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Crl.A (MD)Nos.168, 180 & 204 of 2020 and 386 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.10.2022

Pronounced on : 08.11.2022

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.A (MD)Nos.168, 180 & 204 of 2020 and 386 of 2021

and

Crl.M.P(MD)No.6747 of 2022 in Crl.A(MD)No.204 of 2020

and

Crl.M.P(MD)No.11280 of 2022 in Crl.A(MD)No.168 of 2020

Crl.A (MD)Nos.168, 180 & 204 of 2020:

Sivakandan

.. Appellant/A5 in

Crl.A.(MD)No.168/2020

Thiyagu @ Thiyagarajan

.. Appellant/A1 in

Crl.A.(MD)No.180/2020



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Crl.A (MD)Nos.168, 180 & 204 of 2020 and 386 of 2021

Raja @ Ashok Kumar

.. Appellant/A4 in

Crl.A.(MD)No.204/2020

Vs.

State through

The Inspector of Police,

CBCID, Nagercoil,

Kanyakumari District.

(Crime No.868 of 2010 of Kottar Police Station),

.. Respondent/
Complainant

Appeals filed under Section 374 of Criminal Procedure Code,
against the judgment and order dated 12.02.2020 in S.C.No.600/2017, on
the file of the Principal Sessions Judge, Tirunelveli.

For Appellants

: Mr.V.Kathirvelu

Senior counsel for

Mr.K.Prabhu

for appellant/A5 in Crl.A.(MD)No.168/2020

Mr.A.Ramesh

Senior Counsel for

Mr.M.G.Bharat Singh

for appellant/A1 in Crl.A(MD)No.180/2020



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Mr.S.Palanivelayutham
for appellant/A4 in CrI.A(MD)No.204/2020

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

CrI .A(MD)No.386 of 2021:

State Represented by

The Inspector of Police,

CBCID, Kanyakumari District,

Nagercoil.

(Kottar Police Station Crime No.868 of 2010)

.. Appellant/
Complainant

Vs.

1.Thiyagu @ Thiyagarajan

2.Udayakumar

3.Udayasankar

4.Raja @ Ashokkumar

5.Sivakandan



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6.Sudan

.. Respondents /A1 to A6

Appeal filed under Section 374 of Criminal Procedure Code, to call for the records pertaining to the judgment and order dated 12.02.2020 in S.C.No.600/2017, passed by the learned Principal Sessions Judge, Tirunelveli and convict all the accused (A1 to A6) as per the charges framed by the trial Court except 302 IPC in respect of A1, A4 and A5.

For Appellant : Mr.S.Ravi
Additional Public Prosecutor

For Respondents: Mr.A.Ramesh, Senior Counsel for
Mr.M.G.Bharat Singh, for R1/A1

R2-died

Mr.N.Dilip Kumar for R3/A3

Mr.S.Palanivelayutham for R4/A4

Mr.V.Kathirvelu, Senior counsel for



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Mr.K.Prabhu for R5/A5

Mr.R.L.Dhilipan Pandian for R6/A6

COMMON JUDGMENT

J.NISHA BANU, J.

AND

N.ANAND VENKATESH, J.

Criminal Appeal Nos.168 of 2020, 180 of 2020 and 204 of 2020 have been filed by A5, A1 and A4 respectively, against the judgment and order passed by the Principal Sessions Judge, Tirunelveli, made in S.C.No.600 of 2017, dated 12.2.2020, convicting each of the accused persons for offence under Section 302 IPC and sentencing each of them to undergo Life Imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo one year Rigorous Imprisonment.



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2. Criminal Appeal No.386 of 2021 has been filed by the State challenging the acquittal of A2, A3 and A6 from all charges and challenging the acquittal of A1, A4 and A5 from all other charges except under Section 302 IPC.

3. The case of the prosecution is that there were two groups, one headed by Sathasivam and the other headed by A2-Udayakumar and A3-Udayasankar. A2 is an advocate and A3 was working as Sub Inspector of Police in Kanyakumari district. A1,A2 and A3 are relatives and the deceased accused Jegan alias Jagatsingh Sowhan, A5 to A7 are their friends. Deceased Manikandan alias Ayyappan belongs to the Sadasivam group. There was enmity between Sadasivam and Udayakumar regarding the administration of temple undertaken by Irulappapuram Siva Devasthanam Committee as well as in the management of Kamarajar Polytechnic at Palavilai.



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4. The enmity between the two groups was prevailing from the year 2001 onwards and this went on till the year 2010 and various cases were registered by and against both the groups. In the year 2004, during one of the temple festivals, the tent caught fire and the fortune tellers informed that the temple festival can be conducted only after three years. One Shanmugasundaram (P.W-15) used to be god possessed during all the temple festivals. In spite of the same, within three months, temple festival was conducted and P.W-15 refused to be the god possessed in that festival and hence, A3 took the task of god possessed in that festival. The same was criticised by the deceased, P.W-1 and others. After three days, a group headed by A1 assaulted P.W-1 with iron rod and P.W-1 was admitted in Asaripallam Government Hospital. A complaint was lodged against the deceased before the Kottar Police Station, 3 or 4 months before the occurrence. The deceased obtained anticipatory bail from the High Court and when he surrendered before the Court at Nagercoil, he was restrained by the Advocates headed by A2. Hence, the



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deceased filed an application before this court for modification and the deceased was directed to surrender before the police station.

5. Two or three months before the occurrence, the marriage of the son of Senniappan was conducted at Irulappapuram and there was a wordy quarrel between Vijayamohan and one Ganesh, who is the son of Ilayaperumaland the deceased is said to have interfered and A1 and persons accompanying him, are said to have assaulted the deceased with aruval on his head. A complaint came to be lodged and the seriousness of the complaint is said to have been watered down by A3 by using his position as if it was an ordinary assault.

6. An article seems to have been published in Kumudam and Kumudam Reporter to the effect that A3 was conducting a chit unauthorizedly. A2 and A3 came to a conclusion that it is the deceased



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who was the cause for the publication of the article in the magazine and hence, they decided to do away with the deceased. Hence, a conspiracy was hatched and on 07.07.2010 at about 06.30 p.m., when the deceased was sitting inside his omni van at Irulappapuram junction, opposite to Rajalakshmi Hospital, A1, deceased accused Jeganand A5 to A7 came to that place with aruval and started attacking the deceased. The deceased came out of the car and crossed the road and entered Rajalakshmi Hospital. However, the accused persons followed him and attacked the deceased indiscriminately. The deceased is said to have died on the spot with serious injuries all over his body.

