

Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

**RESERVED ON : 29.04.2026**

**PRONOUNCED ON : 01.06.2026**

CORAM:

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH  
AND  
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024**

**Crl.A.(MD) No.973 of 2023**

Muthukumar

: Appellant(s)/  
A3

Vs.

The Inspector of Police,  
Thaadikombu Police Station,  
Dindigul District.  
Crime No. 264 of 2012.

: Respondent(s)

**PRAYER:** Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, to call for records and set aside the conviction and sentences imposed by the learned Additional District and Sessions Judge, Dindigul, Dindigul District and set aside the judgment dated 09.10.2023 in S.C.No.83 of 2018 by acquitting the appellant.



WEB COPY



*Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024*

For Appellant

: Ms. P. Kritika Kamal

For Respondent

: Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor

**Crl.A.(MD) No.1094 of 2023**

1.Selvaraj  
2.Selvapandi

: Appellant(s)/  
Accused Nos.1 & 2

Vs.

The Inspector of Police,  
Thaadikombu Police Station,  
Dindigul District.  
Crime No. 264 of 2012.

: Respondent(s)

**PRAYER:** Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, to call for records and set aside the conviction and sentences imposed by the learned Additional District and Sessions Judge, Dindigul, Dindigul District and set aside the judgment dated 09.10.2023 in S.C.No.83 of 2018 by acquitting the appellants.

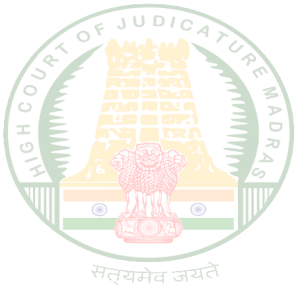
For Appellant

: Mr.Gopala Krishna Laxmana Raju  
Senior Advocate for

Mr.S.G.L.Rishwanth

For Respondent

: Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

WEB COPY **Crl.A.(MD) No.642 of 2024**

Thoongan @ Urathevar

: Appellant(s)/  
A4

Vs.

The State  
Rep. by The Inspector of Police,  
Thaadikombu Police Station,  
Dindigul District.  
Crime No. 264 of 2012.

: Respondent(s)

**PRAYER:** Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, to call for records and set aside the conviction and sentences imposed by the learned Additional District and Sessions Judge, Dindigul, Dindigul District and set aside the judgment dated 09.10.2023 in S.C.No.83 of 2018 by acquitting the appellant.

For Appellant

: Mr.A.Arunprasad  
for Mr.M.Suresh

For Respondent

: Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor



WEB COPY



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

**COMMON JUDGMENT**

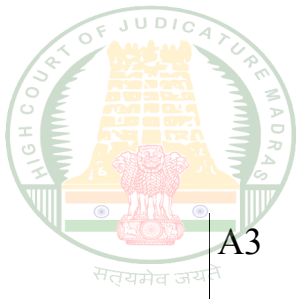
**(Judgment of the Court was  
delivered by N.ANAND VENKATESH, J.)**

These criminal appeals have been filed in the following manner:

<b>Rank</b>	<b>Appeal</b>
A3	Crl.A.(MD) No.973 of 2023
A1 and A2	Crl.A.(MD) No.1094 of 2023
A4	Crl.A.(MD) No.642 of 2024

2. These appeals have been filed against the judgment of the Additional District and Sessions Judge, Dindigul, made in S.C. No. 83 of 2018 dated 09.10.2023, wherein the appellants were convicted and sentenced in the following manner:

<b>Rank</b>	<b>Charge</b>	<b>Sentence</b>
A1, A2, A4	Sec. 302 IPC (2 counts)	Life imprisonment for each count and fine of Rs.10,000/- for each count, in default to undergo 3 months simple imprisonment.
A1, A2, A3, A4	Sec. 148 IPC	3 years rigorous imprisonment



WEB COPY



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

A3	Sec. 302 IPC	Life imprisonment and fine of Rs.10,000/-, in default to undergo 3 months simple imprisonment.
----	--------------	--

The above sentences were directed to run concurrently.

3. The case of the prosecution is that A1 is the husband of A5 and brother of PW1. A2 is the son and A6 and A7 are the daughters of PW1. A3 is A1's sister's son and A4 is the relative and uncle of the deceased Periyasamy (D2). The deceased Kannan (D1), who is the son of PW1 and PW2, was married to A7 and one of those days, when he went to the house of A1, he saw A1 and A7 in a compromising position. Hence, he quarrelled with A1 and A7. Hence, a panchayat was held and it is stated that a customary divorce was effected between D1 and A7. In this panchayat, D2 is said to have supported D1 and his parents and therefore, the accused persons developed enmity against both D1 and D2. After the customary divorce, A7 was married to another person and D1 had gone to Chennai for work.

