



Crl.A(MD)Nos.258 & 272 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.258 & 272 of 2020

Muniyasamy @ Pon Muniyasamy

... Appellant in Crl.A(MD)No.258 of 2020/

Accused No.1

Manikandan

... Appellant in Crl.A(MD)No.272 of 2020/

Accused No.2

Vs.

The State rep. by

The Inspector of Police,

Thoothukudi North Police Station,

Thoothukudi District.

(in Cr.No.664 of 2013) ...Respondent/Complainant in both appeals

COMMON PRAYER : Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.266 of 2015 on the file of the II Additional District and Sessions Court, Thoothukudi, dated 22.01.2020 and set aside the conviction and sentence imposed against the appellants.

In both appeals



Crl.A(MD)Nos.258 & 272 of 2020

For Appellants : Mr.V.Malaiyendran – for A1
Mr.Karuppasamy Pandiyan – for A2
for Mr.M.S.Jeyakarthik
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

These Criminal Appeals are filed against the conviction and sentence passed against the appellants/accused No.1 and 2 in the judgment dated 22.01.2020 passed by the II Additional District and Sessions Judge, Thoothukudi in S.C.No.266 of 2015 by convicting and sentencing the appellants for the offence punishable under Section 302 of the IPC. A1 and A2 had been convicted for offence punishable under Section 302 of the IPC and were sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- each in default to undergo six months simple imprisonment each.

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



Crl.A(MD)Nos.258 & 272 of 2020

(a) On 27.10.2013, Arumugasamy P.W.1 lodged a complaint

in which it was stated that the deceased Balamurugan is his son, a driver aged about 31 years. Three years ago, he had married one Muneeswari, daughter of Muniyasamy. They were not blessed with children. Due to misunderstandings, she left to her parental home. Subsequently, a panchayat was held, and she took back her jewels. Thereafter, both were living separately. He met his wife occasionally.

(b) Brother of Muneeswari, Pon Muniyasamy-A1 created problems with his son. The complainant hence cautioned him. On 27.10.2013 at 3.15 p.m., himself and his son-in-law Robinson were talking about real estate, behind the Registrar Office. They heard some noise near the New Bus Stand where a crowd was gathering. They also rushed to the place, and noticed that Muniyasamy @ Pon Muniyasamy-A1, his friends A2- Manikandan, A3-Balasubramanian, A4-Shanmuga Raj @ Arjunan, A5-Ramalingam, and A6-Kannan @ Valliyooran Kannan were fighting with his son Balamurugan. When he tried to stop them, A3 to A6, held his son and A1 and A2 took out knives. A1 stabbed his son's left stomach, left ribs and left arm. A2, inflicted cut injury on his upper lip, and right chest. His son was lying in a pool of blood. The



Crl.A(MD)Nos.258 & 272 of 2020

complainant and others raised a hue and cry. The accused fled away from the bus stand. They accused were found in an inebriated condition. The complainat's son was struggling for life, and therefore, he took him in 108 ambulance to a Government Hospital. The Doctor declared that he was brought dead, and his body was kept in the mortuary. Hence, the complaint.

(c) P.W.13, Thiru Shanmugavadivu, after receiving the complaint Ex.A1 at about 16.45 hours registered a case in Crime No.664 of 2013 for the offences under Sections 147, 148, 149, 342, and 302 of IPC. The FIR has been marked as Ex.P24. He forwarded the complaint and FIR to the Judicial Magistrate No.II, Thoothukudi and other copies to the concerned Officers for reference.

(d) P.W.18, Thiru.Kumaresan, Inspector of Police took up the case for investigation. On 27.10.2013 at about 18.13 hours, he went to the place of occurrence and prepared observation mahazar Ex.P27 in the presence of witnesses Thiru.Mariyappan – PW6 and Thiru.Dharmaraj – PW7. He also prepared rough sketch Ex.P28 and recovered blood stained cement M.O.7 and ordinary cement M.O.8 under a recovery



Mahazar Ex.P.29. On the same day, from about 20.30 to 23.00 hours, he conducted inquest on the dead body, and prepared inquest report Ex.P20.

Thereafter, in order to conduct postmortem of the dead body, he sent a requisition letter to the Dean, Government Hospital through Grade-I Constable Thiru.Samudraselvan- P.W.10.

