



CrI.A.(MD)Nos.267 and 281 of 2020 and 28 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 26.09.2024

PRONOUNCED ON : 25.10.2024

CORAM

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

CrI.A(MD)Nos.267 and 281 of 2020 and 28 of 2021

Murugan	... Appellant in CrI.A(MD)No.267 of 2020
1.Pandi	
2.Premkumar	... Appellants in CrI.A(MD)No.281 of 2020
1.Kannan	
2.Balamurugan	... Appellants in CrI.A(MD)No.28 of 2021

vs

The State represented by
The Inspector of Police,
Rajathani Police Station,
Theni District.
(in Cr.No.16 of 2017) ...Respondent in all cases

COMMON PRAYER: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code, to call for the records from the lower Court and duly set aside the judgment passed by the learned Additional District and Sessions Judge, Theni, Theni District in S.C.No.166 of 2017 dated 03.03.2020 and acquit the appellants.

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For Appellants : Mr.Gopalakrishna Lakshmana Raju
Senior Counsel
for Mr.R.Venkateshwaran
(Crl.A.(MD)No.267 of 2020)
:Mr.V.Kathirvelu, Senior Counsel
for Mr.S.Balaji (Crl.A(MD)No.281 of 2020)
Mr.S.Pandiraj for Mr.A.Rajaram
(Crl.A.(MD)No.28 of 2021)
Mr.K.Prabhu
Legal Aid Counsel for A1
For Respondent : Mr.A.Thiruvadu Kumar
Additional Public Prosecutor

COMMON JUDGMENT

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

All the three Criminal Appeals have been filed challenging the conviction and sentence imposed against the appellants in S.C.No.166 of 2017 by the learned Additional District and Sessions Judge, Theni, by judgment dated 03.03.2020. Totally, ten accused faced trial.

2.The charges which had been framed were under Sections 147, 148, 294(b) and 302 IPC against A1 to A6 and under Sections 147, 294(b), 323 and 302 IPC against A7 to A10. By judgment, the learned trial Judge had acquitted A3, A4, A5, A6 and A10 of all the charges framed against them



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and had convicted A1, A2, A7, A8 and A9 for offence punishable under Section 147 IPC, A1 and A2 for offence punishable under Section 148 IPC, A1, A2, A7, A8 and A9 for offence punishable under Section 302 IPC and had imposed sentences accordingly. Questioning that particular conviction and sentence imposed, A7 has filed Crl.A(MD)No.267 of 2020, A2 and A9 have filed Crl.A(MD)No.281 of 2020 and A1 and A8 have filed Crl.A(MD)No.28 of 2021.

3.To present in detail the conviction and sentence imposed, the following table would be illustrative:

Charge	Accused	Sentence
No.1 u/s 147 IPC	A1	No separate sentence is imposed as he is sentenced u/s 148.
	A2	No separate sentence is imposed as he is sentenced u/s 148.
	A3 to A6	Acquitted under Section 235(1) of Cr.P.C.
	A7 to A9	Convicted and sentenced to undergo Rigorous imprisonment for a period of one year for each and to pay a fine of Rs.1000/- each i/d one month simple imprisonment for each. Total fine amount Rs.3000/-
	A10	Acquitted under Section 235(1) Cr.P.C.



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No.2 u/s 148 IPC	A1 and A2	Convicted and sentenced to undergo rigorous imprisonment for a period of two years for each and to pay a fine of Rs.1000/- each i/d one month simple imprisonment for each. Total fine amount Rs.2000/-.
	A5 and A6	Acquitted under Section 235(1) Cr.P.C.
No.3 u/s 294(b) IPC	A1 to A10	Acquitted under Section 235(1) of Cr.P.C.
No.4 u/s 323 IPC	A7 to A10	Withdrawn u/s 224 of Cr.P.C.
No.5 u/s 302 IPC	A1, A2 and A7 to A9	Convicted and sentenced to undergo life imprisonment under Section 302 IPC with a fine of Rs.5000/- each in default to undergo further period of one year simple imprisonment. Total fine amount Rs.25,000/-
	A3, A4, A5, A6 and A10	Acquitted under Section 235(1) Cr.P.C.

4.The learned trial Judge had also observed that the period of remand already undergone by A1, A2, A7, A8 and A9 should be set off under Section 428 of Cr.P.C. He had further held that the sentences imposed against A1, A2, A7, A8 and A9 shall run concurrently.



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5.It is the case of the prosecution that all the accused were residents of Kaliyamman Kovil East Street, Theppampatti Village in Theni District, and were related to each other.

6.In Theppampatti village, at the time of Mattu Pongal, the Village Head, Panneerselvam, would lead out his bulls in the street, after doing pooja. This would be watched by all the villagers.

