

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 1168-1171 OF 2009

MEERA MYDEEN ETC. ETC.APPELLANT(S)

VERSUS

STATE OF TAMIL NADURESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

The appellants in this appeal, who were Accused Nos. 1, 2 and 4 in the trial court, and were prosecuted along with four other accused (in all 8 accused persons) have been convicted of offences under Sections 302 r/w Sections 149 and 120B, of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo a life imprisonment and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment (RI) for three years. A-1 to A-3 were also convicted and sentenced to undergo RI for two years for the offences punishable under Section 147 of IPC and to undergo imprisonment for life and also pay a fine of Rs. 1,000/- each, in default to undergo RI for three years on each count. A-3 was convicted for the offence under Section 341 and sentenced to undergo simple imprisonment for one month. A-2 to A-4 were also convicted and sentenced to undergo RI for three years for the offences

punisbale under Section 148 of the IPC. All the sentences were directed to run consecutively. The conviction recorded by the Sessions Court and the aforesaid sentences thereupon have been upheld by the High Court, resulting into dismissal of the appeals which were filed by these appellants against the judgment of the trial court.

Insofar as Accused Nos. 5 to 8 are concerned, they were acquitted by the trial court. State had challenged their acquittal by filing appeals before the High Court. By common impugned judgment, the High Court has upheld the acquittal of Accused Nos. 5 to 8, resulting into dismissal of appeals of the State. Insofar as State is concerned, it has accepted verdict of the High Court and, therefore, acquittal of Accused Nos. 5 to 8 is not challenged by it. However, insofar as Accused Nos. 1 to 4 are concerned, they are not satisfied with the outcome of the trial and the appeal preferred by them in the High Court and, therefore, have challenged their conviction and sentence in the instant appeals.

- 2) The case of the prosecution, in brief, was that the accused persons had committed the murder of Manicka Nadar (hereinafter referred to as the 'D-1') and Selvaraj (hereinafter referred to as the 'D-2') in retaliation of the murder of one Md. Kasim, of which deceased Manicka Nadar was a suspect. It was alleged that the deceased Manicka Nadar was the state Executive member of the B.J.P. and the deceased Selvaraj was the District Convener of the B.J.P. Dindigul and they were Hindu activists. It

so happened that on October 10, 1994, the Hindu Munnani Leader Rajagopalan was brutally murdered at Madurai and on the same day evening at 6.00 p.m., one Mohammed Kasim, a Muslim Hazarath was brutally murdered by Hindu fanatics near D-1's house at Dindigul. The Investigating Officer in Mohammed Kasim's case had taken D-1 to the police station for enquiry in that case but let him go after finding that he was not involved in that occurrence. But newspaper carried news as if D-1 was arrested in that case.

- 3) In order to take revenge, on January 10, 1997 at about 21.30 hours, A1 to A8 and the deceased accused Rifayudden formed themselves into an unlawful assembly with the common object of murdering D-1 and D-2 at Thiruvalluvar Salai, 11th Cross Road Junction, Dindigul. A2 to A8 were armed with lethal weapons, i.e., Vettaruval and Knives and caused the death of Manicka Nadar and Selvaraj.
- 4) As per the prosecution, P.W. 1 (not an eye-witness) immediately after knowing the occurrence went to the spot and ascertained the death and then he went to the police station and lodged the complaint Ex. P.1. According to the Prosecution, P.Ws. 2 to 4 are the eye-witnesses. P.W. 1 – Raja lodged the complaint (Ex. P.1), stating that P.W. 2-Muthukumar, who is an auto driver and who knew the deceased Manicka Nadar and Selvaraj and also A-1, took his customers at 09.30 p.m., on January 10, 1997 from Dindigul Bus Stand and dropped them at Raja Rajeswari

Hospital. His customers requested him to wait. Therefore, he parked his auto some distance from the hospital gate. At that time, one Srinivasa Perumal and P.W. 3 – Saravanan came along with Bus Stand road and were standing near the flower market. Then, both of them conversing with each other crossed the road and went to the opposite place near the sugar cane crusher. There A-1, who was an employee of D-1, was standing with a T.V.S. Moped. Next to him, three persons were talking to him. They looked like college students about 20 to 25 years of age. One of them was smoking a cigarette. One of the other three pulled out something from behind. The object was wrapped in a newspaper and it was a sword. Another person drew out an object from his right waist and flung it mouthwards. That was a knife. Then, A-1 and the three men went and stood by the fence, at the place near D-1's house. At that time, D-2 came in his Avanti motor cycle and D-1 sat on the pillion seat. When D-1 and D-2 were approaching the place where A-1 was standing, A-1 gave a signal to the three persons with his right hand. Immediately, the person, who was smoking the cigarette stopped D-2, who was driving the motor cycle, by holding his left shoulder and uttered the following threatening words "These are the B.J.P. men; cut them, stab them...." Thereupon, the other two started attacking D-1 and D-2. Four persons came from north with knife and arival and they also attacked D-1 and D-2. An auto driver was standing in front of P.W. 2. P.W. 2 moved away. Later, on enquiry P.W. 2 learnt that the said auto

