

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.03.2020

Delivered on: 22.06.2020

CORAM

**THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND**

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

**Referred Trial No.3 of 2017
and CrI.A.Nos.162 to 165 of 2018 and 183 of 2018**

Referred Trial No.3 of 2017

1.Chinnasamy
2.Jagatheesan
3.Manikandan
4.Selvakumar
5.Kalithamilvaanan @ Tamil @ Kalai
6.Mathan @ Michael

.... Accused / A1, A4 to A8

vs.

The Deputy Superintendent of Police,
Udumalpet Sub Division, Udumalpet.
(Crime No.194 of 2016 on the file of
Udumalpet Police Station).

.... Complainant.

Prayer in R.T.No.3 of 2017 : Referred Trial under Section 366 CrPC on the judgment of the Trial Court made in Spl.S.C.No.19 of 2016 [Crime No.194 of 2016 of Udumalpet Police Station, P.R.C.No.7 of 2016 on the file of the Judicial Magistrate No.1, Udumalpet], on the file of the Principal District and Sessions Judge, Tiruppur

CrI.A.Nos.162 to 165 of 2018

1.Chinnasamy
2.Jagatheesan
3.Manikandan
4.Selvakumar
5.Kalithamilvaanam @ Tamil @ Kalai

... Appellant in CrI.A.No.162/2018 /A1

6.Mathan @ Michael ... Appellants in CrL.A.No.163 of 2018 /A4 to
A8

7.Dhanraj @ Tamil @ Stephen Shanraj ... Appellant in CrL.A.No.164 of 2018 /
A9

8.Manikandan ... Appellant in CrL.A.No.165 of 2018 /A11

Vs

The Deputy Superintendent of Police,
Udumalpet Sub Division,
Udumalpet.

... Respondent in all CrL.As.

Prayer in CrL.A.Nos.162 to 165 of 2018 : Criminal Appeals preferred under Section 374(2) CrPC against the judgment of conviction and sentence dated 12.12.2017 made in Spl.S.C.No.19 of 2016 [Crime No.194 of 2016 of Udumalpet Police Station, P.R.C.No.7 of 2016 on the file of the Judicial Magistrate No.1, Udumalpet], on the file of the Principal District and Sessions Judge, Tiruppur.

CrL.A.No.183 of 2018

State represented by
Deputy Superintendent of Police,
The Public Prosecutor,
High Court, Madras-104.
[Udumalpet P.S.Crime No.194/2016]

... Appellant / Complainant

1.Annalakshmi

2.Pandidurai

3.Prasanna @ Prasanna Kumar ... Respondents /A2, A3 & A10

Prayer in CrL.A.No.183 of 2018 : Criminal Appeal preferred under 378(i)(b) CrPC to set aside the judgment of acquittal of the respondents A2, A3 & A10 from the charges under Sections 120-B, 147, 302 IPC r/w. 120-B IPC r/w. 109, 302 r/w.149 IPC, 307 r/w.149 IPC and 307 r/w.120-B r/w.109 IPC and under Sections 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015 in Spl.S.C.No.19 of 2016, [Crime No.194 of 2016 of Udumalpet Police Station, P.R.C.No.7 of 2016 on the file of the Judicial Magistrate No.1, Udumalpet], on the file of the Principal District and Sessions Judge, Tiruppur.

For Appellants

CrI.A.No.162 of 2018 (A1) : Mr.V.Karthick, Senior Counsel
assisted by Mrs.AL.Gandhimathi

CrI.A.Nos.163 & 164 of 2018 : Mr.AR.L.Sundaresan, Sr. Counsel
(A4 to A8) (A9) assisted by Mrs.AL.Gandhimathi

CrI.A.No.165 of 2018 (A11) : Mr.C.T.Murugappan
CrI.A.No.183 of 2018 : Mr.C.Emalias,
Additional Advocate General
assisted by
Mr.R.Prathap Kumar,
Additional Public Prosecutor.

For Respondents in

R.T.No.3 of 2017
& CrI.A.Nos.162 to 165/2018 &
Appellant in CrI.A.NO.183/2018 : Mr.C.Emalias,
Additional Advocate General
assisted by
Mr.R.Prathap Kumar
Additional Public Prosecutor

For R1 in CrI.A.No.183 of 2018 : Mr.R.Karthikeyan
For R2 in CrI.A.No.183 of 2018 : Mr.C.R.M.Prabhu
For R3 in CrI.A.No.183 of 2018 : Mr.N.Manoharan

COMMON JUDGMENT

M.SATHYANARAYANAN, J.

The Reference in R.T.No.3 of 2017 is made by the Court of Principal District and Sessions Judge, Tiruppur under Section 366 of the Code of Criminal Procedure [in short “CrPC”] seeking confirmation of capital punishment imposed

upon A1- Chinnasamy, A4-Jagatheesan, A5-Manikandan, A6-Selvakumar, A7-Kalaithamilvaanan and A8-Mathan @ Michael, vide judgment dated 12.12.2017 made in Spl.S.C.No.19/2016 [PRC.No.7/2016 on the file of the Judicial Magistrate No.I, Udumalpet in respect of Crime No.194 of 2016 on the file of Udumalpet Police Station]. The Trial Court acquitted A2-Annalakshmi, A3-Pandithurai and A10-Prasanna @ Prasannakumar of the charges framed against them and challenging the impugned judgment of acquittal, the State has preferred CrI.A.No.183 of 2018. Aggrieved by the conviction and sentence awarded by the Trial Court, A1 has filed CrI.A.No.162 of 2018, A4 to A8 have filed CrI.A.No.163 of 2018, A9 has filed CrI.A.No.164 of 2018 and A11 has filed CrI.A.No.165 of 2018.

2 The Trial Court, vide impugned judgment dated 12.12.2017 had charged, tried and convicted, A1, A4 to A8, A9 and A11 as follows:

<i>Accused</i>	<i>Charges under Sections</i>	<i>Sentence</i>
A1	120-B IPC	Sentenced to Death and Fine of Rs.1,00,000/- in default to undergo 1 year Simple Imprisonment.
	302 r/w. 120-B IPC r/w 109 IPC	Sentenced to Death and Fine of Rs.1,00,000/- in default to undergo 1 year Simple Imprisonment.
	307 r/w.120-B IPC r/w. 109 IPC	10 years Rigorous Imprisonment and Fine of Rs.50,000/- in default to undergo 6 months

<i>Accused</i>	<i>Charges under Sections</i>	<i>Sentence</i>
		Simple Imprisonment.
	3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015	3years Rigorous Imprisonment with a Fine of Rs.50,000/- in default to undergo 6 months Rigorous Imprisonment.
A4	120-B IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	147 IPC	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	148 IPC	3 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	302 IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	307 IPC	10 years Rigorous Imprisonment and Fine of Rs.25,000/- in default to undergo 6 months Simple Imprisonment.
	3(1)(r)(s) of SC/ST Act	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
	3(2)(va) of SC/ST Act	5 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
A5	120-B IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	147 IPC	2 years Rigorous Imprisonment and Fine of

<i>Accused</i>	<i>Charges under Sections</i>	<i>Sentence</i>
		Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	148 IPC	3 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	302 IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	307 r/w. 149 IPC	10 years Rigorous Imprisonment and Fine of RS.25,000/- in default to undergo 6 months Simple Imprisonment.
	3(1)(r)(s) of SC/ST Act r/w 149 IPC	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
	3(2)(va) of SC/ST Act	5 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
A6	120-B IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	147 IPC	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	148 IPC	3 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	302 IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	307 IPC	10 years Rigorous Imprisonment and Fine of RS.25,000/- in default to undergo 6 months Simple Imprisonment.
	3(1)(r)(s) of SC/ST	2 years Rigorous Imprisonment and Fine of

<i>Accused</i>	<i>Charges under Sections</i>	<i>Sentence</i>
	Act r/w 149 IPC	Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
	3(2)(va) of SC/ST Act	5 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
A7	120-B IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	147 IPC	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	148 IPC	3 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	302 IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	307 r/w. 149 IPC	10 years Rigorous Imprisonment and Fine of RS.25,000/- in default to undergo 6 months Simple Imprisonment.
	3(1)(r)(s) of SC/ST Act r/w 149 IPC	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
	3(2)(va) of SC/ST Act	5 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
A8	120-B IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	147 IPC	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	148 IPC	3 years Rigorous Imprisonment and Fine of

<i>Accused</i>	<i>Charges under Sections</i>	<i>Sentence</i>
		Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	302 r/w.149 IPC	Sentenced to Death and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	307 r/w. 149 IPC	10 years Rigorous Imprisonment and Fine of RS.25,000/- in default to undergo 6 months Simple Imprisonment.
	3(1)(r)(s) of SC/ST Act r/w 149 IPC	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
	3(2)(va) of SC/ST Act	5 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
A9	120-B IPC	Life Imprisonment and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	147 IPC	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 3 months Simple Imprisonment.
	302 r/w.149 IPC	Life Sentence and Fine of Rs.50,000/- in default to undergo 1 year Simple Imprisonment.
	307 r/w.149 IPC	Life Sentence and Fine of Rs.25,000/- in default to undergo 6 months Simple Imprisonment.
	3(1)(r)(s) of SC/ST Act r.w. 149 IPC	2 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
	3(2)(va) of SC/ST Act	5 years Rigorous Imprisonment and Fine of Rs.10,000/- in default to undergo 6 months Simple Imprisonment.
A11	212 IPC	5 Years Rigorous Imprisonment and Fine of Rs.50,000/- in default to undergo 6 months

<i>Accused</i>	<i>Charges under Sections</i>	<i>Sentence</i>
		Simple Imprisonment.

The sentences are ordered to run concurrently. The remand period already undergone by A1, A4 to A9 and A11, were ordered to be set off under Section 428 CrPC.

3 Facts leading to this Referred Trial as well as the Criminal Appeals filed by A1, A4 to A8, A9 and A11 relevant for the disposal of these cases, briefly narrated, are as follows. This Court, for the sake of convenience and for better understanding, is adopting the array of accused as per the impugned judgment of the Trial Court.

3.1 A1 and A2 are parents of PW1- Kowsalya and they belong to Hindu Piraimalai Kallar Community, which is a Denotified Community [DNC]. PW1 was studying Computer Science Engineering in P.A. College of Engineering at Pollachi. The deceased – Shankar was studying Mechanical Engineering Final Year in the same College and he belongs to Hindu Pallar Community, which is a Scheduled Caste [SC] Community.

3.2 PW1 and Shankar / deceased started loving each other. The parents of PW1, namely A1 and A2 became aware of the said love affair and therefore, asked PW1 not to attend the college. PW1 disclosed this fact to the deceased and he told her to come out of her parental home for the purpose of getting married and accordingly, PW1 came out of her parental home on 11.07.2015 and stayed in the friend's house of the deceased/Shankar at Thali. According to PW1, she and Shankar got married at Paadhavinayagar Temple at Palani on 12.07.2015 by exchanging garlands.

3.3 PW1 and Shankar, apprehending trouble on account their inter-caste marriage, gave a petition for protection under Ex.P1 dated 12.07.2015. before the All Women Police Station, Udumalpet. The parent of PW1, namely A1 and A2 came to the said police station for the purpose of enquiry and so also the father of Shankar/deceased and his relatives. The police officials attached to AWPS, Udumalpet caused enquiry and Shankar/deceased gave a letter under Ex.P2 dated 12.07.2015 stating that he will take care of his wife/PW1, in which the father of Shankar/deceased, namely Velusamy and one Varadharajan, President of Komaralingam Village Panchayat had subscribed their signatures. PW1 also gave a

petition under Ex.P3 dated 12.07.2015 to the Inspector of Police, AWPS, Udumalpet, not to take further action against her parents and in the said petition, neighbours of Shankar/deceased, namely Tvl.Senthilkumar, Anbazhagan, P.Balasubramanian and another had subscribed their signatures.

3.4 During the course of enquiry, A2 / mother of PW1, grandmother of PW1 and her two aunts told PW1 that it is not possible to live with Shankar/deceased, who belongs to Scheduled Caste community and the marriage is also not valid and therefore, asked her to come with them. PW1 refused to heed to their advise and insisted that she will live only with Shankar. A2 / mother of PW1 asked PW1 asked to return the jewels worn by her and accordingly, she returned the same to her parents.

3.5 PW1 resided with Shankar in her matrimonial home at Komaralingam as husband and wife for about 8 months. Maternal grandfather of PW1/ DW2, namely Jayaraman, after two weeks of marriage, came to the matrimonial home of PW1 and told her to forget the past and he will workout compromise and also took PW1 and Shankar to a nearby market and bought them new dresses and snacks. PW1 and Shankar returned to their home at Komaralingam and her grandfather left his Scooty two-wheeler with them. On the

next day at about 11.00 a.m, DW2 came to the matrimonial home of PW1 and at that time, PW1, Paternal Uncle's daughter of Shankar, namely Maariatha and father of Shankar, namely Velusamy were present and her grandfather developed chest pain and therefore, PW1 took him along with Maariatha in the Scooty two-wheeler to hospital.

3.6 DW2 took treatment in a private hospital at Madathukulam and after treatment, while they were returning, PW1 saw an Indigo Car. A1, A2 and friend of A1, namely Kalidhas alighted from the car and anticipating some trouble, PW1 started running and she was chased and forcibly put inside the case and she was taken to the house of her junior mother, namely, Revathi at Dindigul. It is the version of PW1 that they forcibly removed her Mangalasutra "Thali", "Meti" and the dress worn by her and put it in fire and they also poured water on her by telling that there is no relationship between her and Shankar and however, PW1 insisted that she will live with Shankar only. PW1 was taken to various places and some black-magic was also performed to erase her memory about Shankar. A3, namely Pandithurai came to Dindigul and told the parents of PW1 that in the light of her conduct, she should not be left alive and she would be a bad example and it may be followed by his children also.

3.7 Shankar has also lodged a complaint on 24.07.2015 as to the missing of his wife from 23.07.2015. PW36, who was the Circle Inspector of Madathukulam Police Station, has registered a case in crime No.320/2015 for “Women Missing”, marked as Ex.P39. PW1 had voluntarily appeared and after recording her statement, she was sent with Shankar and her relatives and in respect of the said complaint, final report was filed under Ex.P40 before the Judicial Magistrate No.II, Udumalpet.

3.8 Even prior to the said incident, on 11.07.2015, A1 also lodged a complaint alleging that Shankar had kidnapped her daughter and based on the said complaint, a case in Crime No.647/2015 under Ex.P35, was registered on the file of Palani Town Police Station for the alleged commission of offence under Section 366 IPC. PW35 was the Station House Officer of the Palani Town Police Station, who took up the said case for investigation and PW1 appeared before him on 13.07.2015 and gave a statement that no one had kidnapped her and she married Shankar by way of love marriage. PW1 was produced before the Judicial Magistrate Court, Palani and the said Court permitted PW1 to go with Shankar on her own volition and therefore, the said enquiry was closed and the Final Report

was filed before the said Court, which was marked as Ex.P38.

3.9 PW1 continues to have apprehension that her relatives continuously followed her and prevailed upon her to break the marital relationship and A3 also came near to her house and noted the surroundings. Shankar told PW1 that they can go to Udumalpet to buy new dresses for the reason that the College Annual Day function is slated to be held on 14.03.2016. Accordingly, PW1 and Shankar proceeded to Udumalpet by bus at about 12.00 noon on 13.03.2016 and they bought new dresses in Super Collection Shop owned by PW50 and they were proceeding towards Udumalpet bus stand and both of them were waiting at Palani to Pollachi road in front of Eswari Departmental Store, owned by PW7 at around 2.15 p.m. on 13.03.2016.

3.10 At that time PW5 started attacking Shankar with Aruval Knife on the rear side of the neck and pulled him back and pushed him. A6 repeatedly cut Shankar with Aruval. A8, who was wearing helmet, attacked PW1 by inflicting cut injury on her head and pushed her down. A4, A6 and A8 repeatedly attacked Shankar by inflicting cut injuries and he fallen down. Thereafter, A5, A6 and A7 repeatedly cut Shankar. A4 and A6 also inflicted cut injuries upon PW1. A4 and A6, while attacking Shankar, also castigated him by using his caste name. A4 also

attacked PW1 by uttering a word to get rid of the world. All the assailants went in two wheelers with their weapons under the impression that both of them are dead.

3.11 A9, who was standing nearby, was a member of the unlawful assembly and he also took steps to prevent the deceased and PW1 not to escape from the attack. A10 was waiting in a motor cycle to facilitate the escaping of the assailants. A11 had harboured the assailants by giving accommodation in his house and facilitated their abscondence.

3.12 PW49 – Ambulance Driver, took PW1 and Shankar in the Ambulance at about 2.15 p.m. on 13.03.2016 on an intimation from the owner of the Ambulance, namely Karuppusamy as to the assault inflicted and took them to Government Hospital at Udumalpet.

3.13 PW44 was the Assistant Surgeon attached to Udumalpet Government Hospital and both PW1 and Shankar found to be conscious and they had sustained injuries. PW1 told PW44 that she and her husband Shankar were attacked by some persons at about 2.15 p.m. on 13.03.2016 at Udumalpet Bus Stand and thereby they sustained serious injuries. Shankar also told PW44 the same thing. PW44 having noted that both of them had sustained serious injuries, gave First Aid and

referred them to Coimbatore Medical College Hospital [CMCH], Coimbatore for further treatment.

3.14 PW1 and Shankar were taken from Udumalpet Government Hospital to Coimbatore Medical College Hospital by PW49 and on reaching the said hospital at around 4.00 p.m., Shankar was examined by a Doctor and was declared dead. PW1 was admitted for further treatment as in-patient in the said hospital between 13.03.2016 and 28.03.2016.

3.15 PW51 was the Head Constable attached to Udumalpet Police Station and at about 3.00 p.m. on 13.03.2016, while he was on duty, received an information/intimation from the Government Hospital at Udumalpet as to the sustainment of injuries by a male and a female and he immediately proceeded to the said hospital, wherein he was informed that both the injured were referred to Coimbatore Medical College Hospital, Coimbatore for further treatment. PW51 returned to the Udumalpet Police Station at 3.30 p.m. and informed the same to PW52-Head Constable about the same. PW51 was asked to come to the Coimbatore Medical College Hospital on 14.03.2016 and he reached the said hospital at 12.30 p.m.

3.16 PW54 was the Inspector of Police, Law and Order, attached to Udumalpet Police Station and he received a telephonic information at about 3.50 p.m. on 13.03.2016 through PW52 as to the demise of Shankar and sustainment of grievous injuries by PW1. Immediately, PW54 proceeded to the Coimbatore Medical College Hospital and recorded the statement of PW1 under Ex.P4 and at about 4.00 p.m. returned to the police station and registered a case in Crime No.194 of 2016 under Sections 147, 148, 307, 302 and 109 IPC and under Section 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. The printed F.I.R was marked as Ex.P66. PW54 dispatched the original of Ex.P4 and Ex.P66 through PW53, who was the Head Constable, Udumalpet Police Station, to the Court of Judicial Magistrate No.I, Udumalpet and also dispatched the copies to the Deputy Superintendent of Police, Udumalpet for further investigation.

3.17 PW67 / Investigation Officer was the Deputy Superintendent of Police, Udumalpet and upon receipt of the FIR under Ex.P66 from PW54, commenced the investigation and also in terms of the proceedings of the Superintendent of Police, Tiruppur District dated 13.03.2016 marked as Ex.P102

and upon receipt of the said information at 7.25 a.m. on 13.03.2016, he proceeded to the Scene of Crime.

3.18 PW67, in the presence of PW6 and Kapilan had observed the Scene of Crime and prepared Observation Mahazar, marked as Ex.P6 as well as Rough Sketch, marked as Ex.P103 and also collected Blood Stained Earth and Sample Earth [M.Os.15 to 18] in the presence of very same witnesses under Mahazar / Ex.P7 at about 8.30 p.m. on 13.03.2016. The said material objects were also dispatched to the Jurisdictional Magistrate Court under Form 91, marked as Ex.P104.

3.19 PW67, on the very same day on 13.03.2016, had examined the eye-witnesses, namely PW2-Auto Driver, PW3-Fruit Merchant and witnesses to the Observation Mahazar, namely PW6 and Kapilan and recorded their statements. PW67 proceeded to the Coimbatore Medical College Hospital and examined PW1, who was admitted as inpatient at about 1.30 a.m. on 14.03.2016 and recorded her statement. PW67 searched for A1 to A3 and proceeded to Ottanchachiram, Palani and found that they had absconded.

3.20 PW67 went to the Coimbatore Medical College Hospital and conducted inquest on the body of the deceased at about 9.00 a.m. on 14.03.2016 in the presence of Panchayatdars and prepared Inquest Report, marked as Ex.P105. PW67 sent a requisition for conducting autopsy on the body of the deceased / Shankar to the Professor and Police Surgeon, Coimbatore Government Medical College Hospital through PW51 – Head Constable at about 12.30 p.m. on 14.03.2016.

3.21 PW67 also seized the cloth worn by the deceased, marked as M.Os.9 to 11 and sent it through Form 91 to the jurisdictional Magistrate Court, marked as Ex.P64 and also recorded the statement of PW51/Head Constable, who took the body of the deceased along with the requisition for postmortem.

3.22 PW45 was the Tutor in Trauma and Doctor working in Coimbatore Medical College Hospital and he has also treated PW1, who was admitted as inpatient and issued the Wound Certificate and also stated about taking X-Ray and CT Scan and gave the information that the injuries upon PW1 might have caused by M.Os.1 to 5.

3.23 PW51 - Head Constable submitted the requisition for conducting autopsy on the body of Shankar to PW46, Senior Civil Surgeon attached to Medical Legal Department, Coimbatore Medical College Hospital, who upon receipt of the said requisition, commenced postmortem at 12.45 p.m. on 14.03.2016 and noted the following features:

“The following ante mortem injuries noted over the body:

- 1) Transversely oblique cut wound 20x5x6 cm bone deep noted over right side neck extending from 1 cm below to the chin at the level of midline and passes laterally up to mastoid and occipital region 4 cm back to right ear lobe. Both ends are sharpened and both margins are regular. On dissection, medially the wound cutting the underlying muscle, vessels, nerves and partially cutting the underlying C-4 vertebra and laterally the wound cutting the muscle, vessel, nerves and cutting the right mastoid and occipital bone enter into the cranial cavity.
- 2) Transversely oblique cut wound measuring 4x2 cm x muscle deep noted on upper border of the wound no 1, 3 cm back to medial end of wound no 1. The wound passes medially, backward and merged with the wound no 1. On dissection, the wound cutting the underlying muscle, vessel and nerves.
- 3) Transversely oblique cut wound measuring 5x2 cm x muscle deep noted on right side neck muscle just below to inferior border of wound no 1. The wound passes medially and merged with the wound no 1. On dissection, the wound cutting the underlying muscle, vessel and nerves.
- 4) Transversely oblique cut wound 8x1x3 cm muscle deep noted over right side neck, 0.5 cm below and parallel to the wound 1. On dissection the wound cutting the underlying muscle, vessel and nerves.
- 5) Transversely oblique cut wound 6x1x1 cm noted over right side mastoid region, 1 cm above to the lateral end of wound no 1. On dissection the wound cutting the underlying muscle, vessel, nerves

and partially cutting the mastoid bone.

6)Transversely oblique cut wound 5x1 cm x muscle deep noted over middle of front of neck. Both ends are sharpened. On dissection the wound cutting the underlying muscle, vessel, and nerves.

7)Incised wound 5x0.25x0.25 cm noted over the body of mandible on right side.

8)Incised wound 9 x 1 cm x muscle deep noted over outer aspect of right elbow and forearm.

9)Transverse cut wound 7x2 cm x muscle deep noted over back of right mid forearm, both ends are sharp and margins are regular. On dissection the wound cutting the underlying muscle muscle, vessels and nerves.

10)Transversely oblique cut wound 7x4 cm x bone deep noted over outer aspect of right forearm, 8 cm from right wrist. On dissection the wound cutting the underlying muscle, vessel,nerves and completely cutting the underlying ulna.

11)Transversely placed cut wound 7x4 cm x bone deep and over right forearm, 5 cm from the right wrist. On dissection the wound cutting the underlying muscle, vessel, nerves and both bones of forearm found completely cut in two pieces.

12)Stab wound 3x1x4 cm noted over inner aspect of left forearm. The upper end is cm below the elbow and the lower end is 8 cm above the wrist. Both ends are sharpened. On dissection the wound passes inwards, downwards and cutting the underlying muscle, vessels and nerves.

13)Stab wound 3x1x3 cm noted over inner aspect of left forearm, the upper end is 9 cm below to olecranon process and the lower end is 13 cm above the wrist. On dissection the wound passes inwards, upwards and cutting the underlying muscle, vessels and nerves.

14)Punctured wound 1x0.5x0.5 cm noted over left deltoid region.

15)Stab wound 2x1x3 cm noted over back of right side lower chest. The inner end is 8 cm from the midline and the outer end is at posterior axillary line. Both ends are sharpened and margin regular. On dissection the wound passes inwards, downwards and cutting the underlying muscle vessels and nerves.

16)Cut wound noted over left index, middle and ring finger at the level of mid phalynx. On dissection the wound cutting the left index and middle finger completely and hanged over theof skin and

partially cutting the left ring finger at the level of 1st inter phalangeal joint measuring 2x1 cm x bone deep.

17) Left great tow nail found avulsion.

18) Incised wound 12x0.25x0.25 cm noted over right shoulder and deltoid region.

19) Incised wound 7x0.5x0.25 cm noted over mid and outer aspect of right arm.

20) Incised wound 5x0.25x0.5 cm noted over top of right shoulder.

21) Incised wound 1x1.5x0.25 cm noted over top of right shoulder.

22) Incised wound 1x0.25x0.25 cm noted over top of right shoulder.

23) Incised wound 21x0.5x0.5 cm noted over lateral aspect of right lateral chest and abdomen.

24) "+" shaped transversely incised wound 10x0.5x0.5 cm and vertically 8x0.25x0.25 cm noted over right lower chest.

25) Incised wound 6x0.25x0.25 cm noted over left scapular region.

26) Incised wound 2x0.25x0.25 cm noted over right forehead.

27) Incised wound 6x0.25x0.25 cm noted over right side neck.

28) Reddish abrasion 1x0.25 cm noted over left forehead.

29) Reddish abrasion 1x0.25 cm noted over left forehead close to eye.

30) Reddish abrasion 0.5x0.5 cm noted over right forehead.

31) Reddish abrasion 0.5x0.25cm noted over left cheek close to ear.

32) Reddish abrasion 1x0.5 cm noted over right jaw.

On dissection of Scalp, Skull and Dura: Sub scalpal contusion noted around the wound no.1

Diffuse sub dural and sub arachnoid hemorrhage seen over entire brain.

Note: Blood clots noted on the all the above wounds.

PW46 opined after conclusion of autopsy that the deceased would appear to have died of shock and hemorrhage due to multiple cut and stab injuries and the death would have occurred 12 to 24 hours prior to autopsy. The Postmortem Certificate was marked as Ex.P57. PW46 also gave the Final Opinion, marked as Ex.P58,

stating that the viscera of the deceased does not contain any poison.

3.24 PW67 continued with the investigation and examined the father of the deceased, namely Velusamy, younger brother of the deceased / PW9, Gopal, Murugan and Kathiresan separately and recorded their statements. During the course of enquiry, PW67 became aware of the fact that the deceased belong to Scheduled Caste Hindu Pallar Community and the girl he married, belongs to Piramalai Kallar Community and they developed love affair during their studies at P.A. College of Engineering at Pollachi and got married during July, 2015 against the wish of their parents and despite insistence by A1 to A3, PW1 came out of the matrimonial home and she failed to acceded to their said request and enraged by the same, they engaged the services of the assailants and committed the offences.

3.25 PW67 proceeded to the Scene of Crime, which is just opposite to Eswari Departmental Store and recorded the statement of Ibrahim-PW13, Marimuthu, Sundaram and Karuppasamy and also forwarded M.Os.9 to 11 for forensic analysis.

3.26 PW67, while continuing with the investigation on 15.03.2016, had

received wireless message as to the apprehension of the suspected accused, namely A4 and A5 by LW118 -Mr.Venkataraman, Inspector of Police, Crime, Udumalpet Police Station and proceeded to Pethampatti, temporary check-post and about 7.45 a.m. on 15.03.2016, had enquired A4 and A5 and at about 8.00 a.m., effected their arrest. PW67 also availed the services of PW12-Village Administrative Officer and Village Menial, namely Vijayakumar by contacting through mobile phone and they also came to the spot. A4 was examined by PW67 in the presence of the said witnesses. A4 voluntarily came forward to give confession statement and it was typed by using computer and got the signature of the said witnesses in the confession statement. The admissible portion of the confession statement of A4 was marked as Ex.P16.

3.27 A4 had admitted that he got Rs.50,000/- from A1 and after spending a sum of Rs.5,000/-, he took Rs.24,000 and gave Rs.20,000/- to A6 and also disclosed the place wherein he has concealed the bloodstained clothes of A6 and A5 as well as the 3 knives used by them. A4 had also stated that all the assailants proceeded to the house of A11 and told about the happenings and A11 also agreed to them and further deposed that he will identify the place where he has concealed Rs.24,000/- as well as Black Colour Pulsor Motorcycle bearing Reg.No.TN57-AZ-

2340 [M.O.12], clothes and knives.

3.28 PW67, in the presence of PW12 and another, examined A5/Manikandan. A5 voluntarily came forward to give a confession statement and it was recorded in the presence of PW12 and another, who subscribed their signatures and as per the admissible portion of the confession statement marked as Ex.P18, he has identified the place wherein he has concealed the shirt, towel and knives used for the commission of offences. A4 took a sum of Rs.24,000- [M.O.3 series] kept inside the pocket as well as M.O.12 and those articles were recovered under Mahazar/Ex.P17 at 10.30 a.m. on 15.03.2016.

3.29 PW67 took A4, A5, PW12 and another and went to PAP Canal, wherein, he recovered Green Colour Shirt [M.O.24], blood stained knife worn by A5, Maroon colour shirt [M.O.26], Saffron colour towel [M.O.27] and blood stained knife [M.O.2] measuring 65.5 cm and A4 handed over yellow and black big checkered full hand shirt of A6 [M.O.25], knife [M.O.3] measuring 51.5 cm concealed under the sluice and seized those articles under Ex.P19 / Mahazar at about 11.15 a.m. on 15.03.2016 in the presence of witnesses and obtained their signatures.

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3.30 PW67, on receipt of secret information, mounted surveillance near railway gate situated in the road from Udumalpet to Anaimalai and found A6, A8 and A11 at about 12.15 p.m. who came in an unregistered Bajaj Discover Motorcycle [M.O.13] and effected their arrest. PW67 examined A6 in the presence of PW11 and his menial Chockalingam. A6 voluntarily came forward to give confession statement and as per the admissible portion of the confession statement marked as Ex.P12 dated 15.03.2016 and it was recorded by using computer and as per the admissible portion of the confession statement, he undertook to produce black and yellow checkered full hand shirt worn by him as well as the knife used for the commission of offences.

3.31 A8 also voluntarily came forward to give confession statement and it was recorded by using computer and he undertakes to produce the shirt worn by him as well as blood stained knife which was hidden in a bush near Sadayapalayam Pirivu in Mukkonam to Anamalai Road and his admissible portion of the confession statement was marked as Ex.P13.

3.32 A11 also voluntarily came forward to give confession statement and

it was recorded at 2.30 p.m. on 15.03.2016, wherein he has disclosed the fact of giving asylum in his house and as per the admissible portion of the confession statement, marked as Ex.P14, he undertakes to identify the house in which he gave asylum to the assailants and sum of Rs.20,000/- given by A6 [M.O.21] and unregistered Bajaj Pulsor motorcycle [M.O.13] and they were recovered under Mahazar/Ex.P11 in the presence of witnesses. At about 5.00 p.m. on 15.03.2016, the blood stained knife [M.O.4] used by A8 as well as Blue Orange Wooden colour Full Hand Shirt [M.O.22] were produced by A8 and they were recovered under Mahazar/ Ex.P15 in the presence of the said witnesses.

3.33 PW67 effected the arrest of A4, A5, A6, A8 and A11. A6 identified the place where he has concealed the material objects and all of them were sent to the police station. PW67 took photographs of the assailants separately by using camera and the photographs were taken by police photographer and two sets of photographs were printed.

3.34 PW67 altered the provisions of law to Sections 147, 148, 307, 302, 109, 212 IPC and 3(2)(va) of SC/ST Act, 2015. The Alteration Report was marked as Ex.P106. PW67, before effecting photographs, asked A4, A5, A6, A8 and A11

to wear the clothes worn by them at the time of commission of offences and took photographs. The photographs of A4, A5, A6 and A8 were marked as Exs.P37, P38, P39 and P40 series respectively. PW67 recorded the statements of PW12/VAO, Vijayakumar, Easwaran and Chokalingam separately.

3.35 On 16.03.2016, PW67 had produced A4, A5, A6, A8 and A11 before the Judicial Magistrate No.I, Udumalpet for their judicial custody and also submitted their confession statements, recovery mahazars along with the remand report and they were remanded to judicial custody and lodged at Central Prison at Coimbatore. During the course of journey to the Coimbatore Central Prison, faces of the said accused were also concealed with masks. PW67 also dispatched the material objects in Form 91 as well as photographs, marked as Ex.P107 to Court.

3.36 PW67 proceeded to Coimbatore Medical College Hospital and examined PW1 and seized the blood stained clothes [M.Os.6 to 8] worn by her at the time of occurrence in the presence of Velusamy/PW2 and PW9 under Mahazar /Ex.P9. PW67 recorded the further statements of PW1, father of the deceased and younger brother of the deceased, namely PW9.

3.37 PW67 had examined the doctor - PW46 who conducted autopsy on the body of the deceased and also obtained the Postmortem Certificate, marked as Ex.P57. PW67 proceeded to the Eswari Departmental Store and obtained CCTV [M.O.19] and hard disk [M.O.20] in the presence of witnesses Sudharsanraj, Siva, PW7 and PW8 at about 5.00 p.m. under Mahazar/Ex.P8 at about 5.00 p.m. on 15.03.2016 and also obtained signatures in the Recovery Mahazar and dispatched the same under Form-91, marked as Ex.P108. PW67 also examined the Sudharsanraj, Siva, PW7 and PW8 and recorded their statements.

3.38 PW67 made a requisition to the Chief Judicial Magistrate, Tiruppur District for conducting Test Identification Parade for A4, A5, A6 and A8 through PWs.1 to 4. PW67 also made a requisition for recording the statements of PWs.1 to 3, Ibrahim, Sundaram and Karuppasamy under Sections 164 CrPC to the Judicial Magistrate, Palladam and also made a requisition for conducting forensic analysis of the seized material objects.

3.39 On 17.03.2016 at 4.00 p.m. PW4 came to Udumalpet Police Station and voluntarily surrendered the Micromax Cellphone [M.O.14] in which he recorded the scene of occurrence along with Memory Card [M.O.42] and the same

were recorded by PW67 under Mahazar / Ex.P5 and also obtained the signature of PW4. PW67 sent a requisition to the Judicial Magistrate No.1, Udumalpet for sending the video recordings in the DVD hard disk, cell phone memo card with that of the photographs of A4, A5, A6 and A8 for forensic analysis to the Forensic Laboratory at Chennai.

3.40 PW67 also sent a requisition to the Revenue Tahsildar, Madathukulam to get community certificate of the deceased/Shankar and also made similar requests to the Tahsildar, Dindigul to know about the communal status of A4, A6, A8 and A11. PW67, on becoming aware of the fact that A1 had surrendered before the Judicial Magistrate Court, Nilakottai and lodged at Central Prison, Madurai, made a requisition to the Judicial Magistrate No.I, Udumalpet to issue Prisoner's Transfer [PT] Warrant.

3.41 On 21.03.2016 at 8.00 a.m. PW67 had examined PW4 and Nazusutheen and recorded their statements and also obtained the custody of A1. PW67 had nominated PW63-Inspector of Police, Madhathakulam as Special Officer to trace the absconding accused A2, A3 and A9 and also recorded the statements of PW5 and Marimuthu.

3.42 On 22.03.2016 at 1.00 p.m. PW63 produced A3 to PW67 with his Special Report and in the presence of PW12/VAO and his assistant Muruganantham, PW67 arrested A3 and examined him. A3 voluntarily came forward to give confession statement and his statement was recorded in the presence of the said witnesses. PW67 also examined PW13 and Muruganantham and recorded their statements. PW67 also examined PW52-Head Constable, PW53-Head Constable, PW54-Inspector of Police, PW33-SI-AWPS and PW63-Inspector of Police, Madathakulam PS and recorded their statements. Thereafter, PW67 produced A3 before the Judicial Magistrate for judicial custody and he was lodged at Central Prison, Coimbatore.

3.43 PW67 had obtained the documents relating to Petition No.310/2015, marked as Ex.P34 and the marriage photographs of Shankar-deceased and Kowsalya/PW1. PW67 made a requisition to the Tahsildar, Palani to get the Community Certificates of A1 to A3. On 23.03.2016, PW67 went to the Coimbatore Medical College Hospital and informed PW1 as to the recording of statements under Section 164 CrPC by the Judicial Magistrate, Palladam on 21.03.2016 as well as the identification parade to identify A4, A5, A6 and A8,

which is to be held on 23.03.2016 and also recorded her statement.

3.44 PW67 came back to Udumalpet and recorded the further statements of PW2, Sundaram, PW3, Ibrahim and PW4 and also their participation in the Test Identification Parade. PW67, on becoming aware of the fact that A10, namely Prasanna @ Prasannakumar had surrendered before the Judicial Magistrate Court, Nilakottaim, Dindigul District on 18.03.2016, had secured his custody and also obtained his police custody.

3.45 On 24.03.2016, PW67, for the purpose of examining A1, availed the services of PW13/VAO and his menial and A1 voluntarily came forward to give the confession statement, which was recorded in the presence of witnesses by using computer at 2.30 p.m. on 24.03.2016. A1 narrated about the conspiracy hatched to do away with the lives of PW1 and Shankar/deceased as well as drawing money from the joint account of A1 and A2 for the purpose of engaging hirelings and also identified M.O.13-Bajaj Discover motorcycle.

3.46 PW67 also recorded the statement of PW13-VAO and his menial Muruganandham separately and also examined A10 in the presence of PW13 and

his menial and recorded his statement and as per the admissible portion of the confession statement, he undertakes to identify the place where he has concealed the cellphone as well as the clothes worn by him. A10 was shown the videographs and he identified the person who worn the helmet at the time of commission of offence and the rider of the motorcycle, namely A7 and A8. PW67 took A1, A10 along with police party in jeep and A10 took the police party to his house and produced M.O.30-Nokia Cellphone, M.O.31-Shirt and M.O.32-Pant and the said articles were recovered under Mahazar-Ex.P28 in the presence of the witnesses Karunanithi and Kalimuthu at about 11.30 a.m. on 25.03.2016 and their signatures were also obtained and their statements were also recorded.

3.47 PW67, seized M.O.14-Page Nos.1 to 45 of the Lodge Register produced by the owner of Bhagyam Lodge, namely PW14 and the said seizure was effected in the presence of one Sokkaraj and PW15 under Mahazar/Ex.P23 and obtained the signatures of PW14, PW15 and Sokkkaraj and it was sent to the Court through Form 91, which was marked as Ex.P110.

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3.48 PW67, as identified by A1, proceeded to Dhandayuthapani Swami Park in Palani By-Pass Road and prepared Observation Mahazar/Ex.P31 and

Rough Sketch/Ex.P109 in the presence of witnesses Subramaniam and Selvaraj and then he examined the witnesses PW14, Sokkaraj, PW15, Balasubramania, Selvaraj, Kalidass, Duraisamy and Senthilkumar separately and recorded their statements and also examined PWs.26 and 27.

3.49 At about 10.00 p.m. on 25.03.2016, A1 to A10 were brought back to Udumalpet Police Station by PW67 and were put into custody and sent the material objects seized from A10 to the Court under Form 91, marked as Ex.P111. PW67 concealed the face of A10, while he was taken away for the purpose of recovery.

3.50 On 26.03.2016 at about 10.00 a.m. PW67 proceeded to Komaralingam and examined PW24 and recorded his statement. On 27.03.2016 at about 10.00 a.m. PW67 examined Dr.Jayasingh, Professor, Forensic Department, Coimbatore Medical CollegeHospital and also examined PW28, who identified M.O.13 – Motorcycle. On 28.03.2016, PW67 gave a requisition to the Judicial Magistrate, Palladam to record the statements of the witnesses Kalidass, PW14, PW25, PW26 and Senthilkumar under Section 164 CrPC and also taken photographs of A1 and A10 and the said photographs were marked as M.O.43

series and it was dispatched to the Court in Form No.91, marked as Ex.P12 and thereafter, remanded A1 to A10 to judicial custody.

3.51 PW67 sent a requisition to Judicial Magistrate No.I, Coimbatore to take A1 to A6 and A8 under police custody. On 28.03.2016 at about 3.30 p.m., PW67, as per secret information, arrested A9 in the bus stop at Palani Vandivaikkal in the presence of PW23 and PW42 and examined A9 at 3.45 p.m. A9 voluntarily came forward to give confession statement and as per the admissible portion of confession statement marked as Ex.P30, A9 undertook to produce 3 Cellphones hidden in the bag and also identified M.O.28 – Bajaj Discover Motorcycle bearing Reg.No.TN57-AZ-3957 and also produced M.O.34 – Cellphone used by A8, M.O.36-Cellphone used by A11 and M.O.33-light blue colour bag in which A9 had kept the 3 mobile phones. PW67 seized the said articles under Mahazar / Ex.P29. PW67 recovered the said articles in the presence of witnesses and got signatures from the witnesses. In the light of the statement of A9 to PW67, he identified the house of PW16, who identified M.O.28 – Motorcycle in front of his house and the same were seized in the presence of PW23 and his menial and their statements were recorded.

3.52 PW67 came back to the police station and reached the station on the early morning hours on 28.03.2016 at 12.30 hours and kept A9 under safe custody and sent the seized articles under Form 19, marked as Exs.P113 and P114 to the Judicial Magistrate Court No.1, Udumalpet.

3.53 PW67, on 29.03.2016 at about 9.00 a.m., took photographs of A9, marked as M.O.44 series and sent to the Court under Mahazar in Form No.91, marked as Ex.P115 and A9 was produced before the Judicial Magistrate Court for judicial custody. PW67, on the same day, obtained police custody of A4, A5, A6 and A8, who were in Central Prison, Coimbatore and in the presence of PW13 and Muruganantham had examined A4 and recorded his confession statement. A4 was shown the WhatsApp upload through laptop as to the attack inflicted on PW1 and Shankar/deceased and A4 identified A7. A5 also gave confession statement on the same day at 7.30 p.m. and he also identified A7 through WhatsApp upload. PW67, for the purpose of conducting Test Identification Parade for A9 and A10, sent a requisition to the Judicial Magistrate, Tiruppur.

