



Crl.A(MD)Nos.447,455 and 485 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.04.2025

Pronounced on : 25.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)Nos.447, 455 and 485 of 2021

Crl.A(MD)No.447 of 2021

1.M.Rajamanickam
2.A.Sankar
3.V.Manivel

.. Appellants/Accused Nos.1,3&4

Vs.

State rep by
The Inspector of Police,
Edamalaipatti Pudur Police Station,
Trichirapalli.
Crime No.306/2012

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment dated 30.09.2021 passed in S.C.No.100 of 2014 on the file of the learned II Additional District & Sessions Judge, Tiruchirapalli.



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For Appellants : Mr.C.Muthu Saravanan

For Respondent :Mr.S.Ravi
Additional Public Prosecutor

Crl.A(MD)No.455 of 2021

1.Mohan @ Neelamegam	.. Appellant No.1/Accused No.6
2.Prabhu	.. Appellant No.2/Accused No.7
3.Mohanraj	..Appellant No.3/Accused No.9
4.Neelamegam @ Jambulingam	..Appellant No.4/Accused No.10

Vs.

State rep by
The Inspector of Police,
Edamalaipatti Pudur Police Station,
Trichirapalli.
Crime No.306/2012

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the judgment dated 30.09.2021 made in S.C.No.100 of 2014 on the file of the III Additional District and Sessions Court, Tiruchirapalli and set aside the conviction and sentence imposed against the appellants/accused.

For Appellants : Mr.R.Gandhi, Senior Counsel,
for Mr.J.Karthikeyan

For Respondent :Mr.S.Ravi
Additional Public Prosecutor

Crl.A(MD)No.485 of 2021

1.Vadivel	
2.Dharmar @ Dharmaraj	
3.Sambath	.. Appellants/Accused Nos.2, 5 & 8



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Vs.

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State rep by
The Inspector of Police,
Edamalaipatti Pudur Police Station,
Trichirapalli.
Crime No.306/2012

...Respondent/Complainant

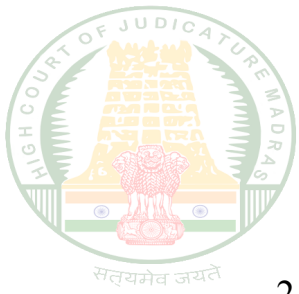
PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records from the lower Court in S.C.No. 100 of 2014 on the file of the learned III Additional District Sessions Judge, Trichy, dated 30.09.2021 and set aside the conviction and sentence passed against the appellants.

For Appellants : Mr.Anantha Padmanabhan, Senior Counsel
for M/s.APN Law Associates
For Respondent :Mr.S.Ravi
Additional Public Prosecutor

COMMON JUDGMENT

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

The above mentioned criminal appeals are by the accused persons found guilty and sentenced by the trial court in SC No: 100/2014, on the file of 3rd Additional Sessions Judge, Trichy, vide judgment dated 30.09.2021.



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2.The gist of the prosecution case in brief leading to the appeals:

(i)The deceased Subban and P.W.1 to P.W.8 are residents of Ramji Nagar, Trichy. They are all relatives. The accused belongs to K.Kallikudi Village and they all belong to the same caste. On 26.06.2013 at about 06.30 p.m., when two residents of Ramji Nagar, were going in an auto-rickshaw, two persons from K.Kallikudi Village made an attempt to overtake the auto-rickshaw in their two wheeler. In the wordy altercation, the passengers in the auto were assaulted by one Rajendran and others. The auto-rickshaw was also damaged. In retaliation, the Tea Shop and the Bolero car of Rajendran damaged. Two criminal cases were registered based on the complaint given by Balachander and the counter complaint by Rajendran.

(ii) There was also animosity between the two villagers regarding first respect (Parivattam) in the temple festival not given to the Kallukuzhi villagers.

