

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.A.Nos.628, 629 & 748/2017

V.Mohan

.. Appellant / A-2
in Crl.A.No.628/2017

1.Vadivel
2.Meganathan
3.Krishnan
4.Kuppan

.. Appellants /
A-3, A-4, A-6 & A-7
in Crl.A.No.629/2017

Ramesh

.. Appellants /
A-1 in Crl.A.No.748/2017

Vs.

WEB COPY

State rep. by,

The Inspector of Police

Mamallapuram Police Station

Kancheepuram District.

.. Respondent in
all the appeals

Criminal Appeals filed under Section 374[2] of the Criminal Procedure Code to set aside the judgment of the learned Additional District and Sessions Judge, Chengalpattu, Kanchipuram District made in SC.No.173/2010 dated 08.08.2017.

For Appellants in
all the appeals

: Mr.S.Ashok Kumar
Senior Counsel for
Mr.R.Ganesh Kumar
[Crl.A.No.628/2017]

Mr.T.R.Ravi [Crl.A.No.629/2017]
Mr.M.Rajavelu
[Crl.A.No.748/2017]

For Respondent in
all the Appeals

: Ms.M.Prabavathy, APP

COMMON JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant in Crl.A.No.628/2017 is arrayed as A-2 ; appellants in Crl.A.No.629/2017 are arrayed as A-3, A-4, A-6 and A-7 ; and the appellant in Crl.A.No.748/2017 is arrayed as A-1 out of seven accused in the case in SC.No.173/2010 on the file of the Court of the learned Additional District and Sessions Judge, Chengalpattu, Kancheepuram District. Pending trial, **Gnanavel**, arrayed as **A-5** in the present case, died. The Trial Court, under impugned Judgment dated 08.08.2017

convicted and sentenced the appellants / accused as follows:-

<i>Rank of the Accused</i>	<i>Conviction under section</i>	<i>Sentence Awarded</i>
A1 and A2	148 and 324 IPC	Each of the accused were sentenced to undergo 2 years rigorous imprisonment with a fine of Rs.2000/- each and in default, to undergo 6 months rigorous imprisonment, for each of the offences.
	302 r/w 149 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.3000/- each with a default sentence of 1 year rigorous imprisonment.
A3 & A4	148 IPC	Each of the accused were sentenced to undergo 2 years rigorous imprisonment with a fine of Rs.2000/- each and in default, to undergo 6 months rigorous imprisonment.
	324 r/w 149 IPC [2 counts]	Each of the accused were sentenced to undergo 2 years rigorous imprisonment with a fine of Rs.2000/- each and in default, to undergo 6 months rigorous imprisonment [for each count] .
	302 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.3000/- each with a default sentence of 1 year rigorous imprisonment.
	302 r/w 149 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.3000/- each with a default sentence of 1 year rigorous imprisonment.

Rank of the Accused	Conviction under section	Sentence Awarded
A6 & A7	302 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.3000/- each with a default sentence of 1 year rigorous imprisonment.
	147 IPC	Each of the accused were sentenced to undergo 1 year rigorous imprisonment with a fine of Rs.1000/- each and in default, to undergo 1 year rigorous imprisonment.
	324 r/w 149 IPC [2 counts]	Each of the accused were sentenced to undergo 2 years rigorous imprisonment with a fine of Rs.2000/- each and in default, to undergo 6 months rigorous imprisonment. [for each count].
	302 r/w 149 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.3000/- each with a default sentence of 1 year rigorous imprisonment.

The sentences were ordered to run concurrently. Aggrieved over the said conviction and sentence, the present appeals came to be filed by the appellants/accused.

