



CRL.A.(MD).No.343 of

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	05/11/2025
Date of Pronounced	18/12/2025

CORAM

**THE HONOURABLE MR JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MRS JUSTICE L.VICTORIA GOWRI**

Crl.A(MD)No.343 of 2024

1.Subbaiah @ Sudhakar
2.Esakkimuthu
3.Sudalaimuthu

: Appellants/A1 to A3

Vs.

State represented by
The Inspector of Police,
Kallidaikuruchi Police Station,
Tirunelveli District.
(Crime No.380 of 2021)

: Respondent/Respondent

PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records in SC No.163 of 2022 on the file of the III Additional District and Sessions Court, Tirunelveli, and set aside the judgment, dated 19/02/2024 by acquitting the appellants.

For Appellants

: Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondent

: Mr.B.Nambi Selvan
Additional Public Prosecutor



JUDGMENT

(Judgment of the Court was made by the Hon'ble **P.VELMURUGAN J.**)

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This criminal appeal is filed against the judgment of conviction passed by the III Additional District and Sessions Judge, Tirunelveli, in SC No.163 of 2022, dated 19/02/2024 and to set aside the same and consequently to acquit the appellants/A1 to A3.

2.The case of the prosecution is that there was previous enmity between the family of the first accused and the deceased family regarding the compound wall and there is also another motive that the first accused suspected the character of his wife having illicit relationship with the deceased namely Velu. Suspecting her fidelity, the wife of the first accused refused to live with him and left for Calcutta to reside with her family. On 14/06/2021 at about 9.30 pm,the deceased as well as PW1 went to invite PW5 to attend a function. The deceased was travelling in a Bajaj Pulsar Bike, whereas PW1 and PW5 followed him on a TVS XL. When they were proceeding near Pappankulam Nalu Mukku Road, in view of the above said motive, A3 wrongfully restrained the deceased and at his instigation, A1 and A2 attacked the deceased with Aruval and caused his death.

3.Based on the complaint given by the de-facto complainant, who is



the brother of the deceased, the respondent Police registered a case in Crime No.320 of 2021 for the offences punishable under Sections 341, 302, 506(ii) and Section 34 IPC against the accused. On completion of the investigation, the respondent Police laid a charge sheet before the Judicial Magistrate, Ambasamuthiram, against A1 for the offences punishable under Sections 294(b), 302, 506(ii) IPC and against A2 for the offences punishable under Section 294(b) and 302 IPC and against A3, for the offences punishable under Sections 341 and 302 IPC and the same was taken on file as PRC No.45 of 2021. After completing the formalities, since the offences are triable exclusively by the Court of Session, the case was committed to the Principal District and Sessions Judge, Tirunelveli and it was taken on file as SC No.163 of 2022 and thereafter, the same was made over to the III Additional District and Sessions Court, Tirunelveli, for disposal.

4.After completing the formalities, since there were *prima facie* materials to frame charges against the accused the learned III Additional District and Sessions Judge, Tirunelveli, framed the charges under Section 506(ii) IPC against A1 to A3; under Section 341 IPC against A3, under Sections 294(b) and 302 IPC against A1 and A2 and under Section 302 r/w 109 IPC against A3.

5.In order to prove the charges against the accused, on the side of the prosecution, 19 witnesses were examined as PW1 to PW19 and 36



documents were marked as Exs.P1 to P36, besides marking 11 material objects as MO1 to MO11.

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6.When the accused were questioned under Section 313 Cr.P.C in respect of the incriminating circumstances appearing against them on the evidence adduced by the prosecution, they denied the same as false. On the side of the defence, no oral or documentary evidence was adduced.

7.After completing the trial and upon hearing the arguments advanced on either side and also considering the oral and documentary evidence, the learned III Additional District and Sessions Judge, Tirunelveli found all the accused persons guilty, convicted and sentenced them as stated below:-

Conviction against A1 and A2:

Offence	Sentence	Fine	In default sentence
302 IPC	Life Imprisonment each	Rs.1,000/- each	1 month SI each

Conviction against A3:-

Offence	Sentence	Fine	In default sentence
341 IPC	1 month Simple Imprisonment	Rs.500/-	1 Week Simple Imprisonment
302 r/w 109 IPC	Life Imprisonment	Rs.1,000/-	1 month Simple Imprisonment

8.Challenging the judgment of conviction and sentence passed by



the trial Court, A1 to A3 as appellants preferred this criminal appeal before this Court.

