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Crl.A.Nos.202 & 205 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	22.07.2025
<i>Pronounced on</i>	20.08.2025

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Crl.A.Nos.202 & 205 of 2019Crl.A.No.202 of 2019

1.Ilango

2.Arumugam

3.Ragu

4.Iyyanar

5.Periyannan

...Appellants

Vs.

State rep. by
The Inspector of Police,
Bahour Police Station,
Puducherry.

...Respondent

Prayer: Criminal Appeal filed under 374(2) of Criminal Procedure Code to set aside the judgment dated 27.03.2019 made in S.C.No.21 of 2011 on the file of the II Additional Sessions Judge at Puducherry.



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Crl.A.Nos.202 & 205 of 2019

For Appellants : Mr.V.Gopinath, Sr. Counsel
for Mr.Swami Subramanian

For Respondent : Mr.K.S.Mohandass,
Public Prosecutor (Puducherry)

Crl.A.No.205 of 2019

1.Rajkumar

2.Vetrivel

3.Sugan

4.Kaviraj

...Appellants

Vs.

State rep. by
The Inspector of Police,
Bahour Police Station,
Puducherry.

...Respondent

Prayer: Criminal Appeal filed under 374 of Criminal Procedure Code to set aside the judgment dated 27.03.2019 made in S.C.No.21 of 2011 on the file of the II Additional Sessions Judge at Puducherry.

For Appellants : Mr.R.John Sathyan, Sr. Counsel
for Mr.Swami Subramanian

For Respondent : Mr.K.S.Mohandass,
Public Prosecutor (Puducherry)



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COMMON JUDGMENT

WEB CO **M.S.RAMESH,J.**

Through a judgment passed in S.C.No.21 of 2011 dated 27.03.2019 passed by the II Additional Sessions Judge, Puducherry, it was recorded that the prosecution had proved the guilt of the accused A1 to A9 beyond all reasonable doubts and accordingly found them guilty for the offence punishable under Sections 148 IPC, 302 IPC r/w 149 IPC (2 Counts), 307 IPC r/w. 149 IPC (2 Counts) and 427 IPC r/w 149 IPC and convicted them thereunder. The sentences imposed against these nine accused are as follows:-

“A1 to A9 are sentenced to undergo Rigorous Imprisonment for 3 Years and shall pay a fine of Rs.1,000/- each in default to undergo Simple Imprisonment for 3 months under Section 148 IPC; and A1 to A9 are sentenced to undergo Imprisonment for Life each for each count and shall pay a fine of Rs.5,000/- each for each count, in default to undergo Simple Imprisonment for one year each for each Count under Section 302 IPC r/w 149 IPC (2 counts); and A1 to A9 are sentenced to undergo Rigorous Imprisonment for 10 years each for each count and shall pay a fine of Rs.2,000/- each for each count, in default to undergo Simple



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Imprisonment for six months for each count under Section 307 IPC r/w 149 IPC(2 counts); and A1 to A9 are sentenced to undergo Rigorous Imprisonment for One year and to pay a fine of Rs.1,000/- each under Section 427 IPC r/w 149 IPC in default to undergo Simple Imprisonment for 2 months. The sentences imposed on the accused persons on all sections shall run concurrently. Since the accused are convicted under Section 307 r/w 149 IPC, no separate sentence is imposed under Section 326 r/w 149 IPC. The conviction is recorded under Section 235(2) of Cr.P.C. Total fine for each accused Rs.16,000/-.The period of imprisonment already undergone by the accused persons are ordered to be set off under Section 428 of Cr.P.C. ”

2. While A1 to A4 and A8 had challenged the aforesaid judgment through Crl.A.No.202 of 2019, A5 to A7 and A9 had preferred a separate appeal through Crl.A.No.205 of 2019. Since both these appeals arise out of the common judgment in S.C.No.21 of 2011 dated 27.04.2019, they are disposed together through this common judgment.



3. This is a case of double murder of Paranjothi (D1) and Gnanaprakasam (D2).

4.1. The brief case of the prosecution are as follows:

4.2. Elango/A1, Gnanaprakasam/D2 and Murugan/P.W.3 were allegedly involved in illegal sand transportation.

4.3. When the Police had seized the lorry and other materials of A1, his two accomplices, namely D2 and P.W.3 withdrew their association with A1 and joined with P.W.1.

4.4. It is alleged that A1 had mistakenly thought that it was D1 who had given a complaint against A1 about his illegal transportation of sand and hence carried a grudge against him.

4.5. On 13.10.2009 at about 06.00 A.M., all the residents of Soriyankuppam Village had decided to collect money from the bullock cart owners, who were into illegal sand transportation, for renovation of their temple car, for which purpose they had put up a thatched shed.

4.6. A1, who was also into illegal sand transportation, also used to collect money from such Bullock Cart owners. At about 01.00 P.M. on the same day, A1, out of the vengeance he had against D2, joined with Arumugam/A2 and Vetrivel/A6 and dismantled the thatched shed put up



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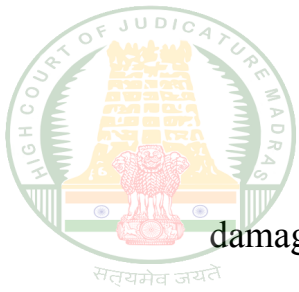
by the Villagers, owing to which a tussle broke between the parties.

WEB COPY 4.7. On information, the Inspector of Bahour Police Station arrived at the scene and summoned both the parties to come to the Police Station by 04.00 P.M for mediation.

4.8. Accordingly, both the deceased, along with P.W.2, P.W.4 and P.W.6, went to Navarthope, via the Cremation Road, when they were intercepted by A1 along with the other eight accused.

4.9. At about 04.30 and 04.45 P.M., a scuffle broke out between the parties when A1 claimed that D1 had frustrated his earnings and attacked him on his head with a concealed knife. A2 also attacked D1 on his head. A5 and A7 attacked D2 with knives on his head. A3 and A4 had assaulted P.W.2 with a casuarina log on his face, waist and body. When P.W.1 intervened, A6 had cut his two knees. A9 is said to have assaulted D2 with a casuarina log on his body while A8 assaulted P.W.1 and broke his right hand. Thereafter, A9 had set fire to the two wheeler of Velmurugan (P.W.5).

