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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : **14.09.2018**

Judgment Pronounced on : **25.09.2018**

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.[MD].Nos.313, 322 & 364 of 2015

and 8, 13, 204 & 458 of 2016

and

M.P.[MD]No.1 of 2015

and

CRL.MP.[MD]Nos.373 of 2016, 10914 of 2017

and 6230 of 2018

R.Mahesh [A1]	... Appellant in Crl.A.[MD]No.313 of 2015
Abbas Maraikayar [A4]	... Appellant in Crl.A.[MD]No.322 of 2015
Raja @ Maharajan [A3]	... Appellant in Crl.A.[MD]No.364 of 2015
P.Marimuthu [A2]	... Appellant in Crl.A.[MD]No.8 of 2016

1.Velliyan @ Chinnathurai [A5]	
2.Arumugam [A7]	... Appellants in Crl.A.[MD]No.13 of 2016
Lakshmanan [A9]	... Appellant in Crl.A.[MD]No.204 of 2016

The State Rep. by,
The Public Prosecutor,
High Court,
Madras - 600 104.
Thoothukudi South Police Station,
[Crime No.01/2012] ... Appellant in Crl.A.[MD]No.458 of 2016

-Versus-

State Represented by
The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi,
Thoothukudi District.
[Crime No.1 of 2012]

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

... Respondents in Crl.A.[MD]Nos.313, 322
& 364 of 2015 and 8, 13 & 204 of 2016



1. Gurumuthu
2. Arumugam
3. Vettrivel @ Samundi
4. Lakshmanan
5. Nagaraj @ Lingaraj

... Respondents in Cr1.A. [MD]No.458 of 2016

COMMON PRAYER in Cr1.A. [MD]Nos.313, 322 & 364 of 2015 and 8, 13 & 204 of 2016: Appeals filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to call for the records in S.C.No.85 of 2013, on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, Thoothukudi District and set aside the judgment dated 04.09.2015 and acquit the appellants of the charges levelled against them.

PRAYER in Cr1.A. [MD]No.458 of 2016: Appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973, praying to set aside the judgment dated 04.09.2015 passed in S.C.No.85 of 2013 by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi District in acquitting A6 to A10 u/s.302 r/w. 149 IPC and convict the respondents / accused [A6 to A10] for the offences under Section 302 r/w. 149 IPC.

Cr1.A. [MD]No.313 of 2015

For Appellant : Mr.P.Gopinath,
Senior Counsel for Mr.P.Andiraj
For Respondent : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.R.Anandharaj
Additional Public Prosecutor

Cr1.A. [MD]No.322 of 2015

For Appellant : Mr.S.Manoharan
For Respondent : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.R.Anandharaj
Additional Public Prosecutor

Cr1.A. [MD]No.364 of 2015

For Appellant : Mr.S.Ramasamy
For Respondent : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.R.Anandharaj
Additional Public Prosecutor



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Crl.A. [MD]No.8 of 2016

For Appellant : Mr.A.Joseph Jawahar
For Respondent : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.R.Anandharaj
Additional Public Prosecutor

Crl.A. [MD]No.13 of 2016

For Appellant : Mr.V.Kathirvelu
Senior Counsel for Mrs.A.Banumathy
For Respondent : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.R.Anandharaj
Additional Public Prosecutor

Crl.A. [MD]No.204 of 2016

For Appellant : Mr.A.Thiruvadikumar
For Respondent : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.R.Anandharaj
Additional Public Prosecutor

Crl.A. [MD]No.458 of 2016

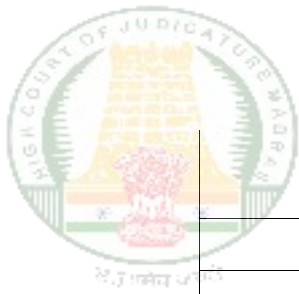
For Appellant : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.R.Anandharaj
Additional Public Prosecutor
For Respondent No.2 : Mr.N.Anandakumar
For Respondents 3 & 4 : Mr.A.Thiruvadikumar
For Respondents 1 & 5 : No appearance

COMMON JUDGMENT

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

The Accused Nos.1 to 4, 5&7 and 9, on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, Thoothukudi District, have come up with Crl.A[MD] Nos.313 of 2015, 8 of 2016, 364 of 2015, 322 of 2015, 13 of 2016 and 204 of 2016, challenging the Judgment dated 04.09.2015. The State has come up with Crl.A[MD]No.458 of 2016, challenging the acquittal of Accused Nos.6 to 10 u/s.302 r/w. 149 IPC. The Trial Court framed as many as six charges, as detailed below.

