



Crl.A(MD)Nos.156, 238, 247, 283 and 333 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.07.2022

DELIVERED ON : 18.08.2022

CORAM :

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA**

Crl.A(MD)Nos.156, 238, 247, 283 and 333 of 2019

1.Silambarasan

... Appellant/A1
in Crl.A(MD) No.156 of 2019

2.R.Sundarrajan @ Keerathurai Sundhar

...Appellant/ A5
in Crl.A(MD) No.238 of 2019

3.Tamil Selvan

4.Ramesh @ Singam Ramesh

... Appellants/ A3 & A7
in Crl.A(MD) No.247 of 2019

5.Jeyachandran @ Jeyanth

... Appellant/ A6
in Crl.A(MD) No.283 of 2019

6.Murugan

... Appellant/ A4
in Crl.A(MD) No.156 of 2019

Vs.



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State of Tamil Nadu represented by the
Inspector of Police,
C.5, Karimedu (L&O) Police Station,
Madurai.
(Crime No.99 of 2013)

... Respondent/
(in all appeals)

COMMON PRAYER: Criminal Appeals filed under Section 374 of the
Criminal Procedure Code, 1973, against the judgment and order dated
13.03.2019 made in S.C.No.103 of 2014 on the file of the learned
V-Additional District and Sessions Judge (FAC), Madurai.

For Appellants : Mr. K.Sundaravel (A1)

Mr.A.K.Azagarsami (A3 & A4)

Mr.C.Mayilvahana Rajendran
for Mr.A.Balaji (A5)

Mr.V.Kathirvelu,
Senior Counsel
for Mr.K.Prabhu(A6)

Mr.Niranjan S.Kumar
for Mr.B.Sudha Sathiyanath (A7)

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
(in all appeals)



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JUDGMENT

[Judgment of the Court was delivered by **R.HEMALATHA, J.**]

This criminal appeal has been filed against the judgment and order dated 13.03.2019 made in S.C.No.103 of 2014 passed by the V-Additional District and Sessions Judge (FAC), Madurai, Madurai District, in and by which, the appellants were convicted for the offences punishable under Sections 148, 302 r/w 149, 341 r/w 149 and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
148 IPC	Three years rigorous imprisonment each	NIL
302 r/w 149 IPC	Life Imprisonment each	Rs.5,000/- each, in default, to undergo simple imprisonment for two months each.
341 r/w 149 IPC	one month simple imprisonment each	NIL

The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellants (A1, A3, A4, A5, A6 and A7) have come up with these Criminal Appeals.



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2. The case of the prosecution as could be made out from the oral and documentary evidence presented by them is as follows:-

- i. The deceased Prabhu was a resident of Koodalnagar in Madurai and was living with his parents Mokkaladurai (P.W-10) and Petchiammal (P.W-11). One Ravi @ Pamburavi (P.W-3), a friend of Prabhu was also residing in Koodalnagar and had later shifted to Puttuthoppu, Sekkadi street where Madankumar (P.W-1), Mahesh(P.W-2) and Rajesh Kumar (P.W-18) were residing. This group of friends used to play Gilli (local game) and Cricket on the banks of Vaigai River and another team led by Silambarasan (A1) consisting of Selvam @ Parattai Selvam (A2), Sundar (A5), Ramesh (A7), Murugan (A4) and Tamilselvan (A3) used to play with them. Silambarasan had the habit of taunting Ravi @ Pamburavi (P.W-3) calling him as an outsider and also it came to light that Silambarasan (A1) had stolen the broiler hen gifted to one Ambalam by the victim Prabhu. It was alleged that Silambarasan had killed the bird



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and eaten it. Prabhu had questioned Silambarasan regarding this which led to an altercation between them. On 03.02.2013, when Prabhu (deceased) was playing with his friends in the evening at Puttuthoppu playground, Silambarasan had wantonly picked up a quarrel which resulted in a scuffle, in which Silambarasan had fell down. The infuriated Silambarasan had vowed to seek revenge and on 04.02.2013, after lunch when the victim was with his friends near a cow-shed belonging to P.W-3, the accused Silambarasan (A1), Selvam (A2), Ramesh (A7), Murugan(A4), Sundar (A5). Tamilselvan (A3) armed with knives (M.O.2A series) attacked the victim violently and stabbed him indiscriminately causing multiple injuries to the victim. The accused thereafter fled the scene. The injured victim fell down in front of P.W-3's house from where he was rushed to the hospital by P.W-1 and Rajesh Kumar (P.W-18) in an auto. Raffiq Raja(P.W-17) drove the auto.



