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Criminal Appeal No.689 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

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**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN**

Criminal Appeal No.689 of 2018

Annamalai @ Prakash

.. Appellant

Vs.

State represented by
The Inspector of Police,
Ariyankuppam Police Station,
Puducherry.
(Crime No.2 of 2010)

.. Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order passed in S.C.No.56 of 2010 dated 11.07.2018 by the learned III Additional Sessions Judge, Puducherry.

For Appellant : Mr.R.John Sathyan

For Respondent : Mr.V.Balamurugan
Additional Public Prosecutor
(Puducherry)



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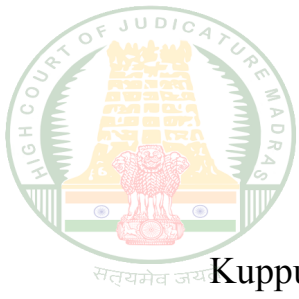
JUDGMENT

[Judgment of the Court was delivered by **P.N.PRAKASH, J.**]

This criminal appeal is directed against the judgment and order of acquittal dated 11.07.2018 passed by the learned III Additional Sessions Judge, Puducherry, in S.C.No.56 of 2010.

2. The prosecution story runs thus:

2.1. The deceased Ramachandran, who was 54 years old at the time of his death on 02.01.2010, was working as a Librarian and was living with his wife Chithra and daughter Lalitha in Door No.10, First Main Road, Gandhiji Nagar, Ariyankuppam, Puducherry. He owned a house in Door No.30, Block-I, Viduthalai Nagar, which was allotted to him by the Puducherry Housing Board. He had given that property on a perpetual lease to one Amirta Raj. The said Amirta Raj is said to have sold that property to one Kuppu @ Thatchayani, who also lives in the neighbourhood. On coming to know of this, the deceased Ramachandran lodged a complaint alleging that his property has been unlawfully sold and on the basis of his complaint,



Kuppu @ Dhatchayani was arrested by the police on 02.01.2010.

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2.2. Infuriated at that, Kuppu @ Dhatchayani's son, Annamalai [A1] (much debate was raised at the bar with regard to his name, which this Court would advert to in the course of this judgment) is said to have come to the house of Ramachandran around 11.30 p.m. in the night on 02.01.2010 and banged the gate violently. On hearing this, Ramachandran came out with a torch light to find out who it was and when Ramachandran opened the door, Annamalai [A1], armed with a knife, entered into the house and indiscriminately attacked Ramachandran. On hearing the hue and cry raised by Ramachandran, his wife Chithra [P.W.1] and daughter Lalitha [P.W.2], who were in the house, came to rescue him.

2.3. It is alleged that three persons also joined Annamalai [A1] by entering the house of Ramachandran and assisted Annamalai [A1] in the commission of offence; Chithra [P.W.1] and Lalitha [P.W.2] also suffered injuries in the attack. After the attack, the group left leaving Ramachandran dead.



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2.4. On a written complaint [Ex.P.1] given by Chithra [P.W.1], the Inspector of Police, Ariyankuppam Police Station, registered a case in Crime No. 2 of 2010 on 03.01.2010 at 00.05 hours (12.05 A.M) for the offences under Sections 341, 302, 324 IPC read with 34 of IPC against Annamalai [A1], and two others, and prepared the printed FIR [Ex.P37], which reached the jurisdictional Magistrate at 8.15 a.m. on 03.01.2010, as could be seen from the endorsement thereon.

