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Crl.A.(MD).Nos.556 and 577 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2024

CORAM

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

Crl.A.(MD).Nos.556 and 577 of 2022
and
Crl.M.P.(MD).Nos.10872 of 2022 and 9417 of 2023

Crl.A.(MD).No.556 of 2022

Ramu @ Ramkumar

..Appellant/Accused No.2

Vs.

The Inspector of Police,
Kundrakudi Police Station,
Sivagangai District.

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records in S.C.No.56 of 2014 dated 28.04.2022 passed by the learned Additional District and Sessions Judge, Sivagangai and to set aside the judgment of conviction and sentence.

For Appellant : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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Murugan @ Thirumurugan

..Appellant/Accused No.1

Vs.

State,
represented by the Sub-Inspector of Police,
Kundrakudi Police Station,
Sivagangai District.
(Crime No.179/2012)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records and set aside the judgment and conviction dated 28.04.2022 by the learned Additional District and Sessions Judge, Additional District Court, Sivagangai in S.C.No.56 of 2014 and acquit the appellant.

For Appellant : Mr.R.Venkateswaran

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

COMMON JUDGMENT

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

The present Criminal Appeals are preferred by the Accused Nos.1 and 2 against the conviction and sentence rendered by the learned Additional



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District and Sessions Judge, Sivagangai in S.C.No.56 of 2014 vide judgment dated 28.04.2022.

2. The Trial Court, which has tried four accused for the offences under Section 120(b) r/w 302 IPC against all the four accused, Section 302 IPC against A1 and A2, Section 302 r/w 34 IPC against A3 and A4 and Section 302 r/w 120(b) and 114 IPC against A4. After trial, the Trial Court has held that the prosecution was not able to prove the theory of conspiracy involving A3 and A4 and therefore, acquitted them. As against A1 and A2, the Trial Court held that the evidence of the prosecution is sufficient to hold them guilty for the offence under Section 120(b) r/w 302 IPC and sentenced them to undergo life imprisonment with a fine of Rs.10,000/- each, in default, to undergo six months simple imprisonment. The Trial Court also found them guilty for the offence under Section 302 IPC simplicitor and sentenced them to undergo life imprisonment with a fine of Rs.10,000/- each, in default, to undergo nine months simple imprisonment.



3. On considering the prosecution evidence, the Trial Court had culled out the incriminating evidence against A1 and A2 and has observed that it is a case of circumstantial evidence, wherein, the prosecution is able to prove the motive, which, according to the witnesses, a quarrel between A2, Ramkumar and Karthick, who was examined as P.W.7, both students of Alagappa University. They quarrelled about teasing a girl, who participated in the College Day festival. For the theory of last seen together, the Trial Court relied upon the evidence of P.W.6, who had seen A1 and A2 at the relevant point of time carrying wooden log and when he enquired them, they stated that they are proceeding to do away a person.

4. The Trial Court also relied upon the evidence of P.W.1, who is the brother of the deceased, who had deposed that on that day night, at about 9.00 PM, he enquired his mother and sister about his brother and they told that his brother had gone out to participate in the Bakrid party offered by one Nazar and when his mother called the deceased Thirunavukkarasu over phone, he told that he is with one Nazar to attend the Bakrid party. The said Nazar is arrayed as A3. Further, the Trial Court relied upon the confession



statement of the accused A1 to the Village Administrative Officer, P.W.5, which has led to recovery of M.O.1 knife with blood stain and the serology report, Ex.P17, which shows that the blood stain found in the knife tallies with the blood group of the deceased Thirunavukkarasu.

5. The Trial Court disbelieved the theory of conspiracy hatched in the house of A4 and pursuant to the conspiracy, A3 called the deceased over phone to come to the scene of occurrence, which is near a graveyard, to have drinks, and when the deceased came there, A1 and A2 first attacked the deceased with wooden log and thereafter, brutally stabbed him on his back and over the body and also slit his neck using M.O.1 knife.

6. The learned counsels appearing for the appellants/A1 and A2 would submit that the link of circumstances has not been proved and it is severed at various points. The motive spoken by P.W.7 ought to have been established by the prosecution through the girl, whom the second accused is alleged to have teased. The origin for the motive has not been established except by P.W.7, who in fact admits that he engaged the deceased person to



quarrel with the accused A2. Thereafter, in support of A2, A1 joined and there was quarrel between P.W.7 and A2. For these incidents, though it is stated that there was a police complaint and the Police advised them to behave properly since A2 and P.W.7 are college students, the prosecution had not placed any record to show that some complaint regarding this matter came to their notice and that they enquired and closed the complaint. Even otherwise, this incident is alleged to have taken place in the month of February 2012, whereas, the murder of Thirunavukkarasu was on 4th August, 2012. The learned counsels further submitted that the Trial Court had erroneously applied the theory of last seen together when there is no evidence to show that the appellants/A1 and A2 and the deceased were seen together.

7. The learned counsels appearing for the appellants further submitted that a disjoint reading of evidence of P.W.1 and P.W.6 has been considered by the Trial Court to hold that the accused A1 and A2 had caused the death of Thirunavukkarasu. The learned counsels drew the attention of this Court to the part of the testimony given by P.W.1, who had deposed that when he



asked his mother to contact his brother, Thirunavukkarasu, over phone to know his location, his brother told that he is with Nazar A3, who has invited him for Bakrid party. P.W.1 has also stated that on the next day, i.e., on 05.08.2012 at about 6.30 AM in the morning, he received a phone call informing that his brother was found dead near NGO Colony graveyard. It is further stated that when he went there, he saw his brother severely injured. A mobile phone, three wooden logs and the two wheeler of his brother were also found near that place. However, the call details of the phone number of the deceased or the phone number of the accused were not collected, the same factum is admitted by the Investigating Officer. Therefore, the testimony of P.W.1 by itself will not give an inference that the deceased was found alive with the accused A1 and A2 soon before his death. Furthermore, when the Trial Court has disbelieved the case of the prosecution as far as A3 Nazar and A4 Velmurugan, the Trial Court ought not to have relied upon the testimony of P.W.1 to invoke the theory of last seen together to fix A1 and A2.