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ii. On reaching the hospital Dr.Vanitha (P.W-25) prepared the Accident Register (Ex.P23) and administered the required medical aid and admitted him as an inpatient. However, he succumbed to injuries in the hospital on the same day. The police was also informed and Mr.A.G.Murugan (P.W-26),Sub Inspector of Police, C.5, Karimedu Police Station, in turn, visited the hospital and took written complaint from P.W-1 countersigned by P.W-18. He then registered an FIR (Ex.P-24) in Crime No.99/2013 of Karimedu Police Station against the appellants for the offences punishable under Sections 147, 148, 323, 341 and 302 IPC. He then placed the entire records before the Inspector of Police for investigation.

iii. Thiru.V.Seetharaman(P.W-27), the then Inspector of Police, Karimedu Police Station took up investigation in Crime No. 99/13 went to the scene of occurrence and prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P25) in



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the presence of Thiru.S.Rajendran (P.W-16) and V.Kannan(not examined). He also recovered bloodstained earth(M.O3), ordinary earth(M.O4), bloodstained Slipper(M.O5) from the scene of occurrence under the cover of a mahazar (Ex.P3) in the presence of the same witnesses. Thereafter, he recovered bloodstained cement mortar (M.O6) and ordinary cement mortar(M.O7) under the cover of a mahazar(Ex.P4) in front of the house of P.W-3. He then went to the mortuary of Rajaji Government Hospital, Madurai and conducted inquest(Ex.P26) on the body of the deceased in the presence of panchayatdhars. He sent the body for postmortem through Thiru.Sevugan (P.W-21), Head Constable of police to the Rajaji Government Hospital, Madurai.

iv. Dr.Sadhasivam (P.W-22) conducted autopsy on the body of the deceased and found the following injuries:

“The following ante mortem injuries are noted on the body:



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1.A sutured stab injury 5 cm x 1cm xPleural cavity deep noted on front of left upper chest 9cm below left shoulder joint and 10cm inner to mid axillary line.

On dissection: The wound is directed downwards, forwards and medially piercing the underlying the muscles and vessels and nerves and enters into thoracic cavity by piercings the intercostal muscles at left 4th intercostal space and pierces the pleura 4cm x linear/through and through and pierces the upper lobe of left lung and ends as a point. Left pleural cavity contains 100 ml of fluid blood with clots.

2.A sutured stab injury 5cm x 1cm x peritoneal cavity deep noted on front of left lower abdomen 10cm above iliac crest and 5cm inner to mid axillary line.

On dissection: The wound is directed upwards, inwards and medially piercing the underlying muscles, vessels and nerves and enter into peritoneal cavity by piercing the peritoneum 4cm x linear x through and pierces the lower 3rd of descending colon and enters into the lumen.

3.A sutured stab injury 5cm x 1cm x thoracic spine deep noted on lower part of left side back of neck 2cm away from midline and 10cm below external occipital protuberance.



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On dissection: The wound is directed downward, inwards and medially piercing the underlying muscle and vessels and nerves piercing the coverings of spinal cord and pierces the spinal cord and ends as a point.

4.A sutured stab injury 3cm x 1cm x bone deep noted on front of left upper arm 10cm below left shoulder joint.

5.A sutured stab injury 3cm x 1cm x muscle deep noted on left shoulder.

6.A sutured stab injury 3cm x 1cm x muscle deep noted on back of left forearm 7cm below elbow joint.

