



Crl.A(MD)Nos.10, 13, 16 and 135 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.09.2024

PRONOUNCED ON : 22.10.2024

CORAM

THE HON'BLE MR.JUSTICE **C.V.KARTHIKEYAN**

AND

THE HON'BLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

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Alagupandi	... Appellant in Crl.A(MD)No.10 of 2021
Mutheeshwaran	... Appellant in Crl.A(MD)No.13 of 2021
Selvam	... Appellant in Crl.A(MD)No.16 of 2021
Thangapandi	... Appellant in Crl.A(MD)No.135 of 2021

vs

State through
The Inspector of Police,
Thirumangalam Taluk Police Station,
Madurai District.
(in Cr.No.39 of 2010) ...Respondent in all cases

COMMON PRAYER: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records connected to the judgment in S.C.No.423 of 2010 on the file of the I Additional District and Sessions Judge, Madurai, dated 07.12.2020 and set aside the conviction and sentence imposed against the appellant.



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For Appellants : Mr.V.Kathirvelu
Senior Counsel
for Mr.R.Alagumani
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor
(in all cases)

COMMON JUDGMENT

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

A complaint had been lodged before the Thirumangalam Taluk Police Station, Madurai by PW-1, Alagammal on 14.03.2010 at around 09.30 pm, consequent to which, FIR in Cr.No.39 of 2010 had been registered for offences punishable under Sections 147, 148, 342, 323 and 302 IPC as against six named accused, Mutheeshwaran (A1), Alagupandi (A2), Thangapandi (A3), Selvam (A4), Pandiammal (A5) and Chittammal (A6). Subsequent to investigation, final report had been filed before the Judicial Magistrate at Thirumangalam and taken cognizance as P.R.C.No.22 of 2010. Since the offence under Section 302 IPC is triable exclusively by a Court of Sessions, after following due procedure, the learned Judicial Magistrate, Thirumangalam had committed the case to the Principal Sessions Court at Madurai. It was then taken on file as S.C.No.423 of 2010



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and made over for trial to the I Additional District and Sessions Court at Madurai.

2.On 10.03.2015, the following charges were framed by the Court:

Charge No.1	Against A1 to A6 for offences punishable under Section 147 IPC
Charge No.2	against A1 to A4 for offences punishable under Section 148 IPC
Charge No.3	Against A5 and A6 for offences punishable under Sections 148 r/w 149 IPC
Charge No.4	Against A1 to A4 for offences punishable under Section 302 IPC
Charge No.5	Against A5 and A6 for offences punishable under Section 302 IPC r/w 149 IPC

3.On 04.11.2020, the following additional charges were framed against the accused:

Charge No.1	Against A5 and A6 for offences punishable under Section 352 IPC
Charge No.2	Against A1 to A6 for offences punishable under Section 147 IPC
Charge No.3	Against A1 to A4 for offences punishable under Section 148 IPC



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Charge No.4	Against A1 to A4 for offences punishable under Section 302 IPC
Charge No.5	Against A5 and A6 for offences punishable under Sections 302 r/w 149 IPC

4.After trial, judgment was pronounced on 07.12.2020 and A1 to A4 were found guilty and convicted for offence punishable under Section 302 IPC and were each sentenced to imprisonment for life and fine of Rs.5,000/- in default to undergo three months simple imprisonment. A5 and A6 were acquitted of all charges. A1 to A4 were acquitted of the charges under Sections 147 and 148 IPC. Questioning and challenging the conviction and sentence, A2 has filed Crl.A(MD)No.10 of 2021, A1 has filed Crl.A(MD)No.13 of 2021, A4 has filed Crl.A(MD)No.16 of 2021 and A3 has filed Crl.A(MD)No.135 of 2021. The State has not filed any appeal challenging the acquittal of A5 and A6 or the acquittal of A1 to A4 for offences punishable under Sections 147 and 148 IPC.

5.Since all the four appeals arise from the same judgment, a common judgment is passed in all the four appeals.



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6.Before proceeding further, the relationship among the parties should also be stated:

7.A5, Pandiammal and A6 Chittammal are sisters. A2, Alagupandi, A3, Thangapandi and A4 Selvam are the sons of A5 Pandiammal. A1 Mutheeshwaran is the son-in-law of Pandiammal. The de-facto complainant, Alagammal (PW-1) is the wife of the deceased, Paunraj. PW-2, Malarkodi is the daughter of PW-1 and the deceased Paunraj. PW-3 Alagu is the resident of the opposite house of the accused. He is also a nephew of PW-1, Alagammal.

