



Crl.A.(MD)No.181 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
12.03.2024	26.03.2024

CORAM:

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

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1.Suresh, S/o.Ramar
2.Chinnamuthu, S/o.Mookkan

... Appellants / A1 & A3

vs.

State Rep. by
The Inspector of Police,
Dindigul Town South Police Station,
Dindigul District.
(Crime No.483 / 2011)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records relating to the judgment passed in S.C.No.50 of 2014, dated 26.02.2020, on the file of the learned Principal District and Sessions Judge, Dindigul, and set aside the same and acquit the appellants/accused from the charges levelled against them.



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For Appellants

: Mr.N.Anantha Padmanabhan
Senior Counsel
for M/s.APN Law Associates

For Respondent

: Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

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

The appellants are the Accused 1 and 3 in S.C.No.50 of 2014 on the file of the Principal District and Sessions Court, Dindigul.

2. The second accused being a juvenile, a case against him was split up and been tried by the Juvenile Justice Board. On completion of investigation in Crime No.483 of 2011 by the Inspector of Police, Dindigul Town South Police Station, the following charges were framed by the Court below against the appellants/A1 and A3 and they were subjected to trial:-

1st Appellant / A1 : 341 and 302 of I.P.C.

2nd Appellant / A3 : 341 and 302 read with Section 34 of I.P.C.



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3. To prove the charges, the prosecution has examined 21 witnesses, marked 24 documents and 8 material objects.

4. The criminal law was set into motion by the brother of the deceased Chandru. He is the first informant as per the prosecution. His statement was recorded by the Police as Ex.P1. Based on the said statement, the F.I.R. [Ex.P14] was registered on 13.06.2011 at about 02.30 a.m. in Crime No.483 of 2011. The content of the first information runs as below:-

On 12.06.2011 at about 10.30 p.m., at the place where the music concert was proceeding, there was a quarrel between Chandru [the deceased] and the sons of one Ramar due to previous enmity. When P.W.1 along with his brother Chandru and his friends left the place, proceeding towards their house, the appellants restrained them and questioned Chandru why he was leaving in the mid of the programme and even if he try to go, they will not leave him alive. When Chandru tried to run from the place, the appellants 1 and 2 along with the split up accused caught hold of Chandru. The second appellant/A3 [Chinna Muthu], Manikandan [Juvenile] caught hold the hands of Chandru, the



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first appellant / A1 [Suresh] stabbed him with Knife on the right side chest and thereafter, they also ran away. Chandru was taken to the Hospital in an Auto. However, he died on 13.06.2011 at about 12.35 a.m. The F.I.R. was registered on 13.06.2011 at 01.15 a.m. and taken up for investigation.

5. The accused persons were arrested. In the presence of the Village Administrative Officer and their confession statements were recorded. Pursuant to the information disclosed in the confession statement, the weapon used for the commission of offence and blood stained clothes of A1 was recovered under a Seizure Mahazar.

6. The trial Court being satisfied that the prosecution has proved the guilt beyond reasonable doubt and sentenced the appellants as under:-

1st Appellant / A1	Section 302 I.P.C.:- Life imprisonment with fine of Rs.10,000/-, in default, to undergo six months simple imprisonment.
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2nd Appellant / A3	Section 341 I.P.C.:- One month simple imprisonment. Section 302 read with Section 34 I.P.C.:- Life imprisonment with fine of Rs.10,000/-, in default, to undergo six months simple imprisonment. [Both the sentences was ordered to run concurrently]
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7. The learned Senior Counsel appearing for the appellants submitted that the trial Court judgment suffers improper appreciation of evidence and erroneous acceptance of uncorroborated evidence. The learned Senior Counsel would further submit that P.W.1, who is the brother of the deceased, claims to be an eyewitness to the occurrence and he is the first informant as per the prosecution case. He turned hostile and had not supported the case of the prosecution. He has specifically stated that at the time of occurrence, he was at Mettupatti and he came to Kudaiparaipatti only on receiving information about the incident. At the request of the Police, he affixed his signature in the blank white paper. He has identified the signature in the statement as his signature. Except that, there is no incriminating material against the accused to believe the case of the prosecution that Chandru was stabbed to death by the first appellant / A1 while the second appellant / A3 and the juvenile caught hold of Chandru. The Accident Register



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[Ex.P24] discloses that the injured person was brought to the hospital with stab injury by unknown person at about 10.45 p.m. near Kudaiparaipatti. While so, the complaint, which is signed by P.W.1, discloses the name of the assailant, which makes the origin and genesis as projected by the prosecution doubtful.

