



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2016

CORAM:

**THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
AND
THE HONOURABLE MR.JUSTICE V.S.RAVI**

Cr1.A(MD)No.297 of 2013

1. Sivakumar
2. Deivenderan
3. Ansari

... Appellants/Accused Nos.1,2&5

Vs.

State rep. By
The Inspector of Police,
Chinnamanur Police Station,
Theni District.
(Crime No.48 of 2004)

... Respondent/Complainant

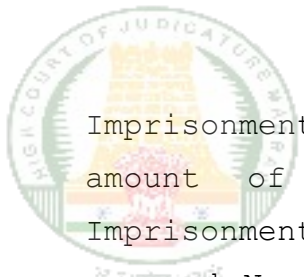
PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying this Court, to call for the records relating to the Judgment delivered in S.C.No.92 of 2006, dated 16.08.2013, on the file of the learned Principal District and Sessions Judge, Theni and to set aside the conviction and sentence imposed against the appellants/accused and to allow the above appeal by acquitting the accused.

For Appellants : Mr.K.Mahendran, Advocate
For Respondent : Mr.K.S. Duraipandian,
Additional Public Prosecutor

Judgment reserved on : 28.01.2016
Judgment pronounced on : 11.04.2016

JUDGMENT

The appellants are the accused Nos.1, 2 and 5 on the file of the learned Principal District and Sessions Judge, Theni. Totally, there are six accused and the case, against the accused Angathevar @ Kattaiyan and Raja, has abated, as both of them have already expired. The appellants/accused Nos.1,2 and 5 have been charged for the offence under Sections 148, 302 r/w 149 and 120(b) r/w 302 I.P.C., The Trial Court, by Judgment dated 16.08.2013, convicted the accused Nos.1, 2 and 5 for the offence under Section 148 I.P.C., and sentenced them to undergo rigorous



Imprisonment for the period of one year each and also, imposed fine amount of Rs.1,000/- each, and, in default, to undergo Simple Imprisonment for the period of one month each and also, convicted the accused Nos.1,2 and 5 for the offence under Section 302 r/w 149 I.P.C., and sentenced them to undergo Life Imprisonment each and also, imposed the fine amount of Rs.4,000/- each and, in default to, undergo Simple Imprisonment for the period of four months each and acquitted the accused Nos.1,3 and 5 for the offence under Section 120(b) r/w 302 I.P.C., and also, acquitted the accused Nos.3 and 4 for the offence under Sections 148, 302 r/w 149 and 120(b) r/w 302 I.P.C., and also, acquitted the accused No.6 for the offence under Sections 147, 302 r/w 149, 302 r/w 109 and 120(b) r/w 302 I.P.C. Challenging the said conviction Judgment delivered in S.C.No.92 of 2006, the appellants/accused Nos.1, 2 and 5 in Crime No.48 of 2004, are before this Court with the present appeal, praying the above mentioned reliefs.

2.The brief case of the prosecution is as follows;

Angathevar @ Kattiayan and the deceased Deivendran have taken the coconut groves, on lease and also, they have done the business of selling coconuts and tender coconuts and there arose a competition and enmity between the said Angathevar @ Kattaiyan and the said Deivendran, with regard to the said right to take, the coconut groves, for lease, and two years before the occurrence, Pitchaimani, namely, the son-in-law of the said Angathevar has been murdered by Murugan and Pandian and the said Angathevar has thought that the said Murugan and Pandiyan have been acquitted, due to the financial assistance, given by the said Deivendran and hence, the said Angathevar has planned to murder the said Deivendran and on 18.03.2004, the P.W.1 Thenammal, Perumal, namely, the husband of P.W.1, Manjanaiyammal and Jeyamani, namely, the wife of Baskaran have worked in the said Deivendran's coconut grove and at 3.00 p.m., the said Deivendran has come to his coconut grove and the said Deivendran, has taken the bath in the water tank, nearer to the well and at 3.15 p.m., P.W.1 and others have heard the noise of the said Deivendran and they have gone to the place of occurrence and at that time, the said Kattaiyan has brutally assaulted the said Deivendran and accused Raja, and A2-Deivendran & Ayyadiram have brutally assaulted the said Deivendran, with the help of Sickie and the first accused Sivakumar has brutally attacked



the said Deivendran, with the help of Knife and the said Deivendran has fallen down, nearer to the said water tank and the accused have run away from the scene of occurrence and the said Deivendran has been brought to Uthamapalayam Government Hospital, in the Auto and the Doctors in the said hospital, have declared that the said Deivendran has expired, already, and thereby the accused have committed the said offences, according to the prosecution.

2.1. In order to prove the case of the prosecution, the prosecution has examined 27 witnesses as P.W.1 to P.W.27 and also marked 55 exhibits as Ex.P.1 to Ex.P.55 and also Material Objects as M.O.1 to M.O.31.

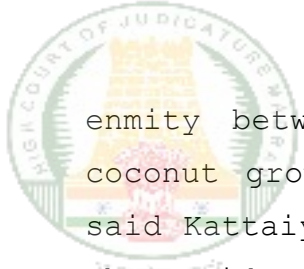
2.2. P.W.1 Thenammal has stated in her evidence that she is residing in Uthamapalayam Ammapatti and the deceased Deivendran is her brother and also, she knows the accused and P.W.1 and her husband have worked in the said Deivendran's coconut grove and the said Deivendran has done the business of selling coconuts and tender coconuts. Further, she has stated that the accused Angathevar, A1-Sivakumar and A2-Deivendran @ Ayyayiram are also residing in their village and accused Raja has expired and the two accused are residing in other villages and she could not identify the other two accused and prior to six years of giving her evidence, before the Trial Court, the P.W.1 and her husband Perumal, Manjanaiyammal and Jeyamani have worked in the said Deivendran's coconut grove and at 3.00 P.M., the said Deivendran has come to the coconut grove and he has gone to take bath, in the water tank and after some time, they have heard the noise of the said Deivendran and they have gone to the place of occurrence and at that time, they have seen six persons, standing around the said Deivendran, and the first accused Sivakumar has assaulted the said Deivendran, with the help of Knife and the second accused Deivendran @ Ayyayiram has brutally attacked the said Deivendran, with the help of Sickle and also, the accused Raja has assaulted the said Deivendran, with the help of Sickle and on seeing the P.W.1, the accused have run away from the scene of occurrence and the said Deivendran has fallen down and the P.W.1 has taken the said Deivendran and put him, on

<https://hservices.courts.gov.in/hservices/new.asp> and the said Deivendran has stated to the P.W.1 that Angathevar @ Kattaiyan has thought that Murugan, has been acquitted from the murder



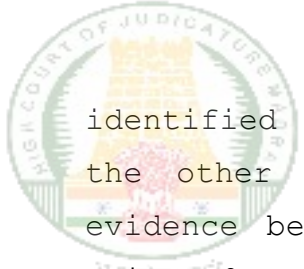
case, due to the financial assistance, given by the said Deivendran and the accused Angathevar has planned to murder the said Deivendran and thereafter, the accused Angathevar @ Kattaiyan, the first accused Sivakumar, accused Raja, A2-Deivendran@ Ayyayiram and two other persons have brutally assaulted him and thereafter, Karnan, namely, the another brother of P.W.1, Vijaya and Murugan have taken the said Deivendran to Uthamapalayam Hospital, in the Auto and P.W.1 and her husband and P.W.4 Selvi, namely, the wife of the said Deivendran have also gone to the said hospital and thereafter, the Doctors have examined the said Deivendran and informed to them that the said Deivendran has expired, already, and thereafter, P.W.1 has gone to Chinnamanur police station and lodged the Complaint as per Ex.P.43 and the husband of P.W.1 has also signed in the said Complaint and Ex.P.1 is her signature in the said Complaint and one month, after the occurrence, P.W.1 has gone to Madurai Central Prison and she has identified the two persons and at the time of identifying the accused, the learned Magistrate is also present, in the Central Prison and the gap between the place, where P.W.1 has worked at the time of occurrence, in the said Deivendran's coconut grove and the place of occurrence, is 120 feet and also, P.W.1 has identified M.O.Nos.1 to 6, namely, Sickles and Knives.