8.It is the case of the prosecution that the two daughters of A5, Pandiammal, Pandimeena and Muthuselvi had come to their mother's house (A5) with their newly born infants. A1 is the husband of Muthuselvi. A5, Pandiammal washed the clothes of two young infants and poured the water outside her house in the road. This was objected to by PW-3, Alagu, who is the resident of the opposite house. The water further flowed down to the neighbouring house, where, PW-1, Alagammal and her daughter, PW-2, Malarkodi resided. There were a few skirmishes among the parties owing to



this act of A5.

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9.On 14.03.2010 in the night around 09.00 pm, A5, Pandiammal had similarly poured water used for washing the clothes of her young grandsons in the road. This flowed across the house of PW-3, Alagu and reached the house of PW-1, Alagammal. This was questioned by PW-3, Alagu. There was a wordy quarrel between A5, Pandiammal and PW-3 Alagu. PW-1 Alagammal poured sand over the said water and joined in the quarrel. A6, Chittammal also joined. The wordy quarrel slowly escalated into minor violence with the ladies pulling each others hair. At that time, A1 also came to that place and it is stated that he had an aruval with him. A2 to A4 also arrived with sticks in their hands. The deceased, Paunraj, the husband of PW-1, Alagammal, who was inside the house came out and tried to mediate.

10.It is the case of the prosecution that at that time, Paunraj was held by his hands by A3, Thangapandi and A1, Mutheeshwaran hit one blow on his head with the aruval. Paunraj collapsed on the ground. It is further alleged that A2, Alagupandi, A3 Thangapandi and A4 Selvam hit Paunraj on his back with the sticks in their hands. Thereafter, the accused ran away.



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PW-1 Alagammal and PW-2, Malarkodi raised a cry. At that time, they found that Paunraj had died. Thereafter, with the assistance of PW-6, Palani, who is a brother-in-law of PW-1, Alagammal, a complaint had been lodged before the Thirumanalgam Taluk Police Station. This complaint, during trial, was marked as Ex-P1. Consequent to this complaint, FIR in Cr.No.39 of 2010 had been registered at 09.30 pm on 14.03.2010 for offences punishable under Sections 147, 148, 342, 323 and 302 IPC against A1 to A6, who had been named in the complaint.

11.As stated above, after investigation, final report was filed and it was taken cognizance by the learned Judicial Magistrate at Thirumangalam and later, the case was committed to the Court of Sessions and later, made over to I Additional District and Sessions Court, Madurai and taken on file as S.C.No.423 of 2010 and on conclusion of trial, A1 to A4 were convicted for offence punishable under Section 302 IPC and acquitted of all other charges framed against them and A5 and A6 were acquitted of all charges framed against them. These Criminal Appeals have been filed by A1 to A4 questioning the said conviction and sentence.



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12.To elaborate the facts in accordance with the evidence produced before the Court, a further narration is required.

13.PW-1 Alagammal in her evidence stated that on 14.03.2010 at 09.00 pm, her neighbour, Pandiammal (A5) poured the water used for washing the clothes of her infants in the road. This water flowed through the house of PW-3, Alagu, who is residing in the opposite house of A5, Pandiammal and reached the house of PW-1, Alagammal. In her evidence, she stated that this was questioned by PW-3, Alagu. In her cross examination, she stated that Alagu was her nephew (கொழுந்தியான் மகன்). A quarrel started between A5, Pandiammal and PW-3, Alagu. It was joined by A6, Chittammal, the younger sister of A5 and also PW-1, Alagammal and her daughter, PW-2, Malarkodi. The quarrel escalated into violence. PW-1 in her evidence further stated that at that time, there was a free fight among the ladies by each pulling the other hair. A1 then came to the spot with aruval. The husband of PW-1 and PW-2, Malarkodi tried to separate them. At that time, it is contended that A3, Thangapandi caught the hands of Paunraj and A1, Mutheeshwaran cut him on his head. Her husband fell down.



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14. She further stated that A2, Alagupandi, A3, Thangapandi and A4, Selyam hit her husband with sticks and then all the accused ran away. Her brother-in-law, Palani, PW-6 then came to that place and PW-1 went with him to give complaint to the Police Station. That complaint was marked as Ex-P1. PW-1 identified the clothes worn by her husband as MO-1 and MO-2. She also identified the aruval used by A1, which was produced as MO-3. The three sticks used by A2, A3 and A4 were marked as MO-4 series.