2 The brief facts of the prosecution case, are as follows:-

[a] The **deceased Boopalan** is the **brother** of **P.W.1-Thirupathi**. P.W.1 and deceased are **brother-in-laws** of **P.W.2-Sugumar**. They are residents of Pattipulam. On **27.01.2009** at about **4.00 a.m.**, P.W.1, P.W.2, deceased Boopalan and one Baskar went to high Seas for fishing and at 6.15 a.m., when they fishing, the accused party came in two boats and questioned P.W.1 and others as to why they were fishing in the place where they had already spread their fishing net. There arose a wordy quarrel between both parties and at that time, **A-3 [Vadivel]** beat the deceased with the fishing Row on his head and as a result, the deceased fell down unconscious and when P.W.1 tried to catch hold of the deceased, **A-1 [Ramesh]** stabbed P.W.1 with knife on his right hand middle finger and little finger and caused injuries. **A-1 and A-2** also beat P.W.1 with Fishing Row. When P.W.2 attempted to prevent the attack, **A-2 [Mohan]** beat P.W.2 with Fishing Row on his back. **A-4 [Meganathan]** attacked deceased with Fishing Row on his right side of the neck, due to which the deceased was about to fall into the sea water ; but he caught hold of the boat. **A-6 [Krishnan]** and **A-7 [Kuppan]**, released the deceased hands from the hold and pushed him into the Sea water. On seeing **P.Ws.3 to 5 [Gangadharan, Siva and Panchatcharam]** coming in a boat, the accused flew away from the place of occurrence.

complaint under **Ex.P.1** to **P.W.12-Sivakumar, Inspector of Police**. On 29.01.2009 at about 6.00 a.m., the dead body of the deceased was washed ashore.

[b] P.W.12, Inspector of Police, at the relevant time, after the receipt of the complaint from P.W.1 under Ex.P.1 on 27.09.2011 at about 9.00 a.m., registered the crime in **Cr.No.47/2009** u/s.147, 148, 324, 307 IPC. **Ex.P.12** is the **First Information Report**. He despatched the originals of Ex.P.1 and Ex.P.12 to the jurisdictional Court and took up the case for investigation. He went to the place of occurrence and prepared the **Observation Mahazar [Ex.P.2]** and **Rough Sketch [Ex.P.13]** in the presence of P.W.6 and Kannan. He enquired the witnesses, viz., P.Ws.1 to 7 and others and recorded their statements. On the same day, at about 2.00 p.m., the Investigating Officer arrested **A-3, A-4, A-6 and A-7** near the Chettinad Hospital in the presence of P.W.6 and one Sekar. A-3 came forward to give a voluntary confession statement, pursuant to which, the Investigating Officer seized **M.O.1 series – Fishing Rows** under **Mahazar**. The said accused were sent for judicial remand. On 29.01.2009 at about 6.00 a.m., P.W.1 appeared before P.W.12 and informed him of washing of the dead body of the deceased off the shore. P.W.12 went to the said place at 6.30 a.m., and held inquest on

the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared **Ex.P.14-Inquest Report**. He forwarded the dead body for autopsy through constable along with a requisition. On the same day, he altered the offences into one u/s.147, 148, 324 and 302 IPC. **Ex.P.15** is the **Altered Report**.

[c] P.W.10-Dr.Parasakthi, Medical Officer and Head of the Forensic Department in the Government Medical College and Hospital at Chengalpattu, at the relevant point of time, received the requisition and commenced the postmortem on 29.01.2009 at 11.30 a.m., and found the following injuries:-

“Antemortem Injuries:-

[1] *Contusion seen on upper part of right chest measuring 9cmx7cm.*

[2] *Diffuse swelling seen on skull vault. O/D Diffuse sub scalp haematoma seen over the region of skull vault. Fracture dislocation seen along the saggital region measuring 15 cms in length.*

[3] *Diffuse subdural haematoma seen.*

[4] *Multiple peritorial hemorrhages seen over both cerebral hemispheres.”*

Ex.P.9 is the **Postmortem Certificate** wherein he had opined that *"the deceased would appear to have died of shock due to head injuries and the death would have occurred 40 to 48 hours prior to postmortem."*

[d] **P.W.9-Dr.Ezhil Sundar, Assistant Surgeon** attached to the Chengalpattu Medical College and Hospital, at the relevant point of time, examined P.W.2 on 30.01.2009 at about 4.40 p.m. and issued **Ex.P.7-Wound Certificate/Accident Register** stating that there was tenderness on his head and chest and that no external injuries are found. On the same day, he examined P.W.1 and found [1] laceration 1x.5x.5 cm on the middle finger of the right hand and [2] laceration on the little finger of the right hand ; [3] tenderness on the chest. He issued **Ex.P.-Wound Certificate/Accident Register** in respect of P.W.1. Both P.Ws.1 and 2 were admitted as In-Patients in the said hospital.

