

Crl.A(MD)No.139 of 2021 and
749 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on:25.02.2025

Delivered on: 25.03.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.139 of 2021and 749 of 2023

Mohan

...Appellant/Accused No.2 in
Crl.A(MD)No.139/2021

Murugesan

... Appellant/Accused No.1 in
Crl.A(MD)No.749/2023

-Vs-

State through the
The Inspector of Police,
Sawyerpuram Police Station
Thoothukudi District,
In Crime No.142/2012

...Respondent/Complainant
in both Crl.As

COMMON PRAYER: Criminal Appeals are filed under Section 374(2) of Cr.P.C., against the judgment and conviction dated 12.02.2021 in S.C.No.308 of 2016 by the learned II Additional District and Sessions Judge, Thoothukudi.



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For Appellant :Mr.R.Anand for
Mr.R.Ponkarthikeyan(Crl.A(MD)No.139/21)
For Appellant :Mr.Suyambulinga Bharathi
Legal aid Counsel (Crl.A(MD)No.749/23)

For Respondent : Mr.A.Thiruvadi Kumar,
in Both Crl.As Additional Public Prosecutor

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

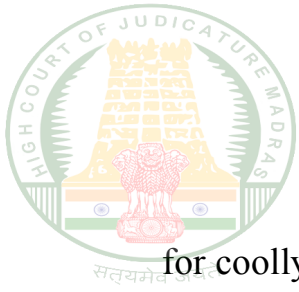
AND

R.POORNIMA, J.

The above Criminal Appeals arise from the judgement dated 12.12.2021 passed in S.C.No: 308/2016, by the II Additional Sessions and District Court, Tutucorin.

2.The appellant in Crl.A.(MD)No.139 of 2021 is the second accused by name Mohan. The appellant in Crl.A.(MD)No.749 of 2023 is the first accused by name Murugesan. For convenience, they will be hereinafter be referred as per their ranking in the trial court.

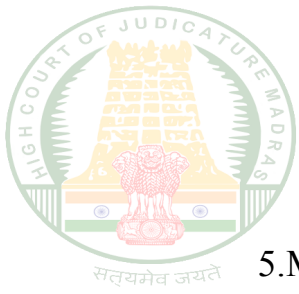
3.The gist of the prosecution case is that A-1, A-2 and the deceased Ravikumar are residents of Kovankadu Village. They are friends and used to go



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for coolly work together. A month prior to the incident, they all went to attend the funeral of one Appu Nadar. Due to petty quarrel between them, Murugesan(A-1) broke the quarter unit liquor bottle kept with by Rajkumar(deceased). Infuriated by the action of A-1, the deceased had beaten A-1. To take revenge for this, on 13.11.2012 at about 18.30 hrs, when the deceased Rajkumar came to buy beedi in the Petty shop at Kovankadu Village, A-1/Murugesan and A-2/Mohan came from the opposite direction and restrained the deceased. Mohan(A-2) caught Rajkumar, A-1 Murugesan attacked Rajkumar with Aruval on left side neck, left eye running upto scalp, left check and left hand wrist causing instant death of Rajkumar.

4.Chellathai wife of Rajkumar, who was following her husband, saw the occurrence and gave oral complaint to the Sayarpuram Police Station on 13.11.2012 at 20.30 hours. The same was reduced into writing and FIR in Cr.No: 142 of 2012 registered against A-1 and A-2 for the offences under Sections 341, 342 and 302 IPC by the Head Constable Mr.Sivaramalingam. A copy of the FIR was forwarded to the Judicial Magistrate, through Grdae-I PC Mr.Ganapathi Subramanian(PW-10). Since the jurisdiction Magistrate was on leave, he delivered the FIR at the residence of the In-charge Judicial Magistrate at Kovilpatti on 14.11.2012 at about 5.45 am.



