



Crl.A.No.2 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.03.2024

PRONOUNCED ON: 03.04.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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1. Rajesh @ Panneerselvam

2. Gasthan @ Kutti Desthan

... Appellants/Accused 1 and 2

vs.

State rep. By
The Inspector of Police,
Karaikal Town Police Station,
Karaikal.

(Crime No.5 of 2018)

...Respondent/complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellants and sentence in S.C. No.3 of 2018 dated 25.10.2018, on the file of the learned Sessions Judge, Karaikal and set aside the conviction and sentence imposed in judgment dated 25.10.2018 and acquit the appellants.

For Appellants

: Mr.Ashok Kumar, Sr. Counsel



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assisted by Mr.P.Palaninathan

For Respondent : Mr.K.S.Mohan Dass
Public Prosecutor (Puducherry)
Assisted by Ms.Danalachumi

JUDGMENT

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

This Criminal Appeal has been filed by Accused 1 and 2, challenging the conviction and sentence imposed upon them vide judgment dated 25.10.2018 in S.C.No.3 of 2018 on the file of the learned Sessions Judge, Karaikal.

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

3(i) It is the case of the prosecution that during May 2017, the deceased, PW1 and PW2 had caused the murder of A1's brother; that therefore A1 vowed to take vengeance on the deceased; that the deceased, PW1 and PW2 were arrested in connection with the said murder and



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released on bail and were directed to stay in Karaikal and report before the Karaikal Town Police Station every day; that A1 to A5 forcibly kidnapped PW5 and PW6 who were close to the deceased and forced them to point out the whereabouts of the deceased and took both of them in a car on 09.01.2018; that A1 asked PW5 to make a call to the deceased and ask him to come to the petrol bunk near the bus stand in Karaikal, where the accused were waiting in the car ; that when the deceased came there, A1 to A3 tried to attack the deceased, who ran towards the road near the petrol bunk; that A1 to A3 chased the deceased; that A1 assaulted him by using an aruval on the back side of his head; that A2 assaulted the deceased with an aruval all over the body; that A3 assaulted the deceased by using a wheel spanner; and that after the attack, the accused returned with bloodstained clothes and knives to the car.

(ii) It is the further case of the prosecution that in the meantime when PW5 called the deceased to the petrol bunk, PW1 and PW2 were with the deceased; that after the deceased left to meet PW5, he did not return for a long time and PW1 came in search of the deceased and saw a car driven by



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PW5 and followed the car; that thereafter, he saw the car parked at Petrol Bunk and saw the accused chasing the deceased; that the accused thereafter had taken the car in which PW5 and PW6 were seated and dropped them at Pondicherry and escaped; that PW1 on seeing the accused getting into the car with bloodstained clothes rushed to the street and found that the deceased was done to death; that PW1 thereafter went to the Hotel and informed PW2 about the occurrence and he brought PW2 to the occurrence spot and found that the deceased was not there and learnt that the deceased was taken to Government Hospital for treatment; and that PW1 went to the police station on 09.01.2018 at 11.30 p.m. and lodged a complaint [Ex.P1]. In the complaint, he stated that he suspected the involvement of A1 and his friends.

(iii) PW20, the Sub Inspector of Police registered the FIR at 23.45 hours on 09.01.2018 in Cr.No.5 of 2018 for the offence under Section 302 r/w 34 of the IPC. The FIR was marked as Ex.P21.

(iv) PW22, the Inspector of Police, took up the investigation at about



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00.50 hours on 10.01.2018 and he went to the scene of the occurrence at 1.20 a.m., prepared the Observation Mahazar [Ex.P5] and Rough Sketch (Ex.P4) and seized a plastic chair [M.O.5], five pairs of chappals [M.O.4 series] and a bloodstained wooden rack [M.O.3] under Seizure Mahazar (Ex.P3). He arranged for photographs and inspected the place, examined a few witnesses and on 10.01.2018 at about 4.30 a.m., he went to the hospital and thereafter, collected the bloodstained clothes of the deceased and sent them to the Court. At about 9.00a.m., he conducted an inquest in the presence of panchayatars and prepared the inquest report [Ex.P25].

(v) Thereafter, PW22 took the Forensic Science Laboratory experts to the scene of the occurrence and collected the bloodstained hair of the deceased as well as the sample of bloodstains found in the wall and in the wooden rack, at the scene of the occurrence. He thereafter made a requisition to conduct postmortem which was conducted by PW16, who issued a postmortem certificate [Ex.P17]. He also seized the dress materials [M.O.16 to M.O.18] of the deceased under Seizure Mahazar [Ex.P26].



