



BAIL SLIP

The Appellants/Accused Viz. 1)Selvaguru, S/o. Mookaiah, 2) Ananth S/o. Vedhamuthu, 3)Sankar S/o. Pandi, 4) Prakash, S/o. Murugan, 5) Vijay @ Kurangattivijay, S/o. Pandi, 6)Muthalagu S/o. Chandra Sekar were released on bail granted as per order dated 02.11.2016 made in CRL MP(MD).3968/2016 in CRL A(MD).151 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
12.02.2019	20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.A(MD) No.151 of 2016

1.Selvaguru
2.Ananth
3.Sankar
4.Prakash
5.Vijay @ Kurangattivijay
6.Muthalagu

: Appellants/Accused Nos.1 to 6

Vs.

State rep. by
The Deputy Superintendent of Police,
Virudhunagar Rural Police Station,
Virudhunagar.

: Respondent/Complainant

PRAYER: Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records in Spl.S.C.No.24 of 2013 on the file of the Principal Sessions Court, Virudhunagar District at Srivilliputhur and set aside the order dated 28.03.2016 made therein.

For Appellants 1 to 3, 5 & 6

: Mr.M.Jegadeesh Pandian

For Appellant No.4

: Mr.G.Thirumarut Selvan

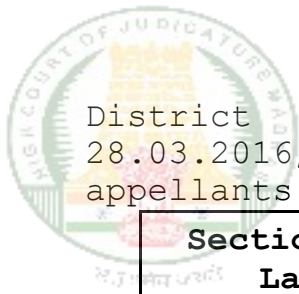
For Respondent

: Mr.G.Karuppasamy Pandian
Special Public Prosecutor

J U D G M E N T

(Order of the Court was made by **B.PUGALENDHI, J.**)

This appeal is preferred as against the conviction and sentence imposed by the learned Principal Sessions Judge, Virudhunagar
<https://hcservices.ecourts.gov.in/hcservices/>



District at Srivilliputhur in Spl.S.C.No.24 of 2013, dated 28.03.2016, in and by which, the learned trial Judge found the appellants guilty, convicted and sentenced them as detailed below:

Section of Law	Sentence of imprisonment	Fine amount
148 I.P.C.	To undergo rigorous imprisonment for four months.	Rs.500/- in default to undergo simple imprisonment for one month.
302 I.P.C.	To undergo imprisonment for life.	Rs.5,000/- in default to undergo simple imprisonment for one year.
506 (ii) I.P.C.	To undergo rigorous imprisonment for four months.	Rs.500/- in default to undergo simple imprisonment for one month.

2.The brief facts of the case, as projected by the prosecution, in a nutshell are as follows:

2.1.The deceased Mohan @ Red Mohan, was running Chit Fund business and for collecting the chit amount, on 28.06.2012, at about 07.30 am, he went to Ambedkar Nagar along with his collection agent Kannan [PW4]. PW4 rode the motorcycle and the deceased was on the pillion. After completing the collection at Ambedkar Nagar, they went to Second Street, where the accused persons were standing near a Pillaiyar Temple. Already, there was a dispute between the deceased and the first accused during the Panchayat Election and a case was also pending in this regard before the Virudhunagar East Police Station. When PW4 and the deceased passed through the Pillaiyar Temple, the first accused pushed them from behind, due to which, PW4 and the deceased fell down. The accused, thereafter, surrounded them with knives and attacked the deceased indiscriminately. PW4 escaped from the place of occurrence and the accused chased and intimidated him. Apprehending danger to his life, PW4 went to his relatives place in Kammappatti believing that it would be safe for him, however, he informed the incident to the sister of the deceased Mariswari [PW7] over phone.

2.2. On receipt of the information from Kannan [PW4], Mariswari [PW7] went to the place of occurrence and found her brother Mohan with injuries lying on the ground. She arranged a vehicle and took him to the Government Hospital, Virudhunagar. On the way to the Hospital, she informed her husband Manimaran [PW9] over phone and he also joined them at the Hospital. The Doctor at Virudhunagar Government Hospital Arulvictor [PW28] admitted the injured on 28.06.2012 at 08.25 am and gave first aid. According to the Doctor, the injured was conscious and he informed him that he was assaulted by 13 known persons at about 08.00 a.m. on 28.06.2012 at Ambedkar Nagar with knife. The copy of the accident register issued by Dr.Arulvictor [PW28] was marked as Ex.P56. The Doctor [PW28]



referred the injured for further treatment to Government Rajaji Hospital, Madurai.