(e) P.W.11 Dr.Manohar conducted the autopsy on the dead body and made the following observations:

“The following ante mortem injuries were noted in the body: -

1. A stab wound of size 3cms x 0.5cm x oral cavity deep seen in the left half of upper lip which is corresponding to the injuries to the tooth (left upper quadrant incisors missing).

2. A stab wound of size 2.5cms x 1cm x abdominal cavity deep seen in the left side abdomen. of lower

3. A stab wound of size 2.5cms x 0.5cm x bone deep seen in the left check.

4. A stab wound of size 2cms x 1cm x 4cms seen above right collar bone.

5. A stab wound of size 4cms x 2cms x bone deep seen in the dorsum of left hand.

6. A stab wound of size 2cms x 1cm x bone deep



seen in the inner side of left hand.

7. A stab wound of size 2cms x 1cm x bone deep seen in the outer side of left elbow.

8. A stab wound of size 3cms x 1cm x muscle deep seen in the outer aspect of left arm.

9. A stab wound of size 10cms x 0.5cm x muscle deep seen in the lateral aspect of left chest 21cms below the left axilla.

10. A stab wound of size 1cm x 0.5cm x muscle deep seen 3cms behind the injury no.9

11. A stab wound of size 1cm x 0.5cm x soft tissue deep seen in the left groin.

12. A stab wound of size 1cm x 0.5cm x bone deep seen in the left side of forehead.

13. An incised wound of length 4cms seen in the left side of neck 4cms below the lower jaw bone.

14. An incised wound of length 4cms seen 2cms below the injury no.13.

15. An incised wound of length 5cms seen in the left cheek and lower jaw bone. Tailing noted in the incised injuries at their right end.

16. An abrasion of size 7cms x 3cms seen in the dorsum of left hand.

17. An abrasion of size 3cms x 2cms seen in the right side of nose.

Internal findings:-



Peritoneal cavity-contained about 1500ml of blood. Heart-normal and chambers empty. Larynx and Trachea-normal. Hyoid bone-intact. Lungs, Liver, Spleen and Kidneys-normal and cut section pale. Stomach-contained about 200ml of brown coloured semisolid food particles with fruity odour. Small intestine-contained about 80ml of brown coloured digested food particles with fruity odour. Omentum-multiple perforating injuries with surrounding bruise about 200gms noted. Bladder-empty. Brain- normal. External genitalia- normal.

Note:-1. Viscera preserved for chemical examiner's analysis.

2. Blood preserved for biological analysis.

OPINION:

The deceased would appear to have died of shock and hemorrhage due to multiple stab injuries. Death would have occurred 12-24hrs prior to the autopsy. However, final opinion is reserved due to pending chemical examiner's report.

FINAL OPINION:

The deceased would appear to have died of shock and hemorrhage due to multiple stab injuries. Death would have occurred 12-24hrs prior to the autopsy. Ethyl Alcohol was detected in the viscera analysed.”



Crl.A(MD)Nos.258 & 272 of 2020

(f) Thereafter, the Investigating Officer examined witnesses

Aarumuga Swamy-PW1, Robinson-PW17, Karthik Raja-PW2, Senthil Kumar Mariyappan PW6, Dharmaraj PW7 and Shanmugavadivu-PW13 and recorded their statements.

(g) On the same day, at about 23.30 hours, after receipt of secret intimation, he arrested A1-Muniasamy, A2-Manikandan, and A3-Balasubramaniyan in the presence of Thiru.Selvakumar-PW9 and Thiru.Senthilkumar – PW8. He recorded the confession statement of A1 under Ex.P30 and recovered a knife under a recovery mahazar Ex.P32. He also recorded the confession statement of A2 under Ex.P33 and recovered a knife at about 2.00 p.m.. He then recovered M.O.2-blood stained vest in a recovery Mahazar Ex.P34, and obtained the signatures of the witnesses, and sent the accused to judicial custody.

(h) On 28.10.2013 he examined Maria Soosai, Maria Selvaraj, Ponmani @ Innasi Muthu, Samuthraselvan, Thiru.Ramalingam, and Dr. Loorthus Albina-P.W.14, and recorded their statements. He also sent a requisition letter to the Judicial Magistrate for forwarding the material objects to forensic analysis, and thereafter handed over the files



Crl.A(MD)Nos.258 & 272 of 2020

to Thiru Harikrishnan, Inspector of Police. He had examined the witnesses and recorded their statements. He also examined Head Constable Kasi Viswanathan and Postmortem Doctor Manoharan and recorded their statements.

