



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Judgment Reserved on : 23.11.2021**  
**Judgment Pronounced on : 07.12.2021**

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**CORAM:**

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**  
**and**  
**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**Crl.A(MD)No.274 of 2018**

P.Thilagavathi ... Appellant/P.W.8

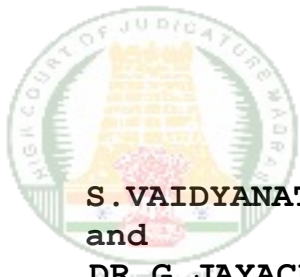
Vs.

1.Murugesan @ Shanmugasundaram  
2.Patchaiparumal @ Patchikutti  
3.Palavesaraj @ Palavesamuthu  
4.Kulasekarapandian  
5.Arun  
6.Thangavelu  
7.Sathiyaseelan  
8.Prabakaran @ Karathay Pandian  
9.Jeya Pandian  
10.Bileydy Ganesan @ Selvaganesan  
11.Kutti @ Patchi Perumal  
12.Menaka ... Respondents 1 to 12/A1 to A12

13.State rep. by Inspector of Police,  
Eral Police Station,  
Tuticorin District.  
(Cr.No.181 of 2007.) ... 13<sup>th</sup> Respondent/Complainant

**PRAYER:** The Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, to call for the records relating to the judgment in S.C.No.19 of 2009, dated 01.09.2009, passed by the learned Additional Sessions Judge, Fast Track Court No.I, Thoothukudi, and set aside the same and convict the accused persons.

For Appellant : Mr.D.Saravanan  
Mr.Nawas Khan  
Amicus Curiae  
For R1 to R8, 10 & 11 : Mr.C.Muthu Saravanan  
For R9 & 12 : Mr.Pon Senthil Kumaran  
For R13 : Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor

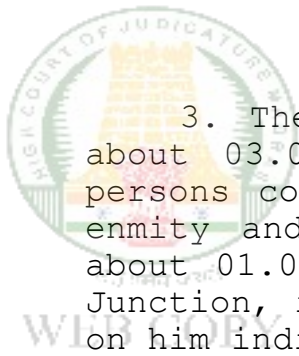
**JUDGMENT****S.VAIDYANATHAN, J.****and****DR.G.JAYACHANDRAN, J.**

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This appeal has been preferred against the judgment of acquittal of all the 12 accused, who stood tried before the learned Additional Sessions Judge, Fast Track Court No.I, Thoothukudi, in S.C.No.19 of 2009, for the offences under Section 120-B of I.P.C. against Accused Nos.1 to 12; Section 148 of I.P.C. against Accused Nos.1 to 6 & 8 to 11; Section 341 of I.P.C. against Accused Nos.3 & 4; Section 302 read with Section 34 of I.P.C. against Accused Nos.1, 2, 4 to 6 and 8 to 11; Section 302 read with Section 149 of I.P.C. against Accused No.3; Section 302 read with Section 109 of I.P.C. against Accused No.7; Section 506(ii) of I.P.C. against Accused Nos.1 to 6 & 8 to 11; Section 302 read with Section 120-B of I.P.C. against Accused No.12.

2. For easy reference, the charges against respective accused is given in the below table:-

| Accused Rank | Name                           | Sections of Law                                 |
|--------------|--------------------------------|-------------------------------------------------|
| A1           | Murugesan @ Shanmugasundaram   | 120-B, 148, 302 r/w 34 IPC and 506(ii) IPC      |
| A2           | Patchaipерumal @ Patchikutti   | 120-B, 148, 341, 302 r/w 34 IPC and 506(ii) IPC |
| A3           | Palavesaraj @ Palavesamuthu    | 120-B, 148, 341, 302 r/w 149 & 506 (ii) IPC     |
| A4           | Kulasekarapandian              | 120-B, 148, 341, 302 r/w 34 and 506(ii) IPC     |
| A5           | Arun                           | 120-B, 148, 302 r/w 34 and 506(ii) IPC          |
| A6           | Thangavelu                     | 120-B, 148, 302 r/w 34 and 506(ii) IPC          |
| A7           | Sathiyaseelan                  | 120-B, 302 r/w 109 IPC                          |
| A8           | Prabakaran @ Karatheey Pandian | 120-B, 148, 302 r/w 34 and 506(ii) IPC          |
| A9           | Jeya Pandian                   | 120-B, 148, 302 r/w 34 and 506(ii) IPC          |
| A10          | Bileydy Ganesan @ Selvaganesan | 120-B, 148, 302 r/w 34 IPC and 506(ii) IPC      |
| A11          | Kutti @ Patchi Perumal         | 120-B, 148, 302 r/w 34 and 506(ii) IPC          |
| A12          | Menaka                         | 120-B, 302 r/w 120-B IPC.                       |



3. The averments of the prosecution is that on 10.07.2007 at about 03.00 p.m., at the house of 9<sup>th</sup> accused, all the accused persons conspired to eliminate one Patchaiperumal, due to previous enmity and in pursuant to the said conspiracy, on 12.07.2007 at about 01.00 p.m., near Nadesan Nadar Plantation south of Kodunkani Junction, intercepted the said Patchaiperumal and inflicted injuries on him indiscriminately causing his death.

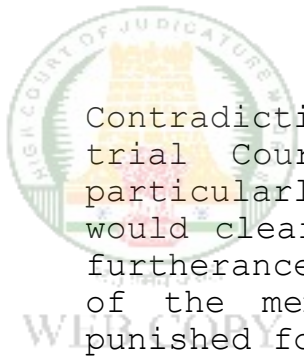
4. The complaint was given by one Senthilkumaran P.W.2, in the presence of Ilangovan P.W.1 to the Sub-Inspector of Police, Eral. In the said complaint given by Senthilkumaran four accused were named with their overt act and unnamed few others for causing injuries with weapon. Based on the said complaint, a case was registered in Crime No.181 of 2007 under Sections 147, 148, 341 and 302 of I.P.C. and the investigation was taken up by the said police. Final report was filed against 12 accused. The learned Judicial Magistrate, Srivaikundam, took cognizance of the case and offence being triable by the learned Sessions Judge, committed the case to the Sessions Court. The Principal Court of Sessions assigned S.C.No.19 of 2009 and made over the case to the Additional Sessions Court, Tuticorin.

5. The prosecution, to prove the charges, had examined 36 witnesses, marked 42 exhibits and 13 material objects. On the side of the accused, two exhibits viz., D1 and D2 were marked.

6. The learned Additional Sessions Judge, Fast Track Court No.I, Thoothukudi outrightly rejected conspiracy theory propounded by the prosecution through P.W.7. While considering the other charges, delay in forwarding the F.I.R. to the Court, failure to identify the material objects in the Court and the contradictions between P.W.1 and P.W.2 who were supposed to be the eyewitnesses to the occurrence, held that it is doubtful whether P.W.1 was present at the scene of occurrence and it is improper, to accept the evidence of P.W.1 to record conviction. The contradictions about the overt act of each of the accused persons elucidated during the examination of the witnesses, lead the trial Court to observe that P.W.2 would not have been present at the time and place of the alleged occurrence and acquitted the accused. The evidence of P.W.3 and P.W.4 was disbelieved, since their testimony before Court and the previous statement to the learned Magistrate found to be contradictory.

7. Being aggrieved by the said findings of the acquittal by the trial Court, the present appeal has been preferred by the wife of the deceased Patchaiperumal, who was examined as P.W.8.

8. The learned counsel for the appellant submitted that in case of multiple accused forming unlawful assembly carrying deadly weapons and target a single individual, the eyewitnesses cannot depose preciously and exactly the overt act of each accused persons weapons they carried and the seat of attack.



