

Bail Slip in Crl Rc No.478/12

The 1st Appellant/1st Accused namely Duraisamy S/O Kandasamy was directed to be released on bail as per order of this Court dated 31.10.12 and made in M.P.No.2/12 in Crl A 478/12 and the 2nd Appellant/2nd Accused namely Murugesan S/O Venkatachalam was directed to be released on Bail on as per order of this Court dated 30.8.12 and made in M.P.No.1/12 in Crl.A No.478/12 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.03.2016
Delivered on : 21.04.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CRIMINAL APPEAL No.478 of 2012

and

CRIMINAL REVISION CASE No.1277 of 2012

CRL.A.No.478 of 2012:

1.Duraisamy
2.Murugesan

.. Appellants/Accused 2 and 3

VS

State rep. By
Inspector of Police
Steel Plant Police Station
Salem District.
Crime No.222/2005

.. Respondent/Complainant

CRL.R.C.No.1277 of 2012:

M.Dhanasekaran

.. Petitioner/PW1
De-facto complainant

vs

1.Kandasamy
2.Duraisamy
3.Murugesan
4.Mani
5.Suresh

6.Raja .. Respondents 1 to 6/Accused

7.State rep. By

The Inspector of Police Steel Plant,
Salem. (Crime No.222/2005)
Salem District.

.. 7th Respondent/Complainant

Prayer in CrI.A.No.478 of 2012: Criminal appeal preferred under Section 374(2) of the Code of Criminal Procedure against the judgment dated 19.7.2012, made in S.C.No.252/2006, on the file of the I Additional Session Judge, Salem.

Prayer in CrI.Rc.No.1277 of 2012: Criminal revision case preferred under Section 397 read with 407 of the Code of Criminal Procedure against the judgment dated 19.7.2012, made in S.C.No.252/2006, on the file of the I Additional Session Judge, Salem.

For Appellants : Mr.A.Raghunathan
in Criminal Appeal Senior Counsel
for Mr.K.Selvakumaraswami

For Respondents in
Criminal Appeal : Mr.M.Maharaja
Additional Public Prosecutor

For Petitioner in
CrI.R.C. : Mr.V.Sekar

For Respondents in
CrI.R.C. : Mr.K.V.Sridharan for RR1 to 6

Mr.M.Maharaja
Additional Public Prosecutor
for R7

C O M M O N J U D G M E N T

M.SATHYANARAYANAN, J.

The appellants in CrI.A.No.478 of 2012 are accused Nos.2 and 3 respectively in S.C.No.252 of 2006, on the file of the I Additional Sessions Judge, Salem.

2. Originally, six accused were tried for the following charges:-

Accused	Charges
A-1	Sec.302 read with 109 IPC

Accused	Charges
A-2 to A-6	Sections 148 and 302 IPC
A-3	Section 324 IPC

3. The trial Court, vide judgment dated 19.7.2012, convicted A2 for the commission of offence under Section 302 IPC and sentenced him to undergo Imprisonment for Life and to pay a fine of Rs.10,000/- with a default sentence of 2 years Rigorous Imprisonment. A3 was convicted for the commission of offence under Section 324 IPC and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.2,500/- with a default sentence of 6 months Rigorous Imprisonment. A1 was found not guilty for the offence under Section 302 read with 109 IPC; A2 to A6 not guilty for the offence under Section 148 IPC and A3 to A6 not guilty for the offence under Section 302 IPC and they were acquitted. The sentences were ordered to run concurrently and set off was also granted under Section 428 CrPC. A2 and A3, aggrieved by the above said conviction and sentence, had filed Crl.Rc.No.1277 of 2012.

