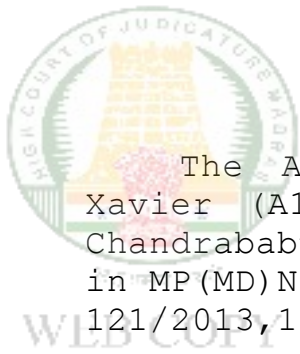


**BALIL SLIP**

The Appellants/Accused Nos.1 to 5 namely, 1) Sunil @ Arul Xavier (A1) 2) Saji (A2) 3) Invert Raj (A3) 4) Jegan (A4) 5) Chandrababu (A5) were released on bail by this Hon'ble Court made in MP(MD) Nos.1,1,1,1 and 1/2013 in CRL.A(MD) Nos.173/2013, 92/2013, 121/2013, 103/2013 and 118/2013 dated 18.07.2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2016

CORAM:

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

CRL.A(MD) No.92 of 2013
CRL.A(MD) No.103 of 2013
CRL.A(MD) No.118 of 2013
CRL.A(MD) No.121 of 2013
AND
CRL.A(MD) No.173 of 2013

i) CRL.A(MD) No.92 of 2013

Saji .. Appellant / Accused No.2

ii) CRL.A(MD) No.103 of 2013

Jegan .. Appellant / Accused No.4

iii) CRL.A(MD) No.118 of 2013

Chandrababu .. Appellant / Accused No.5

iv) CRL.A(MD) No.121 of 2013

Invert Raj .. Appellant / Accused No.3

v) CRL.A(MD) No.173 of 2013

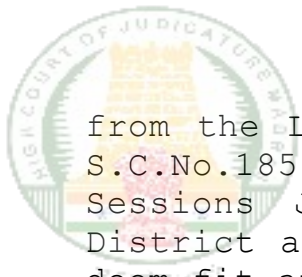
Sunil @ Arul Xavier .. Appellant / Accused No.1

Vs.

State rep. by The Inspector of Police,
Kuzhithurai Police Station,
Nagercoil.
(Crime No.990 of 2002)

Kanyakumari District .. Respondent / Complainant
(in all the above mentioned
Criminal Appeals)

PRAYER: The above mentioned Criminal Appeals filed under Section 374(2) of Cr.P.C., praying this Court, to call for the records



from the Lower Court, and to set aside the Judgment delivered in S.C.No.185 of 2003, dated 15.02.2013, on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil, Kanyakumari District and to pass such other further orders, as this Court may deem fit and proper in the circumstances of the case.

WEB COPY

For Appellants : Mr.P.Andiraj, Advocate
for Mr.S.Duraiaraj,
Advocate for the appellants
in Crl.A.(MD)No.92 of 2013 and
Crl.A(MD)No.118 of 2013

Mr.N.R.Elango, Senior Advocate
for Mr.S.Ravi, Advocate for the appellant
in Crl.A(MD)No.103 of 2013

Mr.V.Gopinath, Senior Advocate
for Mr.P.Andiraj, Advocate for the
appellants in Crl.A(MD)No.121 of 2013

Mr.V.Kathirvelu, Senior Advocate
for Mr.K.Prabhu, Advocate for the appellant
in Crl.A(MD)No.173 of 2013

For Respondent : Mr.K.S.Duraipandian,
Additional Public Prosecutor for the
respondent in all the above mentioned
Criminal Appeals.

Judgment reserved on : 30.11.2015

Judgment pronounced on : 22.04.2016

COMMON JUDGMENT

The appellant in Crl.A(MD)No.92 of 2013 is the accused No.2, the appellant in Crl.A(MD)No.103 of 2013 is the accused No.4, the appellant in Crl.A(MD)No.118 of 2013 is the accused No.5, the appellant in Crl.A(MD)No.121 of 2013 is the accused No.3 and the appellant in Crl.A(MD)No.173 of 2013 is the accused No.1 in S.C.No.185 of 2003 (Crime No.990 of 2002) on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil. Totally, there are six accused in the case, including the appellants herein and the sixth accused has been acquitted by the Trial Court. The Trial Court has framed charges as detailed herein below, as against the above mentioned appellants/accused:-



Charge(s) Against Accused	Charge(s) framed under Penal provision
Accused No.1	120(b), 148, 341, 302 and 307 of I.P.C.,
Accused Nos.2 to 4	120(b), 147, 341, 302 r/w 149, 307 r/w 149 of I.P.C.,
Accused No.5	120(b), 147, 341, 302 r/w 149, 307 r/w 114 of I.P.C.,

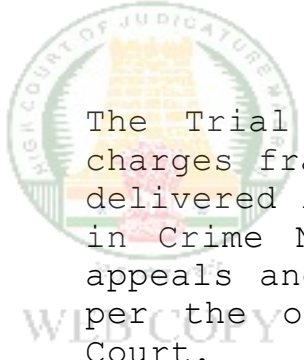
After full trial, by Judgement dated 15.02.2013, the Trial Court has convicted A1 to A5 alone as detailed herein below:-

Rank of the Accused	Convicted under	Sentenced to
A1	120(b) and 307 of I.P.C.,	Not found guilty.
	148 of I.P.C.,	Rigorous Imprisonment for three years and to pay a fine amount of Rs.500/- and, in default, to undergo Rigorous Imprisonment for the period of eighteen months.
	341 of I.P.C.,	To pay a fine amount of Rs.500/- and, in default, to undergo Rigorous Imprisonment for the period of one month.
	302 of I.P.C.,	Life Imprisonment and to pay a fine amount of Rs.2,000/- and, in default, to undergo Rigorous Imprisonment for four years.



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A2 to A4	120(b) and 307 r/w 149 of I.P.C.,	Not found guilty
	147 of I.P.C.,	Rigorous Imprisonment for two years and to pay a fine amount of Rs.500/- and, in default, to undergo Rigorous Imprisonment for the period of eight months.
	341 of I.P.C.,	To pay a fine amount of Rs.500/- and, in default, to undergo Rigorous Imprisonment for the period of one month.
A2 to A4	302 r/w 149 of I.P.C.,	Life Imprisonment and to pay a fine amount of Rs.2,000/- and, in default, to undergo Rigorous Imprisonment for the period of four years.
A5	120(b) and 307 r/w 114 of I.P.C.,	Not found guilty.
	147 of I.P.C.,	Rigorous Imprisonment for two years and to pay a fine amount of Rs.500/- and, in default, to undergo Rigorous Imprisonment for the period of eight months.
	341 of I.P.C.,	To pay a fine amount of Rs.500/- and, in default, to undergo Rigorous Imprisonment for the period of one month.
	302 r/w 149 of I.P.C.,	Life Imprisonment and to pay a fine amount of Rs.2,000/- and, in default, to undergo Rigorous Imprisonment for four years.



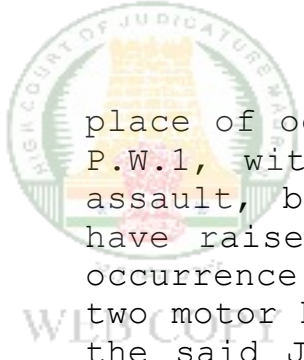
The Trial Court has acquitted the sixth accused from all the charges framed as against him. Challenging the conviction Judgment delivered in S.C.No.185 of 2003, the appellants/accused Nos.1 to 5 in Crime No.990 of 2002 are before this Court with the present appeals and they have been granted the suspension of sentence, as per the orders dated 18.07.2013 and 29.07.2013 passed by this Court.

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

The accused Nos.1 to 6 are close associates. There arose a strong enmity between the appellants/accused and the deceased John Shaji, due to various reasons and hence, on 06.10.2002 at about 7.30 p.m., the deceased along with his wife (P.W.2) and child have gone to their house in a motor cycle, and at that time, the accused Nos.1 to 5 have assembled together unlawfully and they have waylaid the deceased in front of Vijayan's old house and at that time, the accused have brutally stabbed the deceased, with the help of knife and the P.W.1 Senthilkumar has come to the place of occurrence, to prevent the assault caused to the deceased and however, the first accused has attempted to stab the P.W.1 and he has escaped from the brutal attack by bending his body and the deceased, died in the spot itself and thereby, the accused have committed the said offences, according to the prosecution.

