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Crl.A.Nos.110, 1191, 1219, 1317, 292 and 739 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2024

PRONOUNCED ON : 13.03.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

**Crl.A.Nos.110, 1191, 1219, 1317, 292 and 739 of 2023**

**and**

**Crl.M.P.No.18499 of 2023 in Crl.M.P.No.1317 of 2023**

**Crl.A.No.110 of 2023**

Thirupathy Balaji @ Venkatesan

... Appellant/A1

VS.

State by:

The Inspector of Police,  
Town Police Station,  
Thiruvannamalai.  
(Cr.No.1051 of 2012)

... Respondent/Complainant

**Crl.A.No.1191 of 2023**

Vijayaraj

... Appellant/A8

VS.

State by:

The Inspector of Police,4  
Thiruvannamalai Town Police Station  
(Cr.No.1051 of 2012)

... Respondent/Complainant

**Crl.A.No.1219 of 2023**

Iyayappan

... Appellants/A7



**Crl.A.Nos.110, 1191, 1219, 1317, 292 and 739 of 2023**

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VS.

State by:  
The Inspector of Police,  
Thiruvannamalai Town Police Station,  
Thiruvannamalai.  
(Cr.No.1051 of 2012)

... Respondent/Complainant

**Crl.A.No.1317 of 2023**

1. Murugan  
2. Sadaiyan

... Appellant/A5 & 9

VS.

State by:  
The Inspector of Police,  
Town Police Station,  
Thiruvannamalai.  
(Cr.No.1051 of 2012)

... Respondent/Complainant

**Crl.A.No.292 of 2023**

Mrs.Meenatchi

... Appellant/A4

VS.

State by:  
The Inspector of Police,  
Thiruvannamalai Town Police Station,  
Thiruvannamalai, Thiruvannamalai District.  
(Cr.No.1051 of 2012)

... Respondent/Complainant

**Crl.A.No.739 of 2023**

Subramani

... Appellant/A10



*Crl.A.Nos.110, 1191, 1219, 1317, 292 and 739 of 2023*

VS.

State by:

1. The Inspector of Police,  
Thiruvannamalai Town Police Station,  
(Cr.No.1051 of 2012)

... Respondent/Complainant

2. Thirupathi Balaji @ Venkatesan  
Selvam (Died)  
Kasi (Died)  
3. Meenatchi  
4. Murugan  
5. Chandrasekar  
6. Iyyappan  
7. Vijayaraj  
8. Sadaiyan

... Respondents/Accused 1 to 9

**Common Prayer:** Criminal Appeals filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellants and sentence in S.C. No.14 of 2014 dated 23.01.2023, on the file of the learned Principal District and Sessions Judge, Thiruvannamalai (FAC) and set aside the conviction and sentence imposed in judgment dated 23.01.2023 and acquit the appellants.

For Appellant(s)

in Crl.A.No.110/2023 : Mr.A.K.Sriram, Sr. Counsel  
for Mrs.G.Uma Maheswari

in Crl.A.No.1191/2023 : Mr.S.Shiek Ismail

in Crl.A.No.1219/2023 : Mr.V.Rajmohan

in Crl.A.No.1317/2023 : Mr.S.Senthil Murugan

in Crl.A.No.292/2023 : Mr.Anantha Narayanan, Sr.Counsel  
for Mr.S.M.Nandhie Devhan



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in Crl.A.No.739/2023 : Mr.N.A.Nissar Ahmed, Sr.Counsel

For Respondent/State : Mr.A.Gokulakrishnan  
in all Crl.As. Additional Public Prosecutor

**COMMON JUDGMENT**

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

These Criminal Appeals have been filed by Accused Nos.1, 4, 5 and 7 to 10, challenging the conviction and sentence imposed upon them vide judgment dated 23.01.2023 in S.C.No.14 of 2014 on the file of the learned Principal District and Sessions Judge, Tiruvannamalai.