2.3. Further, P.W.2 Perumal has stated that P.W.1 is his wife and the deceased Deivendran is the brother-in-law of P.W.2 and P.W.5 Prakash is his son and he has seen the occurrence and he has stated about the occurrence, as pointed out by P.W.1, in her evidence and he has identified Sickles, before the Court, which have been used by the accused, during the occurrence and also, he has signed as an attesting witness in the Ex.P.43 Complaint and thereafter, he has identified two persons in Central Prison, Madurai. Further, P.W.3 Jeyamani has stated that she knows the accused and on the date of occurrence, P.W.Nos.1 to 3 have worked in Deivendran's coconut grove and she has also seen the occurrence and thereafter, she has identified two unknown persons, out of twenty five persons, who are aged about twenty five years, in the Central Prison, Madurai, before the presence of the learned Magistrate. Further, P.W.4 Selvi has stated that the deceased Deivendran is her husband and the said Deivendran has owned one coconut grove and the said Deivendran has done the business of selling tender coconuts and there is a previous



enmity between the accused Kattaiyan and their family, regarding the coconut groves taken on lease and one month before the occurrence, the said Kattaiyan's family have threatened the said Deivendran's family that the said Deivendran has done the financial assistance to the said Murugan, for conducting the murder case of the said Pitchaimani and also, for the acquittal of the said Murugan, in the said murder case and hence, they would murder the said Deivendran and after one month, her husband has taken food and gone to the grove and thereafter, the said Deivendran has not returned to the house and her brother-in-law has stated to her that Kattaiyan's family have murdered the said Deivendran and her brother-in-law has taken P.W.4, to the said coconut grove, in the Auto at 3.30 p.m., and at that time, her sister-in-law, namely, P.W.1 has put the said Deivendran, on her lap and P.W.1 has stated to her that Kattaiyan's family have murdered the said Deivendran, regarding the monetary assistance given by the said Deivendran, to Murugan, for getting the acquittal of the said Murugan, in the murder case and thereafter, they have taken the said Deivendran to Uthamapalayam Hospital, in an Auto and thereafter, she has informed about the occurrence, to her son, who, studied at Rayappanpatti, in hostel and thereafter, P.W.1 has lodged the Ex.P.43 Complaint to the police.

2.4. Further, P.W.5 Prakash has stated that he is working as Teacher and he has identified the accused Kattaiyan, A2-Ayyayiram, A3-Vasakar and A1-Sivakumar, before the Court and he has no knowledge about the other three persons and on 18.03.2004, he has heard that Deivendran has been murdered and also, he has gone to Uthamapalayam Hospital and heard about the death of the said Deivendran and thereafter, he has informed about the death of the said Deivendran, to the relatives, through Telephone and at 8.00 p.m., the police of Chinnamanur Police Station have come to place of occurrence and also, visited the place of occurrence, with the help of Torch Light and they have prepared Observation Mahazar as per Ex.P.2 and P.W.5 and Muniyandi have signed in the Observation Mahazar of Ex.P.2 and also, they have recovered M.O.7 bloodstained earth and M.O.8 sample earth, in the Athatchi as per Ex.P.3 and at 10.00 p.m., P.W.5 and the said Muniyandi have signed in the said Mahazar and however, he could not remember about the recovery of soap, at the place of occurrence. Further, P.W.6 Kasi has stated that he has



identified four accused, before the Court and he has no knowledge about the other three accused and six years prior to the date of giving evidence before the Trial Court, P.W.6 and Chandran have gone to meet Deivam @ Deivendran and while, they have returned to their house, at 2.00 p.m., they have seen the third accused Vasakar, with two wheeler and other two persons, talking to each other, in the backside of the house of Paneer and on seeing P.W.6, they have stopped their talks and after one hour, he has heard that the said Deivendran has been murdered and also, he has stated to the police about the said talks, between the third accused and other two persons and they have kept one lengthy object, in one plastic gunny bag and also, he has identified two persons, in the Central Prison, Madurai, before the learned Magistrate.

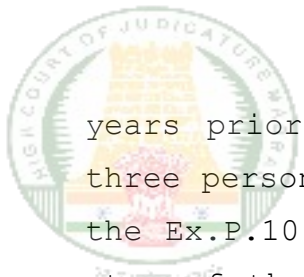
2.5. Further, P.W.7 Karnan has stated that he has owned a Tractor and he has done the work as a Coolly and six years prior to the date of giving his evidence before the Trial Court, P.W.7 and his driver Thavasi have come from Chinnamanur, in the Tractor, with the load of Compost bags and thereafter, they have stopped the said Tractor, near the house of Paneer, in Muthusampuram, at Ammapatti, for the purpose of unloading the said Compost bags, from the said Tractor and at that time, the two persons have come suddenly from the coconut grove of the said Paneer, with Knives and they have gone away, in the two wheeler, which has been parked, nearer to the house of the said Paneer and P.W.2 Perumal and P.W.3 Jeyamani have come there and stated to him that his brother Deivendran has been murdered and thereafter, he has gone to the place of occurrence and at that time, the said Deivendran has been put on the lap of P.W.1 and he has taken the said Deivendran to Palayam Hospital, in an Auto and the Doctors have examined the said Deivendran and stated to them that the said Deivendran has expired, already and P.W.1 has stated to him that Kattaiyan's family and other two unknown persons, totally six persons have brutally assaulted, the said Deivendran and she has stated about the previous enmity between the Kattaiyan's family and the said Deivendran's family and the said Kattaiyan's family have already threatened the said Deivendran and after one month, he has also identified two persons in the Central Prison, Madurai.

2.6. Further, P.W.8 Senthil has stated that he has worked as the



Manager in Rajkumar Lodge, Chinnamanur and six years prior to the date of giving his evidence, before the Court, he has gone out from the said Lodge, at night, after completing his duty and the Watchman only has booked room for two persons and also, he has signed, in the Athatchi dated 25.03.2004 as per Ex.P.4 and Ex.P.5 is the Register of Srirajkumaran Lodge, Chinnamanur and on 16.03.2004, Siva has come to the said Lodge and booked one Single Room at 11.00 p.m., and the said Siva has stated to the Lodge authorities that he has come, for business purpose and thereafter, the Room No.104 has been allotted to the said Siva and on 17.03.2004, the said Siva has vacated the said Room and gone out from the said Lodge, at 9.00 a.m., and he has produced the papers of the said Booking Register, to the Village Administrative Officer and he has not signed in the said Register and only the person, who has booked the room, used to sign in the said Register and A.Siva has signed in the said Register and Ex.P.6 and Ex.P.7 are the Athatchi and Booking Register. Further, P.W.9 Nagaraj has stated that he is running Tutorial College and the first accused Sivakumar has worked as a Teacher of Physics and Chemistry and six and seven years prior to the date of giving his evidence, at about 10.00 a.m., the first accused Sivakumar and the first accused's two friends have come to his house and they have stated to him that they are coming for selling coconuts and thereafter, they have kept their bags, in his house and gone out from his house and they have not returned to his house and thereafter, he has handed over the said bags to the police and also, he has signed in the Athatchi of Ex.P.8 and Ex.P.9, for the recovery of the said bags and however, he cannot specifically say as to whether he has handed over the Rexin bag(in the shape of suitcase) to the police.

