



BAIL SLIP

Patti @ Kathiravan, S/o.Rajendran, Accused No.4 was released on bail vide order of this Court dated 04.08.2017 made in CrI.MP(MD) No.3820/2016 in CrI.A(MD)No.146 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED : 08.12.2017

PRONOUNCED : 05.01.2018

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

CRL.A[MD].No.146 of 2016

1.Rocky @ Rajesh
2.Ramadurai
3.Patti @ Kathiravan : Appellants/Accused Nos.1, 2 & 4

Vs.

The State, represented through
the Inspector of Police,
Vengamedu Police Station,
Karur District,
Crime No.107 of 2012. : Respondent/Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 24.03.2016 made in S.C.No.32 of 2014, on the file of the Fast Track, Mahila Court, Karur.

For Appellant Nos.1 &2: Mr.V.Ramamurthy

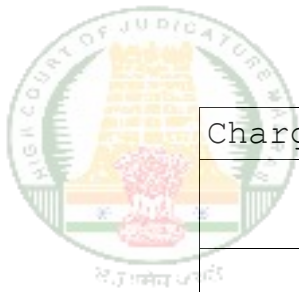
For Appellant No.3 : Mr.M.Venkateshwaran

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

R.SUBBIAH, J.

The appellants are the accused Nos.1, 2 and 4 in S.C.No.32 of 2014, on the file of the Fast Track, Mahila Court, Karur. Totally, there were ten accused in the case. The third accused died during trial and thus, the charges framed against him stood abated. The Trial Court framed as many as five charges against the accused, as detailed below.



Charge	Accused	Penal Provisions
1	1,3,4,5,6,8 and 10	120-B r/w 302 IPC
2	1 to 9	147 IPC
3	1 to 9	148 IPC
4	1 to 4	302 IPC
5	5 to 9	302 r/w 149 IPC

2. By Judgment dated 24.03.2016, the Trial Court has acquitted some of the accused as follows:-

Accused	Penal Provisions
1,4,5,6,8 and 10	120-B r/w 302 IPC
1, 2 and 4 to 9	147 and 148 IPC
5 to 9	302 r/w 149 IPC

However, the Trial Court has convicted the accused Nos.1, 2 and 4 and sentenced them, as detailed below:-

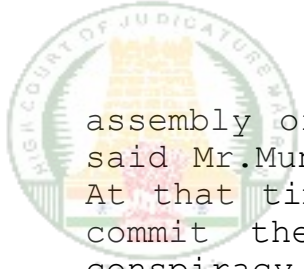
Accused	Section of Law	Sentence of imprisonment	Fine amount
1, 2 and 4	302 IPC	To undergo imprisonment for life.	Rs.1,000/- each in default to undergo simple imprisonment for one month.

Challenging the said conviction and sentence, the appellants/the accused Nos.1, 2 and 4 have come up with this Criminal Appeal.

3. The case of the prosecution, as put forth by its witnesses, is consciously narrated below:-

The deceased, in this case, is one Mr.Pithan @ Sakthi. PW-1 is a resident of Balammalpuram Village, Karur Taluk and a friend of the deceased. PW-6, who is the *de facto* complainant, is stated to be in a relationship as that of the sister to the deceased. PW-6 is a resident of Balammalpuram Village, Karur Taluk. One month prior to the occurrence, there was a quarrel between the deceased and the fourth accused in a Wine Shop situated near the Government Colony, in which the deceased, one Mr.Ragu @ Ragupathi, who is the sister's son of the deceased and one Mr.Muniappan stabbed the fourth accused. The fourth accused challenged the deceased that he will not spare him, after he was discharged from the hospital. This is stated to be the motive for the occurrence between the fourth accused and the deceased.

