

1.Kumar Vs. the State Represented by

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Court : Chennai

Decided On : Mar-08-2013

Judge : A.Selvam

Appellant : 1.Kumar

Respondent : The State Represented by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

08. 03/2013 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM AND THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.185 o

1. Kumar 2.Esakkipandi 3.Kittu @ Krishnan ... Appellant/ A.1 to A.3 Vs. The State represented by The Sub Inspector of Police, Nanguneri, Muneerpallam Police Station, Tirunelveli District. ... Respondent/ Complainant Prayer Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment passed in S.C.No.59 of 2002 dated 27.02.2006, by the Second Additional Sessions Judge, Tirunelveli, Tirunelveli District. !For Appellant ... Mr.V.Gopinath, Senior Counsel for Mr.R.Rajesh Kumar ^For Respondent ... Mr.K.S.Duraipandian, Additional Public Prosecutor * * * * *:JUDGMENT M.SATHYANARAYANAN,J.

The appellants are arrayed as A.1 to A.3 in S.C.No.59 of 2002, on the file of the Court of Second Additional Sessions Judge, Tirunelveli District, at Tirunelveli and

they stood charged and tried and convicted as follows: Accused Charges A.1 to A.3 Sections 120(b), 148, 147, 341, 302 I.P.C. A.1 Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. A.1 to A.3 Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Accused Conviction Sentence A.1 to A.3 Section 341 I.P.C. to undergo simple imprisonment for one month. Section 302 I.P.C. to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- each, in default to undergo rigorous imprisonment for six months.

2. A.1 to A.3 in respect of the charges framed under Sections 120(b), 147, 148 and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, were acquitted and A.1, in respect of the charge under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, was acquitted.

3. A.4 to A.7 who were also tried for the commission of the offences except under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, were acquitted and the State has not preferred any appeal challenging the acquittal of A.4 to A.7 as well as the acquittal of A.1 to A.3 for the commission of the offences under Sections 120(b), 147, 148, I.P.C and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the acquittal of A.1 in respect of the commission of offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. The trial Court further ordered that the sentences of imprisonment imposed on the appellants/A.1 to A.3 shall run concurrently and also ordered set-off under Section 428 of the Code of Criminal Procedure and challenging the legality of the conviction and sentence passed by the trial Court, they preferred this appeal.

5. The facts leading to the filing of this appeal, are as follows: (i) P.W.1 is the father of the deceased and the defacto complainant and his eldest son namely Sivanpandi was employed as a driver and eking out his livelihood as broker for the sale of sand, blue metals, etc. Sivanpandi was employed as a driver under the services of Mandhiripandian, the father of the first accused. About four months

prior to 25.11.2001, there was a difference of opinion between Mandhiripandian and Sivanpandi - the son of P.W.1 and therefore, the first accused who is the son of Mandhiripandian and his associates, hatched a conspiracy to murder Sivanpandi. On 25.11.2001, at about 01.30 p.m., P.W.1, one Thangapandi and P.W.4 - Shanmugavel were taking bath and at that juncture, the son of P.W.1, namely Sivanpandi was proceeding from east to west in his motorcycle bearing Registration not TN-72-F-9848 (M.O.6) and P.W.2 - Ganeshan was sitting on the pillion of the said vehicle and when he was approaching the new bridge, A.1 and A.2 - the sons of Mandhiri, A.3 - the son of junior father of A.1 and A.2, A.4 - the son of Karungadu Kittu, A.5 - the cousin brother of A.1 and A.2, armed with aruvals and A.6 - the lorry driver employed under the father of A.1 and A.2; and A.7 - the son of Subbiah Thevar, armed with weapons, rushed towards Sivanpandi and abused him and also restrained him. A.1 with an aruval, forcefully attacked him and it was prevented and when it was blocked by using his left hand, he sustained a bleeding injury. A.2 also attacked Sivanpandi with an aruval and it fell on the right forearm of Sivanpandi and sustained a bleeding injury. A.3 attacked Sivanpandi and it fell on the cover of the two wheeler petrol tank and Sivanpandi dropped the vehicle and started running towards the river and he was chased by A.3 and he inflicted cut injury on the left leg. A.7 attacked Sivanpandi with a stick on his head and A.3 once again attacked Sivanpandi with an aruval on the rear side of the head repeatedly and also on the left side of the neck and Sivanpandi had fallen down. Immediately, A.1 repeatedly attacked Sivanpandi on his face and A.4 had also attacked him with an aruval on his left wrist and also on the left hand and A.5 also attacked on the left shoulder and on the back. A.6 set on fire the two wheeler and as a result of which, the plastic cover put on the petrol tank, got burnt. The above said occurrence was witnessed by P.W.1 - Olimuthu, P.W.10 - Thangapandi, P.W.2 - Ganeshan and P.W.4 - Shanmugavel and they immediately raised alarm and therefore, all the accused ran away on the western side. The son of P.W.1 died on the spot. (ii) P.W.16 was the Sub Inspector of Police attached to Muneerpallam Police Station and while he was on duty at about 14.30 hours, on 25.11.2001, P.W.1 and P.W.2 appeared before him and P.W.1 had given a statement with regard to the occurrence and it was recorded by P.W.16 and based on the complaint of P.W.1, P.W.16 registered a case in Cr.No.302 of 2001 for the

