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Crl.A.(MD)NO. 101 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

Crl.A.(MD)No.101 of 2021

and

Crl.M.P(MD)No.11287 of 2024

P.Murugesan (Died)

... Petitioner /
Defacto Complainant

1.Venkatachalam

2.Rajeshwari

*(P.1 & P.2 are substituted as
petitioners instead of their (died)
father, vide order of this Court
dated 06.02.2024 in Crl.M.P(MD)
No.158 of 2024)*

... Appellants

Vs.

1.Ganeshan

2.Mohan Prabhu

3.Ganasekar

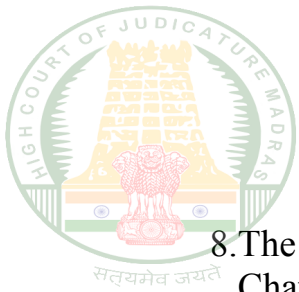
4.Subramani

5.Muthusamy

6.Perumal

7.Maniyan @ Manikandan

... Respondents 1 to 7 /
Accused 1 to 7



8.The Inspector of Police,
Chathrapatti Police Station,
Dindigul District.
(Crime No.64 of 2014)

... Respondent /
Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the judgment of acquittal dated 07.02.2020 made in S.C.No.39 of 2018 on the file of the learned Additional District cum Sessions Judge, Palani and convict the respondents 1 to 7.

For Appellants : Mr.S.C.Herold Singh

For Respondents : Mr.D.Venkatesh
for R.1 to R.3 & R.5 to R.7

Mr.T.Antony Arul Raj for R.4

Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R.8

J U D G M E N T

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

This Criminal Appeal is directed against the judgment dated 07.02.2024 made in S.C.No.39 of 2018 on the file of the learned Additional District cum Sessions Judge, Palani.

2.By the impugned judgment, the trial Court acquitted all the seven accused. Questioning the same, the defacto complainant preferred



this appeal. During the pendency of the appeal, he passed away and he

has been substituted by Venkatachalam, brother of the deceased.

3.The case of the prosecution is as follows:

On 20.05.2014, at around 09.00 p.m, a quarrel erupted between Boopathi (deceased) and Ganesan (A1) at a Tasmac liquor outlet at Chathrapatti. A1 Ganesan therefore wanted to do away with Boopathi and entered into conspiracy with A2 to A7. At around 09.30 p.m on the same day, when Boopathi reached the occurrence spot, A1 to A7 waylaid him. By way of self-defence, Boopathi stabbed Ganesan on his stomach. In retaliation, A1 kicked Boopathi. A2 Mohan Prabhu cut Boopathi on his face and left hand with a knife. The other accused also joined in and indiscriminately attacked Boopathi with their hands. Since Boopathi suffered grievous injuries, he was rushed to Government Hospital, Palani. He was then referred to Government Hospital, Coimbatore. But he died enroute. PW5, father of the deceased lodged Ex.P5 complaint before the Inspector of Police, Chathrapatti Police Station. Based on the same, Crime No.64 of 2014 was registered under Section 302 IPC. All the seven accused were implicated in the FIR. PW18 took up the investigation. He went to the occurrence spot at 06.00 a.m on 25.01.2016 and prepared rough sketch and observation mahazar. He also collected the blood stained



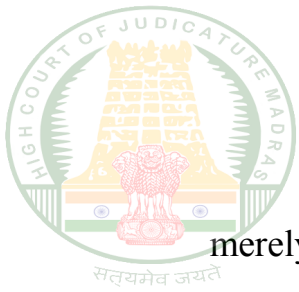
earth samples. He arranged inquest to be made and then he sent the body for post-mortem. He examined the witnesses. On 23.05.2014 at about 10.00 a.m, A2 Mohan Prabhu and A7 Maniyam @ Manikandan were arrested. Based on their confession statement, knives used for committing the crime were recovered. A1 Ganesan was arrested on 30.05.2015. After obtaining the forensic reports, final report was filed before the learned Judicial Magistrate, Ottanchathram. It was taken on file in PRC.No.5 of 2015 and the case was committed before the Principal Sessions Judge, Dindigul. It was made over to the Additional District and Sessions Judge, Palani and taken up for trial in S.C.No.39 of 2018. The prosecution examined as many as 18 witnesses and Ex.P1 to Ex.P18 were marked. M.O.1 to M.O.6 were also marked. On the side of the accused, Ex.D1 to Ex.D3 were marked. After considering the evidence on record, the trial Court acquitted the accused.

4.The question that arises for consideration is whether the findings of the Court below can be termed as perverse warranting interference with the judgment of acquittal.