2.5. The injured Chithra [P.W.1] and Lalitha [P.W.2] were rushed to Indira Gandhi Government General Hospital, Puducherry, where, Chithra [P.W.1] was examined by Dr.Johnson Reddy [P.W.21] at 1.15 A.M on 03.01.2010. At the time of admission, Chithra [P.W.1] has stated that she was 'assaulted with a sharp object on 02.01.2010 at 11.30 p.m in her house by known people'. She was found with two lacerated injuries, one on her forehead and other on her left eye, which in the opinion of Dr.Johnson Reddy [P.W.21], were simple in nature. The Accident Register copy of Chithra [P.W.1] has been marked as Ex.P.23. Similarly, Lalitha [P.W.2] was examined by Dr.Johnson Reddy [P.W.21] at 1.16 a.m. on 03.01.2010 and at



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the time of examination, she has stated that she was attacked by known persons at 11.30 p.m. on 02.01.2010 in her house; she was found with lacerations on her left ring finger. The Doctor opined the said injury was simple in nature and she was discharged.

2.6. The case was taken over by one Anil Kumar [P.W.29], Inspector of Police [hereinafter referred to as 'the Investigating Officer'], who was not alive when the trial commenced and therefore, on his behalf, Jeyasankar [P.W.32], who was the Sub-Inspector of Police and who had assisted Anil Kumar, Inspector of Police, was examined. The Investigating Officer [P.W.29] went to the place of occurrence and prepared a rough sketch [Ex.P7] and observation mahazar [Ex.P8] and from the place of occurrence, the Investigating Officer seized the following items under the cover of a mahazar [Ex.P9] namely :

- M.O.2 - Broken Torch light
- M.O.3 - Blood Stained sand
- M.O.4 - Control sand
- M.O.5 - Blood Stained flooring
- M.O.6 - Control cement flooring



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- M.O.12 - Black colour chappal
M.O.13 - Blue colour Hawaii Chappal
M.O.14 - White colour Hawaii Chappal

2.7. Inquest was conducted over the body of Ramachandran at the place of occurrence and the inquest report was marked as Ex.P.39. Thereafter, the body was sent for postmortem to the Government Hospital, Puducherry, where Dr.Diwakar [PW-22] performed autopsy and issued the post-mortem certificate [Ex.P.25], wherein, he has noted the following injuries:

“8. EXTERNAL INJURIES (Ante-mortem)

ABRASIONS:

1. 3cms X 1cm, below the right eye;
2. 10cms X 1cm, over the back of the chest, over upper /middle area;
3. 5cms X 4 cms, over the front of right knee;
4. 2cms X 1cm, over the front of left knee.

OBLIQUE, INCISED, GAPING WOUNDS:

5. 6cms X 1cm, over the left frontal area of the scalp;
6. 6cms X 2 cms, over the right parietal area of the scalp
7. 22cms X 4 cms, over the right side outer aspect of



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the forehead and occipital area, with the brain found extruded;

8. *13cms X 2 cms, over the left temporal area, with the brain found extruded;*

9. *6 cms X 2 cms, over the left cheek;*

10. *20 cms X 17 cms, over the mid – occipital area of the scalp, with the brain found extruded.*

9. INTERNAL EXAMINATION

Head (scalp, skull, brain

menings and blood vessels) : Surface vessels empty.

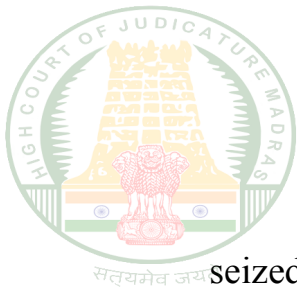
11. *multiple, incised wounds of varying sizes over the dura, beneath the extl. Wounds No. 7 to 10.*

12. *Multiple, cut fractures over the skull bones, including the left upper jaw bone, beneath the extl. Wounds no. 7 to 10.”*

After obtaining the viscera report [Ex.P26], Dr.Diwakar [PW-22] has given his final opinion as under:

“16. Opinion regarding the cause of death : Died of head injuries.”

2.8. The Investigating Officer [P.W.29] arrested five accused including Annamalai [A1] on 04.01.2010 about 19.15 hours and based on the confession statement of Annamalai [A1], the following items were



seized under a cover of mahazar [Ex.P18]:

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M.O.1 - Long knife with wooden handle, length about 2 feet.

