



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2020

Pronounced on : 28.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.A.(MD)No.162 of 2014

Kathiresan

... Appellant/P.W.1

Vs.

1.State rep. by

The Inspector of Police,
Veeravanallur Police Station,
Tirunelveli District.
Cr.No.38 of 2010

... Respondent/Complainant

2.Vijayan

3.Issac

4.Anburaj

5.Rebens Samuelraj

6.Justin

7.Murugesan

... Respondents/Accused Nos.1 to 6

PRAYER: Appeal filed under Section 372 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.106 of 2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.1, Tirunelveli, dated 27.02.2012 and set aside the same and consequently convict the respondents 2 to 7 by imposing maximum punishment provided under the law.

For Appellant : Mr.R.Anand

For Respondents : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

Mr.G.Karuppasamy Pandian
for RR.3, 5 & 6



Mr.S.Deenadhayalan
for RR.4 & 7

JUDGMENT

B. PUGALENDHI, J.,

This appeal is filed at the instance of the defacto complainant / PW1 as against the judgment of acquittal passed by the learned Additional District and Sessions Judge, Fast Track Court No.1, Tirunelveli District, in S.C.No.106 of 2011, dated 27.02.2012.

2. This appeal was originally filed as a criminal revision case in Crl.R.C.(MD)No.186 of 2012 and as per the order of the learned Single Judge, dated 28.03.2014, that as per amended code, under proviso 372 Cr.P.C., only appeal is maintainable at the instance of the victim, the criminal revision case was re-numbered as Crl.A.(MD)No.162 of 2014 and as per the order of the learned Single Judge, dated 02.12.2019, that since this is an appeal against the judgment of acquittal for the offences under Sections 148, 294(b), 302, 307, 324, 506(ii) r/w 34 IPC, it has to be heard by a Division Bench, the appeal was listed before this Court for final disposal.

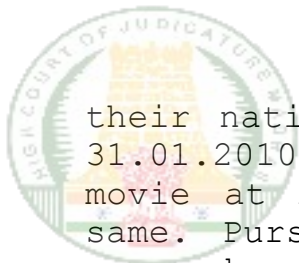
3. The respondents 2 to 7 / accused were tried before the trial Court for the following charges:

Charge	Accused	Offence under Section
I	A1 to A6	148 IPC
II	A1 to A6	294(b) IPC
III	A1	302 IPC
IV	A2 to A5	307 IPC
V	A2	324 IPC
VI	A1 to A5	506(ii) IPC
VII	A2 to A6	302 r/w 34 IPC

In conclusion of the trial, the trial Court, by judgment dated 27.02.2012, acquitted the respondents 2 to 7 / accused, as the prosecution has not proved the case beyond reasonable doubt. Aggrieved over the same, the defacto complainant / PW1 has preferred the instant appeal. For the sake of convenience and clarity, the parties are referred to as per their rank before the trial Court.

4. The brief facts of the case, in a nutshell, are as follows:

4.1. PWs.1 to 3 are brothers, working at Chennai and the deceased namely, Rajendran, is their father. PWs.1 to 3 came to



their native village at Reddiyarpuram for Pongal holidays and on 31.01.2010, the first accused suggested PWs.1 to 3 to go for a movie at Ambasamudram and PWs.1 to 3 have also agreed for the same. Pursuant to the assurance given by PWs.1 to 3, the first accused came along with the second and third accused in a Tata Ace Vehicle, bearing registration no.TN-72-AC-6733, to PW1's house and called them for the movie. The deceased, Rajendran, on seeking the inebriated condition of the first accused, did not permit his sons to accompany the accused for cinema and also abused them as drunkards. The first accused got a grievance that based on the assurance given by PW1 only, he arranged the Tata Ace vehicle and he was worried about the rent, scolded the deceased and PWs.1 to 3 and left for cinema.

4.2. On the next day, ie., on 01.02.2010, at about 07.00 am, when the deceased along with his sons PWs.1 to 3 were planning for a construction in their vacant site near their house, the accused nos.1 to 5 along with few others came with Aruval, attacked the deceased Rajendran. PWs.1 to 3, who were also present in the place of occurrence, attempted to prevent the attack and in the course of the same, they also sustained injuries. PW4, an Auto Driver in the village, rushed to the spot on hearing the sound, found the deceased and PWs.1 to 3 lying with injuries. He also witnessed the accused nos.1 to 5 in the place of occurrence with weapons. He arranged '108' Ambulance over phone and the deceased and PWs.1 to 3 were taken to the Government Hospital, Ambasamudram.

