

Bail Slip

Shanmugam, S/o.Peramaiya Nattar, A4/Petitioner in CMP(MD) No.2442/18 in Crl.A(MD)No.149 of 2018, Ramadoss, S/o.Appadurai Naattar and Sivadoss, S/o.Appadurai Naattar, Petitioners / A2 and A3 in CMP(MD)Nos.3639/18 in Crl.A(MD)No.244 of 2018. Stalin, S/o.Ganesakandiar, Petitioner / A1 in CMP(MD)No.4987 of 2018 in Crl.A(MD)No.293 of 2018 were released vide Court order dated 03.07.2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.03.2020

DELIVERED ON : 08.05.2020

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Criminal Appeal (MD) Nos.149, 244 and 293 of 2018

Crl.A(MD) No.149 of 2018:

Shanmugam

... Appellant /A.4

Vs.

State,
represented by
The Inspector of Police,
Madukkur Police Station,
Thanjavur District.
(Cr. No.206/2009)

... Respondent/Complainant

Crl.A(MD) No.244 of 2018:

1.Ramadoss

2.Sivadoss

... Appellants/A.2 & A.3

Vs.

State,
represented by
The Inspector of Police,
Madukkur Police Station,
Thanjavur District.
(Cr. No.206/2009)

... Respondent/Complainant

Crl.A. (MD) No.293 of 2018:

Stalin

... Appellant/A.1

Vs.

State, represented by
The Inspector of Police,
Madukkur Police Station, Thanjavur District.
(Cr. No.206/2009)

... Respondent/Complainant



Common Prayer : Criminal Appeals filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment and order dated 13.03.2018 passed in S.C.No.71 of 2014 by the III Additional District and Sessions Judge, (Full Additional Charge), Pattukottai.

WEB COPY

For appellant in Crl.A.
(MD) No.149 of 2018 and : Mr. C. Arulvadivel Sekar
1st appellant in Crl.A.
(MD) No.244 of 2018

For appellant in Crl.A. Mr. V. Kathirvelu, Sr.
(MD) No.293 of 2018 and : Counsel
2nd appellant in Crl.A. for M/s. K. Prabhu
(MD) No.244 of 2018

For respondent/State in : Mr. M. Chandrasekaran
all the three appeals Additional Public
Prosecutor

COMMON JUDGMENT

P. N. PRAKASH, J.

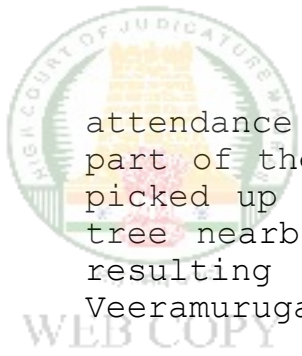
The appellants are A.1 to A.4 in S.C.No.71 of 2014 on the file of the III Additional District and Sessions Court (Full Additional Charge) Pattukottai and challenging the conviction and sentence imposed by the trial Court vide judgment and order dated 13.03.2018, they have come up with the present Criminal Appeals.

2. The facts in brief leading to the institution of this criminal appeal are as under:

2.1. The deceased Velmurugan, who was aged around 17 years and studying +1, was the son of Chellapandian (P.W.1), and brother of Veeramurugan (P.W.2) and Thirumurugan (P.W.4). His family was from Aavikkottai Village, Pattukkottai, Thanjavur District.

2.2. The four accused in this case, viz., Stalin (A.1), Ramadoss (A.2), Sivadoss (A.3) and Shanmugam (A.4) were also from the same village. Ramadoss (A.2) and Sivadoss (A.3) are brothers.

2.3. The incident in this case took place on Monday - 06.07.2009. Two months prior to the occurrence, Stalin (A.1) and Ramadoss (A.2) were found consuming liquor in the land of Chellapandian (P.W.1). Chellapandian (P.W.1) and his son Veeramurugan (P.W.2) berated the accused and upbraided them for using their agricultural land as a bar. On 06.07.2019, the village temple festivities were going on and Chellapandian (P.W.1) with his two sons, Veeramurugan (P.W.2) and Velmurugan (deceased), were in



attendance around 09.00 p.m., in the cultural programme, which was part of the celebrations. At that time, the abovenamed four accused picked up a quarrel with them and took them away beneath a banyan tree nearby. They fell upon them and belaboured them with knives, resulting in serious injuries to Velmurugan (deceased) and Veeramurugan (P.W.2). They assaulted Chellapandian (P.W1).

2.4 On hearing the hue and cry raised by the victims, their relatives, Saravanan @ Senthilnathan (P.W.3), Thirumurugan (P.W.4), Sudhakar (P.W.5), Backiaraj (P.W.6) and Ramesh (P.W.7), came to their rescue, by which time, the accused fled the scene. A car was requisitioned and Veeramurugan (P.W.2) and Velmurugan (deceased) were rushed to Government Hospital, Mannargudi for treatment.

2.5. Dr.Manjula (P.W.13) who was on duty in the Government Hospital, examined Veeramurugan (P.W.2) at 11.30 p.m., on 06.07.2009 and noted the following injuries on him and recorded the same in the Accident Register (Ex.P.12):

"1.Cut injury 5 x 2 x 1 cm size right side scalp.

2. Cut injury 2 x 1 x 1 cm size left hand.

Treated as OP/IP:

Opinion: (Simple/Grievous/Reserved)

Refer to TMCH, Tanjore."

2.6. She examined Velmurugan (deceased) at 11.35 p.m., on 06.07.2009 and noted the following injuries on his person and recorded the same in the Accident Register (Ex.P.13):

"1. Cut injury 4 x 1 x 1 cm size left side neck.

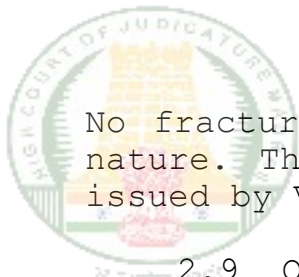
2. Cut injury 4 x 1 x 0.5 cm left thigh.