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

3(i) The case of the prosecution is that A1 to A4 were closely related to each other; that A1 and A2 are brothers; that A3 is the father of A1 and A2; that A4 is the wife of A2; A5 was the driver of the lorry belonging to A2; A6 to A10 were employed in the Diary Farm run by A1; that A1 to A4 had prior enmity towards the deceased and there were many cases instituted against each other; that the deceased was a whistle-blower and had exposed



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the various illegal activities said to have been committed by A1 and his family members, including land grabbing and illegal sand mining; and that therefore A1 to A4 decided to do away with the deceased with the aid of the A5 to A10.

(ii) It is the further case of the prosecution that on 01.07.2012 at about 9.00 p.m., all the accused hatched a conspiracy; that in pursuance to the said conspiracy, on 02.07.2012 at about 6.00 a.m, near Singa Muga Theertham Road in Tiruvannmalai to Chengam Road, A1 to A4 and A7 were waiting for the deceased to come there; that A8 went in advance and informed the movements of the deceased; that A6 brought chilli powder; that A10 agreed to surrender A5 and A6, to save A1 and other persons; that all of them formed an unlawful assembly; that A1, A2, A5 to A7 armed with deadly weapons stabbed/cut the deceased who was coming in a motorcycle; A6 put chilli powder on the face of the deceased; that A3 and A4 instigated the other accused to do away with the deceased; that A1 inflicted an injury on the left side of the face and back side of the head of the deceased by using a billhook [வீச்சுருவாள்]; that A2 inflicted an injury on the left side of the deceased by billhook; that A7 also caused injury on the left hand little finger



of the deceased by using a billhook; and that A6 inflicted injury on the left shoulder by using a billhook with the aid of A8 to A10.

(iii) It is the further case of the prosecution that PW1, the wife of the deceased, witnessed the occurrence, which took place at about 6.00 a.m. She lodged a complaint [Ex.P1] at 4.00 p.m., which was registered in Cr.No.1051 of 2012 by PW13, the Inspector of Police, for the offences under Sections 147, 148, 341 and 302 of the IPC. The printed FIR was marked as Ex.P26.

(iv) PW13 went to the scene of the occurrence at 5.00 p.m., and prepared the Observation Mahazar [Ex.P27] and Rough Sketch [Ex.P28] in the presence of witnesses including PW5 (Kasilingam). He thereafter recovered the motorcycle of the deceased bearing Regn.No.TN25K8958 [M.O.12], a Bag [M.O.13], a Nokia Black coloured Cellphone [M.O.10], an Iron knife [M.O.6], a pair of chappels [M.O.9], a bloodstained spectacle [M.O.11], an Ever-silver water can [M.O.5], a bloodstained soil [M.O.14], soil mixed with chilli powder [M.O.15], soil without bloodstain [M.O.16] and chilli powder packet with a chilli powder [M.O.17], from the place of



occurrence under Seizure Mahazar [Ex.P29].

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(v) PW13 conducted an inquest on the dead body of the deceased in the presence of panchayatars and prepared the inquest report [Ex.P30]. He sent the body for autopsy by requisition letter [Ex.P31]. He thereafter recovered the apparel [M.O.18, M.O.19 and M.O.20] from the body of the deceased.

(vi) PW13 came to know that A5 and A6 surrendered before the learned Judicial Magistrate, Polur, on 02.07.2012, and A1 and A2 surrendered before the learned Judicial Magistrate on 03.07.2012. He made a request to the learned Magistrate to take them into police custody and he took them into police custody on 05.07.2012.

(vii) Thereafter, on the confession of A1 in the presence of PW17-VAO and witness Mohammed Ali Jinna (Revenue Inspector), the admissible portion of which is marked as Ex.P4, PW13 seized the billhook [M.O.1], bloodstained white coloured half-hand shirt [M.O.21] and bloodstained dark blue coloured lungi [M.O.22] under Seizure Mahazar [Ex.P33].



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(viii) On the confession of A2 in the presence of the same witnesses, the admissible portion of which is marked as Ex.P5, PW13 seized the billhook [M.O.2], bloodstained green [பச்சை] coloured checked half-hand shirt [M.O.7] and bloodstained blue coloured jeans pant [M.O.8] under Seizure Mahazar [Ex.P34].

(ix) On the same day, on the confession of A5 in the presence of the same witnesses, the admissible portion of which is marked as Ex.P6, PW13 seized the billhook [M.O.3] under Seizure Mahazar [Ex.P.35] and also seized a bloodstained black full pant [M.O.18] and bloodstained light green coloured full hand shirt [ M.O.22] under Seizure Mahazar [Ex.P37].

