



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB CO **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 26.03.2025

Pronounced on : 17.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)Nos.288, 293, 457, 786, 807 & 832 of 2022
and 159 of 2023

Crl.A(MD)No.288 of 2022

Neethirajan

.. Petitioner/Accused No.6

Vs.

State through
The Inspector of Police,
South Gate Police Station,
In Crime No.336 of 2014

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence dated 22.03.2022 passed in S.C.No.361 of 2017 by the learned VI Additional Sessions Judge, Madurai.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

For Appellant : Mr.G.Karuppasamy Pandiyan
for Mr.B.Ashok

For Respondent : Mr.A.Thiruvadikumar,
Additional Public Prosecutor,
Mr.G.Thalaimutharasu,
to assist APP (in all cases)

COMMON JUDGMENT

Dr.G.JAYACHANDRAN, J.
and
R.POORNIMA, J.

The batch of seven Criminal Appeals are against the judgment dated 22.03.2022 rendered in S.C.No.361 of 2017 on the file of IV Additional Sessions Court at Madurai.

Brief facts:

2.V.Muthuramalingam(PW-1), gave a complaint to the Therkuvasal Police on 08.06.2014 at about 21.30 hrs reporting that while he along with his daughter Dhanalakshmi and his son-in-law Alagarsami were waiting at Keelveli Veedhi Mission Hospital Bus Stop, at about 21.00 hrs, a gang of 7 known and few unknown persons armed with arruval and iron pipe came in a



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

Auto. On seeing them his son in law tried to fled from the place, but he was surrounded by the members of the gang in front of Vetrivel Medicals few feet away from the bus stop and they attacked his son-in-law Alzagarsami with aruval and iron pipe, causing instant death. The complaint was scribed by Manikandan (PW-10) who was also an witness to the occurrence.

3.Maruthalakshmi (PW-6) the Sub-Inspector of Police attached to the Therkuvasal Police received the complaint(Ex.P-1) from PW-1 and registered the FIR in Cr.No.336 of 2014 under sections 147, 148, 341and 302 IPC and forwarded the copy of the FIR to the Judicial Magistrate through Panaraj(PW-7). She also placed the FIR for the perusal of Inspector of Police.

4.Ganesan(PW-24), the Inspector of Police, on getting intimation about the crime went to the place of crime and found the body of Alagarsami severely wounded over his chest, limbs and head. After taking photographs of the body and scene of crime he sent the body to Rajaji Government Hospital for post mortem. From the scene of crime he collected suspected



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COE evidences, prepared rough sketch, observation mahazar and recorded statements of witnesses. In the course of investigation gathered information that one of the assailant by name Niranjana sustained injuries at the hands of co assailant by name Nithiyanaanth(A-2) and died two days later in the hospital. From the confession of the accused persons, the weapons and the vehicle used by them for the crime were recovered.

5.After arrest of the accused persons , recovery of suspected materials used for committing the crime, recording the statements of the doctors who conducted post mortems of Alagarsami and Niranjana, Doctor who recorded the accident register for Niranjana, P.W.24 completed the investigation and filed the filed his final report before the Magistrate court as against 9 persons and case against a juvenile was sent to Juvenile Justice Board.

6.The Judicial Magistrate after serving the copies to the accused persons, committed the matter to the court of sessions at Madurai. The VI Additional Sessions Judge, Madurai to whom the case was made over, framed charges under sections 120 B, 148. 341 and 302 IPC. Later, in the



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY course of the trial, the 4th charge under sections 302 IPC against A-1 to A-5 and A-7 to A-9) was altered to 302 r/w 149 IPC.

7.The accused were put to trial for the charges as below:-

S.No	Name of the Accused	Charges
1	Vijayalingam	120 B , 148 and 302 r/w 149 IPC
2	Nithyanandh	120 B , 148, 302 r/w 149 and 304 (ii) IPC
3	Solairaja	120 B , 148, 341 and 302 r/w 149 IPC
4	Ramasamy	120 B , 148 and 302 r/w 149 IPC
5	Alexpandian s/o Mookian	120 B , 148, 341 and 302 r/w 149 IPC
6	Neethirajan	120 B IPC
7	Alexpandian s/o Pandi @ Thadipandi.	120 B , 148 and 302 r/w 149 IPC
8	Muniasamy @ Sendu Muniasami	120 B , 148 and 302 r/w 149 IPC
9	Ranjith kumar.	120 B , 148 and 302 r/w 149 IPC

8.To prove the above charges, 24 witnesses, 26 documents and 18 material objects were marked on the side of the prosecution. No oral and documentary evidence placed in defence.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY 9. The trial court on considering the evidence, held the charges under sections 120 B IPC, 148 IPC and 302 r/w 149 IPC as against A-1 to A-5, A-7 to A-9 are proved. Charge u/s 120 B IPC as against A-6 proved. Charge under Section 304(ii) IPC as against A-2 proved. However, the charge under Section 341 IPC against A-3 and A-5 had not proved.

