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Crl.A.No.58 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.08.2024
Pronounced on	19.09.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

Crl.A.No.58 of 2019

1. Thangesh
2. Suresh
3. Praakash
4. Elumalai
5. Rajesh
6. Sahadevan

... Appellants/Accused 1 to 6

Vs.

State by Inspector of Police,
Vanapuram Police Station,
Tiruvannamalai District.
(Crime No.82 of 2011)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of the learned Principal District and Sessions Judge, Tiruvannamalai, Tiruvannamalai District made in S.C.No.4 of 2012 dated 21.12.2018 and acquit the appellants herein from the said charges.

For Appellants : Mr.N.R.Elango



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Senior Counsel
for Mr.Aswin Prasanna

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

J U D G M E N T

C.KUMARAPPAN, J.

The appellants were arrayed as A1 to A6 before the Trial Court in SC.No.4 of 2012, wherein they were convicted and sentenced as follows:-

<i>Accused</i>	<i>Offences</i>	<i>Sentence</i>
A1	147, 148, 294(b), 302, 326 r/w 149, 506 (ii) r/w 149 IPC	(i) To undergo 2 years simple imprisonment and to pay a fine of Rs.1,000/- for each offences under Section 147, 148 and 506(ii) r/w 149 IPC, i/d 3 months simple imprisonment for each offences. (ii) To undergo 3 months simple imprisonment and to pay a fine of Rs.500/- for the offence under Section 294 (b) IPC, i/d one week simple imprisonment for each offences. (iii) To undergo life imprisonment and to pay a fine of Rs.1,000/- i/d 2 years Rigorous imprisonment for the offence under Section 302 IPC (iv) to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- i/d 2 years rigorous imprisonment for the offence under Section 326 r/w 149



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<i>Accused</i>	<i>Offences</i>	<i>Sentence</i>
		IPC
A2	147, 148, 294(b), 302, 326, 506(ii) r/w 149 IPC	(i) To undergo 2 years simple imprisonment and to pay a fine of Rs.1,000/- for each offences under Section 147, 148 and 506(ii) r/w 149 IPC, i/d 3 months simple imprisonment for each offences. ii) To undergo 3 months simple imprisonment and to pay a fine of Rs.500/- for the offence under Section 294 (b) IPC, i/d one week simple imprisonment for each offences. (iii) To undergo life imprisonment and to pay a fine of Rs.1,000/- i/d 2 years Rigorous imprisonment for the offence under Section 302 IPC (iv) to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- i/d 2 years rigorous imprisonment for the offence under Section 326 IPC
A3	147, 148, 294(b), 302, 326 r/w 149, 506 (ii) r/w 149 IPC	(i) To undergo 2 years simple imprisonment and to pay a fine of Rs.1,000/- for each offences under Section 147, 148 and 506(ii) r/w 149 IPC, i/d 3 months simple imprisonment for each offences. (ii) To undergo 3 months simple imprisonment and to pay a fine of Rs.500/- for the offence under Section 294 (b) IPC, i/d one week



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<i>Accused</i>	<i>Offences</i>	<i>Sentence</i>
		simple imprisonment for each offences. (iii) To undergo life imprisonment and to pay a fine of Rs.1,000/- i/d 2 years Rigorous imprisonment for the offence under Section 302 IPC (iv) to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- i/d 2 years rigorous imprisonment for the offence under Section 326 r/w 149 IPC
A4 to A6	147, 148, 294(b), 302 r/w 149, 324, 326 r/w 149, 506(ii) r/w 149 IPC	(i) To undergo 2 years simple imprisonment and to pay a fine of Rs.1,000/- for each offences under Section 147, 148 and 506(ii) r/w 149 IPC, i/d 3 months simple imprisonment for each offences. (ii) To undergo 3 months simple imprisonment and to pay a fine of Rs.500/- for the offence under Section 294 (b) IPC, i/d one week simple imprisonment for each offences. (iii) To undergo life imprisonment and to pay a fine of Rs.1,000/- each i/d 2 years Rigorous imprisonment for the offence under Section 302 r/w 149 IPC (iv) each to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- i/d 2 years rigorous imprisonment for the offence



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<i>Accused</i>	<i>Offences</i>	<i>Sentence</i>
		under Section 326 r/w 149 IPC (v) each to undergo 2 years simple imprisonment and each to pay a fine of Rs.1000/- i/d 3 months simple imprisonment for the offence under Section 324 IPC