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5.Mr. Ramarajan, Inspector of Police (PW-15) took up the investigation. He went to the spot and prepared observation mahazar Ex P-3, rough sketch Ex P-12, enquired witnesses and recorded their statements. He sent the body for post-mortem to Government Hospital, Tutucorin. Inquest between 7.00 am to 9.00 am on 14.11.2012 was conducted at Mortuary. Meanwhile, A-1 and A-2 surrendered before Judicial Magistrate, No:1, Coimbatore. On receipt of the information, PW-15, took custody of them on 23.11.2012 and recorded their confession statements. Aruval M.O.1, blood strained half sleeve shirts and blood strained lungies of the accused persons concealed in the backyard of the Murugesan (A-1) residence were recovered under mahazar Ex P-6.

6.On completion of investigation, final report was filed and taken cognizance by the Judicial Magistrate No: 1, Tutucorin. The offence being triable exclusively by court of Sessions, Judicial Magistrate committed the case to the Court of Sessions at Tutucorin.

7.Charges were framed against A-1 u/s 341 and 302 r/w 34 of IPC. Against A-2 u/s 342 and 302 r/w 34 IPC. To prove the charges, on the side of prosecution, 15 witnesses, 16 Exhibits and 10 material objects were marked. No defence



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witness and no exhibit or material object marked on the side of the accused.

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8.The trial court, held A-1 and A-2 guilty of the charges. They were sentenced as below:

A-1 : 302 IPC. and 341 IPC.	To undergo life imprisonment and fine of Rs 1000/- To undergo one month Simple Imprisonment.
A-2: 302 r/w 34 IPC. 341 IPC. 342 IPC.	To undergo Life Imprisonment and fine of Rs 1000/- To undergo one month Simple Imprisonment. To undergo One year Simple Imprisonment.

The sentences ordered to run concurrently. The period of sentence already undergone was set-off under section 428 of CrPC.

Crl.A(MD)No.749 of 2023 by A-1 (Murugesan):

9.Mr. R. Anand, learned Senior Counsel for the appellant/first accused contended that the complaint(Ex P-1) and the de-facto complainant(PW-1) does not reveal the real facts. PW-1 is not the witness to the occurrence. She had falsely deposed that at the time of occurrence, she was following her husband/the deceased and witnessed the incident. In the cross examination, she says that she touched her husband and lifted him. If it is true, naturally her clothes would have



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the strains of blood. The respodent police had not recovered her clothes. Further, she had also categorically deposed that nobody else touched or lifted the deceased on seeing him in pool of blood. Contrarily, PW-3 had deposed that on 13.11.2012, at about 6.30pm, while he was standing outside his house at North Street, he saw A-1 and A-2 stoped the deceased Ravikumar. A-2 caught the shirt of Ravikumar, A-1 cut Ravikumar with aruval on the head, neck and wrist. In the cross examination, PW-3 had stated that he rushed shouting and lifted the injured. His clothes got strained with blood. In the sketch(Ex P-12), the house of PW-3 is not found. His blood strained clothes also not recovered by the police, to prove that PW-1 and PW-3 were really witnessed the occurrence.

10.PW-1 has stated, in the cross examination, that the place of occurrence is a residential area and many families live in the North Street. In the chief examination, she has deposed that on seeing her husband being attacked by A-1 and A-2, she ran towards him screaming and on hearing her scream, neighbouring residents Jayamurgan(PW-3) and Muthulingam(PW-4) came. On seeing them, the assailants ran away. Whereas in the cross examination, she says that at the time of occurrence no one was present. The neighbouring residents came to the spot, only after she raised alarm. This contradiction is fatal to the prosecution case



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since it makes the evidence of P.W.1 wholly unreliable.

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11.In the rough sketch, the residence of Jayamurugan and Muthulingam does not find place. They are nephew and cousin of the deceased and their presence in the spot to witness the occurrence is highly remote. There are 6 houses near the scene of crime, as per the sketch. None of the inmates of those houses were examined and the persons examined are the persons living far away from the alleged scene of crime.

