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Crl.A.(MD) Nos.113 & 114 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	29.11.2023
Pronounced on	22.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.A.(MD) Nos.113 & 114 of 2020

Valli
W/o.Poovalingam

... Appellant in
Crl.A.(MD)No.113 of 2020

Poovalingam
S/o.Ottakaruppan

... Appellant in
Crl.A.(MD)No.114 of 2020

Vs.

The State through
The Inspector of Police,
Manamadurai Police Station,
Sivagangai District.
Crime No.455 of 2012

... Respondent in both Crl.As.

Common Prayer:- Criminal Appeals filed under Section 374(2) of the Code of Criminal Procedure, 1973 [Act No.2 of 1974] praying to set aside the Conviction and Sentence imposed on the appellants by the learned Principal Sessions Judge, Sivagangai in S.C.No.14 of 2015 dated 28.01.2020.



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For Appellants in
both Crl.As.

: Mr.K.Samidurai

For Respondent in
both Crl.As.

: Mr.S.Ravi

Additional Public Prosecutor

COMMON JUDGMENT

R.SAKTHIVEL, J.

By this common Judgment, the following Criminal Appeals are being disposed of.

- i. *Crl.A.(MD) No.114 of 2020 preferred by 'Accused No.1 – Poovalingam'* [henceforth 'A1' for the sake of brevity].
- ii. *Crl.A.(MD) No.113 of 2020 preferred by 'Accused No.2 – Valli'* [henceforth 'A2' for the sake of brevity].

2. The aforementioned Criminal Appeals are preferred by the respective 'appellants' [henceforth referred to as 'accused' for the sake of convenience] assailing the 'Judgment dated January 28th, 2020' [henceforth 'impugned Judgment' for the sake of brevity] passed by 'The Principal Sessions Court, Sivagangai' [henceforth 'Trial Court' for the sake of brevity] in Sessions Case No.14 of 2015 in which both the accused were convicted and sentenced as follows:



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Crl.A. (MD) No.	Accused No.	Offence u/s.	Sentence
114/2020	Accused No.1 (Poovalingam)	302 of IPC	To undergo Imprisonment for Life and to pay a fine of Rs.5,000/-, in default thereof, to undergo Rigorous Imprisonment for a further period of 3 months.
113/2020	Accused No.2 (Valli)	324 of IPC	To undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs.2,000/-, in default thereof, to undergo Rigorous Imprisonment for a further period of 3 months.
Note: The period of imprisonment already undergone was ordered to be set off under Section 428 of Criminal Procedure Code, 1973 (Act No.2 of 1974) [henceforth referred to as 'Cr.P.C.' for the sake of brevity]			

3. The case of prosecution case, in brief, is as follows:

3.1. The deceased-Bagirathi alias Paapa was residing in Manamadurai Burma Colony along with her husband namely, Baskaran (P.W.1); two sons namely, Nithyanandham (P.W.2) and Kasivishwanadhan; and one daughter. Poovalingam S/o.Ottakaruppan and Valli who are the accused in this case, are husband and wife. The accused also live in Burma Colony and own a petty shop there. The deceased's family and the accused's family were at odds over the theft of accused's hen. On November 16th, 2012 at 18.00 hours, the deceased was on her way



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to buy milk along with her husband. While approaching Santhana Mariyamman Temple in Burma Colony, Manamadurai, the accused abused them with obscene words. When the deceased questioned them as to why the accused are interrogating them rather than interrogating those who actually stole the hen, A2 attempted to assault the deceased's husband namely, Baskaran (P.W.1) with a wooden log. Though Baskaran tried to ward off the assault, he got a simple injury on his thumb and index fingers. Then A2 instigated A1 by blaming the deceased for everything and urging A1 to kill the deceased. Upon the instigation, A1 hit the deceased at her right temple with the stone he had in his hand, with the aid of A2 who held the deceased tightly. The deceased fainted instantly. The said incident was witnessed by both the deceased's sons. The deceased was rushed to Manamadurai Government Hospital where she was declared brought dead.

3.2. Then P.W.1 went to Manamadurai Police Station and lodged the Written Complaint (Ex.P1) at 17.30 hours on the aforementioned date. On receiving Ex.P.1, the then Sub-Inspector of Police, Manamadurai Police Station (P.W.10) registered First Information Report [FIR] (Ex.P. 14) in Crime No.455/2012 under Sections 294(b), 324, 342 and 302 of



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'The Indian Penal Code' 1860 (Act No.45 of 1860) [henceforth 'IPC' for the sake of brevity].

3.3. Upon receiving the case files, the then Inspector of Police, Thirupuvanam Police Station [In-charge of Manamadurai Police Station] (P.W.11) [henceforth 'Investigation Officer (P.W.11)' for the sake of brevity and clarity] rushed to the scene of occurrence and prepared Rough Sketch (Ex.P.15) and Observation Mahazar (Ex.P.2) in the presence of the witnesses Pazhanikumar (P.W.5) and Karunakaran (P.W.6). Then he collected blood-stained Soil (M.O.3) and sample Soil without blood stains (M.O.4) from the scene of occurrence under Seizure Mahazar (Ex.P.3) in the presence of the same witnesses. Then he examined the witnesses and recorded their statements. Then he arrested A1 and A2 at 23.30 hours on the same day in front of the Masque near Muthu Nagar Crematorium in Athanoor Road and recorded the voluntary confession given by them in the presence of the aforementioned witnesses, the admissible portion of which is marked as Ex.P.4. Pursuant to the confession, he recovered Wooden log (M.O.1) and Cement Stone (M.O.2) in the presence of the same witnesses under Seizure Mahazar (Ex.P.5). Thereafter, on the next day i.e., November 17th, 2012 from 06.00 hours to 09.00 hours, he



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conducted inquest over the dead body and prepared Inquest Report (Ex.P.

16). Then, along with the properties, he sent the accused to Judicial Custody. Then, he handed over the case files to Mr.Paulpandi, Inspector of Police, Manamadurai Police Station (P.W.12) [henceforth 'Investigation Officer (P.W.12) for the sake of brevity and clarity] after Mr.Paulpandi took charge of Manamadurai Police Station.