4.3. Dr.Saravanan [PW19], Assistant Medical Officer, Government Hospital, Ambasamudram, provided first aid to the deceased and PWs.1 to 3 and noted down the injuries in Ex.P19 to Ex.P22. On seeing their condition, he referred them for further treatment to the Government Medical College Hospital, Tirunelveli.

4.4. Dr.Sudhakar @ Shanmugasundram [PW20], Radiologist, Government Hospital, Tirunelveli, has taken X-ray for the fractures sustained by PW1. On the medical intimation received from the Government Medical College Hospital, Tirunelveli, at about 10.00 am on 01.02.2010, the Sub-Inspector of Police [PW24], Veeravanallur Police Station, went to the Government Medical College Hospital, Tirunelveli and recorded the statement from the injured PW1 between 11.00 am and 12.00 noon in Ex.P1, returned to the Police Station and registered the case in Crime No.20 of 2010 as against the accused 1 to 5 and unnamed, but identifiable, some other persons for the offence under Sections 147, 148, 294(b), 307, 326, 324 & 506(ii) IPC and the same is marked as Ex.P28. He also forwarded the printed First Information Report to the Court and to the Inspector of Police.



4.5. The Inspector of Police [PW27], on receipt of the information as to the registration of the case, went to the place of occurrence, prepared an observation mahazar [Ex.P3] and rough sketch [Ex.P34] in the presence of PW5 and another. He also recovered earth with and without blood in MOs.1 & 2, respectively. He also examined the witnesses PWs.1 to 5 and recorded their statements.

4.6. In the meanwhile, the deceased Rajendran, who took treatment at Government Medical College Hospital, Tirunelveli, succumbed to the injuries on 02.02.2010 at 04.30 am and it was intimated to the Police Station in Ex.P35. Based on the same, the Inspector of Police [PW27] altered the offence in Crime No.20 of 2010 and submitted the alteration report to the learned Judicial Magistrate, Cheranmahadevi, in Ex.P36. He conducted inquest on the body of the deceased in the presence of panchayatars and prepared an inquest report [Ex.P37] and after completing the inquest, he forwarded the body of the deceased for postmortem, through one Constable, Karupasamy.

4.7. Dr.Mani [PW25], Assistant Professor, Government Medical College Hospital, Tirunelveli, conducted postmortem on 02.02.2010 at about 11.50 am and noted down the following injuries:

"8 cm long sutured wound seen on the frontal region. It is 8 cm above the root of the nose, 16 cm above the root of left external ear.

On dissection of scalp : 18 x 13 cm sub scalpel seen on the left frontal region. 6 cm long fissured fracture seen on the left frontal region. It is seen 5 cm above the root of the nose. Marked subdural and subarachnoid haemorrhage seen on the major portions of brain tissue. Intra cerebral haemorrhage seen on the frontal and parietal lobe of right cerebral hemisphere."

He gave his final opinion that the deceased would appear to have died of shock and haemorrhage due to heavy cut injury to the region of head. The postmortem certificate is marked as Ex.P29.

4.8. On 02.02.2010, the Inspector of Police arrested the first accused near Rediyarpuram Railway Gate, recorded his confession statement in the presence of PWs.6 & 7 and recovered an Aruval [MO5], pursuant to his confession statement under a cover of mahazar. He also arrested the second accused and recovered an Aruval [MO6] in the presence of the said witnesses under a cover of mahazar. The other accused surrendered before the learned Judicial Magistrate, Tuticorin, on 12.02.2010 and the Inspector of Police [PW27] made a requisition for police custody and taken them under custody and recovered MOs.7 & 8 - Aruval pursuant to the confession statement of accused nos.4 & 5. He also arrested the



accused Murugesan and Anburaj and recovered an Aruval [MO9] and a TVS Champ Mopet, bearing registration no.TN-67-Z-6447 [MO10]. He also examined the Doctor, who provided the first aid treatment at Government Hospital, Ambasamudram and the Doctor, who conducted the postmortem and thereafter, filed the final report on 30.04.2010.

