

BAIL SLIPS

The Appellant/Sole Accused viz., Mudikrishnan @ Krishnan, S/o.Palanisamy, male was directed to be released on bail by the order of this court dated 15.12.2011 and made in MP(MD)No.1/2011 in Crl.A(MD) No.200/2011.

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The Appellant/Sole Accused viz., Pathu @ Padmanabhan, S/o.Thangaraj, male was directed to be released on bail by the order of this court dated 15.12.2011 and made in MP(MD)No.1/2011 in Crl.A(MD) No.261/2011.

The Appellants/Sole Accused viz., (1)Kalivarathan, S/o.Durairaj, (2)Senthilkumar, S/o.Balasubramanian, male were directed to be released on bail by the order of this court dated 01.12.2011 and made in MP(MD) No.1/2011 in Crl.A(MD)No.316/2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.01.2016

Pronounced on : 08.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

CRL.A(MD)No.200 of 2011

CRL.A(MD)No.261 of 2011

AND

CRL.A(MD)No.316 of 2011

i) CRL.A(MD)No.200 of 2011:

Mudikrishnan @ Krishnan

..Appellant/Accused No.2

ii) CRL.A(MD)No.261 of 2011:

Pathu @ Padmanabhan

..Appellant/Accused No.1

iii) CRL.A(MD)No.316 of 2011:

1. Kalivarathan

2. Senthilkumar

..Appellants/Accused Nos.5 & 6

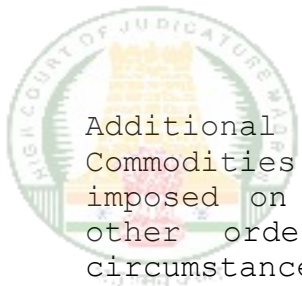
Vs.

State rep. by The Inspector of Police,
East Police Station,
Thanjavur, Thanjavur District.
(Crime No.524 of 2005)

..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 pertaining in S.C.No.180 of 2007, dated 04.05.2011, on the file of the learned



Additional District and Sessions Judge cum Special Judge for Essential Commodities Act, Thanjavur and to set aside the conviction and sentence imposed on the appellants and to acquit the appellants and pass such other orders, as this Court may deem fit and proper under the circumstances of the case.

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For Appellants : Mr.R.Sivasubramanian, Advocate
(in Crl.A(MD)No.200 of 2011)

Mr.S.Ashok Kumar, Senior Advocate
for Mr.A.Thiruvadikumar, Advocate
(in Crl.A(MD)No.261 of 2011)

Mr.V.Kathirvelu, Senior Advocate
for Mr.A.Arun Prasad, Advocate
(in Crl.A(MD)No.316 of 2011)

For Respondent : Mr.K.S. Durai Pandian,
Additional Public Prosecutor
(in all the above mentioned
Criminal Appeals)

COMMON JUDGMENT

P.R.SHIVAKUMAR, J.

The appellant in Crl.A.(MD).No.200 of 2011 is the accused No.2, the appellant in Crl.A.(MD) No.261 of 2011 is the accused No.1 and the appellants in Crl.A.(MD) No.316 of 2011 are the accused Nos.5 and 6 in S.C.No.180 of 2007 (Crime No.524 of 2005) on the file of the learned Additional District and Sessions Judge cum Special Judge for Essential Commodities Act, Thanjavur. Totally, there were ten accused in the case, including the appellants herein. The case filed as against accused No.3 Gajendran, has been split up and numbered as a separate sessions case viz. S.C.No.82 of 2011. The fourth accused Dilip @ Philip expired, during trial and the charges against him abated. The Trial Court has framed charges as detailed below:-

Accused No.	Penal provisions under which charges framed
Accused Nos.1 and 5	120-B r/w 302, 341, 148, 326, 302 r/w 149 or 302 r/w 34 and 506(2) I.P.C.,
Accused No.2	120-B r/w 302, 341, 148 and 302 I.P.C.,
Accused No.6	120-B r/w 302, 341, 148, 302, 326, 302 r/w 149 or 302 r/w 34 and 506(2) I.P.C.,
Accused Nos.7 to 10	120-B r/w 302, 148, 302 r/w 149 or 302 r/w 34 I.P.C.,

2. After full trial, by its Judgement dated 04.05.2011, the Trial Court acquitted accused Nos.7 to 10 and convicted accused Nos.1, 2, 5 and 6, as detailed herein below:-

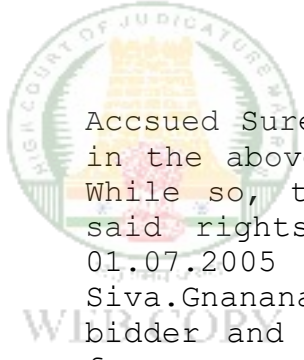


Rank of the Accused	Convicted under	Sentenced to
A1, A5 and A6	120-B I.P.C.,	Life Imprisonment each.
	341 I.P.C.,	Simple Imprisonment for One month each.
	148 I.P.C.,	Rigorous Imprisonment for Six Months each
	326 I.P.C.,	Rigorous Imprisonment for two years each.
	302 r/w 34 I.P.C.,	Life Imprisonment each and to pay a fine amount of Rs.1,000/- each, in default, to undergo Rigorous Imprisonment for four months each.
	506(2) I.P.C.,	Rigorous Imprisonment for four months each.
A2	120-B I.P.C.,	Life Imprisonment.
	341 I.P.C.,	Simple Imprisonment for One month.
	148 I.P.C.,	Rigorous Imprisonment for Six Months.
	506(2) I.P.C.,	Rigorous Imprisonment for four months.
	302 I.P.C.,	Life Imprisonment and to pay a fine amount of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for four months.

Challenging the Judgment of conviction delivered in S.C.No.180 of 2007, the appellants/accused Nos.1, 2, 5 and 6 in Crime No.524 of 2005 have filed the above mentioned Criminal Appeals, before this Court.

3. The case of the prosecution, in brief, is as follows:-

i) The Temple Authorities of Arulmighu Punnainallur Mariamman Temple, Thanjavur used to conduct auction for every year for the grant of licence to collect parking fees for the motor vehicles, collecting live hens offered to the deity and for the sale of Neivilakku separately. For the periods prior to 01.07.2005, the first accused Pathu @ Padmanabhan got the right of collecting parking fees for the vehicles, whereas the second accused Krishnan @ Mudikrishnan got the right to collect the hair offered by the devotees and the third accused Gajendran got the right to collect live hens offered to the deity and to prepare and sell the Neivilakku. After they emerged as successful bidders, they got the licence for the said purposes for the period prior to 01.07.2005. The 4th accused Dilip @ Philip, 5th accused Kalivaradhan, 6th accused Senthil Kumar, 8th accused Suresh, S/o.Kadiresan, 9th Accused Shahul Hameed and 10th

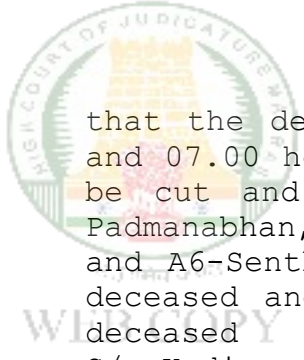


Accused Suresh, S/o.Madhar were the persons who helped the accused 1 to 3 in the above said business. A7-Kishore was the friend of Accused 1 to 3. While so, the public of Singavalanadu took a decision to get the above said rights in the auction proposed to be conducted for the period 01.07.2005 to 30.06.2006. They projected the deceased Siva.Gnananadatharasu to bid in the auction. He emerged as the successful bidder and thus, the public of Singavalanadu got the above said rights for a period of one year in the name of the deceased Siva.Gnananadatharasu. The same provided motive for the accused 1 to 3 against Siva.Gnananadatharasu as they felt that their source of income was lost because of the act on the part of the deceased Siva.Gnananadatharasu.

ii) The auction in respect of the licence to collect parking fee and other rights for the period 01.07.2005 to 30.06.2006 were held on 17.05.2005, 30.05.2005, 02.06.2006 and 16.06.2006 at the office of the palace Devasthanam in West street, Thanjavur. Since no one came forward to make security deposit, the auction was postponed and at last, the auction was conducted on 24.06.2005 in the campus of Pragatheeswarar Temple, Thanjavur. The auction for granting licence to prepare and sell Prasadham was again postponed and on 30.06.2005, the said right was conferred on one Srinivasan on closed tender method. The licence to collect live hens, licence to collect the hair, licence to collect fee for toilet and bathroom were granted to one Veeraiyan of Pulichampattu, whereas licence to collect parking fee for car, van and scooters was given to one Govindaraj of Pulichampattu. PW8-Jeyakumar was the licensee for four years, who was granted the licence to collect parking fee at Punnainallur Mariyamman Temple, Thanjavur.

iii) PW1.Siva.Parthasarathy is the brother of deceased Siva.Gnananadatharasu. Apart from PW1, the deceased Siva.Gnananadatharasu had another brother by name Siva.Ambalatharasu. On 01.10.2005, PW1 - Siva.parthasarathy had gone to the house of the deceased Siva.Gnananadatharasu at about 18.00 hours and at that point of time, Accused 1 to 6 came there and demanded that the deceased Siva.Gnananadatharasu should give up the rights obtained by him in the auction, in their favour. The deceased Siva Gnananadatharasu informed them that it was a decision taken by the villagers, pursuant to which the above mentioned rights were obtained in his name in the auction conducted for the period 01.07.2005 to 30.06.2006 and that hence, he had nothing to say regarding the auction which had already been concluded. Immediately thereafter, the first accused Pathu @ Padmanabhan threatened the deceased stating that he would see how the deceased Siva.Gnananadatharasu would be collecting the fees. At the same time, the accused 2 to 5 caused a threat by stating that unless the deceased would be cut, he would not mend his ways. Thereafter all the six accused (A1 to A6) left that place.