7.A sutured stab injury 5cm x 1cm x muscle deep noted on front of right side of neck, 10cm away from midline.

On dissection: The wound is directed downwards, inwards and medially piercing the underlying muscles, vessels and nerves.

8.A sutured stab injury 5cm x 1cm x muscle deep noted on outer aspect of front of right forearm 5cm below elbow joint.

9.A sutured stab injury 5cm x 1cm x bone deep noted on back of right shoulder 9cm below and medial to right acromion process.



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10.A sutured cut injury 7cm x 0.5cm x bone deep noted on left side of cheek 5cm in front of left ear.

11.A sutured cut injury 6cm x 0.5cm x bone deep noted on left side of nose.

On dissection: The wound is found cutting the underlying and muscle and nasal bones.

12. A sutured cut injury 5cm x 1cm x muscle deep noted on left side of upper part of neck 2 cm behind left ear.

13.A sutured cut injury 6cm x 1cm x muscle deep noted on left side of upper part of neck 2 cm below left ear.

14.A sutured cut injury 8cm x 1cm x bone deep noted on back of left shoulder 4cm below left acromion process.

15.A cut injury 8cm x 1cm x bone deep noted over dorsum of left hand exposing the bones.

16.A cut injury 5cm x 1cm x bone deep noted on dorsum of left hand 4cm below injury No.15.

17.A cut injury 4cm x 1cm x muscle deep noted on dorsal surface of distal phalanx of left ring finger.

18.Multiple linear contusions of varying length noted on left side of frong of abdomen, left side of front of chest



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and left side of back of shoulder.

- v. The doctor (P.W-22) opined that *“the deceased would appear to have died of shock and hemorrhage due to injury Nos.1, 2 and 3 and their corresponding internal injuries with cumulated effect of all other injuries.”*

Postmortem certificate was marked as Ex.P6.

- vi. P.W-27 arrested the accused Silambarasan (A1), Selvam @ Parattai Selvam(A2), Tamilselvan (A3), Sundarrajan @ Kerathurai Sundhar(A5) and Ramesh @ Singam Ramesh(A7) on 05.02.2013 at about 9.00 p.m. near Melur bus stand. He recorded their police confessional statements based on which he arrested the accused Murugan(A4), Jeyachandran @ Jeyanth(A6) at about 10.15 p.m. Their police confessional statements were also recorded. The admissible portions of the confessional statement of all the accused were marked as Ex.P9, Ex.P11, Ex.P13, Ex.P15 and Ex.P17 respectively. Based on their confessions, 7 knives



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were recovered, which were hidden by the accused under a river bridge, Arapalayam, Madurai, under the cover of mahazars, Ex.P8, Ex.P10, Ex.P12, Ex.P14, Ex.P16, Ex.P18 and Ex.P20.

vii. Thereafter, he examined the witnesses and recorded their statements. He collected reports from experts and completed investigation. P.W-27, thereafter, filed a final report before the Judicial Magistrate No.V, in PRC.No.XVI/13. The learned Judicial Magistrate No.V, Madurai, furnished the copies of documents to all the accused under Section 207 Cr.P.C., and committed the case to the Court of Sessions. The Principal District and Sessions Judge, Madurai, took up the case on file in S.C.No.103/14 and made over the same to the V-Additional District and Sessions Court, Madurai. Since the accused pleaded not guilty to the charges framed against them, the case was posted for trial.