3. Cut injury 3 x 0.5 x 0.5 cm back side.

4. Cut injury 5 x 1 x 1 cm between right thumb & index finger deep laceration 4 x 2 x 2 cm right forearm."

2.7. Since the injuries were found to be serious, she referred both of them to the Thanjavur Medical College Hospital, Thanjavur. However, the injured were taken to Vinodhagan Memorial Hospital (P) Ltd., Thanjavur and were admitted on 07.07.2009 at 00.40 hours. They were treated by Dr.D.Jayaprakash (P.W.10). He admitted both of them as inpatients. He took C.T. scan of the chest and abdomen of Velmurugan (deceased) and found a haemorrhage in the right chest region and an injury in the right kidney and for treatment, blood transfusion was required and therefore, Backiaraj (P.W.6) and Ramesh (P.W.7) donated their blood to Velmurugan (deceased). However, Velmurugan (deceased) did not survive, but succumbed to the injuries at 11.20 a.m., on 07.07.2009. The copy of the Accident Register of Velmurugan (deceased) issued by Vinodhagan Memorial Hospital was marked as Ex.P.8.

2.8. Dr.D.Jayaprakash (P.W.10) examined Veeramurugan (P.W.2) at 00.50 hours on 07.07.2009 and took x-ray of his head and left hand.



No fracture was found and the injuries were found to be simple in nature. The copy of the Accident Register of Veeramurugan (P.W.2) issued by Vinodhagan Memorial Hospital was marked as Ex.P.9.

2.9 On information, V.S.Venkatachalam (P.W.15), Head Constable attached to Madukkoor Police Station, went to Vinodhagan Memorial Hospital at 10.30 a.m. on 07.07.2009 and found that both Velmurugan (deceased) and Veeramurugan (P.W.2) were admitted as inpatients and were under treatment.

2.10. After the Doctors declared Velmurugan (deceased) dead, Chellapandian (P.W.1) gave a complaint (Ex.P.1), based on which, a case in Cr.No.206 of 2009 under Sections 294(b), 342, 323, 307 and 302 I.P.C., was registered on 07.07.2009 at 13.00 hours and the printed copy of the F.I.R., (Ex.P.14) was prepared. The F.I.R. reached the jurisdictional Magistrate at 02.15 p.m., on 07.07.2009 as could be seen from the endorsement thereon.

2.11. Ravichandran (P.W.16), Inspector of Police, took over the investigation of the case. He went to the place of occurrence and from there, went to Vinodhagan Memorial Hospital, Thanjavur and conducted inquest over the body of Velmurugan (deceased), vide inquest report (Ex.P.15). He recorded the statements of Chellapandian (P.W.1), Veeramurugan (P.W.2), Saravanan @ Senthilnathan (P.W.3), Thirumurugan (P.W.4) and Sudhakar (P.W.5) and despatched the body of the deceased to the Thanjavur Medical College Hospital, Thanjavur, for post-mortem, where Dr.K.G.Padmanaban (P.W.11) performed autopsy on the body of the Velmurugan (deceased). Dr.K.G.Padmanaban, in his evidence as well in the post-mortem certificate (Ex.P.10), has noted the following injuries:

"External Injuries:

1. Surgically made midline laprotomy wound seen over the front of abdomen measuring 19 cm above and 6 cm below the umbilicus.
2. Sutured cut injury measuring 4 x 2 cm x muscle deep seen over the left side of neck.
3. Sutured laceration measuring 9 x 1 cm x bone deep seen over right dorsum of wrist joint region.
4. Sutured cut injury measuring 5 x 2 cm x bone deep seen over the palmer aspect of right hand below the right thumb.
5. Intercostal drain seen over the right side of lateral wall of chest in the 5th intercostal region (for treatment purpose).
6. Surgically made drainage wound seen over the right flank (for treatment purpose).
7. Sutured laceration measuring 3 x 2 cm x bone deep over left side of hip region with underlying left pubis iliac crest bone fracture with surrounding contusion.
8. Abrasion, reddish brown in colour measuring 6 x 1 cm



seen over lateral aspect of left arm.

9. Sutured stab injury seen on top of left shoulder measuring 2 x 1 cm x muscle deep.

10. Sutured stab injury seen over the right back of abdomen in renal area measuring 4 x 2 cm x peritoneal cavity depth.

11. Sutured stab injury seen over the right upper gluteal region measuring 2 x 1 cm x muscle deep.

Internal Findings:

12. Both thoracic cavity contained 500 ml of fluid blood.

13. Contusion seen over the right 4th rib region.

14. On opening of abdomen peritoneal cavity contained 1500 ml of fluid blood. On examination of peritoneal cavity evidence of surgical removal of right kidney (for treatment purpose) seen.

15. Diffuse contusion seen over right and left paraspinal region from L1 to L5 region.

16. Diffuse contusion of small intestine seen.

17. Right renal brance or aorta was surgically sutured in the nephrectomy area.

Extremities	: Pale
Pericardium	: Intact
Heart	: Normal in size C/s all four chambers contained fluid blood.
Valves	: Normal
Great vessels	: as noted above
Coronary vessels	: Patent
Lungs	: C/s. Pale and Oedematous
Larynx, Hyoid bone	: Intact
Stomach	: Empty. No specific smell made mucosa pale.
Small intestine	: As noted above
Liver, Spleen	: C/s pale

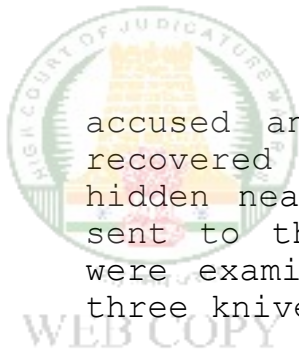
Kidneys	: As noted above left kidney C/s pale
---------	---------------------------------------

Bladder	: Empty
Pelvis	: As noted above
Bones, Membrances	: Intact
Brain	: C/s. Oedematous
Spinal column	: Intact

Opinion:

The deceased would appear to have died due to complications of multiple injuries involving the vital organ - right kidney with shock and haemorrhage."