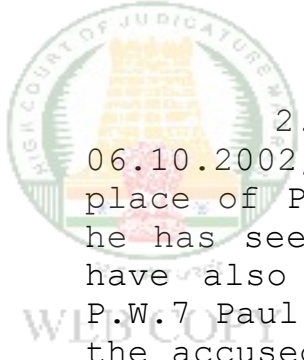
2.1. In order to prove the case of the prosecution, the prosecution has examined 22 witnesses as P.W.1 to P.W.22 and also, marked 33 exhibits as Ex.P.1 to Ex.P.33 and also Material Objects as M.O.1 to M.O.17.

2.2. P.W.1 Senthilkumar has stated that he has worked as Watcher in Marthandam Marshal Nesamani Memorial College, at the time of occurrence and the deceased John Shaji and all the accused are known to him, already and during the occurrence, the said John Shaji has worked as Lab Assistant in Thovalai Engineering College and on 06.10.2002 at 5.30 p.m., after the completion of the college work, he has gone nearer to the place of Marudhankodu Cashew nut Mill and at that time, he has seen the accused, sitting in the portico of Vijayan's old house, near the said mill and he has also seen that the two motor cycles, parked nearer to the place of the sitting, and he has returned back by 7.30 p.m., after purchasing household articles and at that time, he has seen that the deceased John Shaji, along with his wife and one year child and they came in a bike and the accused have stopped the bike of the said John Shaji and thereafter, the accused have brutally assaulted the said John Shaji, with the help of M.O.1 knife. ~~Thereafter, the accused have attempted to assault the P.W.1, as he has seen the occurrence. However, the P.W.1 has run away from the~~



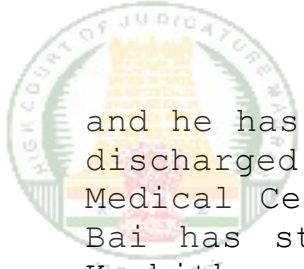
place of occurrence and the first accused has tried to assault the P.W.1, with the M.O.1 knife and the P.W.1 has escaped from the assault, by bending his body and thereafter, the P.W.1 and P.W.2 have raised loud noise and the people have come to the place of occurrence and the accused have left the place of occurrence in two motor bikes, parked nearer to the said place of occurrence and the said John Shaji, died on the spot itself and he has seen the occurrence, with the presence of Cashew Mill's light and the street light and the occurrence has happened, due to the motive that the deceased John Shaji has loved the sister of the accused by name, Jain and married and already there existed dispute between the deceased and the fourth accused Jegan, regarding issues with reference to the Star Cricket Club and the P.W.1 has lodged the complaint as per Ex.P.1 and the P.W.1 and P.W.3 John Arul have signed in the said complaint and also, he has identified the M.O.1 knife.

2.3. Further, the P.W.2 Leenat has stated that the deceased John Shaji is her husband and she knows the accused and on 06.10.2002 evening 4.00 p.m., the said John Shaji and the P.W.2 along with their child have gone to see the uncle of P.W.2, in the motor bike with Registration No.TN 74-Z-5576 and then, they have returned back at 7.00 p.m., and at that time, the accused have brutally assaulted the said John Shaji, for the above mentioned motive. Further, the P.W.3 John Arul has stated that the deceased John Shaji is the son of his uncle and he knows all the accused and on 06.10.2002 at 7.30 p.m., near Marudhankodu Cashew Nut Mill, the P.W.3, Christhuraj and Albert Nelson have spoken to each other, and at that time, the said John Shaji has come in the motor bike with Registration No.TN 74-Z-5576, along with his wife and child and at that time, the accused have assaulted the said John Shaji and he has seen the occurrence, with the presence of Cashew Mill's light and the street light and also, he has signed in the Ex.P.1 complaint. Further, the P.W.4 Christuwin has stated that on 6.10.2002, the P.W.4 and one Devaraj have signed in the Athatchi of Ex.P.2, for the recovery of M.O.3 bloodstained earth and M.O.4 sample earth and also, they have signed in the Athatchi of Ex.P.3, for the recovery of M.O.2 Motorcycle bearing Registration No.TN 74-Z-5576 and they have signed in the Athatchi of Ex.P.4, for the recovery of M.O.Nos.5 to 10, from the place of occurrence and also, they have signed in the Observation Mahazar of Ex.P.5. Further, the P.W.5 Subash Chandra Bose has stated that on 22.10.2002, the P.W.5 and one Robi have signed in the admissible portion of the confession statement of Ex.P.6, given by the accused Nos.1 to 3 and the police have recovered the M.O.1 knife, from the bush nearer to the river, at Kuzhithurai and also, they have signed in the Athatchi of Ex.P.7, for the said recovery and they have also signed in the Athatchi of Ex.P.8, for the recovery of M.O.17 Motorcycle bearing Registration No.TN 74-Z-3793.



2.4. Further, the P.W.6 Stephen has stated that on 06.10.2002, the P.W.6 and one Sathish Kumar have waited near the place of Parankundru, in order to go to Kerala and at that time, he has seen the accused, going in the motor bike and the accused have also stated about the success of the plan. Further, the P.W.7 Paul has stated that on 09.10.2002, the police have arrested the accused Nos.4 and 5, in the place of Adaikakuzhi at Kollankodu and he has signed in the confession statement, given by the accused Nos.4 and 5 and the Ex.P.9 is the admissible portion of the confession statement and he has also signed in the Athatchi of Ex.P.10, for the recovery of the two wheeler, from the place of Kozhivilai. Further, the P.W.7 has been treated as hostile witness, as he has not supported the case of the prosecution. Further, the P.W.8 Agastin has stated that he knows the deceased John Shaji and the fourth accused Jegan and on 6.10.2002, he has seen the dead body of the deceased at the place of occurrence and he has stated about the previous dispute that has happened between the deceased and the fourth accused Jegan along with other 5 persons on 3.10.2002 and he has separated them. Further, the P.W.9 Stalin has stated that he knows the deceased John Shaji and the accused and prior to 17 years, from the date of giving his evidence before the Trial Court, the P.W.9 and the deceased are the members in one club and the said club has been conducted only for two years, from the date of opening. Further, the P.W.10 has stated that he knows the deceased John Shaji and he does not know the accused and on the date of occurrence, he has seen the dead body of the deceased. Further, the P.W.11 Thiru.Subbaiya, Inspector of Police has stated that on 21.12.1996, Thiru.Thomas, Head Constable has received the previous case complaint from the fifth accused Chandrababu and registered the case in Crime No.997 of 1996 and Thiru.Saravanabhavan, Sub Inspector of Police has completed the investigation and on 18.01.1998, he has taken up the case for investigation and he has filed final report and the Ex.P.11 is the First Information Report, of the said previous case in Crime No.997 of 1996.

