

*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 25.02.2025
Delivered on: 18.03.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

**R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024**

R.T(MD)No.1 of 2024

State by

The Deputy Superintendent of Police,

Sankarankovil Sub Division,

Thiruvengadam P.S.

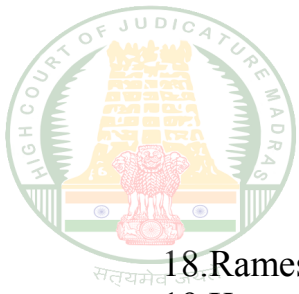
Crime No.168/2014

... Complainant

-Vs-

- 1.Ponnumani
- 2.Kuttiraj @ Paramasivan
- 3.Gurusamy
- 4.Kannan
- 5.Ulakkan @ Muthusamy
- 6.Kaliraj @ Thangaraj
- 7.Kannan
- 8.Murugan @ Balamurugan
- 9.Muthukrishnan
- 10.Jeyaram(Died)
- 11.Murugan
- 12.Selvaraj
- 13.Ponraj
- 14.Vairamthu
- 15.Saravanan(Died)
- 16.Subburaj
- 17.Mariraj

Page 1 of 32



*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

18.Ramesh
19.Karuppasamy
20.Balasubramaniyan
21.Jeya
22.Ganesamoorthy
23.Karuppasamy
24.Kannan
25.Suresh

... Accused

Prayer: Referred Trial numbered under Section 366 of Cr.P.C., to go into the question of confirmation of the death sentence awarded by the II Additional District and Sessions Judge, (PCR), Tirunelveli, in S.C.No.152 of 2016 dated 26.09.2024.

Crl.A(MD)No.926 of 2024

1.Ponnumani
2.Gurusamy
3.Kaliraj @ Thangaraj
4.Muthukrishnan

... Appellants/
Accused Nos.1,3,6,9

-Vs-

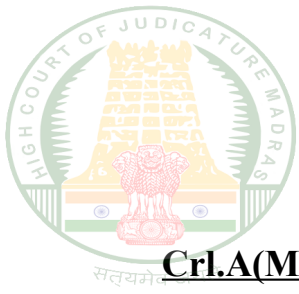
1.State represented by
The Deputy Superintendent of Police,
Sankarankovil Sub Division,
Thiruvengadam Police Station,
Tirunelveli District.
(Crime No.168 of 2014)

... 1st Respondent/
Complainant

2.K.Rajesh

... 2nd Respondent/
De-facto complainant(Victim)

PRAYER: Criminal Appeal filed under Section 415(2) of BNSS (Section 374(2) of Cr.P.C., to call for the records from the lower Court in S.C.No.152 of 2016 on the file of the learned II Additional District and Sessions Judge, (PCR) Tirunelveli District and set aside the judgment dated 26.09.2024 by acquitting the appellant and by allowing the appeal.



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

CrL.A(MD)No.891 of 2024

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- 1.Kuttiraj @ Paramasivan
- 2.Kannan
- 3.Ulakkan @ Muthusamy
- 4.Kannan
- 5.Murugan @Balamurugan
- 6.Knnan
- 7.Suresh

... Appellants/ Accused
Nos.2,4,5,7,8,24 & 25

-Vs-

- 1.State represented by
The Deputy Superintendent of Police,
Sankarankovil Sub Division,
Thiruvengadam Police Station,
Tirunelveli Distirct.
(Crime No.168 of 2014)

... 1st Respondent/
Complainant

- 2.K.Rajesh

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PRAYER: Criminal Appeal filed under Section 415(2) of BNSS (Section 374(2) of Cr.P.C., to call for the records from the lower Court in S.C.No.152 of 2016 on the file of the learned II Additional District and Sessions Judge, (PCR) Tirunelveli District and set aside the judgment dated 26.09.2024 by acquitting the appellants and by allowing the appeal.

For Appellants : Mr.Hasan Mohammed Jinnah,
in R.T(MD)No. State Public Prosecutor
1 of 2024 for R1 Mr.A.Thiruvadikumar,
in both Appeals Addl. Public Prosecutor
Mr.A.Damodharan,
Addl. Public Prosecutor

For R1, R3, R6 & : Mr.V.Kathirvelu, Senior Counsel
R9 in R.T(MD) for Mr.K.Prabhu
No.1 of 2024



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*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

For A1 to A5 : Mr.K.Prabhu(Crl.A(MD)No.891 of 2024)
For Appellants : Mr.K.Prabhu(Crl.A(MD)No.926/2024)
For R6 & R7 : Mr.P.Subbiah (Crl.A(MD)No.891/2024)
For R2 : No appearance in both appeals

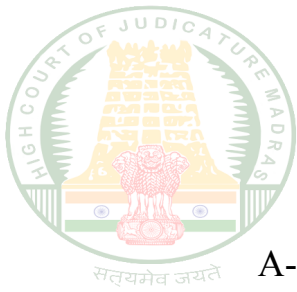
COMMON JUDGMENT

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

On 01/06/2012, three persons by name Kaliraj, Venugopal and Murugan who are all from Schedule Caste Community were done to death brutally. In this connection against 25 persons final report filed. Before framing of charges two of them died. For the remaining 23 accused charges under sections 120B, 302, 148 of IPC and Section 3 (v) of Sc/ST (PoA) Act where framed and tried in SC No: 152/2016 by the Special Court for PCR cases at Thirunelveli.