4.10. The Police had rushed to the Scene of Crime (SOC) to find P.W.1 wounded and lying on the floor. Since D1 and D2 were in a serious condition, they were taken to the Government Hospital, Puducherry in a Tata Ace van. In the meantime, all the accused were claimed to have



damaged the houses of both the deceased.

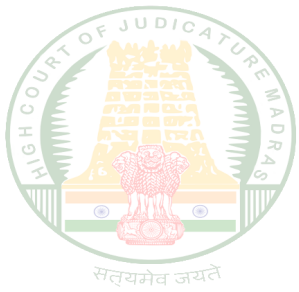
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4.11. While P.W.1 was being treated at the hospital, he had given a complaint (Ex.P.1) to the Police and affixed his left hand thumb impression, since his right hand was injured, which complaint was registered in Crime No.152 of 2009 at 05.00 P.M. of 13.10.2009.

4.12. During investigation, A1, A3, A5 to A7 and A9 were arrested on 15.10.2009; A4 and A8 were arrested on 25.10.2009; and A1 was arrested on 04.12.2009.

4.13. On conclusion of the investigation, the Investigation Officer-P.W.29 had filed the final report charging all the accused of having committed the offences under Sections 147, 148, 302, 326, 307, 427 r/w 149 IPC.

5. In order to prove their case before the Trial Court, the prosecution had examined 29 witnesses (P.W.1 to P.W.29) and marked 42 documents (Ex.P.1 to Ex.P.42), apart from 29 material objects (M.O.1 to M.O.29). On the side of the defence, 6 documentary evidences (Ex.D.1 to Ex.D.6) were marked, but no witnesses were examined.



6. On the strength of the oral and documentary evidences before it, the Trial Court had found all the accused guilty for the charged offences and sentenced them to imprisonment, as stated above.

7. Mr.V.Gopinath, learned Senior Counsel appearing for A1 to A4 and A8, as well as Mr.R.John Sathyan, learned Senior Counsel appearing for A5 to A7 and A9, predominantly raised similar grounds attacking the judgment of the Trial Court. According to them, the entire genesis of the prosecution's case was fabricated by the Police and there is a suppression of substantive evidences in this case. According to them, A1, A3 and A4 had sustained grievous knife injuries, apart from being assaulted with casuarina logs, which the prosecution has miserably failed to explain. By referring to the oral evidence of the Investigation Officer-P.W.29, the first complaint registered in Crime No.151 of 2009 (Ex.D.6), which culminated into S.C.No.68 of 2010 and which was based on the complaint given by A4 against D1, D2, P.W.1 to P.W.5, has been totally suppressed by the prosecution. When three of the accused had sustained grievous injuries arising out of the same occurrence and which the prosecution had admitted but failed to explain, the genesis of the entire case itself is doubtful and there was no clarity as to who among the two



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groups were the aggressors or the victims. In the absence of a proper explanation to the injuries sustained by three accused, as well as the first complaint in Crime No.151 of 2009, the case of the prosecution is highly suspicious. Therefore, all the accused ought to have been acquitted by the Trial Court. The learned Senior Counsels drew our attention to the oral evidence of P.W.1, wherein he had admitted about the case in S.C.No.68 of 2010 with a further admission that the Police had come to the SOC within half-an-hour, but however the confession statement of the accused in S.C.No.68 of 2010 was obtained only after about two months. Likewise, from the evidence of P.W.2, our attention was drawn about his admission to the injuries sustained by three of the accused, as well as his knowledge about the case in S.C.No.68 of 2010. A similar statement of P.W.3, about his knowledge of the counter case in S.C.No.68 of 2010, was also pointed out. With reference to these evidences, they submitted that the non-disclosure of the counter case and non-explanation of the injuries of the accused, would be fatal to the case of the prosecution. In support of their arguments, they drew our attention to the extracts of general diary of Bahour Police Station (Ex.D.1 and Ex.D.2), as well as the accident registers of A1, A3 and A4, which were marked before the Trial Court as Exs.D.3 to D.5 respectively, apart from the final report in



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Crime No.151 of 2009, which was marked as Ex.D.6. With regard to the non-explanation on the injuries on the accused, the learned Senior Counsels placed reliance on the decision of ***Lakshmi Singh and Others Vs. State of Bihar*** reported in ***AIR 1976 SC 2263***.

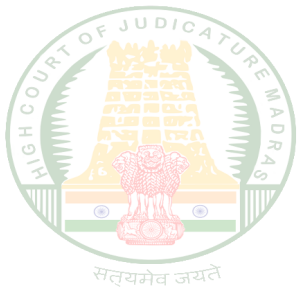
8. The learned Public Prosecutor drew our attention to the oral evidences of P.W.1 and P.W.2 to substantiate that the accused had motive which arose from an earlier incident, wherein the accused had entered into a scuffle with the deceased group. Specific references were made to the evidences of P.W.1 and P.W.2, who had corroborated that when the accused attacked the deceased group, D2 attempted to run away from the SOC when they were chased and attacked by the deceased, which evidences were also corroborated by P.W.3 and P.W.4. For further corroboration, he relied on the admissible portion of P.W.5, who was an hostile witness, for proving the motive. According to the learned Public Prosecutor, the case of the prosecution rests on the evidences of several eye witnesses, among whom P.W.1 and P.W.2 were the injured eye witnesses, whose testimonies stand on a high pedestal. He elaborately drew our attention to such portions of the oral evidences of the eye witnesses, namely, P.W.1, P.W.2, P.W.6, P.W.7 and P.W.8 with regard to



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the overt acts attributed to each of the accused while inflicting injuries on both the deceased, as well as P.W.1 and P.W.2 and submitted that since all the eye witnesses had cogently spoken about these overt acts, the guilt of all the accused stands substantiated and therefore, the Trial Court had rightly convicted them for their respective offences. Insofar as the injuries on the accused, as well as the counter case are concerned, he placed reliance on the decisions of the Hon'ble Supreme Court in the cases of ***Ramlagan Singh and Others Vs. State of Bihar*** reported in ***AIR 1972 SC 2593***, as well as ***Surendra Paswan Vs. State of Jharkhand*** reported in ***(2003) 12 SCC 360*** and submitted that non-explanation of the counter case or the injuries may not be fatal to the prosecution's case, more particularly when there were several eye witnesses to the occurrence. With regard to the documentary evidences let in by the defence, the learned Public Prosecutor placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Prabhakar B.Poojari Vs. State of Karnataka*** reported in ***1990 (Supp) SCC 146*** and submitted that the Trial Court can rely only on the documents produced before it in connection with the evidences let in by the prosecution in that particular case and not the evidences let in the counter case.