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(vi) On the same day, at about 3.00 p.m., PW5 and PW6 came to the police station with injuries on their heads and hands and gave a statement to PW22. At 4.30 p.m., he sent both of them to the hospital for treatment and to obtain wound certificates. Thereafter, at 5.15 p.m., he intercepted the accused who were going in an Indica car on the Chidambaram to Pitchavaram junction and when questioned, they gave inconsistent replies and he thereafter arrested them.

(vii) The PW22 seized the car driven by the accused viz., the Indica Car bearing Regn.No.PY 01 AB 8937. He thereafter sent A1 and A2 to the hospital for treatment and to obtain wound certificates. On the confession of A2, he seized the weapons which were kept in a gunny bag under Seizure Mahazar [Ex.P8] and thereafter made arrangements for recording the statements of PW5 and PW6 under Section 164 Cr.P.C., and after examination of the Forensic Science Laboratory experts, postmortem doctor and other witnesses, he filed the final report on 06.02.2018 against the accused for the offences under Sections 147, 148, 363, 324, 342, 506 (ii) and 302 r/w 149 of the IPC before the learned Judicial Magistrate-II,



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4. 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 in S.C.No.5 of 2018 and was made over to the learned Sessions Judge, Karaikal, for trial. The trial Court framed charges against the appellants and when questioned, the appellants pleaded 'not guilty.

5. To prove the case, the prosecution examined 22 witnesses as P.W.1 to P.W.22, marked 29 exhibits as Exs.P1 to P29, and marked 5 Material Objects as M.O.1 to M.O.18. When the appellants were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The appellants/accused neither examined any witnesses nor marked any documents.

6. On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held A1 guilty of the offence under Sections 363, 324 (2 counts), 506



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(ii) and 302 of the IPC and A2 guilty of the offence under Section 302 of the IPC. However, the trial Court found A3 to A5 not guilty of the offences charged against them and accordingly acquitted them. The Accused 1 and 2 were sentenced as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1	363 IPC	To undergo RI for two years and to pay a fine of Rs.1,000/- in default to undergo SI for six months.
	324 IPC (2 counts)	To undergo RI for one year for each count.
	506 (ii) IPC	To undergo RI for one year.
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo SI for six months.
	Sentences were directed to run concurrently.	
A2	302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo SI for six months.

Hence, the accused/appellants have preferred the appeal challenging the said conviction and sentence.

7. Heard, Mr.Ashok Kumar, learned senior counsel appearing for the appellants/accused, and Mr.K.S.Mohan Dass, learned Public Prosecutor (Pudhucherry) appearing for the respondent/State.



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8. Mr.Ashok Kumar, learned senior counsel appearing for the appellants submitted that the case is sought to be established through the evidence of PW1, who had seen the accused chasing the deceased; and the evidence of PW5 and PW6 who were kidnapped by the accused and were forced to point out the place where the deceased was residing; that none of the witnesses can be believed; that PW1 had made several improvements in his deposition, which makes his evidence unreliable; that conduct of PW5 and PW6 is opposed to normal conduct and their evidence is an afterthought to suit the prosecution case; that the prosecution proceeded on the preconceived notion that the appellants were involved in the offence; that there was a delay in the FIR; that the earliest entries made in the hospital records have been suppressed by the prosecution; and hence, prayed for acquittal.

9. (i) The learned Public Prosecutor (Puducherry) *per contra* submitted that PW5 and PW6 are reliable witnesses and they have given a reasonable explanation as to why they did not go to the police station immediately complaining about the acts of the accused; that PW5 and PW6



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were both attacked and therefore they were under threat and that the injuries suffered by them confirmed by the wound certificates issued by the doctor i.e., Ex.P12 and Ex.P13 respectively would show that their version is true.

(ii) The learned Public Prosecutor (Puducherry) also submitted that PW1 has supported the prosecution case and there is no reason to disbelieve his version; that the motive has been clearly established by the prosecution which has not been disputed by the defence; and that no interference is called for and prayed for dismissal of the appeal.

10. We have carefully considered the rival submissions and perused the materials on record.

11. (i) The prosecution has examined 22 witnesses. As stated earlier PW1 and PW2 were friends of the deceased; PW1 is the complainant and had seen the accused getting out of the car and chasing the deceased; PW3



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found the deceased lying in a pool of blood outside his house; PW4 is the brother of one Prasanna and came to know of the occurrence through him; PW5 and PW6 were allegedly used by the accused to identify the place of the deceased and they speak about the presence of A1 to A5 in the car; PW7 is the witness for the arrest, confession of the accused and seizure of the Indica car; PW8 is the mahazar witness; PW9 is the Village administrative Officer, who witnessed the arrest and confession of A1 and A2; and PW10 is the photographer.