4.9. During the trial, on the side of the prosecution, as many as 27 witnesses were examined and 47 exhibits were marked, besides 12 material objects. Excepting PWs.1 to 5, all other witnesses, apart from the official witnesses, were treated as hostile and the Inspector of Police [PW27] was also treated as hostile in this case. The trial Court, in conclusion of the trial, acquitted the accused / respondents 2 to 7 as the prosecution has not proved the case beyond reasonable doubt and as against the same, the defacto complainant [PW1] has preferred the present appeal.

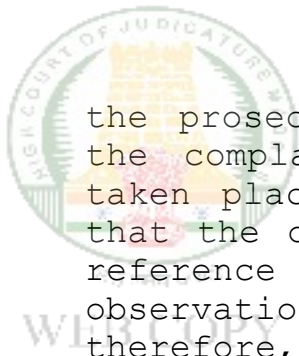
5. Mr.R.Anand, learned Counsel for the appellant, in support of this appeal, made the following submissions:

5.1. The trial Court failed to consider the oral testimonies of the injured eye witnesses PWs.1 to 3 and acquitted the accused on certain minor contradictions that the place of occurrence has not been established and that the statements recorded under Section 161(3) Cr.P.C., were dispatched to the Court belatedly. When the prosecution has collected blood samples and when the investigation officer was not contradicted with regard to the delay in dispatching the statements recorded under Section 161(3) Cr.P.C., the trial Court has failed to discuss the reasons for disbelieving the oral testimonies of the injured eye witnesses.

5.2. The evidence of PWs.1 to 3 coupled with the evidence of the Doctor [PW19] and the Accident Registers [Ex.P19 to Ex.P22] establish the case of the prosecution beyond any reasonable doubt. The evidence of the Radiologist [PW20] would expose that one of the injury sustained by PW1 is grievous in nature and the Doctor [PW25], who conducted the postmortem, in a clear and categorical statement, gave his final opinion that the death was due to shock and haemorrhage due to heavy cut injury to the head region. Moreover, the recovery of the weapons MOs.5 to 9 - Aruval pursuant to the confession statements of the accused establish the case of the prosecution and therefore, the learned Counsel prayed to set aside the impugned judgment.

6. Per contra, the learned Counsel for the accused, in unison, made their submission as follows:

6.1. There is an inordinate delay in the First Information Report reaching the Court and that was not properly explained by



the prosecution. The place of occurrence is highly doubtful. In the complaint [Ex.P1], PW1 has stated that the occurrence was taken place near their house, but the prosecution has projected that the occurrence has taken place behind a Church. There is no reference about the house of the accused, either in the observation mahazar [Ex.P3] or in the rough sketch [Ex.P34] and therefore, the place of occurrence has not been proved beyond any reasonable doubt. Moreover, the '108' Ambulance Driver, who took the deceased and PWs.1 to 3 to the Government Hospital, Ambasamudram was not examined.

6.2. In the complaint [Ex.P1], five named persons along with a group of known other persons were mentioned as assailants. But the investigation was confined with regard to six accused alone and name of the sixth accused was not mentioned in the complaint [Ex.P1]. Though the occurrence was taken place near a Church, in a day time, no independent witness was examined on the side of the prosecution. There are material contradictions between the evidence of the Doctor and the evidence of the eye witnesses with regard to the injuries. Some of the injuries noted down by the Doctor are lacerated and deformed injuries, which could be possible only by a blunt material. Therefore, the case of the prosecution that the injuries were caused by MOs.5 to 9 is not all possible and they pray for dismissal of this appeal.

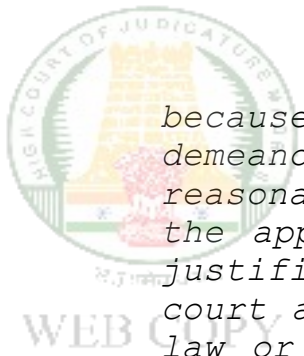
7. This Court paid it's anxious consideration to the rival submissions made by the learned Counsel for the respective parties and also perused the available records.

8. Before dwelling into the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in **V.Sejappa v. State [(2016) 12 SCC 150]**, wherein, the Hon'ble Supreme Court has followed its own decision in **Muralidhar v. State of Karnataka [(2014) 5 SCC 730]**. The guidelines issued in the said decision are extracted hereunder:

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

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

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



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

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

9. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is



further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

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10. The trial Court mainly relied upon the contradictions with regard to the place of occurrence; the weapons used; non-examination of independent witness and the delay in FIR reaching the Court. Since this is an appeal against acquittal, this Court, keeping in mind the aforesaid decisions, is inclined to proceed with this appeal issue by issue.

