



CrI.A.(MD)No.78 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.10.2024

PRONOUNCED ON : 70.10.2024

CORAM

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

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**R.Chinnapitchai (Died)
Muthu**

... Appellant

VS

**1.The State represented by
The Inspector of Police,
Thiruchuli Police Station,
Virudhunagar District.
(in Cr.No.373 of 2011)**

**2.Sathiyar @ Sathiyaseelan
3.Isac Ravindra Paul
4.Palraj
5.Joseph @ Kandasamy
6.Thannasi
7.Saravanan
8.Bose**

...Respondents

(The sole appellant was died and the appellant, Muthu was substituted and permitted to prosecute the appeal vide order of this Court, dated 29.07.2022 in CrI.M.P.(MD)No.8765 of 2022)



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PRAYER: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, to call for the records pertaining to the acquittal order passed in S.C.No.144 of 2012 on the file of the Additional District and Sessions Court, Virudhunagar dated 02.02.2019 and to set aside the same as illegal and convict the accused.

For Appellant : Mr.R.Murugan
For R1 : Mr.S.Ravi
Additional Public Prosecutor
For R2 to R8 :Mr.G.Karuppasamy Pandian

JUDGMENT

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

The Criminal Appeal had been filed by the father of the deceased, Ramachandran, for whose alleged murder, the 2nd to 8th respondents/A1-A4 and A6-A8 and also the deceased, A5, stood trial before the Additional District and Sessions Court, Virudhunagar in S.C.No.144 of 2012.

2.By judgment dated 02.02.2019, all the accused were acquitted of all the charges. Questioning that particular judgment, the appellant, as victim and father of the deceased, Ramachandran had filed the present Criminal Appeal under Section 372 Cr.P.C.



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3. Pending the appeal, the appellant died and his daughter, Muthu, sister of the deceased, Ramachandran had filed CrI.M.P.(MD)No.8765 of 2022 seeking permission to continue the appeal and to be substituted as appellant. That petition was ordered by a coordinate Division Bench of this Court by order dated 29.07.2022.

4. It must also be mentioned that originally eight (8) accused faced trial in S.C.No.144 of 2012 before the Additional District and Sessions Court, Virudhunagar. Pending trial, A5 died. The same had also been recorded by the trial Court. Even though the name of A5 was shown in the cause title in the judgment of the Sessions Case, he has not been shown as a respondent in this appeal. The charges against him stood abated.

5. It is the case of the prosecution that in Puliuran Village, Aruppukottai Taluk, Virudhunagar District, there were two rival groups, one headed by the deceased, Ramachandran and the other headed by A1, Sathiyar @ Sathiyaseelan. The disputes between the rival groups escalated at the time of election for post of President and Vice President of the Panchayat. It had been stated that in the Panchayat President election, the



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sitting Panchayat President, Jeya, wife of A1 lost to Mariyammal, who was supported by the deceased and his group. This created deep enmity between the two groups. Again when on 30.11.2011, elections were held for the post of Vice President, PW-3, Soundarapandian, who was supported by the deceased, Ramachandran and his group, was elected. He defeated one Anand, who was supported by A1, Sathiyar @ Sathiyaseelan.

6.It is the further case of the prosecution that the enmity further deepened owing to the results of this election. It is contended that A1 entered into criminal conspiracy with A2 to A8 to commit the murder of the deceased, Ramachandran and his group.

7.It had been further stated that on 30.11.2011, at around 01.00 pm, when PW-1, Oorkavalan, (de-facto complainant) and the deceased, Ramachandran, Muthu (not examined), PW-10, Baskaran, PW-9, Murugan, PW-3, Soundarapandian and PW-4, Thangeshwaran were talking along with one Srinivasan (not examined) in front of the gallery/*Kalaiarangam* of their village, A1 to A8 came over there, formed an unlawful assembly armed with deadly weapons of iron rods and bill hook and on the instigation of A1,



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began to assault the deceased Ramachandran and others.