2.5. Further, the P.W.12 Thiru.Jose has stated that on 31.12.1996, he has served as Head Constable at Kuzhithurai police station and at 9.00 a.m., the fifth accused Chandrababu has appeared before him and lodged a complaint and he has registered a case in Crime No.1033 of 1996 and he has taken up investigation and he has submitted the case records to the Inspector of Police, for further investigation and the Ex.P.12 is the First Information Report of the said crime number. Further, the P.W.13 Dr.Babu has stated that he is running one private clinic, namely, Babu Hospital and on 6.10.2002 at 8.30 p.m., the P.W.2 Leenat has been brought to his hospital, by her mother and the said lady has been seen in shocking condition and unable to talk and thereafter, he has sent her to Government Hospital, for medical treatment and again on 7.10.2002 at 11.00 a.m., she has come to his hospital, for medical treatment and she has been admitted as an in-patient



and he has given medical treatment to the P.W.2 and she has been discharged on 14.10.2002 at 9.30 a.m., and he has issued the Medical Certificate, as per Ex.P.13. Further, the P.W.14 Dr.Mary Bai has stated that on 06.10.2002, she has served as Doctor in Kuzhithurai Government Hospital and she has examined the P.W.2 Leenat, namely, the wife of the deceased at 11.00 p.m., and the mother of the said Leenat has informed that on 06.10.2002 at 7.00 p.m., the said Leenat has seen the murder caused to her husband and the P.W.2 has been seen in shocking condition and she has given first aid treatment to the P.W.2 and she has sent the P.W.2 to the Government Hospital, for further treatment and also, she has issued the Accident Register to the P.W.2, as per Ex.P.14

2.6. Further, the P.W.15 Dr.Jeyalal has stated that he has served as Doctor at Kuzhithurai Government Hospital and on 07.10.2002, he has conducted Postmortem on the dead body of the deceased John Shaji in Crime No.990 of 2002 and also, he has issued Postmortem Certificate as per Ex.P.15 and in the said Postmortem Certificate, he has given his opinion that the deceased would appear to have died of shock and hemorrhage, due to cardiac injury about 16-18 hours, prior to Postmortem. Further, the P.W.15 has stated that the injuries would have caused to the deceased, due to the assault caused, with the help of M.O.1. Further, the P.W.16 Chinnaian has stated that he has worked as lineman of Tamil Nadu Electricity Board and on 6.10.2002, there is no disruption of supply of electricity, in the place of occurrence. Further, the P.W.17 Prem has stated that on 7.10.2002, he has worked as Manager in Photo Park Lab and he has developed the photo film roll, which has been given by the Inspector of Police and he has taken 7 prints and 2 copies and also, the photos and negatives are M.O.11(series), submitted by him, to the police.

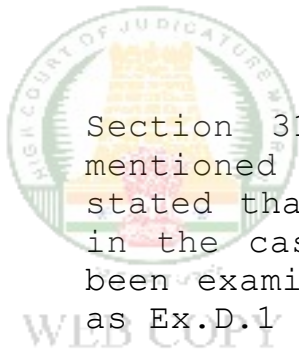
2.7. Further, the P.W.18 Thiru.Bensam, Sub Inspector of Police at Kuzhithurai Police Station has stated that on 6.10.2002 at 23 hours, he has received Ex.P.1 complaint from the P.W.1 Senthilkumar and registered the case in Crime No.990 of 2002 and prepared First Information Report as per Ex.P.16 and also, he has submitted the said Express First Information Report to the learned Judicial Magistrate No.1, Kuzhithurai and concerned Higher Officials, through Thiru.Murugan, Head Constable. Further, P.W.19 Thiru.Thangarajan has stated that he has served as Head Constable and on 6.6.1994, he has gone to Kuzhithurai Government Hospital, as per the information, received from the said hospital and he has recorded the statement from one Justin Jeeva, who has been admitted in the hospital and at 22 hours, he has registered a previous case in Crime No.347 of 1994, as against the deceased John Shaji and other accused and thereafter, he has submitted the said complaint, Ex.P.17 First Information Report and Intimation to the learned Judicial Magistrate No.2, Kuzhithurai.



2.8. Further, the P.W.20 Thiru.Baskaran has stated that on 6.10.2002, he has served as Inspector of Police and he has received the Ex.P.16 First Information Report in Crime No.990 of 2002 from the Sub Inspector of Police and he has taken up the case for investigation and he has prepared the Observation Mahazar and Rough Sketch as per Ex.P.5 and Ex.P.18 respectively and also, he has recorded the statements of the prosecution witnesses and also, he has prepared Inquest Report as per Ex.P.19 and also, he has recovered the M.O.3 bloodstained earth and M.O.4 sample earth at the place of occurrence, in the Athatchi of Ex.P.2, in the presence P.W.4 Christuwin and one Devaraj and also, he has recovered the M.O.2, two wheeler bearing registration No.TN 74-Z-5576 at the place of occurrence, in the Athatchi of Ex.P.3, in the presence of the same witnesses and also, he has recovered the M.O.Nos.5 to 10, at the place of occurrence, in the Athatchi of Ex.P.4. Further, the P.W.20 has recorded the confession statement of the accused Nos.4 and 5 and the Ex.P.21 is the admissible portion of the confession statement and also, he has recovered the M.O.12, two wheeler bearing Registration No.TN 74-Z-4392, from the bush at Kozhivilai Village, in the Athatchi of Ex.P.22 and also, he has sent the M.O.Nos.13 to 16, namely, the dresses of the deceased, to the Court, which have been handed over by the Head Constable, after the completion of the Postmortem.

2.9. Further, the P.W.20 has recorded the confession statement of the first accused Sunil @ Arul Xavier and he has recovered the M.O.1 knife, from the bush, nearer to the place of the river at Kuzhithurai in the Athatchi of Ex.P.7 and also, he has recovered the M.O.17, two wheeler bearing Registration No. TN 74-Z-3793, from Sri Krishnasamy Auto Workshop in the Athatchi of Ex.P.8 and he has submitted the requisition letters as per Ex.P.23 to Ex.P.25, for sending the material objects for the Chemical Analysis Test and on 17.11.2002, he has recorded the statement of P.W.2 Leenat, namely, the wife of the deceased and thereafter, he has handed over the case records to the P.W.22 Inspector of Police, for taking further investigation of the case. Further, the P.W.21 Thiru.Kumaradass has stated that he has served in Judicial Magistrate Court No.I, Kuzhithurai and he has sent the material objects along with Court letter of Ex.P.27, for Chemical Analysis Test and he has submitted the Chemical Analysis Reports of Ex.P.28, Ex.P.29 and Ex.P.32 and Serology Reports of Ex.P.30 and Ex.P.33. Further, the P.W.22 Tmt.Sunantha Bagavathi, learned Deputy Superintendent of Police has stated that on 5.4.2003, she has served as Inspector of Police and she has taken up the case for investigation and on 9.04.2003, she has received the 164 of Cr.P.C statements of the prosecution witnesses and after getting opinion from the learned Public Prosecutor, she has filed the final report on 02.05.2003.

3. On completion of the evidences on the side of the prosecution, the appellants/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 case. On the side of defence witnesses, 2 witnesses have been examined as D.W.1 and D.W.2 and 7 exhibits have been marked as Ex.D.1 to Ex.D.7.

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

5. Further, it is stated in the Grounds of the above mentioned Appeals, that the Trial Court has failed to take into consideration that the P.W.1 and the P.W.3 are closely related to the deceased and they are the interested witnesses. There is an inordinate and unexplained delay in sending Ex.P.1 complaint and Ex.P.16 printed First Information Report to the learned Magistrate. There is no strong motive excised between the deceased and the appellants herein and the appellants have been falsely implicated. The Trial Court ought to have held that the medical evidence is not at all corroborated by other evidences. There is no cogent and acceptable evidence has been let in, on the side of the prosecution, so as to attract the offences under Sections 147, 341 and 302 r/w 149 I.P.C. The Trial Court has failed to see that there is no common motive among the accused and place of occurrence has not been properly established by the prosecution. There are vital contradictions, with regard to overt act attributed to the accused. The eyewitnesses of the P.W.1 and the P.W.3 have every motive to implicate the accused. The other reasons assigned by the Trial Court in convicting the accused are not unsustainable either on law or on facts. The evidences of the P.W.1 to P.W.3 are unsafe and as such the appellants are entitled to get acquittal. The Trial Court has failed to consider that the strong enmity is existed between the P.W.1 and the appellants and as such the appellants ought to have been acquitted. The Trial Court has failed to consider that the earlier information in respect of the occurrence, has been suppressed by the prosecution. The witnesses of the P.W.1 and the P.W.3 are not genuine witnesses and their presence in the occurrence place is doubtful. The Judgment of the Trial Court has to be set aside since the motive between the accused and the deceased has not been established by the prosecution. Further, the P.W.1 to P.W.3 have given contradictory statements before the Court and the stomach of the deceased has contained the partly digested food articles and the conviction is a moral conviction and there is no legal proof in the present case and for the foregoing reasons, the Judgment of the Trial Court may be set aside, according to the above mentioned grounds. The appellants are entitled to get acquittal.