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3.54 On 30.03.2016 at about 8.00 a.m. PW67 examined A6 in the presence of PW13/VAO and his assistant Muruganantham and recorded his

confession statement. A6 was shown the WhatsApp upload as to the occurrence and he also identified A7. Similarly A8 was also examined in the presence of same witnesses and A8 also identified A7 on seeing the WhatsApp upload as to the occurrence. PW67, on the same day, had examined 3 other witnesses and once again re-examined PW13 and recorded his statement and also remanded A4, A5, A6 and A8 to judicial custody.

3.55 PW67 made a requisition to the Court for sending the photographs of A9 and A10 for forensic analysis for the purpose of identification and also made a requisition to the State Bank of India, Palani Branch to get the account details of A1 for the period between 01.02.2016 and 30.03.2016.

3.56 PW67, on becoming aware of the fact that A2 had surrendered before the Judicial Magistrate Court, Theni on 28.03.2016 and lodged at Central Prison, Madurai, made a requisition on 31.03.2016 to get her police custody and examined her in the presence of PW64 and another. A2 voluntarily came forward to give confession statement, wherein she has disclosed the place wherein she has concealed her cellphone [M.O.29] and it was seized under Mahazar/Ex.P25 in the presence of PW18 and another and their statements were recorded. Subsequently,

A2 was sent for judicial custody and sent M.O.29 to Court through Form 91, marked as Ex.P116.

3.57 On 02.04.2016, PW67 went to the Coimbatore Medical College Hospital and re-examined the Doctors - PW45 and PW46 and recorded their statements. PW45 had given the Wound Certificate of PW1 marked as Ex.P56 and PW67 collected the Postmortem Report of the deceased, marked as Ex.P58 from PW46 and also recorded the statement of other witnesses.

3.58 On 04.04.2016, PW67 had examined PW65 and another and also PWs.42, 40, 41, 38 and 39 and recorded their statements and also PW43/Tahsildar-Madathuklam and PW34-Sub Inspector of Police, Palani Town Police Station and collected the certified copies of F.I.Rs in Crime Nos.647/2015, 211/2016 and 212/2016, marked as Exs.P37 to 39 and also examined one Revathi and recorded her statement. On 05.04.2016 at 11.00 a.m., PW67 had examined PW44 and got the Wound Certificate, marked as Ex.P56 and got the custody of A7, who surrendered before the Judicial Magistrate Court No.I, Udumalpet and also sent requisition letters to the Cyber Crime Special Cell, Tiruppur to get the details with regard to 7 mobile numbers.

3.59 On 06.04.2016 at about 8.00 a.m. PW67 had examined A7 in the presence of witnesses and A7 voluntarily came forward to give confession statement and as per the admissible portion of confession statement marked as Ex.P26, he identified the place in which, he concealed the knife/M.O.5 and accordingly PW67 recovered M.O.5 from a thorny bush near Kuthiraiyaru Bridge, Komaralingam and it was recovered under Mahazar/Ex.P27 in the presence of witnesses and it was dispatched to the Court under Form 91, marked as Ex.P117. PW67 examined PW22, PW5 and Marimuthu and also took photographs of A10 [M.O.10 series] and sent it to the Court under Form 91, marked as Ex.P118 and also sent A7 for judicial custody. PW67, while taking out A7 for the purpose of investigation, concealed his face by mask.

3.60 On 07.04.2016, PW67 had examined PW5 and Marimuthu and recorded their statements and submitted a requisition to Chief Judicial Magistrate, Tiruppur to conduct Test Identification Parade for A7 in the presence of PWs.1 to 4 and also sent photograph of A7 to be compared with CCTV recordings for forensic analysis.

3.61 On 08.04.2016, PW67 examined PWs.56 to 59 and recorded their statements and obtained their certificates under Section 65B of the Indian Evidence Act. PW67 also conducted investigation as to the mobilephones used by A5, A6, A8 and A9, which shows that they were near the place of occurrence and that they were in frequent touch with each other through mobile phones. The mobilephone call details were also seized under Mahazar, marked as Exs.P119 and 120.

3.62 On 09.04.2016, PW67 examined PW29 and PW61 and recorded their statements. PW29 has told about the missing of his motorcycle bearing Reg.No.TN59-A7-2766 for which a complaint was given by him under CSR No.83/2016. The said motorcycle was marked as M.O.12. On 11.04.2016, PW67 examined PW31- Motor Vehicle Inspector and recorded his statement and also obtained the certified copies of 'B' Register. On 12.04.2016, PW67 made a requisition to the Regional Forensic Science Laboratory, Coimbatore and also examined PW47 and another. On 13.04.2016, PW67 re-examined PWs.1 to 3 and recorded their further statements and also the Motor Vehicle Inspector -PW32.

3.63 PW67 proceeded to Chennai and on 15.04.2016 examined PW58,

PW62 and one Nalina and obtained the Serology Report, marked as Ex.P121. On 17.04.2016, PW67 examined LW118-Venkataraman. On 18.04.2016, PW67 had examined PW60, PW37, PW40 and PW35 and recorded their statements. PW67 had filed Final Report in Crime No.647/2015, marked as Ex.P38. On 19.04.2016, PW67 had examined PW48, PW49, Ramaraj and Annam and recorded their statements and also recorded the statement of PW36-Inspector of Police, Madathukulam, who registered the case in Crime No.320/2015, marked as Ex.P39 and the Final Report marked as Ex.P40, also examined PW58 and recorded her statement.

3.64 On 23.04.2016, PW67, after completion of investigation, has filed a Final Report against A1 to A11 for the alleged commission of offences under Sections 120-B, 147, 148, 307, 307 r/w.149, 307 r/w.149/109, 302, 302 r/w.149/109, 212 IPC and under Section 3(1)(r)(s) and 3(2)(va) of the SC/ST Act on the file of the Court of Judicial Magistrate No.I, Udumalpet, who took it on file in P.R.C.No.7/2016. The Committal Court, namely Judicial Magistrate No.I, Udumalpet had issued summons to all the accused and furnished them with copies of documents under Section 207 CrPC and having found that the said case is exclusively tried by the Sessions Court, had committed the same to the Principal

District and Sessions Judge, Tiruppur in Spl.C.C.No.19/2016.

3.65 The Trial Court, upon committal, had summoned all the accused, framed necessary charges and questioned them and they pleaded not guilty to the charges framed against them.

3.66 The prosecution, in order to sustain it's case, examined PWs.1 to 67, marked Exs.P1 to P122 and also marked M.Os.1 to 49. All the accused were questioned under Section 313(1)(b) CrPC with regard to the incriminating circumstances made out against them in the evidence rendered by the prosecution and they denied it as false and also filed their respective written statements denying the allegations/accusations levelled against them and also examined DWs.1 to 6 and marked Exs.D1 to D10 on their behalf.

3.67 The Trial Court, on consideration and appreciation of oral and documentary evidence, had found that A1, A4 to A9 and A11 guilty of the offences and convicted and sentenced them and also awarded compensation. In view of the death sentence imposed on A1, A4 to A8, the Trial Court had referred the case to this Court under Section 366 CrPC for confirmation of capital sentence.

The aggrieved accused had also filed independent appeals in CrI.A.Nos.162 to 165 of 2018.

4 R.T.No.3 of 2017 as well as connected CrI.A.Nos. were taken up for hearing by this Division Bench [**M.Sathyannarayanan, J. and M.Nirmal Kumar, J.**] on 27.03.2019 and during the course of hearing, both of us were deputed to Madurai Bench of Madras High Court for a period of 3 months respectively on different occasions. Therefore, hearing was taken up through Video Conference and after elaborate arguments on various dates, judgment was reserved on 18.03.2020.

5 Mr.V.Karthick, learned Senior Counsel assisted by Mrs.AL.Gandimathi, learned counsel appearing for the appellant in CrI.A.No.162 of 2018 / A1 in R.T.No.3 of 2017 made the following submissions:

- The prosecution proceeded on the footing that A1 did not approve the marriage of his daughter/PW1 and Shankar/deceased as she belongs to Piraimalaikallar Community, which is a Most Backward Community and that the deceased belongs to Hindu Pallar Community, which is a Scheduled Caste Community.

1) PW1 lodged a complaint under Ex.P4 dated 13.03.2016 and that on a particular day she was forcibly taken away by her parents/A1 & A2 and the Mangalasuthra worn by her has been forcibly removed and she was advised and threatened to dissolve the marriage and some black-magic was also performed.

- Shankar/Husband of PW1/deceased has also lodged a complaint, which was registered in CrI.No.320/2015 under Ex.P39 and further proceedings were dropped for the reason that PW1 herself has stated that she was not kidnapped. A1 himself has lodged a complaint, which was registered in CrI.No.647/2015 under Ex.P35 as to the missing of his daughter and it was enquired into and based upon the statement given by PW1 that she has married Shankar and living in her parental home on her own volition and no further action was taken and as such, the findings recorded by the Trial Court is totally unsustainable.

- A1 and A2 had maintained joint account at the State Bank of India, Palani Branch and the statement of accounts dated 30.03.2016, Ex.41, marked through PW37 and though the Trial Court had acquitted A2/wife of A1 on the ground that PW1 did not depose as to the motive to do away with the life of her daughter and that A2 giving money to A4 has been strictly

established and in the light of the testimony of PW1, the prosecution is not strong enough to consider A2 as a conspirator and that A2 did not withdraw the money and ultimately, acquitted A2 for the commission of offences, for which she has been charged.

- The same analogy is equally applicable to A1 also for the reason that PW37/Bank Official had spoken about the withdrawal of Rs.50,000/- from the Automatic Teller Machine (ATM) from the joint account of A1 and A2 from 26.02.2016 and 28.02.2016 and there was no investigation and it entails the evidence as to the withdrawal of said money by A1 only through the alleged confession by A4 and A6 coupled with the alleged recovery from A4 and A6 of a sum of Rs.24,000/- and Rs.26,000/- respectively, A1 has been roped in and the same is unsustainable in law.
- The findings of the Trial Court that the cellphone used by A1, A4, A6, A8 on 13.03.2016 through call records marked as Ex.P86 establish the fact that prior to the time of occurrence, there were frequent contacts between A1 and the assailants and as such, A1 had engaged the services of hirelings stands established and the said finding is also unsustainable in law and on facts for the reason that there was no certification obtained under Section 65B(4) of the Indian Evidence Act from PW59 under Ex.P88 and

admittedly, the alleged conversation between A1 and the assailants have also not been recorded. The findings recorded by the Trial Court as to the proof of conspiracy through the evidence of PWs.21, 22 and 30 is also unsustainable for the reason that even as per the testimony of PW21, 20 days prior to the occurrence, at around 4.30 p.m. A1 conversing with four youths and he knew the identity of A4 and A5 and identified them in the open Court and in the cross examination, made a crucial admission that he saw A1 outside the park and the distance between him and A1 was about 70 meters and for the suggestion that he would not have been heard the conversation within the distance of 70 meters, he answered in positive in favour of the accused. The testimonies of the said witnesses are also highly artificial and tainted.

- As regards the testimony of PW30, it cannot be even termed as a chance witness and an overall reading of the said testimony would disclose that he would have no acquaintance with A1 and that apart, the area of the park is about 5 acres and therefore, he would not have heard the conversation and that no documents have been seized as to his occupation as Auto Driver. PW30 even in the cross examination had admitted that A1 did not see anything in a fit of rage or anger as to the taking away of life of his

daughter/PW1 in the light of the fact that she contracted inter-caste marriage and as such, through him also, the prosecution has failed to prove the hatching of conspiracy.

- Similarly, the testimonies of the lodge owner, namely PW14 and his brother PW15 as to the arrangements made by A1 to get accommodation for A4, A5 and A8 in the lodge owned by PW14 is also unsustainable for the reason that the Lodge Register, marked as Exs.P20 and P21 are bereft of any material particulars and in the cross examination, PW14 would clearly admit that the entries made in the first column in Exs.P20 and P21 and none of the other columns have been filled and though he was in the habit of preparing receipts, the police did not seize the receipt book and he has also identified the accused only in the open Court and the alleged corroboration of his brother, namely PW15 is also equally unsustainable for the reason that he did not make any entry in Ex.P21 and there is no entry as to the payment of amount and handing over of keys and therefore, the findings recorded by the Trial Court in this regard as to A1 making arrangements to get accommodation for A4, A5 and A8 in the lodge owned by PW14 is wholly unsustainable.
- The testimony of PW34, Sub-Inspector of Police, Palani who speaks about

the complaint given by A1 under Ex.P35 dated 11.07.2015 and the apprehension expressed on A4 and A8 on suspicion and the FIRs under Exs.P36 and 37 lodged against them and the efforts taken by A1 to get them released cannot be believed for the reason that PW34 in the cross examination would admit that there are no documents available as to A1 giving sureties for the release of A4 and A8 in the form of countersignatures is available and that A4 and A8 did not execute bonds for their release and no document/muchilika has been handed over to PW67 and as such, the prosecution has miserably failed to establish the contact between A1 on the one hand and A4 to A8 on the other hand.

- The testimony of PW25 supports the case of A1 for the reason that he incidentally met A1 and he told him about the inter-caste marriage between his daughter and Shankar/deceased and PW25 had consoled him and it was also accepted by A1 and A1 did not tell PW25 as to the wrecking vengeance with regard to the said incident and with feeling of sorrow had stated the said fact and in the light of his testimony, the prosecution has miserably failed to produce any iota of material/evidence as to the enragement on the part of A1 to do away with the lives of his daughter/PW1 and the deceased on account of the said inter-caste marriage.

- Similarly, the testimony of PW26 would also not come to the aid of the prosecution that even in the cross examination, he made a clear admission that A1 while coming to the house of the deceased, did not create any scene and did not forcibly taken his daughter PW1.
- The alleged implication of the parents to the commission of offences by PW1 through her statement, marked as Ex.P4 also cannot be believed for the reason that PW1 even in her cross examination would admit that she did not state anything as to the threat being wielded to her, but it was for the reason that she was mentally disturbed on account of the demise of Shankar and though she claims to have handed over the photographs relating to the marriage, the said photographs were not marked, despite the same handed over to the Investigation Officer/PW67 and though she was kept by her parents between 23.07.2015 and 27.07.2015, the fact remains the complaint given by her under Ex.P39 has been closed under Ex.P40 on 27.07.2015 itself and as regards, Ex.P1 complaint given by PW1 as to the protection sought immediately after marriage, she herself gave a letter under Ex.P34 dated 12.07.2015 stating that she had handed over all the articles to her mother and that her parents and relatives undertaken not to interfere with the said marriage and that she also made a requisition not to pursue the

complaint and in the light of the said contradictory evidence, her oral testimony, which is clearly an improvement, cannot be believed and she is also guilty of taking contradictory stand.

- The Trial Court did not properly appreciate the evidence of DW2, maternal grandfather of PW1 and father of A2 for the reason that he had also spoken about the complaint given by his son-in-law/A1 as to the missing of his daughter under Ex.P35 dated 11.07.2015 and in the cross examination, he deposed that the parents of PW1 was neither happy nor sorrow about the marriage of their daughter with Shankar and also denied the black-magic performed upon their granddaughter.
- The alleged confession statement of A1 did not lead to neither the discovery of facts nor recovery of incriminating articles and as such, it is of no use.
- Non-examination of the crucial witnesses, namely LW118 - Venkataraman, Inspector of Police (Crimes), Udumalpet Police Station on the date of occurrence on 13.03.2016 had shaken the very foundation laid by the prosecution for the following reasons.

PW67/Investigating Officer would admit that A4 and A5 were apprehended by LW118 on 15.03.2016 and enquired them at about 7.45 a.m. and he was on patrol duty at 2.00 p.m. on

13.03.2016, i.e., on the date of the incident. PW67 would further depose that while he caused enquiry with LW118, he told that a male and female with cut injuries had been sent to the hospital through ambulance and that LW118 did not report the said incident to the police and he has also not given any reason for non-passing of the said information. Therefore, the earliest information which was known to LW118 has been deliberately suppressed for the reasons best known to the prosecution and that apart, though LW118 was examined during investigation and his statement was recorded, has been cited as a witness and the prosecution has deliberately failed to examine him fearing that their case may go.

- The conduct of PW.51 namely the Head Constable attached to Udumalpet Police Station for the reason that he received the information as to the attack inflicted upon PW1 and Shankar through the intimation from the Government Hospital at 3.00 p.m. on 13.03.2016 and immediately proceeded to the hospital of having found that they were referred to Coimbatore Medical College Hospital for further treatment and returned back to the police station and informed the same to PW52, Women Head Constable, Udumalpet Police Station and with regard to the intimation under Ex.P65 from the hospital, no entries have been made in the General Diary.

- Similarly, the testimony of PW52, Women Head Constable attached to Udumalpet Police Station would also reveal that he was on duty between 8.00 a.m. and 9.00 p.m. on 13.03.2016 and nobody has given the complaint and despite he aware of the said fact through PW51, did not take any steps to depute police personnel to the scene of occurrence and it is a deliberate lapse on the investigation, which continued throughout, as evidenced from the testimony of PW54 and PW67/Investigation Officer and the very foundation laid by the prosecution has become shaken and whatever the findings recorded by the Trial Court for acquittal of A2 is equally apply to A1 also and prays for his acquittal and alternately pleads for modification of capital punishment as A1 is uneducated and hailing from a rural background and his reaction would be normal as that of any parent and hence pleads for leniency.

The learned Senior Counsel appearing for A1, in support of his submissions, has placed upon the following decisions:

- Walli Mohammad & another v. The King [1949 MWN [Cri.] 88]*
- Bhuboni Singh v. The King [1949 MWN (Crl.) 116 Privy Council]*
- Kashmira Singh v. The State of Madhya Pradesh [1952 MWN (Crl.) 106]*
- RamkishanMithanlal Sharma v. State of Bombay [AIR 1955 SC 104]*

- v. *VadiveluThevar v. The State of Madras [AIR 1957 SC 614]*
- vi. *HaricharanKurmi and another v. State of Bihar [AIR 1964 SC 1184]*
- vii. *Balak Ram v. State of U.P. [(1975) 3 SCC 219]*
- viii. *Sri Rabindra Kumar Dey v. State of Orissa [(1976) 4 SCC 233]*
- ix. *State of Haryana v. RaiSaheb and another [AIR 2002 SC 620]*

5(i) In *BhuboniSahu v. The King [1949 MWN (Crl.) 116 (Privy Council)]*, it was held that “*the statement of each prisoner are evidence against himself only and are inadmissible against his fellow accused*”.

5(ii) In *Kashmira Singh v. The State of Madhya Pradesh [1952 MWN (Crl.) 106]*, it was held that “*confession of the co-accused cannot be termed as a evidence and it can only be used in support of other evidence, subject to the condition that it should lend assurance to other evidence against the co-accused*”.

5(iii) The submission made by the learned Senior Counsel appearing for A1 is that though the prosecution through the alleged confession of the assailants, namely A4, A5, A6 and A8 and recoveries effected through the admissible portion

of the confession statement of the assailants, still cannot take advantage of the same in the light of the above cited authoritative pronouncements and factually speaking, the alleged confession of A1 either lead to recovery of incriminating articles or discovery of facts and as such, it is of no use.

5(iv) In *RamkishanMithanlal Sharma v. State of Bombay [AIR 1955 SC 104]*, the scope of Section 27 of the Indian Evidence Act came up for consideration and in Paragraph No.22, it was observed that “*On a bare reading of the terms of the Section it appears that what is allowed to be proved is the information or such part thereof as relates distinctly to the fact thereby discovered. The information would consist of a statement made by the accused to the police officer and the police officer is obviously precluded from proving the information or part thereof unless it comes within the four corners of the section.*”

5(v) In *Sri Rabindra Kumar Dey v. State of Orissa [(1976) 4 SCC 233]*, the Hon'ble Supreme Court had enumerated 3 cardinal principles of criminal jurisprudence and it is relevant to extract the same:

1. *that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case';*
2. *that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and*
3. *that the onus of the prosecution never shifts.*

Though the prosecution had let in oral evidences, voluminous documentary evidences and supporting materials, it has failed to establish rather sustain the charges framed against the appellant/A1 beyond any reasonable doubt and the Trial Court, in any event, ought to have ordered benefit of doubt.

5(vi) The decision relied on by the learned Senior Counsel appearing for A1 in *VadiveluThevar v. The State of Madras [AIR 1957 SC 614]*, sentencing policies have been enumerated.

5(vii) In *Haricharan Kurmi and another v. State of Bihar [AIR 1964 SC 1184]*, the Hon'ble Supreme Court of India, while dealing with Section 30 of the Indian Evidence Act, in Paragraph No.11 observed that "**Section 30 provides that such a confession may be taken into consideration even against a co-accused**

who is being tried along with the maker of the confession. There is no doubt that a confession made voluntarily by an accused person can be used against the maker of the confession, though as a matter of prudence criminal courts generally require some corroboration to the said confession particularly if it has been retracted". In paragraph No.12, it was further observed that "*What weight should be attached to such evidence, is a matter in the discretion of the court. But a court cannot say in respect of such evidence that it will just not take that evidence in to account*". The Hon'ble Supreme Court, by way of caution in Paragraph No.13 observed that "*though confession may be regarded as evidence in generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed an opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence*". The learned Senior Counsel appearing for the appellant/A1 would submit that the evidence let in by the prosecution to sustain the charges framed against A1 have not been trustworthy and believable and in any event, the Trial Court ought to have granted benefit of doubt and

acquitted A1 also along with his wife/A2.

6 Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mrs.AL.Gandhimathi, learned counsel appearing for the appellants in CrI.A.Nos.163 and 164 of 2018 / A4 to A8 and A9, apart from adopting the arguments of the learned Senior Counsel appearing for the appellant in CrI.A.No.162 of 2018 / A1, made the following submissions:

- The alleged presence of the assailants /A4 to A8 in the scene of occurrence was sought to be established by the prosecution through CCTV recordings installed in Eswari Departmental Store owned by PW7 coupled with the reports of the Forensic Science Laboratory, Chennai dated 22.03.2016 / Exs.P90 and 91 coupled with the testimony of LW118, PW58, PW62 as well as the alleged certification under Section 63B of the Indian Evidence Act, given by the Nodal Officers of the service providers, who have been examined as PWs.56, 57 and 59 supported by certificates issued under Exs.P72 to P78 and Ex.P88 as well as other documents, namely Exs.P68, P69, P72 to P77, P86 and P87. The alleged certifications given by the Nodal Officers under Section 65B of the Indian Evidence Act, has no sanction of law and rather not in strict compliance of the statutory provisions and

further that the testimonies of PWs.58 and 62 cannot be termed as expert evidence for the reason that they did not possess the necessary qualification to undertake the said exercise and allegedly using certain instruments/devices and the footages have been enlarged for the purpose of identification.

- Admittedly, the Investigating Officer/PW67 did not obtain prior permission for taking photographs of the assailants/A4 to A9 under M.Os.37 to 40 & 45 and photographs have been shown to the concerned witnesses for the purpose of identification and adoption of such a method by the Investigating Officer is wholly illegal and it is not supported by any provision of law or backed by the order passed by the jurisdictional Magistrate Court.
- The Test Identification Parade conducted by PW66 in terms of law cannot be taken as a substantive piece of evidence and even for the sake of arguments, there are other materials/evidence which connects the assailants with the commission of crime, the facts remains that it is also admitted by PW67/Investigation Officer in his cross examination that the alleged attack inflicted upon PW1 and Shankar became viral through WhatsApp upload coupled with the testimonies of DWs.4 and 5, who would depose that photos of 4 persons, namely A4, A5, A6 and A8 have been published in

Malaimalar News Daily dated 16.03.2016 and it is also supported by another news daily in Dinamalar dated 16.03.2016, wherein the photos of the assailants were published and in the light of the said fact, the Test Identification Parade conducted by PW66 on various dates as well as the Test Identification Parade Reports dated 06.04.2016, 07.04.2016 and 12.04.2016, marked as Exs.P95 to 97 cannot be termed as sufficient evidence to connect them with the commission of crime.

- A4, A5, A6 and A8, in their written statements filed under Section 313(5) CrPC, also took a stand that prior to the Test Identification Parade, the photographs already taken by PW67, marked as Exs.P37 and P38 have been shown to the witnesses concerned and as such, it cannot be stated that the prosecution has proved the case and the presence and overt acts of the concerned accused beyond any pale of doubt.
- The alleged confession statements and the admissible portion of the confession statements, marked as Ex.P12 (A6), Ex.P13(A8), Ex.P16 (A4), Ex.P18 (A5) and Ex.P26(A7) also would not come to the aid of the prosecution for the reason that the identification of the place, wherein material objects said to have been concealed, have not been specifically identified and unless and until there are other materials and substantial

evidence which connect the assailants with the commission of crime have been clearly established, the alleged recovery of incriminating articles / material objects alone is not sufficient to connect them with the commission of crime.

- The testimonies of the eyewitnesses, namely PWs.1 to 4 did not corroborate with each other on material particulars and they have made very many improvements from that of the statements recorded during investigation and therefore, it is wholly unsafe to rely upon their testimonies to sustain the charges framed against the accused/assailants.
- The alleged recording of video of the actual attack by PW4 through his mobile phone / M.O.47 cannot be believed for the reason that there was no compliance of Section 65B of the Indian Evidence Act and his testimony is also highly artificial and he claims to be a chance witness and he has surrendered the cellphone only after 4 days from the date of the incident and that apart, the photographs of the assailants, marked as M.Os.37 to 40 were again shown to PW4 for the purpose of identification and in any event, it would not amount to fair and proper investigation and rather the said illegality continues to be perpetuated.
- The learned Senior Counsel appearing for A4 to A8, reiterated the

submission made by the learned Senior Counsel appearing for A1 as to the non-examination of LW118-Mr.Venkataraman – Inspector of Police (Crimes), Udumalpet Police Station coupled with the inaction shown by PWs.51 and 52 as to the non-registration of the case despite becoming aware of it would sound as death knell to the case of the prosecution and that apart, the delay in registration of the FIR as well as the belated dispatch have also not been properly explained by the prosecution.

- Similarly, the testimony of PW34 would also reveal that cases under Exs.P36 and P38 registered against A8 and A4 respectively for the commission of offence under 41(1)(d) CrPC as both of them were found to be moving on suspicious manner at 19.00 hours on 2.3.2016 and it is not even a cognizable offence and taking into consideration of the fact that A4 to A8 do not have any criminal antecedence coupled with their young age, family background and other circumstances, this Court may exhibit mercy / leniency in computing his sentence of death to one of life, if this Court ultimately concludes that conviction recorded by the Trial Court as against them is sustainable.

7 A9 was charged for the commission of hte offences under Sections

120[B] of IPC, 302 read with 149 of IPC, 307 read with 149 of IPC and 147 of IPC and under Sections 3[2][Va] and 3[1][r] and [s] of SC/ST [POA] Amendment Act, 2105.

7[a] This Court, while narrating the facts, had given the tabular column as to the conviction and sentence awarded to each of the convicted accused and therefore, it is unnecessary to re-state the facts.

7[b] Mr.Ar.L.Sundaresan, learned Senior Counsel appearing for Mrs.Ar.L.Gandhimathi, learned counsel appearing for A9/appellant in CrL.A.No.164/2018, would submit that A9 has been roped in with the aid of 120[B] of IPC and under Sections 149 and 147 of IPC and even as per the case of the prosecution, he has not been prosecuted with any fatal overt act and said to have been present in the scene of crime..

7[c] It is the further submission of the learned Senior counsel that the Trial Court had dealt with the findings relating to A9 in paragraphs No.134 to 140 and 145 and also discussed the witnesses who had spoken against A9, viz., PW5, PW10, PW22 to PW24, PW40, PW56, PW66 and PW67. Learned Senior Counsel,

by drawing the attention of this Court to the testimonies of the said witnesses, would submit that the testimony of PW5 who is said to have been eking out his livelihood by mobile fruit vendor, could not be believed for the reason that according to his evidence, a person riding a motorcycle, came from the direction of Pollachi and halted the said vehicle in front of his mobile cart without switching of the engine and he was looking perplexed and at that time, another person came running and boarded the motorcycle and both of them went away.

7[d] It is the further submission of the learned Senior counsel that admittedly, PW5 had no acquaintance with A9 who is said to have halted the motorcycle in front of his mobile cart and despite the fact, he had identified him in the Test Identification Parade held on 06.04.2016 and that cannot be the sole circumstance to connect him with the commission of the crime and in the cross-examination, he would also admit that during the course of investigation and at the time of examination by PW67, he did not disclose the name, physical features, dress worn by A9 and A0 and as such, his version cannot be believed.

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7[e] Similarly, recovery of motorcycle also cannot be believed for the reason that the services of the Village Administrative Officer, viz., PW10, has

been utilised and mere recovery without active participation in the commission of the crime, will not connect him with the commission of the crime. Insofar as PW22 is concerned, it is the submission of the learned Senior Counsel that he had merely seen A1 conversing with four or five persons of young age and admittedly, no Test Identification Parade was conducted and he merely identified A9 during the course of his evidence and in the light of the settled position of law, the Test Identification Parade is not the substantive piece of evidence and his version cannot be believed.

7[f] Similarly, the testimonies of PW23 who had spoken about the arrest and recovery as well as the testimony of PW24 as to the boarding of bus by Shankar and PW1 on 13.03.2016 at 12.30 p.m., and following of the said bus by A9 in a motorcycle, is also highly artificial and the witnesses have been coerced and coaxed to state something in support of the prosecution and prays for his acquittal.

7[g] *Per contra*, Mr.C.Emalias, learned Additional Public Prosecutor assisted by Mr.R.Prathapkumar, learned Additional Public Prosecutor appearing for the State would submit that no doubt that A9 has not been attributed with any

overt act ; but the fact remains that he was also a member of unlawful assembly and was in constant touch with A5 between 12.03.2016 and 13.03.2016 respectively and the prosecution, through the testimonies of the above said witnesses, had proved beyond reasonable doubt the offence of conspiracy and the membership of A9 as a part of unlawful assembly and the Trial Court, on a thorough consideration and proper appreciation of the evidence made available by the prosecution and other materials, has rightly convicted and sentenced A9 and prays for dismissal of the appeal filed by A9 in CrI.A.No.164/2018.

8 Mr.C.T.Murugappan, learned counsel appearing for the appellant in CrI.A.No.165 of 2018 / A11, who said to have harboured the assailants, made the following submissions:

- The evidence of PW65, who said to be the owner of the house, which was leased out in favour of A11 would disclose that for the purpose of collecting rent, PW65 and his wife went to the house of A11 wherein he was present and along with him 4 persons were also present and when their identities were asked, A11 disclosed that they were his friends. PW65 further stated that since A11 is not paying rent regularly and also giving accommodation to many persons, asked him to vacate the house and after 2 or 3 days,

became aware of the fact of murder through news articles and during the course of oral evidence, identified A4, A5, A6 and A8 as the persons present along with A11 in his house.

- In the cross examination, PW65 would disclose that he was examined on 04.04.2016 and he would admit that while his statement was recorded, he did not specifically state that the house bearing Door No.11 was leased out in favour of A11 and further made a crucial admission that there was no written lease agreement between him and A11 and that he was not in the habit of issuing rental receipts and that apart, there is no documentary proof to show that the premises bearing Door No.11 was leased out in favour of A11.
- PW65 further admitted that either prior or after 14.03.2016, he had seen A4, A5, A6 and A8 and he also did not elicit any specific statement during the course of investigation as to his willingness to identify them and also did not disclose their physical features or clothes worn by them and in the light the said testimony, the findings recorded by the Trial Court that there may not be an inference that A11 is not an tenant of PW65 and further finds that since A11 was arrested along with A6 and A8 and in the absence of any plausible explanation as to the said fact, the charge against him for the

commission of offences under Section 212 IPC is perverse and prays for setting aside the conviction and sentence and for his acquittal.

9 Mr.C.Emiliyas, learned Additional Advocate General appearing for the State, in response to the arguments submitted by Mr.V.Karthick, learned Senior Counsel appearing for A1 and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for A4 to A8 and A9 made the following submissions:

- PW1 is the daughter of A1 and A2 and she was grievously injured along with Shankar (since deceased) on account of the attack inflicted upon them by A4 to A8 on the fateful hours at about 2.15 p.m. on 13.03.2016 and admittedly, the attack took place on a broad daylight during one of the busiest areas of Udumalpet Town. PW1 survived the attack and was conscious throughout during the course of treatment initially at Government Hospital, Udumalpet and later on at the Coimbatore Medical College Hospital.
- The statement recorded by PW54 – Inspector of Police, Udumalpet Police Station under Ex.P4 gives the facts leading to the said attack as well as the role played by the assailants. The events which took place prior to the attack had also been substantiated in the form of documents, marked as Ex.P40

and also corroborated by Exs.P34 to 40, which would speak about the registration of cases on the basis of the complaint given by PW1, A1 and the deceased and the further proceedings which took place and that apart, PW22 also spoken about the happenings prior to the attack upon PW1 and Shankar and the seizure through the said witnesses had amply proved the motive aspect and even otherwise, the motive has been amply proved in the light of the testimony of the injured eyewitness, namely PW1 and as to the attack inflicted upon PW1 and Shankar, the testimony of PW1 had been amply corroborated by PWs.2, 3, 4 and 5, who are eyewitnesses.

- The conspiracy between A1 to A11 had also been proved beyond reasonable doubt by the prosecution and it is also a well settled position of law that since conspiracy always takes place in secrecy and that meeting of minds alone is sufficient to constitute the offence and in most of the cases, it is most difficult to get direct evidence and it can be proved only through circumstantial evidence.

- A1 - father of PW1 and husband of A2 hatched a conspiracy to eliminate his daughter PW1 along with Shankar with whom she said to have been married, especially for the reason that A1 and A2 and PW1 belongs to Hindu PiraiMallaikallar community, which is a Most Backward Class

Community and that PW1 had developed love affair with Shankar, who belongs to Hindu Pallar community, which is a Scheduled Caste community and on account of the same, they have been castigated by their caste and community name.

- A1 was amply assisted by his wife /A2 and A3, who is his close relative, also told him that his daughter had brought disrepute to their community and in continuance of the conspiracy hatched, engaged the services of hirelings, namely A4 to A11 to execute the said conspiracy.
- A1 and A2, on more than one occasion, forcibly taken PW1/daughter from the custody of Shankar, which resulted in lodging of complaint by PW1 and the deceased and during the course of enquiry, it revealed from the testimony of PW1 that A1 and A2 had also told her that her marriage with Shankar have not been liked by their community people and there is every danger as to their life and liberty and on one occasion, A3 also openly told that she has brought disrepute to the community and she should be eliminated.
- A2 also exhibited her cruelty by asking her daughter PW1 to return all the jewels worn by her while she left her parental home and also took the chappal worn by her PW1 and bite into pieces and threw it away and the

threat exhibited on PW1 and Shankar will be dealt with and also wreaked vengeance upon PW1 and Shankar.

- The phone calls through mobile phones between A1 and the assailants, as per Exs.P60, 69, 73, 74 to 77, 79, 86 and 87 would also disclose that proximate to the date and time of the incident to the commission of crime on 13.03.2016, there were frequent calls among A1 and the assailants and the said call records have also been certified under Section 65B(4) of the Indian Evidence Act, under Exs.P70, 78 and 88.
- The testimonies of the officials of the service providers, namely PW56, 57 and 59, who issued the certifications, had also supported the case of the prosecution coupled with the above cited documentary evidence.
- A1 for the purpose of paying hirelings, had also drawn money at the relevant point of time from the joint account with A2 under Ex.P41, coupled with the testimony of the bank official, namely PW37 and that apart, the recovery of the portion of money was also effected in pursuant to the admissible portion of the confession statements of A4 and A6 and M.O.23 and 21 respectively were recovered in the presence of Pws.12 and 11.
- The CCTV recordings along with DVR had been recovered from the owner

of Eswari Departmental Store, namely PW7 under M.Os.19 and 20 under Mahazar / Ex.P8 and also in the presence of PW8, Scientific Officer who removed the CCTVs from the Eswari Departmental Store owned by PW7.

- The testimonies of the Scientific Experts, namely PW58 and PW62 coupled with Exs.P80 to 85, 90 and 91 had proved the case of the prosecution beyond any pale of doubt as to the presence of hirelings in or near the scene of occurrence.
- The testimony of PW4, who has recorded the said events through his mobile phone, marked as M.O.14 along with Memory Card as well as the testimonies of the above cited witnesses had also supported the case of the prosecution as to the overt act attributed against the actual assailants, namely A4 to A8.
- The scientific evidence in the form of Exs.P55, P56, P57 and P58 as well as Exs.P60 and P61 had also clearly established the case of the prosecution as to the grievous attack inflicted upon PW1 and Shankar by using lethal weapons in a broad daylight by A4 to A8.
- The arrest and recovery of incriminating articles, marked as M.Os.1 to 5, 21 to 27, 30 to 36 coupled with their identification recorded in CCTV cameras installed at Eswari Departmental Store owned by PW7 through the

testimony of PWs.58 and 62 also substantiated the case of the prosecution and that PW1 had sustained grievous injuries and as a result of the attack by the assailants, namely A4 to A8, Shankar, who had suffered grievous injuries, had breathed his last on the way to Coimbatore Medical College Hospital.

- The assailants, namely A4 to A8, came along with A9 and A10 in motorcycles, marked as M.Os.12, 13 and 28 and the details as to the said vehicles had also been spoken to by the officials of the Transport Department, who are examined as PWs.31 and 32 as well as the owners of the vehicles, namely PWs.28 and 29.
- The CCTV recordings as well as the cellphone recording by PW4 would also disclose that immediately after inflicting grievous attack upon PW1 and Shankar, the assailants escaped from the scene of occurrence by driving as pillion riders in two wheelers driven by A9 and A10. A9 was also waiting in the scene of crime in order to prevent PW1 and Shankar from escaping/surviving the said attack.
- A11 granted asylum to the assailants and the said aspect has been spoken to by the owner of the house, namely PW65 coupled with the identification in the open Court.

- The Test Identification Parade conducted by PW66 and Test Identification Proceedings, marked as Exs.P94 to 97 coupled with the testimonies of PWs.1 to 4 had also corroborated the testimonies of the eyewitnesses as to the presence of the assailants in the scene of crime and that apart, some of the witnesses had also identified the assailants as well as the weapons used by them in the Court.
- The non-examination of LW118-Mr.Venkataraman – Inspector of Police (Crimes), Udumalpet Police Station, who was on patrolling duty near the scene of occurrence at the relevant point of time is not fatal to the case of the prosecution for the reason that PW51, on receipt of the intimation from the Government Hospital, Udumalpet, has gone to the said hospital and got an information that PW1 and Shankar were referred to the Coimbatore Medical College Hospital and immediately, returned to the Police Station and informed PW52 – Head Constable. PW54 – Inspector of Police, Udumalpet Police Station rushed to the Coimbatore Medical College Hospital and recorded the statement of PW1, who was under treatment under Ex.P56 and immediately, registered an F.I.R. on the same day and dispatched through PW53 to the jurisdictional Magistrate Court and the cross examination of the said witnesses failed to yield any positive thing in

favour of the accused concerned and there was no delay in registration of F.I.R. and dispatching to the jurisdictional Magistrate Court.

- The Community Certificates issued by PWs.38 to 43 would disclose that A1, A2, A3, A6 and A8 belong to Hindu Piranmallai Kallar Community which is a denotified community and the concerned exhibits were marked as Exs.P45, 46, 49, 50 and 47, A10 belong to Backward Class Community and A9 belong to Most Backward Class community, marked as Ex.P50 and A11 belongs to Most Backward Class community marked as Ex.P53. The fact that the deceased belong to Hindu Pallar Community, which is a Scheduled Caste Community is also evidenced under Ex.P54 and supported by the testimony of PW43 and the ingredients of the offences under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 had also been amply proved through the testimonies of the eyewitnesses.

10 Mr.C.Emiliyas, learned Additional Advocate General appearing for the State would also submit that CrI.A.No.183 of 2018 has been preferred by the State against the acquittal of A2, A3 and A10 and also advanced the following arguments in CrI.A.No.183 of 2018 challenging the acquittal of A2, A3 and A10:

- A2 stands on similar footing as that of A1 and PW1, her own daughter had

spoken about the attitude exhibited by A2 on earlier occasions prior to the occurrence for the assault and murder which took place on 13.03.2016 and the admissible portion of the confession statement of A2 also lead to the recovery of M.O.29 – Mobile phone.

- Once the Trial Court had believed the testimonies of the said witnesses coupled with the exhibits and material objects while convicting A1, ought to have convicted A2 also especially in the light of their act of biting the chappals worn by her daughter into pieces and the Trial Court appears to have gone by sentiments rather than the evidences of sterling quality, which was made available by the prosecution before the Court.
- As regards A3 also, the reasons assigned by the Trial Court are *per se* unsustainable for the reason that PW1 had also spoken to the fact of words uttered by A2 and A3 that on account of the fact that she eloped with Shankar, she is to better die and along with A1, hatched a conspiracy and also engaged the services of hirelings and without properly appreciating the evidence available on record, has reached a conclusion that there is no substantial evidence to prove the involvement in the conspiracy and no call records had also been put into service by the prosecution as to his presence at the time of the alleged conspiracy, overlooking the fact that to prove the

conspiracy, meeting of minds alone is sufficient.

- As regards A10, the judgment of acquittal passed by the Trial Court is equally unsustainable for the reason that the testimony of PW1 who said to have seen A10 in the scene of occurrence cannot be believed and PW22 also did not speak anything about his presence and so also PWs.1 to 4 and mere identification of A10 by PW5 during Test Identification Parade alone is not sufficient.
- The Trial Court has also not properly appreciated the testimony of PW24, who saw A9 and A10 at Komaralingam on 13.03.2016 at about 12.00 noon and through the admissible portion of the confession statement of A10, marked as Ex.P10, A10 had identified A7 and A8 from the photographs shown by PW67/Investigation Officer and that apart, M.O.30-Mobile phone used by A10 had been seized and the said evidence has also been appreciated by the Trial Court for the reason that the prosecution has filed to prove that M.O.30-Mobile phone was owned by A10 and further recorded an erroneous finding that the face of A10 had not been clearly culled out from the video recordings recorded in CCTV cameras as well as in the cellphone and the prosecution, in that regard, has failed to prove his presence through the testimonies of the concerned witnesses and the said

findings are perverse on account of improper appreciation of oral and documentary evidence and other materials by the Trial Court and since it is a Referred Trial as well as the appeals preferred by the some of the assailants are also continuation of original trial, it is open to this Court to re-appreciate the entire oral and documentary evidences to reverse the order of acquittal passed against A2, A3 and A10 and prays for interference.

