



CrI.A.(MD)No.314 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 03.10.2024

PRONOUNCED ON : 24.10.2024

CORAM

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HON'BLE MS.JUSTICE R.POORNIMA**

CrI.A(MD)No.314 of 2021

State represented by
The Public Prosecutor,
High Court, Madras 104.

... Appellant

VS

1.Issakiyappa Manickaraja @
Manickaraja @ Raja
2.Murugan @ Sakkapzham
3.Amjathkumar
4.Murugan

...Respondents

PRAYER: Criminal Appeal filed under Section 378(1) of the Criminal Procedure Code, to set aside the judgment of acquittal made in S.C.No.393 of 2013 dated 20.12.2019 on the file of the 4th Additional District and Sessions Judge, Tirunelveli and convict the the respondents in accordance with law.



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For Appellant : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
For Respondents : Mr.R.John Sathyan, Senior Counsel
for Mr.R.Selvam (For R1) and
for Mr.C.Christoper (For R2 to R4)

JUDGMENT

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

The respondent/complainant/prosecution in S.C.No.393 of 2013 aggrieved by the judgment dated 20.12.2019 in S.C.No.393 of 2013 on the file of the IV Additional District and Sessions Court at Tirunelveli by which judgment, the said Court had acquitted the accused therein of all charges, has filed the present Criminal Appeal under Section 378(1) of Cr.P.C.

2.It is the case of the prosecution that on 08.09.2012, while celebrating Sudalai Madasamy Temple festival at Valliyoor Main Road in Tirunelveli, a quarrel arose between the deceased, Ravi and A4, Murugan at around 04.00 pm in the evening. It is contended that the deceased, Ravi had assaulted A4. Owing to this, A4 harboured enmity against the deceased. It is stated that A4 had taken the assistance of A1 to A3 to take revenge on Ravi.



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3.It is further contended that on the same day, 08.09.2012, at around 09.30 pm, the de-facto complainant, Subash, PW-1 and the deceased were consuming liquor in the Government TASMACH shop/bar near Valliyoor old bus stand. It is further contended that at that time, A1, A2 and A3 entered into the TASMACH shop/bar. A2 caught hold of the deceased, Ravi in his chair. A1 stabbed the deceased on his neck. A3 stabbed the deceased repeatedly on his stomach and chest. The deceased collapsed in that place. PW-1 was threatened and chased out. While running out, he saw A4 who also chased him away.

4.In this connection, PW-1 had given a complaint, Ex-P1, consequent to which, FIR in Cr.No.566 of 2012 had been registered by the Valliyoor Police Station at 11.30 in the night for offences punishable under Sections 294(b), 342, 506(ii) and 302 IPC against, Manickkaraj @ Raja (A1), Murugan (A2), Amjath Kumar (A3). The name of A4 was not mentioned in the complaint.

5.Subsequent to investigation, final report was filed before the Judicial Magistrate Court at Valliyoor and was taken cognizance as



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P.R.C.No.17 of 2013. Since the offence under Section 302 IPC was triable exclusively by a Court of Sessions, the case was committed to the Principal Sessions Court at Tirunelveli. It was taken on file as S.C.No.393 of 2013 and made over to the IV Additional District and Sessions Judge at Tirunelveli for trial.

6.Initially, on 18.11.2014, the following charges were framed:

Charge No.1	Against A1 to A4 under Section 302 r/w 34 IPC
Charge No.2	Against A1 (two counts) and A2 and A3 under Section 294(b) IPC
Charge No.3	Against A2 under Section 352 IPC
Charge No.4	Against A1 to A3 under Section 506(ii) IPC

7.Thereafter, on 01.06.2016, the following amended charges were framed:

Charge No.1	Against A1 to A3 under Section 302 IPC
Charge No.2	Against A2 under Section 302 r/w 109 IPC
Charge No.3	Against A4 under Section 302 r/w 34 IPC
Charge No.4	Against A1 to A4 under Section 120B(1) IPC



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8.The 1st charge which had been framed under Section 302 r/w 34 IPC against A1 to A4 was altered to the 1st amended charge, Section 302 IPC against A1 to A3. The 2nd, 3rd and 4 charges were retained. The 2nd, 3rd and 4th amended charges were added as the 5th, 6th and 7th charges.

9.The accused denied the charges and claimed to be tried. The prosecution examined PW-1 to PW-18 witnesses and marked Ex-P1 to Ex-P17 documents. The prosecution also produced MO-1 to MO-10 material objects. The incriminating portions were put to the accused their confession statements were then recorded under Section 313(1)(b) Cr.P.C.

10.On the side of the accused, one witness was examined as DW-1 and one document was marked as Ex-D1 series.

11.On conclusion of trial, by judgment dated 20.12.2019, the accused were acquitted of all charges. It is under these circumstances that the complainant/prosecution has filed the present Criminal Appeal.

12.To narrate the facts in a little more detail, it would be required to



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examine the nature of evidence adduced by the prosecution.

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13.PW-1, Subash in his evidence stated that on 08.09.2012 in the evening at 04.00 pm during manjal neerattu function at Sudalai Madasamy Temple festival in Ambedkar Nagar, a quarrel arose between A4, Murugan and the deceased, Ravi. The issue had been settled by the people present there. It had been contended by PW-1 that A4 then threatened the deceased that he would ensure that he was killed.

14.The witness further stated that at 09.30 pm on the same day, he and the deceased, who incidentally happened to be his sister's son, had gone over to the Government TASMACH shop to consume liquor. At that time, A1, A2 and A3 came to the shop. A2 abused him in filthy language. A2 then caught hold of the deceased in his chair. A1 caught hold of the head of the deceased and stabbed him with a knife on the neck. A3 also stabbed him repeatedly on the stomach and chest. They then threatened PW-1 and chased him away. He stated that when he came out, A4 was standing outside and he also chased him away. He then informed the incident to his sister.



