



Crl.A.(MD)Nos.139 of 2020 etc. batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
12.03.2024	28.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**Crl.A.(MD)Nos.139, 148, 187, 188, 194, 224, 240, 250, 255 & 265 of 2020 &
74 of 2021**

Veerabathran	.. Appellant in Crl.A.(MD)No.139 of 2020 / A13
K.Selvaraj	.. Appellant in Crl.A.(MD)No.148 of 2020 / A16
Ramayee	.. Appellant in Crl.A.(MD)No.187 of 2020 / A12
Rathi	.. Appellant in Crl.A.(MD)No.188 of 2020 / A11
B.Prabhu	.. Appellant in Crl.A.(MD)No.194 of 2020 / A9
M.Pandivel	
M.Veerabathran	
C.Pazhaniyandi	
R.Muthupandi	.. Appellants in Crl.A.(MD)No.224 of 2020 / A2, A3, A7 and A10
Muniyandi, S/o.Palaniyandi	.. Appellant in Crl.A.(MD)No.240 of 2020 / A6
Muniyandi, S/o.Kuruvi @ Veerapathiran	.. Appellant in Crl.A.(MD)No.250 of 2020 / A4
Azhagu Pandi	.. Appellant in Crl.A.(MD)No.255 of 2020 / A5



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Poojaimani
Rajangam

.. Appellants in Crl.A.(MD)No.265 of 2020 /
A1 & A8

Michael @ Muniyandichamy

.. Appellant in Crl.A.(MD)No.74 of 2021 / A14

vs.

State through:-

The Inspector of Police,
Thirupachethi Police Station,
Sivagangai District.
(Crime No.124 / 2010)

... Respondent in all the Crl.As. / Complainant

Prayer in all the Crl.As. : Criminal Appeals filed under Section 374 of Cr.P.C., to call for the records relating to the judgment in S.C.No.105 of 2012, dated 27.02.2020, on the file of the Principal Sessions Court, Sivagangai, set aside the same and allow the Criminal Appeals and acquit the appellants/accused.

For Appellant

in Crl.A.(MD)Nos.139 & 148 of 2020 : Mr.R.Venkatesan

For Appellants

in Crl.A.(MD)Nos.187, 250 &
265 of 2020 and 74 of 2021 &

For Appellants 2 and 3

in Crl.A.(MD)No.224 of 2020

: Mr.Abudukumar Rajarathinam
Senior Counsel
for Mr.R.Udhayakumar

For Appellant

in Crl.A.(MD)No.188 of 2020 &

For 1st Appellant

in Crl.A.(MD)No.224 of 2020

: Mr.P.Andiraj



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For 4th Appellant
in Crl.A.(MD)No.224 of 2020

: Mr.R.Gandhi
Senior Counsel
for Mr.R.Udhayakumar

For Appellant
in Crl.A.(MD)No.194 of 2020

: Mr.S.Ramsundarvijayraj
for M/s.Veera Associates

For Appellant
in Crl.A.(MD)No.240 of 2020

: Mr.A.K.Samidurai
for Mr.M.Dinesh Hari

For Appellant
in Crl.A.(MD)No.255 of 2020

: Mr.N.Anantha Padmanabhan
Senior Counsel
for Mr.R.Srinivasan

For Respondent in all the Crl.As.

: Mr.S.Ravi
Additional Public Prosecutor

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

and

C.KUMARAPPAN, J.

These batch of Criminal Appeals are by Accused Nos.1 to 14 and 16 in S.C.
105 of 2012, on the file of the Principal Sessions Court, Sivagangai.



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2. The case of the prosecution is that, due to previous enmity, on 30.08.2010, at about 02.30 p.m., an armed gang consists of 18 members assembled unlawfully and in furtherance of common object, caused death of one Allimuthu. They also caused grievous injuries to Chandrakumar [P.W.1] and Sureshkumar [P.W.2] and simple injuries to Pandi [P.W.3] and Mathi @ Mathiyazhagan [P.W.4].

3. At the time of framing charges, the first accused Sekar was absconding. Hence, the case against him was split up. Later, he died and the case against him got abated. Pending trial, yet another accused by name, Karupaiah (A17) died. The trial Court, in the course of trial, on completion of examining the witnesses on either side, rearranged the ranks of the accused and also altered the charges as below:-

A-1, A-4, A-7, A-8, A-10, A-11, A-13, A-14, A-15 and A-16	Section 148, 324 r/w 149 I.P.C. (2 counts), 326 r/w 149 I.P.C. (2 counts) and Section 302 r/w 149 I.P.C.
A-2, A-3, A-5, A-6, A-9 and A-12	Section 147, 324 r/w 149 I.P.C. (2 counts), 326 r/w 149 I.P.C. (2 counts) and 302 r/w 149 I.P.C.