Charge No.	Accused No.	Penal Provisions
1	1 to 10	120(B) IPC
2	1 and 10	148 IPC
3	1 to 10	449 IPC



4	1 to 5 6 to 10	302 IPC 302 r/w. 149 IPC
5	1	324 IPC
6	1 to 10	506 IPC

By Judgment dated 04.09.2015, the Trial Court acquitted all the ten accused from some of the charges, as detailed below.

Accused No.	Penal Provisions
1 to 10	120(B) and 506(ii) IPC
6 to 10	302 r/w. 149 IPC
1	324 IPC

However, the Trial Court convicted all the ten accused and sentenced them, as detailed below:-

Accused	Section of Law	Sentence	Fine amount
1 to 10	148 IPC	To undergo rigorous imprisonment for one [1] year.	No fine.
1 to 5	449 IPC	To undergo rigorous imprisonment for ten [10] years.	Rs.2,000/- in default to undergo rigorous imprisonment for one [1] year.
1 to 5	302 IPC	To undergo imprisonment for life.	Rs.3,000/- in default to undergo rigorous imprisonment for one [1] year.

2. The prosecution version as unfolded during trial is as follows:

2.1. The deceased Doctor Sedhu Lakshmi, was a Chief Medical Officer in E.S.A. hospital. She was residing with her husband Thirugnana Sambantham [P.W.12] at Door No.97G/3A, New No.9, Kamaraj Nagar, Medical College Road, Thoothukudi. Adjacent to the above house, she was also running a hospital in the name and style 'Subam hospital'. P.W.12, a retired Professor of Geology is residing with the deceased and helping her.

2.2. On 30.12.2011, one Mahesh [A1] brought his wife Nithya, who was six months pregnant by then to the hospital. On examination, the deceased doctor Sedhu Lakshmi informed A1 that Nithya's condition was critical as the child in the womb has died. The same was also informed to A1's family members. The deceased doctor Sedhu Lakshmi has therefore advised them to take Nithya to some other hospital for better treatment. However, A1 and his family members, as they know the deceased doctor Sedhu Lakshmi and



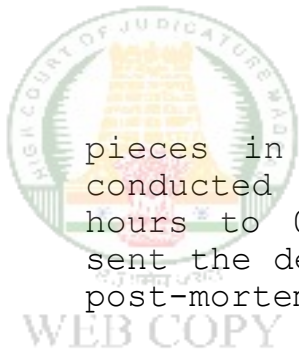
have taken treatment for many years, expressed their inability to spend money in other hospitals. They further requested the deceased doctor to provide treatment for Nithya.

2.3. In order to prevent danger to the said Nithya, the deceased doctor performed surgery to remove the dead foetus from the womb. However, after such surgery, the condition of A1's wife Nithya became worsen. Immediately, doctor Sedhu Lakshmi took Nithya to A.V.M. hospital, for further treatment. However, in the A.V.M. hospital, without responding to the treatment, Nithya died. Immediately, A1 and his family members agitated and shouted at the deceased doctor Sethu Lakshmi and indulged in violence in front of Subam hospital. P.W.12, immediately gave a complaint to the Sub-Inspector of Police, Thoothukudi South Police Station [P.W.27]. Pursuant to the complaint given by P.W.12, P.W.27 called A1 and warned him not to create any quarrel in the hospital and advised him to take legal action.

2.4. When the matter stood thus, on 02.01.2012, at 08:30 p.m., the deceased doctor Sedhu Lakshmi was in her chamber attending her out-patients. P.W.12 was also in the hospital campus. At that time, the Accused No.1 came in an Auto bearing Reg. No.TN 69 M 4268, along with sixth and ninth accused. Similarly, Accused No.4 came in another Auto bearing Reg. No.TN 69 B 9831 along with second and third accused and Accused No.7 came in another auto bearing Reg. No.TN 69 C 0103, along with fifth and eighth accused. At about 09.30 p.m., four of the accused stood outside the hospital and the Accused Nos.1 to 4 barged into the consultation room of doctor Sedhu Lakshmi with Aruval, knife and other deadly weapon. P.W.12 rushed to the room of the deceased only after hearing the noise of broken glasses, where he saw A1 indiscriminately cut the deceased. A2, A3 and A4 also indiscriminately cut the deceased and A5 stabbed the deceased on her chest. On seeing the gruesome attack, the nurses and other patients turned into sculptures. P.W.12 was also self shocked.

2.5. P.W.12 immediately rushed to the police station with his friend Murugesan [P.W.10] and lodged the complaint [Ex.P.2], with P.W.26, the Inspector of Police, Thoothukudi Police Station at the relevant point of time. P.W.26, received the complaint [Ex.P.2] from P.W.12 at 22:45 hours and registered the crime in Crime No.1 of 2012 under Sections 147, 148, 449, 324, 302 and 506(ii) IPC under Ex.P.31, the First Information Report. Later, P.W.26 forwarded the First Information Report to the learned Judicial Magistrate No.I, Thoothukudi and gave a copy to his superior officer.