commission of the offences under Sections 147, 148, 341 and 302 I.P.C and the printed F.I.R was marked as Ex.P.49. P.W.15 dispatches the original of Ex.P.1 and F.I.R to the jurisdictional Judicial Magistrate namely, Judicial Magistrate No.6, Tirunelveli and also the copies to the Inspector of Police and also the higher officials. (iii) P.W.19 was the Inspector of Police of Muneerpallam Police Station and at about 03.00 p.m., on 25.11.2001, he received the F.I.R and through wireless message, he requested the services of Police Photographer, Dog Squad and scientific assistants and proceeded to the scene of crime namely, below bridge at Tharuvai and in the presence of P.W.6 and another, prepared the Observation Mahazar - Ex.P.2 and the rough sketch, Ex.P.50. P.W.19 in the presence of the Panchayatdars conducted the inquest on the body of the deceased and prepared the inquest report, Ex.P.51. (iv) P.W.19 sent the body of the deceased Sivanpandi through the Head Constable to Tirunelveli Medical College Hospital, for conducting post-mortem. P.W.12, was the Professor attached to the Tirunelveli Medical College Hospital, on receipt of the requisition given by the police for conducting post-mortem, commenced the post-mortem at 10.15 a.m., on 26.11.2001 and noted the following features: "1) Horizontal gaping cut injury 5x2 cm on the right temple close to outer angle of right eye with a tailing of 2 cm on its outer end. On dissection, the underlying bones and soft tissues were found cut.

2) Horizontal gaping cut injury 5x2 cm from the nasal bridge to the left lower eyelid with a tailing of 2 cm on its outer aspect. On dissection, the underlying bone and soft tissues were found cut.

3) Horizontal gaping cut injury 14x1 cm from the right cheek to the left cheek crossing the nose in its way. On dissection, the underlying bone and soft tissues were found cut and communicates into the oral cavity.

4) Horizontal gaping cut injury 5x1 cm x 1 cm on the right cheek with a tailing of 1.5 cm seen on its lower end.

5) Horizontal gaping cut injury 1 cm above the injury no 4 measuring 6x1x1 cm with a tailing of 2 cm on its outer end.

6) Horizontal cut injury 18x2 cm from the right side of cheek below the ear lobe to the angle of mouth on the left side cutting the lower lip through and through. Underlying muscles and bones were found cut with a tailing of 1.5 cm seen on the left end of the wound.

7) Horizontal cut injury 4x.5 cm x .5 cm on the upper lip.

8) Oblique cut injury 3x.5 cm x .5 cm on the left cheek with a tailing of 3 cm on its upper end.

9) Horizontal gaping cut injury 12x2 cm x 2 cm on the temporal region of the scalp on the left side. On dissection, the underlying bone found cut and the brain matter exposed.

10) another parallel gaping cut injury 8x2 cm just below and close to the injury no.9. The wound communicates into the cranial cavity by cutting the bone.

11) Another vertical cut injury 5x1 cm x bone deep on the back of upper part of center of scalp.

12) Horizontal gaping cut injury 9x2 cm on the occipital region on the right side. The bone found cut and communicates into the cranial cavity.

13) Horizontal gaping heavy cut injury 15x2 cm on the back of head on the left side 1 cm below the injury no 12, cutting the left ear at its outer aspect. The underlying bone found cut.

14) Horizontal gaping cut injury 7x1 cm on the left cheek, front of left ear extending onto the ear and the ear was cut into 2 pieces. Underlying bone found cut.

15) Oblique gaping heavy cut injury on the whole of back of neck, 18x2 cm cutting the back of C1 and body of C2 cervical vertebrae along with the spinal cord.