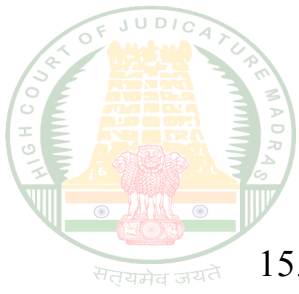
12.The prosecution case that PW-1, PW-3 to PW-5 were eye witnesses to the occurrence. However, there are inherent improbabilities in the prosecution story. The narration of facts by these witnesses are inconsistent to each other and contrary to human nature. Being close relatives of the deceased they all have come forward to give false evidence as if they witnessed the occurrence. If really, they were present and seen the occurrence, the natural human conduct would have been to stop the violence or at least they would have attempted to rescue the injured.



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13.The learned Counsel for the appellant also submitted that Ex P-1 is not the first information to the police. The correction in the time of the passport for forwarding the FIR to Judicial Magistrate is made with an intention to cover up the delay due to substituting the real information. As per PW-1, PW-2, PW-3 and PW-5, the police came to the spot at 7.00 pm, immediately after the occurrence. Whereas, the prosecution case is that, they came to know about the incident only on the complaint(Ex P-1) given by PW-1, which was registered at 8.30 pm. There was further delay in forwarding the FIR to Judicial Magistrate. As per the endorsement, the FIR received by the Magistrate on the next day morning at 05.45 am. Therefore, the Learned Counsel submits that, concoction of facts is the reason for the delay in registering the FIR and forwarding it to the Judicial Magistrate. The trial Court failed to take into consideration the reason for delay not satisfactorily explained.

14.The next argument on behalf of the appellant was that, the scene of occurrence not properly ascertained by the prosecution. Whether the occurrence was opposite to Immanuel house or near the petty shop at North Street could not be properly fixed. The witnesses for prosecution, who claims to be present at the time of occurrence, are not consistent regarding the place of occurrence.



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15.Mr. Suyambulinga Bharathi, the Learned Counsel for the second accused appointed by the Legal Service Authority, in line with the above submission made by the Learned Counsel for the first accused, emphasised that, the unnatural conduct of the witnesses, who claims to have been present and seen the occurrence creates doubt about their credential. They are all relatives of the deceased and residing elsewhere, therefore, their presence at the scene of occurrence is improbable. Their evidence not reliable for being interested witnesses.

16.The corrections in the passport given to PW-10 to deliver the FIR copy to the Judicial Magistrate obviously indicates that it was done to suppress the earlier information about the crime. Regarding the time of arrival of the police to the scene of crime, the contradictions in the evidence of the prosecution witnesses PW-1, PW-2, PW-3, PW-5, PW-6 and PW-12 ought to have been duly considered by the trial Court and acquitted the accused.

17.PW-1 admits that the deceased had bad criminal record. He had several enemies. The investigating Officer admits that he did not verify the antecedent of the deceased. The motive for the crime, as per the prosecution, is the petty quarrel



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in the funeral. The said incident is not only very trivial, but also it was only between the deceased and A-1. That could not be a motive for A-2 to kill his friend.

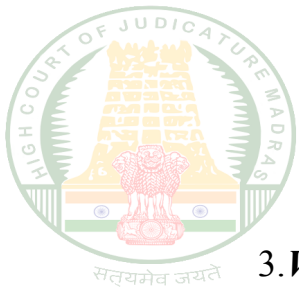
18.The prosecution case it that A-2 caught the shirt of the deceased, A-1 attacked the deceased with aruval. The improbability of attacking a person on the neck, head and cheek by one person after another person holding him by shirt not considered by the trial Court.

19.Further, PW-14, the doctor, who conducted post mortem had opined that the multiple injuries found on the body of the deceased might have been caused by more than one weapon.

20.To buttress the above submissions, the following judgments are referred:-

1.*Amar Singh -vs-State (NCT of Delhi)*, reported in *(2020) 19 Supreme Court Cases 165*.

2.*Mahendra Singh and Others -vs- State of Madhya Pradesh* reported in *(2022) 7 Supreme Court Cases 157*.



