



Crl.R.C.(MD).No.398 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	27.09.2023
Pronounced on	:	02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). Nos.398 & 399 of 2023

and

Crl.M.P(MD).Nos.12613 & 12617 of 2023

Crl.RC.(MD).No.398 of 2023

1.Vengai

2.Chithra

3.Arumugam

... Petitioners

Vs.

The State by the Inspector of Police,
Sipcot Police Station,
Manamadurai,
Sivagangai District
(Crime No.190/2013)

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for records and set aside the conviction and sentence passed in S.C.No.108 of 2017, dated 23.04.2019, by the Learned Chief Judicial Magistrate



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cum Assistant Sessions Judge, Sivagangai and confirmed in Crl.A.No.41 of 2019 by the Learned Additional District and Sessions Judge, Sivagangai by his judgment dated 25.01.2023.

For Petitioners : Mr.R.L.Dhilipan Pandian

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

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1.Sonaithevan

2.Karuppusamy

... Petitioners

Vs.

The State by the Inspector of Police,
Sipcot Police Station,
Manamadurai,
Sivagangai District
(Crime No.190/2013)

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for records and set aside the conviction and sentence passed in S.C.No.164 of 2018, dated 23.04.2019, by the Learned Chief Judicial Magistrate cum Assistant Sessions Judge, Sivagangai and confirmed in Crl.A.No.42 of 2019 by the learned Additional District and Sessions Judge, Sivagangai by his judgment dated 25.01.2023.



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For Petitioners : Mr.R.L.Dhilipan Pandian
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

COMMON ORDER

Since these criminal revision cases are arising out of the same crime, these cases are taken up for hearing together and disposed of by way of this common order.

2. The brief facts of the case is as follows:

There was a money dispute pending between P.W.2's family and accused family. Due to the said dispute, PW.2's family members, murdered the A1's father Muthaiah. Therefore A1's family members lodged a complaint before the respondent police. In pursuance of which, the respondent police registered a case on 15.05.2013, for the offence punishable under Section 302 IPC. Subsequently, PW2, got bail and on 18.10.2013, she was going to her house after making her appearance and signing before the police station as per bail condition. Watching the same, A1 to A6 went to the house of P.W.2, with deadly weapon and assembled unlawfully and uttered obscene words and called her to come out of the house. When she came out of her house, all the accused assaulted her with deadly weapons with an intention to cause death and caused



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grievous injuries. Therefore, P.W.1 son of the injured/PW.2 lodged a complaint before the respondent police.

2.1. On the basis of the complaint lodged by P.W.1, the respondent police registered a case in Crime No.190 of 2013, for the offences punishable under Sections 147, 148, 294(b), 341, 323, 324 and 307 of IPC against the accused Nos.1 to 6.

2.2. After completion of the investigation, final report was filed before the learned District Munsif Cum Judicial Magistrate, Karaikudi and the same was taken on file in P.R.C.No.23 of 2016 and thereafter the same was committed to the Sessions Court. The Chief Judicial Magistrate taken the same on file in S.C.Nos.108 of 2017. Thereafter, A1 and A2 absconded, therefore the case was split up as S.C.No.164 of 2018 in respect of A1 and A2. Subsequently, they appeared before the Court and the trial was conducted. In order to prove the charges, the prosecution examined P.W.1 to P.W.12, exhibited Ex.P.1 to Ex.P.18 and marked M.O.1 to M.O.3. Thereafter, the learned trial Judge put the relevant question under Section 313 Cr.P.C., and the accused denied the case as false and they did not examine anybody. Therefore, the learned trial Judge, completed the



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trial by passing the impugned judgments in S.C.No.108 of 2017 and S.C.No.164 of 2018, dated 23.04.2019.

2.3.The learned trial Judge, after considering the evidence, convicted the accused as follows:

<i>Sl. No.</i>	<i>S.C. Nos.</i>	<i>Accused</i>	<i>Under Sections</i>	<i>Conviction</i>
1	164 of 2018	Accused No-1	Section 148 of IPC	Sentenced to undergo 1 year of rigorous imprisonment and to pay a fine of Rs.250/- in default to undergo 3 months simple imprisonment.
2.			Section 307 of IPC	Sentenced to undergo 7 years of rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment
3		Accused No-2	Section 148 of IPC	Sentenced to undergo 1 year of rigorous imprisonment and to pay a fine of Rs.250/- in default to undergo 3 months simple imprisonment.