[e] **P.W.11-Dr.Sankaralingam, Medical Officer** attached to the said hospital examined P.W.2 and issued **Ex.P.10-Accident Register** wherein he has stated that the injuries on P.W.2 are simple in nature. He also examined P.W.1 and issued **Ex.P.11-**

Accident Register, wherein he has stated that the injuries on P.W.1 are simple in nature.

[f] P.W.12-Investigating Officer, in continuation of his investigation, on 01.02.2009 at about 6.00 p.m., effected the arrest of **A-1** in the presence of **P.W.8-Parthasarathy** and one Desamuthu and A-1 came forward to give a **confession statement** voluntarily, **admissible portion** of which is marked as **Ex.P.3**, in pursuant to the same, the Investigating Officer seized a **knife [M.O.2]** under **Mahazar**. A-1 was sent for judicial remand and the material objects were sent to the Court. On 27.01.2009, he arrested **A-3-Vadivel**, who came forward to give a complaint against the prosecution party and the Investigating Officer registered a case in **Cr.No.49/2009** for offence u/s.324 IPC. On enquiry in the said counter case, the Investigating Officer closed the case and filed the **Referred Charge Sheet** before the jurisdictional Court. The Investigating Officer enquired P.Ws. 9 to 11, doctors who conducted autopsy on the dead body of the deceased and who treated P.Ws.1 and 2 ; received the medical reports and on completion of investigation, filed the Final Report against A1 to A7 before the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram, who took it on file in PRC.No.27/2010 and issued summons to the accused and on their appearance, furnished

them copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Chengalpattu, who in turn, had made over the case to the learned Additional District and Sessions Judge, Chengalpattu, Kancheepuram District, who took it on file in SC.No.173/2010 and on appearance of the accused, had framed the charges against the accused as stated above and questioned them. Pending trial, A-5 died. A-1 to A-4 and A-6 and A-7 pleaded not guilty to the charge framed against them.

[g] The prosecution examined P.Ws.1 to 12 and marked Exs.P.1 to 15 besides marking M.O.1 and M.O.2.

[h] A-1 to A-4 and A-6 and A-7 were questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against them in the evidence rendered by the prosecution and they denied it as false. On the side of the defence, no oral and documentary evidence was let in.

[i] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, had convicted

and sentenced the appellants/A-1 to A-4 and A-6 and A-7 as above stated and hence, these appeals.

3 Mr.S.Ashok Kumar, learned Senior Counsel assisted by Mr.R.Ganesh Kumar, learned counsel for the appellant in CrI.A.No.628/2017 ; Mr.T.R.Ravi, learned counsel for the appellants in CrI.A.No.629/2017 and Mr.M.Rajavelu, learned counsel for the appellant in CrI.A.No.748/2017 submitted that the entire case of the prosecution is highly doubtful and the injuries sustained by the accused party has been suppressed by the prosecution. It was the accused party who gave the complaint against the prosecution party at the earliest point of time ; but the said complaint has not seen the light of the day. It is his further submission that though the Investigating Officer has submitted the Referred Charge Sheet stating closing the said case as Mistake of Fact, he has not produced any documents whatsoever relating to Cr.No.49/2009. Learned Senior Counsel submitted that from the very version of the prosecution witnesses, it has been clearly established that only the prosecution party are the aggressors and that being the position, it is the duty of the prosecution to place all the materials before the Court of law. But, the prosecution / Investigating Agency has failed to place all the relevant documents/materials before the Court as regards the counter case. Hence, the evidence of the

