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CrI.A.(MD)No.218 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.08.2024

PRONOUNCED ON : 10.09.2024

CORAM

THE HON'BLE MR.JUSTICE **C.V.KARTHIKEYAN**
AND
THE HON'BLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

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1.Pitchu Mani @ Pitchai Mani
2.Esakkimuthu

... Appellants

VS

State represented by
The Inspector of Police,
Munneerpallam Police Station,
Tirunelveli District.

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records pertaining to the judgment delivered by the learned I Additional District Judge, Tirunelveli in S.C.No.656 of 2016 vide judgment, dated 04.03.2020 and to set aside the same and consequently, acquit the appellants from all the charges mentioned in the said case.

For Appellants : Mr.R.Anand
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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JUDGMENT

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

The Criminal Appeal had been filed by Pitchu Mani @ Pitchai Mani A1 and Esakkimuthu, A2 against the judgment dated 04.03.2020, in S.C.No. 656 of 2016 passed by the I Additional District Sessions Court, Tirunelveli, by which judgment, A1 had been convicted for offence punishable under Section 302 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo two years simple imprisonment and A2 had been convicted for offences punishable under Section 302 r/w 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/- in default to undergo two years simple imprisonment.

2.The case of the prosecution is that PW-1, Moses Livingston, son of the deceased, Edison Suvisesha Muthu was a resident of South Omanallur Village in Tirunelveli District. The deceased knew Balasubramanian, father of A1. In July 2011, the deceased Edison Suvisesha Muthu was playing cards. This was informed to the jurisdictional Police by Balasubramanian.



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Aggrieved over the same, Edison Suvisesha Muthu had attacked Balasubramanian causing injuries in his left hand. This created an enmity between the family of Balasubramanian and the family of Edison Suvisesha Muthu. It is stated that A1 and A2 had conspired to cause the death of Edison Suvisesha Muthu.

3.It is further stated that Edison Suvisesha Muthu was in the habit of taking liquor. There were also several criminal cases registered against him. He was also detained under Tamil Nadu Act 14 of 1982. He was released after serving the entire period of detention just about two months prior to the date of the incident leading to his death.

4.It is the further case of the prosecution that on 14.04.2013 at around 12.00 noon, A2, Estakkimuthu had gone over to the house of Edison Suvisesha Muthu. His son and wife, PW-1 and PW-2 were also there. A2 called him to come with him to consume alcohol in a TASMACH Shop. Fearing the worst, PW-1 and his mother, Tmt.Shanthi, PW-2, went in a bicycle to Ponnankudi TASMACH shop. They saw Edison Suvisesha Muthu, who was drinking and called him out. At that time, A2, Esakkimuthu is said



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to have given a signal towards the north entrance of the TASMACH shop and bar and A1 Pitchu Mani @ Pitchai Mani came near Edison Suvishesha Muthu and attacked him indiscriminately including severing three fingers on his right hand. Edison Suvishesha Muthu collapsed to the ground dead. The prosecution had thus charged A1 for offence under Section 302 IPC and A2 for offence under Section 302 IPC r/w 34 IPC.

5.The learned Judicial Magistrate-V, Tirunelveli had committed the case, on filing of the final report, to the Court of Session. Documents under Section 207 of Cr.P.C., had been given free of cost to the accused. Thereafter, the Principal Sessions Court at Tirunelveli had made over the case for trial to the I Additional District and Sessions Court at Tirunelveli. Charges were accordingly framed. The accused denied the charges. The prosecution was then called upon to prove the charges in manner known to law. The prosecution examined PW-1 to PW-22 and also marked Ex-P1 to Ex-P24. They also produced material objects, MO-1 to MO-8.

6.On conclusion of recording evidence of the prosecution witnesses, the accused were questioned under Section 313 Cr.P.C. Their statements



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were recorded. The accused did not examine any witnesses or produce any document. Thereafter, by judgment dated 04.03.2020, the I Additional District Sessions Court, Tirunelveli, had convicted A1 for offence under Section 302 of IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo two years simple imprisonment and convicted A2 for offence under Section 302 IPC r/w 34 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo two years simple imprisonment. Questioning that conviction and sentence, the present Criminal Appeal has been filed.

7.Heard arguments advanced by Mr.R.Anand, learned Counsel appearing for the appellants and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent.

8.Mr.R.Anand, learned Counsel appearing for the appellants took the Court through the prosecution case and the evidence adduced on behalf of the prosecution. He stated that about two years prior to the incident, the deceased is alleged to have violently attacked the father of A1. He also



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stated that the deceased had several criminal cases registered against him.

He was also addicted to liquor. He also stated that the deceased, owing to the number of cases registered against him in and around Tirunelveli, had been detained as a goonda under Tamil Nadu Act 14 of 1982. He further pointed out that none of his family members had filed any Habeas Corpus Petition questioning the detention order.

9.The learned Counsel stated that it is the case of the prosecution that the aforementioned incident of violent attack against his father was the motive which A1 harboured to commit the murder of the deceased. According to the learned Counsel, on 14.04.2013, at around 12.00 noon, when A2, Esakki Muthu had gone to the house of the deceased, he was eating at that time. A2 called the deceased to accompany him to the TASMACH shop. PW-2, his wife, Tmt.Shanthi, protested and tried to prevent her husband from going along with A2, but however, he left with A2 in a motor cycle.

