



Crl.A(MD)No.401 of of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.03.2025

Pronounced on : 02.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)No.401 of 2021

S.Annathai

.. Appellant/De-facto
Complainant

Vs.

1.Marimuthu @ Kattamari

2.Madasamy @ NCC Madasamy

3.Amirtharaj

4.Kumar

5.Subramani @ Kumar

6.Mookkan @ Raja

7.Ranjithkumar

8.Sudalaimuthu @ Muthu

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9.Maharajan @ Kullamani

...Respondents 1 to 9/
Accused No.2,3 and 5 to 11

10.State of Tamil Nadu
Rep by the Inspector of Police,
Thalayuthu Police Station,
Thalayuthu
Tirunelveli District.
(Crime No.297 of 2015)

... 10th Respondent/
Complainant

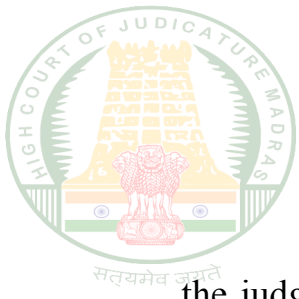
PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 05.04.2021 in S.C.No.735 of 2016 on the file of the III Additional Sessions Court, Tirunelveli.

For Appellant	: Mr.N.Pragalathan
For R1, 3 to 5, 7 to 9	: Mr.V.Kathirvelu, Senior Counsel for Mr.K.Prabhu
For R2	: Mr.D.Shanmugaraja Sethupathi
For R6	: Mr.G.Karuppasamy Pandian, for Mr.P.Senthilkumar
For R10	:Mr.E.Antony Sahaya Prabhakar Additional Public Prosecutor

JUDGMENT

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

The Criminal Appeal under Section 372 of Cr.P.C., is filed by one Annathai, W/o Swaminathan, the de-facto complainant, being aggrieved by

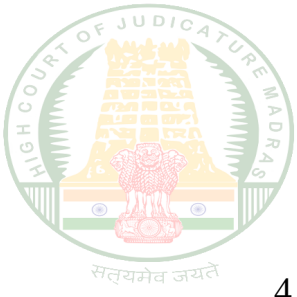


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the judgement of acquittal rendered by the III Additional Sessions Judge at Tirunelveli, in S.C.No:735 of 2016, dated 05-04-2021.

2.The case of the prosecution is that due to personal enmity between two groups in the Dhandhanuthu Village, Tirunelveli District, Swaminathan, the husband of the de-facto complainant was done to death by the members of the other group. The de facto complainant set the law into motion through her complaint/Ex.P-1. The said complaint dated 25.09.2019 received at 17:30 hours registered as Cr.No.297 of 2015 under sections 147, 148, 120 B and 302IPC by Thalaiyuthu Police Station.

3.The sum and substance of the complaint is that, the husband of the de-facto complainant viz., Swaminathan was supervising about 100 acres of farm land owned by Sahib Meeran in that village. Out of which, in 25 acres he had fenced and rearing cattles. The deceased under his leadership conducted festivals of Mariamman Temple, Kalamman Temple and Sudali Temple in the year 2014. At that time, he did not collect contribution from the members of the group led by NCC Maadaamy, son of Subbaiah and Katta Mari @ Marimuthu, son of Chelliah.

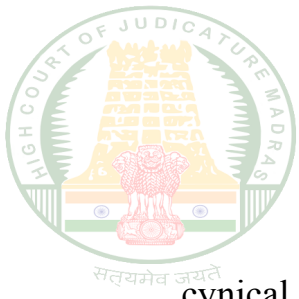


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4.Two months before the occurrence, a complaint to the Police was lodged by the poojari of Mariamman Temple, viz., Thangavelu regarding the theft of Temple hundi by Kallathiyan and Mani. The respondent Police registered the complaint against them and the same was under investigation. The deceased was assisting the complainant Thangavelu in this connection. Therefore, the said Kallathiyan and his associates Marimuthu, Madasamy, Komban @ Balasubramaniam, Amirtharaj, Kumar and Subramaniam and others had a grudge against Swaminathan. The complainant-P.W.1 when she heard that the associates of Kallthiyan had conspired to murder her husband, she warned him to be careful.