10. The sentence imposed on them for the charges proved are as below:-

120- B IPC	A- 1 to A-9	Life imprisonment and fine of Rs 10,000/- each. In default 6 months Simple Imprisonment.
148 IPC	A-1 to A-5 and A-6 to A-9	3 years RI and fine of Rs 10,000/- each. In default 3 months SI
302 r/w 149 IPC	A-1 to A-5 and A-6 to A-9	Life imprisonment and fine of Rs 10,000/- each. In default 6 months Simple Imprisonment.
304 (ii) IPC	A-2 (for causing death of Nirajan-co assailant)	10 years RI and fine of Rs 10,000/- in default 6 months SI.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY11.The sentences passed against each accused for each offences was ordered to run concurrently and the period of imprisonment already undergone was set off. The details of the Criminal appeals and the appellants:-

(i).Crl.A(MD)No.288 of 2022 is by Neethirajan(A-6) as against the conviction and sentence under section 120B IPC. This appellant is an Advocate by profession He was held guilty for conspiracy with the other accused to murder Alagarsami. In addition to the grounds mostly common in all the appeals, one of the ground which exclusively pleaded by this appellant is :

“On 07.05.2011, A1's wife lodged complaint against the deceased and 6 others before Keeraithurai Police Station and the same was registered in Crime No.529 of 2011 under Section 307 IPC, later the deceased close relative one Kanagaraj name was deleted in the charge sheet, so A6 filed Crl.O.P(MD)No.807of 2014 before this Court to change of investigation and the same was dismissed with the direction to challenge before the concern trial Court, later the A6 appeared on behalf A1's wife before the learned Ist Sub Judge, Madurai in S.C.No.285 of 2013 under Section 307 IPC on 10.01.2014(trial date) filed a petition to reinvestigate the case



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY *in Cr.M.P.No.146 of 2014 against the deceased for which he trial was collapsed so the deceased family falsely implicated A6 in the present case. It is pertinent to note that the A6 name was found along with his senior name in the above Crl.O.P petition and Crl.M.P petition.”*

(ii).Crl.A(MD)No.293 of 2022 is by Ranjithkumar(A-9) as against the conviction and sentence under sections 120 B, 148 , 302 r/w 149 IPC. This appellant name not specifically mentioned in the FIR but later based on the information collected particularly from the confession of the other accused, arrayed as 9th accused. The specific and exclusive ground raised in this appeal is that:-

“The trial Court failed to consider the evidence of investigation officer(PW24) who categorically admitted the name of the appellant neither finds in the FIR nor finds in the 161(3) of Cr.P.C statements of P.W.1 and P.W.2 nor finds in the inquest report (Ex.P.20). Further, the appellant's name was inserted in the further statement under Section 161(3) of Cr.P.C of P.W.1 and P.W.2 dated 09.08.2014. However, that statements reached the Court much belatedly on 25.05.2015. The investigation officer stated that the section of law alteration report reached the Court on 11.05.2015 which contains the name of the appellant. This itself shows the name of the appellant had been deliberately



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY *inserted in the case.*”

(iii).Crl.A(MD)No.457 of 2022 is by Solairaja(A-3) and Ramasamy(A-4) as against the conviction and sentence under sections 120 B, 148 , 302 r/w 149 IPC. These two appellants are brothers. Apart from impeaching the credibility of PW-1, PW-2 and PW-10 as interested witnesses. Alteration in the FIR, the delay in forwarding the forwarding the statements of witnesses to the court, hostility of the witnesses to prove conspiracy, failure to prove the motive for the crime and failure to probe the injuries on the accused (Nirajan) are the grounds raised in the appeal.

(iv).Crl.A(MD)No.786 of 2022 is by Alex Pandian, S/o.Pandi @ Thadi Pandi (A-7) as against the conviction and sentence under sections 120B, 148, 302 r/w 149 IPC. This appellant claims that his name not found in the FIR nor in the first statement of PW-1 and PW-2 who were alleged to have been present and witness the crime. He was added later based on the further statement of PW-1 and PW-2 and based on the inadmissible portion of the statement of accused 1, 2 and 8 given to the police during the custody.

(v).Crl.A(MD)No.807 of 2022 is by Alex Pandian, S/o.Mookaian(A-5) as against the conviction and sentence under sections



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB C 120 B, 148, 302 r/w 149 IPC. This appellant attack the trial court judgment

for the following reasons:-

“(i)Even according to the prosecution documents and evidence there is a strong contradiction about the occurrence place.

(ii)The statements of the witnesses have been sent to the Court after a long time gap and they were prepared with after thought to fit in all the accused in this case.

(iii)P.W.1 is residing at Kannarpatti, Kamudhi Taluk, Ramanathapuram District and there would be no chance to see the occurrence as stated by the prosecution.

(iv)P.W1, P.W2, P.W10 are very close relative to the deceased and there is no independent witness to support the prosecution.

(v)It is submitted P.W.4, P.W5, P.W9 have turned hostile and they have not come forward to give false evidence.

(vi)The evidence of P.W8 and P.W11 are doubtful one they had given evidence only due to the pressure given by the police.

(vii)Except P.W1 father-in-law, P.W.2 wife, P.W10 brother-in-law of the deceased. Other witnesses P.W6, P.W7, P.W12, P.W13, P.W14, P.W17, P.W18, P.W24 are the Government servants as such they have supported the



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY prosecution without any other go.

*(viii)P.W20, P.W21, P.W23 are the medical evidence,
which are actually supporting the defense case.”*

(vi).Crl.A(MD)No.832 of 2022 is by Muniyasamy @ Chendu Muniyasamy (A-8) as against the conviction and sentence under sections 120 B, 148, 302 r/w 149 IPC. The contention of this appellant is that the delay in forwarding the records to the Magistrate is in violation of the dictum laid by this court in Karunakaran Jabamani Case. There is no independent witness to corroborated the prosecution case. The witnesses for prosecution were all close relatives of the deceased and interested witnesses having animosity against this appellant and others. The contradictions in their evidence not properly considered by the trial Court.

(vii).Crl.A(MD)No.159 of 2023 is by Vijayalingam(A-1) and Nithiyananth (A-2). These two appellants are father and son. A-1 convicted and sentenced for offences under sections 120 B, 148 , 302 r/w 149 IPC. A-2 in addition to Sections 120B, 148 , 302 r/w 149 IPC also convicted and sentenced for causing the death of Niranjan a co assailant. The grounds



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

raised in their appeal is almost verbatim of the grounds raised by the 8th accused in CA (MD) No: 832/2022.