2.12. Ravichandran (P.W.16), Inspector of Police, went to Aavikkottai Village and in the presence of one Rajendran (not examined) and Kannan (P.W.8), prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.16). On 08.07.2009, he arrested all the four



accused and based on the confession statement of Stalin (A.1), recovered three knives (M.O.3, M.O.4 and M.O.5) that were kept hidden near the house of Sivadoss (A.3). The seized articles were sent to the Tamil Nadu Forensic Sciences Laboratory, where, they were examined by Avina (P.W.12), who detected human blood in the three knives (M.O.3, M.O.4 and M.O.5).

2.13. On transfer of Ravichandran (P.W.16), Inspector of Police, the investigation was continued by Rajmohan (P.W.17), Inspector of Police, who examined witnesses, collected various reports, completed the investigation and filed a final report in P.R.C.No.4 of 2010 before the Judicial Magistrate, Pattukkottai, for the offences under Sections 120-B, 342, 352, 307 and 302 read with Section 34 I.P.C., against Stalin (A.1), Ramadoss (A.2), Sivadoss (A.3) and Shanmugam (A.4).

2.14. On appearance of the accused, the case was committed to the Court of Session in S.C.No.71 of 2014 and was made over to the III Additional District and Sessions Judge, Pattukkottai, for trial.

2.15. The trial Judge framed the following charges:

Charge	Accused	Penal Provisions (U/s)
1	A.1 to A.4	120-B I.P.C.
2	A.1 to A.4	294 (b) I.P.C.
3	A.1	302 I.P.C.
4	A.4	342 I.P.C.
5	A.2 to A.4	307 r/w 34 I.P.C.
6	A.1 to A.4	352 I.P.C.

2.16. To prove the case, the prosecution examined 17 witnesses and marked 18 exhibits and 5 material objects. One exhibit was marked as Court Exhibit (Ex.X.1).

2.17. When the accused were questioned under Section 313 Cr.P.C., they abjured their guilt and denied their involvement in the offence. No witness was examined nor any document was marked from the side of the accused.

2.18. After considering the evidence and hearing either side, the trial Judge, by judgment and order dated 26.02.2016 in S.C.No.71 of 2014, convicted and sentenced the accused as follows:



WEB COPY

Accused	Conviction (U/s)	Sentence
A.1	294 (b) I.P.C.	To pay a fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment.
	352 I.P.C.	To pay a fine of Rs.500/-, in default, to undergo one month rigorous imprisonment.
	302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months rigorous imprisonment.
A.2 & A.3	294 (b) I.P.C.	To pay a fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment.
	352 I.P.C.	To pay a fine of Rs.500/-, in default, to undergo one month rigorous imprisonment.
	307 r/w 34 I.P.C.	To undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment.
A.4	294 (b) I.P.C.	To pay a fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment.
	352 I.P.C.	To pay a fine of Rs.500/-, in default, to undergo one month rigorous imprisonment.
	307 r/w 34 I.P.C.	To undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment.
	342 I.P.C.	To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month rigorous imprisonment.

2.19. Challenging their convictions and sentences, the accused preferred Crl.A. (MD) Nos.73, 81, 82 and 250 of 2016. Chellapandian (P.W.1) - *de facto* complainant preferred Crl.A. (MD) No.251 of 2016, challenging the acquittal of A.2 to A.4 of the offence under Section 302 I.P.C. All the five appeals were heard by a Division Bench of this Court (S.Nagamuthu and M.V.Muralidharan, JJ.), who found that the trial Court had failed to frame a charge

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



under Section 302 read with Section 34 I.P.C., against A.2 to A.4 and therefore, set aside the judgment and order dated 26.02.2016 of the trial Court and remanded the matter to the trial Court with the following directions:

"17. In the result, CRL.A(MD)Nos.73, 81, 82 and 250 of 2016 filed by the accused Nos.1 to 4 are allowed, the conviction and sentence imposed on the accused Nos.1 to 4 are set aside; CRL.A.(MD)No.251 of 2016 filed by the de facto complainant against the acquittal of the accused Nos.1 to 4 from some of the charges is also allowed and the case in S.C.No.71 of 2014, on the file of the learned Third Additional District and Sessions Judge, Pattukkottai, is remanded back to the Trial Court for fresh disposal in accordance with law. The Trial Court shall alter the charges, appropriately, as indicated in the Judgment, afford sufficient opportunity to the prosecution to let in additional evidence, if any, either oral or documentary and also allow the prosecution to recall any witness examined already for the purpose of further examination. Similarly, the Trial Court shall allow the accused Nos.1 to 4 to recall any witness already examined by the prosecution for the purpose of further cross-examination and allow the accused Nos.1 to 4 to let in evidence on their side, either oral or documentary. At any rate, the Trial Court shall dispose of the case within a period of six months from the date of receipt of a copy of this Judgment. Consequently, connected Miscellaneous Petition is closed."

2.20. After remand, the trial Court framed the following charges against the accused:

Charge	Accused	Penal Provisions (U/s)
1	A.1 to A.4	120-B(i) I.P.C.
2	A.1 to A.4	294(b) I.P.C.
3	A.1	302 I.P.C.
4	A.4	342 I.P.C.
5	A.1 to A.4	307 r/w 34 I.P.C.
6	A.1 to A.4	352 I.P.C.
7	A.2 to A.4	302 r/w 34 I.P.C.



2.21 When the accused were questioned, they once again pleaded not guilty. The prosecution reported to the trial Court that they are not going to examine any witness afresh and that they would rely upon the evidence already recorded. The accused also did not choose to recall any witness for further cross-examination or adduce evidence from their side.

2.22. The trial Court heard the arguments of the prosecution and the accused and vide judgment and order dated 13.03.2018 in S.C.No.71 of 2014, convicted and sentenced the accused as under, after questioning them under Section 235(2) Cr.P.C:

Accused	Conviction (U/s)	Sentence
A.1	302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment.
	120-B(i) r/w 302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
	307 r/w 34 I.P.C.	To undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment.
	294(b) I.P.C.	To undergo one month simple imprisonment.
	352 I.P.C.	To undergo one month rigorous imprisonment.