5.On 25.09.2015 at about 1:30 PM, the said Swaminathan went to the farm to milking. Since he did not return home, his wife/the complainant got panic, so at about 3.00 p.m., she went to the farm along with one Pappa wife of her husband's brother in search of Swaminathan. Near the farm, they saw Komban @ Balasubramaniam, Kallathiyan, his brother Subramani, Kumar and Amirtaraj were running haphazard towards the Eastern direction. Amritaraj, Kallathiyan and Komban @ Balasubramaniam were carrying aruval with them. On seeing them running, P.W.1 suspected something

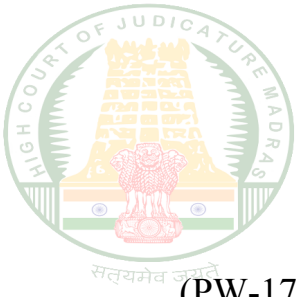


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cynical about the visit of these persons to her field. She got panic and started calling her husband. They were not able to find him in the field. His cell phone was switched off. They came back to village crying P.W.1 informed it her son-in-law Maharaja, Sankaraammal, wife of murugan, Senthil Ganesh, Son of Isakki Muthu and the Ward Councillor Essakimalli. Gathering the villagers she again went to the field in search of Swaminathan. At about 5.00 p.m, in the Sahib Meeran land on the South-west corner found Swaminathan dead with cut injuries on his neck head partially severed and cut injuries on his head.

6. Thereafter, P.W.1(wife of the deceased Swaminathan) along with her son-in-law Anandaraj went to the police station and gave the complaint for taking necessary action. After registering the FIR at 17.30 hours, in Cr.No: 297 of 2016, the investigation was taken up by Jeen Kumar, the Inspector of police, Thalaiyuthu P.S/(PW-23). The Investigating Officer went to the spot at 18:10 hours started examining the witnesses, prepared rough sketch and observation mahazar. Then conducted inquest in the presence of Panchayatars between 18:30 hrs to 20.00 hrs. After completion of inquest, removed the body and sent it for post-mortem through constable Utamraj



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(PW-17), to the Tirunelveli Government Medical College Hospital. The soil with blood stain and without the stain collected from the scene of crime in the presence of witnesses. Later, it was sent for chemical analysis. The next day, arrested Kallathiyan(A-1) and Amirtaraj(A-5) in the presence of witnesses and recorded their statement. Based on the confession given by Kallathiyan, aruval (M.O 3) was recovered concealed in a thorn bush near Rajaveli Puram, Villakoil. On the same day, at about 15:30 hours, arrested Maharajan (A-11), Marimuthu (A-2) and Kumar (A-6).

7.The blood stained clothes of the deceased was collected from the mortuary by Uthamraj Police Constable. They were sent to the forensic laboratory for analysis. After completion of investigation and arrest of the suspected accused, final report was laid against 11 persons. The learned Judicial Magistrate, after serving the copies of documents and the final report to the accused persons, committed the case of the court of Session for trial by Court of Sessions. The case was made over to the III Additional Sessions Judge, Tirunelveli who framed charges against the accused persons as under:-



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1 st Charge	A1 to A11	Criminal Conspiracy to murder Swamy @ Swaminathan, offence under Sections 120(b) r/w 302 IPC.
2 nd Charge	A2 to A7 & A11	Rioting. Offence under Section 147 IPC
3 rd Charge	A1 & A8 to A10	Rioting armed with a deadly weapon. Offence under Section 148 IPC
4 th Charge	A1 to A11	Wrongfully restraining Swamy @ Swaminathan, offence under Section 341 IPC
5 th Charge	A1 to A11	Abused with filthy language, offence under Section 293(b) IPC
6 th Charge	A4 & A5	Wrongfully confining the deceased Swamy @ Swaminathan. Offence under Section 342 IPC
7 th Charge	A1,A8,A9 & A10	Murdered Swamy @ Swaminathan, offence under Section 302 IPC
8 th Charge	A2 to A7 & A11	Murdered Swamy @ Swaminathan along with other persons, offence under Section 302 r/w 149 IPC.

8.To prove the charges, the prosecution had examined 23 witnesses, marked 37 exhibits and nine material objects. On the side of the defence, no witnesses examined and no documents marked.



