



CRL.A.(MD)Nos.174, 249 and 860 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.03.2026

Pronounced on : 15.04.2026

CORAM:

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

CRL.A.(MD)Nos.174, 249 and 860 of 2023
and
CRL.MP(MD).No.6379 of 2026

CRL.A.(MD).No.174 of 2023:

1.Suresh @ Vazhakkai Suresh Kumar
2.Suresh
3.Baskar

... Appellants / Accused Nos.
1,2 & 4

Vs.

The State through
The Inspector of Police,
Kottar Police Station,
Kanyakumari District
At Nagercoil
Crime No.1315/2012

... Respondent / Complainant

PRAYER: Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, against the judgment and order dated 15.12.2022 in S.C.No.136 of 2018 on the file of the learned Additional District and

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Sessions Judge, Fast Track Court, Kanyakumari at Nagercoil.

For Appellant : Mr.A.Ramesh,
Senior Counsel
for M/s.Ajmal Associates
for Mr.K.Althaf Sheriff
for Accused No.1

Mr.N.Anandha Padmanaban
Senior Counsel
for M/s.APN Law Associates
for Mr.S.Srikanth
for Accused No.2

Mr.T.Lajapathy Roy
Senior Counsel
for Mr.G.Anto Prince
for Accused No.4

For Respondent :Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

CRL.A.(MD).No.249 of 2023:

Vignesh ... Appellant / Accused No.3
Vs.

The State through
The Inspector of Police,
Kottar Police Station, Kanyakumari District
Crime No.1315/2012 ... Respondent / Complainant

PRAAYER: Criminal Appeal has been filed under Section 374(2) of



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Criminal Procedure Code, against the judgment and order dated 15.12.2022 in S.C.No.136 of 2018 on the file of the learned Additional District and Sessions Judge, Kanyakumari District at Nagercoil.

For Appellant : Mr.S.Xavier Rajini
for Accused No.3

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

CRL.A.(MD).No.860 of 2023:

Varun @ Varukumar @ Kosumuttai ... Appellant / Accused No.5
Vs.

The State through
The Inspector of Police,
Kottar Police Station, Kanyakumari District
Crime No.1315/2012 ... Respondent / Complainant

PRAYER: Criminal Appeal has been under Section 374(2) of Criminal Procedure Code, against the judgment and order dated 15.12.2022 in S.C.No.136 of 2018 on the file of the learned Additional District and Sessions Judge, Kanyakumari District at Nagercoil.

For Appellant : Mr.V.Kathir Velu
Senior Counsel
for Mr.K.Prabhu



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for Accused No.5

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was made by **K.K.RAMAKRISHNAN,J.**)

These criminal appeals have been filed by the appellants against the following conviction and sentence of imprisonment imposed against them vide impugned judgment dated 15.12.2022 in S.C.No.136 of 2018 on the file of the learned Additional District and Sessions Judge, Kanyakumari District at Nagercoil.



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<i>Rank of the accused</i>	<i>Charges/Offences for which convicted (IPC)</i>	<i>Sentence imposed</i>
<i>A1 (Crl.A(MD).No.174 of 2023)</i>	<i>302 r/w 34 120B r/w 302</i>	<i>Life imprisonment with a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment</i>
	<i>148</i>	<i>Rigorous imprisonment for one year</i>
	<i>341</i>	<i>One month simple imprisonment</i>
	<i>307</i>	<i>Rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one year</i>



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A2 (Crl.A(MD).No.174 of 2023)	302 r/w 34	Life imprisonment with a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment each
A3 (Crl.A(MD).No.249 of 2023),	148	One year rigorous imprisonment each
A4 (Crl.A(MD).No.174 of 2023)	341	One month simple imprisonment each
A5 (Crl.A(MD).No.860 of 2023)		
The sentences were ordered to run concurrently.		

2.Brief facts of the case:

2.1. The case of the prosecution is that on 22.08.2012, during a festival at Ashtakaliyamman temple, the deceased Vijayakumar started dancing by sneaking into the group of women and A1 is said to have objected the same and it led to a quarrel between A1 and the deceased. It is the further case of the prosecution that A6 had a love affair with the daughter of the maternal aunt of the deceased and the same was questioned



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by the deceased and as a result, there was a previous enmity between A6 and the deceased. On account of this previous enmity, it is alleged that on 24.08.2012, at about 7.30 p.m., A1 to A14 assembled in front of Bay Watch Audio Shop run by A6 and had conspired to murder the deceased and his family members.

2.2. In furtherance of this conspiracy, on 24.08.2012, at about 9.45 p.m., all the accused unlawfully assembled near the house of the deceased with deadly weapons. A9 to A11 stood guard on the eastern side of the house, while A12 to A14 stood guard on the western side. A7 and A8 restrained the deceased and prevented his movement. Thereafter A1 attacked the deceased with aruval on his right shoulder, right elbow and right wrist. A2 attacked with aruval on the fingers of the right hand and right fore-arm. A3 attacked with aruval on the right hip and right thigh. A4 attacked with aruval on the left hand little finger, left wrist and right side of the abdomen, chest and below the naval. A6 attacked with aruval on the right side of the head, rear portion (occipital region) of the head, right cheek



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and left side of the neck. Consequent to this indiscriminate attack on the deceased, he succumbed to the injuries at the scene of occurrence.

2.3. During the attack, when the father of the deceased (PW1) intervened, it is alleged that A1 attacked him with *aruval* and caused injuries on his left palm.

2.4. P.W.1 lodged a complaint before P.W.25 on 25.08.2022 at about 12:30 a.m. Upon receipt of the said complaint, P.W.25 registered a case in Crime No.1315 of 2022 for the offences under Sections 147, 148, 341, 307 and 302 IPC. The printed First Information Report was marked as Ex.P32 and the copy of the same was forwarded to the Investigating Officer, P.W. 27. P.W.27, on receipt of the FIR at about 2:00 a.m., proceeded to the scene of occurrence. He prepared the Observation Mahazar and Rough Sketch in the presence of witnesses, with the aid of street light. The Rough Sketch was marked as Ex.P34 and the Observation Mahazar as Ex.P35. He examined P.W.1, P.W.9, P.W.11 and other witnesses. At about 3:00 a.m., he recovered blood-stained earth and sample (unstained) earth from the place



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of occurrence under Mahazar, marked as Ex.P36. Subsequently, at about 3:25 p.m., he recovered a vehicle allegedly left behind by the accused under Ex.P37. At about 3:45 p.m., he recovered another vehicle used by another accused. Thereafter, he proceeded to the Government Hospital and conducted inquest over the body of the deceased at about 7:00 a.m. in the presence of Panchayatdars. The Inquest Report was marked as Ex.P39. He also recovered the blood-stained clothes of the deceased under Ex.P40.

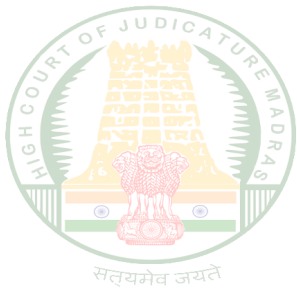
2.5. During the course of investigation, he examined several witnesses and on 26.08.2012 altered the case by including Sections 120B, 302 read with 34, 148, 341, 307 and 302 read with 149 of IPC along with the existing offences, and under Alteration Report was marked as Ex.P41, which was duly forwarded to the Court. On 29.08.2012 at about 10:30 a.m., he arrested the accused persons, namely Suresh @ Vazhakai Suresh Kumar (A1), Varun Kumar (A5), Vinod (A6), Anand (A7) and Ajay (A8) at Sottavala Beach. Based on the voluntary confession given by Suresh Kumar (A1), an aruval (billhook) was recovered. The admissible portion of the confession was marked as Ex.P42 and the recovery mahazar as Ex.P43.