2.3. Thiru.Ravi, Judicial Magistrate No.1, Madurai [PW14] received the intimation from Government Rajaji Hospital, Madurai, on 28.06.2012 at about 1.00 pm, for recording the dying declaration. Immediately he went to the Government Rajaji Hospital, Madurai and the Doctor, who was on duty at ward No.99 identified the injured (deceased - Mohan), who was in treatment. The learned Judicial Magistrate [PW14] ensured with the duty Doctor on the condition of the injured / deceased and also ensured that no other person, apart from the Doctor was available in that room. The learned Judicial Magistrate informed his identity to the injured / deceased and for what purpose he is intending to record the statement from him. The duty Doctor at the Government Rajaji Hospital, Madurai gave a certificate that the deceased was fully conscious and was in a fit state of mind at the time of recording the dying declaration. The dying declaration [Ex.P18] was recorded by the learned Judicial Magistrate from 1.40 pm to 2.00 pm. Thereafter he read out the contents recorded by him to the injured / deceased and obtained his left hand thumb impression, since drips was administered to the injured through his right hand and he was not in a position to sign in the dying declaration. After recording the dying declaration, the learned Judicial Magistrate, also obtained a certificate from the duty Doctor that the deceased was in a fit state of mind at the time of recording the dying declaration. The requisition from the Chief Medical Officer, Government Rajaji Hospital, Madurai for recording the dying declaration is marked as Ex.P17 and the procedures followed, while recording the dying declaration is marked as Ex.P18. The injured / deceased stated that he was assaulted with sword and knife by Suresh Kumar [A7], Selvaguru [A1], Vijay [A5], Anand [A2], Shankar [A3] and one Udayakumar, Chinnaraj, Chandrasekar, Gurusamy, Muthalagu, Mookaiyah, sakthi and another person, who was a college student.

2.4. Kannan [PW4] went to Virudhunagar Rural Police Station around 04.00 pm on 28.06.2012 and lodged a complaint about the incident to the Head Constable, Rural Police Station, Virudhunagar [PW20]. PW20, on receipt of the complaint [Ex.P1], registered a case in Crime No.338 of 2012 as against the appellants and another for the offences punishable under Sections 147, 148, 307 and 506 (ii) IPC. The printed First Information Report was marked as Ex.P25.

2.5. On receipt of the complaint, the Inspector of Police, Virudhunagar Rural Police Station, Virudhunagar [PW27], proceeded to the place of occurrence on 28.06.2012 at about 05.00 pm, inspected the place of occurrence and prepared an observation mahazer [Ex.P19] and a rough sketch [Ex.P38] in the presence of PW17 and another. After examining PWs.1 to 6, the Inspector of Police went to the Government Rajaji Hospital, Madurai on the next day and examined the

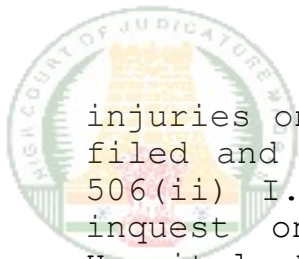


injured Mohan (deceased), PW7 and PW10 and recorded their statements. He also recovered the bloodstained shirt [MO2] from the injured Mohan (deceased) in the presence of PW9 and another in Ex.P24.