2. Aggrieved with the above order of conviction, the appellants preferred the instant appeal.

3. To understand the full gamut of the issue, filtering the unnecessary detail, we deem it appropriate to narrate the actual prosecution case. In our case, the deceased name is Chandrababu, who is the son of PW2-Rajammal and brother of PW4-Haridas. According to the prosecution, PW4-Haridas had caused street sexual harassment to A7's daughter about 4 days prior to the occurrence. Thereafter, there was a confabulation and negotiation among the PW4's [Haridas] family and the accused's family, and it was believed by Haridas [PW4] family that the problem was subdued. However, the accused have nurtured a grudge against Haridas's family.

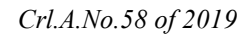


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4. While so, on 24.03.2011 at about 9.00.p.m, when the deceased Chandrababu and PW3-Sivakumar were talking with each other at Mariyamman temple, the accused formed an unlawful assembly and murdered Chandrababu. Immediately, thereafter PW1-Sumathi, who according to the prosecution is an eyewitness to the occurrence, had lodged a police complaint [Ex.P1] before the then Sub Inspector of Police Tmt.Tamilarasi [PW19] on the intervening night of 24/25.03.2011 at about 00.45 hours. The same was immediately forwarded to the jurisdictional Magistrate and to the Investigating Officer [PW20].

5. The Investigating Officer [PW20] on receipt of the copy of FIR [Ex.P28] proceeded to the scene of occurrence and had recorded the statement of the eye witnesses and mahazar witnesses. He also recorded the confession statement of the accused in the presence of Mr.Rajasekar [PW10], Mr.Sampath [PW12], and Mr.Damodharan [PW13]. Further, he also prepared the observation mahazar [Ex.P29], and rough sketch [Ex.P30], and recorded the statement of the postmortem Doctor [PW14], and scientific officer [PW17]. Eventually, he laid a charge sheet against the accused.



8. The Trial Court after having considered the oral and documentary evidence and also based on the material objects, had come to the conclusion that the prosecution had proved the charges beyond reasonable doubts, and ultimately, convicted and sentenced all the accused as indicated supra. Challenging the said judgment, the accused 1-6/appellants have preferred the instant Criminal Appeal.



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9 (a). Assailing the above order, the learned Senior Counsel Mr.N.R.Elango appearing on behalf of the appellants/accused 1 to 6 would vehemently contend that all the prosecution witnesses are interested witnesses and close relatives of the deceased, and that no independent witnesses were examined. He would also contend that the evidences of all the prosecution witnesses are parrot like version, which is an indication to doubt their credibility. It was also the contention of the learned Senior Counsel that there are wild contradictions in respect of the registration of the complaint, qua place where the complaint was given, and before whom.

9(b). It was also the contention of the learned Senior Counsel that the injury sustained by the deceased and the weapon used, do not tally. It was further contended that the Postmortem Doctor [PW14] did not speak as to whether these injuries sustained by the deceased are sufficient in the ordinary course of nature to cause death, and the Doctor also failed to specify the fatal injury among other injuries. The learned Senior Counsel would further contend that the recovery, at the instance of the accused, are unreliable. He also contended that the charges, as framed against A1 to A3, has caused substantial prejudice to them as they were only charged under Section 302



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IPC simplicitor, but suffered punishment by invoking Section 149 IPC. He further contended that on account of the apparent omission of Section 149 IPC in the charges would render the conviction illegal. It was also the contention of the learned Senior Counsel that the contradiction of the witnesses and between witnesses are not minor, but rather grave, touching upon the core issue of the occurrence, which would shake the credibility of the prosecution case. Hence, prayed to allow this Criminal appeal.

10(a). Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent would contend that the evidence of the injured witnesses PW1 to PW4 must be kept in high pedestal. He would further contend that there is nothing manifest to infer motive against the witnesses, so as to say that they had falsely implicated the accused. It was also the contention of the learned Additional Public Prosecutor that the evidence of the eye witnesses are consistent and they are wholly reliable. Hence, he contended that the absence of corroboration by independent witnesses, cannot be a ground to disbelieve their testimonies. It was also contended by the learned Additional Public Prosecutor that the complaint has been promptly given, and that the FIR has been forwarded to the concerned



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jurisdictional Magistrate within the least possible time, which could covertly and overtly reflect and vindicate the truthfulness of the prosecution case.

