



BAIL SLIP

The Appellants namely 1). S.Sudhakar, S/o.V.Subramanian, 2). S.Jothibas, S/o.V.Subramanian, 3). S.Vetri mani, S/o.V.Subramanian, 4). V.Kolanji @ Kolanjinathan, S/o.Velayutham and V.Subramanian, S/o.Venkatesan accused in S.C.No.156 of 2014 on the file of the Principal District and Sessions Judge, Cuddalore were directed to be released on bail as per order of this Court dated 07.01.2019 (accused 2 to 5) and 09.07.2019 (accused 1) made in CrI.MP.Nos.94 of 2019 & 7163 of 2019 in CrI.A.No.4 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.1.2022

Delivered on: 02.2.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.4 of 2019

1. V.Subramanian
2. S.Sudhakar
3. S.Jothibas
4. S.Vetrimani
5. V.Kolanji @ Kolanjinathan .. Appellants/Accused 1 to 5

vs.

State rep. by
Inspector of Police,
Chozhatharam Police Station,
Srimushnam,
Cuddalore District.
(Crime No.72 of 2013)

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against judgment of conviction and sentence passed in S.C.No.156 of 2014 dated 18.12.2018 by the Principal District and Sessions Judge, Cuddalore.

For Appellants : Mr.S.Ashokkumar, Senior Counsel for Mr.P.Palaninathan

For Respondents : Mr.S.Sugendran, Government Advocate



JUDGMENT

Challenging the judgment of conviction and sentence rendered by the Principal District and Sessions Judge, Cuddalore in S.C.No.156 of 2014, A1 to A5 have preferred the present Criminal Appeal.

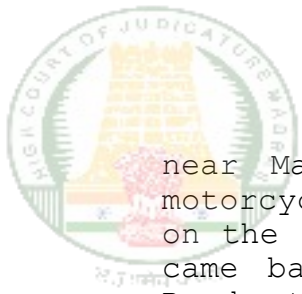
2. The appellants/accused stand convicted and sentenced as under:-

Rank of the party	Provision of Conviction	Sentence
A1	304 (i) IPC	RI for 10 years with fine of Rs.1000/- i/d SI for one year
A2	323 IPC	SI for 6 months with fine of Rs.500/- i/d SI for one month
A3	324 IPC	SI for one year with fine of Rs.500/- i/d SI for one month
A4	323 IPC	SI for 6 months with fine of Rs.500/- i/d SI for one month
A5	323 IPC	SI for 6 months with fine of Rs.500/- i/d SI for one month

3. An animosity between two group of persons viz., accused and the victims in the prosecution witnesses on account of help of one Sanjeevi (since deceased) and other injured/victims in the prosecution witnesses for elopement of one Subasri @ Ammu, daughter of A1 with one Karthik is said to be the root cause for the offence.

4. The factual matrix in brief as evinced from the prosecution witnesses and other materials is as under:-

(i) A1 is father of A2 to A4 and A5 is the brother in law of A1. On 25.3.2013, at about 11.00 pm, PW1 Mayaselvan alongwith the deceased Sanjeevi were proceeding to their house in their motorcycles and by that time, A1 and A2 were standing



near Mariyamman Temple and the deceased Sanjeevi drove the motorcycle in a manner likely to dash against A1. Subsequently, on the same night, when PW1, deceased Sanjeevi and PW4 Jothibas came back in the same way to proceed towards Kumarakudi Main Road, they noticed Bamboos Sticks lying on the middle of the road. On noticing the same, PW1 slowed down the two wheeler and at that time, the accused persons unlawfully assembled with deadly weapons with the intention to cause death of Sanjeevi and other witnesses.