2.Pending trial, due to the death of A-10, A-13 and A-15, the charges against them got abated.

3.The Learned II Additional District and Sessions Judge (PCR), Thirunelveli in his judgement dated 26th September, 2024 held the charges against A-11 to A-21 not proved beyond doubt and acquitted them. In respect of remaining accused, held:



*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

A-1, A-4, A-6 and A-9 are guilty of offences u/s 302 r/w 149 (3 counts) each, 120B r/w 302 r/w 149,148,341 IPC and Section 3 (v) of SC/ST (PoA) Act.

A-2, A-3, A-5, A-7, and A-8 are guilty of offences u/s 302 r/w 149 (3 counts) each, 148 ,341 IPC and Section 3 (v) of SC/ST (PoA) Act.

A-22 and A-23 are guilty of offences 120 B r/w 149IPC and Section 3 (v) of SC/ST (PoA) Act.

The sentence imposed on A-1 Ponnumani: -

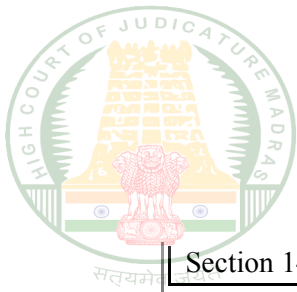
Section 302 r/w 149 IPC (3 counts)	<u>Hanging till death.</u> Fine of Rs 1 lakh, in default 3 years Rigorous Imprisonment.
Section 120 B r/w 302 r/w 149 IPC	Life Imprisonment. Fine of Rs 10000/- in default 3 years Rigorous Imprisonment.
Section 148 IPC.	3 years Rigorous Imprisonment. Fine Rs 5000/- in default 6 months RI.
Section 341 IPC.	One Month Simple Imprisonment.
Section 3 (2)(v) of SC/ST (PoA) Act.	Life Imprisonment. Fine Rs 10,000/- . In default 3 years Rigorous Imprisonment.

The sentence imposed on A-3 Gurusamy: -

Section 302 r/w 149 IPC (3 counts)	<u>Hanging till death.</u> Fine of Rs 1 lakh, in default 3 years Rigorous Imprisonment.
Section 148 IPC.	3 years Rigorous Imprisonment. Fine Rs 5000/- in default 6 months RI.
Section 341 IPC.	One Month Simple Imprisonment.
Section 3 (2)(v) of SC/ST (PoA) Act.	Life Imprisonment. Fine Rs 10,000/- . In default 3 years Rigorous Imprisonment.

The sentence imposed on A-6 Kaliraj @ Thangaraj:-

Section 302 r/w 149 IPC (3 counts)	<u>Hanging till death.</u> Fine of Rs 1 lakh, in default 3 years Rigorous Imprisonment.
Section 120 B r/w 302 r/w 149 IPC	Life Imprisonment. Fine of Rs 10000/- in default 3 years Rigorous Imprisonment.



*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

Section 148 IPC.	3 years Rigorous Imprisonment. Fine Rs 5000/- in default 6 months RI.
Section 341 IPC.	One Month Simple Imprisonment.
Section 3 (2)(v) of SC/ST (PoA) Act.	Life Imprisonment. Fine Rs 10,000/- . In default 3 years Rigorous Imprisonment.

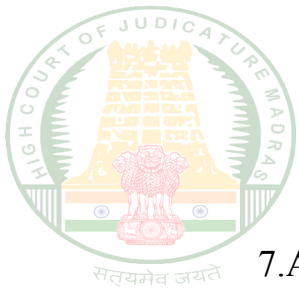
The sentence imposed on A-9 Muthukrishnan:-

Section 302 r/w 149 IPC (3 counts)	Hanging till death. Fine of Rs 1 lakh, in default 3 years Rigorous Imprisonment.
Section 120 B r/w 302 r/w 149 IPC	Life Imprisonment. Fine of Rs 10000/- in default 3 years Rigorous Imprisonment.
Section 148 IPC.	3 years Rigorous Imprisonment. Fine Rs 5000/- in default 6 months RI.
Section 341 IPC.	One Month Simple Imprisonment.
Section 3 (2)(v) of SC/ST (PoA) Act.	Life Imprisonment. Fine Rs 10,000/- . In default 3 years Rigorous Imprisonment.

4.The trial court imposed Capital punishment to accused A-1, A-3 , A-6 and A-9 subject to confirmation by the High Court. Order hanging by neck till their death after completion of sentences imposed for other offences. The fine amount imposed ordered to be paid equally to the legal heirs of the 3 victims.

5.In compliance of Section 407 Cr.P.C, for confirmation of the death sentence, the Registry has placed the records before this Court for consideration in R.T No: 1/2024.

6.As against the conviction and sentence A-1, A-3, A-6 and A-9 had preferred Crl.A(MD)No.926/2024.



