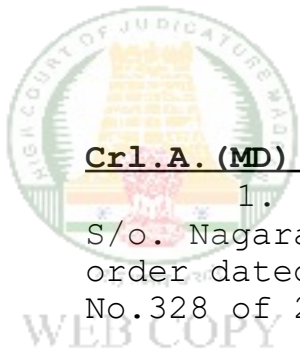




BAIL SLIP

Crl.A.(MD) No.328 of 2018 :

1. Satheeshkumar S/o. Alagarsamy, male & 2. Deivendran S/o. Nagaraj, male (Accused 2 & 3) are released on bail vide court order dated 01.08.2018 in CRL.MP(MD).No.5738 of 2018 in CRL.A(MD).No.328 of 2018

Crl.A.(MD) No.329 of 2018 :

1. Alagarsamy S/o. Narasimman, male, aged about 74 years of 2018(accuses -1) 2. Ravichandran S/o. Nagaraj, male, aged about 50 years of 2018(Accused-4), 3. Nagaraj S/o. Vengidusamy @ Ramasamy, male aged about 74 years of 2018(Accused-6), & 4. Sudhakaran S/o. Thirumalaisamy, male aged about 39 years of 2018(Accused-7) are released on bail vide court order dated 01.08.2018 in CRL MP(MD).No. 5760 of 2018 in CRL. A.(MD).No.329 of 2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	22.03.2021
Date of Judgment	30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.A.(MD)Nos.328 and 329 of 2018

Crl.A.(MD) No.328 of 2018 :

1.Satheesh Kumar
2.Deivendran : Appellants/A2 and A3

-Vs-

State Rep. by
The Inspector of Police,
Vathalagundu Police Station,
Dindigul District. : Respondent/Complainant

Crl.A.(MD) No.329 of 2018 :

1.Alagarsamy
2.Ravichandran
3.Nagaraj
4.Sudhakaran : Appellants/A1,A4, A6 and A7

-Vs-

State Rep. by
The Inspector of Police,
Vathalagundu Police Station,
Dindigul District. : Respondent/Complainant



Prayer: Appeals filed under Section 374(2) of the Code of Criminal Procedure against the judgment made in SC No.8 of 2006 by the Additional District and Sessions Court, Dindigul, dated 17.07.2018.

WEB COPY

For Appellants	: Mr.V.Kathirvel, Senior Counsel
(in both appeals)	assisted by Mr.D.Venkatesh
For Respondent	: Mr.R.Anandharaj
(in both appeals)	Addl. Public Prosecutor

C O M M O N J U D G M E N T

K.KALYANASUNDARAM, J.,

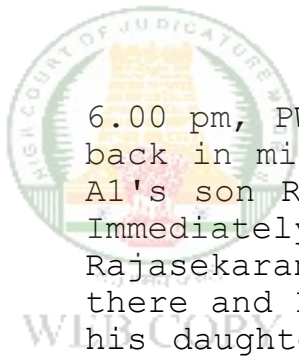
The appellants are the accused in Sessions Case No.8 of 2006 on the file of the Additional District and Sessions Judge, Dindigul. The charges against the accused are that 147, 427, 323, 302 r/w 109 IPC (A1, A5 and A6); 148, 427, 323 and 302 IPC (A2); 148, 427, 323, 324 and 302 IPC (A3); 148, 427, 324, 302 r/w 149 IPC (A4); 147, 427, 302 r/w 149 IPC (A7) and 147 and 427 IPC (A1). The accused stand convicted and sentenced to undergo 6 months simple imprisonment under section 427 I.P.C.; 3 months simple imprisonment under section 323 I.P.C.; one year simple imprisonment under Section 148 I.P.C.; 2 years simple imprisonment with fine of Rs.5,000/-, carrying default sentence under Section 324 I.P.C., the accused were sentenced to undergo life imprisonment together with fine of Rs.10,000/-, carrying a default sentence under Sections 302, 302 r/w 149, 302 r/w 109 I.P.C.