3.4. The Investigation Officer (P.W.12) continued the investigation. He re-examined the witnesses but did not record their Statements as their Statements were the same as their previous Statements given to Investigation Officer (P.W.11), received Post-mortem Report (Ex.P.8), examined the Post-mortem Doctor (P.W.8) and recorded the Statement of Forensic Experts. After completion of investigation, Investigation Officer (P.W.12) filed Charge Sheet against A1 for the offences punishable under Sections 294(b), 342 and 302 of IPC and against A2 for the offences punishable under Sections 294(b), 324, 342 and 302 r/w. 109 of IPC before the Judicial Magistrate Court, Manamadurai.

3.5. The learned Judicial Magistrate registered the case on file as PRC.No.28/2014. After furnishing copies under Section 207 of Cr.P.C. to



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the accused, he committed the case file to the Trial Court under Section 209(a) of Cr.P.C., as offence punishable under Section 302 of IPC is exclusively triable by Sessions Court. The Trial Court, after receiving the case file, assigned Sessions Case No.14 of 2015, framed charges under Sections 294(b) and 302 of IPC against A1 and framed charges under Sections 294(b), 342 and 302 r/w. 109 of IPC against A2, read over and explained the charges to the accused in Tamil. Since the accused pleaded not guilty, trial was ordered.

3.6. To prove its case, the prosecution examined P.W.1 to P.W.12 (Witnesses) and marked Ex.P.1 to Ex.P.17 (Documents) and M.O.1 to M.O.4 (Material Objects). The defence side examined D.W.1 and D.W.2 (Witnesses) and marked Ex.D.1 and Ex.D.2 (Documents).

3.7. The Trial Court after hearing either side, concluded that the prosecution has proved the offence punishable under Section 302 of IPC against A1 and the offence punishable under Section 324 of IPC against A2. Accordingly, the Trial Court convicted and sentenced the accused as stated *supra* in paragraph no.2.



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WEB COPY 3.8. Feeling aggrieved with the Conviction recorded and the Sentence imposed by the Trial Court, the accused have preferred these Criminal Appeals under Section 374(2) of Cr.P.C.

Arguments

4. Mr.K.Samidurai, the learned counsel for accused submitted that the deceased and P.W.1 used to purchase various things from A1's shop on credit basis; that A1 went to the deceased's house two or three times before the occurrence, demanding payment of Rs.3,000/- towards the outstanding debt; that, enraged by this, the deceased unlawfully vandalized the accused's shop with her relatives on the day of occurrence and assaulted A1 with wooden log fracturing his right hand; during the course of the said incident, there was a push and pull between the deceased and A1, and the deceased accidentally fell down hitting her head on a stone; that A1 gave a complaint to the Police; that A2 came to Police Station to see her husband; that in the meantime, police got information over phone that the deceased passed away in Hospital; that upon learning about the said incident, P.W.1 who is working in a hotel 3 Kilometers away from the place of occurrence came to the police station along with



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some political personnels, lodged a false complaint suppressing the real incident; that the police then arrested A1 and took him to Government Hospital, Manamadurai and obtained a false medical record as if A1 stated to the doctor that on November 16th, 2012 at 18.00 hours, he fought with two known persons, fled the scene and stumbled into a pit getting injured.

4.1. Drawing the attention of this Court to the evidence of D.W.1 & D.W.2 and Ex.D.1 & Ex.D.2, he further submitted that A1 got heavily injured in the assault; that A1 availed treatment from November 17th, 2012 to November 28th, 2012 at Mahatma Gandhi Memorial Government Hospital, Trichy; that the doctor therein found that radius bone in right hand had a fracture; that thereafter, he availed treatment at Prison Hospital till December 21th, 2012 i.e., until he was released on bail;

4.2. He further submitted that the prosecution, suppressing the real facts and the injuries sustained by A1, foisted a false case against the accused; that the prosecution has suppressed the very genesis and origin of occurrence of the crime and that the confession and recovery are false and fabricated by the prosecution. He further argued that P.W.1 was not present in the place of occurrence; that P.W.1 and P.W.2 are family



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members of the deceased, P.W.3 is the friend of P.W.2 and hence, they are interested witnesses and their evidence have to be scrutinized carefully; that the evidence of P.W.1 & P.W.2 are highly contradictory; that the Trial Court failed to appreciate the prosecution's witnesses as per law; and that the prosecution failed to prove the case beyond reasonable doubt. He relied on the following authorities in support of his arguments:

- i. ***State of Punjab Vs. Kulwant Singh alias Kanta***, reported in (2008) 16 SCC 290.
- ii. ***Shivaji Chintappa Patil Vs. State of Maharashtra***, reported in (2021) 5 SCC 626.
- iii. ***Lakshmi Singh and others Vs. State of Bihar***, reported in (1976) 4 SCC 394.
- iv. ***Nand Lal and others Vs. The State of Chhattisgarh***, reported in (2023) 10 SCC 470 : 2023 SCC OnLine SC 262.
- v. ***Arputhan Vs. State rep. by Inspector of Police, D6 Anna Square Police Station, Chennai***, reported in 2023 (3) MWN (cr.) 310 (DB).

Accordingly, the learned counsel for accused prayed to allow these Criminal Appeals, set aside the impugned Judgment and acquit A1 and A2.



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5. In response to the above arguments, Mr.S.Ravi, learned Additional Public Prosecutor for the respondent-State submitted that P.W.

1 is an injured ocular witness and hence, his evidence is reliable and trustworthy; that evidence of P.W.2 and P.W.3 is clear and cogent and there is no reason to reject the same; that the prosecution proved the place of occurrence, arrest, confession and recovery of M.O.1 and M.O.2 beyond reasonable doubt; that the prosecution has clearly established that the deceased died due to homicidal death; that A1 himself has explained his injury to the Doctor; that therefore, the argument of the defence that prosecution suppressed the factum of A1's injury loses its significance and hence, the principle laid in **Lakshmi Singh's case** would not be applicable to the present case; that the Trial Court only after careful consideration of the evidence and materials, convicted A1 and A2. Further, as an alternative plea, he submitted that, assuming that the act of A1 would not attract the offence punishable under Section 302 of IPC, in that case, it would attract Exception 4 of Section 300 of IPC punishable under Section 304 Part 1 of IPC. He submitted the following authorities in support of his arguments:

- i. **Vijayee Singh and others Vs. State of U.P.**, reported in **(1990) 3 SCC 190**.