(x) On the confession of A6 in the presence of the same witnesses, the admissible portion of which is marked as Ex.P7, PW13 seized billhook [M.O.4] under Seizure Mahazar [Ex.P36] and also seized bloodstained white mixed green, blue, cement coloured checked lungi [M.O.24] and bloodstained cement coloured full hand shirt [M.O.25] under Seizure Mahazar [Ex.P38].

(xi) Thereafter, PW13 examined the witnesses viz., Chandrasekar



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[PW7], the Village Administrative Officer, Mohammed Ali Jinna [Revenue Inspector], Saravanan and PW8-Balaji and recorded the statement. He thereafter, altered the offences from Sections 147, 148, 341 and 302 of the IPC into Sections 147, 148, 341, 120(B), 324, and 302 of the IPC. The alteration report was marked as Ex.P39.

(xii) On 09.07.2012, PW13 examined the witnesses viz., Thambidurai [PW6], Moorthi, Kumaran, Narayanan, Ramkumar and recorded the statement. On the same day, PW13, produced A1, A2, A5 and A6 before the learned Magistrate and remanded them to judicial custody.



(xiii) In continuation of further investigation, on 10.07.2012 at 6.00 a.m., PW13 arrested A7, A8, A9 and A10 at Thiruvannamalai to Chengam Road, opposite to Thiruvannamalai Government Arts College.

(xiv) On the confession of A7 in the presence of witnesses Saravanan [PW10] and one Subramani, the admissible portion of which is marked as Ex.P40, PW13 seized the Hero Honda Splender Plus Two-wheeler, bearing Regn.No.TN25H1729 [M.O.26] and red coloured G.L.X. cell phone [M.O.27] under Seizure Mahazar [Ex.P42]. He also seized the billhook [M.O.30] under Seizure Mahazar [Ex.P44] and the ashes of burnt dresses [M.O.31] under Seizure Mahazar [Ex.P45].

(xv) On the confession of A8 in the presence of the same witnesses, the admissible portion of which is marked as Ex.P41, PW13 seized the Hero Honda Splender Plus blue coloured Two-wheeler, bearing Regn.No.TN31J3145 [M.O.28] and G5 cell phone [M.O.29] under Seizure Mahazar [Ex.P43].

(xvi) By consent of both parties, the Biology Report and Serology



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Report were marked as Ex.P46 and Ex.P47 respectively, as per Section 294(3) Cr.P.C.

(xvii) Thereafter, PW13 sent A7, A8, A9 and A10, for remand to judicial custody on the same day and sent the material objects under Form-95 to the concerned Court. He also made arrangements for the Test Identification Parade and the witnesses viz., Mini @ Eliamma Joseph (PW1), Balaji (PW8), Saravanan (PW10) and Thambidurai (PW6) were produced on 21.07.2012 before the learned Magistrate for conducting Identification Parade. After examination of the scientific officers and recording Section 164 Cr.P.C. statements of some of the witnesses, he laid the final report against the accused for the offences under Sections 147, 148, 120(B), 341, 324 and 302 of the IPC and Section 25 of Indian Arms Act r/w 201 of the IPC, before the learned Judicial Magistrate No.1, Tiruvannamalai.

(xviii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.14 of 2014 and was made over to the learned Principal



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Sessions Judge, Tiruvannamalai, for trial. Before framing of charges, A2 and A3 died and the trial Court framed charges against the other accused viz., A1 and A4 to A10, and when questioned, the accused pleaded 'not guilty'.

(xix) To prove the case, the prosecution examined 13 witnesses as P.W.1 to P.W.13, marked 56 exhibits as Exs.P1 to P56, and marked 47 Material Objects as M.O.1 to M.O.47. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused did not examine any witnesses or mark any documents.