2.6. P.W.28, Inspector of Police, took up the investigation and went to the place of occurrence and prepared Observation and Rough Sketch [Ex.P.32], with the help of witnesses Jeyavel, Village Administrative Officer [P.W.16] and one Periyamayagam and collected blood stained granite pieces and glass



pieces in the presence of the witnesses. Thereafter, P.W.28, conducted inquest over the dead body on 03.01.2012 between 00:15 hours to 02:30 a.m., and prepared Inquest Report [Ex.P.33] and sent the dead body to the Thoothukudi Medical College Hospital for post-mortem with requisition letter [Ex.P.19].

2.7. P.W.21, the Medical Officer attached to the Thoothukudi Medical College Hospital, after receipt of the post-mortem requisition letter [Ex.P.19] conducted autopsy over the dead body of the deceased and found the following:

"Moderately nourished body of a female. Finger and toe nails are pale. Dried blood stains seen over the face and hands. Tuft of hair seen in the right hand.

The following ante mortem injuries are noted on the body.

(1) Missing of scalp over an area of 10 cms x 7 cms x cranial cavity deep seen in the right frontal region. 8 cms long linear cut injury seen extending from the frontal bone along the parietal bones. Margin of the wound regular. Loss of a piece of frontal bone in the above wound noted.

(2) A cut wound of size 12 cms x 1 1/2 cm x nasal cavity deep seen extending from the right cheek to left cheek. Nose found hanging as a flap.

(3) A vertical cut wound of size 9 cms x 1 cm x bone deep seen in the right temporal region. A cut of length 7 cms seen in the right temporal bone.

(4) A cut wound of size 3 cms x 1/2 cm x bone deep seen behind the right ear.

(5) A cut wound of size 22 cms x 6 cms x vertebra deep seen in the right side of neck. The underlying major vessels, nerves and muscles found cut.

(6) A cut wound of size 11 cms x 5 cms x vertebra deep seen in the front of neck.

(7) A cut wound of size 4 cms x 1 cm x bone deep seen at the root of right index and middle finger.

(8) A cut wound of size 2 cms x 1/2 cm x bone deep seen in the right little finger.

(9) A cut wound of size 3 cms x 2 cms x bone deep seen in the left ring finger.

(10) A stab wound of size 5 cms x 1 cm x 5 cms seen at the right side of back of neck.

<https://hcservices.ecourts.gov.in/hcservices/> *A stab wound of size 5 cms x 2 cms x 8 cms seen in the back of right upper chest.*



(12) A stab wound of size 5 cms x 2 cms x 8 cms seen in the back of left upper chest.

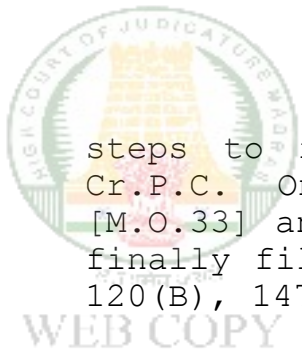
Left collar bone, ribs 1 and 2 seen in the left chest found cut. Two oblique cuts seen in the 6 and 7 vertebra.

On dissection of Scalp, Skull and Dura-Dura matter in the right frontal region found torn over an area of 5 cms x 3 cms. Sub arachnoid haemorrhage seen over the right temporal lobe and cerebellum."

2.8. The post-mortem certificate was marked as [Ex.P.20]. P.W.21 finally opined that the deceased died due to shock and haemorrhage due to multiple cut and stab injuries. The Viscera Report, Chemical Report and Serological Report were marked as Exs.P.21, P.35 and P.36, respectively. P.W.28, in continuation of his investigation, on 03.01.2010, arrested A1, while he was driving auto bearing Reg. No.TN 69 M 4268 and also arrested A6. Similarly, P.W.28 has also arrested A4 & A3 and A7 & A8 and seized vehicles bearing Reg. Nos.TN 69 B 9831 and TN 69 C 0103, respectively. On the same day, P.W.28 recorded the voluntary confession of A1 in the presence of witnesses P.W.16 and Periyannayagam, which was marked as Ex.P.6. In pursuant to the confession statement of A1, P.W.28 recorded the disclosure statements of A4, A7, A10, A5 and A2 and they were marked as Exs.P.8, P.11, P.10, P.27 and P.28. Based on the disclosure statements of the said accused, P.W.28 seized the material objects such as M.Os.16, 18, 19, 20, 21, 22 and 23 under mahazar Exs.P.7, 9, 12, 13, 15, 29 and 30, in the presence of the witnesses.