driver was Kasilla. One amongst the group showed the knife to the auto driver and asked him to run away. Immediately, Kasilla took his auto and drove away towards South. The assailants ran eastwards through the old flower market side. Another person came near D-1's house and joined the group of assailants and ran away. Immediately, P.W. 2 went and informed P.W. 1. Both of them came back to the scene of occurrence in 10 minutes. When they came back, D-1's wife, P.W. 16 – Kelaiselvi was weeping there. D-1 and D-2 were lying down in a pool of blood. There was a huge crowd. Near the transformer, D-1 and D-2 were lying dead. There were many blood stained wounds on them. P.W. 2 being an auto driver, he went in P.W. 2's auto to Dindigul Town North Police Station and there, he gave the written complaint (EX. P.1). He sent away P.W. 2 since he was agitated. The names and particulars of the accused were not mentioned in the FIR.

- 5) P.W. 32 took up the investigation and went to the scene of crime and prepared the observation Mahazar. He also drew a rough sketch Ex. P.26. He requested the Finger Print Expert and the Photographer – L. Sugumaran (P.W. 25) to go to the scene of occurrence where sniffer dog was also taken. He proceeded to the scene of occurrence along with P.W. 1. He prepared the Observation Mahazar (Ex. P. 18; and Rough Sketch (Ex. P.26). P.W. 25 the Photographer, took photos at the scene of occurrence. The photos were marked as Ex. P. 19 series. At about 12.30 a.m., in the presence of V.R.O.-R. Durairaj (P.W. 26), he

recovered M.Os. 20 to 30 under Ex. P. 19. He conducted the Inquest over the dead body of D-1 between 01.20 a.m. and 03.00 a.m. and the Inquest Report which is Ex. P.27. He recorded the statements of P.Ws. 1, 2, 16 and one Narayanasamy. He conducted the Inquest on the dead body of D-2 between 03.00 a.m. and 05.00 a.m. The Inquest Report is Ex. P.28. During the Inquest, he recorded the statement of P.W. 15 – Shanthi, wife of D-2 and others. In order to ascertain the real cause of death, he sent the dead body of D-1 and D-2 through P.W. 24 – Bose P.C., and P.W. 12- Sundaram, Constable respectively along with requisitions in Exs. P.12 and 13. P.W. 9 – Dr. Anandan, who was the Doctor on duty in the Government Hospital received Ex. P.12 and conducted the autopsy on the dead body of D-1 between 08.30 a.m., and 10.30 a.m. on January 11, 1997. Ex. P-13 is the Post-Mortem Certificate in respect of D-1. On receipt of Ex. P.14, requisition memo, P.W. 9 conducted the autopsy on the deadbody of D-2. Ex. P-15 is the Post-Mortem Certificate in respect of D-2. The injuries noticed by P.W. 9, the Post-Mortem Doctor in respect of D-1 are as follows:-

1. A horizontal incised wound extending from the upper frenulum of the upper lip to the right earlobe measuring about 15x2x2cms, cutting the facial muscles and exposing the oral cavity.
2. An oblique incised wound starting from the ala of the right nose and joining the injury No. 1 measuring about 6x1x1 cm., exposing the muscles of the face.
3. A punctured wound with clear cut margin extending from the right lateral, aspect of the neck at the level of Hyoid bone passing through the neck

horizontally into the opposite side of the neck measuring about right side 3x1 cms and left side 2x1 cms.

On dissection the carotid vessel, trachea above the level of thyroid cartilage are cut and muscle of the neck of the right side is cut.

4. An elliptical punctured wound measuring about 3x1 cm overlying the 4th intercostal space 2 cm away from the sternum of the right side of the chest passing through thoracic cavity.
5. A punctured elliptical wound measuring about 4x1 cm passing through the thoracic cavity over lying the 6th intercostal space on the anterior axillary line of the left side passing into thoracic cavity.
6. A punctured elliptical wound just below the axillary fold overlying the 7th intercostal space of the left side chest measuring about 4x1 cms. Wound passes through the thoracic cavity.