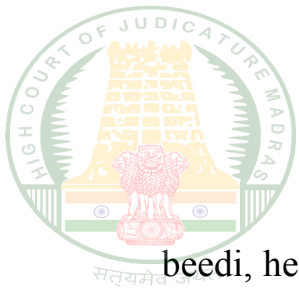
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3. *Viswanathan and another -vs- State rep by the Inspector of Police, Somarasampatti Police Station, Trichy*, reported in (2013) 1 MLJ (Crl.) 516.

4. *Gambhir Singh -vs- The State of Utter Pradesh*, in Crl.A.Nos.850-851 of 2019

21.Per contra, Mr. A.Thiruvadikumar, the learned Additional Public Prosecutor appearing for the State submitted that the date of occurrence is 13.11.2012. Witnesses for prosecution were examined after 7 years. Due to the lapse of time and fading memory, there are some contradictions in their evidence. Nonetheless, they are not vital contradictions. The blood strained clothes of the accused persons were recovered on the basis of disclosure made in the confession. They were sent to the lab for test and the Serology Report(Ex P-15) had proved that the blood of the deceased found in the dresses of the accused A-1 and A-2. The incriminating piece of evidence not been controvered or explained by the accused. In such facts, the omission to recover the clothes of the witnesses is not a lapse on the prosecution.

22.The scene of occurrence is opposite to the house of Immanuel. The case of the prosecution witness PW-1 is that, while her husband proceeding to buy

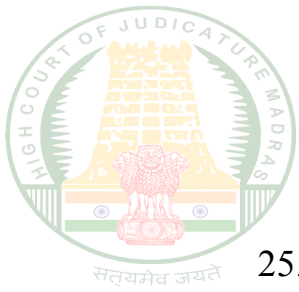


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beedi, he was intercepted and hacked to death. Therefore, the scene of occurrence is well identified by the witnesses and the earth collected from the scene of occurrence proves that the blood strains in the earth belongs to Human blood B-group, which is the blood group of the deceased.

23.Regarding the credibility of the witnesses, the learned Additional Public Prosecutor submitted that, the testimony of PW-1 is natural and wholly reliable. On the fateful day, her husband went to buy beedi and she was following him to buy vegetables, they were proceeding from North to South. A-1 and A-2 came from South to North, intercepted the deceased and attacked him. That was seen by PW-1. Two days after the incident, on 15.11.2012, A-1 and A-2 surrendered before the Judicial Magistrate at Coimbatore. The police took custody of A-1 and A-2 and recorded their statement. The material objects M.O.1, M.O.4 to M.O.6 were recovered from the backyard of A-1 house. The blood strain group in the clothes of the accused tally with the blood group of the deceased. Thus, the prosecution has proved the guilt of the accused beyond doubt.

24.Heard the rival contentions made by the Learned Counsels.



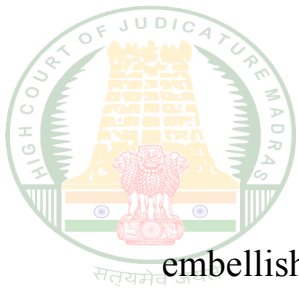
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25. In *Amar Singh –vs- State of NCT of Delhi* (2020 SCC (19) 165) the

Hon'ble Supreme Court has observed:-

“As a general rule the court can and may act on the testimony of single eyewitness 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, the Courts will insist on corroboration. It is not the number the quality, 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”.

Courts had consistently held that, conviction on sole witness sufficient provided the witness is whole reliable and their is no inconsistency with ordinary course of human nature. On appreciation of evidence, the Court is bound to find out whether the prosecution story is highly improbable and inconsistent of ordinary course of human nature. Out of three types of witnesses: viz a) Whole reliable, b) whole unreliable and c) neither wholly reliable nor wholly unreliable, if one put the testimony of prosecution witnesses in this case, we find the testimony of PW-1 is wholly reliable. Her conduct is natural and her testimony is without any



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embellishment. The other witnesses, who claims to have seen the occurrence, have come to the scene of occurrence after hearing the scream of PW-1 and therefore, their testimony about the hearing of the scream of PW-1, fleding of A-1 and A-2 from the scene of crime and seeing the body of deceased with cut injuries fall within the admissible evidence under section 6 of the Evidence Act. The surrender of A-1 and A-2 before the Judicial Magistrate at Coimbatore, a place about 350 km away from their residence, also to be taken note, as conduct of the accused persons under section 8 of the Evidence Act.

