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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| 12.03.2019  | 21.06.2019   |

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH  
and  
THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD) Nos.277 of 2016 and 379 & 380 of 2018

**Crl.A. (MD) No.277 of 2016:**

T. Siva Balaji ... Appellant / *De facto* Complainant  
vs.

1. Tirupathi Rajan

2 Mohana Rajan

3 Govinda Rajan ...Respondents 1 to 3 / A1 to A3

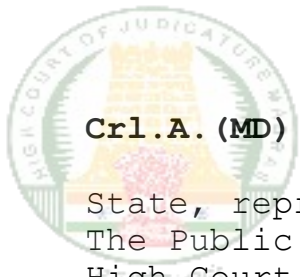
4. State rep.by through  
The Inspector of Police  
Suchindrum Police Station  
Anjugrammam P.S.  
(Crime No.246/2006) .... 4<sup>th</sup> Respondent / Complainant

Criminal Appeal filed under Section 372 Cr.P.C., to call for the records pertaining to the judgment of acquittal dated 29.04.2016 passed in S.C.No.99 of 2007 on the file of the Sessions Court, Kanyakumari Division at Nagercoil and set aside the same.

For appellant : Mr.Veera Kathiravan, Senior Counsel  
for Mr.C.Jeganathan

For respondents : Mr.V.Gopinath, Senior Counsel  
for Mr.N.Pragalathan for R1 to R3

: Mr.R.Anandharaj  
Additional Public Prosecutor for R4

**Crl.A.(MD) No.379 of 2018:**

State, represented by:

The Public Prosecutor

High Court, Madras - 600 104

(Suchindrum P.S.

Crime No.246/2006 of Anjugramam P.S.) ...Appellant / Complainant

vs.

1. Tirupathi Rajan

2. Mohana Rajan

3. Govinda Rajan

... Respondents / Accused

Criminal Appeal filed under Section 378(1)(b) Cr.P.C., to set aside the judgment of acquittal dated 29.04.2016 passed in S.C.No.99 of 2007, by the Sessions Judge, Kanyakumari Division at Nagercoil and convict the respondents / accused as charged in accordance with law.

For appellant : Mr.R.Anandharaj  
Additional Public Prosecutor

For respondents : Mr.V.Gopinath, Senior Counsel  
for Mr.N.Pragalathan

**Crl.A.(MD) No.380 of 2018:**

State, represented by:

The Public Prosecutor

High Court, Madras - 600 104

(Suchindrum Police Station

Crime No.246/2006 of Anjugramam P.S.) ...Appellant / Complainant

vs.

Sree Renga Rajan

... Respondent / Accused

Criminal Appeal filed under Section 378(1)(b) of the Code of Criminal Procedure, to set aside the judgment of acquittal dated 29.04.2016 passed in S.C.No.178 of 2015 by the Sessions Judge, Kanyakumari Division at Nagercoil and convict the respondent / accused as charged in accordance with law.

For appellant : Mr.R.Anandharaj  
Additional Public Prosecutor

For respondent : Mr.V.Gopinath, Senior Counsel  
for Mr.N.Pragalathan

COMMON JUDGMENT

**B. PUGALENDHI, J.,**

While Crl. A. (MD) Nos.277 of 2016 and 379 of 2018 have been preferred by the *de facto complainant* and the State respectively, challenging the judgment and order of acquittal dated 29.04.2016 passed by the Sessions Court, Kanyakumari at Nagercoil in S.C. No.99 of 2007, Crl. A. (MD) No.380 of 2018 has been preferred by the State challenging the judgment and order of acquittal of even date passed by the very same Court S.C. No.178 of 2015.

**2** The terse facts of the case, shorn of the minute details, necessary for deciding these three criminal appeals are as under:

**2.1** At the outset, we wish to clarify that we are not deliberately giving the array of the accused in this judgment and instead, we refer to them by their name, because, due to the abscondence of two of the accused from time to time, their array also has got changed. Similarly, though most of the prosecution witnesses, prosecution exhibits and material objects are common for both the cases, yet, their array is also changed in view of splitting up of the case, as stated above. However, for the sake of convenience, we refer to the array of the prosecution witnesses and the number assigned to the prosecution exhibits and material objects as given in S.C. No.99 of 2017.

**2.2** This is a case in which two persons, *viz.*, Thangavel Nadar (D1) and his son Sivagurunathan (D2) lost their lives allegedly at the hands of seven accused, *viz.*, Tirupathi Rajan, Sivapathi Rajan, Sree Ranga Rajan, Mohana Rajan, Govinda Rajan, Gopalakrishna Rajan and Geethakrishna Rajan, who are brothers.

**2.3** The incident in this case is said to have occurred on 25.04.2006. Thirty years prior to the incident, one Narayana Nadar, the elder brother of Thangavel Nadar (D1) was the Trustee of Ayyavazhi temple at Kumarapuram Thoppur. The seven accused named above are the sons of the said Narayana Nadar. According to the prosecution, Narayana Nadar voluntarily gave up the Trusteeship of the temple and so, it passed on to his younger brother Thangavel Nadar (D1). After some of the sons of Narayana Nadar came of age, they started demanding rights in the administration of the temple from their paternal uncle Thangavel Nadar (D1), which the latter refused to concede. Therefore, the sons of Narayana Nadar unsuccessfully filed a civil suit against Thangavel Nadar (D1) before the District Munsif Court, Nagercoil and thereagainst, an appeal was preferred.

**2.4** While that being so, the temple festival was going on in the third week of April 2006. On 23.04.2006, Tirupathi Rajan came to the temple around 11.00 p.m. and entered the *sanctum sanctorum*. This was resisted by Thangavel Nadar (D1) and there was a scuffle



between the two, resulting in injuries to Thangavel Nadar (D1). An altercation ensued between Thangavel Nadar (D1) and Tirupathi Rajan, in which, it is alleged that Tirupathi Rajan vowed to eliminate Thangavel Nadar's family.

**2.5** On 25.04.2006, around 2.15 p.m., when Thangavel Nadar (D1) and his family members were in their house, all the seven accused, some of them armed with weapons, barged into the house of Thangavel Nadar (D1). Sensing trouble, Thangavel Nadar (D1) and his two sons, viz., Sivagurunathan (D2) and Siva Balaji (P.W.1), escaped through the rear door of their house and came to the street behind their house. They were chased and surrounded by the accused, after which, they were attacked, resulting in the death of Thangavel Nadar (D1) and Sivagurunathan (D2) and injuries to Siva Balaji (P.W.1). This was witnessed by Kasthuri Bai (P.W.2), wife of Thangavel Nadar (D1) and Chandra (P.W.3), wife of Sivagurunathan (D2). All the three were rushed to the Government Hospital, Kanaykumari, where Dr. Ramachandran (P.W.4) examined them around 3.40 p.m. and found that Thangavel Nadar (D1) and Sivagurunathan (D2) were brought dead. As regards Siva Balaji (P.W.1), Dr. Ramachandran (P.W.4) examined him at 3.40 p.m. and issued the copy of the accident register (Ex.P.2) to the Investigating Officer. Dr. Ramachandran (P.W.4) in his evidence as well in the accident register (Ex.P.2), has stated as follows:

