



Crl.A(MD)Nos.4 & 56 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.4 & 56 of 2023

1.Crl.A(MD)No.4 of 2023:

1.Vijayakumar
2.Muthuraja
3.Gopi

... Appellants/Accused Nos.6 to 8

Vs.

The Inspector of Police,
Kenikarai Police Station,
Kenikarai,
Ramanathapuram District.
(Crime No.318 of 2015). ... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records and set aside the order of conviction and sentence passed in S.C.No.120 of 2018 dated 08.12.2022 on the file of the learned Principal Sessions Judge, Ramanathapuram and allow this appeal and acquit the appellants/accused.

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For Appellant 1 : Mr.M.Velmurugan
for Mr.A.Arumugam

For Appellants 2 & 3: Mr.K.Chellapandian
Senior Counsel
for Mr.V.R.Shanmuganathan

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

2.Crl.A(MD)No.56 of 2023:

1.Madhava Magesh
2.Selvam
3.Gopal
4.Seeni @ Seenivasan
5.Balayogesh ... Appellants/Accused Nos.1 to 5

Vs.

The Inspector of Police,
Kenikarai Police Station,
Kenikarai,
Ramanathapuram District.
(Crime No.318 of 2015). ... Respondent/Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records in S.C.No.120 of 2018 dated 08.12.2022 on the file of the learned Principal Sessions Judge, Ramanathapuram and set aside the sentence and conviction awarded to A.1 to A.5.

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- For Appellant 1 : Mr.Abudu Kumar
Senior Counsel
for Mr.P.Senguttuarasan
- For Appellant 2 : Mr.R.Gandhi
Senior Counsel
for Mr.J.Vivek
- For Appellant 3 : Died
- For Appellant 4 : Mr.C.Mayilvagana Rajendran
for Mr.J.Vivek
- For Appellant 5 : Mr.S.Ramasamy
for Mr.J.Vivek
- For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

Both the appeals have been preferred as against the Judgment passed in S.C.No.120 of 2018, dated 08.12.2022, on the file of the Principal District and Sessions Court, Ramanathapuram thereby convicting the accused for the offences punishable under Sections 120(B) and 302 of I.P.C.



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2.The case of prosecution is that there are totally eight accused and all are same family members, close relatives and friends of A.1. There is a civil dispute between one Mahamayi and A.3. The deceased had assisted Mahamayi in conducting the civil case as against A.3. The brother of A.3 was murdered and as a result, A.3 believed that the deceased was a key person involved in the murder of his brother. Therefore, A.3 had previous enmity with the deceased.

3.While being so, on 08.07.2015, A.1, A.2 and A.4 to A.8 assembled in a wine shop situated at ECR (Race Course Road) and conspired to do away with the life of the deceased. Later on, 10.07.2015, A.1, A.2, A.4, A.5, A.7 and A.8 assembled at the house of A.3 and further conspired to do away with the life of the deceased.



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4.In furtherance to this conspiracy, on 12.07.2015, A.1 was waiting near the ginger tea shop situated at ECR in his two wheeler and A.4 was also waiting nearby in his two wheeler. A.5 to A.8 were waiting in their Bolero car near the tea shop with the intention of murdering the deceased. A.3 informed A.1 that the deceased had left his house. Thereafter, A.1 instructed A4 to remain in the tea shop, while A.1 and A.2 proceeded in their two wheelers and waited along the road towards Sethupathi Nagar.

5.Subsequently, A.4 informed A.1 and A.2 about the movement of the deceased in his two wheeler. Immediately, A.1 and A.2 followed the deceased. A.2 attacked the deceased from behind with a sickle, causing him to fall from his two-wheeler. A.1 then stopped his two wheeler, approached the deceased with a knife and cut his throat. The deceased sustained grievous injuries and died on the spot.



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6. On the complaint, the respondent registered the F.I.R in Crime No.318 of 2015 for the offences punishable under Sections 120(B), 302 read with 34 of I.P.C. After completion of the investigation, the respondent filed a final report. On receipt of the said final report, the Trial Court had taken cognizance and framed charges for the offences punishable under Sections 120(B), 302 read with 34 of I.P.C as against A.1 and A.2 and the Trial Court framed charges for the offences punishable under Sections 120(b) read with 302 of I.P.C as against A.3 to A.8.

7. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.24 and marked Ex.P.1 to Ex.P.18. The prosecution also produced Material Objects M.O.1 to M.O.16. On the side of the accused, no witnesses were examined and no documents were produced before the trial Court.



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8.On perusal of oral and documentary evidence, the Trial Court found A.1 to A.8 guilty for the offence punishable under Section 120(B) of I.P.C and sentenced them to undergo Rigorous Imprisonment for life each and to pay a fine of Rs.10,000/- each and in default, to undergo two years Simple Imprisonment each. A.1 and A.2 are found guilty for the offence punishable under Section 302 of I.P.C and sentenced them to undergo Rigorous Imprisonment for life each and to pay a fine of Rs.10,000/- each and in default, to undergo two years Simple Imprisonment each. Aggrieved by the same, A.1 to A.5 have filed Crl.A(MD)No.56 of 2023 and A.6 to A.8 have filed Crl.A(MD)No.4 of 2023.

9.It is stated that pending the appeal, the third respondent died and as such, all the charges against him stood abated.

10.The learned senior counsel appearing for A.1 in Crl.A(MD)No.56 of 2023 submitted that the prosecution relied on



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P.W.2 and P.W.3 as eyewitnesses to the alleged occurrence. Their presence in the scene of crime itself is doubtful, since P.W.2 did not even mention the names of the accused to P.W.1, who lodged the complaint. In fact, P.W.2 and P.W.3 were also present during the enquiry conducted by the Investigating Officer. During the inquest, they did not even mention the names of A.1 and A.2, who allegedly attacked the deceased. P.W.1 lodged the complaint mentioning only the suspected accused. Therefore, the names of A.1 and A.2 were not included in the complaint, F.I.R or the inquest report.

11.Further, the prosecution also failed to prove the recovery. Material Objects 1 and 2 did not contain any bloodstains. The Forensic Laboratory report clearly shows that Material Objects 1 and 2 ,which were marked as item Nos.6 and 7, did not contain any bloodstains. Further, the doctor who conducted the analysis of these Material Objects deposed as P.W.17. Therefore, the evidence of P.W.17 did not support the case of the prosecution, since Material



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Objects 1 and 2 did not contain any bloodstains.

12.During the recovery, a panchanama was prepared by the Investigating Officer, in which the statements of the accused were not recorded. The said panchanama was marked as Ex.P.6. In support of his contention, the learned counsel also relied upon the Judgments of the Hon'ble Supreme Court of India.

13.The learned senior counsel appearing for A.2 submitted that, according to the case of the prosecution, A.2, who was the pillion rider of A.1, attacked the deceased on his back with Material Object No.1. The doctor who conducted the postmortem on the deceased deposed as P.W.19. As per the postmortem report, there was only one injury on the neck of the deceased, measured 8 X 2 cm. That apart, there was a lacerated wound on his left forehead. There was no injury on the back side of the deceased. Therefore, the overt act of A.2 is not proved by the prosecution.



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14.P.W.1 and P.W.2 are not eyewitnesses and were allegedly planted by the prosecution in order to bring the charges to home for the simple reason that the names of A.1 and A.2 did not appear in the complaint, F.I.R or inquest report. According to the prosecution, P.W.2 and P.W.3 had seen the scene of crime and were present during the inquest conducted by the Investigating Officer. A.1 was known to P.W.1 and P.W.3, whereas A.2 was a stranger to them.

15.Further, P.W.2 only informed P.W.1, the wife of the deceased about the occurrence. Thereafter, P.W.1 went to the police station and lodged the complaint. However, P.W.2 and P.W.3 did not even whisper about the names of A.1 and A.2. Therefore, the evidences of P.W.2 and P.W.3 do not support the case of the prosecution and they were planted witnesses.



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16. There was also a delay in registering the F.I.R. The alleged occurrence took place at about 11.30 a.m., on 12.07.2015. The complaint was lodged at about 01.00 p.m., on the same day. The F.I.R was registered at about 01.00 p.m., but it reached the Court only at about 08.00 p.m. The delay has not been explained by the prosecution and it is fatal to the case of the prosecution.

