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Crl.A(MD)Nos.212 & 232 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.06.2022

DELIVERED ON : 02.08.2022

CORAM :

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

**Crl.A(MD)No.212 & 232 of 2019
and
Crl.M.P(MD)Nos.7065 and 7066 of 2022**

1.Rajendran

2.Chinnadurai

3.Satheesh

4.Ramesh

5.Siva

6.Radhakrishnan

.. Appellants/
Accused Nos.1,2,3,4,6 & 7
in Crl.A(MD)No.212 of 2019

Jeyakumar

.. Appellant/Accused No.5
in Crl.A(MD)No.232 of 2019



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Crl.A(MD)Nos.212 & 232 of 2019

Vs.

The State represented by,
The Inspector of Police,
Annavasal Police Station,
Pudukottai District.
(Crime No.95/2017)

.. Respondent/Complainant
in both cases

COMMON PRAYER: Criminal Appeals filed under Section 374 of Criminal Procedure Code, 1973, against the judgment and order dated 23.04.2019 in S.C.No.165 of 2017 passed by the learned Additional District and Sessions Judge/Presiding Officer[Special Court for E.C and NDPS Act Cases], Pudukkottai, Pudukkottai District.

In Crl.A(MD)No.212/2019:

For Appellant No.1 (A1) : Mr.B.Kumar
Senior Counsel
for Mr.Rajeshwaran

For Appellant No.2 (A2) : Mr.V.Karthic,
Senior Counsel
for Mr.R.L.Dhilipan Pandian



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For Appellant No.3 (A3) : Mr.S.Ashok Kumar,
Senior Counsel
for Mr.N.Anandakumar

For Appellant No.4 (A4) : Mr.Selvakumarasamy
for Mr.M.Rajavelu

For Appellant No.5 (A6) : Mr.D.Rameshkumar
for Mr.K.Praveenkumar

For Appellant No.6 (A7) : Mr.K.Srinivasan
for Mr.S.Satheesh Kumar

In Crl.A(MD)No.232/2019:

For Appellant (A5) : Mr.V.Kathirvelu
Senior Counsel
for Mr.G.Mathavan

To assist the prosecution
in both appeals : Mr.C.Mayilvahana Rajendran
for Mr.T.Vadivelan

For Respondent
in both appeals : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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COMMON JUDGMENT

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

These criminal appeals have been filed against the judgment and order dated 23.04.2019 in S.C.No.165/2017 passed by the learned Additional District and Sessions Judge/Presiding Officer[Special Court for E.C and NDPS Act Cases], Pudukkottai, Pudukkottai District. The Trial Court framed six charges, as detailed below.

Charge	Penal Provisions	Accused
1	120(b) IPC	A1, A2, A3, A4, A5, A6
2	148 IPC	A1, A2, A3, A4, A5, A6
3	341 IPC	A1, A2, A3, A4, A5, A6
4	302 IPC	A1, A2, A3, A4, A5, A6
5	307 IPC	A1, A2, A3, A4, A5, A6
6	323 IPC	A4



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2. By judgment and order dated 23.04.2019, the Trial Court convicted and sentenced the appellants, as detailed below:

Section of Law	Accused	Sentence of imprisonment	Fine amount
148 IPC	A1 to A7	Rigorous Imprisonment for one year each.	Rs.500/- each, in default, to undergo simple imprisonment for three months each.
341 IPC	A1 to A7	Rigorous Imprisonment for three months each.	Rs.500/-each, in default, to undergo simple imprisonment for fifteen days..
304(I)	A1 to A3	Life Imprisonment.	Rs.2,000/-each, in default, to undergo simple imprisonment for one year each.
304(I) r/w 149 IPC	A4 to A7	Life Imprisonment.	Rs.2,000/-each, in default, to undergo simple imprisonment for one year each.
326 IPC	A1 and A6	Rigorous Imprisonment for ten years.	Rs.2,000/-each, in default, to undergo simple imprisonment for one year each.
326 r/w 149 IPC	A2 to A5 and A7	Rigorous Imprisonment for ten years.	Rs.2,000/-each, in default, to undergo simple imprisonment for one year each.

The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellants have come up in these Criminal Appeals.