7.On 15.01.2017, Mattu Pongal day, similarly, the Village Head, Panneerselvam, had let out the bulls in the evening at around 04.00 pm. This was watched by A1, Kannan among others. At that time, the deceased, Nagaprabhu, who belonged to the another community, pushed Kannan aside and went in front. There was a quarrel between A1 and the deceased. A2 to A10 also joined in the quarrel. They asked the deceased as to why he came to their portion where the accused were watching the bulls and caused this trouble.

8.It is the further case of the prosecution that later, at 07.30 pm, Nagaprabhu came to the street where the accused were residing, namely,



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Kaliamman Kovil East Street and shouted out degradingly against the accused. It is contended by the prosecution that at 08.30 pm on the same day, 15.01.2017, the accused, armed with stones, logs and sticks, went to the house of Nagrabhu and shouted out questioning why he had come to their street and had abused them and the women folk degradingly. They shouted that they would not leave without killing him. It is the case of the prosecution that this was witnessed by PW-1, Poongodi and PW-2, Nagaselvam, who were both in the house where Nagrabhu resided and also by PW-4, Veluthai, PW-6 and PW-9, both called Petchiammal, PW-7, Vadivel and PW-8, Selvakukmar. Thereafter, it is stated that A1 to A10 went away from that place.

9.At around 09.30 pm, the deceased Nagrabhu came out of his house to purchase beedies. At that time, A1 to A10 were still standing in the corner. It is the specific overt act alleged by the prosecution that A7, Murugan and A8, Balamurugan held the hands of Nagrabhu and A9, Pramkumar, A10, Thangavel held his legs and they all stamped on his body and at the same time, A1, Kannan hit him with a stone in the right chest, A2, Pandi, hit him with a stone on the left chest, A3, Sakthi Ganesan, hit him on



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the legs and stomach with the stick, A4, Pitchai Mani hit him on the hands, legs and stomach with another stick, A5, Muneeshwaran, hit him on his head and stomach and shoulder with a wooden log and A6, Thanga Muneeshwaran, hit him on his face and chest with a wooden log. Owing to the injuries suffered, Nagaprabhu died at that place.

10.It is under these circumstances that the learned trial Judge had framed charges under Section 147 IPC against A1 to A10, under Section 148 IPC against A1 to A6, under Section 294(b) IPC against A1 to A10, under Section 323 IPC against A7 to A10, under Section 302 IPC against A1 to A10. As stated above, A3, A4, A5, A6 and A10 had been acquitted of all charges and A1, A2, A7, A8 and A9 had been convicted of all charges framed against them. Since one of the charge was under Section 302 IPC, among other sentences, the sentence of life imprisonment was also imposed against them. They had filed these Criminal Appeals questioning such conviction and sentence.

11.It is to be noted that the trial Court had not framed any charge under Section 149 IPC. Section 149 IPC is as follows:



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“49. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

12.In connection with the occurrence, the complaint, Ex-P1, was lodged before the Rajathani Police Station at 11.30 pm by PW-1, Poongodi. In the complaint, the names of 11 accused were given. The 8th and 9th named accused therein Mokkarasu and Vathiyar Peran were dropped from the array of accused and on the other hand, A9, Premkumar was included.

13.On the basis of this complaint, FIR in Cr.No.16 of 2017 for offences punishable under Sections 147, 294(b) and 302 IPC had been registered against the named accused. The FIR was received by the Judicial Magistrate at 11.05 am on 16.01.2017. On the basis of this complaint and on the basis of the investigation conducted, pursuant to the registration of the FIR, final report was filed by PW-23, Elangovan, for offences punishable under Sections 147, 148, 294(b) and 302 IPC against A1 to A6 and for offences punishable under Sections 147, 294(b), 342 and 302 IPC against



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A7 to A10.

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14.The final report was taken cognizance as P.R.C. No.16 of 2017 by the Judicial Magistrate, Andipatti. The learned Judicial Magistrate complied with the required provisions under the Code of Criminal Procedure and thereafter, since the offence under Section 302 IPC was triable exclusively by a Court of Sessions, had committed the case to the Principal Sessions Court at Theni. It was taken on file as S.C.No.166 of 2017 and made over to the Additional District and Sessions Court/Fast Track Court, Theni, wherein, charges as aforementioned were framed against the accused. The accused denied the charges and claimed to be tried. The prosecution was then invited to adduce oral and documentary evidence to prove the charges.

15.The prosecution examined PW-1 to PW-22 witnesses and marked Ex-P1 to Ex-P25 documents and produced MO-1 to MO-6 material objects. On conclusion of evidence on the side of the prosecution, the accused were questioned under Section 313(1)(b) Cr.P.C., on the incriminating evidence against them. Their statements were recorded. They did not examine any



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witness. They did not mark any documents. Thereafter, by judgment dated 03.03.2020, the learned Additional District and Sessions Judge, Theni, had convicted A1, A2, A7, A8 and A9 for offences punishable under Section 147 IPC, A1 and A2 for offence punishable under Section 148 IPC, A1, A2, A7, A8 and A9 for offence punishable under Section 302 IPC and had acquitted A3, A4, A5, A6 and A10 of all charges. The learned trial Judge had also imposed sentences accordingly.