WEB COPY

A.2 & A.3	302 r/w 34 I.P.C.	Each of them to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment.
	120-B(i) r/w 302 I.P.C	Each of them to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
	307 r/w 34 I.P.C.	Each of them to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment.
	294(b) I.P.C.	Each of them to undergo one month simple imprisonment.
	352 I.P.C.	Each of them to undergo one month rigorous imprisonment.
A.4	302 r/w 34 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment.
	120-B(i) r/w 302 I.P.C	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
	307 r/w 34 I.P.C.	To undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment.
	342 I.P.C.	To undergo three months rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
	294(b) I.P.C.	To undergo one month simple imprisonment.
	352 I.P.C.	To undergo one month rigorous imprisonment.

2.23. Challenging the convictions and sentences, the accused have preferred the above appeals.

3. Heard the learned counsel for the accused and the learned Additional Public Prosecutor appearing for the respondent State.



4. At the outset, the learned counsel for the accused submitted that the trial Court did not re-examine the witnesses when the charges were altered and therefore, the trial stands vitiated.

5. In this case, even in the final report that was filed by the police, all the accused were charged for the murder of Velmurugan (deceased) and they were also charged for the attempt to murder Veeramurugan (P.W.2). In spite of availability of such overwhelming materials in the final report and the accompanying documents, the trial Court, without application of mind, framed the charge under Section 302 I.P.C., only against A.1 and charged the others for the offence under Section 307 I.P.C., for the attack on Veeramurugan (P.W.2).

6. Even in the evidence that was adduced by the prosecution during trial, the prosecution witnesses, including the injured witnesses, Chellapandian (P.W.1) and Veeramurugan (P.W.2), had stated about the attack mounted on them by the four accused. For the failure of the Court to frame a charge under Section 302 I.P.C., read with Section 34 I.P.C., against A.2 to A.4, they were convicted only of the offence under Section 307 I.P.C. for attempting to murder Veeramurugan (P.W.2). This grave illegality was noticed by this Court when the appeals of the accused were heard along with the appeal filed by the *de facto* complainant - Chellapandian (P.W.1) under the proviso to Section 372 Cr.P.C.

7. It is true that when a charge is altered or added, the prosecution and the defence will have an opportunity to recall a witness or examine any other person as a witness. In this case, the trial Court gave this opportunity to the prosecution and the accused and both of them consciously did not elect to recall any witness or examine any fresh witness.

8. In ***Ranbir Yadav v. State of Bihar [(1995) 4 SCC 392]***, the Supreme Court, while dealing with Section 217 Cr.P.C., has held as follows:

"23. ... In the instant case, as has already been noticed after the addition of charges the prosecution expressly stated that they did not want to further examine the four witnesses already examined but they were willing to produce them if the accused so wanted. The accused, however, did not avail of this opportunity in accordance with Section 217 of the Code and, therefore, it is too late in the day for them to raise a grievance on that score. We hasten to add that even if we had found that there was any irregularity in the continuation of the trial against the appellants after the additional charges were framed, we would not have been justified in setting aside the impugned judgment on that ground



alone for there is not an iota of material on record wherefrom it can be said that a failure of justice has occasioned thereby. To put it differently, in our view in such a case Section 465 of the Code would have squarely applied."[emphasis supplied]

WEB COPY

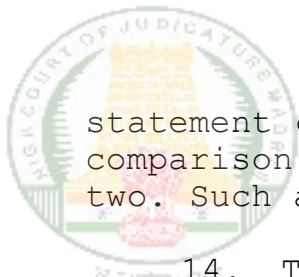
9. Chellapandian (P.W.1), in his evidence, has stated that two months prior to the incident, he and his son - Veeramurugan (P.W.2), chided Stalin (A.1) and Ramadoss (A.2) for consuming liquor in their lands, saying "Why are you drinking in agricultural lands?" At this juncture, it may be appropriate to state here that agricultural land is God for Indian farmers and they would resist anyone defiling it.

10. Chellapandian (P.W.1) and Veeramurugan (P.W.2), in their evidence, further stated that on 06.07.2009, they had gone along with Velmurugan (deceased) to attend the music programme that was going on in the village temple as part of the festivities and at that time, the four accused came there and picked up a quarrel with them; when Velmurugan (deceased) questioned them, they pulled him to the banyan tree nearby and Stalin (A.1), Ramadoss (A.2) and Sivadoss (A.3), who were having knives, attacked him. When Veeramurugan (P.W.2) intervened, he was also attacked brutally. On seeing his two sons being attacked, Chellapandian (P.W.1) interceded and he was assaulted by the accused.

11. The learned counsel for the defence attacked the evidence of Chellapandian (P.W.1) by referring to the omissions in his complaint (Ex.P.1) which formed the basis for the registration of the F.I.R. (Ex.P.14). The learned counsel submitted that in the complaint (Ex.P.1), Chellapandian (P.W.1) has not stated about the previous motive, viz., that he (P.W.1) along with his son - Veeramurugan (P.W.2) scolded the accused two months prior to the incident for consuming liquor in his lands. The learned counsel further submitted that in the complaint (Ex.P.1), Chellapandian (P.W.1) has stated that they had gone to the music programme in their cycles, but has not stated so in his evidence.

12. In our opinion, these omissions will not amount to contradictions, because these two omissions are not inconsistent or incompatible with the facts that were narrated by this witness. Assuming for a moment that they were contradictions, the defence should have drawn the attention of the witness to them as required under Section 145 of the Evidence Act, which was not done.

13. In **Karan Singh v. State of Madhya Pradesh [2003 (6) Supreme 927]**, the Supreme Court has stated that the previous statement of a witness should be brought to his notice and his explanation should be sought before contradicting him. Keeping the deposition of the witness on the right hand and his previous



statement on the left hand, the Court cannot embark on a process of comparison to find out the contradictions and omissions between the two. Such a procedure is unknown to law.

