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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 13.04.2022

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CORAM:

THE HON'BLE MR. JUSTICE. P.N. PRAKASH
and
THE HON'BLE MR. JUSTICE A.A. NAKKIRAN

R.T. No. 4 of 2021

&

Crl.A. Nos.483, 504, 522, 523, 524 & 626 of 2021

R.T. No. 4 of 2021:

The Deputy Commissioner of Police
District Crime Branch
Chennai

Complainant

v

D. Marudhupandiyan

Respondent/A2

Crl.A. No.483 of 2021:

M. Sellamuthu

Appellant/A15

v

1 The State by the Deputy Superintendent of Police
CBI/SCB/Chennai
Chennai
(RC3(S)/2004/CBI/SCB/Chennai)

2 C. Samikannu

3 S. Velmurugan Respondents
(RR 2 & 3 impleaded as per order dated 05.04.2022 in
Crl.M.P. No.4579 of 2022 in Crl.A. No.483 of 2021)

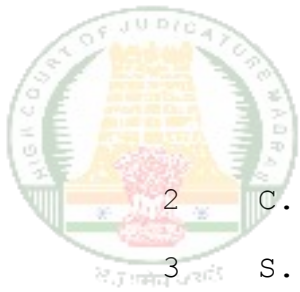
Crl.A. No.504 of 2021:

D. Marudhupandiyan

Appellant/A2

v

1 The State by
Deputy Superintendent of Police
CBI/SCB/Chennai
Chennai
(RC3(S)/2004/CBI/SCB/Chennai)



2 C. Samikannu

3 S. Velmurugan

Respondents

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(RR 2 & 3 impleaded as per order dated 05.04.2022 in
Crl.M.P. No.4580 of 2022 in Crl.A. No.504 of 2021)

Crl.A. No.522 of 2021:

1 K. Ramadoss

2 N. Chinnadurai

Appellants/AA 12 & 13

v

1 The State by
Deputy Superintendent of Police
CBI/SCB/Chennai
Chennai
(RC3(S)/2004/CBI/SCB/Chennai)

2 C. Samikannu

3 S. Velmurugan

Respondents

(RR 2 & 3 impleaded as per order dated 05.04.2022 in
Crl.M.P. No.4582 of 2022 in Crl.A. No.522 of 2021)

Crl.A. No.523 of 2021:

1 C. Duraisamy

2 D. Rangasamy

3 G. Kanthavel

4 G. Jothi

5 G. Venkatesan

6 R. Mani

Appellants/AA 1,3 & 5-8

v

1 The State by
Deputy Superintendent of Police
CBI/SCB/Chennai, Chennai
(RC3(S)/2004/CBI/SCB/Chennai)

2 C. Samikannu



3 S. Velmurugan

Respondents

(RR 2 & 3 impleaded as per order dated 05.04.2022 in
Crl.M.P. No.4578 of 2022 in Crl.A. No.523 of 2021)

Crl.A. No.524 of 2021:

1 R. Dhanavel

2 V. Anjapuli

Appellants/AA 10 & 11

v

1 The State by
Deputy Superintendent of Police
CBI/SCB/Chennai, Chennai
(RC3(S)/2004/CBI/SCB/Chennai)

2 C. Samikannu

3 S. Velmurugan

Respondents

(RR 2 & 3 impleaded as per order dated 05.04.2022 in
Crl.M.P. No.4581 of 2022 in Crl.A. No.524 of 2021)

Crl.A. No.626 of 2021:

1 K.P. Tamilmaran
Appellant/A.14

v

1 The State by the Deputy Superintendent of Police
CBI/SCB/Chennai
Chennai
(RC3(S)/2004/CBI/SCB/Chennai)

2 C. Samikannu

3 S. Velmurugan

Respondents

(RR 2 & 3 impleaded as per order dated 05.04.2022 in
Crl.M.P. No.4575 of 2022 in Crl.A. No.626 of 2021)

Prayer in R.T. No.4 of 2021: Referred Trial under Section 366
Cr.P.C. on the judgment and order dated 24.09.2021 passed in
S.C. No.3 of 2019 on the file of the Special Court for Exclusive
Trial of SC/ST (PoA) Act Cases, Cuddalore, Cuddalore District.

Common Prayer in all the criminal appeals: Criminal Appeal
filed under Section 374(2) Cr.P.C. seeking to set aside the
judgment and order of conviction and sentence dated 24.09.2021



passed in Sessions Case No.3 of 2019 on the file of the Special Court for Exclusive Trial of SC/ST (PoA) Act Cases, Cuddalore, Cuddalore District.

For complainant in the R.T. & Mr. K. Srinivasan
For 1st Respondent in all Special Public Prosecutor
Criminal Appeals for CBI Cases

For respondent in the R.T. Mr.V. Gopinath, Sr. Counsel
for Mr. S.Sasikumar

For appellant in Crl.A. Mr. S. Doraisamy
No.483/21

For appellant in Crl.A. Mr.V. Gopinath, Sr. Counsel
No.504/21 for Mr. S.Sasikumar

For 1st appellant in Mr. V. Karthic, Sr. Counsel
Crl.A.No.522/21 and for Mr. Adithya
Varadarajan

For 2nd appellant in Mr.S.Prabakaran, Sr.
Crl.A.No.522/21 Counsel
Mr. M.R. Jothimanian

For appellants 1,4,5 & 6 in Mr. V. Gopinath, Sr.
Crl.A.No.523/21 Counsel
for Mr. K. Balu

For appellants 2 & 3 in Mr.S.Ashok Kumar,
Crl.A.No.523/21 Sr.Counsel
for Mr. K. Balu

For 1st appellant in Crl.A. Mr.S.Ashok Kumar,
No.524/21 Sr.Counsel
for Mr. M.R. Jothimanian

For 2nd appellant in Crl.A. Mr.S.Prabakaran, Sr.
No.524/21 Counsel
Mr. M.R. Jothimanian

For appellant in Crl.A. Mr. S. Karthikeyan
No.626/21 and

For RR 2 & 3 in all the Dr. V. Suresh
criminal appeals



COMMON JUDGMENT

P.N. PRAKASH, J.

Referred Trial No.4 of 2021 arises out of a reference made by the Special Court for Exclusive Trial of SC/ST (PoA) Act Cases, Cuddalore (for brevity "the trial Court") under Section 366 of the Code of Criminal Procedure, 1973 (Cr.P.C) for confirmation of the death sentence imposed on Marudhupandiyan (A.2), vide a judgment and order dated 24.09.2021 passed in Sessions Case (S.C.) No.3 of 2019.

2 In addition, six criminal appeals have been filed by the other accused assailing their convictions and sentences passed vide the judgment and order referred to, supra, passed by the trial Court. In view of the commonality of issues involved, this common judgment shall govern the decision in all the aforesaid cases.

3 The facts present themselves as a complex web of four intricately interwoven narratives. We begin by first setting out certain undisputed facts, and facts that have been proved beyond a cavil.

4 This is a case of an unnatural and untimely death of a newly married couple, Murugesan and Kannagi. The former was a Dalit and the latter belonged to the Vanniyar caste. The place of occurrence is Pudukkoorapettai Village in Cuddalore District. The principal players who were pitted against each other were the Vanniyars and the Dalits.

5 It is common knowledge that the members of the Vanniyar community are caste Hindus, who, in the Chatur Varna, trace their lineage to the Agni Kulas of the Kshatriyas (for reference, see Castes and Tribes of Southern India by Edgar Thurston, C.I.E., Volume-VI, Page 1, MJP Publishers), albeit, for the purpose of reservation, they are classified as Most Backward Community vide G.O.Ms.No.353, Industries, Labour and Cooperation Department dated 31.01.1957 read with G.O.Ms.No.242, Backward Classes Welfare, Nutritious Meal Programme and Social Welfare Department dated 28.03.1989. In fact, in G.O.Ms.No.242, ibid., they are referred to as Vanniyakula Kshathriyas. Whereas, the Dalits are kept out of Chatur Varna and are classified as the Panchamas. The factual context in this case requires to be assessed in the backdrop of this social milieu.



6 Duraisamy (A.1), his son Marudhupandiyan (A.2), Rangasamy (A.3), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8), Dhanavel (A.10), Anjapuli (A.11), Ramadoss (A.12) and Chinnadurai (A.13) belong to Vanniyar caste and are natives of Pudukkoraipettai Village.

7 Duraisamy (A.1) was the President of the Pudukkoraipettai Village Panchayat. Kannagi, the other deceased in this case, is the daughter of Duraisamy (A.1). The fact that the accused referred to in paragraph 6 (supra) belong to Vanniyar caste, has not been denied by them. Even in the preamble portion of their statements recorded under Section 313 Cr.P.C., on the information provided by them, the Court has recorded their caste as Vanniyar.

8 Samikannu (P.W.1), his deceased son Murugesan, Ayyasamy (A.4), Ilayaperumal (died during trial), and Gunasekaran (A.9), who are Dalits, hailed from Kuppanatham Village. A few months prior to the date of occurrence in this case, owing to some problem in Kuppanatham Village, Samikannu (P.W.1) relocated his family to the Dalit colony in Pudukkoraipettai Village. This colony is on the outskirts of the village about two furlongs from where Vanniyars and the other caste Hindus reside.

9 Murugesan was born to Samikannu (P.W.1) through his first wife Ambika and after Ambika's demise, Samikannu (P.W.1) married Ambika's sister Chinnapillai (P.W.49), through whom, he has four sons and three daughters, notably, Velmurugan (P.W.2), Palanivel (P.W.3) and Tamilarasi (P.W.15). Mayavel (P.W.20) is the husband of Tamilarasi (P.W.15). Ayyasamy (A.4) and Ilayaperumal are the brothers of Samikannu (P.W.1). Amaravathy (P.W.16) is the sister of Samikannu (P.W.1), Ayyasamy (A.4) and Ilayaperumal.

10 Murugesan was an Engineering graduate from Annamalai University, Chidambaram and Kannagi was a B.Com. graduate from the same university. Seemingly, during their college days, they fell in love with each other, which fact has been proved via the love letters (Exs.P.3 and 4 series) as well through the evidence of Samikannu (P.W.1) and Venkatachalapathy (P.W.8).

11 Since they knew that there would be stiff opposition to their marriage from their respective families, they had their marriage solemnized in Sri Vinai Theertha Vinayagar Temple, Manjakuppam, Cuddalore, on 05.05.2003, unbeknownst to anyone and also had it registered in the office of the Marriage Registrar, Cuddalore, vide marriage certificate (Ex.P.1). After the



around 5.00 a.m. on 08.07.2003; seeing them together, he (Duraisamy) felt ashamed and so, he poured Nuvacron (insecticide) in a stainless steel tumbler, gave it to his son Marudhupandiyar (A.2) and asked him to make Kannagi drink it; Kannagi took the tumbler and drank the insecticide and fell down dead; on seeing this, Samikannu (P.W.1) tried to give the left over insecticide in the same tumbler to Murugesan for consumption, but, the latter initially resisted; however, Ayyasamy (A.4) and Ilayaperumal, brothers of Samikannu (P.W.1), forcibly administered the insecticide to Murugesan and soon, Murugesan also died; after that, he (Duraisamy) took the body of his daughter Kannagi and cremated it and likewise, Samikannu (P.W.1) and Ayyasamy (A.4) took the body of Murugesan and cremated it; since a feeling of guilt was haunting him, he had decided to confess and unburden himself.

18 Ashokan (P.W.32), V.A.O., recorded the confession statement of Duraisamy (A.1), which has been marked as Ex.P.9 and produced Duraisamy (A.1) along with the confession statement (Ex.P.9) before the Vriddhachalam Police Station along with a special report (Ex.P.11). At the Vriddhachalam Police Station, at the relevant point of time, Tamilmaran (A.14) was the Sub Inspector and Sellamuthu (A.15) was the Inspector.

19 Based on the special report (Ex.P.11) of Ashokan (P.W.32), V.A.O., Tamilmaran (A.14), Sub Inspector, registered a case in Vriddhachalam P.S. Cr.No.356 of 2003 on 17.07.2003 at 4.30 p.m. under Sections 147, 302 and 201 IPC against eight persons, viz., Duraisamy Padayachi, Marudhupandiyar, Rangasamy, Anbalagan, Ilayaperumal, Kannadasan, Ayyasamy and Samikannu and prepared the printed FIR (Ex.P.10). We may point out here that the scribe of the printed FIR (Ex.P.10) is one Dhanapal (P.W.44), who was the Sub Inspector in Aavinangudi Police Station, which is close to Vriddhachalam Police Station.

20 Investigation of the case was taken over by Sellamuthu (A.15), Inspector, Vriddhachalam Police Station, who arrested Duraisamy (A.1), Marudhupandiyar (A.2), Ayyasamy (A.4), Anbalagan (P.W.29), Kannadasan (P.W.33) and Ilayaperumal on 17.07.2003 and Samikannu (P.W.1) on 18.07.2003.

21 Sellamuthu (A.15) recorded the police confessions of Duraisamy (A.1) and Ilayaperumal and on his request, had the same attested by Jayaraman (P.W.34), V.A.O. and one Siva Perumal, Village Assistant (not examined).

22 Based on the admissible portion of the police confession of Duraisamy (A.1), Sellamuthu (A.15) recovered a 250



ml. plastic container with the label "Monocrotopos 36% Nuvacron" (M.O.1) and a stainless steel tumbler (M.O.2 series) under the cover of a mahazar (Ex.P.25) attested by Jayaraman (P.W.34) and Siva Perumal.

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23 Based on the admissible portion of the police confession of Ilayaperumal, Sellamuthu (A.15) seized one stainless steel tumbler (M.O.2 series) under the cover of a mahazar (Ex.P.27) in the presence of Jayaraman (P.W.34) and Siva Perumal.

24 Based on the information provided by the arrested accused about the places where Murugesan and Kannagi were cremated, Sellamuthu (A.15) went there and collected some bone fragments (M.O.3) and ash (M.O.4) from the place where Kannagi was cremated, under the cover of a mahazar (Ex.P.29) attested by Jayaraman (P.W.34) and Siva Perumal.

25 Likewise, from the place where Murugesan was cremated, Sellamuthu (A.15) collected some bone fragments (M.O.5) and ash (M.O.6) under the cover of a mahazar (Ex.P.31) attested by Jayaraman (P.W.34) and Siva Perumal.

26 The seized items, viz., bone fragments (M.Os. 3 & 5) and ash (M.Os.4 & 6) were sent through the Judicial Magistrate No.1, Vriddhachalam, to the Forensic Sciences Department, for examination and report. The forensic science report (Ex.P.36) reads as follows:

"We have carefully examined the items 1 to 4 described above and based on the observations the following opinion is offered.

OPINION:

1. Among the pieces of fragmentary bones in item 1, a left mandibular condyle revealing anatomical characteristics consistent of human origin was found. The conspicuously small size of condyle indicates that it could have belonged to a female individual. The available portion of condyle is insufficient for assessing the age. The anatomical identity of the other bones could not be established.

2. Among the pieces of fragmentary bones in item 2, a portion of distal end of humerus, a portion of proximal end of tibia and portions of vertebrae indicate anatomical characteristics consistent of human origin. The available bones are insufficient for assessing the sex or age. The anatomical identity of the other bones could not be established.



3. The charcoal described in item 2 and 4 do not reveal detectable bony ash."

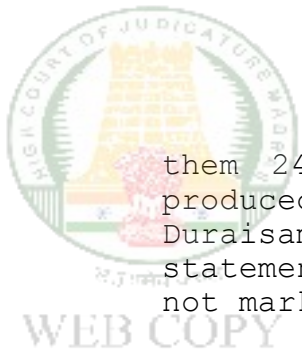
Thus, a reading of the above shows that the bone fragments (M.Os. 3 & 5), supposed to have been collected from the place where Kannagi was cremated, showed that they belong to a female, whereas, the bone fragments qua Murugesan were inconclusive. What must also be stated is that both the bodies were cremated on 08.07.2003, but the Vriddhachalam police effected the recoveries only on 18.07.2003. The report of the Forensic Sciences Department (Ex.P.36) also does not throw much light on the identity of the deceased. Of course, it is nobody's case that Murugesan and Kannagi are alive and well. The point at issue is whether the duo's death was a suicide or an honour killing and therefore, the forensic science report (Ex.P.36) is not of much use in determining the facts in issue in this case.

27 The arrest of Samikannu (P.W.1), Ilayaperumal, Kannadasan and Ayyasamy (A.4) who are all Dalits and close relatives of the deceased Murugesan, stirred a hornet's nest since the Dalits believed that they were, in no way, involved in the murders and that the murders were engineered by the Vanniyars to avenge their lost honour.

28 Therefore, the Dalits approached one P. Rathnam, Advocate, who, though not a Dalit by birth, espoused their causes. It appears that the said Rathnam and a team of lawyers from Chennai went to Pudukkoraipettai Village, prepared a report dated 26.07.2003 and sent it to the Home Secretary, Director General of Police, District Collector, Cuddalore and Superintendent of Police, Cuddalore.

29 While the eight accused (4 Vanniyars and 4 Dalits) were languishing in jail, a bail application was filed in CrI.M.P.No.5031 of 2003 in the Principal Sessions Court, Cuddalore, by Duraisamy (A.1) for himself and also on behalf of the other accused, which was dismissed on 29.07.2003.

30 Sellamuthu (A.15), Inspector of Police, moved an application before the Chief Judicial Magistrate, Cuddalore, for recording the confession statements of Samikannu (P.W.1), Duraisamy (A.1) and Ilayaperumal under Section 164 Cr.P.C., in which, an order was passed directing the District Munsif-cum-Judicial Magistrate, Tittakudi, to record the statements. Accordingly, Samikannu (P.W.1), Duraisamy (A.1) and Ilayaperumal were produced before the District Munsif-cum-Judicial Magistrate, Tittakudi, on 30.07.2003. On that day, the said District Munsif-cum-Judicial Magistrate, cautioned them and gave



them 24 hours reflection time and they were directed to be produced on 31.07.2003, on which day, Samikannu (P.W.1), Duraisamy (A.1) and Ilayaperumal gave statements to him. These statements were found in the records of the trial Court but were not marked as exhibits during trial.

31 We called for the records and read those statements in order to understand the line of investigation by the Vriddhachalam police. The statements of the aforesaid trio are exculpatory in nature and do not amount to confessions.

32 Samikannu (P.W.1), in his Section 164 Cr.P.C. statement to the Magistrate, has stated that he was threatened by Marudhupandiyan (A.2) to bring Murugesan and Kannagi to Pudukkoraipettai Village and so, he went in search of them and found them in his relative's house and dropped the girl in the village; on the next day, his son went missing from his relative's house; fearing that he would be in trouble, he did not return to Pudukkoraipettai Village and later, he learnt that Murugesan and Kannagi were brought to the village and murdered.

33 Duraisamy (A.1), in his statement recorded under Section 164 Cr.P.C., has stated that Kannagi went missing on 03.07.2003 and they were searching for her everywhere, but in vain; on 08.07.2003, he was told that two bodies were floating in the Ponneri pond and when he went there, he found one of them to be that of his daughter's; the parents of Murugesan also came there and after discussing with them, they decided to cremate the bodies and did so.

34 As alluded to above, the statements of Samikannu (P.W.1) and Duraisamy (A.1) that were recorded under Section 164 Cr.P.C. were at variance and totally different from the case projected by the Vriddhachalam police.

35 To recapitulate, according to the Vriddhachalam police, Duraisamy (A.1) surrendered before Ashokan (P.W.32), V.A.O. on 17.07.2003 and gave an extrajudicial confession (Ex.P.9) stating that Murugesan and Kannagi were brought to Pudukkoraipettai Village and that his son Marudhupandiyan (A.2) administered Nuvacron (insecticide) to Kannagi and Samikannu (P.W.1) administered Nuvacron (insecticide) to his son Murugesan.



36 Thus, as on 31.07.2003, there were three narratives, viz., the first by Duraisamy (A.1), the second by Samikannu (P.W.1) and the third by the Vriddhachalam police.

37 We make it very clear that we are not using the aforesaid Section 164 Cr.P.C. statements as substantive piece of evidence, but, are using them only for the limited purpose of recording the sequence of events in this case.

38 Subsequently, it transpires that another bail application in Crl.M.P.No.5683 of 2003 was moved by an Advocate V.R.Dhandapani of Cuddalore, for all the eight accused, in the Principal Sessions Court, Cuddalore. Acting on the representation of the trial Court Public Prosecutor that the investigation has been substantially completed, bail was granted on 11.08.2003 to all the eight accused, i.e., within 23 days of the occurrence. The reasoning given by the Principal Sessions Court, Cuddalore, for grant of bail appears bizarre and shocking and the same is as under:

"Learned PP now represented that substantial part of the investigation has been completed in this case.

It is the case of the petitioners in Crl.M.P.5683/2003 that the first petitioner being the President of Pudukooraipettai village is in judicial custody for the past 23 days and if he continues to be in judicial custody exceeding 30 days, he will incur disqualification of his President post as per S.45 and 47 of the Tamil Nadu Panchayats Act, 1994.

