



Crl.A.No.554 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

Crl.A.No.554 of 2018

1.GunduViji @ Vijayakumar
2.Abhisheik
3.Mari @ Sivakumar

... Appellants

Vs.

The State represented by Inspector of Police,
R-8 Vadapalani Police Station,
Chennai - 600 028.

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of conviction and sentence passed by the learned VII Additional Sessions Judge, Chennai, in S.C.No.273 of 2016, dated 10.08.2018.

For Appellants : Mr.R.John Sathyan
Senior Counsel
for Ms.A.B.Fathima Sulthana



Crl.A.No.554 of 2018

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem

J U D G M E N T

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Aggrieved over the judgment of conviction and sentence passed by the learned VII Additional Sessions Judge, Chennai, in S.C.No.273 of 2016, dated 10.08.2018, the appellants, who are A1, A2 and A4 have filed the present appeal. The appellants/accused were convicted and sentenced by the trial Court as follows :

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1, A2 & A4	Section 302 r/w. 34 IPC	Life imprisonment each and fine of Rs.10,000/- each, in default, to undergo six months simple imprisonment
	Section 341 IPC	Fine of Rs.500/- each, in default, to undergo simple imprisonment for one week

2.The case of the prosecution is as follows :

2.1.P.W.1 is the resident of Kumaran Colony. He is residing with his wife (P.W.5), son (P.W.2), another son and daughter. Along with them, his



elder brother-in-law Nageswara Rao (deceased) and younger brother-in-law Rajesh (P.W.3) are also residing. One Kowsalya (P.W.18) is the wife of A1 and there was an illicit intimacy between P.W.18 and P.W.3. Offended by that, A1 gave a complaint to the Police on 18.05.2016 alleging that his wife (P.W.18) was missing. When the Police enquired, P.W.18 declined to join A1. Even thereafter, relationship continued between P.W.3 and P.W.18.

2.2. When the matter stood thus, on 08.06.2016 at about 10.30 a.m., A1 along with his two sons (A2 and A3) and his friend Mari (A4) came to the house of P.W.1 and asked about P.W.3. Besides, they also abused him. Immediately, the deceased Nageswara Rao, Rajesh (P.W.3) and his friend Nagaraj (P.W.4) went to the Police Station and lodged a complaint in this regard. On the same night, while P.W.3 and the deceased Nageswara Rao were returning to the house after giving the complaint, the accused A1 to A4 waylaid them at about 11.30 p.m. in front of Kalpatha Apartments and fought with P.W.3 and the deceased. A1 to A4 beat the deceased with wooden logs (M.O.1) on the head, body and legs, as a result of which, the deceased fell down and thereafter, A2 hit the deceased head with a cement slab (M.O.2), due to which the deceased sustained grievous injuries on his



head and all over the body. Immediately, the accused ran away from the place of occurrence.

2.3.P.W.1 called the Ambulance and the deceased was taken to the Kilpauk Government Hospital, where he was declared dead at 1.20 a.m. on 09.06.2016 and P.W.22 (Medical Officer), who examined the deceased, issued Ex.P7 (Accident Register). When P.W.1, along with family members, reached the hospital, it was informed that Nageswara Rao had died. Thereafter, P.W.1 lodged a complaint (Ex.P1) before the respondent Police.

3. Based on the complaint (Ex.P1), Mr.Pasupathy, Inspector of Police (P.W.27) registered an FIR (Ex.P12) in Crime No.821 of 2016 for the offences under Sections 341, 324 and 302 IPC as against Vijayakumar (A1), Abishek (A2), Rohith (A3) and Mari (A4). After registration of FIR (Ex.P12), P.W.27 took up the investigation and went to the scene of occurrence at 5.00 a.m. on 09.06.2016 and prepared Observation Mahazar (Ex.P14) in the presence of P.W.7 and Rough Sketch (Ex.P13). He seized the blood stained earth, ordinary earth and the cement slab which was used to hit the deceased (M.O.2) under Seizure Mahazar (Ex.P15). Thereafter, he



Crl.A.No.554 of 2018

sent the collected material objects to the Court under Form-91 (Ex.P16).