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3. The case of the prosecution in a nutshell runs as follows:

- i. The deceased Chelladurai and the appellants are residents of Koothinipatti Village. The deceased Chelladurai and Thiru.Murugesan (P.W-6) are brothers. Thiru.Punniyamurthy (P.W-1) and Thiru.Nagaraj(P.W-2) are the sons of P.W-6. Tmt.Kalavathy (P.W-3) and Kasthuri (P.W-4) are the wife and daughter of the deceased respectively. The accused 1 to 7 are all related to each other. Both the appellants and the above said witnesses are all residing at Koothinipatti Village and belong to same community.
- ii. The appellant Rajendran (A1) was the Panchayat President during 2015 and was also involved in the profession of stone cutting. The victim (deceased Chelladurai) was prevented from erecting a flex banner for the marriage of one Balraj (DW1), a relative of the victim/deceased. This started a feud



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between the appellants and the deceased and continued during every temple festival when the appellants used to collect funds from the villagers for conduct of 'Annadhanam'. There were complaints and counter complaints by both sides and the Annavasal Police had to pacify both sides brokering a truce. In 2017, the appellants collected Rs.200/- from each house for conducting 'Annadhanam' on account of Tamil New Year, leaving the family of the deceased. Since they did not collect any amount from the house of the deceased, the deceased lodged a complaint on 12.05.2017 with the Inspector of Police, Annavasal Police Station and the police advised both the groups to conduct 'Annadhanam' jointly. The prosecution version is that this escalated tensions on both sides leading to the murder of the victim by A1 to A7. Though the victim's family favoured a compromise, the appellants' family did not agree to it and the first appellant refused to conduct any



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festival during the said year. Hence, the appellants conspired with each other to eliminate the victim. At about 11.00 p.m., on 12.05.2017, the appellants armed with deadly weapons namely, wooden logs and bill hooks assembled in front of the house of the deceased Chelladurai. The deceased, who was in front of his house was the first target of attack. The first appellant, Rajendran(A1) attacked him with a bill hook below his left eye followed by Chinnadurai (A2), who struck on the right thigh causing loss of a portion of flesh. A3 hit the deceased with a wooden log on his chest. Punniyamurthi (P.W-1), nephew of the deceased attempted to prevent the appellants 1 to 3 from attacking the deceased, but he was also attacked by Rajendran(A1) and Siva(A6) on his head and his left hand with bill hooks causing grievous injury Nagaraj (P.W-2) was also attacked by A4. Jeyakumar(A5) and Radhakrishnan(A7) prevented the deceased victim, P.W-1 and



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P.W-2 escaping from the scene of occurrence. When their relatives and neighbours screamed for help, the appellants fled the scene of occurrence with their weapons.

iii. The deceased and P.W-1 were rushed to Pudukkottai Government Hospital, where Dr.Suguna Alamelu examined Chelladurai at 1.20 a.m., on 13.05.2017 and declared him as brought dead. A copy of the Accident Register was marked as Ex.P22. The same Doctor examined P.W-1 at 1.30 a.m., on 13.05.2017 and noted a lacerated injury on his left arm (posterior aspect) measuring 7x3x3 cm. She admitted P.W-1 as an inpatient in the Hospital. Ex.P23 is a copy of the Accident Register.

iv. Thiru.Senthilmaran (P.W-18) Inspector of Police, Annavasal Police Station, on receiving intimation from the Government Hospital, Pudukkottai, went to the Hospital and recorded the



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statement (Ex.P1) of Punniyamurthy (P.W-1) at about 4.00 a.m, on 13.05.2017 and registered an FIR in Crime No. 95/2017 (Ex.P13) against the appellants and others for the offences punishable under Sections 147, 148, 341, 323, 307 and 302 IPC., at 4.00 a.m., on 13.05.2017, which reached the hands of the jurisdictional Magistrate at 10.35 a.m., on the same day as could be seen from the endorsement thereon.

- v. On 13.05.2017, at about 12.00 p.m, P.W-1 got himself admitted in Devadoss Multi Speciality Hospital, Pudukkottai where he was treated as an inpatient. Dr.Chidambaram, Senior Consultantcum-Orthopedic Surgeon(P.W-17) examined P.W-1 and advised him to take x-ray and CT Scan. The x-ray report revealed that P.W-1 sustained compound fracture on his left humerus with radial nerve palsy. The CT Scan of the brain showed normal study and after treatment P.W-1 was



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discharged from the hospital on 21.05.2017. The discharge summary was marked as Ex.P25 and the injury-cum-treatment certificate issued by Dr.Chidambaram (P.W-17) was marked as Ex.P12. In the opinion of Dr.Chidambaram, P.W-1 sustained a grievous injury.