15. During her cross examination, she admitted that at 09.30 pm, MO-3 aruval was shown by the Inspector of Police in the Police Station. At that time, A2, Alagupandi and A3, Thangapandi were also present in the Police Station. A1, Mutheeshwaran was also present. She was there in the Police Station till 10.00 in the night. A6, Chittammal was also present. She further stated that she had also suffered injuries. She further asserted that the accused dropped the weapon used by them at the scene of occurrence and then ran away.



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16.PW-2, the daughter of PW-1, Malarkodi, in her evidence also spoke about the same incident and also stated that A1 cut the deceased on the head and that A2, A3 and A4 hit him on the back repeatedly. During her cross examination, she stated that she suffered injuries in both her hands. She was treated in Thirumangalam Government Hospital.

17.The prosecution also examined PW-3, Alagu, who also spoke about the same incident and that he had witnessed the occurrence. During his cross examination, he stated that when A1 tried to also attack PW-1, the blow fell on the front face of A3, Thangapandi.

18.These are the eye witnesses evidence on whom the prosecution relied to speak about the occurrence.

19.PW-4, Ayyavu, who is also a resident of the same area in his cross examination stated that on the same night at 10.30 pm, he went to the hospital, where he saw A3, A5 and A6, Alagupandi, Thangapandi and Chittammal in the hospital. They had been brought by the Police.



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20.PW-5, Dhanapackiyam, who is the wife of PW-3 in her cross examination admitted that as against her and against her husband, PW-3, Alagu, A3 had filed a private complaint which after investigation, had been taken cognizance as C.C.No.2 of 2017.

21.The FIR in this case was registered by PW-13, R.Alagarsamy, who was the Sub Inspector of Police at Thirumanaglam Taluk Police Station and who on receiving Ex-P1, complaint, registered Ex-P15, FIR on 14.03.2010 in Cr.No.39 of 2010 at 09.30 pm for offences punishable under Sections 147, 148, 342, 323 and 302 IPC. During his cross examination, he admitted that the distance between the Police Station and the Judicial Magistrate Court was just about 200 feet and could be reached by walking in 10 minutes. This evidence is crucial, since the FIR was received by the Judicial Magistrate, Thirumangalam on 15.03.2010 at 05.20 am nearly about 8 hours later. No credible reason had been given for this delay.

22.PW-14, Murugan was the Head Constable at Thirumangalam Taluk Police Station and had been given the duty to hand over the FIR and the complaint to the Judicial Magistrate. In his evidence, he stated that



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when he went to the Court, he was informed that the Judicial Magistrate was taking rest and therefore, he had handed over the copies at 05.30 in the morning on 15.03.2010. During his cross examination, he stated that the Judicial Magistrate was not on leave, but was taking rest and that the Court staff asked him to come in the early morning.

23.The investigation was then taken over by Sulaiman, who was the Circle Inspector for Thirumangalam Taluk Police Station on 14.03.2010. He went to the scene of occurrence at 10.00 pm on that date. He prepared the observation mahazar, Ex-P2 and rough sketch, Ex-P16 in the presence of witnesses, Shanmugam (not examined) and Duraipandi (PW-7). He then collected blood stained sand (MO-6) and sand without blood stain (MO-5) under seizure mahazar, Ex-P3. He then conducted inquest over the dead body at Thirumangalam Government Hospital in the presence of panchayadars. The inquest report was marked as Ex-P17. He then forwarded the dead body through PW-15, Rajaram, Head Constable, for conducting postmortem. The requisition letter was marked as Ex-P13.



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24.The postmortem was conducted by Dr.Pandi, PW-12, who issued the postmortem report, Ex-P14. In the postmortem report, the following injuries were noted:

*“1)A deep cut injury in the occipital area and over the scalp measuring 9x2 cm which extended upto to the skull; and
2)Injuries in the chest and back.”*

25.In the opinion given by PW-12, it was opined that the death was due to shock and hemorrhage due to injury to brain.