3.2. It is further alleged that on 11.03.2012, at about 04.45 PM, when PW-1 and one Muniappan came out of the street to proceed to a Textile Shop at Karur, they found the tenth accused, who was running a bar at the Wine Shop, situated near the Government Colony, and also found the accused Nos.1, 3, 4, 5, 6 and 8, standing nearby a Road, known as "Five Feet". Suspecting some possible danger on account of unlawful



assembly of the accused Nos.1, 3, 4 to 6, 8 and 10, PW-1 and the said Mr.Muniappan followed the accused Nos.1, 3, 4 to 6, 8 and 10. At that time, the accused Nos.1, 3, 4 to 6, 8 and 10 conspired to commit the murder of the deceased. In pursuance of the said conspiracy, it is alleged that on 11.03.2012, at about 05.00 PM, the accused Nos.1 to 9 came in three different Motorcycles near Balammalpuram Main Road, where the accused was standing and talking in cellphone with somebody and the accused No.10 came in an Omni Car and on seeing the deceased, the accused Nos.5 to 9, instigated the other accused to do away with the deceased. The first accused cut the deceased with aruval on his left neck, the second accused stabbed the deceased on his both sides chest, backside of the body and the left palm and the accused Nos.3 and 4 attacked the deceased with wooden logs on his stomach and hands. The deceased fainted and fell down in a pool of blood.

3.3. It is further alleged that PW-6 and PW-7, who were standing 40 feet away from the place of occurrence and conversing with one Maniyar, tried to catch the accused. All the accused threatened them of dire consequences and fled away from the scene of occurrence with weapons. Immediately, PW-6 and PW-7, went near the deceased and PW-6 carried him on her lap and asked as to who had attacked him, for which the deceased replied and narrated the entire occurrence in a vivid manner. PW-6 and PW-7, immediately, took the deceased in a car to the Amaravathi Hospital, where the deceased was given first aid treatment and thereafter, he was referred to the Government Medical College Hospital at Coimbatore. PW-7 and his relatives took the deceased to the Government Medical College Hospital, Coimbatore.

3.4. On the same day, at 06.30 PM, PW-6 went to the Vengamedu Police Station and made a written complaint. PW-13, on receipt of complaint from PW-6, registered a case in Crime No.107 of 2012 for the offences under Sections 147, 148 and 307 of the Indian Penal Code. EX-P6 is the complaint and EX-P19 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

3.5. Taking up the case for investigation, at 07.45 PM, on 11.03.2012, PW-14 proceeded to the place of occurrence, prepared an Observation Mahazer [EX-P20] and a Rough Sketch [EX-P21] showing the place of occurrence in the presence of PW-5 and another witness. He examined PW-5, PW-6 and one Mr.Kajendran and recorded their statements. At 11.05 PM, PW-14 received intimation from one Mr.Mani, Special Sub-Inspector of Police, that the deceased succumbed to the injuries on the way to Government Medical College Hospital, Coimbatore. On receipt of such intimation, PW-14 altered the case into one under Sections 148 and 302 of the Indian Penal Code and forwarded the alteration report to the Court of Judicial Magistrate. EX-P22 is the alteration report. On 12.03.2012, at 06.00 PM, PW-14 conducted inquest on the body of the deceased in the presence of the panchayat members at the Mortuary, Government Hospital, Karur. EX-P23 is the inquest report. Then, he forwarded the dead body for postmortem

through PW-12. EX-P11 is the requisition submitted by PW-14 to PW-10 for postmortem.

3.6. PW-10 - Dr.S.Prabhakaran conducted autopsy on the body of the deceased. EX-P12 is the postmortem certificate. He noticed the following injuries:-

"1). A curvilinear cut injury with hanging flap of size 17 X 0.5X10 CM in downward direction strong just below the left ear to the centre of the back of the neck.

2). A stab injury 2 X 0.75 CM X muscle depth in right chest 6 CM above the nipple directing upwards and medially, slit like in shape, both angles sharp with blood clot, cleancut margins.

3. Incised wound 6 X 0.25 CM X skin depth present horizontally over right chest near right nipple.

4. An incised wound 2 X 0.25 X skin depth over the left arm.

5. An incised wound 4 X 0.5 CM X skin depth near injury No.4

6. An incised wound 2 X 0.5 CM X muscle depth over left arm just above the elbow.

7. An incised wound 1 X 0.25 X skin depth over right little finger injuries 3 to 7, have clean cut margins, everted edges, spindle shaped.