10(b). The learned Additional Public Prosecutor would further contend that the arrest and recovery would be an additional factor to lend support to the findings of the learned Trial Judge. He would also contend that the so called injury sustained by A4, is only a minor injury and therefore, the non explanation of such minor injury will in no way have an effect to dent the prosecution case. Hence, the learned Additional Public Prosecutor would contend that the prosecution has proved the charge beyond reasonable doubts and there are no grounds to interfere in the judgment of the learned Trial Judge. Hence, prayed to dismiss the criminal appeal.

11. We have given our anxious consideration to either side submissions.

12. Before we get into the onerous duty of re-appreciation of the facts and evidence, this Court would like to take up the legal submissions raised by the appellants. The learned Senior Counsel for the appellant would contend



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that the framing of charge under Section 302 IPC simplicitor against A1 to A3 has caused a substantial prejudice to them. In this regard, it is their contention that the postmortem Doctor [PW14] did not speak about the specificity of the fatal injury.

13. In order to appreciate the above argument and for ready reference, we deem it appropriate to extract the postmortem certificate.

*“Moderately built adult male body lying on its back, Eyes opened Irish black in colour, Mouth closed, tongue with in the mouth. Pink frothing fluid discharged from both nostrils. **External Injuries:** 1) Abrasion Rt. Cheek 2.5 x 1cm. Dark red in colour, 2) laceration in Lt. Cheek: 1cm x 0.5cm x 0.3cm size, 3) Eliptical laceration Rt. Side of chest, 1cm x 0.5cm x 0.3cm size, dark red in colour, 4) Laceration Rt. Inframamory region 0.5cm x 0.5cm x 0.3cm size 5) Elliptical laceration Lt side of chest infraclavicular region 1.5cm x 0.5cm wound probed approximately 5 cm length, 6) Eleplitcal laceration Lt Inframamory region Lt side of chest 1.5cm x 0.5cm would probed depth approximately 5cm depth, 7) Vertical linear abrasion Rt supraclavicular region of neck to Rt iliac crest 46cm lenth, 8) Trainvere abrasion Lt infrmamary region Lt. 15Cm lenth linear, 9) Transvere abrasion Rt side of*



neck two linear one 2cm another 1.5cm size, 10) linear vertical abrasion near angle of mandible (Rt), Head and neck: scalp, skull membranes intact, Brain solid c/s congested, Base of the skull normal. Thorax: Ribs cartilages intact. Laceration intercostal muscle at 3rd and 5th intercostal space each 1cm x 0.5cm depth probed approximately 4cm. Thoracic cavity Lt side filled with 500ml liquid blood. 500Gm clot, mediastinal Haematoma 10cm X 3 cm size. Rt Lung intact c/s congested. Laceration Lt lung 1cm x 0.5cm x 2cm. Heart lacerated Lt. Ventricle 1cm x 0.1cm size empty. Abdomen: Peritoneal cavity empty stomach intact contains undigested Rice particles about 300gm, Liver intact c/s congested, spleen intact c/s congested, Kidneys intact c/s congested, bladder intact empty, spine and long bones intact.

The following external organs were preserved for chemical analysis: (1) Stomach and its contents (2) Part of Liver (3) One kidney (4) Loop of intestine (5) Preservative (ii) Hyoid bone presented for HPE, (iii) blood soaked and dried gauze and blood were preserved.

.....

Opinion:

The deceased would appear to have died of shock and haemorrhage due to the injuries sustained by 12 to 16 hours prior to autopsy.”



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14. According to the Doctor's opinion, the deceased would have appeared to have died of shock and hemorrhage due to the cumulative effect of all injuries. Therefore, the contention of the appellants is that there is no specific opinion as to which of the injuries was fatal and that, if really all the injuries have collectively caused the death, the charge under Section 302 IPC simplicitor against accused 1 to 3 is a ground to interfere with the punishment. However, we are constrained to disagree with the submissions of the learned Senior Counsel, as in our indubitable opinion, the framing of charge under Section 302 IPC simplicitor, has not rendered any failure of justice to them.