12.The Learned Counsel for this appellant argued that the evidence placed by the prosecution clearly proves that injuries sustained by Niranjana was at Munichalai Road and it was a road accident. The place of crime as per the prosecution is near the Mission Hospital Bus Stop. PW-24 had not investigated the case properly and filed the final report without probing the un- natural death of Niranjana but falsely implicating A-2 by registering FIR regarding the death of Niranjana after 2 days mentioning the place and time of occurrence falsely.

13.According to the Learned Counsel for A-1 and A-2, the death of Niranjana is not arising out of same transaction. Hence it should have been investigated separately and tried separately. Clubbing the occurrence which is subject matter of Cr No: 336/2014 dated 08/08/2014 and the subject matter of Cr.No; 337/2014 dated 10/08/2014 is violation of procedure established under law. These two FIR's with consecutive numbers but registered after gap of two days is an evidence for its manipulation.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY14.Per contra, the Learned Additional Public Prosecutor for the State

submitted that, the complaint by Muthuramalingam(PW-1) was investigated and found that the murder of Alagarsami was the outcome of prior enmity and executed in furtherance of conspiracy involving 10 persons, out of which one was a juvenile. The crime of murder by known and unknown persons armed with weapons, established through the evidence collected in th course of investigation which includes the voluntary confession made by the accused persons. Hence, on completion of the investigation, final report filed as against 9 persons for causing the homicidal death of Alagarsami, in pursuant to the conspiracy.

15.To prove the charges, the prosecution examined 24 witnesses, marked 26 documents as exhibits and 18 material objects.

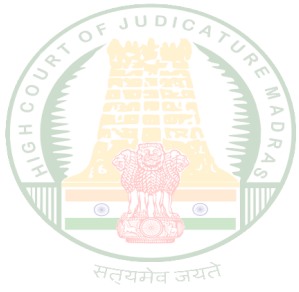
16.The charge of conspiracy proved through the testimony of PW-8 and PW-11. While PW.8-Muthu had deposed about the congregation of conspirators a week before the occurrence at the house of A-1 and the utterance of A-6 to A-1, “somehow to finish the problem” along with the



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB CO evidence of PW.11-Suresh Pandian, who had deposed that on 05.08.2014, when he went to the house of Nithyananth(A-2) on his invitation, he saw A-6 in the house of A-2. A-6 incited him to murder Alagarsami, and assured he will take care of the Court case. However, he refused to his offer.

17.The occurrence and overt act of the accused persons seen by PW-1, PW-2 and PW-10. No doubt, PW-1 is the father-in-law of the deceased, PW-2 is the wife of the deceased and PW-10 is the brother-in-law of the deceased, but that cannot be a reason to ignore the testimony when their presence with the deceased waiting at the bus stop is proved through unassailable evidence. These witnesses have deposed the reason for being with the deceased. Their evidence is natural and stands un-impeached. Minor discrepancies mentioned by the defence counsels does not discredit the prosecution case. The evidence of eyewitnesses about the overt act and the evidence of PW-12 PW-13, PW-17, PW-18 and PW-19 about the events subsequent to the occurrence clearly establishes the chain of event without any break. The place of occurrence been spoken by the witnesses PW-4, PW-5 and PW-6, who are all carrying on business near the Mission Hospital



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

Bus stop. Though PW-4 and PW-5 were treated hostile, their admission about the occurrence is sufficient to reject the defence plea about the place of occurrence.

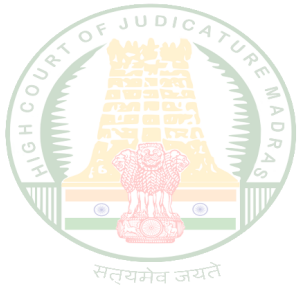
18.Regarding the allegation of delay in registering the FIR and suppression of earlier FIR, the Learned Additional Public Prosecutor submitted that, the occurrence on 08.08.2014 at 21.00 hrs near Mission Hospital Bus stop informed to the police by Muthuramalingam(PW-1) at about 21.30 hrs. Immediately, it was registered and investigation commenced. The FIR copy was forwarded forthwith to the Judicial Magistrate and received by the in-charge Magistrate at 5.45 am in his residence. PW-7, had clearly deposed that the FIR copy handed over to him by PW-6 at about 22.15 hrs and he took the FIR copy along with passport and reached the Judicial Officers Quarters. After knowing that the Judicial Magistrate is on leave and as per the information, went to the residence of the In-charge Magistrate and delivered the FIR Copy. The delay explained by PW-7 not disputed or disproved through any evidence.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY19.Heard the learned counsels on either side.

20.The case of the prosecution is, the first accused and the deceased are related to each other and both hail from the village by name Pammanenthal at Ramanathapuram District. Regarding Karuvelam tree contract, there was enmity between them. Few months ago, a criminal case for attempt to murder the first accused was registered by Keerathurai Police Station against the deceased and pending on the date of occurrence. A week before the occurrence, at A-1 house the accused persons assembled and on the advice of Neethirajan(A-6), the conspirators decided to murder Alagarsami. In pursuant to the said conspiracy, on 08.08.2014 at about 9.00 pm, on knowing that the deceased is near Mission Hospital Town Bus stop, A-1 to A-5, A-6 to A-9 and Balakrishnan a Juvenile in conflict with law, went to the spot carrying weapons in a share Auto bearing Registration No.TN-64-D-1796. On seeing the assailants, the deceased tried to escape. However, A-3 and A-5 directed the others to chase Alagarsami, round him and chop to death. (ஒடவிராதிங்கடா சுத்தி வளைச்சி வெட்டி தள்ளுங்கடா)



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY 21. Alagarsami was rounded up near Vetrivel Medical Shop. A-2-

Nithyananth with aruval cut his left leg below knee, back of the scalp near the left ear frontal region and left forearm, left fingers. The other accused by name Niranjan (sustained injury during the fight and died subsequently due to the injuries) cut the right wrist. A-7-Alex Pandian stabbed on the left side of the chest, Muniyasami @ Chendu Munisamy stabbed at the middle of the chest with knife, The juvenile conflict with law repeatedly hit Alagarsami with a iron pipe, A-1 attacked Alagarsami with aruval on the left side of the chest, left shoulder and left wrist. Alagarsami died on the spot. The case of Alagarsami's murder is the subject matter in FIR in Cr.No.336 of 2014 dated 08.08.2014.