(xx) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held A1, A4 to A10 GUILTY of the offences charged against them. The appellants herein/A1, A4, A5 and A7 to A10 were convicted and sentenced as follows:

| <i>Accused No.</i> | <i>Offence under Section</i> | <i>Sentence imposed</i>                                                                                 |
|--------------------|------------------------------|---------------------------------------------------------------------------------------------------------|
| A1                 | 148 IPC                      | To undergo SI for one year.                                                                             |
|                    | 302 IPC                      | To undergo imprisonment for life and to pay a fine of Rs.3000/- in default to undergo RI for two years. |
|                    | 341 IPC                      | To undergo SI for one year.                                                                             |
| A4                 | 147 IPC                      | To undergo SI for one year.                                                                             |



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| <b><i>Accused No.</i></b> | <b><i>Offence under Section</i></b> | <b><i>Sentence imposed</i></b>                                                                          |
|---------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------|
|                           | 302 r/w 149 IPC                     | To undergo imprisonment for life and to pay a fine of Rs.3000/- in default to undergo RI for two years. |
|                           | 341 IPC                             | To undergo SI for one year.                                                                             |
| A5                        | 148 IPC                             | To undergo SI for one year.                                                                             |
|                           | 302 IPC                             | To undergo imprisonment for life and to pay a fine of Rs.3000/- in default to undergo RI for two years. |
|                           | 341 IPC                             | To undergo SI for one year.                                                                             |
| A7                        | 148 IPC                             | To undergo SI for one year.                                                                             |
|                           | 302 IPC                             | To undergo imprisonment for life and to pay a fine of Rs.3000/- in default to undergo RI for two years. |
|                           | 341 IPC                             | To undergo SI for one year.                                                                             |
| A8                        | 302 r/w 149 IPC                     | To undergo imprisonment for life and to pay a fine of Rs.3000/- in default to undergo RI for two years. |
|                           | 341 IPC                             | To undergo SI for one year.                                                                             |
| A9                        | 302 r/w 149 IPC                     | To undergo imprisonment for life and to pay a fine of Rs.3000/- in default to undergo RI for two years. |
|                           | 341 IPC                             | To undergo SI for one year.                                                                             |
| A10                       | 302 r/w 149 IPC                     | To undergo imprisonment for life and to pay a fine of Rs.3000/- in default to undergo RI for two years. |
|                           | 341 IPC                             | To undergo SI for one year.                                                                             |

The sentences were ordered to run concurrently. Hence, A1, A4, A5 and A7 to A10, have preferred the above appeals challenging the said conviction and sentence.



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4. Heard, Mr.Anantha Narayanan, learned Senior counsel appearing for the appellant in Crl.A.No.292 of 2023; Mr.A.K.Sriram, learned Senior counsel appearing for the appellant in Crl.A.No.110 of 2023; Mr.N.A.Nissar Ahmad, learned Senior counsel appearing for the appellant in Crl.A.No.739 of 2023; Mr.S.Senthil Murugan, learned counsel appearing for the appellant in Crl.A.No.1317 of 2023; Mr.V.Rajmohan, learned counsel appearing for the appellant in Crl.A.No.1219 of 2023; Mr.S.Sheik Ismail, learned counsel appearing for the appellant in Crl.A.No.1191 of 2023; and Mr. A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

5.(i) The learned senior counsels and the counsels for the appellants submitted that all the eyewitnesses and witnesses, examined by the prosecution to prove the conspiracy turned hostile, except PW1, the wife of the deceased; that PW1 cannot be believed in view of the inherent improbabilities in her evidence, and the fact that she gave a delayed complaint; and that there were lapses in the investigation, which is fatal to the prosecution case.



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(ii) The learned counsels therefore submitted that the conviction cannot be sustained on the basis of a solitary eyewitness, whose evidence does not inspire confidence and prayed for acquittal of the accused/appellants.

6.(i) Mr.A.Gokulakrishnan, learned Additional Public Prosecutor *per contra* submitted that mere lapse in the investigation or delay in lodging the complaint alone cannot be the basis to reject the prosecution case, when the ocular evidence, arrest and recovery made from the accused are cogent and convincing.

(ii) The learned Additional Public Prosecutor also pointed out that the weapons seized from the accused were bloodstained and tallied with the blood group of the deceased, which would further corroborate the evidence of PW1 and therefore submitted that the judgment of the trial Court is in accordance with the law and there is no reason to interfere with the judgment of the trial Court.