15. At this juncture, it is relevant to recollect the judgment the Hon'ble Supreme Court held in ***Bala Seetharamaiah Vs. Perike S.Rao and others*** reported in (2004) 4 SCC 557, wherein the Hon'ble Supreme Court has held that, when the accused are not told that they had to face charges of being members of an unlawful assembly, then the non framing of charge under Section 149 IPC would definitely cause prejudice to the accused concerned. Therefore, as per ***Bala Seetharamaiah's*** case, what is essential is, to supply the ingredients under Section 149 IPC in the charges. To put it differently, if



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the charges are clearly indicating the ingredients of Section 149 IPC, the mere non reference of Section number will in no way affect their conviction, as contemplated under Section 464 Cr.P.C.

16. It is pertinent to mention here that the very Section 149 IPC is nothing, but fixing vicarious liability upon the member of the unlawful assembly for the commission and omission of the other members of that assembly. As rightly contended by the learned Senior Counsel, though the accused 1 to 3 were charged under Section 302 IPC simplicitor, the very charge commences in so many words indicating that A1 to A3 are the members of the unlawful assembly and they had committed the offence in prosecution of the common object. For ready reference and for better appreciation, the charge against A1 to A3 are extracted hereunder:-

“மூன்றாவதாக. மேற்சொன்ன நான், மேற்சொன்ன நேரம், மேற்சொன்ன இடத்தில், **மேற்படி சம்பவத்தின் தொடர்ச்சியாக,** 1 முதல் 7 வரையிலான எதிரிகளாகிய நீவிர், இறந்துபோன சந்திரபாபுவை கொலை செய்யும் பொது உட்கருத்துடனும், அவருக்கு தாங்கள் ஏற்படுத்தும் உடற்காயங்களால், இயற்கையின் சாதாரண போக்கில், மரணத்தை ஏற்படுத்த போதுமானவை என்று அறிந்தே, முதல் எதிரியாகிய நீர் கத்தியால், இறந்த சந்திரபாபுவின் இடது பக்க மார்பில் “இதோடு ஒழிந்து போடா” என்று சொல்லி குத்தியும், 2ம் எதிரி சுரேஷ் கத்தியால், இறந்த சந்திரபாபுவின் இடதுபக்க, வலது



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பக்க மாப்பில் குத்தியும், 3ம் எதிரியாகிய நீர் கத்தியால் இறந்த சந்திரபாபுவை இடதுபக்க வயிற்றில் குத்தியும் கொலை செய்துள்ளதாகவும், அவ்வகையில் 1, 2 மற்றும் 3ம் எதிராளிகளான நீவீர் அனைவரும் இ.த.ச 302 பிரிவின கீழும், 4 முதல் 7 வரையிலான எதிரிகளாகிய நீவீர் இ.த.ச.302 உடனணைந்த 149 பிரிவின்கீழும் தண்டனைக்குரிய குற்றத்தை செய்திருப்பதாக உம்மீது குற்றச்சாட்டு.”

17. On a harmonious reading of the above charge along with charge 1, where all the accused were charged for forming an unlawful assembly with a common object, would abundantly qualify charge No.3 to be one under Section 302 r/w 149 IPC. Therefore, we are of the firm opinion that the mere framing of charge under Section 302 IPC simplicitor, without referring to Section 149 IPC against A1 to A3 is only a irregularity which will in no way cause any substantial prejudice to them, as the very charge No.3 contains all the ingredients of Section 149 IPC. Therefore, we are of the firm view that the non reference of Section 149 IPC along with Section 302 IPC against A1 to A3 will make no difference.

18. In this regard, it is appropriate to refer to the judgment of the Hon'ble Supreme Court in *Ramkishan and others Vs. State of Rajasthan* reported in (1997) 7 SCC 518, wherein the Hon'ble Supreme Court has



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followed the Constitutional Bench judgment of the Hon'ble Supreme Court in **Willie (William) Slaney Vs. State of M.P** reported in **AIR 1956 SC 116** and held as follows:-

*“8. In view of the findings recorded by the learned Sessions Judge and the material on record, we are unable to ascribe to the finding that the appellants' intention was to cause death of Bhura deceased. The finding betrays the observation of the trial court as noticed above. The medical evidence also does not support the ultimate finding recorded by the trial court and upheld by the High Court. The offence in the established facts and circumstances of the case in the case of the appellants would only fall under Section 304 Part II IPC read with Section 149 IPC and not under Section 302 IPC. Indeed no specific charge indicating the applicability of Section 149 IPC was framed, but all the ingredients of Section 149 IPC were clearly indicated in the charge framed against the appellants and as held by the Constitution Bench of this Court in Willie (William) Slaney v. State of M. P. [AIR 1956 SC 116 : (1955) 2 SCR 1140] **the omission to mention Section 149 IPC specifically in the charge is only an irregularity and since no prejudice is shown to have been caused to the appellants by that omission it cannot affect their conviction.**”*

