
**Panjali Alias Savaridoss, Anthony @ Anthony Samy and Pookkaran @
Velankanni Vs The State**

Criminal Appeal (MD) . No. 261 of 2010

Court: Madras High Court (Madurai Bench)

Date of Decision: Dec. 10, 2011

Acts Referred:

Constitution of India, 1950 " Article 21#Criminal Procedure Code, 1973 (CrPC) " Section 211, 212, 313, 464#Evidence Act, 1872 " Section 165, 27#Penal Code, 1860 (IPC) " Section 109, 120(B), 141, 147, 148

Citation: (2012) 1 CTC 166 : (2012) 1 LW(Cri) 210

Hon'ble Judges: S. Nagamuthu, J; M. Jaichandren, J

Bench: Division Bench

Advocate: A.K. Azhagarsamy 1 and 2 and Mr. N. Sathishbabu 3, for the Appellant; C. Ramesh, for the Respondent

Final Decision: Allowed

Judgement

S. Nagamuthu, J.

Not infrequently in the past, if not in many cases, at least in some cases, while examining the correctness and legality of

the Judgment of the Criminal Courts, this Court has witnessed that charges had not been framed properly, evidence collected during investigation

had not been let in during trial appropriately, the examination of accused u/s 313 of the Code of Criminal Procedure had not been done

scrupulously, the power u/s 165 of the Indian Evidence Act, 1872, had not been exercised promptly and lastly, the appreciation of evidence had

not been done meticulously. With pains, we would like to state that the instant case is a classic example as to how the stakeholders in the

dispensation of the criminal justice have miserably failed in their duties and as a consequence, the appellants, who have been projected as the

perpetrators of the heinous crime, flee away from the clutches of the strong arm of the law. With this prelude, let us go into the facts of the case.

2. The appellants are the accused Nos.1,2 and 4 in S.C.No.92 of 2010, on the file of the learned Additional District and Sessions Judge, (Fast

Track Court), Dindigul. Totally, there were eight accused, including the appellants herein. The Trial Court, by Judgment dated 30.06.2010,

convicted the appellants for offences under Sections 120(B), 148 and 302 r/w 34 of the Indian Penal Code. For the offence u/s 120(B) of the

Indian Penal Code, the learned Additional District and Sessions Judge has sentenced them to undergo rigorous imprisonment for two years, for the

offence u/s 148 of the Indian Penal Code, has sentenced them to undergo rigorous imprisonment for three years and for offence u/s 302 r/w 34 of

the Indian Penal Code, has sentenced them to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo six months

rigorous imprisonment. The other accused, i.e., accused Nos.3 and 5 to 8 have been acquitted. Challenging the said conviction and sentence, the

appellants have come up with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:

The deceased, Mr. Visuvasam, was a resident of Muthalagupatti Village in Dindigul District. He was also holding the post of ""oor Servai"" [village

leader]. PW-1 was the then Nattanmai of the said village. The villagers, headed by the deceased and PW-1 had put up a notice board in respect

of the temple festival. Few days prior to the occurrence, these accused had caused damage to the said notice board. The deceased had given a

complaint to the police in this regard. The accused were enraged over the same. On 10.08.2009, in the morning, by about 09.00 AM, the village

meeting was held at Sepasthiyar Temple in the said village.

(ii). At that time, few persons from CSI Temple had come to the said temple to distribute invitation for festival in a CSI Temple. The meeting went

on for some time. PW-1 and the deceased participated in the meeting. After the meeting, PW-1 and the deceased were returning to their

respective houses on foot. PW-1 was proceeding first, by pushing a cycle. The deceased was following him. When they were nearing ""Vellaichi

Amman Temple"" in the said village, suddenly, these accused Nos.1 to 7 emerged and at that time, the accused Nos.1 to 4 were all armed with

knives and accused Nos.5 to 7 were unarmed. All the accused surrounded the deceased and then accused Nos.1 to 4 mounted indiscriminate

attack, with knives, on the deceased. The deceased fell down. PW-1 attempted to prevent the further attack. PW-1 was also attacked by the

second accused causing injury on his right palm. The occurrence was witnessed by PW-3 and few others, including PW-9. PW-1 raised alarm,

which attracted the villagers towards the place of the occurrence.

