



Crl.A.(MD)Nos.3 & 22 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 21.02.2022

DELIVERED ON : 28.02.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**Crl.A.(MD)No.3 of 2020
and
Crl.M.P.(MD)No.1422 of 2022
and
Crl.A.(MD)No.22 of 2020**

1.Kannan@ Mannanai Kannan
2.Ramar
3.Selvam

... Appellants 1 to 3/
Accused Nos.1 to 3 in
Crl.A.(MD)No.3/2020

4.Balamurgan

... Appellant / Accused No.4
in Crl.A.(MD)No.22/2020

Vs.

State Represented by:
The Inspector of Police,
C5 Karimedu (L&O) Police Station,
Madurai City.
(Crime No.87 of 2016)

... Respondent / complainant
in both Crl.As.



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COMMON PRAYER: Criminal Appeals filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Madurai, made in S.C.No. 294 of 2017 dated 12.11.2019.

For Appellants : Mr.G.Karuppasamy Pandian for A1
(In Crl.A.(MD)No.3/2020) Mr.M.Jegadesh Pandian for A2 & A3

For Appellants : Mr.M.Jegadesh Pandian
(In Crl.A.(MD)No.22/2020)

For Respondent : Mr.A.Thiruvadi Kumar,
(In both Crl.As) Additional Public Prosecutor.

COMMON JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

These appeals have been filed by the appellants/ accused Nos.1 to 4 as against the conviction and sentence, dated 12.11.2019, made in S.C.No. 294 of 2017, by the learned I Additional District and Sessions Judge, Madurai.



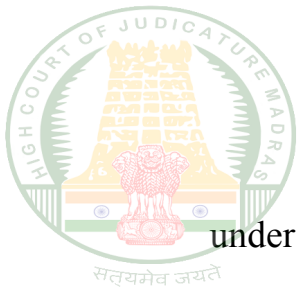
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2. The appellants/A1 to A4 stood convicted and sentenced to undergo imprisonment as detailed hereunder:

	Conviction U/s.	Sentence	Fine amount
A-1	294(b) IPC	-	To pay a fine of Rs.1,000/-, in default, to undergo two weeks simple imprisonment.
	302 IPC	To undergo life imprisonment	To pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
A-2 & A-3	302 IPC	To undergo life imprisonment	To pay a fine of Rs.5,000/- each, in default, to undergo one year three months simple imprisonment.
A-4	302 r/w 34 IPC	To undergo life imprisonment	To pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.

3. It is the case of the prosecution that the deceased Balamurugan brother of P.W.1 was attacked by the accused and succumbed to injuries. P.W.17, after receipt of the complaint-Ex.P.16, registered a case in Crime No.87 of 2016, for the offences under Sections 341, 294(b), 506(ii) and 302 IPC under Ex.P17-FIR and took up the case for investigation, went to the place of occurrence, prepared Observation Mahazar-Ex.P18, drew a rough sketch under Ex.P.19 and has seized the bloodstained earth, ordinary earth

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under Ex.P.20-Seizure Mahazar and has conducted inquest over the dead body and prepared inquest report under Ex.P.21 and sent the body for postmortem. P.W.16, the Medical Officer conducted autopsy and found the following injuries:

“1.An Oblique stab injury 3cm x 1cm x muscle deep noted over left forehead.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves.

2.An Oblique stab injury measuring 8cm x 1cm x muscle deep noted over right side cheek.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves.

3.An Oblique stab injury measuring 2cm x 1cm x muscle deep noted over top of right shoulder.

On dissection: The wound passes upward and backward, cutting the underlying muscle, vessels and nerves.

4.An Oblique stab injury measuring 4cm x 1cm x muscle deep noted over right upper arm.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves.

5.An Oblique stab injury measuring 3cm x 1cm x muscle deep noted over right thumb.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves.



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6.An Oblique stab injury 3cm x 1cm x cavity deep noted over front of right side of abdomen.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves end in the abdomen cavity.

7.An Oblique stab injury 4cm x 1cm x cavity deep noted over front of middle of abdomen.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves enters the abdomen cavity, and pierce the lung.

8.An Oblique stab injury measuring 5cm x 1cm x cavity deep noted over front of right side of chest.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves enters the chest cavity, and pierce the lung.

9.An Oblique stab injury measuring 3cm x 1cm x cavity deep noted over front of right side of chest 5cm below the previous wound.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves enters the chest cavity, and pierce the lung.

