



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2025

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CORAM :

The Hon'ble **Mr.JUSTICE N.SATHISH KUMAR**

and

The Hon'ble **Mr.Justice M.JOTHIRAMAN**

Crl.A.Nos.407, 477, 478, 365 and 485 of 2022

and

Crl.M.P.Nos.4019 & 4022 of 2022

R.Siva @ Sivakumar

Arun @ Arunkumar

Anbu @ Anbalagan

Ganesan @ Military Ganesan

Rajkamal @ Rajendran

.. Appellant in Crl.A.No.407 of 2022

.. Appellant in Crl.A.No.477 of 2022

.. Appellant in Crl.A.No.478 of 2022

.. Appellant in Crl.A.No.365 of 2022

.. Appellant in Crl.A.No.485 of 2022

Versus

State rep by

The Inspector of Police,

Crime Branch CID

Namakkal Pallipalayam Police Station

Namakkal District

(Crime No.310 of 2010)

.. Respondent in all appeals

These Criminal appeals have been filed under Section 374(2) Cr.P.C. seeking to set aside the judgment of conviction and sentence dated 14.03.2022 passed in S.C.No.69 of 2012 on the file of learned Sessions Judge (Fast Track Court Mahila Court),



Crl.A.Nos.407, 477, 478, 365 and 485 of 2022

Namakkal and thus render justice.

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For Appellants

: Mr.R.Vivekananthan
in Crl.A.No.407 of 2022
Mr.R.John Sathyan, Senior Counsel
for Mr.S.Sheik Ismail
in Crl.A.No.477 of 2022
Mr.S.Sheik Ismail
in Crl.A.No.478 of 2022
Mr.N.R.Elango, Senior Advocate
for Mr.S.Agilesh Kumar
in Crl.A.No.365 of 2022
Mr.M.Yogesh Kanna
in Crl.A.No.485 of 2022

For Respondent
in all Crl.Appeals

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

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COMMON JUDGEMENT

(Judgment of the Court was made by **N.SATHISH KUMAR, J.**)

Aggrieved over the judgment of conviction and sentence, dated 14.03.2022 passed in S.C.No.69 of 2012 on the file of learned Sessions Judge (Fast Track Court Mahila Court), Namakkal, A-1 has filed Crl.A.No.407 of 2022, A-5 has filed Crl.A.No.477 of 2022, A-6 has filed Crl.A.No.478 of 2022, A-4 has filed



Crl.A.No.365 of 2022 and A-2 has filed Crl.A.No.485 of 2022. The appellants/accused were convicted and sentenced by the trial Court as follows :

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1, A2 and A5	Section 120B	Each to undergo Life imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo one year simple imprisonment.
A1, A2, A4, A5 & A6	Section 148 of IPC	Each to undergo three years Rigorous imprisonment
A1, A2, A4, A5 & A6	Section 341 of IPC	Each to undergo one month simple imprisonment
A2	Section 302 of IPC	Each to undergo Life imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo one year simple imprisonment.
A1, A4, A5 & A6	Section 302 read with Section 149 of IPC	Each to undergo Life imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo one year simple imprisonment.
These sentences were ordered to run concurrently		

Facts of the prosecution case :

2.The brief facts of the prosecution case is as follows:

2.1.PW1 Jambu @ Shanmugasundaram is residing in Pallipalayam, Agraharam, Namakkal. The deceased is his brother. A2 and A5 are the relatives of PW1 and the deceased. The deceased was holding the post of Branch Secretary in the Communist Party and he is involved in public and social activities. A1 and A7 are money lenders and they used to collect exorbitant interest. 10 to 15 days prior to the



occurrence, there were obscene photographs circulated in the cell phones connecting A7 and daughter of PW13. PW13 sought the help of the deceased Veluchamy with regard to stoppage of circulation of obscene photographs. Three days prior to the occurrence, there was circulation in the newspaper about the obscene matters circulated in the cell phone and the deceased also helped PW13 to give a complaint in this regard. When the matter stood thus, on 10.03.2010 at about 9 am, when PW1 brother of the deceased was proceeding in the motorcycle, A1 stared at him, thereafter, at about 10 am, A2 and A5 came to the house of the PW1, when PW1 enquired, the accused shouted that the deceased was causing damage to A1's reputation and they will not leave him by saying they left the place. Therefore, PW1 searched his brother to inform the same, however, he was not available at the relevant point of time, later, after completing his job, he reached the house at 8.30pm, deceased also came home, PW1 informed about the A2 and A5 threatening in the morning. The deceased went to the police station to give a complaint and PW1 also accompanied and lodged a complaint. After giving complaint to the police, they were returning to their house and the deceased was proceeding in his TVS 50, PW1 was following in his cycle. When the deceased was proceeding in the place where four