8. A stab wound 3 X 1 CM X cavity depth over left back just below the scapula, elliptical in shape, clean cut margins, both the angles are sharp directing downwards and laterally.

9. A stab injury 2 X .0.75 CM cavity depth over back in the left paramedian at the level of 1.2 spine, slit like shaped, cleancut margins with blood clot, both the angles sharp directing forward, placed vertically.

10. Incised wound 6 X 0.25 X skin depth over right back with cleancut margins. Old skull - intact, Brain - Pale, Hyoid bone - intact, thoracic cavity contains 750 ml of blood, Ribs - fractures, 8, 9 left side injury No.8 dissected and is found to be piercing the skin posterior thoracic wall in downwards and lateral direction and ends in piercing the lower lobe of the left lung [torn] a punctured wound of size 3X 0.5 CM with cleancut margins both the angles are sharp. Heart chambers - empty. Abdominal cavity contains 500 gms of clotted blood. Stomach contains 300 gms of undigested food particles. Injury No.9 dissected and found to be piercing the skin, posterior abdominal wall and ends in a cut injury of size 1 X 0.5 X 0.5 CM over the posterior surface of left kidney with cleancut margin elliptical in shape, both the angles are sharp".

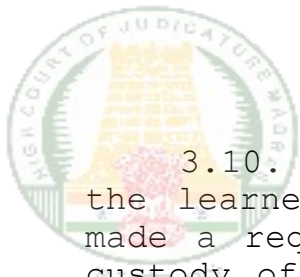
He reserved opinion regarding the cause of death pending report of chemical analysis. The report shows that the deceased would appear to have died of shock and hemorrhage due to injury to vital organs.



3.7. PW-14 examined PW-4, PW-7 and the other witnesses and recorded their statements. Then, he recovered a cement colour lungi with bloodstains, [MO-7] worn by the deceased at the time of occurrence. On 13.03.2012, PW-14 examined PW-1 and another witness and recorded their statements. On 14.03.2012, PW-14 examined PW-2 and PW-3 and recorded their statements.

3.8. On 16.03.2012, at about 02.00 PM, PW-14 arrested the accused Nos.2 and 7 near a Matriculation School situated on the Karur - Coimbatore Main Road. On such arrest, the second accused gave a voluntary confession in the presence of PW-8, the Village Administrative Officer, in which he disclosed the place, where he had hidden the bloodstained shirt and a knife. In pursuance of the same, the second accused took the police and the witnesses to the hide out and produced the bloodstained shirt [MO-8] and the knife [MO-2]. PW-14 recovered the same under a mahazer. The admissible portion of the confession statement given by the second accused is EX-P24. The seventh accused also gave a voluntary confession, in which he disclosed the place, where he had hidden a Motorcycle. In pursuance of the same, the seventh accused took the police and the witnesses to the hide out and produced the Yamaha Motorcycle bearing Registration No.TN-47-D-9898 [MO-5]. PW-14 recovered the same under a mahazer. The admissible portion of the confession statement given by the seventh accused is EX-P25. Then, he forwarded the accused Nos.2 and 7 to the Court for judicial remand. Then, PW-14 examined PW-8 and another witness and recorded their statements. On 17.03.2012, PW-14 examined the doctor, who conducted autopsy on the body of the deceased and recorded his statement and also obtained the postmortem certificate.

3.9. On 14.03.2012, the accused Nos.1, 3, 5 and 6 had surrendered before the learned Judicial Magistrate No.II, Trichy. On 16.03.2012, the accused Nos.4 and 8 had surrendered before the learned Judicial Magistrate No.II, Trichy. On 22.03.2012, PW-14 took police custody of the accused Nos.1, 3, 4, 5, 6 and 8. On 23.03.2012, the accused Nos.1, 3, 4, 5 6 and 8 gave voluntary independent confession statements, in the presence of the witnesses. EX-P27 to EX-P32 are the admissible portions of the confession statements given by the accused Nos.1, 3, 4, 5 6 and 8, in which they disclosed the place, where they had hidden an aruval, [MO-1], a bloodstained full hand shirt [MO-9], wooden log [MO-4], two bloodstained white and brown colour full hand shirts, [MO-10], bloodstained wooden log [MO-3], two sky blue light colour half hand shirts, [MO-8], light yellow colour half hand shirt [MO-11], Black Colour Hero Honda Splender Plus, bearing Registration No.TN-47-L-4875 [MO-12] and Appachi Metalic Colour Two Wheeler, bearing Registration No.TN-47-AA-8514, [MO-13]. Accordingly, the accused Nos.1, 3, 4, 5 6 and 8 took the police and witnesses to Karur - Vankal Main Road and produced the above material objects. PW-14 recovered the same under separate mahazers and forwarded the same to the court. Then, he examined one Mr.Senthilkumar and Mr.Sureshkumar and recorded their statements.



