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CRL.A.(MD)No.137 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R.POORNIMA

CRL.A(MD)Nos.137, 138, 212 & 217 of 2023

Crl.A.(MD)No.137 of 2023

Thangam @ Mathalaimuthu

... Appellant / Accused No.4

Vs.

The Inspector of Police,
Dindigul Town South police station,
Dindigul.
(Crime No.198 of 2014)

... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the judgment dated 15.11.2022 made in S.C.No.36 of 2018 passed by the learned Additional District and Sessions Judge, Dindigul and allow this criminal appeal.

For Appellant : Mr.Kathirvelu,
Senior counsel,
for Mr.K.Prabhu.

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

* * *



Crl.A.(MD)No.138 of 2023

Joseph Stephen

... Appellant / PW2

Vs.

1. State through,
The Inspector of Police,
Dindigul Town South police station,
Dindigul.
(Crime No.198 of 2014) ... Respondent / Complainant
2. Chinnappan @ Chinnakalai
3. Pappathi @ Kuzhandhai Therasu
... Respondents / Accused Nos.9&10

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to call for the records of the judgment dated 15.11.2022 in S.No.36 of 2018 on the file of the learned Additional District and Sessions Judge, Dindigul and set aside the order of acquittal to the respondents 2 and 3 / accused No.9 and 10 with regard to offences under Sections 148, 302 r/w.109 IPC and convict them for the above said offences.

For Appellant : Mr.Ananda Padmanabhan,
Senior counsel,
for M/s.APN Law Associates.

For R-1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

For R-2 : Mr.R.Narayanan

* * *



CrI.A.(MD)No.212 of 2023

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1. Justin Doss @ Justin
 2. Johnson Prabhakaran
 3. Thamaraikannan @ Kannan
 4. Ignésious Inbaraj
- ... Appellants / Accused Nos.5 to 8

Vs.

State through,
The Inspector of Police,
Dindigul Town South police station,
Dindigul.
(Crime No.198 of 2014) ... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to call for the records of the judgment dated 15.11.2022 in S.No.36 of 2018 on the file of the learned Additional District and Sessions Judge, Dindigul and set aside the same.

For 1st Appellant : Mr.S.Sarvagan Prabhu

For Appellants
2 to 4 : Mr.Abudu Kumar Rajaratnam,
Senior counsel,
for Mr.M.Jegadeesh Pandian.

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

* * *



Crl.A.(MD)No.217 of 2023

1. Anthony Vimal Raj @ Vimal Anthony
2. Chinnaparaj
3. Arul Arockiyadoss @ Avukutti ... Appellants /Accused Nos.1to3

Vs.

State through,
The Inspector of Police,
Dindigul Town South police station,
Dindigul.
(Crime No.198 of 2014) ... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to call for the records of the judgment dated 15.11.2022 in S.No.36 of 2018 on the file of the learned Additional District and Sessions Judge, Dindigul and set aside the same.

For 1st Appellant : Mr.C.Mayil Vahana Rajendran

For Appellants 2&3: Mr.Ashok Kumar,
Senior counsel,
for Mr.M.Jegadeesh Pandian.

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

* * *

COMMON JUDGMENT

These appeals are directed against the judgment dated 15.11.2022 made in S.C.No.36 of 2018 on the file of the Additional District and Sessions Judge, Dindigul.



2. By the impugned judgment, accused Nos.1 to 8 were convicted for the offences under Sections 302 r/w.149 and 148 IPC and sentenced to life imprisonment and levied with fine of Rs.10,000/- each. Accused Nos.9 and 10 were acquitted. A4 Thangam @ Mathalaimuthu filed Crl.A.(MD)No.137 of 2023. Questioning the acquittal of accused Nos.9 and 10, P.W.2 filed Crl.A.(MD)No.138 of 2023. A5 to A8 have filed Crl.A.(MD)No.212 of 2023. A1 to A3 have filed Crl.A.(MD)No.217 of 2023.

