

1.S.M.Ganesan Vs. State Through

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Court : Chennai

Decided On : Aug-19-2015

Judge : S.Nagamuthu

Appellant : 1.S.M.Ganesan

Respondent : State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

19. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL (MD).Nos.418 of 2008 and 471 of 2008 and 340 of 2014 1.S.M.Ganesan 2.Muthu @ Muthukrishnan 3.Baskar 4.Kottaisamy : Appellants/A1 to A3 & A5 in C.A.No.418/2008 Ramachandran : Appellant/A4 in C.A.No.471/2008 Natarajan : Appellant/A2 in C.A.No.340/2014 Vs. State through Inspector of Police Thisaiyanvilai Police Station Tirunelveli District. in Crime No.165 of 1999 :Respondent in all appeals PRAYER Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the I Additional Sessions Judge, Tirunelveli, in S.C.No.14 of 2004 dated 05.09.2008 and in S.C.No.14A of 2004 dated 27.11.2014. !For Appellant : Mr.S.Saji Bino ^For Respondent : Mr.C.Ramesh Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.) The appellants in C.A.No.418 of 2008 and 471 of 2008 are the accused 1 to 5 in S.C.No.14 of 2004 on the file of the learned I Additional District and Sessions Judge, Tirunelveli Division. The appellant in C.A.No.340 of 2014 is the sole accused in S.C.No.14A of 2004 on the file of the learned I Additional District and Sessions Judge, Tirunelveli.

2. The trial Court framed as many as 5 charges against them. They are as follows:
Charge Nos. Accused Penal provisions 1 A1 to A8 147 IPC2A2 to A8 148 IPC3A2 to A8 341 IPC4A1 302 r/w 114 IPC5A2 to A8 302 IPC3 The appellants in C.A.Nos.418 and 471 of 2008 have been convicted and sentenced as follows:
S.No Accused Conviction u/s Sentence 1 A1 147, 302 r/w 114 IPC To undergo rigorous imprisonment for offence under Section 147 IPC and to undergo life imprisonment and to pay a fine of Rs.15,000/-, in default, to undergo simple imprisonment for two years for offences under sections 302 r/w 114 IPC2A2 to A5 147, 148, 341 and 302 IPC To undergo rigorous imprisonment for two years each for the offence under Section 147 IPC; to undergo rigorous imprisonment for three years each for offence under Section 148 IPC; to undergo simple imprisonment for one month each for the offence under Section 341 IPC; to undergo life imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo simple imprisonment for one year each for the offence under section 302 IPC4 Originally, in S.C.No.14 of 2004 on the file of the learned I Additional District and Sessions Judge, there were eight accused. The 2nd accused in the said case Mr.Diwakar is a juvenile and therefore, the case against him was split up after the charges were framed. The 8th accused Mr.Paramasivan, S/o.Alagappa Thevar died during trial. Therefore, the trial Court proceeded with the trial of S.C.No.14 of 2004 against the accused 1,3 to 5, 6 and 7 (as per the charges framed against them).

5. The appellant in C.A.No.340 of 2014 was the third accused in S.C.No.14 of 2004 before the case was split up. He also faced the trial along with the other accused in S.C.No.14 of 2004. After all the accused including Mr.Natarajan, the appellant in C.A.No.340 of 2014, were questioned under Section 313 Cr.P.C., Mr.Natarajan, the appellant in C.A.No.340 of 2014, namely, the 3rd accused, as it stood originally in S.C.No.14 of 2004, absconded, when the case was listed for

arguments. Therefore, the case against the 3rd accused Mr.Natarajan in S.C.No.14 of 2004 was split up and the same was numbered as S.C.No.14A of 2004 and kept for trial separately. The learned I Additional District and Sessions Judge, convicted all the above accused namely, A1 ?. Mr.Ganesan, A4 ?. Mr.Muthu @ Muthukrishnan, A5 ?. Mr.Baskar, A6 - Mr.Ramachandran and A7 ?. Mr.Kottaisamy as detailed in the first paragraph of this judgment. They were all re-arranged as accused 1 to 5 in S.C.No.14 of 2004, after the case was split up.

