

CrI.A(MD)No.167 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

CrI.A(MD)No.167 of 2021

The State represented by
The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli District.
(Crime No.153 of 2017)

... Appellant /
Complainant

Vs.

1.Vaikundam
2.Chinnadurai

... Respondents /
Accused 1 & 2

Prayer: Criminal Appeal filed under Section 378(i) of Code of Criminal Procedure, 1973 to allow this Appeal and to set aside the judgment of acquittal of the respondents / accused in S.C.No.620 of 2017 dated 14.11.2019 by the learned IV Additional District & Sessions Judge, Tirunelveli and convict the respondents / accused for the charges framed against them.

For Appellant : Mr.T.Senthil Kumar
Additional Public Prosecutor



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For Respondents : Ms.T.Seeni Syed Amma
for M/s.T.Lajapathi Roy & Associates

JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

The State has preferred this appeal against the judgment of acquittal rendered in S.C.No.620 of 2017 on the file of IV Additional District and Sessions Judge, Tirunelveli on 14.11.2019.

2.The case of the prosecution is as follows:

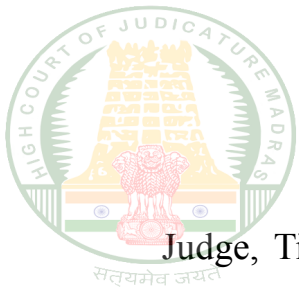
The deceased Niraikulathu Iyyanar @ Iyyanar as well as PW1 Malaiyappan belonged to Avinaperi. On 06.06.2017, the accused namely, A1 Vaikundam and A2 Chinnadurai were found consuming liquor at around 01.00 p.m near a Hospital in Pudumanai. This was questioned by the deceased. This infuriated the accused. The deceased and PW1 went in their two wheeler to attend a temple festival. While returning on the same day at around 10.15 p.m, the deceased and PW1 were waylaid by the accused. The accused abused the deceased and PW1. Thereafter, they took MO1 billhooks and brutally assaulted PW1. PW1 suffered grievous injuries on his left chest, left elbow and left little finger. When Iyyanar tried to run, the accused chased him and inflicted multiple injuries on him. Iyyanar fell down. He was taken to Tirunelveli



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Government College and Hospital. He died enroute. PW1 had also been

admitted to Tirunelveli Medical College Hospital at Palayamkottai. His statement was recorded by PW17 and was reduced to writing vide Ex.P1. PW17 returned to Tirunelveli Taluk Police Station and registered Crime No.153 of 2017 at around 00.15 hrs on 07.06.2017. PW18 Inspector of Police took up investigation and came to the spot at around 1.15 a.m on 07.06.2017. He prepared ExP2 observation mahazar and rough sketch ExP19. He collected the blood stained earth samples and other articles from the spot under Ex.P3 mahazar. He came to Tirunelveli Government Medical College and Hospital at around 03.15 a.m and recorded the statement of PW1 Malaiyappan. He also recorded the statements of PW2 Palani and PW3 Chelladurai and other witnesses. He conducted inquest at 3.30 p.m in the presence of panchayatdhars and submitted ExP20 inquest report. Post-mortem was conducted and the blood stained cloths of the deceased were seized. The accused were arrested at 15.50 hrs and based on their disclosure statements, MO1 billhooks were seized as Ex.P4 recovery mahazar. Since the accused had suffered injuries, they were also admitted to Hospital. After they were discharged, they were sent to judicial custody on 09.07.2017. After obtaining forensic reports and examining the medical witnesses, final report was filed. It was committed to the Principal Sessions Court and later made over to IV Additional District and Sessions



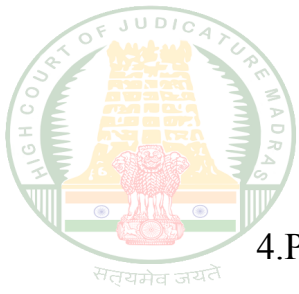
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Judge, Tirunelveli in S.C.No.620 of 2017. Charges were framed against the

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accused under Sections 341, 294(b) and 302 of IPC. As against A1, an additional charge under Section 307 was also framed. The accused pleaded not guilty and claimed to be tried. The prosecution examined PW1 to PW18. Exp1 to Exp23 were marked. MO1 to MO10 were also marked. On the side of the accused no evidence was adduced. Incriminating circumstances were put to the accused during examination under Section 313 of Cr.P.C. The accused characterized them as false. After considering the evidence on record, the trial Court vide judgment dated 14.11.2019 acquitted the accused. Questioning the same, this appeal has been filed.

