

For Appellant
in Crl.A.Nos.778/2019
& 546/2020

: Mr.S.Suresh

For Appellant

in Crl.A.No.779/2019 : Mr.S.Senthilvel

For Respondent
in all Appeals

: Mr.A.Gokulakrishnan

Additional Public Prosecutor

COMMON JUDGMENT

C.KUMARAPPAN, J.

All the three appeals have been filed assailing the judgment in S.C.No.241 of 2016 dated 30.09.2019 passed by the learned III Additional Sessions Judge, Poonamallee. The learned Sessions Judge has convicted A1 to A4 for the offence under Section 302 IPC and A5 was convicted for the offence under Section 302 IPC r/w 149 IPC. Similarly, A1 to A5 were also found guilty for the offence under Sections 341 and 148 of IPC. Against the above conviction and sentence, A5 preferred a Criminal Appeal in Crl.A.No.778 of 2019. A1 filed a Criminal Appeal in Crl.A.No.779 of 2019. Similarly, the other 3 accused viz., A2, A3 and A4 filed a Criminal Appeal in Crl.A.No.546 of 2020.



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2. During the pendency of these appeals, A2-Pravinkumar @ Pravin @ Kumar, S/o. Muthulingam, died. Hence, the appeal against A2 stands abated.

3. Since all the 3 Criminal Appeals are against the judgment in SC.No.241 of 2016, this Court deems it appropriate to take up all these appeals and dispose of the same by a common judgment.

4. According to the prosecution, the *de facto* complainant viz., Mr.Ravichandran-PW1 was the driver of the deceased Guru. The deceased Guru was the 86th ward councilor of Chennai Corporation, and he owned a house at No.25, Manickkampillai Street, Manoorpet. It appears that on 30.09.2015 at about 1.15 p.m, when the deceased Guru was approaching his car to proceed to attend the council meeting at Rippon Building, he was hacked to death. According to the prosecution, the appellants in all these appeals were the assailants.

5. PW1-Mr.Ravichandran who witnessed the occurrence gave the complaint [Ex.P1] to the police immediately after the occurrence. According to PW1, he being the driver, when he was waiting in the car expecting the



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arrival of Guru, at about 1.15.p.m, when the deceased Guru was coming, Mr.Suresh, Raj, Pravin and one more identifiable person, who came in 2 motor bikes attacked the deceased on his head, hand and wrist, indiscriminately and fled away from the scene of occurrence.

6. The complaint was received by the Sub Inspector of Police [PW9] on 30.09.2015 at about 3.00.p.m. Immediately, on receipt of the complaint, she registered an FIR in Crime No.439 of 2015 for the offence under Section 302 IPC. It appears that on registering the FIR, she forwarded the same to the Investigating Officer [PW18].

7. According to the Investigating Officer Mr.V.Karnan [PW18], on receipt of the FIR, he proceeded to the scene of occurrence at about 5.30.p.m, and prepared observation mahazar and rough sketch in the presence of one Mr.Selvamani [PW10] and Mr.Mukesh. Thereafter, he recorded the statement of PW1-Mr.Ravichandran, PW2-Mr.Maskrin and PW3-Mr.Ando Stalin viz., driver, wife and son respectively of the deceased. He also recorded the statement of the other witnesses viz., PW4-Mr.Vinoth, PW5-Mr.Nagoor Meeran and one Mr.Syed. On 01.10.015 at about 9.00.a.m, he



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conducted inquest upon the body of the deceased and arranged for a postmortem. He also recorded the statement of the inquest witnesses, the Forensic expert and the photographer. Thereafter, he collected the blood stains from the scene of occurrence. He also forwarded the blood stained dhothi of the deceased, to the jurisdictional Magistrate under Form-95. On 01.10.2015 at about 22.00 hours, he arrested A1, A3 and A4 and recorded their confession statement in the presence of one Mr.Raja Karunakaran [PW6] and Mr.A.Meganathan [PW7] and made a discovery of facts by recovering the weapons and vehicles used in the occurrence. He also recorded the confession statement of A2 and A5 before the very same witnesses. The recovery of weapons were made behind the Seeyathamman Temple in respect of A1 to A4, whereas, against A5, the recovery was made at the burial ground, Oragadam.

