



Crl.A.(MD)No.131 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

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State rep. by
The Inspector of Police,
Arumanai Police Station,
Kanyakumari District.
(Crime No.312 of 2009)

... Appellant / Complainant

vs.

1.Vinu @ Sreevinu
2.Rajesh @ Rajeshkumar
3.Kishore
4.Suresh @ Suresh Kumar

... Respondents / A1 to A4

Prayer : Criminal Appeal filed under Section 378(1)(b) Cr.P.C., against the judgment of acquittal of the respondents/A1 to A4, dated 31.01.2017, in S.C.No. 19 of 2011, on the file of the Sessions Court, Kanyakumari District at Nagercoil.

For Appellant : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

For R1 : Mr.C.Kishore

For R2 and R4 : Mr.N.Ratheesh

For R3 : Mr.M.R.Sreenivasan



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JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

This appeal against the acquittal is preferred by the State being aggrieved by the judgment of the trial Court, dated 31.01.2017, in S.C.No.19 of 2011.

2. The brief facts of the case are that, the deceased Romas, a resident of Thattankonam, Karode, had a property dispute with the first accused Vinu @ Sreevinu. The portion of the land, which the first accused family occupying, was earlier alleged to have been sold by the family of the deceased and for the adjacent Poramboke land, which was occupied by the family of the deceased, there was rival claim between them. As a consequence, on the day of occurrence, it appears that the deceased had picked up quarrel with the mother of A1. When A1 came back to home, he was informed about the incident occurred on the earlier part of the day. Therefore, A1 along with his associates, who are arrayed as A2 to A5, decided to do away the deceased Romas and therefore, they went to the field, where the deceased was sleeping on a cot, along with a cane of acid and



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an Aruval. A1 poured acid on the face of the deceased. His associates attacked him over the body using the Aruval. The deceased Romas was taken to the Government Hospital and after 10 days, he succumbed to the injury. Meanwhile, his statement was recorded, which form basis of the F.I.R. Based on the information given by the deceased, the accused were arrested. Their confession statements were recorded and the cell phones used by the accused persons to communicate between them were recovered based on the information given by A1. With this narration, the prosecution has filed final report along with the materials collected during the course of investigation. The Court below framed following charges against the accused:-

Rank	Sections of law
A1	147,148, 294(b) and 302 I.P.C.
A2	147, 148 and 302 I.P.C.
A3 and A4	147, 148 and 302 r/w. 149 I.P.C.

3. Prior to framing of charges, A5 died and therefore, no charge was framed against him.



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4. To prove the charges, the prosecution has marshalled 22 witnesses, marked 37 documents and 8 material objects. On the side of the defence, no witness was examined.

5. After appreciating the evidence, the Court below found that the First Information Report and the subsequent statement, which is alleged to have been recorded from the victim, suffer from contradictions and embellishments and vital witnesses have turned hostile. The prosecution has failed to probe, and place evidence to prove that the acid injury found on the first accused was during the incident, which has caused the death of Romas. Therefore, for want of proof, all the accused were acquitted.

6. Being aggrieved, the State has preferred this appeal on the ground that the evidence let in by the prosecution is sufficient to prove that A1 to A4 and the deceased 5th Accused all joined together in pursuance of their common object to do away Romas, went to the field of Romas and with an intention to cause death, had poured acid on the face of the deceased Romas. The acid injury is sufficient to cause death and this was done with the knowledge that the injury is likely to



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cause death. Though the deceased died 10 days after the occurrence, *i.e.*, on 26.11.2009, the proximity of the incident and the death as per the postmortem report, would clearly show that the accused persons are responsible for the death of Romas and intention to cause his death warrants conviction.

7. The evidence of P.W.3 Robinson, S/o.Ambrose, who is the brother of the deceased, is read over to this Court by the learned Additional Public Prosecutor to impress upon this Court that the trial Court had failed to consider the testimony of P.W.3, which is natural and reliable. He is also a witness to the occurrence. When his evidence not been impeached by the defence through cross-examination, the Trial Court ought to have disbelieved his evidence.

