



Bail Slip

The Appellants/Accused Nos. 1, 4 & 6 Ravi, S/O.Shanmugam, Chellammal, W/o.Shanmugam & Marimuthu, S/o.Ayyathurai, are released on bail order dated 02/08/2018 made in Crl.M.P.(MD)No.5506 of 2018 in Crl.A(MD)No.316 of 2018, the Appellant/Accused No.2 Thavamani@ Karuppaiah, S/o.Rangasamy, is released on bail order dated 23/10/2018 made in Crl.M.P.(MD)No.7677 of 2018 in Crl.A(MD)No.447 of 2018 and the Appellant/Accused No.7 kailasam, S/o.Kalimuthu is released on bail order dated 01/11/2018 made in Crl.M.P.(MD)No.8512 of 2018 in Crl.A.(MD)No.478 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A (MD)Nos.316, 447 and 478 of 2018

1.Ravi

2.Chellammal

3.Marimuthu .. Petitioner/Appellants in Crl.A.(MD)
No.316 of 2018/A1, A4 & A6

Thavamani @ Karuppaiah .. Appellants in Crl.A.(MD)
No.447 of 2018/A2

Kailasam .. Appellant in Crl.A.(MD) No.
478 of 2018/A7
-vs-

State,
through the Inspector of Police,
C.B.CID.,
Pudukkottai
in Nagudi Police Station,
Crime No.56 of 2007. .. Respondent/Respondent/Complainant in
all the Criminal Appeals

Criminal Appeals filed under Section 374(2) of the Code of Criminal Procedure against the judgment of the learned Additional District and Sessions Judge, Pudukkottai in S.C.No.193 of 2008 dated 16.02.2018.



For Appellant in :: Mr.AR.L.Sundaresan
Crl.A.(MD) No. Senior Counsel for
316 of 2018 Mr.J.Anandakumar

For Appellant in :: Mr.K.R.Laxman
Crl.A.(MD) No.
447 of 2018

For Appellant in :: Mr.M.Karunanithi
Crl.A.(MD) No.
478 of 2018

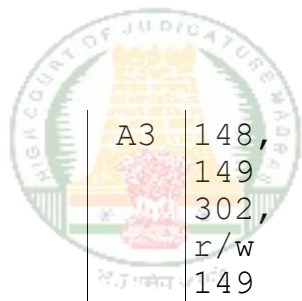
For Respondent :: Mr.E.Antony Sahaya Prabakar
in all the appeals Additional Public Prosecutor

COMMON JUDGMENT

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

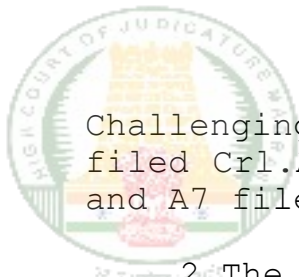
The appellants in these Criminal Appeals are Accused Nos.1, 2, 4, 6 and 7 in S.C.No.193 of 2008, on the file of the learned Additional District and Sessions Judge, Pudukottai. They along with A3 and A5 stood charged, convicted and sentenced as follows:

Acc used	Charges framed	Convicted under Section	Sentence Imposed	Fine	Default Sentence
A1	148, 302, 307, 147 r/w 323, 149 r/w 307 (3 counts)	148 I.P.C.	3 years R.I.	--	--
		302 r/w 149 I.P.C.	Life Imprisonment	Rs.10,000/-	2 Years S.I.
		307 I.P.C. (2 counts)	10 Years R.I. for each count	Rs.10,000/- for each count	2 Years S.I. for each count
		323 r/w 149 I.P.C.	--	Rs.1,000/-	3 Months S.I.
A2	148, 307, 149 r/w 302, 147 r/w 323, 149 r/w 307 (3 counts)	148 I.P.C.	3 years R.I.	--	--
		307 I.P.C. (2 counts)	10 Years R.I. for each count	Rs.10,000/- for each count	2 Years S.I. for each count
		302 r/w 149 I.P.C.	Life Imprisonment	Rs.10,000/-	2 Years S.I.
		323 r/w 149 I.P.C.	--	Rs.1,000/-	3 Months S.I.



