

HIGH COURT MADRAS**Date of Decision: 16th February 2024****Bench: Justices M.S. Ramesh and Sunder Mohan**

Criminal Appeal Nos. 483, 488, 508, 469, 538, 543 of 2019 & 179 of 2020
and CrI.M.P.No.11844 of 2019

K. Shanmugam and Others ... Appellant(s)**VERSUS****State by The Inspector of Police (L&O), V-5, Thirumangalam Police
Station, Chennai ... Respondent/Complainant****Legislation and Rules:**

Indian Penal Code (IPC) Sections 147, 148, 341, 302, 120B, and 34

Code of Criminal Procedure, 1973, Section 374(2)

Subject: Criminal appeals challenging the conviction and sentence of the appellants in a murder case involving multiple accused.

Headnotes:

Murder Conspiracy and Attack – Accused charged with murder of an individual due to personal grudges and illicit relationships. The attack involved multiple accused using knives and took place on 11th February 2008 - [Para 3(i), 3(iii), 3(iv)].

Criminal Law – Murder Conspiracy – Acquittal – Court examined the conviction and sentencing of the accused in a murder conspiracy. The key evidence was the testimony of PW1, the brother of the deceased. The Court scrutinized the credibility of PW1's testimony, inconsistencies in the investigation, and the evidence presented by the prosecution. [Para 10-14, 16]

Credibility of Sole Eyewitness – doubted – The Court expressed doubts over the reliability of PW1, the sole eyewitness. Discrepancies in his testimony, improbabilities in his conduct, and inconsistencies in his statements raised questions about his credibility. The Court observed that it was unsafe to base the conviction solely on PW1's testimony. [Para 10, 14]

Investigation and FIR Procedures – scrutinized – The Court examined the procedures followed in the investigation and the registration of the FIR. Delays in sending the FIR to the magistrate and the presence of police before the FIR registration indicated possible manipulation. [Para 11, 14]

Evidence of Weapons – not corroborative – The knives allegedly recovered from the accused were not bloodstained, as per the Serologist's report. This weakened the prosecution's claim that these were the murder weapons. [Para 13]

Decision – Acquittal of Accused – The Court acquitted accused A2, A4 to A9, citing insufficient evidence and unreliability of the sole eyewitness's testimony. The convictions and sentences in S.C. No.5 of 2011 dated 25.07.2019 were set aside. The Court directed the acquitted individuals to be released, unless required for other cases. [Para 18]

Referred Cases: Not mentioned in the provided excerpt.

Representing Advocates:

For Appellants: Mr. V. Gopinath, Mr. P. Pugalenti, Mr. Iniyavan, Mr. R. Sivaraman

For Respondent: Mr. A. Gokulakrishnan, Additional Public Prosecutor

COMMON JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

These Criminal Appeals have been filed by Accused Nos.1 to 9, challenging the conviction and sentence imposed upon them vide judgment dated 25.07.2019 in S.C.No.5 of 2011 on the file of the learned Additional Sessions Judge, Chennai.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3(i) The case of the prosecution is that A1 and the deceased-Karthik were close friends; that the deceased developed illicit relationship with the

wife of A1 and therefore, the relationship of A1 and deceased got strained and deceased became friendly with A2; that the deceased also had illicit intimacy with wife of A4 and due to that A4 also had a grudge against the deceased; that hence all the accused (11 persons) conspired to murder the deceased and in pursuance of the conspiracy, on 11.02.2008 at about 6.00 p.m., when the deceased was returning after distributing his wedding invitation and while he reached NVN Nagar Junction, the accused/A2, A3, A4, A5 and A9 came in a TATA Sumo Vehicle bearing Regn.No.TN09-J3639 and picked up a wordy quarrel with the deceased; that PW1, the brother of the deceased and his friends intervened and thereafter the accused persons went away; that on the same day at about 7.00 p.m., when the deceased was returning home in a two-wheeler belonging to his friend and when he was proceeding through 100 feet road near Krishna Garden at Thirumangalam, after dropping his aunt [PW25], accused viz., A1 to A6 along with A9 wrongfully restrained the deceased and A1 to A6 inflicted knife injuries repeatedly on the head, right and left ear, neck, face, right and left shoulder, right elbow, forearms, palm and finger of the deceased and the other accused also viz., A7, A8 and A9 wrongfully restrained the deceased from escaping and after inflicting the injuries on the deceased, all the accused fled in the TATA Sumo car.