7. We have carefully considered the rival submissions and have



perused all the relevant records.

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8.(i) PW1, as stated earlier is the wife of the deceased and supported the prosecution case and it is her version that her husband the deceased went out of the house on 02.07.2012 at about 5.45 am, to purchase milk and since, he left the gate open, one of the pet dogs in the house went out of the house and followed her husband and when she went to bring the dog, she happened to witness the occurrence. She had also identified A5, A6 and A7 in the Test Identification Parade.

(ii) PW2, PW3, PW4 and PW6, who were examined as eyewitnesses, turned hostile; PW5 is the witness to the Observation Mahazar [Ex.P2] and Seizure Mahazar [Ex.P3]; PW7 is the Village Administrative Officer, who speaks about the confession and recoveries made from the accused and was a witness to the Seizure Mahazars; PW8 and PW12, were witnesses to the conspiracy and they both turned hostile; PW9 is the postmortem doctor; PW10 is the witness to the confession of A7 and A8 and turned hostile; PW11 is the learned Judicial Magistrate, who conducted the Test Identification Parade for witnesses PW7, PW8, PW12 and for PW1. He also



recorded the Section 164 Cr.P.C., statements of PW6, PW8 and PW10 which were marked as Ex.P22 to Ex.P24. PW6, PW8 and PW12 had identified A5 to A10 in the Test Identification Parade. However, since they turned hostile, the identification in the Test Identification Parade, loses its significance. PW1 identified A5, A6 and A7 in the Test Identification Parade and the proceedings were marked as Ex.P25. PW13 is the investigation officer, who filed the final report.

9. PW9-postmortem doctor issued the postmortem certificate [Ex.P15] wherein he found on examination the following external injuries:

- (1) cut injury 7(L) x 4(D) 3cm (L) shoulder
- (2) cut injury 7(L) x 4(D) 3 (B) Neck (L)
- (3) cut injury 18(L) x 3(D) 6(B) from (L) ear to neck through cheek exposing cut bones in cheek and throat
- (4) cut injury 4x3x2cm above injury (2)
- (5) cut injury 15x3(D)x2(B)cm scalp centre exposing fractured skull
- (6) cut injury (L) hand 15x2x6cm through IV web space.

In his final opinion, PW9 had opined as follows:

“The deceased would appear to have died of shock and hemorrhage leading to cardio respiratory arrest due to the



injury he sustained.”

The defence have not elicited anything from the doctor, so as to discredit his evidence. The prosecution thus, had established that the deceased had suffered an homicidal death.

10. The next question would be as to whether, the appellants were involved in the said violence. The above narrative of evidence would show that the eyewitnesses except PW1 and the witnesses examined to prove conspiracy, turned hostile. The reading of the evidence of the hostile witnesses would show that no portion of their evidence can be accepted and their evidence has to be rejected in toto.

11.(i) We are now left with the evidence of PW1. In her complaint [Ex.P1], PW1 has referred to the involvement of A1 to A4. Though no *overt act* was attributed to any of the accused, she had also stated about two other persons whose names were not known to her, but could be identified and certain others were also involved in the offence. Her Section 161 Cr.P.C. statement was recorded by the police the next day. According to PW13, the investigation officer, PW1 had not stated the specific *overt acts* of the accused even during the said examination. The relevant portion of the



evidence of PW13 would confirm the said fact and the same is extracted hereunder.

