



Crl.A.(MD)No.247 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
27.02.2024	13.03.2024

CORAM:

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

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1.Saravanan, S/o.Mahamuni
2.Satheesh, S/o.Mahamuni
3.Sankarmani, S/o.Mahamuni

... Appellants/ A1, A4 and A5

vs.

State Rep. by
The Inspector of Police,
Lalpettai Police Station,
Karur District.
(Crime No.359 / 2017)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374 of Cr.P.C., to call for the records and set aside the sentence and conviction imposed in S.C.No.35 of 2018, on the file of the learned Additional Sessions Judge / Fast Track Mahila Court, Karur, vide judgment dated 02.07.2020.



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For Appellants : Mr.S.M.A.Jinnah

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal is preferred by A1, A4 and A5 against the conviction and sentence imposed in S.C.No.35 of 2018, dated 02.07.2020, on the file of the learned Additional Sessions Judge / Fast Track Mahila Court, Karur.

2. On 21.10.2017 at about 23.00 hours, for offences under Sections 294(b), 323, 324 and 506 (ii) I.P.C. against Saravanan (A1), Minnalkodi (A2), Vijayalakshmi (A3), Sathish (A4) and Sankarmani (A5), the First Information Report was registered in Crime No.359 of 2017 by the Sub-Inspector of Police attached to Lalpettai Police Station, Karur District, on receipt of a complaint from one Sumathi, W/o.Thirunavukarasu.



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3. Gist of the complaint:-

(i) Accused No.1 (Saravanan), Accused No.4 (Sathish) and Accused No.5 (Sankarmani) are brothers. Accused No.2 (Minnalkodi) is the wife of first accused. Accused No.3 (Vijayalakshmi) is a relative of first accused.

(ii) For a long time, there is misunderstanding between her family and the family of Saravanan, who is residing in the next house. Often the family members of Saravanan used to talk ill about P.W.1 family. Likewise, on 19.10.2017, morning at 08.30 a.m. when she was engaged in cooking inside her house, Saravanan came in front of her house and started abusing her in filthy language. When she questioned him why he is abusing her, Saravanan and her wife Minnalkodi, his maternal aunt Vijaya, brothers Satish and Sankarmani joined together and attacked her. Saravanan kicked her on her abdomen saying all the problems are only because of this lady of loose moral. Minnalkodi hit with her hands and bit the eyebrow. Sathish and Sankarmani hit her with wooden stick when Vijaya caught hold her hands. To rescue Sumathi, her brother-in-law Sakthivel came rushing. He was attacked by Sathish and Sankarmani with a stick and caused injury on his chest.



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(iii) P.W.1 and P.W.2 went to Kuzhithalai Government Hospital. By that time, on hearing the incident, Perumal the brother of Sumathi came to the spot and enquired Minnalkodi (A2), questioned why she quarrelled with P.W.1. At that time, Saravanan (A1) came in a two wheeler and dashed Perumal. Saravanan rode the two wheeler repeatedly over the stomach of Perumal. Satish and Saravanan kicked Perumal on his abdomen repeatedly. Perumal was taken to Government Hospital, Kuzhithalai. Later, he was shifted to Karur Government Hospital and then referred to Trichy Government Hospital for further treatment.

4. Outcome of the Investigation and the trial:-

The accused were arrested on 21.10.2017 and remanded to judicial custody. Meanwhile, the injured Perumal was referred to Stanley Medical College Hospital, Chennai. He was admitted as inpatient at Stanley Medical College Hospital on 28.10.2017. He lost his breath on 04.11.2017. Hence, the charge alteration report was sent to the learned Judicial Magistrate by adding Sections 147, 148, 294(b), 323, 324, 506(ii) and 302 I.P.C.



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5. On completion of the investigation, final report was filed and the Sessions Court, Karur, took the case on committal in S.C.No.35 of 2018. Charges were framed as below:-

A1	Saravanan	u/s. 294(b), 147, 323, 302, 149 r/w 294(b), 149 r/w. 323 and 149 r/w. 325 IPC.
A2	Minnalkodi	u/s. 147, 294(b), 323, 149 r/w. 323, 149 r/w. 325, 149 r/w 294(b) and 149 r/w 302 IPC.
A3	Vijayalakshmi	u/s. 147, 294(b), 323, 149 r/w 323, 149 r/w 325, 149 r/w. 294(b) and 149 r/w. 302 IPC.
A4	Sathish	u/s. 147, 294(b), 323, 325, 109 r/w. 302, 149 r/w. 323 and 149 r/w. 302 IPC.
A5	Sankarmani	u/s. 147, 294(b), 323, 325, 302, and 149 r/w 323 IPC.

