



Crl. A(MD)No.493 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
26.09.2022	28.09.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

AND

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

Crl. A. (MD)Nos.493, 619 of 2019 and 349 of 2021

Senthilumar

.. Appellant/A3 in
Crl.A.(MD) No.493/2019

Shenbagaraj

.. Appellant/A2 in
Crl.A.(MD) No.619/2019

Gurusamy

.. Appellant/A1 in
Crl.A.(MD) No.349/2021

Vs.

State rep by
The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
(in Crime No. 1105 of 2013)

.. Respondent/Complainant

1/39



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Appeals filed under Section 374 of Criminal Procedure Code, against the judgment and order dated 13.09.2019 in S.C.No.369/2015, on the file of the I Additional District and Sessions Judge, Tuticorin.

For Appellants	: Mr.V.Kathirvelu Senior counsel for Mr.K.Prabhu (CA No.493/2019) Mr.G.Karuppasamy Pandian for CA Nos.349/2021 and 619/2019
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For Respondent	: Mr.A.Thiruvadikumar Additional Public Prosecutor
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COMMON JUDGMENT

J.NISHA BANU
AND
N.ANAND VENKATESH

These appeals have been filed by A1 to A3 against the judgment of the I Additional District and Sessions Judge, Tuticorin, made in SC No. 369/2015 dated 13.09.2019, convicting and sentencing them in the following manner:



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Provisions under which convicted	Rank of the accused	Sentence of imprisonment	Fine amount
341 IPC	A1 to A3	To undergo simple imprisonment for one month each	Rs.500/-, in default, to undergo simple imprisonment for one month each.
302 r/w 34 (2 counts) IPC	A1 to A3	To undergo imprisonment for life (2 counts) each.	Rs.2,500/- (2 counts), each, in default, to undergo rigorous imprisonment for two years each. (2 counts)
506 (II) IPC	A1 to A3	To undergo rigorous imprisonment for seven years each	Rs.1,000/- in default, to undergo rigorous imprisonment for one year each.

2.The case of the prosecution is that the accused persons were involved in the business of selling pork and they seem to have created pollution in the locality, while burning the pigs. The people living in the locality had complained about the same and the accused persons did not heed to their request. Ultimately, P.W.6 had complained about this to deceased Murugan (D1) and Balamurugan (D2) and they, in turn, complained to the local body and a police complaint was also given in this regard. An inspection was also conducted by the Inspector belonging to the local body and the accused persons were also called to the police station on



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24.10.2013 and were warned. This incident was projected as the motive by the prosecution and had developed enmity against the deceased persons.

2.1. On 05.11.2013, P.W.1, who is the son of D1, was informed by one Pandi (P.W.14) that the parties can compromise the matter and they can come over to the house of A3 to hold a discussion. On coming to know of the same, D1 and D2 went together in a two-wheeler on 06.11.2013 at about 9.15 a.m. and they were followed by P.W.1 and P.W.2 and they were going towards the house of A3. At that point of time, the accused persons waylaid D1 and D2 and abused them in filthy language and they were attacked indiscriminately with aruval M.Os.1 to 3. As a result, D1 and D2 sustained grievous injuries and they died on the spot. Thereafter they ran away from the scene of occurrence.

2.2. A complaint was given by P.W.1, who is the son of D1 and an FIR came to be registered on 06.11.2013 at 9.45 a.m. by P.W.26. The investigation was conducted by P.W.27 and a final report came to be laid against the accused persons before the Judicial Magistrate No.I, Kovilpatti.



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The case was committed to the Principal Sessions Court, Tuticorin and it was made over to the Court below. Charges were framed against A1 to A3 for offences under Sections 341, 302 read with 34 (2 counts) and 506(II) IPC and a further charge of Section 294(b) IPC as against A1.

3. To prove the case, the prosecution examined P.W.1 to P.W.27 and marked Ex.P1 to Ex.P18, besides M.O.1 to M.O.23. The incriminating materials were put to the accused persons, while questioning them under Section 313 (1) (b) Cr.P.C. and they denied the same as false.

4. The trial Court, considering the facts and circumstances of the case and appreciating the evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and convicted and sentenced the accused persons in the manner stated supra. Aggrieved by the same, the present criminal appeals have been filed before this Court.