4. D1 had come to his native place to attend a family function. On 17.05.2012, when he was at his home, D2 called him over phone and



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

hence D1 left to Thadikombu at about 4 p.m. on 18.05.2012. Around 4.40 p.m., PW1 received a phone call to the effect that A1 and A4 were chasing D1 at Thadikombu Road. Immediately, PW1 and PW2 left in a two-wheeler to Thadikombu and on enquiry they were informed that the incident was taking place at Dindigul Road. Immediately, PW1 and PW2 went to the place near the scene of crime and they saw D1 and D2 talking to another person near the TASMAC shop on the main road. A share auto came to that place and A5 to A7 got down from the auto and threw chilli powder on D1 and D2. Immediately, A1 to A4 along with another accused (child in conflict) got down from the same auto and A2 attacked D1 on his neck with aruval. A1 stabbed D1 on his left chest with knife. A4 attacked D1 on his shoulder and hand with aruval. A3 stabbed D1 with knife on his ribs. D2 was attacked by A1 with a knife on his abdomen. A2 attacked with aruval on his chest and A4 attacked D2 with aruval on the back of his head, left hand and right hand. All the accused persons ran away from the place of occurrence. Immediately, intimation was given for 108 ambulance and D2 was taken in an ambulance to Government Hospital, Dindigul. D1 was taken in a separate ambulance and he was declared brought dead.



*Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024*

5. PW1 gave a complaint (Ex.P1) at Thadikombu Police Station on 18.05.2012 at about 11 p.m. and PW15 registered the FIR (Ex.P17) in Crime No.264 of 2012 for offences under Sections 147, 148, 307 and 302 of IPC. The express FIR was sent to Court on 19.05.2012 and it was received at 6 a.m.

6. PW9, who was the duty doctor at Dindigul Government Hospital, had received D2, who was brought by his brother, at about 9.15 p.m. on 18.05.2012 and PW9 prepared Ex.P12 accident register. The original accident register was marked as Ex.C1. The doctor is said to have informed the police about the condition of D2 and immediately steps were taken for recording the dying declaration.

7. PW14, the Judicial Magistrate No.V, Madurai, proceeded to the hospital and recorded the dying declaration of D2 at 12.30 midnight. PW13, who is a doctor, was present and she gave the certificate to the effect that D2 was conscious and in a fit state of mind to give the statement. The dying declaration was recorded and it was marked as Ex.P16. In the dying declaration, D2 is said to have narrated the incident



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

and given the names of the accused persons who were involved in the crime.

WEB COPY

8. PW16, who is the Investigation Officer, took up the investigation and he went to the scene of occurrence at about 1.00 a.m. on 19.05.2012 and prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P18) in the presence of witnesses PW7 and another person. MO1 to MO4 were seized under Athatchi (Ex.P3). He later went to the mortuary and conducted the inquest on the body of D1 in the presence of panchayathars and prepared the inquest report (Ex.P19). The body of D1 was sent for autopsy and the postmortem was conducted by PW10, who issued the postmortem certificate for D1, which was marked as Ex.P13.

The following injuries were noted in the postmortem certificate:

“External Injuries:

1. Cut injury scalp Rt Parietal region, extending up to the Occipital Bone 9cm x 5cm exposing the Skull.
2. Cut Injury Neck, Deep cut of Lower Part of Rt. Side Neck 15 cm x 5cm, cutting the neck muscles and Greater Arteries and Veins supplying the Brain (Carotids) up to the depth of Cervical Vertebrae.



WEB COPY



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

3. Cut injury over the posterolateral part of Rt. Shoulder of size 3cmx3cmx1cm/
4. Cut injury Rt.Shoulder 7cmx3cm cutting the Acromioclavicular joint and exposing it.
5. Or injury of the Rt.mid forearm (Extensor Surface) 9cmx3cm exposing the bone and muscles
6. Cut injury below Rt. Wrist (Flexor Surface) 1cm above the wrist line, 5cmx2cm exposing the deeper tendons.
7. Deep cut injury 11cmx2cm of the Rt.Palm, wound extends from base of the thumb, index finger towards the medial border of palm.
8. Stab injury over the medial border of Rt. Scapula at 5th rib level 4cmx1cm., on probing the wound extends to the thoracic cavity.
9. Stab Injury over the nape of neck 3cmx1cm.
10. Stab Injury in the Lt. Supraclavicular area 1 cm above clavicle 4cmx2cmx2cm.
11. Two Stab Injuries below the Lt.Clavicle (Mid clavicular line) 3cmx2cmx2cm.
12. Stab Injury over the Lt. Axilla of 4cmx2cm, size on the



WEB COPY



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

anterior axillary fold.