A3	148, 307,	148 I.P.C.	3 years R.I.	--	--
	149 r/w 302, 147	307 I.P.C. (2 counts)	10 Years R.I. for each count	Rs.10,000/- for each count	2 Years S.I. for each count
	302, 147 r/w 323, 149 (3 counts)	302 r/w 149 I.P.C.	Life Imprisonment	Rs.10,000/-	2 Years S.I.
		323 r/w 149 I.P.C.	--	Rs.1,000/-	3 Months S.I.
A4	147, 302	147 I.P.C.	3 years R.I.	--	--
	149 r/w 109, 149 r/w 302, 147	302 r/w 149 I.P.C.	Life Imprisonment	Rs.10,000/-	2 Years S.I.
	302, 147 r/w 323, 149 (4 counts)	307 I.P.C. (2 counts)	10 Years R.I. for each count	Rs.10,000/- for each count	2 Years S.I. for each count
		323 r/w 149 I.P.C.	--	Rs.1,000/-	3 Months S.I.
A5	147, 323, 307, 149 r/w 302, 147 r/w 323, 149 r/w 307 (3 counts)	Charge abated as A5 died pending trial			
A6	147, 323, 149 r/w 302, 147	147 I.P.C.	3 Years R.I.	--	--
	302, 147 r/w 323, 149	307 I.P.C. (2 counts)	10 Years R.I. for each count	Rs.10,000/- for each count	2 Years S.I. for each count
	307 (4 counts)	302 r/w 149 I.P.C.	Life Imprisonment	Rs.5,000/-	6 Months S.I.
		323 r/w 149 I.P.C.	--	Rs.1,000/-	3 Months S.I.
A7	147, 342	147 I.P.C.	3 Years R.I.	--	--
	149 r/w 302, 149 r/w 302, 147	342	1 Year R.I.	--	--
	302, 147 r/w 323, 149	302 r/w 149 I.P.C.	Life Imprisonment	Rs.5,000/-	6 Months S.I.
	149 r/w 307 (4 counts)	307 I.P.C. (2 counts)	10 Years R.I. for each count	Rs.10,000/- for each count	2 Years S.I. for each count
		323 r/w 149 I.P.C.	--	Rs.1,000/-	3 Months S.I.

The sentences were ordered to run concurrently and the sentence already undergone were given set of under Section 428 Cr.P.C.
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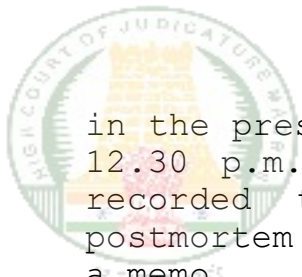
Challenging the aforesaid conviction and sentence, A1, A4 and A6 filed Crl.A.(MD) No.316 of 2018, A2 filed Crl.A.(MD) No.447 of 2018 and A7 filed Crl.A.(MD) No.478 of 2018.

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

The deceased in this case, namely, Krishnakumar, is the husband of P.W.3 and he is also brother-in-law of A1. P.W.1 is paternal uncle of the deceased Krishnakumar, all belongs to same village. The deceased married P.W.3, sister of A1, which was a love marriage, stoutly opposed by A1's family, over the same there were continuous quarrel between the deceased's family and accused's family. On 15.07.2007, at about 2.00 p.m., while the deceased and his friend Nandakumar were coming by bicycle, A1 to A3 waylaid them and quarrelled with them. Subsequently, on the very same date, at about 8.00 p.m., when P.W.2, father of the deceased, went to the house of his neighbour for inviting them for a dinner, there was a quarrel between A3 and P.W.2. On hearing the quarrel, P.Ws.1, 3 and 4 went there. The neighbours present there interacted and pacify them, asked them to disburse, when P.Ws.1 to 4 were nearing a place called Pillayar Pottal, A5, sister of A1, caught hold of P.W.3 and started attacking her. At that time, the deceased interfered and A5 tried to strangulate him. A4, mother of A1, instigated the other accused to attack the deceased. A7, relative of A1, caught hold the deceased and A1 attacked him with a knife in the chest and abdomen and while P.Ws.2 and 4 tried to prevent the attack, A3 attacked P.W.2 on his chest and A2 attacked P.W.4 on his chest. A6 tried to attack P.W.3, when she evaded it, the attack fell on A5's head and A5 suffered injury and fell down. Thereafter, all the accused run away. Deceased and P.Ws.2 and 4 were found unconscious, P.Ws.1 and 3, took them to the Aranthangi Government Hospital, where the doctor declared the deceased brought dead, while P.W.1 and P.W.4 were sent to Government Medical College Hospital, Thanjavur, for further treatment.

3.P.W.23, Sub-Inspector of Police attached to respondent Police Station, on receipt of the intimation from the hospital, went there and recorded the statement of P.W.1 (Ex.P.1) at 1.00 a.m. and based on the same, she registered a criminal case in Crime No.56 of 2017, under Sections 307 and 302 I.P.C. at 3.30 a.m. and sent the First Information Report (Ex.P.16) to the concerned Court, copies to the higher officials and also sent a copy to P.W.25, Inspector of Police, for investigation.