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8.It is contended that A3 and A2 assaulted the deceased Ramachandran on his head and face with iron rod and he fell down and A4 to A8 (including the deceased A5) stamped him. The injuries led to his death. It is further contended that A4 with intention to murder, assaulted Muthu (not examined) with iron rod on the centre of the head and caused injuries. A6 also assaulted Srinivasan (not examined) and also PW-4, Thangeshwaran with iron rod on the left side of the head and left shoulder respectively. It is further contended that A8 assaulted PW-3, Soundarapandian with aruval and caused injuries. It is further contended that A7 assaulted PW-9, Murugan (declared hostile) on front parietal region and left hand. It is further stated that A3 assaulted PW-10, Baskaran on his left fore head and left side of head, left hand, right hand thumb and caused injuries. It is further contended that A5 (since deceased) assaulted PW-1 Oorkavalan with iron rod on his head and caused injuries.

9.In this connection, PW-1, Oorkavalan, had given a complaint, Ex-P1 before the Inspector of Police, Thiruchuli Police Station, on the same



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day, 30.11.2011 at 06.00 pm. FIR in Cr.No.373 of 2011 had been registered by PW-19, Ramalingam, Sub Inspector of Police, for offences punishable under Sections 147, 148, 323, 324, 307 and 302 IPC. In the complaint, the names of A1, Sathiyar @ Sathiyaseelan, A2, Isac Ravindra Paul, A3, Paul Raj, A4, Joseph @ Kandasamy, A5, Rava Muthu A6, Thannasi, A7, Saravanan and A8, Bose were given. The FIR was despatched to the Judicial Magistrate Court at Aruppukottai by PW-19, Ramalingam, who also forwarded a copy to the Circular Inspector, Thiruchuli Police Station. It had been received by the learned Judicial Magistrate, Aruppukottai, on the same day, 30.11.2011 at 11.00 pm.

10.The Circle Inspector, Thiruchuli Police Station, Kannan, was examined as PW-20. In his evidence, he stated that at 07.30 in the night, he went over to the scene of crime and in the presence of PW-12, Pitchai and Chinnathambi (not examined), he prepared observation mahazar, Ex-P22 and rough sketch, Ex-P43. Thereafter, at 08.30 pm in the presence of the same witnesses, he collected blood stained sand, MO-8 and sand without blood, MO-9 under seizure mahazar, Ex-P23. He then recorded the statements of PW-1, Oorkavalan, Muthu (not examined), PW-2, Kumar,



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Chinna Pitchai (not examined), PW-12, Pitchai and Chinna Thambi (not examined).

11.He then forwarded the material objects under Form-95 to the Court. On 01.12.2011, he conducted inquest over the dead body of the deceased, Ramachandran at Government Hospital, Aruppukottai in the presence of panchayatdars and witnesses. The inquest report was marked as Ex-P44. He also recorded the statements of the witnesses to the inquest report. He further recorded the statements of PW-3, Soundarapandian, Srinivasan (not examined), PW-4, Thangeshwaran and Pitchaiammal (not examined).

12.On the same day at 02.00 pm, he arrested A4 and A5 in the presence of witnesses, Seeniraj (not examined) and PW-6, Pandiyaraj. He recorded the confession statement of A4. The admissible portion of the confession of A4 was marked as Ex-P45. He also recorded the confession statement of A5. The admissible portion of the confession of A4 was marked as Ex-P46. He then recovered the iron rod used by A4 under Ex-P47. He also recovered the iron rod, MO-10 used by A5 under Ex-P48. He



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also seized the dress materials of the deceased, MO-11, MO-12 and MO-13.