5.The learned counsel on either side reiterated their respective

contentions. It is relevant to note here that the State did not prefer any appeal. It is only the de-facto complainant who filed this appeal. The prosecution has projected as many as 5 eye witnesses. (PW1, PW2, PW5, PW9, and PW15). PW5 was the de-facto complainant in this case. He claims to have witnessed the entire occurrence. But his very presence in the occurrence spot was doubted by the Court below. This is because of the admission by PW6 Ananthi who is none other than the wife of the deceased Boopathi in her cross examination. She stated that her father-in-law (PW5) was informed over the phone that Boopathi was lying dead in the occurrence spot. It is pertinent to note that PW6 was not re-examined. The occurrence had taken place at 09.30 p.m on 20.05.2014. PW5 lodged complaint only at 05.00 a.m the next day. The distance between the occurrence spot and the Police Station was hardly 4 kms. If PW5 had actually witnessed the occurrence as deposed by him, there would not have been a delay of more than 7½ hours in lodging the complaint. This confirms the statement of his daughter-in-law PW6 that PW5 rushed to the occurrence spot only after receiving telephonic intimation about the occurrence. That apart, the person (Rajendran) who is said to have given the intimation was also not examined. PW.1

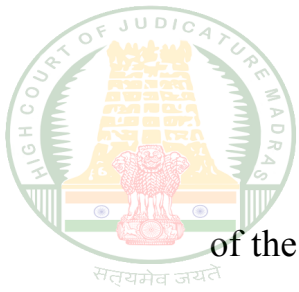


merely deposed that Ganesan kicked Boopathi. He has not implicated

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A2 at all. In his cross examination, he had conceded that Boopathi (deceased) stabbed Ganesan (A1) on his hand as well as stomach. Therefore, testimony of PW1 did not inspire the confidence of the Court below. PW2, brother of the deceased, deposed that he received telephonic intimation to come to the occurrence spot since trouble was anticipated. When a specific question was put to him as to who informed him over phone, PW2 feigned ignorance. Admittedly, A1 Ganesan suffered stab injury in the abdomen. This is evident from perusal of Ex.D2 and Ex.D3. It is beyond dispute that A1 Ganesan sustained grievous injuries. But PW2 did not even whisper about this.

6. Likewise, PW9 and PW15 also suppressed the attack made on A1 Ganesan by the deceased Boopathi in their deposition. Even according to PW1, it was the deceased Boopathi who stabbed A1 Ganesan. It is for this primary reason, the trial Court disbelieved their evidence. PW.15 is the brother-in-law of the deceased. He claims to be an eyewitness. It was he who took Boopathi in the car and admitted him in Government Hospital, Palani at 10.05 p.m. But FIR was lodged only 7 hours later. There is considerable merit in the contention of the defence that this time was used for concocting the complaint by adding the names



of the accused and by attributing specific overt acts to them. PW3, PW4,

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7.From a holistic reading of the entire evidence on record, one can come to a safe conclusion that the occurrence in question was not witnessed by any of the so called eye-witnesses. It is trite that delay in lodging the FIR would not be fatal to the prosecution. The Hon'ble Supreme Court in *Sekaran vs. State of Tamil Nadu* (Crl. Appeal No. 2294 of 2010) held as follows:

"11. ..It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version. In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; **however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.**"



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8. In the case on hand, the delay of 7.5 hours has not at all been explained by the prosecution. This is fatal to the case of prosecution. If the Court below comes to the conclusion that persons who could not have witnessed the occurrence have been projected as eye-witnesses, then the entire prosecution case must be disbelieved, and the benefit of doubt will have to go to the accused. We however do not endorse the reasons given by the Court below. The Court below has proceeded on the premise as if the genesis of the occurrence had been suppressed by the prosecution. It is not so. In charge No.4 itself, it has been clearly mentioned that the deceased had stabbed A1 Ganesan with a knife. In fact the genesis has been suppressed by the alleged eye-witnesses. The Hon'ble Supreme Court in its decision reported in (2005) 10 SCC 404 (*Babulal Bhagwan Khandare and Anr. v. State of Maharashtra*), held as follows:

“Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. The eye-witnesses who deny the presence of injuries on the person of the accused are lying on the most material point, and therefore, their evidence is unreliable. It assumes



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much greater importance where the evidence consists of interested or inimical witnesses.”

In the present case also, the injuries sustained by the accused Ganesan has been uniformly suppressed by all the alleged eye witnesses except PW1. This goes to the root of the matter.

9. For the reasons given above, we uphold the judgment of acquittal given by the Court below. Interference with the order of the court below is not warranted. This Criminal Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [R.P., J.]
13.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
MGA

To:

- 1.The Additional District cum Sessions Judge,
Palani.
- 2.The Inspector of Police,
Chathrapatti Police Station,
Dindigul District.



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



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G.R.SWAMINATHAN,J.

AND

R.POORNIMA, J.

MGA

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