5. Heard the learned Senior counsel for the appellant/A3, learned counsel for the appellants/A1 and A2 and the learned Additional Public



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6. In the present case, the star witnesses on the side of the prosecution are P.W.1 to P.W.3, who were projected as eyewitnesses. P.W.4 to P.W.6, P.W.11 and P.W.12 were also examined to prove the motive behind the crime.

7. The main grounds that were projected by the learned counsel for the appellants are,

- The very presence of the eyewitnesses in the scene of occurrence is doubtful.
- The inquest reports that were marked as Ex.P16 and Ex.P17 run contra to the ocular evidence.
- The accused persons were seen in the police station by P.W.1 and P.W.2 between 11 a.m. and 12.30 p.m. along with M.Os.1 to 3, whereas, the arrest of the accused persons took place only on 06.11.2013 at 4.30 p.m.
- The witnesses speak about seeing the dead bodies of the deceased in



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the Government hospital between 10.00 a.m. and 10.45 a.m., whereas the inquest reports marked as Ex.P16 and Ex.P17 show that the dead bodies were verified in the scene of occurrence between 2 p.m. and 4 p.m.

- There was an unexplained delay in the FIR reaching the Court only at 6.20 p.m. on 06.11.2013.
- There was an unexplained delay of 77 days in sending the 161 Cr.P.C. statement of the witnesses to the Court and the Investigating officer was not able to give any explanation for the delay.
- The arrest and recovery from the accused persons is highly doubtful, since, according to the prosecution, it took place between 4.30 p.m. and 6.30 p.m. on 06.11.2013, whereas, the accused persons were seen in the police station between 11 a.m. and 12.30 p.m.
- The weapons that were used to commit the offence M.O.1 to M.O.3 were not even shown to the postmortem Doctor and the injuries were not matched with the weapons used to commit the crime.
- In the present case, it is seen from the rough sketch (Ex.P13) that lot of houses were available and the occurrence had taken place opposite



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to the house of one Jeyaraj and not a single independent witness was examined and all the witnesses examined are related witnesses.

- The presence of P.W.1 and P.W.2 in the scene of occurrence is wholly dependant on the evidence of one Pandi, who is said to have called the parties for a compromise talk, whereas, Pandi was not examined in these lines and even the two-wheeler, in which, P.W.1 and P.W.2 travelled was not produced as a material object in this case.
- P.W.11 has spoken about the dead bodies being taken for postmortem by 11 a.m. In such an event, the evidence of P.W.18 and P.W.19, who are two police officials, who took the dead bodies for postmortem, becomes false.
- The postmortem Doctor examined as P.W.20 categorically states in Ex.P16 and Ex.P17 that rigor mortis had set in both the limbs, when she started the postmortem. According to the prosecution, the occurrence had taken place at 9.15 a.m. and rigor mortis could not have set in in both the limbs within 6 hrs. and that shows that the incident did not take place, at the time, as attempted to be projected by the prosecution.



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- P.W.1 and P.W.2, in their evidence, speak about lifting the bodies of the deceased, which were soaked with blood. If that is so, their clothes must have been sent for serology report to match the blood group and that could have substantiated the presence of P.W.1 and P.W.2 in the scene of occurrence. Curiously, this was not done by the prosecution.

- The learned counsel, in order to substantiate their submissions, relied upon the following judgments:

(a) Arumugam @ Doss V. State reported in CDJ 2007 MHC 5204

(b) Viswanathan and another reported in 2013 (1) MLJ CrI 516

(c) Murugaiah v. State reported in 2018 (1) MLJ CrI 401

(d) Subburam v. State [Crl. A(MD) No.397 of 2019 dated 07.09.2022].