The learned Additional Advocate General, in support of his submissions, has placed reliance upon the following judgments:

- i. ***BhagwanDass v. State (NCT of Delhi) [(2011) 6 SCC 396]***
- ii. ***ArumugamServai v. State of T.N. [(2011) 6 SCC 405]***
- iii. ***Anvar P.V. v. P.K.Basheer [(2014) 10 SCC 473]***
- iv. ***Shafi Mohammed v. State of H.P. [(2018) 2 SCC 801]***
- v. ***Sonu @ Amar v. State of Haryana [(2017) 8 SCC 570]***

10(i) In ***Bhagwan Dass v. State (NCT of Delhi) [(2011) 6 SCC 396]***, the Hon'ble Supreme Court has dealt with the case of honour killing and gave a finding that honour killings are nothing but barbaric and brutal murders by bigoted person with feudal minds and it comes within the category of the rarest or rare cases deserving death punishment.

10(ii) Similar view was taken by the Hon'ble Apex Court in *AmurugamServai v. State of T.N. [(2011) 6 SCC 405]*, wherein the issue relating to abolition of death penalty was dealt with and after referring to it's earlier decisions in *Prakash Kadam v. R.V.Gupta [AIR 2011 SC 1945]* and *Satya Narayan Diwari v. State of U.P. [(2010) 13 SCC 689]*, the Hon'ble Apex Court had reached the conclusion that it comes within the category of rarest of rare cases and the persons involving in the said cases deserves capital punishment.

10(iii) In *Anvar P.V. v. P.K.Basheer [(2014) 10 SCC 473]*, the Hon'ble Supreme Court had dealt with the scope of electronic evidence in reference to Sections 59, 65A and 65B of the Indian Evidence Act.

10(iv) In *Shafi Mohammed v. State of H.P. [(2018) 2 SCC 801]*, the Hon'ble Supreme Court had held that “*the applicability of the requirement of certificate being procedural can be relaxed by the Court wherever interest of justice so justifies*”.

10(v) In yet another decision in *Sonu @ Amar v. State of Haryana [(2017) 8 SCC 570]* as to the certification under Section 64B(4) of the Indian Evidence Act, it was held that objections should be raised at the earliest point of time and not later and even otherwise, in the testimonies of the service providers and other officials, they had spoken about the mobile phones used by the assailants, tower location and the required certification and the said witnesses had no axe to grind against the assailants and they are independent witnesses.

- The alleged belated registration of F.I.R and dispatch to the Court has also been spoken cogently by the witnesses, namely PWs.51, 52 & 54 and only in the absence of any explanation as to the belated registration and dispatch of F.I.R, the findings are said to be fatal to the prosecution and in the light of the plausible explanation offered, the arguments advanced in this regard would not come to the aid of the convicted accused.
- The conspiracy hatched by A1 to A10 had also been spoken to by the concerned witnesses and the fact that some of the assailants, especially A3, A4, A6 to A8 belong to Denotified Community and A1, A2 and PW1 belong to Hindu Piraimaikallar Community/ Most Backward Class Community coupled with the testimonies of the officials and amply

supported by the oral testimony of the bank official, namely PW37, the recovery of money from the confession statement of A4 and A10 had also established the fact that A1 had withdrawn money from the joint account with A2 for the purpose of paying the hirelings through A4, who in-turn distributed the money to other hirelings.

- The hatching of conspiracy in a park at Palani and the arrangements made by A1 to lodge them in a lodge at Palani had also been spoken to by PWs.14 and 15, coupled with Exs.P21 and 22 and PW21 also seen A4 and A5 in the company of A1 in the Children Park at Palani just 20 days prior to the occurrence and also identified A4 and A5 in the open Court.
- Similarly, PW22 also identified A1 along with 4 young persons near the Rope-Car Junction, Palani and he has also identified A4 to A9 in the open Court and the disturbed mind of A1 and expressing grievance as to the inter-caste marriage of his daughter PW1 with Shankar has also been spoken to by PW25 and through him, the prosecution was able to prove the chain of links as to the conspiracy by the concerned accused beyond reasonable doubt.
- The electronic evidence, the details of which have been extracted in the earlier paragraphs had also been amply established by the prosecution and

however, the Trial Court, with the same set of evidence, had convicted A1, A4 to A9 and had erroneously acquitted A2, A3 and A10 and prays for interference.

11. Mr.V.Karthick, learned Senior Counsel appearing for the first respondent in CrI.A.No.183 of 2018 / A2, which has been preferred by the State against the order of acquittal, made the following submissions:

- The witnesses who had spoken against A2 were PWs.1. 9, 11, 12, 18, 33, 36, 37, 57, 59 and 67.
- Attention of this Court was invited to Ex.P4/statement recorded by PW54 from PW1 as well as her testimony and a submission was made that in Ex.P4, about 2 weeks prior to the occurrence on 13.03.2016, her father/A1, her mother/A2 and friend of her father came to the house of Shankar at Komaralingam and told her that since she performed love marriage, their relatives were in anger and they threatened to cut and stab her and also threatened her to come with them. However, PW1 in the oral evidence would disclose that since her parents made arrangements for marriage, she lodged a complaint under Ex.P1 on 12.07.2015 and one day prior to that, she and Shankar got married at Pathavinayagar Temple, Palani for which

she did not obtain any receipt and also not performed regular rituals and in pursuant to Ex.P1, her parents were summoned and along with them, her two aunts had come and they were very angry and left with no other option, gave an undertaking and went of peacefully. Even in Ex.P1, PW1 did not specifically state that she feared for life on account of the attitude of her parents and she also did not state that she was taken to her senior father's house and was threatened and also denied the suggestion that in order to wreak vengeance, she deposed falsely.

- PW67/Investigating Officer, in the cross examination, would admit that DW2 and the grandmother of PW1 have not been arrayed as accused and she did not specifically state during the course of cross examination that she was taken for the purpose of performing black-magic.
- Attention of this Court was also invited to the testimony of PW33, who registered the CSR on the basis of the complaint given by PW1 on 12.07.2015 and based upon it, she asked the parents of PW1 to be remain present and also conducted enquiry and based upon Ex.P3/letter given by PW1 and Ex.P2/letter given by Shankar and the undertaking given by A1 that he will not interfere with the marital life of his daughter, she close the CSR. PW33 would further depose that PW1 voluntarily handed over the

gold jewels and watch to her father and that apart, A1 also lodged a complaint as to the missing of his daughter, based on which a CSR was registered. PW33 had also deposed that both parties went on peacefully and enquiry was conducted between 11.00 a.m. and 7.00 p.m. and Ex.P3 was also given by PW1 in writing that her father, mother and relatives did not interfere with her life and requested for dropping of further action and as such, the motive aspect has been failed to be established by the prosecution.

- The case against A2 rests upon circumstantial evidence and the Trial Court, on an exhaustive analysis of the testimonies of the concerned witnesses, had recorded a categorical finding that there is nothing to show that A2 has motive to commit criminal assault/murder of Shankar and PW1.
- The testimony of PW9- younger brother of the deceased did not throw any light as to the alleged role played by A2 and the testimony of DW2-in act supported the case of A2 and PW67/Investigating Officer had also admitted that DW2 and grandmother of PW1 had not been arrayed as the accused.
- The Trial Court, in paragraph No.21 also recorded a categorical finding that the marriage between PW1 and Shankar at PaathaVinayakar Temple, Palani has not been established by the prosecution and neither photographs of marriage nor receipt for marriage have been marked, despite the fact that

PW1 had stated that he has handed over the photographs to PW67 and it was also admitted by him.

- The recovery of Rs.20,000/- from A6, under Mahazar marked as Ex.P11 and M.O.21-mobile phone was spoken to by PW11. The Trial Court, in Para 22 of it's judgment, had recorded a finding that though the Bank Account is a Joint Account of A1 and A2, the act of A2 conspiring with A1 to give money to A4 has not been established and the testimony of PW11 is not strong enough to sustain the charge of conspiracy against A2.
- The recovery of Sim Card / M.O.29 pertains to the mobile phone of A2 under Mahazar/Ex.P25. The testimony of PW18, who is said to be the seizure witness for recovery of mobile phone of A2 did not establish that A2 had conversation with A3 to A10 to do away with the life of PW1 and Shankar and the call records would also disclose that she has contacted A1 often and even the said phone calls between A2 and A1 cannot be put against A2 for the reason that A1 is none other than her husband and there is nothing wrong in having communication with A1 through the cellphone by A2.
- The testimony of the Bank Official, namely PW37, who has spoken about the Joint Account of A1 and A2 coupled with the Bank Statement, marked

as Ex.P49, establish the fact that an amount of Rs.50,000/-was withdrawn from the bank on 26.02.2016 and 28.02.2016 and the relevant entry in page No.4 was marked as Ex.P99 and the amount drawn in relevant page was marked as Ex.P100 and the prosecution has failed to produce any evidence to show that withdrawal of money was done only by A2 and even assuming the said evidence as true, there is no other material to sustain the case of the prosecution as to the role played by A2 in the conspiracy and admittedly it was withdrawn from the ATM and the actual person who has withdrawn the money also have not been established by the prosecution.

- The act of A2 in biting and tearing the chappals worn by PW1 into pieces and in the light of the improvements made by PW1 as that of her statements recorded during investigation, her oral evidence cannot be believed and the Trial Court, on a thorough consideration and appreciation of oral and documentary evidence, has rightly reached the conclusion to acquit A2 from the charges framed against her and it is not open to the prosecution to approbate and reprobate by seeking to sustain the findings of the Trial Court as regards, A1, A4 to A9 and A11 and sought to attack the findings as regards the acquittal of A2 and the State, being the prosecutor, is not expected to take such a stand.

12. Mr.R.Karthikeyan, learned counsel appearing for the second respondent in CrI.A.No.183 of 2018 / A3 made the following submissions:

- ✓ The case of the prosecution is that A1 and A2 along with A3 hatched a conspiracy to do away with the life of PW1 and Shankar. PW1 in her testimony would state that one occasion told to PW1 that she had gone to a great extent and done some acts and on account of the love marriage of PW1 and Shankar, their children would also get spoiled and asked the parents of PW1 to take her. PW1 further deposed that some of the neighbours who are living near the matrimonial home at Komaralingam had also stated that A3 visited the spot and made some observations. As regards the statements said to have been made by A3 that why she has been kept alive so far have not been spoken by PW1 during the course of investigation under 161 CrPC and PW67 also admitted the said contradiction.
- ✓ A3 said to have uttered the name of one Revathi and though, he was examined as LW76, was not examined as witness in support of the testimony of PW67. Even in the complaint given by Shankar under Ex.P39 dated 24.07.2015 as to the missing of his wife and due to the closure under Ex.P40, wherein PW1 merely stated that she was staying with her ailing

grandfather at Tiruppur for 3 days and returned to the matrimonial home and even in the said statement, she has not spoken anything against A3.

- ✓ The statement of PW1 during the course of investigation that neither the neighbours of Shankar/deceased informed that they had seen A3 in the matrimonial home to note down the physical features of her matrimonial home at Komaralinam, the prosecution has miserably failed to cite any witnesses and assuming some witnesses would have been examined, their version would have been only mere hearsay.
- ✓ The Trial Court in Paragraph Nos.26 to 33 of the judgment had given clear and cogent reasons for reaching the conclusion as the non-proving of charge of conspiracy and lack of materials for sustainment of the said charges and also admitted the statement of the learned Senior Counsel appearing for A3.

13. Mr.N.Manoharan, learned counsel appearing for A10/3rd respondent in CrI.A.No.183 of 2018 made the following submissions:

- ✓ The eye-witnesses, namely PWs.1 to 4 did not speak anything as to the alleged presence of A10 on or near the scene of occurrence.
- ✓ PW5-push cart fruit vendor had spoken about the presence of A10 on the motorcycle as pillion rider and the Test Identification Parade was conducted

only on 07.04.2016. In the cross examination, PW5 would admit that he was cross examined only once by the Investigating Officer and he did not specifically state the names of the accused, their physical features as well as the dress worn by them and the police took control of the scene of the occurrence at 5.00 p.m. on 13.03.2016.

- ✓ In the cross examination done on behalf of A10, PW5 would depose that very many persons used to come near the push cart and he may not be able to identify them and he did not gave the details such as age, physical features as well as the dress worn by the said person who sat in the motor cycle as pillion rider / A10 and though the police has specifically asked the physical features, he told that only on seeing him he would have been in a position to tell about his physical features.
- ✓ PW5 would further admit that from the scene of occurrence, his location was about 10 feet away and he did not submit any material to show that he is eking out his livelihood as push cart fruit vendor.
- ✓ PW67/Investigating Officer, in the cross examination, would admit that neither PW1 nor other eyewitnesses did not state anything about the physical or other features of the assailants who attacked PW1 and the deceased and till the arrest of A4 and A5, he was not aware of the details of

the other accused except A1 to A3. PW67 would further admit that after the surrender of A10 on 18.03.2016, PW5 was examined on 21.03.2016, PW7 was examined on 25.3.2013 and prior to 21.03.2016, PW5 did not voluntarily come forward to give confession statement and none of the physical features of A10 had been disclosed by PW5 during the course of investigation and even after the Test Identification Parade, PW5 did not specifically state that he has identified A10.

- ✓ PW67 also made a crucial admission that the testimony of PW5 on 21.03.2016 as well as the entire statements were dispatched the Court on 27.03.2016 and as per the Police Standing Order and as well as the details, statement of the witnesses and material objects had been dispatched to the Court on time. PW67 further admitted that before taking photograph of A10, he did not obtain any permission and only after taking photographs, request was made for taking photographs.
- ✓ As regards recovery, the testimony of PW10 did not specifically disclose that A10 had told about the concealing of phone in his house and he went inside the house and produced M.Os.30 to 35 under the Mahazar, Ex.P28 and the signature of A10 was not obtained and the exact place in the house the material object was concealed has also not been stated by A10.

- ✓ As regards the testimony of PW24, who claims to be a friend of A10 and studied along with A10, has merely spoken about the presence of A10 at Rasi Bakery, Komaralingam bus stand on 13.03.2016 and the distance between A10's house to Komaralingam bus stand was not indicated and no Rough Sketch has also been prepared.
- ✓ It was further admitted by PW67 that he did not take any steps to verify the statement of A10 recorded under Section 164 CrPC.
- ✓ The learned counsel appearing for A10 further invited the attention of this Court to the testimony of PW10/VAO, who is said to be a witness to the disclosure statement given by A10 and would submit that he is only a chance witness and the statement recorded during investigation did not disclose that A10 concealed the mobile phone and during the course of testimony, made improvements and that apart, the said statement was also belatedly dispatched.
- ✓ PW23/VAO is the witness to the recovery of M.Os.30 to 32 under Mahazar/Ex.P28 on 25.03.2016 and even assuming for the sake of arguments his testimony is believed, it cannot be treated as incriminating material to convict A10 and in the absence of any specific statement as to the exact place of concealment, the recovery was highly doubtful and no

evidence has been produced by the prosecution as to use of M.O.30 -mobile phone by A10.

- ✓ PW24, who is said to be the co-student of A10, did not explain as to his presence at Komaralingam and his testimony was highly artificial and he can be termed only as a chance witness.
- ✓ PW27, who was examined by the prosecution towards the factum of usage of M.O.30 -mobile phone by A10 did not support the case of the prosecution and he was treated as hostile witness and the testimonies of the witnesses, namely PW57 would disclose that as per the call details, marked as Ex.72, PW27 was in regular touch with A5 and that PW27 was also using two other cellphones and as such, the exclusive use of M.O.30-mobile phone by A10 have not been proved at all.
- ✓ PW27 is also having criminal antecedents and therefore, he was every necessity to oblige to the directions of police.
- ✓ The testimony of PW57, who was the Nodal Officer of Aircel have not come to the aid of the prosecution for the reason that for want of material corroboration, his testimony cannot be used against A10.
- ✓ As regards identification of A10 through CCTV footages / M.Os.45 and 47, the evidence of PW58/Anthropologist and his report marked as Ex.P83 in

no way advance the version of the prosecution against A10.

- ✓ The Test Identification Parade conducted by PW66 coupled with the testimony of PW5 would also disclose that even prior to the Test Identification Parade, the photograph of A10 was published in newspapers coupled with the testimony of PW67 that photographs of A10 was taken during the course of police custody on 28.03.2016 without the permission of the Court and it is also not a substantive piece of evidence.
- ✓ PW67 also admits that PW5, who is said to be the eye witness, was not examined at the earliest point of time and was examined only after surrender of A10 on 18.03.2016 and with the aid of the photographs, some attempts have been made to identify A10 from the CCTV footages and the evidence of PW58 have not advanced the case of the prosecution.
- ✓ The Trial Court has dealt with the charges framed against A10 in page Nos.147 and 165 of the judgment and on an exhaustive analysis and thorough appreciation of the evidence available on record, has rightly reached the conclusion to acquit him and this Court, in exercise of its appellate jurisdiction, may not interfere with the same.

13[a] The learned counsel appearing for A10, in support of his

submissions, has placed reliance upon the following judgments:

Sheikh SinthaMadhar Alias Jaffer Alias Sintha v. State represented by Inspector of Police [(2016) 11 SCC 265]

MunnaChanda v. State of Assam [(2006) 3 SCC 752]

NagarjitAhir v. State of Bihar [(2005) 10 SCC 369]

M.Sakthivel v. State by Inspector of Police, Yercaud Police Station, Salem [(2016) 2 MLJ (CrL.) 666]

Jarnail Singh and Others v. State of Punjab [(2009) 9 SCC 719]

Satrughana alias SatrughanaParida and Others v. State of Orissa [1995 Supp (4) SCC 448]

Narayanaswamy @ Narayanan (A2) and Others v. State [(2016) 3 MLJ (CrL.) 23]

Ramesh v. The State [2011 (1) MWN (Cr.) 416 (Mad)]

Dinesh and another v. State of Haryana [(2015) 17 SCC 804]

Vijay Singh v. State of M.P [2004 (4) Crimes 373]

Anter Singh v. State of Rajasthan [(2004) 10 SCC 657]

Naravala @ Balamurali v. State [(2016) 3 MLJ (CrL.) 529]

Harbeer Singh v. Sheeshpal and Others [(2016) 16 SCC 418]

13(a) (1) In ***Sheikh SinthaMadhar and Others v. State [(2016) 11***

SCC 265], the Hon'ble Apex Court while dealing with the issue relating to Test

Identification Parade, had held that Joint Test Identification Parade in no manner affect its validity and if accused is already known to witness, Test Identification Parade does not hold much value and it is identification in court, which is of utmost importance.

13(a) (2) In *MunnaChanda v. State of Assam [(2006) 3 SCC 752]*, the Hon'ble Apex Court had dealt with the ingredients of Section 149 of the Indian Penal Code and pointed out that there are two essential ingredients i.e., (i) commission of an offence by any member of an unlawful assembly, and (ii) such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed and it is essential to prove that the person sought to be charged with an offence with the aid of Section 149 was a member of the unlawful assembly at the time the offence was committed.

13(a)(3) In *M.Sakthivel v. State [(2016) 2 MLJ (CrL.)666]*, the fact of non-disclosure of alleged relevant facts by the concerned witness immediately after the alleged occurrence, but only after few days of occurrence cannot be believed in the absence of explanation.

13(a) (4) In *Jarnail Singh and Others v. State of Punjab [(2009) 9 SCC 719]*, the credibility in the appreciation of chance witness have been considered and it was held that testimony of chance witness requires a very cautious and close scrutiny and must adequately explain his presence at the place of occurrence and the deposition of a chance witness whose presence at the place of incident remains doubtful, should be discarded.

13(a)(5) In *Satrughana alias SatrughanaParida and Others v. State of Orissa [1995 Supp (4) SCC 448]*, delay of 1½ months in holding Test Identification Parade held to be fatal to the case of the prosecution.

13(a)(6) In *Ramesh v. The State [2011 (1) MWN (Cr.) 416 (Mad)]*, non-explanation by prosecution as to belated dispatch of the statement of important witnesses to the recovery is found to be fatal and therefore, the case of the prosecution was set aside.

13(a)(7) In *Dinesh and Another v. State of Haryana [(2015) 17 SCC 804]*, it was held that while appreciating evidence, contradictions, inconsistencies,

exaggerations or embellishments have to be taken note of and appreciated by the Court and it is obligatory to make an effort at finding out the truth by separating it from the falsehood, but, on finding it not possible to do so, it is not permissible for the Court to spin out an altogether new case, different from the one alleged by the prosecution and to convict the accused.

13(a)(8) In *Anter Singh v. State of Rajasthan [(2004) 10 SCC 657]*, requirement of Section 27 of the Evidence Act has been reiterated.

13(a)(9) In *Harbeer Singh v. Sheeshpal and Others [(2016) 16 SCC 418]*, the Hon'ble Apex Court has dealt with the question as to the scope of interference in an appeal preferred against acquittal.

14 This Court paid it's anxious consideration and carefully and in detail, gone through the testimonies of the witnesses and other materials placed on record as well as the original records. This Court has also given thoughtful consideration to the submissions made and the decisions relied on by the respective learned Senior Counsel appearing for the convicted accused, learned counsel appearing for the acquitted accused and the learned Additional Advocate General appearing for

the State.

15 The following questions arise for consideration in the Referred Trial as well as in the Criminal Appeals preferred by the accused :-

- 1) Whether the sentence of death imposed by the Trial Court upon A1, A4 to A8 is to be confirmed?
- 2) Whether the findings recorded by the Trial Court as to the guilt of A1, A4 to A8 and A9, conviction and sentence awarded as a consequence thereof, are to be interfered with and the appeals are to be allowed?
- 3) Whether the sentence of death imposed upon A1,A4 to A8 requires modification? and
- 4) Whether the appeal against acquittal preferred by the State as against A2, A3 and A10 is to be allowed?

Question No.2:-

CRL.A.No.162 of 2018:-

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16 The facts leading to the Reference as well as the Appeals preferred by the convicted accused, have not only been narrated in detail by the Trial Court, but also by this Court.

97/328

17 Let this Court first takes up the **Conspiracy** hatched between the accused under Section 120-B of IPC.

18 The motive for the commission of the offences, according to the prosecution was that PW1-Kowsalya, daughter of A1 and A2 belong to Hindu Piranmalai Kallar Community which is a De-notified Community and she developed a love affair with Shankar [since deceased] who belonged to Hindu Pallar Scheduled Caste Community and as a result of the same, the honour and reputation of A1 got spoiled in the eyes of their community people and therefore, a conspiracy has been hatched to do away with the lives of PW1 and Shankar.

19 PW1 is the daughter of A1 and A2 and also an injured eyewitness. In the cross-examination done on behalf of A3, who was acquitted by the Trial Court, she would depose among other things that on 10.07.2015, her parents [A1 and A2] opposed her relationship with Shankar and on 11.07.2015, she sent a message to Shankar and on account of the opposition by her parents, she immediately married Shankar. She also lodged a complaint on 12.07.2015 on the

file of Udumalpet All Women Police Station under Ex.P1 wherein she had stated that she left her parental home on 11.07.2015 and got married to Shankar at Palani Padhavinayagar Temple on the same day and she would admit that for the purpose of marriage ceremony, no receipt was obtained and no money was remitted and the marriage was also not registered and camphor was lighted and mangalasutra was tied. She would further depose that on the lodging of Ex.P1, her parents and two others came and denied the suggestion that they gave it in writing that they would not disturb PW1 and Shankar and went out of the Police Station peacefully and however, they were in a fit of rage. It is further deposed by PW1 that on registration of the FIR under Ex.P.35 on 11.07.2015, she and Shankar were summoned by the Court of Judicial Magistrate, Palani and before the learned Magistrate, she did not state anything as to the anger exhibited by her parents [A1 and A2] and she and Shankar lived as husband and wife for about eight months and that since they did not possess sufficient means, the marriage was not registered.

20 PW1 would further admit in Ex.P1 that she did not state anything about A3 and in Ex.P4 – the statement given by her to PW54 on 13.03.2016, she did not state anything as to taking her to the house of his senior father and was

threatened and that was for the reason that she was mentally disturbed on account of the demise of Shankar.

21 In the cross-examination done on behalf of A1, the learned counsel appearing for A1, apart from adopting the cross-examination of A3, also put some questions. PW1, in the said cross-examination, would depose that she was admitted in the Engineering College under the Management Quota and she contracted marriage only after completion of 18 years and it was solemnised on 12.07.2015 and with regard to the said marriage, photograph was taken and no videography was taken and the said photo was handed over by Shankar while lodging the complaint dated 24.07.2015 under Ex.P39 on the file of Madathukulam Police Station. She would further depose that immediately on the next day of marriage, a conspiracy was hatched by her parents to murder her and Shankar and she was abducted and kept in custody for a period of four days between 23/24.07.2015 and 27.07.2015 and on 27.07.2015, she was taken to Madathukulam Police Station.

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22 As regards the events happened after her attack on 13.03.2016, in the afternoon hours, she was taken in a private Ambulance to Udumalpet Government

Hospital along with Shankar and first aid was also administered upon PW1 and Shankar and she denied the suggestion that she had stated to the doctor as to the attack inflicted by known persons by use of hands and sticks. She would further depose that while they were taken to Coimbatore Medical College Hospital, nobody had accompanied them and they reached the said hospital between 3.45 p.m., and 4.00 p.m. and at about 4.15 p.m., her statement was recorded [Ex.P4] by PW54 and during midnight hours, she was examined by PW67 and in the complaint, she had stated that persons responsible for the attack were her parents, her maternal uncle [A3] and identifiable persons numbering 6 and however, she had stated only five persons and she also identified them in the Test Identification Parade. PW1 would also state that she did not become unconscious and she was treated as an In-patient for a period of 16 days and she also attempted to commit suicide for which, no case has been registered.

23 On behalf of A2, PW1 was cross-examined and apart from adopting the cross-examination of A3, it was suggested that on account of the advise given by her mother, she got enraged and had given a false complaint and she denied the said suggestion.

24 PW1 was cross-examined on behalf of A4 to A9 and with regard to

the fact of coming to Udumalpet on 13.03.2016, she did not state anything as to the purpose for which they came. Attention of PW1 was also invited to Ex.P4-statement recorded by PW54 and she would state that six persons in two two-wheelers had come and by use of aruvals, injuries were inflicted upon them and in Ex.P4, she had stated that six persons had attacked her first and the fact of their inflicting attack on Shankar has not been stated.

25 PW1 would further depose that either in Ex.P4 or in the statements recorded during investigation, she did not disclose the names of the assailants and their address and she became aware of the names only at the time of Test Identification Parade and she did not specifically stated the overt acts on the part of the assailants either in Ex.P4 or in the statements recorded during the course of investigation and so also their physical features, age, dress worn by them at the time of attack as well as the details of the weapons used by them. She did not state anything as to the conversation took place between her and Shankar while they were taken to Coimbatore Medical College Hospital, either in Ex.P4 or during the course of investigation. As regards Test Identification Parade conducted by PW66-Judicial Magistrate No.2, Udumalpet, she did not state anything as to the dress worn by the accused who participated in the Test Identification Parade.

26 PW1 was summoned again and she was further cross-examined on behalf of A1 and A2 and she would state that Shankar asked her to come out of her parental home for the purpose of marrying him and her parents [A1 and A2] were also aware of the caste of Shankar and they became aware of the said relationship on 10.07.2015 and after informing Shankar, immediately she came out of her parental home on 11.07.2015 and at that time, she became major. PW1 denied the statement that she was brought up strictly by her parents and she was castigated by them since she had conversation with Shankar through cellphone during late night hours and also used to go with boy friends and therefore, she developed enmity against her parents and deposed against them falsely.

27 PW54, Inspector of Police [Law and Order] attached to Udumalpet Police Station at the relevant point of time, had recorded Ex.P4 from PW1 and in the cross-examination done on behalf of A4 to A9 would state that at the time of recording the statement of PW1, he did not ascertain the physical fitness and mental capability of PW1 from the doctors and though her statement was recorded by one Nagarajan, Constable, there was no indication in Ex.P4 as to the said fact. PW54 would further state that in Ex.P4, PW1 did not state anything as to the

physical features of the persons, their age, color and other details ; but stated about the weapons used and did not specify the nature of the weapons and PW1 had further stated in Ex.P4 that six persons came in two two-wheelers and after inflicting attack, they returned in the said two-wheelers. PW54 was also aware of the fact that at the time of getting statement from PW1, Shankar was no more and he did not see his body for the reason that it was sent to Mortuary and thereafter only, he recorded the statement of PW1.

28 PW54 also deposed that in Ex.P4, PW1 did not state anything about the conversation between her and Shankar while they were taken to Coimbatore Medical College Hospital [CMCH] and Exs.P4 and 66 were received by the jurisdictional Magistrate Court at about 11.30 p.m., on 13.03.2016. It was also admitted by PW54 that before the registration of the case, he did not send any Constable either to Komaralingam or to Palani and he did not go to the scene of crime immediately after the registration of FIR ; but went there at about 9.00 p.m., on 13.03.2016 and he handed over the FIR under EX.P66 to PW67 at about 7.20 p.m. He would admit that at the time of occurrence, LW118-Mr.Venkatraman, was the Inspector of Police [Crime] attached to Udumalpet Police Station and PW54 was not aware of the fact that he was on patrol duty at about 2.00 p.m., on

13.03.2016 in the place in and around Udumalpet Police Station and denied the suggestions. He was also cross-examined on behalf of A1 and A2 wherein, he had admitted that he had handed over the FIR under Ex.P66 to PW67-Investigating Officer, at about 7.20 p.m., on 13.03.2016 and denied the suggestions.

29 Now, coming to the findings recorded by the Trial Court as to the guilt on the part of A1, the following are the discussions.

30 PW9-Vigneshwaran is the younger brother of the deceased Shankar and in the chief examination, he would depose about the love affair between his brother Shankar and PW1 and their marriage on 12.07.2015 at Padhavinayagar Temple at Palani and immediately, PW1 gave a petition/complaint under Ex.P1 on 12.07.2015 on the file of Udumalpet Police Station, seeking protection as it was an inter-caste marriage between her and Shankar and an enquiry was conducted and the parents of PW1 [A1 and A2] asked PW1 to hand over the gold jewels and dress worn by her and those things were handed over and A1 has told that he has no connection with his daughter – PW1 and similarly, PW1 also told that she has no connection that her father [A1] and it was also reduced into writing. He further deposed that on 24.07.2015, his brother Shankar has lodged a complaint

under Ex.P39 which was registered as a case in Crime No.320/2015 by Madathukulam Police Station and on 26.07.2015, police contacted them stating that PW1 came to the Police Station and accordingly, Shankar and his father went to the Police Station and brought back PW1. Just about two weeks prior to 13.03.2016, parents of PW1 [A1 and A2] and her grandmother and some of the relatives came and told PW1 that since she got married to a person outside their caste, the relatives are angry and that they are going to inflict injuries on PW1 and Shankar and if any such thing happens, they are not aware of it and in a fit of rage, went out. PW9 would further state that he became aware of the attack at a later point of time on 13.03.2016.

31 PW9, in the cross-examination done on behalf of A1 would depose that he did not attend the marriage ; but had seen the photograph of the marriage and immediately, on the date of marriage on 12.07.2015, PW1 gave a complaint under Ex.P1 and he also accompanied her and PW1 had exhibited her disinclination to go with her parents and handed over the gold jewels and dress to them and both of them told each other that there will not be any relationship of father and daughter and daughter and father respectively in the form of writing. PW9 would further depose that prior to the incident on 13.03.2016, A1 and A2

came to the house of Shankar and disclosed the fact of non-acceptance of marriage by their relatives and the threats wielded out as to the infliction of injuries. It is also deposed by PW9 that after the incident, PW1 was given employment as a Clerk at Wellington, Ooty and his father was also given employment on account of the demise of Shankar and denied the suggestion that there was no marriage between Shankar and PW1.

32 PW13-Syed Ibrahim was the Village Administrative Officer of Udumalpet Town and his services were required by PW67 and accordingly, he went to Udumalpet Police Station at about 1.30 p.m., on 22.03.2016 along with his Menial Muruganantham and in their presence, A3 was examined and at about 2.30 p.m., on 24.03.2016, A1 was examined and PW13 identified A1 in the open Court. PW13 would depose that A1 voluntarily gave a confession statement where he has spoken about the fact of distress on account of the marriage of his daughter-PW1 with Shankar and hatching of conspiracy. It is to be noted at this juncture that the confession statement given by A1 in the presence of PW13 did not lead to any recovery of any incriminating weapons and the question remains is whether it led to discovery of fact.

33 PWs.14 and 15 are the owners of the Lodging House, viz., Bakya Mahal. PW.14-Baskaran, in the chief examination would depose that he knew A1 and identified him in the Court and A1 used to bring persons in his Taxi for the purpose of their accommodation in the Lodge and he also knew A5 for the reason that the father of A5, viz., Marimuthu, was doing the business of selling inner-wears in front of his Lodge and he also identified A5. He would further depose that on 05.03.2016, A1 and A5 along with some other persons came and asked for rooms and since PW14 knew A1 and A5, he gave one room for accommodation by accepting the charges and A1 left the Lodge immediately and A5 and another person stayed in the room and since A1 and A5 called the other person by name Madhan, PW14 came to know the name of the said person as Madhan [A8]. PW14 would also depose that he had recorded the fact of giving the room for accommodating Manikandan in the Register maintained by him marked as Ex.P.20 and in the second page, it is stated that Room No.8 was given to Manikandan and the said entry is marked as Ex.P21.

34 PW14 would further state that on account of the fact he got fracture and got admitted in the hospital at Palani, his brother-PW15 was in-charge of the Lodge and that 2-3 persons used to visit the Lodge for the purpose of seeing A5

and A8 and PW15 went to the Hospital and informed PW14 that on 13.03.2016 at about 5.00 p.m., A5 vacated the room and handed over the key and he was examined by PW67 on 25.03.2016 and he handed over Exs.P.20 and 21 to PW67 under Ex.P.22. He would further depose that he did not get the signatures of A5 in the Register [Ex.P20] for the reason that his father was well known to him.

35 In the cross-examination of PW14, the Presiding Officer has put questions as to the maintenance of the Register and the details thereon as per the directions of the police and the said questions were answered in positive by PW14 and PW14 reiterated that he did not record the fact of staying of A5 in the Register as well as the acceptance of money for the fact that the father of A5 was well known to him.

36 PW14 was examined on behalf of A1 and A2 and his attention was invited to Ex.P.20-Register [pages 1 to 45] and Ex.P21-Entry made in page No.2 of Ex.P20 and he would depose that except the first column in Ex.P20, none of the other columns were filled up and he did not hand over the said Register to the Palaniadivaram Police Station occasionally and the police used to come to his Lodge ; but they would not give any acknowledgment as to their visits. It is also

deposed by PW14 that he was not aware as to the residence of A1 and that no CCTV Cameras are installed in the Lodge and that he was not in the habit of getting the identification of the persons who would like to stay in the Lodge and though he is in the habit of issuing receipts, the Receipt Book has not been seized by the Police. He would further depose that between 06.03.2016 and 13.03.2016, he was directly not aware of the persons who got accommodation in the Lodge and he identified A1, A5 and A8 at the time of his chief examination in the Court.

37 PW14 was cross examined on behalf of A4 to A9 and he would admit that there are separate columns in Ex.P20 as to the names of the persons who are to be accommodated, age, their address, time of admission and time of departure, the number of persons and their signatures and in Ex.P21, excepting the first column, none of the other columns have been filled up and except the entry under Ex.P21, all other columns have been filled up and also made further admission relating to seizure of Ex.P20 and that PW67 had inspected the said Register.

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38 PW15-Manokaran, is the brother of PW14 and in the cross-examination done on behalf of A1 and A2, he would depose that there are no

written records to show that he was in-charge of the Lodge between 06.03.2016 and 13.03.2016 and apart from he and his brother [PW14], there are other persons to maintain the Lodge. It was further deposed by PW15 that he read in the newspaper about the occurrence that took place on 13.03.2016 and he was shown with the recordings in the Laptop by PW67 and he was not aware as to the native place of A8 and also the Car Number and the residential address of A1. PW15, in the cross-examination done on behalf of A4 to A9 would admit that he did not make relevant entries in Ex.P21 and in Ex.P21, nothing is stated about handing over of the keys.

39 PW21-Kalidas, was eking out his livelihood as an Auto Driver and he used to park his auto in Tirunagar Auto Stand at Dindigul-Palani Road and opposite to the Auto Stand, a Taxi Stand is also there and he knew A1 who used to park his Car/Taxi in the Taxi Stand. PW21 also identified A1 in the Court. He would further depose that he is well acquainted with A1 and A1 told him about the love marriage between his daughter [PW1] and Shankar and on account of the same, he was mentally disturbed and that since his daughter got married to a person belonging to a lower caste, he was ashamed and on two occasions, A1 had told to PW21 as to the doing away with the life of Shankar and PW1-Kowsalya. PW21

has consoled A1. It was further deposed in the cross-examined that about 20 days prior to 13.03.2016, at about 6.00 p.m., he saw A1 in the Children's Park along with four youngsters and he also saw A4 and A5 along with A1 for the reason that he saw them along with A1 earlier and he was not aware of the other two persons and also identified A4 and A5 in the open Court and did not identify rest of the two accused. PW21 saw A1 asking the four persons that since his daughter got married to Shankar, his reputation in his locality has come down and further asking them as to what they are going to do for the same. PW21 became aware of the fact of the attack on 13.03.2016 through newspapers and he was examined by PW67.

40 PW21 in the cross examination done on behalf of A1 and A2 had further deposed that he is also having acquaintance with PW13 and he did not own the auto ; but merely an auto driver and he did not produce any materials to show that he was eking out his livelihood as an auto driver and did not hand over any document to PW67. He would further depose that he is having acquaintance with A1 for the past two years and not aware as to the details of A1 and also the nature of the disputes between them and he was not directly aware of the marriage between PW1 and Shankar and that, only A1 had told him about that. PW21 also made a crucial admission that A1 did not state anything as to wrecking of

vengeance upon Shankar and Kowsalya [PW1] and to take away their lives. He would further depose that the Children's Park belong to Palani Devasthanam [Arulmighu Dhandayudapani Swamy Devasthanam] and for entering the Park, one has to buy ticket and he saw A1 standing outside the Park and the distance between him and A1 was 70 meters and also answered the suggestion in positive that he would not have heard the conversation from the distance of 70 meters and he saw the conversation between A1 and four youngsters for about two minutes and he was not aware of which person had conversed with each other. PW21 would further depose that he became aware of the incident on 14.03.2016 through news item and one week thereafter, he was examined by the police and he did not notice the presence of PW13. PW21, in the cross-examination done on behalf of A4 and A5 would admit that he also belongs to Scheduled Caste Community and denied the suggestion as to his seeing of A4 and A5.

41 PW22-Anbazhagan, was the IX Ward Member of Komaralingam, the place in which the deceased Shankar had resided and in the chief examination he has spoken about the marriage between PW1 and Shankar and the visit of the parents and relatives of PW1 to the house of Shankar. PW22 would further depose that just prior to the occurrence, he went to Pandi Temple and on his way to return,

near the Rope Car Junction, he saw A1 with four or five youngsters in a fit of rage and he knew A1 and that he could identify the other four persons on seeing them and accordingly, identified A1, A5, A6, A7 and A9 in the Court and he had deposed that the said accused were conversing with each other at about 5.00 p.m., on 12.03.2016 near the Rope Car Junction and he became aware of the incident in the evening hours on 13.03.2016 and he was examined by PW67 two days later.

42 In the cross-examination done on behalf of A1 and A2, PW22 would admit that he is related to the deceased Shankar and a member of AIADMK Party and he also went to the All Women Police Station in connection with the marriage of Shankar and PW1 and also spoken about the presence of A1 and A2 in the Police Station and handing over of the articles by PW1. He would also admit that while closing the complaint under Ex.P1 given by PW1, both side agreed not to disturb each other which was reduced into writing and that he had also put his signature in the said statement and that the marriage photo of PW1 and Shankar was handed over to the Inspector of Police [PW33] in the Police Station and that he has also seen the photograph. PW22 would further depose that two months after the marriage of PW1 and Shankar, A1 and A2 came to their house and PW1 expressed her disinclination to go with her parents and A1 and A2 did not wait and

angrily went out. As regards seeing of A1 in the company of other four accused, contradiction was sought to be elicited by suggesting that during the course of examination by police, he told that he went to Murugan Temple at Palani on 12.03.2016 for worship and however, in the evidence, he has stated that he went to Pandi Kovil at Palani. PW22 would also admit that he was not aware of the conversation that took place between A1 and the other accused and no Test Identification Parade was conducted for the purpose of identifying A5, A6, A7 and A9. In the cross-examination done on behalf of A5 to A7 and A9, PW22 would admit that he did not disclose the names of four or five persons who were seen in the company of A1 and he also did not disclose the age and other physical features to the Investigating Officer [PW67] and denied the suggestion that he did not see anybody.

43 PW25-Duraisamy claims that he knew A1 for 7 years and he used to participate in the cock fight events and A1 used to rear the cocks and PW25 used to purchase the same and as such, he developed acquaintance with A1 and he became aware of the marriage of the daughter of A1 [PW1] with Shankar and A1 also told him with teared eyes as to the said event and the agony undergone by his wife / A2 and PW25 consoled him. In the cross-examination done on behalf of A1

and A2, PW25 would depose that after consoling, A1 had accepted that and he became aware of the said incident through TV news.

44 PW30-Balasubramaniam was examined to corroborate the testimony of PW21 and in the chief examination, he would depose that he was an auto driver who used to park his auto in Tirunagar Auto Stand and A1 was examined by PW67 on 25.03.2016 at about 4.30 p.m. at the Children's Park and an Observation Mahazar was prepared in the presence of PW21 and Selvaraj and it was marked as Ex.P31 and he also identified A1 in the Court. In the cross-examination done on behalf of A1 and A2, PW30 would depose that with regard to the murder of Shankar, PW21 did not say anything to him and he knew A1 for the past 2 years and he used to drive taxi and he did not hand over any document to show that he is eking out his livelihood as an auto driver and he was not aware of the relatives of A1.

45 PW30 also described the topography of the Children's Park and would state that the Children's Park is measuring 5 Acres and the length is 30 feet and breadth is 40 feet and it is adjacent to the bypass and would further depose that the particular place in the Park has not been identified by A1 and in the further

cross-examination, PW30 would state that he knew A1 only for six months prior to the occurrence and A1 did not state in a fit of rage as to the finishing of the life of PW1 and Shankar on account of inter-caste marriage and he was not aware of the deceased Shankar.

