

**(2004) 03 MAD CK 0194**

**Madras High Court**

**Case No:** Criminal Appeal No. 202 of 1996

Manoharan, Karuthappa @  
Ganesan, Ramadas, Veeramani

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** March 18, 2004

**Hon'ble Judges:** S.R. Singharavelu, J; P. Sathasivam, J

**Bench:** Division Bench

**Advocate:** K.S. Rajagopalan, for the Appellant; V.M.R. Rajendran, Assistant Public  
Prosecutor, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

P. Sathasivam, J.

A-1 to A-4 in Sessions Case No. 80 of 95 on the file of the Additional Sessions Judge, Nagapattinam are the appellants in the above appeal. All the four appellants/accused were convicted for offences under Sections 341 and 302 read with 34 I.P.C. and sentenced each to undergo S.I. for one month for the offence u/s 341 I.P.C, and life imprisonment for the offence u/s 302 read with 34 I.P.C. and the sentences were ordered to run concurrently. Aggrieved by the same, this appeal has been filed.

2. The prosecution case in brief is as follows:

(a) There was previous enmity with respect to fishing rights in auction. On 2-11-93 at about 7 P.M. while P.Ws.3 and 4 were returning to their house, they heard a noise. P.W. 3 switched on torch light which he kept and saw A-1 to A-4 cutting the deceased indiscriminately with Aruvals. On seeing the accused, P.Ws.3 and 4 ran away. One Velayutham informed P.W. 1 that her husband fell down in the scene of occurrence with cut injuries. Immediately P.W. 1 and the village people went to the scene of occurrence and saw the deceased who died. P.W. 1 went to the Police Station and informed the occurrence to P.W. 1 2, Sub Inspector of Police, Palaiyur, who

registered a case in Crime No. 367 of 93 u/s 302 I.P.C. of Palaiyur Police Station.

(b) P.W. 18-Soundarrajan, Inspector of Police, went to the scene of occurrence, prepared observation mahazar and conducted inquest and sent the dead body for post-mortem.

(c) Dr.T. Thirugnanasambandam, who conducted post-mortem on the body of the deceased Vaitha alias Sekar 04-11-93 at 10.30 A.M. found 10 injuries. He issued Post-mortem certificate-Ex. P-15.

(d) P.W. 18, Inspector of Police arrested A-3 on 18-11-03. A-1, A-2 and A-4 surrendered before Court. P.W. 18 recovered M.O.8 from A-3 and M.Os.9 to 11 from A-1's house. The M.Os. were sent to Chemical Analysis. After examining all the witnesses, P.W. 18 filed charge sheet on 28-3-94 under Sections 341 and 302 read with 34 I.P.C. against the accused.

3. Before the trial, Court on the side of the prosecution, P.Ws.1 to 18 were examined. Exs. P-1 to P-29 were filed and M.Os.1 to 16 were marked.

4. When the accused were questioned u/s 313 Cr.P.C, they denied their complicity in the crime and stated that a false case has been foisted against them.

5. The trial Court accepting the prosecution case, convicted the accused for the offences under Sections 341, and 302 read with 34 I.P.C. Challenging the judgment of conviction, the appellants/accused have filed this appeal.

6. Heard Mr. K.S. Rajagopalan, Learned Counsel for the appellants and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor.

7. Mr. K.S. Rajagopalan, Learned Counsel for the appellants, after taking us through the entire materials, oral and documentary evidence, would contend that the prosecution has failed to establish motive and even if there is motive, the same is very feeble. He further contended that the learned trial Judge committed an error in relying on the evidence of P.Ws.3 and 4, who are said to be the eye witnesses, since they were examined only 10 days after the occurrence. He further contended that in view of the conduct of these persons in not reporting the occurrence either to the concerned Village Administrative Officer or to the police and left the village for a period of 10 days, it is not safe to rely on their evidence. Since they stood as witnesses against the accused on earlier occasions, their evidence cannot be relied upon. He further contended that in the light of the contradiction in the evidence of P.W. 9-Doctor, and P.W. 18 Investigation Officer, the recovery of Material Objects was doubtful. He also contended that based on the alleged confessional statement of A-3, recovery of Aruvals said to have been used by other accused cannot be accepted. On the other hand, Mr. V.M.R. Rajendran, learned Additional Public Prosecutor, would contend that the prosecution has established previous enmity/motive between the prosecution parties and the accused, that the delay in examination of witnesses is not a fatal and that the trial Judge after considering all

the materials, rightly found the accused guilty; hence there is no ground for interference in this appeal.