14. The learned counsel for the defence submitted that in the complaint (Ex.P.1), Chellapandian (P.W.1) has stated that Stalin (A.1) stabbed Velmurugan (deceased) on the right thigh, waist and left shoulders and in the evidence, he has merely stated that A.1 to A.3 stabbed Velmurugan (deceased). He took this Court to the injuries referred to in the Accident Register (Ex.P.13) and submitted that the injuries referred to in the complaint (Ex.P.1) do not tally with the ones noted in the Accident Register (Ex.P.13). It was also contended by the defence that Chellapandian (P.W.1) did not undergo any treatment in the hospital and that, had he been attacked, he would have also been treated by Dr.Manjula (P.W.13).

15. Chellapandian (P.W.1), neither in his complaint (Ex.P.1) nor in his evidence, has stated that the accused attacked him with knives. He has only stated that when he interceded, they kicked him ignoring the fact that he was an elderly person. Had Challepandian (P.W.1) stated either in the complaint (Ex.P.1) or in his evidence that he had also sustained a knife injury and if he had not been treated for that, then one can doubt his testimony. On the contrary, all the witnesses including the injured witness - Veeramurugan (P.W.2) and the other witnesses who came to the place of occurrence, on seeing the commotion, have stated about the presence of Chellapandian (P.W.1), Veeramurugan (P.W.2) and Velmurugan (deceased) in the place of occurrence.

16. Dr.Manjula (P.W.13), in her evidence, has clearly stated that both Veeramurugan (P.W.2) and Velmurugan (deceased) were brought to the hospital by Chellapandian (P.W.1). This has also been recorded in the two Accident Registers, viz., Exs.P.12 and P.13. Since Chellapandian (P.W.1) did not suffer any serious injury, he was more keen in saving the lives of his two sons and he would not have bothered to make a big fuss about the assault suffered by him at the hands of the accused. Even in his evidence, he stated that since the time of admission of his two injured sons in the hospital, he had not taken any food and was extremely tired. It must be remembered that after the attack, Veeramurugan (P.W.2) and Velmurugan (deceased) were immediately carried by Chellapandian (P.W.1) to the Government Hospital, Mannargudi, from where, they were taken to Vinodhagan Memorial Hospital, which is in the adjacent district, viz., Thanjavur, for treatment.

17. Chellapandian (P.W.1) has further stated that since he was very disturbed after his son Velmurugan (deceased) was declared dead, he signed in the complaint (Ex.P.1) that was scribed by his nephew - Backiaraj (P.W.6). Veeramurugan (P.W.2), in his evidence,



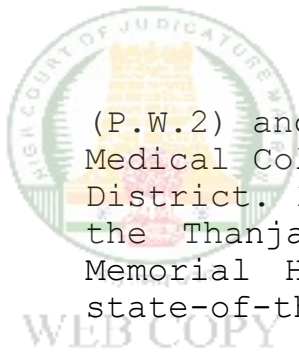
has stated that all the four accused came to the music programme and abused them; when he and his brother questioned them, they pulled his brother - Velmurugan (deceased) to the nearby banyan tree and A.1 to A.3 started stabbing him; Stalin (A.1) stabbed him in his waist and Ramadoss (A.2) stabbed in his neck; Sivadoss (A.3) stabbed in his buttocks; at the time when he (P.W.2) intervened, Ramadoss (A.2) cut him on his head and neck and Sivadoss (A.3) stabbed in his buttocks; Stalin (A.1) stabbed him on his back; when his father Chellapandian (P.W.1) intervened, they assaulted him; while the three accused were attacking, Shanmugam (A.4) was holding an iron rod and also tightly held Veeramurugan (P.W.2) so as to facilitate the others to stab him.

18. The learned counsel for the defence submitted that in the charges that were framed by the trial Court at the first instance, only Stalin (A.1) was charged for attacking Velmurugan (deceased) and Ramadoss (A.2), Sivadoss (A.3) and Shanmugam (A.4) were charged for attempting to murder Veeramurugan (P.W.2) and therefore, the conviction of A.2 to A.4 under Section 302 I.P.C., was vitiated.

19. We are unable to persuade ourselves to agree with the said submission, because in the earlier round of litigation before this Court, this Court found that the charges were not properly framed at the first instance and that is why, this Court allowed the appeals of the accused and the appeal of the *de facto* complainant and remanded the matter to the trial Court to frame proper charges and also give opportunity to the prosecution and the defence to adduce their evidence. Pursuant to the remand, the trial Court framed the charges against all the four accused under Section 302 read with Section 34 I.P.C., for the murder of Velmurugan (deceased) and under Section 307 read with Section 34 I.P.C., for the attempt to murder Veeramurugan (P.W.2). Therefore, the defence cannot rely upon the charges that were framed at the first instance since it became irrelevant after fresh charges were framed pursuant to the order of remand.

20. The learned counsel for the defence placed reliance on the evidence of Dr.Padmanaban (P.W.11), who conducted autopsy on the body of Velmurugan (deceased) and also the post-mortem certificate (Ex.P.10) and submitted that the deceased had not died on account of the attack by the accused, but on account of renal transplantation.

21. It is true that Velmurugan (deceased) underwent renal transplantation in Vinodhagan Memorial Hospital, for which, blood was given by Backiaraj (P.W.6) and Ramesh (P.W.7). Though in the Accident Register (Ex.P.13), only four injuries were recorded, the post-mortem report (Ex.P.10) clearly shows the number of stab injuries and also the sutures. The evidence on record shows that the injured were taken immediately to the Government Hospital, Mannargudi, where Dr.Manjula (P.W.13) examined Veeramurugan



(P.W.2) and Velmurugan (deceased) and referred them to the Thanjavur Medical College Hospital, Thanjavur, which is in adjoining Thanjavur District. However, Challepandian (P.W.1), instead of taking them to the Thanjavur Medical College Hospital, took them to Vinodhagan Memorial Hospital in Thanjavur, which is a famous hospital with state-of-the-art facilities.

