



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on : 14.11.2017

Pronounced on : 13-12-2017

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CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal (MD) No. 424 of 2016

and

Crl.M.P. (MD) .No.7471 of 2017

1. Selvakumar
2. Dhanraj
3. Arivazhagan
4. Lakshmanan
5. Prabu

.. Appellants/
A1 to A5

Versus

State through the Inspector of Police,
Thanjavur Medical College Police Station,
Thanjavur.

.. Respondent/
Complainant

Appeal filed under Section 374 of Code of Criminal Procedure against the Judgment dated 24.10.2016 passed in S.C. No. 291 of 2015 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur

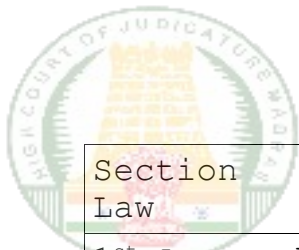
For Appellants : Mr. N. Anantha Padmanaban

For Respondent : Mr. C. Ramesh
Additional Public Prosecutor

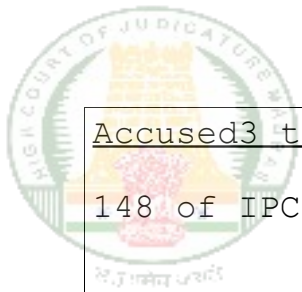
JUDGMENT

R. SUBBIAH, J

The accused 1 to 5 in S.C. No. 291 of 2015 on the file of the I Additional District and Sessions Judge, Thanjavur are the appellants in this appeal. They stood charged for the offence punishable under Section 147, 148, 294 B, 324, 307 and 302 of IPC. After conclusion of trial, the accused were convicted and sentenced to undergo imprisonment for various term and they are set out hereunder.



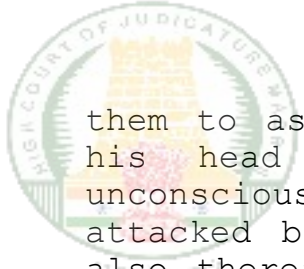
Section of Law	Period of Sentence	Fine
<u>1st Accused</u>		
294(b) of IPC	To undergo one month of simple imprisonment	Nil
148 of IPC	To undergo one year rigorous imprisonment	Rs.1,000/- in default to undergo imprisonment for three months
307 of IPC read with 109 IPC (3 Counts)	To undergo Seven years rigorous imprisonment	Rs.5,000/- each count and in default to undergo imprisonment for one year for each counts.
302 of IPC	To undergo imprisonment for life	Rs.10,000/- in default to undergo imprisonment for a period of one year
<u>2nd Accused</u>		
148 of IPC	To undergo one year rigorous imprisonment	Rs.1,000/- in default to undergo imprisonment for three months
307 of IPC	To undergo Ten years rigorous imprisonment	Rs.10,000/- and in default to undergo imprisonment for one year
302 read with Section 149 of IPC	To undergo imprisonment for life	Rs.10,000/- in default to undergo imprisonment for a period of one year



<u>Accused3 to 5</u>		
148 of IPC	To undergo one year rigorous imprisonment	Rs.1,000/- in default to undergo imprisonment for three months
324 of IPC (2 counts)	To undergo rigorous imprisonment for one year	Rs.1,000/- and in default to undergo imprisonment for three months each
302 read with Section 149 of IPC	To undergo imprisonment for life	Rs.10,000/- in default to undergo imprisonment for a period of one year

