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CRL.A.(MD)NO.246 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R.POORNIMA

CRL.A(MD)No.246 of 2024

1. Anthony Raj @ Anthony
2. Robin
3. Ravi
4. Anbu Patturaj @ Patturaj ... Appellants / Accused Nos.1 to 4

Vs.

The State,
Rep. by its Inspector of Police,
Srivaikundam police station,
Tuticorin District.
(Crime No.33 of 2015) ... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the judgment and sentence dated 14.02.2024 passed in S.C.No.255 of 2017 on the file of the Principal Sessions Judge, Tuticorin and acquit the appellants.

For Appellants : Shri.V.Raghavachari,
Senior counsel,
for Mr.V.Arul.

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

* * *

**J U D G M E N T**

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This appeal is directed against the judgment dated 14.02.2024 made in S.C.No.255 of 2017 on the file of the Principal District and Sessions Judge, Tuticorin. By the impugned judgment, the appellants who were arrayed as accused Nos.1 to 4 were convicted and sentenced as follows:-

Rank of the accused	Offence u/s.	Sentence of imprisonment	Fine	Default of fine
A1	341 IPC	1 month SI	-	-
	302 r/w.34 IPC	Life Imprisonment	Rs.1,000/-	3 months RI
A2	324 IPC	1 Year SI	-	-
	341 IPC	1 month SI	-	-
	302 r/w.34 IPC	Life Imprisonment	Rs.1,000/-	3 months RI
A3	341 IPC	1 month SI	-	-
	302 r/w.34 IPC	Life Imprisonment	Rs.1,000/-	3 months RI
A4	341 IPC	1 month SI	-	-
	302 r/w.34 IPC	Life Imprisonment	Rs.1,000/-	3 months RI



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

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The deceased Pitchaiah was a notable person of Kongarayakuruchi. On 15.07.2014, one Sam Devasahayam of Kongarayakuruchi who belonged to Nadar community was hacked by the persons belonging to Thevar community. Sam Devasahayam passed away on 22.07.2014. The accused who belonged to Nadar community wanted to take revenge for the killing of Sam Devasahayam. They conspired and pursuant to the conspiracy, the accused formed an unlawful assembly and murdered the said Pitchaiah on 10.03.2015 at about 6.30 a.m. In this regard, Ex.P.1 complaint was lodged by the son of the deceased Veerapandiyan(P.W.1). Based on Ex.P.1, Crime No.74 of 2015 was registered on the file of Srivaikundam police station. Investigation was taken up. P.W.21 conducted the initial investigation. P.W.22 took over the investigation from P.W.21 and filed final report before the Judicial Magistrate, Srivaikundam. It was taken on file in P.R.C.No.33 of 2015. The matter was committed to the file of the Principal Sessions Judge, Thoothukudi and it was taken up for trial in S.C.No.255 of 2017. Charges were framed against 11 accused. They pleaded not guilty and claimed to be tried in trial. In support of the charges, the prosecution examined P.W.1 to P.W.22 and marked Ex.P.1 to Ex.P.25. M.O.1 to M.O.



17 were marked. After considering both sides on the evidence on record, the trial Court found the accused Nos.1 to 4 to be guilty and sentenced them as mentioned above. The remaining accused were acquitted. Challenging the same, this appeal came to be filed.

3. The learned Senior counsel appearing for the appellants submitted that the scene of occurrence itself is doubtful. In the complaint, the place of occurrence has been mentioned as Anandha Kalyana Mandabam. But the evidence on record indicates that the murder took place in front of the house of Subbiah in Moorthy Nagar. Anandha Kalyana Mandabam is not mentioned in the Observation Mahazar (Ex.P.2) or Rough Sketch (Ex.P.19). Even though P.W.1, P.W.2 and P.W.4 have been projected as eyewitnesses, they could not have been present at the spot at all. P.W.2 claims to be an injured eyewitness. The submission of the appellants is that the injury was self-inflicted. The occurrence is said to have taken place at about 6.30 a.m. on 10.03.2015. The FIR was registered at 8.00 a.m. From the evidence of P.W.4, it is seen that the police were present in the spot even before lodging of the FIR.