2.9. After examining the witnesses, he recorded the statements of the witnesses. P.W.19, the Medical Officer stated that on 03.01.2012, he treated P.W.1, Valli and noted 4 x 1 x 1 cm cut injury on her left hand and issued Accident Register, Ex.P.16. He further stated that he also referred the dead body of doctor Sedhu Lakshmi to mortuary, on the basis of the requisition letter of the Inspector of Police. The accident register in respect of deceased doctor Sedhu Lakshmi is Ex.P.17. P.W.15, one Zahir Hussain, has given a statement that while he was in the TASMACH shop, he heard the confession of A1 and others to eliminate the deceased. P.W.20, Doctor Ganesan Marimuthu has also given a statement that Nithya was admitted in A.V.M. hospital on 30.12.2011, in a critical stage and she was accompanied by doctor Sedhu Lakshmi. P.W.13, one Nithyanantham, also stated that he heard the confession of the accused to eliminate the deceased. P.W.28, in continuation of his investigation, forwarded all the materials to the Court below for sending them to forensic lab.

2.10. P.W.29, the successor of P.W.28, after receipt of the lab reports, namely, Biological Report [Ex.P.35], Serological Report [Ex.P.36] and after examining the medical officer, took



steps to record the statement of P.W.12 under Section 164 of Cr.P.C. On 07.03.2012, P.W.29 arrested A.10 and seized the knife [M.O.33] and altered the crime by alteration report [Ex.P.37] and finally filed the final report against the accused under Sections 120(B), 147, 148, 449, 302, 324 and 506(ii) r/w. 149 IPC.

2.11. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case, on the side of the prosecution, as many as 29 witnesses were examined, 37 documents and 23 material objects were marked.

2.12. The learned Trial Court after analysing the entire evidence held that the charge under Section 120(B) IPC against all the accused were not proved. Similarly, the trial Court acquitted A1 under Section 324 IPC, for causing injury to P.W.1, Accused No.6 to 10 under Section 149 IPC and Accused Nos.1 to 10 under Section 506(ii) IPC. However, all the accused were found guilty under Section 148 IPC. Having held so, the trial Court convicted A1 to A5 under Sections 449 and 302 IPC but imposed punishment to A6 and A10 only for the offence under Section 148 IPC. Aggrieved over the same, the present appeals came to be filed. The State has also preferred appeal against Accused Nos.6 to 10 for enhancement of punishment in CrI.A.[MD]No.458 of 2018.

3. It is curious to note that neither the State nor the de-facto complainant has filed any appeal as against the acquittal recorded by the trial Court in respect of the charge under Section 120(B). Learned Senior Counsel Mr.P.Gopinath for Mr.P.Andiraj, appearing for A1 and learned Counsel appearing for other appellants submitted that the entire prosecution rests on the sole evidence of P.W.12, the husband of the deceased. Though, alleged occurrence took place on 02.01.2012, at 09:30 p.m., the FIR has been filed belatedly and the same has reached the Court with inordinate delay which remains unexplained. In the First Information Report, P.W.12 gave a specific overt act only against the four accused. Whereas before the evidence, he has taken a contrary stand and stated that nine accused came in three Autos which is contradictory to the earlier version of P.W.12 in the FIR. Further, there is no whisper about A10 neither in the FIR nor in the evidence.

4. Similarly, there are lot of contradictions between FIR and P.W.12's 164 statement before the learned Judicial Magistrate and the evidence. A2 was implicated for the first time only in evidence. P.W.12's entire evidence is highly improved and create serious doubt about the prosecution. No test identification parade was conducted and in the First Information Report, there is interpolation in order to add many number of accused at that point of time. These corrections in the documents remain unexplained and even in the FIR, the names of A5 and A7 are not mentioned. Therefore, the entire evidence of P.W.12 is highly doubtful and

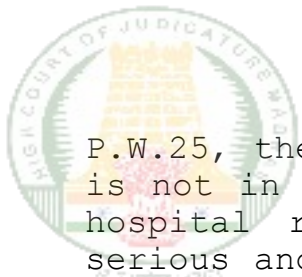


creates serious doubts in the prosecution. The further contention of the learned Counsel is that presence of P.W.12 in the place of occurrence is highly doubtful and the delay in FIR and different version in the FIR fortify the same. Hence, the learned Counsel submitted that the entire prosecution is doubtful since the other witnesses have not supported the prosecution and the sole evidence of P.W.12 is full of contradictions and improvements. Therefore, the learned Counsel submitted that the prosecution as against A1 to A10 is highly doubtful and the identification parade has not been conducted. Hence, the learned Counsel submitted that all the accused are entitled for acquittal.