4. The factual matrix of the case is as follows:-

(a) PW1 Dhanasekaran - de-facto complainant, is the son of the deceased Ranganayaki. PW2 is the sister's son of Ranganayaki. On 14.08.2005 at about 7.15 p.m., PWs.1 and 2 were standing in front of the Television Room belonging to local body and were conversing with each other. At that time, A2 to A6 were coming towards northern side and among them, A3 to A6 were holding iron rods, being used for cleaning coir. A2 did not possess any weapon. A3 attacked PW2 on his back with an iron rod and on seeing it, PW1 raised alarm. PW2 also shouted. On hearing it, Ranganayaki came out from her house situated about 42 feet away and advised PW2 to go away by stating that the accused were under the influence of alcohol. Immediately, A2 by uttering an unparliamentary word, removed the iron pipe from the nearby water pump and hit Ranganayaki on the right side of the head and rest of the accused, assaulted her with iron rods on her hand and body. At that time, uncle of PW1 viz., PW3, and the brother of PW1 also came there and on seeing them, A2 dropped the iron pipe at the spot itself and ran away and A3 to A6 also fled away from the scene of occurrence by carrying the iron rods and they also uttered, as per their father's wish, they have finished and there are no enemies against them. Ranganayaki was found unconscious and the uncle of PW1 viz. PW3, and the brother of PW1 viz. Rajasekaran, took her to Manivannan Hospital at Omalur in a motorcycle and in the hospital, the injured Ranganayaki was seen by the Doctor PW11, who had given

her first aid and advised them to take her to Salem Government Hospital as her condition was serious.

(b) Accordingly, PW3 and brother of PW1, namely Rajasekaran took the injured Ranganayaki to Salem Government Hospital by Car and they were followed by PWs.1 and 9 in a TVS 50 two-wheeler. PW14, Duty Doctor attached to Salem Government Hospital, after examining Ranganayaki, pronounced her dead on arrival and issued a death intimation under Ex.P24.

(c) Thereafter, PW1 went to Salem Steel Plant Police Station and lodged a complaint under Ex.P1 to PW13, Sub-Inspector of Police, who on receipt of the said complaint, registered the First Information Report under Ex.P22 in Crime No.222/2005 at about 1.30 a.m. on 14/15.8.2005, under Sections 147, 148, 324 and 302 read with 149 IPC, and despatched the originals of Exs.P1 and P22 to jurisdictional Magistrate and sent copies to the Inspector of Police.

(d) PW19, Inspector of Police attached to Salem Steel Plant Police Station, on receipt of the FIR at about 3.00 a.m. on 15.8.2005, proceeded to the scene of occurrence and prepared an Observation Mahazar and a rough sketch marked as Ex.P38, in the presence of PW5 and another and also recovered M.Os.3 and 4 under Ex.P6/ mahazar. PW19 went to Salem Government Hospital mortuary and in the presence of panchayatdars, conducted inquest on the dead body of the deceased and prepared an Inquest Report marked as Ex.P31, and thereafter, examined PWs.1 to 5, witnesses viz. Rani, Kannan, Palanisamy and PW7 and recorded their statements. He sent a requisition for conducting postmortem on the body of the deceased through PW12/Constable.

(e) PW17, Professor of Forensic Medicine, Government Mohan Kumaramangalam Medical College, Salem, on receipt of the body, commenced postmortem at about 11.20 a.m. on 15.8.2015, and noted the following features:-

“INJURIES:

- 1) A cut lacerated injury present on right parietal region of scalp 8 x 1 x 1 cm; All sutures are intact.
- 2) A contusion present on mid parietal region of scalp 12 x 8 x 0.5 cm.
- 3) Fissured fracture of right parietal bone to left temporal bone, 12 cm in length.
- 4) Sub dural and sub arachnoid haemorrhages present over both cerebral hemispheres.
- 5) A contusion on left temporo-parietal region 15 x 12 x 0.5 cm.

6) Contusions over - right shoulder 5 x 3 x 1 cm; left shoulder 3 x 2 x 1 cm; right forearm 5 x 3 x 2 cm; left thigh 5 x 2 x 1 cm; - Above injuries red in colour and gaping in nature (antemortem).