*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

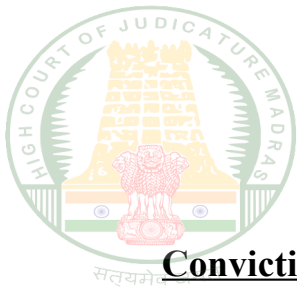
7.A-2 , A-4, A-5, A-7, A-8, A-22 and A-23 are the appellants in
Crl.A(MD)No.891/2024. Their conviction particulars are as below:-

Conviction Particulars of A2:

S.No.	Offence	Sentence	Fine	In default Sentence
1.	Section 302 r/w 149 of IPC	Life Imprisonment(3 counts)	1,00,000/-	3 years rigorous imprisonment
2.	Section 148 IPC	3 years rigorous imprisonment	5,000/-	6 months rigorous imprisonment
3.	Section 341 IPC	1 month simple imprisonment	-	-
4.	Section 3(2)(v) of SC/ST Act	Life Imprisonment	10,000/-	3 years rigorous imprisonment

Conviction Particulars of A4:

S.No.	Offence	Sentence	Fine	In default Sentence
1.	Section 302 r/w 149 of IPC	Life Imprisonment(3 counts)	1,00,000	3 years rigorous Imprisonment
2.	Section 120(b) r/w 302 r/w149 of IPC	Life imprisonment	10,000/-	3 years rigorous imprisonment
3.	Section 148 IPC	3 years rigorous imprisonment	5,000/-	6 months rigorous imprisonment
4.	Section 341 IPC	1 month Simple Imprisonment	-	-
5.	Section 3(2) (v) of SC/ST Act	Life imprisonment	10,000/-	3 years rigorous imprisonment



*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

Conviction Particulars of A5:

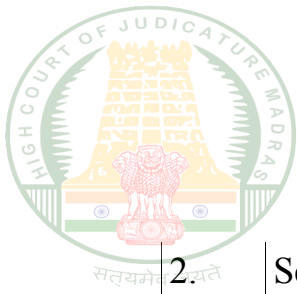
S.No.	Offence	Sentence	Fine	In default Sentence
1.	Section 302 r/w 149 of IPC	Life Imprisonment(3 counts)	1,00,000	3 years rigorous Imprisonment
2.	Section 148 of IPC	3 years rigorous imprisonment	5,000/-	6 months rigorous imprisonment
3.	Section 341 IPC	1 month simple imprisonment	-	-
4.	Section 3(2) (v) of SC/ST Act	Life imprisonment	10,000/-	3 years rigorous imprisonment

Conviction Particulars of A7:

S.No.	Offence	Sentence	Fine	In default Sentence
1.	Section 302 r/w 149 of IPC	Life Imprisonment(3 counts)	1,00,000	3 years rigorous Imprisonment
2.	Section 148 of IPC	3 years rigorous imprisonment	5,000/-	6 months rigorous imprisonment
3.	Section 341 IPC	1 month simple imprisonment	-	-
4.	Section 3(2) (v) of SC/ST Act	Life imprisonment	10,000/-	3 years rigorous imprisonment

Conviction Particulars of A8:

S.No.	Offence	Sentence	Fine	In default Sentence
1.	Section 302 r/w 149 of IPC	Life Imprisonment(3 counts)	1,00,000	3 years rigorous Imprisonment



*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

2.	Section 148 of IPC	3 years rigorous imprisonment	5,000/-	6 months rigorous imprisonment
3.	Section 341 IPC	1 month simple imprisonment	-	-
4.	Section 3(2) (v) of SC/ST Act	Life imprisonment	10,000/-	3 years rigorous imprisonment

Conviction Particulars of A22:

S.No.	Offence	Sentence	Fine	In default Sentence
1.	Sections 120(b) r/w 302 r/w 149 of IPC	Life Imprisonment(3 counts)	1,00,000	3 years rigorous Imprisonment
2.	Section 3(2) (v) of SC/ST Act	Life imprisonment	10,000/-	3 years rigorous imprisonment

Conviction Particulars of A23:

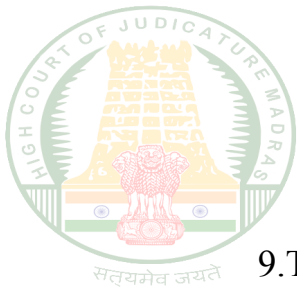
S.No.	Offence	Sentence	Fine	In default Sentence
1.	Sections 120(b) r/w 302 r/w 149 of IPC	Life Imprisonment	1,00,000	3 years rigorous Imprisonment
2.	Section 3(2) (v) of SC/ST Act	Life imprisonment	10,000/-	3 years rigorous imprisonment

8.As per the final report filed, on completion of investigation is that on the complaint given by one Rajesh, S/o.Kaliraj, on 01.06.2014 at 20.30 hours, the Special Sub-Inspector of Police, registered the said complaint in Crime No.168 of 2016 at 08.30 p.m. The complaint disclosed previous enmity between the members of the scheduled caste community and members of the Yadava



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

Community a non-scheduled caste living in the Udappankulam Village, Tirunelveli District and as a consequence of the enmity, the membes of Yadav Community conspired to kill two or three scheduled caste people of the village. Hence, on 01.06.2014, while Kaliraj, Murugan and Venugopal were proceeding in TVS-50 two wheeler bearing Registration No.TN67-AZ-6097, near Siddha Hospital on the west of the village at about 07.15 p.m., members of the Yadava Community armed with weapon stopped the two wheeler. Ponnumani-A1 with aruval attacked Kaliraj on his head and face repeatedly. Kuttiraj attacked with aruval on the shoulder and right wrist. Gurusamy attacked the left forearm. Venugopal was attacked by Kannan with aruval on the face and harmed repeatedly. Ulakkan attacked Venugopal on the head. Thangaraj attacked Venugopal on right thigh. Murugan was attacked with aruval by Kannan on the left wrist and right forearm. Balamurugan attacked him near left side eye with aruval. Muthukrishnan attacked left leg toe. The complainant, who was following his father Kaliraj along with Muthusamy and Padmakumar in another two wheeler saw the incident before he could reach the spot, all the accused persons fleded from the scene of occurrence.