5. Countering the above arguments, the learned Additional Advocate General submitted that the occurrence and time are not disputed. Similarly, the presence of P.W.12 in the hospital is quite probable and the same is also not disputed by the accused. There was no motive for P.W.12 to implicate all the accused. Minor discrepancies in the First Information Report is not a ground, since FIR is only a piece of information and it is not an encyclopedia. Therefore, P.W.12 has clearly identified all the accused and hence submitted that the prosecution has proved the guilt of the accused. Merely because other eye witnesses turned hostile including the injured, P.W.12 cannot be disbelieved. It is the further contention of the learned Additional Advocate General that the trial Court having found the accused 6 to 10 guilty under Section 148 IPC, ought to have sentenced them for offences under Sections 449 and 302 r/w. 149 IPC. But, the trial Court has committed error in this aspect. Hence, the appeal filed by the State is liable to be allowed and prays that the appeals filed by the accused shall be dismissed.

6. The learned Additional Advocate General, in support of his contention that FIR is only a piece of information and it is not an encyclopedia, relied upon the judgment of the Apex Court in **State of Uttar Pradesh Vs. Krishna Master & Others.**

7. In the light of the above submissions, now it has to be analysed whether the prosecution has proved the guilt of the accused beyond all these doubts. It is not in dispute that the deceased doctor Sedhu Lakshmi was running a separate clinic in the name and style 'Subam Hospital'. The motive projected by the prosecution is that on 30.12.2011, A1 brought his wife Nithya, who was six months pregnant by then to the hospital of the deceased doctor Sedhu Lakshmi. At that time, the deceased doctor Sedhu Lakshmi conducted surgery and removed the dead child from the womb, which deteriorated the health of Nithya. Thereafter, immediately she took Nithya to the nearby A.V.M. hospital. However, the said Nithya did not respond to the treatment and died. Therefore, the accused and his family members agitated and
https://hcservices.ecourts.gov.in/hcservices/ created a plan for revenge on doctor Sedhu Lakshmi. On the very same day, they also indulged in violence in the hospital run by the deceased doctor Sedhu Lakshmi. In this regard, the evidence of

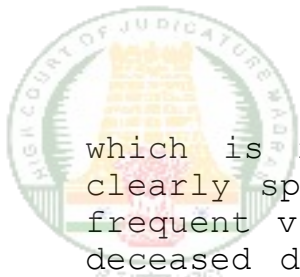


P.W.25, the mother of A1 clearly establishes the said motive. It is not in dispute that on 30.12.2011, Nithya was admitted in the hospital run by deceased doctor Sedhu Lakshmi, Nithya became serious and that she was immediately taken to some other hospital in ambulance, where she died. In fact, P.W.20, doctor Ganesan Marimuthu, working in A.V.M. hospital has also clearly spoken about the fact that on 30.12.2011, at about 08:00 p.m., Nithya was brought to their hospital in critical condition and she was accompanied by doctor Sedhu Lakshmi. However, Nithya died in the hospital, without responding to the treatment. Ex.P.18, the treatment history maintained by A.V.M. hospital is also filed by the prosecution.

8. It is the further contention of the prosecution that agitated over the death of the said Nithya, A1, his family members and others indulged in violence and caused damage to the hospital of the deceased doctor Sedhu Lakshmi on the same day. In respect of which, a complaint is also said to have been lodged to the Sub Inspector of Police, Thoothukudi South Police Station [P.W.27]. P.W.27 in his evidence has also clearly spoken about the above aspects and he has also spoken about the fact that he warned A1 not to indulge in such violence and advised him to proceed legally for any such medical negligence. Apart from the above, P.W.12, in his evidence has clearly spoken about the incident that occurred on 30.12.2011 in their hospital. It is also not denied by the accused in the cross examination. From the undisputed facts, the motive aspect projected by the prosecution is clearly established. P.W.14, one Annalakshmi has also clearly spoken about said Nithya visiting the hospital of the deceased Sedhu Lakshmi. The evidence of P.W.25, mother of A1 also clearly shows that only after the surgery conducted by doctor Sedhu Lakshmi on 30.12.2011, said Nithya died.

9. From the above undisputed evidence placed on record, the motive projected by the prosecution has been clearly established. Though, the prosecution has examined as many as 9 witnesses namely, P.W.1 to P.W.9 as eye-witnesses of the occurrence, who were at the hospital at the relevant point of time they have not supported the prosecution. In fact, P.W.1 to P.W.5, who were working in the hospital also not supported the prosecution. P.W.6 to P.W.9, who were in the hospital at the relevant point of time also not supported the prosecution. Though, they have not supported the case of the prosecution, from their evidence, it can be easily seen that they ran away after the group entered the hospital and caused the death of the deceased.