9. We have given our anxious consideration to the submissions made by the respective counsels.

Previous Enmity:-

10. We find from the evidences before the Trial Court that there existed a long standing feud between the family of the accused and the family of the prosecution witnesses. A1 to A3 are brothers. Likewise, A4 and A7 are also brothers and A6 is the son of A8. Thus, almost all the accused are closely related to each other. Similarly, P.W.6 to P.W.8 are the nephews of D1. P.W.9 and P.W.12 are the brothers of P.W.2 and P.W.3 respectively. While P.W.15 is the sister of P.W.1, P.W.16 is his wife. P.W.18 is the father of D2 and P.W.23 is the son of D1. Thus, on the side of the prosecution also, almost all the eye witnesses and other witnesses are closely related to each other.

11. Some of the evidences before the Trial Court, which finds corroboration with regard to the grudge which both the parties carried against each other are that, the earlier accomplices of D2 and P.W.3 in the illegal sand transportation activities, withdrew their association with A1 and joined P.W.1's group. When the villagers of Soriyankuppam Village



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had put up a shed for collecting money from the illegal sand transporters for renovating their temple car, A1, A2 and A6 had dismantled the shed on 13.10.2009 at 01.00 P.M., owing to which a tussle broke between the parties. These facts were spoken to by P.W.1 to P.W.4, P.W.6, P.W.8 and P.W.10. These incidents have been projected by the prosecution, as motive for the occurrence that took place on 13.10.2009. There does not appear to be any serious contradictions in the oral testimonies of the above witnesses who spoke about the prior incidents.

12. If we go by the facts of the case projected by the prosecution, the present evidences let in by the aforesaid witnesses may suggest previous enmity which the accused group had against the prosecution witnesses group, as a motive for committing the double murder. However, we hasten to record here that rather than terming the past incident as motive for the occurrence, we may record these prior incidents only as a serious grudge which both the parties carried against each other. We have made this conscious recording for reasons which would be reflected in the succeeding portions of our judgment.

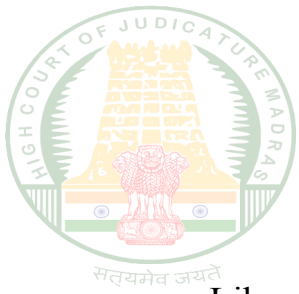


Medical evidence:-

WEB COPY 13. Before the Trial Court, the prosecution had examined Dr.Diwakar-P.W.25, who had conducted the postmortem on both the bodies of D1 and D2. Insofar as the external injuries, which he detected on the body of D1 is concerned, he had noted the following injuries:-

“ABRASIONS:

- 1) 13cm x 1/2cm, over the back of right shoulder;
- 2) 14cms x 1cm, over the left side outer chest;
- 3) 11cm x 1/2cm, over the outer aspect of right thigh;
- 4) 9cms x 1/4cm, over the front of left thigh;
- 5) 5cms x 1 1/2cms, over the back of right foot.
- 6) An oblique, incised gaping wound of 7cms x 1cm, of the head. over the vertex
- 7) An oblique, incised sutured wound of 10cms, over the mid-occipital area of the head.
- 8) A vertical, incised gaping wound of 2cms x 1cm, over the left side of the lower lip.
- 9) A vertical, incised sutured wound of 3cms, over the back of Rt. elbow.
- 10) An oblique, incised sutured wound of 1/2 x 1/2 cm, over the right little finger..
- 11) An oblique, incised gaping wound of 3cms x 1cm, over the web of left little finger and ring finger.
- 12) An oblique, incised sutured wound of 4cms, over



the back of left heel.”

Likewise, he had deposed, touching upon the injuries which he found in the body of D2, in the following manner:-

“*ABRASIONS:*

- 1) 2cms. x 1cm, over the right side back of chest;*
- 2) 1/2 cm x 1/4cm, over the back of left forearm;*
- 3) 2cm x 1cm, over the front of left knee;*
- 4) 3cms x 2cms, over the left ankle.*
- 5) An oblique, incised sutured wound of 8cms over the left frontal area of the scalp, with diffuse bruising beneath.*
- 6) An oblique, incised sutured wound of 5cms, over the left temporoparietal area of the scalp, with diffuse bruising beneath.”*

These injuries were recorded in the postmortem certificates (Ex.P.24 and Ex.P.26). In his final opinion reports (Ex.P.25 and Ex.P.27) of both D1 and D2, P.W.25 had opined that the cause of death was due to the head injuries sustained by both the deceased.

14. When the material objects, namely knives and casuarina logs, were shown to P.W.25 during the trial, he had stated that the injuries of both D1 and D2 could have been caused by these weapons. On an overall appraisal of the evidences let in by the postmortem doctor, as well as the



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post mortem certificates, we have no difficulty in holding that the death of D1 and D2 was due to culpable homicide.

Occurrence:-

15. On 13.10.2009 at 01.00 P.M., when A1, A2 and A6 had destroyed the thatched shed put up by the prosecution witnesses and other villagers, the Police had intervened and summoned both the parties to come to the Police Station situated at Cremation road. Consequently, when both the deceased, along with P.W.2, P.W.4 and P.W.6 were on their way to the Police Station, via the Cremation road, they were intercepted by all the nine accused who were armed with deadly weapons. A scuffle broke between them and the prosecution claims that all the accused had attacked both the deceased, as well as P.W.1 and P.W.2 with knives (M.O.1 to M.O.5) and casuarina logs (M.O.6 to M.O.9). The prosecution has projected P.W.1 to P.W.10 as eye witnesses to these incidents, among which P.W.1 and P.W.2 are the injured eye witnesses. The eye witnesses have also spoken about the overt acts of each of the accused when they had assaulted D1, D2, as well as P.W.1 and P.W.2, apart from the weapons which they carried. Almost all the eye witnesses corroborate to the overt acts of each of the accused, as well as the weapons which they



had used during the assault.