(ii) It is the further case of the prosecution that PW1, the brother of the deceased, gave a complaint [Ex.P1] to PW29, the Inspector of Police, who registered the FIR in Cr.No.97 of 2008 for the offences under Sections 147, 148, 341, 302 and 120B IPC r/w 34 of the IPC. The Express FIR was marked as Ex.P36.

(iii) PW29 took up the investigation, and went to the scene of the occurrence at 23.15 hours, and prepared the Observation Mahazar [Ex.P37]

and Rough Sketch [Ex.P38]. He seized the bloodstained earth [M.O.4] and the earth that was not bloodstained [M.O.5] in the presence of witnesses under Seizure Mahazar [Ex.P39]. He thereafter examined the eyewitnesses, and on 12.12.2008, he went to the mortuary at Government Hospital, Kilpauk, and conducted an inquest between 8.00 a.m., and 10.00 a.m., in the presence of Panchayatars, and prepared the inquest report [Ex.P40]. Thereafter, he made a requisition to the Doctor through PW20-Constable to conduct a postmortem. PW28-Doctor attached to Kilpauk Medical College conducted a postmortem and issued a postmortem certificate [Ex.P35].

(iv) Thereafter, on 12.02.2018, A4, A5, and A8 surrendered before the Court, and PW29 filed a petition before the learned XIII Metropolitan Magistrate on 13.02.2018 seeking police custody of the said three accused. On 14.02.2018, police custody for two days was granted, and on 15.02.2018, he examined A4, A5, and A8, who gave confessions in the presence of PW12 and one Murali. On the confession of A4, the admissible portion of which is marked as Ex.P41, he seized two knives [M.O.1 series] under Seizure Mahazar [Ex.P8].

(v) Thereafter on 16.02.2008, PW29 arrested A1, A7, A10, and A11 (the deceased accused) and examined them in the presence of PW11, PW22, and one Shanthamoorthy. On the confession of A1, the admissible portion of which is marked as Ex.P42, he seized the knife [M.O.1 series] under Seizure Mahazar [Ex.P28].

(vi) On the confession of A10, the admissible portion of which is marked as Ex.P43, he seized the Nokia Mobile Phone [M.O.3] and Hero Honda Two Wheeler [M.O.8] under Seizure Mahazar [Ex.P29].

(vii) Thereafter, after learning that A3 and A9 surrendered before the learned XIII Metropolitan Magistrate, Chennai, PW29 took them into police custody and examined them in the presence of PW13-Village Administrative Officer and one Munusamy. On the confession of A9, the admissible portion of which is marked as Ex.P42, he seized the TATA Sumo Vehicle bearing Regn.No.TN09J3639 [M.O.2], under Seizure Mahazar [Ex.P16]

(viii) Thereafter, on 03.03.2008, A2 surrendered before the learned XIII Metropolitan Magistrate, Chennai and PW29 took him into police custody and examined him in the presence of PW14 and one Munusamy. On the confession of A2, the admissible portion of which is marked as Ex.P44, he seized the knife [M.O.1 series], under Seizure Mahazar [Ex.P45]. He thereafter seized the dress materials from the body of the deceased, viz., pants [M.O.6]. He examined the other witnesses and filed the final report against the accused for the offences under Sections 147, 148, 302, and 120B of the IPC before the learned X Metropolitan Magistrate, Egmore, Chennai.

(ix) 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 Session in S.C.No.5 of 2011 and was made over to the learned II Additional Sessions Judge, Chennai, for trial. The trial Court framed charges against the accused, and when questioned, the accused pleaded 'not guilty'.

(x) To prove the case, the prosecution examined 29 witnesses as P.W.1 to P.W.29, marked 56 exhibits as Exs.P1 to P56, and marked 8 Material Objects as M.O.1 to M.O.8. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused did not examine any witnesses or mark any documents.

(xi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellants/A1 to A9 are guilty of the offences charged against them. However, the trial Court acquitted A10. The charge against A11Murali was abated as he died pending trial. The appellants herein/A1 to A9 are convicted and sentenced as follows:

Accused No.	Offence under Section	Sentence imposed
A1	148 IPC	To undergo RI for one year and to pay a fine of Rs.1,000/-, in default to undergo SI for three months.
A2 to A9	147 IPC	Each of them to undergo RI for six months and to pay a fine of Rs.1,000/-, in default to undergo SI for three months.
	341 r/w 149 IPC	Each of them to undergo SI for one month.
	302 r/w 149 IPC	Each of them to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo SI for three months
The sentences were ordered to run concurrently.		

Hence, A1 to A9 have preferred the above appeals challenging the said conviction and sentence.

