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CrI.A.(MD)No.738 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.08.2025

DELIVERED ON : 07.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA
and

THE HONOURABLE MS.JUSTICE R.POORNIMA

CrI.A. (MD) No.738 of 2022

Muthukaleeswaran

Appellant/A2

Vs.

The Inspector of Police

Ramanathapuram B1 Town Police Station

Ramanathapuram District

(Crime No.382 of 2012)

Respondent/Complainant

Prayer:-Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records relating to the judgment in S.C.No.37 of 2021, dated 27.09.2022 passed by the Additional District and Sessions Court, Ramanathapuram and set aside the same.

For appellant

Mr.M.Subash Babu
Senior Advocate
for Mr.C.Susi Kumar

For respondent

Mr.A.Thiruvadikumar
Additional Public Prosecutor



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J U D G M E N T

A.D.JAGADISH CHANDIRA, J.

This criminal appeal is filed against the judgment of conviction and sentence dated 27.09.2022 made in S.C.No.37 of 2021 on the file of the Additional District and Sessions Court, Ramanathapuram (for short “the Trial Court”).

2. Five accused were involved in this case. Maris @ Marimuthu (A1) died during trial. After a full-fledged trial, the trial Court, finding Rajasekar (A3), Nagaraj (A4) and Saravanan (A5) not guilty of the offences punishable under Sections 148 and 302 read with 149 of IPC, acquitted them under Section 235(1) of Cr.P.C. but finding the appellant *viz.*, Muthukaleeswaran (A2) (for short “the appellant”) guilty of the offence under Section 304 (II) IPC, convicted and sentenced him *vide* judgment dated 27.09.2022 as under:

Provision under which convicted	Sentence
304 (II) IPC	Life Imprisonment and fine of Rs.5,000/-, in default, to undergo six months simple imprisonment.



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The case of the prosecution, in a nutshell, is as under:-

3.1. On 30.10.2012, one Abubaker, the deceased (hereinafter referred to by his name for the sake of convenience), his friend Abubaker @ Babu (P.W. 2) and the car driver Mohammed (P.W.3), were going to Ervadi dargah on a religious visit from Malappuram District, Kerala State, in a Bolero Car bearing Registration No.KL-52-B-9900. When they reached near EB sub station at R.S.Madai Village, near Keelakarai Road, Ramanathapuram, around 8.00 p.m. on that day, the five accused pelted stones on their car to mark their protest against the administration in respect of murder of three persons during Pasumpon Muthuramalinga Thevar Jayanthi held at Kamuthi in Ramanathapuram District on that day.

3.2. The first stone was pelted by Maris @ Marimuthu (A1), who died during trial and the second stone was pelted by the appellant, which hit on the right forehead and right eye of Abubaker. To prevent oozing of blood, Abubaker @ Babu (P.W.2) who was travelling along with Abubaker in the car, held his kerchief on the injury and thereafter, rushed to three private hospitals at



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Ramanathapuram and since no treatment was given there, took Abubaker to Ragavendra Hospital at Madurai and informed about the incident to Sainulabudheen (P.W.1) who is Abubaker's nephew and Risadudin (P.W.4) who is Abubaker's son. On 31.10.2012, about 11.00 a.m., Abubaker was shifted to Apollo Hospitals, Madurai, where he succumbed to the injuries on 06.11.2012.

3.3. Sadhu Ramesh (P.W.15), Sub Inspector of Police, Ramanathapuram Town Police Station, who was the Investigating Officer, after receipt of the intimation about the incident, went to Apollo Hospitals, Madurai, on 31.10.2012 at about 7.00 p.m. and recorded the statement of Sainulabudheen (P.W.1) and registered an FIR (Ex.P.9) in B1 Ramanathapuram Town P.S. Crime No.382 of 2012 under Sections 324 IPC and 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 (for short "the TNPPDL Act") on 01.11.2012 and prepared observation mahazar (Ex.P.2) and rough sketch (Ex.P.10).