3. The case of the prosecution is as follows:-

Gnanaprakasam @ Podari was the husband of A10 Pappathi. He was heading one faction of loadmen at Dhadikombu. The deceased Sebasthiyan was heading the rival faction. Gnanaprakasam was murdered in the year 2006. Sebasthiyan (deceased herein) was awarded life sentence by the trial Court. He was acquitted by the appellate Court. Since the family of Gnanaprakasam wanted to take revenge, Sebasthiyan avoided regularly staying in his native village, namely Muthazhagupatti. He used to come home once in 15 days. On 04.05.2014 Sebasthiyan came to the village. He was murdered between 5.00 a.m. and 5.30 a.m. (ie.) on 05.05.2014 in West Street



near Sandhiyagappar Church. Sebasthiyan was accompanied by his wife(P.W.1). Upon hearing the scream of P.W.1, P.W.2 and another family member rushed to the spot. P.W.1 lodged Ex.P.1 complaint at 7.00 a.m. before the Dindigul Town South police station. P.W.2 signed in Ex.P.1 complaint. Crime No.198 of 2014 was registered for the offences under Sections 147, 148 ,341, 302 and 109 IPC. As many as 10 persons were named in the FIR. P.W.10 was working as Inspector of Police. He went to the spot at around 7.45 a.m. He conducted inquest. Ex.P.9 is the inquest report. He also prepared rough sketch as well as observation mahazar. He examined the witnesses. He collected bloodstained earth sample and other articles from the spot. Postmortem was conducted on 05.05.2014 at 1.00 pm. by P.W.7. Ex.P.5 is the postmortem certificate. Based on A2's disclosure statement Ex.P.13, M.O.10 Aruval was seized under recovery mahazar Ex.P.14. A1, A5, A6, and A7 were arrested on 10.05.2014. The fourth accused surrendered on 06.05.2014. The tenth accused was arrested on 14.05.2014. The ninth accused surrendered on 08.09.2014. A2, A3 and A8 were arrested on 05.05.2014 in the presence of P.W.4 and P.W.5. Likewise confession



statements were obtained from all the accused. Based on the disclosure statement of the other accused, weapons used for committing the crime were recovered under mahazars. After obtaining forensic reports and examining the medical witnesses, P.W.11 who continued the investigation filed the final report before the Judicial Magistrate No.III, Dindigul. It was taken on file as P.R.C.No.15 of 2014. The case was committed to the file of the Principal Sessions Judge, Dindigul and made over to the Additional District and Sessions Judge, Dindigul in S.C.No.36 of 2018. Charges were framed against the accused under Sections 302 r/w. 149 and 148 IPC. As against accused Nos.9 and 10, charges were also framed under Section 302 r/w. 109 IPC. The prosecution examined P.W.1 to P.W.11. Ex.P.1 to Ex.P.31 were marked. M.O.1 to M.O.20 were marked. On the side of the accused, no evidence was adduced. The trial Court after considering the evidence on record, vide judgment dated 15.11.2022 acquitted accused Nos.9 and 10 and convicted and sentenced the remaining accused as mentioned above. Aggrieved by the same, these criminal appeals have been filed.



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4. Heard the learned Senior counsel appearing for the accused, the learned Senior counsel appearing for P.W.2 / appellant in Crl.A. (MD)No.138 of 2023 and the learned Additional Government Pleader.

5. We will take up the first question whether acquittal of accused Nos.9 and 10 is justified. P.W.2 in his testimony had deposed that the crime was committed pursuant to the instigation of accused Nos.9 and 10. But he did not say so during the police investigation. P.W.10 investigation officer had also admitted that P.W.2 did not state in his 161 Cr.P.C. statement that accused Nos.9 and 10 have instigated the commission of the crime. Accused No.10 was arrested and confession statement was taken from her. Pursuant to the said confession, there was no recovery. Accused No.9 was shown as an absconding accused. From accused No.9 also, there was no recovery. P.W.2 had not deposed as to what accused Nos.9 and 10 were doing at the time of occurrence. Since accused Nos.9 and 10 were not present at the spot and none of the prosecution witnesses



had stated that accused Nos.9 and 10 were armed with weapons, the Court below rightly acquitted them of the charge under Section 148 IPC. There was no evidence whatsoever to show that accused Nos.9 and 10 had committed the offence. Therefore, the Court below rightly acquitted accused Nos.9 and 10 in respect of the offences under Sections 148 and 302 r/w.109 IPC. We are satisfied that the acquittal of accused Nos.9 and 10 is well founded. Therefore, Crl.A. (MD)No.138 of 2023 stands dismissed.