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- ii. ***Gurwinder Singh alias Sonu and others Vs. State of Punjab and another***, reported in ***(2018) 16 SCC 525***.

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Accordingly, he prayed to dismiss these Criminal Appeals and sustain the Conviction recorded and Sentence imposed by the Trial Court.

6. This Court has perused the case file and heard either side. The following points arose for consideration:-

- i. Whether the prosecution has proved the charge levelled against A1 under section 302 of IPC?
- ii. Whether the prosecution has proved the charge levelled against A2 under section 324 of IPC
- iii. Whether there exist any reason to interfere with the Impugned Judgement?

Discussion and Decision for Point Nos.(i), (ii) and (iii)

Place of Occurrence

7. The Investigation Officer (P.W.11) inspected the crime scene, prepared Rough Sketch (Ex.P.15) and Observation Mahazar (Ex.P.2) and collected blood-stained Soil (M.O.3) and sample Soil without blood stains (M.O.4) from the scene of occurrence under Seizure Mahazar (Ex.P.3). Chemical Report (Ex.P.11) and Serological Report (Ex.P.12) reveal that



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the blood stains found in M.O.3 matches with the blood group of the deceased. Chemical Report (Ex.P.13) reveals that M.O.3 and M.O.4 are similar to each other in respect of their density and distribution pattern. Further, the defence side also does not dispute the alleged place of occurrence. Hence, the prosecution has proved the place of occurrence.

Deposition of P.W.1

8. Baskaran (P.W.1) is none other than the husband of the deceased. He in his chief-examination deposed that he and the deceased have two sons and the younger son is away from Manamadurai pursuing his studies; that on November 16th, 2012 at 18.00 hours, when he and the deceased were walking along the road, A1 and A2 abused them for allegedly stealing their hen; that when the deceased questioned them as to why A1 and A2 are interrogating them rather than interrogating those who actually stole the hen, A2 attempted to assault the deceased with a Wooden log (M.O.1) whereupon he intervened and sustained blood injury on his thumb and index finger; that then A1 hurled abuses at the deceased and hit the deceased at her right side forehead with a stone; that the deceased fainted instantly; that the deceased was transferred into '108 Ambulance' with the aid of their two sons and Ramesh Kumar (P.W.3) and rushed to



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Manamadurai Government Hospital where she was declared dead; that then P.W.1 lodged Written Complaint (Ex.P.1).

8.1 In his cross-examination, he admitted that the place of occurrence is a Junction road surrounded by many Shops and Houses; that he is working in a Hotel 1 Kilometer away from the place of occurrence; that his son (P.W.2) is working in Gandhi Mess $\frac{3}{4}$ Kilometer away from the place of occurrence. Further, he deposed that, when he and the deceased crossed the accused's shop, not A1 but A2 abused them; that then A1 came out from his shop with a stone and there was a wordy quarrel for 10-15 minutes; that no one around tried to pacify the situation; that his sons were engaged in a conversation near Santhana Mariyamman Temple; that later upon hearing his alarm, they rushed to the place of occurrence; that A1 and A2 fled the place of occurrence before his sons got there; that when A2 attempted to attack the deceased with a Wooden log [கம்பு], he intervened and sustained injury in his hand; that he snatched away the Wooden log (M.O.1) from A2 and later handed over the same to Police. He further admitted that A1's shop was vandalized, however, he deposed that he was not present at the time, nor is he aware of the vandals. Relevant extract of P.W.1's cross-examination is as follows:



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“... எதிரிகளின் கடைக்கு நாங்கள் முன்பாக போகும்போதுதான் எங்களை எதிரிகள் பேசினார்கள். 2வது எதிரிதான் எங்களை திட்டிபேசினார். 1வது எதிரி எங்களை திட்டி பேசவில்லை. அவர் பின்னால் கல்லை எடுத்துக்கொண்டு ஓடிவந்தார். எதிரிகளின் கடையிலிருந்து 5 அடி தூரத்தில் அவ்வாறு நாங்கள் வந்தபோது பேசினார்கள். 2வது எதிரி அவரது பெட்டிக்கடையிலிருந்து பேசிகொண்டு வந்தார். எங்களுக்கு 10 முதல் 15 நிமிடம் வரை வாக்குவாதம் நடந்தது. அவ்வாறு வாக்குவாதம் நடந்த சமயத்திலும் தாக்கிய சமயத்திலும் அக்கம்பக்கத்தில் உள்ளவர்களுக்கு தெரியும். பக்கத்தில் இருந்தவர்கள் யாரும் சண்டையை விலக்கவில்லை. சம்பவ சமயத்தில் என் மகன்கள் சந்தனமாரியம்மன் கோவில் அருகில் பேசிகொண்டிருந்தார்கள். என் மனைவி தாக்கப்பட்டு மயக்கப்பட்டு கீழே விழுந்தவுடன் நான் சத்தம்போட்டேன். என் சத்தத்தை கேட்டுதான் சந்தன மாரியம்மன் கோவிலில் பேசிக்கொண்டிருந்த எனது மகன்கள் சம்பவ இடத்திற்கு வந்தார்கள். என் மகன்கள் இருவரும் சம்பவ இடத்திற்கு வருவதற்குள் எதிரிகள் இருவரும் அந்த இடத்தை விட்டு ஓடிவிட்டார்கள். என் மனைவியை 2வது எதிரி கம்பால் தாக்க வரும்போது நான் அதை மறித்து பிடித்ததில் எனக்கு காயம் ஏற்பட்டது. நான் கம்பை பறித்து கீழே போட்டேன். அந்த சா.பொ.1 கம்பை காவல்நிலையத்தில் கொண்டுபோய் கொடுத்தோம். என் மனைவியை 1வது எதிரி கல்லால் குத்தியவுடன் அந்த கல்லை என்ன செய்தார் என்பதை நான் கவனிக்கவில்லை. 2வது எதிரியிடமிருந்து நான் பறித்த கம்பால் எதிரிகளை நான் தாக்கவில்லை. எதிரிகளை நான் காயப்படுத்தவில்லை.