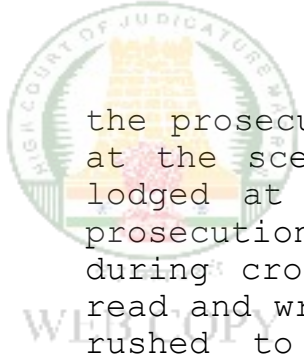
3.10. On 26.03.2012, the accused No.10 had surrendered before the learned Judicial Magistrate No.I, Karur. On 04.04.2012, PW-14 made a request to the learned Judicial Magistrate to grant police custody of the accused No.10 for two days. Accordingly, PW-14 took police custody of the accused No.10, who gave a voluntary confession statement, in which he disclosed the place, where he had hidden a Car. In pursuance of the same, the accused No.10 took the police and the witnesses to the Railway Junction at Salem and produced the car, bearing Registration No.TN-47-W-9378 [MO-6]. PW-14 recovered the same under a mahazer. The admissible portion of the confession statement made by the accused No.10 is EX-P9. Then, he forwarded the accused No.10 to the Court for judicial remand. Then, he examined PW-9 and two other witnesses and recorded their statements. On 17.05.2012, at about 02.00 PM, in front of Panchamadevi Road, PW-14 arrested the accused No.9 and forwarded him to the Court for judicial remand. On completing the investigation, he laid charge sheet against the accused, on 18.06.2012.

3.11. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 14 witnesses were examined, 38 documents and 13 material objects were marked.

3.12. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. On their side, one document was marked as EX-D1. However, they did not choose to examine any witness. Their defence was a total denial. Having considered all the above materials, the Trial Court has acquitted the accused Nos.5 to 10 from the charges levelled against them, however, the Trial Court has convicted the appellants/accused Nos.1, 2 and 4, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants/the accused Nos.1, 2 and 4 are now before this Court with this Criminal Appeal. As we have already stated, the third accused died during trial and thus, the charges levelled against him stood abated.

4. The learned counsel appearing for the appellants would submit that the prosecution, in order to prove the charges, mainly relies upon the evidences of PW-1, PW-6 and PW-7. Though PW-2 and PW-3 have been examined to speak about the conspiracy said to have been hatched by the accused, they have turned hostile and they have not supported the case of the prosecution in any manner. PW-4 is the wife of the deceased. She rushed to the place of occurrence subsequently and saw the deceased lying in a pool of blood and she has spoken about the treatment given to the deceased.

5. The learned counsel for the appellants would also submit that the lodging of complaint by PW-6 was not convincingly proved by



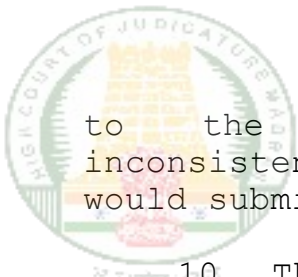
the prosecution. According to him, PW-6 could not have been present at the scene of occurrence and the complaint could not have been lodged at the time and in the manner, as it is alleged by the prosecution. The learned counsel would further submit that PW-6, during cross-examination, has admitted that she does not know to read and write. However, PW-13, in his evidence has stated that PW-6 rushed to the Vengamadu Police Station and lodged a written complaint. Thus, the evidences of PW-6 and PW-13 are totally contradictory to each other and thus, the lodging of the complaint by PW-6 was not proved by the prosecution. The place of occurrence also was not established by the prosecution and the previous enmity between the accused and the deceased was also not at all proved.

