



Crl.A(MD)Nos.339 & 386 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 05.03.2025

Pronounced on : 09.04.2025

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)Nos.339 & 386 of 2020

Venkadesh ... Appellant in Crl.A(MD)No.339 of 2020/
Accused No.4

1.Manikandan

2.Ajmeerkhan ... Appellant in Crl.A(MD)No.386 of 2020/
Accused Nos.1 & 3

Vs.

The State rep. by
The Inspector of Police,
Thirumangalam Taluk Police Station,
Thirumangalam
Madurai District.
(in Cr.No.301 of 2015) ...Respondent/Complainant in both appeals



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COMMON PRAYER : Criminal Appeals filed under Section 374(2) of

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the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.508 of 2016 on the file of the IV Additional District and Sessions Court, Madurai, dated 14.10.2020 and set aside the conviction and sentence imposed against the appellants.

In both appeals

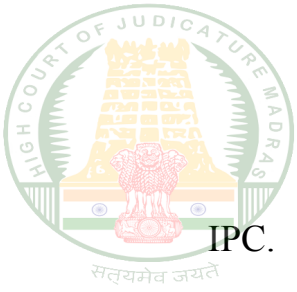
For Appellants : Mr.M.Jegadeesh Pandian – for A4
Mr.Karuppasamy Pandiyan–for A1 & A3

For Respondent : Mr.A.Thiruvadi 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, 3 and 4 in the judgment dated 14.10.2020 passed by the IV Additional District and Sessions Judge, Madurai in S.C.No.508 of 2016 by convicting and sentencing the appellants for the offence punishable under Sections 302, 341 r/w.34, 364 r/w.34, 120(b) r/w.302, 302 r/w.341 of



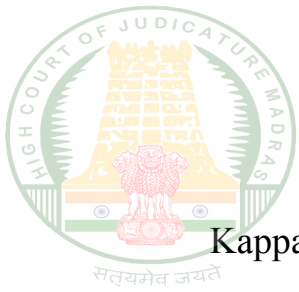
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IPC. A1 and A3 had been convicted for offence punishable under Section 302 IPC and were sentenced to undergo life imprisonment each and to pay a fine of Rs.5,000/- each in default to undergo six months simple imprisonment each. A1, A3 and A4 had been convicted for offence punishable under Sections 120(b) r/w.302 IPC and were sentenced to undergo 10 years rigorous imprisonment, for offence under Section 341 r/w.34 of IPC they were sentenced to undergo one month simple imprisonment, for offence under Section 364 r/w.34 IPC they were sentenced to undergo life imprisonment each and to pay a fine of Rs.5,000/- each in default to undergo six months simple imprisonment each. A4 had been convicted for offence under Section 302 r/w.34 of IPC and sentenced to undergo life imprisonment each and to pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment. Accused Nos.2 and 5 were acquitted.

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

(a)The complainant is a resident of Melakottai Village, Thirumangalam. His wife's name is Jeevarani. He had two sons viz., Ramachandran, Ramanathan @ and Ranjith. His younger son completed ITI and worked in SIDCO No.3, HI Tech Company as a Mechanic at



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Kappalur. He had love affairs with one Hemalatha D/o. Pandiraj, whom he married and living in Thirumangalam Pandi Nagar. In the meantime, A1 was making some offensive gestures towards his daughter-in-law and harassing her. She complained about the same to her husband and the complainant.

(b) Both cautioned him, but A1 repeatedly gave trouble to her, when the same was questioned by his son, he replied that he could do whatever he wished. He also proclaimed that he would kidnap his wife after killing him. A1 and the accused quarreled with each other, The complainant separated them. At that time A1 was accompanied by his father Murugan(A2), his friends, Amirkhan (A3) and Venkatesh (A4). His son apprehends danger to his life.

(c) On 22.11.2015 his son came on his bike, heading to work, the complainant and his elder followed him on another bike to safeguard him. When he approached Thirumangalam Pandi Nagar, Railway Gate, A1 to A4 intercepted his son, A1 confronted him asking why he had repeatedly thrashed him and stated that if he were alive, he would question him. Then, A1 attacked him with an iron rod on his head while A2 restrained the deceased from proceeding further. A3 and A4 strangled his son.