16.To appreciate the sequence of events, the facts are narrated in a little more detail from the the view point of the witnesses:

17.PW-1, Poongodi, mother of the deceased, Nagaprabhu, in her evidence stated that there was a quarrel between her son on the one hand and the accused on the other hand during the Mattu Pongal festival. She stated that she and others had brought her son back home. She further stated that the accused came to her house and threatened her son and challenged him to come out of the house. She further stated that at 08.30 in the nigher, her son went outside to purchase beedies, but did not come back.



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18. She further stated that she and her other son, PW-2, Nagaselvam went in search of her son. At that time, A1, Kannan, A2, Pandi, A10, Thangavel, A3, Sakthi Ganesan, A9, Premkumar, A7, Murugan, A8, Balamurugan, A5, Muneeswaran and Eswaran (probably Thanga Muneeswaran (A6)) hit her son at Muthalamman Kovil East Street and ran away. She had not mentioned the name of A4, Pitchaimani and had given the name of Eswaran, which is presumed to be A6, Nalla Muneeswaran. She had not given the direct overt acts committed by each one of the accused. She thereafter stated that they had contacted 108 and called for the ambulance. Her son was taken to K.Vilakku Government Hospital, where, her son was declared dead. She identified her complaint, Ex-P1.

19. During her cross examination, she stated that she saw her son near the Temple and further stated that she saw her son lying down injured. It was dark (இருட்டாக இருந்தது). She further stated in her cross examination that in her complaint, she had not stated that since her son did not come back after going out to purchase beedies, she and her younger son, PW-2, Nagaselvam had gone in search of him.



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20.The prosecution then examined PW-2, Nagaselvam, the other son of PW-1 and the brother of the deceased. He also stated about the quarrel at the time of Mattu Pongal festival, but did not name any of the accused. He then stated that at 08.30 pm, the accused came to the house and shouted. Thereafter, the deceased went out to purchase beedies. He did not come back. He stated that therefore, he and his mother (PW-1) went in search of him. He stated that at that time, Kannan (A1), Bala Murugan (A8), Eswaran (probably Thangamuneeshwaran (A6)), Murugan (A7), Premkumar (A9), Muneeshwaran (A5), Pitchai (Probably Pitchai Mani (A4)) and Pandi (A2) hit the deceased and ran away. Thereafter, the deceased was taken to Government Hospital by an ambulance. He was informed that his brother had died. He had attested Ex-P1 complaint. His signature was marked Ex-P2. He had not named A3, Sakthi Ganesan and A10, Thangavel. He had given the name, Eswaran and it is presumed that he is Thanga Muneeshwaran (A6). He had also given the name, Pitchai and it is presumed that he is Pitchaimani (A4).

21.During his cross examination, he stated that when he was enquired



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in the Police Station at 09.00 pm, the complaint was written down two times and that his mother, PW-1 had affixed her thumb impression twice and that he also attested the same. Ex-P1 is the complaint. It runs to three separate pages. The left thumb impression of PW-1 is found only on the third page and only once and not twice. Similarly, the signature of PW-2 is found only once in third page and not twice.

22.During his further cross examination, he stated that he saw the accused from a distance of 20 feet, when they were running away and that at that time, it was slightly dark. He also stated that all of them ran together and therefore, he was not able to state in which direction they ran. He also stated that 6 to 7 Police men came after the body was taken in the ambulance and he was enquired in the scene of occurrence itself and a statement in written was prepared. This statement was not produced by the prosecution. He was then taken to the hospital by the Police.

23.The prosecution further examined PW-3, Thangarasu, who was the paternal uncle of the deceased. He spoke about the quarrel at 04.00 pm between the deceased and the residents of Kaliamman Kovil East Street



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Colony. He stated that he saw the accused standing in the road at around 09.00 pm. He stated that when the deceased came to purchase beedies, the accused gathered near Muthalamman Kovil Street and A1, hit him with a stone in the chest, A2, Pandi, hit him with another stone in the chest and others hit him with sticks and stones and kicked him. He further stated that when he went close by, all the accused ran away. The deceased was then shifted to the hospital by ambulance. It is significant to point out that he did not give the names of the other accused. During his cross examination, he stated that he does not know the name of A9, even during the occurrence and also at the time of deposing evidence.

24.The prosecution then examined PW-4, Veluthai, who did not witness the incident, but went there on hearing a noise.

25.The prosecution further examination, PW-5, Nagendran, who is another paternal uncle of the deceased. He also stated that there was a quarrel at the Mattu Pongal festival at 04.00 pm between the accused and the deceased. He also stated that when he went to the scene of crime, there was a big crowd and that Nagaprabhu, the deceased was lying down injured.



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He only heard about the incident and was not a direct eye witness. He also stated that he was enquired by the Police at that place itself.