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15. Thereafter, his sister and brother-in-law, Rengaraj, PW-4, came to the scene of crime. They went to the TASMAL bar shop. The deceased was lying in a pool of blood. He then prepared a complaint. During his evidence, he identified the complaint lodged by him as Ex-P1. He also identified MO-1 knife used by A1 and patta kathi, MO-2 used by A3.

16. PW-2 Thavasimuthu, who was the Manager of the TASMAL shop did not support of the case of the prosecution.

17. PW-3, Kannan, who was the supplier for the said TASMAL shop/bar, in his evidence stated that the deceased and PW-1 had come to the shop in the night at 09.30 pm to consume liquor. At that time, A1 to A3 had entered into the shop. A2 caught hold the deceased in his chair by holding the hands behind. A1 then caught hold of the head of the deceased and stabbed the deceased on the neck. A3 also stabbed the deceased repeatedly on his stomach and chest. Thereafter, the said accused, including A4 chased away PW-1. The witness also identified the weapons when shown during trial.



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18. These are the material witnesses for the prosecution. PW-1 and PW-3 had stated practically the same facts. The witnesses were also cross examined on the same day.

19. During cross examination, PW-1 stated that consequent to the information given to his sister, who was the mother of the deceased, she came to the TASMACH shop. In his evidence, he stated that A1 to A3 were outsiders. He withstood cross examination.

20. He was again recalled on 31.10.2019. It must be kept in mind that he was examined in chief on 17.03.2015. When he was recalled, he stated that on 08.09.2012 in the night at 11.00 pm, he went to the Police Station and he was shown a few papers. He stated that he went again to the Police Station on 09.09.2012 in the afternoon around 01.00 pm and signed in two sheets of paper in which the respondent Police had written something. He identified Ex-P1 as the said document.



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21.PW-3 had also been cross examined on the same day, when chief examination was taken. He was also recalled on 02.04.2016 after more than year and during further cross examination on behalf of the accused, he stated that the dead body of the deceased was found next to the Kamarajar statue in the road. The body was then shifted by an ambulance run by a Muslim.

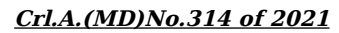
22.The main contention of the learned Additional Public Prosecutor in seeking reversal of the judgment of the trial Court is that PW-1 had deposed in chief on 17.03.2015 and was cross examined on the same day. He had narrated the facts as he had earlier stated in his statement recorded under Section 161 Cr.P.C. But, however, he was recalled on 31.10.2019 nearly more than 4½ years after his initial examination. At that time, he stated that he signed without knowledge of contents in papers identified as Ex-P1. It is contended by the learned Additional Public Prosecutor that on the basis of this single sentence, the trial Court had disbelieved the earlier evidence of PW-1 and the case of the prosecution and on that among other grounds had taken a decision to acquit the accused.



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23.The learned Additional Public Prosecutor then pointed out the evidence of PW-3, who was examined in chief on 17.03.2015 and cross examined on the very same day. This witness was also recalled on 02.04.2016 one year after he had tendered evidence. He was further cross examined on behalf of the accused. In that cross examination, he stated that a dead body was found in the corner of the road near Kamarajar statue and stated that at 10.30 in the night, the body was taken by an ambulance run by a Muslim. This witness was declared hostile. The learned Additional Public Prosecutor stated that this stray statement by PW-3 had been taken into consideration by the learned trial Judge overlooking the earlier evidence.

24.The learned Senior Counsel appearing on behalf of the accused however pointed out that the prosecution had failed to prove the complaint in manner known to law. The learned Senior Counsel also stated that both PW-1 and PW-3 had taken a conscious decision to speak against the prosecution and stated that the trial Court had correctly analysed their evidence.



the Hon'ble Supreme Court had laid down the principles to overrule or otherwise disturb a trial Court judgment of acquittal. In para 17, it had been held as follows:

3. *If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.*”



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26.This Court will necessarily therefore have to re-apprise the evidence to determine whether the judgment of the trial Court acquitting the accused will have to be interfered with and set aside.

27.In this connection, a more detailed examination of the sequence of events will necessarily have to be narrated.

28.PW-1, is the de-facto complainant. In his evidence, he stated that on 08.09.2012 at around 04.00 pm during the manjal neerattu function in Sudalai Madasamy Temple, a quarrel arose between the deceased Ravi and A4, Murugan. Ravi is said to have assaulted Murugan. This statement had not been deposed by the witness, but is found in the charge. On the same day in the night at 09.30 pm, PW-1 and the deceased who incidentally happened to be his sister's son, went over to the Government TASMACH shop near Valliyoor bus stand for consuming liquor. At that time, A1 to A3 entered into the shop.



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29. According to PW-1, A2 held the hands of the deceased with the chair. A1 stabbed him on the neck. A3 stabbed him repeatedly on the stomach and chest. The deceased collapsed. It is in the evidence of PW-1 that he immediately informed this to his sister/mother of the deceased. He then lodged a complaint at 11.30 pm before the Valliyoor Police Station on the basis of which, FIR in Cr.No.566 of 2012 had been registered on 08.09.2012 at around 11.30 pm. This FIR had been received by the learned Judicial Magistrate-III, Tirunelveli, on 09.09.2012 at 06.30 am. It had been received with a delay of minimum of 7 hours.

30. The FIR was registered by PW-12, Sundara Rajan, Sub Inspector of Police. In his evidence, he stated that after registering the FIR, he had forwarded the same to the Judicial Magistrate, Valliyoor at 01.00 am through Police Constable, Ramesh (PW-11). He further stated that the distance between the scene of crime and the Police Station was about 1 km. In his re-examination, he stated that after the registration of the FIR, he had gone over to the scene of crime and he came back and then despatched the FIR to the Judicial Magistrate Court.