3.4. On receipt of the death information of Abubaker at about 11.30 a.m. on 06.11.2012, Sadhu Ramesh (P.W.15) handed over the case for further investigation to Soundarapandian (P.W.16), Inspector of Police, who continued



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the investigation and during the course of investigation, altered the case into one under Sections 147, 148, 336 and 302 IPC *vide* alteration report (Ex.P.12) and sent the same to the Judicial Magistrate No.I, Ramanathapuram. Thereafter, he prepared inquest report (Ex.P.13) after enquiry in the presence of panchayatdars and sent the body for post-mortem through Palpandian (P.W.11) Head Constable and recorded the statements of witnesses. On 07.11.2012, when he was on the hunt for the accused, he arrested Maris @ Marimuthu (A1) and the appellant at 7.15 a.m. since they seemed to be connected to the case and recorded the confession statement of Maris @ Marimuthu (A1) in the presence of Krishnamoorthy (P.W.8), V.A.O and Muthuvel (not examined) Village Assistant and also arrested the remaining accused on the same day. After completing the investigation, he filed a final report before the Judicial Magistrate No.I, Ramanathapuram which was taken on file as P.R.C.No.20 of 2013.

3.5. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Ramanathapuram in S.C.No.37 of 2021 and was made over to the Trial Court, for trial.



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3.6. The Trial Court framed charges against all the accused for the offences under Sections 148 and 302 read with 149 IPC and when questioned, they pleaded not guilty.

3.7. To prove the case, the prosecution examined 16 witnesses and marked 13 exhibits and 1 material object (two stones). When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same and did not examine any witness but marked 3 exhibits.

3.8. After considering the evidence on record and on hearing either side, the trial Court, by judgment dated 27.09.2022, acquitted Rajasekar (A3), Nagaraj (A4) and Saravanan (A5) but found the appellant guilty and hence, convicted and sentenced him as set out in the tabulation at paragraph 2 *supra*. As far as Maris @ Marimuthu (A1) is concerned, as already noticed above, he died during trial.

3.9. Challenging the said conviction and sentence imposed by the Trial Court, the present criminal appeal has been filed.



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Learned Senior Counsel appearing for the appellant would submit that:

- i. though Abubaker @ Babu (P.W.2) and Mohammed (P.W. 3) are eyewitnesses to the occurrence, they did not choose to give any complaint at the nearby police station at Ramanathapuram or to admit Abubaker in the Government Hospital at Ramanathapuram; as per the evidence of Abubaker @ Babu (P.W.2) and Mohammed (P.W.3), they went to three private hospitals at Ramanathapuram and when none of the private hospitals came forward to give treatment, they admitted Abubaker to Raghavendra Hospital at Madurai; but contrary to their evidence, Dr.Shanmugam (P.W.12), who is the doctor of Ragavendra Hospital, deposed that Abubaker had taken initial treatment at Sathya Hospital, Ramanathapuram and thereafter, for better treatment, he was admitted to their hospital, which fact was suppressed by the prosecution as well as the eyewitnesses which creates a serious doubt in the case of the prosecution;
- ii. Sainulabudeen (P.W.1) who is a hearsay witness residing at Dindigul, after knowing about the incident, came to Ragavendra Hospital at Madurai and gave the complaint



(Ex.P1) and the same was recorded by Sadhu Ramesh (P.W.15), in which, the said Sainulabudeen (P.W.1) had instructed the police not to take any action on the basis of his complaint and the said fact was witnessed by Risaduddin (P.W.4), Abubaker's son and Umar (P.W.5), Abubaker's brother, who were also hearsay witnesses and thus, the evidence of these witnesses does not support the case of the prosecution;

iii. Though Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) are said to be the eyewitnesses to the occurrence and they accompanied Abubaker, Mohammed (P.W.3), who is the driver of the car, drove the car at a speed of 40 to 50 km./hour and the occurrence having taken place at 8.00 p.m., when the stone was said to be pelted by a mob on a moving car and when it is also the admitted case of Mohammed (P.W.3) during cross-examination that he came to know about the names of Maris @ Marimuthu (A1) and the appellant on the information of the police, the identification of the accused by Mohammed (P.W.3) is unreliable and doubtful which vitiates the case of the prosecution;



