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Crl.A.Nos.610 of 2018 and 536 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.07.2024

PRONOUNCED ON: 05.07.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.610 of 2018 and 536 of 2019

- | | |
|---------------|---|
| 1. Manivannan | ... Appellant in Crl.A.No.610/2018
/Accused No.1 |
| 2. Muthu | ... Appellant in Crl.A.No.536/2019
/Accused No.2 |

vs.

State Rep. by
The Inspector of Police,
Neyveli Township Police Station,
Cuddalore District.
(Cr.No.190/2014)

... Respondent/Complainant
in both the cases.

Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the entire records in connection with the S.C.No.169 of 2015 on the file of the learned III Additional District and Sessions Judge, Virudhachalam and set aside the Judgment dated 15.09.2017.

For Appellants
in Crl.A.No.610/2018 : Mr.K.Gandhi Kumar



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in Crl.A.No.536/2019 : Mr.K.Seetha Ram

For Respondent : Mr.E.Raj Thilak
in both cases Additional Public Prosecutor

COMMON JUDGMENT

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

These Criminal Appeals have been filed by accused 1 to 2, challenging the conviction and sentences imposed upon them vide judgment dated 15.09.2017 in S.C.No.169 of 2015 on the file of the learned III Additional District and Sessions Judge, Virudhachalam.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the trial Court.

3(i) It is the case of the prosecution that A2-Muthu used to stay in the house of the deceased; that one Prabhu was murdered and a case in Cr.No.168 of 2014 was pending on the file of Neyveli Nagar Police Station; that one Rajkumar was the accused in the said case; that A1-Manivannan is the brother-in-law of the said Rajkumar; that the deceased permitted the friends of Prabhu, who had conspired to murder the said Rajkumar to stay in



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his house; that therefore, A1 and A2 decided to do away with the deceased; that A1 and A2 and a juvenile accused-Ajithkumar on 15.06.2014 between 11.00 and 11.30 a.m., trespassed into the house of the deceased and caused his death; that A1 held the head of the deceased by tying his dhoti around his neck; that A2 sat on the back of the deceased and stabbed him on his chest and neck with a knife; that the juvenile accused held the legs of the deceased; and that thereafter, A1 took another knife and stabbed on the deceased in the stomach.

(ii) It is the further case of the prosecution that the deceased was separated from his wife and his son and was living separately; that PW1 the son of the deceased, on coming to know that his father was done to death, went to his father's house and after ascertaining that his father was done to death, lodged a complaint, Ex.P1, which was registered as an FIR [Ex.P17] in Cr.No.190 of 2014, by the Sub Inspector of Police [PW17].

(iii) PW18, the Inspector of Police, took over the investigation, went to the scene of the occurrence and prepared the Observation Mahazar [Ex.P2]



and two Rough Sketches [Ex.P18 and Ex.P19]. He seized the bloodstained dhoti [M.O.1], another bloodstained dhoti with a green-coloured border [M.O.14], a towel [M.O.2], a bloodstained mat [M.O.3], bloodstained earth [M.O.4] and the earth that was not bloodstained [M.O.5] under Seizure Mahazar [Ex.P3]. He conducted an inquest over the dead body between 7.15 p.m., and 9.15 p.m., in the presence of the panchayathars and prepared the inquest report [Ex.P20]. Thereafter, he made a request to conduct a postmortem, which was conducted by PW16, who issued the postmortem certificate [Ex.P15] and final opinion [Ex.P16].

(iv) PW18 examined the other witnesses and on 19.06.2014, he arrested A1, A2 and the juvenile accused. He recorded the confession of A1 and on his confession, the admissible portion of which is marked as Ex.P4, seized a knife [M.O.6] and the bloodstained clothes [M.O.11 and M.O.12]. He recorded the confession of A2 and on his confession, the admissible portion of which is marked as Ex.P5, he seized a bloodstained vegetable cutting knife [M.O.7] and the bloodstained clothes of A2 [M.O.15]. He thereafter recorded the confession of the juvenile accused and on his



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confession, the admissible portion of which is marked as Ex.P6, he seized a two-wheeler viz., Bajaj Discover bearing Regn.No.TN31-AP 7126. Thereafter, he handed over the investigation to PW21.

(v) PW21, the second investigating officer, conducted further investigation, examined the remaining witnesses and filed the final report for the offences under Sections 302 and 120-B of the IPC against A1 and A2, before the learned District Munsif-cum-Judicial Magistrate, Neyveli.

(vi) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.169 of 2015 and was made over to the learned III Additional District and Sessions Judge, Virudhachalam, for trial. The trial Court framed charges under Sections 120-B, 449 and 302 of the IPC against the accused and when questioned, the accused pleaded 'not guilty'.