(iii). On seeing the people rushing towards the place of occurrence, the accused took to their heels with weapons. PW-3 took the deceased, in an

auto rickshaw, to the Government Hospital at Dindigul. At 10.05 AM, on examining him, the doctor declared him as ""brought dead"", [vide EX-P3

- Accident Register]. Then, the body was kept in the mortuary. PW-2, who rushed to the spot, found PW-1 with injury and under shock. The

deceased had already been taken to the Government Hospital by PW-3. Therefore, he took PW-1 to the Police Station. In the meanwhile, PW-2

had information over phone from PW-3 that the deceased had died. At the Police Station, as it was narrated by PW-1, PW-2 drafted the

complaint [EX-P1], in which PW-1 signed. Then, at 10.45 AM, PW-1 presented the said complaint - [EX-P1]. PW-23, the then Sub-Inspector

of Police, attached to the Dindigul Town South Police Station, on receiving the said complaint, registered a case in Crime No.500 of 2009, under

Sections 147, 148, 323 and 302 of the Indian Penal Code. EX-P-18 is the First Information Report. He forwarded the First Information Report

and the complaint to the Court, which were received by the jurisdictional Magistrate at 03.00 PM on the same day. PW-23 sent PW-1 to the

Hospital for treatment for the injuries sustained by him, with a police memo. Then, he handed over the Case Diary to PW-24, for investigation.

(iv). PW-1 had gone to the Government Hospital at Dindigul at 02.35 PM. On examination, the doctor had found an aberration measuring 2 X 0.5

Cms on the left palm. EX-P4 is the Accident Register relating to PW-1. He was treated as outpatient.

(v). Taking up the case for investigation, PW-24 proceeded to the place of occurrence, at 11.45 PM and prepared an Observation Mahazar [EX-

P5], in the presence of PW-16 and another witness. He also prepared a Rough Sketch under EX-P-19. From the place of occurrence, he

recovered bloodstained earth, [MO-1], sample earth, [MO-2], a chappal [MO-3] and a salvai [MO-4], under EX-P6 -Mahazar. Then, he

examined PW-1 and PW-2 and recorded their statements. Between 01.15 PM and 03.00 PM, in the Government Hospital at Dindigul, PW-24

conducted inquest on the body of the deceased and prepared EX-P-20 - Inquest Report. Then, he forwarded the body for autopsy.

4. PW-15, a Senior Civil Surgeon, attached to the Government Hospital, Dindigul, conducted autopsy on the body of the deceased at 03.05 PM

on the same day. On examination, he found the following injuries:

1. A Transverse stab wound with both side sharp edges of 3 X 1 X 5 cms size, lies on II Inter costal space of Chest Left in mid clavicular line. On

dissection pleura beneath is punctured with 1 litre of blood in left side pleural cavity and the stab wound seen in upper lobe of left lung of 3 X 1 X2

cms with upper lobe of lung collapsed.

2. A vertical stab wound on Left Arm in Axillary region of 2.5 X 1 X 2 cm with sharp edge pointing downwards.

3. A vertical stab wound on left side abdomen umbilical region of 3 X 1 cm size X entering peritoneal cavity. On dissection stab wound of 1 X 1

cm on small intestine with opening into the lumen at 2 feet away from function, with the contents of small intestine came out into the peritoneal

cavity. The sharp edge of the skin would pointed downwards.

4. A cut injury on Left Hand between Thumb and Index Finger of 5 X 2 X 2 cms size, exposing II meta carpal and muscles.

5. A transverse stab wound on left side cheek 3 X 1 cm X 1 cm with sharp edge pointing medially.

6. A transverse stab wound 2.5 X 1 X 2 cms on left back of chest in 6th Intercostal space, lies 3 cms away from midline, with sharp edge pointing

laterally.

7. A transverse stab wound 3 X 1 X 1 cm on left back of abdomen loin with sharp edge pointing laterally.

8. A vertical elliptical stab wound of 3 X 1 X 5 cm seen over centre of back of chest (midline) at D8 vertebra level.

9. A transverse stab wound of 2.5 X 1 X 5 cm in Right side chest at 7th Inter costal space in Mid clavicular line on C/s stab wound (transverse)

seen in Right lobe of liver of 3 X 1 X 4 cms size with sharp edge pointing laterally. There was 1500 ml Blood seen in peritoneal cavity.