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... அதற்கு பின்காக 1வது எதிரியின் கடை நொறுக்கப்பட்டிருந்தது. 1வது எதிரியின் கடையை யார் நொறுக்கினார்கள் என்பது எனக்குத் தெரியாது. அவ்வாறு என் மகன் நித்யானந்ததும் அவரது நண்பர்களும் 1வது எதிரியின் கடையை நொறுக்கி கொண்டிருந்தார்கள் என்றும், அந்த சத்தம் கேட்டு என் மனைவி 1வது எதிரியின் கடைக்கு வந்து என் மகனையும் அவரது நண்பர்களையும் 1வது எதிரியின் கடையை நொறுக்கவிடாது தடுத்தபோது அவர் கீழே விழுந்து என் மனைவிக்கு காயம் ஏற்பட்டது என்றால் சரியல்ல. ...

... இரவு 8.00 மணிக்கு நான் காவல்நிலையத்திற்கு சென்றபோது அங்கு 1வது எதிரியை பார்த்தேன். என் மகன் நித்யானந்தம் 1வது எதிரியை தாக்கி காயப்படுத்தினார் என்றும், 1வது எதிரியின் கடையை நொறுக்கி சேதப்படுத்தினார் என்றும் அது சம்பந்தமாக 1வது எதிரி மானாமதுரை காவல்நிலையத்திற்கு புகார் கொடுக்க வந்திருந்தார் என்றால் அதுகுறித்து எனக்கு தெரியாது. 2வது எதிரிக்கு இந்த வழக்கிற்கு எந்தவித சம்பந்தமும் இல்லை என்றும், அவரை வேண்டுமென்றே பொய்யாக இவ்வழக்கில் அரசியல் செல்வாக்கை பயன்படுத்தி சேர்த்திருக்கிறோம் என்றால் சரியல்ல.

... 1வது எதிரியை நான் மானாமதுரை காவல்நிலையத்தில் அன்று இரவு 8.00 மணிக்கு பார்த்தபோது 2வது எதிரியும் காவல் நிலையத்தில் இருந்ததை நான் பார்த்தேன். நான் கொடுத்த புகாரின் பேரில் எதிரிகளை போலிசார் கூட்டிவந்திருப்பார் என நான் நினைத்தேன். சா.பொ.1



மற்றும் சா.பொ.2 எதிரிகளுக்கு பாத்தியப்பட்டது இல்லை என்றும் அவை இந்த வழக்கில் சம்பந்தப்பட்டவை அல்ல என்று சொன்னால் சரியல்ல. ..”

Deposition of P.W.2

9. Nithyanandham (P.W.2) who is none other than the elder son of the deceased in his chief-examination deposed in line with the deposition of P.W.1 with minor contradictions. Notably, he deposed that he was engaged in a conversation with his brother, and P.W.3 (friend) near Santhana Mariyamman Temple and that A2 hit the deceased with stone at 16.00 hours.

9.1. In his cross-examination, he deposed in complete contradiction with prosecution's case and P.W.1's evidence. He deposed that the occurrence went on for ½ an hour to 1 hour and the ladies living in the Street were merely spectating without intervening to pacify the situation; that when he reached the place of occurrence, the deceased was lying down unconscious and the spectators did not come to rescue her; that the deceased and others who came with her assaulted A1 and injured A1; that A1 then went to Police Station; that he rushed the deceased to Government Hospital, Manamadurai; that upon learning about the



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incident and that the deceased was rushed to the Hospital, his father came

to the Hospital directly from his workplace (Hotel). The relevant extract

of the cross-examination of P.W.2 is as follows:

“என் தாயார் அடிபட்டுவிட்டார் என்று கேள்விபட்டு மானாமதுரை பாரத் ஹோட்டலில் வேலை பார்த்து கொண்டிருந்த என் தகப்பனார் நேரடியாக மானாமதுரை மருத்துவமனைக்கு வந்தார். நான் சம்பவ இடத்தில் இருந்தேன். சம்பவம் ½ மணி முதல் 1 மணி நேரம் வரை நடந்தது. அந்த சமயத்தில் நான் சம்பவ இடத்தில்தான் இருந்தேன். சம்பவம் 1வது எதிரியின் பெட்டிக்கடைக்கு முன்பு 10அடி தூரத்தில் நடந்தது. சம்பவம் நடக்கும் போது அந்த தெருவில் உள்ள பெண்கள் பார்த்துக்கொண்டிருந்தார்கள். யாரும் விலக்கவில்லை. நான் சம்பவ இடத்திக்கு போகும்போது என் அம்மா மயக்கப்பட்டு கீழே கிடந்தது. அக்கம்பக்கத்தில் வேடிக்கை பார்த்த யாரும் என் அம்மாவை தூக்கவில்லை. 1வது எதிரிக்கு சம்பவத்தில் காயம் ஏற்பட்டது. என் அம்மாவும் அவரை சார்ந்தவரும் அடித்துதான் 1வது எதிரிக்கு காயம் ஏற்பட்டது. அவ்வாறு காயம்பட்டவுடன் 1வது எதிரி காவல் நிலையத்திற்கு போய்விட்டார். நாங்கள் மானாமதுரை மருத்துவமனைக்கு சென்றோம். சம்பவம் நடக்கும்போதே சம்பவ இடத்திற்கு போலிசார் வந்துவிட்டனர். சம்பவத்திற்கு முன்பாக அன்றைய தினம் முழுவதும் சம்பவ தெருவில் போலிசார் பாதுகாப்பு இருந்தது. சம்பவ இடத்திற்கு வந்த போலிசார் எதிரிகளை காவல்நிலையத்திற்கு கூட்டி போனார்கள். நாங்கள் ஆட்டோவில் சென்றோம். எதிரிகள் நடத்தி வந்த



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பெட்டிக்கடையை சம்பவத்தன்று அடித்து நொறுக்கிவிட்டார்கள். பெட்டிக்கடையை யார் அடித்து நொறுக்கினார்கள் என்று எனக்குத் தெரியாது. கோழி காணாமல் போன விபரம் எனக்கு தெரியாது. நான் பீச்சி கொடுப்பேன். என் தாயார் வீட்டுக்கு வீடு பால் விற்று வருவார். என் அம்மாவிற்கு காசநோய் இல்லை. சம்பவத்தன்று யாரிடம் பால் வாங்க சென்றார் என்று எனக்குத் தெரியாது. 1வது எதிரியின் கடையில் நான் கடனுக்கு சாமான்கள் வாங்க மாட்டேன். ஆனால் வீட்டில் சாமான்கள் வாங்குவார்கள். ...
... போலீசார் என்னை விசாரிக்கவில்லை அவர்களிடம் எதுவும் சொல்லவில்லை. என் மீது பல கிரிமினல் வழக்குகள் நிலுவையில் உள்ளது என்றால் சரியல்ல. ...”

