



Crl.A.(MD).No.44 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 08.08.2023

DELIVERED ON : 12.01.2024

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

Crl.A.(MD)No.44 of 2021

1.K.Gajendran
2.K.Vijendran
3.Kamaraj
4.K.Gowri

.. Appellants / Accused No.1 to 4

Vs.

The State rep. By,
The Inspector of Police,
Patteeswaram Police Station,
Kumbakonam, Thanjavur District.
(Crime No.194/2013)

.. Respondent / complainant

Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence imposed by the trial Court by its judgment passed in S.C.No.96 of 2014 dated 05.11.2020 on the file of the Additional District & Sessions Judge, (Fast Track Court), Kumbakonam and acquit the appellants.



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For Appellant : Mr.A.Arun Prasad
For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by ***M.S.RAMESH, J.***)

The appellants before this Court were arrayed as accused Nos.1 to 4 before the trial Court in S.C.No.96 of 2014 on the file of the Additional District and Sessions Judge (Fast Track Court), Kumbakonam. Through the judgment dated 05.11.2020, the first accused was found guilty for the offence under Sections 120(B), 341 and 302 IPC; second accused was found guilty for the offence under Sections 120(B), 341, 506(ii) and 302 IPC; the third accused was found guilty for the offence under Sections 120(B), 341, 506(ii) and 302 r/w 34 IPC; and the fourth accused was found guilty for the offence under Sections 120(B), 341, 506(ii) and 302 r/w 34 IPC and sentenced them to undergo various imprisonments including the rigorous imprisonment for life. The accused two to four were found not guilty for the charge under Section 294(b) IPC.



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2.The case of the prosecution before the trial Court was that on an earlier occasion, the son of the third accused Deenendran, died in a road accident while he was working at Kerala along with the son of P.W.1. They had implicated the cause of the death on the deceased Veeramani and P.W.1. According to the prosecution, all the accused had stayed together for four months prior to the date of occurrence and hatched a conspiracy to murder the deceased.

3.On 02.10.2013, at about 5.30 p.m., when the deceased was returning from his mother's house, A1 armed with a knife, A2 armed with an Aruval, A3 armed with a knife along with A4, waylaid the deceased. A1 and A2 had attacked the deceased in the left and right hands, head, right neck, right shoulder, left armpit, left forearm with knife and aruval respectively. A3 had threatened P.W.1 with the knife and A4 had orally threatened the witnesses with dire consequences. Thereafter, A1 and A2 had left the scene of the occurrence in a TVS-50 Motorcycle.

4.While P.W.1 is the wife of the deceased, P.W.2 and P.W.3 are her daughters. The prosecution claims P.W.1 to P.W.3, to have been present in



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the scene of occurrence and were eyewitnesses to the incident. P.W.7, the brother of P.W.1, was also arrayed as an eyewitness. P.W.9, who is the mahazar witness is also an eyewitness to the incident. P.W.4 to 6, P.W.10 and P.W.11 were treated as hostile witnesses by the trial Court. PW.1, in her oral testimony speaks about the death of the third accused's son as the motive for the present incident. According to her, she had witnessed A1 to A4 at the scene of occurrence on 02.10.2013 at 5.30 p.m., when her husband was returning from his mother's house. After waylaying him, A1 and A2 had inflicted cut injuries with aruval and knife respectively. on various parts of the body of the deceased. While A4 was threatening the witnesses at the scene of occurrence, A3 was holding a knife and also threatening.

5.The statement of P.W.1 was reiterated by P.W.2 and P.W.3, who were daughters of the deceased. P.W.7 is the brother of P.W.1, who claims to be present in the scene of occurrence and had witnessed A1 and A2 causing injuries as stated by P.W.1 to P.W.3, P.W.7 and P.W.9. P.W.12 and P.W.13 are the Village Administrative Officers of Sheshanbody and Tharasuram Villages respectively, who spoke about the arrest of the accused and recovery of the weapons as well as the other material objects.



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Postmortem on the body of the deceased was conducted by P.W.15, who spoke about the injuries on the body of the deceased. P.W.16 is the forensic witness, who confirms the presence of human blood in the earth, lungi, inner-wear and shirt, as well as on the knife and aruval that were received by him for examination. P.W.17 is the scientific assistant in the forensic laboratory, who confirms the non-presence of any poisonous substance in the internal organs of the deceased. While P.W.18, is the Sub-Inspector of Police, who had received the complaint of P.W.1 and registered it in FIR No. 194 of 2013, P.W.19 had handed over the FIR to the learned Judicial Magistrate, Kumbakonam. The body of the deceased was handed over to P.W.15 for postmortem by P.W.20. The statements under Section 164 Cr.P.C. of P.W.2, P.W.3, P.W.4 and P.W.10 was recorded by the learned District Munsif-cum-Judicial Magistrate No.II, Kumbakonam, who was examined as P.W.21 and who confirmed the confession given by them. While P.W.22 was the Investigation Officer, who conducted the investigation initially, P.W.23, had taken over the rest of the investigation and filed the charge sheet as against the accused. The trial Court, had placed reliance on the evidence of P.W.1 to P.W.3, P.W.7 and P.W.9, who were the eyewitnesses and whose presence in the scene of occurrence was