10. A vertical stab wound seen in Right Arm in Axillary region 2.5 X 1 X 2 cm size with sharp edge pointing downwards.

He opined that the deceased would have died due to shock and hemorrhage due to the injuries found on the body. Ex-P2 is the Post-mortem

Certificate.

5. Continuing the investigation, PW-24 examined few more witnesses and recorded their statements. At 05.00 PM, on the same day, in the

presence of PW-17 and another witness, he arrested the accused Nos.1, 2, 4, 5, 6 and 7. On such arrest, the accused No.1 - Panchali @

Savaridoss gave a voluntary confession statement in the presence of the witnesses. The same was reduced into writing. In the said confession, she

made a disclosure [vide EX-P9] that he had hidden the knife by the side of Muthalagupatti Saroja Mill. The second accused Anthoni @

Anthonisamy also gave a confession statement at 06.30 PM voluntarily and the same was also reduced into writing. In the said statement, he

disclosed [vide EX-P10] that he had hidden a sabre [knife] near a Water Tank. Then, the accused No.4 - Pookkaran @ Velankanni gave a

voluntary confession statement and the same was also reduced into writing, in which he disclosed [vide EX-P11] that he had hidden the knife near

Water Tank.

6. In pursuance of the above said disclosure statements, the respective accused took PW-24 and the witnesses to the places mentioned by them,

took out the weapons and produced the same. The first accused produced a knife, the second accused produced a knife [MO-12] and the fourth

accused produced another knife. PW-24 recovered the said Material Objects under Mahazars. Then, he returned to the Police Station, along with

the accused and the Material Objects recovered. The Accused No.6 - Sahayaraj was then wearing a full hand shirt, stained with blood. PW-24

recovered the same, which is [MO-13]. The accused No.7 - Singh @ Dominic was also wearing a shirt with bloodstain. PW-24 recovered the

same, which is MO-14. The first accused - Panchali @ Savaridoss was wearing a T-shirt stained with blood. PW-24 recovered the same under a

Mahazar - MO-15. The fourth accused - Pookkaran @ Velankanni was wearing a black colour shirt with bloodstain. PW-24 recovered the same

under a Mahazar, which is MO-16. The fifth accused was also wearing a bloodstained shirt, which was recovered under Mahazar, which is MO-

17. The accused No.2 was also wearing a bloodstained shirt, which was also recovered under a Mahazar, which is MO-18. Then, PW-24

collected the clothe found on the body of the deceased under Form 95 from PW-20. Then, he forwarded all the accused to the Court for judicial

remand. He also forwarded the Material Objects to the Court.

7. On 12.08.2009, at 01.00 PM, he arrested the third accused in the presence of PW-18 and another witness. On such arrest, he gave a

voluntary confession statement, in which he disclosed that he had hidden the knife near Saroja Oil Mill [vide EX-P-24]. He took PW-24 and the

witnesses to the said place and produced a knife [knife not identified]. Then, he forwarded the accused to the Court for judicial remand. He made

a request to the Court to forward the Material Objects for chemical examination. EX-P15 is the Chemical Examination Report and EX-P16 is the

Serology Report. According to EX-P15, blood was detected from MO-5 to MO-7. According to EX-P16, one of the knives contained "O"

group human blood. The clothe recovered from the accused also contained blood [vide EX-P15]. Then, PW-24 examined the doctor, who

conducted autopsy on the body of the deceased and recorded his statement. On completing the investigation, on 22.09.2009, he laid the charge

sheet against all the eight accused under Sections 147, 148, 324, 120(B), 302 r/w 34 and 109 of the Indian Penal Code.

8. Based on the above materials, the Trial Court framed the following charges. The first charge is u/s 120(B) of the Indian Penal Code against all

the eight accused, the second charge is u/s 148 of the Indian Penal Code against the accused Nos.1 to 4 and Section 147 of the Indian Penal

Code against the accused Nos.5 to 7, the third charge is u/s 302 r/w 34 of the Indian Penal Code against the accused Nos.1 to 4, the fourth

charge is u/s 324 of the Indian Penal Code against the second accused and the fifth charge is u/s 302 r/w 109 of the Indian Penal Code against the

accused Nos.5 to 7.