7. PW-1, who is the brother of the deceased, gave a complaint to P.W-29 on 07.07.2010, at about 07.00 p.m., and an FIR (Ex.P27) came to be registered in Crime No.868 of 2010. The investigation was taken up by P.W-30 at about 07.30 p.m., after he



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received the copy of the FIR and he visited the place of occurrence. P.W-30 is said to have sent the dead body through constable P.W-20 with a requisition to keep the dead body at the mortuary for conducting postmortem. This happened at about 07.45 p.m. Thereafter, P.W-30 left to Asaripallam Government Hospital mortuary and at about 08.00 p.m., he conducted the inquest on the dead body of the deceased in the presence of witnesses and panchayatdhars and the inquest was completed at about 11.00 p.m. The inquest report (Ex.P28) was prepared and thereafter, the body of the deceased was sent for postmortem.

8. P.W-28, doctor conducted the postmortem on 08.07.2010 at about 12.00 noon and the postmortem certificate (Ex.P25) was prepared and the following injuries were noted:

“1) 20 x 5cm x cranial cavity deep horizontal cut injury seen over the back of head found at the level of occipital



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protruberence.

2) 25 x 5cm x cranial cavity deep horizontal cut injury seen over the back of head. 2cm above and parallel to the previous injury No.1.

3) 30 x 4cm x cranial cavity deep horizontal cut injury seen over the back and left side of head. It is 3cm above the previous injury and over the left side. It is overlapping the previous injury No.2.

4) 20 x 3cm x cranial cavity deep horizontal cut injury seen over the left side of back of head and left temporal region. It is found overlapping the previous injury No.3.

5) 10 x 2cm x bone deep horizontal cut injury seen over the left side of head found overlapping injury No.4.

6) 8 x 1cm x bone deep horizontal cut injury seen over the left side of head found overlapping injury No.4 and 5.



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7) 6 x ½ cm vertical cranial deep cut injury seen over the back of head overlapping injury No.1 and 2. Tags of scalp skins were found hanging in between the cut injuries.

O/D Scalp, skull and dura:- Sub scalpal bruising noted over the left temporo parietal region. Vault of the skull found fractured over the left temporal and occipital region. Posterior part of the brain found missing and cut into multiple pieces. Bony fragments on the occipital region are found missing.

8) 2 x ½ x ½ cm incised punctured wound seen over the right side of inter scapular region.

9) 2 x ½ x ½ cm incised punctured wound seen over the right side of nape of neck.

10) 1 x ½ x ½ cm incised punctured wound seen over the left scapular region.

11) 2x ½ x ½ cm incised punctured wound seen just below



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the left scapular region.

12) 8 x ½ cm abrasion seen over the back of left shoulder.

13) 10 x ¼ cm horizontal abrasion seen over the back and outer aspect of right arm.

14) 8 x ¼ cm abrasion seen just parallel and 1cm above the previous abrasion.

15) 1 x ½ x ¼ cm incised punctured wound seen over the back of middle of left fore arm.

16) 6 x ¼ cm, 8 x ¼ cm and 5 x ¼ cm three linear abrasion seen over the back of lower half of left fore arm, half to 1cm close to each other.

17) 4 x 1cm x bone deep cut injury seen over the back of left middle finger. On examination the proximal phalanx found cut and fractured.



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- 18) 4 x $\frac{1}{2}$ x $\frac{1}{4}$ cm cut injury seen over the back of left hand.
- 19) 10 x 3cm x bone deep cut injury seen over the right side of head. 5cm above the upper end of right ear.
- 20) 3 x 2cm x bone deep cut injury seen over the palmar aspect of left middle finger and found hanging.
- 21) 1 x $\frac{1}{2}$ x $\frac{1}{4}$ cm cut injury seen over the palmar aspect of left ring finger.
- 22) 1 x $\frac{1}{2}$ x $\frac{1}{4}$ cm cut injury seen over the palmar aspect of left little finger.
- 23) 3x $\frac{1}{2}$ x $\frac{1}{4}$ cm cut injury seen over the outer aspect of left ring finger.
- 24) 1 x $\frac{1}{2}$ cm abrasion seen over the left side of lower abdomen.
- All the above said injuries are reddish in colour.”



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9. A final opinion was rendered by P.W-28 to the effect that the deceased would appear to have died of shock and haemorrhage and due to multiple cut injuries. The final opinion was given under Ex.P26 after receiving the viscera report (Ex.P28).

10. P.W-30 examined P.W-1, P.W-2, P.W-3 and P.W-13 at the hospital premises and recorded their statements separately under Section 161(3) of Cr.P.C. P.W-30, once again came to the place of occurrence on 08.07.2010 at about 07.00 a.m. and prepared the observation mahazar (Ex.P9) in the presence of witness P.W-17 and prepared the report (Ex.P29). P.W-30 recovered M.O.12, M.O.13 and M.O.14 from the scene of occurrence. Thereafter, P.W-30 examined P.W-17, P.W-4 to P.W-7 and recorded their statements. P.W-30, thereafter, seized the dress materials from the dead body of the deceased which are M.O.3, M.O.4, M.O.5 and M.O.15 and the same was handed over to the Head Constable under



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Form-95, which was marked as Ex.P30 series.

11. On 10.07.2010, P.W-30 got an information about the movement of the accused persons and he rushed to the Sothavilai beach at about 05.30 a.m. and caught hold of 5 persons, who are A1, deceased accused Jegan, A4, A5 and A6 and they were arrested at about 06.00 a.m. in the presence of P.W-18. On interrogation, the accused persons confessed and based on the admissible portion of the statements, marked as Exhibits P10, P12, P14, P16 and P18, recovered M.O.1, M.O.16, M.O.17, M.O.6, M.O.19 and M.O.2 in the presence of P.W-18 under Exhibits P11, P13, P15, P17 and P19.

12. The accused persons were produced before the learned Judicial Magistrate No.II, Nagercoil, on the same day evening and they were remanded to judicial custody. The seized properties were sent to the



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court under Form-95, which was marked as Ex.P31 series.