2.7. Further, P.W.10 Pandiyan has stated that he is running an Auto Consulting Shop and seven years prior to the date of giving his evidence before the Trial Court, the juvenile accused Prathap has purchased K.Bajaj old model two wheeler from his shop, and he has no knowledge about the person, in whose name, the said two wheeler has been registered and also, he does not know about the place of residence of the said Prathap and the said Prathap is aged about 18 - 20 years and he has not handed over the said vehicle. Further, P.W.12 Anbu has stated that he has worked as Manager in Arafa Tourist Home and six and half

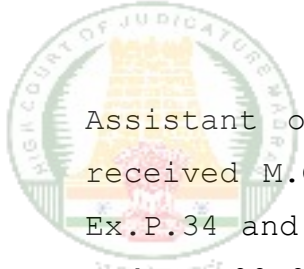


years prior to the date of giving his evidence before the Trial Court, three persons have stayed in the said Tourist Home and he has handed over the Ex.P.10 Register to the police, with regard to the details about the stay of the said persons and however, he has no knowledge as to whether the accused have stayed in the said Tourist Home and also, he could not say, about the details of the persons, who have registered the name and address in the said Tourist Home and on 18.03.2004, the name of Ansari Rosekandan, Kumuli has been registered and the said Ansari has signed in the Register and the Ex.P.11 is the notes, with regard to the details for the stay, of the said Ansari on 18.03.2004, in the said Tourist Home and the Inspector of Police of Chinnamanur Police Station has recovered the said Register. Further, P.W.13 Murugan has stated that he does not know about the seven accused and six years prior to the date of giving his evidence before the Trial Court, when he has worked in Mammuti Store, Moonar, he has signed in Ex.P.12 Athatchi and however, he has no knowledge about the contents of the said Athatchi and also, he does not know about the present case. Further, P.W.14 Thiru.Manoharan has stated that on 24.04.2004, he has served as Village Administrative Officer of Markaiyan Kottai and the police have arrested the accused Angathevar @ Kattaiyan, Raja S/o.Rajamani Thevar and the second accused Deivendran S/o.Ochathevar and also, the police have recorded the confession statements, from the said accused and also, the police have recovered Sickles and Knife and shirt in Athatchi as per Ex.P.13, from the accused Angathevar @ Kattaiyan, which has been hidden under the bush near Ellapatti and the P.W.14 and his Assistant have signed in the said Athatchi and Ex.P.14 is the admissible portion of the confession statement, given by the accused Angathevar @ Kattaiyan and also, he has identified M.O.Nos.2 and 3 Sickles and M.O.6 Knife and the said material objects have been handed over by the accused Raja, the second accused Deivendran and the accused Kattaiyan, from the bush and also, he has identified M.O.9 shirt and also, the P.W.14 and his Assistant have signed in the Athatchies of Ex.P.15 and Ex.P.16 and Ex.P.Nos.17 and 18 are the admissible portions of the confession statements, given by the second accused Deivendran @ Ayyayiram and the accused Raja and the police have arrested the fourth accused Sekar @ Thotti Sekar and also, he has recovered the confession statement, given by the fourth accused and also, he has recovered M.O.10 two wheeler from the fourth accused and also,



the police have arrested the fifth accused Ansari and the accused Deepan Chakravarthi and the police have recorded the confession statement, given by the fifth accused and Ex.P.19 Ex.P.20 are the admissible portions of the confession statements, given by the fifth accused and the accused Deepan Chakravarthi and the police have recovered knives and bloodstained shirt in the Athatchi as per Ex.P.21, which has been hidden nearer to the bush at burial ground and he has also signed in the said Athatchi. Further, P.W.14 has stated that the police have also recovered M.O.11 Rexin bag, M.O.12 Suitcase and M.O.Nos.13 and 14 shirts in the Athatchi, which has been hidden in the inside portion of the house of Nagarajan and he has also, signed in the said Athatchi and the police recorded the confession statement from the first accused Siva and also, the police have recovered Ledger book, from Bose, Manager of Rajkumaran Lodge, Chinnamanur and also, the police have recovered Knife from Muthusamy, in the Athatchi, which has been hidden nearer to the bush and the P.W.14 and his Assistant have signed in the said Athatchi and Ex.P.22 is their signature in the said Athatchi and Ex.P.23 is the admissible portion of the confession statement and also, the police have recovered Ex.P.24 Ledger book in the Athatchi, from the Manager of Keerthi Tourist Home Lodge, Kumuli where, the fifth accused Ansari has stayed and Ex.P.25 is their signature in the said Athatchi and Ex.P.26 and Ex.P.27 are the specimen signatures of the fifth accused Ansari.

2.8. Further, P.W.15 Dr.Amudhini has stated that she has served as Doctor in Uthamapalayam Government Hospital on 19.03.2004 and she has conducted Postmortem on the dead body of the deceased Deivendran, aged about 43 years and also, she has issued Postmortem Certificate as per Ex.P.28 and in the said Postmortem Certificate, she has given her opinion that Postmortem concluded on 19.03.2004 at 12.30 p.m., and the deceased would appear to have died of Shock and Haemorrhage due to multiple injuries sustained and death would have occurred 12 to 20 hours prior to Autopsy. Further, P.W.16 Thiru.Pappusamy has stated that he has served as Head Clerk of Judicial Magistrate Court, Uthamapalayam and he has sent the material objects to Madurai Forensic Science Lab and Chennai Forensic Science Lab and Ex.P.Nos.30 to 33 are the Court letters and on 20.03.2004, the Test Reports have been received by the Court. Further, P.W.17 Tmt.Mahalakshmi has stated that she has served as Scientific



Assistant of Forensic Science Lab, Madurai and on 19.04.2004, she has received M.O.Nos.1 to 18, from the Court and thereafter, she has issued Ex.P.34 and Ex.P.36 Chemical Analysis Reports and Ex.P.35 Serology Report and on 09.06.2004, one material object, namely, knife has been received and Thiru.Vijayendran, Junior Scientific Assistant has conducted test of the said material object and Ex.P.37 is the Biology Report and Ex.P.38 is the Serology Report of the said material object. Further, P.W.18 Thiru.Karunanithi, learned IV Additional Subordinate Judge, Madurai has stated that during the year 2004, he has served as learned District Munsif and Judicial Magistrate, Bodinayakanur and as per the order of the learned Chief Judicial Magistrate, Madurai in Ex.P.40, he has conducted Identification Parade at Central Prison, Madurai on 23.04.2004 at 12.00 noon and he has issued Identification Parade Report as per Ex.P.41. Further, P.W.Nos.11 and 26 have been treated as hostile witnesses, as they have not supported the case of the prosecution.