8. The learned Senior Counsel further submitted that P.W.2 and P.W.3 are other two ocular witnesses relied by the prosecution, but their testimony is contradictory to each other and also suffers self-contradiction. The trial Court failed to take note of the fact that P.W.2 had deposed that he along with the deceased and others left the music concert to drink water after quarrel with the accused persons. When they returned back to watch the programme, they were stopped by the accused persons and at that time, the deceased was attacked. Whereas, P.W.3 had deposed in the cross examination that soon after the quarrel at the place of music concert, fearing danger, he left the place and stayed at his home. He had not deposed that he witnessed the occurrence. P.W.2 in the cross examination had stated that he saw the Police in the Hospital at 12.30 a.m. and they enquired him what happened so, he has given a statement. Thereafter, he was never enquired by the Police. P.W.3 had deposed that the Police came to the



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Hospital at 11.00 p.m. and enquired him. When he has signed in the statement, the doctor was present at that time. Therefore, the trial Court ought not to have relied upon the evidence of P.W.2 and P.W.3, which is not cogent and convincing, but also contradictory.

9. The learned Senior Counsel further submitted that artificial, cryptic and contradictory testimony without corroboration been relied by the trial Court for convicting the appellants. There is contradiction even regarding the time of death of the deceased. While P.W.2 had stated that Chandru died in the Hospital at 11.30 p.m. P.W.3 had stated that he died on 02.30 a.m. on the next day. In any event, the case of the prosecution regarding the origin shrouded with suspicion.

10. It is an admitted fact that in the site of music concert, there was a Police protection [Bandobust]. P.W.2 and P.W.3 invariably say that the Police came to the Hospital immediately and they were present in the Hospital and recorded their statements. While so, there is no explanation from the prosecution why the statement of the injured Chandru was not obtained and why the case was registered belatedly at 01.15 a.m. The said registration of the complaint itself



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gets falsified due the hostile evidence of P.W.1, who is the complainant. When the genesis of the prosecution case is highly doubtful, the accused have to be acquitted.

11. The learned Senior Counsel further submitted that while P.W.3 says it was 11 O' clock when the Police came, P.W.2 says it was 12.30 a.m. The Accident Register indicates that Chandru got admitted at 11.15 p.m. Further, the doctor, who has admitted Chandru in the Hospital and issued Accident Register was not examined. The Members of the Temple Committee, who arranged the music concert were not examined. The doctor [P.W.9], who conducted autopsy on the body of the deceased, was not sure about the nature of injury to correlate with the weapon. The alleged recovery based on the confession also does not stand to the test of prudence. The trial Court though found that only P.W.2 and P.W.3 had supported the prosecution case, their testimony is sufficient. It failed to scrutinise the testimony of P.W.2 and P.W.3 dispassionately to hold whether it is tainted with embellishment and falsehood.

12. The learned Senior Counsel also submitted that a single stab injury without any intention to cause death, in any event, will not attract the ingredients



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required to punish a person under Section 302 I.P.C. When the own brother of the deceased has turned hostile and did not support the case of the prosecution. There is no witness from the general public, who were witnessing the music concert, had been examined by the Police. The Police, who were in the protection duty, were not examined by the Investigating Officer though they were present at the time of music concert. The circumstantial evidence, which is relied by the trial Court with broken link has to be disbelieved.

13. To buttress his submissions, learned Senior Counsel relied on the following judgments:-

(i) **Prahlad vs. State of Madhya Pradesh and another** reported in **2022 STPL 10003 SC**

(ii) **Khema @ Khem Chandra etc. vs. State of Uttar Pradesh** reported in **2022 AIR (SC) 3765 : 2023 (10) SCC 451**

(iii) **Chotkau vs. State of Uttar Pradesh** reported in **AIR 2022 SC 4688**

14. Per contra, the learned Additional Public Prosecutor submitted that it is not a case based on circumstantial evidence. It is a case of direct eyewitnesses'



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evidence, which has been spoken by P.W.1, P.W.2 and P.W.3. No doubt, P.W.1 turned hostile and there are some contradictions in the evidence of P.W.2 and P.W.3. However, it does not cause any damage to the prosecution case to affect the root of the prosecution case.