13. P.W-30, thereafter, examined other witnesses on 11.07.2010 and 12.07.2010 and recorded their statements separately. On 14.07.2010, the omni van was produced before the police station along with documents by one Babu and the same was seized and identified as M.O.20. The vehicle was sent to the Motor Vehicle Inspector, who issued a certificate, marked as Ex.P32. The damage sustained by the omni van vehicle was also assessed and the damage certificate was marked as Ex.P33. The photographs that were taken in the scene of occurrence were collected and were marked as M.O.21 series and the photographer was examined as P.W-30 and his statement was recorded.

14. A Criminal Original Petition came to be filed by P.W-1 before the High Court in Crl.O.P.No.8151 of 2010 on 22.07.2010 seeking



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for transfer of investigation. The investigation was transferred to the CBCID and P.W-30 handed over the case file to the Superintendent of Police, Kanyakumari on 12.10.2010. Thereafter, the investigation was taken up by P.W-31 on 13.10.2010.

15. P.W-31 once again went to the scene of occurrence and inspected the occurrence place in the presence of witnesses and prepared an observation mahazar (Ex.P35) and a rough sketch (Ex.P36). P.W-31 also recorded the statements of witnesses including P.W-1. Thereafter, P.W-31 started taking steps to get the call details and he received the CD containing the call detail information of the mobile numbers of the accused persons which was marked as Ex.P37. Apart from recording the statement of the witnesses afresh, P.W-31 also took steps to seize certain additional documents and material objects and the most important seizure was the diary of the deceased which was marked as Ex.P39 and the



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complaint that was sent by the mother of the deceased which was marked as Ex.P40. P.W-31 also collected the article that was published in the Kumudam Reporter and the same was marked as M.O.9 and M.O.22 respectively. P.W-31 also took steps to get the statements of certain witnesses recorded under Section 164 Cr.P.C before the concerned Court. Ultimately, after collecting all the relevant documents and recording the statements of the witnesses and also after collecting the scientific reports, P.W-31 filed the final report before the learned Judicial Magistrate No.I, Nagercoil. By the time the final report was filed, Jegan alias Jegatsingh Sowhan (originally arrayed as A2 in the FIR) died.

16. The learned Judicial Magistrate after furnishing the copies of the documents to the accused persons committed the case to the file of the Principal District and Sessions Court, Kanyakumari and the case was assigned S.C.No.49 of 2017. Thereafter, Crl.O.P.(MD)No.



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10355 of 2017 came to be filed seeking for transfer and the case was transferred to the file of the Principal Sessions Judge, Tirunelveli and the case was renumbered as S.C.No.600 of 2017.

17. The Court below framed the charges against the accused persons in the following manner:

Accused Rank	Charge
A1 to A6	S.120B IPC
A1, A4, A5, A6	S.148 IPC
A1, A4, A5, A6	S.341 IPC
A1, A4, A5, A6	S.294(b) IPC
A6	S.3(1) TNPPDL Act
A1, A4, A5	S.3(1) TNPPDL r/w 149 IPC
A1, A4, A5, A6	S.302 r/w 149 IPC
A1 to A6	S.302 r/w 120B IPC
A1, A4, A5, A6	S.506(ii) IPC



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18. The prosecution examined P.W-1 to P.W-32 and marked Exhibits P1 to P56 and identified and marked M.O.1 to M.O.23. The defence examined D.W-1 to D.W-5 and marked Exhibits D1 to D15. The incriminating materials that emerged in the course of evidence was put to the accused persons when they were questioned under Section 313 (1) (b) Cr.P.C and they denied the same. A1 to A6 gave their explanation along with the relevant documents.

19. The Court below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts only as against A1, A4 and A5 for the offence under Section 302 IPC simpliciter and convicted and sentenced them for the said offence. Insofar as the other accused persons are concerned, they were acquitted from all charges.



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20. Heard Mr.A.Ramesh, Senior Counsel for Mr.M.G.Bharat Singh, for A1, Mr.N.Dilip Kumar for A3, Mr.S.Palanivelayutham for A4, Mr.V.Kathirvelu, Senior counsel for Mr.K.Prabhu for A5, Mr.R.L.Dhilipan Pandian for A6 and Mr.S.Ravi, Additional Public Prosecutor for the State.

21. The main focus of the arguments made on the side of the appellants is that P.W-1, P.W-2, P.W-4 and P.W-5 could not have seen the occurrence. To substantiate this plea, the various contradictions that were found in their evidence were brought to the attention of this Court. The main contradictions that were pointed out are:

- P.W-1 in his complaint has spoken about A2 travelling in an ambassador car and there was no mention about any two wheeler in the entire complaint. Whereas, at the time of giving evidence, there is reference to two wheelers,



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there is no reference to the presence of A2 and P.W-1 is said to have informed P.W-2 and P.W-4 about the incident, which makes the presence of P.W-2 and P.W-4 in the scene of crime totally unbelievable.

- All the eyewitnesses state that the deceased came in an omni van and whereas, there is no reference to omni van in the rough sketch that was marked as Ex.P29. To get over the same, in the rough sketch prepared by P.W-31, the omni van is brought in.
- P.W-2 in his evidence states that he has spoken about the incident only to the CBCID police and did not inform about the same to the Kottar police (P.W-30) and if this statement is considered, P.W-2 had spoken about this incident for the first time after nearly three months when the investigation was transferred and P.W-31 took up investigation on 13.10.2010.



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- P.W-4 is a chance witness and it is unbelievable that he went to the scene of occurrence to recharge his mobile phone and he also speaks about the accused persons coming to the scene of crime in two wheelers. His presence becomes even more doubtful in view of the evidence of P.W-1 where it is stated that it was P.W-1 who informed P.W-2 and P.W-4 after the incident.
- Even insofar as P.W-5 is concerned, he speaks about the accused persons coming in a white coloured car and he was not sure about the vehicle in which the accused persons came.
- The second occurrence had taken place inside Rajalakshmi hospital and the best witnesses, who could have spoken about the attack was those who were present within the premises of the hospital and not the so called eyewitnesses as projected by the prosecution.



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- P.W-1 has stated that he lifted the blood soaked body of the deceased and if that is so, his dress must have been sent for serological report, which could have proved his presence in the scene of crime.
- Each and every eyewitness, who were examined in this case were close relatives of the deceased and if the murder had taken place in the manner in which it is projected by the prosecution, it would have been supported by some independent witness.