roads had joining in front of Om kalamman temple, at that time, A6 dragged the deceased vehicle and kicked the vehicle. When the deceased tried to stand up, A1 cut the deceased on the head, A2 cut the deceased on chest, A3 stabbed the deceased on the stomach and A1 also threatened PW1 that if he comes near, he will also be cut. A2, A4, A6 and A5 also repeatedly cut the deceased with M.O.2 like weapons. Since all the accused carried weapon, PW1 could not prevent the attack and shouted. On hearing his sound, neighbours and shopkeepers, PW1's sister, PW4, PW5 and PW2 reached the spot and even then the accused did not stop attacking the deceased, thereafter, the accused left the place. Thereafter, PW1 went to the police station and gave Ex.P1/complaint.

2.2 According to PW1, he has given a complaint to SI.Tr.Singh and his brother PW2 wrote the complaint under Ex.P1 and PW1 signed the complaint. PW2 is the brother of PW1 and deceased Veluchamy. According to him, since, there was obscene photograph involving PW13's daughter circulated in the cell phone, PW13 requested the deceased help, later, the same is also published in the newspaper and the accused was under the impression that only the deceased was instrumental for defaming the reputation, on 10.03.2010, when PW2 went in search of PW1 and the



deceased, on hearing the sound near Om Kaliamman temple, he found that deceased was dead and when enquired, PW1 informed that the accused had caused death. PW5

is the cousin of the deceased. On 10.03.2010, he has also seen the deceased found dead, later police came to the spot. Police prepared observation mahazaar under

Ex.P2 and seized the TVS 50, blood stained and non blood stained mud under Ex.P3 seizure mahazaar. The seized items are M.O.3 to M.O.5. PW17 is the brother of the

deceased, he has handed over the RC books of the vehicle to the police station. PW19

is the owner of the two wheelers TN 34 H 1417, the accused A1 borrowed the vehicle from him on 10.03.2010 for collection of finance amount. The said vehicle is M.O.6.

PW20 is editor of the daily Thee Kadhira and he has handed over the edition dated 22.02.2010 to the Inspector and is marked as Ex.P7 and Ex.P8. PW22 is running

cycle stand, the police seized TN-34-H-1417 from the stand. PW23 signed the confession of A1 and the admissible portion of the confession is marked under

Ex.P11. Similarly, admissible portion of the confession of A2 is marked under

Ex.P12. Admissible portion of the confession of A3 is marked under Ex.P13. In pursuant to the same, they also seized M.O.2 handed over by A1 under Ex.P14.

M.O.7 and M.O.8 were handed over by A2 under Ex.P15 and the police also seized



M.o.6 two wheelers under Ex.P16 and P17 Mahazaar.

2.3. PW24/Medical Officer attached to the Government Hospital, Erode

had found the following external injuries:

“incised wound over the Xiphisterinum 4x3x3 cm (2) incised wound over the left side of adbomen near umblicae. 10X5x4 cms. Horizondeling exposing the intensine outside. (3) incised wound just above the above wound 3x3x3 cms exposing the intense the outside. (4) incised wound just below the right elbow 5x4x3 cms. (5) incised wound just below the above wound 5x4x4 cms, deformed right fore arm. (6) incised wound right index finger, middle finger and ring finger 3x5bone depth, oblige wound, (7) Fracture of proximal fingers of all four fingers, (8) incised wound over hip joint 3x3x3 cms. (9) Abrasion Right shoulder (10) abrasion left solder (11)Incised wound extending from the angle of mandible right side to just below the chin right side 10x5x4 horizonding (12) Incised wound just below the left side angle of mouth to left side chin 5x4x4 cm. (13) incised wound over to chin 5x3x3 cm. (14) Incised wound over the neck 4x5x4 cms. Trukia is cut. (15) incised wound over the back of neck 6x4x bone depth. Cervical vertebra cut C2 level. (16) Irregular wound over the right chest 10x5x4 cms. (17) incised wound just below the above wound horizondle 4x4x3 cm. (18) incised wound over left side chest running left side nipple to left axilia, 8x5x4 cms. Fracture right side ribs 2-6. Hear. 300 grams. Lungs right 500 grams, left 460 grams. 200 grams of blood clots present in thorax. Hyoid: intact. Stomach, empty, liver, right lob of liver is cut. 5X5x4 cms. Left 1600 grams. Spleen 160 grams. Kidneys both 100 grams, normal. Blood clots 300 grams present in abdomen. Intenstines. Multiple incides would over small intensine of various sizes. ”