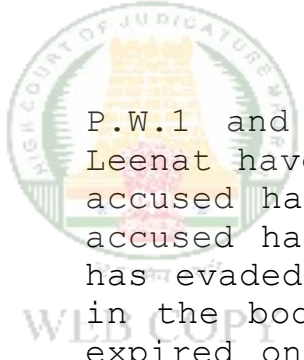
6. The points that arise for consideration in the above mentioned appeals, which have been filed as against the same Judgment delivered in S.C. No. 185 of 2003, are as follows:-

i) Whether the Lower Court has passed the impugned Judgment of conviction of the appellants, after properly appreciating the materials on record, in the proper perspective?

ii) Whether the said Criminal Appeals have to be allowed for the reasons and grounds stated in the Memorandum of Appeals and also for the submissions made on behalf of the above mentioned appellants?

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

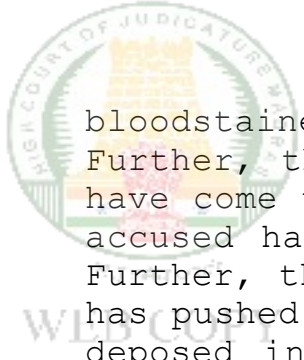
P.W.1 Senthilkumar has categorically deposed in his evidence that at the time of giving his evidence before the Lower Court, he has worked as Library Assistant in Marthandam Marshal Nesamani Memorial College and he knows all the accused and he knows the deceased John Shaji and the said John Shaji has worked as Lab Assistant in Thovalai Engineering College and on 06.10.2002, after completing his college work, he came near Marudhankodu Cashew-nut Mill, at about 5.30 hours and at that time, he has seen all the accused, sitting in the old house of Vijayan, near the said Cashew-nut Mill and he has also seen two bikes parked nearer to them and he has gone to his house and thereafter, in order to purchase household articles, for his house and he came nearer to Parankundru place and he returned in the night at 7.30 p.m., near the said Cashew-nut Mill and the said John Shaji has come in the bike, along with his wife and one year old child and at that time, the second accused has blocked the way of the said John Shaji and also the second accused caught hold of, the handle bar of the said bike, driven by the said John Shaji and the third accused has pushed the wife of the said John Shaji and the child on the floor and at that time, the fourth accused Jegan has scolded the said John Shaji and also, caught hold of, the right hand of the said John Shaji and the third accused has caught hold of, the left hand of the said John Shaji and thereafter, the second accused has left the handle bar of the said bike and hold the body of the said John Shaji, by inserting his hands into the body of the said John Shaji. Thereafter, the fifth accused has scolded the said John Shaji, by filthy language and instigated others to assault the said John Shaji, brutally and thereafter, the first accused has taken out the knife and assaulted the said John Shaji, on the left side of the chest and thereafter, the



P.W.1 and the wife of the said John Shaji, namely, the P.W.2 Leenat have tried to lift the said John Shaji and also, the fifth accused has instigated others to assault the P.W.1 and the first accused has tried to assault the P.W.1, with Knife and the P.W.1 has evaded from the said assault and if the assault has happened in the body of the P.W.1, then, certainly, the P.W.1 would have expired on the said spot itself and after hearing the loud noise raised by the P.W.1 and the wife of the said John Shaji, namely, the P.W.2 Leenat, John Arul, Albert Nelson and Krithudass have come to the place of occurrence and thereafter, all the five accused have escaped from the scene of occurrence, in two bikes.

8. Further, the P.W.1 has also vividly deposed about the motive for the attack and also, distinctly pointed out in the deposition that the sixth accused Jain's sister has been married by the deceased John Shaji, after making love and already there existed dispute, with regard to Star Club Cricket, between the fourth accused's brother and the deceased and thereafter, the P.W.1 has gone to the police station and lodged the complaint as per Ex.P.1 and he has seen the occurrence with the presence of light in the Cashew-nut Mill and also, the streetlight and the M.O.1 is the Knife used by the first accused, to assault the deceased John Shaji. Hence, it is seen that the P.W.1 has given the detailed particulars, regarding the occurrence as per the Ex.P.1, to the police, on 06.10.2002 at 23 hours itself, about the occurrence that has taken place on 06.10.2002 at 19.30 hours. Further, the P.W.2 Leenat, namely, the wife of the deceased John Shaji has also clearly deposed that on the date of occurrence on 06.10.2002, her husband John Shaji and the P.W.2 and child have travelled in the two wheeler with Registration No. TN 74-Z-5576, at about 7.00 p.m., and they have returned nearer to the place of Marudhankodu Sedhanam Cashew-nut Mill and the accused have blocked their way and assaulted the deceased, as clearly pointed out by the P.W.1 in his evidence and also in the Ex.P.1 complaint. Further, the P.W.2 has deposed that her brother is the other accused Jain, in the present case. Further, the P.W.1 has also deposed that the deceased has loved the sister of the sixth accused and married her and there arose an enmity between the accused and the deceased. Further, the P.W.2 has also particularly deposed that she has married the deceased John Shaji and the same has not been liked by her brother, namely, the sixth accused. Further, the P.W.2 has also deposed that the fifth accused has laid the road and on that ground, he has got enmity towards her husband and due to that reason also, there existed an enmity between the accused and the deceased.

9. Further, the P.W.2 has specifically deposed that the deceased John Shaji and the P.W.2 have loved for two years and ~~the deceased and the P.W.2~~ have married. Further, the P.W.2 has clearly explained that her mother has washed the bloodstained cloths, as the mother of the P.W.2 does not have the knowledge, that the



bloodstained cloths have to be handed over to the police. Further, the P.W.2 has also specifically deposed that the accused have come to the place of occurrence and after the occurrence, the accused have escaped from the scene of occurrence, in two bikes. Further, the P.W.2 has particularly deposed that the third accused has pushed her from the bike. Further, the P.W.2 has also clearly deposed in her evidence that after the instigation of the fifth accused, the first accused has assaulted the deceased, with the help of M.O.1 Knife and the first accused has taken out the M.O.1 Knife, from his hip and assaulted the deceased, with the help of the M.O.1 Knife. Further, the P.W.3 John Arul has deposed that the deceased John Shaji is his uncle's son and he knows all the accused and on 06.10.2002 at night 7.30 hours, the P.W.3, Krithuraj and Albert Nelson have spoken to each other, near Marudhankodu Sedhanam Cashew-nut Mill and at that time, the deceased John Shaji has come in the two wheeler with Registration No.TN 74-Z-5576, along with his wife and child and he has seen the accused, assaulting the deceased, as stated by the P.W.1 and the P.W.2 in their evidences and also in the Ex.P.1 complaint and the P.W.3 has also identified the M.O.1 Knife, used by the first accused, to assault the deceased and also, the M.O.2 two wheeler. Hence, the above said eyewitnesses, namely, the P.W.1, P.W.2 and P.W.3 have clearly and vividly deposed about the occurrence and also murder caused to the deceased, namely, John Shaji.

10. Further, the P.W.4 Christuwin has deposed that on 06.10.2002, the police have collected the M.O.3 bloodstained earth and the M.O.4 sample earth, from the scene of occurrence, in the Athatchi as per Ex.P.2 and he has signed in the said Athatchi and the police have recovered the M.O.2 two wheeler, with Registration No.TN 74-Z-5576, from the scene of occurrence, in the Athatchi as per Ex.P.3 and he has signed in the said Athatchi and also, the police have recovered the M.O.5 Ladies chappal one pair, M.O.6 Ladies bag, M.O.7 milk feeding bottle, M.O.8 and M.O.9, namely, the dresses of the child and the M.O.10 Hand Kerchief, from the scene of occurrence, in the Athatchi as per Ex.P.4 and he has also signed in the said Athatchi and he has also signed in the Observation Mahazar of Ex.P.5. On perusal of the said Athatchi, it is seen that the P.W.4 has clearly signed in the said records. Further, the P.W.4 has clearly denied the suggestion put on behalf of the appellants, to the effect that he has deposed as per the request made by the police, as used to go to the police station, to sign the said records. Further, the P.W.5 Subash Chandra Bose has deposed that on 22.10.2002, the police have recorded the confession statement from the first accused Sunil, the third accused Invert Raj and the second accused Saji and the first accused Sunil has taken over the M.O.1 Knife, from the bush, as per the Ex.P.6 admissible portion of the confession statement and the police have recovered the said Knife, in the Athatchi as per Ex.P.7 and also, the P.W.5 and Rabi have signed in the said Athatchi and also, he has signed in the Ex.P.8 Athatchi, for the

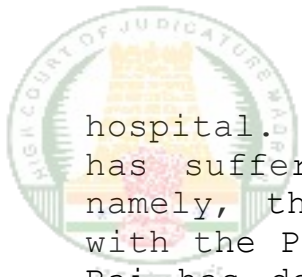


recovery of the M.O.17 two wheeler, with Registration No.TN 74-Z-3793. Further, in the cross examination, the P.W.5 has particularly deposed that the first accused has taken out the M.O.1 Knife from the bush, near Vettumani Sasthan Kovil and he has signed in the Ex.P.7 Athatchi.