[Emphasis supplied by this Court]

At the risk of repetition, as already explained, the charge No.3 in substratum has categorically brought in all the ingredients of Section 149 IPC. Even otherwise except for the argument across the bar, the accused did not prove



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or show any prejudice that may have caused to them. Therefore, the contention of the learned Senior Counsel that the mere framing of charge under Section 302 IPC simplicitor against A1 to A3 has caused substantial prejudice, is liable to be rejected.

19. Now, let us revert back to the factual issues, and consider whether the prosecution has established the charges against the accused, beyond reasonable doubts. The prosecution has relied as many as 20 witnesses to prove their case. Out of them, according to the prosecution, PW1 to PW5 are the eyewitnesses, and among them, PW1 to PW3 are the injured eyewitnesses. Naturally, the creditworthiness of the injured eyewitness have to be kept in high pedestal, provided their evidence is consistent and wholly reliable.

20. As already stated, these occurrence witnesses are related to each other and also related to the deceased Chandrababu. Admittedly, no independent witnesses were examined. Here, PW1 is the *de facto* complainant, and the deceased was her elder brother's son. PW2 and PW4 are the mother and brother of the deceased respectively, and PW3 is the cousin of the deceased. PW5 is the sister's son of the deceased. Similarly, the



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deceased is the uncle of PW6. The PW7 and PW8 are the 1st and 2nd wife of the deceased. Thus, the witnesses are close relatives among themselves, as well as with the deceased. Therefore, as a rule of prudence, whenever the relatives are arrayed as the prosecution witnesses, it is the obligation on the part of the Court to scrutinise their evidence with great care, caution and circumspection. On such scrutiny, if the testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, to base a conviction. Therefore, it becomes incumbent upon this Court to find out, whether the statement of the witnesses are inherently probable and intrinsically reliable.

21. Let us proceed with our voyage to find out the reliability on the testimonies of the alleged injured eyewitnesses. According to the prosecution, on the fateful day the deceased Chandrababu and Mr.Sivakumar [PW3] were chatting together in the Mariamman temple. More precisely, at the time of occurrence, PW3 was in closest proximity with the deceased. In his chief examination, he narrates the occurrence and about the specific overtacts of each of the accused. It is his specific statement that at the time of occurrence, both the deceased and himself were only present. For ready reference, the



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admission of PW3 is as follows:-

“சம்பவம் நடந்ததாக சொல்லப்படும் நேரத்தில் அங்க ஐனங்க
யாருமே இல்லை. நாங்க இரண்டே பேர் தான்.”

22. He would further narrate that the occurrence took place in front of the temple, and that they were attacked by 10 members team, with knife, and that he was also attacked with a soda bottle and sustained an injury. However, PW3's narration of the alleged occurrence, does not inspire confidence in view of his further admission of having been tutored by a lawyer to depose before the Court. The relevant admission is as follows:-

“வக்கீல் வைத்து எனக்கு சொல்லி கொடுத்தார்கள். என் மாமியார்
தான் வக்கீல் வைத்து சொல்லி கொடுத்தார்.”

This aspect was neither reneged or disputed by the prosecution.

23. Thus, the resultant position, which emerges in the present case is that, PW3 is a tutored witness. Furthermore, he was closely related to the deceased Chandrababu as like the other eye witnesses. Therefore, when it is established that PW3 was tutored as to what to depose before the Court, his evidence absolutely lacks credibility, though he was projected as an injured witness. In this regard, it would be useful to refer the judgment of the



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Hon'ble Supreme Court in *Manikandan Vs. State by the Inspector of Police* made in *Criminal Appeal No. 1609 of 2011*, wherein it was held that the tutoring of witness is nothing, but interference in the judicial process. In a similar circumstances, when the witnesses were tutored, the Hon'ble Supreme Court had frowned upon the prosecution and held that those evidences have to be discarded. For ready reference, the relevant para is extracted hereunder:-