15. 15 days prior to the incident, there was a murder in the Village. The victim Kennedy was a friend of the deceased Chandru. Fearing life threat to Chandru at the hands of the murderers of Kennedy, who are relatives of the accused persons, the parents of Chandru had asked him to leave the Village and to stay in his sister's house. Accordingly, he was staying in his sister's house for 15 days and came back to the Village to attend the Temple festival. When he was watching the music concert along with his brother and friends, the accused persons have picked quarrel with Chandru. When Chandru and his brother along with their friends tried to leave the place, they were intercepted, forcibly restrained and prevented from moving by holding him. A1 took out the Knife and stabbed Chandru. This occurrence been spoken by P.W.2 and P.W.3, who had seen the crime. Based on the confession statement, dagger, shirts of the accused persons with blood stains were recovered. The shirt of A1 found presence of

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human blood though the group was inconclusive. The accused is bound to explain how his shirt found concealed in a bush near the cremation shed. The recovery been proved through P.W.10.

16. Therefore, the learned Additional Public Prosecutor submitted that having proved the case through direct evidence and other circumstances, the judgment of the trial Court is to be upheld.

17. Heard the learned counsel on either side and perused the records.

18. In this case, P.W.1 and P.W.3, who are the eyewitnesses to the occurrence, have spoken in support of the prosecution case. The occurrence took place during the month of June, 2011. The first incident was 15 days prior to this incident, in which, one Kennedy was done to death. The said Kennedy is the friend of Chandru, who is the deceased victim in this case. P.W.7 is the sister of the deceased. She had spoken about the first incident and their apprehension of life threat to her brother as a consequence of Kennedy murder. She had further deposed that in view of the earlier incident, her brother came to her house at



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Periyakulam and he was staying with her till 11.06.2011. The mother of the deceased boy was examined as P.W.5. She has also spoken about the earlier incident and she fearing danger to his son's life, asked her son to go and stay with her daughter at Periyakulam. Thus, the prosecution has proved the motive and the threat to the life of Chandru at the hands of the accused persons.

19. Regarding the time when P.W.1, P.W.2 and P.W.3 went to the music concert, undoubtedly, there are contradictions in their evidence. While P.W.1 totally deny his presence in the Village on that day, however, he is the complainant, who has set the law into motion and his complaint is contrary to the testimony before the Court. Whereas, the other eyewitness P.W.2 and P.W.3 had spoken about the incident and their presence during the occurrence. By elucidating certain answers in the cross examination disjointly, certain doubts been created whether P.W.3 was really present when A1 stabbed Chandru while other two accused persons caught hold of him.

20. P.W.3 in the chief examination, has clearly said that he saw A1 stabbed Chandru and A2 and A3 caught hold of Chandru to prevent him from running. A



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penetrating deep injury over the right side of chest close to sternum, which has injured the right lung in the middle lobe of size 3 x 1 x 3 cm. found. The doctor has opined that the deceased died of shock and haemorrhage due to penetrating injury through chest. The trial Court had believed the evidence of P.W.2, though P.W.1 being the brother of the deceased, disowned the complaint and his presence at the scene of occurrence. There is no impediment to hold a person guilty even if sole witness could depose cogently, which inspire the confidence of the Court that he is a reliable witness.

21. It is taken judicial note that the evidence of P.W.2 and P.W.3 were recorded five years after the occurrence. They were not cross examined on the same day of their chief examination, when they were examined in chief, *i.e.*, on 08.03.2016. P.W.2 was recalled and cross examined on 23.08.2016, *i.e.*, 5 ½ months after the chief examination. P.W.3 was recalled and cross examined on 28.08.2017, *i.e.*, about 1 ½ years after the chief examination. Therefore, the minor contradictions in their evidence does not take away their credibility of being present at the time of occurrence.