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Similarly, upon the confession of Vinod (A6), another aruval was recovered under Ex.P45, based on the admissible portion of his confession marked as Ex.P44. On the same day at about 6:00 p.m., based on Varun Kumar's confession, weapon was recovered. The admissible portions of his confession was marked as Ex.P46 and the corresponding recovery mahazar marked as Ex.P47. On 04.09.2012, P.W.27 arrested Suresh (A2) and Vignesh (A3) at Christopher Bus Stop in the presence of witnesses Kannan and Gobi. Based on the confession of Suresh (A2) marked as Ex.P48, another weapon was recovered under Ex.P49. Likewise, based on the confession of Vignesh (A3), an aruval was recovered under Ex.P50 and the admissible portion of his confession was marked as Ex.P51. He examined the witnesses Kannan and Gobi. On 13.09.2012, he sent requisition for chemical analysis of viscera. On 30.10.2012, he forwarded the blood-stained clothes for forensic examination. On 09.01.2013, he came to know that the accused Bhaskar had surrendered before the Judicial Magistrate No.II at Nagerkovil. Thereafter, he got police custody of the said accused and, based on his confession, recovered an aruval under Ex.P53, the admissible portion of the confession has been marked as Ex.P52. The



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accused was thereafter remanded to judicial custody. Subsequently, after examining further witnesses, P.W.27 was transferred. The investigation was thereafter taken over and continued by his successor namely P.W.28.

2.6. On 22.03.2014, P.W.28 arrested the accused Venkatesh (A10). Thereafter, he examined several witnesses, including the Medical Officer and Forensic Experts. Subsequently, he was transferred from the said post. His successor, P.W.30, took up further investigation. On 08.02.2014, one accused “Kannan (A9)” was produced before him by the Village Administrative Officer, Manikandan, along with his extra-judicial confession. Based on the said confession, A9 was remanded to judicial custody. Thereafter, on 26.12.2015 at about 12:15 p.m., P.W.30 arrested A. 14, namely Esack, in connection with Crime No.899 of 2015. During interrogation, he is stated to have given a voluntary confession admitting his involvement in the present case. Based on the admissible portion of the said confession (marked as Ex.P54), six aruvals and two motorcycles were recovered under mahazar. P.W.30 thereafter examined further witnesses, including P.W.1. Upon completion of investigation, after collecting all

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relevant materials and examining witnesses, he filed the final report on 23.03.2016 before the learned Judicial Magistrate No.II, Nagercoil, for offences under Sections 120-B, 147, 148, 341, 302, 307 read with 149 IPC. The case was taken on file in P.R.C. No.13 of 2016. Since the offences were exclusively triable by the Court of Sessions, the learned Judicial Magistrate committed the case to the learned Principal Sessions Court, Nagercoil, where it was taken on file as S.C. No.136 of 2018 and made over to the learned Additional Sessions Court (Fast Track), Kanyakumari. Upon appearance of the accused, copies of documents were furnished in compliance with Section 207 Cr.P.C.

2.7. Thereafter, the learned Sessions Judge framed necessary charges against the accused. The accused denied the charges and pleaded not guilty, thereby necessitating trial. During trial, the prosecution examined witnesses (P.Ws.1 to 30) and marked documents (Ex.P1 to P54) and material objects (M.O.1 to 6). After completion of prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them. The accused denied all such



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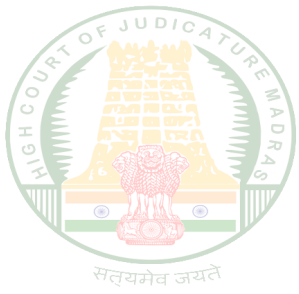
circumstances as false. On the side of the defence, two witnesses were examined as D.W.1 and D.W.2 and two documents were adduced on behalf of the defence as Ex.D1 and Ex.D2. Upon appreciation of the entire oral and documentary evidence, the learned Trial Judge, by judgment dated 13.12.2022, convicted Accused Nos.1 to 5 and acquitted the remaining accused.

2.8. There are totally 14 accused in this case and the trial Court, on appreciation of evidence, acquitted A6 to A14 and convicted A1 to A5 in the manner stated supra.

3. Crl.A.(MD).No.174 of 2023 has been preferred by A1, A2, and A4, Crl.A.(MD).No.249 of 2023 has been preferred by A3 and Crl.A.(MD).No. 860 of 2023 has been preferred by A5.

4. The main grounds that were raised on the side of the appellants are:

4.1. PW1 to PW4 and PW6 are blood relatives of the deceased and



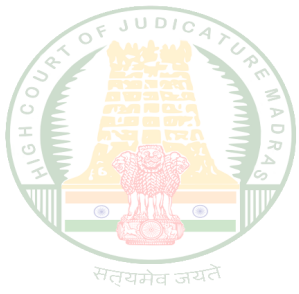
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their very presence at the scene of crime is doubtful, since

(i) the occurrence is alleged to have taken place at 21.45 hrs., on 24.08.2012 and the complaint (Ex.P1) is said to have been given by PW1 at 00.30 hrs., on 25.08.2012, whereas, it has emerged out in the evidence of PW1, PW2 and PW3 that the complaint itself was given only at 4.00 a.m., on 25.08.2012;

(ii) Almost all the eyewitnesses specifically state that the occurrence had taken place in front of Durai Bhavanam, whereas, it is clear from the rough sketch and the observation mahazar that this place is almost 40 feet away from the place of dead body of the deceased, which was virtually on the other side of the road and therefore, the place of occurrence is also questionable;

(iii) PW1 to PW4 and PW5 and PW6 clearly depose that they carried the dead body of the deceased, which was soaked in blood and all their clothes were stained with blood, but, however, the investigating officer has not recovered any clothes of these witnesses to substantiate that they were actually present at the scene of crime and they had taken the deceased to the



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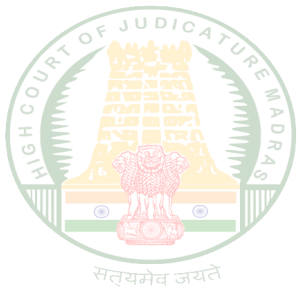
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(iv) The statement of the eyewitnesses was recorded by the investigating officer only on 26.08.2012 and this was admitted by PW27 – investigating officer during cross-examination and no reasons have been given as to why there was almost two days delay in recording the statements of the eyewitnesses;

(v) The statements recorded from the eyewitnesses and almost every other statements recorded from the other witnesses reached the Court only on 25.05.2016 and there is absolutely no explanation as to why it took almost four years for these statements to reach the Court;

(vi) The police station was hardly 3 kms, from the Judicial Magistrate Court, whereas, the express FIR reached the Court only at 6.00 a.m. on 25.09.2012.