(e) Amar Singh and others v. State reported in 2020 (4) MLJ 344

8. Per contra, the learned Additional Public Prosecutor made the following submissions:

- Pandi was examined as P.W.14 only for the purpose of speaking about



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- The discrepancy in the evidence of P.W.1 to P.W.3 regarding the presence of accused persons in the police station and availability of M.O.1 to M.O.3 even before their arrest and recovery was due to lack of memory, since they were examined in chief on 01.11.2016, whereas they were cross-examined only on 02.07.2019.
- The serology report marked as Ex.P10 through P.W.21 clearly tallies the clothes recovered from the accused with the blood group of the deceased.
- The presence of P.W.1 and P.W.2, during the inquest, is very clear from Ex.P16 and Ex.P17 and hence, their statement that the dead bodies of the deceased were present in the hospital in the morning was clearly due to lack of memory and it will not affect their evidentiary value with regard to the description of the incident, which was done in a clear and cogent manner.
- To substantiate this submission, the learned Additional Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court in ***Shahaja @ Shahajan Ismail Mohd. Shaikh v. State of Maharashtra***



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- The evidence of P.Ws.1 and 2 has not been discredited in the cross-examination and they have clearly described the incident and both their names were also found in the complaint and in the inquest report.
- The delay in the express FIR reaching the Court has been properly explained by P.W.17 and hence, it is not fatal to the case of the prosecution. To substantiate this submission, the learned Additional Public Prosecutor relied upon the judgment in ***Anilraj v. State of Bihar*** reported in **(2001) 7 SCC 318**.
- The delay of 77 days in the statement recorded from the witnesses reaching the Court by itself will not result in throwing away the case of the prosecution and the inquest report had reached the Court on 07.11.2013 itself.
- The motive to the crime has been clearly spoken by P.W.24, who had enquired the earlier complaint and the same has been corroborated by the evidence of P.W.1 to P.W.3.



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WEB COPY 9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. In the present case, there was an earlier dispute between the accused persons and D1 and D2. The same has been clearly spoken to by PW-24, who had enquired the earlier complaint given against the accused persons. The motive for the crime as spoken to by the other witnesses has been corroborated by PW-24, who is an independent witness and who had no axe to grind against A1 to A3. It is true that motive may not be a relevant factor in a case involving eye witnesses. However, it can be taken to be one piece of evidence to connect the accused persons and the deceased to further develop the case of the prosecution.

11. Insofar as the incident is concerned, PW-1 and PW-2 have described the incident in a clear and cogent manner and the overt acts of each of the accused persons. The incident took place on 06.11.2013 at 9.15 a.m. and it was PW-1, who gave the complaint (Ex.P1) at about 9.45 a.m. Based on the same, the FIR came to be registered in Crime No.1105 of



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2013. This document has been marked as Ex.P11 and the name of the accused persons and the deceased have been mentioned in the FIR. The names of PW-1 and PW-2 find place in the complaint. Even in the complaint, the entire facts have been properly explained and the overt acts have been described and the same was reiterated both by PW-1 and PW-2 in the witness box.

12. The learned counsel appearing on behalf of the appellants questioned/doubted the very presence of PW-1 and PW-2 in the scene of occurrence. The main reason that was projected was that one Pandi had called the parties for mediation in the house of A3 and that is the reason why PW-1 and PW-2 followed the deceased persons in their two-wheeler. However, Pandi, who was examined as PW-14, does not even speak about any mediation initiated by the accused persons. Therefore, there was no occasion for PW-1 and PW-2 to follow the deceased persons in a two wheeler. That apart, the two-wheeler in which they travelled was not even marked as a material object.



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13. A careful reading of the evidence of PW-14 shows that there is absolutely no reference to the mediation talks and this witness has been examined only as a hearsay witness, who came to know about the incident subsequently. The submission made in this regard by the learned counsel for the appellants carries some weightage.

14. PW-1 and PW-2 clearly pointed out the fact that the dead bodies of the deceased were available in the Government Hospital, Kovilpatti at about 10 a.m. to 10.45 a.m. on 6.11.2013. This statement made by them runs contrary to the inquest report marked as Ex.P16 and Ex.P17 prepared by the Investigating Officer. As per Ex.P16, the dead body of D1 was available when the report was prepared between 12 noon and 02.00 p.m. on 06.11.2013. Similarly, as per Ex.P17, the dead body of D2 was available in the scene of occurrence between 02:15 and 03:30 p.m. on 6.11.2013. It is only thereafter, PW-19 had taken the body of D2 for postmortem and handed over at around 03:45 p.m. and PW-19 had handed over the dead body of D1 at about 03.00 p.m. It is further seen from the evidence of the postmortem Doctor (PW-20) through whom Ex.P5 and Ex.P7 were marked



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that the postmortem was conducted for Murugan (D1) from 3.20 p.m. and for Balamurugan (D2) from 4.30 p.m. All the above evidence runs contrary to the deposition of PW-1 and PW-2 on the availability of the dead bodies of the deceased between 10 a.m. and 10.45 a.m. in the Government Hospital, Kovilpatti on 6.11.2013.