iv) On 06.10.2005, at about 19.00 hours, near Rettaipillaiyar temple at Vandikara theru, Thanjavur, PW6-Yogamurthy saw the Accused Nos.1 to 5 and 7 to 10 conspiring together to kill deceased Siva.Gnananadatharasu, as the village public had taken the marriyamman temple auction in the name of Siva.Gnananadatharasu and thereby they were deprived of their income. At that point of time, PW6 over heard the conversation of the above said accused persons which was to the effect



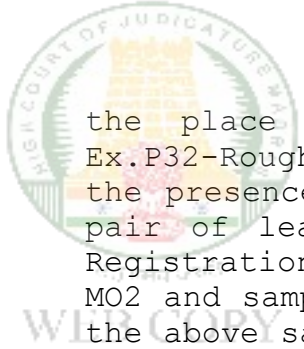
that the deceased would come to the tea shop to take tea between 06.00 and 07.00 hours in the morning and that at that point of time, he should be cut and killed. They made an arrangement as per which A1-Pathu @ Padmanabhan, A2-Mudikrishnan @ Krishnan, A3-Gajendran, A5 - Kalivarathan and A6-Senthil Kumar would wait near Kalyanamandapam for the arrival of deceased and on his arrival, they should cut him to death. In case the deceased would escape their attempt, A7-Kishore, A8-Suresh, S/o.Kadiresan, A9-Shahul Hameed and A10-Suresh, S/o.Madhar, who would be waiting at Vilar Road Junction would finish him. The first accused asked the third accused Gajendran to arrange for the Aruvals and come to that place at 04.00 hours in the morning.

v) On the next day, namely 07.10.2005, at about 05.30 hours in the morning, PW1 - Siva.Parthasarathy went to the house of Siva.Gnananadatharasu and was chatting with the deceased, his son Anbarasu (PW2), their uncle PW3 - Swaminathan and thereafter, on the invitation of Siva.Gnananadatharasu, Pws 1 to 3 decided to go along with the deceased to the tea shop to take tea. While the deceased Siva.Gnananadatharasu and PW1-Siva.Parthasarathy were proceeding in the TVS 50 vehicle driven by the deceased, Pws 2 and 3 were proceeding towards the tea stall by walk. While they were thus proceeding on the western bund of Kallanai Canal in the direction of South to North, the accused 1 to 6 intercepted the said vehicle at Vilar Road Junction, near Jayaram Kalyana Mahal. As soon as the vehicle was stopped, PW1 got down and was standing at a distance from the vehicle. At that point of time, Accused 1 to 6 cut Siva.Gnananadatharasu with Aruvals. Siva.Gnananadatharasu fell down after receiving the cut injuries. As Pws 1 to 3 approached towards Siva.Gnananadatharasu, Accused 1 to 6, showing the aruvals to them, proclaimed that they would also meet with the same fate in respect of the temple auction and then escaped from the place. While accused 1 to 6 were running from the place, four more persons, who were armed with knives, joined them at Vilar Road Junction and ran along with A1 to A6.

vi) After coming to know that Siva.Gnananadatharasu had passed away, PW1 went to Thanjavur Town East Police Station and lodged a complaint under Ex.A1. PW2-Anbarasu, who is none other than the son of deceased Siva.Gnananadatharasu and PW3-Swaminathan, were the other two witnesses, who saw the occurrence in which the deceased Siva.Gnananadatharasu was butchered to death by Accused 1 to 6. PW20-V.Arunachalam, the then Sub-Inspector of Police, Thanjavur East Police Station, received the complaint at 07.15 hours on 07.10.2005, prepared Ex.P31-First Information Report and registered a case in Crime No.524 of 2005 for offences under Sections 147, 148, 341, 506(ii) and 302 IPC against three named accused and three unnamed accused. The three named accused are A1-Pathu @ Padmanabhan, A2-Mudikrishnan @ Krishnan and A3 Gajendran. The complaint and the first information report were sent to the Judicial Magistrate and their copies were sent to the higher officials of the Police Department through PW17-Dinakaran, who was working as Head Constable at that point of time in the said Police Station. A copy of the First Information Report was also submitted by PW20 to the Inspector of Police for investigation.

<https://hcservices.ecourts.gov.in/hcservices/>

vii) PW21-M.Ravichandran, the then Inspector of Police, Thanjavur Town East Police Station, took up the investigation of the case, visited

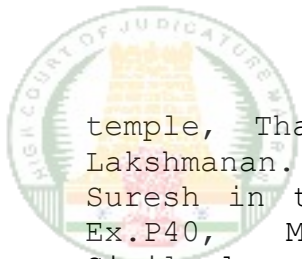


the place of occurrence and prepared Ex.P2-Observation Mahazar and Ex.P32-Rough Sketch showing the topography of the place of occurrence, in the presence of PW5-Duraimanickam and one Karthikeyan. He also seized a pair of leather chappels marked as MO1, a TVS 50 two wheeler bearing Registration No.49-A-8764 marked as MO4, blood stained earth marked as MO2 and sample earth marked as MO3 under Ex.P3-mahazar in the presence of the above said witnesses from the place of occurrence. Then he conducted an inquest in the presence of Panchayatdhars and prepared Ex.P33-Inquest Report. After inquest, the dead body of deceased Siva.Gnananadatharasu was sent by him through PW19-Selvakumar, Head Constable No.477, along with a requisition for autopsy to Thanjavur Medical College Hospital, Thanjavur.

viii) PW9-Dr.Sukumar conducted autopsy on 07.10.2005 at 11.00 hours. PW9 noted as many as 14 external injuries and issued the Postmortem Examination Certificate under Ex.P6 opining that the deceased Siva.Gnananadatharasu appeared to have died of shock and haemorrhage caused due to the multiple cut injuries and also due to the injury caused to the brain. The time of death, according to PW9 was 3 to 6 hours prior to autopsy. After post mortem examination, MO5-Full Sleeve Shirt, MO6-Polyster Dhoti, MO7-Striped underwear, MO8-banian and MO9-Waist chord, which were removed from the dead body, were collected by PW19 and handed over to the Investigating Officer with his special report marked as Ex.P30. The blood sample taken from the dead body was sent to Tamil Nadu Forensic Lab at Chennai where it was found by PW10 Scientific Assistant to be of 'A' Group Human Blood and the reports submitted by him in this regard is Ex.P7. The serology report marked as Ex.P7 also ruled out consumption of Alcohol or any other poisonous substance by the deceased.

ix) During the course of investigation, PW21-the Investigating Officer, arrested the first accused Pathu @ Padmanabhan on 08.10.2005 at 14.00 hours in front of ITI on Mariyamman Koil road in the presence of PW22-Kumaravel and one Kumaresan. On the basis of the information furnished by the first accused in his voluntary confession statement recorded by PW21 between 14.00 Hrs. and 15.30 Hrs., the admissible portion of which has been marked as Ex.P34, the Investigating Officer recovered MO10-Aruval under Ex.P35 mahazar in the presence of the above said witnesses. The said Aruval was sent to the Court under Ex.P36 Form 95. On the same day, at 19.00 hours, the third accused Gajendran, 5th accused Kalivaradhan and 6th Accused Senthilkumar were arrested by PW21 near the Railway gate on the Mariyamman Koil Road in the presence of PW12-Tmt.Uma, Village Administrative Officer of Pudhupattinam and PW13-Senthil Vadivelan, Village Assistant of the same village. On the information furnished by the third accused Gajendran in his voluntary confession statement, admissible portion of which has been marked as Ex.P37, the Investigating Officer (PW21) recovered MO11 to MO13-Aruvals under Ex.P13 Mahazar in the presence of the above said witnesses. On the basis of the information furnished by the 6th accused Senthilkumar in his confession statement, admissible portion of which has been marked as Ex.P38, MO14 Aruval was recovered under Ex.P39 mahazar in the presence of the very same witnesses.

<https://hcservices.ecourts.gov.in/hcservices/> x) The 8th accused Suresh S/o.Kadiresan, 9th accused Shahul Hameed and 10th Accused Suresh S/o.Madhar were arrested by the Investigating Officer at 2.00 hours on 09.10.2005 at a place in front of Pillaiyar



temple, Thanjavur Town in the presence of PW14-Pakkrisami and PW15-Lakshmanan. On the basis of the information furnished by the 8th accused Suresh in the admissible portion of his confession statement marked as Ex.P40, MOs 15 and 16 knives were recovered under Ex.P41 mahazar. Similarly, on the basis of the information contained in the admissible portion of the confession statement of the 9th accused (Shahul Hameed) marked as Ex.P42, MO17 knife was recovered under Ex.P43 mahazar. Based on the confession statement of 10th accused (Suresh S/o.Madhar), MO18 knife was recovered under Ex.P45 mahazar. The said recoveries were made in the presence of PW14 - Pakkrisami and PW15-Lakshmanan. Thereafter, the recovered articles were sent to the Court under Ex.P46 and Ex.P51 Form 95.

xi) On 16.10.2005 at 17.30 hours in front of Sakthivinayagar temple in Sallaikara Street, Thanjavur, the 5th accused Dilip @ Philip was arrested. The second accused Mudikrishnan @ Krishnan had surrendered before the Judicial Magistrate, Thirumangalam on 19.10.1995. He was taken in police custody on 26.10.2005 and was interrogated in the presence of PW16-Manokaran and one Sambandham. Based on the information furnished by him, the Investigating Officer saw the place of occurrence and also the places wherein the weapons had been hidden. The Investigating Officer, on completion of investigation, submitted a final report on 05.12.2005 against all the 10 accused alleging commission of offences under Sections 120-B, 147, 148, 341, 506(ii) and 302 IPC and 302 r/w. 109 IPC and other penal provisions.

xii) The material objects recovered by the Investigating Officer during investigation was sent to the Regional Forensic Lab for chemical examination by PW11-Seetha, the then Head Clerk of Judicial Magistrate, Thanjavur along with Ex.P9 letter. All the dress materials removed from the dead body of the deceased were found to contain 'A' Group human blood as evidenced by Ex.P7-Report of the Scientific Assistant. The weapons allegedly recovered from the accused persons and their dress materials when sent from the Court to the Forensic Lab under Covering letter Ex.P9, they were examined by PW10- Scientific Assistant and the Scientific Assistant sent a report under Ex.P8. Items 3 to 7, namely dress materials and the earth mixed with stone and vegetative matters were found to contain blood stains, whereas none of the weapons, which were shown as Items 1,2 and 8 to 11 did not contain any blood stain. It was found that the blood stains found in the articles noted as Items 3 to 7 in Ex.P8 were found to be 'A' Group human blood.