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questioned the presence of P.W.1 to P.W.3 and P.W.7 in the scene of occurrence. He also pointed out the discrepancy in the complaint, which states that the deceased had come walking from his mother's house, while in the statement, P.W.1 had stated that he came in a two wheeler. The further discrepancy pointed out was that the complaint states the accused had ran away from the scene of occurrence, while in her deposition she had stated that the accused left in a two wheeler. According to the learned counsel, the complaint itself has been falsely made.

7.The learned Additional Public Prosecutor, on the other hand, drew our attention to the oral testimony of P.W.1 to P.W.3 for the motive. According to him, when P.W.1, P.W.2 , P.W.3, P.W.7 and P.W.9 had spoken about their presence in the scene of occurrence and their witness to the entire accident, whose evidences were corroborated with each other, the trial Court had rightly convicted all the accused for their respective offences. He further stated that even assuming that the motive was not properly established, it will not go to the benefit of the defense in view of the corroborated testimony of all the eyewitnesses. The learned Additional Public Prosecutor also placed reliance on the statement made by the



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eyewitnesses under Section 164 Cr.P.C., which was substantiated through the evidence of learned Judicial Magistrate, who was examined as P.W.21, which confession also corroborates all these witnesses.

8.We have given careful consideration to the submissions of both the counsel.

9.Among the various eyewitnesses projected by the prosecution, P.W.1, P.W.2, P.W.3, P.W.7 and P.W.9 had supported the case of the prosecution, while the other eyewitnesses had turned hostile. From the statements of these five witnesses, A1 and A2 who were armed with knife and aruval at the scene of occurrence on 02.10.2013 at 5.30 p.m., had brutally attacked the deceased, by inflicting several cut injuries on his body. It is also the case of the prosecution that A3 and A4, who were also at the scene of occurrence, did not inflict any body injury, but had threatened the witnesses with dire consequences. The complaint of P.W.1 was received by P.W.18 at 6.30 p.m. and since the occurrence had taken place at 5.30 p.m. on 02.10.2013 and also that the registered FIR had reached the learned Judicial Magistrate at 1.30 p.m., there does not seem to be any unreasonable delay,



in either the reporting of the incident or registration of the complaint or the complaint being forwarded to the concerned Judicial Magistrate. P.W.12 and P.W.13 are the Mahazar witnesses, who had spoken about the arrest of the accused and recovery of the weapons and other material objects. As per the evidence of eyewitnesses, A1 and A2 has indiscriminately caused cut injury over the body on the deceased on his head, neck and both hands. The injury inflicted by them was through indiscriminate cutting over the body of the deceased. The postmortem report Ex.P10 evidences nine cut injuries in the following manner:

- “1. 10x2x1 cm in right frontal region of head in vertical direction;*
- 2. 12x4x6 cm in right neck exposing deep structure;*
- 3. 12x3x6 cm in right occipital region of severed blood vessel and nerves;*
- 4. 2x1.2 cm cut injury on the right ear lobe*
- 5. 5x2x2 cm on the right shoulder*
- 6. 5x3x2 cm lacerated wound in left palm*
- 7. 5x2x2 cm in left Axilla*
- 8. C shaped wound in 10x3 cm in left knee. Pattella have displaced.*
- 9. Lacerated would in Ulan side of left forearm 8x3cm.”*



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10.While deposing, P.W.15, who was the postmortem Doctor had categorically in his testimony confirmed these injuries as found in the postmortem report (Ex.P10) and stated that such injuries could have been caused by use of the weapons viz., M.Os.1 and 3. In the cross examination, he had reiterated the entire statement extracted during the chief examination. The defense could not discredit the evidence of the postmortem Doctor.

11.In the complaint (Ex.P1), P.W.1 had categorically stated that her husband was waylaid by all the accused on 02.10.2013 at 5.30 p.m., A1 and A2 had inflicted cut injuries with the aruval and when she had tried to stop the accused, she was threatened by A3 and A4. The statement made in Ex.P1 has been corroborated through her oral testimony also. P.W.2 and P.W.3, who are the daughters of the deceased had confirmed the sequence of the statement made by P.W.1 and implicated A1 and A2 of having inflicted the cut injuries, while A3 and A4 had threatened them. P.W.7, who was the brother of P.W.1 and an eyewitnesses to the incident and so also P.W.9, who is an independent witnesses, had substantially corroborated the statements



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of P.W.1 to P.W.3. There are very minor discrepancies in the statements of these five witnesses. The question that arises for consideration is as to whether such minor discrepancies would go to the root of the prosecution's case, so as to discredit their other statements of having witnessed the incident?

