



Crl.A(MD)Nos.355 of 2020, 27 of 2021, 25, 153 and 257 of

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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

CORAM

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

Crl.A(MD)Nos.355 of 2020, 27 of 2021, 25, 153 and 257 of 2022

(1)Crl.A(MD)No.355 of 2020:-

Sappani @ Murugesan

: Appellant/1st Accused

Vs.

The State Rep. By
The Inspector of Police,
Abiramam Police Station,
Abiramam,
Ramanathapuram District.
(Crime No.54 of 2006)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of the Criminal Procedure, to set aside the conviction and sentence as imposed on him by the Additional District and Sessions Court, Paramakudi, Ramanathapuram District, made in Sessions Case No.27 of 2007, dated 23/09/2020.

For Appellant

: Mr.V.Kathirvelu
Senior Counsel
for Mr.M.Jegadeesh Pandian

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor



(2)Crl.A(MD)No.27 of 2021:-

Muthuramalingam

: Appellant/6th Accused

Vs.

The State Rep. By
The Inspector of Police,
Abiramam Police Station,
Kamuthi Taluk.
Ramanathapuram District.
(Crime No.54 of 2006)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of the Criminal Procedure, to set aside the conviction and sentence as imposed on him by the Additional District and Sessions Court, Paramakudi, Ramanathapuram District, made in Sessions Case No.27 of 2007, dated 23/09/2020.

For Appellant

: Mr.J.William Christopher

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor

(3)Crl.A(MD)No.25 of 2022:-

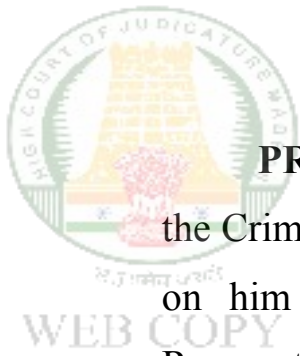
Moorthy @ Thiru Moorthy

: Appellant/5th Accused

Vs.

The State Rep. By its
The Inspector of Police,
Abiramam Police Station,
Abiramam,
Ramanathapuram District.
(Crime No.54 of 2006)

: Respondent/Complainant



Crl.A(MD)Nos.355 of 2020, 27 of 2021, 25, 153 and 257 of

PRAYER: Criminal Appeal filed under Section 374 of the Code of the Criminal Procedure, to set aside the conviction and sentence as imposed on him by the Additional District and Sessions Court, Paramakudi, Ramanathapuram District, made in Sessions Case No.27 of 2007, dated 23/09/2020.

For Appellant

: M/s.M.Kamalini
(Legal Aid Counsel)
&
Mr.G.Karuppasamy Pandian

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor

(4)Crl.A(MD)No.153 of 2022:-

Ravi @ Ravi Shanmugam

: Appellant/4th Accused

Vs.

State Rep. By
The Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.
(Crime No.54 of 2006)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of the Criminal Procedure, to set aside the conviction and sentence as imposed on him by the Additional District and Sessions Court, Paramakudi, Ramanathapuram District, made in Sessions Case No.27 of 2007, dated 23/09/2020.

For Appellant

: Mr.M.Jegadesh Pandian

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor



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(5)Crl.A(MD)No.257 of 2022:-

Gnanavelpandian

: Appellant/3rd Accused

Vs.

The State Rep. By
The Inspector of Police,
Abiramam Police Station,
Ramanathapuram District.
(Crime No.54 of 2006)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of the Criminal Procedure, to set aside the conviction and sentence as imposed on him by the Additional District and Sessions Court, Paramakudi, Ramanathapuram District, made in Sessions Case No.27 of 2007, dated 23/09/2020.

For Appellant

: Mr.M.Jegadeesh Pandian

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

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

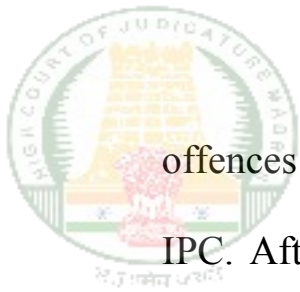
These criminal appeals are directed against the judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Paramakudi, Ramanathapuram District, in Sessions Case No.27 of 2007, dated 23/09/2020.



