



Crl.A(MD)No.178 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 02.01.2025

CORAM:

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

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The State rep. by

The Inspector of Police,

Thenkarai Police Station,

Theni District.

(in Cr.No.751 of 2015)

... Appellant/Complainant

Vs.

1.Senthilkannan

2.Mokkaveeran

3.Palpandi @ Palpandian

4.Chellapandi

5.Palpandi

6.Panchavarnam

...Respondents/Accused 1 to 6

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.79 of 2017 on the file of the Additional District and Sessions



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Judge, Theni @ Periyakulam, dated 12.11.2019 and set aside the judgment of the trial Court and convict the respondents/accused.

For Appellant : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

For Respondents : Mr.M.Thiagarajan

JUDGMENT

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

This Criminal Appeal is filed against the judgment dated 12.11.2019 passed by the Additional District and Sessions Judge, Theni @ Periyakulam in S.C.No.79 of 2017 by acquitting the accused.

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

(a) The complainant's paternal uncle, Nattar @ Veeranathevar married one Ochammal, and was blessed with a son Devraj. He also married Rajamma for the second time, and she was blessed with two sons and three daughters, namely, Senthilkannan-A1, Mokkaveeran-A2, Panchavaranam, Maniyammal, and Vijaya.



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(b) Devaraj, the first wife's son married one Papa and was blessed with two sons, namely, Sridhar and Kumar. His wife died, after which he married one Chellammal. They were blessed with a son, Raghuveesan. Tmt.Panchavarnam, daughter of Rajamma (second wife of Nattar) got married to one Chellapandi.

(c) Both Nattar @ Veerاناتhevar and his father Kasimayan jointly owned 15 acres of lands in two places. But it was not partitioned. Thiru.Chellapandi, the husband of Tmt.Panchavarnam was looking after this property. Thereafter, the Nattar's children, when they attained majority requested him to hand over their share of the land but he refused to give them their share. Chellapandi filed a case before the Sub Court, Periyakulam, which was ended in favour of Nattar's children. Chellapandi filed an appeal before the High Court, Madurai against the said judgment, and the same remains pending.

(d) The lands were under the custody of Thiru.Kumar, the deceased Son of Papa, who was the first wife of Devaraj.



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(e) The sons of Nattar's second wife, namely, Senthilkannan

and Mokkaveeran had a quarrel with Kumar to divide the property and to give their shares. Kumar refused to partition the property, stating that they were sons of the concubine of Veera Nattar. Therefore, both A1 & A2 had conspired with A4, where A4 told them that they will not get their shares as long as Kumar lives. Since the said Kumar was working at Coimbatore, they waited for his arrival at the village.

(f) On 09.11.2015, Kumar, the deceased came to his house for Diwali. Since had lands at Jallipatti and also since the complainant, who is a friend of the deceased was there, he stayed at Jallipatti. On 11.11.2015 at about 6.00 p.m., both the complainant and his nephew Pandiyarajan inspected the lands while they were staying in the savadi. On 12.11.2015 at about 2.30 a.m., they heard screaming, due to which they woke up and witnessed A1 Senthilkumar, A2 Mokkaveeran, and A3 Palpandi surrounding the deceased in a place between the Savadi (booth) and a Temple. They inflicted injuries on Kumar with bill hook indiscriminately and shouted at him that “Vz;lh Njtpbah kfNd vq;fSf;F nrhj;J jukhl;Nld; vd;W nrhy;Yutdhlh me;j nrhj;ij eP mDgtpf;f \$lhj vd;Wk; capUld; ,Uf;f \$lhj vd;Wk; nrj;J njhiyAlh” when they tried to stop



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them, they threatened them with dire consequences, fearing which they ran away from the place of occurrence. Few people who were at the location to watch a movie witnessed the occurrence too. Afterwards, the complainant and his nephew went to their house and narrated the incident to the sister, Kani. They visited the place of occurrence again, this time with the said Kani, and saw the deceased's body with injuries on the occipital region, forehead, nose, left cheek, right cheek, jaw, neck, both hands and knee joints. Hence, the complaint.