16) Gaping oblique heavy cut injury 2 cm below the injury no 15 on the whole of back of neck, 20x4cmx 7 cm. The underlying back of C2 and body of C3 cervical vertebrae were found completely cut including the spinal cord at that level.

- 17) Oblique gaping cut injury 12x3cm x 4 cm on the top of back of right shoulder close to the neck.
- 18) Horizontal gaping cut injury 12x4 cm on the back of base of neck. The wound exposes the cut portion of the C6 cervical vertebra.
- 19) Oblique gaping cut injury on the center of back close to the base of neck, 13x3x4 cm;
- 20) Vertical gaping cut injury 12x2cm x 4 cm on the upper part of back on the left side inner to the left shoulder blade.
- 21) Gaping heavy cut injury 18x2cm x 2 cm on the top of left shoulder from the base of neck to the outer aspect of shoulder.
- 22) A vertical heavy gaping cut injury 15x3 cm x 3 cm on the left deltoid region.
- 23) Horizontal gaping cut injury 9x2 cm with a tailing of 2 cm at its outer end on the left cheek; the wound exposes the cut ends of the soft tissues and bones. It lies 4 cm below the left ear lobe.
- 24) A horizontal bevelled cut injury from below upwards seen on the front of left shoulder, 10x4 cm x 4cm;
- 25) An oblique gaping heavy cut injury 18x5 cm the wound exposes the cut ends of the soft tissues and the ulna bone at that level in the right forearm on its middle of back.
- 26) An oblique bevelled cut injury from below upwards 25x5 cm x bone deep on the front of whole of left forearm.
- 27) An oblique bevelled cut injury from below upwards 11x 4 cm x bone deep on the back of left hand upto the wrist.
- 28) Horizontal gaping heavy cut injury on the back of upper third of left forearm 11x4cm x 4 cm. The wound exposes the cut margins of soft tissues and upper end of ulna.

29) A vertical gaping cut injury 20x4cm x 4 cm with a tailing of 2 cm at its lower end seen on the outer aspect of left gluteal region.

30) Horizontal bevelled gaping cut injury 16x6 cm x 8 cm on the front and inner aspect of upper third of left leg; the underlying bone is found cut to the depth of .5 cm;

31) Oblique cut injury from back to front 5x3x3 cm on the inner aspect of middle of left foot. PLEURAL AND PERITONEAL CAVITIES:Empty. Heart: All chambers contain a few cc of fluid blood. Lungs:C/S:Pale. Hyoid bone: Intact. Stomach: Empty. Nil specific smell. Mucosa:pale. Small intestine: Empty. Nil specific smell. Mucosa:Pale. Liver, spleen and kidneys: C/S: Pale. Bladder:Empty. Brain:C/S:Pale. The brain surface below the injuries no 9, 10 and 12 is found cut correspondingly to a depth of .5cm;" (v) After concluding the post-mortem, P.W.12 opined that 'the deceased died of heavy cut injuries in the regions of face and neck and the death would have occurred 18 to 24 hours prior to autopsy.' The post-mortem certificate issued by P.W.12 was marked as Ex.P.40. (vi) P.W.19 also recovered the two wheeler used by the deceased and the blood stained stick, blood stained earth and sample earth in the presence of P.W.6 and also the other articles and materials seized from the scene of crime were marked as M.O.11 to M.O.23. (vii) P.W.19 also with the help of the scientific assistant, seized the foot prints under the cover of mahazar and also examined P.W.1, P.W.4 and other witnesses and recorded their statements. (viii) On 26.11.2001, P.W.19 recorded the statements of other witnesses and also sent the material objects seized from the body under Form 95 and on 28.11.2001, recorded the statement of P.W.3 and on 29.11.2001 recorded the statement of P.W.12 - Doctor, who conducted autopsy and recorded his statement. P.W.19 came to know that all the accused had surrendered before the Court of Judicial Magistrate, Ambasamudiram and hence, he submitted a petition on 03.12.2001 for taking them under police custody, to the Court of Judicial Magistrate No.6, Tirunelveli and on 11.12.2001, obtained their police custody. (ix) A.1 voluntarily came forward to give a confession statement and accordingly, it was recorded in the presence of P.W.8 and others and the admissible portion of the same was marked as Ex.P.52 and his hair was seized under the cover of mahazar. A.2 also came forward to give his confession