“என்னிடம் புகார் கொடுத்ததாக சொல்லப்பட்ட 02.07.2012 அன்று அ.சா.1ஐ விசாரித்து வாக்குமூலம் பதிவு செய்யவில்லை என்றால் சரிதான். அவரை மறுநாள் தான் விசாரணை செய்தேன் என்றால் சரிதான். என்னிடம் கொடுத்த புகாரில் காசி, மினாட்சி என் கணவரை வெட்டி கொல்லுங்கடா என்று குறிப்பிட்டு சொல்லவில்லை என்றால் சரிதான். 161 வாக்குமூலத்தில் அடையாளம் தெரியாத நபர்கள் அவர்களின் உருவமைப்போ மற்றும் அவர்கள் அணிந்திருந்த உடை குறித்து கூறவில்லை என்றால் சரிதான். முருகன் இடதுபக்கம் கழுத்தில் வெட்ட முற்பட்டபோது என் கணவர் இடதுகையில் தடுத்ததால் அவருடைய சுண்டுவிரலில் கீழ் பாகம் வெட்டப்பட்ட நிலையில் இருந்தது என்றும், சந்திரசேகரன் என்பவர் என் கணவரை இடதுபக்க தோல்பட்டையில் வீச்சருவாளால் வெட்டினார் என்றும் எங்கள் வீட்டில் நாய் வளர்த்தோம். என் கணவர் பால் வாங்குவதற்காக கேட்டை திறந்து மூடாமல் சென்றுவிட்டார் அப்போது ஒரு நாய் என் கணவரின் வண்டியை தொடர்ந்து சென்றது அந்த நாயை பின் தொடர்ந்து நான் சென்றேன் என்று என் விசாரணையில் அ.சா.1 சொன்னாரா என்றால் இல்லை.”

(ii) However, during her deposition in Court, PW1 attributed specific *overt acts* to the accused. She had stated that A2 and A4 instigated the other accused; that one of the accused sprayed chilli powder on the face of the deceased. Likewise, she had attributed specific *overt acts* to A1, A2, A5 and



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A6. She would also add that A1 to A10 except A7, were responsible for the occurrence. The relevant portion reads as follows:

“என் கணவரை வெட்டியவர்கள் ஆஜர் எதிரிகளான வெங்கடேசன், முருகன், மீனாட்சி, விஜயராஜ், சந்திரசேகர், சுப்பிரமணி, சடையன் ஆவார்கள் மற்றும் செல்வம், காசி இறந்து விட்டார்கள்.”

She would also state that there was enmity between the deceased and a lawyer by name Kumaran and his wife one Lakshmi, working as Deputy Superintendent of Police and that the deceased had earlier filed a complaint in the police station stating that the sewage water from an ashram nearby was directed towards their house; that the said lawyer had appeared for the accused in the said complaint and A1 to A4 compelled the deceased/the defacto complainant therein, to withdraw the complaint and that there are various other complaints and counter complaints between the deceased and the family of the lawyer.

(iii) In her deposition, PW1 has made substantial improvements from what was stated in her complaint [Ex.P1]. The FIR is certainly not an encyclopaedia and merely because certain specific details are not found in the FIR, the deposition cannot be considered as an improvement. It would



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all depend on the facts and circumstances of each case. However, in the instant case, the details containing the *overt acts* of the accused were not stated even during the investigation by the police, the next day.

(iv) Be that as it may, it is PW1's version that after her husband was done to death, the passers-by gave intimation to the police station; that the police also came to the occurrence immediately thereafter and inquired with the people around. She would further add that police did not inquire her and the body was immediately taken to the hospital through an ambulance. The relevant portion of the cross examination of PW1 reads as follows:

“என் கணவரின் பிரேதத்தை பார்த்தவுடன் காவல் நிலையத்திற்கு தகவல் கொடுக்கவில்லை. அங்கு இருந்தவர்கள் தான் காவல் நிலையத்திற்கு தகவல் கொடுத்தார்கள். அங்கு சுமாராக ஒரு பத்து பேர் இருக்கலாம். என் கணவர் பிரேதம் இருந்த இடத்தில் சற்று தூரத்தில் இருந்தேன். போலிசார் அங்கு இருந்தவர்களை விசாரித்தார்கள். என்னை விசாரிக்கவில்லை. பின்னர் பிரேதத்தை ஆம்புலன்ஸ் மூலமாக அரசு பொது மருத்துவமனைக்கு கொண்டு சென்றார்கள்.”

The above extracted portion of evidence reveals that the police were present even on the morning of 02.07.2012 at the occurrence place and the body was taken immediately thereafter to the hospital. Though the police denied the



fact of taking the body to the hospital immediately in the morning, we find that the prosecution has not produced the earliest entries made in the hospital records, when the deceased was taken to the hospital. The suppression of the said document raises a doubt with regard to when the body was taken to the hospital. The evidence of PW1 that the body was taken immediately to the hospital is not only probable but is in consonance\_with natural human conduct. The second aspect that is revealed from the above portion of the evidence is the improbable conduct of PW1 in not telling the police as to what happened to her husband when according to her the police were inquiring all others. PW1 appears to be a chance witness. Her presence at the scene of the occurrence, which is far away from her house, is sought to be justified by stating that she had to go out to the house chasing their pet dog, which followed her husband. This version of PW1 has to be tested. If the other evidence on record establishes her presence, then, the justification offered by PW1 can safely be accepted.