2. It is to be noted that pending trial, A5 Ramasamy died and hence, the charges against him abated. Pending appeal, A6 Nagaraj passed away on 26.09.2018 and hence, the charges against him also abated.

3. The case of the prosecution necessary for the disposal of these appeals would run thus:-

This is a case of playful act of two adolescents led to a group clash, eventually resulted in death of one Alagarsamy and causing injuries to PW1 and PW2 and A1 and A4. PW1 and PW2 are husband and wife. PW3 is the daughter of PW1 and PW2. The deceased Alagarsamy is husband of P.W.4 and brother of P.W.1. A1 is the father of A2. A3 and A4 are the sister's son of A1. A5 is the younger brother of A1. A6 and A7 are his relatives. Both the accused party and prosecution party are permanent residents of Viralipatti.

4. The story of the prosecution is that P.W.1 runs a provision store at Viralipatti Busstand. On 03.10.2003 at about



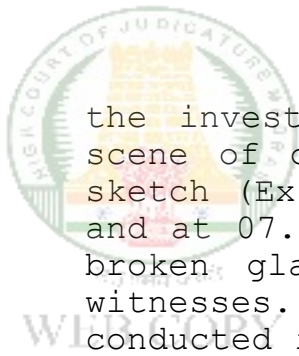
6.00 pm, PW3 was proceeding to her grandmother's house, but returned back in midway screaming. On enquiry PW1 and PW2 were informed that A1's son Rajasekaran threw stones on her and also pulled her hair. Immediately, PW2 took PW3 to the house of A1 to question the act of Rajasekaran. At that time, PW1's brother-in-law Kannan also came there and PW1 requested his brother-in-law to bring his wife PW2 and his daughter PW3 back to his house. In the meanwhile, PW2 and PW3 reached the house of A1 and when they questioning the act of the said Rajasekaran, PW1 to PW4 attempted to assault them with pestle. Then they came back and the prosecution party wanted to leave the matter as it is. While so, at 6.00 pm on 04.10.2003, PW1 and PW2 were cleaning their shop to celebrate Ayutha Pooja. A1 went to the shop and made sarcastic comments against P.W.1, which was objected by him. A1 left the place and within 10 to 15 minutes, A2 and A3 armed with knife, A4 with iron road and the other accused with sticks, came back to the shop of PW1 and caused damages to the glass jar and other articles.

5. The further case of the prosecution is that proclaiming that no one is there to question them even they commit murder, A1 assaulted PW1 on his left shoulder, while the other accused pulled him down and beat him with sticks and hands. On hearing the hue and cry, PW1's brother Alagarsamy came to the spot and he took a stick and attacked A1 and A3. So, A1, A5 and A7 instigated the other accused to kill the deceased Alagarsamy. Thereafter, the deceased Alagarsamy ran to his house, but he was chased by the accused and brought back to the staircase of the shop, where A4 and A7 caught hold and pressed him against the wall, A3 with knife inflicted injury on the left flank and left neck. PW2 intervened, A3 assaulted on her left nape. On seeing the people rushed to the scene, the accused took to their heels.

6. The further story of the prosecution is that PW5 brought a Car from Battalagundu and took deceased, PW1 and PW2 to Government Hospital, Battalagundu, where the deceased Raja @ Alagarsamy was declared brought dead. PW2 and PW3 were admitted in the hospital. P.W.13, Dr.Thamilarasan, after providing first aid to PW3, referred her Rajaji Government Hospital, Madurai, for better treatment.

7. PW15 the Sub Inspector of Police, attached to Battalagundu Police Station on receipt of intimation, went to the Hospital and received a complaint from P.W.1 and registered a case at 9.15 p.m., in Crime No.516 of 2003 for the offence under section 147, 148, 341, 323, 324, 307 and 302 IPC. Ex.P19 is the First Information Report. Then, he immediately made arrangements to send the FIR and the complaint to the concerned Judicial Magistrate Court.

