

BAIL SLIP

Appellants 4 and 5/Accused 4 & 5 namely, Selvakumar, Aged 41, and Venkatesh, Aged 30 were directed to be released on bail as per order of this Court, dated 25.07.2019 made in CRL MP(MD).No.6047 of 2019 in CRL A(MD).No.549 of 2018.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.09.2021

Delivered on : 27 .09.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A (MD)No.549 of 2018

and

Crl.MP(MD)No.3848 of 2020

1.Vetri
2.Karthick
3.Rajkumar
4.Selvakumar
5.Venkatesh

.. Appellants/Accused 1 to 5

-vs-

The State
By the Inspector of Police,
West Police Station,
Thanjavur,
Crime No.528/2014

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment and conviction dated 30.11.2018 passed by the learned I Additional District and Sessions Judge(PCR), Thanjavur in S.C.No.442 of 2015 and acquit the appellants.

For A-1 & A-3 :: Mr.V.Ramamurthy

For A-2 :: Mr.Arun Prasad

For R4 & A-5 :: Mr.M.Karunanidhi

For Respondent :: Mr.A.Thiruvadikumar
Additional Public Prosecutor

**JUDGMENT**

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

Totally there are six accused in this case, pending trial A-1 died. Hence, the remaining five accused stood charged as follows:

Charge No.	Rank	Charge
1.	A1 to A5	120-B r/w 302 I.P.C
2.	A1 to A5	148 I.P.C
3.	A3	341 I.P.C
4	A1 to A3	302 r/w 149 I.P.C
5.	A4 & A5	302 r/w 149 I.P.C
6.	A1	506(ii) I.P.C
7.	A2 to A5	506(ii) r/w 149 I.P.C

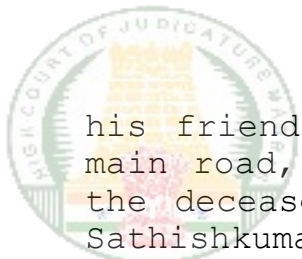
2. By judgment dated 30.11.2018, the trial Court acquitted A-1 for the offence under Section 148, 506(ii) I.P.C, A-2, A-3 for the offence under Section 148, 506(ii) r/w 149 I.P.C and A-4 & A-5 for the offence under Sections 148, 302 r/w 149, 506(ii) r/w 149 I.P.C and has convicted and sentenced them as follows:-

Rank of the accused	Convicted under Section	Sentence Imposed	Fine	Default Sentence
A1 to A5	120-B r/w 302 I.P.C	Life Imprisonment	Rs.50,000/- (each)	3 months S.I.
A1 to A3	302 r/w 341, 120-B I.P.C	Life Imprisonment	Rs.10,000/- (each)	3 months S.I.
A-3	341 I.P.C	1 month S.I.	Rs.500/-	1 week S.I.

The sentences are ordered to run concurrently. Challenging the aforesaid conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

The deceased in this case by name Malaiarasan is the son of P.W.1. On 25.12.2014, at about 10.30 a.m., while the deceased and <https://hcservices.ecourts.gov.in/hcservices/>



his friend P.W.17, came in a two-wheeler in Karanthai - Thanjavur main road, near C.R.C., bus depot, A-3 waylaid him. At that time, the deceased accused Appu @ Sathishkumar and A1, joined him and attacked the deceased with Bill Hook on his head. A-3 attacked him near the ear of the deceased and criminally intimidated P.W.17 and ran away from the scene of occurrence. P.W.17 rushed back to the house of the deceased and informed P.W.1, the mother of the deceased about the occurrence. Then P.Ws.1 and 17 rushed to the scene of occurrence, where P.W.5 and another friend of the the deceased were present. Then they called an Ambulance and took the body to the Medical College Hospital, Thanjavur, where he was declared brought dead. Thereafter, they went to the respondent police and lodged a complaint at about 12.30 p.m.

4. P.W.16, the Sub-Inspector of Police, working in the respondent police station, received the complaint and registered the F.I.R(Ex.P13) in Crime No.528 of 2014 against four unnamed persons for the offence under Sections 302 I.P.C., and sent the F.I.R to the Judicial Magistrate No.I, Thanjavur, also sent the copy of the F.I.R to the Inspector of Police and other higher officials for investigation.