4. The final report submitted by the Investigating Officer was taken on file by the learned Judicial Magistrate No.1, Thanjavur as P.R.C.No.20 of 2006. Following the procedure, the accused were committed for trial to the Court of Session, Thanjavur. The learned Principal Sessions Judge, Thanjavur, took it on file as S.C.No.180 of 2007 and made over the same to the Additional District and Sessions Judge/Special Judge, Essential Commodities Act, Thanjavur for trial and disposal according to law.

5. After appearance of the accused, as pleaded innocence, ~~charges~~ were framed as indicated supra. After hearing the charges read over and explained, the accused persons pleaded not guilty and wanted a trial to be conducted.



6. In order to prove the prosecution case, Pws 1 to 22 were examined, Exs.P1 to P55 were marked and material objects Mos 1 to 18 were produced on the side of the prosecution. After the completion of recording evidence adduced on the side of the prosecution, the incriminating materials found in such evidence were culled out and the accused were examined under Section 313(1)(b) Cr.P.C regarding those incriminating materials and generally regarding the charges levelled against them. They denied such evidence to be false and reiterated their stand that they were innocent and that they were falsely implicated. On the side of the accused, DW1 was examined as the sole witness and three documents were marked as Exs.D1 to D3.

7. Thereafter, the learned trial Judge, heard the arguments advanced on both sides and considered the evidence in the light of the arguments thus advanced. Upon such consideration, the learned trial Judge, by a judgment dated 04.05.2011, acquitted Accused 7 to 10 of all the offences for which they were prosecuted and convicted Accused Nos.1,2, 5 and 6 as indicated supra.

8. As against the conviction of A1- Pathu @ Padmanabhan, he has preferred Crl.A (MD) No.261 of 2011, both regarding conviction and sentence. The second accused Mudikrishnan @ Krishnan preferred Crl.A. (MD) No.200 of 2011 as against his conviction and punishment imposed on him. The Accused Nos.5-Kalivarathan and Accused No.6-Senthilkumar have jointly filed Crl.A.No.316 of 2011 against their conviction and punishment imposed on them. Since, all the appeals have arisen from the common judgment, all the appeals are heard together and are being disposed of by this common judgment.

9. Mr.S.Ashok Kumar, learned senior counsel representing Mr.A.Thiruvadikumar, learned counsel on record for Accused No.1 (appellant in Crl.A.(MD) No.261/2011) advanced the following arguments:

a) The judgment of the trial court is totally against the weight of evidence, probabilities of the case and against law. The trial court simply convicted the first accused on conjectures and surmises. The material contradictions, omissions and the gradual improvements made in the prosecution case were not adverted to by the trial court. Though the death of the deceased is homicidal cannot be disputed, the prosecution failed to prove that his death was caused by the accused persons, especially the Accused 1, 2, 5 and 6, who were convicted by the trial court. The alleged motive for the accused to kill the deceased with the help of the other accused, has not been substantiated by reliable evidence and the prosecution miserably failed to prove the same. However, the learned trial Judge chose to render an erroneous finding that the motive for the occurrence was established by the prosecution by reliable evidence. The alleged occurrence leading to the death of the deceased, according to the prosecution case, was preceded by a criminal conspiracy among the accused 1 to 10 that took place on 06.10.2005. The only witness examined on the side of the prosecution to have seen the accused persons conspiring is PW6-Yogamurthy. The evidence of PW7-



Thiru.Govindram, Assistant Commissioner, HR&CE and Exs.P4 and P5 will make it clear that the alleged motive is not true. The learned trial Judge disbelieved the evidence of PW6. However, contrary to the finding that PW6's evidence regarding conspiracy is not believable, the learned trial Judge chose to convict A1, A2, A5 and A6 for the offence of criminal conspiracy punishable under Section 120-B of the Indian Penal Code, simply because such a charge came to be made in the final report and the death of the deceased was alleged to be caused by the accused persons acting as members of an unlawful assembly with the common object of killing the deceased.

b) PW1-Siva.Parthasarathy, PW2-Anbarasu and PW3-Swaminathan are the close relatives of the deceased, namely brother, son and uncle of the deceased. Their evidence should have been approached by the trial court with care and caution. Had such care and caution been used in analysing the evidence of PWs.1 to 3, the learned trial Judge would have arrived at a conclusion that the evidence of the said interested witnesses would not be reliable in view of the material contradictions between their evidence. PW4-Kaliyaperumal is admittedly an employee of the deceased. Hence he is also an interested witness. The learned trial Judge failed to consider the admissions made by PW3 regarding the criminal case relating to the murder of one Balamurugan to wreak vengeance for the death of Siva.Gnananadatharasu. Specific overt acts have been attributed in Ex.P1-complaint to accused 1 to 3 and three other unnamed, but identifiable persons. It is quite improbable to give such a detailed description of the overt acts on the part of each one of the accused 1 to 6. The very fact that the complaint contains such details, will show that the complaint was prepared and lodged after the injuries found on the death body of the deceased were noted. Though A1 to A3 alone were named in Ex.P1-complaint, no identification parade was conducted to identify the other accused persons. The failure to conduct identification parade in respect of A5 and A6, seriously affected the case of the prosecution against them. Still the learned trial Judge chose to convict them also and the same will make it clear that the learned trial Judge, with an erroneous approach and with a view to convict the accused searched for the reasons in support of such conviction.

c) If all these aspects are taken into consideration, this court has to arrive at a conclusion that the learned trial Judge committed an error in holding the accused 1, 5 and 6 guilty of offences punishable under sections 120-B, 341, 148, 326, 302 r/w 34 and 506(ii) IPC and the accused 2 guilty of offences under sections 120-B, 341, 158, 506(ii) and 302 IPC and convicted them for the said offences. This court, being the final court of appeal on facts, on re-appreciation, should upset the above said



findings of the trial court and set aside the conviction and acquit the accused persons, especially A1.

10. Mr.V.Kathirvelu, learned senior counsel appearing for accused Nos.5 and 6 (appellants in CrI.A.(MD) No.316/2011), besides adopting the above said contentions raised by Mr.S.Ashok Kumar, learned senior counsel in his arguments, made the following submissions:-

a) According to the contents of Ex.P1, the alleged earliest statement, based on which the case came to be registered, only three named persons (A1-Pathu @ Padmanabhan, A2-Mudikrishnan @ Krishnan and A3-Gajendran) and three more unnamed persons, all armed with Aruvals, intercepted the deceased and PW1, who were proceeding in a TVS 50 two wheeler bearing Regn. No.TN-49 A-8764 at about 6.30 hours on 07.10.2005 and cut the deceased with Aruvals indiscriminately causing his instantaneous death. Though the other three persons, namely accused 4 to 6 were also known to PW1 by their names and names of their fathers, they were not referred to in the complaint by their names. The same will show the non-involvement of A4 to A6 in the alleged occurrence or the improbability of PW1 having seen the occurrence.

b) PW6 - Yogamurthy, who is a resident of another village is only a chance witness and he could not have been an eyewitness and the same will be quite evident from the discrepancies and the contradictions between the evidence of PW3 and PWS.1 and 2. It is the case of prosecution that the accused, who indulged in direct actions were six in number and four more accused were waiting near Vilar Road junction, all armed with weapons like Aruvals and Knives. Apart from the deceased, there were only three eyewitnesses, namely PWs.1 to 3. Out of the three persons, PW1 did not offer any resistance and he did not make any attempt to prevent the accused 1 to 6 from cutting the deceased with Aruvals. According to the prosecution case, PWs.2 and 3, who rushed to the place of occurrence on hearing the noise were threatened by accused 1 to 6. But their evidence is to the effect that after making such a threat, the accused 1 to 6 ran away from the place of occurrence. As PWs.1 to 3 were unarmed, whereas accused 1 to 6 were armed with Aruvals, it is quite improbable that the accused could have run away from the place, after causing a threat to PWs.1 to 3. The inquest is said to have been made between 8.45 hours and 10.45 hours. The fact that Ex.P1-complaint contains details of overt acts on the part of the accused 1 to 6, which correspond to the injuries found on the dead body of the deceased, will make it clear that Ex.P1-Complaint could have been brought into existence after the dead body was examined and the injuries were noted. It is also quite improbable that the accused would have known that the deceased would go to the Tea shop in the morning hours. The evidence adduced by the prosecution witnesses clearly show that it was not the regular practice



of the deceased to go to the Tea stall in the morning to take tea and that he and others could have got either tea or coffee prepared for them at the house of the deceased itself. Though PW1, in his complaint, did not name the accused other than A1 to A3, after the arrest of the other accused persons and on the surrender of A2, no steps came to be taken to conduct an identification parade to identify A4 to A6 to be the persons, who along with A1 to A3, allegedly cut the deceased to death in the occurrence. Though observation mahazar and rough sketch were stated to have been prepared before inquest, PW5-Durai Manickam, one of the attestors of the Observation Mahazar marked as Ex.P3, which is said to have been prepared at 8.30 hours on 07.10.2005, did state in his evidence that at the time of preparation of Ex.P3-Observation Mahazar, the dead body was not there. However, it is the evidence of PW21-Thiru.Ravichandran, Investigating Officer that the dead body was sent to the hospital for autopsy only after the inquest was completed and the Inquest Report was prepared.