interested witnesses is highly unreliable and further, their evidence also creates a serious doubt about the very occurrence in the manner projected by the prosecution. Ex.P.1-complaint said to have been given by P.W.1 does not whisper about the presence of A-7 as well as P.Ws.3 to 5 and the Inquest Report, prepared after two days of occurrence, also does not whisper about the presence of the eyewitnesses at the time of the occurrence. It is the further submission of the learned counsel that the accused have not assembled with the common object and in fact, the prosecution witnesses have entered the area where the accused party had spread their fishing net and when the same was questioned by the accused, there arose a wordy altercation between the parties, which culminated into exchange of blows and the accused party also suffered injuries and the prosecution has failed to explain the injuries on the accused. Further, the version of P.Ws.1 to 5 are highly inconsistent with each other and the manner in which Ex.P.1 came to be filed, is also doubtful. It is the version of P.W.1 that he went to the police station and lodged the complaint ; whereas it is the evidence of P.W.2 and P.W.3 that the complaint was given by the villagers and not by P.W.1. This factum is further fortified by interpolation of three lines in the complaint written in a very fumbled manner to implicate A-3 to A-6 at the later point of time. It is also the submission of the learned

arrested near Chettinad Hospital ; whereas the nature of injuries sustained by them, has been purposely suppressed by the prosecution. All the above facts creates a serious doubt about the prosecution version. Lastly, it is the contention of the learned Senior Counsel that the Trial Court has awarded double life sentences to A-3 , A-4, A-6 and A-7 for offences u/s.302 and 302 read with 149 IPC, which is contrary to law and prayed for acquittal of the appellants by setting aside the conviction and sentence and allowing of the criminal appeals.

4 *Per contra*, Ms.M.Prabavathy, learned Additional Public Prosecutor appearing for the State submitted that the occurrence took place in high sea and P.Ws.1 to 5 have stated about the occurrence and the evidence of P.W.12-Investigating Officer as regards the counter case registered against the prosecution party is that the same has been registered as Mistake of Law and the evidence of the Medical officer also clearly proves the version of the prosecution witnesses and hence, submitted that the Trial Court, on considering these aspects had arrived at the correct finding and the same warrants no interference at the hands of this Court and prayed for dismissal of the appeals.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, now it has to be analysed whether the prosecution has brought home, the guilt of the appellants / accused beyond all reasonable doubt?

7 Prosecution mainly relies upon the evidence of the eyewitnesses, viz., P.Ws.1 to 5, out of whom, P.Ws.1 and 2 are injured witnesses. This Court has to analyse whether their evidence is trustworthy ; credence and reliable.

8 P.W.1 is the brother of the deceased **Baskar @ Boopalan** and P.W.2 is the brother-in-law of the deceased and P.W.1. P.Ws.3 to 5 are said to be the eyewitnesses to the occurrence and they belonged to the same village of the deceased and P.Ws.1 and 2. Law was set in motion on the basis of the complaint-Ex.P.1 said to have been given by P.W.1 on 27.01.2009 at about 9.00 a.m.

9 **P.W.1-Thirupathi**, in his evidence has stated that on 27.01.2009 at about 6.15 a.m., while he was fishing in a boat along with P.W.2 and deceased, the accused party came there in two boats

and questioned them as to why they are fishing in the place where the accused party had already spread their fishing net. In due course, a wordy altercation took place and in the said altercation, A-3 beat the deceased with the Fishing Row on account of which, the deceased fell unconscious ; A-1 stabbed P.W.1 on the middle and little finger of the right hand. A-1 and A-2 also attacked P.W.1 with Fishing Row A-2 also beat P.W.2 ; A-4 beat the deceased on the neck with the Fishing Row when the deceased was in an unconscious state ; A-6 and A-7 pushed the deceased into the Sea. Thereafter, on seeing P.Ws.3 to 5 coming in yet another boat, the accused fled away from the scene of crime.

10 P.W.2-Sugumar, in his evidence has stated that A-3 beat the deceased on his head with Fishing Row and when P.W.2 tried to prevent the attack on deceased, A-2 beat P.W.2 on his back with the Fishing Row ; A-1 stabbed P.W.1 with knife on his right hand ; A-4 attacked deceased on his right shoulder with the Fishing Row and as a result, the deceased fell into the Sea and got drowned and it was P.Ws.3 and 4 who brought P.Ws.1 and 2 to shore. P.W.2, in his evidence, had never stated about the presence of A-6 and A-7 and their overt act of pushing the deceased from the boat into the sea.

11 P.W.3-Gangadharan, in his evidence has stated that the deceased was beat on his head by A-3 using Fishing Row ; on his back side of the neck by A-4 using Fishing Row ; P.W.2 was attacked by A-2 using Fishing Row ; P.W.1 was stabbed by A-1 using knife [M.O.2]. P.W.3 never whispered a word about A-6 and A-7 causing any injury on the deceased.