22. The Accident Register (Ex.P.8) issued by Vinodhagan Memorial Hospital shows that Velmurugan (deceased) was admitted at 00.40 hours on 07.07.2009. It is nobody's case that while he was being shifted from the Government Hospital, Mannargudi, he was attacked by someone else during transit. Injury No.10 in the post-mortem certificate (Ex.P.10) reads as under:

"10.Sutured stab injury seen over the right back of abdomen in renal area measuring 4 x 2 cm x peritoneal cavity depth."

23. This stab injury on the back has penetrated and damaged the right kidney and hence, the Doctors in Vinodhagan Memorial Hospital had to remove it. The absence of the right kidney is mentioned in Item No.14 of the post-mortem certificate (Ex.P.10) and it reads as follows:

"14.On opening of abdomen peritoneal cavity contained 1500 ml of fluid blood. On examination of peritoneal cavity evidence of surgical removal of right kidney (for treatment purpose) seen."

24. The learned counsel for the defence contended that at the time of admission of Veeramurugan (P.W.2) and Velmurugan (deceased) in the Government Hospital, Mannargudi, they have stated that while they were going in a bike, they were attacked by three known persons with knives and that has been recorded in the Accident Registers (Exs.P.12 and P.13). Based on this entry in the Accident Registers, the learned counsel for the defence contended that the evidence of Chellapandian (P.W.1) and Veeramurugan (P.W.2) that Velmurugan (deceased) was pulled by the accused from the music programme and assaulted, deserves to be rejected.

25. With regard to the evidentiary value of such entries in the Accident Registers, it will be profitable to refer to the sapient passages from the following judgments of the Supreme Court:

(i) In ***P.Babu v. State of A.P. [(1994) 1 SCC 388]***, the Supreme Court held as follows:

"6. ... Ex.P. 6 is the injury certificate. It appears that it was noted in Ex.P.6 against an entry that the injured was said to have been stabbed by somebody. Placing much reliance on this entry, P.W.10 was asked in the cross-examination as to how it was made. P.W.10 stated that the deceased stated so in



the first instance. The learned counsel relying on this admission sought to contend that the deceased was not aware as to who stabbed him. We see no force in this submission. It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc. ..."

(ii) In **B.Bhadriah v. State of A.P. [1995 Supp (1) SCC 262]**, it is held as under:

"5. ... The casual way of filling up the column in the medical certificate does not in any manner amount to recording a statement of the injured witness. ..."

(iii) In **P.Venkaiah v. State of A.P. [AIR 1985 SC 1715]**, it is held as follows:

"17. ... It is well settled that Doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible."

26. This issue can be examined from yet another angle. If the recording of the statement of the injured by the Doctor in the Accident Register about the number of persons who had attacked, is construed as a previous statement of the injured witness, then, for the purpose of contradicting him qua his testimony in the Court, his attention should be drawn to the statement in the Accident Register as mandated by Section 145 of the Evidence Act. That has not been done in this case and therefore, this argument of the defence fails.

27. The learned counsel for the defence contended that the injured had stated to the Doctor that three persons had attacked, whereas, four persons are being charged, which is a contradiction *per se*.

28. A careful reading of the evidence of Chellapandian (P.W.1) and Veeramurugan (P.W.2) shows that the actual attackers were only Stalin (A.1), Ramadoss (A.2) and Sivadoss (A.3), who were armed with knives and who belaboured Velmurugan (deceased) and Veeramurugan (P.W.2). Shanmugam (A.4) was part of the group and had only caught hold of the victims to facilitate the attack by Stalin (A.1), Ramadoss (A.2) and Sivadoss (A.3). Therefore, the statement of the victim to the doctor that three persons attacked, is not



29. At this juncture, it should be borne in mind that Veeramurugan (P.W.2) was also a victim and his evidence cannot be easily brushed aside, especially, in the light of the authoritative pronouncement of the Supreme Court in **Abdul Sayeed v. State of M.P. [(2010) 10 SCC 259]**, wherein, it is held as follows:

"30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

30. In this case, the defence was not able to point out any major contradiction or discrepancy in the evidence of Veeramurugan (P.W.2) for us to disbelieve him.

31. The learned counsel for the defence placed reliance on the evidence of V.S.Venkatachalam, (P.W.15), Head Constable attached to Madukkoor Police Station, who has stated that after getting information from Vinodhagan Memorial Hospital, he went there at 11.20 a.m., on 07.07.2009 and submitted that the failure of V.S.Venkatachalam (P.W.15), Head Constable, to get a complaint from Chellapandian (P.W.1) immediately, is fatal to the case of the prosecution. In other words, the learned counsel for the defence submitted that there is an inordinate delay in giving the complaint itself by Chellapandian (P.W.1).

32. In this case, the incident had taken place on 06.07.2009 around 09.00 p.m., in the village. The injured were carried to the Government Hospital, Mannargudi and since their condition was critical, they were taken to Vinodhagan Memorial Hospital in Thanjavur District, where, they were admitted as inpatients and the Doctors were fighting to save the life of Velmurugan (deceased). Chellapandian (P.W.1), being the father of Velmurugan (deceased) and the injured, has stated in the evidence that he had not even taken food and was physically worn out. As stated above, blood transfusion was done in Vinodhagan Memorial Hospital. The situation in Vinodhagan Memorial Hospital would have been of great anxiety and tension at that juncture. No one would have been in a frame of mind to give a complaint, because, all their attention would have been riveted to save the life of the two injured persons. In the facts and circumstances of the case, this Court does not find that there



was delay in giving the complaint by Chellapandian (P.W.1) to V.S.Venkatachalam, (P.W.15) Head Constable.

