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Crl.A.Nos.624 of 2018 & 51 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.08.2024
Pronounced on	19.09.2024

CORAM :

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

AND

THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**Crl.A.Nos.624 of 2018 & 51 of 2019

Mohammed Imathathullah
Alias Mohammed Yasin

... Appellant/A2 in Crl.A.624/2018

Hakeem

... Appellant/A1 in Crl.A.51/2019

Vs.

State represented by
Inspector of Police,
Maduravoyal Police Station,
Chennai.
Crime No.383/2014

... Respondent/Complainant in both Appeals

Common Prayer: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence imposed in the judgment dated 07.06.2018 against the appellants/accused in S.C.No.10/2016 on the file of the learned III Additional Sessions Judge, Poonamallee, Tiruvallur District and acquit the appellants.

For Appellant



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in Crl.A.No.624/2018 : Mr.V.Parthiban

For Appellant

in Crl.A.No.51/2019 : Mr.I.Abdul Basith

For Respondent

: Mr.A.Gokulakrishnan

in both Appeals

Additional Public Prosecutor

COMMON JUDGMENT

C.KUMARAPPAN, J.

The Criminal Appeal No.51 of 2019 was filed by 1st accused. Similarly, Criminal Appeal No.624 of 2018 was filed by 2nd accused. Both the appeals have arisen from the order of conviction passed in SC.No.10 of 2016 dated 07.06.2018 by the learned III Additional Sessions Judge, at Poonamallee, Tiruvallur District for the offence under Section 302 r/w 34, 341 and 323 (3 counts) of IPC.

2. The case of the prosecution is that, the accused and the deceased Vijay are known to each other. It appears that on 16.03.2014 at about 5.00 p.m, the deceased Vijay questioned the accused of their high handed act of consumption of liquor in the middle of the road. Enraged by the hegemony shown by the deceased, the accused developed enmity with the deceased. To



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avenger their revenge, they proceeded to the deceased Vijay's uncle Jaysankar's [PW2] house on 24.03.2014 at about 10.00 a.m. But, the deceased Vijay fortunately was not in PW2's house. Realising the unquenched anger of the accused against the deceased, the family members decided to lodge a police complaint against them. In furtherance thereof, on the same day [24.03.2014] the deceased Vijay, and his brother Manikandan [PW1], his uncle Jaysankar [PW2] and his paternal uncle Kannan [PW10] along with his friends viz., Salaman [PW3] and Sudhakar [PW4] proceeded to the police station to give a police complaint. At about 13.15.p.m, when all of them were near Sree Lakshmi Nagar, 7th main road junction, the 1st and 2nd accused on seeing Vijay (deceased), waylaid him and indiscriminately stabbed him with knife. While, PW1, PW2 and PW10 intervened to protect the deceased, they also sustained injuries. Hence, a complaint [Ex.P1] was given by PW1 at about 1.45.p.m.

3. On the basis of complaint [Ex.P1], FIR [Ex.P14] was registered by the Investigating Officer Mr.Anandbabu [PW18]. After that, he made arrangements to send the injured persons viz., PW1, PW2 and PW10 to the hospital for treatment. He also proceeded to the scene of occurrence, and



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prepared the observation mahazar [Ex.P2] and rough sketch [Ex.P15], besides, collecting the sample sand, and blood stained sand. Between 16.45 to 18.45 hours, he conducted inquest over the body of the deceased Vijay and prepared the inquest report [Ex.P16]. Thereafter, he made arrangements for postmortem of the body of the deceased. On the very same day, he recorded the statement of the eye witnesses viz., PW1 to PW5 and PW9.