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31.PW-11 in his examination stated that he received the copy of the FIR to be handed over to the Judicial Magistrate, Valliyoor at 01.00 am on 09.09.2012. He was then informed that the Judicial Magistrate was on leave. He therefore had to serve the FIR to the Judicial Magistrate-III, Tirunelveli. He stated that he was able to hand over the tapal only at 06.30 am on 09.09.2012 to the Judicial Magistrate-III, Tirunelveli.

32.The investigation was then taken over by PW-15, Muthuraj, who was the in-charge Inspector of Police, Valliyoor Police Station. On 09.09.2012, early in the morning at 02.15 am, he went to the scene of occurrence and in the presence of Dhananjeyan (PW-5) and Paulraj (not examined), he prepared observation mahazar, Ex-P2 and rough sketch, Ex-P10. He also seized a broken piece of orange colour plastic chair, MO-5, cement pieces with blood stain, MO-3, and cement pieces without blood stain, MO-4, a pair of slippers worn by the deceased, MO-6 and cash in the possession of the deceased, MO-7 under seizure mahazar, Ex-P3. He then conducted inquest over the dead body in the early morning between 05.00 to 07.00 am in the presence of panchayatdars. The inquest report was marked as Ex-P11. He then forwarded the dead body for postmortem to the



Tirunelveli Medical College and Hospital through Police Constable Sajee (PW-13).

33.The postmortem was conducted by Dr.Sridharan, PW-14. In his evidence, he stated that he commenced the postmortem at 10.20 am on 09.09.2012. He found the following injuries on the body:

“1)7x 5cm x cavity deep, wedge shaped stab injury, obliquely present, towards left seen front of middle of neck. It lies, 11 cm below chin, 5cm above supra sternal notch, 13cm from top of right shoulder, 14cm from top of left shoulder. Underlying soft tissues (trachea, oesophagus & both side carotid arteries) found cut. Tip of the weapon make a stab of size 1x1cm in the C6 Vertebrae

2)3x2cm x cavity deep, wedge shaped stab injury, obliquely present, towards left seen in middle of abdomen in the epigastric region. It lies 18 cm below supra sternal notch, 12 cm above umbilicus, 14 cm from left nipple, 13cm from right nipple.

3)2x1cm x cavity deep, wedge shaped stab injury, obliquely present, towards right seen in middle of abdomen, in the epigastric region, 2 cm below injury number 2.

4)4x2cm x cavity deep, wedge shaped stab injury, obliquely present, towards right seen in middle of abdomen, in the epigastric region, 3cm below injury number 3.

5)4x2cm x cavity deep, wedge shaped stab injury, obliquely present, towards left seen in right side of abdomen, 5cm away from umbilicus, 20cm below right nipple.

6)4x2cm x cavity deep, wedge shaped stab injury, vertically present, towards down seen in midline of lower abdomen, 3cm below umbilicus, 10cm above pubic symphysis.

7)3 x 2cm x cavity deep, wedge shaped stab injury, vertically present, towards down seen in right side of abdomen, 3cm away from the injury number 6.

8)3x2cm x cavity deep, wedge shaped stab injury, vertically



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present, towards down seen in left side abdomen, 4 cm away from the injury number 6.”

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34.The opinion for the cause of death was stated to be owing to the injury in the neck. The fatal injury was injury No.1, which was a stab injury in the middle of the neck. During his examination, PW-14 stated that it was possible for the injuries to have been caused by MO-1 knife and MO-2 knife.

35.PW-15 in his evidence further stated that he then recorded the statements of Subash (PW-1), Rengaraj (PW-4) (father of the deceased), Abdul Khadar, Singadurai, Paramasivam (all not examined), Thavasi Muthu (PW-2), Kannan (PW-3), Dhananjeyan (PW-5) and Paulraj (not examined). Thereafter, at 03.00 pm on 09.09.2012, he arrested A1 and A2 in the presence of Nagarajan (PW-10) and Subramanian (not examined). He then recorded the confession statement of A1. On the basis of the confession statement of A1, he recovered MO-1, knife and MO-2 knife under seizure mahazar, Ex-P5. The admissible portions of the confession statement was marked as Ex-P4. He then arrested A3 and A4 at 04.30 pm on the same day.



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Since the name of A4 was not mentioned in the FIR, he prepared a special report including him as an accused and forwarded it to the Court. The special report was marked as Ex-P12. He then forwarded the clothes of the deceased under Form-95 to the Magistrate Court for sending the same for forensic examination. They were produced as MO-8, MO-9 and MO-10. He then recorded the statements of Nagarajan, PW-10, Subramanian (not examined) and Sajee, PW-13.

36.PW-15 further stated that PW-2, Thavasi Muthu had in his statement stated that on 08.09.2012 at 09.30 pm, the deceased was stabbed by A1 in the neck and by A3 in the stomach and chest and that A2 had caught hold of the deceased in the chair and that they chased away PW-1. PW-15 was recalled for cross examination. The cross examination was focused on whether the bar was authorised or was running illegally. He stated that no licence had been granted to run a bar in that TASMACH shop. He also stated that in the rough sketch, he had not indicated the place where the body was present. He stated that when he went to the scene of crime, there were no empty tumblers or liquor bottles. It was therefore suggested to him that the offence did not happen at that particular TASMACH shop or



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bar, which suggestion he denied.

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37.PW-15 further stated that during the postmortem, the material objects and viscera had been sent for forensic examination. The reports had been marked as Ex-P15, Ex-P16 and Ex-P17. Human blood was detected with group “O” in MO-6, pair of slippers, MO-1 and MO-2, knives, MO-8 to MO-10, the clothes of the deceased. Since the Inspector of Police at Valliyoor Police Station had re-joined duty, PW-15 then handed over the case records to the said Inspector.