Deposition of P.W.3

10. Rameshkumar (P.W.3) who is a friend of P.W.2, in his chief-examination deposed that he, P.W.2 and P.W.2's brother were engaged in a conversation at 17.30 hours on the fateful day in front of Santhana Mariyamman Temple; that by the time they rushed to the place of occurrence, everything was over.

10.1. Rameshkumar (P.W.3) in his cross-examination deposed that he did not notice the accused during the incident; that there were 40-50 spectators and they did not try to pacify the situation. His deposition has



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major contradictions with the prosecution's case. The relevant extract of the cross-examination of P.W.3 is as follows:

“ ... நாங்கள் சென்று விலக்குவதற்கு முன்பாக சண்டை முடிந்துவிட்டது. எதிரிகளுக்கு காயம் இருந்ததா என்று நான் பார்க்கவில்லை. சண்டை நடந்துகொண்டிருக்கும்போது எதிரிகளை நான் பார்க்கவில்லை. எதிரிகளை நாங்கள் தாக்கவில்லை. எதிரிகளின் ஆயுதங்களை நாங்கள் பறிக்கவும் இல்லை. ஆயுதங்களை எதிரிகள் எங்கிருந்து எடுத்துவந்தார்கள் என்று தெரியாது. ஆயுதங்களை நாங்கள் மருத்துவமனைக்கோ போலிசாரிடமோ எடுத்துசெல்லவில்லை. சம்பவத்தை அந்த தெருவழியாக போய்வந்தவர்களும், வேடிக்கை பார்த்த சுமார் 40, 50 பேர்கள் யாரும் வந்து இந்த சண்டையை விலக்கவில்லை.

11. A perusal of Rough Sketch (Ex.P.15) and Observation Mahazar (Ex.P.2) reveals that the occurrence happened near a junction road in an area which serves both residential and commercial purposes. The Santhana Mariyamman Temple is situate within 50 feet from the place of occurrence. The accused's shop is situate within 25 feet from place of occurrence. If really P.W.2 and P.W.3 were near Santhana Mariyamman Temple, they would not have merely spectated such a serious incident involving P.W.2's mother (deceased) for 10-15 minutes but rather would



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have intervened and attempted to pacify the situation. Further, there is contradiction among the evidence of P.W.1, P.W.2 and P.W.3 with regard to the time of occurrence. Further, P.W.2 in his cross-examination, as alluded to *supra*, provides an account of the incident which is in sheer contradiction with the evidence of P.W.1 and the prosecution's case. Hence, this Court is of the view that the evidence of P.W.3 coupled with the evidence of P.W.2, makes their presence in place of occurrence highly doubtful.

11.1. As far as the evidence of P.W.1 is concerned, it is partly reliable and partly not reliable. It is believable that P.W.1 got injured; that he availed treatment at 18.50 hours on November 16th, 2012 at Government Hospital, Manamadurai. Dr.Jeevarathinam (P.W.7) is the Doctor who treated Baskaran (P.W.1) as an out patient. He deposed that he noted the following injuries.

1) An abrasion of 2 cm x 2 cm in the right palm at the base of right index finger.

2) An abrasion of 3 cm x 2 cm in the palmar aspect of right thumb.



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WEB COPY 11.2. He further deposed that P.W.1 told him that P.W.1 was attacked around 18.00 hours on the same day near Santhana Maariamman Temple by 2 known persons using stone and wooden log. He issued a Wound Certificate certifying that the above injuries were simple in nature.

11.3. Close scrutiny of P.W.1's evidence coupled with the evidence of P.W.7, would reveal the fact that, P.W.1 at 18.00 hours on November 16th, 2012 got injured near Santhana Mariyamman Temple owing to some scuffle / clash / push and pull or sort between the accused side and the deceased side during which P.W.1 and the deceased sustained injuries.

11.4. It is apposite to reproduce Post-mortem Report (Ex.P.9) hereunder:

Body kept in GH mortuary lies on back. Eyes partly open. Mouth partly open. Tongue inside the mouth. Laceration of size 3.5 cm x 1.5 cm seen over the (L) frontal region above (L) eyebrow. No other obvious external injuries.

Internal Organs: *Liver – cut section – pale. Spleen – cut section pale. Heart – Chamber empty-pale.*



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Stomach – cut section pale – contains about app. 400 ml. of partly digested food material. Intestine – pale contains digested food material. Kidney – cut section pale.

On opening skull: *linear fracture of size 7 cm x 0.1 cm seen extending from (L) frontal bone to (L) parietal bone. Corresponding soft tissue contusion of size 3 cm x 2 cm.*

On opening head: *Intracranial hemorrhage seen over the frontal lobe. Brain matters appears pale.*

Viscera sent for chemical analysis. The deceased could have died 18-22 hours prior to autopsy. Opinion pending. Chemical analysis of viscera report awaited.

The deceased could have died of intracranial hemorrhage due to head injury.

11.5. Dr.Senthilkumar (P.W.8) is the Post-mortem Doctor. Post-mortem Report (Ex.P.9) was marked through him. He deposed in his cross-examination that the said injury may be caused by an assault with M.O.2. He opined that it could also be caused due to a fall down. In view of the medical evidence, the burden is heavily upon the prosecution to prove that the deceased died due to homicidal death.



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WEB COPY **Injuries sustained by A1**

12. According to the prosecution, the occurrence took place at 18.00 hours on November 16th, 2012. A1 and A2 were arrested at 23.30 hours on November 16th, 2012. But, the arrest memo of A1 specifies that the arrest was made at 23.30 hours on November 16th, 2012 and the arrest memo of A2 specifies that the arrest was made at 16.30 hours on November 16th, 2012. To be noted, FIR (Ex.P.14) was registered at 19.30 hours on the aforementioned date. The Investigation Officer (P.W.11) admitted that at the time of arrest, A1 had injuries and he sent A1 to Government Hospital, Manamadurai for treatment and the concerned Doctor has issued Ex.P.17 Document in this regard. The fact that A1 was brought to Government Hospital, Manamadurai after arrest was admitted by A1. However, A1 denied as false the entries made by the Doctor in Ex.P.17 as if, he stated to the Doctor that he fought with two known persons, fled the scene and stumbled into a pit getting injured. To be noted, Ex.P.17 Document was not sent to the Court along with Charge Sheet. The Investigation Officer (P.W.11) in his evidence admitted that he did not send Ex.P.17 Document to the Court.