(ii) PW11 is the Motor Vehicle's Inspector, who inspected the car driven/used by the accused and spoke about the number of people who could travel in the car; PW12 is the Analyst Incharge of the District Mobile Forensic Unit, who assisted in collecting the bloodstains on the wall, plastic chair, plastic wooden box and piece of hair found at the scene of the occurrence; PW12, is the doctor who examined PW5 and PW6 and issued Wound certificates i.e., Ex.P12 and Ex.P13, respectively; PW14 is the father of the deceased who is an hearsay witness; PW15 is the doctor who treated A1 and A2 and issued the Wound Certificate i.e., Ex.P14 and



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Ex.P15 respectively; PW16 is the postmortem doctor who issued postmortem certificate [Ex.P17]; PW17 and PW18 are the Constables who assisted the investigating officer; PW19 is the Forensic Science expert who examined the bloodstained articles and issued the report [Ex.P20]; PW20 is the Sub Inspector of Police, who registered the FIR; PW21 is the Principal District Munsif – cum - Judicial Magistrate who recorded 164 Cr.P.C.

statements of PW5 and PW6; and PW22 is the investigating officer, who filed the final report.

12. As stated earlier, PW16 the postmortem doctor issued the postmortem certificate Ex.P17. He found 16 incised wounds on external examination. He had opined that the deceased died due to “intracranial haemorrhage as a result of a head injury”. The report of the doctor has not been seriously disputed by the defence, except for suggesting that the incised wounds could not be caused by a weapon like a spanner which was admitted by the doctor. The prosecution has therefore established that the deceased



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sustained grievous injuries due to homicidal violence and succumbed to it.

13. The prosecution seeks to rely upon the evidence of PW1, PW2, PW5 and PW6 to prove that the accused were involved in the offence. A3 was acquitted by the trial court on the ground that the *overt act* attributed to him viz., that he attacked the deceased with a wheel spanner is improbable as only incised wounds that could be caused by sharp weapons were found in the body of the deceased. To this extent, the trial court has disbelieved the evidence of PW1, PW2, PW5 and PW6.

14. PW1 lodged a complaint at about 23.45 hours, which is about 2 ½ hours after the occurrence. In the complaint he would state that at the petrol bunk, the car driven by the PW5 was parked and two persons got down from the car, with sharp edged weapons, chased the deceased who was walking towards the car; that the deceased thereafter ran to a street next to the petrol bunk; that at about 9.30 p.m. the said two persons returned to the car and the car left the place; that he thereafter went to the street and saw the deceased lying in a pool of blood at the end of the street with cut injuries;



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that he became frightened and went to bring PW2 and came back to the scene of the occurrence; that when he came back along with PW2, he did not find the body of the deceased at the scene of the occurrence and thereafter on coming to know that the deceased was taken to Karaikal Government Hospital for treatment, he went there and learnt that the deceased succumbed to the injuries.



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15. PW1 is the first informant. He made a complaint nearly 2 ½ hours after the occurrence. There was no reason for the delay as admittedly, the deceased was taken to the hospital immediately and the hospital authorities would have sent an intimation to the police immediately. Further, it is seen that PW1, who had first seen the deceased lying down did not take any steps to take him to the hospital and he instead went to the hotel to inform PW2. This conduct appears to be opposed to normal conduct. The evidence of PW1 therefore has to be appreciated cautiously.

16. In the earliest version given in the complaint, PW1 stated that he saw two unknown persons with sharp edged weapons getting down from the car and that the car was driven by PW5. In his deposition, however, PW1 would specifically state that he saw A1 and two others getting down from the car and chasing the deceased. He would also specifically state that he saw PW5 sitting in the car and not driving it. The above two improvements are material in nature, which would shake the credibility of PW1. Had PW1 seen A1 and others chasing the deceased, there is no reason why he had to state in the complaint that he suspected the involvement of A1 and his



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friends. The prosecution has not come up with any explanation whatsoever with regard to these material improvements. The improvements clearly appear to be an afterthought and hence, PW1 cannot be believed.

17. The next witness relied upon by the prosecution is PW5. As per the FIR, PW1 saw PW5 driving a car and he followed the car. But both PW1 and PW5 in their depositions would now state that PW5 was sitting in the car. As stated earlier, this material improvement is sufficient to disbelieve them. It is the version of PW5 and PW6 that they both were kidnapped at Pondicherry, attacked on 09.01.2018 and were forced to sit in the car. It is the further case of PW1 that A1 made PW5 call the deceased over the phone in speaker mode and asked PW5 to call the deceased to come to the Bus stand. The investigating officer would admit that he had collected the Call Details Record of the deceased and PW5. However, he would state that he had not filed the Call Details Record since he had enough evidence to prove the prosecution case. The relevant portion reads as follows:

“அரவந்த் கொப்பு கார்த்தியின் செல் போன் அழைப்பு பற்றிய விவரங்களை சம்பந்தப்பட்ட செல்போன் நிறுவனத்திலிருந்து வேண்டுகோள் கடிதம் மூலம் பெறப்பட்டது. போதுமான சாட்சியங்கள்



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இருந்ததால் நான் அதனை நீதிமன்றத்தில் தாக்கல்
செய்யவில்லை”
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An adverse inference can be drawn from the above evidence of PW22. After having collected the Call Details Record, which would strengthen the prosecution case, there was no reason why PW22 had to withhold it unless it would belie the prosecution case.