26.PW-16 in his evidence thereafter stated that he recorded the statements of Alagammal, PW-1, Palani, PW-6, Malarkodi, PW-2, Alagu, PW-3, Ayyavu, PW-4, Dhanapackiyam, PW-5, Jeyakumar (not examined), Dinesh Kumar (not examined), Shanmugam (not examined), Duraipandi, PW-7, Murugan, Head Constable, PW-14, Rajaram, Head Constable, PW-15 and Alagarsamy, Sub Inspector of Police, PW-13. He then arrested the accused at 05.00 am on 16.03.2010. He recorded the confession statement of A1, Mutheeshwaran. The admissible portions of the same were marked as Ex-P18. He recovered the aruval, MO-3 under seizure mahazar,



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Ex-P19. He also recorded the confession statement of A2, Alagupandi. The admissible portions of the confession were marked as Ex-P20. He seized the three wooden sticks under seizure mahazar, Ex-P21. The wooden sticks were marked as MO-4 series. He forwarded the material objects under Ex-P22 to the Court.

27.He then recorded the statement of Dr.Pandi, PW-12, who had conducted the postmortem. He also recorded the statement of Annadurai (PW-8), Wireman of Electricity Board. He then received the biological and serological reports, Ex-P11 and Ex-P12. He then filed the final report before the Court charging the accused with commission of offences punishable under Sections 148, 149 and 302 IPC.

28.During his cross examination, he was questioned about the FIR in Cr.No.42 of 2010 also registered in the same Thirumangalam Taluk Police Station for offences punishable under Sections 294(b), 324 and 323 IPC. When a copy of the FIR was shown, he refused to acknowledge the correctness of such copy. He also denied knowledge about the final report filed by him pursuant to investigation in the said FIR. He further



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proclaimed innocence of knowledge that in that FIR, it had been alleged that PW-3, Alagu had attacked and caused injuries to A3, Thangapandi, A5, Pandiammal and A6, Chittammal. He further stated that unless he sees the final report, he would not be able to state whether he had filed the final report in the Court pursuant to investigation. He further stated that he does not know about the Police Standing Order-588 relating to joint trial of case and counter case. He further denied knowledge about the private complaint which had been filed against PW-3 Alagu and PW-5 Dhanapackiyam, by A3, Thangapandi relating to the injuries suffered by A3, A4 and A5 which was pending as C.C.No.2 of 2017.

29.In the face of the evidence of PW-16, who denied knowledge about the complaint given by the accused against PW-3 and PW-5, on the side of the accused, 7 witnesses were examined and 4 documents were marked.

30.DW-1 was A3, Thangapandi, DW-2 was A6, Chittammal and DW-3 was A5, Pandiammal. All three of them deposed that they had suffered injuries in the hands of PW-3, Alagu and PW-5, Dhanapackiyam.



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They alleged that it was only in such quarrel, did the deceased suffer injuries. A3, A5 and A6 had also suffered injuries. In this connection, A3 had lodged a complaint which was marked as Ex-D1. He stated that he was examined in hospital by the Police. DW-2, Chittammal also stated that she had also suffered injuries. Similarly, DW-3, Pandiammal, A5, also stated that she had suffered also injuries.

31. On the side of the accused, Dr. Ramkumar was examined as DW-4. He was a Senior Civil Surgeon in Thirumangalam Government Hospital. He stated that A3, Thangapandi was brought to the hospital by A2, Alagupandi and on examination, the following injuries were found:

“1) A laceration measuring 4x2 cm in the upper lip tearing the middle portion of the lip;

2) A laceration cut injury 3x1 cm in the upper cheek.”

32. The witness stated that A3 was sent to Government Rajaji Hospital for further treatment. The copy of the medical register was marked as Ex-D2. During the question put by the Court, he stated that the injuries were fresh and could have happened as stated by A2.



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33.On the side of the accused, Dr.Priyadarshini was examined as DW-5. She tendered evidence on the basis of the records relating to A6, Chittammal who had been admitted to the Central Prison Hospital, Trichy. The records for the treatment were marked as Ex-D3. She stated that A6 had suffered injuries on the left proximal ulna and stated that the injury could have been caused by an aruval.

34.On the side of the accused, R.Krishnamurthy, who was working as Special Sub Inspector of Police at Thirumangalam Taluk Police Station was examined as DW-6. He stated that on the basis of the complaint given by A3, Thangapandi, he had registered FIR in Cr.No.42 of 2010 under Sections 294(b), 324 and 323 IPC. He then arrested the accused, Alagu, PW-3 and Dhanapackiyam, PW-5 on 17.03.2010. He handed over the investigation to PW-16, Sulaiman, Inspector of Police. The certified copy of the FIR in Cr.No.42 of 2010 was marked as Ex-D4. It had been mentioned that the occurrence had happened at 09.00 pm on 14.03.2010 in the front of the house of A3, Thangapandi.



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35.On the side of the accused, Dr.Revathy was examined as DW-7.