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11. Further, the P.W.6 Stephen has evidently deposed that on 06.10.2002, the P.W.6 and Sathishkumar have waited for the bus to go to Kerala and at that time, he has seen that in one motorcycle, the second accused Saji and the third accused Invert Raj have come and in another motorcycle, the fourth accused Jegan and the fifth accused Chandra Babu have come. Further, the P.W.8 Agastin has pointed out that he has seen the dead body of the deceased John Shaji, on 06.10.2002, at 8.30 p.m., after the occurrence. Further, the P.W.9 Stalin has deposed that he knows the deceased and accused and the Star Club has been conducted for two years only and the P.W.10 Kesava Pillai has seen the dead body of the deceased on the date of occurrence. Further, the P.W.11 Thiru.Subbaiya has specifically deposed that he has served as Inspector of Police in Kuzhithurai Police Station in the year 1998 and he has enquired the case registered in Crime No.997 of 1996 and the First Information Report has been prepared as per Ex.P.11 and the said First Information Report has been filed, based on the complaint of the fifth accused Chandra Babu, as against the deceased John Shaji and others. On that ground only, the prosecution has stated that due to the enmity, the fifth accused Chandra Babu has also joined with others and brutally assaulted and also caused death to the deceased John Shaji. Further, the P.W.12 Thiru.Jose has particularly deposed that on 31.12.1996, he has served as Head Constable in Kuzhithurai Police Station and at 9.00 a.m., he has received the complaint from Chandra Babu and registered the case in Crime No.1033 of 1996 and the Ex.P.12 is the First Information Report and as per the said First Information Report, it is found that already, there existed an enmity between the fifth accused and the deceased.

12. Further, the P.W.13 Dr.Babu has evidently deposed that the wife of the deceased John Shaji, namely, the P.W.2 has been brought to the hospital, by her mother on 06.10.2002 and the P.W.2 has not got the physical condition, to speak and he has sent the P.W.2 to Government Hospital and again, she has come to his hospital on 07.10.2002 for taking medical treatment and the P.W.2 has been admitted as an in-patient and on 14.10.2002 at 9.30 a.m., she has been discharged from the hospital, in good condition and the Ex.P.13 is the Medical Certificate. Further, on a perusal of the Ex.P.13, it is found that the said Dr.Babu has certified, to the effect that the medical treatment given to the wife of the deceased John Shaji, namely, the P.W.2 Leenat on 07.10.2002 at 11.00 a.m. is a case of shock following the sudden death of her husband and she has been given medical treatment as an in-patient and thereafter, she has been discharged from the P.W.13's



hospital. Hence, immediately after the occurrence also, the P.W.2 has suffered shock following the sudden death of her husband, namely, the deceased John Shaji and undergone medical treatment with the P.W.13, namely, the Dr.Babu. Further, the P.W.14 Dr.Mary Bai has deposed that on 06.10.2002, she has served as Doctor in Kuzhithurai Government Hospital and at 11.00 p.m., she has examined the P.W.2 and the P.W.2 has informed to her that she has fallen down, at the time of the murder of her husband, near the place Marudhankodu Cashew-nut Mill and the medical treatment has already been given to the P.W.2, in the private hospital. Further, the P.W.13 has also deposed that she has been given medical treatment in his hospital, namely, Babu Hospital as per the Ex.P.13 Medical Certificate. Hence, immediately, after the occurrence, the P.W.13 Dr.Babu and the P.W.14 Dr. Mary Bai have also given medical treatments to the wife of the deceased John Shaji, as per the Ex.P.13 Medical Certificate and the Ex.P.14 Accident Register, due to shock, suffered by the P.W.2, on witnessing the murder caused to her husband, namely, John Shaji.

13. Further, the P.W.15 Dr.Jeyalal has deposed that he has served as Doctor in Kuzhithurai Government Hospital, on 07.10.2002 and he has conducted Postmortem on the dead body of the deceased John Shaji and issued Postmortem Certificate as per Ex.P.15. Having regard to the nature of the occurrence, in which, the deceased has been attacked, coupled with the evidence of the P.W.15 and there are corresponding external injuries in the said Postmortem Certificate. Further, in the said Postmortem Certificate, it is distinctly pointed out by the P.W.15 Doctor as follows:-

" External Injuries:

A sharp edged stab injury over the left anterior chest wall involving vertically over the left 3rd, 4th, 5th internal spaces, medial to Mid Clavicular line directed medially and postero inferiorly towards the mid sternum obliquely. On exploration size of wound involving skin and Subcutaneous, Tissue is 7x3x2cm and then extends down to produce a sharp cut of 3rd, 4th, 5th ribs near the sternocostal junction of size 6x1x1cm. Then extends down to produce a sharp cut over the anterior pericardium of middle mediastinum of size 5 x 1 x 1cm. Blood clots seen inside the pericardial cavity. The wound then extends down to produce a sharp through & through cut over the Right ventricle anteriorly 4x1x1cm and posteriorly 3x1x1cm then extends down to produce a sharp cut of



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2x1x1cm over the upper part of cardiac notch of inferior lobe of left lung collapsed. Total depth of wound 12cm Cardiac Chambers empty. About 2 liters Blood & Blood Clots seen inside the thorax.

Trocha/Hyoid bone intact.

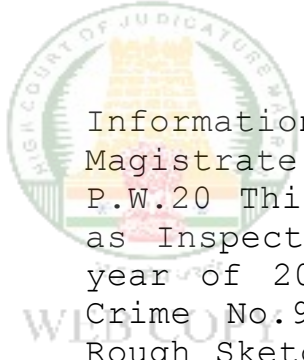
On opening the abdomen liver spleen, kidney appears normal & congested. Stomach contains 300 ml partially digested food particles. On opening the skull there is no fracture, brain congested.

Opinion:

The deceased would appear to have died of shock and Haemorrhage due to cardiac injury about 16-18 hrs. Prior to P.M."

Further, the P.W.15 Doctor has also vividly deposed that if the deceased has been assaulted, with the help of M.O.1 knife, the injuries, as pointed out by him, in the Ex.P.15 Postmortem Certificate, could have been caused. Hence, the medical evidence and also, records corroborate the deposition details of the above mentioned eyewitnesses, to the effect that the appellants have participated in the occurrence and caused brutal injuries on the deceased. As pointed out earlier, regarding the participation of appellants in the occurrence, the P.W.15 has cogently deposed regarding brutal injuries, suffered by the deceased and the medical records also support the same. The appellants have participated in the occurrence and caused brutal injuries on the vital parts of the body of the deceased and also ensured that he, died instantaneously. Therefore, the offence has been completely and totally proved as against the accused/appellants and the injuries suffered by the deceased are also tallying with the evidences of eyewitnesses. So, their testimonies are acceptable, trustworthy and reliable. Hence, it is found that the evidences of the eyewitnesses of the P.W.1 to P.W.3 have been corroborated by the medical evidence and medial records.