*"Nature of injuries/treatment:*

*Alleged assault by 7 known persons with **kz;bt1;o fk;g** on 25.04.2006 about 2.15 p.m. to 2.20 p.m. at his house.*

*Injuries:*

*Contusion over left shoulder size 3 cm. x 2.5 cm.*

*Contusion over posterior sagittal line size 2.5 cm x 2 cm.*

*Patient conscious answering and questions.*

*Pulse 70/mt. BP 120/N*

*CVS*

|    |     |   |                 |
|----|-----|---|-----------------|
|    | NAD | } | Treatment given |
| RS |     |   |                 |

*D.O.A. 25.04.2006*

*D.O.D. 25.04.2006*

**2.6** On the statement (Ex.P.1) given by Siva Balaji (P.W.1), Krishna Raj, (P.W.9), Sub Inspector of Police, registered an FIR in Anjugramam P.S. Cr.No.246 of 2006 on 25.04.2006 at 6.30 p.m. under Sections 147, 148, 452, 341, 323, 307 and 302 IPC against nine accused, which reached the jurisdictional Magistrate on the same day at 10.00 p.m. The investigation of the case was taken over by Raja (P.W.16), Inspector of Police, who went to the place of occurrence at 8.00 p.m. and prepared the observation mahazar (Ex.P.3) and rough sketch (Ex.P.27). From the place of occurrence, he seized bloodstained aggregates and aggregates without bloodstain.

**2.7** On 26.04.2006, Raja (P.W.16), Inspector of Police, conducted inquest over the bodies of the deceased and despatched the bodies for postmortem.



**2.8** Dr. Geetha performed autopsy on the body of Sivagurunathan (D2) and issued postmortem certificate (Ex.P.14). Since she retired from service in 2009 and settled in Japan, the prosecution examined Dr. Dhanasekar (P.W.13), who had worked with her, to prove the postmortem certificate. In the evidence of Dr. Dhanasekar (P.W.13) as well in the postmortem certificate (Ex.P.14), it is stated as under:

**"Injuries:**

1 A lacerated oblique wound on the right jaw (upper  $1/3^{rd}$ ) of extending to the middle of lower lip right lower middle 2 incisor chopped off and seen separated from the jaw 10 cm. X 5 cm. left right end 2 cm. and left end 1 cm. Depth: enters into the oral cavity. Multiple fracture of mandible along the line of injury face disfigured.

2 A lacerated transverse wound on the left side of jaw 1 cm. below the left side of lower lip 1 cm. lateral to the 1<sup>st</sup> injury,  $2\frac{1}{2}$  cm. x  $\frac{1}{2}$  x  $\frac{3}{4}$  cm.

3 A lacerated transverse wound on the right frontal area of scalp 4 cm. above the right eyebrow, 3 cm. and  $\frac{3}{4}$  cm. x bone depth.

4 A linear lacerated wound on the right parietal region of scalp  $7\frac{1}{2}$  x 3 cm. at left and at edge anterior, posterior -  $\frac{1}{2}$  cm. Blood clots present on exploring depressed fracture of right parietal bone along the line of injury.

**Opening of head:**

On flapping the scalp, blood clots seen on the right tempora parietal region of scalp. Brain - pale weight - 1100 gm. brain along with membranes exposed corresponding to 4<sup>th</sup> injury. Heart weight 275 gm. C/s dark coloured blood clots. Lung - pale weight right 475 gms., left 400 gms. - Hyoid bone - intact. Stomach - undigested rice particle and weight 200 gm. Liver - pale weight 1000 gm c/s pale. Spleen weight 90 gm. Kidney weight right, left 100 gm. c/s pale. Death would appear to have occurred 20 - 22 hours prior to postmortem. Postmortem concluded at 12.30 p.m. on 26.04.2006.

The deceased would appear to have died of shock and hemorrhage due to injury of vital organ (brain) and due to multiple injuries."

**2.9** Thereafter, Dr. Geetha conducted postmortem on the body of Thangavel Nadar (D1) and issued the postmortem certificate (Ex.P.17). In the evidence of Dr. Dhanasekar (P.W.13) as well in the postmortem certificate (Ex.P.17), it is stated as follows:

**"Injuries:**

1 A linear lacerated wound in the occipital region of scalp towards the centre 9 cm x 2 cm left and edges 1 cm. x bone depth.

2 Depressed fracture on the left maxilla on exploring depressed fracture on the left mandible (face disfigured).

3 Greenish discoloured old wound on the right big toe.

4 On exploring the thorax: - Depressed fracture just below the manubrium sterni including 3<sup>rd</sup> and 4<sup>th</sup> rib left medial end. haematoma present intercostal muscle crushed. 200 ml. of dark coloured fluid blood in the thoracic cavity.

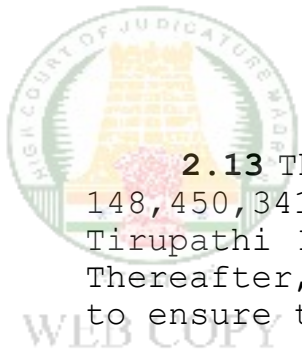
5 Nose fracture at the root and disfigured. Mouth and lips open, pale. Tongue inside pale. Jaws - open. Teeth - broken artificial denture. Extremities both limb extended finger flexed. Heart - pale weight 275 gms. c/s empty. Blood dark coloured. Lung - pale weight right 375 gm. left 350 gm. Hyoid bone intact. Stomach - undigested rice particles present weight 200 gm. pale, liver - pale weight 1000 gm, spleen - pale weight 90 gm. - Kidneys - pale weight 100 gm each. Intestines - pale, brain - membrane intact weight 1100 gm pale death would appear to have occurred 20-22 hours prior to postmortem. Postmortem concluded at 1.40 p.m.

The deceased would appear to have died of shock and hemorrhage due to multiple injuries."

**2.10** The police arrested Tirupathi Rajan, Sree Renga Rajan, Govinda Rajan, Gopalakrishna Rajan and Geethakrishna Rajan and recorded their confession statements, pursuant to which, spade (M.O.1), billhook (M.O.2), pounder (M.O.3), etc. were seized.

**2.11** Investigation of the case was continued by Pauldurai (P.W.17), Inspector of Police, who examined witnesses, obtained various reports and filed final report in P.R.C. No.23 of 2006 on 12.07.2006 before the Judicial Magistrate, Nagercoil against Tirupathi Rajan, Sivapathi Rajan, Sree Ranga Rajan, Mohana Rajan and Govinda Rajan. Since Geethakrishna Rajan and Gopalakrishna Rajan were juveniles, in respect of them, final report was filed before the Juvenile Court.

**2.12** In the final report filed in P.R.C. No.23 of 2006, Sivapathi Rajan and Mohana Rajan were shown as absconding accused and the case against them was split up at the Magistrate Court itself and the case against Tirupathi Rajan, Sree Ranga Rajan and Govinda Rajan was committed to the Court of Session in S.C. No.99 of 2007.



