



BAIL SLIP IN Crl.A. (MD) .No.208 of 2018

A.Muniyasamy, Male Aged about 36 years, S/o.Angusamy, A.Vijayakumar Male Aged about 30 years, S/o.Angusamy, A.Ananthan Male Aged about 28 years, S/o.Angusamy, and R.Vivek Male Aged about 25 years, S/o.Ravi Accused 1 to 4 were released on bail vide order of this Court dated 12/06/2018 and made in Crl.MP(MD)No.3378/2018, in CRL.A. (MD)No.208/2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.A. (MD) .No.208 of 2018

1. Muniyasamy
2. Vijayakumar
3. Ananthan
4. Vivek

... Appellants /Accused Nos.1 to 4

-vs-

State through
the Inspector of Police,
Kenikarai Police Station,
in Crime No.91 of 2014.

... Respondent

PRAYER : Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records in S.C.No.106 of 2016, on the file of the Additional Sessions Judge, Ramanathapuram, dated 28.03.2018 and set aside the conviction and sentence imposed against the appellants.

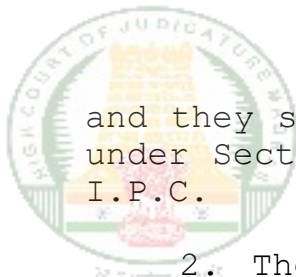
For Appellants : Mr.N.Ananthapadmanabhan
for M/s.APN Law Associates

For Respondent : Mr.S.Ravi
Standing counsel for the State

J U D G M E N T

(Judgment of the Court was delivered by V.BHARATHIDASAN,J.)

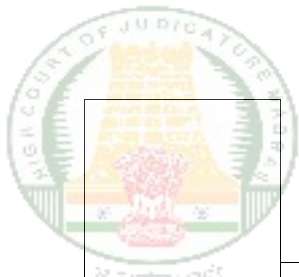
The appellants are the accused Nos.1 to 4 in S.C.No.106 of 2016, on the file of the Additional Sessions Judge, Ramanathapuram



and they stood charged and tried for the commission of the offences under Sections 148, 294(b), 341, 302 r/w. 149, 307, 307 r/w. 149 of I.P.C.

2. The trial Court, vide impugned judgment dated 28.03.2018, has convicted the appellants herein for the above said offences and imposed the sentences, thus:

Accused	Conviction	Sentence
Accused No.1	U/s. 148 of I.P.C.	To undergo simple imprisonment for a period of 2 years and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for a period of six months.
	U/s. 341 of I.P.C.	To undergo simple imprisonment for a period of one month and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of seven days.
	U/s.302 of I.P.C	To undergo life imprisonment and to pay a fine of Rs.50,000/-, in default to undergo simple imprisonment for a period of three years.
	U/s. 307 r/w.149 of I.P.C	To undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of one year.
Accused No.2	U/s. 148 of I.P.C.	To undergo simple imprisonment for a period of 2 years and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for a period of six months.
	U/s. 341 of I.P.C.	To undergo simple imprisonment for a period of one month and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of seven days.
	U/s.302 r/w 149 of I.P.C	To undergo life imprisonment and to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for a period of two years.
	U/s. 307 of I.P.C	To undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for a period of two years.



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Accused No.3	U/s. 147 of I.P.C.	To undergo simple imprisonment for a period of one year and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for a period of one month.
	U/s. 341 of I.P.C.	To undergo simple imprisonment for a period of one month and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of seven days.
	U/s.302 r/w 149 of I.P.C	To undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of one year.
	U/s. 307 r/w.149 of I.P.C	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of one year.
Accused No.4	U/s. 147 of I.P.C.	To undergo simple imprisonment for a period of one year and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for a period of one month.
	U/s. 341 of I.P.C.	To undergo simple imprisonment for a period of one month and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of seven days.
	U/s.302 r/w 149 of I.P.C	To undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of one year.
	U/s. 307 r/w.149 of I.P.C	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of one year.

Now, challenging the conviction and sentence, the present appeal has been filed. Totally, there are five accused in this case and A5 is a juvenile and the case against him was separated and A1 to A4 have faced the trial.

3. The case of the prosecution in brief is as follows:

The deceased Nagaraj is the husband of P.W.12. A1 to A3 are his brothers and A4 is his brother-in-law. Sometimes before the occurrence, A2/Vijayakumar, in this case married the daughter of the deceased's sister against her parents wish. Hence, there was an enmity between the accused family and the deceased family.