M.O.7 - Blood stained white orange stripped half-hand shirt.

M.O.8 - Blood stained red colour lower(Full pant).

2.9. Similarly, on the confession of the accused, the Investigating Officer [P.W.29] seized motorcycles bearing Registration Nos. PY-01-AJ-2470 [Ex.P19] and PY-01-M-5496 [Ex.P20].

2.10. After examining various witnesses and collecting the reports of experts, the Investigating Officer [P.W.29] completed the investigation and filed a final report in PRC.No.20 of 2010 in the Court of the Judicial Magistrate I, Puducherry against five accused, viz., (1) Annamalai @ Prakash[A1], (2)Kumaran [A2], (3) Suresh [A3], (4) Anbu @ Anbazhagan [A4] and (5)Silambu @ Silambarasan [A5] for the offences under Sections 148, 149, 302 and 324 IPC (2 counts).

2.11. On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of



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Session in S.C.No.56 of 2010 and was made over to the III Additional Sessions Court, Puducherry, for trial. The Trial Court framed the aforesaid charges against the five accused and when they were questioned, the accused pleaded "not guilty".

2.12. To prove the case, the prosecution examined, 32 witnesses, marked 42 exhibits and produced 20 material objects. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. From the side of the accused, Natarajan the brother of Annamalai [A1] was examined as D.W.1 and Exs. D1 to D8 were marked.

2.13. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 11.07.2018 in S.C.No.56 of 2010, has acquitted A2 to A5 of all the charges, but has convicted Annamalai [A1] for the offences under Sections 302 and 324(2 counts) IPC. Challenging the same, Annamalai [A1] is before this Court.



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3. Heard Mr.R.John Sathyan, learned counsel for the appellant and Mr.V.Balamurugane, learned Additional Public Prosecutor [Pondicherry] for the respondent.

4. At the outset, it can be stated without contradiction that the prosecution has proved the following facts beyond a peradventure:

(a) Ramachandran was living in Door No.10, First Main Road, Gandhiji Nagar, Ariyankuppam, Puducherry along with his wife Chithra [P.W.1] and daughter Lalitha [P.W.2];

(b) Ramachandran died of violent death (homicide) on the night of 02.01.2010 around 11.30 p.m.

5. The short question is, whether the appellant herein was the perpetrator of the offence. The prosecution case, rests squarely on the testimony of the two injured witnesses, namely, Chithra [P.W.1] and Lalitha [P.W.2], whose evidence describe the attack made by the accused perspicuously; Chithra [P.W.1], in her evidence, has stated that her husband Ramachandran was allotted a house in Door No.35, Block-I, Viduthalai



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Nagar by the Housing Board, which he had given to one Amirtha Raj on a perpetual lease; that the said Amirtha Raj sold that property to the mother of Annamalai [A1]; and on the action taken by her husband Ramachandran, the mother of Annamalai [A1] was arrested and was remanded in custody by the police; on this motive, on 02.01.2010 around 11.30 in the night, while she [P.W.1] was in the house with her husband and daughter, they heard someone banging the gate violently; on hearing this, her husband went out to look who it was; at that time, Annamalai [A1] entered the house and hacked her husband; along with Annamalai [A1], two persons came; when she and her daughter Lalitha [P.W.2] intervened, they also sustained injuries; thereafter, she lodged a complaint to the police and the complaint was marked as Ex.P.1. On the same lines is the evidence of Lalitha [P.W.2].

