

CrI.A(MD)No.210 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 12.02.2025

Pronounced on : 24.02.2025

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

CrI. A(MD)No.210 of 2021

Ramya

.. Appellant/ P.W.1

Vs.

1.State rep. through
The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.
(Crime No.2/2016)

.. 1st Respondent/Complainant

2.Murugan

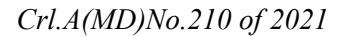
3.Ganesan

4.Rajan

5.Pappuraj

6.Iyyappan

.. Respondents 2 to 6/
Accused Nos.1,3 to 6



For Appellant : Mr.J.Jeyakumaran

For Respondents : Mr.S.Ravi
Additional Public Prosecutor
for R1

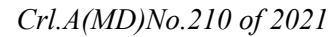
: Mr.M.Jothi Basu
for R2, R3, R5 & R6

: No appearance for R4



Crl.A(MD)No.210 of 2021

in motion through her written complaint (Ex.P-1) dated 01.01.2016 informing the first respondent police that in the Illathupillaimar Community Public Fund Office at Rajapalayam she work as Manager. When the Executive Committee members were discussing about a emergent meeting, Murugan(A-1) came to the office and abused her calling her as daughter of a bitch and threatened dire consequence if her husband (Rajasekar) attend the meeting. Immediately she informed about it to her husband Rajasekar over phone. At about 11.30 am, her husband (Rajasekar) and his brother (Nageshwaran–PW4) came to the Community Fund Office and all three decided to give police complaint and were about to leave for the Police Station to give complaint. At that time, Murugan (A-1), Ulaganathan (A-2), Ganesan (A-3), Rajan (A-4), Papuraj (A-5) and Ayyappan (A-6) came to the Office. A-1 scolded Rajasekar for entering the Office and stabbed him on the forehead with a knife (MO-1). When she tried to save her husband, A-1 stabbed her also. She tried to avoid the stab with her left hand and got injured on her left forearm. When Nageshwaran (PW-4) tried to stop A-1, the other accused persons, A-3 to A-6 caught hold of him. Then, A-1 stabbed Nageshwaran on the left chest with the knife, A-2 stabbed Nageshwaran on his back. Subramaniam (PW-3) and one Palanisamy (not examined) took all



3. The Complaint of Ramya(PW-1) was scribed by her relative Nathan (PW-7) in the Rajapalayam Hospital and received by t.Viji-Sub-Inspector of Police) at 13.15 hrs. The case in Cr.No:03 under Sections 147, 148,450, 294(b), 342, 324, 307, 302, 506(ii) of registered by Rajapalayam North Police Station and taken up for n by Mr.Rajendiran, Inspector of Police (PW-28). The Mahazar and rough sketch (Ex.P-28), Inquest report (Ex.P-29) red by PW-28. Statements of witnesses were recorded. A-1 and rrested on the same day at about 20.30 hrs. Rest of the accused



Crl.A(MD)No.210 of 2021

were secured later. The blood stained clothes and the weapons used by A-1 and A-2 were recovered under mahazars Ex.P-7 and Ex.P-8 respectively based on their confession statement.

4. On committal, the Sessions Court framed the following charges against the accused persons and tried them.

A-1 to A-6: Section 148 IPC.

A-1 and A-2: Section 294(b) IPC ; Section 302 IPC and Section 307 IPC.

A-3 to A-6: Section 302 r/w 149 IPC ; 307 r/w 149 IPC and Section 342 IPC

A-1: 324 IPC and 506(ii) IPC.

5. The prosecution examined 29 witnesses. Marked 35 Exhibits and 13 Material objects. On the side of the defence A-2 was examined as DW-1 and Ex.D-1 was marked. The summon issued to PW-1 was marked as Court Exhibit-1.