12 Similarly, **P.W.4-Siva,** in his evidence has stated that he along with P.W.3 and P.W.5 went in a separate boat and witnessed A-3 and A-4 attacking the deceased ; A-1 attacking P.W.1 ; A-2 attacking P.W.2 and A-6 and A-7 pushing deceased into the water. Evidence of P.W.4 is totally in contradiction with the evidence of P.Ws.1 to 3 about A-1 as regards the overt act leveled against A-6 and A-7.

13 P.W.5-Panchatcharam, in his evidence, has deposed about A-3 attacking the deceased on his head with Fishing Row ; A-2 attacking deceased on his shoulder ; A-1 stabbing P.W.1 with knife on his right hand ; A-4 attacking P.W.2 using Fishing Row and A-6 and A-7 pushing the deceased into the sea water. The evidence of P.W.5 is inconsistent with the evidence of P.Ws.1 to 4 as regards the beating of the deceased on the head using Fishing Row, as it is the evidence of P.Ws.1 to 4 that it was A-1 who had done that act ;

whereas, according to P.W.5, it was A-3 who had beat the deceased on his head using Fishing Row.

14 Though the evidence of P.Ws.1 to 5 are inconsistent and contrary to each other, they in one voice and parrot-like version, have repeatedly stated that the accused party came in two boats and not only beat the deceased and caused his death but also caused injuries on P.Ws.1 and 2. Immediately, the complaint was lodged. It is to be noted at this juncture that admittedly, the occurrence took place in the mid-sea. Though P.W.1 is said to have given the complaint-Ex.P.1, he has not been cross-examined and he is said to have died prior to his cross-examination. When the evidence of P.W.2 is carefully analysed, in cross-examination, he has categorically admitted that P.Ws.1 and 2 had never went to the Police Station to lodge the complaint and it was only their relatives who had given the complaint and P.Ws.1 and 2 were examined by the police only at 10.00 a.m. on 27.01.2009, in their village. P.W.3, in the cross-examination, also had categorically admitted that P.Ws.1, 2, 4 and 5 had never gone to the Police station to lodge the complaint and only the Panchayatdhars had given the complaint and the police came to their place of residence and enquired them. P.W.4, also categorically admitted in the cross-examination that before their party going to the police station, the

accused party, viz., A-3, A-5 and A-4, had already went to the police station and given a complaint as against P.W.1, deceased and P.W.2. This fact clearly shows that there was a case in counter registered in the same police station and the said fact is also admitted by P.W.12- Investigating Officer in his evidence, wherein he has stated that a case in Cr.No.49/2009 u/s.324 IPC was registered as against the prosecution party. It is also worthy to note that Ex.P.1 does not whisper a word about the presence of P.Ws.3 to 5 ; whereas the complaint shows as if 20 persons in 4 boats had chased A-1 and A-2 and that P.Ws.1 and 2 had somehow managed to come to the shore. This fact also proves the fact that the occurrence had not taken place as alleged by the witnesses There were many persons at the time of occurrence and the possibility of implicating only few persons who belong to different village, cannot be ruled out and all the witnesses are from Pattipulam village and this Court is of the view that the version of the prosecution witnesses is highly unsafe to be believed to base the conviction, on account of the inconsistency coupled with serious discrepancies found out in the FIR.

15 The Investigating Officer, also in his evidence, has admitted that at the time of arrest of A4, A5 and A7, A5 had sustained injuries ; but he has not made any investigation in that regard. Further,

sustainment of injuries by A-5 has also been admitted by the prosecution witnesses. P.W.4 has admitted that A-5 had sustained injuries on his thigh at the relevant time. So also P.W.5. All these facts creates serious doubt in the prosecution version.