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16. We find certain minor contradictions in these overt acts, which may not be substantive enough to discredit their presence in the SOC. Thus, an overall appreciation of the oral testimonies of these ocular witnesses, may suggest that all the accused had indulged themselves in the incident and had attacked D1, D2, P.W.1 and P.W.2 with M.O.1 to M.O.9.

17. To this extent, the findings of the Trial Court, placing the eye witnesses at the SOC, as well as attributing the overt acts on the accused named by the eye witnesses, may be correct. But, there appears to be a serious lacuna in the investigation of the prosecution which may have a substantive bearing to their entire case, which we shall now deal with.

First information of the incident:-

18. We had already recorded about the long standing feud between the families of the accused and prosecution witnesses. On the fateful day, a complaint was given by A4 against D1, D2, P.W.1 to P.W.5, stating that on 13.10.2009 at about 04.30 P.M., all the accused, in prosecution of

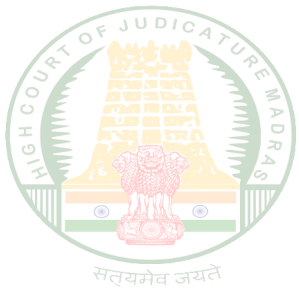


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their common object, formed themselves as members of an unlawful assembly and by arming themselves with deadly weapons, such as knives and casuarina logs, rioted and assaulted A1 and A3 causing grievous injuries. This complaint was registered by the Bahour Police Station in Crime No.151 of 2009. On completion of the investigation in this complaint, a charge sheet came to be filed on 01.07.2010 against P.W.1 to P.W.5, for the offences under Sections 147, 148, 324, 326 and 307 r/w 149 IPC. Since D1 and D2 had expired while undergoing treatment at the hospital on 13.10.2009 and 14.10.2009 respectively, the charges against them were recorded as abated.

19. After registration of the first information in Crime No.151 of 2009, the Bahour Police Station has recorded the second information from P.W.1, touching upon the same incident that occurred on 13.10.2009 at 04.45 P.M., as Crime No.152 of 2009 for the offences under Sections 147, 148, 307, 324 and 427 r/w 147 IPC. The genesis of registration of the second complaint has been spoken to by the Sub-Inspector of Police (P.W.28) attached to Bahour Police Station, as well as its Investigation Officer (P.W.29) in this case.



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20. According to P.W.28, when he had received an information that on 13.10.2009 at about 05.00 P.M., a group of persons were indulging in an assault and that the injured persons were admitted to the Government Hospital, Puducherry by Police and private vehicles, he had gone to the hospital and recorded the oral complaint given by P.W.1 at 07.15 P.M. Thereafter, he had returned to the Police Station and registered P.W.1's complaint as Crime No.152 of 2009. As per the oral testimony of P.W.29, on 13.10.2009, when he received the FIR in Crime No.152 of 2009 from P.W.28, along with the statements recorded by him from similar witnesses, he had commenced the investigation. He had further deposed that during the course of investigation, he was informed that P.W.1, P.W.2, D2 and several other persons had also assaulted A1, A3 and A4, which was also registered in Crime No.151 of 2009 and that P.W.1, P.W.2, D1 and D2, along with A4 and A5, were admitted in the Government Hospital, Puducherry.

21. P.W.29, during the cross examination, has stated that while investigating the first complaint in Crime No.151 of 2009 and after filing the final report, admitted that he had questioned the witnesses as to how A1, A3 and A4 had sustained injuries. Curiously, the prosecution, though

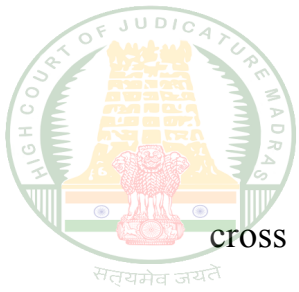


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had admitted that A1, A3 and A4 have also sustained grievous injuries, they had suppressed the injuries on the accused during the investigation and filed a final report in Crime No.152 of 2009. During the course of cross examination of P.W.29, the defence had marked the wound certificates of A1, A3 and A4 as Exs.D.3 to D.5 respectively. Ex.D.3 is the wound certificate of A1 issued by the Primary Health Centre, Bahour, wherein it has been recorded that A1 had sustained multiple 'grievous' injuries in the right temporoparietal region with brain contusion, which was reported as a result of the assault on 13.10.2009 at 04.30 P.M. Ex.D.3 also records that A1 was admitted as an in-patient between 14.10.2009 and 24.10.2009. Ex.D.4 is the wound certificate of A3 which also records simple injuries on his forearm as a result of the alleged assault occurred on 13.10.2009 at 04.30 P.M. So also, Ex.D.5, which is the wound certificate of A4, records the multiple simple injuries, including a deep cut injury on the back and right thigh.

22. P.W.28, during the course of cross examination, had admitted that after registering the first complaint in Crime No.151 of 2009 and recording the statements of some witnesses, P.W.29 had taken over the investigation on the first complaint. The Investigation Officer also, in his



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cross examination, has not denied about the first complaint, but rather had admitted, in several words, about his investigation over the complaint in Crime No.151 of 2009.

23. When the Bahour Police Station had registered both the complaints in Crime No.151 of 2009 and Crime No.152 of 2009, arising out of the same occurrence, the prosecution had let in evidences before the Trial Court on the investigation conducted by them in Crime No.152 of 2009, but had suppressed the existence of the complaint in Crime No.151 of 2009.

24. When the Investigation Officer receives a complaint and counter complaint arising out of the same transaction, he is generally required to enquire into both of them and to charge the case where the accused were the aggressors and close the other complaint or refer both the cases if he should find them untrue. He should thereafter place before the court a definite case for its acceptance. In other words, the Investigating Officer should not accept one complaint and examine only witnesses who support it and give no explanation at all for the injuries caused to the other side. It is also the duty of the Investigating Officer to



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exhibit the counter complaint in the Court and prove the medical certificates of persons wounded on the opposite side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the court to enable it to arrive at the truth and just decision. But there may also arise a situation in group clashes predominantly between two groups involved in communal rivalry, illegal criminal activities, political rivalry, etc., wherein both parties may be aggressors, who have caused grievous injuries on each other. In such cases, when the evidences establish the possibility of the persons in both the groups to have been the aggressors, the Investigation Officer may file positive final reports against the offenders in both the groups, against whom there are evidences of commission of cognizable offences. But the general rule is that when there are case and counter case registered, it is the duty of the Investigation Officer to properly explain the registration of the counter case, as well as the injuries sustained by the persons in the counter case.