- iv. though Krishnamoorthy (P.W.8), retired Village Administrative Officer, on the request made by the Investigating Officer, went to Ramanathapuram Railway Station along with one Muthuvel-Village Assistant and spoke about the arrest of all the accused, he had attested only the confession statement of Maris @ Marimuthu (A1) and no confession statement had been recorded from the appellant, which creates a serious doubt in the case of the prosecution;
- v. though Anwar Ali (P.W.9) deposed that he had seen the accused having stones in their hands prior to the occurrence, he is not an eyewitness to the occurrence and he has not deposed as to how he knew the accused prior to the occurrence and hence, his evidence cannot be believed, especially when he is a stranger to the accused and also belongs to Ta.Mu.Mu.Ka., a political outfit;
- vi. though Noorulhak (P.W.10) who had signed in athatchi (Ex.P.4), by which, stones (M.O.1 series) were recovered from the car and which were said to have been pelted by the accused turned hostile, he deposed that he did not know about the contents of athatchi (Ex.P.4) and hence, the evidence of Noorulhak (P.W.10) also does not support the case of the prosecution;



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vii.when the confession statement of the appellant was not recorded by the Investigating Officer and no recovery was made on his confession, the conviction based on the basis of the recovery of M.O.1 has to be set aside;

viii.though the entire judgment of the Trial Court is based on the evidence of eyewitnesses Abubaker @ Babu (P.W.2) and Mohammed (P.W.3), their evidence cannot be believed since they did not know the accused earlier and also when the FIR (Ex.P.9) was registered against unknown persons and even the description of the accused was not mentioned therein, Test Identification Parade (for short “TIP”) ought to have been conducted so as to inspire confidence about the identity of the assailants, but, in the present case, no TIP was conducted during the course of investigation and in such circumstances, the identification of the appellant by Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) is highly doubtful and it does not inspire confidence about the identity of the assailants and the Trial Court ought to have considered this serious remissness in the investigation, but, instead, the trial Court had wrongly convicted the appellant;



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ix. when the accused are not known to the witnesses and the incident having happened at night hours, the non-conduct of TIP assumes greater significance and the Trial Court has erred in believing the version of the prosecution witnesses, who identified the accused for the first time in the witness box/dock.

5. In support of his contention, the learned Senior Counsel for the appellant relied on the following judgments:

- i. Noorahammad and others vs. State of Karnataka [(2016) 3 SCC 325];
- ii. P.Sasikumar vs. State, rep. by the Inspector of Police [(2024) 8 SCC 600]; and
- iii. Amrik Singh vs. State of Punjab [(2023) 2 Supreme Court Cases (Cri) 404];

6. Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent/State, would submit that this is a case where the accused involved in this case and others had conducted a protest on account of murder of three persons during Pasumpon Muthuramalinga Thevar Jayanthi held at Kamuthi on 30.10.2012 and had pelted stones on a car, in which, Abubaker, Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) were travelling and due to pelting of stones by the accused, Abubaker suffered head injuries



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and he was taken to Madurai for treatment, where he succumbed to the injuries on 06.11.2012. He further submitted that when the appellant and other accused were identified by Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) in the dock, TIP is not a substantive piece of evidence and non-conduct of TIP would not vitiate the trial and/or case of the prosecution and the same may not *ipso facto* be sufficient to discard the testimony of witnesses, who had identified the accused in the Court. He further submitted that the Trial Court, finding that Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) had identified the accused in the Court, had rightly found the appellant guilty and hence, the conviction and sentence imposed on the appellant is sustainable in law and accordingly, this criminal appeal is liable to be dismissed.

7. Having heard both sides, to test the correctness or otherwise of the judgment under appeal, it becomes imperative for this Court to appraise the evidence of the prosecution witnesses, who are said to be the eye witnesses to the occurrence, a little threadbare at the cost of verbosity.

7.1. Abubaker @ Babu (P.W.2) has deposed in his evidence that he was residing at Malappuram District, Kerala and he is an agriculturist; Abubaker is



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his close friend and Mohammed (P.W.3) is also his friend; he knew the accused; to worship at Ervadi Dargah, on 30.10.2012, Abubaker, he (P.W.2) and Mohammed (P.W.3) travelled in a Bolero Car bearing Registration No.KL-52-B-9900 from Malappuram District, Kerala State and when they reached near EB Sub Station at R.S.Madai Village near Keelakarai Road, the accused pelted stones on the car to mark their opposition for murder of three persons in Pasumpon Muthuramalinga Thevar Jayanthi held at Kamuthi on that day; the first stone that was pelted, after hitting the car, fell to the ground; while Abubaker was watching the direction in which the stone was hurled, the second stone that was pelted by the appellant hit on Abubaker's right eye; in order to prevent oozing of blood, he (P.W.2) held his kerchief on the injury and thereafter, they went to three private hospitals at Ramanathapuram for treatment but to no avail; hence, they took Abubaker to Ragavendra Hospital at Madurai and informed about the incident to Risaduddin (P.W.4.), Umar (P.W.5) and Sainulabudeen (P.W.1); on 31.10.2012, at about 11.00 a.m., they shifted Abubaker to Apollo Hospitals, Madurai, for further treatment; the Sub Inspector of Police, Ramanathapuram Town P.S. came to Apollo Hospitals, Madurai for receiving complaint and while he was narrating about the incident to him, Sainulabudheen (P.W.1) wrote a complaint and handed over the same;