8. He also recorded the statement of Doctor PW15-Mr.Manikandaraj, who conducted postmortem on the body of the deceased. In the postmortem certificate, PW-15/Doctor has found the following injuries:-

“Injuries

- *Reddish brown abrasion of 3 cm X 0.5 cm, 1 cm x 1 cm over the outer aspect of upper 1/3 of right arm.*



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- *Reddish brown abrasion of 10 cm x 1 cm over the upper aspect of right shoulder.*
- *Reddish brown abrasion of 5 cm x 0.5 cm over the upper 1/3 of left arm*
- *Reddish brown abrasion of 10 cm x 2 cm over the upper aspect of left shoulder.*
- *Reddish brown abrasion of 8 cm x 3 cm over the back of upper 1/3 of left forearm.*
- *Incised wound of 8 cm x 3 cm x bone deep over the back of right hand.*
- *Incised wound 3 cm x 1 cm x bone deep over the back of right index finger.*
- *Incised wound 5 cm x 1 cm x bone deep over the back of right thumb.*
- *Incised wound of 7 cm x 6 cm x bone deep over the back of left hand.*
- *Incised wound of 2 cm x 1 cm x 0.5 cm over the base of left index finger.*
- *Incised wound of 6 cm x 1 cm x bone deep over the left upper frontal region*
- *Incised wound of 5 cm x 1 cm x bone deep over the left temporo parietal region.*
- *Incised wound of 6 cm x 1 cm x bone deep over the upper left parieto occipital region.*
- *Incised wound of 7 cm x 1 cm x bone deep over the lower left parieto occipital region.*
- *Incised wound of 2 cm x 2 cm x scalp deep over the upper aspect of right parietal region.*
- *Incised wound of 12 cm x 2 cm x bone deep over the occiput extending from left side to right side and an incised wound of 7 cm x 2 cm x bone deep intersecting the above mentioned wound over the centre of the occiput.*
- *Incised wound of 12 cm x 8 cm x bone deep over the lower aspect of right side of the occiput.*
- *Incised wound of 5 cm x 2 cm x bone deep over the upper aspect of right side of the occiput.*
- *Incised wound of 11 cm x 10 cm x bone deep over the back of the head, 4 cm above the occiput.*
- *Incised wound of 10 cm x 1 cm x bone deep over the centre of the occiput*



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- *Incised wound of 6 cm x 2 cm x bone deep over the centre of nape of the neck.*
- *Incised wound of 7 cm x 2 cm x bone deep over the right side of the nape of the neck.*
- ***Vault:*** *Depressed comminuted fracture over the occiput and sub occipital region exposing the meninges of the brain.*
- ***Brain:*** *Diffuse subdural and sub arachnoid haemorrhage involving all the lobes of the brain. **Cerebellum:** C/S: Congested."*

9. According to the Doctor's [PW15] opinion, the deceased would have died due to the above injuries.

10. After that, the Investigating Officer [PW18] also received viscera report from the forensic lab and recorded the statement of PW17- Mrs.Umadevi. He also recorded the statement from the serology expert. He then altered the charge to Sections 147, 148, 302 of IPC and forwarded the alteration report to the jurisdictional Magistrate. And once again he forwarded the alteration report by incorporating Section 149 IPC. Thus, after completing the investigation, and after recording the statement from all the witnesses, he laid the charge sheet against all the accused for the offences under Sections 147, 148, 341 and 302 r/w 149 IPC.

11. In order to prove their case, before the Trial Court, the prosecution has examined as many as 18 witnesses as PW1 to PW18, marked 27 exhibits



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as Exs.P1 to P27 and 15 Material Objects as M.O.1 to M.O.15.

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12. The Trial Court, after having considered the oral and documentary evidences and after hearing the arguments on either side has found that the charges framed against the accused have been proved beyond reasonable doubts and imposed life imprisonment against all the accused. Aggrieved by the same, the appellants are before this Court in these Criminal Appeals.

13(a). The learned counsel for the appellants/A1, A3 to A5 would contend that the Trial Court has not considered their contention that all the prosecution witnesses are unreliable witnesses, which factum could be evidently proved through systemic delay of registering the FIR and forwarding the same to the jurisdictional Magistrate. The learned counsel would further contend that there was an inordinate delay in sending all the statements recorded under Section 161 Cr.P.C to the Court. The learned counsel would further contend that, the very genesis of the case was suppressed. It is also the contention of the learned counsel for the appellants/A1, A3 to A5 that the discrepancy found in the FIR as to the number of assailants would create a grave doubt about the presence of PW1 at the scene of occurrence.