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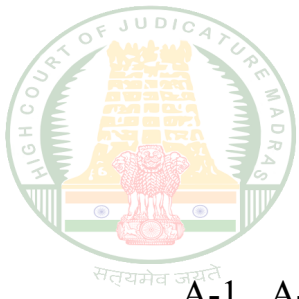
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9.After questioning the accused persons about the incriminating evidence against them under Section 313(1) of CrPC and on appreciation of the evidence, the trial Court acquitted the accused from all the charges, after recording the death of A-1 and A-4 pending trial.

10.The order of acquittal is under challenge in this Appeal preferred by the wife of the deceased who is the de facto complainant.

11.According to the final report, the crime was committed pursuant to the conspiracy hatched by Kallathiyan(A-1) and his associates in the meeting held on 22.09.2015 at about 19.00 hours at Dhathanuthu Bus stop. The crime was executed on 25.09.2015 at about 2:30 PM. The witnesses to prove the charge of conspiracy turned hostile and found lack of credibility.

12.In the complaint(Ex P-1), it is stated that PW-1 saw five persons (A-1, A-4, A-5, A-6 and A-7) running hurriedly from her farm land. Out of five, three (A-1, A-3 and A-5) were carrying stickles and the remaining two persons (A-6 and A-7) were carrying nothing in their hands. However, before the Court, PW-1 had deposed that, she and Pappa(not examined) saw



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A-1, A-3, A-4 , A-5 , A-6 and A-7 all were carrying stickles. In the complaint, she had mentioned about her information about the conspiracy hatched to kill her husband, but she had not mentioned the source of that information in the complaint. The witnesses, who were supposed to speak about the conspiracy turned hostile. Therefore, the trial Court has held that PW-1 is not a reliable witness and her testimony lacks corroboration.

13. Whereas, the learned counsel for the appellant/de-facto complainant argued that, PW-1 saw the accused persons running with weapon near the scene of crime. Her husband was found dead with several injuries over his vitals. The motive been proved through the earlier complaint against the accused persons regarding theft of temple money. The enmity in connection with organizing the temple festival also spoken by the witnesses. The accused were arrested and based on their confession, the weapon and clothes were recovered from the place which was known to them exclusive. While so, in spite of unassailable incriminating evidence, the trial Court had acquitted all the accused doubting the case of the prosecution pointing out minor contradictions, which are trivial in nature,



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14.The Leaned Counsel for the appellant submitted that the occurrence took place inside the farm land near the road on the North West direction leading to Thalaiyuthu village. Ex.P.35 shows the scene of occurrence. No doubt only one pathway leading to Thalaiyuthu village is shown in the sketch-Ex.P-35, however P.W.23, who visited the scene and prepared the sketch, has categorically said that though the land been fenced, the persons can exit through different points, since there were several gaps in the fence. The place of crime was a vast area of land measuring about hundred acres which belongs to P.W.10-Sahib Meeran. The trial Court has disbelieved the evidence of P.W-3, who saw the occurrence and the evidence of P.W-1, who saw the accused persons running from the field carrying weapons after committing the crime.

15.The learned counsel for the appellant submitted that the trial Court ought not to have disbelieved P.W.3 on the ground his conduct is un-natural because, he claims that he saw PW-1 and Pappa coming towards the farm land, but he did not inform them about the occurrence to them, but ran towards the village to inform the villagers. This omission taken as a serious lapse on the part of the prosecution witnesses to suspect their presence. The



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trial Court failed to visualise that P.W.3 was running out of fear on seeing the occurrence. P.W.1 was moving towards the scene of occurrence without knowing what has happened to her husband. In the said circumstances, whether P.W-3 noticed P.W.1 and Pappa or not, is not clean. If noticed whether his omission to caution P.W.1 can also be the behavior of a person in the given circumstances when either of the behaviour is possible and exhibiting one among them is not certainly a unnatural behavior as termed by the trial Court.

16.The non-examination of Pappa shown as LW-6 cannot be a reason to acquit the accused. It is settled principle of law, conviction can be given based on the sole witness evidence if the evidence is cogent and wholly reliable. Evidence has to be weighed by it quality and not by quantity. While appreciating the evidence of witnesses, the trial Court had heavily harped on non-examination of listed witness and the hostility of the prosecution witness. It failed to take into consideration that the murder of Swaminathan was the sequel of the criminal complaint in Cr.No:234 of 2015 dated 25.07.2015 registered against A-1 and his associate Mani. While so, it is difficult for any witness to survive peacefully in the village, after giving



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evidence against these powerful group.