2.6. The Inspector of Police, Shanmugasundaram [PW27] arrested the accused Nos. 2 to 6 on 30.06.2012 and recorded their confession statements. Thereafter, on 01.07.2012 at about 9.00 am, PW27 arrested the accused No.1. Pursuant to their statements the weapons used for the commission of offence were recovered under cover of mahazars. The details of the arrest and recovery from the accused are tabulated as follows:

Accused and their date of arrest	The material objects recovered	Recovery of Mahazar	Witnesses for the arrest and recovery
Selvaguru (A1) 01.07.2012	Knife (MO8)	Ex.P49	Murali (PW11) & Karthick (PW12)
Ananth (A2) 30.06.2012	Knife (MO3)	Ex.P40	Karuppasamy (PW13) & Gurusamy (not examined)
Sankar (A3) 30.06.2012	Motorcycle (MO4)	Ex.P42	Karuppasamy (PW13) & Gurusamy (not examined)
	Knife (MO5)	Ex.P43	
Prakash (A4) 30.06.2012	Knife (MO6)	Ex.P45	Karuppasamy (PW13) & Gurusamy (not examined)
Vijay @ Kurangattivijay (A5) 30.06.2012	Knife (MO1)	Ex.P51	Karuppasamy (PW13) & Gurusamy (not examined)
Muthalagu (A6) 30.06.2012	Knife (MO7)	Ex.P47	Karuppasamy (PW13) & Gurusamy (not examined)

2.7. In the meantime, the injured / deceased who was under treatment at Government Rajaji Hospital, Madurai, succumbed to the



injuries on 02.07.2012. Therefore, an alteration report [Ex.P52] was filed and the offences were altered to Sections 147, 148, 302 and 506(ii) I.P.C and The Inspector of Police [PW.27] conducted the inquest on 03.07.2012 at about 08.30 am at Government Rajaji Hospital, Madurai in the presence of panchayatadars and the inquest report was marked as Ex.P53. PW27 requested for postmortem and the postmortem was conducted by the Doctor [PW22] at about 11.00 am. The postmortem certificate was marked as Ex.P27, wherein, the following ante mortem injuries were noted:

1. Surgical lapratomy sutured wound 30cm x 1cm cavity deep noted on front of abdomen.

2. Sutured oblique stab injury 4cm x 1cm x cavity deep noted on left hypochondrium just below left costal margin in the level of anterior axilla line.

3. Oblique sutured stab wound 4cm x 1cm x cavity deep noted on front of right side of abdomen 8cm above an lateral to umblicus.

On dissection: The wound entering in to peritoneal cavity and entering in to ascending colon 3cm x 0.5cm x cavity deep found was sutured.

4. Drainage wound 2cm x 1cm x cavity deep noted on flank of left side of abdomen.

5. Drainage wound 2cm x 1cm x cavity deep noted on flank of right side of abdomen.

6. Sutured stab wound 1cm x 0.5cm x muscle deep noted on front of left side of chest in 6th inter costal space in mid axillay line.

7. Sutured stab wound 7cm x 2cm x muscle deep noted on dorsal aspect of aspect of middle 1/3rd of left forearm.

8. Sutured stable wound 2cm x 0.5cm noted on middle of left upperarm.

9. Another sutured wound 2cm x 0.5cm noted on middle of left upper arm.

10. Two scratch wounds 8cm in length (NC) one above another 2 inch apart noted on outer aspect of right upper arm.

11. Sutured cut injury 7cm x 1cm x muscle deep noted on right tempert, parietal.

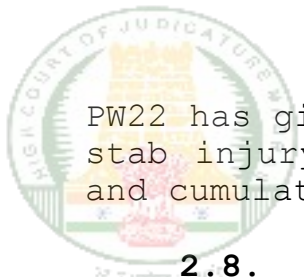
12. Sutured cut injury 7cm x 1cm x muscle deep noted on right tempert, parietal.

13. Sutured cut injury 12cm x 1cm x bone deep noted on back of right chest (lower aspect) near mid line.

14. Sutured stab injury 2cm x 0.5cm x muscle deep noted on lower border of right scapular region.

15. Sutured stab injury 2cm x 0.5cm x muscle deep noted on middle border of left scapular region.

16. Sutured stab injury 2cm x 0.5cm x muscle deep noted 2 inch below injury No.15.



PW22 has given his opinion that the deceased appears to have died of stab injury on the abdomen and the corresponding internal injuries and cumulative effect of all other injuries.