6. Mr.R.John Sathyan, learned counsel appearing for the appellant, principally attacked the evidence of Chithra [P.W.1] and Lalitha [P.W.2], by taking this Court through the evidence of Natarajan [D.W.1]. It is the case of the appellant that his name is not Annamalai [A1] and when such a suggestion was put to Chithra [P.W.1] and Lalitha [P.W.2], they have denied

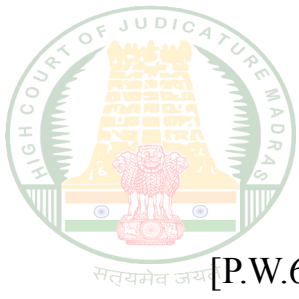


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the same and have stated that the name of A1 is Annamalai. In order to show that the name of A1 is Arumugam, A1 examined his brother Natarajan as a defence witness and marked exhibits Ex.D1 to Ex.D8, viz.,

- “Ex.D1 - 06.03.2012 Photo copy of Adhaar Card of A1*
- Ex.D2 - 26.05.2016 Photo copy of State Bank Account of A1*
- Ex.D3 - 04.04.2017 Photo copy of certificate of marriage of A1*
- Ex.D4 - Nil Photo copy of Income Tax card of A1*
- Ex.D5 - 20.06.2012 Photo copy of Election card of A1*
- Ex.D6 - 24.09.1997 Transfer Certificate of A1*
- Ex.D7 - 06.12.2012 Community Certificate of A1*
- Ex.D8 - 11.11.2011 Family Ration Card of A1*

7. Now, we are required to answer this principal contention. Consistently, Chithra [P.W.1] and Lalitha [P.W.2] have been maintaining from the inception that the deceased Ramachandran was having disputes with the mother of Annamalai [A1]. At this juncture, it may be relevant to advert to the evidence of Kumaran [P.W.6]. Kumaran [P.W.6's] is the brother-in-law of the deceased Ramachandran [brother of P.W.1]; in his



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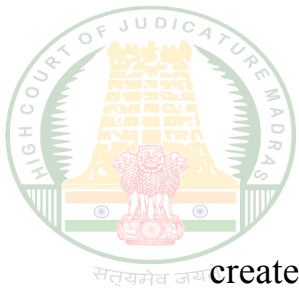
[P.W.6] evidence, he has stated that Ramachandran was allotted a house bearing Door No.30, Block -I, Viduthalai Nagar, in connection with which he had a dispute with Kuppu @ Dhatchayani, the mother of Annamalai [A1] and that on the complaint of Ramachandran, Kuppu @ Dhatchayani was arrested on 02.01.2010 and remanded in custody. On the same night, the incident had occurred, in which, Annamalai [A1] had attacked Ramachandran as alluded to above.

8. Let the name of Annamalai [A1] be anything. The fact remains that Chithra [P.W.1] and Lalitha [P.W.2] knew Annamalai [A1] full well as the son of Kuppu @ Dhatchayani and therefore, there was no question of any misidentification of the attacker of the deceased Ramachandran. Chithra [P.W.1], in her complaint, had clearly narrated the sequences of events, namely, the fact that Kuppu @ Dhatchayani was arrested by the police on the complaint by her husband Ramachandran and aggrieved at that Kuppu @ Dhatchayani's son attacked her husband Ramachandran. The defence has not suggested to any witness that A1's mother is not Kuppu @ Dhatchayani and what was hotly contested was the name Annalmalai [A1] given to A1;



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According to Chithra [P.W.1] and Lalitha [P.W.2] and other prosecution witnesses, the name of A1 is Annamalai, whereas according to A1 and his brother Natarajan [D.W.1], his name is Arumugam. From the time of arrest of A1, he has been shown as Annamalai S/o. Jeganathan. Therefore, there is no dispute with regard to the father's name of A1 because Natarajan [D.W.1], who is the brother of A1, has given his father's name as Jeganathan. Therefore, when the witnesses know a person well, and identifies him as the person, who had mounted the attack, the name of that person does not assume much significance because it is common in our country for a person to assume a name at home and another in his work place. In the country side, a child is first given either his paternal grandfather's name or maternal grandfather's name, but he will be called by a different name. Therefore, we are indeed not surprised if A1 is known to his neighbours as Annamalai, but his records show that he is Arumugam. Most importantly, it is relevant to state that Ex.D1 to Ex.D5 and Ex.D7 have all been obtained after the incident, namely, after 02.01.2010, as could be seen from the dates found thereon. Therefore, the trial Court was right in not placing much reliance on Ex.D1 to Ex.D8 (except Ex.D6), which were



