



BAIL SLIP

The Appellant/Accused 8 namely Sivasankaran, aged 90, S/o Sivasankaran Poosari, was directed to be released on bail as per the order dated 11.01.2018 made in CRL MP(MD)No.9753/2017 in Crl.A (MD)No.425 of 2017 on the file of this Court.

and

The Appellants/Accused A9 & A10 namely A-9 Vijayakumar, aged 28, S/o Ramu, A-10 Sathaiah, aged 31, S/o Velu were directed to be released on bail as per the order dated 14.11.2018 made in CRL MP (MD)No.9195/2018 in Crl.A(MD)No.425 of 2017 on the file of this Court.

and

The Appellant/Accused A2 namely Balamurugan, aged 29, S/o Velu, was directed to be released on bail as per the order dated 03.08.2018 made in CRL MP(MD)No.9754/2017 in Crl.A(MD)No.426 of 2017 on the file of this Court.

and

The Appellants/Accused A3 to A7 namely A-3 Deivendran, aged 27, S/o Raman, A-4 Kasivelu, aged 35, S/o Sivasubramanian, A5 Sivasubramanian, aged 73, S/o. Chellam Poosari, A6 Durairaj, aged 43, S/o. Karuppaiah A7 Selvaraj, aged 32 S/o. Valakkan were directed to be released on bail as per the order dated 03.08.2018 made in CRL MP(MD)No.9755/2017 in Crl.A(MD)No.427 of 2017 on the file of this Court.

and

The Appellant/Accused A1 namely Ganesan, aged 45, S/o Sivasangaran was directed to be released on bail as per the order dated 01.02.2018 made in CRL MP(MD)No.719/2018 in Crl.A(MD)No.428 of 2017 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 24.09.2019

JUDGMENT DELIVERED ON : 03.10.2019

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
Crl.A(MD)Nos.425, 426, 427 and 428 of 2017

and

Crl.M.P. (MD) .No.9809 of 2018



In Crl.A. (MD) .No.425 of 2017:

1.Sivasankaran
2.Vijayakumar
3.Sathaiah

.. Appellants / Accused Nos.8, 9 & 10

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In Crl.A. (MD) .No.426 of 2017:

Balamurugan

.. Appellant/Accused No.2

In Crl.A. (MD) .No.427 of 2017:

1.Deivendran
2.Kasivelu
3.Sivasubramanian
4.Duraiaraj
5.Selvaraj

.. Appellants/Accused Nos.3 to 7

In Crl.A. (MD) .No.428 of 2017:

Ganesan

.. Appellant/Accused No.1

Vs.

State represented by,
The Inspector of Police,
Nainarkovil Police Station,
Ramanathapuram District.

(Crime No.117 of 2009) .. Respondent / Complainant in all cases

COMMON PRAYER: Appeals are filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment of conviction and sentence, dated 31.08.2017, passed in S.C.No.3 of 2011 by the learned Additional District Judge (Fast Track Court), Paramakudi, and to acquit the accused/appellants from all the charges.

For Appellants : Mr. Gopalakrishna Lakshmana Raju
Senior Counsel

for Mr.R.Venkateswaran

for A8 in Crl.A(MD).No.425 of 2017,

for A2 in Crl.A(MD).No.426 of 2017,

for A1 in Crl.A(MD).No.428 of 2017,

and for A3, A4 &A6 in Crl.A(MD).No.427 of 2017.



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Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu
for A5 & A7 in Crl.A.(MD).No.427 of 2017

For A9 & A10 : Mr.R.Venkateswaran

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor
in all cases

COMMON JUDGMENT

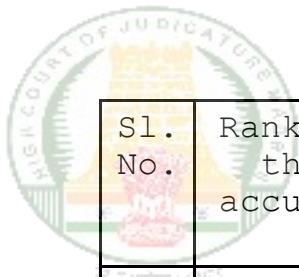
S.VAIDYANATHAN, J.

AND

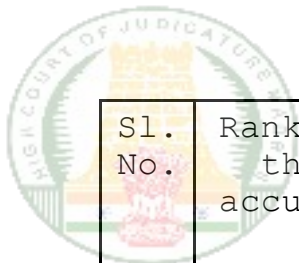
N.ANAND VENKATESH, J.

The appellants, who were ranked as A1 to A10 before the trial Court have filed this Criminal Appeal against the judgment of the learned Additional District Judge (FTC), Paramakudi, dated 31.08.2017, made in S.C.No.3 of 2011, wherein the accused persons have been convicted and sentenced as follows:

Sl. No.	Rank of the accused	Offence for which convicted	Sentence of imprisonment	Fine amount
1.	A1	Under Section 147 IPC	1 year Simple Imprisonment	Rs.500/-, in default, to undergo one month Simple Imprisonment
		Under Section 148 IPC	3 years Simple Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment.
		Under Section 307 IPC	10 years Rigorous Imprisonment	Rs.3000/-, in default, to undergo 1 year Rigorous Imprisonment
		Under Section 302 IPC	Life imprisonment	Rs.2,000/-, in default, to undergo six months Rigorous Imprisonment



Sl. No.	Rank of the accused	Offence for which convicted	Sentence of imprisonment	Fine amount
2.	A2	Under Section 147 IPC	One year simple imprisonment	Rs.500/-, in default, to undergo one month Simple Imprisonment
		Under Section 148 IPC	Three years Rigorous Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment
		Under Section 302 r/w 149 IPC	Life Imprisonment	Rs.5000/-, in default, to undergo two years Rigorous Imprisonment
3.	A3 to A7	Under Section 147 IPC	One year Simple Imprisonment	Rs.500/-, in default, to undergo one month Simple Imprisonment
		Under Section 148 IPC	Three years Rigorous Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment
		Under Section 302 r/w 149 IPC	Life Imprisonment	Rs.5000/-, in default, to undergo two years Rigorous Imprisonment
4.	A8	Under Section 147 IPC	One year Simple Imprisonment	Rs.500/-, in default, to undergo one month Simple Imprisonment
		Under Section 148 IPC	Three years Rigorous Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment
		Under Section 324 IPC	Three years Rigorous Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment
		Under Section 302 r/w 149 IPC	Life Imprisonment	Rs.5000/-, in default, to undergo two years Rigorous Imprisonment



Sl. No.	Rank of the accused	Offence for which convicted	Sentence of imprisonment	Fine amount
5.	A9	Under Section 147 IPC	One year Simple Imprisonment	Rs.500/-, in default, to undergo one month Simple Imprisonment
		Under Section 148 IPC	Three years Rigorous Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment
		Under Section 324 IPC	Three years Rigorous Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment
		Under Section 326 IPC	Five years Rigorous Imprisonment	Rs.3000/-, in default, to undergo one year Rigorous Imprisonment
		Under Section 302 r/w 149 IPC	Life Imprisonment	Rs.5000/-, in default, to undergo two years Rigorous Imprisonment
6.	A10	Under Section 147 IPC	One year Simple Imprisonment	Rs.500/-, in default, to undergo one month Simple Imprisonment
		Under Section 148 IPC	Three years Rigorous Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment
		Under Section 324 IPC	Three years Rigorous Imprisonment	Rs.1000/-, in default, to undergo six months Rigorous Imprisonment
		Under Section 302 r/w 149 IPC	Life Imprisonment	Rs.5000/-, in default, to undergo two years Rigorous Imprisonment

2. In this case, there were totally twelve accused persons, who faced trial before the Court below. All died during the pendency of this Criminal Appeal and therefore, this Criminal Appeal stands abated insofar as A8 is

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concerned. A12 was acquitted from all charges.