8. PW16, Inspector of Police attached to Vilamapatti Police Station, who was in-charge of Battalagundu Police Station took up



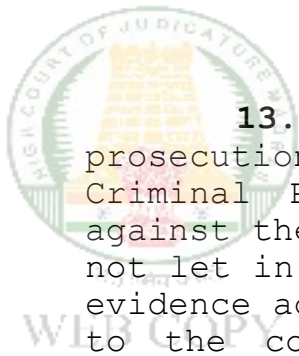
the investigation. On 05.10.2003 at about 6.00 am, went to the scene of occurrence and prepared observation mahazar (Ex.P20) and sketch (Ex.P21), which was attested by one Bharathidasan and Pichai and at 07.15 am, he recovered blood stained earth, sample earth and broken glass bottle, MOs.7 to 13 in the presence of the same witnesses. In continuation of investigation, at 8.00 am, he conducted inquest on the body of the deceased in the presence of the panchayadhars and other witnesses. Ex.P23 is the inquest report. Thereafter, he handed over the body to Murugesan, Head Constable, for postmortem. He obtained statement from the witnesses on 07.10.2003 and handed over the investigation to the Inspector of Police Karnan.

9. P.W.14 is the Duty Doctor, who did postmortem on the dead body of the deceased Alagarsamy on 05.10.2003, found four injuries as noted by him in Ex.P17. Ex.P18 is the requisition given by the Investigating Officer to conduct postmortem. According to him, death would have occurred 16 to 18 hours prior to autopsy, as a result of shock and haemorrhage due to the injuries sustained by him.

10. PW17 took up the further investigation on 08.10.2003 and visited the scene of occurrence, examined and obtained statement from the witnesses. On 13.10.2003, he sent the materials objects to the concerned court. On 17.10.2003, he came to know that A2 and A4 surrendered before the Judicial Magistrate, Nelakottai, PW17 gave requisition on 21.10.2003 for custody of the accused. On 21.10.2003 itself, the custody of the accused was handed over to the Investigating Officer and A2 and A6 gave a voluntary statement before PW17. In pursuance of the statement of A2, MO3 Knife was recovered and 3-1/2 feet wooden log was recovered on the basis of the statement of A6 in the presence of Bharathidasan and Pichai. On 17.11.2003, A5 and A6 surrendered before the Judicial Magistrate court, Nilakottai. On requisition, the custody was handed over to the Investigating Officer and on 24.11.2003, they gave a statement in the presence of Mahalingan and Murugan. On that basis, 3 feet and 2-1/2 feet sticks were recovered. After obtaining statement from the witnesses and after completing the investigation, PW17 lodged a final report against all the accused.

11. When the accused were questioned under section 313(1) of the Criminal Procedure Code, they denied the charges and claimed for trial.

12. In order to prove the charges, the prosecution examined as many as 18 witnesses, besides marked Exs.P1 to P40 and MOs1 to 14.



13. On completion of the evidence on the side of the prosecution, the accused were questioned under section 313 of the Criminal Procedure Code about the incriminating materials found against them and they denied all of them are false. The defence did not let in any oral or documentary evidence. On appreciation of the evidence adduced by the prosecution, the learned Sessions Judge came to the conclusion that the prosecution has proved the charges against the accused beyond all reasonable doubts and found them guilty and convicted and sentenced them to undergo imprisonment as stated supra. Hence, these appeals at the instance of the appellants/A1 to A3 and A4, A5 and A7.

14. Mr.V.Kathirvel, learned Senior counsel appearing for the appellants would argue that the investigation in this case is a bias one in favour of the prosecution party; the Investigating Officer though registered the case in Crime No.517 of 2003 on the strength of the complaint given by the accused party, failed to conduct investigation properly and also failed to produce the materials before the concerned court. He further added that the prosecution cited PW1 to PW4 as eye witnesses to the occurrence, but their evidence is untrustworthiness and unbelievable due to the material contradictions in their evidence. Further, the unexplained delay in registering the case and sending FIR would show that the complaint was given after due deliberation and discussion. Since the genesis of the occurrence has been deliberately suppressed by the prosecution and they did not come to the court with clean hands, the appellants are entitled for acquittal.