c) PW.19, the then Head Constable, through whom the dead body was sent to the hospital for autopsy did not state specific time at which he received the dead body to be taken to the hospital for autopsy. On the other hand, it is his evidence that the dead body of deceased Siva.Gnananadatharasu was handed over to him to be taken to the Thanjavur Medical College Hospital after the inquest was over. The requisition for autopsy has not been produced on the side of the prosecution and marked as a document. When questioned about the same, the Investigating Officer gave a reply that the requisition letter was not found in the case diary file. The same will show that some kind of adjustment in time came to be made, which will give rise to a reasonable suspicion that the complaint itself could have been brought into existence at a later point of time. Totally eleven material objects were sent to the Forensic Laboratory for examination to find out the presence of blood stains and whether such blood is a human blood and if so, of what group? Out of 11 material objects sent to the Forensic Lab, five alone were found to contain 'A' group human blood stain. They are none other than the dress materials removed from the dead body of the deceased and the blood stained earth recovered from the scene of occurrence. All six bill-hooks sent to the Forensic Lab were found with no blood stain. The same is obvious from Ex.P7-Serology Report and Ex.P8-Chemical Examination Report. Though the dress materials of the deceased with blood stains are sent to the Forensic Laboratory for examination, none of the dress materials of the accused was recovered and sent to the Forensic Laboratory. Except the alleged confession leading to the recovery of the bill-hooks produced as Material Objects, there is no other evidence to connect those weapons or the dress materials of the accused with the death of the deceased Siva.Gnananadatharasu. Still the learned Trial Judge



proceeded with an assumption that the accused 1 to 6 could have caused the death of the deceased by cutting him with Aruvals. The learned trial Judge rightly disbelieved the evidence of PW6 having witnessed the alleged conspiracy and the evidence of the prosecution regarding the involvement of the accused 7 to 10 in the occurrence. But the learned trial Judge, without properly marshalling and appraising the evidence adduced on the side of the prosecution and without proper consideration of the evidence adduced by the accused persons through DW1 and the documents produced by them as Exs.D1 to D3, rendered an erroneous finding, which can even be stated to be perverse, that the charges against the accused were proved beyond reasonable doubt. This court, on re-appreciation of evidence, has to upset the finding of the trial court, set aside the conviction and acquit the accused 1, 2, 5 and 6 (appellants in Crl.A.(MD) Nos.200, 261 and 316 of 2011).

11. Mr.R.Sivasubramanian, learned counsel appearing for the 2nd accused (appellant in Crl.A.(MD) No.200/2011) adopted the arguments advanced by Mr.S.Ashok Kumar, learned senior counsel and by Mr.V.Kathirvel, learned senior counsel appearing for accused No.1 and accused Nos.5 and 6 respectively. In addition, the learned counsel for the second accused would reiterate the contention that the alleged motive, besides not having been proved by the prosecution, has been disproved by accused by eliciting a fact from the evidences of the prosecution witnesses to the effect that the deceased Siva.Gnananadatharasu had nothing to do with the auction held by the Temple authorities of Punnainallur Mariamman Temple for collection of parking fee and other rights. The disproof of the motive itself, coupled with the other discrepancies, will show that an unnatural death due to attack by other enemies of the deceased Siva.Gnananadatharasu has been projected as a murder by the accused persons and the case against the accused persons came to be cooked up by the family members and relatives of the deceased Siva.Gnananadatharasu. Learned counsel for the second accused also would contend that the finding of the trial court holding the accused persons, especially A2, guilty of the offences under Sections 120-B, 341, 158, 506(ii) and 302 IPC is discrepant and liable to be interfered with and that the second accused should be acquitted by this court after setting aside the conviction made by the trial court.

12. The arguments advanced by Mr.K.S.Durai Pandian, learned Additional Public Prosecutor, in reply to the above said submissions made on the side of the accused persons/appellants in the appeals were also heard. It is the contention of the learned Additional Public Prosecutor that the accused 1, 2, 5 and 6/appellants are trying to capitalise on the minor discrepancies in the prosecution case by blowing the same out of proportion; that the trial court, which did have the benefit of noting the demeanour of witnesses, took a decision to rely on the evidence of the prosecution witnesses regarding conspiracy and also the occurrence; that such a decision taken by the trial court should not be interfered with by the appellate court simply because a different conclusion is also possible and that hence the judgment of the trial court, both regarding conviction and sentence should be upheld.



13. This court paid its anxious considerations to the above said contentions made on both sides. The judgment of the trial court and all other materials available on record were also perused and taken into consideration.

14. There is no dispute over the fact that on 07.10.2005 at about 6.00 hours, the deceased Siva.Gnananadatharasu was found lying dead at Vilar Road junction near Jayaram Kalayana Mahal, Thanjavur. The Investigating Officer, who started investigating the case, held inquest between 8.45 and 10.45 hours and thereafter the dead body of Siva.Gnananadatharasu was sent to Thanjavur Medical College Hospital through PW19-R.Selvakumar, the then Head Constable, for autopsy to ascertain the cause of death. The Inquest Report marked as Ex.P33 shows that there were a number of cut injuries on the dead body of the deceased. From the evidence of PW9-Medical officer, who conducted autopsy and Ex.P6-Post Mortem Examination Report, it is quite obvious that as many as 14 external injuries were found in the dead body of the deceased Siva.Gnananadatharasu. They are as follows:

1. *Cut wound 5 x 4 cm - bone deep over the left parietal regional of the scalp. The skin flip is found to be attached at the posterior end.*
2. *Cut wound 3 x 1 cm - skin deep over the right frontal region close to the midline just above the hair line.*
3. *Abrasion 6 x 4 cms over the right side of forehead above the outer half of right eyebrow.*
4. *A wide gapping cut wound 34 x 2 cms - skull cavity deep noted encircling the back of head seen involving the right temporal, right parietal, whole of occipital region and extending to the left cheek involving the lower half of left ear pinna and upto the outer half of left ear pinna and upto the outer half of left lower eyelid, exposing the brain and cut surface of facial bones.*
5. *A cut wound 14 x 4 cms - cavity deep noted over the occipital region upto angle of mandible on the left side situated just below Wound No.4.*
6. *A Cut wound 9 x 3 cms muscle deep over the back of left side of neck situated 3 cms below Wound No.5.*
7. *Scratch abrasion 14 x ¼ cms over the left scapular region.*
8. *Abrasion 12 x 3 cms over the back of left scapular region situated 4 cms medial to above Wound No.7.*
9. *Oblique cut wound 7 x 4 cms - bone deep over the front of right wrist on examination tendons and muscles was found cut and partial cut noted in the anterior surface of both bones at that level.*



10. Two gaping cut wounds noted involving the whole of right palm exposing the cut ends of muscles and carpal and metacarpal bones.

11. A cut wound 5 x 4 cms - bone deep over the front of left knee with a chip of bone 1 x 1 cms from the anterior surface of patella found cut and removed and found to be sticking along with skin flap attached at the upper and medial aspect.

12. Cut wound 3 x 1 cms bone deep over the medial aspect of left little finger exposing the cut fracture of proximal phalanx.

13. Cut wound 4 x ¼ x ¼ cm over the left side of chin.

14. Four scratch abrasion of various sizes noted over the front of right side of chest."

On dissection, PW9 found the following internal injuries and the condition of the internal organs and incorporated the same in the Post Mortem Examination Report. The findings of the Medical Officer on dissection are as follows:

"On opening the skull cap and on examination cerebellum is found cut and separated, bases of both frontal lobes and left temporal lobes were found cut (sliced) and few fine fragments of bones were found sticking to the brain. All the wounds noted above are antemortem in nature.

Extremities	- Pale
Heart	- Normal in size. Musculature pale. All chambers contain few cc of fluid blood.
Valves	- Normal. Coronary vessels - patent. Great Vessels - few atheromatous patches seen on the wall of root of Aorta.
Lungs	- Both c/s. extremely pale
Larynx and hyoid Bone	- Intact
Stomach	- Contained 100 ml of dirty white coloured 'kanji' like thick fluid mucosa extremely pale.
Liver, Spleen, kidneys	- C/s. extremely pale
Small intestine	- Empty mucosa extremely pale
Bladder	- Empty, pelvis - intact

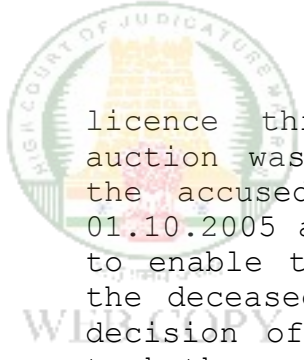


15. Based on the external injuries noted at the time of autopsy, internal injuries found on dissection and the condition of the internal organs found by him at the time of autopsy, PW9 - Medical Officer gave opinion that the deceased appeared to have died of shock and haemorrhage due to multiple cut injuries and injuries to the vital organ viz. brain. According to his assessment, the death would have occurred between 3 to 6 hours prior to Post mortem examination. The post mortem examination was conducted at 11.00 hours on 07.10.2005. Hence the probable time of death would be between 5.00 hours and 8.00 hours on 07.10.2005. The extensive cut injuries and the abrasions found on the dead body are definitely not self-inflicted injuries and they could not have been sustained in an accident. Those injuries are injuries caused by other persons with weapons like Aruval and Knife. Hence this court is of the view that the death of the deceased Siva.Gnananadatharasu was caused by other persons and it was a homicidal death. The very nature of injuries themselves will lead to a reasonable conclusion that such injuries should have been caused with the intention of causing death. As such, the person or persons, who caused the death of the deceased Siva.Gnananadatharasu, shall be liable to be convicted and punished for the offence of murder under Section 302 IPC, unless the case can be brought under any one of the general exceptions or any one of the exceptions provided to Section 300 IPC.