10.1. Issue 1:

Finding of the trial Court:

Place of occurrence not proved.

Our Reasoning:

i) In the complaint [Ex.P1], PW1 has stated that on 01.02.2010 at about 07.00 am, when they were standing in their street, the accused came and attacked them. In the observation mahazar [Ex.P3], the place of occurrence is mentioned as behind the CSI Church at Reddiyarpuram village. As per the rough sketch [Ex.P34], the place of occurrence is shown as behind the CSI Church. The mortars with and without blood were taken in Ex.P4 in the presence of PW5 and in Ex.P4 also, it is mentioned that behind CSI Church at Reddiyarpuram, the samples were collected.

ii) PW1 in evidence has stated that when they were discussing in their plot, the occurrence was taken place. During the cross examination, an attempt was made that the Church is far away from his residence, which was denied by PW1 and he has stated that it would be 50 feet from the occurrence village. In the rough sketch [Ex.P34], the vacant site of the deceased is shown as Sl.No.6. PW9, a neighbour of the deceased, one Selvi W/o Velmurugan was also examined by the prosecution for the purpose of establishing the previous day occurrence took place on 31.01.2010. An attempt was made by the accused to PW9 that the Church was far away from their residence. But, PW9 in her evidence has also clearly stated that their residence is at North street and the Church is in the middle street and it would be 50 feet away from their street.

iii) PW4, the Auto Driver, an independent witness has also stated that 01.02.2010, he went to the place of occurrence and found the deceased lying with injuries and PWs.1 to 3 with injuries near the Church. PW1, his brothers [PWs.2 & 3] and his father / the deceased have sustained serious injuries and they were taken to the Government Hospital, Ambasamudram, in an '108'



Ambulance and they were treated at about 09.30 am. Thereafter, they were referred to the Government Medical College Hospital, Tirunelveli, for further treatment, where the statement was recorded from the complainant [PW1] at about 11.00 am, when they were in a state of shock. Just because PW1 has not mentioned the Church in his complaint [Ex.P1], it is not proper on the part of the trial Court to arrive at a conclusion that the place of occurrence has not been proved by the prosecution, when there are other evidence to establish the same and moreover, there is no evidence to dispute that the place of occurrence is far away from the residence of PWs.1 to 3.

10.2. Issue 2:

Finding of the trial Court:

The '108' Ambulance Driver was not examined.

Our Finding:

The occurrence was taken place on 01.02.2010 at 07.00 am, where all the family members of the deceased were attacked with deadly weapons. At the instance of PW4, an Auto Driver, '108' Ambulance was called and the victims were taken to the Government Hospital, Ambasamudram [PW19] at about 09.30 am. The Wound Certificates cum Accident Registers of PWs.1 to 3 and the deceased were marked as Exs.P19 to P22, wherein, it is mentioned that they were brought to the Hospital through '108' Ambulance. While so, the non-examination of the '108' Ambulance Driver, who brought the injured to the Hospital, is not a material defect to disbelieve the prosecution case.

10.3. Issues 3 and 4:

Finding of the trial Court:

i) In the complaint [Ex.P1] and in the inquest report [Ex.P37], it is mentioned that along with the named accused, some other identifiable persons have also accompanied and assaulted the deceased. But, there is no investigation with regard to the identifiable other persons and no identification parade was conducted to fix the other accused.

ii) Moreover, the earlier occasion that took place on 14.01.2010 was not at all mentioned in the complaint [Ex.P1].