4. On 25.03.014, based on the intelligence information, he arrested both the accused near Maduravoyal Tollgate. While interrogating, they voluntarily gave confession statement, and the same was recorded in the presence of witnesses Karthik [PW15] and Kumaran. After recording the same, a discovery of fact was effected by recovering blood stained shirt, along with blood stained knife at the instance of 1st accused. Similarly, blood stained shirt and blade was recovered at the instance of the 2nd accused. Further, the Investigating Officer ascertained the identity of the accused through PW1, PW2 and forwarded the recovered materials to the jurisdictional Magistrate. He also made arrangements for forensic analysis of the weapon. After receipt of the forensic report, he recorded the statement of the Scientific Officer. Further, he examined the doctor, who gave treatment to



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the injured witnesses, and the postmortem Doctor. Thus, after completing the investigation, he laid the charge sheet against the accused for the offence under Sections 302 r/w 34, 341, 324 [3 counts] of IPC.

5. Before the Trial Court, to prove the prosecution case, they relied as many as 22 documents as Exs.P1 to P22, and 13 Material Objects as M.O.1 to M.O.13. Besides, 18 witnesses were examined as PW1 to PW18.

6. The Trial Court, after having considered the oral and documentary evidence, have arrived at a conclusion that the prosecution has proved all the charges against the accused 1 and 2 beyond reasonable doubts and found that the accused are guilty for the offences under Sections 341, 323 [3 counts] and 302 r/w 34 of IPC and sentenced them as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Punishment</i>
A1	302 r/w 34 IPC	To undergo "Life Imprisonment" and to pay a fine of Rs.1000/- in default of payment of fine, to undergo rigorous imprisonment for a period of 6 months
	341 of IPC	To undergo simple imprisonment for one month
	323 [3 counts] of IPC	To undergo Rigorous imprisonment for 6 months for each counts
A2	302 r/w 34 IPC	To undergo "Life Imprisonment" and to pay a fine of Rs.1,000/- in default of payment of



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<i>Accused</i>	<i>Offence</i>	<i>Punishment</i>
		fine, to undergo rigorous imprisonment for a period of 6 months
	341 of IPC	To undergo simple imprisonment for one month
	323 [3 counts] of IPC	To undergo Rigorous imprisonment for 6 months for each counts

7. Aggrieved with the order of conviction, 1st accused preferred Crl.A.No.51 of 2019, and 2nd accused preferred Crl.A.No.624 of 2018.

8. Mr.I.Abdul Basith, learned counsel for 1st accused would vehemently contend that there are wild contradictions regarding the time of occurrence and registration of FIR. The learned counsel would further contend that, the very presence of the witnesses and their injuries are doubtful, and that the accused have been falsely implicated in this case and the same is evidently vindicated through the accident register, wherein the alleged eyewitnesses have referred to the Doctor [PW16] that they have been attacked by unknown persons, while the accused and their friend were known to each other. It was further contended that, though the prosecution has stage managed the discovery of fact, there are no links between the material discovered and the occurrence. They also would contend that the delay of 3 hours in registration



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of FIR would demonstrate the fallacy in the prosecution case.

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9. Though the learned counsel for the 2nd accused Mr.V.Parthiban reiterated the argument of the 1st accused, he further proceeded to argue by contending that the Trial Court has miserably failed to take into consideration of major and vital contradiction, which affects the root of the case. He would also project the unnatural conduct of the witnesses in not evincing any interest to protect the life of the deceased. It was also the contention of the learned counsel that there are no explanation as to how the blood group “B” found in the recovered articles. Hence, prayed to allow the appeal. Thus, the both learned counsels in a unison voice would contend that the prosecution has miserably failed to prove their case and prayed to allow the appeals.