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viii. In order to establish the guilt of the appellants, the prosecution examined 27 witnesses and marked 26 documents and 8 material objects.

ix. When the appellants were questioned with regard to the circumstances appearing in evidence against them under Section 313 of the Code of Criminal Procedure, they denied of having committed any offence. However, they did not examine any witness on their side.

x. The learned V-Additional District and Sessions Judge, after analyzing the oral and documentary evidence adduced on both sides found the appellants guilty of the offences under Sections 148, 302 r/w 149, 341 r/w 149 and sentenced them as stated in paragraph No.1. Challenging the conviction and sentence passed by the trial Court, the present appeals are filed by the appellants viz., Crl.A(MD)No.283/2019 is filed by A6 along with a petition to condone the delay of 40 days



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in filing the appeal, in Crl.M.P(MD)No.5601 of 2019. The delay was condoned by this Court vide, orders dated 25.06.2019. The appeal in Crl.A(MD)No.156/2019 is filed by A4 along with a petition to condone the delay of 58 days in filing the appeal, in Crl.M.P(MD)No.6373 of 2019. The delay was condoned by this Court vide, orders dated 19.07.2019. The appeal in Crl.A(MD)No.247/2019 is filed by A3 & A7 along with a petition to condone the delay of 2 days in filing the appeal, in Crl.M.P(MD)No.4671 of 2019. The delay was condoned by this Court vide, orders dated 22.05.2019.

3.Heard Mr.K.Sundaravel, learned counsel appearing for A1, Mr.A.K.Azagarsami, learned counsel appearing for A3 & A4, Mr.C.Mayilvahana Rajendran, for Mr.A.Balaji, appearing for A5, Mr.V.Kathirvelu, learned Senior counsel assisted by Mr.K.Prabhu, for A6 and Mr.Niranjan S.Kumar, for Mr.B.Sudha Sathiyath, appearing for A7 and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor



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appearing for the respondent.

4.The case of the prosecution rests on the eye witness accounts of P.W-1 to P.W-4. P.W-1 to P.W-3 were the friends of the victim and used to play with him and were also fully aware of the squabble and the growing animosity between the victim and Silambarasan (A1). What initially appeared to be petty issues grew out of proportion as we are able to make out from the versions of the prime eyewitnesses. P.W-1 has deposed that Silambarasan (A1) used to pick up quarrel with P.W-3 and it was the victim, who had challenged him directly. According to his versions, the act of Silambarasan (A1) of taking away the broiler hen from Ambalam, the close friend of the victim annoyed him and when the victim came to know that the bird was killed, roasted and eaten by Silambarasan, the victim did not hesitate in confronting Silambarasan directly. According to him, it was on 03.02.2013, the fight between the two became physical when Silambarasan was pushed down by the victim, which led to further tension and Silambarasan swearing to take revenge. On the very next day i.e., 04.02.2013, when P.W-1 was walking



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5.The deposition of P.W-2 and P.W-3 are very similar to that of P.W-1 with no much deviation except for the time of occurrence. However P.W-4, who was another eyewitness to the incident, when she was sitting and chatting along with S.Tamilselvi (P.W-5) and M.Indhumathi (P.W-6), also narrated a similar version except that she



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had claimed that there were seven assailants out of which two of them namely Silambarasan (A1) and Parattai Selvam (A2) had only indulged in stabbing the victim though all of them were armed with knives and four of them were just standing and watching the murder. It was also deposed by her that when the victim Prabhu tried to escape and fell down in front of the house of P.W-3, Silambarasan (A1) again stabbed him when a bespectacled person, whose name was not known, told Silambarasan to come back and that it was enough. According to her version, her friend Tamilselvi (P.W-5) who also was an eyewitness to the incident called the grandmother of the accused Silambarasan by which time Silambarasan fled the scene. However, his grandmother came there and told them to throw the injured victim into the garbage bin. The other four ladies P.W-5 to P.W-8, who were reportedly with P.W-4 at the time of occurrence turned hostile to the prosecution.

6. P.W-1 to P.W-3, who were examined in chief on 28.10.2014 were cross-examined only on 24.03.2015. As regards P.W-4, who was examined in chief on 18.11.2014 was cross examined on 05.10.2015 and



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again on 02.04.2018 to extract statement that she did not witness the crime. However, she was not treated as hostile. P.W-1 to P.W-3 deposed in a cogent manner narrating the sequence of events without any aberration and thereby building a strong base for the prosecution case during their chief examinations. However, they turned hostile during the cross examination which took place after a lapse of several months. It is not that the Court should not believe the evidence of the hostile witness, if there is sufficient evidence to corroborate their versions. P.W-4's version was also matching with the versions of P.W1 to P.W-3 with added details which the other witnesses would have missed to observe.