26.The prosecution further examined Petchiammal, as PW-9, who stated that the accused had attacked the deceased at 09.00 pm, when he went to purchase beedies. She did not specifically mention any name of the accused. During her cross examination, she stated about Sakthi Ganesan, A3 and Premkumar, A9.

27.The prosecution also examined PW-7, Vadivel, who was also not a direct eye witness. He heard about the incident. Similarly, PW-8 Selva Kumar, also heard about the incident. PW-9 Petchiammal was also not a direct eye witness but only heard about the same. PW-10 Krishnan also heard about the incident. PW-11, Kannan, stated that at 09.30 pm, when the deceased Naga Prabhu went to purchase beedies, the accused took him and hit him on the chest with stones. He stated that he along with others pulled the deceased back. He also stated in his chief examination that he went to the scene of occurrence only after hearing about the same. He stated that he had witnessed only the incident at 04.00 pm and not any other incident. It is



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clear that his evidence is of no assistance to the prosecution.

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28.The prosecution then examined PW-12, Panneerselvam, who also only heard about the incident.

29.The prosecution then examined PW-13, Murugan, who was the witness to the observation mahazar, Ex-P3 and rough sketch, Ex-P22. In his cross examination, he stated that he does not know what an observation mahazar means.

30.The prosecution further examined PW-14, Rajkumar, who was an employee in the Tamil Nadu Electricity Board. He stated that when enquired by the Investigating Officer, he had given a report that on 15.01.2017 at around 09.30 pm, there was no electricity cut near Muthalamman Kovil in Theppampatti village. He was further asked whether there was electricity cut between 08.00 pm and 10.00 pm on 15.01.2017 and he had again given a reply that there was no electricity cut. The letters given by him were marked as Ex-P7 series. However, the evidence of PW-14 should be read in juxtaposition with the evidence of PW-1, who stated that the place was dark



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and there was no light and the evidence of PW-2, who stated that the place was slightly dark.

31.The prosecution further examined PW-15, Raja, who was working as Writer at Theppampatti Village Panchayat. He stated that tube lights were burning near Muthalamman Kovil Street on 15.01.2016. However, in his cross examination, he stated that at the scene of crime, there was no street light pole at all.

32.The prosecution then examined PW-16, Dr.Balakrishnan, who was working at Government Hospital at Theni on 16.01.2017, when the body of the deceased was brought to the hospital. The Accident Register issued by him was marked as Ex-P4. In the accident register, he had written that the body had been brought dead and sent to mortuary.

33.The prosecution then examined Dr.Priya, who had conducted the postmortem at 12.45 pm on 16.01.2017. She had issued the postmortem certificate, Ex-P5 and final opinion Ex-P6. In Ex-P5, she stated that there was a smell of alcohol in the stomach and small intestine. In the



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postmortem report, the following injuries were noted:

- “1.Abrasion of size 6 cms x 5 cms seen over the right elbow body.*
- 2.Abrasion of size 3 cms x 1.5cms seen over the left arm.*
- 3.Abrasion of size 3 cms 1.5 cms seen over the left arm*
- 4.Abrasion of size 3 cms x 2 cms seen over the right side abdomen.*
- 5.Abrasion of size 2 cms x 1 cm seen over the left cheek.*
- 6.Abrasion of size 1 cms x 0.75 seen over the left side jaw.*
- 7.Blue coloured contusion of size 6 cms x 5 cms seen over the left side upper chest*
- 8.Blue coloured contusion of size 5 cms x 3 cms seen over the left elbow joint.*
- 9.Blue coloured contusion of size 4 cms x 3 cms seen over the lateral end of right eye.*
- 10.Blue coloured contusion of size 1 cms x 0.75 cms seen over the right chest.*
- 11.Swelling and contusion of size 5 cms x 4 cms seen over the right side head (Temporo-occipital area of scalp)*
- 12.Blue coloured contusion of size 6 cms 5 cms over the posterior aspect of right lower chest.”*

34.In Ex-P6, was stated that the deceased would have died due to shock and hemorrhage due to abdomen and chest injuries.

35.The prosecution further examined PW-18, Suresh Kannan, who had taken the body of the deceased to the hospital for postmortem and after



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dated 18.01.2017. He also stated that in the FIR, he had not given the time, when it was despatched to the Judicial Magistrate Court.

38.The prosecution further examined PW-20, Raja. He stated that he came to the Judicial Magistrate Court at Andipatti at 03.30 am on 16.01.2017 and found that the Officer was on leave and that the Judicial Magistrate, Uthapalayam was in-charge. He had served the copy at 11.05 am on 16.01.2017 to the learned Judicial Magistrate, Uthapalayam. In his cross examination, he stated that from the Police Station, it will take half an hour to go the Judicial Magistrate Court at Andipatti and that from the Judicial Magistrate Court at Andipatti, it will take one hour to go to the Judicial Magistrate Court at Uthamapalayam. He stated that since it was night, it took two hours for him.