On opening the thorax 700 ml of clotted blood found on the both pleural cavity. The pleura is cut corresponding to the injury Nos. 3, 5 and 6.

The middle lobe of the Highs lung is punctured measuring about 2.5x1x3 cms cutting the lung tissue. This lung injury corresponds to the external injury No. 4. The lower lobe (left) lung is punctured on the lateral aspect measuring about 3.5x1x1 cms. This injury corresponds to the Injury No. 5.

A punctured wound over the lateral and posterior aspect of the lower lobe of the left lung measuring about 3.5x1x3 cms. This injury corresponds to the Injury No. 6.

7. An incised wound starting from the back of the neck in the mid-line extending to the lateral aspect of the left side of neck cutting the muscles and tissues measuring about 10x2x1 cms. On exploration the underlying muscles and tissues alone are cut.
8. An elliptical punctured wound below the costal margin on the anterior axillary line obliquely placed with direction upwards, measuring about 5x2 cms in the right side. The omentum is protruding through the wound. On dissection the peritoneal cavity contains 300 ml of clotted blood. The underlying peritoneum and muscles are cut. On dissection, the liver right lobe is found cut on the inferior surface upto middle of the right lobe measuring about 3x1.5x6 cms.
9. An elliptical punctured wound overlying the abdomen 5 cm above the umbilicus in the midline measuring about 5x2 cms. Small intestine and

omentum protruding through the wound. Peritoneum and muscles are cut. No visceral injury corresponding to this injury.

10. An elliptical incised wound overlying the right loin region just above the right iliac crest measuring about 3x1x2 cms. On dissection, no deeper structure are cut except the muscles and tissues.
11. An elliptical incised wound 7 cm above the iliac crest on the left loin measuring about 3x2x2 cms. On dissection, no deeper tissue are cut except muscles and underlying tissue.
12. An incised wound over the prominence of the right hand measuring about 2x1x1 cms. Making cut of the muscles and tissue.
13. An incised wound overlying the left hand cutting the muscles into two halves in between the II and III space measuring about 6x1x1 cm.
14. An elliptical oblique incised wound on the anterior aspect; of the right upper arm overlying the deltoid muscle measuring 2x1/2 cms making only tissue and muscle.
15. An oblique elliptical incised wound 2 cm below the Injury No. 14 measuring about 2x1/2x1 cms. Only underlying muscles are cut on exploration.
16. The pinna of the left ear is cut into 2 halves measuring 3x1/2x1/4 cms vertically.
17. The abrasions each measuring about 6x5 cms on the lateral aspect of the middle of the left arm.

The opinion of the Doctor as to the cause of death is as follows:

“The deceased would appear to have died of shock and haemorrhage due to injury to carotid vessels and vital organs lungs and liver.”

The injuries noticed by the Post-Mortem Doctor in respect of D-2 are as follows:

1. An oblique incised wound overlying the anterior aspect of neck in the midline just below the thyroid cartilage measuring about 5x2x3 cms. exposing the trachea.
2. An elliptical incised wound 5 cm below the angle of mandible left side measuring about 5x2x3 cms. cutting the major vessels common carotid

vessels and jugular veins of left side of the neck. The blood suffused into the surrounding tissues of injury.

3. An oblique incised wound overlying the nape of neck on the right side 5 cm below the occipital protuberance measuring about 4x2x2 cms underlying the muscles and tissues were cut.
4. An elliptical punctured wound overlying the areola of the nipple on the right side on the 4th intercostal space measuring about 5x2xpasses inside the thoracic cavity. On dissection the wound enters vertically into the middle lobe of the anterior surface of the right lung. The parietal pleura and the thoracic muscles are cut. The pleural cavity contains 500 ml of clotted blood. The injury on the lung measures about 4x1x5 cm.
5. An incised wound overlying the anterior fold of the axilla and the lateral aspect of the right side of the chest wall measuring about 12 cmsx5x3 cms with clear cut margins, cutting the muscles on the anterior axillary fold and no other deeper structures are involved.
6. An elliptical horizontal punctured wound below the inferior angle of the scapula the overlying 8th intercostal space on the back measuring about 4x1.5xpasses internally. On dissection the posterior surface of the lower lobe of the right lung measuring about 3x1x5 cms. Muscles and pleura and other thorax are cut.
7. An oblique incised wound overlying the medial aspect of the right leg 2 cm below the patella measuring about 5x1x1 depth. The opinion of the Doctor as to the cause of the death is as follows:

“The deceased would appear to have died of shock and hemorrhage due to the injuries to the neck vessels and lung.”