4.2. The occurrence had taken place at 9.45 p.m., and the visibility factor looms large in this case and the prosecution in order to establish the same examined PW15, who turned hostile and did not support the case of

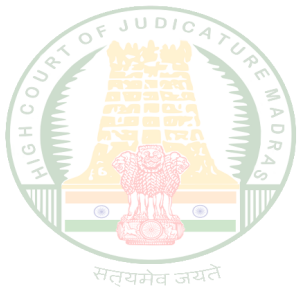


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the prosecution. Hence, the only other evidence available is that of PW26, who did not produce any material to show that she was working as the Executive Engineer in TNEB and she also admitted the fact that she cannot state decisively as to whether the tube light was burning on the date of incident. Only to get over this hitch, it is shown in the rough sketch as if the dead body was lying near the EB post, whereas, the eyewitnesses have stated that the incident took place in front of Duraibhavanam.

4.3. In the light of the serious doubts raised on the credibility of the evidence tendered by PW1 to PW4 and PW6, who are close relatives, the prosecution has not examined even a single independent witness even though many houses were there as shown in the rough sketch.

4.4. The evidence of PW1, who is said to be the injured witness, is unreliable since the wound certificate was not even marked by the prosecution, though it is claimed PW1 had taken treatment with PW18 on 24.08.2012, at 10.45 p.m. Insofar as PW19 is concerned, he was a private Doctor, who is said to have treated PW1 on 25.08.2012 at 3.40 a.m., and he

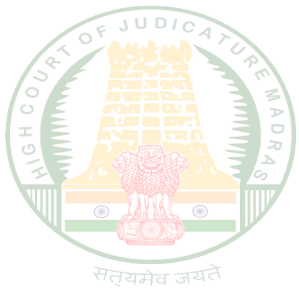


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speaks about the sutures in the palm of PW1 and there is absolutely no indication to show as to who sutured the wound sustained by PW1. Even the said wound was old wound. Hence, the prosecution has not established that PW1 had sustained injuries in the same incident, in which case, he cannot be given the status of injured witness.

4.5. As per the postmortem certificate, the deceased had sustained nearly 50 injuries out of which, 20 injuries are lacerated injuries, 11 are stab injuries and the rest are cut injuries. The alleged weapons that were used for the commission of the crime was neither shown to the Doctor nor to the eyewitnesses to link the weapons with the crime. Even though the weapons used are shown as sickle and knife, none of the witnesses speak about the use of knife and everyone speaks only about sickle.

4.6. The charge was framed and the trial was conducted on the ground of criminal conspiracy, whereas at the last moment, Section 34 of IPC was brought in by way of altering the charges and there is no material to show that there was common intention for the accused.



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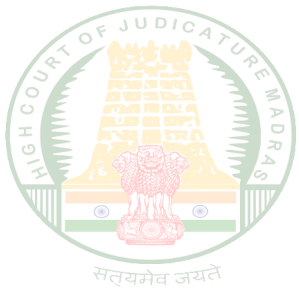
4.7. PW29 specifically states in his evidence that the dead body was taken in a lorry, which was driven by one Ramkumar and his statement was also recorded by PW29. However, neither Ramkumar was examined nor the statement of Ramkumar was made available and if really the lorry was used to carry the body of the deceased, the same should have been seized to see if there are bloodstains in the lorry matching the blood group of the deceased.

4.8. In the light of the discrepancies, when the trial Court had extended the benefit of doubt in favour of A6 to A14, the same benefit of doubt ought to have been extended in favour of A1 to A5 also.

5. Submission of the learned Additional Public Prosecutor :

5.1. The Learned Additional Public Prosecutor submitted that, though the eyewitness (P.W.1) was treated as hostile on account of his inability to identify the accused before the Court, the explanation offered by him ought not to be discarded in toto, but requires due consideration. It was further contended that the examination of the said witness took place after a lapse

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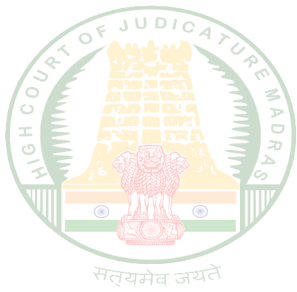


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of nearly eleven years from the date of occurrence, and such prolonged delay reasonably explains his inability to identify the accused in Court. Therefore, the said circumstance, by itself, cannot be a ground to reject the prosecution case. The Learned Additional Public Prosecutor further submitted that the delay in recording the statements of eyewitnesses under Section 161 of the Code of Criminal Procedure does not, per se, render their testimony unreliable, particularly when their evidence is cogent, consistent, and finds corroboration from medical evidence.

5.2. It was also argued that the occurrence in question was brutal in nature, as evidenced by the fact that the deceased sustained more than 40 injuries. The multiplicity and severity of the injuries clearly establish the manner of assault and the involvement of the accused in the commission of the offence. Further, it was contended that lapses on the part of the Investigating Officer, including the non-seizure of bloodstained clothes from the victim or witnesses, cannot enure to the benefit of the accused when there exists reliable ocular and medical evidence establishing the prosecution case. The Learned Additional Public Prosecutor reiterated that



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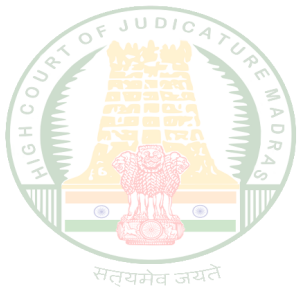
minor discrepancies in the testimony of witnesses, particularly when examined after a considerable lapse of time, are natural and do not affect the core of the prosecution case.

5.3. Lastly, it was submitted that the acquittal of certain co-accused cannot be a ground to extend the same benefit to the present accused, when the available evidence clearly and convincingly establishes their individual role in the commission of the offence. Accordingly, it was prayed that the conviction and sentence imposed upon the accused be confirmed.

5.4. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and the precedents relied upon by them.

6. Point for Determination:

Whether the prosecution has proved the guilt of the appellants/accused beyond reasonable doubt, and whether the



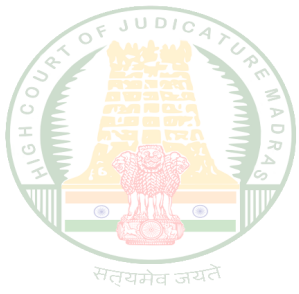
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warrant interference by this Court?*

7. Discussion and finding:

7.1. It is a settled principle of criminal jurisprudence that motive is a double-edged weapon and enmity may be both a cause for the offence and a ground for falsely implicating the accused. When the evidence of eyewitnesses is found to be so inextricably mixed—partly reliable and partly unreliable and the truth is so interwoven with embellishments and falsehood it is impossible to disentangle one from the other and the entire testimony becomes unsafe for reliance and the Court is constrained to reject the evidence in toto.

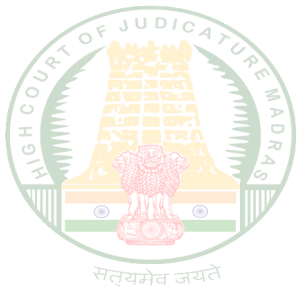
7.2. From the evidence of P.W.7, it is apparent that there existed prior enmity between A1, A6 and the family of the deceased, thereby providing a possible motive for the occurrence. In the present case, both the oral evidence of the prosecution witnesses and the documentary evidence on record disclose the existence of prior enmity between A1 and the family of



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P.W.1 and the deceased. The prosecution case, in brief, is that the deceased and his father were allegedly engaged in the illegal transportation and smuggling of Public Distribution System (PDS) rice. In order to establish the background circumstances and alleged motive, the prosecution examined P.W.7. According to his evidence, on 22.08.2012, a temple festival was conducted at Pattavillai Asthakaliamman Temple, during which there was an orchestra programme (“Adal Padal”). At that time, the deceased, who was allegedly under the influence of alcohol, sneaked into the area earmarked for women devotees and began dancing. This conduct was objected to by A1. In response, the deceased is stated to have criminally intimidated A1, asserting that he was responsible for informing the police about the illegal ration rice activities and further threatened to cause trouble to A1’s auto business. The testimony of P.W.7 further indicates that he subsequently came to know, through newspaper reports, that one Vijikumar had been murdered by unknown assailants. Thus, the prosecution attempts to establish motive through the evidence of P.W.7.