4. Heard, Mr.V.Gopinath, learned senior counsel appearing for the appellants in Crl.A.No.488 of 2019; Mr.P.Pugalenth, learned counsel appearing for the appellants in Crl.A.Nos.483, 508, and 469 of 2019; Mr.V.Iniyavan, learned counsel appearing for the appellant in Crl.A.No.543 of 2019; Mr.R.Sivaraman, learned counsel appearing for the appellants in Crl.A.No.538 of 2019 and 179 of 2020; and Mr. A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/state. This Court also perused all the materials available on record.

5. Mr.V.Gopinath, learned senior counsel appearing for A6 and A9/appellants in Crl.A.No.488 of 2019, led the arguments on behalf of all the counsels appearing for the above appellants. The learned senior counsel

submitted that the entire case rests on the evidence of PW1, the sole eyewitness and the only point in the instant appeals, is whether his evidence can be relied upon to record a finding of guilt. The learned senior counsel made the following submissions to impress upon us, as to how PW1 cannot be believed.

(a) PW1 did not accompany the deceased to the hospital. PW3, one Ganesh accompanied the deceased to the hospital and made a statement to the doctor that the deceased was lying unconscious and was assaulted by an unknown person, which falsifies the prosecution case.

(b) Several improvements were made by PW1 in the deposition in Court which were not found in his earliest version, i.e., in the complaint [Ex.P1]. The answers given in the cross examination of PW1 suggest that it is highly unsafe to rely on the sole testimony of PW1.

(c) The printed FIR was not sent to the learned Magistrate immediately, as could be seen from the evidence of PW19, the Constable, who delivered the FIR to the Court.

(d) The presence of police at the hospital even before the complaint was given by PW1 and the admission made by the investigating officer that he had inquired with PW1 about the occurrence, would show that the earliest version was suppressed by the prosecution.

(e) Knives recovered from the appellants were not bloodstained, and therefore, the recoveries would not be of any avail to the prosecution.

Therefore, the learned senior counsel prayed for acquittal of the appellants.

6.(i) Mr.A.Gokulakrishnan, learned Additional Public Prosecutor per contra submitted that it is well settled that the conviction can be based on a sole eyewitness provided his evidence inspires confidence. PW1 is the brother of the deceased, and there is no reason for him to falsely implicate persons who are not involved in the occurrence. His presence at the scene

of the occurrence is natural. Apart from that, merely because PW1 had not given the names of some of the accused in the complaint, his evidence in Court, which has not been discredited by the defence, cannot be thrown away, and the FIR is not an Encyclopaedia.

(ii) The learned Additional Public Prosecutor further submitted that there was an incident 45 minutes prior to the occurrence, which has been spoken to by PW1 and other witnesses, which confirms the motive for the occurrence, and therefore, he submitted that the prosecution has established its case beyond reasonable doubt and there is no reason to interfere with the judgment of the trial Court.

7. We have carefully considered the rival submissions and have perused all the relevant records.

8. PW1 as stated earlier, is the brother of the deceased; PW2 to PW5 are neighbours, who were examined as eyewitnesses, and all of them turned hostile; PW6, PW11, PW12, PW13, PW14, PW22, and PW24 are either mahazar witnesses or witnesses to the confession and recovery of weapons on the confession of the appellants, out of which, PW6, PW12, PW22, and PW24, turned hostile; PW7 is the brother of the deceased, who is a hearsay witness; PW8, who is examined to prove the motive, turned hostile; PW9 is the owner of the TATA Sumo vehicle, which is said to have been stolen and used by the appellants at the time of the occurrence; PW10 is the owner of the bike said to have been used by the deceased, and turned hostile; PW15, Sub Inspector of Police, who speaks about the complaint said to have been given by A2 against the deceased earlier and that there was a prior enmity between the deceased and the accused; PW16, PW17, and PW18, who were working in the Forensic Science Laboratory, spoke about the reports given by them after the analysis of the material objects sent to

them; PW19 is the Constable who handed over the FIR to the Court; PW20 is the corpse Constable; PW21 is the Scientific officer working in the Forensic Science Laboratory and who issued Ex.P23-report; PW23, is another Serologist, who issued Ex.P31-report; PW25 is the aunt of the deceased, who speaks about the deceased dropping her in her house after purchasing the saree for the marriage and came to know about the occurrence later; PW26 is the photographer; PW27 is the doctor who first examined the deceased and made entries in the Accident Register; PW28 is the postmortem doctor; and PW29, is the investigating officer.