10. Per contra, the learned Additional Public Prosecutor would vehemently contend that the prosecution has proved the case with overwhelming evidence, qua through the eye witnesses. He would contend that the injured witnesses must be kept in a high pedestal and that the defence has not put forth any acceptable material to disbelieve the evidence of the eye witnesses. It was also contended by the learned Additional Public



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Prosecutor that the alleged discrepancy found in the accident register will in no way helpful to the accused as it was subsequent to the registration of FIR, as the FIR has the names of both the accused. Furthermore, it is the contention of the learned Additional Public Prosecutor that the entry made by the Doctor would be relevant, only with reference to the injuries sustained by the witnesses and not that the statement recorded by the Doctor for the cause of injury. The learned Additional Public Prosecutor would further contend that the recovery has been proved and that the recovered materials, had a link with the occurrence, as the knife and the dress materials had blood stains of the deceased blood grouping. Therefore, the learned Additional Public Prosecutor would submit that the prosecution has proved the case beyond reasonable doubts. Hence, prayed to dismiss the appeals.

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



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12. The main contention of the appellants is the doubt regarding the presence of the eyewitnesses at the scene of occurrence. In this regard, the learned counsel would rely upon the chief examination of PW1, wherein he would state that, before they visited the police station, all of them [PW1, PW2 and PW10] had gone to the hospital and thereafter, went to the police station. While perusing the evidence of PW1, though he refers about the visit to the hospital, it was at 1.30.p.m, while the complaint was given at 1.45.p.m. Besides, he and the other injured persons [PW2 and PW10] were again referred to the hospital by 6.00.p.m. Therefore, the admission regarding the mere visit to the hospital by 1.30.p.m, cannot be a material contradiction, since the fact remains that he was in the hospital only upto 1.30.p.m. Pertinently, the complaint was given immediately at 1.45 p.m, within 30 minutes from the time of occurrence, qua from 1.15.p.m. Besides, the witnesses [PW1, PW2 and PW10] were again sent to the hospital as evidenced from A.R copy Exs.P9 to P11.

13. However, the learned counsels appearing for the appellants would draw the attention of this Court that in a AR copy Exs.P9 to P11, it has been mentioned that PW1, PW2 and PW10 were assaulted by the unknown



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persons. Therefore, contended that, had there been any assault by these accused, who are known to the witnesses, definitely the A.R copy must have an entry that they were assaulted by known persons and hence, there is a reasonable doubt on the involvement of the accused. But, this Court is of the view that the accident register came to existence on 24.03.2014 at about 6.50 p.m, but the FIR was registered prior in point of time against these accused. Fortunately and more pertinently, the FIR even prior to the time of A.R copy Exs.P9 to P11, reached to the Court at about 4.10.p.m. Therefore, we are of the firm opinion that the reference in the accident registers made by the Doctor that the injured were assaulted by the unknown persons cannot be given any undue weightage, and in fact assumes no significance at all, as the name of the accused were found in the FIR, which reached the Court, well prior to the time mentioned in AR copy. In this regard, the learned Additional Public Prosecutor relied upon the Division Bench judgement of this Court in ***Annamalai Vs. State*** made in ***Crl.A.No.1431 of 2004***, and would contend that in the place of ocular evidence, the accused cannot take any advantage out of the entry in AR copy. Further, the reference in the accident register cannot be a conclusive proof.



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14. The learned counsel for the appellants would draw the attention of this Court about the absence of any initiative to provide first aid to deceased.

For ready reference, the very admission of PW1 is extracted hereinbelow:-

“..... என் அண்ணனை வெட்டிய பிறகு என் அண்ணன், குற்றுயிருமாக, கொலையுமாக இருந்தார்.அதன் பிறகும், என் அண்ணனை மருத்துவமனைக்கு கூட்டிச் செல்ல நாங்கள் முயற்சிக்கவில்லை.”

No doubt, it was admitted by PW1 that he did not take his brother to the hospital. But, while looking at the evidence of other eyewitnesses PW2, PW3, PW4 and PW10, it is amply clear that the death of the deceased was instantaneous. If we construe the evidence of PW1, in the background of the other remaining witnesses, the admission made by PW1 that he did not take any initiative to take his brother to the hospital, would only further the theory of prosecution. Therefore, mere imperfect use of vocabulary by PW1 cannot be a ground to discredit his trustworthiness. Therefore, the stray statement of PW1 cannot be taken in isolation with the other evidence.