9. When the accused were questioned in respect of the charges, they pleaded innocence. On the side of the prosecution, as many as 24 witnesses

were examined and 26 documents were exhibited, besides 18 Material Objects. When the Trial Court examined the accused u/s 313 of the Code

of Criminal Procedure in respect of incriminating evidences available against them, they denied the same as false. However, they did not choose to

examine any witness nor to exhibit any document in their defence. Having considered all the above materials, the Trial Court convicted the

appellants, as detailed in the first paragraph of this Judgment, and sentenced them accordingly. That is how, the appellants are before this Court

with this Criminal Appeal.

10. We have heard the learned counsel for the appellants, the learned Additional Public Prosecutor and also perused the records carefully.

11. As we have already narrated, there were as many as five charges. The first charge is as against all the eight accused u/s 120(B) of the Indian

Penal Code. According to the said charge, these eight accused had conspired to commit murder of the deceased, Visuvasam. Before proceeding

further, let us have a look into Sections 211 and 212 of the Code of Criminal Procedure, which deal with form of charges. Section 211 speaks of

the contents of the charge and Section 212 speaks of the particulars as to time, place and person to be mentioned in the charge. It states, "the

charge shall contain such particulars as to the time and place of the alleged offence, and the person [if any] against whom, or the thing [if any] in

respect of which, it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged. Section 212(i) of

the Code of Criminal Procedure is a part of fair procedure, constituting a fair trial to an accused, which is a fundamental right guaranteed under

Article 21 of the Constitution of India. In essence, according to the said provision, the accused shall be put on notice about the time, place and the

person against whom, or the thing [if any] in respect of which, the crime was committed, so that the accused would be in a position to defend

himself.

12. Keeping in mind the above mandatory procedure contemplated in Section 212(i) of the Code of Criminal Procedure, we have gone through

the charge No.1 framed u/s 120(B) of the Indian Penal Code. We are at a loss to find any such particulars relating to the date, time and the place,

where these eight accused are alleged to have conspired to murder the deceased, Visuvasam. The said charge is very vague. Thus, the framing of

the charge No.1 has not afforded sufficient notice to the accused to defend the said charge. In order to ascertain the materials, upon which this

charge was framed, we have examined the records, more particularly, the evidence of PW-24. During cross-examination, he has specifically stated

that, during investigation, he could not collect any material/evidence in respect of the conspiracy said to have been hatched among these eight

accused. Thus, we find force in the argument advanced by the learned counsel for the appellants that the charge No.1 was baseless.

13. The third charge against the accused Nos.1 to 7 is u/s 302 r/w 34 of the Indian Penal Code. The second charge is u/s 148 of the Indian Penal

Code as against the accused Nos.1 to 4 and u/s 147 as against the accused Nos.5 to 7. When the Lower Court had found materials to come to

the prima facie conclusion for the purpose of framing charges under Sections 147 and 148 of the Indian Penal Code that there was a common

object among all these seven accused, it is not understandable as to how the Lower Court could omit to frame charge against the accused Nos.5

to 7 u/s 302 r/w 149 of the Indian Penal Code. Similarly, as against the accused Nos.1 to 4, the Trial Court ought to have framed charges u/s 302

r/w 149 of the Indian Penal Code. Strangely, as against the accused Nos.1 to 4, the Trial Court had framed charge u/s 302 r/w 34 and as against

the accused Nos.5 to 7, u/s 302 r/w 109 of the Indian Penal Code. For framing charge u/s 109 of the Indian Penal Code, absolutely, there were

no materials available before the Trial Court. Similarly, when there is a charge u/s 324 of the Indian Penal Code against the second accused, for

having caused injury on PW-1, it is not known as to why there was no charge framed against the rest of the accused u/s 324 r/w 149 of the Indian

Penal Code. Thus, we are totally dissatisfied with the way in which the Trial Court has discharged its judicial obligation to frame charges in such a

sensational murder case.

14. At this juncture, we are also conscious of Section 464 of the Code of Criminal Procedure, which states that any error or omission in the charge

shall not be a ground to set aside the conviction and sentence, unless the accused has shown failure of justice occasioned thereby. Therefore, not

on the ground of a serious error in the charges that we are inclined to acquit these appellants from the charges, but because there has been no

evidence at all to prove the said charge.