9. (i) PW28 the postmortem doctor issued the postmortem certificate [Ex.P35], in which he has noted as many as 18 injuries. Though a final opinion was not given in Ex.P35-postmortem certificate, the doctor had deposed in Court that the deceased died due to shock and haemorrhage due to the injuries. The defence in the cross examination of the doctor stated that the doctor had not recorded his opinion in the postmortem certificate.

(ii) Considering the nature of injuries that the deceased had suffered, as could be seen from Ex.P35-postmortem certificate, and the fact that the doctor's opinion in Court has not been challenged, we are of the view that the prosecution has established that the deceased sustained injuries due to homicidal violence and succumbed to the same.

10. (i) The next question is, who caused those injuries. As could be seen from the list of witnesses and the purpose for which they were examined, which we have stated earlier, the entire case rests on the evidence of PW1. PW15 speaks about an earlier complaint given by A2 against the deceased and about the compromise entered into between them.

(ii) PW1 speaks about the motive for the occurrence, viz., that the accused were inimical towards the deceased, since they were under the impression that the deceased had an illicit relationship with A1's wife and subsequently with A4's wife. He also refers to the police complaint given by the accused against the deceased earlier. He speaks about the earlier occurrence in the year 2007 during Diwali, wherein A3 questioned the deceased as to why he was having intimacy only with married women, a fight took place, and A3 and A5 assaulted the deceased and the uncle of the deceased, one Sankarapani, subsequently a police complaint was made and a compromise was reached.

(iii) PW1 would also speak about an incident that had happened around 6.00 p.m., on 11.02.2008, wherein A2, A3, and A5 came in a TATA Sumo car and questioned the deceased and challenged him, stating that they would not let him marry; that the deceased and PW1 avoided the confrontation and left the place; thereafter, when PW1 was walking, he saw the deceased coming in the opposite direction and saw all the accused in a TATA Sumo car stopping the deceased and attacking him with knives; that before he and his friends went to the place, all the accused fled away in the TATA Sumo car.

(iv) The question is whether this version of PW1 can be believed. According to PW1, he knew all the accused as they were all living close by. However, he did not name all the accused in the complaint. In the complaint, he has referred to the attacks made by A2, A3, A4, A5 and A9 but there is no reference to the names of the other accused, viz., A6 to A8. Further, no *overt act* has been attributed to A1 in Ex.P1-complaint; however a specific *overt act* has been attributed to A1 in his deposition in Court.

(v) Be that as it may, PW1 would state that he, along with PW2Prakash, PW3-Ganesh, PW4-Raja, and PW5-Babu, took the deceased to the hospital, and he would further state that he did not go into the hospital and only PW3 went into the hospital. This conduct itself appears to be improbable. The doctor [PW27] who made entries in the Accident Register [Ex.P34] has recorded in the Accident Register as follows:

“alleged H/o – found injuries due to assault by unknown person at Rohini Theatre Road, Krishna Tiles, Thirumangalam”

(vi) It is the prosecution case that PW3, PW5, and PW1 were eyewitnesses. However, in the earliest version given by PW3, who, according to PW1, accompanied him to the hospital, he stated that the deceased was found unconscious and assaulted by an unknown person. If PW1 had witnessed the occurrence, the statement that the deceased was lying unconscious wouldn't have been made.

(vii) The next aspect that we find is that, it was admitted by both PW1 and PW29, the investigating officer, that on coming to know of the occurrence, PW29 went to the hospital at 8.00 p.m., on 11.02.2008 and he inquired with all the eyewitnesses and thereafter returned to the police station. PW1 would also state that the police came to the hospital, and he went along with the police to the police station. The FIR came to be registered only at 10.30p.m. on 11.02.2008, on the written complaint said to have been given by PW1. The presence of police in the hospital even before the registration of FIR and the fact that PW1 went along with the police in the van to the police station, would show that the manipulation cannot be ruled out.

11. (i) The other aspect that casts a doubt on the manner in which the FIR was registered is the evidence of PW29, who claims that he sent the express FIR immediately to the learned Magistrate on the same evening. He

would also initially state that he did not remember through whom, the FIR was sent to the learned Magistrate, but, thereafter, recollected and stated that Constable No.2628-Selvakumar took the FIR.

(ii)PW19-Selvakumar is the Constable who delivered the FIR to the learned Magistrate. However, he would state that the express FIR was handed over by PW29 only at 8.45 a.m. on 12.08.2008 and he had delivered the same to the learned XIII Metropolitan Magistrate at 10.00am. Therefore, there is a delay in sending the express FIR to the learned Magistrate, which has not been explained by the prosecution.