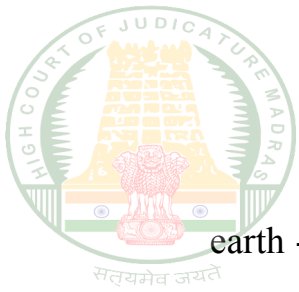
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(d) On witnessing the same, the complainant's elder son

attempted to intervene, but the assailants pushed them away and forcibly took his son in a Tata Ace bearing Registration No. TN 58 Z 0633. The complainant and his son chased them, but the vehicle suddenly disappeared. On the next day at about 11:00a.m, they found his son's dead body near the Odaipalam Bridge, Vadakarai Colony situated at Melakottai with severe head injury, and nail marks on his neck. A1 to A4 kidnapped his son and killed him and hence, lodged the complaint before the Thirumangalam Police Station.

(e) The complaint Ex.P.1 was received by the Sub Inspector of Police, Koodakovil Police Station on 23.11.2015 at about 13.00 hours, he registered a FIR in Crime No.301 of 2015 for the offences under Sections 342, and 302 of IPC. The FIR has been marked as Ex.P21. He sent the original to the Judicial Magistrate through Police Constable, Shajahan and other copies to the concerned Officers for reference.

(f) P.W.20, Thiru.Venkatasamy, Inspector of Police, took up the case for investigation. After receipt of the FIR, on 23.11.2015 he went to the place of occurrence at about 14.00 hours and prepared observation mahazar Ex.P.5, rough sketch Ex.P.2 in the presence of witnesses Backiyaraj and Radhakrishnan. He recovered blood stained



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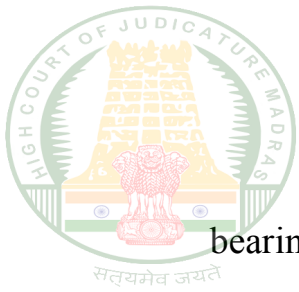
earth -M.O.4, ordinary earth-M.O.5 and Helmet -M.O.8 under a recovery mahazar Ex.P.6.

(g) He conducted inquest on the dead body in the presence of panchayadhars and prepared inquest report Ex.P.23. He had sent the dead body through Constable Rajarajan -419 with a requisition letter to conduct postmortem to the Government Hospital duty Doctor.

(h) On the same day at about 17.00 hours, he went to Pandiyan Nagar 1st Street and prepared observation mahazar Ex.P.24, rough sketch Ex.P.25 in the presence of Manickaraj and Paulraj. He recovered white colour fuse carrier – M.O.9 under recovery mahazar Ex.P.26. He examined Varadharaj- P.W.1 and recorded his statement.

(i) He also examined the witnesses Hemalatha, Balakrishnan, Vairamuthu, Santhanam, Backiyaraj, Radhakrishnan, Manickaraj, Paulraj and recorded their statement.

(j) On 24.11.2015 he recorded the further statement of P.W.1 Varadharaj. He conducted search to arrest the accused and at about 13.30 hours he arrested A1 to A4 in front of the Anandha Theatre. In the presence of witnesses Ramamoorthy, Village Administrative Officer and Nagarajan, Village Assistant and then recorded the confession statements of A1 and A4, under Ex.P.10 and Ex.P.12, recovered Tata Ace Vehicle



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bearing Registration No.TN 58 Z 0633 – M.O.1, iron rod – M.O.3 from

WEB COPY A1. Two wheeler of deceased Ramanathan bearing Registration No.TN 67 AF 3882-M.O.2 from A4 under recovery mahazar – Ex.P.13.

(k) He brought the accused to Police Station and handed over to judicial remand. He send the material objects to the Magistrate Court.

(l) On 25.11.2015, he arrested Smt.Hemalatha, A5 at 7.00 p.m., with the help of Women Constable in the presence of Village Administrative Officer Ramamoorthy, his Assistant Nagaraj and recorded her confession statement Ex.P.14, recovered the micro-max cell phone – M.O.6, Nokia cell phone – M.O.7 under a recovery mahazar Ex.P.15 in the presence of witnesses.