She was the Medical Officer in Women Prison at Trichy and she also stated about the injuries suffered by A6, Chittammal. She identified Ex-D3 series relating to the treatment.

36.As stated above, on analysis of the above evidence, the learned I Additional District and Sessions Judge, Madurai, by judgment dated 07.12.2020, in S.C.No.423 of 2010 had convicted A1 to A4 for offence punishable under Section 302 IPC and sentenced each of them to undergo life imprisonment and fine of Rs.5,000/- each, in default to undergo three months simple imprisonment and acquitted them of other charges and acquitted A5 and A6 of all charges. Questioning the said conviction and sentence, A1 to A4 have filed the present Criminal Appeals.

37.Heard arguments advanced by Mr.V.Kathirvelu, learned Senior Counsel appearing for the appellants and Mr.T.Senthil Kumar, learned Additional Public Prosecutor appearing for the respondent.



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38.Mr.V.Kathirvelu, learned Senior Counsel appearing for the appellants took the Court through the facts of the case and pointed out that the charges framed against A1 to A4 were under Sections 147, 148 and 302 IPC and against A5 and A6 were under Sections 147, 352 and 302 r/w 149 IPC. He pointed out that no charge had been framed under Section 149 IPC against A1 to A4. He further pointed out that the trial Court had acquitted A5 and A6 of all charges. The trial Court also acquitted A1 to A4 for offences punishable under Sections 147 and 148 IPC. So far as the offence under Section 302 IPC is concerned, the learned Senior Counsel pointed out that the only evidence as against A3 was that he held the hands of the deceased and as against A2, A3 and A4 was that, when the deceased had fallen down, they had beaten him with sticks. The learned Senior Counsel pointed out that as against A1, the allegation is that he had attacked the deceased on his head with aruval. So far as A2 to A4 are concerned, the learned Senior Counsel argued that the overt act as against them will have to be viewed independently and it has to be explained whether the allegations against them would cause death. He again stressed on the point that a charge under Section 149 IPC had not been framed against them.



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39.The learned Senior Counsel then pointed out that initially there was a wordy quarrel between A5, Pandiammal and PW-3, Alagu over A5 allegedly pouring water used for washing the clothes of her infant grandchildren in the road. This had been objected to by PW-3, Alagu. This incident happened around 09.00 pm on 14.03.2010. The quarrel between A5, Pandiammal and PW-3 Alagu further escalated with the joining of A6, Chittammal and PW-1, Alagammal. The quarrel escalated into a skirmish with the ladies pulling each other hair. At that time, it was contended by the prosecution that A1 came with an aruval and A2, A3 and A4 came with sticks.

40.It was pointed out by the learned Senior Counsel that the deceased, the husband of PW-1 and PW-2, Malarkodi, daughter of PW-1 tried to separate the quarrelling persons. The learned Senior Counsel stated that it is the case of the prosecution that at that time, A3 had held the hands of the deceased and that A1 cut the deceased on the head with the aruval. After the deceased had fallen down, it was contended by the prosecution that A2, A3 and A4 had beaten him with sticks.



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41.The learned Senior Counsel then pointed out that A3, Thangapandi and A6, Chittammal had also suffered aruval cuts and that fact had been completely suppressed by the prosecution. The learned Senior Counsel argued that the injuries on the accused must have been explained only by the prosecution. In this case, the prosecution had suppressed the fact that A3 and A6 had actually suffered cut injuries.

42.The learned Senior Counsel further argued that the accused had adduced oral and documentary evidence about the registration of FIR against PW-3, Alagu and PW-5, Dhanapackiyam, for having caused injuries with aruval against A3 and A6. He therefore contended that once there had been a case and counter case, a joint trial should have been conducted. He therefore assailed the procedure adopted by the trial Court. He further strongly condemned the denial of PW-16, Sulaimain, Investigating Officer about the knowledge of even registration of FIR on the complaint given by A3, Thangapandi. The learned Senior Counsel stated that the prosecution had deliberately suppressed all these material facts.



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43. In this connection, the learned Senior Counsel appearing for the appellants relied on the judgment of Hon'ble Full Bench of this Court in ***Crl.O.P.No.4587 of 2023 etc., batch (T.Balaji and another vs State represented by Inspector of Police, New Washhermpet Police Station, Chennai)***, wherein, the Hon'ble Full Bench had examined the guidelines for investigation and trial of what is often termed as case and counter case.