2. The sentences imposed on the accused/appellants on various spells were, however, ordered to run concurrently.

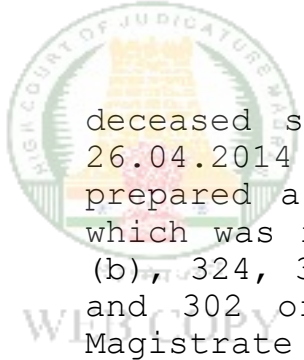
3. The deceased in this case is one Arul George Simon. The deceased is the elder brother of PW1. PW1 is working as Clerk in City Union Bank, Ariyalur. PW2 is yet another brother of PW1 and the deceased. On 20.04.2014, PW1 came to the house of the deceased situate at Fathima Nagar, Thanjavur to see the new born female child born to PW10, who is the son of the Junior Paternal uncle of PW1, at Cauvery Nagar, Matha Kottai Road. After seeing the child, at around 11.30 am PW1, PW2, PW10 and the deceased went to the liquor shop situated at Cauvery Nagar. While the deceased and others were consuming alcohol in the liquor shop, two unknown persons, who were in the age group of 30 years, entered into a quarrel with one Rajendran (PW3), who was working as the supplier in the liquor shop and questioned him as to why he did not attend to them. PW3 has told them that every one in the shop has to be attended and they cannot be attended to immediately. In this regard, there was a quarrel between the two unknown persons and the supplier Rajendran, PW3. On hearing the quarrel, the deceased intervened and attempted to pacify them. The deceased asked the unknown persons as to why they are fighting with the old man who is in the age of their father. Enraged by this, one of the persons abused the deceased with filthy language as to how he could support the aged man. At this stage, PW1, 2 and 10 asked the deceased not to intervene in such disputes and asked him to come back. Thereafter, the deceased came back to his table and continued consuming alcohol drinks and they were inside the liquor shop for about one hour. After consuming alcoholic drinks, the deceased along with PW1, 2 and 10 came out of the shop. While they were leaving the liquor shop, at about 12.30 pm, the two unknown persons who fought with the deceased inside the liquor shop, were standing at the entrance of the liquor shop near a tree. Along with them, two other persons were also standing. One among them, who quarrelled with the deceased, identified the deceased, informed the other accused that it is he who quarrelled with him and instigated



them to assault him. Accordingly, they attacked the deceased on his head with a wooden log and the deceased fell down unconsciously. PW10 attempted to prevent the same, but he was also attacked by them and therefore, he sustained injuries. PW1 was also thereafter attacked by the group of persons in his forehead with a wooden log. Similarly, PW2 also sustained injuries on his head. After unleashing such violent attack, the accused persons fled away from the scene of occurrence in the motor cycle. According to the defacto complainant, no one who witnessed have come to their rescue and they have fled the scene of occurrence out of fear. Therefore, on the request of the prosecution witnesses, they were taken in a car which was coming on that way and driven by an unknown person and all of them were admitted in Vinodhagan Hospital. Since the deceased and PW10 sustained grievous injuries in the attack, they were admitted in the Intensive Care Unit in the hospital. Similarly, PW1 and his brother PW2 have also taken treatment in the said hospital. According to PW1, after taking treatment, he has given a complaint to the Inspector of Police, Tanjavur Medical College Hospital Police Station and on receipt of the complaint, a case in Crime No. 97 of 2014 was registered for the offences punishable under Section 294 (b), 324, 307 of IPC at 12.30 am on 21.04.2014.

4. PW17, the Inspector of Police, Tanjavur Medical College Hospital Police Station, during the course of his evidence before the trial Court has stated that he received intimation from Thanjavur Medical College Hospital and he proceeded there and recorded the statement of PW1, who was taking treatment as an in-patient. Based on the complaint of PW1, PW17 had registered the case in Crime No. 97 of 2014 at 12.30 am on 21.04.2014. The printed copy of the first information report is Ex.P14, which was forwarded by PW17 to the learned Magistrate No.2, Thanjavur. Thereafter, on 21.04.2014 at 08.00 am, PW17 proceeded to the scene of occurrence, where he drew a rough sketch in the presence of PW-9, Shanmuganathan and another witness Anthonysamy and prepared a Mahazar, which is marked as Ex.P3. He also drew a rough sketch, which was marked as Ex.P15. Thereafter, PW17 recorded the statement of witnesses namely Irudaya George Fernandas - PW2, Elangovan - PW4, Palanivel - PW6, Muruganandam - PW7 and Ramesh - PW8. Thereafter, he also obtained the statement of PW9 and Anthonysamy, who stood as witness to the Mahazar drawn by him at the scene of occurrence. PW17 also recovered wooden log measuring about 5 feet in the presence of PW3/Rajendran and PW5/Suseendiran and sent it to Court of Judicial Magistrate No.2, Thanjavur by preparing Form 95.