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thereafter, Abubaker succumbed to the injuries on 06.11.2012 and on 07.11.2012, post-mortem was conducted at the Government Rajaji Hospital, Madurai; on the same day around 11 a.m., as informed by the police, he went along with Sainulabudeen (P.W.1) and Mohammed (P.W.3) to the Town Police Station, where, they identified two persons, viz., the appellant and Maris @ Marimuthu (A1) and after post-mortem, they took Abubaker's body to Kerala and funeral took place on 08.11.2012 and the Inspector of Police (P.W.16) examined him.

7.2 Mohammed (P.W.3) has deposed on the same lines as Abubaker @ Babu (P.W.2) and hence, it is not necessary to delve into the same.

7.3 Anwar Ali (P.W.9), a resident of Chakkarakottai and a social activist, has deposed that he know Abubaker and Maris @ Marimuthu (A1) and the appellant; on 30.10.2012, while he (P.W.9), along with his friend Mohammed Sherfuddin, was returning from Keezhakarai to Ramanathapuram in two wheeler, at about 7.45 p.m., he saw Maris @ Marimuthu (A1) and the appellant and two or three other persons, having stones in their hands; on seeing them, they got scared and left the place; while they were going to



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Ramanathapuram Railway gate, they saw a white colour Bolero car, which was crossing them; he heard that Abubaker who was travelling in Bolero Car, was admitted to Apollo Hospitals, Madurai due to head injury; after knowing about the death of Abubaker on 06.11.2012, he went along with his friend Mohammed Sherfudeen to hospital and saw Abubaker and his relatives; he informed Abubaker's relatives about the accused having stones in their hands at the scene of occurrence; and the Inspector of Police (P.W.16) enquired him.

8. Now, the points that emerge for consideration in the instant appeal are as follows:

- i. Whether the prosecution has proved its case beyond all reasonable doubt?
- ii. Whether the Trial Court is right in convicting the appellant believing the evidence of Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) who identified Abubaker for the first time in the witness box/dock?

9. Concededly, Abubaker, Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) are residents of Malappuram District, Kerala State and in fact, they were friends; the appellant who is a resident of Ramanathapuram is a



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stranger to the aforesaid trio; and the incident is said to have taken place on 30.10.2012 at about 8.00 p.m.

10. A careful reading of the FIR (Ex.P.9) brings to light that the same was registered pursuant to a statement given on 31.10.2012 by Sainulabudheen (P.W.1) who is not an eyewitness to the occurrence but Abubaker's nephew. As per the version of Sainulabudheen (P.W.1) in the FIR (Ex.P.9), while his uncle (Abubaker), his friend Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) were travelling in a car to Ervadi dargah, at about 8.00 p.m., Abubaker sustained injuries owing to pelting of stones by some unknown persons, whose identity was not known and Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) took his uncle in the same car to Ragavendra Hospital, Madurai, and subsequently, to Apollo Hospitals, Madurai, for further treatment. It is noteworthy that even in the FIR (Ex.P.9), Sainulabudheen (P.W.1) had categorically requested not to take any further action. Thereafter, Sadhu Ramesh (P.W.15) filed a case in B1 Ramanathapuram Town P.S. Crime No.382 of 2012 under Sections 324 IPC and 3(1) of the TNPPDL Act on 01.11.2012 at 8.00 a.m. While so, Abubaker breathed his last on 06.11.2012 at about 11.30 a.m. and thereafter, Soundarapandian (P.W.16), Inspector of Police, who continued the



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investigation, altered the case to one under Sections 147, 148, 336 and 302 IPC
vide alteration report (Ex.P.12). (emphasis supplied).