(m) Thereafter, he altered the section of law from 302 IPC to Sections 147, 342, 365, 302, 201 r/w.120(b) IPC under alteration report Ex.P.27. He handed over A5 for remand through Women Police. He forwarded the material objects through form-95 to the Judicial Magistrate, Thirumangalam.

(n) He recovered the dresses worn by the deceased at the time of death namely, jeans pant, full hand shirt, ash colour banian & brief (jatti) – M.O.10 to M.O.13 under form-95 Ex.P.28 which was



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handed over by the Head Constable Rajarajan and sent the material objects to chemical analysis through Women Constable Swedha.

(o) He examined the witnesses and recorded their statements. He also examined P.W.12 Dr.Mahesh Kumar, who had conducted postmortem on the dead body and issued postmortem cum final opinion under Ex.P16, with the following observation :

“The deceased would appear to have died of vital organ injury and skull fracture with intracranial hamatoma and asphyzia due to manual strangulation”

(p) Thereafter, he examined the witnesses in various dates and recorded their statements.

(q) After completion of the investigation, he filed a charge sheet against the accused on 10.03.2016, for the offence under Sections 120(b), 341, 342, 364, 302 and 201 IPC.

3.Upon receipt of the records, the Judicial Magistrate, Thirumangalam took up the case in P.R.C.No.20 of 2016 and issued summons to the accused. After appearance of the accused, copies of all the prosecution documents were furnished to them free of cost as per Section 207 of Cr.P.C.



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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, Madurai, under Section 209(A) of Cr.P.C. for further action.

5.The Principal District and Sessions Judge, Madurai received the case records and numbered the case as S.C.No.508 of 2016, and made over to the IV Additional District and Sessions Judge, Madurai, for disposal according to law.

6. Upon receipt of the case records, the learned IV Additional District and Sessions Judge, Madurai, after hearing the learned Public Prosecutor and defence counsel, framed charges against the accused for the offence under Sections 341 r/w.34, 364 r/w.34, 302 r/w.34 IPC against A1 to A4, Section 120(b) r/w.302 IPC against A1, A3, A4, and Section 109 r/w.302 against A5. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.



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7. In order to prove the case of the prosecution, P.W.1 to

WEB COPY P.W.20 were examined, and Ex.P1 to Ex.P28 were marked, and material objects M.O.1 to M.O.13 were produced. On the side of the accused, no witnesses was examined and no document marked.

8. After full trial, the Trial Court held that the accused No.1, 3 and 4 were guilty of the offence punishable under Sections 302, 341 r/w.34, 364 r/w.34, 120(b) r/w.302, 302 r/w.341 of IPC. A2 and A5 were acquitted. A1 and A3 had been convicted for offence punishable under Section 302 IPC and were sentenced to undergo life imprisonment each and to pay a fine of Rs.5,000/- each in default to undergo six months simple imprisonment each. A1, A3 and A4 had been convicted for offence punishable under Sections 120(b) r/w.302 IPC and were sentenced to undergo 10 years rigorous imprisonment, for offence under Section 341 r/w.34 of IPC they were sentenced to undergo one month simple imprisonment, for offence under Section 364 r/w.34 IPC they were sentenced to undergo life imprisonment each and to pay a fine of Rs.5,000/- each in default to undergo six months simple imprisonment each. A4 had been convicted for offence under Section 302 r/w.34 of IPC and sentenced to undergo life imprisonment and to pay a fine of



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Rs.5,000/- in default to undergo six months simple imprisonment.

Against this, these Criminal Appeals are filed on the following, among other grounds:-

(a) That the trial Court has failed to consider the evidence of PW3 in a proper manner. It is the evidence of PW3 that on the date of occurrence i.e., on 22.11.2015 P.W.1 and him has lodged a complaint before the Police. If it so, it is the earliest document in the case. The complaint was not produced and marked as one of the Exhibit.

(b) That the trial Court ought to have seen that the origin and genesis of the occurrence was not proved in a manner known to law.