17. P.W.3 is a witness to the observation mahazar, which was recorded at about 01.30 p.m., on 12.07.2015. Even if P.W.3 had seen the occurrence, he did not even whisper about the names of A.1 and A.2. Therefore, the presence of P.W.2 and P.W.3 at the scene is doubtful and they are only planted witnesses by the prosecution. In fact, P.W.2 did not even inform P.W.1 of the names of A.1 and A.2, despite being present at the time P.W.1 lodged the complaint.

18. P.W.2 is none other than the son of P.W.9, and the deceased is the brother of P.W.9. Therefore, all the witnesses



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examined by the prosecution were close relatives, and no independent witness was examined to corroborate the evidence of P.W.2 and P.W.3.

19. According to the prosecution, A.2 first attacked the deceased on his back with M.O.1, causing the deceased to fall from the motorcycle. Thereafter, A.1 allegedly assaulted the deceased on the neck with M.O.2. However, the doctor who conducted the autopsy on the deceased, deposed as P.W.19, and found only one injury on the neck of the deceased. Therefore, P.W.2 and P.W.3 were not present at the scene of the crime and did not witness the alleged occurrence.

20. Further, even according to the prosecution, the name of A.1 was known only to P.W.2 and P.W.3. The identity of A.2 was not known to them. Despite this, the respondent did not conduct any test identification parade to identify A.2.



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21.P.W.2 and P.W.3 deposed that they had seen the accused only at the police station, where they identified them. Since A.2 was a stranger to them, the respondent ought to have conducted a test identification parade to properly identify him.

22.Moreover, according to P.W.2, the first complaint was lodged, but it was completely suppressed by the prosecution. Hence, the very genesis and origin of the complaint itself is doubtful, and the prosecution miserably failed to prove the charges. Further, the statements of P.W.2 and P.W.3 were recorded only after two months, and their statements reached the Court only after one and a half years. Even then, the Trial Court mechanically convicted the accused.

23.The learned counsels appearing for A.4 to A.8 submitted that A.3 to A.8 were charged with the offence punishable under



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Section 302 read with Section 34 of the I.P.C. When the Trial Court acquitted A.3 to A.8 for the offence punishable under Section 302 read with Section 34 of the I.P.C., it ought to have also acquitted them of the offence punishable under Section 120(B) of the I.P.C.

24.The prosecution primarily alleged a conspiracy against A.4 to A.8, claiming that on 08.07.2015 all the accused persons conspired together at a wine shop situated on East Coast Road to do away with the life of the deceased. Thereafter, on 10.07.2015, all the accused allegedly assembled at the house of A.3 and conspired together to do away with the life of the deceased. However, no witness provided clear evidence to substantiate the conspiracy.

25.The prosecution examined P.W.10 to prove the conspiracy that allegedly took place on 08.07.2015. He deposed that, four years prior to the date of occurrence, while he was consuming alcohol, he saw the accused talking together and that they had



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28.The learned counsels further submitted that A.1 to A.5 were arrested on 29.07.2015. On the same day, the respondent altered the offences. After the alteration report, P.W.9 and P.W.10 were examined. However, P.W.9 and P.W.10 did not know the identity of all the accused. Despite this, the respondent failed to conduct any test identification parade, which is fatal to the case of the prosecution.

29.The prosecution has also not explained on whose instructions or based on whose statements the accused were identified and arrested. Further, the prosecution failed to recover the motorcycle allegedly used by the accused.

30.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that there was no delay in registering the F.I.R. or in sending the F.I.R. to the Court. The



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prosecution categorically proved the motive behind the crime by examining P.W.9, who deposed that there was a land dispute between A.3 and the deceased's family. Furthermore, the brother of A.3 was murdered by some persons. Therefore, A.3 suspected that the deceased had helped them in causing the death of his brother. This provides a clear motive to do away with the life of the deceased.

31.Hence, all the accused allegedly assembled at the house of A.3 on 10.07.2015 and conspired to kill the deceased. On 12.07.2015, all the accused acted in furtherance of their plan. A.1 was informed about the movement of the deceased. Immediately, A.1 and A.2 followed the deceased on their motorcycle and assaulted him with M.O.1 and M.O.2.