Contradictions between two witnesses in such case is natural. The trial Court has failed to understand the provisions of law, particularly, governing Sections 120-B, 148 and 149 of I.P.C. which would clearly show that in a case of unlawful assembly gathered in furtherance of common intention and in case of conspiracy, each one of the members of the unlawful assembly will be liable to be punished for the act of other persons.

9. The learned counsel for the appellant would submit that the F.I.R. given soon after the occurrence by Senthilkumaran [P.W.2] who being the witness to a horrid murder, cannot be an encyclopedia of the offence when members of an unlawful assembly consist of 11 persons carrying deadly weapons brutally attacked the victim. Therefore, the omission to name the other accused and their respective overt act, except A1 to A4 in the FIR, cannot be fatal to the case of the prosecution, more so, to acquit all the accused persons in spite of overwhelming evidence against the presence of Accused Nos.1 to 11 and their overt act, which corroborates the injuries found on the body of the victim in the postmortem certificate [Ex.P.25]. The trial Court verdict is the outcome of improper appreciation of evidence.

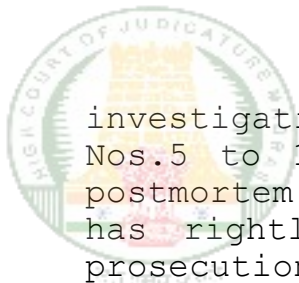
10. To emphasis, the trial Court judgment of acquittal to be reversed, the following judgments are relied.

**(i) Vijay Mohan Singh vs. State of Karnataka** reported in **2019 (5) SCC 436**.

**(ii) Gangadhar Behera Zothens vs. State of Orissa** reported in **2003 Cri. L.J. 41 (SC) : 2002 (8) SCC 381**.

**(iii) Jaishree Yadav vs. State of U.P.** reported in **2006 (1) SCC (Cri) 160**.

11. Per contra, the respondents, who were represented by their counsels would submit that the trial Court has rightly disbelieved the evidence of P.W.1 and P.W.2, who claimed to be the eyewitnesses to the occurrence. It was not only due to material contradictions between their evidence, but also the embellishment and false statement made after the F.I.R. was given by P.W.2, who admittedly was conscious at the time of informing the police. In the F.I.R., he has not referred Accused Nos.5 to 11, more particularly, when he admits that he knew Accused Nos.5, 6, 8, 10 & 11 for quite a long time. Therefore, when in the complaint [Ex.P.2] only the name of Accused Nos.1 to 4 have been mentioned with specific overt act, on seeing the Postmortem report, which reveals that the deceased has sustained 11 injuries, the case has been built up with false statements and over statements. It is obvious that after the receipt of the postmortem report, P.W.1 has improved his version by roping Accused Nos.5 to 11 distributing 11 injuries to all the accused. Admittedly, the name of Accused Nos.5 to 11 came to be introduced only on 13.07.2007 and it is also an admitted fact by the Investigating Officer (P.W.32) Thangaraj, the first day of



investigation i.e., on 12.07.2007 no witnesses implicated Accused Nos.5 to 11. The embellishment and improvement subsequent to the postmortem report attributing the overt act to each of the accused has rightly been considered by the trial Court to discard the prosecution case.

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12. The learned counsel for the respondents specifically referred the evidence of P.W.7 in respect of the alleged criminal conspiracy hatched on 10.07.2007 at 12.00 noon and would submit that if really this witness has come to know about the criminal conspiracy to eliminate his brother-in-law Patchaiperalum two days prior to the occurrence, his natural conduct would have been to inform the police or alert the deceased about the conspiracy to eliminate him. The very factum that he did not inform to the deceased or the police would go to show that it is only an afterthought to rope in family members of Kulasekarapandi with whom the deceased family had animosity regarding purchase of property.

13. Pointing out the delay of 15 ½ hours in forwarding the express F.I.R. to the concerned learned Magistrate and the postmortem report which shows that undigested food particles in the stomach of the deceased found, which belie the evidence of P.W.1 and P.W.2 that they went to the School of the deceased at noon on the fateful day and all left the School to home to have their lunch.

14. If the version of the prosecution witness is correct, the undigested food particles in the stomach of the deceased ought not to have been found. Hence, the finding of the trial Court in acquitting all the accused for the above said reasons cannot be faulted and if two views are possible, the view in favour of the accused has to be taken as the settled position.

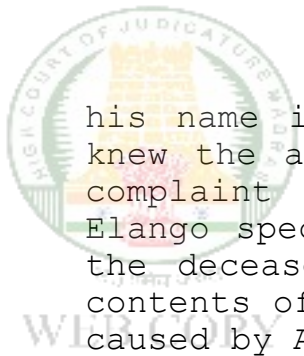
15. In support of the said proposition, the learned counsel for the respondents have referred the following judgments:

(i) **The State of Himachal Pradesh Vs. Naveen Kumar** reported in **2019 SAR (Criminal) 78**.

(ii) **Mohd. Akhtar @ Kari and others vs. State of Bihar and another** reported in **2019 SAR (Criminal) 221**.

(iii) **Peer Singh vs. The State of Madhya Pradesh** reported in **2019 SAR (Criminal) 573**.

16. Apart from the arguments made by the learned counsel for the respondents 1 to 8, 10 & 11, the learned counsel for the respondents 9 & 12 would add that when the initial version of the prosecution witnesses was only against A1 to A4, the case was improved and embellished later to add other accused against whom the deceased family had grudge. The case of the prosecution is that, A9 attacked the deceased with Aruval and caused injury on the left wrist of the deceased. If A9 was present at the scene of occurrence and had caused injury as stated by the witnesses, the reason to omit



his name in the F.I.R., even though the informant admits that he knew the accused person for a long time, leads to suspicion. The complaint [Ex.P.2] given by P.W.2, in the presence of P.W.1 / Elango specifically mentioned that the injury on the left wrist of the deceased was caused by A1 Murugesan, whereas contrary to the contents of the F.I.R, P.W.1 has attributed that the said injury was caused by A9.

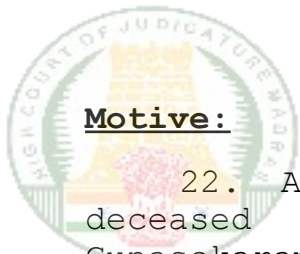
17. Further, the learned counsel would also point out the specific case of the prosecution that the occurrence was witnessed by 6 witnesses viz., P.W.1 to P.W.6. However P.W.2, P.W.3, P.W.5 and P.W.6 turned hostile and they did not support the case of the prosecution. Whereas, P.W.4, who is the sister's husband of the present appellant, had spoken in detail about the occurrence, as if he was the witness to the occurrence, however, his presence at the scene of occurrence was not mentioned in the complaint [Ex.P.2], which is contemporaneous document, nor spoken by P.W.1 and P.W.2, who are the eyewitnesses to the occurrence.

18. Therefore, the learned counsel for the respondents would submit that the entire case of the prosecution founded on the embellished version of the prosecution witnesses finds no trustworthiness and therefore, the trial Court has rightly disbelieved the case of the prosecution and at this length of time, there is no reason to interfere with the said judgment.

19. This Court is conscious of the fact that unless and until there is serious omission or error in the appreciation of evidence by the trial Court in the judgment of acquittal, leading to miscarriage of justice, the same cannot be interfered. Contrarily just because, if there is an alternate view probable, if the trial Court had relied upon the contradictions, which are not material and omit to consider the un-assailed evidence before it, then, in the interest of justice, interference warrants.

20. Hence, it is the duty of the appellate court to find whether there is any perversity or patent omission of material evidence in the trial Court judgment leading to miscarriage of justice and whether the trial Court has adopted the view one which is in favour of the accused is a reasonable view.