15. In respect of the charge u/s 120(B) of the Indian Penal Code, when a specific query was made to the learned Additional Public Prosecutor to

point out any evidence on record even to suggest such conspiracy among all these eight accused, the learned Additional Public Prosecutor has

nothing in store to place reliance. On our part, we have carefully gone through the oral evidence of all the 24 witnesses, as well as the documentary

evidence, only to find that there has been nothing on record even to suggest that there was such conspiracy among these eight accused to do away

with the deceased. Above all, when the charge itself was that all these eight accused had conspired to kill the deceased, having acquitted the rest of

the accused, it is strange that the Trial Court has found these appellants alone guilty under this charge. At any rate, since, absolutely there is no

evidence to sustain the conviction under the charge u/s 120(B) of the Indian Penal Code, we are impelled to acquit these appellants from the said

charge.

16. Now, turning to the other charges and the evidences let in, the prosecution mainly relies on the eye - witness account of PW-1, PW-3 and

PW-9 to prove the involvement of these appellants in the crime. But, the learned counsel for the appellants would submit that these three witnesses

are not believable, as they are highly interested and closely related to the deceased. In order to substantiate his contention, the learned counsel has

taken us through the evidences of PW-1, PW-3 and PW-9 and has pointed out certain infirmities, about which we will deal with in details herein-

below. Before that, we will examine the argument of the learned counsel for the appellants that the complaint, in this case, itself is a concocted

document, and therefore, the entire case of prosecution should be doubted and disbelieved.

17. The learned counsel would point out that though it is stated that the occurrence was at 09.30 AM, on 10.08.2009 and that the Police Station is

situated hardly at a distance of two kilometres from the place of occurrence, the complaint [EX-P1] had been submitted to the police only at 10.45

AM. He would further submit that thereafter the complaint was handed over to the jurisdictional Magistrate only at 03.00 PM. These two delays

have not been explained. This, according to the learned counsel, creates a serious doubt. We have examined the said contention. A perusal of the

evidence of PW-1 would go to show that immediately, after the occurrence, PW-3 rushed the deceased to the Government Hospital at Dindigul.

However, PW-1, who is yet another injured in the occurrence, was present at the place of occurrence. PW-1 would state that while he was at the

place of occurrence and as soon as the deceased was taken to the Government Hospital, the Police Personnel arrived at the place of occurrence.

He has further stated that the complaint was drafted by PW-2 at the place of occurrence and handed over to the police, who were present at the

place of occurrence. But, according to PW-2, the complaint was drafted at the place of occurrence by him, as it was narrated by PW-1, and

thereafter, both of them had gone to the Police Station, where the said complaint was submitted to the police. However, during cross-examination,

he has stated that EX-P1 was drafted only at the Police Station. There is no explanation for this material contradiction. PW-23, the then Sub-

Inspector of Police, would state that the complaint was made only at the Police Station at 10.45 AM on 10.08.2009. Thus, there is no consistency

between the evidences of PW-1, PW-2 and PW-23 in respect of the submission of the complaint to the police.

18. At this juncture, we hasten to say that in our adjudicatory process, consistency is not the only test to find out the veracity of the case of the

prosecution. We would add that consistency is only one of the tests. In this case, for a moment, we do not hold that EX-P1 is a concocted

document only because of the above inconsistency, but because of the other circumstances as well. For example, the case was registered on the

basis of EX-P1 under Sections 147, 148, 324 and 302 of the Indian Penal Code. This means, even before the complaint was preferred, PW-1

must have had knowledge that the deceased, who had been rushed to the Government Hospital by PW-3, was dead. But, a close scrutiny of the

evidence of PW-1 would go to show that he has not stated anything about his knowledge that the deceased had already died. He has only stated

that the deceased was taken to the Government Hospital, and thereafter, he remained at the place of occurrence under severe shock, until PW-1

took him to the Police Station to prefer complaint. Thus, it has not been explained as to how, even in EX-P1, the death of the deceased came to

be mentioned.

19. Nextly, we have to refer to the presence of the police at the place of occurrence, as soon as the occurrence, as has been spoken to by PW-1.

It is not explained to the Court as to what was the earliest information to the police, which had brought the police to the place of occurrence.

Absolutely, we find no explanation regarding the said information.