Thereafter, he recorded the statements of the eye-witnesses. Then, he conducted inquest over the dead body and issued inquest report (Ex.P17). Thereafter, he sent the dead body for postmortem through one Sankar, Head Constable (P.W.13).

4.P.W.24 (Medical Officer) conducted autopsy on the body of the deceased and issued postmortem certificate (Ex.P8). He opined that the deceased appears to have died due to head injury.

5.Then, P.W.27 arrested the accused A1, A3 and A4. at about 12.00 noon on 09.06.2016. After recording the confession from the accused, he seized the three wooden logs (M.O.1) and sent the same to the Court vide Form-91 (Ex.P18). After recording statements of the other witnesses and sending the arrested accused and the collected materials to the Court, P.W.27 handed over the case file to Mr.Alphin Raj, Inspector of Police (P.W.28) for further investigation.



CrI.A.No.554 of 2018

WEB COPY 6.P.W.28, in continuation of the investigation, arrested A2 on 23.06.2016 at Vijaya Hospital, Vadapalani, who was taking treatment in the said hospital as In-Patient. After recording the confession statement from A2, the statements of other witnesses, collecting call details related to the case, and after receipt of viscera report (Ex.P9), serology reports (Exs.P10 and P11), biological report (Ex.P21) and chemical report (Ex.P22) and completing the investigation, P.W.28 laid a final report for the offences under Sections 341, 302 r/w. 34 IPC in P.R.C.No.64 of 2016 before the XVII Metropolitan Magistrate Court, Saidapet, Chennai.

7.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.273 of 2016 and was made over to the VII Additional Sessions Court, Chennai, for trial.

8.Since A3 was a juvenile, the case insofar as A3 was split up and the Sessions Case proceeded as against A1, A2 and A4.



Crl.A.No.554 of 2018

WEB COPY

9.The trial Court framed the charges for the offences under Sections 341, 324 and 302 r/w. 34 IPC as against A1, A2 and A4. When questioned, the accused pleaded “not guilty”.

10.To prove the guilt of the accused, the prosecution examined P.W.1 to P.W.28, marked Exs.P1 to P22, and produced M.Os.1 to 9. On the side of the defence, D.W.1 was examined and no document was marked.

11.The trial Court, after appreciating the oral and documentary evidence and materials on record, by judgment dated 10.08.2018 in S.C.No.273 of 2016, found the accused A1, A2 and A4 guilty of the offences under Sections 341, 302 r/w. 34 IPC and thereby, convicted and sentenced the accused as stated *supra*.

12.Challenging the conviction and sentence, the present appeal has been filed by A1, A2 and A4.



Crl.A.No.554 of 2018

WEB COPY 13.Learned Senior Counsel appearing for the appellants/accused would submit that A3 was a juvenile and therefore, the case as against A3 was split up and tried. Though he was found guilty of the charges, he was set at liberty under Section 18(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015. According to him, it is a case and case-in-counter and in fact, the appellants have exercised their right of private defence. The prosecution has suppressed the cut injuries and grievous injuries caused to A2 and A3. In fact, A2 was arrested only on 23.06.2016 as in-patient in the Vijaya Hospital. The medical records also would show that he has suffered serious injuries on chest and shoulder and this aspect has been totally suppressed by the prosecution. The Investigating Officer has not conducted the investigation as per PSO 566 and has not even found as to who was the real aggressor and has mechanically filed charge sheet in both the matters. The trial Court has also not appreciated the evidence properly and has mechanically relied upon both the versions.



Crl.A.No.554 of 2018

WEB COPY

14.The learned Senior Counsel would further submit that the evidence of all the so-called eye-witnesses P.W.1 to P.W.4 is a parrot-like repetition and in fact, they are not eye-witnesses at all. It is his specific contention that P.W.1, P.W.2 and others could not have been eye-witnesses to the occurrence. Their conduct clearly indicates that they are not eye-witnesses. Except A1 and other accused who were present, others could not have witnessed the occurrence at all.