3. The case of the prosecution:

There was a previous enmity between the parties in construction of a Mariamman temple at Government poramboke land at Siruvayal Nadukkudiyiruppu Village. On 23.12.2009, at about 06.00 p.m., at Aranmanai Bus Stand, A12 is said to have instigated A1 and A8 to kill the deceased Murugesan. Pursuant to the said instigation, A1, A2, A8, A9, A10 and A11 are said to have joined together as an unlawful assembly with deadly weapons and they were also joined by A3 to A7 and at 7.00 p.m., on the southern side of the bus stop of Siruvayal Nadukkudiyiruppu, when P.W.1, the deceased Murugesan, P.W.4, P.W.5, P.W.6, P.W.7 and P.W.8 were catching fish, they were attacked and the following overtacts were attributed to the accused persons:

Rank of the Accused	Overtacts attributed
A1	(a) attacked P.W.1 with Aruval at the centre of his head by uttering "you are dead and gone" and thereby, committed an offence under Section 307 IPC. (b) A1 indiscriminately cut the deceased in his head and caused his death and thereby, committed an offence under Section 302 IPC.
A2	(a) attacked P.W.5 with iron rod and caused injury in the middle finger of the left hand and committed an offence under Section 324 IPC. (b) attacked the deceased Murugesan with iron rod in his right eye and thereby, committed the murder along with A1 and therefore, liable for an offence under Section 302 IPC.
A3 to A7	cordoned the deceased and prevented him from escaping from the place and thereby, committed an offence under Section 341 IPC.
A9	(a) attacked P.W.6 with Aruval in the middle of his head and committed an offence under Section 324 IPC. (b) attacked P.W.7 with Aruval on the left and right side of his head and thereby, committed an offence under Section 326 IPC.



Rank of the Accused	Overtacts attributed
A10	attacked P.W.5 with Aruval above the left hip and thereby, committed an offence under Section 324 IPC.
A2, A3 to A7, A9 and A10	formed into an unlawful assembly with a common object of causing the death of the deceased Murugesan and thereby, committed an offence under Section 302 r/w 149 IPC.

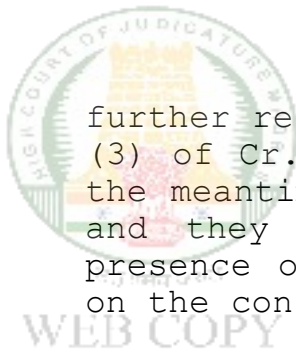
(3.1) In view of the above overtacts, the deceased Murugesan died on the spot and P.W.1 and P.W.4 to P.W.8 sustained injuries. On hearing the alarm, the villagers rushed to the spot and all the accused persons escaped from the scene of crime. All the injured persons and the deceased were taken to the hospital by Ambulance.

4. Complaint and evidence collected in the course of investigation:

The complaint (Ex.P.1) was received from P.W.1 at the hospital by the Inspector of Police (P.W.24) and it was also attested by P.W.9. Thereafter, it was taken to the police station and an FIR was registered (Ex.P.32) in Crime No.117 of 2019 by P.W.24, for the offences under Sections 147, 148, 341, 307 and 302 IPC. The FIR was registered at 1.00 a.m., on 24.12.2009.

(4.1) The investigation was commenced by P.W.24 and he reached the scene of crime at 3.00 a.m., and he prepared the observation mahazer (Ex.P.7) and rough sketch (Ex.P.33) in the presence of P.W.12 and one Karthick Raja. He also seized the material objects from the scene of crime (M.O.6 and M.O.7) in the presence of witnesses. He also recorded the statements of P.W.1, P.W.4, P.W.5, P.W.6, P.W.8, P.W.9, P.W.10 and P.W.11 under Section 161(3) of Cr.P.C. On the same day at about 7.00 a.m., he proceeded to the mortuary in the Government Hospital and conducted the inquest over the body of the deceased and completed it around 10.00 a.m., and prepared the inquest report (Ex.P.34). Body was handed over to the Head Constable (P.W.21) with a requisition to conduct postmortem and thereafter, the body was handed over to the relatives.

(4.2) In the course of investigation, on 24.12.2009, at about 2.00 p.m., based on the information, the Investigating Officer proceeded to arrest A3, A7, A10 and A11 and recorded their confession statements in the presence of witnesses. Based on the confession, at Manjakulam Bus Stop, he recovered M.O.3 and M.O.4. He



further recorded the statements of other witnesses under Section 161 (3) of Cr.P.C., and had sent the material objects to the Court. In the meantime, A1, A2 and A9 surrendered before the Magistrate Court and they were taken on police custody. On 06.01.2010, in the presence of the witnesses, their confession was recorded and based on the confession M.O.1, M.O.2 and M.O.5 were recovered.

(4.3) In the course of investigation, the dress from the deceased was recovered (M.O.8 to M.O.10) and a requisition was made to send the same for chemical analysis. Statements were also taken from certain other witnesses in the course of investigation.

(4.4) On 05.03.2010, A6 was arrested and thereafter, remanded to judicial custody. Requisition was also made for recording the statement under Section 164 Cr.P.C., from two of the witnesses.

(4.5) The investigation was handed over to P.W.25 and he took steps to get the 164 statement recorded from P.W.10 and P.W.11 and they were produced before the Judicial Magistrate Court. He handed over the further investigation to P.W.26, who altered the offence and sent the alteration report before Judicial Magistrate Court (Ex.P.37). The investigation was completed and he laid the final report before the concerned Magistrate Court on 15.09.2010.

5. After the case was committed to the Additional District Court (FTC), Paramakudi, the trial Court framed the charges against the accused persons. The prosecution examined P.W.1 to P.W.26 and marked Ex.P1 to Ex.P.37 and M.O.1 to M.O.10.

6. After the completion of the examination of witnesses, the trial Court brought to the notice of each of the accused persons, the incriminating materials that were brought out during the course of trial and questioned them under Section 313 (1) (b) of Cr.P.C., and all of them denied the same as false.

7. The trial Court on consideration of the facts and circumstances of the case and on the appreciation of oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and convicted and sentenced the accused persons in the manner, referred supra.

Submissions:

8. Mr.Gopalakrishna Lakshmana Raju, learned Senior Counsel appearing on behalf of A1 in Crl.A(MD).No.428 of 2017, A2 in Crl.A (MD).No.426 of 2017, A3, A4 & A6 in Crl.A(MD).No.427 of 2017, and A8 in Crl.A(MD).No.425 of 2017 made the following submissions:



- The evidence of P.W.1 clearly shows that he had gone to the police station and given a complaint at about 8.00 p.m., and this complaint was suppressed by the prosecution. Therefore, the present complaint (Ex.P.1) is a deliberated one and an afterthought.
- As per Ex.P.2 and Ex.P.3 (Accident Registers), the incident is said to have taken place at Peruvayal Bus Stand at 7.30 p.m., and it is stated that four known persons attacked. As per Ex.P.4 and Ex.P.5 (Accident Registers), the incident is said to have taken place at Siruvayal Bus Stand and Ex.P.26, which is the case record given by the Government hospital, it is stated that the incident had taken place at Siruvayal at 6.30 p.m., and it is further stated that the injured was assaulted by 10 to 12 known persons with Aruval, Spear, Wooden Log and Pipe. By pointing out to these infirmities, it was contended that the occurrence could not have taken place at a single spot and in the manner alleged by the prosecution. The incident is said to have taken place at 7.00 p.m., and as per the evidence of P.W.1 and P.W.10, police were present at the scene of crime even at 7.30 p.m. The injured and the deceased were sent in an Ambulance to the hospital separately. None of the persons, who were present in the scene of crime or the Ambulance driver was examined by the prosecution. The accident register insofar as the injured persons are concerned does not show that the injured were brought in an Ambulance and they got admitted on their own. Therefore, the very genesis of the case is doubtful.
- The motive that has been attributed for the incident is with regard to the construction of the Mariamman temple in the poramboke land and this dispute is said to have taken place two years before the incident. This itself shows that there was no provocation to indulge in an incident of this nature with so much spontaneity and the motive itself has been created for the purpose of this case and in order to conceal the actual irrigation dispute between two parties, which involved various incident that took place across the village.
- The presence of P.W.9, who is the son of P.W.1, in the scene of crime is highly doubtful. He states that he was in his house at Ramanathapuram till 06.15 p.m., on the date occurrence and he could not have reached the place of crime at 7.00 p.m.
- P.W.10 has specifically stated that the bus M.3 started from Ramanathapuram Aranmanai at 5.45 p.m., and it takes half-an-hour to reach the Siruvayal stop. This would mean that the bus would have reached Siruvayal by 6.15 p.m. Therefore, there is a very serious doubt even with regard to the time of occurrence of the crime, which is said to have taken place at 7.00 p.m., and a reading of Ex.P.26 shows that the injury



was sustained by P.W.7 at 6.30 p.m.