46 PW33-Tamizhselvi was the Inspector of Police, All Women Police Station, Udumalpet and she speaks about Ex.P1-complaint given by PW1 on 12.07.2015 and in connection with the said complaint, she summoned the parents of PW1 as well as Shankar and during the course of enquiry, PW1 expressed her disinclination to go with her father [A1] and wanted to live with Shankar and also gave a letter marked as Ex.P3 and Shankar also gave a letter under Ex.P2 to the effect that he will look after Kowsalya [PW1] and A1 also gave a letter that he will not interfere with the marriage life of his daughter.

47 PW33 would further depose that PW1 voluntarily came forward to hand over gold jewels as well as the wrist watch worn by her and accordingly, handed over the same to A1 and since A1 had also stated that he will not create any problem, no further action was taken upon A1 and Ex.P3 was written by PW1 in the presence of four witnesses and the enquiry under Ex.P1 was closed by PW33

and an endorsement was also made by PW33 and the said endorsement is marked as Ex.P34.

48 PW33 in the cross-examination done on behalf of A1 and A2 would depose that after receipt of Ex.P1, she summoned the parents of PW1 through phone and they came and the letter given by A1 as to non-interference with the marital life of PW1 was marked as Ex.D1 and she did not prepare any separate receipt as to the handing over of the articles by PW1 to A1 and in the statement of PW1 marked as Ex.P3, PW33 has subscribed her signature. PW33 also opined that after the proceedings, PW33 also developed an impression that both side also went peacefully and the enquiry was conducted between 11.00 a.m. and 7.00 p.m. PW33 also handed over the Birth Certificate to PW67.

49 PW34-Muthulakshmi was the Sub Inspector of Police attached to Palani Town Police Station and he speaks about Ex.P35-case in Crime No.647/2015 registered on the basis of the complaint given by A1 on 11.07.2015 as to the missing of his daughter, viz., PW1, based on which, a case was registered for the alleged commission of the offence under Section 366 of IPC and in the said complaint, A1 had stated that his daughter was kidnapped by Shankar.

50 PW34 also spoken about the arrest of A8 on 02.03.2016 as well as A4 under Section 41[1][d] of CrPC in Crime Nos.211 and 212 of 2016 respectively. The said First Information Reports were marked as Exs.P36 and 37 and she also identified A1, A4 and A8 in the Court. PW34, in the cross-examination done on behalf of A4 and A8 would depose that action is to be taken only upon the complaint under section 41[1][d] of CrPC and if the offence punishable is below 7 years, the concerned persons cannot be arrested and Column Nos.8 and 9 in the FIRs marked as Exs.P36 and 37, there was no mention as to the concerned accused found in possession of suspected articles. PW34 would further depose that having satisfied with the information given by A4 and A8 and based upon the surety given by A1, they were released on bail ; but with regard to the same, there was no specific endorsements in Exs.P.36 and 37 and though Exs.P36 and 37 were despatched to the Court of Judicial Magistrate, Palani, there was no endorsement as to the said acknowledgment and however, there was an endorsement on 25.04.2016.

51 In the cross-examination done on behalf of A1 and A2, the learned counsel for A1 and A2 adopted the cross-examination of A4 and A8. PW34 would

depose that on 13.07.2015, PW1 came along with Shankar and his father and some other persons also accompanied them and further proceedings were dropped and with regard to the surety executed by A1 for the release of A4 and A8, counter signatures of A4 and A8 have not been obtained and no bonds were also obtained from A4 and A8 and Muchalika executed by A1 for release of A4 and A8 has not been handed over to PW67 and she denied the suggestion that she is deposing falsely as to the execution of the surety by A1 for the release of A4 and A8.

52 PW35-Pugazhenthhi was the Inspector of Police, Palani Town Police Station at the relevant point of time and he speaks about the complaint given by A1 under Ex.P35 as well as the Final Report under Ex.P38 and he would depose that PW1 voluntarily appeared before the Police Station on 13.07.2015 and stated that she was not kidnapped by anybody and she married Shankar who had also studied in her College and her statement was recorded and was produced before the Court of Judicial Magistrate, Palani and after recording her statement, the Court permitted PW1 to go with Shankar and further proceedings were dropped under Ex.P38.

53 PW35, in the cross-examination done on behalf of A1 and A2 would

depose that during the course of enquiry, he became aware of the marriage of PW1 with Shankar on 11.07.2015 at Paadhavinayagar Temple at Palani and also examined A1, A2, mother of A1 and one Sathishkumar and did not obtain photograph evidencing marriage during the course of enquiry and after completion of the proceedings before the Judicial Magistrate, Palani, A1 did not create any problem or incident.

54 PW36-Parthiban was the Circle Inspector of Madathukulam Police Station and he speaks about the registration of the case in Crime No.320 of 2015 on the basis complaint given by the deceased Shankar under Ex.P39 for "Woman Missing". PW36 would depose that on 27.07.2015, PW1 voluntarily appeared and since her grandfather Jayaram [DW2] was unwell, she went with him and on becoming aware of the complaint lodged by her husband Shankar, she came to the Police Station and her statement was recorded and she was sent with her husband Shankar and his relatives and also the Final Report marked as Ex.P40.

55 In the cross-examination done on behalf of A1 and A2, PW36 deposed that he did not enquire the grandfather of PW1 and however, examined the sister of Shankar, viz., Mariyammal and recorded her statement and in Ex.P39,

a mention has been made as to the marriage between PW1 and Shankar on 11.07.2015 at Paadhavinayagar Temple. PW36 would further state that PW1 had stated to him that during the period in which PW1 was with her parents, she was not confined or tortured or some black magic was performed upon her and A1 and A2 were not examined with regard to the said complaint given under Ex.P39 and further proceedings were also dropped.

56 PW37-Kumar is the State Bank Official and it is the case of the prosecution that A1 and A2 maintained a Joint Savings Account and from the joint account, some amount was drawn and it was paid to the hirelings. PW37 had spoken about the joint account maintained by A1 and A2 and he produced the statement of Accounts pertains to the period between 01.02.2016 and 14.02.2016 marked as Ex.P41. In the cross-examination, he had deposed that the statement of the joint bank Account of A1 and A2 for the period between 01.02.2016 and 31.03.2016 was produced by him under Ex.P99 and the contents of the same would read that on 26.02.2016, a sum of Rs.15,000/- and Rs.10,000/- were withdrawn through ATM and similarly, a sum of Rs.15,000/- and Rs.15,000/- were withdrawn on 28.02.2016 through ATM. In the cross-examination done on behalf of A1 and A2, a sum of Rs.41,469.64p., was available and denied the suggestion

that the said statement has not been given in terms of Bankers Book of Evidence Act.

57 PW39-Muthusamy speaks about the Community Certificates given to PW1, A1 and A2 stating that they belong to De-Notified Community.

ELECTRONIC EVIDENCE – MOBILE PHONE COMMUNICATION
BETWEEN A1, A6, A8 AND A9:-

58 According to the prosecution, A1 was in possession of a mobile phone bearing No.9677490925 and the mobile number of A9 is 9585700205. PW67 has given a requisition under Ex.P101 seeking for Call Data Records [CDRs] in respect of the said phone numbers of A1 and A9 and the service provider of the mobile numbers of A1 and A9 is AIRTEL and M.O.29 is the mobile phone of A2-Annalakshmi. The SIM numbers of A1 and A9 stand in their own names. It is the submission of the learned Additional Public Prosecutor appearing for the State that there was a meeting of mind between A1, A8, A6 and A9 as evidenced from CDRs between 06.02.2016 and 06.03.2016.

59 PW59-David Joseph Paulraj was the Deputy General Manager of

Bharti Airtel and he speaks about the mobile phone numbers of A1 and A5. As regards the mobile number 9894575791 is concerned, it stands in the name of the father of A5 and he furnished the CDRs for the period between 01.02.2016 and 15.03.2016 and he had also given the certification under Section 65B of the Indian Evidence Act, under Ex.P88. Except A5, the learned counsels appearing for the other accused did not cross-examine PW59.

60 In the cross-examination done on behalf of A5, PW59 would state that a call emanated on 13.03.2016 at about 1.50 p.m. from the mobile phone number 9894575791 [A5] from the mobile tower located at Kozhumam Post and and he denied the suggestion that he was not competent to accord certification under Section 65B of the Evidence Act under Ex.P88.

61 The testimony of A1 and the CDRs under Exs.P87 and P88 were put as incriminating circumstances in the form of Q.Nos.177 and 178 and A1 responded to the said questions by saying that he was not aware of it. A1 has also filed the written statement dated Nil under Section 313[5] of CrPC and as far as the testimony of PW59 is concerned, A1 has stated that he is not aware of the PW59's evidence.

62 It is very pertinent to point out at this juncture that as per CDRs marked as Exs.P86 and 87, calls emanated from the mobile phone number of A8 to the mobile phone of A1 on 05.02.2016, 06.02.2016, 07.02.2016, 01.03.2016 and 02.03.2016 and similarly, A1 made calls to A8 on 07.02.2016, 08.02.2016 and 02.03.2016. So also PW59 was not cross examined by the learned counsel for the A1 and there is not even a suggestion that in respect of mobile phone bearing No.9677490925, the service provider is Bharti Airtel. It is the case of the prosecution that A8, namely, Madhan @ Michael has also been attributed with fatal overt act.

63 It is a well settled position of law that a conspiracy ordinarily, is hatched in secrecy and the Court, while evaluating the evidence for the purpose of arriving at a finding as to the offence of conspiracy has been committed or not committed, may take into consideration, the circumstantial evidence. It must also be borne in mind that meeting of mind is essential.

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64 In *Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra* reported in *2008 [10] SCC 394 : 2008 [6] Scale 469*, in paragraph No.25, the

Hon'ble Supreme Court of India has held as follows:-

"25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement."

[Emphasis supplied]

65 In *K.R.Purushothaman Vs. State of Kerala* reported in 2005 [12] SCC 631 : 2006 [1] SCC [Cr.] 686, the Hon'ble Apex Court dealt with the ingredients of the offence of conspiracy and it is relevant to extract paragraph No.13 of the said decision:-

"13. To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither it is necessary that every

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one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in mind the well-known rule governing circumstantial evidence viz., each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is sine quo non for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the Plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement."

[Emphasis supplied]

In the above cited decision, it is also observed that "in most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused

involved in the conspiracy..... The criminal conspiracy is an independent offence in the Indian Penal Code".

66 PW40 had issued the Community Certificate under Ex.P47 and as per the said document, A8 belongs to the same community as that of A1. Since the offence of proof regarding commission of the offence of criminal conspiracy in most of the cases, is to be proved in the form of circumstantial evidence and that the non-offering of any explanation of any explanation to the said incriminating circumstances can also be treated as a connecting link in the chain of circumstances. A1 is bound to explain as to why he was repeatedly communicating with A8. As already pointed out, there is not even a suggestion to PW59 that A1 did not possess a cellphone with the mobile number 9677490925 and he has no connection with A8 whatsoever and in response to the said incriminating circumstances put against him under Section 313(1)(b) of CrPC questioning, he merely stated that he was not aware of it and so also in his written statement under Section 313(5) of CrPC. Therefore, the prosecution was able to prove that A1 was in contact with A8 and vice versa between 06.02.2016 and 06.03.2016.

67 In *AIR 2005 SC 3820 : 2005 [11] SCC 600 [State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru]* , the case pertains to prosecution of the accused who involved in the attack in the Parliament House Complex. The Hon'ble Apex Court had dealt with the offence relating to conspiracy under Section 120-B of IPC and in paragraph No.12, observed as follows:-

"12 Conspiracy:-

.....Mostly, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused. [Per Wadhwa J. in Nalini's case [supra] [1999 AIR SC@ 1889 : AIR 1999 SC 2640] at page 516]. The well known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible." G.N.Ray, J., in Tanibeert Pankaj Kumar [1997 [7] SCC 156], observed that this Court should not allow the suspicion to take the place of legal proof.

.....

One more principle which deserves notice is that

cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. K.J.Shetty, J., pointed out in Kehar Singh's case [AIR 1988 SC 1883] that "the innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict."

....

We are of the view that those who committed the offences pursuant to the conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy ; but, the non-participant conspirators cannot be found guilty of the offence or offences committed by the other conspirators. There is hardly any scope for the application of the principle of agency in order to find the conspirators guilty of a substantive offence not committed by them. Criminal offences and punishments therefor are governed by statute. The offender will be liable only if he comes within the plain terms of the penal statute. Criminal liability for an offence

cannot be fastened by way of analogy or by extension of a common law principle.

..

*In **Ajay Aggarwal Vs. Union of India [1993 [3] SCC 609]**, while discussing the question whether the conspiracy is a continuing offence, the following pertinent observations were made by K.Ramaswamy, J., speaking for the Bench at para 11:*

"Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence, to which individual offenders are liable to punishment independent of conspiracy."

68 As regards the validity of the Certification of the Call Data Records [CDRs] marked as Exs.P86 to 88 are concerned, this Court will deal with the points urged by the respective learned counsels for the other accused.

69 It is also urged by the learned Senior counsel appearing for A8 that FIR pertains to the incident has been belatedly registered and despatched and that apart, non-examination of LW118-Venkataraman, who was the Inspector of Police [Crime] attached to Udumalpet Police Station, is also fatal to the case of the prosecution. PW67-Investigating Officer was cross-examined on behalf of A4 to

A9 and the said official deposed as follows:-

- PW67 has received the FIR in Crime No.194 of 2016 at about 7.20 p.m. on 13.03.2016 and he became aware of the said incident at 2.30 p.m. on the same day.
- PW67 examined LW118-Venkataraman on 17.04.2016 and included him as a witness in Sl.No.118.
- LW118 was on patrol duty at Udumalpet Bus Stand at about 2.00 p.m. on 13.03.2016. LW118 during the course of investigation has stated that on becoming aware of the fact that a male and female sustained cut injuries and lying at Udumalpet Bus Stand, he sent them in Ambulance for treatment and LW118 did not inform the said fact to Udumalpet Police Station and he also did not tell the reasons for it. On 13.03.2016 at about 2.30 p.m. the policemen who were on duty, reached the scene of crime and PW67 was not aware of the names of the said constables.
- PW67, while examining PW1 in the Coimbatore Medical College Hospital [CMCH] on 13.03.2016, found that she was conscious state of mind while giving the statement and with regard to her fit state of mind, he did not obtain certification from the Doctor.
- Till the arrest of A4 and A5, apart from A1 to A3, PW67 was not aware of

the names and the details of the other accused. A4 and A5 were intercepted by LW118 and he did search them and also informed that A4 and A5 are the suspected accused.

- In column No.17 of Ex.P17 which pertains to seizure of M.Os.12 and 23, viz., Black colour Pulsar Motorcycle bearing Regn.No.TN-57-AS-2340 and cash of Rs.24000/-, the denomination of Rs.24,000/- has not been specifically indicated.
- PW67 would further depose in the cross-examination that PW14 and PW15- owners of Bakya Mahal/Lodge at Palani Town, did not produce any documents to show that they were the owners of the lodge and in Ex.P20, the registered name of Bakya Lodge has not been printed and it was written by hands and A5 and A8 did not sign in Exs.P20 and 21 and no receipts were also issued to them and during the course of investigation, PW67 did not ascertain the daily charge/rent payable.
- He would further depose that he did not get certification from the officials of the Service Providers who issued certifications under Section 65B of the Evidence Act that they are competent to issue such certificates.
- He was cross-examined on behalf of A3 and he would depose that though he tried to get the Dying Declaration from PW1, he was not able to do so

and the learned Public Prosecutor also told him that the Dying Declaration is in the custody of the Court and he did not take any steps to get the same.

- As regards LW118, PW67 would depose that he was present at the scene of crime and however, after the occurrence was over, he did not lodge any complaint ; but was taking steps to lodge the complaint and with regard to sending of Shankar for treatment, he did not submit any Special Report and also not obtained statements from the persons who were present in the scene of occurrence and he has also not insisted for examination of LW118 as a witness to the learned Public Prosecutor.
- PW67 would further state that A3 along with A1 and two others, came to the house of PW1 and he did not collect any documents and he did not array DW2-grandfather and the grandmother of PW1 as accused persons.
- PW67 was also cross-examined on behalf of A1 and A2 and in answering the questions, he would state that the assault took place at about 2.00 p.m. on 13.03.2016 and that at about 2.30 p.m., an information was received as to the assault upon a single individual and he received the official information at about 6.30 p.m. on 13.03.2016 and he cannot tell as to the receipt of the prior information.

- PW67 also made an attempt to get the Dying Declaration of PW1 and submitted a requisition to the Dean of CMCH and requisition from the Doctor was also recorded by the Fast Track Judge, Coimbatore ; but he did not get the copy of the same.
- PW67 would further depose that A1, A4, A5, A6 and A8 hatched a conspiracy in Children's Park of Arulmighu Dhandayudhapani Temple and hirelings were arranged by A1 and A2 and only after obtaining the confession statement of A1, he got the confession statement from A2 and A1 to A3 belong to Piranmalai Kallar De-notified community.
- As regards the act of A1 in getting release of A4 and A8 has spoken to by PW34, PW67 had deposed that he did not see the Muchalika through which A1 got release of A4 and A8 and denied the suggestion since A1 did not sign the Muchalika, he did not seize the same and also denied the suggestion that cases under Exs.P35 and P36 were falsely registered and also got the certification as to the competency of the Nodal Officer to issue the certification and he did not take any steps as to the non-submission of the Special Report by LW118.
- PW67 denied the suggestion that after a long gap from the marriage of PW1

and Shankar, there was no necessity on the part of A1 and A2 to attack them and also denied the suggestion that a sum of Rs.44,000/- kept for family expenses, has been utilised for the purpose of foisting a false case and also would admit that during the course of investigation, PW1 made an attempt to commit suicide for which, no case has been registered and Preventive Detention Orders passed against A1 and A2, have been set aside.

70 DW2 is the maternal grandfather of PW1 and he would depose that his wife is Kothaiammal and out of his wedlock with the said Kothaiammal, he has begotten A2-Annalakshmi and Vijay and A1 is his sister's son. Kothaiammal, through her first marriage with one Pandi, has begotten A3 and the maternal uncle is only Vijay and he died on 04.02.2006 in an accident. He has spoken about the events that had happened as to the registration of the earlier cases. In the cross-examination, he would depose that A1 and A2 paid the Capitation Fee and got admission of PW1 and they got a means through agricultural income and he was not aware of the maintenance of the joint account of A1 and A2 and on 12.07.2015, PW33, the Inspector of Police, All Women Police Station has informed about the fact of marriage of PW1 with Shankar and A1 and A2 neither exhibited happiness nor sorrow and they did not get any jewels and cloth worn by

PW1 and also denied the suggestion that in the Police Station, A2 bit the chappal worn by PW1 and threw it away and also denied the suggestion as to the performing of black magic upon PW1. DW2 would further admit that with regard to the illegal transportation of Ganja, 2 cases are pending against him and PW1 was in his custody till the age of five years.

71 This Court, in the earlier paragraphs, after referring to some of the decisions of the Hon'ble Supreme Court of India, laid down the proposition that proof of conspiracy is in the nature of a circumstantial evidence and therefore, the links in the chain of circumstances shall be completed so as to sustain the charges framed against the concerned accused. This Court, keeping in mind the said time bound tested principles, has considered the evidences and other materials placed by the prosecution to sustain the conviction and sentence passed against A1.

72 The following are the circumstances projected by the prosecution against A1:-

[1] Previous complaints given by PW1, deceased Shankar and A1 and the conclusion of the said proceedings.

[2] Mobile phone conversations between A1, A6 and A8 and vice versa.

[3]Drawal of money by A1 from the joint account of A1 and A2 and payment of some money to one of the hirelings.

[4]Conspiracy that took place in Children's Park at Palani and near Rope Car Junction at Palani.

[5]Staying of A5 and A8 in the Lodge owned by PW14 and PW15 as arranged by A1.

73 In the light of the discussions made earlier that between 06.02.2016 and 06.03.2016, there were phone calls from the mobile phones of A6, A8 and A9 to A1 and A2 contacting A8. As far as the rest of the circumstances are concerned, the prosecution failed to link the circumstances which would have been unerringly pointed out the guilt on the part of A1 for the following reasons.

74 Even as per the evidence tendered by the prosecution, the complaint given by PW1 under Ex.P1 on 12.07.2015 came to be closed on the basis of the letter under Ex.P3 dated 12.07.2015 given by PW1 wherein PW22 also made an endorsement. In respect of the complaint given by the deceased Shankar under Ex.P39 dated 24.07.2015, a Closure Report was also filed under Ex.P40 and based on the said complaint given by the deceased Shankar under Ex.P39, PW1 appeared

and expressed her inclination to go along with Shankar and the complaint given by A1 under Ex.P35 dated 11.07.2015 was also closed under Ex.P38 after recording the statement of PW1. PW25 would also say that A1 had never talked about wrecking vengeance against his daughter [PW1] ; but he developed only unhappiness and he has also consoled A1 in this regard and it was also accepted by A1.

75 Now coming to the conspiracy, the testimonies of PW14 and PW15 no way advanced the case of the prosecution for the reason that except the filling up of the first column in Ex.P20 as evidenced under Ex.P21, the names of the persons, viz., A5 and A8 who supposed to have stayed in the Lodge have not been indicated and Identity Cards have not been collected and no receipts for the payment of rent have been given and the counterfoil of the Receipt Book was not even seized by the Investigating Officer – PW67. It is the testimony of PW14 that even prior to the seizure of Exs.P20 to 22, the Investigating Officer caused verification of the said Register [Ex.P20] and that apart, there was no Test Identification Parade conducted so as to enable PW14 and PW15 to identify A5 and A8 and they identified them in the Court at the time of the chief examination on 21.07.2016. The testimonies of PW14 and PW15 would also disclose that they

do not have any acquaintance with them and for the first time, in the open Court, they identified the said accused. Since the relevant records in the form of Ex.P20 which is supposed to be maintained in the normal course of business, have not been maintained properly and also the crucial admission of PW14 that except under Ex.P21 pertains to staying of A5 and A8, for the rest of the persons who stayed in the lodge, the relevant columns have been filled up, also throws doubt as to the genuineness of the entry made in Ex.P21. Therefore, the prosecution was unable to prove that it was A1 who made arrangements for A5 and A8 to stay in the lodge owned by PW14 and PW15.

76 It is also the specific case of the prosecution that prior to the incident, A1, A4 and A5 met in the Children's Park belong to Arulmighu Dhandayudhapani Devasthanam, Palani, through the corroborating testimonies of PW21 and PW22. The testimonies of the said witnesses have been considered and discussed in detail in the earlier paragraphs and PW21 had stated in the chief examination that he knows A1 for six months and in the cross-examination, he had stated that he knew him for two years and on a particular day at about 6.00 p.m., he saw A1 along with 4 youngsters [A4 and A5] and he was unable to identify the rest of two persons and he heard A1 saying that since his daughter [PW1] got married to Shankar, his

reputation got spoiled and he asked as to what they are going to do. In the cross-examination, he had stated that A1 had told him that he is going to wreck vengeance against PW1 and Shankar and he also consoled him. He also made a crucial admission that he saw A1 in the company of youngsters outside the Children's Park and the distance between him and A1 was 70 meters and that when somebody was conversing in such a distance, one cannot decipher it and though he saw A1 and others conversing for two minutes, he did not know the actual conversation happened between them. Of course, he identified A4 and A5 in the Court at the time of chief examination on 19.07.2016.

77 PW22 was related to the deceased Shankar and also he speaks about the conspiracy in the form of conversation between A1, A5, A6, A7 and A9 near Rope Car Junction on 12.03.2016 at about 5.00 p.m. and identified them in the open Court. In the cross-examination, PW22 also made a crucial admission that he did not hear the nature of conversation and no Test Identification Parade was conducted and he did not disclose the age, physical features of the persons he had seen on that day [A4 to A7 and A9] at the time of investigation done by PW67 and that he is also related to the deceased.

78 The testimonies of the said witnesses as to the seeing of A1 in the company of some of the assailants is highly doubtful. It is also to be noted at this juncture that except A1, they do not have any acquaintance with the other accused and no Test Identification Parade was conducted and the identification for the first time was made in the Court and as such, this Court is not inclined to believe the said testimonies as regards the charge of conspiracy.

79 A2 – the wife of A1, almost stand on similar footing as that of A1 and the Trial Court had acquitted A2 on the ground that through her mobile phone, she did not contact the assailants and the money drawn was from the joint account, for which, A2 has no role to play for the reason that there was no evidence that she gave money to A4 directly and the Trial Court further recorded the finding that as regards recovery of cellphone [M.O.29] from A2 is concerned, as per the admissible portion of the confession statement under Ex.P93 is concerned, there is no specific evidence to substantiate the said recovery. The Trial Court also recorded the finding that the alleged act of A2 in biting the chappal worn by A1 and throwing it away has also been substantiated and ultimately recorded the finding in paragraph No.25 that there is no substantial evidence to prove the role of A2 as to the participation in the conspiracy and there is a doubt also. Of course,

the State has preferred appeal against her acquittal.

80 The testimony of PW25 also speaks about the disclosure of the alleged elopement of the daughter of A1 with Shankar and the words of consolation which has also been accepted by A1, did not strengthen the case of the prosecution. So also the evidence of PW26. During chief examination, PW26 had spoken about A1 coming along with a boy in a motorcycle and identified the house of Shankar. In the cross-examination, he had admitted that he is the friend of the deceased Shankar and both of them belong to the same community and when A1 came to the house of Shankar, he did not create any ruckus and forcefully taken PW1 and he did not know the registration number of the motorcycle and the brand name of the vehicle. The said testimony also appears to be artificial and not believable.

81 Now coming to the evidence of PW28 who is said to have pledged his motorcycle [M.O.13] to A1 and A2, in the cross-examination, PW28 had deposed that he borrowed a sum of Rs.70,000/- from A1 and A2, for which, he did not execute any written document in their favour and he did not give any RC Book for the security and nobody has signed as guarantors also and despite the vehicle

was seized in connection with the commission of the crime, he did not make any attempt to get it back by way of interim custody. It is also the case of the prosecution that A1, after pledging of the vehicle, had handed over the same to A4 and the said vehicle was used in the commission of the crime so as to enable some of the assailants to flee from the scene of crime soon after the occurrence. PW67- the Investigating Officer would also admit in his cross-examination that PW29, during the course of investigation, did not state anything about the Engine and Chassis Number. In the light of the testimony of PW29, the prosecution is unable to prove as to the pledging of the two-wheeler [M.O.13] with A1 and A2 and the conduct of PW29 also appears to be doubtful and unbelievable.

82 PW30-Balasubramaniam was also examined as to the conspiracy which took place in the Children's Park at Palani and according to him, he is eking out his livelihood as an auto driver and he knew A1 for two years who was running taxi and he used to park his vehicle opposite to the Auto Stand and he also gave the description of the Children's Park which admeasures 5 Acres and the topography also and the length of the Park was 30 feet and the breadth was 40 feet and the park lies adjacent to the bypass road which is having a breadth of 18 feet and he was one of the witnesses who was present at the time of interaction of A1 and who identified the spot. This Court has also recorded the finding that the

testimonies of PW21 and PW22 cannot be believed and in the light of the testimony of PW30 as to the physical features of the park, it would have been impossible for PW21 and PW22 to hear the conversation and it is once again to be noted that the said witnesses do not have any prior acquaintance with the other accused who were identified by them in the open Court and they would also admit that their photographs were also shown by PW67 in the recordings of the Laptop maintained by him.

83 PW33-Tamizhselvi, the Station House Officer, All Women Police Station, Udumalpet Police Station, who speaks about Ex.P3 even in the chief examination, had stated that PW1 voluntarily came forward to hand over the jewels and watch worn by her and A1 also gave a written undertaking that he will not create any problem in respect of the marriage of his daughter-PW1 with Shankar and similarly, under Ex.P3, PW1 also made a request not to take any further action and in the cross-examination, he has also admitted that both of them went out peacefully after conclusion of the proceedings.

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84 PW34-Muthulakshmi, the Sub Inspector of Police attached to Palani Town Police Station had also spoken about the complaint given by A1 for missing

of his daughter-PW1 under Ex.P35 as well as the arrest of A4 and A8 under Exs.P36 and 37 and also spoken about the fact of A1 giving surety for the release of A4 and A8. The prosecution, through the said testimony, wants to prove as to the prior acquaintance of A1 with A4 and A8 who were the hirelings. PW34, in the cross-examination, would admit that for the release of A4 and A8 as per the surety executed by A1, there are no documents/endorsements available and the counter signatures of A4 and A8 were also not been obtained and they also did not execute any bond. It is also to be noted at this juncture that both of them were arrested under Section 41[1][d] of CrPC, as they were suspiciously roaming around and it is not a grave offence also. Thus, the prosecution was unable to prove as to the previous acquaintance of A4 and A8 with A1 through the said witness.

85 PW35-Pugazhenth, the Inspector of Police attached to Palani Town Police Station at the relevant point of time, had spoken about the FIR registered on the basis of the complaint given by A1 under Ex.P35 and he would state that PW1 appeared and gave a statement that she voluntarily went with Shankar and in this regard, statements of A1, A2, mother of A1 and another were recorded and he did not collect the photograph of the marriage of Shankar with PW1 and even at the

time of production of PW1 before the Court of Judicial Magistrate, Palani A1 was present and that, when PW1 made such a statement, A1 did not object or agitated.

86 This Court has, in the earlier paragraphs, had discussed about the joint account of A1 and A2 marked as Ex.P41 through PW37. A perusal of Ex.P41 marked through PW37 would disclose that it contains the name of A2 and the Closed Balance date starts from 01.12.2016 and ended with 14.02.2016. A further perusal of the said exhibit would disclose the following dates and withdrawal of various amounts on that date:-

12.02.2016-Rs.15,000/-, Rs.15,000/- and Rs.10,000/- and there is a reversal entry of ATM on the same day for a sum of Rs.10,000/-, **13.02.2016**-Rs.10,000/-, 10,000/- and Rs.10,000/- and there is a reversal on the same day for a sum of Rs.10,000/- and withdrawal of a sum of Rs.10,000/- and on **14.02.2016**, a sum of Rs.10,000/- and all the withdrawals were done through Automatic Teller Machines [ATMs]. Even according to the prosecution, it was a joint account and PW37 would admit that in ATMs, CCTV Cameras would be available and however, the said CCTV Cameras and the recordings have not been seized and analysed.

87 It is the case of the prosecution that as per the admissible portion of

the confession statements, a sum of Rs.24,000/- was recovered from A4 and yet another sum of Rs.26,000/- was recovered from A6 and the said recovery of the said amounts had been marked as M.Os.23 ad 24 series and the Trial Court has recorded the finding that in the absence of suggestion that A1 has withdrawn the said money for his domestic expenses, there is no plausible explanation offered by A4 and A6 as to how the money of A1 had reached their hands.

88 As per the admissible portion of the confession statement of A4 dated 15.03.2016 marked as Ex.P16, the place in which the blood stained shirts worn by him as well as A5 and A6 and three knives had been hidden, were indicated. As per admissible portion of the confession statement of A6 marked as Ex.P12, A6 had undertaken to identify the place wherein he has hidden his full hand shirt and the weapon used for the commission of the offence. The Seizure Mahazars pertain to seizure of cash [M.Os.11 and 17] were marked Exs.P11 and 17. Ex.P17 pertains to seizure of Cash of Rs.24,000/- and the motorcycle [M.O.12].

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89 The admissible portion of the confession statement of A4, marked as Ex.P16, only points out the place wherein the clothes worn by A4, A5 and A6

along with 3 weapons were hidden ; but the portion of the statement wherein, he voluntarily handed over a sum of Rs.24,000/- from his pant pocket has not been indicated. The admissible portion of A6, marked as Ex.P12 would disclose that he had indicated the place in which he has hidden the cloth worn by him and the weapon used by him at the time of commission of the offence and the other portion of the confession statement would disclose the payment of a sum of Rs.20,000/- by A4 to him. However, in Ex.P11, apart from seizure of an unregistered motorcycle marked as M.O.13, cash of Rs.20,000/- was also seized and it is not even the statement of A6 that he had handed over the said sum.

90 In the considered opinion of the Court, the drawal of money by A1 from his joint account through ATM, in the light of the discussions made, had not at all been proved by the prosecution, especially for the reason that though ATMs do contain CCTV Camera, naturally the image of the persons who come and use the ATM, would have been recorded and the same has not been seized by PW67 as done by him in respect of the CCTV Camera installed in Eswari Departmental Store owned by PW7. In the admissible portion of the confession statement also, there are no specific words as to the recovery of the said money and the rest of the admissible portion of the confession statement of A4 would disclose that he

voluntarily handed over the sum of Rs.24,000/- marked as M.O.23 and even it was absent in the confession statement of A6. Even otherwise, the Bank Statement marked through PW37 marked as Ex.P41 would disclose that the amount of Rs.80,000/- were all withdrawn through ATM between 12.02.2016 and 14.02.2016. It is to be noted at this juncture that A1 is also running a Taxi and also doing agricultural activities. In the considered opinion of the Court, the prosecution is unable to prove that A1 alone has withdrawn the said sums through ATMs and paid a part of the amount to A4 and A6 – assailants in furtherance of the conspiracy to do away with the life of PW1 and Shankar.

91 PW67, the Investigating Officer, in pages No.38 and 39 of his cross-examination done on behalf of A4 to A9 and A11 would also admit that A6, in the confession statement, did not specifically indicate that he handed over a sum of Rs.20,000/- and the discovery of motorcycle, but merely stated that he is possession of the said amount and in Ex.P11, the Mahazar pertains to A6, there was no indication that on the basis of the admissible portion of the confession statement, the said sum and motorcycle were recovered and in Column No.7 of Ex.P11 also, the denomination of the sum of Rs.20,000/- has been indicated. Thus, the prosecution was unable to prove the drawal of money by A1 from the joint account of himself and his wife and payment of part of the sum to the said

hirelings who took away the life of PW1 and Shankar in continuance of the conspiracy.

92 A1 has been roped in for the commission of the offence under Sections 302 of IPC and 307 of IPC as well as Section 3[2][Va] of the Scheduled Caste and Scheduled Tribes [POA] Amendment Act, 2015 with the aid of Section 120[B] of IPC.

93 This Court has also taken into consideration some of the cited decisions relied on by the learned Senior counsel appearing for A1/appellant in CrL.A.No.162/2018.

94 In *1949 Madras Weekly Notes [Crl.] 88 Privy Council [Walli Mohammad and another V. The King]*, it is held as follows:-

".....the statements of each prisoner are evidence against himself only and are inadmissible against his fellow accused. Consequently the only safe method of testing the strength of the case for the prosecution is to take each man's case separately, neglect the evidence of the other and ask whether the connecting and inconsistent nature of the matters alleged and persons implicated combined with the

admission that the accused man was himself present is enough to justify a verdict against him."

95 In 1949 *Madras Weekly Notes [Crl.] 116 Privy Council [Bhuoni*

Sahu Vs. The King], it is held as follows:-

"S.30 seems to be based on the view that an admission by an accused person of his own guilt affords some sort of sanction in support of the truth of his confession against others as well as himself. But a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in S.3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver which is not subject to any of those infirmities. S.30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act ; but the section does not say that the confession is to amount to proof. Clearly there must be other evidencethe view which has prevailed in most of the High Courts in India, namely that the confession of a co-accused can be used only in support of other evidence and cannot be made the foundation of a conviction, is correct."

96 In *1952 Madras Weekly Notes [CrL] 106 [SC] [Kashmira Singh V. The State of Madhya Pradesh]*, the appreciation of the evidence relating to the confession as well as Section 30 of the Indian Evidence Act, came up for consideration and it is observed by the Hon'ble Supreme Court of India as follows:-

"..The proper way to approach a case of this kind is, first, to marshall the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course, it is not necessary to call the confession in aid.... In such an event, the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

97 In *AIR 1955 SC 104 : 1955 CrL.L.J.196 :1955 [1] SCR 903 [Ramkishan Mithanlal Sharma and Others V. State of Bombay]*, the scope of Section 27 of the Evidence Act, came up for consideration and in paragraphs No.21 and 22, the Hon'ble Apex Court has observed as follows:-

"21.....Section 27 is an exception to the rules enacted

in Sections 25 and 26 of the Act which provide that no confession made to a police officer shall be proved as against a person accused of an offence and that no confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Where however any fact is discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, that part of the information as relates distinctly to the fact thereby discovered can be proved whether it amounts to a confession or not. The expression "whether it amounts to a confession or not" has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby discovered can be proved against the accused. The sections seems to be based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. [Kottaya V. Emperor AIR 1947 PC 67].

22 *On a bare reading of the terms of the section it appears that what is allowed to be proved is the information or such part thereof as relates distinctly to the fact thereby discovered. The information would consist of a statement made by the accused to the police officer and the police officer is obviously precluded from proving the information or part thereof unless it comes within the four corners of the section...."*

98 In *AIR 1964 SC 1184 : 1964 [6] SCR 623 : 1964 [2] CrL.L.J.344*

[Haricharan Kurmi and Another Vs. State of Bihar], the Hon'ble Supreme Court

has taken a similar view as that of the above cited decisions of the Privy Council, has been taken.

99 The recovery of money said to have been paid by A1 to A4 to A8 as well as from A6, in the considered opinion of the Court may not fall strictly within the ambit of Section 27 of the Indian Evidence Act and even for the sake of accepting the arguments advanced on behalf of the State, the prosecution has failed to prove that it was A1 alone had withdrawn the money from the joint account of himself and his wife under Ex.P41 marked through PW37, especially in the light of the fact that the said sums were withdrawn from the Automatic Teller Machines [ATMs]. It also came out from the evidence that A1 is also a Tourist Car Operator.

100. In the light of the findings recorded by this Court, the prosecution is unable to prove the charge of conspiracy beyond any reasonable doubt and he is to be acquitted for the commission of the offence of conspiracy under Section 120[B] of IPC as well as Sections 302, 307 read with 109 of IPC and Section 3[2][Va] of SC/ST [POA] Amendment Act, 2015.

CrL.A.No.163 of 2018 FILED BY A4 TO A8:-

101 A4 to A8 have been attributed with fatal overt acts. *De hors* the findings recorded by this Court that the charge of conspiracy as against A1 have not been proved, if this Court ultimately finds that the evidence and materials available on record would be sufficient, still it can convict them for the commission of the offence punishable under Sections 302 read with 149 IPC, 307 read with 149 IPC and other allied offences and also the relevant provisions of SC/ST [POA] Amendment Act, 2015.

102 PW1 is the injured eyewitness. PW54, the Inspector of Police attached to Udumalpet Police Station, on receipt of information at about 3.50 p.m. on 13.03.2016 from PW52 through telephone as to the demise of Shankar as well as the treatment given to PW1-Kowsalya, proceeded to CMCH at Coimbatore and recorded the statement of PW1 who was admitted as an In-patient and after read over to her, got her signature in the said statement and it was marked as Ex.P4. PW54, on the basis of the said statement, came back to Udumalpet Police Station on the same day and at about 18.30 hours, has registered the case in Crime No.194 of 2016 for the commission of the offences under Sections 147, 148, 307, 302, 109 of IPC read with Section 3[2][va] of SC/ST [POA] Amendment Act, 2015 and the

Printed FIR is marked as Ex.P66. The Printed FIR [Ex.P66] as well as Ex.P4 were despatched to the jurisdictional Magistrate Court through PW53.

103 PW51-Kannappan, at the relevant point of time, was the Head Constable attached to Udumalpet Police Station and while he was on duty, at about 3.00 p.m. on 13.03.2016, received an intimation from the Government Hospital at Udumalpet as to the sustainment of cut injuries by a male and female. He immediately proceeded to the said Hospital and was informed that both of them were referred to further treatment to CMCH. PW51 came back to the Police Station at about 3.30 p.m. and had told the said fact to PW52. He was also entrusted with the body of Shankar after completion of postmortem. PW51, in the cross-examination done on behalf of A4 to A9, would admit the fact that on receipt of information from the hospital, it should be recorded in the General Diary as well as the Intimation Register and however, it was not done so after the receipt of Ex.P65-intimation.

104 PW52-Savithiri, was the Head Constable attached to Udumalpet Police Station and while she was on duty, received an intimation about the said incident at about 3.00 p.m., immediately she deputed PW51 to Government

Hospital at Udumalpet and on return, he informed the fact of referring both the injured to CMCH. PW52 received a wireless message from the Police Outpost of CMCH at about 345 p.m. on 13.03.2016 and he in turn informed the same to the Inspector of Police attached to Udumalpet Police Station.

105 In the cross-examination done on behalf of A4 to A9, PW52 has admitted the fact of receipt of information of the demise of Shankar at about 3.45 p.m. on 13.03.2016 from the Police Outpost of CKCH and the Station House Officer had also received the said information. However, the other police personnel present in the Police Station did not register any case and PW52 did not depute any police person to the scene of occurrence and also admitted that the distance between Udumalpet Police Station and the Government Hospital was only 200 meters and it can be reached within five minutes.

106 PW54, who registered the FIR under Ex.P66 in the cross-examination done on behalf of A4 to A9 would state that at the time of recording the statement of PW1, he did not ascertain her mental and physical condition either from the doctor or from the nurse and Ex.P4 was written by the Constable Nagarajan and however, it was not indicated so in Ex.P4. The said witness would

further add that prior to the registration of the case, no police personnel were sent either to the Komaralingam or to Palani and at the relevant point of time, LW118-Venkataraman, Inspector of Police [Crime], Udumalpet Police Station was on duty and he was not aware that the said police officer was on duty in and around places near Udumalpet Central Bus Stand.

107 PW53 was assigned with the duty to submit the Printed FIR [Ex.P66] as well as Ex.P4 to the jurisdictional Magistrate Court and he got the said documents at about 7.15 p.m. on 13.03.2016 from PW54 and at about 7.45 p.m., he went to the house of the learned Judicial Magistrate No.1, Udumalpet, and since he was unavailable on account of official duty, he was waiting there and on return of the learned Magistrate, he handed over the said documents. In the cross-examination, he would state that the distance between the Police Station and the Court of Judicial Magistrate No.1, Udumalpet, is about half a kilometre and it can be reached within five minutes and when he reached the Court at about 7.30 p.m. on 13.03.2016, no officials of the court were available and answered a suggestion that a person would be available for 24 hours and denied the suggestion as to the belated despatch of the FIR.

108 The learned Senior counsel appearing for A4 to A8 and also for A9 would submit that there is a serious lapse in the form of unexplained delay in registering and despatching the FIR and pointed out lapses on the part of Pws.51, 52 and 54 and also added that the conduct of the said police personnel despite receipt of the information with regard to the commission of the cognizable offence and the inaction on the part of LW118-Venkataraman, Inspector of Police [Crime] attached to Udumalpet Police Station who was in the nearby vicinity is fatal to the case of the prosecution. It is further pointed out that the earliest information as to the commission of the offence, in all probability, would have been burked by the prosecution and also drawn the attention of this Court to the cross-examination of the Investigating Officer – PW67.