The learned PP has no serious objection and submitted before the Court as a special case in view of substantial part of investigation has already been completed, petitioners may be released imposing condition.

Considering that the substantial part investigation has already completed and further detention of first petitioner in Crl.M.P.5683/2003 is likely to incur disqualification of holding the post of village President by the first petitioner, this Court is inclined to grant bail to the petitioner imposing condition.

Hence, the petitioners 1 to 7 in Crl.M.P.5683/2003 and the petitioner in Crl.M.P.5451/2003 are ordered to be released on bail on their each executing a bond for Rs.5,000/- together with two sureties each for a like sum to the satisfaction of J.M.I, Vriddhachalam and on further



condition that they shall appear before the I.O. at 10.30 a.m. until further orders."

39 Now, reverting to our narration of the facts, after all the eight accused were released on bail, Samikannu (P.W.1), Ilayaperumal, Kannadasan and Ayyasamy, approached this Court under Section 482 Cr.P.C. in Crl.O.P.No.31572 of 2003 seeking CBI investigation of the case in Vriddhachalam P.S.Cr.No.356 of 2003 and payment of compensation to them. They also filed an application in Crl.O.P.No.31850 of 2003 seeking cancellation of bail that was granted to Duraisamy (A.1), Marudhupandiyan (A.2), Rangasamy (A.3) and Anbalagan (P.W.29) and Crl.O.P.No.31581 of 2003 seeking quashment of the prosecution against them in Vriddhachalam P.S.Cr.No.356 of 2003.

40 While the aforesaid petitions were pending before this Court, Sellamuthu (A.15), Inspector, Vriddhachalam Police Station, completed the investigation in Cr.No.356 of 2003 and filed a charge sheet (final report) in Ex.P.55 before the Judicial Magistrate No.I, Vriddhachalam on 16.09.2003 for the offences under Sections 147, 302 and 201 IPC against eight persons, viz., Duraisamy Padayachi, Marudhupandiyan, Rangasamy and Anbalagan (all Vanniyars) on the one hand and Ilayaperumal, Kannadasan, Samikannu and Ayyasamy (all Dalits), on the other. The Magistrate took the case on file as P.R.C.No.18 of 2003.

41 In the meantime, the criminal original petitions filed by Samikannu (P.W.1) and others seeking CBI investigation and compensation, cancellation of bail and quashment of the prosecution in Vriddhachalam P.S.Cr.No.356 of 2003, were finally heard by a learned single Judge of this Court. In the said petitions, Duraisamy (A.1) filed a counter affidavit, the relevant portion of which has been extracted in the order of the learned single Judge and the same reads thus:

"28. ... The second respondent's daughter Kannagi had finished her diploma in M.G.R. Co-operative Training Centre and for further education, she had joined B.Com in Correspondence course in Annamalai University, Chidambaram. She used to go to Chidambaram Annamalai University to attend the seminars, which is conducted normally once in a month. On 3.7.2003, his daughter was missing from his house and he was informed that his daughter was taken away by one Murugesan, the son of the petitioner. One Ayyasamy, the brother of the petitioner had also informed him that his daughter and the petitioner's son have eloped and that they are also searching for the petitioner's son. Considering the family situation and the future



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of his two other daughters, who are yet to be married, the second respondent was in search of his second daughter in Chidambaram, Cuddalore and in his relatives houses, but he was not able to trace her.

29. On 08.07.2003, the second respondent was informed by some of the villagers that two bodies were lying at Ponneri Kulakuttai. Immediately, he went to the place and saw his daughter lying dead along with the said Murugesan. The petitioner and his family members were also present in the place and the villagers also gathered there in large numbers. The second respondent shocked and stunned on seeing his daughter dead and he was not able to comprehend the situation. Having lost his daughter and without knowing what to do and on considering the future of his other two daughters, after discussing with the petitioner and his family members and the elder members of the village, he had taken the body of his daughter and performed the funeral of his daughter. The petitioner had also taken his son and performed the funeral of his son.

30. Subsequently, on 17.07.2003, the first respondent had taken the respondents 2 to 5 to the police station and there, the petitioner, Ilayaperumal and Ayyasamy, the brothers of the petitioner and one Kannadsan, the brother-in-law of the petitioner were also present. The Village Administrative Officer was also present in the police station. The second respondent was asked to sign in some blank papers. The second respondent and others were detained in the station on that day. The police informed him that they registered a case against him and seven others in Crime No.356 of 2003 for alleged offence under Sections 201, 147, 302 I.P.C. in respect of the death of his daughter and the son of the petitioner."

Thus, according to the counter affidavit filed by Duraisamy (A.1), his daughter Kannagi and Murugesan eloped on 03.07.2003; later, he found their bodies on 08.07.2003 in Ponneri pond; thereafter, he cremated Kannagi's body and likewise, Samikannu (P.W.1) also cremated his son Murugesan's body.

42 This narrative of Duraisamy (A.1) is in sync with his statement under Section 164 Cr.P.C. However, Duraisamy (A.1) has repudiated the case of the Vriddhachalam police that he gave an extrajudicial confession to Ashokan (P.W.32), V.A.O. on 17.07.2003 and instead, he has taken a stand that the Vriddhachalam police fabricated the extrajudicial confession (Ex.P.9) and foisted a case on him.



43 However, the learned single Judge did not buy the tall tales of Duraisamy (A.1) and the Vriddhachalam police and therefore, he cancelled the bail of Duraisamy (A.1) and ordered investigation by the CBI vide order dated 22.04.2004. To be more precise, it may be necessary to extract the operative portion of the order dated 22.04.2004 that was passed by the learned single Judge in Crl.O.P.Nos.31572, 31850 and 31851 of 2003:

"47. From the decisions cited above, it is clear that in cases where the credibility of police investigation is shaken and undermines the faith of common man and police acted in a partisan manner, in the interest of justice, it is necessary to get fresh investigation made through an independent authority so that truth may be known. In a given situation of the facts of this case, to do justice between the parties and to instill confidence in the public mind, it has become necessary to request the Central Bureau of Investigation to make further investigation in the above case.

48. Therefore, charge sheet filed in crime No.356 of 2003 on the file of the third respondent, which was taken on file as P.R.C. No.18 of 2003 on the file of the Judicial Magistrate, Vriddhachalam, is to be further investigated by the Central Bureau of Investigation, who shall file an application before the concerned Magistrate seeking permission for further investigation and to conduct investigation and file a final report according to law. With these observations, the above Crl.O.Ps. are closed."

(emphasis supplied)

44 We have found it necessary to extract the operative portion of the order dated 22.04.2004, inasmuch as, an argument was advanced at the bar by the defence that, what was ordered by the learned single Judge was not a de novo investigation, but was only a further investigation and therefore, the entire trial pursuant to the investigation made by the CBI stood vitiated. We will answer this argument at the appropriate time.

45 Pursuant to the order dated 22.04.2004 passed by the learned single Judge, the CBI took up the investigation of the case in Vriddhachalam P.S.Cr.No.356 of 2003 and filed an application in Crl.M.P.No.885 of 2004 under Section 173(8) Cr.P.C. seeking further investigation before the Judicial Magistrate No.1, Vriddhachalam, which was allowed on 19.05.2004 in view of the order dated 22.04.2004 passed by the High Court.



Accordingly, the CBI re-registered the case in Vriddhachalam P.S.Cr.No.356 of 2003 as RC 3(S) dated 21.05.2004/CBI/SCB and investigation was initially conducted by Subbian (P.W.50), Inspector of Police, CBI.

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46 As the Chief Judicial Magistrate, Chengalpet, was the designated Court for CBI Cases, an application was filed for transfer of the records from the file of the Court of the Judicial Magistrate No.I, Vriddhachalam, to the file of the Chief Judicial Magistrate Court, Chengalpet.

47 After the transfer of records to the Court of the Chief Judicial Magistrate, Chengalpet, during the course of investigation by Subbian (P.W.50), Inspector of Police, it came to light that offences under the Scheduled Castes & Schedules Tribes (PoA) Act (for brevity "the SC/ST Act") also had been committed and therefore, vide order dated 14.07.2004 (Ex.P.64) of the Superintendent of Police, CBI, the investigation of the case was handed over to Nandakumar (P.W.51), Deputy Superintendent of Police, with a direction to Subbian (P.W.50), Inspector of Police, to assist Nandakumar (P.W.51), Deputy Superintendent of Police, in conducting the investigation.

48 Since the bail of Duraisamy (A.1) was cancelled by this Court vide order dated 22.04.2004, the CBI re-arrested him on 29.05.2004. Apart from Duraisamy (A.1), the CBI also arrested Kanthavel (A.5), Jothi (A.6) and Venkatesan (A.7) on 20.07.2005, Mani (A.8) on 07.10.2005, and Gunasekaran (A.9), Dhanavel (A.10), Anjapuli (A.11), Ramadass (A.12) and Chinnadurai (A.13) on 20.07.2005.

49 At the request of the CBI, the statements of around 10 witnesses were recorded by Mr.Rajendran (P.W.45), Judicial Magistrate No.1, Chengalpet, under Section 164 Cr.P.C.

50 At the request of the CBI, Mr.Ravindran (P.W.46), Judicial Magistrate, Tambaram, conducted a test identification parade for the witnesses, Saroja (P.W.23) and Indrani (P.W.24), to identify Marudhupandiyan (A.2), Kanthavel (A.5), Venkatesan (A.7), Mani (A.8), Gunasekaran (A.9), Dhanavel (A.10), Anjapuli (A.11) and Chinnadurai (A.13).

51 We feel that it may not be necessary to discuss who all these two Dalit witnesses (P.Ws.23 & 24) identified in the test identification parade, for, they turned completely hostile and did not identify any accused in the dock.



52 After completing the investigation, Nandakumar (P.W.51), Deputy Superintendent of Police, filed a final report (charge sheet) on 14.10.2005 in the Court of the Chief Judicial Magistrate, Chengalpet, against 15 accused, including Tamilmaran (A.14), Sub Inspector, Vriddhachalam Police Station and Sellamuthu (A.15), Inspector, Vriddhachalam Police Station.

53 To be noted, it was these two officers, viz., Tamilmaran (A.14), who had initially registered the FIR in Vriddhachalam P.S.Cr.No.356 of 2003, and Sellamuthu (A.15), who had completed the investigation and filed the final report (charge sheet) against 8 accused before the Judicial Magistrate No.I, Vriddhachalam, about which, we have discussed in detail above.

54 Now, let us examine the fourth narrative, viz., the CBI's narrative in the present charge sheet, as is disclosed therein which reads thus:

"The investigation conducted by CBI disclosed that, Murugesan S/o.Samikannu, a schedule caste youth and Kannagi, D/o.Duraisamy, a Vanniyar girl, while living in village Pudukoorapettai, developed an intimacy and clandestinely entered into the wedlock at Registrar Office, Cuddalore on 05.05.03. However, they continued to stay with their respective parents till 03.07.03, the date on which Murugesan and Kannagi left the village. When the missing of his daughter came to the notice of Duraisamy (A1), he entered into a criminal conspiracy on or before 08.07.2003 with Maruthapandiyan (A2), D.Rangasamy (A3), Ayyasamy (A4), Kandhavelu (A5), Jothi (A6), G.Venkatesan (A7), Mani (A8), Gunasekaran (A9), Dhanavel (A10), Anjapuli (A11), K.Ramdass (A12) and N.Chinnadurai (A13) with intention to cause death of Murugesan and Kannagi as they brought bad name to Vanniyar community, and in furtherance of the said criminal conspiracy, the accused formed an unlawful assembly with common object to kill both Murugesan and Kannagi, secured the presence of Murugesan through Ayyasamy (A4), uncle of Murugesan at Pudukoorapettai on 07.07.03 evening. Murugesan was then wrongfully confined/illegally detained undressed, tied and tortured by Duraisamy (A1), Maruthapandiyan (A2), D.Rangasamy (A3), Ayyasamy (A4), Kandhavelu (A5), Jothi (A6), G.Venkatesan (A7), Mani (A8), Gunasekaran (A9), Dhanavel (A10), Anjapuli (A11), K.Ramdass (A12) and N.Chinnadurai (A13) to get the information of whereabouts of Kannagi which may facilitate the commission of offence. Unable to bear the torture, Murugesan informed that Kannagi was available in the house of



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Smt.Saroja, a relative, at Moongilthuraippattu. On getting this information, Duraisamy (A1) arranged a TATA sumo vehicle bearing registration No.TN-23-C-5282 and Ayyasamy (A4), Kandhavelu (A5), Jothi (A6), G.Venkatesan (A7), Mani (A8), Gunasekaran (A9), Dhanavel (A10) and Anjapuli (A11) on 07.07.03 night proceeded to Moongilthuraippattu with an intention to abduct her and cause death of Kannagi and brought Kannagai by force from the house of Smt.Saroja to Pudukoorapettai around 5.30 a.m. on 08.07.03. Till such time, Murugesan was wrongfully confined/illegally detained, undressed, tied and tortured by Duraisamy (A1), Maruthapandi (A2), D.Rangasamy (A3), Ramdass (A12) and Chinnadurai (A13). They committed atrocities against Murugesan knowing fully well that he belongs to scheduled caste community. On reaching Pudukoorapettai on 08.07.03 early hours, Kannagi was taken to a cashew grove, opposite to Pudukoorapettai Village. Murugesan was also taken to the said grove by the accused persons. In furtherance to the said conspiracy and with an intention to cause death of Murugesan and Kannagi by administering poison, Duraisamy brought 'Nuvacron', a pesticide and a steel tumbler to the cashew grove. He went near Kannagi and spat on her face stating that she is unfit to live. Thereafter, Duraisamy (A1) handed over the poison along with the steel tumbler to his son Maruthupandi (A2). Maruthupandi poured the poison in the tumbler and administered the same to Kannagi and caused death of Kannagi. Thereafter, Maruthupandian (A2) took the poison to Murugesan who was wrongfully confined and detained by Ayyasamy (A4) and Gunasekaran (A9) and after pouring the same in the tumbler, handed it over to Ayyasamy with a direction to administer the same to Murugesan. Ayyasamy did so and caused death of Murugesan. Thereafter, the deadbodies of Murugesan and Kannagi were disposed off by the accused persons on 08.07.03 morning itself to cause disappearance of evidence with the intention of screening the offender from legal punishment..."

55 In their final report, the CBI have stated that they were not able to gather incriminating materials against four accused, viz., Anbalagan, Ilayaperumal, Kannadasan and Samikannu, who were named in the final report (Ex.P.10) filed by the Vriddhachalam police.

56 A précis of the CBI's final report (fourth narrative) is that Murugesan and Kannagi eloped; Murugesan was brought to Pudukkooraipettai Village by his junior paternal uncle Ayyasamy



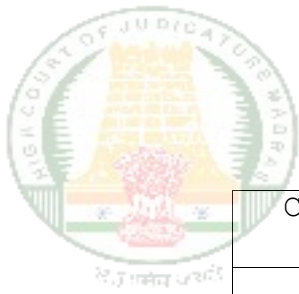
(A.4) on the direction of Marudhupandiyan (A.2); Murugesan was tortured by Duraisamy (A.1) and his group to reveal the whereabouts of Kannagi; he revealed that Kannagi was in Moongilthuraipattu Village in the house of Saroja (P.W.23), the mother-in-law of Ayyasamy (A.4); Kannagi was thereafter brought to Pudukkoraipettai Village in the early hours of 08.07.2003; Duraisamy (A.1) directed his son Marudhupandiyan (A.2) to give poison to Kannagi; accordingly, Marudhupandiyan (A.2) did so; Duraisamy (A.1) directed Ayyasamy (A.4) to give poison to Murugesan; accordingly, Ayyasamy (A.4) did so; the couple died after consuming the poison and they were cremated.

57 Though the final report was filed by the CBI on 14.10.2005, the case was committed to the Court of Session only on 15.03.2010 (after a lapse of over 4 years) and the trial Court was able to frame 15 charges and question the accused only on 14.07.2017 (after a lapse of over seven years since committal). The reason for this inordinate delay is the filing of several petitions on behalf of the accused like petitions for discharge under Section 227 Cr.P.C. and filing of petitions on the side of the victims seeking cancellation of the bail of some of the accused for intimidating witnesses. Noteworthy it is that in the trial Court judgment, the trial Judge has meticulously set out in the preamble portion, all the required details, including the petitions that were filed in the High Court. Upon examining the trajectory of the case in the trial Court, we are reminded of the following observation of a Constitution Bench of the Supreme Court in Hardeep Singh v State of Punjab and others [(2014) 3 SCC 92]:

"19. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

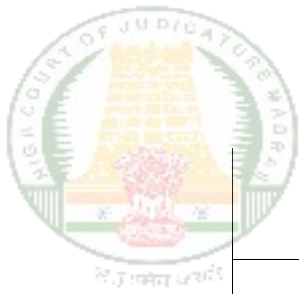
58 It is seen from the preamble portion of the trial Court judgment that Ramadass (A.12) and Chinnadurai (A.13) filed a petition in Crl.M.P.No.6056 of 2012 under Section 227 Cr.P.C. seeking discharge from the prosecution and the same was not pressed on 23.08.2013. Thereafter, they once again filed a fresh application for discharge in Crl.M.P.No.2870 of 2014, which was dismissed by the trial Court on 18.04.2015. Challenging the same, they preferred a revision in Crl.R.C.No.716 of 2015 in the High Court, which was dismissed on 01.06.2017 with a direction to the trial Court to complete the trial within a period of four months.

59 The trial Court, initially, framed 15 charges as under:



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Charge No.	Description of charge
1	Under Section 120-B IPC read with Section 302 IPC (2 counts) against AA 1 to 13 conspiring to commit the murders of Murugesan and Kannagi.
2	Under Section 147 IPC against AA 1 to 13 for forming an unlawful assembly on 07.07.2003 in Pudukkoraipettai Village with the common object of causing the death of Murugesan and Kannagi.
3	Under Section 347 IPC against AA 1 to 13 for illegally confining Murugesan on 07.07.2003, torturing him by tying his legs and lowering him upside down in a deep bore well to make him disclose the whereabouts of Kannagi.
4	Under Section 364 IPC against AA 4 to 11 for going by Tata Sumo car bearing Regn.No. TN 23 C 5282 (M.O.7) on 07.07.2003 to the house of Saroja (P.W.23) at Moongilthuraippattu for abducting Kannagi therefrom to Pudukkoraipettai Village on 08.07.2003 and torturing her.
5	Under Section 364 IPC read with Section 149 IPC against AA 1 to 3, A12 and A.13 in respect of the fourth charge.
6	Under Section 3(1)(x) of the SC/ST Act against AA 1 to 3, AA5 to 8 and AA10 to 13 for torturing Murugesan knowing full well that he is a Dalit, by tying his hands and legs and lowering him upside down, into a deep bore well, for extracting information from him about the whereabouts of Kannagi.
7	Under Section 302 IPC against Marudhupandiyan (A.2) for administering poison, viz., Nuvacon-insecticide, in a stainless steel tumbler to his sister Kannagi on the directions of his father Duraisamy (A.1) around 5.30 a.m. on 08.07.2003.



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8	Under Section 302 IPC read with Section 149 IPC against AA 1 & 3 to A.13.
9	Under Section 302 IPC against Ayyasamy (A.4) for administering poison, viz., Nuvacron - insecticide, to Murugesan, on the directions of Duraisamy (A.1).
10	Under Section 302 IPC read with Section 149 IPC against AA 1 to 3 and AA 5 to 13 in continuation of Charge 9.
11	Under Section 3(2)(v) of the SC/ST Act against AA 1 to 3, AA 5 to 8 and AA 10 to 13 for causing the death of Murugesan on the ground that being a Dalit, he had fallen in love with Kannagi, a girl belonging to Vanniyar caste.
12	Under Section 302 read with Section 201 IPC (2 counts) against AA 1 to 13 for cremating the dead bodies of Murugesan and Kannagi, thereby causing disappearance of evidence.
13	Under Section 217 IPC against AA 14 and 15 for not registering a case on 08.07.2013 on the complaint of Chinnapillai (P.W.49), mother of Murugesan and thereafter, registering a case only on 17.07.2003 in Vriddhachalam P.S.Cr.No.356 of 2003 (i.e., after 8 days from the date of the occurrence)
14	Under Section 218 IPC against AA 14 and 15 for fabricating records, viz., recording the confession statement of Ilayaperumal, preparing a mahazar as if a steel tumbler was recovered based on his disclosure in order to screen the actual offenders.
15	Under Section 4 of the SC/ST Act against AA 14 and 15 for not registering a case on the complaint of Chinnapillai (P.W.49) knowing full well that she is a Dalit and the mother of Murugesan.



60 During the course of the trial, an additional charge, viz., Charge 16 was framed by the trial Court on 15.12.2020 under Section 3(2)(i) of the SC/ST Act against AA 14 and 15 for falsely implicating Ilayaperumal, Kannadasan and Samikannu as accused in Vriddhachalam P.S.Cr.No.356 of 2003 for the offence under Section 302 IPC, knowing full well that they were Dalits, which would have resulted in life imprisonment for them.