39.The prosecution further examined Sankar Kumar, as PW-21, the Assistant Director in Regional Forensic Science Laboratory at Theni. He had received the viscera of the deceased and had issued viscera report, Ex-P9.



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40.The prosecution then examined Murugesan, PW-22, who was the Village Administrative Officer for Theppampatti Village. He was called by the Inspector of Police, who stated that he had retained in custody Kannan (A1), Pandi (A2), Muneeshwaran (A5) and Thanga Muneeshwaran (A6). PW-22 further stated that A1 had given a confession statement, in which he had signed as witness. The admissible portion of the confession statement was marked as Ex-P10. He then stated that on the basis of that admission, 1 kg of stone was recovered under seizure mahazar, Ex-P11. The stone was produced as MO-1.

41.He further stated that thereafter, A2, Pandi, had also given a confession statement and the same was marked as Ex-P12. On the basis of the said admission, another 1 kg stone was recovered under seizure mahazar, Ex-P13 and the stone was produced as MO-2. A5, Muneeshwaran also gave a confession statement and the admissible portion of the same was marked as Ex-P14. On the basis of the said confession, wooden log was recovered under seizure mahazar, Ex-P15 and the wooden log was produced as MO-3. A6, Thanga Muneeshwaran also gave a confession statement and the admissible portion of the same was marked as Ex-P16 and on the basis



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of the admission, a wooden log was recovered under seizure mahazar, Ex-P17. The wooden log was produced as MO-4.

42.He then stated that he was also informed about the arrest of two further accused. He found Sakthi Ganesan, A3 and Pitchai Mani @ Pitchai, A4 were in the custody. Sakthi Ganesan, A3, gave a confession statement. The admissible portion of the same was marked as Ex-P18. On the basis of the said admission, a wooden stick was recovered under seizure mahazar, Ex-P19. The wooden stick also produced as MO-5.

43.Pitchai Mani @ Pitchai, A4, also gave a confession statement and the admissible portion of the same was marked as Ex-P20. On the basis of the same, a wooden log was recovered under seizure mahazar, Ex-P21 and the wooden stick was produced as MO-6.

44.The prosecution finally examined Elangovan, PW-23, who was the Inspector of Police. He took up investigation of FIR in Cr.No.16 of 2017 registered by Rajadhani Police Station at 12.30 in the middle night on 16.01.2017. He then went over to the scene of crime and prepared



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observation mahazar, Ex-P3, and rough sketch, Ex-P22. He then recorded the statements of Poongodi, PW-1, Nagaselvan, PW-2, Thangarasu, PW-3, Kannan, PW-11 and Murugan PW-13. He stated that he filed alteration report, Ex-P23 altering the offences to Sections 147, 148, 294(b), 336 and 302 IPC. He then conducted inquest over the dead body at Government Hospital, Theni in the presence of panchayatdars. The inquest report was marked as Ex-P24. He then forwarded the dead body for conducting postmortem. He then took into custody the accused persons and recorded their confession statements and recovered the material objects as stated by PW-22, Murugesan, the Village Administrative Officer. He then remanded the accused to judicial custody.

45. Thereafter, on 22.01.2017, he recorded the statements of Panneerselvam, PW-12, Pavunthai (not examined) and Nagendran (PW-5) and further on 24.01.2019, he recorded the statements of Vadivel (PW-7) and Selvakumar (PW-8). On 25.01.2017, he recorded the statements of Veluthai, PW-4, Petchiammal, PW-9, Krishnan, PW-10, Kannan and another Petchiammal, PW-6 and Murugavel, called Murugan, PW-13. He then recorded the statements of Dr. Balakrishnan, PW-16 and Dr. Priya,



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PW-17. He then recorded the statements of Sureshkannan, PW-18, Raja, PW-20 and Rengasamy, PW-19, Sub Inspector of Police. He then obtained the viscera certificate from PW-21, Sankar Kumar. He then recorded the further statements from Poongodi, PW-1, Nagaselvam, PW-2, Thangarasu, PW-3 and Kannan, PW-11. He then recorded the statements of Rajkumar, PW-14, of Tamil Nadu Electricity board and Raja, PW-15 of the Village Panchayat. He then filed an alteration report, Ex-P25, deleting the name of Mokkarasu from the array of accused. He then filed final report before the Judicial Magistrate, Andipatti charging A1 to A6 with commission of offence punishable under Sections 147, 148, 294(b) and 302 IPC and charging A7 to A10 for commission of offence punishable under Sections 147, 294(b) and 302 IPC.

46.During his cross examination, he admitted that MO-1 and MO-2 stones were not weighed to determine that their weight is 1 kg. He also stated that in the FIR, it had been stated that there were 11 accused and others. He also admitted that though the initials of the Judicial Magistrate were on 16.01.2017, the Court seal was on 18.01.2017.



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47.As stated above, on analysis of the evidence stated above, the learned trial Judge had convicted A1, A2, A7, A8 and A9 of all charges and acquitted A3, A4, A5, A6 and A10 of all charges.