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4			Section 307 of IPC	Sentenced to undergo 7 years of rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment
5	108 of 2017	Accused No-3	Section 148 of IPC	Sentenced to undergo 1 year of rigorous imprisonment and to pay a fine of Rs.250/- in default to undergo 3 months simple imprisonment.
6			Section 307 of IPC	Sentenced to undergo 7 years of rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment
7		Accused No-4	Section 148 of IPC	Sentenced to undergo 1 year of rigorous imprisonment and to pay a fine of Rs.250/- in default to undergo 3 months simple imprisonment.
8			Section 307 of IPC	Sentenced to undergo 7 years of rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment.



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9		Accused No-5	Section 148 of IPC	Sentenced to undergo 1 year of rigorous imprisonment and to pay a fine of Rs.250/- in default to undergo 3 months simple imprisonment.
10			Section 307 r/w Section 34 of IPC	Sentenced to undergo 7 years of rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment.
11		Accused No-6	Section 148 of IPC	Sentenced to undergo 1 year of rigorous imprisonment and to pay a fine of Rs.250/- in default to undergo 3 months simple imprisonment.
12			Section 307 r/w Section 34 of IPC	Sentenced to undergo 7 years of rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment.

Challenging the same, the 1st and 2nd accused filed the appeal in C.A.No.42 of 2019 and the accused Nos.3 to 6 filed the appeal in C.A.No.41 of 2019 before the learned Additional District and Sessions Judge, Sivagangai District.



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2.4.The learned first appellate judge, after considering the facts and circumstances of the case and the materials on record, has acquitted the accused No.3 alone and confirmed the conviction in respect of other accused persons. Aggrieved over the same, the petitioners/Accused Nos.1, 2, 4, 5 and 6 herein filed these Criminal Revision Cases before this Court.

3. Submission of the learned counsel for the revision petitioners:

(i)The occurrence took place on 18.10.2013 at 04.30 p.m., the case was registered at 11.p.m., but the FIR reached the Court only on the next day at 08.55.p.m for which, there was no explanation. Hence, the benefit of doubt to be given to the petitioners.

(ii)The first appellant Court acquitted A3. But, he convicted the remaining accused on the basis of the evidence given by P.W.2 is not maintainable. To substantiate the same, he relied the judgment of the Hon'ble Supreme Court in Crl.A.No.1012 of 2022. He seeks acquittal on the basis of the Paragraph No.15 of the said Judgment.

(iii)Both the Courts below failed to consider the contradiction between P.W.2 and the remaining witnesses in respect of the weapon and time of the occurrence.



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(iv)Both the Courts below failed to consider that the independent witnesses had turned hostile and when the prosecution failed to produce the X-Ray report to prove the nature of injury, and conviction given only on the basis of evidence of P.W.2 is not legally maintainable.

(v)P.W.6 Mahazar witness stated that he signed in the police station and hence the recovery of the material objects are doubtful.

(vi)Finally, the learned counsel for the petitioners submitted that all the petitioners/accused are first time offenders and all the petitioners claim the benefit of Section 4 of the Probation Offenders Act.

4. Submission of the learned Government Advocate:

The learned Additional Public Prosecutor submitted that P.W.2 sustained grievous injuries and hence she was taken to the Sivagangai hospital and she was shifted to Rajaji Government Hospital, Madurai for further treatment. The Sivagangai hospital sent an intimation to the respondent police and recorded statement from P.W.1, who is the son of P.W.2. The First Information Report has reached the following day of occurrence no way affected the evidence of P.W.2 and the same was corroborated with the medical evidence. Further, there was no question put to the investigating officer regarding the said aspect. Therefore,



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their plea has to be rejected.

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4.1.The discrepancies noted by the petitioners are minor one and the same has not materially affected the evidence of an injured witness P.W.2. P.W.2 clearly deposed about the assault made by the accused and the injuries sustained by her and the same was corroborated by the medical evidence.