Crl.A(MD)No.210 of 2021

6. To prove the charges, the prosecution had heavily relied on the ocular evidence of the injured witnesses (PW-1 and PW-4). Whereas, the defence had put forth the theory of false accusation out of ill motive, aggression and self inflicted injury. On appreciating the evidence, the trial Court has held that though PW-1 claims to be a witness to the occurrence and also sustained injury at the left forearm caused by A-1, there is contradiction in her evidence about the weapon used by A-1 to cause the injury. To the Doctor at Hospital she had stated that she was attacked with blade by a known person (Ex.P-21). Later in her complaint (Ex.P-1) she has stated that she was attacked with knife by A-1. Before the Court, she has not identified the weapon used by A-1 to attack her.

7. PW-4 is yet another injured witness. He is the brother of the deceased Rajasekar. He had deposed that after receiving the phone call from PW-1, he and the deceased went to the Community Office on the fateful day to question A-1. He was stabbed by A-1 in the chest and by A-2 on his back. The place of occurrence was inside the Illathupillaimar Community Fund Office. Whereas at the Rajapalayam Hospital to the Duty Doctor (PW-25), he had stated that he was stabbed by one person with knife near



Crl.A(MD)No.210 of 2021

Arunachalswarar Temple. Same is recorded by PW-25 in the Accident Register (Ex.P-23).

8. The prosecution failed to explain the injuries on A-1 and A-2 as noted by the doctor in the Accident Registers Ex.P-24 and Ex.P-25. The trial Court in view of the said failure and considering the testimony of DW-1 found it probable, that the prosecution witnesses are not reliable to render conviction. Highlighting the embellishments and contradictions in the FIR, Statements and the Accident Register of PW-1, the trial court held that PW-1 and PW-4 though are injured witnesses, they are not reliable witnesses. The place and time of the arrest of A-1 and A-2, as well as the alleged recover of incriminating material objects from them were found doubtful in view of the proven fact that A-1 and A-2 were admitted in the hospital for the injuries sustained and PW- 5 saw the police taking them from the hospital to police station by 12.00 noon on that day. This belies the prosecution case that they both were apprehended at 20.30 hrs during the vehicular check.

9. The learned Counsel for the appellant/PW-1 submitted that, the trial Court failed to give due weightage to the testimony of the injured

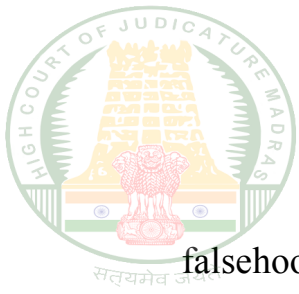


CrI.A(MD)No.210 of 2021

witnesses, which stands on a higher pedestal. The presence of A-1 and A-2 at the place of occurrence not denied. Minor discrepancies about the weapon used or error in mentioning the exact number of assailants to the Doctor cannot be a reason to doubt the credibility of a witness. PW-1 on seeing her husband stabbed brutally was perplexed and not able to comprehend and get composed to narrate it immediately. Hence, to reconcile the error, PW-1 give a statement to the Magistrate and same recorded under Section 164 CrPC. This is not an embellishment or improvement of the prosecution version.

10. The learned Counsel also argued that the private complaint of A-1 against the appellant and others ended in acquittal, which proves that the deceased and PW-1 were not the aggressors or cause for the alleged injuries found on A-1 and A-2. A day light murder in front of the wife and the brother has been given unmerited acquittal contrary to law and evidence, hence should be reversed for the reason the view taken by the trial court to acquit the accused is an view improbable and not possible.

