



WEB COPY



1

Crl.A.(MD)NO. 870 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R. POORNIMA

Crl.A.(MD)No.870 of 2022

and

Crl.M.P(MD)No.8861 of 2024

1.Murugan
2.Palani @ Palanichamy
3.Shanthi

... Appellants /
Accused No.1 to 3

Vs.

The State represented by
The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
(Crime No.637 of 2006)

Investigation by

The Inspector of Police,
CB-CID,
Organized Crime Unit,
Madurai City.

... Respondent /
Complainant

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, to set call for the records in S.C.No.112 of 2011 on the file of the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District at



Srivilliputhur, Virudhunagar District and set aside the judgment dated 31.10.2022 and acquit the appellants of the charge leveled against them.

For Appellants : Mr.Ananda Padmanabhan
Senior Counsel
for M/s.APN Law Associates

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

* * *

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 31.10.2022 made in S.C.No.112 of 2011 on the file of the Sessions Court (FTC), Virudhunagar District at Srivilliputhur. The case on hand involves the murder of four persons belonging to a single family. The deceased are Ganesan, his wife Kala and their children Priya @ Shanthinipriya and Veni @ Krishnaveni. The accused are none other than the siblings of the deceased Ganesan. The occurrence took place between 6.00 p.m on 03.11.2006 and 04.00 p.m on 04.11.2006. One Sankar Ganesh who is a resident of RR Nagar, Rajapalayam lodged



Ex.P1 complaint before the Rajapalayam South Police Station after noticing that Ganesan and his family members are lying dead in their house. Crime No.637 of 2006 was registered for the offences under Sections 306 and 302 of IPC against unknown accused. Investigation was taken up and Ex.P4 observation mahazar was prepared. After recovery of hair samples from the bloodstained beddings under Ex.P5 to Ex.P8, the bodies were sent for post mortem. Subsequently, hair samples were collected from the accused and also other close relatives. Since for several months, there was no satisfactory progress, Crl.O.P(MD)No.249 of 2007 came to be filed and the case was transferred to CBCID. Order to this effect was passed by the ADG on 19.05.2007. There was no progress till September 2010. According to the prosecution, breakthrough came on 20.09.2010 when PW29 in his statement under Section 164 of Cr.P.C implicated the accused herein.

2.The accused were arrested and final report came to be filed before the learned Judicial Magistrate No.II, Virudhunagar. It was taken on file in PRC.No.4 of 2011. The case was committed to Principal Sessions Judge, Viruthunagar and made over to the Sessions Court (FTC), Virudhunagar District at Srivilliputhur in S.C.No.112 of 2011 for



trial. On the side of the prosecution, 35 witnesses were examined. Ex.P1

to Ex.P100 were marked. M.O.1 to M.O.65 were also marked.

Incriminating circumstances were put to the accused during examination under Section 313 of Cr.P.C. The accused characterised them as false.

On the side of the accused, no evidence was adduced. After considering the evidence on record on the trial Court found accused guilty of the offences with which they were charged. A.1 and A.2 were sentenced as follows:

To undergo life imprisonment for the offence under section 120 B R/W 302 of IPC

to undergo 10 years rigorous imprisonment for the offence under section 328 R/W 34 of IPC

7 years rigorous imprisonment for the offence under section 450 IPC

to undergo life imprisonment for each offence under section 302, 2 counts

to undergo life imprisonment for each offence under section 302 r/w 34, IPC two counts

seven years rigorous imprisonment for offence under section 201 r/w 34 IPC

to undergo two years rigorous imprisonment for offence under Section 506(1) IPC

in addition to which a total fine amount of Rs.29,000 imposed on each of them.



WEB COPY A.3 was sentenced as follows:

To undergo life imprisonment for the offence under section 120 B R/W 302 of IPC
to undergo 10 years rigorous imprisonment for the offence under section 328 R/W 34 of IPC
7 years rigorous imprisonment for each of the offence under section 450 IPC, 2 counts
to undergo life imprisonment for each offence under Section 302, 2 counts
to undergo life imprisonment for each offence under section 302 r/w 34, IPC two counts
seven years rigorous imprisonment for offence under section 201 r/w 34 IPC
to undergo two years rigorous imprisonment for offence under section 506(1) IPC.

3.The question that calls for consideration is whether the impugned judgment is sustainable. It is beyond dispute that the entire case of the prosecution rests only on the testimony of PW.29 (Raju). Raju is deaf and dumb. His evidence was recorded by taking assistance of an interpreter. As already noted, his statement was recorded under Section 164 Cr.P.C. The accused came to be implicated only following this statement made by PW.29. When PW.29 was examined, he turned hostile. He did not support the prosecution. He went to the extent of



accusing the Police. He claimed that because he was beaten up by three Police officers, he named the accused.