(i) He examined Serma Bala Arun and Chithiraivel Sekar and recorded their statements. He completed the investigation and filed a final report on 29.01.2014.

3.Upon receipt of the records, the Judicial Magistrate No.II, Thoothukudi took up the case in P.R.C.No.44 of 2014 and issued summons to the accused. After appearance of the accused, copies of all the prosecution documents were furnished to him free of cost as per Section 207 of Cr.P.C.

4.Since the offence was exclusively triable by the Sessions Court, the learned Judicial Magistrate committed the case records to the Principal District and Sessions Judge, Ramanathanpuram under Section 209(A) of Cr.P.C. for further action.



Crl.A(MD)Nos.258 & 272 of 2020

5.The II Additional District and Sessions Judge, Tuticorin

received the case records and numbered the case as S.C.No.266 of 2015, and thereafter, framed charges against accused Nos.1 to 6 under Section 120(b) of IPC, against accused Nos.3 to 6 under Sections 147 and 302 r/w.149 of IPC, and against accused Nos.1 and 2 under Sections 148 and 302 r/w.34 of. IPC. It was read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

6.In order to prove the case of the prosecution, P.W.1 to P.W.18 were examined, and Ex.P1 to Ex.P35 were marked, and material objects M.O.1 to M.O.9 were produced. On the side of the accused, no witnesses were examined.

7.After full trial, the Trial Court held that the accused No.1 and 2 were guilty of the offence punishable under Section 302 of IPC. A3 to A6 were acquitted. A1 and A2 had been convicted for the offence punishable under Section 302 of IPC, and were sentenced to undergo life imprisonment each, and to pay a fine of Rs.1,000/- each in default, to undergo six months simple imprisonment each. Against this, the present Criminal Appeal is filed on the following, among other grounds:-



Crl.A(MD)Nos.258 & 272 of 2020

(a) That the Court below failed to see that except PW1, there were no other eye witnesses examined by the prosecution.

(b) That the Court below failed to see that in the evidence of the Doctor, he has deposed that the deceased father, at the time of admission, stated that his son was attacked by two known persons. No identification was, however, stated by the deceased father.

(c) That the Court below failed to see that the sister of PW1, who was said to have been an eye witness to the occurrence, was not examined by the prosecution, which throws suspicion against the case of the prosecution, which invites adverse inference against the prosecution.

(d) That the Court below failed to see that the document writers were not examined by the prosecution, especially since the eye witnesses claimed themselves that they went to the scene of occurrence for the purpose of visiting the registration office.

(e) That the Court below failed to see that there is a delay in the registration of FIR, and that there is a delay in it reaching the Court.



(f) That the Trial Court failed to see that no independent witnesses from the occurrence place were examined by the prosecution.

(g) It is submitted that, even assuming the case of the prosecution is true, the punishment awarded against the Appellants are excessive.

(h) That A2 is innocent and he did not commit any offence as alleged by the prosecution. There is no motive with respect to A2 and the deceased, namely, Balamurugan. Even according to the prosecution case, the motive was established only with respect to A1 and the deceased.

(i) It is submitted that even according to the prosecution case, the alleged commission of offence was witnessed by the deceased's father, namely, Arumugasamy [PW1], sister Sri Devi and brother-in-law Robinson [P.W.17]. But the sister was not examined as a prosecution witness. Further, during trial, P.W.17, the brother-in-law of the deceased also deposed that he did not witness the alleged commission of offence.



(j) It is submitted that P.W.1 deposed in the trial that during the period of the alleged murder, the deceased was living together with his wife. Therefore, the motive attributed to A1 by the prosecution becomes false and innovated.

(k) Further, P.W.1 deposed that on the date of occurrence, the accused persons had brought the deceased to a Tasmac bar and had consumed alcohol with the deceased. But in the FIR, he made allegations that the accused persons went to the Tasmac bar, after seeing whom, the deceased ran away from the said bar.