- The case of the prosecution commenced with the abetment by A12 to A1 and A8 at Aranmanai bus stand. A12 has been acquitted. There is absolutely no material to show that there was a meeting of mind between A1, A2, A8 and A9 on the one hand and the rest of the accused on the other hand and there is nothing to show that the accused had a common object to commit the crime.
- Neither the driver nor the conductor of the bus were examined as witnesses and the trip sheet was not marked as a document and therefore, there is absolutely no proof to substantiate the case of the prosecution that the bus reached at 7.00 p.m., and A1, A2, A8 and A9 started attacking the deceased and the injured persons.
- A3 to A7 are said to have come from the village to the scene of crime and there is no material to show that they knew before hand the plan to kill the deceased. Similarly, A10 and A11 also came from the village and it is not known as to how they joined A1, A2, A8 and A9 in prosecution of the common object.
- The evidence of P.W.10 and P.W.11 is totally artificial and highly doubtful and they are said to have travelled in the bus and overheard the accused planning to kill the deceased and not informed the same to the victim party, who are their close relatives. When the trial Court disregarded their evidence insofar as P.W.12 is concerned, it must have disbelieved their evidence in total.
- The prosecution has concealed the earliest information received and therefore, there is a very serious doubt on the genesis of the case, and the accused persons are entitled to be extended the benefit of doubt.
- The evidence of P.W.1, P.W.5 and P.W.8 gives a completely different picture regarding the place of occurrence and it goes contrary to the rough sketch, which was marked as Ex.P.24.
- The Accident Register of the deceased was not marked and the Accident Register Doctor was also not examined and this was intentionally done by the prosecution as it would have gone against their case.
- The learned Senior Counsel in order to substantiate his arguments relied upon the following judgments:

1. State rep., by the Inspector police, Papanasam Police Station, Thanjavur District vs. Senthil and others,

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reported in **2015(1) MLJ (Crl) 159;**

2. **Chinnaurai and Others vs. State by the Inspector of Police, Poraiyar Police Station, Nagapattinam District,** reported in **2016(2) MLJ (Crl) 496;**

3. **Kumar @ Magilmannan and another vs. State by the Inspector of Police, Thalaigaynar Police Station, Nagapattinam District,** reported in **2014(4) MLJ (Crl) 211;**

4. **Kumar vs. State by the Inspector of Police, M-2, Puzhal Police Station, Thiruvallur District,** reported in **2016(1) MLJ (crl) 410;**

5. **Veerapathiran and others vs. State rep. by the Inspector of Police, Avaniapuram Police Station, Madurai District,** reported in **2016(2) MLJ (crl) 239.**

9. Mr.V.Kathirvelu, learned Senior Counsel, appearing on behalf of A5 and A7 in Crl.A.(MD).No.427 of 2017 made the following submissions:

- The learned Senior Counsel adopted the arguments of Mr.Gopalakrishna Lakshmana Raju, learned Senior Counsel.
- The place of occurrence is highly doubtful since P.W.4 and P.W.1 have stated that the incident took place at Peruvayal bus stand and P.W.6 and P.W.8 have stated that it took place at Siruvayal bus stand and the distance between the Peruvayal and Siruvayal is nearly 7 to 8 kms.
- The entire attempt of the prosecution is to club various incidents that had taken place in the village due to a water sharing dispute between various parties and which has been spoken to by many witnesses and it has been clubbed and brought as a single incident and as many persons as possible have been implicated in this case.
- The charge for the offence under Section 149 IPC has not been made out by the prosecution since there is absolutely no material to show that A5 and A7 were members of the unlawful assembly and they acted in prosecution of the common object of that assembly.
- The Court below convicted A5 and A7 under Section 148 IPC even without framing a charge against them and the Court below has not even given a finding with regard to the offence under Section 341 IPC for which they were charged.



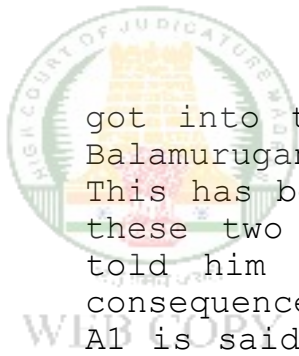
10. Mr.M.Chandrasekaran, learned Additional Public Prosecutor, appearing on behalf of the State made the following submissions:

- The injured persons have specifically spoken about the overtacts of each of the accused persons and there is no ground to disbelieve their evidence.
- The motive behind the occurrence, namely, construction of the Mariamman temple has been specifically spoken by the witnesses. Even assuming that the motive has not been established, that will not in any way discredit the evidence of the witnesses, who have specifically attributed overtacts against the accused persons.
- The common object between the accused persons, who formed themselves into an unlawful assembly is apparent from the manner in which they have attacked the deceased and the injured persons. The injured witnesses have spoken about the presence of A3 to A7 and therefore, there is no doubt regarding their presence in the scene of crime.
- The non-examination of the Ambulance driver, wife of P.W.1, Accident Register Doctor and the non-marking of the Accident Register of the deceased are defects, which are attributable to the investigating officer and that should not lead to the conclusion that the prosecution has not made out a case resulting in the acquittal of the accused persons.
- The recovery of the material objects after the arrest/police custody of the accused persons, nearly after 11 days from the date of occurrence is established by the fact that it contained human blood (B-Group) as per the serology report marked as Ex.P.31.
- The prosecution has proved the case beyond reasonable doubts and there is absolutely no ground to interfere with the judgment of the trial Court.

Discussion:

11. This Court has carefully considered the submissions made on either side and assessed the oral and documentary evidence along with the original records placed before this Court.

12. It is the definite case of the prosecution that there was a dispute between the parties over the construction of a Mariamman temple in a poramboke land at Siruvayal Nadukkudiyiruppu village. This simmering dispute is said to have lead to this incident. The starting point of the case was the alleged instigation done by A12 to A1 and A8 on 23.12.2009 at 6.00 p.m., near Aranmanai bus stand. The instigation was to kill Murugesan, the deceased. A1 and A8 have



got into the M-3 bus from Ramanathapuram Aranmanai bus stop. A2-Balamurugan and A9-Vijayakumar were also present in the same bus. This has been spoken to by P.W.10 and P.W.11. It is the evidence of these two witnesses that A12-Balusamy spoke with A1-Ganesan, and told him to kill Murugesan and that he will take care of the consequences. When the bus was going near Cauvery Kudineer Thotti, A1 is said to have taken the Aruval and got into the footboard. At that time, A9 also had an Aruval in his hand. Both of them were travelling in the footboard. A2 was having an iron rod in his hand and A8 was also having Vangaruval. This bus is said to have reached the scene of occurrence at about 7.00 p.m. and immediately, thereafter these accused persons started attacking the deceased and the injured persons, who were fishing at that point of time.