On 02.12.2011, he arrested A1, A3, A7 and A8. He recorded the confession statements given by them in the presence of Prabhu (not examined) and PW-7, Chandran. The admissible portion of confession of A1 was marked as Ex-P10. The admissible portion of confession of A3 was marked as Ex-11, the admissible portion of the confession of A7 was marked as Ex-P12 and the admissible portion of confession of A8 was marked as Ex-P13. On the basis of the confessions, PW-20 recovered the iron rods used by A1 and A7 and the aruval used by A8 and the bill hook used by A3.

13. On 03.12.2011, he arrested A2 and A6 in the presence of witnesses, Muthuramalingam (PW-8) and Ganapathy (not examined). The admissible portion of the confession of A2 was marked as Ex-P18 and the admissible portion of the confession of A6 was marked Ex-P19. He also recovered the weapons used and they were produced as MO-1 to MO-7 and MO-10.

14. He then remanded the accused to judicial custody. He forwarded the material objects under Form-95 to the Magistrate Court. He also gave a



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requisition to forward the viscera taken from the body of the deceased for chemical examination. He then examined the Headmistress of Puliyanar Nadar Middle School, Mangayarkarasi and obtained certificate from her. He then recorded the statements of Mangayarkarasi, PW-13, Ramalingam, PW-19, Special Sub Inspector of Police and Muthu Kumar (not examined), Police Constable. He then recorded the statement of Nagaraj, PW-11. He then gave a requisition for recording 164 Cr.P.C. statement of Pitchaiammal (not examined) before the Judicial Magistrate-II, Virudhunagar.

15.He then recorded the statements of Dr.Malar Vannan, PW-15 and Dr.Sundereshwari, PW-16 and also obtained the Accident Certificates from them. He then forwarded the blood stained sand and sand without blood, MO-8 and MO-9 for forensic examination. He also recorded the statement of Dr.Sampath, PW-14, who had conducted the postmortem on the body of the deceased. He then received the certificate from the Forensic Department and recorded the statements of Vidyarani, PW-18 and Vairamuthu, PW-17.

16.During the examination of Mangayarkarasi, Headmistress of Nadar Middle School, he marked Ex-P24 and Ex-P25. During the evidence



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of Dr.Sampath, PW-14, the postmortem certificate and the final report were marked as Ex-P26 and Ex-P27. The Accident Register copies of the injured Murugan, PW-9 was marked as Ex-P28, of injured Baskaran, PW-10 was marked as Ex-P29, of Muthu, (not examined), was marked as Ex-P30, of Soundarapandian, PW-3 was marked as Ex-P31, of Srinivasan (not examined) was marked as Ex-P32, of Thangeshwaran, PW-4 was marked as Ex-P33 and of Oorkavalan, PW-1, was marked as Ex-P34 and medical reports of Baskaran, PW-10 was marked as Ex-P35 and of Murugan, PW-9, marked as Ex-P36. The chemical examination reports were marked as Ex-P37 to Ex-P41.

17.On completion of investigation, he filed a final report before the Judicial Magistrate, Aruppukottai. The final report was taken cognizance as P.R.C.No.28 of 2012 by the Judicial Magistrate Court, Aruppukottai. Since the offence under Section 302 IPC was triable exclusively by a Court of Sessions, it was committed to the Principal Sessions Court at Virudhunagar. It was then made over to the Additional District and Sessions Court at Virudhunagar and taken on file as S.C.No.144 of 2012. The following charges were framed against the accused:



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Charge No.1	Against A1 to A8 under Sections 147, 148, 302 r/w 34, 120B r/w 302 IPC
Charge No.2	Against A4, A5, A6 (3 counts) and A8 under Section 307 or 324 IPC
Charge No.3	Against A7 and A3 under Sections 324 IPC
Charge No.4	Against A1, A2, A3 under Section 149 r/w 307 IPC

18.Individual charges as against each one of the accused had been framed by the Court and therefore, the total number of charges framed by the Court were 18 in number. The accused denied the charges and claimed to be tried. The prosecution was then invited to prove the charges in manner known to law. The prosecution examined PW-1 to PW-20 witnesses and marked Ex-P1 to Ex-P52 documents. The prosecution also produced MO-1 to MO-13 material objects.