3.The learned Additional Public Prosecutor appearing for the State submitted that the prosecution had proved its case beyond reasonable doubt and that the Court below has assigned frivolous reasons for acquitting the accused. He conceded that the testimony of PW1 is shaky. He therefore wanted us to go more by the testimonies of PW2 and PW3 who are eyewitnesses. According to the learned Additional Public Prosecutor, the case of the prosecution can very well be sustained with reference to the testimonies of PW2 and PW3. He called upon this Court to set aside the impugned judgment and find A2 guilty of the offence with which he was charged.



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4.Per contra, the learned counsel appearing for the accused submitted that the Court below rightly acquitted the accused and interference is not warranted.

Notes of argument was also filed by the learned counsel and we were taken through its contents. She called upon this Court to sustain the impugned judgment and dismiss the appeal.

5.We carefully considered the rival contentions and went through the evidence on record.

6.During the pendency of appeal, A1 was murdered on 10.03.2022. His death certificate has also been filed by the State. Therefore, this appeal stands abated as far as A1 is concerned.

7.PW1 Malaiyappan is an injured witness. According to the prosecution, the crime was also witnessed by PW2 Palani and PW3 Chelladurai.

8.PW1 in his chief examination admitted that he knew both the accused, namely, Vaikundam and Chinnadurai. FIR in this case (Crime No.153 of 2017) on the file of Tirunelveli Taluk Police was registered on the basis of Ex.P1 complaint. Ex.P1 complaint was recorded at around 11.10 p.m on 06.06.2017



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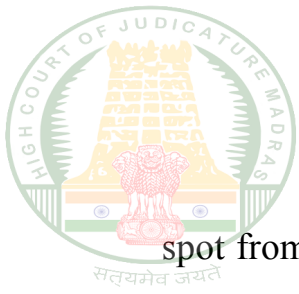
at the Hospital. PW1 Malaiyappan had implicated A1 Vaikundam by name.

WEB COPY The other person who is said to have participated in the crime was not named.

If A2 had participated in the crime, PW1 would have definitely implicated him by name in Ex.P1 complaint itself. Non-implication of A2 by name in Ex.P1 complaint in these circumstances does seriously undermine the prosecution case as far as A2 is concerned.

9.The only question that calls for consideration is whether the acquittal of A2 for the offences under Sections 341, 294(b) and 302 of IPC should be reversed.

10.Probably realizing the unreliability of PW1's testimony, the learned Additional Public Prosecutor wanted us to rather ignore PW1's testimony and focus on the deposition of PW2 and PW3. It may be mentioned at the outset that PW2 Palani was the cousin of the deceased while PW3 was the nephew of the deceased. Their presence at the spot is not natural. Both of them are residents of Avinaperi. Both are coolie workers. They claimed that they had come to Puthumanai only for the purpose of having dinner at Kalyani Parotta Stall in Chithra complex which happens to be near the occurrence spot. When they heard screams, they got down from the restaurant and rushed towards the



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spot from where the sound came. They witnessed Iyyanar being chased by the

accused. Both PW2 as well as PW3 have deposed that A2 Chinnadurai waylaid Iyyanar and inflicted cut injuries on the vital parts of the body. The Court below disbelieved their testimonies.

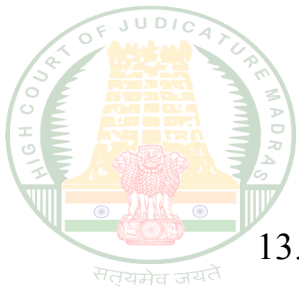
11.PW2 admitted that he always carried his mobile phone with him. If really PW2 and PW3 had witnessed the occurrence, they would have done any or all of the following three things: (i) they would have called the Police and informed them about the occurrence; (ii) they would have rushed Iyyanar to the Hospital; Tirunelveli Medical College Hospital was located close to the occurrence spot; they did not bother to take Iyyanar or PW1 to the hospital; (iii) they would have atleast informed the family members of the deceased. PW3 is none other than the nephew of Iyyanar while PW2 was the cousin brother. So obviously they would be having the contact details of the family members of the deceased. PW6 Ganesan is the son of the deceased. He stated that he received information over the phone from an unknown person. Admittedly, neither PW2 nor PW3 informed Ganesan about the occurrence. Both PW2 as well as PW3 claimed that they were standing in the spot. The Police appeared to have arrived on their own some 30-45 minutes after getting information from some source. The deceased as well as Malaiyappan were taken in the Police vehicle. Both PW2 as well as PW3 knew the accused. If