**2.13** The Court of Session framed charges under Sections 148, 450, 341, 302 (2 counts) read with Section 149 and 324 IPC against Tirupathi Rajan, Sree Ranga Rajan and Govinda Rajan on 30.06.2008. Thereafter, the accused adopted every possible trick under the sun to ensure that the trial did not begin.

**2.14** While that being so, Mohana Rajan was arrested by the police and his case was committed to the Court of Session and he was arrayed as an accused in S.C. No.99 of 2007. Similar charges were framed against Mohana Rajan also.

**2.15** Ultimately, trial began in S.C. No.99 of 2007 against four accused, viz., Tirupathi Rajan, Mohana Rajan, Govinda Rajan and Sree Ranga Rajan and date was fixed for examination of Sivapathi Rajan (P.W.1) and other witnesses. However, on 28.09.2015, Sree Ranga Rajan absconded and therefore, the Trial Court split up the case against Sree Ranga Rajan as S.C.No.178 of 2015.

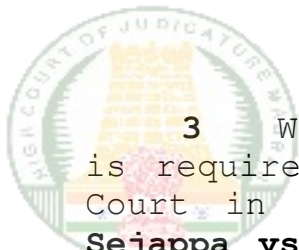
**2.16** Siva Balaji was examined as P.W.1 in S.C. No.99 of 2007 on 29.09.2015. Since the accused did not engage a counsel, the witness was recalled on 15.10.2015 for cross-examination. Thereafter, Sree Ranga Rajan was arrested and the trial in S.C. No.178 of 2015 began on 07.12.2015 with the examination of Siva Balaji as P.W.1.

**2.17** Thus, both the trials, viz., the trials in S.C. No.99 of 2007 and 178 of 2015 started proceeding simultaneously from 07.12.2015.

**2.18** In S.C. No.99 of 2007, the prosecution examined 17 witnesses and marked 32 exhibits and 10 material objects. In S.C. No.178 of 2015, the prosecution examined 16 witnesses and marked 28 exhibits, which are certified copies of exhibits marked in S.C. No.99 of 2007 and marked 10 material objects which were also marked in S.C. No.99 of 2007.

**2.19** The accused were questioned under Section 313 Cr.P.C. separately in both the cases. No witness was examined on behalf of the accused nor any document marked on their behalf in both the cases.

**2.20** After analysing the evidence on record and hearing either side, the Trial Court, by two separate judgments in S.C. No.99 of 2007 and S.C. No.178 of 2015, delivered on 29.04.2016, acquitted all the four accused, aggrieved by which, Siva Balaji (P.W.1) has filed Crl. A. (MD) No.277 of 2016 challenging the acquittal of Tirupathi Rajan, Mohana Rajan and Govinda Rajan and the State has preferred two appeals, viz., Crl. A. (MD) No.379 of 2018 challenging the acquittal of Tirupathi Rajan, Mohana Rajan and Govinda Rajan in S.C. No.99 of 2007 and Crl.A.(MD) No.380 of 2018 challenging the acquittal of Sree Ranga Rajan in S.C. No.178 of 2015.



3 While dealing with an appeal against acquittal, this Court is required to bear in mind the guidelines issued by the Supreme Court in various decisions, which have been referred to in **V. Sejappa vs. State by Police Inspector Lokayukta, Chitradurga**<sup>1</sup>, the relevant portion of which reads as under:

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"23. In *Muralidhar alias Gidda and Anr. v. State of Karnataka* (2014) 5 SCC 730, this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in paragraph (12) held as under:-

"12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu* AIR 1954 SC 1, *Madan Mohan Singh* AIR 1954 SC 637, *Atley* AIR 1955 SC 807, *Aher Raja Khima* AIR 1956 SC 217, *Balbir Singh* AIR 1957 SC 216, *M.G. Agarwal* AIR 1963 SC 200, *Noor Khan* AIR 1964 SC 286, *Khedu Mohton* (1970) 2 SCC 450, *Shivaji Sahabrao Bobade* (1973) 2 SCC 793, *Lekha Yadav* (1973) 2 SCC 424, *Khem Karan* (1974) 4 SCC 603, *Bishan Singh* (1974) 3 SCC 288, *Umedbhai Jadavbhai* (1978) 1 SCC 228, *K. Gopal Reddy* (1979) 1 SCC 355, *Tota Singh* (1987) 2 SCC 529, *Ram Kumar* (1995) Supp 1 SCC 248, *Madan Lal* (1997) 7 SCC 677, *Sambasivan* (1998) 5 SCC 412, *Bhagwan Singh* (2002) 4 SCC 85, *Harijana Thirupala* (2002) 6 SCC 470, *C. Antony* (2003) 1 SCC 1, *K. Gopalakrishna* (2005) 9 SCC 291, *Sanjay Thakran* (2007) 3 SCC 755 and *Chandrappa* (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It



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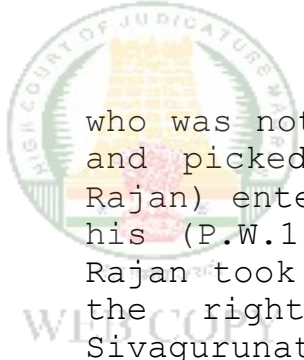
is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

4 As stated above, the dilatory tactics adopted by the accused before the Trial Court have been vividly set out in paragraph nos. 6 to 12 of the judgment of the Trial Court, which are indeed self-explanatory and require no further expatiation. It is obvious that the accused would not have expected the injured witness and the widows of the deceased to turn hostile, but, would have gained time to win over other independent witnesses.

5 In the memo of evidence appended to the final report, the Investigating Officer has included the name of seven persons as eyewitnesses, apart from the three relatives of the deceased. The trial in respect of the offence which took place in the year 2006, began with the examination of Siva Balaji (P.W.1) in the year 2015 and the prosecution was able to examine only three eyewitnesses and not the other four independent eyewitnesses for obvious reasons. Therefore, it has become imperative for us to discuss in detail the evidence of the three witnesses, viz., Siva Balaji (P.W.1), Kasthuri Bai (P.W.2) and Chandra (P.W.3).