5. P.W.20, the Inspector of Police working in the respondent police station, on receipt of the First Information Report, commenced the investigation and visited the place of occurrence at about 12.45 a.m., and prepared Observation Mahazar (Ex.P.18) and Rough Sketch (Ex.P.19) and collected bloodstained thaar(M.O.12) from the road, ordinary thaar(M.O.13) from the road, in the presence of witnesses and also recovered a two-wheeler under a mahazar. Thereafter, he proceeded to the Medical College Hospital, Thanjavur and at about 2.15 p.m., he conducted inquest on the dead body in the presence of Panchayatars and witnesses and prepared Inquest Report (Ex.P.21) and sent the dead body for conducting postmortem through P.W.13 - Special Sub-Inspector of Police and recorded the statements of the witnesses.

6. P.W.15-Dr.Tamizhmani, Assistant Professor, working in the Medical College Hospital, conducted autopsy on the dead body at about 4.00 p.m., and found the following injuries:

"1.An oblique gaping heavy cut injury of size 15cm X 2cm X cranial cavity depth noted over right side of forehead and top of middle of head. It lies 6cm above right eyebrow and 10cm above right ear. It cuts underlying scalp, skull bone meninges and brain matter.

2.An oblique gaping cut injury of size 7cm X 3cm X cranial cavity depth noted over occipital region. It



cuts underlying scalp, skull bone and meninges. It lies 6cm below injury No.1.

3.An oblique gaping heavy cut injury of size 11cm X 4cm X cranial cavity depth noted over right temporal and parietal region. It lies 10cm below injury No.1. It cuts underlying scalp, skull bone and brain matter.

4.An oblique gaping heavy cut injury of size 14cm X 3cm X bone depth noted over right temporal, parietal and occipital region. It lies 4cm below injury No.3.

5.An oblique gaping heavy cut injury of size 22cm X 3cm X 9cm seen over right side of face, right side of neck, back of neck and occipital region. It cuts underlying soft tissues major vessels, Nerves, facial bones occipital bone and cervical vertebrae no.1 and its spinal cord with medulla oblongata. It lies 5cm outer to right side of nose, 1cm below right ear and 6cm below occipital protuberance.

6.An oblique gaping heavy cut injury of Size 18cm X 2cm X 7cm seen over right side of face, right side neck and back of neck. It cuts underlying soft tissue, major vessels, nerves, facial bones and cervical vertebrae no.3 and its spinal cord. It lies 1cm below injury no.5.

7.An oblique gaping heavy cut injury of size 13cm X 2cm X 7cm seen over right side of face, right side of neck. It cuts underlying soft tissue, major vessels, nerves, trachea esophagus, facial bones. It merge with injury no.6.

8.An oblique gaping heavy cut injury of size 16cm X 3cm X 4cm seen over right side of face, jaw, right side of neck and back of neck. It cuts underlying soft tissue, major vessels, nerves, trachea esophagus and facial bones and jaw bones. It lies 1cm below injury no.7.

9.An oblique gaping heavy cut injury of size 8cm X 3cm X 2cm over right side of face, right lower jaw, right side of neck. It cuts underlying major vessels, nerves, trachea. It lies 1cm below injury no.8.

10.An horizontal cut injury of size 3cm X 2cm X 1cm seen over right lower jaw.



11. An oblique gaping heavy cut injury of size 14cm X 5cm X 7cm seen over front and right side of neck. It cuts underlying major vessels, trachea, oesophagus and cervical vertebrae No.6 and its spinal cord. The tailing mark of length 7cm noted in its inner part. It lies 1cm below injury No.10

12. A horizontal cut injury of Size 3cm X 1cm X 2cm seen over right side of neck. It lies 5 cm below injury no.11

13. Abrasion seen on the following areas:
12cm X 1cm over right arm, 3 X 1cm right forearm.
5 cm X 1 cm over right wrist.