12.The Hon'ble Apex Court in a recent decision in ***Ravasaheb @ Ravasahebgouda Etc. Vs. State of Karnataka*** reported in ***[2023] 3 Supreme 461***, had held that “*the general principle of appreciating the evidence of eye-witnesses is that when a case involves a large number of offenders, prudently, it is necessary, but not always, for the Court to seek corroboration from at least two more witnesses as a measure of caution. Be that as it may, the principle is quality over quantity of witnesses.*”. It was further held that the evidence, when examined as a whole, must reflect a ring of truth and the minor omissions and discrepancies, which do not shake the foundations of the prosecution's case, must not be given undue importance.



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13.In the light of the aforesaid decision of the Hon'ble Supreme Court, the minor discrepancies pointed out by the appellants, may not be that significant to disbelieve the other statement of they having witnessed the entire incident of A1 and A2 causing the injuries leading to the death of P.W.1's husband. On an over all consideration of evidence of the eyewitnesses, P.W.1 to P.W.3, P.W.7 and P.W.9, which clearly establishes that they had witnessed the incident of A1 and A2 causing injuries, the minor discrepancies pointed out by the appellants' counsel will not be fatal to the prosecution's case.

14.Insofar as the role of A3 and A4 are concerned, P.W.1 in her complaint (Ex.P1) had stated that during the occurrence, A3 was holding a knife and causing threat while A4 was also giving oral threats. In her oral testimony before the trial Court, she had reiterated the same.

15.P.W.1 in her evidence had stated that A3 had brandished the knife and threatened her, A4 verbally threatened her while A1 and A2 attacked the deceased and thereafter, both A3 and A4 left the scene of occurrence. The evidence of P.W.2 is that A3 threatened with knife and A4 was shouting at



P.W.1 stating that she will face the same fate. The evidence of P.W.3 is also on similar lines. P.W.2 and P.W.3 are the daughters of P.W.1 and the deceased. P.W.1 in her evidence does not say so and hence the versions of P.W.2 and P.W.3 in this regard, is without corroboration.

16.As per the evidence of P.W.7 and P.W.9, A3 was armed with a knife and A4 had verbally threatened. P.W.7 is the brother-in-law and P.W.9 is the close relative of the deceased. Their evidences appear to be exaggerated and contrary to each other.

17.A3 and A4 were not near the deceased and had not participated in the occurrence. The overt act against A3 and A4 is for common intention, which requires a pre-arranged plan to show that there was some prior meeting of minds and the consequential overt act should be due to such pre-arrangement or premeditated concert. In this case, the motive attributed by the prosecution is that when Deenendran, son of A3 went along with Vinothkumar [son of the deceased], Kumarasamy and one Mannan had gone to Kerala during January 2013 for employment, Deenendran died in a road accident within three days, owing to which there arose some enmity



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between the family of the accused and the deceased. It is claimed that there was a panchayat in this regard. However, no evidence in this regard was produced before the Trial Court.

18.P.W.11 was examined by the prosecution to substantiate their theory of conspiracy and attempted to project as though on 01.10.2013, a day before the occurrence, at about 4.00 p.m., all the four accused were sitting in a Banana grove and discussing about murdering the deceased Veeramani. However, P.W.11 has not supported the case of the prosecution, since he was treated as hostile. Other than P.W.11, there were no witnesses or any other material produced by the prosecution to prove their theory of conspiracy. Hence, the theory of conspiracy propounded by the prosecution that there was conspiracy and a common intention by A3 and A4 with A1 and A2, stands disproved.

19.As regards A1 and A2, both were charged for the offence under Section 302 IPC. All the witnesses had clearly spoken about the overt act of A1 and A2. It is to be seen that after the occurrence, while A1 and A2 fled from the scene of occurrence in their TVS Super XL/M.O.4, A3 and A4