20. According to the prosecution, the case was allegedly registered at 10.45 AM. According to PW-19, the Head Constable, attached to the

Dindigul Town South Police Station, the First Information Report was handed over to him only at 12.30 PM on the same day, for the purpose of

handing over the same to the Magistrate. He has further deposed that he handed over the same to the Jurisdictional Magistrate at 03.00 PM,

which is also evident from the endorsement made by the learned Magistrate. But, he has not explained the delay between 12.30 PM and 03.00

PM. Thus, the delay remains unexplained. Thus, there are reasons to believe that EX-P1 would have come into existence, after due deliberation,

and therefore, no much importance could be attached to the same.

21. The unexplained delay, coupled with the other infirmities and the improbabilities, which we have already narrated, would all go to create initial

doubt in the case of the prosecution.

22. Now, coming to the eye - witnesses, PW-1 has stated about the presence and participation of the accused Nos.1,2 and 4 alone in the

occurrence. He has not even mentioned about the rest of the accused. Though it is stated that he did sustain injury in the occurrence, he has not

stated so in his evidence. Admittedly, in the complaint, he had mentioned about the participation of the accused Nos.1 to 7 as well as their

individual overt acts. Now, he has completely given a go by to the rest of the accused other than these appellants. When that be the case, it is very

difficult to attach implicit reliance on the evidence of this witness, otherwise, it will amount to giving allowance to a person, who has chosen to

implicate seven accused at the initial stage, and thereafter, has chosen to implicate only three accused giving honourable go by to the rest of the

accused.

23. Nextly, PW-3 is the brother of the deceased. According to him, he was not anywhere near the place of occurrence. He would state that he

had just returned from a different village and he was walking near Vellaichi Amman Temple. At that time, according to him, he had seen all the

eight accused attacking the deceased. He would further state that he witnessed the occurrence from a distance of ten feet. After the assailants fled

away from the scene of occurrence, according to him, he rushed the deceased to the Government Hospital. Thus, according to him, all the eight

accused participated in the crime and attacked the deceased, which is not at all the case of the prosecution. Admittedly, according to the case of

the prosecution, the eighth accused was not at all present at the scene of occurrence. In respect of the accused Nos.1 to 7, according to the case

of the prosecution, the accused Nos.1 to 4 alone attacked the deceased with weapons, whereas the other accused did not make any attack at all.

Quite contrary to the case of the prosecution, PW-3 has given evidence. Having regard to the fact that he is closely related to the deceased, the

fact that his presence, even according to him, is only by chance and having regard to the fact that his evidence is quite contrary to the case of the

prosecution itself, in our considered opinion, it is very difficult to place implicit reliance on his evidence also. We have got every doubt about the

alleged presence of this witness at the time of occurrence.

24. Now, turning to the evidence of PW-9, she is the sister-in-law of the deceased. Her presence, even according to her, was only by chance. She

has stated that the accused Nos.1, 2 and 4 along with 6 to 7 persons came to the place of occurrence. Immediately, on their arrival, the accused

Nos.1, 2 and 4 attacked the deceased with knives. She has not stated anything about the rest of the accused. She has not also identified the other

6 to 7 persons, who came along with these appellants. Thus, her evidence is also not consistent with the case of the prosecution. Here again,

having regard to the fact that PW-9 is closely related to the deceased, the fact that even according to her own admission, she was present by

chance at the time of occurrence and the fact that her evidence is not consistent with the case of the prosecution, we are not inclined to place

implicit reliance on the evidence of this witness also.

25. From the foregoing discussions, we are able to find that instead of corroborating each other, the evidences of PW-1, PW-3 and PW-9,

contradict each other and they are in conflict with the prosecution case itself. But, the Trial Court has relied on the evidences of these witnesses to

hold that these accused alone are guilty. In our considered opinion, the Lower Court was not right in doing so.

26. Next comes the medical evidence. PW-15 had found that there were as many as ten injuries on the body of the deceased. According to the

case of the prosecution, the said injuries were caused by the accused by using knives, viz., MOs-5 to 7 and 12. But, PW-15, during cross-

examination, has stated that the injury Nos.1 and 8 would not have been caused by any of these weapons. He has given cogent reasons for such

conclusion also. From the nature of the injuries, he has opined that these two injuries would not have been caused by these weapons at all. But,

unfortunately, there was no attempt made by the prosecutor to re-examine him to explain further about the nature of the injuries and the probability

of the same having been caused by these weapons. Thus, the medical evidence also does not corroborate the evidences of PW-1, PW-3 and

PW-9.