11. When admittedly FIR (Ex.P.9) was registered against unknown persons and even the description of the accused was not mentioned therein, in the opinion of this Court, TIP ought to have been conducted so as to inspire confidence about the identity of the assailants. But, in this case, indisputably, no TIP was conducted during the course of investigation. However, Mohammed (P.W.3) who accompanied Abubaker, had deposed that the occurrence took place at 8.00 p.m. and stones were pelted by a mob. In such circumstances, identification of the accused by Mohammed (P.W.3) is highly doubtful and it does not inspire confidence about the identity of the assailants and *ex consequenti*, dock identification for the first time in the Court after nine years of the occurrence *i.e.*, on 16.03.2022, cannot be relied upon and this remissness in investigation vitiates the case of the prosecution.

12. In this context, it is felicitous to allude to the following sapient passages from the judgments of the Supreme Court, wherein, the significance of conduct of TIP has been expatiated:



WEB COPY i. Noorahammad and others vs. State of Karnataka [(2016) 3 SCC 325]:

"25. This Court in *Dana Yadav v. State of Bihar* ((2002) 7 SCC 295 : 2002 SCC (Cri) 1698] has elaborated upon the importance of test identification parade in great details. The relevant paras 6, 7 and 8 read thus:

"6. It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Question is, what is its probative value? Ordinarily, identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are fortified in our view by a catena of decisions of this Court in *Kanta Prashad v. Delhi Admn.* ...

7. Apart from the ordinary rule laid down in the aforesaid decisions, certain exceptions to the same have been carved out where identification of an accused for the first time in court without there being any corroboration whatsoever can form the sole basis for his conviction. In *Budhsen v. State of U.P.*, [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] it was observed:

'7. ... There may, however, be exceptions to this general rule, when for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration.'

8. In *State of Maharashtra v. Sukhdev Singh* [(1992) 3 SCC 700 : 1992 SCC (Cri) 705] it was laid down that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time,



conviction can be based. In *Ronny v. State of Maharashtra*, [(1998) 3 SCC 625 : 1998 SCC (Cri) 859] it has been laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held. In that case, the accused concerned had a talk with the identifying witnesses for about 7/8 minutes. In these circumstances, the conviction of the accused, on the basis of sworn testimony of witnesses identifying for the first time in court without the same being corroborated either by previous identification in the test identification parade or any other evidence, was upheld by this Court. In *Rajesh Govind Jagesha v. State of Maharashtra*, [(1999) 8 SCC 428 : 1999 SCC (Cri) 1452] it was laid down that the absence of test identification parade may not be fatal if the accused is sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement or is arrested on the spot immediately after the occurrence and in either eventuality, the evidence of witnesses identifying the accused for the first time in court can form the basis for conviction without the same being corroborated by any other evidence and, accordingly, conviction of the accused was upheld by this Court. In *State of H.P. v. Lekh Raj*[(2000) 1 SCC 247 : 2000 SCC (Cri) 147] it was observed (at SCC p. 253, para 3) that:

‘test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration.’

In that case, laying down the aforesaid law, acquittal of one of the accused by the High Court was converted into conviction by this Court on the basis of identification by a witness for the first time in court without the same being corroborated by any other evidence. In *Ramanbhai Naranbhai Patel v. State of Gujarat*, [(2000) 1 SCC 358 : 2000 SCC (Cri) 113] it was observed : (SCC p. 369, para 20)

‘20. ... It, therefore, cannot be held, as tried to be submitted by the learned counsel for the appellants, that in the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances



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of each case.’

In these circumstances, conviction of the accused was upheld on the basis of solitary evidence of identification by a witness for the first time in court.”

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ii. P.Sasikumar vs. State [(2024) 8 SCC 600]:

“23. We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of the appellant. In cases where accused is a stranger to a witness and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (see :*Kunjumon v. State of Kerala*[(2012) 13 SCC 750 : (2012) 4 SCC (Cri) 406]).

24. After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused. The prosecution has not been able to prove the identity of the present appellant i.e. A-2 beyond a reasonable doubt.

25. The relevance of a TIP, is well-settled. It depends on the facts of a case. In a given case, TIP may not be necessary. The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. It would all depend upon the facts of the case. It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in *Rajesh v. State of Haryana* [(2021) 1 SCC 118 : (2021) 1 SCC (Cri) 327] and therefore TIP may not be necessary. It is the task of the investigating team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution as we are afraid it will be in the present case.