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created only for the purpose of setting up the plea of mistaken identity in the case. It is seen that the incident had taken place on 02.01.2010, the case was committed to the Court of Session in the year 2010 and the trial began with the examination of Chithra [P.W.1] only in April 2016. Therefore, the accused had sufficient time at his disposal to manufacture records to support of his defence of mistaken identity.

9. One important aspect that has to be alluded to here is that when Chithra [P.W.1] and Lalitha [P.W.2] were examined by Dr.Johnson Reddy, they have stated that they were attacked by known persons. It is true that initially, Chithra [P.W.1] had given the name of Annamalai [A1] and two others in the FIR, but in the evidence, she has roped in two more accused. The legal maxim *Falsus in uno falsus in omnibus* would not apply in India and the principle that has been applied in India for appreciating the evidence of a witness is “removal of the chaff from the grain” theory, which the trial Court had applied and has rightly acquitted A2 to A5. The presence of Chithra [P.W.1] and Lalitha [P.W.2] in their house when the incident had taken place at 11.30 p.m. on 02.01.2010 cannot be ignored as fanciful: they

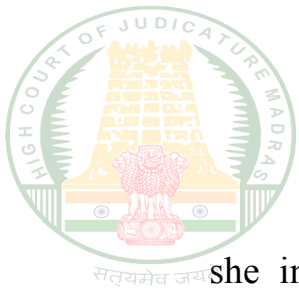


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being injured witnesses themselves. Just because their clothes did not get any bloodstain of the deceased, that cannot be a reason to disbelieve them in toto. The fact remains that they were injured witnesses and hence their testimony deserves a little higher pedestal. In this context, it is apropos to refer to the judgment of the Supreme Court in **Bhajan Singh @ Harbhajan Singh & Others vs. State of Haryana [(2011) 7 SCC 421]**, the relevant portion of which reads thus:

“36. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.” (emphasis supplied)

10. Mr. R. John Sathyan, learned counsel for the appellant contended that the FIR had been ante-timed, in that, even according to Chithra [P.W.1],



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she informed about the incident to her brother Kumaran [P.W.6.], who received the phone call at 12.45 a.m., thereafter came to Chithra's [P.W.1's] house and helped her for lodging the complaint. As stated above, in a case of this nature, the witnesses cannot be expected to work with a Swiss watch precision and remember the timing of the various events and tell them correctly six years later when they are examined as witnesses in the trial. There are bound to be *inter se* discrepancies in the testimony of witnesses, especially, injured witnesses because they would be in a state of trauma after the attack. Only if the witnesses were to speak like parrots, it will arouse the suspicion of the Court. In this case, there are no serious contradictions in the testimony of Chithra [P.W.1] and Lalitha [P.W.2] in respect of the kernel of the prosecution case, viz., the entry of Annamalai [A1] into their house at an odd hour to avenge the arrest of his mother and the attack mounted by him on Ramachandran and also causing of injuries to Chithra [P.W.1] and Lalitha [P.W.2].

11. In view of the foregoing discussion, we find no infirmity in the judgment of the Trial Court warranting interference.



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and
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mp/mrn

12. In the result, this Criminal Appeal stands dismissed. The Trial Court is directed to secure the appellant and commit him to prison for undergoing the sentence.

[P.N.P., J]

[A.A.N., J]

16.03.2022

Index: Yes/No

mp/mrn

To

1. The III Additional Sessions Judge,
Pondicherry.

2. The Inspector of Police,
Ariyankuppam Police Station.
Puducherry.

3. The Public Prosecutor,
High Court, Madras.

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