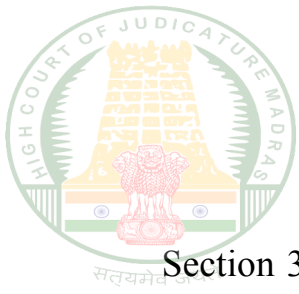


R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

9.The above complaint taken up for investigation by Kalivarathan, Deputy Superintendent of Police, Sankarankovil. From his investigation, he gathered material that due to previous enmity, the occurrence took place on the eve of new year on 28.05.2014, there was enmity between these two community. The members of non-scheduled caste community in Uduppankulam Village, on 31.05.2014 met at Pillaiyarkovil Temple in the village and conspired to murder 2 or 3 scheduled caste persons. In furtherance of the said conspiracy on 01.06.2014, 25 persons belonging to non-scheduled caste community formed unlawful assembly with weapon near Siddah Hospital building at 07.15 p.m and wrongfully restrained Kaliraj, Murugan and Venugopal who were proceedings in two wheeler bearing Registration No.TN-67-AZ-6097 and attacked with aruvals causing death of Kaliraj, Murugan and Venugopal.

10.Based on the final report and records, the trial Court framed charges against A1 to A23 as under:

A1 to A23 were charged for offence under Sections 148 and 341 of IPC. A1 to A9, who are the named persons in the FIR were charged for offence under Section 302 IPC, A10 to A23 were charged for offence under Section 302 r/w 34 IPC. Since the victims belongs to scheduled caste community, the charge under



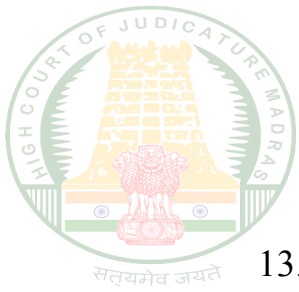
*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

Section 3(2)(v) of SC/ST(POA)Act was framed against A1 to A9. That apart, the accused Nos.1,2,6,7,21,22 and 23 were charged for offence under Sections 120(b) IPC.

11.To prove the charges, the prosecution has examined 23 witnesses, marked 56 exhibits and 24 material objects. In defence, to prove that Kannan-A7 suffers from visual disability. Dr.Babusankar was examined as D.W.1. 5 exhibits were marked on the side of the accused. That apart, the signature of P.W.1 in the summon was marked as Ex.C.1.

Submission by the learned counsels for the appellants/accused:-

12.It is contended that it is improbable for PW-1 to witness the occurrence from about 30 feet away with the help of the vehicle head light. It is still more improbable to identify each of the accused and their over act specifically. Further it is contended, that out of 23 accused, there are 3 accused having same name viz Kannan. None of the eye witnesses PW-1 to PW-3 had identified A-7 who is visually impaired person as per the evidence of DW-1 and the exhibits D-1 to D-5. Yet another Kannan (A-3) s/o Chellaiah Konar identified by PW-1 alone and his evidence is not corroborated by other two eye witnesses examined as PW-2 and PW-3.



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

13.PW-2 had not identified any of the accused. In his deposition he had only said that a mob of 9 persons came and attacked Kaliraj, Murugan and Venugopal and disbursed. He along with PW-1 and PW-3 went to the scene thereafter. By that time two of his community men were near the bodies. This witness has not disclosed the two person who were near the dead bodies. He has also not identified the accused.

14.PW-3, had deposed that, he along with PW-1 and PW-2 following Kaliraj and others in a two wheeler on their way they saw the death bodies of Kaliraj, Murugan and Venugopal with injuries. PW-3 was declared as hostile witness and cross examined by the prosecution.

15.The trial court failed to consider that even according to the complaint ExP-1 and PW-1, it was only 9 persons involved in the crime. But the final report was filed against 25 persons. The IO succumbed to the public pressure had included innocent persons of the Yadava community in that village including two person who suffer 100% visual impairment. The trial court without testing the veracity of the witnesses and the contradictions, had erred in convicting A-1 to A-9 for offence under section 302 (three counts).



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

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16.In addition, serious doubt about the arrest and seizure of material objects from the accused persons based on their alleged confession raised since the witnesses to the confession and seizure had failed to identify the accused persons and the weapons alleged to have been recovered from there.