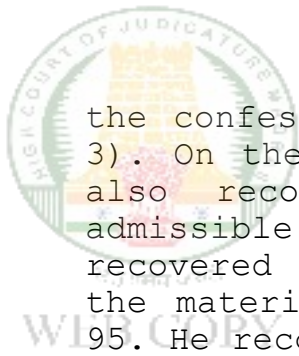
Subsequently, in a temple festival, there was a quarrel between the parties. On 03.03.2014, there was a marriage function at Munusuvalasai Village, in which, both the deceased and A1 to A4 have attended. In the said marriage, there was a quarrel between them. After that, the deceased and P.W.1, who is his friend along with one Packiyaraj returned back to Enthal village. While P.W.1 and Packiyaraj stopped the bike near a petty shop for purchasing cigarettes, the deceased return back to the marriage. At that time, A2 and A4 came in a bike and quarrelled with the deceased. Thereafter, A1, A3 and A5 Kannan came and joined in the quarrel. During the quarrel, A2 attacked P.W.1 with iron pipe in his neck. A1 attacked the deceased with knife in his hip. A2 attacked the deceased with iron rod on the head and then ran away from the scene of occurrence. The occurrence has taken place at 3.00 p.m., and the deceased was taken to the Government Hospital, Ramnad in a 108 Ambulance, where P.W.4, Doctor, declared him dead. Thereafter, P.W.1 was admitted in the Government Headquarters Hospital, Ramanathapuram at about 9.45 p.m. and P.W.3, Assistant Surgeon working in the hospital issued the Accident Register, Ex.P2.

4. P.W.20, Sub Inspector of Police, working in the respondent police station, on receipt of intimation from the Government Hospital, Ramnad, went to the hospital at about 7.30 p.m., and recorded the statement of P.W.1. and based on the same, she registered the F.I.R in Crime No. 91 of 2014, for the offences under Sections 147, 148, 341, 294(b), 324 and 302 of I.P.C. and sent the same to the concerned judicial Magistrate and copies of the same to the higher officials.

5. P.W.21, Inspector of Police, in the respondent police station after receipt of the F.I.R., has commenced the investigation, visited the scene of occurrence at about 9.00 p.m., and prepared the Observation Mahazar and also Rough Sketch, Ex.P16. He also collected bloodstained soil, ordinary soil, recovered deceased's two wheeler, and also recorded the statement of P.W.1 and other witnesses. Thereafter, on 04.03.2014, at about 7.00 a.m., he conducted inquest on the dead body of the deceased in the presence of Panchayatars and prepared the Inquest Report Ex.P.17, and sent the body for autopsy.

6. P.W.15, Doctor working at Government Hospital, Ramnad, conducted postmortem autopsy on the dead body and given the postmortem report Ex.P.10, stating that the death was occurred because of shock and haemorrhage, due to multiple injuries on vital organs.

7. P.W.21, Inspector of Police, continued the investigation and on 04.03.2014 at about 3.00 p.m., arrested the accused No.1 and on such account A1 voluntarily came forward to give a confession statement and he recorded the same in the presence of Village
Admission Court, P.W.14, based on the admissible portion of



the confession recovered the two wheeler and iron pipe (M.Os.2 and 3). On the same day at about 6.30.p.m., he arrested A2 and A4 and also recorded their confession statements and based on the admissible portion of the confession statement given by A2, he recovered a iron pipe, also the two wheeler used by them and sent the material objects to the Judicial Magistrate Court, under Form 95. He recorded the statements of the Doctors. Thereafter, he handed over the investigation to P.W.22.

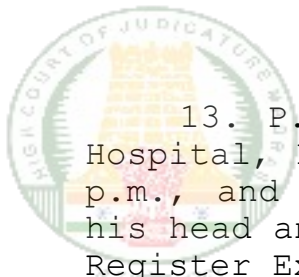
8. P.W.22, Inspector of Police, continued the investigation, sent the material objects for chemical examination and after examining P.W.16, Scientific Officer, he filed a final report against the accused under Sections 147, 148, 294(b), 342 and 302 I.P.C.

9. In the meanwhile, A3, who said to have injured in the same occurrence, was admitted in the Government Hospital, Ramnad, on 03.03.2014, at about 8.20 p.m., with two stab injuries in the thigh and knee. D.W.1, Doctor working in the hospital admitted him and treated him. Once again, A3 was admitted in the Government Rajaji Hospital, Madurai on 11.03.2014, for further treatment and discharged on 26.03.2014. Then he was admitted on 05.03.2014.