7. At this juncture, it is appropriate to extract Sections 309 and 311 of the Criminal Procedure Code.

“309. Power to postpone or adjourn proceedings:.

(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined,



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unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody.

311. Power to summon material witness, or examine person present:

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Sub Section 1 of 309 makes it mandatory to hold the trial on a day-to-day basis and adjournment should be allowed only when necessitated and for reasons to be recorded. In the instant case, the trial Court Judge had adjourned the case for cross examination of the prime witnesses by mere



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asking. He did not record any reasons for the same. It has been, time and again, held by the Hon'ble Apex Court that unless there were compelling reasons, the trial Court should not adjourn the matter on the mere asking. In ***Vinod Kumar Vs. State of Punjab reported in (2015) 3 SCC 220***, the Supreme Court expressed deep anguish over dilatory tactics and non-usage of Section 309 and held that “It was not appreciable to grant adjournments on non-acceptable reasons”. The trial Court had also allowed the petitions filed under Section 311 Cr.P.C by the defense and recalled the witnesses after a lapse of several months. Taking all such factors into consideration, Section 154 of the Evidence Act was amended in order to empower the Courts not to completely discard the testimony of a hostile witness. Jothi (PW4) was examined in chief on 18.11.2013, recalled on 05.10.2015 for cross examination and once again on 02.04.2018 on which date she ultimately stated that she did not witness A1 stabbing the victim. Such a practice adopted by the trial Court Judge is deprecated. It is also to be borne in mind that Section 311 Cr.P.C., is not limited only to the benefit of the accused. The determinative factor for exercise of the power is to see whether it is essential to a just decision



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in the case. But exercise of this power cannot be arbitrary. The discretion to examine witnesses under Section 311 Cr.P.C., though very wide, the very width requires corresponding caution.

8.The learned counsels for the appellants contended that

- i. P.W-1 did not identify the accused in the Court. Mere mentioning of names of the accused is not sufficient.
- ii. Though the victim, before his death, stated before Dr.Vanitha (P.W-26) that the place of occurrence is Chekkadi Street, the prosecution case is that the place of occurrence is Aruppalayam junction.
- iii. P.W-4 during the course of cross examination stated that the time of occurrence is 6.00 p.m., and there was no adequate light.
- iv. Alteration with regard to the time of incident made in the Accident Register (Ex.P23) is fatal to the case of prosecution.
- v. Ocular testimony does not tally with the medical evidence.



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- vi. There was a considerable delay in sending FIR to Court which has not been explained.
- vii. House of Jothi (P.W-4) was not shown in the rough sketch.
- viii. Blood stained material objects were sent for chemical analysis in the same container.
- ix. Though the father of the deceased stated that his statement was recorded by the police in the hospital the same was suppressed by the police.
- x. Statements of the witnesses recorded under Section 161(3) Cr.P.C were sent to Court only on 27.07.2013.
- xi. No overt act was attributed to A6 and A7.
- xii. Though the charges were altered on 14.03.2018, no opportunity was given to the appellants to cross examine the witnesses as per Section 216 Cr.P.C.

9. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor contended that the difference in the time mentioned by the prosecution witnesses cannot be termed as fatal to the case of the



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prosecution because one common aspect was that the incident occurred post lunch and even as per the Accident Register (Ex.P23), the time of occurrence was 6.00 p.m. In fact, the victim also had mentioned this time before the doctor. After alteration of the charges, P.W-4 was recalled and cross examined by the defense and the other witnesses turned hostile to the prosecution and hence, the allegation of prejudice gets doubted. On the aspect of delay in FIR, no questions were posed to the constable (P.W.20), who took the FIR to Court.