ON DISSECTION OF HEAD:

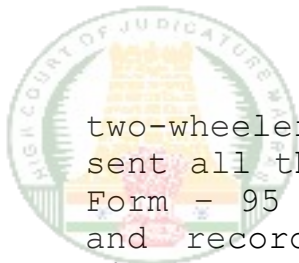
Scalp contusion noted entire scalp. Marked subdural, subarachnoid hemorrhage noted over entire cerebrum & cerebellum. 10 cm length fissure fracture noted middle cranial fossa.

OTHER FINDINGS:

Heart: Normal. Coronary Vessels Patent. Hyoid bone: Intact. Stomach: Contains 350 gm of partially digested cooked food particles, no specific smell, Mucosa - Pale. Lungs, Liver, Spleen & Kidneys - Normal, c/s Pale. Small Intestine: Contains 100 ml of brown coloured fluid. No specific smell. Mucosa pale. Bladder: Contains 20 ml of urine. Brain: as Described. Spinal Column : As Described.

He was of the opinion that the deceased would have died due to multiple cut injuries over the region of head and neck and other vital organ of brain and spinal cord.

7. P.W.20, continued the investigation and recorded the statement of P.Ws.3, 5 and 17 and based on their statements, altered the F.I.R against six accused persons for the offence under Sections 341, 506(ii), 302, 120(B) I.P.C. On the same day at about 4.15 p.m., he arrested A-4 and A-5 and on such arrest, A-4 voluntarily came forward to give a confession. He recorded the confession of the accused in the presence of witnesses and based on admissible portion of his confession, he recovered two bloodstained Bill Hooks (M.Os.5 and 6) under mahazar Ex.P4, in the presence of witnesses and the remaining accused surrendered before the Judicial Magistrate No.5, Trichy on 05.01.2015 and A-3 voluntarily came forward to give a confession, on his confession, he recovered two



two-wheelers and three Bill Hooks (M.Os. 7 to 9) under mahazar and sent all the material objects to the Judicial Magistrate Court under Form - 95 (Ex.P.18), and remanded the accused to judicial custody and recorded the statement of the Postmortem Doctor and other witnesses and after completing the investigation, on 13.02.2015, he filed the final report before the learned Judicial Magistrate No.1, Thanjavur, for the offence under Sections 147, 148, 120(b), 341, 506 (ii), 302 r/w 149 I.P.C

8. Considering the above materials, the trial Court framed charges as mentioned above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 20 witnesses, marked 24 documents and also produced 13 material objects.

9. Out of the witnesses examined, P.W.1 is the mother of the deceased. According to her, on 15.12.2014, Christmas day, the deceased and P.W.17 went in a two-wheeler. After sometime, P.W.17 came and informed her that her son was attacked by some unknown persons and caused his death. Thereafter, she has given a complaint before the respondent police. P.W.2 is the neighbour of P.W.1, he turned hostile. P.W.3 is a person known to the deceased. He spoke about the conspiracy. According to him, prior to the occurrence, while he and his friend one Sathish(P.W.4) walking near a mutton stall in Pookulam Street, they saw all the accused discussed that since the deceased attacked the deceased accused Appu and A-4, they wanted to finish him off. A-5 was also present there and supported him stating that he will take care of the expenses. Subsequently, from the newspaper report, they came to know about the murder. Then, he approached the police and gave a statement.

10. P.W.4 is another witness spoke about the conspiracy. According to him, he along with P.W.3, heard all the accused hatched a conspiracy to murder the deceased. P.W.5 is the friend of the deceased and he is an eyewitness to the occurrence. According to him, on the date of occurrence ie., on 25.12.2014, while he was standing near a tea shop, both the deceased and P.W.17 came in a two-wheeler. At that time, A-3 waylaid the deceased and the deceased accused Appu attacked him on the head, then, A-3 and A-4 attacked him on the neck and ran away. Then P.W.1, came to the scene of occurrence and they took the body to the Medical College Hospital, Thanjavur and they identified all the accused in the Court during trial.