38.The Investigation was then taken over by PW-16, Aji Kumar, Inspector of Police. He recorded the statements of Ramesh, PW-6, Kannan, PW-7, Shankar (not examined), Chellappan, PW-8, Isakkiappan, PW-9. All these witnesses were declared hostile during their evidence. He then recorded the statements of Police Constables, Ramesh, PW-11 and Sajee, PW-13. He then recorded the statement of Dr.Sridharan, who conducted the postmortem, PW-14. He also recorded the statement of Sundara Rajan, PW-12, Sub Inspector of Police, who had registered the FIR. He then completed the investigation and filed charge sheet against the accused



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charging them with commission of offence punishable under Sections 294(b), 352, 342, 506(ii) and 302 r/w 34 IPC.

39.In his chief examination, he asserted that PW-6, Ramesh and PW-7 Kannan had stated that the statements as recorded by him. They had spoken about the alleged conspiracy among the accused. He also stated that PW-8, Chellappan and PW-9, Isakkiappan, also stated to him the statements, he had recorded. They had stated about the purchase of knives by the accused persons.

40.The final report was taken taken cognizance as P.R.C.No.17 of 2013 by the Judicial Magistrate, Valliyoor. The learned Judicial Magistrate complied with the provisions of Section 207 Cr.P.C. and furnished free copies of all documents to the accused. Thereafter, since the offence under Section 302 IPC was triable exclusively by a Court of Sessions, the case was committed to the Principal District and Sessions Court at Tirunelveli. It was taken on file as S.C.No.393 of 2013. It was then made over to the IV Additional District and Sessions Judge at Tirunelveli for trial. The charges were framed on two separate dates on 18.11.2014 and also on 01.06.2016.



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The 1st charge which had been framed on 18.11.2014 was altered. The 2nd 3rd and 4th charges were retained. On 01.06.2016, the altered 1st charge was framed and further, 5th, 6th and 7th charges were also framed. In effect, the following charges were framed by the Court:

Charge No.1	Against A1 and A3 under Section 302 r/w 34 IPC
Charge No.2	Against A1 (two counts), A2 and A3 under Section 294(b) IPC
Charge No.3	Against A2 under Section 352 IPC
Charge No.4	Against A1 to A3 under Section 506(ii) IPC
Charge No.5	Against A2 under Section 302 r/w 109 IPC
Charge No.6	Against A4 under Section 302 r/w 34
Charge No.7	Against A1 to A4 under Section 120B(1) IPC

41.The accused denied the charges and claimed to be tried. The prosecution was invited to prove the charges by adducing oral and documentary evidence. The prosecution examined PW-1 to PW-18 witnesses and marked Ex-P1 to Ex-P17 documents. They also produced MO-1 to MO-10 material objects.



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42.As already stated, PW-1, the eye witness and the de-facto complainant had been examined and also cross examined on 07.03.2015. He had spoken as his statement had been recorded under Section 161 Cr.P.C., by PW-15, Muthuraj, Investigating Officer. He was however further recalled for further cross examination on behalf of the accused on 31.10.2019 nearly after 4 ½ years. At that time, he disowned the complaint lodged by him, Ex-P1.

43.PW-2, who is the Manager of the TASMACH shop bar where the incident said to have happened was declared hostile. However, PW-15 in his examination asserted that the statement recorded by him reflected the statement made by PW-2 to him.

44.PW-3, the supplier for the TASMACH shop was examined in chief and cross examined on 17.03.2015. He spoken about the incident as he saw it. He was recalled for further cross examination on behalf of the accused on 02.04.2016 after one year. At that time, he gave an entirely new story. He stated that the body of the deceased was found near Kamaraj Statue at



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Valliyoor and was taken by an ambulance owned by a Muslim who was running a butcher shop.

45.PW-4 was the father of the deceased. PW-5 had had singed as a witness in the observation mahazar, Ex-P2 and rough sketch, Ex-P10 and also in the seizure mahazar, Ex-P3 for seizure of MO-3, MO-4, MO-5, MO-6 and MO-7, the material objects that had been seized in the TASMACH shop. During cross examination, a suggestion was put to him that the material objects were not seized from the said TASMACH shop.

46.PW-6 to PW-9 who were witnesses for the arrest and recovery of MO-1 and MO-2 were declared hostile. But it is a fact that the accused were actually arrested. PW-11 to PW-13 were the Constables, who were respectively assigned the job to hand over the FIR to the Magistrate and the body for conducting postmortem. PW-12 was the Sub Inspector of Police, who registered the FIR.

47.PW-14, Dr.Sreedharan, had conducted the postmortem. PW-15 and PW-16 were the Investigating Officers. PW-17 was the Court staff and



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PW-18 was the Scientific Analyst. He deposed that human blood in 'O' group is detected in MO-1, MO-2, MO-6, MO-8, MO-9 and MO-10.

48. On completion of recording evidence on the side of the prosecution, the incriminating portions were put to the accused and their statements were recorded.

49. On the side of the accused, one witness M. Jakeer Hussain, as DW-1 was examined and one document was marked as Ex-D1, which is Form-91 series relating to the list of properties sent to the Magistrate Court. These documents have been marked to point out that the properties had been forwarded on 09.09.2012, but received belatedly.

50. A perusal of Ex-D1 shows that there are seals of the Judicial Magistrate Court and also of the Principal District Munsif-Judicial Magistrate, Valliyoor which were dated 10.09.2012, 12.09.2012, 18.09.2012 and 09.10.2012. It is evident that the properties had actually been forwarded immediately on 09.09.2012 by PW-15, the Investigating Officer. There cannot be any complaint of delay on the part of the



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prosecution in this regard.