(ii) Abusing the victims with filthy language, A3 had assaulted the de facto complainant on his head with the aid of Kattai Kazhi due to which, the de facto complainant sustained grievous injuries. A1 had assaulted the deceased Sanjeevi on his head with Kattai Kazhi. When PW2 Boominathan and PW3 Anb hazhagan came to rescue, A2 had assaulted PW2 on his head with Kattai Kazhi. A4 and A5 has attacked PW3 on his face and forehead due to which, PW2 and PW3 had sustained simple injuries. The injured Sanjeevi, who was assaulted by A1 was immediately taken to the Government Hospital, Chidambaram, where, he was referred for higher treatment at Government Hospital, Chennai.

(iii) PW12 is Doctor Saravanakumar, who had treated the victims/injured Sanjeevi (since deceased) and P.Ws.1 to 3 and issued the Accident Register copies, Exs.P15 to P18 referring the victim Sanjeevi to be treated at Government Hospital, Chennai.

(iv) On receipt of information from the Government Hospital, Chidambaram on 26.3.2013 at about 5.00 am, PW14, Sub Inspector of Police, Chozhatharam Police Station had visited the Hospital and recorded the statement, Ex.P1 from PW1 and registered a case in Crime No.72 of 2013 against the accused for the offences punishable under Sections 147, 148, 294(B), 341, 323 and 307 IPC, the FIR being Ex.P19. He had sent the FIR and other papers to the District Munsif cum Judicial Magistrate, Kattumannarkoil and copies of the same to his higher officials and submitted the case records to PW16, Inspector of Police.

(v) PW16, who took up the investigation, had visited the scene of occurrence on 26.3.2013 at about 8.00 am and prepared observation mahazar, Ex.P2 and rough sketch, Ex.P21 in the presence of PW6 and another. Subsequently, PW16 had seized M.Os.1 to 4 in the presence of the same witnesses under seizure mahazar Ex.P22. Thereafter, he had enquired P.Ws.1 to 3, who had been taking treatment in Government Hospital, Chidambaram and recorded their statements.

(vi) Thereafter, on the same day at 3.00 pm, PW16 had



arrested the accused persons in the presence of PW10 and recorded the confession given by them on their own volition and seized M.Os.5 to 9 under Form 95, Ex.P33, in the presence of PW10 under seizure mahazars, Exs.P24, P26, P28, P30 and P32 on the basis of the admitted portions of confession statement of the accused persons in Exs.P23, P25, P27, P29 and P31 respectively and thereafter, remanded the accused to judicial custody.

(vii) On receipt of information that the victim Sanjeevi died in the Rajeev Gandhi Hospital, Chennai on 27.3.2013 at 5.10 am, PW16 had altered the offences under Section 147, 148, 341, 294B, 321, 307 and 302 and sent the Alteration Report, Ex.P34 to the court. Thereafter, PW16 had visited the hospital on 28.3.2013 and conducted inquest between 8.00 am and 10.00 am in the presence of the panchayatdars. The inquest report is marked as Ex.P35. Subsequently, PW16 had submitted requisition through PW13, Head Constable for conducting of post mortem and on 1.4.2013, he had sent the internal organs for chemical analysis through the same Head Constable. He had also sent the M.O.s for chemical analysis.

(viii) On receipt of request, PW11, Dr.Vedhanayagam had conducted post mortem and issued the post mortem report Ex.P14 which discloses the injuries found by the Doctor and his opinion as under:-

"Injuries:

1. A sutured wound with six sutures measuring 5 cm over the right parietal region; On removal of sutures, edges are clear cut and the wound was bone deep.

2. A reddish brown abrasion of size 0.5 x 0.5 cm on the right upper cheek.

On dissection of head: Scalp contused over the mid parietal region and occipital region. Right temporalis muscle found contused. A linear fissured fracture of length 12 cm on the right temporal bone; a linear fissured fracture of length 8 cm on the left temporal bone. Coronal suture found separated for 15 cm; duramater was intact; diffuse subdural haemorrhage all over the left cerebral hemisphere; thin layer of subarachnoid haemorrhage all over the brain surface; brain was oedematous; a linear fissured fracture of length 7 cm on the right middle cranial fossa.