48.Heard arguments advanced by Mr.Gopalakrishna Lakshmana Raju, learned Senior Counsel for Mr.R.Venkateshwaran, learned Counsel appearing for the appellant in Crl.A.(MD)No.267 of 2020, Mr.V.Kathirvelu, learned Senior Counsel for Mr.S.Balaji, learned Counsel appearing for the appellants in Crl.A.(MD)No.281 of 2020, Mr.S.Pandiraj and Mr.K.Prabhu, learned Counsels appearing for the appellant in Crl.A.(MD)No.28 of 2021 and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondents in all the appeals.

49.Mr.Gopalakrishna Lakshmana Raju, learned Senior Counsel appearing for A7, took the Court through the facts of the case and pointed out that there were four separate incidents, which had occurred on 15.01.2017. The first one was at 04.00 pm, when general public including the accused were watching the Mattu Pongal festival at Theppampatti village. At that time, even according to the charge, the deceased,



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Nagaprabhu, had pushed aside, A1, Kannan and had abused him. There was a wordy quarrel. The second incident was at 07.30 in the night, when the deceased came over to the street, where all the accused resided and abused them including the ladies degradingly. The third incident was at 08.30 pm, when it is alleged that the accused had gone over to the house of the deceased and had threatened that they would kill him. They then disbursed. The fourth incident was at 09.30 pm, when the deceased came out of his house to purchase beedies and was assaulted him.

50.The learned Senior Counsel pointed out the overt acts as stated in the charge, namely, that A6 and A7 had held the hands of the deceased and A9 and A10 had held the legs of the deceased. While so holding, all four of them had stamped the deceased. The learned Senior Counsel also wondered that how that could have been possible. The overt act as against A1 and A2 is that they had thrown stones at the deceased and against A3 and A4 was that they had hit the deceased with wooden logs and against A5 and A6 was that they had hit the deceased with the wooden sticks.

51.The learned Senior Counsel pointed out that a charge under



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Section 149 IPC had not been framed and therefore viewing it each one of these overt acts independently, the charge under Section 302 IPC would never lie. The learned Senior Counsel also stated that PW-1 had very clearly stated in her chief examination that she only saw the accused running away. She did not mention the nature of the injuries caused by each one of the accused. She did not state about the weapons carried out by each one of the accused. She very honestly stated that the place was dark.

52.The learned Senior Counsel then pointed out the evidence of PW-2, who stated that the place was slightly dark, but still dark. Though PW-2 named some of the accused, he did not give the specific overt acts as against the accused. The learned Senior Counsel stated that the entire incident happened owing to provocation by the deceased against A1, by first pushing A1 and later by abusing the accused including the ladies degradingly by going over to their street. These provocations were totally unwarranted.

53.The learned Senior Counsel then pointed out that though the incident had happened at 09.30 pm, the complaint was received only at



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11.30 pm and it had been received by Magistrate at 11.05 am on 16.01.2017. He pointed out the explanation given by PW-20, Raja, who stated that the Judicial Magistrate, Andipatti was on leave and therefore, he had to serve the FIR on the Judicial Magistrate, Uthamapalayam. However, during cross examination, he admitted that from the Police Station, he can go the Judicial Magistrate Court, Andipatti within half an hour and from Judicial Magistrate Court, Anditipatti to the Judicial Magistrate Court, Uthapalayam, he can go over in one hour. He stated that he had taken two hours. But even then, the records had reached the Magistrate at 11.05 am, which was nearly 11 ½ hours later. There is no explanation at all for this delay.

54.The learned Senior Counsel stated that none of the other prosecution witness witnessed the offence. There were no direct eye witness at all. He further pointed out that the learned trial Judge had adopted a pick and choose strategy by convicting A7 and A8, who are said to have held the hands of the deceased and also A9, who is said to have held the legs of the deceased but acquitting A10 who is also said to have held the legs of the deceased.



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55.He also pointed out that A3, A4, A5 and A6 who were said to have attacked the deceased with wooden sticks and wooden logs were acquitted of all charges, even though the wooden logs and wooden sticks had been recovered and produced as material objects. No reason had been given why the learned trial Judge had adopted this policy on convicting certain accused and acquitting certain accused on the basis of very same evidence. As a matter of fact, the learned Senior Counsel asserted that there is zero evidence with respect to the overt acts and therefore, there cannot be division among the accused by convicting a few and acquitting a few. The learned Senior Counsel asserted that the conviction against A7 should be set aside by this Court.

56.Mr.V.Kathirvelu, learned Senior Counsel appearing for A4 and A9 who had filed Crl.A(MD)No.281 of 2017 adopted the arguments of Mr.Gopalakrishna Lakshmana Raju. The learned Senior Counsel also asserted that there was absolutely no eye witnesses produced by the prosecution for the occurrence and even though the prosecution has examined PW-1 and PW-2, PW-1 had not stated anything about the



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accused. In her cross examination, she admitted that she went to the place only after the accused had run away and the place was dark. PW-2 had named few of the accused, but did not give the specific overt acts as against them. The learned Senior Counsel also asserted that the conviction of few of the accused was on the basis of extraneous factors and thus perverse in nature.