5. In the meantime, based on a tip-off, PW17 proceeded to R.R. Nagar Bus Stop and arrested the 5th accused at about 2.00 p.m. on 21.04.2014. On such arrest, the 5th accused has given a voluntary statement and the same was recorded by PW17. Thereafter, PW17 sent the 5th accused for remand. When PW17 was in search of the whereabouts of the other accused, he came to know that the



deceased succumbed to the injuries and died in the hospital on 26.04.2014 at 4.10 am. On receipt of such information, PW17 prepared a report and altered the case in Crime No. 97 of 2014, which was registered for the offences punishable under Section 294 (b), 324, 307 of IPC into one of Sections 147, 148, 294 B, 324, 307 and 302 of IPC. The altered report was sent to the Judicial Magistrate No.2, Thanjavur and it was marked as Ex.P17 during the course of trial. Thereafter, PW17 proceeded to the Government Medical College Hospital and conducted inquest on the body of the deceased and prepared an inquest report, which was later marked as PW18 during the course of trial. PW17, thereafter, sent the body of the deceased for Postmortem through Jambulingam, Special Sub Inspector of Police, PW16. On 27.04.2014, PW17 arrested the accused 1, 3 and 4 near Hotel Shivas, opposite to New Bus Stand, Thanjavur in the presence of witnesses Arunkumar and Felix. On such arrest, the first accused gave a voluntary statement, based on which PW17 seized the Motor Cycles which were used in the commission of offence. The material portion of the voluntary statement given by first accused was marked as Ex.P18. Thereafter, on 29.04.2014, PW17 arrested the second accused Dhanraj, Son of Arumugam at Thiruvengadam Nagar, in the presence of witnesses Arunkumar and Felix. On such arrest, the second accused gave a voluntary confession statement and it was recorded by him. During the course of investigation, PW17 recorded the statement of Dr. Jayaprakash, Doctor attached to Vinodhan Memorial Hospital, who gave first aid to PW1 and 2 in the hospital. PW17 also proceeded to record the statement of Professor Tamizhmani, PW15, who conducted the Postmortem on the dead body of the deceased. The postmortem Certificate issued by PW17 was marked as Ex.P12 in which PW15 has rendered his opinion as follows:-

"The following Ante-mortem Injuries were noted:-

- 1) A "U" shaped surgical sutured wound of size 27 X 1 cm X bone depth seen over right frontal, parietal and temporal region
- 2) A "U" shaped surgical sutured wound of size 31 X 1 cm X Bone depth seen over left frontal, parietal & temporal lobe
- 3) A sutured lacerated wound of size 4 X 1 cm X bone depth seen over middle frontal region
- 4) Partially healed abrasion seen on the following areas:-
 - 2 X 1 cm over Nose, 3 X 2 cm over left Check, 1 X 1 cm over lower part of right forearm, 2 X 2 cm over dorsum of right hand, 4 X 3 cm over left elbod
- 5) A horizontal surgical suture wond of size 12 X 140 X 0.5 cm seen over left side of abdomen. On removal of suture it contain (surgically removed) portion of skull bone (Treatment procedure)

On Dissection of Head

Scalp contusion noted entire surface of scalp. Both temporalis muscle found contused. Right frontal



temporal & parietal bone of size 11 X 9 cm found missing. The bone margins are regular, underlying meninges found exposed and gel foam adherent to it (Craniotomy Procedure)

Left frontal, temporal & parietal bone of size 14 X 10 cm found missing the bone margins regular. Underlying meninges found exposed with gel foam adherent to it (Craniotomy procedure). Subdural and subarachnoid hemorrhage noted over both temporal, parietal & occipital and cerebellum. Resolving subdural clots noted over inferior surface of both temporal lobe with surrounding necrosis of Brain matter. Ventricular hematoma of weight 10 gm noted both later ventricle. Brain found edematous, softened and congested.

