



Cr1.A.No.739 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 03.07.2025	Pronounced on: 02.09.2025
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CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

Cr1.A.No.739 of 2022

The State Rep. by
The Inspector of Police,
Veeranam Police Station,
Salem District.
(Crime No.538 of 2003) .. Appellant

Vs.

Palanivel
S/o.Sankar .. Respondent

Prayer: Appeal filed under Section 378(i) of Cr.P.C., praying to call for the records in S.C.No.217 of 2009 dated 15.09.2020 on the file of the 1st Additional District cum Sessions Judge, Salem and set aside the same convict the respondent/accused in accordance with law.

For Appellant : Mr.E.Raj Thilak,
Additional Public Prosecutor

For Respondent : Mr.R.Sankarasubbu

JUDGMENT

(Judgment of the Court was made by **V.LAKSHMINARAYANAN, J.**)

The present appeal is one against acquittal. The State



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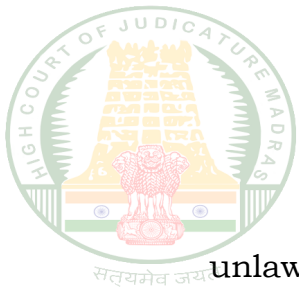
challenges the acquittal of the sole respondent in S.C.No.217 of 2009 on the file of the I Additional District and Sessions Judge, Salem dated 15.09.2020. The State wants to convict the respondent for the murder of two individuals, namely, Sundarajan and Kuppusamy.

2. The case of the prosecution is that the aforesaid two gentlemen were attacked, by as many as 24 persons, who constituted an unlawful assembly. The deceased were pelted with stones and beaten with sticks on 15.07.2003. The incident is said to have taken place at three locations, namely,

- (i) Veemanur Bus Stop,
- (ii) in front of Mariamman Temple and
- (iii) near one Anai Gounder's house.

The last two locations being at Pallikoodathanur.

3. According to the prosecution, the motive is twofold. First, that the first deceased i.e., Sundarajan and one Natesan were the members of a communist party. On account of differences, the deceased were excluded from the party. They, in turn, formed an association, which can be loosely termed as “Rajinikanth Fan's Association”. Under the banner of this association, they had collected funds and celebrated temple festivals, which was not to the liking of the members of the

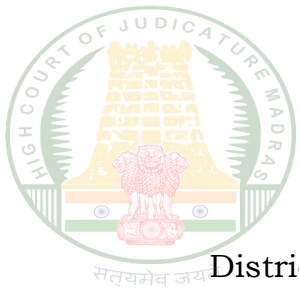


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unlawful assembly. Consequently, on 15.07.2003, they accosted Sundarajan at the Veemanur Bus Stop and thrashed him, till he nearly lost his consciousness. Thereafter, they went over to the residence of Kuppusamy, who had sat down to have his dinner. They pulled him out of the house and with the help of a stone, they smashed his face in front of Anai Gounder's house. Thereafter, they went to Mariamman Temple at Pallikoodathanur Village and in the presence of PW1 to PW5, ended the life of Sundarajan in a similar fashion.

4. Initially, the investigation was taken up by the Inspector of Police and thereafter, on the directions of Superintendent of Police, Salem, one Palanivelu, the Deputy Superintendent of Police (PW17) took up the investigation. On completion of investigation, he laid a charge sheet before the Judicial Magistrate – IV at Salem. The said case was taken on file as PRC.No.40 of 2003. The learned Magistrate committed the case for trial to the learned I Additional District and Sessions Judge, Salem.

5. Charges were framed against 24 accused. The sole respondent is the fourth accused. He did not appear before the Court and was declared as an absconding accused. The learned I Additional



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District and Sessions Judge split the case and tried it as against the others in SC.No.34 of 2019. After trial, he convicted few of the accused and acquitted the remaining. Thereafter, the sole respondent, who was the fourth accused, was tried by the learned Trial Judge in SC.No.217 of 2019.

6. During the course of trial, the prosecution marched 17 witnesses, and marked 39 exhibits and 16 Material Objects.

7. After due trial and examination, the learned Trial Judge acquitted the fourth accused from the charges under Section 120B r/w 302 and 149 of the Indian Penal Code. Aggrieved by the same, the present appeal.

8. We heard Mr.Raj Thilak, learned Additional Public Prosecutor for the Appellant/State and Mr.Sankarasubbu for the sole respondent.

9. Mr.Raj Thilak urged that the trial court had miserably failed to appreciate the clear and cogent evidence of PW5, the sister of the deceased, Sundarajan, and PW6 and PW9, the mother and the sister of the deceased, Kuppusamy. He pleaded that when such is the texture of their evidence, it ought not to have been excluded. He points out that PW6 speaks about the presence of the accused at the



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place of occurrence and this had not been taken note of by the learned Trial Judge in its proper perspective. He would further add that the accused, having absconded himself during the course of trial, only did so on account of the fact that he knew that he was guilty.