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9.The learned counsel for the appellants would submit that the prosecution has not proved its case beyond reasonable doubt; the independent eyewitness turned hostile and PW1 and PW5 are only brother and sister of the deceased and they are stated to be the eye witnesses and they are interested witnesses. Further in this case, there is a delay in registering the FIR, which is also fatal to the prosecution, so, conviction cannot be recorded solely on the basis of the interested witnesses and their evidence is highly doubtful and their presence is also highly doubtful. The mahazar witnesses also turned hostile and they did not support the case of the prosecution and the prosecution has not proved its case beyond reasonable doubt and the trial Court recorded a conviction based on the interested witnesses and when two views are possible, the trial Court ought to have given consideration to the benefit of doubt in favour of the accused. The trial Court failed to consider the fact that there is no eyewitness in this case and the occurrence took place during night hours, as alleged by the prosecution. Even the Rough Sketch (Ex.P23) shows that the eye witnesses could not have seen the occurrence and the identification of the accused itself is doubtful. The medical evidence has also not corroborated with the evidence of the eyewitnesses and there are bundle of doubts and the genesis and veracity of the complaint is doubtful and the trial Court has not appreciated



the evidence, both oral and documentary in a proper perspective and therefore, the conviction recorded by the trial Court is liable to be set aside and the appeal is to be allowed. In support of his contention, the learned Senior Counsel for the appellants would rely upon the judgments of the Hon'ble Supreme Court reported in the case of Subhash and another Vs. State of UP (1966 SCC (Cri) 483; N.H.Muhammed Afras Vs. State of Kerala [(2008)15 SCC 315; and Dauvaram Nirmalkar Vs. State of Chhattisgarh (2022 LiveLaw (SC) 650).

10. Per contra, the learned Additional Public Prosecutor appearing for the respondent State would submit that the prosecution has proved its case beyond all reasonable doubt through eyewitnesses, and when it is a case of eyewitnesses, motive need not be emphasized, much less need be proved. However, in this case, motive has also clearly established through the eyewitnesses namely PW1 and PW5; Though the other independent witnesses turned hostile, that could not be a sole ground to discard the evidence of the eyewitnesses, for which, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Edakkani Dineshan @ P.Dineshan and others Vs. State of Kerala reported in[(2025)3 SCC 273]***, wherein it has been held in paras 15 to 17, 20 to 22 as under:-

“15.The law relating to material contradiction in witness testimony has been discussed by this Court in the judgment of Rammi v. State of MP [(1999) 8 SCC 649]. It was held that:(SCC pp.656-57, paras 25-26)



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“25.It is common practice in trial court to make out contradictions from the previous statements. Merely Because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the Section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness.....

26....Only such of the inconsistent statement which is capable to be "contradicted" would affect the credit of the witness.”

16.The abovementioned settled position of law in Rammi Vs. State of M.P., (1999)8 SCC 649 : 2000 SCC (Cri) 26) was again reiterated by this Court in the judgment of Birbal Nath v. State of Rajasthan [(2024)15 SCC 190] wherein it was held as under: (Birbal Nath Case (2024)15 SCC 190), SCC para 21 & 26)

“21.No doubt statement given before police during investigation Under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this only for a limited purpose, to "contradict" such a witness. Even if the defense is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting



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this witness. It is here that we feel that the learned Judges of the High Court have gone wrong.”

26.In the landmark case of Tahsildar Singh v. State of U.P. (AIR 1959 SC 1012) this Court has held that to contradict a witness would mean to "discredit" a witness. Therefore, unless and until the former statement of this witness is capable of "discrediting" a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgement, including Rammi (Supra).

17.Bearing in mind the abovementioned settled position of law, this Court is of the considered opinion that though there is a variance in the statements of the witnesses, it is minor and not of such a nature which would drive their testimony untrustworthy. This Court finds the deposition of witnesses PW1, 2 and 4 to be honest, truthful, and trustworthy. Hence, the observations made by the High Court in this regard are well reasoned.