2.9. Further, P.W.19 Thiru.Dharmaraj has stated that during the year 2004, he has served as Head Constable of Chinnamanur Police Station and on 18.03.2004 at 19.45 hours, he has received Ex.P.44 First Information Report in Crime No.48 of 2004 and also, he has submitted the said First Information Report to the learned Judicial Magistrate, Uthamapalayam at 22 hours. Further, P.W.20 Thiru.Ayyavu, Special Sub Inspector of Police(Retd.,) has stated that he has served in Chinnamanur Police Station and on 19.04.2004, at 19 hours, he has handed over dead body of the deceased Deivendran, to Uthamapalayam Government Hospital, for conducting Postmortem and after the completion of the Postmortem, he has recovered M.O.15 shirt, M.O.16 Lungi and M.O.17 Towel and also, he has submitted the Report to the Inspector of Police, regarding the recovery of the said material objects. Further, P.W.21 Thiru.Balasubramani has stated that he has served as Writer in Chinnamanur Police Station and on 07.06.2004, he has submitted the list of tourists, who have stayed on 14.03.2004 at Srirajakumaran Lodge. Further, P.W.22 Thiru.Yuvenesan has stated that he has served in the Records Section of Forensic Science Lab, Chennai and on 10.06.2004, the material records in Crime No.48 of 2004 have been received and <https://hservices.ecourts.gov.in/hservices/> signatures have been made on 16.03.2004 in the Register of Srirajakumaran Lodge, marked as Q1 and also, the signatures, made in



carbon sheets in the Register of the same Lodge, marked as Q2 and also, the particulars and signatures made in the Register of Keerthi Tourist Home, marked as Q3 and Q4 and also, the particulars and signatures made in the Register of Arafa Tourist Home, marked as Q5 and Q6 and the specimen signatures of the first accused A.Sivakumar, received in full sheets, have been marked as S1 to S26 and also, the specimen signatures of fifth accused R.Ansari, received in full sheets, have been marked as S27 to S40 and he has issued Report as per Ex.P.42 and as per the said Report, he has not stated any details about Q1 and Q2 signatures, and also, he has submitted the said Report to the Court.

2.10. Further, P.W.24 Thiru.Sathyaseelan has stated that on 18.03.2004, he has served as Sub Inspector of Police of Chinnamanur Police Station and at 5.30p.m., P.W.1 Thenammal, W/o.Perumal has appeared before him and also, he has received Ex.P.43 Complaint from P.W.1 and at 6.30 p.m., he has prepared First Information Report as per Ex.P.44 in Crime No.48 of 2004 under Sections 147, 148 and 302 I.P.C., and also, he has submitted the said First Information Report to the learned Judicial Magistrate, Uthamapalayam, through Dharmar, Head Constable and also, he has submitted the case records to Thiru.Palaniappan, Inspector of Police at 7.45 p.m., on the same day. Further, P.W.25 Palaniyappan has stated that on 18.03.2004, he has served as Inspector of Police of Chinnamanur Police Station and at 7.45 p.m., he has received the case records in Crime No.48 of 2004 from the Sub Inspector of Police and at 8.15p.m., he has gone to the place of occurrence, with Torch light and Battery light and he has prepared Observation Mahazar and Rough Sketch as per Ex.P.2 and Ex.P.45 respectively and at 8.30 p.m., he has instructed to Vellaisamy, Photographer, to take photos, in five directions and at 10.00 p.m., he has recovered M.O.7 bloodstained earth, M.O.8 sample earth and M.O.20 Lifebuoy soap, in the Athatchi as per Ex.P.3, before the presence of P.W.5 Prakash and Muniyandi and they have signed in the said Athatchi and also, he has prepared Inquest Report as per Ex.P.46 and also, he has recovered the dresses of the deceased, after the completion of Postmortem and on 22.03.2004, he has sent the material objects to the Court and on 24.03.2004, he has arrested the accused Angathevar @ Kattaiyan, the second accused Deivendran @ Ayyayiram and Ex.P.14 is the admissible portion of the confession statement, given by the accused



Angathevar @ Kattaiyan and at 8.15 a.m., he has recorded the confession statement, given by the accused Raja and Ex.P.18 is the admissible portion of the confession statement, given by the accused Raja and at 9.30 a.m., he has recorded the confession statement, given by the second accused Deivendran @ Ayyayiram and Ex.P.17 is the admissible portion of the confession statement, given by the second accused and at 11.30 a.m., he has recovered M.O.1 Sickle and M.O.9 shirt, from the accused Angathevar @ Kattaiyan, in the Athatchi as per Ex.P.13 and also, he has recovered M.O.2 Sickle and M.O.14 Polyester shirt, from the accused Raja, in the Athatchi as per Ex.P.15 and also, he has recovered M.O.3 Sickle and M.O.13 Polyester shirt, from the second accused Deivendran @ Ayyayiram, in the Athatchi as per Ex.P.16 and at 1.15 p.m., he has arrested the third accused Vasakar and at 2.30 p.m., he has handed over the accused and material objects to the police station and also, he has handed over the accused to court custody and on 25.03.2004, at 12.00 noon, he has arrested the accused No.4 Sekar @ Thotti Sekar, near "Satha Kovil" Markeyan Kottai-Bodi Road and he has recorded the confession statement from the accused No.4 and Ex.P.47 is the admissible portion of the confession statement given by the fourth accused and at 2.30 hours, he has recovered M.O.10 two wheeler bearing Registration No.TN 59-Z-0001 in the Athatchi as per Ex.P.48, from the accused No.4 Sekar @ Thotti Sekar and the accused No.4 has identified Srirajakumaran Lodge, Chinnamanur and the Manager of the said Lodge and also, the room, in which, they have stayed on 16.03.2004 and he has recovered Ex.P.7 Lodge Booking Register from Senthil, Manager of the said Lodge, in the Athatchi as per Ex.P.6 and in Ex.P.7 Register, the signature of the first accused Siva has been seen, for staying in Room No.104, of the said Lodge and thereafter, he has handed over the first accused to the Court custody.

2.11. Further, P.W.25 has stated that on 26.03.2004 at 2.30 p.m., he has arrested the accused No.5 Ansari and the accused Deepan Chakravarthy and he has recorded the confession statement from the accused No.5 Ansari and also, he has recovered M.O.5 Knife at 8.45 p.m., from the place near the burial ground, in the Athatchi as per Ex.P.50 and on 26.03.2004, at 9.30 p.m., he has recovered M.O.Nos.23 to 28, namely, the clothes and M.O.11 Rexin Bag and M.O.12 suitcase, from the inside portion of the house of Nagarajan, in the Athatchi as per Ex.P.9 and



also, he has recovered M.O.Nos.29 to 31, namely, the dresses, from the bag in the house of Nagarajan, in the Athatchi as per Ex.P.51 from the accused Deepan Chackravathy and at 11.45 p.m., he has recovered Ex.P.24 Booking Register from Surendran, Manager of Keerthi Tourist Home Centre, Kizhaku Medu, Kumuli, in the Athatchi as per Ex.P.25 and in the said Ex.P.24 Booking Register, the signature of the accused No.5 Ansari, is shown in page No.77, on the date of 19.03.2004 at 11.30 a.m., and also, in the said Register, it has been mentioned, up to 20.03.2004 at 9.00 a.m., and Ex.P.26 is the specimen signatures of the accused No.5 Ansari and on 29.03.2004, he has submitted the material objects to the Court and on 30.03.2004, the said material objects have been received by the Court and on 29.03.2004, he has received the Accident Register and Ex.P.28 Postmortem Certificate and he has also enquired the P.W.15, Doctor, who has conducted Postmortem on the dead body of the deceased Deivendran and on 31.03.2004 at 10.00 a.m., he has arrested the accused Pradap, near Markeyan Kottai bus stop and also, he has recorded the confession statement from the accused Pradap and also, he has recovered R.C.Book of the two wheeler bearing Registration No.TN 59-Z-0001, from the house of Pushpam, who is the aunty of the accused Pradap, in the Athatchi as per Ex.P.53 and also, he has handed over the accused Pradap and the said R.C.Book, to the court.