21. The deceased family and the family of accused A-4 (Gunasekarapandian) and A-9 (Jayapandian) are related to each other. They live in same locality. Most of the non official witnesses in this case are related to both sides. The case of the prosecution spins around the theory of motive, conspiracy and in furtherance to the conspiracy, murder of Patchaiparumal by the members of unlawful assembly armed with deadly weapons.

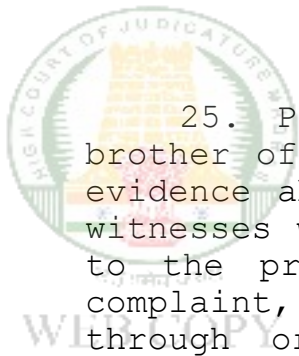


**Motive:**

22. According to the prosecution, the motive to kill the deceased Patchaiparumal emanated from the feud between A-4 Gunasekarapandian family and the deceased Picthaiparumal family in respect of a property agreed to buy by the deceased from one Subbaiah Nadar two years prior to the incident. In respect of this property, already there was a dispute between Subbaiah Nadar and Gunasekarapandian. Apart from Civil suit, twice criminal complaints against A-4 and his sons alleging that they have damaged the walls of the property, was lodged by the Subbaiah Nadar. While so, on 31/01/2007, the Eral police found Menaka (A-12), W/o Jayapandian (A-9) quarrelling with the deceased near the water tap and abusing him in filthy language, therefore, a case was registered against her under section 294(b) of IPC in STC No.163/2007 and produced before the Judicial Magistrate at Vaikundam. On recording the plea of guilty, fine of Rs 150/- was imposed on A-12. Hence A-12 had a grudge and vowed that she will see that Thilagavathi, the wife of the deceased cut her thali (to mean that Pitchaiparuma will be killed and Thilagavathi will remove her mangal suthra and become a widow).

23. To substantiate the motive of the A-4 family to kill the deceased, the prosecution has relied on Ex P-42, the certified copy of the FIR in Cr. No.222/2003 dated 05/11/2003 on the file of Eral Police Station given by Subbaiah against Gunasekarapandian and his son Pachaiparumal and the Ex P-38, the certified copy of the FIR in Cr.No.472/005 dated 31/05/2205 against Murugesan, s/o Gunasekarapandian, and Pachaiparumal, S/o Gunasekarapandian. In these two complaints the defacto complainant Mr. Subaiah had alleged that the compound wall of his house in S.No. 271/3 at Vazavanthan village was damaged by the accused persons. The said property, the deceased has agreed to buy from Subbaiah for a consideration of Rs. 1.50 lakhs and paid advance of Rs 1.25 lakhs. However, for the said agreement, except oral evidence, there is no documentary proof.

24. To substantiate the motive of the A-9 family to kill the deceased, the prosecution has relied on Ex P-39 FIR in Cr. No. 13/2007 registered by Eral Police against A-12 for offence under section 294(b) IPC and Ex P-40, the proceedings of the Judicial Magistrate in STC.No.163/2007 in Cr.No 13/2007, dated 31/07/2007 convicting A-12 and sentencing her to pay a fine of Rs 150/-in default to undergo simple imprisonment for one week. The deposition of PW-4 Kathiresan and his previous statement under section 164 Cr.P.C before the Judicial Magistrate and marked as Ex.D-2, corroborates the fact about the enmity between A-12 and the deceased. The vow by A-12 to kill the decease and make Thilagavathi a widow, is deposed by PW-4, though he has been extensively cross examined by four different counsels for the accused, this portion of the PW-4 evidence remains un assailed.



25. P.W.1, the brother-in-law of the deceased. P.W.2, the brother of the deceased. P.W.8, the wife of the deceased had given evidence about the fond with the accused family, besides the above witnesses who are the family members, P.W.4 and P.W.9 lend credence to the prosecution case. P.W.9 is the owner of land, on his complaint, FIR Ex.P38 and Ex.P42 came to be registered. Thus, through oral and documentary evidence motive to murder is well established by the prosecution.

**Conspiracy:**

26. To prove the theory of conspiracy, the prosecution has relied on the evidence of PW-1 and PW-7. Accordingly to these witnesses, driven by the motive mentioned above, a conspiracy was hatched at the house of A-9, on 10/07/2007 at about 3.00 pm. The testimony of PW-1 about the overhearing of the accused persons saying that "they will get peace only if they eliminate them," ( இவர்களை தொலைத்துக் கட்டினால் தான் நிம்மதி கிடைக்கும் ) and the testimony of PW-7, that on 10/07/2007 at about 3.00 pm all the accused were in A-9 Jayapandian house, they all in one voice said " because of Patchthaiperumal, there is lot of disturbance. If he is eliminated, it will create problem" (பச்சைப்பெருமானால் ஒரே இடைஞ்சலாக இருக்கிறது என்று அவரை தீர்த்துக் கட்டினால் பிரச்சனை ஏற்படும் ) .

27. If really, PW-1 overheard the conversation between the accused persons at the 9<sup>th</sup> accused house on 10/07/2007 conspiring to kill Patchthaiperumal who is none other than his brother-in-law, this witness could not have kept silent. He would have informed about it immediately to the deceased or atleast to the police before or soon after the occurrence when he accompanied PW-2 to the Police station to give Ex P-2 complaint and signed in complaint as witness. Therefore the view of the trial court to disbelieve these two witnesses regarding conspiracy is a reasonable view and need no interference.

**Oral and documentary evidence:**

28. The homicide death of Pachaiperumal on 12/07/2007 was due to shock and hemorrhage. The post-mortem report Ex.P-25 shows the following antemortem injuries.

"1. Cut injury left side 6 inch oblique in direction from just below to left ear pinna to midline of the chin 11 cm x 4 cm x 9 cm with fracture of the facial bones exposure of the deeper structure.

2. Cut injury 2 inches outer to injury No.1, 7 cm x 2 cm x 4 cm.

3. Cut injury left side neck extending from just posterior to upper part of the left ear to midline of the neck, anteriorly with exposure of deeper structure with cut of a



great vessels and arteries with a dip of spinal cord 18 cm x 7cm x 15 cm

4. Cut injury left side scalp transversely 8 cm x 3 cm x 2 cm.

5. Lacerated injury right portion of hand with hanging of thumb with exposure of deeper structure 10 cm x 8 cm x 4 cm.

6. Left hand cut off from wrist joint

7. Lacerated injury medial aspect left of the arm 7 cm x 5 cm x 3 cm

8. Lacerated injury just lateral to injury No.7 5cm x 3 cm 2 cm

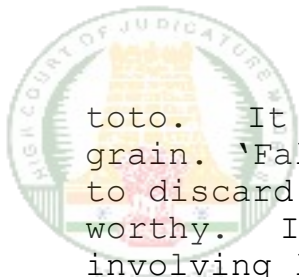
9. Lacerated injury in the left side shoulder 4cm x 3cm x 2 cm

10. Cut injury right shoulder 10cm x 5cm x 5 cm.

11. Cut injury left wrist posterior aspect 6cm 2 4cm x 2 cm.

29. The law was set into motion on the complaint Ex.P-2 given by PW-1. The complaint is against 4 named persons and against unnamed few others alleged to have attacked the deceased. On completion of investigation, final report is against 12 accused. Out of 12 accused, the names of A-1 to A-4 and their specific overt act finds place in the FIR. Among the remaining accused A-5, A-6, A-8 to A-11 fall under the category 'and few others' mentioned in the FIR. Whereas A-7 tried for abetting to commit murder. A-12 was tried for the charge of conspiracy to commit murder.