11. Per contra, the learned Counsel for the respondents/accused submitted that the case of the prosecution suffers embellishment and



CrI.A(MD)No.210 of 2021

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falsehood to the core right from its inception. The prosecution case is that the accused persons 6 in number came to the Illathupillaimar Community Fund Office on 01.01.2016. Abused PW-1 in filthy language thereafter, A-1 and A-2 stabbed the deceased Rajasekar on the abdomen and forehead respectively. When PW-1 tried to defend the attack of A-1, she sustained linear aberration size 7 x 0.5 cm on her left forearm. When PW-4 tried to intervene, he was caught hold by A-3 to A-6, stabbed by A-1 on the right side chest and stabbed by A-2 on the back repeatedly. According to the medical report, the injuries sustained by PW-1 and PW-4 were superficial and simple in nature. The trial Court taking note of the fact that these two witnesses had not spoken the truth, had observed that there is fundamental contradiction between these two witnesses who are the witnesses to the crime as per the prosecution. Besides, the contradictions about the place of occurrence between the FIR, AR and the testimony also stare at the eyes of the prosecution. Citing the principle laid by the Supreme Court, submitted that when two views are possible, the view taken in favour of the accused by the Court below to acquit the accused need not be substituted with alternate view by the Appellate Court to reverse the finding, unless the view of the Court below patently perverse and illegal.



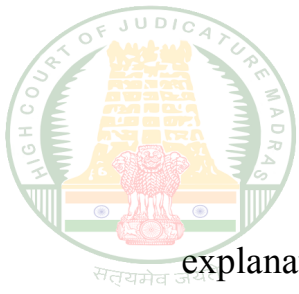
Crl.A(MD)No.210 of 2021

Scene of Crime:

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12. The case of the prosecution is that A-1 and other accused came to the Illathupillaimar Community General Fund Office and attacked the deceased, PW-1 and PW-4. It is a closed premises. As per the rough sketch Ex.P-28, it is located on the West of Tenkasi Main Road, bearing Door No:868 A. The observation mahazar Ex.P-3, describes the place of occurrence as 868 A, Tenkasi Main Road. As per the seizure mahazar Ex.P-4 cement floor pieces with and without blood strain were collected only from the Office premises of Illathupillaimar Community General Fund.

13. The Accident Registers of Ramya(PW-1), Rajasekar (deceased), Nageshwaran (PW-4), Murugan (A-1) and Ulaganathan (A-2) are marked as Ex.P-21 to Ex.P-25 respectively. The entries in these registers are made by PW-25/Dr.Rajeswari based on the information given by the person concern or person who brought the patient. These AR's are prepared between 11.45 am to 12.10 pm. Based on the serial numbers found in the AR copy and the correction made in the time, the trial Court has held that there is a manipulation of record to show as if A-1 and A-2 came to the hospital subsequent to PW-1, deceased and PW-4. The Investigating Officer has no



Crl.A(MD)No.210 of 2021

explanation for not placing the records relating to the counter complaint given by Murugan(A-1) as against the deceased, PW-1, PW-3, PW-10 and others. No satisfactory explanation placed before the court by IO for the injuries on A-1 and A-2.

14. In the AR copy of PW-1 and the deceased (Ex.P-21 and Ex. P-22), the place of occurrence is shown as Illathupillaimar Community General Fund Office. In the AR copy of PW-4 , A-1 and A-2 the place of occurrence is mentioned as near Arunachaleeswara Temple Office. From the rough sketch it is clear that Illathupillaimar Community General Fund Office and Arunachaleeswara Temple office are not one and the same. At this juncture, it is also pertinent to take into consideration the evidence of DW-1, who had deposed that soon before the incident, he saw A-1 near the vacant place of the temple with blood injuries and he told that he was attacked by Subramani and his men. He then went to the Illathupillaimar Community Fund Office and questioned Subramani , Ramya, Rajasekar, Nageshwaran, Murugadass, Arumugam @ Durairaj who were present in the office. Again there was clash and in the mele he got injured and Rajesekar got injured. A-1 took a blade from the nearby flower vendor and cut her forearm voluntarily.



CrI.A(MD)No.210 of 2021

The trial court has taken note that, the version of DW-1 to a limited extent that the injury to A-1 was probable by blade as recorded in AR Ex P-21 and not by knife as deposed by PW-1.