10.An Oblique stab injury measuring 2cm x 1cm noted over left forearm.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves.

11.An Oblique stab injury measuring noted over front of left side of thigh.



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On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves.

12.An Oblique stab injury 4cm x 1cm noted over right axillary.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves.

13.An Oblique stab injury 4cm x 1cm noted over right axilla, 4cm below the previous wound.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves.

14.An Oblique stab injury 3cm x 1cm noted over back of middle of neck.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves.

15.An Oblique stab injury 2cm x 1cm x cavity deep noted over back of left side of chest.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves enters the chest cavity, and pierce the lung.

16.An Oblique stab injury measuring 5cm x 1cm x cavity deep noted over back of right side of chest.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves enters the chest cavity, and pierce the lung.

17.An Oblique stab injury measuring x cavity deep noted over back of right side of chest 7cm below the previous wound.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves enters the



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chest cavity, and pierce the lung.

18.An Oblique stab injury 5cm x1cm x cavity deep noted over back of right side of abdomen.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves enters the abdomen cavity, and pierce the lung.

19.An Oblique stab injury measuring 3cm x1cm x cavity deep noted over back of right side abdomen, 3cm below the previous wound.

On dissection: The wound passes upward and backward, cutting the underlying muscles, vessels and nerves end in the abdomen cavity.”

He issued Ex.P14-postmortem certificate and opining that the deceased would appear to have died of shock and hemorrhage due to injuries Nos.7, 8, 9, 15, 16, 17, 18 and cumulative effect of other injuries and death would have occurred 16 to 20 hours prior to autopsy. P.W.17-Investigating Officer arrested the accused 1 and 2 on 06.02.2016 in the presence of P.W.13 and P.W.14 and recorded the voluntary confession of A1. The admissible portion of the voluntary confession of A1 was marked as Ex.P.22. Pursuant to the same, P.W.17 seized the two wheelers under Ex.P7 and also seized four knives-M.O.7 to M.O.10 under Ex.P8. P.W.17

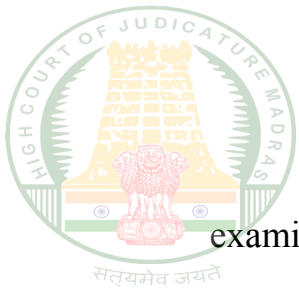


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recorded the confession of A2 then, he remanded the accused to judicial custody and sent the material objects to the Court concerned and finally, after completing the investigation, laid a final report against the accused, before the learned Judicial Magistrate concerned.

4. The prosecution, in order to bring home the guilt of the accused examined as many as 17 witnesses as P.W.1 to P.W.17, marked 25 documents as Ex.P1 to P25 and 10 material objects as M.O.1 to M.O.10. After analyzing the oral and documentary evidence, the trial Court has found the first accused guilty under Sections 294(b) and 302 IPC, second and third accused found guilty under Section 302 IPC and the fourth accused found guilty under Section 302 r/w 34 IPC. Assailing the same, the present appeals are filed.

5. Learned counsel appearing for the appellants vehemently contended that the trial Court has convicted the accused without any evidence. All the eyewitnesses turned hostile. The trial Court, relying upon the evidence of Medical Officer and postmortem certificate, has convicted the accused. The trial Court came to a conclusion as if in the cross



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examination, witness has deposed which is against reality and in fact only the statement of 161(3) Cr.P.C., was read over to the witnesses by the Public Prosecutor which was construed as an evidence, which is impermissible under law. He further submits that there is no evidence whatsoever to base the conviction and therefore, he prays to allow the appeals.

6. The learned Additional Public Prosecutor submitted that though eyewitnesses turned hostile, in the cross examination they admitted the occurrence. Therefore, the trial Court has appreciated the evidence properly and hence, he prays for dismissal of these appeals.

7. We have given our anxious consideration to the entire materials available on record and also the rival contentions made by the respective counsel.

8. The deceased brother of P.W.1 died due to the injuries viz., stab injuries and cut injuries. Though the prosecution has relied upon P.W.1 to P.W.7 said to be eyewitnesses, including the wife of the deceased and the close relatives of the deceased have not supported the prosecution in any

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manner. All the witnesses have turned hostile and not supported the case of the prosecution. The learned trial Judge has rightly found that all the witnesses turned hostile, however in paragraph 27 of the judgment, the trial Court recorded its findings, as if witnesses admitted the occurrence in their cross examination.

