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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.09.2026

PRONOUNCED ON : 29.10.2026

CORAM

THE HONOURABLE MR.JUSTICE S.KARTHIKEYAN

CRL A(MD) Nos. 173, 218, 226 of 2019 and 211 of 2022

{CNR: HCMD010345422019}

Crl.A(MD)No.173 of 2019

1.Vijesh
2.Sabin ... Appellants/Accused 4 & 5

Vs.

State rep. by
Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanniyakumari District.
(Crime No.380 of 2009) ... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374 (2) of Cr.P.C to set aside the conviction and sentence passed by the Principal Sessions Judge, Kanniyakumari District at Nagercoil in S.C.No.196 of 2016, dated 02.04.2019 and acquit the appellants/Accused Nos.4 & 5 by allowing the appeal.

For Appellants : Mr.S.Palanivelayutham for A1
: Mr.S.Jeevagan for A2

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

Crl.A(MD)No.226 of 2019

1.R.Vivin
2.R.Vigin @ Vigil ... Appellants/Accused 2 & 3

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Vs.

State rep. by
Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanniyakumari District.
(Crime No.380 of 2009) ... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374 (2) of Cr.P.C to allow the appeal and set aside the judgment passed by the learned Principal Sessions Judge, Kanniyakumari District at Nagercoil in S.C.No.196 of 2016, dated 02.04.2019.

For Appellants : Mr.M.Subash Babu
Senior Counsel
for Mr.S.Ravi

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

Crl.A(MD)No.218 of 2019

Sarath ... Appellant/1st Accused

Vs.

State rep. by
Inspector of Police,
Vadasery Police Station,
Nagercoil, Kanniyakumari District.
(Crime No.380 of 2009) ... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374 (2) of Cr.P.C to set aside the conviction and sentence passed by the learned Principal Sessions Judge, Kanniyakumari District at Nagercoil in S.C.No.196 of 2016, dated 02.04.2019 and acquit the appellant/Accused No.1 by allowing the appeal.

For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.L.Shaji Chellan

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For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

Crl.A(MD)No.211 of 2022

P.R.Deepak ...Petitioner/Appellant/Complainant

Vs.

1.The State Represented by its,
Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanniyakumari District.
(Crime No.380 of 2009) ... Respondent/Complainant

2.Mr.Ottabi @ Radhakrishnan
3.Mr.Aneesh ... Respondents/Accused Nos.6 & 7

RAYER : Criminal Appeal filed under Section 378(4) and 482 of Cr.P.C to call for the records pertaining to the judgment in S.C.No.196 of 2016, dated 02.04.2019, on the file of the Principal District Court, Kanyakumari in Crime No.380 of 2009, on the file of the Respondent No.1 and set aside the same.

For Appellant : Mr.T.Manikandan
for J.Pandidurai

For R1 : Mr.A.Robinson
Government Advocate (Crl. Side)

For R2 & R3 : No appearance

COMMON JUDGMENT

These appeals in Crl.A.(MD) Nos.173, 218, and 226 of 2019 are directed against the judgment of conviction and sentence imposed on Accused Nos.1 to 5

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by the learned Principal Sessions Judge, Kanniyakumari District at Nagercoil, in S.C. No.196 of 2016, dated 02.04.2019. The appeal in Crl.A.(MD) No.211 of 2022 is directed against the order of acquittal passed by the learned Principal Sessions Judge, Kanniyakumari District at Nagercoil, in S.C. No.196 of 2016, dated 02.04.2019, insofar as Accused Nos.6 and 7 are concerned.

2. Since these appeals arose from the same judgment, they are tagged together, heard together, and hence, disposed of by way of this common judgment.

3. For the sake of convenience, the parties herein are referred to as per their respective rankings before the Trial Court.

4. The appeal in Crl.A.(MD) No.173 of 2019 was preferred by Accused Nos.4 and 5. Crl.A.(MD) No.218 of 2019 was preferred by the first Accused. Crl.A.(MD) No.226 of 2019 was preferred by Accused Nos.2 and 3 before the trial Court. Crl.A.(MD) No.211 of 2022 was preferred by the *de facto* complainant, one of the victims, and P.W.1-Deepak.

5. On careful perusal of the records, it is found that on 01.06.2009, at around 4.45 a.m., on receiving information from Thiraviyam Hospital, PW10 went to the said hospital at 6.45 a.m. and obtained Ex.P1 complaint statement from P.W.1 Deepak, who was taking treatment at the said hospital. The said complaint

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was attested by P.W.3 Aswin. P.W.10 registered Ex.P9 – First Information Report (F.I.R) in Cr.No.380 of 2009 for the offences punishable under Sections 147, 148, 450, 294(b), 324, 307 and 427 of the IPC. He forwarded the complaint statement and F.I.R. to the Jurisdictional Magistrate and placed the Case Diary before the Inspector of Police for investigation.

6. P.W.11-Jamal, the Inspector of Police, Vadaseri Police Station, took up the investigation of the above case. He visited the place of occurrence at around 8.45 a.m. and prepared Ex.P.10 Observation Mahazar and Ex.P.11 Rough Sketch in the presence of witnesses P.W.6-Ashokan and one Saravanan. He had taken photographs of the place of occurrence with the help of the police photographer. At around 09.15 hours, he recovered the broken glass pieces of the television, broken glass pieces of the red-colour light of the Yamaha motorcycle, broken pieces of the headlight of the said motorcycle, plastic pieces, and broken window glass under the cover of Ex.P.12 Athatchi in the presence of the same witnesses. The said recovered articles, M.O.8 to M.O.12, were forwarded to the Court under Form-95. He examined the witnesses Deepak, Aneesh, Aswin, Saravanan, and Ashokan and recorded their statements. On the same day, at around 13.15 hours, he arrested the Accused Sarath, Vijesh, Sabin, and Nabin at Pallivilai Railway Station in the presence of the witnesses P.W.4 Dibu and Anu. He interrogated the

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Accused. The Accused Sarath voluntarily gave a confession, which was recorded in the presence of the same witnesses. In the confession statement, he made a disclosure statement, and he was taken to the place which he had indicated. At around 14.45 hours, M.Os.1 to 4 four sickles, M.O.5 and M.O.6 two iron rods, and M.O.7 plastic jute bag were recovered under the cover of Athatchi Ex.P.12. He examined the witnesses Dibu and Anu and recorded their statements. He forwarded the Accused to judicial custody. Thereafter, he examined the witnesses Arasu, Ashok, Head Constable Kolappan, and Abathukathapillai and recorded their statements. Since he was transferred, he handed over the case diary to his successor, viz., Selvaraj, Inspector of Police.

7. The said Selvaraj conducted further investigation in the above case. He examined the doctors who had given treatment to the injured and obtained the wound certificates. He altered the case Sections from Sections 147, 148, 450, 294(b), 324, and 307 of the IPC to Sections 147, 148, 450, 294(b), 324, 326, 307, and 323 of the IPC and Section 3(1) of the TNPPDL Act read with Section 149 of the IPC and forwarded Ex.P.13 Alteration report to the Court. On completion of the investigation, on 29.02.2012, he laid final report before the learned Judicial Magistrate No. II, Nagercoil.