32.In addition, there was a dispute regarding real estate between A.6 and the deceased, in which the father of A.6 was also



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murdered. Though P.W.8 turned hostile, he deposed in his chief examination that he had warned the deceased to be careful about threats from the accused.

33.The F.I.R. is not an encyclopedia and need not contain the names of all the accused. Though P.W.2 informed P.W.1 about the occurrence, he did not know the contents of the complaint or the F.I.R. He was unaware whether the names of A.1 and A.2 were included in the F.I.R. Further, P.W.2 was not present during the inquest. The non-mentioning of the names of A.1 and A.2 during the inquest to the Investigating Officer is not fatal to the prosecution's case, since P.W.2 and P.W.3 are eyewitnesses to the occurrence and categorically deposed about the specific overt acts committed by A.1 and A.2.

34.To prove the conspiracy, the prosecution examined P.W.8 to P.W.10, who substantiated the existence of a conspiracy



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between the accused. With regard to motive, the prosecution examined P.W.8, who established the motive behind the crime. Therefore, the Trial Court rightly convicted the accused, and the same does not warrant any interference of this Court.

35.Heard the learned counsels appearing on either side and perused the materials placed on record.

36.There are totally eight accused. A.3 is the father of A.1 and A.5. A.6 to A.8 are the cousins of A.1. A.2 and A.4 are friends of A.1. The prosecution presented the case as if there was a civil dispute between one Mahamayi and A.3. A.3 had assisted Mahamayi in conducting her cases. The brother of A.3 was murdered and as such, A.3 believed that the deceased was the key person responsible for causing the death of his brother. Therefore A.3 had enmity with the deceased. Hence, all the accused conspired together and decided to do away with the life of the deceased.

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37. On perusal of the submissions by the learned counsels and the learned Additional Public Prosecutor, the following points arise for consideration:

(1) Whether the prosecution proved the motive behind the crime.

(2) Whether the prosecution proved the conspiracy between the accused.

(3) Whether the prosecution proved the charge under Section 302 of IPC.

38. Motive:

38.1. A.3 is the father of A.1 and A.5, and A.6 to A.8 are the cousins of A.1. A.2 and A.4 are friends of A.1. In order to substantiate the motive, the prosecution examined P.W.8 and P.W.9.



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38.2. P.W.8, in her chief examination, deposed that her father was assisted by one Bhagavathy, who is alleged to be the concubine of A.3. Through this concubine, all the original documents of her father were allegedly taken, and she filed a suit regarding the property belonging to her father, for which the deceased supported her in conducting the trial.

38.3. Further, P.W.8 was examined by the respondent only after one and a half months from the date of occurrence. Her statement was sent to the Court only after two years, along with the charge sheet. Therefore, P.W.8 is alleged to be a planted witness intended to prove the motive of A.3.

38.4. Moreover, the prosecution did not produce any independent evidence to substantiate this claim. Hence, the prosecution failed to prove the motive behind the crime.



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38.5. In this regard, it is relevant to rely upon the Judgment of the Hon'ble Supreme Court of India in the case of **Aslam alias Imran Vs. The State of Madhya Pradesh [Crl.A.No.1538 of 2025]**, wherein it is held as follows:

22. It is a settled law that enmity is a double-edged weapon. On one hand, it provides motive, on the other hand it also does not rule out the possibility of false implication. From the nature of the evidence placed on record by the prosecution, the possibility of the present appellant being falsely implicated on account of previous enmity cannot be ruled out. In our opinion, therefore, the appellant is entitled to benefit of doubt.”

Therefore, the possibility that the accused were falsely implicated on account of previous enmity cannot be ruled out in this case.

39. Conspiracy:

39.1. The theory of conspiracy between the accused, as projected by the prosecution, is that on 08.07.2015, A.1, A.2, and



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A.4 to A.8 assembled at a wine shop situated on East Coast Road and conspired together to do away with the life of the deceased, which was allegedly heard by P.W.9. He deposed that there had been a civil dispute between A.3 and the deceased for the past 25 years. Just two days before the occurrence, he claimed to have seen A.1, A.2, and A.4 to A.8 in the wine shop, where they allegedly conspired to take the life of the deceased. In fact, he was also consuming alcohol in the wine shop. P.W.9 is none other than the brother of the deceased.