22. The focus was thereafter shifted to the arrest and recovery of the material objects and the following submissions were made:

- P.W-18, who is a very close relative of the deceased was the only witness examined to prove arrest and recovery and no independent witness of respectable



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stature was examined.

- The manner in which the recovery was made after the alleged arrest is completely artificial since all the material objects were recovered from the beach and whereas each recovery is made independently for each material object with the very same witness.
- The admissible portion in the confession made by the accused persons does not even speak about the exact place where the material object was concealed and hence the very recovery is not valid in the eye of law.
- The eyewitnesses P.W-1 and P.W-4 identified the weapons for the first time in the Court and the same is clear from their evidence and P.W-30 and P.W-31 have admitted to this fact.



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23. Apart from the above, the other submissions that were made by the learned counsel for the appellants are:

- A2 was consciously let out by the prosecution and the same is evident from the evidence of P.W-1 and the inquest report that was prepared under Ex.P28. This creates a very serious doubt on the veracity of the evidence of P.W-1 and it also goes against the complaint given by him, which was marked as Ex.P1. The person, who was in control of the temple committee and the educational institution was let out and the others, who are said to have supported him have been convicted in this case.
- The deceased is a history sheeter, who had a murder case against him and he had so many enemies and the prosecution found it convenient to put the blame on the appellants.
- The statements recorded by P.W-30 was not sent to the



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Court and P.W-31 did not even refer to the earlier investigation made by P.W-30 and infact, it was informed to the Court below that the entire investigation of P.W-30 along with the recording of the statement of the witnesses can be disregarded.

- If the evidence of P.W-30 is disregarded, there is a huge delay in recording the statements of the eyewitnesses by the investigation agency and it causes a serious dent in the investigation.
- There were material contradictions between Section 164 Cr.P.C statement given by the witnesses and what was deposed as evidence before the Court.
- The serial number in the FIR mismatched and there were corrections and there was also a substantial delay in the FIR reaching the Court and that by itself shows that there was deliberation and the prosecution story is unreliable.



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- Section 164 Cr.P.C statements, which were marked, was objected by the defence and inspite of recording the objections, the Court below did not even deal with the objections. For that matter, none of the objections raised by the defence at the time of marking documents was dealt with by the Court below.
- There was no charge under Section 302 IPC simpliciter and inspite of the same, the appellants were convicted and sentenced for offence under Section 302 IPC.

24. The learned counsel for the appellants inorder to substantiate their submissions relied upon the following judgments:

- a) **Makhan Singh v. State of Punjab**, reported in 1988 AIR SC1705.
- b) **Murugan & Ors. v. State** (Manu/TN/7876/29).
- c) **Farooq @ Mahomed Farooq v. State**, reported in 2018



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MHC 2374.

- d) **Mohanbhai Gorjibhai Pargi v. State of Gujarat**, reported in 2013 SCC Online Guj 8705.
- e) **Shahid Khan v. State of Rajasthan**, reported in 2016 AIR SC 1178.
- f) **Ganesh Bhavan Patel & Anr. v. State**, reported in 1978 SCC 4371.
- g) **Re.Thanigai & Ors.** (Manu/TN/0536/1972).
- h) **R.Murugan v. State** (Manu/TN/2089/2016).
- i) **P.Jothi and Ors. v. State** (Manu/TN/1442/2001).
- j) **State by Deputy Superintendent of Polcie v. Stalin & 7 Ors.**, reported in 2002 MLJ Cri 1 33).
- k) **Suraj Pal v. State of Uttarpradesh**, reported in 1955 AIR SC 419.
- l) **Halke Ram & Ors. v. State of Madhya Pradesh** (Manu / SC/0895/2018).



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m) **Chotkau v. State of Uttar Pradesh**, reported in 2022
SCC Onlin SC 313.

25. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State made the following submissions:

- The motive to the crime has been specifically spoken by P.W-1, P.W-2, P.W-4, P.W-5 and P.W-14.
- The evidence of P.W-1, P.W-2, P.W-4 and P.W-5 clearly establishes that they were eyewitnesses to the incident and the contradictions pointed out by the learned counsel for the appellants does not make their evidence totally unreliable. To substantiate this submission, the learned Additional Public Prosecutor relied upon the judgment of the Apex Court in ***Shahaja alias Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra*** reported in 2022 SCC OnLine SC 883.



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- The doctor, who was examined as P.W-12 clearly confirms the presence of P.W-1, P.W-2, P.W-3, P.W-5 in the scene of occurrence, when he rushed to the Rajalakshmi hospital, immediately after hearing about the incident.
- The Court below went wrong in acquitting A6 inspite of P.W-1, P.W-2, P.W-4 and P.W-5 specifically deposing about the presence of A6 and the overtact attributed on him.
- The charge of criminal conspiracy has been clearly made out as against A2 and A3 and the Court below rendered a perverse finding by disregarding the evidence of P.W-13 and by not considering the overall facts and circumstances of the case whereby A2 and A3 were the persons, who were in control of the temple administration and the educational institution and the



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other accused persons were acting on their behalf.

- It is only because of a slipshod investigation done by P.W-30, the investigation was transferred to CBCID and there was a long lapse of time due to which there are bound to be some contradictions and embellishments. The trial had commenced after nearly 8 years from the date of incident and there is bound to be contradictions and what has to be seen by the Court is as to whether the eyewitness account and other circumstances reposes the confidence of the Court on the dastardly attack made on the deceased in a crowded place.