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8. The learned Judicial Magistrate No. II, Nagercoil, has taken cognizance of the said final report and issued summons to the Accused. Upon their appearance, copies of the documents relied upon by the prosecution were furnished to them under Section 207 of the Code of Criminal Procedure. Since the offences alleged are exclusively triable by the Court of Sessions, he committed the said case under Section 209 of the Cr.P.C. to the Principal District Court, Kanyakumari District, at Nagercoil.

9. The Principal District Court, Kanyakumari District, at Nagercoil, has taken cognizance of the said case in S.C. No. 196 of 2016. Pending trial, Accused Nos. 2 and 7 did not appear, and therefore, non-bailable warrants were issued against them, which were pending execution. Consequently, the case against them was split up and numbered as S.C. No. 113 of 2018. The remaining Accused were arrayed as A1 to A7. Upon the appearance of Accused Nos. 1 to 7, the trial Court framed the following charges:-

Accused Rank	**Charges**
Accused – 1	Sections 148, 450, 307 IPC and 3(1) of TNPPDL Act
Accused – 2	Sections 148, 450, 307 IPC and 3(1) of TNPPDL Act r/w. 149 of IPC
Accused – 3	Sections 148, 450, 307 IPC and 3(1) of TNPPDL Act r/w. 149 of IPC
Accused – 4	Sections 148, 450, 307 IPC and 3(1) of TNPPDL Act

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Accused – 5	Sections 148, 450, 307 IPC and 3(1) of TNPPDL Act
Accused – 6	Sections 147, 450, 307 r/w 149, 323 IPC and 3(1) of TNPPDL Act r/w. 149 IPC
Accused – 7	Sections 147, 450, 307 r/w 149, 323 IPC and 3(1) of TNPPDL Act r/w. 149 IPC

The charges were read over and explained to the Accused, which they denied and therefore, they were tried by the trial Court.

10. On the side of the prosecution, P.W.1 to P.W.11 were examined, and Ex.P.1 to Ex.P.13 were marked. M.O.1 to M.O.13 were also marked. Upon closure of the prosecution evidence, the incriminating circumstances appearing in the evidence were put to the Accused under Section 313(1)(b) of the Cr.P.C. The Accused denied the same as false and stated that they had witnesses to examine on their side. On the side of the defence, D.W.1 and D.W.2 were examined. However, no documents were marked. Therefore, the defence evidence was closed.

11. After hearing both sides, the trial Court found Accused Nos.1 to 5 guilty of the following offences and sentenced them as tabulated below:-

Accused Nos.	**Penal Provision**	**Imprisonment**	**Fine amount**
A1 to A5	148 of IPC	One year Simple Imprisonment	Rs.1,000/- in default of which to undergo two months simple imprisonment

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A1 to A5	450 of IPC	Two years simple imprisonment	Rs.5,000/- in default of which to undergo three months simple imprisonment
A1,A4 & A5	427 of IPC	Six months simple imprisonment	Rs.1,000/- in default of which to undergo one month simple imprisonment
A2 & A3	427 r/w 149 of IPC	Six months simple imprisonment	Rs.1,000/- in default of which to undergo one month simple imprisonment
A1 & A3	324 of IPC	One year simple imprisonment	Rs.2,000/- in default of which to undergo two months simple imprisonment
A2 & A4	324 r/w 149 of IPC	One year simple imprisonment	Rs.2,000/- in default of which to undergo two months simple imprisonment
A2	326 of IPC	Three years Simple Imprisonment	Rs.5,000/- in default of which to undergo six months simple imprisonment
A1,A3 & A5	326 r/w149 of IPC	Three years Simple Imprisonment	Rs.5,000/- in default of which to undergo six months simple imprisonment

The trial Court has found the Accused Nos.6 & 7 are not guilty of the offence charged and therefore, they are acquitted from all the charges. Aggrieved by the said conviction and sentence, the Accused Nos.1 to 5 have come up with the present appeals as stated supra. Aggrieved by the order of acquittal, P.W.1/Deepak/victim has come up with the appeal in Crl.A(MD)No.211 of of 2022 as stated supra.

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12. Heard the respective learned counsel for the appellants, the learned Government Advocate (Criminal Side) appearing for the State and the counsel for the respondent/A6& A7. The trial Court records were called for and perused.

13. The points for determination:

(i) Whether the judgment of conviction recorded against Accused Nos. 1 to 5 is sustainable or not?

(ii) Whether the order of acquittal recorded in favour of Accused Nos. 6 and 7 is sustainable or not?

Answer:

14. On careful perusal of the records, it is found that it is the case of the prosecution that the de facto complainant, Deepak, was studying in the third year of the Mechanical Engineering at Sun Engineering College, Erachakulam. He was staying in a rented house belonging to one Arasu, along with his friends Anish and Aswin, situate at Putheri, Kurunchi Nagar. One Ashok was studying in the third year of the Computer Science course in the same college. On 30.05.2009, in the evening, there was a quarrel between the said Ashok and the Accused, namely, Sarath, Santheep, Vivin, Vijesh, Sabin and Naveen. On seeing this, P.Ws.1 to 3 intervened and separated them. The Accused herein developed an impression that

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the said three witnesses are supporting Ashok and, therefore, developed animosity against them. They decided to do away with them and brought Accused Nos.6 and 7 from Kerala and conspired to cause their death with deadly weapons.

15. It is the further case of the prosecution that on 01.06.2009, at about 01.45 a.m., when P.Ws.1 to 3 were studying under the light provided by an electric bulb, Accused Nos.1 to 3 and Santheep came armed with sickles, while Accused Nos.4 and 5 and Naveen came armed with iron pipes. They formed an unlawful assembly with the common object of causing the death of the said witnesses. They knocked on the door of the house where the witnesses were residing. The *de facto* complainant, Deepak, opened the door, whereupon the Accused trespassed into the house and abused the witnesses, saying that "vd;dlh ePq;f mNrhf;Ff;F rg;Nghl;lh gz;wPq;f Gz;lh kfd;fsh Njtbah gay;fsh".

16. It is the further case of the prosecution that the first Accused attacked P.W.1 with a sickle on his head, which P.W.1 attempted to prevent by his right hand, resulting in an injury to his right elbow. The fourth Accused attacked P.W.1 with an iron pipe on his left leg, thereby causing grievous hurt. The Accused Santheep attacked P.W.1 with a sickle on his left palm, right knee, and left thigh, causing simple injuries. The second Accused attacked P.W.2 with a sickle on his

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right hand, causing a simple injury. He also caused a cut injury to his left elbow, thereby causing grievous injury. The fifth Accused attacked P.W.2 with an iron pipe on his left forehead and left hip, causing simple hurt. The sixth Accused attacked P.W.2 with his hands on his right elbow and stomped on his left knee, causing simple hurt. The third Accused attacked P.W.3 with a sickle, causing a simple injury to his right elbow. The Accused Naveen attacked P.W.3 with an iron pipe, causing simple hurt. The seventh Accused stomped on P.W.3's right palm, causing a simple injury, and thereby they attempted to cause the death of P.Ws.1 to 3.