44. The learned learned Senior Counsel further placed reliance on a judgment of a Division Bench of the Principal Bench in ***Crl.A.No.1305 of 2022***, dated 26.04.2023, ***Arputhan vs State represented by Inspector of Police, D6-Anna Square Police Station, Chennai***, with respect to the injuries suffered by the accused and asserted that when the prosecution had suppressed the genesis and origin of the occurrence and had not presented a true version, then, the accused must be acquitted of the charges. The learned Senior Counsel therefore asserted that the judgment and conviction should be set aside by this Court.

45. Mr.T.Senthil Kumar, learned Additional Public Prosecutor appearing for the respondent denied and disputed the contentions raised by



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the learned Senior Counsel appearing for the appellants. The learned Additional Public Prosecutor however stated that a charge under Section 149 IPC had not been framed. But, he pointed out that the prosecution had established that there was a quarrel between A5 and PW-3, which escalated into violence owing to A6 and PW-1 joining and led to the death of the husband of PW-1/father of PW-2. He pointed out the evidence of PW-1 to PW-4, who consistently stated that A1 had attacked the deceased with an aruval and that the deceased immediately collapsed at that place and was later beaten up by A2, A3 and A4.

46.The learned Additional Public Prosecutor pointed out the postmortem report in this connection, Ex-P14 issued by PW-12, Dr.Pandi, wherein, the injuries noted were consistent with the evidence of PW-1 to PW-4. The learned Additional Public Prosecutor argued that when the evidence of witnesses inspires confidence, there is no reason to suspect or doubt the correctness of their evidence. The learned Additional Public Prosecutor asserted that the accused had been correctly convicted by the trial Court. He therefore urged that the Court should confirm the conviction against A1 to A4 and dismiss the Criminal Appeals.



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47. We have carefully considered the arguments advanced and perused the material records.

48. All the accused are members of one family. A2, A3 and A4 are sons of A5. Her son-in-law is A1. Her younger sister is A6. The two daughters of A5 had come to their mother's house, since they had two new young infant children. On 14.03.2010 at around 09.00 pm, A5 is said to have poured the water with which she had washed the clothes of the infant children in the street in front of her house. PW-3 was residing in the opposite house. He objected to this. A quarrel arose between A5 and PW-3. The water further flowed to the house of PW-1, Alagammal, who is also a close neighbour. Incidentally, PW-3 is her nephew (கொழுந்தியான் மகன்). She put sand over the water and blocked it. This gave rise to further words being exchanged among A5, PW-3 and PW-1. At that time, A6, younger sister of A5 also joined in the quarrel. The quarrel escalated to such an extent that the ladies started to tear each other hair. At that time, the deceased Paunraj, the husband of PW-1 and PW-2, Malarkodi, the daughter of PW-1 came there and to separate the ladies.



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49.It is stated that at that time, A1 also came with an aruval and A2, A3 and A4 came there carrying sticks. It is the case of the prosecution that A3 held the hands of Paunraj and A1 cut him on his head. When he fell down, it is the further case of the prosecution that A2, A3 and A4 beat him with the sticks they had in their hands.

50.But none of the prosecution witnesses and more importantly, PW-16, Investigating Officer, Sulaiman had spoken about the injuries suffered by A3, Thangapandi and A6 Chittammal. They had also suffered cut injuries which according to DW-4, Dr.Ram Kumar, and DW-5, Dr.Priyadarshini and DW-7, Dr.Revathi had been caused by cuts with an aruval. A3 had been treated in Thirumangalam Government Hospital. A6 had been treated in the Women Prison Hospital at Trichy. Records in that connection had also been marked as documents, namely, Ex-D2 and Ex-D3.

51.It is also on record that A3 had given a complaint against PW-3 and PW-5 for causing injuries with an aruval on himself and on A6. In this connection, FIR in Cr.No.42 of 2010 had been registered in the very same



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Police Station by DW-6, R.Krishnamurthy, Special Sub Inspector of Police.

It is to be noted that the FIR in the instant case is FIR in Cr.No.39 of 2010.

Thus, at very close proximate time, two separate FIRs had been registered relating to the same occurrence. The prosecution had deliberately suppressed every detail about FIR in Cr.No.42 of 2010 in which the accused had suffered aruval cut injuries.