10.This is a sensational case, which shows how ego issues transform into rivalry and become life threatening. The victim Prabhu was a young lad of 21 years of age and was as expected of that age was with his group of friends having fun while playing cricket and gilli (a local game). He was a close friend of one Paambu Ravi (P.W-3) and also was friend with Madankumar (P.W-1), Mahesh (P.W-2) and Rajesh Kumar (P.W-18). All of them were residents of Puttuthoppu Sekkadi Street except the victim, who was a resident of Koodalnagar. The accused Silambarasan and his friends Selvam, Sundar, Ramesh, Murugan



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and Tamilselvan used to play with the victim and his group of friends.

Minor squirmishes between the victim Prabhu and the main accused Silambarasan used to occur and they escalated over a period of time. The tension between the two got heightened when the broiler hen, bought by the victim and gifted to one of his friends Ambalam, was taken away by Silambarasan and was killed and cooked. On 03.02.2013, the said Silambarasan had provoked the victim picking up a quarrel leading to a scuffle in which Silambarasan was pushed down to the ground by the victim. The said Silambarasan had vowed to avenge this act of the victim and on the very next day, ie., on 04.02.2013, the main accused, along with his friends armed with knives, attacked the victim in broad daylight stabbing him multiple times and amidst chaos fled the scene.

11. P.W-1, P.W-2, P.W-3, and P.W-9, who were all good friends of the victim and who witnessed the ghastly crime narrated the sequence of events in the first instance in the trial court and later in the cross examination, after a long gap of about one year, turned hostile, clearly showing that they were won over. P.W-1 the complainant and P.W-18



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were the ones, who had taken the victim in an auto to the Government Hospital, Madurai, where the victim succumbed to the injuries. The one gutsy witness, Jothi(P.W-4), also corroborated the version of P.W-1. The postmortem certificate is a poignant testimony of the nature of injuries inflicted on the victim. The incident of murder definitely appears to be a well planned one. P.W-4 has to be commended for more than one reason. Her clear deposition in the midst of the 'converted' hostile prosecution witnesses is one of the reasons. Her version of the incident is so exhaustive and corroborates with the statements of all the other witnesses, who were present when the murder took place, but who retracted their statements later for the reasons best known to them. The police also has been swift in their action. It was not a very pleasant situation. It was a gruesome murder in broad daylight. There had to be an investigation in the scene of occurrence and the culprits had to be apprehended. All these had to be time-bound and it is found that they have handled them effectively. The prime eye witnesses P.W-1, P.W-2 and P.W-3 though have been treated as hostile witnesses, it is pertinent to observe that they retracted their deposition made in the Court in the chief



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examination when they were cross-examined after a lapse of several months. P.W-18 turned hostile but his examination in chief itself was in 2015 indicating that though he was present with the victim throughout, he backed out by turning hostile after seeing his other friends also turn hostile. P.W-18's name has been mentioned as the person, who accompanied the victim, in the Accident Register(Ex.P-23) by Dr.Vanitha(P.W-25), who attended to the victim immediately after he was brought to the hospital. P.W-18 turned hostile even when he was examined by the Public Prosecutor maintaining that he found the victim lying injured and brought him to the hospital along with P.W-1. However, the complaint Ex-P1 has P.W-18's signature, which he has not disputed.

12. P.W-4, in her deposition has mentioned that Tamilselvi (P.W-5), Indumathi (P.W-6) and Thilaga (P.W-8) were also present with her when the incident took place. All the other three witnesses turned hostile. The father, mother and the brother of the victim also deposed as P.W-10, P.W-12 and P.W-13 respectively. They were only hearsay witnesses and to that extent, they have helped the prosecution. As many as 18 stab and