- 6) P.W. 12, the first grade constable at Dindigul Town North Police Station at the relevant point of time, who handed over the body of D-2 along with the requisition to the Doctor, handed over the wearing apparels of D-2 (M.Os. 10 to 13) to P.W. 32. P.W. 23, the Head Constable at Dindigul Town North Police Station, who handed over the wearing apparels of D-1 (M.Os. 15 to 18) to P.W. 32.

- 7) P.W. 32 continued the investigation and recorded the statement of some more witnesses, at 10.00 a.m., he recovered the wearing apparels of D-1 (M.Os. 15 to 18) and the wearing apparels of D-2 (M.Os. 10 to 13). He also recorded the statement of Post-Mortem Doctor (P.W. 9).
- 8) P.W. 32 also recovered an umbrella, leather chappals, rubber chappals, knife etc. P.W. 32 held inquest over the dead body of the Selvaraj in the presence of Panchayatdars and witnesses between 3.00 to 5.00 a.m. and prepared the inquest report. He sent the dead bodies for postmortem examination with the requisitions through P.W. 12 Sundaram and P.W. 24 Bose the constables.
- 9) On January 16, 1997, P.W. 32 handed over the investigation to P.W. 33 Mahendran, Inspector of Police C.B.C.I.D. P.W. 33 took up further investigation in this case on January 17, 1997. On January 25, 1997, he arrested A-1 Meera Mydeen. A-3 Mohammed Subair who was in custody in Cr. No. 151/98 of Coimbatore Bazaar Police Station was brought on P.T. Warrant and remanded to judicial custody in this case on March 01, 1999.
- 10) On October 12, 1999, the investigation was handed over to PW-34. He examined P.W. 2 and P.W. 3 and recorded their further statements. He also examined P.W. 4 and other witnesses and recorded their further statements.

- 11) P.W. 35 took up further investigation on March 17, 2001. A-4 who was in custody in Kodangaiyur Police Station, case was brought on P.T. Warrant and remanded to judicial custody on the requisition of the Investigating Officer. He was taken into police custody on April 05, 2001. After completing the investigation, he laid charge-sheet against the accused A-1 to A-8 and one Rifayudden (deceased accused).
- 12) The charges were framed by the Trial Court for the offences under Section 120 as against the Accused Nos. 1 to 8; under Section 147 IPC as against A1; under Section 148 IPC as against A2 to A8; under Section 341 IPC as against A2 to A4; under Section 302 (2 counts) IPC as against A2, A4, A5 to A8 and under Section 302 R/w. 149 IPC as (2 counts) against A1 and A3. To prove the case of the prosecution, the prosecuting agency examined 35 witnesses and marked 4 exhibits and 30 material objects on their side.
- 13) It may be mentioned at this stage that investigation was handedover to PW-33 by PW-32 on the instruction of Deputy General of Police. When PW-33 took up further investigation on January 17, 1997, he continued the same till October 12, 1999. On the basis of the statement recorded from Kasilla, he learnt that A-1 was involved in the murder and Kasilla also indentified A-2. On January 18, 1997, P.W. 3 – Soundarajan and P.W. 6 – Perumal identified A-2, A-4 and A-3. On January 19, 1997, he recorded the statement of P.W. 11 – V. Krishnan. On January 20, 1997,

he recorded the statement of P.W. 5 – Malleswaran, who identified A-3. On January 25, 1997 at about 10.30 p.m., he arrested A-1 in the presence of witnesses at his residence. Then, on January 26, 1997, he remanded him to judicial custody. On February 12, 1997, he gave a requisition to send the articles for chemical analysis. P.W. 29 - Kasthuri is the head clerk through whom the recovered objects were sent for chemical analysis. The Chemical Analysis Report is Ex. F.22 and the Serological Report is Ex. P.23. When P.W. 33 learnt that A-2 had been arrested in connection with Crime No. 381 of 1997 on the file of Kodungaiyur Police Station, he obtained P.T. warrant from learned Judicial Magistrate No. II, Dindigul and remanded A-2 in this case – He gave a requisition to the learned Chief Judicial Magistrate for conducting Test Identification Parade. He took A-2 under police custody from May 15, 1997 to May 19, 1997. P.W. 7 – P. Kulamani is the Judicial Magistrate No. III at the relevant: point of time. He issued orders for conducting test identification parade in respect of A-2 on April 07, 1997. The test identification parade is Ex. P.3. P.W. 8 – L. Thamburaj, Judicial Magistrate recorded the statements of P. Ws. 2, 3, Srinivasa Perumal, P.W. 4 and one Natarajan under Section 164(5) Cr.P.C. and they are Exs. P.4 to P.8. He asked to conduct the test identification parade with regard to A-3, A-4, A-5, A-6 and A-8. But, the accused refused to participate in the test identification parade on the ground of delay of four years and the publicity given in the newspapers. The request for test