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4. The trial Court on considering 21 prosecution witnesses, one defence witness, 77 exhibits and 13 material objects, held all the 16 accused guilty of the offences charged and sentenced them as below:-

A-1 to A-16	Section 302 r/w 149 I.P.C.	Life imprisonment with fine of Rs.2,000/-, in default, to undergo three months rigorous imprisonment.
	Section 326 r/w 149 I.P.C. (2 counts)	Three years rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment for each counts.
	324 r/w 149 I.P.C. (2 counts)	Two years rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment for each counts.
A-2, A-3, A-5 A-6, A-9 & A-12	Section 147 I.P.C.	Two years rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment.
A-1, A-4, A-7, A-8, A-10, A-11 & A-13 to A-16	Section 148 I.P.C.	Three years rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment.



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The period of imprisonment already undergone by A1 to A16 during the trial, is to be set off under Section 428 of Cr.P.C. The sentences were ordered to run concurrently. Pending appeal, Ganesan (A15) died, hence, the appeal [Crl.A.(MD)No.211 of 2020] filed by him was dismissed as abated on 31.10.2023.

5. The substance of charges based on the final report :-

The incident happened at Avarankadu Subbiahpuram Village within the jurisdiction of Thiruppachethi Police Station, Sivagangai. It is a practise of the farmers of that area, to request goat herders to shelter their goats in their land between harvest and next sowing for reclaiming the fertility of the land. Likewise, during the month of September, 2010, Malaichamy, the goat herder [P.W.9] camped his goats in the land of Muniyandi (A4) at Avarankadu. It is alleged that Muniyandi instructed Malaichamy not to shelter his goat in the land of Chandrakumar. So, when Chandrakumar requested Malaichamy to shelter his goat in his land, he refused and also informed that Muniyandi (A4) had told him not to shelter his goat in the land of Chandrakumar. Hence, on 30.09.2010 at about 10.00 a.m., Chandrakumar went to the house of Muniyandi and picked quarrel why he is preventing Malaichami from camping his goat in his land. In



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continuation of this incident, at about 02.30 p.m., when P.W.1 to P.W.5 were discussing with Allimuthu in front of the ration shop, The appellants along with Sekar (deceased) and Karuppaiah (deceased) armed with weapons, like spear (velkambu), Knife (Kathi) and billhook (Aruval) came to the spot.

- (i) A-3 and A-4 caught hold of Allimuthu.
- (ii) Sekar (since deceased) stabbed Allimuthu with spear on the stomach.
- (iii) A2 attacked Allimuthu with Knife on the jaw and chest.
- (iv) A9 stabbed Allimuthu with Knife on the right hand little finger.
- (v) When P.W.1 to P.W.5 tried to rescue Allimuthu, A10 caught hold P.W.1 and A11 attacked P.W.1 with Aruval on the left forearm and caused grievous injury.
- (vi) A8 attacked P.W.1 with Aruval and caused simple injury on the right index finger.
- (vii) A5 attacked P.W.2 with Aruval caused simple injury on the right thumb, near the wrist.
- (viii) A14 attacked P.W.2 with Aruval on the right shoulder twice and caused grievous injuries to P.W.2.



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(ix) A13 caught hold of P.W.4 and A12 attacked P.W.4 with Knife on left thumb and caused simple injury.

(x) A15 attacked P.W.5 with Knife and caused simple injury on her stomach.

(xi) A16 attacked P.W.3 with Aruval on the head and caused simple injury.

(xii) A17 attacked P.W.3 with Aruval on the left hand thumb finger and index finger and caused simple injuries.

(xiii) A18 attacked P.W.3 with Aruval on the right jaw caused simple injury.

[Here the naming of the accused is as per the original charge before deleting the name of Sekar and Karuppaiah]

6. Case of the prosecution as spoken by the witnesses for prosecution:-

(i) P.W.1 to P.W.5 had deposed about the occurrence, the overt act of each of the accused and the weapon used by them and the injuries sustained. They all consistently had deposed that each of them saw Sekar, S/o.Muniyandi stab Allimuthu with Velkambu (spear). The said spear was identified by P.W.1 and marked as M.O.12.



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(ii) For the injuries caused on P.W.2 to P.W.4, the prosecution has relied on the ocular evidence of the respective victims and corroboration by the other witnesses and the wound certificates given by doctor at Meenaskhi Mission Hosptial at Madurai.