2.12. Further, P.W.25 has stated that on 31.05.2004 at 6.00 p.m., he has recorded the confession statement from the first accused Siva @ Sivakumar and Ex.P.23 is the admissible portion of the confession statement, given by the first accused Siva @ Sivakumar and on 01.06.2004 at 6.30 a.m., he has recovered M.O.6 Knife, which has been hidden in Mallaya Goundan coconut grove, in the Athatchi as per Ex.P.22 from the first accused and also, he has recovered Ex.P.10 Register of Arafa Tourist Home, Moonar, in the Athatchi as per Ex.P.54 and Ex.P.11 is the notes in the said Register at 51th page and also, in page No.24 at Serial No.238, of the said Register, it has been mentioned that three persons have stayed in the said Lodge, in the name of Ansari in Room No.102 on 18.03.2004 at 9.00 p.m., and Ex.P.27(series) are the specimen signatures of the first accused Siva @ Sivakumar and also, on 07.06.2004, he has recovered Ex.P.7 Original Lodge Report, with regard to the date of 16.03.2004 and he has recovered Transfer Certificate and Mark List from



the witness V.R.Ganesan, on 10.06.2004 and he has recorded the statement from Thiru.Paulraj, Head Master of Srikrishna Ayyar Higher Secondary School, regarding the Age Certificate of the accused Pradap and on 8.11.2004, he has received the copy of the R.C.Book of the two wheeler bearing Registration No. TN 60-Y-3027 and thereafter, after the completion of his investigation, he has filed final report under Sections 147, 148, 302 r/w 149, 109 and 120(b) I.P.C., on 12.11.2004 and also, he has filed final report, separately for the juvenile accused Pradap. Further, P.W.27 Thiru.Thiruvankadam, Inspector of Police(Retd.,) has stated that he has served as Inspector of Police for the period from 29.11.2002 to 31.12.2005 and thereafter, he has retired and the previous case in Crime 180 of 2002 under Section 302 has been acquitted in Periyakulam Fast Track Court and the present case in Crime No.48 of 2004 under Sections 147, 148, 149, 120(b) and 302 r/w 109 I.P.C., has been registered and investigated by P.W.25 Thiru.Palaniyappan, Inspector of Police of Chinnamannur Police Station and the case records in Crime No.180 of 2002 has been handed over to Chinnamanur Police station, for the above said case and Ex.P.32 is the photo copy of First Information Report in Crime No.180 of 2002.

3. On completion of the evidences on the side of the prosecution, the accused have been questioned under Section 313 of Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and they have stated that they are innocent persons and they are not involved in the said occurrence.

4. Having considered all the above materials on record, the Trial Court has convicted the appellants/accused Nos.1, 2 and 5, as mentioned in the beginning of this Judgment and challenging the said Judgment of the Trial Court, the appellants/accused Nos.1, 2 and 5 have come forward with the present criminal appeals.

5. It is stated in the Grounds of Appeal, that the Trial Court ought to have acquitted the appellants/accused having regard to the facts and circumstances of the case and the guilt of the accused have not been proved beyond reasonable doubts. There is contradiction between the first information given by P.W.1 and the final report filed by the



respondent police before the Trial Court. The Trial Court has failed to see that one Angathevar and 5 others are said to have attacked the deceased, resulting in death on 18.03.2004 at about 03.15 p.m. However, the final report has been filed against 10 accused and thus, the case of the prosecution, that the appellants/accused have murdered the deceased cannot be believed. The evidences of eyewitnesses, namely, P.W.1 to P.W.4 are self contradictory and their depositions do not support the other prosecution witnesses. The offences alleged as against the accused Nos.3, 4 and 6 have not been proved, according to the Trial Court, and as such the conviction Judgment delivered as against the appellants/accused are not proper and also, not in confirmation with law. P.W.1 is not an eyewitness to the occurrence, having regard to the fact that she has rushed to the scene of occurrence, only after the alleged attack of the deceased, resulting in his death. P.W.1 has stated in her evidence that 6 accused are involved in the occurrence, though the final report has been filed as against 10 accused by the prosecution and as such the case of prosecution cannot be true and no reliance can be placed on the side of the prosecution. The Trial Court has failed to note that the motive is a double-edged weapon and as such conviction of the appellants/accused on the strength, the motive attributed by the prosecution that the deceased have financed one Murugan, the accused in connection with murder of son-in-law of Angathevar cannot be sustained for simple reason that the said motive has been mentioned only, for implicating the appellants in the offence of murder. The eyewitnesses of P.W.1 and P.W.2 are close relatives to the deceased and also, P.W.1 and P.W.2 have previous enmity with the accused. The Trial Court has failed to see that the evidences of P.W.4 and others are only hearsay evidences and as such no reliance can be based on the evidences of such witnesses. The evidences of P.W.5 to P.W.27 will not substantiate the case of prosecution. If the grievous injuries have been caused in the body of the deceased, on vital parts, then, it will not be possible for the deceased to speak to P.W.1 that the accused have attacked him, due to previous enmity. P.W.15 Doctor, who has conducted Postmortem on the dead body of the deceased, has stated in her evidence that the death has been caused due to injury caused on the head of the deceased, and also, the Doctor has admitted that the said injury ~~caused due to a fatal fall.~~ The Trial Court has failed to see that the incident is said to have occurred at about 3.15



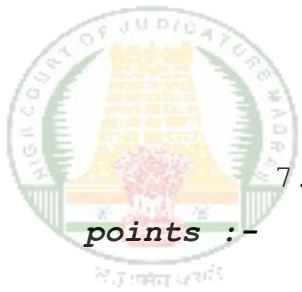
p.m., resulting in instantaneous death of the deceased, whereas the complaint has been given at about 6.30 p.m., especially, when the distance between the place of occurrence and police station is only 6 k.m., and the said delay in preferring the Complaint has not been explained by the prosecution. The Trial Court ought to have seen that P.W.25(Inspector of Police) has stated in his evidence that the Complaint has been recorded by the Head Constable, namely, Manikam, whereas, as per the Ex.P.44(FIR), the Complaint has been recorded by the Sub Inspector of Police(P.W.24) and as such the very foundation of the case of prosecution is doubtful and as such the conviction based on the said materials are unsustainable and also, an abuse of process of law. The Trial Court has failed to note that P.W.6 has stated that P.W.Nos.1 to 3 are not there in the scene of occurrence and as such the presence of P.W.Nos.1 to 3 in the scene of occurrence is highly doubtful. The evidence of P.W.2 is not reliable, having regard to the fact that in his evidence, he has deposed that the incident has occurred when the deceased has taken bath, wearing a towel. However, in the Inquest Report(Ex.P.46) it has been stated that shirt and dhoties have been recovered from the body of the deceased with the cuts, made in the dresses and as such the presence of P.W.2 is highly doubtful. Identification Parade will not be helpful to the prosecution, in the light of the fact that the photographs of the accused, have been published in news paper, as deposed by P.W.6. Conviction of the appellants/accused for the offences punishable under Sections 148 and 302 r/w 149 I.P.C., in the absence of any legally acceptable evidence, cannot be sustained and also, unsustainable in law.

6. The points that arise for consideration in the present Criminal Appeal are as follows:-

1) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?

ii) Whether the said Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also

for the submissions made on behalf of the above mentioned appellants?



7. Analysis, discussions and findings with regard to the points :-

The learned counsel for the appellants has vehemently submitted that there is no clinching and trustworthy testimony of the eyewitnesses. According to the learned counsel for the appellants, there is no reliable eye witnesses to establish the guilt of the appellants herein. Further, the learned counsel for the appellants, has submitted that the circumstances have not been established by the prosecution, in an acceptable manner. Further, the learned counsel for the appellants, has also submitted that the prosecution has not proved the case by examining the acceptable and trustworthy evidences, exhibits and material objects. Further, the evidences of interested witnesses of P.W.1 and P.W.2 are not trustworthy and clear. The motive aspect and intention have not been explained, properly, by the prosecution. Further, the learned counsel for the appellants, has stated that there are vital discrepancies and contradictions in the evidences of the prosecution and there is a serious doubt about the genuineness of Ex.P.1. Further, the learned counsel for the appellants has stated that the prosecution witnesses have not come forward with the true version and also, for the above mentioned reasons, the appellants are entitled to get acquittal.