15. Per contra, Mr.R.Anandhraj, learned Additional Public Prosecutor appearing for the State contended that PW1 to PW3 have spoken about the motive for the commission of the occurrence. PW1 and PW2 are the injured eyewitnesses and P.W.4 is the wife of the deceased, they have categorically stated about the overt act attributed against the accused and there is no reason to disbelieve their testimony. It is further contended that though the witnesses were examined to prove the confession and recovery of weapons, P.Ws.9 to 12 turned hostile and the weapons were identified by the witnesses and the same was accepted by the trial court. The Investigation Officer received copies of the FIR relating to Crime Nos.516 and 517 of 2003 and after investigation, he found out that the accused party are aggressors and hence, he referred the Crime No.517 of 2003 as Mistake of Fact. According to the learned Additional Public Prosecutor, even though the Investigating Officer did not produce the case papers relating to Crime No.517 of 2003, admittedly the accused party filed a private complaint against the prosecution party, where they produced all the records and hence, no fault can be found against the prosecution.



16. Heard the rival submissions and carefully perused the materials available on record.

17. It is not in dispute that Alagarsamy died due to homicidal violence on 04.10.2003 and in the course of the same transaction, P.Ws.1 and 2 and A1 & A4 also sustained injuries. The dead body was subjected to postmortem. Ex.P17 is the postmortem certificate. P.W.14 is the Doctor, who did postmortem. So, we hold that the prosecution has established that Alagarsamy died due to homicidal violence.

18. Indisputably, the accused party and the prosecution party are permanent residents of Vilampatty village in Dindigul District. It appears from the materials available on record that they are living peacefully without even pinpricks. It is not the case of the prosecution that they belong to different political parties or any property dispute exists between them. It is the case of the prosecution that on 03.10.2003 at 6.00 pm, when PW3 had gone to the house of her grandmother, the son of A1, namely, Rajasekaran thrown stones on her and also pulled her hair. It appears that both the said Rajasekaran and PW3 were 8 to 9 years old at the relevant point of time. On account of PW3 reported the incident to her parents, P.W.2 got annoyed and went to the house of A1, in order to question the act of the said Rajasekaran. It is the further case of the prosecution that PW1 sent his brother in law Kannan to bring back PW2 and PW3, since he does not want to precipitate the issue.

19. It is an admitted fact that there was no complaint with regard to the incident that is said to have been taken place on 03.10.2003. Admittedly, PW17 did not even examine PW1's brother-in-law and son of A1 Rajasekaran, which reveals no investigation was carried out to ascertain the truth in the motive alleged by the prosecution.

20. The next issue arises for consideration is whether the testimony of P.Ws.1 to 4 are credible and trustworthy and that can be relied on to sustain conviction on the accused.

21. It is the specific case of the prosecution that PW1 was attacked by A4 Ravichandran with iron rod. In Ex.P1, it is stated that A4 had attacked him with heavy force with iron rod in his left shoulder. But before the Court, PW1 took U turn and deposed that A1 assaulted him with stick and thereafter, the other accused pulled him down and assaulted with hands and sticks. PW13 Dr.Tamilarasan, who treated the PW1 at Government Hospital, Battalagundu found him sustained simple injuries. Ex.P16 is the Accident Registrar. P.W.3 also stated that A4 used iron rod to assault her father P.W.1. It is to be noted that had A4 attacked PW1 with iron road with heavy force, certainly PW1 would have sustained fracture on his left



shoulder. That apart, the iron rod said to have been used by A4 to attack PW1 was not at all recovered during investigation.