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17.The learned counsel for the appellant also took exception for the observation of the trial Court that being a circumstantial evidence, the prosecution failed to prove the chain of circumstances with cogent evidence. According to the counsel for the appellant, it is not a case of circumstantial evidence. For the occurrence, PW-3 is the eye witness. He in his testimony had identified the accused persons and their overt act. While so, the trial Court had ignored the evidence of PW-3 in toto, which is perverse.

18.According to the Learned Counsel for the appellant, the link in the chain without break is proved by the prosecution through Ex.P-24 the FIR in Cr.No:234 of 16 dated 25.07.2016 against/A-1 and one Mani, which is one of the motive to murder Swaminathan. PW-3 had deposed cogently about the presence of A-1, A-4, A-5, A-7, A-8, A-10 and their respective overt act in causing injuries to Swaminathan. PW-1 had deposed that, when she came in search of her husband, she saw A-1, A-4, A-5, A-6 and A-7 were running towards Eastern direction near the farm land. Omission to examine Pappa, who accompanied PW-1 and omission to examine Moorthy, who



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accompanied PW-3 are noway fatal to the prosecution case in view of impeccable evidence of PW-3 and PW-1. The minor contradictions noted by the trial Court are insignificant as against the cogent evidence of these two witnesses.

19.It is contended by the appellant counsel that the evidence of PW-3, that the assailants split into two groups and ran in different direction is disbelieved by the trial Court based on the rough sketch-Ex.P-35, which shows only one pathway towards the village. The trial Court failed to consider the live thorn fencing not a strong concrete structure difficult to breach. Further, the Investigating Officer, who visited the spot and prepared the sketch, had clearly explained that from the scene of occurrence one can exit from different direction through the gaps in the fence.

20.The incident has taken place after Swaminathan left his house at 1:30 PM and before 3.00 PM. The incident was reported to the police by 5:30 PM and police has reached the spot by 6:30 PM. The sun-burn marks on the body of Swaminathan been explained by the post-mortem Doctor as it could have happened if the body is exposed to sun heat for more than 2



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hours. The trial Court, for the sake of disbelieving the prosecution case about the possible time of occurrence, had opined that no person would have allowed the body to get exposed to sun after noticing it. Hence, the time of occurrence must be prior to the time what the prosecution has projected. This reasoning on presumption is also perverse.

21.The counsel for the appellant submitted that three main reasons on which the accused were acquitted or all very trivial in nature and contrary to the evidence. Those contradictions no way impeaches the credibility of the ocular evidence of PW1 and PW-3. Therefore, prayed for interference since the view of the trial Court is not a possible view.

22.Per contr, the Learned Senior Counsel appearing for the respondents submit that the case of the prosecution is without any basis even to frame charges against the accused persons. He submitted that, according to the appellant, PW-1 and PW-3 are the witness to prove the case of prosecution. On examining the credibility of PW-1, her complaint Ex.P-1 say about conspiracy, but does not disclose the source of information. She says she along with Pappa saw five of the accused persons were running from the

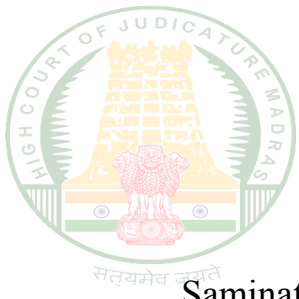


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scene of occurrence. However for reasons best known the other witness Pappa though shown as a listed witness in the final report not examined by the prosecution to corroborate the version of PW-1. In her complaint, PW1 had also named few more persons, who went along with her in search of her husband. Even those villagers were not examined as witnesses. This, on the face, renders the evidence of PW1 unreliable. The wealth of details in the complainant about the name of the suspects along with their father's name but not mentioning the person, who informed about the conspiracy and the participants in the conspiracy, embellishment about her interaction with PW-3 and Moorthy, while she went in search of her husband are found in her evidence to disregard it for want of credibility.

23. In the complaint, as well in her testimony, PW-1 had stated that her husband went to the farm at about 1:30 PM for milking. The rough sketch marked as Ex.P.35 there is no evidence of cattle shed or cattle in the field. No utensils or material to fortify the statement of PW-1 that her husband went to the field for milking. PW-2 and PW-4 are not witnesses of the occurrence. PW-3 had deposed that the occurrence took place in the farm land of the deceased. He saw PW-1 and his sister Papa coming in search of



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Saminathan. If this version is to be believed as true, it is natural that he would have informed the wife of the deceased about the incident. However PW-1 says that PW-3 did not inform her about the incident. This goes against the human nature, hence, the trial Court had disbelieved the evidence of PW-1 and PW-3.