10. Mr.Raj Thilak relies upon the evidence of PW2 and PW3 in addition to the aforesaid witnesses to urge that they match with Ex.P25 and Ex.P26, the post-mortem reports issued by Dr.Ravishankar, PW16. He urged that the prosecution had properly proved the case. He relies upon the judgment of the Supreme Court in ***Khabir v. State of West Bengal, (2020) 1 SCC (Cri) 398*** to urge that when ocular evidence is corroborated with medical evidence, the learned Trial Judge should have convicted the accused.

11. Mr.Raj Thilak would further point out that the deficiency in the evidence are due to the normal errors of memory on account of lapse of time, and the shock and horror at the time of occurrence. Those errors should be kept aside when the witnesses are otherwise honest, truthful and credible. For this proposition, he relies on the judgment of the Supreme Court in ***State of Karnataka v. Suvarnamma, (2015) 1 SCC 323***.



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12. Per contra, Mr.Sankarasubbu points out that the learned Trial Judge had gone into the evidence in detail and had analysed the evidences of PW2, PW3, PW5, PW6 and PW9 and had come to a clear and categorical conclusion that their evidences do not inspire enough confidence for the purpose of convicting the sole respondent. He points out that being an appellate court, dealing with an appeal against acquittal, though this court has the power to re-appreciate the evidence, we should not interfere with an order of acquittal, unless and until the judgment of the trial court is perverse or so unreasonable that the conclusion of the trial court requires interference.

13. Mr.Sankarasubbu invites our attention to the several discrepancies in the evidence of the ocular witnesses, which was relied upon by the learned Additional Public Prosecutor, to point out that their evidence was not as sterling as pleaded by the prosecution. He also urges that they are all interested witnesses, being close relatives of the deceased and therefore, much reliance cannot be placed on them. He pleads that the appeal be dismissed and the order of acquittal be confirmed.

14. We have carefully considered the submissions of both sides



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and gone through the records.

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15. Before we delve into the facts of the case, we would like to recall certain verdicts of the Supreme Court, which have given guidance as to the scope of an appeal against the acquittal. The first of the judgments is ***Chandrappa v. State of Karnataka, (2007) 4 SCC 415***. The Court held that the appellate court should be slow in interfering with the judgment of acquittal and that, if two views are presented, and both are plausible, the appellate court should prefer one, which supports the acquittal rather than the one which goes against it.

16. The second verdict is the one rendered in ***State of Rajasthan v. Shera Ram (2012) 1 SCC 602***. The Supreme Court laid down the principles that the presumption of innocence which is available to the accused till he is convicted, gets strengthened by virtue of an acquittal. It also pointed out that the grounds for reversal must be strong and should not be one merely because a different view is possible. It pointed out that if the trial court ignores material evidence or relies upon inadmissible evidence or has on the basis of evidence applied perverse reasoning, it is only in such cases that the appellate court should interfere.



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17. The principles which flow out of these judgments are that:

- (i) presumption of innocence is strengthened by acquittal;
- (ii) only perverse or wholly unreasonable acquittals must be interfered with;
- (iii) if two views are possible, the one in favour of the accused must always be preferred; and
- (iv) there must be substantial and compelling reasons in order to overturn an order of acquittal.

18. Having informed ourselves about our jurisdiction, we now proceed to the merits of the case.

19. The prosecution was launched on the basis of the complaint given under Ex.P21 by one Sankar. He is the father of the deceased Kuppusamy. Insofar as assault on Sundarajan is concerned, the first information report only states that he heard about the incident and went over to the scene of crime. With respect to the attack on his son, Kuppusamy himself does not say as to who were all present in the house at the time when the alleged incident is said to have taken place.



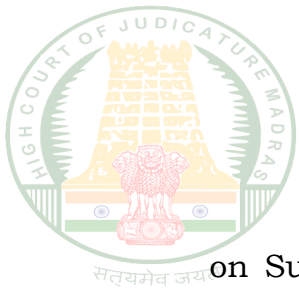
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20. It is pertinent to point out that the prosecution witnesses namely, PW1, PW3 and PW4 do not speak about the presence of the sole respondent in their statements. Consequently, they do not speak about the alleged assault by Palanivel on Sundarajan. While PW2 does mention about Palanivel, she does not speak about any act of Palanivel against Sundarajan. The complaint under Ex.P21 also does not speak about the presence of Palanivel, or of the fact that he had attacked Sundarajan or Kuppusamy. The assault on Kuppusamy is said to have taken place, soon after the incident at Veemanur bus stop.

21. The natural witnesses, who would have been available at the residence of the deceased, Kuppusamy, are his family members. The son and daughter-in-law of the first informant, namely, Ayyasamy and Palaniammal, though present as per Ex.P2, have not been examined as witnesses in the case. The other witness examined by the prosecution is PW5, Jayapal. The presence of Jayapal at the time of the incident, is not spoken to by Ayyammal, the wife of the first informant and Uma, her daughter, and in Ex.P21 complaint statement of Sankar.