11. P.W.6 is running a cycle stand near the place of occurrence. He turned hostile. P.W.7 is running a restaurant near the occurrence, he also turned hostile. P.W.8 is a tea shop owner near the place of occurrence. He also turned hostile. P.W.9 is the brother of P.W.1. According to him, he saw the dead body in the Medical College Hospital. P.W.10 is the Village Administration



Officer. He is the witness to the Observation Mahazar and Rough Sketch and also the arrest of A-4 and A-5 and recovery of material objects. P.W.11 is Village Menial. He spoke about the confession given by A-1 and A-3 and recovery of Bill Hooks and other material objects.

WEB COPY

12. P.W.12 is the Head Clerk working in the Judicial Magistrate Court No.1, Thanjavur. He spoke about the receipt of material objects. P.W.13 is the Special Sub-Inspector of Police working in the respondent police station. He took the body for postmortem and identified the body. P.W.14 is the another Special Sub-Inspector of Police. He handed over the materials objects to the District Forensic Lab, Thanjavur. P.W.15, is the Doctor, conducted postmortem autopsy on the dead body and prepared postmortem report Ex.P.11.

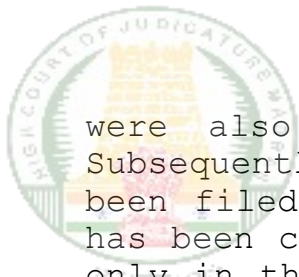
13. P.W.16 is the Sub-Inspector of Police working in the respondent police station, who registered the F.I.R. P.W.17 is an another eyewitness to the occurrence. He is the friend of the deceased. According to him, on the date of occurrence, while he along with the deceased going in a two-wheeler, A-3 waylaid them and the deceased accused Appu, A-2, A-3 and A-4 attacked the deceased and caused his death and he identified all the accused in the Court during trial.

14. P.W.18 is the Scientific Officer working in the Forensic Lab, who examined the visceral part of the deceased and gave a report Ex.P.15. P.W.19 is the another Scientific Officer, who examined the bloodstained material objects and gave a report Ex.P.16. P.W.20 is the Inspector of Police, who has conducted the investigation, arrested the accused and recorded the statement of witnesses and recovered the material objects and on completion of investigation, filed the final report.

15. The above incriminating materials were put to the accused under Section 313 Cr.P.C.. The accused denied the same as false. On their side, they have not examined any witnesses. However, the Accident Register was marked as Ex.D1.

16. Having considered the above materials, the trial Court convicted and sentenced the appellants/accused as stated in paragraph No.1..... of this judgment. Challenging the aforesaid conviction and sentence, the appellants are before this Court with this Criminal Appeal.

17. Mr.V.Ramamurthy, learned counsel appearing for A-1 and A-3, would submit that all the accused were falsely implicated in this case. According to him, the presence of P.W.5 and P.W.17, the alleged eyewitnesses in the scene of occurrence is doubtful. Originally, the complaint was filed by P.W.1 against four unnamed persons. At the time of giving complaint, both P.W.5 and P.W.17,



were also available and they had not identified the accused. Subsequently, after six days, on 01.01.2015, the altered F.I.R has been filed naming six accused. However, no identification parade has been conducted and both the eyewitnesses identified the accused only in the Court during trial after a period of three years. That apart, P.W.9, who is the close relative of the deceased in the cross-examination has stated that on the very next day of occurrence, he saw all the accused in the police lockup. Hence, even before filing the altered F.I.R., the police has arrested all the accused.

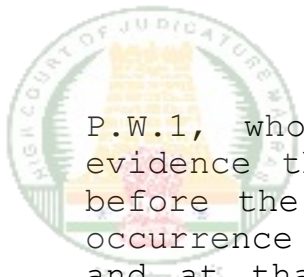
18. According to the learned counsel, there is a doubt regarding filing of complaint. According to P.W.1, the police obtained a statement from her in the scene of occurrence itself and obtained her signature. But, according to P.W.16, only at about 12.30 p.m., P.W.1 came to the police station and lodged the complaint.

19. So far as the conspiracy theory is concerned, P.Ws.3 and 4, who are all chance witnesses and close friends of the deceased. According to them, they came to know about the murder on the very next day. But, they have kept quiet and after six days only, they have given a statement before the respondent police. Hence, their evidence could not be relied upon. Further, it is not known, how the accused were identified and implicated in the crime. Without considering all those materials, the trial Court convicted the accused. Hence, he prays that the judgment of the trial Court is to be set aside.