19.On conclusion of trial, the accused were acquitted of all charges, by judgment dated 02.02.2019, by the Additional District and Sessions Court, Virudhunagar. Questioning such acquittal, the father of the deceased, Ramachandran, had filed the present Criminal Appeal. During



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the pendency of the Criminal Appeal, he died and therefore, his daughter, Muthu had been substituted and permitted to prosecute the appeal.

20. Heard arguments advanced by Mr.R.Murugan, learned Counsel appearing for the appellant, Mr.S.Ravi, learned Additional Public Prosecutor appearing for R1 and Mr.G.Karuppasamy Pandian, learned Counsel for R2 to R8.

21. It must also be mentioned that though eight (8) accused stood trial, pending the trial, A5 died. Even though in the judgment under appeal, his name was reflected in the cause list, while filing the Criminal Appeal, his name had been omitted and A6, A7 and A8 have been reserialised as A5, A6 and A7. It is for that reason, there are seven accused before this Court serialised as R2 to R8.

22. Mr.R.Murugan, learned Counsel appearing for the appellant took the Court through the facts of the case and pointed out that owing to the Panchayat elections, there was law and order problem in Puliuran village and the candidate who had been supported by the accused had lost the Vice



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President election and therefore, they had a common intention to cause the death of those who had supported the victorious candidate, Soundarapandian, PW-3. The learned Counsel stated that among the prosecution witnesses, PW-1, Oorkavalan, PW-3, Soundarapandian, PW-4, Thangeshwaran, PW-9, Murugan and PW-10, Baskaran had suffered injuries and this fact had been corroborated by PW-15 and PW-16, the Doctors, who had treated them. The Accident Registers had also been marked as documents. All of them had suffered injuries by being hit on the vital parts, namely, the head by the accused persons. The material objects were also seized. The leaned Counsel questioned the reasons given for acquittal and stated that the learned trial Judge had not considered the evidence in entirety and had acquitted the accused. The learned Counsel therefore stated that this Court should set aside the acquittal and convict the accused for the charges framed against them.

23.Mr.S.Ravi, learned Additional Public Prosecutor stated that the State had not filed any appeal as against the acquittal. However, the learned Additional Public Prosecutor pointed out the evidence of PW-3, PW-4 and PW-10, who had very specifically spoken about the overt acts of A1, A2



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and A3 who had caused injuries to the deceased, Ramachandan and stated that the judgment under appeal had not considered this evidence adduced by the prosecution.

24.Mr.G.Karuppasamy Pandian, learned Counsel for R2 to R8 pointed out that PW-20, the Investigating Officer had admitted in his evidence that A5 had suffered injuries and had actually been admitted to the hospital. He pointed out that none of the prosecution witness had spoken about this fact. He further stated that there was a group fight and the injuries were caused by both sides to members of both sides and therefore, it cannot be specifically pointed out as to who had caused injuries on whom and who had caused injuries leading to the death of Ramachandran. The learned Counsel therefore stated that the benefit of doubt has to be extended to the accused and stated that the trial Court had correctly acquitted the accused.

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



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26.An analysis of the evidence reveals that there was enmity between two groups in Puliuran Village owing to the President and Vice President elections for the Panchayat. One group was headed by the deceased, Ramachandan, and the other group was headed by A1, Sathiyar @ Sathiyaseelan. The wife of A1 had contested for the post of President and had lost to Mariyammal, who was supported by Ramachandran group. Thereafter, the Vice President elections were conducted on 30.11.2011. A1 had projected as their candidate, Anand, but he also lost the election.