(iii) Since there is no evidence for the injuries alleged to have sustained by P.W.5, who had deposed that she was present at the spot and sustained injury on her abdomen when A15 attacked her with Knife, her case to that extent, not considered by the trial Court while re-framing the charges.

(iv) Apart from these 5 witnesses, rest of the prosecution witnesses, had not said anything much in support of the prosecution.

(v) P.W.6 is the salesman of the Ration Shop. According to the prosecution, he was present in the Shop when the incident took place at about 20 feet away from the Shop. He turned hostile. P.W.7, P.W.9 and P.W.10 had deposed that they came to the spot after hearing the commotion and saw the injured persons. P.W.11 and P.W.12 are the V.A.O. and his Assistant. They are the witnesses for recovery and confession. They both turned hostile, except identifying their signatures in the Recovery Mahazars.



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(vi) P.W.13 is the doctor, who had deposed about the wound certificate (Ex.P43) issued to P.W.4 Mathi. P.W.15 is the doctor, who is acquaintance with the handwriting of Dr.Deenadayaparan, who gave the wound certificate for the injured Pandi (P.W.3) and injured Chandrakumar (P.W.1). The wound certificates are marked as Ex.P47 and Ex.P48, respectively. P.W.16 is the doctor, who conducted autopsy on Allimuthu. The postmortem certificate is Ex.P50. P.W.14 is the Scientific Expert, who had conducted biological examination and serological examination of the blood stains collected from the soil and dress materials. His Biological Report is Ex.P45. Serological Report is Ex.P46.

(vii) P.W.18 to P.W.21 are the Policemen, who registered the F.I.R. and carried the F.I.R. to the learned Judicial Magistrate, and investigated the case and filed final report on completion of investigation.

7. CASE OF THE DEFENCE:-

(i) The origin of the case is totally suppressed by the prosecution. The motive as alleged in the charge, found false from the prosecution witness itself. P.W.9 Malichamy the goat herder had not supported the version of the



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interested witnesses regarding motive. According to P.W.9, he refused to shelter his goats in the land of P.W.1, because, he did not pay for the previous year's service. While so, the reason given by P.W.1 for going to the house of A4, on that day, morning at 10.00 a.m., and later, gathering near the house of A4 and A2 along with his maternal uncle Allimuthu, aunt Thangamuthu, W/o.Thangamuthu, his brother Sureshkumar and paternal uncle Pandi and brother-in-law Mathi @ Mathiazhagan remains unexplained.

(ii) The omission to probe the real reason for P.W.1 to pick quarrel with Sekar, an Ex-Serviceman suffering from mental illness and the injuries on A8 as proved by the defence through D.W.1 and Ex.D1 and Ex.D2 ought to have been considered by the trial Court and ought to have acquitted the appellants as real victims of crime at the hands of the aggressors.

(iii) The willful suppression of the registration of counter case in Crime No.136 of 2010 against P.W.1 and others for assaulting Sekar (since deceased) and Rajangam (A8). The anticipatory bail obtained would show that the appellants were illegally prosecuted. The trial Court failed to consider the



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falsehood, contradictions and embellishments in ocular evidence. When the evidence for prosecution is intrinsically mixed with falsehood occupying a major portion and truth in minor portion, the principle of separating grain from chaff not possible. Further, when it is case and case in counter, the prosecution ought to have acted fairly following the Police Standing Order 588-A and the Criminal Rules of Practice as per the judicial dictum.

8. Per contra, the learned Additional Public Prosecutor representing the State submitted that the evidence of injured witnesses to be considered under high pedestal. When the victim witnesses had deposed about the overt act of each of the accused, proof of motive not necessary. Only in case of circumstantial evidence, motive need to be proved. The minor contradictions between the injured witnesses do not take away the strong evidence against the accused persons, who have committed grave offence of murder and also grievous injuries to two persons and simple injuries to two other persons, who all had came to rescue Allimuthu, who was badly injured by Sekar, A2 and A9. The medical examination of the witnesses, who sustained injuries in the melee, the weapons recovered based on the confession statements of the accused persons when



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considered together, it will prove the guilt of the appellants/accused. The gravity of the crime warrants severe punishment and the trial Court has rightly analysed the evidence placed before it and concluded that the appellants are guilty of assembling unlawfully with weapons, shared the common object to kill and caused death of Allimuthu, caused grievous injuries to P.W.1 and P.W.2 and also caused simple injuries to P.W.3 and P.W.4.