(iii) Due to the enmity between two villages, the accused persons met together, in prosecution of th common object to cause death of persons hailing from to Ramji Nagar on 27/06/2013 at about 02.45 a.m, when the deceased Subban and P.W.1 Arumugam of Ramji Nagar were sleeping on the



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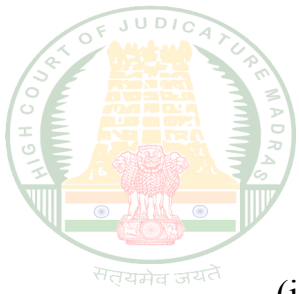
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bank of Kothamangalam Village pond, the A1 to A7 said to have attacked the Subban with aruval and caused his death. When Arumugam (PW-1) tried to intervene, A-8, A-9 and A-10 assaulted P.W.1 and left the place. P.W.1 was taken to a private hospital at Trichy. Based on the statement of PW-1, FIR registered in Cr. No: 306/2013 against 8 named persons and few unnamed persons under Sections 147, 148, 302 and 307 IPC.

(iv) On completion of investigation, final report filed against 10 persons. Based on the final report, the trial court framed charge under Sections 147 IPC and 148 r/w 149 IPC against all the accused. (A-1 to A-10). Charge under section 302 r/w 149 IPC against A-1 to A-7 for causing the death of Subban. Charge under Section 307 r/w 149 IPC for the attempt to cause death of PW-1 (Arumugam) against A-8 to A-10.

(iv) To prove the charges, on the side of prosecution, P.W.1 to P.W.21 were examined. Ex.P.1 to Ex.P.67 were marked and M.O.1 to M.O.18 were produced before the trial Court.

3.At the conclusion of the trial, the Trial Court found all the accused guilty and sentenced to undergo as follows:



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(i) Life imprisonment for the offence under Sections 302 r/w 120(b) IPC and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for two years.

(ii) 2 years rigorous imprisonment for the offence under Section 148 r/w 149 IPC.

(iii) Life imprisonment for the offence under Sections 302 r/w 149 IPC and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for two years and

(iv) Life imprisonment for the offences under Section 307 r/w 149 IPC and all the sentences are ordered to run concurrently. The period of detention already undergone by the accused during the trial ordered to be set off as per Section 428 Cr.P.C (Total fine Rs.10,000/-).

4. Challenging the judgment of conviction and sentence imposed:-

Crl.A(MD)No.447 of 2021 is preferred by M. Rajamanickam (A-1), A.Sankar (A-3) and V.Manivel (A-4).

Crl.A(MD)No.455 of 2021 is preferred by Mohan @ Neelamegam (A-6), Prabu (A-), Mohanraj (A-9) and Neelamegam @ Jambulingam (A-10.)



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Crl.A(MD)No.485 of 2021 is preferred by Vadivel (A-2), Dharmar @ Dharmaraj (A-5) and Sampath (A-8).

5.The case of the prosecution as unfurled through the witnesses:

Arumugam(PW-1) set the law into motion by his statement (Ex P-1) to the Sub-Inspector of Police, Edamalaipatti Police Station. The said Arumugam, who was injured in the attack by a mob armed with weapon, was taken to Trichy Kaveri Medical Hospital by his wife(PW-4). On receipt of the intimation from the hospital, Dayalan(PW-20) the Sub-Inspector of Police went to the hospital and recorded the statement from Arumugam, who was conscious, but unable to sign. In the statement, the thumb impression of the said Arumugam was obtained in the presence of his wife-PW.4. In the said statement, Arumugam had informed the police that the previous day 26.06.2013 at about 7.00 pm, he heard that there was altercation between the members of his village-(Ramjinagar) and the members of the neighbouring village -(T.Kallupatti) while the two wheeler driven by one Santhosh of T.Kallupatti / the brother of Rajendiran overtook the auto of Sankar of Ramjinagar. The members of T.Kallupatti village attacked the members of

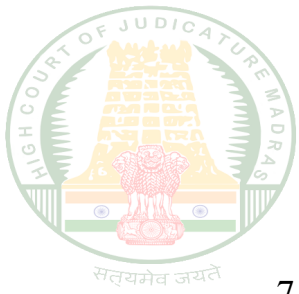


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Ramjinagar and inturn, Uvaraj, Kumar and others who are from Ramjinagar village burnt the Bolero car of Rajendiran and ransacked his Tea shop. Even earlier to this incident, the members of Servai Community in Ramjinagar and the members of Mutharaiyar Community in T.Kallupatti were at loggerheads in connection with the temple festival and first honour.