10. Based on the above materials, the trial Court framed the charges against the accused as mentioned above. However, the appellants/accused Nos.1 to 4 have denied the same. The prosecution, in order to sustain their case, examined 22 witnesses, marked 21 documents and also produced 5 material objects.

11. Out of the witnesses examined, P.W.1 is eyewitness to the occurrence and he is a friend of the deceased and also the author of the F.I.R. According to him, on the date of occurrence, both the deceased and P.W.1 attended the marriage along with one Packiyaraj at Munusuvalasai Village, after the marriage, they returned back to Enthel Village. While P.W1 and Packiyaraj standing near a petty shop for purchasing cigarettes, the deceased was returning back to the marriage. At that time, A2 and A4 came in a two wheeler and waylaid the deceased and quarrelled with him. Immediately, A1, A3 and A5 joined with them and there was a quarrel between the parties. At that time, A1 stabbed the deceased with knife in his hip and A2 attacked the deceased with iron rod on his head and also attacked P.W.1 with iron rod on his head.

12. P.W.2 is the another eyewitness to the occurrence, who is also the friend of the deceased and he has spoken about the prior motive between the parties. According to him, A2 attacked the deceased with iron rod and A1 attacked the deceased with knife in the abdomen. At that time, A3 and A4 were also present. In the same occurrence, P.W.1 was also suffered injury, as A2 attacked him with iron rod and also identified M.O.3 iron rod and M.O.4 knife.



13. P.W.3 is the Doctor working in the Government Headquarters Hospital, Ramanathapuram treated P.W.1, on 03.03.2014 at about 9.45 p.m., and find that there are three sutured lacerated injuries in his head and he admitted him in the hospital and issued an Accident Register Ex.P.2.

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14. P.W.4, Doctor, working in the Government Hospital, Ramanathapuram, received the body of the deceased at about 3.45 p.m., on 03.03.2014 and declared that the deceased was brought dead and issued the accident register Ex.P3.

15. P.Ws.5 to 9, who are all residents of Ental Village and all of them turned hostile. P.W.10, son-in-law of the deceased, examined to prove the motive, turned hostile. P.W.11 is the brother of the deceased and he spoke about the motive that, A2 married the daughter of the deceased's sister and hence, there was an enmity between the deceased family and the accused family. Subsequently, in a temple festival also, A1 attacked one Sathishwaran and the deceased admitted him in the hospital and given complaint against him and it further aggravated their enmity.

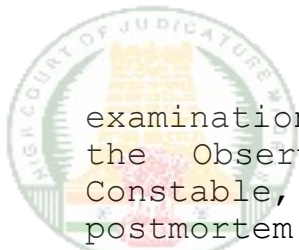
16. P.W.12 is the wife of the deceased. She also spoke about the motive for the occurrence that she saw the deceased after the occurrence and took him in 108 Ambulance. P.W.13 is the wife of P.W.1, she knew the accused and she is a hearsay witness. P.W.14 is the Village Administrative Officer, a witness to the confession of A1 and also recovery of M.Os.4, 5 and 6.

17. P.W.15 is the Doctor working in the Government Hospital, Ramnad and he has conducted postmortem autopsy on the dead body and given a postmortem report Ex.P.10, which reads as follows:

"Rigor mortis presents all four limbs. Injury left partial region cut injury on the scalp 10 x 0.5 cm. The brain are congested. No skull left scale thorax antaxillary line cut injury 2.5 cm Length x 10cm depth at the level of rib right side thorax axillary line at the level of 10th rib cut injury 3 cm x 12 cm depth. The lungs and heart are congested. The left lung lower tube lacerated injury left side haemothorax present 300 ml blood present stomach body of the stomach ½ cm depth cut injury present. Undigested rice present in the stomach. Spleen irregular lacerated injury present liver lacerated injury in the surface and to the right side, size approximately. Haemoputium present around 1 litre of blood present.

Death due to Haemorrhage and Shock, due to multiple vital organs around 16-18 hours before autopsy."

18. P.W.16 is the Scientific Officer working in Forensic Lab, Ramanathapuram and he received Material Objects sent for chemical
<https://hcservices.ecourts.gov.in/hcservices/>



examination. P.W.17, neighbour of the deceased and the witness to the Observation Mahazar and he turned hostile. P.W.18, Head Constable, identified the body of the deceased to the Doctor for postmortem autopsy and received the dresses worn by the deceased and handed over to the investigating officer. P.W.19 is the Head Constable and he has handed over the F.I.R. and the complaint to the Judicial Magistrate No.II, Ramanathapuram and copies to the higher officials.