26. The relevance of TIP has been explained by this Court in a number of cases (see :*Ravi Kapur v.State of Rajasthan*[(2012) 9 SCC 284, para 35 : (2012) 4 SCC (Civ) 660 : (2012) 3 SCC (Cri) 1107], *Malkhansingh v. State of M.P.*[(2003) 5 SCC 746, para 16 : 2003 SCC (Cri) 1247]).



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27. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP which has not been done. The emphasis of TIP in a given case is of vital importance as has been shown by this Court in recent two cases of *Jayan v. State of Kerala*[(2021) 20 SCC 38] and *Amrik Singh v. State of Punjab*[(2022) 9 SCC 402 : (2023) 2 SCC (Cri) 404] .

28. In *Jayan v.State of Kerala*, [(2021) 20 SCC 38] , this Court disbelieved the dock identification of the accused therein by a witness and while doing so, this Court discussed the aspect of TIP in the following words : (*Jayan case v. State of Kerala*, [(2021) 20 SCC 38] , SCC p. 44, para 18)

“18. It is well settled that TI parade is a part of investigation and it is not a substantive evidence. The question of holding TI parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time-gap between the date of the incident and the date of recording of his evidence. In such a case, TI parade may make the identification of the accused by the witness before the Court trustworthy.”

29. Under these circumstances, we hold that the identity of the present appellant is in doubt. The appellant could not have been convicted on the basis of a very doubtful evidence as to the appellant's identity. The appeal is allowed and the impugned order of the High Court dated 12-1-2017 [*P. Sasikumar v. State of T.N.*, 2017 SCC On Line Mad 38087] is hereby set aside. The appellant has been in jail for about 8 years as we have been told at the Bar, he shall be released forthwith unless he is required in some other case. We make it absolutely clear that this decision of acquittal is based on the evidence, or lack thereof, which the prosecution has against Accused 2 i.e.,the present appellant. This will absolutely have no bearing on the case of Accused.”

13. Superadded, in **Amrik Singh vs. State of Punjab [(2022) 9 Supreme Court Cases 402]**, the Apex Court has categorically held that when



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no TIP is conducted, the first version of the complainant reflected in the FIR would play an important role and when the identity or description of the accused is not mentioned in the FIR, the identification of the accused for the first time before the Court cannot be believed. This judgment applies very much on all fours to the facts of this case.

14. Applying the above principles laid down by the Apex Court as regards the conduct of Test Identification Parade in a criminal trial, this Court holds that nonconduct of TIP is a serious remissness in the investigation.

15. Now, let us proceed to appreciate the evidence of Abubaker @ Babu (P.W.2), Mohammed (P.W.3) and Anwar Ali (P.W.9).

16. In their chief-examination, Abubaker @ Babu (P.W.2) and Mohammed (P.W.3) have very candidly stated that Abubaker was taken to three private hospitals at Ramanathapuram initially and since treatment was refused to be given to him there, he was thereafter taken to Raghavendra Hospital at Madurai. In striking contrast, Dr. Shanmugam (P.W.12) has deposed in the chief-examination that Abubaker was first treated at Sathya Hospital at



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Ramanathapuram and then, was admitted to Raghavendra Hospital at Madurai.

This glaring variation in the deposition of prosecution witnesses cannot be slightly brushed aside. To be noted, Dr. Shanmugam (P.W.12) has no axe to grind to depose so.

17. That apart, in the cross-examination, Mohammed (P.W.3) has candidly admitted that he came to know about the names of Maris @ Marimuthu (A1) and the appellant only through the police. In such circumstances, Mohammed (P.W.3) being a stranger to the accused, he identifying the accused for the first time in the dock without there being any TIP conducted in the course of investigation, makes his evidence regarding identifying the accused highly doubtful. At this juncture, it is not out of place to point out that the observation of the Supreme Court in **State of Uttar Pradesh v M.K. Anthony (AIR 1985 SC 48)** that cross-examination is an unequal duel between a rustic and a refined lawyer, cannot be pressed into service in the instant case to the advantage of the prosecution for the reason of assertion with which Mohammed (P.W.3) has deposed so.