Other findings:-

Heart: Normal and Coronary vessels; Patent, Hyoid bone; intact. Stomach. Contain 200ml of brown colour fluid, with no specific smell, mucosa - normal lungs Liver, Spleen. Kidneys; Normal, c/s. Congested. Small intestine contains 20ml of bile stained fluid, with no specific smell, mucosa - normal. Bladder; contains 20ml of urine. Brain - Described. Spinal column - Intact.

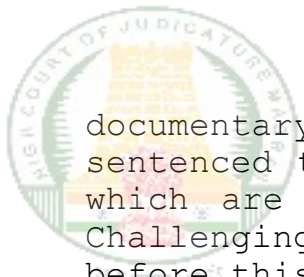
6. After receipt of chemical analysis report, PW15 issued Postmortem Certificate in which he has given his final opinion as under:-

"Final Opinion:-

The deceased would appear to have died of complications of head injuries due to injuries over vital organ of brain."

7. During the course of investigation, since PW17 was transferred from Thanjavur Medical Hospital Police Station, PW18, who is his successor, continued the investigation in the case. On perusal of the case file and on perusal of the statements recorded by his predecessor - PW17 from the witnesses in the case, the altered first information report and other material documents, PW18 filed the charge sheet in this case as against all the accused for the offences under Section 147, 148, 294 B, 307, 302, 506 (2) read with 149 of IPC.

8. The prosecution, in order to prove the guilt of the accused with respect to the offences complained of, has examined as many as 18 witnesses as Pws 1 to 18, marked Exs. P1 to P21 and two Material Objects as Mos 1 and 2. On the side of the accused/appellants, neither any witness was examined nor any document was marked. When the trial court questioned the accused/appellants under Section 313 of Cr.P.C. with respect to the incriminating materials available against them, they denied the same as false. The trial court, on considering the oral and



documentary evidence adduced by the prosecution, convicted and sentenced the appellants to undergo imprisonment for various terms which are set out in the preceding paragraph of this Judgment. Challenging the Judgment dated 24.10.2016, the appellants are before this Court with this appeal.

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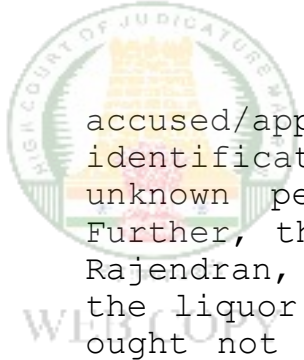
9. The learned counsel appearing for the appellants would mainly contend that the prosecution has not proved the case as projected by it against the accused/appellant beyond reasonable doubt and there are material inconsistencies in the prosecution case which are fatal to the case of the prosecution. According to the learned counsel for the appellants, Ex.P1, complaint given by PW1 and the first information report, Ex.P14 which was registered on the basis of Ex.P1, contain inconsistent statement with respect to the place of occurrence. Furthermore, there was an unexplained delay in registering the first information report, Ex.P14 inasmuch as the occurrence took place on 20.04.2014 at 12.30 p.m. and Ex.P14 was registered on 21.04.2014 at 00.30 hours. This delay in registering the first information report, according to the learned counsel for the appellant, is fatal to the case of the prosecution besides it was not properly explained by any of the prosecution witnesses.