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22. The single stab injury had caused the death of Chandru, since it has landed in the vital part of the body and his death was within two hours of the attack in spite of he being shifted to the Hospital immediately. The trial Court while considering the facts, has observed that the occurrence had happened when the deceased tried to leave the place after the quarrel. Chandru been wrongfully restrained by the accused persons and stabbed him. They have shared the common intention to kill him. They have picked quarrel with the deceased by teasing him as a coward, who had ran away from them. They have also declared that they will not leave him even if he tried to go in the mid of the music concert. These factors leads to the irresistible conclusion that the appellants had stabbed the deceased Chandru with intention to cause death and also had sufficient knowledge that the stab in the chest piercing lungs, is sufficient to cause death.

23. The judgment of the Hon'ble Supreme Court rendered in **Khema @ Khem Chandra's case** (cited supra), relied on by the learned Senior Counsel for the appellants, deals about the previous enmity, which may also leads to the possibility of false implication. This judgment deals about appreciation of interested witnesses. In the case on hand, what we find is, P.W.1, the brother of



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the deceased, is the most interested person as far as the deceased is concerned. But, he had turned hostile and the reason not so difficult to understand. P.W.2 and P.W.3 are the friends of the deceased. They had fearlessly come before the Court to depose about what happened to their friend. They were subjected to chief examination after five years of the occurrence and the cross examination even still further. Therefore, the judgment cited on facts may not be any helpful to the appellants.

24. The judgment of the Hon'ble Supreme Court rendered in **Chotkau's case** [cited supra] relied on by the learned Senior Counsel for the appellants deals about circumstantial evidence. Whereas, in the case on hand, there are two direct eyewitnesses. The trial Court as well as this Court rely upon their evidence despite minor discrepancies occurred, due to examining them after more than five years. Hence, this judgment also cannot be applied in benefit of the appellants.

25. In **Prahlad's case** [cited supra] relied on by the learned Senior Counsel for appellants, the Hon'ble Supreme Court interfered with the High Court's judgment of conviction, since the prosecution was not clear about the cause of



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death and it has put forth three different versions. Since the true genesis of the incident was not put forth by the prosecution, the Hon'ble Supreme Court had interfered with the judgment of conviction. Contrary to the facts in **Prahlad's case** [cited supra], in the case on hand, there is every reason to presume that the Police had the information about the incident much before the registration of the F.I.R. on 13.06.2011 at 01.15 a.m., since the incident had taken place during the Temple festival in the presence of large public gathering and the Police Bandobust. It is also necessary to take note of the fact that the injured was taken to the Hospital at 11.15 p.m. as per the Accident Register, marked as Ex.P24. The gap between the registration of the F.I.R. and the incident is hardly less than three hours. The possibility of manipulating or tinkering the origin or genesis of the offence is totally nil. When in the absence of any possibility of tampering the basic facts, the judgment rendered by the Hon'ble Supreme Court in the said case will not apply.

26. Therefore, this Court is of the firm view that the finding of the trial Court that the prosecution has proved the case beyond all reasonable doubts, is perfectly in order. Thus, this Criminal Appeal is liable to be dismissed.



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27. Accordingly, this Criminal Appeal is dismissed. The conviction and sentence imposed on the appellants / A1 and A3 by the learned Principal District and Sessions Judge, Dindigul, in S.C.No.50 of 2014, dated 26.02.2020, stands confirmed.

28. In view of dismissal of this appeal, the bail bond executed by the appellants / A1 and A3 shall stand cancelled. The appellants / A1 and A3 shall surrender before the trial Court within 15 days from today, to undergo the remaining period of sentence. Failing which, the respondent Police shall secure them and commit them to prison to undergo the remaining period of sentence.

Index : Yes / No
NCC : Yes / No
smn2

[G.J., J.] & [C.K., J.]
26.03.2024

To

- 1.The Principal District and Sessions Judge,
Dindigul.
- 2.The Inspector of Police,
Dindigul Town South Police Station,
Dindigul District.

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- 3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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PRE-DELIVERY JUDGMENT MADE IN
CrI.A.(MD)No.181 of 2020

26.03.2024