15.Further, it is his contention that, though the alleged occurrence is said to have taken place at 11.45 p.m., the deceased was taken to the hospital at 01.15 a.m. and the FIR came to be registered only at 3.00 a.m. All these facts create a serious doubt about the case of the prosecution. It is his further contention that, merely because the said Nageswara Rao died due to the injuries and P.W.1 to P.W.4, who are the family members, had deposed as eye-witnesses, conviction cannot be made, since all the witnesses have suppressed the nature of injuries caused to the other side, i.e., A2 and A3 (juvenile). In fact, the prosecution witnesses were carrying a knife, which



Crl.A.No.554 of 2018

fact has been totally suppressed in the entire investigation, however, P.W.1 to P.W.4 have deposed as if the accused alone were carrying wooden logs (M.O.1) and they beat the deceased with the wooden logs. Therefore, it is his contention that the procedure laid by the Full Bench of this Court while dealing with the case and case-in-counter, in ***T.Balaji v. State [Crl.O.P.Nos.4587 of 2024, etc. and batch, dated 08.08.2024]***, has not been followed by the prosecution. For all these reasons, the learned Senior Counsel would submit that the conviction made by the trial Court has to be set aside.

16. Whereas, the learned Additional Public Prosecutor appearing for the State would submit that all the eye-witnesses have clearly spoken about the occurrence and the deceased was taken to the hospital where he was declared dead. P.W.1 and his son (P.W.2) are eye-witnesses. The incident had occurred while P.W.3 and P.W.4 were returning from the Police Station after giving complaint as against A1 and his sons. Therefore, P.W.3 and P.W.4 have also witnessed the occurrence. Further, all the prosecution witnesses have clearly spoken about the accused visiting P.W.1's house at



Crl.A.No.554 of 2018

10.30 p.m. on the date of occurrence asking the whereabouts of P.W.3 (Rajesh) and abusing him. Further, the medical evidence also clearly establishes that the injured had died due to head injuries. Further, the learned Additional Public Prosecutor would submit that both the groups have committed acts of aggression and therefore, two separate final reports have been filed as against each group. Since the prosecution has clearly established the guilt of the accused through eye-witnesses and medical evidence, the trial Court has rightly appreciated the evidence on record and convicted the accused and therefore, the judgment of conviction and sentence passed by the trial Court, warrants no interference.

17. We have perused the entire materials available on record.

18. Admittedly, it is a case and case-in-counter. It is relevant to note that, based on the complaint given by A1 (Vijayakumar), an FIR has also been registered in Crime No.822 of 2016 as against this prosecution witnesses on the same day for the offences under Sections 294(b), 323, 324 and 307 IPC. Though the complaint in this case which has been marked as



Ex.P1 is said to have been received at 3.00 a.m. and an FIR was registered pursuant to the same, the other FIR in Crime No.822 of 2016 has been registered at 4.00 a.m. for the reasons best known to the Investigating Officer.

19.P.W.1 to P.W.4, in parrot-like repetition, have stated that the accused A1 to A4 beat the deceased with wooden logs (M.O.1) and A4 kicked him, as a result of which, the deceased fell down and A1, A3 and A4 asked A2 to smash his head. Accordingly, A2 took the cement slab (M.O.2) and hit the deceased on his head, as a result of which, the deceased sustained grievous injuries on his head and thereafter, he succumbed to the injuries. Though all the witnesses, in unison voice, supported the prosecution version, the fact remains that the witnesses have spoken as if only the accused carried wooden logs. The witnesses have never spoken about the injuries sustained by A2 and A3 (juvenile accused). In fact, A2 was seriously injured and he has sustained serious laceration on the chest, which has been suppressed by the prosecution. Whereas, for the said injuries sustained by the accused, a different crime number has been



Crl.A.No.554 of 2018

assigned and the prosecution witnesses have been prosecuted for the offence under Section 307 IPC. However, in the present case, the witnesses have spoken as if no other incident had occurred and only the deceased alone suffered injuries. The prosecution has completely suppressed the scuffle between the two groups.