22. PW2 in her chief examination stated that after she was inflicted injury by A3 with knife, she became unconscious and fell down and she could recover conscious only at the Rajaji Government Hospital, Madurai, where she was informed about the death of Alagarsamy. But during the cross examination, she has admitted that she was conscious throughout. Ex.P15 - copy of Accident Register shows that PW2 also sustained simple injury. Further, PW13 Doctor, who treated PW2 deposed that PW2 informed him that she was assaulted by six known persons with knife and sticks. The Doctor further stated that PW1 informed that he was also assaulted by six known persons with sticks, knife and hands.

23. A perusal of Ex.P1 reveals that the names of PW3 and PW4 have not been mentioned therein. PW17 Investigating Officer deposed that the incident was not witnessed by PW3 and PW4. That apart, in Ex.P1, P.W.1 mentioned only two injuries and no explanation was offered as to how the deceased sustained injury on his back, when he was pressed against the wall and caught hold by A4 and A7.

24. It is not disputed that at 18.15 hours on 04.10.2003, the incident had taken place. The distance between the scene of occurrence and the Police Station is 7 Kms. Taxi stand and the Government Hospital are situated just in front of the Police Station. But, the case came to be registered at 21.15 hours and the complaint and the printed F.I.R. reached the Court at 11.40 hours on the same day. It is the contention of the learned Senior Counsel for the appellants the witnesses have admitted that the Police could reach the Hospital in 2 to 3 minutes, but the delay occurred is to falsely rope in all the accused in this case. It is next contended by the learned Senior Counsel that the earliest complaint given by P.W.4 has been suppressed and Ex.P1 was prepared to suit the case of the prosecution. In this regard, if we look into the evidence of P.W.4, she has consistently deposed that on the same date she lodged a complaint and she was examined by the Police next day. However, P.W17, Investigating Officer has stated that no complaint was made by P.W.4 and the statement under Section 161 Cr.P.C. was recorded from P.W.4 only on 27.11.2003.

25. PW17 also admitted that he obtained statement from PW3 only on 27.11.2003. PW1 to PW4 in a parrot like story stated that PW2 sustained injury near the staircase of the Shopping Complex, but in Ex.P21 sketch, it is stated that she was assaulted in front of her shop No.2. Ex.P21 shows that both are different places and the bus stand is situated in front of the place of occurrence. Though the occurrence happened on the day of Ayutha Pooja and in a public place, prosecution failed to examine independent witnesses to



corroborate the evidence of the interested witnesses.

26. It is not in dispute that in the course of same transaction, A1 and A4 sustained injuries and they were also admitted in the Government Hospital at Battalagundu on the same day. On the basis of the confession of A1, a case in Crime No.517 of 2003 was registered. PW17 has categorically admitted that he did not recover the weapons used against A1 and A3. Admittedly, A1 and A3 took treatment in Battalagundu Government Hospital and Government Rajaji Hospital, Madurai and Aravind Eye Hospital, Madurai and CF Hospital, Oddanchatram. A1 sustained fracture and the injury was grievous in nature. However, the Investigating Officer, without conducting investigation, in Crime No.517 of 2003, on the very same day of the registration of the case, closed it as mistake of fact. And, on the top of it, he failed to produce any of the document relating to counter case before the Court.

27. It is settled principles of law that in the case of case and counter, the Investigating Officer has to investigate both complaints in a manner known to law and file the final report in one case and exhibit the materials collected by him during investigation in the connected complaint before the court, leaving the entire issue namely, which is true or false to be decided by the Court. But the Investigating Officer PW17 failed to produce the FIR, statement obtained from the witnesses and the materials collected in connection with the Crime No.517 of 2003.