10. The learned counsel for the accused/appellants would further contend that PW17, the investigation officer, during the course of his deposition, has stated that he received intimation regarding the injuries sustained by the prosecution witnesses from Ward No.26 of Tanjore Medical College Hospital in the night of 21.04.2014. However, in Ex.P1, complaint given by PW1, it was stated that soon after the occurrence, a person who came in a car has taken the injured to Vinodhagan Memorial Hospital where the deceased and PW10 were admitted in the Intensive Care Unit. Further, in the Accident Register, Ex.P5 issued to the deceased by Vinodhagan Memorial Hospital, it was stated that the deceased was admitted in the hospital by one Mr. Stanley. Further, it was stated therein that the deceased was assaulted by 3 unknown persons with wooden log near "*Child Jesus Church, Thanjavur*". Further, Mr. Stanley, who is alleged to have admitted the deceased in Vinodhagan Memorial Hospital was not examined on the side of the prosecution. Similarly, in Ex.P6, Accident Register and Ex.P7, Wound Certificate issued to PW2, it was stated that one Ms. Asha Mary has admitted him in Vinodhagan hospital, but the said Ms. Asha Mary was not examined by the prosecution. Similarly, in Ex.P8, Accident Register and Ex.P9, Wound Certificate issued to PW10, it was stated that PW10 was brought to Vinodhagan hospital by one Mr. Philips Solomon but the said person was not examined before the trial Court. Furthermore, in Ex.P9, Accident Register and Ex.P10, Wound Certificate issued to PW1/defacto complainant by Vinodhagan Memorial Hospital, it was stated that he was brought by one Ms. Usha for admission in the said Vinodhagan hospital, but the said MS. Usha was not examined before the trial Court. Therefore, it is contended that non-examination of the persons who brought the



prosecution witnesses to the hospital soon after the assault is fatal to the case of the prosecution. Above all, in Ex.P5, Accident Register issued to the deceased by Vinodhagan Memorial Hospital, it was stated that the deceased was assaulted by 3 unknown persons with wooden log near "Child Jesus Church, Thanjavur" and not at the entrance of the liquor shop at Cauvery Nagar as portrayed in Ex.P1, complaint. Thus, the prosecution is not sure with respect to the place where the occurrence had allegedly taken place and this inconsistency would devastate the case projected by the prosecution. Even in the evidence of PW1, no where, it was stated that the injured person or the deceased was admitted in Tanjore Medical College Hospital at any point of time after they were admitted in Vinodhagan Memorial Hospital and this material inconsistency in the case of the prosecution would entitle the accused to be acquitted.

11 The learned counsel for the accused/appellants would vociferously contend that PW1, in his deposition, has stated that when he was admitted in Vinodhagan Memorial Hospital, PW17 recorded his statement. However, in Ex.P14, first information report, it was stated that PW17 received intimation about the assault of the prosecution witnesses from Ward No.26 of Tanjore Medical College Hospital. Further, PW14, Dr. Jayaprakash, Doctor attached to Vinodhagan Memorial Hospital, has deposed that on 20.04.2014 when he was on duty, the deceased was brought to the hospital with injuries and he was admitted in the hospital as an in-patient. He further deposed that the person who brought the deceased to the hospital has stated that the deceased was assaulted by three unknown persons near Child Jesus Church. Similarly, PW16, Jambulingam, who was working as Special Sub Inspector of Police at the relevant time, deposed that on receipt of the requisition from PW17, he handed over the dead body of the deceased to the Doctor attached to Tanjore Medical College Hospital. However, in the cross-examination, he has stated that he went to Vinodhagan Memorial Hospital on 20.04.2014 at about 8.45 pm and collected Ex.P5 Accident Register of the deceased and Ex.P6, Accident Register of PW2. Therefore, it is not clear as to whether the deceased and the injured were admitted, soon after the alleged assault, at Vinodhagan Memorial Hospital or at Tanjore Medical College Hospital. Further, according to PW1, soon after the assault, all the injured were taken by a car at the same time from the same place, but such evidence is falsified by the Accident Register and Wound Certificate issued to the injured. Further, PW1 and 2, in their evidence have stated that within two hours after their admission in Vinodhagan Memorial Hospital, police came and recorded his statement. However, the first information report came to be registered only on 21.04.2014 at 00.30 hours. Therefore, according to the learned counsel for the accused/appellants, the inconsistencies in the case of the prosecution would only indicate that the place of occurrence is not the one as narrated by PW1 in Ex.P1, complaint and it goes to the very root of the case of the prosecution. Above all, it is contended by the counsel for the



accused/appellant that the prosecution did not conduct a test identification parade when it is the case of the prosecution that unknown persons have assaulted the deceased and the injured. Further, the trial Court failed to take note of the fact that PW3, Rajendran, with whom the accused is alleged to have quarrelled in the liquor shop has turned hostile and therefore, the trial court ought not to have convicted the accused for the offence alleged. The learned counsel for the accused/appellant therefore prayed for setting aside the Judgment passed by the trial Court.