6. The next question that calls for consideration is whether the conviction of accused Nos.1 to 8 is sustainable. The specific case of the prosecution is that the deceased Sebasthiyan and his wife Daisy Pensila Mary (P.W.1) were crossing Sandhiyagappar temple to attend the call of nature. Admittedly, P.W.2 rushed to the spot only after hearing the scream of P.W.1, and witnessed the occurrence.

7. P.W.1 turned hostile. P.W.1 in her chief examination stated that her husband was found killed in a channel. When persons of the locality rushed to the spot, P.W.1 also went and saw the deceased



lying dead. P.W.1 did not support the prosecution version that she was with her husband when the occurrence took place. Not only P.W.1, other witnesses such as P.W.3, P.W.4, P.W.5, P.W.6 and P.W.8 also turned hostile. The Court below found that the accused Nos.1 to 8's guilt rests entirely on the testimony of P.W.2 Joseph Stephen. Joseph Stephen was the nephew of the deceased Sebasthiyan. According to him, the case on hand is one of revenge murder. Gnanaprakasam, the father of accused Nos.2 and 3 was murdered in 2006 and in the said case, Sebasthiyan was the prime accused. Though the trial Court found him guilty, he was acquitted by the appellate Court. The prosecution no doubt has established that the accused had a motive to kill Sebasthiyan.

8. It is well settled that motive by itself is not sufficient to find the accused guilty (vide ***State of Madhya Pradesh V. Paltan Mallah [(2005) 3 SCC 169]***). There must be a legally acceptable evidence to connect the accused with the crime. In the case on hand except the testimony of P.W.2, there is no other evidence. The Hon'ble Supreme Court in its decision reported in **(1957) SCR 981 (*Vadivelu Thevar v State of Madras*)**, held as follows:



“Generally speaking, oral testimony in this context may be classified into three categories, namely:

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

In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion.

It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

Since the testimony of PW2 falls in the third category, we have to carefully scrutinize his testimony and find out if it has a ring of truth and can command our confidence.

9. Admittedly, the occurrence had taken place between 5.00 a.m. and 5.30 a.m. on 05.04.2014. P.W.2 is the nephew of the deceased Sebasthiyan. Sebasthiyan's residence was in the South street of Muthazhagupatti. Admittedly, P.W.2 was residing in East



Street. There is a distance of 200 meters between the house of P.W.2 and the house of the deceased. P.W.2 has not given any convincing reason as to why he should be in the house of Sebasthiyan in the early hours on 05.05.2014. P.W.2 admittedly did not accompany his uncle when he went to attend the call of nature. The occurrence had taken place near a drainage channel which was located near Sandhiyagapar Church which was on the West Street. P.W.2 would claim that the distance between Sebasthiyan's house and the occurrence spot would be 100 meters. The defence suggested that the distance between the occurrence spot (Odai Street) and the house of Sebasthiyan would be close to $\frac{3}{4}$ km. This suggestion was of course denied by P.W.2. Ex.P.11 is the rough sketch drawn by P.W.10. In the rough sketch, the houses in Sandhiyagapar Church street where the occurrence took place have been mentioned(houses on both sides). Likewise, the names of the houses on both sides of South Street have been mentioned. But there is no reference to the house of the deceased. The distance between the occurrence spot and the house of the deceased ought to have been mentioned in the observation mahazar. The failure to include the house of the



deceased in Ex.P.11 rough sketch is a serious lacuna in the investigation. Neither P.W.10 nor P.W.11 have mentioned the exact distance between the occurrence spot and the house of the deceased. Such an omission is fatal to the prosecution. The learned Senior counsel pointedly contended that it was impossible for those sleeping in the house of the deceased in South Street to have heard any noise from the occurrence spot.