13. Cut Injury over Lt. outer forearm (Extensor Surface)  
13cmx2cm, exposing deeper bone and soft tissue.

14. Deep Cut Injury in the Lt. Palm corresponding to the  
horizontal palmar crease 10cmx2cm, cutting all the deeper  
tendons of 2 to 5 fingers.

15. Stab Injury over LtLoin (L3 level) 4cmx2cmx3cm.

**Internal Injuries:**

Chest Cavity: 1x 0.5cm Exit wound in the 5th Rt. Intercostal  
space with blood clot 150ml in the Rt. Chest Cavity  
(Corresponding to wound No.8)

Heart chambers Rt Full, Lt.Empty. Lung & Liver. Spleen,  
Kidneys-Pale

Hyoid Bone Intact

Stomach contains 150ml rice.

Skull In-tact, on opening, Brain and Meninges Normal.

**OPINION:** The deceased would appear to have died of shock  
and haemorrhage due to multiple injuries sustained, and death  
could have occurred 16 to 18 hours prior to autopsy.”



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

9. The final opinion was given to the effect that the deceased (D1) would appear to have died of shock and haemorrhage due to multiple injuries sustained.

10. PW16 received the blood-stained dresses of D1 (MO5 to MO7) and it was sent to the Court under Form 91 (Ex.P20).

11. A6 was arrested on 19.05.2012 at about 4 p.m. A1, A2 and A4 were arrested on 22.05.2012 at about 9 a.m. in the presence of PW7 and another witness and based on the admissible portion of their confession, blood-stained clothes and weapons were recovered, (MO8 to MO15) under recovery mahazar Exs. P5, P7 and P9. The same was sent to the court under Form 91 (Exs.P21 to P23).

12. PW16 received information about the demise of D2 on 24.05.2012. Therefore, alteration report was prepared and it was sent to the Court by altering the sections to Sections 147, 148 and 302 of IPC. The inquest was conducted on the body of D2 and inquest report Ex.P25 was prepared in the presence of panchayathars. The body was sent for autopsy and the postmortem was conducted by PW12, who gave the



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

postmortem certificate marked as Ex.P15, in which the following injuries

WEB COPY were noted:

“The following ante mortem injuries are noted on the body:

1. Surgically sutured injury 20cm x 1cm x cavity deep. noted from xiphisternum to 18cm above pubic symphysis.

On dissection: Sutured wound 4cm x 4cm noted on the anterior wall of stomach. Sutured wound 2cm x 1cm noted on the post wall of stomach. Peritoneal rent found closed with sutures.

2. Stab injury 4cm x 1cm x muscle deep noted on left side of chest 7cm above left nipple, 7cm away from midline and 13cm to the right of left axilla.

3. Stab injury 2cm x 1cm x muscle deep noted on 6cm below wound No-2.

4. Cut injury on left hand, severing left hand at the level of wrist.

5. Stab injury 3cm x 1cm x muscle deep noted on outer aspect of right arm.

6. Cut injury on palm of right hand 7cm x 1cm x bone deep, cutting the underlying tissues, nerves vessels and underlying bones.



WEB COPY



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

7. Cut injury 10cm x 2cm x muscle deep extending from left cheek to left temporal region.
8. Cut injury 18cm x 2cm x muscle deep noted on the inner aspect of right forearm extending from 5cm below right elbow to right wrist.
9. Drainage wound (treatment wound) 1cm x 1cm x cavity deep noted on right and left outer aspect of abdomen.
10. Inter costal drainage wound (treatment wound) 1cm x 1cm x cavity deep noted on the outer aspect of left side of chest.
11. Healed scar 15cm x 10cm noted on the right side of buttocks to scarum.

Note: All the margins of all injuries are one end of stab injury regular is pointed and the other end blunted.

**OTHER FINDINGS:**

Peritoneal cavity described; Pleural cavities empty; Pericardium contains 15ml of straw colour fluid; Heart - right side fluid blood, left side empty; Coronaries - patent; Lungs - cut section congested; Larynx & trachea normal; Hyoid bone intact; Stomach - described, contains 100ml of brown colour fluid, nil specific smell, mucosa - normal; Liver, Spleen & kidneys - cut section congested; Small intestine - contains



WEB COPY



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

20ml of bile stained fluid, nil specific smell, mucosa - normal; Bladder empty; Brain surface vessels and cut section congested.