(g) P.W.24 Tmt.Bakkiyam, Inspector of Police received the complaint Ex.P1 and registered an FIR on 12.11.2015 at 5.00 a.m., in crime No.751/2015 under sections 302, 109, and 506 (ii) of IPC and sent the original complaint with the FIR-Ex.P7 to the Judicial Magistrate through Constable P.W.19 Thiru.Ramaswamy.

(h) P.W.28, Thiru. Chellapandi, Inspector of Police, on receipt of the FIR, inspected the place of occurrence at about 5.45 a.m.. In the presence of witnesses Karmegam and Uyyathevar, he prepared the observation mahazar Ex.P2, rough sketch Ex.P13, recovered blood stained earth – M.O.4, ordinary earth – M.O.5, and a 2 feet long thread under a recovery mahazar - Ex.P3.



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(i) On the same day, from about 8.00 a.m. to 10.00 a.m., he conducted inquest on the dead body, in the presence of witnesses Karnan Pandiyarajan, and Deivakani @ Kani, and prepared an inquest report Ex.P12. In order to find out the real cause of death, he sent the dead body with a request letter through P.W.20 Thiru.Silambarasan, Grade-I Police Constable.

(j) P.W.27 Dr.Arun Kumar, Professor of Government Medical College Hospital, Theni, conducted postmortem on the dead body and made the following observations:

“Following Ante mortem injuries are noted on the body:

1. A transverse deep cut injury measuring 25 x 18 cm x cervical bone deep noted on the front of whole of neck with wide gaping.

Anatomical landmarks: The cut injury is situated 1cm below the chin, 2 cm below the right awed process, 2.5 cm below the left mastoid process.

On dissection of the wound: The Wound found cutting underlying muscles, vessels, nerves, pharynx, larynx, windpipe, food pipe, body of 2nd, 3rd, 4th cervical vertebrae and found cutting the underlying spinal cord.

Note-The Wound margins are regular.



2. *A longitudinal cut injury noted on the right side of face, from upper part of right frontal area extending to right cheek, measuring 8cms x 2cms x muscle deep.*

3. *A longitudinal cut injury noted on the right frontal area of scalp that extend to left eye, measuring 6cms x 2cms x bone deep.*

4. *A transverse cut injury noted extending from right cheek to left cheek through upper lip, measuring 7cms x 3cms x bone deep with gapping.*

5. *A transverse cut injury on left cheek, measuring 4cms x 2cms x muscle deep.*

6. *A transverse cut injury on the dorsal aspect of right wrist joint, measuring 5cm x 3cm x bone deep.*

7. *A cut injury on the left upper chest, measuring 3cms x 2cms x muscle deep.*

8. *A cut injury noted on front of left shoulder joint measuring 4cms x 3cms x muscle deep. The cut injury is situated 5 cm below the left shoulder joint.*

9. *A cut injury noted on front of left shoulder joint, measuring 3cms x 2cms x muscle deep. The cut injury is situated 1 cm below injury no.8.*

10. *A cut injury on the left temporal area of scalp, measuring 3cm x 6 cm x bone deep*

11. *A transverse cut injury on front of lower part of right leg, 3 cm above right ankle joint, measuring 3cm x 2cms x*



muscle deep.

12. A transverse cut injury on front of lower part of right leg, 2 cm above injury no-11, measuring 2cm x 1cm x muscle deep.

13. A transverse cut injury on front of lower part of left leg, 2 cm above left ankle joint, measuring 2.5cm x 1cm x muscle deep.

14. A transverse cut injury on front of lower part of left leg, 2 cm above injury no-13, measuring 2cm x 1cm x muscle deep.

15. A transverse cut injury on front of upper part of left leg, 2 cm below left knee joint, measuring 3cm x 1cm x muscle deep.

16. A transverse cut injury on left temporal-parital area of scalp, measuring 10cm x 3cm x bone deep.

17. A transverse cut injury on back of left chest, measuring 3cm x 2cm x muscle deep.

18. A transverse cut injury measuring 5cm x 3cm x muscle deep back of left upper arm.

19. A transverse cut injury measuring 4cm x 1cm x muscle deep noted on back of left lower arm.

Note: The margins of all the cut injuries are regular.