6.On that night, to avoid mosquito bites, he (the defacto complainant - Arumugam), Subban (the deceased), Guna @ Gunasekar(PW-2), Ramu (PW-3) and Sridhar (PW-7) went to the nearby pond to sleep. At about 02.45 a.m, a gang armed with weapon lead by (A-1)Rajamanickam brother of Rajendiran came and attacked Subban indiscriminately, with aruval and veecharuval. Overt act of Rajamanikam A-1, Vadivel A-2, Sankar A-3, Manivel A-4, Dharmar A-5, Mohan A-6, Prabu A-7 and the weapon used by them to attack Subban explicitly mentioned. Further, he had also informed that when he, Guna, Sridhar and Ramu tried to intervene, Sampath(A-8) hit him with aruval on the head, two other persons from Ettarikoppai village took aruval from Rajamanikam and Vadivel and attacked him on forehead and left knee. On seeking this, others ran away. His wife came and took him to the hospital in an auto.



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7.Ex.P-32 is the wound certificate of Arumugam issued by Dr.Ganesh Kumar of Kaveri Hospital, Trichy. Since he has left the job, Dr.Sivamani (PW-16) who is acquainted with signature and hand writing of Dr.Ganesh Kumar, had spoken about the wounds mentioned in the wound certificate-Ex. P.32. About the clinical examination, MRI Scan report and CT Scan report regarding the injuries sustained is reflected in the reports marked as Ex.P.29 to Ex.P.32 and spoken by PW-1, Dr.Senthil Murugan (PW-14), Kamalnathan (PW-15) and Dr.Sivamani(PW-16) given their opinion of the nature of injuries sustained by Arumugam (PW-1).

8.Apart from the injured witness P.W.1-Arumugam, PW.2-Guna @ Gunasekar, P.W.3-Ramu and PW.7-Sridhar were also present at the scene of occurrence. They, on seeking the occurrence, ran back to the village and informed the wife of PW-1 and other villagers. At about 03.30 a.m, when they all came to the spot, saw PW-1 crawling and moving towards the main road. PW-1 was taken to the hospital by his wife Jaya(PW-4) who was present in the hospital, when PW-1 gave statement(Ex P-1) to Dayalan, PW-20. She had identified her signature in the statement of PW-1.



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9.P.W.21- Vijayabaskar Inspector of Polic, who took up the investigation, went to the scene of occurrence and prepared the rough sketch and observation mahazar in the presence of P.W.5-Kamal and P.W.6-Durai. He arrested A-1, A-3, A-5 and A-6 at about 18.15 pm on 27.06.2013. The confession statements and recovery was done in the presence of Palanivel Village Administrative Officer(PW-9) and his Assistant Srinivasan(not examined). On 29.06.2013 at about 16.00 hrs, he arrested A-2 and A-8. Based on their confession, recovery was made in the presence of witnesses Gunasekaran(PW-2) and Prithiviraj(not examined). On 01.07.2013 at about 07.15 hrs, he arrested A-4, A-7, A-9 and A-10. Recorded their confession statements recovered weapons in the presence of Senthilkumar(not examined) and Srinivasan, S/o.Subramani(PW-13).

10.The FIR in Cr.No.306 of 2013 registered by PW-20 forwarded to the Judicial Magistrate through P.W.11-Selvaraj Head Clerk and delivered to the Judicial Magistrate on 27.06.2013 at 2.00 pm.



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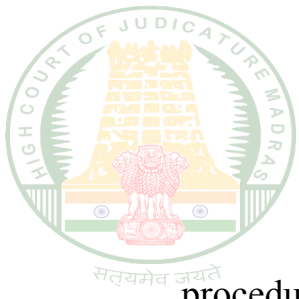
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11.The body of Subban was taken to the hospital by P.W.10 at about 09.45am. The post mortem commenced at 11.35am. The rigour mortis present all over the body. The autopsy of the deceased Subban was conducted by Dr.Saravanan. The Post mortem report is marked as Ex.P-24. According to the doctor, the deceased would appear to have died of shock haemorrhage due to multiple injuries.

12.PW-17, the Scientific Officer, who examined chemically the material objects, had given report that the weapons recovered and forwarded by the police for analysis does not contain any human blood.

13.The trial Court, with these evidence, found all the accused guilty for the homicide death of Subban and for the attempt to murder Arumugam (PW-1) and sentenced them as stated above.