6. The learned counsel for the appellants would further submit that as per the case of the prosecution, immediately after the occurrence, PW-6 came near the deceased, carried him on her lap and asked as to who did this. The deceased mentioned the names of the accused, who cut, stabbed and attacked him with aruval, knife and wooden log. If it is so, according to the learned counsel, the dress worn by PW-6 would have been stained with blood. However, no bloodstained dress of PW-6 was recovered, which, according to the learned counsel, would show that PW-6 was not at all present at the time of occurrence.

7. Furthermore, the learned counsel for the appellants would submit that PW-6 came to know about the assailants only from the deceased, which would go to show that she was not aware of the identity of any of the accused. Had it been true that PW-6 was present at the time of occurrence, certainly, she would not have asked the deceased as to who were all the persons, who had cut, stabbed and attacked him with which weapons.

8. The learned counsel for the appellants would also submit that when the Trial Court having refused to believe the evidence of PW-1 relating to the presence and participation of the accused Nos.5 to 10 at the time of occurrence, ought not have relied upon the evidence of PW-1 in respect of the remaining accused. PW-1, who had taken much interest in following the accused to the scene of occurrence, did not care to inform the police about the occurrence for two days, which, according to the learned counsel, is highly unbelievable. The non-examination of PW-1 for two days, immediately after the occurrence was not explained to the satisfaction of the Court by the prosecution. If really PW-1 was present at the time of occurrence, certainly, PW-1 would have made a complaint to the police immediately, whereas, the complaint was preferred by PW-6, which goes to the very root of the case of the prosecution.

9. The learned counsel for the appellants would also submit that the prosecution has failed to collect the accident register copy relating to the treatment particulars of the deceased from Andravathi Hospital, where the deceased took treatment. Thus, the earliest document has been suppressed by the prosecution. Referring



to the above improbabilities, contradictions and the inconsistencies, the learned counsel appearing for the appellants would submit that the appellants are entitled for acquittal.

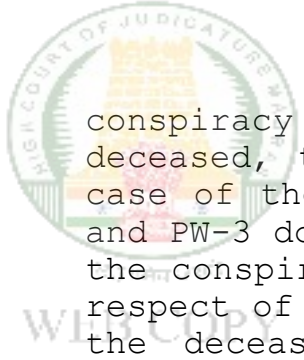
10. The learned Additional Public Prosecutor, would however, oppose this Criminal Appeal. According to him, the prosecution has clearly proved the case with cogent and convincing evidences of PW-1, PW-6 and PW-7, who have narrated the entire occurrence in a vivid manner and the Trial Court has considered the entire case of the prosecution and has come to the right conclusion that it was these accused, who had caused the death of the deceased. Under such circumstances, no infirmity can be found on the conviction and sentence recorded by the Trial Court. Thus, the learned Additional Public Prosecutor would pray for dismissal of the Criminal Appeal.

11. We have given our anxious consideration to the submissions made by the learned counsel appearing for the appellants as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

12. The case of the prosecution is that one month prior to the occurrence, the fourth accused, namely, Patti @ Kathiravan was assaulted by the deceased, Raghu @ Raghupathi and one Muniappan with knife, which is stated to be the motive for the occurrence. It is further alleged that on 11.03.2012, at about 04.45 PM, when PW-1 and one Muniappan came out of their street to proceed to a Textile Shop at Karur, they found the tenth accused standing near a Public Toilet at Balammalpuram and the accused Nos.1 to 4 were also standing nearby a Road, known as "Five Feet". Suspecting about their unlawful assembly and anticipating that there may be possible danger at the hands of the accused, PW-1 and the said Muniappan followed the accused Nos.1, 3, 4 to 6, 8 and 10. At that time, the accused Nos.1, 3, 4 to 6, 8 and the accused No.10, who was running a bar at the Wine Shop, situated near the Government Colony, conspired to commit the murder of the deceased.