10. In the above background, now the prosecution is left with the evidence of P.W.12, who is the husband of the deceased. P.W.12 is a retired Professor. He was residing with the deceased ~~services.eidorts.gov.in/hcservices/~~ not in dispute that the hospital run by the deceased is adjacent to the place where they were living. P.W.12 has also clearly spoken about the motive aspect in the evidence



which is not in dispute. P.W.12, in his further evidence has clearly spoken about the fact that A1 and his wife Nithya were frequent visitors to their hospital. Only on their request, the deceased doctor Sedhu Lakshmi undertook the surgery to save the life of Nithya on 30.12.2011. However, Nithya died. Thereafter, there was violence in the hospital on the same day by A1 and others.

11. With respect to the occurrence, it is the evidence of P.W.12 that on 02.01.2012, at about 08:30 p.m., he and his wife were talking to each other and as it was informed that a patient has come to the hospital, the deceased left to hospital. At that time, when P.W.12 was in the hospital campus, the accused came in three Autos and A1 to A5 barged into the room of the deceased and A1 to A4 indiscriminately cut the deceased. Besides, A5 also stabbed her. Other accused guarded outside the hospital. Despite the deceased pleaded them, they cut her indiscriminately. P.W.12 was self shocked. Immediately, with the help of his friend P.W.10, he went to the police station and gave a report [Ex.P.2].

12. If the entire evidence of P.W.12 in the chief examination is carefully seen, it clearly shows that only A1 to A5 entered the room of the deceased and other four accused have guarded outside the hospital. He never whispered about A10 in this case. Normally, a relative witness cannot be always construed as interested witness. A relative witness is one mostly unreluctant to leave the real culprits go out free. Whereas, the interested witnesses are always interested to see that the accused are convicted in order to derive some benefit out of such conviction. In the above settled position, the evidence of P.W.12 also to be seen with care and caution. Admittedly, as per Ex.D.1, an earlier complaint was lodged by A1 against the hospital and the deceased doctor Sedhu Lakshmi for her negligence which resulted in the death of his wife. Therefore, the entire evidence of P.W.12, who is the sole eye-witness, requires careful scrutiny.

13. P.W.12 was the informant to lodge First Information Report. As rightly contended by the learned Additional Advocate General, FIR is not an encyclopedia. FIR need not contain minor details always, since it is not a substantive piece of evidence. Mere omission or inconsistencies, which are minor in nature can be ignored to unravel the truth. At the same time, when the earlier statement in the FIR is totally contradictory to the evidence of the informant, the evidence of such informant requires careful scrutiny. As far as the occurrence is concerned, it is the specific case of the P.W.12 in his earlier version namely the complaint [Ex.P.2] that on the date of occurrence only A1 came in single auto along with Gurumuthu [A6] and Raja @ Maharajan [A3] and the said auto was driven by one Abbas Maraikayar [A4]. It is the specific version of P.W.12 in his FIR that A4 remained in auto and he never entered into the hospital at the relevant point of time. It is also the specific version of P.W.12 in the FIR that



only A1 and A6 entered the doctor's room and A1 cut her indiscriminately and came out of the doctor's room. A2 also came out from the doctor's room. On a careful scanning of the FIR, it clearly appears that except attributing specific overt act as against A1 and A6 entering into the doctors room, no other overt act whatsoever is attributed against any of the accused.

14. It is curious to note that Ex.P.1 mentions about only one auto in which four of the accused A1, A6 A3 and A4 came to the hospital and A4 remained in the auto. A1 and A6 alone entered the doctor's room and caused the death of the deceased. A3 guarded at the hospital gate. Except that there is no whisper whatsoever. Despite the specific number of accused in the Ex.P.2, in the printed FIR registered against four accused and others, the word 'Silar' [meaning 'others'] has been specifically inserted in a different font. This aspect remains unexplained by the prosecution. It is further to be noted that P.W.12 has not given any oral statement at the first instance before P.W.26. In fact, the complaint has been written by P.W.10 at the dictation of P.W.12. P.W.10, in his evidence has spoken that he has written Ex.P.2 as per the dictation of P.W.12. In the cross examination, he has given a contradictory stand to the effect that he has written the complaint in the police station as instructed by the Sub-Inspector of Police. Therefore, Ex.P.2 and evidence of P.W.12 requires careful scrutiny.