17. It is the further case of the prosecution that the fourth Accused damaged the television with an iron pipe. The first Accused damaged the Yamaha motorcycle bearing Registration No. TN-22-F-5401 with a sickle, which belonged to P.W.3. The fifth Accused damaged the window glass on the western side of the house with an iron pipe, thereby causing damage to the tune of Rs.2,200/-. Therefore, according to the prosecution, Accused Nos.1 and 5 are punishable under Sections 147, 148, 294(b), 326, and 307 IPC (3 counts), and Section 3(1) of the TNPPDL Act read with Section 149 IPC. Accused No.2 is punishable under Sections 147, 148, 294(b), 324, 326, and 307 IPC (3 counts), and Section 3(1) of the TNPPDL Act read with Section 149 IPC. Accused Nos.3 and 4 are punishable

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under Sections 147, 148, 294(b), 326, and 307 IPC (3 counts), and Section 3(1) of the TNPPDL Act read with Section 149 IPC. Accused Nos.6 and 7 are punishable under Sections 147, 148, 294(b), 324, 326, and 307 IPC (3 counts), and Section 3(1) of the TNPPDL Act read with Section 149 IPC. Accused Nos.8 and 9 are punishable under Sections 147, 148, 294(b), 323, 326, and 307 IPC (3 counts), and Section 3(1) of the TNPPDL Act read with Section 149 IPC.

18. To substantiate the said case, the prosecution has projected P.W.1 to 11 and exhibited Ex.P1 to P13 and marked M.O.1 to 13.

19. One of the injured, who set the criminal law in motion, was examined as P.W.1. He, In his chief examination, deposed that he was studying at Sun Engineering College, Nagercoil, and that the other Accused were also studying with him. On 30.05.2009, he, P.W.2 Aneesh, P.W.3 Aswin, and one Ashok had gone to drink tea, and at that time, the Accused picked a quarrel with Ashok. The said Ashok was also studying with them. He and his other friends intervened and removed them. At that time, at around 6.30 p.m., the Accused abused them with filthy language and told them that they would see them next time.

20. PW1, further deposed that on the next day, they had an examination. On 01.06.2009, at around 01.45 a.m., he, P.W.2 and P.W.3 were studying for the

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examination at a house situated at Kurunchinagar. They heard the noise of somebody tapping on the door and P.W.2 went and opened the door. All the Accused pushed the door and came inside. The Accused Sarath attacked him on his head with a sickle, which he prevented with his right hand. Therefore, the said blow fell on his hand below the wrist. A4-Vijesh attacked him with an iron pipe, causing an injury to his left leg near the ankle, where he suffered a fracture.

21. PW1, further deposed that the Accused Santheep (split-up Accused) attacked P.W.1 with a sickle on his head. P.W.1 attempted to prevent the attack with his left hand and, as a result, sustained an injury to his left palm. Further, the Accused Santheep attacked him with the sickle on his right hand, knee, and thigh, causing him to suffer serious injuries. The fourth Accused also came armed with a sickle. The third Accused came with iron pipe. The Accused Nos.2 attempted to cut P.W.2 on his head with sickle and he has prevented the same, in which he suffered injury on his both hands. Accused No.5 attacked P.W.2 with iron pipe on his forehead twice in which, he suffered blood injury. All the Accused abused them with filthy language and attacked them. Further, they attacked them by saying 'get lost with this'. Accused No. 5 attacked P.W.2 on his hip with an iron pipe, causing a bleeding injury. A6 stomped on P.W.2’s hand and leg. A3 attacked P.W.3 with a sickle, which P.W.3 attempted to ward off, thereby sustaining an

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injury to his right hand. Accused Navin (split-up Accused) attacked P.W.3 on his back with an iron pipe, causing an injury. A7 Anish stomped on P.W.3's hand and leg. A4 Vijesh damaged the television kept in the house. The motorcycle belonging to P.W.3 was parked outside the house which was damaged by A1. A5 damaged the window glass of the house. Since they shouted, the Accused ran away through the back door.

22. PW1 further deposed that P.W.2 called one Pradeep, who brought an ambulance, and they went to Thiraviyam Hospital for treatment. Thereafter, P.W.2 was referred to the Government Medical College Hospital, Thiruvananthapuram, where a plate was fixed in his left leg and he underwent surgery. While P.W.2 was at Thiraviyam Hospital at about 6:30 a.m., the police has recorded his Ex.P1 complaint statement. Further, he identified the sickles used by the Accused and the said sickles were marked as M.Os.1 to 4, Iron pipe were marked as M.Os.5 to 7. P.W.2 Anish and P.W.3 Aswin have also deposed in line with P.W.1.

23. P.W.4 Dibu is a witness to the confession. He, in his evidence, deposed that on 01.06.2009 at about 01.45 a.m., somebody had attacked P.Ws.1 to 3, which he heard, and he went to Thiraviyam Hospital. P.W.1 informed him that he was attacked by Sarath, Nivin, Santheep, Vibin, Vijesh, Sabin and two more persons. The police, who were standing there, asked him to identify those Accused. He

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identified A1, A2, A4 and A5 at Pallivilai Railway Station. The police interrogated A5 Sabin. He gave a confession statement, which the police recorded in his presence. The Accused Vibin made a disclosure that if he is taken to the place which he identify, he would produce the weapon. Thereafter, the police took him to Erachakulam. From the house of Vijesh A4, he produced the weapons, namely, sickles and iron pipes. The police prepared Ex.P3 Athachi, in which he signed. He identified the sickles and iron pipes in Court.

24. P.W.5 Arasu is the owner of the occurrence house where the injured witnesses stayed. He, in his evidence, deposed that he had rented out his house to some persons who were studying at Sun Engineering College. There was a quarrel between them and some other students. Subsequently, they vacated the house. The window glass of his house was broken.

25. P.W.6 Ashokan did not support the case of the prosecution and was treated as hostile by the prosecution. Though the prosecution was permitted to cross-examine him, nothing favourable to the prosecution could be elicited from his evidence.

26. P.W.7 Dr. Ramesh, in his evidence, deposed that on 01.06.2009, while he was working at Thiraviyam Hospital, P.W.2 Anish was admitted to the hospital.

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At the time of admission, P.W.2 informed him that he had been attacked by known persons at Putheri. Though P.W.2 was admitted by Dr.Subash, he was also present with him. He provided treatment to P.W.2, who had sustained the following injuries:

> "1. An incised wound measuring about 6x4xmuscle deep seen over thenar eminence (palmar region) of right hand exposing the cut thenar muscles.
>
> 2. Contusion over right forearm.
>
> 3. An incised wound measuring about 9x6xmuscle deep seen over front of upper 1/3rd of left forearm exposing the cut flexor muscles with a contusion over it.
>
> 4. An incised wound measuring about 2x2x1cm seen over left iliac region.
>
> 5. An incised wound measuring about 5x1x1cm seen over left side of forehead.
>
> 6. Another incised wound measuring about 3x1x1cm seen over left side of forehead.
>
> 7. Contusion over left leg."