13. In pursuance of the said conspiracy, it is alleged that on 11.03.2012, at about 05.00 PM, the accused Nos.1 to 9 came in three different Motorcycles near Balammalpuram Main Road, where the accused was standing and talking over the cellphone with somebody and the accused No.10 came in an Omni Car and on seeing the deceased, the accused Nos.5 to 10, instigated the other accused to do away with the deceased. The first accused cut the deceased with aruval on his left neck, the second accused stabbed the deceased on his both sides chest, backside of the body and the left palm and the accused Nos.3 and 4 attacked the deceased with wooden logs on his stomach and hands. The deceased fainted and fell down in a pool of blood and died subsequently.

14. In order to prove the charges, the prosecution mainly relies upon the evidences of PW-1, PW-2, PW-3, PW-6 and PW-7. Though PW-2 and PW-3 have been examined to speak about the



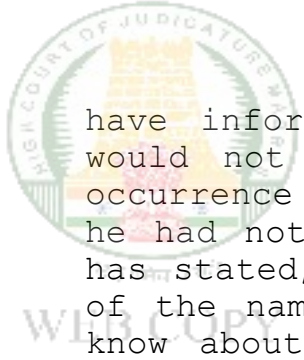
conspiracy hatched by the accused to commit the murder of the deceased, they have turned hostile and they have not supported the case of the prosecution in any manner. Thus, the evidences of PW-2 and PW-3 do not come to support the case of the prosecution to prove the conspiracy. The Trial Court has also rejected their evidence in respect of conspiracy hatched by the accused to commit the murder of the deceased and the Trial Court has, thus, acquitted all the accused from the charge under Section 120-B of the Indian Penal Code.

15. Now, turning to the evidences of PW-1, PW-6 and PW-7, they are chance witnesses. It is the law that unless the reason for their presence at the time and place of occurrence is explained to the satisfaction of the Court, their presence cannot be believed. Being chance witnesses, it is for them to explain to the satisfaction of the Court as to what made them to be present at the place of occurrence and as to for what purpose, they went to the place of occurrence. If there is no satisfactory explanation for their presence at the place of occurrence, then, their evidences become doubtful.

16. In the instant case, absolutely, there was no cause for PW-1, PW-6 and PW-7 to be present at the place of occurrence. The explanation of PW-1 was that suspecting the unlawful assembly of the accused and anticipating that there may be some possible danger, PW-1 and one Muniappan just followed the accused 40 feet away from the place of occurrence. This explanation is hard to be accepted.

17. Further PW-1, in his chief-examination, had stated that when he and one Mr.Muniappan came out of their street to proceed to a Textile Shop at Karur, the occurrence had taken place. However, the above said Mr.Muniappan did not come to the witness box to speak about the occurrence. There was no explanation on the side of the prosecution as to why the said Mr.Muniappan was not examined by the prosecution. Furthermore, had it been true that PW-1 was really present at the time of occurrence and witnessed the occurrence, as it is alleged by the prosecution, either PW-6 or PW-7 would have certainly made mention about the presence of PW-1 at the time of occurrence in their chief-examination and they would not have omitted to say about the presence of PW-1.

18. Now, turning to the conduct of PW-1, the occurrence, in this case, took place on 11.03.2012, at about 05.00 PM. PW-1, in his evidence, has stated that he was very much present at the time of occurrence and he went to the Amaravathi Hospital, where the deceased took treatment and he was all along present in the place, where the other witnesses were examined by the police. However, PW-1 along with the said Mr.Muniappan went to the Police Station at about 04.00 PM on 13.03.2012 and he was examined by the police only on 13.03.2012. It is common knowledge that when PW-1 claims to have witnessed the occurrence, certainly and immediately, he would have gone to the Police Station and made complaint or at least he would



have informed the police about the occurrence over phone and he would not have kept quite for two days, without disclosing the occurrence to the police. However, PW-1 has stated that out of fear, he had not disclosed the occurrence to the police. Moreover, PW-1 has stated, during cross-examination, that he was not at all aware of the names of some of the accused and subsequently, he came to know about their names only from the news item published in the paper, which also renders the evidence of PW-1 doubtful and unbelievable. The above unnatural conduct of PW-1 creates enormous doubt in the case of the prosecution, which renders the evidence of PW-1 unbelievable.