2.8. Pursuant to the directions of the Superintendent of Police, the offences were altered to Sections 147, 148, 506(ii), 307 (a), 302 and 120(b) IPC r/w 3 (2) (v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, and the further investigation was handed over to Ramamoorthy, Deputy Superintendent of Police, Virudhunagar Division [PW29] and he took up the investigation from PW27 on 31.07.2012. He obtained the community certificates of the accused and the deceased from the Tahsildar, Virudhunagar [PW23] and examined the other witnesses as there was no variation to their earlier statements, concluded his investigation on 24.01.2013 and filed his final report as against A1 to A4 under Sections 147, 148, 302, 506(ii) and 120(b) IPC r/w 3 (2) (v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and as against A5 and A6 for the offence under Sections 147, 148, 302, 506(ii) and 120(b) IPC

2.9. In support of the prosecution, 29 witnesses were examined, 57 documents were marked and 8 material objects were produced. The available evidences from the prosecution witnesses are as follows:

(i) PWs.1 to 6 were examined as eye witnesses, but excepting PW4, others turned hostile. PW4 was an employee of the deceased, who accompanied the deceased and lodged the complaint [Ex.P1].

(ii) PWs.7, 8 and 9 have spoken about the treatment given to the deceased at Virudhunagar Government Hospital, followed by the Government Rajaji Hospital, Madurai.

(iii) PW10 is the brother of the deceased, who speaks about the motive.

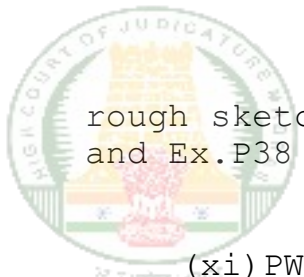
(iv) PW11 and PW12 are the witnesses for the recovery of MO8 from Accused No.1 and they were treated as hostile.

(v) PW13 is the witness for the recovery of MOs. 1 & 3 to 5 from Accused Nos.2, 3 and 5.

(vi) PW14 is the learned Judicial Magistrate No.1, Madurai, who recorded the dying declaration [Ex.P18] of the deceased on 28.06.2012 at about 01.40 pm, at Government Rajaji Hospital, Madurai.

(vii) PW15 and PW16 were examined for the purpose of conspiracy and they were treated as hostile.

<https://hcservices.ecourts.gov.in/PW27> PW17 is the witness for the observation mahazar and the



rough sketch of the place of occurrence, which were marked as Ex.P19 and Ex.P38 respectively.

(xi)PW18 is the learned Judicial Magistrate, Madurai, who had recorded the statements of PWs.1 to 5 under Section 164 Cr.P.C.

(x) PW19 is the witness, who attested the mahazer for the recovery of the bloodstained shirt [MO2].

(xi)PW20 is the Head Constable, who registered the First Information Report.

(xii)PW21 is the Grade-I Police Constable, who identified the deadbody of the deceased to the Doctor [PW22] for conducting postmortem.

(xiii)PW22 is the Doctor, who conducted postmortem on the body of the deceased.

(xiv)PW23 is the Tahsildar, who issued the community certificate for the deceased and accused.

(xv)PW24 is the Assistant Director of Forensic Laboratory Department, Madurai, who analyzed the bloodstained shirt, recovered from the deceased and MOs.1 to 3. According to PW24, the blood group of the deceased is Group 'O' and the bloodstains in M.Os.1 to 3 are that of human blood. The blood group in MOs 1 & 2 is found to be "O" and the result is inconclusive as regards MO3.

(xvi)PW25 is the Head Clerk in the Magistrate Court, who speaks about the receipt of letter from the investigation officer as well as the letter of the learned trial Judge for forensic analysis.

(xvii)PW26 is the Scientific Analyst, Forensic Laboratory Department, Ramanathapuram and his reports were marked as Ex.P32 to Ex.P35.

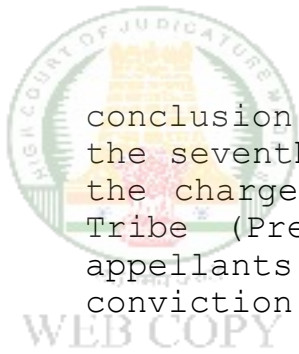
(xviii) PW27 is the Inspector of Police, Virudhunagar Rural Police Station, who conducted the initial investigation as stated above.