20. Mr.M.Karunanidhi, learned counsel appearing for A-4 and A-5, would submit that there is a discrepancy with regard to the place of occurrence. The eyewitnesses have contradicted each other regarding the same. According to the learned counsel, even though the complaint said to be filed at about 12.30 p.m., according to P.W.1, while the dead body was taken to the hospital at about 11.15 a.m., the police were present in the scene of occurrence and they have recorded her statement. That apart, even though the complaint is said to be registered at about 12.30 p.m., the complaint reached the concerned Judicial Magistrate Court at about 2.00 p.m., and there is some correction in the time of receipt of F.I.R before the Court. It creates a doubt regarding the time of occurrence and registration of F.I.R.

21. The learned counsel appearing for A-2 adopted the arguments of the learned counsels appearing for the other accused.

22. Opposing the same, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the State would submit that, there are two eyewitnesses to the occurrence. P.W.17 took the deceased in a two-wheeler where the accused waylaid him and attacked him.



P.W.1, who is the mother of the deceased also corroborates his evidence that both the deceased and P.W.17 went in a two-wheeler before the occurrence. P.W.5, who was standing near the scene of occurrence saw both the deceased and P.W.17 came in a two-wheeler and at that time, all the accused waylaid them and attacked the deceased indiscriminately with Bill Hook and caused his death. The evidence of P.Ws.5 and 17 are consistent and clearly narrated the occurrence. That apart, only P.W.5 along with P.W.1 took the dead body to the hospital. The accident register also clearly reveals the same. That apart, the two-wheeler driven by P.W.17 also recovered by the police from the scene of occurrence. All those materials clearly established that both the eyewitnesses were present in the scene of occurrence. Since the name of the accused are not known to him, the F.I.R has been registered against four unnamed and identifiable persons. Subsequently, they identified the accused and they have been implicated. In the said circumstance, there cannot be any doubt about the presence of both the eyewitnesses in the scene of occurrence.

23. So far as the conspiracy is concerned, according to the learned Additional Public Prosecutor, P.Ws.3 and 4 clearly spoke about the same and immediately after coming to know about the occurrence, they appeared before the police and informed the same. The medical evidence also clearly corroborates the evidence of the eyewitnesses and there is no delay in filing the F.I.R and also sending the same to the Judicial Magistrate Court. Some of the accused namely A-1 to A-3, they themselves surrendered before the Judicial Magistrate Court and in the police custody, they gave confession and based on their confession, the weapons used for the occurrence have been recovered. Thus, the prosecution has clearly established the guilt of the accused. The trial Court after considering the entire materials, has rightly convicted the accused and there is no reason to interfere with the well considered judgment of the trial Court.

24. We have considered the rival submissions and also perused the records carefully.

25. The occurrence took place in a broad daylight at about 10.30 a.m., in a busy Thanjavur - Karanthai main road. According to the prosecution, while the deceased and P.W.17 came in a two-wheeler, A-3 waylaid them and A-2 and A-3 and the deceased accused Appu, attacked the deceased with Bill Hook. P.W.5-Karthikeyan, is the friend of the deceased and he was the eyewitness to the occurrence apart from P.W.17, who accompanied the deceased and A-4 and A-5 had been implicated in this case with the aid of Section 120 (B) I.P.C. P.Ws.3 and 4 spoke about the conspiracy. The complaint has been filed by P.W.1, the mother of the deceased at about 12.30 p.m., stating that four unknown persons attacked the deceased and caused his death. Based on that, F.I.R was registered against four



unnamed persons. According to the prosecution, the initial investigation reveals that only these accused were involved in the occurrence. Hence, after six days, F.I.R has been altered naming all the accused.