(c) That the trial Court has failed to note that PW8 evidence is unbelievable, not sufficient to connect the Appellant /Accused No.4 in the case.

(d) That the trial Court should have seen that there is delay in despatching the F.I.R to the Magistrate Court. On 23.11.2015 at 01.00 hrs PW1 said to lodged a complaint (Ex.P.1) before the Police. On 23.11.2015 at 06.00 P.M the F.I.R reached the Judicial Magistrate Court.

(e) That the trial Court ought to have seen that PW1 and PW2 are father and brother of the Deceased. PW1 and PW2 are proposed as an eyewitness to the occurrence. It is the evidence of PW1 and PW2 that



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they saw the incident/occurrence, after searching; they went to the house, without informing to the Police. Next date on 23.11.2015 at about 11.00 a.m., they came to know about the body is lying in the particular place, then on 23.11.2015 at about 01.00 hour they went to the Police Station and lodged a complaint.

(f) That the trial Court should have that the contact of PW1 and PW2 are unnatural and highly unbelievable, it shows they may not be an eyewitness to the occurrence.

(g) That the trial Court failed to appreciate the validity of the statement recorded under Section 161(3) Cr.P.C. It is needless to say it is not admissible piece of evidence.

(h) That the trial Court ought to have seen that there is no motive between A4 and deceased.

(i) That the trial Court failed to consider that the entire case based upon eyewitness account. Per contra, Investigation Officer admitted that sniffer dog was pressed into service and fingerprints of the persons also were lifted from the place where the body was available. But the fingerprints and other reports relating to sniffer dog have not been produced before the Court. So the adverse inference envisages in Section 114(g) of the Indian Evidence Act can easily be drawn against the



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prosecution for withholding the evidence deliberately.

WEB COPY (j) That the trial Court failed to consider that according to the prosecution case the accused No.1 to 4 were arrested on 24.11.2015. Per contra PW-1 & PW-5 have deposed that they have seen all the accused in the police station even on 23.11.2015 and also they happened to see the MO.3 (Iron rod). So the theory of arrest made by the prosecution has gone out.

(k) That the trial Court failed to consider that the evidence of PW-11 who is a VAO, he categorically stated that he happened to see all the accused only in police station and the documents and formalities relating to the occurrence were not made at the place where the arrest was made.

(l) That the trial court failed to consider that the material contradiction which affects the prosecution case. According to the prosecution case the occurrence took place on 22.11.2015 at 10 p.m. Per contra Ex.P.23 inquest which reveals that the dead body of the deceased was found by P.W.6 on 22.11.2015 at 7.30 a.m. moreover the doctor who conducted autopsy gave opinion that the death could have been occurred even on 21.11.2015. So the claim of prosecution case and the evidence of P.W.6, P.W.12 and Ex.P.23 is mutually contradictory and incongruous



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with each other.

WEB COPY (m) That the trial Court failed to consider that the accused no. 2 & 5 are acquitted since there is a lack of evidence. Per contra, on the same type of evidence the accused no.1, 3 and 4 are convicted surprisingly. The trial Court failed to know the basic concept in criminal law that what applies to the one accused, shall apply to the other accused who were on joint trial based on the same set of evidence. Hence, the judgment dated 14.10.2020 of the Trial Court is liable to be set aside.

9. The learned Additional Public Prosecutor appearing for the respondent argued that the motive for the occurrence was spoken about by the witness P.W.1, P.W.2 are eye witness spoke about the carried out by the accused and kidnap. Subsequently, the dead body was found severe injuries and nail marks in his neck. The accused were arrested, and their confession statements were recorded, and materials objects were seized. The prosecution proved the case beyond all reasonable doubt. He submitted that there is no need to interfere with the judgment of the Trial Court, and prayed for the dismissal of these Criminal Appeals.



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

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

12.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.