22. Nithyanath(A-2) inadvertently attacked Niranjan on the limbs, while Niranjan was holding Alagarsami and preventing him from fleeing. The injured Niranjan was taken to the hospital by Nithyanath(A-2). He got Niranjan admitted in the hospital stating falsely that, near Munichalai at about 9.00 p.m, while they were travelling in his two wheeler, Niranjan was hit by an unknown vehicle. Thereby, A-2 not only had created an alibi for his

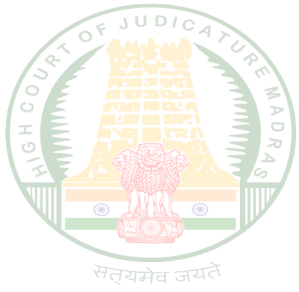


Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

presence elsewhere, also it is extended further to argue that the place of incident is not opposite to Vetri Medical, near Mission Hospital bus stop but it was near Munichalai and rely on the Accident Register-Ex.P.17. Nonetheless, the injured had spelt the truth which is recorded in the FIR. The Post Mortem report of Niranjana is marked as Ex.P-16 which apparently disclosed the cut injuries of radial arteries and fracture these injuries apparently were not caused in a road accident.

23.The evidence collected and placed before this Court, we find that immediately on admitting Niranjana in the hospital as inpatient, intimation given to the South Gate Police Station and CSR No.317/2014 registered as a road accident case. When the police came to the hospital and enquired Niranjana about the cause of injuries, he admitted about his involvement along with other accused persons in the crime of murdering Alagarsami near Vetri Medical Shop, Mission Hospital town bus stop. Also attributed the injuries found on him to Nithyananth. Two days after the incident Niranjana died. His statement to the police Ex.P-19 is the source of information to the FIR Ex.P-23 registered in Cr.No:337 of 2014. The FIR was registered only



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

after receiving death intimation from the hospital. Ex.P-19 being a statement by an accused to the police, the major portion of the statement are in the nature of confession and not admissible in view of the embargo under Section 25 of the Indian Evidence Act (section 23(1) of BSA, 2023). Notwithstanding the embargo, a portion of the statement which are disclosure about the injuries which is the cause for his death, that portion of the statement is admissible in evidence under section 32 of the Evidence Act. (Section 26 of BSA,2023). This Court is conscious of the law that the portion of the statement though admissible, but a weak piece of evidence and requires strong corroboration which is substantial in nature.

24.Dr.Panneerselvam(PW-23), the duty doctor at casualty ward of Rajaji Government Hospital, Madurai had deposed that on 08.08.2014 at about 09.30 pm Niranjan with injuries on his left wrist and left forearm was brought to the hospital by Nithyananth. Niranjan was conscious but drunk. Based on the information given by Niyananth, he had registered it as road accident case occurred near Munichalai. He was told by A2 that an unknown vehicle hit them while proceeding in a two wheeler. PW-23 had deposed that



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY he went to Munichalai and made a spot enquiry and ascertained that there was no accident at Munichalai at that point of time.

25.The post mortem report-Ex.P-16 indicates that Niranjan sustained cut injuries measuring 9 x 1 cm bone depth over the posterior aspect of right forearm, 7 cm above from right wrist. On the dissection of forearm and hand, lower 1/3rd of radial bone found cut through and through, cut of adjoining radial artery partially and Haematoma measuring 4 x 4 cm. The base of the second metacarpal bone found cut through and through. In addition, external injuries like cut injuries 9 x 1 cm bone depth on dorsal aspect of left wrist, cut injuries 1x1 cm size on left and right wrist were noted. PW-21-Dr.Chandrasekar, who conducted the autopsy had opined that the deceased (Niranjan) would appear to have died of cut injury of hand and its complications thereof’.

26.The nature of injuries and the site of the injuries clearly rules out road accident. The suggestion put to PW-21 in the cross examination does not provide any impression that the cut injuries on both the wrists and right



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

forearm together is highly improbable in a accident fall from a moving vehicle. To disbelieve the version of the defence, we also take note of the fact that the particulars about the vehicle or the vehicle which hit the two wheeler in which the deceased Niranjana and Nithynanth(A-2) travelled are facts within the knowledge of A-2, but not placed before this Court.

27.PW-16 is the wife of Niranjana. She turned hostile and was cross examined by the prosecuton. She in her chief had deposed that on hearing that her husband met with an accident and admitted in the hospital, she went to the hospital and saw her husband injured on his head and hands. He was not conscious and died later. In the Accident Register copy or in the post mortem report, we find no head injury noted. But this witness speaks about a non existing injury only to embellish the case of the defence that her husband died in a road accident.