.....

20.Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the weapons etc. At this stage, it may not be out of place to refer to the principle called as 'falsus in uno,



falsus in omnibus'.

21. It is a settled position that '*falsus in uno, falsus in omnibus*' (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgments. In *Ram Vijay Singh v. State of UP* (2021)15 SCC 241, a Three Judge bench of this Hon'ble Court had held that: (SCC pp.254-55, paras 20-21)

(20) We do not find any merit in the arguments raised by the learned Counsel for the Appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the Court. The maxim *falsus in uno, falsus in omnibus* is not the rule applied by the courts in India. This Court recently in a judgment *Ilangoan v. State of T.N.* (2020)10 SCC 533 held that Indian Courts have always been reluctant to apply the principle as it is only a rule of caution. It was held as under: (SCC Pg 536, para 11)

“(11). The Counsel for the Appellant lastly argued that once the witnesses had been disbelieved with respect to the co-accused, their testimonies with respect to the present Accused must also be discarded. The Counsel is, in effect, relying on the legal maxim "*falsus in uno, falsus in omnibus*", which Indian Courts have always been reluctant to apply. A three Judge bench of this Court, as far back



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as in 1957, in Nisar Ali v. State of UP, AIR 1957 SC 366 held on this point as follows (SCC OnLine SC paras 9-10)

“9.This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a Rule of law. It is merely a Rule of Caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded....

10.The Doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory Rule of Evidence"

21.Therefore, merely because a prosecution witness was not believed in respect of another Accused, the testimony if the said witness cannot be disregarded qua the present Appellant. Still, further it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality if evidence which is relevant in criminal trial and not the quantity.”

(emphasis in original)

22.Hence, as can be seen from above, it has being a consistent stand of this Hon'ble Court that the principle 'falsus in uno, falsus in omnibus' is not a Rule of evidence and if the court inspires confidence from the rest of the testimony of such a witness, it can very well rely on such a part of the testimony and base a conviction upon it.”



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11. Further, he would submit that cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct which would satisfy the requirement of sudden or immediate provocation. This principle does not do away with the requirement of an immediate or the final provocation act, words or gesture. In this case motive is proved, so there is no question of provocation. Therefore, the contention of the learned Senior Counsel for the appellants is not acceptable. Further, he would submit that in this case, PW1 and PW5 are the eyewitnesses, who accompanied with the deceased at the time of the occurrence and they have also established the motive behind the murder. Further, the eyewitnesses clearly stated that the appellants only caused the fatal injuries through deadly weapons and except the appellants, no other persons inflicted the deceased. Further, he would submit that the medical evidence also corroborated with the evidence of the eye witnesses. Further in this case, there is proper explanation for the delay in registering the FIR and the complaint has been lodged within a reasonable time to set the law in motion and the Police registered the case and investigated the matter and arrested the accused and also sent the recovered materials to the Forensic Lab for chemical examination and Ex.P12 Serological report also proved that human blood



detected in the recovered materials and therefore, the prosecution has proved its case beyond reasonable doubt and the contradictions pointed out by the learned

Senior Counsel for the appellants are not the material contradictions and the trial Court has rightly appreciated the evidence, both oral and documentary and convicted the appellants for the charged offences and therefore, there is no merit in this appeal and the appeal is liable to be dismissed.

12. Heard the learned Senior Counsel appearing for the appellants and the learned Additional Public Prosecutor appearing on behalf of the State and also perused the materials available on record.

13. It is the specific case of the prosecution that there was previous enmity between the family of the first accused and the deceased family regarding the compound wall and there is also another motive that the first accused suspected the character of his wife, saying that she was having an illicit relationship with the deceased namely Velu and on suspecting her fidelity, the wife of A1 refused to live with him and left for Calcutta to live at her house. In the meantime, on 14/06/2021 at about 09.30 pm, the deceased as well as PW1 went to invite PW5 to attend the function. At that time, the deceased was travelling in a Bajaj Pulsar, whereas PW1 and PW5 followed the deceased in a TVS XL. When they were proceeding near Pappankulam Nalu Mukku Road, in view of the above motive, A3 wrongfully restrained the deceased and at his



instigation, A1 and A2 attacked the deceased with a billhook and caused his death.