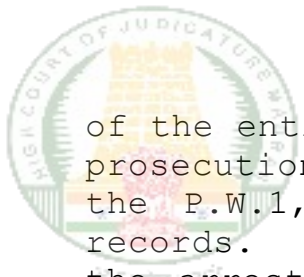
14. Further, the P.W.16 Thiru.Chinnaiyan has undeniably deposed that he has worked as lineman in Electricity Board and on the date of occurrence, the supply of electricity has not been disturbed, in the area of occurrence. Further, the P.W.18 Thiru.Bensam has manifestly deposed that he has served as Sub Inspector of Police in Kuzhithurai Police Station and on 06.10.2002 at 23 hours, he has received the Ex.P.1 complaint for the P.W.1 and registered the case in Crime No. 990 of 2002 and also, prepared the First Information Report as per Ex.P.16 and he has submitted the said First Information Report to the learned Judicial Magistrate No.I, Kuzhithurai and concerned Higher Officials, through the Head Constable and the said First



Information Report has been received by the learned Judicial Magistrate on 07.10.2002, at 6.30 a.m., itself. Further, the P.W.20 Thiru.Baskaran has specifically deposed that he has served as Inspector of Police in Kuzhithurai Police Station, during the year of 2002 and he has taken up the case for investigation in Crime No.990 of 2002 and he has prepared Observation Mahazar, Rough Sketch and Inquest Report as per Ex.P.5, Ex.P.18 and Ex.P.19 and he has recovered the M.O.3 bloodstained earth and the M.O.4 sample earth, in the Athatchi as per Ex.P.2 and also, he has recovered the M.O.2 two wheeler, with Registration No.TN 74-Z-5576, in the Athatchi as per Ex.P.3 and also, he has recovered the M.O.5 Ladies chappal one pair, M.O.6 Ladies bag, M.O.7 milk feeding bottle, M.O.8 and M.O.9, namely, the dresses of the child and the M.O.10 Hand Kerchief, from the scene of occurrence, in the Athatchi as per Ex.P.4. Further, he has arrested the accused Nos.4 and 5 on 9.10.2002 at 17 hours and also, he has recorded the confession statement, given by the fourth accused and the Ex.P.21 is the admissible portion of the confession statement and he has recovered the M.O.12 two wheeler, with Registration No.TN 74-Z-4392, in the Athatchi as per Ex.P.22 and also, he has sent the M.O.Nos.13 to 16, namely, the dresses of the deceased, to the Court and also, he has recorded the confession statement, given by the first accused Sunil @ Arul Savior and he has recovered the M.O.1 knife, from the bush, in the Athatchi as per Ex.P.7 and also, he has recovered the M.O.17 two wheeler, with Registration No.TN 74-Z-3793, in the Athatchi as per Ex.P.8 and he has handed over, the case records to the P.W.22 Inspector of Police, for further investigation.

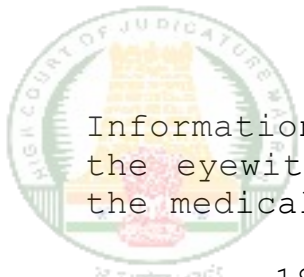
15. Further, the P.W.21 Thiru.Kumaradass has pointed out that he has served in the Kuzhithurai Judicial Magistrate Court No.I and he has received the material objects and sent it, for Chemical Analysis Report, as per the Ex.P.27 Court letter and he has received the Ex.P.28 and Ex.P.29 Chemical Analysis Reports and the Ex.P.30 Serology Report and he has sent the M.O.1 Knife for Chemical Analysis Report, as per the requisition given by the Inspector of Police and the Ex.P.31 is the Court Letter and the Ex.P.32 and Ex.P.33 are the Chemical Analysis Report and Serology Report respectively, of the M.O.1 knife. Further, the P.W.22 Tmt.Sunantha Bagavathi has manifestly deposed that she has served as Inspector of Police in Kuzhithurai Police Station and on 09.04.2003, she has enquired the witnesses and completed the investigation and filed final report on 02.05.2003.

16. On a careful perusal of the entire materials on available on record, it is found that the prosecution has established the case, as against the appellants herein, as clearly pointed out by the Lower Court, in the impugned Judgment. Further, the senior counsel appearing for the appellants have vehemently submitted that the Ex.P.1 complaint alleged to be lodged by the P.W.1, is doubtful. However, on a careful perusal



of the entire materials available on records, it is found that the prosecution has proved about the lodging of Ex.P.1 complaint, by the P.W.1, by producing the relevant evidences and appropriate records. Further, the learned senior counsel have submitted that the arrest, confession and recovery have not been proved by the prosecution in an acceptable manner. However, on a careful scrutiny of the entire materials available on records, it is found that the prosecution has proved the offence committed by the appellants herein, beyond reasonable doubt. Further, the learned senior counsel have raised common defence that the P.W.1 to P.W.3 are relatives to the deceased and their evidences cannot be believed and their evidences are very doubtful. However, on a careful analysis of the entire records, it is seen that the evidences of the P.W.1 to P.W.3 are trustworthy, cogent and clear and also, supported by the medical evidences and records. Besides that, the prosecution has established the arrest, confession and recovery of the material objects, by examining the acceptable evidences and appropriate records.

17. Further, the motive has been established by the prosecution, to commit the brutal assault, on the deceased John Shaji, in the presence of the wife of the deceased, namely, the P.W.2. Though the learned senior counsel appearing for the appellants have pointed out about certain contradictions in the evidences of the eyewitnesses and it is found that they are mere immaterial contradictions and also, they are minor in nature. Further, the occurrence has taken place on 06.10.2002 and the witnesses have given the evidences in years 2008 and 2009 only. Hence, due to the said time gap also, there are the said minor contradictions, in the evidences of the prosecution witnesses. Further, the Ex.P.1 complaint contains the relevant material details to establish the involvement of the appellants, with the crime committed by the appellants herein. Further, mere suspension of the P.W.20 Inspector of Police, temporarily and the said suspension of service will not cause any hindrance to the present case of the prosecution and the said Inspector of Police has not been suspended from his service, for the mistake committed, during the course of investigation of the present case. Further, the learned senior counsel appearing for the appellants have elaborately argued that the accused have assaulted the deceased at the place of occurrence in the presence of the P.W.1 to P.W.3 are highly doubtful. However, it is found that the P.W.1 to P.W.3 have given clear details about the place of occurrence and nature of offence committed by the accused. Further, the learned senior counsel for the appellants have pointed out that the P.W.1 has admitted in his evidence that the police have come to the place of occurrence and enquired them and recorded his statement. However, on a careful scrutiny of the entire materials available on records, it is found that as per Ex.P.1, the complaint has been lodged by the P.W.1 and thereafter, the police have conducted investigation, after the preparation of the First



Information Report. Further, the clear and cogent evidences of the eyewitnesses of the P.W.1 to P.W.3 have been corroborated by the medical evidences and material records also.

18. Further, the learned senior counsel have pointed out that the P.W.13 Doctor has deposed that the P.W.2 has been brought to the P.W.13's clinic, by the mother of the P.W.2 and the said mother of the P.W.2 has not been examined. However, that will not disturb the case of the prosecution, as there are clinching eyewitnesses in the present case and also supported by the medical evidences and material records. Further, on a perusal of the entire materials available on record, it is found that there is common intention between all the appellants to commit the crime and the motive has been distributed to each one of the appellant. Hence, all the five accused, namely, the appellants herein have been rightly implicated by the prosecution. Further, the learned senior counsel appearing for the appellants have vehemently argued that the other person Albert Nelson who came to the place of occurrence, has not been examined by the prosecution. However, the evidences of the eyewitnesses of the P.W.1 to P.W.3 and other material witnesses and relevant records are enough to strengthen the case of the prosecution and also, the case of the prosecution has been supported by the admissible portions of the confession statements and recoveries. Further, it is a common knowledge that the P.W.2, who is the wife of the deceased John Shaji, has got shock and fallen down unconscious, due to the sudden assault of her husband and also the murder caused to her husband and it has been rightly pointed out in the evidences of P.W.13 Doctor and P.W.14 Doctor and they have given treatment to the P.W.2, as the P.W.2 has got shock, due to the sudden brutal attack caused to her husband. Further, the presence of the P.W.1 to P.W.3 at the place of occurrence, has been established, in an appropriate manner by the prosecution. Further, no material improvement has been made by the eyewitnesses of the P.W.1 to P.W.3 and also, significant evidences have been given by the doctors, who do not have any axe to grind against the appellants herein.