109 PW67, the Investigating Officer, on receipt of the FIR, had reached the scene of occurrence at about 7.30 p.m. on 13.03.2016 and commenced the investigation and after completion of the investigation, has filed the Final Report / Charge Sheet on 23.04.2016. In the cross-examination done on behalf of A4 to A9 and A11, PW67 would state during the course of investigation, he became aware of the fact that LW118 was on patrol duty at about 2.00 p.m. on 13.03.2016 at Udumalpet Central Bus Stand and LW118 in his statement, has stated that while he

was on patrol duty, having seen a male and female were found lying with injuries, sent them for treatment by engaging the services of an Ambulance and however, LW118 did not sent any intimation to the Police Station and he has also not given any reasons for the same. In the cross-examination done on behalf of A11, PW67 would state that LW118 was present near the scene of occurrence and however, he did not lodge any complaint ; but was taking steps to obtain a complaint and after sending PW1 and Shankar for treatment, he did not give any Special Report. He did not record any statement from the persons who were present in the scene of occurrence. PW67 would further state that he did not make any request to the Public Prosecutor to examine LW118. It is also the evidence of PW67 that he tried to obtain a dying declaration from PW1 at CMCH and without that he continued the investigation, and he did not take any steps in that regard for the reason that the Public Prosecutor had told him that the dying declaration recorded is already in the custody of the Court and denied the statement as to the burking of the said dying declaration.

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110 Thus, from the testimonies of the above said witnesses, it is rather surprise to note that despite the receipt of the information as to the incident/attack upon PW1 and Shankar, the police personnel did not act swiftly and shown little

urgency and LW118, who himself is a police officer, did not choose to lodge any complaint and it is also to be noted at this juncture that though he has been cited as LW118 in the Charge Sheet / Final Report, he was not examined as a witness.

111 PW54 has recorded the statements of PW1 under Ex.P1 and from the materials placed, PW1 was conscious right from the time of attack till she was referred for further treatment at CMCH. In Ex.P4 dated 13.03.2016, PW1 had narrated about the earlier incidents prior to the attack on 13.03.2016 and as regards the happenings which took place in the afternoon hours on 13.03.2016, she had stated that she and her husband Shankar started from Komaralingam and came down to Udumalpet and after purchasing articles, they were waiting in front of Eswari Departmental Store to go to Central Bus Stand, Udumalpet at about 2.15 p.m. At that juncture, she saw six persons coming in two two-wheelers, armed with aruvals and she was pushed down and kicked and injuries were inflicted on three places on the head and in injury was inflicted on the left hand finger. Her husband Shankar was attacked by six persons and words were uttered as to whether he can contract love marriage and he was also abused with the caste name and that he should die and immediately, all six persons attacked him with lethal weapons on the right side of the neck thrice, left hand and right hand fingers as

well as on the back and PW1 immediately raised alarm to save them and since the assailants were armed with lethal weapons, none of them had approached them and after finishing the job, all of them fled away from the scene of crime in two-wheelers and both of them were administered with first aid and were referred to CMCH and she was informed about the demise of her husband. PW1 had also added that the said incident had happened at the instigation of her parents, viz., A1 and A2 and her uncle A3 and therefore, prayed for appropriate action against A1 to A3 and identifiable six assailants.

112 PW1 was examined in chief on 12.07.2016 and on that day, there was no cross-examination done on behalf of A1 to A9 and A11 and the learned Legal Aid Counsel who appeared for A10 was also absent. On behalf of A3, a petition was filed for recalling PW1 and she was cross-examined on 09.11.2016. Learned counsel for A1, apart from adopting the cross-examination of A3, has also cross-examined PW1. PW1, in the cross-examination, would state that she was sent to CMCH in a private Ambulance accompanied by Shankar and she denied the suggestion that before the doctor she had stated that she was attacked by known persons and both of them were administered first aid at the Government Hospital, Udumalpet and at about 4.15 p.m. on 13.03.2016, her statement was

recorded and during midnight hours on the same day, PW67 met her. She would further state that though she had stated that both of them were attacked by six known persons, she had indicated only five persons and she identified in them the Test Identification Parade and she was fully conscious and took treatment as an In-patient for six months. In the cross-examination done on behalf of A4 to A9, PW1 would depose among other things, admitting the statement in Ex.P4 as to the inflicting of attack by six persons and she would further depose that either in Ex.P4 or during the course of examination, she did not give the names of the persons or their address and became aware of their names only at the time of the Test Identification Parade and she did not specifically give the overt acts on the part of the assailants and also not given their physical features, age either in Ex.P4 or in the statements recorded during investigation as well as the dress worn by them. She also not indicated as to the nature of the weapons used for the commission of the offence.

113 A4 and A5 were apprehended by LW118 while he was on patrol duty at about 6.00 a.m. on 15.03.2016 and on receipt of the information, PW67 proceeded to the spot and recorded their confession statements and the admissible portion of the same were marked as Exs.P.16 and 18 respectively, which led to the

discovery of the cloth and lethal weapons used by them and also recovery of money said to have been paid by A1. A perusal and consideration of the testimonies of the above cited witnesses would disclose that there are some lapses in the investigation at the initial stage, especially, with regard to the registration of the FIR.

114 In *AIR 1955 SC 196 [H.N.Rishbud and Inder Singh Vs.State of Delhi]*, the mandatory or directory nature of Section 5A of the Prevention of Corruption Act, 1947, came up for consideration and in paragraph No.5, the issue relating to illegality in the investigation has been considered. It is relevant to extract paragraphs No.9 and 10:-

"9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to

whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of

the Code of Criminal Procedure which is in the following terms is attracted:

“Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice.”

*If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in *Prabhu v. Emperor* [AIR 1944 Privy Council 73] and *Lumbhardar Zutshi v. King* [AIR 1950 Privy Council 26] . These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of*

prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for."

115 In ***AIR 1999 SC 3717 [Leela Ram [Dead] Through Duli Chand V. State of Haryana and Another]***, the issue relating to the irregularity or illegality during investigation and discrepancies in evidence of the eyewitnesses came up for consideration and it is relevant to extract paragraph No.8 :-

"8. It is now a well-settled principle that any irregularity or even an illegality during investigation ought

not to be treated as a ground to reject the prosecution case and we need not dilate on the issue excepting referring to a decision of this Court (vide State of Rajasthan v. Kishore [(1996) 8 SCC 217 : 1996 SCC (Cri) 646 : AIR 1996 SC 3035])."

116 In paragraph No.9 of the said decision, the Apex Court referred to its earlier decision reported in *AIR 1985 SC 48 : 1985 CrL.LJ 493 [SC] [State of UP Vs. M.K.Antony]* and extracted paragraph No.10 and it is relevant to extract the same:-

"9....In this context, reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] . In para 10 of the Report, this Court observed: (SCC pp. 514-15)

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence,

attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

It is also relevant to extract paragraphs No.11 and 12 :-

"11. The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.

12.It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain

some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

117 In **2008 [2] SCC [Cri.] 600 [Animireddy Venkata Ramana and Others Vs. Public Prosecutor, High Court of Andhra Pradesh]**, the scope and ambit of FIR came up for consideration and it is held that in the FIR, each and every detail of the incident was not necessary to be stated, but it is not meant to be an encyclopedic. While considering the effect of some omissions in the First Information Report on the part of the informant, a Court cannot fail to take into consideration, the probable physical and mental condition of the first informant. One of the important factors which may weigh with the Court is as to whether there was a possibility of false implication of the appellants. Only with a view to test the veracity of the correctness of the contents of the report, the Court applies certain well known principles of caution. [paragraphs No.13 and 14].

118 In **1999 [9] SCC 524 [Leelaram V. State of Haryana]**, it is observed

that:-

"There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence...."

The court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise."

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119 In 2012 [10] SCC 433 [Kuriya and Another V. State of Rajasthan], contradictions, inconsistencies, exaggerations and embellishments as well as discrepancies or improvements in the statements of the witnesses have been considered and following principles have been reiterated:-

"30. This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even in law render credential to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility

of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements.

31.What is to be seen next is whether the version presented in the Court was substantially similar to what was said during the investigation. It is only when exaggeration fundamentally changes the nature of the case."

120 In **2014 [14] SCC 619 : 2015 [1] SCC [Cri.] 462 [Pargan Singh V. State of Punjab]**, the identification of the accused by the witness and the credibility of the evidence came up for consideration. It is a case of death by snatching of bag containing Rs.4 Lakhs and in the process, by means of firing, the person who carried the bag, was done to death. The Apex Court has exhaustively dealt with the theory working on human memory and it is relevant to extract paragraphs No.18.1 to 18.6:-

"18.1. First, memory does not work like a video recorder. Instead, when a person witnesses some complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires fragments of information from the environment. These fragments are then integrated with other information from other sources. Examples of such sources are: information previously stored in memory that leads to prior expectations about what will happen, and information—both information from external sources, and information generated internally in the form of inferences—that is acquired after the event has occurred. The result of this amalgamation of information is

the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not "cast in concrete". Rather, a memory is a highly fluid entity that changes, sometimes dramatically, with the passage of time. Every time a witness thinks about some event—revisits his or her memory of it—the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g. when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event.

18.2. *Memory researchers study how memory works using a variety of techniques. A common technique is to try to identify circumstances under which memory is inaccurate versus circumstances under which memory is accurate. These efforts have revealed four major sets of circumstances under which memory tends to be inaccurate. The first two sets of circumstances involve what is happening at the time the to-be-remembered event is originally experienced, while the second two sets of circumstances involve things that happen after the event has ended.*

18.3. *The first set of circumstances involves the state of the environment at the time the event is experienced. Examples of poor environmental conditions include poor lighting, obscured or interrupted vision, and long viewing distance. To the degree that environmental conditions are poor, there is relatively poor information on which to base an initial perception and the memory that it engenders to begin with. This will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.*

18.4. *The second set of circumstances involves the state of the observer at the time the event is experienced. Examples of sub-optimal observer states include high stress, perceived or directly inflicted violence, viewing members of different races, and diverted attention. As with poor environmental factors, this will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.*

18.5. *The third set of circumstances involves what occurs during the retention interval that intervenes between the to-be-remembered event and the time the person tries to remember aspects of the event. Examples of memory-distorting problems include a lengthy retention interval, which leads to forgetting, and inaccurate information learned by the person during the retention interval that can get incorporated into the person's memory for the original event.*

18.6. *The fourth set of circumstances involves errors introduced at the time of retrieval i.e. at the time the person is trying to remember what he or she experienced. Such problems include biased tests and leading questions. They can lead to a biased report of the person's memory and can also potentially change and bias the memory itself."*

121 On the facts of the case, the Hon'ble Apex Court has held that it took 90 seconds to commit the crime and the said period was too long a period which could enable the eyewitness, viz., PW2, to watch the accused persons under such a horrible experience and would not be easily forgotten and the death of a friend and near death experience by the witness himself would be etched in the memory for too long.

122 This Court, keeping in mind, the principles culled out in the said decisions, is analysing the testimonies of the eyewitnesses, viz., PWs.1 to 4.

123 The oral testimony of PW1 has been considered in depth by this Court while extracting the facts as well as dealing with the case of A1 – her father with regard to the charge of conspiracy. It is again to be reiterated that *de hors* acquittal of A1 by this Court and A2, A3 and A10 by the Trial Court, A4 to A8 have been attributed with fatal overt acts in the form of attacking PW1 with lethal weapons and caused grievous injuries and also caused the death of Shankar and with regard to the said acts, individual charges have also been framed.

124 It appears that there was some lapse initially in not registering FIR at the earliest point of time and the oral testimonies of the witnesses, viz., PWs.51, 52 and 54 would also substantiate the same and that apart, the police official who was on duty near the scene of occurrence, viz., LW118-Venkataraman, Inspector of Police [Crime], has not been examined despite the fact that he was instrumental in the arrest of A4 and A5.

125 It is very pertinent to point out at this juncture that Ex.P4 which is in

the nature of complaint, has been recorded by PW54 on the same day of occurrence, i.e., 13.03.2016, from PW1 who was admitted and taking treatment as an In-patient at CMCH and the contents of Ex.P4 as well as her oral evidence would disclose that right from the time she suffered grievous injuries, she was fully conscious. PW1, apart from suffering grievous attack, had also seen the repeated fatal attack inflicted by A4 to A8 on Shankar by using lethal weapons. It is also to be remembered at this juncture that the said attack took place at about 2.15 p.m. on 13.03.2016 in one of the busiest places in Udumalpet. PW1 had lost her companion, viz., Shankar with whom she is said to have been married and since it is a tragic incident and painful event, she is bound to remember the same.

126 The observations made by the Hon'ble Supreme Court of India in the decision reported in *2014 [14] SCC 619 [cited supra]* would also come to the aid of the prosecution.

127 PW1 was examined in chief on 12.07.2016, within four months from the date of incident and upon filing of petition, she was recalled on 09.11.2016 and was cross-examined on behalf of A3. On behalf of A1 and A2 also petition was filed for recalling her and she was also cross-examined on their behalf on

23.06.2017. This Court in the later part of judgment is also making observations as to the deferment of cross-examination of the crucial eyewitnesses and allowing of recall petition filed by the accused after some lapse of time, may be for the purpose of winning over the said witness or under the impression that after a lapse of time, they forget the incident or not in a position to narrate the incident properly.

128 PW1 in Ex.P4, though would state that the attack was inflicted by six persons, later on would depose that only five persons carried out the attack. If a witness gives a parrot-like version with minute details, a doubt is bound to arise as to the tutoring of the said witness by the prosecution. It is also to be remembered at this juncture that PW1 is an injured witness and it requires and rather deserves a higher degree of credibility unless there are strong reasons to disbelieve or discard the said testimony.

129 It is also a well settled position of law that quality of the witness alone matters and not the quantity and if the testimony of the eyewitness is cogent, reliable and trustworthy, it can be the sole basis of conviction also. There are bound to be some inconsistencies or embellishments or exaggerations in the testimonies of the eyewitnesses and it is obligatory on the part of the Court, while

appreciating their evidence, to separate grain from chaff and find out whether the witnesses are speaking the truth.

130 In the case on hand, on the basis of Ex.P4, PW54 registered the FIR under Ex.P66 at 18.30 hours on 13.03.2016 and upon receipt of the same, PW67- the Investigating Officer has proceeded to the scene of occurrence and commenced the investigation. PW51 to whom the originals of Ex.P4 and Ex.P66 was handed over, for submitting the same to the jurisdictional Magistrate, has also explained the reasons as to the alleged delay in submitting the originals of Exs.P4 and P66. In the considered opinion of the Court, in the light of the above facts and circumstances, it cannot be said that the FIR came to be registered with considerable delay and the originals of Exs.P4 and P66 had also reached the jurisdictional Magistrate without much loss of delay/time and that apart, FIR also came to be registered on the basis of Ex.P4-statement given by PW1 [injured eyewitness] to PW54 – Inspector of Police [L&O], Udumalpet Police Station.

131 PW67-Investigating Officer, in the cross-examination done on behalf of A3, had deposed that he did not enclose the dying declaration given by PW1 along with the Final Report/Charge Sheet and he would further add that he has

taken steps to obtain the dying declaration of PW1 ; but he was not able to get it and without the dying declaration, he proceeded with the investigation and the learned Public Prosecutor also told him that the dying declaration recorded is in the sealed cover and in the custody of the jurisdictional Court and it is not possible for him to get it and therefore, he did not take any steps. PW67 has denied the suggestion that since in the dying declaration of PW1, nothing is stated about the accused and that is why he has buried the said document. Thus, it appears from the said evidence of PW67 that the dying declaration from PW1 was recorded and it was also submitted to the jurisdictional Magistrate Court and was in their custody and in the light of the reasons assigned by PW7 in the cross-examination done on behalf of A3 that he was not able to get it and however, proceeded with the investigation.

132 In the case on hand, PW1 survived later and she was initially treated at the Government Hospital at Udumalpet along with Shankar and later, both of them were shifted to CMCH at Coimbatore and PW54 had recorded her statement under Ex.P4, based on which, he registered the FIR on 13.03.2016 under Ex.P66. Assuming that the dying declaration of PW1 said to be in the custody of the Court, the fact remains that she survived later and the dying declaration given by her, if

any, can be treated as a statement under Section 164 of CrPC.

133 PW67, in the chief examination, would depose that he has also taken steps to record the statements of PW1, PW2, PW3, Ibrahim, Sundaram and Karuppusamy under Section 164 of Cr.P.C., and therefore, the non-collection of the dying declaration said to have been given by PW1, in the considered opinion of the Court, is not fatal to the prosecution. This Court, has recorded the finding that the testimony of an injured eyewitness deserves higher degree of credibility unless there are strong circumstances to disbelieve or discard the said testimony and in the case on hand, PW1 was also subjected to cross-examination.

134 It is to be noted at this juncture that the chief examination of PW1 was done on 12.07.2016 and the learned counsels appearing for A1 to A9 and A11 did not cross-examine her and it was closed and thereafter, on petitions filed for recalling, she was cross-examined on 09.11.2016 and 23.06.2017 respectively. In the light of some passage of time between the chief examination and the cross-examination also, some inconsistencies bound to take place and unless it had gone into the very foundation laid by the prosecution, the testimony of the injured witness, viz., PW1, cannot be discarded in toto. It is obligatory on the part of the

Court to separate grain from chaff and find out whether PW1 has spoken the truth or not? and in the considered opinion of the Court, her testimony supports the case of the prosecution and all material particulars, especially, the role played by the assailants. This Court has also analysed the evidence and materials available as against the assailants and the role played by A9 and A11.

135 PW1, is an injured witness and in Ex.P4, recorded by PW54, she has stated that she and Shankar, after purchasing articles at Udumalpet, they were standing just in front of Eswari Departmental Store for the purpose of crossing the road to take a bus to Udumalpet Central Bus Stand and six persons came in two-wheelers, who are capable of identification and they were armed with aruvals [lethal weapons] and attacked her as well as Shankar and they also abused Shankar with derogatory remarks demeaning his caste.

136 PW1, as regards the attack inflicted upon her by A4 to A8 would depose that when they were waiting in front of Eswari Departmental Store at about 2.15 p.m. on 13.03.2016 for the purpose of crossing the road, A5 armed with an aruval, cut Shankar from behind on the right side of the neck and pushed him

down and thereafter, A6, with an aruval, repeatedly attacked him and A8, who was wearing a helmet, attacked her on the head and and pushed her down and A4, A5 and A6 repeatedly attacked Shankar and he has fallen and rolled down and even after that, A5 to A7 repeatedly attacked Shankar with lethal weapons, so also A4. During the course of attack, A4 to A6 had abused Shankar by making derogatory remarks about his caste. A4 also attacked PW1 and they though that on account of attack, both of them had died and fled away from the scene of occurrence through two two-wheelers.

137 PW1, in the chief examination, further deposed that she had identified the assailants in the Test Identification Parade conducted by PW66-Judicial Magistrate and also identified them in the open Court as well as the weapons used by them marked as M.Os.1 to 5. PW1 was examined in chief on 12.07.2016 and her evidence was closed and on filing petitions, she was cross-examined on behalf of A3 on 09.11.2016 and on 23.06.2017, she was cross-examined by A1, A2, A4 to A9. PW1, in the cross-examination, would depose that in Ex.P4, she had stated that six persons came in 2 two-wheelers and by using aruvals, she was cut on the head and she did not state anything about inflicting of attack upon Shankar. She would further depose that in Ex.P4 as well as during the

course of investigation, she did not disclose the names of the assailants and their address and she became aware of their names only during the course of Test Identification Parade and since the Investigating Officer also did not asked her, she has not told so. PW1 would admit that she was not specific as to the actual overt acts on the part of the accused, both in Ex.P4 as well as in statements recorded during the course of investigation and she also did not specifically indicate the cloth worn by them and denied the suggestion that their identity was disclosed by PW67 and the Investigating Officer did not show the weapons during the course of enquiry. PW1 would further stat that neither in Ex.P4 nor during the course of course of investigation, she did not say anything as to the attempt made by some elderly auto drivers to prevent the attack.

138 This Court, while dealing with the Criminal Appeal filed by A1, had also exhaustively considered the testimonies of PW1 and PW67-Investigating Officer and given findings with reasons. The occurrence took place in a broad day light and in a busy area and PW1 has lost her life partner on account of the fatal attack inflicted and though the occurrence took place in a short span of time, the injured witness/PW1, after sustainment of attack, was conscious throughout, till she was referred and admitted in CMCH. The death of her life partner as well as

the near death experience by her, would be remembered by her for a long time and as such, her testimony cannot be brushed aside though there are some discrepancies in her evidence.

139 It is also the vehement submission of the learned Senior counsel appearing for A4 to A8 that prior to the conducting of Test Identification Parade, photographs of some of the assailants had appeared in News Dailies and PW67- Investigating Officer has also admitted that without obtaining requisite permission, photographs of the accused were taken and as such, Test Identification Parade conducted by PW66, has become false as before doing so, identification of the assailants have been shown to the concerned witnesses through the said photographs.

140 In the decision reported in ***AIR 1971 SC 1050 [Matru @ Girish Chandra Vs. State of Uttar Pradesh]***, the Hon'ble Supreme Court of India had dealt with Section 9 of the Indian Evidence Act and in paragraph No.13, it was observed as follows: "*Identification tests are primarily meant for the purpose of helping the Investigating Agency with an assurance that the progress in the investigation into the offence is proceeding on the right lines.*"

141 In **2011 [3] SCC 654 [Sheo Shankar Singh Vs. State of Jharkand and Others]**, in paragraph No.46, it is observed as follows:-

"46. It is fairly well settled that identification of the accused in the court by the witness constitutes the substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a TIP then provides corroboration to the witness in the court who claims to identify the accused persons otherwise unknown to him. Test identification parades, therefore, remain in the realm of investigation."

142 In the said decision, the Apex Court has taken into consideration, its earlier decision reported in **2003 [5] SCC 746 [Malkhan Singh and Others Vs. State of Madhya Pradesh]** and extracted paragraph No.7 as well as its earlier decisions reported in **AIR 1958 SC 350 [Kanta Prashad V. Delhi Administration]** ; **AIR 1960 SC 1340 [Vaikuntam Chandrappa V. State of A.P.]** ; **1970 [2] SCC 128 [Budhsen Vs State of U.P]** and **1971 [2] SCC 715 [Rameshwar Singh V. State of Jammu and Kashmir]**. In paragraph No.7 in the decision in **2003 [5]**

SCC 746 [cited supra], it is observed among other things that *"it is trite to state that the substantive evidence is the evidence of identification in Court.....The facts, which establish the identity of accused persons are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings....They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."*

143 In the case on hand, PW1 had identified A4, A5, A6 and A8 in the Test Identification Parade conducted on 22.03.2016 and in the second round

parade conducted on the same day, she once again identified A4, A5, A6 and A8 and in the third round of identification also, she identified A4, A5 and A6. The Test Identification Parade in respect of A7 was conducted on 12.04.2016 and PW1 has identified A7 and that apart, she identified the assailants in the open Court. An overall consideration and appreciation of the testimony of PW1 would disclose that the assailants/A4 to A8 were present in the scene of occurrence at about 2.15 p.m. on 13.03.2016 and carried out the attack and as a result, PW1 sustained grievous injuries. So also Shankar and later on succumbed to the injuries on the same date of occurrence. The Postmortem Certificate of the deceased Shankar marked as Ex.P57 by PW46 would also reveal that Shankar had sustained as many as 33 injuries and the opinion given that he died of shock and hemorrhage due to multiple cut and stab injuries and as per the Final opinion marked as Ex.P58, the Viscera of the deceased Shankar does not contain any poison. Therefore, the deceased Shankar died on account of homicidal violence. In the light of the reasons assigned above, there is no rhyme or reason to discredit the testimony of PW1, an injured witness, who also survived the fatal attack in the form of sustainment of grievous injuries.

144 The main plank of attack by the learned Senior counsel appearing for

A4 to A8 is as to the non-examination of LW118-Venkataraman, Inspector of Police [Crime], attached to Udumalpet Police Station who was on patrol duty near the scene of occurrence at the relevant point of time and that series of photographs were taken by PW.67, marked as M.Os.37 to 40, which pertain to A4, A5, A6 and A8 and M.O.45 which pertains to A7. As regards non-examination of LW118 is concerned, the argument advanced was considered by this Court while dealing with the appeal filed by A1 and also rendered its finding and therefore, it is unnecessary to repeat the same.

145 Now, coming to taking of photographs, M.Os.37 to 40 and 45 respectively, PW67, in the chief examination would depose that after effecting the arrest of the accused, especially the assailants, they were brought to Udumalpet Police Station and for the purpose of investigation, their photographs have been taken in four angles by utilising the services of a photographer and the said photographs were marked as M.O.37 [A4] ; M.O.38 [A5] ; M.O.39 [A6] ; M.O.40 [A8] and those photographs were also despatched to the Court under Form 91 marked as Ex.P107. PW67, after effecting the arrest of A1 and A10, also took their photographs and M.O.43 pertains to A1 and M.O.45 pertains to A10 and it was despatched under Form 91 to the Court under Ex.P108. It is also the

submission of the learned Senior counsel that under Ex.D7, a news item was published in Malaimalar on 16.03.2016 and one more news item was published in Dinamalar Daily on 17.03.2016, marked as Ex.D9 and the witnesses, viz., DW4 had spoken about the photographs of A4, A5, A6 and A8 appearing in the Newspaper "Malaimalar" on 16.03.2016 and DW5 had spoken about the appearance of news item on 15.03.2016 as to the arrest of five accused on 15.03.2016 and admittedly, PW67 did not obtain any prior permission for taking the said photographs coupled with the testimonies of DW4 and DW5 and Exs.D7 and D9 had sustained the defence that prior to the Test Identification Parade, photographs were taken and were shown to the witnesses and would further add that even according to the prosecution, the attack on the part of the alleged assailants took place within a short span of time and in the said attack, PW1 had also sustained grievous injuries and coupled with the fact that she made improvements during the course of evidence as to the number of persons inflicting the attack coupled with the fact that she had failed to disclose the physical features and the dresses worn by the accused, it is not safe to rely upon the said testimony.

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146 In 2018 [8] SCC 25 [Sonvir Vs. State [NCT of Delhi]], the Hon'ble Supreme Court of India had dealt with the issue relating to taking of finger prints

of the accused after his arrest without the permission of the Magistrate as per Section 5 of the Identification of the Prisoners Act, 1920. Hon'ble Mrs. Justice Indu Malhotra and the Hon'ble Mr. Justice Ashok Bhushan, had delivered separate and concurrent verdicts. The Hon'ble Mr. Justice Ashok Bhushan, while concurring with the verdict of the Hon'ble Mrs. Justice Indu Malhotra, had also dealt with the important question of law pertaining to interpretation of Sections 4 and 5 of the Identification of the Prisoners Act, 1920. Section 5 of the said Act speaks about the power of the Magistrate to order a prisoner to be measured or photographed.

147 In **2019 [8] SCC 1 [Ritesh Sinha V. State of U.P and Others]**, the Hon'ble Supreme Court of India had dealt with the scope of Section 53, 53A and 311A of CrPC and also dealt with the issue of taking a voice sample. The Hon'ble Apex Court, had taken note of the fact that none of the above said amendments in CrPC specifically authorise or empowers a Magistrate to direct an accused person or any other person to give his/her voice for the purpose of investigation under CrPC and observed in paragraph No.27 that, *"thus, until the explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the*

purpose of investigation of a crime. Such power has to be conferred on the Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in the Court under Article 42 of the Constitution of India."

148 PW67-Investigating Officer, in the cross-examination done on behalf of A4 to A9 and A11 would concede that prior to taking of photographs, he did not obtain permission from the Court and before sending the accused for judicial remand/custody, he took photographs for the purpose of investigation and answered the suggestion that he was not aware of the orders of the Apex Court, prohibiting taking of the photographs of the accused and he would further depose that he took two sets of photographs and forwarded one set to the Forensic Lab and the other set to the jurisdictional Magistrate Court under Form 95. It is very pertinent to point out at this juncture that the photographs of A4, A5, A6 and A8, marked as M.Os.37 to 40 and the photographs of A9 and A10 marked as M.Os.43 and 44 respectively, were forwarded to the Court of Judicial Magistrate No.1, Udumalpet, without any loss of time.

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149 It is also borne out from the evidence of PW67 that he did not obtain any prior permission while taking photographs of the said accused and if the

submission of the learned Senior counsel appearing for A4 to A8 is positively considered, then the said photographs ought not to have been used by PW67 for the purpose of investigation in the form of comparison with video footages and mobile call records. The Court of Judicial Magistrate No.1, Udumalpet, under Ex.P80 dated 17.03.2016, had addressed a Letter to the Director, Forensic Science Laboratory, Chennai, based on the requisition dated 17.03.2016 given by PW67. The contents of Ex.P80 would disclose that apart from enclosing articles such as black colour Digital Video Recorder and Black colour Micro Max Double Sim mobile phone handed over by PW4 marked as M.O.14, photographs of A4, A5, A6 and A8 were enclosed. Under Ex.P82, the jurisdictional Judicial Magistrate, had addressed a Letter dated 30.03.2016, based upon the requisition given by PW67 dated 30.03.2016 and he had enclosed along with the articles, the photographs of A9 and A10. In the same way, under Ex.P84 dated 07.04.2016, the jurisdictional Magistrate had addressed a Letter to the Forensic Lab on the basis of the requisition given by PW67 wherein he had enclosed the photographs of A7 for forensic analysis. The Reports of the Forensic Science Lab, Chennai, in response to the said exhibits, were marked as Exs.P81, P83 and P90 and Annexures to Ex.P90 were marked as Ex.P91.

150 Even if we accept the arguments of the learned Senior Counsel appearing for A4 to A8 that prior permission of the learned Judicial Magistrate No.1, Udumalpet, have not been obtain before taking photographs of the said accused, it can be termed only as an irregularity and it got cured in the form of Exs.P80, P82 and P84 for the reason that the jurisdictional Magistrate Court was also very well aware of the fact of non-obtaining of such a permission by PW67 and despite that, the said official has forwarded the photographs for forensic analysis. It is once again to be pointed out at this juncture that as per the testimony of PW67, two sets of photographs have been taken and one set of the photographs was forwarded to the said Magistrate under Form 95.

151 Let this Court go to the extreme and consider whether any illegality was practiced by the Investigating Officer-PW67 in the form of taking the said photographs without prior permission of the Court and utilised the same for the purpose of investigation.

152 In *AIR 1955 SC 196 [H.N.Rishbud and another V. State of Delhi]*, which pertains to conviction of the appellant under the Prevention of Corruption Act, 1947 and the investigation under the said Act was conducted, not by the

Deputy Superintendent of Police ; but by the Officer of the lower rank and therefore, a question arose for consideration as to whether the trial initiated on such charge sheets, are illegal and required to be quashed. This Court, while dealing with the issue relating to the illegality in the investigation, has considered this decision. In paragraph No.10 of the said decision, it was observed that "*when the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for.*" It was further observed that "*illegality is also curable under Section 537 of CrPC [Old Act].*"

153 In *1973 AIR 157 : 1973 SCR [2] 417 [R.M.Malkani Vs. State of Maharashtra]*, the interception in the form of tape recording phone and its reliability came up for consideration and it was argued on behalf of the appellant therein that the tape recorded conversation was obtained by illegal means and the same is in contravention to Section 25 of the Indian Telegraph Act. It also referred to the decision reported in *1965 [2] All.E.R 464 [R. Vs. Maqsud Ali]*, wherein admissibility of the tape-recording to the incriminating conversation and

evidence also came up for consideration and it was held that the tape recorded conversation is contemporaneous relevant evidence and therefore, it is admissible and it is not tainted by coercion or unfairness and as such, there is no reason to exclude the said evidence.

154 In *AIR 1999 SC 3717 [Leela Ram [D] through Duli chand Vs. State of Haryana and anothere]*, the Apex Court, after taking note of the decision reported in *AIR 1996 SC 3035 : 1996 AIR SCW 1392 [State of Rajasthan V. Kishore]*, in paragraph No.8, observed that "...it is now a well settled principle that any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case."

155 It is not even suggested to PW67 that the photographs were by taken by adopting coercion or under compulsion and the suggestion was that the said photographs were taken contrary to the orders of the Hon'ble Supreme Court of India and the Police Standing Order and the same has been utilised fraudulently for the purpose of Test Identification Parade. The contents of M.Os.37 to 40, 43 and 44 were also not been seriously disputed and as such, the non-obtaining of prior

permission for taking the said photographs can be termed as some "irregularity" and also got cured in the light of Exs.P80, P82 and P84 by the Court of Judicial Magistrate No.1, Udumalpet.

156 A4 to A8 were also convicted for the commission of the offence under Section 120-B of IPC. This Court, while dealing with the Criminal Appeal filed by A1 in CrI.A.No.162/2018, has recorded the finding that except the call details of A1 marked as Ex.P86, wherein there were repeated calls from A8 to A1 and one call each from A6 to A9 to A1 and some calls from A1 to A8, no other circumstances projected by the prosecution against A1, have been substantiated and the chain of circumstances as regards conspiracy hatched by A1, has not been completed and there were missing links and acquitted A1.

157 This Court has also recorded the finding that the prosecution has not proved the fact that A1 has booked rooms for A4, A5 and A8 through A5 in the Lodge owned by PW14 and PW15, for the reason that the Lodge Register was maintained during the normal course of business marked as Exs.P20 and P21 and insofar as hiring of room by A1, was not properly maintained as the relevant entries are lacking. It is also the case of the prosecution that PW21 had seen A1 in

the Children's Park along with A4 and A5 20 days prior to the occurrence and also recorded the finding that even as per the own testimony, PW21 stood 70 feet away from the place where, A1, A4 and A5 had conversation and he would not have heard the conversation and it was admitted by him and there was no Test Identification Parade on that aspect.

158 Similarly, PW22 had seen A1 along with four or five youngsters near the Rope Car Junction of Palani Temple and for him, no Test Identification Parade was conducted and the identification was only in the open Court and this Court, also thread barely discussed their testimonies in the Criminal Appeal filed by A1. PW25, who is stated to be the friend of A1, also spoken about some advise given by him to A1 and the realisation of A1 by accepting the advise of PW25 and his evidence is in no way, had advanced the case of the prosecution as to the wrecking of vengeance on the part of A1 against his daughter-PW1 and her life partner Shankar. Insofar as the testimony of PW26 is concerned, this Cour, in the findings recorded in the Appeal filed by A1, had dealt with the earlier incidents/cases prior to the fateful date of occurrence on 13.03.2016 and also the letter given by PW1 herself under Ex.P3 and given a categorical finding that the charge of conspiracy against A1, has not been proved.

159 Now, coming to the case of A4 to A8, it is relevant to narrate the following facts.

- The Call Data Records [CDRs] were collected by PW67 and the statements of the Nodal Officers of the Service Providers, viz., PW56, PW57 and PW59 of Vodafone, Aircel and AirTel, were also recorded. There were frequent exchange of calls through the mobile phones between A1, A5, A6, A8 and A10 on 13.03.2016 at or about the time of the commission of the offence. Prior to the commission of the offence at about 2.15 p.m. on 13.03.2016, A1 was in touch with A2, A8 and A9 over his mobile phone and A5 had contacted A6 and A9 and also contacted A8. A8 contacted A4 and A9 was in touch with A5, A6 and A10 and so also, A10 with A6.
- Elaborate arguments were advanced by the learned Senior counsel appearing for the assailants/A4 to A8 as to the admissibility of the electronic evidence under Section 63B of the Indian Evidence Act, especially with regard to the recovery.
- A9 was arrested on 28.03.2016 in the presence of PW24 and the admissible portion of the confession statement marked as Ex.P.30 which led to the recovery of M.O.34-cellphone used by A6 ; M.O.35-Cellphone used by A8

and A5 used M.O.36-mobile phone and the said phones were found inside M.O.33-bag and was seized under the cover of Mahazar-Ex.P29. The mobile phones used by A5, A6, and A8 were seized from A9. Mobile phones, viz., M.Os.34 to 36 were also seized by PW67.

- PW67 had also given a requisition for examination the CDRs as to the mobile numbers of A1, A2, A5, A6 and A8 and it is revealed that mobile phone used by A5 stood in the name of his father and yet another mobile phone bearing No.9715829615 stood in the name of one Bharathiraja and it was found to be a fake address. The investigation revealed that the registration of SIM Cards were in the name of A1, A9 and the mobile phone used by A5 was in the name of his father and another one was found to be with fake address. The testimonies of the Nodal Officers along with CDRs marked as Exs.P72, P74, P76, P77, P78, P79, P86 and P87 would unerringly point out that there was a frequent interaction between the accused including A1 prior or just prior to the commission of the offence.

ELECTRONIC EVIDENCE:-

160 Elaborate arguments were also advanced as to the non-compliance of Section 65B of the Indian Evidence Act. The Certifications under Section 65B of

the Evidence Act were marked as Exs.P70, P78 and P88 respectively.

161 PW56 was the Nodal Officer of Vodafone and he speaks about the phone of A9 and the call details. He would depose that on 13.03.2016 at 14h20m55s, a call emanated to the mobile number of A9 [7094532388] and its connectivity was from Udumalpet tower and it was an incoming call from the mobile number 7305363926 [A8] and it was for about 17 seconds and the certification given by him was marked as Ex.P70. In the cross-examination, PW56 denied the suggestion that the certification is not valid under Section 65B of the Indian Evidence Act.

162 The Nodal Officer of Aircel was examined as PW57 and he speaks about the mobile phones of A6 and A10 and the call records were marked as Exs.P74 and P75. PW58 would depose that on 13.03.2016, at 14hrs11m01s, from the tower location of by-pass road, Malaiamman buildings, Palani Road, Udumalpet coverage, an incoming call emanated to the mobile phone of A10 for a period of 65 seconds and to the mobile phone of A4, an incoming call came at 12p.m.04m32s on 13.03.2016 and it was for a period of 19 seconds and the Certification under Section 65B of the Evidence Act was marked as Ex.P78.

Similar suggestion was made as to the validity of the certification and that was also denied by him.

163 This Court is also referring to various pronouncements of the Hon'ble Supreme Court of India pertains to Section 65B of the Indian Evidence Act.

164 In 2014 [10] SCC 473 [Anvar P.V. Vs. B.K.Basheer and Others] , the Hon'ble Supreme Court of India had considered the issue relating to the admissibility of the electronic record and considered the scope of Sections 62, 65A and 65B of the Indian Evidence Act. The facts of the case would disclose that the appellant filed an Election Petition to set aside the election of the 1st respondent on the ground that alleged songs, announcements and speeches made as part of election propaganda by the 1st respondent amounted to corrupt practice and the songs, announcements and speeches were recorded by using some instrument and in turn, it was fed to computer and Compact Discs [CDs]. In paragraph No.15, it is observed that "*if it is desire to give a statement in any proceedings pertaining to electronic evidence, it is permissible provided the following conditions are satisfied:-*

- *There must be a certificate which identifies the electronic record containing*

the statement ;

- *The certificate must describe the manner in which the electronic record was produced;*
- *The certificate must furnish the particulars of the device involved in the production of that record;*
- *The certificate must deal furnish the particulars of the device involved in the production of that record;*
- *The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device."*

It is also relevant to extract paragraph No.16, which reads thus:-

"16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the

whole trial based on proof of electronic records can lead to travesty of justice."

In paragraph No.17, it is observed that, *"only if the electronic records is duly produced in terms of Section 65B of the Evidence Act, then a question arise as to the genuineness thereof and in that situation, resort can be made to Section 45A – opinion of Examiner of electronic evidence."* In paragraph No.18, it is observed that *"the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act, are not complied with, as the law now stands in India."* Reference was also made to the decision in **State [NCT Delhi] V. Navjot Sandhu** reported in **2005 [11] SCC [Cri.] 600**. In paragraph No.150 of the said decision, it is observed that *"irrespective of the compliance with the requirements of Section 65B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details and sub-section [4] of Section 65B is not filed in the instant case, but that does not mean that the secondary evidence cannot be given even if law permits such evidence in the circumstances mentioned in the relevant provisions, viz., Sections 63 and 65."*

165 In **2015 [1] SCALE 498 : 2015 [7] SCC 178 [3 Judges] [Tomaso Bruno and another V. State of Uttar Pradesh]**, the Hon'ble Apex Court, after taking into consideration the decision reported in **2015 [11] SCC 600 [cited supra]**, had dealt with the murder case based upon the circumstantial evidence and also taken into consideration the non-production of electronic evidence such as CCTV footage, call records and SIM details of the mobile phones and observed that "*Court is to draw an adverse inference against the prosecution under Section 114[g] of the Evidence Act, 1872*".

166 In **2018 [2] SCALE 235 [2 Judges] [Shafhi Mohammad V. The State of Himachal Pradesh]**, the Hon'ble Supreme Court of India, has once again considered the scope of Sections 63, 63, 65B of the Indian Evidence Act, as well as Sections 2[o] and 2[t] of the Information Technology Act. The Court has also taken into consideration, the decisions reported in **2014 [10] SCC 473** and **2015 [1] SCALE 498 : 2015 [7] SCC 178 [cited supra]**. One of the questions posed in the above cited decision was that "whether the videography of the scene of crime or scene of recovery during investigation should be necessary to inspire the confidence in the evidence collected?" and it is held as follows:-

*"9[7] Though in view of Three-Judge Bench judgments in **Tomaso Bruno and Ram Singh [supra]**, it can be safely held that electronic evidence is admissible and provisions under Sections 65A and 65B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65B[h].*

13[11] The applicability of procedural requirement under Section 65B[4] of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness, but on account of manner of proving, such document is kept out of consideration by the Court in absence of certificate under Section 65B[4] of the Evidence Act, which party producing

cannot possibly secure. Thus, requirement of certificate under Section 65B[h] is not always mandatory.

14[12]Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially, by a party who is in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B[4] of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies."

167 In 2017 [8] SCC 518 [3 Judges] [Vikram Singh @ Vicky Walia and Another Vs. State of Punjab], the admissibility of the original tape recorded conversation of ransom calls handed over to police has been considered in the light of Sections 7, 62 and 65B of the Indian Evidence Act. It was argued that tape-recorder conversation has been placed reliance upon, without there being any certificate under Section 65B of the Evidence Act and reliance was also placed upon the decision reported in 2014 [10] SCC 473 [cited supra]. In paragraph No.26, it was held that "*The tape-recorded conversation was not secondary evidence which required certificate under Section 65-B, since it was the original cassette by which ransom call was tape-recorded, there cannot be any dispute that for admission of secondary evidence of electronic record a certificate as*

contemplated by Section 65-B is a mandatory condition."