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14. In order to substantiate the charges levelled against the appellants, the prosecution has examined totally 19 witnesses and marked 36 documents, besides 11 material objects were exhibited. On the side of the defence, no oral or documentary evidence was let in.

15. In this case, PW1 is the eyewitness, who gave the complaint Ex.P1 before the respondent Police, in which he has clearly stated about the motive for the occurrence. From the evidence of PW1, it is seen that at the time of the occurrence, PW1 and PW5 were travelling in a two wheeler and the deceased was proceeding on his bike in front of them. At that time, the appellants waylaid him and also attacked him with deadly weapons.

16. A combined reading of the complaint (Ex.P1) and the evidence of the PW1, it is seen that there is specific overt act against the appellants. PW1 also identified the bike and the dress of the deceased and also the weapon used by the appellants for the commission of the crime during trial before the trial Court. PW2 has also spoken about the incident. In his evidence, he has stated that immediately soon before the occurrence, the appellants were talking about the motive. Though, PW3 and PW4 are witnesses to the observation mahazar,



they turned hostile and did not support the prosecution case. PW5 is the sister of the deceased and she has also spoken about the occurrence. She is also one of the eyewitnesses and accompanied with PW1 and in front of them, the deceased was proceeding on a two wheeler and at that time only, the appellants waylaid the deceased. From her evidence also, it is seen that there is specific overt act against the appellants.

17. PW6 is the Doctor, who conducted the postmortem on the body of the deceased and he has also spoken about the injuries sustained by the deceased and issued Postmortem Certificate (Ex.P6). In the Postmortem Certificate, the following injuries were mentioned:-

(1).An oblique gapping cut injury of size 4x0.5 x 0.5cm in left side of forehead. Underlying scalp found cut.

(2).A horizontal gaping heavy cut injury of size 23 x 1 x 10 cm lies in upper part of front and sides of neck. Underlying soft tissues. vessels, nerves, larynx, cervical vertebra and spinal cord found cut.

(3).A horizontal gaping heavy cut injury of size 22 x1 x12cm lies 2cm below injury no.2. Underlying soft tissues, vessels, nerves trachea,



cervical vertebra and spinal cord found cut. A part of cervical vertebra between injury no.2 and 3 found missing.

(4).An oblique gapping heavy cut injury of size 13 x 2 x 4cm noted in back of neck. Underlying soft tissues and cervical vertebra found cut.

(5).An oblique gapping cut injury of size 6 x 1 x 2cm lies 4cm behind left ear. Underlying scalp found cut.

(6).A curved horizontal scratch abrasion of length 13 cm noted in left shoulder.

(7).A vertical scratch abrasion of length 5cm noted in front of left shoulder.

(8).A horizontal gapping cut injury of size 6 x 1 x 1 cm noted in back of left shoulder with a tail of 3cm in its outer aspect.

(9).A scratch abrasion of length 8cm noted in back of left upper arm.

(10).An oblique gapping cut injury of size 8 x 2 x 2cm noted in back of left forearm. Underlying soft tissue and left ulna bone found cut.

(11).Left hand severed from left forearm at the level of left wrist. Severed part shows clean cut margins. Separated left hand matches with the stump by its color contour and anatomical continuity.



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*(Head hanging with a tag of skin on right
and left side of neck).*

18. Though PW7 is one of the witnesses to the recovery of the materials and also gave statement, he also turned hostile. PW8 is also a witness to the recovery and he has also turned hostile and did not support the case of the prosecution. PW9 is the Assistant Engineer working in the Electricity Department and he has spoken about the electricity supplied in and around the place of occurrence during the time of occurrence. PW10 is the Foreman working in the Electricity Board and he has also spoken about the electricity supply in and around the occurrence place. PW11 is the Scientific Officer of the Forensic Lab and he has spoken about the chemical analysis and also about the Biological report (Ex.P11) and serological report (Ex.P12). Though the eyewitnesses namely PW1 and PW5 are relatives of the deceased, their evidence is cogent, consistent and reliable and credible and there is no reason to discard their evidence, unless the Court finds that they are interested witnesses and their presence is highly doubtful and their evidence does not inspire the confidence of the Court. However, a reading of the complaint(Ex.P1) is said to have given by PW1 and the evidence of PW1 corroborated by the evidence of PW5, inspire confidence in the evidence of the eye witnesses namely PW1 and PW5. The evidence of PW2 also corroborated the fact that immediately before the occurrence, the accused were talking about taking away the life of the deceased,