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cut injuries were found on the body of the victim. Most of the injuries were found on the left hand side of the body as per the postmortem certificate. The place of occurrence has been mentioned as opposite to the Muniyandi temple near the cow shed belonging to P.W-3. The victim was caught unawares and had tried to escape after getting stabbed and fell down in front of P.W-3's house. P.W-4 has added that when Tamilselvi (P.W-5) called Silambarasan's grandmother, the assailants left the scene and the grandmother, who came there told them to throw the injured victim into the dustbin. Such was the animosity, it can be deciphered. P.W-4 had also mentioned that one bespectacled person told Silambarasan that the stabbing was enough (to kill the victim) and that he has to come back. This was when Silambarasan had reportedly gone to stab the victim lying injured in front of P.W-3's house. However, there are different versions by different eye witnesses regarding the number of accused involved in the crime. While P.W-1 deposed as six accused naming all of them, P.W.2 had a different version naming only five accused. P.W.2 to P.W.4 did not specifically mention the presence of A6 in the scene of crime and also the overt act committed by A6. P.W1 also



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did not attribute any overt act as against A6.

13. P.W-17, the auto driver, who ferried the victim accompanied by his friends P.W-1 and P.W-18 to the Madurai Government Hospital has deposed that it was true that he took the victim to the hospital. His version that the fuel of the auto got exhausted enroute to the hospital tallied with the version of P.W-1. Obviously, the medical aid for the victim also got delayed. The torn chappal (M.O-5) of the victim as confirmed by his brother P.W-12 also had a tale to narrate, that of the hapless victim.

14. This case has been tricky at the trial stage. It is not only because of the record number of witnesses/eye witnesses turning hostile making it suspicious, especially, when it happens at the time of cross examination, but also because of the numerous doubts raised in the prosecution theory. The learned counsels for the appellants have gone into the nitty gritty of the facts of the case for which prosecution has to have a strong premise to overcome their objections.



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15. Another contention raised by the learned counsel for the appellants is that in the instant case, no Test Identification Parade was conducted and that the accused were not also identified in the Court by the witnesses and in any event, the dock identification alone in the absence of further corroborative evidence cannot be treated as substantive piece of evidence. In the instant case, P.W-1 to P.W-3 were all friends of the deceased and their evidence is that they used to play with the team led by silambarasan (A1). In the circumstances, there was no necessity to conduct a Test Identification Parade.

16. Further contention of the learned counsels for the appellants is that though the charges were framed on 16.06.2014, all the charges were altered on 14.03.2018 and the accused were not given any opportunity to cross-examine the witnesses after the alteration of charges under Section 216 Cr.P.C., In the instant case, eyewitnesses P.W-1 to P.W-3 were recalled on 24.03.2015 on which date, they turned hostile to the prosecution. P.W-5 to P.W-9 already turned hostile to the case of the



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prosecution. The only witness Tmt.Jothi(P.W-4) did not turn hostile to the prosecution. A bare perusal of the records shows that P.W-4 was recalled by the accused again on 02.04.2018, ie., after the alteration of the charges on 14.03.2018, and was cross-examined. In such circumstances, it cannot be stated that the accused were prejudiced for not giving an opportunity to recall and cross-examine the prosecution witnesses after the alteration of charges. Similarly, the investigation officer was recalled and cross-examined on 08.06.2018. In the decision of ***Ranbir Yadav v. State of Bihar*** reported in ***1995(4) SCC 392*** the Hon'ble Supreme Court has held that,

“It is undoubtedly true that discretion has been given to the Court to direct a new trial after addition or alteration of any charge, but it does not mean that every such addition or alteration in the charge, which has been read over and explained to the accused would lead to inevitable inference that the Court has directed a new trial for them. It, therefore, follows that unless the Court passes a specific order and directs a new trial, it cannot



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be presumed that a new trial has commenced only because an alteration or addition to a charge, which has been read over and explained to the accused has been made. any such direction given by the Court has to be judged on the touchstone of prejudice to the accused or the prosecution.we hasten to add that even if we had found that there was any irregularity in the continuation of the trial against the appellants after the additional charges were framed, we would not have been justified in setting aside the impugned judgment on that ground alone for there is not an iota of material on record wherefrom it can be said that a failure of justice has occasioned thereby. To put it differently, in our view in such a case Section 465 of the Code would have squarely applied.”