26. This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the judgment and order passed by the Court below.



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27. This Court will start the discussion with the eyewitness account. Before going into this issue, this Court must keep in mind the fact that there was interference in conducting a fair investigation in this case due to some pressure exerted at some level. P.W-30 had taken up investigation and the investigation was not going in the right lines. After nearly three months, this Court had to interfere with the investigation and an order was passed based on the petition filed by P.W-1 in Crl.O.P.No. 8151 of 2010 and the investigation was transferred to the Inspector of Police, CBCID and P.W-31 took up the investigation only on 13.10.2010. This means that by the time P.W-31 took up investigation, the first crucial three months were lost. P.W-30 had conducted a slipshod investigation and that is the reason why when the written arguments were filed by P.W-31, an extreme stand was taken requesting the Court to completely disregard the evidence of P.W-30. The investigation was completed by P.W-31 and final report was filed only on 02.04.2013. The



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story did not end here. Originally, the case was committed to the file of the Principal District and Sessions Court, Kanyakumari at Nagercoil and it was assigned S.C.No.49 of 2017. However, a transfer petition came to be filed before this Court and based on the order passed by this Court in Crl.O.P.(MD)No.10355 of 2017, the case was transferred to the file of the Principal Sessions Judge, Tirunelveli through order dated 08.08.2017 and the case was renumbered as S.C.No.600 of 2017. The evidence of P.W-1 commenced only on 11.09.2018. It is therefore clear that this case had seen too many interferences and there was a substantial delay of eight years by the time the case was taken up for trial. Therefore, it is clear that there has been intermittent interference in the progress of this case and the same has to be kept in mind while appreciating the evidence recorded in this case.

28. This Court must also keep in mind the principles evolved by the Apex Court in a recent judgment with regard to the appreciation of



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ocular evidence in ***Shahaja alias Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra*** reported in **2022 SCC OnLine SC 883** and for proper appreciation, the relevant portions in the judgement are extracted hereunder:

“27. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find



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out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate Court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is



justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.



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VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually,



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people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of



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looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : (1983) 3 SCC 217 : AIR 1983 SC 753, Leela Ram v. State of Haryana, (1999) 9 SCC 525 : AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]

28. To put it simply, in assessing the value of the evidence of the eyewitnesses, two principal



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considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it



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will also have to be taken into account while assessing the value of the prosecution evidence.”

29. P.W-1, who is the brother of the deceased has stated in his evidence that he is an auto driver and an unlettered person. He was present in the scene of crime, which is the Irulappapuram junction where he normally parks his auto in the auto stand. He was present along with P.W-2 and P.W-3. On 07.07.2010 at about 06.30 p.m., he heard a sound and when he saw from the place where the sound came, which was opposite to Rajalakshmi hospital and which was about 60 feet from where he was standing, he saw the deceased sitting inside the car being attacked by A1 and A6, A4, A5 and the deceased accused Sowhan were surrounding the car and all of them were carrying aruval marked as material objects M.O.1, M.O.2, M.O.16, M.O.17 and M.O.19. The deceased opened the car and he crossed the road and he started running towards Rajalakshmi Hospital. He entered the gate of the hospital and he



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was chased by the accused persons. About 20 feet from the hospital gate, the deceased was once again attacked indiscriminately by the accused persons and thereafter, they fled the scene of occurrence.

30. P.W-1, immediately after the occurrence, went to the Kottar police station and with the help of his relative Anusham Tirunaal, a complaint was prepared and it was given to the police. In the complaint(Ex.P1), he has also mentioned about the presence of A2, who is said to have instigated the other accused persons and he had come in a car. Even though this was the version that was given in the complaint at the earliest point of time, at the time when he was examined, P.W-1, for reasons best known to him, omits to name A2 and his presence in the scene of crime. Based on the complaint given by P.W-1, an FIR came to be registered by P.W-29 at about 07.00 p.m. In the FIR, the names of A1 to A5 and that of the deceased accused Sowhan was specifically mentioned and it was also mentioned that there are two more persons,



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who can be identified. The FIR was registered within half an hour after the occurrence took place. This FIR reached the Court on 07.07.2010 at about 09.05 p.m. It is therefore clear that there was no exorbitant delay.

31. P.W-1 also speaks about the fact of his brother dying on the spot with several cut injuries on his head, shoulder and hand. The evidence of P.W-1 has been attacked mainly on the ground that he consciously omitted to name A2 and there was discrepancy in the vehicles in which the accused persons had come and he also made a statement as if he informed P.W-2, P.W-4 and P.W-14 from the scene of crime. That apart, P.W-1 identified the weapon for the first time only in the Court. He had also stated that he lifted the body of the deceased and there were bloodstains in his dress and this was not given to the police to get the scientific report to prove his presence in the scene of crime.



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32. P.W-2, who is the cousin of the deceased has also deposed on the same lines. The evidence of P.W-2 has been attacked on the ground that he was also not clear about the vehicles that were used by the accused and he had not stated about this incident to anybody and for the first time, he had stated about this incident only to P.W-31. His presence at the time of occurrence was also questioned based on the evidence of P.W-1.

33. P.W-3, who was also cited as eyewitness, turned hostile and therefore, there is no need to go into the evidence of this witness.

34. P.W-4 is said to be the nephew of the deceased and he had also deposed on the same lines. According to this witness, he happened to be present in the scene of crime when he went to the place for recharging his mobile phone. According to him, the shop in which he had recharged his mobile phone viz. Siva Store was about 50-60 feet



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from the place where the deceased was sitting inside the omni van. The evidence of this witness has been questioned mainly on the ground that his presence in the scene of crime is artificial and unnatural and he has been brought in as a witness since he was the relative of the deceased. That apart, his presence is doubtful in view of the evidence of P.W-1.

35. P.W-5 is the cousin of the deceased. He claims that he was having tea in a tea shop at Irulappapuram junction and at that point of time, he saw the occurrence. The evidence of this witness is also questioned on the ground that it is unnatural and this witness also identified the weapons for the first time only in the Court. This witness also speaks about the accused persons coming in a car which goes contrary to the evidence of the other witnesses.

36. The evidence of P.W-12, who is the doctor working in Rajalakshmi hospital assumes some significance in order to ascertain as



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to whether P.W-1, P.W-2, P.W-4 and P.W-5 were really in the scene of occurrence on the date of the incident. P.W-12 in his evidence states that he is running Rajalakshmi nursing home and on 07.07.2010, he was in his residence and he received a phone call around 06.40 p.m., regarding the murder of Manikandan inside the nursing home. P.W-12 immediately rushed to the nursing home and reached the place within five minutes. He found the deceased lying face down and when he tested his pulse, he found that Manikandan had died. This witness specifically states about the presence of P.W-1, P.W-2, P.W-3 and P.W-5 and many others when he reached the hospital. He also speaks about the information received by him about the incident when he was inside the nursing home.