Heart: Normal in size; C/S: All chambers were empty. Lungs: Normal in size; C/S: Congested.

Larynx and Trachea: Empty. Stomach: Empty.



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Liver, Spleen and Kidneys: Normal in size; C/S: Congested. Bladder: Empty. Hyoid Bone, Pelvis and Spinal column: Intact. Opinion:

The deceased would appear to have died of effects of Head injury."

(ix) PW15, Tmt.Jayanthi, Scientific Officer, had conducted chemical analysis of on M.Os and issued chemical analysis report, Ex.P20. The Report from Forensic Sciences Department and Serology Report are Exs.P36 and P37.

(x) On 17.6.2013, PW16 had enquired Dr.Saravanan, PW12, who had issued the Accident Register copies, Ex.P15 to P18. Thereafter, PW16 had enquired Dr.Vedanayagam, PW11, who had issued the post mortem report, Ex.P14. On 11.7.2013, he had enquired the Scientific Officer Mrs.Jayanthi PW15 and recorded her statement. Subsequently, on completion of investigation, PW16 had filed the final report.

(xi) The learned District Munsif cum Judicial Magistrate, Kattumannarkoil, on receipt of the final report, took up the case on file in P.R.C.No.19 of 2013 under Section 147, 148, 294 (b), 341, 323, 307 and 302 read with Section 149 IPC and furnished copies of the records relied on by the prosecution as contemplated under Section 207 Cr.P.C. The learned Magistrate finding that the case is triable by the court of Sessions, committed the case to the Principal District and Sessions Court, Cuddalore.

(xii) The Principal District and Sessions Judge, Cuddalore, on being satisfied that prima facie case is made out framed charges as under:

Rank of accused	Provision of offence
A1	Sections 147, 294(b), 341, 307 read with Section 149 and 302 IPC
A2, A4 and A5	Sections 147, 294(b), 341, 323, 307 read with Section 149 and 302 IPC read with Section 149 IPC
A3	Sections 147, 294(b), 341, 307 and 302 read with Section 149 IPC

When the charges were read over and explained to the accused, they denied them and sought to be tried.

(xiii) During trial, the prosecution had examined PWs 1 to



16 and marked Exs.P1 to P37 and M.Os.1 to 9. On the side of the accused, no witness was examined, but, Exs.D1 to D4 were marked.

(xiv) After a full-fledged trial, the Trial Court had found the accused guilty and convicted and sentenced them as stated above, against which, the present Criminal Appeal has been filed by the accused.

5. Assailing the judgment of conviction and sentence, learned Senior Counsel Mr.Ashokkumar appearing for the appellants has made his submissions as under:-

(i) The Trial Court has failed to take into consideration the grave contradictions, inconsistencies in the evidence and the embellishments made. The prosecution has suppressed the genesis of the case. It is the admitted case of the prosecution witnesses that the accused had also sustained injuries in the incident. No investigation has been done in accordance with the Police Standing Orders to find out as to who are the real aggressors in this case. The prosecution has tampered with the records to suppress the fact that the first complaint was given by the accused party. The complaint of the accused was originally registered as Crime No.73 of 2013 and subsequent FIR given by the de facto complainant was registered as 74 of 2013, however, it was altered as Crime No.72 of 2013 and the manipulation was done by the prosecution to show as if the complaint of the victims were prior to the complaint of the accused. PW12 is the Doctor, who had treated the accused as well as the witnesses. Though based on the complaint given by the accused, a case in Crime No.73 of 2013 has been registered and the case has been taken in C.C.No.82 of 2014, the prosecution has not stated anything with regard to the finality in that case.

(ii) There is a grave delay in the FIR and the statements recorded under Section 161 Cr.P.C. reaching the Magistrate concerned. Though as per PW14, the complaint is said to have been given at 7.00 am, it had reached the Judicial Magistrate concerned only at 11.30 pm especially when the distance between the police station and the court is reachable within 30 minutes as spoken by PW14.