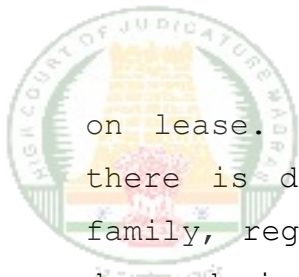
8. On the other hand, the learned Additional Public Prosecutor for the respondent has submitted that the evidences of the eyewitnesses of the prosecution are reliable and trustworthy and the fact remains that the genesis of the crime is not suppressed and the presence of the prosecution witnesses at the scene of occurrence is not doubtful. Further, there is no serious infirmity or inconsistency in the evidences of the prosecution witnesses and the prosecution has established the case, beyond reasonable doubts and there are cogent evidences to connect the appellants to the said crime. Though, there are slight variations, the evidences of prosecution, could not affect, the credibility of the prosecution witnesses.

9. The crucial witness, namely, P.W.1 Thenammal has deposed that the deceased Deivendran is her brother and P.W.2 Perumal is her husband and P.W.1 and P.W.2 have worked in the deceased Deivendran's coconut



grove and her brother, namely, Deivendran, used to take coconut groves on lease and he has done the business of selling the coconuts and she knows the seven accused. Further, P.W.1 has admitted that after the occurrence, she has lifted the body of the deceased Deivendran and put it on her lap and asked him as to what has happened. Further, P.W.1 has lodged the Complaint as per Ex.P.43 with the police on 18.03.2004 at 17.30 hours, i.e., immediately, after the occurrence, as stated in the said Complaint that after the death of her brother and also declared by the Doctor and she has gone to Chinnamanur police station, along with her husband Perumal and lodged the Complaint as per Ex.P.43 on 18.03.2004 at 7.30 hours and the same has been registered in Crime No.48 of 2004 by P.W.24 Sub Inspector of Police. Further, P.W.1 has admitted that she has signed in the Ex.P.43 Complaint and Ex.P.1 is her signature in the said Complaint and her husband also, has signed in the said Complaint, as an attesting witness. Further, P.W.1 has deposed that before the date of occurrence, there arose an enmity between the accused and the deceased. However, she has not deposed specifically about the motive for the brutal assault, caused to the deceased Deivendran, by the accused, with the help of the dangerous weapons. Further, in the cross examination, once again, P.W.1 has admitted that she has asked the details about the occurrence, to her deceased brother and she has heard, and also her deceased brother has narrated the details to her and from that, she came to know about the occurrence details. Further, the Trial Court has also observed at the time of recording the evidence of P.W.1, to the effect that P.W.1 has deposed as per the version told to her and P.W.1 has been directed by the Court, to depose naturally. Further, P.W.1 has deposed that she has lodged Ex.P.43 Complaint orally and only the police have written the said Complaint. However, in the present case, the person who has written the said Complaint, as per the dictation given by P.W.1, has not been examined by the prosecution. Further, P.W.1 has admitted in her cross examination that the police have enquired her at hospital at night 11.00 p.m., only. Further, P.W.1 has deposed that she has given Ex.P.43 Complaint orally only and the police have written the said Complaint and she has signed in the said Complaint.

<https://hcservices.ecourts.gov.in/hcservices/> Further, P.W.1 has admitted that there is no dispute between P.W.1's family and accused family, regarding, taking of coconut grooves



on lease. However, in Ex.P.43 Complaint, P.W.1 has pointed out that there is dispute between the deceased Deivendran's family and accused family, regarding taking of coconut groves on lease. Further, P.W.1 has deposed in Ex.P.43 Complaint that Pitchaimani has been murdered by Murugan and Pandi and the said Murugan, used to come to P.W.1's brother Deivendran's grove for cutting the coconuts, for coolly and her deceased brother Deivendran has helped Murugan for the said murder case, by engaging Advocate and on the said ground also, there is an enmity between the deceased and the first accused. However, P.W.1 has specifically admitted that the said murder of Pitchaimani has taken place before two years. But, the said Complaint has been lodged by P.W.1, only on 18.03.2004. In such circumstances also, it is highly doubtful for the said vengeance, the accused have assaulted the deceased Deivendran. Further, P.W.1 has stated that due to coconut groves, taken on lease, there is a dispute arose between the accused and the deceased. However, the said details have also not been established on behalf of the prosecution, in an acceptable manner, for the accused, to brutally murder the deceased Deivendran. Further, P.W.1 has clearly admitted that she has handed over the bloodstained saree of herself to the police station. However, the police have not produced the said bloodstained saree of P.W.1, to establish that P.W.1 has seen the occurrence. For, not producing the said bloodstained saree of P.W.1 also, the prosecution has not produced any valid reasons.

11. Further, P.W.2 Perumal has deposed that P.W.1 is his wife and the deceased Deivendran is the brother of P.W.1 and P.W.5 Prakash is his son. Further, P.W.1 Thenammal has deposed that due to the coconut groves taken on lease, there arose a dispute between the deceased family and the accused family. However, P.W.2 has admitted that during the period of occurrence, the deceased Deivendran has not taken any coconut groves, on lease. Further, P.W.2 has admitted in his chief examination that he knows only four persons, out of the seven persons, who have appeared before the Open Court, regarding the present case, and he does not know about other three persons. Furthermore, P.W.2 has admitted that he has enquired to P.W.1 about the incident and P.W.1 only has informed him about the incident. Also, P.W.2 has admitted in his chief examination that he has identified two persons at the Central Prison, and



among the two persons, only one person, present in the Open Court, at the time of giving his evidence. Further, P.W.2 has admitted that the deceased Deivendran has stated to him that, about two years before Murugan has murdered Pitchaimani and for that, the deceased has helped to the said Murugan, by giving amounts and due to that enmity the accused have assaulted the deceased and he has informed the said details to the police. However, for an incident that has taken place about two years before, the accused have brutally assaulted the deceased Deivendran, with dangerous weapons, are highly doubtful. Further, P.W.2 has admitted that he has not seen his son, namely, P.W.5 Prakash, in the hospital and also, the deceased Deivendran has not got any enmity as against the accused, due to the coconut groves, taken on lease. However, P.W.1 has stated in Ex.P.43 Complaint and in her evidence that there is an enmity between the deceased and also the accused, with regard to the coconut groves taken on lease by the deceased person.

12. Further, P.W.3 Jeyamani has deposed that the police have enquired her at night 11.00 p.m., in Uthamapalayam Hospital and she does not know, whether the police have recovered two Knives, from the well, after draining the well water. Hence, her evidence also is not very much clear and cogent, to establish the case of the prosecution. Further, P.W.4 Selvi has deposed that the deceased Deivendran is her husband and she has stated in the police enquiry that she has been taken to the place of occurrence, only, by stating that the deceased Deivendran, namely, the husband of P.W.4 has been assaulted and also murdered. Further, P.W.5 has deposed in the chief examination that he could not remember as to whether, M.O.20 Lifebuoy soap has been kept in the place of occurrence. However, he has admitted in the cross examination that he has remembered about the said Lifebuoy soap, recovered by the police, from the place of occurrence. Further, P.W.6 Kasi has clearly deposed that the police have informed him about the two persons, before identifying the accused, and at that time, he does not know about the name, village and other particulars of the accused and thereafter, he came to know about the names of the two persons, through newspaper reports only. Further, P.W.7 Karnan has also deposed that he has identified only two persons in the Central Prison, Madurai. Further, P.W.8 Senthil has deposed that he has worked as Manager in Rajkumar Lodge, Chinnamanur and



he cannot say as to whether the persons, standing in the Court, as first accused Siva has taken room in the said lodge and also, about the signature of the first accused, made in Ex.P.7 Lodge Booking Register and also, about Athatchi of Ex.P.6 and also, he cannot say about the details of the persons, stayed in the said lodge on 16.04.2004 and also, as to when the said persons have vacated from the said lodge.