20. Graze Abrasion of size 5cm x 3cm noted over outer aspect of right abdomen.



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21. *Graze Abrasion of size 8cm x 6cm noted over sides of right thigh.*

22. *Graze Abrasion of size 9cm x 4cm noted over outer aspect of left thigh.*

23. *Abrasion of size 5cm x 3cm noted over front of left knee joint.*

Other findings:

Peritoneal cavity-normal. Pleural cavities- empty. Pericardium contains 10ml of straw colour fluid; Heart - Chambers empty. Coronaries - patent. Lungs, liver, spleen, and kidneys cut section pale. Larynx and trachea -normal. Hyoid bone-intact. Stomach-contains 50gms cooked rice particles, nil specific smell, mucosa - pale. Small intestine contains 20ml of bile stained fluid, nil specific smell, and mucosa pale. Bladder-empty. Brain-cut section-pale.

OPINION:

The deceased would appear to have died of Shock and Haemorrhage due to External injury No: 1 and its corresponding internal injuries and cumulative effects of all external cut injuries, 10 hours to 14 hours prior to Autopsy.”

(k)P.W.28, Thiru.Chellapandi, Investigating Officer enquired the witnesses Karnan, Pandiyarajan, Thangapandi, Maruthupaandi, Manimuthu, Saravanan, Deivakani @ Kani, Karmegam, Oyyathevar,



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Ilaiyaraaja, Jagadish, Ravichandran, Devaraj, and Sridhar the brother of the deceased and recorded their statements. At about 15.30 hours, he arrested the accused A2 and A4 in the presence of witnesses Murugan and Sadaiyandi and recorded the confession statement (Ex.P.5) of A2-Mokkaveeran. At about 15.45 hours he recovered the blood stained bill hook – M.O.16 and the clothes worn by him on the date of occurrence viz., blood stained T-shirt, and Lungi M.O.12 and M.O.13 under a recovery mahazar Ex.P6.

(m) Thereafter, he went to the Police Station along with the accused and material objects. He sent the accused for remand, and the material objects to the Court. He then recorded the statement of witnesses Murugan, Sadayandi, Sundarapandi, Vasanth, and Tmt.Bhagyam.

(n) Thereafter, he received the deceased's clothes after the postmortem, through P.W.20 Thiru.Silambarasan, Grade-I Constable 1973. These include a blood stained blue shirt -M.O.12, a blood stained blue and white checkered lungi -M.O.13, a blood stained brown vest – M.O.14, a brown pocket model brief -M.O.15, and the blood sample taken from the deceased in form 95.

(o) Thereafter, he recorded the statements of Kasimayan, Jayapaul, Raghuveeran, Vasanthi, Thiraviyam, and Andikalai.



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(p) At about 12.15 p.m., he arrested A1 and A3 at Kodaikanal

Junction on the way to Theni-Dindigul Main Road, near the bus stop, and recorded their confession statements in the presence of Vinoth Raj Baskaran. He then recovered the material objects, that are, a gunny bag, a blood stained Aruval, a blood stained blue and black checkered lungi, and a blood stained black and white striped half slack shirt under a recovery mahazar in the presence of the witnesses. As per the statement of the accused, he went to their residence, and recovered a blood stained gunny bag, and a 108 c.m., long thread with blood stains from A1 in the presence of witnesses under a recovery mahazar. He sent the accused and the material objects to the Court.

(q) Subsequently, he came to know that apart from the above mentioned accused, one Palpandi and his wife Panchavaranam were also involved in the occurrence. They watched the conspiracy and abetted them to kill, so he added them as accused and prepared an alteration report and sent the same to the Court. On 14.11.2015 he arrested A6 at about 11.30 hours and sent her to judicial custody.

(r) He forwarded the material objects in form 91 to the Court along with a requisition letter, asking to send the material objects to the Forensic Department for a chemical analysis.