(l) It is submitted that during the examination of P.W.1, he deposed that on the date of the occurrence i.e., 27.10.2013, himself [PW1], the deceased's sister, Sri Devi and the deceased's brother-in-law, Robinson [P.W.17] went to the Thoothukudi Registrar office. At that junction, they saw the commission of the offence. However, the said date 27.10.2013 is a Sunday which was a Government holiday. Therefore, it has come to light that in order to strengthen the prosecution case, P.W.1 & P.W.17 innovated as eye witnesses.



(m) That the Trial Court failed to note the contradictions in the evidence of P.W.1.

(n) That the Trial Court passed conviction against A2 relying only upon the evidence of P.W.1, P.W.11, P.W.15 and P.W.18. P.W.1 is the father of the deceased. He is a interested witness. P.W.11 is the postmortem doctor and he is an official witness. P.W.15 is a friend of the deceased, and hence, is an interested witness. P.W.18 is the Investigation Officer. Apart from the above witnesses, no independent witness supported the case of the prosecution.

(o) Even according to the prosecution case, the alleged commission of the offence took place at the Thoothukudi bus stand in the daytime. But no independent witness who was present at the bus stand at the time of occurrence was examined as a witness.

(p) That the Court should always give proper weight and consideration to such matters as [1] the views of the Trial Judge and the credibility of the witnesses, [2] the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he



had been acquitted at his trial [3] the right of the accused to the benefit of doubt and [4] the slow speed of an Appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of observing the witness.

(q) That the Trial Court ought not to have believed the evidence of interested witnesses and consequently ought not to have convicted the petitioner. That the Trial Court, without discarding the evidence of the interested witnesses, convicted A2.

(r) That in order to incriminate the appellant, he was purposely implicated as an accused in the present criminal case.

(s) That there is no other material collected against A2, while the respondent, without properly conducting due investigation, wrongly implicated A2 as an accused.

(t) Though there is an absence of corroborative evidence, convicting the appellant merely based the arrest, confession and recovery is highly arbitrary and unsustainable.



WEB COPY (u). The conviction is solely based on uncorroborated evidences given by the Investigation Officer and the interested witnesses.

(v) That the Trial Court failed to note that the prosecution has not proved the case beyond reasonable doubt, and hence, the Trial Court ought to have acquitted the appellant of all charges on the ground of benefit of doubts.

(w) That the Trial Court failed to note that the benefit of reasonable doubts are to be given to the accused person only, if the reasonable doubts emerge from the evidence of the prosecution.

(x) That the Trial Court passed the sentence against the appellant based on presumptions and surmises, and hence, the judgment dated 22.01.2020 of the Trial Court is liable to be set aside.

8.The learned Additional Public Prosecutor appearing for the respondent argued that the motive for the occurrence was spoken about by the eyewitness. The accused was arrested, and his confession



Crl.A(MD)Nos.258 & 272 of 2020

statement was recorded, and materials objects were seized. The prosecution proved the case beyond all reasonable doubt. He submitted that there was no need to interfere with the judgment of the Trial Court, and prayed for the dismissal of the Criminal Appeal.

9.Heard the learned counsel on either sides and perused the evidence on record.

10.Now this court has to decide whether the judgement rendered by Trial Court is proper or liable to be set aside.

11.Since the issues, facts, evidences and documents involved in these Criminal Appeals are all one and the same, they are taken up for hearing together and are disposed of by this common judgment.

12.On careful perusal of the entire records, the prosecution case unfolded from the evidences of P.W.1 to P.W.18 is as follows:

(i) P.W.1, the complainant and eye witness to the occurrence, deposed that the deceased Balamurugan is his son. Two years ago, he had



Crl.A(MD)Nos.258 & 272 of 2020

married one Muneeswari, daughter of Muniasamy Thevar. Both had misunderstandings, and an enquiry was held in the All Women Police Station, and both separated. Muneeshwari's jewels were returned. The deceased was working as a driver in the Market Van Stand. The complainant's daughter-in-law had requested his son to pardon her. Therefore, his son went to her house and was living with her. Balamurugan (deceased) had informed P.W.1 about the problem created by his brother in law. A1 threatened the complainant's son that he will kill him. Balamurugan took A1 to Tasmac bar, purchased alcohol, and asked him to consume the same.

(ii) All the accused conspired together, and on 27.10.2013, at about 3.15 p.m., A3 to A 5 held the deceased as A1 and A2 stabbed him with knife. A1 stabbed his right ribs and his right upper hand upper. A2 inflicted injury below his nose.