16. Now the question that remains to be considered is, *"whether the death of deceased Siva.Gnananadatharasu was caused by any of the accused, or some or all of the accused persons as projected by the prosecution?"*

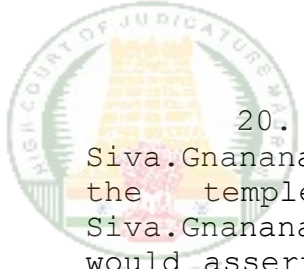
17. Though 10 persons, who were arraigned as A1 to A10, were prosecuted, the learned trial Judge, chose to hold that the involvement of four out of ten accused, namely accused persons 7 to 10, in the occurrence leading to the death of deceased Siva.Gnananadatharasu was not proved by reliable evidence beyond reasonable doubt and acquitted the said persons A7 to A10 in respect of all the offences for which they were prosecuted. Out of the remaining six accused (A1 to A6), A4 died and the charges against him stood abated even when the trial was in progress before the trial court. A3-Gajendran, was absconding and hence the case against him was split up and numbered as a separate case as S.C.No.82/2011. As such, the trial court, on consideration of evidence held A1 - Pathu @ Padmanabhan, A2-Mudikrishnan @ Krishnan, A5 - Kalivarathan and A6-Senthil Kumar to be guilty of the offences under Sections 120-B, 341, 148, 326 and 302 of IPC (the second accused alone) and 302 r/w 34 of IPC(A1, A5 and A6), convicted them accordingly for the said offences and imposed the punishment as indicated supra.

18. In order to prove the charges against accused Nos.1, 2, 5 and 6 (appellants in the appeals), the prosecution set up a motive, which, according to it, led to the occurrence in which deceased Siva.Gnananadatharasu was done to death. The motive as alleged by the prosecution is that accused Nos.1 to 3 were the persons who got licence from Punnainallur Mariamman Temple for the collection of parking fee for the vehicles coming to the temple and other rights by emerging as the service providers in the public auctions conducted for a number of years prior to 01.07.2005; that in the auction conducted for the period from 01.07.2005 to 30.06.2006, the villagers of Singavalanadu got the said



licence through the deceased Siva.Gnananadatharasu; that after the auction was concluded in favour of the deceased Siva.Gnananadatharasu, the accused 1 to 6 approached the deceased Siva.Gnananadatharasu on 01.10.2005 and asked him to give up the rights obtained in his name so as to enable the accused 1 to 3 to get those rights from the temple; that the deceased refused to accept their demand stating that, as it was the decision of Singavalanadu villagers and it was the village public, who took the auction in his name, he had nothing to do with the same and that the same made the accused 1 to 3 feel that their source of income was lost because of the act on the part of the deceased Siva.Gnananadatharasu. It is the further case of the prosecution that accused Nos.4 to 6 were the persons, who helped the accused 1 to 3 in their business and hence they also had the motive to cause the death of the deceased. Not only the accused 4 to 6, but also the accused 8 to 10, projected as the persons who were helping the accused 1 to 3 in their business and the 7th accused (Kishore), as a friend of accused 1 to 3, were said to have developed such a motive against the deceased Siva.Gnananadatharasu. Accused 7 to 10 were held to be not guilty and they were acquitted by the trial court in respect of the offences for which they were prosecuted. The common cause providing the motive for all the accused according to the prosecution story is, the defeat of the accused 1 to 3 in the auction conducted by the temple for the period from 01.07.2005 to 30.06.2006. Since according to the prosecution, it was the deceased Siva.Gnananadatharasu, as he emerged as successful bidder in the temple auction.

19. In this regard, PW1 simply states that the rights were taken on auction by the accused for the periods prior to the period for which the auction was taken in the name of the deceased by the villagers of Singavalanadu. He has not specified which of the accused participated in the auction and what right had been taken by each of the accused in the previous auctions. Apart from that, PW1 made a vital admission to the effect that the deceased Siva.Gnananadatharasu did not directly take part in the Mariamman temple auction. He also pleaded absence of knowledge as to whether the deceased Siva.Gnananadatharasu participated in the auction through another person, Whether the deceased paid the security deposit for participating in the auction and whether any other person paid the security deposit. It is also his admission that the deceased Siva.Gnananadatharasu was running a xerox centre at the old Bus Stand of Thanjavur and that PW4-Kaliyaperumal was employed under him in the said xerox centre. He has also admitted that there were civil cases pending between one Balamurugan and the deceased and one Jagannathan and deceased Siva.Gnananadatharasu. However, he was evasive to a query as to whether there was any criminal case. He also admits the fact that one Balamurugan, who was having a tea shop at Mariamman temple was murdered, but he was not aware of the fact that a close relative of PW1 by name Stalin had been arraigned as 6th accused in the murder case of Balamurugan and that the said Stalin gave a confession statement to the effect that Balamurugan was murdered as a revenge for the murder of the deceased Siva.Gnananadatharasu. He also admitted that there was a dispute between deceased Siva.Gnananadatharasu and a close relative of the former Chief Minister of Tamil Nadu over the parivattam right in Mariamman temple, which resulted in the deceased Siva.Gnananadatharasu slapping the said person on his cheek.



20. PW2, who is none other than the son of the deceased Siva.Gnananadatharasu, would admit that there is no evidence to show that the temple rights were taken in auction by the deceased Siva.Gnananadatharasu on behalf of Singavalanadu villagers. However he would assert that it was his father who paid the amount to the villagers and that the said amount was paid by the villagers as security deposit for participation in the auction. A comparison of the evidence of PWs.1 and 2 in this regard will show that there is a vital contradiction between the two. According to PW1's evidence, it was the villagers who took the temple right in the auction conducted by the temple authorities in the name of the deceased Siva.Gnananadatharasu. However, according to the evidence of PW2, it was his father Siva.Gnananadatharasu, who gave the amount to the village people of Singavalanadu and Singavalanadu villagers paid the amount provided by Siva.Gnananadatharasu as deposit for participating in the auction.

21. It is pertinent to note that the Investigating Officer also collected evidence from the Hindu Religious and Charitable Endowments Department regarding the auction conducted by the authorities for issuing licence for certain rights at Punnainallur Mariamman Temple for the period from 01.07.2005 to 30.06.2006. As the said documents do not support the evidence of PW1, a paradigm shift came to be made in the evidence of prosecution through PW2, as if the deceased Siva.Gnananadatharasu gave the money to the villagers and the villagers made the deposit for taking part in the auction. The other witness who was examined regarding the auction is PW7-Govindram, Assistant Commissioner, HR&CE Department. Through PW7, the Auction Registers for Faslis 1414 and 1415 have been produced and marked as Exs.P4 and P5. It is quite obvious that the auction in respect of the rights at Punnainallur Mariamman Temple for the period between 01.07.2005 and 30.06.2006 was held on 17.05.2005, 30.05.2005, 02.06.2005 and 16.06.2005, on which dates no one had paid the deposit amount, forcing the authorities to postpone the auction. At last, in the tender-cum-auction wherein the tenders were opened on 30.06.2005, one K.Srinivasan was awarded licence for preparing and supplying prasadam, one Veeraiyan was awarded the licence for collecting live hens and hairs offered by the devotees and for collecting fees for toilet and bathroom, whereas one R.Govindaraj was awarded the licence for collecting the parking fees for the cars, vans and scooters. It is the clear evidence of PW7 that the above said persons, who participated in the auction paid the deposit amounts in the form of demand drafts for a sum of Rs.1,40,000/- each and that except the above said three persons, no other person came forward to bid at the auction.

22. From the evidence of PW7 and Exs.P4 and P5, it is quite obvious that the deceased Siva.Gnananadatharasu was not the person who participated in the auction and three other persons, who belonged to Kulichapattu village and not Singavalanadu village, got the temple rights in the auction for the period 01.07.2005 to 30.06.2006. Therefore, the alleged motive for the accused persons to kill the deceased Siva.Gnananadatharasu does not stand substantiated and on the other hand, it stands disproved by the above said evidence. In this regard, the finding of the trial court that the motive alleged by the prosecution was substantiated by the prosecution cannot be sustained. The said finding, as rightly contended on behalf of the appellants (accused 1, 2, 5 and 6)

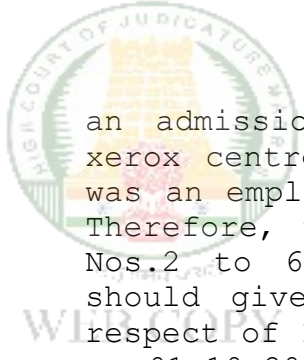


is discrepant, infirm and erroneous and the same is liable to be reversed.

23. In the foregoing discussions we have seen that the prosecution failed in its attempt to prove the motive for the accused persons to kill the deceased Siva.Gnananadatharasu. Proof or otherwise of the motive is one among several aspects to be taken into consideration to arrive at a final conclusion as to whether the charges against the accused have been substantiated or not. The mere fact that the motive alleged by the prosecution has not been proved or stands disproved does not automatically lead to the conclusion that the charges against the accused have not been proved beyond reasonable doubt. Hence we have to consider the evidence of the prosecution, oral, documentary and circumstantial, regarding the occurrence to find out whether the charges have been or any one of the charge has been proved by the prosecution beyond reasonable doubt.