15. PW-11 was a witness, who was examined by the prosecution to establish the motive behind the crime. This witness in his cross-examination states that he went to the Government Hospital, Kovilpatti on 6.11.2013 at 11 p.m. and he found the dead bodies of D1 and D2. If the evidence of PW-11 is taken to be true, the evidence of PW-18 and PW-19 becomes questionable. The evidence of PW-11 is in line with the evidence of PW-1 and PW-2. This is yet another material discrepancy for which there is no explanation.

16. Both PW-1 and PW-2 and PW-3 also, clearly mention about the presence of the accused persons in the police station between 11 a.m. and 12.30 p.m., on 06.11.2013. However, the accused persons were arrested and



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recovery of M.O.1 to M.O.3 was made only between 4.30 p.m. and 6.30 p.m. on 06.11.2013, which was spoken by PW-15.

17. Insofar as the complaint (Ex.P1) is concerned, even though PW-2 is said to have accompanied PW-1, PW-2, in his evidence, clearly states that he had put his signature in Ex.P1 only at about 2 p.m., when he went to the police station and he was not even able to identify the signature of PW-1 in Ex.P1 and he feigned ignorance.

18. It is seen from the inquest report marked as Ex.P16 and Ex.P17 that PW-1 and PW-2 were present and their names also finds place. If that is so, there is no explanation as to how PW-1 and PW-2 saw the dead body of the deceased persons between 10 a.m. and 10.45 a.m. in the Government Hospital, Kovilpatti and as to how they saw the accused persons and M.O.1 to M.O.3 in the police station even before the completion of the inquest. These were the material discrepancies that were pointed out by the learned counsel for the appellants to discredit and suspect the evidence of PW-1 and PW-2, who were examined as eye witnesses.



19. In the judgment that was relied upon by the learned Additional Public Prosecutor in *Shahaja* case referred supra, the Apex Court has evolved principles for appreciation of ocular evidence in a criminal case and for proper appreciation, Paragraph Nos. 27 and 28 of the judgment 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 out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is



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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



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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.

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



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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, 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



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account of the fear of 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 : AIR 1983 SC 753, **Leela Ram v. State of Haryana**, 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 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



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

20. It is clear from the above judgment that there are two principle considerations that must be taken into account by the Court, while assessing the ocular evidence and they are:

- Whether the circumstances of the case make the Court believe the presence of the eye witnesses in the scene of occurrence possible ? and



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- Whether there is anything inherently improbable or unreliable in their evidence ?

The Apex Court has made it very clear that the discrepancies and trivial matters not touching upon the core of the case should not discredit the evidence of the eye witnesses.

21. When the above test is applied to the facts of the present case, the very presence of PW-1 and PW-2 in the scene of occurrence becomes doubtful. Just because they have described the overt acts of the accused persons, that by itself cannot clinch the evidence due to the surrounding circumstances, which stares at them. In the first place, they accompanied the deceased only based on the mediation talks initiated through Pandi. However, Pandi, who was examined as PW-14, does not speak about any mediation. Under such circumstances, the reason for PW-1 and PW-2 to accompany the deceased becomes questionable. PW-1 and PW-2 claim that they lifted the dead body of D1 and D2, which were soaked with blood and there were bloodstains in their apparel. It is not known as to why their apparel were not sent to obtain serology report and that would have clinched



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their presence in the scene of occurrence. PW-1 and PW-2 had travelled in a two-wheeler following the deceased and curiously, the two-wheeler in which they travelled was not even identified and marked as a material object. PW-2, who is said to have signed in the complaint (Ex.P1), admits that he countersigned only at 2 p.m. in the police station and he was not even able to recognise the signature of PW-1 in the complaint, if he had really accompanied PW-1 to the police station to give complaint at 9.45 am. on 6.11.2013. Their evidence about the presence of the dead body in the Government Hospital, Kovilpatti and the presence of the accused persons in the police station along with M.O.1 to M.O.3 runs completely contrary to the case of the prosecution. For all these reasons, the presence of PW-1 and PW-2 in the scene of occurrence and the subsequent events that had taken place makes their presence improbable and unreliable.