9. As far as the injuries found on A8, the trial Court rightly rejected it as injuries not suffered in the same transaction. As per Ex.D1 and Ex.D2, Rajangam (A8) had sustained the injuries at 06.00 p.m. That is after the occurrence under consideration, in which the victims were at Hospital even before 04.30 p.m. on 30.08.2010 as per their respective Accident Registers maintained by the Hospital. Therefore, there is no error in closing the complaint registered in Crime No.136 of 2010 as mistake of fact.

10. The learned Additional Public Prosecutor further submitted that the trial Court has rightly observed that *falsus in uno, falsus in omnibus* cannot be applied in this case, and it is for the Court to remove the chaff from the grain that is to say



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ignore the falsities and believe the truth out of the available evidence. Therefore, ignoring the minor discrepancies regarding the weapons used by each of the accused or the contradiction between the ocular evidence and the medical evidence regarding injuries, will not impair the overall evidence of the prosecution. While the incriminating evidence against the accused are overwhelmingly to prove that all the accused have gathered with weapons sharing a common object of causing death, conviction of all the members of the unlawful assembly for the offence punishable under Section 302 read with Section 149 I.P.C. is legally correct.

11. The Additional Public Prosecutor also submitted that the argument placed by the appellants' counsels that the animosity was only between P.W.1 and A4. None of the appellants had the intention to cause the death of Allimuthu. Therefore, the punishment under Section 149 I.P.C. is not legally sustainable is incorrect. According to the learned Additional Public Prosecutor, to attract Section 149 I.P.C., the members of the unlawful assembly may not be shared a common object to cause death of any particular person. Sharing of intention to murder is sufficient and who is the victim is not material.



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12. Heard the learned counsel on either side and perused the records.

13. According to the prosecution, the place of crime is about 20 ft. away from the Subbiahpuram Ration Shop at Avarankadu. P.W.5, who is the wife of Allimuthu had admitted in her cross examination that, she did not go to the shop for purchase of any goods. P.W.6 the shop Salesman in the cross examination admit that, on that day, he did not open the shop. He also admits that he is the uncle son of P.W.1. It is admitted by P.W.1 in the cross examination that, he and other witnesses are residents of Kachanatham Village, which is at least 2 Kms. away from the ration shop. He also had admitted that the ration shop is meant for Avarankadu Villagers and not for any other Villagers. It is elucidated from the cross examination of P.W.1 that his uncle Muthiah's House is on entrance of Avarankadu Village. One Kilometre from Muthaiah's house, on the south direction, east side road, leads to Kachanatham – Maaranadu Villages split. From there, about ½ Km. away his Village Kachanatham is located. Thus, from his evidence, it is clear that the scene of crime is at least 2 Kilometers away from the residence of the deceased Allimiuthu as well as the residences of P.W.1 to P.W.5.



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Whereas, the sketch marked as Ex.P52, show the residences of A2 and A4 on the east side of the scene of crime, where the ration shop is located. Thus, it is very evident that it was the complainant [P.W.1] and his relatives had gathered near the accused house for the reason not probed by the Investigating Officer.

14. Further, it is suggested to P.W.1 in the cross examination that, he and his relatives used to tease Sekar, a mentally imbalanced person. On that day, when Sekar and A8 returning to their Village at about 01.00 p.m., P.W.1 along with Allimuthu and others teased Sekar and caused injuries to Sekar and Rajangam (A8). A criminal case was registered against them in Crime No.136 of 2020. They all obtained anticipatory bail in that case. This suggestion is denied by P.W.1, except getting anticipatory bail. However, the Investigating Officer in this case examined as P.W.21, in the cross examination, admits about the registration of criminal case against P.W.1 and others for offence under Section 324 I.P.C. in Crime No.136 of 2010. He is unable to explain satisfactorily why he did not pursue the investigation in that case. The learned trial Judge has said that the Accident Register of Rajangam reveals that the attender of the patient has said to the doctor that A8 sustained injury on the head at 06.00 p.m. on 30.08.2010



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when a known person attacked him with sickle. Therefore, this incident cannot be connected with the earlier incident happened at 02.30 p.m.

15. If it is so, the prosecution ought to have proceeded with that complaint independently to find out, who caused the comminuted depressed fracture on the left parietal dural and brain laceration to A8, on that day, which has warranted 15 days inpatient treatment in the Vadamalayan Hosptials (P) Ltd., Madurai.