6. To prove the above charges, prosecution examined 21 witnesses and marked 23 documents along with one Material Object.

7. The trial Court acquitted A2 and A3 from all the charges. Convicted A1 and A5 under Section 302 I.P.C. Sentenced them to undergo life imprisonment



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and ordered to pay fine of Rs.1,000/-, in default, to undergo three months simple imprisonment. Convicted A4 under Section 302 r/w 109 I.P.C. Sentenced A4 to undergo life imprisonment and ordered to pay fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.

8. Appeal:-

The appeal by A1, A4 and A5 is directed against the conviction and sentence. Pending appeal, A1 Saravanan died on 14.04.2023. On production of his death certificate, abatement of the appeal recorded, vide order dated 27.02.2024.

9. The gist of the prosecution case as unfurled through the witnesses and the documents:-

(i) Ex.P16 is the F.I.R. registered by P.W.20 on the complaint given by Sumathi [P.W.1]. He prepared Rough Sketch, Observation Mahazar and recorded the statement of witnesses. He arrested the suspected accused and remanded them to judicial custody. Thereafter, P.W.21 took up investigation and on completion of investigation, she has filed final report, which was taken cognizance by the Sessions Court on committal.



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(ii) There was dispute between the de-facto complainant Sumathi (P.W.1) family and the family members of the first accused Saravanan and the third accused Vijayalakshmi. On 19.10.2017 at about 10.00 a.m., A1 came to the house of P.W.1 and picked quarrel by abusing P.W.1 in filthy words. When P.W.1 questioned, A1 and the family members of A1 got Infuriated. A3 caught hold of P.W.1 hands and A2, who is the wife of A1, bite the eyebrow of P.W.1. A1 kicked P.W.1 on her abdomen. A4 and A5 hit her with stick. At that time, Sakthivel (P.W.3) the brother-in-law of P.W.1, on hearing the scream of P.W.1 came to the spot and questioned the assailants.

(iii) Immediately, A1 caught hold the hands of P.W.3 from behind. A2 punched P.W.3 on his chest. A4 and A5 hit P.W.3 with sticks. The injured P.W.1 and P.W.3 were taken to the Government Hospital at Kuzhithalai. At about 11.00 a.m., Dr.Vijay Surendar (P.W.17) the duty doctor treated P.W.1 for the lacerated injury on the right eyebrow and recorded it in the Accident Register [Ex.P10]. He treated P.W.3 for the lacerated injury on the right lip and recorded it in the Accident Register [Ex.P11]. In the opinion of P.W.17, he recorded the injury found on P.W.1 and P.W.3 are simple in nature.



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(iv) Meanwhile, at about 10.15 a.m., Perumal the brother of P.W.1, on hearing his sister P.W.1 was attacked, came to the scene of occurrence and questioned the assailants. While so, A1 rode his two wheeler TVS XL Super and dashed Perumal from behind and pushed him down. Then, all the accused together attacked Perumal. They stamped him with their legs. Then, A1 rode his two wheeler over the abdomen of Perumal repeatedly. On seeing Perumal lying motionless, the assailants assuming he is dead, fled from the scene.

(v) P.W.4, P.W.5 and P.W.11 were witnesses to the occurrence. P.W.6 Murugan and one Ayappan (not examined) took the injured Perumal in a two wheeler to the Government Hospital, Kuzhithalai. After providing medical assistance for the injuries, P.W.17 recorded the Accident Register (Ex.P12) for Perumal. All the three injured persons were referred to Government Hospital, Karur, for further treatment.