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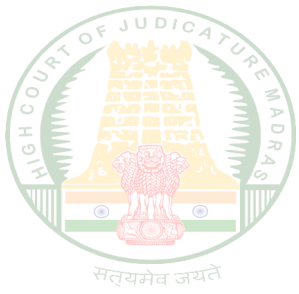
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7.3. The learned trial Judge acquitted Accused Nos.6 to 14, holding that the prosecution failed to prove the case against them even though PW1, 2, 3, 5, 6 clearly deposed that A6 caused murderous assault on the deceased with aruval and A7-14 holding deadly weapons prevented the deceased from escape.

7.4. Therefore, this Court is constrained to examine ,scrutinize and evaluate the remaining part of evidence of P.Ws.1 to 6 implicating A1-5 with more care, caution and circumspection.

8.Discussion on registration of FIR:

8.1. In cases involving the offence of murder, the prompt and proper registration of the First Information Report (FIR), including the accurate recording of the time of receipt of the complaint, constitutes a material safeguard to the prosecution case. The FIR, being the foundational document, is expected to reflect a truthful and contemporaneous account of the occurrence. Any inconsistency or unexplained delay in its registration



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assumes significance and may cast doubt on the veracity of the prosecution version.

8.2. The specific case of the prosecution is that the incident took place at 9.45 p.m., on 24.08.2012 and the complaint was given at 00.30 hrs., on 25.08.2012. The evidence of PW1, PW2 and PW3 establishes the fact that the complaint was given only at 4.00 a.m., on 25.08.2012. In fact, PW1, who is the complainant, specifically states atleast on three occasions during his evidence that the complaint was given only at 4.00 a.m. on 25.08.2012. Further, P.W.6 has unequivocally admitted in her deposition that, as early as 10:30 p.m. on the date of occurrence (i.e., the night of 24.04.2014), police officials, including the Sub-Inspector of Police, Inspector of Police, and the Deputy Superintendent of Police, had already reached the scene of occurrence, examined her , and recorded her statement. P.W.4 also affirmed the same. This material contradiction with respect to the time of lodging the complaint remains unexplained. PW2 clearly deposed that when PW1 was admitted in hospital , she had informed to him about overtact of each accused and the relevant evidence is as follows:

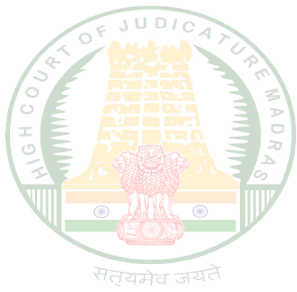


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“சம்பவத்தின்போது வினோத்தும் வெட்டினார் என எனது அப்பாவிடம் நான் சொன்னேனா என்றால் எனக்கு சரியாக ஞாபகமில்லை. வினோத்துதான் விஜிகுமாரின் தலையில் வெட்டினார் என்பதை சம்பவ தினத்தன்றோ அல்லது அடுத்த நாளோ எனது அப்பாவிடம் நான் சொன்னேனா என்றால் சொன்னேன். அதை நான் எனது அப்பா காவல் நிலையத்திலிருந்து வீட்டிற்கு வந்தபோதுதான் சொன்னேனா என்றால் எனது அப்பா மருத்துவமனையில் இருக்கும்போது சொன்னேன். யார், யார் சம்பவத்தை நடத்தினார்கள் என எனது அப்பா என்னிடம் கேட்டபோது நான் சொன்னேனா என்றால் சொன்னேன்.”

8.3. In such an event, the complaint and the FIR coming into existence at 00.30 hrs. on 25.08.2012, becomes questionable and it goes to the root of the matter as to who actually gave the complaint. If the prosecution relies upon the evidence of PW19, who is the Doctor and who treated PW1 on 25.08.2012 at 3.45 a.m., what was stated by PW3 that the complaint was given only after PW1 and PW5 came back from the hospital has to be taken to be correct.

9. The specific evidence of PW23 is that the learned Judicial Magistrate Court is hardly 3 kms., from the police station and the express FIR (Ex.P32) reached the Court only at 6.00 a.m. This clearly coincides



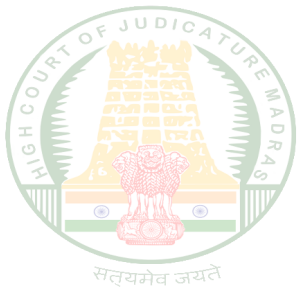
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with the fact that the complaint was given and the FIR was registered at 4.00 a.m. and it reached the Court at 6.00 a.m. In such an event, Ex.P1 and Ex.P32, which are said to have been registered at 00.30 hrs., on 25.08.2012 becomes highly doubtful. The Hon'ble Supreme Court in *Thulia Kali v. State of Tamil Nadu* has held that delay in lodging the FIR, particularly when unexplained, affords scope for embellishment and fabrication, and therefore, such delay must be viewed with suspicion. Applying the above principles, the contradictions regarding the time of receipt of the complaint, coupled with the admitted prior arrival of police authorities and recording of statements, clearly indicate that the earliest version of the occurrence has not been brought on record. Such suppression materially affects the credibility of the prosecution case and renders the FIR doubtful and strikes at the root of the prosecution case.

10. Eyewitness account of the injured eyewitness PW1:

10.1. It is true that in the case of an injured witness, he is placed in a higher pedestal than any other eyewitness and it is generally reliable, since he himself has sustained an injury in the course of the same incident. But, in

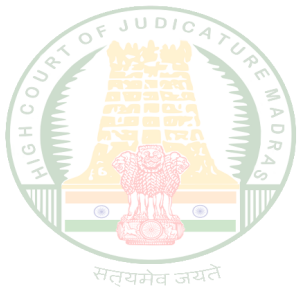


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the case of injured eyewitness, the prosecution is required to establish three foundational aspects: (i) his presence at the scene of occurrence; (ii) that he sustained injuries in the course of the same transaction; and (iii) that he had the opportunity to witness the occurrence. Apart from that, even in the case of an injured witness, it must be subjected to careful scrutiny, if circumstances and materials are available on record to suggest that he may have falsely implicated the accused persons for some reasons. Useful reference can be made to the judgment of the Apex Court in ***Indira Devi v. State of Himachal Pradesh*** reported in **2016 (12) SCC 770**.

10.2. PW1 is the father of the deceased. He deposed that at about 9.45 p.m., on 24.08.2012, he saw A1 to A6 attacking the deceased with deadly weapons indiscriminately and he also gives specific details on the weapon used and the overt act attributed to each of the accused. He further states that this incident had taken place in front of Duraibhavanam, where street light was available. He further states that he was attacked by A1, as a result of which, he sustained injury on his left palm.

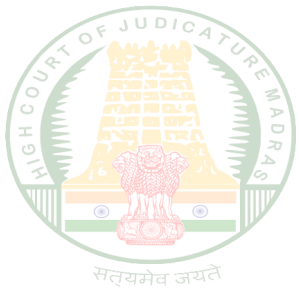


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WEB COPY 10.3. It must be first seen as to whether PW1 had really sustained injury in the very same incident, where his son was done to death. For this purpose, the evidence of PW18 and P19 assumes significance.