16. There is every reason to believe that A8 had sustained the said injury only during the same transaction. P.W.1 to P.W.5 as well as P.W.21 [Investigating Officer] had conveniently screened that fact from the eyes of the Court. P.W.21 the Investigating Officer, who candidly admit about the registration of another case between the parties on the same day, had not proceeded the investigation in that case, which is gross violation of Police Standing Order and the celebrated judgment of this Court rendered by Mr.Justice Ramaswami in **Thota Ramakrishnayya and others vs. State [AIR 1954 Mad 442 : 1954 Cri.L.J. 610]**, which lead to the introduction of Police Standing Order 588-A - relied and



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followed in subsequent judgments like, **Krishnamoorthi vs. State [1992 LW (Cri.) 415 (DB)]** and **Venthimuthu vs. State [2007 (2) MLJ (Cri.) 405 (DB)]**.

17. The doubt about the truthfulness in the prosecution case gets further amplified when the prosecution attempt to establish motive through P.W.9, failed totally. The alleged motive, which was projected by the prosecution could not have been looked into it or given serious consideration, as submitted by the learned Additional Public Prosecutor, if it has not been taken as a reason for P.W.1 to quarrel with A4, on that day, morning at 10.00 a.m. To avoid the impression that he and his relatives were the aggressors and provokers, P.W.1 has projected the said theory of motive. However, his fabrication of story been exposed by P.W.9 who had categorically stated that it was P.W.1, who picked quarrel with him as well as A4. When motive pleaded as the driving force to commit the crime, there is necessity in law to prove it, not only in a case of circumstantial evidence, even otherwise failure to prove motive may not be always make the prosecution case doubtful, but if the evidence indicates something contrary, then, the evidence of the witnesses, who claim false motive becomes not worthy to rely.



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18. No doubt, the credibility of injured witness is to be placed on high pedestal. However, Courts should also bear in mind that the injured witness is also an interested witness. If his evidence suffers from apparent infirmities and contradictions, it is not safe to rely on the injured witness alone, but the Court should ensure adequate and sufficient corroboration from other independent witness, not from another interested witness. So, what P.W.1 has said in this case, ought to have been corroborated by independent witnesses. Unfortunately, in this case, the trial Court has taken the other interested witness to corroborate the evidence of P.W.1. P.W.2 to P.W.6 are all interested witnesses to save and shield themselves from the counter case registered in Crime No.136 of 2010. Whereas, the independent witnesses P.W.6, P.W.7 and P.W.10 are all hearsay witnesses. They all had deposed that they heard commotion near ration shop and when they came to the spot, they saw P.W.5 holding her husband Allimuthu bleeding and other witnesses with injuries.

19. To ascertain whether all the appellants and the two deceased persons Sekar and Karuppaiah were present at that time or to ensure whether all the appellants were holding weapons as mentioned by P.W.1 and whether the injuries on P.W.1 to P.W.4 were caused by the respective appellants as spoken by the



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witnesses P.W.1 to P.W.5. On cross verification with each other witnesses and the material objects along with wound certificates, we find that their testimony found to be suffered with falsehood besides embellishment and contradictions. The injuries and the accused, who have caused it and the weapon used is taken into consideration.

(1) Chandrakumar (P.W.1) :-

Wound Certificate is Ex.P48. Wounds noticed:-

- (a) 10 c.m. x 8 c.m. lacerated wound exposing on the forearm.
- (b) 10 c.m. x 3 c.m. lacerated wound on right hand.
- (c) 2 c.m. x 2 c.m. laceration on the index finger.

Injury (a) certified as grievous and other two injuries (b) and (c) are simple in nature.

(i) P.W.1 had deposed that he was caught hold by Palaniyandi son Muniyandi and attacked by Muniyandi, S/o.Kuruvi @ Veerabathiran with Aruval on the right hand and broke the hand. Palaniyandi attacked him with Aruval on the index finger. When he tried to run, Prabu caught him and Muthupandi attacked him twice on the left wrist.



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(ii) For three injuries on his body, this witness had embellished his testimony by adding one more injury and implicating totally five accused. P.W.1 had identified M.O.1 as the Aruval used by Muniyandi (A4). M.O.2 as the Aruval used by Palaniyandi (A7). M.O.3 as the Aruval used by Muthupandi (A10). If Palaniyandi (A7) was carrying the Aruval M.O.2, how he could have caught hold of P.W.1 or if he had shared the common intention to murder, why he had not attacked P.W.1 with the Aruval he was carrying to cause injury?

(2) Sureshkumar (P.W.2):-

Wound certificate is Ex.P49. Injuries noticed:-

- (a) 5 c.m. x 1 c.m. incised wound exposing on the right arm.
- (b) 3 c.m. x 1 c.m. a lacerated injury over the thumb exposing muscle.