6. After the judgment in S.C.No.14 of 2004, convicting the appellant in C.A.Nos.418 and 471 of 2008, the learned I Additional District and Sessions Judge, Tirunelveli, took up the case for trial in S.C.No.14A of 2004. By judgment dated 27.11.2014, the trial Court convicted and sentenced him to undergo simple imprisonment for the offence under Section 147 IPC and sentenced to undergo rigorous imprisonment for one year for the offence under Section 148 IPC; sentenced to undergo simple imprisonment for one month for the offence under Section 341 IPC and to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for one year.

7. Challenging their conviction and sentence in S.C.No.14 of 2004, the appellants/accused 1 to 5 have come up with criminal appeals in C.A.Nos.418 and 471 of 2004 and challenging the conviction and sentence in S.C.No.14A of 2004, the appellant/accused has come up with C.A.No.340 of 2014.

8. Since all these appellants have been convicted, on appreciating the same evidence recorded commonly, the learned senior counsel for the appellants submitted that these three appeals may be heard and disposed of together by a common judgment. In fact, the learned senior counsel has filed a memo to that effect. In our considered view, since the evidence was recorded against all the appellants commonly and since the case was split up only after the accused were questioned under Section 313 Cr.P.C., we have agreed with the said suggestion made by the learned senior counsel as hearing all these appeals would not cause any prejudice to any of the accused. Accordingly, we have heard all these appeals together and dispose of the same by means of this common judgment.

9. In this judgment, the appellants in C.A.Nos.418 and 471 of 2008 are referred to as accused Nos.1,4,5,6 and 7 as arrayed originally in S.C.No.14 of 2004 and the appellant in C.A.No.340 of 2014 is referred to as the accused No.3 as originally arrayed in S.C.No.14 of 2004 before the case was split up.

10. The case of the prosecution in brief is as follows: The first accused Mr.M.S.Ganesan was running wine shops in Thisayanvilai, benami in the name of Mr.P.L..Ganesan. He was also running a daily shandy in Thisayanvilai. The deceased in this case was one Mr.Sekar. He had taken one of the shops from the first accused and he started running the shop. This resulted in enmity between the first accused and the deceased Sekar. Some time before the alleged occurrence, the first accused attempted to purchase a Tractor bearing registration No.TN74 2133 belonging to one Mr.Ganesan. But the Registration Certificate and other documents relating to the said vehicle were at the hands of the deceased Sekar. This transaction also further aggravated the enmity between them. Out of the said enmity, on one occasion, the deceased Sekar and one Kannan had attacked A3 ?. Mr.Natarajan. A3 is the son-in-law of A1. This happened 2 days before the present occurrence. This is stated to be the immediate motive for the alleged occurrence.

10.1. While so, it is alleged that on the night intervening 06.05.1999 and 07.05.1999, the deceased Sekar was in his house. P.W.5 is his wife. She was also at her home. P.W.1 is the junior father-in-law of the deceased. According to him, on 06.05.1999, he had come to the house of the deceased. Since it became very late, he stayed back at the house of the deceased. Thus, during the said night, at the house of the deceased, the deceased, his wife P.W.5 and P.W.1 alone were there. On the next day, i.e. on 07.05.1999, at 5.00 a.m., the deceased received a phone call. The caller told the deceased that his vehicle had developed snag and therefore, the deceased should immediately come and attend on that. The phone conversation was informed to P.W.1 by the deceased himself, as soon the phone call was over. Immediately, the deceased wanted to go to the said place in response to the said phone call. His wife (P.W.5) requested him not to go. But the deceased insisted to go and accordingly, he went out. Since he was going alone, P.W.5 wanted P.W.1 also to accompany him. So when the deceased was proceeding at a distance of about 15 to 20 feet, P.W.1 was following him.