Among the seven injuries, the third injury was grievous in nature. In this connection, P.W.4 issued the wound certificate. Dr. Subash had given the said opinion, as he was abroad, P.W.7 is deposing before the Court. The injuries sustained by P.W.2 could have been caused by the four sickles produced before the Court. The contusion could have been caused by the iron pipes produced before the Court.

27. P.W.7 further deposed that another injured person, Deepak, was also

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admitted on the same day, and he sustained the following injuries:

> "1. A transverse incised wound measuring about 7x4xbone deep seen over lateral aspect of left ankle exposing the underlying fractured bone.
>
> 2. A transverse incised wound measuring about 7x4xtendon deep seen over front of distal 1/3rd of right leg exposing the cut extensor tendons with a contusion.
>
> 3. A transverse incised wound measuring about 5x2xmuscle deep seen over front of middle 1/3rd of right thigh.
>
> 4. A transverse incised wound seen over the entire circumference of left palm measuring about 10x2xmuscle deep.
>
> 5. An incised wound measuring about 10x7xmuscle deep seen over flexor aspect of upper 1/3rd of right forearm exposing the cut flexor muscles with a contusion over it."

Among the said five injuries, the injuries mentioned at Sl. Nos. 1 and 2 are grievous in nature, while the other injuries are simple in nature. In this connection, Dr. Subash has issued P.W.5 Wound Certificate. The said injuries could have been caused by the sickle produced before the Court.

28. P.W.7 further deposed that another injured person, P.W.3 Aswin, was also admitted for treatment on the same day. He had sustained the following injuries:

> "1. An incised wound measuring about 8x6xmuscle deep seen over front of middle 1/3rd of right forearm exposing the cut flexor muscles with contusion over it.

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2. An incised wound measuring about 4x3x2cm seen over midback region.

3. Contusion over right forefoot."

Dr. Subash has certified that all three injuries are simple injuries vide Ex.P6 wound certificate. According to PW7, the said Injuries 1 and 2 could have been caused by a sickle. Injury No. 3 could have been caused by stomping.

29. P.W.8, Dr. Vinoth Kumar, in his evidence, deposed that he had examined one Deepak, who was admitted to the Government Medical College Hospital, Trivandrum, on 01.06.2009. The injured was treated as an inpatient and was discharged on 16.06.2009. The discharge summary and treatment particulars were sent to Thiravium Hospital, and the discharge summary was marked as Ex.P7. The discharge summary of Anish was marked as Ex.P8.

30. P.W.9 Police Photographer Abathukathapillai, deposed that on 01.06.2009, at the request of the Inspector of Police, Vadasery Police Station, he went to a house belonging to one Arasu at Putheri, Kurunchinagar, and took the photographs (The photographs were marked as exhibits, subject to objections raised by the defence as the negatives of the photographs were not produced).

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31. P.W.10 Kolappan, is the Sub-Inspector of Police who recorded the statement of P.W.1 and registered Ex.P9 FIR.

32. P.W.11 Mr. Jamal, is the Investigating Officer, who deposed about the investigation conducted by him, the preparation of the observation mahazar and rough sketch at the place of occurrence, and the taking of photographs of the scene of crime through the police photographer. He further deposed about the recovery of the damaged articles under the cover of Athachi, the arrest of the Accused, the recording of the confession statement, and the recovery of the weapons based on the disclosure made by the Accused. He also deposed about the filing of the final report before the jurisdictional Judicial Magistrate.

33. On the side of the defence, one Mohammed Lafi was examined as D.W.1. He, in his evidence, deposed that A5 was studying with him in the college. A5 had stayed in a house situate at Jeeva Nagar, Erachakulam. He was a day scholar. He used to go to the house of A5 for group study. On 31.05.2009, examinations were going on. He used to go to the house of A5 at around 7.00 p.m. On the next day morning, he would go to his house and, after taking bath, would return to Jeeva Nagar house between 8.30 a.m. and 9.00 a.m. and would take A5 to college. On 01.06.2009, he went to the house of A5 at around 8.30 a.m. A5 was also getting ready to go with him. At that time, two police officers came in

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uniform and enquired about A5. They further enquired about A4 also. They asked both of them to board the Tata Sumo. He questioned them as to why they were being taken into custody. The police officers enquired about his name and address and asked him to leave. After reaching the college, he informed his friends about the same. Further, he also informed the father of A5 about the same. On the night of 31.05.2009, A5 was studying with him at the Jeeva Nagar house.

34. One Stalin was examined as D.W.2. He, in his evidence, deposed that A1 was staying at his house and that both of them were studying at Sun College. On 31.05.2009, A1 was at his house. On 01.06.2009, when he and A1 were proceeding to the college near Erachakulam Junction, Dibu and seven others attacked Sarath, in which Sarath sustained an injury below his eye. He asked A1 to take him to the hospital, but A1 refused to come and informed him that they would go after the examination. The said occurrence took place at around 9.30 a.m. Within five minutes, they reached the college. The police enquired about A1 and took him in the said car. A4 and A5 were already there. After the examination, he called A1's father and informed him about A1's arrest.

35. On close scrutiny of the evidences projected on the side of the prosecution, it is found that it is the case of the prosecution that on 30.05.2009, in the evening, there was a quarrel between one Ashok and Accused Nos. 1 to 5 and

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one Santheep. In the said quarrel, the injured P.Ws. 1 to 3 intervened and prevented the Accused and saved Ashok. Only due to the said motive, the occurrence was said to have happened. Therefore, as contended by the learned Senior Counsels appearing for the appellants, since the witnesses are inimical towards the Accused herein, this Court is of the considered view that their evidence needs strict scrutiny.

36. Further, it is also a settled position of law that the evidence of an injured witness ought to be placed on a higher pedestal, as they have no reasons to falsely implicate some one other than the one who caused the injury. However, the Hon'ble Apex Court, in ***Balbir and another Vs. Vazir and others*** reported in ***2014 (12) SCC 670*** observed as follows:

> *"14.... just as there is a possibility of murder having been committed because of motive due to enemity where is also a possibility of false implication of innocent people to settle past scores. that is why it is said that motive is a double edged weapon we shall keep this in mind and approach the case."*

Therefore, due to the alleged previous enmity and motive, this court is of the considered view that the evidence of the prosecution witnesses, has to be scrutinized with great care and caution.

37. As per the case of the prosecution, the occurrence took place due to the alleged motive. The occurrence took place on 30.05.2009. The learned counsel

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for the appellants contended that the motive alleged by the prosecution is flimsy in nature and does not warrant the murderous attack alleged to have taken place at the house of the injured witness. Further, the learned counsel for the appellants contended that, as per the case of the prosecution, on 30.05.2009, in the evening, at Putheri, the Accused herein, along with the absconding Accused, picked up a quarrel with one Ashok. However, the said Ashok was not examined before the Court to prove the alleged motive.