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12.1. Interestingly, Dr.Jeevarathinam examined as P.W.7 who treated P.W.1 as an out-patient and issued Ex.P.6 Document, is also the Doctor who issued Ex.P.17 Document. However, his statement in this regard has not been recorded by the Investigation Officer (P.W.11) and he has not deposed anything in this regard in his evidence. To be noted, the Investigation Officer (P.W.11) marked Ex.P.17 only during re-examination from his Case Diary. Relevant extract of P.W.11's cross-examination is as follows.

“ ... 1வது எதிரிக்கு காயம் இருந்ததா என்றால் இருந்தது. அது அரசு தரப்பு சாட்சிகள் 1 முதல் 4 தாக்கி ஏற்பட்டதா என்றால் இல்லை. நான் கைதுசெய்தபின்னர் 1வது எதிரியை மருத்துவமனைக்கு அனுப்பப்படவில்லை என்றால் சரியல்ல. அவரை அனுப்பி சிகிச்சை அளித்து சான்று பெற்றுள்ளேன். அந்த சான்றையும் நீதிமன்றத்திற்கு அனுப்பவில்லை என்றாலும் அவ்வாறு சிகிச்சை அளித்த மருத்துவரை விசாரித்து வாக்கு மூலம் பதிவு செய்யவில்லை என்றாலும் சரியல்ல. நான் நீதிமன்றத்திற்கு அனுப்பவில்லை. அந்த மருத்துவரை விசாரித்தேன். 1வது எதிரி திருச்சி சிறைச்சாலையில் 3 மாத காலம் மருத்துவமனையில் உள்ளோயாளிகாக அனுமதிக்கப்பட்டு அவருக்கு கையில் ஏற்பட்டிருந்த எலும்பு முறிவுக்கு மருத்துவம் பார்க்கப்பட்டதாக சான்று வழங்கப்பட்டுள்ளதா என்றால் அந்த விவரம் எனக்கு தெரியவில்லை. ...”



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Further, the Investigation Officer (P.W.12) also admitted that A1 sustained grievous injury and was admitted in Hospital and that he did not investigate in this regard.

12.2. This court has perused the remand order of A1 and A2 dated November 17th, 2012. It is pertinent to note that the Judicial Magistrate has recorded therein as follows:

“Accused produced before me at 12.40 pm. Age verified. Ground of arrest explained. No complaints against police. A1 had a bandage on his head/hand (not clear) and his right arm has swelling. I enquired about the injuries. He said that Mr.Baskaran and his sons beaten him by iron rod. Remanded till 30/11/2012.

s/d-

17.11.2012”

12.3. The defence side examined Deputy executive officer, Central Prison, Trichy namely, Baskar (D.W.1) and Dr.Mahalakshmi, Mahatma Gandhi Memorial Government Hospital, Trichy (D.W.2) and marked Ex.D.1 and Ex.D.2 Documents.



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12.4. As per evidence of D.W.1, A1 was admitted into Central Prison on November 17th, 2012. At the time of admission, he had injuries near his right hand wrist and near left eyebrow and hence, he was admitted at Mahatma Gandhi Memorial Government Hospital, Trichy till November 27th, 2012. He produced before Court the medical file of A1 marked as Ex.D.1. As per evidence of D.W.2, A1 availed treatment from November 17th, 2012 to November 28th, 2012 at Mahatma Gandhi Memorial Government Hospital, Trichy. A1's radius bone in right hand had a fracture. She produced the medical file of A1 marked as Ex.D.2.

12.5. Upon perusal of Ex.D.1 and Ex.D.2 Medical Records, it can be seen that, post discharge, A1 availed treatment at Prison Hospital till December 21th, 2012 i.e., until he was released on bail.

12.6. Per Contra, Ex.P.17 Document states that the injuries suffered by A1 were simple in nature and that he was treated as out-patient. Further, A1 in his examination under Section 313 of Cr.P.C. have denied the evidence of prosecution as false and filed Written Statement under Section 313(5) of Cr.P.C. along with annexures which belies the entries made in Ex.P.17. The defence of A1 is that the police obtained Ex.P.17



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using their influence only with a view to remand A1. To be noted, the Investigation Officer (P.W.11) has not examined the Doctors who treated A1 and issued Ex.D1 and Ex.D2. A bare reading of the evidence of D.W. 1 & D.W.2 along with Ex.D.1 and Ex.D.2 would prove that A1 sustained grievous injuries in his right hand. To be noted, in view of Section 320 of IPC, fracture of radius bone is a grievous hurt.

12.7. Notably, A1 has lodged a complaint dated January 28th, 2013 against the deceased's family members before the Police. Since Police did not register the FIR, he filed Crl.O.P. (MD) No.7555 of 2013 which was disposed of by this Court *vide* order dated September 26th, 2013. Relevant extract of the order is as follows:

ORDER

This petition has been filed under Section 482 Cr.P.C., to direct the second respondent to register the FIR based on the complaint given by the petitioner, dated 28.1.2013 and proceed in accordance with law.

2. The learned Government Advocate (Crl. Side) representing the respondents submitted that petition enquiry is pending in the matter.



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3. *In view of the above, the second respondent is directed to complete the enquiry withing a period of two weeks from the date of receipt of a copy of this order and act in accordance with law.*

4. *The Criminal Original Petition is disposed of with the above direction. Consequently, the connected Miscellaneous Petition is closed.*

12.8. To be noted, Charge Sheet dated January 25th, 2013 has been filed before the Judicial Magistrate on May 8th, 2014. This Court has perused the Charge Sheet dated January 25th, 2013. There is no reference pertaining to the complaint given by A1.

12.9. As alluded *supra*, A1 and A2 have denied the incriminating circumstances against them in their examination under Section 313 of Cr.P.C. To be noted, A1 and A2 filed Written Statement under Section 313(5) of Cr.P.C and A1 has annexed medical records, which belies the entries made in Ex.P.17, along with his Written Statement.