and opined that the deceased would appear to have died 10-14 hours prior to autopsy

due to damage to vital organs, Hemmorhage and shock and issued



Ex.P19/postmortem certificate.

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2.4.PW25/Superintendent of Regional Transport Office, Namakkal handed over Ex.P20 relating to the vehicle TN 31 AA 0166. PW26 Motor Vehicle Inspector issued certificate exhibit P21 that the vehicles TN 27 T 7386, TN 34 H 1417 AND TN 31 AA 0166 are running in good condition. PW27/SI of Pallipalayam Police Station received the complaint given by the deceased on 25.02.2010 and issued the receipt in CSR.90/2010. The complaint copy and copy of the receipt is marked as Ex.P22. Petition No.90 of 2010 CSR receipt book is marked as Ex.P23 and counterfoil book is marked as Ex.P24 and the signature of the deceased Velusamy in CSR.No.112 of 2010 receipt book is marked as Ex.P26. PW29 is the investigating officer. According to him, he received the complaint under Ex.P1 and registered FIR in Cr.No.310 of 2010 under Sections 147, 148, 302, 506(ii) of IPC and the FIR is marked as Ex.P27. PW29 took up the investigation and went to the place of occurrence and prepared the observation mahazaar and rough sketch under Ex.P28 and also seized blood stained ordinary earth and conducted inquest over the dead body and prepared inquest report under Ex.P29 and forwarded the dead body to the Erode Government Hospital with postmortem requisition under Ex.P18 and also



seized the other material objects and sent them to Court under Form 95 and according to the PW29, one Veerasamy, Head Constable received the complaint and treated CSR.No.112/2010. In PW30 presence, confession of A7 was recorded and the signature of PW30 and photograph is also seized under seizure mahazar Ex.P31.

2.5. PW31 is the Inspector of CBCID. On 17.03.2010, case has been transferred to the CBCID by the orders of the CBCID office and he took the case on 18.0.2010 for investigation and examined the place of occurrence and collected all the other materials and file a petition for police custody and took A1 to A3 and recorded their confession and seized the material objects and examined all the other witnesses and altered the FIR under exorbitant interest under Ex.P41 and finally laid the final report against all the accused under Sections 120(B), 341, 148, 149, 302 read with 149 of IPC.

2.6. 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.69 of 2012 and was made over to the learned Sessions Judge, Fast Track Mahila Court, Namakkal for trial.

**Charges against the accused :**

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3.The trial Court framed the following charges against the accused:

<i>Accused</i>	<i>Charges</i>
A1	Sections 120B, 148, 341, 302 read with 149 of IPC
A2	Sections 120B, 148, 341, 302 IPC
A4	Sections 148, 341, 302 read with 149 IPC
A5	Sections 120B, 148, 341, 302 read with 149 of IPC
A6	Sections 148, 341, 302 read with 149 of IPC
A7	Dead and charged abated

4.To prove the case, the prosecution has examined as many as 31 witnesses, namely P.W.1 to P.W.31 and marked 45 documents, namely Ex.P.1 to Ex.P.45 and produced 18 material objections, namely M.O.1 to M.O.18.

5.On completion of the evidence on the side of the prosecution, the accused were questioned under section 313 Cr.P.C. as to the incriminating circumstances found against them in the evidence adduced by the prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, three witnesses, namely D.W.1 to D.W.3 were examined and seven documents namely Ex.D1 to Ex.D7 were marked.