30. When the trial court finding that the conspiracy not proved is one view possible. We find that the outright rejection of the evidence of prosecution by comparing and contrasting the ocular evidence highlighting minor contradictions for the sake of doubting the prosecution case in entirety is perverse. Over implication and false implication of other accused who have not been assigned any specific injury to the deceased in the FIR, but charge sheet filed against those persons not named in the FIR after making investigation has to be tested through the evidence. Court should bear in mind while appreciation of evidence, the witness failure in memory to recollect exactly the occurrence after lapse of time is natural, particularly in a case of brutal murder of a person causing multiple injuries by the members of unlawful assembly carrying deadly weapon it is impossible to narrate the occurrence photographically. Further when being cross examined by several advocates omission, addition, alteration or contradiction is expected and for that reason, the witness cannot be disbelieved in



toto. It is the duty of the court to remove the chaff from the grain. 'Falsus in uno Falsus in omnibus' principle cannot be applied to discard the entire evidence of an witness who is otherwise credit worthy. In this contest, this court wish to record that in a case involving large number of accused, where the witnesses depose to the fact that certain persons were members of the unlawful assembly which had committed the offences in question, the principle laid down by the Supreme Court by Four Judges Bench in Maslati case ( 1965 SC 202) is followed consistently by the Courts in India. In **State Maharashtra -vs- Ramlal Devappa Rathod [2015(15) SCC 77]** , referring the four witnesses principle laid in Maslati case, the Supreme court said,

" though testimony of a single witness would be enough to convict an accused person, in a case involving large number of accused, where the witnesses depose to the fact that certain persons were members of the unlawful assembly which has committed the offense in question, a test ( Four witnesses test -- At least four witnesses had shown to have given a consistent account against any of the appellants, the case against them could not to be said to have been proved) adopted by the High Court found to be safe. It was observed that though every member of the unlawful assembly would be liable for the offence committed by anyone actuated by and entertaining common object of the unlawful assembly, in the absence of any overt act or specific allegation, it was possible to adopt such test."

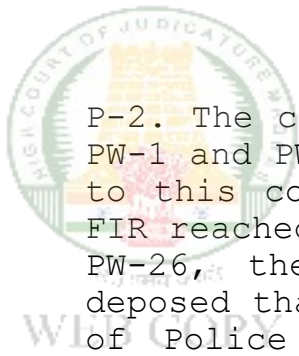
"24. The liability of those members of the inlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extend of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus when the persons forming the assembly are shown to be having same interest in pursuance of which some



*of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons. But in a situation where assault is opened by a mob of fairly large number of people, it may at times be difficult to ascertain whether those who had not committed any overt act were guided by the common object. There can be room for entertaining a doubt whether those persons who are attributed of having done any specific overt act, were innocent bystanders or were actually members of the unlawful assembly."*

31. As per the First Information report Ex P-41, the occurrence took place on 12/07/2007 at about 1.00 pm near Natesa Nadar plaitain field. PW-18, Mr. Vincent P.G Assistant in the Government School at Umarikadu, had deposed that the deceased was a teacher in Umarikadu Government Higher Secondary School. On the date of occurrence ie 12/07/2007, the deceased attended duty in the morning and left the school at about 12.40 pm in his Bajaj Boxer Motorcycle to have lunch at his home. Thereafter he did not return. PW-1 ( Elango ) is the brother-in-law of the deceased. PW-2 ( Senthil Kumaran ) is the younger brother of the deceased. PW-1 in his testimony before the court has deposed that on 12/07/2007 at about 12.40 pm, he and PW-2 went to Umarikadu Government School and met his brother ( the deceased ) when he came out from the school during the lunch break. The deceased told them to come home and can have discussion while taking lunch. So, he and PW-2 followed the deceased. On the way, between Umarikadu to Arumugamangalam, he saw A-7 ( Sathiyaseelan) in the Maruthi car bearing registration No. TN 09 AK 8444 parked on the road. Near Nedunkani Villaku he saw A-4 ( Gunasekarapandian ) and A-3 (Palvesaraj @ Palvesamuthu) standing on the road. A-4 was holding a aruval. A-3 was holding a nijha chain. When A-3 tried to stopped the decease bike with the ninja chain, it broke into two pieces. A-1 ( Murugesan ) standing there, attacked the deceased on his neck with aruval. When the deceased tried to defend the attack with his left hand, his left wrist got severed and fell. A-2 (Pachaikutti) attacked the deceased with an aruval above the left ear. A-4 attacked the deceased with aruval which fell on the right palm when the deceased tried to defend the attack with his right hand. On seeing this, he and PW-2 who were following the deceased in the Yamaha motor bike got down and tried to rescue the deceased. The assailants threatened them that if they come near they will also face the same fate. So he and P.W.2 moved and hide behind a tree. PW-1 has further deposed, how and where the other accused attacked the deceased.

32. Before proceeding with the other portion of the PW-1 deposition, as far as the presence of A-1 to A-4 at the scene of crime and their specific overt act it find place in the complaint Ex



P-2. The complaint given by PW-1 seen by PW-2 and the signatures of PW-1 and PW-2 find place in the complaint. The FIR recorded pursuant to this complaint is marked as Ex P-28. Evidence show the express FIR reached the Judicial Magistrate on 13/07/2007 at about 5.30 am. PW-26, the Head Constable attached to Eral Police Station has deposed that he received the Express FIR copy from the Sub Inspector of Police at 15.00 hrs on 12/07/2007. He went to Srivaigundam Judicial Magistrate on the same day. Since the Judicial Magistrate was not available, he stayed at Srivaikundam and delivered the cover containing the FIR to the Judicial Magistrate at 5.30 am on 13/07/2007. The passport marked as Ex P-19 contains the signature of the Judicial Magistrate with date and time. The FIR also contains the signature of the Judicial Magistrate with date and time. In this regard, the Sub Inspector of Police PW-36 who registered the FIR had deposed that on receipt of the complaint Ex P-2 from PW-1 he registered the case and forwarded the FIR Ex P-2 to Srivaikundam Judicial Magistrate.

33. The court below has highly doubted the genuineness of the First Informant as well as his first information. Particularly, the delay in delivering the express FIR to the Judicial Magistrate is pointed out as one of the reason for acquittal. The counsel for the respondents / accused, also would submit that the travelling distance between Eral Police Station and Srivaikundam Judicial Magistrate Court is 30 minutes. However the FIR received by the Judicial Magistrate only on the next day 13/07/2007 at 5.30 am. The trial court rightly observed that normally Judicial Magistrates would be in court upto 5.30 pm. Therefore the explanation of PW-26 is childish. The inordinate delay in forwarding the FIR create reasonable doubt about the prosecution case.

34. The law mandates, the Station House Office to forward the copy of the FIR to the Judicial Magistrate forthwith in case of grave crime. This is to ensure the no manipulation done to the contemporaneous document either by omission or embellishment. Delay in forwarding the FIR to the Judicial Magistrate is not always fatal to the prosecution case. Only in case of inordinate delay and non explanation of the delay, it will have impediment in considering the content of the FIR. If the delay is explained and not inordinate, the duty of the court is to ensure whether there was any possibility of manipulation.