4.2.In this case, Probation of Offenders Act, is not applicable. Since this is retaliation murderous attack upon P.W.2 and P.W.2 sustained injuries all over her body and hence, the investigating agency filed a final report for the offences punishable under Section 307 IPC. In the said circumstances, he prays to dismiss the revisions.

5. This Court have considered the rival submissions made on either side and perused the materials available on record and the precedents relied by them.

6. In this case, to find out the perversity in the appreciation of the evidence of the injured eye witness, this Court is duty bound to remember of the detailed guidelines issued by the Hon'ble Three Member Bench of Supreme Court in



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recent decision reported in **2023 SCC Online SC 355**, to appreciate the eye witness, in the case of ***Balu Sudam Khalde and another Vs. State of Maharashtra***:

APPRECIATION OF ORAL EVIDENCE

25.The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

“I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the



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trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.



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VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is



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liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.”

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096) Leela Ram v. State of Haryana, (1999) 9 SCC 525 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)]

Following the above guidelines, this Court addresses the appreciation of the prosecution evidence under a separate head.



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7. Motive:- Muthaiah was the father of the accused Nos.1 and 2. P.W.2, her husband and her son were said to have murdered the said Muthaiah and they are facing trial. In the said case, both of them obtained bail on condition to report before the respondent police for certain period. On 18.10.2013, ie., the last date of compliance, while she proceeded to her house after complying the condition, she was hounded by the accused persons. All the accused went to her house, abused her and asked to come out of her house and assaulted her with deadly weapons with intention to cause murder.

7.(ii). Further, PW.2's son who was arrayed as accused in the case of Muthaiah's father's murder, went abroad and hence trial of the case got delayed. All the accused had unlawfully assembled before the house of P.W.2 and attacked her with an intention to cause death, as a retaliation to the murder of their father. P.W.1, P.W.2 and P.W.6 cogently deposed about the motive and their evidence devoid of any infirmities. Therefore motive has been proved by prosecution beyond all reasonable doubt.



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8. Reliability of the injured/PW.2- witness:-

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8.1 Before going into the correctness of findings of the both the Courts below in accepting the evidence of P.W.2/injured witness, the following principles laid down by the Hon'ble Supreme Court necessarily have to be borne in mind:

8.1(a) The Hon'ble Three Member Bench of Supreme Court in recent decision reported in **2023 SCC Online SC 355** held as follows:

26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.



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(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial,



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the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

8.1(b).Jodhan Vs. State of Madhya Pradesh reported on 2015 11 SCC 52

28... for there is no rule of evidence that the testimony of the interested witnesses is to be rejected solely because other independent witnesses who have been cited by the prosecution have turned hostile.

29.... the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt guarantee of his presence at the place of occurrence.

8.1(c) Baleshwar Matho and another Vs. State of Bihar and another reported in 2017 3 SCC 152:

12. Here, PW 7 is also an injured witness. When the eyewitness is also an injured person, due credence to his version needs to be accorded.

29.... In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon.



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8.1.(d) *Balwan and others Vs. State of Haryana reported in 2014 13 SCC 560*

16. It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let the actual assailant go unpunished.

8.2. In this case, P.W.2, in her evidence clearly deposed that the first accused slapped P.W.2 over her chest. The second accused attacked with Aruval on her right hand, the third accused attacked with Iron rod on her head and the fourth accused exhorted the accused Nos.1, 2 and 3 and also asked them to ascertain her death. After that the accused Nos.5 and 6 attacked with stick on her head and all over her body. The above evidence of injured witness corroborated with the medical evidence of, PW-9 and PW-10/doctors who clearly deposed about the injuries and also deposed that they might have been caused with the alleged weapons. Further PW-2 withstood the cross examination and nothing could be elicited to discard her testimony and her evidence is cogent and trustworthy and her evidence inspires the confidence of this Court.



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8.3. This Court finds no major contradiction, inconsistency or any infirmities in the evidence of P.W.2 to discredit her evidence. Both the Courts below clearly analysed the evidence along with medical evidence and came to the conclusion that the accused Nos.1, 2, 3, 4 and 6 attacked with alleged weapon/ material objects and hence, there is no perversity in the finding of both courts.