OTHER FINDINGS:

Peritoneal cavity and pleural cavity - empty. Pericardium - 10 ml. of straw coloured fluid present. Heart - fluid blood present. Myocardium - normal. Coronaries - patent. Hyoid bone - intact. Lungs - congested and edematous. Stomach - 150 gm of greyish brown chyme present. Mucosa - congested. Liver - congested. Spleen - congested. Kidneys - capsule intact, congested. Bladder - empty. Normal. Uterus - normal. All other internal organs - congested."

(f) PW17, after completion of postmortem, had opined that the time of death was 12 to 18 hours prior to postmortem examination and the deceased died of shock and hemorrhage due to head injuries. The Postmortem Certificate was marked as Ex.P36.

(g) A2, at about 2.00 P.M. on 15.8.2005, appeared before PW6, Village Administrative Officer of Keraipappampadi Village and voluntarily gave a confession statement and it was recorded by PW6 in the presence of PW7 and the statement of A2 was marked as Ex.P9 and thereafter, he took A2 to PW19 and handed over his custody. PW19 effected the arrest of A3 to A6 at about 12.15 noon on 16.8.2005, near Gnanapathypalayam Bus stop, and they voluntarily came forward to give independent confession statements and their statements were recorded in the presence of PW8 and another and as per the admissible portions of the confession statements, the weapons used for the commission of crime, were recovered under mahazars/ Ex.P18 to P21. A1 was also arrested on the same day and all of them were remanded to judicial custody. PW19, after completion of investigation, had filed the final report on 17.9.2005, charging the accused for the commission of offences under Sections 148, 149, 324 and 302 read with 109 of IPC.

5. The Court of Judicial Magistrate No.I, Salem, on filing of the final report, took it on file in PRC No.1/2006 and issued summons to the accused and on their appearance, furnished to them, copies of documents under Section 207 CrPC and having

found that the case is exclusively triable by the Sessions Court, committed it to the Principal Sessions Court, Salem, which took it on file in S.C.No.252 of 2006 and made over it to the learned I Additional Sessions Judge, Salem.

6. The trial Court, on appearance of the accused, has framed the charges and questioned them and all of them pleaded not guilty to the charges framed against them.

7. The prosecution in order to sustain it's case, examined PWs.1 to 19 and marked Exs.P1 to P39 and M.Os.1 to 9. The accused were questioned under Section 313(1)(b) of CrPC with regard to incriminating circumstances found in the evidence rendered by the prosecution and they denied it as false and they have also filed written statements stating among other things that they were illegally detained by the respondent police and by adopting third degree methods, their signatures were obtained in blank papers, based on which the prosecution has created reference and due to threat and physical torture, they have stated that they had sustained injury while they were chased by public and prays for examination of the owner of the car in which the deceased was taken. The accused, on their behalf, had examined DW1 and DW2/PW14 and marked Exs.D1 series, D2 and D3. The trial Court on a consideration of oral and documentary evidences, had found A2 and A3 guilty and convicted and sentenced them as stated above, and hence, this appeal.

8. Mr.A.Raghunathan, learned Senior Counsel assisted by Mr.K.Selvakumaraswami, learned counsel appearing for appellants/A2 and A3, made the following submissions:

(i) Place of occurrence has been shifted to suit the convenience of the prosecution as to the identification of the assailants/A2 and A3/appellants with the help of streetlight located near Panchayat TV Room.

(ii) F.I.R. Under Ex.P22, which came to be registered at 01.50 p.m. on 15.08.2015 and sent to the jurisdictional Magistrate at about 05.00 p.m. on the same day and no explanation whatsoever has been offered either by PW15, who registered the FIR or by PW19/Investigating Officer and in the absence of the same, origin and genesis of the occurrence becomes highly doubtful.

(iii) The trial Court, on same set of evidence had acquitted A1, A4 to A6, but partially disbelieved the testimonies of the concerned witnesses. The procedure contemplated/method adopted by the trial Court is wholly unsustainable and in any event, the trial Court

ought to have awarded benefit of doubt and acquitted the appellants/A2 and A3 also.