37. There is no reason to discard the evidence of P.W-12, who is a neutral person, who does not have any axe to grind against any group. This witness specifically speaks about P.W-1, P.W-2, P.W-3 and P.W-5 and their presence inside the nursing home was seen hardly within



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15–20 minutes from the time of the incident. In view of the same, the presence of eyewitnesses in the scene of crime cannot be totally rejected as was contended by the learned counsel appearing on behalf of the appellants.

38. Even if the eyewitness account of P.W-4 and P.W-5 is doubted on the ground that they were merely chance witnesses and their presence in the scene of crime is unnatural, there is absolutely no reason to reject the eyewitness account of P.W-1 and P.W-2. P.W-1 is an auto driver who has his auto stand in Irulappapuram junction and he was standing along with P.W-2 and P.W-3. It is true that there are some deficiencies and infirmities in the evidence of P.W-1 and P.W-2. As stated above, the evidence was given after eight years from the date of incident and some stray answers given by these witnesses cannot be a ground to completely discard their evidence. Ultimately, as held by the Apex Court in the judgment referred supra, their evidence must be read as a whole



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and this Court must see if it inspires the confidence of this Court and there is a ring of truth. The demeanour of these two witnesses has been seen by the Court below and the Court below has formed an opinion to rely upon their evidence and this Court does not find any formidable ground to come to a different opinion than the one formed by the Trial Court. This Court also does not find the discrepancies pointed out to be so incompatible with the credibility of the version given by these witnesses justifying the rejection of their evidence in toto.

39. In the present case, it was an uphill task to even complete the investigation in a fair manner and the witnesses obviously should have been overtaken by events and when such a gory murder takes place, it would have obviously disturbed the mental faculties of the eyewitnesses and they cannot be expected to perfectly reflect what actually happened as if every witness possesses a photographic memory.



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40. As held by the Apex Court in the judgment referred supra, this Court does not doubt the presence of P.W-1 and P.W-2 in the scene of occurrence and there is nothing inherently improbable and unreliable in their evidence. This finding does not mean that this Court is completely discarding the eyewitness account of P.W-4 and P.W-5. Such a finding is rendered only to impress upon that even in the extreme case of disregarding the evidence of P.W-4 and P.W-5, eyewitness account of P.W-1 and P.W-2 can be relied upon.

41. Just because P.W-1, P.W-2, P.W-4 and P.W-5 happened to be the relatives of the deceased that by itself is not a ground to reject their evidence. The prosecution did attempt to examine the other eyewitnesses P.W-6 to P.W-11, who are having shops in the same junction and unfortunately, every other eyewitness became hostile. There is nothing surprising in the independent witnesses becoming hostile and more particularly, in a case of this nature where some influence was



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exerted to thwart fair investigation. Therefore, it is not as if the prosecution did not examine any independent witness and this is a case where all independent witnesses became hostile. Since witnesses turning hostile in high profile cases has become a norm, the Courts must be very careful while appreciating the evidence and just because the witnesses, who supported the case of the prosecution are the relatives of the deceased, that by itself is not a ground to discard their evidence unless the Court is satisfied that it is wholly unreliable.

42. In the present case, a lot of discrepancies were pointed out in the manner in which the arrest and recovery took place. There was a complete flaw in the investigation conducted by P.W-30 with regard to recovery and it is only because of such a slipshod investigation, it was transferred to an independent agency and by the time P.W-31 took up investigation, the damage had been done. The irregularity or illegality in the recovery may not have any bearing in a case where there is a clear



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eyewitness account regarding the incident and the accused persons, who are involved in the same. The same reasoning will apply even for the other discrepancies that were pointed out by the learned counsel for the appellants regarding the deficiency found in the sketch prepared by P.W-30 and marked as Ex.P29, the difference in the serial number found in the FIR, bloodstained clothes of witnesses not being recovered and delay in sending the FIR to the Court.

43. On an overall reading of the evidence, it is very clear that there were two groups, one led by one Sadasivam and the other led by A2 and A3, which were competing to hold control over the management of a temple committee and a polytechnic college. This was not the first occasion where the deceased was attacked and there is already a previous case, where again the deceased was attacked and an FIR was pending. There were complaints and counter complaints against both the groups. In short, both the groups are not paragon of virtues and



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the dispute between both of them had been going on from 2001 to 2010 and it reached its crescendo with the brutal murder of Manikandan. A lot of hue and cry was made on the side of appellants as if Sadasivam, who is the main person, was not even examined. However, it was brought to the notice of this Court that Sadasivam had died as early as on 06.12.2012 itself, even before the trial commenced in the year 2018. Likewise, it was also brought to the notice of this Court that A2, who was also an Advocate and who was in the helm of affairs, also died during the pendency of this appeal on 30.07.2020. There is much to say against A2 based on the materials available on record. However, this Court is refraining itself to comment upon a person, who is already dead and gone.

44. The motive behind the crime takes a back seat in cases where the eyewitness account clearly establishes the case of the prosecution. However, in the present case, the evidence of P.W-1, P.W-2,



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P.W-4, P.W-5 and P.W-14 clearly establishes the motive behind the crime. Hence, this is one more additional factor which corroborates or supports the eyewitness account and consequently establishes the case of the prosecution.

45. This Court will now take up the appeal filed by the State against the acquittal of A2, A3 and A6 from all charges and A1, A4 and A5 from all charges except Section 302 IPC. The appeal against the acquittal confines itself only to A3 and A6, since A2 died during the pendency of the appeal.

46. The main charge that brings all the accused persons within the net is the charge of criminal conspiracy under Section 120B IPC. To establish this charge, the prosecution has relied on the evidence of P.W-13 and also the material objects that were marked as M.O.9 and M.O.22 and Ex.P39 read with Ex.P50 and Ex.P51. The Court below has



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appreciated the evidence of P.W-30 at paragraph 42 of the judgment and it was found that his evidence was completely not acceptable and unbelievable. This is a witness, who was crossing the house of A2 in his two wheeler and from a distance, claims to have seen all the accused persons standing in front of the house and conspiring to do away with Manikandan. The Court below rightly held that P.W-13 is an unnatural witness, whose evidence cannot be relied upon. That apart, the evidence of this witness also runs contrary to Ex.P28, which is the inquest report in which it had been stated that the conspiracy had taken place in a park. Whereas, this witness stated that the conspiracy took place in the street just in front of the house of A2. The evidence of this witness is liable to be discarded in toto.