24. According to the prosecution story, the occurrence took place at 6.00 hours on 07.10.2005 when the deceased and PW1 were proceeding in a TVS 50 motorcycle from South to North on the Kallanai channel bund towards a tea shop to take tea, while PW2 and 3 were following them on foot. The exact place of occurrence is stated to be a place near Jayaram Kalyana Mahal at Vilar Road junction, Thanjavur. The said occurrence is said to have a prelude to it. According to the prosecution story, on 01.10.2005 at 18.00 hours when PWs.1, 2 and Arasi (the daughter of the deceased) were in the house of the deceased Siva.Gnananadatharasu, accused 1 to 6 came there and asked the deceased to give up the rights he had obtained in respect Punnainallur Mariamman Temple in the auction conducted for the period from 01.07.2005 to 30.06.2006 in their favour for which the deceased Siva.Gnananadatharasu replied that it was the villagers' decision and hence he could not do anything and that at that juncture, the accused 1 to 6 made a threat to the deceased that they would ensure that he was not enjoying the right and that they would cut him to death.

25. Regarding the previous occurrence that allegedly took place at 18.00 hours on 01.10.2005, out of the three persons, who were projected as witness for the previous occurrence, only two, namely PWs.1 and 2 were examined and Arasi, daughter of Siva.Gnananadatharasu was not examined as a witness. Though PW1 refers to the presence of Arasi at the time of the alleged previous occurrence on 01.10.2005, PW2 does not refer to the presence of his sister Arasi. According to PW1's evidence it was the first accused Pathu @ Padmanabhan, who demanded the deceased Siva.Gnananadatharasu to give up the temple rights he had obtained by bidding at the auction and when the deceased expressed his unwillingness and inability to concede to their demand, all the six accused proclaimed that they would cut him. On the other hand, PW2 does not refer to such a threat by any of the accused to kill the deceased to death. On the other hand, he simply stated that the first accused and the accused 2 to 6 proclaimed that they would see how the deceased would collect the amounts as per the licence. In this regard, there is such a contradiction between the two witnesses, namely PWs.1 and 2, examined on the side of the prosecution to prove the prior occurrence. The evidence of PW7 and Exs.P4 and P5 themselves show that it was not the deceased Siva.Gnananadatharasu, who got those temple rights in auction and he has nothing to do with those temple rights. On the other hand, there is also



an admission by PW1 that deceased Siva.Gnananadatharasu was having a xerox centre at the old Bus Stand of Thanjavur and PW4 - Kaliyaperiumal was an employee at the xerox centre. PW4 has also corroborated the same. Therefore, there was no occasion for either the accused No.1 or accused Nos.2 to 6 to make a demand that the deceased Siva.Gnananadatharasu should give up the right to collect parking fee and other rights in respect of Punnainallur Mariamman Temple. The alleged previous occurrence on 01.10.2005 at 18.00 hours has not been proved with reliable evidence beyond reasonable doubt.

26. The further case of the prosecution is that all the accused A1 to A10 met at 7.00 p.m on 06.10.2015 near Irattai pillayar temple and conspired to kill the deceased Siva.Gnananadatharasu and that PW6 was the witness for the hatching of such conspiracy. Here again the reason for the grudge against the deceased Siva.Gnananadatharasu is said to be the auction of the temple rights taken by him. We have seen that the temple rights had not been taken in auction by the deceased Siva.Gnananadatharasu. PW6 is the lone witness, who was examined to prove the alleged conspiracy. According to his testimony, during the said conspiracy the accused were discussing among themselves that the deceased would come at 6.00 to 7.00 hours the next day to take tea and at that point of time the accused 1 to 6 would be waiting in the lane near Jayaram Kalayana Mandapam, they should cut him to death on his arrival and that in the event of his escape from them, the accused 7 to 10, who were to wait at Vilar Road junction, should cut him to death.

27. It was also the testimony of PW6 that A1-Pathu @ Padmanabhan instructed A3-Gajendran to come to that place at 4.00 hours after arranging for the weapons (aruvals). Though PW6 would state in the cross examination that one Balaguru was also a witness to the said conspiracy, Balaguru was not examined as a witness for the prosecution. The evidence of PW6 is to the effect that neither he nor Balaguru made any attempt, either to inform the deceased Siva.Gnananadatharasu or the police regarding the alleged conspiracy. The reason assigned by him for not informing the deceased Siva.Gnananadatharasu is that he did not know the location of the house of the deceased Siva.Gnananadatharasu. They were also not the persons, who were found at the place of occurrence when the Investigating Officer conducted investigation and examined by the Investigating Officer. PW6 did not even attend the funeral of the deceased. He did not even go to the residence of the deceased for condolence. However, it is his claim that, he along with Balaguru, without any summon from the police, voluntarily went to the police station on 09.10.2005 and informed the police of their witnessing the conspiracy. In fact, though PW6 would name all the 10 accused, he has not identified any of the accused persons specifically. It is his further admission that he did not identify any of the accused in any identification parade conducted by the Judicial Magistrate. It is his further admission that when he went to the police station on 09.10.2005, six out of ten accused were there in the police station. Even then, no attempt was made to have the alleged conspirators identified by PW6 in an identification parade. From the evidence of PW6, it is obvious that he was not the resident of the place near the scene of occurrence and on the other hand, he is a resident of a different village called Paruthicherry, which is at a distance of 60 Km. from Thanjavur. The only chance witness examined on the side of the prosecution to prove the



alleged conspiracy does not seem to be a reliable witness. In fact the learned trial Judge disbelieved the evidence of PW6-Yogamurthy and the reason assigned by the trial court is that he did not inform his witnessing the hatching of conspiracy either to the police or to other authorities, or to the deceased or to any other prominent personality known to him. Having chosen to hold that the only witness, who was examined to prove the alleged conspiracy at 19.00 hours on 06.10.2005 to be unreliable, the learned trial Judge took a U-turn and without assigning any reason, simply held that the charge framed against A1, A2, A5 and A6 (appellants in the appeals) under Section 120-B IPC was proved beyond reasonable doubt, while holding the accused 7 to 10 to be not guilty of the said offence.

28. As rightly pointed out on behalf of the contesting accused/appellants, the said approach made by the trial court seems to be erroneous. However, the learned trial Judge seems to have arrived at a conclusion that there should have been a conspiracy among accused 1, 2, 5 and 6, pursuant to which alone, they could have acted with a common intention of killing the deceased Siva.Gnananadatharasu and that hence the charge of criminal conspiracy framed against them stood substantiated. To prove an offence of criminal conspiracy punishable under Section 120-B IPC, there should be meeting of minds prior to the occurrence and the common intention that might have developed during the course of occurrence shall not amount to an unassailable circumstantial piece of evidence in proof of criminal conspiracy. Section 120-A IPC defines criminal conspiracy as follows:

120A. Definition of criminal conspiracy –

When two or more persons agree to do, or cause to be done,–

(1) an illegal act, or

(2) an act which is not illegal by illegal

means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation – *It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.*

The essential ingredient of criminal conspiracy is the very agreement between two or more persons. There must be a common design and a common intention to work in furtherance of the common design.

29. The conspiracy that allegedly took place at 19.00 Hrs. on 06.10.2005 has not been substantiated by the direct evidence of PW6 projected and relied on by the prosecution. However, one cannot expect direct evidence for conspiracy in all cases. A criminal conspiracy involves an agreement between two or more persons to commit an illegal act or an act which is not illegal by adopting illegal method. Meeting of minds is the essential ingredient of the criminal conspiracy. It is

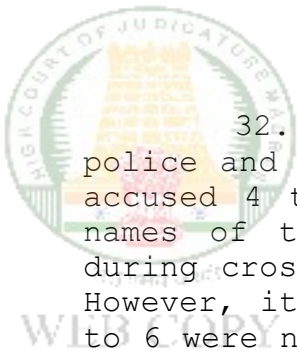


immaterial whether after such agreement, the agreed act has been committed or not in case of an agreement to commit an illegal act. In case of an agreement is to commit an act, which is not illegal, by adopting an illegal method, something towards the object of the agreement should have been done to bring it within the ambit of Section 120-A IPC.

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30. In the case on hand, it is not the case of the prosecution that there was an agreement among the accused persons to commit an act, which is not illegal by adopting illegal method. On the other hand, it is the case of the prosecution that all the accused conspired to commit murder of the deceased Siva.Gnananadatharasu. Hence the case of the prosecution falls within sub clause (1) of Section 120-A and not under sub clause (2) of Section 120-A, in which case alone the proviso requiring something to be done towards the object of the agreement shall be necessary. Of course the prosecution failed to prove the criminal conspiracy to commit an offence by direct evidence, namely the evidence of PW6. However, from the development of things during the course of a transaction leading to the commission of an offence, the words spoken and other aspects may indicate a prior meeting of minds constituting an agreement to commit the offence. The same can be inferred from the circumstantial evidence. Hence though the attempt made by the prosecution to prove conspiracy through the evidence of PW6 has failed, we have to consider whether the criminal conspiracy alleged by the prosecution with the object of killing the deceased Siva.Gnananadatharasu can be inferred from the circumstantial evidence. In this regard, we have to consider the evidence regarding the occurrence.