38. On careful perusal of the records, it is found that the said Ashok was not examined before the trial Court, though he was cited as a witness by the prosecution. However, the injured witnesses have clearly deposed about the said incident. It was not disputed by the defence, therefore, the non examination of the said Ashok will not dilute the case of the prosecution. Apart from that it is a settled position of law that motive assumes significance only in cases based on circumstantial evidence. In cases borne by eyewitness accounts, the motive pales into insignificance. Therefore, non-examination of the said Ashok is not fatal to the case of the prosecution.

39. On careful scrutiny of the evidence of the prosecution witnesses, it is found that the injured witnesses were examined as P.Ws.1 to 3. According to P.Ws.1 to 3, all of them resided in a house belonging to P.W.5, situated at

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Kurunchi Nagar. The learned counsel for the appellants contended that, although the landlord was examined as P.W.5, he did not depose in his evidence that he had rented out his house to the injured witnesses. Further, he did not produce any rental agreement to prove that he had rented out the said house to the injured witnesses.

40. On careful perusal of the evidence of P.W.5, it is found that P.W.5, the landlord, has deposed that he had rented out his house to some students studying at Sun Engineering College. He has not specifically stated that he had rented out the house to P.Ws.1 to 3. However, on careful perusal of the cross-examination of the appellants herein, it is found that they have not contended that the injured witnesses were not residing in the house of P.W.5. Their only defence is that P.W.5, being a hearsay witness, was not in a position to state whether the windowpanes were damaged by the inmates themselves. As it was not disputed before the Trial Court that the injured were not residing in the house owned by P.W.5, the contention of the learned senior counsel for the Appellants that the prosecution has failed to prove through PW5 that the injured were residing in the house of P.W.5 cannot be sustained.

41. Apart from the above, from the evidence of the Investigating Officer, it is found that he visited the place of occurrence and prepared Ex.P10 Observation

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Mahazar and Ex.P11 Rough Sketch in the presence of P.W.6 Ashokan. The learned counsel for the appellants contended that the evidence of the Investigating Officer is not corroborated by the independent witness P.W.6 Ashokan, and that the other witness to the Observation Mahazar was not examined by the prosecution. Therefore, according to the learned counsel for the appellants, the prosecution has failed to prove the place of occurrence.

42. It is true that P.W.6 has not supported the case of the prosecution and has completely turned hostile to the prosecution. However, on a careful perusal of the evidence of the Investigating Officer, it is found that, on 01.06.2009 at around 8.45 a.m., he prepared Ex.P10 Observation Mahazar and Ex.P11 Rough Sketch. The defence has disputed only the house of the Accused and not the house in which the injured persons were staying. Having failed to dispute the place of occurrence before the trial Court, the appellants cannot contend the same for the first time before this Court. Ex.P10 clearly discloses that the place of occurrence situate 3 km north of Vadasery Police Station, at Mela Putheri–Valluvar Nagar North Road. Apart from that, from the evidence of the Investigating Officer, it is found that M.O.8(a) to M.O.12 were recovered under the cover of Ex.P12 Athatchi, in the presence of P.W.6 Ashokan and Saravanan, who was not examined.

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43. On careful perusal of P.W.6, it is found that the said Ashokan has completely turned hostile to the case of the prosecution and did not support the case of the prosecution. Even though the evidence of the Investigating Officer is not supported by an independent witness, it is found that the defence has not disputed the recovery of M.O.8(a) to 12 from the house of P.W.5 Arasu. Therefore, the contention of the learned counsel for the appellants that the prosecution has failed to prove the place of occurrence is untenable.

44. The next contention of the learned senior counsel for the appellants is that though seven persons are said to have attacked the injured with sickles and an iron pipe, neither blood-stained soil nor the ordinary soil was recovered from the place of occurrence to prove the place of occurrence. The learned counsel for the appellants further contended that the Investigating Officer failed to collect even the blood from the place of occurrence by using a cotton swab. Therefore, according to the learned counsel for the appellants, the prosecution has failed to prove the place of occurrence. However, from the evidence of the Investigating Officer, it is found that he had caused photographs of the place of occurrence to be taken through P.W.9, the police photographer. He produced M.O.8 photographs to that effect through P.W.9.

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45. On careful perusal of the cross-examination of P.W.9, it is found that the defence has not disputed that the said photographs were not taken at the house of P.W.5. Their only contention is that the witness was not aware of the state of affairs of the said house before taking the photographs. M.O.8 photographs were objected to by the defence on the ground that the negatives were not produced. On a careful perusal of the judgment of the trial Court, it is found that the trial Court has not considered the objections raised by the appellants. However, it is found that the trial Court has not relied upon M.O.8 photographs to arrive at its findings against the appellants. Therefore, even though the admissibility of M.O.8 was not considered, since the trial Court has excluded the said evidence from its consideration, this Court is of the considered view that non discussion on the admissibility of M.O.8 would not vitiate the findings of the trial Court.

46. It is the next contention of the learned counsel for the appellants that the occurrence is said to have taken place at 1.45 a.m. and, therefore, according to the learned counsel for the appellants, there is absolutely no evidence on record to show that there was sufficient light at the place of occurrence to identify the assailants. However, on a careful perusal of the evidence of P.Ws.1 to 3, who are the injured witnesses, it is clear that they have deposed that, on 01.06.2009, at about 1.45 a.m., P.Ws.1 to 3 were studying for their examination. Therefore, it is

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clear that there was light at the place of occurrence. Though the learned counsel for the appellants contended that the prosecution had failed to establish the presence of sufficient light at the time of the occurrence, on a careful perusal of the cross-examination of the injured witness, P.W.2, it is found that the defence has not disputed the presence of light in the place of occurrence. Therefore, the said contention of the learned counsel for the appellants is nothing but an afterthought raised for the purpose of the present appeal. Accordingly, the said contention is also rejected.

47. On careful scrutiny of the evidence of the injured witnesses, P.Ws.1 to 3, it is found that on 01.06.2009, at around 1:45 a.m., they were studying at the house of P.W.5. At that time, they heard the sound of someone knocking on the door. P.W.1 went and opened the door. The appellants entered the house by pushing him aside. A1 attempts to cut P.W.1 on his head with sickle, which he tried to prevent with his right hand, thereby sustained a cut injury on his right hand below the wrist. A4 attacked P.W.1 with an iron pipe on his left leg. By which he suffered a bleeding injury and due to the said blow sustained a fracture. The split-up Accused, Santheep, attacked P.W.1 with a sickle on his head and right hand, causing an injury to his left palm. Further, the split-up Accused, Santheep, attacked his right knee and thigh and thereby caused injuries. According to P.W.1,

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A2 attacked P.W.2 with a sickle on his head. P.W.2 attempted to block the attack with both hands and, as a result, sustained injuries to both hands. A5 attacked P.W.2 with iron pipe, in which P.W.2 suffered injury on his forehead. A5 attacked P.W.2 on his hip with iron pipe and thereby suffered blood injury. A6 Radhakrishnan stomped P.W.2 on his head and leg. A3 attacked P.W.3 with sickle which he blocked and therefore, he suffered injury on his right hand. A2 attacked P.W.3 with iron pipe on his back and thereby caused injury. A7 stomped with P.W.3 on his hand and leg. P.W.2 and P.W.3 have also corroborated the evidence of P.W.1.