statement and the same was recorded in the presence of same witnesses and as per the admissible portion (Ex.P.53), an aruval was seized under the cover of mahazar. On the same day, A.3 also gave a confession statement and the admissible portion was marked as Ex.P.54. A.5 also gave a confession statement and the admissible portion was marked as Ex.P.55. On the same day, A.6 and A.7 gave their confession statements and the same were recorded in the presence of the same witnesses. Foot prints seized from the scene of crime, were sent for scientific analysis and the weapons used by the accused seized in pursuance of their confession statements, were sent to the Court under Form 95 and on 12.12.2001, A.4 was taken into custody and also his confession statement was recorded by P.W.19. P.W.19 once again recorded the statements of P.W.1, P.W.4, P.W.2 and another and altered the Sections into one under Sections 147, 148, 341, 302 I.P.C and Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and the alteration report was marked as Ex.P.56 and he forwarded the case diary to the Deputy Superintendent of Police, Nanguneri, for further investigation. (x) P.W.24, after receipt of the case diary, has commenced the investigation since the accused were also charged for the commission of the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and proceeded to the scene of crime at about 15.30 hours on 15.12.2001 and once again recorded the statements of P.W.1, P.W.2, P.W.4 and others. (xi) P.W.24 also made a requisition for scientific analysis of the material objects and also obtained the Community Certificate of the accused as well as the deceased and after receipt of the reports of the Forensic and Scientific opinions, filed the charge sheet against the accused charging them for the commission of the offences under Sections 120(b), 302, 307, 147, 341 I.P.C and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, read with Section 149 I.P.C. (xii) The Court of Judicial Magistrate No.6, Tirunelveli, on receipt of the filing of the charge sheet, issued summons to all the accused and furnished them with the copies of the charge sheet and the documents as contemplated under Section 207 of the Code of Criminal Procedure, 1973. (xiii) The committal Court having found that the offences for which the accused are charged, are exclusively triable by the Sessions Court, committed the same to the Court of Principal Sessions Judge, Tirunelveli, and the said Court in

turn, made over the case to the Second Additional Sessions Judge, Tirunelveli and the said Court took the case on its file in S.C.No.59 of 2002 and issued summons to the accused and on their appearance, framed the above said charges and questioned them. (xiv) All the accused pleaded not guilty to the charges and prayed for trial of the case. (xv) The prosecution in order to sustain their case, examined P.W.1 to P.W.24 and marked Exs.P.1 to P.73 and also marked M.O.1 to M.O.24. (xvi) All the accused were questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against them in the evidence tendered by the prosecution and they denied it as false. (xvii) On behalf of the accused, Exs.D.1 and D.2 were marked and no oral evidence was let in. (xviii) The trial Court, on consideration of oral and documentary evidence and other materials, had convicted A.1 to A.3/appellants herein, as stated above and challenging the vires of the conviction and sentence, they preferred this appeal.

6. Mr.V.Gopinath, learned Senior Counsel appearing for the appellants/A.1 to A.3 would submit that though the occurrence took place at about 01.30 p.m., on 25.11.2001, the complaint came to be lodged only at about 02.30 p.m., on 25.11.2001 and even with regard to the contents of the complaint, three different versions have been spoken to by the eyewitnesses namely P.W.1 and P.W.2 and other two witnesses namely P.W.4 and P.W.10 did not support the case of the prosecution and they were treated as hostile.

7. It is further contended by the learned Senior Counsel appearing for the appellants/A.1 to A.3 that P.W.1 is the father of the deceased and P.W.2 is the cousin brother of the deceased and except their interested and tainted testimonies, no corroboration from independent sources has been adduced by the prosecution to sustain their case.

8. It is the further submission of the learned Senior Counsel appearing for the appellants/A.1 to A.3 that though the F.I.R was registered at about 14.30 hours on 25.11.2001, it reached the jurisdictional Judicial Magistrate Court, at 10.45 p.m., on 25.11.2001 and in spite of specific questions put to P.W.16, who registered the F.I.R, P.W.17 who took the F.I.R to the jurisdictional Judicial Magistrate Court and

P.W.19, the Investigating Officer, no proper explanation has been given as to the belated dispatch of the F.I.R and consequently, the F.I.R could not have come into existence as spoken to by the prosecution and since the entire investigation commenced based on the F.I.R. and in respect of its belated dispatch, no explanation has been offered, the entire case of the prosecution became highly suspicious.

9. It is also the submitted by the learned Senior Counsel appearing for the appellants/A.1 to A.3 that even assuming that the testimonies of P.W.1 and P.W.2 can be believed, there are material contradictions between them as to where and when the offence took place and the testimony of P.W.1 would also disclose that he would not have witnessed the occurrence at all and also drawn the attention of this Court to the testimonies of P.W.1 and P.W.2.