2.The case of the prosecution is that on 28/04/2006, when the de-facto complainant Bose-Head Constable, was returning to the Police Station, around 07.00 pm, he was waylaid by the accused persons near Nanthicheri bus stop and was attacked by them. They tied him up with a lungi and took his motorcycle away. They also took away some of his valuables. After sometime, he managed to escape and walk to the Village. Upon reaching the village, he informed one Neelamegam-PW22 and one Manikandan about the incident. They, in turn, informed PW2-Malar, Sub Inspector of Police attached to Kamuthi Police Station and she assembled the constables and went to Nanthicheri bus stop. There, they found the Sub Inspector of Police Subramanian lying with injuries. Both the injured persons were taken in an auto to the Government Hospital, Kamuthi and from there, Bose was shifted to Meenakshi Mission Hospital, Madurai. The Sub Inspector Subramanian was taken to Government Rajaji Hospital, Madurai, where he was declared dead on arrival.

3.Upon receipt of the complaint, the respondent Police registered two cases in Crime Nos.53 and 54 of 2006 for the offences under Sections 147, 148, 341, 342, 307 and 379(NP) of IPC. After investigation in Crime No.54 of 2006, charge sheet was laid before the Judicial Magistrate, Kamuthi, and the same was taken on file in PRC No.25 of 2008 for the

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offences punishable under Sections 147, 148, 341, 342, 307, 379 r/w 302 IPC. After completing the formalities, since the offences are exclusively triable by a Court of Session, the case was committed to the learned Principal District and Sessions Judge, Ramanathapuram and it was taken on file in SC No.27 of 2007 and thereafter, the same was made over to the Additional District and Sessions Judge, Paramakudi, for disposal.

4.After completing the formalities, since there were *prima facie* materials to frame the charges against the accused persons, the learned Additional District and Sessions Judge, Paramakudi, framed charges for the offences under Sections 120(B), 396, 302 r/w 34 IPC as against A1, A3, A4, A5 and A6 and under Sections 120(B) and 396 IPC as against A7.

5.In order to prove the charges against the accused, on the side of the prosecution, 56 witnesses were examined as PW1 to PW56 and 70 documents were marked as Exs.P1 to P70, besides marking 28 materials objects as MO1 to MO28.

6.When the accused were questioned under Section 313 Cr.P.C., in respect of the incriminating circumstances appearing against



them based on the evidence adduced by the prosecution, the accused denied the same as false. On the side of the defence, no oral or documentary evidence was adduced.

7.The trial Court, after completing the trial found A1 and A3 to A6 in SC No.27 of 2007 guilty of offences under Sections 302 r/w 34 IPC and 396 IPC and a sentence of Life Imprisonment was imposed on them, apart from a direction to pay a fine of Rs.2,000/- each, failing which to undergo Simple Imprisonment for a period of one year. In respect of charge under Section 120(B) IPC, they were acquitted. Further, A7 was found not guilty and he was acquitted from the charges levelled against him under Sections 120(B) and 396 IPC.

8.Aggrieved over the judgment of conviction and sentence, A1, A3, A4, A5 and A6 are before this Court by way of filing these appeals namely Crl.A(MD)Nos.355 of 2020, 27 of 2021, 25, 153 and 257 of 2022.

9.Simultaneously, since the Head Constable-Mr.Bose was also injured on the same day, at almost the same time, another case was registered in Crime No.53 of 2006 by the respondent Police for the offences



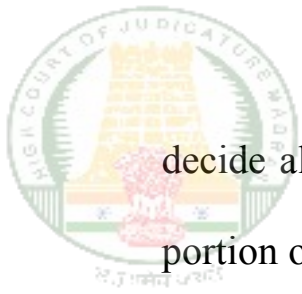
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punishable under Sections 147, 148, 341, 342 and 379 IPC and the case was taken on file in SC No.28 of 2007 by the Additional District and Sessions Court, Paramakudi. In that case also, some of the accused namely A1 and A3 to A6 were convicted and sentenced to undergo 7 years Rigorous Imprisonment and to pay fine of Rs.1,000/-, in default to undergo 6 months Simple Imprisonment. Aggrieved over that judgment of conviction and sentence, the aggrieved persons have come up with the appeals namely Crl.A(MD)Nos.352 of 2020, 29 of 2021 and 258 of 2022.