identification parade is Ex. P. 10 and the Report is Ex. P.11 series. When P.W. 33 learnt that A-3 was remanded in connection with Crime No. 151 of 1998 on the file of Coimbatore Bazaar Police Station, he obtained P.T. warrant from the Judicial Magistrate No. 11, Dindigul and remanded A-3 in this case. On April 09, 1999, he took A-3 under police custody and recorded his statements. P.Ws. 3, 4 and 5 identified A-3. On April 20, 1999, he recorded the statement of other witnesses and concluded the investigation and filed the Charge-Sheet against the accused on July 30, 1999.

- 14) It may also be recorded at this stage that P.W. 3 – Soundarajan belongs to Vellodu village. He is an L.I.C. agent. His statement is that he knew D-1 and D-2. He had gone to Dindigul Bazaar in the morning on January 10, 1997 to meet P.W. 11, who is his friend. P.W. 11, V. Krishnan asked P.W. 3 if he knew any good doctor, for treatment of his stomach ailment. P.W. 3 told him that he had work in the morning and asked P.W. 11 to come near Raja Rajeswari Hospital at about 09.30 p.m. At 09.00 p.m., on a cycle, he was proceeding from Railway Station road through Thiruvalluvar Salai to reach the Raja Rajeswari Hospital. There, he saw A-1, the employee of D-1 and three others. He went near the Raja Rajeswari Hospital and stopped there. He identified Meera Mohideen as the first accused present in the Court. When he went near the hospital, an auto was parked on the northern side and another auto came near the hospital and dropped its customers and stood near the

auto. A-1 on his moped went near the sugar cane crusher and from that place, he gave a sign. As soon as he gave the sign, three persons came and stood near A-1. At that time, P.W. 4 and one Srinivasa Perumal came from the bus stand side and was standing near the road, which goes to the flower market. Near the sugar cane crusher, Sodium Vapour lamp was burning and just opposite to D-1's vacant site, tube light was burning. It was at about 09.30 p.m., in the night, D-2 came in his Avanti Moped and D-1 sat on the pillion. When they were nearing Sugar cane crusher, one of the three, who was smoking the cigarette went and stopped D-2, the other two pulled out the sword and cut D-1 and D-2. The other pulled out the knife near his waist and cut D-1 and D-2. The entire events would not have taken more than 10 seconds. By that time, from the north i.e., from the bus stand side, four other came with Arival and sword and other deadly weapons. They also cut D-1 and D-2. P.W.3 full of fear saw D-1 and D-2, who were lying in a pool of blood. At that time, one of the assailants pulled out the sword from his waist and showed it towards the auto driver, who ran away. P.W.3 identified A-3 as the person, who stabbed D-2. P.W.3 identified A-3 as the person, who was talking to A-1 and thereafter attacked D-1 and D-2. One more person came and joined these persons and thereafter A-1 ran towards the south and others ran eastwards.

- 15) P.W. 4 – Saravanan is a tailor. He deposed that he also knew D-1 and D-2. Two years after the occurrence, the C.B.C.I.D., enquired him about

the occurrence that took place on January 10, 1997. According to him, he and Srinivasa Perumal would meet every night near Dindigul bus stop. On January 10, 1997 also, after meeting at the bus stand and having taken tea, they walked along Thiruvallur Salai. P.W. 5 – Malleswarazi works in a tyre shop in Dindigul Spencer compound. About two days prior to the date of occurrence, one person was standing in front of his shop between 06.00 p.m. and 06.30 p.m. He had a rexin bag in his hand. He was watching his shop for half an hour. So, P.W.5 asked the reason. Then, the person started moving and running. P.W.5 chased him. The slippers in P.W.5's foot fell off. Before he could run, the person mingled in the crowd, and escaped. Two days later, the occurrence took place. About 10 days thereafter, P.W.33 enquired him about the person, who he was chasing. He was shown 50 photographs, in which he picked up one and said that is the person, who has escaped. The said photo is M.O.9 and marked No.3. The witness identified A-3 in the Court. P.W.6 – Perumal is a machine operator in Dindigul Industrial Company. D-1 and D-2 are known to him. About two days prior to the date of occurrence, after witnessing the show at 06.30 p.m., at Ganesh Theatre, he was going towards his village. At about 09.15 p.m., when he was approaching the Raja Rajeshwari Hospital via Thiruvallur Street, he saw A-1 and three others near the sugar cane crusher. They were pointing out the spot towards the West and saying that, that would be the appropriate spot, A-1 was telling the others that if the act is