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13 (b). It was also contended by the learned counsel for the appellants that there are wide discrepancies between the evidences of one witness from the other witnesses that too in respect of the core issue of the crime, such as, in respect of the presence of PW1 to PW5 at the scene of occurrence. Though it was projected by the prosecution that there was a motive between the accused and the deceased, there was not an iota of evidence available to prove such motive. It was also contended by the learned counsels for the appellants that the discovery of fact projected by the prosecution is concocted one. They would further contend that, there is no proof to connect the discovery of fact with that of the occurrence and the accused. Thus, the learned counsel for the appellants would vehemently contend that though the prosecution has miserably failed to prove their case, the Trial Court, based upon the surmises and conjectures, has found that the charges are proved and erroneously convicted and awarded sentences against the accused.

14 (a). Per contra, the learned Additional Public Prosecutor would renege the submission, by contending that the prosecution has proved the charges beyond reasonable doubt through the eye witnesses, who are none other than the driver of the deceased, who was very much present at the



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scene of occurrence and also through the wife and son of the deceased, who were living with the deceased and also present at the time of occurrence.

The learned Additional Public Prosecutor would further contend that PW4, who is an independent witness has corroborated the evidence of PW1 to PW3. Apart from that, the learned Additional Public Prosecutor would contend that there are no unreasonable delay in either registering the FIR, or forwarding the same to the concerned jurisdictional Magistrate.

14 (b). It was further contended by the learned Additional Public Prosecutor that the case of the prosecution is further substantiated through the discovery of fact, which has been proved through the witnesses PW6 and PW7. Thus, the learned Additional Public Prosecutor would contend that occurrence, which is a daylight murder, has been witnessed by the occurrence witnesses and there are no reason to doubt their veracity, and that all the occurrence witnesses are trustworthy witnesses, and that they are consistent in their stand through out their examination. Hence, it was contended by the learned Additional Public Prosecutor that the Trial Court has considered all the material aspects and has rightly concluded that the prosecution has proved the charges beyond reasonable doubts. It was the



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further contention of the learned Additional Public Prosecutor that the appellants have not made out any case for interference in the well considered order of conviction. Hence, prayed to dismiss the appeals.

15. We have given our anxious consideration to either side submissions.

16. The entire prosecution case revolves around the testimony of eye witnesses viz., PW1 to PW4. Whereas, the learned counsel for the appellants set up a defence of absence of PW1 at the scene of occurrence. In this regard, he would bring the attention of this Court in respect of Ex.P1-complaint. Though PW1 admits that he was present at the Police Station within half an hour from the time of occurrence qua 1.30.p.m, the complaint was registered at about 3.00 p.m. Therefore, the learned counsel for the appellants projects the case that, when the police was present within five minutes from the time of occurrence, and having taken PW1 to the police station within 30 minutes, the delay of 2 hours in registering the FIR must be construed as unexplained inordinate delay. It is well settled principle of law that mere delay would not be fatal to the prosecution's case.



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17. However, there is an inherent danger in losing the advantage of spontaneity. Such delay attached with danger of creeping in by the introduction of a coloured version, exaggerated account or concocted story as a result of larger number of deliberation and consultation. In the case on hand, though the occurrence took place at 1.30.p.m, on 30.09.2015, the deceased was taken to the hospital immediately, where he succumbed to the injuries at about 2.00 p.m. Now, according to the prosecution, the assailants were 5 in number and the occurrence was a daylight incident. When such a brutal murder takes place, everyone might have been under shock, and some reasonable time may be required to recover from such a shock. Therefore, though PW1 was present in the station within 30 minutes of the occurrence, considering the nature of occurrence and the brutality of the incident and also considering the fact that the deceased was taken to the nearby hospital, this Court could not find any inordinate delay in registering the FIR.

18. Now let us consider the next defence of delay in forwarding FIR. The learned counsel for the appellants would contend that, though FIR refers that the same was registered at 3.00.p.m, the time at which the jurisdictional Magistrate received the FIR should also be relevant and an indicator to consider whether the FIR was really registered at 3.00.p.m, as contended by



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the prosecution. In this regard, a perusal of the FIR, which is marked as Ex.P1 and as admitted by PW-18/Investigating Officer, would reveal that it reached the jurisdictional Magistrate on 30.09.2015 at about 9.30.p.m (Ex.P12). It is pertinent to mention here that even according to PW9-Inspector of Police, Tmt.R.Sundari, the jurisdictional Magistrate Court is just 2 ½ kms away from the scene of occurrence, which could be reached within 20 minutes even during peak hours. As we already stated, it is settled principle that the mere delay is not a fatal, but still it may impact upon the spontaneity of FIR. Be that as it may.