4.P.W.25, Inspector of Police in the respondent police station, on receipt of the First Information Report, commenced the investigation and reached the scene of occurrence at 5.30 a.m., where he prepared Observation Mahazar (Ex.P.2), Rough Sketch (Ex.P.17) in the presence of witnesses. He also collected bloodstained soil (M.O.1) and sample soil (M.O.2) in the presence of witnesses under mahzar (Ex.P.3). Then, he proceeded to the Government Hospital, Aranthangi, conducted inquest on the dead body



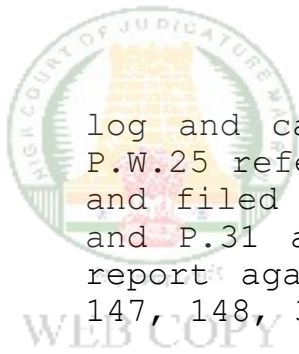
in the presence of Panchayatars and witnesses between 10.00 noon and 12.30 p.m. and prepared Inquest Report (Ex.P.19). Thereafter, he recorded the statements of witnesses and sent the body for postmortem autopsy through Ravichandran, Head Constable, along with a memo.

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5.P.W.19, is the Doctor working in Government Hospital, Aranthangi, conducted postmortem autopsy and gave a postmortem report (Ex.P.10) and he was of the opinion that, the deceased would appear to have died of shock due to the injury found in the left kidney, laceration in the abdomen aorta near left renal artery and injury sigmoid vessel left injury, sigmoid colon and small intestine with profuse bleeding and shock.

6.In the meantime, P.W.25, investigation officer, continued the investigation and arrested the first accused at about 3.00 p.m. and on such arrest, he voluntarily gave a confession, and on the basis of the admissible portion of the confession of A1, he recovered M.O.3 - knife and sent the accused for judicial custody, and recorded the statements of other witnesses. On 17.07.2007, at about 6.00 p.m., he arrested A2 and A3 and on such arrest, both of them voluntarily gave a confession and based on the admissible portion of the confession, he recovered two knives (M.O.5) and also recovered the bloodstained dress of A2 and A3, sent the same to the Judicial Magistrate Court under Form - 95 and sent A2 and A3 for remand to judicial custody. After recording the statements of the other witnesses and also the doctor, who conducted postmortem, he filed final report for the offences under Sections 307 and 302 r/w 34 I.P.C.

7.Subsequently, on the petition filed by P.W.3 before this Court for transfer of investigation, the investigation was transferred to CBCID on 09.01.2008. Then P.W.26, Inspector of Police, CB CID, Pudukottai, on receipt of the case records, commenced the investigation. When he inspected the Scene of Occurrence, found some discrepancy in the rough sketch prepared by P.W.25, so, he once again prepared an observation mahazar (Ex.P.4) and rough sketch (Ex.P.21) in the presence of witnesses. Again he recorded the statements of P.W.3, and other eyewitnesses, recovered a marriage invitation, also recovered letters sent by P.W.3. Based on the investigation, P.W.26 found that the other accused, namely, A4, A6 and A7 have also involved in the occurrence. Then, he arrested those accused and they were remanded to judicial custody. Once again, he recorded the statements of other witnesses. A5 in this case also sustained injury and she was admitted in the Government Hospital, Aranthangi. She has also given a complaint and based on that a F.I.R. (Ex.P.30), was registered in Crime No.59 of 2007, against P.W.1, in this case for the offence under Sections 341 and 323 I.P.C. on the ground that P.W.1, attacked her with wooden



log and caused injury. Both cases were investigated together and P.W.25 referred the Criminal Case registered on the complaint of A5, and filed closure report (Ex.P.31). P.W.26 collected both Exs.P.30 and P.31 and after completion of investigation, he filed a final report against all the seven accused for offences under Sections 147, 148, 323, 342, 307, 302 r/w 114 and 149 I.P.C.

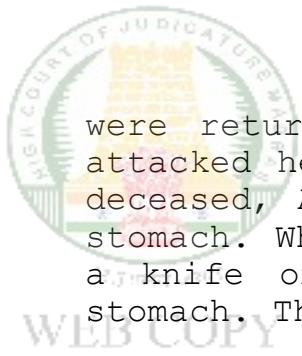
8.Considering the above materials, the trial Court framed charges and after trial convicted the accused by judgment 22.07.2011 as follows:

Accused	Convicted under Section
A1	148, 302, 307 I.P.C.
A2	148 I.P.C.
A3	148 & 307 I.P.C.
A4	147, 302 r/w 34 I.P.C.
A5	147, 302 r/w 109 I.P.C.
A6	147 I.P.C.
A7	147, 302 r/w 109 I.P.C.