48. The learned senior counsel for the appellants contended that it is the case of the prosecution that there were seven Accused who had entered the house where the victims were staying and attacked them with sickles and iron pipes. Therefore, they might not have been in a position to identify who attacked them. According to the learned counsel for the appellants, the evidence of P.Ws.1 to 3 is not natural but highly artificial. According to the learned counsel for the appellants, the parrot-like evidence adduced by the witnesses creates a doubt in the case of the prosecution.

49. However, it is a settled position of law that the evidence of injured witnesses needs to be given due weight, as they have no reason to falsely

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implicate someone who is not responsible for the injuries. Therefore, the evidence of the injured witnesses cannot be disbelieved merely on the ground that they have spoken clearly about the manner in which the appellants attacked them.

50. The learned senior counsels for the appellants contended that the evidence of the injured witness is not corroborated by the medical evidence. According to the learned counsel for the appellants, the medical evidence can be used for the purpose of testing the veracity of the injured witness. In this case, upon a careful perusal of the evidence of P.W.7 Dr. Ramesh, it is found that the injured witness had sustained corresponding injuries. Therefore, the medical evidence also supports the case of the prosecution witnesses PW1 to PW3.

51. Though the learned counsel for the appellants contended that the doctor who admitted the injured, namely, Dr. Subash, was not examined before the Trial Court, on a careful perusal of the evidence of P.W.7, it is found that Dr. Subash was on abroad at the time of examination and, therefore, his presence could not be secured without considerable delay and expense. From the evidence of P.W.7, it is also found that he accompanied the doctor who admitted the injured in the hospital. On careful perusal of the cross-examination of the Accused, it is found that they have not disputed the presence of P.W.7 at the time of admission of the injured witnesses. P.W.7 Ramesh is also an ocular witness who has spoken about

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the injuries sustained by the injured, based on Exs.P4, P5 and P6. Though the learned counsel for the appellants contended that no Accident Register was produced before the Courts below and that only the wound certificates were produced before the Trial Court, on a careful perusal of Exs.P4 to P6, it is found that they were issued by Thiraviyam Orthopaedic Hospital.

52. In this connection, the learned Government Advocate (Crl. Side), appearing for the respondent, has submitted that private hospitals are not in the practice of recording an Accident Register in such cases. The practice of recording an Accident Register is followed only in Government Hospitals. On careful perusal of the cross-examination of P.W.7 and P.W.8, the doctors, by the Accused, it is found that the defence has not disputed the wound certificates on the ground that they were not contemporaneous. The non-production of the Accident Register was not questioned either to the doctors or to the Investigating Officer. Therefore, since the wound certificates were marked through P.Ws.4 and 5 which clearly speaks about the injuries sustained by the injured witnesses, the non-production of the Accident Registers which are not in existence, does not affect the case of the prosecution.

53. The defence has not disputed the treatment of P.W.1 and P.W.2 at the

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Government Hospital, Tiruvandrum. Their only contention is that the wound certificate does not mention how many persons assaulted the injured or the place of occurrence. The learned counsel for the appellants contended that the wound certificate does not reveal how many persons attacked the injured. Therefore, according to the learned counsel, the said wound certificate cannot be relied upon.

54. However, the Hon'ble Apex Court, time and again, has held that the statement of the injured to the Doctor has no great significance. In (i) ***Pattipati Venkaiah vs. State of Andhrapradesh [1986 MLJ Crl. 23(SC)]***, the Supreme Court has held:

> *"17. .....A doctor is not at all concerned as to whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. In this state of confusion, P.Ws.1 and 2 may not have chosen to give details of the murder to the doctor. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the postmortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible."*

(ii) ***P.Babu vs. State of Andhra Pradesh [1994 SCC Crl. 424]***, the Supreme Court has held :

> *".....It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire*

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from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc."

Therefore, it is clear that it is not the duty of the doctor to record the statement of the injured. The doctor does not conduct any investigation; his duty is to examine and treat the injured. If, incidentally, the injured states the manner in which the injuries were sustained, the same may be recorded in the Accident Register. Therefore, the absence of any entry in the Accident Register or wound certificate regarding the number of persons involved in the occurrence does not, in any way, affect the case of the prosecution.

55. Further, learned senior counsels for the appellants contended that the Trial Court failed to properly appreciate the evidence of the defence witnesses. According to the learned counsel for the appellants, the evidence of the defence witnesses cannot be discarded merely because they were produced by the defence. The evidence of the prosecution witnesses and the defence witnesses ought to be appreciated on the same scale.

56. The learned counsel for the appellants in Crl.A.(MD) Nos.173, 218 and 226 of 2019 relied upon the following judgments in this regard:

(1) Sakthivel vs. State reported in ***(2017) 4 MLJ (Crl) 715***

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(2) Kartare and others vs. The State of UP reported in ***AIR 1976 SC 76***

(3) State of UP vs. Babu Ram reported in ***AIR 2000 SC 1735***

(4) Pulukuri Kottaya and others vs. Emperor reported in ***AIR (34) 1947 PC 67***

(5) High Court of Karnataka in the case of **State vs. Sheenappa Gowda and others in Crl.A.No.530 of 2002, Dated 03.03.2010**

(6) ***Nallasingam and others vs. State*** reported in ***1993 1 MLJ (Cri) 6***

(7) High Court of Madras in ***Uthandaraman and others vs. State in Crl.A.No.262 of 2003, Dated 09.02.2010***

57. The learned counsel for the appellant in Crl.A.(MD) No.211 of 2022 relied upon the following judgments:

(1) ***S.K.Khaja vs. State of Maharastra*** reported in ***2023 LiveLaw (SC) 715***

(2) ***R.Baiju vs. State of Kerala*** reported in ***2025 LiveLaw (SC) 441***

(3) ***State of Karnataka vs. K. Yarappa Reddy*** reported in ***(1999) 8 SCC 715***

(4) ***State of Madhya Pradesh vs. Kanha @ Omprakash*** reported in ***(2019) 3 SCC 605***

(5) High Court of Kerala in ***XXXX vs. State of Kerala, Crl.A.No.548 of 2022, Dated 25.09.2025***

(6) Sitaram Kuchhbedia vs. Vimal Rana and others reported in ***2026 LiveLaw (SC) 189***

58. On careful perusal of the evidence of defence witnesses D.Ws.1 and 2, it is found that the evidence of D.W.1 is to the effect that, on 31.05.2009 during

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the night, A5 was studying with him at the house of Sabin at Jeeva Nagar. According to D.W.2, on 31.05.2009, A1 Sarath was at the house of P.W.2 situated at Kurunchi Nagar. From the evidence of D.Ws.1 and 2, it is found that the defence witnesses attempted to put forward a plea of alibi to disprove the case of the prosecution. In a case involving a plea of alibi, it is for the defence to prove that the Accused was elsewhere at the time when the occurrence took place. The defence of alibi is contemplated under Section 11 of the Indian Evidence Act. Section 11 of the Act makes it clear that *facts not otherwise relevant are relevant - (i) if they are inconsistent with any fact in issue or relevant fact; (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.* Therefore, it is for the defence to prove that the presence of Accused Nos. 1 to 5 at the place of occurrence was highly improbable.