13. Further, P.W.9 Nagaraj has deposed that he has conducted Tutorial classes at Chinnamanur and the first accused Sivakumar has worked along with him, as Physics and Chemistry Master and he has handed over the Travels Bag to the police and he has also signed in Ex.P.8 Athatchi. However, he has admitted that he cannot say, whether he has handed over same bag shown to him in the Court, to the police, on that particular day. Further, he has admitted that he cannot specifically say, as to whether he has signed in the police station and he does not remember the said details. Further, P.W.10 Pandiyan has deposed that he is running Pandiyan Auto Consulting Shop, at Theni and six or seven years before, the accused Prathap has purchased K.Bajaj two wheeler from his shop. However, he has deposed that he cannot identify the said vehicle, because, the said vehicle has been sold, before six or seven years and he has not got any records, regarding the sale of the said two wheeler to the said person.

14. Further, P.W.12 Anbu has deposed that he has worked as Manager in Arafa Tourist Home and the fifth accused has signed in Ex.P.11 Register. However, he has admitted in the cross examination that in Ex.P.11 Register, the details and addresses of persons, who have taken room, have not been mentioned and he does not know about the stay of the fifth accused Ansari, in Room No.102, at the said lodge. Further, P.W.13 Murugan has deposed that he does not know all the seven accused and he has signed in the Athatchi as per Ex.P.12. However, he has admitted that he does not know about the contents of the said Athatchi and he does not know anything about the present case. Further, P.W.14 Thiru.Manoharan has deposed that on 24.04.2004, he has served as Village Administrative Officer and he has admitted that he has given evidences in favour of the police for thirty cases and hence, it is clear that he has given evidences, in favour of the police, for more than thirty cases. Further,



on that ground only, it is rightly submitted on behalf of the appellants, by the learned counsel for the appellants, that P.W.14 is the readily available evidence for the police and also, an obliging evidence for the police. Further, P.W.15 Dr.Amudhini has deposed that on 19.03.2004, she has served as Doctor in Uthamapalayam Government Hospital and she has conducted Postmortem on the dead body of the deceased Deivendran, aged about 43 years and issued Postmortem Certificate as per Ex.P. 28 and in the said Postmortem Certificate, she has given her opinion that the deceased would appear to have died of Shock and Haemorrhage, due to multiple injuries sustained by him. Further, she has deposed that the police have shown to her M.O.Nos.1 to 6, namely, the weapons only at the time of giving her evidence before the Court and the Investigation Officer has not shown to her, the said M.Os., and also, not enquired with her, as to whether the Postmortem mentioned injuries would have been caused by the weapons of M.O.Nos.1 to 6. Further, P.W.15 Doctor has deposed that the injuries pointed out in Ex.P.28 Postmortem Certificate, could have been caused by other weapons, other than M.O.Nos.1 to 6. Further, P.W.15 Doctor has deposed that if, the blood-vein which, used to take blood to brain, has been cut and then, the deceased's brain will not function and it will not also function, immediately, after the assault and also, after the injury caused, as pointed out in the said Postmortem Certificate and also, it is not possible for the deceased, to speak. However, P.W.1 has deposed that she has lifted the body of the deceased Deivendran and asked him, as to what has happened and the deceased has narrated that the accused have brutally assaulted him, with dangerous weapons, due to previous enmity. Hence, the medical evidence also has not corroborated with the evidence of P.W.1 and the details mentioned in Ex.P.43 Complaint, lodged by P.W.1, to the police. Further, P.W.11 and P.W.26 have been treated as hostile witnesses, as they have not supported the case of the prosecution fully, and hence, the case of the prosecution has been weakened, on that ground also.

15. Further, P.W.18 Thiru.Karunanithi, learned IV Additional Subordinate Judge, Madurai has deposed that in the year 2004, he has served as learned District Munsif-cum-Judicial Magistrate, Bodi and on 29.04.2004, he has conducted Identification Parade, at the Central Prison, Madurai and he has prepared Identification Parade Report as per



Ex.P.41. However, P.W.6 has admitted in his evidence that the two accused have been identified by the police, before identifying the accused and he came to know about the accused, through newspaper report, also. Hence, the said Identification Parade Report also has not strengthened the case of the prosecution, in the light of the evidence of P.W.6. Further, P.W.19 Thiru.Dharmaraj, Special Sub Inspector has deposed that in the year 2004, he has served as Head Constable in Chinnamanur Police Station and on 18.03.2004, he has submitted Ex.P.44 Express First Information Report to the learned Judicial Magistrate, Uthamapalayam at 22 hours, though, Ex.P.43 Complaint has been registered on 18.03.2004 at 17.30 hours, itself, by the police. Further, P.W.22 Thiru.Yuvanesan has deposed that he is serving as Scientific Assistant in Forensic Science Department, Chennai and he has specifically deposed in his evidence that he is unable to give any opinion, regarding Q1 and Q2, signatures, obtained from A1, when compared with the sample signatures obtained from A1/first appellant herein.

16. Further, P.W.24 Thiru.Sathyaseelan has deposed that on 18.03.2004, he has served as Sub Inspector of Police in Chinnamanur Police Station and he has registered the First Information Report as per Ex.P.44, based upon the Ex.P.43 Complaint, lodged by P.W.1, at 5.30 p.m., on 18.03.2004 itself. However, Ex.P.44 First Information Report has been received by the learned Judicial Magistrate on 18.03.2004 at 10.00 p.m., only and the police have not furnished any acceptable reasons for the said long delay, in submitting the said First Information Report to the learned Judicial Magistrate. Further, Thiru.Palaniyappan, Investigation Officer, namely, P.W.25 has deposed that on 18.03.2004, he has served as Inspector of Police of Chinnamanur Police Station and on 25.03.2004 at 2.30 hours, he has recovered the M.O.10, K. Bajaj two wheeler bearing Registration No.TN 59-Z-0001 from the fourth accused Sekar @ Thotti Sekar, in the Athatchi as per Ex.P.48 and also, he has recovered R.C. Book of the said two wheeler, from the accused Prathap, in the Athatchi as per Ex.P.53. However, P.W.11, namely, the vendor of the said two wheeler has not specifically stated in the police enquiry that the accused Prathap, has purchased the said two wheeler from him. Further, <https://hservices.courts.gov.in/hservices/> the Investigating Officer has admitted that on 29.03.2004 only, the material objects have been sent to the Court of Judicial Magistrate and



however, for the delay in sending the said material objects to the Court of Judicial Magistrate, also, the prosecution has not furnished any valid reasons. Further, the Investigation Officer has admitted that there are no records to establish, as to by, what time, the Death Intimation has been received from Uthamapalayam Government Hospital, regarding the death of the deceased. Though the said record is an important document, the Investigation Officer has not explained about the said vital document. Further, for the question, whether the Death Intimation has been received through (VHF) Very High Frequency message or telephone message, also, the Investigation Officer has only deposed that the said message might have been received through any one of the method and he does not know about the manner in which the said communication has been received. Further, he has admitted that there is no entry, regarding the receipt of the message with regard to the death of the deceased Deivendran, in the case diary, and also, with regard to the receipt of message of the death intimation through Very High Frequency message or telephone. At the same time, the Investigation Officer has admitted that the Death Intimation Report has been sent to the Court and the same has placed in the records. However, the details of the same have not been filed by the Investigation Officer to prove the case of the prosecution, beyond reasonable doubts. Further, the Investigation Officer has deposed that the deceased Deivendran has taken coconut groves on lease and done the business and however, P.W.2 has deposed that during the period of occurrence, the deceased has not done the coconut business.