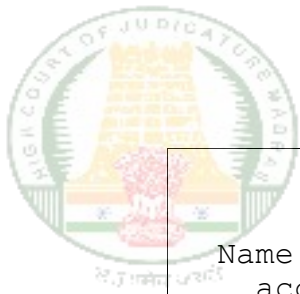
61 All the accused pleaded "not guilty" to the charges.

62 To prove the case, the prosecution examined 51 witnesses and marked 64 exhibits and 7 material objects.

63 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined from the side of the accused nor was any document marked in furtherance of their case.

64 After considering the evidence on record and hearing either side, the trial Court, vide judgment and order dated 24.09.2021 in S.C.No.3 of 2019, acquitted Ayyasamy (A.4) and Gunasekaran (A.9) of all the charges and convicted and sentenced the remaining accused as under:

Name of the accused	Provision under which convicted	Sentence
Duraisamy (A.1) Marudhupandian (A.2) Rangasamy (A.3) Kanthavel (A.5) Jothi (A.6) Venkatesan (A.7) Mani (A.8) Dhanavel (A.10) Anjapuli (A.11) Ramadass (A.12) Chinnadurai (A.13)	Section 120-B r/w 302 IPC (2	Life imprisonment for each count and fine of Rs.50,000/- each for each count
	Section 147 IPC	2 years rigorous imprisonment and fine of Rs.5,000/- each
	Section 347 IPC	3 years rigorous imprisonment and fine of Rs.10,000/- each
	Section 3(1) (x) SC/ST (POA) Act	5 years rigorous imprisonment and fine of Rs.10,000/- each
	Section 3(2) (v) SC/ST (POA) Act (2 counts)	Life imprisonment and fine of Rs.50,000/- each for each count
	Section 302 r/w. 201 IPC (2 counts)	7 years rigorous imprisonment and fine of Rs.20,000/- for each count



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Name of the accused	Provision under which convicted	Sentence
Duraisamy (A.1) Rangasamy (A.3) Kanthavel (A.5) Jothi (A.6) Venkatesan (A.7) Mani (A.8) Dhanavel (A.10) Anjapuli (A.11) Ramadass (A.12) Chinnadurai (A.13)	Section 302 r/w. 149 IPC (2 counts)	Life imprisonment and fine of Rs.50,000/- each for each count
Marudhupandian (A.2)	Section 302 r/w. 149 IPC (1 st Count)	Life imprisonment and fine of Rs.50,000/-
	Section 302 IPC (2 nd count)	Death sentence and fine of Rs.1,00,000/-



Duraisamy (A.1) Marudhupandian (A.2) Rangasamy (A.3) Anjapuli (A.11) Ramadass (A.12) Chinnadurai (A.13)	Section 364 read with 149 IPC	Life imprisonment and fine of Rs.50,000/- each
Kanthavel (A.5) Jothi (A.6) Venkatesan (A.7) Mani (A.8) Dhanavel (A.10)	Section 364 IPC	Life imprisonment and fine of Rs.50,000/- each
Tamilmaran (A.14) Chellamuthu (A.15)	Section 217 IPC	2 years rigorous imprisonment and fine of Rs.10,000/- each
	Section 218 IPC	3 years rigorous imprisonment and compensation of Rs.3,00,000/- each to Samikannu (P.W.1), Kannadasan (P.W.33) and the family of Ilayaperumal (since deceased)
	Section 4 SC/ST (POA) Act	1 year rigorous imprisonment and fine of Rs.5,000/- each
	Section 3(2) (i) SC/ST (POA) Act	Life imprisonment and fine of Rs.1,00,000/- each

65 As for Duraisamy (A.1), Marudhupandian (A.2), Rangasamy (A.3), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8), Anjapuli (A.11), Ramadass (A.12), Chinnadurai (A.13), Tamilmaran (A.14) and Chellamuthu (A.15), the sentences imposed on them were ordered to run concurrently. It was further ordered that in the event of the said accused committing default qua payment of fine, their properties attached by the Court would be proceeded against to recover the same.

66 Since Marudhupandiyan (A.2) was sentenced to death by the trial Court, the case was referred to this Court for confirmation under Section 366 Cr.P.C. and was taken on file as R.T.No.4 of 2021, as alluded to in the opening paragraph.

67 Challenging their respective conviction and sentences, the accused have preferred six appeals, the details of which are as under:



Name of accused	Crl.A. No.
C. Duraisamy (A.1)	523 of 2021
D. Rangasamy (A.3)	
G. Kanthavel (A.5)	
G. Jothi (A.6)	
G. Venkatesan (A.7)	
R. Mani (A.8)	
D. Marudhupandiyan (A.2)	504 of 2021
R. Dhanavel (A.10)	524 of 2021
V. Anjapuli (A.11)	
K. Ramadoss (A.12)	522 of 2021
N. Chinnadurai (A.13)	
K.P. Tamilmaran (A.14)	626 of 2021
M. Sellamuthu (A.15)	483 of 2021

68 The CBI have not challenged the acquittal of Ayyasamy (A.4) and Gunasekaran (A.9).

69 Heard Mr.K.Srinivasan, learned Special Public Prosecutor for the CBI, who commenced the arguments in R.T.No.4 of 2021 followed by Mr.V.Gopinath, learned Senior Counsel appearing for Duraisamy (A.1), Marudhupandiyan (A.2), Jothi (A.6), Venkatesan (A.7) and Mani (A.8); Mr.S.Ashok Kumar, learned Senior Counsel appearing for Rangasamy (A.3), Kanthavel (A.5) and Dhanavel (A.10); Mr.S.Prabakaran, learned Senior Counsel appearing for Anjapuli (A.11) and Chinnadurai (A.13); Mr.V.Karthic, learned Senior Counsel appearing for Ramadass (A.12); Mr.S.Karthikeyan, learned counsel for Tamilmaran (A.14); and Mr.S.Doraisamy, learned counsel for Sellamuthu (A.15).

70 Since the criminal miscellaneous petitions of Samikannu (P.W.1) and Velmurugan (P.W.2) filed under Sections 15-A(3) and 15-A(5) of the SC/ST Act read with Sections 374 and 482 Cr.P.C. seeking to be heard in this batch of cases were allowed by this Court on 05.04.2022, his counsel Dr.V.Suresh advanced arguments on behalf of the family of the deceased Murugesan for sustaining the trial Court judgment.

71 At the outset, we notice that this case has had a roller coaster ride which is apparent from the aforesaid four narratives. The double murder had taken place in the year 2003 and the trial had begun with the examination of Samikannu (P.W.1) on 28.08.2017, i.e., nearly 14 years later, and this explains why 32 prosecution witnesses, including some Vanniyars as well Dalits, and some local policemen attached to the Vriddhachalam Police Station, who had retired from service by



then, had turned hostile. The caste composition of the witnesses as disclosed in their deposition shows that 18 witnesses belonging to Vanniyar caste, had turned hostile and 10 witnesses belonging to Dalit community, had turned hostile.

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72 What nagged us was as to why the Dalits turned hostile. We found the answer to this question in the petition in Crl.M.P.No.3747 of 2013 that was filed by the trial Court Public Prosecutor to cancel the bail of the accused on the ground that they were intimidating the witnesses, both Vanniyars and Dalits, from deposing against them. In fact, it appears that one witness by name Selvaraj (L.W.26) committed suicide after he received summons to give evidence in this case. In connection with the suicide of Selvaraj (L.W.26), a case in Cr.No.642 of 2017 was registered on 01.09.2017 by the Vriddhachalam Police under Section 174 Cr.P.C. However, the trial Court dismissed Crl.M.P.No.3747 of 2013 on the ground that those witnesses who earlier complained that they were intimidated, came to the Court and stated that they were not intimidated. Further, the Additional Superintendent of Police, CBI, has averred as under in the counter affidavit filed in Crl.M.P.No.4111 of 2017 that was filed by Samikannu (P.W.1) under Section 311 Cr.P.C. seeking to examine Chinnapillai (P.W.49) as a witness:

"During investigation, it was revealed that being poor and reserved community the people belong to Scheduled Caste were subjected to harassment by the higher and dominant community, i.e., Vanniyar which resulted in the murder of Murugesan and Kannagi. Even after the murder of Murugesan and Kannagi also, the higher community dominated the reserved community people who are the victims in the case by the way of threatening and intimidating them to depose in their favour before this Hon'ble Court."

This Court cannot be impervious to these events that transpired before the trial Court and go about appreciating the evidence of the witnesses in a pedestrian manner with blinkers.

73 The prosecution case mainly rests on the testimony of Samikannu (P.W.1), Velmurugan (P.W.2), Palanivel (P.W.3), Tamilarasi (P.W.15) and Chinnapillai (P.W.49). It is true that Samikannu (P.W.1) and Chinnapillai (P.W.49) are the parents of Murugesan; Velmurugan (P.W.2) and Palanivel (P.W.3) are Murugesan's younger brothers; and Tamilarasi (P.W.15) is Murugesan's sister. Therefore, the defence strenuously contended that these five witnesses are interested witnesses and they have not implicated Ayyasamy (A.4) and Gunasekaran (A.9) at all and



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hence, their evidence is not worthy of acceptance and should be rejected lock, stock and barrel. They also drew the attention of this Court to the contradictions in the inter se testimony of these witnesses as well the contradictions in their individual testimony qua their police statements.

74 The defence further contended that what was directed by the High Court vide order dated 22.04.2004 in CrI.O.P.Nos.31572, 31850 and 31851 of 2003 was only "further investigation" under Section 173 (8) Cr.P.C. and instead of doing that, the CBI had done "re-investigation" and therefore, the entire trial stands vitiated.

75 To appreciate this argument, we carefully perused the order dated 22.04.2004. The admitted fact remains that on 08.07.2003, Murugesan and Kannagi had an unnatural death. According to Vriddhachalam police, whose station is just 3 kms. from Pudukkooraipettai Village, they were blissfully ignorant of the occurrence on 08.07.2003. At this juncture, let us give them the benefit of doubt that they did not know anything about the incident that occurred on 08.07.2003. According to them, they woke up only on 17.07.2003 after Duraisamy (A.1) surrendered before Ashokan (P.W.32), V.A.O. and gave an extrajudicial confession (Ex.P.9) implicating himself and Samikannu (P.W.1). The arrest by the Vriddhachalam police of the four Dalits, along with 4 persons of Vanniyar caste, and their release from prison on bail within 23 days of the arrest, triggered Samikannu (P.W.1) to approach this Court and seek CBI investigation.

76 As stated supra, the learned single Judge did not fall for the story proffered by the Vriddhachalam police and in paragraph 47 which has been extracted in paragraph 43 (supra), it could be seen that the learned single Judge has used the expressions "fresh investigation" and "further investigation". In other words, the learned single Judge wanted an independent agency to investigate into the matter to unravel the truth.

77 Normally, further investigation would be done only by the police who had conducted the initial investigation. In this case, there had been a change of investigation agency itself and the CBI was directed to conduct further investigation.

78 Under such circumstances, the argument of the defence that the CBI should have continued with the investigation that was done till then by the Vriddhachalam police and that the CBI should not have gone about collecting materials afresh, cannot be countenanced. After all, the definition of the word



"investigation" as defined under Section 2(h) Cr.P.C., 1973, is wide enough to enable the CBI to go about collecting evidence. In the course of collecting evidence, if they stumble upon fresh materials which run contra to the story of the Vriddhachalam police, it is their bounden duty to investigate the same.

79 The principal accused, viz., Duraisamy (A.1) and Marudhupandiyan (A.2) also did not build up their case based on the FIR registered by the Vriddhachalam police, because, it would have been suicidal to them had they done so, since the said FIR was predicated on the extrajudicial confession (Ex.P.9) of Duraisamy (A.1), wherein, it is stated that since his daughter Kannagi eloped with a Dalit boy, he felt ashamed and so, he had them brought before him and directed his son Marudhupandiyan (A.2) to administer poison to Kannagi.

80 At this juncture, we would like to answer yet another argument that was advanced by the defence, in that, they contended that even in the order dated 22.04.2004 of the learned single Judge, it has been observed that offences under the SC/ST Act appear to have been committed and therefore, after the case was transferred to the CBI, Subbian (P.W.50), Inspector of Police, ought not to have conducted the investigation, inasmuch as, offences under the SC/ST Act could be investigated only by an officer not below the rank of a Deputy Superintendent of Police.

81 We find that the Investigating Officers have been questioned by the defence on this aspect in the cross-examination also. On a careful reading of the order dated 22.04.2004 passed by the learned single Judge, we find that only the contentions of both parties have been extracted therein, in that, Samikannu (P.W.1) had contended that the provisions of the SC/ST Act would stand attracted, whereas, the Vriddhachalam police had contended that their investigation did not reveal about the commission of an offence under the SC/ST Act. The learned single Judge has not returned a finding that the provisions of the SC/ST Act stood attracted in this case at all, because, what was dealt with in those petitions was, whether investigation that was being done by the Vriddhachalam police was proceeding on the right lines or not and whether the bail of the accused should be cancelled.

82 Assuming for a moment that, in the course of the discussion, an observation had been made by the learned single Judge to the effect that the provisions of the SC/ST Act would stand attracted, that cannot be binding on the Investigating Officer, because, the Investigating Officer is required to



collect evidence, assess the evidence so collected and form an independent opinion therefrom. In this case, the Vriddhachalam police had not included the provisions of the SC/ST Act in their FIR and charge sheet. Therefore, when the case was transferred to the CBI, the investigation was entrusted to Subbian (P.W.50), Inspector of Police, who went about collecting evidence. During such collection, he came to know that the provisions of the SC/ST Act could be triggered. Thereupon, he reported the matter to the Superintendent of Police of the CBI, who passed an order directing Nandakumar (P.W.51), Deputy Superintendent of Police, to conduct the investigation with a further direction that Subbian (P.W.50), should assist him.

83 The issue of an incompetent officer conducting an investigation and the results flowing therefrom has been set at rest by the Supreme Court in H.N.Rishbud and Inder Singh v State of Delhi [AIR 1955 SC 196], the relevant portion of which reads thus:

"9.We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

The defence was not able to place any material before this Court to show that they had suffered prejudice because of Subbian (P.W.50), Inspector of Police, going about recording the statements of some witnesses at the initial stage.

84 The learned defence counsel took this Court through the charge sheet filed by the CBI and submitted that the CBI have stated as under:

"As far as the accused A. Anbalagan (A16), Ilayaperumal (A17), Kannadasan (A18) and Samikannu (A19) are concerned, no evidence has come forth to establish the involvement in the commission of the offences. As such, they may be discharged from the commission of the offences."

85 The learned defence counsel contended that it is not open to the CBI to say that the aforesaid persons should be discharged and that it is for the Magistrate to accept or reject the final opinion of the CBI. They also contended that the names of the aforesaid four persons have been included as part of the profile of the accused persons and also in the memo of evidence as prosecution witnesses. All these, according to the defence, vitiated the trial.



86 We carefully perused the final report filed by the CBI. According to the final report filed by the Vriddhachalam Police Station, Anbalagan, Ilayaperumal, Kannadasan and Samikannu (P.W.1) were arraigned as accused by them. According to the CBI, these four persons were falsely implicated by Sellamuthu (A.15). Therefore, the CBI have stated so in the above quoted paragraph. Just because they have used the expression "may be discharged", that, by itself, would not vitiate the entire case of the prosecution. It would be a travesty of justice if the wrong usage of an English expression by the investigating agency in the charge sheet were to vitiate a trial. Such extreme propositions must be treated as being stated only to be rejected.

87 As regards the profiles of the said four persons that have been given along with the charge sheet, a careful examination shows that the CBI have clearly stated in the heading "Not charge sheeted". The fact that the Chief Judicial Magistrate, Chengalpet, took cognizance of the offences disclosed in the final report under Section 190 Cr.P.C. and issued process under Section 204 Cr.P.C. to AA 1 to 15 and not to the aforesaid four persons itself, shows that the Chief Judicial Magistrate, Chengalpet, has accepted the opinion of the Investigating Officer that there are materials only against AA 1 to 15 to be prosecuted and not against the aforesaid four persons. Hence, this argument of the defence fails.

88 Yet another peripheral complaint that was articulated before us was that the CBI had recorded the statements of witnesses in English and not in Tamil. When this question was put to Nandakumar (P.W.51), Deputy Superintendent of Police in the cross-examination, he stated that since superior officers of the CBI in Delhi do not know Tamil, they normally record the statements of witnesses in English for their benefit. We are at a loss to understand as to how, this could, in any manner, cause prejudice to the accused. In any event, a statement recorded by a police officer has no evidentiary value at all and it can, at the most, be used for contradicting the witnesses during cross-examination whilst they are in the witness box. The police statements that are supplied to the accused under Section 207 Cr.P.C. are intended to put the accused on prior notice as to what a particular witness is likely to depose in the trial. Even if the police had not recorded the statement of a person, he can still be examined as a witness during trial. [See Dayal Singh v State of Maharashtra [(2007) 12 SCC 452]. Further, in Zahira Habibullah H. Sheikh and another v State of Gujarat and others [(2004) 4 SCC 158], the Supreme Court has very clearly held that it is not necessary for the police to record the statement in the language known to the giver. What the Court is required to



analyse is, not the statement recorded by the police under Section 161 Cr.P.C., but, the testimony of the witness in the witness stand. Therefore, we have to assess the intrinsic worth of the evidence of Samikannu (P.W.1), Velmurugan (P.W.2), Palanivel (P.W.3), Tamilarasi (P.W.15) and Chinnapillai (P.W.49).

89 The contention that Samikannu (P.W.1), Velmurugan (P.W.2), Palanivel (P.W.3), Tamilarasi (P.W.15) and Chinnapillai (P.W.49) are unworthy of credit as they are interested witnesses, suffers from the usual fallacy that a witness must be branded as interested merely because he is related to the deceased. This is a regular plea that the defence normally take, for which, Vivian Bose, J., has provided an answer five decades ago in Dalip Singh and 3 others v State of Punjab [AIR 1953 SC 364] in the following words:

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

(emphasis supplied)

90 One more feature in this case is that though the CBI re-registered the case after taking over the investigation from the Vriddhachalam police, they had not registered a fresh FIR. They only went about collecting materials in order to find out how the death of Murugesan and Kannagi had occurred.

91 Now, let us analyse the evidence of Samikannu (P.W.1), Velmurugan (P.W.2), Palanivel (P.W.3), Tamilarasi (P.W.15) and Chinnapillai (P.W.49).



92 Samikannu (P.W.1) is the father of Murugesan who was born to him through his first wife Ambika. After Ambika's demise, Samikannu (P.W.1) got married to Ambika's sister, Chinnapillai (P.W.49) and through her, he has three daughters and four sons, of whom, in this case, Velmurugan (P.W.2), Palanivel (P.W.3) and Tamilarasi (P.W.15) were examined.

93 In his testimony, Samikannu (P.W.1) has stated that his eldest son Murugesan was a Chemical Engineer from Annamalai University, Chidambaram, and was employed in Bangalore; about 1 ½ years prior to the demise of Murugesan, he (P.W.1) relocated his family owing to some quarrel, from Kuppanatham Village to Pudukkoraipettai Village, where, Duraisamy (A.1) was the Panchayat President; 5 days prior to the death of Murugesan, Marudhupandiyan (A.2), armed with a sword, came to his house around 5 p.m., looking for Murugesan; Marudhupandiyan (A.2) stated that Murugesan had borrowed Rs.10,000/- and if he is not brought, he would hack him (P.W.1) to death; so, he (P.W.1) went in search of Murugesan and found him in the house of his sister-in-law, Dhanavalli, in Raasaapalayam; there, he also saw a girl with Murugesan and when enquired, Murugesan told him that she is Kannagi, daughter of Duraisamy (A.1); so, he advised Murugesan to send Kannagi back to her parents' house, because, they (P.W.1's family) are Dalits; Murugesan agreed to that and so, he (P.W.1) returned to his village; again, Marudhupandiyan (A.2) came to his house looking out for Murugesan and so, he once again, went to Raasaapalayam in search of Murugesan, but, did not find him there; on his return, he was shocked to learn from his wife Chinnapillai (P.W.49), Maharani (daughter) and Amaravathi (P.W.16-sister) that in the interregnum, Murugesan and Kannagi were brought to the village and murdered. Rest of his evidence relating to how Murugesan and Kannagi were done to death, is hearsay.

94 Samikannu (P.W.1) has further stated that on the next day, when he wanted to go to the police station, he was abducted by Duraisamy (A.1) and Marudhupandiyan (A.2) and their men, taken to Rangasamy School in Periyar Nagar and was threatened to remain silent saying that the matter can be compromised. They also brought an advocate by name Palanivel and wrote out a memorandum of compromise. A day later, Duraisamy (A.1) called him to the police station and when he went there along with his brother Ayyasamy (A.4), both of them were placed under arrest along with Duraisamy (A.1) and sent to judicial custody. After his release on bail, he (P.W.1) filed an application in the High Court seeking CBI investigation.