(iii) The complainant, his daughter Sridevi, and son-in-law Robin were on the way to the Registrar Office. On seeing the occurrence, he and his daughter raised an alarm. The accused fled from the place of occurrence. His daughter cautioned him to not to go near them as the



Crl.A(MD)Nos.258 & 272 of 2020

accused were holding knives. Immediately, they called 108 ambulance, and the complainant's son, the deceased, was taken to Government Hospital, Thoothukudi. The complainant, his daughter Sridevi, and son-in-law Robinson accompanied the deceased in the ambulance. The complainant's son died on the way to the hospital. Subsequently, he made the complaint Ex.P1 at the North Police Station. He identified M.O.1 and M.O.2. weapons before the Court.

(iv) Except P.W.1, all other eyewitness viz., P.W.2 Maria Soosai, P.W.3 Maria Selvaraj, P.W.4 Ponmani and P.W.5 Sermabala Arun did not support the prosecution case, and turned hostile. The above witnesses were alleged to be present at the bus stand at the time of occurrence, but they stated that they were not aware of the occurrence.

(v) P.W.6 and P.W.7, in whose presence the Investigating Officer prepared observation mahazar and rough sketch, also turned hostile, and did not support the prosecution case.

(vi) P.W.8 and P.W.9, in whose presence the accused Balasubramanian and Manikandan were arrested and had their



Crl.A(MD)Nos.258 & 272 of 2020

confessions recorded, as well as in whose presence the material objects were seized by the Investigating Officer also did not support the prosecution case, and turned hostile.

(vii) P.W.11, Dr.Manoharan who had conducted the autopsy deposed about the postmortem, injuries, and the cause of death.

(viii) P.W.12, Thiru.Kasiviswanathan, Head Clerk of Judicial Magistrate No.II, Thoothukudi stated that the material objects and viscera received by them were sent to chemical analysis.

(ix) P.W.13, Tmt.Shanmugavadivu, Sub Inspector of Police, who had registered the FIR Ex.P24 in Crime No.664/13, under sections 147, 148, 149, 342, and 302 of IPC deposed about the registration of the FIR.

(x) P.W.14 Dr. Loodus Albina, who had admitted the deceased in Government Hospital Thoothukudi and had declared his death, spoke about the same. The accident register issued by him was marked as Ex.P 25.



Crl.A(MD)Nos.258 & 272 of 2020

(xi) P.W.15 Thiru.Karthik Raja spoke about the threat made

by A1 and the problem between the deceased and A1. He deposed that both the deceased Balamurugan, and his wife, the sister of A1, separated due to problems that occurred between both the parties. Therefore, the deceased Balamurugan had not met his wife. A complaint was lodged by Muneeshwari before the All Women Police Station, and she had received her jewels from Balamurugan. Thereafter, she had gone to the van stand and cried and made a request to the witness that he should speak to her husband, Balamurugan and pacify him, and request him to speak to her. Therefore, he had pacified Balamurugan and asked him to meet his wife who was, at the time, residing in her parents house. But A1 threatened the deceased, Balamurugan, that if he visits his house, he will do away with him. In connection to this, both had often quarreled with each other.

(xii) P.W.18 Thiru.Kumaresan, Investigating Officer spoke about the investigation done in this case.

13. The learned counsel for the appellants argued that though it was stated that the occurrence was witnessed by P.W.1, the father of the deceased, Sri Devi, the daughter of PW1, and his son-in-law Robinson,



Crl.A(MD)Nos.258 & 272 of 2020

Sri Devi was not examined by prosecution. P.W.17, the son-in-law was examined, but he did not supported the prosecution case. He had stated that he is not aware of the incident.

14.It is true that the daughter of PW1, is not cited as a witness by the Investigating Officer. However, PW1, in his complaint 161 statement, had not stated that his daughter Sri Devi witnessed the occurrence. It was during trial that he stated that his daughter had also witnessed the occurrence.

15.The prosecution case rests on the evidence of eye witnesses. We admit that except P.W.1, the father of the deceased, all other eyewitnesses turned hostile and did not support the prosecution case. The son-in-law of PW1, who has been cited as one of the eye witnesses of the occurrence, did not support the prosecution case. During trial he deposed that he is unaware of the incident.