(iii) It is the admitted case in the Accident Register recorded by PW12 in respect of the injured persons that they have, in unison, stated that they had been assaulted by 20 known persons near the house, whereas in the complaint, as per PW1, the occurrence is said to have taken place near the place where Mariamman Temple was under construction. Admittedly, as spoken by PW12, all the injured witnesses had stated that they were assaulted by 20 persons with knife, soda bottle, beer bottle and



wooden logs, whereas the prosecution has confined the case only to 5 accused and the weapon used was also stated as Casuarina stick and therefore, the entire case of the prosecution is doubtful.

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(iv) Failure of the investigating agency to investigate about the genesis of the occurrence and also shifting the scene of occurrence create a great doubt in the prosecution case thereby entitling the accused for the benefit of doubt.

(v) The respondent has done the investigation partially and in a partisan manner suppressing the vital facts. Fair investigation would be a colourable one when there is suppression in the prosecution case. Suppressing the motive, injuries and other existing factors will have effect of modifying or altering the charge and thereby it would amount to perfunctory investigation making the entire case of the prosecution a false one.

6. Per contra, Mr.S.Sugendran, learned Government Advocate (Criminal Side) appearing for the respondent would submit that the prosecution has proved its case beyond all reasonable doubts and non explanation of the injuries suffered by the accused itself shall not be sufficient to discard the prosecution case outrightly in this case and the Trial Court has rightly found the accused guilty and convicted and sentenced them.

7. The point to be determined in this Appeal is whether the prosecution has proved its case beyond all reasonable doubts and whether the Trial Court is right in convicting the appellants.

8. To establish the case, the prosecution has examined 16 witnesses and 37 documents. Among them, P.Ws.1 to 3 are injured/victims of the occurrence. The prosecution has relied P.Ws.4, 5, 7, 8, 9 as eyewitnesses to the occurrence. Among them PW5 is the paternal uncle of the deceased Sanjeevi. PW7 is the wife of PW5 and PW9 is their son. Though PW4 appears to be an independent eyewitness, the defence had elicited some variation in his stand when compared to that of in his chief examination. PW6 is the witness signatory to the observation mahazar and PW10 is the signatory to seizure mahazars. Though PW7 had deposed that she had witnessed the occurrence, she had admitted in her cross examination that she has got some eye sight issue. PW8 is said to be a neighbour, who had witnessed the occurrence, but, she had admitted in her cross examination that she could not see the occurrence place from her house. PW11 is the Doctor, who had treated the injured/victims. PW12 is the Doctor, who had conducted post mortem. PW13 is the Head Constable. PW14 is the Sub Inspector of Police, who took up the case initially. PW15 is the



Scientific Officer, who had conducted chemical analysis. PW16 is the investigating officer.

9. The appellants/accused have produced Exs.D1 to D3, Accident Register copies in respect of A1 to A3 respectively and Ex.D4, certified copy of FIR in Crime No.73 of 2013 of Chozhatharam Police Station, lodged by the accused/appellants alleging the assault made by the victims in the prosecution witnesses. By relying those documents, they have taken a stand that due to the animosity between the accused and the prosecution parties on account of elopement of a girl from the side of the accused parties in which, the deceased Sanjeevi was instrumental, some wordy quarrel had been emanating and in such course of action, the scuffle had taken place and in fact, the accused parties had also sustained injuries for which, they had lodged a complaint in Crime No.73 of 2013, as evidenced by Ex.D4 and only thereafter, the de facto complainant had lodged the present complaint, which was originally taken on file as Crime No.74 of 2013 however, some manipulation had been done to make it as Crime No.72 of 2013 and establish the present complaint as an earlier one. It is the further case of the appellants that when the complaint was said to have been registered as FIR by 7.00 am on 26.3.2013, it had reached the court only by 11.00 pm on that date, though the Court could be reached, admittedly, within half an hour and thereby there is unexplained delay in the FIR and other statements reaching the court. It is also the case of the appellants that there is inconsistency in the Accident Register copies issued by PW12 as he had deposed that he was informed by the injured/victims that they had been attacked by about 20 persons armed with soda bottles, beer bottles, knife, etc., whereas, only five accused are implicated in the case and the M.Os. produced on the side of the prosecution are only wooden logs which creates much doubt on the case of the prosecution. The appellants would crave indulgence of the court to look into the genesis of the occurrence and partisan manner in which the investigation was done against the appellants and thereby giving benefit of doubt, they may be acquitted of the charges.