39.2. Even according to him, he did not know A.2 and A.4, though the other accused were known to him. Despite allegedly hearing about the conspiracy, he did not inform the deceased to take care regarding the accused. Furthermore, his statement was recorded only one and a half months after the date of the alleged occurrence. A.1 to A.5 were arrested and remanded to judicial custody on 29.07.2015, i.e., before the recording of his statement. His statement

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was subsequently sent to the Court after two years. Therefore, it appears that only after the arrest of the accused, these witnesses were produced by the prosecution to substantiate the alleged motive and conspiracy.

39.3. Another witness was examined by the prosecution to prove the second date of the conspiracy viz., P.W.9. P.W.9 is the son of the deceased. He deposed that, just two days prior to the occurrence, he had seen all the accused persons at the house of A.3 and allegedly heard about the conspiracy to do away with the life of the deceased. He is an interested witness, and his statement was recorded only one and a half months after the alleged crime to support the prosecution's claim of conspiracy. In fact, he did not even inform anyone about the alleged conspiracy. Though he deposed that he informed some persons, this was not proved by the prosecution.



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39.4. Therefore, P.W.8 to P.W.10 are all interested witnesses and appear to have been planted by the prosecution. Accordingly, the prosecution failed to prove the theory of conspiracy between the accused to do away with the life of the deceased.

40. Eyewitness:

40.1. The prosecution examined P.W.2 and P.W.3 as eyewitnesses to the alleged occurrence. P.W.2 is the son of P.W.9, and the deceased is the brother of P.W.9. P.W.3 is the cousin of P.W.1, and the deceased is the paternal uncle of P.W.3. Therefore, both P.W.2 and P.W.3 are close relatives of the deceased.

40.2. P.W.2 deposed that while he and P.W.3 were standing at the ginger tea shop on 12.07.2015 at about 11.30 a.m., P.W.3 received a phone call from the deceased, who informed them that he was proceeding to Katturooni Road and called them to that place. While they were reaching the location, two other persons followed the deceased's vehicle from behind. A.1 was riding the vehicle, and



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A.2 was sitting as a pillion rider. A.2 attacked the deceased on his backside with a sickle, causing him to fall down. Immediately, A.1 stopped the vehicle, got down, and assaulted the deceased on his neck with the sickle. Thereafter, they fled from the scene of the crime. P.W.2 and P.W.3 tried to pursue them but could not catch them. Due to the injuries sustained, the deceased died.

40.3.Immediately, P.W.2 informed P.W.1 and other relatives about the occurrence. Thereafter, P.W.1 lodged a complaint at the police station. About 15 days after the date of the occurrence, P.W.2 was called to the respondent police station, where he saw A.1 to A.5 and identified the accused. He also identified the weapons, M.O.1 and M.O.2, used by the accused.

40.4. According to P.W.1, A.1 and A.2 fled away from the scene of the crime without taking their motorcycle. However, the respondent did not recover the motorcycle allegedly used by the



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accused in the crime. In his cross-examination, P.W.1 deposed that immediately after the occurrence, a policeman arrived at the scene and informed him about the specific overt acts committed by A.1 and A.2.

40.5.The cousin of P.W.2, P.W.3, also deposed and corroborated the evidence of P.W.1. He was subsequently called by the respondent to identify the accused at the police station. Both A.1 and A.2 were present at the police station 10 to 20 days after the date of the occurrence, and he identified them.

41.Even according to P.W.1 and P.W.2, A.2 is a stranger to them, and they did not know his name. A.2 is a friend of A.1. A.2 was identified by P.W.2 and P.W.3 only at the police station. If they had actually witnessed the alleged occurrence, they would have informed the Investigating Officer about the known accused, namely A.1, during the inquest and to P.W.1, who lodged the complaint.

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42.The complaint, marked as Ex.P.1, the F.I.R., marked as Ex.P.4, and the inquest report, marked as Ex.P.12, did not contain the names of A.1 and A.2. Therefore, the presence of P.W.2 and P.W.3 at the scene of the crime is highly doubtful. Further, if A.1 and A.2 had abandoned their two-wheeler and fled away from the scene of the crime, the respondent would have seized the motorcycle used in the alleged crime. However, no motorcycle was recovered from the scene.