15. Though, the occurrence is not disputed and the motive was also established, now this Court has to see whether the version of P.W.12 as such spoken before the Court is true or the same is mixed with truth and false. It is well settled that the doctrine of '*falsus in uno falsus in omni bus*' cannot be applied merely because the witnesses are disbelieved in certain aspects. Their entire evidence need not be disbelieved. The trial is a voyage for the truth. It is the duty of the Court to remove the chaff from the grain to unravel the truth with the available materials. The specific evidence of P.W.12 before this Court is that on 02.01.2012, 9 accused came in three different Autos and A1 to A4 barged into the room of the deceased doctor Sedhu Lakshmi and A1 to A5 cut her indiscriminately and other four accused stood at the entrance of the hospital. His evidence is totally contradictory to his earlier version in Ex.P.2. It is the specific version of P.W.12 in Ex.P.2 that A4 was in the auto and only A1 and A6 barged the room of the doctor and cut her. Whereas before this court, it is the evidence of P.W.12 that A6, A7, A9 and another stood in front of the hospital and only A1 to A5 entered the room of the deceased. This version is highly doubtful and totally contradictory to his earlier version. It is further to be noted that the earlier version specifically attributed overt act against A1 and A6 whereas before this Court, his version attributes overt act against A1, A5 and A6. It is further to be noted that P.W.12 has also given a statement before the Judicial Magistrate under 164. In his 164 statement, he has never whispered about A2 coming to



the hospital at the relevant point of time.

16. It is further curious to note that on the date of P.W.12's examination, A5, A6 and A9 were in fact absent before the Court. Despite their absence, he has identified them in the Court which is improbable. It is his further evidence that he has no acquaintance with the other accused and that he has seen them for the first time. Admittedly, identification parade is also not conducted by the prosecution. Therefore, P.W.12's identification of all the other accused in the trial even if three of the accused were absent on that day is highly improbable and creates a doubt. Admittedly, he is acquainted only with A1, since A1 and his wife are frequent visitors to his hospital. This aspect has not been explained. As per the admission of P.W.12, he had acquaintance of A2 to A10 only at the time of occurrence. Even then, he has not implicated them in the First Information Report. But, even in the inquest, he has not spoken about A2. Similarly, in his 164 statement also he has not spoken about A2.

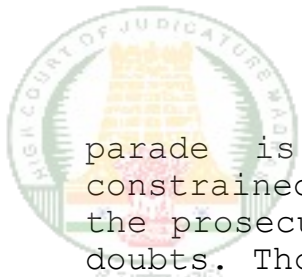
17. Further in his cross examination, P.W.12 clearly admitted that since he has given the complaint that the auto was driven by one Abbas Maraikayar and since his name is given in the FIR, the police wanted to add the said Abbas as an accused in this case. Only after that Abbas was added as an accused, namely, A4. All these facts create a serious doubt about his version as against all the other accused. Admittedly, P.W.12 has allegedly seen A2 to A9 for the first time in the occurrence. However, he has not given a complaint about all other accused. The word 'Silar' (others) has been specifically inserted in FIR to include many number of accused in this case. The earlier version appears to be the correct version and only at the intervention of the police, the name of other accused have been included. Even at the time of complaint, the police influence was very much present as per the evidence of P.W.10.

18. Therefore, we are of the view that since there is serious contradiction between the earlier version of P.W.12 in the complaint and the evidence and further since the test identification parade has not been conducted, P.W.12's identification of the accused with their specific names is doubtful. We are of the view that the evidence of P.W.12 as against A2 and A9 is liable to be rejected. Though, in normal circumstances, once the evidence is disbelieved, the accused are entitled to the benefit of doubt, in this case, it is the duty of the Court to unravel the truth and remove the chaff from the grain. Though P.W.12 has given a different version, his presence in the hospital is not disputed. Similarly, motive aspect is also clearly established as against A1 and P.W.12's evidence in the earlier version though appears to be exaggerated and improved as ~~Services as per the evidence~~ accused are concerned, the participation of this accused A1 is clearly established. This is not only by evidence of P.W.12 alone but also by the scientific evidence.



19. Admittedly, A1 was arrested by P.W.29 and not only the billhook was seized from him but also the blood stained shirts. M.Os.22 to 28 were seized by the investigation officer from A1 along with the Billhook. The same were sent to the forensic lab and the Serological Report [Ex.P.36], Biological report [Ex.P.35] show that one of the shirts namely, red colour half hand shirt was found with 'A' group human blood. 'A' group is the blood group of the deceased which has been established by the Serological Report [Ex.P.36]. The investigation officer evidence and the evidences of the witnesses accompanied by the arrest of A1 clearly establish the seizure of these material objects. Particularly in M.O.20, 'A' group human blood was detected in the material object seized from A1. Human blood was detected in other material objects seized from the other accused also.