10. In fine, the case of the appellants/accused is that the genesis of the occurrence arose from the side of the injured prosecution witnesses, but, it has been overlooked by the prosecution and without explaining the injuries sustained by the accused parties and the criminal prosecution initiated by them and rather suppressing such cause of action and the fact that it is a case and counter case, the prosecution has conducted the case in a partisan manner by manipulating the Crime Number to make belief that the complaint lodged by the de facto complainant in the present case is an earlier one and the Trial Court had also, by ignoring the inconsistencies and



embellishments in the case of the prosecution, had wrongly found the appellants guilty and convicted and sentenced them.

11. It is apposite to refer that in a similar situation, the Hon'ble Apex Court in Babu Ram and Others vs. State of Punjab reported in (2008) 3 SCC 709; it has been held that

"18.It is a well-settled law that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of 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."

19.Further, it is important to point out that 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."

12.Further this Court in Criminal Appeal No.891 of 2012 in Chandiran vs. State Represented by the Sub Inspector of Police, dated 12.02.2016, has held

"4.The learned counsel for the appellants would submit that the prosecution has not come forward with the true version of the occurrence in as much as the counter case in Crime No.263 of 2009 was not investigated properly, the injury sustained by the 4th accused has not been properly explained by the prosecution. He would further submit that the records pertaining to Crime No.263 of 2009 have been completely suppressed. Thus, according to the learned counsel, the appellants are entitled for acquittal."

.....

7.Admittedly, the occurrence was on 11.10.2009, at 9.00 p.m. On the complaint made



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by P.W.1, the present case in Crime No.262 of 2009 was registered and the same was investigated initially by P.W.14, the then Sub-Inspector of Police. There is no controversy before this Court that in the very same occurrence, the 4th accused, by name, Radha, also sustained injuries. On the complaint of the 4th accused, a counter case was registered in Crime No.263 of 2009 by P.W.14 under Sections 294(b), 323 & 324 IPC. P.W.14 would state that the said case in Crime No.263 of 2009 was investigated properly and since the same was found to be false, a negative report was filed before the Magistrate Court, but, unfortunately, none of the documents, like the First Information Report, Wound Certificate of 4th accused, the Observation Mahazar etc., have neither been marked nor proved in evidence, through the present case. It is seen that the records pertaining to Crime No.263 of 2009 have been completely suppressed. Time and again, the Hon'ble Supreme Court has been reiterating the procedure to be followed in the matter of investigation of cases in counter. The Hon'ble Supreme Court has time and again held that both cases should be investigated simultaneously by one and the same Investigating Officer and on completing the investigation, he should file reports in both the cases. This has been reiterated in Tamil Nadu Police Standing Order No.5884A, issued by the Government of Tamil Nadu. But, in the instant case, P.W.15, the Inspector of Police, has stated that he did not investigate the case in Crime No.263 of 2009 at all. Curiously, the investigation in Crime No.263 of 2009 was conducted by P.W.14, the Sub Inspector of Police, whereas, the investigation of the present case in Crime No.262 of 2009 was investigated by the Inspector of Police. Thus, it is crystal clear that two different Investigating Officers were investigating the case and two different reports were stated to have been given by them."