13. It is also the admitted case of the prosecution that the other accused persons, namely, A3 to A7, A10 and A11 came from the village at the same time and participated in the crime. There is absolutely no material to show as to how A3 to A7, A10 and A11 were even aware about the fact that A1, A2, A8 and A9 have come to the scene of occurrence to attack the deceased. Except A1, all the other accused persons have been convicted for life imprisonment for an offence under Section 302 r/w 149 IPC.

14. This Court has to therefore see if the accused persons joined together as an unlawful assembly with a common object of killing the deceased, in order to rope them under Section 149 IPC.

15. At this juncture, it will be necessary for this Court to consider the scope and ambit of Section 149 of I.P.C., by referring to some judgments of the Hon'ble Supreme Court of India as follows:

- The Hon'ble Supreme Court in **Akbar Sheikh and others vs. State of West Bengal**, reported in **2009 (7) SCC 415** has held as follows: The relevant portions of the judgment is extracted hereunder:

"22. In Munna Chanda v. State of Assam [(2006) 3 SCC 752], this

Court held as under:

"10. The concept of common object, it is well known, is different from common intention. It is true that so far as common object is concerned no prior concert is required. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of the assembly, however, is a relevant factor. At what point of time the common object of



the unlawful assembly was formed would depend upon the facts and circumstances of each case.

11. Section 149 IPC creates a specific and distinct offence. There are two essential ingredients thereof:

(i) commission of an offence by any member of an unlawful assembly, and

(ii) such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed.

12. It is, thus, essential to prove that the person sought to be charged with an offence with the aid of Section 149 was a member of the unlawful assembly at the time the offence was committed.

13. The appellants herein were not armed with weapons. They except Bhuttu were not parties to all the three stages of the dispute. At the third stage of the quarrel, they wanted to teach the deceased and others a lesson. For picking up quarrel with Bhuttu, they might have become agitated and asked for apologies from Moti. Admittedly, it was so done at the instance of Nirmal, Moti was assaulted by Bhuttu at the instance of Ratan.

However, it cannot be said that they had common object of intentional killing of the deceased. Moti, however, while being assaulted could free himself from the grip of the appellants and fled from the scene. The deceased was being chased not only by the appellants herein but by many others. He was found dead the next morning. There is, however, nothing to show as to what role the appellants either conjointly or separately played. It is also not known as to whether if one or all of the appellants were present, when the last blow was given. Who are those who had assaulted the deceased is also not known. At whose hands he received injuries is again a mystery. Neither Section 34 nor Section 149 of the Penal Code is, therefore, attracted. (See *Dharam Pal v. State of Haryana* and *Shambhu Kuer v. State of Bihar*) "

23. The question came up for consideration before this Court in *Baladin & Others v. State of Uttar Pradesh* [AIR 1956 SC 181] wherein B.P. Sinha, J., as the learned Chief Justice then was, opined



that with a view to invoke the provisions of Section 149 of the Indian Penal Code, "it was necessary therefore for the prosecution to lead evidence pointing to the conclusion that all the appellants before us had done or been committing some overt act in prosecution of the common object of the unlawful assembly".

24. It was furthermore stated in Baladin case:

"19.....The evidence as recorded is in general terms to the effect that all these persons and many more were the miscreants and were armed with deadly weapons, like guns, spears, pharsas, axes, lathis, etc. This kind of omnibus evidence naturally has to be very closely scrutinised in order to eliminate all chances of false or mistaken implication. That feelings were running high on both sides is beyond question.

That the six male members who were done to death that morning found themselves trapped in the house of Mangal Singh has been found by the courts below on good evidence. We have therefore to examine the case of each individual accused to satisfy ourselves that mere spectators who had not joined the assembly and who were unaware of its motive had not been branded as members of the unlawful assembly which committed the dastardly crimes that morning.

It has been found that the common object of the unlawful assembly was not only to kill the male members of the refugee families but also to destroy all evidence of those crimes. Thus even those who did something in connection with the carrying of the dead bodies or disposal of them by burning them as aforesaid must be taken to have been actuated by the common objective."

25. The aforementioned observation was, however, not accepted later by this Court as an absolute proposition of law and was held to be limited to the peculiar fact of the case in *Masalti v. State of U.P.* [(1964) 8 SCR 133] in the following terms:

"17.....What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained long with the other members of the assembly the common



object as defined by Section 141 IPC Section 142 provides that however, being aware of facts which render any assembly an unlawful assembly intentionally joins that assembly, or continue in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common object specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly..."

26.. We may, however, notice that whereas the principle of law laid down in *Masalti* (supra) is beyond any doubt or dispute, its application in the later cases has not been strictly adhered to. This Court, as would appear from the discussions made hereinafter, in some of its decisions had proceeded to determine the issue in the factual matrix obtaining therein although some observations of general nature had been made.

27. In *Sherey and Others v. State of U.P.* [1991 Supp (2) SCC 437] involved a case where there was a dispute between Hindus and Muslims of a village regarding a grove. Whereas the Hindus were claiming that it was a grove, the Muslims were claiming it to be a graveyard. A large number of Muslims, about 25 in number, came out with lethal weapons and killed three persons and injured others. Before this Court an argument was advanced that the appellants against whom no overt act was attributed but were part of the unlawful assembly should be held to be not guilty was accepted, stating:

"4....Therefore, it is difficult to accept the prosecution case that the other appellants were members of the unlawful assembly with the object of committing the offences with which they are charged. We feel it is highly unsafe to apply Section 149 IPC and make everyone of them constructively liable. But so far as the above nine accused are



concerned the prosecution version is consistent namely that they were armed with lethal weapons like swords and axes and attacked the deceased and others. This strong circumstance against them establishes their presence as well as their membership of the unlawful assembly. The learned counsel appearing for the State vehemently contended that the fact that the Muslims as a body came to the scene of occurrence would show that they were members of an unlawful assembly with the common object of committing various offences including that of murder. Therefore all of them should be made constructively liable. But when there is a general allegation against a large number of persons the Court naturally hesitates to convict all of them on such vague evidence. Therefore we have to find some reasonable circumstance which lends assurance. From that point of view it is safe only to convict the abovementioned nine accused whose presence is not only consistently mentioned from the stage of FIR but also to whom overt acts are attributed..."

28. Similarly, in *Musa Khan and Others v. State of Maharashtra* [(1977) 1 SCC 733], it was opined:

"5....It is well settled that a mere innocent presence in an assembly of persons, as for example a bystander, does not make the accused a member of an unlawful assembly, unless it is shown by direct or circumstantial evidence that the accused shared the common object of the assembly. Thus a court is not entitled to presume that any and every person who is proved to have been present near a riotous mob at any time or to have joined or left it at any stage during its activities is in law guilty of every act committed by it from the beginning to the end, or that each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in which the assembly would subsequently indulge. In other words, it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all these stages..."

It was opined therein that as evidence was wholly lacking that all of them had taken part at all stages of the commission of offence, they were held



to be not guilty of the charges levelled against them.

29. Yet again in *Nagarjit Ahir v. State of Bihar* [(2005) 10 SCC 369], it was opined:

WEB COPY "12....Moreover, in such situations though many people may have seen the occurrence, it may not be possible for the prosecution to examine each one of them. In fact, there is evidence on record to suggest that when the occurrence took place, people started running helter-skelter. In such a situation it would be indeed difficult to find out the other persons who had witnessed the occurrence..."

It was furthermore observed:

"14. ...In such a case, it may be safe to convict only those persons against whom overt act is alleged with the aid of Section 149 IPC, lest some innocent spectators may get involved. This is only a rule of caution and not a rule of law..."

30. Almost a similar view has been taken in *Hori Lal and Another v. State of U.P.* [(2006) 13 SCC 79] wherein this Court noticed both *Baladin* (supra) and *Masalti* (supra) as also other decisions to opine:

"23. Common object would mean the purpose or design shared by all the members of such assembly. It may be formed at any stage.