24.PW-4 is the witness for Observation Mahazar and the sketch. He had deposed that he live 20 km away from the Thalaiyuthu village. He came to know about the murder of Swaminathn at about 5 PM, who is the maternal uncle of his mother. He went to the spot to see him. At the request of the police, he put his signature in one document at 6.40 pm and another document at 8.30 pm. At that time, PW-1 was in her house. Therefore, the evidence of PW1 that she was presnet at the scene of occurrence when police conducted inquest is demolished by the evidence of PW-4. If we to believe PW-1, the evidence of PW4 become unbelievable.

25.The learned counsel for the respondents/accused further submits that PW6-Gandhi is a person residing in Coimbatore and according to the prosecution, he identified A-1 and A-5 as the person suspected in the crime.

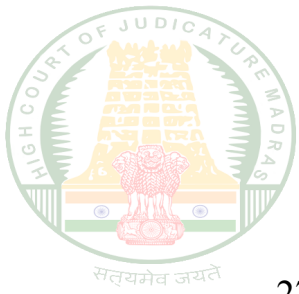


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Though he is not a resident of the village or person, nor saw the assailants earlier, had asked by the Investigating Officer to identify them. PW-3 the eye witness or PW-1 or Papa not called by the police to identify the assailants, but a stranger, who is not even in the village at the time of occurrence called upon to identify the assailants.

26.All PW5, PW7, PW8 and PW9, who were witnesses for confession and recovery turned hostile. They did not support the case of the prosecution. Therefore, the recovery of weapons based on the confession of the accused persons to the police stands not proved. Further, in the inquest report, in the column, the person, who last saw the deceased alive, it is mentioned as PW-1 at 1.30 pm. Whereas, the last person, who saw Swaminathan alive and who saw him hacked is hacking PW-3 at about 2.30 pm. PW-3 had deposed that after police arrived to the spot, he went to the spot and saw the police preparing inquest. He told the Investigating Officer about the incident that he witnessed. Thus, the prosecution version about the presence of PW-3 at the time of occurrence remains doubtful.



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27.The trial Court, after considering the grave material contradictions, inconsistency and embellishments in the prosecution case, had acquitted the accused persons for want of proof beyond doubt. Therefore, the learned counsel submitted that the trial court finding need not be interfered.

28.The trite principle of law for appreciation of evidence and classification of witness is always been wholly reliable witness and wholly unreliable witness; and partially reliable and partially unreliable witness. It is also the quality of the evidence to be weighed and not the quantity. Therefore, Courts have held time and again, that even the evidence of a sole witness is sufficient if it is inspires confidence and fall under the category of wholly reliable.

29.With the above litmus test, the evidence of P.W.3, who according to the prosecution witness is the eye witness, the evidence has to be examined. Before adverting this scrutiny of the testimony, it is also necessary to bear in mind the reliability of the witness is based on corroboration and the absence of contradictions. Now, reverting back to the testimony of P.W. 3, this witness is the resident of the village and know the deceased as well as

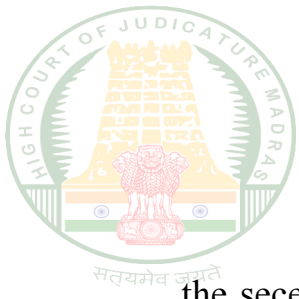


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the accused personally. He had spoken about the dispute between the group led by deceased Swaminathan and the group lead by Madasamy, Marimuthu and others. He had also spoken about the peace meet conducted by the Revenue Officials and completion of the temple festival three years ago, after the peace meet. He had spoken about the complaint given by Poosari Thangavelu, on 22.07.2025 regarding the theft of temple Hundi, in which, Kallathiyan A1 and one Mani were the named accused. He had deposed that on 25.09.2015 at about 02.30 p.m., he along with his son-in-law Moorthy went to the farm of Moorthy which is nearby the farm of Swaminathan. It is to be placed on record that the prosecution has not examined the said Moorthy who would have been best witness to corroborate the evidence of P.W.3 regarding the occurrence.