28.In the statement of Niranjana Ex.P-19, which is the source for registering the complaint in Cr.No.337of 2014, the thumb impression of Niranjana is obtained. The injured was conscious as per the evidence of



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB C **PW-23** the duty doctor at Causality ward. The information furnished by the said Niranjana about the circumstances of the transaction which resulted in his death is relevant whether it is in writing or oral. Therefore, the fact that Niranjana died due to the injuries caused by Nithyananth and they both were present and were part of the unlawful assembly which gathered at Mission Hospital Bus stop on 08.08.2014 at about 9.00 pm is proved beyond any pale of doubt.

29.Cr.No.336 of 2014 and Cr.No.337 of 2014 are the two FIRs registered in respect of the incident occurred during the same transaction. The second FIR in Cr.No.337 of 2014 with narration by one of the accused against another accused of the first FIR in Cr.No.336 of 2014. It is not a case and case in counter. The Investigating Officer, after collection of the evidence, found the second FIR came to be registered in the course of the attempt to convert a crime into motor accident case. Therefore, the trial Court has rightly framed charge against A-2 under Section 304(ii) IPC for the distinct and separate crime arising out of the same transaction. Therefore, having proved the charge beyond any doubt, the conviction and sentence on



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY A-2 for the offence under Section 304 (ii) IPC stands confirmed.

Conspiracy:

30. Conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be proved largely from inference from the act or illegal omission committed by the conspirators in performance of the common design. To prove the offence of conspiracy, the prosecution need not necessarily prove that the perpetrator expressly agreed to do an illegal act. Such agreement may be proved by necessary implication also.

31. In ***Kehar Singh & Ors –vs- State (Delhi Administration)*** reported in ***1988 (3) SCC 609***, the Hon'ble Supreme Court has held :-

“generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter is. It is however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.”

32.The law of conspiracy is well settled by the Hon'ble Supreme Court in above terms. Hence, through the prism of the above judgment, the evidence available in the instant case has to be examined whether the charge of conspiracy is made out against these appellants.

33.The prosecution harps on the evidence of PW-8 and PW-11 to prove the charge of conspiracy which is framed against all the 9 accused. It is to be borne in mind that the FIR(Ex.P-2) is the earliest document in this

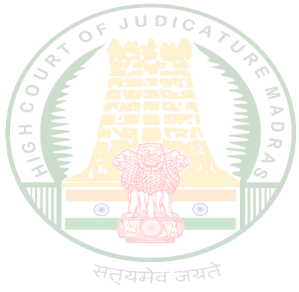


Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY It got registered at 21.30 hrs on 08.08.2014 and it reached the Judicial

Magistrate Court at about 5.45 am on 09.08.2014. In the FIR, Vijayalingam(A-1) his two sons Nithyananth(A-2) and Balakrishnan(juvenile conflict with law), his brothers Solairajan(A-3) and Ramasamy(A-4), his son-in-law Alex(A- 5) and Niranjana (Friend of A2 who sustained injuries caused by A-2 unintentionally and died two days later) are the accused named, as persons present and the members of the unlawful assembly armed with weapons along with few other unknown persons. The name of the 9th accused Ranjith Kumar is not in the FIR. The 6th accused Neethirajan though a named accused in the FIR, he was not present along with the other accused persons when the incident took place. He is charged solely for the offence under Section 120 B IPC.

34.Muthu(PW-8) is one of the witnesses for prosecution, who speak about meeting of the accused persons prior to the occurrence for committing the illegal act of murder. As far as the evidence of PW-8, he had partially deposed about the gathering at the house of A-1, a week before the incident. He had deposed that on that day seeing crowd at the house of the first



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COUNCIL, he slowed his vehicle and overheard A-6 saying to A-1, “finish the problem soon.” Except A-1 and A-6, he did not know who all were present in that crowd. The next day when he met Algarsami told him about what he heard on the previous day and advised Algarsami to settle the problem amicable, without fighting with the relatives. He was treated hostile by the prosecution, since his previous statement to the police contains disclosure of the accused name spresent during the conspiracy meeting held at the residence of A- 1 and he saw them when he went inside the house of A-1 to deliver provisions.

35.PW-11 had deposed that Nithyananth(A-2) called him to his house on 05.08.2014. When he went to the house of A-2, he saw A-6 in the house of A-2 who asked him to join them to murder Algarsami and he will take care of the Court cases. The witness refused and left the place. In the cross examination, PW-11 admitted that the deceased Algarsami is his maternal uncle. He and the deceased are in good terms. He never had any intention to murder Algarsami. His family and the first accused family are not in good terms. Manikandan(PW-10) who is one of the eye witness to the occurrence is his brother.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY 36. To discredit the evidence of PW-11, the defence emphasis that he is an interested witness and a family member of the deceased. No person with prudence wants to murder Alagarsami will call his own sister's son to join them in the act of murdering the maternal uncle, unless the prosecution could establish, like other accused, PW-11 also had the intention to eliminate Alagarsami for any reason. PW-11 is the brother of PW-10. Both these witnesses are being relative of the deceased, their evidence is not worth relying.

37. While analyzing the evidence on the charge of conspiracy, it is just necessary to test the evidence of the hostile witness PW-8. For the said purpose, it is profitable to take the guideline of the Hon'ble Supreme Court rendered in judgments like ***Rameshbhai Mohanbhai Koli Vs. State of Gujarat*** wherein the Hon'ble Supreme Court has held :-

“It is well settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY *accepted to the extent their version is found to be dependable on a careful scrutiny thereof. (vide Bhagwan Singh Vs. The State of Haryana AIR 1976 SC 202) ”.*

38.In *State of UP –vs- Ramsh Prasad Misra and Anr*(AIR 1996, SC 2766), the Apex Court held that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated in *Subbu Singh Vs. State, (2009) 6 SCC 462*.