17.The learned Counsel of A-22 and A-23 submitted that , these two accused were implicated in the crime based on the alleged statement of Arjunan PW-7, who according to the prosecution overheard the conversation between Ponnumani (1), Kannan (4), Kaliraj @ Thangaraj (6) , Muthukrishnan (9) , Kannan (22) and Suresh(23) while they were talking near the well of Arumuga Vathiyar on 01/06/2014 at 10.00. am. The trial court framed charge u/s 120B IPC as against A-1,A-2,A-4,A-6,A7,A21,A-22 and A-23. The theory of conspiracy was introduced by the prosecution only after recording the statement of Arjunan PW-7 on 15/06/2014. The said Arjunan is one of the panjayathar for the inquest conducted on 02/06/2014 between 3.00 am and 09.30 am conducted at Govt. Hospital,Thirunelveli in respect of the three deceased victims. . His signature is in Ex P- 32, Ex P-33 and Ex P-34. While so, PW-7 had not deposed about his participation in the inquest as one of the panchayathars. To justify the inordinate



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

delay in sharing of the information about the conspiracy, he had invented an excuse that he left the village on the day of occurrence and came back to the village only to participate the funeral. He had mentioned two Kannan's as the participants in the conspiracy meeting. The prosecution has included totally 3 persons by name Kannan (A-4, A-7 and A-22). The trial court at random choosen A-7 and A-22 as the conspirators and convicted them for offence under Section 120 B r/w 302 r/w 149 IPC. This said conviction for Section 120B r/w 302 r/w 149 IPC without framing the charge is perse improper. That apart, the trial court ought not to have relied the uncorroborated testimony of PW-7 to convict for an offence without framing the relevant charge.

18.The learned State Public Prosecutor Mr.Hasan Mohammed Jinnah, submitted that it was a shocking incident of three innocent scheduled caste persons done to death by a mode of armed with deadly weapons, It was in consequence to the existing dispute and a clear case of communal offence. The evidence for prosecution through P.W.6 and P.W.7 who had spoken about the conspiracy hatched prior to the occurrence coupled with the identification of the accused had found to be adequate and proof beyond about by the trial Court to convict A1 to A9 and A21 and A23 for offence under Section 302 IPC with the aid



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

of Section 149 IPC, though no specific charge framed under Section 149 IPC. The learned Judge in the impugned judgment had given reason for convicting them with the aid of Section 149 IPC which is legally sustainable. Regarding capital sentence imposed on A1, A3, A6 and A9, the learned Public Prosecutor submitted that the triple murder of the members of suppressed community is without any doubt a grave crime which had shocked the Society at large creating fear of insecurity. However, whether it is a rarest of rare case to impose death or enough mitigating circumstances before or after occurrence may be considered in the light of the submissions made by the learned counsels for the appellant.

19.The arguments placed by the counsels for the appellants and the prosecution case as unravelled through its witnesses is scrutinized in depth. To begin, it is appropriate to find whether the prosecution had proved the alleged motive for the occurrence, which is a deadly act of triple murder persons of suppressed community.

Motive:

20.Prosecution rely upon the oral evidence of the witnesses who all belong to the Pallar Community to prove the existing dispute between the schedule caste people and non-schedule caste people of Udaippankulam Village. They are all



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

interested witnesses and no independent witness speak about the existing dispute.

Neither documentary evidence placed before the court to prove the alleged motive. The existing dispute between the two communities are the earlier two incidents viz: busting of crackers by Yadava caste youths near the flag post of Pallar Community on the eve of new year and the assault of Soundararajan, father of PW-1 on 28/05/2014 by two assailants (both by name Mariraj, one son of Perumal Konar and another son of Ponnusamy Konar) on 28/05/2014. In the cross examination it is admitted that in the Sounderarajan assault case the accused were acquitted. IO had not collected the case particulars to prove the murder of three schedule caste persons was the sequel of the earlier incident.

Section 8 (b) of the SC/ST (PoA) Act reads as below:-

“Section 8(b) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, presumes that if a group of persons commits an offence under this Act, and it's proven that the offence was a sequel to an existing dispute, it was committed in furtherance of a common intention or in prosecution of a common object, unless proven otherwise.”

21.However, without sufficient evidence to prove that murder was committed only for the reason that the victims belong to Schedule caste and



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

without proof that there was existing dispute, we find that the trial court had with the aid of Section 8 (b) of the SC/ST (POA) Act, had presumed that the 9 accused had committed the offence in furtherance of the common object.

22.To draw presumption relying Section 8 (b), the prosecution ought to have proved existing dispute. In this case there is no proof for the existing dispute between the deceased persons and the accused persons. Without proof of existing dispute, the trial court ought to have not drawn the presumption clause under Section 8 (b) of SC/ST Act.

Conspiracy:

23.As per the charge, the case of the prosecution is that on 31/05/2014 at about 10.00 pm the members of Yadava Community gathered in front of Pillayar Temple and conspired to murder two or three members of Pallar community so that they will live peacefully. This was seen and heard by PW-6 Marikumar. Thereafter, on 01/06/2014 at about 10.00 am the members of the Yadava community 7 in number conspired to eliminate two or three persons of Pallar Community of their village. That was overheard by PW-7. The further case of the prosecution is that, in pursuance of the said conspiracy A-1 to A-9 killed 3



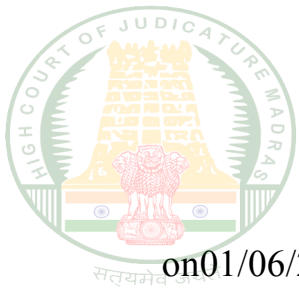
R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

persons of Pallar community at 7.15 pm.

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24.PW-6 had deposed that on 28/05/2014 while he and Madasami were proceeding to Manalur to distribute his sister's wedding invitation, he saw members of Yadava community discussing about killing the members of Pallar community. However he could not identify them since he heard their conversation hiding himself. He informed it Kaliraj (deceased) immediately. This witness is son of Soundrarajan who was assaulted by two persons by identical name viz: Mariraj. In his cross examination, he admits that he didnot inform about this to the police during the enquiry.