52.PW-16, Sulaiman, Inspector of Police, had actually also filed final report in FIR in Cr.No.42 of 2010. He belatedly denied the same in his evidence. It is clear that the prosecution had not presented the correct version before the Court. They consistently suppressed material evidence and failed to explain the injuries on the accused. This creates a very strong suspicion on the credibility of the evidence of PW-1, PW-2 and PW-3. They were also specifically asked about the injuries which had been suffered by A3 and A6 and they denied knowledge of the same. But the said accused were also present in the Police Station, when PW-1 was also present. A3 had been taken to Thirumangalam Government Hospital. He had received treatment at the hands of Doctor at that place. A6 had been treated at the hospital premises in Women Prison at Trichy. The Doctors,



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who actually gave treatment had also been examined as witnesses on the side of the accused. We find that no reason had been advanced by the prosecution for deliberate suppression of material facts. The prosecution had also failed to explain how A3 and A6 sustained injuries.

53.In *Lakshmi Singh and others vs. State of Bihar* reported in (1976) 4 SCC 394, the Hon'ble Supreme Court had extended the benefit of doubt, when the prosecution had failed to explain the injuries sustained by the accused. In the instant case, the prosecution had not only suppressed that fact, but PW-16 denied that fact, even though he, as the Investigating Officer, had filed final report in Cr.No.42 of 2010 which was registered on a complaint given by A3 about the injuries suffered by him and also by A6. He had alleged that they were cut with an aruval by PW-3 Alagu. As a matter of fact, DW-6, R.Krishnamurthy, Special Sub Inspector of Police at the very same Police Station had deposed that he had not only registered the FIR, but had also arrested PW-3 and PW-5.

54.In *Babu Ram and others vs. State of Punjab* reported in (2008) 3 SCC 709, the Hon'ble Supreme Court had held that non explanation of the



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injuries sustained by the accused at the time of occurrence or in the course of altercation is a very important circumstance from which the Court can draw adverse inference against the prosecution for suppressing the genesis and origin of the occurrence and for not presenting the true version.

55.In *Bhagwan Sahai and another vs. State of Rajasthan* reported in (2016) 13 SCC 171, the Hon'ble supreme Court had held that once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and failed to explain the injuries on the person of the accused, the probable course left open was to grant benefit of doubt to the appellant.

56.In *Nand Lal and others vs. State of Chattisgarh* reported in (2023) 10 SCC 470, the Hon'ble Supreme Court had relied upon the *Lakshmi Singh case [(1976) 4 SCC 394]* referred supra and held as follows:

*“26.We will first consider the issue with regard to nonexplanation of injuries sustained by Accused No. 11 Naresh Kumar. In the case of **Lakshmi Singh and Others. v. State of Bihar [(1976) 4 SCC 394]**, which case also arose out of a conviction Under Section 302 read with Section 149 of the Indian Penal Code, this Court had an occasion to consider the issue of*



non explanation of injuries sustained by the Accused. This Court, after referring to the earlier judgments on the issue, observed thus:

“12.....It seems to us that in a murder case, the non-explanation of the injuries sustained by the Accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the Accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the Accused it is rendered probable so as to throw doubt on the prosecution case.

.....

27.A similar view with regard to non-explanation of injuries has been taken by this Court in the cases of *State of Rajasthan v. Madho and Another* [1991 SCC (Crl) 1048], *State of M.P. v. Mishrilal (Dead) and Ors* [(2003) 9 SCC 426] and *Nagarathinam and Others. v. State (Represented by Inspector of Police)* [(2006) 9 SCC 57].

28.Undisputedly, in the present case, the injuries sustained by Accused No.11 Naresh Kumar cannot be considered to be minor or superficial. The witnesses are also interested witnesses, inasmuch as they are close relatives of the deceased. That there was previous enmity between the two families, on account of election of Sarpanch, has come on record. As observed by this Court in the case of *Ramashish Ray v. Jagdish Singh* [(2005) 10 SCC 498], previous enmity is a double-edged sword. On one hand, it can provide motive and on the other hand, **the possibility of false implication cannot be ruled out.**”

(Emphasis supplied)



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57.In the instant case, as repeatedly pointed out, the prosecution had completely suppressed the registration of FIR in Cr.No.42 of 2010 in the very same Police Station. They had suppressed the fact that a complaint was given by A3 that A3 and A6 had suffered aruval cut injuries. They had been treated at Thirumangalam Government Hospital and at Prison Hospital at Trichy, respectively. The prosecution had suppressed that DW-6 had arrested PW-3 and PW-5, the accused in that case. The prosecution had further suppressed that PW-16 had actually filed final report which had been taken cognizance by the competent Court and the trial was pending.