Challenging the same, earlier the accused filed Crl.A.(MD) Nos.232 and 239 of 2011, before this Court, and this Court by judgment dated 12.03.2013, set aside the conviction and sentence, on the ground that the trial Court convicted all the accused without framing charge under Section 149 I.P.C. and the matter was remanded back to the trial Court with a direction to frame appropriate charges and to give adequate opportunity to the accused and thereafter pass appropriate judgment. On remand, the trial Court framed fresh charges as stated above in the first para of this judgment, conducted retrial and gave opportunity to all the accused to cross-examine the witnesses examined by the prosecution. On the side of prosecution, as many as 26 witnesses were examined, 31 exhibits were marked apart from producing 9 material objects.

9.Out of the witnesses examined, P.W.1, is the paternal uncle of the deceased. He is an eyewitness to the occurrence. He also spoke about the motive for the occurrence that, the deceased got married to P.W.3, against the wishes of the accused family. After the occurrence, he went to the police station, where a statement was recorded and he had signed the complaint (Ex.P.1). According to him, without reading the same, he signed it.

10.P.W.2 is the father of the deceased. He is also an injured eyewitness. He also spoke about the marriage between the deceased and P.W.3 and also the quarrel between the deceased's family and the accused's family. On the date of occurrence, at about 8.00 p.m., he went to the house of one Arumugam, where A3 quarrelled with him. After hearing the noise, the deceased, P.Ws.1, 3 and 4 came there and the neighbours have interfered and pacified them. While they



were returning back, A5, sister of A1, caught hold of P.W.3 and attacked her. While the deceased interfered, A6 caught hold of the deceased, A4 caught hold of P.W.3, A1 attacked the deceased in the stomach. When, P.W.4, his brother, went there, A2 attacked him with a knife on the chest, thereafter, A1 also attacked him in the stomach. Thereafter, they were taken to hospital.

11.P.W.3 is the wife of the deceased and sister of A1 and A5. A5 and P.W.3 are daughters of A4. She has also spoke about the occurrence. According to her, while they were returning home, A5 caught hold of her and attacked her, while her husband came for her rescue, A7 caught hold of the deceased, A1 attacked him and A2 attacked P.W.4. While A4 and A5 caught hold of her, A6 tried to attack her, when she evaded the attack, it fall on A5's head and she sustained injury.

12.P.W.4, another injured witness, is the brother of P.W.1. He has reiterated the evidence of other two eyewitnesses. P.W.5 is the brother of the deceased. He spoke about the motive for the occurrence. He is also an eyewitness to the occurrence. P.W.6, a neighbour of the deceased, turned hostile. P.W.7, former Panchayat President of the Village, spoke about the motive and the earlier mediation conducted by him. P.W.8, spoke about the earlier quarrel between the parties and also witness to the observation mahazar (Ex.P.2) and recovery of M.O.1. P.W.9, belongs to the same village, turned hostile. P.W.10, photographer, took photos of the dead body of deceased. P.W.11, Village Administrative Officer, is witness to the observation mahazar. P.W.12, Taxi driver, took the injured and deceased to the Aranthangi Government Hospital. P.W.13, village menial, spoke about the arrest and recovery of materials objects.

13.P.W.14, Head Clerk, in the Judicial Magistrate Court, Aranthangi, received the material objects and sent it to the forensic laboratory. P.W.15, Head Constable, handed over the material objects to the forensic laboratory. P.W.16, Head Constable working in the respondent Police Station, received the intimation regarding the death of the deceased and the injury to P.Ws.2 and 4 and informed the same to the Inspector of Police attached to the respondent Police Station. P.W.17 is the Head Constable, who typed the statements of witnesses in the computer. P.W.18, Judicial Magistrate, Allangudi, recorded the statements of witnesses under Section 164 Cr.P.C.

14.P.W.19, doctor, working in Aranthangi Government Hospital, conducted postmortem autopsy on the dead body of the deceased and issued postmortem certificate Ex.P.10, which reads as follows:

"The body was first seen by the undersigned at 1:00 P.M. on 16.7.07 its condition then was Rigor Mortise present in all four limbs. Post-mortem commenced at 1:00 P.M. on 16.7.07. Appearance found at the Post-Mortem,



lies on back, Blood stained at flank and Left shoulder ant.aspect, Cold, well nourished, symmetrical, pale.

External Injuries:

1. Lacerated injury with blood clot, left shoulder ant. aspect near Accromial end size about 3 x 3 x 1cm.
2. Lacerated injury in the left flank at ant. axillary line about 10cm above the left ant. sup. Iliac spine size about 10 x 6 x 2cm. With Gloved digital examination of the wound continuous with the Peritoneal cavity, the depth may more than 10cm.