completed there, no one will get any suspicion. The other three agreed. Thereafter, P.W.6 took the bus and went to the village. Two days later he learnt from the newspaper that D-1 and D-2 were murdered at the same spot. P.W.33 recorded his statement about eight days after the occurrence i.e., on January 16, 1997. P.W.6 informed him all that he had seen. About 50 photographs were shown to him and he was asked whether any of the person whom he had seen was there in the photograph. He pointed out M.Os.3, and 5. He identified A-2, A-3 and A-3 in the Court. About three months later, he was asked to identify the suspects in the identification parade. He and P.W.3 asked for police escort. They went to Palayamkottai prison. In the identification parade, P.W.6 identified A-2.

- 16) P.W.10 – Smt. Jothimani is the Assistant Engineer in Dindigul Nagal Nagar. She has deposed with regard to the power distribution and the power connection in the name of N. Susila and G. Navaneetha Srishman. P.W.11-V. Krishnan is a weaver, who is a friend of P.W.3. Because of his stomach ache, he asked P.W.3 for advice regarding a good doctor. But, on that day, he did not go. P.W.13-Venkateawaran was working in D-1's shop. On January 10, 1997, which is Friday, they performed the pooja as usual. At that time, he, one Ramamoorthy, A-1, D-1 and D-2 were there. Thereafter, at about 12.30 a.m., he received information from A-1 that some one killed D-1 and D-2. Five days thereafter, P.W.21 – Satheesh Kumar, the son-in-law of D-1 carried on

the business. According to this witness, A-1 did not report to duty thereafter. _P.W.1 S. Thangavelu is the Municipal Officer in Dindigul Municipality, who was examined with regard to the encroachment. P.W.15 is the wife of D-2. On January 10, 1997, after lunch, D-2 went on his Avanti Motor Cycle to see D-1. P.W.15 identified M.O.14. Her husband did not return even after 10.30 p.m. At 10.30 p.m., one Jagadeesan came to her residence, said something to her father-in-law and took him over one hour and thereafter, she was informed that her husband was killed. P.W.16 is the wife of D-1. She identified A-1 as the person, who was working in her husband's shop. At about 10 p.m., she was informed that her husband was killed. She thought it was an accident. It is only thereafter, she realised that her husband was killed. She did not notice who was there. P.W.17 – Muruganantham @ Mookan is also an iron merchant, who has been examined to link the T.V.S. moped with A-1. P.W.18 – Muniyasamy is the onion merchant. Three days prior to the accident, he and his friend Ravichandran were drinking tea at Udayara tea stall. The owner of Udayam Tea stall is P.W.19. He was there and also one Ramanatnan, who worked in the tea stall that time, A-1 ordered for tea and he was talking to three others. Three others asked him “when will the person leave, which is the appropriate place”. He identified A-1, A-2 and A-4 in Court. According to him, it is only when he read in the newspaper that A-1 was arrested, he realised that A-2 to A-4 were planning the murder when he saw them

near the tea stall, P.W.19 Vasudevan, who is the tea stall owner also is an acquaintance of D-1. According to him, A-1 would purchase tea and cigarette worth about Rs.100 to 150/- and in the evening he would settle the account. On the date of occurrence, he learnt about the murder of D-1, so he closed his shop and took part in the funeral ceremonies and after that A-1 had not visited his shop. A-21 is the son-in-law of D-1. He is carrying on business in Kovilpatti. On receipt of the information about the occurrence through phone, he proceeded to Dindigul. According to him, A-1 did not come to the shop after the date of occurrence. P.W.22-Irulappan is doing finance business. He knows P.W.23-Govindarajan, who used to borrow money from him. In the first week of January, he went to the auto stand to meet him. Since he was not there, he went to the house at about 05.00 p.m., or 06.00 p.m. He introduced A-3, A-4 and A-2, who were tenants in the next house. P.W.22 identified A-2 to A-4 in the Court. On January 10, 1997, at about 06.00 p.m., he went to collect the interest from P.W.23. He was not in the auto stand. Then, he went to his residence. But, the house was locked. In the next house, there were 10 slippers and he thought that P.W.23 might be there and slowly opened the door. He heard the person inside saying that today Nadar must be done away with. According to this witness, A-1 to A-4 were there and five others. According to him, P.W.23 told him two days later that A-2 to A-4 left the place without even receiving the advance. P.W.23 is an auto driver. He