which also strengthens the prosecution case. In this case, PW3 and PW4 are the mahazar witnesses and they turned hostile and did not support the prosecution case. PW7 and PW8 are the recovery witnesses and they also turned hostile and did not support the prosecution case. Even though the mahazar witnesses namely PW3, PW4 and the recovery witnesses namely PW7 and PW8 turned hostile, that may not be a sole ground to discard the evidence of PW1 and PW5. In this case, the eyewitnesses namely PW1 and PW5 have clearly stated about the occurrence and also the specific overt act against the appellants. The medical evidence also corroborated the same. Mere contradictions, during the cross examination of the eyewitnesses and the mahazar and recovery witnesses turning hostile, cannot make the evidence of the eyewitnesses doubtful. When the evidence of the eyewitnesses inspires confidence of the Court and no reason to disbelieve their evidence and the mahazar witnesses and recovery witnesses turned hostile for the reasons best known to them, the evidence of the prosecution witnesses cannot be ignored totally. Further, minor discrepancies and contradictions in the investigation also may not be a sole ground to discard the evidence of the eyewitnesses. Further, if any lapse on the part of the investigation or defect in investigation may not be a ground to disbelieve the case of the prosecution, whereas in this case, the motive has been clearly established and that was also not denied by the appellants. So, the decisions relied on by the learned Senior Counsel appearing for the appellants are not applicable to the present case on hand. However, the decision relied on by the learned Additional Public



Prosecutor is applicable to the present case on hand.

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19. In this case, motive has been clearly established and the eyewitnesses namely PW1 and PW5 have also clearly spoken about the motive, however, considering the motive and though the accused persons took the law into on their own hands, the allegation is highly emotional and sentimental. Though the prosecution has proved its case beyond reasonable doubt, the offences committed by the appellants do not fall under Section 302 IPC. However, this Court finds that the offence committed by the appellants falls under Section 304(i) IPC. Therefore, it is held that the appellants have committed the offence punishable under Section 304(i) IPC. This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding. Considering the nature of the crime, nature of the weapon used and the fact that the incident occurred by chance and without any premeditation, this Court finds that the appellants 1 and 2/A1 and A2 are guilty of the offence under Section 304(i) IPC, instead of Section 302 IPC. Insofar as the 3rd appellant/A3 is concerned, though he has not inflicted any injury, he wrongfully restrained the deceased and thereby facilitated the commission of crime and therefore, the 3rd appellant/A3 guilty of the offence under Sections 341 and 304(i) r/w 109 IPC.



20. In the result, this Criminal Appeal is **partly allowed**. The conviction under Section 302 IPC passed by the III Additional District and Sessions Judge, Tirunelveli, dated 19/02/2024 in SC No.163 of 2022 is set aside. The Life Imprisonment ordered by the trial Court as regards the appellants 1 and 2/A1 and A2 under Section 302 IPC stands modified and they shall undergo rigorous imprisonment for **ten years** under Section 304 (I) IPC. In so far as the 3rd appellant/A3 is concerned, the Life Imprisonment ordered by the trial Court under Section 302 r/w 109 IPC stands modified to **ten years** rigorous imprisonment. The fine amount imposed by the trial Court as well as the default clause stand confirmed. In respect of the imprisonment under Section 341 IPC against the 3rd appellant/A3, the order of the trial Court is confirmed. The period of sentence already undergone by the appellants/A1 to A3 shall be set off under Section 428 Cr.P.C against the substantive sentence.

(P.V.,J) (L.V.G.,J)
18/12/2025

Index:Yes/No
Internet:Yes/No

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To

1.The III Additional District and Sessions Judge,
Tirunelveli.

2.The Inspector of Police,
Kallidaikuruchi Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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**P.VELMURUGAN,J.
and
L.VICTORIA GOWRI,J
er**

**Pre-Delivery Judgement made in
Crl.A(MD)No.343 of 2024**

18/12/2025