22. PW5, Jayapal states that he heard about the alleged assault



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on Sundarajan at Veemanur Bus Stop. He states that one Natesan, Jagan, Kalaivanan, Selvam, Neela, Thiyagarajan, and others are said to have assaulted Sundarajan. He mentioned that the aforesaid persons came to the residence of Kuppusamy in an Auto-Rickshaw and on entering the house, Natesan had beaten Kuppusamy with the rear end of a coconut branch (தென்னை மர தொன்னை). He would state that the others, who had accompanied Natesan, had pelted stones on Kuppusamy, and Palanivel had used a wooden log to hit the deceased. He would state that his mother, Ayyammal, had returned to the residence at 6.30 pm, whereas Ayyammal herself would state that she had returned home only at 7 pm.

23. Material Objects had not been collected either from the residence of Kuppusamy or from near about the place where Kuppusamy is said to have been done to death - Anai Gounder's house. In total contradiction to the weapons said to have been used by Palanivel on Kuppusamy, PW9 would state that the weapons that had been utilised by Natesan and others were stones. Furthermore, while the alleged incident is said to have taken place at Veemanur bus stop at around 8 pm, PW5 and PW9 in their evidence state that the incident had occurred one hour earlier at 7 pm. This casts a huge doubt on the time of occurrence of the incident itself.



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24. When the evidence of PW5 is analysed in the light of PW6 - Uma, namely, the sister of Kuppusamy, some more contradictions are discernible. It is the specific case of PW5 that M.O.1 was utilised by Palanivel to beat Kuppusamy at his residence. However, MO1 was recovered, as pointed out above, not from the residence of Kuppusamy or near Anai Gounder's house, but from the Veemanur bus stop.

25. It is not the prosecution's case that the deceased, Kuppusamy was present at the bus stop and he had been assaulted by the accused. The learned Trial Judge has given cogent reasons to conclude that the presence of PW5, PW6 and PW9 at the place of occurrence is itself doubtful.

26. Another factor, which persuaded the learned Trial Judge and also finds acceptance with us, is that PW6 is none else than the former sister-in-law of the accused. Uma, PW6, had been married to one Annamalai, the brother of Palanivel. On account of family disputes, they had separated and the relationship ended in a divorce. This shows that there has been pre-existing disputes between PW6 and the accused's family. Therefore, there is every possibility of false implication of the accused.



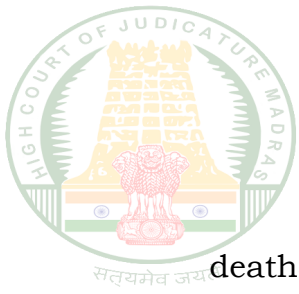
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27. It is not unknown that in group clashes, innocent people would be roped in by persons supporting the prosecution in order to settle old scores. The reason for non-examination of Palaniammal and Ayyasamy has not been placed before the court by the prosecution. When there are contradictions in the evidence of the witnesses marched by the prosecution, the court cannot rely upon their evidence for the purpose of convicting the accused. The contradictions are not of such a nature, which can be ignored.

28. When an essential proof, on the nature of weapon used to attack, is itself lacking, we do not find any error in the order of the learned Trial Judge in not placing reliance upon the alleged eye-witnesses.

29. We have to agree with Mr.Raj Thilak that the evidence of PW16 - Dr.Ravishankar and Ex.P25 and Ex.P26 point out that the death of Sundarajan and Kuppusamy was on account of brutal attack on the persons. However, the role of the prosecution does not stop by proving that part alone. The prosecution would further have to prove that the accused had a role in, or at least a hand in, the said homicide. When that evidence is lacking, the court of criminal jurisdiction cannot conclude for the mere fact that there are two



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deaths, the persons arrayed as accused are responsible for the same.

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30. Furthermore, the evidences on record show that several persons were present at the time of alleged incident. All the persons, who marched before the court as witnesses, were close relatives or estranged relatives of the accused. No reason has been set forth as to why any credible and independent witnesses have not been examined to substantiate the case of the prosecution. That being the position, as the view taken by the trial court being one of the plausible views in the case, we are not inclined to disturb the findings of the learned Trial Judge.

31. In the light of the above discussion, the criminal appeal is dismissed. The order dated 15.09.2020 passed by the learned I Additional District and Sessions Judge, Salem in S.C.No.217 of 2009 is hereby confirmed.

(M.S.R., J)

(V.L.N., J)

02.09.2025

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order

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To

- 1.The I Additional District cum Sessions Judge, Salem
- 2.The Public Prosecutor,
High Court, Madras.

M.S.RAMESH, J.
and

V.LAKSHMINARAYANAN, J.

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