10.4. PW18 states that on 24.08.2012, at about 10.45 p.m., PW1 and his son/the deceased came to Kanyakumari Government Medical College and Hospital. He found that PW1 had sustained lacerated wound in his left hand measuring 18 x 2 x 3 cms. He further states that PW1 was not interested in taking treatment as an inpatient and therefore, he was not able to properly treat PW1. Ex.P18 was marked in this regard where it is stated that there was an alleged assault by six known persons by means of aruval and knife *near Hindu college* and that PW1 was not willing for admission.

10.5. PW19 is a Doctor working in a private hospital named as Sriram Hospital. PW1 is said to have gone to this Doctor on 25.08.2012 early in the morning at 3.40 a.m. PW19 in his evidence states that he found the wound sutured and he gave medicines and thereafter PW1 took treatment as outpatient. He issued Ex.P20.



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10.6. Neither the evidence of PW18 nor the evidence of PW19 nor the documents marked as Ex.P18, P19 and P20 establish that PW1 had sustained the injury in the same incident. It is not even clear as to who sutured the wound of PW1 and when such suture was done.

10.7. They were not able to say when the injury would have been sustained by PW1 and it is quite unnatural that PW1 will go to a Government Hospital on 24.08.2012 at 10.45 p.m., and once again go to a private hospital on 25.08.2012 at 3.40 a.m. for taking treatment for the same injury. It must be kept in mind that PW1 went along with the body of the deceased to PW18(first doctor) and if really PW1 had complained about the injury, considering the seriousness of the incident, certainly a wound certificate would have been prepared by PW18. This Court wanted to ascertain as to when 161 Cr.P.C. statements of PW18 and PW19 were recorded and when they reached the Court. On going through the original records, it is seen that the 161 statements recorded from PW18 and PW19 do not even bear the date, whereas in all other 161 statements including that

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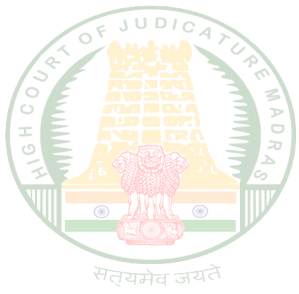
of the postmortem Doctor, specific dates are available and these 161 statements had reached the Court only at the time of filing the final report on 25.05.2016.

10.8. It is pertinent to note that wound was old one and same is clear from the following contents of Ex.P20 and evidence of PW19:

“..... நான் வழங்கிய அ.சா.ஆ.20 சான்றிதழில் அந்த காயத்தின் வயது மற்றும் நிறம் குறிப்பிடவில்லை என்றால் சரி அதனால் அந்த காயம் எப்போது ஏற்பட்டது என்று குறிப்பிட்டு சொல்ல இயலாது என்றால் சரி முதன்முதலாக என்னிடம் சுயம்புலிங்கம் சிகிச்சைக்கு வருவதற்கு முன்பு சுமார் 3 நாட்களுக்கு முன்பு கூட அவருக்கு இந்த காயம் ஏற்பட்டிருக்கலாம் என்றால் சரி அந்த காயம் எந்த ஆயுதத்தால் ஏற்படுத்தப்பட்டிருக்கும் எனது சான்றிதழில் சொல்லப்படவில்லை என்றால் சரி”

10.9. In the absence of cogent and reliable evidence to establish that P.W.1 sustained injuries on 24.08.2012 during the course of the alleged assault on his deceased son, this Court is unable to accept that he is an injured witness.

10.10. More significantly, P.W.22, the doctor who examined and



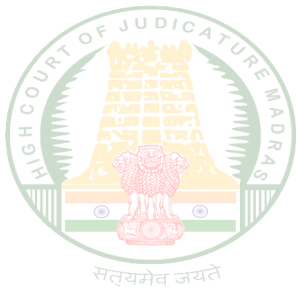
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treated P.W.1, has categorically opined that the injury noted was old wound.

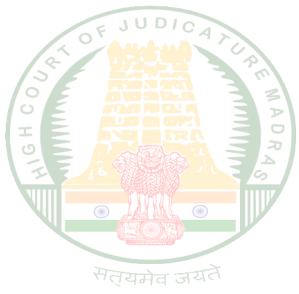
This medical opinion finds further corroboration in Ex.P20, wherein it is explicitly recorded that the injury was not recent. The contents of Ex.P20, read in conjunction with the testimony of P.W.19 and P.W.18, clearly indicate that the injury cannot be temporally connected to the occurrence in question. Further, P.W.1 has attributed the involvement of a particular number of accused, which appears to be exaggerated . Hence, the learned trial judge has not accepted his version regarding serious overtact caused by A6 upon the deceased's stomach and hip. In such circumstances, the version of P.W.1 that he sustained injury while intervening in the occurrence, allegedly inflicted by A1 with an aruval, becomes highly doubtful and remains unsubstantiated by medical evidence. Thus, the prosecution has failed to establish that PW1 had sustained the injury in the same incident when his son was done to death. Accordingly, this Court finds no material to treat P.W.1 as an injured witness, and his evidence cannot be accorded the evidentiary weight ordinarily attached to such a witness and Consequently, his evidence cannot be accepted as forming a sound basis for conviction.

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11. Eyewitness account of PW1 to PW4 and PW6:

11.1. Upon careful consideration of the evidence on record, this Court finds that the testimonies of P.Ws.1 to 4, 6, who are projected as eyewitnesses to the occurrence, suffer from material discrepancies and inherent improbabilities. A crucial infirmity in the prosecution case is the suppression of the earliest version of the occurrence. Such suppression assumes considerable significance, as it raises a legitimate doubt regarding the true genesis of the prosecution case and adversely affects the credibility of the witnesses examined subsequently. Further, the alleged occurrence is stated to have taken place during night hours. The prosecution has not satisfactorily established the source of light or the circumstances under which the witnesses could have clearly identified the assailants. This omission renders their presence at the scene of occurrence doubtful. Additionally, the inconsistencies in their depositions, when read in light of the surrounding circumstances, create serious doubt as to whether these witnesses had, in fact, witnessed the occurrence at all. In such

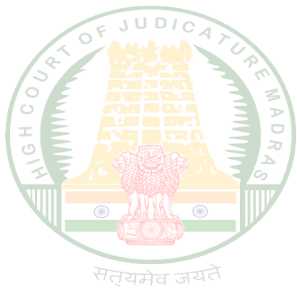


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circumstances, this Court finds substance in the contention advanced by the learned counsel for the appellant that P.Ws.1 to 4, 6 are not natural witnesses, but have been introduced at a later stage and planted as witnesses with a view to artificially strengthen the prosecution case. Accordingly, this Court is not inclined to place reliance on their evidence. The testimonies of P.Ws.1 to 4, 6 are liable to be rejected as unreliable and insufficient to sustain a conviction.

11.2. All the eyewitnesses consistently state that the incident took place in front of the house called Duraibhavanam, which is owned by one Kalyanasundaram. In the rough sketch marked as Ex.P34, this house is shown as S.No.10 and it is clearly away from the place, where the dead body is found. Surprisingly the resident of the house Kalyanasundaram was not examined by the prosecution. The EB post is not found near Duraibhavanam and the dead body is found right under the EB post. This discrepancy has not been properly explained by the prosecution. Hence, the exact place where the incident took place is also doubtful.