20.Further, on a scanning of the evidence of P.W.1 and P.W.2, we are of the definite view that they could have not been eye-witnesses at all. Though it is admitted by P.W.2 that he lifted the deceased to the Ambulance and his dress was stained with blood, his dress has not been seized. There are contradictory statements of P.W.1 in the complaint (Ex.P1) and his evidence. In the very complaint (Ex.P1), P.W.1 has stated as if, immediately when the deceased fell down, he informed the same to the Police, besides, he also called the Ambulance. Whereas, in his evidence, he has stated that he reached the hospital at 1.30 a.m. and only thereafter, he lodged a complaint before the Police at 3.00 a.m. If really P.W.1 and P.W.2, who are the family members were present at the place of occurrence, the normal human conduct of such family members would be rush to the hospital along



Crl.A.No.554 of 2018

with the injured in the Ambulance. But their evidence clearly indicates that they have not travelled in the Ambulance with the injured and they have casually went to the house and later, they had reached the hospital at 1.30 a.m. Though it is stated that they followed the Ambulance in a bike, their evidence is falsified by the evidence of the Doctor (P.W.2) who had seen the deceased at the first instance. P.W.22 (Doctor), in his evidence, has clearly stated that the deceased was brought in the Ambulance by the Driver and no one accompanied the deceased at the relevant point of time. Only on seeing the Driving Licence found on the body of the deceased, the Doctor came to know that the deceased's name was Nageswara Rao. Only thereafter, all the family members have gathered. Therefore, the very presence of the so-called eye-witnesses is highly doubtful in this case.

21. Admittedly, the number of persons on the complainant side are more in number, including P.W.1 to P.W.4 and the deceased. If the deceased was beaten in such a manner, the natural immediate reaction of the family members would be atleast to make some attempt to prevent the attack and save the injured. Whereas, no such attempt, whatsoever, has been made. It



is not their case that the accused were carrying deadly weapons. The evidence of P.W.1 to P.W.4 itself shows that the accused were carrying only wooden logs. If P.W.1 and P.W.2 had really witnessed the serious violence unleashed on the deceased, they would have atleast made certain attempt to prevent such attack. However, nothing of that sort has happened.

22.Further, to show that P.W.3 and the deceased were returning to the house at 11.45 p.m. from the Police Station after giving complaint, no evidence, whatsoever, is filed by the prosecution to show that any such complaint has been given at the relevant point of time. Though a motive is alleged that P.W.3 had developed illicit intimacy with A1's wife, who is examined as P.W.18, she (P.W.18), in her evidence, has totally denied that aspect. Therefore, the motive becomes insignificant. In order to believe the ocular evidence, it must be free of any doubt. When one version is totally suppressed and the fact that the prosecution witnesses were also carrying weapon, is also suppressed, and when all the witnesses have spoken as if no injury, whatsoever, occurred on the other side, the same clearly indicates that there is clear suppression of facts.



Crl.A.No.554 of 2018

WEB COPY 23. Further, the Investigating Officer has not even conducted investigation to find out who is the real aggressor and mechanically, filed final report in both the cases. No doubt, the deceased has died due to the injuries on head. We are unable to believe the eye-witnesses' versions to show that they were present at the relevant point of time. The very cross-examination of P.W.1 would indicate that, while he was going to the place of occurrence, the accused had already fled the scene and someone gave information to the Ambulance. Thereafter, he went to his house and later, went to the hospital. These facts clearly would indicate that he (P.W.1) is not an eye-witness.