47. Insofar as Ex.P39, Ex.P40, Ex.P43 series, Ex.P44 and Ex.P45 are concerned, it is not known from whom the prosecution had recovered these documents. P.W-31 also has not examined and taken



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statements of the persons, from whom these documents were recovered. That apart, these documents were not marked through persons from whom it was recovered. Unless the documents are produced by the prosecution and marked through the correct person, such documents cannot be looked into by the Court. In any case, none of these documents help the prosecution in establishing the charge of criminal conspiracy.

48. There is a specific allegation that A3, who was working in the police department, had also conducted unauthorised chit. The chit book, that is said to have contained the handwriting of A3 was marked through P.W-31. According to P.W-31, he examined one Sivasundaravel Gramani, who produced this chit book and this person has not been examined as a witness. There is no proof that the handwriting found in the chit book (Ex.P38) is that of A3. M.O.9 and M.O.22 are the magazines in which the unauthorised chit run by A3 was mentioned and according to the prosecution, this became the trigger for murdering



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Manikandan. There are statements made by witnesses and evidence available on record to show the part played by A3, who was using his official position and getting things done. However, even if all these evidence is put against A3, at the best, it only creates a strong suspicion against A3. Strong suspicion by itself is not a ground to establish a charge under Section 120B IPC and the Apex Court in ***John Pandian v. State*** reported in (2010) 14 SCC 129, has held that howsoever strong the suspicion may be, it cannot take place of the proof required to convict the accused.

49. In view of the same, the charge under Section 120B IPC has not been proved by the prosecution and there is no ground to interfere with the finding of the trial Court in this regard. Once such a finding is rendered, the acquittal of A3 by the Court below does not warrant any interference.



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50. The next question is as to whether the Court below was right in acquitting A6 from all charges. The Court below, after appreciating the evidence of P.W-1, P.W-4 and P.W-5, has come to a conclusion that the prosecution did not prove the identity of A6 in this case and gave the benefit of doubt to A6. It is alleged that A6 was the one, who damaged the windshield of the omni van in which the deceased was sitting at the time of occurrence. P.W-1 in his evidence states that he did not know A6 before and also states that A6 belongs to Kalai Nagar. The police did not conduct any Test Identification Parade and this accused was identified by the witness after nearly eight years of the incident. P.W-2 in his evidence states that he did not know the name of A6 at the time of incident and he did not speak with anyone on the part played by A6 and A6 was not identified by P.W-2 even in the course of investigation. The Court below, on appreciation of evidence, has given the benefit of doubt to A6 since the prosecution was not able to specifically identify A6 and his name was also not mentioned in the FIR.



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The view taken by the Court below is a possible view and just because there is an alternative view that can be taken by this Court that is not a ground to interfere with the acquittal of A6. Useful reference can be made to the judgment in *N.Vijayakumar vs. State of Tamil Nadu* reported in **2021 (1) MWN (Cr.) 602**.

51. In view of the above finding, the acquittal of A3 and A6 from all charges by the Court below does not warrant the interference of this Court since it does not fall within the parameters for interfering in an appeal against acquittal.

52. The only other finding of the trial Court which warrants the interference of this Court pertains to the acquittal of A1, A4 and A5 from the charge of Sections 148 and 149 IPC. The Court below has come to a conclusion that since the prosecution was able to establish the case only against A1, A4 and A5 and it falls below five members, it does not



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satisfy the requirement of Section 141 IPC.

53. It is clear from the evidence of the eyewitnesses that there were totally five persons, who were present in the scene of crime. Out of this, one of the accused persons, viz. Sowhan died even before the final report was filed. The prosecution was not able to establish the case as against A6. As a result, the total number came down to three. Therefore, the Trial Court came to a conclusion that the ingredients under Section 141 IPC were not fulfilled. It is not necessary that in order to convict under Section 149 IPC, five or more persons must necessarily be convicted. Even if the number of persons convicted is less than five and the others are acquitted, the persons, who are convicted can be convicted with the aid of Section 149 IPC. The test of availability of five persons is at the time of occurrence and not at the time of conviction. The law on this issue has been substantially made clear by the Apex Court in *Shaji v. State of Kerala* reported in (2011) 5 SCC 423 and *Bivash Chandra*



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Debnath @ Bivash D. and Ors. v. State of West Bengal reported in **2015**
(2) MWN (Cr.) 87 (SC).

54. It is clear from the evidence of the eyewitnesses that there were five persons present in the scene of crime and they formed into an unlawful assembly with common intention/common object of doing away with the deceased person. Under such circumstances, even if there was no overtact ascribed as against any one of the accused persons, even then such a person can be convicted for the offence of murder with the aid of Section 149 IPC. The Court below completely lost sight of this settled principle of law.

55. The Court below has acquitted A1, A4 and A5 for the charge under Section 148 IPC with the very same reasoning and the same is also liable to be interfered with by this Court. All the five accused persons were seen in the scene of crime armed with deadly weapons. The



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same was used for committing the offence of murder. Hence, even though the number of persons convicted comes down to three, inspite of the same, they can be convicted and sentenced for offence under Section 148 IPC. The contrary finding of the Court below in this regard is also liable to be interfered with by this Court.

56. This Court is not inclined to interfere with the acquittal with regard to other charges and the Court below has given the right reasoning while acquitting A1, A4 and A5 from the other charges.

57. The upshot of the above discussion leads to the conclusion that the appeals filed by A1, A4 and A5 are liable to be dismissed. Insofar as acquittal of A3 and A6 from all charges is concerned, the same does not warrant any interference. Insofar as the acquittal of A1, A4 and A5 for charges under Sections 148 and 149 r/w Section 302 IPC, the same requires the interference of this Court.



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58. Since this Court is going to convict and sentence A1, A4 and A5 for offences under Sections 148 and 149 r/w Section 302 IPC by reversing the acquittal from these charges, the short question that arises is as to whether they must be questioned before they are sentenced. The answer for this issue is provided in the judgment of this Court in ***State v. Jayaseelan*** reported in **2001 SCC OnLine Mad 1436**.