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51.DW-1 stated that he owns an ambulance used by the general public and by the Police. He stated that on a date, which he did not remember, at 10.00 pm, he received a call from the Valliyoor Police Station to bring over the ambulance near the brandy shop near Kamarajar statue in Valliyoor main road. He brought the ambulance. A dead body was there outside the shop. The Police Constables placed the body in the ambulance. The ambulance was driven to the Valliyoor Police Station at the time around 10.30 pm. Thereafter, he dropped the body at Palayamkottai Government Hospital. In his cross examination that he did not seek or have any documents to show that he actually took the body in his ambulance. He also stated that he did know whether the body was actually sent on 09.09.2012 at 07.00 am through Constable Sajee to Tirunelveli Government Medical College and Hospital. He denied that he was giving false evidence to protect the accused, who are his friends.

52.In this connection, Ex-P8 would be relevant. It was the passport given to PW-13, Police Constable, Sajee to take the body of the deceased,



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Ravi for postmortem and to hand over the body after the postmortem to the relatives. This had been signed by PW-15, Investigating Officer on 09.09.2012. During his cross examination, PW-13 was never put a suggestion that he had not transported the body and that rather PW-1, had taken the body to Palayamkottai Hospital in the early morning at 03.00 am.

53.The learned Trial Judge in the course of his judgment while examining the evidence of PW-1 in Paragraph Nos. 11 to 17, had extracted the entire evidence and the cross examination and also the cross examination conducted on 31.10.2019 and had concluded that owing to the cross examination conducted on 31.10.2019 nearly 4½ years after having tendered his initial evidence, the second cross examination on 31.10.2019 was prejudicial to the prosecution and that his evidence must be rejected in entirety.

54.The learned trial Judge while examining the evidence of PW-3 had again examined the evidence in paragraph Nos. 19-21, and stated that no document had been produced to show that he was a supplier to the TASMACH shop. It was also observed that he had further stated that the



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Police had arrived at the place only after two hours and they came only after the presence of PW-4, the father of the deceased. The learned trial Judge had again placed reliance on the evidence tendered after being recalled on 02.04.2016 and stated that his evidence in entirety was prejudicial to the prosecution.

55.The learned trial Judge in para No.16 had examined the evidence of PW-1, who stated that there were blood stains in the ground and observed that the same had not been noted in the rough sketch. It was also observed that the placement of the dead body was not noted in the rough sketch, Ex-P10. Therefore, the learned trial Judge had returned a finding against the prosecution.

56.The learned Trial Judge in paragraph No.17 of the judgment, had pointed out the evidence of PW-1 during his further cross examination on 31.10.2019, wherein, he had stated that the Police had asked him to sign in blank papers and the next day, he was asked to sign in a paper, in which there were writings and had therefore, disowned Ex-P1, the complaint. The learned Trial Judge therefore stated that the very genesis of the case as



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projected by the prosecution could not be believed. The learned Trial Judge extracted the evidence of all the witnesses in entirety.

57.He also examined the evidence of PW-16 Ajikumar, the Investigating Officer, who filed the final report and who stated that he did not enquire with the Doctor who conducted the postmortem, Dr.Shreedharan, PW-14, whether since the throat was cut, through that open space, food which had been earlier eaten or the liquor which had been taken earlier, would have flowed out of the body. The learned trial Judge had therefore concluded that the prosecution had failed to establish that the incident happened when the deceased was consuming liquor. We are not able to understand this reasoning of the learned trial Judge. Broadly, on the above mentioned grounds, the learned trial Judge had acquitted the accused of all charges.

58.Assailing the said judgment, the prosecution has filed the present Criminal Appeal.



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59.Heard Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the appellant and Mr.John Sathyan, learned Senior Counsel appearing for the respondents.

60.Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the prosecution took the Court through the facts of the case. He pointed out that during the manjal neerattu function at Sundalai Madasamy Temple festival in Valliyoor main road, a quarrel emanated between A4 and the deceased at around 04.00 pm on 08.09.2012. It was alleged that the deceased had assaulted A4. The learned Additional Public Prosecutor stated that this was a cause for enmity harboured by A4 against the deceased. Later, he had engaged A1 to A3 and it is alleged that they all had decided to do away with the deceased.

61.The learned Additional Public Prosecutor then stated that on the same day/08.09.2012 at around 09.30 pm, PW-1 Subash and the deceased, Ravi went over to the TASMACH shop/bar near Valliyoor bus stand. At that time, A1 to A3 came inside the bar. It is alleged that A2 had held back the deceased in the chair and A1 stabbed the deceased on the neck. A3 is said



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to have stabbed the deceased repeatedly in his stomach and chest. The deceased collapsed at that place. PW-1 was chased away out of the TASMAC bar.

62.The learned Additional Public Prosecutor further stated that later, PW-1 had given a complaint before the Valliyoor Police Station at 11.30 in the night. He further pointed out that during evidence, PW-1 had spoken about the incident when he was examined on 17.03.2015. He was also cross examined on the same day. Later, after 4½ years, he had been recalled and at that time, he disowned the complaint given by him, Ex-P1. The learned Additional Public Prosecutor stated that this stray piece of evidence had been relied on by the learned Trial Judge to give that as one of the reasons to acquit the accused.

63.The learned Additional Public Prosecutor stated that PW-2, who is the Manager of the Bar had turned hostile.

64.But, PW-3, the supplier of the bar had again deposed about the incident very clearly. However, he was discarded hostile, only because no



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document had been produced to show that he was a supplier to the Bar.

Even PW-3 had been recalled after more than one year and during his cross examination, when recalled, he had stated that a body was found near Kamarajar statue in Valliyoor in the night at 10.30 pm, and an ambulance owned by a Muslim had come and taken the body. The learned Additional Public Prosecutor pointed out that this was an entirely new story put up by the witness and alleged that the witness was won over by the accused.

65.The learned Additional Public Prosecutor then pointed out the evidence of DW-1, Jaheer Hussain, who claimed that he was called by the Police to carry a dead body further front of the TASMAL Bar near Valliyoor bus stand and had taken to Palayamkottai Government Hospital. In his evidence, he however did not give the date. He also did not produce any document to show that he had actually transported the dead body.