16.Now this Court is to decide whether the evidence of P.W. 1 alone is sufficient to hold the guilt of the accused.



WEB COPY

17.P.W.1, in his evidence, clearly stated that both A1 and A2 attacked his son with M.O.1 and M.O.2. He identified the knives used by the accused in the Court. Soon after the occurrence, he took the deceased to the hospital and admitted him for treatment, which was supported by the evidence of P.W.14, Dr. Loodus Albina, who had issued the accident register Ex.P25. He deposed that on 27.10.2013, when he was working in the intensive care unit, the victim Balamurugan, aged about 31 years, was brought in by his father Arumugasamy P.W.1 in 108 ambulance for treatment. On enquiry, P.W.1 informed the doctor that his son was attacked with knives at the new bus stand, where the Rameswaram buses were parked, by two known and some unknown persons on 27.10.2013 at about 3.15 PM. The occurrence took place at 3.15 PM. Without any delay, the victim was taken to the hospital by P.W. 1 in an ambulance and he then was admitted at 4.10 PM in the Government Hospital. Ex.P25 accident register issued by P.W.14, which supported the version of the witness. If PW1 was not present at the place of occurrence, he could not have accompanied the victim and have admitted him for treatment within a short duration from the time of occurrence. The evidence of PW1 is also supported by Ex.P.24 FIR and



Crl.A(MD)Nos.258 & 272 of 2020

Ex.P1 complaint. Ex.P1 complaint was preferred by P.W.1 on the same day and was received by the Sub Inspector Shanmugavadivu, Vadabhagam Police Station at 16.45 hours. In the complaint, it was contended that the complainant took his son for treatment, and the doctor declared that he was brought dead, after which, the body was kept in the mortuary. He then lodged the complaint. FIR Ex.P24 reached the Court on the same day at about 22.00 hours. There was a delay in sending the FIR to the Court, but the FIR ultimately reached the Court on the same day. There was no inordinate delay in it reaching the Court. Even if there is a delay, a delay by itself is not necessarily fatal to prosecution. The Court has to consider the delay in the context of other relevant circumstances such as (a) whether the delay was properly explained and whether the FIR was filed late, (b) whether the delay prejudiced the accused, (c) whether the delay was result of an afterthought to present a coloured version of the incident, and (d) whether the delay was necessitated to frame anyone as an accused. In this case there is no delay in filing the complaint and in registering the FIR. The complainant, while he admitted his son in the hospital, specifically stated about the involvement of the accused, which was set out in the complaint. There is no chance for manipulation or afterthought to give a coloured version.



Crl.A(MD)Nos.258 & 272 of 2020

Therefore the delay in the FIR reaching the Court is not fatal to the prosecution case.

18.Further, A1 and A2 were arrested on the same day, that is, 27.10.2013 at 23.30 hours. The Investigation Officer recovered the knife from A1 at about 00:30 hours. Another knife measuring 28.5 cms was recovered from A2 at about 2.00 AM. He also recovered a blood stained inner (baniyan) from A2. However, the witnesses P.W.8 and P.W.9, before whom the accused were arrested, did not support the prosecution case, and during trial, they stated that the police did not arrest the accused in their presence and that no recovery was effected. Though they have not supported the prosecution case, they admitted that their signatures are in the confession statement and recovery mahazar. The confession statements and recovery mahazar were marked through the above witnesses as Ex.P6 to Ex.P9, but the defence counsel did not object the same. The Additional Public Prosecutor cross examined the witnesses by treating them as hostile witnesses.

19.Furthermore, Ex.P.22 and Ex.P.23 support the prosecution version. Ex.P.22 reveals that the blood sample taken from a piece of



Crl.A(MD)Nos.258 & 272 of 2020

gauze cloth and the control blood samples recovered from the deceased, the blood stained earth, knives recovered from the accused, the blood stained dresses recovered from the deceased and the blood stained baniyan recovered from A2 were all found to be human blood belonging to 'A' group. Ex.P.26 is the blood report on the control sample, which shows that the deceased's blood extracted from the gauze cloth that was examined for grouping was found to belong to 'A' group. The witnesses before whom the accused were arrested and the material objects were recovered clearly admitted their signatures' presence in the confession statement as well as in the recovery Mahazar. But they turned hostile by not supporting the prosecution case. However, they did not state that their signatures were obtained in a blank sheet by the Police which was subsequently filled up. The defence counsel also did not cross examine the witnesses, stating that the Police obtained their signature in a blank sheet and subsequently filled it up at their convenience.