10. Drawing the attention of this Court to the testimony of P.W.2, who was the pillion rider of the two wheeler driven by the deceased, it is contended that he could not have accompanied the deceased at all and therefore, in all probabilities, he would not have witnessed the occurrence at all and hence, he cannot be termed as an eyewitness.

11. It is also vehemently contended by the learned Senior Counsel appearing for the appellants/A.1 to A.3 that admittedly, the police party reached the spot even prior to the lodging of the complaint which implies that there was prior information even before lodging the complaint by P.W.1 under Ex.P.1.

12. It is further submitted by the learned Senior Counsel appearing for the appellants/A.1 to A.3 that the prosecution has miserably failed to prove the motive for the commission of the offence and also made a vehement submission that on the same set of evidence, A.4 to A.7 were acquitted and therefore, the trial Court ought to have ordered the benefit of doubt to A.1 to A.3, but failed to do so.

13. It is also contended by the learned Senior Counsel appearing for the appellants/A.1 to A.3 that A.1 to A.3 were acquitted for the commission of the offences under Sections Sections 120(b), 147, 148, I.P.C and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and A.1

was acquitted for the commission of offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, for the reason that the prosecution has failed to prove the commission of the said offences and the trial Court having found that the testimonies of the witnesses cannot be believed for the commission of the offences for which A.1 to A.3 were acquitted, ought not to have convicted them for the commission of the offences under Sections 341 and 302 I.P.C.

14. Insofar as the scientific evidence is concerned, it is contended by the learned Senior Counsel appearing for the appellants/A.1 to A.3 that the foot prints seized did not tally with the foot prints of A.1 and A.2 and the lethal weapons also did not contain any blood stains and the infirmities pointed out above had shaken the very foundation laid down by the prosecution and hence, the appellants/A.1 to A.3 are to be acquitted.

15. Per contra, Mr.K.S.Durai Pandian, learned Additional Public Prosecutor appearing for the respondent would vehemently contend that the prosecution has amply proved the motive as the deceased - the son of P.W.1 was employed under the father of A.1 and on account of difference of opinion, he left the employment and hence, there was misunderstanding and enmity developed.

16. Insofar as the lodging of the complaint under Ex.P.1 is concerned, it is submitted by the learned Additional Public Prosecutor that the occurrence took place at about 01.30 p.m., on 25.11.2001 and Ex.P.1, complaint came to be given by P.W.1 without any loss of time within one and half hour and it was registered by P.W.16 at about 02.30 p.m. on 25.11.2001, wherein the details with regard to the motive as well as the overt acts played by each of the accused have been clearly narrated.

17. Insofar as the belated dispatch of Ex.P.1 and F.I.R is concerned, it is the submission of the learned Additional Public Prosecutor that the delay in dispatching of the complaint and the F.I.R cannot lead to the inference that the case of the prosecution is false and concocted and it depends upon the facts and circumstances of each case. Ex.P.1, complaint, came to be lodged without any loss of time, wherein the details of the commission of crime have been narrated in

detail and even assuming the above said material documents have been belated dispatched, it cannot be said that there was interpolation in the above said documents.

18. The learned Additional Public Prosecutor would further contend that the occurrence took place during November 2001 and the witnesses came to be examined during April 2005 and on account of passage of time, they are bound to be some discrepancies and moreover, the witnesses belonged to the downtrodden community hailing from a small village and therefore, they cannot be expected to depose verbatim or parrot like version and would submit that the testimonies of P.W.1 and P.W.2 would corroborate with each other on material particulars. As regards the presence of police, the learned Additional Public Prosecutor would contend that it is not only the duty of the police to investigate, but also to prevent the commission of the offence and since the matter involves murder committed by the people belonging to the upper caste, anticipating some trouble and immediately, on coming to know the said fact, the police would have come to the spot and it may not lead to the inference that in pursuance of the earlier information, they reached the scene of crime.

19. It is further contended by the learned Additional Public Prosecutor that the scientific evidence in the form of the post-mortem report marked as Ex.P.40, and the Serology report, has also supported the case of the prosecution and though the foot prints seized from the scene of crime did not tally with that of A.1 and A.2, their presence had been spoken to by P.W.1 and P.W.2 and the infirmities pointed out by the learned Senior Counsel appearing for the appellants/A.1 to A.3 are only trivial in nature and the same has not discarded the case of the prosecution. Therefore, the learned Additional Public Prosecutor would also contend that since the trial Court on a proper consideration and appreciation of oral and documentary evidence has convicted the appellants/A.1 to A.3, interference may not be warranted at the hands of this Court in exercise of the appellate jurisdiction.