95 The defence counsel contended that in the cross-examination, Samikannu (P.W.1) admitted that he gave a statement



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to the Judicial Magistrate, Tittakudi, in which, he had stated that after he was threatened, he went in search of his son and found him along with a girl in his relative's house; to this extent, the previous statement of Samikannu (P.W.1) given under Section 164 Cr.P.C. corroborates his testimony in the Court; however, when Samikannu (P.W.1) was asked as to whether he brought the girl and dropped her in Pudukkoraipettai Village, he denied the same. The defence counsel confronted him with his statement under Section 164 Cr.P.C., wherein, he has stated that he dropped Kannagi in Pudukkoraipettai Village and argued that hence, his evidence is not credible. However, it was suggested to Samikannu (P.W.1) by the defence that Murugesan and Kannagi committed suicide by consuming poison on account of some differences of opinion. This is precisely the narrative of Duraisamy (A.1). If Samikannu (P.W.1) had indeed brought Kannagi back to Pudukkoraipettai Village leaving Murugesan in his relative's house, the story of the couple entering into a suicide pact and committing suicide in Pudukkoraipettai Village defies common sense and logic. The fact that Samikannu (P.W.1) was intimidated by Marudhupandiyan (A.2) demanding production of Murugesan for having borrowed Rs.10,000/-, has been corroborated by Palanivel (P.W.3) and Chinnapillai (P.W.49). Thus, from the evidence of Samikannu (P.W.1), it has been established satisfactorily by the prosecution that Murugesan and Kannagi went missing and sensing that they had eloped, Marudhupandiyan (A.2), in order to get hold of Murugesan, contrived a story as if Murugesan had borrowed Rs.10,000/- from him and demanded his production. Fearing the threat of Marudhupandiyan (A.2), Samikannu (P.W.1) went in search of Murugesan and saw him with Kannagi in his relative's house in Raasaapalayam and persuaded Murugesan to send Kannagi back to her house.

96 The next vital piece of evidence is that of Velmurugan (P.W.2), the younger brother of Murugesan, who was studying in XI standard and was 17 years old when the incident occurred in the year 2003. He was examined as a witness in this case on 28.08.2017. A free English translation of the chief-examination of Velmurugan (P.W.2) runs thus:

"At present, I am working as a Social Worker in Trichy. P.W.1 is my father. My siblings are totally 8 persons. 5 males and 3 females. My elder brother, deceased Murugesan is the son of Ambika, the first wife of my father. My elder brother Murugesan had done B.E. Mechanical Engineering in Annamalai University, Chidambaram. My elder brother was done to death by administering poison. My elder brother Murugesan, before his death, was working in Bangalore. Two days prior to the death of my elder brother Murugesan, i.e., on 7/7/2003 at around 11:00 am, while



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I was coming from Virudhachalam to Pudukooraipatti, Marudhupandian and his friends, intercepted me, at the ground near water tank, and asked as to where my brother was. The witness identifies A2 and says that he is Marudhupandian. They said that my elder brother had borrowed money and asked as to where he was. They told that if my elder brother did not turn up, we would not be left alive and that they would not let our family inside the village. Further, since I did not give proper reply to the questions posed by Marudhupandi, they locked me up in the store room located below the Pudukooraipatti water tank. They undressed me and searched the items that I had kept. Then, they took away the bus ticket that I had kept. Then at around 4 pm, some unidentified persons released me stating that my elder brother was traced out. Then, I left for my mother's house at Pudukooraipatti. At that time, my mother informed me that my junior paternal uncle Ayyasamy had brought my elder brother and that I need not worry. Then, my mother said that my elder brother was kept in the sugarcane grove of Duraisamy. Then, when I went to sugarcane grove of Duraisamy, in search of my elder brother, my elder brother was found with A1-Duraisamy and A4-Ayyasamy, my junior paternal uncle. Then, while they were talking, within a few minutes, Marudhupandian, A2, S/o.Duraisamy and his relative A7-Venkatesan, arrived there. They asked my elder brother Murugesan as to where he was keeping, Kannagi, the daughter of Duraisamy. Once they had left, my brother Palanivel arrived there. At that time, my junior paternal uncle Ayyasamy asked Duraisamy as to why he was taking his elder brother's son alone on the allegation of missing of a girl, when he had stated to bring him on the complaint that he had borrowed money from him. For that, Duraisamy replied that only if it is stated that he has to give money, he would bring him and that is why he had stated so. Duraisamy further promised that my brother would be released, once the girl arrives. Then, my brother Palanivel and I returned home. Then, while we were at home, at around 7 pm, it was informed by the villagers that my brother Murugesan had been beaten up, in front of a temple, where he was put to tether. When I went home, my mother, elder sister Tamilarasi and aunt Amaravathi, were present at home. Then, I, along with my relatives, elder sister and brothers went to Mariamman temple in search of him. At that time, my elder brother Murugesan's hands were found tied at backside and each one was beating him. At that



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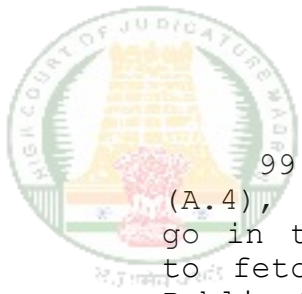
junction, all the accused present now, in the Court, were present. The witness specifically states that Marudhupandian, Jothi, Kanthavel, Venkatesan, Gunasekaran, Dhanavelu and Anjapuli were present. Further, more than 100 villagers were present over there. Then, my junior paternal uncle Ayyasamy asked Duraisamy and his accomplice, as to why they were torturing him. When my elder brother was beaten up, since he did not come up with proper reply to the questions posed by them, they tortured him and by tying up his legs with rope, lowered him into the deep bore well situated near the tank near the temple, upside down, asking him to reveal the truth. After my brother agreed to reveal the truth, they removed the rope tied in his hand. My brother begged for his life and stated that Kannagi has been kept in the custody of his uncle's (Chithappa) mother-in-law Saroja's residence, at Moongilpatty. Thereafter, within a few minutes, a white colour TATA SUMO car, driven by one Jayatharasan, arrived there and 6 to 7 unknown persons (once again the witness says 6 to 7 persons, whose names not known), by saying we should go to Moongilthurai, immediately, left in that car. Kanthavelu, Jothi, Mani, Dhanavel, Gunasekaran, Venkatesan, having threatened my uncle (Chithappa), had taken him also in that vehicle and left. They made my brother Murugesan sit in front of the temple. Maruthupandi, Duraisamy and his men were put to escort him. Maruthupandi and Duraisamy insisted us to leave for home saying that my brother would be released at once, if the girl arrives. Then, my sister Tamilarasi, aunt Amaravathi, brother Palanivel and I had left for home. Thereafter, thinking that it would become a problem if the girl could not be traced out, my brother Palanivel and I proceeded to my uncle's motor shed, at 8.30 p.m. Thereafter, we went home in the morning. At that time, no one was available at home. When I was in search of them, the villagers informed that my brother and the girl, whom he married, were done to death by giving them poison and they were set ablaze. While I was proceeding in search of my mother and younger sister, I found them coming on the main road, crying. I enquired them as to what had happened. They also informed, as stated by the general public, that my brother and that girl were set ablaze, while alive, by giving poison. (The learned counsel for A1 to A3, A5, A6, A9 to A11 has raised an objection that the above evidence is a hearsay evidence and therefore, the same is recorded subject to objection). Thereafter, being frightened, we went to our native



village Kuppanatham, the next night. The police enquired me in this regard.”

97 Velmurugan (P.W.2) was subjected to stiff cross-examination by the defence. In the cross-examination, he has inter alia stated that he went along with his mother to the police station around 8 a.m., but the police did not record what they had stated. To a specific suggestion, he has stated that while he alighted from the bus and was going towards the water tank, he was threatened by Marudhupandiyan (A.2) and was asked about the whereabouts of Murugesan. He has, in the cross-examination, further, inter alia, stated that his house was around 500 metres away from the place where Murugesan was kept tied and beaten. He has also admitted that there were about 100 people who had gathered at the place where Murugesan was kept tied. It was suggested to this witness that after the incident, Dalit leader Mr.Thirumavalavan issued a statement and the Nakkiran magazine published a news item, for which, he has answered in the affirmative. He has also admitted that his elder brother Palanivel (P.W.3) gave a representation to the Chief Minister and other higher officials in this regard.

98 The evidence of Samikannu (P.W.1) and Velmurugan (P.W.2) have been substantially corroborated by Palanivel (P.W.3), who has stated that Marudhupandiyan (A.2) threatened his father Samikannu (P.W.1) to bring Murugesan saying that Murugesan had borrowed money from him and therefore, his father Samikannu (P.W.1) went in search of Murugesan; thereafter, Marudhupandiyan (A.2) threatened Ayyasamy (A.4) also to bring Murugesan to the village; before Ayyasamy (A.4) left in search of Murugesan, his brother Velmurugan (P.W.2) was kept in confinement in the Panchayat office and he was released only after Ayyasamy (A.4) brought Murugesan to the village; thereafter, Murugesan's hands and legs were tied and he was lowered upside down in a deep bore well near the water tank and was asked to disclose the whereabouts of Kannagi; at that time, Marudhupandiyan (A.2), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Malayan, Gunasekaran (A.9) and Ramadass (A.12) were also there; there were about 50 persons gathered there; Murugesan stated that he would disclose where he had kept Kannagi and so, a white colour Tata Sumo car (M.O.7) driven by Jayatharasan (P.W.22) was brought, in which, six or seven persons went to Moongilthuraippattu Village and they were Ayyasamy (A.4), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Malayan, Gunasekaran (A.9) and Dhanavel (A.10); after that, he (P.W.3) and his brother Velmurugan (P.W.2) left the place and spent the night in the fields; on the next day, he learnt that Murugesan and Kannagi were murdered.



99 In the cross-examination by the counsel for Ayyasamy (A.4), Palanivel (P.W.3) has stated that Ayyasamy (A.4) did not go in the Tata Sumo car (M.O.7) to Moongilthuraippattu Village to fetch Kannagi. Therefore, on this score, the trial Court Public Prosecutor prayed for declaring Palanivel (P.W.3) hostile and cross-examined him by suggesting that Ayyasamy (A.4) had indeed gone in the Tata Sumo car (M.O.7) along with the others to bring Kannagi. Palanivel (P.W.3) denied the said suggestion.

100 Thus, from a cumulative analysis of the evidence of Samikannu (P.W.1), Velmurugan (P.W.2) and Palanivel (P.W.3), we find that the prosecution has proved the following facts:

- i. Murugesan and Kannagi went missing from Pudukkoraipettai Village;
- ii. 5 days prior to the death of Murugesan and Kannagi, Marudhupandiyan (A.2) threatened Samikannu (P.W.1) to bring Murugesan saying that he had borrowed a sum of Rs.10,000/- from him;
- iii. Samikannu (P.W.1) went in search of Murugesan and found the Murugesan-Kannagi duo in his relative's house in Raasaapalayam and after advising Murugesan to send back Kannagi to her parents' house, he quietly came back to the village;
- iv. Murugesan and Kannagi shifted places;
- v. One day prior to the occurrence, once again, Marudhupandiyan (A.2) threatened Samikannu (P.W.1) to bring Murugesan and so, Samikannu (P.W.1) went to Raasaapalayam Village in search of Murugesan, but, did not find him there; however, he did not return to the village and remained elsewhere fearing reprisal if he returned empty-handed.
- vi. Marudhupandiyan (A.2) threatened Ayyasamy (A.4) to bring Murugesan and kept Velmurugan (P.W.2) as a hostage;
- vii. Ayyasamy (A.4) went and brought Murugesan back to Pudukkoraipettai Village on the same evening (07.07.2003);
- viii. On the return of Murugesan, Velmurugan (P.W.2) was released;



ix. Around 7.00 p.m., Murugesan was undressed except for his underwear; his hands and legs were tied and was beaten near the village temple demanding the whereabouts of Kannagi;

x. When Murugesan was not relenting, he was lowered upside down in a deep borewell till he revealed the whereabouts of Kannagi;

xi. Murugesan eventually relented and revealed the whereabouts of Kannagi;

xii. A white colour Tata Sumo car (M.O.7) driven by Jayatharasan (P.W.22) was brought in which 7 persons left the village to bring Kannagi;

101 According to Velmurugan (P.W.2) and Palanivel (P.W.3), Murugesan was kept near the village temple and beaten. Even according to these witnesses, a group of persons had gathered there for witnessing the occurrence. Now, the question is, could all this be a figment of imagination of Velmurugan (P.W.2) and Palanivel (P.W.3).

102 To satisfy ourselves, we pored over the testimony of the hostile witnesses and found that Srinivasan (P.W.6), Ashok Kumar (P.W.7) and Ashokan (P.W.9) have stated that they are from Pudukkoraipettai Village; they belong to Vanniyar caste; they know Murugesan and Kannagi; Kannagi belongs to Vanniyar caste; Murugesan is a Dalit; at the time of Murugesan's death, Duraisamy (A.1) was the Panchayat President; a day prior to the death of Murugesan, there were special poojas in the Mariamman temple in the village; when they went to attend the poojas, they happened to see a crowd near the village water tank; towards the evening, there was a noisy crowd gathered near the water tank which was next to the temple.

103 Ashok Kumar (P.W.7) has further stated that one person was kept tied. Since Ashok Kumar (P.W.7) had stated in the earlier part of his chief-examination that he knew Murugesan, the trial Judge had put the following question to him:

Court Question:

Since you know Murugesan earlier, were you able to identify the person who was kept bound near the temple?



For the aforesaid question, Ashok Kumar (P.W.7) has replied that since it was dark, he did not know the person who was kept tied. Pertinent it is to point out that to the question put by the Court, Ashok Kumar (P.W.7) did not state that the person whose hands and legs were kept tied, was not Murugesan, but had only stated that he was unable to identify the person since it was dark.

104 Thus, the testimony of these three hostile witnesses provide a broad corroboration to the testimony of Velmurugan (P.W.2) and Palanivel (P.W.3) that one day prior to the death of Murugesan, he was brought to the village, his hands and legs were bound and he was tortured near the village temple.

105 Of course, we also have the evidence of Tamilarasi (P.W.15) and Chinnapillai (P.W.49) to corroborate Velmurugan (P.W.2) and Palanivel (P.W.3) who have spoken to about the torture that was meted out to Murugesan. We are not discussing their evidence here, because, much argument was advanced at the bar by the defence contending that the evidence of these two witnesses should be rejected. This criticism requires to be answered in detail and therefore, we will advert to the testimony of Tamilarasi (P.W.15) and Chinnapillai (P.W.49) in detail at a later juncture.

106 According to the CBI, after Murugesan revealed Kannagi's whereabouts, Duraisamy (A.1) arranged a white colour Tata Sumo car (M.O.7) bearing Regn. No.TN 23 C 5282 (M.O.7) driven by Jayatharasan (P.W.22) in which Ayyasamy (A.4), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8), Gunasekaran (A.9), Dhanavel (A.10) and Anjapuli (A.11) were despatched on the night of 07.07.2003 to the house of Saroja (P.W.23), mother-in-law of Ayyasamy (A.4), in Moongilthuraippattu Village and they brought Kannagi in the early hours of 08.07.2003 to Pudukkooraipettai Village, where, on the directions of Duraisamy (A.1), Marudhupandiyan (A.2) administered Nuvacron (insecticide) to Kannagi and Ayyasamy (A.4) was directed to administer the same to Murugesan.

107 In paragraph 100 (supra), we have recorded that the prosecution has proved the fact of the torture meted out to Murugesan, his eventual disclosure about the whereabouts of Kannagi, summoning of a white colour Tata Sumo car driven by Jayatharasan (P.W.22) and seven persons, including Ayyasamy (A.4) being sent to bring Kannagi. Though Jayatharasan (P.W.22) turned hostile, he has admitted the following facts:

- He is a resident of Pudukkooraipettai Village;



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- He knows AA 1 to 13;
- Except Ayyasamy (A.4) and Gunasekaran (A.9), other accused belong to Vanniyar caste;
- He also belongs to Vanniyar caste;
- Duraisamy (A.1) was the President of the Village Panchayat in 2003;
- He knows Kannagi; and
- In 2003, he was driving a white colour Tata Sumo car (M.O.7) which the CBI police seized and have produced it before the Court.

Of course, he did not say that he went along with the other accused and brought Kannagi to Pudukkoraipettai Village and therefore, he was declared hostile. The admission of Jayatharasan (P.W.22) that he was driving a white colour Tata Sumo car (M.O.7) in 2003, which the CBI had seized and produced before the Court, is compatible with the evidence of Velmurugan (P.W.2) and Palanivel (P.W.3) that Jayatharasan (P.W.22) was the driver of the Tata Sumo car (M.O.7). Tata Sumo car has been marked as M.O.7 and its R.C. book which has been marked as Ex.P.59, bears the name and photograph of Jayatharasan (P.W.22). From the evidence of Velmurugan (P.W.2) and Palanivel (P.W.3), it has been established that Ayyasamy (A.4), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8), Gunasekaran (A.9) and Dhanavel (A.10) went by Tata Sumo car (M.O.7) driven by Jayatharasan (P.W.22) to fetch Kannagi. Though the CBI recorded the statements of several persons to testify to the fact that Kannagi was brought from the house of Saroja (P.W.23) in Moongilthuraipattu to Pudukkoraipettai Village, where, insecticide was administered to her and Murugesan, they turned hostile, except Chinnapillai (P.W.49), Murugesan's mother, who has stated that it was Marudhupandiyan (A.2) who forcibly administered the poison to Murugesan.

108 The defence counsel submitted that in the charge sheet filed by the CBI, Chinnapillai (P.W.49) was not included in the list of witnesses. When Nandakumar (P.W.51), Deputy Superintendent of Police, was asked as to why he had not included the name of Chinnapillai (P.W.49) in the memo of evidence, he has stated that he had not included her, because, she was giving conflicting statements and so, he thought that she would not be a reliable witness.

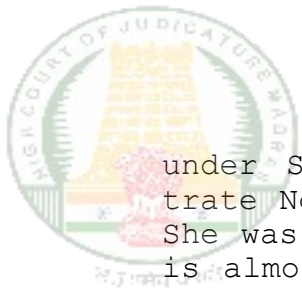
109 Placing reliance upon the judgment of the Supreme Court in Vadivelu Thevar and another v State of Madras [AIR 1957 SC 614], the defence contended that where a witness is wholly unreliable, no amount of corroboration could cure the vice of



110 The trial Court records show that the trial Court Public Prosecutor and Samikannu (P.W.1) had filed petitions in CrI.M.P.Nos.4100 and 4111 of 2017 respectively, under Section 311 Cr.P.C. before the trial Court to examine Chinnapillai (P.W.49) as a witness. The trial Court had allowed the petition filed by the trial Court Public Prosecutor and consequently, dismissed the petition that was filed by Samikannu (P.W.1). Then, the question arose as to whether Chinnapillai (P.W.49) should be examined as a prosecution witness or a Court witness. This issue came up to the High Court in CrI.O.P.No.22051 of 2017 in which, the High Court, vide order dated 27.10.2017, eventually held that Chinnapillai (P.W.49) should be examined as a prosecution witness. Accordingly, Chinnapillai was examined as P.W.49.

111 We may point out that at the instance of the CBI, the statement of Chinnapillai (P.W.49) was recorded by the Magistrate under Section 164 Cr.P.C. and the same has been marked as Ex.P.48. Just because the Investigating Officer was of the opinion that Chinnapillai (P.W.49) would not be a reliable witness, that, by itself, cannot make her evidence unreliable. The fact remains that the trial Court had felt that her evidence is relevant and necessary for the case and had, therefore, allowed the application of the trial Court Public Prosecutor under Section 311 Cr.P.C. to examine Chinnapillai (P.W.49) as a prosecution witness. The matter had even come up to the High Court, as stated above, of course, at the instance of Samikannu (P.W.1) and the learned single Judge had directed that Chinnapillai (P.W.49) should have to be examined not as a Court witness, but, as a prosecution witness. Once the trial Court has held that the evidence of Chinnapillai (P.W.49) is essential to the just decision of the case as required under Section 311 Cr.P.C., the opinion of the Investigating Officer that she would not be a reliable witness is really of no consequence.

113 Chinnappillai (P.W.49) who is the second wife of Samikannu (P.W.1) and the stepmother of Murugesan, is an illiterate Dalit peasant, as could be seen from the fact that she has affixed her thumb impression in the deposition. Her statement



under Section 164 Cr.P.C. was recorded by the Judicial Magistrate No.I, Chengalpet, at the request of the CBI on 02.07.2004. She was examined-in-chief in the trial Court on 08.12.2017 which is almost 14 years after the date of occurrence. Noteworthy it is to state here that there is a Section 161(3) Cr.P.C. statement of Chinnapillai (P.W.49) that was recorded by the Vriddhachalam police, a Section 161(3) statement of hers recorded by the CBI and a Section 164 Cr.P.C. statement of hers recorded by the Judicial Magistrate No.I, Chengalpet, as stated above.