4.The learned Senior Counsel appearing for the appellants drew our attention to the decision reported in **2020 (7) SCC 722 (Somasundaram @ Somu Vs The State represented by the Deputy Commissioner of Police)**. Paragraphs 68 to 71 of the said decision read as follows:

“68. Section 164 of the CrPC enables the recording of the statement or confession before the Magistrate. Is such statement substantive evidence? What is the purpose of recording the statement or confession under Section 164? What would be the position if the person giving the statement resiles from the same completely when he is examined as a witness? These questions are not res integra. Ordinarily, the prosecution which is conducted through the State and the police machinery would have custody of the person. Though, Section 164 does provide for safeguards to ensure that the statement or a confession is a voluntary affair it may turn out to be otherwise. We may advert to statements of law enunciated by this Court over time.

69. As to the importance of the evidence of the statement recorded under Section 164 and as to whether it constitutes substantial evidence, we may only to advert to the



following judgment, i.e., in George and others v. State of Kerala and another, AIR 1998 SC 1376:

“In making the above and similar comments the trial Court again ignored a fundamental rule of criminal jurisprudence that a statement of a witness recorded under S. 164, Cr.P.C., cannot be used as substantive evidence and can be used only for the purpose of contradicting or corroborating him.”

70. What is the object of recording the statement, ordinarily of witnesses under Section 164 has been expounded by this Court in R. Shaji v. State of Kerala, AIR 2013 SC 651:

“15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted. (Vide: Jogendra Nahak & Ors. V. State of Orissa & Ors., AIR 1999 SC 2526: (1999 AIR SCW 2736); and Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd. & Ors., AIR 2000 SC 2901) : (2000 Air SCW 3150).

16. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the Committal Court or even to contradict the same. As the defence had no opportunity to cross-examine the



witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence.”

71. Thus, in a case where a witness, in his statement under Section 164 of the CrPC, makes culpability of the accused beyond doubt but when he is put on the witness stand in the trial, he does a complete somersault, as the statement under Section 164 is not substantial evidence then what would be the position? The substantive evidence is the evidence rendered in the Court. Should there be no other evidence against the accused, it would be impermissible to convict the accused on the basis of the statement under Section 164.”

The Hon'ble Supreme Court authoritatively held that the statement under Section 164 Cr.P.C is not substantive evidence and that the substantive evidence is evidence rendered in Court. It had been further held that it would be impermissible to convict the accused on the basis of the statement under Section 164 of Cr.P.C.

5.The learned Additional Public Prosecutor contended that there has been crediting of some amount in the bank account of PW.29 in the wake of the occurrence. This can only show PW.29 in a poor light. Except the statement of PW.29 recorded under Section 164 of Cr.P.C, there is no other evidence against the accused. Since PW29 disowned



the statement under Section 164 Cr.P.C during trial, the irresistible conclusion is that there is no legal evidence against the appellants herein.

We may also incidentally remark that even the statement under Section 164 of Cr.P.C is not credible in many places. For instance, PW.29 stated that a few years back Ganesan (deceased) called him over phone and asked him to come to his house and that he went to his house at around 08.00 p.m. When admittedly PW.29 was deaf and incapable of hearing, we fail to understand as to how he could have received the telephonic message. The occurrence had taken place on 04.11.2006. But the statement implicating the accused came from PW.29 only on 20.09.2010. PW.29 who claims to be an eye witness would not have kept quiet for close to four years.

6.The prosecution alleges that the accused committed the crime and did away with all the members of the family of their own sibling to grab property. The brutality of crime will not and cannot dispense with the need to adduce legal evidence to fasten penal culpability on the accused. In this case, there is absolutely no legal evidence against the accused. The Court below grievously erred in finding the accused guilty on the strength of the statement under Section 164 of Cr.P.C. The



conviction and sentence imposed on the appellants by the trial court is set aside. The appellants are acquitted of all the charges. Fine amount already paid, if any, shall be refunded to them. Bail bonds executed by them shall stand cancelled.

7.This Criminal Appeal is allowed accordingly. No costs.
Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [R.P., J.]
12.12.2024

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

To:

- 1.The Sessions Judge, Fast Track Mahila Court,
Virudhunagar District at Srivilliputhur.
- 2.The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent of Prison, Central Prison,
Madurai.



11

Crl.A.(MD)NO. 870 of 2022

G.R.SWAMINATHAN,J.

AND

R.POORNIMA, J.

MGA

Crl.A.(MD)No.870 of 2022

12.12.2024