(vi) The Accident Registers Ex.P3 to Ex.P5 issued by P.W.12 Dr.Deepa, Assistant Surgeon in Government Hospital, Karur and her ocular evidence reveals that on 19.10.2017 at about 03.12 p.m. Perumal was treated in the Karur Government Hospital and was referred to the Government Hospital, Trichy. P.W.3 Sakthivel was admitted at about 03.30 p.m. and was treated as



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inpatient from 19.10.2017 to 25.10.2017 for the fracture over his right clavicle bone, which is an injury grievous in nature. P.W.1 was admitted at about 04.00 p.m. and was treated as inpatient from 19.10.2017 to 24.10.2017. The injuries were simple in nature.

(vii) Perumal, who was taken to K.A.P. Viswanatham Government Medical College Hospital, Trichy, was admitted as inpatient for further treatment by P.W.18 Dr.Akila. She took CT scan of the patient. The Accident Register issued by her is Ex.P.13. Dr.Manimaran [P.W.19] examined Perumal and from the C.T. scan report, he found that there was abdominal paracentesis bleeding. Hence, surgery was conducted on 19.10.2017 at about 11.30 p.m. Third day of the surgery, the patient reported pain and swelling in the stomach. The contra C.T. Scan and M.R.I. scan report revealed injuries in pancreas and damages to veins of pancreas. Hence, for further treatment, the patient Perumal was referred to Stanley Medical College Hospital, Chennai. The case sheet and operation notes of P.W.19 maintained in the Hospital at Trichy is marked as Ex.P.14 and Ex.P.15 respectively.

(viii) Perumal, who was admitted in the Stanley Medical College Hospital, Chennai, on 28.10.2017, died in the hospital on 04.11.2017 at 03.15



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p.m. The below external and internal injuries were found on the body of Perumal as per the postmortem report Ex.P7 issued by P.W.13 Dr.Priyadharshini :-

"1. Irregular healed grazed abrasions:-

- a) 13 x 5 cm on the front of left thigh;*
- b) 6 x 4 cm on the left hip region;*
- c) 2.5 x 2 cm on the left knee;*
- d) 4 x 2 cm on the right knee;*
- e) 2 x 1 cm on the front of left side of the chest;*
- f) 4 x 2 cm on the outer part of left eye;*
- g) 3 x 1 cm on the right elbow;*
- h) 2 x 1 cm on the lower part of left forearm;*
- i) 3 x 2 cm on the back of left hand;*
- j) 3 x 1.5 cm on the back of upper part of left forearm;*
- k) 2 x 1.5 cm on the right of the abdomen;*
- l) 2 x 0.5 cm on the right side of the upper abdomen.*

2. Sutured incised wound 9 cm with 9 intact sutures on the right side of the abdomen. On removal of sutures: Wound margins were regular and adherent - Therapeutic - Drainage wound.

3. 25 cm stapled laparotomy wound on the middle of the abdomen; on removal of staples: Wound margins were regular and adherent; on dissection: Abdominal cavity contained 400 ml serous fluid; intestinal coils were edematous and adherent to each other; pancreas was enlarged and edematous with diffuse brownish black discoloration noted; dark



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reddish contusions 4 x 3 x 0.5 cm on the right side of the mesentery and 3 x 2 x 1 cm on the caecal regions; ileostomy wound to the lower part of right side of the abdomen.

On further dissection:-

Heart: Normal in size; C/S: Chambers contained fluid and clotted blood; valves and great vessels: Normal.

Lungs: Both lungs adherent to chest wall; both thoracic cavities contained serous fluid; C/s: copious fluid oozed out from the congested cut surface of both the lungs.

Hyoid bone: Intact; Larynx and trachea: Empty.

Stomach: contained 10 ml brownish fluid with no peculiar odour; mucosa: congested.

Liver, Spleen and Kidneys: Normal in size; C/S: congested.

Bladder: Empty; Pelvis and Spinal column: Intact.

Scalp, vault and dura: Intact; Brain: Edematous; C/s: Normal"

(ix) The postmortem doctor opined that Perumal would appear to have died due to effects of blunt injury to the abdomen.

10. Submission made by the learned counsel for the Appellants:-

(a) The complaint of P.W.1 leading to registration of F.I.R. bristles with inherent falsehood and exaggerations. The complaint given belatedly two



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days after occurrence and the faulty investigation has led to miscarriage of justice.