(v) However, we find that though PW1 would state that she went to the police station at about 8.00 a.m., she did not lodge any complaint, since her complaint was in Malayalam and that the police asked her to give the



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complaint in Tamil and therefore, she took the assistance of her friends to draft a complaint in Tamil. Therefore, according to her, she lodged a complaint only at 4.00 p.m. However this version of PW1 is contradicted by the investigation officer himself, who would state that PW1 came to the police station only at 4.00 p.m., with the Tamil version of the complaint. That apart, PW1 herself would admit that she was conversant in Tamil and that she could speak Tamil, though, she could not write. Therefore, the reason offered by her that she could not convey the details of the occurrence and complain to the police because of language barrier, cannot be accepted. There was no necessity for a written complaint and the police officers can always record a oral complaint and register an FIR. The reason therefore, given by PW1 for lodging the complaint belatedly at 4.00 p.m., cannot be countenanced.

(vi) The investigating officer [PW13], would reiterate that they were not aware of the occurrence till 4.00pm, until PW1 came to the police station. This stand taken by PW13 belies common sense. The occurrence had taken place on a public road. To say that the police were not aware of it till 4.00pm is far from the truth. To top it all, PW13, who had prepared the



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Observation Mahazar and the Rough Sketch at 5.00pm on 02.07.2012 has observed that the body was still lying in the place of occurrence. This is again improbable and contrary to the evidence of PW1 herself that the body was taken to the hospital by an ambulance around 6.30 a.m. The suppression of the earliest entries made in the hospital further raises a doubt with regard to the prosecution case that the body was found in the place of occurrence at 5.00 p.m. This stand taken by the investigating officer probabalises the defence case that the FIR came into existence after much deliberation.

(vii) It is fairly settled that any lapse in the investigation by itself would not be fatal to the prosecution case. It would depend upon the facts and circumstances of the case. The investigating officer-PW13 had gone to the extent of feigning ignorance of the occurrence till 4.00 p.m., and creating records to suit the prosecution case. The delay in lodging the complaint by PW1 has not been explained. In this background the presence of PW1 at the time of occurrence who is a chance witness and her explanation for her presence at the scene of occurrence, is doubtful. That apart, we also noted that there are several improvements attributing specific *overt acts* to the



accused. Thus, the lapses in the investigation in the present case have a bearing on the prosecution case.

(viii) We may also note another aspect in this case that PW1 had identified A5, A6 in the Test Identification Parade, which was conducted by PW11. Strangely, no Test Identification Parade was conducted in respect of A8, A9 and A10. That apart, we find that PW1 had not identified the accused in the dock. A1 to A4 of course were known to her. Even as regards the other accused, the prosecution had not chosen to ask her to identify the accused. She had only named the accused and attributed specific *overt acts* and that in our view would not amount to identification of the accused. In these circumstances, we are of the view that it would be highly unsafe to rely upon the sole testimony of PW1 to hold the appellants guilty for the offences for which they were charged.

12. The learned Additional Public Prosecutor would submit that PW1's evidence has been corroborated by the arrest, confession and recovery made from the accused and the fact that the weapons seized from the accused had bloodstains and belonged to 'A' group. The forensic science



experts were not examined by the prosecution and the documents Ex.P46 and Ex.P47 were marked with consent. To a specific question put by the defence to the investigating officer that there is no 'A' group blood and it has to be either A+ve or A-ve, the investigating officer admitted that he was not aware of the same. But even otherwise, we find that the FIR in this case was brought into existence long after the occurrence and after deliberation. The family members of A2 including his wife and father were sought to be implicated. Though chilli powder is said to have been used by one of the accused, the same was not deducted by the postmortem doctor and there is no explanation offered by the prosecution for the same. Therefore, the possibility of false implication cannot be ruled out and if the FIR is held to be fabricated. It is well settled that the entire fabric of the prosecution case would collapse and the arrest, confession and recoveries would also be of no avail to the prosecution.