8. We have carefully considered the rival submissions.

9. According to the prosecution, previous enmity with respect to fishing rights in the tank is the main cause for the incident. Though P.W. 1, wife of the deceased, has stated in her evidence that there was a dispute between the Caste Hindus-prosecution party and accused-Adidraavidars over fishing rights in the tank called "Pudukulam" in their village, in an auction conducted by the Government, admittedly, there is no whisper in the complaint-Ex. P-1 made by her to the Inspector of Police. A perusal of Ex. P-1 shows that P.W. 1 has not at all referred to the auction which took place in the month of November, 1993 and mis-understanding, altercation etc., thereafter. Though first information report is not an Encyclopaedia, which should contain all the details, the fact remains that there is no reference to the dispute between the accused and the deceased in respect of fishing rights. No doubt, in her chief examination, P.W. 1 has referred to the said aspect, altercation between the deceased and A-1 on the next day followed by damaging the house of the deceased by A-1. In cross-examination she admitted that some time back, the deceased was doing arrack business. Though she denied that he did not involve any theft case, the fact remains that he was convicted in 4 or 5 theft cases.

10. In order to prove motive, apart from the evidence of P.W. 1, the prosecution has examined one Manisekaran, a resident of Poongudi village as P.W. 7. He speaks about the auction made for fishing rights in the month of November, 1993 and various offers made by persons belonging to Adidraavidars and Hindu communities. Though it is his case that the deceased was murdered within 5 or 6 days after the auction, in fact, the deceased was murdered on 2-11-93, whereas the auction took place even on 24-5-93. On a careful analysis of the evidence of P.Ws.4 and 7, and Ex. P-1 would go to show that there was a dispute and altercation after the auction was conducted relating to the fishing right in the lake in question. First of all there is no reference in the complaint-Ex. P-1 at the earliest point of time. Considering the length of time in between the date of auction, namely, 24-5-93 and the date of murder of Sekar i.e., on 2-11-93, we are satisfied that there is no proximate motive to the occurrence as claimed by the prosecution.

11. The next witness to be considered is P.W. 2 who is a neighbour of P.W. 1. She knows the deceased as well as the accused. She is not an eye witness to the occurrence. Though she claims to have seen A-1, A-2 and A-3 running around 11 P.M. from east to west, admittedly, she has not stated anything about the fact whether they were running along with weapons. Absolutely there is no reference about A-4. Though she had stated before the Court that there was altercation between the deceased and the accused, after the auction and A-1 damaged the house of the deceased, P.W. 18-Inspector of Police has admitted that P.W. 2 has not

stated anything about the same. After considering her entire evidence, we are of the view that her evidence is not helpful to the prosecution case.