15. In addition, this Court find from the evidence available in the course of same transaction, fight between two groups had occurred at two different places. The prosecution had suppressed the earlier incident.

First Information Report:

16. PW-1 had deposed that the complaint Ex.P-1 was written by Shanmuganathan (PW-7) on her dictation. As per the endorsement in Ex.P-1, the written complaint received on 01.01.2016 at 13.15 hrs at Govt. Hospital, Rajapalayam. PW.26/Viji, Sub-Inspector attached to All Women Police Station, Rajapalayam North had deposed that on receipt of telephonic intimation from the Hospital on 01.01.2016 at about 12.30 pm, she went to the hospital and recorded the statement of PW-1 through PW-7. She admits that at that time PW-1 was admitted in the hospital and taking treatment. However she did not get permission from the duty doctor to record her statement. PW-26 had further deposed that on receipt of the complaint-



CrI.A(MD)No.210 of 2021

Ex.P-1 registered case in Cr.No.3 of 2006 under Sections 147, 148, 450, 294(b), 324, 307, 302 and 506 (ii) of IPC. In the complaint the father name of Ramya (PW-1) is mentioned as Rajendiran. Same is reflected in the FIR also. However in the body of the complaint while narrating the motive PW-1 has mentioned her father name as Subramani. The error in identity not satisfactorily explained.

17. The printed FIR is marked as Ex.P-27. The express FIR had reached the Judicial Magistrate on 02.01.2016 at 00.20 hrs. PW-29/Ravi, the Inspector of Police who investigated the case admits that the distance between the police station and the Judicial Magistrate Court is 100 meters. The Police Constable who carried the Express FIR not examined. He is not even cited as witness for prosecution. No explanation for the delay in forwarding the FIR to the court given. In the cross examination of the Investigating Officer, it is suggested that the complaint and FIR was not registered in the time and place mentioned and it was prepared belatedly after advise to implicate all the persons whom PW-1 had enmity. This is probablised by the fact that PW-7 who scribed the complaint was not the resident of Sivakasi and he claims that on 01.01.2016 he was at



CrI.A(MD)No.210 of 2021

Sankarapuram in his sister house. He know PW-1. He came to know through her sister that Rajasekar, the husband of Ramya was stabbed. So he went to Rajapalayam Hospital at 12.15 pm and saw Ramya who was under treatment. On her request, he wrote the complaint Ex.P-1 and affixed his signature Ex.P-2. In the cross examination, it has been elicited that the distance between Sivakasi and Rajapalayam is 40 km. The distance between Sankarapuram and Rajapalayam is 4 km. The complaint Ex.P-1 runs to 6 pages. The improbability of PW-7 being present at the Rajapalayam Hospital at 12.15 pm and wrote the complaint at hospital premises on the dictate of Ramya (PW-1) suggested to PW-7 and same denied. However, the fact that the injured persons went to the hospital at about 11.45 am and the FIR registered at 13.30 hrs stands undisputed as per AR copies and FIR. In the Complaint as well as in the FIR there is endorsement that the FIR copy forwarded to the Judicial Magistrate forthwith, which is hardly 100 metres away from the Police Station. The initial of the Judicial Magistrate proves that the express FIR received only at 00.20 hrs on 02.01.2016. No evidence to show how it reached the Magistrate and who carried the express FIR and what is the reason for the delay. The infirmities and inconsistencies cumulatively put together, shakes the foundation of the FIR regarding time



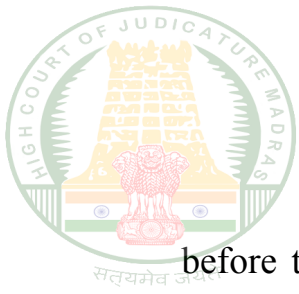
Crl.A(MD)No.210 of 2021

as well as the contents.