Internal injuries:

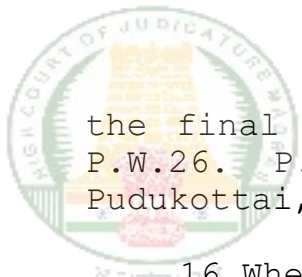
3. Peritoneal cavity contains liquid and clotted blood about 1 ½ ltr. clot about 500gm.
4. Injury with laceration piercing the left kidney, laceration involving the Hilum of the left kidney, Renal Vessels, blood clot 200 gms completely covering the kidney.
5. Laceration with contusion with Haematoma within the sigmoid part of the left colon and sigmoid mesentry and sigmoid vessels.
6. Laceration with discoloration with Haematoma in small intestine about 10 feet from the iliac Jn.
7. Peritoneal cavity pooled with blood about 4 lits.
8. Laceration of the abdomen Aorta just below the left renal artery, laceration about 5cm with blood clot about 300gm around the injury, other Thorasic and abdominal Solid and viscera are normal.

Brain: Membrane Normal wt. 1700gm, Ventricles empty.

Opinion: Deceased would appear to have died of shock due to the following injury found in the P.M.

1. Injury in the left kidney.
 2. Laceration in the abdomen aorta near left renal Artery.
 3. Injury sigmoid vessel left injury sigmoid colon and small intestine with profuse bleeding and shock.
- Death may occurred 14 to 17hrs prior to Post Mortem."

15.P.W.20, Scientific Officer, in Regional Forensic Science Laboratory, Trichi, examined the material objects and issued Chemical Analysis Report (Ex.P.11) and Serological Report (Ex.P.12). P.W.21, doctor working in the Government Hospital, Aranthangi, admitted the deceased and P.Ws.2 and 4 in the hospital and issued accident register (Ex.P.13) and wound certificates (Exs.P.14 and 15). P.W.22, Doctor, working in Thanjavur Medical College Hospital admitted P.Ws.2 and 4 and gave treatment. P.W.23 is the Sub-Inspector of Police, signed the F.I.R. (Ex.P.16). P.W.24 is the Sub-Inspector of Police, who recorded the statement of P.W.1 at the Hospital and based on that prepared the F.I.R. (Ex.P.26). P.W.25, is the Inspector of Police, who conducted the investigation and filed



the final report, thereafter, he handed over the investigation to P.W.26. P.W.26, Inspector of Police, working in the CB CID, Pudukottai, conducted reinvestigation and filed the final report.

16. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., all the accused denied the same as false. The accused did not choose to examine any witness nor did they mark any document on their side.

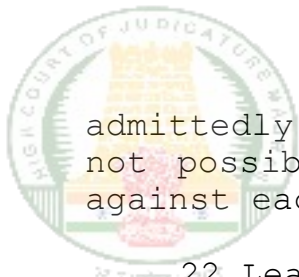
17. Having considered all the above, the trial Court found the accused/appellants guilty under the said charges and accordingly sentenced them as detailed in the second paragraph of this judgment. Challenging the above judgment, the appellants are before this Court with these Criminal Appeals.

18. We have heard Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for A1, A4 and A6/appellants in Crl.A.(MD) No.316 of 2018, Mr.K.R.Laxman, learned counsel appearing for A2/Appellant in Crl.A.(MD) No.447 of 2018, Mr.M.Karunanathi, learned counsel appearing for A7/appellant in Crl.A.(MD) No.478 of 2018 and Mr.E.Antony Sahaya Prabakar, learned Additional Public Prosecutor for the respondent.

19. It is reported that pending trial A5, Amutha, died. Hence, the remaining accused, namely, A1 to A4 and A6 & A7 faced the trial. Now, pending appeal Thavamani @ Karuppaiah/A2 died and the learned Additional Public Prosecutor on verification confirmed the same. Further, according to the learned counsel for the appellants and the learned Additional Public Prosecutor, the whereabouts of A3 was not known and he has not filed any appeal against the judgment of conviction and sentence.

20. Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for A1, A4 and A6 submitted that, the prosecution has suppressed the origin and genesis of the case. Admittedly, in the same occurrence, A5 sustained serious head injury and she was admitted in the hospital and based on the complaint an F.I.R. was marked as Ex.P.30. But the prosecution failed to explain the injuries sustained by her, even though investigation has been conducted and the F.I.R. was closed as mistake of fact and the closure report is marked as Ex.P.31. The investigating officer clearly stated at the time of cross examination that she was admitted in the hospital and she has stated before them that five known person attacked her. But for the reasons best known to them, the accident register was not produced and the doctor who admitted A5 in the hospital was not examined.

21. Learned Senior Counsel would further submit that there are lot of inconsistencies in the evidence of P.Ws.1 to 4, which create a clear doubt regarding the presence of eyewitnesses in the scene of occurrence. The occurrence said to have taken place at 8.30 p.m. in the night in the dark hours and there is no light in that area and



admittedly there was a quarrel between the parties and hence, it is not possible for the eyewitnesses to find out the exact overtact against each accused.