18. PW5 and PW6 did not complain about the attack on them, about the kidnapping and about their witnessing the accused chasing the deceased etc., until 3.00 p.m., the next day. The Investigating Officer confirms this fact. The relevant portion of PW22's evidence reads as follows:

“10.01.2018 அன்று மாலை 15.00 மணிக்கு
புதுச்சேரியை சேர்ந்த அரவிந்த் என்ற அரவிந்த்
நாராயணன் மற்றும் நவீன் என்ற நவீனன்
ஆகியோர்கள் கையிலும் தலையிலும் காயங்களுடன்
நகர காவல் நிலையம் வந்து என்னிடம் மேற்படி
வழக்கு சம்பந்தமாக வாக்கு மூலம் கொடுத்தார்கள்.
அதனை நான் பதிவுசெய்தேன்.”

The explanation offered by both of these witnesses for not informing the police is not plausible. They had stated that they were under fear and were forced to go to the police because, the police would come to know of the



phone calls made by PW5 to the deceased. Considering the earliest version of PW1 that PW5 drove the car and PW5's involvement, the prosecution case that PW5 was kidnapped is unbelievable. In any case, the evidence of PW5 and PW6 though they would state that they were under threat, is in the nature of an accomplice's evidence and this Court cannot solely rely upon their evidence. From their conduct and versions, their evidence can be relied upon only if it is corroborated by unimpeachable evidence. PW5 and PW6 cannot corroborate each other as they both stand on the same footing. The other corroboration is offered by PW1, whose evidence is also not reliable. Further, if PW1 had really seen PW5, driving the car, the natural reaction of PW1 would be to verify with PW5 as to who else was in the car. PW5 has not stated that PW1 called him. For all the above reasons, both PW5 and PW6 cannot be relied upon.

19. PW2 is a hearsay witness and his evidence would not be of any use to the prosecution, in light of the nature of PW1's evidence. PW3 and PW4 are also hearsay witnesses and do not advance the prosecution case in any manner.



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20. It is seen that from the beginning, the investigation has proceeded suspecting the involvement of A1 and his friends. It is nobody's case that the prosecution had ascertained that the accused were involved in the occurrence when the inquest was conducted at 9.00 a.m. on 10.01.2018. In Column No.15, the investigating officer recorded that A1 to A3 along with others had caused the death of the deceased. Even according to the prosecution, PW5 and PW6 came to the police station only at 3.00p.m. on 10.01.2018. That being so, the findings in the inquest report are without any basis and would establish that the investigation proceeded on the basis that the accused were involved.

21. That apart, it is a further case of the prosecution that the deceased succumbed to the injuries in the hospital only at 11.30p.m. as could be seen from the inquest report. It was also the case of the prosecution that immediately after the accident, the deceased was taken to the hospital. While that being so, the earliest entries made in the Accident Register by the doctor and the treatment given to the deceased have been suppressed by the



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prosecution, which raises doubt in the prosecution case.

22. Thus, we find that the versions of the witnesses which had not come at the earliest point in time cannot be accepted. PW1, PW5 and PW6 are unreliable and it is highly unsafe to record a finding of guilt on the basis of the evidence of these witnesses. We are therefore of the view that the prosecution has failed to establish the occurrence beyond a reasonable doubt. That apart, as stated earlier, the prosecution's case as regards the role of A3 has been disbelieved by the trial Court and has not been challenged by the prosecution.

23. For all the above reasons, we are of the considered view that the judgment of conviction and sentence cannot be sustained and liable to be set aside.

24. Accordingly, the Criminal Appeal is allowed, and the appellants/A1 and A2 are acquitted of all the charges. The conviction and sentence imposed upon the appellants/A1 and A2, in S.C. No.3 of 2018



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dated 25.10.2018, on the file of the learned Sessions Judge, Karaikal, are
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set aside. The fine amount, if any, paid by the appellants shall be refunded.

Bail bond, if any, executed shall stand discharged.

[M.S.R.,J.] [S.M.,J.]
03.04.2024

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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M.S.RAMESH,J.

and

SUNDER MOHAN,J.

ars

To

1.The Sessions Judge,
Karaikal.

2.The Inspector of Police,
Karaikal Town Police Station,
Karaikal.

3. The Superintendent of Prisons,
Central Prison, Karaikal.

3.The Public Prosecutor,
High Court, Madras.

Pre-delivery judgment in
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03.04.2024