19. Further, the D.W.1 Dr. Manojkumar has clearly admitted that the 12% permanent disability, pointed out by him, in Ex.D.4 Wound Certificate, is only a partial disability for the second accused and he does not know about the medical treatment given to the second accused and he has given the evidence before the Court, based upon the perusal of Ex.D.4 Wound Certificate only and he does not take the relevant records from the hospital, regarding Ex.D.4 and the second accused can do his normal works by sitting, standing, eating and other activities. Further, the D.W.2 Chandrababu has admitted that the deceased John Shaji, in the present case and the D.W.2 are belonging to different community and there is no enmity between them and there is no connection between the D.W.2 and the deceased, in the present case. Furthermore, the D.W.2 has



admitted that he knows the deceased John Shaji and Ex.D.3 is the Complaint lodged by his wife, dated 08.10.2002 and he does not know, as to whether the deceased John Shaji's name has been included in the rowdy list. In such circumstances, it is seen that the defence witnesses and also, the exhibits are not helpful, to the submissions made on behalf of the appellants, that the appellants are not involved in the commission of the offence, namely, brutal assault caused to the deceased John Shaji.

20. i) Further, in the Judgment relied on behalf of the appellants, reported in **AIR 1976 SC 2488 (State of Orissa V. Brahmananda)**, it has been observed only as follows:-

"..in a murder case the entire prosecution case depended on the evidence of a person claiming to be eyewitness and this witness did not disclose the name of the assailant for a day and half after the incident and the explanation offered for non-disclosure was unbelievable, held that such non-disclosure was a serious infirmity which destroyed the credibility of the evidence of the witnesses."

However, in the present case, it is found that the prosecution has established the guilt of the appellants herein, by producing the acceptable and clinching records and exhibits. Further, the evidences of the P.W.1 to P.W.3 are natural and nothing has been brought on record, to create any doubt in the evidences given by the eyewitnesses and also their evidences have been corroborated by the medical evidences and material records.

ii) Furthermore, in the Judgment relied on behalf of the appellants, reported in **(2010) 4 MLJ (Cr1.) 495(SC) (Rameshbhai Mohanbhai Koli V. State of Gujarat)**, it has been observed only as follows:-

"We are unable to accept the case of the appellants, on the other hand, we are satisfied that the case of the prosecution has established its case, in so far as the appellants and rightly convicted and sentenced by the Trial Court. All the materials and evidences of panchas, as discussed, and circumstances unmistakably lead to the conclusion that A1 to A4 are the culprits and the complicity for commission of murder of the deceased is



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proved. These aspects have been fully discussed by the Trial Court. This Court has noted and observed in a large number of cases that witnesses may lie but circumstances do not. On going through the entire materials, particularly, the chain of circumstances, we are satisfied that the prosecution has been successful in bringing home the guilt of the appellants herein for the commission of murder of Prakashbhai Raveshia"

In the present case also, it is seen that the prosecution has established that the appellants are the culprits and the complicity of the commission of the murder of the deceased John Shaji is proved and the prosecution has established its case cogently and also convincingly, by producing the credible and trustworthy records and evidences.

iii) In this connection, it is useful to refer to the decision reported in **AIR 1992 SC 840, State of UP Vs. Ashok Kumar Srivastava** : wherein it is clearly stated as follows:

" The circumstance relied upon must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts is established must be consistent only with the hypothesis of guilt. Further, this is not to say that the prosecution must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet each and every hypothesis put forward by the accused however far fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise."

iv) In the decision of Hon'ble Supreme Court, in the case of **State of Rajasthan Vs. Kishore, (AIR 1996 SC 3035)**, it is precisely held as follows:

". . . It is now well settled principle that any irregularity or even illegality during investigation ought not to be treated as a ground to reject



the prosecution case "

This instructive authority of the Hon'ble Supreme Court invites an instant application in the present case. The alleged minor discrepancies and minor contradictions are immaterial and they can not be held to go to the root of the case, as the prosecution has established the case beyond reasonable doubt by adducing the acceptable evidences and documents to establish the prosecution case. The credibility of the witnesses and other aspects, have been established, in accordance with law, by the prosecution, in so far as the appellants herein are concerned.

v) Further, the Hon'ble Supreme Court, in the Judgment reported in [CTJ 2008 SC 561] in the case of **Ram Swaroop V. State of Rajasthan**, has clearly held as follows:-

" A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post-mortem features which he noticed in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But, to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice. "

vi) Also, in the judgment of Hon'ble Supreme Court, in the case of **State of U.P V. Deoman Upadhaya**, reported in **AIR 1960 SC 1125**, it is clearly observed as follows:-

"The various requirements of the Section 27, as follows:-

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact



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discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon, only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

vii) Further, in the judgment of Hon'ble Supreme Court, in the case of **Sayed Darain Ahsan @ Darain V. State of West Bengal and another**, reported in **(2012) 3 MLJ (Cri) 91 (SC)**, it is clearly stated as follows:-

"The High Court has held in the impugned judgment that all the eyewitnesses have given a vivid and true account of the incident and had seen the occurrence on close range and as they were residents of the locality they had no problem in identifying the assailants and there was nothing on record suggesting that they nurtured ill feeling and harboured enmity against the appellant and that the evidence of the eyewitnesses was consistent and finds due corroboration from the postmortem report. In Court's considered opinion, the High Court has rightly sustained the conviction of the appellant on the evidence of four eyewitnesses as corroborated by the medical evidence."

viii) Further, in the judgment of Hon'ble Supreme Court, in the case of **Waman and others V. State of Maharashtra**, reported in **(2011) 3 MLJ (crl) 999(SC)**, it is clearly observed as follows:-



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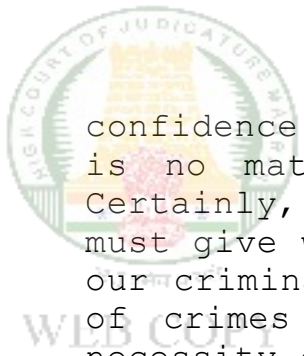
"I. The relationship is not a factor to affect the credibility of a witness and the Courts have to scrutinize their evidence meticulously with a little care.

II. Merely on the basis of minor contradictions about the use and nature of weapons, the statements of the prosecution witnesses cannot be ignored in toto."

In the present Criminal Appeal also, this Court has full power to review, re-appreciate and reconsider the evidence upon which the judgment of conviction is passed by the Trial Court. Furthermore, an appellate Court on the evidence before it, may reach its own conclusion, both on questions of fact and of law. Further, on a careful analysis of the evidences of above mentioned prosecution witnesses, and also the materials on record, this Court is able to agree with the prosecution version, with regard to the appellants herein.

21. Further, it is seen that the reasons pointed out on behalf of the appellants in the Grounds of Appeal are not acceptable for the above mentioned material evidences and acceptable records submitted on behalf of the prosecution side. Further, the prosecution has proved beyond reasonable doubts, with regard to the recovery of the body of the deceased John Shaji, other things like recovery of dresses of the deceased and other material objects. Further, on a careful scrutiny of the entire materials available on record, it is found that the case of the prosecution has been established with appropriate evidences and also corroborated by the materials on record and also established the nexus of the appellants herein with the said crime. Also, through the medical evidences and the other material records and exhibits and material objects, the prosecution has proved the fact that the appellants/accused only have caused death to the deceased, due to the said brutal attack. Further, the Lower Court has convicted the appellants herein on sound principles of law and also, on facts. Further, the evidences of the prosecution evidences are believable and acceptable, to convict the appellants herein, and there are no vital contradictions in the evidences of the prosecution prime witnesses.