9.Evidence of P.W.5 and the principle of *res gestae*

9.1. P.W.5 is PW-2's Son-in-law. He deposed that he saw the accused running away from the place of occurrence immediately after the occurrence. Subsequently, they are arrested and the material objects were recovered. Even in his cross examination he affirmed the same. The said evidence is admissible on the principle of *res gestae* under section 6 of Indian Evidence Act.

9.2.The learned trial Judge, has put the following question under Section 313 of Cr.P.C.

கேள்வி ஆ.சா.5. முத்துமணி தனது
சாட்சியத்தில் தான் உடனே செட்டிகுளம் வந்தேன்
என்றும் அப்போது தன் மாமியார் வீட்டில் இருந்து



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எல்லோரும் ஓடிக்கொண்டு இருந்தார்கள் என்றும் தன்
மாமியாரை எதிரிகள் வெட்டிவிட்டு ஓடியதை தான்
பார்த்தேன் என்றும் அவர்களில் சோணைத்தேவன்
கந்தசாமி சருப்புசாமி ஆகியோரை நன்றாக தெரியும்
என்றும் மற்றவர்களையும் சம்பவத்தின்போது அ.சா.1 ன்
வீட்டில் இருந்து ஓடியவர்கள் என்றும் ----- போலீசார்
தன்னை விசாரித்தார்கள் என்று வழி சாட்சியம்
அளித்துள்ளீரே? நீர் என்ன சொல்லுகிறீர்?

புதில்: பொய்.

9.3. The petitioners has not seriously disputed when the trial judge put the question during his examination under Section 313 of Cr.P.C., and they only stated that it is false. They have not given any explanation. In the said connection, the evasive answer given by the petitoners without explaining the said incriminating circumstance is an additional fact to support the theory of the *resgestae*. To apply the principle of *resgestae*, it must be almost contemporaneous with acts and there should not be an interval which should allow fabrication. In this case, the deposition of P.W.5 is proximate with time and he saw the accused running away from the occurrence place with weapon and he also identified the same in the Court and there was no cross examination, on this aspect much less than reaffirmation of the said statement. Hence, in this case the evidence of P.W. 5 is lending assurance to the prosecution case of the participation of the accused



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in the crime. In this circumstance, it is relevant to note that the judgment rendered by the Hon'ble Apex Court in the case of **Rattan Singh v. State of H.P.**, reported in **(1997) 4 SCC 161**;

16. Illustration 'A' to Section 6 makes it clear. It reads thus:

“(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.”

(emphasis supplied)

Here the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act.

In the case of **Balu Sudam Khalde and another Vs. State of Maharashtra**, reported in **2023 SCC Online SC 355**:

49. The rule embodied in Section 6 is usually known as the rule of res gestae. What it means is that a fact which, though not in issue, is so connected with the fact in issue “as to form part of the same



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transaction” becomes relevant by itself. To form particular statement as part of the same transaction utterances must be simultaneous with the incident or substantial contemporaneous that is made either during or immediately before or after its occurrence.

50. Sections 6 and 7 resply of the Act 1872 in the facts and circumstances of the case, in so far as, the admissibility of a statement of the PW 3 Nasir Rajjak Khan coming to know about incident, immediately from the PW 1 Asgar Shaikh that Abbas Baig had been seriously assaulted and that Asgar Shaikh had also suffered injuries and admitted by the PW 1 Asgar Shaikh in his evidence would be attracted with all its rigour.

10. Despatching of FIR to the Magistrate Court with delay:

P.W.7/Investigating officer, registered the FIR in Crime No.190 of 2013. P.W.7 received the information from the Sivagangai Hospital and before his arrival, P.W.2 was shifted to Rajaji Government Hospital, Madurai. Therefore, the investigating officer recorded the statement from P.W.1, who is the son of P.W.2 in Rajaji Government Hospital, Madurai, and registered the FIR at 21.00 p.m. The same was submitted before the Jurisdictional Magistrate on 19.10.2013. Therefore, there was no delay in registering the FIR. But, the same has reached



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the Court on the next day. Hence, according to the petitioners, there is a doubt over the bonafides of registration of FIR and therefore benefit of doubt has to be given to the petitioners. The said submission is deserved to be rejected, on the ground that FIR was registered at the proper time after getting intimation from the Hospital. There was no cross examination regarding the above said delay and also there is no prejudice caused to the petitioner. It is well settled, in the absence of the cross examination on this aspect to establish the prejudice, the delayed reaching of the FIR is in consequential and the same was not a ground to disbelieve the evidence of P.W.2 and prosecution case” and the same is fortified by the following Judgments of the Hon'ble Supreme Court:

(i) Rabindra Mahto v. State of Jharkhand, reported in (2006) 10 SCC 432

The cases cited by the learned counsel for the appellants do not lay down any law that simply because there is a delay in lodging the FIR or sending it to the Magistrate forthwith, the entire case of the prosecution has to be discarded.