27. Next comes the arrest of the accused, confessions and the consequential recoveries of the Material Objects at their instances. According to

PW-24, the Investigating Officer, the accused Nos.1, 2, 4, 5 and 6 were arrested at 05.00 PM on 10.08.2009. On such arrest, the first accused

gave a voluntary confession statement, in which he had disclosed that he had hidden a knife near Muthalagupatti Saroja Mill. According to PW-24,

the same was recovered in the presence of PW-17. Similarly, on the disclosure statements of accused Nos.2 and 4, two more knives were

recovered. In his evidence, PW-24 has not identified the weapons said to have been recovered from the accused Nos.1, 2 and 4 on their

respective disclosure statements. PW-17 has simply stated that MOs-5 to 7 are the knives recovered by the police. He has not identified the

respective weapon as against each accused. In our considered view, it is a serious lapse on the part of not only the prosecution, [the person who

conducted the prosecution], but also the Lower Court. When it is the case of the prosecution that a particular weapon was recovered from the

possession of an accused, it should have been specifically spoken to by the witness that the said weapon was recovered from the possession of

that particular accused. The very vague statement that MOs-5 to 7 were recovered from the accused will not satisfy the legal requirements.

28. At this juncture, it is needless to point out that it is not the discovery of every fact, out of a disclosure statement made by the accused to the

police that the said statement becomes admissible u/s 27 of the Indian Evidence Act, 1872. Per contra, if only the fact so discovered is a relevant

fact, the disclosure statement will be admissible u/s 27 of the Indian Evidence Act, 1872. Such a relevancy can be established by many ways.

Mostly, the relevancy will be spoken to by the eye - witness to the occurrence. In other words, the eye - witness would identify the weapon used

by each accused. But, in this case, PW-1, PW-3 and PW-9, who claim to be the eye -witnesses, were not at all asked by the prosecution to

identify the weapons said to have been used by the accused at the time of occurrence.

29. It is too elementary to say that in any prosecution case, when there is an eye-witness, one of the foremost duties of the prosecutor would be to

lead the eye - witness to identify the weapon used in the crime, if the said witness is able to do so. This is an important link, establishing the

relevancy between the crime and the weapon and the accused. But, in this case, the learned Public Prosecutor had failed to do so. The other way

to establish the relevancy is by means of the presence of the bloodstain on the weapons. In the instant case, the weapons, i.e., MOs-5 to 7 and 12

were subjected to Chemical Examination. According to the report of the Forensic Sciences Department, blood was found on these knives. But, as

per EX-P16, except a sword, which contained "O" blood group, in the other knives, the result of grouping test was inconclusive. It is not known

that out of the four knives, which knife had "O" group bloodstain. Meticulously, these aspects have not been elicited from the witnesses so as to

establish the link between the weapons and the crime. The Trial Court also had not bestowed its attention into these aspects to bring on record the

material evidence by exercising its power u/s 165 of the Indian Evidence Act, 1872. Thus, though it is alleged that on the arrest of these accused,

they had made disclosure statements and out of which, recoveries of weapons were made, for want of connecting link between the crime and the

weapons, we are unable to attach any importance to the same.

30. PW-24, even during Chief Examination, has stated that the accused Nos.1 and 4 were found with injuries on their bodies at the time when they

were arrested on 10.08.2009. He has further stated that he sent them to the Government Hospital with a police memo for examination. During

cross-examination, he has stated that he collected the Wound Certificates in respect of the said accused. However, he has not produced the same

before the Trial Court. It is not explained to the Court as to why these Certificates have not been produced before the Trial Court. The doctor,

who examined them also has not been examined. As a result, it is not known as to what are all the injuries sustained by them and their nature. PW-

24 has also not explained as to whether they had sustained injuries in the very same occurrence or not. Had it been true that these injuries were

sustained by them in the very same occurrence, certainly, it would have gone to prove their presence and participation in the crime. This would

have been a vital evidence in favour of the prosecution. If really these injuries had not been sustained in the said occurrence, PW-24 would have

explained as to how these injuries were sustained by them. This vital piece of evidence, which would have been otherwise available for the

prosecution to prove the presence and participation of these accused, has been omitted to be brought on record by the prosecution. This again

would only go to expose the indifferent attitude of the prosecution.