also speaks of the loan transaction between him and P.W.22. According to him, on January 10, 1997, A-1 came to his place and brought three persons. He introduced them as Khan, Subair and Ajees and A-1 told him that those three persons would sell old iron in employer's (D-1) shop and that they needed a house. P.W.23 identified A2 to A4 in Court. P.W.23 asked for advance of Rs.5,000/- and this was paid and it was agreed to pay the monthly rent at Rs.500/-. Within one week from the date on which A-2 to A-4 moved to his house, he **raided** P.W.22 that they were in a portion of his house, 15 days later, P.W.22 told him that A-1 has been arrested and only his tenants have murdered D-1 and D-2. He told P.W.22 that the door is kept locked. He also said that out of the advance amount, he had Rs.3,500/- balance still with him and that he would pay to P.W.22.

- 17) After examination of all the prosecution witnesses and their cross-examinations, the statements of accused persons were recorded under Section 313 of the Criminal Procedure Code. Thereafter, arguments were heard and it culminated into the pronouncement of judgment dated July 19, 2005 by the trial court convicting A-1 to A-4 and acquitting remaining accused persons, as already pointed out above.
- 18) It is clear from the aforesaid narration that PW-2 is the eye-witness and PWs 3 & 4 are other material witnesses. PW-1 is the person who had lodged the complaint on the basis of which FIR was registered and PW-32 was the first Investigating Officer. The conviction is primarily

based on the testimony of the aforesaid witnesses who were found reliable and creditworthy by the trial court as well as the High Court.

19) A perusal of the impugned judgment of the High Court would show that the High Court reappreciated and re-examined the entire case from the following angles:

- (a) **Hatching up of conspiracy** by the appellant to murder the deceased persons, holding that the prosecution was able to prove that there was a criminal conspiracy entered into by and between the accused persons who committed the murder of the deceased persons.
- (b) **Presence of the accused at the scene of occurrence:** As per the courts below, sufficient evidence, particularly, that of PWs 2, 3 and 4, prove the presence of accused persons at the scene of crime.
- (c) **Conduct of the accused persons :** The High Court discussed the testimonies evidence of certain witnesses in detail on the basis of which it affirmed the findings of the trial court that after the incident, all the accused persons did not turn up for work and had absconded themselves which, according to it, was another piece of evidence pointing to the guilt of the accused persons.
- (d) **Belated examination of the witnesses:** It may be noted here that one of the arguments of the defence was that some of the witnesses were examined much belatedly which gave them sufficient opportunity to cook up story by implicating the accused persons and, therefore, they should

not have been believed. High Court, under this heading, has discussed this submission of the defence and negated the same by giving the circumstances justifying the recroding of their statement at the time when it was recorded.

- (e) **Identification of the accused:** The High Court also found that PWs 2, 3 and 4 had identified the accused persons and there was no infirmity or contradictions in their statements on this score. Therefore, the identification of the accused persons was another piece of evidence established by the prosecution.
- (f) **Interested witnesses :** The High Court, under this heading, rejected the argument of the defence that evidence of PWs 2, 3 and 4 and evidence of some other persons should not have been believed as they were interested witnesses inasmuch as they were either BJP sympathisers or RSS Sympathisers or the members of the aforesaid parties.
- 20) It becomes clear from the reading of the impugned judgment of the High Court that the conviction is primarily based on the testimony of PW-2, PW-3, PW-4, PW-6 and PW-18 and in the process support from the depositions given by PW-1 (complainant), PW-32 and PW-33, who were the investigating officers. Conscious of this position, first attempt on the part of Mr. Karpagavinagam, learned senior counsel appearing for the appellants, was to demonstrate that these witnesses were unworthy of reliance because of various infirmities in their depositions and, therefore,

the Courts below should not have acted upon their depositions. It was next argued that there was abnormal delay in recording the statement of main witnesses under Section 161 of the Code of Criminal Procedure by the investigating officers which clearly showed that these witnesses are either improved their statements or even introduced at a later date in order to make a false acquisition against the appellants. In this very hue, it was further contended by the learned senior counsel that piecemeal information was supplied by the witnesses from which it could clearly be inferred that there was an improvement on their part about their original version. In nutshell, these arguments were advanced with the purpose to discredit the testimony of the aforesaid witnesses. We are not reproducing the purported discrepancies which were pointed out by the learned senior counsel for the simple reason that this very exercise was undertaken by the counsel for the appellant even before the High Court. The High Court after taking note of such submissions has dealt with them elaborately. Brushing aside the said arguments, it has concluded that the depositions of these witnesses are reliable.