19. However, if the witnesses are in sterling quality, then naturally the so called delay in forwarding the FIR cannot be a ground to doubt the prosecution case. According to the prosecution, the occurrence was witnessed by PW1 viz., the driver of the deceased Guru, and PW2 and PW3, Wife and son of the deceased respectively, PW5, whose shop was located opposite to the scene of occurrence and PW4, who is the acting driver of PW5. According to the appellants, the testimony of these witnesses are not trustworthy and their evidences has inherent contradictions. The learned counsel would draw the attention of this Court to Ex.P1-complaint.



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According to Ex.P1, the occurrence was witnessed by one Mr.Vinoth [PW4], Mr.Syed and Mr.Nagoor Meeran [PW5]. But in the chief examination, PW1 had improved his case by stating that on hearing the noise, the wife of the deceased Guru and his daughter rushed to the scene of occurrence. However, it is manifestly clear that the presence of the deceased's son, who is PW-3 has not been spelt out either in the complaint-Ex.P1 or in the chief examination of PW1. Similarly, though the wife and daughter's presence was not mentioned in the Ex.P1-complaint, PW1 has spoken about their arrival to the scene of occurrence albeit only on hearing the noise.

20. Whereas, the other alleged occurrence witnesses PW2 and PW3, who are the wife and son, have stated that they were present and witnessed the occurrence. But more curiously, PW2/wife of the deceased did not speak about the presence of PW3/her son. Thus, if we look at the evidence of PW2 viz., the wife of the deceased, in the background of Ex.P1-complaint and the evidence of PW1, she (PW2) could have reached to the scene of occurrence from the upstairs only after hearing the noise. Therefore, the claim of PW2(Wife) to have witnessed the occurrence, is highly doubtful.



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21. So also, the presence of the son of the deceased [PW3] was neither spoken to in the evidence of PW1, nor referred in Ex.P1-complaint. This apart, even PW2, who is none other than the mother of PW3, has not spoken about the presence of PW3 at the scene of occurrence. More curiously, contrary to the evidence of PW1 and PW2, the son-PW3 has deposed before the Court that he was present at the time of occurrence and had witnessed the same. If really PW3 was available at the residence, that too at the time of occurrence, his name would have been found place in the oral testimony of PW1, though not referred in Ex.P1-complaint. To crown it all, his mother [PW2] herself did not speak about his presence at the scene of occurrence. Therefore, as rightly contended by the learned counsel for the appellants, the presence of PW3 at the scene of occurrence is highly doubtful.

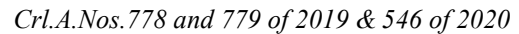
22. Further, though PW2's name finds place in PW1's chief examination, had her presence was really noticed by PW1, the natural propensity would be, her name would have definitely be mentioned in Ex.P1-complaint. Therefore, the non reference in Ex.P1 complaint about the presence of PW2 and PW3, would also assume importance and thus, raises a reasonable apprehension in respect of the presence of PW2 and PW3 at the scene of occurrence.



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23. However, the author of Ex.P1-complaint, qua PW1 in his chief examination referred the names of one Mr.Nagoor Meeran [PW5] and Mr.Vinoth [PW4] as the occurrence witnesses. According to prosecution, PW5 was dealing with iron and having shop just 400 feet away from the scene of occurrence. According to his evidence, when he rushed to the scene of occurrence with PW4, he had found the body of the deceased in a pool of blood. However, PW4-Mr.Vinoth, who had accompanied PW5, has given a different version by implicating all the accused to the crime. Therefore, while looking at the evidence of PW4-Vinoth, in the background of the evidence of PW5-Nagoor Meeran, the evidence of PW4-Vinoth will only come within the category of partly reliable and partly unreliable and hence, needs corroboration.