vi. P.W-18 took up investigation in Crime No.95/2017, went to the scene of occurrence at about 5.00 a.m., and prepared an observation mahazar (Ex.P2), a rough sketch (Ex.P14) in the presence of witnesses Dinesh Kumar (P.W-8) and Balasubramani (P.W-9).

vii. P.W-18 then recovered bloodstained earth and ordinary earth under the cover of a mahazar (Ex.P3) in the presence of the same witnesses from the place of occurrence. He then proceeded to Government Hospital, Pudukkottai, where the body of the deceased was kept in the mortuary and conducted



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an inquest (Ex.P15) on the body of the deceased. Thereafter, he sent the body through Subramaniyan(P.W-11), Grade-I Police Constable for postmortem.

viii.Dr.Kumaresan (P.W-14) conducted postmortem on the body of the deceased Chelladurai and found the following injuries:

“(i) Punctured wound close to left eye.

(ii) 10x6x6 cm lacerated wound with cutting vessels over right thigh.

(iii) Linear abrasion over lip and right index finger.

(iv) 4x2x1 cm laceration over left temporal region.

(v) No bleeding from ear, nose and mouth.”

In the opinion of the Doctor (P.W-14), *“the deceased would appear to have died of vital organ injury, great vessels injury and Hypovolumic shock”.*



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ix. On 15.05.2017, the appellant Rajendran(A1) along with Satheesh(A3), Ramesh(A4) and Jeyakumar(A5) surrendered before Thiru.Muralisankar (P.W-12), Village Administrative Officer, Rapusal Village. The appellant Rajendran (A1) gave an extra-judicial confessional statement (Ex.P4), which was recorded by Thiru. Muralisankar (P.W-12) Village Administrative Officer in the presence of Thiru.Ganeshkumar (P.W-10), Village Administrative Officer, Vilathupatti. Thereafter, P.W-12 produced the appellants before the Inspector of Police, Annavasal Police Station. He also handed over the extra-judicial confessional statement(Ex.P4) of A1. P.W-18 arrested the appellants, viz., Rajendran(A1), Satheesh(A3), Ramesh(A4) and Jeyakumar(A5) on 15.05.2017 and on the basis of A1's police confession (admissible portion of which was marked as Ex.P5), he recovered a bloodstained bill hook (MO4), wooden logs



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(MO5 to MO7) and bloodstained white colour shirt (MO8), which were hidden beneath granite stones under the cover of a mahazar (Ex.P6).

- x. Similarly, the appellants, Chinnadurai(A2), Siva(A6) and Radhakrishnan(A7) surrendered before Tmt.Kalpana (P.W-13), Village Administrative Officer, Irumpali Village on 15.05.2017 at 12 noon. The appellant Chinnadurai (A2) gave an extra-judicial confessional statement (Ex.P-7) before Tmt.Kalpana (P.W-13), Village Administrative Officer, Irumpali Village in the presence of the Thiru.Karuppiyah, Village Assistant and the same was recorded by her. Thereafter, Tmt.Kalpana (P.W-13) produced the appellants, viz., Chinnadurai, Siva and Radhakrishnan before the Inspector of Police (P.W-18), Annavasal Police Station along with the confessional statement (Ex.P7) and a report (Ex.P18).



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xi. P.W-18 arrested the appellants Chinnadurai(A2), Siva(A6) and Radhakrishnan(A7) on 15.05.2017 and on the basis of A2's police confessional statement, P.W-18 recovered bloodstained bill hooks (MO9 & MO10), wooden logs (MO11) and a white colour half slack(MO12) which were hidden by the appellant Chinnadurai in a thorny bush near Chitthannavasal Quarry Road under the cover of a mahazar (Ex.P9).

xii. P.W-18 recorded the statements of witnesses and collected experts' opinion and after completing investigation, he filed the final report before the Judicial Magistrate, Keeranur in P.R.C.No.26 of 2017, who in turn, committed the case to the Court of Session after furnishing copies of documents to the appellants under Section 207 of the Code of Criminal



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Procedure. The learned Additional District and Sessions Judge, Pudukkottai, took up the case on file in S.C.No.165 of 2017. To the charges framed under Sections 120(b), 148, 341, 302, 307 and 323 IPC, the appellants pleaded not guilty. Hence, the case was posted for trial.

xiii. In order to establish the guilt of the appellants, the prosecution examined 19 witnesses, marked 29 documents and 12 material objects.

xiv. 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. The appellants examined 11 witnesses and marked Ex.D1 to Ex.D14. The sum and substance of the evidence of DW1 to DW11 is that the



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appellants were in the local temple on the hillock at the time of the occurrence.

xv. The learned 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, 341, 304(I), 304(I) r/w 149, 326, 326 r/w 149 IPC and sentenced them as stated in paragraph No.2. Now, the present appeal is filed by the appellants against the said conviction and sentence.