24. Whether in a given case the accused persons shared common object or not, must be ascertained from the acts and conduct of the accused persons. The surrounding circumstances are also relevant and may be taken into consideration in arriving at a conclusion in this behalf.

25. It is in two parts. The first part would be attracted when the offence is committed in furtherance of the common object. The offence, even if is not committed in direct prosecution of the common object of the assembly, Section 149 IPC may still be attracted."



What was, therefore, emphasized was that not only the acts but also the conduct and surrounding circumstances would be the guiding factors.

31. In *Shankaraya Naik & Ors. v. State of Karnataka* [2008 (12) SCALE 742], this Court held:

"15...It is clear from the record that the accused had come to the place of incident duly armed and had immediately proceeded with the attack on the opposite party and had caused serious injuries to the deceased and to as many as eight witnesses. It is also clear from the facts preceding the attack that there was great animosity between the parties and it must, therefore, be inferred that when the accused had come armed with lethal weapons, the chance that somebody might be killed was a real possibility."

32. In *Maranadu and Anr. v. State By Inspector of Police, Tamil Nadu* [2008 (12) SCALE 420], this Court stated the law, thus:

"17. 'Common object' is different from 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become



unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot co instanti."

33. We may, however, notice that therein this Court had taken note of an earlier decision of this Court in *State of U.P. v. Dan Singh and Ors.* [(1997) 3 SCC 747] wherein it was held:

"34. Mr Lalit is right in submitting that the witnesses would be revengeful as a large-scale violence had taken place where the party, to which the eyewitnesses belonged, had suffered and it is, therefore, necessary to fix the identity and participation of each accused with reasonable certainty. Dealing with a similar case of riot where a large number of assailants who were members of an unlawful assembly committed an offence of murder in pursuance of a common object, the manner in which the evidence should be appreciated was adverted to by this Court in *Masalti* case at p. 210 as follows:

"15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well-founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend



that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not."

34. The decisions of this Court in Shankaraya Naik (supra) and Maranadu (supra), therefore, do not militate against the proposition of law in regard to appreciation of evidence, which we have to apply herein."

- The Hon'ble Supreme Court Judgment in **Najabhai Desurbhai Wagh vs. Valerabhai Deganbhai Vagh and others**, reported in **2017 (1) MLJ (Crl) 740 (SC)**. The relevant portions of the judgment is extracted hereunder:

" **9.** Whether the High Court was right in acquitting the accused under Section 302 read with 149 IPC is the question that falls for our consideration in this case. The essential ingredients and the width and amplitude of Section 149 as well as its applicability to the facts of the case have to be examined. It would be relevant to refer to Section 149 IPC which is as under:

"149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

10. A Full Bench of the Calcutta High Court analysed Section 149 IPC in the year 1873 in Queen v. Sabid Ali[1]. Phear, J., speaking for the majority, held as under:



" It seems to me clearly not the case that every offence which may be committed by one member of an unlawful assembly while the assembly is existing, i.e., while the members are engaged in the prosecution of a common object, is attributed by Section 149 to every other member. The Section describes the offence which is to be so attributed, under two alternative forms, viz., it must be either - 1st. - An offence committed by a member of the unlawful assembly in prosecution of the common object of that assembly.

2nd. - An offence such as the members of that assembly knew to be likely to be committed in prosecution of that object.

Now, inasmuch as the continuance of the unlawful assembly is by the definition of Section 141 made conterminous with the prosecution of the common object, it seems tolerably clear that the Legislature must have employed the words "prosecution of the common object" with some difference of meaning in these two passages respectively. Also the mere fact that the Legislature thought fit to express the second alternative appears to show very distinctly that it did not intend the words "in prosecution" which are found in the first to be equivalent "during the prosecution"; for if they were then the second alternative would have clearly been unnecessary. And a comparison with this passage of the language which is used in Section 460, where the Legislature makes all the persons concerned in committing a burglary punishable with transportation for life, if any one of their number act the time of committing of burglary causes death, &c., strongly bears out this view. I am of opinion that an offence, in order to fall within the first of the above alternatives, i.e., in order to be committed in the prosecution of the common object must be immediately connected with that common object by virtue of the nature of the object: for instance, if a body of armed men go out to fight, their common object is to cause bodily injury to their opponents, and in that case death resulting from injury caused would be homicide committed in prosecution of the common object.

And an offence will fall within the second alternative if the members of the assembly, for any reason, knew beforehand that it was likely to be committed in the prosecution of the common object,



though not knit thereto by nature of the object itself.

It seems thus, on a little consideration, to be apparent that the two alternatives of Section 149 do not cover all possible cases of an offence being committed by one member of an unlawful assembly during the time when the common object of the assembly is being prosecuted. It follows that in every trial of prisoners on a charge framed under the provisions of Section 149 of Penal Code, even when it is proved that the specified offence was committed by one of the members of the assembly during, so to speak, the pendency of that assembly, it yet remains an issue of fact to be determined on the evidence whether that offence was committed in prosecution of the common object, as I have endeavoured to explain the meaning of those words in the first part of the Section; and, if not, whether it was an offence such as the members of the assembly knew to be likely to be committed in the prosecution of the object."

The Calcutta High Court was dealing with a case of riot over a dispute about a piece of land between Fukeer Buksh and Sabid Ali. Tureeboollah, who was a member of Sabid Ali's party of assailants, fired a gun and killed one Samed Ali. The Trial Court held that Tureeboollah was a member of the unlawful assembly of which the others in Sabid Ali's party were also members. It convicted all the accused under Section 302 read with 149 IPC. The High Court held that the conviction under Section 149 was unsustainable. In a concurring opinion, Jackson J. held as follows:

"It appears to me that the construction of this Section (149), that is, a construction which shall be at once reasonable grammatical, involves two difficulties, or at least two points which call for attentive consideration:-

1st - "The common object,"

2nd - or "such as the members of that assembly knew to be likely to be committed in prosecution of that object." It has been proposed to interpret the "common object" in a precise sense so as to indicate the exact extent of violence to which the rioters intended to go, viz., to take possession of the land



by force extending, if need be, to wounding and the like.

This I think is not the sense in which the words were intended to be understood.

They are not, it seems to me, used in the same sense as "the common intention" in Section 34, which means the intention of all whatever it may have been.

The words here seem to have manifest reference to the defining Section 141, and to point to one of the five objects, which being common to five or more persons assembled together, make their assembly unlawful.

For this reason, I think that any attempt to mitigate the rigour of the Section by limiting the construction of the words "common object" must fail, and that any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in Section 141, which is or are brought home to the unlawful assembly to which the prisoner belonged, is an offence within the meaning of the first part of the Section."

Pontifex, J. agreed with the majority and interpreted the word "knew" in Section 149 in the following terms:

"To bring the offence of murder as defined by the Code within Section 149, I think it must either necessarily flow from the prosecution of the common object; or it must so probably flow from the prosecution of the common object that each member might antecedently expect it to happen. The offence of murder as strictly defined by the Code requires a previous intention or knowledge in the perpetrator; and to "know" that murder is likely to be committed, is to know that some member of the assembly has such previous intention or knowledge. The word "knew" used in the second branch of the Section is I think advisedly used, and cannot be made to bear the sense of "might have known."

11. This Court in *Mizaji and Another v. State of U.P.* [2] observing that various High Courts of



India had interpreted Section 149 held that every case has to be decided on its own facts. This court proceeded to deal with Section 149 in detail as under:

"The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149. Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to be committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all. There is a great deal to be said for the opinion of Couch, C.J., in Sabid Ali case [(1873) 20 WR 5 Cr] that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149, Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of Section 149 as explained



above or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part."