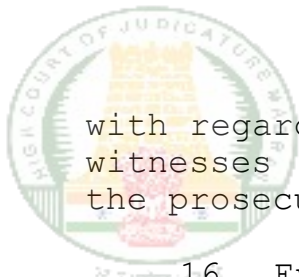
12. The learned Additional Public Prosecutor would contend that the trial Court, taking note of the fact that the accused/appellants have indulged in brutal assault as against the deceased and prosecution witnesses and which was proved beyond reasonable doubt by examining the prosecution witnesses, has rightly come to the conclusion that the prosecution has proved the case beyond reasonable doubt. The learned Additional Public Prosecutor therefore prayed for dismissal of the Criminal Appeal and to confirm the conviction and sentence imposed on the appellants.

13. We have considered the rival submissions and gone through the materials placed on record.

14. The case, as projected by the prosecution, is that on 20.04.2014 at 11.30 am when the deceased, Pws 1, 2 and 10 were taking liquor in a liquor shop in Cauvery Nagar, two unknown persons have indulged in a quarrel with PW3, Rajendran. According to the prosecution, the deceased attempted to pacify the person who quarrelled with PW3 by saying as to why he should quarrel with PW3, who is the age of his father. This, according to the prosecution, had enraged the so-called unknown persons and they abused the deceased in filthy language as to who he is to intervene. At this stage, Pws 1, 2 and 10 requested the deceased not to have any quarrel with them and the deceased came back to continue drinking liquor. After one hour, when they left the liquor shop, four unknown persons, including the two persons who quarrelled with PW3 inside the liquor shop, have assaulted the deceased with wooden logs in his head and he swooned on the spot. When Pws 1, 2 and 10 went to rescue the deceased, they were also assaulted. After such assault, according to PW1/defacto complainant, the accused zipped fast in the motor cycle in the Madha Kottai Road. Thereafter, some one who came in a car had taken the deceased and the prosecution witnesses and admitted them in Vinodhagan Hospital for treatment.

15. It is the further case of the prosecution that complaining about the assault and the consequential grievous injuries sustained by the deceased and the prosecution witnesses, a written complaint was given by PW1. In the complaint, PW1 has requested the Police to take action against four persons whom he can identify, but whose names are not known to him. It is based on such written complaint given by PW1, Ex.P14, First Information Report was registered by PW17. It is relevant to point out that in PW14, First Information