13. The appellant submits that the trial Court ought to have seen that P.W.1 and P.W.2 are the father and brother of the deceased. P.W. 1 and P.W.2 were cited as an eyewitness to the occurrence. It is the evidence of P.W.1 and P.W.2 that they saw the incident / occurrence, and after searching, they went to the house, without informing the Police. Next date on 23.11.2015 at about 11.00 a.m, they came to know that the body was lying in a particular place, then on 23.11.2015 at about 01.00 hour they went to the Police Station and complained. The trial Court



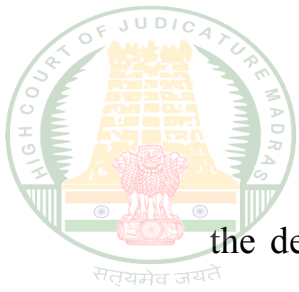
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should have seen that the conduct of P.W.1 and P.W.2 is unnatural and highly unbelievable, it shows they may not be an eyewitness to the occurrence.

14. Prosecution indeed referred the P.W.1 and P.W.2 as eyewitness to the occurrence. P.W.1, the complainant and the father of the deceased Ramanathan, during trial, deposed that A1, Manikandan made offensive gestures towards the wife deceased viz., Smt. Hemalatha. Both the P.W.1 and deceased cautioned him against such behavior. However A1 repeated the act, the deceased confronted him, leading to quarrel. P.W.1 and others intervened and separated them. Following this A1, openly threatened to kill deceased Ramanathan, and would kidnap his wife, several individuals witnessed the incident.

15. As a result deceased feared his life. Whenever he goes work, P.W.1, also accompanies him. On the night of occurrence viz., 22.11.2015 at 10 p.m, he and his elder son (P.W.2) were riding one bike while deceased Ramanathan was on another bike, when they reached near Thirumangalam Railway Gate, A1 to A4 intercepted his son, A1 shouted at him, accusing him of repeatedly causing problem. He said if



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the deceased remained alive, he would question him. A1 then declared that he wanted to eliminate him and struck him on the head A2, prevented him from proceeding further while A3 and A4 strangled him. He and his son try to intervene, but they were pushed aside by the accused, then kidnapped the deceased along with his bike in a Tata Ace vehicle bearing registration number bearing No.TN 58 Z 0633. He along with his elder son (P.W.2) chased the vehicle, but he could not locate it.

16. The next day he continued searching, at around 11 a.m, he found the dead body of his son in a village Bond of Vadakara colony, near Melakottai and lodged a complaint against that the accused.

17. During cross examination, P.W.1 admitted that on the date of occurrence, baby shower function was conducted for his daughter-in-law (A5). He came in the morning, attended the function and then returned to his residence. He has not explained why he came back again to the place of occurrence. He further admitted that soon after the hit, blood was oozing from the head of his son and the place of occurrence spilled with blood. But the Investigating not collected any blood samples from the place of occurrence, he stated that no such evidence available in the place of occurrence except a fuse carrier.



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18. As per P.W.1, he and his son P.W.2 were riding in a bike

to safeguard his deceased son; his son was also riding alongside him. On the contrary of P.W.2 stated that he and his father were travelling on the two wheeler alone at that time, the deceased arrived, and he was directed to stop. Both the statements are contrary.

19. The initial incident occurred at 10 p.m on 22.11.2015.

Both P.W.1 and P.W.2 testified that the deceased was brutally attacked by A1 and strangled by A3 and A4 then, kidnapped the deceased. P.W.1 stated that, A2 prevented the deceased from moving forward, but P.W.2 not stated about the participation of A2. Despite being aware of the deceased's critical condition, neither P.W.1 nor P.W.2 filed a complaint, before the Thirumangalam Police Station, which could be reached within three minutes. P.W.2 attributed the delay to his father's high blood pressure yet P.W.2 unencumbered by such circumstances, also refrain from reporting the incident to the police promptly.

20. Both witness claimed to have discovered the deceased body, the following day subsequently lodging a complaint at 1PM, indicating a significant delay. Had P.W.1 and P.W.2 be present at the



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scene as they accepted, it would be reasonable to expect them to file a complaint immediately. This delay creates doubt on their claimed presence during the occurrence. The prosecution not able to established the fact that the first occurrence place at 10.00 p.m in the presence of P.W.1 and P.W.2.