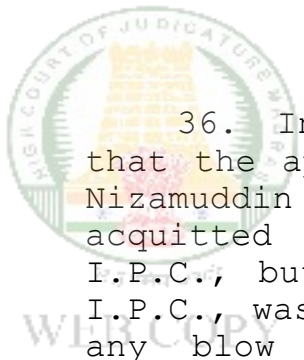
33. The contention of the defence that the evidence of Veeramurugan (P.W.2) as to the places in which Velmurugan (deceased) was attacked by the accused does not tally with the injuries noted in the Accident Register (Ex.P.13) or in the post-mortem certificate (Ex.P.10) and therefore, the evidence of Veeramurugan (P.W.2) should be rejected, requires to be stated only to be rejected. When three persons attack with deadly weapons, one of the injured witness cannot be expected to say exactly in which parts of the body, the deceased was attacked. The injured victim may be in a position to say where all he sustained injuries, because he would have suffered pain in those parts. In this regard, reference can be made to the judgment of the Supreme Court in **Abdul Sayeed** (supra), wherein it is held as follows:

"39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

34. In the case at hand, the medical evidence is not incompatible with the ocular evidence of Chellapandian (P.W.1) and Veeramurugan (P.W.2) for this Court to disbelieve them.

35. The learned counsel for the defence placed reliance on the following judgments of the Supreme Court to drive home the point that the accused cannot be convicted with the aid of Section 34 I.P.C:

- (1) **Badruddin v. State of U.P. [AIR 1998 SUPREME COURT 3243];**
- (2) **Jai Bhagwan v. State of Haryana [1999 Supreme Court Cases (Cri) 388];**
- (3) **Raghunath v. State of Haryana [(2003) 1 Supreme Court Cases 398];**
- (4) **Cherlopalli Cheliminabi Saheb v. State of A.P. [(2003) 2 Supreme Court Cases 571];** and
- (5) **Ezajhussain Sabdarhussain v. State of Gujarat [2019 SCC Online SC 206].**



36. In **Badruddin** (supra), on facts, the Supreme Court found that the appellant therein did not share the common intention with Nizamuddin to kill the deceased and therefore, the appellant was acquitted of the offence under Section 302 read with Section 34 I.P.C., but his conviction under Section 323 read with Section 34 I.P.C., was confirmed. In that case, the appellant had not inflicted any blow to the deceased, but had attacked some witnesses. Therefore, on facts, this ruling will not apply to this case.

37. In paragraph 10 of the judgment in **Jai Bhagwan** (supra), the Supreme Court has held that, for fastening criminal liability, common intention and participation of the accused should be established. In this case, all the four accused had the common intention to liquidate Velmurugan (deceased) as could be seen from the fact that three of them were having knives and the fourth one was having a rod. They had picked Velmurugan (deceased), Chellapandian (P.W.1) and Veeramurugan (P.W.2) from the temple festival and attacked them due to previous motive. Ramadoss (A.2) and Sivadoss (A.3) are brothers and Ramadoss (A.2) was chided by Chellapandian (P.W.1) and Veeramurugan (P.W.2) for consuming liquor in their lands. Therefore, this judgment also will be of no avail to the defence.

38. In **Raghunath** (supra), the Supreme Court held that the delay in lodging the complaint is fatal. On facts, this Court has given reasons as to why there was a delay in this case in lodging the complaint to the police. At the risk of repetition, Velmurugan (deceased) was in a critical condition and was undergoing treatment in Vinodhagan Memorial Hospital where Doctors had to remove his kidney. It is not a thumb rule that in every case, complaint should be given while the injured is fighting for his life in the hospital.

39. In **Cherlopalli Cheliminabi Saheb** (supra), the Supreme Court found that the prosecution had not explained the injuries on the accused and there was no evidence to show that all the accused came prepared to attack the deceased. In this case, all the accused came armed and attacked the deceased during the festivities.

40. In **Ezajhussain Sabdarhussain** (supra), the Supreme Court acquitted the appellant therein on the ground that there was no evidence to show that there was a pre-arranged plan and that the mere fact that the appellant had caught hold of the deceased would not, by itself, be enough to convict him under Section 302 read with Section 34 I.P.C. In this case, all the accused came armed to the place of occurrence, viz., A.1 to A.3 were having knives and A.4 was having a rod. They pulled Velmurugan (deceased) from the music programme and attacked him. When Veeramurugan (P.W.2) came to rescue his brother, Shanmugam (A.4) held him tightly and facilitated the attack by others. On facts of the present case, this judgment also does not, in any way, advance the case of the defence.



41. Before parting with this case, we deem it necessary to refer to the pristine ruling in ***Bharwad Mepa Dana v. State of Bombay*** [AIR 1960 Supreme Court 289], wherein a three Judge Bench has sapiently expatiated on the contours of Section 34 I.P.C., thus:

WEB COPY

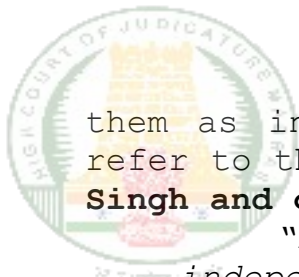
"19. ... The number of convicted persons is more than one, and it does not fall below the required number. What then is the difficulty in applying S.34, Indian Penal Code? Learned counsel says: "We do not know who gave the fatal blows". We accept the position that we do not know which particular person or persons gave the fatal blows; but once it is found that a criminal act was done in furtherance of the common intention of all, each of such persons is liable for the criminal act as if it were done by him alone. The section is intended to meet a case in which it may be difficult to distinguish between the acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. The principle which the section embodies is participation in some action with the common intention of committing a crime; once such participation is established, S.34 is at once attracted. ..."

(emphasis supplied)

42. Applying the above salutary principle, we have no hesitation in holding that the prosecution has proved the charges against all the appellants beyond a peradventure.

43. Apart from the evidence of Chellapandian (P.W.1) and Veeramurugan (P.W.2) about the attack, we have the evidence of Saravanan (P.W.3), Thirumurugan (P.W.4) and Backiaraj (P.W.6), who have stated that while they were in the music programme, they heard someone hollering for help and so, when they rushed towards the banyan tree, they saw the injured on the floor and also the four accused with arms. Backiaraj (P.W.6) has stated that when he went there, the accused were kicking Chellapandian (P.W.1) and Stalin (A.1), Ramadoss (A.2) and Sivadoss (A.3) were having knives and Shanmugam (A.4) was having a rod.