10.PW-1, Moses Livingston, son of the deceased and PW-2, Tmt.Shanthi, wife of the deceased, both suspecting the worst and fearing for



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the life of the deceased also went to Ponnankudi TASMACH shop in a bicycle. The learned Counsel stated that it is the case of the prosecution that when they entered the Ponnankudi TASMACH shop, they saw the deceased drinking liquor and they called him out. A2 then gave a signal by calling out the name of A1, who immediately came inside and indiscriminately cut the deceased including severing three fingers on the right hand. The learned Counsel further stated that PW-1 and PW-2, who are son and wife of the deceased, immediately left the place and went back to their house and got a complaint written down by Venita, niece of PW-2 and thereafter, PW-1 and PW-3, Backiaraj, had gone over to the Munneerpallam Police Station and lodged a complaint. The learned Counsel stated that the author of the complaint had not been examined by the respondent during the course of the investigation. He further pointed out that the FIR was registered at 02.30 pm, but had reached the Court only at 08.00 pm that night and stated that no explanation had been given for the delay.

11. The learned Counsel in the course of his arguments, after narrating the facts, stated that both PW-1 and PW-2, who are son and wife of the deceased, were interested witnesses and therefore argued that their



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statements cannot be relied on. He pointed out that the distance from their house to Ponnankudi TASMACH shop was nearly about 16 km and that therefore, it would be impossible to travel by bicycle that distance in half an hour time. He also pointed that they both contradicted each other in the layout of the TASMACH shop and the bar and the direction of the entrances to the TASMACH shop and therefore stated that the Court should not place reliance on their evidence. He further pointed out the conduct of PW-1 and PW-2 in not going to rescue the deceased who had fallen down, but leaving the place and going to their house past the Police Station. They did not lodge any complaint in the Police Station. He also stated that during the course of investigation, the three fingers of the deceased which had been cut during the attack had not been recovered by the respondent. He therefore assailed the evidence of PW-1 and PW-2 and stated that the Court should reject their evidence.

12.The learned Counsel further pointed out the medical evidence in this regard, particularly, the postmortem report which mentioned about 26 cut injuries and stated that the description did not tally with the overt acts alleged by PW-1 and PW-2.



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13.The learned Counsel also pointed out the delay in despatching the FIR which reached the Court only at 08.00 pm, nearly 5 ½ hours after it had been registered and stated that no explanation had been given for such delay.

14.The learned Counsel also pointed out the evidence of PW-4 and PW-5, who were also present in TASMACH shop consuming liquor and also that of PW-6, the Manager of TASMACH shop, who all stated that suddenly about four or five persons came and cut the deceased.

15.The learned Counsel again reiterated that the author of the complaint had not been examined by the respondent. He also pointed out the evidence of PW-1 that he saw A2 in the night of the same day in the police station and therefore, questioned the arrest itself. The learned Counsel further pointed out with respect to the motive, which was about the previous case wherein the deceased is alleged to have attacked the father of A1, and stated that the details relating to that particular case had not been produced during the course of trial. He also pointed out that the deceased had been detained under Tamil Nadu Act 14 of 1982, but PW-1 and PW-2



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did not take any step to file any Habeas Corpus Petition questioning such detention.

16.The learned Counsel also stated that on 21.09.2017, when PW-1, PW-2 and PW-3 were examined in chief and were cross examined, A1 was not present in Court and therefore, stated that A1 had not been identified by the said witnesses in Court and also pointed out that the respondent had also not conducted any test identification parade. The learned Counsel also pointed out the sketch of the scene of crime prepared in Ex-P21 and stated that both PW-1 and PW-2 had not given correct details about the direction of the entrances to the TASMAL shop and therefore, raised a doubt about the very identification of the scene of crime. He also pointed out the evidence of both PW-1 and PW-1, who had admitted that there are four other TASMAL shops in and around the area and they had not given proper explanation as to how they went only to Ponnankudi TASMAL shop and not to the other TASMAL shops searching for the deceased, when he was taken by A2 to a TASMAL shop. The learned Counsel also pointed out that PW-4, PW-5 and PW-6, who were also eye witnesses and who were available in the TASMAL shop had been declared hostile and had not



supported the case of the prosecution.

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17.Pointing out all these contradictions, the learned Counsel stated that on the basis of the evidence of PW-1 and PW-2, who can be categorised as interested witnesses, it would not be proper to uphold the conviction of A1 and A2.

18.In this connection, the learned Counsel also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2024 LiveLaw (SC) 244, in the case of Periyasamy vs State represented by Inspector of Police**, with specific reference to the observation about the scrutiny to be made regarding the evidence of interested witnesses and contradiction in the categorical statements made about the location and topography of the TASMAC shop.

19.The learned Counsel further placed reliance on the judgment of the Hon'ble Supreme Court reported in **2022 LiveLaw(SC) 856 (Mohamed Jabbar Ali and others vs State of Assam)**, wherein, the Hon'ble Supreme Court had observed as follows:



*“55.It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case of **Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381**, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.*

*56.In **Raju alias Balachandran v. State of Tamil Nadu, (2012) 12 SCC 701**, this Court observed:*

*“29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in **Dalip Singh [(1953) 2 SCC 36: AIR 1953 SC 364]** and pithily reiterated in **Sarwan Singh [(1976) 4 SCC 369]** in the following words : (**Sarwan Singh case [(1976) 4 SCC 369, p. 376, para 10]**)*

“10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration.”



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*57.Further delving on the same issue, it is noted that in the case of **Ganapathi v. State of Tamil Nadu, (2018) 5 SCC 549**, this Court held that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.”*

20.The learned Counsel therefore stated that the Criminal Appeal should be allowed and the conviction and sentence against A1 and A2 imposed by the trial Court should be set aside.