Our Finding:

i) Both in the complaint [Ex.P1] and in the inquest report [Ex.P37], the names of the accused nos.1 to 5 are mentioned. PWs.1 to 3 along with their father were assaulted by five persons with deadly weapons. In the course of the incident, PWs.1 to 3 and the deceased sustained serious injuries and the deceased succumbed to the injuries on the next day. One of the injuries sustained by PW1 is grievous in nature. The injured were taken to the Government Hospital, Ambasamudram, and thereafter, considering the seriousness of the injury, they were referred to the Government Hospital, Tirunelveli, where the complaint was recorded, within



four hours from the commission of offence.

ii) The defacto complainant [PW1], who has sustained a grievous injury, was under a shock and also in treatment, if has stated something that a group of persons attacked, that alone cannot be taken as a ground for disbelieving the entire prosecution case when the names of the accused nos.1 to 5 were very well mentioned in the complaint [Ex.P1]. The Hon'ble Supreme Court, time and again, has reiterated that a complaint cannot be an encyclopedia where all minute details can be furnished. The omission or certain exaggeration while lodging the complaint cannot be a ground to disbelieve the entire case of the prosecution. The evidence of the eye witnesses has to be scrutinized in a careful manner and ought to have been analyzed depending upon the veracity of their evidence in the trial.

10.4. Issue 5:

Finding of the trial Court:

There is no explanation for the delay in FIR reaching the Court.

Our Finding -

i) The Sub-Inspector of Police [PW24] recorded the statement of PW1 between 11.00 am and 12.00 noon, returned to Veeravanallur Police Station and registered the case in Crime No.20 of 2010 at 01.00 pm. He dispatched the printed copy of the FIR to the concerned Judicial Magistrate Court and to the investigation officer [PW27] at about 01.30 pm. PW27 received the printed FIR from the Constable [PW23] at about 02.30 pm, proceeded to the place of occurrence and prepared the spot mahazar [Ex.P3] at about 03.00 pm and rough sketch [Ex.P34]. He also recovered the mortars with and without blood from the place of occurrence on the same day at about 04.00 pm in Ex.P4 in the presence of PW5-Poosapandi. But, the printed FIR [Ex.P28] reached the concerned Judicial Magistrate Court only on the next day, ie., on 02.02.2010, at about 11.30 am.

ii) But, it appears, the alternation report [Ex.P36] was received by the concerned Judicial Magistrate on 02.02.2010 at about 12.00 noon. The FIR in Ex.P28 was registered for the offence under sections 147, 148, 294 (b), 307, 326, 324 & 506(ii) IPC. Though it is registered for the offence under section 307 IPC, the police failed to treat the same as an express FIR and forward the same immediately to the Court. On receipt of the information as to the death of the deceased in Ex.P35, they prepared the alteration report in Ex.P36 and the same was received by the concerned Judicial Magistrate at 12.00 noon on the same day. Of course, there is a lacuna on the part of the investigation agency in dispatching the printed FIR [Ex.P28]. But this lacuna cannot be a material defect, when the injured witnesses and the deceased were taken to the Hospital, admitted at about 09.30 am, within three



hours and the case also registered at about 01.00 pm and more particularly, the alteration report reached the Magistrate without any delay.

10.5. Issue 6:

Finding of the trial Court:

In the Accident Registers [Exs.P19 to P22], it is mentioned that four known persons have assaulted the victims, whereas in the complaint [Ex.P1], five named persons and others were mentioned as assailants.

Our Finding:

As discussed supra, all the victims were seriously injured and the accused nos.1 to 3 are belonging to the same village and the accused nos.4 & 5 were from another village. This contradiction, at the most taken in the benefit of the other two accused [A5 & A6], cannot be a ground to disbelieve the entire case of the prosecution *in toto* as against the accused nos.1 to 4. Moreover, apart from the evidence of PWs.1 to 3, the independent witness [PW4], an Auto Driver has also stated about the presence of this accused nos.1 to 5 in the place of occurrence with Aruval.

10.6. Issue 7:

Finding of the trial Court:

Motive is Unbelievable.

Our Finding:

i) This is a case of eye witness and motive is insignificant when there are three injured eye witnesses in this case. The first accused has invited PWs.1 to 3 for a movie to Ambasamudram and on the assurance given by PW1, the first accused arranged a Tata Ace vehicle for transportation. He went to PW1's house after consuming liquor and on seeing his inebriated condition, the deceased prevented PWs.1 to 3 to accompany the accused and also insulted the first accused. The first accused, who sustained some expense by engaging an Auto on the promise given by PW1, got infuriated over the act.

ii) Apart from this incident, there was yet another incident on 14.01.2010, wherein a Kabadi match was conducted during the Pongal festival, the second accused caused some problem by consuming liquor and at that time also, the deceased had abused them. This incident on 14.01.2010 was not stated in the FIR and the witness PW8, who was examined for establishing this incident on 14.01.2010 has not stated properly about the same and leaving this incident on 14.01.2010, the incident that took place on 31.01.2010 was clearly spoken by the witnesses PWs.1 to 3 and a neighbour PW9. Therefore, it cannot be decided that there is no proper motive for the commission of offence. The accused was insulted and also made to suffer a loss at the instance of the deceased and therefore, the accused is having a motive against the



deceased.

