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CRL.A.(MD)NO.138 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R.POORNIMA

CRLA(MD)No.138 of 2021

State rep. By,
The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli District.
(Crime No.236 of 2011)

... Appellant / Complainant

Vs.

1. Marimuthu @ Vinoth
2. Shanmugavelraja
3. Subbu @ Subramanian
4. Karuppaswamy
5. Sudalaimani
6. Velraja
7. Ganesan
8. Esakkimuthu
9. Pechidurai
10. Velmurugan
11. Maya @ Sudalaimani
12. Balasubramanian @ Suresh

... Respondents / Accused 1 to 6, 8 to 13

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to allow this appeal and to set aside the judgment of acquittal of the respondents / accused in S.C.No.441 of 2013 dated 07.02.2019 by the learned IV Additional District and Sessions Judge, Tirunelveli and



convict the respondents / accused for the charges framed against them.

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For Appellant : Mr.T.Senthil Kumar,
Additional Public Prosecutor.
For R-1 to R-3 : Mr.R.Anand
For R-6 to R-12 : Mr.K.Veilmuthu

* * *

J U D G M E N T

The State has preferred this appeal against the judgment dated 07.12.2019 in S.C.No.441 of 2013 on the file of the IV Additional District and Sessions Judge, Tirunelveli. By the impugned judgment, the Court below acquitted all the 13 accused.

2. The case of the prosecution is as follows:-

The defacto complainant Shantha (P.W.1) is the wife of the deceased Muthu Pappa. The sister-in-law of the deceased was the President of Manakkadu Village Panchayat. The accused are the residents of Colony Street. A7 Arumugam, S/o.Chinnamadan had collected monies from several persons of Manakkadu and got them water connection without the knowledge of the Panchayat.



Arumugam was questioned by Muthu Pappa. Since Arumugam abused Muthu Pappa in a filthy language, Muthu Pappa with one Udhayakumar and his brother Solemon went to the local police station for lodging complaint on 17.07.2011 at about 4.00 p.m. They were waylaid and attacked with stones at about 5.00 p.m. near the bridge situated to the south of Manakkadu by Ganesan, Vinoth, Arumugam, Velraj and others. Udhayakumar and Solemon suffered injuries. Muthu Pappa escaped and came home. The injured Udhaya Kumar and Solemon lodged complaint with the police station. When at around 8.00 p.m., on the same day (ie.,) 17.07.2011 when Muthu Pappa was at his house talking to his brother Esakki Muthu, the accused Karuppusamy, Sudalaimani, Arumugam, Ganesan, Velraja and Vinoth came to the house of Muthu Pappa. When they tried to attack Muthu Pappa, to escape from them, Muthu Pappa ran into the field. Some of the accused were hiding in the field. Muthu Pappa was wrongfully restrained. He was beaten with iron rods and killed. Shantha lodged Ex.P.1 complaint before Tirunelveli Taluk police station at around 23 hours.

3. Crime No.236 of 2011 was registered for the offences under Sections 147, 148, 294(b) and 302 IPC. The Inspector of Police,



Tirunelveli Taluk police station took up investigation. He went to the

spot at around 11.30 p.m., and prepared Rough Sketch (Ex.P.14) and

Observation Mahazar (Ex.P.2). He examined the eyewitnesses. He

arranged inquest to be conducted. Body was sent to Palayamkottai

Government Hospital for conducting postmortem. Some of the

accused were arrested at 5.00 p.m., on 19.07.2011 based on the

confession statement of Marimuthu @ Vinoth. The weapons used for

committing the crime were recovered under cover of mahazar. The

remaining accused were also arrested in due course. After obtaining

postmortem report and the serology report, final report was filed

against the accused. It was taken on file in P.R.C.No.3 of 2012 on the

file of the Judicial Magistrate No.III, Tirunelveli. Copies of the final

report and other documents were served on the accused. Since the

case was exclusively triable by the Sessions Court, it was committed

to the Sessions Judge, Tirunelveli. It was taken on file in S.C.No.441 of

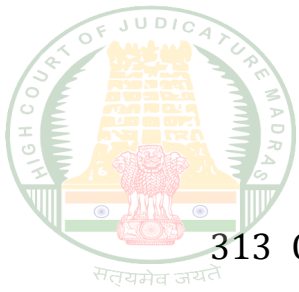
2013 and made over to the IV Additional District and Sessions Judge,

Tirunelveli. Charges were framed against the accused. The accused

pleaded not guilty and claimed to be tried. The prosecution examined

as many as 13 witnesses. Ex.P.1 to Ex.P.20 were marked.

Incriminating circumstances were put to the accused under Section



313 Cr.P.C. They characterised them as false. On the side of the accused, D.W.1 and D.W.2 were examined. Ex.D.1 to Ex.D.3 were marked. After considering the evidence on record, the trial Court acquitted the accused vide judgment dated 07.12.2019. Challenging the same, this criminal appeal has been filed.

4. The learned Additional Public Prosecutor for the appellants submitted that the Court below erred in acquitting the accused. He contended that Ex.P.7 to Ex.P.9 were not even considered. The core argument of the learned Additional Public Prosecutor is that the crime was witnessed by eyewitnesses and it was also duly corroborated. His contention is that the Court below needlessly attached importance to minor discrepancies. He would characterise the approach of the trial Court as perverse. He called upon this Court to set aside the impugned judgment and allow this appeal as prayed for.

5. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment is well reasoned and that it does not call for interference. He also filed his written arguments.



6. We carefully considered the rival contentions and went through the evidence on record.

7. P.W.1 Shantha is the defacto complainant in this case. Ex.P.1 complaint was lodged by her. She claimed to have witnessed the crime. But the trial Court rejected her testimony for the following reasons:-

a) She named A1 to A5 in her complaint. Specific overt acts were also attributed to them. But in her testimony, she implicated A1 to A13 and also assigned specific overt acts.

b) In Ex.P.1 complaint, the place of occurrence was mentioned as house of the deceased. But in her deposition, she stated that the occurrence took place in the agricultural field of one Ponraj. The crime took place during night hours. In order to substantiate the assertion that the crime was witnessed, in the deposition before the trial Court, the witness introduced torch lights and street lights for the first time.

c) In Ex.P.1, it was stated that A1 to A3 were carrying sickles and A4 and A5 were carrying sticks. But during the deposition, P.W.1 stated that all the accused persons were armed with “Noka Kuchi Kambi”, a kind of iron rod.

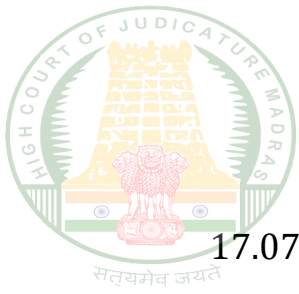


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8. The trial Court took into account the aforementioned aspects and also the fact that there was delay in giving complaint and chose to disbelieve her evidence. There was also a gap of 200mts. between the local temple which had lighting facility and the place of occurrence. The statement of P.W.1 was recorded by the Judicial Magistrate under Section 164 Cr.P.C. The learned trial Judge noted that what was deposed by P.W.1 in the trial Court was an improvement over her statement recorded under Section 164 Cr.P.C.

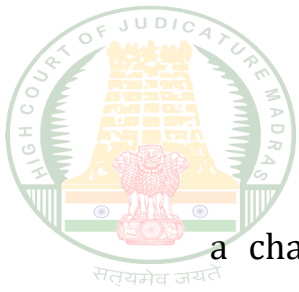
9. P.W.2 also improved his version in respect of the overt acts of the accused. His evidence was also not in consonance with the testimony of P.W.1 with regard to the manner of occurrence as well as the place of occurrence. Therefore, his evidence was also rightly rejected by the Court below.

10. P.W.3 also claims to be an eyewitness. But admittedly he did not inform anyone about the occurrence till he was examined by the investigating officer. The trial Court came to the conclusion that his conduct was unnatural and his testimony was unbelievable. Ex.P.13 First Information Report was purportedly registered at 23 hours on



17.07.2011. But in the mortuary ledger, in the relevant column, crime number has not been mentioned. The dead body was admitted on 18.07.2011 at 1.10 am. If really FIR was registered at 11.00 pm., on 17.07.2011, certainly crime number would have been mentioned in the mortuary ledger(Ex.D.2). The FIR reached the Judicial Magistrate only at 12.30 p.m., on 18.07.2011. The distance between the police station and the learned Judicial Magistrate was hardly 2 to 3 Kms. The trial Court took into account the unexplained delay. The evidence of P.W.8 was also rejected because he was never examined during the course of investigation and no statement was recorded by the investigating officer. This was admitted by the investigating officer himself.

11. P.W.1 had stated in her complaint Ex.D.1 that her husband was indiscriminately cut with sickles. She even claimed in Ex.P.1 that her brother-in-law and co-brother Esakki Muthu and Uikattan(P.W.2) shouted “don't cut, don't cut”. But the postmortem report clearly proved that the injuries found on the body of Muthu Pappa are blunt injuries. They could not have been caused by Sickles which were said to have been used by A1 to A3. That is why the trial Court came to be conclusion that the prosecution version underwent



a change after seeing the nature of injuries noted down in the postmortem report. Only to match those injuries, it was projected that the accused persons used “Nokka kuchi kambu”.

12. The trial Court also rightly came to the conclusion that the investigation was not conducted on proper lines. In Ex.P.1 complaint, the brother of the deceased namely, Esakki Muthu was mentioned as an eyewitness. It was also mentioned that Udhayakumar, son of the deceased also witnessed the occurrence. But both of them were not examined by the investigating officer. In the FIR, the number of persons who had committed the crime was mentioned as five. Later the number of persons who committed the crime became 13. This gross addition in the number of accused and the substitution of the weapon used for committing the crime led the Court below to doubt the truth of the prosecution version. This is an appeal against acquittal. A judgment of acquittal can be reversed by the appellate Court only if the appellate Court comes to the conclusion that the judgment of acquittal suffers from patent perversity. We are clearly of the view that the trial Court correctly appreciated the evidence on record and acquitted the accused. Interference with the impugned



judgment is not warranted. There is no merit in the appeal. This criminal appeal is dismissed. No costs.

(G.R.SWAMINATHAN, J.) & (R.POORNIMA, J.)
13th December 2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

1. The IV Additional District and Sessions Judge,
Tirunelveli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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