21.Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent strongly refuted the contentions of the learned Counsel for the appellants. The learned Additional Public Prosecutor stated that it is the consistent evidence of PW-1 and PW-2 that on 14.04.2013, when they were in the house along with the deceased, A2 had come there and had taken the deceased in his motorcycle asking him to come over to the TASMACH shop. The Additional Public Prosecutor stated that a careful reading of the entire deposition would show that there were no major contradictions in the evidence of PW-1 and PW-2 and also in the evidence of the Doctor, who conducted the postmortem. He further pointed out that



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there was not much delay in forwarding the FIR to the Court and stated that the Court was at a distance of 10 km from the police station. He pointed out that the incident is said to have occurred about 12.30 noon and by about 02.30 pm, the complaint had been registered and thereafter, the FIR had been forwarded to the Court.

22.The Additional Public Prosecutor also stated that merely because PW-1 and PW-2 are son and wife of the deceased, their testimony cannot be brushed aside. The deposition will have to be read in entirety. He also pointed out that the complaint has to be read as it is and there was no necessity to examine the scribe. He further pointed out that the incident happened in the year 2013 and PW-1 and PW-2 were examined a further four years later in the year 2017 and therefore, their recollection could be a little confused about the actual direction of the entrances of the TASMACH shop and directions in which they were facing. The fact that they were present cannot be denied and had not been dislodged by the defence. He further pointed out that the viscera report revealed that there was alcohol in the stomach of the deceased which itself showed that he had consumed liquor in the TASMACH shop. He was murdered there.



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23.He further pointed out that the evidence of PW-1 and PW-2 were recorded on 21.09.2017 and on that date, A1 was though absent, a petition was filed under Section 317 Cr.P.C., on behalf of A1 with specific concession to proceed with the case. The case was posted for examination of list witnesses, 1, 2 and 3 and the trial Judge had therefore proceeded to examine them as PW-1, PW-2 and PW-3 and to record their evidence. This was not objected by the Counsel for A1, who also proceeded to cross examine the witnesses and had not raised any question on the identity of A1. The original document filed under Section 317 Cr.P.C., is available in the records. It had also been recorded in the notes paper. There has been no dispute about the identity of A1 and it was not raised as an issue during the course of trial. The learned Additional Public Prosecutor therefore stated that the complicity of A1 and A2 in the offence cannot be denied or disputed.

24.The learned Additional Public Prosecutor stated that the prosecution had established the motive, had established that A2 had taken the deceased to a TASMACH shop and when PW-1 and PW-2 went over to the TASMACH shop, A2 called over A1 and A1 had indiscriminately cut the



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deceased who died on the spot. He pointed out that PW-1 was a young boy aged 17 years and PW-2 as his mother, had to necessarily protect him and therefore, it was only natural that they both left the TASMACH shop immediately and went over to get a complaint written and lodged before the police station. It was lodged by 02.30 pm without any delay. The learned Additional Public Prosecutor therefore stated that the role of both A1 and A2 had been spoken to by PW-1 and PW-2. He also pointed out the evidence of PW-3, PW-4 and PW-5, who though had been declared hostile had stated that the deceased was murdered in the TASMACH shop fixing the scene of crime and therefore stated that the apparent confusion in the minds of PW-1 and PW-2 about the direction of the entrances of the TASMACH shop and bar were irrelevant and of no consequence. The learned Additional Public Prosecutor therefore stated that the trial Court had correctly placed reliance on the said evidence and had convicted A1 and A2 of the offences for which they were charged.

25.The learned Additional Public Prosecutor placed reliance on the judgment of the Hon'ble Supreme Court reported in **(2012) 7 SCC 723** (*Thotimanohar vs State of Andhra Pradesh*), wherein, the Hon'ble



Supreme Court had held as follows:

“30. The second submission of the learned counsel for the appellant is that all the witnesses, being relatives, are interested witnesses. The occurrence in part took place inside the house and the rest of it slightly outside the premises of the deceased. Under these circumstances, the family members and the close relatives are bound to be the natural witnesses. They intervened and sustained injuries. Their sustaining of injuries has got support from the ocular evidence as well as the medical evidence. The same has been dislodged and if we allow ourselves to say so, not even a fragile attempt has been made to dislodge the same. By no stretch of imagination can it be said that they are chance witnesses. In the obtaining factual matrix, they are the most natural witnesses.

*31. In this context, we may refer with profit to the decision of this Court in **Dalip Singh v. State of Punjab [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465]**, wherein Vivian Bose, J., speaking for the Court, observed as follows : (AIR p. 366, para 25)*

*“25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in **Rameshwar v. State of Rajasthan [1951 SCC 1213 : AIR 1952 SC 54 : 1952 Cri LJ 547 : 1952 SCR 377]**.”*

32. In the said case, it was further observed that : (Dalip Singh case [(1953) 2 SCC 36 : AIR 1953 SC



364 : 1953 Cri LJ 1465] , AIR p. 366, para 26)

“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 foundation is often a sure guarantee of truth.”

33. In Masalti v. State of U.P. [AIR 1965 SC 202 : (1965) 1 Cri LJ 226] it has been ruled that normally close relatives of the deceased would not be considered to be interested witnesses who would also mention the names of the other persons as responsible for causing injuries to the deceased.