114 For the sake of convenience, we give below the free English translation of the chief-examination of Chinnapillai (P.W.49):

"At present, I am residing at Kuppanatham. I have 7 children, in all. The deceased Murugesan is my elder sister's child. After the death of my elder sister, I married my elder sister's husband for fostering the child. The child born next to Murugesan, is Palanivel, the next child's name is Velmurugan, next to him is Maharaja, next to him is Sundharapandian. The names of the daughters are Tamilarasi, Mahalakshmi and Maharani. Murugesan had studied BE, before his death. On completion of his BE Course, he went to Bangalore for work. Murugesan died in the year 2003. Since there was an issue in the village, 1 ½ years prior to the death of Murugesan at Kuppanatham, we migrated to Kooraipeitai from Kuppanatham. A2 - Marudhapandi threatened us with a knife stating that, my son Murugesan had borrowed Rs.10,000/- and gone and if I did not repay the amount, he will set all of us ablaze along with house. My husband went in search of Murugesan. Later, he had told A4 - Aiyaswamy that his elder brother's son had borrowed Rs.10,000/- and went and had asked him to bring his elder brother's son Murugesan. He had said as such, a day prior to the death of my son Murugesan. My husband, who went in search of my son, had not returned. A4 Aiyaswamy brought my son from the house of my daughter Tamilarasi at Vannankudikadu. The accused Aiyaswamy had taken away my son to the motor shed owned by Al Duraisamy, once darkness fell. Duraisamy, Marudhapandian and Aiyaswamy are all present in this Court, now. When my son was brought, we, viz., my daughter Tamilarasi, my sons Palanivel, Velmurugan and I were all at home. Having been beaten and dragged out from the motor shed, my son had been tied and beaten up near Mariamman temple. Maruthapandi, Ramadoss, Thangavel, Rangasamy, Molaiyan and Mani



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assaulted my son. Now, all of them are present before this Court. They assaulted him asking, "where you had kept the girl, we will kill you if do not say the place where you had kept the girl". The girl's name is Kannagi. They assaulted by using abusive words, stating that, 'para pundaikku vanniya pundai kekkudha'. My sister-in-law - Amaravathi and my daughter Tamilarasi, came from the village, and said that, her elder brother was tied and beaten up. When I saw my son, he was left barely with an underwear. His hands and legs were tied. They lowered my son, upside down, with his hands and legs tied, into a bore pipe measuring 10 inches. Once he was lowered and lifted up as such, my son told them that he had kept Kannagi in the house of Aiyasamy's mother-in-law. The above said occurrence was seen by me, my sister-in-law Amaravathi, my daughter Tamilarasi and my sons Velmurugan and Palanivel. Later on, accused Jothi, Venkatesan, Marudhapandi, Ramadass, Thangavel and Mani having assaulted my brother in law Aiyasamy, took him in a SUMO Car, stating that the girl is in his mother-in-law's residence only. During that time, they tied my son nearby Mariamman Temple, placed him under the custody of two persons and went. They chased me out, without allowing me to see my son. We went home. My daughter and I stayed in sister-in-law's house. Being afraid, both my sons, slept in the backyard, near the village. In the early morning, while my sister-in-law, my daughter and I went and saw, my son Murugesan was not found near the temple. At that time, talks have been prevailing among the villagers that, my son is going to be killed, by giving poison. At that time, my sister-in-law and I rushed through the Aiyanar Temple, in search of my son.

A passage would pass through the Aiyanar Temple. We went searching through that path. While we were going, we heard an alarm. My son was found to have been tied around a tree at a cashew grove, near the Aiyanar Temple. Accused Aiyasamy was found to be tied with a tree. The accused who are present were all present there. Except A14 and 15, all the other accused were present there. When we saw, my son was made to be laid with his head on the western direction and his legs on the eastern direction. His hands and legs were tied. Marudhapandi poured the poison into my son's mouth. Since my son did not open his mouth, one Rangasamy cut my son's mouth, with a knife. Accused Jothi and Mani caught hold of my son's hands. The Accused Ramadass sat upon the chest of my son. It is only the thing that had happened. They gave poison. I intercepted.



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They restrained me. I lost my consciousness, on seeing poison being fed to my son. My sister-in-law gave me water. Immediately, we rushed to the Police Station. In the Police Station, we were assaulted and chased out stating 'parachikku padayatchi ponnu kekkudha' (Is the girl from upper caste padayatchi required for a boy hailing from pariah caste). Thereafter, we came home. Later, my husband returned home. At that time, accused Rangasamy and others had arrived, stating that, they had given poison and set him ablaze. At once, my husband, my daughter and I, all went to the crematorium. There, my son was on pyre. A ring was there in my son's finger. We took that and came. Later on, we shifted our residence to Kuppanatham. I have testified regarding this occurrence in Chengalpet Court, also.

Permission was sought for on the prosecution side to cross examine the witness, permission granted.

Accused Aiyasamy was at home, when my son was kept tied near the temple. Aiyasamy was taken from his residence by the men belonging to Padayatchi caste. They took him to the place where my son was present. I do not admit the suggestion that I am making a false testimony as if my brother-in-law Aiyasamy was dragged and brought from his residence by Padayatchi men, while my son was tied and beaten. I do not admit the suggestion that, Aiyasamy was present along with that gang only. I do not admit, similarly, the suggestion that I am making a false testimony as if the other accused had assaulted, dragged and taken Aiyasamy in a TATA Sumo vehicle to the place where Kannagi was kept. I have not noticed anyone in the place where my son and Aiyasamy were tied and kept. Accused Gunasekaran was present in the said place. Accused Gunasekaran also went in the Sumo vehicle. I do not admit the suggestion that Maruthapandi gave the poison to Aiyasamy stating that, "I had killed my younger sister by giving poison and hence, you should kill Murugesan" and in turn, Aiyasamy having given the poison to Murugesan, Murugesan who refused at first, later, had received the poison kept in tumbler, drank, due to the compulsion of Aiyasamy, and died.

Adjourned for hearing as to whether the government advocate has rights to cross examine this witness, in this case.

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Chinnapillai"



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115 The defence mounted a strident attack on the testimony of Chinnapillai (P.W.49) by contending that:

- i. in her statement under Section 164 Cr.P.C., she had implicated several others, viz., Kodandapani, Kaliyaperumal, Aranganathan, Balu, Kaattu Raja, et al., who have not been arrayed as accused in the case;
- ii. she has ruled out the presence of Velmurugan (P.W.2), Palanivel (P.W.3) and Tamilarasi (P.W.15) when Murugesan was allegedly tortured near the village temple by saying in the cross-examination that when she went home, her two sons were there and after that, they all slept;
- iii. her evidence is against charge no.9, in that, she has stated that it was Marudhupandiyan (A.2) who had administered poison to Murugesan, whereas, charge no.9 states that it was Ayyasamy (A.4) who had administered poison to Murugesan.

116 The learned counsel for the defence contended that the prosecution should have a definite case and cannot blow hot and cold and when the evidence adduced by the prosecution falls short of the necessary proof required for proving the charge, the Court must extend the benefit of doubt to the accused.

117 Before adverting to the aforesaid submission, it may be relevant to allude to the definition of the word "proved" in Section 3 of the Evidence Act. For ready reference, the said provision is extracted:

"Proved" .-A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

(emphasis supplied)

In the above definition, two expressions, viz., "considering the matters before it" and "its existence so probable that a prudent man", require emphasis.

118 Sir James Fitzjames Stephen, who was the principal architect of this legislation, has carefully used the expression "considering the matters before it" instead of "considering the evidence before it". Though the word "evidence" has been



defined, the word "matters" has been deliberately left undefined. The Evidence Act has, therefore, left it to the discretion of the Court to appreciate the evidence and decide whether a fact has been proved or not, from the standpoint of a prudent man. At this juncture, it is felicitous to refer to the judgment of the Supreme Court in *State of Maharashtra v Mohd. Yakub and others* [AIR 1980 SC 1111], wherein, it was held as under:

"12. At the outset, it may be noted that the Evidence Act does not insist on absolute proof for the simple reason (sic reason) that perfect proof in this imperfect world is seldom to be found. That is why under Section 3 of the Evidence Act, a fact is said to be "proved" when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This definition of "proved" does not draw any distinction between circumstantial and other evidence. Thus, if the circumstances listed above establish such a high degree of probability that a prudent man ought to act on the supposition that the appellant was attempting to export silver from India in contravention of the law, that will be sufficient proof of that fact in issue."

(emphasis supplied)

119 In India, the situation is even more peculiar, because, by the time a witness comes to testify in a Court of law, passage of time adds to his loss of memory which fuels his imagination and consequently, leads to embellishments and exaggerations in his testimony.

120 Let us take the present case. Due to the elopement of a Dalit boy with a caste Hindu girl, the whole village was in pins and needles, especially, when the girl turned out to be the daughter of the President of the Village Panchayat. There were active participants as well inquisitive onlookers who did not have the courage to intervene. From the evidence of Velmurugan (P.W.2), Palanivel (P.W.3), Srinivasan (P.W.6), Ashok Kumar (P.W.7) and Ashokan (P.W.9), we are able to infer that only after 7.30 p.m. on 07.07.2003, when Murugesan could not withstand the torture any more, he divulged the whereabouts of Kannagi. Thereafter, a group of accused, owing allegiance to Duraisamy (A.1), went along with Ayyasamy (A.4) in a Tata Sumo car (M.O.7) driven by Jayatharasan (P.W.22) to the house of the mother-in-law of Ayyasamy (A.4), viz., Saroja (P.W.23) in Moongilthuraippattu Village. The next day, by sunrise, two bodies were found cremated. In this charged atmosphere, the



family members of Murugesan, viz., Samikannu (P.W.1), Chinnapillai (P.W.49), Palanivel (P.W.3), Tamilarasi (P.W.15), et al, would have been in a state of emotional trauma not knowing what would happen the next moment. In such a situation filled with tension, there are bound to be distortions in their ability to perceive, register and recall the events sequentially.

121 Taking all such social factors into consideration, the principle "falsus in uno, falsus in omnibus" has been made inapplicable to India by several authoritative pronouncements of the Supreme Court. Suffice to refer to the judgment in Laxman and Others v State of Maharashtra [(1974) 3 SCC 704], where, the Supreme Court refers to a test that was conducted in America in which persons who had witnessed an incident, gave different versions of the same, when they were asked to narrate very shortly after the incident, what they saw.

122 In this case, the defence had the benefit of the Section 161(3) Cr.P.C. statements that were recorded by the Vriddhachalam police to suit their narrative; the Section 161(3) Cr.P.C. statements recorded by the CBI to conform to their theory; and the Section 164 Cr.P.C. statements of the witnesses that were recorded later. When all these previous statements are put to an illiterate witness like Chinnapillai (P.W.49) whilst she is in the witness box, naturally, she would be flummoxed.

123 To be noted, her examination-in-chief was on 08.12.2017 and the cross-examination was on 18.12.2017. In the cross-examination, she has stated that when she gave the statement before the Judicial Magistrate, Chengalpet, she was in a certain frame of mind and that on that day (the day on which she testified in the trial Court), on seeing the faces of the accused standing in the dock, she was able to recollect the incident and give evidence. This answer which was invited by the defence counsel in the cross-examination cuts the very umbilical cord of the defence attack on her testimony. When the statement of a witness is recorded by a Magistrate under Section 164 Cr.P.C., the accused will not be present in the Court. The witness would have to recall the incident based on his/her sheer memory and narrate the same. The ability to register and recall matters, differs from person to person. Perhaps, for Chinnapillai (P.W.49), when she saw the accused in the dock, her memory would have got triggered and the overt acts of the accused would have come graphically before her mind's eye which she would have been able to place before the Court. Therefore, the contention of the defence that she has contradicted Velmurugan (P.W.2), Palanivel (P.W.3) and Tamilarasi (P.W.15)

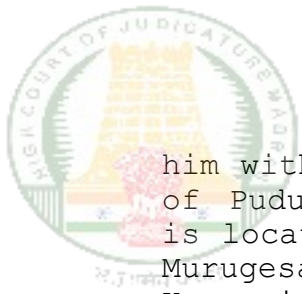


deserves only outright rejection in the facts and circumstances of the case and we have no reason to discard her testimony in toto.

124 That said, even in her Section 164 Cr.P.C. statement, Chinnapillai (P.W.49) had stated that it was Marudhupandiyan (A.2) who had administered poison to Murugesan, which story she stuck to in her evidence before the Court. Of course, it is the CBI's case that on the directions of Duraisamy (A.1), Ayyasamy (A.4) handed over the poison to Murugesan and made him drink it. The 9th charge was framed on this basis. But, when Chinnapillai (P.W.49) did not subscribe to this theory of the CBI even at the time of giving statement under Section 164 Cr.P.C., the CBI thought it fit to exclude her from the memo of evidence appended to the final report and only at the instance of the trial Court Public Prosecutor, was she examined as P.W.49. In our opinion, the evidence of Chinnapillai (P.W.49) is in consonance with the evidence of Samikannu (P.W.1), Velmurugan (P.W.2) and Palanivel (P.W.3) with regard to the facts that there was a manhunt for Murugesan after he eloped with Kannagi, resulting in Marudhupandiyan (A.2) threatening Samikannu (P.W.1) and Ayyasamy (A.4) to bring Murugesan or face dire consequences, leading to Ayyasamy (A.4) bringing Murugesan to the village, followed by torture of Murugesan by Duraisamy (A.1) and his henchmen, for eloping with a caste Hindu girl and for making him reveal her whereabouts. The fact that Murugesan revealed the whereabouts of Kannagi pursuant to which Ayyasamy (A.4) was taken by Duraisamy's (A.1's) men in a Tata Sumo car (M.O.7), driven by Jayatharasan (P.W.22) to fetch Kannagi, has been proved beyond reasonable doubt. Thereafter, as many witnesses who were to speak about the poison being administered to Kannagi and Murugesan had turned hostile, we are left with only the evidence of Chinnapillai (P.W.49) who also speaks only about the poison being administered by Marudhupandiyan (A.2) to Murugesan and does not speak a word about the murder of Kannagi. Should this Court throw up its hands and hold that, after the proof of such relevant facts, Murugesan and Kannagi must have committed suicide in the presence of the whole village, as lamely contended by Duraisamy (A.1)?

125 Let us, for a moment, extend the benefit of this doubt to Duraisamy (A.1) and proceed further to analyse if the theory of suicide proffered by him is probable.

126 Duraisamy (A.1) is not an unlettered peasant, as is evident and manifest from his signature in his statement given under Section 313 Cr.P.C. At the relevant point of time, he was the President of the Pudukkooraippettai Village Panchayat, which he has admitted in the answer to Question No.41 that was put to



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him with regard to the evidence of Arumugam (P.W.21), a resident of Pudukkoraipettai Village. The Vriddhachalam Police Station is located just 3 kms. away from Pudukkoraipettai Village. Had Murugesan and Kannagi committed suicide, his natural conduct as Kannagi's father and as the President of the Village Panchayat would have been to inform the police immediately, lest, the blame should fall on his shoulders. Instead, both bodies were hastily cremated on 08.07.2003 and thereafter, when Dalit leaders and the fourth estate raised a hue and cry, the Vriddhachalam police panicked and commenced a farcial investigation on 17.07.2003. In his statement under Section 313 Cr.P.C., Duraisamy (A.1) has not whispered a word as to the circumstances under which the body of his daughter was cremated even sans postmortem. Though it may not be necessary for the accused to prove a fact beyond reasonable doubt, nevertheless, a burden is cast upon him under Section 106 of the Evidence Act to prove facts which are exclusively within his knowledge. This evidentiary burden can be discharged by offering a plausible explanation or by a preponderance of probability. The accused cannot maintain a stoic silence by not coming forward to explain to the Court as to why the two bodies were disposed of hastily by cremating them. It is not the case of the accused (the father-son duo) that Kannagi had perished of a heart attack and so, they cremated her as per their custom.

127 In the cross-examination of the witnesses, the accused have suggested that Murugesan and Kannagi had committed suicide by consuming poison as they had differences of opinion. Thus, even according to the principal accused in this case, the deaths of Murugesan and Kannagi were owing to consumption of poison. The evidence produced by the prosecution has proved, beyond reasonable doubt, the following facts:

- (a) Murugesan was forcibly brought to Pudukkoraipettai Village;
- (b) Murugesan was beaten black and blue in public to disclose the whereabouts of Kannagi;
- (c) Murugesan yielded to the torture and disclosed the whereabouts of Kannagi, following which, a team had gone to Moongilthuraippattu Village to bring Kannagi;
- (d) The bodies of Murugesan and Kannagi were cremated and disposed off in hot haste.

128 In the light of the aforesaid proved facts, the dictates of common sense would state that the theory of suicide set up by the defence is clearly a red herring. The inference, which is strengthened by the unnatural conduct of Duraisamy (A.1) in keeping silent after cremating the body of his daughter, that



can be safely drawn is that the couple was brought to the village and murdered by the group, led by the accused (father - son duo). Such an inference is permissible if the definition of the word "proved" is read with Section 114 of the Evidence Act and we are fortified in drawing such an inference from the statement of law propounded by a three Judge Bench of the Supreme Court in M.Narasinga Rao v State of Andhra Pradesh [(2001) 1 SCC 691].

"15. The word "proof" need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word "proved" in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins v. Powells Tillery Steam Coal Co. Ltd. [(1911) 1 KB 988 : 1911 WN 53] observed like this:

"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion."

16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

17. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the ex-



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istence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled."

(emphasis supplied)

129 At this juncture, we must also advert to the evidence of Velmurugan (P.W.2), Palanivel (P.W.3) and Tamilarasi (P.W.15), who have stated that on the next day, when they went in search of Murugesan, the villagers told them that Murugesan and Kannagi were murdered and burnt. This evidence of the trio, in our opinion, is relevant and admissible under the category of *res gestae*, relevant under Section 6 of the Evidence Act, as an exception to the inadmissibility of hearsay evidence. As a matter of fact, Illustration (a) appended to Section 6, *ibid.*, clinches the issue. The fact that the villagers had gathered when all these were happening from the previous day, has been established beyond doubt not only through the evidence of Velmurugan (P.W.2), Palanivel (P.W.3), Tamilarasi (P.W.15) and Chinnapillai (P.W.49), but also through the evidence of hostile witnesses like Srinivasan (P.W.6), Ashok Kumar (P.W.7) and Ashokan (P.W.9). The fact that the villagers were saying that Murugesan and Kannagi were administered poison and done to death is not, by itself, a fact in issue in this case. However, this becomes a relevant fact as it is connected with the fact in issue, viz., administering of poison to Murugesan and Kannagi by Duraisamy (A.1) and Marudhupandiyan (A.2) and their group in Pudukkoraipettai Village around the same time so as to form part of the same transaction.

130 It is true that Chinnapillai (P.W.49) has not stated anything about who had administered poison to Kannagi and she has only stated that it was Marudhupandiyan (A.2) who had administered poison to Murugesan. The defence contended that this evidence of Chinnapillai (P.W.49) goes against the case of the prosecution and therefore, her testimony deserves to be discarded. In a case of this nature, when witnesses who are supposed to speak about several relevant facts and on the facts in issue, are won over and as a sequel, turn hostile, a duty is cast upon the Court to remove the chaff from the grain to arrive at the truth. At this juncture, it would be profitable to quote Sir James Stephen from his book, "The Evidence Act, with an



introduction on the Principles of Judicial Evidence" (Macmillan & Company), wherein, in Chapter II, he says:

"In so far as it can be acquired at all, it is to be acquired only by experience, for the acquisition of which the position of a judge is by no means peculiarly favourable. People come before him with their cases ready prepared, and give the evidence which they have determined to give. Unless he knows them in their unrestrained and familiar moments, he will have great difficulty in finding any good reason for believing one man rather than another. The rules of evidence may provide tests, the value of which has been proved by long experience, by which judges may be satisfied that the quality of the materials upon which their judgments are to proceed is not open to certain obvious objections; but they do not profess to enable the judges to know whether or not a particular witness tells the truth or what inference is to be drawn from a particular fact. The correctness with which this is done must depend upon the natural sagacity, the logical power, and the practical experience of the judge, not upon his acquaintance with the law of evidence.

The grounds for believing or disbelieving particular statements made by particular people under particular circumstances may be brought under three heads,—those which affect the power of the witness to speak the truth; those which affect his will to do so; and those which arise from the nature of the statement itself and from surrounding circumstances. A man's power to speak the truth depends upon his knowledge and his power of expression. His knowledge depends partly on his accuracy in observation, partly on his memory, partly on his presence of mind; his power of expression depends upon an infinite number of circumstances, and varies in relation to the subject of which he has to speak.

A man's will to speak the truth depends upon his education, his character, his courage, his sense of duty, his relation to the particular facts as to which he is to testify, his humour for the moment, and a thousand other circumstances, as to the presence or absence of which in any particular case it is often difficult to form a true opinion.

The third set of reasons are those which depend upon the probability of the statement.