(ii) State of Rajasthan v. Daud Khan, (2016) 2 SCC 607

if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as



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detrimental to the prosecution case. It would depend on the facts and circumstances of the case.

(iii) Jafel Biswas v. State of W.B., (2019) 12 SCC 560 :

20...But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.

23.On delayed dispatch of FIR, some prejudice has to be proved by accused.....

(iv) Rattiram v. State of M.P., reported in (2013) 12 SCC 316

25.....However, if the court is convinced as regards the truthfulness of the prosecution version and trustworthiness of the witnesses, the same may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case

(v) Sheo Shankar Singh v. State of U.P., (2013) 12 SCC 539

30..Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained.



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(vi) *Anjan Dasgupta v. State of W.B.*, reported in (2017) 11 SCC 222

23.....*When no questions were put to IO in his cross-examination regarding the delay in dispatch, at the time of hearing, the accused cannot make capital of the said delay in forwarding the FIR.*

24.*The present is the case, where recording of the FIR on 16-6-2000 itself has been proved, accepted by the trial court also, thus mere dispatch of the FIR on 22-6-2000 from the police station to the Magistrates' Court has no bearing on the basis of which any adverse presumption can be drawn. From the above discussion, we are of the clear view that the FIR was genuine FIR and the trial court committed an error in drawing adverse inference against the prosecution and refusing to attach value to the FIR."*

11. Recovery of material objects:

P.W.12/Inspector of Police, after receipt of express FIR, conducted investigation and arrested the accused Nos.1, 2, 3, 4 and 5 on 19.10.2013 at Idaikattur around 14.30 hours. The first accused gave a voluntary confession in the presence of P.W.6. He further disclosed the place of occurrence and the hidden place of the weapons. On the basis of the disclosure statement in the



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presence of P.W.6, M.O.1 to M.O.3 were recovered. In this aspect, the evidence of P.W.6 and P.W.12 is cogent and without any infirmity. Eventhough both the witnesses were subjected to the intensive cross examination, no circumstances elicited to disbelieve thier version. The witness has only stated that after returning from the place of recovery, he also signed in Police Station, and this does not mean that the signature in the recovery mahazar is obtained at the police station. It is settled principle that entire evidence is to be read and isolated and trauncated version cannot be accepted. Hence, different meaning given by the learned counsel for the petitioner that he also signed in the document at the police station does not amount to the preparation of the recovery mahazar at police station doubting the recovery The material objects were also shown to the doctor and the doctor also affirmed that the injury might have been caused by the weapons. Hence, the prosecution proved the recovery of weapons. Both the Courts below also appreciated the said evidence and rendered the concurrent findings in the said aspect. This Court find no reason to interfere in the said findings.

12. Contradiction and infirmities:

In this above circumstances, the learned counsel for the petitioner



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pointed out some contradictions and infirmities in the prosecution evidence relating to injuries, time of occurrence between the evidence of P.W.1 and P.W.2. As per contention of the accused, P.W.1 was not an eye witness and the same was also accepted by the trial court. Hence, the contradictions and infirmities relating to injuries sustained by P.W.2 is not material one when P.W.2 clearly deposed the time of occurrence and injuries caused by accused. It is a well settled that minor contradiction, discrepancies and infirmities do not affect the prosecution case, when the material portion evidence is cogent and trustworthy. In this case P.W.2 is cogent and her evidence inspires confidence and the same has been corroborated by medical evidence. P.W.5 in her evidence clearly deposed that the accused left from the scene of occurrence immediately after occurrence. Therefore prosecution clearly proved the case beyond reasonable doubt.