43.Moreover, P.W.2 and P.W.3 categorically deposed that A.2 was the pillion rider on the motorcycle driven by A.1 and attacked the deceased with M.O.1. The doctor who conducted the autopsy on the body of the deceased, deposed as P.W.19. He found only two injuries on the deceased. The two injuries are as follows:

“1.இடது பக்க கழுத்தில் 8x2x செ.மீ சதை
ஆழம் வரை வெட்டுக்காயம் காணப்பட்டது. அந்த
வெட்டுக்காயத்தினை விரித்துப் பார்த்தபோது



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முச்சுக்குழாய், உணவுக்குழாய் வரை சென்று அறுபட்டு காணப்பட்டது. மேலும் இதயத்திலிருந்து மூளைக்கு செல்லும் இரத்தக்குழாய் முழுவதுமாக அறுபட்டிருந்தது. மூளையிலிருந்து இருதயத்திற்கு வரும் இரத்தக் குழாயும் அறுபட்டுக் காணப்பட்டது. அந்த காயத்தில் 200 மி.லி. அளவில் இரத்தம் உறைந்திருந்தது.

2.இடது முன்கையில் 8x4 cm அளவில் சிராய்ப்புக் காயம் காணப்பட்டது.

பிரேதத்தை அறுத்து பார்த்தபோது மூளை, இருதயம், கல்லீரல், நுரையீரல், சிறுநீரகம் ஆகியவை வெட்டுத் தோற்றத்தில் வெளிநி காணப்பட்டது. குறிப்பிடும்படியான மாற்றங்கள் இல்லை. இரைப்பையில் 100 மி.லி. அளவில் செரிக்கப்பட்ட நிலையில் கூழான உணவு இருந்தது.”

44.According to P.W.2 and P.W.3, after the first assault by A.2, the deceased fell down from the motorcycle. Thereafter, A.1 allegedly assaulted the deceased on his neck with M.O.2. During the postmortem, the injury purportedly caused by A.1 was found, but no injury was found on the deceased's back. Therefore, the evidence of P.W.2 and P.W.3 does not corroborate the postmortem report.



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47. In this regard, the learned senior counsel appearing for A.1 relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Rai Sandeep alias Deepu Vs. State (NCT of Delhi)*** [2012 (8) SCC 21], wherein it is held as follows:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-



examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all 12 other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the



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crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

48.The above Judgment is squarely applicable to the case on hand and as such, P.W.2 and P.W.3 are not sterling witnesses and they are planted by the prosecution in order to bring the charges to home.

49.The learned senior counsel appearing for A.1 vehemently contended that Ex.P.6-panchanama is not in accordance with law. The statement of the accused should have been recorded by the Investigating Officer in the panchanama while making recovery. Both M.O.1 and M.O.2 were recovered from A.1 and A.2 under



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Ex.P.6. However, it did not contain the statement of the accused and as such, it is not in accordance with law.

50. In support of his contention, the learned senior counsel relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Ramanand alias Nandlal Bharti Vs. State of Uttar Pradesh [2023 (16) SCC 510]***, wherein it is held as follows:

“56.If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the



accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama.



This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

.....

59.The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW. 7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused



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expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer; more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.



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51.Thus, it is clear that the accused stated before the Investigating Officer, while in custody, about the weapons used in the occurrence. However, this statement does not indicate or suggest that the accused revealed anything about their involvement in the concealment of M.O.1 and M.O.2. The statement is vague in nature. Mere discovery of the weapon cannot be interpreted as sufficient to infer the accused's authorship of the concealment of the weapon. The accused could have obtained knowledge of the weapon's existence at the location through other sources. The accused might have even seen someone else concealing the weapon. Therefore, it cannot be presumed or inferred that because the person discovered the weapon, they were the one who had concealed it, nor can it be presumed that they used it. Hence, even if the discovery by the accused is accepted, the substantive evidence regarding the discovery of the weapon shows that the accused disclosed the location of the weapon used in the commission of the offence. The Panchanama marked as Ex.P.6 is a vital document, and the statement of the accused must be recorded



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by the Investigating Officer.