4. Heard Mr.B.Kumar, learned Senior Counsel assisted by Mr.Rajeshwaran, for the first appellant(A1), Mr.V.Karthic, learned Senior Counsel assisted by Mr.R.L.Dhilipan Pandian, for the second appellant(A2), Mr.S.Ashok Kumar, learned Senior Counsel assisted by Mr.N.Anandakumar, for the third appellant (A3), Mr.Selvakumarasamy, learned counsel assisted by Mr.M.Rajavelu, for the fourth appellant(A4),



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Mr.D.Rameshkumar, learned counsel assisted by Mr.K.Praveenkumar, for the fifth appellant(A6), Mr.K.Srinivasan, learned counsel assisted by Mr.S.Satheesh Kumar, for the sixth appellant(A7), Mr.V.Kathirvelu, learned Senior Counsel, assisted by Mr.G.Mathavan for the appellant (A5) in Crl.A(MD)No.232 of 2019 and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, for the respondents in both the appeal.

5. According to the prosecution this murder was a result of a brutal attack by a group of men, namely, A1 to A7, who are the appellants in these two appeals. The enmity between the families of Rajendran (A1) and that of the deceased Chelladurai appears to have been a running feud for quiet sometime with both sides not letting go their egos and always trying to show one upmanship over the other. According to the prosecution, it started with the erecting of a cut-out for one Balraj(D.W-1), who was related to the deceased, on the occasion of his marriage. It is clear from the deposition of P.W-1 that the cut-out was



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erected very near to another cut-out that was erected by Rajendran (A1). It is also evident that when A1 and his men requested the deceased family to shift the cut-out of the said Balraj to some other place, it was refused by the deceased. It is pertinent to mention that this incident happened in 2015, when A1 was the President of the Village. It is also clear from the depositions of the prosecution witnesses P.W-1 to P.W-6 that both the sides were nursing grudge against each other and what has been revealed in the instant case is, only a part of the running feud. The deceased and his brother (P.W-6) were already arrayed as accused in a murder of one Karthikeyan, advocate. The prime accused in the murder case of advocate Karthikeyan was one Nagu @ Nagendran, who was also murdered later. P.W-6 in his deposition during cross-examination has deposed that the murder of his brother, Chelladurai took place even when the trial of the advocate Karthikeyan's murder case was pending. These details, though not directly relevant to the present appeals do show that the enmity between the two groups was quite intense and ominous too.



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6. The sum and substance of the oral testimony of P.W-1 is that the appellant Rajendran(A1) was the Panchayat President during the year 2015 and that the victim Chinnadurai was prevented from erecting a flex board for the marriage of one Balraj (D.W-1), a relative of the victim/deceased and that this started a feud between the appellant and the deceased, which continued during every temple festival. During the year 2017, the appellants, though collected Rs.200/- from each house for conducting 'Annadhanam' in connection with the local temple festival, did not collect any amount from the family of the deceased for which the deceased lodged a complaint on 12.05.2017 with the Inspector of Police, Annavasal Police Station, who advised both the groups to conduct 'Annadhanam' jointly. According to P.W-1, the appellants' family did not agree for a compromise and they refused to conduct 'Annadhanam' during the said year. On 12.05.2017, at about 11.00 p.m., Rajendran (A1), Chinnadurai (A5) and Siva (A6) armed with bill hooks and other accused armed with wooden logs assembled in front of the



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house of the victim and Rajendran (A1) attacked the victim with his bill hook as a result of which the deceased victim sustained injuries below his left eye. Chinnadurai (A2) also attacked the deceased with his bill hook and the deceased sustained injuries on his left leg above knee level. When he(P.W-1), Nagaraj (P.W-2), Kalavathy(P.W-3), Kasthuri (P.W-4) and Dineshkumar (P.W-8) rushed to the scene of offence and attempted to prevent the appellants from attacking the victim deceased, Siva(A6) attacked him(P.W-1) on his left hand. When his brother Nagaraj (P.W2) tried to hold him, the accused Ramesh(A4) hit Nagaraj (P.W2) on his left leg with his wooden log, Jeyakumar(A5) and Radhakrishnan(A7) prevented him(P.W-1), P.W-2 and also the deceased escaping from the scene of occurrence. Thereafter, the appellants fled the scene of occurrence taking their weapons in their hands and all the injured were rushed to the Government Hospital at Pudukkottai in a Scorpio Car driven by one Balraj (D.W1), where Chelladurai (deceased) was declared as brought dead. He also deposed that he gave a complaint statement