“8. Thus, the scenario which emerges is that precisely a day before the evidence of PW-1 to PW-5 was recorded before the Trial Court, they were called to the Police Station and were taught to depose in a particular manner. One can reasonably imagine the effect of “teaching” the witnesses inside a Police Station. This is a blatant act by the police to tutor the material prosecution witnesses. All of them were interested witnesses. Their evidence will have to be discarded as there is a distinct possibility that the said witnesses were tutored by the police on the earlier day. This kind of interference by the Police with the judicial process, to say the least, is shocking. This amounts to gross misuse of power by the Police machinery. The Police cannot be allowed to tutor the prosecution witness. This conduct becomes more serious as other eyewitnesses, though available, were withheld. We are surprised that both the Courts overlooked this critical aspect. It is pertinent to note that the defence of the accused, as can be seen from the



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*line of cross-examination, was that they were not present at the place of the incident at the time of the incident. PW-2 admitted that accused no. 1 was working in another village called Tirrupur. **Although available, independent witnesses were not examined by the Prosecution. Therefore, adverse inference must be drawn against the prosecution. Hence, there is a serious doubt created about the genuineness of the prosecution case.** The benefit of this substantial doubt must be given to the appellants. Before the appellants were enlarged on bail by this Court, they had undergone incarceration for more than 10 years.”*

[Emphasis supplied by this Court]

24. As stated in the above precedent, although there were independent witnesses available in the case in hand, they were not examined by the prosecution. This aspect warrants drawing an adverse inference against the case of the prosecution. Hence, in accordance with the ratio in ***Manikandan's case*** [cited supra], though the prosecution projects Sivakumar [PW3] as an occurrence witness, we have our own apprehension to rely upon his evidence.

25. Let us now consider the reliability and trustworthiness of the remaining alleged occurrence witnesses. According to the prosecution, Haridas [PW4], who is the brother of the deceased was also projected as an



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occurrence witness, claiming that he was standing near the place of occurrence along with the deceased and PW3, which is quite contradictory to PW3's statement. According to PW3, except he and the deceased Chandrababu, there were no other persons. In line with the defence version, more pertinently, PW4-Haridas in his 164 Cr.P.C statement before the learned Judicial Magistrate, has stated that at the time of the occurrence, he was at his residence. Therefore, his statement before the Court about his presence at the scene of occurrence, at the crucial point of time, is a material improvement from his previous statement, and also inherently contradicting the statement of PW3-Sivakumar. Therefore, the only irresistible conclusion which would arise is the doubtful presence of PW4 at the scene of occurrence.

26. The yet another witness relied by the prosecution is PW5-Mr.Vadivel, who is none other than the husband of PW1. According to his statement, he reached the village where the occurrence took place, only after the occurrence was over. The relevant admission of PW5-Vadivel is “சம்பவம் எல்லாம் முடிந்த பிறகு ஊருக்கு வந்தேன்”. Therefore, though the prosecution projected PW3 to PW5 as the occurrence witnesses, for the reasons deliberated hereinabove, it would be highly unsafe to place reliance on their



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testimonies.

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27. PW6-Viji was also projected as an eyewitness by the prosecution, but his evidence *ex facie* cannot be relied upon, for the following two reasons: (i) that his presence in the scene of occurrence has not been spoken to by any other witnesses; (ii) though he had stated that he was in the scene of occurrence along with his friend, he could not recollect his friend's name. If really PW6 was in the scene of occurrence, he could have definitely recollected his friend's name. Thus, his inability to recollect his friend's name, would palpably raise a reasonable doubt about the presence of this witness at the scene of occurrence.

28. The remaining occurrence witnesses to be analysed are, the *de facto* complainant PW1-Sumathi, and PW2-Rajammal. According to PW2-Mrs.Rajammal, she had witnessed the occurrence. But, while analysing her evidence with a forensic insight, this Court is having a reasonable doubt in her veracity. During her cross examination, she would state that, had she been in her residence, she could not have witnessed the occurrence. The relevant admission is “நான் வீட்டில் இருந்தால் இந்த சம்பவத்தை பார்த்திருக்க முடியாது.” On the contrary, she states that she had witnessed the occurrence



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and sustained an injury.