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Arrest and Remand:

18. It is evident from the record that on the date of event, clash between two faction of Illathupillaimar Community regarding inclusion of the deceased in the Committee of Management had taken place. Admittedly, the deceased was called to the Office by his wife PW-1 after A-1 challenged PW-1 that her husband will not return alive if he come to the Community Office. The accident report of A-1 and A-2 discloses that 10 persons attacked them. Further Ex.P-24 the AR of Murugan (A-1) reveals that he had multiple injuries and complaint of chest pain. Abrasion over let knee and left elbow as well as teeth injury noticed. It is recorded in Ex.P-24 that Murugan (A-1) he was admitted in Accident ward but was discharged on request that he wants to get treatment in Government Rajaji Hospital, Madurai. The time of discharge not mentioned. It is the case of the defence that A-1 was forcibly taken by the Police from the Hospital. We find for the evidence of PW-17 Kanagaraj (chance witness) that between 3.00 pm to 4.00pm he saw A-1 and A-2 going in the two wheeler towards Shanbaga Thoppu. PW-28 had deposed that, he arrested A-1 and A-2 near Annappa Raja High School at about 20.30 hrs. After recording confession and recovery, he produced them



Crl.A(MD)No.210 of 2021

before the Judicial Magistrate only on the next day at 12.30 hrs. From the arrest memo, it reveals that A-1 was arrested at 20.30 hrs on 01.01.2016. The express FIR sent to the Judicial Magistrate thereafter and reached belatedly. The remand report does not disclose the injuries sustained by A-1.

19. The alteration of time in the AR report, contradiction about the weapon used to attack PW-1, contradiction regarding the father name of PW-1, the doubt about the presence of PW-7 in the hospital at 12.15 pm and scribing the complaint Ex P-1, the doubt about the time and place of arrest of A-1 and above all failure to explain the injuries found on the body of A-1 and A-2 which is supported by AR copy Ex.P-24 and Ex.P-25, the view taken by the trial Court to acquitted all the accused for want of proof beyond reasonable doubt is well justified.

20. When the evidence of the injured witnesses found to be inherently contradictory, conviction cannot be based on their evidence. In the instant case, no explanations for the doubtful circumstances given by the prosecution. Hon'ble Supreme Court in ***Marudanal Augusti –vs- St of Kerala (AIR 1980 SC 638)*** had observed as follows:



CrI.A(MD)No.210 of 2021

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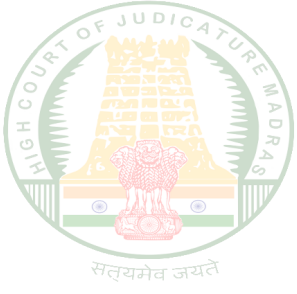
“..... No explanation for any of these doubtful circumstances has been given by the prosecution. There can be no doubt that in these tell-tale circumstances the Sessions Judge was fully justified in entertaining a serious doubt about the truth of the prosecution case. In view of all these facts the view taken by him was doubtless reasonable possible.”

21. In the instant case, it is proved that there was enmity prevailing between the two faction one lead by Subramani (PW-2) and another by Murugan(A-1). The witnesses to the prosecution PW-1 to PW-7 are interested witnesses. They have not spoken the whole truth about the incident. They have deliberately screened material evidence which are incriminating the deceased, PW-1 and PW-4. In such circumstances we are of the opinion that the view taken by the trial court is reasonable possible and not perverse to interfere.

22. As a result of the above discussion, the Criminal Appeal filed against the acquittal stands dismissed.

**[G.J.,J] [R.P., J]
24.02.2025**

Index : Yes/No
Internet : Yes/No
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PJJ



Crl.A(MD)No.210 of 2021

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To

1.The Principal Sessions Judge,

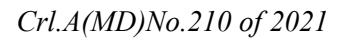
Virudhunagar District camp at Srivilliputhur.

2.The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.





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Crl.A(MD)No.210 of 2021

**DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.**

PJL

**Judgement made in
Crl.A(MD)No.210 of 2021**

24.02.2025