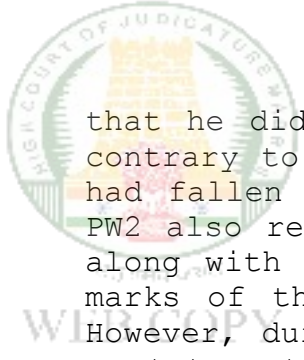
31. While considering the alleged previous occurrence that took place on 01.10.2005 at 18.00 hours at the residence of the deceased Siva.Gnananadatharasu, the evidence of PWs.1 and 2 were discussed and this court observed supra that their evidence were far from being reliable. So far as the actual occurrence that allegedly took place at 6.00 hours on 07.10.2005 is concerned, in addition to PWs.1 and 2, one more witness viz. PW3 has been projected as direct eye witness. All the three witnesses are close relatives of the deceased Siva.Gnananadatharasu. PW1 is the own brother, PW2 is the son and PW3 is the uncle respectively of the deceased Siva.Gnananadatharasu. It is the evidence of PW1 that he went to the residence of his brother deceased Siva.Gnananadatharasu at 5.30 hours on 07.10.2005 and PW3-Swaminthan had also come there. It is his testimony that PWs.1 to 3, the deceased Siva.Gnananadatharasu and his daughter Arasi were chatting and at that point of time, the deceased invited PWs.1 to 3 to the tea shop to take tea; that while the deceased and PW1 were proceeding in the TVS 50 vehicle, the other two were following them by walk and that at that point of time, accused 1 to 6 armed with aruvals, intercepted them near Jayaram Kalyana Mahal at Vilar Road junction. It is his further evidence that when the vehicle was stopped by the deceased due to the interception by accused 1 to 6, he moved aside and the accused 1 to 6 indiscriminately cut the deceased Siva.Gnananadatharasu with aruvals. It is his further evidence that at that juncture PWs.2 and 3, were approaching towards the place of occurrence and on seeing them, the accused 1 to 6 ran away from the place, threatening PWs.1 to 3 that they would also meet with the very same fate showing the aruvals they had.



32. PW1 is the person who lodged the complaint under Ex.P1 to the police and set the law in motion. It is not the evidence of PW1 that the accused 4 to 6 were not known to him either by their names or through names of their father. On the other hand, he made a clear admission during cross-examination that he knew the accused 4 to 6 by their names. However, it is surprising to note that in Ex.P1-complaint, accused Nos.4 to 6 were not named and they were referred to as three other identifiable persons. In addition, the admissions made by PW1 during cross-examination will give rise to a serious and reasonable doubt as to whether Ex.P1-complaint could be the first information received by the police or an earlier information received by the police was suppressed and Ex.P1 was brought into service after the injuries found on the dead body of the deceased were noted. In this regard, it is the admission of PW1 that on the date of occurrence, namely 7.10.2005 between 6.30 hours and 7.00 hours, he was examined by the police at the scene of occurrence. If at all police had reached the place of occurrence before 6.30 hours and PW1 was examined between 6.30 hours and 7.00 hours on 07.10.2005, certainly Ex.P1-complaint could not be the first information; the information received by the police first in point of time has been suppressed and Ex.P1 came to be pressed into service subsequently. The very fact that all the injuries found on the dead body of the deceased were accounted for and they were evenly disputed to the accused 1 to 6, will probablise the defence case of the accused that earlier information was burked and Ex.P1 was brought into existence after deliberation.

33. It is the further evidence of PW1 that four more persons, who were armed with knives joined with accused Nos.1 to 6 at Vilar Road junction when they were running from the place of occurrence. The four more persons referred to by PW1 are the accused 7 to 10. The said evidence of PW1 is an improvement from Ex.P1-complaint. In Ex.P1-complaint he named A1 to A3 alone and referred to A4 to A6 as three more persons. Though he has claimed that A1 to A6 were the persons who came to the house of the deceased on 01.10.2005 in the evening at 18.00 hours and caused a threat and that the very same persons on 07.10.2005 at 6.30 hours cut the deceased Siva.Gnananadatharasu with aruvals to death, he did not choose to name the accused 4 to 6 in the complaint. They were referred to as three identifiable persons in Ex.P1-complaint. Ex.P1-complaint does not contain any averment that four more persons (A7 to A10), who were waiting at Vilar Road junction joined the accused 1 to 6, when they were running from the place of occurrence after cutting the deceased with aruvals. There is also nothing in Ex.P1-complaint that those four persons were armed with knives (கத்தி). In this regard, there is a remarkable improvement and embellishment in the evidence of PW1 to rope in the accused 7 to 10 also. If the non-mentioning of the names of the accused 4 to 6 in the complaint is considered in the light of the above said aspects, the involvement of the accused 4 to 6 in the occurrence or PW1 having seen the occurrence shall be seen shrouded with suspicions.

34. The deceased Siva.Gnananadatharasu was found with as many as 14 external injuries and he died of shock and haemorrhage due to the said injuries. PW1 in his complaint, marked as Ex.P1, claims that he along with PWs.2 and 3 lifted the deceased, who had fallen down after receiving the cut injuries. But curiously the dress materials of none of the witnesses PWs.1 to 3, were found to be stained with blood. PW2, who is none other than the son of the deceased makes a statement in his evidence

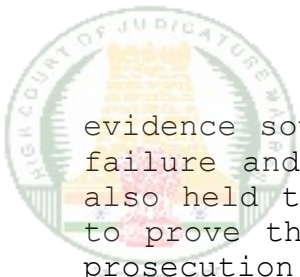


that he did not even touch the dead body of his father, which is quite contrary to the evidence of PW1 that PWs.1 to 3 lifted the deceased, who had fallen down with the cut injuries and found him to be dead. Though PW2 also referred to the accused 7 to 10 as four other persons, who ran along with accused 1 to 6, he had not chosen to give any identification marks of those four persons in his statement under Section 161 Cr.P.C. However, during the cross examination, he ventured to state that he gave a statement to the police at the time of inquest that six persons were cutting his father, while the other four persons were standing nearby. But he was contradicted with reference to his 161 statement in this regard, in which, he has not referred to any identification marks of the accused 7 to 10.

35. So far as PW3's evidence is concerned, he gives a version, which is different from the evidence of PWs.1 and 2. According to PW3, accused 1 to 6 were cutting the deceased and when he rushed to the place of occurrence after hearing the hue and cry, he saw four more persons standing with weapons on the west of the place of occurrence. What were the weapons with which they have been armed, has not been stated by PW3. He has not even stated what were the weapons with which the accused 1 to 6 were cutting the deceased Siva.Gnananadatharasu. Though the names of accused 4 to 10 were not found in the complaint marked as Ex.P1, no identification parade was conducted for their identification by PWs.1 to 3.

36. The evidence of PW4 - Kaliyaperumal regarding the alleged occurrence is inadmissible, as it is only hearsay. It is his evidence that he was informed that accused 1 to 6 and four others caused the death of Siva.Gnananadatharasu by cutting him. Hence the evidence of PW4 regarding the occurrence shall not be helpful to the prosecution in any way.

37. It is also quite improbable that PWs.1 to 3 could have gone to the residence of deceased Siva.Gnananadatharasu in the early morning at 5.30 hours to have discussion with Siva.Gnananadatharasu and his family members. Though the witnesses have spoken about some discussion, they did not clarify as to what was the discussion they made in the early hours of 07.10.2005 at the residence of the deceased Siva.Gnananadatharasu. PW1 in his evidence admits that the deceased was running a dairy; that his wife Lalitha, used to prepare coffee and tea and that PW1 liked the coffee prepared by Lalitha for him. PW2 also admits that his mother was good at preparing coffee and tea. As per the said evidence of PWs.1 and 2, the deceased was running a dairy and hence milk would have been available at his residence. The wife of the deceased Siva.Gnananadatharasu was good at preparing tea and coffee and PW1 himself admits that he liked the coffee prepared by Lalitha, the wife of the deceased. When it is so, PWs.1 to 3 and the deceased would not have chosen to go to the tea shop to take tea in the morning. In the post mortem examination certificate marked as Ex.P6, it has been noted that the stomach contained 100 ml of dirty white coloured kanji like thick fluid and the mucosa was found extremely pale. The same will indicate that the deceased before his death had taken some fluid food like Kanji. None of the witnesses assert that it was the routine practice of the deceased Siva.Gnananadatharasu to go to the tea shop in the morning to take tea. If it was so, it is highly doubtful as to how the accused could have predicted the deceased to cross the place of occurrence to go to the tea shop to take tea at a particular time. The



evidence sought to be adduced through PW6 as indicated supra, is a total failure and his evidence is totally unreliable. The learned trial Judge also held that the evidence of PW6 is not reliable. PW8 who was examined to prove the motive, turned hostile and did not support the case of the prosecution.

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38. One Uma, Village Administrative Officer of Karungal village, who deposed as PW12, has not identified the accused 3, 5 and 6 even though she mentioned their names and stated that they were arrested by the Inspector of Police on 08.10.2005; that their confession statements were recorded in her presence and in the presence of her Village Assistant, Senthil Vadivelan (PW13); that one aruval was recovered from the plantain field on the back side of A3's house and that three aruvals were recovered from A5 - Kalivaradhan's Fishery on the bank of Vadavaru. Even then, for the reasons best known to the trial court and the public prosecutor, she was treated hostile and she was cross examined by the public prosecutor to deny the suggestions made by the Public Prosecutor regarding her statement given before the Investigating Officer. The evidence of the Village Assistant-Senthil Vadivelan (PW13) is also to the same effect. But curiously, he was also treated hostile and cross examined by the public prosecutor.

39. For the arrest of A8-Suresh s/o Kathiresan, A9-Shahul Hameed and A10-Suresh s/o Madhar, recording of their confession statement and recovery of the knives, PW14-Pakkirisamy and PW15-Lakshmanan were examined. Though they were treated hostile and cross examined on the side of the prosecution, nothing useful to the prosecution case could be elicited from them. PW16-Manokaran who was examined as witness for the recording of the confession statement of the second accused Mudikrishnan @ Krishnan, who allegedly showed the place of occurrence and the place wherein aruvals were hidden, did not support the prosecution case. He was treated hostile and cross examined by the prosecution. Still nothing useful to the prosecution would be elicited from him.