10.All the above said appeals were taken up together by the Division Bench of this Court and all the criminal appeals were allowed and the judgement of conviction and sentence passed in SC Nos.27 and 28 of 2007 on the file of the Additional District and Sessions Court, Paramakudi, Ramanathapuram District, were set aside and all the matters were remitted back to the trial Court to conduct a joint trial.

11.Aggrieved over the said common judgment of the Division Bench of this Court, one of the acquitted accused filed SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court granted stay and subsequently, allowed the SLP by setting aside the common judgment of the Division Bench of this Court and remitted the matter back to this Court to

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decide all the appeals on merits and in accordance with law. The relevant portion of the Judgment reads as under:-

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“9.In view of the above, we allow the prayer of the appellants and set aside the orders of the High Court dated 29.04.2022 and we now request the High Court to consider these appeals/petitions afresh on the merits of the case as apart from finding on the anomalies in the procedures, the High Court has in fact to apply its mind to the merits of the case. We therefore, request the High Court to decide the appeals/petitions purely on its merits and take a decision as expeditiously as possible.

10.For such of the accused who have already been granted bail by the Trial Court/Court concerned, subsequent to the remand of the matters by the High Court in the order(s) impugned, shall continue to remain on bail on the same terms and sureties as decided by the Court concerned and for the rest of the accused persons(s) who have not granted bail, will always be at liberty to seek bail afresh.”

12.Subsequently, this Court passed an Order, dated 27/06/2025, which reads as under:-



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“The Hon'ble Supreme Court in Criminal Appeal Nos.5013-5020 of 2024, by order dated 04.12.2024 while remitting the matter back to the Sessions Court, directed this Court to consider these appeals afresh on the merits of the case and also directed the High Court to decide the appeals purely on its merits and take a decision as expeditiously as possible.

2.The learned Additional Public Prosecutor submits that the Criminal Appeals in Crl.A(MD)Nos.355 of 2020, 27 of 2021, 25, 153 and 257 of 2022, related to the offence under Section 302 IPC, which comes before the Division Bench of this Court and the other appeals in Crl.A(MD)Nos.352 of 2020, 29 of 2021 and 258 of 2022 related to the offence under Section 307 which comes before the learned Single Judge.

3.Mr.M.Karthikeya Venkitachalapathy, learned counsel appearing for the appellant in Crl.A(MD)Nos.257 and 258 of 2002 seeks permission of this Court to withdraw his appearance as he has also filed a memo to that effect. The said Memo dated 24.06.2025 is recorded.



4.The Registry is directed to issue notice to the appellant in Crl.A(MD)Nos.257 and 258 of 2022 who is now confined at Central Prison, Madurai, as to whether he will be able to engage a counsel or whether he requires the assistance of legal aid for appointment of an Advocate to defend him?

5.The Registry is directed to segregate the matter and list the matters in Crl.A(MD)Nos.352 of 2020, 29 of 2021 and 258 of 2022 before the learned Single Judge and list the matters in Crl.A(MD)Nos.355 of 2020, 27 of 2021, 25, 153 and 257 of 2002 before this Court “ for final hearing” after two weeks.”

13.Since the appellants in both cases are one and the same and arise out of SC Nos.27 and 28 of 2007, this Court directed the Registry to segregate all the cases and list the cases in Crl.A(MD)Nos.352 of 2020, 29 of 2021 and 258 of 2022 before the learned Single Judge and list the cases viz., Crl.A(MD)Nos.355 of 2020, 27 of 2021, 25, 153 and 257 of 2022 before the Division Bench of this Court “ for final hearing” after two weeks.