25.PW-7, Arjunan is the witness who claims he overheard the conversation of conspiracy on 01/06/2014 at 10.00 am. Based on his statement recorded on 15/06/2014, charge of conspiracy framed against A-1, A-2, A-6,A-7, A-21 to A-23. This witness is not reliable witness since, he had deliberately suppressed his presence at the Hospital and participating in the inquest on the early morning of 02/06/2014. Contrarily had deposed that after over hearing the conversation, he informed it to Kaliraj and left to outstation. He came back to village on hearing the murder. Whereas in his previous statement to the police he had stated that

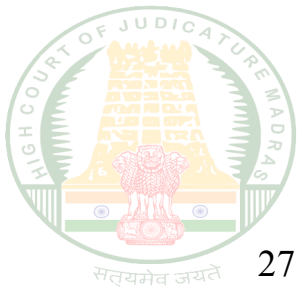


R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024

on 01/06/2014 he left to Kerala to work in Yanamalai Estate and on return to his village on 14/6/2014 he came to know about the murder. On the next day he informed to the police about what he saw and overheard on 01/06/2014 near the well of Arumugavadiayar at about 10.00 am. The prosecution unable to explain the contradiction. The signatures of PW-7 in the inquest reports prepared on 02/06/2014 at Govt. Hospital, Thirunelveli belies the testimony of PW-7.

26.The trial court rightly acquitted A-10 to A-21 for lack of evidence, however had erroneously convicted A1, A-4, A-6, A-9 , A-22 and A-23 which the aid to Section 120B IPC solely on the basis of the evidence of PW-7, whose testimony is highly doubtful since, the place of the conspiracy meeting is on open ground near a well and having access to people of other community. Further, he did not inform this to the police when he was very well present and participated in the inquest held at the Hospital in Thirunelveli on the next day between 3.00 am to 9.30 am. The trial court has convicted A-9 also for conspiracy without framing charge for conspiracy and without evidence. Thus improper appreciation of evidence in this aspect is apparently found.

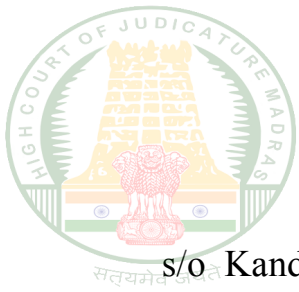
Presence of accused and their overt act:



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

27.PW-1 is the only witness for the prosecution who had deposed about the presence of A-1 and A-9 and their respective overt act. PW-2 could able to say that while he was proceeding along with PW-1 and PW-3 in the two wheeler, he saw a mob of 9 persons armed with weapon. They attacked Kaliraj, Murugan and Venugopal and ran away. PW-2 could not identify the assailants and their overt act. PW-3, in his evidence only say that he along with PW-1 and PW-2 went in the two wheeler following Kaliraj, Murugan and Venugopal. He saw they were dead with injuries. He had not said nothing about the assailants.

28.PW-1 Rajesh is son of Kaliraj. The other two victims Murugan and Venugopal are the cousins of Kaliraj. As per the testimony of PW-1, on 01/06/2014 at about 7.15 pm, Kaliraj, Murugan and Venugopal were proceeding in the two wheeler XL Super to Sankarankoil from their village. PW-1 along with PW-2 and PW-3 were following them in another two wheeler. Near the Siddha Hospital, from the South direction a mob came and attacked Kaliraj, Murugan and Venugopal with aruval and caused their death. He was able to see the assailants and identify them with his vehicle head light. He had recollected the overt act of the each of the accused as mentioned in his complaint Ex P-1. He attribute the injuries sustained by his father Mariraj to the specific overt act of Ponmani (A-1)



R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024

s/o Kandasamy, Kuttiraj (A-2) and Gurusamy (A-3). He attribute the injuries sustained by Venugopal to the specific overt of act of Murugan (A-4) s/o Chllaiah, Ulakkan (A-5) s/o Urulaikonar and Thangaraj (A-6). H attributes the injuries sustained by Murugan to the specific overt act of Kannan , Balamurugan (A-8) and Muthukrishnan (A-9).

29.PW-2, the other eye witnesses who was with PW-1 had deposed that he was with P.W.1 and P.W.3 travelling a two wheeler, he saw a person carrying weapons. When they reached the spot found 3 of their community members injured and dead. This deposition creates doubt about P.W.1 testimony. P.W.3 the other eye witnesses, not even corroborate P.W.2 evidence.

30.The trial court has held that the sole evidence of PW-1 is sufficient to convict A-1 to A-9 for offence under section 302 r/w 149 IPC (3 counts), without altering the charge since they were explained about the common object in the charges framed under section 148 IPC. No doubt, if the evidence of a witness is wholly reliable, conviction can be based on the sole witness without even any corroboration. However such evidence must be unblemished and not controverted by any means.



R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024

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31.Examining the reliability of PW-1 testimony, we find in his complaint Ex P-1 itself he had named the assailants and each of their over act with precision. He claims that he was able to see the incident from 30 feet away with the help of his two wheeler head light. While he was able to identify the assailants, for some he was able to give their names with their parents name. For few he had given only the name. This need a consideration since A-4, A-7 and A-22 are accused having the same name Kannan. In Ex P-1 complaint, PW-1 had informed Kannan s/o Velusamy (A-7) attacked Murugan on the left wrist and right forearm with arruval. Before the court he has deposed that Kannan s/o Chellaiah Konar (A-4) attacked Venugopal with arruval. Not mentioned the father name of Kannan who chased and attacked Murugan.