20. In view of the Blood Group being not established from other material objects seized from other accused, merely on the basis of biological report and serological report, we are not in a position to conclude that other accused also participated in the trial. As far as A1 is concerned, his identity is not in dispute. He is well known to P.W.12 and the motive against him is also clearly established by the prosecution and P.W.12 evidence and earlier version clearly prove the participation of A1 in the occurrence on that particular day. Though, we disbelieve the evidence of P.W.12 in respect of other accused, in view of the serological report which contained deceased blood group in the material objects seized from A1, coupled with the evidence of P.W.12, we hold that scientific evidence is conclusive to establish the complexity of A1 with the crime. No doubt, the post-mortem doctor's evidence clearly shows that the deceased succumbed injuries due to various cut and stab injuries. The nature of injuries inflicted on the deceased is nothing but gruesome. The injuries inflicted on the deceased prove that more number of persons are involved in the occurrence. To substantiate the medical evidence, the possibility of including more accused by the police at later point of time cannot be ruled out. P.W.12 was also in the state of shock at the relevant point of time. Though he has given some earlier version, he had to stick on to the version of the police during trial to see that justice is rendered to him. So, merely because he had to stick on to the police version in his evidence and his evidence appears to create doubt about the other accused, we are of the view that his entire evidence cannot be disbelieved. Applying the principle that it is the duty of the Court to remove the chaff from the grain, scanning his evidence and his conduct, the fact that the motive has also been established against A1 and scientific evidences also conclusively establish his participation in the occurrence, we hold that the prosecution has clearly established the role of A1 in the death of the deceased. Though the nature of injuries suggest that many number of people are involved in view of the serious doubt and the fact that no test identification



parade is conducted as against the other accused, we are constrained to hold that as far as other accused are concerned, the prosecution has not established the charges beyond reasonable doubts. Though, the learned Additional Advocate General has relied upon the judgment of the Apex Court in State of Uttar Pradesh Vs. Krishna Master & others, contending that FIR is only a piece of information and not an encyclopedia, the said case is factually not applicable to the case on hand.

21. Accordingly, we hold that conviction rendered by the trial Court as against A2 to A10 under various charges is not in accordance with law and liable to be interfered with. Trial Court in fact having held that some of the accused are guilty under Section 148 IPC, failed to apply the legal principles. Once unlawful assembly is established, then the member of such assembly is also liable for any offence committed by any member of such unlawful assembly. At any event, since the charges against the other accused have not been established by the prosecution, we hold that they are entitled for acquittal.

22. In the result,

(i) the appeal filed by Accused No.1 in CrI.A.[MD]No.313 of 2015 is dismissed and the conviction and sentence imposed on Accused No.1 by the trial Court for the offences under Sections 148, 449 and 302 IPC are hereby confirmed.

(ii) the appeals filed by Accused Nos.2, 3, 4, 5, 7 and 9 in CrI.A[MD]Nos.8 of 2016, 364 of 2015, 322 of 2015, 13 of 2016 and 204 of 2016 are allowed and the conviction and sentences imposed by the trial court on these appellants namely, A2, A3, A4, A5, A7 and A9 are hereby set aside and they are acquitted of all the respective charges. Fine amount, if any, paid by the Accused Nos.2, 3, 4, 5, 7 and 9 shall be refunded to them. Bail bond, if any executed by the Accused No.9 and the sureties shall stand terminated. The Accused Nos.2, 3, 4, 5 and 7 are directed to be released forthwith, unless their custody is required in connection with any other case.

(iii) the appeal filed by the State in CrI.A.[MD]No.458 of 2016 against the acquittal of Accused Nos.6 to 10 is dismissed. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-IV)



To

1. The Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court),
Thoothukudi, Thoothukudi District.
2. DO THROUGH the principle District Judge, Thoothukudi.
3. The Judicial Magistrate No.1, Thoothukudi.
4. do through, the Chief Judicial Magistrate, Thoothukudi.
5. The District Collector, Thoothukudi.
6. The Director General of Police, Mylapore, Chennai.
7. The Superintendent, Central Prison, Palayamkottai, Tirunelveli.
8. The Superintendent of police, Thoothukudi.
9. The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi, Thoothukudi District.
10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

- +1 CC To MR.A.THIRUVADI KUMAR, Advocate SR. NO. 86571
- +1 CC To MR.A.BANUMATHY, Advocate SR. NO.86875
- +1 CC To MR.A.JOSEPHJAWAHAR, Advocate SR. NO. 86400
- +1 CC To MR.S.RAMASAMY, Advocate SR. NO.86515
- +1 CC To MR.S.MANOKARAN, Advocate SR. NO. 86326

COMMON JUDGMENT MADE IN
Crl.A. [MD].Nos.313, 322 & 364 of 2015
and 8, 13, 204 & 458 of 2016
25.09.2018

MR

TR/RP/SAR-IV(22.11.2018)16P 18C