31. Thus, the prosecution has failed to bring on record promptly the evidences collected during investigation were not properly brought on record

by the prosecution. The Lower Court has also not shown any diligence in exercising its power u/s 165 of the Indian Evidence Act, 1872. In the

matter of appreciation of evidence, as well, the Trial Court has not been diligent. For instance, the Trial Court has convicted these three appellants

for the offence u/s 148 of the Indian Penal Code also. As we have already seen, the Trial Court has acquitted the other accused, barring these

three appellants. Thus, even according to the Trial Court, the participation of these three appellants alone has been proved by the prosecution.

When that be so, it is strange as to how the Trial Court could convict these three appellants alone u/s 148 of the Indian Penal Code. According to

the findings of the Trial Court, there was an assembly consisting of only three accused and still the Trial Court did not care to see that the said

assembly will not be an unlawful assembly, as defined in Section 141 of the Indian Penal Code. This again shows that the Trial Court has not

appreciated the facts and law involved in the case in their proper perspectives. In Paragraph No.29 of the Judgment, the Trial Judge has

categorically come to the conclusion that the evidence of PW-1 is quite contrary to EX-P1, his own complaint. He has further concluded that the

evidence of PW-3 is an exaggeration. Similarly, in the same paragraph, he has concluded that the evidence of PW-9 is an exaggeration. In

Paragraph No.30, the Trial Judge has held that the alleged confession said to have been given by the accused Nos.1, 2 and 4 to PW-24 in the

presence of PW-17 cannot be true, and therefore, the recovery of all these Material Objects cannot be believed. Having concluded so, the Trial

Judge has, however, found these appellants alone guilty, based on the evidences of PW-1, PW-3 and PW-9 alone. The Trial Court has

disbelieved the evidence of PW-1, PW-3 and PW-9 in respect of the other accused. When that be so, the Trial Court has not given any reason as

to why it has chosen to believe these three witnesses in respect of these appellants alone. We do not mean to say that since their evidences have

been disbelieved by the Trial Court in respect of the other accused, they should have been disbelieved in to, as against these appellants as well.

32. There are cases, where the grain could be separated from the chaff and implicit reliance could be attached on the evidences of the eye -

witnesses against some of the accused alone. In such a case, it would be possible in law to rely on the said witnesses and to hold the accused

guilty. But, here, in this case, as we have already concluded, no reliance could be placed on the evidences of PW-1, PW-3 and PW-9 so as to

convict these appellants alone.

33. In view of the foregoing discussions, we are of the considered view that the prosecution has failed to prove the charges against these appellants

beyond reasonable doubts, and therefore, the appellants/accused Nos.1,2 and 4 are entitled for acquittal.

34. In the result, this Criminal Appeal is allowed, the conviction and sentence imposed by the learned Additional District and Sessions Judge, (Fast

Track Court), Dindigul, made in S.C.No.92 of 2010, dated 30.06.2010, is set aside and the appellants/accused Nos.1,2 and 4 are acquitted of all

the charges. The fine amount, if any, paid by them shall be refunded to them. The appellants/accused Nos.1,2 and 4 are directed to be released

forthwith, unless their presence is required in connection with any other case.

35. Before parting with this Judgment, we would like to express our desire that each stakeholder in the criminal justice delivery system should be

vigilant to ensure that the real culprit does not escape from the clutches of law and every innocent is acquitted. Even if one stakeholder fails to

discharge his judicial obligation, it may result in failure of justice, thereby eroding the confidence of the people in the very justice delivery system. It

is the only confidence of the people reposed in the system, which strengthens the fabric of the justice delivery. After all, judiciary, one of the

strongest pillars of democracy and the last hope for the people, survives on the strength of the confidence of the people. Therefore, each

stakeholder, i.e., Judges, Prosecutor, Defence Counsel and Police should realize their responsibilities and respond to the call of the society for

justice delivery. We believe that in the days to come, the stakeholders will bestow their attention in the best possible manner in this regard.