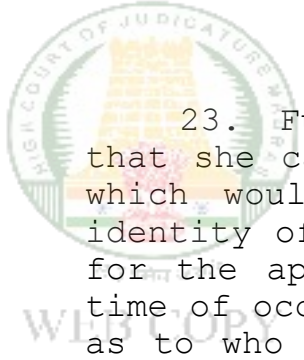
19. In this context, we may usefully refer to the Judgment of the Hon'ble Supreme Court in the case of Puran Vs. the State of Punjab, reported in AIR 1953 SC, wherein it has been held as follows:-

"Such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence".

20. In addition to the above and as rightly pointed out by the learned counsel appearing for the appellants, when the Trial Court has not come forward to believe the evidence of PW-1 relating to the unlawful assembly, presence and participation of the accused Nos.5 to 10 at the time of occurrence, the evidence of PW-1 ought not have been relied upon in respect of the remaining accused.

21. Now, turning to the treatment given to the deceased at Amaravathi Hospital, PW-6, during cross-examination, has stated that immediately after the occurrence, the deceased was taken to the Amaravathi Hospital, where he was admitted in ICU Ward and given treatment. PW-6 and PW-7, who took the deceased to the Amaravathi Hospital, have explained to the doctor about the occurrence. Thereafter, the deceased was referred to the Government Medical College Hospital, Coimbatore. However, the prosecution has failed to collect the accident register copy relating to the treatment particulars of the deceased given at Amaravathi Hospital. Thus, the earliest document has been suppressed by the prosecution. Had the Accident Register pertaining to the treatment given to the deceased been produced by the prosecution, the actual occurrence, that had taken place, would have seen the light of the day.

22. Now, coming to the lodging of complaint by PW-6, during cross-examination, she has admitted that she does not know to read and write, whereas PW-13, in his evidence has stated that PW-6 came to the Vengamadu Police Station and lodged a written complaint. Thus, the evidences of PW-6 and PW-13 are totally contradictory to each other. In view of the same, we find that the complaint lodged by PW-6 is a doubtful document in this case and EX-P6 is shrouded by suspicion. Therefore, the story that PW-6 witnessed the occurrence becomes doubtful. Thus, we find it difficult to act upon the



23. Furthermore, PW-6, during chief-examination, has stated that she came to know about the assailants only from the deceased, which would go to prove that she was not at all aware of the identity of any of the accused. As contended by the learned counsel for the appellant, had it been true that PW-6 was present at the time of occurrence, certainly, she would not have asked the deceased as to who were all the persons, who had cut, stabbed and attacked him. It is in evidence, as we have already pointed out that there were as many as ten injuries found on the body of the deceased. In a highly dramatic manner, the deceased has explained about each and every injury sustained by him and also as to who were all the accused, who cut, stabbed and attacked him with which weapons, when PW-6 carried him and kept him on her lap and each and every individual overt act of four accused, which, in our considered view, would raise a doubt that PW-6 would have spoken about the same out of tutoring. Moreover, when the deceased had sustained ten injuries, which are all severe in nature and when the deceased was struggling for his life, it is not humanely possible to explain as to who had cut, stabbed and attacked him with aruval, knife and wooden log.

24. PW-6 and PW-7 have deposed, in a parrot like manner. PW-6, during cross-examination, has stated that immediately after the occurrence, she and PW-7 rushed near the deceased, carried him, kept him on her lap and asked as to who had attacked the deceased. The deceased mentioned the names of the accused, who cut, stabbed and attacked with aruval, knife and wooden log. PW-7 has stated verbatim, as it was stated by PW-6. If it is so, in our considered view, the dress worn by PW-6 and PW-7 would have been stained with blood. However, no bloodstained dress of PW-6 and PW-7 was recovered. Moreover, PW-6 has also stated, during cross-examination, that the deceased was speaking over a Cellphone with somebody, before the occurrence and after he was attacked, the cellphone fell on the floor. However, the cellphone was not recovered by PW-14 and in EX-P20 also, there was no mention about the presence of cellphone. PW-14, during cross-examination, has also admitted that he did not conduct any investigation about the cellphone, in which the accused was speaking with somebody just three minutes prior to the occurrence.