20.As far as the evidentiary value of hostile witnesses is concerned, we rely upon the judgement in ***Selvamani Vs. The State rep. by the Inspector of Police*** reported in ***AIR 2024 SC 2273***, in which the Hon'ble Supreme Court held as follows :



“9. A 3-Judge Bench of this Court in the case of Khujji @ Surendra Tiwari v. State of Madhya Pradesh⁶, relying on the judgments of this Court in the cases of Bhagwan Singh v. State of Haryana⁷, Sri Rabindra Kuamr Dey v. State of Orissa⁸, Syad Akbar v. State of Karnataka⁹, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

10. This Court, in the case of C. Muniappan and Others v. State of Tamil Nadu¹⁰, has observed thus:

“81. It is settled legal proposition that : (Khujji case, SCC p. 635, para 6) ‘6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.’

82. In State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) 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 by this Court in Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543], Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516], Radha Mohan Singh v. State of U.P.,(2006) 2 SCC 450], Sarvesh Narain Shukla v. Daroga Singh, (2007) 13 SCC 360] and Subbu Singh v. State, (2009) 6 SCC 462.

21. We noticed that the confession statements of the accused were sent to the Court immediately and the initial of the Judicial Magistrate available in the above statement with date clearly shows that it had reached the Magistrate Court on 28.10.2013 itself, without any delay. Likewise, the recovered weapons and other material objects viz., M.O.1 to M.O.9 through Ex.P29, Ex.P.32 and Ex.P.34 were also handed over to the Judicial Magistrate without any delay on 28.10.2013, which is evident from the endorsement of the Magistrate found in the above mahazar. The witnesses to the confession statement did not support the prosecution case, but that alone does not eschew the accused from guilt. The material objects received from the accused person were sent to chemical examination by the Judicial Magistrate. The examination proved



Crl.A(MD)Nos.258 & 272 of 2020

that the blood stain found in the weapon used by the accused and the dress worn by A2 belongs to the same blood group as the blood of the deceased and the blood found in the clothes worn by the deceased.

22.The witness in whose presence the blood stained earth was recovered, also did not support the prosecution case. But he admitted his signature's presence in the observation Mahazar and recovery Mahazar. The blood found in the earth recovered by the Investigating Officer is also showed in the chemical analysis to be of 'A' group in Ex.P23. The blood stained earth was also forwarded to the Magistrate Court the next day, on 28.10.2023, without any delay. Therefore, even though the witnesses to the recovery and observation mahazar turned hostile, they admitted their signature in the observation mahazar and recovery mahazar, but did not state that their signatures were obtained in a blank paper which was subsequently filled by the Investigating Officer. The Defence Counsel, did not put forth any suggestion to the witness in this regard, but the prosecution treated him as hostile and cross examined him.



CrL.A(MD)Nos.258 & 272 of 2020

23. Therefore we have not rejected the evidence of the above witness, but on careful scrutiny, we presume it reveals that the aforesaid witness would either have been won over or did not reveal the truth due to fear. But the prosecution established that the material objects were recovered from the accused.

24. Further we have noticed that the appellants were questioned under section 313 of Cr.P.C on 4.12.2017 about the incriminating circumstances against them, viz., arrest, confession and recovery. But the appellants did not specifically deny such recovery made from them. They denied the presence of the witnesses. Further, A2 also did not specifically deny that the vest (baniyan) and the blood stained knife were not recovered from him. But he simply stated that it is false. The object of section 313 of Cr.P.C is that the accused must be explained the circumstances appearing in the evidence against him, so that he could offer explanation. After an accused is questioned under section 313 of Cr.P.C, he is entitled to examine defence witness and lead other evidences. If the accused is not explained the important circumstances appearing against him, he will not properly defend himself. If he does not avail the opportunity, he must face the



consequences. In Mannu Sao Vs. State of Bihar, reported in 2010 (12)

WEB COPY SCC 310, it was held as follows:

“14. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313 (4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put as evidence against the accused in any other enquiry or trial for any other offence for which such answers may tempt to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

15. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Code as it cannot be regarded as a substantive piece of evidence.”