(xix) PW28 is the Doctor, who gave first aid to the deceased on 28.06.2012 at Virudhunagar Government Hospital.

(xx)PW29 is the Deputy Superintendent of Police, who conducted further investigation and filed the final report in this case.

2.10.The incriminating materials from the prosecution evidence were put to the accused under Section 313 Cr.P.C. and the accused denied the same. Though the accused stated that there are witnesses

<https://hcservices.ecourt.gov.in/hcservices/> their case, no defence witness was examined. In



conclusion of the trial, the learned Trial Judge, though acquitted the seventh accused from all the charges and accused Nos.1 to 4 from the charges under Section 3(2)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, has convicted the appellants herein as stated above in paragraph No.1. As against the conviction and sentence, the appellants have filed this appeal.

3. Heard, Mr.M.Jegadeesh Pandian, learned counsel appearing for the appellants 1 to 3, 5 & 6; Mr.G.Thiruvarut Selvan, learned counsel appearing for the fourth appellant and Mr.G.Karuppasamy Pandian, learned Special Public Prosecutor appearing for the respondent.

4. The learned counsel for the appellants raised the following points for consideration of this Court:

4.1. The deceased, in the dying declaration has stated that he was assaulted by 13 known persons, whereas, the Inspector of Police [PW27], has not arrested the other accused referred to by the deceased and there is no investigation in this regard.

4.2. There is a delay in lodging the First Information Report and the same in reaching the Court, but the delay has not been explained. The constable, who took the FIR to the Court is not examined in this case.

4.3. Since the witness nos.15 and 16, who have been examined for the purpose of conspiracy, turned hostile, the prosecution has failed to establish the motive, as such, the entire prosecution case fails. Moreover, the seventh accused, in whose residence the conspiracy was alleged to have taken place, was acquitted and therefore, the trial Court ought to have acquitted the appellants also.

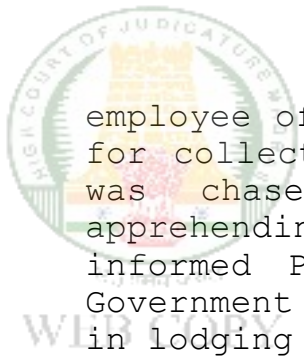
4.4. PW4 is said to have sustained injuries, but there is no wound certificate to that effect.

4.5. PW7, on information from PW4, is said to have taken the deceased to the Government Hospital, Virudhunagar, but the accident register issued at Virudhunagar Government Hospital shows that PW9 had taken the deceased to the Hospital.

4.6. Except PW4, all other eye witnesses have turned hostile and the solitary evidence of PW4 as eye witness cannot be relied upon, in view of the fact that there is a delay in reporting the incident and an inordinate delay in the First Information Report reaching the Court and that the deceased was admitted in the Government Hospital by PW9.

4.7. Though PW7, in her deposition, has stated that she took the deceased to the Government Hospital, no bloodstained clothes have been recovered from PW7 and therefore, she is inserted at a later point of time in order to fill up the delay in lodging the complaint.

5. Per contra, Mr.G.Karuppasamy Pandian, learned Special Public Prosecutor appearing for the respondent contended that PW4 is an



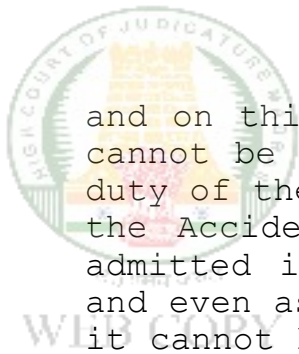
employee of the deceased and he took the deceased in the motorcycle for collection of chit amount, when the occurrence took place. PW4 was chased and intimidated by the accused and therefore, apprehending danger to his life, he went to a safer place and informed PW7. Pursuant to that, the deceased was taken to the Government Hospital at Virudhunagar by PW7 and therefore, the delay in lodging the complaint has been explained by the prosecution.