14.The present appellants have not challenged the above

said order and therefore, that order has become final. Subsequently, the present appeals have been segregated and heard on merits and the same are being disposed of by way of this common judgment.

15.The learned Counsel appearing for the appellants would submit that the trial Court failed to appreciate that the prosecution had not proved the charges beyond all reasonable doubts; A large number of material witnesses, including PW6, PW14, PW18, PW19, PW20, PW22, PW23, PW24, PW27, PW28, PW32 and PW36, turned hostile, and several listed witnesses (LW-12, L17, L21, L26, L29, L30, L33, L34, L36, L39, L40, L42, L46 and L57 were not examined and were simply dispensed with and the conduct of the prosecution would clearly indicate that the prosecution case lacked support from its own witnesses and such non-examination and hostility of the witnesses strike at the root of the prosecution case and renders the conviction untenable; The very implication of the Appellants in the alleged crime is doubtful and unsupported by credible evidence; In this case, the evidence of PW14-Auto Driver and PW15-Ambulance Driver plays a vital role and the number of persons who travelled in their vehicles was totally different from the prosecution version to whom injured informed the alleged occurrence;

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There is no incriminating evidence against the appellants; Though the trial Court came to the conclusion that in case, there is hearsay witness and there is no straight jacket formula to show the circumstantial evidence to corroborate with one and another, it convicted based on the 161 Cr.P.C Statement and based on the evidence of the eye witness-PW55-Mathialagan, which is against the criminal jurisprudence; Though the deceased, while giving a statement had stated that he suspected one Muthukulathur Market Vegetable Shop Moorthy and later it was altered to a different Moorthy said to be linked with a Sappani Gang, which is also highly doubtful; In this case, there were several dying declarations, which contradict with each other; In one of the dying declarations, the deceased admitted the name of the Muthukulathur Market Vegetable Shop Moorthy in Ex.P21. Later, it was altered to Moorthy of Sappani Gangsters; The statement was not prudent and conscious to that effect; no evidence was also produced to show that Moorthy had a previous case involving Sappani Gang; Further, the manner in which information received regarding the occurrence is highly doubtful; It is informed to PW1 through the public and then to PW2-Malar/Sub-Inspector of Police at about 07.30 pm and she informed the other Police personnel namely PW3, PW4, PW7 and PW8 and thereafter, they informed to the Investigating Officer-PW55 at about 08.00 pm which is highly improbable; The evidence between PW9-Bala, a



relative of the deceased and PW55-Investigating Officer contradicts each other and the deceased could not have spoken with PW55-Investigating Officer when he had sustained grievous injuries sustained by him; PW49-Doctor, who conducted postmortem noted the stab injury in head, which went deep into the brain about 0.5 cm and once the brain is injured, there is no possibility of being in a fit state of mind to give a statement; In this case, the prosecution begins the case from the statement of the deceased and other corroborated hearsay witnesses, which is highly improbable and the statement made under Section 161 Cr.P.C is not admissible, as it can be used for the purpose of elucidate contradiction by the defence; The statements recorded by the Police Officials under Section 161 Cr.P.C. during investigation are not admissible in evidence, which is hit by Section 162 Cr.P.C; Even as per the evidence of PW19-Postmortem Doctor, postmortem was done on 29/04/2006 at about 11.15 am and he gave a report that the deceased died between 12 to 16 hours prior to autopsy; In this case, the occurrence is said to have taken place on 28/04/2006 at 07.00 pm and the Police received the information at about 07.30 pm, as such the postmortem report reveals that the deceased would have died due to loss of blood caused by heavy wounded injury in different parts of the body, more particularly, brain and mouth sustaining severe injury, so there is no possibility of giving a statement as alleged by the prosecution.