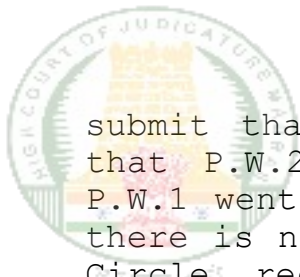
22.Learned Senior Counsel further submitted that there is a clear doubt regarding registration of F.I.R. According to P.W.1, after the occurrence, he went to the police station and gave an oral complaint, which was registered as Ex.P.16 and he signed in the complaint. However, according to P.W.24, the Sub-Inspector of Police, he recorded the statement of P.W.1 at about 1.15 a.m. and registered the F.I.R. at about 3.30 hours and the other witnesses also stated that P.Ws.1 and 3 went to the police station at about 1.00 a.m. and their statements were recorded. The earliest statement given by P.W.1 has been suppressed by the prosecution. Even in F.I.R. (Ex.P.16) only names of four accused, namely, A1 to A3 and A5 were found and the names of A4, A6 to A8 were not found place, and in the earlier statements of witnesses only implicated four accused. But later on, other accused were included based on several representations sent to the authorities. After the investigation was transferred to CB CID, witnesses have falsely implicated the other accused, based on that A4, A6 and A7 were added and it is a clear case of false implication. He further submitted that the said contradictions in the testimony of the eyewitnesses create a clear doubt regarding the presence of the eyewitnesses in the scene of occurrence. The prosecution has failed to establish the case beyond reasonable doubt and the accused are entitled for acquittal.

23.Mr.M.Karunanithi, learned counsel appearing for the appellant in Crl.A.(MD) No. 478 of 2018/A7, reiterated the submissions of the learned Senior Counsel, further submitted that A7 in this case was not present in the scene of occurrence.

24.Mr.K.R.Laxman, learned counsel for the appellant in Crl.A.(MD) No.447 of 2018 submitted that pending appeal, A2, died and hence, the appeal is abated against him.

25.Mr.E.Antony Sahaya Prabakar, learned Additional Public Prosecutor, appearing for the State submitted that, there are five eyewitness to the occurrence, out of which, two eyewitnesses were injured witnesses. The motive has been clearly established by the prosecution. It is a case of honour killing with a strong motive, as P.W.3, sister of A1, got married to the deceased against their consent and there were frequent quarrel between the accused's family and the deceased's family and just before the occurrence, A3 quarrelled with P.W.2 as a consequence all the accused assembled and attacked the deceased, P.W.2 and P.W.4. The contradictions in the evidence of eyewitnesses are minor in nature and it is not material contradictions which vitiate the prosecution case.

26.The learned Additional Public Prosecutor would further



submit that regarding filing of F.I.R., P.W.1 has clearly stated that P.W.24 recorded the statement in the hospital. Thereafter, P.W.1 went to hospital and based on that F.I.R. was registered and there is no doubt about it. P.W.25, Inspector of Police, Aranthangi Circle, recorded the statements of witnesses regarding the injuries sustained by A5 and all the eyewitnesses clearly says that while A6 was trying attack P.W.3 with wooden stick, she evaded the attack, in which, A5 suffered a minor injury in the head. Based on the complaint filed by A5, F.I.R. was registered, which was also investigated along with the present crime and after investigation, it was found that a false case and the case has been closed as mistake of fact, and there is no suppression by the prosecution. Further, based on the orders passed by this Court, the investigation was transferred to CB CID, further investigation was conducted, in which, it is found that A4, A6 and A7 also involved in this case, hence, they are also impleaded. The trial Court after considering the materials rightly convicted all the accused and there is no error or infirmity in the judgment of the trial Court, warranting interference by this Court.

27.We have considered the rival submissions and the evidence produced carefully.

28.There are five eyewitnesses in this case. The deceased and the accused are closely related. The deceased married A1's sister, P.W.3. It is a love marriage conducted without the consent of A1's family. Hence, A1's family had a grievance against the deceased's family. According to the prosecution, this is the motive for the occurrence. The marriage said to have taken place four years prior to the occurrence and after marriage, there is no material available to show that there was any quarrel between the deceased and A1's family. All belongs to the same village and same community and there is no evidence available to show that it is a honour killing.