17. Further, the Investigation Officer has admitted that during his investigation, he does not come to know, as to whether the deceased has got dressed with the shirt and dhoti, at the time of occurrence. However, he has admitted that in M.O.15 bag, he has seen the dresses of the deceased with three cut pieces, caused by weapons. Further, it is quite unnatural for the deceased to take bath by wearing dresses and also, the case of the prosecution, that the accused have assaulted the deceased, while taking bath, is also highly doubtful, as rightly pointed out by the learned counsel for the appellants. Further, P.W.27 has deposed that the previous case, in Crime No.180 of 2002 has ended in acquittal. However, he has admitted that the Inspector of Police of Chinnamanur Police Station has not recorded any statement from him and



during the period of occurrence, he has not served in Uthamapalayam Police Station.

18. Further, on a careful perusal of the evidence of P.W.1 along with the evidences of P.W.2 and P.W.27 witnesses, it is found that their evidences are not reliable and trustworthy, to believe the case of the prosecution. Further, the Doctor, who has informed to P.W.1 about the death of Deivendran, in Uthamapalayam Government Hospital, has not been examined by the prosecution. Further, it is also seen that proper final report has not been filed and also, there is no proper investigation made based upon Ex.P.44 First Information Report, and it is seen that the time received by the Court, left blank, in Ex.P.44, First Information Report.

19. Further, the crucial witnesses in the present case are P.W.1, sister of the deceased and P.W.2, husband of the P.W.1. As they are close relatives of the deceased Deivendran and admittedly, there are certain previous enmity between the accused and the deceased and the evidences of P.W.1 and P.W.2 have to be examined with much care and caution. However, it is seen that the evidences of the said key witnesses in the present case are not cogent, reliable, credible and trustworthy in support of the case of the prosecution. There are vital contradictions between the evidences of P.W.1 and P.W.2 and other witnesses of the prosecution. Further, on a careful perusal of the entire evidences, it is found that the evidences of the prosecution witnesses are not clinching and trustworthy.

20. Further, it is useful to refer the following Judgments, for the proper appreciation of the facts and circumstances of the present case:-

i) In the case reported in **1995 SCC (Cri) 151, (State of Haryana V. Inderaj and another)**, wherein it is precisely observed as follows:-

"Prosecution case based on evidence of highly interested witnesses. Their presence at the scene of occurrence doubtful - Witnesses making certain improvements regarding nature of weapon used - No other



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person of locality examined by the prosecution. Evidence of defence witness who resided near the place of occurrence found reliable - Held. In the circumstances, it is highly unsafe to convict the accused in appeal."

In the present case also, on a careful scrutiny of the entire materials on record, it is found that the prosecution has not established the guilt of the appellants, beyond all reasonable doubts. Further, the contradictions as pointed out by the appellants are material and can be held to go to the root of the case. Due to the inconsistent statements given by P.W.1 and P.W.2, and also the testimonies of the prosecution witnesses, are not reliable and therefore, no reliance can be placed on the evidences of the prosecution. The non-examination of acceptable persons, to establish the case of the prosecution also, throws a cloud on the case of the prosecution. Further, the said variations relate to vital details of the prosecution case, and hence, it cannot be dismissed as minor discrepancies, as pointed out by the learned Additional Public Prosecutor.

ii) Further, in the case reported in **2006 (2) MWN (Cr.) 10 (DB), (Srikanth & others V. The State, rep. by Inspector of Police, K-10, Koyembedu Police Station)**, it is clinchingly held as follows:-

"Motive part of prosecution case, therefore, not acceptable - Recovery effected pursuant to confession allegedly given by accused in police custody, cannot be given much importance - No cogent evidence to connect accused to crime - Prosecution miserably failed to establish its case. Conviction set aside. "

iii) Furthermore, in the case reported in **AIR 1984 SC 1622, (Sharad V. State of Maharashtra)**, it is significantly held as follows:-



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must stand or fall on its legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view." (underlined for emphasis)

In the present case, also, P.W.1 in her evidence has categorically submitted that no complaint has been given as against the motive incident stated supra. In such view of the matter, the motive projected by the prosecution is not supported by evidences or material records and the prosecution has not proved the said motive beyond reasonable doubts, by examining the acceptable and convincing evidences on the side of the prosecution.

21. Further, the prosecution has projected P.W.11 and P.W.26 as independent witnesses. However, they have not supported the case of the prosecution and therefore, they have been treated as hostile witnesses. In this regard, it is useful to refer the following Judgment:-

In the case reported in **1989 SCC (Cri) 585, (State of U.P. V. Madan Mohan and others)**, it is specifically held as follows:-

"Be that as it may, the fact remains that the genesis of the crime is suppressed and no witness from the locality whose presence would be natural is examined which creates a doubt regarding the truth of the prosecution version."

In the present case, also, no clinching independent witness has been examined by the prosecution to support their case. It is pertinent to point out that the independent witnesses of P.W.11 and P.W.26 have turned as hostile witnesses.

22. On a careful scrutiny of the entire materials on record of the present case, it is found that the above judgments are squarely applicable to the facts and circumstances of the present case. For the above mentioned reasons, this Court is satisfied that the evidences of the eyewitnesses are not worthy of credence, and therefore, no reliance can be placed on their evidences. Further, the evidences of other witnesses which are only of corroborative type would not in any way



improve the prosecution case. Further, there is no clinching evidence to connect the appellants, with injuries suffered by the deceased as pointed out in the Postmortem Certificate, namely, Ex.P.28.

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23. In view of the above discussion, this Court has no hesitation to hold that the prosecution has not established the guilt of the appellants beyond reasonable doubts and the above mentioned circumstances also create serious doubt in the case of the prosecution. The doubts have not been clearly explained by the prosecution in any manner and thus, the appellants are entitled to get the benefit of such doubts. Thus, it is found that the prosecution has failed to prove the case beyond all reasonable doubts and the appellants, are entitled for acquittal and the evidences of the eyewitnesses have no credibility to establish the case of the prosecution.

24. For the above mentioned reasons, facts and circumstances and situations, it is held that the Lower Court has not delivered the impugned Judgment, after properly appreciating the entire materials available on record, in proper perspective and the present Criminal Appeal has to be allowed, for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellants herein.

25. **In the result**, this Criminal Appeal is allowed and the conviction and sentence imposed by the learned Principal District Sessions Judge, Theni by Judgment dated 16.08.2013 delivered in S.C.No.92 of 2006 is set aside and the appellant No.1/accused No.1/Sivakumar @ Kumar @ Siva, appellant No.2/accused No.2/Deivendran @ Ayyayiram and the appellant No.3/accused No.5/Ansari in Crime No.48 of 2004 are acquitted. The bail bond, if any, executed by them shall stand cancelled and fine amount, if any, paid by them shall be repaid to them.

Sd/-
Assistant Registrar (CS-II)

/True Copy/



To

1. The Principal District Judge, Theni.
2. The Judicial Magistrate, Uthamapalayam.
3. -Do- through The Chief Judicial Magistrate, Theni.
4. The District Collector, Theni.
5. The Director General of Police,
Mylapore, Chennai.
6. The Superintendent of Police,
Central Prison, Madurai.
7. The Inspector of Police,
Chinnamanur Police Station,
Theni District.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:-

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.M.S.JEYAKARTHIK, ADVOCATE IN SR NO. 20149

PMU

TE/GSV-PM/SAR-II : 17/05/2016 : 29P/11C

PRE-DELIVERY JUDGMENT
MADE IN
Cr1.A(MD)No.297 of 2013
11.04.2016