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were said to have walked away from the scene of occurrence. Hence, it cannot be said that A3 and A4 had a common intention with A1 and A2, to murder the deceased Veeramani. It is also to be seen that P.W.1 in Ex.P1/compliant stated that it was A1 and A2 armed with Aruval restrained her husband Veeramani and attacked him. The evidence of P.W.1, P.W.2, P.W.3, P.W.7 and P.W.9 as regards the presence of A3 and A4 in the scene of occurrence are contradictory and unbelievable. The version of P.W.1 is that she was threatened by A3 with knife and verbally by A4. This threat is after A1 and A2 had attacked the deceased Veeramani. The version of P.W.2 and P.W.3 is that A3 threatened with knife and A4 was dancing and threatening their mother/P.W.1. However P.W.1 did not corroborate with such a claim. Further, P.W.7 did not speak about any threat by A3 and A4 to P.W.1 or the dancing by A4. On the other hand, P.W.7 gives a exaggerated version as though A4 shouted at A1 and A2 to cut the deceased like cutting the firewood. The evidence of P.W.9 in this regard is also not clear. On an overall appreciation of these evidences, the very presence of A3 and A4 in the scene is doubtful. Thus the evidence as against A3 and A4 about their presence, use of abusive words, threat exerted and slipping from the scene of occurrence are mulcted with contradictions and hence the evidences of



P.W.1, P.W.2 P.W.3, P.W.7 and P.W.9 becomes doubtful and does not inspire confidence.

20.The Apex Court in the case of ***Pandurang vs. State of Hyderabad*** reported in ***AIR 1955 SC 216***, held that “*It is now presupposes a prior concert, a pre-arranged plan i.e. a prior meeting of minds. This does not mean that there must be a long interval of time between the formation of the common intention and the doing of the act. it is not necessary to adduce direct evidence of the common intention. Indeed, in many cases it may be impossible to do so. The common intention may be inferred from the surrounding circumstances and the conduct of the parties*”.

21.Further, in the case of ***Laxman Anaji Dhundale and another vs. State of Maharashtra*** reported in (2007) 10 SCC 771, the Apex Court referred to earlier judgments in invocation of Section 34 IPC which is as follows:

“10.As regards invocation of Section 34 IPC, it was held by the Privy Council in ***Mahbub Shah vs. Emperor [AIR 1945 PC 118]*** as follows:

"To invoke Section 34 successfully, it must be



shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if it is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre- arranged plan. As has been often observed, it is difficult if not impossible to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case." (emphasis supplied)

11.*In **Hamlet vs. State of Kerala [2003 (10) SCC 108, vide para 17]**, this Court held that to establish the common intention of several persons to attract Section 34 IPC, the following two fundamental facts have to be established: (i) common intention and (ii) participation of the accused in commission of the offences. In the present case, neither common intention nor participation of the appellants in the commission of the offence has been established beyond reasonable doubt.*

12.*No doubt, as held by this Court in **Anil***



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Sharma vs. State of Jharkhand [2004 (5) SCC 679, vide para 17] direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case. However, in order to bring home the charge of common intention the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34. In the present case there is no credible evidence, direct or circumstantial, that there was such a plan or meeting of minds of all the accused persons to commit the offence in question. Hence, in our opinion, the charge under Section 34 IPC has not been established.”

22. Thus the consistent view of the Apex Court is that the common intention referred to in Section 34 IPC, presupposes a prior concert and a pre-arranged plan. On the facts of the above case, no such pre-meditation can be inferred. Hence, the prosecution have failed to prove their case beyond all reasonable doubts against A3 and A4. Hence, the conviction and sentence imposed against A3 and A4 by the Trial Court are set aside and A3 and A4 are acquitted from all the charges.



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23.As regards A1 and A2, it is seen that the only witness for the conspiracy is P.W.11, who had not supported the case of the prosecution. There is no evidence or any other materials to show that there was any conspiracy hatched on 01.10.2013 to commit the offence of murder of the deceased Veeramani on 02.10.2023. In view of the same, the conviction and sentence imposed on A1 and A2 for the offence under Section 120(b) IPC is hereby set aside.

24.However, the conviction and sentence imposed on A1 by the Trial Court to undergo one month simple imprisonment for the offence under Section 341 IPC, to undergo rigorous imprisonment for life for the offence under Section 302 IPC and to pay a fine of Rs.1,000/-, in default, to undergo two years simple imprisonment are sustained.

25.As regards A2, the conviction and sentence imposed by the Trial Court to undergo one month simple imprisonment for the offence under Section 341 IPC, to undergo five years rigorous imprisonment for the offence under Section 506(ii) IPC, to undergo rigorous imprisonment for



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life for the offence under Section 302 IPC and to pay a fine of Rs.1,000/-, in default, to undergo two years simple imprisonment are sustained.

26.With the above modification, the Criminal Appeal stands partly allowed.

(M.S.R.,J.) (M.N.K.,J.)
12.01.2024

NCC : Yes
Index : Yes
vsm/cse

To

- 1.The Inspector of Police,
Patteeswaram Police Station,
Kumbakonam,
Thanjavur District.
- 2.The Additional District & Sessions Judge,
(Fast Track Court), Kumbakonam.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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Pre-Delivery Judgment in
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