57.The learned Senior Counsel pointed out that the only overt act as against A9 was that he had held one of the legs of the deceased. With respect to A2, he had thrown a stone on the deceased. But, again, there was no evidence for both these alleged overt acts. The learned Senior Counsel also asserted that in the absence of any charge under Section 149 IPC, A2 and A9 should be acquitted of all charges.

58.Mr.S.Pandiaraj, learned Counsel for A8 adopted the arguments of both the learned Senior Counsels and argued that there was no evidence about the involvement of A8 in any of the offence. Even in the charge, the only overt act alleged against A8 was that he had held that hands of the accused. The learned Counsel stated that holding the hands would by no



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means of imagination attract a conviction under Section 302 IPC.

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59.Mr.K.Prabhu, learned Counsel appeared on behalf of A1 also adopted the arguments of the learned Senior Counsels and stated that as against A1, there was no direct evidence and also stated that A1 was the victim in the hands of the deceased, who pushed aside A1 at the time of Mattu Pongal festival at 04.00 pm. There was no provocation for the deceased to so push A1. The learned Counsel therefore stated that this Court should acquit A1 of all charges.

60.Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent pointed out that the incident had happened at 09.30 pm and the complaint had been lodged immediately at 11.30 pm and the investigation had commenced at 12.30 in the middle night. The learned Additional Public Prosecutor also pointed out that the prosecution had conducted a thorough investigation. The arrest of the accused and recovery of the material objects had been proved by examination of PW-22, Murugan. He further pointed out the nature of injuries suffered and stated that the deceased had been very brutally attacked by the accused persons.



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61.He stated that though PW-1 and PW-2 did not see the overt act, but still taking into consideration the fact that they saw the accused running away, the conduct of the accused shows that they were involved in the offence. In this connection, the learned Additional Public Prosecutor also pointed out the evidence of PW-3, Thangarasu and PW-11, Kannan. He stated that the accused had no necessity to run away from the scene of crime. The learned Additional Public Prosecutor further pointed out that on over all analysis of the evidence, the learned trial Judge had come to the correct conclusion and therefore, stated that the judgment of the trial Court should be confirmed by this Court.

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

63.All the accused are related to each other. They are resident of Kalamman Kovil East Street, Theppampatti Village, Theni District. During Mattu Pongal festival every year, there was a convention that the bulls of the Village Headman, Panneerselvam would be let to the streets and the



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general public would watch them. Similarly on 15.01.2017, on Mattu Pongal festival, at 04.30 pm, the bulls were let out. A1 was among those who were watching. At that time, without any provocation, the deceased, Nagaprabhu, had pushed aside A1 and went to the front. He also abused A1. There was a general quarrel. A2 to A10 took A1 back home.

64.Even in the charge, it had been stated that at 07.30 pm, the deceased again without any provocation, came over to the street where the accused resided and shouted degradingly at them and at the ladies. This provocation was totally unwarranted. It is stated by the prosecution that at 08.30 pm, A1 with a stone, A2 with another stone, A3 and A4 with sticks, A5 and A6 with wooden logs and accompanied by A7 to A10 had gone over to the house of the deceased and had threatened him with dire consequences.

65.In the FIR, Ex-P8, registered on the basis of the complaint, Ex-P1, the names of A1, A2, A3, A4, A5, A6, A7, A8 and A11 were mentioned and it was also stated that and some more persons were involved. A9 was later added as an accused. A9 and A10 mentioned in the FIR were deleted.



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66.This only shows that at the initial time, when PW-1 had given the complaint, there was a confusion over the identity of the accused. In her evidence, she stated that when she saw, the accused were running away. She further stated that there was darkness in the area. PW-2 another eye witness stated that when he saw, the accused were running away. He stated that it was slightly dark.

67.To contradict this evidence of PW-1 and PW-2, the prosecution were forced to examine PW-14, Rajkumar, who issued Ex-P7 series letters that there was no power cut in the area. But that was not sufficient. The prosecution further examined, PW-15, Raja, who was the Writer in the Village Panchayat and who stated that the street light was burning. In his cross examination, he stated that at that particular scene of occurrence, there was no lamp post at all.

68.A combined reading of the the evidence above would show that the there was no possibility of directly witnessing and directly identifying the accused by PW-1 and PW-2. They were material witness. They had



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given the names of some of the accused. But they had not given the overt acts of each one of the accused. They are the residents of the same village. They know that the accused had altercation with A1 at 04.00 pm. Therefore, the only names which would come to the minds were the accused and nobody else. PW-1 and PW-2 must have already formulated that it was the accused and the accused alone who were responsible for the death of the deceased and nobody else. Therefore, the evidence on their side is on the basis of their preconceived presumption and not on the basis of what they directly saw happening. They did not see the offence. They saw the accused running away. PW-2 actually stated that all the accused were running away together. Therefore, they could only see the back sides of the accused and certainly, when it was dark. At 09.30 pm, when there was not even a lamp post, they could never, ever identify the accused.