14.Aggrieved, the appeals are filed and the learned counsels for the Appellant in the grounds of appeal as well in their oral submissions pointed that, right from framing of charges, the trial Court has not followed the due



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procedure laid under law. The judgement bristles with gross failure to appreciate the evidence in proper perspective. The trial Court failed to consider the prosecution case laid on a very weak and fragile foundation and fully depend on the interested witnesses.

15.Ex.P-32, the wound certificate given to PW-1 by Kaveri Hospital is the earliest documentary evidence in this case. The said wound certificate registered on 27.06.2013 at 4.00 a.m, it is mentioned that the patient (Arumugam-PW.1) was assaulted by unknown persons. The patient was conscious and drowsy. While so, in Ex.P-1 the statement alleged to have been recorded by PW-20 at about 04.30 a.m, on the information of PW-1 contains wealth of details about the assailants including their name, relationship, specific nature of the site of attack, injuries sustained and the weapon used. In Ex.P-1 though it is mentioned as recorded at 4.30 a.m at the Hospital and then P.W-20 came to the Police Station and registered the FIR at 05.00 am. It has reached the Judicial Magistrate only at 02.00 pm., which is hardly 4 km away from the Police Station, No explanation by P.W-11 or from P.W-21 been placed for the delay in forwarding the FIR to the Court. The corrections and interpolations in Ex.P-1 coupled with the fact that P.W.1



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was conscious when he was admitted in the hospital, but not mentioned the names of the assailants at the earliest point of time, the statement with a thumb impression without mentioning whose thumb impression it is, put together clearly establishes that Ex.P-1 is not true and the first information received by the police. The corrections in the FIR made using whitener strengthens the suspicion about the credibility of the prosecution case.

16.The failure to collect the blood cloths of PW-2, PW-3, PW-4 and PW-7 who all claims that they touched the body of the deceased and their dress got blood stained will only lead to the irresistible conclusion that they are not eye witnesses to the occurrence, but relatives of the deceased planted by the prosecution to support their case.

17.The deceased as well as the witnesses PW-2, PW-3 and PW-7 are notorious persons having criminal cases against them. However, they have denied the suggestion about the criminal cases pending against them to pose themselves as honourable witnesses. However, PW-19, PW-20 and PW-21 the police officers have admitted in the cross examination that the



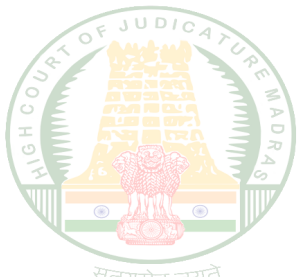
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prosecution witnesses, who are the relatives and the native of Ramjinagar have criminal cases against them. Thus, the credibility of these witnesses are doubtful and wholly unreliable.

18.Vital contradictions about the nature of injuries found on the body of the deceased as well as PW-1 not been correlated to the weapon and the accused by the witnesses. The prosecution had not placed any evidence to prove that the accused person had animosity against the deceased. Contrarily, it is admitted by the prosecution witnesses, that neither in the earlier incident of ransacking the tea shop of Rajendiran and his Bolero car or the alleged animosity in the celebrating the temple festival, the accused in this case are involved. Thus, the motive projected for the murder of Subban miserable fails,

19.The arrest, confession and the alleged recovery based on the information collected through confession not natural and loaded with fabrications. The witnesses for the confession and recovery could not withstand the cross examination, since they were not real witnesses for the



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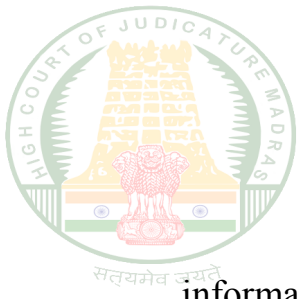
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confession or recovery.

20.The learned Additional Public Prosecutor, in response submitted that, the murder of Subban been witnessed by PW-1 , PW-2 , PW-3 and PW-7. They all in unison had deposed about the motive for the crime and the reason for their presence at Pond on that night. The prosecution had proved the case through PW-1 who is an injured witness. In respect of the incident occurred at about 02.45 am, the FIR registered at 5.00 a.m., and the FIR copy handed over to PW-11 at 7.00 a.m., to deliver at the Judicial Magistrate Court. The FIR copy is received by the Judicial Magistrate at 02.00 p.m. The delay is reasonable and not a ground for suspecting the prosecution case.

21.Heard the learned counsels on either side.