15. If we read the evidence of PW1, PW2 and PW10 carefully and harmoniously, their description of events are simple and straight forward, and



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the cross examination does not demolish their version of events. All of them withstood the onerous test of cross examination. In the case in hand, the occurrence is a daylight occurrence. It is well settled principle of law that where a witness to the occurrence is himself an injured in the incident, the testimony of such witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of crime and also on the ground that it is unlikely to spare his actual assailants. Therefore, to contradict such strong witnesses or to discredit their reliability, it is the duty of the appellants/accused to demonstrate a concrete contra evidence. But, the appellants by relying upon minor variation in respect of a timing and from an isolated statement taken in out of context, attempted to discredit them, which is not permissible, that too when the witnesses are injured in the same occurrence.

16. Apart from that, the prosecution has also established the discovery of fact through the accused. In the presence of PW15, the discovery of fact was effected. While perusing the evidence of PW15, it appears to be natural. But, it was contended that he was a chance witness. Taking into consideration of the place where he was invited qua the Toll plaza, though he



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may be a chance witness, there are no reasons to disbelieve his presence at the place of recovery and his evidence. He also withstood the cross examination and he has categorically spoken about the recovery of blood stained knife and shirt. The prosecution had taken effective steps to identify the grouping of blood stain found in the knife discovered at the instances of the accused. As a matter of evidence, in both the knives, the blood group has been identified as “B”. This blood grouping tallies with grouping of the blood stain recovered from the dresses of the deceased.

17. At this juncture, the learned counsel for the appellants would contend that the knife recovered from A1 and A2 also have the stain which have the blood grouping of “O”, which is a clinching evidence to show that these weapons are not related to the occurrence as it contains two blood groups, which are illogical. Here, while looking at the case, the accused also attacked the witnesses. However, the prosecution did not test the blood grouping of those witnesses. Therefore, the other blood grouping of the blood stains would also be a proof against the accused. Therefore, this Court is of the firm view that the prosecution has established the connection of the recovered weapon with the occurrence by proving similarity of blood



grouping between the blood stain contained in the weapon and in the dress materials of the deceased.

18. It is also pertinent to mention here that for the reason best known to the accused, the evidence of one of the eyewitness PW3 was not cross examined, where he had clearly implicated the accused with occurrence. In addition to the points discussed hereinabove, this unchallenged testimony is also an additional factor against the accused.

19. Before giving our ultimate finding, for easy understanding, we would like to recapitulate the points for our ultimate decision. The same are:-

1. Though there is a discrepancy in the accident register, the same become insignificant, in view of the prompt and prior receipt of the FIR by the Court.
2. All the witnesses had consistently spoken about the occurrence and also withstood the arduous cross examination.
3. The witnesses PW1, PW2 and PW10 are the injured witnesses and no ground was established to discredit their trustworthiness.
4. The prosecution has proved the recovery and established the connection to the occurrence.
5. The contradictions relied are minor and are not in respect of the core



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issue involved in this case.

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20. Thus, we are of the firm opinion that the prosecution has established the charge beyond reasonable doubts. Therefore, there are no grounds to interfere with the order of conviction dated 07.06.2018 passed by the Trial Court in SC.No.10 of 2016.

21. In the result, both the Criminal Appeals stand dismissed.

[M.S.R., J.] [C.K., J.]
19.09.2024

Index: Yes

Neutral Citation: Yes

Speaking order: Yes
kmi

To

1. The III Additional District and Sessions Judge,
Poonamallee, Tiruvallur District.
2. The Inspector of Police,
Inspector of Police,
Maduravoyal Police Station,
Chennai.
3. The Public Prosecutor,
High Court of Madras.



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

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Pre-delivery judgment made in
Crl.A.Nos.624 of 2018 & 51 of 2019

19.09.2024