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52.It is also evident from the Forensic Laboratory report marked as Ex.P.13, which revealed that both M.O.1 and M.O.2 did not contain any bloodstains. Therefore, the prosecution failed to prove the recovery of M.O.1 and M.O.2 from A.1 and A.2.

53.Admittedly, A.2 and A.4 are strangers to P.W.2 and P.W.3. They had never seen them before the alleged occurrence. Both P.W.2 and P.W.3 categorically deposed that they found A.2 and A.4 at the police station 15 days after the occurrence. They were called by the respondent to identify them and they identified them.

54.The learned Additional Public Prosecutor relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Dharmendra Kumar alias Dhamma Vs. State of Madhya Pradesh*** [2024 (8) SCC 60], in which it is held as follows:



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“47. It is trite law that identification tests (TIP) do not serve as substantive evidence but are primarily intended to assist the investigating agency in ensuring that their progress in investigating the offence is on the correct path. Holding a TIP is not obligatory. Further, a failure to hold TIP cannot be a ground to eschew the testimony of witnesses whose evidence was concurrently accepted by the trial and appellate courts. Additionally, a failure to hold a parade would not make inadmissible the evidence of identification in the court.”

55. There is no dispute that a test identification parade is not obligatory in nature. The failure to hold a test identification parade cannot be a ground to disregard the testimony of witnesses whose evidence was concurrently accepted by the Trial Court.



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56. In the case at hand, as stated above, the evidence of P.W.1 and P.W.2 is highly doubtful, as their presence at the scene of the crime itself is questionable. Since their evidence is not reliable, a test identification parade is essential in this case to identify A.2 and A.4. Admittedly, they are strangers to both P.W.2 and P.W.3 and had never seen them before. They identified A.2 and A.4 only at the respondent police station. Therefore, the judgment cited above is not helpful to the case at hand.

57. Therefore, it is evident that no identification parade was conducted by the respondent. The respondent showed A.2 and A.4 to P.W.2 and P.W.3, mentioning their names. The failure to conduct a test identification parade is detrimental to the prosecution's case, as P.W.2 and P.W.3 did not know the identities or names of A.2 and A.4. As such, the prosecution should have conducted the test identification parade to properly identify A.2 and A.4. Therefore, it is not possible to link the accused to the present crime.



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58.In light of the overall circumstances, the prosecution has failed to prove the motive behind the crime and the conspiracy among the accused to do away with the life of the deceased. Hence, the prosecution has failed to prove the charges under Sections 120B and 302 of the I.P.C. The conviction and sentence imposed on the accused 1, 2 & 4 to 8 cannot be sustained and the same are liable to be set aside.

59.During the pendency of the appeal, A.3 died and as such, all the charges against him stood abated.

60.In view of the above, the conviction and sentence imposed on the accused Nos.1, 2 & 4 to 8 in S.C.No.120 of 2018, dated 08.12.2022, on the file of the Principal District and Sessions Court, Ramanathapuram, cannot be sustained and are liable to be set aside.



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61.In the result, these Criminal Appeals are allowed and the Judgment made in S.C.No.120 of 2018, dated 08.12.2022, on the file of the Principal District and Sessions Court, Ramanathapuram, is hereby set aside. The accused Nos.1, 2 & 4 to 8 are acquitted of all the charges. The bail bond, if any, executed by the accused Nos.1, 2 & 4 to 8 shall stand cancelled. The fine amount, if any paid, shall be refunded to the accused Nos.1, 2 & 4 to 8. The accused Nos.1, 2 & 4 to 8 shall be set at liberty forthwith, if they are is no longer required in connection with any other case.

[G.K.I.J.,] & [R.P.J.,]
11.02.2026

NCC :Yes/No
Index :Yes/No
ps



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To

1.The Principal District and Sessions Court,
Ramanathapuram.

2.The Inspector of Police,
Kenikarai Police Station,
Kenikarai,
Ramanathapuram District.

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



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G.K. ILANTHIRAIYAN, J.
AND
R. POORNIMA, J.

ps

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