13. Acquittal of A3 and the principle of parity.

13.1 When the evidence adduced by the prosecution is intrinsically inseparable and the conviction is passed in favour of one accused and the acquittal is passed on the other accused, the principle of parity is applicable. When the evidence is separable, it would be open to the Court to convict the accused notwithstanding the fact that the evidence has been found to be



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deficient to prove the guilt of other accused. The Hon'ble Supreme Court in the case of ***Gangadhar Behera v. State of Orissa***, reported in **(2002) 8 SCC 381** is as follows:

15. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end.

The said principle was reiterated by the Hon'ble Supreme Court in number of cases.

13.2 The learned counsel further submitted that A3 – Kandasamy was acquitted by learned first appellate Judge. Hence, the same benefit has also to be given to the remaining accused. To substantiate the same, the learned counsel placed reliance on the recent judgments of Hon'ble Supreme Court in ***C.A.No. 1012 of 2022***.



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13.3 This court finds its difficulty in accepting the precedent relied by the petitioner in this case. In the said case, the Hon'ble Supreme Court specifically held that evidence is inseparable and hence acquitted the accused. In this case, P.W.2, in her chief examination never attributed any overtact against the third accused Kannusamy. The same was meticulously analyzed by the learned appellate Judge. In view of the above circumstances, the learned appellate Judge correctly sifted the case of Kannusamy. It is not the case, that P.W.2 attributed overtack against the acquitted accused Kannusamy and also against the remaining accused and the learned appellate judge believed the evidence in respect of the other accused and disbelieved the same in respect of Kannusamy. There is lack of evidence against Kannusamy. In the said circumstances, plea of the learned counsel for the petitioner on the basis of the judgment of the Hon'ble Supreme Court in Crl.A.No.1012 of 2022 in the case of ***Javed shaukat Ali Qureshi Vs. State of Gujarat***, wherein the finding of the Hon'ble Supreme Court is that the identical evidence is available on record and the Courts below convict one accused and acquit others is not correct. The same situation is not available here. In this case, P.W.2 specifically deposed and attributed the specific overtact against the remaining accused which reads as follows:

□நான் வீட்டில் இருந்த போது எதிரிகள் அங்கு
ஆயுதங்களுடன் வந்து வீட்டை உடைத்து தேவிடியா



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முண்டை வெளியேவாடி என்று சொல்லிபேசி
சோணைத்தேவன் கையில் வைத்திருந்த கத்தியால் எனது
மார்பில் குத்திவிட்டார். கருப்பச்சாமி அரிவாளால்
தோள்பட்டையிலும் வலதுகையிலும் வெட்டினார். ஏதிரி
கந்தசாமி கம்பியால் தலையில் தேவிடியா உன்னைத்தாண்டி
கொல்லனும் நீ செத்தாதான் நிம்மதி என்று சொல்லி
தலையில் அடித்து காயப்படுத்தினார்கள் மற்ற எதிரிகளும்
தேவிடியா முண்டை உன்னை கொல்லாமல்விடமாட்டோம்
என்று சொல்லி அடித்தார்கள். மீண்டும் சோணை நான்
செத்துவிட்டேனா என்று பார்க்கும்படி வேங்கையிடம் சொல்ல
அவர் என்னை பார்த்து செத்துவிட்டால் என்று சொல்லி
தலையில் ஊத்தினார்கள். சித்திராவும் ஆறுமுகமும்
என்வீட்டின் கதவை உடைத்து உள்ளேயிருந்து
என்னை இழுத்துவந்து கம்பியால் எனது தலையிலும்
உடம்பிலும் அடித்தார்கள்.□

13.4. Hence, the learned first appellate Judge has reappreciated the above evidence and concurred with the findings of the learned trial Judge that there is a specific overtact against the accused Nos.1, 2, 4 , 5 and 6, and confirmed the conviction and sentence imposed on them. Therefore, the principle of parity is not applicable in this case. Hence, the submissions made by the learned counsel for the petitioner to apply the principle of parity cannot be accepted and hence, the petitioners are not entitled for acquittal on the principle of parity.



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14. Application of the Probation of Offenders Act:

The learned Counsel for the petitioner made submission on the basis of the following precedents that the petitioners are the first offenders and hence, they are entitled to the benefit of Probation of Offenders Act. In support of his contention, he relied the un reported judgment passed by this Court in Crl.A.No. 243 of 2009 dated 03.02.2017 and in Crl.R.C.(MD).No.653 of 2016, dated 09.12.2020.