(iv) Oral evidence of the eyewitnesses including the injured witnesses did not corroborate with each other on material particulars and therefore, prays for acquittal of the appellants/A2 and A3.

9. Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor would submit that alleged discrepancies pointed out by the learned Senior Counsel appearing for the appellants are trivial in nature and did not affect the core of the prosecution case. It is further submitted by the learned Additional Public Prosecutor that the testimony of PW2, who sustained injury at the time and place of occurrence, lends support to the case of the prosecution and the trial Court, on a fair consideration of oral and documentary evidence and other materials, has rightly reached the conclusion, convicting the appellants/A2 and A3 and prays for dismissal of this Criminal Appeal.

10. This Court has considered the rival submissions and also perused the oral and documentary evidence and other materials as well as the original records.

11. Ex.P1/complaint was given by PW1 to PW13, who on receipt of the same, had registered a case in Crime No.222/2015 for the commission of offence under Sections 147, 148, 324, 302 r/w. 109 IPC. A perusal of Ex.P22/FIR would disclose that the jurisdictional Magistrate had initialed it at 9.00 hours on 15.08.2005. Even in Ex.P1/complaint also, learned Magistrate had made an endorsement of having received it at 9.00 hours on 15.08.2005. PW13, who registered the FIR, would state that after registration of the FIR at about 01.30 hours on 15.08.2005, he has submitted the original at 03.00 hours to PW19, the Investigating Officer. He would further depose that the distance between the Court and the Police Station is 10 kms. and denied the suggestion that the manner in which the occurrence took place and the registration of the FIR, are not true.

12. PW15 was the Head Clerk attached to the Court of Judicial Magistrate No.1, Salem, and in the cross-examination, he would admit that Ex.P1 and Ex.P23-Accident Register copy were received at 21.00 hours on 15.08.2005 and since it was public holiday on account of Independence day, Court seal was put only on 16.08.2005. PW19/ Investigating Officer had denied the suggestion that he did not receive the FIR at about 03.00 hours on 15.08.2005.

13. In re Karunakaran Jabamani Nadar [1974 Mad LW (Cr1) 190 = 1975 Cri LJ 798], it has been held that the original report or complaint recorded under Section 154 CrPC and the printed form of the First Information Report prepared on the basis of the said report or complaint, inquest reports and statements of witnesses recorded during the inquest and other documents of special importance, should be despatched by the Investigating Officers without any delay to the Magistrates and they should bear the initials of the Magistrates with reference to both the time and date of their receipt.

14. In Rabindra Mahto v. State of Jharkhand [(2006) 10 SCC 432 = 2006 Cri.L.J. 957], it has been held that Section 157 CrPC requires sending of an FIR to the Magistrate forthwith.

15. In Ragi Kumar v. State of Punjab [(2005) 9 SCC 315 = 2005 Cri.L.J. 1742], it has been held that immediate sending of the report mentioned in Section 157 CrPC is the mandate of law and sending the copy of the special report to the Magistrate as required under Section 154 CrPC is the only external check on the working of the police agency imposed by law which is required to be strictly followed.

16. It is also a well settled position of law that mere delay in dispatch of the FIR is not a circumstance which can throw the prosecution in its entirety and the Court should be on guard to find out whether the version as stated in the Court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime.

17. This Court keeping in mind the principles laid down in the above cited decisions, has carefully scanned through the materials.

18. In Ex.P1/complaint, PW1 had stated that A3 to A6 were armed with weapons, A3 attacked PW2 with iron rod on his back and he raised alarm and on hearing it, mother of PW1 namely Ranganayaki (deceased) came out of her house and pushed Jayaraman away stating that the accused were in inebriated condition. A2, on hearing it, took the handle of the water pump and attacked her on the right side and on her head and the above said accused, who were armed with iron rods, also attacked her and on hearing her sound, his son, namely, PW3 and Rajasekaran came and on seeing them, A2 dropped the handle of the water pump and other accused fled away from the scene of occurrence. According to PW1, the occurrence took place in front of Panchayat TV Room and he had seen the occurrence through the street light located near the said room.