34. In Hari Obula Reddy v. State of A.P. [(1981) 3 SCC 675 : 1981 SCC (Cri) 795 : AIR 1981 SC 82] (SCC pp. 683-84, para 13) a three-Judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It cannot be laid down as

“an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by



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itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

35. In *Kartik Malhar v. State of Bihar* [(1996) 1 SCC 614 : 1996 SCC (Cri) 188] (SCC p. 621, para 15) it has been opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term “interested” postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

36. In *Pulicherla Nagaraju v. State of A.P.* [(2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500 : AIR 2006 SC 3010], while dealing with the liability of interested witnesses who are relatives, a two-Judge Bench observed that : (SCC p. 453, para 16)

“16. ... it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible.”

The said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, then it can be acted upon.

“16. ... If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted.” (Pulicherla case [(2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500 : AIR 2006 SC 3010], SCC p. 453, para 16)

37. Tested on the anvil and touchstone of the aforesaid principles, we find that the evidence of the injured



witnesses who are close relatives of the deceased have really not embellished or exaggerated the case of the prosecution. They are the most natural witnesses and there is nothing on record to doubt their presence at the place of occurrence. By no stretch of imagination can it be stated that the presence of the said witnesses at the scene of the crime and at the time of occurrence was improbable. Their version is consistent and nothing has been suggested to bring any kind of inherent improbabilities in their testimonies.

38. *The learned counsel for the appellant has endeavoured hard to highlight certain discrepancies pertaining to time, situation of the land, number of persons, etc. but in our considered opinion, they are absolutely minor in nature. Minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution. Giving undue importance to them would amount to adopting a hypertechnical approach. The Court, while appreciating the evidence, should not attach much significance to minor discrepancies, for the discrepancies which do not shake the basic version of the prosecution case are to be ignored. This has been so held in **State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48]** , **Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696]** , **Rammi v. State of M.P. [(1999) 8 SCC 649 : 2000 SCC (Cri) 26 : AIR 1999 SC 3544]** , **State of H.P. v. Lekh Raj [(2000) 1 SCC 247 : 2000 SCC (Cri) 147]** , **Laxman Singh v. Poonam Singh [(2004) 10 SCC 94 : 2004 SCC (Cri) 1514]** and **Dashrath Singh v. State of U.P. [(2004) 7 SCC 408 : 2004 SCC (Cri) 1932]***

39. *No evidence can ever be perfect for man is not perfect and man lives in an imperfect world. Thus, the duty of the court is to see with the vision of prudence and acceptability of the deposition regard being had to*



*the substratum of the prosecution story. In this context, we may reproduce a passage from the decision of this Court in **State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407]**, wherein H.R. Khanna, J., speaking for the Court, observed thus : (SCC pp. 285-86, para 23)*

*“23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures.”*

40. In view of our aforesaid analysis, we are unable to accept the submission of the learned counsel for the appellant that the evidence of the eyewitnesses should be rejected solely on the ground that they are close relatives and interested witnesses.”

26.The learned Additional Public Prosecutor also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2023 SCC OnLine SC 355 (Balu Sudam Khalde and another vs State of Maharashtra)** with



specific reference to paragraph No.25, which is as follows:

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“APPRECIATION OF ORAL EVIDENCE

25. 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 shaken as to render it unworthy of belief.

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

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

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical



approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

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

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

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

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

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

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, 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 sub-conscious mind of the witness sometimes so operates on 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 : (1983) 3 SCC 217 : AIR 1983 SC 753) Leela Ram v. State of Haryana, (1999) 9 SCC 525 : AIR 1999 SC 3717 and Tahsildar Singh v. State of UP (AIR 1959 SC 1012)]

27. Pointing out the ratio laid down therein, the learned Additional Public Prosecutor argued that the evidence of PW-1 and PW-2 cannot and should not be discarded as the same is natural and has a ring of truth. He argued that the conviction of the accused was proper and that therefore the



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appeal should be dismissed.

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

29.The point to be determined is whether the conviction and sentence imposed against A1 and A2 by the trial Court should be set aside or modified or upheld?

30.It is the case of the prosecution that the deceased Edison Suvisesha Muthu, father of PW-1 and husband of PW-2, was a person addicted to liquor and had many criminal cases registered against him in police stations in and around Tirunelveli. On an earlier occasion about two years prior to 14.04.2013, he had, owing to a quarrel while playing cards with the father of A1 had cut the father of A1 in his hands and had also been taken into custody. He had also been detained as a goonda under Tamil Nadu Act 14 of 1982. It is on record that PW-1 and PW-2 had not taken any steps to file any Habeas Corpus Petition seeking to set aside the detention order. They were of the opinion that he was safer inside the jail. His detention period



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expired just about two months prior to 14.04.2013.

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31.On 14.04.2013, when PW-1, PW-2 and the deceased were in their house and the deceased had just about eaten his food, A2 is said to have come over to the house and called the deceased to come with him to the TASMAC shop to consume liquor. Even though PW-2 protested, the deceased went along with A2 in a motor cycle brought by A2. It is the further case of the prosecution that PW-1 and PW-2 also went to the TASMAC shop fearing for the life of the deceased. They went in a bicycle.

32.During cross examination of PW-1, he stated that the distance between his village and the new bus stand would be 8 km. He also stated that from the new bus stand till Ponnankudi TASMAC shop, there would a further distance of 7, 8 km. Placing reliance on this evidence, it had been very strongly argued by the learned Counsel for the accused that PW-1 and PW-2 could not have covered that distance by bicycle within a period of half an hour.



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33.The trial Judge brushed aside that particular argument by pointing out that on the date of the incident, PW-1 was a young boy of 17 years and that both PW-1 and PW-2 were anxious about the safety of the deceased, who was their father/husband and that therefore there was every possibility of them reaching the TASMACH shop within the said time period.