**OPINION:**

"THE DECEASED WOULD APPEAR TO HAVE DIED OF STAB INJURY ABDOMEN AND ITS CORRESPONDING INTERNAL INJURIES AND THE CUMULATIVE EFFECT OF ALL OTHER INJURIES"

13. A final opinion was given to the effect that D2 would appear to have died of stab injury in the abdomen and its corresponding internal injuries and the cumulative effect of all other injuries.

14. PW16 arrested A3 and A5 on 25.05.2012 at about 11 a.m. and their confession was recorded in the presence of PW7 and another witness and based on the admissible portion of the confession, a knife (MO16) was recovered under Athatchi Ex.P11. The same was sent to Court under Form 91 marked as Ex.P26.

15. The Investigation Officer recorded the statements of all the witnesses under Section 161(3) of Cr.P.C. and received the Biology Report (Ex.P28), Serology Report (Ex.P29) and all other reports. On completion of investigation, the charge sheet was filed before the

14/35



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

Judicial Magistrate No.II, Dindigul, which was taken on file in PRC No.4 of 2013 as against seven accused persons. After furnishing copies under Section 207 of Cr.P.C., the case was committed under Section 209 of Cr.P.C. and it was made over to the Additional District and Sessions Court, Dindigul, and it was taken on file as S.C. No.83 of 2018.

16. The trial court framed the following charges against the accused persons:

<b>Rank</b>	<b>Charges framed</b>
A1 and A2	Sections 148 and 302 IPC (2 counts)
A3	Sections 148 and 302 IPC (1 count)
A4	Section 147 and 302 IPC (2 counts)
A5, A6 and A7	Sections 147, 302 IPC r/w 34 of IPC

17. The prosecution examined PW1 to PW16 and marked Exhibits P1 to P29 besides MO1 to MO16. Two Court documents were also marked as Exhibits C1 and C2.



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

18. The incriminating evidence and circumstances were put to the accused persons when they were questioned under Section 313(1)(b) of Cr.P.C. and they denied the same as false.

19. The accused persons did not examine any witnesses nor did they mark any document.

20. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts as against A1 to A4 and accordingly, convicted and sentenced them in the manner stated supra. A5 to A7 were acquitted from all charges. Aggrieved by the same, these criminal appeals have been filed before this Court.

21. The main submissions that were put forth on the side of the accused persons are:

- PW1 and PW2, who are the parents of D1, were examined as eye witnesses by the prosecution and that both of them could not have



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

seen the occurrence and their evidence is entirely not reliable and they are planted witnesses who did not really see the incident.

WEB COPY

- PW1 and PW2 are interested witnesses and they are not wholly reliable and in the absence of any corroboration, their evidence cannot be acted upon.
- The so-called dying declaration given by D2 cannot be acted upon since there is absolutely no evidence as to who informed the Judicial Magistrate to record the dying declaration and even the Investigation Officer became aware about the recording of dying declaration only after a couple of days after he took up investigation. Curiously, the statement of D2 was not even recorded by the Investigation Officer even though D2 died nearly five days after the incident.
- If the dying declaration of D2 is to be acted upon, it has to be acted upon wholly and if the benefit of doubt has been given to A5 to A7, whose names were also mentioned in the dying declaration, the same must equally apply to the other accused persons also. In



*Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024*

short, the dying declaration cannot be dissected and acted upon for some accused persons while leaving out the rest.

WEB COPY

- Murugesan and Rathinavel are important witnesses in this case. Their presence has been spoken to by PW1 and even in the inquest report their names were found and in the complaint also the name of Murugesan is present. However, PW16 did not even record their statements under Section 161(3) of Cr.P.C. Hence, non-examination of vital witnesses in this case must result in drawing adverse inference against the prosecution.
- There is no scrap of evidence to establish where D1 was taken in the ambulance after the incident and which doctor had examined D1 and what entries were made in the accident register. This crucial evidence was intentionally concealed by the prosecution since it would have brought out the real truth.
- The driver of the share auto in which the accused persons are said to have come to the scene of crime was not examined and the share auto was not even seized during the course of investigation.



WEB COPY



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

Similarly, none of the ambulance drivers were examined on the side of the prosecution and thus, there are wide gaps in the case of the prosecution which remain unanswered by the Investigation Officer.