27.On the same day, 30.11.2011, PW-1 Oorkavalan, Muthu (not examined), PW-10, Baskaran, Srinivasan (not examined), PW-9, Murugan, PW-3, Soundarapandian, who incidentally won the election for the post of Vice President, PW-4, Thangeshwaran and the deceased, Ramachandran had congregated near the gallery/*kalaingarangam* of the Village. The accused also came there and there was a melee with stones being thrown. PW-1 initially stated that he and Ramachandran were there and chased and when they came back, PW-1 took a pipe by breaking open the water pipeline and Ramachandran took a wooden log with him. At that time, it is stated that A6, Thannasi, threw a stone at Ramachandran, but Ramachandran evaded



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and tried to hit A6, Thannasi with a wooden log. Thannasi also evaded and the wooden log fell down and broke.

28.PW-1 further stated that A5, Ravamuthu (dead), hit him on the left forehead with an iron rod. PW-1 then felt dizzy and went to wash his face. When he turned around, he stated that all the accused joined together and beat up Ramachandran with wooden logs and aruval. Ramachandran fell down injured on the head. The accused ran away. Thereafter, PW-1 and PW-2 took Ramachandran to Government Hospital at Aruppukottai and within half an hour from the time of admission, he died. PW-1 was also given medical treatment. He then gave a complaint before the Thiruchuli Police Station. That complaint was marked as Ex-P1.

29.It had been the general impression conveyed to the Court that during the course of argument that PW-1 had been declared hostile, but a reading and re-reading of his evidence does not indicate that the Court had declared him hostile. The facts which come out from his evidence are that A6 threw a stone on the deceased, Ramachandran, but Ramachandran, evaded. In turn, the deceased Ramachandran tried to hit A6 with a wooden



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log, but A6 also evaded and the wooden log fell down and broke. A5 (since dead) hit PW-1 on the left forehead with an iron rod. PW-1 felt fizzy and went to wash his face. When he turned around, he saw all the accused (without naming anyone) hitting Ramachandarn. It is thus seen that the evidence of PW-1 is not helpful for the prosecution.

30.PW-2, Kumar, had taken Ramachandran in a car to the Government Hospital. He was not an eye-witness.

31.PW-3, Soundarapandian, had been elected as Vice President. In his evidence, he stated that he was the brother-in-law of the deceased, Ramachandran. He also stated about the violence which the Panchayat election had caused. He stated that around 01.00 pm, after the election result for the post of Vice President had been declared on 30.11.2011, he along with PW-1, the deceased Ramachandran, Muthu (not examined), Murugan, PW-9, Baskaran, PW-10, Thangeswaran, PW-4, Srinivasan (not examined), congregated at the gallery/*kalaiarangam* and were talking with each other. At that time, A1, A2, A3, A4, A5, A7, A6 and A8 came there. He stated that A1, Sathiyar @ Sathiyaseelan hit Ramachandran on the head with iron



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rod, A3, Paulraj hit Ramachandan also on the head with iron rod. Isac Ravindra Paul, A2 hit Ramachandan on the left eye with an iron rod and Ramachandan fell down. He stated that Joseph @ Kandasamy, A4, Ravamuthu (deceased) A5, Thannasi, A6, Saravanan, A7 and Bose, A8 stamped Ramachandan in the legs. When PW-3 the witness went to prevent the attack, A6 hit him on the left head and on the fingers with an iron rod. Thereafter, A8, Bose hit him on the head with aruval. Thereafter, the accused ran away. Thereafter, he, Srinivasan, Muthu (both not examined), Oorkavalan, (PW-1) and Baskaran (PW-10) were taken to the hospital in an ambulance. He identified the aruval used by Bose, A8 as MO-1. He was not able to identify the iron rods.

32.While analysing this evidence, it is seen that the witness had only spoken about the overt acts of A1, A3 and A2 who had caused injuries on the deceased, Ramachandan. This has to be contrasted with the evidence of PW-1 who had stated that initially A6 Thannasi threw a stone at Ramachandan and Ramachandan retaliated by trying to hit him with wooden log but it fell down and that all the accused hit Ramachandan and ran away.