22. It is true that the case of the prosecution cannot be thrown out just because no independent witnesses have been examined. However, considering the fact that almost all the important witnesses in this case are relatives of the deceased and the evidence of the star witnesses becoming



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doubtful, the evidence of an independent witness would have brought more reliability to the case of the prosecution. It will be relevant to take note of the judgment of this Court in *Viswanathan and Another*, referred supra and the relevant portions in the judgment are extracted hereunder:

“18. Admittedly, P.W. 1 to 6 belong to Sunnambukarampatti, whereas, the occurrence had taken place in Pallakadu village. The presence of P.Ws. 1 to 6, at the place of occurrence, according to the learned senior counsel for the appellants is doubtful. In this argument, we find some force. In the absence of examination by (sic) independent and natural witness from that locality, in our considered opinion, the evidences of P.Ws. 1 to 6 cannot be acted upon, unless they inspire the confidence of the Court. We are not to say that P.W. 1 to 6 are to be disbelieved, simply, because they happened to be the close relatives. Because they happened to be the close relatives of the deceased and because their presence at the scene of occurrence is by chance and since they have not spoken as to what made them to be present at the crucial moment at the place of occurrence, we are to say that the presence of these witnesses is doubtful. Now, coming to occurrence place, it is not as though the occurrence had taken place where there is no chance for the presence of any



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independent witness. Admittedly, the occurrence had taken place at 8.30 a.m. and therefore, by all probabilities, there would have been a number of people present at the place of occurrence. The prosecution has not explained as to why no independent witness, more particularly, from Pallakadu village, has been examined. This creates further doubts in the case of the prosecution.

...

20. Now, coming to the lodging of the First Information Report, the alleged occurrence had taken place, according to the prosecution, at 8.30 p.m. It is their positive case that P.W. 1 proceeded to the police station and he made a complaint at 10.00 p.m. upon which, the present case was registered. But, according to the evidences of P.Ws. 1 to 5, immediately after the occurrence, within 15 minutes, on an information passed on to the police, over a cryptic telephonic message, the police reached the place and removed the dead body. This shows that the police had some other information before Exhibit P-1. Therefore, Exhibit P-1 can not be the First Information. Assuming that over a cryptic telephonic message, the police reached and removed the dead body within half an hour after occurrence, it goes without saying that the First Information



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Report would not have come into existence as alleged by the prosecution and it would have come into existence only after the arrival of the police at the spot. Had it been true that with a cryptic telephonic message, the police reached the place of occurrence within 15 minutes, nothing would have prevented the police from recording the truth and to have placed the same before the Court below. This also creates doubt as to whether the First Information Report would have come into existence as alleged by the prosecution.

21. Regarding the arrest and the consequential recovery of M.Os. 1 and 2, P.W. 6, the mother of the deceased, has categorically stated that on the next day of the occurrence at 10.00 a.m., she along with the other witnesses went to the police station, as they were asked to come and identify the weapons used in the crime. Accordingly, M.Os. 1 and 2 were identified by them at the police station. This would go to show that the accused would not have been arrested at the time and the place as has been projected by the prosecution and the weapons also would not have been recovered at the instance of the accused. This also creates doubt in the case of the prosecution. Above all, A. 2 is a woman. In our considered view, it is somewhat unbelievable that an aged woman, would



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23. The above judgment will squarely apply to the facts of the present case, since the related witnesses were not helpful in substantiating the case of the prosecution. That apart, the very arrest and recovery from the accused persons becomes highly doubtful, since there is a direct contradiction between the evidence of PW-1 and PW-3 on the one hand and the evidence of PW-15 on the other.