22. Per contra, the learned Additional Public Prosecutor submitted that the incident had taken place in the year 2012 and naturally there will be some discrepancies in their evidence and therefore their evidence will have to be considered as a whole. They have spoken about the incident in clear terms and it is clearly corroborated by the dying declaration given by D2. The complaint has been given at the earliest point of time and the FIR has also reached the Court at the earliest. This is a case of double murder and just because there are lapses on the side of the Investigation Officer, the entire case cannot be thrown out. The trial Court has appreciated the oral and documentary evidence in a proper perspective and has come to the right conclusion that the prosecution has proved the case beyond reasonable doubts as against the appellants and therefore the said judgment does not require interference of this Court.



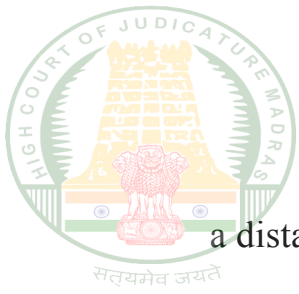
Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

23. This Court has carefully considered the submissions made on either side and materials available on record.

24. The entire case of the prosecution hinges upon the eyewitness account of PW1 and PW2 and the dying declaration of D2. This Court will first deal with the eyewitness account of PW1 and PW2 and see if the same can be acted upon as was done by the trial court.

25. PW1 is the mother of D1 and PW2 is the father of D1. It must be kept in mind that the alleged incident had taken place at Thadikombu and PW1 and PW2 are the residents of Vedasandur which is nearly 10 to 15 kilometres from Thadikombu. Both of them speak about the motive behind the crime on the alleged illegal intimacy between A1 and A7.

26. PW1 has stated in the evidence that D1 left the house at about 4 p.m. to Thadikombu after receiving the phone call from D2. Thereafter, at about 4.40 p.m., PW1 is said to have received a phone call to the effect that A1 and A4 were chasing D1. Immediately, PW1 and PW2 came to Thadikombu Bus Stand and enquired and they were told the place where D1 was chased by A1 and A4. When they went to that place, from



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

a distance PW1 claims to have seen A5 to A7 get down from a share auto and had thrown chilli powder at D1 and D2. Thereafter, the other accused persons get down from the same share auto and indiscriminately attacked D1 and D2 with aruval and knife. In the cross-examination, PW1 states that the phone call was received at about 7.40 p.m., and thereafter, PW1 and PW2 went to Thadikombu Bus Stand in a two-wheeler. This vehicle was parked in a path going towards Dindigul on the left hand side of the main road. From there, PW1 claims to have seen the incident along with PW2.

27. PW2, who is the father of D1, comes up with a different version to the effect that PW1 and PW2 asked D1 to come back home after they reached Thadikombu and he asked them to wait and thereafter the incident took place. Therefore, the place from which PW1 and PW2 are alleged to have seen this incident is in complete variance.

28. PW1 says that she saw the incident from a distance. PW2 specifically states that they called D1 and asked him to come back home and he asked them to wait and thereafter the incident had taken place. In such an event, there is a complete contradiction between the versions

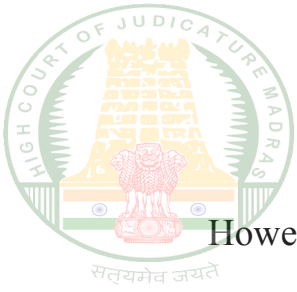


Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

given by PW1 and PW2. As such, no phone call records were collected during the course of investigation and the person who had informed PW1 and PW2 about D1 being chased by A1 and A4, has not been examined as a witness. PW1 and PW2 had gone all the way from Vedasandur to Thadikombu and unless the prosecution is able to establish as to who informed PW1 and PW2, the very presence of PW1 and PW2 in the scene of crime will become highly doubtful.

29. PW1 gave the complaint (Ex.P1) and in the said complaint, it is stated that D1 and D2 went in a two-wheeler to Thadikombu on 18.05.2012 in the morning and about 3 p.m., D1 has been chased by the accused persons and this information reached PW1 and PW2 through known persons in the locality and this version in the complaint goes against the version given by PW1 while deposing before the Court. Therefore, there is a very serious doubt as to how PW1 and PW2 received the intimation before the incident had taken place, since they were nearly 10 to 15 kilometres away from Thadikombu.

30. A careful reading of Exhibit P12, which is the accident register given for D2, shows that it was recorded at 3.15 p.m. on 18.05.2012.



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

However, the original accident register which was marked as Exhibit C1 shows alteration in the time as if the incident took place at 8.30 p.m. If the incident had taken place at 3.15 p.m., then the presence of PW1 and PW2 in the scene of crime becomes impossible since they have reached the scene of crime only around 11.40 p.m. to 11.45 p.m. There is not even an explanation given as to why there is discrepancy between Exhibit P12 and Exhibit C1 and why alterations and corrections have been made in Exhibit C1 with respect to the timing.