20. This Court bestowed its best attention to the submissions made by the learned Senior Counsel appearing for the appellants/A.1 to A.3 and the learned Additional Public Prosecutor appearing for the respondent and also perused the oral and

documentary evidence and the original records.

21. P.W.1, the father of the deceased, has deposed in the chief examination that he, P.W.4 and one Thangapandi were taking bath in a canal at about 01.30 p.m., on 25.11.2001 and at that time, he saw his son - Sivanpandi was riding a two wheeler and at that time, A.1 to A.7 wrongly restrained him and indiscriminately attacked him by using the aruvals and stick. P.W.1, on seeing the occurrence, went near him and found that he was dead and therefore, he proceeded to Muneerpallam Police Station to lodge an oral complaint under Ex.P.1, which was reduced into writing by P.W.16 and he registered the F.I.R, marked as Ex.P.49.

22. P.W.1 also identified the weapons used by them. In the cross- examination, P.W.1 deposed that the police came to the spot at about 03.30 p.m., and noted the injuries from the body of the deceased and at that time, P.W.16 and P.W.19 were also present.

23. A suggestion was made to P.W.1 with regard to the antecedents of his deceased son and he denied the suggestion that on account of his enmity with others, he was done away with.

24. P.W.2, who accompanied the deceased as a pillion rider in the motorcycle, in his chief examination deposed that when they were proceeding in a two wheeler, all the accused by using the lethal weapons and sticks repeatedly attacked the deceased and consequently, he died. In the cross-examination, P.W.2 deposed that in the Police Station, he has spoken about the overt acts on the part of the accused and the police asked them as to which person had attacked the deceased and neither he nor P.W.2 had stated. The persons asked P.W.1 to lodge a complaint and the police came to the spot and made an enquiry with the persons who assembled therein. P.W.2 would further depose that from the place in which the motorcycle driven by the deceased, had fallen, his father namely P.W.1 was taking bath about 20 feet away. He would further depose that he was not attacked by the accused and however, he witnessed the occurrence from the distance of 20 feet. P.W.2 denied the suggestion hat with regard to the lodging of the complaint and about the antecedents of the deceased.

25. P.W.4 and P.W.10, who were also the eyewitnesses to the occurrence, did not support the case of the prosecution and hence, they were treated as hostile witnesses and they were cross-examined by the prosecution.

26. P.W.16, has registered the F.I.R marked as Ex.P.49, based on the complaint given by P.W.1, marked as Ex.P.1, and in the cross-examination, he deposed that the Court of Judicial Magistrate or his house, can be reached within half-an-hour if a concerned person travels in a motorcycle and it may take an hour if he travels in a bus.

27. P.W.17, in the chief examination, deposed that he handed over the F.I.R to the Judicial Magistrate at 15.30 hours on 25.11.2001 and in the cross- examination, he deposed that from Muneerpallam to Tirunelveli, the travelling time will be an hour and after submitting the original documents, he handed over the passport to the Inspector of Police and denied the suggestion that he received the F.I.R only at 08.00 p.m., on 25.11.2001.

28. The Honourable Apex Court in the decision in Bhajan Singh v. State of Haryana reported in (2011) 7 SCC 42.: (2011) 3 SCC (Cri) 241, has elaborately dealt with the issue of sending the copy of the F.I.R to the jurisdictional Judicial Magistrate and after placing reliance upon a large number of decisions delivered by it, came to the conclusion that the Code of Criminal Procedure provides for internal and external checks; one of them being the receipt of a copy of the F.I.R by the Magistrate concerned and the Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 of the Code of Criminal Procedure, if so required. It has been further held that it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the F.I.R has not been lodged at the time stated or has been ante-timed or ante-dated or the investigation is not fair and forthright and with regard to the belated dispatch of F.I.R, an adverse inference may be drawn on the basis of attending circumstances involved in a case.

29. In an yet another earlier decision in State v. N.Rajamanickam reported in (2008) 13 SCC 30.: (2009) 2 SCC (Cri) 239, the Honourable Apex Court held that delay in receipt of F.I.R and the connected documents in all cases, cannot be a

factor corroding the credibility of the prosecution case and that is not the only factor and other factors may not have an adverse effect on the prosecution case.