34.One crucial aspect is the further question put to PW-1 that on the way back, they would have crossed Munneerpallam Police Station. He however stated that there was no necessity to go through that particular route. It is thus also possible that only the distance had been put which had been affirmed but not the actual pathway from the house of PW-1 and PW-2 to Ponnankudi TASMACH shop.

35.It is the case of the prosecution that when PW-1 and PW-2 reached the TASMACH shop, they saw the deceased sitting in a table along with A2, drinking liquor. At that time, A2 called out the name of A1, who was standing outside the other door and on that signal, A1 entered into TASMACH shop and in front of PW-1 and PW-2, indiscriminately cut the deceased, who collapsed at that very place.



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36.It is the case of the accused that PW-4 and PW-5 who were customers in the TASMACH shop and PW-6, who was the Manager had, in their evidence, stated that four or five persons came and attacked the deceased. But the evidence of both PW-1 and PW-2 is very clear. They heard the name of A1 being shouted by A2 and A1 coming and attacking the deceased. We are of the firm opinion that the trial Court had correctly treated PW-4, PW-5 and PW-6 as hostile witnesses. One fact which emerges from their evidence is that the deceased was murdered only in that TASMACH shop and nowhere else.

37. Specific questions had been put to PW-1 and PW-2 about the location of the doorways to the TASMACH shop and bar and whether they were facing north or west. It must be pointed out that PW-1 and PW-2 had gone over to that particular TASMACH shop witnessed the murder of the deceased and immediately came out. This was on 14.04.2013. They were examined in Court on 21.09.2017, nearly after four years and five months. Naturally, minute discrepancies about the direction in which the door way was situated and whether it was north or south or west would not be a detail which would have remained in their minds. They would have only known



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about the attack being carried on against the deceased and as soon as that had happened, PW-1, who was a young boy of 17 years was taken away by PW-2. That was only natural as PW-2 would have feared for the life PW-1 also. Her young son was aged just 17 years. Therefore, we would not place much credence to the minute discrepancies about which direction the doorways were situated in the TASMAC shop. It is not the case of the accused that both PW-1 and PW-2 were and are frequent visitors to that TASMAC shop prior to and even after that particular incident.

38. There is one more factor which had been pointed out, namely, that three fingers had been cut and they were not recovered by the Investigating Officer. We really wonder as to how this could shake the evidence of PW-1 and PW-2. They had witnessed a series of cuts being inflicted on the deceased and to the extent possible, they had narrated the same. In effect, their father/husband had died on the spot. They rushed back to their house and got a complaint written down and lodged it with the help of PW-3 in the police station. This is the maximum extent which they could do in the circumstances. The incident occurred in a TASMAC shop where customers were drinking and naturally they had to leave that place hurriedly. PW-3,



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Backiaraj, who had also signed in the complaint spoke affirmatively about the complaint being written down and being lodged in the police station.

39.PW-18, Ramakrishnan was the Sub Inspector of Police at Munneerpallam Police Station on 14.04.2013. In his evidence, he stated that at 02.30 in the afternoon, PW-1 had come to the police station and had lodged the complaint and he had registered the FIR in Cr.No.168 of 2013 under Section 302, 120B r/w 34 IPC. He thereafter, sent the FIR by express tapal through police Constable Kumar, through passport, Ex-P10 to the Judicial Magistrate-V, Tirunelveli and also sent copies to his higher officials. Since the Inspector of Police was not available, he had forwarded a copy of the FIR to the in-charge Inspector of Police at Cheranmahadevi through a woman Constable. The FIR had been marked as Ex-P16. He denied the suggestion that the complainant/PW-1 had singed in blank papers and thereafter, the complaint was written down by a higher official. He denied that the FIR was not registered at the time mentioned in Ex-P16.

40.The investigation was taken over by PW-20, Lakshmanan, who was the Circle Inspector at Cheranmahadevi Police Station on 14.04.2013



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and in-charge of Munneerpallam Police Station as Inspector of Police. He had received a copy of the FIR through woman Police Constable of Munneerpallam Police Station. At 04.30 pm, he investigated the scene of crime in the presence of witnesses, Kerson, PW-7 (declared hostile), but whose signatures in the observation mahazer and athatchi were marked as Ex-P2 and Ex-P3 and witness Kovil Pitchi, PW-8 (declared hostile) whose signatures in the observation mahazar and athatchi were marked Ex-P4 and Ex-P5. PW-20 further stated that at 05.30 pm., from the TASMACH shop, he recovered a pair of slippers (MO-4) and blood stained cement piece (MO-5) and cement piece without blood (MO-6), blood stained stool (MO-8) and blood stained small box (MO-7). He further identified the black and white checked blood stained cotton lungi (MO-3), gray colour t-shirt (MO-2) worn by the deceased which were seized under Form-91 and forwarded to the Court. These would show that the incident did actually happen only at the said TASMACH shop.

41.PW-20 then conducted inquest over the dead body of the deceased in front of panchayatars. The inquest report was marked as Ex-P23. Thereafter, he recorded the statements of Moses Livingston (PW-1),



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Tmt.Shanthi (PW-2), Backiaraj (PW-3), Sathiyaraj (PW-4) (declared hostile), Selva Michael Raj (PW-5) (declared hostile), Chellakannu (PW-6) (declared hostile), Kerson (PW-7) (declared hostile), Kovil Pitchai (PW-8) (declared hostile), Grade-I Police Constable, Kumar (PW-14) and Sub Inspector of Police, Ramakrishnan (PW-18). He then made arrangements through PW-15, Baskar, Police Constable to send the body for postmortem through passport, Ex-P11 and covering letter, Ex-P14.