Report, it was stated that on receipt of information received from Ward No.26 of Tanjore Medical College Hospital, PW17 proceeded to Tanjore Medical College and recorded the statement of PW1. On the contrary, PW1 himself has stated that soon after the incident, he and other injured were taken to Vinodhagan Memorial Hospital where they were taking treatment. Further, in the complaint itself, PW1 has stated that four unknown persons have assaulted him, however, the complaint, Ex.P14, was registered against 4 identifiable persons and others. Further, as per the Accident Register issued to the deceased, Ex.P5, he was admitted in the hospital by one Mr. Stanley at 1.45 pm on 20.04.2014 and the time at which he was assaulted was mentioned as 1.30 p.m. Similarly, in Ex.P6, Accident Register issued to PW2, it was stated that he was admitted at 3.55 p.m. and he was allegedly assaulted by unknown persons at 1.30 p.m. PW2 was stated to have been admitted in the hospital by one Mrs. Asha Mary at 3.55 p.m. and in the Accident Register issued to PW2, it was stated that he was assaulted by unknown persons at 1.30 p.m.. Further, in Ex.P8, Accident Register issued to PW10, it was stated that he was admitted in the hospital by one Mr. Philips Solomon at about 2.55 p.m. and he was assaulted by unknown persons at 1.30 p.m. Lastly, in Ex.P19, Accident Register issued to PW1, it was stated that he was admitted in the hospital by one Mrs. Usha at 3.20 p.m. and he was assaulted by unknown persons at 1.30 p.m. But the fact remains that as per the Accident Registers, the deceased, PW1, 2 and 10 were brought to the hospital by various persons at various time, but the persons who admitted the deceased, PW1, 2 and 10 were not examined before the trial Court. Contra, in the complaint Ex.P1, it was stated that all the injured were taken in a car and admitted in Vinodhagan Hospital which would mean that all the injured were admitted at Vinodhagan Hospital at one and the same time. It is further stated that the deceased, PW1, 2 and 10 sought the help of a person who came in the car driven by an unknown person and got admitted to Vinodhagan Hospital for treatment, but such a statement runs contrary to the one indicated in the Accident Registers issued to the deceased, PW1, 2 and 10 wherein it was indicated that all of them came to the hospital at different time and they were brought to the hospital by different persons. The further fallacy in the case of the prosecution is that in the Accident Register issued to the deceased, the place of occurrence, where the deceased sustained head injury, was indicated as "*near Child Jesus Church, Thanjavur*" whereas in the complaint, Ex.P1 given by PW1, it was stated that unknown four persons have assaulted them soon after they came out of the liquor shop at Cauvery Nagar. Further, PW16, Jambulingam, Special Sub-Inspector of Police has stated that he had gone to Vinodhagan Memorial Hospital to collect the Accident Register of the injured. Moreover, PW14, Dr. Jayaprakash attached to Vinodhagan Memorial Hospital, in his deposition has stated that the deceased was brought to the hospital on 20.04.2014 at about 1.45 pm and the person who brought the deceased has informed him that he was assaulted by unknown persons near "*Child Jesus Church*". These inconsistencies in the case of the prosecution, in our opinion, creates a strong doubt



with regard to the manner in which the deceased and the prosecution witnesses have sustained injuries on 20.04.2014, as projected by the prosecution.

16. Even assuming that the deceased, PW1, 2 and 10 were attacked at the entrance of the liquor shop at Cauvery Nagar, at 12.30 pm in the afternoon, it is surprising as to how the prosecution could not examine even one eye witness to the incident. Even PW3, Rajendran with whom the unknown persons in the liquor shop have allegedly quarrelled, has turned hostile. When the deceased and prosecution witnesses were assaulted in broad day light, the prosecution ought to have examined atleast one eye witness to the incident and non-examination of any such eye witness would only casts a shadow of doubt in the case projected by the prosecution. Therefore, on the basis of the interested testimony of Pws 1, 2 and 10, who are related to each other, we feel that it is highly unsafe to accept the case of the prosecution.

17. The learned counsel for the appellants vehemently contended that when PW1 has stated in Ex.P1, complaint that four unknown persons have assaulted him and others, the investigation officer ought to have conducted a Test Identification Parade to ensure that the prosecution witnesses could identify the accused correctly. In the present case, no such test identification parade was ever conducted and this is yet another fault attributable on the prosecution. In this context, the learned counsel for the appellants relied on the decision of the Honourable Supreme Court in the case of (Amitsingh Bhikmsing Thakur vs. State of Maharashtra) reported in AIR 2007 Supreme Court 676 wherein the Honourable Supreme Court has held the circumstances, under which a test identification parade is necessary. Useful reference to the said judgment can be apposite:-

"13.The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye-witnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code of Criminal Procedure, 1973 (in short the 'Code') and the Indian Evidence Act, 1872 (in short the "Evidence Act"). It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This



becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution."

18. It is evident from the above decision of the Honourable Supreme Court that if the person who is said to have committed an offence is not known to the victim or injured, prior to such occurrence, it is desirable that a test identification parade could be conducted. In the present case, even in Ex.P1, complaint, PW1 has stated that unknown persons have caused assault on him and others at the entrance of the liquor shop situated at Cauvery Nagar. During the chief examination of PW1, he identified accused Nos. 3, 4 and 5 for the first time in Court. While so, it is just and proper for the prosecution to have conducted a test identification parade to ensure that it is the accused who have committed the offence complained of by PW1. The non-conduct of identification parade, therefore, is fatal to the case of the prosecution.