58.It is also to be noted that it is the evidence of PW-13, Alagarsamy, who was the Sub Inspector of Police, Thirumangalam Taluk Police Station and who had registered the FIR in Cr.No.39 of 2010 that the distance between the Police Station and the Judicial Magistrate Court is about 200 feet and could be reached in 10 minutes even by walking. The FIR in the instant case had been registered at 09.30 pm on 14.03.2010 and was received by the Judicial Magistrate only at 05.20 am on 15.03.2010. An explanation had been given by PW-14, Murugan, Head Constable that the Judicial Magistrate was taking rest. We are not inclined to accept that



particular reason, as it is totally unsubstantiated and not available in any other record. It was also not spoken to by PW-16, the Investigating Officer.

59. In ***Rajeevan and another vs. State of Kerala*** reported in (2003) 3

SCC 355, the Hon'ble Supreme Court had as follows:

*“15. This Court in **Marudanal Augusti v. State of Kerala [(1980) 4 SCC 425 : 1980 SCC (Cri) 985]** while deciding a case which involves a question of delayed dispatch of the FIR to the Magistrate, cautioned that such delay would throw serious doubt on the prosecution case, whereas in **Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372: 1994 SCC (Cri) 1551]** it was reminded by this Court that: (SCC p. 382, para 24)*

*“[T]he forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch which intention is implicit with the use of the word ‘forthwith’ occurring in Section 157 CrPC, which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. **It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.**”*

(Emphasis supplied)

60. It is thus seen that the Hon'ble Supreme Court had held that the delay would throw serious doubt on the case of the prosecution. In the instant case, the delay assumes significance owing to suppression of



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registration of FIR in Cr.No.42 of 2010.

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61.It is also to be noted that a Full Bench of this Court in ***Crl.O.P.No. 4587 of 2023 etc., batch (T.Balaji and another vs State represented by Inspector of Police, New Washhermpet Police Station, Chennai)***, when two separate FIRs had been registered on the same transaction and the accused had also suffered injuries, had examined the following questions of law:

“i. Whether the police is required to mandatorily follow the procedure prescribed in Police Standing Order 566 while investigating a case and case in counter?

.....

iv. What is the procedure to be adopted by the Court trying offences in cases where the prosecution files a report under Section 173(2) Cr.P.C in both the case and case in counter?”

62.The Full Bench had answered the aforementioned questions as follows:

“a. The police are required to mandatorily follow the procedure prescribed in PSO 566 while investigating a case and case in counter ie., rival versions of the same incident.

.....

d. Trial of a case and counter case shall be held simultaneously before the same Court.....”



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63.In the instant case, there has been complete violation of procedure by PW-16, Investigating Officer. As noted, there had been suppression of material facts which leads us to the only conclusion that the prosecution had deliberately suppressed the genesis and origin of the occurrence.

64.As held by the Hon'ble Supreme Court that when the prosecution has failed to explain injuries on the accused, the Court can draw adverse inference as against the prosecution for not presenting the true version. As held by the Hon'ble Supreme Court in *Lakshmi Singh and others [(1976) 4 SCC 394]* referred supra, *Babu Ram and others [(2008) 3 SCC 709]* referred supra, *Bhagwan Sahai and another [(2016) 13 SCC 171]* referred supra and *Nand Lal and others [(2023) 10 SCC 470]*, referred supra , the only course open is to grant the benefit of doubt to the accused.

65.In view of all the above reasons, since the prosecution had suppressed the genesis and origin of the occurrence and had failed to explain the injuries suffered by A3 and A6 at the time of occurrence and in view of the delay in forwarding the FIR to the Magistrate, we hold that the prosecution had failed to prove the case against the accused/appellants



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beyond reasonable doubt.

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66.In the result, Criminal Appeals are allowed. The conviction and sentence passed by the I Additional District and Sessions Judge, Madurai in S.C.No.423 of 2010 by judgment dated 07.12.2020 against the appellants herein/A1 to A4 for offence punishable under Section 302 IPC is set aside. The appellants/accused A1 to A4 are acquitted of all the charges. The surety bonds executed shall be discharged. The fine amounts paid shall be refunded.

[C.V.K., J.] & [J.S.N.P., J.]
22.10.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

cmr



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To

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- 1.The I Additional District and Sessions Judge, Madurai.
- 2.The Inspector of Police,
Thirumangalam Taluk Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.V.KARTHIKEYAN, J.

AND

J.SATHYA NARAYANA PRASAD. J.

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22.10.2024