42.The Doctor, who conducted the postmortem, Dr.Selvamurugan, was examined as PW-17. He stated that on 15.04.2013, he conducted the postmortem on and from 10.45 am of a 47 years old, whose name was given as Edison Suvisesha Muthu. At that time, rigor mortis had set in. He identified the following injuries:

“1)A horizontal gapping heavy cut injury of size 12 x 2 x 7cm seen over front and right side of upper part of neck. It cuts underlying soft tissues, larynx, trachea, vessels and nerves.

2)A horizontal gapping heavy cut injury of size 4 x 2 x 3cm seen in right side of neck. It lies 2cms below injury no.1.

3)A cut injury of size 2 x 1 x 1cm seen in left cheek.

4)An oblique gapping heavy cut injury of size 6 x 1cm x bone deep in left temporal region.

5)An oblique cut injury of size 4 x 1 x 0.5cm



seen in front of left ear.

6)An oblique gapping heavy cut injury of size 14 x 4 x 6cm seen in left cheek and left side of chin. It cuts underlying left ear lobule, soft tissues and left side of mandible.

7)A vertical gapping heavy cut injury of size 4 x 1cm x bone deep in left side of occipital region.

8)A vertical gapping heavy cut injury of size 11 x 2 x 3cm lies 5 cm behind left ear. It cuts underlying soft tissues and left side of mandible.

9)A horizontal gapping heavy cut injury of size 12 x 4.x 8cm in upper part of back of neck. It cuts underlying soft tissues vessels, nerves, cervical vertebra and spinal cord.

10)An oblique gapping cut injury of size 3x1x1cm in top of right shoulder.

11)An oblique gapping heavy cut injury of size 8 x 3 x 5cm seen in inner aspect of right upper arm. It cuts underlying soft tissues.

12)An oblique gapping cut injury of size 4x2x1cm seen over back of middle of right forearm.

13)A horizontal gapping heavy cut injury of size 8 x 2 x 3cm in back of right wrist. It cuts underlying soft tissues, tendons and right radius bone.

14)A horizontal gapping heavy cut injury of size 4 x 1 x 2cm in inner aspect of right wrist.

15)An oblique gapping heavy cut injury of size 10x2x4cm seen in palmar aspect of right hand. It cuts soft tissues of base of thumb, vessels, nerves and tandoms and meta carpol bone.

16)A horizontal gapping heavy cut injury of size 17x2x5cm extending from right palm to inner aspect of right wrist. It cuts underlying soft tissues, vessels, nerves and meta carpol bones.

17)An oblique gapping heavy cut injury over tips of 234 and 5 fingers of right hand and separates the lower part of fingers. Separated part matches with stump by its colour, contour, complexion and anatomical continuity.

18)An oblique gapping



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heavy cut injury of size 15x3x6cm seen in back of left upper arm. It cuts underlying soft tissues.

19)An oblique cut injury of size 15x7x2cm seen in back of left elbow.

20)A horizontal gapping heavy cut injury of size 15x2x6cm seen in outer aspect and back of left wrist. It cuts underlying soft tissues, vessels, nerves, tendons and carpal bones of left wrist.

21)A vertical cut injury of size 14x1x1cm seen in palmar aspect of left hand.

22)A horizontal gapping heavy cut injury of size 25 x 3 x 10cm seen in back of left thigh. It cuts underlying soft tissues, vessels, nerves and left femur.

23)A horizontal gapping heavy cut injury of size 24x3x10 cm seen in back of upper part of left leg. It cuts underlying soft tissues, vessels, nerves and left leg bones.

24)A horizontal gapping heavy cut injury of size 14x3x6 cm seen in back of middle of right thigh. It cut underlying soft tissues, vessels and nerves.

25)A horizontal gapping heavy cut injury of size 18x3x6 cm lies 2cm below injury no.24. It cuts underlying soft tissues. Vessels and nerves.

26)A horizontal cut injury of size 5x1x1 cm lies 4cm below injury no.25.”

43.The learned Counsel appearing for the appellants pointed out the injuries as listed which are 26 in number and then pointed out the evidence of PW-1 and PW-2 relating to the overt acts of A1 while inflicting injuries against the deceased. PW-1 in his evidence had stated that the right hand fingers had been cut and thereafter, the deceased fell down and A1 had repeatedly cut on his two legs and then held the head and cut the neck.



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PW-2 in her evidence also stated that the fingers in the right hand had been cut and that her husband fell down and his legs were also cut and also that A1 cut indiscriminately on the neck. She then stated that since PW-1 was a young boy, she took him and went away from that place. The learned Counsel had stated that both PW-1 and PW-2 had not mentioned that there were 26 cuts inflicted on the body of deceased and pointed out the injuries noted by the Doctor, PW-17 which had been extracted above.

44.A perusal of the injuries as noted by the Doctor also shows that there were cut injuries on the neck, left cheek, left ear, left temporal bone, mandible, back of neck, top of right shoulder, middle of right fore arm, right wrist, separation of fingers, left upper arm, left femur, left leg bones and middle of right thigh. It is thus seen that on a brought aspect, injuries have been inflicted on the neck portion, on the right arm and on the legs which is consistent with what PW-1 and PW-2 had seen and stated. They could not have possibly counted the number of cut injuries. They can only see the first injury inflicted on the right arm severing the fingers and the deceased falling and repeated cuts inflicted on the legs and thereafter, repeated cuts inflicted on the neck portion. As a matter of fact, PW-17, Dr.Selva



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Murugan, also stated with respect to the fingers which were allegedly missing as follows:

“separate part matches with stump by its colour, contour, complexion and anatomical continuity”.