19. Above all, we find from the records that the incident, in which the deceased, PW1, 2 and 10 have allegedly sustained injuries, took place at about 12.30 p.m. on 20.04.2014, however, the first information report, Ex.P14, was registered only at 00.30 hours on 21.04.2014. PW1 in his cross-examination has stated that within two hours after he was hospitalised, the police officials came and recorded his statement at Vinodhagan Memorial Hospital. While so, it is not known as to why the first information report was registered only at about 00.30 hours on 21.04.2014. This delay is fatal to the case of the prosecution besides it was not properly explained by PW17. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (S. Subbulaxmi vs. Kumarasamy and others) reported in 2017 STPL 8970 SC wherein the Honourable Supreme Court, while taking note of the delay in registration of first information report, has held as follows:-

"17.It is on record that PW9 in his examination categorically stated that on the day of incident at 7.30 pm, the Head Constable from Erode Government Hospital Outpost Police Station informed him over phone that Subramani (deceased) involved in the scuffle had died in the hospital and DW2 was admitted with injuries. After that, he visited hospital, received complaint (Ext.P1) from PW1 at 8.45 pm and registered it 12.30 am (Ext.P9). He further deposed that he received complaint from DW2 (Ext.P14) at 10 pm in the hospital and registered it at 2.00 am on 16.09.1984 (Ext.P10). However, it is somewhat mysterious that though he received complaint from PW1 at 8.45 pm, he did not register it till 12.30 am, akin



to this, the complaint from DW2 though received at 10 pm, was not registered till 2.00 am and no explanation is forthcoming for the delay. On the other hand, DW2, made a definite statement that Ext.P14 complaint was never given by him to the police and police did not approach him at all."

20. In the present case, PW1 has categorically deposed that the Police from the Thanjavur Medical College Outpost Police Station has recorded his statement within two hours of his admission in the hospital. As per Ex.P10, Accident Register issued to PW1, the date of his examination was indicated as 3.20 p.m. Therefore, it can be presumed that the statement of PW1 could have been recorded atleast by 5.30 p.m on 20.04.2014. While so, it is not clear as to how and why the first information report came to be registered at 00.30 hours on 21.04.2014. This inordinate delay in registering the first information report has not been properly explained by the prosecution. Even during the examination of PW17, investigation officer, no explanation was given for the delay in registering the first information report. This delay, in our opinion, would defeat the theory putforth by the prosecution. In effect, we hold that the prosecution has failed to prove the guilt of the accused/appellants beyond reasonable doubt. However, the trial Court passed a Judgment of conviction without any legally acceptable evidence. Therefore, we hold that the accused are only entitled for acquittal.

21. For all the reasons aforesaid, we set aside the Judgment dated 24.10.2016 passed in S.C. No. 291 of 2015 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur. The Criminal Appeal stands allowed. The accused are acquitted of the charges and they are ordered to be set at liberty. The bail bond, if any, executed by the accused/appellants shall stand cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1.I Additional District and Sessions Judge (PCR)
Thanjavur

2.The Judicial Magistrate No.II, Thanjavur

3.The Chief Judicial Magistrate, Thanjavur

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

4.The Principal District Judge, Thanjavur



5.The District Collector, Thanjavur District

6.The Director General of Police,
Mylapore, Chennai-4

7.The Inspector of Police,
Thanjavur Medical College Police Station,
Thanjavur District

8.The Superintendent , Central Prison, Trichy
(In duplicate for communication to the Accused)

9.The Additional Public Prosecutor,
Madurai Bench of Madras High court,
Madurai

+One cc to Mr.N.Anantha Padmanaban, Advocate, SR.No.92601

Copy to:-

The Section Officer, Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai (2 copies)

rsh

RL/14C/14P/SKN/RSK/SAR1/29/1/2018

Judgment in

Crl.A.(MD) No. 424 of 2016

13-12-2017