6 Siva Balaji (P.W.1), S/o Thangavel Nadar (D1) and the brother of Sivagurunathan (D2), has stated in his evidence that his father was the chief of Ayyavazhi temple, to which is attached, around 20 families; about 30 years ago, Narayana Nadar, the father of the accused, was the chief of Ayyavazhi Temple and he voluntarily gave up the position and later, died 20 years ago; every year, the temple festival will be held for ten days from the birth of the Tamil calendar year; accordingly, the festival was held from 14.04.2006 to 23.04.2006; on the last date of the festival, i.e., 23.04.2006, his father Thangavel Nadar (D1) was distributing the collected amount to the stakeholders; at that time, Tirupathi Rajan



who was not a stakeholder, came to the temple at 11.30 in the night and picked up quarrel with Thangavel Nadar (D1); he (Tirupathi Rajan) entered the *sanctum sanctorum* of the temple, on seeing which, his (P.W.1's) brother Sivagurunathan (D2) prevented him; Tirupathi Rajan took a lamp from the *sanctum sanctorum* and caused injuries to the right toe of Thangavel Nadar (D1); on seeing this, Sivagurunathan (D2) intervened and pacified Tirupathi Rajan; at that time, Tirupathi Rajan vowed that he and his brothers will eliminate the entire family of Thangavel Nadar (D1); saying so, he (Tirupathi Rajan) left the place; his father (Thangavel Nadar-D1) gave a complaint to the police station; on 25.04.2006, at 2.15 p.m., while he (P.W.1) was in his house with his father Thangavel Nadar (D1), his brother Sivagurunathan (D2), his mother Kasthuri Bai (P.W.2) and sister-in-law Chandra (P.W.3), wife of Sivagurunathan (D2), Tirupathi Rajan and Sivapathi Rajan, each carrying a spade, Sree Ranga Rajan armed with a billhook, Mohana Rajan armed with a pounder, Govinda Rajan, Gopalakrishna Rajan and Geethakrishna Rajan, each armed with a danda, entered their house; on seeing them entering the house, his father (Thangavel Nadar-D1), his brother (Sivagurunathan-D2) and he (P.W.1), escaped through the rear entrance and came to the East Street; all the seven accused chased and rounded up them near the house of one Muthuswami (not examined); Tirupathi Rajan attacked his father (Thangavel Nadar-D1) with a spade on his head; Sivapathy Rajan gave a blow with a spade on Sivagurunathan's (D2's) head; Sree Ranga Rajan hacked Sivagurunathan (D2); Mohana Rajan hit him (P.W.1) with a pounder on his left shoulder; Govinda Rajan hit him (P.W.1) forcefully on his head; Gopalakrishna Rajan aimed a blow using a danda on his (P.W.1's) head; but, he (P.W.1) staved off the attack with his right hand; Geethakrishna Rajan attacked Thangavel Nadar (D1) and Sivagurunathan (D2); Thangavel Nadar (D1) and Sivagurunathan (D2) fell down in a pool of blood; on seeing this attack, his (P.W.1's) mother Kasthuri Bai (P.W.2) and sister-in-law Chandra (P.W.3) and neighbours, viz., Arumuga Perumal and Lakshmi, raised alarm, on hearing which, the other neighbours came there; on seeing people coming, all the seven accused fled. In the witness box Siva Balaji (P.W.1) identified the spade used by Tirupathi Rajan and the billhook used by Sree Ranga Rajan and the pounder used by Mohana Rajan. He also identified the bloodstained lungi that was worn by his father and the bloodstained lungi that was worn by his brother. He has further stated that after the incident, he took his father and brother by a taxi to the Government Hospital at Kanyakumari, where, the doctors examined and declared them as brought dead; he (P.W.1) was given treatment in the hospital and when he was in the hospital, the police came there and recorded his statement (Ex.P.1).

7 Siva Balaji (P.W.1) was not cross-examined on 29.09.2015 (i.e.) the day on which he was examined in chief, but, was recalled for cross-examination on 15.10.2015. The cross-examination of this witness which was done on 15.10.2015 runs to eighteen typed pages. Once again, he was recalled on 07.12.2015 and was further cross-examined, which deposition runs to two pages. Thus, on the whole,



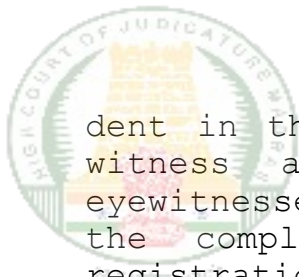
the cross-examination of this witness alone runs to 20 typed pages in question-answer format. Therefore, we were able to understand the question that was posed to this witness and the answer he had given.

8 In the cross-examination, Siva Balaji (P.W.1) has admitted that his elder brother Sivakumar was working as Inspector in Chennai at the time of the incident. He has also admitted that the husband of his sister Geetha was also working in the Police Department. He has stated that the attack got over in two to four minutes. To a specific question, he has stated that there were bloodstains in his clothes, but, the same were not seized by the police. He has also stated that the clothes of his mother Kasthuri Bai (P.W.2) and sister-in-law Chandra (P.W.3) also got stained by blood, but, the police did not recover them. It was suggested to him that the injured should have been taken to the Government Hospital at Nagercoil instead of the Government Hospital at Kanyakumari, for which, he has stated that the taxi driver drove the taxi in a shortcut to the Government Hospital at Kanyakumari. He has also stated that his mother Kasthuri Bai (P.W.2) and sister-in-law Chandra (P.W.3) did not accompany him to the hospital. Ultimately, it was suggested to him that his father Thangavel Nadar (D1) and brother Sivagurunathan (D2) were murdered near Kanyakumari and they were taken to the Government Hospital in Kanyakumari and that he did not sustain any injury in the attack, which suggestions, he denied.

9 Kasthuri Bai (P.W.2), wife of Thangavel Nadar (D1) and Chandra (P.W.3), wife of Sivagurunathan (D2), in their evidence, have stated about the animosity between the two families with regard to the administration of the temple and that on 25.04.2006, when they were at home, the seven brothers armed with weapons, barged into their house, on seeing which, Thangavel Nadar (D1), Sivagurunathan (D2) and Siva Balaji (P.W.1) ran through the rear door; they were chased by the accused; near Muthuswamy's house, the accused rounded up all the three of them and attacked them, resulting in the death of Thangavel Nadar (D1) and Sivagurunathan (D2) and injuries to Siva Balaji (P.W.1); they both shouted for help and the incident was witnessed by their neighbours Arumuga Perumal and Lakshmi, who also raised alarm; hearing the hue and cry, when people started rushing there, the accused took to their heels; Siva Balaji (P.W.1) took both Thangavel Nadar (D1) and Sivagurunathan (D2) by a taxi to the Government Hospital, Kanyakumari, where they were declared brought dead; after the incident, scared of the accused, they vacated the village. These two witnesses, viz., Kasthuri Bai (P.W.2) and Chandra (P.W.3) were also examined in chief on 29.09.2015, but, were not cross-examined immediately. Kasthuri Bai (P.W.2) was cross-examined on 29.10.2015 and Chandra (P.W.3) was cross-examined on 27.10.2015. Their cross-examination also runs to around 15 pages in question and answer format.

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

10 We find that the defence was not able to make any serious



dent in the cross-examination of Siva Balaji (P.W.1), the injured witness and Kasthuri Bai (P.W.2) and Chandra (P.W.3), the eyewitnesses. Their testimony is in consonance with the averments in the complaint statement (Ex.P.1) which formed the basis of registration of FIR in this case.