16 It is also curious to note that though Ex.P.1 is said to have been given by P.W.1 on 27.01.2009 at 9.00 a.m., on a careful scrutiny of Ex.P.1, it is seen that the same has been written in different handwriting and on the top of the second page, three lines have been inserted / accommodated before continuation of the sentences from the first page. The manner in which the three lines have been incorporated in the complaint to implicate three accused, viz., A-3 to A-5 and A-7, clearly show that the complaint is nothing but a due deliberation and a concocted one. Further, FIR [Ex.P.12] shows as if A-1 has attacked P.W.1 first and thereafter, A-1 and A-2 beat the deceased with Fishing Rows and threw him into the Sea. This version is totally contradictory to the evidence of the prosecution witnesses. Evidence of P.Ws.1 to 5 reveals as if only A-3 has beat the deceased first and A-6 and A-7 had thrown him into the water. But, the complaint and FIR reveal a different version. Further, three lines have been incorporated to accommodated four other accused. This fact also create a serious doubt about the veracity of the prosecution case. Further, Ex.P.1 does

not whisper about the presence of P.Ws.3 to 5 as eyewitnesses at the relevant point of time. If really P.Ws.3 to 5 were present at the relevant point of time and rescued P.Ws.1 and 2, their names and the role played by them, could have very well be found in Ex.P.1. Whereas, neither their presence nor their role has been mentioned in Ex.P.1. Therefore, the version of P.Ws.3 to 5 that they have witnessed the occurrence, is doubtful. We are constrained to doubt about the prosecution version in view of the different version in Ex.P.1. Of course, FIR need not contain minute details and it may not be an Encyclopedia . But the fact remains that when a different version has been given in FIR, thereafter some interpolation is made to suit the convenience of the prosecution case, we will have to necessarily doubt the prosecution, particularly, in the background that the injuries sustained by A-5 has not at all been explained by the prosecution and the counter case registered in Cr.No.49/2009 at the relevant point of time, has not been properly investigated by the Investigating Officer and the Investigating Officer though followed the procedure contemplated under PSO 566[2] of the Police Standing Order, he ought to have placed all the materials before the Court of law.

17

It is also the version / evidence of the prosecution

witnesses, in particular, P.W.2, that the accused party had already

spread their fishing net in the place of occurrence at the relevant point of time and the prosecution party used motor boat and there arose a quarrel. Admittedly, it was the prosecution party who went the place of occurrence where the accused had already spread their net and the said act of the prosecution party was questioned by the accused party. Therefore, it cannot be said that the accused party had common intention or object at the relevant point of time and the entire occurrence took place due to a sudden quarrel as the prosecution party are the aggressors. The Trial Court has not considered the said vital aspect.

18 The evidence of P.W.7 shows that some of the accused were arrested in front of Chettinad Hopspital. This fact also probablise the defence theory that the accused were in fact admitted in the hospital and were taking treatment. P.Ws.1 and 2 though said to have suffered injuries on 27.01.2009, they had never gone to the hospital immediately. Only for the first time, on 30.01.2009, they went to Chengalpattu Government Hospital for treatment and the Medical Officer, viz., P.W.9, has not noted down any external injuries on them and P.Ws.1 and 2 had complained only tenderness on the head and chest. On the same day, P.W.1 was treated for laceration measuring 1x0.5x0.5cm. The delay in going to the hospital also shows the

possibility of the witnesses getting admitted in the hospital at a later point of time only to show as if they sustained injuries only in that particular occurrence and this possibility also cannot be ruled out. It is further to be noted that the Postmortem Certificate of the deceased, no doubt, proves the homicidal violence and the evidence of the Medical officer clearly reveal that there are fracture dislocation seen along the saggital region measuring 15cms in length ; diffuse subdural haematoma seen and multiple hemorrhages seen over both cerebral hemispheres. The evidence of the Medical officer clearly shows that the injury caused on the head of the deceased must be fatal. Therefore, the evidence of the prosecution witnesses that after sustainment of head injury by the deceased, he was holding the boat with his two hands, is highly impossible and improbable and their evidence that A-6 and A-7 released the hands of the deceased from holding the boat and pushed him into the water, is also highly improbable. All these facts coupled with the fact that the counter case has not been investigated properly and that the documents relating thereto, have not been filed and further, the non-explanation of injuries sustained by the accused party ; interpolation in the complaint, makes this Court to reach to the irresistible conclusion as to doubt the very veracity of the prosecution case / version.