“14. We also applied our mind to the additional ground put forward before this Court by the learned counsel for the appellant. We have already held that there is no condemnable delay in lodging the complaint with the police. It is true that P.W. 2 in this evidence had stated that when P.W. 1 lodged the complaint with the police, four or five villagers were by his side; they all decided and then only the report was given. Such gathering of people in the police station when a man in the village is done to death is not unusual. All the persons talking



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together and giving the report would not necessarily mean that Ex. P. 1 contains a fabricated version or a concocted version. We find no material at all to arrive at such a conclusion. Ex.P.1 appeals to us as a true document containing a natural version. We have already held that there is absolutely no delay also in sending the material records to the Court. As far as the absence of explanation regarding the injury found on A1, the defence had not brought out any material to even infer that A1 had sustained the injury in the same transaction in which the deceased was done to death. In fact A1 at the time of his arrest had stated before the officer concerned that he had sustained the injury due to an accidental fall two days prior to the occurrence. When P.W. 7 had given evidence that A1 told him at the time of his arrest that he had received the injury two



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days prior to the occurrence due to an accidental fall, the defence had not chosen to cross examine him on that aspect. If that is the position, the argument put forward by the learned counsel for the appellant regarding the non-explanation of the injury found on A1, cannot in any way affect the case of the prosecution. In conclusion we hold that the learned sessions Judge had acted contrary to the legal materials available on record and no other conclusion, except the conclusion of guilt of A1 alone can be arrived at on the materials noted earlier. Since this Court is interfering in an appeal against acquittal a question arises as to whether we should send for the accused and question him on the question of sentence. The accused is found guilty for the offence punishable under section 302 I.P.C. The sentence that could be



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imposed on the accused is either a sentence of death or a sentence of life imprisonment. The very idea of questioning the accused on the question of sentence is to enable the Court to consider the request of the accused to award a lesser punishment. In fact the Hon'ble Supreme Court of India in the judgment reported in (1977) 3 SCC 218 : AIR 1977 SC 1747 (Tarlok Singh v. State of Punjab) held as follows:

“The object of section 235(2) is to give a fresh opportunity to the convicted person to bring to the notice of the Court such circumstances as may help the Court in awarding an appropriate sentence having regard to the personal, social and other circumstances of the case. Of course, when it is a case of conviction under section 302 I.P.C. if the minimum sentence is



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imposed, the question of providing an opportunity under section 235 would not arise.

Failure to give an opportunity under section 235(2) will not affect the conviction under any circumstances.

The only point is relevant to sentence. Even there, in a murder case where the charge of murder is made out, the limited question is as between the two sentences, prescribed under the penal Code”.

15. A similar situation, as in the case on hand before us, arose before this Court in Crl. App. No. 194/87. That was also an appeal against acquittal filed by the State challenging the acquittal of various accused in that sessions case in respect of various offences, which included the offence under section 302 read with 149 I.P.C. The learned Judges constituting that Division



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Bench allowed the said appeal setting aside the judgment under challenge; held the accused guilty of the offence punishable under section 302 read with 149 I.P.C. and convicted the accused. The same question as before us namely, whether the accused should be sent for and be questioned under section 235(2) of the Code on the question of sentence arose. Following the judgment of the Apex Court referred to supra, this Court held that, since the offence punishable under section 302 I.P.C. attracts only two punishments namely, death or life imprisonment, if the Court is inclined to impose only life imprisonment to the accused, then there would be no need to question the accused on the question of sentence, since there is no scope for the Court to award any punishment other than the two referred to earlier. The Division Bench in



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that case was conscious of the position in law that, if the extreme sentence of death is proposed to be given, then the requirement of section 235(2) of the Code should be complied with. There is yet another judgment of the Hon'ble Supreme Court of India reported in (1977) 2 SCC 131 : AIR 1977 SC 1066 (Narpal v. State of Haryana) wherein it was held as follows:

“that in a murder case, where the accused were convicted under section 302 Penal Code and sentenced to imprisonment for life it was not necessary to remit the case to the Trial Court for giving an opportunity to accused of being heard on the question of sentence, as they were awarded minimum sentence that could be passed under section 302 Penal Code”.



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16. Under these circumstances, we have no doubt at all in our mind that, since we intend to sentence the accused to undergo life imprisonment, there is no need to question the accused under section 235(2) of the Code, as he is not going to be prejudiced in any manner by he not being questioned on the question of sentence.”

59. It is clear from the above that there is no need to question A1, A4 and A5 under Section 235(2) of Cr.P.C as they are not going to be prejudiced in any manner and they are already undergoing life imprisonment.



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60. In the result,

(i) Crl.A(MD)Nos.168 of 2020, 180 of 2020 and 204 of 2020 stand dismissed and the judgment and order of the learned Principal Sessions Judge, Tirunelveli in S.C.No.600/2017 dated 12.02.2020 to that extent is hereby confirmed.

(ii) Crl.A.(MD)No.386 of 2021 stands partly allowed and A1, A4 and A5 are convicted and sentenced in the following manner:

Sl. No.	Rank of the accused	Convicted for offence under	Sentence/ Punishment
1.	A1, A4, A5	Section 148 IPC	Three years Rigorous Imprisonment and a fine of Rs. 5000/- each, in default, to undergo six months Rigorous Imprisonment.
2.	A1, A4, A5	Section 149 r/w 302 IPC	Life Imprisonment and a fine of Rs.10,000/- each, in default, to undergo one year Rigorous Imprisonment.
3.	A1, A4, A5	Section 302 IPC	Life Imprisonment and a fine of Rs.10,000/- each, in default, to undergo one year Rigorous Imprisonment.



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The judgment of the learned Principal Sessions Judge, Tirunelveli, in S.C.No.600/2017 dated 12.02.2020 is modified accordingly.

(iii) All the above sentences are ordered to run concurrently.

The period of sentence already undergone by the appellants/A1, A4 & A5 is ordered to be set off under Section 428 Cr.P.C. Consequently connected Miscellaneous Petitions are closed.

[J.N.B., J.] & [N.A.V., J.]
08.11.2022

Index : Yes
Internet : Yes
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To

1. The Principal Sessions Judge,
Tirunelveli.
2. The Inspector of Police,
CBCID, Kanyakumari District,
Nagercoil.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
4. The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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J.NISHA BANU, J
AND
N.ANAND VENKATESH, J

PJL

Judgment made in
Crl. A.(MD)Nos.168, 180 & 204 of 2020
and 386 of 2021

08.11.2022