First injury (a) is grievous and injury (b) is simple in nature.

(i) P.W.2 had deposed that Veerabathiran, S/o.Karuppaiah attacked with Aruval on the right shoulder while he tried to stop them spreading his both hands. The seat of first injury differs, besides who caused the second injury on him not explained by this witness. This omission gains significance, because one of the accused by name, Rajangam (A8) had got admitted in the private hospital on the



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same day with comminuted depressed fracture left parietal dural and brain laceration. This indicates both the group might have used weapons and exchanging attack.

(3) Pandi (P.W.3):-

Wound certificate is Ex.P47. The injuries noticed:-

- (a) A lacerated wound 2 x 3 c.m. on the left wrist.
- (b) A lacerated wound 4 x 5 c.m. on the left side head.
- (c) A stab injury on the right side thigh.
- (d) injury on the left hand index finger.
- (e) A lacerated wound on the left hand palm at 2 c.m.

Injuries (a) to (e) are simple in nature.

(i) According to P.W.3, he was attacked with Aruval by Ganesan (A15) on the left side of his head. Karuppaiah (A16, since deceased) attacked him with Aruval on left hand thumb, index finger and middle finger. Karuppaiah (A17) attacked him with Aruval on his right thigh.

(ii) There is only one Karuppaiah among the accused. He had mentioned two Karruppaiah, one as A16 and another as A17. Further, some of the injuries



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found on his body as per Ex.P47 does not correlate with his ocular evidence, who caused him the other injuries, leaves a doubt that the occurrence did not happen the manner projected by the prosecution.

(4) Mathi @ Mathiyazhagan (P.W.4): -

Wound certificate is Ex.P43. The injuries noticed :-

(a) A sutured lacerated wound anterior to left thumb of size 5 x 1 c.m.

(b) A punctured wound near the navel at skin depth.

Both the injuries are simple in nature.

(i) P.W.4 had deposed that when he was caught hold by Ramayee (A12), Rathi (A11) attacked him with Knife causing injury on his left thumb, the weapon touched his stomach lightly.

(ii) Thangamuthu (P.W.5) though had deposed about injury sustained by her at the hands of Micheal @ Muniyandichamy (A14), no evidence to prove the injury except the ocular evidence of P.W.1 to P.W.4. Her presence at the scene of crime itself doubtful. Even if her presence is to be believed, the allegation that A14 was present and attacked her is totally unbelievable in the absence of proof.

(5) Allimuthu [deceased]:-



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As per the doctor's evidence [P.W.16], who conducted postmortem, the deceased Allimuthu has sustained the following external and internal injuries:-

External injuries:-

(1) A punctured wound was found in the left abdomen measuring $7 \times 6 \times 3$ c.m. The small intestine was exposed through the wound.

(2) A punctured wound of size $\frac{1}{2} \times \frac{1}{2}$ c.m. was found in the left chest below 5th intercostal space and 4th intercostal space.

(3) A punctured wound was found on the left jaw measuring $1 \times \frac{1}{2} \times \frac{1}{2}$ c.m.

(4) An abrasion wound was found on the left shoulder.

(5) A mild abrasion was observed on the left ankle.

(6) 1×1.5 c.m. punctured wound was found on the left little finger.

Internal injuries:-

(1) There was no fracture of the neck bone.

(2) Heart, liver, lung and kidney were seen with haemorrhage.

(3) A stab wound of size $6 \times 4 \frac{1}{2} \times 1 \frac{1}{2}$ c.m. was found between the 11th and 12th wounds. Due to that injury, there was a fracture in the 12th rib.

(4) Abdominal region was found empty.



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(5) 500 ml to 750 ml of blood was seen in the stomach.

(6) Bowel was found empty.

(7) There were no fractured brain injuries.

(i) P.W.1 had deposed that,

(a) Sekar, the son of the fourth accused Muniyandi stabbed the deceased Allimuthu with the spear on his abdomen.

(b) Poojaimani (A1) stabbed Allimuthu with Knife on the chest and left jaw;

(c) Pandivel (A2) and Veerabathran (A3) caught hold of Allimuthu, who tried to flee.

(d) Rajangam (A8) stabbed Allimuthu with Knife on the right thumb; and

(e) Azhagupandi (A5) stabbed Allimuthu with Pichuva on his buttocks.

(ii) However, on comparison of the postmortem report with the ocular evidence of P.W.1 and P.W.2 to P.W.5, who had deposed almost similarly, would show that there is no injury on the buttocks of the deceased person and therefore, attributing overt act to Azhagupandi (A5) is absolutely false.