40. Though the TVS Moped bearing Regn. No.49 A-8764 allegedly recovered from the place of occurrence has been produced as MO4, there is no evidence of detection of any blood stain in it. In Ex.P2-Observation Mahazar, the presence of M.O.4-TVS 50 vehicle and M.O.1-pair of cheppals were found at the place of occurrence. Though the same were said to have been recovered under Ex.P3-Mahazar in the presence of one Karthikeyan and PW5-Durai Manickam, there is no evidence to show that either MO1-Cheppals and MO4-TVS 50 vehicle had any blood stain. In fact from Ex.P3-Mahazar, it is obvious that the said TVS 50 moped did not have the pedal on one side. No attempt was made to test the vehicle to find out whether it contained fuel and whether it was in a running condition. Though five aruvals and four knives were allegedly recovered based on the confession statements of accused persons, none of the weapons was found with blood stains. There is no evidence as to the recovery of the sixth aruval, though six aruvals came to be sent to the Forensic Lab for examination. There is nothing to connect the weapons with the injuries found on the deceased. The dress materials of the accused persons were recovered to show they were stained with the blood of the deceased. The above said aspects will show the existence of improbability and the serious doubts regarding the prosecution version as to the occurrence leading to the death of the deceased Siva.Gnananadatharasu.



41. The aspects that go against the prosecution case can be elicited as follows:

i) Though accused Nos.4 to 6 were known to PW1 by their names prior to the occurrence, their names did not find a place in Ex.P1 - complaint lodged by PW1. In the complaint PW1-implicated accused Nos.1 to 3 alone by their names and three other unnamed persons, who could be identified if seen again alone were said to be the assailants. But subsequently, four more accused were implicated. The same will show the contradiction in the prosecution version as to the number of persons involved in the occurrence. The trial court itself rightly ruled out the participation of accused Nos.7 to 10 and acquitted them of all the offences for which they were prosecuted.

ii) So far as the charges against accused Nos.1 to 6 are concerned, apart from the fact that there is an improvement to implicate A4 to A6, though their names were not furnished in the complaint, there is a serious doubt regarding the presence of PWs.1 to 3 in the scene of occurrence at the time of occurrence. PW1 is a Railway employee, employed as a Booking Clerk, who used to go to Tiruchirapalli from Thanjavur everyday. Even as per his evidence, he would board the train at Thanjavur at daily at 7.45 hours to go to his office at Tiruchirapalli. If it was so, it is highly improbable that he could have gone to the residence of the deceased at 5.30 hours on the date of occurrence and to have gone along with the deceased to take tea in a Tea stall at about 6.00 hours without making preparation for his journey to his workplace, which was at Tiruchirapalli.

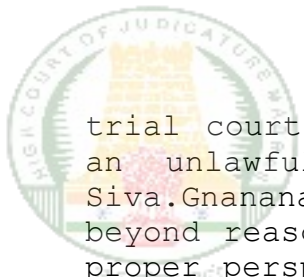
iii) The alleged motive has not been proved by the prosecution. On the other hand, the story propounded by the prosecution as the motive for the occurrence, has been disproved by the evidence of PW7, the Assistant Commissioner-HR&CE Department and Exs.P4 and P5 - Auction Registers. The said evidence go to show that the deceased was not a person, who got the temple rights in the auction and not even the villagers of Singavalanadu had taken the rights in the said auction in the name of the deceased Siva.Gnananadatharasu. On the other hand, the deceased Siva.Gnananadatharasu had other enemies. Admittedly, he was having litigation with regard to his xerox centre with one Jagannathan. Subsequent to the occurrence in which the deceased Siva.Gnananadatharasu was murdered, one Balamurugan, who was running a tea shop at Punnainallur Mariamman Temple was murdered at the said Mariamman Temple. One Stalin figured as the 6th accused in the said case. The said Stalin is said to have given a confession statement to the effect that the said Balamurugan was murdered as a revenge to the murder of Siva.Gnananadatharasu, the deceased in this case.

iv) PW1 also has not denied the suggestion that while parivattam honour was given to a close relative of the former Chief Minister of Tamil Nadu in the said Mariamman



Temple, the deceased Siva.Gnananadatharasu slapped him on his cheek. In this regard, one Thiru.M.Venkatesan, Inspector of Police, Voimedu was examined as DW1. He was the Investigating Officer in Crime No.645/2010 registered on the file of Thanjavur Taluk Police Station regarding the death of Balamurugan. DW1 asserts in clear terms that one Stalin was arrested as an accused in the said case and in his confession statement he divulged the fact that the said Balamurugan was involved in the murder of his cousin Siva.Gnananadatharasu and that to wreak vengeance for the murder of Siva.Gnananadatharasu, he waited for an appropriate time. The said evidence of DW1 will make it clear that the above said Stalin was a close relative of Siva.Gnananadatharasu and he was arrested in the case of murder of one Balamurugan and that the murder of Balamurugan took place to wreak vengeance for the murder of Siva.Gnananadatharasu. The same will make probable the defence case of the accused that the deceased Siva.Gnananadatharasu was found lying dead with cut injuries and the case came to be registered against A1 to A3 and three unnamed persons alone on suspicion; that subsequently, improvements and embellishments were made to rope in all the 10 accused and that the same came to be done as no one saw the occurrence in which the deceased Siva.Gnananadatharasu was killed.

42. The above said defects and discrepancies in the prosecution case and the contradictions pointed out in the evidence of the prosecution witnesses will at least point to a reasonable suspicion that the case should have been foisted against the accused persons. In view of the above finding that the occurrence itself has not been proved by the prosecution by reliable evidence, the proof of the alleged conspiracy by the circumstances should also be negatived. The learned trial Judge, without properly appreciating the evidence adduced on the side of prosecution, without giving due weight to the evidence adduced on the side of the accused and forgetting the fact that the burden of proof cast on the prosecution is beyond reasonable doubt whereas the proof required of the accused is only on preponderance of probabilities, chose to convict the accused 1, 2, 5 and 6 for the offences as indicated supra. The improper approach made by the trial court will be seen from the fact that though A1 to A6 were said to have caused the injuries using aruvals leading to the death of the deceased Siva.Gnananadatharasu, A1, A5 and A6 were convicted for an offence under Section 326 IPC, besides convicting them for an offence under Section 302 r/w 34 IPC regarding the injuries caused to the very same person. Though the evidence does not point out any particular accused to have caused the death of Siva.Gnananadatharasu solely by his act, the 4th charge framed by the trial court is for an offence of murder straight way under Section 302 against accused Nos.2 and 3. The other accused, namely A1, A4, A5 to A10 were prosecuted for an offence under Section 326 of IPC and at the same time for an offence under Section 302 IPC r/w 149 or in the alternative for an offence under Section 302 r/w 34 IPC. The trial court chose to convict the accused Nos. 1, 5 and 6 to 10 for the offence under Section 302 r/w 34 IPC and at the same time A1, A5 and A6 were also convicted for the offence under Section 326 IPC. The same will show the improper approach made by the



trial court. In any event, the prosecution case that the accused formed an unlawful assembly and they caused the death of the deceased Siva.Gnananadatharasu has not been substantiated by reliable evidence beyond reasonable doubt. Had the trial court appreciated the evidence in proper perspective and applied the proper principles of law, it ought to have acquitted the appellants/accused. As the final court of appeal on facts, this court, on re-appreciation of evidence, come to the conclusion that none of the offences for which the accused/appellants were prosecuted, has been proved by the prosecution beyond reasonable doubt by adducing reliable evidence; that the involvement of the accused in the occurrence itself has not been proved by the prosecution beyond reasonable doubt and that therefore they are entitled to be acquitted of all the offences for which they were prosecuted.

In the result, CrI.A.(MD) No.200, 261 and 316 of 2011 are allowed and the conviction and sentence imposed by the learned Additional District and Sessions Judge cum Special Judge for Essential Commodities Act, Thanjavur, by judgment dated 04.05.2011 delivered in S.C.No.180 of 2007 is set aside and the accused No.2 /Mudikrishnan @ Krishnan, accused No.1/Pathu @ Padmanabhan, accused No.5/Kalivaradhan and accused No.6/Senthilkumar in Crime No.524 of 2005 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(AS)

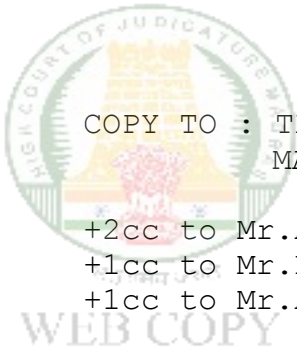
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Sub Assistant Registrar(CS)

Madurai Bench of Madras High Court,
Madurai.

To:

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE
CUM SPECIAL JUDGE FOR ESSENTIAL COMMODITIES ACT, THANJAVUR.
2. -DO-THRO'THE PRINCIPAL SESSIONS JUDGE, THANJAVUR DISTRICT.
3. THE JUDICIAL MAGISTRATE NO.I, THANJAVUR.
4. -DO-THRO'THE CHIEF JUDICIAL MAGISTRATE, THANJAVUR DISTRICT.
5. THE SUPERINTENDENT OF CENTRAL PRISON, TRICHY.
6. THE INSPECTOR OF POLICE, EAST POLICE STATION, THANJAVUR,
THANJAVUR DISTRICT.
(CRIME NO.524 OF 2005)
7. THE DISTRICT COLLECTOR, THANJAVUR DISTRICT.
8. THE DIRECTOR GENERAL OF POLICE, VEPERY, CHENNAI-7.
9. THE ADDL.PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



COPY TO : THE SECTION OFFICER, CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2cc to Mr.A.Thiruvadikumar, Advocate in SR.13040
+1cc to Mr.R.Sivasubramanian, Advocate in SR.13064
+1cc to Mr.A.Arunprasad, Advocate in SR.13127

PRE-DELIVERY JUDGMENT IN
CRL.A(MD)No.200 of 2011
CRL.A(MD)No.261 of 2011 AND
CRL.A(MD)No.316 of 2011
DATED : 08.03.2016

GPA/ASR
PBK/AAL-MPA/AR-I 17.03.2016 ::28P-15C::