29.According to prosecution, the cause for the occurrence is, on 15.07.2007, while the deceased and his friend were going in a cycle, A1 to A3 waylaid and quarrelled with them. Thereafter, on the same day, at about 8.30 p.m., P.W.2, went to the neighbour's house for inviting him for a dinner, where A3 quarrelled with him. After hearing the noise, P.W.1, P.W.3 and P.W.4 went there and joined the quarrel. The neighbours intervened, all disbursed, the deceased and witnesses returning back to their home. At that time all the accused assembled there, A5, none other than the sister of P.W.3, caught hold of P.W.3 and attacked her. While the deceased interfered, A7 caught hold of the deceased and A1 attacked him with knife in the abdomen and chest. While P.W.4 went there, A2 attacked him in the right shoulder. In the same occurrence, P.W.2, also sustained injury and according to him, A1 and A2 attacked him.



30. Admittedly, in the same occurrence, A5 also sustained injury in the head and she was also admitted in the very same Government Hospital, Aranthangi. At about 10.00 p.m., she has given a complaint, which was registered by the respondent police in Crime No.59 of 2007. The prosecution is trying to explain the injury, that, while A6 tried to attack P.W.3, she evaded it and the attack fell on A5, and she sustained injury. But on a perusal of the F.I.R. (Ex.P.30), it has been specifically stated that at about 8.30 p.m. there was a power cut, at that time P.W.1 attacked her on his head and she was fainted, then, she was taken to hospital, that complaint has been closed as mistake of fact. On a perusal of the closure report (Ex.P.31), it is stated that, on investigation it was found that, A5 stated at about 10.00 p.m. she was attacked by five known persons, however, at that time P.W.1, was in the hospital along with other injured witnesses, and there is no occasion for them to present in the scene of occurrence, hence, the F.I.R. was closed as mistake of fact. It is the case of the prosecution that A5 sustained injury, while she fell down, which is contrary to the evidence of P.W.3, and by that it cannot be held that the prosecution has explained the injuries on A5.

31. A5, sustained head injury and admitted in hospital along with the injured witnesses. When the accused sustained injury, the prosecution has to explain the injury sustained by her. For the reason best known to them, the prosecution did not examine the doctor, who admitted A5, in the hospital and failed to mark the accident register, however, trying to explain the injuries as if A6 attacked P.W.3, when she evaded it, fall on A5. That explanation cannot be accepted for the simple reason that, a specific complaint has been given that P.W.1 has attacked her, as she has stated that, in the quarrel five persons present and attacked her. In the said circumstances, the burden is on the prosecution to dispel doubt and produce necessary materials before this Court to explain the injury; but the prosecution has failed to do so.

32. In that respect, it is useful to refer the following judgments of the Hon'ble Supreme Court. In **Lakshmi Singh v. State of Bihar [(1976) 4 SCC 394]**, the Hon'ble Supreme Court 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:

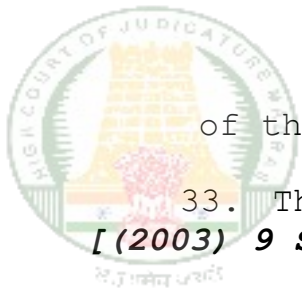
- (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.
- (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
- (3) It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

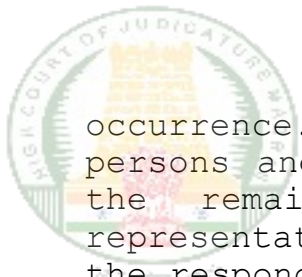


of the prosecution one."

33. 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."

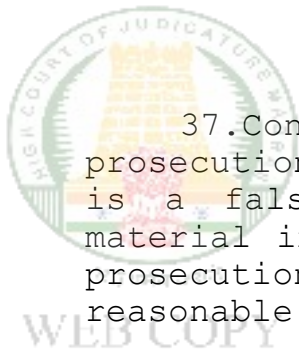
34. The next contention of the learned counsel for appellants is material contradictions with regard to F.I.R. P.W.1 is the author of the F.I.R. According to him, after the occurrence both the deceased and the accused were taken to the hospital, from where he gone to the police station, given oral complaint and it was reduced into writing and he signed the same, without even reading the same. However, it is the evidence of P.W.24, Sub-Inspector of Police, attached to the respondent police station, that at about 1.00 a.m., on intimation, he went to the hospital and recorded the statement of P.W.1 and registered the F.I.R. P.W.23, another Sub-Inspector, also clearly stated that he went to the Police Station at about 3.30 a.m., wherein P.W.25, Inspector of Police, two constables and P.Ws.1 to 3, were present in the Police Station, where, P.W.24 prepared the F.I.R. and asked him to sign it. However, on seeing the F.I.R., we found that, complaint has been given against four persons, but the F.I.R. has been registered only against three person. The Inspector of Police explained that some of the injured witnesses were unconscious and after their recovery, he will enquire them and include the remaining accused. From their evidence, it is clear that F.I.R. was registered only at 3.30 a.m., and the earliest statement said to have given by P.W.1, immediately after the occurrence has been suppressed by the prosecution. That apart, a perusal of the complaint of P.W.1, he has clearly stated that only four accused, namely, A1, A2, A3 and A5 alone were present and A5 caught hold of P.W.3 and attacked her and when the deceased interfered, A1 attacked him with knife on the chest and abdomen, A2 attacked P.W.4 with knife in the chest, A3 attacked P.W.2 with knife on the chest and abdomen. Subsequently, P.W.3 in this case said to have sent a complaint to the District Collector, which was marked as Ex.P.25, stating that all the seven accused were present in the scene of