20. The trial Court by altering the charges framed earlier, had proceeded



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further without giving any opportunity to the accused persons. The trial Court has given reason for proceeding further without providing any further opportunity to answer the altered charges. According to the learned trial Judge, since already there is charge against the accused persons for offence under Section 149 I.P.C., he thought fit to charge all the accused for the offence under Section 149 I.P.C. along with Sections 302, 324 and 326 I.P.C. This procedure could have been a curable irregularity, had the prosecution succeeded in proving the charge under Section 149 I.P.C., which is a substantive offence by itself. When there is failure on the part of the prosecution to prove the substantive offence under Section 149 I.P.C., then, roping all the accused alleged to have present, but without sharing the common object, will be lead to miscarriage of justice.

21. Therefore, it is predominant to find out whether the evidence for prosecution sufficient to infer the appellants along with the two other persons who died pending the case, had shared common object when they formed as an assembly with weapons.

22. The necessary ingredients to attract the offence under Section 149 I.P.C. are:-

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(1) There must be an unlawful assembly.

(2) Any member of the unlawful assembly must have committed an offence.

(3) The offence committed must be in furtherance of the assembly's common objective or the members must have knowledge about the happening of the offence. There must be active participation of the person in the offence with the necessary criminal intention or sharing of the common object of the unlawful assembly, otherwise, the person cannot be held liable for the offence under Section 149 I.P.C. However, active participation does not mean that there must be over act of committing the offence, presence and assisting or aiding the assailant with whom the person share the common object to commit the said crime is sufficient.

23. While elaborating further, the Hon'ble Supreme Court in **Rabindra Mahto and another vs. State of Jharkhand** reported in **AIR 2006 SC 887 : 2006 (10) SCC 432** held that, the common object need not require prior concert and a common meeting of minds before the attack, and an unlawful object can



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develop after the assembly gathered before the commission of the crime at the spot itself. There need not be any prior meeting of mind. It would be enough that the members of the assembly which constitutes five or more persons, have common object and that they acted as an assembly to achieve that object.

24. The common object can be gathered from the facts and circumstances of the case. In the instant case, the rough sketch marked as Ex.P52 show blood stains in two different places. One on the road running East – West, where the houses of A2 and A4 located on the extreme east. The another spot in the pathway running North-South, opposite to the ration shop. From the Sketch, we are able to understand, it is not possible to see from one spot to another spot. While the presence of all the appellants in the scene of crime itself is doubtful for want of independent corroboration, sharing of common object by all the accused also become doubtful. They did not gather first. Admittedly, P.W.1 and his men totally, six in numbers, first gathered at the ration shop at 12.30 p.m. to question A4 for the incident happened at 10.00 a.m. The incident of murder alleged to have happened at 14.30 hours. As noted earlier, though it is alleged all the accused were armed with deadly weapons, which are identified and marked as M.O.1 to



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M.O.13, except the spear, which caused the punctured wound to Allimuthu and proved to have been caused by Sekar, there is no inferential circumstance to draw a presumption that they all shared a common object with Sekar to cause death. Even for P.W.1, who had sustained one grievous injury and two simple injuries, the nature of injuries are lacerated wound on the forearm, index finger and right hand. Though it is his evidence that the assailants had lethal weapons, the seat of injury and the gravity of injury would show that the assailant, whoever it is, did not have any intention to cause the death of P.W.1, who engineered the fight. While so, it is highly improbable to hold all the accused shared common object to cause death of Allimuthu or any other persons.

25. The Hon'ble Supreme Court in **Bhagwan Jagannath Markad and others vs. State of Maharashtra** reported in **2016 (10) SCC 537** had summarised the principles how to appreciate the credibility of witnesses in the following manner:-

"18. It is accepted principle of criminal jurisprudence that the burden of proof is always on the prosecution and the accused is presumed to be innocent unless proved guilty. The prosecution has to prove its case beyond reasonable doubt and the accused is entitled to the



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benefit of the reasonable doubt. The reasonable doubt is one which occurs to a prudent and reasonable man. Section 3 of the Evidence Act refers to two conditions—(i) when a person feels absolutely certain of a fact—“believes it to exist”, and (ii) when he is not absolutely certain and thinks it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence. The doubt which the law contemplates is not of a confused mind but of prudent man who is assumed to possess the capacity to “separate the chaff from the grain”. The degree of proof need not reach certainty but must carry a high degree of probability [Vijayee Singh v. State of U.P., (1990) 3 SCC 190, pp. 206-09 & 217-18, paras 18, 28-30 : 1990 SCC (Cri) 378] .