32.Through DW-1 Dr. Babu Sankar and Ex D-1 to Ex D-3 had proved that A-7 Kannan suffers 100% night blindness for the past 30 years. The occurrence has happened at 7.15 pm. PW-1 in his deposition has said that he saw Kannan chased Murugan and attacked on his forehead with arruval. He has not specified which Kannan among three Kannan attacked Venugopal. Taking into consideration the defence evidence, court cannot with certainty hold A-7 Kannan



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

was present along with the other members of unlawful assembly, shared common object to murder and caused injuries on Venugopal.

33.The confession of A-4 kannan s/o Chellaiah Konar recorded in the presence of PW-10 Ranjith Kumar. The admissible portion of the confession is marked as Ex P-10. The recovery mahazar is marked as Ex P- 11. This witness is not able to identify the person among the accused present in the court, who gave confession in his presence. He has not identified the knife alleged to have been recovered based on the confession given by the said accused. Like wise, the confession of Kannan s/o Vellusami Konar (A-7) recorded in the presence of PW-12 Gopalsamy VAO. He is able to identify only his signatures in the statement and recovery mahazar. He is unable to identify the weapon or the accused who disclosed about the concealment of the weapon in the said place. Hence, he was treated as hostile.

34.With a material contradiction about the identity of the accused A-4 and A-7 in their involvement in the alleged offence, the conviction based on the sole testimony of PW-1 whose evidence does not fall under the category of wholly reliable but only partly reliable and partly un reliable. Hence, it is the duty of the



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

court to remove the chaff from the grain and find the truth.

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Conviction without charge:

35.The trial court obviously convicted the accused persons under Section 302 IPC with the aid of Section 149 IPC, though no charge framed for that offence. In respect of SC/ST Act, without framing charge A22 and A23 were convicted for life. For taking the aid of Section 149 IPC, the trial court conscious of the deviation, has considered the law and facts in this regard. Taken into consideration Section 468 of Cr P C, Section 149 of IPC and the judgment of the Hon'ble Supreme court in State of UP –vs- Subhash @ Pappu Yadav: 2022 LiveLaw (SC) 316.

36.Accused A-1 and A-23 were charged for offence under Section 148 IPC. The reading of the substance of charge we find the ingredient of 149 IPC also vaguely mentioned, ie sharing of the common object to murder Kaliraj, Murugan and Venugopal. The common object among the members of unlawful assembly need not be conceived before forming unlawful assembly. It may get conceived even after forming unlawful assembly. The necessary ingredient is the presence of the accused and sharing of the common object before the commission of the act of

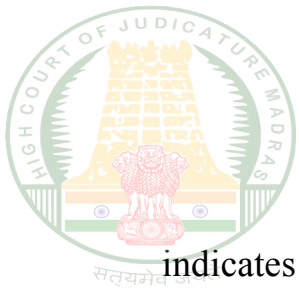


R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

crime. In the present case, considering the evidence, even to take the testimony of PW-1 reliable to some extent, we find the presence of A-1, A-2, A-3, A-5, A-6, A-8 and A-9 at the site of crime alone is proved from the testimony of PW-1. No evidence sufficient to prove that they gather unlawfully with weapon to murder the three persons of schedule caste community pursuant to conspiracy. Though, all the three victims are from schedule caste community, two of them belongs to Coimbatore and not the residence of Udappankulam Village. They are not persons already known to the accused.

37.In the said circumstances, the trial court erred in convicting A-4,A-7 ,A-22 and A-23 without adequate evidence to prove their presence among the unlawful assembly. In the absence of proof of their presence at the scene of crime or earlier meeting of mind to commit crime convicting them with aid of Section 149 IPC is baseless and to be set aside.

38.The trial court after taking the report of the probation officer had imposed death sentence to A-1, A-3, A-6 and A-9. While considering the mitigating circumstances and the aggravating circumstances, he had classified this case as rarest of rare in so far as these four accused. The perusal of the report



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

indicates that apart from the sessions case under consideration, there is no other serious bad antecedent mentioned in the report. The proceedings of the Executive Magistrate under Section 107 and 110 CrPC already disposed and a pending criminal case under Section 324 and 506 IPC against A-6 and A-9 taken as the aggravating circumstances to weigh against the mitigating circumstances. This analysis and conclusion on the face of the record is erroneous and warrants interference. The case in consideration was the only grave offence connected by these four accused. This offence also not proved to be done because of their community.

39.Though charge under section 149 IPC not framed, A-1 to A-9 who were charged for offence under section 302 IPC simplicitor were sentenced under sections 302 r/w 149 IPC (three counts) . A-22 and A-23 who were charged for 120 B IPC along with A-1,A-2,A-6, A-7 and A-21 were convicted for offence under section 120 B r/w 302 r/w 149 IPC.