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16.Further, the learned Counsel appearing for the appellants would submit that there is no eyewitness to the occurrence and in this case, all the witnesses are Police Officials, the first statement who made before the Doctor, who made an entry in the accident register stated therein “unknown persons”; He also recorded the dying declaration, in which also, he has stated “known 6 or 7 persons”; They have not named the accused also; Further, in the dying declaration, he stated that they suspected the accused i.e., Muthukulathur Market Vegetable Shop Moorthy, however, PW1 to PW4 have stated that while going to the Hospital in an auto, the deceased mentioned the names of the accused, which is highly impossible, but not before the Doctor; Even the Doctor mentioned in the accident register that the witnesses brought the deceased to the Hospital for treatment; In that also, they have stated that only “unknown persons” and therefore, the evidence of PW1 to PW4 are highly doubtful and there are material contradictions.

17.Further, learned Counsel appearing for the appellants would submit that one of the defences taken by the appellants is that the trial Court failed to conduct a joint trial which also vitiated the prosecution case; However, in this case, P.W.1 who is the defacto complainant has stated that while he was brought by PW2 and other Police Officials, the deceased

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in this case was also taken in the same auto; At that time, he named the accused persons, whereas when he was admitted in the Hospital an entry was made in the accident register wherein it is mentioned as “unknown persons”; The doctor, during his evidence, has stated that the deceased was attacked by unknown persons, which is also highly doubtful; Therefore, the prosecution failed to prove their case beyond all reasonable doubts; Even without conducting a joint investigation, they linked the other case with this case, which is against the criminal jurisprudence; The Investigating Officer has not followed the procedure; They have simply taken the fingerprint and also the confession statement alleged to have been made by the appellants is inadmissible in evidence, which is hit by Section 25 of the Indian Evidence Act and it is also not proved before the trial Court; However, the trial Court failed to appreciate the evidence and based on surmises and conjectures and relying on the evidence of the witnesses in the other case, convicted the appellants, which is against the fundamental principles of jurisprudence; It is the bounden duty of the prosecution to prove the foundational facts, but they have not proved the case beyond reasonable doubt that the appellants alone caused the injury to the deceased and due to these injuries, the deceased died.



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18.Further, the learned counsel appearing for the appellants would submit that earlier, a case was registered for the offence under Section 307 IPC; During the investigation, the offence was subsequently altered to Section 302 r/w 34 IPC, and filed alteration report included Sections 120(B) and 396 IPC; The Investigating Officer improved the case side by side without any iota of evidence taking advantage of the incident in the other case and making use of the complaint of PW1 to link the appellants in this case, which is against the settled principle of law; The trial Court also without properly appreciating the evidence both oral and documentary in a proper perspective, convicted the appellants, which warrants interference of this Court. In support of their contention, they relied upon the following decisions:-

(1)Mallikarjun and others Vs. State of Karnataka [(2019)8 SCC 359];

(2)Achhar Singh Vs. State of Himachal Pradesh [(2021)5 SCC 543;

(3)Randeep Singh alias Rana and another Vs. State of Haryana and others (2024 SCC OnLine SC 3383);



*(4)Agniraj and others Vs. State through
Deputy Superintendent of Police CB-CDI (2025
SC OnLine SC 1203);*

*(5)State of Rajasthan Vs. Hanuman (2025
SCC OnLine SC 1387);*

*(6)Kaleel Rahman @ Rahman @ Ragu
Vs. Inspector of Police, Orleanpet Police Station,
Puducherry (2024-2-L.W.(Crl.) 253);*

*(7)Unreported Judgment of this court, dated
19/07/2019 made in Crl.A(MD)No.473 of 2017 in
the case of Saravanan Vs. State, represented by
the Inspector of Police, Samayanallur Police
Station, Madurai District;*

*(8)Unreported Judgment of this Court, dated
24/02/2020 made in Crl.A(MD)No.198 of 2018 in
the case of Jeyakumar Vs. State, rep. By the
Inspector of Police, Palavoor Police Station,
Tirunelveli District.*