19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of



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discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [Leela Ram v. State of Haryana, (1999) 9 SCC 525, pp. 532-35, paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a “partisan” or “interested” witness may lead to failure of justice. It is well known that principle “falsus in uno, falsus in omnibus” has no general acceptability [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32]. On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the



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normal discrepancy does not affect the credibility of a witness.

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [Gangadhar Behera case, (2002) 8 SCC 381, p. 394, para 17]

21. An offence committed in prosecution of common object of an unlawful assembly by one person renders members of unlawful assembly sharing the common object vicariously liable for the offence. The common object has to be ascertained from the acts and language of the members of the assembly and all the surrounding circumstances. It can be gathered from the course of conduct of the members. It is to be assessed keeping in view the nature of the assembly, arms carried by the members and the behaviour of the members at or near the scene of incident. Sharing of common object is a mental attitude which is to be gathered from the act of a person and result thereof. No hard-and-fast rule can be laid down as to when common object can be inferred. When a crowd of assailants are members of an unlawful assembly, it may not be possible for witnesses to accurately describe the part played by each one of the assailants. It may not be necessary that all members take part in the actual assault [Gangadhar Behera case, (2002) 8 SCC 381, pp. 396-98, paras 22-24] . In Gangadhar Behera [Gangadhar Behera, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] , this Court observed : (SCC pp. 398-99, para 25)



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“25. The other plea that definite roles have not been ascribed to the accused and therefore Section 149 is not applicable, is untenable. A four-Judge Bench of this Court in Masalti case [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] observed as follows : (AIR p. 210, para 15)

‘15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not



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used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not. ’’’

26. This Court is conscious of the fact that, it is not possible for a witness to accurately describe the part played by each of the assailants when a man armed with deadly weapon attack indiscriminately. The Court is bound to separate the grain from the chaff even if the testimony suffers embellishments. However, in this case, the Court finds on appreciating the evidence the infirmities and discrepancies shake the truthfulness of the so-called injured witnesses. The suppression of real motive for gathering near the houses of A2 and A4 not spoken by the witnesses P.W.1 to P.W.5 nor probed by the Investigating Officer. This makes the case of the prosecution totally a lopsided investigation. Except the interested witnesses, there is no independent corroboration to say these appellants were really present with a common object or they attacked these witnesses and the deceased Allimuthu in the manner P.W.1 to P.W.5 had deposed. The injuries found on A8 not been explained by the prosecution. The reasoning given by the



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trial Court for the injuries on A8 is not based on evidence, but on inference. If really, P.W.1 to P.W.5 were not involved in the crime, then, what was the necessity for the Police to register case against them in Crime No.136 of 2010 and these witnesses getting anticipatory bail.

27. An injured witness or relative of injured witness may not conceal the real culprit. However, there is every possibility for a witness with enmity to rope innocent persons along with real culprit to wreak vengeance. If the evidence available not helpful to identify the real culprit and the persons implicated falsely in a case tried for the offences read with Section 149 I.P.C., it is the bounden duty of the Court to ensure that innocents are not punished with the assistance of Section 149 I.P.C. by applying the principle of vicarious liability.

28. In this case, the only person against whom incriminating evidence available is Sekar, who was originally the first accused. He is now dead. The other person A8 had sustained grievous injuries. No action taken by the prosecution against the suspected perpetrators, who are none other than the witnesses P.W.1 to P.W.5 and the deceased Allimuthu.



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29. When the prosecution deliberately suppressed a part of the incident from the view of the Court, it is impossible for the Court to assess the evidence in broad substratum of the prosecution version, which is found to be truncated and misleading in all manners, including motive and scene of occurrence. Therefore, we have no other option except to conclude that the prosecution has not proved the case beyond reasonable doubt.

30. As a result, these Criminal Appeals are allowed. The judgment of the trial Court, dated 27.02.2020, in S.C.No.105 of 2012, is set aside and the appellants are acquitted from all the charges. Bail bonds stand cancelled. Fine amount already paid, if any, shall be refunded to the appellants.

Index : Yes
NCC : Yes

[G.J., J.] & [C.K., J.]
28.03.2024

To

1.The Principal Sessions Judge,
Sivagangai.



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- 2.The Inspector of Police,
Thirupachethi Police Station,
Sivagangai District.
- 3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
CrI.A.(MD)Nos.139, 148, 187, 188, 194, 224, 240, 250, 255 & 265 of 2020 &
74 of 2021

28.03.2024