12.10. At this juncture, this Court would like to refer to the Hon'ble Supreme Court's Judgement in ***Kali Ram's*** case [***Kali Ram Vs. State Of***



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Himachal Pradesh, reported in (1973) 2 SCC 808]. Relevant extract is as

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25. *Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As*



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mentioned by us recently in the case of State of Punjab v. Jagir Singh [(1974) 3 SCC 227 : 1973 SCC (Cri) 886] a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

12.11. In this case, two possible views could be inferred from the evidence adduced from either side. In such a situation, the onus is on the prosecution to explain the same. In failure to do so, the Court has to consider the view favourable to the accused. It is settled law that the standard of proof required for defence is preponderance of probabilities. This Court is of the opinion that the prosecution has miserably failed to



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explain the injury sustained by A1. On the other hand, A1 has established that he got injured in the course of some scuffle between the deceased' party and the accused. Therefore, in view of ***Kali Ram's case*** and the above reasons, this Court is of the view that the accused are entitled to benefit of doubt.

Arrest, Confession and Recovery

13. P.W.11 is the Investigation Officer in this case. He deposed that he arrested A1 and A2 at 23.30 hours on November 16th, 2012 and recorded the voluntary confession given by them, the admissible portion of which is marked as Ex.P.4 and that pursuant to the confession, he recovered Wooden Log (M.O.1) and Cement Stone (M.O.2) under Ex.P.5.

13.1. According to the prosecution, the occurrence took place at 18.00 hours on November 16th, 2012. A1 and A2 were arrested at 23.30 hours on the same day. But, the arrest memo of A1 and the arrest memo of A2 specify that the arrests were made on November 16th, 2012, at 23.30 hours (A1) and at 16.30 hours (A2) respectively. To be noted, FIR (Ex.P. 14) was registered at 19.30 hours on the aforementioned date.



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13.2. P.W.1 in his evidence deposed that A1 and A2 were at Manamadurai Police Station at 20.00 hours on the aforementioned date; that he thought that they were held at Police Station in pursuance of his Written Complaint (Ex.P.1) and that he himself handed over the Wooden log (M.O.1) at the Police Station. In view of the above discussions, the arrest, confession and recovery as spoken by the prosecution are riddled with doubts and therefore not reliable and trustworthy.

Vandalization of A1's Shop

14. P.W.1 in his evidence admitted that the accused's shop was vandalized; however, he was not present at the time, nor is he aware of the vandals. The Investigation Officer (P.W.11) in his evidence specifically admitted that A1's shops were already vandalized when he rushed to the scene of occurrence upon receiving the case files at 20.00 hours on November 16th, 2012. He further admitted that the occurrence place is a residential cum commercial area and that he did not investigate about the vandals. The subsequent Investigation Officer (P.W.12) also admitted in his cross-examination that the shop was vandalized and no investigation about the vandals was conducted. To be noted, the alleged occurrence happened at 18.00 hours in busy and bustling area which means there



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would have been many ocular witnesses for the alleged occurrence. This Court has perused the list of witness annexed along with the Final Report (Charge Sheet) which reveals that Investigation Officer (P.W.11) cited P.W.1 to P.W.3 alone as ocular witnesses. The Investigation Officer (P.W. 11) has not examined any independent ocular witness and no reasons were assigned in this regard. Non-examination of independent witness coupled with non-explanation of injury sustained by A1, given the facts and circumstances, creates serious doubts in the case of the prosecution.

14.1. It is apposite to cite here the Hon'ble Supreme Court's decision in *Lakshmi Singh's* case [*Lakshmi Singh Vs. State of Bihar* reported in (1976) 4 SCC 394]. Since criminal cases turn heavily on facts, this Court would first like to extract the relevant paragraphs capturing the facts therein hereunder:

4. Appellant Ramsagar Singh and his brother Dasrath Singh were full brothers being sons of Maharaj Singh. They were residents of Village Alipur Hatha, Police Station Mahnar. The deceased Chulhai and one Ramasray were the first cousins of these two persons and the deceased Brahmdeo was a nephew of Chulhai. It appears from the prosecution case that the two families were living together in the same house in different portions having a common courtyard. There was some sort of partition between the two cousins and their children in which portions of the house were allotted to each branch.



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Jaiwanti daughter of Ramdayal Singh one of the sons of Chulhai Singh was married on April 18, 1966 and Dasain Singh and others had fixed a marwa (marriage platform) in their common courtyard. The marriage passed off peacefully and the appellants Ramsagar Singh and Dasrath Singh never objected either to the marriage being held in the courtyard or to the construction of the marwa. Three days later i.e. on April 21, 1966, which according to the prosecution happened to be the day when the chauthari ceremony had been performed at about 4 p.m. when Dasain Singh, his father Chulhai Singh and others were sitting in the house the appellants Ramsagar Singh and Dasrath Singh armed with bhala and bana respectively appeared on the scene and asked Chulhai Singh and Dasain Singh to demolish the marwa. Chulhai Singh, however, protested and refused to demolish the marwa because it was customary in the family not to demolish the marwa until 1¼ months from the date of the marriage had elapsed. This led to an exchange of hot words and an altercation in the course of which other five appellants, namely, Lakshmi Singh, Ramprasad Singh, Jagdhari Singh, Jagdish Singh and Chhathu Singh joined the two appellants Ramsagar Singh and Dasarath Singh and made a common cause with them in assaulting the two deceased persons Chulhai Singh and Brahmdeo. According to the prosecution, Jagdhari Singh gave orders for assaulting the prosecution party and thereupon Ramsagar Singh assaulted Brahmdeo Singh with a bhala on his head, Dasrath Singh struck him with the lathi portion of his bana while Jagdish Singh and Jagdhari Singh assaulted him with lathis. Lakshmi Singh is said to have assaulted Chulhai Singh with a bhala in his abdomen and when he fell down he was assaulted with lathis by Chhathu Singh and Ramprasad Sah. Dasain Singh was also assaulted by Jagdhari Singh when he tried to intervene. Thereafter all the accused persons fled away. Dasain Singh and his brother Dangroo Singh carried the two deceased persons to Mahnar Hospital on rickshaw, where they were admitted. The ASI attached at the Mahnar



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police station reached the hospital at 7.57 p.m. on receiving a slip from the doctor incharge of the Mahnar Hospital and found Brahmdeo Singh and Chulhai Singh unconscious. The ASI recorded the further statement of Dasain Singh which was treated as the first information report. Brahmdeo Singh however succumbed to his injuries at Mahnar Hospital, while Chulhai Singh, was advised to be taken to a bigger hospital at Hajipur and there he died the next day. After the usual investigation, the police submitted chargesheet against the seven accused who were put on trial and were convicted as indicated above.