4. The learned Senior counsel launched a frontal attack on the motive for murder projected by the prosecution. He pointed out that Sam Devasahayam who belonged to Nadar community was a highly respected person in the locality. He led the struggle against sand mafia and successfully prevented illicit mining. He was killed by the sand mafia. He added that the deceased Pitchaiah was neither an accused nor a witness in that case. It has also been brought out in evidence that the deceased Pitchaiah supported the efforts of Sam Devasahayam for preventing illicit quarrying. The learned Senior counsel would add that since Pitchaiah was engaged in money lending business, some aggrieved individuals could have carried out the crime. The FIR reached the Court belatedly and there is no reasonable explanation for the same. Likewise the statements recorded under Section 161 Cr.P.C. also were not despatched in time to Court. The so called recovery is also doubtful. The appellants filed written arguments. The learned Senior counsel took us through the same. It was further submitted that if the testimony of P.W.1 could be rejected as regards A5 to A11, it cannot hold good for A1 to A4. The learned Senior counsel prayed for acquitting the appellants also.



5. Per contra, the learned Additional Public Prosecutor submitted that the prosecution had successfully established the case beyond reasonable doubt and that the impugned judgment is well reasoned and it does not warrant any interference. He prayed for dismissal of the appeal.

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

7. It is not in dispute that Pitchaiah Thevar, father of P.W.1 and P.W.2 was murdered on 10.03.2015 at 6.30 a.m. P.W.1 is the defacto complainant in this case. It was he who lodged Ex.P.1 complaint. In the complaint, P.W.1 had clearly mentioned that the occurrence took place at Moorthy Nagar of Kongarayakuruchi.

8. It is not in dispute that the occurrence took place in front of Subbiah's house at Moorthy Nagar. It is true that in bracket, Anandha Kalyana Mandabam had been mentioned. Probably it was mentioned as a land mark. On this ground, we cannot conclude that there was shifting of the scene of crime. In the complaint it was mentioned that the deceased and P.W.1 and P.W.2 were going towards their field. When they were



passing near Moorthy Nagar, the deceased received a call on his mobile phone and that he walked into Moorthy Nagar. Nowhere the eyewitness P.W.1 or the other eyewitnesses have taken the stand that the occurrence took place in front of Anandha Kalyana Mandabam. We do not find any substance in the contention of the learned Senior counsel for the appellants that there is doubt regarding the very site of occurrence.

9. It has been strongly contended that P.W.1, P.W.2 and P.W.4 have been falsely projected as eyewitnesses. P.W.3 turned hostile. P.W.4 is from another village and we are not impressed by P.W.4's explanation as to how he came to be present in Kongarayakuruchi that morning.

10. Let us take up the testimony of P.W.1 and P.W.2 for analysis. P.W.1 is the son of the deceased born through the second wife. It is beyond dispute that the occurrence spot and the residence of the deceased are situated close to each other. To a specific query, P.W.1 replied that from the occurrence spot, they can reach their house within a few minutes. According to P.W.1, on 10.03.2015 he was going to the field along with his father and elder brother Balasubramaniyan (P.W.2). His father received a call on his mobile phone and he entered Moorthy Nagar.



Soon thereafter he heard his father's screams. P.W.1 clearly deposed that he saw A1 Anthony Raj hacking his father on the left part of the neck, cheek and jaw with Aruval. A2 Robin cut his father on the left part of the head and ear with Aruval. A3 Ravi hacked his father on the right side of the neck. A4 Anbu Patturaj also attacked and inflicted cut injury on the neck. It is true that in his testimony, he attributed overt acts to few other accused also. The Court below chose to believe the testimony of P.W.1 only in so far as the appellants are concerned.

11. We do not find any merit in the contention that if P.W.1's testimony could be disbelieved in respect of some of the accused, it should be rejected in toto. The legal maxim “*Falsus in uno, falsus in omnibus*” is not followed in India. It is the duty of the Court to sift the grain from the chaff.

12. P.W.1 had clearly implicated the appellants herein and also attributed specific overt acts against them. He withstood the cross examination. The presence of P.W.1 cannot be doubted. Kongarayakuruchi is a small village. The occurrence spot is situated very close to their home. It is quite usual for the villagers to take a stroll to



their field. There is nothing unusual about the sons accompanying their father. Even P.W.1 stated that their father was walking in front and P.W.1 and P.W.2 following him at a distance. Pitchaiah Thevar was surrounded by a group of persons who were armed with dangerous weapons. They were hacking him and inflicting indiscriminate cut injuries on the vital parts of the body. Therefore, P.W.1 did not immediately rush to his rescue. Pitchaiah died on the spot. The appellants are not strangers. They also hail from Kongarayakuruchi.