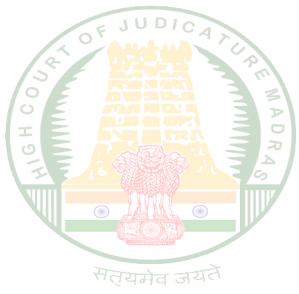


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11.4. It must be kept in mind that PW1 is the father of the deceased. PW2 to PW4 and PW6 are also the children of P.W.1 and all of them are interested witnesses. It is not as if the Court cannot rely upon the eyewitness account just because they are related to the deceased. However, when a doubt arises as to the credibility of their evidence, the Court has to necessarily look for corroboration from an independent source.

11.5. On going through the rough sketch and the observation mahazar,

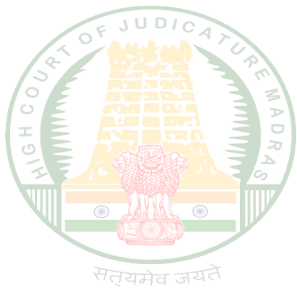


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it is seen that there were several houses in the vicinity and in an incident of this nature, obviously many would have heard the cries of the deceased and would have seen the occurrence and the investigating officer has chosen not to record the statement of any of the independent witnesses.

11.6. If really PW1 to PW4 and PW6 are the star witnesses in this case, since they are the eyewitnesses, the Court will expect that their statements be recorded at the earliest point of time and it reaches the Court at the earliest as per the mandate under Section 158 of the Code of Criminal Procedure. This would have atleast given credence to the case of the prosecution and to lean in favour the eyewitness account. Unfortunately Insofar as PW2 is concerned, the statement has been recorded on 26.08.2012 and it has reached the Court only on 25.05.2016 at the time of filing the final report. Insofar as PW3 is concerned, the statement has been recorded on 26.08.2012 and it has reached the Court on 29.08.2012. Insofar as PW4 is concerned, the statement has been recorded on 26.08.2012 and it has actually reached the Court on 25.05.2016 when the final report was filed. The statement of PW6 was recorded on 26.08.2012 and it has reached



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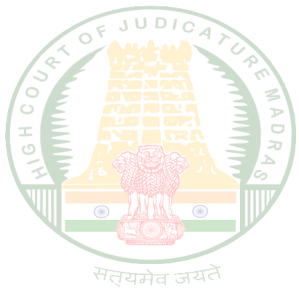
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the Court only on 25.05.2016 when the final report was filed and also PW1's statement has reached the Court only on 29.08.2012.

11.7. There is absolutely no explanation forthcoming from the investigating officer PW27 as to why there is so much of delay both in recording the statements as well as the same reaching the Court.

11.8. Surprisingly the prosecution attempted to show PW5, who is the son-in-law of PW1 as an eyewitness in this case, but none of the other eyewitnesses have even mentioned his name when the statements were recorded under Section 161 Cr.P.C. Therefore, his very presence in the scene of crime is highly doubtful.

11.9. In the light of the above discussions, serious doubts arise as to whether PW1 to PW4 and PW6 would have really seen the occurrence in the light of the above lapses that have been pointed out. Therefore, in the absence of any corroboration from an independent witness, it will not be

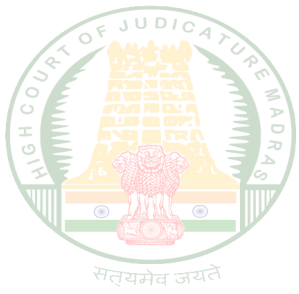


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safe to convict and sentence the accused persons based on the evidence of these eyewitnesses.

12. Discrepancy regarding the availability of light and the weapons used for commission of crime:

12.1. The occurrence had taken place at 9.45 p.m., on 24.08.2012. A careful perusal of the rough sketch and observation mahazar, shows that there is one EB post. Whether the light was burning on the fateful day is attempted to be proved by examining PW26 and PW15. PW15 has turned hostile and therefore, it has to be seen whether the evidence of PW26 establishes the availability of light. PW26 was the person, who had issued the certificate Ex.P33. In the said certificate, it has been stated that electricity was available on 24.08.2012 in the area. This certificate nor the evidence of PW26 establishes as to whether the tube light was burning on the fateful day. Normally, the witness is examined from the local Municipality or the Corporation since they are the ones who maintain the street lights. PW26 was not able to confirm as to whether the tube light was burning on the given day. This assumes a lot of significance since multiple

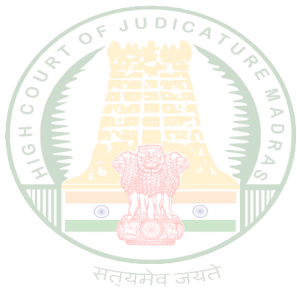


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accused are said to have committed the offence and the so called eyewitnesses should have been in a position to see these accused clearly. In the absence of the same, the benefit of doubt has to go in favour of the accused.

13. The next issue is regarding the weapons used and the injury sustained by the deceased. The postmortem certificate shows that the deceased had sustained nearly 50 injuries, out of which, 20 were lacerated injuries, 11 stab injuries and the rest are cut injuries. It is quite unfortunate that the weapons used for commission of crime was not shown to the Doctor and to the eyewitnesses while recording their evidence. All the eyewitnesses speak about the deceased being attacked with aruval (sickle) and none of them talk about the knife, whereas, what has been recovered by the prosecution is both knife and sickle and there is no accountability on the part of the prosecution to establish the usage of knife in the commission of the crime. Further, the serologist report does not conclude that it corresponds to the blood group of the deceased. Thus, the forensic linkage between the weapon and the alleged offence is missing. In view of the

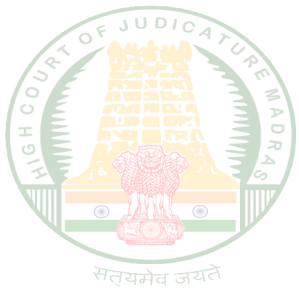


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same, the benefit of doubt has to go in favour of the accused persons.

14.Charge of criminal conspiracy under Section 120B r/w 302 altered after the completion of evidence by including Section 302 r/w 34 IPC:

14.1. There is no doubt that a trial Court has very wide powers to alter the charges under Section 216 Cr.P.C till the final judgment is pronounced. However, it has to be seen as to whether the evidence that has been recorded ultimately makes out an offence with respect to the altered charge. Obviously the charge of criminal conspiracy was not made out and therefore, the trial Court itself had acquitted the appellants for charge under Section 120B r/w 302 IPC. However, it proceeded to convict the appellants for offence under Section 302 r/w 34 IPC. The test under Section 34 IPC is to see whether the act done by more than one person cumulatively had been done in furtherance of a common intention of all such persons. Therefore, there must be evidence to show that each of the accused had the common

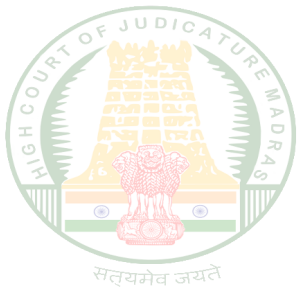


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intention to do the act jointly. In order to determine whether there was a common intention, it can be inferred objectively from the conduct displayed in the course of commission of the crime. The subjective element in common intention therefore should be proved by the objective test. It is only then one accused can be made vicariously liable for the acts and deeds of the other co-accused. A group of 14 accused had assembled in the scene of occurrence for commission of crime and the Court was not able to find that there was neither criminal conspiracy nor common intention for A6 to A14, who were all acquitted from all charges and the same yardstick will apply for the other accused persons also. Thereafter, the Court must only see if the remaining accused can be punished for the individual overt act committed by them. Certainly, the element of common intention while relying upon Section 34 will not come into play in such a case. This is one more vital factor, which missed the attention of the trial Court.