9. In the light of the above findings, when we peruse the chief examination of all the witnesses, it is seen that none of the witnesses supported the prosecution version in any manner. P.W.1-brother of the deceased never whispered anything about the presence of the accused and causing injuries. Similar in the case of other eyewitnesses. The entire statement of the witnesses recorded under Section 161(3) Cr.P.C., were put to the witnesses in the cross examination and in the last line it is suggested that they have given a false evidence in order to support the accused. From the nature of the questions put to the witnesses, we are of the firm view that what was extracted from the witness is the statement recorded under Section 161(3) Cr.P.C. and the suggestion put to the witnesses, wherein they denied witnessing the occurrence. Therefore, at no stretch of imagination such recording / extraction of 161(3) statement in the cross examination would be

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construed as substantive piece of evidence. Even assuming that the witnesses admitted in the cross examination that they have stated the above statement before the Investigating officer, such evidence would be useful only to prove the one particular fact that the said witness has given a statement under Section 161(3) Cr.P.C., not for any other purpose.

10. Therefore, even the witnesses admitted in the cross examination about the nature of the statement given to the Investigating Officer, such statement can never construed to be a substantive piece of evidence to prove the complicity of the accused. Substantive evidence means the evidence tendered by the witnesses on oath during the criminal trial. Therefore, mere repeating the statement contained in 161(3) Cr.P.C by the public prosecutor under the pretext of cross examination of the witness who turned hostile can never be substantive evidence. It is relevant to note that the purpose of treating the witnesses hostile and cross examination is to get some materials or to unearth truth from the witnesses.

11. The probative value of the evidence of the hostile witnesses always depends on the validity and the confidence it generates in the mind

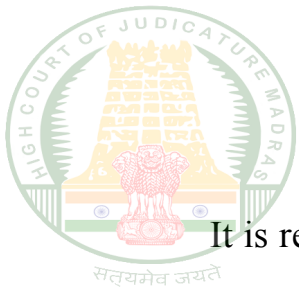


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of the Court after being subjected to close scrutiny. Therefore to scrutinize the evidence, there must be a proper cross examination which resulted certain answers from the witnesses, which are relevant one way or the other to the case to prove the complicity of the accused. Only in that context, the cross examination of such witnesses is required. Therefore, mere mechanical typing of the 161(3) statement and recording a general suggestion, as if the witness is lying can never to be construed as an evidence at all. Therefore, the learned trial Judge's conclusion that the witnesses admitted the occurrence is nothing but figment of imagination of the trial Judge. Though evidence of hostile witnesses cannot be rejected in toto and the same also can be considered with other corroboratory evidence to base the conviction, but in the given case, there is no material available on record from the statement of eyewitnesses to prove the complicity of the accused. Except the evidence of P.W.13, no other relevant materials found against the accused. Even from the recovery, there is no incriminating evidence found against the accused.

12. In view of the above circumstances, this court is of the view that the trial Court has committed a fundamental error in convicting the accused.

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It is relevant to note that the repetition of the statement which was relied by the trial Court has not been put the accused under Section 313 of Cr.P.C.

13. In such view of the matter, the way in which the witnesses are turned hostile and mechanically recorded the cross examination and the trial court has relied upon the same, the appeals deserve to be allowed. It is high time for the prosecution agencies to conduct training programmes for the Public Prosecutors with experienced criminal lawyers and seniors in the field to keep them abreast with the procedural law.

14. With the above observations, we are of the view that absolutely there is no material to convict the accused. Therefore, we find that the judgment of the trial Court is not according to law and the same deserves to be interfered and the same is set aside.

15. In the result, the Criminal Appeals stand allowed and the conviction and sentence imposed on the appellants/A1 to A4, by Judgment dated 12.11.2019, made in S.C.No.294 of 2017, on the file of I Additional District and Sessions Court, Madurai, are set aside and the appellants/A1 to



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A4 are acquitted. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond, if any, executed by them and the sureties shall stand terminated. Consequently, connected miscellaneous petition is closed.

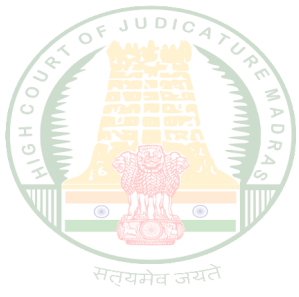
(R.S.M., J.) (N.S.K., J.)
28.02.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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To

- 1.The I Additional District and Sessions Judge,
I Additional District and Sessions Court,
Madurai
- 2.The Inspector of Police,
C5 Karimedu (L&O) Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Judgment in
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