59. The distance between Jeeva Nagar and Kurunchi Nagar has not been brought on record to show that their presence at the scene of occurrence at around 01.45 a.m. was highly improbable. Even if the evidence of D.W.1 and D.W.2 is taken at its face value, it would not prove the plea of alibi. As stated supra, the evidence of the injured witnesses carries greater weight than that of the defence witnesses, as the latter are interested witnesses. Therefore, the above contention of

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the learned counsel for the appellant is also liable to be rejected.

60. In the given circumstances, from the evidences available on record, it is clear that A1 to A5, along with one Santheep, unlawfully assembled with deadly weapons such as an iron pipe and a sickle, went to the house of the injured witnesses and attacked P.Ws.1 to 3, thereby caused the injuries sustained by them. Though the injured witnesses have deposed about the overt acts of A6 and A7, it is the case of the prosecution that A6 and A7 were not students of Sun Engineering College and that they were brought by the other Accused to take revenge on the injured witnesses. While this is so, the fact that the other Accused had gone armed with weapons but A6 and A7 who were brought for taking revenge has gone with empty hands appears to be unbelievable.

61. Apart from that, A6 and A7 were absolute strangers to the injured witnesses. In such circumstances, it is not clear as to how the injured witnesses were able to identify and depose about the involvement of A6 and A7. Admittedly, no identification parade was conducted. Further, the trial Court found that P.W.2, in his cross-examination, had admitted that A6 belonged to Maranadu Village and that he came to know about A6 only by reading the newspaper. He also came to know about A7 only through the newspaper. At the time of the occurrence, he was

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not aware of their names or addresses, and he had not stated anything about them to the police when he was examined by the police at Thiraviyam Hospital. Therefore, the trial Court extended the benefit of doubt to A6 and A7 and acquitted them of the charges.

62. The learned counsel for the appellants in Crl.A.No.211 contended that the injured witnesses had clearly deposed about the overt acts of A6 and A7 in their chief examination. Apart from that, their overt acts were corroborated by the medical evidence. The corresponding injuries found on the bodies of the injured witnesses clearly proved the presence of A6 and A7 at the place of occurrence. Therefore, according to the learned counsel for the appellants, the acquittal recorded by the trial Court ought to be interfered with.

63. However, as contended by the learned counsel for the respondents, no identification parade was conducted immediately after the occurrence. The occurrence is taken place on 01.06.2009, whereas the injured witnesses were examined before the Court only on 20.11.2018, after a lapse of nine years. As submitted by the learned counsel for the appellants, when nine Accused persons entered the house of the injured witnesses and attacked them indiscriminately, it is doubtful whether the injured witnesses could have noticed the Accused, who were

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strangers to them, and identified them at the time of their examination before the Court after a lapse of nine years.

64. Further, on a careful perusal of the evidence of P.Ws.1 to 3, it is found that, though the injured witnesses claimed in their chief examination that they knew A6 and A7, on the dates of their examination, A6 and A7 were absent. The prosecution had not taken any steps to secure the presence of A6 and A7 so as to enable the injured witnesses to identify them in Court. In the absence of identification of the Accused as contemplated under Section 9 of the Indian Evidence Act, their involvement in the said occurrence cannot be said to have been proved by the prosecution. Therefore, this Court is of the considered view that the acquittal recorded in favour of A6 and A7 does not warrant any interference by this Court. Accordingly, the acquittal of A6 and A7 is upheld.

65. The next limb of the argument of the learned counsel for the appellants is that the prosecution has failed to prove the weapon allegedly involved in the above occurrence. According to the learned counsel for the appellants, the recovery of the said weapons, based on the confession of A1 and from A5 Sabin, is highly doubtful. Further, the learned counsel for the appellants contended that the recovery of the weapons was not proved by the prosecution through any

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independent witness. Apart from that, the injured witnesses have failed to specifically identify the appellants and have only identified them vaguely. Therefore, according to the learned counsel for the appellants, the prosecution has failed to establish the link between the weapon allegedly used and the injuries sustained.

66. On careful perusal of the evidence of the Investigating Officer, it is found that he arrested the Accused, Sarath, Vijesh, Sabin and Navin, on 01.06.2009 at 13:15 hours. According to the Investigating Officer, A1 made a disclosure statement, and based on the said statement, the weapons were recovered from the house of A5. However, the said evidence of the Investigating Officer is not corroborated by the independent witness, P.W.4, Dibu. According to Dibu, A5 made the disclosure statement and produced the weapons from his house. Therefore, the recovery of the weapons and the involvement of A5 in the incident becomes doubtful.

67. Further, it is found that the prosecution has not made it clear whether the weapons were concealed at the house of A5. Unless the weapon is recovered from a concealed place, such recovery cannot be said to a fact discovered. Further, as contended by the learned counsel for the appellants, it is found that the injured

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witness, P.W.1, identified all the four sickles and three iron pipes as M.O.1 to M.O.7. However, P.W.1 to P.W.3 did not specifically state how they identified the sickles or which person had used each of the sickles. Therefore, such identification is vague.

68. Further, the said sickles were not forwarded to the Forensic Science Laboratory for chemical examination to ascertain whether they contained any bloodstains. In the absence of any connecting material linking the alleged crime weapons with the Accused, the said recovery cannot be put against the Accused. Therefore, this Court is of the considered view that the prosecution has failed to prove beyond all reasonable doubt that the injuries were inflicted by the weapons produced as M.O.1 to 7.

69. The next contention of the learned counsel for the appellant is that the prosecution has failed to prove the grievous nature of the injuries sustained by the injured witnesses. On a careful perusal of the medical evidence, it is found that Exs.P4 to P6, the wound certificates, disclose that the injury sustained by P.W.2 on his left forearm is grievous in nature. The injuries sustained by P.W.1 on his left ankle and right leg are also grievous in nature, whereas the injuries sustained by P.W.3 are simple in nature.

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70. However, on a careful perusal of the injury sustained by P.W.2 on his left forearm, it is found that he had not suffered any fracture to the left forearm. Therefore, it is not clear as to how the doctor opined that Injury No.3 was grievous in nature. Further, as per Ex.P5 wound certificate, the injuries suffered by P.W.1 on his left ankle and right leg are grievous in nature.