Mizaji's case was referred to and relied upon in a long line of decisions of this court. (See, e.g., Avtar Singh v. State of Haryana[3], Roy Fernandes v. State of Goa[4], Lokeman Shah v. State of W.B.[5]).

12. Applying the well settled principles laid down by this court we proceed to examine whether the Accused can be convicted for an offence under section 302 with the aid of Section 149 IPC. As per Section 141 IPC an assembly of five or more persons is designated an unlawful assembly if the common object of the persons composing that assembly is to commit an offence mentioned therein. Guidance is supplied by this Court regarding the requirement of examining the circumstances in which the incident occurred, the weapons used and the conduct of the accused during the course of the incident. In Lalaji v State of Uttar Pradesh[6] this court held that:

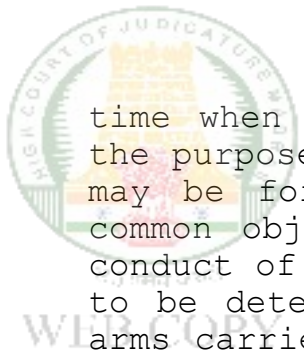
"The common object of the assembly must be one of the five objects mentioned in Section 141 IPC. Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case."

16. It is clear from the above judgments that Section 149 IPC creates a specific and distinct offence. There are two essential ingredients thereof:

(a) Commission of offence by any member of an unlawful assembly, and,

(b) Such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed.

17. It must be proved in each case that the person concerned was not only a member of the unlawful assembly but also **"must have shared the common object"** (emphasis supplied) of the assembly at the



time when the offence was committed. The common object would mean the purpose or design shared by all the members of such assembly. It may be formed at any stage. Where the accused persons shared a common object or not, must be ascertained only from the acts and conduct of the accused persons. It is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident.

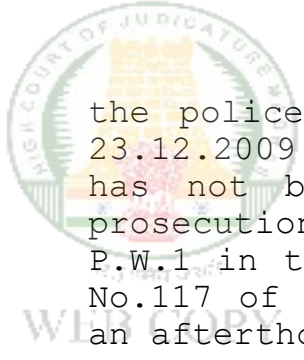
18. Keeping in mind the above dictum of the Hon'ble Supreme Court, when the same is applied to the facts of the present case, this Court has to examine whether the common object of the unlawful assembly has been proved by the prosecution. In other words, this Court has to examine whether all the accused persons were aware about the common object and concurred in it.

19. In the instant case, it is the very specific case of the prosecution that A1, A2, A8 and A9 got down from the bus and started attacking the deceased and the injured persons. There was nothing to show that A3 to A7 and A10 shared the common object or were aware about the common object and proceeded to participate in the crime. These accused persons were said to have come from the village to the scene of crime. It is beyond the course of natural events for these two sets of accused persons to have gathered in the spot at the same time and to commit the crime with the common object. The common object by its very definition involves meeting of minds between the accused persons, which can happen even on the spot. However, it is not known as to how A3 to A7 and A10 knew that the other set of accused persons have come to the scene of crime to commit the murder of Murugesan. Therefore, in the considered view of this Court, A3 to A7 and A10 have been roped in for the offence of murder by using Section 149 IPC without any materials and the facts and circumstances of this case does not even lead us to presume the participation of A3 to A7 and A10 in pursuance of a common object.

20. The learned Senior Counsels appearing for the appellants vehemently argued regarding a very strong doubt on the very genesis of the case of the prosecution. The arguments were developed on the basis of the following facts:

(a) M-3 bus timing was spoken by P.W.10. He has stated that the bus started at 5.45 p.m., from Ramanathapuram Aranmanai bus stop and it reaches Siruvayal in half-an-hour. This would mean that the bus would have reached the Siruvayal bus stop by 6.15 p.m., and immediately, the incident had taken place. However, the case of the prosecution is that the incident took place at 7.00 p.m.

<https://hcservices.ecourts.gov.in/hcservices/> (b) P.W.10 even in the chief-examination has stated that he gave



the police complaint in the police station at about 8.00 p.m. on 23.12.2009 and only thereafter, went to the hospital. This complaint has not been produced by the prosecution and according to the prosecution, the FIR was registered after recording the statement of P.W.1 in the hospital, at about 1.00 a.m., on 24.12.2009 in Crime No.117 of 2009. Therefore, this complaint is a deliberated one and an afterthought.

(c) P.W.1 and P.W.10 categorically speak about the presence of the police at the scene of crime half-an-hour after the incident and the injured persons were taken in one Ambulance and the deceased was taken in another Ambulance. None of these police officers were examined by the prosecution.

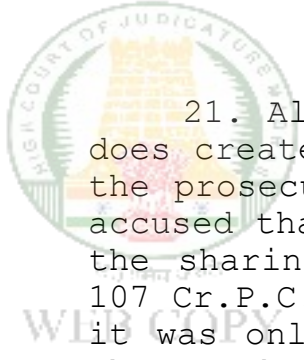
(d) The injured were taken in an Ambulance and the deceased was taken in another Ambulance and no Ambulance driver was examined in this case.

(e) M-3 bus in which A1, A2, A8 and A9 travelled, neither the driver nor the conductor was examined and trip sheet was not marked as exhibit. This would have ensured atleast the time at which the bus had started from Ramanathapuram Aranmanai and reached the Siruvayal bus stand. The accident register of the deceased was not marked and the accident register Doctor was also not examined. The evidence of P.W.4 and P.W.1 with specific reference to Ex.A2 and Ex.A3 shows that the incident had happened at Peruvayal bus stand. However, the evidence of P.W.6 and P.W.8 with specific reference to A4 and A5 shows that the incident had happened at Siruvayal bus stand.

(f) The exact place at which the incident had happened as spoken by P.W.8, P.W.5 and P.W.1 does not coincide with the rough sketch, which was marked as Ex.P.33.

(g) All the injured are said to have sustained bleeding injuries apart from the deceased. However, blood stained earth was recovered only from one place and explanation given by the investigating officer, who was examined as P.W.24 was that the other blood stained earth would have got wiped off due to the rains. This also creates a doubt regarding the place of occurrence.

(h) The Accident Register, which has been marked shows that the injured persons have got themselves admitted on their own and it does not show that they were brought in an Ambulance and thereafter, they took treatment.



21. All the above factors that have been brought to our notice, does create a doubt on the genesis of the case that is projected by the prosecution. Therefore, it probablises the defense taken by the accused that there was a widespread dispute in the village regarding the sharing of water for irrigation and there was already Section 107 Cr.P.C., proceedings pending before the Executive Magistrate and it was only as a result of the same, there were various incidents that took place in the village and all the incidents are sought to be brought in as a single incident by roping in several persons as accused.

22. If we come to such a conclusion, the next question that is required to be answered by this Court is whether all the accused persons are entitled to be acquitted from all charges inspite of substantial evidence made available regarding the injuries sustained by the deceased and the injuries sustained by the witnesses supported by medical evidence and recovery of material objects?

23. The motive behind the crime, the manner in which the incident is sought to be projected and the absence of certain very vital information during and immediately after the incident, certainly weakens the case of the prosecution. That by itself should not deter this Court to focus on the individual overtacts attributed to the accused persons and the evidence that is available in order to substantiate the same. In other words, this Court has to now separate the chaff from the grain. This exercise can be done inspite of the fact that the evidence has been found to be deficient and not wholly credible with regard to the manner in which it was projected by the prosecution.

24. The maxim "*falsus in uno, falsus in omnibus*" has no application in India. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, the same can be used to convict an accused.

25. It will be relevant to rely upon the judgments of the Hon'ble Supreme Court in this regard.

- The Hon'ble Supreme Court in the judgment in ***Syed Ibrahim vs State Of Andhra Pradesh***, reported in **2007 (1) SCC (Cri) 34**, wherein in paragraph No.10, has held as follows:

"10. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW1 to a large extent to contend about desirability to throw out entire prosecution case.