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33.PW-4, Thangeshwaran, in his evidence, stated that he along with PW-3, Soundardapandian, PW-10, Baskaran, Muthu and Srinivasan (both not examined), Ramachandran, deceased, PW-1, Oorkavalan, and PW-9, Murugan, had congregated in the gallery/*kalaiarangam*, when all the eight accused came there and A1, A2 and A3 hit Ramachandran on the head with iron rods which they had kept and A6 had hit the deceased on his left shoulder. He also stated that others were also attacked with aruval. Ramachandran was then taken to the hospital.

34.The other injured witness, Murugan was examined as PW-9. He stated that he was in a tea shop and when he heard some noise. He went to the gallery/*kalaiarangam* and saw a gang fight and somebody threw a stone which fell on his head and he suffered an injury. He was declared hostile.

35.The another eye witness, Baskaran, PW-10 stated that the deceased Ramachandran was attacked by A1, A2 and A3 and he was also attacked by A3, Paulraj. He was also attacked by Bose with an aruval.



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36. One fact which had not been stated by all these witnesses or by the Investigating Officer was that A5, Rava Muthu, was also injured in the gang fight. He was also sent to the Government hospital. He was then remanded to custody, but again was sent to Ruskin Hospital and was an in-patient for ten days. The Investigating Officer admitted that he did not enquire into that particular incident of A5 suffering injury. He had suppressed the fact that A5 had suffered injuries. He suppressed the medical records relating to the injury of A5.

37. At this juncture, it must be pointed out that when an accused suffers injuries, it is the burden of the prosecution to explain the injuries. PW-20, the Investigating Officer also admitted that owing to the tension in the area, even during the incidents on 30.11.2011, there was Police bandobast in Puliur Village. He also stated that no reason had been advanced why one Pitchaiammal another eye witness was not examined as a witness before the Court even though her statement had been recorded under Section 164 Cr.P.C.



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38.The prosecution further examined PW-5, Chinnaraj, who had gone to the hospital on hearing the death of Ramachandran. He witnessed recording of confession statements of A4 and A5. He was however declared hostile.

39.The prosecution also examined as PW-6, Pandiaraj, who was also witness for recording of confession of A4 and A5. He was also declared hostile.

40.The prosecution also examined PW-7, Chandran. He was also a witness for recording of confession of A1, A3, A7 and A8. He was also present when, on the basis of the said confession, MO-2, MO-3, MO-4 and MO-5 were recovered. During his cross examination, he admitted that there was no connection between the arrest of the accused, confession of the accused and the recovery of the material objects. This could only be taken as an elicitation of admission of a fact by the witness and owing to the self contradictory nature of evidence, the entire statement of the witness will have to be rejected.



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41.The prosecution further examined Muthu Ramalingam, PW-8, who was the Village Administrative Officer. In his evidence, he stated that he was the witness for the arrest of A2 and A6. He was also the witness for the confession statement given by them. The admissible portion of the confession statement of A2 was marked as Ex-P2 and of A6 was marked as Ex-P19. He was also witness for the recovery of MO-6 and MO-7. During cross examination, he admitted that he does not know where Ex-P18 to Ex-P21 were written, by whom it was written and that he was not present when they were written. Again, it would not prudent to rely on the evidence of this witness.

42.The prosecution further examined PW-9, Murugan, who was actually an injured witness, but stated that he got injured when he was drinking tea near the tea shop and a stone came and fell on him. He was declared as hostile.

43.The prosecution further examined PW-10, Baskaran, who was also one of the injured witnesses. He stated that at 01.00 pm, he and the



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deceased, Ramachandran, PW-9, Murugan, PW-3, Soundarapandian, Muthu (not examined), PW-4, Thangeshwaran and Srinivasan (not examined) were standing, when the accused came and A1, A2 and A3 had hit Ramachandran with iron rods on his head. The witness was hit by A3 and was also hit by A8 with aruval. He did not disclose that A5 had actually suffered injuries in the same transaction. In view of that direct suppression, particularly, when read in conjunction with the admission of Investigating Officer, PW-20 that A5 had suffered injuries and had been admitted to the hospital and after remand to custody was again admitted to hospital for ten days, it can only be stated that the witness has suppressed material facts and therefore, cannot be considered as a reliable witness.