22. Further, this Court is not finding any substantial and compelling reasons to interfere with the Judgment of the Lower Court. Further, there are no good, sufficient and cogent reasons and also strong reasons to interfere with the Lower Court Judgment. Further, the P.W.1 has lodged the complaint as per Ex.P.1 and also, identified the material objects. The view taken by the Lower Court is clearly reasonable and the same is
<https://hccasesandorders.hccer.org/hccer/> to the materials available on record. The Lower Court has rightly observed that the witnesses examined and material objects produced by the prosecution are inspiring



confidence to assert the guilt of the accused/appellants. There is no material deficiency in the evidences of eye witnesses. Certainly, the practices and principles that served in the past must give way to innovative and creative methods, in order to save our criminal justice system. Further, the emergence of new types of crimes and their level of sophistication have made in the necessity of new methods in crime detection. Further, the reasons assigned by the Lower Court for convicting the appellants are sustainable and therefore, not liable to be set aside, for the reasons pointed out on behalf of the appellants herein.

23. Further, the learned senior counsel appearing for the appellants have vehemently contended that all the circumstances are inconsistent with the appellants / accused and the evidences of prosecution witnesses and materials are very doubtful in the present case. However, on a cumulative consideration of the above mentioned entire evidences of the prosecution and also exhibits and material objects, it is found that the prosecution has established the allegation made against the appellants by producing the reliable, trustworthy and credible witnesses, exhibits and material objects, in the present case. Further, the learned senior counsel appearing for the appellants have repeatedly contended that there is no positive and supportive evidences with regard to the allegations made by the prosecution as against the appellants. However, it is found that the prosecution has produced cogent, natural and trustworthy evidences and material objects and exhibits to establish the crime committed by the accused/appellants.

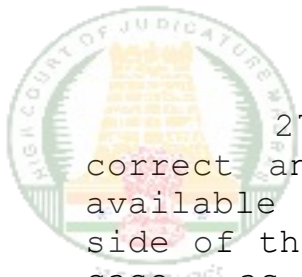
24. Further, minor defect in the investigation cannot result in acquittal of the accused, and also, as against the appellants herein, enough evidences and materials are available for conviction. Further, if the evidences of the P.W.1 to P.W.3 are reliable, trustworthy, cogent and duly corroborated by the other witnesses and exhibits, then, their statements cannot be discarded, only on the ground, they are interested and related to the deceased person and they have some interest in the case of the prosecution. Further, the recovery of the material objects are also providing a link for the involvement of the appellants herein, in the commission of the said crime. Further, undue importance cannot be given to minor discrepancies, which do not shake the basic version of the case of the prosecution. If the major portion of the evidence of prosecution is found to be cogent, clear and sufficient to establish the guilt of the appellants, then, the Court must separate the grain from the chaff. If the Court considers some portion of the evidence, as not very clear, then, it does not mean that entire evidences must be discarded, in all aspects. Further, enough evidences are <https://hccs.eas.gov.in/services> to substantiate the guilt of the appellants. This Court has to consider the evidences of the interested witnesses with great care and caution only. There is no major



contradiction in the evidences of P.W.1 to P.W.3 and also in the evidence of the P.W.15 Postmortem Doctor. In the present case, there is cogent and consisting evidences given by the above mentioned prosecution witnesses, with regard to the occurrence and also with regard to the case, as pointed out by the prosecution side, in so far as the appellants herein, are concerned. Further, it is seen that the conclusion of the Lower Court is not perverse and on the other hand, it is also supported by the materials on record. Further, it is seen that the materials on record have been rightly appreciated by the Lower Court. The materials available on record, are sufficient in the circumstances, to inspire confidence of testimonies of the above mentioned prosecution witnesses. Further, there is no material evidence appearing on record to establish the grounds, as pointed out, on behalf of the appellants.

25. Further, it is settled law that if the Lower Court has not ignored materials and relevant facts or the Lower Court has not misread the material evidences or ignored material records, then the Appellate Court is not competent to reverse the decision of the Lower Court. In the present case also, it is seen that the prosecution has established the relevant circumstances and also the allegation brought against the accused are sufficiently proved and established. Further, the chain of events clearly established that the accused have got the ill-will to do the brutal assault on the deceased John Shaji. Further, suspicious conduct of accused after committing the alleged crime would amply provide link to the chain of events. Furthermore, the information given by the accused which has led to the cause of discovery of the aforesaid material object, would clearly prove the theory of the evidences of the eyewitnesses. Further, time and again the Honourable Supreme Court has clearly observed that when on the basis of information given by the accused/appellants there is a recovery of the objects of crime which provides a link in the chain of circumstances, then such information leading to the discovery of objects are admissible. Further, minor loopholes and irregularities in investigation process cannot form crux of the case, on which the appellants have relied upon to prove their innocence, in the present case.

26. Further, on a careful scrutiny of the entire records it is found that the prosecution has proved the above mentioned crime with relevant material evidence, corroborated by medical records and also by the recovery of weapons of the crime and established the nexus of the accused with crime. Further, through medical evidence and recovery of the material objects, the prosecution has proved the fact that the accused alone have involved in the brutal attack on the deceased and also caused



27. Further, it is the duty of the Court to arrive at a correct and just conclusion, by examining the entire materials available on record and the procedural mistakes, committed on the side of the investigation, are not vital to affect the prosecution case, as the prosecution has established the case of the prosecution, with the help of the medical evidences and the above mentioned relevant prosecution evidences and materials on record. Further, in the present case, the Lower Court has not convicted the appellants/accused solely based on recoveries and in fact, there are other relevant circumstances and materials as mentioned above and also the chain of events, suggesting involvement of the appellants in committing the crime of murder of the deceased John Shaji. Further, the various grounds taken, on behalf of the appellants have to be negatived for the above mentioned natural, convincing and acceptable evidences and material records of the prosecution. Also, on a careful scrutiny of the entire materials available on records, it is found that there is tangible motive for the appellants to commit the offence as alleged by the prosecution.

28. Further, on a careful scrutiny of the entire materials available on record, it is found that the reasons given by the Lower Court for convicting the appellants herein and also, the finding given by the Lower Court, are in accordance with proper appreciation of evidences and also the view taken by the Lower Court is reasonable and thus, the points are answered, as against the appellants, herein.

29. In the result, the conviction and sentence imposed on the accused No.1/Sunil @ Arul Xavier, accused No.2/Saji, accused No.3/Invert Raj, accused No.4/Jegan and accused No.5/Chandrababu in Crime No.990 of 2002, delivered in S.C.No.185 of 2003, dated 15.02.2013, on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil, Kanyakumari District are confirmed and the CrI.A(MD)No.92 of 2013, CrI.A(MD)No.103 of 2013, CrI.A(MD)No.118 of 2013, CrI.A(MD)No.121 of 2013 and CrI.A(MD)No.173 of 2013 are dismissed. Consequently, the Lower Court is directed to secure the appellants and commit them to undergo the remaining period of sentence and the bail bonds, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



pmu

To,

1. The Judicial Magistrate No.I, Kuzhithurai

2. The Chief Judicial Magistrate,
Kannniyakumari District at Nagercoil3 The Sessions Judge, Kanyakumari District at Nagercoil,
Kanyakumari District.4 The District Collector,
Kanniyakumari District at Nagercoil.5 The Director General of Police,
Mylapore, Chennai - 46 The Superintendent, Central Prison,
Palayamkottai, Tirunelveli - 2,7 The Inspector General of prison,
Chennai - 600 0088 The Deputy Superintendent of Police,
Kanyakumari @ Nagercoil.9 The Principal Secretary to Government
Home, Prohibition and Excise, Department,
Secretariat, Chennai - 600 009.10. The Inspector of Police, Kuzhithurai Police Station,
Kanyakumari District.11. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+2CC Mr.Pandiraj Advocate Sr.No.23554, 23064

+1CC to Mr.S.Ravi Advocate Sr.No.22848

+1CC to Mr.K.Prabhu Advocate Sr.No.23018

GJM/JGB/SS/9.5.16-28p-16C

PRE-DELIVERY JUDGMENT MADE IN

Crl.A.(MD)No.92 of 2013

CRL.A(MD)No.103 of 2013

CRL.A(MD)No.118 of 2013

CRL.A(MD)No.121 of 2013

AND

CRL.A(MD)No.173 of 2013

22.04.2016