8. The learned counsels also submitted that the confession and alleged recovery of M.O.1 is highly doubtful because that was happened after ten days of the occurrence and the knife was recovered very near the SOC. Further, the learned counsels also submitted that the fingerprint lifted from the brandy bottles near the dead body of the deceased Thirunavukkarasu was sent for comparison by the experts, but the fingerprint experts had opined that the fingerprints of the accused do not tally with the chance fingerprints lifted from the bottles. When M.O.1 knife with blood stain itself is highly doubtful, there is no other incriminating evidence against these appellants to hold them guilty and therefore, the learned counsels sought for acquittal by setting aside the judgment of the Trial Court.

9. Per contra, the learned Additional Public Prosecutor appearing for the respondent Police submitted that it is a case of circumstantial evidence, wherein, the prosecution has let in 14 witnesses, marked 17 exhibits and 18 material objects. The key witness to the prosecution is P.W.7, who had spoken about the motive as well as the animosity between the deceased and the appellants/A1 and A2. A threat to the life of A2, Ramkumar, had made



him to take the help of A1 and others to murder Thirunavukkarasu. The confession statement of A1 contains wealth of information, which are exclusively within the knowledge of the accused persons and therefore, the discovery of facts through the confession statement cannot be neglected, more so, when M.O.1 knife was recovered on the information furnished by A1 and in the knife, the blood stain of the deceased being found and tallied through the serology examination.

10. Heard the learned counsels and perused the materials available on record.

11. The genesis of the case as per the prosecution started in the month of February 2012 in a college cultural programme conducted for welcoming the new comers. A2 and P.W.7 are students of that College. The other accused and the deceased are not college students. But, while the deceased Thirunavukkarasu was engaged by P.W.7 to support him and to question A2, the A2 has taken the help of A1 and others. This is all in respect of an incident, which took place in the month of February 2012, i.e., about six months earlier to the incident.



12. As far as the murder of Thirunavukkarasu is concerned, the prosecution relied upon the evidence of P.W.1, P.W.2 and P.W.3, who are the two brothers and mother of the deceased. In fact, these three witnesses are the persons, who had seen the deceased alive on the evening of 4th August, 2012, who had left the house in his two wheeler. As far as the accused persons are concerned, the prosecution relied upon the testimony of P.W.6, who had seen A1 and A2 in two wheeler crossing him, while he was near Kuppachi Oorani while consuming liquor. These two places are not nearby or conjoint so as to read the evidences of these witnesses together to draw an inference that the deceased Thirunavukkarasu and the accused were last seen together before the occurrence.

13. The yet another incriminating material, which could have some lead to the prosecution, is the alleged phone call of P.W.3 to her son on 4th August, 2012 at about 10.00 PM. P.W.3 had deposed that when she called her son, Thirunavukkarasu, he informed her that he is with Nazar A3. Regarding the identity of the said Nazar, certain question has been put to the Investigating Officer in the cross-examination that the name of A3, which is



shown in the final report as Nazar @ Pakkirmuhammed, and the Nazar, who has been mentioned by P.W.3 are not one and the same. This doubt regarding the identity of A3 gets strengthened or widened when the prosecution has failed to collect the call details of A3 and the deceased to fix A3. Similarly, according to the prosecution, the conspiracy hatched two days earlier in the house of A4. It is true that conspiracies are hatched in secrecy and only circumstances will reveal the secrecy. However, before the Trial Court, the involvement of A3 and A4 in the crime could not be established by the prosecution and the Trial Court has acquitted them.

14. Now, when we look at the evidence of the prosecution, whether A1 and A2 had any meeting of mind to do any illegal act, viz., murder of Thirunavukkarasu, the prosecution evidence is silent about the same. The evidence of P.W.6, who claims that he saw A1 and A2 at about 9.00 PM on 04.08.2012 near Kuppachi Oorani, alone cannot be sufficient to hold that they went to NGO colony graveyard, where Thirunavukkarasu was waiting and attacked him with wooden log, which was marked as M.O.10 followed by stabbing using M.O.1 knife.



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15. In the light of the above fact, neither the conspiracy nor the last seen together theory inspires confidence of this Court, and the link in the circumstances has not been completely established by the prosecution. However, the Trial Court without any connecting link had accepted the theory of conspiracy and last seen together when there is a possibility of presuming innocence of the appellants.

16. Hence, the Criminal Appeals are allowed. Accordingly, the judgment of conviction and sentence passed by the Additional District and Sessions Court, Sivagangai in S.C.No.56 of 2014 dated 28.04.2022, is set aside and the appellants/A1 and A2 are set at liberty. Bail bonds, if any executed by the appellants, shall stand cancelled. Fine, if any paid by the appellants, shall be refunded. Consequently, connected miscellaneous petitions are closed.

(G.J.,J.) (C.K.,J.)
25.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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1. The Additional District and Sessions Court,
Sivagangai.
2. The Inspector of Police,
Kundrakudi Police Station,
Sivagangai District.
3. The Sub-Inspector of Police,
State,
Kundrakudi Police Station,
Sivagangai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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