25. Contrary to the aforesaid procedure, the Investigation Officer, in the present case, had admittedly examined the witnesses, who had supported his case in Crime No.152 of 2009 and had suppressed the

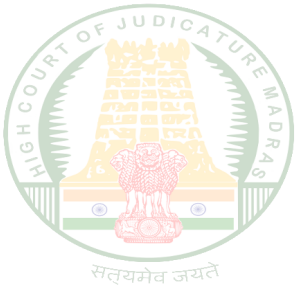


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existence of the counter case in Crime No.151 of 2009, which culminated into S.C.No.68 of 2010. The pendency of the counter case in S.C.No.68 of 2010 have been admitted by P.W.1 and P.W.2, who are the injured eye witnesses, as well as P.W.3 and P.W.4, who are claimed to be eye witnesses to the occurrence, as well as P.W.28-Sub-Inspector of Police who had registered the case in Crime No.151 of 2009 and conducted the further investigation. P.W.29, who had conducted the investigation in Crime No.151 of 2009, also had admitted in his chief examination about the registration of the complaint in Crime No.151 of 2009 (S.C.No.68 of 2010). The relevant portions of their admissions are as follows:-

“P.W.1 – 13.10.2009 அன்று மாலை 4.15 மணிக்கு நானும் என் தரப்பை சார்ந்தவர் இந்த வழக்கில் உள்ள 1வது, 3வது மற்றும் 4வது எதிரிகளை அடித்து கொடுங்காயம் ஏற்படுத்தி கொலைமுயற்சி செய்ததாக பாகூர் காவல் நிலையத்தில் வழக்கு பதிவு செய்து அந்த வழக்கு S.C.No.68 of 2010 இதே நீதிமன்றத்தில் நடப்பது தெரியும்.

P.W.2 – என் மீதும் எங்கள் தரப்பினர் மீதும் இளங்கோ, ஐயனார், ரகு என்ற வழக்கு S.C.No.68 of 2010 இந்த நீதிமன்றத்தில் நடந்து வருகிறது தெரியும். அந்த 3பேருக்கு



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எங்கு வைத்து யாரால்காயம் ஏற்பட்டது என
போலிசாரிடம் சொல்லவில்லை என்னிடம்
விசாரிக்கவில்லை.

P.W.3 – 13.10.2009 அன்று மாலை
4.15மணிக்கு எங்கள் தரப்பினர் இளங்கோ, ரகு,
ஐயனார் வெட்டி காயப்படுத்தியதாக என்ற
வழக்கு S.C.No.68 of 2010 இந்த நீதிமன்றத்தில்
நிலுவையில் உள்ளது.

P.W.4 – இளங்கோ, ரகு, ஐயனார்
ஆகியோரை காயப்படுத்தி கொலை முயற்சி
செய்ததாக S.C.No.68 of 2010 வழக்கு இந்த
நீதிமன்றத்தில் உள்ளது. அந்த வழக்கில்
3வது எதிரி நான்.

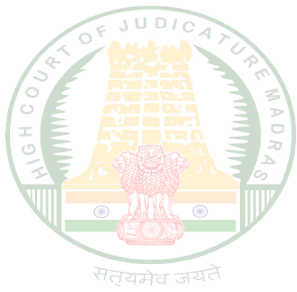
P.W.28 – மருத்துவமனையில் இருந்த
இளங்கோவிடம் நான் வாக்குமூலம் எதுவும்
வாங்கவில்லை. நிலைய பொது நாட்குறிப்பில்
14.10.2009 அன்று நிலைய தலைமை காவலர்
1472 தேர்வுநிலை தலைமை காவலர் 1335
யிடம் 4.30 மணிக்கு ஒப்படைத்ததாக உள்ளது.
குற்ற எண் 151/2009 வழக்கு விசாரணைக்காக
ஒப்படைத்ததாக வாசகம் உள்ளது. பாகூர்
காவல் நிலைய குற்ற எண் 151/2009
வழக்கினை நான் தான் விசாரணை
செய்தேன்.



.....

குற்ற எண் 151/2009 வழக்கின் நான் தான் முபமையாக புலன் விசாரணை செய்து ஆய்வாளர் வசம் ஒப்படைத்தேன். ஆய்வாளர் கோப்பினை பார்த்து இறுதி அறிக்கை மட்டும் தாக்கல் செய்தார். ஆய்வாளர் அலுவலகம் பாகூர் காவல் நிலையத்திலே உள்ளது என்றால் சரிதான். குற்ற எண் 151/2009 மற்றும் 152/2009 வழக்குகளின் கோப்புகளை ஆய்வாளர் பரிசீலனை செய்தார்.

P.W.29 – இந்த வழக்கின் விசாரணையின்போது எதிரிகளான இளங்கோ, ஐயனார், ரகு ஆகியோர்களை எதிர்தரப்பைச் சேர்ந்த கலியபெருமாள், ஞானமூர்த்தி, ஞானபிரகாசம் மற்றும் பலர் தாக்கியதாக இதற்கு முன்பாக குற்ற எண் 151/2009 இதச பிரிவுகள் 147, 148, 307, 324 உடனினைந்த பிரிவு 149 என்ற வழக்கு பதிவு செய்யப்பட்டிருந்தது. இந்த வழக்கில் சம்மந்தப்பட்ட அடிபட்ட நபர்களான கலியபெருமாள், ஞானமூர்த்தி, பரஞ்சோதி மற்றும் ஞானபிரகாசம் ஆகியோரும் எதிர் தரப்பைச் சேர்ந்த அடிபட்ட ஐயனார், ரகு ஆகியோர் புதுவை அரசு மருத்துவமனையில் சிகிச்சைக்காக அனுமதிக்கப்பட்டிருந்தார்கள்.”