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**11** The contentions put forward by Mr. V. Gopinath, learned counsel for the accused and our reasonings therefor, are as follows:

**11 (a)** *Tirupathi Rajan also sustained injuries and was admitted in the hospital as inpatient and therefore, he could not have been one of the attackers, which has not been explained by the prosecution.*

**Our reasoning:**

However, Siva Balaji (P.W.1) has spoken to about the clash that took place between his father Thangavel Nadar (D1) and Tirupathi Rajan on the night of 23.04.2006, the last day of the ten day temple festival, in which, Tirupathi Rajan attacked Thangavel Nadar (D1) with a lamp. From the evidence of Dr. Kaleeswaramoorthy (P.W.12), it is seen that on 24.04.2006, Tirupathi Rajan got himself admitted at 12.15 a.m. at the Kanyakumari Government College and Hospital, where, he was examined by Dr. Kaleeswaramoorthy (P.W.12). At the time of examination, Tirupathi Rajan has told Dr. Kaleeswaramoorthy (P.W.12) that four known persons had attacked him with a lamp. Dr. Kaleeswaramoorthy (P.W.12), in his evidence as well in the copy of the case sheet (Ex.P.12), has noted the following injuries on the body of Tirupathi Rajan:

- Superficial abrasion measuring 1 x 5 cm. around the neck
- Superficial incised wound on the left thigh
- Tooth bite marks on his left forearm

Tirupathi Rajan was admitted as inpatient. However, he absconded from the hospital at 1.00 p.m. on 25.04.2006, as could be seen from the case sheet (Ex.P.12). It was suggested by the defence to Dr. Kaleeswaramoorthy (P.W.12) that Tirupathi Rajan was admitted as inpatient till 6.00 p.m. on 25.04.2006, for which, he stated that he was only attending to the outpatient duty and hence, he was not aware as to when he left the hospital. However, on a perusal of the case sheet (Ex.P.12), we find the endorsement "patient absconded at 1.00 p.m." At this juncture, it may be necessary to state here that when Tirupathi Rajan was questioned under Section 313 Cr.P.C. with regard to the evidence of Dr. Kaleeswaramoorthy (P.W.12), he has stated that he was admitted in the hospital, but, he obtained the permission of the hospital authorities and then only, got discharged. He has also filed a written explanation under Section 313 Cr.P.C. However, nowhere, he has stated the time at which he left the Government Hospital, Kanyakumari on 25.04.2006. The nature of the injuries sustained by him are not such that he would have been immobilised and would not have been able to leave the hospital at 1.00 p.m. to be present at the place of occurrence at 02.15 p.m. along with his brothers to lead the siege. Alibi is relevant under Section 11 of the Indian Evidence Act, 1872 and the onus is on the accused to establish this satisfactorily. However, from the evidence of Dr. Kaleeswaramoorthy (P.W.12) and the case sheet (Ex.P.12), one

aspect is clear, viz., there was a scuffle between Tirupathi Rajan and four others in the midnight on 23.04.2006, in which, a lamp was used as a weapon. This piece of evidence corroborates the evidence of Siva Balaji (P.W.1) that on 23.04.2006, around 11.15 p.m., there was a fight between Tirupathi Rajan and his father Thangavel Nadar (D1) in the temple in which Thangavel Nadar (D1) was attacked with a lamp.

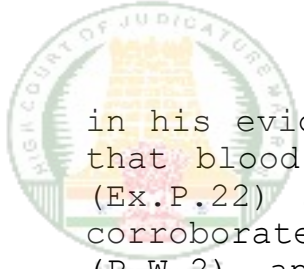
**11 (b)** *Kasthuri Bai (P.W.2) and Chandra (P.W.3) were not present at the place of occurrence, because, had they been really present, they would have surely accompanied their husbands in the taxi to the Government Hospital, Kanyakumari, whereas, they have admitted in their deposition that it was only Siva Balaji (P.W.1) who had taken Thangavel Nadar (D1) and Sivagurunathan (D2) to the hospital.*

**Our reasoning:**

A person cannot be expected to act in an ideal manner and his failure to so act, cannot be a good reason to disbelieve his testimony. In this regard, we may profitably quote the following sapient passage from the judgment of the Supreme Court in **Rana Partap and others vs. State of Haryana**<sup>2</sup>:

*"6. .... Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."*

From the evidence of Siva Balaji (P.W.1), Kasthuri Bai (P.W.2) and Chandra (P.W.3), it is seen that as the attackers entered the house, the male members started fleeing through the rear door into the East Street. At the time of the attack, Thangavel Nadar (D1) was 70 years old and Tirupathi Rajan was 29 years old. His elder brother Sivapathi Rajan was 32 years old. All the other accused are younger to Sivapathi Rajan. Therefore, they were able to immediately round up Thangavel Nadar (D1) near Muthuswamy's house, which is hardly about 50 meters away from their house. Hence, there is every possibility of Kasthuri Bai (P.W.2) and Chandra (P.W.3) seeing the attackers from behind from their house and witnessing the incident which has occurred in broad daylight. The Investigating Officer collected bloodstained concrete aggregates (M.O.7 and M.O.8) from the place of occurrence under mahazar (Ex.P.4) and the same were sent through the jurisdictional Magistrate to the Tamil Nadu Forensic Sciences Laboratory, for examination and report. The Biology Report (Ex.P.21) was examined by Gajendravaradan (P.W.15), ~~Services returned to the Government of Tamil Nadu~~ Assistant, Tamil Nadu Forensic Sciences Department, who,



in his evidence as well in the Biology Report (Ex.P.21), has stated that blood was detected in the aggregates and the Serology Report (Ex.P.22) shows that the blood is of human origin. This clearly corroborates the evidence of Siva Balaji (P.W.1), Kasthuri Bai (P.W.2) and Chandra (P.W.3) that the attackers rounded up the victims near Muthuswamy's house and after the attack, Thangavel Nadar (D1) and Sivagurunathan (D2) fell down with injuries. Thus, the place of occurrence has been established not only through the testimony of Siva Balaji (P.W.1), Kasthuri Bai (P.W.2) and Chandra (P.W.3), but also from the recovery of human blood therefrom.

**11 (c)** *The blood stained clothes of Siva Balaji (P.W.1), Kasthuri Bai (P.W.2) and Chandra (P.W.3) were not seized by the police and therefore, their presence at the place of occurrence is doubtful.*

**Our reasoning:**

The failure of the police to obtain the bloodstained clothes of Siva Balaji (P.W.1), Kasthuri Bai (P.W.2) and Chandra (P.W.3) can, at the most, be called as remissness in investigation, for which, their eyewitness account cannot be disbelieved.