10.2. When the deceased was crossing the house of the first accused, which is situated

in the same street, the main entrance of the house of the first accused was slightly kept open. On seeing the deceased going on the road, suddenly, the first accused came out of the house and shouted at others to kill the deceased. Immediately, the accused 2 to 5 emerged out of the house of the first accused. Along with them, the accused 6 to 8 also emerged. Immediately, the 2nd accused (juvenile accused), who is the son of the first accused, attacked the deceased on his right thigh with an aruval. The third accused Natarajan, the 4th accused Mr.Muthu @ Muthukrishnan and the 5th accused Mr.Baskar also attacked him indiscriminately with aruvals. The accused 6 to 8, who belonged to different village also attacked him with aruvals. P.W.1 shouted at them to stop cutting. The deceased fell down sustaining serious injuries in a pool of blood. The occurrence was incidently witnessed by P.Ws.2 and 3 also. P.W.2 is the brother-in-law of the deceased and P.W.3 was an employee under the deceased. All the accused thereafter fled away from the scene of occurrence. P.W.1 returned to the house of the deceased and prepared a complaint in his own handwriting. Then, he proceeded to the police station and presented the said complaint to P.W.19. 10.3. P.W.19, the then Inspector of Police of Thisayanvilai Police Station, on receipt of the said complaint, registered a case in Crime No.165 / 1999 under Sections 147, 148 and 302 IPC against the accused 1 to 5 and few others. The accused 6 to 8 were not named in the FIR. Ex.P21 is the FIR and Ex.P1 is the complaint. Then, he forwarded Exs.P1 and P21 to the Court through P.W.17. The same were received by the learned Judicial Magistrate at 6.30 p.m., i.e. in the evening on 07.05.1999 at Nanguneri. P.W.19 took up the case for investigation and proceeded to the place of occurrence and at 9.00 a.m. he prepared an observation mahazar under Ex.P2 and a rough sketch under Ex.P22 in the presence of P.W.4 and another witness. Then, he conducted inquest on the body of the deceased. He examined P.Ws.1 to 6 and recorded their statements. Then, he forwarded the body for postmortem. 10.4. P.W.16 ?. Dr.Christopher Dass conducted autopsy on the body of the deceased on 07.05.1999 at 4.00 p.m. He found the following injuries:

1. Incised wound 20 x 8 x 8 cm in front of neck below the mandible. All structures in front of necks cut body of the 2nd cervical vertebra and spinal cord cut.
- 2.Incised wound 10 x 6 x 4 cm in front of right side of mandible. Mandible cut on the medial aspect.

3. Incised wound 7.5 x 1.5 x 8 cm over right infra-axillary region, present obliquely, exposing liver, part of liver weighing about + kg cut from its upper part seen as separate piece 4. Incised wound 15 x 8 x 6 cm, 4 cm above umbilicus, part of small intestine has come out through the opening.

5. Incised wound 15 x 6 x 5 cm, 4 cm above 4th wound part of large intestine has come out through the opening.

6. Incised wound 10 x 6 x bone deep in front of left thigh 15 cm above left bone.

7. Incised wound 15 x 8 x 8 cm over lateral aspect of let side of abdomen.

8. Incised wound 15 x 8 x 6 cm over posterior part of right axilla 9. Incised wound 10 x 3 x bone deep over front of scalp.

10. Incised wound 8 x 3 x 3 cm over posterior aspect of left shoulder.

11. Incised wound 10 x 3 x 2 cm over upper part of left scapula.

12. Incised wound 15 x 2 x 2 cm over posterior aspect of left axilla. In the stomach, he found partially digested food material. Ex.P18 is the report. He gave opinion that the deceased would appear to have died of injuries to major organs and shock and hemorrhage. 10.5. From the place of occurrence, P.W.19 had recovered bloodstained earth, sample earth and other bloodstained materials. The total number of bloodstained earth and other materials recovered from the place of occurrence was 9. Then, he handed over the material objects to the Court. On 09.05.1999, he arrested the third accused Mr.Natarajan at 2.00 p.m. at Melapalayam in the presence of P.W.7 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed that he had hidden Mahindra Jeep bearing registration No.KLM6740near Kurichi Municipal Office. He also disclosed that he had hidden a Veech Aruval (Chopper) in the said vehicle. In pursuance of the said disclosure statement, they were recovered by P.W.19. Ex.P15 is the disclosure statement and Ex.P26 is the mahazar for recovery of the above weapons. Then, he forwarded the accused to Court for judicial remand and also handed over the material objects to the Court. 10.6. On 10.05.1999, the 4th accused surrendered before the learned Judicial Magistrate, Nagercoil. He took