occurrence. Even though in the complaint (Ex.P.1) P.W.1 named four persons and F.I.R. has been registered only against three persons, the remaining three accused were implicated based on the representation of P.W.3 to the District Collector, complaining that the respondent police have not implicated the remaining accused. She has also filed a petition, seeking transfer of the investigation, and on the orders passed by this Court in the year 2008, investigation has been transferred to CB CID, only thereafter, the remaining three accused were implicated.

35.We have also perused the original records and statements given by the witnesses under Section 161(3) Cr.P.C., wherein all the witnesses have implicated only four accused. Thereafter, in the further investigation conducted by P.W.26, recorded the statements of other witnesses on 09.01.2008, wherein they have implicated the remaining three accused and come out with a new case as if A4, mother of P.W.3, was also present in the scene of occurrence and instigated the other accused to murder the deceased and A7 caught hold of the deceased and A1 attacked the deceased and while A6 tried to attack P.W.3, A5 sustained injury. A careful perusal of the entire materials, it could be seen that, the prosecution witnesses have changed the entire story and implicated other accused in this case. Originally, consistent statements have been made by all the witnesses that only four accused involved in this case, subsequently, they have made improvements and went on to implicate all the members of the family of the accused and it is a clear case of false implication of accused.

36.The next submission of the learned counsel appearing for the appellant is with regard to the scene of occurrence. In both the rough sketches, Ex.P.17 and Ex.P.21, no electric post has been seen. Admittedly, the occurrence said to have taken place near a Vinayagar Temple at 8.30 p.m. in a dark night. Even though the witnesses said to have taken torch lights along with them, the same were not seized and produced before the Court. P.W.3 also stated in the cross-examination that at the time of occurrence there was power cut. In these circumstances, as rightly pointed out by the learned Senior Counsel appearing for the appellants/A1, A4 and A7, it is not possible for the accused to seen the occurrence clearly, and the overtact of the each accused as stated by them. That apart, P.W.1 has not accounted for the injuries sustained by P.W.2 and P.W.3. In the cross-examination he has stated that the other witnesses came to the scene of occurrence after the deceased was attacked by the accused and both P.Ws.2 and 4 stated that they sustained injuries near their house, and there are material inconsistencies in the evidence of P.Ws.1 to 4, eyewitnesses, which create a doubt about their presence at the time of occurrence.



37.Considering those circumstances, we are of the view that the prosecution has suppressed the origin and genesis of the case, there is a false implication of accused, apart from that there are material inconsistencies in the eyewitnesses, and cumulatively, the prosecution has failed to prove the guilt of the accused beyond reasonable doubt, thus, the accused are entitled for acquittal.

38.In the result, Crl.A.(MD) Nos.316 and 478 of 2018 are allowed and the conviction and sentence imposed on the appellants/A1, A4, A6 and A7, by the learned Additional District and Sessions, Pudukkottai, in S.C.No.193 of 2008, by judgment dated 16.02.2018, are hereby set aside. The appellants/A1, A4, A6 and A7 are acquitted of all the charges levelled against them. Fine amounts, if any, paid by the appellants/A1, A4, A6 and A7 shall be refunded to them. Bail bonds, if any, executed by them also shall stand cancelled. Crl.A.(MD) No.447 of 2018 stands dismissed as abated.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

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 Additional District and Sessions Judge,
Pudukkottai.

2.The Judicial Magistrate,
Aranthangi.

3.The Judicial Magistrate,
Pudukkottai.

4.Do Through the Chief Judicial Magistrate,
Pudukkottai.

5.The Superintendent, Central Prison,
Trichy.

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



6.The Judicial Magistrate,Alangudi.

7.The Officer in Charge,
Special Prison for Women,
Gandhi Market,
Trichy.

8.The Inspector of Police,
C.B.CID.,
Pudukkottai
in Nagudi Police Station,

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

Copy to

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

+1CC to M/S.K.R.Laxman,Advocate (SR.No.30675)

Criminal Appeal No. (MD) Nos.316, 447 and 478 of 2018
28.09.2021

MGJ(26.11.2021) 17P 11C