13. In an identical situation, the Hon'ble Apex Court in Kumar vs. State Represented by Inspector of Police reported in (2018) 7 SCC 356, has held the following:



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"29. Another point put forth by the learned counsel on behalf of the appellant-accused is that the prosecution has not explained the injuries suffered by the accused and hence the prosecution case should not be believed. At the outset, it would be relevant to note the settled principles of law on this aspect. Generally failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true (see Mohar Rai v. State of Bihar)

30. In Lakshmi Singh v. state of Bihar this Court observed: (SCC p. 401, para 12)

12. 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 probabilities the plea taken by the appellants,"

It was further observed that : (SCC p. 401 para 12)

12. ... 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 completes in probability with that of the prosecution one."

31. In the case on hand, admittedly, the



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appellant-accused was also injured in the same occurrence and he too was admitted in the hospital. But, the prosecution did not produce his medical record, nor the doctor was examined on the nature of injuries sustained by the accused. The trial court, instead of seeking proper explanation from the prosecution for the injuries sustained by the accused, appears to have simply believed what prosecution witnesses deposed in one sentence that the accused had sustained simple injuries only.

33. Coming to the other aspect of the case, motive of the accused to commit the crime is ascribed to the previous quarrel occasioned between the accused and the deceased during a drama at a village festival. Generally, in the case prosecution desires to place motive of the accused as a circumstance, like are alive to the fact that if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. But in the case on hand, as we have already discussed in the above paragraphs, the evidence of direct witnesses is not satisfactory and on the other hand, it is demonstrated that the deceased hit the accused on his head with the wooden log besides the testimony from the eyewitnesses that there was scuffle. In such a factual situation, certainly motive may act as a double-edged sword.

34. In the light of the settled law thus by this Court and also from what is clear from the evidence, there is absence of extreme cruelty, even if it is assumed that the accused hit the deceased with the log. Had there been a strong motive to do away with the life of the deceased, generally there would have been more fatal injuries caused on the deceased not by a log but by utilizing more dangerous weapons. These circumstances would tell us that there is no reason to believe that motive was entertained by the accused in the backdrop of quarrel that took place during drama at the village festival, prior to the date of occurrence. In as much as the prosecution laid



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the foundation for the commission of crime by the accused in the said quarrel as an element of motive, in the absence of positive proof of such motive, the prosecution has to face the peril of failure in establishing that foundation."

14. In Suresh Chaudhary vs State of Bihar ((2003) SCC (Cri) 801), the Apex Court has held that inordinate delay of 1-1/2 days in sending the report to the Magistrate after the registration of complaint in the absence of any explanation therefor, it contributes to the doubtful circumstances surrounding the prosecution case.

15. In Rajeevan and another vs. State of Kerala ((2003) SCC (Cri.) 751)), it has been held by the Apex Court that the delay in forwarding FIR to the Magistrate without satisfactory explanation therefor, it would adversely affect the prosecution case.

16. On analysis of the entire evidence in this case in the light of the principles laid down in the above decisions, this court finds that an enmity had arisen between the two group of persons viz, accused persons and the injured/victims in the prosecution witnesses on account of a love affair of a girl from the accused parties and help said to have been rendered by the deceased and the occurrence had taken place on 25.3.2013 at about 11.00 pm and the complaint is said to have been given by PW1 on 26.3.2013 at 5.00 am, but, it had reached the court only at 11.30 pm on that day with a delay of more than 6 hours.

17. Moreover, there are material contradictions in the evidence of the prosecution witnesses. In the complaint, Ex.P1 given by PW1, the place of occurrence is said to be Kumarakudi Main Road, Mariamman Koil Street whereas, P.Ws. 1 to 4 had stated before the Doctor PW12, who had treated them that the occurrence had taken place in the house of PW2 and PW3. There is also contradiction in the version of prosecution witnesses with regard to the weapons alleged to have been used by the accused for attacking them. They had stated before the Doctor PW12 that they had been assaulted by 20 known persons armed with Soda Bottles, Beer Bottles, knife and wooden logs whereas, the M.Os. produced are only Bamboo Sticks and only five accused are implicated in the case.