police custody on 22.05.1999. While in the police station, in the presence of P.W.8 and another witness, he gave a voluntary confession to P.W.19. In that, he disclosed that he had hidden a Tractor bearing registration No.TN72B8596 and an aruval. In pursuance of the said disclosure statement, he took P.W.19 and the witnesses to the said place and produced the Tractor and aruval. They were recovered under Ex.P28 mahazar. On returning to the police station, he forwarded the accused to Court and handed over the material objects to Court. 10.7. On 23.05.1999, at 02.30 p.m., he arrested the accused Ramachandran ?. A5 in the presence of P.W.9 and another witness. On such arrest, he also gave a voluntary confession, in which, he disclosed the place, where he had hidden a Veecharuval (Chopper) at Idinthakarai. In pursuance of the said disclosure statement, he took P.W.19 and other witnesses to the said place and produced M.O.8 aruval. The same was recovered. 10.8. On 25.05.1999 at 6.30 a.m., P.W.19 arrested the 7th accused Kottaisamy in the presence of P.W.10 and another witness at Thili Bus stop. On such arrest, he also gave a voluntary confession, in which, he disclosed that he had hidden an aruval at Vijayapathy stone quarry. In pursuance of the said disclosure statement, he took P.W.19 and other witnesses to the said place and produced produced M.O.9 aruval. That was recovered under mahazar. Then, he forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. 10.9. On 21.05.1999, the 4th accused Muthukrishnan had surrendered. He took police custody on 28.05.1999. While in custody, in the presence of witnesses, P.W.1 and another witness, he gave a voluntary confession, in which, he disclosed the place, where he had hidden the aruval. In pursuance of the same, he took P.W.19 and another witness and produced M.O.10 aruval and the same was recovered.

11. On 08.06.1999, he gave a request to the learned Judicial Magistrate for conducting identification parade for the accused Ramachandran, Kottaisamy and Paramasivan (A6, A7 and A8). On 04.06.1999, the first accused surrendered before the learned Magistrate at Tenkasi. P.W.19 took police custody of him on 12.06.1999. While in custody, in the presence of two witnesses, he gave a voluntary confession, but no discovery of any weapon was recovered out of the same. In the test identification parade conducted by the learned Magistrate, P.Ws.1 to 3 identified the accused 6 and 8. On completing the investigation, he

laid the charge sheet against all the accused.

12. Based on the same, the trial Court framed the charges as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the charges, on the side of the prosecution as many as 22 witnesses were examined, 41 documents were exhibited and 12 material objects were marked. Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses, who have elaborately spoken about the entire occurrence. P.W.4 has spoken about the observation mahazar and recovery of material objects from the place of occurrence. P.W.5 is the wife of the deceased, who has spoken about the motive as well as about the fact that the deceased left her house by around 5.00 a.m. on 07.05.1999 and that P.W.1 followed him. P.W.6 has spoken about the motive. P.Ws.7 to 11 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.12 the Executive Officer of the Panchayat has spoken about the shandy let out to the first accused. P.W.13 the Foreman from the Tamil Nadu Electricity Board has stated that there was no electricity failure at the place of occurrence on the crucial date. P.W.14 the Executive Engineer of TNEB, has also spoken about the same. P.W.15 is the learned Magistrate, who conducted Test identification parade for the accused 6 and 7. According to her report, P.Ws.1 to 3 identified the accused 6 and 7 in the parade held on 25.06.1999. The 8th accused was not put up for identification parade. P.W.16 ?. Dr.Christopher Dass has spoken about the postmortem conducted by him and his final opinion. P.Ws.17 and 18 are the police constables, who carried the FIR to the Court and the dead body to the hospital for postmortem. According to P.W.17, the FIR was handed over by him to the Court at 6.30 p.m. P.W.19 the Inspector of Police has spoken about the registration of the case and the investigation done by him. P.W.20 ?. Dr.Thangaraj has spoken about the injuries found on the 6th accused, when he was arrested. P.W.21 is the Officer in Forensic Department, who has given opinion regarding the viscera and P.W.22 is the Inspector of Police is the one, who laid the charge sheet followed by the investigation by P.W.19.

13. When the incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, they have examined two witnesses as D.Ws.1 and 2 by name Ganapathy and P.L.Ganesan. D.W.1 ?.