21. P.W.6, a worker from the corporation, states that he saw that dead body at 7:30 hours and immediately informed the Village Administrative Officer and his assistant. P.W.20 the Investigating Officer also admitted this, but he did not examine the Village Administrative Officer. It is not known why the Village Administrative Officer did not file any complaint soon after witnessing the dead body.

22. P.W.20 stated that they brought sniffer dog to know the real accused. The report of sniffer dog, did not find in the records. The FIR was reached in the Judicial Magistrate Court on 23.11.2015 at 14:30 p.m by the P.W.17, the Head Constable who had handed over the FIR admitted that they could reach the Court and the residence of the Judicial Magistrate within five minutes.



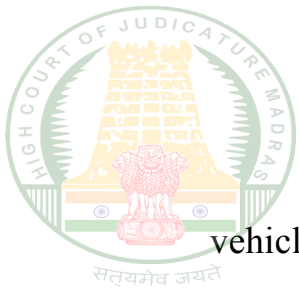
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23. The delay in registering the FIR and delay in sending the same to the Judicial Magistrate, not properly explained the prosecution.

24.P.W.3, Balakrishnan stated that on 22.11.15 at 10 hours, he had gone to meet his son at Pandian Nagar when he heard alarm he was informed by P.W.1, who came from the opposite direction that his son Ramanathan had been kidnapped by A1, A3 and A4.

25. During cross examination, P.W.2 stated that he chased the vehicle belonging to the accused for about 2 km, and then returned back to Railway Gate, where he met P.W.1. Then the P.W.1 lodged a complaint at the Thirumangalam Police Station. The police arrived at the scene of occurrence at 12 hours and went to the deceased's house. Subsequently, arrested A5. If P.W.2's is to be believed, it indicates that a complaint was lodged on the same day at 12.00 hours. However, this was concealed by the police for reason best known to them.

26. P.W.5, Tr. Santhanam, deposed that on 22.11.2015 date of occurrence he saw individuals washing their vehicle at around 11.30 p.m. Upon enquiry, they informed that they had brought saplings and the



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vehicles had become dirty, hence they were washing it. He then noticed a person lying on his back and questioned them about it. He was told that, the person was sleeping due to exhaustion from heavy work. P.W.5 identified the accused before the court. However during cross examination admitted that he did not know the name of accused or their father's name. He stated that he had seen them in the auto stand but unaware of their name and addresses. No identification Parade was conducted by the police to confirm that he had previously seen the accused.

27. The motive for the crime as elicited by the prosecution is that A5, the wife of deceased had an illegal relationship with A1. The deceased cautioned, both A1 and A5 regarding their relationship. Aggrieved by the same A5 induced A1 and therefore A1 to A4, intercepted, attacked and kidnapped him and murdered him on 22.11.2015. It was also contended that A5 used to talk with A1, in a Micromax cell phone, which was gifted by A1. The phone was recovered by the Investigating Officer, but he failed to collect the call record details and produce before the court to show the contact between A1 and A5. Therefore, the motive for the crime and the alleged illegal relationship



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between A1 and A5 was not established with document or oral evidence.

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28. The prosecution failed to establish the crime against the accused beyond all reasonable doubt. Hence the benefit of doubt is given to accused and judgment of the trial Court liable to be set aside.

29. Accordingly, these Criminal Appeals are allowed and the judgment passed in S.C.No.508 of 2016 on the file of the IV Additional District and Sessions Judge, Madurai, dated 14.10.2020 is hereby set aside. The appellants/A1, A3 & A4 are acquitted of all the charges. The appellants are directed to be set at liberty forthwith. The bail bonds executed, if any, shall stand cancelled. The fine amount, if any paid, shall be refunded to the appellants/A1, A3 & A4.

(G.J., J.) & (R.P., J.)
09.04.2025

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

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- 1.The IV Additional District and Sessions Court,
Madurai,
- 2.The Inspector of Police,
Thirumangalam Taluk Police Station,
Thirumangalam,
Madurai 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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G.JAYACHANDRAN J.
AND
R.POORNIMA, J.

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Judgment in
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