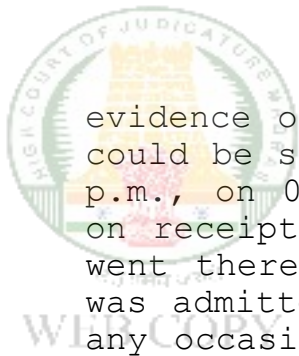
19. P.W.20, Sub Inspector of Police, on receipt of intimation from the Government Hospital, Ramnad, at about 7.30 p.m., went to the hospital and recorded the statement of P.W.1. Based on that, he registered an F.I.R. at about 8.00 p.m. and sent the same to the concerned Judicial Magistrate Court. P.W.21 is the Investigating Officer, who conducted the initial investigation. He conducted inquest, arrested the accused, recovered the Material Objects and recorded the statement of witnesses. P.W.22, Inspector of Police, continued the investigation on completion of the same, filed the final report.

20. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., all the accused denied the same as false. In support of their case, accused examined 3 witnesses and marked 6 documents.

21. D.W.1 is the Doctor working in the Government Headquarters Hospital, Ramnad, who admitted P.W.1 in the hospital and through him, they have marked Ex.D1, In-patient Admission Report. D.W.2 is another Doctor working in the Government Rajaji Hospital, Madurai, who admitted A3, on 11.03.2014 and issued the Accident Register Copy - Ex.D3, Inpatient Receipt - Ex.D4, and Case Sheet - Ex.D5. D.W.3 is the Doctor working in Government Rajaji Hospital, Madurai and he admitted A3 in the hospital on 03.03.2014, at about 8.20 p.m., and he found two stab injuries on his thigh and knee and issued Accident Register Copy - Ex.D6.

22. Considering the above materials, the trial Court convicted the accused and sentenced them as stated above. Challenging the same, the present appeal has been filed.

23. Mr.N.Ananthapadmanabhan, learned counsel appearing for the appellants would submit that the prosecution has suppressed the origin and genesis of the case and according to him, in the same occurrence, A3 has also suffered injury and he was admitted in the Government Rajaji Hospital at about 8.20 p.m., on the very same day. Once again, he was admitted in the Government Rajaji Hospital, Madurai, through police on 11.03.2014 and he has taken treatment till 26.03.2014, but the injuries on the accused was not explained and suppressed by the prosecution. That apart, there were lot of material contradictions in the evidence of P.Ws.1 and 2 and there is



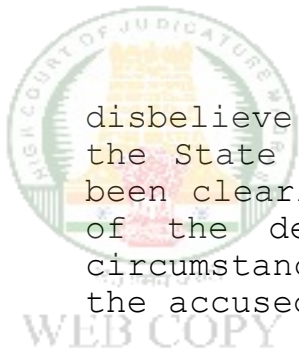
evidence of P.W.3, Doctor, and Ex.P.2 - Accident Register Copy, it could be seen that P.W.1 was admitted in the hospital at about 9.45 p.m., on 03.03.2014. According to P.W.20, Sub Inspector of Police on receipt of intimation from the Government Hospital, Ramnad, she went there and recorded the statement of P.W.1 at 7.30 p.m. P.W.1 was admitted in the hospital only at 9.45 p.m. and there cannot be any occasion for him to give a statement in the hospital at about 7.30 p.m. That apart, even though the F.I.R. was registered at 8.00 p.m., the same was received by the concerned judicial Magistrate only on the next day at 10.30 a.m. and the Judicial Magistrate Court, is situated in the very same compound, which clearly shows that there is a likelihood of false implication.

24. According to the learned counsel, the presence of P.Ws.1 and 2 is highly doubtful. According to P.W.1, he was attacked by A2 by iron rod, but P.W.3, Doctor found that three sutured wounds, which show that before he admitted in the Hospital, he has already taken treatment in some other hospital, which was suppressed by the prosecution and P.W.2 is a known criminal and having so many criminal cases against him and there is no occasion for him to present at the scene of occurrence. According to P.W.2, only A1 and A2 were present at the scene of occurrence. He has not spoken about the presence of A3 to A5, which creates a suspicion and there is false implication of the accused in this case.

25. The learned counsel further submitted that to prove the motive, neither the sister of the deceased nor her daughter has been examined and the neighbours, who were said to have been present at the scene of occurrence, viz., P.Ws.5 to 9 turned hostile. The trial Court, without considering all these evidences, believing the evidence of P.W.1, convicted the accused.