31. PW9 is the doctor who gave the accident register states that one Murugesan brought D2 to Dindigul Government Hospital at 9.35 p.m. and it was informed that the incident had taken place at 8.30 p.m when six persons attacked D2. This timing as stated by PW9 does not correlate with Exhibit P12 and the timing mentioned in Exhibit C1 is not decipherable. Therefore, there is serious doubt regarding the time that has been mentioned in the accident register.

32. To make things worse, there is no iota of evidence to show as to where D1 was taken in the ambulance and which doctor had examined D1 and if any accident register was prepared for D1. The Investigation



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

Officer is completely silent on this aspect. If really the deceased persons were taken in an ambulance, at least the ambulance driver should have been examined as witnesses so that the Court can gather some materials regarding the timings and in the absence of the same, there is a serious doubt regarding the time at which the incident had taken place. Consequently, the presence of PW1 and PW2 in the scene of crime becomes highly suspect.

33. In the light of this discussion, this Court has to necessarily hold that the so-called eyewitness account of PW1 and PW2 cannot be relied upon and in fact it looks like both of them are planted witnesses who were actually not present at the scene of crime.

34. At this juncture, this Court has to necessarily take serious note of the fact that some of the crucial witnesses in this case were not examined by the Investigation Officer during the course of investigation. One Murugesan, who is the brother of D2, is said to have taken D2 in the ambulance to the hospital. His presence is also recorded in the inquest report and his name is also found in the complaint (Ex.P1). This crucial witness was not examined on the side of the prosecution. Even on going



*CrI. A(MD)Nos.973, 1094 of 2023 and 642 of 2024*

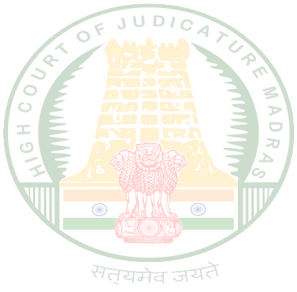
through the original records, it is seen that not even a statement has been recorded under Section 161(3) of Cr.P.C.

WEB COPY

35. Yet another crucial witness in this case is Rathinavel. He is said to have accompanied D2 to Rajaji Government Hospital at Madurai, which has been spoken to by PW11. His presence is also recorded in the inquest report. In spite of the same, not even his statement has been recorded under Section 161(3) of Cr.P.C.

36. D1 and D2 were taken in two separate ambulances and the most relevant witnesses in order to ascertain the timing will be the ambulance drivers whose evidence can corroborate the evidence of main witnesses. Unfortunately, even they have not been examined by the Investigation Officer.

37. If the accused persons had arrived at the scene of crime in a share auto, the most relevant witness will be the share auto driver and even his statement has not been recorded by the Investigation Officer.



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

38. It is clear from the above that even though there are crucial witnesses in this case whose statements ought to have been recorded under Section 161(3) Cr.P.C. and who should have been examined as witnesses before the Court, the same has not been done by the Investigation Officer who was not able to give any explanation when questioned in the course of cross examination. Thus, in the light of the conflicting versions given by the eye witnesses coupled with non-examination of vital witnesses, an adverse inference has to be drawn by this Court to the effect that those vital witnesses were not examined since the true facts would have surfaced and the very genesis and substratum of the case of the prosecution would have been demolished.

39. The last important issue that has to be gone into is the dying declaration of D2. This dying declaration (Ex.P16) is said to have been given by D2 to the Judicial Magistrate who was examined as PW14.

40. PW14, in his evidence states that the information was received from the Government Hospital, Madurai, at about 12.15 midnight and he reached the hospital at about 12.30 midnight and based on the certificate given by PW13, the dying declaration was recorded and the same has



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

been marked as Exhibit P16. In the dying declaration, D2 has stated as follows:

“தூங்கா தேவர், செல்வராஜ். செல்வராஜ் மருமகன் முத்து, பாண்டி, கண்ணி ராணி, மாயக்காள், ஈஸ்வரி எல்லோரும் 18.05.2012 அன்று மாலை 6,7 மணிக்கு மிளகாய் பொடி தூவினார்கள், கண்ணி செல்வராஜ், துதூங்கான் முத்து, பாண்டி ஆகியோர் அருவாள், கத்தியால் வெட்டினார்கள். நானும் சின்னம்மா மகனும் ஓயின்சாப்பிற்று செல்லும் போது வெட்டிவிட்டார்கள், வெட்டியவர்கள் என் உறவினர்கள். என் சின்னம்மா மகன் செல்வராஜ் மகளை திருமணம் செய்து இருந்தார், தீர்த்துவிட்டார்கள். அதனால் வாய்தகராறு இருந்தது. எனக்கும் இடப்பிரச்சினை இருந்தது. அதனால் வெட்டிவிட்டார்கள். எனக்கு வலதுகை, கால், நெஞ்சு, வயிறு, வாய், மண்டையில் வெட்டி காயம் ஏற்பட்டுள்ளது. வேறு ஒன்றும் கூற வேண்டியதில்லை.”