24. The learned counsel for the appellants would contend that the evidence of PW1, who set the law in motion, is attached with serious inherent contradiction to his first version in Ex.P1-complaint, which refers to 4 persons, having participated in the crime and later improved his version and claimed that they were five in numbers. No doubt, a person who witnessed a brutal murder because of some shock, may err, while naming the



25. In this regard, the learned counsel for the appellants would invite the attention of this Court in respect of the evidence of the Investigating Officer-PW18, where he has categorically admitted that the statement recorded on 30.09.2015 under Section 161 Cr.P.C, has been forwarded to the Court after a period of 27 days viz., on 27.10.2015. Therefore, as rightly contended by the learned counsel for the appellant, the long delay in sending the statement recorded under Section 161 Cr.P.C, that too, when the prosecution has included one more additional accused, after the Ex.P1-complaint, assumes much relevance and causes a dent in the prosecution case.

26. In the totality of these circumstances viz., registering the complaint after two hours, though the police have reached the scene of occurrence immediately within 5 minutes, and when PW1 complainant was taken to the Police station within half an hour, and transmitting the FIR to the concerned jurisdictional Magistrate thereafter, after a lapse of 8 hours viz., at 9.30.p.m,



though the Court was reachable within 20 minutes from the place of occurrence, apart from the long delay of 27 days in forwarding the 161 Cr.P.C statement, cumulatively strengthens the case of the accused that the evidence of the star witnesses qua PW1 to PW4 cannot be believed on its face value, as the imperviousness of their trustworthiness was compromised.

27. Thus, while looking at the complaint-Ex.P1, in the background of the reasonable doubts demonstrated hereinabove, about the presence of the key eye witnesses viz., PW2, PW3 and PW4, at the scene of occurrence, would prognosis the fudging and pliable condition of the prosecution case.

28. As a matter of fact, the accused were not arrested by the police, but when confession witness PW6 and PW7 were present in the Police station, A1 to A3 were produced before the police station by the general public, in a different case with the charge of robbery. It is the submission of the learned counsel for the appellants that a person, who has a motive against the deceased, and committed a daylight gruesome murder, cannot be expected to wander and involve in another case, instead of hiding themselves. This Court also has to inexorably accept the argument as there is apparent speciousness in the theory of arrest.



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29. At this juncture, it is relevant to refer to the alleged discovery of fact made by the prosecution through the confession statement of all the five accused. It appears that A1 to A4 have concealed the weapon, and the blood stained clothes behind the “**Seeyathamman temple**”. Though PW6 recovery witness speaks about the recovery of weapon on the back side of Seeyathamman temple, the other confession witness PW7, has stated during his chief examination that the recovery was made behind the **Pothiamman Temple**. But, during his cross examination, he has stated that, he has inadvertently referred Pothiamman temple during chief examination, instead of Seeyathamman temple. Admittedly, both “**Seeyathamman temple**” and “**Pothiamman temple**” are within the jurisdiction of Ambattur Estate police station. If really a recovery had been genuinely effected at Seeyathamman temple, there was no reason for PW7, to state different temples. This cannot be taken as simple slipshod evidence, as this was made during his chief examination. Therefore, referring to different temples by PW7 is yet another adrift in the prosecution's case. To crown it all, though the recovered weapon had blood stains, admittedly, there is no reference or evidence connecting those weapons with the occurrence.



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30. It is well settled principle of law that in a case based on ocular evidence, the motive loses its significance. However, in the case on hand, we have demonstrated a numerous reasonable doubt in the evidence of the eye witnesses. Therefore, in this backdrop, the proof regarding motive endogenously assumes much significance. To put it differently, where the ocular testimony appears to be suspicious, then the existence or non existence of motive acquires significant substratum to the probability of the prosecution case, as held in the judgment of the Hon'ble Supreme Court in ***Badam Singh v. State of M.P.***, reported in ***(2003) 12 SCC 792***.

31. Here, the motive for occurrence is previous enmity between the deceased and accused. More curiously, even the alleged eye witnesses viz., PW1 to PW4 did not speak about the so called motive. Hence, palpably no evidence available to prove any motive. Therefore, the argument of the learned counsel for the appellants that there are no reasons for the appellants to do away the deceased, also cannot be lightly ignored. Further, there are no materials such as finger prints or any other scientific evidence connecting the accused to the occurrence.