26. Mr.S.Ravi, learned Standing counsel appearing for the State would submit that there are two eyewitnesses in this occurrence, P.W.1 is injured eyewitness and both of them clearly and consistently stated that all the five accused waylaid the deceased and A1 and A2 attacked the deceased with iron pipe over the head and A2 attacked him with the knife in the head and caused injuries. That apart, A2 also attacked P.W.1 with the same iron rod and caused injuries. On the same day, he was admitted in the hospital, from where he has given a statement, which clearly implicated all the five accused, as both the deceased and P.W.1 attending the marriage together. The presence of P.W.1 cannot be doubted.

27. He further submitted that P.W.2, is also known to the deceased. He has also clearly stated that only A1 and A2 attacked the deceased with the knife and A2 attacked P.W.1 with iron rod. The medical evidence also corroborated the evidence of eyewitnesses and the occurrence has taken place only at 3.00 p.m. and the F.I.R., was registered at 8.00 p.m. and the delay was properly explained by the



disbelieve the prosecution case. The learned Standing Counsel for the State further submitted that the motive for the occurrence has been clearly stated by P.Ws.11 and 12, who are the brother and wife of the deceased respectively. Considering all these facts and circumstances of the case, the trial Court has rightly convicted all the accused and there is no reason to interfere with the same.

28. We have heard the learned counsel for the appellants and the learned Standing Counsel appearing for the State and perused the materials available on record.

29. The primordial submission of the learned counsel for the appellants is that, the origin and genesis of the case has been suppressed by the prosecution. According to him, one of the accused viz., A3, in this case also suffered stab injury in his leg and it has been suppressed by the prosecution. To prove the same, they have examined two Doctors. D.W.2 is the Doctor working in the Government Rajaji Hospital, Madurai, and he admitted A3 and given treatment. D.W.3 is the Doctor working in the Government Rajaji Hospital, Madurai. According to him, on 03.03.2013, at about 8.20 p.m., A3, was admitted in the hospital and on examination, he found two stab injuries, one is in the left thigh measuring 6 x 4 x 2 cm. and another stab injury is in the knee 3 x 2 x 2 cm. and also issued Accident Register, Ex.D6. On perusal of Ex.D6, Accident Register, it is seen that A3 was admitted in the hospital at about 8.20 p.m. and stated that 15 known members attacked him with knife and caused two stab injuries on the thigh and the above knee. Ex.D2, the another accident register issued by a private hospital at Ramanathapuram, wherein it is stated that, A3 was admitted there on 04.03.2014 at about 8.00 p.m. It is also seen that subsequently, on 05.03.2014, A3, was arrested and remanded to judicial custody. Subsequently, A3 developed some complications and he was taken to Government Rajaji Hospital, Madurai and D.W.2, Doctor, admitted him and treated him. The Case Sheet was marked as Ex.D5. On a perusal of Ex.D5, it could be seen that A3 was admitted as in-patient in Government Rajaji Hospital, Madurai on 11.03.2014 and he was discharged on 26.03.2014. Hence, it is seen that he has taken treatment nearly for 15 days in the Government Rajaji Hospital. Even though D.W.3 has given an Accident Register Copy (Ex.D.6), wherein it is mentioned as simple injury, considering the treatment taken by A3 for more than 15 days in the Government Rajaji Hospital, Madurai, and the injury suffered by him is the stab injury, it cannot be considered as a simple injury. As rightly contented by the learned counsel appearing for the appellants, the injury on the accused viz., A3 not explained and it has been suppressed by the prosecution and it proved fatal to the prosecution.

30. Further, the Hon'ble Supreme Court in **Lakshmi Singh v. State of Bihar [(1976) 4 SCC 394]**, held as follows:

"12. ... This Court clearly pointed out that where



the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probabalise the plea taken by the appellants. The High Court in the pre-sent case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In **Puran Singh v. The State of Punjab [(1975) 4 SCC 518]**, which was also a murder case, this Court, while following an earlier case, observed as follows:

In **State of Gujarat v. Bai Fatima, [(1975) 2 SCC 2]**, one of us (Untwalia, J.,) speaking for the Court, observed as follows: [SCC p. 13 : SCC (Crl) p. 390, para 17]

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

- (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.
- (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
- (3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

- (1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused



it is rendered probable so as to throw doubt on the prosecution case.