14.1. In this case, the petitioners were convicted under Section 307 of IPC. They also caused grievous injuries to P.W.2. Further in this case, the petitioners are above the age of 21 years. Therefore, Court has jurisdiction to pass a sentence of life. But the Courts below awarded only seven years imprisonment. Adding to that this case arose out of retaliation of murder of A1's father. In the cited un reported judgment, the conviction is not under section 307 of IPC. Therefore, the submission of the learned counsel on the basis of the un reported judgment cannot be accepted. Hence applicability of Probation of Offenders Act cannot be accepted. In this circumstance, it is relevant to note that the judgment



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of the Hon'ble Apex Court in the case of **Lakhanlal v. State of M.P., reported in (2021) 6 SCC 100:**

8. Thus, if the offender is less than 21 years of age or a woman not convicted of an offence not punishable with death or imprisonment for life; such offender can be granted benefit of probation on satisfaction of the court on the basis of parameters contained in Section 360 of the Code. However, in respect of an offender more than 21 years of age, the benefit of release is available only if the offence is punishable for less than seven years' imprisonment or fine. The object of Section 360 of the Code is to prevent young persons from being committed to jail, who have for the first time committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens.

15. The power of revisionary jurisdiction of this Court under Section 397 r/w 401 Cr.P.C.,

In the case of **Chandra Babu v. State**, reported in **(2015) 8 SCC 774**

11. First, we shall dwell upon the issue whether the High Court, in exercise of the revisional jurisdiction, should have adverted to the merits of the case in exte



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nso. As the factual matrix would reveal, the learned Single Judge has dwelled upon in great detail on the statements of the witnesses to arrive at the conclusion that there are remarkable discrepancies with regard to the facts and there is nothing wrong with the investigation. In fact, he has noted certain facts and deduced certain conclusions, which, as we find, are beyond the exercise of revisional jurisdiction. It is well settled in law that inherent as well as revisional jurisdiction should be exercised cautiously. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the Court. (See Amit Kapoor v. Ramesh Chander [(2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] .)

15.1. In this case, the learned trial Judge convicted all the accused for all charges and imposed the sentence as stated above. The learned appellate Judge reappreciated the evidence and meticulously reappreciated the evidence and analysed the submissions and affirmed the conviction and sentence passed against the accused Nos1, 2, 4, 5 6 and considering the lack of overtact attributed against the evidence in the deposition of P.W.2/injured witness against



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A3, acquitted the third accused.

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16. Conclusion:

In this case, P.W.2 was attacked by the accused Nos.1, 2, 4, 5 and 6, the same was cogently deposed by P.W.2. Her evidence is also corroborated with the



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medical evidence. P.W.5 also clearly deposed that he saw the accused running away from the place of occurrence ie., the house of P.W.2. The petitioners /A1 , A2, A4, A5 and A6 all were arrested by P.W.12 and recovered the weapons and his evidence was corroborated with the evidence of Village Administrative Officer namely P.W.6. The weapons also were shown to the doctors and he also affirmed that the injuries might have been caused by using of the recovered weapons. The injuries sustained by P.W.2 itself shows that the petitioners attacked the injured with an intention to cause death and with sufficient knowledge that the injury might have caused death and thereby, the prosecution clearly proved the offence under Section 307 of IPC. This Court finds no infirmities in P.W.2's evidence to disbelieve her version. Hence, this Court finds no infirmity and perversity in the finding of both the Courts below to exercise the revisional power under Section 397 r/w 401 of Cr.P.C.

17. Accordingly, the criminal revision cases are dismissed. Consequently, connected miscellaneous petitions are closed.

02.11.2023

NCC : Yes/No

Index : Yes/No



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Internet: Yes/No

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To

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- 1.The Chief Judicial Magistrate cum Assistant Sessions Judge,
Sivagangai.
- 2.Additional District and Sessions Judge,
Sivagangai.
- 3.The Inspector of Police,
Sipcot Police Station,
Manamadurai, Sivagangai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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Crl.RC(MD). Nos.398 & 399 of 2023
and
Crl.M.P(MD).Nos.12613 & 12617 of 2023

02.11.2023