19.Per contra, the learned Additional Public Prosecutor would submit that in this case, the appellants attacked the deceased for snatching the rings, cell phones and bike and even prior to the occurrence,



the appellants also attacked PW1 near to that place and thereafter, they proceeded and attacked the deceased and PW1 informed the witnesses, PW2 and other Police Officials came to the spot and they found that the deceased was lying and they took the deceased and also PW1; While proceeding to the hospital, on the way, the deceased named all the appellants and therefore, subsequently, they recorded the confession statement and identification parade was also conducted, PW1 identified all the accused; Since the injured died in this case, the case was altered into Sections 120(B) and 302 IPC and based on the confession statement recorded, they filed alteration report included the Section 396 IPC; In the confession statement, one of the accused has categorically stated about the incident that prior to the incident, all the accused persons in this case have caused injury to PW1 and based on his evidence, the appellants were arrested and based on the confession statement, recovery was effected and the fingerprint already taken from one of the accused was tallied, since he was involved in several other cases, they are also shown as history sheet elements and they collected the fingerprints from the recovered materials and tallied with the fingerprint already available in the police station; In another case, the fingerprint of the appellants was confirmed and kept in the lab; Even in the recovery materials they found human blood; Therefore, in this case, though there is no direct eyewitness, the prosecution has proved



its case beyond reasonable doubt, especially the motive, last seen theory and also recovery. Therefore, the prosecution has proved its case beyond all reasonable doubts: The trial Court has rightly appreciated the oral and documentary evidence and hence, the case was tried separately and earlier, the Division Bench of this Court set aside the judgment of the trial Court and remitted back the cases to the trial Court for joint trial; One of the accused, who was acquitted from both the cases, filed SLP, challenging the earlier order passed by this Court; The Hon'ble Supreme Court set aside that order and remitted the matter back to this Court; Subsequent to the order of the Hon'ble Supreme Court, a Division Bench of this Court also segregated both the cases, since all the appeals arise out of the both the cases; So, the appellants were convicted under Section 307 IPC by the Single Bench of this Court and therefore, this Court passed an order, dated 23/09/2020; Aggrieved over the same, there is no challenge against that order and therefore, the contention of the appellants is not acceptable that both are to be tried jointly, since both the occurrences are different; But however, PW1 has clearly identified the accused and stated the names of the appellants mentioned by the deceased; PW1 in this case and the other case are one and the same and the identification parade was also conducted and PW1 identified the accused and therefore, there is no merit in these appeals and they are liable to be dismissed.

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20. Heard both sides and perused the materials available

on record.

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21. It is the specific case of the prosecution that on 28.04.2006 at about 7.00 p.m., P.W.1–Bose was initially attacked by five known persons at Nanthicheri Vilakku. He immediately informed the respondent Police. Thereafter, P.Ws.2 to 5 rushed to the spot and, after picking up P.W.1 for treatment, were proceeding to the hospital. On the way, they found one Subramaniam, Sub-Inspector of Police, who had sustained cut injuries. According to him, he was attacked by five persons at the very same spot at about 7.30 p.m. Both P.W.1 and Subramaniam were then taken in an auto-rickshaw to the Kamuthi Hospital and took first aid. While on the way to the referred hospital for further treatment, namely the Government Rajaji Hospital, Madurai, SI Subramaniam succumbed to his injuries. P.W.1 was taken to Meenakshi Mission Hospital, Madurai, for treatment. P.W.55-Investigating Officer, who reached the Kamuthi Hospital at about 21.00 hours, recorded the statements of P.W.1 and SI Subramaniam at about 22.10 hours. Two separate criminal cases were registered in Crime Nos.53 and 54 of 2006. After the death of the Sub-Inspector, an alteration report was prepared. Initially, eight persons were arrayed as accused, out of whom A2 and A8 died during the course of trial. The remaining accused faced the trial.



22.In order to substantiate the charges levelled against

the appellants, the prosecution has examined totally 56 witnesses and marked 70 documents, besides 28 material objects were exhibited. On the side of the defence, no oral or documentary evidence was let.

23.In this case, there is no direct eyewitness. The case is only based on the circumstantial evidence and also based on the dying declaration of the deceased and also based on the evidence of PW1.