Mr.Ganapathy was the staff in the Thisayanvilai Town Panchayat. He has stated about the auction of the daily shandy belonging to the panchayat. He has spoken about the auction held for the years 1995-1996 to 1999-2000 and 2001. According to him, the shandy was taken in the name of P.L.Ganesan. D.W.2 is Mr.P.L.Ganesan, who has stated that he was awarded the contract in the public auction held to run the shandy. On the side of the accused, 8 documents were marked. All relating to the auction of the shandy in the name of P.L.Ganesan, namely D.W.2. Ex.D1 is the Doctor's report relating to the contents of the stomach of the deceased. Having considered all the above materials, in S.C.No.14 of 2004, the trial Court convicted all the accused and similarly in S.C.No.14A of 2014, the trial Court convicted the accused Natarajan as detailed herein above. That is how, they are before this Court with this appeal.

15. We have heard the learned counsel for the accused/appellant, the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

16. The learned senior counsel for the appellants would submit that FIR in this case is a doubtful document. According to him, there is enormous delay in the FIR in reaching the hands of the learned Judicial Magistrate, which has not been explained away. The learned senior counsel would next contend that the FIR does not contain the names of the accused 6 to 8. He would further submit that the Doctor, who conducted postmortem, has clearly stated that he found partially digested food material and that the death would have occurred one hour after the deceased taken his last meal. The learned senior counsel would point out that P.W.1 has admitted during cross examination that the deceased had his last meal at 10.00 p.m. From this, the learned senior counsel would submit that the occurrence would have taken place somewhere around 11 p.m. and not at 5.30 a.m. on the next day. Thus, according to him, the medical evidence does not support the case of the prosecution at all. He would further submit that P.Ws.1 to 3 are closely related to the deceased and they were inimical towards the accused and also interested in the case of the prosecution. He would further submit that their presence is highly doubtful. He would further submit that their presence at the place of occurrence has not been duly explained away to the satisfaction of the

Court. The learned counsel would further point out that during their evidence, P.Ws.1 and 2 have spoken only about the presence and overt acts of the accused 1 to 5 and they have not stated anything about the accused 6 to 8. P.W.3 has spoken only about the accused 1 to 3 and he has also not spoken anything about the rest of the accused. Thus, according to the learned senior counsel, these three witnesses are not fully believable. For these reasons, according to the learned senior counsel, the trial Court ought to have acquitted all the accused.

17. The learned Additional Public Prosecutor would, however, oppose this appeal. According to him, in preferring the complaint, there is no delay at all. He would further submit that though there is some delay in forwarding the FIR to the Court that has not caused any doubt in the case of the prosecution. He would, however, submit that the presence of P.Ws.1 to 3 have been duly explained away by them and therefore, their presence cannot be doubted. He would further submit that so far as the medical evidence is concerned, since it is the opinion evidence, the eye witnesses account of P.Ws.1 to 3 should be accepted and the opinion evidence should be rejected. He would further submit that there is no contradiction between the evidence of P.Ws.1 to 3. Though according to him, P.Ws.1 to 3 had identified the accused 6 and 7, in the identification parade, for their own reason, they have not identified them in the Court. On that score, according to the learned Additional Public Prosecutor, their evidence against the accused 1 to 5 cannot be doubted and rejected. Thus, the learned Additional Public Prosecutor, the conviction and sentence imposed on these appellants deserve only to be confirmed.

18. We have considered the above submissions.

19. According to the prosecution case, the alleged occurrence was at 5.30 a.m. on 07.05.1999. The FIR is stated to have been registered at 6.30 a.m. But, admittedly, the same had reached the hands of the learned Judicial Magistrate only at 6.30 p.m. i.e. on the evening. Thus, there is 12 hours delay in the FIR reaching the hands of the learned Judicial Magistrate. P.W.17 ? the Constable, who carried the FIR, had not explained the said delay. This unexplained delay creates doubt in the case of the prosecution, more particularly, because there are multiple number of accused and also because, in the FIR, the names of the

accused 6 to 8 had not been mentioned. According to the FIR, apart from A1 to A5, few more persons had also participated in the occurrence. In a case involving in multiple number of accused, the unexplained delay, which is enormous, creates strong doubt about the truthfulness of the allegations made in the FIR.