13. P.W.2's testimony is also on the same lines as that of P.W.1.

14. The learned Senior counsel appearing for the appellants had strongly contested the motive attributed to the accused. It is true that Sam Devasahayam was a respected member of the locality. There is nothing on record to show that Pitchaiah was behind the murder of Sam Devasahayam. But it has been brought out on record that after the killing of Sam Devasahayam, the houses belonging to Thevar community in the village were ransacked by those belonging to Nadar community. Thevar community was the predominant community. When communal tensions run high, targets for retaliation killings are chosen at random. Pitchaiah



could have been targetted because he was a predominant member of the Thevar community and he was perceived to have been behind the killing of Sam Devasahayam. In any event, when the eyewitnesses' testimony commands the confidence of the Court, the aspect of motive pales into insignificance.

15. The learned Senior counsel for the appellants also pointed out that Murugan who was an elected member of the local body and who was also the son of the deceased was not even examined. He suggested that Murugan did not want innocents to be implicated and that is why, he was completely kept out. We do not find any force in this contention. Pitchaiah Thevar was twice married. Murugan was the son born through the first wife. P.W.1 and P.W.2 were born through the second wife. They were living with Pitchaiah Thevar. Therefore, it is quite possible that Murugan was indifferent towards his father who contracted second marriage.

16. Much was sought to be made out of the fact that there were no blood stains on the clothes of P.W.1 and P.W.2. It was submitted that normally there would have been physical contact with the deceased persons and the grieving family members.



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17. Reaction and response of a grief-stricken individual would vary from person to person. In front of P.W.1 and P.W.2, their father was done to death. Therefore, their conduct cannot be said to be unnatural. Pitchaiah was a well known member of the local body. His murder in a public street would have attracted the attention of the police immediately. They therefore had rushed to the spot. From this, one cannot infer that the earliest complaint had been suppressed. Obviously, FIR could have been registered only on the complaint. P.W.1 lodged such a complaint (Ex.P.1) only at 8.00 a.m. Based on the same, FIR was also registered. During the relevant time, the jurisdictional Magistrate was on training. Therefore, FIR was despatched to the Judicial Magistrate, Sathankulam who was holding additional charge. We are satisfied that delay in forwarding the FIR to the Judicial Magistrate has been adequately explained. It is true that the statements recorded under Section 161 Cr.P.C. were not sent to the Court immediately. The statements of P.W.1, P.W.5 and P.W.7 which were recorded on 11.03.2015 were sent to the Court only on 06.07.2015. It is true that Section 161 Cr.P.C. statements must be despatched to the Court without delay. This is one of the reason for acquitting A5 and A.11. The very same benefit cannot be extended to



the appellants. The delay in sending Section 161 Cr.P.C., statements cannot vitiate the prosecution case in *toto*. This is because in Ex.P.1 complaint itself, the appellants have been named. If the name of the accused has been introduced for the first time in the statement recorded under Section 161 Cr.P.C., and such statement has been sent to the Court belatedly, one can infer in favour of the accused. But where the names of the accused are mentioned in the FIR itself, the delay in sending Section 161 Cr.P.C. statements to the Court is not at all fatal.

18. The learned Senior counsel also impeached the recoveries of the material objects (M.O.4 to M.O.9 Aruvals). The case of the prosecution is that after the appellants were arrested, based on the disclosure statements, M.O.4 to M.O.9 were recovered. It is true that in respect of the recovery from A2, one of the recovery witnesses(P.W.2) turned hostile and the other recovery witness was not even examined by the prosecution. It is relevant to note that the case against the appellants rests primarily on the eyewitnesses' testimony. If recovery is the primary basis of the prosecution case, then its doubtful nature can undermine the entire prosecution case. Such is not the case here. We find the testimonies of P.W.1 and P.W.2 to be credible and convincing. Interference with the



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impugned judgment is not warranted. This criminal appeal is dismissed.

No costs.

(G.R.SWAMINATHAN, J.) & (R.POORNIMA, J.)
19th December 2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

PMU

To:

1. The Principal Sessions Judge,
Tuticorin.
2. The Inspector of Police,
Srivaikundam police station,
Tuticorin District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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