8. Per contra, the learned counsels for the respondents/accused submitted that P.W.1 Michael, the star witness for the prosecution, turned hostile. P.W.2, the employer of the deceased, who came to the scene of occurrence after the incident, had not supported the case of the prosecution and nothing could be elicited through his evidence in favour of the prosecution. The other witness P.W.3 though had supported the prosecution case and claims to be an eyewitness, he



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being the brother of the deceased, is an interested witness and his evidence has to be looked with suspicion. More so, there is no reason for P.W.3 to be at the scene of occurrence, where his brother was employed under P.W.2.

9. Regarding the statement of the deceased recorded by P.W.16, the learned counsels for the respondents/accused submitted that the said statement, which was recorded after registration of the First Information Report from the very same person, did not disclose the identity of the assailant and therefore, the same is liable to be rejected and the trial Court has rightly rejected it for multiple reasons, primarily, the statement been recorded by P.W.16 Sub-Inspector of Police and the so called attesting witness Nirmala not been examined.

10. The learned counsels for the respondents also highlighted the contradiction in the accident register, which says the attack by unknown person and the version of the prosecution substantially relied upon the so called statement recorded by the Sub-Inspector of Police [P.W.16], marked as Ex.P.17. Vividly narrating the details of the assailants and the injury caused, clearly show that it is a document introduced by the prosecution to fix the respondents, who are



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all in fact, innocents. The trial Court on appreciation of the evidence, has rightly acquitted the respondents for want of evidence and since the acquittal has enured double benefit to the accused persons, it need not be interfered.

11. This Court after careful examination of the witnesses and arguments made by the learned Additional Public Prosecutor and the learned counsels appearing for the respondents, finds that the case of the prosecution solely rests on the testimony of P.W.3 and Ex.P.17. P.W.3 Robinson is the brother of the deceased person. In his chief examination, he claims that on the fateful day night, *i.e.*, on 16.11.2009 at 09.30 p.m., he saw A1, A2 and A3 along with two other persons near P.W.2's rubber estate. He had also deposed that in the two wheeler of Ajjayan [A5], two boys came and conducted ruckus near the house of the deceased and thereafter, came to his house. He saw the deceased A5 carrying a sword. When he went to see his brother, he heard the alarm of his brother and with the help of torchlight, he saw A1 pouring acid on his brother [the deceased], A2 attacked him on the head with the sword. After that, they all fled from the scene of occurrence, washed their hands in the nearby Panchayat water tap. He was able to identify the sword alleged to have been used by the accused persons



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and the same is marked as M.O.1. The cut injury on the head of the deceased is attributed by Rajesh (A2). P.W.3 has identified the empty plastic acid cane and three wooden sticks. However, he could not withstand the cross-examination conducted by the counsels appearing for the accused persons. Therefore, the trial Court has rightly disbelieved his version of witnessing the entire occurrence starting from the accused persons causing ruckus at the house of the deceased and thereafter, fled from the scene of occurrence after committing the crime.

12. The other piece of evidence is Ex.P.17, which is the statement recorded by P.W.16 Sub-Inspector of Police under Section 161 Cr.P.C. No doubt, a reading of the statement reveals the persons, who had involved in the crime coupled with the postmortem report, even if he safely conclude that the statement can be treated as a dying declaration, since it speaks about the cause of death. The reliability of this statement is shrouded with suspicion, since it has been recorded by the Police and the attesting witness by name, Nirmala not been examined to vouchsafe the authenticity of the content.



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13. This Court holds so, because the statement was recorded in the hospital and the acid burn injury appears to be very severe in nature and any Police Officer, who investigate the case must have knowledge that this acid injury is likely to cause death and the statement of the injured person should be recorded in the presence of the Doctor, so that, it could have gained more evidentiary value while testing it in the Court of law. This omission has become fatal to the prosecution case. The trial Court, therefore, has rightly acquitted the persons for the want of evidence. This Court on re-appreciating the evidence, finds that there is no scope to reverse the findings of the trial Court. Hence, the appeal is dismissed. The judgment of the trial Court is confirmed.

Index : Yes / No

NCC : Yes / No

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To

[G.J., J.] & [C.K., J.]

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1.The Sessions Judge,
Kanyakumari District at Nagercoil.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.



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JUDGMENT MADE IN
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