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32. It is pertinent to mention here that generally witnesses can be classified into 3 categories viz., (i) wholly reliable, (ii) wholly unreliable and (iii) partly reliable and partly unreliable. There is no problem to evaluate the testimonies of wholly reliable and wholly unreliable witnesses. But, in so far as the witnesses, who are partly reliable and partly unreliable, it would be obligatory on our part to closely scrutinize their testimonies for corroboration in material particulars, so as to remove the grain from the chaff. With this view in mind, when the testimonies of these witnesses were circumspected, we find that there are no corroboration of each witness from the other witnesses. The motive which could also to some extent be construed as a corroboration, has not been proved. Besides, though the recovery of weapon is doubtful, still there are no proof to connect the blood stains in the recovered weapon, with the occurrence.

33. The yet another aspect is the consistency of the testimony. While appreciating the evidence of PW1, we find that he has retracted from the evidence made during his chief examination. While appreciating the evidence in a criminal case, what would be more relevant is, the consistency



of the statement right from the starting point till the end. In the present case, PW1 initially states in his complaint that 4 persons were seen in the place of occurrence and during chief examination, he states the presence of 5 persons. To crown it all, in the cross examination, he pleaded ignorance as to against whom he had given a complaint. For ready reference, it is relevant to extract the admission made by PW1 during the cross examination:-

“அந்த 4 நபர்கள் மீது நடவடிக்கை எடுக்கும்படி நான் சொல்லியுள்ளேனா என்றால் நான் அவ்வாறு எதுவும் சொல்லவில்லை. சம்பவத்தை நான் உன்னிப்பாக கவனிக்கவில்லை. சம்பவம் 5 நிமிடம் நடந்திருக்கும். சம்பவம் பார்த்தவுடன் நான் குருவின் வீட்டிற்கு ஓடிப்போய் விட்டேன். நான் திரும்பி வந்து பார்த்த போது எதிரிகள் யாரும் அந்த இடத்தில் இல்லை. 3 நாட்களும் என்னை காவல் நிலையத்தில் உட்கார வைத்துவிட்டார்கள். புகார் யார் யார்மீது கொடுக்கப்பட்டது என்ற விவரம் எனக்கு தெரியாது.”

34. Before closing the curtain, we would like to recapitulate our above discussion for easy reference. In this case, there is no consistency in the evidence of PW1. Similarly, PW2-wife of the deceased during cross examining, has admitted that she reached the scene of occurrence when the deceased was fighting for his life after the attack. As already stated, PW3's presence was not spoken to by either PW1 or PW2. Though PW4 speaks



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about the occurrence, there is no corroboration for his evidence. Besides if we look at the evidence of PW5, even PW4 could not have reached the scene of occurrence at the time of attack. Recovery is tethering with doubt and not tethered with the occurrence. Thus, while cumulatively looking into all the above aspects, there are palpable reasonable doubts in the prosecution case.

35. However, the Trial Court has proceeded to believe all the witnesses, which according to us, is not in tandem with law, as it goes contrary to the discussion which we hereinabove made. Though the learned Trial Judge has relied so many legal principles and precedents, what she missed to see is, whether the eye witnesses are trustworthy or not. For all the above detailed analysis, we are of the indubitable view that it is highly unsafe to rely upon the testimonies of the witnesses PW1 to PW5. Even otherwise, admittedly, there are no corroboration to those witnesses, even if we treat them as partly reliable and partly unreliable. Thus, we hold that the prosecution has miserably failed to prove the charges against the accused beyond all reasonable doubts. Hence, the order of conviction is liable to be set aside.



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36. In the result, all the three Criminal Appeals are allowed in so far as A1, A3, A4 and A5 are concerned. In concomitant, the conviction and sentence passed in S.C.No.241 of 2016 by the III Additional District and Sessions Judge Poonamallee dated 13.09.2009 is set aside against A1, A3, A4 and A5. Resultantly, the appellants A1, A3, A4 and A5 are acquitted from all the charges and the fine amount paid by them will be directed to be refunded. The bail bond, if any, executed by the A1, A3, A4 and A5, shall stand cancelled. As against A2, the appeal stands abated, as he died during the pendency of these appeals.

[M.S.R., J.] [C.K., J.]
06.09.2024

Index:Yes

Neutral Citation: Yes

Speaking order: Yes

kmi

Note: Issue order copy on 06.09.2024 (today)

To

1. The III Additional District and Sessions Judge,
Poonamallee.
2. The Inspector of Police,
Ambattur Estate Police Station,
Thiruvallur District.
3. The Public Prosecutor,
High Court of Madras.



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