66.The learned Additional Public Prosecutor further pointed out that when PW-5, who was the witness for the seizure of MO-3, blood stained cement pieces, MO-4 cement pieces without blood stain, MO-5 a broken piece of plastic chair, MO-6, a pair of slippers, MO-7, all from the scene of



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crime and cash from the person of the dead body was cross examined, no question was put about the situs of the crime or the place where the dead body was present. This seizure of the material objects was immediate after the investigation commenced. PW-5 had also signed as a witness to the observation mahazar, Ex-P2 and also to the rough sketch prepared. The learned learned Additional Public Prosecutor therefore stated that the evidence of DW-1 will have to be rejected by this Court as false.

67.The learned Additional Public Prosecutor pointed out that the learned trial Judge had placed reliance on extraneous materials and had omitted to consider the evidence of PW-1, PW-3 and PW-5, who were present at the scene of crime at the time of occurrence or immediately thereafter. The learned Additional Public Prosecutor also stated that even Ex-D1 series reflected that the material objects which had been seized had been forwarded on 09.12.2012 itself. It could have been received by the Court a day or two later, but it had been forwarded by PW-15 immediately. The learned Additional Public Prosecutor therefore stated that the reasons given by the learned trial Judge are superficial and are actually perverse and therefore, urged that this Court should interfere with the acquittal of the



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accused and not set aside the judgment of the learned Trial Judge.

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68.Mr.R.John Sathyan, learned Senior Counsel appearing for the accused however disputed the contentions of the learned Additional Public Prosecutor. The learned Senior Counsel first pointed out that in Ex-P10, the rough sketch, which had been prepared by PW-15 immediately on arrival at the TASMAC bar, the position where the body was found, had not been given. This fact had also been admitted by PW-1 during his cross examination. The learned Senior Counsel also pointed out that PW-15 had not spoken about the presence of tumblers and liquor bottles at the scene of crime. He pointed out that the body was actually found outside the TASMAC bar as stated by PW-3, when he had been recalled for cross examination. This had been further reiterated by DW-1. The learned Senior Counsel therefore contended that the incident had never happened inside the bar. He further pointed out the admission by PW-15 that there was no licence to run a bar and therefore, contended that no bar at all in the TASMAC shop.



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69.The learned Senior Counsel stated that the fact that PW-1 had disowned the complaint, Ex-P1, when recalled for cross examination is very significant and brushed aside the allegation that the witness had turned hostile, when recalled after 4 ½ years. The learned Senior Counsel stated that evidence was tendered under oath before the Court and therefore, much credence should be given to the same.

70.He further pointed out the evidence of PW-2 who is the Manager of the TASMALC shop/bar who witnessed and had direct knowledge about the incident.

71.He questioned the genuineness of the statements of PW-3, since no proof was produced that he actually a supplier to the TASMALC shop/bar. The learned Senior Counsel further pointed out that the witnesses who were present during arrest and recovery, had been declared hostile and therefore, asserted that the arrest and the recovery of MO-1 and MO-2 have not been proved in manner known to law.



72.The learned Senior Counsel further pointed out that if the evidence of PW-1 is omitted, then the only conclusion the Court could arrive at is of acquittal. He pointed out that the trial Court had carefully analysed the evidence in extension.

73.The learned Senior Counsel then relied on the judgment of the Hon'ble Supreme Court reported in **(2022) 8 SCC 440 (Jafarudheen and others vs State of Kerala)**, wherein, the Hon'ble Supreme Court had held as follows:

“Recovery under Section 27 of the Evidence Act

37.Section 27 of the Evidence Act is an exception to Sections 24 to 26. Admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offence. Thus, it incorporates the theory of “confirmation by subsequent facts” facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilise it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso.

38.The onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under



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Section 27 will have to satisfy the court's conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act.”

74.The learned Senior Counsel further pointed out that though it is alleged that the incident had taken place at 09.30 pm, in the evidence of PW-1, he had stated that he made a telephone call only around 10.00 pm. He then pointed out that the FIR was also handed over to the Magistrate only at 06.30 am and contended that there was no explanation for the delay. Pointing out all these aspects, the learned Senior Counsel urged that the judgment of the trial Court had been passed only after considering all the surrounding factors. He asserted that the trial Court had correctly acquitted the accused and therefore, urged that the Criminal Appeal should be dismissed.

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



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76.It is the case of the prosecution that during the Temple festival on 08.09.2012 of Sudalai Madasamy Temple at Valliyoor main road in Tirunelveli District at around 04.00 pm, a quarrel emanated between A4 and the deceased. It is stated that the deceased had assaulted A4. It is further contended that A4 therefore harboured enmity against the deceased. He had spoken to A1 to A3 also.

77.In this connection, the prosecution had examined PW-6, Ramesh, PW-7, Kannan, PW-8, Chellappan. and PW-9, Esakkiappan. However, all the four witnesses were declared hostile.

78.It is the further case of the prosecution that on the same date/08.09.2012 at around 09.30 pm, PW-1 Subash and the deceased, Ravi who was actually the sister's son of PW-1, had gone over to the Government TASMAL shop near Valliyoor bus stand to consume liquor. It is in the evidence of PW-1 that when they were sitting in the bar, A1 to A3 entered and A2 caught hold of the hands of the deceased and held him tightly in the chair. A1 then stabbed the deceased on the neck. A3 stabbed the deceased repeatedly on the stomach and chest. It is contended that the deceased



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collapsed immediately. A1, A2 and A3 then chased PW-1 outside. When he ran out of the bar, he saw A4 outside the bar. A4 also chased him away.