24. The delay in the FIR reaching the Court has been properly explained by PW-17. However, there is admittedly a delay of 77 days in sending the Section 161 Cr.P.C. statements of the witnesses to the Court and the Investigation Officer (PW-27) was not able to give any explanation for such an exorbitant delay. This Court in *Subburam* case (supra) dealt with the importance of sending the material documents to Court on time. For proper appreciation, Paragraph Nos.22 and 23 of the judgment are extracted hereunder:



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“22. In a case of this nature, the delay in sending the material documents to the Court, has a lot of significance. A Division Bench of this Court in **Re. Karunakaran and another, reported in 1975 (1) MLJ Crl 106** has categorically held that there are certain material documents which should be despatched immediately without any delay by the investigation officer to the Court. The Division Bench also indicated the procedure to be followed. Such immediate despatch of the material documents to the Court was insisted since it will provide a safeguard against the subsequent fabrication of such documents in grave crimes. While identifying the material documents, the complaint and the printed form of FIR have been shown to be material documents.

23. Another Division Bench in **Sakthivel vs. State rep. By the Inspector of Police, Papparapatty Police Station, Dharmapuri District reported in 2017 (4) MLJ Crl 715** took note of the above judgment and reiterated the importance of despatching material documents immediately to Court. It was held that even in a case whether the material documents are despatched belatedly, it is open to the investigating officer to explain the reasons for the same and it has to be elicited while



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examining the investigation officer. P.W-16, who was the Head Constable, who had taken the documents to the Court, was not able to really explain as to why there was a long delay in handing over the documents to the Court. The delay in despatching the documents to the Court will have significance since P.W-1 had contradicted himself with regard to the attack on the deceased person by stating that 2 male known persons attacked the deceased and later changing the version as if it was only the accused/appellant, who attacked the deceased. The delay that had occasioned in despatching the documents to the Court once again leads to subsequent deliberation and fixing the accused person.”

25. Considering the facts and circumstances of the case, the delay of 77 days in sending the statement of the witnesses to the Court will have lot of significance in the present case, particularly when the statement of the eyewitnesses is said to have been recorded at the earliest point of time.

26. The learned Additional Public Prosecutor made a faint attempt to explain the discrepancy in the evidence of PW-1 and PW-2 on the ground that they were examined in chief on 01.11.2016 and they were cross-



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examined only on 02.07.2019. It must be kept in mind that delay in cross-examination will have a bearing only in a case where the witnesses can be won over and can be made to speak against the evidence rendered during chief examination. In a case where the witnesses are related witnesses and they claim that they are perfectly aware about the facts of the case, delay in cross-examination by itself will not come to the aid of the witnesses to disregard material discrepancies in the evidence rendered by them. For proper appreciation, the judgment in *Murugaiah* case, (supra) can be taken into consideration and the relevant portions are extracted hereunder:

*“12. But, it is the specific contention of the learned Additional Public Prosecutor appearing for the State that the chief examination was conducted on 29.10.2015 and thereafter, after a lapse of one month, viz., on 01.12.2015, PW-1 was cross-examined and thus, PW-1 would have been won over by the other side. In this regard, the learned Additional Public Prosecutor makes reliance on a Judgment of a Division Bench of this Court in **Dharmaraj v. The Inspector of Police**, reported in 2015 (2) LW (Crl) 458, wherein it has been held that in a criminal proceedings, if a*



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witness has been cross-examined after a long interval from the date of chief-examination, circumstances are available for the purpose of believing that he or she might have been won over by other side and such evidence can be disregarded/eschewed.

13. Though the above submission is attractive, it has no substance, since, in the above referred to case, the witness was a third party to the accused, whereas, in the case on hand, PW-1 is the father of the deceased and thus, the question of winning over by the other side does not arise at all. Therefore, the dictum laid down by the Division Bench is not applicable to the case on hand.”

27. This is a case involving double murder and the deceased persons have been hacked to death with multiple injuries in their vital organs and the same is evident from the postmortem certificates marked as Ex.P5 and Ex.P7 and the cause of the death is shock and haemorrhage due to the injuries sustained by them. Unfortunately, this is yet another case, where the Investigation Officer has goofed up the case. A careful reference to the Rough Sketch (Ex.P13) shows that there are many houses in the scene of



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occurrence and the murder had taken place in front of the house of one Jeyaraj. It defies logic as to why not even a single independent witness has been examined by the prosecution. The Investigation Officer, who was careful enough to send the clothes of the deceased to get the serology report, did not even bother to send the clothes of PW-1 and PW-2, which also contained bloodstains, according to them, since they claim to have lifted the bodies of the deceased. If their clothes had been sent and a serology report had been obtained, at least that would have sustained the case of the prosecution and lent support to the presence of PW-1 and PW-2 in the scene of occurrence.