6.The learned Special Public Prosecutor further submitted that PWs.1 to 3, 5 and 6 are the witnesses from the place of occurrence and they have turned hostile out of fear. In this regard, he referred to the evidence of PW7 that the witnesses have been threatened by the accused prior to the trial and for that a separate criminal case was also registered. Therefore, the learned Special Public Prosecutor prayed for dismissal of this appeal.

7.This Court considered the rival submissions made by the learned Counsel appearing on either side and also perused the documents placed on record.

8.The occurrence has taken place on 28.06.2002 at 07.30 am, when the deceased went to Ambedkar Nagar for collecting the chit amount. It is stated by PW4 that the Accused No.1 pushed the motorcycle from their behind and therefore, the deceased and PW4 fell down. The Accused Nos.1 to 6, armed with knives, surrounded and attacked the deceased indiscriminately. PW28, the Doctor, who gave first aid to the deceased at Virudhunagar Government Hospital has noted down the injuries as stated supra. The postmortem Doctor has also noted down 16 injuries and gave his opinion that the deceased appears to have died of stab injury on the abdomen and the corresponding internal injuries and cumulative effect of all other injuries.

9.The Doctor, who admitted the deceased on 28.06.2012 was examined as PW28 and the Accident Register copy was marked as Ex.P56. In fact, in Ex.P56, it is referred as the victim was brought to the Hospital by PW9. PW9 is the husband of PW7 and PW7 is the sister of the deceased. PW4, who was present in the place of occurrence, witnessed the brutal attack on the deceased, ran away from the place of occurrence to a safe place where his relatives were residing and informed PW7 over phone about the incident. PW7, in turn, informed her husband, went to the place of occurrence and took the deceased to the hospital. PW9, on getting information from PW7, went to the Hospital directly and therefore, the name of PW9 is recorded in the accident register. The Doctor, who is recording the accident register at the time of admission, is not expected to mention the names of all the persons, who brought the victim to the Hospital in the accident register and the non mentioning of PW7 in the AR copy will not in any way affect the case of the prosecution



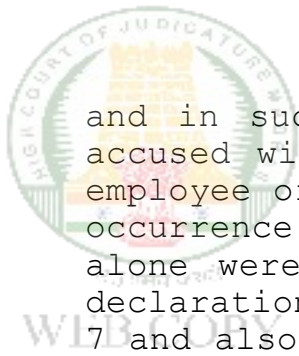
and on this ground, the presence of PW4 in the place of occurrence cannot be disbelieved. It is to be noted at this juncture that the duty of the Casualty Medical Officer is to note down the injuries in the Accident Register and he is not concerned whether the person admitted in the hospital was attacked by known or unknown persons and even assuming that the names of such persons are recorded, still it cannot be used either by the prosecution or by the witnesses. It is also relevant to refer to the decision of Division Bench of this Court in **Annamalai v. State** reported in **(2007) 1 MLJ (Cr1) 319**, wherein it is held as follows:

"The Madras Medical Code (Vol.I) Section 10 paragraph-622 gives guidelines or instructions to the doctor as to how the columns in wound certificate are to be filled up. Para-622 (vi) reads:

"Medical officer should ascertain and incorporate in the certificate only the alleged cause as to the manner in which the injuries were inflicted, the weapon used and the time."

The Medical Officer should ascertain the cause of the injury, weapon used, time, etc. thereby showing no power is vested upon the Medical Officer, to ascertain from the injured or the person accompanied the injured, who is the cause for the assault, whether it is known or unknown even. The doctor is concerned, to ascertain and incorporate in the certificate, how the injuries were inflicted and what is the weapon used, including the time, so as to find out, at later point of time, whether the injury would have been caused by the weapon produced on behalf of the prosecution said to have been used by the assailants on the basis of the recovery, if any. In this view, if the doctor had incorporated about the statement made by the person who brought the deceased, that can be ignored, which appears to be the dictum of the Apex Court also in *Basheer v. State* 1993 Cr1.L.J. 2173."