45.This therefore establishes that the cut fingers were actually recovered and matched with stumps found in the right hand finger parts of the deceased. We would therefore unhesitatingly hold that the statements made by PW-1 and PW-2 relating to the nature of the injuries have actually been confirmed by the postmortem certificate, Ex-P15 which was the result of a detailed and leisurely examination of a dead body.

46.During his cross examination, PW-20, Lakshmanan had further stated that there was enmity between the deceased and the father of A1, since the deceased had attacked and caused cut injuries to the father of A1 two years before. He further stated that during his enquiry, PW-1 and PW-2 had stated that they had gone by bicycle to call the deceased back from the TASMACH shop. He denied the suggestion that information was first received in the police station about a dead person in the TASMACH shop and



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thereafter, they had sent information to PW-1 and PW-2 and only then they arrived. He also denied that PW-1 and PW-2 were not eye witnesses. He also affirmed that PW-1 and PW-2 entered the TASMACH shop bar through the south side.

47.PW-21, Muthu Subramaniam,Inspector of Police, Munneerpallam Police Station, who continued with the investigation on 15.04.2013, had once again examined the witnesses whose statements had already been recorded, and confirmed their statements. Then, at around 04.00 am on 15.04.2013, he arrested A2 in the presence of witnesses, Durai Raj (not examined) and Duraipandi (PW-18). He also recorded the confession statement of A2 and recovered the motor cycle in which he had taken the deceased from the house of the deceased to the Ponnankudi TASMACH shop. The motorcycle was seized under mahazar Ex-P13. He then received information on 18.04.2013 that A1 had surrendered before the learned Judicial Magistrate, Ambasamudram. He then filed an application seeking police custody of A1 and took him into police custody from 25.04.2013 evening 04.00 pm. On 26.04.2013, he recorded the confession statement of A1 in the presence of Mohan, Village Administrative Officer,



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Munneerpallam (PW-9) and Perumal (PW-10) (declared hostile). He then recovered the aruval used by A1 (MO-1). He then recorded the statements of Dr.Selvamurugan (PW-17), who had conducted the postmortem. He also recorded the statement of witnesses, Mayandi (PW-11) (declared hostile) and Aathavan (PW-12) (declared hostile). He then handed over the investigation to PW-22, Charles Kalaimani, who had taken charge as Inspector of Police, Munneerpallam Police Station.

48.During cross examination, PW-21, Muthu Subramaniam, denied that on 14.04.2013 itself, A2 had been taken into custody. He denied that A1 and A2 had been wrongly charged with commission of offences. He denied that there was a delay in forwarding the FIR to the jurisdictional Magistrate Court. He denied the suggestion that material objects were not recovered in the manner as he stated.

49.The investigation was then continued by PW-22, Charles Kalaimani, Inspector of Police, Munneerpallam Police Station. He took up the further investigation and forwarded the material objects for forensic examination under requisition letter, Ex-P24. He then recorded the



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statement of Police Constable, Meenakshi Murugan (not examined). He then received the report from the Forensic Laboratory and also recorded the statement of Tmt.Minitha, (not examined) Junior Scientific Officer, Regional Forensic Laboratory, Tirunelveli. He also recorded the statement of Balamurugan (PW-16), Forensic Scientific Expert, who had identified Ex-P12 and Ex-P13 relating to the blood stained material objects and viscera of the deceased.

50.After completing investigation, PW-22, Charles Kalaimani filed final report charging the accused with commission of offences under Sections 302 and 120B IPC r/w 34 IPC.

51.During cross examination, he denied the suggestion that the deceased was murdered by unidentified persons. He denied the suggestion that the accused had no connection with the case.

52.The above narration of flow of events would show in detail the sequence of events from the time when the deceased had cut the father of A1 owing to a quarrel while playing cards and later, being detained as a



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goonda under the Tamil Nadu Act 14 of 1982 and coming out of the detention and within two months thereafter, being enticed from his house by A2 and going to Ponnankudi TASMAL shop with A2 and drinking liquor there and PW-1 and PW-2 out of extreme anxiety rushing to that place in a bicycle and witnessing A1 indiscriminately cutting the deceased initially on the right hand cutting away his fingers and when he fell down, indiscriminately on his legs and also on his neck by holding his head causing instant death. The subsequent investigation had established that the evidence of PW-1 and PW-2 cannot be discarded as being stated by interested witnesses, as contended by the learned Counsel for the appellants.

53.The learned Counsel for the appellants had placed reliance on the judgment of the Hon'ble Supreme Court reported in **2022 LiveLaw(SC) 856 (Mohamed Jabbar Ali and others vs State of Assam)**, wherein, on examining the evidence of that particular case, the Supreme Court had come to a conclusion that there are discrepancies between the statements of the witnesses and materials and therefore, had acquitted the appellants therein of all charges. Similarly, the learned Counsel for the appellants had also placed reliance on the judgment of Hon'ble Supreme Court reported in **2024**



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LiveLaw (SC) 244, in the case of Periyasamy vs State represented by

Inspector of Police, where again the Hon'ble Supreme Court had examined the evidence adduced in that particular case and had held that there were cumulative lapses affecting the over all sanctity of the prosecution case.