**11 (d)** *The taxi driver who carried Thangavel Nadar (D1) and Sivagurunathan (D2) to the hospital was not examined and this is fatal to the case of the prosecution.*

**Our reasoning:**

It is the case of Siva Balaji (P.W.1) that he carried Thangavel Nadar (D1) and Sivagurunathan (D2) to the Government Hospital at Kanyakumari in a taxi. The fact remains that from the place of occurrence, the Government Hospital at Kanyakumari is 20 kms. away, which Siva Balaji (P.W.1) himself has admitted. Siva Balaji (P.W.1) has stated that there was no ambulance facility in the village at that time and so, he called a taxi and carried his father Thangavel Nadar (D1) and brother Sivagurunathan (D2) to the hospital. Even in the complaint statement (Ex.P.1), Siva Balaji (P.W.1) has not given the name of the taxi driver or the registration number of the taxi. Obviously, he must have been under stress, because, he himself sustained injuries and had escaped death by a whisker. Further, Dr.Ramachandran (P.W.4) has stated that while he was on duty in the Government Hospital, Kanyakumari on 25.04.2006 around 03.40 p.m., Siva Balaji (P.W.1) came with his father Thangavel Nadar (D1) and brother Sivagurunathan (D2) and on examination, both of them were declared dead and their bodies were sent to the mortuary and Siva Balaji (P.W.1) also had sustained injuries and was admitted to the hospital. Thus, from the evidence of Dr. Ramachandran (P.W.4) it is clear that the bodies of Thangavel Nadar (D1) and Sivagurunathan (D2) were brought by Siva Balaji (P.W.1) at 03.40 p.m. on 25.04.2006. Obviously, two dead persons would not have walked and got admitted themselves to the Government Hospital, Kanyakumari. They must have either been taken in an ambulance or in some other vehicle. Hence, the non-examination of the taxi driver who transported the trio to the Government Hospital, Kanyakumari, cannot



be held to be fatal in the facts and circumstances of this case.

**11 (e)** As per the evidence of Siva Balaji (P.W.1), the nearest hospital from the place of occurrence is the Government Hospital, Nagercoil, which is 15 kms. away, whereas, the Government Hospital, Kanyakumari is 20 kms. away and therefore, the defence theory that Thangavel Nadar (D1) and Sivagurunathan (D2) were murdered somewhere near Kanyakumari and not near their residence in Kumarapuram Thoppur village stood probablised.

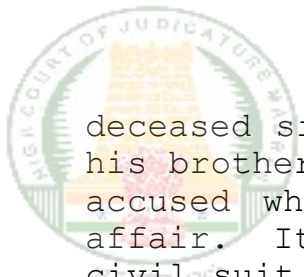
**Our reasoning:**

In the explanation given by Siva Balaji (P.W.1) in the cross-examination, he has stated that he requisitioned the services of a taxi driver for going to the hospital and the taxi driver took a shortcut and took them to the Government Hospital at Kanyakumari. It is true that there is a Government Hospital in Nagercoil and there is a Government Hospital in Kanyakumari. Siva Balaji (P.W.1) could have chosen to go either here or there. The Government Hospital at Kanyakumari cannot be said to be inferior in standards when compared to the Government Hospital at Nagercoil. The autopsy of both the dead bodies was done in the Government Hospital, Kanyakumari. That apart, when Tirupathi Rajan allegedly sustained injuries in the fracas that took place in the temple, which is in the same village, in the midnight of 23.04.2006, he did not choose to go to the Government Hospital at Nagercoil, instead, got himself admitted only to the Government Hospital, Kanyakumari. What is sauce for the goose cannot be soup for the gander. It is indeed very unfortunate that the Sessions Judge has missed the woods for the trees and has acquitted the accused by giving specious and perverse reasonings, which we propose to discuss hereinafter.

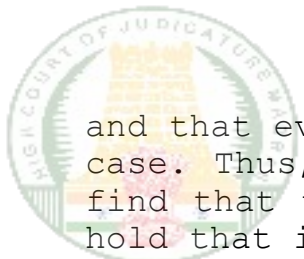
**11 (f)** Two close relatives of the victims were working in the Police Department and that is why, all the seven brothers, including two juveniles, were implicated in the case and since the police had to fix all the accused, there was delay in the registration of the FIR.

**Our reasoning:**

**(i)** At first blush, this submission did sound appealing. However, a closer scrutiny of the materials on record impels us to think otherwise. The motive for the offence is the feud between the two families for gaining control over the administration of Ayyavazhi temple. St. Vaikuntar who is revered and called as "Ayya" by a section of the Nadar community people was an apostle of peace. It is indeed sad that some of his followers have given a complete go-by to the teachings of that great soul. It is a grim fact that, today, in several parts of the State, administering a temple is not for spiritual upliftment of the masses, but, for one's economic aggrandizement and as a status symbol. Running a temple has now almost become a commercial enterprise that needs very less investment, but, which fetches huge profits. According to the family of the accused, it was their father Narayana Nadar who had established Ayyavazhi temple and therefore, as his legatees, they are the natural heirs to the throne. However, it is the case of the



deceased side that Narayana Nadar abdicated his rights in favour of his brother Thangavel Nadar (D1) thirty years ago and therefore, the accused who are the sons of Narayana Nadar, have no say in the affair. It is also seen that the deceased side had succeeded in the civil suit that was filed by the accused side. This dispute sounds similar to the claim of Duryodhana that his father Dritharashtra was denied kingship because of his blindness and so, the kingship went to Pandu; on Pandu's abdication, it should revert to him (Duryodhana), because, he does not suffer any physical disability and not to Pandu's sons. Whereas, it was the case of the Pandavas that their father was not a caretaker but was a full-fledged king and hence, on his demise, they would succeed to his throne as his legatees. On this short issue, all the hundred brothers ganged up against their five cousins and eventually, lost their precious lives. Reverting to the facts of the case at hand, on the last day of the ten day festival, Tirupathi Rajan entered the *sanctum sanctorum* of the temple and a scuffle had ensued between Tirupathi Rajan and Thangavel Nadar (D1). According to Siva Balaji (P.W.1), it was Tirupathi Rajan who attacked his father Thangavel Nadar (D1) with a lamp. But, it is Tirupathi Rajan's case that he was attacked with a lamp and he sustained injuries, for which, he got himself admitted in the Government Hospital at Kanyakumari, as could be seen from case sheet (Ex.P.12). Siva Balaji (P.W.1) has stated that during the scuffle, Tirupathi Rajan stated that he and his brothers will avenge for the incident. Tirupathi Rajan absconded from the hospital on 25.04.2006. Siva Balaji (P.W.1), Kashturi (P.W.2) and Chandra (P.W.3) have stated that when they were at home along with Thangavel Nadar (D1) and Sivagurunathan (D2), they saw all the seven brothers barging into their house. They have also clearly stated about the weapon carried by each of them. From their evidence, it is seen that only Sree Ranga Rajan was carrying a billhook and the others were carrying ordinary agricultural implements and pounders, which will be available in every village household. Immediately after the incident, when Siva Balaji (P.W.1) took Thangavel Nadar (D1) and Sivagurunathan (D2) to the hospital at 3.40 p.m., he had told Dr.Ramachandran (P.W.4) that they were assaulted by 7 known persons with spade and danda around 2.15 p.m., at their house. Dr. Ramachandran (P.W.4) declared that Thangavel Nadar (D1) and Sivagurunathan (D2) were brought dead and Siva Balaji (P.W.1) was admitted as inpatient; thereafter, intimation was sent to the police, pursuant to which, Krishnaraj (P.W.9), Sub Inspector of Police, came to the hospital and recorded his (P.W.1's) statement from 17.15 to 18.00 hrs. Krishnaraj (P.W.9) came back to the police station and registered the FIR at 18.30 hrs. and the same was received by the jurisdictional Magistrate at 10.00 p.m. on 25.04.2006. That apart, in the complaint statement (Ex.P.1), Siva Balaji (P.W.1) has clearly stated the weapon carried by each of the accused and the overt acts of each of them. In **Ravinder Kumar and another vs. State of Punjab**<sup>3</sup>, the Supreme Court has held that delay in lodging the FIR is not fatal in all cases and just because an FIR has been promptly lodged, that also does not mean that it is genuine



and that everything depends upon the facts and circumstances of each case. Thus, in the facts and circumstances of this case, we do not find that there is any delay in the registration of FIR nor can we hold that it is not genuine.