(vii) To prove the case, the prosecution examined 21 witnesses as P.W.1 to P.W.21 and marked 30 exhibits as Exs.P1 to P30, marked 16 Material Objects as M.O.1 to M.O.16. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them,



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they denied the same. The accused neither examined any witnesses, nor marked any documents.

(viii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held A1 and A2 guilty of offences under Sections 449 and 302 of the IPC. The accused were convicted and sentenced as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1 and A2	449 IPC	Each of them to undergo imprisonment for five years and to pay a fine of Rs. 1000/- in default to undergo simple imprisonment for three months.
	302 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months.
	Sentences were ordered to run concurrently.	

Hence, the accused have preferred these appeals challenging the said conviction and sentences.

4. Heard, Mr.K.Gandhi Kumar, learned counsel appearing for A1/Appellant in Crl.A.No.610 of 2018, Mr.K.Seetha Ram, learned counsel appearing for A2/Appellant in Crl.A.No.536 of 2019 and Mr.E.Raj Thilak,



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learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the appellants submitted that the prosecution case based on circumstantial evidence has not been established; that the motive has not been established by the prosecution; that the arrest and recovery from the accused is doubtful; that there was no evidence to compare the blood group found in the material objects recovered from the accused; that the evidence of witnesses relating to the circumstance of last seen cannot be believed, since none of those witnesses were examined during inquest; that all of them were either closely related to the deceased or were co-workers to the deceased; that their statements were sent to the Court belatedly; and that in any case, the only circumstance of last seen would not complete the chain of circumstances pointing out only to the guilt of the accused, hence, prayed for acquittal.

6. Learned Additional Public Prosecutor *per contra* submitted that six witnesses, viz., PW5 and PW7 to PW11 have seen the accused along with the deceased; that the investigating officer had marked Ex.P29 and Ex.P30



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to show that one Prabhu was done to death and that one Rajkumar, the brother-in-law of A1, was involved in the said offence and hence, motive also has been established by the prosecution. Therefore, he prayed for dismissal of the appeals.

7. We have carefully considered the rival submissions and perused all the relevant materials available on record.

8. The case is based on circumstantial evidence. PW16, the postmortem doctor had issued postmortem report Ex.P15. The doctor had noted six stab injuries and two cut injuries over the neck. The doctor had also opined as follows:

“The deceased would appear to have died of cut throat injuries with evidence of alcohol (ethyl) in the viscera.”

The above would suggest that the deceased suffered a homicidal death.

9. In order to prove the involvement of the accused, the prosecution has relied upon the circumstance of motive, the accused last seen with the



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deceased and the arrest and recovery from the accused.

10. As regards motive, it is the prosecution case that the deceased was giving shelter to certain individuals, who had conspired to murder A1's brother-in-law Rajkumar. However, the prosecution has not established this aspect of its case. The investigating officer-PW21 had marked the FIR [Ex.P28] and the final report [Ex.P29] in the case relating to the murder of one Prabhu in which A1's brother-in-law (Rajkumar) is an accused. Beyond that, there is nothing to suggest that the deceased gave shelter to any person and that infuriated A1. Therefore, in our view, the prosecution has failed to establish motive.

11. (i) The prosecution had examined 21 witnesses. PW1 is the son of the deceased; PW2 is the wife of the deceased; PW3 is the nephew of the deceased, who first saw the deceased and gave information to PW1; PW4 is a relative of the deceased and is a witness to the observation mahazar; and PW5 was co-worker of the deceased and they were all staying in the Neyveli Lignite Corporation Quarters. He deposed that he saw the accused



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coming out of the house of the deceased from the back door and they were all tensed.

(ii) PW6 is the friend of the deceased and had seen the deceased along with the accused consuming liquor together and were quarrelling with each other; PW7 is another nephew of the deceased and had seen the deceased along with A1 coming in a bike to the sister's house of the deceased at 7.45 a.m and he had also seen the accused coming out of the house of the deceased at about 11.00 a.m., when he went to TASMAC shop for consuming liquor and thereafter, he went to the house of the deceased at 6.00 p.m., after hearing about the death of the deceased.

(iii) PW8 is also a relative of the deceased and he had gone to the house of the deceased at about 11.00 a.m. on 15.06.2014 and when they went to the back door they saw the accused coming out of the house of the deceased through the back door. He had further stated that when he asked the accused as to whether the deceased was inside the house, the accused had informed him that the deceased had gone out. Believing the words of



the accused, PW8 left the place and later came to the house of the deceased at 5.30 p.m., on learning that the deceased was found murdered at his house.