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(Ex.P1) before the police, who enquired him at the Government Hospital, Pudukkottai and thereafter, he (P.W-1) got himself admitted in Devadoss Hospital, Madurai. The evidence of Nagaraj (P.W-2) and Kalavathy (P.W-3) corroborated the versions of P.W-1 in all material particulars except the name of the driver, who took them to the Hospital. While according to P.W-1, it is Balraj (D.W-1), who drove the car, P.W-2 and P.W-3 had stated that it is Balasubramani(P.W-9). Apart from this, there are certain embellishments in the injuries sustained by P.W-1, P.W-2 and the deceased victim.

7. The learned counsels for the appellants have raised the following contentions and also pointed out the gaping deficiencies in the case of the prosecution.

- i. According to the complaint-ExP1 given by P.W-1, it has not been mentioned as to who had cordoned off or restrained other relatives from rescuing the deceased (by



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preventing them to go near the deceased) whereas in his deposition, P.W-1 has mentioned that it was A5 and A7, who had done this act of restraining them. Therefore, it is clear that both A5 and A7 were not involved directly in the attack though they are alleged to have been carrying wooden log.

- ii. Though the Accident Registers (Ex.P22 and Ex.P23) mention that 20 known persons attacked the victims, the deposition of P.W-1 mentions only seven persons as accused.
- iii. The wife of P.W-1, one Radhika, was not examined though her name was mentioned in the Accident Register(Ex.P23), as the person, who accompanied P.W-1.
- iv. The postmortem certificate (Ex.P10) did not mention any injury caused by wooden log on the chest, though P.W-1



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- had deposed that the deceased was beaten on his chest.
- v. Dr.Suguna Alamelu, who noted the injury sustained by P.W-1 and recorded the Accident Registers(Ex.P22 and Ex.P23) was not examined.
- vi. As regards the injury caused near the left eye of the deceased it could not have resulted in his death and this is also indicated by the postmortem certificate, which mentions that it was a punctured wound and therefore, A1 cannot be charged of causing a grievous injury, which resulted in the death of Chelladurai.
- vii. When P.W-1 was cross-examined, he deposed that he was unconscious while Ex.P23, the Accident Register mentions that he was conscious. Furthermore, P.W-1 has also deposed that he was not aware as to who had taken him to the hospital.
- viii. Extra-judicial confession (Ex.P7) before P.W-12 and



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P.W-13 lack credibility as exposed in the cross-examination of these witnesses.

- ix. A4(Ramesh) assaulted P.W-2, causing only simple injuries and therefore he cannot be charged for murder.
- x. P.W-18, the investigation officer, in his deposition has stated that he did not collect the medical records of P.W-2, which creates a doubt as to whether P.W-2 was injured at all.
- xi. Ex.P10, the postmortem certificate was not in detail about the blood vessels, which were cut or about the temporal bone injury, thereby, making out a case at the most only for Section 325 IPC.
- xii. Non-examination of Balraj on the side of the prosecution is fatal to the case of the prosecution.
- xiii. The deposition of P.W-3 regarding the loss of about 200 gms of flesh from the right thigh of the deceased



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victim does not find a place in the postmortem certificate (Ex.P10), thus making his deposition unreliable.

xiv.P.W-4, the daughter of the deceased in her cross-examination admitted that she was tutored by P.W-6, her paternal uncle.

xv.The seizure mahazar (Ex.P9) mentions the date of seizure as 15.05.2017 whereas the witnesses have signed as 13.05.2017.

xvi.The wordings “received a statement” found on Ex.P1 creates a doubt as to whether it was the original statement made by the complainant or a revised recorded statement received later.

xvii.Though P.W-1, P.W-2 and P.W-4 have deposed that the incident took place in the house, P.W-6 had deposed that it took place between the water tank and the house.

xviii.No officers from the Electricity Board were examined



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to show that there was continuous power supply to the locality where the occurrence took place on the fateful night.

xix.The evidence of the Driver(P.W-9), who took the deceased and injured to the hospital does not have a licence.

xx.The evidence of D.W-1 to D.W-11 that the celebration went on in the temple.