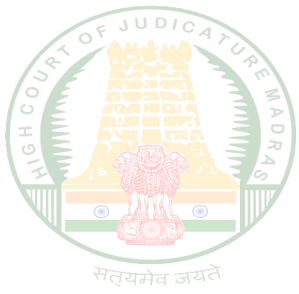
14.2. According to the evidence of P.W.2 and other prosecution witnesses, the house of P.W.2 is bounded by a compound wall of about six feet in height, and the place of occurrence is situated at a distance of more



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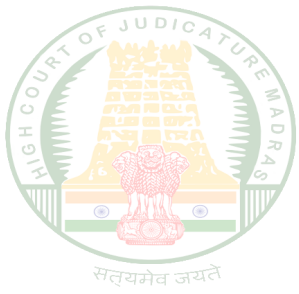
than 80 feet from the said house. It is the specific case of P.W.2 that upon noticing the accused armed with weapons, he retreated into his house. Thereafter, the deceased and P.W.1 are stated to have proceeded towards the western side. Subsequently, P.W.2 and the sisters are alleged to have followed them and witnessed the assault on the deceased as well as on P.W.1. This version, when examined in the light of the physical features and topography of the place of occurrence, appears highly unnatural and improbable. The evidence on record indicates that from the house of P.W.1/P.W.2, there exists a row of physical obstructions, namely a compound wall, followed by a lorry shed, and thereafter a sewage channel, beyond which, at a distance exceeding 80 feet, lies the alleged place of occurrence. In the absence of any evidence that the accused chased the deceased and P.W.1 up to that particular spot and assaulted them in the immediate vicinity of the witnesses, the claim of P.W.2 and others that they have seen the occurrence becomes doubtful. The conduct attributed to P.W.2 namely, initially retreating into the house upon seeing armed assailants and thereafter venturing out to follow them and witness the occurrence does not appear to be natural or probable. The presence of P.W.2 at the scene of



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occurrence becomes highly doubtful. Consequently, his version of witnessing the alleged assault on the deceased and P.W.1 suffers from inherent improbabilities and lacks credibility.

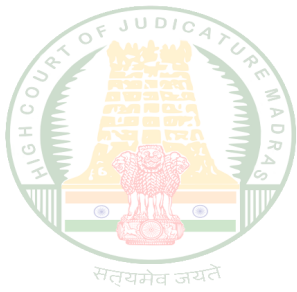
14.3. In the light of the above discussions, this Court finds it difficult to accept the prosecution case that all 6 accused simultaneously assaulted the deceased while the remaining accused prevented his escape. Significantly, the learned trial Judge has acquitted some co-accused, despite specific overt acts attributed to them by the very same eyewitnesses. One of the accused has also been acquitted on the ground of lack of identification. In such a scenario, the evidence of PW1 to PW4 and PW6, being indivisible and tainted by inconsistencies, serious doubts arise as to whether PW1 to PW4 and PW6 would have really seen the occurrence in the light of the above lapses that have been pointed out and this Court is unable to segregate the credible portion from the unreliable part of their evidence in respect of A6 and A1-5 when both are attributed specific overtacts and also finds much difficulty to selectively rely upon it insofar as the present appellants are concerned and this Court finds no sufficient material to



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sustain the conviction of the accused, and the benefit of doubt must necessarily be extended in their favour. In the present case, in view of the material inconsistencies and improbabilities in the evidence of PW1 to PW4 and PW6 , the existence of prior enmity assumes significance in favour of the defence. The plea of false implication, as advanced on behalf of the appellant, appears to be probable. Accordingly, the entire testimony of such witnesses is liable to be discarded as untrustworthy. Therefore, in the absence of any corroboration from an independent witness, it will not be safe to convict and sentence the accused based on the evidence of these eyewitnesses under Section 302 read with 34 IPC. For the same reason, this Court is not inclined to accept the submissions of the Learned Additional Public Prosecutor that the acquittal of co-accused is a not ground to acquit the remaining accused.



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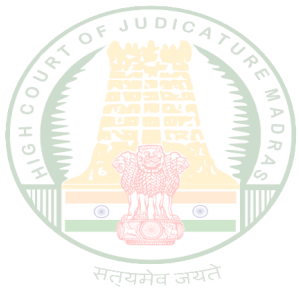
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15. Lapse on the part of the investigating officer:

The specific evidence of PW1 to PW6 is that the body of the deceased was taken in a lorry by them and their cloths are bloodstained and the said lorry carried the blood soaked body of the deceased, but, however, both lorry and bloodstained cloths of witnesses were not seized, and subjected to test by the Forensic Sciences Laboratory to detect the blood and see if it matched with the blood group of the deceased. If the investigating officer had atleast made this attempt and established that the dead body was boarded by the witnesses and carried in lorry, it would have certainly helped the prosecution to an extent to corroborate the eyewitness account and failure on the part of IO , to seize and subject to test by the Forensic Sciences Laboratory to detect the blood in the lorry, cloths and the an unexplained delay in recording and forwarding the eyewitness to the occurrence creates serious dent in the prosecution case.

16.Brutality of the Crime Cannot Substitute Proof:

16.1. The learned Additional Public Prosecutor vehemently contended that the deceased had sustained more than 45 cut injuries and that the

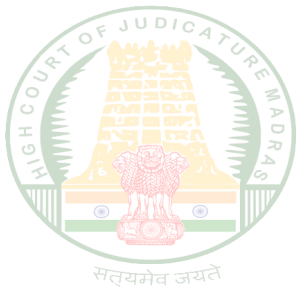


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brutality of the attack unequivocally establishes the guilt of the accused/appellants.

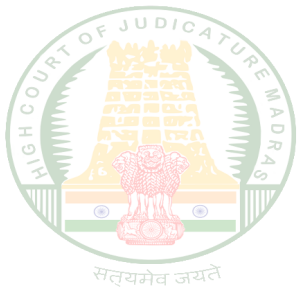
16.2.However, criminal jurisprudence cannot be swayed by societal sentiments or emotional considerations. Courts are duty-bound to adjudicate cases strictly on the basis of legally admissible evidence and settled principles of law, uninfluenced by public opinion or emotional reactions. In this regard, this Court remains guided by the golden principles reiterated by the Hon'ble Supreme Court in *Dagdu v. State of Maharashtra*, wherein the Hon'ble Thiru. Chief Justice V.S.Chandrachud, reaffirmed the observations of Hon'ble Mr.Justice Vivian Bose that the shocking nature of a crime must not induce an instinctive or emotional reaction leading to disproportionate or uncritical scrutiny of facts and law. The adjudicatory process must remain anchored in an objective evaluation of evidence, uninfluenced by the gravity or brutality of the allegation.It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof. Conviction cannot be founded on surmises, but must rest on legally admissible, reliable, and cogent evidence. The prosecution is required to



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establish its case beyond reasonable doubt, and the severity of the injuries cannot, by itself, form the basis for conviction when the foundational evidence is unreliable. The Court must decide on the basis of evidence on record, and not on the nature of the offence or on sentimental considerations.