168 In **2018 5 SCALE 384 : 2018 [5] SCC 311 [Shafhi Mohammad Vs. State of Himachal Pradesh]**, the Hon'ble Supreme Court of India has once again considered the admissibility of the electronic evidence under Sections 65A and 65B of the Evidence Act and also considered the issue relating to the use of videography in police investigation. The Apex Court, while doing so, has also considered the decision reported in **2018 [2] SCC 801 [cited supra]**, and observed as follows:-

"9. We are in agreement with the Report of the Committee of Experts that videography of crime scene during investigation is of immense value in improving administration of criminal justice. A Constitution Bench of this Court in Karnail Singh v. State of Haryana [Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887] , SCC para 34 noted that technology is an important part in the system of police administration. It has also been noted in the decisions quoted in the earlier part of this order that new techniques and devices have evidentiary advantages, subject to the safeguards to be adopted. Such techniques and devices are the order of the day. Technology is a great tool in investigation [Ram Singh v. Ram Singh, 1985 Supp SCC 611; R. v. Maqsood Ali, (1966) 1 QB 688 : (1965) 3 WLR 229 : (1965) 2 All ER 464 (CCA); R. v. Robson, (1972) 1 WLR 651 : (1972) 2 All ER 699 (CCC); Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329 : (2010) 2 SCC (Civ) 112 : (2010) 2 SCC (Cri) 826; Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54; Mohd. Ajmal Amir Kasab v. State of

Maharashtra, (2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481; State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] . By the videography, crucial evidence can be captured and presented in a credible manner.

10. Thus, we are of the considered view that notwithstanding the fact that as of now investigating agencies in India are not fully equipped and prepared for the use of videography, the time is ripe that steps are taken to introduce videography in investigation, particularly for crime scene as desirable and acceptable best practice as suggested by the Committee of the MHA to strengthen the Rule of Law. We approve the Centrally Driven Plan of Action prepared by the Committee and the timeline as mentioned above. Let the consequential steps for implementation thereof be taken at the earliest. "

[Emphasis supplied]

169 A Division Bench of this Court in the decision reported in **2016 [2] CTC 135 [K.Ramajayam @ Appu V. The Inspector of Police, T4 Maduravoyal Police Station, Chennai]** , has considered the issue relating to admissibility of CCTV footages. The facts of the case would disclose that the accused was prosecuted for the commission of the offence of murder and Section 380 of IPC. The offence took place in a pawn shop and the events that took place prior to murder came to be recorded in the CCTV cameras installed in the said shop. The Trial Court has awarded death sentence and therefore, a Reference was made by the Trial Court and the accused has also filed independent appeal. The Division

Bench has taken note of *P.V.Anvar's case* and other decisions and after scanning through the evidence, found that the recordings in the CCTV camera have been deciphered by PW24, viz., Mrs.Puspharani, [who has been examined as PW58 in the present case] and morphological study done by her was also taken into consideration and in paragraph No.28, it was observed that "*it is axiomatic that CCTV footage does not suffer such ills and human frailties, and they are indubitably superior to human testimony of facts.*" The Division Bench has also taken note of Tamil Nadu Urban Local Bodies [Installation of Closed Circuit Televisions Units in Public Buildings] Rules, 2012, and also taken note of various administrative instructions as to the installation of CCTV Cameras and in paragraph No.33, observed as follows:

' '33.....*Only to obviate this difficulty and to satisfactorily meet the objections relating to admissibility of Secondary Evidence in Electronic form, the Parliament thought it fit to provide a certification under Section 65-B. Even if the certification is not obtained at the time of collection of evidence, yet, at the time of trial, evidence aliunde can be given through the person, who was in charge of the Server, in terms of Section 65-B of the Act, as held by a Division Bench of the Delhi High Court in **Kundan Singh V. State, Manu/DE/3674/2015.** The Police can also requisition the services of Computer Experts and Experts from the Forensic*

Sciences Department to retrieve data from a huge server through USB drive or CD drive or any other gadget for the purpose of investigation and production of the same before the Court without disturbing the integrity of the original source. If we fail to provide this facility to the Police, the Criminal Justice Delivery System will become a lame duck."

170 Thus, the law of admissibility of electronic evidence is well settled in the light of the above decisions. This Court, on appreciation of evidence, is of the considered view that proper certification has been obtained. The Apex Court, in the decision reported in **2018 [5] SCC 311 [cited supra]**, has claimed that it is high time, videography to be introduced as a part of the investigation.

171 Now, this Court is examining the evidence made available by the prosecution as regards genuineness /authentication of CCTV footages and mobile phone recordings done by PW4.

172 PW7 is the owner of Eswari Departmental Store located at UKB Complex and lies opposite to Udumalpet bus stop. PW7 in the chief examination, would depose among other things that on 13.03.2016, he was not available as he went along with his family to Tirupati and returned during night hours on

14.03.2016 and came to the Stores on 15.03.2016. At about 5.00 p.m., on 16.03.2016, PW67 – Investigating Officer, came to the shop along with PW8 and requested to hand over the recordings in the Hard Disc of the CCTV cameras installed in the shop and PW7 also agreed. Accordingly, the DVR along with Hard Disc Adopter have been removed in the presence of PW7 and the employees of the shop, viz., Siva and Sudharsan under the cover of the Mahazar [Ex.P8]. DVR along with Hard Disc is marked as M.O.19 and the Adopter is marked as M.O.20 and he also made a request to PW67 for reimbursing the DVR, Hard Disc and the Adopter.

173 PW7 was examined in chief on 19.07.2016 and on that day, he was not cross-examined and he was re-called and cross-examined on behalf of A4 to A9 on 14.12.2016, i.e., nearly after five months. In the cross-examination, PW7 would depose that he has installed the CCTV Camera with projection outside and however, the screen is available inside the shop. So also the other articles and the CCTV recordings will be available for a period of 20 days and thereafter, it would get automatically erased. He would further depose that the camera was installed by one Sudharsan Raj, a technician and denied the suggestion that M.Os.19 and 20 were not handed over by him.

174 PW8 was the Assistant Director of the Mobile Forensic Lab at Erode and he was also incharge of Tiruppur District. In the chief examination, he would depose that as per the request made by PW67, he came to Eswari Departmental Store at about 5.00 p.m., on 16.03.2016 and PW67 made a request to PW7 for removal of DVR, Hard Disc as well as Adopter and he has removed the same. PW8 was examined in chief on 19.07.2016 and he was not cross-examined on that day and he was recalled and cross-examined nearly five months thereafter, i.e., 21.12.2016 on behalf of A1 and A4 to A9. PW8, in the cross-examination done on behalf of A4 to A9 would depose that the CCTV camera was installed outside the shop and after the removal, he did not check up as to whether it was in working condition and he was not aware of the person in whose custody M.O.19 and M.O.20 were maintained between 13.03.2016 and 16.03.2016.

175 PW67, during the course of investigation, sought information as to the Experts along with the photographs of A4 to A8 [M.Os.37 to 40] and A10, A9 and A7 [M.Os.43 to 45].

176 PW58-Pushparani, was the scientific officer attached to the Forensic

Lab, Mylapore, Chennai-4 and she was examined in chief on 08.08.2016 and in the chief examination, she would depose that she is having 15 years of experience for identifying individuals and he received requisition as to the examination and analysis of CCTV footages through the Court of Judicial Magistrate No.1, Udumalpet along with photographs marked as M.Os.37 to 40 and 43 to 45 and also the CCTV recordings recorded by PW4 through his cellphone marked as M.O.14. Recordings done in the CCTV as well as the mobile phone, were played through the Software, viz., VLC Player, and the morphological features of the persons who appeared in the video recordings were taken through snapshots and screen shots and videos were played in slow and normal speed by frame by frame and the contents were examined. She would further state that the appearance of the persons, such as, hair style, physical features, gait pattern and the dress worn by them, were also examined minutely and carefully and to identify the individual factor, additional parameters were also employed and in the chief examination, she had briefly narrated the details of the said process and examination. The Report of PW58 was marked as Ex.P81 dated 23.03.2016. PW58 also followed the very same procedure in respect of A9 and A10 also and would depose that Item No.17- video recordings were not clear and therefore, their faces have not been identified and that apart, the video recordings done through M.O.14-cellphone and the faces

appeared in M.O.47 - the video recorded through M.O.14, also not appeared to be A9 and A10 and in respect of A7, she had followed the same procedure and she had given the finding as to his identification. The CCTV recorded in DVR as well as in the Hard Disc were also played in the open Court and were witnessed by the accused, Public Prosecutor, Court staff as well as PW58. PW58, as per her Report, had identified A4 to A8 and clearly identified A8, A6, A4 and A7. Insofar as the mobile phone recording done through M.O.14 by PW4, PW58 had identified A5, A7, A6 and A4. The respective learned counsel for the accused did not cross-examine PW58 at the time of chief examination and on filing petitions, she was recalled and cross-examined on 03.03.2017, nearly after 7 months after the chief examination.

177 In the cross-examination done on behalf of A4 to A9, PW58 would depose that she is having the qualification of M.Sc. [Zoology] and Doctorate [Ph.D] in Anthropology and she would further depose that a person can be identified through photographs ; but she was not aware of the persons who took the photographs marked as M.Os.37 to 40 and 43 to 45 and where it was taken and she did not independently examine as to the authenticity of M.O.41-Software CD with M.O.19 and she examined the video and was not aware that the Memory Card

marked as M.O.43 was used in which mobile phone and also answered the question that the recordings in the Memory Card can be further recorded and when it was done, necessary details would be available. She would further depose that the distance of recordings done in M.Os.41 and 42, have not been specifically indicated by her as well as the directions from where the recordings were done and the period and date on which the recordings were done. She would further depose that in Camera No.10, faces of persons in M.O.41-CD recordings were not clear and the angle from which the recordings were done and also not indicated the percentage of tally between the photographs and the recordings in the videography. She would further depose that in M.O.46-DVR recordings, faces were not clear and therefore, the factors were used and she has not indicated as to the percentage of the enlargement done to identify the accused and denied the suggestion that she did not examine the recordings properly and there is no connection between the persons appearing in the recordings and the accused.

178 PW62, at the time of her chief examination, on 16.08.2016, was the Assistant Director of Forensic Lab at Chennai and in the chief examination, she would depose that she had 25 years of experience as to the analysis of the video footages and she received a requisition as to the decipher of the video recordings

in the Hard Disc through the Court of Judicial Magistrate No.1, Udumalpet. The material objects received for analysis were marked as M.Os.14, 19, 20, 41 and 42 and she had done analysis the video recordings as well as the recordings in M.O.14-Mobile phone and given her opinion as to the authenticity by stating that Histograms and Resolutions are continuous without any editing or manipulation and no tampering took place. PW62 gave her Final Opinion that DVR Recordings between 2.00 p.m. and 3.00 p.m. on 13.03.2016 through Camera No.10 [installed outside Eswari Departmental Stores] are the recordings of the criminal case and they are true and authenticated without any tampering.

179 The respective learned counsel appearing for the accused did not cross-examine PW62 and she was re-called and cross-examined on 15.03.2017 on behalf of A4 to A9 and she would state that she had examined M.Os.14, 19, 20, 41 and 44 and she received the said material objects from the Court on 18.03.2016 and prior to that, she was not aware as to in whose custody, the said material objects were there. PW62 would further depose that she did not examine the Hard Disc and what was recorded in the Hard Disc were copied to a Memory Device and she has been trained to analyse CCTV footages and she did not have degree as to the examination of DVD and CCTV footages. PW62 stated that she is having

23 years of experience in the relevant field. She would further depose that there is no separate order as to the grant of Certification in respect of CCTV footages and they are doing it from the time immemorial and experts like her can operate Hard Disc and DVD and there is no possibility of virus being spread in the Hard Disc. She would also depose that after the analysis, it will be sent to Anthropology Section and denied the suggestion that her Analysis and the Report has been fraudulently prepared and Ex.P90 and Ex.P90-Annexures to Ex.P90, are truncated ones.

180 The learned Senior Counsel appearing for the assailants, viz., A4 to A8, made his primordial submission attacking the authenticity of the Reports given by PW58 and PW62 may be for the reason that their actual presence in the scene of occurrence as well as the attack inflicted upon PW1 and Shankar, had been captured.

181 This Court, as to the taking of photographs by PW67 marked as M.Os.37 to 40 and 43 to 45, has given a finding that assuming that the said evidence is collected illegally or in utter disregard to the procedural law during the course of investigation, it will not be *per se*, inadmissible. In **2014 [1] CTC 289**

[DB] [K.Ramaraj V. The Inspector of Police, CBCID, Chennai], a Division Bench of this Court, while deprecating the practice of police taking photographs of the accused in the police stations, however held that it can be used by Experts for their analysis and opinion and the jurisdictional Magistrate Court at Udumalpet, based upon the requisition given by PW67, has also forwarded the said photographs along with Material Objects for analysis and the Experts, viz., PW58 and PW62, had compared the photographs with the appearance of the assailants in the videographs as well as in the mobile phone recordings and gave their positive findings. The Division Bench of this Court, in **K.Ramajayam @ Appu V. The Inspector of Police, T4, Maduravoyal Police Station, Chennai** reported in **2016 [2] CTC 135**, has also avowed the said practice and in paragraph No.28 has given a finding that "*it is axiomatic that CCTV footage does not suffer such ills and human frailties, and they are indubitably superior to human testimony of facts.*"

182 The opinion given by the Experts, viz., PW58 and PW62, is to be treated and analysed like any other evidence and this Court, in the light of the forceful and vehement submissions made by the learned counsel for A4 to A8, has analysed their testimonies and their Reports in detail and the finds that, being independent and official witnesses, they have no axe to grind against the

assailants/accused and to depose in favour of the prosecution. The oral evidence of PW58 and PW62 is credible, trustworthy, believable and they are having long years of experience and carrying out such tasks in a scientific manner. There are no reasons available to discard or discredit their testimonies.

183 It is also to be remembered at this juncture that the sole basis of the conviction of A4 to A8 is not only on account of the Experts' opinion, but also the testimony of the injured eyewitness, viz., PW1 corroborated by the other eyewitnesses, viz., PW2 to PW5 and this Court, in the following paragraphs, is also analysing the testimonies of PW2 to PW5 who are also cited as independent witnesses by the prosecution.

184 PW2 was examined in chief on 12.07.2016 and as per his chief examination, he owns an auto bearing Regn.No.TN-72-W-8290 and he used to park his auto in front of UKB Complex near the bus stand. Eswari Departmental Store owned by PW7, is located in UKB Complex. PW2 would depose that he was waiting at about 2.15 p.m. on 13.03.2016 for the reason that his customers went out for purchasing some articles and at that time, he saw a girl and a boy standing in front of Eswari Departmental Store for crossing the road and he

became aware of the name of the boy as Shankar at a later point of time. He would further depose that at that time, a two-wheeler came from the western side to eastern side and it was halted in front of his auto and the person who came in the said two-wheeler was A4 and PW2 became aware of the same, later and behind the motorcycle, yet another two-wheeler came and two persons got down and they are A8 and A7, whose names PW2 became aware, at a later point of time. Two other persons were also standing near his auto and they are A5 and A6 and PW2 also came to know about their names at a later point of time. He has given the details of the assault inflicted by A4 to A8 upon Shankar and Kowsalya [PW1] as well as escaping from the scene of crime. PW2 also participated in the Test Identification Parade conducted on 21.03.2016 ; 22.03.2016 and 12.04.2016 respectively by PW66 as well as identified the accused as well as the weapons used by them.

185 The respective learned counsel did not cross-examine PW2 and he was recalled and cross-examined on 30.11.2016 on behalf of A4 to A9. Certain questions were put to PW2 for eliciting contradictions through the testimony of PW67. PW2, in the cross-examination would depose that at the time of examination by PW67, he did not give the details of the physical features and their

age as well as the details of the colour of the dress worn by the accused and the occurrence took place in a very busy place having lot of traffic. PW2 further deposed that from Udumalpet Police Station, the Government Hospital is five minutes away and from Udumalpet Bus Stand, the Police Station is ten minutes away and it will take only five minutes from the Government Hospital, Udumalpet, to reach the Police Station. PW2 also deposed that he identified the material objects only in the Court and not in the Police Station and at the time of his examination by PW67, weapons were not shown to him and he did not take any steps to lodge a complaint as to the said attack and within ten minutes, his customers came and he took the auto and he did not see the assailants prior to the said occurrence. He was also not aware of their details. PW2 denied the suggestion that before conducting Test Identification Parade, the identification of the accused was disclosed to him and denied the suggestion that video recordings were manipulated by the Police. In the cross-examination done on behalf of A10, PW2 would depose that the scene of crime is in front of Eswari Departmental Store.

186 PW3 is also an eyewitness to the occurrence and he was examined in chief on 18.07.2016 and he would depose that he is a push-cart fruit vendor and

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when he is doing his business in front of UKB Complex, at about 2.15 p.m on 13.03.2016, he saw PW1 and Shankar standing to cross the road and at that time, they were repeatedly attacked by A4 to A8 and when he went near them to prevent the attack, he was threatened by A4 and however, PW1 raised alarm to save them and she was pushed by A8 and also attacked by him and A6 and A4 also repeatedly attacked PW1. PW3 would further depose that after the commission of the offence, five persons had gone away in two motorcycles and he was able to identify A8 as he has lifted his helmet and PW2 also saw the incident and he also made an attempt to prevent the occurrence. PW3 also participated in the Test Identification Parade conducted on 21.03.2016 ; 22.03.2016 and 12.04.2016 respectively and also identified the assailants as well as the material objects. Learned counsel appearing for the assailants, did not cross-examine PW3 on the same day and he was recalled and cross-examined on 30.11.2016 on behalf of A4 to A9 and he would depose that he has seen the videograph for the first time in the Court when it was played and he was not aware of the details of PW1 and Shankar prior to the occurrence and he did not disclose their names, age, height and physical features of the assailants at the time of investigation done by PW67 and also not identified the material objects and also the dress worn by the accused/assailants. PW3 would also depose that he was present in the scene of

crime for about 10 minutes and he did not take any steps to lodge a complaint after the occurrence and he was examined on the same day at about 7.00 p.m. and he did not see the Television as to the said occurrence. It was further stated that when the video was shown to him by PW67, he did not tell the physical features of the assailants and denied the suggestion that prior to the Test Identification Parade, the identity of the accused was disclosed to him.

187 PW4 is also an eyewitness and apart from witnessing the occurrence, he also took the videograph of the same through his mobile phone marked as M.O.14. He was examined in chief on 18.07.2016 and he would depose that he is running a Fancy Store at Tirupur and also the Secretary of Tirupur District Tamil Nadu Muslim Munnetra Kazhagam [TMMK]. PW4 would also depose that he went to Udumalpet to attend a house warming ceremony and on the way to return, he halted his car in front of Eswari Departmental Store at about 2.05 p.m., on 13.03.2016 and his family members went inside the shop for purchasing some articles and he saw the deceased Shankar and PW1 [Kowsalya] standing in front of Eswari Departmental Store for the purpose of crossing the road and he became aware of their names at the later point of time.

188 PW4 would depose that the wearing red colour shirt, stabbing on the right side of the neck of Shankar and the persons wearing yellow and green color shirts, repeatedly attacked Shankar with lethal weapons and the person wearing helmet pushed PW1 down and Shankar was attacked by four persons and the persons wearing red colour shirt and white colour checked shirt also attacked Shankar. When PW1 raised alarm, the persons wearing yellow and white shirts also attacked her and thereafter, they escaped in two motorcycles and he took videograph of the said events through his mobile phone [M.O.14]. He voluntarily went to Udumalpet Police Station on 17.03.2016 and after removing the two SIM Cards, handed over the mobile phone with Memory Card. PW4 also identified the assailants in the Test Identification Parade held on 21.03.2016 and 22.03.2016 respectively and he also identified them in the open Court. PW4 was recalled and cross-examined on behalf of A4 to A9 on 14.12.2016 and he would depose that he was present in the scene of crime for about 20 minutes and after seeing the Television and reading newspaper, he became aware of the identity of Shankar and Kowsalya [PW1] and when he was examined by PW67, he did not disclose the name of the accused. But at the time of his further examination, he disclosed the name and on both occasions, he did not tell the age of the accused, their complexion and their physical features and certain questions were also put to PW4

for the purpose of eliciting contradiction through PW67 and denied the suggestion that he did not disclose the colour of the shirt worn by the accused and further denied the suggestion that prior to the Test Identification Parade, the identity of the accused was shown to him in the Police Station and further that M.O.14 belongs to him. PW4 was recalled by the State and he was shown the recordings in the Memory Card attached to his mobile phone and the Memory Card was marked as M.O.42 and he denied the suggestion that M.O.42 did not belong to him, when he was again cross-examined on behalf of A4 to A9.

189 PW66, the learned Judicial Magistrate No.2, Udumalpet, who conducted the Test Identification Parade, was cross-examined in detail and her testimony to the disclose that the said official had duly applied all the procedural formalities. In the cross-examination done on behalf of A4 to A9, PW66 would depose that A4 told her that his identification was shown to two persons in Udumalpet Police Station before the Test Identification Parade and similarly, A5, A6,A8, A9 and A7 also said so. She was not aware of the fact that even prior to Test Identification Parade, photographs of the accused appeared in newspapers.

190 PW67-Investigating Officer, was examined in chief on 27.03.2017

and 28.03.2017 and he was recalled and cross-examined on behalf A4 to A9 and A11 on 05.04.2017. In the cross-examination, PW67 would depose that neither PW1 nor the eyewitnesses, did not particularly disclose the names of the accused, their age, physical appearance and identification and the dresses worn by them. He further deposed that at about 2.30 p.m., on the date of occurrence on 13.03.2016, policemen on patrol duty, had reached the spot and he did not remember their names and in the Observation Mahazar marked as Ex.P6 and the Rough Sketch marked as Ex.P103, the CCTV Camera available at Eswari Departmental Store, has not been shown and no photograph of the scene of crime has also been taken and in Ex.P105-Inquest Report also, the details of the assailants have not been stated. It is further deposed by PW67 that till the arrest of A4 and A5, apart from A1 to A3, whose names have been included in the FIR, was not aware of the details of the other accused. Specific question was put to PW67 that prior to Test Identification Parade, photographs of the suspected accused should not be shown to the witnesses and he answered in positive and also deposed that he did not show any photographs prior to the Test Identification Parade to the witnesses and further that, PW1 to PW5 did not specifically stated about the names of the accused and their participation. But, however, they have stated that they would disclose their identity.

191 PW67 was questioned with regard to the contradiction elicited in the testimonies of PW1 to PW4 and as regards PW2, PW67 would depose that during the course of investigation, PW2 had stated that he was waiting in the auto as his customers came in his auto, went inside the shop ; but did not state that for the purpose of crossing the road, a male and a female were standing. But, however, told him that they were waiting to cross the road. Similarly, PW4 did not state as to the presence of PW1 and Shankar in front of his car and stabbing of Shankar on his neck by a person wearing red colour shirt and did not specifically state that Shankar was repeatedly attacked by persons wearing yellow and green colour shirts by using lethal weapons and further, did not specifically state that PW1 was pushed by the person wearing helmet and four persons attacked Shankar. PW4 did not state anything as to handing over of his mobile phone and SIM card.

192 Now, coming to the evidence of PW5, he has spoken about the presence of a person coming in a motorcycle and halting in front of his mobile fruit vending cart and in the chief examination, on 19.07.2016, he would depose that he was selling fruits, he heard about the occurrence and at that time, he saw a

person riding a motorcycle and halted near his mobile cart without switching off the engine and he was perplexed and at that time, from UKB Complex, a person came running and boarded the motorcycle and both of them can be identified by him and he was examined by him by PW67 on 21.03.2016 and he also identified the concerned accused persons [A9 and A10] in the Test Identification Parade as well as in the open court.

193 In the cross-examination done on 14.12.2016 on behalf of A4 to A9, PW5 had stated that he did not specifically stated the physical appearance and the dress worn by the accused and certain questions were also put to him for the purpose of eliciting contradiction and in the cross-examination done on behalf of A10, he would state that though the police came to the spot for about 5 or 6 days continuously after the occurrence, he did not give any statement and he was examined on 21.03.2016 and he did not give the details of the person who came in the motorcycle and boarded it and he did not produce any materials to show as to his occupation.

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194 PW67, with regard to the contradiction in the testimony of PW5, would depose that during the course of examination, he did not specifically state

about the perplexed attitude of the two persons and spoken about one person proceeding on the easterly direction.

195 A careful scrutiny and analysis of the testimonies of PW2 to PW4 would disclose and reveal that they corroborate the testimony of the injured eyewitness, viz., PW1, on all material particulars. It is to be remembered at this juncture that the occurrence took place in a broad day-light at about 2.15 p.m. on 13.03.2016 in a very busy area / locality of Udumalpet Town and the presence of PW2 to PW4 cannot be doubted though they were chance witnesses. The said witnesses, during the course of investigation, did not specifically state as to the name, age, physical features etc., of the assailants ; but the video footage recorded in the CCTV camera [M.O.46] installed in front of Eswari Departmental Store as well as the mobile phone [M.O.14] recordings under M.O.47 was shown to them in the presence of the accused and the said witnesses had identified the assailants in the Test Identification Parade conducted by PW66 and also identified them in the open Court.

Identification of Prisoners Act, 1920:-

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196 In **2019 [3] SCC 770 [Ashish Jain V. Makrand Singh and Others]**, the scope of Sections 4 and 5 of the Identification of Prisoners' Act, 1920 also came up for consideration and in paragraph No.36 of the said decision, the Hon'ble Apex Court, has taken into consideration, the decision reported in **2018 [8] SCC 24 : 2018 [3] SCC [Cri.] 486 [Sonvir V. State [NCT of Delhi]]** and observed that "*Section 5 of the Act is not mandatory but, is directory and affirms the bona fides of the sample-taking and eliminates the possibility of fabrication of evidence.*"

197 Section 2[a] of the Identification of Prisoners' Act, 1920 [Central Act 33 of 1920] as amended by the Tamil Nadu Act 29 of 2010, defines "*measurements*" and it includes finger impressions and foot-print impressions. Therefore, the said definition is an inclusive definition. Section 5A of the Act speaks about the Power to Magistrate to order a person to be measured or photographed and the corresponding Rule is Rule 6 of the Tamil Nadu Identification of Prisoners' Rule, 2007.

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198 This Court, in paragraph No.169 of this judgment, had taken into consideration, the judgment rendered by a Division Bench of this Court reported in

2016 [2] CTC 135 [cited supra], which also deals with the issue relating to taking of photographs of the accused without obtaining prior permission from the Magistrate. In paragraphs No.149 and 150 of this judgment, the photographs taken were forwarded by the jurisdictional Magistrate for expert opinion and though the said official was very well aware of the fact that non-obtaining of such a permission by PW67 and despite that, had forwarded the photographs for forensic analysis. In the considered opinion of the Court and in the light of the findings recorded in paragraph No.150 coupled with the decision reported in **2016 [2] CTC 135 [DB] [cited supra]**, it is only a curable irregularity or error and the non-obtaining of prior permission from the jurisdictional Magistrate is merely an irregularity and even otherwise, the opinion / testimonies of the experts, viz., PW58 and PW62 despite grueling and extensive cross-examination, remain unshaken. Therefore, the submissions made in this regard, are liable to be rejected.

199 Almost all prosecution witnesses were not cross-examined on the date of completion of their chief examination and only on filing of petitions for recall, they were cross-examined four or five months from the date of their chief examination.

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200 In *2001 [1] SCC [Cri.] 190 [Swaran Singh and Another V. State of Punjab]*, the Hon'ble Supreme Court of India, incidentally considered the issue relating to adjournments during the course of trial. It is relevant to extract some portions of paragraph No.36, which reads thus:-

"36.A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence. Here are the witnesses who are a harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the court many times and at what cost to his own self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice....."

[Emphasis supplied]

201 As already pointed out, the witnesses, especially, the eyewitnesses were cross-examined four or five months after their chief examination and the eyewitnesses, viz., PW2, PW3 and PW5 are eking out their livelihood as an auto driver, push cart vendors and they are also rustic witnesses. On account of the belated cross-examination, there is bound to be some variations or improvements by the concerned witnesses and that is not by itself sufficient to hold that their testimonies to be infirm.

202 In **2006 [2] SCC [Cri.] 444 [Surender Singh and Another V. State of Haryana]**, the Apex Court, in paragraph No.6, has observed that "*..It is a well established principle of law that every discrepancy in the witness statement cannot be treated as fatal to the prosecution case. The discrepancy, which does not affect the prosecution case materially, does not create infirmity.*"

203 If witnesses give photographic and minute details of the assailants, they may be treated as witnesses, telling parrot-like version and on that ground, they may be disbelieved. The eyewitnesses, viz., PW2, PW3 and PW5 are rustic witnesses and witness No.4, viz., PW4, is a businessman and in the light of their sociological background, some discrepancies are bound to occur and also, in the

light of their belated cross-examination. This Court in the light of discussions, is of the considered view that an overall appreciation of their testimonies, it inspires confidence, credibility and acceptability.

204 The defence has failed to project any substantive evidence in their testimonies and even otherwise, it is always open to the Court to separate grain from chaff by applying the said principle, this Court, is of the considered opinion that the testimonies of corroborating eyewitnesses, viz., PW2 to PW4, are believable and further corroborated through the Test Identification Parade conducted by PW66 as well as identification in the open Court. The testimonies of the Expert witnesses, viz., PW58 and PW62, coupled with their Reports marked as Exs.P81, 83, 85,90 and 91 would also further corroborate and substantiate their testimonies as to the seeing of assailants, inflicting fatal attack upon Shankar and PW1. There is absolutely no rhyme or reason to reject their testimonies in toto.

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ARREST, CONFESSION AND RECOVERY:-

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205 A4 and A5 were detained near Petheppampatti Check Post at about 5.00 p.m., on 18.03.2016 and in the presence of PW12, they voluntarily came

forward to give confession statements and the admissible portions were marked as Exs.P16 and P18 respectively, which led to seizure of M.O.12-Pulsar Motorcycle ; M.O.23-cash of Rs.24,000/- as well as M.Os.1 to 3, 24, 25, 26 and 27.

206 PW12 was the Village Administrative Officer of Somavarapatti and he speaks about the arrest of A4 and A5. A6 was detained at about 12.00 Noon on 15.03.2016. So also, A8 and A11 and they voluntarily gave the confession statements, which were recorded in the presence of PW11 and the respective admissible portions of the confession statements were marked as Exs.P12, P13 and P14, which led to the discovery of M.Os.21 and 22. Insofar as A11 is concerned, he harboured A4 to A8 in his house, after the commission of the offence. A7 surrendered before the Judicial Magistrate, Nilakottai, on 05.04.2016 and his police custody was taken by PW67 on 06.04.2016 and in the presence of PW19, he came forward to give a confession statement and the admissible portion of the same is marked as Ex.P26, which led to the recovery of M.O.5-knife used by him. A9 was arrested on 28.03.2016 and in the presence of PW23, he he came forward to give a confession statement and the admissible portion of the same is marked as Ex.P30 and pursuant to which, M.Os.29, 33, 24, 35 and 36 were seized.

207 The primordial submission made by the learned Senior counsel as to the arrest and recovery insofar as A4 and A5 are concerned, LW118-Venkataraman, Inspector of Police [Crime] attached to Udumalpet Police Station, had detained them and despite the admission on the part of PW67 that LW118 was present near the scene of occurrence on patrol duty and that he made arrangements to send the injured Shankar and PW1 for treatment to the Government Hospital at Udumalpet, he was not examined though cited as a witness and the alleged admissible portion of the confession statements which led to the recovery also did not specifically pinpoint, the cases in which the incriminating articles were concealed and the entire show was stage managed as to the alleged confession and recovery and therefore, it should be eschewed in toto.

208 In *AIR 1961 SC 1808 [State of Bombay V. Kathi Kalu Oghad]*, the Hon'ble Apex Court has observed in paragraph No.13 as follows:-

"13.....The information given by an accused person to a police officer leading to the discovery of a fact which may or may not prove incriminatory has been made admissible in evidence by that section. If it is not incriminatory of the person giving the information, the question does not arise. It can arise only when it is of an incriminatory character so far as the giver of the information is concerned. If the self-

incriminatory information has been given by an accused person without any threat, that will be admissible in evidence and that will not be hit by the provisions of clause (3) of Article 20 of the Constitution for the reason that there has been no compulsion. It must, therefore, be held that the provisions of Section 27 of the Evidence Act are not within the prohibition aforesaid, unless compulsion had been used in obtaining the information."

209 In 2010 [3] SCC 56 [**Vikram Singh V. State of Punjab**], the Apex Court has reiterated that there was no need of formal arrest or applicability of Section 27 of the Evidence Act. It is also well settled position of law that Section 27 of the Evidence act is founded on the principle that even though the evidence leading to the confession or other statements made by a person while he is in the custody of the police officer is tainted and therefore, declared as provable insofar as it distinctly relates to the fact thereby discovered.

210 In AIR 1947 PC 67 [**Pulukuri Kottaya Vs. King-Emperor**], the proposition of law laid is that the discovery of fact arises by reason of the fact that the information given by the accused exhibited knowledge or mental awareness of the informant existed at a particular place.

211 Ex.P16 is the admissible portion of the confession statement of a4 wherein he speaks about his blood stained shirt as well as the blood stained shirts of A5 and A6 and that 3 knives used by them for the commission of the offence concealed below the barrage and A4 voluntarily handed over the sum of Rs.24,000/- from his pant pocket. M.O.12-Bajaj Pulsar motorcycle as well as cash of Rs.24,000/- were recovered in terms of the said confession statement.

212 The admissible portion of the confession statement of A6 was marked as Ex.P12 and as per the said admissible portion, he undertook to identify and produce black and yellow striped full-hand shirt as well as the place in which the weapon was concealed and production of the same and led to the recovery of M.Os.21 and 30 The details of recovery effected from A5, A8, A11, A7 and A9 were also discussed by this Court in the earlier paragraphs. The seized articles were also subjected to chemical analysis and upon requisition of PW67, the Court of Judicial Magistrate-1, Udumalpet, has forwarded the incriminating articles under Ex.P59 dated 18.03.2016 to the Regional Forensic Laboratory, Coimbatore, who in turn, gave a Report under Ex.P60 and as per the said Report, blood was detected in item Nos.1,3, 5 to 8, 10, 11, 13 and 14 and not on item Nos.2, 4, 9, 12.

In Ex.P61, a Report was given as to non-detection of blood in the alleged weapon, viz., knife. It is also a well settled position of law that mere recovery of incriminating articles would not lead to the inference that the accused had committed the offence. In the case on hand, the prosecution was able to prove that some time prior to the commission of the offence and just prior to the commission of the offence, the assailants were interacting with each other through mobile phones and the evidence of the Nodal Officers of the respective Service Providers, viz., PW56 and PW57, coupled with the certification given by them under Exs.P70, P78 and coupled with the call details, would amply prove the case of the prosecution as to the presence of the assailants in the scene of occurrence. It is also pointed out that the testimony of the injured eyewitness, viz., PW1, had been amply corroborated by the testimonies of the other eyewitnesses, viz., PW2 to PW5.

213 This Court, in the appeal filed by A1, has held that he is not guilty of conspiracy for the reason that only one link in the chain of circumstances, as to the frequent contact between A8, A6 and A9 with A1 and in turn, his contact with A8 has been proved since other links in the chain of circumstances, have not been proved and had acquitted him. It was further held that arrangements of staying

made by A1 to accommodate some of the accused in the Lodge owned by PW14 and PW15, have also been not proved as well as payment of cash to A5 by drawal of money from the joint account through ATM. Despite that, the accused have also been charged individually for the commission of the offence u/s.302

Simplicitor and in the light of the sterling quality evidence let in by the prosecution as to the role played by the assailants, viz., A4 to A8, in inflicting murderous attack upon Shankar and PW1 and on account of the same, Shankar died and PW1 sustained grievous injuries, this Court is of the considered view that the presence of A4 to A8 in the scene of occurrence and their overt acts have been amply proved by the prosecution beyond any reasonable doubt and the adding factor is that, the admissible portions of the confession statements, led to the recovery of incriminating articles and scientific evidence has also proved that weapons have been used for the commission of the offence. The other scientific evidence in the form of Ex.P55-Accident Register copy of the deceased Shankar, Ex.P56-Wound Certificate of PW1 and Ex.P57 – Postmortem Certificate and Ex.P58-Final Opinion given by PW46, has also proved the case of the prosecution and that, on account of the said attack, PW1 had sustained grievous injuries and her life partner Shankar succumbed to the grievous injuries sustained by him.

214 A4 to A8 were also imposed with the capital sentence for the commission of the offence u/s.120[B] of IPC also.

215 A perusal of the charges framed against A4 to A8 would disclose that A1 to A3 had decided to do away with the life of Shankar and PW1 within ten days and through A4, engaged the services of A5 to A10 and A3 also instigated A4. The charges further read that ten days prior to the date of occurrence on 13.03.2016, as per the conspiracy hatched by A1 to A3, A1, A4, A5, A6 and A8 assembled in Arulmighu Dhandayudapani Children's Park at Palani and hatched a conspiracy to murder PW1 and Shankar and A1 and A2 had also paid a sum of Rs.50,000/- to A4 and A1 has also handed over an unregistered Bajaj Discover motorcycle [M.O.28] for using it for the commission of the offence and A4, A5, A6 and A8 also stayed in Bakya Lodge owned by PW14 and PW15 and the said arrangement was made by A1 and A1 came to the scene of occurrence in a two-wheeler and on the date of commission of the crime, movements of PW1 and the deceased Shankar was also watched by A9 and A10 and while they boarded the bus to Udumalpet at about 12.45 p.m. on 13.03.2016, A10 followed them in M.O.28 [motorcycle] and A4 to A10 assembled near the scene of crime for the

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purpose of murdering them. The Trial Court, had totally acquitted A2, A3 and A10, though according to the prosecution, A10 was present in the scene of occurrence. The State has also preferred appeal against acquittal.

216 This Court, in respect of the appeal filed by A1, found that except A8, A6 and A9 contacting A1 and A1, in turn, contacting A8, through his mobile phone, no other circumstances relating to conspiracy have been proved. Repeated contacts between the assailants have also not been cited as a specific instance for conspiracy, in the charges framed against the assailants / A4-A8. However, in the questions put under Section 313[1][b] of CrPC, to the assailants, specific questions have been put as to the said conversation and the accused had denied it as wrong and they also separately filed written statements under Section 313[5] of CrPC, denying their complicity in the commission of the offence.

217. In the light of the reasons assigned above, the prosecution is unable to prove the charge of conspiracy under Section 120-B of IPC beyond any reasonable doubt against A4 to A8.

218 A4 to A8 were also charged for the commission of the offences

under Section 3[2][va] of SC/ST [POA] Amendment Act, 2015 and under Section 3[1][r] and [s] of the said Act.

219 Section 3[1][r] of SC/ST [POA] Amendment Act, 2015 says that "*intentionally insults or intimidates with intent to humiliate a member of Scheduled Caste or a Scheduled Tribe in any place within public view.*"

220 Section 3[1][s] says that "*abuses any member of Scheduled Caste or Scheduled Tribe in caste name in any public place within public view*".

221 PW1 in Ex.P4-Statement recorded by PW54 would state that her husband Shankar was dragged by six persons and uttered something about his caste name and all six of them repeatedly cut Shankar with lethal weapons. However, in her oral evidence, it is stated about the attack inflicted by five persons upon Shankar as well as upon herself and with regard to the use of caste name, in inner page No.5 of the chief examination, PW1 would state that while Shankar was attacked, A4 and A6 abused him denigrating him by using his caste name.

However, in the cross-examination, except generally stating that PW1 is stating falsely, no specific question has been put as to the said portion of her evidence. Therefore, A4 and A6 alone can be convicted for the commission of the offence under Section 3[1][s] of SC/ST [POA] Amendment Act, 2015 and therefore, conviction and sentence imposed upon them for the commission of the said offence is sustained.

222 Now, coming to the charge under Section 3[1][r] of SC/ST [POA] Amendment Act, 2015, intimidation or intend to humiliate a member of Scheduled Caste or Scheduled Tribe was on the part of A4 and A6 only, in the light of the testimony of PW1 and therefore, conviction and sentence awarded for the commission of the said offence, insofar as A4 and A6 are concerned, are sustained.

223 Now, coming to the rest of the assailants, viz., A5, A7 and A8 are concerned, this Court has already held that they are present in the scene of occurrence at the relevant point of time and the overt acts on their part, have been proved beyond reasonable doubt by the prosecution. However, the prosecution has failed to prove the commission of the offences u/s.3[1][r] and [s] of SC/ST [POA] Amendment Act, 2015, as against A5, A7 and A8 and therefore, they are acquitted.

224 A4 to A8 were also charged for the commission of the offence under Section 3[2][va] of SC/ST [POA] Amendment Act, 2015. 3[2][va] reads that *"Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code for such offences and shall also be liable to fine."*

225 No doubt, the prosecution has marked the Community Certificates of all the accused under Exs.P42 to P54 coupled with the testimonies of the Tahsildars concerned, who issued such certificates.

226 In the light of the findings recorded by this Court, the prosecution has failed to prove the offence of conspiracy and that A4 and A6 alone abused Shankar with caste name. Insofar as A5, A7 and A8 are concerned, this Court is of the considered view that their conviction under Sections 147 and 148 of IPC along with A4 and A6, in causing the death of Shankar, who belonged to Hindu Pallar Scheduled Caste Community, had been proved. Section 8 of SC/ST [POA]

Amendment Act, speaks about the presumption as to the offences and in view of sub-section [b] of Section 8 of the said act, the conviction and sentence imposed upon A5, A7 and A8 under Section 3[2][va] of SC/ST [POA] Amendment Act, 2015, are to be necessarily sustained.

227 It is also to be noted at this juncture that except PW1, none of the witnesses, especially, PW2 and PW3 have spoken anything as to the utterances of words by the assailants denigrating the caste of the deceased Shankar. Therefore, the conviction of A4, A5, A6, A7 and A8 for the commission of the offence under Section 3[2][va] of SC/ST [POA] Amendment Act, 2015, are sustained, in the light of the findings recorded earlier by this Court.

CRL.A.No.164 of 2018 filed by A9:-

228 The substratum of the charge against A9 is that he was also a part in the offence of conspiracy and he had driven M.O.28-motorcycle to the scene of occurrence and in the event of Shankar and PW1 escaped the attack on the part of A4 to A8, A9 has to finish their life and he had also had a common intention and also a part of unlawful assembly.