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(s) He recorded the statement of the doctor who had conducted postmortem, and handed over the file to the Inspector of Police Thiru.Ramakrishnan – P.W.29 for further investigation due to his transfer.

(t) P.W.29 Thiru.RamaKrishnan, examined the witness, forensic expert Thiru.Vijayendran, and recorded his statement. He filed a final report for the offence under Sections.120(b), 506(ii), 302 and 109 of the IPC against the accused on 29.07.2016.

3. Upon receipt of the records, the Judicial Magistrate, Periyakulam, took up the case in P.R.C.No.22 of 2016 and issued summons to the accused. After the appearance of the accused, copies of all the records were furnished to him free of costs as per section 207 of the Cr.P.C.

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



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5. The Principal District Judge, Theni received the case records, numbered it as S.C.No.79 of 2017, and made it over to the Additional District and Sessions Judge, Theni @ Periyakulam, for it to be disposed according to law.

6. After receipt of the case records, the learned Additional District and Sessions Judge, Theni @ Periyakulam, framed charges against A1 to A3 for the offence under Sections 120(b) r/w. 302 of IPC and 506(ii), and against A4 for the offence under Section 120 (b) r/w.302 of IPC and against A5 and A6 for the offences under Sections 120(b) r/2.302 of IPC and 109 of IPC. The charges were read over and explained to the accused. The accused denied the charges and requested to be tried. Therefore, the case was posted for trial.

7. In order to prove the case of the prosecution, on the side of the prosecution, P.W.1 to P.W.29 were examined and Ex.P1 to Ex.P13 were marked. Material Objects M.O.1 to M.O.19 were produced. On the side of the accused, no witnessed were examined.



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8. After full trial, the trial Court acquitted the accused for the offence under Sections 120(b) r/w. 302, 506(ii), and 109 IPC, and against which, the present Criminal Appeal has been filed by the complainant on the following, among other grounds:-

(i) That the trial Court, while acquitting the accused, failed to appreciate the entire evidence, as the accused is the perpetrator of the said offence.

(ii) That the trial Court has not considered that even the hostile witness' statement that supports the prosecution case can be relied upon, as observed in Govindaraju @ Govinda Vs. State by Srirampuram Police Station and another, reported in 2012 (4) SCC 722.

(iii) That the trial Court failed to observe that the instant case depends entirely on the circumstantial evidence, due to which the responsibility of the prosecution is more, as a case where the ocular testimony of the direct evidence, the eye witnesses have turned hostile.

(iv) In any event, the judgment of the Trial Court is liable for interference, and it is prayed to allow the Criminal Appeal.

9. Heard the learned counsel on either side and perused the materials available on record.



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10. Now this court has to decide whether the judgement

rendered by trial Court is proper or liable to be set aside.

11. On careful perusal of the entire records, the prosecution case that unfolded from the evidence of P.W.1 to P.W.29 is as follows:

(a) P.W.1, the complainant is the nephew of the first accused.

He deposed that there was a civil dispute pending between the family members. A1 and A2 requested the deceased Kumar to partition the property, in response to which the said Kumar refused to give their share, stating that they are not the legitimate heirs of their grandfather. Therefore, they had conspired to kill him. On 09.11.2015, the deceased Kumar came from Coimbatore, met the complainant, and then went to the field on 11.11.2015. Both the complainant and his nephew Pandiyarajan went to the field, switched off the motor and, slept in the eastern side of the Savadi. They heard a screaming at about 2.30 a.m., and went to the place. There they saw A1 to A3, surrounding Tr. Kumar. A1 inflicted cut injury on the nose of Kumar, A2 inflicted injuries on his backside with a bill hook, A3 inflicted injury on both his legs beneath the knees, A1 cut both his hands. The complainant and his nephew attempted to stop them, but they were also threatened with dire consequences. Out of fear, they went to Kailashapatti and informed the same to the sister, Kani.