22.The perusal of the records reveals that, according to the prosecution the murder of Subban and attempt to murder Arumugam was on 27.06.2013 at 2.45 am on the bunk of a pond, which is about 1 ½ km away from the Ramjinagar. Ex.P- 38, the FIR registered at 5.00 a.m., based on the

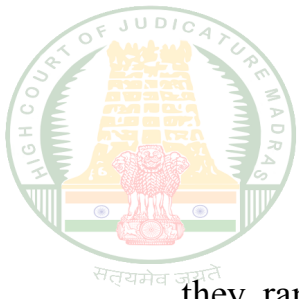


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information given by P.W-1 at 4.30 a.m., had reached the Judicial Magistrate at 02.00 pm. The time of forwarding the FIR to the Judicial Magistrate gains vital significance in this case because, the earliest document Ex.P-32, the wound certificate does not mention about the details of the assailants. In fact it is recorded as assaulted by unknown persons. The wound certificate is not expected or considered for identifying the assailants, but relevant only for the nature of injuries found, the embellishments in the complaint is patent, this point cannot be ignored totally. Moreso, when the FIR copy had reached only at 02.00 p.m, after the body of the deceased sent to post mortem and commencement of post mortem at 11.45 am. The corrections in the FIR with whitener and wealth of details found in Ex.P-1, a document with thumb impression without identifying and mentioning in the document itself the person who affixed the thumb impression creates serious doubt about the prosecution version.

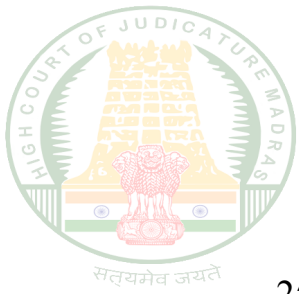
23.The injured PW-1 was taken to the hospital by his wife PW-4 at about 04.00 am. The other witnesses PW-2, PW-3 and PW-7, who claim to be present at the time of occurrence, had not tried to rescue either Subban (deceased) or took PW-1 for hospital immediately. They all had deposed that



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they ran to the village to muster strength and come back. The witnesses PW-2 to PW-4 in the cross examination had deposed that their cloth got stained with blood. Their cloth not recovered and produced before the Court. This adds to the doubt about their presence either at the time of occurrence or thereafter as deposed by them.

24.The prosecution in their attempt to prove that the accused persons formed unlawful assembly near RTO Office Power House at 10.30 p.m on 27.06.2013 and conspired to murder some one from Ramjinagar, had introduced PW-8-Mothilal, who in his evidence, had stated that he informed the police about the conspiracy on 27.06.2013 at 05.30 a.m., when the police was present at the scene of occurrence and conducted the enquiry with the villagers. He, in his chief examination, had also deposed that meeting of A-1 to A-10 to kill some one from Ramjinagar was shared with his villagers on the previous night and he advised them to be alert. He had also deposed that his statement was recorded by the Police. Whereas, PW-21 the Investigating Officer admits that, he examined Mothilal on 27.06.2013 at the Hospital and none of the prosecution witnesses told him about the information convey by Mothilal.



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25.Likewise, PW-1 to PW-7 and PW-21 were recalled by the defence and cross examined particularly about PW-8-Mothilal and his evidence about his overhearing of A-1 to A-10, conversation near RTO Office Power House at 10.30 pm. Their admission clearly establishes that PW-8-Mothilal a close relative of the deceased and the prosecution witnesses PW-1 to PW-4, been a witness planted by the prosecution to speak about conspiracy, though charge for conspiracy framed against the accused subsequently, the trial Court, without evidence for conspiracy, had convicted all the accused with the aid of section 120 B of IPC.

26.The over all scrutiny of the trial Court judgment fails, the test of proof beyond doubt for the following reasons:-

27.Charge:

From records, this Court finds that final report was filed on 7th December 2013 before the learned Judicial Magistrate No.II, Trichy, under Sections 147, 148, 307 and 302 IPC and committed to the Court of Sessions. On committal to the Court of Sessions initially framed charges against A1 to



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A10 for offence under Sections 147, 148 r/w 149 IPC, against A1 to A7 for offence under Sections 302 IPC and against A8 to A10 for offence under Section 307 IPC was framed. Later, the same was amended on 11.12.2014 as against A1 to A10 for offence under Sections 147, 148 r/w 149 IPC, A1 to A8, for offence under Sections 302 r/w 149 IPC, A8 to A10, offence under Sections 307 r/w 149 IPC. Later, on 25.10.2018, the charges were further altered as under:

A1 to A10 offence under Sections 302 r/w 120B IPC

A1 to A10 offence under Section 147 IPC

A1 to A10 offence under Sections 148 r/w 149 IPC

A1 to A10 offence under Sections 302 r/w 149 IPC

A1 to A10 offence under Sections 307 r/w 149 IPC. The charges were altered on 25.10.2018 introducing conspiracy. Thereafter, witnesses were recalled and question regarding Mothilal who claims himself a witness for conspiracy been put in cross examination. While altering the charges and reread to the accused on 25.10.2018, the place of conspiracy is mentioned as Pirattur Dinakaran Office. Even while altering the charges as above, the place of occurrence where the murder of Subban occurred not been



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mentioned as required under Section 216 of Cr.P.C.

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28. Under Section 212 of Cr.P.C (Section 235 of BNSS), the charge should contain particulars about the time, place and person. In this case, the charge does not say about the place of occurrence. When there is any alteration of charge, the Court shall alter the charge and proceed in the manner envisaged under Section 216 of CrPC (Section 239 of BNSS). The trial Court has convicted all the accused under Section 302 r/w 120B IPC by altering the charge in the midst of the trial. We find A-8 to A-10 charged for offence under Section 307 IPC earlier, later convicted for offence under Section 302 with the aid of Section 120 B IPC.

29. That apart, the corrections in recovery mahazars like Ex.P-7 and Ex. P-52, the corrections in the confession of the accused the absence of independent witnesses for the confession and recovery were also not been properly considered by the trial Court.



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30.Confession and recovery:

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We also find that the witnesses to the prosecution being interested witnesses had venture to improve and embellish their previous statement to the police and the same is highlighted from the incised cross examination of PW-21, the Investigating Officer, who had recorded the previous statements of the witnesses. The contradictions regarding the name of the village, which the accused belong to, the contradiction in respect of the description of properties recovered and failure to get respectable persons of the locality to witness and those witnesses, who are not interested witnesses being turned hostile(Srinivasan PW-13), all put together makes the recovery and the case of the prosecution lack proof beyond reasonable doubt.

31.We also find, no clear evidence to prove the earlier incidents as motive for the accused persons to murder Subban or to attempt to murder Arumugam. The eye witnesses evidence lack corroboration and overshadowed with embellishment, improvements and also falsehood. The recovery of material objects based on the confession suffers vice of inadmissibility and proof. None of the weapon sent for serology examination

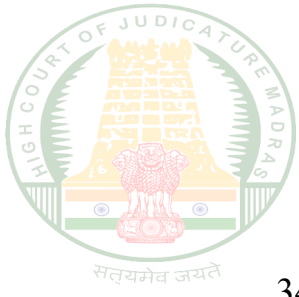


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proves the presence of human blood. Further, these weapons are available commonly in the market and houses.

32.Going back to the entry made in Ex.P-32, the wound certificate prepared at 04.00 a.m say P.W.1 was assaulted by unknown persons. Ex.P-1 prepared at 04.30 a.m., mention 8 names and few others. To this by adding A-8 to A-10 subsequently, and charging them for being members of the unlawful assembly and causing grievous injuries to PW-1 is an apparent embellishment. Further receiving the weapon from A-1 and A-2 and attacked P.W.1 has no evidence to support the charge A9 and A10. Hence, the conviction of A8 to A10 for offence under Sections 302 r/w 120 B IPC without evidence to prove conspiracy goes to show that the trial Court miserably failed to consider the evidence and law properly.

33.As a result, the appeals are allowed holding that the prosecution failed to prove the case against the appellants/accused beyond reasonable doubt.



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34.In fine, Crl.A(MD)No.447 of 2021, Crl.A(MD)No.455 of 2021 and Crl.A(MD)No.485 of 2021 are allowed. Fine amount paid if any, to be refunded to the appellants/accused. The bail bond stands discharged.

[G.J.,J] & [R.P., J]
25.04.2025

Index : Yes/No
NCC : Yes/No

To

1.The II Additional District & Sessions Judge,
Tiruchirapalli.

2..The Inspector of Police,
Edamalaipatti Pudur Police Station,
Trichirapalli.

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
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25.04.2025