12. Let us consider the evidence of eye witnesses-P.Ws.3 and 4. According to P.W. 3, on the morning of 2-11-93, he went to Kumbakonam. As he thought that he will return late, he took torch light along with him. While he was returning to his village around 7 P.M. along with one Kannaiyan, Village Menial (P.W. 4), they heard a noise near Thiruvizhimalai canal, where they saw A-1 to A-4 stabbing the deceased Sekar with Aruval indiscriminately. He switched on the torch light and was able to identify the persons, who stabbed the deceased Sekar. On hearing alarm from A-2, both of them ran away from the scene of occurrence to Vadamattam. After sun shine on the next day, they came to the scene of occurrence and noticed blood-stains in the scene of occurrence and the dead body of the deceased Vaithi alias Sekar lying near the canal with stab injuries. P.Ws.3 and 4 left the scene of occurrence. P.W. 3 went to Madras and stayed at Saidapet in his friend's house. P.W. 4, Village Menial, also stated in the same manner as spoken to by P.W. 3. The learned trial Judge accepted their testimony and found guilty of all the accused for committing the murder of the deceased. After going through the entire evidence of P.Ws.3 and 4, as rightly contended by the Learned Counsel for the appellants, we are of the view that the learned Sessions Judge ought to have rejected their evidence. First of all, both of them are inimical towards the accused, since P.W. 3 had given evidence against A-1 before the Judicial Magistrate's Court, No. 2, Mayiladuthurai, which shows she is interested in implicating the accused falsely. It is also seen that P.W. 3 had figured as counter-petitioner in a security case prior to the occurrence. It is also seen that there was a dispute between P.W. 3 and father of A-1, father of A-2 and A-4 with regard to distribution of surplus lands under Land Ceiling act. Finally, the evidence of P.Ws.3 and 4 ought to have been rejected as they were examined only 10 days after the occurrence. It is not their case that because of fear, they did not tell to any one and went to a far away place like Madras. As a matter of fact, P.W. 4 is none-else than the Village Menial, who is expected to inform either to the Village Administrative Officer or to the nearest Police Station. Admittedly, after the occurrence, P.W. 3 went to Kumbakonam and thereafter to Chennai and stayed at Saidapet in his friend's house. P.W. 4 went to his father-in-law's house at Barasingampettai and stayed there for 9 days. Further, according to P.W. 1, he left his house in the morning of 2-11-93 to Kumbakonam. His claim that he had taken torch light along with him on the assumption that he might return at late night is highly improbable and unacceptable. Further, even if it is acceptable, according to him, by switching on the torch light, they were able to see accused stabbing the deceased, but it would not be possible for the accused to identify these two persons. Hence, they would not have got any fear or apprehension as claimed. As stated earlier, both these witnesses stood as counter petitioners, and witnesses against the accused in many proceedings and their conduct in leaving the village to a far away place, by absconding themselves for about 10 days would amply show their inimical

terms towards the accused, as well as their interest in implicating the accused with the crime, which is also unbelievable and unacceptable. The learned Sessions Judge ought to have rejected the evidence of P.Ws.3 and 4 in toto. Even otherwise, in the light of their own statements, we are satisfied that P.Ws.3 and 4 are obliging witnesses. In the case of *Palanisamy v. State of Tamil Nadu*, reported in AIR 1986 SC 593, the prosecution has attempted to explain away the absence of P.Ws.5 and 6 till 6-7-80 on the tenuous plea that they were afraid of a threat to their life at the hands of the accused. They were cobblers and, therefore, they were afraid to risk their lives by getting themselves involved in the investigation in a case in which men of a higher caste were involved. Rejecting the said contention, the Supreme Court had held that "We are not impressed with this explanation. In a case like this, such an explanation is far from convincing. The witnesses have admitted in evidence that they gave the names of the assailants only to the police for the first time when they were examined on 6-7-1980...." After saying so, they observed that this doubt entertained by the Court has necessarily to go to the benefit of the accused.

13. In [State of Orissa Vs. Mr. Brahmananda Nanda](#), where in a murder case the entire prosecution case depended on the evidence of a person claiming to be eye-witness and this witness did not disclose the name of the assailant for a day and a half after the incident and the explanation offered for non-disclosure was unbelievable, it was held that such non-disclosure was a serious infirmity which destroyed credibility of the evidence of the witness.

14. In [Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India](#), the eye-witness examined in that case, after witnessing occurrence failed to report to any of the villagers and he reported the same to the police by a delay of 15 hours. The Supreme Court has held that his testimony is clouded with strong suspicion.

15. Though the learned Additional Public Prosecutor has relied on two decisions of the Apex Court in (i) *Band @ Guddu v. State of Madhya Pradesh* [2003 (7) Supreme 691; and (ii) in *Amritlal v. State of M.P.*, [2004 (1) Supreme 1048 for acceptance of the evidence of P.Ws.3 and 4, for the reasons mentioned above and the infirmities pointed out, we are of the view that both the decisions are not helpful to the prosecution case. In the light of the discussion pointed out above and in view of the legal position, we hold that the evidence of P.Ws.3 and 4 is unacceptable.