6. DW1/photographer and reporter in Dina Thanthi newspaper. According to him, on 10.03.2010, the police called him to take photographs of the dead body at around 9.40 pm, he also went to the place of occurrence and he saw the dead body and took photographs on 22.08 pm. Next day, he published about the murder in the newspaper. DW2 is a resident of Pallipalayam Agraharam came to know about the death of death of deceased at around 10 to 10.15 pm. DW3 is also a resident of Pallipalayam Agraharam. According to him at around 9.45 to 10 pm, his friend Boopathy came that way and informed that velu is lying dead and has informed that the dead body was taken to Government Hospital. Ex.D1 is the signature of PW1 Jambu @ Shanmugasundaram in voter's application. Ex.D2 is 16 signatures of Shanmugam in the election application.

7. The trial Court, after appreciating the oral and documentary evidence and materials on record, by judgment dated 14.03.2022, found the accused 1, 2, 4, 5 and 6 guilty of the offences and thereby, convicted and sentenced them to undergo imprisonments as stated above. The 7th accused Aamaiyan @ Ravi reported dead and charges were abated against A7. Since the third accused was absconding for a long



time, therefore, the case against the third accused Boopathi is split up and taken on cognisance in S.C.No.88 of 2019.

Submissions on the side of Appellants :

8.The learned senior counsel Mr.R.John Sathyan and Mr.N.R.Elango and the counsel appearing for the appellants submitted that entire prosecution rests on the solitary evidence of alleged eyewitness PW1 whose evidence is highly unbelievable. The alleged motive set forth by prosecution that there was a previous complaint is created only for the purpose of the case. Ex.P26, so-called complaint given prior to the occurrence is concocted, in fact, if really there is any such complaint, the same will be in the proper record. Ex.P26 is created later and it creates serious doubt about the prosecution case. DW3 also seen the dead body at 10 pm in the place of occurrence and the photographer DW1 has also seen the dead body before 10 pm, therefore, so-called previous complaint given by the deceased is highly doubtful. The FIR has reached the Court only on 11.03.2010 at 01.45 pm, therefore, the very lodging of complaint by PW1 is highly doubtful. Ex.P1 though said to have been given by PW1 on the same day at 23.50 hours, his signature found in Ex.P1 and FIR



and Exs.D1 and D2 creates serious doubt about the very lodging of complaint by PW1. In Ex.P1, he has signed as C.rz;KfRe;jpud;, whereas, in FIR, Ex.P27, he has signed as C.rz;KfRe;jpuk;, but in Exs.D1 and D2, application of election, he has signed as C.rz;Kfk;. These, creates serious doubt as to the very lodging of complaint by PW1.

9. Further, it is the contention that according to the prosecution, the alleged occurrence took place within minutes of the lodging of complaint under Ex.P26, whereas, complaint was given on 23.50 hours more than 1 hour delay though the place of occurrence is very near to the police station. These facts also creates serious doubt about PW1 witnessing the occurrence. Further, in his evidence, there is a lot of improvement in every aspects. PW1 has stated he has lodged a complaint to Thiru.Singh and FIR has been registered by Thiru. Singh, PW29, who carried out the investigation was on casual leave which has been clearly spoken by PW29 and PW31/Investigating Officers. Further, the FIR has reached to the Court with an inordinate delay, it has reached the Court only on 11.03.2010 at about 1:45, such



delay has not been explained. These facts clearly indicate that the entire prosecution case has been improved later.

10. Though PW1 has spoken about the earlier there was some alleged obscene photographs circulated in the cell phones, PW13 sought help with the deceased, the fact remains that the same is not sufficient to hold that accused have committed murder of the accused. The deceased is working as a member of the Marxist Communist Party and he is also having a lot of enemies, therefore, when the evidence of PW1 creates doubt, the prosecution cannot rely upon the evidence of PW1.

11. Whereas, the learned Additional Public Prosecutor submitted that the eye witness has clearly spoken about the occurrence. Though PW1 is the sole witness, he has clearly spoken about the nature of cut injury caused by the accused. Hence, submitted that the prosecution has proved the entire case.