(ii) Coming to the allegation that two of the relatives of the deceased are in the Police Department, the witnesses have admitted to this fact. Even in the cross-examination of Kasthuri Bai (P.W.2), the defence has put the following question:

"Q. Is it true that your second son Shivakumar is a Police Inspector working in Chennai?

A. Yes

Q. Is it true that your son-in-law is also in the Police Department.

A. Yes."

(iii) These questions by the defence themselves show that the defence were aware that Kasthuri Bai's (P.W.2's) son Shivakumar was working as Inspector of Police in Chennai which is about 800 kms. away from Kanyakumari. It is not the case of the defence that both the son and son-in-law of Kasthuri Bai (P.W.2) were posted in Kanyakumari District for them to immediately gang up and fix all the family members of the accused. At the risk of repetition, Siva Balaji (P.W.1) has told Dr. Ramachandran (P.W.4) at 3.40 p.m. on 25.04.2006 that he was attacked by 7 known persons around 2.15 p.m. Therefore, the stand of the defence that the FIR was concocted and belatedly sent to the Court is stated only to be rejected.

**11 (g)** *Kasthuri Bai (P.W.2), in her cross-examination, has stated that she did not inform her son and son-in-law about the incident, which, conduct is indeed strange.*

**Our reasoning:**

Kasthuri Bai (P.W.2) was 73 years old when she gave evidence and was cross-examined on 29.10.2015 in respect of an incident that took place in the year 2006. The question that was put to her was "Did you telephonically inform your son and son-in-law about the incident, for which, she has stated "No". This does not mean that some other relatives or the police themselves would not have informed her son and son-in-law about the incident. In any event, this question relates to what she did or did not do after the incident. Therefore, this answer of Kasthuri Bai (P.W.2), by itself, is not sufficient to disbelieve her testimony.

**11 (h)** *Siva Balaji (P.W.1), Kasthuri Bai (P.W.2) and Chandra (P.W.3) are close relatives of the victims and when the incident had allegedly taken place in the street, that too, in a broad day light, the non-examination of independent witnesses is fatal to the case of the prosecution.*

**Our reasoning:**

<https://hcservices.ecourts.gov.in/hcservicesportal> The index of evidence appended to the charge sheet shows that the police have cited the names of four independent witnesses, viz., Arumuga Perumal, Lakshmi, Rajappa and Velmurugan, as



eyewitnesses. As stated above, the charge sheet was filed on 12.07.2006 and the trial effectively commenced only in the year 2015. It is not the case of the defence that no independent witness was cited in the memo of evidence. Therefore, the non-examination of the independent witnesses at this distant point of time will not be fatal to the case of the prosecution. In fact, Kasthuri Bai (P.W.2) and Chandra (P.W.3) have stated that after the incident, they were so much terrorised that they shifted their residence to another place.

(ii) As regards the allegation that P.W.s 1 to 3 are close relatives of the deceased and hence, their evidence cannot be taken into account, it is felicitous to allude to the following sagely words of Vivian Bose J. in **Dalip Singh and 3 others vs. State of Punjab**<sup>4</sup>:

*"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."*

**11 (i)** Siva Balaji (P.W.1) was not an injured witness, because, Dr. Ramachandran (P.W.4) has stated that after he was admitted, on the same day, at 8.15 p.m., he left the hospital against medical advice.

**Our reasoning:**

In the cross-examination of Siva Balaji (P.W.1), he was not asked any question about this. There may be myriad reasons for him to have left the hospital in the night hours. Perhaps, he would have thought that the accused may hunt him down in the hospital or that he would have even wanted to be at the funeral of his father and brother, etc. Hence, just because he left the hospital against medical advice, it cannot be stated that he did not suffer any injury at all, because, the evidence of Dr. Ramachandran (P.W.4) and the copy of the accident register (Ex.P.12) cannot be wished away.

**12 Perversities in the Trial Court's reasonings:**

(a) In paragraph no.32 of the judgment of the Trial Court, it is stated that the victims of a crime cannot have control over the investigation". After having said so, the Trial Judge has strangely picked holes in the investigation of the case and has collated the same to justify the order of acquittal. For example, the Trial Judge has stated in the impugned judgment that the Investigating Officer should have collected the bloodstained clothes of Siva Balaji (P.W.1), Kasthuri Bai (P.W.2) and Chandra (P.W.3); he should have recorded the statement of the taxi driver who took the two dead bodies to the hospital; the higher officials have not supervised the investigation, inasmuch as, material objects, viz., spade and billhook were not sent to the Forensic Science Department to find out whether there were bloodstains. The Trial Judge has given a ludicrous finding which is as under:

*"32. . . . .When it was recovered from the accused in the presence of witnesses under Section 27 of the Indian Evidence Act, confession of accused leading to recovery of weapons. Then, those weapons should have bloodstains. No bloodstains were found in M.O.1 to M.O.3. Had there been blood stains, then, it is the prime duty of the Investigating Officer to send it for forensic examination."*

According to the Trial Judge, in every case of recovery of a weapon under Section 27 of the Evidence Act, there would be bloodstains!!

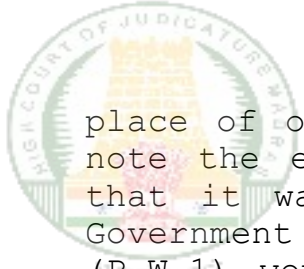
(b) In paragraph no.34 of the judgment, it has been stated as follows:

*"34. .... He had clearly stated that the injuries found on the body of the deceased noted by Dr. Geetha on the deceased Thangavel Nadar could have been caused by spade M.O.1 before this Court. That alone will not be sufficient to find the accused guilty of the crime."*

It is true that the evidence of the postmortem doctor that the weapon shown to him could cause the injury noted on the body will not, by itself, be a ground to convict the accused, but, it is a powerful piece of evidence for corroborating the oral testimony of the eyewitnesses. When Siva Balaji (P.W.1), Kasthuri Bai (P.W.2) and Chandra (P.W.3) have stated that the accused had used spades to attack the deceased, the opinion of the doctor that the spade (M.O.1) could cause a particular fatal injury is an opinion which gives credence to the version of the eyewitnesses.

(c) In paragraph nos.36 and 37 of the judgment under assail, the Trial Court has returned a finding that there is a delay in the registration of the FIR, which finding does not cut much ice with this Court for the reasons given in paragraph no.11 (f)(i), supra.