41. There was no material available as to who initiated the process of dying declaration and who informed the Judicial Magistrate. On careful scrutiny of the original records, it is seen that a Special Sub-Inspector of Police, named Venkataraman, had informed the Magistrate on 19.05.2012 at about 00.05 hours. Surprisingly, the Investigation Officer, who took up the investigation at about 1.00 a.m. on 19.05.2012,



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

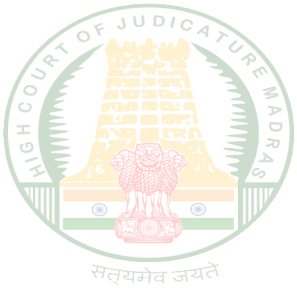
was not even aware that a dying declaration had been recorded from D2.

WEB COPY

In the course of cross-examination, he states that he came to know about the recording of the dying declaration only after two to three days after he took up the investigation. It is even more curious that D2, who had given the dying declaration, was alive till 24.05.2012 and till then, the Investigation Officer did not even record the statement of D2.

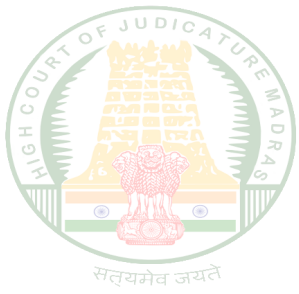
42. The dying declaration is a relevant fact under Section 32 of the Indian Evidence Act. It is now settled that if the dying declaration is found to be reliable entirely, conviction can be sustained on its basis alone without any need for corroboration. However, if the Court is not able to entirely act upon the dying declaration, the Court has to necessarily look for corroboration.

43. As already stated supra, there is a serious doubt as to when the incident had actually taken place in this case. Apart from that, certain important witnesses, for reasons best known to the Investigation Officer, have not been examined and this Court has already entertained a doubt that such non-examination was intentional since it would have brought out the true facts in this case.



**WEB COPY** 44. In view of the same, it will not be appropriate to entirely rely upon the dying declaration and proceed further to convict and sentence the appellants.

45. There is yet another reason as to why the dying declaration cannot be put against the appellants. In the dying declaration, the names of all the accused persons have been stated by D2, which includes A5 to A7. A5 to A7 have been acquitted by the trial Court on the ground that the prosecution has not made out a case. In such an event, the question that arises for consideration is as to whether the Court can rely upon the dying declaration for the other accused persons against whom the order of conviction and sentence has been passed. The dying declaration has to be acted upon as a whole or it has to be rejected as a whole. There is no question of dissecting the dying declaration and applying it against some of the accused persons and leaving it for the rest. Therefore, the benefit of doubt has been given for A5 to A7 and they have been acquitted even though they have been named in the dying declaration, and it will not be appropriate to proceed against the appellants only on the basis of the dying declaration.

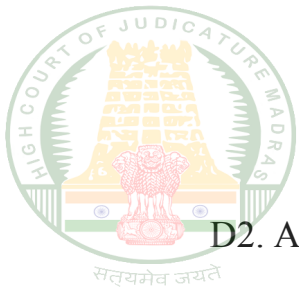


Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

WEB COPY

46. In the light of the above findings, this Court has to necessarily look for corroboration and the dying declaration by itself cannot be the basis to convict and sentence the appellants. Unfortunately, in this case, there is no corroboration available for the Court to act upon the dying declaration. Therefore, the dying declaration given by D2 is only a piece of evidence which by itself is not enough to act upon without corroboration.