28. This is a sample case, which highlights the predicament faced by the prosecution in proving heinous crimes. The non availability of independent witnesses or the hesitation shown by the general public to stand as a witness in a criminal case has been sufficiently lamented by the Apex Court and all High Courts in various judgments. The Witness Protection Law is yet to get into its shape. Similarly, the falsity uttered by the witnesses in the witness box and particularly when an independent witness



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is asked to depose in a criminal case, is not being able to be effectively handled and perjury as an offence only remains in the law book and it has never really acted as a deterring force to prevent witnesses uttering falsehood, when they are called as eyewitness in a criminal case.

29. With our experience in the Bench, we find that the prosecution always tries to safely bring in related witnesses to ensure that they support the case of the prosecution. In other words, many a times, related witnesses are swapped in the place of independent witnesses, who actually had seen the crime. The tutoring of a related witness, who has not seen a crime, at the best, can make him talk about the occurrence as projected by the prosecution including the overt acts attributed to each accused person. However, the risk is that they get caught very badly during cross-examination when unexpected questions are put by the counsel appearing for the defence, who is well-versed with the entire case. The answers given to such questions, expose the falsity of the so called eyewitnesses. Once the tutored related witnesses get exposed during the course of cross-examination, the statements made by them as if they saw the crime, becomes



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30. In the instant case, it was a gruesome double murder, which had happened in a place surrounded by a crowded residential area. Obviously, there are eyewitnesses to the crime and probably the prosecution did not want to take a chance. P.W.1 to P.W.3, who are close relatives of the deceased and who came to know about the incident subsequently, were swapped in the place of independent witnesses. Even though they spoke about the overt acts of the accused persons, exactly in the same manner, they got very badly exposed in the course of cross-examination and the same has been explained in detail, supra. As a result, their evidence as eyewitnesses becomes completely unreliable. As a consequence, the Court has to necessarily acquit the accused persons from all charges in a case involving a heinous crime. This trend seems to be continuing and that is the reason why the Courts have started wholly relying upon the statement of related witnesses in order to maintain a balance. That may not necessarily click in every case. For instance, it did not help the prosecution in the present case.



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31. It is high time that the general public is given the confidence to stand as a witness in a criminal case by providing proper witness protection. An independent witness should not get the feeling that he will be facing hardships, if he stands as a witness in a case. Every citizen must understand that a grave situation like that can arise for their kith and kin and for their own family members and only then, they will realise that in spite of a gory incident, the same was not able to be proved, since the onlookers were not ready to stand as witness. It requires an attitudinal change and every citizen must realise that he will also face a similar situation at some point in time in his life. Hence, the hesitation to stand as an independent witness must be shed and a citizen must take more responsibility to uphold the rule of law. The criminal justice system depends upon fair trial and the independent witnesses willing to come to Court to give evidence. In the absence of the same, the criminal justice system will collapse and it will only lead to anarchy. The police and the Courts must keep this in mind and build confidence in the minds of the general public that they will not be harassed or tormented if they stand as a witness in a criminal case.



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32. In the present case, with the available evidence, it becomes almost impossible for this Court to hold that the prosecution has proved the case beyond reasonable doubts. This Court is left with no other option except to acquit the accused persons from all charges.

33. In the result, the criminal appeals are allowed and the judgment and order of the I Additional District and Sessions Judge, Tuticorin, made in S.C.No.369 of 2015, dated 13.9.2019 are hereby set aside. The appellants are acquitted of all the charges. The appellant in Crl.A(MD) No.349/2021 is directed to be released forthwith unless his presence is required in connection with any other case. Fine amount paid, if any, shall be refunded to them. Bail bond shall stand terminated, insofar as the appellants/A2 and A3 are concerned.

[J.N.B., J.] & [N.A.V., J.]
28.09.2022

Index : Yes
Internet : Yes
RR



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To

- 1.The I Additional District and Sessions Judge,
Tuticorin.
- 2.The Inspector of Police,
Kovilpatti East Police Station,
Tuticorin District.
- 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**

RR

Judgment made in
Crl. A. (MD)Nos.493, 619 of 2019 and 349 of 2021

28.09.2022