24. According to the prosecution, though the evidence of P.Ws.2 to 6 corroborates the evidence of P.W.1, a reading of the evidence of P.Ws.1 to 6 would show that they are only hearsay witnesses and that they have not witnessed the occurrence. When the case rests on circumstantial evidence, the prosecution is required to prove the essential ingredients, namely motive, the “last seen” theory, and recovery. Though P.Ws.1 to 6 are prosecution witnesses, they are all from the Police Department and, in their evidence, they have stated that P.W.1, after the occurrence, managed to inform his relatives, Neelamegan and Manikandan, and from them contacted the Abiramam Police Station. Thereafter, they came to the scene of occurrence and took the injured persons in an auto-rickshaw. On the way, they found that the deceased in this case had also sustained injuries and

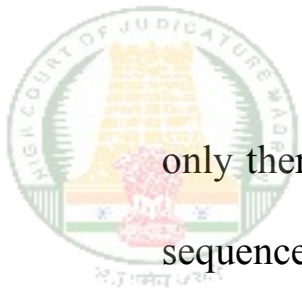
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took him along as well. It is further stated that, on the way to the hospital, deceased named the accused persons.

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25. In this case, P.W.1, during his evidence, deposed that immediately after the occurrence, he went to Nanthicheri Village and conveyed the incident to two of his relatives, Manikandan and Neelamegan, and from them the police were informed. However, Manikandan, was not examined as a prosecution witness. Neelamegan, the other relative who was examined as P.W.22, turned hostile and did not support the prosecution. Therefore, the prosecution has failed to prove that P.W.1 actually gave information about the incident to these two relatives. Further, even assuming that P.W.1 sustained the injuries as claimed, when he was able to approach Neelamegan and Manikandan, in order to save his life, they ought to have immediately taken him to the hospital and thereafter informed the police from there. However, the evidence of P.W.1 shows that though he was beaten and his hands and legs were tied, he somehow managed to go to Nanthicheri Village and inform his relatives, Neelamegan and Manikandan, who in turn informed the Abiramam Police Station. He further stated that the police personnel told him not to be afraid and that they would come. Thereafter, with the help of Neelamegan and Manikandan, he came on a two-wheeler to Nanthicheri Vilakku. In his evidence, he further stated that



only thereafter the police arrived at the spot and took him in an auto. This sequence of events appears highly improbable. If at all, PW1 informed the Abiramam Police, who got injury on his back side of the head, definitely, they would have called the Ambulance and tried to go to the hospital first to save his life. Further, the case of the prosecution is that, while they were on their way, they found the deceased with injuries and thereafter picked him up. While going by Auto, the deceased informed them the names of the appellants on the way, but whereas the deceased was admitted in the hospital at 09.00 pm. The Doctor, who made the entry in the accident register has clearly stated that he informed that assault was made by unknown persons and thereafter, he made intimation to the Police station. Already, the injured witness was brought only by the Police Personnel. PW40-Doctor has stated in his evidence that he made AR entry at 09.00 pm stating that he was informed that attack was made by a group of unknown persons and also made intimation to the Judicial Magistrate. The Judicial Magistrate has recorded the dying declaration on the basis of the intimation given by the Doctor. PW38 is the Judicial Magistrate, who recorded the dying declaration wherein, he has stated that one Moorthy @ Muthukalathur Market Vegetable Shop Moorthy tried to wreck vengeance and to take action to remove from the service. Even in that dying declaration, he has stated that at about 07.30 pm, nearby Nathicheri Vilaku,