Many discussions have taken place on the effect of the improbability of a statement upon its credibility in cases which can never fall under



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judicial consideration. It is unnecessary to enter upon that subject here. Looking at the matter merely in relation to judicial inquiries, it is sufficient to observe that whilst the improbability of a statement is always a reason, and may be, in practice, a conclusive reason for disbelieving it, its probability is a poor reason for believing it if it rests upon uncorroborated testimony. Probable falsehoods are those which an artful liar naturally tells; and the fact that a good opportunity for telling such a falsehood occurs is the commonest of all reasons for its being told." (emphasis supplied)

131 In this case, the witnesses did not have the will to speak against the accused, because, they lacked the requisite courage to testify against the members of the dominant community. Witnesses turning hostile on account of sociological factors in the village are not a new phenomenon. The Courts cannot afford to remain ignorant of the power dynamics in the social strata of the villages in this country which largely influences the way evidence is given in law Courts. In *Ramesh v State of Haryana* [(2017) 1 SCC 529], the Supreme Court approvingly referred to two articles by the social anthropologist Daniela Berti. The Court observed as under:

"49. In this regard, two articles by Daniela Berti delve into a sociological analysis of hostile witnesses, noting how village compromises (and possibly peer pressure) are a reason for witnesses turning hostile. In one of his articles [Daniela Berti, "Courts of Law and Legal Practice", pp. 6-7.] , he writes:

"For reasons that cannot be explained here, even the people who initiate a legal case may change their minds later on and pursue non-official forms of compromise or adjustment. Ethnographic observations of the cases that do make it to the criminal courtroom thus provide insight into the kinds of tensions that arise between local society and the State judicial administration. These tensions are particularly palpable when witnesses deny before the Judge what they allegedly said to the police during preliminary investigations. At this very moment they often become hostile. Here I must point out that the problem of what in common law terminology is called "hostile witnesses"



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is, in fact, general in India and has provoked many a reaction from Judges and politicians, as well as countless debates in newspaper editorials. Although this problem assumes particular relevance at high-profile, well-publicised trials, where witnesses may be politically pressured or bribed, it is a recurring everyday situation with which Judges and prosecutors of any small district town are routinely faced. In many such cases, the hostile behaviour results from various dynamics that interfere with the trial's outcome – village or family solidarity, the sharing of the same illegal activity for which the accused has been incriminated (as in case of cannabis cultivation), political interests, family pressures, various forms of economic compensation, and so forth. Sometimes the witness becomes “hostile” simply because police records of his or her earlier testimony are plainly wrong. Judges themselves are well aware that the police do write false statements for the purpose of strengthening their cases. Though well known in judicial milieus, the dynamics just described have not yet been studied as they unfold over the course of a trial. My research suggests, however, that the witness's withdrawal from his or her previous statement is a crucial moment in the trial, one that clearly encapsulates the tensions arising between those involved in a trial and the court machinery itself.”

“In my fieldwork experiences, witnesses become “hostile” not only when they are directly implicated in a case filed by the police, but also when they are on the side of the plaintiff's party. During the often rather long period that elapses between the police investigation and the trial itself, I often observed, the party who has lodged the complaint (and who becomes the main witness) can irreparably compromise the case with the other party by means of compensation, threat or blackmail.”



132 There is one common thread running in the narratives of the Vriddhachalam police and the CBI. Both subscribe to the theory that poison was administered to Kannagi by Marudhupandiyan (A.2) and the Dalits had administered poison to Murugesan.

133 According to the Vriddhachalam police, Samikannu (P.W.1) voluntarily administered poison to his son Murugesan, whereas, according to the CBI, on the directions of Duraisamy (A.1), Ayyasamy (A.4), a Dalit and the junior paternal uncle of Murugesan, administered poison to Murugesan. We cannot blindly say that the narrative of the CBI on this aspect is unfounded. Given the weak, both physical and social structure of the Dalits, the members of the dominant community would have just commanded them to obey their dictum and they too would have meekly acquiesced.

134 We can take judicial notice of certain notorious facts that obtain in our country in terms of Sections 56 and 57 of the Evidence Act. When a baby is born in this country, its caste gets determined first even before it is named. Caste consciousness is so deeply embedded in our social consciousness that its manifestation in the countryside is almost tyrannical in form. This, perhaps, prompted Dr. Ambedkar to remark in his opening address on 04.11.1948 in the Constituent Assembly as "What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism." We would like to put it more pithily by saying that in a 100 metre dash race, the starting line for a Dalit is 25 metres behind and he is required to run a hurdle race, when others are required to merely sprint. The Dalits, whose colony is always in the outskirts of a village, have to eke out their livelihood by working as farm hands in the lands of the upper caste people. If they dare to testify against the upper caste people, an innocuous fatwa by the upper caste not to employ the Dalits from a particular colony as farm hands, would be enough to drive them to starvation.

135 Based on a study that was published in the journal "Population and development review", a news item entitled "Longevity depends on caste - a study", was published in the Times of India on 23.04.2022, wherein, it is reported that the life expectancy of upper caste is about 4 to 6 years more than the men and women from the Scheduled Castes and Scheduled Tribes. What the Dalits want is, not merely reservation in some Government jobs and education, but emotional assimilation into the fabric of our society and to be treated as equals.



136 At the risk of repetition, the witnesses, who were examined by the CBI during the investigation in order to prove the fact that Marudhupandiyar (A.2) administered poison to his sister Kannagi and Ayyasamy (A.4) administered poison to Murugesan on the directions of Duraisamy (A.1), turned hostile in the trial. Chinnapillai (P.W.49), right from the stage of recording of her Section 164 Cr.P.C. statement, has been maintaining that poison was administered to Murugesan by Marudhupandiyar (A.2) and she was not subscribing to the CBI theory that it was Ayyasamy (A.4) who had administered poison to Murugesan on the directions of Duraisamy (A.1). Since she did not subscribe to this view of the CBI, the CBI did not include her as a prosecution witness in the memo of evidence. As alluded to above, she was examined as P.W.49 only on the application of the trial Court Public Prosecutor. Therefore, we cannot say that she is completely an untruthful witness just because she did not subscribe to one part of the CBI's theory, viz., administration of poison to Murugesan.

137 The learned defence counsel attacked the evidence of Tamilarasi (P.W.15) by contending that her husband Mayavel (P.W.20) has stated in the cross-examination that Tamilarasi (P.W.15) was in the house taking care of her infant. To examine this contention, we are required to analyse the evidence of Tamilarasi (P.W.15), Mayavel (P.W.20), Saroja (P.W.23) and Indrani (P.W.24), daughter of Saroja (P.W.23).

138 To recapitulate, it is the case of the CBI that after Marudhupandiyar (A.2) threatened Ayyasamy (A.4) to produce Murugesan, Ayyasamy (A.4) went to the house of Tamilarasi (P.W.15), Murugesan's sister, at Vannangudikkadu and brought him back to Pudukkoraipettai Village and handed him over to Duraisamy's (A.1's) group one day prior to his death. Tamilarasi (P.W.15), in her evidence, has stated that her brother Murugesan was in her house in the morning (she did not say that Ayyasamy (A.4) came to her house and picked up Murugesan) and later, in the evening, when she felt that something was going amiss, she left her village and came to Pudukkoraipettai Village and witnessed the torture that was meted out to her brother Murugesan.

139 Mayavel (P.W.20), in the chief-examination, has stated that his wife Tamilarasi (P.W.15) left for Pudukkoraipettai Village in the evening around 6 p.m. But, in the cross-examination, he has stated that on that day, his wife was in the house taking care of her infant. In our opinion, this stray statement of Mayavel (P.W.20) in the cross-examination cannot have the effect of completely demolishing the evidence of Tamilarasi (P.W.15) with regard to the fact that her brother



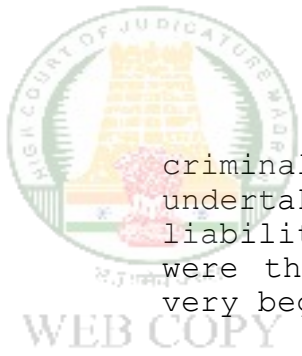
Murugesan was in her house at that time and on that evening, she came to Pudukkoraipettai Village sensing some trouble and witnessed the torture that was meted out to Murugesan. As held by the Supreme Court in State of Uttar Pradesh v M.K. Anthony [AIR 1985 SC 48], after all, "cross-examination is an unequal duel between a rustic and a refined lawyer".

140 Likewise, it is the case of the CBI that Murugesan had left Kannagi in the house of Saroja (P.W.23) at Moongilthuraippattu and that he revealed it when he was subjected to torture; since Saroja (P.W.23) is the mother-in-law of Ayyasamy (A.4), Duraisamy (A.1) sent Ayyasamy (A.4), along with his men, in a Tata Sumo car (M.O.7) to bring Kannagi back to Pudukkoraipettai Village. To this extent, we have the evidence of Velmurugan (P.W.2) and Palanivel (P.W.3).

141 However, Saroja (P.W.23), a Dalit and her daughter Indrani (P.W.24) eventually turned hostile and stated that they do not know anyone by name Murugesan which on the face of it, is too big a pill for us to swallow. We do understand the societal compulsions of the two Dalit women, viz., Saroja (P.W.23) and her daughter Indrani (P.W.24), for turning hostile.

142 Bearing in mind the sapient counsel of Sir James Stephen extracted in paragraph 130 (supra), we are bringing to the fore, our logical power, natural sagacity and practical experience while appraising the evidence of Velmurugan (P.W.2), Palanivel (P.W.3), Tamilarasi (P.W.15) and Chinnapillai (P.W.49). The fact remains that the death of Kannagi was in Pudukkoraipettai Village (the fort of AA 1 & 2 group) and therefore, we are perfectly justified in drawing the inference that the team deployed by Duraisamy (A.1) in the Tata Sumo car (M.O.7) had brought Kannagi to Pudukkoraipettai Village. When there is satisfactory evidence to show that both Murugesan and Kannagi came into the clutches of the group of Duraisamy (A.1), then, their deaths soon thereafter should have been caused only by them and none else, unless they had come forward to probabalise a different theory and thereby, discharge the burden under Section 106 of the Evidence Act. We are fortified in arriving at such an inference with the aid of the decision of the Supreme Court in State of West Bengal v Mir Mohammad Omar and others [(2000) 8 SCC 382]. Ergo, we have no hesitation in inferring that the deaths of Murugesan and Kannagi were not owing to suicide but owing to honour killing perpetrated by Duraisamy (A.1) and Marudhupandiyan (A.2) and their henchmen.

143 The trial Court has acquitted Ayyasamy (A.4) and Gunasekaran (A.9), both Dalits. The CBI have not appealed against their acquittal. Now, the daunting task of fixing



criminal liability on the remaining convicted accused has to be undertaken by us. There is no difficulty in fixing criminal liability on Duraisamy (A.1) and Marudhupandian (A.2) as they were the dramatis personae in this sordid story right from the very beginning.

144 As regards the remaining convicted accused, the defence counsel submitted that even according to the prosecution witnesses, the whole village had gathered at the place as mere onlookers and therefore, the other accused cannot be convicted. In this case, the trial Court has convicted and sentenced the other accused with the aid of Section 149 IPC. We are legitimate in invoking Section 34 IPC also with or without the aid of Section 8(b) of the SC/ST Act, which reads as follows:

"8. Presumption as to offences:- In a prosecution for an offence under this Chapter, if it is proved that:

(a)...

(b) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object."

145 Mr. V. Gopinath, learned Senior Counsel, contended that Section 8, *ibid.* can be invoked only if the prosecution proves that the group members had committed the murders of Murugesan and Kannagi and in the absence of any evidence as to who had actually administered poison to the deceased duo, the question of invoking Section 8, *ibid.*, does not arise at all.

146 We have carefully considered the aforesaid submission. There is no direct evidence to show as to who had administered poison to Kannagi. Nevertheless, there is direct evidence to show that Marudhupandiyan (A.2) had administered poison to Murugesan via the evidence of Chinnapillai (P.W.49). To be noted, a fact can be proved not only by direct evidence but also via circumstantial evidence. This is a case predicated on both forms of evidences, viz., direct and circumstantial. Keeping aside the evidence of Chinnapillai (P.W.49) for a moment, we have the direct evidence of Samikannu (P.W.1), Velmurugan



(P.W.2), Palanivel (P.W.3) and Tamilarasi (P.W.15), through whom, the following facts stand proved:

- i. Marudhupandiyan (A.2) was looking out for Murugesan and was demanding his production from Samikannu (P.W.1) and Ayyasamy (A.4);
- ii. Samikannu (P.W.1) found Murugesan and Kannagi in Raasaapalayam in the house of his relative Dhanavalli;
- iii. Murugesan was brought to Pudukkoraipettai Village by Ayyasamy (A.4);
- iv. Murugesan was tortured in public gaze to reveal the whereabouts of Kannagi;
- v. On Murugesan revealing Kannagi's whereabouts, a group went by Tata Sumo car (M.O.7) to Moongilthuraipattuto fetch Kannagi to Pudukkoraipettai Village; and
- vi. On the next day, Murugesan and Kannagi were murdered and their bodies cremated.

147 Now, let us examine thoroughly the scope of Section 8 (b) of the SC/ST Act. This provision appears to draw its strength from Section 6, *ibid.*, because Section 8(b), *ibid.*, uses the expressions "common intention" and "common object". Section 2(f), *ibid.*, telescopes the definitions in Cr.P.C. and IPC into the SC/ST Act. Though the expression "common intention" has not been defined as such in the IPC, the expression "unlawful assembly", which is the genus of the species under Section 149 IPC, has been defined in Section 141 IPC. The third clause in Section 141 IPC uses the expression "other offence". This means, if five or more persons gather with the common object of committing an offence, such a gathering is defined as an unlawful assembly. What is an offence? The word "offence" has been defined in Section 40 IPC, which is as under:

"40. Offence - Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter VA and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330,



331, 347, 348, 388, 389 and 445, the words "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

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And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."

In the third clause of Section 40 IPC, which relates to offences punishable under special or local laws, Section 141 IPC finds a place. Thus, if five or more persons gather with the common object of committing an offence punishable with imprisonment for a term of six months or more prescribed by a special law, then Section 141 IPC will apply. The SC/ST Act is a special law and Section 3(2)(v), *ibid.*, for which A1 to A13 were charged, prescribes a punishment of life imprisonment which is obviously more than the imprisonment stipulated in the third clause of Section 40 IPC. The upshot of the above discussion is, if five or more persons gather with the common object of committing an offence under Section 3(2)(v) of the SC/ST Act, they can be punished under Section 141 r/w Section 143 IPC. If a member of such an unlawful assembly were to commit an offence, the others could be made liable with the aid of Section 149 IPC.

148 Now, let us go to the application of Section 34 IPC. It is trite that Section 34 IPC does not create an offence but is only a rule of evidence. It is for this reason that Section 34 does not use the word "offence" and instead, the expression "criminal act" has been employed. The expression "criminal act" like the expression "illegal act" is wide enough to include an offence. In other words, all offences are illegal acts and not vice versa. Thus, if two or more persons share the common intention to commit an offence under Section 3(2)(v) of the SC/ST Act, they can be convicted and sentenced accordingly with the aid of Section 34 IPC.

149 At this juncture, it may be relevant to state here that Section 34 IPC and Section 149 IPC are not two mutually exclusive provisions. An assembly of five or more persons may have a common object and may also share a common intention to commit an offence. Thus, these two provisions can overlap in a given case, as in this case, and hence, both Sections 34 and 149 IPC can be invoked albeit the absence of Section 34 IPC in the charges. [See *Karnail Singh v State of Punjab* (AIR 1954 SC 204)]



and Nallabothu Venkaiah v State of Andhra Pradesh [(2002) 7 SCC 117].

150 Now, reverting to the discussion on Section 8(b) of the SC/ST Act, the same would be incomplete without an expatiation of Section 6, *ibid.* Section 6, *ibid.* reads as under:

"6. Application of certain provisions of the Indian Penal Code.—Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code."

151 Section 6, *ibid.* makes it clear that, Sections 34 and 149 IPC would apply in all their fours to a prosecution under the SC/ST Act. In our opinion, in the light of the discussion in paragraphs 145 to 147 (*supra*), even without the aid of Section 6, *ibid.* Sections 34 and 149 IPC can be applied to a prosecution under Section 3(2)(v) of the SC/ST Act. Thus, Section 6 of the SC/ST Act appears to have been introduced, *ex abundanti cautela*, qua Sections 34 and 149 IPC.

152 Section 8(b) of the SC/ST Act uses the expression "a group of persons". A group could be two or more persons. The word "group" has been used in order to make the presumption applicable both to common intention (Section 34 IPC) and common object (Section 149 IPC). Section 8(b) of the SC/ST Act would apply to offences relating to any "existing land dispute or any other matter". The expression "any other matter" would undoubtedly encompass an "Honour Killing". The object of Section 8(b), *ibid.*, is to relieve the prosecution of its evidentiary burden to prove that each member in the group shared the common intention or had a common object. It reverses the onus and casts it on a member to show that he or she neither shared the common intention nor had the knowledge about the common object of the group. In normal circumstances, in an IPC prosecution, the onus is on the prosecution to show that the accused shared the common intention or had knowledge about the common object of the assembly for convicting him with the aid of Sections 34 or 149 IPC, as the case may be. This would be established by proving the overt acts of the accused based on which the Court would draw the necessary inference. Offences under the SC/ST Act are normally perpetrated on the Dalits on account of cultural and deep-rooted prejudice that the non-Dalits harbour against them. So, on the slightest pretext, a whole community of non-Dalits would go about on a rampage burning the houses of Dalits with the



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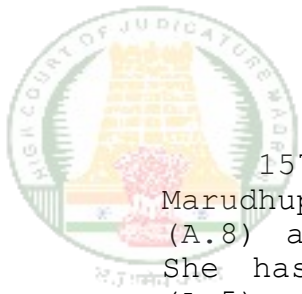
refrain, "these fellows should be taught a lesson". Therefore, in the wisdom of the Parliament, Section 8(b) of the SC/ST Act was introduced to shift the onus on the accused to show that they neither shared the common intention nor had any knowledge about the common object of the group.

153 A fortiori, once an offence under Chapter II of the SC/ST Act is proved to have been committed by a group, the presumption under Section 8(b), *ibid.*, would come into play. Presumptions, as was colourfully explained by the American Judge Lamm, J. "are like bats, flitting in the twilight but disappearing in the sunshine of facts." (See *Mackowik v Kansas City St. James & CBR Co.* [(1906) 94 SW 256]. The legislature, in its wisdom, was conscious of the fact that in matters involving atrocities on Scheduled Castes and Scheduled Tribes, the evidence would mostly be in the twilight zone and in the absence of a statutory presumption, the perpetrators would escape in the shadow of the fading light.

154 In this case, the evidence is so watertight that, we are afraid, we need not labour hard to invoke Section 8(b), *ibid.* and instead, we take into aid Section 34 IPC simpliciter along with Section 149 IPC to sustain the conviction of most of the accused for the honour killing. As stated in paragraph 143 (*supra*), we have no difficulty in fixing criminal liability on Duraisamy (A1) and Marudhupandiyan (A2) in the torture of Murugesan, abduction of Kannagi and murder of both. Now, let us examine the evidence against the others.

155 Velmurugan (P.W.2), in his evidence, has stated that all the accused in the dock were present when Murugesan was tortured. However, he has specifically stated that Marudhupandiyan (A.2), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Gunasekaran (A.9), Dhanavel (A.10) and Anjapuli (A.11) were present; of these persons, Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8), Gunasekaran (A.9) and Dhanavel (A.10) went along with Ayyasamy (A.4) in the Tata Sumo car (M.O.7) driven by Jayatharasan (P.W.22) to fetch Kannagi.

156 The above evidence of Velmurugan (P.W.2) is generally corroborated by Palanivel (P.W.3), who has identified the presence of Marudhupandiyan (A.2), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Gunasekaran (A.9), Ramadass (A.12) and Malayan (accused standing in the last). He has also stated that Ayyasamy (A.4), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8), Gunasekaran (A.9) and Dhanavel (A.10) went by Tata Sumo car (M.O.7) to bring Kannagi.



157 Chinnapillai (P.W.49), in her evidence, has identified Marudhupandiyan (A.2), Rangasamy (A.3), Kanthavel (A.5), Mani (A.8) and Malayan as the persons who have tortured Murugesan. She has further stated that Marudhupandiyan (A.2), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8) and Ramadass (A.12) assaulted Ayyasamy (A.4) and went along with him to bring Kannagi.

158 On a careful analysis of the evidence of Samikannu (P.W.1), Velmurugan (P.W.2), Palanivel (P.W.3) and Chinnapillai (P.W.49), we find that the presence of Rangasamy (A.3), which has been spoken to by Chinnapillai (P.W.49), has not been spoken to by either Velmurugan (P.W.2) or Palanivel (P.W.3). That apart, the assertion of Chinnapillai (P.W.49) that Rangasamy cut the mouth of Murugesan when Marudhupandiyan (A.2) administered poison to him, is not compatible with charge no.9. Therefore, we are of the view that Rangasamy (A.3) deserves to be acquitted of all the charges.

159 As regards Chinnadurai (A.13), his name has not been stated by Samikannu (P.W.1), Velmurugan (P.W.2), Palanivel (P.W.3) and Chinnapillai (P.W.49), but, there is a reference to one Malayan in the evidence of Palanivel (P.W.3). In the absence of materials to show that Chinnadurai (A.13) was referred to as Malayan, it may not be safe to sustain his conviction.