69.It is inconceivable to understand how the learned trial Judge accepted the case of the prosecution that A7 and A8 held the hands of the deceased, A9 and A10 held the legs of the deceased and at the same time, A7 to A10 stamped on the deceased and at the same time, A1 and A2 threw stones on the deceased and A3 and A4 hit him with wooden sticks and A5



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and A6 hit him with wooden logs. Merely because, the prosecution produced two stones and two sticks and two wooden logs, would not mean that the prosecution distributes the weapons among the accused and charge them with commission of the offences, as the prosecution things it had happened. There must be direct evidence. There is no evidence at all in this case.

70. More surprisingly, the learned trial Judge appears to have adopted a whimsical pick and choose theory by convicting some of the accused and acquitting some of the accused, particularly, when there was no evidence at all about the overt acts of any of the accused. There must be reasonableness even in conviction. There must be some evidence about the overt acts alleged by the prosecution.

71. It is understandable that at 09.30 pm, when there was no lamp post, there may not be much light, but when the evidence was only that the accused were running away and that PW-1 and PW-2 saw them, it is beyond reason to hold that a few of the accused are to be convicted for the offence punishable under Section 302 IPC and a few of them should be acquitted.



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show the act being committed and that evidence must be direct in nature. In this case, the prosecution had projected direct eye witnesses through evidence of PW-1 and PW-2. Unfortunately, the evidence is totally uninspiring, unreliable and lapse credibility.

74.The learned trial Judge had extracted portions and portions of judgments of the Hon'ble Supreme Court without indicating their relevance. He had also examined the threat held out by the accused. The crux of the issue however rests on the incident which cause the death of the deceased for which there is absolutely no evidence. There must be a direct link between the evidence and the offence. The learned trial Judge had not discussed about the non framing of the charge under Section 149 IPC.

75.We are also not able to understand the reason why there was a delay in forwarding the FIR to the Judicial Magistrate. An explanation had been given that the Judicial Magistrate, Andipatti was on leave and it had to be served on the Judicial Magistrate at Uthamapalayam. But, the direct evidence of PW-20, Raja, Police Constable who had served the FIR to the Judicial Magistrate was that it would take half an hour from the Police



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Station to the Judicial Magistrate, Andipatti and a further one hour to go to the Judicial Magistrate, Uthapalayam. But the FIR had reached the Judicial Magistrate, Uthamapalayam at 11.05 am, when it was registered in the previous night at 11.30 pm. The explanation given is rejected.

76.The Hon'ble Supreme Court in ***Rajeevan and another vs. State of Kerala*** reported in ***[2003] 3 SCC 355***, the Apex Court in paragraph 15 held as follows:

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

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

(Emphasis supplied)



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77.It is also relevant to refer the decision of Apex Court reported in

(2016) 10 SCC 519 (Jose @ Pappachan vs the Sub Inspector of Police),

wherein, the Hon'ble Supreme Court had held as follows:

*“56. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of “may be true” but has to essentially elevate it to the grade of “must be true”. **In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof** and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, **to prevent miscarriage of justice, benefit of doubt is to be extended to the accused.** Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted.”*

(Emphasis supplied)

78.In view of the fact that there is absolutely no credible evidence against the accused, we are convinced that the judgment under appeal will have to be set aside and the conviction against the appellants herein will have to be set aside.

79.Accordingly, the judgment of the learned Additional District and



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Sessions Judge, Theni, in S.C.No.166 of 2017 dated 03.03.2020 by which, the learned trial Judge had convicted A1, A2, A7, A8 and A9 for offence punishable under Section 147 IPC, A1 and A2 for offence punishable under Section 148 IPC, A1, A2, A7, A8 and A9 for offences punishable under Section 302 IPC, is set aside. In effect, the appellants herein are acquitted of all charges. The appellants are to be set at liberty forthwith, unless their detention is required in connection with any other case. The bail bonds executed, if any, shall stand cancelled. The fine amounts, if any paid, shall be refunded to the appellants.

80.In the result, the Criminal Appeals are allowed. This Court must place its deep appreciation for the efforts taken by Mr.K.Prabhu, learned Legal Aid Counsel, who appeared for A1.

[C.V.K., J.] & [R.P., J.]
25.10.2024

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

cmr



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To

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- 1.The Additional District and Sessions Judge, Theni, Theni District.
- 2.The Inspector of Police,
Rajathani Police Station,
Theni 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.POOENIMA. J.

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Judgment made in
Crl.A(MD)No.267 and 281 of 2020 and 28 of 2021

25.10.2024