18. It is further seen that in the same occurrence, the accused parties are also said to have sustained injuries and they had lodged a complaint based on which, a case in Crime No.73 of 2013 has been registered in the same police station. In such cases, the investigation official is required to do the



investigation in compliance with the Police Standing Orders 588A which reads as under:-

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"In a complaint and counter complaint arising out of a same transaction, the investigation Officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter-complainant, as the case may be, should be advised about the disposal by a notice in Form-96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the police."

19. However, in the present case, the complaint lodged by the accused party was separately dealt with, without following the above guidelines and for the reasons best known to them, the police officials, in charge of the investigation had suppressed about such a complaint lodged by the accused parties and the prosecution witnesses including such police officials had pleaded ignorance of the same which speaks volumes about the investigation done in a biased manner.

20. It is also seen from the records that the Doctor, PW12, who had treated the prosecution witnesses by 3.00 am on the date of occurrence, had treated the accused party also at 2.00 am itself on the date of occurrence, but, the same has been suppressed by the investigation and thereby it is proved that the accused party had also sustained injuries in the occurrence, however, it has been cleverly left to be dealt by the prosecution and the injured/victims in the prosecution witnesses also pleaded ignorance of the same. PW14 Sub Inspector of Police, who had the knowledge about the complaint given by the accused party had also remained silent and pleaded ignorance of the same. Further, this court called for the original F.I.R.s in both cases and it is clear that the Crime Numbers have been corrected and manipulated to project that the F.I.R. in the present case as prior. At this juncture, it is relevant to refer to Arvind Kumar @ Nemichand & others vs. State of Rajasthan reported in LL (LiveLaw) 2021 SC 686 on similar set of facts regarding deliberate defective investigation and conscious suppression of facts, wherein the Hon'ble Apex Court, referring



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to Kumar vs. State and Lakshmi Singh v State of Bihar referred supra, has held as under:-

"45. A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have to effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false and would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there are inimpeachable evidence to come to a conclusion for awarding a punishment on a different charge."

21. The totality of the circumstances as could be found from the entire evidence and the submissions made by the learned Senior Counsel for the appellants in the light of the decision cited supra, this court has to arrive at an irresistible conclusion that the genesis of the occurrence has been suppressed by the prosecution and the prosecution witnesses have tried to give a different colour to the occurrence without explaining the injuries sustained by the accused parties in the same occurrence and the resultant criminal proceedings initiated by them and thereby, the prosecution has failed to prove its case beyond reasonable doubts and it is surrounded by cloud of doubts and the benefit of such doubt has to be afforded to the appellants/accused, however, the Trial Court, without properly appreciating the evidence available on record and the tangible contradictions thereon, has rendered an erroneous finding and has wrongly convicted and sentenced the appellants and thereby, they are entitled for acquittal.

22. In the result, this Criminal Appeal stands allowed. The Judgment of conviction and sentence passed by the Trial Court is hereby set aside. The appellants/accused are acquitted from the charges levelled against them. Bail bonds, if any, executed by them shall stand cancelled. Fine amount, if any, paid by them shall be refunded to them.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

ssk



To

1. The Principal District and Sessions Judge,
Cuddalore.
2. The District Munsif-cum-
Judicial Magistrate,
Kattumannarkoil.
3. The Chief Judicial Magistrate,
Cuddalore.
4. The Judicial Magistrate-II,
Panruti.
5. The Sessions Judge,
Cuddalore.
6. The Superintendent,
Central Prison,
Cuddalore.
7. The Inspector of Police,
Chozhatharam Police Station,
Srimushnam,
Cuddalore District.
8. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.P.Palaninathan, Advocate, S.R.No.6785 [26/04/2022]

Criminal Appeal No.4 of 2019

SSI (CO)
SU(08/02/2022)