30. The Honourable Apex Court in *Alla China Apparao v. State of A.P* reported in (2002) 8 SCC 44.:

2003. SCC (Cri) 87, has considered the issue with regard to the delay in dispatch of F.I.R and held as follows: "9. it is a matter of common experience that there has been tremendous rise in crime resulting in enormous volume of work, but increase in the police force has not been made in the same proportion. In view of the aforesaid factors, the expression 'forthwith' within the meaning of Section 157(1) obviously cannot mean that the prosecution is required to explain every hour's delay in sending the first information report to the Magistrate, of course, the same has to be sent with reasonable dispatch, which would obviously mean within a reasonably possible time in the circumstances prevailing. Therefore, in our view, the first information report was sent to the Magistrate with reasonable promptitude and no delay at all was caused in forwarding the same to the Magistrate. In any view of the matter, even if the Magistrate's Court was close by and the first information report reached him within six hours from the time of its lodgement, in view of the increase in workload, we have no hesitation in saying that even in such a case it cannot be said that there was any delay at all in forwarding the first information report to the Magistrate." 31. As per the above cited decisions rendered by the Honourable Apex Court, it is not possible to lay down any universal rule as to within what time, the special report is required to be dispatched by the concerned Investigating Officer after recording the first information and each case depends upon its own facts.

32. In the case on hand, the commission of the offence took place at about 01.30 p.m., on 25.11.2001 and the oral complaint given was reduced into writing and the F.I.R under Ex.P.49 came to be registered without any loss of time at about 02.30 p.m., on the same day. Though the F.I.R reached the jurisdiction Judicial Magistrate Court at about 10.45 p.m., nearly after eight hours, it cannot be said that on account of the said delay, a grave doubt has been created in the case projected by the prosecution as there was no possibility of interpolation.

33. P.W.17 who took the F.I.R also denied the suggestion that the F.I.R was handed over to him at 08.00 p.m., on 25.11.2001. Therefore, this Court is of the view that the belated dispatch of Ex.P.1 and F.I.R marked as Ex.P.49, has not affected the core of the prosecution case.

34. It is the submission of the learned Senior Counsel appearing for the appellants/A.1 to A.3 that there is a material contradiction between the testimonies of P.W.1 and P.W.2 said to be the eyewitnesses and since their testimonies did not corroborate with each other and that the case of the prosecution entirely rests upon their testimonies, the trial Court has committed a grave error in convicting the appellants/A.1 to A.3 and also contended that on the same set of evidence, A.1 to A.3 were acquitted of the some of the offences and A.4 to A.7 were totally acquitted and the same yardstick would have been applied to A.1 to A.3 also.

35. The Honourable Apex Court in Sukhdev Yadav v. State of Bihar reported in 2001 Supreme Court Cases (Cri) 1416, held as follows: "It is now well settled that the court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence. There would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment. Sometimes there is a deliberate attempt to offer the exaggerated evidence and sometimes the witnesses in their overanxiety to do better from the witness box detail out an exaggerated account." 36. It is to be remembered at this juncture that P.W.1 and P.W.2 belong to the downtrodden community and hailing from a small village and they have given evidence nearly after four years from the date of occurrence and therefore, their testimonies bound to contain some amount of exaggeration or embellishment.

37. A careful perusal and analysis of the testimonies of P.W.1 and P.W.2 would clearly disclose that they have witnessed the occurrence which took place at about 01.30 p.m., on 25.11.2001 and P.W.2 was the pillion rider of the two wheeler which was driven by the deceased and he was wrongfully restrained by all the accused and was indiscriminately attacked by them by use of lethal weapons

namely, aruvals and sticks.

38. P.W.2 has also deposed that P.W.1 - the father of the deceased who was taking bath, has witnessed the occurrence from a close proximity and even assuming that there are some embellishments in their testimonies, the oral evidence of P.W.1 and P.W.2 as above, are cogent, credible and trustworthy.

39. It is a settled position of law that where the case of the prosecution built upon the eyewitnesses, motive falls into insignificance and in this case, the prosecution has also proved the motive on the part of the accused to do away with the life of the son of P.W.1.

40. The learned Senior Counsel appearing for the appellants/A.1 to A.3 had also vehemently contended that A.1 to A.3 were acquitted for the commission of some of the offences and A.4 to A.7 were acquitted of all the charges and hence, the trial Court should have applied the same yardstick and acquitted A.1 to A.3 also.