12. We have perused the entire materials placed on record.



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13. The entire case rests on the sole witness/eye witness, PW1. According to him, 10 days prior to the occurrence, there was obscene photograph circulated in the cell phone involving the daughter of PW13 and A7. PW13 sought the help of the deceased. The deceased took PW13 to give a complaint. Agitated over the same as the news also reported in Thee Kadhira about the obscene photographs circulated in the cell phone, the accused decided to do away the deceased. It is the case of the PW1 that on the date of occurrence in the morning, A2 and A5 came to his house and warned that the deceased should be careful since he is defaming the reputation of the A1. The PW1 searched the deceased, since, he could not be located, he went to his job. In the evening, the deceased came to his house at around 8.30 pm, PW1 informed the deceased and immediately, the deceased went to the police station along with PW1 and lodged a complaint. The so-called complaint said to have been given is also recorded in Ex.P26 CSR. It is the specific case of the prosecution that while PW1 and deceased were returning after giving complaint from the police station, the accused had waylaid the deceased and A6 dragged the TVS 50 of the deceased and kicked the vehicle, thereafter, A1 and other accused caused severe cut injuries on the deceased



and the deceased fell down and PW1 shouted, on shouting, his brother PW2 and others came and the accused ran away from the place. It is relevant to note that it is the very specific case of the PW1 that A6 dragged the vehicle and kicked the vehicle, thereafter, A1 caused cut injuries and the deceased fell down, thereafter, PW1 gave a complaint under Ex.P1 to SI, Thiru. Singh, it is the specific case that he has lodged a complaint with Thiru. Singh.

14. Be that as it may, pursuant to Ex.P1, in fact, FIR under Ex.P27 is registered by Thiru.Singh at about 23:50. It is relevant to note that in Ex.P1, signature of PW1 signed as C.rz;KfRe;jpud;, whereas, in FIR, Ex.P27, he signed as C.rz;KfRe;jpuk;, though, it may have no relevance, but the very signature of the PW1 itself is doubtful. In Exs.D1 to D2, election application filed in 2011, his signature is totally different, he has signed as C.rz;Kfk;, though these matters may not be relevant for the purpose of FIR, but, at the same time, the same is also relevant to find out whether the PW1 was actually present in the scene of occurrence and had lodged the complaint. The signatures of PW1 in Exs.D1 to D2 is not disputed, it is the admitted



signature of PW1 and it is totally different from the signature found in Ex.P1 and the FIR. It is the specific case of the PW1 that he lodged a complaint with the Sub Inspector of Police. Though the FIR has been filed at 23.50 pm, it is the case of PW1 that prior to the occurrence, they lodged a complaint in the police station at 10.30 pm, to prove the same, Ex.P26 also filed as CSR receipt. According to the prosecution, within 10 minutes of such complaint, the occurrence has took place and the occurrence place is just 1 ½ kilometres, whereas, the FIR was registered only at 23.50 pm and reached to the Court with an inordinate delay on the next day at 11.03.2010 at 1.45 pm, the delay has not been explained by the prosecution in any manner. Of course, in the absence of any explanation, the very spontaneity loses and it gives inference that the FIR is a result of deliberation and consultation later.

15. The evidence of PW1 though indicate that the FIR has been filed by Thiru.Kesavaramsingh, the evidence of PW29/Investigating Officer indicate that as if he immediately took up the case for investigation and proceeded for investigation and went to the place of occurrence and prepared observation mahazaar, inquest report etc., The evidence of PW29 itself clearly indicate that on that day he was on Casual



Leave, this has also been confirmed by PW31/Investigating Officer, CBCID. Though

it is the explanation of the PW29 that though he was on casual leave, after murder, he came to the police station at 12.15 pm and commenced the investigation, though his explanation is also plausible, but the fact remains that whether PW1 could have been an eye witness to the occurrence has to be seen. It is the case of the PW1 that he was following the deceased and there was no reason as to why immediately after the occurrence he has not lodged the complaint. The complaint came to be filed only at 23.50 hours after more than 1 hour. Though his evidence indicate that immediately he rushed to the police station, the distance between the police station is hardly about 1 ½ kilometres, particularly, when all the other relatives also reached, there was no reason to go to the police station with a delay, this aspect also creates serious doubt. The doubt is further fortified by the further evidence of PW1. PW1 though claimed to have seen the occurrence, according to him all the accused surrounded and repeatedly caused the cut injuries, therefore, the deceased fell from the vehicle and he was in lying position. This evidence is in fact falsified by Observation Mahazaar/Ex.P2.