16.3. In the present case, the testimonies of P.W.1 to P.W.6 suffer from serious infirmities, lack credibility, and are attended by inherent improbabilities. More importantly, P.W.1 and other witnesses have admitted that the names of the accused were disclosed only upon the instructions of P.W.2 (brother of the deceased). In such circumstances, the parrot-like and mechanically consistent version of all the eyewitnesses does not inspire confidence; rather, it gives rise to a reasonable inference of tutoring or a pre-arranged version. This assumes significance particularly in the absence of independent corroboration, especially when, as per the prosecution case itself, several relatives had assembled at the house on account of a family marriage function. Further, the unexplained delay in the registration of the FIR, the doubts surrounding the recording of eyewitness statements under



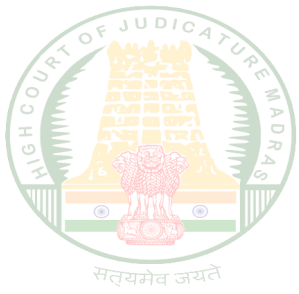
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Section 161 Cr.P.C., and the delay in forwarding the same to the Court cause serious dent in the prosecution case. Hence, in the present case, the inherent improbabilities in the prosecution version go to the root of the matter and render the eyewitness testimony unreliable. In such circumstances, the brutality of the attack alone cannot be a substitute for proof of guilt. Therefore, this Court is unable to accept the submission of the learned Additional Public Prosecutor that the brutality of the attack, evidenced by multiple injuries, by itself establishes the culpability of the accused/appellants in the absence of cogent, reliable, and legally admissible evidence.

17. Conclusion:

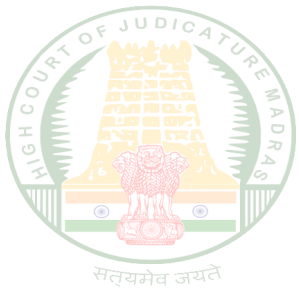
17.1. In the present case, the existence of prior enmity between the deceased and the appellant is an admitted fact. It is equally borne out from the record that the conduct of the deceased had caused disturbance to the female members in the temple festival in an inebriated condition prior to the occurrence on 22.08.2012 and the same was questioned by A1. While motive can operate both as a ground for commission of the offence and for



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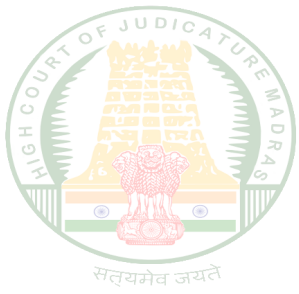
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false implication, the latter assumes significance when the prosecution evidence itself is doubtful. In such peculiar circumstances, it would be unsafe to place reliance on the testimonies of the eyewitnesses. It is the prosecution case that P.W.1 (father of the deceased), P.W.2 (brother of the deceased), and other alleged eyewitnesses were present together at the place of occurrence. However, their conduct, as projected, appears inherently unnatural and raises serious doubt regarding their presence at the scene. While it is a settled principle that different individuals may react differently in a given situation, certain basic human reactions such as raising an alarm are expected. The incident, as alleged, was not a minor altercation but an indiscriminate and brutal attack carried out by more than six assailants armed with weapons. In such circumstances, it is but natural for those present, particularly sisters and brother, to raise hue and cry or make some attempt to intervene. It is highly improbable that P.W.1, an aged person, alone attempted to intervene in the occurrence, while the other eyewitnesses who are comparatively younger, including the son and daughters of P.W.1 remained passive spectators without raising any alarm or attempting to prevent the assault. Hence, the conduct of witnesses is wholly



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unnatural and does not inspire confidence and hence, such evidence cannot be relied upon without corroboration. Further, none of the independent witnesses from the surrounding area, who could have naturally witnessed the occurrence, have been examined. This omission assumes significance in the facts and circumstances of the case. Additionally, the prosecution has failed to recover bloodstained clothes of injured eyewitnesses or other material objects namely lorry in which the deceased was taken to hospital, etc connected with the crime. There is also an unexplained delay in the recording and forwarding of statements of PW1-6 to the Court. Though P.W. 1 attempted to give a detailed, almost graphic account of the injuries attributed to each accused, he was unable to properly identify the some of the assailants before the Court. This inconsistency further undermines his credibility. Moreover, the injury attributed to P.W.1 has been described by P.W.10 (Doctor) as an old injury, thereby creating additional doubt about his presence at the scene. More importantly, P.W.4 and other witnesses have admitted that the names of the accused were disclosed only upon the instructions of P.W.2's relative (brother of the deceased). This circumstance further weakens the credibility of the prosecution version. The prosecution

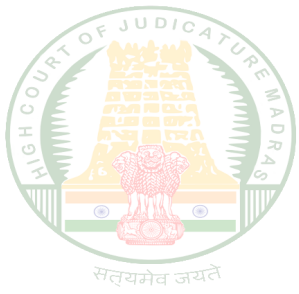


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has also failed to establish the recovery and use of weapons in a credible manner. The alleged extra-judicial confession of one of the accused and case against A6 to 14 have not been accepted by learned trial judge and the learned trial judge rejected major portion of evidence of injured witness and eye witnesses and acquitted A6 to 14 and the finding regarding the place of occurrence are not supported by reliable evidence.

17.2. In view of the cumulative effect of these infirmities, namely, the unreliable testimony of the eyewitnesses, lack of corroboration, suppression of the earliest version, doubtful identification, and prior enmity, this Court holds that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Consequently, the accused are entitled to acquittal by extending the benefit of doubt. Therefore, this Court is inclined to allow the appeal and to set aside the conviction and sentence imposed by the learned Additional District and Sessions Judge (Fast Track Court), Kanyakumari at Nagercoil in S.C.No.136 of 2018 dated 15.12.2022 under Section 302 IPC.



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(i) the conviction and sentence imposed by the learned Additional District and Sessions Judge (Fast Track Court), Kanyakumari at Nagercoil in S.C.No.136 of 2018 dated 15.12.2022 is set.

(ii) the appellants are acquitted from all the charges.

(ii) the appellants are directed to be released, unless their detention is required in any other case.

(iii) The bail bond, if any executed, shall stand cancelled. Any fine amount, if any paid, shall be refunded to them.

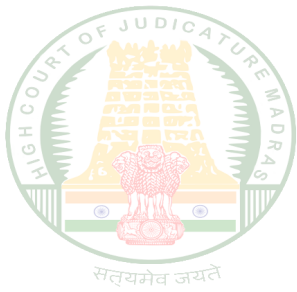
Consequently, connected miscellaneous petitions are closed.

[N.A.V, J.] & [K.K.R.K,J.]

15.04.2026

NCC : Yes
Index : Yes
Internet : Yes

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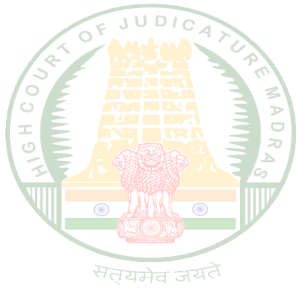


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To

- 1.The Additional District and Sessions Judge,
(Fast Track Court),
Kanyakumari at Nagercoil.
- 2.The Inspector of Police,
Kottar Police Station,
Kanyakumari District at Nagercoil.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.
and
K.K.RAMAKRISHNAN, J.

pal/RR

PRE-DELIVERY JUDGMENT made in
CRL.A.(MD)Nos.174, 249 and 860 of 2023

Dated:15.04.2026