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18. As regards the evidence of Anwar Ali (P.W.9), though he is said to have seen the appellant along with three other persons standing with stones at about 7.45 p.m., *i.e.*, prior to the occurrence, he has admitted in the cross-examination that he came to know about the occurrence only on the information given by his friends Mohammed Sherfudeen and Abbas from Madurai, who are also members of political outfit, *viz.*, Ta.Mu.Mu.Ka. and he has not seen the accused pelting stones on the car. This evidence, can, by no stretch of imagination, support the case of the prosecution and on the other hand, can only raise suspicion and there is absolutely no other material to show that the appellant pelted stone on the car. Pertinent it is to point out that suspicion, however grave it may be, cannot take the place of proof, and there is a world of difference between something that 'may be' proved and 'will be' proved. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take the place of proof and this is a settled law.

19. In the light of what has been discussed above, this Court has no incertitude in holding that the testimonies of these witnesses are highly



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doubtful. As a sequel, it can safely be held that the prosecution, which predicates its case on the testimonies of these three witnesses, has failed to prove its case beyond reasonable doubt.

20. Next, coming to the contention of the learned Senior Counsel for the appellant in respect of nonrecording of confession statement from the appellant, to be noted, the confession statement is an incriminatory statement made by the accused and it can be used as evidence, though statements made to police are generally inadmissible in Court. But, in the present case, though confession statement was recorded from Maris @ Marimuthu (A1), no confession statement was recorded from the appellant at the time of arrest, which, indeed, surprises this Court.

21. In respect of seizure of M.O.1 (stones) which were said to have been pelted by the accused, though they have been recovered from the car through athatchi (Ex.P.4) which was attested by Noorulhak (P.W.10), he has turned hostile and further, he has deposed that he does not know the contents of athatchi (Ex.P.4) and hence, his evidence can hardly be of any help to the prosecution. Further, as alluded to above, when the confession statement of the



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appellant was not recorded and no recovery was made based on his confession, the conviction made based *inter alia* on the recovery of M.O.1 is unjustifiable.

22. Both the points for discussion having been answered against the prosecution in the light of the above discussion, this Court holds that the appellant is entitled to benefit of doubt and accordingly, he is acquitted of all the charges. Bail bond, if any executed by the appellant, shall stand cancelled and the fine amount, if any, paid by him shall be refunded to him.

23. Before bringing the curtains down, this Court hastens to add that though benefit of doubt is extended to the appellant on the ground that the prosecution has not proved its case beyond reasonable doubt, the fact remains that innocent pilgrim Abubaker, who had come all the way from our neighbouring State to worship at Erwadi dargah, had died, for no fault of his, but only owing to the protesters pelting stones on the car for which the melancholic state of his legal heirs has to be considered empathetically and they have to be compensated adequately.



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24. Accordingly, in exercise of powers under Section 396 (2) of the BNSS, 2023 and considering the fact that Abubaker, aged 50 years, was an agriculturist and breadwinner of his family, this Court makes a recommendation to the District Legal Services Authority, Ramanathapuram, to pass an award fixing the amount of compensation to the legal heirs of Abubaker under the Tamil Nadu Victim Compensation Scheme, 2013, and forward the same to the District Collector, Ramanathapuram, for disbursement of compensation. Further, it will not be out of place to point out here that had Pasumpon Muthuramalinga Thevar been alive, he would, for sure, have strongly condemned and reprimanded this brutal act, for, according to him, விவேகமற்ற வீரம் முரட்டுத்தனமாகும் (Bravery sans prudence is brutality). In fact, it is befitting to point out that any riot or act of violence committed in the name of a leader, without due regard to his true vision or ideology, cannot be justified and shall amount to an insult to the leader's honour and the very principles he stood for.



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A.D. JAGADISH CHANDIRA, J.
and
R.POORNIMA, J.

raa/cad

25. In the result, the impugned judgment of conviction and sentence dated 27.09.2022 made in S.C.No.37 of 2021 by the Additional District Court, Ramanathapuram, is set aside. *Ex consequenti*, this criminal appeal stands allowed.

(A.D.J.C., J.) (R.P., J.)
07.11.2025

raa/cad

NC: Yes

Index:Yes

To:

1. The Additional District and Sessions Judge, Ramanathapuram
2. The Chairman
District Legal Services Authority, Ramanathapuram
3. The Inspector of Police
Ramanathapuram B1 Town Police Station
Ramanathapuram District
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai
5. The Section Officer
Criminal Records
Madurai Bench of Madras High Court, Madurai

Pre-delivery judgment in
CrI.A. (MD) No.738 of 2022