10.7. Issue 8:

Finding of trial Court:

The statements recorded under section 161(3) Cr.P.C., and other documents reached the Court belatedly.

Our Finding:

No doubt, a Division Bench of this Court in **Karunakaran In re** reported in **1974 L.W. (Cr1)**, has issued a direction that all the material documents has to reach the concerned Judicial Magistrate Court immediately after the occurrence. On a perusal of the available records, it appears that the material documents like the complaint [Ex.P1], the inquest report [Ex.P37], the recovery mahazars, the confession statements and the Accident Registers [Exs.P19 to P22] have reached the Court without any delay. Since the statements recorded under section 161(3) Cr.P.C., alone were filed along with the final report, when all other material documents have been forwarded to the Court without any delay, it cannot be taken as a material defect. The evidence of PWs.1 to 3 is in consonance with the complaint [Ex.P1] and therefore, the delay in forwarding the statements recorded under section 161(3) Cr.P.C., does not affect the case of the prosecution.

10.8. Issue 9:

Finding of the trial Court:

There is no independent eye witness in this case.

Our Finding:

i) The occurrence was taken place at about 07.00 am, in the early morning hours behind a Church and PWs.1 to 3, though close relatives of the deceased, are injured witnesses. The injuries are of serious in nature and they have sustained these injuries when they attempted to prevent the attack on the deceased.

ii) The contention raised by the learned counsel for the accused that the prosecution witnesses were closely related to one another and no independent witness, who had seen the crime, was examined does not cut much ice with this Court, because, the law does not lay down any separate parameter for appreciating the evidence of a relative, vis-a-vis, the evidence of a person not related to the victim. In **State of Andhra Pradesh Vs. S.Rayappa**, reported in **2006 AIR SCW 929**, the Hon'ble Supreme Court has observed as follows:-

"On the contrary, it has now almost become a fashion that the public is reluctant to appear and depose before the Court, especially, in criminal case, because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all, they are



subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased, they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously. The High Court has brushed aside the testimony of PW-1 and PW-2 on the sole ground that they are interested witnesses being relatives of the deceased".

iii) Mere because they are close relatives, their evidence cannot be discarded. Their evidence has to be analyzed carefully. Moreover, apart from the evidence of PWs.1 to 3, an Auto Driver [PW4], who arranged the '108' Ambulance to transport the victims to the Hospital, has stated about the presence of the accused nos.1 to 5, with Aruvals at the place of occurrence. Apart from this evidence, PW9-a neighbour / another independent witness has stated about the previous day occurrence that took place on 31.01.2010.

10.9. Issue 10:

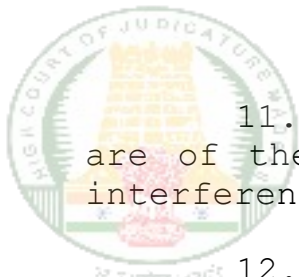
Finding of trial Court:

There is no material as to how the sixth accused is inserted in this case.

Our Finding:

i) The sixth accused is added as a conspirator for the occurrence at a later point, pursuant to the confession statement of the other accused, which ought to have been analyzed independently and not as a whole to disbelieve the entire case of the prosecution.

ii) The complaint [Ex.P1] was lodged as against five named persons along with a group of other known persons. The name of the sixth accused is not mentioned in the complaint [Ex.P1]. The identify features of the sixth accused is also not mentioned in the complaint [Ex.P1]. The investigation agency has not conducted any test identification parade to fix the sixth accused. Since this is an appeal against acquittal, considering the fact that the name of the sixth accused is not found place in the complaint [Ex.P1]; the identity features were not mentioned and there is no investigation as to how this sixth accused was arrayed as an accused, this Court deems it fit that it is not proper to interfere with the finding of the trial Court, insofar as the sixth accused is concerned.



11. In view of the foregoing reasonings and discussions, we are of the opinion that the finding of the trial Court warrants interference as regards the accused nos.1 to 5.