79.A perusal of the records shows that PW-1 had spoken about this incident in very clear terms during his chief examination recorded on 17.03.2015. He was cross examined on the same day. He was however recalled for further cross examination on 31.10.2019. This was done pursuant to the direction issued by a learned Single Judge of this Court in CrI.O.P.(MD)No.11404 of 2017 by an order, dated 12.09.2019. That order came to be passed by the learned Single Judge, since on behalf of the accused, Cr.M.P.No.574 of 2017 had been filed before the trial Court seeking to recall PW-1 for further cross examination. The reason given for further cross examination was that when the prosecution examined PW-17 and PW-18, several new facts had been elicited during the cross examination and therefore, PW-1 is required to be recalled for cross examination. The learned Single Judge had allowed the said petition.

80.PW-1 had been recalled for further cross examination on 31.10.2019. During his cross examination, the evidence of PW-17 or PW-18



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was never referred at all. Rather, voluntarily he stated that on 08.09.2012 at around 11.00 pm, when he went over to the Police Station, the Police were enquiring some persons and the Police told him that those who had committed the offence had accepted to the same and therefore, they want his signature in the papers in which they writing something already. He further stated that on 09.09.2012 in the afternoon at 01.00 pm, he again went over to the Police Station. At that time, two pages were shown to him and he had affixed his signature. He identified that particular two pages as Ex-P1. He further stated that those whom the Police enquired were in the Police Station and he had also seen the weapons used for the offence.

81.It is very relevant to point out that the purpose for recalling PW-1 was to put before him the materials which, according to the accused had been elicited from PW-17 and PW-18. In this connection, it must be further pointed out that PW-17 was the Head Clerk of Judicial Magistrate Court, Valliyoor and PW-18 was the Assistant Director of Regional Forensic Science Laboratory at Tirunelveli.



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82.PW-17 during his chief examination had only marked the documents under which the material objects had been forwarded for chemical examination through the letter of the Court. Thereafter, he identified the material objects when received back by the Court. He had not spoken a single letter about Ex-P1, complaint.

83.PW-18 had also spoken only about the tests conducted relating to the material objects and about the results which had been marked as Ex-P13, Ex-P14, Ex-P15, Ex-P16 and Ex-P17. He never even uttered a single letter about Ex-P1 complaint.

84.It is thus seen that PW-1 had been re-called by surreptitiously, without informing the correct reasons to the Court.

85.Insofar as the further cross examination of PW-3 is concerned, he stated about a body lying at 10.00 to 11.00 pm near Kamarajar statue and that an ambulance driven by a Muslim had taken the dead body. In this connection, the accused had also examined DW-1. But however, very crucially, PW-5, Dhananjeyan, who was witness when with PW-15, the



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Investigating Officer, when he had visited the scene of crime and had signed as a witness in Ex-P2, observation mahazar and Ex-P10, rough sketch, was examined. No question was put that the body was not in the TASMAL shop/bar. However, MO-5, the broken piece of chair and MO-6, pair of slippers were seized from inside the TASMAL shop/bar. Very importantly, MO-7, which are four notes of Rs.100/- and two notes of Rs.10/- were recovered from the body and the clothes of the deceased found inside the TASMAL shop/bar.

86. In the observation mahazar, Ex-P2, it had been very clearly stated that the scene of crime is a Shop No.10603, TASMAL shop and the bar is at the back side of the shop. In that place, the deceased body was lying with the head down and the legs pointing the western direction. It was also mentioned that on the left hand, there was a tattoo mark, Ajith. There was also a dragon tattoo mark in the left forearm. The injuries were also very clearly noted down. It was also noted that in the shirt pocket, there was Rs. 420/- and the denominations were also given.



87.Ex-P3 is the seizure report for the broken piece of chair, pair of slippers and the cash from the shirt pocket of the deceased. It is thus very evidently clear that the deceased was murdered only inside the TASMAC shop.

88.The nature of the death had been very clearly stated in the postmortem report, Ex-P15. The injuries had been stated earlier and they are repeated again:

“1)7x 5cm x cavity deep, wedge shaped stab injury, obliquely present, towards left seen front of middle of neck. It lies, 11 cm below chin, 5cm above supra sternal notch, 13cm from top of right shoulder, 14cm from top of left shoulder. Underlying soft tissues (trachea, oesophagus & both side carotid arteries) found cut. Tip of the weapon make a stab of size 1x1cm in the C6 Vertebrae

2)3x2cm x cavity deep, wedge shaped stab injury, obliquely present, towards left seen in middle of abdomen in the epigastric region. It lies 18 cm below supra sternal notch, 12 cm above umbilicus, 14 cm from left nipple, 13cm from right nipple.

3)2x1cm x cavity deep, wedge shaped stab injury, obliquely present, towards right seen in middle of abdomen, in the epigastric region, 2 cm below injury number 2.

4)4x2cm x cavity deep, wedge shaped stab injury, obliquely present, towards right seen in middle of abdomen, in the epigastric region, 3cm below injury number 3.

5)4x2cm x cavity deep, wedge shaped stab injury, obliquely present, towards left seen in right side of abdomen, 5cm away from umbilicus, 20cm below right nipple.

6)4x2cm x cavity deep, wedge shaped stab injury, vertically present, towards down seen in midline of lower abdomen, 3cm below umbilicus, 10cm above pubic symphysis.



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7)3 x 2cm x cavity deep, wedge shaped stab injury, vertically present, towards down seen in right side of abdomen, 3cm away from the injury number 6.

8)3x2cm x cavity deep, wedge shaped stab injury, vertically present, towards down seen in left side abdomen, 4 cm away from the injury number 6.”

89.The finding is that the deceased would have died owing to stab injury in the neck and that Injury No.1 is fatal.

90.Thus, the death was a homicide.

91.PW-1 and PW-3 have very clearly stated that inside the TASMACH shop/bar where the body was found, A2 had held the hands of the deceased and pinned it to the chair and A1 had stabbed him on the neck and A3 had stabbed him repeatedly on the stomach and chest. They then chased PW-1 outside and when he ran out, A4 was standing who also chased PW-1 away. A4 was standing outside to ensure that no third person entered into the TASMACH bar. A4 had the main cause for enmity against the deceased. There is consistent evidence available that there was a quarrel between him and the deceased at 04.00 pm on the same day during the village Temple festival.