229 The Trial Court had dealt with the charges framed against A9 in paragraphs No.134 to 140 and 144. The Trial Court found that the witnesses who had deposed against A9 are PW5, PW10, PW22 to PW24, PW40, PW56, PW66 and PW67 and he has not been attributed with any overt act except the fact that he was present in the scene of occurrence with M.O. 28 – motorcycle.

230 PW5, at the relevant point of time, was eking out his livelihood as a mobile fruit vendor and he was doing the business in the afternoon hours on 13.03.2016 and somebody was inflicted with cut injuries, there was a commotion and at that time, a person riding a motorcycle, from the direction of Pollachi, halted his motorcycle in front of his mobile cart without switching off the engine and he was perplexed and another person from UKB Complex came running and boarded the motorcycle and immediately, it proceeded towards the direction of Palani and he was examined by PW67 on 21.03.2016 and in the Test Identification Parade held on 06.04.2016, he identified A9 and A10 and that apart, also identified them in the open Court. PW5, in the cross-examination done on behalf of A4 to A9, would depose that during the course of investigation, while the statement was recorded, he did not disclose the name of the accused, their physical features, dress

worn by them and he has also stated, while his statement was recorded, about the person coming in motorcycle and halting in front of his mobile cart and was found to be perplexed. In the cross-examination done on behalf of A10, he would depose that while his statement was recorded, he did not disclose the physical features or the dress worn by the accused and when the police specifically asked about the physical features, he told them that if he happens to see them personally, he will identify them and he became aware of their names only at the time of Test Identification Parade and he did not produce any material to show that he was carrying on business as a mobile cart vendor.

231 PW66 conducted the Test Identification Parade of A9 on 06.04.2016 and one Marimuthu and PW5 had participated in the said Identification Parade and PW5 has identified A9. A specific question was put to PW67 – Investigating officer in the cross-examination done on behalf of A4 to A9 and A11, as to the contradiction in the testimony of PW5 between his statement recorded during investigation and his evidence before Court and PW67 would depose that PW5 did not state anything as to the perplexed attitude of A9 and however, during the course of investigation, had stated that a person came UKB Complex and boarded the two-wheeler. The said contradiction appears to be minor in nature.

232 PW10 was the Village Administrative Officer of Kanakkampalayam Village and he has spoken about the recovery effected in pursuant to the admissible portion of the confession statement of A10, marked as Ex.P10 and in the presence of PW10, A10 was shown the recordings as to the commission of the offence and after seeing it, he identified A8, A7 and A9.

233 PW22 was the relative of the deceased Shankar and he had spoken about the events that took place near the Rope Car Junction which according to the prosecution, is also a part of conspiracy. According to PW22, A1 was conversing with four or five persons of younger age and he identified A9 in the Court and in the cross-examination, he would state that no Test Identification Parade was conducted and he also did not disclose the age and other physical features as well as the complexion of the said persons.

234 PW23 was the Village Administrative Officer of Periamapatti Village, Palani Taluk and he has spoken about the arrest and recovery effected from A2 as well as A9 and as per the admissible portion of the confession statement of A9, 3 mobile phones, viz., M.Os.34 to 36, were recovered under the cover of

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Mahazar [Ex.P29] and that apart, A9 also undertook to identify the motorcycle driven by him on the date of occurrence [M.O.28].

235 PW24 has spoken about the boarding of bus by Shankar and PW1 at about 12.30 p.m. on 13.03.2016 and the following of the said bus by A9 in a motorcycle [M.O.28] and he identified him in the Court. In the cross-examination, PW24 would depose that during the course of investigation, he did not disclose the physical features, age and complexion and that he belongs to the caste as that of the deceased Shankar.

236 PW40-Tahsildar, had issued the Community Certificate for A9 under Ex.P50. PW56-Nodal officer of Vodafone has spoken about the call records of A9. PW58-Scientific Officer of Forensic Lab at Chennai, in the cross-examination would depose that she received photographs of A10 and A9 and Anthropology examination was done by comparing the two videos and since their faces were not visible, they are unable to be identified and the recordings in the cellphone marked as M.O.14 owned by PW4, also did not tally. PW62, the Assistant Director of Forensic Lab, though spoken about the cellphone recordings, did not state anything as to the identification of A9.

237 Mr.Ar.L.Sundaresan, learned Senior Counsel appearing A9 would submit that the only witness to the alleged presence of A9 in the scene of crime with the motorcycle [M.O.28] is PW5 and even accepting his testimony to be credible, he has got only two seconds to see him and admittedly, during the course of investigation, he did not give any details as to the physical features, complexion and the dress worn by A9 and in the Test Identification Parade conducted on 06.04.2016, though PW5 had identified A9, it is an admitted fact that photographs of the accused were taken by PW67 without the permission of the Magistrate concerned and in all probability, prior to the Test Identification Parade, their identification in the form of photographs would have been shown to the concerned witness. Even otherwise, he has not been attributed with any fatal overt act and he has been convicted with the aid of Section 149 of IPC and further points out that A10, who stood on similar footing, has been acquitted by the Trial Court by appreciating the same set of evidence and hence, prays for his acquittal.

238 *Per contra*, Mr.C.Emalias, learned Additional Advocate General assisted by Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that though A10 has not been attributed with any fatal

overt act, the prosecution was able to prove that he was a part of conspiracy and he was in touch with A5 on 12.03.2016 and 13.03.2016 respectively and the prosecution, through the testimonies of the concerned witnesses, had proved the offence of conspiracy as well as their presence in the scene of occurrence and therefore, the Trial Court has rightly convicted him and prays for dismissal of the appeal filed by A9.

239 This Court, has carefully considered the rival submissions and also perused the oral and documentary evidences and other materials.

240 In the light of the findings recorded by this Court as to the lack of evidence as regards conspiracy as against A1 as well as A4 to A8, it should be held that A9 is not guilty of the offence of conspiracy under Section 120[B] of IPC. As rightly submitted by the learned Senior counsel appearing for A9 that PW5 had only few seconds to see A9 who came in a motorcycle and halted in front of his mobile fruit shop and that he was perplexed and in the light of the improvement made by him during the course of his testimony, as per the evidence of PW67- Investigating Officer, his testimony insofar as A9 is concerned is not believable. PW5 as well as PW67 would admit that the physical features, complexion and

other relevant details of A9 have not been disclosed during the course of investigation. No doubt, PW5, did identify A9 in the Test Identification Parade and since it is not a substantive evidence and in the absence of any other clinching and corroborative evidence, on the basis of the Test Identification Parade alone, he cannot be convicted. It is also a settled position of law that mere recovery of material object, *ipso facto* do not connect the accused with the commission of crime and the confession statement of A10 in identifying A9, cannot be taken as an important factor or evidence to rope A9 with the commission of the offence.

241 This Court has also considered the evidence of the Scientific Expert, PW58 and PW58, through the mobile phone recordings had identified only A5, A6, A7 and A8 and the testimony of PW62 would also only speak about the assailants carrying weapons and boarding motorcycle and nothing has been stated about A9 in the Anthropology Report [Ex.P.90] as well as the Annexures to Ex.P90 under Ex.P91.

242 The prosecution was unable to prove as to the presence of A9 in the scene of crime beyond any reasonable doubt and in the light of the findings already recorded that the prosecution is also unable to prove the offence of conspiracy

beyond reasonable doubt and that he has been roped in for the commission of the offence under Sections 302 and 307 of IPC with the aid of 149 of IPC as well as for the commission of the offence under Section 147 of IPC and in the absence of any credible or believable evidence as to the presence of A9 in the scene of crime, the conviction and sentence under Section 302 r/w 149 of IPC, 307 r/w 149 of IPC and 147 of IPC are liable to be set aside.

243 The findings recorded by this Court as regards commission of the offences under Sections 3[2][Va] of SC/ST [POA] Amendment Act, 2015 and 3[1][r] and [s] of SC/ST [POA] Amendment Act, 2015, in respect of A5, A7 and A8, would also equally applicable to A9 also and as far as Section 3[1][r] and [s] of SC/ST [POA] Amendment Act, 2015, is concerned, he has been convicted with the aid of Section 149 of IPC and in the light of the findings earlier recorded, the said conviction and sentence are also liable to be set aside.

CRL.A.No.165 OF 2018 [PREFERRED BY A11]

244 The appellant/A11 has been convicted for the commission of the offence under Section 212 of IPC and imposed with rigorous imprisonment of 5

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years and a fine of Rs.50,000/- with a default sentence of 6 months simple imprisonment and out of the fine amount of Rs.50,000/-, Rs.5,000/- is to be appropriated to the State and the balance amount is to be apportioned equally between PW1 and the father of the deceased Shankar as compensation under Section 357 [2] of CrPC and challenging the legality of the conviction and sentence awarded by the Trial Court, the present appeal is filed.

245 The facts leading to the filing of this appeal as well as the Referred Trial, have been narrated in detail and in extenso in dealing with the appeals filed by A1 and A4 to A8 and therefore, it is unnecessary to restate the entire facts once again.

246 The substratum of the charge framed against A11/appellant is that after commission of the offence, A4, A5, A6 and A8 came to the house of A11/appellant and despite knowing that they had committed heinous crime/offence, the appellant/A11 given asylum / accommodation in his house and as such, the charge under Section 212 of IPC has been framed.

247 The prosecution, in order to substantiate the charge framed against

A11, had examined PW11, PW42, PW65 and PW67. PW11 was the Village Administrative Officer of Ragalpa at the relevant point of time and he along with his Menial were proceeding to their office and while they were crossing Anaimalai Road Railway Gate at about 12.15 p.m. on 15.03.2016, PW67 was examining 3 persons and PW11 and his Menial, voluntarily went and identified themselves and PW67 had told them that with regard to the murder that took place on 13.03.2016, he was examining the said three persons and asked the assistance of PW11 and his menial and they also agreed to the same. The three persons who were examined by PW67 are A6, A8 and A11. A11 voluntarily came forward to give a confession statement, the admissible portion of which is marked as Ex.P14, wherein A11 had stated that three accused involved in the commission of the offence, viz., A4, A6 and A8, came to his house at about 9.00 p.m. on 13.03.2016 and he granted them asylum and also undertook to identify his house. It is to be noted at this juncture that the admissible portion of the confession statement marked as Ex.P14, did not lead to the recovery of any articles or discovery of fact.

248 PW42, was the Tahsildar of Niladakottai and he has given the Community Certificate under Ex.P53 dated 19.03.2016, certifying that A11/appellant belongs to Hindu Nadar Community. A11 either belongs to Hindu

Piranmalai Kallar Community or the Scheduled Caste community.

249 PW65 is the landlord of the premises of A11 and in the chief examination, he would depose that he has constructed the house by obtaining loan and from the year 2016 onwards, A11 and his wife are residing in the said premises by way of lease and monthly rent of Rs.1,500/- has been collected and also identified A11. Since A11 was in the habit of not adhering to the time schedule for payment of rent, repeated request has been made by PW65 to vacate the house and on one such occasion, on 14.03.2016, at about 8.00 a.m. PW65 along with his wife went to the house of A11 for the purpose of demanding money and he found four persons in conversation with A11. When PW65 asked about their identity to A11, he told PW65 that they are his friends and they came to his house for taking dinner and PW65 gave advise as to the adherence of time schedule for payment of rent. Two or three days later, PW65 read in the newspaper and came across the information that the persons who were found in the company of A11 at his house, were arrested and he also identified A4, A5, A6 and A8 in the open Court. He would further add that within one week from 14.03.2016, he handed over the keys of the house.

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250 In the cross-examination, PW65 would depose that he was examined by PW67 on 04.04.2016 wherein he has stated that A11 and his wife are residing in his house right from the year 2016 and PW65 would further depose that during the course of enquiry, he did not state as to the door number of the house which was leased out in favour of A11 and there was no Rental Agreement and he was also not in the habit of issuing any receipt and he has no proof to show that he let out his house in favour of A11. It is further deposed by PW65 that he was not aware of the purpose for which, the said persons came to the house of A11 and would also concede that either prior to 14.03.2016 or after 14.03.2016, he has never seen the said persons and at the time of recording his statement, he did not state that he is prepared to identify them and also not disclosed their identification marks nor the dress/cloth worn by them. PW65 denied the suggestion that if he had really seen the four persons, he would have definitely gone to the Police Station and lodged a complaint.

251 PW67-Investigating Officer, in the cross-examination done on behalf of A4 to A9 and A11 would depose that in Ex.P53-Community Certificate of A11, the residential address of A11 is not disclosed and would further state that in the

confession statement of A11, the signature was found in the last page and the learned counsel appearing for A11 has invited the attention of this Court to the decision reported in **1992 [2] SCC 288 [Sanjiv Kumar V. State of Himachal Pradesh]** and would submit that the ingredients of the offence under Section 212 of IPC have been dealt with in the above cited decision and in paragraph No.21, it is held that *"to attract the ingredients of Section 212 IPC, it is necessary to establish commission of an offence; harbouring or concealing the person known or believed to be the offender; and such concealment must be with the intention of screening him from legal punishment. The evidence adduced by the prosecution in this regard is wholly insufficient to establish either of the aforesaid ingredients, though all the ingredients are necessary to be proved."*

252 This Court, on a careful scrutiny and analysis of the evidence made available by the prosecution, is of the considered view that the prosecution has failed to prove the commission of the offence under Section 212 of IPC on the part of A11 for the following reasons.

253 The admissible portion of the confession statement of A11 marked as Ex.P14 dated 15.03.2016, did not lead to any recovery of any incriminating articles

or discovery of fact and the entire reading of the said confession statement leads to only inference that it is a self-incriminatory and it cannot be used against A11. The Community Certificate of A11 marked as Ex.P53 through PW42 did not help the prosecution in any way for the reason that he did not belong to the caste of A1 to A3 or some of the assailants and that, he also do not belong to the community of the deceased Shankar. The only evidence projected by the prosecution is in the form of testimony of PW65 and his evidence appears to be highly artificial for the reason that he along with his wife said to have gone to the house of A11 for the purpose of demanding rent and on that occasion, he saw A11 in the company of four persons. It was conceded by PW65 in the cross-examination that either before or after the date of the commission of the offence, he was not aware of their identity and he is also not aware of any of their details and he did not specifically state before PW67 – Investigating Officer that he is prepared to identify them and he also did not disclose the physical and other features as well as the dress / cloth worn by them.

254 No doubt, PW65 had identified A4, A5, A6 and A8 in the open Court and it is a well settled position of law that Test Identification Parade is not a substantive evidence and in the absence of any clinching or acceptable evidence as

regards conformity of A11, the reasons assigned by the Trial Court for convicting and sentencing him for the commission of the offence under Section 212 of IPC, is wholly unsustainable and is to be acquitted.

255. ACCORDINGLY, THE CRIMINAL APPEAL IN CRL.A.No.165/2018 IS ALLOWED AND THE APPELLANT/A11 IS ACQUITTED OF ALL CHARGES LEVELED AGAINST HIM.

Question No.4:-

CRL.A.No.183/2018-APPEAL AGAINST ACQUITTAL

256 The State has preferred this appeal challenging the acquittal of A2, A3 and A10 respectively by the Trial Court.

257 The 3rd respondent / A10 is charged for the commission of the offences u/s.120-B, 147, 302 r/w 149 and 307 r/w 149 of IPC and under Sections 3[1][r] and [s] of SC/ST [POA] Amendment Act, 2015 r/w 149 of IPC and 3[2][va] of SC/ST [POA] Amendment Act, 2015 r/w 149 of IPC.

258 The substratum of the charges against the 3rd respondent / A10 is that he along with A4 to A9 was present in the the scene of occurrence, having

common intention to do away with the life of Shankar and Kowsalya [PW1] and also formed themselves into an unlawful assembly, prior to the occurrence and just prior to the occurrence, Shankar and Kowsalya [PW1] were proceeding to Udumalpet and boarded a bus at about 12.45 p.m. on 13.03.2016 and A10 has also boarded the said bus and A9 was closely following the bus by riding motorcycle [M.O.28]. The Trial Court had dealt with the evidence and materials against A10 in paragraphs No.147 to 166 of the impugned judgment. The reasons adduced by the Trial Court, are as follows:-

- PW5 who is a mobile fruit vendor, is the only cited witness by the prosecution for having seen A10, rushing and boarding the bike driven by A9. PW22 who had spoken about A1 and A4 to A10, talking with each other in Children's Park at Palani By-pass road, did not state anything about A10's presence with the other accused. PW1-injured eyewitness and PW2 to PW4, the other eyewitnesses had not even referred to the presence of A10 in the scene of occurrence.
- PW5, though identified A10 in the Test Identification Parade – proceedings marked as Ex.P96, during the course of investigation, did not state anything about the physical and other features of A10 and therefore, it is impossible for PW5 to remember a person who had slipped off within few seconds

from the place.

- PW24 who is said to have seen A9 and A10 at Rasi Bakery at Komaralingam bus stand on 13.03.2016 midnoon, though spoken about the presence of A10, did not state anything further.
- PW10-Village Administrative Officer, who had spoken about the voluntary confession statement given by A10, the admissible portion of the same has been marked as Ex.P10, had identified A7 to A9 and PW23-Village Administrative Officer of Periapatti has also spoken about the recovery of M.O.30 to M.O.32 on the basis of the admissible portion of confession statement given by A10.
- Thus, the prosecution has tendered the evidences through PW5, PW10, PW23, PW24, PW57, PW66 and PW67 to prove the charges against A10.
- The Trial Court, on clinching evidences in the form of CCTV footage and cellphone video footage, had taken into consideration, the testimonies of the scientific Experts, viz., PW58 and PW62.
- The Trial Court has recorded the finding that PW58 had analysed morphology of the individual, viz., A10, marked as items No.1 to 5 in M.O.43 series and given a finding in her Anthropology Report dated 04.04.2016 marked as Ex.P83 series, that the individual alleged to be A10

with the same morphological, did not appear in the video recording in item No.18, the cellphone.

- PW62, another scientific Expert, while narrating the sequence of events, had taken into consideration Frame No.17895 at 2.11.55 p.m. on 13.03.2016, wherein A10 was found running from the left and joined the company of A5 and A7 who were standing in front of the Commercial Complex and recorded the finding that the presence of A10 was not found in the scene of occurrence where A4 to A8 had assaulted PW1 and Shankar.
- The Trial Court further recorded the finding that the ocular observation in the form of CCTV footage, has given a clinching evidence as against A4 to A8 for the commission of the offences. But, at the same time, it is also in favour of A10. The Trial Court, further recorded the fact that the presence of A10 in CCTV frame was at 02.13.07 hours on 13.03.2016 whereas, A9 had appeared prior to the said time at 02.12.59 hours.
- The Trial Court, has also taken into consideration the defence witness, viz., DW3 who is the Head of the Department of B.Com [CA] of Vidyasagar College of Arts and Science at Udumalpet in which A10 studied as student and through her, Ex.D6-Attendance Register was marked.

- DW3 had deposed that on the eve of the practical examination on 16.03.2016, A10 did not attend the College and however, on the next day, he attended the College with a normal behaviour and he was enquired by the Police on 15.03.2016.
- The Trial Court has also taken into consideration the decision on by the learned counsel appearing for A10 reported in *AIR 1971 SC 1050 [Matru @ Girish Chandra V. State of Uttar Pradesh]* wherein it has been held that even an innocent man may feel panicky and try to evade arrest when he is wrongly suspected for a grave crime and such is the instinct of self-preservation.

The Trial Court, by citing the above reasons, had acquitted A10.

259 Mr.C.Emalias, learned Additional Advocate General appearing for the State would submit that the sequence of conspiracy had been spoken well by PW14 and PW15-Lodge owners as well as CDRs as A10 was in conversation with A4 on 11.03.2016 and 12.03.2016 respectively and the mobile phones of A5, A6, A8 and A10 were in operation in and around Udumalpet on 13.03.2016-date of occurrence and the said clinching evidence had proved that the concerned accused were in close touch with each other at and before the time of occurrence and the

call records of the Service Providers, viz., Vodafone, Aircel and Airtel, marked as Exs.P68, P72, P74, P76, P77, P79, P86, P87, P90 and P120, are also in support of the Nodal Officers, viz., PW56 and PW57.

260 PW24 who is the classmate of A10 had also deposed as to the presence of A9 and A10 on 13.03.2016 from 12.30 p.m. and Kowsalya [PW1] and Shankar were waiting to board the bus and in fact, A10 had boarded the bus and A9 followed the bus in his motorcycle and that apart, the presence of them in the scene of occurrence had also been spoken to by PW5 who had also identified him in the Test Identification Parade and recovery was also effected in pursuant to the admissible portion of the confession statement of A10 and the cellphone used by him was also marked as M.O.30 and the CDRs relating to the mobile phone were also marked as Exs.P77 to 79 and the Trial Court has committed a grave error in not properly appreciating the qualitative evidence let in by the prosecution and would further add that though he did not actually participate in the commission of the offence, he was part of conspiracy and also a member of unlawful assembly and though A9, who almost stand on a similar footing was convicted, the Trial Court, has let-off A10 and prays for reversal of the judgment of acquittal and sentence him accordingly.

261 *Per contra*, Mr.N.Manoharan, learned counsel appearing for A10/3rd respondent, submitted that there are totally 9 witnesses, who have spoken about A10 and they are, PW5, PW10, PW24, PW27, PW57, PW58, PW62, PW66 and PW67 and by drawing the attention of this Court to their testimonies, the learned counsel would submit that the prosecution made all out efforts to get conviction of A10 in respect of the charges framed against him merely based upon exemptions, conjectures and surmises overlooking the fact that burden lies on the part of the prosecution to prove the charges framed against A10 beyond any reasonable doubt and the Trial Court, despite convicting A1, A4 to A8 and awarding them with capital sentence, had also convicted A9 and A11 on a proper scrutiny and appreciation of evidence and other materials and assigned proper and tenable reasons to acquit A10. He would further point out that though it is open to this Court, being the First Appellate Court, on evidence and law, to reverse the judgment of acquittal, unless and until the Trial Court had overlooked the material and clinching evidences, normal interference will not be made in the judgment of acquittal and prays for dismissal of the appeal preferred by the State.

262 This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

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263 The sole question arises for consideration is that whether the Trial Court had considered the evidences and other materials on proper perspective and was right in acquitting the 3rd respondent / A10?

264 This Court, before analysing the evidence and other materials, is relying upon the decisions of the Apex Court as to the scope and exercise of its power under Sections 378 with 386 of CrPC.

265 In **2009 [1] SCC [Cri.] 60 [Ghurey Lal V. State of Uttar Pradesh]**, the appellant/accused therein, was acquitted by the Trial Court and it was reversed by the High Court of Allahabad and challenging the same, the accused had preferred the appeal. The Hon'ble Supreme Court of India has referred and considered its earlier decisions as to the powers of the High Court being the Appellate Court to deal with the appeals of acquittal by the Trial Court and after referring its earlier decisions, has placed reliance upon paragraph No.42 of the decision reported in **2007-4-SCC-415 [Chandrappa V. State of Karnataka]**, wherein, it has been held as follows:-

"42. ... (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the

order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

In paragraph No.69, the Hon'ble Apex Court has culled out the following principles that emerged from the above cited cases:-

"69. The following principles emerge from the cases above:

- The appellate court may review the evidence in*

appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

In paragraph No.70, the principles to be followed by the High Court and other Appellate Courts if it is going to overrule or otherwise disturb the Trial Court's acquittal, has been laid and it is relevant to extract the same:-

"70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to

discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

In paragraph No.71 of the said decision, it is observed that "*though the Appellate Court's power is wide and extensive, it must be used with great care and caution.*"

266 In 2018 [5] SCC 790 [*Banna Reddy and Others V. State of Karnataka and Others*], the Hon'ble Apex Court had taken note of the decision reported in 2011 [2] SCC 490 [*Dara Singh V. Union of India*] and in paragraph No.11, observed that "*it is not in dispute that the presumption of innocence is further reinforced, reaffirmed and strengthened against the acquitted accused by*

the judgment in his favour."

267 This Court, keeping in mind the principles and directions given by the Hon'ble Supreme Court of India, in the decision reported in **2009 [1] SCC [Cri.] 60 [Ghurey Lal V. State of Uttar Pradesh]**, proceeds to analyse the evidence available on record against A10 / 3rd respondent.

268 PW10 was the Village Administrative Officer of Kanakampalayam and he has spoken about the examination of A10 by PW67 in his presence as well as the admissible portion of the confession statement of A10 marked as Ex.P10, wherein he would disclose that he has agreed to hand over the pant and shirt [M.O.31 and M.O.32] worn by him as well as the cellphone [M.O.30] concealed in his house and he would also shown the videograph recordings by PW67 from his laptop. PW10, in his cross-examination, would depose that in the confession statement of A10, there is no word that A10 undertook to hand over M.O.30-Cellphone.

269 It is the admitted case of the prosecution A10 did not take part in the assault inflicted by A4 to A9 upon PW1 and Shankar and therefore, the recovery of

pant and shirt [M.Os.31 and 32] have no significance to the case and as far as the recovery of the mobile phone used by him [M.O.30], there is no specific word that he will produce the cellphone.

270 A perusal of the call details of A5 would disclose that on 11.03.2016 and 12.03.2016, calls emanated from A10 through his mobile number and this Court will deal with the said aspect while considering the testimonies of PW57-Nodal Officer pertains to cellphone.

271 The next witness cited by the prosecution is PW23, who was the Village Administrative Officer of Periamatti, Palani Taluk and he has spoken about the presence of A10 on 25.03.2016 and further conduct of going to his house and producing M.O.30-cellphone as well as pant and shirt [M.Os.31 and 32]. In the cross-examination, PW23 would state that in four cases, he acted as a witness in respect of the confession statement and in the recovery Mahazar marked as Ex.P28, from which part of the house, the articles were taken, has not been disclosed and denied the suggestion that the Mahazar has not been prepared properly and there was belated despatch.

272 This Court, while dealing with the appeal of A9, had also reiterated the settled legal principle that mere recovery alone, will not connect the accused with the commission of the offence and the only clinching evidence made available by the prosecution is in the form of recovery of M.O.30-cellphone.

273 PW24, in the chief examination, would state that A10 was his B.Com [CA] classmate at Vidyasagar College of Arts and Science and while he was proceeding to Komaralingam bus stand at 12.30 p.m. on 13.03.2016, he saw A10 and another person were coming in the opposite direction and were taking tea at Rasi Bakery and at that time, Shankar and Kowsalya [PW1] were waiting and later boarding the bus proceeding to Udumalpet and A10 had also boarded the bus and the person, who came along with A10, followed the bus in a motorcycle and identified as A9. PW24, in the cross-examination, would state that he and the deceased Shankar belongs to the same community and denied the suggestion that he is deposing in favour of the prosecution on account of the same. In the cross-examination done on behalf of A10, PW24 denied the suggestion that during the course of investigation, he did not state anything about drinking tea by A10 and another person. He also did not speak to anybody as to the presence of A10 till he was examined by PW67 on 26.03.2016 and denied the suggestion that he is

deposing falsely as he belongs to the same caste as that of the deceased Shankar.

274 PW67, in the cross-examination, would depose that he examined PW24 on 26.03.2016 and though he voluntarily came forward to give a statement, he was not specific as there was a delay of 13 days in giving such statement and the statement of PW24 was sent along with the Final Report. He would further state that he did not prepare any Rough Sketch near Komaralingam Bus stop and denied the suggestion that in order to falsely implicate him, the statement of PW24 was belatedly despatched.

275 This Court, while dealing with the appeal filed by A9, had disbelieved the testimony of PW24 as to the identification of A9. Mere presence of A10 in the bus stand at Komaralingam and boarding the bus to Udumalpet, cannot be cited as a clinching or relevant circumstance connecting A10 with the commission of the offence for the reason that admittedly, the College in which PW24 and A10 were studying, is located at Udumalpet and therefore, there may not be any wrong in boarding a bus which is proceeding towards Udumalpet. Though PW24 would deny that he is deposing in favour of the prosecution for the reason that he is related to the deceased Shankar, it is also an important fact to be

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taken into consideration by this Court while evaluating his testimony is in the nature of interested testimony and he also belongs to the same village as that of the deceased Shankar.

276 PW27 was examined to speak about the fact of giving cellphone as well as the SIM card to A10 and he totally turned against the prosecution and was treated as a hostile witness. In the cross-examination done on behalf of the prosecution, he has deposed that he purchased Aircel SIM Card about 1 ¼ years back for his personal use and it was a prepaid card and used it for two weeks and he lost the SIM card along with Nokia Phone within two weeks and the mobile phone was a used cellphone and he did not lodged any police complaint nor given any letter to block the mobile number after this case and he also did not question A10 as to why he has done so. He would further depose that A10 was junior to him by four years. In the cross-examination done on behalf of A10, PW24 would depose that a case in Crime No.250/2013 has been registered on the file of Ottanchathiram Police Station for the offence of abduction, for which Final Report is yet to be filed and he was in remand for 58 days and he denied the suggestion that he continues to use M.O.30-cellphone. His testimony would disclose that it is also the case of the prosecution that he owned the mobile phone as well as the SIM

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Card registered and despite missing of the phone along with the SIM Card, he did not lodge any complaint and did not give a letter for blocking the number and his cross-examination would also reveal that he has obliged the prosecution for the reason that he has involved in the abduction case registered by the Ottanchathiram Police Station in Cr.No.253/2013 and therefore, it would be unsafe to rely upon his testimony as regards M.O.30-cellphone.

277 The Nodal Officer pertains to M.O.30-cellphone, has been examined as PW57 and he was the Assistant Manager, Legal and Regulatory apart from Nodal Officer of Aircel and he would depose that as per the requisition marked as Ex.P71, the call details pertains to the mobile phone [M.O.30] were requested and the requisition also pertains to CDRs between 01.02.2016 and 15.03.2016. Insofar as M.O.30 [cellphone] is concerned, PW57 would depose that the SIM Card was registered in the name of PW27 and it was activated on 22.05.2015 and Ex.P74 is the CDR and in pages No.157 and 158, the name and address of the owner find place and has also given certification under Ex.P78 under Section 65B of the Indian Evidence Act.

278 PW57, in the cross-examination done on behalf of A10 has denied

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the suggestion that the certification given by him is not in accordance with Section 65B of the Evidence Act and the mobile phone pertains to M.O.30 has been used between 24.02.2016 and 05.03.2016 and from the cellphone bearing IMEI No.911430905996630, there was no call between 06.03.2016 and 09.03.2016. The records pertain to SIM Card issued in favour of PW27 has been marked as Ex.D2. PW57 would state that it was registered in the name of PW27.

279 This Court, while dealing with the testimony of PW10 had disbelieved the recovery and even as per the case of the prosecution, the SIM card pertains to the mobile phone [M.O.30] is not in the name of A10 ; but it was in the name of PW27, who has been treated as a hostile witness and the conduct in not reporting of the lost of cellphone to the concerned authority, also creates doubt and that apart, PW27 is also having a case involving cognizable offence, registered and pending against him. Therefore, the testimony of PW57, in no way helpful to prove the case of the prosecution.

280 The prosecution has laid much stress and reliance upon the testimony of PW58 and PW62 – Scientific Experts. PW58, while narrating the sequence of events would state in the video recordings pertains to Item No.18, which was for a

period of 00.01.27 hours. and the person wearing green full hand shirt along with two other persons, boarded the motorbike and also identified A4, A5 and A6. She also identified A8. The said witness would further depose that she received Ex.P82 series pertains to A9 and A10 on 31.03.2016 under M.O.43 and photographs and both faces have not been identified and that apart, in the cellphone of PW4 [M.O.14] also, their faces are not clear. PW62, while narrating the sequence of events, after analysing the CCTV recordings as well as M.O.14-cellphone, though spoken about two motorcycles, had identified them with the shirt worn by them and the person wearing white shirt, was driving the motorcycle. In the light of the testimony of PW58, as to the non-identification, the prosecution is unable to prove the presence of A10 in or near scene of occurrence.

281 As far as the Test Identification Parade is concerned, this Court, while dealing with other appeals, has also covered the legal position as to the evidenciary value of Test Identification Parade. The Test Identification Parade as well as identification in the open Court alone is not sufficient to connect the accused with the commission of crime. It is also argued by the learned counsel for the 3rd respondent / A10 that A10 surrendered on 18.03.2016 and his custody application was made on 21.03.2016 and on that day only, PW5 was examined and

PW5 despite being aware of the fact, did not disclose till he was examined by PW67 on 21.03.2016 and that apart, his statement has also belatedly reached the Court along with the Final Report on 25.04.2016.

282 A perusal of the testimonies of PW5 would disclose that though the police came to the spot for about 5 or 6 days after the occurrence, he did not tell the said incident until he was examined by the police on 21.03.2016 and has already extracted, he also did not disclose the identity and other features of A10 to PW67, while he was examined.

283 PW67 was also not in a position to explain as to why PW5 was examined on 21.03.2016, the date on which, he filed the custody petition/application to secure A10 pertains to his surrender on 18.03.2016. It is also the vehement submission of the learned counsel for the 3rd respondent / A10 that the photographs of A10 were also taken in the Police Station and the same is taken without getting prior permission from the jurisdictional Magistrate and this Court, after referring to the decisions of the Apex Court reported in **2009 [1] SCC [Cri.] 60 [Ghurey Lal V. State of Uttar Pradesh]**, as well as the Division Bench of this Court reported in **2016 [2] CTC 135 [cited supra]** has repelled the said

contention and therefore, the submission on this point, is liable to be rejected.

284 A10 is also roped with the commission of the offence with the aid of 149 of IPC and in the absence of any clinching evidence, the charge against A10 under Section 147 of IPC cannot be sustained. This Court, while dealing with the cases of A1 and A4 to A8, had also found that the charge of conspiracy against them have not been proved beyond any reasonable doubt. In the considered opinion of the Court, the Trial Court, has appreciated the oral and documentary evidences in proper perspective and in the light of the settled position that unless there are very substantial and compelling reasons exist, the order/judgment of acquittal passed by the Trial Court, be reversed. The Trial Court, had the benefit of watching the demeanor of the witnesses also. Therefore, the order of acquittal passed by the Trial Court against A10 warrants no interference. The Trial Court, on an in-depth analysis of the evidences and other materials, had rightly reached the conclusion to acquit A10 and this Court finds no rhyme or reason to interfere with the same and therefore, the appeal against acquittal of A10/3rd respondent, deserves dismissal.

APPEAL AGAINST ACQUITTAL IN RESPECT OF 2ND RESPONDENT /

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A2:-

285 The 2nd respondent / A2 is the wife of A1 and she along with A1 and A3 have been charged for the offences under Sections 120-B, 302 r/w 120-B R/W 109 and 307 r/w 120-B r/w 109 of IPC.

286 The Trial Court, vide impugned judgment dated 12.12.2017, had acquitted A2/1st respondent for the following reasons.

- Even according to the defacto complainant / PW1 – daughter of A1 ad A2, her mother, viz., A2, had taken her to different places and residences of her relatives and persuaded her to break the matrimony and come and live in the parental home and an overall appreciation of her evidence would disclose that she did not depose anything materially or concretely to hold that her mother-A2 had nurtured a motive by going to the extent of criminal assault or murdering both PW1 and her life partner, Shankar and the Trial Court further held that A2 can be saddled only with the knowledge that her husband/A1 may attempt something in furtherance of conspiracy and that apart, the prosecution has failed to adduce any other evidence or circumstance to show that A2 has been imputed with the knowledge or rather harboured an intention to commit the offence. The prosecution, in

order to sustain the charges against A2, apart from PW1, had examined PW9, PW11, PW12, PW18, PW37, PW39, PW59, PW64 and PW67.

- PW9 is the younger brother of the deceased Shankar and in the cross-examination, he had admitted that he did not attend the marriage of his elder brother and when they were called for an enquiry in the Udumalpet Police Station, based on the petition/compliant given by PW1 under Ex.P1 dated 13.07.2015, the parents of PW1/A1 and A2 assured that they have no more relationship with PW1 and when DW2-maternal grandfather of PW1, came to the house, A2 had stated that as regards the marriage, their relatives are not at all happy and they may do something wrong and except that, the motive on the part of A2 to commit the crime is not clear.
- A2, being the mother of PW1, who was aged about 19 years, had reacted to the situation and it is also a probable one and the prosecution has failed to prove the marriage between PW1 and Shankar at Padhavinayagar Temple. The Trial Court also held that it is a normal reaction on the part of A2 and she cannot be attributed with anything to do with the lives of PW1 and Shankar.
- PW11 had spoken about the recovery of Rs.20,000/- from A6 [M.O.21]

under the cover of Mahazar [Ex.P11] and according to the prosecution, larger amount was withdrawn by A1 from the joint account of A1 and A2 for the purpose of making payment to A4 to engage hirelings.

- The Trial Court found that payment of money by A2 to A4 has not been directly or indirectly established. So also the evidence of PW12 who has spoken about the recovery of Rs.24,000/- [M.O.23] from A4.
- A2 had used M.O.29-SIM Card and the registration of the SIM Card was in the name of A2 is not disputed and no call emanated from A2 to the hirelings as well as to A9 and A10 and she had called her husband//A1 only and therefore, it cannot be put against her.
- PW37 is the Branch Manager of State Bank of India, Palani Branch and he had spoken about the joint account of A1 and A2 and from that Account, a sum of Rs.50,000/- was drawn between 26.02.2016 and 28.02.2016 on various occasions through ATM and the statement of Accounts was marked as Ex.P41 and the relevant entry in page No.4 was marked as Ex.P99 and the amount drawn is marked as Ex.P100.
- The Trial Court through the evidence of PW37, held that the prosecution was able to prove that a joint account was maintained by A1 and A2 and any one of the joint account holders has right to withdraw the amount and

the prosecution has failed to establish that A2 had withdrawn the money for paying to A4 directly and even in the admissible portion of the confession statement of the concerned accused, it is not stated so.

- PW59, the Nodal Officer of Bharthi Airtel has spoken about the SIM standing in the name of A2 and the Trial Court has held that except a call to her husband/A1, she did not contact the other accused.
- PW64 is the witness to the voluntary confession given by A2 and as per the admissible portion of the confession statement marked as Ex.P93, cellphone used by A2 is said to have been recovered and however, it has not been seen by PW64 and therefore, the Trial Court found that there is no specific evidence to substantiate the recovery of M.O.29-cellphone with the SIM Card.
- PW67-the Investigating Officer has also been cross-examined and on going through his evidence, the Trial Court found that mere objection on the part of A2 and the non-approval of A2 alone cannot be treated as a substantial evidence as to the participation of A2 in the criminal conspiracy and ultimately found that the charge for conspiracy under Section 120-B of IPC has not been established and there is no material to prove the charges under Sections 3[2][va] of SC/ST [POA] Amendment Act, 2015 read with 109

IPC and acquitted her and challenging the said acquittal, the State has preferred the present appeal in CrI.A.N.183 of 2018.

287 Mr.C.Emalias, learned Additional Advocate General assisted by Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State has invited the attention of this Court to the testimonies of the above cited witnesses and made the following submissions:-

- A1 and A2 along with their relatives persuaded PW1 to separate from Shankar as he belongs to Scheduled Caste Community and since PW1 exhibited her firmness to stay with Shankar, A1 and A2 insisted PW1 to return all the articles given to her and accordingly, PW1 had returned it.
- A2 in a fit of rage, had bitten the chappals worn by PW1 into pieces and threw it away and the said attitude had exhibited her intention to wreck vengeance upon her daughter – PW1 and the deceased Shankar and the said conduct is also very unusual and exhibiting her strong dissentment also and therefore, A2 along with husband – A1 and A3, had hatched conspiracy to do away with the lives of her daughter/PW1 and Shankar.
- On one such occasions, PW1 had taken her grandfather [DW2] for medical treatment and at that time, A1 and A2 came along with Kalidoss in a car and

anticipating problem, PW1 tried to run away and she was chased and forcefully put inside the car and she was taken to the house of her relative Revathi, wherein the sacred thread [mangalashtra tied by Shankar] and toe ring [metti] were removed and her dresses were burnt and she was made to take head bath with a meaning to wash away the stigma caused by marrying a lower caste boy and that apart, black magic was also performed upon her to come to her senses and in that process, she was also kept in illegal custody for three days and ultimately, on the basis of the complaint given by Shankar under Ex.P39, PW1 was summoned to the Madathukulam Police Station and was enquired and since she has expressed her willingness to go with Shankar, statement of her was obtained and sent along with Shankar and therefore, A2 continued her effort to separate her daughter/PW1 from the company of Shankar and thereby, she had also had the common intention to do away with the lives of Shankar and PW1.

- A1 and A2 had joint account in SBI, Palani Branch under Ex.P99 and the prosecution had marked Ex.P99 and 100 to show that just prior to the commission of the offence, some amounts were drawn from the Bank account through ATM and since it is a joint account, both A1 and A2 are supposed to be aware of the purpose for which it was drawn and in the light

of recovery of moneies effected from A4 and A6 under M.Os.21 and 23 respectively, pursuant to the admissible portion of the confession statement, it can be safely presumed that the money drawn, was paid to A4 who in turn, engaged the hirelings to do away with the lives of PW1 and Shankar.

In sum and substance, it is the submission of the learned Additional Advocate General that the Trial Court, on the same set of evidences, has convicted A1 and imposed with the capital sentence and other sentences and as such, it ought to have convicted A2 accordingly and prays for interference.

288 *Per contra*, Mr.R.Karthikeyan, learned counsel for 1st respondent / A2, on position of law with regard to the appeal against acquittal, would submit that once there is an order of acquittal, the presumption of innocence is strengthened and though, it is open to the Appellate Court to appreciate the evidence, in the light of lack of evidence, as to the sustainment of charges framed against the accused and that the testimonies of the concerned witnesses also bristled with material contradictions and embellishments, the Trial Court had rightly recorded the findings of acquittal.

289 On merits of the case , the learned counsel made the following

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submissions.

- PW1, in the cross-examination done on behalf of A3, had deposed that the marriage between PW1 and Shankar was solemnised on 11.07.2015 at Padhavinayagar Temple at Palani and no receipt was obtained and no money was remitted and the marriage was also not registered and after lodging of the complaint under Ex.P1, her parents and two aunts came and they were very angry and left with no other option, they gave a written undertaking that they will not disturb them and went off peacefully. PW1 would further depose that in Crime No.647/2015 marked as Ex.P35, lodged by her father/A1, she was examined and subsequently, she was produced before the Court of Judicial Magistrate-1, Palani and before the Magistrate, she did not utter anything as to the anger exhibited by her parents [A1 and A2] and even in Ex.P4, she did not state as to the threat wielded out to her on account of the demise of Shankar, she was mentally disturbed. In respect of the complaint given by Shankar, under Ex.P39, PW1 would depose that she appeared before the Madathukulam Police Station and her custody was handed over to Shankar and she did so because her parents had threatened her. PW1, in the cross-examination done on behalf of A1 would state that she was abducted on 23.07.2015 and kept for four days and she

had love affair with Shankar for 1 1/2 years and Shankar asked her to come out of her parental home and her parents were also aware of his caste and they became aware of the love affair on 10.07.2015 and on the next day on 11.07.2015, she came out of her parental home. She denied the suggestion that her parents brought her up very strictly, conservatively and also castigated her as to her relationship with male friends and therefore, deposing accordingly.