35. In the instant case, the express FIR given to PW-26 on the same day within few hours from registration of the case. PW-26 in his deposition has clearly explained that, immediately after receiving the copy of the FIR and passport, he left the station and reached Srivaikundam Judicial Magistrate Court. Since the Judicial Magistrate was not available, he waited and delivered the FIR the next day early morning at 5.30 am. The trial court has applied his opinion what normally a judicial magistrate do in the day to disbelieve the explanation given by PW-26 for the delay in FIR. If



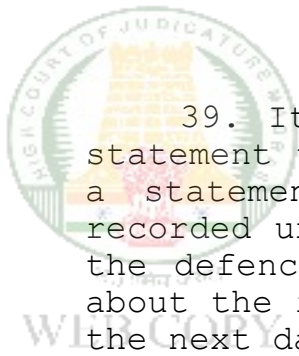
the delay to be attribute for manipulation of facts, then instead of naming 4 persons in the FIR with overt act, there could have mentioned all the 12 accused in the FIR itself. The very fact that the witnesses were not sure of the name of the other accused or could not recollect their names immediately is reasonable as they have stated 'and few others'. These few others as per the prosecution witnesses, were hiding in the nearby field and rushed to the spot soon after the deceased was restrained by A-3 using the ninja chain ( M.O.3 series). P.W.1 while deposing in the Court, had named the persons who came from the nearby field and how they attacked the deceased. He has attributed the left thigh injury to A-5, left jaw injury to A-8, cut injury to twice left hand elbow and wrist to A-9, cut injuries in both shoulders to A-10, cut injuries in the left elbow to A-11.

**Witnesses to the occurrence:**

36. According to the prosecution, PW-1 and PW-2 were following the deceased from Umarikadu Higher Secondary School to the house of the deceased. Whereas PW-3 and PW-4 were proceeding to Umarikadu to see a land. On their way, they met Danasekar (PW-5) and Anthonysami (PW-6). These 6 witnesses (P.W.1 to P.W.6) were supposed to speak about the occurrence and the overt act of each accused. However, in the course of their testimony, PW-2, PW-3, PW-5 and PW-6 turned hostile.

37. While PW-1 has deposed about the overt act of A-1 to A-4 as per the FIR and with precision, PW-2 failed to corroborate the evidence of PW-1 rather deposed contradictory to PW-1 in respect of the individual overt act of each of the accused. Hence he was treated hostile. The contradictions are highlighted by the trial court.

38. PW-3 in his chief examination had deposed that on 12/07/2007 at about 1.00 pm while he along with Kathiresan (PW-4), Danasekaran (PW-5) and Anthony ( PW-6) were going towards Umarikadu, they heard shouting noise 100 meters ahead, so they all rushed to the spot and saw a two wheeler lying on the road. Except A-7 and A-12, all other accused were present and they were attacking a person with pool of blood fallen near the two wheeler. PW-1 and PW-2 were also standing near that place. Thereafter, 3 assailants went towards south direction. 9<sup>th</sup> accused left towards west direction, before leaving he 6 of them witnessing the occurrence, saying they will also face the same fact if they inform it to others. Rest of the accused persons went into the plaintain field on the West direction. In the court he has identified A-7 and A-8. This witness has feigned ignorance about the overt act of the accused. At this stage, the prosecutor has sought permission to declare this witness as hostile and on permission cross examined the witness pointing out the contradictions in his testimony with the previous statement.



39. It is pertinent to note that PW-3 ( Alagesan ) apart from statement to the police under section 161 Cr.P.C, he has also given a statement to the Judicial Magistrate and the said statement recorded under section 164 Cr.P.C is relied and marked as Ex D-1 by the defence. In this statement he has stated that he came to know about the incident only at 6.00pm on 12/07/2007. He went to the spot the next day.

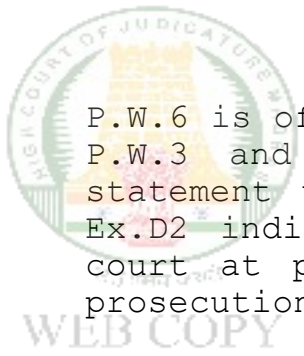
40. PW-4 ( Kathiresan) in his chief examination has deposed about previous enmity between the deceased family and the accused group and his presence at the spot during occurrence along with PW-3 , PW-5 and PW-6. This witness had deposed that A-3 stopped the deceased with a ninja chain, the chain got broken into two piece. A-1 aimed the neck of Pachaiperumal and attacked with arrival. Pachaiperumal tried to defend it with is left hand. The left wrist of the Pachaiperumal got severed. The second accused caused cut injury near the left ear. 6 others came from the Natesa Nadar plaintain field with arruval. On seeing them, he and others hid themselves in the plaintain field. He saw A-6 attacked the deceased with arrival near left neck corner, 8<sup>th</sup> accused cut the on right thigh, 9<sup>th</sup> accused on the left hand, 10<sup>th</sup> accused on left shoulder and right shoulder. 11<sup>th</sup> accused on the left hand. The accused joined together and roled down the injured Pachaiperumal into the nearby plaintain field. Thereafter, A-4, A-6 and yet another accused left the spot in the Maruthi car driven by A-7, which was waiting near the spot on the southside.

41. It is pertinent to note that like PW-3 ( Alagesan ), this witness also apart from statement to the police under section 161 Cr.P.C, given a statement to the Judicial Magistrate on 13/022008. In the said statement recorded under section 164 Cr.P.C ( Ex D-2) has stated about the previous enmity between these two group, but had stated that he received information about the murder of Pachaiperumal at 3.30 pm when he was at Kovakadu. He went to the spot only on the next day.

42. PW-5 and PW-6 both were treated hostile witnesses by the prosecution since they know nothing about the case, except they know all the accused, the deceased and his family. This belies the version of PW-4 who had deposed about the presence of PW-5and PW-6 witnessing the occurrence.

43. Now reverting back to the deposition of P W-1 in respect of the overt act of the other accused, his evidence in respect of overt act of A-1,A-2,A-3, A-9, A-10 and A-11 is corroborated by PW-4. As far as other accused there is contradiction or no corroboration. The presence of A-7 in the scene of crime with maruthi car in which some of the assailants left the scene of crime after commission of offence is substantially corroborated.

44. As a result, on scrutinizing the ocular evidence of P.W.1 to P.W.6, the eye witnesses to the crime, the testimony of P.W.5 and

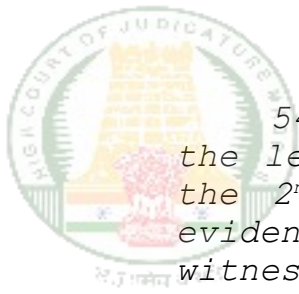


P.W.6 is of no assistance to the prosecution case. The testimony of P.W.3 and P.W.4 are not wholly reliable since their previous statement to the Judicial Magistrate which is marked as Ex.D1 and Ex.D2 indicates they were not witnesses to occurrence. The trial court at paragraph 51 to 58 had drawn the contradictions of the prosecution witnesses as below:

" 51) The prosecution has attempted to prove the guilt of the accused by adducing evidence of P.W.1 to P.W.4, as if they are the real eye witnesses to the occurrence. P.W.3 in his evidence has clearly admitted that he does not know as to who exactly causes hurt and he is treated as a hostile witness. However in cross-examination he has admitted that on the date of occurrence he along with his brother have been taken to the police station pertaining to another murder case and at the time there names and address have been got by the police. Therefore it appears after getting names and address from P.W.3 the prosecution has attempted to introduce P.W.3 as an eye witness to the occurrence. But in fact he is not at all eye witness to the occurrence and therefore no portion of evidence can be looked into as the evidence adduced by P.W.3 is not worthy of consideration.

52) The next evidence is the evidence of P.W.4. For the first time he has deposed before the Court by giving the overt act of the accused. But in the cross-examination he has clearly admitted that he was examined by the learned Judicial Magistrate, Sathankulam and at that time he deposed that he went to attend a condolence on the particular day and he did not know anything about the occurrence. He has further admitted that he has not stated anything to the police about the occurrence. Thus it is very clear that the evidence of P.W.4 is also not worthy of consideration as at the earliest point of time before the learned Judicial Magistrate while recording statement under Section 164 of the Code he had stated that he did not know anything about the occurrence.