12. Apart from the improvements made by PW1 in the depositions, he had made certain admissions in the cross-examination, which would also make him an unreliable witness. The relevant portion of the admission reads as follows:

“fj;jp itj;jpUe;j me;j MW ngu; ahUd;D brhyy; Koa[k;/ Mdh ve;j Ma[jj;ij ahu; itr;rpUjh';fd;D Fwpg;gpl;L brhyy;KoahJ/ me;j rk;gtj;jpy; bkhj;jk; 5 nguh myy;J 6 nguh ,yy; 8 nguh ,Ue;jh'f; d;D brhyy; KoahJ/ M\$u; ,Uff; pw vy;yhUk; Vw;bfdnt v'f; Sf;F bjhpa[k;/ gHfpdt';fjhd;/ mjdhynfhul; ;Ly milahsk; fh;l;I ntz;oa mtrpak; fpilahJ/ vdf;F Vw;fdnt mt';fs bjhpa[k;/ mt';fjhd; ,jid bra;jhuf; sh vd;W vdfF; bjhpahJ/”

In the above extracted portion, the PW1 admitted that he was not sure as to how many persons, whether 5 or 6 or 8, were involved in the incident and he had also stated that he was not sure whether they were the accused.

13. The knives said to have been recovered from the accused were not bloodstained. The report [Ex.P20] of the Serologist, reveals that items 5 to 9, which were the knives said to have been seized on the confession of the accused, did not contain blood. The relevant portion reads as follows:

“Detected blood on each of items 1 and 4 but not on any of the items 2,3, or 5 to 9 (both inclusive).”

Therefore, the recovery of the weapons would not be of any avail to the prosecution.

14. It is no doubt true that the case can rest on the sole witness. Considering the fact that there are several infirmities that we have pointed out in the evidence of PW1; the fact that PW3, who took the deceased to the hospital, stated to the doctor that the deceased was found unconscious and was assaulted by an unknown person; the delay in sending the FIR to the learned Magistrate; and the presence of the police before the registration of the FIR, it would be highly unsafe to base the conviction on the sole testimony of PW1 alone.

15. The other circumstance, i.e., the fact that the stolen car was used by the accused, has not been established since none of the witnesses have deposed that the TATA Sumo car bearing Regn.No.TN09-J-3639 was used. Further, PW25-aunt of the deceased, who states that she came to know of the occurrence, stated in her evidence that her husband received information that the deceased was assaulted, and at that time, they did not know who assaulted the deceased.

16. Therefore, in our view, it would be highly unsafe to record a finding of guilt on the basis of evidence of PW1, and hence, the judgment of conviction and sentence cannot be sustained and are liable to be set aside.

17.(i) It is reported that A1-K.Shanmugam, the sole appellant in CrI.A.No.483 of 2019 died on 21.04.2022 and the death certificate has been produced by the defence, which is confirmed by the learned Additional Public

Prosecutor, though his name is shown as Sathya Narayanan. The learned Additional Public Prosecutor stated that it was the 'alias' name of A1. Hence, ***Crl.A.No.483 of 2019, stands dismissed as abated.***

(ii) Further, it is reported that the 1st appellant in Crl.A.No.508 of 2019, viz., A.Prabhu @ Prabhudoss (A3), died on 21.11.2021 and the death certificate has been produced by the defence, which is confirmed by the learned Additional Public Prosecutor. Therefore, ***Crl.A.No.508 of 2019, stands dismissed as abated insofar as 1st appellant therein/A3, is concerned.***

(iii) Since, the 3rd appellant in Crl.A.No.508 of 2019 viz., Raghu (A7) has filed a separate appeal i.e., Crl.A.No.538 of 2019, through another counsel, Mr.P.Pugalenti, the learned counsel for the appellants in Crl.A.No.508 of 2019, has made an endorsement that he is withdrawing the appeal in respect of the 3rd appellant viz., Raghu (A7). Therefore, ***Crl.A.No.508 of 2019, stands dismissed as withdrawn insofar as 3rd appellant therein/A7, is concerned.***

17. The Criminal Appeals filed by the other accused, viz., A2, A4 to A9, stand allowed. The conviction and sentence imposed upon the appellants/ A2, A4 to A9 in S.C. No.5 of 2011 dated 25.07.2019 on the file of the learned II Additional Sessions Judge, Chennai, are set aside. The appellants/A2 and A4 to A9 are acquitted of all charges and are directed to be released forthwith, unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants/A2 and A4 to A9 shall be refunded. Bail bonds, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition is closed.

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