44.The prosecution further examined PW-11, Nagaraj, who had been declared hostile.

45.The prosecution further examined PW-12, Pitchai, who was present, when the blood stained sand and sand without stain, MO-8 and MO-9 were seized from the scene of occurrence.



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46.The prosecution also examined PW-13, Mangayarkarasi, who was declared hostile.

47.The prosecution further examined PW-14, Dr.Sampath, who conducted the postmortem over the dead body of Ramachandran. He had issued the postmortem certificate, Ex-P26 and the final opinion, Ex-P27. The following external injuries were found on the body of the deceased:

- “1.Lacerated wound in the right occipital region 5x2x1 cm size.*
- 2.Lacerated injury in the left eye lid 1½x1x1 cm size.*
- 3.A lacerated wound in the left side of forehead 1/2x1/2x1/2 cm.*
- 4.A lacerated wound just below the left eye 1x1/2x1x1 cm size.*
- 5.A lacerated wound in the left side of upper lip 1½x10 cm size.”*

48.In the final opinion, the cause for death was given as head injury and injury to brain.



49.The prosecution further examined Dr.Malar Vannan, PW-15. He had treated Murugan, PW-9. The Accident Register in his case was marked as Ex-P28. The witness also gave treatment to PW-10, Baskaran, and the Accident Register was marked as Ex-P29. He further gave treatment to Muthu (not examined) and the Accident Register was marked as Ex-P30. He also gave treatment to PW-3, Soundarapandian and the Accident Register was marked as Ex-P31. He also gave treatment to Srinivasan (not examined) and the Accident Register was marked as Ex-P32. He also treated Thangeshwaran, PW-4 and his Accident Register was marked as Ex-P33. He also gave treatment to Oorkavalan, PW-1 and his Accident Register was marked as Ex-P34. In Ex-P28 to Ex-P34, the injuries suffered were categorisd as simple injuries.

50.One fact which came to light from the evidence of PW-15, Dr.Malar Vannan is that the prosecution had not produced as witnesses, Muthu and Srinivasan, who also suffered injuries. The reason why they had not been examined before the Court had not been explained by the prosecution. It is thus seen that the prosecution had not examined two injured witness and had also suppressed the injuries caused to A5.



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51.The prosecution also examined PW-16, Dr.Sundareshwari. She had also given treatment to Muthu, PW-9 and had issued a certificate, Ex-P35 categorising the injuries as simple injuries. She also gave treatment to Baskaran, PW-10 and had issued certificate, Ex-P36 again categorising the injuries as simple injuries.

52.The prosecution also examined PW-17, Vairamuthu from the Forensic Department, who had issued Ex-P37 to Ex-P40.

53.The prosecution also examined PW-18, Vidhyarani again from the Forensic Department, who had issued certificate, Ex-P41.

54.The prosecution also examined, PW-19, Ramalingam, who had registered the FIR in Cr.No.373 of 2011. The FIR was marked as Ex-P42 He had forwarded the FIR to the Judicial Magistrate and also to his superior officials. The FIR was registered on 30.11.2011 at 06.00 pm. It was handed over to the jurisdictional Judicial Magistrate only at 11.00 pm, after nearly five hours. The reason for the delay had not been explained. The Police



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Constable who had been deputed to hand over the FIR and complaint to the jurisdictional Judicial Magistrate had not been examined as a witness. The prosecution had thus not taken any steps to explain the delay.

55.The prosecution finally examined PW-20, the Investigating Officer, whose evidence had been discussed earlier.