29. The main link, which directly connects her with the occurrence to give more credence is, the injury which she alleges to have sustained in the occurrence. According to her, A2-Suresh had attacked her with a boulder, by which she sustained an injury on the left side of forehead. But curiously, when she was examined before the learned Judicial Magistrate under Section 164 Cr.P.C, she did not state anything about her injury. Therefore, this would definitely amount to a material improvement, which goes to the root of the case. Had PW2 really sustained injury, the only propensity would be to narrate such a terrorising incident at the earliest possible time, when such incident was fresh in her memory. Therefore, we are of the indubitable view that the reference to sustaining an injury at the first time before Court, is a material improvement from her previous statement, which brings down the standard of the PW2 evidence, as neither wholly reliable nor wholly unreliable.

30. Further, her presence at the scene of occurrence, is also doubtful from another angle. She states that PW5-Vadivel was assaulted by A7-Pitchaimani. But curiously, PW5-Vadivel has gracefully admitted that he



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reached the village only after the occurrence had taken place. Therefore, this also gives rise to an inference to doubt the presence of PW2 in the scene of occurrence. Above all, when PW1 was examined, she states that only after hearing her cry, PW2-Rajammal and PW4-Haridas, came to the scene of occurrence from their house.

31. According to PW1-Sumathi, who is the *de facto* complainant, the occurrence was prolonged for an hour. However, PW2 has stated that it was a quick and sudden occurrence in no time, which lasted for just 2 to 3 minutes. Thus, on a cumulative analysis of the multiple versions of the alleged eye-witnesses, we have no other option except to have a suspicion about the presence of PW2 and against his testimony.

32. Our next endeavour now would be to find out the veracity of PW1's evidence. Though PW1 has given a complaint [Ex.P1] naming 7 persons, her wound certificate [Ex.P18] refers that she was attacked by 5 known male persons with a wooden log. The dichotomy between her spontaneous expression to the Doctor in respect of the number of assailants and also giving Ex.P1-complaint with vivid and minute materials against the 7 accused



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would also assume significance to raise a reasonable doubt in the testimony of PW1. She also speaks about the attack against PW2-Rajammal and PW3-Sivakumar. As already stated above, the injury sustained by PW2-Rajammal seems to be doubtful. Similarly, PW3-Sivakumar states that he had sustained an injury from a soda bottle, whereas PW1-Sumathi states that she was attacked with a stone. But the statement of PW1 was seriously doubted by the appellants, who would contend that though Ex.P1-complaint was recorded by a woman Officer, PW1-Sumathi states that her statement was recorded by a male officer. Furthermore, in Ex.P1-Complaint, PW1 states that at the time of occurrence, PW4-Haridas and PW5-Vadivel, were attacked by Pichaimani (A7). As stated supra, PW5-Vadivel admits that he was not present in the scene of occurrence.

33. No doubt, PW1 to PW3 have sustained injuries as evident from Exs.P17 to P19. This Court has no reason to disbelieve these accident registers. But the question is as to whether the witnesses had sustained these injuries from the instant occurrence? Though PW1 to PW3 state that they were occurrence witnesses, PW2-Rajammal says that the assault was by 10 known persons. On the contrary, PW1-Sumathi claims that she was assaulted



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by 5 known male persons with a wooden log. Similarly, PW3-Sivakumar says that the assault was by 10 known male persons with knife, whereas Ex.P1-complaint records the number of assailants as 7 persons. Therefore, the number of assailants and the weapons used, differs among the individual versions of these witnesses.

34. Furthermore, it is the specific case of all the witnesses that immediately after the occurrence, the villagers had gathered near the scene of occurrence. But no independent witness was examined to support the prosecution's case, at least to speak about the instances in *ex post facto* manner. It is true that the relative witnesses should not be doubted on the ground that they are related to the deceased, as the relative witnesses would always ensure that the real culprit would be punished and the possibility of implicating unknown person is remote. But, when reasonable doubts in the evidence of injured witnesses, as indicated hereinabove, are raised, as a rule of prudence, it becomes primordial duty for the Court to expect corroboration, through independent witnesses. But no independent witnesses were examined to corroborate the evidence of the related witnesses. Besides, their evidences also contradicts from each other in material particulars.



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35. It is well settled principle of law that a reasonable doubt is one which renders the possibility of a guilt as highly doubtful. Here, when this Court has look at the material contradictions and material improvement of the injured witnesses, they touches the core of issues. Therefore, all these improvements and contradictions raises a reasonable doubt in the testimonies of those injured witnesses.