26.In this case, the Investigating Officer had taken steps to take custody to interrogate and had recovered vital material objects, which clearly link the accused A-1 and A-2 with the crime.

27.Some doubt, regarding charging both the accused for offence under section 302 r/w 34 of IPC raised by the learned counsels for the appellants and certain observations made in *Vasant @ Girish Akbarasab Sanavale and others- vs- The State of Karnataka (2025 INSC 221)* cited for their support. The test to charge a person under section 34 IPC, as laid in *Shreekantiah Ramayya Munipalli –vs- State of Bombay (AIR 1955 SC 287)* are:-



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....“ it is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of occurrence and must actually participate in the commission of the offence in some way or other at the time the crime is actually being committed. The antithesis is between the preliminary stages, the agreement, the preparation, the planning, which is covered by S.109, and the stage of commission when the plans are put into effect and carried out. Section 34 is concerned with the latter.”

“The emphasis in S.34 is on the word 'done'. When a criminal act is 'done' by several persons, it is essential that they join in the actual 'doing' of the act and not merely in planning its perpetration.”

28.In **Vasant @ Girish case cited supra**, the Hon’ble Supreme Court, after elaborately discussing the precedents regarding when a person can be prosecuted with the aid of Section 34 of IPC, finally concluded as under:-

“87.The net result of the above discussion is that although Section 34 deals with a criminal act which is joint and an intention which is common, it cannot be said that it completely ignores or eliminates the element of personal contribution of the individual offender in both these respects.



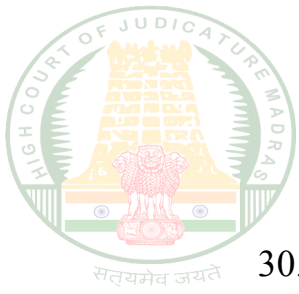
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88. *On the other hand, it is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with other.*

89. *In other words, he must be a sharer both in the 'criminal act' as well as in the 'common intention' which are the twin aspects of Section 34 IPC."*

29. While applying the guidelines of the Supreme Court to the facts of the case, we find that A-1 and A-2 together had entertained the common intention to murder Rajkumar, due to previous enmity. The quarrel between them earlier in the funeral is spoken by PW-1, PW-2, PW-3, PW-4 and PW-5. Rajkumar(deceased) was attack by A-1 with M.O-1, to facilitate the attack, A-2 had caught the deceased. That was seen by PW-1. Thus, the twin test viz, the 'criminal act' and the 'common intention' shared by both the accused, proved to convict A-1 and A-2 for the offence under section 302 IPC with the aid of Section 34 of IPC.



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30. In the said circumstances, this court finds no error or omission or illegality in appreciation of the evidence by the trial Court. The finding and sentence being appropriate, the appeals fail.

31. As a result, Criminal Appeals stand dismissed. The conviction and sentence imposed by the trial Court is confirmed. The appellants are directed to surrender before the trial Court within 15 days from today to undergo the remaining part of the sentence. Failing which, the respondent police to secure the appellants and commit them to the prison. Bail bond, if any, executed shall stand cancelled.

[G.J., J.] & [R.P., J.]

25.03.2025

NCC : Yes / No

Index : Yes / No

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To

1. The II Additional District
and Sessions Judge,
Thoothukudi.

The Inspector of Police,
Sawyerpuram Police Station
Thoothukudi District.

2. The Additional Public Prosecutor,
Madurai bench of Madras High Court,
Madurai.



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