19 In the judgment reported in **AIR 1954 MADRAS 15**

[In re Boya Gajji Pedda Venkatanna @ Bodenna and others Vs. State] a

Division bench of this Court has held in paragraphs No.11 and 12 thus:-

“11 A question of procedure has been raised in this case and that is that the prosecution itself should have placed all the materials relating to the injuries on the person of DW2 and filed Ex.D.10 as an exhibit on the prosecution side. The case of the prosecution with regard to the injuries on D.W.2 and Ex.D.10 seems to be from the arguments of the Public Prosecutor in the Lower Court, that these injuries were self-inflicted and Ex.D.10 was given to provide a defence for the accused. We do not find from the evidence any suggestion to support the above arguments of the Public Prosecutor in the lower court. The Investigation officer if he had taken a little more trouble and investigated the case properly, would have found from the similarity of the injuries on the deceased and DW2 and from a consultation with the doctor, that these injuries were more likely to have been caused by the stones than by sticks, in which case he would have realised that the injuries on DW2 were caused at the same time and in the same occurrence in which the deceased was injured by stone. There would then be no charge sheet for murder but only for rioting and perhaps

for culpable homicide not amounting to murder even if the view was taken that the injury on the deceased was caused by A1 exceeding his right of defence to DW2. We have remarked on more than one occasion that the police do not really investigate the case but merely content themselves with the evidence of witness readily provided by the complainant party.

12 *In a complaint and counter-complaint such as this obviously arising out of the same transaction when the prosecution proceeds on the basis of the complaint, we think it is the duty of the prosecution to exhibit the counter-complaint through the police officer who recorded it and also to prove medical certificates of persons wounded on the opposite side also and place before the Court a definite case which they ask it to accept. We must deprecate the prosecution in such cases accepting in toto one complaint and examining only witnesses who support it and give no explanation at all for injuries caused to the other side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the court to enable it to arrive at the truth and a just decision. If in the present case, Ex.D.10 was in the opinion of the investigating police a false complaint laid for defence purposes and the injuries on DW2 self-inflicted, the prosecution should none the less,*

have file Ex.D.10 and DW2's medical certificate asking the court to reject them. The fact that a complaint Ex.D.10 was filed, that it was treated as false or undetectable and that DW2 did have injuries on his person are relevant facts which the prosecution itself should have placed before the Court in the first instance instead of waiting for the defence to disclose them."

20 We are fully agreeable with the above judgment and in the instant case, the prosecution has not placed the true version before the Court as regards the accused sustaining injuries and the case in counter in the first instance and only cited some interested witnesses, who are supporting the prosecution case and the prosecution also had failed to show who are the aggressors and only from the evidence of the prosecution witnesses, it is revealed that only the prosecution party were the aggressors. In the absence of any materials for the Court to come to the conclusion that whether the accused have exercised right of defence and while exercising such right, had they exceeded the private defence or not and only on such consideration, the Court can come to the right conclusion whereas the prosecution has suppressed one version and projected the other. It is highly difficult to base a conviction on the accused based on one version of the prosecution.

<http://www.judis.nic.in> Therefore, we are of the view that the prosecution having failed to

produce materials with regard to the counter case and that it failed to explain the injuries sustained by the accused, more particularly, on the basis of the homicidal death of the deceased, guilt cannot be inferred as against the accused on the basis of the interested witnesses and their evidence is also highly doubtful in view of the serious discrepancies noted above. Hence, the accused are entitled to benefit of doubt.

21 In the result, the criminal appeals are **allowed**. The **conviction and sentences** imposed on the appellants/accused by the learned Additional District and Sessions Judge, Chengalpattu, Kancheepuram District, in SC.No.173/2010 vide Judgment dated 08.08.2017, are hereby **set aside**. The appellants are acquitted of all charges levelled against them. Fine amounts if any paid, shall be refunded to them.

22 It is reported that the appellants / accused are in jail. They are directed to be released forthwith unless their presence/custody is required in connection with any other case / proceedings.