53) The remaining available evidence are the evidence of P.W.1 and P.W.2. P.W.1 is the brother in law of the deceased. P.W.2 is the brother of the deceased. No doubt as pointed out by the learned Additional Public Prosecutor their evidence shall not be rejected at threshold simply because they are close relatives of the deceased. However their evidence are subject to scrutiny with care and caution. P.W.1 in evidence has stated that A1 inflicted injury on the left hand of the deceased by aruval. But P.W.2 has deposed that A1 inflicted injury on the right jaw. This evidence is contrary to the evidence of P.W.1.



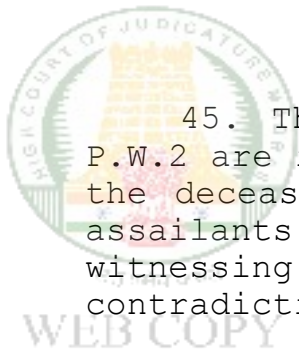
54) According to P.W.1, A2 caused injury just above the left ear of the deceased. But P.W.2 has deposed that the 2<sup>nd</sup> accused caused injury on the right neck. This evidence is inconsistent with the evidence of P.W.1. Both witnesses have not spoken anything about the involvement of the 3<sup>rd</sup> accused. So far as the 4<sup>th</sup> accused is concerned P.W.1 has deposed that he has caused injury on the right palm. But no such evidence is adduced by P.W.2. He has not spoken to anything about the 4<sup>th</sup> accused.

55) P.W.1 has deposed that the 5<sup>th</sup> accused has inflicted injury on the left jaw of the deceased. But P.W.2 has deposed that the 5<sup>th</sup> accused has caused injury on the left neck of the deceased. This evidence is also inconsistent with the evidence of P.W.1. According to P.W.1, A6 has caused injury on the neck whereas P.W.2 has deposed that A6 has inflicted injury on the left jaw. This evidence is quite contrary to the evidence of P.W.1.

56) According to P.W.1 the 8<sup>th</sup> accused has inflicted injury on the left jaw of the deceased. But P.W.2 has not stated that the 8<sup>th</sup> accused has caused any such injury. P.W.1 has further stated that the 9<sup>th</sup> accused has inflicted injury on the left forearm of the deceased. But P.W.2 has deposed that the 9<sup>th</sup> accused has inflicted on the left writ and severed the hand of the deceased. This part of evidence is also completely in contradiction with the evidence of P.W.1.

57. P.W.1 has further deposed that the 10<sup>th</sup> accused has caused injury on the shoulders of the deceased. P.W.2 has deposed in the same way without any contradiction. P.W.1 has further deposed that the 11<sup>th</sup> accused has inflicted injury on the left upper part of the forearm of the deceased. But P.W.2 has deposed that the 11<sup>th</sup> accused has inflicted injury on the right shoulder. This evidence is also quite contrary to the evidence of P.W.1. So far as the 7<sup>th</sup> accused is concerned P.W.1 has stated that A7 was inside the Maruthi Car. But according to P.W.2, A7 was standing near to the Maruthi Car. This part of evidence is also contrary to each other.

58. The aforesaid evidence adduced by P.W.1 and P.W.2 would make it very clear and unambiguous that except the injury alleged to have been caused by the 10<sup>th</sup> accused, none of the overt act against the accused have been corroborated by the witnesses. The evidence available on record is full of contradictions and the accused who alleged to have caused the injuries are not at all proved by the prosecution as their evidence appears to be unworthy of consideration to record conviction. "



45. The trial Court taking into consideration that P.W.1 and P.W.2 are interested witnesses, though being very close relatives of the deceased, they have not tried to rescue the deceased from the assailants. Therefore their presence at the scene of crime and witnessing the occurrence is unbelievable in view of the above noted contradictions.

46. With a predetermined doubt about the reliability of the witnesses for being close relatives of the deceased and prior enmity is not at all a reasonable view. In this case, the trial Court had patently erred in this regard expressing "on account of enmity there would be possibility to name the accused by foisting false case".

47. Likewise, the trial Court expressed its doubt about the presence of P.W.1 at the time of occurrence, because the witness has not lifted the injured from the ground. Had the trial Court appreciated the evidence unbiased, he would have taken note of the fact that the assailants were carrying aruval. P.W.1 and P.W.2 has clearly deposed that on seeing the deceased being attacked, they rushed to rescue him, but the assailants threatened them showing aruval they will also face the same fate to went and hidden behind a tree. This will be natural conduct of any ordinary person who sight muderous attack and receive threat from the assailants when the witnesses life itself was under threat prudent will make them to flee and not to go near the assailants or the injured person and get injured.

48. Therefore, we hold that the trial Court disbelieving the evidence of P.W.1 and P.W.2 about their presence at scene of crime is based on imaginary and illusionary reasons.

49. The trial Court finding that P.W.1 and P.W.2 are interested witnesses and contradictions between P.W.1 and P.W.2 evidence in respect of the assailants and the injuries caused by the m renders their evidence unworthy of consideration for conviction is contrary to the following settled principles of law regarding appreciation of evidence.

***(i) Dalip Singh v. The State of Punjab reported in AIR 1953 SC 364***

*"Ordinarily a close relation 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 cuase for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge alone with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship for from being a foundation is often a sure guarantee of truth."*



**(ii) State of Punjab vs. Jagir Singh Baljit Singh**  
reported in **AIR 1973 SC 2407**

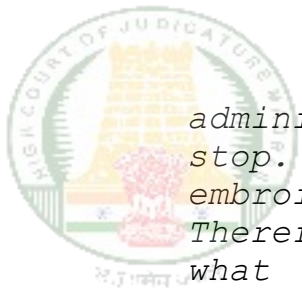
"This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. 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 to prove guilt of other accused persons. Falsity of particular material witness or 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 witnesses cannot be branded as liar. 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 no what may be called a mandatory rule of evidence."

**(iii) Masalti and others v. State of U.P.,** reported in **AIR 1965 SC 202**

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

**(iv) Gurucharan Singh and another v. State of Punjab** reported in **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 justice 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 respects 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."

**(v) Gurubachan Singh v. Satpal Singh** reported in **AIR 1990 SC 209.**

" Exaggerated devotion to the rule of benefit of doubt must no nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law."

50. The other circumstantial evidence which are incriminating the accused are:-

1) Recovery of nija chain M.O 3 from the scene of crime. As per the evidence of PW-1 and PW-2 it used by A-3 to stop the deceased. The observation mahazaar is Ex P-3. One of the witness to the observation mahazar is PW-10 , the Village Administrative Officer.

2) Recovery of arrival ( 3 numbers) from a bush near a temple on the river bunk, Omarikadu. This recovery is based on the information given by A-5 in the presence of PW-11 , the President of Vhazavallan panchayat.

3) Recovery of arrival ( 3 numbers) from the plaitain field of one Arul. This recovery is based on the information given by A-8, in the presence of PW-12, a resident of Vhazavallan village. The other witness to this recovery is PW 13, who is the resident of Vhazavallan. He did not support the prosecution case, turned hostile.

4) The sniffer dog engaged by the police after scenting the soc had run to the A-4 house and stopped. PW-23, the Head Constable of the dog squad.