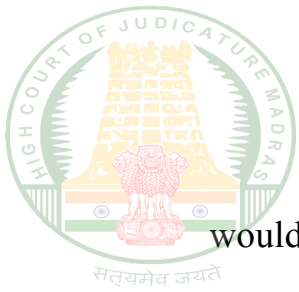


26. As stated earlier, almost all the prosecution witnesses, who have been projected as eye witnesses, are not only closely related to each other, but were also inimically disposed against the accused group. When P.W.1 to P.W.4, P.W.28 and P.W.29 have categorically deposed before the Trial Court about their knowledge of the case in S.C.No.68 of 2010, the prosecution ought to have satisfactorily explained the circumstances under which the counter case in S.C.No.68 of 2010 was registered against P.W.1 to P.W.5, D1 and D2. The defence have also marked the final report in Crime No.151 of 2009 as Ex.D.6 through P.W.29, which corroborates the statements made by the aforesaid witnesses.

Injuries sustained by A1, A3 and A4:-

27. Apart from the suppression of the counter case in S.C.No.68 of 2010, the fact that A1, A3 and A4 had also sustained injuries in the group clash that occurred on 13.10.2009 between 4.30 and 4.45 P.M., have also been suppressed by the prosecution in their investigation.

28. The Hon'ble Supreme Court, in several of its decisions, including the decision in *Lakshmi Singh's case (supra)*, had had held that, non-explanation of the injuries of the accused by the prosecution



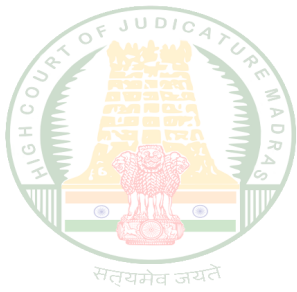
would be fatal to their case, unless the injuries sustained by the accused were minor and superficial.

29. Likewise, in ***Nand Lal and Others Vs. State of Chhattisgarh*** reported in (2023) 10 SCC 470, the prosecution had suppressed the FIR of a counter case and had also failed to explain the injuries sustained by the accused. While analysing the consequences of such a grave omission, it was held that such omission is fatal, in the following manner:-

“25. We will first consider the issue with regard to non-explanation of injuries sustained by Accused 11 Naresh Kumar. In Lakshmi Singh v. State of Bihar [(1976) 4 SCC 394 : 1976 SCC (Cri) 671] , which case also arose out of a conviction under Section 302 read with Section 149 IPC, this Court had an occasion to consider the issue of non-explanation of injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus: (SCC pp. 401-402, para 12)

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

(1) that the prosecution has suppressed the



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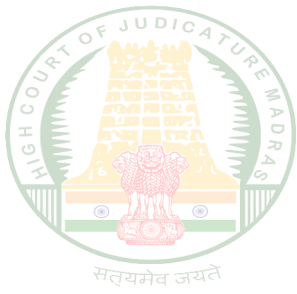
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genesis and the origin of the occurrence and has thus not presented the true version;

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

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

*The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested,*



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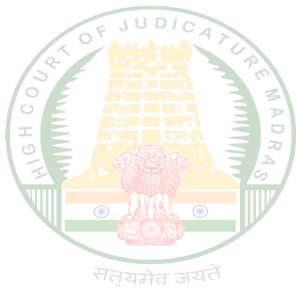


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so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

26. *A similar view with regard to non-explanation of injuries has been taken by this Court in State of Rajasthan v. Madho [1991 Supp (2) SCC 396 : 1991 SCC (Cri) 1048], State of M.P. v. Mishrilal [(2003) 9 SCC 426 : 2003 SCC (Cri) 1829] and Nagarathinam v. State [(2006) 9 SCC 57 : (2006) 3 SCC (Cri) 212].*

27. *Undisputedly, in the present case, the injuries sustained by Accused 11 Naresh Kumar cannot be considered to be minor or superficial. The witnesses are also interested witnesses, inasmuch as they are close relatives of the deceased. That there was previous enmity between the two families, on account of election of sarpanch, has come on record. As observed by this Court in Ramashish Rai v. Jagdish Singh [(2005) 10 SCC 498 : 2005 SCC (Cri) 1611], previous enmity is a double-edged sword. On one hand, it can provide motive and on the other hand, the possibility of false implication*



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cannot be ruled out.

28. We have already seen hereinabove the injuries sustained by Accused 11 Naresh Kumar. Much prior to lodging of the FIR at 3.15 a.m. on 4-11-2006 by Khomlal, the police had taken Accused 11 Naresh Kumar for medical examination. The memo forwarding Accused 11 Naresh Kumar for medical examination to medical officer mentions that Accused 11 had informed the police that at around 8.30 p.m., he was assaulted by Atmaram (PW 1). Undisputedly, the prosecution has suppressed information with regard to the said incident. The prosecution has also suppressed the FIR lodged by Atmaram (PW 1). It is thus clear that the prosecution has attempted to suppress the real genesis of the incident. Taking into consideration this aspect of the matter, coupled with the non-explanation of the injuries sustained by Accused 11 Naresh Kumar, we are of the considered view that Accused 11 Naresh Kumar is entitled to benefit of doubt.”

30. In the instant case, Ex.D3, which is the wound certificate of A1, records that the injuries were sustained by A1 on his vital organs and



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that they were grievous injuries. The record shows that A1 had been an inpatient for ten days at the Primary Health Centre, Bahour and thereafter was shifted to further treatment at the Apollo Hospital, Chennai. Ex.D.3 records multiple injuries in right temporoparietal region with depressed and underlying brain contusion, turning the injuries to be “grievous” in nature. Similarly, the accident registers of A3 and A4 dated 13.10.2009 have also been marked by the defence as Ex.D.4 and Ex.D.5 respectively. While Ex.D.4 records the cut injuries on the right forearm of A3, Ex.D.5 records multiple injuries with deep cut injury on the back, apart from a laceration in the right thigh of A4. Both Ex.D.4 and Ex.D.5 show these injuries to be simple in nature.