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Thereafter, they went back to Jallipatti together, and found the dead body of Kumar. Thereafter, complaint Ex.P1 was drafted by a stranger in the bus stand, and the same was given to the police. They went to the place of occurrence and noticed that A1 to A5 had tried to pack the dead body in a gunny bag, but they had been unable to do so. They were questioned by witness Manimuthu and Saravanan, and the same was informed by Manimuthu. A1 to A3 had fled away from the place of occurrence in three bikes. Thereafter, the Inspector of Police visited the place of occurrence at about 6.00 a.m., and recovered M.O.1 to M.O.3. He then went to Ka.Vilaku Government Hospital and received the dead body.

(b) During cross examination, P.W.1 admitted that he has no personal knowledge about the conspiracy, and further admitted that himself, along with his nephew, Pandiyarajan and his sister went to the place of occurrence and saw the dead body upon being informed of the event.

(c) P.W.2, Thiru.Pandiyarajan, another eyewitness deposed that on 11.11.2015 himself and his uncle P.W.1 went to the field at 6 o'clock, and that there was no power supply. They were staying in Jallipatti due to the rain. They noticed the two wheeler of deceased Kumar, parked near a Neem tree, but he was not to be seen. Thereafter, at about 2 or 3 a.m.,



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they heard screaming. They woke up and went outside to see what happened. They saw A1 shout at Kumar that he had refused to give his share, and proceeded to attack him on the face with a bill hook on his face. A2 attacked his backside, and A3 inflicted injury on his legs. They also attacked his left and right hands, wrist, etc., When the witnesses questioned the same, the accused threatened them with dire consequences. Therefore, he went to their residence and informed about the same to his mother. Thereafter, they went back with their mother P.W. 1 in an auto and found the dead body of Kumar with multiple injuries. P.W.1 lodged the complaint at 5.00 a.m.. A1 to A3 had tried to pack the dead body in a gunny bag. This was questioned by one Mani and Saravanan, but they were not heeded. The accused then escaped in two wheelers.

(d) P.W.3 to P.W.7 did not support the prosecution case. P.W.8, witness to the observation mahazar, deposed, in chief, that the Police came to the place of occurrence, drew a rough sketch, took photographs and recovered ordinary earth etc.. But during cross examination, he admitted that he is not aware of the recovery of material objects.



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(e) P.W.10 Thiru.Jayapal, deposed about the conspiracy. He

deposed that on the next day of Diwali, all the accused had conspired in the house of A1, where they stated that if they do away with Kumar, they will get their share from the property. He also stated that both the accused and the deceased Kumar had dispute over property.

(f) P.W.11 Thiru.Vinothraja deposed about the arrest and the confession of A1 and A3 as well as the recovery of material objects. During cross examination, he admitted that he signed in the written paper, and that the bill hook was taken from the house of Panchavarnam by the Police, while the gunny bag and rope were taken from Jallypatti.

(g) P.W.13 spoke about the land dispute between the accused and the deceased.

(h) P.W.18 deposed that a sniffer dog came with the Police and went to the house of A1, and therefore, the Police arrested A1 and others.

(i) P.W.23 spoke about the arrest of A2, the confession, and the recovery of material from the accused.

(j) P.W.24 spoken about the registration of FIR.



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(k) P.W.25 spoke about the blood stains contained in item

Nos.8 and 10 to 19. As per the serology report, on examination, they found that in item Nos.1, 4 to 8, and 10 to 19, the blood stains were detected as human blood, and in item Nos.4 to 7, 10, 11, 13 and 14, the blood group was found to be 'B' group. In item Nos.1, 3, 8, 12, and 15 to 19 the blood group is inconclusive. Item No.9 belongs to 'B' group. The serology report was marked as Ex.P9.

(l) P.W.27 spoke about the post mortem of the dead body.

P.W.28 and P.W.29 spoke about the investigation.