26. P.Ws.5 and 17 are said to be the eyewitness to the occurrence. Admittedly, both of them are the close friends of the deceased. The occurrence took place in a busy main road at about 10.30 a.m., and no independent witnesses were examined by the prosecution. After the occurrence, the body was taken to the Medical College Hospital, Thanjavur by P.Ws.1 and 5. But, the Accident Register was not marked by the prosecution. However, on the side of the accused, it has been marked as Ex.D1. From a perusal of the same, it could be seen that when the body was taken to the Medical College Hospital at about 11.15 a.m., P.W.5-Karthikeyan, who accompanied the body told the Doctor that, he found the dead body with multiple injuries in the scene of occurrence and the deceased was attacked by some unknown persons.

27. It is the contention of the learned counsel appearing for the appellants/accused that from the statement of P.W.5, it is seen that after the occurrence, only he saw the dead body and that is the reason why, the prosecution has suppressed the Accident Register and not examined the Doctor, who has received the dead body in the Hospital. We find some force in their arguments.

28. According to the prosecution, A-4 and A-5 said to have been arrested on 01.01.2015, the remaining accused surrendered before a Magistrate Court subsequently. From the evidence of P.W.9, the brother of P.W.1, it is seen that on the next day of occurrence, he saw all the accused in the police lockup in the respondent police station. That apart, according to P.Ws.3 and 4, the occurrence has been reported in the daily newspaper on the next day along with photographs of all the accused. From their evidence, it could be seen that all the accused were taken into custody by the police immediately after the occurrence and the arrest was shown subsequently. It creates a doubt on the prosecution story. As per the evidence of P.Ws.5 and 17, the overt act has been attributed only against four persons, who were said to be present in the scene of occurrence including the deceased accused Appu. So far as A-4 and A-5 are concerned, admittedly, they were not present in the scene of occurrence. But, they have been implicated in the crime with the aid of Section 120(b) I.P.C., that they were part of the conspiracy. P.Ws.3 and 4 are the witnesses for the conspiracy. Both of them are well known to the deceased and they are chance witnesses. According to them, while they were walking near Pookulam Street, all the six accused were joined together and hatched a conspiracy, the deceased accused Appu and A-4, said to have some motive against the deceased, wanted to murder the deceased and the other accused also agreed for that. Thereafter, in



furtherance of the conspiracy, A-1 to A-3 and the deceased accused Appu, attacked the deceased.

29. As stated above, the occurrence took place on 25.12.2014 and according to P.Ws.3 and 4, they came to know about the murder on the next day in the newspaper wherein the photographs of all the accused were published. However, they did not come forward to give any statement before the police immediately. According to P.W.20, the Investigating Officer, only on 31.12.2014 ie., after six days, they appeared before the police and said to have given a statement, there is no explanation for the delay in giving the statement. The accused are strangers to the above witnesses and no identification parade was conducted and they have not even identified the accused in the Court during trial. As both P.Ws.3 and 4 are chance witnesses, there is no explanation for their presence at that place, hence their presence at the scene of occurrence is doubtful, and their evidence is suspicious and does not inspire confidence. It is highly unsafe to rely upon their evidence.

30. The Honourable Supreme Court in **Jarnail Singh & Ors vs State of Punjab** reported in (2009) 9 SCC 719, has held as follows:

"22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v. Surat Singh (1997) 4 SCC 192; Harjinder Singh v. State of Gujarat (2004) 11 SCC 253; Acharaparambath Pradeepan & Anr. v. State of Kerala (2006) 13 SCC 643; and Sarvesh Narain Shukla v. Daroga Singh and Ors. (2007) 13 SCC 360). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan (2004) 10 SCC 632). Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident. (vide Thangaiya v. State of Tamil Nadu (2005) 9 SCC 650)."

31. As already stated, the accused are unknown to the eyewitnesses and no test identification parade was conducted, both the eyewitnesses identified A-1 to A-3 in the Court after three years from the date of occurrence. It is also admitted by P.W.17 in the cross-examination that he saw the photographs of the accused in the newspaper. So far as A-4 and A-5 are concerned, they were not present in the scene of occurrence and they have been implicated as they are part of the conspiracy. P.Ws.3 and 4 said to have seen both of them prior to the occurrence and they have not identified both the accused even during trial. As already held, the evidence of P.Ws.3 and 4 is highly suspicious and doubtful. In such



circumstances, a doubt has been arisen whether A-4 and A-5 actually involved in the occurrence.