5 to 6 persons surrounded him and attacked with deadly weapons. After half-an-hour, the Police Personnel came and took them by auto to the Government Hospital, Kamuthi, but whereas, he did not mention the names of the appellants to the Judicial Magistrate. If at all the deceased mentioned the names of the appellants while going by Auto from the occurrence place to the Hospital, Kamuthi definitely the deceased would have stated the names of the appellants, either before the Doctor, Government Hospital, Kamuthi, while registering AR atleast as known persons or when the Judicial Magistrate while recording the statement of the so called dying declaration. Therefore, when the statement was made before the independent witness namely the Doctor, who admitted the deceased for treatment and also the Judicial Magistrate, who was authorised to record the dying declaration, he has stated as “unknown persons”. PW40-Doctor, who admitted the deceased in the Hospital and also gave first aid treatment and also made entry in the AR. PW25, has stated that at about 09.00 pm, on 28/04/2006 on the date of the occurrence, Head Constable from Abiramam Police Station by name Kennady, Karuppaiah and Thirunagu brought the deceased to the Hospital, at that time, they stated that at about 07.30 pm on the same day nearby Nanthicheri Bus Stop, a group of unknown persons attacked with billhooks, sticks, rod and sickles and informed to the Judicial Magistrate. While recording the dying declaration, the Judicial Magistrate



examined the deceased and found that he was conscious and thereafter, the Judicial Magistrate also recorded the statement. Therefore, from the evidence of PW40-Doctor, Ex.P25-AR copy and the dying declaration (Ex.P22), it is made clear that either the deceased or witnesses never informed the names of the appellants.

26.In this case, Karuppaiah was examined as PW3 and Kennedy was examined as PW4, but they have stated in their evidence that while going by Auto, the deceased mentioned the names of the appellants. If that be the case, either the deceased or witnesses would have stated the names of the appellants or otherwise, at least would have stated them as known persons. Therefore, the evidence of PW1 to PW6 is highly doubtful. PW1 to PW6 are police officials and they are not illiterates, and PW1 is a Head Constable. Hence, their evidence is highly doubtful and not reliable. It is also against the natural course of conduct and their evidence is highly doubtful. Further, the identification of the accused by P.W.1 during the identification parade conducted by the Investigating Officer is not helpful to the present case on hand. In this case, P.W.1 is not an eyewitness to the occurrence. Further, the confession recorded by the Police Officer is not admissible in evidence.



27. Though the learned Additional Public Prosecutor

pointed out that the call details regarding the cell phone tower and location tallied, the same was not subjected to the procedure prescribed under Section 65-B of the Indian Evidence Act, and in the absence of the mandatory certificate, the electronic evidence cannot be relied upon. The fingerprint and other forensic materials are also highly doubtful. Once the evidence of PWs.1 to 6 is found to be doubtful, it is clear that the Investigating Officer, based on the version of PW1, has set up the case with the police personnel, which casts further doubt on the reliability of the entire investigation. So, 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. Accordingly, while re-appreciating the evidence, this Court finds that there are reasonable doubts in the mind of the Court. When two views are possible, the view which is in favour of the accused has to be taken into consideration and the benefit of doubt has to be extended in favour of the accused. Though, normally, defective investigation is not a ground to disbelieve the evidence of the prosecution witnesses and does not affect the case of the prosecution and the minor contradictions and the discrepancies will also not affect the case of the prosecution, here, the contradictions pointed out by the defence are material contradictions, which go to the root of the prosecution case. Therefore, this



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Court does not inspire confidence of the evidence of PW1 to PW6. This

Court finds that the prosecution has failed to prove its case beyond all reasonable doubts. Therefore, the benefit of doubt is to be extended in favour of the appellants and accordingly, by extending the benefit of doubt, all the appellants are acquitted from the charges levelled against them. The prosecution has not substantiated the charges levelled against the appellants in the manner known to law beyond all reasonable doubts. So, the benefit of doubt is extended in favour of the appellants and the judgment of conviction and sentence passed by the trial Court is liable to be set aside and accordingly set aside.

28.In the result, all the criminal appeals are **allowed**, by setting aside the judgment of conviction and sentence passed by trial Court. The appellants are acquitted from the charges levelled against them. Bail bonds, if any executed, shall stand terminated and fine amount, if any paid, shall be refunded.

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

Index: Yes/No
Internet: Yes/No

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To

- 1.The Additional District and Sessions Court,
Paramakudi,
Ramanathapuram District.
- 2.The Inspector of Police,
Abiramam Police Station,
Kamuthi Taluk,
Ramanathapuram 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**

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