160 Therefore, de hors Section 8 of the SC/ST Act, we hold that Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8), Dhanavel (A.10), Anjapuli (A.11) and Ramadass (A.12) shared the common intention with Duraisamy (A.1) and Marudhupandiyan (A.2) in the torture of Murugesan for revealing the whereabouts of Kannagi; on Murugesan spilling the beans, forcibly bringing Kannagi to the village; thereafter, murdering both and quietly cremating them. Similarly, Duraiswamy (A.1), Marudhupandiyan (A.2), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8), Dhanavel (A.10), Anjapuli (A.11) and Ramadass (A.12) were part of the unlawful assembly whose common object was to get rid of Murugesan and Kannagi for falling in love and getting married.

161 Coming to the charge of conspiracy, it is trite that it is not necessary for the prosecution to prove that the conspirators met at a secret place and in a hushed up voice, conspired to commit the offence in question. Conspiracy, like any other offence, can be established by the process of inference with the aid of Section 10 of the Evidence Act. In the instant case, Duraisamy (A.1) and his son Marudhupandiyan (A.2),



entertained the idea of eliminating Murugesan and Kannagi for falling in love with each other and eloping. To disguise their evil intention, Marudhupandiyan (A.2) told Samikannu (P.W.1) and Ayyasamy (A.4) that Murugesan had borrowed Rs.10,000/- from him and commanded them to bring Murugesan to the village. When Ayyasamy (A.4) innocently brought Murugesan, the sacrificial lamb for slaughter, Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7), Mani (A.8), Dhanavel (A.10), Anjapuli (A.11) and Ramadass (A.12) joined the bandwagon and started torturing Murugesan, until he disclosed the whereabouts of Kannagi, after which, this group went by Tata Sumo car (M.O.7) driven by Jayatharasan (P.W.22) and accomplished the mission of bringing Kannagi to Pudukkoraipettai Village. Thus, the charge of conspiracy also stands proved against them.

162 Insofar as Marudhupandiyan (A.2), he has been convicted for the murder of Kannagi under Section 302 r/w Section 149 IPC. We are confirming this conviction additionally with the aid of Section 34 IPC. The life imprisonment and fine Rs.50,000/- that have been imposed on him by the trial Court therefor are confirmed. That apart, Marudhupandiyan (A.2) has been convicted for the murder of Murugesan also under Section 302 IPC and has been imposed death sentence therefor, besides a fine of Rs.1 lakh. It may not be proper for this Court to confirm the same, as it is predicated on the uncorroborated testimony of Chinnapillai (P.W.49), insofar as it relates to the issue of administering poison to Murugesan, and the same is also not in consonance with charge no.9. However, we are confirming his conviction along with others [except Rangasamy (A.3) and Chinnadurai (A.13)] for various substantive offences, with the aid of Sections 149 and 34 IPC, apart from confirming his conviction under Section 120-B IPC read with Section 302 IPC. Thus, when all the other accused are sentenced to various terms of imprisonment, except death sentence, by applying the principle of parity, death sentence should not be imposed on Marudhupandiyan (A.2) alone. Ergo, the death sentence imposed on Marudhupandiyan (A.2) is reduced to one of imprisonment for life, but, the sentence of fine imposed by the trial Court is confirmed.

163 As the evidence against Rangasamy (A.3) and Chinnadurai (A.13) is scanty, as alluded to in paragraph nos.158 and 159 (supra), we are extending the benefit of doubt to them. Accordingly, the judgment and order of the trial Court convicting and sentencing them is set aside, and they stand acquitted of all the charges. As a corollary, their appeals are allowed.

Case against Tamilmaran (A.14) and Sellamuthu (A.15):



164 Admittedly, Tamilmaran (A.14) was the Sub Inspector and Sellamuthu (A.15) was the Inspector at the Vriddhachalam Police Station at the relevant point of time. There are three main allegations against Tamilmaran (A.14) and Sellamuthu (A.15). The first allegation against them is that, on 08.07.2003, after knowing about the incident, though they went to Pudukooraipettai Village, they did not register any case when Chinnapillai (P.W.49) came to the police station and complained. The second allegation is that, they fabricated and manufactured records on 17.07.2003, more particularly, the police confession of one Ilayaperumal and followed it up by a make-believe seizure of a stainless steel tumbler (M.O.2) allegedly on the disclosure statement of Ilayaperumal under the cover of mahazar (Ex.P.43) attested by one Jayaraman (P.W.34) and his assistant Sivaperumal. The 15th charge against Tamilmaran (A.14) and Sellamuthu (A.15) is under Section 4 of the SC/ST Act for not entertaining the complaint of Chinnapillai (P.W.49) knowing full well that she is a Dalit. The third allegation (16th charge) is that knowing full well that Ilayaperumal, Kannadasan and Samikannu were Dalits, they were falsely implicated for murder in the final report filed by the Vriddhachalam police and thereby, they are punishable under Section 3(2)(i) of the SC/ST Act.

165 Before discussing the evidence against Tamilmaran (A.14) and Sellamuthu (A.15), we propose to deal with the preliminary legal issues that were raised on their behalf at the bar.

166 Mr. Karthikeyan submitted that there has been a misjoinder of charges, in that, Tamilmaran (A.14) and Sellamuthu (A.15) ought not to have been tried along with AA 1 to 13. In this regard, he placed reliance on a Division Bench judgment of this Court in Solaiappa Gounder and others v State [(2003) 4 CTC 78]. The answer to the above lies in Section 223(d) Cr.P.C. which states that persons accused of different offences committed in the course of the same transaction can be charged and tried together. In this case, AA 1 to 13 were charged for the offences of abduction, torture and murder of Murugesan and Kannagi and Tamilmaran (A.14) and Sellamuthu (A.15) were charged for not entertaining the complaint of Chinnapillai (P.W.49), for disobeying a direction of law with intent to save a person from punishment (Section 217 IPC) and for framing incorrect records to save a person from punishment (Section 218 IPC).

167 Now, the question is whether the two sets of offences, viz., the offences for which AA 1 to 13 were charged and the offences for which Tamilmaran (A.14) and Sellamuthu (A.15) were charged, occurred in the course of the same transaction or not.



168 The expression "same transaction" used in Section 223 (d) Cr.P.C. has not been defined anywhere and therefore, it had always vexed the Courts of law. Sir James Stephen has employed this expression in Section 6 of the Indian Evidence Act, 1872, as well as in Article 3 of his work - A digest of the Law of Evidence, 5th Edition (London), McMillan and Co., 1887. Article 3 reads as follows:

"Relevancy of facts forming part of the same transaction as the facts in issue.

A transaction is a group of facts so connected together as to be referred to by a single legal name, as a crime, a contract, a wrong or any other subject of inquiry which may be in issue.

Every fact which is part of the same transaction as the facts in issue is deemed to be relevant to the facts in issue, although it may not be actually in issue, and although if it were not part of the same transaction it might be excluded as hearsay.

Whether any particular fact is or is not part of the same transaction as the facts in issue is a question of law upon which no principle has been stated by authority and on which single judges has given different decisions.

When a question as to the ownership of land depends on the application to it of a particular presumption capable of being rebutted, the fact that it does not apply to other neighbouring pieces of land similarly situated is deemed to be relevant."

169 In connection with Section 235 of the Code of Criminal Procedure, 1898, (Section 220 under the present Code), the Joint Committee of 1922 said:

"We think it would be dangerous, if not impossible, to attempt any definition of the phrase 'in the course of the same transaction.' An exhaustive definition is not feasible, and if the phraseology is altered, the courts would be deprived of the guidance which they now have from a long series of rulings on the point. We do not find that there has been any pronounced conflict of opinion, the reason being that the courts, instead of attempting to lay down general principles, as a rule discuss each case on its merits."

170 In this context, the judgment of Cuming, J. of Calcutta High Court in Tamezkhan @ Tamejuddin & Others v



Rajjabali Mir and another (AIR 1927 Cal 330) is worth referring to. Speaking for the Bench, Cuming, J. observed as under:

"....What does or does not form part of the same transaction may be considered to be a question of fact in each particular case. Certain tests have been laid down in various cases by which it may be determined whether certain acts do or do not form part of the same transaction. In some cases it has been held that acts may be considered to form part of the same transaction if there are between these acts proximity of time, community of intention and continuity of action...." (emphasis supplied)

171 Taking a cue from the aforesaid judgment, the Supreme Court, in State of Andhra Pradesh v Cheemalapati Ganeswara Rao and another [AIR 1963 SC 1850], further expatiated on the expression "same transaction" and held as under:

"25.....What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a, strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in clauses (a), (c) and (d) of Section 239 would make little difference...." (emphasis supplied by us)

172 Bearing the aforesaid legal principle in mind, now, it has to be decided, at which point of time, the Court is required to consider the issue of who all could be jointly tried under Section 223(d) Cr.P.C.



173 The obvious answer to this question is that the Court would be required to decide the issue at the time of framing of charges [See Nasib Singh v. State of Punjab [(2022) 2 SCC 89]. In this case, at the time of framing of charges, the trial Court had before it, the charge sheet filed by the CBI, Section 161(3) Cr.P.C. statements and Section 164 Cr.P.C. statements of various witnesses.

174 It is the specific case of the CBI that Murugesan was brought to Pudukkoraipettai Village on 07.07.2003 and tortured for finding out the whereabouts of Kannagi; on Murugesan's disclosure, Kannagi was forcibly brought to Pudukkoraipettai Village; both of them were administered poison on 08.07.2003; after their death, their bodies were cremated; within a few hours, Tamilmaran (A.14) and Sellamuthu (A.15) knew of the incident and they came to the place of occurrence; Chinnapillai (P.W.49) went to the police station along with Amaravathi (P.W.16) on 08.07.2003 and gave a complaint seeking police intervention, but they were driven away; Tamilmaran (A.14) and Sellamuthu (A.15) were protecting the group of Duraisamy (A.1) only; when the matter went out of control, Sellamuthu (A.15) contrived a plan to record an extrajudicial confession, purportedly given by Duraisamy (A.1) to Ashokan (P.W.32), V.A.O., based on which, they registered a case in Cr.No.356 of 2003, manufactured further records by arresting eight persons and filing a charge sheet in consonance with their narrative.

175 Thus, the CBI placed before the trial Court, a chain of events intricately linked to one another, which prima facie showed that the offences committed by AA 1 to 13 and the offences committed by Tamilmaran (A.14) and Sellamuthu (A.15), were all done in the course of the same transaction, though they were offences of two different genres.

176 Hence, the trial Court was right in framing charges against AA 1 to 15 by pressing into service Section 223(d) Cr.P.C. Tamilmaran (A.14) and Sellamuthu (A.15) did not object to being tried together and participated in the trial by cross-examining the witnesses without any demur or complaining of any prejudice. However, during trial, most of the witnesses turned hostile and the evidence on record appears disjointed. That cannot be an excuse now to say that Tamilmaran (A.14) and Sellamuthu (A.15) ought not to have been tried together with the remaining accused, viz., AA 1 to 13. Section 464 Cr.P.C caters to such a situation and says that no finding, sentence, or order shall be deemed to be invalid on the ground of irregularity in the charge, including any misjoinder of charges, unless, in the opinion of the Court of appeal, a failure of justice has, in fact, been occasioned thereby. In this case, there is



absolutely no room for this Court to hold that failure of justice has occasioned by the trial Court trying Tamilmaran (A.14) and Sellamuthu (A.15) along with AA 1 to 13.

177 The learned counsel for Tamilmaran (A.14) and Sellamuthu (A.15) contended that the trial Court ought not to have framed the 16th charge under Section 3(2)(i) of the SC/ST Act on the petition filed by Samikannu (P.W.1) under Section 216 Cr.P.C. It is true that Samikannu (P.W.1) filed a petition in CrI.M.P.No.5601 of 2017 (re-numbered as CrI.M.P.No.13 of 2020) under Section 216 Cr.P.C. for framing a charge against Tamilmaran (A.14) and Sellamuthu (A.15) for the offences under Section 3(2)(c) of the SC/ST Act and after hearing both sides, the said petition was allowed by the trial Court on 18.12.2017, which was not challenged by the accused in the High Court. In *Anant Prakash v State of Haryana* [(2016) 6 SCC 105], the Supreme Court has held that on a petition filed by the victim, the charge can be altered. The Code of Criminal Procedure was amended by the Central Act 5 of 2009 with effect from 07.01.2009 by which the word "victim" has been defined in Section 2(w)(a) and certain rights have been provided to the victims. If this provision is read with Section 15-A of the SC/ST Act, which are procedural in nature and therefore retrospective, the application for alteration of charge that has been filed by Samikannu (P.W.1) under Section 216 Cr.P.C. cannot be said to be not maintainable, in the facts and circumstances of the case. We may also point out that in a very recent judgment in *Jagjeet Singh v Ashish Mishra @ Monu* (CrI.A. No.632 of 2022 decided on 18.04.2022), the Supreme Court has held that the victim has an unbridled participatory right from the stage of investigation, till the stage of appeal/revision.

178 After the 16th charge was framed, the accused were given opportunity to recall any witness they want, pursuant to which, Tamilmaran (A.14) and Sellamuthu (A.15) recalled Ashokan (P.W.32), V.A.O. and Jayaraman (P.W.34), V.A.O. and further cross-examined them. In this backdrop, it is impossible to contend, with any degree of seriousness, that Tamilmaran (A.14) and Sellamuthu (A.15) had suffered any real prejudice during trial.

179 We will now examine as to whether the prosecution has proved charge nos.13 to 16 that were framed against Tamilmaran (A.14) and Sellamuthu (A.15).

180 Charge no.13 (u/s 217 IPC) and Charge No.15 (u/s 4 of the SC/ST Act) would go together. The crux of these two charges is that, Tamilmaran (A.14) and Sellamuthu (A.15), knowing full



well that Chinnapillai (P.W.49) was a Dalit, did not register a case on 08.07.2003 on her complaint and they registered the case in Vriddhachalam P.S.Cr.No.356 of 2003 only on 17.07.2003.

181 Many Constables who were attached to the Vriddhachalam Police Station at the relevant point of time, but, who had retired during the trial, conveniently, turned hostile, perhaps, to protect Tamilmaran (A.14) and Sellamuthu (A.15). Judgments of the Supreme Court on the proposition that the testimony of a hostile witness need not be completely brushed aside are a legion. Suffice to refer to Koli Lakhmanbhai Chanabhai v State of Gujarat [(1999) 8 SCC 624]. In fact, Section 154(2) of the Evidence Act clearly states that a person who has been permitted to cross-examine his witness can rely on any part of the evidence of such a witness.

182 Tamilarasi (P.W.15) has stated that after the death of Murugesan, she, along with her aunt Amaravathy (P.W.16) and Chinnapillai (P.W.49), went to Vriddhachalam Police Station where they were driven away by the police hurling casteist slur, the English translation of which we do not want to set out here, lest it be construed as indecorous. Of course, Amaravathi (P.W.16) turned hostile. However, Chinnapillai (P.W.49) has stated that she, after the death of Murugesan, went to the police station, along with Amaravathi (P.W.16) and gave a complaint, but, the policemen refused to entertain her and drove them away hurling casteist invectives.

183 The defence submitted that Tamilarasi (P.W.15) did not accompany Chinnapillai (P.W.49) because in her statement to the CBI, she has stated that she came to know from Amaravathi (P.W.16) that her mother (P.W.49) and Amaravathy (P.W.16) went to the police station and that they were chased away.

184 Even if we keep aside the testimony of Tamilarasi (P.W.15) on this aspect, we have no reasons to disbelieve the testimony of Chinnapillai (P.W.49). Even in her Section 164 Cr.P.C. statement (Ex.P.48), she has stated about this fact and therefore, her testimony in the Court stands corroborated by her previous statement.

185 The defence further contended that Chinnapillai (P.W.49) has not pointedly stated that she met Tamilmaran (A.14) and Sellamuthu (A.15) and that they refused to entertain her complaint. True it is that Chinnapillai (P.W.49) has not stated so specifically, much less in clear terms. But, on that score alone, can the Inspector of Police and the Sub Inspector of



Police who are persons in-charge of the police station, escape criminal liability?

186 Now, let us examine the evidence of Anthonysamy (P.W.40) and Rajendran (P.W.47).

187 It is common knowledge that in the State police apparatus, police personnel attached to the Special Branch, which directly works under the District Superintendent of Police, operate unobtrusively at the village level in order to gather ground intelligence. Anthonysamy (P.W.40) and Rajendran (P.W.47) were Sub Inspector and Head Constable respectively attached to the Special Branch CID. At the time of giving evidence, they had retired from service and therefore, they had turned hostile. But, we are culling out certain portions from their evidence which are in consonance with the prosecution case.

188 Rajendran (P.W.47), Head Constable, has stated that while he was on duty on 08.07.2003 in connection with the funeral of the father-in-law of 'Nakkiran' Gopal in a nearby village, he heard that two persons had committed suicide in Pudukkoraipettai Village; he informed this to Anthonysamy (P.W.40), Sub Inspector, over phone and in turn, Anthonysamy (P.W.40) asked him to go to Pudukkoraipettai Village and enquire about it and report; therefore, he (P.W.47) went to Pudukkoraipettai Village, but, none was coming forward to give any information and he reported this to Anthonysamy (P.W.40); after some time, he left the village.

189 As stated above, he was declared hostile and from the suggestions that were put to him by the trial Court Public Prosecutor, one could infer that he had told the CBI that he went to the cremation ground, by which time, everything was over and he returned to Vriddhachalam Police Station where he was told by Tamilmaran (A.14) that the police received calls and so, he (A.14) went to the place, but, none came forward to give complaint. Of course, this suggestion cannot take the place of proof of those facts.

190 Anthonysamy (P.W.40), Sub Inspector of Special Branch CID, has stated that Rajendran (P.W.47), Head Constable, Special Branch CID, informed him that two lovers got burnt to death in Pudukkoraipettai Village and so, he asked him to go there, enquire and report; later, Rajendran (P.W.47) called him and told him that he went to the place, but, there was no sign of



any such incident; when he (P.W.40) asked him (P.W.47) as to whether any case had been registered, he (P.W.47) stated that none had come forward to give complaint.

191 This witness (P.W.40) was also declared hostile as he had retired by the time he came to testify. However, in the cross-examination by the trial Court Public Prosecutor, this witness has admitted that at the time of the incident, Tamilmaran (A.14) was the Sub Inspector and Sellamuthu (A.15) was the Inspector in the Vriddhachalam Police Station and that he told them that two persons have been burnt and asked them to take action, but they stated that since they had not received any complaint, they could not proceed further. Thus, from the above evidence, it is limpid that the Special Branch CID and Tamilmaran (A.14) and Sellamuthu (A.15) had come to know even on 08.07.2003 itself that there had been two deaths in Pudukkoraipettai Village and that the persons who had died were Murugesan and Kannagi.

192 In the above factual matrix, now, let us examine the duties of a police officer as set out in Section 21 of the Tamil Nadu District Police Act, 1859, which reads as under:

"Every police officer shall, for all purposes in this Act contained, be considered to be always on duty and shall have the powers of a police officer in every part of the General Police District. It shall be his duty to use his best endeavours and ability to prevent all crimes, offences and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him."

193 Collecting intelligence and bringing offenders to justice is a part of a policeman's duty. In this case, the Special Branch CID gathered intelligence and communicated the same to the Vriddhachalam Police Station, but, the latter did not bring the offenders to justice and thus, failed in their duty. Their plea that none came forward to give any complaint and therefore, they could not register a case sounds puerile and amounts to clear dereliction of duty.

194 Next, we have the evidence of Sundarapandian (P.W.38) who was working as a Head Constable in the Vriddhachalam Police Station at the relevant point of time. In his evidence, he has stated that on 08.07.2003, the police station received information that Murugesan and Kannagi had committed suicide, in



connection with which, he learnt that Tamilmaran (A.14) went to the place of occurrence. In the cross-examination, this witness has stated that none came to the police station to give any complaint and there is no entry in the station records to show that Tamilmaran (A.14) went to Pudukkoooraipettai Village.

195 Ramamoorthy (P.W.39) who was also working as Head Constable in the Vriddhachalam Police Station at the relevant point of time, in his evidence, has stated that he collected the various seized articles in Vriddhachalam P.S.Cr.No.356 of 2003, took them to the Court of the Judicial Magistrate No.I, Vriddhachalam and thereafter, handed them over to the forensic laboratory for examination and got back the remnants. However, in the cross-examination, he has stated that on 07.07.2003 and 08.07.2003, he was on duty in Vriddhachalam Police Station and at that time, none came there to give any complaint.

196 The defence counsel drew the attention of this Court to the cross-examination of Sundarapandian (P.W.38) and Ramamoorthy (P.W.39) who have stated that none had come to the police station to give complaint and thus, the evidence of Chinnapillai (P.W.49) stands pitted against the evidence of the retired policemen Sundarapandian (P.W.38) and Ramamoorthy (P.W.39). We are inclined to believe the assertion of the former, viz., Chinnapillai (P.W.49) and not that of Sundarapandian (P.W.38) and Ramamoorthy (P.W.39), because, one cannot expect the Head Constables to say that Chinnapillai (P.W.49) came to the police station to give complaint, but, it was not entertained by them and thereby, dig their own graves.