(d) In paragraph no.39 of the impugned judgment, the Trial Court has stated that the conduct of P.Ws.1 to 3 in not taking the deceased to the nearby hospital and instead taking them to the Government Hospital at Kanyakumari which is 20 kms. away from the



place of occurrence, is unnatural. The Trial Court has failed to note the explanation given by Siva Balaji (P.W.1) who has stated that it was the taxi driver who took the shortcut to reach the Government Hospital at Kanyakumari. As observed by us, Siva Balaji (P.W.1) would have been in a state of stress and shock after the incident and just because he had taken the dead to the Government Hospital at 3.40 p.m. on the same day, his conduct cannot be said to be unnatural.

(e) In paragraph no.41 of the judgment, the Trial Court has found fault with Kasthuri Bai (P.W.2) and Chandra (P.W.3) in not accompanying the deceased to the hospital and has therefore, disbelieved their evidence. We have dealt with this aspect also in paragraph no.11(b), supra.

(f) The most important and interesting finding of the Trial Court is in paragraph no.47, wherein, it is stated that had Siva Balaji (P.W.1) really been present, he would not have survived and that the accused would have killed him. The relevant passage from the judgment of the Trial Court is extracted hereunder:

"47. .... Above all, the prosecution case is that 1<sup>st</sup> accused Tirupathi Rajan along with his brothers numbering six persons (two are juvenile accused split up and sent to the Juvenile Court) came with weapons and surrounded the deceased Thangavel Nadar and Sivagurunathan and P.W.1 Siva Balaji. They had ample time to kill them. With them one was having billhook, another two persons carried spade, the rest of them carried pound and clubs. There was enough time for six people to kill three. But, fortunately, P.W.1 suffered only blunt injury, contusion on his head and shoulders as per P.W.4 Dr. Ramachandran. The said doctor has stated that P.W.1 Siva Balaji brought the deceased persons also in the car. P.W.1 left the hospital without informing the doctor and against medical advice. Therefore, they were unable to give opinion regarding the injury on P.W.1. It also creates doubt against the claim of P.W.1 that he escaped with minor injuries from the attack by six accused."

According to the Trial Judge, since Siva Balaji (P.W.1) escaped with less injuries, his evidence cannot be disbelieved. The corollary of this finding is that the Trial Judge would have believed the evidence of Siva Balaji (P.W.1) had he died in the attack. But, unfortunately, that is an oxymoron.

(g) In paragraph no.62 of the judgment under assail, the following classic statement of law conceived by the Trial Judge finds place:

*"This has no other choice but to accept the jurisprudence in Criminal Justice System to give advantage of the loopholes in the investigation, shoddy investigation to the accused...."*

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The judgments of the Supreme Court that a faulty investigation will



not enure to the advantage of the accused are a legion and it would suffice if we allude to **Karan Singh vs. State of Haryana**<sup>5</sup>.

**13** In view of the aforesaid discussion, we have no incertitude in holding that the judgment and order of acquittal passed by the Trial Court warrants interference by us. We are aware that Sivapathi Rajan is still in abscondence and the case against Gopalakrishna Rajan and Geethakrishna Rajan is still pending before the Juvenile Justice Board. We do not want the said trio to suffer any prejudice on account of our findings herein. Though Tirupathi Rajan, Sree Ranga Rajan, Govinda Rajan and Mohana Rajan are liable to be convicted under Section 302 IPC with the aid of Section 149 IPC, since there were more than five assailants, who had a common object, yet, we are refraining from invoking Section 149 IPC, lest, it should cause prejudice to the case of Sivapathi Rajan, Gopalakrishna Rajan and Geethakrishna Rajan.

**14** However, we hold that Tirupathi Rajan, Sree Ranga Rajan, Govinda Rajan and Mohana Rajan shared a common intention to eliminate Thangavel Nadar (D1) and his sons. Therefore, we convict Tirupathi Rajan, Sree Ranga Rajan, Govinda Rajan and Mohana Rajan under Sections 450, 341 and 324 IPC read with Section 34 IPC for causing injuries to Siva Balaji (P.W.1) and under Section 302 read with Section 34 IPC (2 counts) for causing the death of Thangavel Nadar (D1) and Sivagurunathan (D2) and sentence them as under:

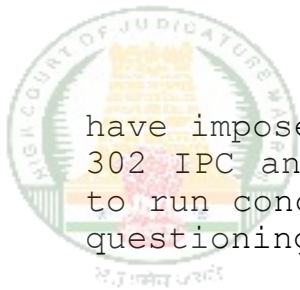
| Provision under which convicted                                          | Sentence                                                                                                 |
|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Section 450 IPC                                                          | 3 years rigorous imprisonment and fine of Rs.1,000/- in default to undergo 3 months simple imprisonment  |
| Section 341 IPC                                                          | 1 month rigorous imprisonment                                                                            |
| Section 324 read with Section 34 IPC for injuries to Siva Balaji (P.W.1) | 1 year rigorous imprisonment with fine of Rs.1,000/- in default to undergo 3 months simple imprisonment. |
| Section 302 read with Section 34 IPC (2 counts)                          | Imprisonment for life for each count                                                                     |

It is trite that for invoking Section 34 IPC, no specific charge needs to be framed (See *Ramji Singh and another vs. State of Bihar*<sup>6</sup>).

**15** The aforesaid sentences shall run concurrently. Since we

<sup>5</sup> (2013) 12 SCC 529

<sup>6</sup> (2001) 9 SCC 528



have imposed them with the minimum sentence prescribed under Section 302 IPC and have ordered that the sentences for the other offences to run concurrently, we are of the view that calling the accused for questioning on sentence will only be an empty formality.

In the result, all the three criminal appeals are allowed as indicated in paragraph nos.14 and 15, supra and the judgment and order of acquittal dated 29.04.2016 in S.C. Nos.99 of 2007 and 178 of 2015 on the file of the Sessions Court, Kanyakumari Division at Nagercoil, are set aside. The Trial Court is directed to secure the aforesaid four accused and commit them to prison for undergoing the sentence.

Sd/-

Assistant Registrar (AD-I)

/ True Copy /

Sub Assistant Registrar(CS-IV)

To

- 1 The Inspector of Police,  
Suchindrum Police Station, Anjugrammam P.S.
- 2 The Sessions Judge  
Kanyakumari Division at Nagercoil
- 3 -Do-Thro-The Principal District Judge,  
Kanyakumari District
- 4 The District Collector,  
Kanyakumari District.
- 5 The Superintendent of Police,  
Kanyakumari District.
- 6 The Deputy Inspector General of Police,  
Mylapore, Chennai.
- 7 The Public Prosecutor  
High Court of Madras, Chennai 600 104
- 8 The Judicial Magistrate, No.III, Nagercoil.

+1 CC to M/s.K.SUDALAIYANDI, Advocate, SR-70590,[F]  
+1 CC to M/s.VEERA ASSOCIATES, Advocate, SR-70786[F]  
+2 CC to M/s.N.PRAGALATHAN, Advocate (SR -70591,70592[F] )

CrI.A. (MD) Nos.277 of 2016 and 379 & 380 of 2018  
21.06.2019