20. Next, comes the medical evidence. According to P.W.16 - the Doctor, there was partially digested food materials found in the stomach. Ex.D1 is the report. According to the Doctor, going by the stage of the food materials found partially digested, he was of the opinion that the deceased would have died within one hour after taking food. This opinion, in our considered view, deserves to be accepted because it is the accepted medical knowledge that the food materials will remain in the stomach, at the most, only for a period of three hours, after one has taken the food. Even if some margin is given to the opinion given by the Doctor, even then, it is not possible that the occurrence would have taken place at 5.30 a.m., because P.W.1 has categorically admitted that he took food at 9.30 p.m. and the deceased had his last meal at 10.00 p.m. Because, P.W.1 happens to be a rustic villager, one cannot attach much importance to the said time spoken by him. We may give some allowance. Assuming that the deceased had taken the food somewhere between 10 p.m. and 11 p.m., the occurrence should have taken place, at any rate, between 11 p.m. and 12 mid night. It is scientifically impossible to infer that the deceased would have died at 5.30 a.m. in the morning. This creates doubt in the case of the prosecution, regarding the time of occurrence. This doubt based on the scientific evidence has not been obviated by the prosecution at all.

21. Next, comes the presence of P.Ws.1 to 3. P.W.1 is the junior father-in-law of the deceased. According to him, he had come to the house of the deceased, then he followed the deceased and thus, he witnessed the occurrence. P.W.2 is the brother-in-law of the deceased. He has stated that he also incidentally came to the place of occurrence from his village. P.W.3 is a servant under the deceased and he also stated that he incidentally came to the place of occurrence. It is too difficult to believe that early in the morning that too at 5.30 a.m. before the sun rise, these three people would have gone to the place of occurrence incidentally. In our considered view, in the absence of any explanation offered by these three witnesses for their being present at the time of occurrence, it is doubtful to believe

their presence at the time of occurrence.

22. Assuming that these three witnesses were present, the next immediate question is whether they are telling the truth. P.W.1 has spoken about the presence and overt acts of the accused 1 to 5. But he has not stated anything about the accused 6 to 8. In the FIR, he did not mention the names of the accused 6 to 8. But, during the identification parade, he identified the accused 6 and 7. But while deposing before the Court, for his own reasons, he had not identified the accused 6 and 7. Similarly, he had not identified the accused No.8, for whom, there was no identification parade at all. P.W.2, who is the brother-in-law of the deceased, has also spoken only about the participation and overt acts of the accused 1 to 5. He has not stated anything about the accused 6 to 8. Though he identified the accused 6 and 7 during the identification parade, for his own reasons, he did not identify them in the Court. He also did not identify the 8th accused in the Court. There is no explanation offered by the prosecution as to why they have not identified the accused 6 to 8 while deposing before the Court. But strangely, P.W.3, who knew all these three accused, has spoken about the presence and participation of the accused 1 to 3 alone. He has not stated anything about the accused 4 to 8. Thus, these witnesses have not given evidence in a cogent and convincing manner. There are lot of contradictions and improbabilities. When their presence itself is doubtful and when the medical evidence completely falsify the case of the prosecution, regarding the time of occurrence, these contradictions, which are major in character, also assume much importance. With these contractions, in our considered view, it is difficult to believe these witnesses.

23. Lastly, though it is stated that some of the accused had given disclosure statement and the weapons were recovered on their disclosure statement, the witnesses, who were examined to speak about the same, have turned hostile. Thus, the prosecution has lost that piece of evidence also in their favour. To put it in nutshell, from the narration of facts, it is inferable that the deceased would have been done to death during mid night on 06.05.1999 and 07.05.1999 and the dead body would have been seen only in the next day morning i.e. on 07.05.1999. Thereafter, after deliberations, the FIR would have come into being only in the evening and that is the reason why it reached the hands of the learned Magistrate

at 6.30 p.m. This reasonable inference, which could be culled out from the facts and circumstances of the case, cannot be ruled out by the prosecution.

24. In view of all the above, we find that the prosecution has failed to prove the case beyond reasonable doubts. Though the prosecution has been able to create suspicion in respect of the alleged complicity of the accused 1 to 5, on that suspicion, we cannot sustain the conviction. In view of all the above, all the three appeals deserves to be allowed.

25. In the result, the criminal appeals are allowed, the conviction and sentence imposed on the appellants are set aside and they are acquitted of all the charges. Fine amount, if any paid by them, shall be refunded to them. Bail bonds shall stand terminated. To 1.The I Additional Sessions Judge, Tirunelveli 2.The Inspector of Police Thisaiyanvilai Police Station Tirunelveli District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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