8. This case is unique in the sense that the learned counsels for the seven appellants have made a sincere attempt to fish out all possibilities, minor or major, in order to at least get the sentence reduced, if not, the accused exonerated. In this attempt, they have pointed out many inconsistencies and lacunae. It would be easier for us to deal with these contentions one by one to find out whether the prosecution has succeeded in establishing the guilt of the appellants 1 to 7.



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9. As regards the number of assailants or the role of each of the assailants as to who caused the death is always difficult to answer. The contention of the counsel for the appellants that it was mentioned by P.W-1 to the Doctor, who treated him that as many as 20 known persons were involved in the attack and that only 7 were named in the FIR and final report. This cannot be a decisive point in favour of the appellants for the simple reason that P.W-1 was in a state of shock. He had seen the fatal attack on his paternal uncle directly in front of him and he was also grievously injured in it. He could not have exactly given the number of assailants to the Doctor in the first instance as his focus must have been on his condition. It is well settled that such statements to the doctor at the first instance cannot be harped upon to wriggle out of the clutches of law.

10. At this juncture, it is pertinent to discuss the evidentiary value of the statement made to a doctor. In the decision in ***P.Babu and others vs. State of Andhra Pradesh [(1994) 1 Supreme Court Cases 388]***, it



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has been held thus:

"It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and the inquiry would be confined as to how he received the injuries namely the weapons used etc."

Similarly, in the decision in ***B.Bhadriah and others Vs. State of Andhrapradesh (1995 Supp(1) Supreme Court Cases 262)***, it has been held that the injured witness is not expected to give a detailed report to the doctor and that the casual way of filling up the column in the medical certificate, would not, in any manner, amount to recording the statement of the injured witness. That apart, the entry in the Accident Register (Ex.P10) is only a previous statement of the victim and such a previous statement is not a substantive piece of evidence. It could be only used to



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corroborate under Section 157 of the Indian Evidence Act or contradict under Section 145 of the Indian Evidence Act. If the victim is to be contradicted on such a previous statements, he/she should have to be confronted with it in the cross examination as mandated under Section 145 of the Indian Evidence Act. That has not been done in the instant case. Therefore, this argument fizzles out.

11. As regards the role of each of the accused in an unexpected attack by a group of persons, it cannot be so precise as expected by any one who has not undergone the trauma. It is pertinent to mention here that even CCTV cameras are replayed frame by frame to know about any crime or accident, and this is required to know the exact sequence of events. This cannot be expected by human brain under stress and that too during the court trial after a few years. As regards the non-examination of P.W-1's wife, it is incomprehensible as to how that would have made a difference when P.W-1 who himself is an injured witness has deposed



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very clearly on the vital aspects of the case. Non examination of the author of Ex.P23 Accident Register, who treated P.W-1 also cannot be termed as fatal to the prosecution case in the light of P.W-1's deposition. It cannot be suggested to P.W-1 that the deceased and he were never taken to the Government Hospital, Pudukkottai after the attack.

12. It has also been pointed out that the postmortem certificate did not mention about any injury on either the chest or the thigh through the prime eyewitnesses had deposed about the attack on the chest and on the left thigh of the deceased victim. This again is attributed to the anxiety when fear and survival mode overwhelms any person in a state of shock. It is very much possible for such persons to exaggerate the injuries sustained by any one related to them.

13. The extra-judicial confessions (Ex.P7 and Ex.P8) is not of great evidentiary value as far as the present case is concerned, especially, with



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the presence of injured eyewitnesses. Even without relying on the extra-judicial confessions, the injured eyewitnesses accounts are very formidable to establish the guilt of all the appellants.

14. The contention of the appellants is that A1 had merely caused a wound near the left eye of the deceased, which could not have caused the death. It is again only the result of a wishful thinking as it was only A1, who was nursing a grudge against the deceased and it was at his behest the entire group of 7 (including A1) armed with dangerous weapons, like, Aruval and wooden log encircled the deceased and ensured his death. The sequence of events, as to who attacked the victim and with which weapon, cannot be elicited from the witnesses with such mathematical precision except for the conclusion that the attack was a murderous one and the mission of killing the victim was accomplished. In fact one of the charges against the appellant is that they formed an unlawful assembly armed with deadly weapons and the attack was master minded by A1.