51. Few reasons stated by the learned trial judge to disbelieve the prosecution case and to record acquittal are:-

a) Neither the observation mahazar nor the rough sketch would refer blood stained earth at the place of occurrence.

b) There was thorn fence between the plaintiff's field and the road. It is highly impossible to roll the body down to the Natesa Nadar plaintiff's field without causing any injury by thorns on the mortal remains of the deceased. The Medical Officer who conducted the post mortem admit that he has not seen any such injury on the corpse of the accused.

c) PW-1 in his evidence admits the sniffer dog which was brought to the place of occurrence did not identify any one assembled there. The dog was taken to the police station.

52. The above three reasons besides other reasons like i) delay in forwarding FIR to the Judicial Magistrate disbelieving the reason for delay explained by PW-26. ii) observing that no brother will leave the place without at least checking the life of the deceased, therefore the presence of PW-1 and PW-2 witnessing the crime is doubtful because a) they did not lift the body of the injured immediately he was attacked by the assailants. This observation is dehors of their evidence, that they were threatened by the assailants not to come near or else they will face the same fate, b) the contradictions about the overt act of the accused as found on comparing the deposition of PW-1 and the deposition of PW-2, despite the fact that it is unnatural and impossible for a witness to recollect an incident involving one victim and nearly 10 assailants causing injuries indiscriminately with deadly weapons and reproduce after lapse of two years photographically before the court while being grilled in cross examination by 4 different counsels.

53. The perversity of the trial court judge is manifested seen, by his recording reasons contrary to evidence.

(i) First, it is the case of the prosecution that the deceased who was proceeding in his motor cycle (M.O.4), was prevented from proceeding further by A-3 with his nija chain. The chain hit the motorcycle and broke into pieces. When the deceased halted, he was attacked by the assailants. The trial court in the judgment has recorded that both PW-1 and PW-2 has not spoken anything about the involvement of the 3<sup>rd</sup> accused. In fact, PW-1 as well as PW-2 has specifically deposed that A-3 stopped the deceased with nija chain Nedungani vllaku (SOC). The said nija chain was later recovered from scene of crime in the presence of independent witnesses and identified before the court and marked as M.O. 3 (series).

(ii) Second, on comparison of the overt acts attributed by PW-1 and PW-2 to each of the accused persons injury wise, the trial court has noted that both PW-1 and PW-2 has deposed in the same way



of the deceased. Even thereafter, the trial court has acquitted all the accused.

54. To say the least, it is appropriate to borrow the below expression of the Supreme Court made in ***K.Gopal Reddy -vs State of AP*** reported in ***1979 SCC (Cri) 305***:

"the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible".

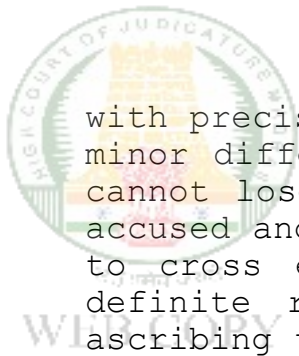
55. The projection of the prosecution is, Pachaiperumal s/o Vel Nadar aged about 48 years, sustained 7 cut injuries and 4 lacerated injuries over his head, neck, shoulders and limbs caused by members of unlawful assembly. In spite of evidence adequate to convict the accused against whom evidence is available and not impeached, the trial court has disbelieved the prosecution case in entirety for slender reasons due to his fanciful reasoning and doubts.

56. The postmorem report reveals, the deceased sustained 11 injuries. In the FIR which is the contemporaneous document say, A-1 aimed at the neck of the deceased but it hit the left hand wrist when deceased tried to defend the attack. A-2 aimed at the neck of the deceased, but it hit near the left ear. When the deceased fell from his motor cycle after sustaining the above injuries, A-4 hit the deceased on the right hand, when the deceased tried to defend, it caused cut injury on the right palm.

57. PW-1 in the chief examination before the court has deposed that, Near Kodunkani Villaku he saw A-4 with arrival and A-3 with nija chain standing on the road. A-3 tried to stopped the deceased bike with the nija chain. The nija chain broke into two pieces. A-1 ( Murugesan ) who was standing near attacked the deceased on his neck with aruval. When the deceased tried to defend the attack with his left hand, his left wrist got severed and fell. A-2 attacked the deceased with an aruval above the left ear. A-4 attacked the deceased with aruval which fell on the right palm, when the deceased tried to defend the attack with his right hand.

58. PW-2 in the chief examination before the court has deposed that, near Kodunkani Villaku 3rd accused with nija chain and 4<sup>th</sup> carrying arrival intercepted his brother ( the deceased). A-2 attacked his brother on the right side neck with arrival. A-1 attacked his brother on right the jaw.

59. The post-mortem reports substantially tally with the injuries attributed to the respective accused A-1, A-2 and A-4. The seat of injuries as spoken by the common man , cannot be exactly go with the post-mortem report given by the subject expert which is



with precise specifications reference to the part of the body. These minor difference cannot be viewed as material contradictions. Court cannot lose sight of the fact that it is a case involving multiple accused and multiple injuries, naturally the witnesses are subjected to cross examination by multiple advocates. Failure to attribute definite roles ascribing to the accused or minor variations in ascribing the roles to the accused, alone cannot a reasonable ground for acquittal.

60. In this case, sufficient evidence available to prove that with deadly weapon likely to cause death, A-1, A-2, A-4 and A-10 had caused the bodily injuries with common intention to cause death and with knowledge that the injuries are sufficient and likely to cause death.

**A-1 ( Murugesan @ Shanmugasundram) :**

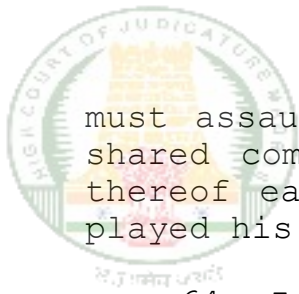
61. As a member of the unlawful assembly immediately after A-3 stopped the deceased with nija chain, he armed with arrival, a deadly weapons attacked the deceased aiming on his neck with aruval. When the deceased tried to defend the attack with his left hand, left wrist got severed and fell. Having shared the common intention along with other accused persons to commit murder, he has committed offence of rioting with deadly weapon and attacked the deceased with other accused sharing common intention to cause his death. Thereby committed offences u/s 148 IPC and 302 r/w 34 IPC.

**A-2 (Pachaiperumal @ Patchiutti) :**

62. As a member of the unlawful assembly immediately after A-3 stopped the deceased with nija chain, he armed with arrival, a deadly weapons attacked the deceased aiming at the neck of the deceased, but hit near the left ear. Having shared the common intention along with other accused persons to commit murder, he has committed offence of rioting with deadly weapon and attacked the deceased with other accused sharing common intention to cause his death. Thereby committed offences u/s 148 IPC and 302 r/w 34 IPC.

**A-3 ( Palavesaraj @ Palavesamuthu) :**

63. As a member of the unlawful assembly, A-3 restrained the deceased with nija chain, a weapon of offence to enable other members of the unlawful assembly armed with deadly weapons to attack the deceased . He is the person who has triggered the crime. As he and A-1, A-2 and A-4 are members of same family and come to the scene of occurrence with others all armed with weapons, his presence at the scene of crime and overt act clearly attracts section 34 and not section 149 IPC. The meeting of minds between other accused to cause of death of Pachaiperumal is well proved through the sequence of action by the accused persons. A-3 and A-4 had restrain the deceased. Prevented him from proceeding further, soon after, the assailants have indiscriminately attacked the deceased. To attract section 34 IPC , it is not necessary taht each one of the accused



must assault the deceased. It is enough if it is proved that they shared common intention to commit the offence and in furtherance thereof each one played his assigned role. In this case, A-3 has played his role to restrain the deceased to carry out the assault.