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really they had witnessed the incident, they would have told the Police that A1 and A2 had attacked the deceased and caused his death. They did not make any such statement to the Police. In fact, PW2 and PW3 would claim that they were not inquired by the Police at all. Iyyanar had been brutally hacked. PW2 and PW3 being his close relatives would have definitely carried him in their arms. But, according to PW3, there were no blood stains on his cloths. PW2 feigned ignorance about the arrival of PW17 Paul Durai. It was PW17 Paul Durai who came to the spot and took the deceased as well as PW2 to the Hospital in the police vehicle and who recorded the statement of PW1 Malaiyappan. PW2 stated in his evidence that he did not know if SI Paul Durai came to the occurrence spot or not. If PW2 had been present all along, he could not have been unaware of the role played by PW17, Sub Inspector Paul Durai.

12.PW2 and PW3 had claimed that they were eating in the parotta stall belonging to PW4 Thamban. PW2 and PW3 rushed out after hearing the screams of Iyyanar. It is improbable that Thamban stayed behind without following them. Thamban PW4 did not depose that he saw the accused. That PW4 did not implicate the accused is another vital circumstance which was taken note of by the Court below.



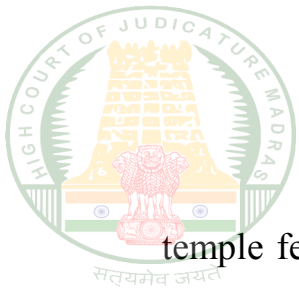
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13. Even according to the witnesses, there is no enmity between the accused on the one hand and the deceased on the other. The only reason as to why the occurrence is said to have taken place was that the deceased pulled up the accused for drinking in a public place. This appears to be too weak a motive.

14. The case of the prosecution is that Iyyanar and PW1 were going in their two wheeler to take part in a temple festival. Enroute they saw the accused consume liquor at a public place in Pudumanai near the hospital. Since Iyyanar pulled them up, the accused wanted to take revenge. If this is the reason, in Ex.P1 complaint, PW1 Malaiyappan would have referred to it. The omission to make a reference to this occurrence in Ex.P1 complaint goes to the root of the matter and renders the motive improbable.

15. We have already noted that on the strength of testimony of PW1, A2 could not be convicted. In fact, PW1 turned hostile during the course of cross examination.

16. From a reading of the entire evidence on record, one can come to the safe conclusion that when the deceased and PW1 who were returning from the



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temple festival, they had been attacked by A1 Vaikundam and another person.

Iyyanar died on the spot. PW1 Malaiyappan had also fallen down and was lying in a badly injured condition. Upon hearing this, the Police came to the spot and took them to the Tirunelveli Medical College Hospital. That is why at 11.10 p.m on the occurrence state, when PW1 gave his complaint, he implicated A1 Vaikundam alone. The deceased and PW1 had remained unattended at the spot till the arrival of the Police.

17. The Hon'ble Supreme Court in its decision reported in 957 SCC OnLine SC 13 (Vadivelu Thevar v. State of Madras), oral testimony was classified into three categories:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

The Court below had given sound and solid reasons for coming to the conclusion that the oral testimonies of PW2 and PW3 were “wholly unreliable” and that they could not have been eyewitnesses. Their version was rightly rejected as improbable. Once the accused have been acquitted, the presumption of innocence is doubly fortified. Since we are dealing with an appeal against acquittal, we are governed by the principles laid down in **Bhupatbhai Bachbhai Chavda v State of Gujarat (2024 SCC OnLine SC 523)**. Unless



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we record that the reasons given by the trial Court are perverse, we cannot intervene. In the case on hand, we are satisfied that the trial Court has given acceptable reasons for disbelieving the prosecution case. Interference is not warranted.

18.This Criminal Appeal stands dismissed. No costs.

[G.R.S., J.] [R.P., J.]
28.01.2025

NCC : Yes / No
Internet : Yes / No
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To

IV Additional District & Sessions Judge,
Tirunelveli.



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