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Once an unlawful assembly is found with a common object to murder the deceased, every member of the assembly, who shared the common object, would be vicariously liable even if he had not himself attacked the deceased. The question is why should then 7 accused assembled and came to the house of the deceased at 11.00 p.m., armed with weapons. It is not their case that they were casual pedestrians, who were going to their houses nearby. That apart, Section 34 IPC which is a rule of evidence can also be pressed into service along with Section 149 IPC, in the facts and circumstances of the case.

15. The admission of P.W-4 that she was tutored by P.W-6 cannot be accorded much weightage as she was a minor and her own father was the deceased victim. Merely because she had deposed that she was tutored by her paternal uncle P.W-6 does not weaken the case of the prosecution on the face of overwhelming injured eyewitnesses accounts.



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16. The discrepancy in the date found in the seizure mahazar (Ex.P6) again is an error due to oversight and cannot be blown out of proportion especially, when both dates are only after the date of occurrence.

17. As regards the exact scene of occurrence, nothing much can go into it as P.W-6 was not a direct eyewitness to the incident. However, it is also evident from the rough sketch (Ex.P14) that there is no huge discrepancy as made out by the appellants as the frontage of the house itself is extended to that extent that both the versions regarding the place of occurrence are correct and one and the same. The contention that A4 had attacked only P.W-2, who sustained simple injuries and hence he cannot be found guilty of murder is also not acceptable, because the target for the unlawful assembly and the deadly assault was only on the deceased victim and P.W-1 and P.W-2 got injured only because they had intervened and tried to rescue the deceased victim. Therefore, as already



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stated, A1 to A7 were all into a joint operation of murdering the victim Chelladurai. However, the trial Court took a view that Section 302 IPC is not applicable to any of the acts of the appellants and therefore convicted A1 to A3 for an offence under Section 304(I) IPC and A4 to A7 under Section 304(I) IPC r/w 149 IPC. The trial Court further convicted A1 and A6 for the offence under Section 326 IPC and convicted A2 to A5 and A7 under Section 326 r/w 149 IPC. The prosecution did not file any appeal against the sentence passed by the trial Court.

18. At this juncture, it is pertinent to go into certain finer aspects of the victim and the witnesses, their reaction and responses. The role of an eyewitness under Indian Law is significant for the trial process and to maintain the fairness of the justice delivery system, but we have to keep in mind that in the instant case, mental trauma puts a major impact on the minds of the people and the victim or witnesses. They may fail to properly observe the actual offender, who attacked him and the other



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persons. Moreover, at the scene of a crime, irrespective of the fact whether the person is a victim or not, he is under high stress. High stress puts one's mind and body to survival mode rather than focussing on the perpetrators. Due to the stressful environment, a person's ability to observe accurately and to recall the event later is reduced. However, the evidence of an injured witness must be given due weightage being a stamped witness as his presence in the scene of crime cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he would spare the real assailants in order to falsely implicate some one else. Therefore, the testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. In the present case, P.W-1 and P.W-2 are injured eyewitnesses and are also nephews of the deceased. Their evidence is corroborative and there is nothing to suggest that they would not like or want to let their actual assailants go unpunished merely to implicate third



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persons falsely for the commission of the offence. The evidence of injured stands on a different pedestal as compared to any other witness cited by the prosecution as eyewitness, who claims to have seen the incident. Where an injured witness clearly names the persons and the assault made on him by those persons, and is broadly corroborated with what has been found in the medical report, even though, there may not be any mathematical precision with regard to the manner of assault, his evidence is paramount. The evidence of an injured eyewitness cannot be lightly thrown aside even if there are certain minor contradictions and omissions. It could be a case of some exaggeration or it could even be some discrepancy in recollecting the whole incident with exactitude and certainty, but on such minor discrepancy, disbelieving altogether the testimony of an injured eyewitness would be against the settled principles of appreciation of evidence. The Hon'ble Supreme Court in the decision in *Abdul Sayeed vs. State of Madhya Pradesh [(2010) 10 SCC 259]* has held as follows:-



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“30.The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.” (emphasis supplied)

19. There are 11 witnesses on the side of the defense (DW1 to DW11) out of which the deposition of DW1 assumes significance. He is the one for whom the cut-out was erected by the deceased family members and it gets clarified in his deposition. He and all the other



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witnesses (DW1 to DW11) have also tried to invent a new theory by which there is an attempt to create an alibi for all the appellants. According to him, all the appellants were participants in the 'Annadhanam' of the local temple on the hillock at the time of the occurrence of the crime. This has been deliberately put forth by him when it is clear from the depositions of most of the prosecution witnesses that the appellant were not ready for a compromise of holding the 'Annadhanam', if the deceased and his men participated in it. It is also pertinent to mention that during the cross-examination of the prosecution witnesses, this aspect was not even touched upon thereby making it clear that there was no 'Annadhanam' as planned earlier. Interestingly, he is the very person (DW1) for whom the deceased and his family had erected a cut-out and fought with A1 and his men. It is seen that he shifted loyalty to the appellants' side and also attempted to spin a different version in order to protect them.