40.Though charge under section 148 of IPC was framed against A-22 and A-23 along with other accused, none of the prosecution witnesses had said A-22 and A-23 were members of the unlawful assemble. It is not even the case of the

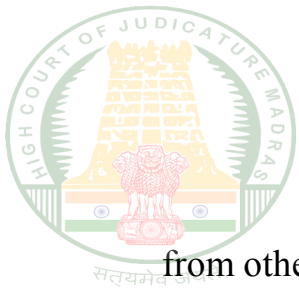


R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

prosecution that these two accused were present along with A-1 to A-9 near Siddha Hospital, Uddampankulam. Except the evidence of PW-7 Arjunan who had deposed that he saw A-22 and A-23 along with Ponnumani (1), Kannan (4), Kaliraj @ Thangaraj (6) , Muthukrishnan (9) and overheard them conspiring to kill members of Pallar Community of Udampankulam, there is no other evidence to implicate these two accused in the case. It is also pertinent to note that to support the case of the prosecution regarding the conspiracy theory, the evidence of PW-7 must be wholly reliable, however in this case, the evidence of PW-7 is otherwise.

41.A-22 and A-23 were charged for the offences of wrongful restrain (Section 341 IPC) and for sharing common intention to commit murder (302 r/w 34 IPC.). However convicted for offences under section 120 B r/w 302 r/w 149 IPC and Section 3(2) (v) of SC/ST (PoA)Act. Therefore, the conviction and sentence of A-22 and A-23 without charge under SC/ST Act which is a stand alone offence and the adequate evidence and proof, is liable to be set aside. Accordingly, the appeal filed by them against the conviction and sentence in SC 152/2016 is allowed. Therefore, this Court hold that

(a)P.W.1 is not a wholly reliable witness. His testimony lack corroboration



R.T(MD)No.1 of 2024 and
CrL.A(MD)Nos.891 and 926 of 2024

from other eye witnesses P.W.2 and P.W.3.

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(b) Testimony of PW.6 and P.W7 as evidence to prove conspiracy apparently introduced subsequently to rope some of the innocent persons as accused. The improbabilities their testimony disproves due charge of conspiracy. Hence, conviction and sentence under Section 120B IPC is unsustainable.

(c) The evidence of the prosecution taken as a whole after removing the chaff from the grain does not establish the fact that the occurrence was equal of existing dispute or due to communal hatred. It only proves that A1, A2, A3, A5, A6, A8 and A9 had formed unlawful assembly with deadly weapons likely to cause death. These 7 accused had caused the injuries on Kaliraj, Murugan and Venugopal as found in the respective post-mortem certificate. In the light of charge framed under Section 148 IPC and Section 302 IPC, however the substance of charge indicates specifically their sharing of common object to murder Kaliraj, Murugan and Venugopal, the error of not framing exclusive charge under Section 302 IPC r/w Sections 149 IPC is curable.

(d) For want of evidence to prove existing dispute on the basis of community the conviction under Section 3(2)(v) of SC/ST Act is to be set aside.

(e) The gravity of the offence is not a case for capital punishment. The parameters laid by the Supreme Court to impose death sentence not satisfied in



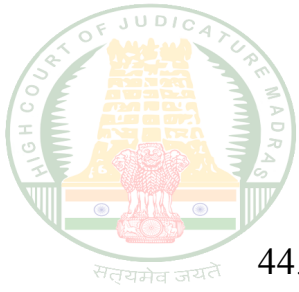
*R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024*

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this case. Hence, the capital sentence imposed on A1, A3, A6 and A9 under Section 302 r/w 149 IPC is modified to life sentence with fine of Rs.1,00,000/-, in default to undergo 3 years of rigorous imprisonment.

42.In the result, R.T.No.1 of 2024 stands disposed by modifying the death into life sentence. The appeals in Crl.A.Nos.891 and 920 of 2024 preferred by the convicted accused are partly allowed in respect of convictions with the aid of Section 120B IPC and the conviction for offence under Section 3(2)(v) of SC/ST(POA) Act.

In the result:

43.Conviction of A1, A2, A3, A5, A6, A8, and A9 under Section 302 r/w 149 IPC confirmed. They are sentenced to undergo life imprisonment and pay a fine of Rs.1,00,000/-, in default, three years of rigorous imprisonment. The sentence of 1 month rigorous imprisonment imposed against A1, A2, A3, A5, A6, A8 and A9 under Section 341 IPC is confirmed. Sentence of 3 years rigorous imprisonment with fine of Rs.5,000/- in default to undergo six months rigorous imprisonment imposed against A1, A2, A3, A5, A6, A8 and A8 is confirmed. Convictions under Section 3(2)(v) of SC/ST(POA) Act is set aside. The sentence with the aide of Section 120B IPC is set aside.



R.T(MD)No.1 of 2024 and
Crl.A(MD)Nos.891 and 926 of 2024

44.In view of the acquittal of Kannan/A4, Kannan/A7, Kannan/A24 and Suresh/A25, they shall be released from the prison forthwith, if their detention is not required in any other case. The fine amount if any, paid by them, shall be refunded to them.

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

18.03.2025

NCC : Yes / No

Index : Yes / No

Ns

To

1.The II Additional District and
Sessions Judge, (PCR)
Tirunelveli District.

2.The Deputy Superintendent of Police,
Sankarankovil Sub Division,
Thiruvengadam Police Station,
Tirunelveli District.



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R.T(MD)No.1 of 2024 and
CrI.A(MD)Nos.891 and 926 of 2024

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

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R.T(MD)No.1 of 2024 and
CrI.A(MD)Nos.891 and 926 of 2024

18.03.2025