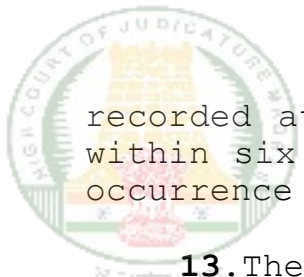
10.The occurrence has taken place when the deceased was travelling in a motorcycle as a pillion rider. The accused came from the back suddenly, pulled the motorcycle and thereby the deceased and PW4 fell down. All the accused have surrounded the deceased and cut him indiscriminately. According to PW4, it was these appellants / accused 1 to 6 have attacked the deceased on the date of occurrence. The motive for the accused was against the deceased alone and therefore, they have concentrated on the deceased alone. The deceased, who was receiving the blow from a group of persons, may not be in a position to identify each and every accused and their overt acts. The deceased has sustained as many as 16 injuries



and in such a brutal attack, no one can identify each and every accused with details with a photographic memory. However, PW4 the employee of deceased, who accompanied the deceased has witnessed the occurrence and he lodged the complaint [Ex.P1], wherein appellants alone were mentioned as accused. But, the deceased in his dying declaration has stated about the presence of accused Nos.1,2,3,5 and 7 and also stated about the 7 other persons, as 13 persons attacked him. This contradiction / exaggerated version in the dying declaration alone cannot be taken into account to disbelieve the dying declaration and the evidence of PW.4. The occurrence has taken place at about 7.30 am and the deceased was admitted in Government Hospital, Virudhunagar at about 8.25 am. On seeing the condition, the deceased was referred to the Government Rajaji Hospital, Madurai and from there, a request was made to the learned Judicial Magistrate No.1, Madurai for recording the dying declaration. The learned Judicial Magistrate [PW14] received the request [Ex.P17] on 28.06.2012 at about 1.00pm. He reached the Government Rajaji Hospital, Madurai around 1.40pm. The Medical Officer on duty gave the certificate that the patient was fully conscious and in a fit state of mind for recording dying declaration and thereafter, dying declaration was recorded by the learned Judicial Magistrate from 1.40 pm to 2.00 pm. The dying declaration of the deceased was recorded within 6 hours from the time of occurrence. However, the complaint [Ex.P1] was lodged only at 4.00 pm.

11. There is a delay in registering the FIR, PW4, who accompanied the deceased at the time of occurrence, is a graduate working as a collection agent with the deceased. He witnessed the occurrence and he was also chased and intimidated by the accused. Out of fear, he went to his native place to take asylum, whereas his relatives are residing. However, he informed PW7 the sister of the deceased about the occurrence and only because of it, PW7 was able to take her brother to the hospital immediately after the occurrence. PW7 and PW9 the relatives of the deceased were in the process of saving the deceased and therefore, they have not lodged any complaint immediately and PW4 has not come out to lodge a complaint out of fear over the accused and therefore, there is a delay in lodging the complaint and that apart there is a delay in the First Information Report reaching the Court also. The Constable, who took the First Information Report was not examined in this case. But, this delay cannot be a material defect, in view of the fact that immediately after the occurrence, the deceased was taken to Virudhunagar Government Hospital and dying declaration was also recorded within 6 hours.

12. Though there is a delay as discussed above, after the occurrence the deceased was taken to the hospital within half an hour by the PW7 and PW9 and PW7 was able to take her brother to hospital only on the intimation of PW4 and the place of occurrence and time of occurrence are very well mentioned in the Accident Register [Ex.P16] and the dying declaration in this case was also



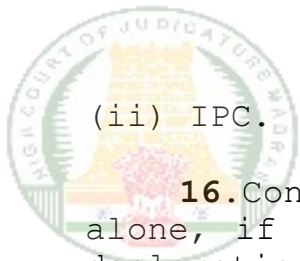
recorded at Government Rajaji Hospital, Madurai, at about 1.40 pm, within six hours, wherein the deceased himself has stated about the occurrence before the learned Judicial Magistrate [PW14].

13.The case of the prosecution is based on the dying declaration of the deceased and the evidence of PW4. Section 32 of the Indian Evidence Act is an exemption to the General Rule against hearsay. Sub Section 1 of Section 32 makes the statement of the deceased admissible.

The dying declaration essentially means the statements made by the person as to the cause of his death or as to the circumstances resulting in his death. The person, who is facing imminent death is expected to speak only the truth. The Court has to ensure whether the deceased was in a fit state of mind to make the dying the declaration or not. In this case the Doctor, who treated the deceased at Government Rajaji Hospital, Madurai before recording the dying declaration and after recording the dying declaration, has certified that the deceased was conscious and was in a fit state of mind to give dying declaration.