13. The case of the prosecution rests on witnesses, but the presence of P.W.1 and P.W.2, at the place of occurrence is highly doubtful. Though they stated that they had witnessed the occurrence on 11.11.2015 at 2.30 a.m., they had not lodged a complaint soon after the occurrence, nor did they try to admit the victim to the hospital. The complaint was lodged at 05.00 hours on 12.11.2015. To explain the delay, they stated that when they had tried to restrain the accused, they had threatened them with dire consequences, and therefore, they went to their residence situated in Kailasapatti and informed the same to the mother of PW1, and then lodged the complaint. This creates doubt. They were also unable to



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say who drafted the complaint, but stated that a passenger in a bus stand did it.

14. During chief examination before the trial Court, it was further added that after lodging the complaint, they went back to visit the the place of occurrence, and witnessed the accused try to put the dead body in a gunny bag, which they failed to do.

15. As per P.W.1 and P.W.2 the occurrence took place at 02:30 am. In the complaint of P.W.1, it is stated that the people who came from the cinema theater witnessed the occurrence too, but no such witness were examined by the Investigating Officer. Further it is difficult to accept the story of the prosecution that the accused remained in the place of occurrence from 02:30 am to 05:00 am to try and pack the dead body in a gunny bag. In the complaint P.W.1 stated that soon after the occurrence, due to fear, both himself and P.W.2 went to his village and then came back to the same place and saw the dead body lying with injuries. It was not stated in the complaint that he saw the accused in the place of occurrence and that they tried to pack the dead body into a gunny bag, which was witnessed by Manimuthu and his son Saravanan. In the trial he made such improvements. Furthermore, both Manimuthu and



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Saravanan did not support the evidence of PW1. who stated that the accused escaped in three motor bikes. No such vehicles were recovered.

16. P.W.2, in his evidence, did not state that he saw the accused flee the place in a motorcycle. But stated instead that he was informed that the accused left in motor cycles. He further stated that both Mani and Saravanan had informed that the accused tried to fit the dead body into a gunny bag. But he has not stated that this attempt was done in his presence. Both the evidences of P.W.1 and P.W.2 are not in corroboration with each other but rather contradict.

17. Both PW1 and P.W.2 stated that the complaint was written by a person who was standing in the bus stand. If really PW1 and PW2 had really witnessed the occurrence, they would have tried to take the victim to the hospital and would have also lodged a complaint without any delay. But the reason stated for the delay in lodging the complaint can not be deemed acceptable. The improvement by the witness is also unbelievable. The place of occurrence is surrounded by houses and a temple. Yet, no independent witness supported the prosecution case.



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18. About the conspiracy for murder, P.W.10 stated that three years ago, the day after Diwali, all the accused had conspired in the residence of A1. The accused stated that they would get their share only if they kill Kumar. Both himself and one Kasi heard the same. During cross examination, he stated that the accused had conspired at 10.00 a.m., and the same was informed to Thiru.Kumar, the deceased within half an hour. Upon verification, the Court found that the date of Diwali fell on 11.11.2015, while the occurrence took place early in the morning of 11.11.2015 at 02.30 a.m.. The witness had stated that they hatched the conspiracy the next day to Diwali. It is therefore not possible that the accused had conspired then. After the occurrence, P.W.10's evidence is also not believable, and the conspiracy is not properly proved.

19. P.W.11 spoke about the confession and the recovery from A1 and A3. He admitted that the Police had arrested the accused before he reached the place where the arrest took place. He further admitted that there were a number of shops in the place, but the Investigating Officer did not examine any independent witness. He admitted in the cross examination that he had signed in a single paper. On the contrary, Ex.P3 is the confession statement consisting of six pages



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and is not a written version, but a computer-typed version. As per the confession statement, the material objects were recovered from the north side of the residence of the aunt of the accused. But during cross-examination, he admitted that the police recovered the material from the house of Tmt.Panchavarnam, which is contrary to the confession statement. He further stated that another material object was recovered from Jallipatti. But the recovery mahazar was not marked on the side of the prosecution to confirm the correctness of the same. The arrest and confession are not properly proved.