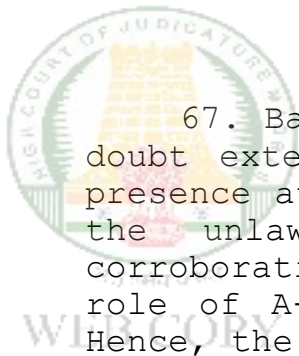
64. In the opinion of this court, the 5<sup>th</sup> charge against this accused must have been for offences under section 302 r/w 34 IPC and not for section 302 r/w 149 IPC. Section 34 IPC, being a rule of evidence and not a substantive offence, the alteration of charge will no way cause prejudice to the accused. Accordingly, the charge is altered for sharing the common intention along with other accused persons of the unlawful assembly to cause the death of Pachaiperumal. The evidence of PW-1 and PW-2 proves that he had committed offence of wrongful restrain, rioting with deadly weapon and sharing common intention to commit the murder of Pachaiperumal. Hence liable to be punished under section 341 IPC, 148 IPC and 302 r/w 34 of IPC.

**A-4 (Kulasekarapandian) :**

65. As a member of the unlawful assembly, carrying arrival stood near A-3 and intercepted the deceased while he was proceeding in his motorcycle. Thereby restrained the deceased from proceeding further with an intention to cause his death. He was carrying arrival, a deadly weapon likely to cause death along with others forming unlawful assembly. Injury number 4 in the post mortem which is a lacerated injury right portion of the hand with hanging thumb with exposure of deeper structure 10x8x4 cm is ascribed to A-4. According to the FIR and the deposition of PW-1, A-4 attacked the deceased with arrival aiming the right hand, when the deceased tried to defend, it caused injury on the right palm. Though there is no corroboration to PW-1 evidence, the evidence of PW-1 is sufficient to inspire the courts confidence, when there is no doubt about the presence of A-4 at that place at the time of occurrence carrying a deadly weapon. This court holds A-4 guilty of offences under section 341, 148 and 302 r/w 34 IPC.

**A-10 (Blade Ganesan @ Ganesan) :**

66. As a member of the unlawful assembly, immediately after A-3 stopped the deceased with nija chain, he armed with arrival, a deadly weapons attacked the deceased on the shoulders in furtherance of the common intention shared with other accused to commit murder. PW-1 and PW-2 had unanimously spoken about the over act of this accused that he attacked the deceased on both the shoulders. This evidence tallies with injuries number 9 and 10 found in the Post Mortem report Ex P-25. Therefore hold him guilty of offence of rioting with deadly weapon and caused the death of Pachaiperumal sharing the common intention with other accused to commit the murder of Pachaiperumal, an offence punishable under sections 148 and 302 r/w 34 of IPC.



67. Based on the principle laid in **Masalti** case, the benefit of doubt extended to A-5, A-6, A-8, A-9 and A-11 regarding their presence at scene of crime carrying deadly weapon or being part of the unlawful assembly for rioting, for want of adequate corroborative proof. The role of A-7 for abetting the crime and the role of A-12 for conspiracy to murder Patchaiparumal not proved. Hence, the acquittal of A5 to A9, A11 & A12 stands confirmed.

68. In so far as A-1, A-2, A-3, A-4 and A-10 their overt act and intention is well established through reliable witnesses. The available evidence is sufficiently adequate to hold them guilty for their respective role played sharing common intention to murder Pachaiparumal.

69. After due consideration of the evidence, this court holds the trial court judgment requires interference to the extent as stated above.

A-1 guilty of offences under sections u/s 148 IPC and 302 r/w 34 IPC.

A-2 guilty of offences under sections u/s 148 IPC and 302 r/w 34 IPC.

A-3 guilty of offences under sections 341, 148 IPC and 302 r/w 34 IPC.

A-4 guilty of offences under section 341, 148 IPC and 302 r/w 34 IPC.

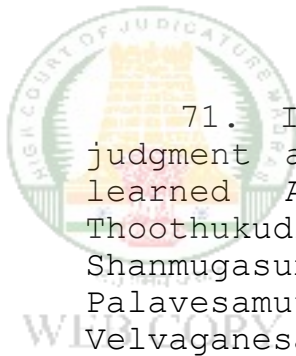
A-10 guilty of offences under section 148 IPC and 302 r/w 34 IPC.

70. In view of the fact that the above accused are found guilty of major offence of murder punishable under Section 302 r/w 34 IPC and the minimum sentence to the said offence is Life Imprisonment. We are of the opinion that there is no necessity to undergo the formality of questioning the accused about the sentence since we inclined to impose only the minimum sentence prescribed i.e., Life Imprisonment. Regarding sentence for other offences, it is for a term less than two years to run concurrently, hence, no purpose will serve questioning the accused about sentence.

**A-1, A2, A3, A4 and A10 are convicted and sentenced to undergo two years Rigorous Imprisonment and a fine of Rs.1,000/- in default to undergo one month Simple Imprisonment for the offence under Section 148 IPC.**

**Further, A1, A2, A3, A4 & A10 convicted and sentenced to undergo Life Imprisonment for the offence under Section 302 r/w 34 IPC.**

**A3 & A4 convicted and sentenced to undergo one year Rigorous Imprisonment and a fine of Rs.500/- in default to undergo one week simple Imprisonment for the offence under Section 341 IPC. The term of imprisonment shall run concurrently.**



71. In fine, the Criminal Appeal is partly allowed. The judgment and order of acquittal, dated 01.09.2009 passed by the learned Additional Sessions Judge, Fast Track Court No.I, Thoothukudi is set aside in respect of A-1/Murugesan @ Shanmugasundaram, A-2/Patchaiparumal/Patchikutti, A-3/Palavesaraj @ Palavesamuthu, A-4/Kulasekarapandian and A-10/Blade Ganesan @ Velvaganesan and each of them are convicted and sentenced as above.

72. The trial Court is directed to secure the accused to undergo conviction as mentioned supra.

73. The learned counsel appearing for the convicted accused seeks one month time for surrender. Considering the said request and other attendant circumstances, time for surrender is granted till 31.12.2021, failing which, the trial Court shall proceed to secure the accused and commit them in prison.

Sd/-

Assistant Registrar (CS-III)

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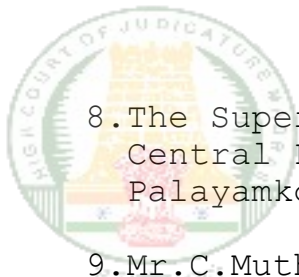
/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Principal District Judge,  
Thoothukudi.
- 2.The Additional Sessions Judge,  
Fast Track Court No.I, Thoothukudi.
- 3.The Chief Judicial Magistrate,  
Thoothukudi.
- 4.The District Collector,  
Thoothukudi.
- 5.The Director General of Police,  
Thoothukudi.
- 6.The Superintendent of Police,  
Thoothukudi.
- 7.The Inspector of Police,  
Eral Police Station,  
Tuticorin District.



8.The Superintendent,  
Central Prison,  
Palayamkottai.

9.Mr.C.Muthusaravanan,  
No.85, Law Chambers,  
Madurai Bench of Madras High Court,  
Madurai.

10.Mr.S.Pon Senthil Kumaran,  
Plot No.34 E.B.Colony,  
K.Pudur, Madurai.

11.Mr.A.Thiruvadi Kumar,  
Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+2 CC to M/s.C.MUTHU SARAVANAN, Advocate (SR-37635[F]  
dated 07/12/2021 )

+1 CC to M/s.D.SARAVANAN, Advocate ( SR-37825[F] dated 08/12/2021 )

**JUDGMENT MADE IN**  
**Crl.A(MD)No.274 of 2018**  
**07.12.2021**

**ARK** (CO)

GC(21.12.2021) 26P 15C