16. Coming to the claim regarding recovery of Material Objects, Learned Counsel for the appellants by drawing our attention to the evidence of the Doctor-P.W. 13 as well as the evidence of P.W. 18-Investigation officer, would contend that the recovery itself is doubtful on the date and time as alleged by the prosecution. Post-mortem Doctor was examined as P.W. 13. In his cross-examination, he has stated that,

Though he has not stated as to when he was examined, and when he was enquired by the police, P.W. 18-Investigation Officer, has stated that,

It is clear from the evidence of P.W. 18 that he enquired the Doctor-P.W. 13 on 9-11-93. We have already referred to the statement of P.W. 13 that M.Os. 9 to 11 were shown to him within 2 or 3 days of his examination. Now let us see when the M.Os., were recovered. One Rajendran, the then Village Administrative Officer, Vayalur, was examined as P.W. 9. According to him, on 18-11-93 when he was working in his office, the inspector of Police, Palaiyur came and informed about the clue that he had received about the murder of Vaitha alias Sekar. P.W. 9 accompanied the Inspector of Police, who arrested A-3 near the junction of Vadamattam-Thenkarai salai. On the basis of the confession made by A-3, A-3 took the Inspector of Police and P.W. 9 and identified 3 Aruvals which were hidden in a hay stalk. All the three Aruvals, M.Os.9, 10 and 11 were recovered under mahazar-Ex. P-10 in the presence of P.W. 9, who attested the same. It is clear that M.Os. 9, 10 and 11 were recovered on 18-11-93 at 3.15 P.M. in the presence of P.W. 9. We have already referred to the categorical statement of P.W. 13 that the M.Os. were shown to him after 2 or 3 days of his enquiry i.e., on 9-11-93 by P.W. 18. His evidence falsifies the claim of the prosecution though the M.Os. were recovered on 18-11-93. We are of the view that the learned Sessions Judge ought to have rejected the evidence of the prosecution witnesses regarding the recovery of weapons which is artificial and unbelievable.

17. Learned Counsel for the appellants would contend that even if the prosecution case is accepted that Aruvals-M.Os.9 to 11 were recovered on the confessional statement of A-3, the recovery by itself will not connect the other accused in the crime. In support of his claim, he relied on a decision of this Court in the case of Muthusamy v. The State of Tamil Nadu by Inspector of Police, Orathanad, Thanjavur [1995 1 L.W. (CrI.) 67]. In that decision, it was held that when the recovery was effected on the information of another accused not connected with the weapon, the recovery by itself will not connect the other accused with the crime. We are in agreement with the said conclusion. In the case on hand, the recovery of M.Os.9, 10 and 11, which was effected on the information given by A-3, is not going to help the prosecution. In other words, A-3 is not connected with all the three Aruvals-M.Os.9, 10 and 11. As observed in the said decision, the recovery of M.Os.9, 10 and 11 at the instance of the alleged confession made by A-3 is not helpful to the prosecution; accordingly the conviction and sentence is liable to be set aside.

18. Learned Counsel for the appellants also submitted that the recovery is not in accordance with Section 27 of the Indian Evidence Act. Admittedly, the report of the Forensic Science Department, Chennai-4 dated 17-12-93 shows that Did not detect blood on any of the 4 items (items 1 to 4 are banian and bill hooks). As observed earlier, though M.Os.9, 10 and 11 were recovered, according to the prosecution, pursuant to the confession given by A-3, however, as per the Serologist report-Ex.

P-23, the knives did not contain any blood-stain. So, as rightly contended by the Learned Counsel for the appellants, the recovery of the weapons are also not admissible because it does not satisfy the provision of Section 27 of the Indian Evidence Act.

19. Therefore, we are constrained to hold that the prosecution has failed to establish the guilt of all the accused beyond reasonable doubt. Consequently, the conviction and sentence imposed on the appellants/accused by the trial Court are set aside. Appeal is allowed. Their bail bonds shall stand discharged.