



Crl.A. Nos.467 & 540/2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>RESERVED ON</i>	<i>24.04.2025</i>
<i>PRONOUNCED ON</i>	<i>18.06.2025</i>

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

Criminal Appeal Nos.467 and 540 of 2019

Anbu .. Appellant in Crl.A. No.467/2019 – A1

Karmegam .. Appellant in Crl.A. No.540/2019 – A3

Vs.

State rep by Inspector of Police
M-3, Puzhal Police Station
(Law and Order) Chennai
Crime No.319/2009

.. Respondent in both Criminal Appeals

Prayer : Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence passed by the Principal Sessions Judge, Tiruvallur dated 26.06.2019 made in S.C. No.49 of 2014 and set aside the same.

For Appellants : Mr.C.R.Malarvannan
in both Appeals For Mr.E.Udayachander

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



Crl.A. Nos.467 & 540/2019

COMMON JUDGMENT

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N.SENTHILKUMAR, J.

Challenging the judgment of conviction and sentence passed by the learned Principal Sessions Judge, Tiruvallur dated 26.06.2019 made in S.C. No.49 of 2014, the accused A1 & A3/appellants herein, have preferred these criminal appeals.

2. The learned Principal Sessions Judge, Tiruvallur in S.C. No.49 of 2014, has convicted the appellants and sentenced them as follows:-

<i>Accused/Appellants</i>	<i>Offence</i>	<i>Sentence</i>
<i>A1 & A3/ Appellant in Crl.A. Nos.467 & 540 of 2019</i>	<i>Section 302 IPC</i>	<i>Life imprisonment and a fine of Rs.1,000/ each-, in default to undergo rigorous imprisonment for six months</i>

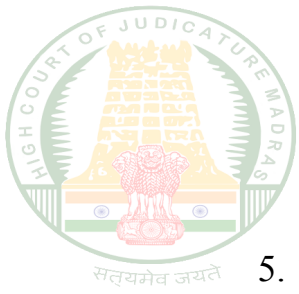
3. The case of the prosecution is that on 10.06.2009 at about 2.30 p.m in Central Prison, Puzhal, at quarantine block, convict prisoner Kumar @ Welding Kumar was done to death by A1 to A7. To prove the case of the prosecution before the trial court, the prosecution has examined PW1 to PW26 and marked



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Exs.P1 to 47 and produced material objects MO1 to MO17. According to the prosecution, the deceased was a convict detained under the Central Prison at AB-II block, where A1 – Anbu, A3 – Karmegam and A2 - Raja (died during pending investigation). All the three accused along with others had inflicted injury with knife, iron rods. The prosecution has examined PW1, Anwar Basha, who was serving as prison jailer on 10.06.2009. Based on the complaint given by PW1, an FIR was registered and the complaint is marked as Ex.P1. PW1 had stated that while he was away for lunch, he received information from the control room stating that the accused persons are fighting with each other in the quarantine block. Upon getting the said information, PW1 rushed to the spot and visited the scene of occurrence and enquired the witnesses who have seen the occurrence.

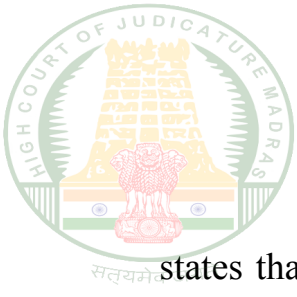
4. According to the prosecution, the evidence of PW2, eyewitness is that, after completing the Para duty at about 1.00 p.m, he heard some noise from the prisoners of AB-II quarantine block where A1, A2 and A3 (died) inflicting injuries on the deceased welding Kumar with knife. When PW2 rushed to the scene of occurrence, all the three accused threatened PW2 by showing the knife, therefore, fearing the consequence, PW2 remained silent.



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5. The prosecution witnesses, namely PW3 to PW5 have turned hostile. PW7, the Ambulance driver was examined who deposed that the deceased was taken in the said ambulance to the Government hospital for further treatment. PW8 is the Head Constable who was then working as Grade II constable. He stated that he was present when the other accused, namely A4 to A6 were examined by the respondent. PW9 and PW10 who were the under trial prisoners had turned hostile. PW11 is the son of the deceased who spoke about how he received the information about the death of his father and the nature of crime that has taken place. PW12 is the constable who signed as witness to the observation mahazar, which was marked as Ex.P6 and Ex.P7 is the seizure mahazar.

6. PWs.13 to 15, who are convicts, had turned hostile. PW16 is the retired head warden of the Central Prison, who also turned hostile. PW17 is the retired Jail Superintendent who witnessed the recovery of material objects through Ex.P15 to Ex.P20. PW18 is a painter, and a resident of Puzhal at the time of occurrence. He had also turned hostile. PW19 is an expert who had conducted examination on the viscera to ascertain the presence of poison or alcohol in the stomach. The said viscera report was marked as Ex.P23, which



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states that no alcohol or poison substance detected in any of the parts sent for examination. PW20 is the Forensic expert whose report was marked as Exs.P24 ad P25.