24. P.W.2 has stated that the moment the deceased fell down, A1, A3 and A4 asked A2 to kill the deceased. Accordingly, A2 smashed the head of the deceased. However, this aspect has never been spoken by P.W.1. Further, the evidence of P.W.2 clearly indicates that his dress was drenched with blood while lifting the deceased to the Ambulance. He has also rushed to the Police Station with the same dress stained with blood. However, no



Crl.A.No.554 of 2018

such blood stained clothes worn by P.W.2 was recovered by the Investigating Officer.

25.P.W.3, though claims to be an eye-witness, his evidence clearly shows that P.W.1 and P.W.2 were not really eye-witnesses. He has stated that, before they reached the place of occurrence, the accused ran away from the place of occurrence.

26.Even P.W.4 (Nagaraj), the friend of P.W.3, who claims to be an eye-witness, has stated in the cross-examination that P.W.1 and P.W.2 entered the place of occurrence only at the time when A2 hit the deceased with cement slab, which runs contrary to the versions of P.W.1 and P.W.2 who state that they were present at the place of occurrence even prior to that, when A1 to A4 were attacking the deceased with wooden logs.

27.Further, the Investigating Officer, in his evidence, has not whispered anything about the injuries sustained by the accused A2 and A3 (juvenile). The other version has been totally suppressed by the



prosecution. When there are rival versions of two incidents, the

Investigating Officer ought to have followed the procedure as under PSO

566. The Full Bench of this Court in ***T.Balaji v. State [Crl.O.P.Nos.4587 of 2024, etc. and batch, dated 08.08.2024]*** has held as follows :

“49.The next question is whether a failure to adhere to PSO 566, ipso facto, vitiate the prosecution? It is well-settled that any defect in the investigation does not automatically vitiate trial unless a miscarriage of justice is shown (vide H.N Rishbud v State, AIR 1955 SC 196). In some cases where a procedural defect is shown at the earliest point of time, it would be possible for the superior court to remedy the situation by setting aside the final reports and issuing directions for proper investigation and filing of the final report. However, where the case is at an advanced stage a plea of non-compliance of PSO 566 cannot be acceded to automatically unless a miscarriage of justice is demonstrated. Whether miscarriage of justice has occurred or not will depend on facts which must be assessed from case to case, and we need say no more on this aspect at this stage except observing that the directions contained in paragraph 35, would ensure that such cases would be few and far between.



(b) At the stage of completion of investigation :

On completion of investigation, the investigation officer may adopt any one of the below course of action :

i. Where the rival versions of the same incident are inconsistent with each other ie., if one is true the other must be false, the investigation officer is duty-bound to come forward with a definitive case and cannot file final reports under Section 193 BNSS 2023 in both cases (PSO 566).

ii. If the investigation officer after investigation finds that one version is true and the other is false he shall file a final report in the former case and refer the latter case as a mistake of fact/law. While filing the final report the IO must specifically state the gist of the counter case and the result of the investigation in that case. He shall also ensure that the FIR and the materials collected in the counter case are annexed to the final report and forwarded to the Jurisdictional Magistrate who can take cognizance of the offence.

iii. Where the investigation officer finds from the investigation that the divergent versions of the same incident are not absolutely inconsistent with each other but however finds that one party is an aggressor and the other party has



WEB COPY



Crl.A.No.554 of 2018

acted in self-defence, he should ordinarily file a final report only against the aggressor.

iv. The party whose complaint is found to be false or is found to be the aggressor by the IO resulting in the case being referred as a mistake of fact, shall serve RCS notice to the complainant. The complainant/victim may file a protest petition and proceed further in a manner known to law.

v. Where after a thorough investigation he is unable to find the real aggressor or where both parties are aggressors and have exceeded the bounds of the law and committed independent offences against each other, he may file a final report in each of the cases. For the sake of clarity, we repeat that these are cases which are not inconsistent with each other. They are no doubt rival versions of the same incident but are cases where both parties are found to have acted lawlessly or committed acts of aggression. It is not necessary for the IO to obtain an opinion from the Public Prosecutor before filing two final reports in such cases. However, the IO must assign proper reasons indicating the factual reasons for filing two final reports in such cases.