39.Thus, it is clear that the evidence of P.W-8 cannot be washed off in toto, but to be scrutinized carefully. This witness is a partly reliable witness. He had deposed that a week before the incident, there was a gathering at the house of A-1. Among the members gathered he saw A-1 and A-6. He also heard A-6 saying to A1 ‘finish the problem’. If he had stopped with this alone, his testimony may not be of any worth referring. He had further deposed that the next day when he met Alagarsami(the deceased), he advised



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY him not to fight with the relative, but to settle the problem amicable. For which, Alagarsami retorted and told to be quite. He is not a person to get scared of all these threat.

40.This may be not verbatim of what he said to the police during investigation in his Section 161 CrPC statement. However, one cannot loose right to the fact that the substance of his evidence is not controverted through cross examination. The meeting at A-1 house discussing about the problem with Alagarsami and the participation of A-6 along with others (those names mentioned in the previous statement but not before the court) and prompting A1 to finish the issues. More particularly his caution to Alagarsami to settle the dispute with A-1 amicable and the retortion of the deceased putting a brave face but got scared and confide with his wife (PW-2)about this in his house on 8th morning are to be considered as crucial and relevant . This is to be read with the evidence of PW-1(the father-in-law of the deceased), who have deposed that, the deceased was worried about the threat he was facing from A-6 and the deceased was contemplating to give police complaint in this regard.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY 41. In ***Suresh Chandra Bahri –vs- State of Bihar*** reported in 1995

SCC (Cri) 60, the Hon'ble Supreme Court has reiterated that the essential ingredient of criminal conspiracy is the agreement to commit an offence.

After referring to the judgments in ***Noor Mohammad Yusuf Momin-vs- State of Maharashtra*** reported in (1970) 1 SCC 696 and ***V.C.Shukla v. State (Delhi Admn.)*** reported in (1980) 2 SCC 665, held that,

“96. In the above context we may refer to the provisions of Section 120-A of the Indian Penal Code which defines criminal conspiracy. It provides that when two or more persons agree to do, or cause to be done, (1) an illegal act or (2) an act which is not illegal by illegal means, such agreement is designated a criminal conspiracy; provided that no agreement except an agreement to commit an offence shall amount to criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Thus, a cursory look to the provisions contained in Section 120-A reveals that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means.

Thus the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY *where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary.*

The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY *conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn. “*

42.It is also worth to refer, the earlier judgement of the Hon'ble Supreme Court in [Noor Mohammad Mohd. Yousaf Momin v. The State of Maharashtra](#) (*cited supra*) in which the Hon'ble Supreme Court has held that, a conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. The Apex Court has observed that:-

"7. So far as Section 34, Indian Penal Code is concerned, it embodies the principle of joint liability in the doing of a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

Section 109, Indian Penal Code on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120-B, Indian Penal Code criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material.

In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto.”

43.In the light of the above precedents, the evidence of PW-11 has to be tested. This witness is cousin of the deceased. He is the brother of another prosecution witness PW-10. For that reason a serious doubt is raised by the defence counsels whether the perpetrators of the crime would have called him to assist them to murder Algarsami. Since conspiracy is a crime by itself and mostly hatched in secrecy, the Courts need not search for direct evidence



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

to prove conspiracy. The law expects act or word indicating sharing of common intention/meeting of mind to do an illegal act or legal act through illegal means.

44.Through PW-8 and PW-11, the prosecution is able to prove that there was meeting at the house of A-1 and they discussed about bringing an end to the dispute with the deceased Alagarsami. The manner in which they want to bring the issue to an end not spoken by PW-8 or PW-11, except A-6 assurance that he will take care of the consequence, ie., the Court cases. A-6 assurance is not as a professional but as the cousin of A-1. The subsequent conduct of the accused persons has brought to light that by murdering Alagarsami, the issue has come to a halt for the present. Therefore, the ingredient of meeting of mind to do an illegal act by illegal means to attract conspiracy charge against A1 to A9 witnesses had deposed that A1 to A5, A7 to A9 along with Niranjana were present and attacked Alagarsami is well made out in this case through the witnesses. Execution of the crime or physical presence at the time of execution is not required to punish a person for the offence under section 120 B IPC.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB CAM Motive:

45.The case under consideration, we find that the witnesses to the prosecution has invariably and consistently deposed about the bad blood running between A-1 and the deceased. Earlier an attempt on the life of A-1 by the deceased failed. A-1 was survived after medical intervention. The deceased was arrested and later, let out on bail. Both were mustering strength to settle the score. On 08.08.2014 was the day for A-1. PW-1 had come to the house of the deceased to meet the Advocate. Before meeting the Advocate, they along with PW-2/the wife of the deceased had decided to buy some dress for the daughter of the deceased who celebrated her birthday few days ago. Thus, all three were together near the Mission Hospital Bus Stop. On receiving information from the team members, the assailants have moved to the spot in the Auto Bearing Registration No:TN-64-D-1796. This vehicle was in rented to Alex Pandian, S/o.Thadi Pandian who was plying it as share Auto. Later, this auto along with weapons were recovered under the Mahazar, Ex.P-9 based on the confession given by A-2.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY 46. In ***Suresh Chandra Bahri –vs- State of Bihar case cited supra***, the

Hon'ble Surpeme court has observed :-

“sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime.”

47. In the complaint, we find the names of A-1(Vijayalingam), his sons A-2(Nithyananth) and Balakrishnan(juvenile), brothers of A-1 Solairajan (A-3) and Ramasamy(A-4) and his son-in-law Alex Pandian(A-5). Along with these named persons, the complainant had mentioned that few



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

others also came in the auto along with them armed with weapons. Only during the course of investigation, including the confession statements of A-1, A-2 and A-8, the informations about the conspiracy, in which the role of Neethirajan-A-6(Nephew of A-1), Alex Pandi, S/o.Thadi Pandi(A-7), Munisamy @ Chandu Muniyasamy(A-8) and Ranjith kumar(A-9) had come to light. Though these disclosure of fact was within the knowledge of the makers, the inculpatory statement of co-conspirator against himself and other conspirators who were tried together, has to be tested with the aid of Sections 10 and 30 of the Indian Evidence Act.