44. The learned counsel for the defence assailed the testimony of these witnesses by contending that they are close relatives of Velmurugan (deceased) and therefore, they are interested witnesses. As stated above, the accused and the victims were from the same village and they knew one another well. The villagers had gathered for the music programme in the temple and at that time, this incident had taken place a little away beneath the banyan tree. Just because the witnesses were related to the victims, one cannot brand



them as interested witnesses. In this context, it is apropos to refer to the following sapient passage of the Supreme Court in **Dalip Singh and others vs. State of Punjab [AIR 1954 SC 364]**:

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

45. The defence counsel further contended that the prosecution has not proved as to how the injured were carried to the hospital and that the prosecution has failed to examine the driver who carried them to the hospital. It is in the evidence of Chellapandian (P.W.1) that on hearing the commotion, his nephews Rajamurugan (not examined), Backiaraj (P.W.6), Saravanan (P.W.3) and his own son Thirumurugan (P.W.4) came to the place of occurrence and that he carried his two sons by car to the Government Hospital, Mannargudi. The fact that the injured were admitted to the Government Hospital, Mannargudi by Chellapandian (P.W.1) at 11.30 p.m. 06.07.2009, has been established via the evidence of Dr. Manjula (P.W.13) and the copies of the accident registers (Exs.P.12 and 13). Mere failure of the prosecution to adduce evidence to show as to who had driven the car or which car was used for transporting the victims, cannot be a good reason to disbelieve the evidence of Chellapandian (P.W.1) and Veeramurugan (P.W.2).

46. The learned defence counsel took this Court through the FIR (Ex.P.14) and submitted that there is interpolation of the words "Today, around 11.15" in it and that Backiaraj (P.W.6), in his evidence, has stated that he does not know who made that and hence, the FIR (Ex.P.14) becomes suspect. We perused the original FIR and found that the words "இன்று சுமார் 11.15 மணிக்கு" (today, around 11.15) have been written separately to show the time of death of Velmurugan (deceased). In other words, if the sentence is completely read, it will give the following meaning:



"Despite intensive treatment given to Velmurugan and removal of his kidney, he died today around 11.15".

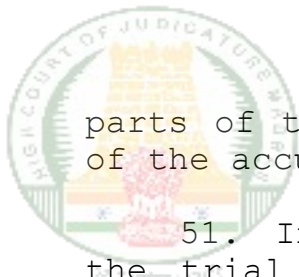
The fact that Velmurugan (deceased) died around 11.15 a.m. on 07.07.2009 is borne out by the records of Vinodhagan Memorial Hospital. The time of death of Velmurugan (deceased) has been included in the complaint (Ex.P.1). On this aspect, there was no question put to Chellapandian (P.W.1). We are unable to understand as to how the addition of these words had materially altered the narration of the actual events in the body of the complaint (Ex.P.1) so as to vitiate the entire prosecution case.

47. The learned defence counsel pointed out an interpolation in the footnote of the FIR (Ex.P.14) that was made by Valli (P.W.14), Sub Inspector of Police, who registered the FIR and advanced the same contention. Valli (P.W.14), in the cross-examination, has explained that she had made the corrections, because, earlier she had wrongly used the expression "statement" which she corrected as "complaint". These corrections made by the FIR registering officer, have, in no way, affected the kernel of the evidence of Chellapandian (P.W.1) and Veeramurugan (P.W.2) relating to the attack.

48. The learned counsel for the defence contended that one of the witnesses, viz., Sudhakar (P.W.5) had turned hostile and therefore, the prosecution case has suffered a dent. Witnesses turning hostile is endemic in our criminal justice system. If the testimony of a hostile witness is used as a yardstick to measure the veracity of the testimony of witnesses who had not turned hostile, our criminal justice system would collapse.

49. Lastly, the learned defence counsel contended that there is no satisfactory evidence to prove that the accused had entered into a conspiracy to eliminate Velmurugan (deceased). There appears to be force in this submission. Conspiracy is a substantive offence and a person is punishable for entering into an agreement to commit an offence irrespective of whether the offence was committed. In this case, there is no satisfactory evidence to prove the charge of conspiracy. Therefore, the conviction and sentence of the accused under Section 120-B read with Section 302 IPC are liable to be set aside.

50. However, there is sufficient evidence to show that all the four accused shared a common intention to eliminate Velmurugan (deceased) as they had gathered at the place of occurrence with weapons, knowing full well that Velmurugan (deceased) and Veeramurugan (P.W.2) will come for the temple festival. The motive for the attack is that Chellapandian (P.W.1) and his son Veeramurugan (P.W.2) had questioned the accused for consuming liquor in their agricultural land. The nature of the injuries and the



parts of the body which were subject to attack, show the intention of the accused.

51. In view of the above discussion, the judgment and order of the trial Court convicting and sentencing the appellants of the offences charged, except the charge under Section 120-B read with 302 IPC, are confirmed. As a sequel, the accused are acquitted of the charge under Section 120-B read with 302 IPC. The conviction and sentence of the appellants for the remaining offences are confirmed.

In the result, these criminal appeals are allowed to the limited extent indicated in paragraph 51 (supra). The trial Court is directed to take the accused into custody for them to serve the remaining period of sentence.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rsb

To

1. THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE,
(FULL ADDITIONAL CHARGE),
PATTUKOTTAI

2. THE JUDICIAL MAGISTRATE, PATTUKOTTAI

3. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY

4. THE INSPECTOR OF POLICE,
MADUKKUR POLICE STATION, THANJAVUR DISTRICT.

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

COPY TO: THE RECORD KEEPER, Criminal SECTION, (2 COPIES)
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (With a direction to transmit the original records
to the Trial Court, forthwith)

Common Judgment made in
Criminal Appeal (MD) Nos.149, 244 and 293 of 2018

sma/19/05/2020/23p/ 8c

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