Crl.A(MD)Nos.258 & 272 of 2020

The judgment is clearly applicable to the instant case, however the Court did not record the section 313 Cr.P.C questioning as a substantive piece of evidence to hold the accused guilty.

25.The evidence of PW1, therefore, is sufficient to convict the accused, as his evidence corroborates with the medical evidence viz., the doctor who initially treated the victim stated that the victim was admitted for treatment by his father P.W.1 who said that his son was attacked with knives by two known and several unknown accused. This shows that the complainant admitted his son in the hospital soon after the incident, and that he had lodged the complaint immediately after the doctor declared that his son was dead.

26.Based on the complaint, the Investigating Officer inspected the place of occurrence, recovered the blood stained earth, prepared the observation mahazar, and gathered material objects without any inordinate delay, and then sent the materials to the Court.

27.Both the accused were arrested on day of occurrence itself. The material objects, i.e., the weapons used to attack were



Crl.A(MD)Nos.258 & 272 of 2020

recovered from the accused. Blood stained clothes worn by A2 were also recovered under a recovery mahazar, and were sent to the Court immediately.

28.The Court sent the material objects, and blood sample of the deceased was collected and found to be of 'A' group through a grouping test. Blood on the weapon used for the offence, the vest of A2 and clothes worn by the deceased, when verified, were found to be of the same group, that is, group A. But the accused did not come forward with any explanation as to how the blood stained knife and the blood stained clothes were found with him. So, we are of the firm view that simply because the other witnesses did not support the prosecution case, the evidence of P.W.1 could not be suspected or thrown away.

29.The learned appellant's counsel appearing for A2 argued that there is no motive established as against A2, but the prosecution rests on eye witness. Prosecution is not required to prove the motive for murder, if there is credible evidence available to prove the murder.



Crl.A(MD)Nos.258 & 272 of 2020

30.We rely upon the judgment in ***Yogesh singh v.***

Mahabeer Singh reported in 2017 (11) SCC 195, in which paragraph

No.46 reads as follows :

“46. It has next been contended by the learned counsel for the respondents that there was no immediate motive with the respondents to commit the murder of the deceased. However, the Trial Court found that there was sufficient motive with the accused persons to commit the murder of the deceased since the deceased had defeated accused Harcharan in the Pradhan elections, thus putting an end to his position as Pradhan for the last 28-30 years. The long nursed feeling of hatred and the simmering enmity between the family of the deceased and the accused persons most likely manifested itself in the outburst of anger resulting in the murder of the deceased. We are not required to express any opinion on this point in the light of the evidence adduced by the direct witnesses to the incident. It is a settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, motive loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of



Crl.A(MD)Nos.258 & 272 of 2020

the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. [Hari Shankar Vs. State of U.P., (1996) 9 SCC 40; Bikau Pandey & Ors. Vs. State of Bihar, (2003) 12 SCC 616; State of U.P. Vs. Kishanpal & Ors., (2008) 16 SCC 73; Abu Thakir & Ors. Vs. State of Tamil Nadu, (2010) 5 SCC 91 and Bipin Kumar Mondal Vs. State of West Bengal; (2010) 12 SCC 91].”

31.Hence we hold that the prosecution has clearly proved the case beyond all reasonable doubts as against A1 and A2. The Trial Court, after scrutiny of all the records, held the accused guilty of offence. Since the conspiracy by the accused could not be established, the Trial Judge acquitted them. But no appeal is filed against such offence.

32.On careful perusal of the entirety of the records, we conclude that there is no reason to interfere with the judgment of the Trial Court. The Criminal Appeal has no merit, and hence, these Criminal Appeals are liable to be dismissed.



Crl.A(MD)Nos.258 & 272 of 2020

33. Accordingly, the Criminal Appeals are dismissed, and the judgment passed in S.C.No.266 of 2015 on the file of the II Additional District and Sessions Court, Thoothukudi, dated 22.01.2020 is hereby confirmed.

(G.R.S., J.) & (R.P., J.)
09.01.2025

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

RM

To

1. The II Additional District and Sessions Court,
Thoothukudi,
2. The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)Nos.258 & 272 of 2020

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
Crl.A(MD)Nos.258 & 272 of 2020

09.01.2025