(b) On the date of incident, the family members of P.W.1 were the real aggressors. Based on the complaint given by Sankarmani (A5), a case was registered against Sumathi (P.W.1), Thirunavukarasu (P.W.2) and Sakthivel (P.W.3). The case and case-in-counter not tried together simultaneously, which is contrary to the law and procedure. P.W.1 and P.W.3 sustained the alleged simple injuries when they tried to attack the accused persons. Even according to the prosecution witnesses, after P.W.1 and P.W.3 sustained injury in the melee, they both were taken to hospital. Perumal, the younger brother of P.W.1, who heard about the incident, came to the place of occurrence after ten minutes and questioned A1, at that time, Perumal was attacked and run over by the two wheeler. Perumal, who was first taken to Kuzhithalai Government Hospital, then to Karur Government Hospital, thereafter, to Trichy Government Hospital and at last to Stanley Government Medical College Hospital, Chennai. Perumal were he died on 04.11.2017 at 15.15 hours. There is no proximity to the incident dated 19.10.2017 and the death of Perumal on 04.11.2017. However, as many as 18 charges were framed by the trial Court including charge under Section 302 I.P.C.



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and 149 I.P.C. clubbing the first incident and the second incident, though they both are two distinct and different incidents and not in continuation of the same transaction.

(c) The learned counsel for the appellants referring the documents and evidence submitted that, the substance of the charges against the accused persons is that, on 19.10.2017 at about 10.00 a.m., the first accused Saravanan (since deceased), who is residing adjacent to P.W.1's house, due to previous enmity in connection with the house site, abused P.W.1 and cursed her. When P.W.1 came out of her house, A1 to A5 with an intention to create riot, assembled unlawfully and attacked P.W.1.

(d) The specific overt act against the accused are:-

- (i) A1 kicked P.W.1 on her abdomen.
- (ii) A2 hit P.W.1 by her hands repeatedly and bit the eye brow of P.W.1.
- (iii) A3 caught hold of the hands of P.W.1 to facilitate A4 and A5 to hit P.W.1.
- (iv) A4 and A5 hit P.W.1 with a stick on her chest.



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(e) The Accident Report Ex.P.10 issued by the doctor at Kuzhithalai Government Hospital states that the patient was brought by one Pappathi who was examined as P.W.11. The Accident Register copy further states that P.W.1 alleged to have assaulted by three known persons with stick and hand. The doctor, who examined P.W.1 had noticed a single lacerated wound 4 x 3 c.m. in the lateral aspect of right eye brow and had certified that the said injury falls under the category of simple injury.

(f) The Accident Register Ex.P.11 issued to Sakthivel (P.W.3) at Kuzhithalai Hospital states that the alleged history of assault by four known persons at Sumathi's (P.W.1) house. The Accident Register copy of P.W.3 issued at Government Hospital, Karur, after discharge, indicates that he sustained fracture injury of clavicle bone and it is grievous in nature. However, the injured witness P.W.3 had not deposed about the injury on clavicle or who caused this injury. His general and vague allegation that he was attacked by 4th and 5th accused with stick is not a proof for the fact that the fractured would was caused by 4th or 5th accused.



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(g) Except P.W.4, P.W.5 and P.W.11, all other witnesses to the prosecution regarding the alleged attack on Perumal are hearsay witnesses. P.W.4 had deposed that while proceeding to the hospital with his wife, near the house of P.W.1, he suddenly felt giddiness, so he was resting under a neem tree. At that time, he saw P.W.1 and P.W.3 were attacked by the accused persons. Ten minutes later, Perumal came and questioned Minnalkodi (A2) why they attacked P.W.1 and P.W.3. At that time, A1 came in the TVS XL Super two wheeler and dashed Perumal from behind. When Perumal lost his balance and fell down. A2 to A5 stamped the stomach of Perumal. This witness (P.W.4) in his previous statement to the Police recorded under Section 161 Cr.P.C. had not stated anything about the reason for his chance presence at the scene of occurrence. The material embellishment in the testimony of Vasu (P.W.4) before the trial Court though been elucidated during the cross examination of P.W.4 and P.W.20, who recorded the previous statement, the trial Court failed to consider the vital contradictions.