7. PW21 is the Judicial Magistrate, who had stated that she has recorded the 164 statement of the witnesses, which were marked as Exs.P27 to P32. PW22 is the doctor who conducted autopsy on the deceased and the said autopsy report was marked as Ex.P33. According to the doctor, the deceased would appear to have died of shock and haemorrhage due to multiple injuries sustained by him. PW23 is the Revenue Divisional Officer, who conducted an inquest and submitted a report which was marked as Ex.P35. It was recorded in his letter that as the crime had happened inside the prison, a special report was obtained. PW24 is the then Inspector of Police who registered the FIR which was marked as Ex.P36 and he prepared the sketch marked as Ex.P37. He deposed that the confession statements of the accused recorded. Pursuant to the confession of the accused, material objects were recovered. PW25, the Assistant Commissioner of Police and PW26, the Inspector of Police who continued the investigation, submitted a final report. Upon completion of the

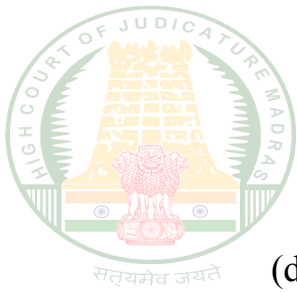


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trial, the learned Principal Sessions Judge, Tiruvallur, has convicted and sentenced the appellants/accused, as stated supra.

8. The learned counsel appearing for the appellants contended that

- (a) As PW1 was only a hearsay witness such witness can neither be treated as a eye witness nor a substantial evidence;
- (b) As the mahazar witnesses, who claimed to have witnessed the recovery from A1 to A4 had turned hostile, the evidenciary value of such recovery is questionable. The recovery of material objects cannot be taken into consideration as all the witnesses have turned hostile except PWs.1 and 2 and other official witnesses;
- (c) As there were several under trial prisoners and convicts who were examined, all the witnesses have turned hostile. It only demonstrates that there was no independent witness to the occurrence. Therefore, it creates substantial doubt in the case of the prosecution and the theory projected by the prosecution is highly dramatic and improbable.



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(d) The only available evidence is PW2, who happens to be an eye witness. The said PW2 is also an official witness and therefore, relying upon the evidence of such official eye witness cannot be taken into consideration, as PW2 is an interested witness and a police man attached to the prison and therefore, the conviction cannot be based on the evidence of PW2.

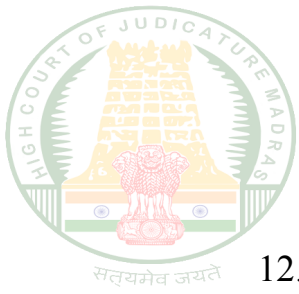
9. Admittedly, the occurrence has taken place inside the prison. There will be three sets of people present inside the prison, namely the police officials who are guarding and managing the Central Prison, Puzhal and the convicts and the under trial prisoners. When the deceased was admitted in the quarantine block which is highly secured and moderate prison, the accused persons with a motive to commit murder had been watching the movements of the deceased through A3 to A7. It is clear from the record that PW2 had rushed to the scene of occurrence upon hearing the noise. He witnessed the accused inflicting injuries on the deceased. A1 to A3 had inflicted injuries on the deceased with knife. Upon seeing PW2, the accused threatened him by showing the knife therefore, PW2 has paved way for the accused to move away from the scene of occurrence.



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10. According to the prosecution, the deceased welding Kumar happened to be a notorious criminal, involved in several criminal cases and the accused persons were also involved in several criminal cases. It has been a longstanding enmity between one of the friends of the accused and the deceased. The trial court had acquitted A3 to A7 for want of evidence as the case of the prosecution itself is that the overt act of A3 to A7 is that they have aided A1 and A2 in committing the murder by watching the activities of the deceased and passed on the information about the movements of the deceased. When the accused and the deceased persons are notorious criminals, it is natural that the convicts who stood as witnesses and the witnesses turning hostile cannot be treated as a defence to disprove the prosecution case.

11. As the occurrence has taken place in the quarantine block which is secured for most wanted criminals who had committed crime on other most wanted criminals, there is no possibility for an independent witnesses apart from the official witnesses. Considering the nature of the case, there is no infirmity in the findings of the trial court.



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12. It is clear from the records that two blood stained knives were recovered from A1 and A2 as MO4 and MO5 respectively and the cause of death as per the post-mortem certificate is multiple injuries sustained by the deceased. Therefore, prosecution has proved the case by producing the material objects which were recovered from the accused and through oral evidence.

13. The evidence of PW2 is natural and cogent in explaining the crime perpetrated by the accused persons. As per the evidence of PW2, when he saw the accused persons attacking the deceased, he moved closer to the scene of occurrence, the accused persons threatened PW2 by showing knife, therefore, he allowed the accused to move away from the place of occurrence. The statement of PW2 reveals the natural conduct of a person, even a police officer who is unarmed. A reading of deposition of PW2 clarified that he is the eye witness to the said occurrence and that with an intention to save his life from the hardcore criminals, PW2 remained silent after witnessing the crime and informed the control room. In view of the same, there is nothing to discredit the credibility and the evidentiary value of PW2. Though the witnesses to recovery under Section 27 of the Indian Evidence Act, had turned hostile, the same will not weaken the case of the prosecution when the said recovery mahazars were marked through the Inspector of Police and it is corroborated in his statement.



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14 In view of the same, we do not find any reason to interfere with the judgment of conviction and sentence passed against the appellants/A1 and A3 by the learned Principal Sessions Judge, Tiruvallur dated 26.06.2019 made in S.C. No.49 of 2014 and the same deserves to be confirmed. Accordingly, the criminal appeals filed by A1 and A3 fail.

15. In fine, both the criminal appeals are dismissed.

[M.S.R., J.] [N.S., J.]
18.06.2025

Asr

Index : Yes

Neutral Citation : Yes

To

1.The Principal Sessions Judge, Tiruvallur

2. Inspector of Police

M-3, Puzhal Police Station
(Law and Order) Chennai
Crime No.319/2009.

3.The Superintendent of Prisons

Central Prison, Puzhal

4.The Public Prosecutor, High Court, Madras



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and
N.SENTHILKUMAR, J.
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Dated : 18.06.2025