23 Before parting with the matter, this Court finds that the Trial Court, while convicting A-3, A-4, A-6 and A-7 under various

offences, had awarded double life sentences, one for the offence u/s.302 IPC and the other, for the offence u/s.302 read with 149 IPC. The Trial Judge has awarded the said sentences for a single charge. This aspect is to be viewed seriously. The Trial Judge is not even aware of the basic principle in framing the charges and awarded two life sentences for a single offence, merely because there were charges against the said accused u/s.302 and 302 read with 149 IPC. The very framing of the charge itself shows that there is non-application of mind on the part of the Trial Judge and while awarding punishment, the Trial Judge has simply ignored the fundamental principle, which is not permissible in law. This Court is of the view that the Trial Judge, viz., the Additional District and Sessions Judge, Chengalpattu, Kancheepuram District, is required to submit his explanation for committing such a grave mistake in the Sessions Trial.

[CTSJ] [NSKJ]

19.03.2018

Internet: Yes

AP

NOTE: Registry is directed to place a copy of the above judgment before the **Hon'ble Portfolio Judges of Kancheepuram District.**

[2] Registry is also directed to call for explanation from the Additional District and Sessions Judge, Chengalpattu, Kancheepuram District.

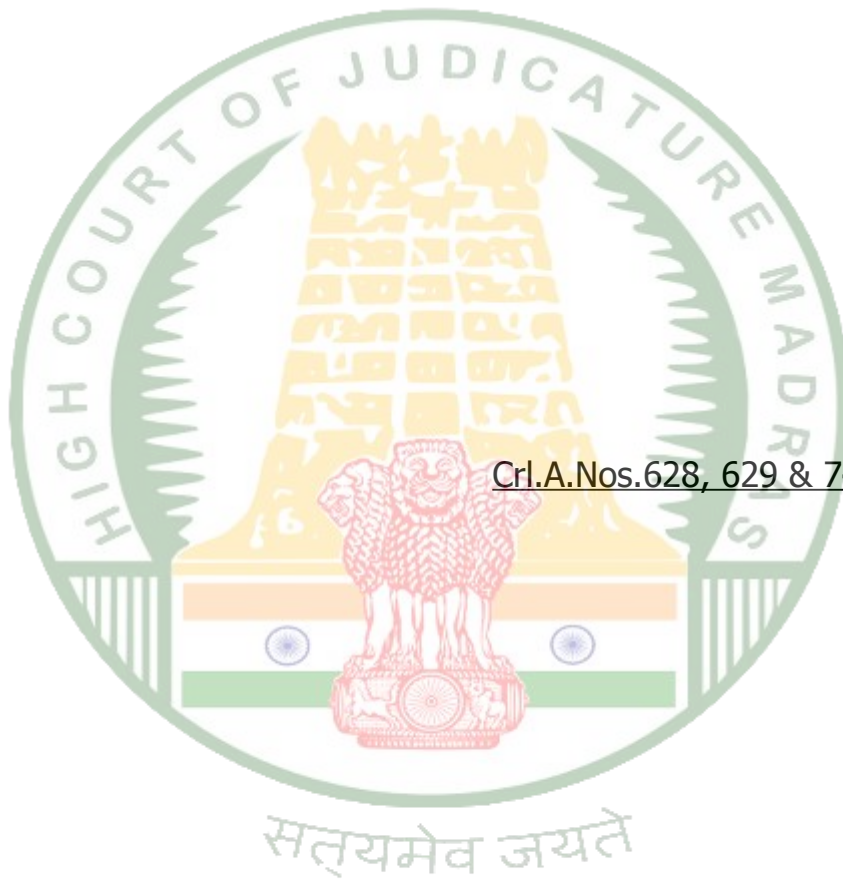
To

- 1.The Principal District and Sessions Judge
Kancheepuram District.
- 2.The Additional District and Sessions Judge
Chengalpattu, Kancheepuram District.
- 3.The District Munsif-cum-Judicial Magistrate
Thirukazhukundram.
- 4.The Chief Judicial Magistrate,
Kancheepuram District.
- 5.The Inspector of Police
E1 Mamallapuram Police Station
Kancheepuram District.
- 6.The District Collector
Kancheepuram District.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The Superintendent of Prison
Central Prison, Puzhal, Chennai.
9. The Public Prosecutor,
High Court, Madras.

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C.T.SELVAM, J.,
AND
N.SATHISH KUMAR, J.,

AP



CrI.A.Nos.628, 629 & 748/2017

19.03.2018

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