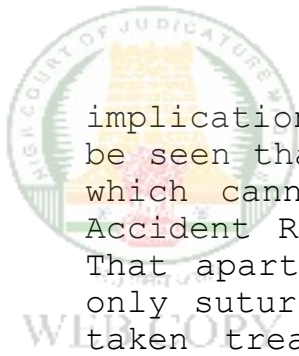
The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

31. The Hon'ble Supreme Court in **State of M.P. v. Mishrilal [(2003) 9 SCC 426]**, held as follows:

19. In Ex.P-1, as already noticed, there is no explanation about the injuries sustained by the three accused. None of the prosecution witnesses explained the injuries sustained by the accused. The injuries sustained by Mishrilal were dangerous to life. The prosecution witnesses consist of interested and inimical witnesses. We are, therefore, of the view that the prosecution has not presented the true version on most material part of the story. Their evidential value does not inspire confidence and it cannot be accepted on its face value and relied upon. It is in these circumstances that non-explanation of the injuries sustained by the accused proved fatal to the prosecution case."

32. The next contention of the learned counsel for the appellants regarding registration of the F.I.R. From the evidence of P.W.3, Doctor, it is seen that P.W.1 was taken to hospital on 03.03.2014, at about 9.45 p.m., he found that he had three sutured injury in the head. Ex.A2 Accident Register Copy also corroborated his evidence. But, according to P.W.20, Sub Inspector of Police, after receiving the intimation from the Government Hospital, he went to the hospital and recorded the statement of P.W.1 at about 7.30 p.m., on 03.03.2014 and based on that, he registered the F.I.R at 8.00 p.m. It is contrary to the evidence of P.W.3, when P.W.1 was admitted in the hospital only at 9.45 p.m., on 03.03.2014, he could not have given statement to P.W.20 in the hospital at 7.30 p.m. It creates a doubt on the time of registration of F.I.R., coupled with the fact that the F.I.R. has reached the Judicial Magistrate Court only on the next day at about 10.00 a.m. P.W.19, the Head Constable, who sent the F.I.R. to the Judicial Magistrate Court, clearly stated that the Judicial Magistrate Court is situated within 5 minutes distance from the police station and the delay in sending the F.I.R to the Court strengthen.

33. Further, according to P.W.2, he has seen only A1 and A2 at the scene of occurrence. He did not speak about the presence of A3 to A5. Considering all these circumstances, we are of the considered view that, there is a likelihood of embellishment and a false



implication in this case. From Ex.P10 - Postmortem Report, it could be seen that only cut injuries were found on P.W.1 and the deceased, which cannot be caused by M.O.4 iron pipe. That apart, Ex.P.2 - Accident Register also shows that P.W.1 has suffered cut injuries. That apart, at the time of admission in the hospital, P.W.3 found only sutured wound in his head, which shows that P.W.1 has already taken treatment somewhere else that was also suppressed by the prosecution. That apart, it is also admitted that P.W.1 and P.W.2 are close friends of the deceased and interested witness and there are lot of material contradictions between the evidence of P.Ws.1 and 2 which creates a doubt regarding the presence of P.W.2, at the scene of occurrence.

34. The prosecution has suppressed the origin and genesis of the case. That apart, the delay in registration of F.I.R. and delay in sending the same to the Court further creates a strong suspicion, that there is a likelihood of consultation and false implication of the accused.

35. Considering the above circumstances, we are of the considered view that the prosecution has failed to prove the case beyond any reasonable doubt and the accused cannot be convicted, based on the doubtful evidence of P.Ws.1 and 2. Hence, the conviction and sentence imposed by the trial Court is liable to be set aside and the appellants are entitled for acquittal.

36. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/A1 to A4, by the learned Additional District and Sessions Judge, Ramanathapuram in S.C.No.106 of 2016, by the judgment dated 28.03.2018, are hereby set aside. The appellants/A1 to A4 are acquitted from all the charges levelled against them. Fine amounts if any paid by the appellants/A1 to A4 shall be refunded to them. Bail bonds executed by them also shall stand cancelled.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Principal District and Sessions Judge, Ramanathapuram.

2.The Additional District and Sessions Judge,
Ramanathapuram.

3.The Judicial Magistrate No.II,
Ramanathapuram.

4.The Inspector of Police,
Kenikarai Police Station,
Ramanathapuram District.

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

6.The Superintendant & Prisons, Central Prison, Madurai.

Copy to
The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.APN LAW ASSOCIATES, Advocate (SR-27505[F] dated
27/08/2021)

Cr1.A.(MD).No.208 of 2018
25.08.2021

_RD(4.10.2021) 13P 10C