32. That apart, as already stated, no test identification parade was conducted and the witnesses identified A-1 to A-3 in the Court during trial. The Honourable Supreme Court in **Dana Yadav v. State of Bihar** reported in **(2002) 7 SCC 295**, held that in the absence of test identification parade and in the absence of any corroborative evidence, it is highly unsafe to rely upon the identification of the accused first time in the Court. Relevant portion of the said judgment is extracted hereunder:

"It is also well settled that failure to hold test identification parade, which should be held with reasonable despatch, does not make the evidence of identification in court inadmissible rather the same is very much admissible in law. Question is what is its probative value? Ordinarily identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous Identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are fortified in our view by a catena of decisions of this Court in *Kanta Prashad v. Delhi Administration*, AIR (1958) SC 350: 1958 Cri LJ 698, *Vaikuntam Chandrappa v. State of A.P.*, AIR 1960 SC 1340:1960 Cri LJ 1681, *Budhsen v. State of U.P.*, (1970) 2 SCC 128:1970 SCC(Cri) 343, *Kanan v. State of Kerala*, [1979] 3 SCC 319:1979 SCC(Cri) 621, *Mohanlal Gangaram Gehani v. State of Maharashtra*, [1982] 1 SCC 700:1982 SCC (Cri) 334, *Bollavaram Pedda Narsi Reddy v. State of A.P.*, (1991) 3 SCC 434: 1991 SCC(Cri.) 586, *State of Maharashtra v. Sukhdev Singh.*, [1992] 3 SCC 700:1992 SCC(Cri) 705, *Jaspal Singh alias Pali v. State of Punjab*, [1997] 1 SCC 510:1997 SCC(Cri) 358, *Raju alias Rajendra v. State of Maharashtra*, [1998] 1 SCC 169:1998 SCC (Cri) 296, *Ronny alias Ronald James Alwaris v. State of Maharastra*, 1998 3 SCC 625:1998 SCC(Cri) 859, *George and Ors. v. State of*



Kerala and Anr., [1998] 4 SCC 605:1998 SCC(Cri) 1232, Rajesh Govind Jagesha v. State of Maharashtra, 1999 8 SCC 428:1999 SCC(Cri) 1452, State of H.P. v. Lekh Raj and Anr., [2000] 1 SCC 247:2000 SCC(Cri) 147 and Ramanbhai Naranbhai Patel and Ors. v. State of Gujarat, [2000] 1 SCC 358:2000 SCC(Cri) 113.

33. Considering all those circumstances, we are of the considered view that, the prosecution has not proved the guilt of the accused beyond reasonable doubt, the Court below without considering those aspects, has convicted the accused. Hence, the conviction and sentence imposed by the trial Court is liable to be set aside and the appellants are entitled for acquittal.

34. In the result, Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused, by the learned I Additional District and Sessions Judge (PCR), Thanjavur, in S.C.No.442 of 2015, by the judgment dated 30.11.2018, are hereby set aside. The appellants/accused are acquitted of all the charges levelled against them. Fine amount, if any, paid by the appellants/accused shall be refunded to them. The bail bond, if any executed by the appellants/accused, shall stand cancelled. The appellants are directed to be released forthwith, unless their custody is required in connection with any other case. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

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 I Additional District and Sessions Judge(PCR),
Thanjavur.

2. The Judicial Magistrate No.I, Thanjavur.

3. The Chief Judicial Magistrate, Thanjavur District at Kumbakonam.



4.The Judicial Magistrate No.I, Chengalpattu.

5.The Chief Judicial Magistrate, Kancheepuram District.

6.The Inspector of Police, Chengalpattu Town Police Station,
Chengalpattu.

7.The Inspector of Police,
West Police Station,
Thanjavur,

8.The Superintendent, Central Prison, Trichy.

9.The Director General of Police, Mylapore, Chennai 4.

10. The District Collector, Tanjore, District.

11. The District Collector , Trichy District.

12.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. (2 copies)

Judgment in
Criminal Appeal No.(MD) No.549 of 2018
Delivered on
27.09.2021

VR(CO)
TR/SKN(29.09.2021) 14P 15C