16. In Ex.P2, in fact, Investigation Officer/PW29 has noticed that the



deceased body was found in the sitting position underneath of the vehicle. PW2 said to have reached the spot stated that the dead body was found in front of temple. PW5 though is not an eye witness, his evidence show that one leg of the deceased was found on the vehicle and the other on the road and also immediately, the police came to the spot and recorded the statement. Therefore, PW1 evidence that dead body was found completely on the road after the accused caused several cut injuries creates doubt about the witnessing the occurrence. The Observation Mahazaar under Ex.P2 and the evidence of PW5 clearly shows that the part of the dead body was on the vehicle and remaining part is on the land. Whereas, PW1 has stated that the vehicle was dragged for sometime, after all the accused caused the injuries, deceased fell down on the ground. He never stated that the deceased body was also on the vehicle, whereas, the entire evidence of PW1 clearly show as if the deceased entire body was on the ground. It is further to be noted that the evidence of PW5 clearly shows that police immediately rushed to the spot and recorded the statement. PW1's statement that he went to the police station and given statement, this also creates serious doubt.

17. Further, FIR is also filed with a delay and reached the Court with an



inordinate delay which also creates some doubt. Though Ex.26 is filed as if there is a CSR already registered under Ex.P44 is also filed by PW31/CBCID Inspector to show that previous complaint is given by the deceased. Ex.P44 clearly shows that it is written on a white paper to show as if it is a petition in Petition No.112/2010 given at 22.25 hours by Velusamy, but the said copies have been sent to the Court for the first time only on 30.08.2010. This also creates doubt about the very lodging of the previous complaint. Further the evidence of PW1 in every aspect with regard to the earlier motive and complaint is also first time introduced only before the CBCID Inspector which has not been stated before PW29. DW1/reporter and photograph evidence clearly indicate that he has received the message about the murder in 9.50 itself and reached the spot within ten minutes and took photographs at 22.08 hours and he has also published the news immediately. DW3 had also seen the dead body around 22.00 pm, therefore, the very time of occurrence spoken by the witness creates serious doubt.

18. The evidence of PW1 that the accused came one by one is also improved for the first time only when he was examined by CBCID/Inspector, he has



never stated the same before the Investigating Officer/PW29 and observation mahazar under Ex.P2 and the evidence of PW5 clearly show that the vehicle was also fell down on the ground and the part of the body was also on the vehicle, whereas, PW1 in his evidence stated that the vehicle was not completely fell on the ground since there was a stone which held the vehicle. This aspect was never seen by the Investigation Officer. According to the PW1, till the police came to the spot vehicle was in the same position, whereas, observation mahazaar do not show that there was a stone which held the vehicle. It is further to be noted that in the complaint endorsement has been made as if the Crime Number was Cr.No.370 of 2010, whereas, in FIR, crime number is Cr.No.310 of 2010, this aspect is also clearly not explained by the prosecution. Though PW13 has sought help from the deceased with regard to the obscene photograph, but, merely on such the facts proved, when the eye witnesses account is doubtful and totally not reliable, merely on the basis of some motive established by the prosecution, it cannot be assumed that only the accused have committed the murder. The material objects seized by the prosecution sent for serological examination though contains human blood group, the result of grouping test is inconclusive.



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19. The medical officer evidence clearly says that there was incise wound, whereas, the evidence of PW1 clearly shows that A3 stabbed on the stomach which also creates about witnessing the occurrence. Ex.P45/Theekadhir daily newspaper dated 12.03.2010 filed through PW31 says that in fact Marxist Communist Party has passed the resolution to take action and dead body is also carried out by the political party. Immediately, the matter has been entrusted to CBCID. Only after CBCID had commenced the investigation, PW1 has improved the version of the motive and minute details against the accused. Whereas, he has not given such statement before the Investigating Officer/PW29, therefore, the possibility of implicating the accused later after the political party made an agitation and passed resolution to transfer the investigation and giving minute details later against the accused cannot be ruled out. In fact, postmortem is also conducted in the other district considering the law and order issue raised, the body was cremated next day, i.e., 11.03.2010, therefore, the possibility of filing the FIR later after due deliberation also cannot be ruled out. Since the FIR itself reached to the Court only on 11.03.2010 at about 01:45 pm, the



previous motive is also not spoken before the first Investigating Officer/PW29 by the PW1 and he has only stated when the CBCID has come into picture.