197 The contention of the learned counsel for the accused that Chinnapillai (P.W.49) did not say that she met Tamilmaran (A.14) and Sellamuthu (A.15) in the police station and they chased her away cannot hold water, because, Chinnapillai (P.W.49) would have been in a state of trauma after having witnessed the ghastly events and the policemen in the sentry duty would not have permitted her to meet the Inspector.

198 From a conspectus of the aforesaid facts, we are able to draw the following inferences without any hesitation:

- i. On 08.07.2003, unnatural deaths of Murugesan and Kannagi occurred in Pudukkoooraipettai Village;
- ii. Around 8.00 a.m. on 08.07.2003 itself, information had come to Vriddhachalam Police Station which is hardly 3 kms. from Pudukkoooraipettai Village that an untoward incident had taken place there;



iii. Tamilmaran (A.14) and Sellamuthu (A.15) knew the names of the dead, viz., Murugesan and Kannagi and also their castes;

iv. Tamilmaran (A.14) had gone to the place of occurrence on 08.07.2003.

v. Chinnapillai (P.W.49), a Dalit, had gone to the Vriddhachalam Police Station to give a complaint but the police did not entertain her and drove her away;

vi. FIR was registered on 17.07.2003, that too, on the alleged extrajudicial confession of Duraisamy (A.1).

199 Therefore, we hold that the prosecution has proved Charges 13 and 15 beyond an iota of doubt and as a corollary, the conviction and sentence of Tamilmaran (A.14) and Sellamuthu (A.15) for the offences under Section 217 IPC (Charge 13) and Section 4 of the SC/ST Act (Charge 15) are confirmed.

200 Charge 14 (u/s 218 IPC) and Charge 16 (u/s 3(2)(i) of the SC/ST Act) against Tamilmaran (A.14) and Sellamuthu (A.15) are somewhat inter-related. The crux of these two charges is that Tamilmaran (A.14) and Sellamuthu (A.15) fabricated records and falsely implicated three Dalits, viz., Ilayaperumal, Kannadasan (P.W.33) and Samikannu (P.W.1) in the murder of Murugesan. The specific allegation in charge 14 (u/s 218 IPC) is that, a police confession (Ex.P.39) purported to have been given by Ilayaperumal was manufactured, based on which a make-believe recovery of a stainless steel tumbler (M.O.2) under the cover of a mahazar (Ex.P.43) was effected by Tamilmaran (A.14) and Sellamuthu (A.15). Now, let us examine the evidence against Tamilmaran (A.14) and Sellamuthu (A.15) for these two charges.

201 According to the Vriddhachalam police, even after the Press and Dalit leaders started crying hoarse from rooftops that honour killing has happened in Pudukkooraipettai Village, they were in deep official slumber and that they woke up only on 17.07.2003 when Ashokan (P.W.32), V.A.O., brought Duraisamy (A.1) along with the extrajudicial confession (Ex.P.9) to the police station.

202 Ashokan (P.W.32) in his evidence, has stated that he was the V.A.O. of several villages, including Pudukkooraipettai Village; he was under suspension from 02.07.2003 to 24.07.2003 under the Tamil Nadu Essential Services Maintenance Act; on



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16.07.2003, he was directed by the Tahsildar to meet the Deputy Superintendent of Police of Vriddhachalam and when he met the Deputy Superintendent of Police, Vriddhachalam, he was asked to meet the Inspector of Police, Vriddhachalam Police Station; accordingly, on 17.07.2003, he went to Vriddhachalam Police Station and met Sellamuthu (A.15); Sellamuthu (A.15) gave something written in two papers and asked him to copy and record the same in his handwriting; accordingly, he recorded the same and affixed his signature; Duraisamy (A.1) also signed in those papers. This statement, purportedly an extrajudicial confession of Duraisamy (A.1), was marked as Ex.P.9. Based on this statement, an FIR in Cr.No.356 of 2003 was registered by Vriddhachalam Police Station and in the printed FIR, the signature of Ashokan (P.W.32), V.A.O. was obtained in the column meant for complainant. He was also asked to give a special report in writing and the said special report was marked as Ex.P.11. He has further stated that in that special report, he had written matters relating to the death of one Kannagi, D/o Duraisamy and one Murugesan, S/o Samikannu, by consuming poison.

203 As far as accused 1 to 13 are concerned, there was no serious cross-examination of this witness, because, they have repudiated the alleged extrajudicial confession of Duraisamy (A.1) to Ashokan (P.W.32), V.A.O. The cross-examination of Ashokan (P.W.32) was mainly done by the counsel who appeared for Tamilmaran (A.14) and Sellamuthu (A.15). The witness withstood the cross-examination without ducking any question. It was suggested to the witness that the extrajudicial confession of Duraisamy (A.1) was not manufactured in the police station, but, it was given by Duraisamy (A.1) to him (P.W.32) and he produced Duraisamy (A.1) along with the extrajudicial confession, gave a special report also, only on which, the case in Vriddhachalam P.S.Cr.No.356 of 2003 was registered and investigation taken up. Ashokan (P.W.32) denied the suggestion.

204 As stated above, after the 16th charge was framed, Ashokan (P.W.32) was recalled by the accused and was further cross-examined by them on 03.03.2021 and the defence was not able to make any substantial gain therefrom.

205 We are convinced that, when public opinion reached a crescendo in this case, the Vriddhachalam police developed cold feet and had to respond in order to save their skin. Therefore, they contrived a plan by which they manufactured an extrajudicial confession purported to have been given by Duraisamy (A.1) and registered an FIR in Cr.No.356 of 2003 against eight persons (four Vanniyars and four Dalits) and arrested them and within 23 days of the arrest, they ensured



that all of them were granted bail by the Principal Sessions Court, Cuddalore, by giving specious instructions to the District Public Prosecutor, about which, we have discussed in detail in paragraph 38 (supra).

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206 In our considered opinion, the extrajudicial confession and the FIR were not the only documents fabricated by the Vriddhachalam police, but also the police confessions of the arrested accused. This fact has been proved through the evidence of Jayaraman (P.W.34) who was also a V.A.O. at the relevant point of time. Jayaraman (P.W.34) was examined-in-chief on 18.09.2017 and on that day itself, his first round of cross-examination by the accused was done.

207 Jayaraman (P.W.34), in his evidence, has stated that in the year 2003, he was working as V.A.O. in Vriddhachalam; he and his assistant Siva Perumal (not examined) were called to the Vriddhachalam Police Station by Sellamuthu (A.15) on 17.07.2003; they went there; at that time, Sellamuthu (A.15) was there; they were asked to sign as witnesses in the police confession of Duraisamy (A.1), Ilayaperumal and Samikannu (P.W.1); his signature and the signature of Siva Perumal in those police confessions were marked as Exs.P.13 to P.18. He has further stated that they were asked to sign in the observation mahazar and seizure mahazar that were kept ready in the police station and accordingly, they signed.

208 Now, we are mainly concerned with charge no.14 which relates to the alleged seizure of a stainless steel tumbler based on the disclosure statement of the arrested accused, Ilayaperumal (since died). Ilayaperumal, who was cited as a prosecution witness, was not alive when the trial began. However, the fact that Sellamuthu (A.15) arrested Ilayaperumal along with Samikannu (P.W.1), Anbazhagan (P.W.29) and Kannadasan (P.W.33) in Vriddhachalam P.S.Cr.No.356 of 2003 and sent them in judicial custody is borne out by records and is not in dispute at all. In fact, it is the assertion of Sellamuthu (A.15) that he had properly conducted the investigation and effected the arrest of the eight accused in this case.

209 Jayaraman (P.W.34) has identified his signature as well the signature of his assistant Siva Perumal in the mahazar (Ex.P.43) that was prepared by Sellamuthu (A.15) for the alleged seizure of a stainless tumbler on the alleged confession of Ilayaperumal. The signatures of Jayaraman (P.W.34) and his assistant Siva Perumal have been marked as Exs.P.27 and P.28 respectively. Thus, according to Jayaraman (P.W.34), Sellamuthu (A.15) manufactured these seizure mahazars in the police



station and he and Siva Perumal were asked to come and sign there.

210 On 18.09.2017, Jayaraman (P.W.34) was superficially cross-examined by the group of Duraisamy (A.1) since he was supporting their narrative as against the narrative of the Vriddhachalam police.

211 This witness was extensively cross-examined on 18.09.2017 by the counsel for Tamilmaran (A.14) and Sellamuthu (A.15) and it was suggested to him that the confession statements and the recovery mahazars were not prepared in the police station as testified by him, but were prepared at the respective places mentioned therein, which suggestion he denied. However, after the 16th charge was framed on 15.12.2020, the trial Court gave an option to the accused to recall any witness and accordingly, Jayaraman (P.W.34) was recalled and was further cross-examined on 03.03.2021, i.e., three years after he testified. In the first portion of the cross-examination on 03.03.2021, Jayaraman (P.W.34) supported the case of Sellamuthu (A.15). Therefore, the trial Court Public Prosecutor declared him hostile and cross-examined him. After the trial Court Public Prosecutor cross-examined Jayaraman (P.W.34), he was cross-examined further by the counsel for Tamilmaran (A.14) and Sellamuthu (A.15) and in that cross-examination, he destroyed the case of Sellamuthu (A.15). Thus, it is obvious that an attempt was made to tamper Jayaraman (P.W.34) and hence, we are not placing any serious reliance on the evidence adduced by him on 03.03.2021.

212 From an analysis of the above, we are able to draw the following inferences without any hesitation:

- i. From 08.07.2003 to 16.07.2003, the Vriddhachalam police did not move even their little finger to register a case and bring the guilty to book.
- ii. On 17.07.2003, Sellamuthu (A.15) began manufacturing records as if Duraisamy (A.1) surrendered before Ashokan (P.W.32), V.A.O. and gave an extrajudicial confession statement implicating himself and Samikannu (P.W.1);
- iii. Based on the fabricated extrajudicial confession, a case in Vriddhachalam P.S.Cr.No.356 of 2003 was registered against four Vanniyars and four Dalits;
- iv. Sellamuthu falsely implicated three Dalits, viz., Samikannu (P.W.1), Kannadasan (P.W.33) and Ilayaperumal (since deceased) in the murder of Murugesan, arrested them and recorded false police confessions (Ex.P.39 & Ex.P.40)



judgment of the Federal Court in Dr.Hori Ram Singh v The Crown [AIR 1939 FC 159], which has been adverted to by Vivian Bose, J. in Shreekantiah Ramayya Munipalli v State of Bombay [AIR 1955 SC287] by holding as under:

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"17. What this argument overlooks is that the stress in the passage quoted is on the word "necessarily" which we have underlined. A later passage at p. 187 explains this:

"I would observe at the outset that the question is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances; it seems neither useful nor desirable to paraphrase the language of the section in attempting to lay down hard and fast tests."

With that we respectfully agree. There are cases and cases and each must be decided on its own facts."

215 It is also apropos to point out that in Choudhury Parveen Sultana v State of West Bengal and another [(2009) 3 SCC 398], the Supreme Court has held as follows:

"18. The direction which had been given by this Court, as far back as in 1971 in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : (1971) 1 SCR 317] holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 CrPC. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : (1971) 1 SCR 317] the underlying object of Section 197 CrPC is to enable the authorities to scrutinise the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 CrPC and have to be considered dehors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be



demanding by the public servant concerned."
(emphasis supplied)

216 It is no part of the public duty of an Inspector of Police to hush up a crime, protect criminals, fabricate records and implicate innocent persons in the crime. In the instant case, the evidence on record shows that Sellamuthu (A.15) has done only this in this case and therefore, he is not entitled to any protection under Section 197 Cr.P.C., for, it is no part of his public duty to do this. He, in fact, has misused his uniform to commit the aforesaid offences.

217 Mr.S.Doraisamy contended that for attracting Section 3 (2)(i) and 4 of the SC/ST Act, the prosecution should have first established that Sellamuthu (A.15) is not a Dalit and in the absence of any evidence that he is not a Dalit, he cannot be charged under Section 3(2)(i) and 4 of the SC/ST Act.

218 Sellamuthu (A.15) is not an illiterate village peasant. At the relevant point of time, he was the Inspector in the Vriddhachalam Police Station. He would have dealt with many a case under the SC/ST Act and therefore, it should be presumed that he knew that a Dalit cannot be prosecuted under Section 3 (2)(i) and 4 of the SC/ST Act. In the final report filed by the CBI, the caste of Sellamuthu (A.15) has been shown as Other Backward Caste. He received the charge sheet under Section 207 Cr.P.C. He did not suggest to any witness that he is a Dalit and not an OBC. In his Section 313 Cr.P.C. statement, the caste of Sellamuthu (A.15) has been shown as "Gounder". This caste is, concededly, a non Dalit caste. That apart, caste being a fact which is to the exclusive knowledge of a person, the burden under Section 106 of the Evidence Act, is on him to show that he belongs to a particular caste, on account of which, he cannot be prosecuted for a certain offence which is predicated on caste identity. Therefore, there are sufficient materials on record to show that Sellamuthu (A.15) is not a Dalit and therefore, his prosecution under Sections 3(2)(i) and 4 of the SC/ST Act cannot be said to be illegal.

219 In fine, we hold that all the four charges framed against Sellamuthu (A.15) have been proved beyond an iota of doubt and hence, the conviction and sentence imposed on him by the trial Court, as set out in paragraph 64 (supra) stand confirmed. The compensation component as against Sellamuthu (A.15) is also confirmed.

220 Coming to the case of Tamilmaran (A.14) qua charges 14 and 16, we feel that it would be apt to quote the following



observations of Lord Atkin in *Dwarkanath Varma and Gaya Prasad v The King Emperor* (AIR 1933 PC 124):

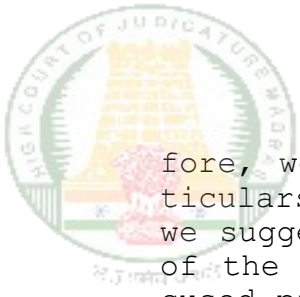
"In India, as elsewhere, a charge of murder is not left to the discretion of a Sub-Inspector of Police. The Superintendent and the Deputy Superintendent investigate for themselves, check the report of the Sub-Inspector, and the Superintendent or some higher official determines what charge is to be made."

221 It is manifest that the fabrication had begun in the morning of 17.07.2003 itself by Sellamuthu (A.15) with the knowledge of his Deputy Superintendent of Police. Only thereafter, Tamilmaran (A.14) registered the case and prepared the printed FIR. Ashokan (P.W.32) and Dhanapal (P.W.44), Sub-Inspector, Avinankudi Police Station, have stated that on 17.07.2003, they were directed by the Deputy Superintendent of Police, Vriddhachalam, to go over to Vriddhachalam Police Station and accordingly, when they went there, Dhanapal (P.W.44) was asked to be the scribe for preparing the printed FIR (Ex.P.47).

222 It is indeed strange as to why the buck stopped with Sellamuthu (A.15) and the CBI did not go above the level of the Inspector of Police to investigate into the involvement of superior officers in hushing up the crime. The evidence on record shows that it was only Sellamuthu (A.15), with the knowledge of his Deputy Superintendent of Police, who had falsely implicated Samikannu (P.W.1), Kannadasan (P.W.33) and Ilayaperumal, all Dalits, in this case, arrested them, recorded their police confessions and effected make-believe seizures. There is no evidence against Tamilmaran (A.14) on these aspects. In our opinion, had Tamilmaran (A.14) engaged a counsel separately for himself in the trial Court, as has been done before us now, he could have got himself delinked from Sellamuthu (A.15), because, the FIR in Cr.No.356 of 2003 was registered by him on 17.07.2003 only after the extrajudicial confession (Ex.P.9) of Duraisamy (A.1) was manufactured by Sellamuthu (A.15).

223 For all the above reasons, we extend the benefit of doubt to Tamilmaran (A.14) and acquit him of charge 14 (u/s 218 IPC) and charge 16 (u/s 3(2)(i) of the SC/ST Act) and consequently, the compensation component therefor is set aside.

224 During the hearing of this case, we found it very difficult to find out who were all the accused who were present in the trial Court and who were all the accused who were granted exemption from appearance, when a witness was examined. There-



fore, we had to frequently call for the daily adjudication particulars from the trial Court in this regard. To obviate this, we suggest to the trial Courts to record in the preamble portion of the deposition of a witness, the names and ranks of the accused present in the Court and also the names and ranks of those absent. The Registry is directed to issue a circular to all the trial Courts in this regard after getting approval from the Hon'ble Chief Justice.

225 We place on record our appreciation to the trial Judge for lucidly setting out the trajectory of the case in the preamble portion of the impugned judgment and order itself, in compliance with the High Court Circular dated 07.04.2021 in R.O.C. No.814/2020/RG/F1 (P.Dis.No.36/2021). We direct the Registry to send a copy of the preamble portion alone of the trial Court judgment in this case, to the Director, Tamil Nadu State Judicial Academy, for use during training programmes.

226 We also place on record our commendation to Mr.P.Rathnam, Advocate, and his legal team for taking up the cause of the Dalits at great personal risk and peril, if not for which, the story of Murugesan-Kannagi would have been buried as yet another case of suicide by dejected lovers.

227 Before bringing the curtains down, it is apt to quote Mahakavi Subramanya Bharathiyar:

சாதிகள் இல்லையடி பாப்பா! - குலத்
தாழ்ச்சி உயர்ச்சி சொல்லல் பாவம்!

Meaning:

There are no castes, dear
child. Identifying persons
on the basis of upper caste
and lower caste is a sin.

Alas! Even after almost a century of his demise, these lines of the Mahakavi seem to remain only in the primary school textbooks and nowhere else. If all the political parties in this country were to arrive at a consensus and ensure that there is a common cremation/burial ground for non-Dalits and Dalits in the countryside, it would be a baby step for the annihilation of castes in this country. Whether they would risk giving up their vote banks for this cause, is a million dollar question.



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In the upshot:

- R.T.No.4 of 2021 is answered in terms of paragraph 162 (supra);
- Crl.A.No.504 of 2021 preferred by Marudhupandiyan (A.2) is partly allowed by modifying the death sentence as one of life imprisonment and confirming all the other sentences, including the sentence of fine, imposed by the trial Court;
- Crl.A.No.523 of 2021 is allowed qua Rangasamy (A.3) and dismissed qua other appellants, viz., Duraisamy (A.1), Kanthavel (A.5), Jothi (A.6), Venkatesan (A.7) and Mani (A.8); Rangasamy (A.3) is directed to be released forthwith, provided he is not required in connection with any other case. Fine amount, if any, paid by him shall be refunded.
- Crl.A.No.524 of 2021 preferred by Dhanavel (A.10) and Anjapuli (A.11) is dismissed.
- Crl.A.No.522 of 2021 stands dismissed as regards Ramadass (A.12) and stands allowed as regards Chinnadurai (A.13). Consequently, Chinnadurai (A.13) is directed to be released forthwith, provided he is not required in connection with any other case. Fine amount, if any, paid by him shall be refunded.
- Coming to Crl.A.No.626 of 2021 preferred by Tamilmaran (A.14), he is acquitted of the charges under Sections 218 IPC and 3(2)(i) of the SC/ST Act and the fine amount, if paid, shall be refunded. The conviction and sentence imposed on Tamilmaran (A.14) by the trial Court for the offences under Section 217 IPC and Section 4 of the SC/ST Act stand confirmed. Accordingly, Crl.A. No.626 of 2021 stands partly allowed.
- Crl.A. No.483 of 2021 preferred by Sellamuthu (A.15) stands dismissed;

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

1 The Deputy Commissioner of Police
District Crime Branch, Chennai



2 The Special Judge for Exclusive Trial of
SC/ST (PoA) Act Cases
Cuddalore, Cuddalore District

3 The Public Prosecutor
Madras High Court, Chennai - 600 104

4 The Superintendent
Central Prison, Cuddalore District

5 The Registrar (Judicial), Madras High Court

6 The Director,
Tamil Nadu State Judicial Academy,
Chennai - 28 [With a direction to enclose the preamble
portion of the trial court Judgment]

7. The Deputy Superintendent of Police,
CBI/SCB, Chennai
Special Crime Branch.

8. The District Collector,
Cuddalore

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

10. The Superintendent of Police,
Cuddalore.

Copy To:

1. The Section Officer,
Criminal Section, High Court,
Madras.
2. The Section Officer 'F' Section,
High Court, Madras.
3. The Secretary, Home Secretariat
Chennai-9.

+2cc to M/s.S.Karthikeyan, Advocate, S.R.No.32947, 32946
+2cc to Mr.M.R.Jothimaniyan, Advocate, S.R.No.33209,33207
+1cc to M/s.Adithya Varadharajan, Advocate, S.R.No.33351
+1cc to Mr.S.Sasi Kumar, Advocate, S.R.No.33212
+3cc to Mr.S.Doraisamy, Advocate, S.R.No.33259
+1cc to Mr.K.Srinivasan Spl.PP.CBL, Advocate, S.R.No.32896
+2cc to Mr.K.Balu, Advocate, S.R.No.33213,33206 (16/06/2022)

R.T. No. 4 of 2021

&
Crl.A. Nos.483,504, 522, 523, 524 & 626 of 2021

RSI (CO)
SB(15/06/2022)