28. In this regard, it is useful to refer the decision of this court made in Crl.A No.15 of 2004, dated 04.09.2006 in the case of **Ravichandran and six others Vs. Inspector of Police, Thittakudi Police Station**. In that case, the Division Bench of this Court has held in para 14 as follows:-

"14.This Court has been repeatedly holding that when there is a case and counter the investigating officer has to investigate both the complaints in a manner known to law and file the final report in one case and exhibit the materials collected by him during investigation in the connected complaint before the Court, leaving the entire issue namely, which is true or false to be decided by the Court. This is not done in this case namely, the complaint given by A.1 is not marked; the statement of witnesses recorded during investigation on that complaint is not marked and on top of it the final report is also not marked. Therefore it appears that the police officer namely, P.W.12 holding back the entire records with him, wants the Court to believe his evidence, that the complaint given by A.1 is false and therefore it deserved to be rejected, as a gospel truth. The police officer is



only an investigating officer and he is not the adjudicator. On the other hand it is for the Court to decide which complaint is true and who are the aggressors. In this context, there is some useful material on record. P.W.12 admitted that Saraswathy and Alamelu are eye witnesses to the occurrence and he had examined them. He had also admitted that he had sent their statements to the Court along with the final report. He had admitted that Saraswathy and Alamelu told him during investigation that it was a free for all situation at the occurrence time. This material that came through the mouth of Saraswathy and Alamelu is admitted by P.W.12. This answer is more than sufficient to hold that there should have been free for all fight at the occurrence time. P.W.12 had not chosen to examine Saraswathi and Alamelu and the reasons are not far off to be seen. P.W.1 is the elder brother of the deceased. P.W.2 is the mother of P.W.1 and the deceased. P.W.3's husband is the younger brother of P.W.1. P.W.4's mother is the sister of P.W.1. The deceased is the junior paternal uncle of P.W.6. P.W.1 had married P.W.8's elder sister. P.W.9's wife is the elder sister of P.W.1's wife. Therefore all the eye witnesses and the deceased are thickly related. There is a long standing enmity between the prosecution party and the accused. On these facts, non-examination of Saraswathi and Alamelu, in the context of the disclosures made by them during investigation assumes importance. In this context the stand of the first accused taken by him in his written statement filed at the end of questioning appears to be more probable than the prosecution case. The Supreme Court as early as in the year 1976 in the case *Lakshmi Singh v. State of Bihar* AIR 1976 SC 2263: 1976 Cr (LR) 1736: 1976(4) SCC 394 held that when the origin of the prosecution case is suppressed, then the prosecution case must fail. In this case for more than one reason, we find that the prosecution is definitely guilty of suppressing the origin of the case.

29. In the decision of this court made Crl.A(MD)No.679 of 1999, dated 10.01.2008 in the case of **Rathiam alias Rathinasamy and 12 others and the State rep. by the Inspector of Police, Taluk Police Station, Aruppukkottai, Virudunagar District**, the same principle has been reiterated. In that case, some of them were injured witnesses and the injuries sustained by the accused was spoken by the witnesses, even then, the accused were acquitted. The relevant paragraphs are extracted hereunder:-



10.From the very evidence available through the Investigator, it could be seen that both the crime numbers, namely 20/97 and 21/97, are part and parcel of the same transaction. If that be so, the law would mandate that the prosecution must place all the material facts before the Court in order to find out the truth or otherwise of the respective contentions. So long as the material papers and records pertaining to Crime No.21/1997 are not produced before the Court, the Court cannot find out even the genesis of the occurrence. Further, when four of the accused were also sustained injuries and they were sent for medical examination, pursuant to the registration of Crime No.21/97 which is part and parcel of the transaction in question, the prosecution should have produced all the necessary facts. It is pertinent to note, not even the FIR, statements recorded, wound certificates, final report or any one of the material pertained to Crime No.21/97 was placed before the Court. When the lower court has thoroughly failed to consider this aspect of the matter, in the considered opinion of the Court, so long as all the materials were not placed before the Court, the Court cannot find out the truth or otherwise of the prosecution case to adumbrate justice, in accordance with law, and hence the prosecution has miserably failed to produce those documents and suppressed them, by which the prosecution case cannot be accepted.