31. Interestingly, A1, A3 and A4 have been admitted to the Primary Health Centre at Bahour by a Police Constable, namely PC 1472. When P.W.28 was shown the general diary of Bahour Police Station for the period between 05.10.2009 and 14.10.2009, during cross examination, he had admitted about the recordings therein that PC 1472 had assigned the case particulars of Crime No.151 of 2009 to the Selection Grade Head Constable, namely, HC 1335 on 14.10.2009 at 4.30 P.M. P.W.28 had also admitted in the cross examination that he was the one who had conducted



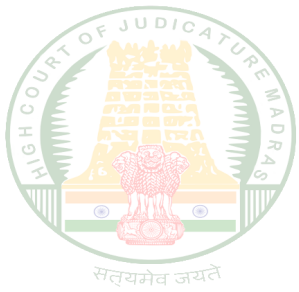
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the investigation, which has already been extracted above. Thus, when the Police were very much aware of the injuries sustained by A1, A3 and A4 and also about the fact that the eye witnesses in the prosecution group were closely related to each other and had serious grudge against the accused group, they ought to have satisfactorily explained the cause of the injuries on the accused also, failure of which will have fatal consequences, as held in the aforesaid decisions.

Evidentiary value of defence witnesses:-

32. An incidental issue that may arise for consideration is as to what weightage could be given to the credibility of the defence witnesses *vis-a-vis* the prosecution evidences.

33. In the case of *State of Haryana Vs. Ram Singh* reported in **(2002) 2 SCC 426**, the Hon'ble Supreme Court had noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one and that the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. It was further held that the issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on par with that of the prosecution.



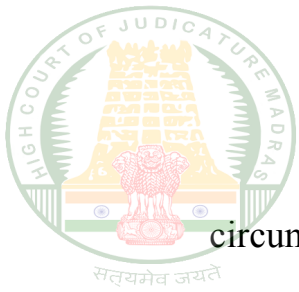
34. In the case of ***Munshi Prasad and Others Vs. State of Bihar***

reported in **(2002) 1 SCC 351**, the Supreme Court had also taken a view that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. A similar view was taken in the case of ***Dudh Nath Panedy Vs. State of Uttar Pradesh*** reported in **(1981) 2 SCC 166**.

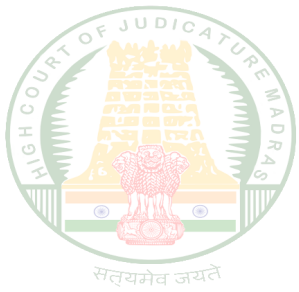
35. The evidences, which the prosecution had wilfully suppressed and failed to produce the necessary documents before this Court, have been marked by the defence through the Investigation Officer-P.W.29, as Ex.D.1 to Ex.D.5. In the light of the *ratio decidendi* of the Hon'ble Supreme Court in the aforesaid decisions, we are of the view that the Trial Court ought to have looked into these vital piece of evidences, viz., Ex.D.1 to Ex.D5, the presence of which were spoken to by P.W.28 and P.W.29 themselves, rather than totally ignoring them.

Theory of the defence:-

36. On completion of the investigation, the Trial Court had put each of the material circumstances of the evidences against the accused to couple them to render explanation to such incriminating



circumstances, under Section 313 Cr.P.C. When A1 was confronted with the incriminating circumstance of having given his confession statement to the Investigation Officer, based on which M.O.1 to M.O.9 were recovered, he specifically denied the same, claiming that he had not given any confession statement and that the Police had neither taken him to any place based on the confession, nor was any material objects recovered through him. Similarly, when he was questioned about the incriminating circumstance that he was arrested, after he had absconded and was hiding at Pattampakkam Village, he denied about the arrest and further stated that the Police had asked him to be a witness in the case relating to the injuries sustained by A1, A3 and A4. Finally, when he was asked to give his remarks with regard to his case, he had specifically stated that he was a victim in this case who was in an unconscious condition due to the assault. After the first aid at Bahour, he had taken treatment at Chennai and only after 12 days, he had regained consciousness. He specifically stated that it was a false case foisted against him and that the prosecution witnesses had attacked them when they were going to Bahour Police Station and the first complaint with regard to this incident was given only by A4.



37. Likewise, when A2 was questioned under Section 313 Cr.P.C.

with regard to the confession and recovery, he gave a similar reply as that of A1, denying the confession and recovery.

38. Similarly, when A3 was questioned under Section 313 Cr.P.C., about the confession and recovery, he also denied of having given any confession or recovery based on his confession. Furthermore, when he was specifically questioned as to any other remarks he wishes to be made in this case, he stated that the Police have foisted a false case and that he and the other accused were attacked by the prosecution witnesses with knives and casuarina logs, for which he had given complaint at Bahour Police Station.

39. A4, while questioned under Section 313 Cr.P.C., also stated that it was a false case and that the prosecution witnesses had assaulted them with knives and casuarina logs causing grievous injuries, for which he had given a complaint to Bahour Police Station.

40. The object of Section 313 Cr.P.C. is to establish a direct dialogue between the Court and the accused, so as to afford the accused a



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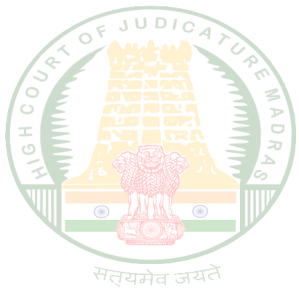
fair chance to defend himself, as laid down by the Hon'ble Supreme

Court in the case of ***Raj Kumar alias Suman Vs. State (NCT of Delhi)***

reported in **(2023) 17 SCC 95**. In this background, when some of the accused have categorically claimed that they were victims and were assaulted by some of the prosecution witnesses and they had already given a complaint in this regard, touching upon the same occurrence, the Trial Court ought to have noted the fact of suppression of the counter case by the prosecution and their failure to explain the grievous injuries sustained by A1, as well as the other injuries by A2, A3 and A4, by considering the evidences let in by the defence, namely Ex.D.1 to Ex.D.5. The failure in not having exercised these aspects, a situation has arisen where there is no clarity as to who were the victims; who were the aggressors; and who exercised the right of self defence in this case.