...

12. PW 8 Dr S.P. Jaiswal who had examined Brahmdeo deceased and had conducted the post-mortem of the deceased had also examined the accused Dasrath Singh, whom he identified in the court, on April 22, 1966 and found the following injuries on his person:

“1.Bruise 3" × ½ " on the dorsal part of the right forearm about in the middle and there was compound fracture of the fibula bone about in the middle.

2.Incised wound 1" × 2 mm × skin subcutaneous deep on the lateral part of the left upper arm, near the shoulder joint.

3.Punctured wound 1/2" × 2 mm × 4 mm on the lateral side of the left thigh about 5 inches below the hip joint.”

In the backdrop of the above-mentioned facts, the Hon'ble Supreme Court in **Lakshmi Singh's** case has held as follows:



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12.

According to the doctor Injury 1 was grievous in nature as it resulted in compound fracture of the fibula bone. The other two injuries were also serious injuries which had been inflicted by a sharp-cutting weapon. Having regard to the circumstances of the case there can be no doubt that Dasrath Singh must have received these injuries in the course of the assault, because it has not been suggested or contended that the injuries could be self-inflicted nor is it believable. In these circumstances, therefore, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. Not only the prosecution has given no explanation, but some of the witnesses have made a clear statement that they did not see any injuries on the person of the accused. Indeed if the eyewitnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. ...

...

... It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:



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“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. ...”

14.2. Notably, the Hon'ble Supreme Court and various Hon'ble High Courts have consistently followed this decision in various cases, some of which are listed below.

- i. ***Bhagwan Sahai and Anr.Vs. State of Rajasthan*** reported in ***(2016) 13 SCC 171***;
- ii. ***Nand Lal and others Vs. The State of Chhattisgarh***, reported in ***(2023) 10 SCC 470 : 2023 SCC OnLine SC 262***.



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iii. ***Arputhan Vs. State rep. by Inspector of Police, D6 Anna Square Police Station, Chennai***, reported in **2023 (3) MWN (cr.) 310 (DB)**.

14.3. In the case on hand, A1 sustained grievous injuries. He has established that those injuries were caused by the deceased's parties. A1 had lodged a complaint dated January 28th, 2013 as soon as he was enlarged on bail in this case, against the deceased's family before the police. Since Police did not register FIR, he has filed Crl.O.P. (MD) No. 7555 of 2013 wherein the State has submitted that 'petition enquiry is pending in the matter'. Final Report (Charge Sheet) dated January 25th, 2013 was filed in this case without any reference or indication about the complaint given by A1. The Investigating Agency ought to have concluded the enquiry on the complaint given by A1 before filing Charge Sheet in this case. Inaction on the part of the Investigating Agency on the complaint given by A1 creates serious doubts in this case.

14.4. Conjoint reading of the Ex.P.17 and the evidence of Investigation Officer (P.W.11), Investigation Officer (P.W.12), and the defence side evidences (both witnesses and documents) would clearly



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show that the prosecution has tried to suppress the genesis and origin of the occurrence and the grievous injuries sustained by A1. Therefore, this Court on the strength of **Lakshmi Singh's** case, comes to a conclusion that the accused (A1 & A2) are entitled to the benefit of doubt.

14.5. In view of the facts and circumstances of the case and in view of the principles stated by the Hon'ble Supreme Court in **Lakshmi Singh's** case and in **Kali Ram's** case, this Court comes to the conclusion that non-explanation of the injury sustained by A1 falls fatal to the case of the prosecution. As alluded to *supra*, in criminal jurisprudence, when two possible views could be inferred from the evidence adduced, the view favouring the acquittal of the accused must be adopted by the Court.

14.6. Further, A1 and A2 have denied the incriminating circumstances against them in their examination under Section 313 of Cr.P.C. To be noted, A1 and A2 have filed Written Statement under Section 313(5) of Cr.P.C and A1 has annexed medical records along with his Written Statement which belies the entries made in Ex.P.17.



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15. For the foregoing reasons, this Court is of the view that the prosecution has suppressed the very genesis or origin of occurrence, and that the prosecution has not proved the charges levelled against A1 and A2 beyond reasonable doubt. The Trial Court has wrongly convicted A1 A2 by relying upon the evidence of P.W.1 and P.W.2 and therefore, this Court inclines to interfere with the impugned Judgment. Accordingly, Point Nos.(i), (ii) & (iii) are answered in favour of the accused and against the prosecution.

16. Before writing operative portion of this Judgment, this Court makes it clear that the Trial Court in paragraph 20(iv) of the impugned Judgment recommended the compensation to be paid to the legal heirs / dependents of deceased Bagirathi @ Pappa. Though these Criminal Appeals are allowed and A1 & A2 are acquitted from the charges levelled against them, considering the facts and circumstance of the case, findings of the Trial Court with regard to the compensation to the legal heirs/dependents of the deceased Bagirathi @ Pappa is not disturbed in this Judgment since parameters for awarding compensation does not depend on the proof of guilt of the accused.



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17. Resultantly,

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- i. These Criminal Appeals are allowed.
- ii. The impugned Judgment dated 28.01.2020 passed by learned Principal Sessions Judge, Sivagangai in Sessions Case No.14 of 2015 is hereby set aside and A1 & A2 (appellants) are acquitted from the charges levelled against them.
- iii. The bail bond if any, executed by A1 & A2 (appellants) shall stand discharged. The fine amount if any paid by A1 & A2 (appellants) shall be refunded to them.

(M.S., J.) (R.S.V., J.)
22.12.2023

Index: Yes
Neutral Citation: Yes
Internet: Yes
Speaking order

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To

- 1.The Inspector of Police,
Manamadurai Police Station,
Sivagangai District.
- 2.The Principal Sessions Judge, Sivagangai.
- 3.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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Pre-Delivery Common Judgment made
in
Crl.A.(MD) Nos.113 & 114 of 2020

22.12.2023