12.In the instant case, therefore, the submissions made by the learned Additional Public Prosecutor that the injuries sustained by the accused were explained and that would be the sufficient reason for non-production of the documents and materials relating to Crime No.21/1997 cannot be accepted. Since the prosecution has failed to produce the documents and materials relating to Crime No.21/1997, the court to unable to find out the genuineness of the crime and the or otherwise of the allegations or accusations made against the appellants and coupled with the fact that there was long delay noticed in the FIR reaching the Court, the Court is of the considered view that the appeal has got to be entertained by upsetting the judgment of the trial Court insofar as convicting and sentencing the appellants.



30. In the present case, the trial court rejected the defence of the accused on the ground that in the private complaint, they failed to explain the injuries sustained by the prosecution witnesses in this case. It is further held that the Investigating Officer deposed that he conducted investigation in both the crime Nos.516 and 517 of 2003 and hence, the investigation was made proper in both the cases. We are not able to understand on what basis, this finding has been given by the trial court, when PW17 has admitted that he did not even recover the weapons used by the deceased to assault the accused viz., A1 and A3 and the injuries sustained by them, has not been explained and he failed to collect the case sheet of the accused. It cannot be disputed that the case in Crime No.517 of 2003 came to be referred as mistake of fact on the same date of registration of the case. Hence, the findings of the trial court cannot be countenanced.

31. It is the next contention of the learned Senior counsel appearing for the appellants that in a criminal trial, the basic principles of natural justice is to provide an opportunity to the accused to explain the incriminating circumstances put against them. But the learned trial Judge failed to frame questions in a proper manner, but the entire evidence of the witnesses have been framed as questions. Hence, the conviction and sentence against the appellants is liable to be set aside. In this regard, the decision of the Hon'ble Apex Court reported in **(2020)10 SCC 108 (Maheshwar Tigga Vs. The State of Jharkhand)** has been relied on, wherein the Hon'ble Apex Court held in para 9 as follows:-

"9.It stands well settled that circumstances not put to an accused under Section 313 Cr.P.C. cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt. This Court, time and again, has emphasised the importance of putting all relevant questions to an accused under Section 313 Cr.P.C. In *Naval Kishore Singh v. State of Bihar*, (2004) 7 SCC 502, it was held to an essential part of a fair trial observing as follows:-

"5.....The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to



explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence..."

32. This Court is conscious of the fact that P.Ws.1 and 2 are not only eyewitnesses, but also injured witnesses. Ordinarily, the Court could not discard their evidence, however, in view of improbabilities, the the serious omissions and infirmities pointed about above, the interested natured of evidence, we are of the opinion that the testimony of P.Ws.1 to 4 does not inspire confidence of this Court and it would be highly unsafe to sustain conviction, which was made on the basis of the evidence of P.Ws.1 to 4. That apart, though P.W.5 was examined as eyewitness and independent witness in this case, but he did not fully support the prosecution case and he turned hostile.

33. For the foregoing reasons, we are of the considered view that the conviction and sentence recorded by the trial court are not supported by credible evidence and the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and the benefit of doubt has to be given to the appellants.

34. In the result, both Criminal Appeals are allowed. The conviction and sentence imposed on the Appellants/A2 and A3 in Crl.A (MD)No.328 of 2018 and the Appellants/A1, A4, A6 and A7 in Crl.A(MD) No.329 of 2018 by Judgment, dated 17.07.2018 in SC No.8 of 2006 by



the learned Additional District and Sessions Judge, Dindigul are set aside. The bail bonds, if any executed by the appellants, shall stand cancelled and the fine amount, if any, paid by them shall be refunded.

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Note :

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

TO

- 1.The Additional District and Sessions Judge,
Dindigul.
- 2.The Inspector of Police,
Vathalagundu Police Station, Dindigul District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
V.R. Section, (2C)
Madurai Bench of Madras High Court,
Madurai.

Crl.A.(MD)Nos.328 and 329 of 2018
30.03.2021

MJ(CO)
KB(21.04.2021) 13P 6C