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92.It is clear that A1 to A4 had common intention to commit the murder of the deceased.

93.None of the exceptions to Section 300 IPC are attracted in the circumstances stated. There was preparation; there was knowledge; and there was intention. A1 would have known that a deep stab injury on the neck would kill any person. The fact that the aim was at the neck and the injury was also on the neck clearly establishes that the intention was to commit murder. The fact that A4 was standing outside is not relevant. He was charged with offence under Section 302 r/w 34 IPC. Section 34 IPC is as follows:

“Section 34 IPC.- Acts done by several persons in furtherance of common intention.—

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

94.A1, A2 and A3 had acted in furtherance of common intention of A1 inside the TASMACH shop/bar was. A1 to A3 had intention to do away with the deceased. It is one transaction with a common intention. The acts



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of A1, A2, A3 and A4 cannot be separated from each other. They each had a separate role to play. A4 was standing outside. A2 held the hands of the deceased. A1 stabbed him on the neck. A3 stabbed repeatedly on the stomach and chest. The stabs on the chest, stomach and neck were possible because the deceased was sitting on the chair, pinned to the chair. Therefore, the natural angle in which any person with a knife would stab would be downwards to the neck and to the chest and stomach. They are also vital organs. The medical opinion had clearly stated that injury No.1 is fatal. If A1 had missed, A3 would ensure that the deceased did not survive by stabbing him on the chest and stomach repeatedly. A4 had ensured that there was no third party interference. He had the primary intention to murder the deceased. A2 had ensured that the deceased did not run away.

95.The judgment under appeal is palpably perverse.

96.In view of all these reasons, we hold that the learned trial Judge had unfortunately overlooked vital aspects, particularly, the fact that PW-1 had been recalled after 4½ years and that the evidence of PW-3 after being recalled after one year cannot be believed or trusted because, questions were



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not put on that line to PW-5, Dhananjeyan. Similarly, the evidence of DW-1 will have to be rejected, as even the date has not been given in that particular evidence.

97.We therefore hold that this is a case where we have to set aside the order of acquittal and hold that the accused must be convicted for the charges alleged.

98.The following are the charges:

Charge No.1	Against A1 and A3 under Section 302 r/w 34 IPC
Charge No.2	Against A1 (two counts), A2 and A3 under Section 294(b) IPC
Charge No.3	Against A2 under Section 352 IPC
Charge No.4	Against A1 to A3 under Section 506(ii) IPC
Charge No.5	Against A2 under Section 302 r/w 109 IPC
Charge No.6	Against A4 under Section 302 r/w 34
Charge No.7	Against A1 to A4 under Section 120B(1) IPC

99.From the evidence available, it is clear that A1 had stabbed the deceased on the neck and A3 had repeatedly stabbed the deceased on the



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stomach and chest. Injury No.1 is on the neck. Injury Nos.2, 3 and 4 are on the middle of the abdomen; Injury Nos.5 and 7 are on the right side of the abdomen; Injury No.6 is on the lower abdomen and Injury No.8 is on the left side abdomen. All these injuries have been caused with knowledge and with intention to cause death. Since that intention pervaded the act, there was also knowledge that the stab injuries would cause death. All these injuries were caused only by A1 and A3. Therefore, A1 and A3 are found guilty for offence punishable under Section 302 IPC and convicted for the offence punishable under Section 302 IPC.

100.So far as the charge under Section 294(b) IPC is concerned, even though PW-1 had stated that he had been threatened, he had immediately run away from the place and therefore, A1, A2 and A3 are acquitted of the offence punishable under Section 294(b) IPC.

101.So far as the offence under Section 352 IPC is concerned, it is seen that A2 had held the hands of the deceased and pinned him to the chair, but that was done to abet A1 and A3 in the commission of their offence. Therefore, A2 is acquitted of this particular charge.



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102. So far as the offence punishable under Section 506(ii) IPC is concerned, once again even though there is evidence of threat held out, PW-1 had ran away from the place. We would acquit the accused of this particular charge.

103. So far as the offence punishable under Section 302 r/w 109 IPC is concerned, A2 had abetted A1 and A3 in the commission of offence punishable under Section 302 IPC by holding the hands of the deceased and pinning him to the chair. We hold that the charge is made out and therefore, A2 is found guilty and convicted for offence punishable under Section 302 r/w 109 IPC.

104. The next charge is under Section 302 r/w 34 IPC as against A4 who was standing outside the shop. PW-1 had very clearly stated in his evidence that he saw A4 standing outside, who had also chased him out. A4 had the common intention to ensure the death of the deceased, since he had an altercation with the deceased earlier in the evening at 04.00 pm. The deceased had assaulted him. Therefore, we hold that A4 though not present inside the TASMAC shop/bar, is equally liable for the act as if the offence



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of Section 302 IPC had been done by him also. A4 is therefore, found guilty and is convicted for offence punishable under Section 302 r/w 34 IPC.

105. So far as the charge under Section 120B(1) IPC is concerned, there is no evidence available in this regard. The witnesses had turned hostile and therefore, we would acquit A1 to A4 of this charge.

106. The judgment of the trial Court in S.C.No.393 of 2013 dated 20.12.2019 is set aside. The Criminal Appeal Stands allowed. The appellant is directed to produce A1 to A4 before this Court to be heard on the question of sentence. A1 to A4 to be produced on 28.10.2024.

107. List again on 28.10.2024.

[C.V.K., J.] & [R.P., J.]
24.10.2024

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

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To

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



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C.V.KARTHIKEYAN, J.

AND

R.POORNIMA. J.

cmr

Judgment made in
CrL.A(MD)No.314 of 2021

24.10.2024