56.On analysis of the evidence recorded, the following facts come to light:

1)Two injured witnesses, Muthu and Srinivasan were not examined before the Court.

2)The injured PW-9, Murugan, was declared as hostile

3)None of the prosecution witnesses have uttered a single word about the injuries suffered by A5.

4)PW-20, the Investigating Officer admitted that A5 had also suffered injuries and had been admitted to the hospital and after remand to custody, had again been re-admitted to the hospital for ten days.

5)PW-1 had also not supported the case of the prosecution in entirety and had contradicted himself during cross examination.



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6)The medical certificates issued for all the injured witnesses except PW-4, Thangeshwaran, reflected that the injuries were simple in nature.

7)There is no reason why Pitchaiammal, whose statement under Section 164 Cr.P.C., had been examined as a witness during trial.

8)PW-11 who had been examined to speak about the conspiracy had been declared hostile.

57.It is also not known whether with respect to the injuries suffered by A5, any complaint had been received by PW-20 and whether any FIR had been registered and whether any investigation had been done pursuant to it. It is also seen that PW-20 had admitted that there was Police bandobast at the area owing to the tension due to the Panchayat elections. It is also significant to note that PW-1 had stated that he and the deceased, Ramachandran were originally sitting near to gallery and then they went and came back with a water pipe and wooden log respectively and that a stone was thrown at Ramachandran by A6, who in turn, tried to hit A6, who evaded and then all the accused joined together and attacked Ramachandran. The names of the accused who had actually attacked had not been given. There is no indication in the records to show that PW-1 had



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been declared as hostile. During his cross examination, he stated that he was only able to see the back of the accused.

58. Even though PW-3, PW-4 and PW-10 injured witnesses had stated that A1, A2 and A3 had attacked the deceased with iron rods, the fact that they had suppressed the injuries caused to A5 in the same transaction shows that their evidence is extremely prejudicial in nature. No reason had been advanced for suppression of that vital fact by all the prosecution witness including the Investigating officer. It is very surprising that the Investigating Officer had suppressed that fact, since he had knowledge that A5 had suffered injuries and had also admitted that fact during cross examination.

59. In *AIR 1957 SC 614*, in the case of *Vadivelu Thevar and another -vs- State of Madras*, the Hon'ble Supreme Court while placing guidelines for analysing the evidence of a witness had held as follows:

"11.....Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.*
- (2) Wholly unreliable.*
- (3) Neither wholly reliable nor wholly unreliable.*



12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

(Emphasis supplied)

60. In the instant case, PW-3, PW-4 and PW-10 can never be categorised as wholly reliable witnesses. They had suppressed the fact that in the same incident, A5 had also suffered injuries.

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

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



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

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

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

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

.....

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

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

(Emphasis supplied)

62.In the instant case, PW-20, the Investigating Officer had admitted during cross examination that A5 had suffered injuries and that after



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remand, he had been admitted to hospital for ten days. Therefore, the injuries cannot be considered as minor or superficial. Suppression of this vital fact brings a deep suspicion in the facts as projected by the prosecution.

63.In (2016) 10 SCC 519 (*Jose @ Pappachan vs the Sub Inspector of Police*), 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.”



64.In (2008) 10 SCC 450, *Ghurey Lal vs the State of Uttar Pradesh*,

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:

“70.In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so.

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in “grave miscarriage of justice”;

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

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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65.It can never be stated that the judgment of the trial Court is perverse or unjust or unreasonable. The prosecution case suffers on the ground of suppression of vital facts.

66.We are not therefore inclined to interfere with the judgment under appeal. In the result, the Criminal Appeal fails and is dismissed.

[C.V.K., J.] & [R.P., J.]
30.10.2024

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, Virudhunagar.
- 2.The Inspector of Police,
Thiruchuli Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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C.V.KARTHIKEYAN, J.

AND

R.POOENIMA. J.

cmr

Judgment made in
CrI.A(MD)No.78 of 2021

30.10.2024