19. It is the primordial submission of the learned Senior Counsel appearing for the appellants/A2 and A3 that the delay in dispatching the FIR to the jurisdictional Magistrate assumes importance and great significance for the reason that the occurrence did not took place in front of Panchayat TV Room, but in the land of one Govindan, which is about 900-1000 feet away and no blood stains were also found in front of TV Room. Therefore, the place of occurrence has been shifted and though the alleged occurrence took place in the land of Govindan, which is 900-1000 feet away from TV Room, it is shifted in front of TV Room where streetlight was located and accordingly, PW1, in Ex.P1/complaint, stated that he witnessed the occurrence through the illumination of the streetlight.

20. PW1, in the chief examination, had deposed that he along with PWs.2 and 3 were conversing in front of Panchayat TV Room and at that time, four or five persons came from the direction of Pappampadi and through the illumination emanated out of streetlight, they were able to identify them and also spoken about the overt acts on the part of the accused. In the cross examination, PW1 deposed that the accused were also related to him and the occurrence took place in front of TV room and on the spot itself, his mother, namely Ranganayaki died, but blood oozed from the head of her mother did not fell down in that place.

21. PW2, an injured eyewitness, had deposed on similar lines and further stated that the deceased was attacked by A2 with the handle of water pump and the other accused with iron rods, and PW2 was attacked by A2 with iron rod on his back. In the cross examination, PW2 would depose that after the attack, his junior mother [mother of PW1], fell near the TV room. PW2 would further depose that after sustaining injury on the head, blood started oozing out and it also fell on the spot/earth and no cloth was put to arrest the flow of blood and denied the suggestion that the occurrence did not take place near the TV room.

22. PW3, another eyewitness, would depose that the accused came near the TV Room and attacked the mother of PW1 and he took the deceased in his motorcycle along with another person and when she was admitted in the Government Hospital, she was declared dead on arrival. In the cross examination, PW3 would depose that Rajasekaran also travelled as pillion rider, holding the deceased and his shirt got blood stains and denied the suggestion that he did not write the complaint.

23. PW5 was the witness to Observation Mahazar, marked as Ex.P7 and from the scene of occurrence, they recovered blood stained iron pipe, sample earth and other articles under

Mahazar/Ex.P6 and blood stained earth and sample earth were marked as M.Os.3 and 4 respectively. On 16.03.2012, the prosecution has recalled him once again to examine him and he would state that PW19/the Investigating Officer had seized the material objects at 05.30 hours on 15.08.2005 under Mahazar/Ex.P6 and on 12.04.2012, he was cross examined, wherein he would depose that PW19/Investigating Officer did not seize any material object in front of the TV room and given a go-by to his earlier oral evidence. Unfortunately, PW5 was not treated as hostile witness by the prosecution.

24. A2 said to have given extra judicial confession before PW7 on 15.8.2005 at about 2.45 p.m. PW11, private doctor who initially treated the deceased, turned hostile. PW19/Investigating Officer was specifically questioned as to the place of occurrence and certain contradictions were also elicited as to the evidence of PWs.2 and 3. PW19 would depose that PW2, during the course of investigation, did not state that A2 to A6 came from the direction of Paappampadi and also not stated that he along with PWs.1, 2 and 3 conversing in front of TV room and abusive words used by A2 and A3 while attacking the mother of PW1. PW19, in the cross examination, would depose that during the course of investigation done, PW3 stated that he was following the mother of PW1 within a distance of 10 feet. PW19 would further depose in the cross examination that the distance between TV room and the land of Govindan would be about 900 to 1000 feet. PW19 also made a crucial admission that the place of occurrence is shown as in-front of the TV room and in that place, he did not recover blood stained earth, sample earth and handle of the pump/M.O.1, said to have been used by A2. In the light of the said infirmity, the belated dispatch of FIR to the jurisdictional Magistrate Court assumes great importance.