(h) Likewise, Balakumar (P.W.5) is not a permanent resident of the Village. Even according to his deposition, he was employed in a hotel at Chennai. For Deepavali festival, he came to his Village. He say, A1 came in T.V.S. two wheeler and dashed Perumal from behind and pushed him down. Thereafter, A2



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to A5 stamped Perumal on his stomach. Then, A1 with A2 on the pillion, rode over Perumal repeatedly. This witness had not said anything to P.W.20 the Investigating Officer, who recorded the previous statement about the reason for his presence at the scene of crime. He had not said that A2 was on the pillion, when A1 repeatedly ran over Perumal. This embellishment was with intent to fix the accused.

(i) P.W.11, the wife of P.W.3, had categorically deposed that she took her husband soon after he sustained injury and she was not an eyewitness to the second occurrence. What she had deposed about the second incident is only an hearsay, like many other prosecution witnesses.

(j) While the trial Court has rightly disbelieved the evidence of P.W.4 about the allegation of A1 to A5 causing simple injuries to P.W.1 and P.W.3 for the reason that he could not have witnessed the occurrence from 20 feet distance, when a large crowd gathered in front of P.W.1's house. The same logic and reason ought to have applied for the second incident, wherein Perumal alleged to have attacked.

(k) The trial Court has properly appreciated the evidence and acquitted all the accused from charges under Sections 147, 294 (b), 323, 325 and



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149 read with Section 325 I.P.C. However, failed to apply the same reasoning and logic for offence under Section 302 I.P.C. against A1 and A5 and for offence under Section 302 read with Section 149 I.P.C. against A4.

11. The learned counsel for the appellants summed up his argument as below:-

(a) The explanation for the delay in registering the F.I.R. is unsound.

(b) The trial Court's finding that A1 and A5 along with A4 killed Perumal in furtherance of common object, is against its own finding and observation while testing the veracity of the prosecution witnesses for rest of the charges. Particularly, P.W.1, P.W.3 (both injured witnesses), P.W.4 and P.W.5 (chance witnesses) and the medical records like, Accident Register copies and the testimony of the doctors, who treated them, does not inspire that the prosecution version must be possible.

(c) Perumal was under medical care from 19.10.2017 to 04.11.2017. None of the doctors, who treated him, had reported that he was run over by a two wheeler. There were no external injuries apparent to hold that he was run over by a two wheeler. The confession statement of A1 and seizure of the two wheeler



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based on the alleged confession not proved. P.W.6, the witness for confession and seizure of TVS XL Super two wheeler [M.O.1], had turned hostile. On the body of Perumal, no tyre mark found to prove that he was run over by a two wheeler repeatedly to cause the internal injuries found in the postmortem report.

(d) The quality of the evidence for prosecution fall under the category of wholly unreliable. Particularly, P.W.4 and P.W.5 are not chance witnesses, but witnesses planted by prosecution to lend support to the case registered two days after the occurrence.

12. Per contra, the learned Additional Public Prosecutor submitted that,

(a) the trial Court had properly weighed the evidence and had relied only the portion of the evidence, which are fully corroborated by oral and documentary evidence. The motive for the occurrence been established from the admission of the accused persons, who were examined as prosecution witnesses in the counter case. Since the patients were shifted from one hospital to another hospital in a short time interval, the intimation reached the Police Station from the hospital belatedly. There is no deliberate delay in registering the F.I.R. or taking



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up the investigation. No prejudice caused to the accused due to the delay in registering the F.I.R.

(b) The victim Perumal had spoken about the cause of the injuries to P.W.1 and P.W.3, who were admitted in the Karur Hospital together for treatment. This statement of the victim regarding cause of injuries and his death later due to that injuries cannot be brushed aside as hearsay. It is also incorrect to plead that there are no external injuries to hold that the victim was run over by two wheeler. The postmortem report reveals irregular healed graced abrasions '(a) to (l)' found all over the body including the abdomen region of the victim. The grace abrasions is the tell tale evidence to prove that the victim was repeatedly run over by a motor vehicle.

13. Before advertng to appreciation of evidence and the merits of the trial Court's finding, this Court bound to address the plea regarding mis-joinder of charges.