25. Now, turning to the non-recovery of bloodstained earth and sample earth, PW-1 and PW-6 have stated, during cross-examination, that immediately after the occurrence was over, blood was oozing out from the body of the deceased and the earth stained with blood. However, PW-14, the Investigating Officer, has not recovered bloodstained earth and sample earth from the place of occurrence and there is no mention about the same, even in his chief-examination. However, during cross-examination, PW-14 has stated that at the place of occurrence, he did not notice the bloodstained earth. Though the non-recovery of material objects will not be fatal to the case of the prosecution, going by the conduct of PW-1, PW-6 and PW-7, the manner in which they have adduced evidences, the non-examination of PW-1 for about two days, the manner of lodging of



complaint by PW-6 and the suppression of earliest document, namely the treatment particulars of the deceased at Amaravathi Hospital, in our considered view, the non-recovery of material objects, referred to above, creates enormous doubt and discloses very many inherent infirmities in the case of the prosecution. Thus, we are impelled to hold that the non-recovery of cellphone, bloodstained earth and sample earth would go to establish that the occurrence would not have taken place, as it is projected by the prosecution.

26. Since the lodging of the complaint by PW-6 was not proved by the prosecution and consequent of the same, the First Information Report, in this case, has become a doubtful document and since PW-1, PW-6 and PW-7 are partly believable and partly unbelievable, their evidences, in our considered view, should be fully rejected. In this regard, we may refer to the legal position that the principle of *falsus in uno, falsus in omnibus* has not been recognized by the Indian Courts and in the Indian scenario, if the Court is able to separate the grain from the chaff, there is no legal impediment for the Court to act upon the same and to convict the accused.

27. In the case on hand, PW-1, PW-6 and PW-7 have not passed the said test for the improbabilities and the inconsistencies, which we have discussed hereinabove. The evidences of PW-1, PW-6 and PW-7 do not inspire the confidence of the Court. There are lot of doubts in their evidences. Thus, from the materials available on record, we hold that an attempt has been made by PW-1, PW-6 and PW-7 to rope in as many number of the enemies as the accused in the case so as to take revenge on them. It may be true that some of the accused would have caused the death of the deceased. But, from the evidences available on record, in our considered view, it is not at all possible for this Court to separate the grain from the chaff. In our considered view, the contradictions and the improbabilities, which we have dealt with hereinabove, would go to show that PW-1, PW-6 and PW-7 would not have seen the occurrence at all. Therefore, we are impelled to give the benefit of doubt to the accused and to acquit them. We hold that the prosecution has failed to prove the case beyond reasonable doubts.

28. In the result,

- this Criminal Appeal is allowed;
- the conviction and sentence imposed on the appellants/the accused Nos.1, 2 and 4, by Judgment dated 24.03.2016, made in S.C.No.32 of 2014, on the file of the Fast Track, Mahila Court, Karur, is set aside and the appellants/the accused Nos.1, 2 and 4 are acquitted.
- Fine amount, if any, paid by the appellants/ the accused Nos.1, 2 and 4 shall be refunded to them.
- The appellants 1 and 2/the accused Nos.1 and 2 are directed to be released forthwith, unless their custody is required in connection with any other case.



- Bail bond executed by the third appellant/the fourth accused and the sureties shall stand terminated.

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/True Copy/

Sd/-

Assistant Registrar (C.O)

Sub-Assistant Registrar

To

- 1.The Judge, Fast Track, Mahila Court, Karur
- 2.The Judicial Magistrate No.1, Karur
- 3.Do through the Chief Judicial Magistrate, Karur
- 4.The Superintendent, Central Prison, Trichy
- 5.The Inspector of Police,
Vengamedu Police Station,
Karur District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

NB

RL/9C/13P/KK/SAR1/29/1/2018

JUDGMENT MADE IN
CRL.A[MD].No.146 of 2016

05.01.2018