71. According to P.W.5, the X-ray discloses a fracture of the lateral malleolus of the left ankle of P.W.1. A unicortical fracture is found on his right leg. The learned counsel for the appellants contended that, although the wound certificate discloses fractures of the left ankle and right forearm, the X-ray was not produced before the Court to substantiate the said case. In this regard, the learned counsel for the appellants relied upon the judgment of this Court in the case of ***Nallasingam and others vs. State*** reported in ***1993 1 MLJ (Cri) 6.***

72. On a careful perusal of the materials placed before the trial Court, it is found that the said X-rays were not produced before the trial Court to prove the nature of the fracture suffered by P.W.1. Further, the doctor who treated P.W.1, namely P.W.8, has not stated that P.W.1 suffered a grievous injury. It is only the doctor who administered first aid who had certified that the injury was grievous in nature. Though the doctor who treated P.W.1 was examined before the Court, the

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prosecution has failed to establish through the said doctor that the fracture suffered by P.W.1 was grievous in nature. Therefore, this Court is of the considered view that the benefit of the said doubt should be extended to the appellants herein.

73. Though the learned Government Advocate has contended that, in order to prove the offence of attempt to murder, no injury is necessary and that the trial Court had erroneously convicted the appellant for the offence under Section 326 of the IPC instead of Section 307 of the IPC, neither the State nor the injured victim has preferred any appeal challenging the conviction for the lesser offence. Therefore, such a contention cannot be canvassed in the present appeal.

74. In view of the above discussion, this Court is of the considered view that the finding of the trial Court that the appellants committed the offence of causing grievous hurt warrants interference. Accordingly, this Court is of the considered view that the appellants are liable to be convicted only under Section 323 of the IPC and not under Section 326 of the IPC, as the prosecution has failed to prove the grievous nature of the injury as well as the weapon alleged to have been used by the appellants.

75. On careful perusal of the evidence of P.Ws.1 to 3, it is found that P.W.1,

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in his chief-examination, deposed that Accused No.4 had broken the television kept in the house. Further, Accused No.1 had damaged the motorcycle belonging to P.W.3. The said evidence of P.W.1 was corroborated by the evidence of P.Ws.2 and 3. Accused No.5 had damaged the window glass of the house in which the victims were staying. The said evidence of P.W.1 was also corroborated by P.Ws.2 and 3.

76. The Investigating Officer collected the broken pieces of the damaged articles and produced them before the Trial Court as M.Os.8 to 12. The Trial Court found Accused Nos.1, 4 and 5 guilty of the offence punishable under Section 427 of the IPC, instead of Section 3(1) of the TNPPDL Act, in view of the decision of this Court in *Logu @ Loga v. State in Crl.A.(MD)No.273 of 2008*. Though subsequently, the said decision was overruled by the Division Bench of this Court in *Mangalanatha Durai and five others vs. State in Crl.R.C.(MD) No.869 of 2022, Dated 08.06.2023*, neither the victim nor the State preferred any appeal against the said finding. The defence has not brought on record any circumstance to discredit the evidence of P.Ws.2 and 3. Therefore, this Court is of the considered view that the conviction of Accused Nos.1, 4 and 5 needs to be sustained.

77. From the evidence of the injured witnesses, it is found that the appellant herein, along with the other split-up Accused, formed an unlawful

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assembly, trespassed into the house of the injured, and committed the offence. Therefore, the Trial Court found the Accused guilty of the offences punishable under Sections 148, 450, 427 and 323 of the IPC.

78. Since this Court, in the foregoing paragraphs, has doubted the prosecution case regarding the carrying of weapons, this Court is of the considered view that the appellants cannot be convicted for the offence punishable under Section 148 of the IPC. Instead, they should be convicted for the offence punishable under Section 147 of the IPC. The trial Court has come to the conclusion that the appellants had no intention to cause the death of the injured and that they had committed only the offence of causing grievous hurt. However, this Court, in this appeal, has come to the conclusion that the prosecution has failed to prove the offence of grievous hurt and has found the appellants guilty under Section 323 of the IPC. Therefore, the appellants are liable to be punished for the offence under Section 448 of the IPC instead of Section 450 of the IPC.

79. Accordingly, Accused No. 1 is convicted for the offence punishable under Section 147 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs.5,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Further, Accused No. 1 is convicted for the offence punishable under Section 448 of the

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IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Accused No. 1 is also found guilty of the offence punishable under Section 323 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Accused No. 1 is further found guilty of the offence punishable under Section 427 of the IPC, and the sentence imposed by the trial Court is reduced to the period already undergone, with a fine of Rs. 2,500/-, in default of payment of which, he shall undergo simple imprisonment for two weeks.

80. Accordingly, Accused No. 2 is convicted for the offence punishable under Section 147 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 5,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Further, Accused No. 2 is convicted for the offence punishable under Section 448 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Accused No. 2 is also found guilty of the offence punishable under Section 323 of the IPC, and the sentence imposed

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by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks.

81. Accordingly, Accused No. 3 is convicted for the offence punishable under Section 147 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs.5,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Further, Accused No. 3 is convicted for the offence punishable under Section 448 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Accused No. 3 is also found guilty of the offence punishable under Section 323 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks.

82. Accordingly, Accused No. 4 is convicted for the offence punishable under Section 147 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 5,000/-, and in default of payment of the fine, to undergo simple imprisonment for two weeks. Further,

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Accused No. 4 is convicted for the offence punishable under Section 448 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, and in default of payment of the fine, to undergo simple imprisonment for two weeks. Accused No. 4 is also found guilty of the offence punishable under Section 323 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, and in default of payment of the fine, to undergo simple imprisonment for two weeks. Accused No. 4 is further found guilty of the offence punishable under Section 427 of the IPC, and the sentence imposed by the trial Court is reduced to the period already undergone, with a fine of Rs. 2,500/-, and in default of payment of the fine, to undergo simple imprisonment for two weeks.

83. Accordingly, Accused No. 5 is convicted for the offence punishable under Section 147 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 5,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Further, Accused No. 5 is convicted for the offence punishable under Section 448 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Accused No. 5 is also found guilty

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of the offence punishable under Section 323 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 1,000/-, in default of payment of which, he shall undergo simple imprisonment for two weeks. Accused No. 5 is further found guilty of the offence punishable under Section 427 of the IPC, and the sentence imposed by the trial Court is modified to the period already undergone, with a fine of Rs. 2,500/-, in default of payment of which, he shall undergo simple imprisonment for two weeks.

84. In the result, this Criminal Appeals in Crl.A(MD)Nos.173, 218 & 226 of 2019 are partly allowed and Crl.A(MD)No.211 of 2022 is dismissed.

29.10.2026

NCC : Yes/No
Index : Yes/No
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To

1.The Principal Sessions Judge,
Kanniyakumari District at Nagercoil.

2.The Inspector of Police,
Vadasery Police Station,
Nagercoil, Kanniyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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S.KARTHIKEYAN, J.

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Judgment made in
Crl.A(MD)Nos.173, 218 & 226 of 2019
and Crl.A.(MD)No.211 of 2022

29.10.2026

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