14. The trial Court has taken all pains to frame totally 18 charges. The first incident alleged to have taken place on 19.10.2017 at about 10.00 a.m., resulting



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in causing hurt to P.W.1 and P.W.3 and also causing injury to the accused persons leading to registration of two F.I.Rs., one on the complaint of P.W.1 and another on the complaint given by the fifth accused. In the complaint of A5, P.W.1, P.W.2 and P.W.3 are accused. Though it is a case and case-in-counter, the counter case was tried simultaneously in S.C.No.59 of 2018. The trial Court has thought fit to not to try them together on the ground that the accused and the investigating agencies are different. That apart, the trial Court had clubbed the second incident with the first incident holding both the incidents form part of the same transaction. Though there was ten minutes gap between the first and second incidents, the complaint as well as the evidence would show that they were part of the same transaction or one series of fact to connect each other.

15. At this juncture, it is relevant to refer Section 220(1) of the Code of Criminal Procedure, 1973, which reads as under:-

"220. Trial for more than one offence.-

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."



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16. In the instant case, since the facts *prima facie* give an impression that they form part of the same transaction, the decision of the trial Court clubbing both the incidents together as part of same transaction is procedurally correct. Even if framing charges for two distinct incidents, which does not form part of same transaction, is an error. Such an error will not vitiate the trial.

17. Reverting to other grounds of appeal, first the reliability of the evidence of P.W.4 and P.W.5, who claim to be chance witnesses as per prosecution, need to be tested in the light of the observation made by the Hon'ble Supreme Court in the judgment rendered in **Rajesh Yadav and another vs. State of Uttar Pradesh** reported in **(2022) 12 SCC 200**. It is settled by catena of judgments that merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. The witness has to explain as to how he / she happened to be at the scene of occurrence.

18. In **State of A.P. vs. K.Srinivasulu Reddy** reported in **(2003) 12 SCC 660**, the Hon'ble Supreme Court observed, the expression "chance witness" is borrowed from countries where every man's home is considered his castle and



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everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence."

19. In Sachchey Lal Tiwari vs. State of U.P. reported in **(2004) 11 SCC 410**, the Hon'ble Supreme Court while considering the evidentiary value of the chance witness in a case of murder, which had taken place in a street and a passer-by had deposed that he had witnessed the incident, observed that "If the offence is committed in a street only a passer-by will be the witness, his evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there."

20. In Rajesh Yadav's case (cited supra) following the judgment of **Thangaiya vs. State of Tamil Nadu** reported in **(2005) 9 SCC 650**, the Hon'ble Supreme Court has observed that the conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the Village about the incident.



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21. For holding A1 and A5 guilty of offence punishable under Section 302 I.P.C. and also for holding A4 guilty of offence punishable under Section 302 read with Section 149 I.P.C., the trial Court has relied on the evidence of P.W.4 and P.W.5 in addition to the medical records maintained by the hospital in which the victim took treatment. For rest of the accused and the rest of the charges, the trial Court has held the prosecution case is not believable and acquitted them.

22. The point for consideration is, whether the ocular testimony of P.W.4 and P.W.5 coupled with the medical records proves beyond doubt that A1 and A5 had committed the murder of Perumal and whether A4 shared the common object with A1 and A5 to cause murder of Perumal?

23. When examining the testimony of P.W.4, who claims himself to be a chance witness and was sitting under the neem tree and watching the incident, it is to be noted that the incident took place for nearly one hour and more than 10 to 20 persons were witnessing the incident. It is also his admission in the cross examination that the neem tree under which he was sitting was 20 to 40 feet away from P.W.1's residence. The trial Court while disbelieving the testimony of P.W.4



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in respect of first incident, in which, P.W.1 and P.W.3 got injured, had believed his evidence in the case of the second incident. When he was sitting at least 20 feet away from the place of incident and 10 to 20 persons were close to the place of the incident, how P.W.4 could have seen the incident remains unexplained. That apart, his very presence in that place should also be doubted, because according to him, he was proceeding to hospital along with his wife. Since he felt giddiness, he took rest under the neem tree. He also, in the cross examination, had stated that the incident took place for around one hour. The person, who was proceeding to the hospital, fell ill and resting under the neem tree, had spoken about the gruesome incident, which spared for one hour. He also states that nearly 10 to 20 persons witnessed the incident, but the prosecution has not examined those witnesses except P.W.5 and the testimony of P.W.5 is also only in respect of second incident and not the first incident.