- In the cross-examination, PW67 would depose that he became aware of the marriage between PW1 and Shankar on 12.07.2015 and he did not examine any direct witness as to the said fact and denied the suggestion that there was no marriage between them and also denied the suggestion that since the marriage took place long ago, there was no necessity on the part of A1 and A2 to develop a grouse against her daughter. PW67 would admit that prior to the commission of the crime, there were complaints and proceedings in All Women Police Station, Udumalpet, Palani and Madathukulam Police Stations and while, he examined the Station House Officers, he did not ask them as to the preventive steps taken and would state that A1 and A2 belong to middle class family and denied the suggestion that seizure of Rs.44,000/- was meant to meet family expenses. PW67 would also admit that during the

course of investigation, he became aware of the marriage between PW1 and Shankar on 12.07.2015 and however, in Ex.P1, PW1 had stated that the said marriage took place on 11.07.2015. PW1, in the cross-examination also admitted that at time of marriage, photograph was also taken and was handed over to Madathukulam Police Station at the time of lodging the complaint under Ex.P39 by Shankar and she did not tell PW67 as to the availability of the photograph.

- Learned counsel appearing for the 1st respondent / A2 would submit that there was absolutely no proof of marriage between PW1 and Shankar and though PW36-Inspector of Police, Madathukulam Police Station was examined, PW67 did not take any effort to collect the photographs which would have been available in the Case Diary relating to Ex.P39 and in the light of the earlier complaint/enquiry under Exs.P34 to 40, wherein the parents of PW1/A1 and A2 gave assurance that they will not interfere with the matrimonial life of Shankar and PW1 and the occurrence took place nearly one year and odd thereafter and the prosecution has failed to connect all links in the chain of circumstances leading to accusation that A1 and A2 along with A3, had hatched conspiracy to do away with the lives of PW1 and Shankar.

- PW9, younger brother of the deceased Shankar, did not implicate A2. PW11-VAO of Ragalpa, who was the witness to the confession statements of A6, A8 and A11, the admissible portions of which are marked as Exs.P12, P13 and P14 respectively, had spoken about A4, handing over a sum of Rs.24,000/- and PW12-VAO of Somavarapatti who speaks about the arrest and recovery of A4 and A5, pursuant to the admissible portion of their confession statements marked as Exs.P16 and P18, had spoken about the recovery of Rs.20,000/- and it is the case of the prosecution that the said amount was drawn from the joint account of A1 and A2 and sought corroboration through the testimony of PW37 who would speak about the withdrawal between 26.02.2016 and 28.02.2016.
- It is the submission of the learned counsel for the 1st respondent / A2 that admittedly, the withdrawal was done through ATM and the prosecution had failed to produce any evidence as to the person who had withdrawn the money though a specific question was put to PW37 as to the availability of CCTV camera in ATM also and the said CCTV recordings have not been summoned / recovered and even otherwise, it is open to any of the account holders to draw money from the joint account. Assuming it is one of the circumstances, it cannot be the sole circumstance which connects A2 with

the other circumstances and it cannot be put against A2. PW39 merely speaks about issuance of Community Certificate issued to 1st respondent / A2 under Ex.P46 and the said Certificate merely defines the community status and not any other information in favour of the prosecution. PW59- Nodal Officer of Airtel, had furnished Ex.P86, the call details of the mobile phone pertains to A2 and also issued Certificate under Ex.P88 and even as per the call details, she had spoken only to her husband/A1 which can be termed as normal under any circumstance. PW64 is the witness to the confession statement of A2, the admissible portion of which is marked as Ex.P93, which led to the recovery and the said confession statement did not lead to any discovery of fact and therefore, his evidence is of no help to the prosecution. The testimony of PW67 would also disclose that there were material contradictions in the testimony of PW1 and it is also elicited through the testimonies of PW1 and PW67 and that, in the light of closure of the proceedings under Exs.P34, P35, P38, P39 and P40 and the only probability is that A1 and A2 had resigned to their fate and had no intention to do away with the lives of PW1 and Shankar and since the Trial Court had appreciated the oral and documentary evidences and other materials in proper perspective and on a thread bare discussion, had rightly reached the

conclusion to acquit A2/1st respondent and prays for dismissal of this appeal.

290 This Court has considered the rival submissions and also perused the materials placed before it.

291 This Court, while dealing with RT No.3 of 2017 and CrI.A.No.162 of 2018 preferred by A1, had exhaustively dealt with the evidences on record and reached a conclusion that the charge of conspiracy against A1, has not been proved by the prosecution and the said findings would also equally applicable to the 1st respondent / A2 also.

292 PW1, immediately after her marriage with Shankar, lodged a complaint under Ex.P1, on the file of All Women Police Station, Udumalpet wherein she would state among other things that since they belong to different community, they anticipated some problem and prayed for protection. Shankar gave a letter under Ex.P2 in the said Police Station wherein he had stated among other things that he and PW1 got married on 11.07.2015 and based upon the complaint under Ex.P1, parents of PW1 / A1 and A2 were summoned and

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examined and though they wanted PW1 to come back, she refused and exhibited her intention to live with Shankar and accordingly, Shankar gave an undertaking that he will look after his wife very well and would take steps to pursue her studies and based upon the said letter, no action was taken. Similarly, PW1 also gave a letter under Ex.P3, wherein, she had stated among other things, as to handing over of the jewels and articles worn by her on her own volition and that her parents/A1 and A2 and other relatives also undertook not to create any problem for them and therefore, requested not to take any further action. PW33-Station House Officer of All Women Police Station, Udumalpet, based upon the said letters, has closed the proceedings and it is also evidenced in Ex.P34.

293 Under Ex.P35-FIR dated 11.07.2015 in Cr.No.647 of 2015, A1 lodged a complaint as to the missing of his daughter based on which, a case was registered under Section 366 of IPC and based upon the said complaint, Kowsalya-PW1 was summoned to the Police Station and she would state that on her own volition, she left her parental home and married Shankar and she is willing to go with her husband and vide Final Report under Ex.P38 dated 13.07.2015, further action was dropped.

294 Shankar, as to the missing of his wife Kowsalya, has lodged a

complaint and FIR was registered under Ex.P39 dated 24.07.2015 and further action was dropped under Ex.P40-Final Report dated 27.07.2015 by the Inspector of Police, Madathukulam Police Station [PW36] and the contents of the same would disclose that PW1 who was found to be missing on 27.07.2015, had contacted her husband Shankar and told him that DW2-her grandfather was unwell and therefore, she admitted him in a private hospital in Tirupur and that is why she was not in a position to give any information to him and PW1/Kowsalya also came to Madathukulam Police Station on 27.07.2015 at 10.00 a.m. and her statement was recorded and in the presence of elders, she was sent along with Shankar.

295 PW34-Inspector of Police, Palani Town Police Station caused enquiry into Ex.P1 and in the cross-examination, she would depose that after completion of enquiry, both sides went of peacefully. PW35-Inspector of Police, Palani Town Police Station had spoken about the complaint given by father of PW1/A1 under Ex.P35 and in the cross-examination, he would depose that PW1 and Shankar got married on 11.07.2015 at Padhavinayagar temple at Palani and as per the Birth Register Extract, PW1 was aged about 19 years and during the course of enquiry, PW1 did not produce any photographs or documents evidencing marriage and while the custody of PW1 was handed over to Shankar, in the

jurisdictional Magistrate Court, A1 did not create any problem.

296 PW36 – Inspector of Police, Madathukulam Police Station, speaks about the complaint given by the deceased Shankar under Ex.P39 and in the cross-examination, he would depose that PW1, during the course of enquiry, had told him that since her grandfather [DW2] was unwell, she went with him and during the period of missing, she was not subjected to any treatment or torture and also as to the performance of black magic and as such, further proceedings were dropped.

297 In the light of overwhelming testimonies of the said witnesses coupled with Exs.P34, P35, P38 to P40, this Court is of the considered view that the parents of PW1, especially, A2, did not exhibit her intention to wreck vengeance as to the intercaste marriage between her daughter with Shankar and that apart, the evidence tendered by the prosecution insofar as 1st respondent / A2 being part of conspiracy, is also not helpful to the case of the prosecution.

298 This Court, on an independent appraisal of evidences and other materials, is of the considered view that there is no infirmity or illegality and the reasons assigned by the Trial Court for her acquittal. Thus, this Court, while

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considering the appeal against acquittal, is having power to re-appreciate the evidence and also, in the light of the fact that Reference is also made by the Trial Court for confirmation of the capital sentence awarded to A1, A4 to A8, is of the considered view that the Trial Court took a very reasonable view in the light of the facts of the case and the evidences tendered by the prosecution and it cannot be said that the conclusion arrived at by the Trial Court for acquitting the 1st respondent / A2, are palpably wrong or erroneous.

299 The view taken by the Trial Court for acquitting the 1st respondent / A2 is also a possible and plausible view and therefore, interference at the hands of this Court in respect of acquittal of A2 is not warranted and therefore, CrI.A.No.183 of 2018 as against the 1st respondent / A2, deserves dismissal.

APPEAL AGAINST ACQUITTAL INsofar AS 2nd RESPONDENT / A3:-

300 The 2nd respondent / A3 is related to A1 and A2 and like them, he was also charged for conspiracy and as a consequence, allied offences.

301 The Trial Court has dealt with the evidences let in by the prosecution against A3 from paragraphs No.26 to 33. The Trial Court found that the only evidence made available by the prosecution is the testimony of PW1 and the alleged confession of A3 spoken to by PW30 and the said evidence of PW30 is also not admissible as there was no recovery. The Trial Court found that PW1 had deposed that she was forcefully taken to the house of one Revathi by her parents, after abducting her and at that time, A3 came and asked whether as to why PW1 is still allowed to live and further state that by seeing PW1, even his children would get spoiled. PW1 also deposed that she was told by her neighbour that A3 came to Komaralingam and visited the house of Shankar and also enquired the neighbours about the number of houses and other details etc and also taken into consideration that in Ex.P1 dated 12.07.2015, PW1 had stated nothing about A3. The Trial Court also recorded the finding that in the complaint given by Shankar on the file of Madathukulam Police Station, based upon which Ex.P39 came to be registered, PW1 was summoned and enquired and she merely stated that she took her grandfather [DW2] to a private hospital and only after the assault and murder on 13.03.2016, PW1 named A3 for the first time in her statement recorded under Section 164 CrPC. Therefore, the Trial Court has reached the conclusion that PW1 made improvements in her statements and there were some contradictions in

her version, vis-a-viz, documents.

302 The Trial Court has also recorded the finding that though the parents of PW1/A1 and A2 had offered opportunities to do some harm to her, expressed their willingness by permitting her to go along with Shankar and also gave assurance that she will not be disturbed and at that time, conspiracy has not even commenced. The Trial Court also found that the evidence of PW1 as to A3 coming to Komaralingam and visited the surroundings near to her matrimonial home, is also unbelievable for the reason that the neighbours are total strangers to A3 and he would not have introduced himself and that apart, no concrete evidence of neighbours stating the presence of A3 is also not made available and no Test Identification Parade was conducted. The Trial Court, ultimately found that excepting naming A3 in the FIR in Ex.P66 dated 13.03.2016, no substantial evidence to prove A3 in the participation of conspiracy and even from the call records, the presence of A3 at the time of the alleged conspiracy has not been established and though PW1 would state that she was abducted by her parents and was taken to the house of one Revathi and though she was examined during the course of investigation as LW176, she was not examined as a witness and the testimony of PW1 against A3 is contrary to the oral and documentary evidence and

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therefore, ultimately found that there are no materials to connect A3 with the commission of the crime and the prosecution has failed to prove the circumstances, either directly or indirectly, charging A3 with the offence of conspiracy and in the light of the said finding, has also acquitted him in respect of the charge under Section 3[2][va] of SC/ST [POA] Amendment Act, 2015 read with 109 of IPC.

303 Mr.C.Emalias, learned Additional Advocate General appearing for the State has invited the attention of this Court to the evidence of PW1 and would submit that PW1 was very categorical that only at the instigation of A3, a conspiracy was hatched and assault and murder was committed and since the testimony of injured eyewitness, viz., PW1, stands on a higher pedestal, the Trial Court ought not to have disbelieved by the Trial Court to that extent, believed her testimony in respect of A1, A4 to A8 and prays for reversal of the order of acquittal and his conviction and sentence.

304 *Per contra*, Mr.R.Karthikeyan, learned counsel appearing for the 2nd respondent / A3 has invited the attention of this Court to the testimonies of PW1 as well as PW67 and would submit that except including the name of A3 through PW1, the prosecution was unable to produce any tenable or credible evidence to

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connect him with the commission of the offence of conspiracy and his name has been unnecessarily roped in for wrecking vengeance and he had undergone enough agony during the course of trial and subject to media trial by print and visual medias also and the Trial Court, on a thorough and proper consideration of the evidences let in by the prosecution, had rightly reached the conclusion to acquit him and prays for dismissal of this appeal.

305 This Court has paid its best attention to the arguments advanced by the the learned Additional Advocate General appearing for the State and Mr.R.Karthikeyan, learned counsel appearing for the 2nd respondent / A3.

306 PW1, in the chief examination, had spoken about the complaint given by her under Ex.P1 and the letter under Ex.P3 and also the events that took place after her abduction and deposed that A3 had stated that PW1 had done enough and in spite of that, why she is kept alive and if his children see her, they will also get spoiled and therefore, asked the parents of PW1 / A1 and A2 to take her away. PW1, in the cross-examination done on behalf of A3, would state that in Ex.P1-complaint, she did not state that through A3, her life would be under threat and also did not state that through her parents also, she may be put to danger. She

denied the suggestion as to the false implication of A3.

307 PW67 – the Investigating Officer, in the cross-examination done on behalf of A3, would depose among other things that he did not investigate as to the phone contact between A3 and other accused and also did not produce any oral and documentary evidence as to A3 coming to the house of A1 and A2 along with PW1 and his participation in the family functions. He would further admit that in Ex.P1 dated 12.07.2015, nothing is stated about A3 and so also, in Ex.P2 – letter dated 12.07.2015 given by Shankar. It is also conceded by PW67 that in Exs.P1 to P3, nothing is stated against A3 and denied the suggestion that without any evidence, A3 has been falsely implicated and further that, as regards the meeting between A1 and other accused, there is no evidence as to the presence of A3. PW67 would further state that though one Revathi [LW176], has, during the course of investigation, has given a statement against A3 and though she was an important witness, she was not examined as a witness during the course of trial. A material contradiction was also elicited in the cross-examination of PW67 and he would depose that in the statement given by PW1, she had not stated anything about the presence of A3 in the house of Revathi and she also did not state anything as to A3 uttering the word that "why PW1 is still kept alive and on seeing

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her, his children would get spoiled" and he also did not obtain further statements from PW1.

308 The Trial Court has rightly found that at the earliest point of time on 12.07.2015, PW1 did not utter anything against A3 and on going through the testimony of PW67, also found that she made very many improvements from that of her statement during investigation and only when her statement under Section 164 of CrPC was recorded, she did state something against A3.

309 In the light of the material improvements, it is unsafe to rely upon the testimony of PW1 insofar as A3 is concerned to sustain the charges framed against him. As rightly pointed out by the Trial Court, though PW1 would state that A3 came to Komaralingam and enquired about the door number of Shankar, no witnesses were examined as to the alleged act of A3.

310 In the considered opinion of the Court, the Trial Court, on a proper consideration and appreciation of evidence and other materials, has rightly reached the conclusion to acquit A3 and no tenable grounds have been made out by the prosecution / State to reverse the order of acquittal. Therefore, the appeal against

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acquittal in respect of 2nd respondent / A3 also deserves dismissal.

In the result, the Criminal Appeal preferred by the State as against the acquittal of A2, A3 and A10, stands dismissed.

Questions No.1 & 3:-

ALTERNATE PLEA FOR MODIFICATION OF SENTENCE:-

311 This Court has set aside the conviction and sentence passed against A1 and acquitted him of all charges leveled against him and found him not guilty in the appeal filed by him in CrI.A.No.162 of 2018 and the Reference made by the Trial Court for confirmation of the capital sentence imposed against him is answered accordingly.

312 Mr.Ar.L.Sundaresan, learned Senior counsel appearing for A4 to A8 / appellants in CrI.A.No.163 of 2018, by way of alternate plea prays for modification of sentence of death imposed by the Trial Court and converting the same into rigorous imprisonment for life for the following reasons.

313 A4 to A8 were aged about 31, 24, 25, 24 and 25 years respectively, at the time of commission of the alleged offences and they do not have any bad

antecedents except A4 and A8 against whom, FIR in Crime Nos.211 and 212 of 2016 under Exs.P36 and 37 dated 02.03.2016 for the commission of the offence under Section 41[1][d] of CrPC came to be registered and the alleged commission of the offence under Section 41[1][d] of CrPC, cannot be considered as a serious offence.

314 The prosecution could not let in any evidence as to the bad antecedents of A4 to A8. The learned Senior counsel would submit A4, A6 and A8 belong to Piranmalaikallar Community – a Denotified Community ; A5 belongs to Backward Class Community and A7 belongs to Vanniya Kula Kshatriya Community, which is a Most Backward Class Community and they are having poor economic background and also not highly educated and in the light of the fact that none of them had any bad antecedents and considering their age and during their conduct during incarceration, did not come to any adverse notice of the concerned authorities, there is every chance of their reformation and further pointed out that the underlying purpose of incarceration is for reformation only and hence, prays for modification of the capital sentence into one of imprisonment for life.

315 *Per contra*, Mr.C.Emalias, learned Additional Advocate General appearing for the State would vehemently contend that any person with an average knowledge and understanding, knows the consequence of indulging in heinous offences and unmindful of the situation and consequences and having well aware of the situation and consequences, A4 to A8, armed with lethal weapons and in a broad day light and that too, in a busy locality, butchered Shankar who has sustained as many as 32 cut injuries and that apart, PW1 was subject to vicious attack. Fortunately, she survived the attack and it had shaken the conscious of the citizens who adhere to the rule of law and the assailants are also exhibited caste bias and prejudice and the Trial Court, had rightly taken into consideration the gravity of the offence and other attending circumstances and has rightly sentenced them to death and prays for confirmation of the death sentence awarded by the Trial Court.

316 The Hon'ble Supreme Court of India, in the decision reported in **1980 [2] SCC 684 [Bachan Singh Vs. State of Punjab]**, in paragraph No.202, has suggested the following aggravating circumstances for awarding capital punishment and it is relevant to extract the same:-

“Aggravating circumstances: *A court may, however, in the following cases impose the penalty of death in its discretion:*

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- (a) if the murder has been committed after previous planning and involves extreme brutality; or
- (b) if the murder involves exceptional depravity; or
- (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—
- (i) while such member or public servant was on duty; or
- (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or
- (d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.”

317 In 2015 [6] SCC 632 [Shabnam Vs. State of Uttar Pradesh], 7 members of the family were murdered and the Trial Court has awarded death sentence and on Reference, the same was confirmed by the High Court of Allahabad and the matter reached portals of the Hon'ble Apex Court and the Hon'ble Apex Court has referred to the principles laid down in 1973 [1] SCC 20 [Jagmohan Singh V. State of U.P.] ; 1980 [2] SCC 684 [cited supra] ; and 1983 [3] SCC 470 [Machhi Singh V. State of Punjab] and also the principles for classification of circumstances and determination of culpability indicia as laid down in the decision in 2012 [4] SCC 257 [Ramnaresh and Others V. State of

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Chhattisgarh] and extracted the same in paragraph No.25 and it is useful to extract the same:-

"25.The guidelines and principles for classification of circumstances and determination of the culpability indicia as laid down by this Court in the aforesaid cases have been succinctly summarised in Ramnaresh v. State of Chhattisgarh [(2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382] . The said are extracted as under: (SCC pp. 285-86, paras 76-77)

“Aggravating circumstances

- (1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.*
- (2) The offence was committed while the offender was engaged in the commission of another serious offence.*
- (3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.*
- (4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.*
- (5) Hired killings.*
- (6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.*
- (7) The offence was committed by a person while in lawful custody.*

(8) *The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 of the Code of Criminal Procedure.*

(9) *When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.*

(10) *When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.*

(11) *When murder is committed for a motive which evidences total depravity and meanness.*

(12) *When there is a cold-blooded murder without provocation.*

(13) *The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.*

Mitigating circumstances

(1) *The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.*

(2) *The age of the accused is a relevant consideration but not a determinative factor by itself.*

(3) *The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.*

(4) *The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.*

(5) *The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation*

like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though prosecution has brought home the guilt of the accused.

77. While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles

(1) The court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime."

318 In paragraph No.26 of the very same decision, it is observed among

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other things that *"it is now settled law that where maximum punishment that could be awarded under a provision is death penalty, the courts are required to independently consider facts of each case and determine a sentence which is the most appropriate and proportional to the culpability of the accused....what is required to be considered is not just the circumstances by placing them in separate compartments, but their cumulative effect."* In the said decision, the judgment reported in *2015 [1] SCC 67 [Mofil Khan and Others Vs. State of Jharkhand]* was also considered and in paragraph No.46 of the said decision, it was observed among other things that *"the cases exhibiting premeditation and meticulous execution of the plan to murder by levelling a calculated attack on the victim to annihilate him, have been held to be fit cases for imposing death penalty. Where innocent minor children, unarmed persons, helpless women and old and infirm persons have been killed in a brutal manner by persons in dominating position, and where after ghastly murder displaying depraved mentality, the accused have shown no remorse, death penalty has been imposed. Where it is established that the accused is a hardened criminal and has committed murder in a diabolic manner and where it is felt that reformation and rehabilitation of such a person is impossible and if let free, he would be a menace to the society, this Court has not hesitated to confirm death sentence."*

In the said case, the Apex Court has confirmed the death sentence awarded the

appellant therein.

319 In **2016 [9] SCC 675 [Tattu Lodhi V. State of Madhya Pradesh]**, permissibility of modification of death sentence into one of imprisonment for minimum non-remittable specified time has been considered and the principles have been summarised. The facts of the case would disclose that the appellant therein was found guilty of committing murder of a minor girl aged about 7 years and also kidnapping and attempt to commit rape on her and destruction of evidence relating to the crime. The Trial court has awarded capital punishment and also punishment for other allied offences and on Reference, the High Court has also confirmed the sentence of death and hence, the appeal was preferred before the Hon'ble Supreme Court of India and reliance was placed upon the decision reported in **2008 [13] SCC 767 [Swamy Shraddananda Vs. State of Karnataka]** and **2016 [7] SCC 1 [Union of India Vs. Sriharan]** for modification of death sentence. In the said case, the Hon'ble Apex Court had modified the sentence of death into one of imprisonment for a period of 25 years without any remission.

320 In **2019 [4] SCALE 622 [Dnyaneshwar Suresh Borkar V. State of**

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Maharashtra, a minor child was done to death and the Trial Court has awarded capital punishment which was, on Reference, the High Court of Bombay has also confirmed the same. The Hon'ble Apex Court found that the accused, at the time of crime, was between 22 and 23 years and was a student, studying in a College and had spent 18 years in jail and not a – fact of professional killer and his conduct during the period of incarceration was also reported to be good and modified the sentence of death into one of punishment of imprisonment with an observation that it is open to the accused to apply for remission to the State Government and the same has been considered and dispose of it accordingly.

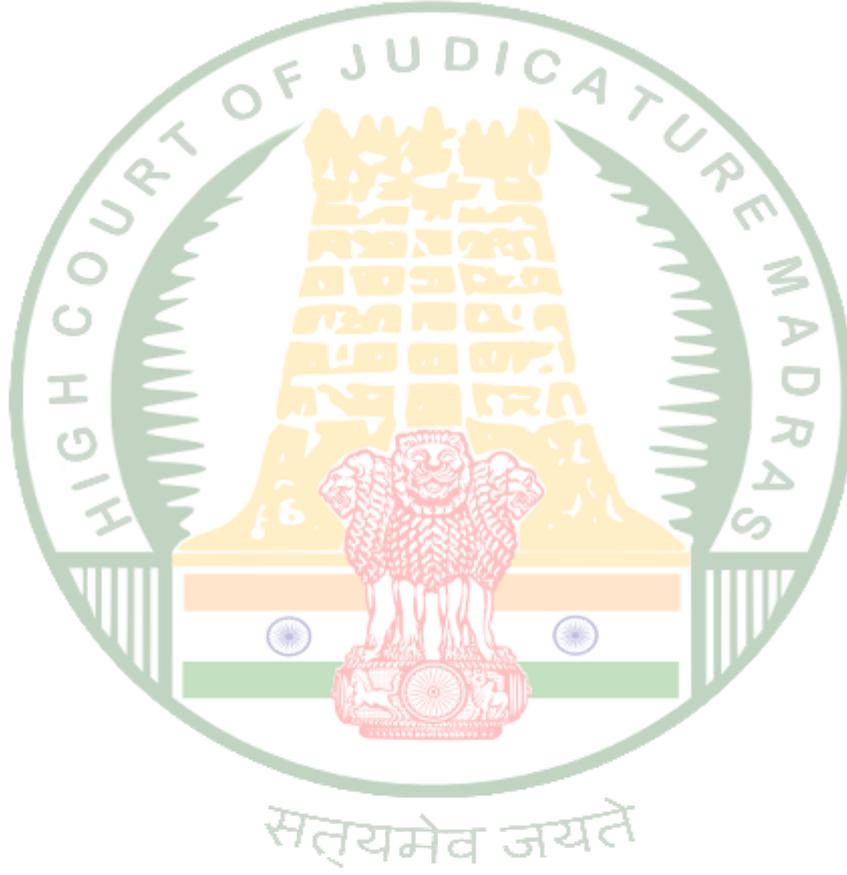
321 In 2019 [7] SCALE 468 [***M.D.Mannan @ Abdul Mannan V. State of Bihar***] the accused was charged for the commission of the offence of rape and murder of a minor girl and the Trial Court has imposed death sentence and it was affirmed by the High Court of Patna and the appeal preferred by him before the Apex Court was also dismissed and he filed a Review Petition. The Apex Court, having taken into consideration that as per the medical opinion, the petitioner therein was not mentally sound and that he was not able to proper legal advise, has modified the sentence of death into one of imprisonment for life till his natural death and no remission of sentence be granted. Therefore, the march of law and

development is that while modifying the death sentence into life imprisonment, fixed life sentence is imposed. The Hon'ble Apex Court, in the decision reported in *2013 [2] SCC 452 [Sangeet and another V. State of Haryana]*, has started awarding fixed life sentence.

322 Now, coming to the facts of the instant case and the evidence let in as well as the findings arrived at by the Trial Court, for imposition of capital punishment against A4 to A8 are concerned, they are all young age and none of them have any serious bad antecedents except A4 and A8 who had faced the prosecution only under Section 41[1][d] of CrPC which is a non-cognizable and bailable offence and also taking into consideration the plea in the form of their written statements recorded under Section 313[5] of CrPC, this Court is of the considered view that there is every possibility that they would reform themselves and on their release, would contribute something useful to the Society. Therefore, the capital sentence imposed upon them, requires modification.

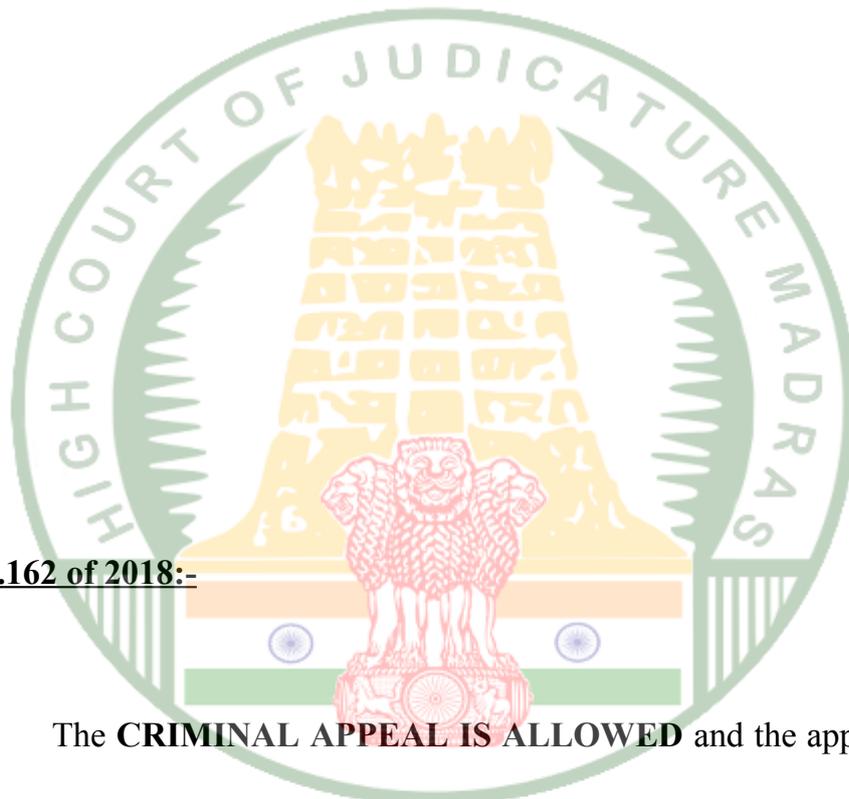
323 In the result, the **REFERENCE in RT.No.3 of 2017 IS ANSWERED AS FOLLOWS:-**

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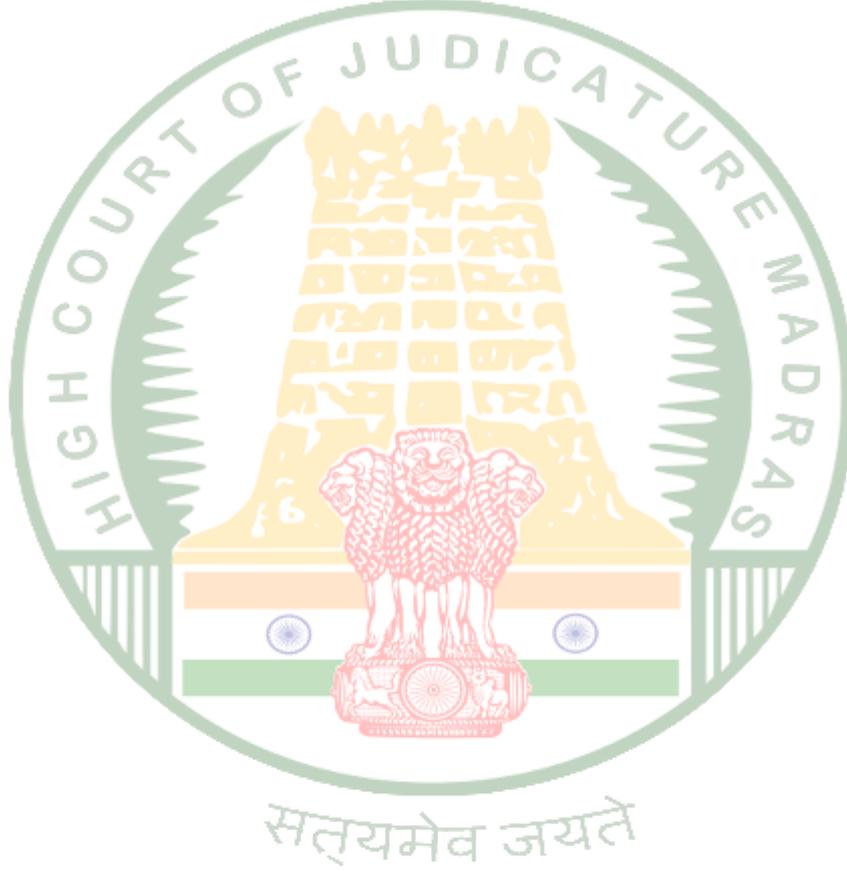


CrL.A.No.162 of 2018:-

324 The **CRIMINAL APPEAL IS ALLOWED** and the appellant/A1 is acquitted of all charges and the **conviction and sentence** imposed against the appellant/A1 by the learned Principal District and Sessions Judge, Tirupur, in Spl. SC.No.19 of 2016 dated 12.12.2017, for the offences under Sections 120[B], 302 r/w 120[B] r/w 109 IPC, 307 r/w 120[B] r/w 109 of IPC and under Sections 3[2][Va] of SC/St [POA] Amendment Act, 2015 are **set aside** and he is acquitted

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of all charges levelled against him. The **fine amount** appropriated by the State as ordered by the Trial Court, **is to be refunded by the State to the appellant/A1**. It is made clear that compensation, if any paid out of the said fine amount to PW1 and the father of the deceased Shankar, shall not be recovered from them.



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325 CrL.A.Nos.163, 164, 165 and 183 of 2018:-

<i>Crl.A.No.</i>	<i>Rank of the Accused</i>	<i>Conviction under Section</i>	<i>Conviction & Sentence confirmed / set aside / modified</i>	<i>Appeal Allowed / Dismissed</i>
163/2018	A4	120[B] of IPC	Conviction and Sentence are set aside.	APPEAL IS PARTLY ALLOWED
		302 IPC	Conviction u/s.302 IPC and the fine amount is confirmed. However, sentence of death awarded is modified and he is sentenced to undergo rigorous imprisonment for life with a direction that he should serve minimum period of 25 years of imprisonment, during which, he will not be entitled to any statutory remission or commutation.	
		307, 147 and 148 of IPC and 3[2][va] of SC/ST [POA] Amendment Act, 2015 & 3[1][r][s] of SC/ST [POA] Amendment Act, 2015	Conviction and sentences awarded for the said offences are confirmed and the sentences are ordered to run concurrently .	

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<i>CrL.A.No.</i>	<i>Rank of the Accused</i>	<i>Conviction under Section</i>	<i>Conviction & Sentence confirmed / set aside / modified</i>	<i>Appeal Allowed / Dismissed</i>
	A5	120[B] of IPC	Conviction and Sentence are set aside.	
		302 of IPC	Conviction u/s.302 IPC and the fine amount is confirmed . However, sentence of death awarded is modified and he is sentenced to undergo rigorous imprisonment for life with a direction that he should serve minimum period of 25 years of imprisonment, during which, he will not be entitled to any statutory remission or commutation	
		307 r/w 149, 147 and 148 of IPC	Conviction and Sentence are confirmed.	
		3[2][va] of SC/ST [POA] Amendment Act, 2015	Conviction and sentence are confirmed and the sentences are ordered to run concurrently.	
		3[1][r][s] of SC/ST [POA] Amendment Act, 2015 r/w 149 of IPC.	Conviction and Sentence are set aside.	
	A6	120[B] of IPC	Conviction and sentence are set aside.	

<i>CrL.A.No.</i>	<i>Rank of the Accused</i>	<i>Conviction under Section</i>	<i>Conviction & Sentence confirmed / set aside / modified</i>	<i>Appeal Allowed / Dismissed</i>
		302 of IPC	Conviction u/s.302 IPC and the fine amount is confirmed . However, sentence of death awarded is modified and he is sentenced to undergo rigorous imprisonment for life with a direction that he should serve minimum period of 25 years of imprisonment, during which, he will not be entitled to any statutory remission or commutation.	
		307, 147 and 148 of IPC	Conviction and Sentence are confirmed .	
		3[2][va] of SC/ST [POA] Amendment Act, 2015	Conviction and sentence awarded are confirmed and the sentences are ordered to run concurrently .	
		3[1][r][s] of SC/ST [POA] Amendment Act, 2015 r/w 149 of IPC.	Conviction and Sentence are set aside .	
	A7	120[B] of IPC	Conviction and Sentence are set aside .	

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<i>CrL.A.No.</i>	<i>Rank of the Accused</i>	<i>Conviction under Section</i>	<i>Conviction & Sentence confirmed / set aside / modified</i>	<i>Appeal Allowed / Dismissed</i>
		302 of IPC	Conviction u/s.302 of IPC and the fine amount are confirmed . However, sentence of death awarded is modified and he is sentenced to undergo rigorous imprisonment for life with a direction that he should serve minimum period of 25 years of imprisonment, during which, he will not be entitled to any statutory remission or commutation.	
		307 r/w 149, 147, 148 of IPC	Conviction and Sentence are confirmed.	
		3[2][va] of SC/ST [POA] Amendment Act, 2015	Conviction and sentence are confirmed. Sentences are ordered to run concurrently .	
	A8	120[B] of IPC	Conviction and sentence are set aside	

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<i>CrL.A.No.</i>	<i>Rank of the Accused</i>	<i>Conviction under Section</i>	<i>Conviction & Sentence confirmed / set aside / modified</i>	<i>Appeal Allowed / Dismissed</i>
		302 r/w 149 of IPC	Conviction u/s.302 r/w 149 of IPC and the fine amount are confirmed. However, sentence of death awarded is modified and he is sentenced to undergo rigorous imprisonment for life with a direction that he should serve minimum period of 25 years of imprisonment, during which, he will not be entitled to any statutory remission or commutation.	
		307 r/w 149, 147 and 148 of IPC	Conviction and sentence are confirmed.	
		3[2][va] of SC/ST [POA] Amendment Act, 2015	Conviction and sentence is confirmed. Sentence are ordered to run concurrently.	
		3[1][r][s] of SC/ST [POA] Amendment Act, 2015 r/w 149 of IPC.	Conviction and setence are set aside.	
183/2018	Appeal Preferred by the State against acquittal of A2, A3 and A10			APPEAL DISMISSED

325 **CrL.A.No.164 of 2018:-**

The **CRIMINAL APPEAL IS ALLOWED** and the appellant/A9 is acquitted of all charges and the **conviction and sentence** imposed against the appellant/A9 by the learned Principal District and Sessions Judge, Tirupur, in Spl.SC.No.19 of 2016 dated 12.12.2017, for the offences under Sections 120[B], 302 r/w 149, 307 r/w 149, 147 of IPC and under Sections 3[2][va] of SC/ST [POA] Amendment Act, 2015 and 3[1][r][s] of SC/ST [POA] Amendment Act, 2015 r/w 149 of IPC are **set aside** and he is acquitted of all charges levelled against him. The **fine amount** appropriated by the State as ordered by the Trial Court, **is to be refunded by the State to the appellant/A9**. It is made clear that compensation, if any paid out of the said fine amount to PW1 and the father of the deceased Shankar, shall not be recovered from them.

326 **CrL.A.No.165 of 2018:-**

The **CRIMINAL APPEAL IS ALLOWED** and the appellant/A11 is acquitted of all charges and the **conviction and sentence** imposed against the appellant/A11 by the learned Principal District and Sessions Judge, Tirupur, in Spl. SC.No.19 of 2016 dated 12.12.2017, for the offences under Section 212 of IPC is

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set aside and he is acquitted of all charges levelled against him. Fine amount, if any, paid by him, shall be refunded to him ; but not the compensation if already paid out of the fine amount.

327 It is reported that the accused, viz., A1, A9 and A11 are in jail, viz., the Central Prison, Coimbatore. Since this Court had acquitted A1, A9 and A11 of all the charges leveled against them, they are directed to be released forth with unless their presence/custody is required in connection with any other case/proceedings.

328 A4 to A8, who are in the Central Prison, Coimbatore, shall undergo the modified sentence now ordered by this Court. The period of incarceration undergone by them during investigation, trial and post conviction, shall be given set-off under Section 428 of CrPC.

सत्यमेव जयते

[MSNJ] [MNKJ]

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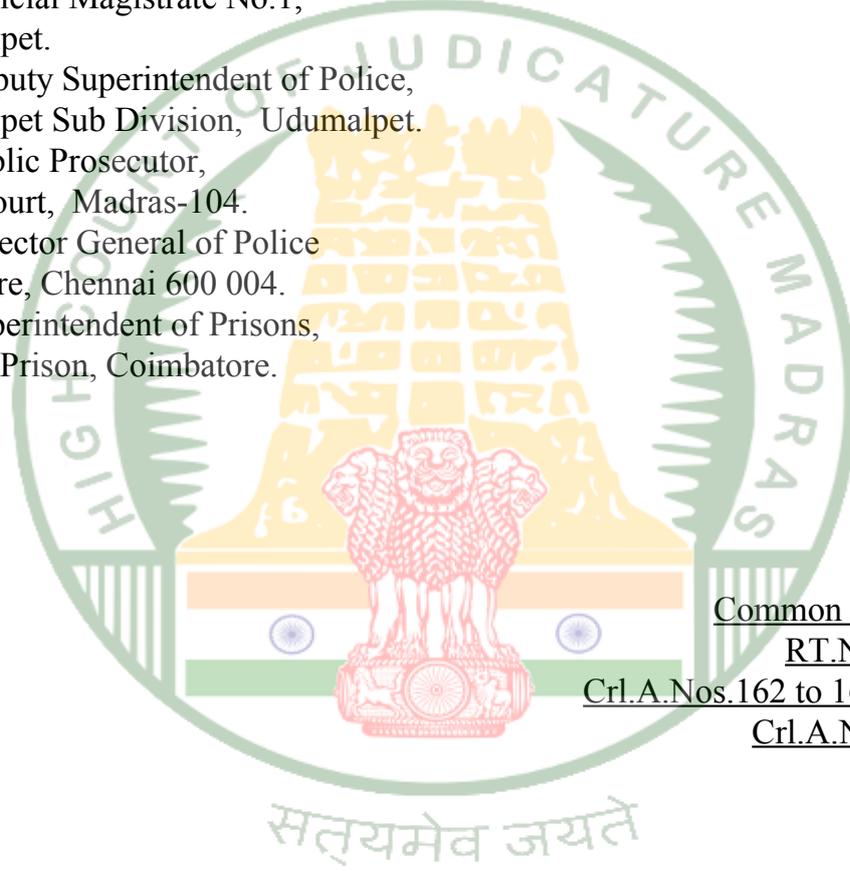
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M.SATHYANARAYANAN, J.,
AND
M.NIRMAL KUMAR, J.

Jvm/AP

To

- 1.The Principal District and Sessions Judge
Tiruppur.
- 2.The Judicial Magistrate No.1,
Udumalpet.
- 3.The Deputy Superintendent of Police,
Udumalpet Sub Division, Udumalpet.
- 4.The Public Prosecutor,
High Court, Madras-104.
- 5.The Director General of Police
Mylapore, Chennai 600 004.
- 6.The Superintendent of Prisons,
Central Prison, Coimbatore.



Common Judgment in
RT.No.3/2017 &
CrI.A.Nos.162 to 165/2018 and
CrI.A.No.183/2018

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