30.Thus, the evidence of P.W.3 lack corroboration. That apart, it also suffers contradictions. When his testimony is that he and his son-in-law on seeing the occurrence fearing threat to their life returned to their house and on there way, saw his sister Papa and P.W.1 Annathai,(wife of Swaminathan), proceeding to the farm of Swaminathan. He, after informing the incident of the villagers on hearing the police has arrived went back to

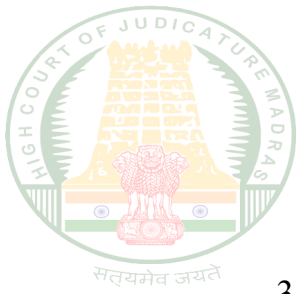


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the scene of occurrence. He was in the scene of occurrence at 05.30 p.m.

According to his testimony, the police had asked the public if anybody seen the occurrence, he and his son-in-law informed the Inspector of police that they saw the occurrence, the Inspector recorded the same. Whereas, contrary to this evidence, P.W.1-Annathai had not said anything about the presence of P.W.3 or his son-in-law-Moorthy, when she went to the farm at about 3.00 p.m. She had further deposed that when the police came to this spot on their complaint and commenced the investigation, Moorthy @ Senthil and Kanagaraj were present. Further, deposed that they informed the police that they saw the occurrence and they saw Kallathiyan, Subramanian, Komban @ Balasubrmanian, Sudalai @ Raja, Amirtharaj, Ranjithkumar and Muthu together slained Swaminathan. However, in the inquest report, no evidence to show P.W.1 and P.W.3 were present when the police conducted inquest and P.W.3 informed the police that he witnessed 7 of the accused persons named above, slained Swaminathan likewise in Column IV of the inquest report, the Investigating Officer should have mentioned the name of P.W.3 as the last person, who saw the deceased Swaminathan alive at 03.30 p.m.



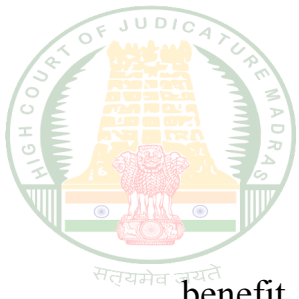
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31. Whereas it says PW.1, saw swaminathan at 1.30 in her cross P.W.1 had deposed that she saw 5 persons running from the farm carrying weapon. She had also deposed that during the enquiry, Kanagaraj and Moorthy informed the police that 7 persons attacked her husband Swaminathan. The name of Sudalai Mani @ Raja, Ranjithkumar been added only in her deposition. P.W.3 has added yet another accused by name Murugan, who is arrayed as A8. Thus, the complaint which started with 5 person slowly enlarged into 7 persons then 8 persons and ultimately 11 persons with the aid of Section 120(b) of IPC.

32. Unfortunately, the prosecution was unable to prove the place or time conspiracy. Thus, first charge against the accused persons failed to be proved the contradiction and embellishment had lead to failure of other charges.

33. In view of the above circumstances, when P.W.2 evidence lack corroboration and also suffers material contradiction, his sole testimony cannot be relied upon to sustain a conviction. It is settled principles of law that the accused, who is acquitted by the trial Court is bestowed with double



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benefit. The first benefit of innocence till proved to be guilty and second benefit is the judicial verdict holding guilty not proved. To interfere the order of acquittal, the reasoning for disbelieving the prosecution case must be perverse or contrary to the evidence. In this case, this Court finds neither perversity nor improper appreciation of evidence. The view of the trial Court holding that the prosecution has failed to prove the guilt beyond reasonable doubt is a possible view, since there is no corroboration but lot of contradictions. Since the view of the trial Court is also possible and the beneficiary to the accused, the alternative view, even though it may be possible that need not be substituted by the Court of appeal. The benefit of doubt ended in acquittal.

34. For the reasons stated above, this Criminal Appeal filed against the order of acquittal is dismissed.

[G.J.,J] & [R.P., J]
02.04.2025

Index : Yes/No
NCC : Yes/No



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- To
- 1.The III Additional Sessions Court,
Tirunelveli.
 - 2.The Inspector of Police,
Thalayuthu Police Station,
Thalayuthu
Tirunelveli District.
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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**Predelivery Judgement made in
Crl.A(MD)No.401 of 2021**

02.04.2025