24. P.W.5 is a non-resident of Thimmachipuram. He was gainfully employed in a hotel at Chennai and he was in the Village to celebrate the Deepavali festival and the incident took place the day next to Deepavali. He was examined by the Police two days after registering the F.I.R.



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25. It is to be noted that the F.I.R. in this case was recorded only after three days of the occurrence, *i.e.*, on 21.10.2017. P.W.5's statement was recorded subsequent to that date. In the cross examination, he admits that normally when he comes to the Village, he used to stay only in his wife's house at Bharathi Nagar. He saw the incident while he was proceeding to the water canal to take bath. He admits that P.W.3 Sakthivel is his relative, but denies to the suggestion that he is an interested witness. The evidence of P.W.4 and the evidence of P.W.5 read in juxtaposition highlights the contradiction and falsehood in the case of the prosecution. They do not corroborate each other as observed by the trial Court, but contradicts to each other on material fact.

26. Out of the remaining witnesses, P.W.6, who supposed to be one of the eyewitnesses, has turned hostile. P.W.10, who is the witness for confession statement and recovery, has turned hostile. P.W.11 is the wife of P.W.3. She had spoken about the first incident, in which, P.W.1 and P.W.3 sustained injury. However, the trial Court has disbelieved her version for want of corroboration. There is no appeal against the acquittal of the accused persons for the charges



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related to the first incident.

27. When analysing Ex.P5 Accident Register issued for Perumal by the Government Medical College Hospital, Karur, it is seen that Perumal was brought by his sister Sumathi (P.W.1) on 19.10.2017 at 03.12 p.m. Before taking to Karur Government Hospital, Perumal was first taken to Kuzhithalai Government Hospital, wherein the doctor, who examined him, has issued Accident Register to Perumal, which was marked as Ex.P12. He was admitted in the general ward for alleged history of assault by four known persons with hands and wooden stick on 19.10.2017 at 10.00 a.m. at his sister's [P.W.1] residence. The patient was found conscious and oriented.

28. Dr.Vijay Surendar [P.W.17], Assistant Surgeon, attached to Kuzhithalai Government Hospital, was the first doctor, who had examined Perumal. He has found a lacerated cut injury 1 x 2 c.m. in the mentis region and abrasion over the right leg. Thereafter, Dr.Deepa (P.W.12), Assistant Surgeon attached to Karur Government Hospital, has treated Perumal, who got admitted in the hospital at 03.12 p.m. On examining him, she had referred the patient to Trichy, Government



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Hospital and the Accident Register issued for him is marked as Ex.P5. Dr.Akila [P.W.18], who was working as Assistant Professor in Anaesthesia Department in K.A.P.Viswanatham Government Medical College Hospital, Trichy, deposed that while she was on duty, Perumal was brought to the hospital for taking CT Scan and for further treatment. When Perumal was admitted in the hospital, he was conscious and oriented. She admitted him in the hospital for further treatment. Thereafter, Dr.Manimaran [P.W.19], Assistant Professor in K.A.P.Viswanatham Government Medical College Hospital, Trichy, examined Perumal and noticed blunt injury in the abdomen and hemoperitoneum with extensive retroperitoneal hematoma and pancreatic haemorrhage injury. Perumal was admitted as inpatient on 19.10.2017. After treatment for nearly 9 days, he was discharged on 27.10.2017 at 11.15 p.m. and referred to Stanely Medical College Hospital, Chennai. During his stay in K.A.P.Viswanatham Government Medical College Hospital, Trichy, as inpatient, Dr.Manimaran [P.W.19] has conducted surgery, since he was complaining of severe abdomen pain.

29. P.W.19 has deposed that on 19.10.2017 when Perumal got admitted in the hospital on reference from the Karur Government Hospital, he examined him



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and found a sutured wound of 1 c.m. near the jaw and abrasions over the left and right knee and elbow. The patient has complained about the severe abdomen pain. On examination of abdomen edema, he arranged for X-ray, ultra sound scan and CT scan for the patient and on examination of the reports, he found that a moderated haemorrhage in the abdomen and haemorrhage near pancreas. Therefore, surgery was conducted on 19.10.2017 at 11.30 p.m. The entire blood in the abdomen and other parts were drained. He noticed internal injuries near intestine. After surgery, Perumal was under the observation. After three days, he again complained about abdomen pain. So, contra CT Scan and MRI Scan were taken. He observed that the patient had suffered haemorrhage in the head portion of the pancreas. Hence, he was referred to Stanely Medical College Hospital, Chennai, for further treatment. Thereafter, Perumal was admitted in the Stanely Hospital on 27.10.2017 and died on 04.11.2017. The case sheet and operating notes of Perumal were marked as Exs.P14 and P15 with the objection of the defence.