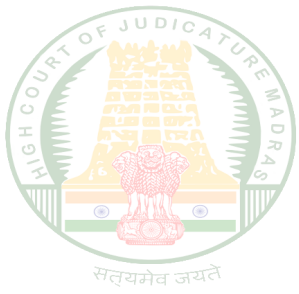
47. In the case in hand, as per the eye witness account and as per the dying declaration, A5 to A7 are said to have thrown chilli powder on D1 and D2 and thereafter they were attacked by the other accused persons. PW1 in her evidence states that the chilli powder had gone into the eyes of D1 and he was rubbing his eyes and at which point of time the first attack came from A4. PW2 states that chilli powder was thrown on the eyes of both D1 and D2 and both were rubbing their eyes and at which point of time they were attacked by the other accused persons. Except for a reference in the observation mahazar about traces of chilli powder found in the two-wheeler, there is absolutely no evidence about the presence of chilli powder in the postmortem conducted on D1 and



*Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024*

D2. Apart from that, the so-called chilli powder that was available in the two-wheeler was not even sent for chemical analysis. If that is the case, the very genesis of the case of the prosecution becomes doubtful. In such a scenario, the Court must be very careful while acting upon the evidence which is full of contradictions and inherent improbabilities.

48. This Court entertains a doubt as to whether PW16, the Investigation Officer, really went to the scene of crime or whether every other document has been prepared in the police station. This serious doubt is entertained since we found from the accident register (Ex.P12) that the left hand of D2 had been amputated in the incident, which means that a portion of the left arm of D2 was available in the scene of crime. However, there is not even an indication regarding the same in the observation mahazar. If this important piece of evidence has not been seized by the Investigation Officer, the only impression that can be gathered by this Court is that the Investigation Officer did not carry out any work in the scene of crime and everything was done sitting in the police station.



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

49. This Court expresses its anguish in the manner in which the investigation has been conducted in this case which involves a double murder. PW16 has conducted one of the most slipshod investigation we have seen in the recent times. Two precious lives have been lost and going by the postmortem reports, we find that very serious injuries had been sustained by D1 and D2. Apart from that, certain vital witnesses who could have lent a lot of credence and strength to the case of the prosecution were intentionally left out and even their statements were not recorded under Section 161(3) of Cr.P.C. Therefore, this Court has to necessarily hold that the prosecution has failed to prove its case only because of the bizarre manner in which PW16, the Investigation Officer, had conducted the investigation. If an acquittal is as a result of a defective investigation, the Court can always record a finding to that effect.

50. The law on the issue was dealt with by the Apex Court in *State of Gujarat v. Kishanbhai and Ors.*, reported in (2014) 5 SCC 108. One of us (Justice N.Anand Venkatesh), had an occasion to deal with this issue in detail in *K.Muthupandi v. State*, reported in (2020) 1 MLJ (Cr1) 53. In view of the same, this Court directs that the departmental action be



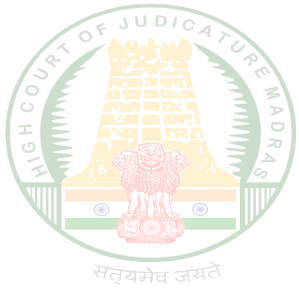
Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

initiated against PW16 under the relevant service rules and it shall be completed as expeditiously as possible after affording opportunity to PW16.

51. In the result, the conviction and sentence imposed on the appellants is unsustainable and hence, the judgment of the learned Additional District and Sessions Judge, Dindigul, made in S.C.No.83 of 2018, dated 09.10.2023, is hereby set aside and and the criminal appeals are allowed. The appellants are set at liberty from all charges. The appellants, who are undergoing the sentence, shall be released from the jail forthwith unless they are required in any other case. Bail bond shall stand terminated. Fine amount paid, if any, is ordered to be refunded.

[N.A.V., J.] [K.K.R.K., J.]  
01.06.2026

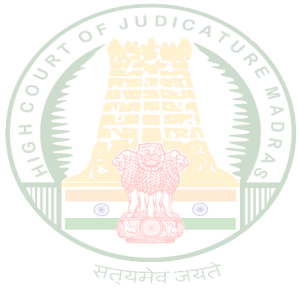
Index : Yes  
Internet : Yes  
Neutral Citation : Yes  
PKN



Crl. A(MD)Nos.973, 1094 of 2023 and 642 of 2024

WEB COPY To

1. The Additional District and Sessions Judge,  
Dindigul, Dindigul District.
2. The Inspector of Police,  
Thaadikombu Police Station,  
Dindigul District.
3. The Superintendent of Prisons,  
Central Prison, Madurai.
4. The Additional Public Prosecutor  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*CrI. A(MD)Nos.973, 1094 of 2023 and 642 of 2024*

**N.ANAND VENKATESH, J.**  
**AND**  
**K.K.RAMAKRISHNAN, J.**

PKN

Judgment made in  
**CrI.A.(MD)Nos.973, 1094 of 2023 and 642 of 2024**

**01.06.2026**