(iv) PW9 runs a bar adjacent to a TASMAC shop and had seen the accused and the deceased visiting his TASMAC bar about 2 or 2 ½ -half years before his examination. PW10 is the neighbour of the deceased and had gone to the house of the deceased between 10.00 a.m. and 10.30 a.m. and at that time, had seen the accused near the house and later he came to know about the occurrence in the evening. PW11 ran a mutton shop and stated that on a Sunday at about 8.30 a.m., the deceased came with the accused to buy mutton from his shop.

(v) PW12 turned hostile. PW13 is the VAO, who had witnessed the arrest and recovery of A1 and the other accused; PW14 is the photographer; PW15 is the Assistant Director of Forensic Science Department; PW16 is the doctor who had conducted the postmortem and issued the postmortem report and final opinion; PW17 is the Sub-Inspector of Police, who



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registered the FIR; PW18 and PW21 are the investigating officers; PW19 and PW20 would speak of the fact that the deceased came to collect money for PW19 on the morning of 15.06.2014. However, both of them were unable to identify as to who came along with the deceased at 7.45 a.m.

12. As stated earlier, the motive has not been established. PW5 and PW7 to PW11 were relied upon by the prosecution to establish that the accused were found near the house of the deceased at the time of the occurrence. PW6 speaks about the quarrel said to have taken place between the accused and the deceased one week before the occurrence while they were consuming liquor together. However, there is nothing to suggest from his evidence as to what was the nature of quarrel. In our view, the evidence of PW6 is of no avail to the prosecution and does not establish any circumstances.

13. PW9 is the TASMAL owner who saw the accused with the deceased 2 ½ years before he was examined and also speaks about the fact that they used to come together to consume liquor. This evidence also does



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not help the prosecution in any way. PW11 runs a mutton shop. He would state that on a Sunday, at about 8.30 a.m., the accused came along with the deceased to buy mutton. He could not remember the exact date of their visit. His evidence is also of no use to the prosecution.

14. PW5 is a co-worker with the deceased. He had seen the accused coming out of the house of the deceased at 11.30 a.m., on the day of occurrence and were found tensed. Similarly PW8 who is related to the deceased, had seen the accused coming out of the back door of the house of the deceased. PW7 also saw the accused coming out of the house of the deceased at about 11.00 a.m. He is also closely related to the deceased. PW10 is the friend of the deceased and had allegedly seen the accused along with the juvenile accused near the house of the deceased at about 10.30 a.m.

15. All these four witnesses PW5, PW7, PW8 and PW10 strangely did not inform PW1 about this fact before he made a complaint to the police. In Ex.P1, there is no reference to the accused coming out of the house of the deceased at 11.30 a.m. That apart, none of these witnesses were examined



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during inquest, which was conducted at 7.15 pm. All these witnesses in their examination would claim that they went to the house of the deceased at 5.00 p.m., when they heard about the death of the deceased.

16. PW21, the investigating officer would further admit that the statements of all these witnesses were sent to the Court only on 07.10.2014. This also raises doubt with regard to the reliability of these witnesses. Above all, the conduct of PW8, who is related to the deceased, that he went to the house of the deceased and saw the accused coming out and did not enter the house since the accused informed him that the deceased went out. This version appears to be inherently improbable.

17. It is well settled that in the absence of proof of motive, the Court has to be circumspect while appreciating the evidence relating to other circumstances. The evidence of the witnesses who had allegedly last seen the deceased with the accused and some of them who had seen the accused coming out of the house of the deceased, does not inspire confidence. As regards recovery, it is seen that the blood group in the weapon seized from the accused, could not be ascertained and hence, it cannot be linked to the



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occurrence.
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18. In such circumstances, we are of the view that the circumstances relied upon by the prosecution have not been conclusively established and in any event, do not form a complete chain pointing out the guilt of the appellants. Therefore, the appellants are entitled to the benefit of doubt and the conviction and sentence imposed on them are liable to be set aside.

19. In the result, these Criminal Appeals are allowed and the appellants are acquitted of the charges. The conviction and sentence imposed upon the appellants in S.C.No.169 of 2015 dated 15.09.2017, on the file of the learned III Additional District and Sessions Judge, Virudhachalam, are set aside. The fine amount, if any, paid by the appellants shall be refunded. Bail bonds, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
05.07.2024

Index : yes/no
Neutral citation : yes/no



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Speaking/Non-speaking order
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Copy to:

- 1.The III Additional District and Sessions Judge,
Virudhachalam.
- 2.The Inspector of Police,
Neyveli Township Police Station,
Cuddalore District.
3. The Superintendent of Prisons,
Central Prison, Cuddalore.
- 4.The Public Prosecutor
High Court of Madras,
Chennai – 600 101.



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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

**Pre-delivery common Judgment in
Crl.A.Nos.610 of 2018 and 536 of 2019**

05.07.2024