41. A similar issue arose for consideration before the Honourable Apex Court in Gangadhar Behera and others v. State of Orissa reported in 2003-1- L.W.(Cri) 1, wherein it has been held as follows: "Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony

may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be reared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto." (emphasis supplied) 42. It has been held in the above cited decision that Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons and falsity of particular material witness or material particular would not ruin it from the beginning to end.

43. The attention of this Court was also drawn to the testimony of P.W.3 by the learned Senior Counsel appearing for the appellants/A.1 to A.3, wherein he deposed in the chief examination that in front of the field of Mandhiripandianan, he saw six accused with blood stained weapons namely aruvals and they were

washing the weapons and in the cross-examination, he deposed with regard to the cleaning of weapons and burning of the shirt worn by them and it is stated before 02.00 p.m. on 25.11.2001.

44. It is the submission of the learned Senior Counsel appearing for the appellants/A.1 to A.3 that since the police came to the spot even before 02.00 p.m., the F.I.R would not have been lodged at that time and only on account of prior information which has been burked by the prosecution, they came to the spot.

45. In our considered opinion, the said submission of the learned Senior Counsel appearing for the appellants/A.1 to A.3 lacks merit and substance, for the reason that the F.I.R came to be registered at 01.30 p.m., on 25.11.2001 and it is natural on the part of the police to visit the scene of crime at the earliest point of time.

46. As already stated above, the deceased belong to the downtrodden community and he was murdered by the accused belonged to the upper caste and therefore, there is nothing wrong on the part of the police to visit the scene of crime at the earliest point of time anticipating law and order problem.

47. In *Animireddy Venkata Ramana v. Public Prosecutor* reported in (2008) 2 Supreme Court Cases (Cri) 600, it has been held that 'it is not necessary for an officer in charge of a police station to take that step only on the basis of a first information report and an information received in regard to commission of a cognizable offence is not required to be preceded by a first information report. It is the duty of the State to protect the life of an injured as also an endeavour on the part of the responsible police officer to reach the place of occurrence in a situation of this nature is his implicit duty and responsibility.' 48. Viewing the case from any angle, F.I.R came to be registered at 02.30 p.m., on 25.11.2001 and according to P.W.1 at about 03.30 p.m, the police came to the spot and therefore, it cannot be stated that there was an earlier information even prior to the lodging of the complaint, Ex.P.1 and the same has been burked by the prosecution.

49. The post-mortem report marked as Ex.P.40, coupled with the testimony of the Doctor, P.W.12, who conducted the autopsy, would disclose that the deceased

sustained number of injuries and he died of heavy cut injuries in the regions of face and neck. The Doctor also opined that the injuries would have been caused by using M.O.1 to M.O.5 - aruvals.

50. Though the prosecution failed to prove that the foot prints seized from the scene of crime were that of A.1 and A.2, it is a settled position of law that the foot print is a very weak scientific evidence and the prosecution has established its case through other evidence available on record.

51. Simply because, A.1 to A.3 were acquitted of other charges, A.4 to A.7 were totally acquitted of the charges against them, it cannot be said that the prosecution has failed to prove its case and as held by the Honourable Apex Court in the above cited decision, if major portion of evidence is found to be deficient, in case, residue is sufficient to sustain the case of the prosecution, then the accused can be convicted and in the case on hand, the prosecution has established its case against them beyond any reasonable doubt.

52. Though P.W.1 and P.W.2 are related to the deceased, there was no reason as to why they should falsely implicate the appellants/A.1 to A.3 and they have cogently spoken about the motive as well as the overt acts on the part of the appellants/A.1 to A.3 and hence, their testimonies are trustworthy and believable.

53. This Court, on a careful consideration and appreciation of the entire materials available on record, is of the view that there is no infirmity or error apparent in the impugned judgment passed by the trial Court in convicting and sentencing the appellants/A.1 to A.3.

54. In the result, this Criminal Appeal is dismissed and the conviction and sentence passed in the judgment in S.C.No.59 of 2002 dated 27.02.2006, by the Court of Second Additional Sessions Judge, Tirunelveli District, are confirmed. The bail bonds executed by the appellants/A.1 to A.3 shall stand cancelled. The trial Court is directed to take expeditious steps to secure the custody of the appellants/A.1 to A.3 to undergo the sentence. rsb To 1.The Sub Inspector of Police, Nanguneri, Muneerpallam Police Station, Tirunelveli District. 2.The Court of Second Additional Sessions Judge, Tirunelveli, Tirunelveli District. 3.The

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

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