14.The learned Counsel for the appellants, by referring to the evidence of PW10, contended that on their advice only, the deceased gave the dying declaration. Though he stated so, PW10, in the chief examination, stated that he went to the Hospital to see his brother / the deceased and at that time, the Judicial Magistrate was examining him. The Judicial Magistrate [PW14] has recorded the dying declaration after satisfying his condition with the Doctor and ensuring that no other person was present at the time of recording the dying declaration. It is also recorded in the dying declaration [Ex.P18]. Therefore, this ground raised by the defence lacks merits.

15.The deceased and the accused were having enmity on account of Panchayat Election, and this motive has also been elicited through the dying declaration and the evidence of Pws.4,7 and 10. As per the evidence of PW7, the deceased contested in the Panchayat election as against one Suresh Kumar and lost the election. By referring the same, the deceased's brother one Ilangovan was insulted by one Thangakani of Suresh Kumar's family and on account of that, there was a prior incident and a case was also registered before the Virudhunagar East Police Station. The deceased has also stated about this case in his dying declaration The motive is insignificant in case of eyewitness. In this case, PWs 1to 6 were examined as eyewitnesses. But, except PW4 all others have turned hostile. PWs 1 to 3 and 5 and 6 are the residents of Ambedkar Colony, where the occurrence was taken place and their statements were also recorded under Section 164 CrPC before the Magistrate [PW.18]. However, during the trial they did not support the case of the prosecution. It is the case of PW.7 that the witnesses including her were intimidated during the trial and she lodged a complain in this regard and a separate Criminal case was registered against the accused in Crime No.440 of 2015 for the offence under Section 506



(ii) IPC.

16. Conviction can be made on the basis of dying declaration alone, if the same is reliable. In this case, apart from the dying declaration the evidence of PW4 is also available to corroborate the crux of the dying declaration and therefore, the case of the prosecution cannot be discarded on account of certain discrepancies with regard to the number of assailants.

17. Apart from this evidence, the accused Nos.2 to 6 were arrested on 30.06.2012 and the accused No.1 was arrested on 01.07.2012 and on their confession statements, the weapons used by the accused for the commission of offence namely MO.3,5,6,1 and 7 were recovered from accused Nos.2 to 6 respectively in the presence of PW.13. The knife MO.8 was recovered from the accused No.1 in the presence of PW.11 and PW.12. These material objectes were also referred for chemical analysis along with the shirt [MO.2], which was recovered from the deceased. The Scientific Officer, Regional Forensic Science Laboratory, Madurai by his report Ex.P34 mentioned that the presence of human blood 'O'group was found in the shirt [MO2], recovered from the deceased and in the knife [MO3] recovered from A3. The presence of human blood was detected in sword, but the grouping was inconclusive.

18. As discussed above, all the grounds raised by the appellants lack merits and therefore, this Criminal Appeal is liable to be dismissed and the same is accordingly, dismissed. The Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.24 of 2013, dated 28.03.2016, is hereby confirmed. Since the appellants are on bail, the learned Trial Judge is directed to secure the appellants and confine them, in accordance with law.

Sd/-

Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar(CS)

ias/gk/dsk

To

1. THE PRINCIPAL SESSIONS JUDGE,
SRIVILLIPUTHUR,
VIRUDHUNAGAR DISTRICT.



2. THE JUDICIAL MAGISTRATE NO.2,
VIRUDHUNAGAR.

3. DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

4. THE DISTRICT COLLECTOR,
VIRUDHUNAGAR DISTRICT.

5. THE SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR.

6. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

7. THE DEPUTY SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR RURAL POLICE STATION,
VIRUDHUNAGAR.

8. THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

9. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO

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

+1CC TO MR.R.KARUNANIDHI, Advocate Sr. No. 88593

ORDER MADE IN
Cr1.A. (MD) No.151 of 2016
20.09.2019

SCR(CO)
TR(12.11.2019) 14P 13C