Members of unlawful assembly – offence committed in prosecution of common object:

48.The size of the armed mob as per the complaint-Ex.P-1 was 7 known by name and few other unknown persons. Before the Court, PW-1, the de-facto complainant had mentioned about the presence of all the accused, except A-6 as the members of the unlawful assembly. Like wise, PW-2 also mentioned all the accused, except A-6 being present at the spot armed with weapons and contributing their overt act in the attack on



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY Alagarsami. PW-10 (Manikandan) is the other witness who had seen the occurrence and corroborated the evidence of PW-1 and PW-2. Doubt about the presence of this witness at the time of occurrence in the spot is raised because he is not with PW-1 and PW-2 at the time of occurrence, but was standing in a Tea shop opposite to the bus stop. His house is about 1 ½ km away from the KelVeli Veethi. He has come to that street to have Tea.

49.The Apex Court in ***Rajesh Yadav & Anr. Etc.,-Vs-State of U.P.***, has held that, *"A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times"*.

50.This witness(PW-10) is the sister's son of the deceased. He speaks about the presence of all the accused except A-6. He is the scribe of the



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COMPLAINT-Ex.P-1 which was received by the Police at 21.30 hrs on 08.08.2014. He had seen the occurrence from a different place and was not along with the deceased or PW-1 and PW-2. His presence at the occurrence place is by chance and properly explained. His evidence is for the purpose of corroboration.

51.The time gap between the occurrence(9.00 pm) and the complaint (9.30 pm) is only 30 minutes. The FIR has reached the Judicial Magistrate's residence on 09.08.2014 at 5.45 am. The argument that there was delay in registering the FIR and manipulation of facts does not carry any merit in view of the explanation given by PW-7.

52.The inclusion of A-7 to A-9 whose name not found in the complaint cannot be of any advantage to these appellants since they are not the persons previously known to PW-1, PW-2 and PW-10. The FIR is also not an encyclopedia. When the offence is committed in furtherance of a conspiracy which is a crime hatched in secrecy, the law does not expect names of all the accused be mentioned in the FIR.



WEB COPY



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

53.In ***Mizaji v. State of U.P., AIR 1959 SC 572***, the scope of Section

149 I.P.C. is explained in the following manner :

"The first part of Section 149 IPC means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. Though it can be said that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

object that does not make the converse proposition true; there may be cases which would come within the second part but not within the first. The distinction between the two parts of Section 149 Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of Section 149 as explained above or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part."

54.In ***Ranbir Yadav-vs-State Of Bihar*** reported in ***1995 AIR 1219***, the Hon'ble Supreme Court has explained the scope of section 149 IPC as under:-

"Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly only to the



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

acts done in the pursuance of the object of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be like to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He cannot put forward defence that he did not with his own hands commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in Prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assemble d together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all merely because he is a member of an unlawful assembly. While over act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten victoriously criminal liability under S. 149. It must be noted that the basis of the constructive guilt



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY *under S. 149 is mere membership of the unlawful assembly,
with the requisite common object or knowledge. "*

Conclusion:

55.While highlighting the defects in the prosecution case, the learned counsels for the appellants brought the following facts:

1)The contradiction between the evidence of PW-1, PW-2 and PW-10 regarding the description of weapons used by each of the accused.

2)The delay in forwarding the records to the Court. The further statement of the witnesses recorded on 09.08.2014 which was forwarded to the court on 11.052015.

3)The failure to investigate the death of Niranjana, which is the subject matter of a different FIR arising from different transaction.

4)The testimony of the interested witness not corroborated by the independent and public witness to support the case of the prosecution.

5) Only the close relatives of the deceased like PW-1, PW-2, PW-10, PW-11, PW-14 and PW-15, who are the interested witnesses and the official witnesses had supported the prosecution. Even for confession and recovery the police had called only the relatives of the deceased from far off place and



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY not any respectable persons from the locality.

6) Crucial witnesses like PW-4, PW-5, PW-8 and PW-9 had turned hostile. This had exposed the weakness in the prosecution case.

56. In this context, it is worth referring the judgment of the Supreme Court rendered in ***Bharwada Bhoginbhai Hirjibhai-vs-State Of Gujarat*** reported in ***1983 AIR 753***, wherein a pragmatic approach laid while appreciating oral evidence;

“We do not consider it appropriate or permissible to enter upon a reappraisal or re-appreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned counsel for the appellant. Over much importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

(3) *The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.*

(4) *By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.*

(5) *In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment 1.1 at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time- sense of individuals which varies from person to person.*

(6) *Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.*

(7) *A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up*



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY *details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.*

Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important "probabilities-factor" echoes in favour of the version narrated by the witnesses.

57.The murder of Alagarsami by a mob on 08.08.2014 at about 9.00 pm near the Vetri Medical Shop is a fact proved through the prosecution witnesses, including the witnesses, who have turned turtle and declared as hostile witness. The shop owners in that place have shut their doors in panic and watching the event helplessly, so the relatives of the victim. The presence of A-1 to A-5, A-6 to A-9 Juvenile Balakrishnan and Niranjana(deceased) at the occurrence place with weapons is proved through PW-1, PW-2 and PW-10. The death of Niranjana due to the injuries, he sustained at the hands of A-2, when he aimed at Alagarsami indicates that



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

even among the assailants, who all formed unlawful assembly with common object pursuant to the conspiracy had lost focus and suffered identity crisis in the mele. While so, expecting a photographic demonstration of the event before the Court after four years is not possible. Minor discrepancies are bound to happen and contradictions among the eye witnesses, on minor aspects will not affect the overall evidence incriminating the accused. When about 10 persons surround a man and attack indiscriminately, the witnesses cannot correlate each one of the accused to the injuries and the weapons they were using to cause the injuries.