36. But the learned Additional Public Prosecutor would invite the attention of this Court that the complaint and the FIR were received and registered within the shortest possible time and that the FIR reached the jurisdictional Magistrate within a reasonable time, thereby, contending that it gives credence to the prosecution case. Though the submissions made by the learned Additional Public Prosecutor is rational, still the very registration of FIR within the shortest possible time, by itself does not mean that the prosecution story stands immeasurably strengthened. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in ***Kilakkatha Parambath Sasi Vs. State of Kerala*** reported in ***(2011) 4 SCC 552***, wherein, the Hon'ble Supreme Court held as follows:-

“20. It is true, and if it is so found, that an FIR has been



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lodged belatedly, an inference can rightly follow that the prosecution story may not be true but equally on the other side if it is found that there is no delay in the recording of the FIR, the prosecution story stands immeasurably strengthened. The High Court has re-examined the findings recorded by the trial court with respect to this matter. We notice that the incident happened at about 2.30 p.m. and the police had arrived at the place of occurrence an hour later. PW 1 and the deceased were taken to Government Hospital, Thalassery where the deceased was examined at about 3.40 p.m. but referred to Medical College, Kozikhode as his injuries were grave whereas PW 1 was admitted to the Government Hospital.”

[Emphasis supplied by this Court]

37. Furthermore, the enmical nature of the deceased family and the accused is an admitted fact. Therefore, the possibility of wrongly implicating the accused cannot also be ruled out. As we have already discussed, there are inherent improbabilities, serious omissions and infirmities in the evidence of the material witnesses. Besides, the witnesses are interested and also enmical against the accused. Thus, the above circumstances also fan the flame of the fire.



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38. It is further relevant to refer that, though PW1 to PW3 are the injured witnesses, we find it difficult to disengage the truth in the testimony of the witnesses from falsehood. While reading the evidence of the prosecution witnesses, the truth and falsehood are so inextricably mixed together, which would make this Court difficult to separate them. In the construction and narration of the evidence, still if we try to do so, it will amount to reconstructing a new case for the prosecution, which cannot be done in a criminal case. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in ***Lakshmi Singh and others Vs. State of Bihar*** reported in ***(1976) 4 SCC 394***.

39. Lastly, the arrest and recovery as portrayed by the prosecution, creates a strong suspicion. In order to prove the arrest and recovery, the prosecution had examined PW12 and PW13, who are the Village Assistants. While, PW12-Sampath would admit that he did not witness the recovery of weapon, PW13-Damodaran would state that he is not in a position to identify the persons, who had given the confession statements. Besides, according to the evidence of PW12, the confession statement were recorded only in the police station, which factum was denied by PW13. Therefore, the evidence



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of PW12 and P13 cumulatively projects a reasonable doubt even against the recovery of weapon and arrest.

40. Thus, we are of the indubitable opinion that the learned Trial Judge had hardly made any real attempt to analyse or discuss the evidence, but has simply believed the evidence of the witnesses, without proper appreciation of their testimony.

41. The learned Senior Counsel has also relied upon the Ex.D1-wound certificate of A4-Elumalai. PW1-Sumathi has also referred that A4 was also admitted in the hospital. But for the reason best known to the prosecution, they have suppressed the complaint given by A4-Elumalai and the injury sustained by him. Therefore, in the background of the reasonable doubt over the evidence of the prosecution witnesses, this non explanation would also assume significance. Thus, we hold that there are numerous reasonable doubts in the prosecution case, which doubts would enure to the benefit of the accused. Thus, we are of the affirmed view that the prosecution has miserably failed to prove their case beyond reasonable doubts. As a concomitant, the order of conviction is liable to be interfered with.



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42. In the result, this Criminal Appeal stands allowed and the conviction and sentence passed in S.C.No.4 of 2012 by the Principal District Court, Tiruvannamalai dated 21.12.2018 is set aside. The appellants are acquitted from all the charges and the fine amount paid by them will be directed to be refunded. The bail bond, if any, executed by the accused shall stand cancelled.

[M.S.R., J.] [C.K., J.]
19.09.2024

Index: Yes

Neutral Citation: Yes

Speaking order: Yes

kmi

Note: Issue Order copy on 19.09.2024

To

1. The Superintendent of Prison,
Central Prison,
Vellore.

2. Inspector of Police,
Vanapuram Police Station,
Tiruvannamalai District.

3. The Public Prosecutor,
High Court of Madras.
Chennai-104.



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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

kmi

Pre-delivery judgment made in
Crl.A.No.58 of 2019

19.09.2024