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20. There were also certain minor inconsistencies as to the time of occurrence of the evidence and as to whether the deceased and P.W-1 were taken in one vehicle or two vehicles to the hospital. There are contradictory versions regarding even as to who drove the vehicle/vehicles. In his evidence, Balasubramani (P.W-9) deposed that he is the driver of the deceased Chinnadurai and that on the fateful day, ie., on 12.05.2017, he is sleeping in a Benz Lorry belonging to Chinnadurai and at about 11.00 to 11.30 p.m., he heard persons screaming in front of the house of his lorry owner Chinnadurai(deceased) and he found the deceased Chinnadurai, Punniyamurthi (P.W-1) and Nagaraj (P.W-2) were badly attacked. His further deposition is that he took them in a Scorpio car belonging to the deceased Chinnadurai to the Government Hospital at Pudukkottai. When he enquired, he came to know about the attack made by the appellants on the deceased as well as P.W-1 and P.W-2. From the evidence of P.W-9, it is seen that he did not witness the occurrence. However, he has seen the deceased and other



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injured witnesses (P.W-2 and P.W-3) and took them to the hospital in the car. It is also pertinent to point out that during the course of cross-examination, he fairly admitted that he did not possess a valid driving license. This alone cannot be a ground to trash the entire prosecution case because P.W-9 did not state that he does not know to drive a four wheeler. When P.W-9 was confronted during the course of cross-examination as to why he took the victim deceased and other injured to the Government Hospital, Pudukkottai, though there is a hospital at Annavasal, which is nearer to Koothinipatti village, he had stated that only at the request of Nagaraj (P.W-2) and Kalavathy (P.W-3), he took them to the Government Hospital at Pudukkottai. Moreover, the hospital at Annavasal is a Taluk Primary Health Centre whereas the Hospital at Pudukkottai is a Headquarters Government Hospital.

21. We have already elaborated on the psychological effect and the panic reaction in case of such a catastrophe descending upon any



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household or family and how the priorities change gears. Therefore, the crux of the issue has to be looked into without harping on periphery. The trial Court had the privilege of observing closely the demeanor of the prosecution, defence witnesses and the accused and was in a better position to judge the veracity of their positions and utterances.

22. Even assuming for a moment that 'Annadhanam' was indeed held on that day, it could have been in the day time and not at 11.00 p.m., of 12.05.2017, when the attack took place. Therefore, even if we believe the evidence of D.W-1 to D.W-11 that 'Annadhanam' was indeed conducted on 12.05.2017, it can at the most cast a doubt on the motive that was projected by the prosecution. Motive assumes importance in a case predicated on circumstantial evidence and not in a case of this nature when we have the evidence of injured eyewitnesses.



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23. With regard to the contention of relative witness, it is useful to extract the decision of the Hon'ble Supreme Court in the case of

Dalip Singh vs. State of Punjab (AIR 1953 SC 364) as under:

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a



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foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

24. In the circumstances, we do not find any reason to interfere with the conviction and sentence passed by the trial Court and accordingly, the appeal deserves to be dismissed.

25. In the result,

(i) These Criminal Appeals are dismissed. Consequently, connected miscellaneous petitions are closed.



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(ii) The conviction and sentence passed by the learned Additional District and Sessions Judge/Presiding Officer[Special Court for E.C and NDPS Act Cases], Pudukottai, Pudukottai District in S.C.No. 165 of 2017 dated 23.04.2019, is confirmed.

(iii) The respondent police is directed to secure all the accused and produce them before the trial Court and the trial Court is directed to commit the appellants to prison to undergo the remaining period of sentence.

[P.N.P., J.] & [R.H., J.]
02.08.2022

Index : Yes/No
Internet : Yes/No
PJL

To

1.The Additional District and Sessions Judge /
Presiding Officer [Special Court for E.C & NDPS Act Cases],
Pudukottai, Pudukottai District.

2. The Inspector of Police,
Annavaasal Police Station,
Pudukottai District.



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

PJL

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.A.(MD)Nos.212 and 232 of 2019

02.08.2022