58. The post mortem report of Alagarsami marked as Ex.P-15 reads as below:-

“11. An oblique cut injury measuring 10 cm x 3 cm x muscle deep noted on front of inner aspect of left upper arm.

12. An oblique cut injury measuring 10 cm x 4 cm x muscle deep noted on front of inner aspect of middle of left forearm.

13. An oblique cut injury measuring 5 cm x 1 cm x muscle deep noted on middle 1/3rd of outer aspect of left forearm.

14. An oblique cut injury measuring 2 cm x 1 cm x muscle deep



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY noted on lower 1/3rd of back of left forearm.

15.An oblique cut injury measuring 12cm x 4cm x muscle deep noted on palm of left hand.

16.An oblique cut injury measuring 3cm x 2cm x bone deep noted on palmar aspect of left middle finger.

17.An oblique cut injury measuring 2cm x 1cm x bone deep noted on palmar aspect of left index finger.

18.An oblique cut injury measuring 15cm x 2cm x 2cm along the muscle plane noted on back of middle of left side of chest.

19.An oblique cut injury measuring 06cm x 2cm x muscle deep noted on back of middle 1/3rd of left thigh.

20.An oblique cut injury measuring 10cm x 2cm x muscle deep noted on outer aspect of middle 1/3rd of left thigh.

21.An oblique cut injury measuring 12cm x 4cm x bone deep noted on dorsal aspect of right index finger.

22.An oblique cut injury measuring 12cm x 4cm x bone deep noted on outer aspect of left knee.

23.An oblique cut injury measuring 6cm x 1cm x muscle deep noted on back of upper 1/3rd of right forearm.

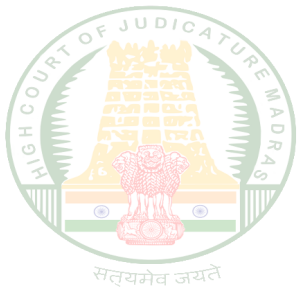
24.An oblique cut injury measuring 15cm x 6cm x bone deep noted on inner aspect of lower 1/3rd right forearm.”



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY59. These injuries were caused by 10 persons. One accused who masterminded the crime stayed. Out of the accused, one is a juvenile and one died. Rest of the 8 accused are here as appellants. Their presence with weapon is spoken by PW-1, PW-2 and PW-10, however with minor variations about the descriptions. Nonetheless the sharing of mind and common object to murder Alagarsami is proved.

60. These three witnesses P.W.1, P.W.2 and P.W.10 been cross examined extensively but could not impeach. Particularly, the chief examination of PW-1 commenced on 07.04.2018. The cross-examination commenced after 10 days and continued for nearly 4 months and after incisive and lengthy cross-examination on 17.04.2018, 08.06.2018, 11.06.2018 and 29.08.2018 by different counsels for the accused completed only on 29.08.2018. The contradictions are trivial in nature and the omissions on the part of the Investigation Officer which are only procedural lapses fails to upset the overwhelming evidence against the appellants who had committed the crime of brutal murder in retaliation and also lost one of their associate in the anxiety to murder Alagarsami.



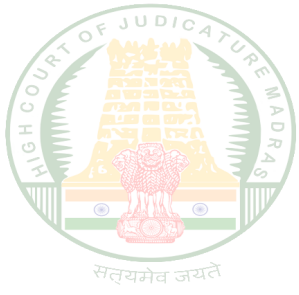
Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

WEB COPY

61.The trial Court has rightly altered the charge from section 302 IPC to 302 r/w 149 IPC and after affording adequate opportunity to the accused persons had concluded that A-1 to A-5, A-7 to A-9 are liable for the homicide death of Alagarsami and guilty of offence punishable under Section 302 r/w 149 IPC. The conspiracy meeting held a week earlier to do the illegal act had manifested into action on 08.08.2014. Among the conspirators, except A-6, all were found assembled unlawfully, at the scene of crime, carrying weapons sharing common object. A week earlier, the presence of A-6 along with the co-conspirators and scheming for the crime is positively spoken by PW-8 and PW-11.

62.As a result, the charges against these appellants found proved beyond doubt.

63.In fine, we confirm the judgment of the trial Court and dismiss the appeals Crl.A(MD)Nos.288, 293, 457, 786, 807 & 832 of 2022 and 159 of 2023. The bail bond executed by the appellants shall stand cancelled. The



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

appellants to be secured forthwith and committed to prison for them to
undergo the remaining period of sentence.

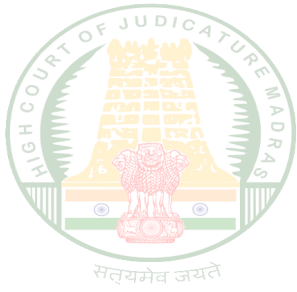
[G.J.,J] & [R.P., J]
17.04.2025

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

To

- 1.The VI Additional Sessions Judge,
Madurai.
- 2.The Inspector of Police,
South Gate Police Station.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:
The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)Nos.288, 293, 457, 786, 807
and 832 of 2022
and 159 of 2023

**DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.**

Ns

**Predelivery Judgement made in
Crl.A(MD)Nos.288, 293, 457, 786, 807 & 832 of 2022
and 159 of 2023**

17.04.2025