13. This Court is reminded of the observations of the Hon'ble Supreme Court in this regard in *Marudanal Augusti vs State Of Kerala* reported in (1980) 4 SCC 425 wherein, the Hon'ble Supreme Court had observed as follows:



*“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could be added without there being anything to check the authenticity of their evidence.”*

14. That apart, PW1 is a chance witness. Her evidence justifying her presence at the scene of the occurrence, is not reliable, as she has not informed the police about the occurrence immediately. The presence of the police was admitted. The FIR is lodged belatedly and the reasons given for the delay in FIR is contrary to the admissions made by PW1 herself as stated earlier. It is also well settled that the Courts have to be cautious while appreciating a solitary witness, who is a chance witness. In this regard, the observations made by the Hon'ble Supreme Court in ***Jarnail Singh Vs. State of Punjab*** reported in **(2009) 9 SCC 719**, is extracted hereunder for better understanding.

“22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v. Surat Singh (1997) 4 SCC 192; Harjinder Singh v. State of Gujarat (2004) 11 SCC 253; Acharaparambath Pradeepan & Anr. v. State of Kerala (2006) 13 SCC 643; and Sarvesh Narain Shukla v.



Daroga Singh and Ors. (2007) 13 SCC 360). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan (2004) 10 SCC 632).”

15. One more aspect which we find from the evidence to disbelieve the prosecution case is the admission made by PW1 that she had filed a writ petition before this Court stating that 48 persons were involved in the murder of her husband. The relevant portion reads as follows:

“என் கணவருக்கு சமீப ஆர்வலர் என்ற போர்வையில் அரசு அதிகாரிகள், காவலர்கள் முதல் போலீஸ் சூப்பிரண்டு வரை மற்றும் பொது வாழ்க்கையில் ஈடுபட்டுள்ளவரை நீதிபதிகள், மற்றும் அரசியல் வாதிகள் ஆகியோர் மீது என் கணவர் மனு கொடுப்பது வழக்கம் என்றால் சரி தான். இந்த வழக்கில் சுமார் 48 பேர் சம்மந்தப்பட்டுள்ளார் என்றும், அவர் ஓய்வு பெற்ற நீதியரசரை வைத்து என் கணவரின் இறப்புக்காக காரணம் அறியப்பட வேண்டும் என்று, நான் மாண்புமிகு சென்னை உயர்நீதிமன்றத்தில் ரிட் மனு தாக்கல் செய்தேன் என்றால் சரி தான்.”

If PW1 had really witnessed the occurrence, there was no necessity for her to allege that 48 persons were involved in the murder of her husband.

16. For the above mentioned reasons we are of the view that the judgment of conviction and sentence imposed upon the appellants/A1, A4,



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A5 and A7 to A10, are liable to be set aside.

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17. Accordingly, the Criminal Appeals filed by A1, A4, A5 and A7 to A10, stand allowed. The conviction and sentence imposed upon the appellants/A1, A4, A5 and A7 to A10, in S.C. No.14 of 2014 dated 28.01.2023 on the file of the learned Principal District and Sessions Judge, Tiruvannamalai (FAC), are set aside. The appellants/ A1, A4, A5 and A7 to A10, are acquitted of all charges and are directed to be released forthwith, unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants/ A1, A4, A5 and A7 to A10, shall be refunded. Bail bonds, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition, is closed.

(M.S.R.,J.) (S.M.,J.)  
13.03.2024

Index : yes/no  
Speaking/Non-speaking order  
Neutral citation : yes/no  
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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

To

1. The Principal District and Sessions Judge,  
Tiruvannamalai.

2. The Inspector of Police,  
Tiruvannamalai Town Police Station,  
Tiruvannamalai.

3. The Superintendent,  
Central Prison, Vellore.

4. The Public Prosecutor,  
High Court, Madras

Pre-delivery Common Judgment in  
**Crl.A.Nos.110, 1191, 1219, 1317,  
292 and 739 of 2023**

13.03.2024