54.In the instant case, there are no material lapses whatsoever in the evidence of PW-1 and PW-2. They had reached the TASMACH shop. They had heard A2 calling out A1 and asking A1 to finish off the deceased. The deceased was in the TASMACH shop, drinking liquor. He had been taken to the TASMACH shop by A2. A1 had a previous motive, since his father's hands had been cut by the deceased earlier. A1 came and the first cut was on the right hand, cutting off the fingers. The deceased then fell down. A1 then cut the deceased indiscriminately on the legs and thereafter held the head and cut him in the neck. These facts have been broadly stated by both PW-1 and PW-2. The nature of injuries have been confirmed by the Dr.Selvamurugan, PW-17, who conducted the postmortem, who had listed out 26 separate injuries, broadly on the neck portion, on the hand and on the legs, in conformity with the evidence of PW-1 and PW-2.



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55.The fact that PW-1 and PW-2 ran away from the TASMACH shop is only natural. PW-2 stated that her son, PW-1 was a young boy (சிறுவன்) and therefore, she had a responsibility to protect him, as she did not know the further intention of A1 or A2. Thereafter, they had gone over to get the complaint being written by her niece. This has been confirmed by PW-3, Backiaraj. The fact that the author of the complaint had not been examined is of no consequence, since she had been identified. It would have been a different issue, if the author of the complaint had not at all been identified and some stranger had written the complaint and the complaint was produced before the police station. Here, a family member had written the complaint and it was presented before the police station as early as possible. The FIR had been lodged at 02.30 pm. The incident had happened at 12.30 pm. There could be a delay in forwarding the FIR to the Court, but again that is of no consequence in this case, since the distance between the Court and the police station is about 10 km and the delay is only natural, since the Inspector of Police, PW-21, was on leave, the copies of the FIR had to be despatched to PW-20, the Inspector of Police, Cheranmahadevi Police Station, who was in-charge of Munneerpallam Police Station on that date. It must be kept in mind that since the Inspector of Police at Munneerpallam



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Police Station was on leave on 14.04.2013, further instructions will have to be obtained only from PW-20, who was Inspector of Police, Cheranmahadevi Police Station. It is on evidence that PW-20 visited the scene of crime by 04.30 pm and commenced investigation. The investigation had also proceeded in the correct course.

56.We hold that the evidence of PW-4, PW-5 and PW-6, who stated that four or five persons came and attacked the deceased is not a correct statement. They had been declared hostile. They would naturally be in fear of A1 after directly witnessing the extreme hostility with which he had attacked the deceased even after the deceased had fallen down. The alleged contradictions in the evidence of PW-1 and PW-2 about the direction of the entrance and doorways of the TASMACH shop and bar is of no consequence, since the body had been recovered from inside the TASMACH shop. They had clearly stated the manner in which the attack took place, the manner in which he fell down and the injuries inflicted on him. There is complete consistency in the evidence on that aspect.



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57.The allegation that PW-1 and PW-2 could not have gone by bicycle covering a distance of 16 km within half an hour time again had been correctly rejected by the learned trial Judge and is also rejected by us, since the actual route and pathway and course of pathway had not been given and even the suggestion that on the way back they crossed the Police Station had been denied by PW-1, who stated that there was an alternate way to reach his place. Therefore, the available record on those aspects do not confirm the theory of the accused that the distance is 16 km. It could be less and PW-1 a young boy of aged 17 years and in an agitated state of mind to protect his father could have cycled at quite a speed to reach Ponnankudi TASMACH shop.

58.The further arguments advanced by the learned Counsel for the appellants that on the date of examination of PW-1, PW-2 and PW-3, A1 was absent in Court cannot be given any consideration at all, since the Counsel for A1 had filed an application under Section 317 Cr.P.C., and had very specifically stated that recording of evidence can continue. Original records are available. We hold that it was a deliberate ploy on the part of A1 to deliberately absent himself on the day when summons had been



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issued to the list witness 1 to 3, namely, PW-1, PW-2 and PW-3. As a matter of fact, extensive cross examination had been conducted on all the three witnesses and arguments have also been advanced on the basis of such cross examination. The identity of A1 was never raised as an issue and is not at all in doubt. That ground had never been raised before the trial Court.

59. Section 317(1) Cr.P.C., is as follows:

“317.Provision for inquiries and trial being held in the absence of accused in certain cases.

(1)At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(Emphasis supplied)

60. The Court can proceed with the examination even in the absence of the accused and the only reason given in the application was that A1 was ill. Since witnesses were present and the Counsel had not raised any objection for examining them, we hold that the trial Court had correctly



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proceeded with the examination of the witnesses. We do not find any infirmity in such procedure.

61.It is thus clear that Edison Suvisesha Muthu had suffered a homicidal death on 14.04.2013 and that the evidence and materials on record point at the involvement of A1 and A2 in such offence. The case does not fall under any of the exception to Section 300 IPC. No mitigating circumstances have been pleaded.

62.In view of all the above reasons, we hold that the well considered judgment of the trial Court cannot be disturbed and we uphold the conviction of A1 and A2 and the sentence imposed by the trial Court. In effect, the Criminal Appeal stands dismissed. The trial Court is directed to secure the appellants/accused and commit them to the prison to undergo the remaining period of sentence. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

[C.V.K., J.] & [J.S.N.P., J.]
10.09.2024

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

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To

- 1.The I Additional District Judge, Tirunelveli.
- 2.The Superintendent, Central Prison, Palayamkottai.
- 3.The Inspector of Police,
Munneerpallam Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.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.

cmr

Judgment made in
Crl.A(MD)No.218 of 2020

10.09.2024