25. According to PW5, even in his chief examination, has deposed that from the scene of occurrence, they recovered blood stained earth, sample earth, iron pipe and broken bangles under Mahazar/Ex.P6 and also given a statement before the jurisdictional Magistrate, marked as Ex.P8. As per Ex.P6, incriminating articles were recovered near a thorny bush behind Panchayat TV room and as per Rough Sketch, marked as Ex.P38, occurrence took place in front of TV room and the distance between the scene of occurrence and the land of Govindan is more than 100 feet and according to PW19/Investigating Officer, distance between the scene of occurrence and the land of Govindan would be about 900 to 1000 feet. In the light of inconsistencies in the statements of PW5 and PW19 as to where exactly the deceased was assaulted and fallen down, it is difficult to believe the version projected by the prosecution. The doubt is further fortified by the fact that PWs.2 and 3 made improvements during the course of evidence from that of statements recorded during the course of investigation.

26. As rightly contended by the learned Senior Counsel appearing for the appellants, if the occurrence really took place in front of TV room, eyewitnesses would have seen them through illumination emanated from the streetlight located in front of TV room and in fact, PW2 was very categorical that when the accused was in some distance, he can see them and only on coming near TV room, through streetlight, he was able to identify them. All the eyewitnesses were categorical that the occurrence took place in front of the TV room and according to PWs.2 and 3, immediately after attack, blood started oozing and it also fell on the spot and that is why, PW5 would state that blood stained earth was also recovered. However, according to PW19/Investigating Officer, no blood stain was found in front of the TV room and he did not recover blood stained earth, sample earth and iron pipe in front of the TV room. That apart, cloth worn by other eyewitness, namely Rajasekaran got blood stain and he was not examined as a witness and the cloth worn by him was also not marked as material object.

27. In *Mehraj Singh v. State of U.P.* [(1994) 5 SCC 188], it has been held that absence of bloodstains at the place of occurrence as also absence of blood trail from the place of occurrence to the place where dead body was found shows that the occurrence did not take place in the manner suggested by the prosecution and that genesis of the case has been suppressed from the Court.

28. In the light of the said factual aspects coupled with the said decision rendered by the Hon'ble Supreme Court of India, this Court is of the considered view that the alleged occurrence did not take place in front of the TV room but somewhere else and the prosecution for the reasons best known, had shifted the place of occurrence. No doubt, PW2 was an eyewitness to the commission of offence and as already pointed out, he along with two other eyewitnesses, namely PWs.1 and 3 would not have seen the occurrence but for the illumination from the streetlight located near TV room and since this Court is of the view that the place of occurrence has been shifted in front of the TV room, the testimonies of the eyewitnesses cannot be believed and adding to the doubt, is also the belated dispatch of the FIR.

29. It is very pertinent to point out at this juncture that the jurisdictional Magistrate, namely the Court of Judicial Magistrate No.I, Salem either in Ex.P1/complaint or in Ex.P22/FIR did not specifically noted the time i.e., a.m. or p.m. but merely noted it as 15.8 and 9 and initialed it and only through the testimony of PW15 - Court official, it was clarified that the FIR was received at 9.00 p.m. on 15.08.2005. In the considered opinion of the Court, such a lapse on the part of the

concerned judicial officer would definitely create a doubt in the mind of the Court as to the manner in which the prosecution projected it's case and therefore, deem it fit and proper to issue the following direction:

30. In future, Judicial Magistrates, on receipt of original criminal complaint and FIR pertaining to criminal cases, especially cases involving heinous offences shall put the date and time and below that shall subscribe their full signature with their name and designation in capital letters and they shall also record the name of the police official who brings FIR and complaint, with designation as well as the police station in which he is attached, clearly in those documents so that confusion can be avoided. Registry, in this regard, is directed to place a note before the Hon'ble The Chief Justice for appropriate Orders.