10. Even according to P.W.2, he rushed to the spot only after hearing the screams of P.W.1. P.W.2 claimed that he was in the house of Sebasthiyan along with his sons / daughter. He further claimed that he and the second daughter of Sebasthiyan rushed to the spot. The said second daughter of Sebasthiyan was not examined as a witness. If others were also with him, they too would have definitely rushed to the occurrence spot. There is no such evidence. According to P.W.2, he rushed to the spot only after hearing the screams of P.W. 1. Obviously by the time P.W.2 would have reached the spot, the entire crime would have been committed.



11.P.W.2 graphically described the acts committed by each of the accused. He states that when he went to the spot, all the accused had surrounded the deceased and that A1 inflicted cut injury on the neck as well as on the left hand. Likewise, he individualized each of the acts committed by each of the accused. PW2's blow by blow account of strikes inflicted on the deceased like in a screenplay renders his version highly improbable. P.W.2 admitted that he did not attempt to save his uncle.

12.P.W.2 had implicated all the family members of Gnanaprakasam. A10 was the wife of Gnanaprakasam. A2 and A3 were the sons of Gnanaprakasam. A9 Chinnappan was the brother of A10. A6 was the son of A9. A4 was also the brother of Gnanaprakasam. A1 and A5 were the sons of A4. Thus, all the family members of Gnanaprakasam have been implicated. A7 and A8 are also closely related to Gnanaprakasam.



13.P.W.1 was projected as the prime eye-witness. When P.W.1 herself had turned hostile, it is difficult to believe that P.W.2 after hearing P.W.1's screams, rushed to the spot and saw the deceased Sebasthiyan being hacked to death. In matters such as this, where a large number of persons have been implicated as direct participants in the crime, it would be most unsafe for the Court to rest its conviction on uncorroborated evidence. The Hon'ble Supreme Court in **Amar Singh v The State (NCT of Delhi) [(2020) 19 SCC 165]** held as follows:

“16. ... As a general rule the Court can and may act on the testimony of single eye witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of [Section 134](#) of the Evidence Act, 1872. But if there are doubts about the testimony Courts will insist on corroboration. It is not the number, the quantity but quality that is material. The time honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of [Section 134](#) of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise (see **Sunil Kumar V/s State**



Government of NCT of Delhi ((2003) 11 SCC 367)".

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14.It is true that Section 134 of the Indian Evidence Act, 1872 does not postulate that there should be “n” number of witnesses in support of the charge. It is the quality and not the quantity that is material. But in the present case, the most material witness(P.W.1) had turned hostile. It would be unsafe for the Court to sustain the conviction of as many as eight accused on the solitary, doubtful and uncorroborated testimony of P.W.2 in this case.

15.This is all the more because, recoveries have not been proved through evidences. Even according to the prosecution, there were lot of differences and enmity between the family of the accused and the family of the deceased. Gnanaprakasam, the father of A2 and A3 and the husband of A10 was murdered in the year 2006. Jeyaraj, the brother of Sebasthiyan who was also convicted along with Sebasthiyan was attempted to be murdered in the year 2007. Sebasthiyan was murdered on 05.05.2014. In this background, the possibility of false implication cannot be ruled out. The testimony of



P.W.2 is such that even his very presence in the occurrence spot, as an eyewitness, is open to grave doubt. Only if we are satisfied that the prosecution proved his case beyond reasonable doubt, we can find the accused guilty and not otherwise.

16. Since we have come to the conclusion that it would be unsafe to convict the accused upon the uncorroborated testimony of P.W.2, the impugned judgment is set aside. Accused Nos.1 to 8 are also acquitted of all the offences with which they were charged. Crl.A.(MD)Nos.137, 212 and 217 of 2023 are allowed. The fine amount, if any paid by them shall be refunded forthwith. The bail bond, if any executed by them shall stand cancelled. No costs.

(G.R.SWAMINATHAN, J.) & (R.POORNIMA, J.)
30.01.2025

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

PMU



To:

1. The Additional District and Sessions Judge,
Dindigul.
2. The Inspector of Police,
Dindigul Town South police station,
Dindigul.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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19

CRL.A.(MD)No.137 OF 2023

G.R.SWAMINATHAN, J.

AND

R.POORNIMA, J.

PMU

CRL.A(MD)Nos.137, 138, 212 & 217 of 2023

28.01.2025