In essence prayer is to apply the principle of

"falsus in uno falsus in omnibus" (false in one



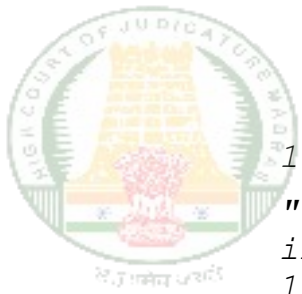
thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be note wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witness or witnesses cannot be branded as liar(s). The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence. (See Nisar Alli v. The State of Uttar Pradesh [AIR 1957 SC 366]. In a given case, it is always open to a Court to differentiate accused who had been acquitted from those who were convicted where there are a number of accused persons. (See Gurucharan Singh and Anr. v. State of Punjab [AIR 1956 SC 460]. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth



or at any rate exaggeration, embroideries or embellishment. (See *Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh* [1972 (3) SCC 751] and *Ugar Ahir and Ors. v. The State of Bihar* [AIR 1965 SC 277]). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel v. State of Madhya Pradesh* [AIR 1954 SC 15] and *Balaka Singh and Ors. v. The State of Punjab* [1975 (4) SCC 511]). As observed by this Court in *State of Rajasthan v. Smt Kalki and Anr.* [1981 (2) SCC 752], normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in *Krishna Mochi and Ors. v. State of Bihar* etc. [2002 (6) SCC 81] and in *Sucha Singh v. State of Punjab* [2003 (7) SCC 643]. It was further illuminated in the *Zahira H. Sheikh v. State of Gujarat* [2004 (4) SCC 158], *Ram Udgar Singh v. State of Bihar* [2004(10) SCC 443], *Gorle S. Naidu v. State of Andhra Pradesh* [2003 (12) SCC 449] and in *Gubbala Venugopalswamy v. State of Andhra Pradesh* [2004 (10) SCC 120]."

- The next judgment on the very same principle is the judgment of the Hon'ble Supreme Court in ***Ranjit Singh and others vs. State of Madhya Pradesh***, reported in **2011 (4) SCC 336**. The relevant portions of the judgment is extracted hereunder:

Falsus in Uno, Falsus in Omnibus:



"15. In *Balaka Singh v. State of Punjab*, AIR 1975 SC 1962, this Court observed as under:-

"It is true that, as laid down by this Court in *Zwinglee Ariel v. State of Madhya Pradesh*, AIR 1954 SC 15, and other cases which have followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply."

16. In *Ugar Ahir & Ors. v. State of Bihar*, AIR 1965 SC 277, this Court held as under:-

"The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."

17. A similar view was taken in *Nathu Singh Yadav v. State of Madhya Pradesh*, (2002) 10 SCC 366.

18. The maxim has been explained by this Court in *Jakki @ Selvaraj & Anr. v. State represented by the IP, Coimbatore*, (2007) 9 SCC 589, observing:- "The maxim *falsus in uno, falsus in omnibus* has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be discarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of



circumstances, but it is not what may be called 'a mandatory rule of evidence'."

19. It is well settled in law that the maxim *falsus in uno, falsus in omnibus* (false in one false in all) does not apply in criminal cases in India, as a witness may be partly truthful and partly false in the evidence he gives to the Court. (Vide: *Kulwinder Singh v. State of Punjab*, (2007) 10 SCC 455; *Ganesh v. State of Karnataka*, (2008) 17 SCC 152; *Jayaseelan v. State of Tamil Nadu*, (2009) 12 SCC 275; *Mani @ Udattu Man & Ors. v. State represented by Inspector of Police*, (2009) 12 SCC 288; and *Balraje @ Trimbak v. State of Maharashtra*, (2010) 6 SCC 673).

20. This position of law has been reiterated by this Court in *Prem Singh & Ors. v. State of Haryana*, (2009) 14 SCC 494, wherein the Court clearly held as under:

"14. It is now a well-settled principle of law that the doctrine "*falsus in uno, falsus in omnibus*" has no application in India."

21. In view of the above, the law can be summarised to the effect that the aforesaid legal maxim is not applicable in India and the court has to assess to what extent the deposition of a witness can be relied upon. The court has to separate the falsehood from the truth and it is only in exceptional circumstances when it is not possible to separate the grain from the chaff because they are inextricably mixed up, that the whole evidence of such a witness can be discarded."

26. A careful reading of the above judgments show that the Courts in India will have to separate the falsehood from the truth and it is only in exceptional circumstances, where it is inextricably mixed up, the whole evidence can be discarded.

27. This Court is now going to individually assess the injuries sustained and the witnesses, who speak about it and the overtacts attributed against each of the accused, supported by medical evidence.

28. Injuries sustained by the deceased:

➤ P.W.1 has stated that A1 has attacked the deceased with a gun and has discriminated in his head and at the back of his



neck.

- P.Ws.4 to 11 have all consistently spoken about the overtact of A1, as against the deceased.

- P.W.3, who was the Doctor, who conducted postmortem has spoken about the injuries sustained by the deceased, in the postmortem report, which was marked as Ex.P.6. The postmortem report reveals the following injuries:

External Examination:

"1. Lacerated wound 5x2.5x7 cm with fracture bone right forehead above right eyebrow.

2. Lacerated wound 3x1 with bone depth with fracture skull left forehead.

3. Lacerated wound 3x1x7 cm with fracture skull back of head.

4. Tear of left lower lobe of ear.

Internal Examination:

Skull: Fracture of skull forehead & back of head rupture of frontal bone and brain, Occipital lobe (ND) rupture-above areas.

Neck: Hyoid intact.

Thorax : No fracture ribs.

Lungs: Normal intact.

Heart : Intact & empty

Abdomen : No injuries outside. Uniform in liver, spleen, 2 kidneys, BM intestines intact. No tear or injury.

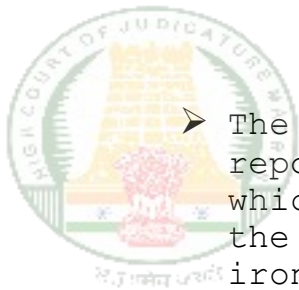
Stomach contains partially digested rice articles.

Spinal Column : Intact

The postmortem doctor opined that the deceased would appear to have died of injury to brain."

- In the course of investigation, A1 was taken on police custody and based on his confession, M.O.1 was seized and the Doctor has specifically stated that the said weapon is capable of causing such an injury.

- Similarly, the overtact of A2 attacking the deceased in his right eye with the iron rod has been spoken consistently by P.Ws.1, 4 to 9 and P.W.11.



- The evidence of P.W.3-postmortem Doctor and the postmortem report shows the specific injury above the right eye-brow, which had also resulted in a serious injury to the brain of the deceased and the Doctor has specifically stated that the iron rod (M.O.5) is capable of causing such an injury.

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- In the course of investigation P.W.24 took police custody of A2 and based on his confession recovered M.O.5.

(28.1) It is clear from the above that there are sufficient materials to make A1 and A2 liable for their individual acts resulting in the death of the deceased. The weapons used by A1 and A2 and the vital part in which the deceased was attacked clearly satisfies the ingredients of Section 300 IPC., and therefore, they are liable to be punished under Section 300 IPC for their individual overtacts.

29. Injury sustained by P.W.1:

- ◆ P.W.1, who is the injured witness has stated about A1 attacking him with Aruval in his head by stating that "with this you will be finished". This has been spoken to by P.Ws.4 to 11.
- ◆ P.W.2, who was the Doctor examined on the side of the prosecution has spoken about the injuries sustained by P.W.1 and the accident register has also been marked as Ex.P.3.