17. Though the time of occurrence has been stated differently by different prosecution witnesses, the incident took place post-lunch for



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sure and after the chaotic melee the victim was moved to the Government Hospital, Madurai, at about 6.00 p.m., as is evidenced from the Accident Register (Ex.P-23).

18. According to the learned counsels for the appellant, the victim was a driver of the local MLA and therefore, the possibility to have had many enemies outside is not ruled out. However, the depositions of the main eyewitnesses are so overwhelming and supports the prosecution theory. It was also pointed out that the two persons who accompanied the victim were mentioned differently by P.W-4. The Accident Register clearly mentions the name of the person, who accompanied the victim. In such ghastly crimes, any one, who is a witness is pushed to the survival or panic mode and finer details are always lost to be registered in the mind. However, in the instant case, the victim as well as the accused were known to the villagers. One striking feature in such incidents is the resilience which witnesses show in maintaining a stoic silence. It is one thing that they do not come to the rescue and it is another, when they claim total ignorance of such a happening. The intensity of the attack



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shows the extent of resentment and animosity. Resentment is self-destructive. This is a classic example as to how the life of a youngster could be snuffed out due to anger like killing a mosquito.

19. Since the blood group found in the knives matched with the blood group of the deceased as is seen from the forensic report (Ex.P22), it is contended that all the material objects were sent to forensic science laboratory in the same container. But the Investigation Officer (P.W-27) was not cross-examined on this aspect. In fact, it was suggested to him that the word 'bloodstained' was inserted in the seizure mahazars, thereby meaning that the knives did not contain and bloodstains. This was stoutly denied by P.W-27.

20. As already observed the eye witnesses P.W-1 to P.W-4 did not depose anything as against A6. May be he was a friend of the accused and therefore, was arrested as an accused, but no overt act has been attributed to him. In such a scenario conviction and sentence as against A6 cannot be sustained. Though it was contended by the counsels for the



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appellants that the place of incident as deposed by the prosecution witnesses was presented differently, it appears that Chekkadi street and Arappalayam Cross road denote the same places. Therefore, this contention has no force. Similarly, there is no delay in sending FIR to Court in the facts and circumstances of the present case. As regards the contention that the statement given by the father of the victim was suppressed, it is to be seen that on the date of murder, the father of the victim (P.W-10) was enquired by the police. Nowhere P.W-10 had stated that he lodged a complaint with the police. In view of all these reasons, all the criminal appeals except Crl.A(MD)No.283 of 2019 deserve to be dismissed.

21. In the result,

i. Crl.A(MD)No.283 of 2019 is allowed.

ii. The conviction and sentence passed by the learned V-Additional District and Sessions Judge (FAC), Madurai, against the sixth accused (Jeyachandran @ Jeyanth), in S.C.No.103 of 2014, dated 13.03.2019, is set aside and A6 is acquitted of the charges framed against him.



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iii. The bail bond and surties executed by A6 shall stand terminated and fine amount, if any, paid by A6 shall be refunded to him.

iv. The Criminal Appeals in Crl.A(MD)Nos.156, 238, 247 and 333 of 2019 are dismissed.

v. The conviction and sentence passed by the learned V-Additional District and Sessions Judge (FAC), Madurai, in S.C.No.103 of 2014 dated 13.03.2019, is hereby confirmed as against A1, A3, A4, A5 and A7.

vi. The respondent police is directed to secure the accused (A1, A3, A4, A5 & A7) and produce them before the trial Court and the trial Court is directed to commit them to prison to undergo the remaining period of sentence.

[P.N.P., J.] & [R.H., J.]
18.08.2022

Index : Yes/No
Internet : Yes/No
PJP



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To

1. The V-Additional District and Sessions Judge (FAC),
Madurai.
2. The Inspector of Police,
C.5, Karimedu (L&O) Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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**P.N.PRAKASH, J
AND
R.HEMALATHA, J**

PJL

Pre-delivery Judgment made in
**Crl.A(MD)Nos.156, 238, 247,
283 and 333 of 2019**

18.08.2022