12. Dr. Saravanan [PW19], Assistant Medical Officer, Government Hospital, Ambasamudram, treated the deceased and PWs.1 to 3 for the injuries sustained by them. The Doctor [PW19] has also issued the Wound Certificates in Ex.P19 to Ex.P22 as follows: Wound Certificate [Ex.P19] issued to PW2:

"i) lacerated wound in right elbow of 3 x 5 x 2 cm, fresh bleeding.

ii) lacerated wound in left shoulder of 3 x 2 x 2 cm."

Wound Certificate [Ex.P20] issued to PW3:

"i) lacerated wound of 4 x 2 cm x bone deep, on the base of left hand, close to ring finger 94th finger), fresh bleeding and bone exposed."

Wound Certificate [Ex.P21] issued to PW1:

"i) deep incised wound in the left shoulder.

ii) avulsed thumb (right), fresh bleeding.

iii) deep cut injury in right arm of 10 x 9 x 9 cm.

Injury No.2 is a grievous injury"

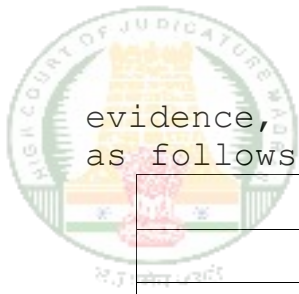
Wound Certificate [Ex.P22] issued to the deceased:

"i) lacerated wound of 5 x 2 x 1 cm on the frontal region, fresh bleeding.

ii) abrasion of ½ x ½ cm size over the nose."

13. The evidence of Dr. Mani [PW25], Assistant Professor, Government Medical College Hospital, Tirunelveli, who conducted postmortem on the deceased, would show that the deceased died of shock and haemorrhage due to heavy cut injury to the region of head. The postmortem certificate is marked as Ex.P29.

14. From the evidence of PWs.1 to 3 as well as the complaint [Ex.P1] and the First Information Report [Ex.P28], it is evident that the first accused has caused the fatal injury on the head of the deceased. The second accused caused the cut injuries on the right and left shoulders of PW1 and on the ring finger of PW3. The third accused caused the cut injuries on the thumb of PW1 and the fourth and fifth accused caused the cut injuries on the right elbow and left shoulder of PW2. Of the injuries sustained by the prosecution witnesses, the injury no.2 sustained by PW1, according to the Doctor [PW19], is grievous in nature. With the common intention to murder the prosecution party, the accused persons, with deadly weapons, have arrived and committed the offence. Moreover, the weapons - Aruval [MO5 to MO9] were also recovered pursuant to the confession statements of the accused persons. In view of the available oral evidence as well as the medical



evidence, this Court holds the accused persons / A1 to A5 guilty as follows:

Accused	Offence under Section
A1 to A5	148 IPC
A1	302 IPC
A2 to A5	307 IPC
A2	324 IPC
A2 to A5	302 r/w 34 IPC

15.In fine, this Criminal Appeal is allowed and the judgment of acquittal passed by the learned Additional District and Sessions Judge, Fast Track Court No.1, Tirunelveli, in S.C.No.106 of 2011, dated 27.02.2012, is set aside, insofar as the accused nos.1 to 5 are concerned. The judgment of acquittal as regards the sixth accused is confirmed. The accused nos.1 to 5 are found guilty as stated in the tabular column in paragraph no.14.

16. For the purpose of questioning the accused nos.1 to 5 / respondents 2 to 6 on the sentence, Registry is directed to post the matter on **12.10.2020**. The first respondent Police is directed to secure and produce them before this Court on the said date. Registry is also directed to issue necessary warrants.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

To

1)The Additional District and Sessions Judge,
Fast Track Court No.1,
Tirunelveli.

2) The Judicial Magistrate, Cheranmahadevi, Tirunelveli District.

3) The Chief Judicial Magistrate, Tirunelveli District.

4)The Inspector of Police,
Veeravanallur Police Station,
Tirunelveli District.



- 5) The District Collector, Tirunelveli District.
- 6) The Commissioner of Police, Tirunelveli District.
- 7) The Superintendent of Police, Tirunelveli District.
- 8) The Director General of Police, Mylapore, Chennai.
- 9) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO

The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

Judgment made in
Cr1.A. (MD) No. 162 of 2014
28.09.2020

NS (CO)
TR (01.10.2020) 16P 12C