30. From the medical record, it is clear that till the CT Scan taken at K.A.P.Viswanatham Government Medical College Hospital, Trichy, the physical examination of Perumal did not disclose any severe injury. The internal injuries,



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which were found during his treatment at K.A.P.Viswanatham Government Medical College Hospital, Trichy, was after examining his CT scan report and Contra CT Scan report.

31. According to the prosecution witnesses P.W.4 and P.W.5, Perumal was run over by the two wheeler repeatedly. If it is so, there should have been enough evidence in the form of injury on the abdomen and near the abdomen region. None of the doctors, who have examined Perumal, had noticed any injury on the abdomen region. The first Accident Register recorded at Kuzhithalai Government Hospital, indicates that Perumal was admitted in the hospital with the alleged history of attack by four persons with hand and wooden stick. There is no whisper about he was ran over by a two wheeler.

32. On examining the postmortem report, marked as Ex.P7, it is seen that the irregular healed grazed abrasions, which are 12 in numbers, found all over his body. However, only two grazed abrasions near the abdomen. On the right side of the abdomen region, size 2 x 1.5 c.m. and another on the right side of the upper abdomen size 2 x 0.5 c.m. His healed grazed abrasions are very negligible



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injuries, which could not be caused if a two wheeler like TVS XL Super is run over. These grazed abrasions had healed on its own even without any medical care or treatment. That is the reason why, none of the doctors, who had examined Perumal earlier while he was alive had noticed these grazed abrasions.

33. A specific question been put to the Investigating Officer (P.W.21) about the grazed lacerated wound found in the postmortem report, she admits that if these injuries were really notable then, the doctor, who examined Perumal at Kuzhithalai Government Hospital, would have recorded it. He admits Injury Nos. 2 and 3 are surgical injuries. The final opinion of the doctor about the cause of death is that, Perumal appear to have died due to effect of blunt injuries to the abdomen.

34. The ocular evidence of P.W.4 and P.W.5, who speak about the manner in which, Perumal sustained injury, does not correlate with the doctors' evidence and the medical records. Due to previous enmity, it appears that a highly exaggerated false statement been made by P.W.1 to P.W.3 to support the prosecution, which was launched after three days of the incident. No plausible explanation been placed before the Court to justify the delay in registering the



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F.I.R.

35. The trial Court had held A1 and A2 guilty for the offence under Section 302 I.P.C. The overt act attributed to A1 found to be false and the testimony of P.W.4 and P.W.5 does not inspire the confidence of this Court due to contradictions and none of the prosecution witnesses had deposed anything about P.W.5 except unspecific allegation that all the accused joined together and kicked Perumal on his abdomen. Similarly, the conviction and sentence imposed on A4 under Section 149 read with Section 302 I.P.C. also does not backed by unimpeachable evidence. For the above said reasons, this Court is of the view that it is a fit case to extend the benefit of doubt to the appellants.

36. In fine, this Criminal Appeal is allowed. The conviction and sentences imposed on the appellants/A1, A4 and A5 by judgment dated 02.07.2020, in S.C.No.35 of 2018, by the learned Additional Sessions Judge / Fast Track Mahila Court, Karur, is set aside and they are acquitted from all the charges. Bail bonds stand cancelled. Fine amount already paid, if any, shall be refunded to them.

Index : Yes
NCC : Yes

[G.J., J.] & [C.K., J.]
13.03.2024

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To

- 1.The Additional Sessions Judge,
Fast Track Mahila Court,
Karur.
- 2.The Inspector of Police,
Lalpettai Police Station,
Karur District.
- 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.

smn2

PRE-DELIVERY JUDGMENT MADE IN
CrI.A.(MD)No.247 of 2020

13.03.2024