vi. *In case and counter cases arising out of factious rioting, communal and political clashes etc., the IO will scrupulously follow PSO 703(i) and investigate the case thoroughly. It is the duty of the IO to investigate and identify the real aggressor keeping in mind the directions contained in the said PSO. The filing of two final reports in such cases must be confined to cases where both parties are found to have acted lawlessly and committed acts of aggression.*

vii. *The aforesaid directions shall be adhered to scrupulously and failure to follow the aforesaid directions will expose the concerned investigation officer to departmental action.”*

(emphasis supplied)

28. In the present case, the Investigating Officer has not followed the procedure as per PSO 566. When it is a case and case-in-counter, normally, the Investigating Officer has to investigate into the matter and find out who is the real aggressor and file a final report as against the aggressor and close the other FIR as mistake of fact. However, the Investigating Officer, has mechanically filed final report in both the cases, one for the offence under



Section 302 IPC and other for the offence under Section 307 IPC.

WEB COPY

29.Further, even when two final reports are filed, the learned Magistrate can scrutinize the final reports carefully and if it is found that the Investigating Officer has mechanically filed two final reports without properly investigating the matter, the learned Magistrate can return the final reports and direct the Investigating Officer to come up with a definitive case. In this regard, the Full Bench of this Court in ***T.Balaji v. State (supra)***, has held as follows :

“B. For the Courts

(a) Pre-Cognizance stage :

...

iv. Where two final reports are filed in a case and counter case, it is the duty of the Magistrate to scrutinize the final reports carefully. If it is found that the final reports put forward inconsistent rival versions of the same incident (ie., if one version is true the other must necessarily be false), or where it is found that the IO has filed two final reports mechanically without properly investigating and finding out the true aggressor the Magistrate shall return the final reports and direct the IO to come up with a definitive case.”



Crl.A.No.554 of 2018

WEB COPY However, this has also not been done in this case.

30. In the present case, when there are rival versions of same incident and the Investigating Officer has totally suppressed the other version and has proceeded mechanically by independently filing final reports in two cases without actually investigating into the matter and finding out who is the real aggressor, more particularly when the Investigating Officer has not spoken about the serious injuries caused by this prosecution witnesses on the accused A2 and A3 (juvenile) and the deadly weapons carried by this prosecution witnesses, it is very unsafe to rely upon the prosecution to convict the accused. Further, when the versions of the so-called eye-witnesses are highly doubtful and the conduct of P.W.1 and P.W.2, who are the family members of the deceased, is alien to normal human conduct in the given situation, this Court is of the view that it is very unsafe to convict the accused for such grave offences. Therefore, we are inclined to extend the benefit of doubt to the accused.



Crl.A.No.554 of 2018

WEB COPY

31. Accordingly, this Criminal Appeal is allowed and the judgment of conviction and sentence passed by the learned VII Additional Sessions Judge, Chennai, in S.C.No.273 of 2018, dated 10.08.2018, is set aside and the appellants/accused are acquitted of all the charges framed against them. Fine amount, if any, paid by the appellants/accused, shall be refunded to them. Bail bond executed by the appellants shall stand discharged.

(N.S.K., J.) (M.J.R., J.)
27.10.2025
(1/2)

mkn

Internet : Yes

Index : Yes / No

Neutral Citation : Yes

To

1. The VII Additional Sessions Judge,
Chennai.

2. The Inspector of Police,
R-8 Vadapalani Police Station,
Chennai - 600 028.

3. The Public Prosecutor,
High Court, Madras.

Page 24 of 26



WEB COPY



Crl.A.No.554 of 2018

N. SATHISH KUMAR, J.
and
M. JOTHIRAMAN, J.

mkn

Crl.A.No.554 of 2018

27.10.2025



WEB COPY



Crl.A.No.554 of 2018

(1/2)