(29.1) In view of the above, it is clear that the prosecution has established the injury sustained by P.W.1 through A1 and the words uttered by A1 while attacking P.W.1 and the weapon used and the vital part at which the attack took place, clearly makes out an offence for attempt to murder punishable under Section 307 IPC.

30. Injury sustained by P.W.4:

- ◆ This injured witness has spoken about he being attacked by A8 with Vangaruval on his right hand.
- ◆ This is corroborated by the evidence of P.W.5, P.w.7, P.W.9 and P.W.11.
- ◆ The evidence of P.W.2-Doctor and the accident register marked as Ex.P2 shows the nature of injury sustained by P.W.4. This wound is categorised as simple injury.

(30.1) From the above, it is seen that there are sufficient materials to make A8 liable to be punished A8 for his specific overtact under Section 324



IPC. Since he has died, the appeal is abated insofar as A8 is concerned.

31. Injury sustained by P.W.5:

- ◆ This injured witness has spoken about he being attacked by A2 and A10. A2 had attacked this witness with iron rod in his left hand middle finger and A10 had attacked him with Aruval above the hip.
- ◆ This is corroborated by the evidence of P.W.1, P.W.6, P.W.7, P.W.9 and P.W.11.
- ◆ The evidence of P.W.19-Doctor and the accident register marked as Ex.P.28 shows the nature of injury sustained by P.W.5. This injury has been categorised as simple injury.

(31.1) From the above, it is seen that there are sufficient materials to punish A2 and A10 for the specific overtact under Section 324 IPC.

32. Injury sustained by P.W.6:

- ◆ This injured witness has spoken about he being attacked by A9. A9 had attacked this witness with Aruval in the middle of the head.
- ◆ This is corroborated by the evidence of P.W.1, P.W.7, P.W.8, P.W.9 and P.W.11.
- ◆ The evidence of P.W.2-Doctor and the accident register marked as Ex.P.4 shows the nature of injury sustained by P.W.6. This injury has been categorised as simple injury.

(32.1) From the above, it is seen that there are sufficient materials to punish A9 for the specific overtact under Section 324 IPC.

33. Injury sustained by P.W.7:

- ◆ This injured witness has spoken about he being attacked by A9. A9 had attacked this witness with Aruval on the left and right side of his head.

- ◆ This is corroborated by the evidence of P.W.1, P.W.4, P.W.5, P.W.8, P.W.9 and P.W.11.



- ◆ The evidence of P.W.18 and P.W.19-Doctors, the wound certificate marked as Ex.P.25 and the accident register marked as Ex.P.27, show the nature of injury sustained by P.W.7. This injury has been categorised as grievous injury.

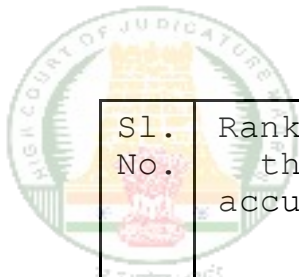
(33.1) From the above, it is seen that there are sufficient materials to punish A9 for the specific overtact under Section 326 IPC.

34. This Court does not find any unreasonable delay in the registration of the FIR or the FIR reaching the Court or the recording of the statements of the witnesses. It is coupled with the fact that the weapons have been recovered based on the confession of the accused persons and the injury sustained by the deceased and the injured witnesses is supported by the evidence of the Doctors and other medical records, coupled with the evidence of the injured witnesses, makes this Court come to a conclusion with regard to the individual overtacts of the accused persons and the actual offence committed by them. This exercise is done since, as stated above, this Court is not able to satisfy itself with the manner in which the incident was sought to be projected by the prosecution and this Court did not find that the accused persons had committed the crime with a common object. Therefore, this Court has separated the chaff from the grain and is proceeding to punish the accused persons by taking into consideration the specific overtact attributed against each one of them, supported by sufficient evidence which has been discussed in detail supra.

35. Since this Court is not taking the aid of Section 149 IPC, due to lack of materials and due to the serious doubt regarding the manner in which the case was projected by the prosecution, this Court finds that A3 to A7 must be given the benefit of doubt and they should be acquitted of all charges. There is a very strong suspicion with regard to their very participation in the whole incident.

Conclusion:

36. As an upshot to the above conclusions, this Court proceeds to convict and sentence the accused persons as follows:



Sl. No.	Rank of the accused	Provision of law under which convicted	Sentence of imprisonment	Fine amount
1.	A1	Under Section 307 IPC	10 years Rigorous Imprisonment	Rs.3000/-, in default, to undergo 1 year Rigorous Imprisonment
		Under Section 302 IPC	Life imprisonment	Rs.5,000/-, in default, to undergo two years Rigorous Imprisonment
2.	A2	Under Section 324 IPC	One year Rigorous Imprisonment	Rs.1000/-, in default, to undergo three months Simple Imprisonment
		Under Section 302	Life Imprisonment	Rs.5000/-, in default, to undergo two years Rigorous Imprisonment
	[Eventhough A2 was acquitted for the charge under Section 302 by the Court below, he was convicted under Section 302 r/w 149 IPC. Originally, charge was framed against him for an offence under Section 302 IPC and he faced the trial for the said charge. Therefore, this Court proceeds to convict A2 for the charge under Section 302 IPC.]			
3.	A3 to A7	Acquitted from all charges		
4.	A9	Under Section 324 IPC	One year Rigorous Imprisonment	Rs.1000/-, in default, to undergo three months Simple Imprisonment
		Under Section 326 IPC	Three years Rigorous Imprisonment	Rs.2000/-, in default, to undergo six months Rigorous Imprisonment
5.	A10	Under Section 324 IPC	One year Rigorous Imprisonment	Rs.1000/-, in default, to undergo three months Simple Imprisonment

37. A1, A2, A9 and A10 are acquitted from the charges under Sections 147, 148, 302 r/w 149 IPC. The sentence imposed against

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



these accused persons shall run concurrently and the period already undergone by the accused/appellants shall be set off under Section 428 Cr.P.C.

38. In the result the Crl.A.(MD).Nos. 425, 426 and 428 of 2017 are partly allowed to the extent indicated hereinabove. Crl.A.(MD). No.427 of 2017 is allowed. Consequently, connected Crl.M.P.(MD). No.9809 of 2018 is closed.

39. The bail bonds executed by A3 to A7, who are the appellants in Crl.A.(MD).No.427 of 2017 shall stand cancelled and the fine amount, if any, paid by them shall be refunded to them.

40. A2, who is the appellant in Crl.A.(MD).Nos.426/2017 and A9 & A10, who are the appellants in Crl.A.(MD).No.425 of 2017 shall surrender before the learned Judicial Magistrate, Paramakudi forthwith. On such surrender, they shall be confined to prison to serve the sentence imposed by this Court. If they do not surrender, the respondent police is directed to immediately secure them and produce them before the learned Judicial Magistrate, Paramakudi, in order to confine them in prison. The bail bond executed by them shall stand cancelled.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

PJL

To

1. The Additional District Judge,
(Fast Track Court),
Paramakudi,
Ramanathapuram District.
2. The Judicial Magistrate, paramakudi.
3. The Judicial Magistrate, Paramakudi
Thro The Chief Judicial Magistrate, Ramanathapuram.
4. The Inspector of Police,
Nainarkovil Police Station,
Ramanathapuram District.



5.The District Collector, Ramanathapuram.

6.The Superintendent, Central Prison, Madurai.

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7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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

Copy to

The Director General of Police,
Mylapore, Chennai-4

+1 CC to Mr.S.SIVABALAN, Advocate (SR-91155[F] dated 03/10/2019)
+1 CC to Mr.S.G.L.RISHWANTH, Advocate, SR.No.91154
+2 CC to Mr.R.VENKATESWARAN, Advocate, SR.No.91156,91152

Judgment made in
Crl .A (MD) Nos .425
to 428 of 2017
03.10.2019

VB(04.11.2019) 40P 15C