20. Further, it is to be noted that if really, PW1 was present and his brother was severely attacked and even assuming that in view of the large number of the accused, a single person cannot prevent such attack. It is to be noted that even after the accused had left the place, the normal conduct of any kith and kin would at-least to make an attempt even to lift the body to find out whether there is any chance of survival to take him to the hospital immediately. PW1 evidence clearly indicate that he never made any attempt to touch the body and his evidence that on seeing his brother and others, the accused ran away from the place of occurrence is also included only for the first time before the CBCID Inspector. In the cross examination, he has stated as if the previous complaint was given only at 9:15 pm – 9:30 pm, i.e., Ex.P26 and as per the evidence of PW31, the occurrence took place within 10 minutes, whereas, Ex.P26 projected as if the complaint was received only at 22:35 pm which creates serious doubt about the time of occurrence. Further, the DW1 and DW2 has found that the dead body even before 10 clock. Further, the very place of occurrence is not established by the prosecution. PW1 would say that the occurrence



took place near the Om Kalamman Temple and also muslim mosque, whereas, in rough sketch, occurrence place is shown as in front of Baby Electronics and Sengunthar Om Kalamman temple, which is situated in other place. PW29 has also admitted that in Inquest Report, it is recorded as if the occurrence took place within Sengunthar Om Kalamman road and Rajaveethi Road joining place and he has also admitted that same is recorded by mistake.

21. PW31 in his statement stated that in his evidence, PW2 and PW5 only after hearing the occurrence have reached the spot and PW31 also admitted that the deceased died in sitting position in the vehicle, however, he has not collected any blood stain from the vehicle and the occurrence place is also thar road. Therefore, he has not collected any blood stain from the thar road. Whereas, PW1 in his cross examination has asserted that dead body of his brother was lying down about 2 to 3 feet away from the two wheeler, whereas, this evidence is also falsified by the very observation mahazaar and the evidence of PW5 and also the evidence of PW31, wherein, it is stated that the deceased was died only in sitting position and part of the dead body on the vehicle and the remaining body on the ground, whereas, PW1 stated



as if the dead body was found away from the vehicle, this aspect also creates serious doubt PW1 witnessing the occurrence.

22. PW29 who conducted the earlier investigation also submitted that he has not collected any CSR report from the deceased body, therefore, if really, CSR said to have been given as per the prosecution on the same day, thereafter, occurrence took place within 10 minutes, CSR receipts should have been collected by the investigating officer. This fact clearly serious about the complaint. Ex.P44 as stated above reached the Court on 30.08.2010, if really, CSR receipt has been given to the deceased, the receipt should have been found in the shirt or packet. PW29 has never found any such receipt from the dead body.

23. No doubt, the prosecution need not depend on the quantity of the evidence, but the quality of the evidence alone is relevant, even the sole eye witness is sufficient to record the conviction; provided his evidence is reliable and does not attach any artificiality. When the evidence of PW1 creates serious doubt as stated above, merely on the basis of some agitation made by the political party, the matter has been referred to CBCID and merely because some previous enmity, it cannot be construed that only the accused caused death, particularly, the evidence of PW1



creates serious doubt. In this regard, it is useful to refer to the judgment of the

Hon'ble Supreme Court in the case of *Vadivelu Thevar vs. State of Madras* reported

in *AIR 1957 SC 614*, wherein, it is held as follows:-

“ 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. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there



are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have, therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.

24. Considering the above judgment, coupled with serious doubt entertained by this Court and unexplained delay in sending FIR to the Court and PW29 conducted the investigation though he was on casual leave as admitted by himself and also PW31, we are of the view that the entire prosecution is highly doubtful. We are of the view that the prosecution has not established the guilt of the accused beyond all reasonable doubt. Therefore, we are inclined to extend the benefit of doubt to all the accused.

25. In the light of the above, these Criminal Appeals are allowed and the judgment of the trial Court dated 14.03.2022 passed in S.C.No.69 of 2012 is set aside and the appellants/accused herein are acquitted of all the charges levelled against them. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond executed by the appellants shall stand discharged. No costs. Consequently, connected miscellaneous petitions are closed.

(N.S.K., J.) (M.J.R., J.)

20.11.2025



Crl.A.Nos.407, 477, 478, 365 and 485 of 2022

Index : Yes

Speaking Order

Neutral Citation : Yes

dhk

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

dhk

To

1. The Sessions Judge (Fast Track Court Mahila Court), Namakkal

2.The Inspector of Police,
Crime Branch CID
Namakkal Pallipalayam Police Station
Namakkal District

3.The Public Prosecutor,
Madras High Court,
Chennai.

Crl.A.Nos.407, 477, 478, 365 and 485 of 2022
and
Crl.M.P.Nos.4019 & 4022 of 2022



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