20. P.W.15 and P.W.18 deposed that the Police sniffer dog entered the house of A1. Therefore, the Police arrested A1. However, P.W.28, Investigating Officer, during his class examination stated that he does not remember whether the sniffer dog was brought to the place of occurrence or not. We can not understand why the Investigating Officer had not mentioned the same, but both P.W.15 and P.W.18 firmly stated that the dog was brought by the Police, and that it was entered the house of A1, after which the Police arrested A1. This is not stated in the final report. The prosecution story projected two different narratives. One rests with eye witness which was not proved. Another one is that the Police



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brought a sniffer dog and which went to the house of A1. But Police did not produce any material witness to prove the same. The prosecution witness has no motive to say falsehood.

21. P.W.23 had spoken about the arrest and confession of A2 and A4 and the subsequent recovery following the same.

22. P.W.24 deposed about the registration of FIR. During cross-examination, he admitted that in the complaint, only the names of four accused were mentioned.

23. In this case, there was a delay in registering the FIR. The occurrence took place on 11.11.2015 at about 2.30 a.m., but the complaint was given only at 5.00 a.m. The FIR reached the court on the same day at 9.15 a.m. However, we doubt the presence of the eyewitnesses in the place of occurrence, because after witnessing the brutal attack by the accused, the witnesses ran away from the place to their village, not to the Police Station. But their house is situated far away from the place of occurrence. P.W.2 stated that they went to their house in a two wheeler. During cross examination, he stated that both P.W.1 and P.W.2 hid themselves and waited for the accused to leave the place, after which they took the vehicle and went to the place. But in chief, both P.W.1 and P.W.2 stated that all the accused remained in the



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place of occurrence till 5.00 a.m., and tried to pack the dead body in a gunny bag. In reality, if both P.W.1 and P.W.2 were present at the place of occurrence, they would definitely have raised a hue and cry and called people for help. They would have immediately take the deceased to a hospital for treatment. But instead, it was stated that they went to their house and explained the happenings to their mother and then went back to the place of occurrence to see whether the victim was alive or not, which creates suspicions about the presence of P.W.1 and P.W.2 at the scene.

24. On the contrary P.W.15 and P.W.18 said that the police brought a sniffer dog which went to A1's house after which, the police arrested A1. If P.W.1 indeed lodged the complaint with the particulars of the accused, the police need not have brought the sniffer dog to identify the culprit. The same was also totally concealed by the Investigating Officer. Both P.W.15 and P.W.18 quite naturally stated that the sniffer dog went to the house of A1 and immediately, the Police arrested A1. There were contradictions and improvements in the evidence of eyewitnesses, and we have found that they are not trustworthy.

25. Furthermore, the evidence of eyewitness is not consistent with medical evidence. P.W.27, the doctor who had conducted the



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autopsy, found 22 injuries on the dead body. But the witness spoke only of few injuries inflicted by the accused.

26. There is no doubt that victim Kumar was brutally killed. But the prosecution has not proved the guilt of the accused in committing the offence beyond all reasonable doubt. The Investigating Officer has not conducted the investigation properly. The duty of the Investigating Officer in a criminal case is to conduct a fair and impartial investigation to gather evidence and established the facts of the case. He must gather all types of evidence and maintain an accurate record. But in this case, he has not properly conducted the investigation and did not reveal important evidence viz., the presence of the sniffer dog. He has not explained the reason behind the concealment. Arrest, confession and recovery have not been proved. If the prosecution does not properly established the case beyond all reasonable doubt, the benefit of doubt should be given to the accused.

27. Upon careful perusal of all the records, we conclude that there is no sufficient material available to interfere with the judgment of the Trial Court. The Criminal Appeal has no merit and hence, the Criminal Appeal is liable to be dismissed.



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28. Accordingly, the Criminal Appeal stands dismissed and

the judgment passed in S.C.No.79 of 2017 on the file of the Additional District and Sessions Judge, Theni @ Periyakulam, dated 12.11.2019 is hereby confirmed.

(G.R.S., J.) & (R.P., J.)
02.01.2025

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

RM

To

1.The Additional District and Sessions Judge,
Theni @ Periyakulam.

2.The Inspector of Police,
Thenkarai Police Station,
Theni 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.



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AND
R.POORNIMA, J.

RM

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