31. The trial Court also disbelieved the evidence of the eyewitnesses while acquitting A1, A4 to A6 by partially believing to convict A2 and A3. In the light of the infirmities pointed out above, it is not safe to rely on the testimonies of eyewitnesses to sustain the case of the prosecution and this Court is of the considered view that the prosecution has failed to prove its case beyond reasonable doubt and therefore, benefit of doubt enure in favour of the appellants/A2 and A3.

32. In the result, this Criminal Appeal is allowed and the conviction recorded and sentence awarded to the appellants/A2 and A3, vide Judgment dated 19.07.2012 made in S.C.No.252 of 2006 passed by the I Additional Sessions Judge, Salem are hereby set aside and the appellants/accused 2 and 3 are acquitted of the charges framed against them. It is reported that the appellants/accused are on bail. The bail bonds shall stand terminated/discharged. Fine amount, paid if any, shall be refunded to the appellants.

33. PW1, son of the deceased, came forward to file CrI.Rc.No.1277 of 2012 challenging the order of acquittal of A1 for the offence under Section 302 r/w. 109 IPC; A3 to A6 for the offences under Sections 148 and 302 IPC and also inadequacy of sentence of two years rigorous imprisonment for A3.

34. The learned counsel appearing for the revision petitioner has drawn the attention of this Court to the impugned judgment and would submit that in the light of categorical testimonies of PWs.1 to 3 coupled with other evidence, the prosecution had sustained its case against the appellants/accused 2 and 3 and therefore, the trial Court had erred in the impugned judgment.

35. Heard the submission of learned Additional Public Prosecutor also.

36. This Court, while discussing the evidence of PW3, had also considered the contradiction elicited through PW9, wherein PW3, during the course of investigation done, stated that he did not specifically state about following of the deceased with a distance of 10 feet and if it is so, he would not have witnessed the occurrence. The trial Court has also recorded the fact that the prosecution relied upon the testimony of PW2 with regard to involvement of A3 to A6 and found that PW2 sustained injury due to attack by iron rod on the back, but did not go to the hospital and only as per the advise of the Investigating Officer, he went to the hospital. PW18, doctor who treated PW2, would state that PW2 informed her that he was assaulted by five persons with crowbars, whereas his testimony is in variance with earlier statements and therefore, the trial Court has rightly disbelieved the evidence of PW2. Insofar as the overt acts on the part of A4 to A6, the testimonies of PWs.1 and 2 did not corroborate with each other and therefore, the trial Court has rightly acquitted them by awarding benefit of doubt.

37. It is a well settled position of law that revisional jurisdiction of this Court while dealing with the order of acquittal passed by the trial Court is narrower in it's scope and the said jurisdiction should be exercised by this Court only in exceptional cases where there is procedural irregularity or overlooking of material evidence or misreading of the same, which is manifest and which results in a flagrant miscarriage of justice. In the present revision, such necessary ingredients are lacking and therefore, this Court is not inclined to exercise its revisional jurisdiction to interfere with the order of acquittal.

38. Therefore, the Criminal Revision is dismissed, confirming the judgment of total acquittal of A1, A3 to A6 and acquittal of A2 and A3 for the offence under Section 148 IPC.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.1,
Salem.
- 2.-Do- Thro Chief Judicial Magistrate,
Salem.
- 3.The I Additional Sessions Judge,
Salem.
- 4.-Do- Thro The Principal Sessions Judge,
Salem.
- 5.Inspector of Police
Steel Plant Police Station
Salem District. (Crime No.222/2005)
- 6.The Superintendent,
Central Prison,
Coimbatore.
- 7.The District Collector,
Salem.
- 8.The Director General of Police,
Mylapore, Chennai.
- 9.The Public Prosecutor,
Madras High Court, Chennai.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.V.Sridharan, Advocate sr.25251
+1cc to Mr.D.Sivakumaran, Advocate sr.24734

Criminal Appeal No.478 of 2012
and Criminal Revision No.1277 of 2012

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srg 06/05/2016