41. Thus, the very genesis of the occurrence is surrounded by suspicion, which would cast a serious doubt on the prosecution's case, sufficient enough to hold it against them, as held in ***Lakshmi Singh's case (supra)***, in the following manner:-

“12..... According to the doctor Injury 1 was grievous in nature as it resulted in compound

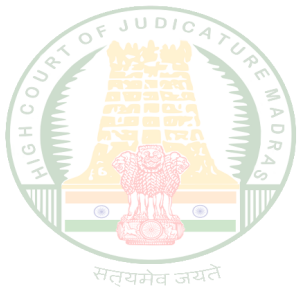


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fracture of the fibula bone. The other two injuries were also serious injuries which had been inflicted by a sharp-cutting weapon. Having regard to the circumstances of the case there can be no doubt that Dasrath Singh must have received these injuries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



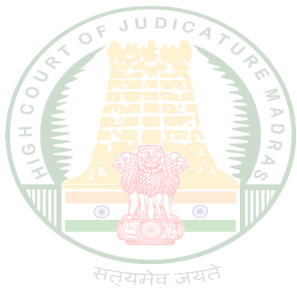
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prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judges without appreciating the ratio of this Court in Mohar Rai v. State of Bihar [AIR 1968 SC 1281 : (1968) 3 SCR 525 : 1968 Cri LJ 1479] tried to brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very doctor who examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasrath Singh also. In the case referred to above, this Court clearly observed as follows:

“The trial court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of PW 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries



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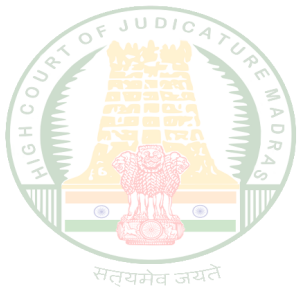


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at the time of the occurrence is highly probabilised. Under these circumstances the prosecution had a duty to explain those injuries ... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants.”

This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In Puran Singh v. State of Punjab [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] which was also a murder case, this Court, while following an earlier case, observed as follows: [SCC p. 531 : SCC (Cri) p. 621, para 20] “In State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] one of us (Untwalia, J.) speaking for the Court, observed as follows:

“In a situation like this when the prosecution fails to explain the injuries on the person of an



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accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.

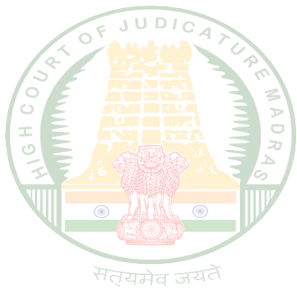
(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four-corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.”

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

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



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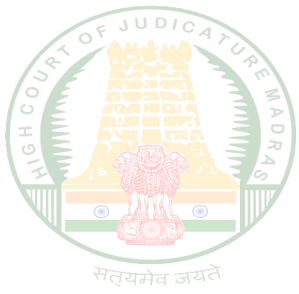


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(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

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

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten



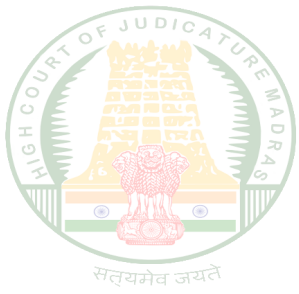
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to add that as held by this Court in State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

42. In the light of the above decision of the Hon'ble Supreme Court and by taking into the substantive pieces of evidence available before us to establish the registration of the earlier complaint in Crime No.151 of 2009, as well as the grievous injuries sustained by A1, apart from the other injuries sustained by A3 and A4, we have no difficulty in holding that the prosecution has miserably failed to prove the case against all the accused and fix the culpability on the accused.



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43. By placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Nathi Lal and Others Vs. State of Uttar Pradesh and Another*** reported in ***1990 (Supp) SCC 145***, the learned Public Prosecutor made a faint attempt to state that the evidences recorded in Crime No.151 of 2009 cannot be looked into, for the purpose of the case in Crime No.152 of 2009. We do not agree with his submissions. Such a procedure is prescribed for the Trial Court before which two counter cases are adjudged. In such cases, the Trial Court is required to try both the cases one after the other. After recording the evidences in one case and hearing the arguments, it shall reserve the case for judgement and then proceed to hear the cross case. Thereafter, the Trial Court shall pass two separate judgments and while doing so, it cannot place reliance on the evidences recorded in the other counter case, but shall adjudge the evidences of each cases independently.

44. In the light of these discussions and findings, we are of the affirmed view that the Trial Court has not only failed to appreciate the vital fact of suppression of the counter case by the prosecution, the injuries sustained by the accused, but has also not properly appreciated the defence evidences. In view of the same, the recording of guilt against



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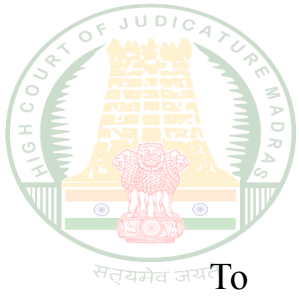
the accused and the consequential conviction made by the Trial Court cannot be sustained.

45. For all the foregoing reasons, the impugned judgment 27.03.2019 made in S.C.No.21 of 2011 on the file of the II Additional Sessions Judge at Puducherry, is set aside. Consequently, all appellants/accused are acquitted of all the charges and are directed to be released forthwith, unless their confinement is required in connection with any other case. The fine amount, if any, paid by the appellants shall be refunded and the bail bonds, if any, executed shall stand discharged. Accordingly, both the Criminal Appeals stand allowed.

[M.S.R.,J] [V.L.N.,J]
20.08.2025

Index:Yes
Neutral Citation:Yes
Speaking order
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Note: Issue order copy on 20.08.2025



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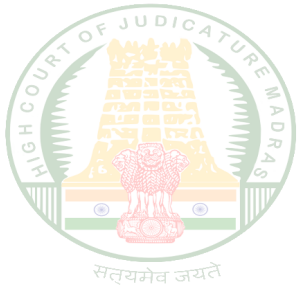
To
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1.The II Additional Sessions Judge,
Puducherry.

2.The Superintendent of Prisons,
Central Prison, Puducherry.

3.The Inspector of Police,
Bahour Police Station,
Puducherry.

4.The Public Prosecutor,
High Court of Madras.



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M.S.RAMESH, J.
and
V.LAKSHMINARAYANAN, J.

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Pre-delivery common judgment made in
Crl.A.Nos.202 & 205 of 2019

20.08.2025