- 21) Scope of power of this Court under Article 136 of the Constitution is well defined and explained by catena of judgments. It is not necessary to refer to all those judgments and the purpose would be served by citing few judgments which bring out the width of the scope of scrutiny by this Court in such matters. In ***State of U.P. v. Babul Nath***¹, it was held that

¹ (1994) 6 SCC 29

under Article 136 of the Constitution, this Court does not normally reappraise the evidence by itself and go into the question of credibility of witnesses and the assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.

22) Likewise, in ***Ganga Kumar Srivastava v. State of Bihar***², the Court explained the scope of exercise of power under Article 136 of the Constitution by stating the following principles:

- (i) **The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances.**
- (ii) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has acted perversely or otherwise improperly.
- (iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.

² (2005) 6 SCC 211

- (iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.
- (v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.
- 23) It was reiterated in ***Alamelu and Anr. v. State, represented by Inspector of Police***³ that in criminal appeals, this Court would not interfere with concurrent findings of fact save in very exceptional cases.
- 24) We have keep in mind the aforesaid statement of law laid down by this Court with regard to Article 136 of the Constituion.
- 25) We have gone through the judgment of the trial court as well as the High Court and have also given the brief description of the manner in which the High Court has structured its judgment and discuss various aspects. As already pointed out, the High Court, in the first instance, discussed the issue of conspiracy and on the basis of testimony of certain witnesses and material produced on record, it has come to the conclusion that the prosecution has produced sufficient evidence to establish existence of conspiracy. In the process, the High Court has discussed in detail the testimonies of PW-6, PW-22, PW-23, PW-27 etc. Two Courts below have, thus, returned a finding, based on the evidence

³ (2011) 2 SCC 385

produced on record, that conspiracy between the appellants to kill the deceased stood established. In the instant appeal which arises out of special leave petition filed under Article 136 of the Constitution, it is not for this Court to reappreciate the evidence, unless it is found that the findings are totally perverse. No attempt was made to demonstrate as to how the High Court had gone wrong in law while arriving at the conclusion on this aspect.

- 26) Similarly, the Courts below have given convincing reasons, after analysing the evidence of certain witnesses, that the presence of the appellants at the scene of occurrence stood established. Here again, the only attempt was to discredit the testimony of these witnesses by trying to point out certain infirmities without raising any substantial questions of law. We may record that the High Court has *inter alia* stated that PW-2, PW-3 and PW-4 have corroborated each other with regard to the presence of the appellants, thereby establishing the following factors on record:

- 1) The presence of Srinivasa Perumal and PW-4 is spoken to by PWs-2 and 3. They have said that PW-4 was there with Srinivasa Perumal near the flower market.
- 2) All the three have spoken of the presence of A-1 to A-4 near the sugar cane crusher. PWs-2 and 3 have referred to one of the other three, smoking cigarette.

- 3) All the three witnesses have spoken of D-2 coming that way in the Avanti two wheeler with D-1 in the pillion.
- 4) PWs-2 and 3 have spoken of the fact that the man smoking cigarette stopped D-2 by holding the left shoulder. PW5 has deposed that A-3 had first stabbed D-2 by holding his shoulder.
- 5) All the three referred to A-1 making a sign to other three.
- 6) PW-2 was standing near the scene of occurrence with an auto and he has mentioned the presence of an another auto near the spot. The driver is Kasillah, who has not been examined. PW-3 had mentioned the presence of the auto and so does PW-4.
- 7) They also have spoken of the threat by A-2 to the auto driver, who was standing there.
- 27) In the process, the High Court dealt with the arguments of the defence and has given cogent reasons in not accepting the same with the conclusion that these witnesses was speaking the truth. It is not at all pointed out as to what was the legal error committed by the High Court in arriving at the aforesaid conclusion.
- 28) Even the argument of the belated examination of witnesses is dealt with in great detail and the High Court has given its own reasons while rejecting this submission, some of which is worthy of reproduction, as under:

“31. Belated Examination of the Witnesses:- It was urged on behalf of the appellant that many of the

witnesses had come forward with their statements to the police belatedly and therefore that must be viewed with suspicion. In this regard, we must remember what is the case of the prosecution as regards the reason for this double murder. There was a murder of one prominent person belonging to one community in 1994, immediately in retaliation, there was a murder of another prominent person of the other community. D1 was interrogated with regard to the second murder. The judgment with regard to the second murder was about to be pronounced at the time of the occurrence. Therefore, it is the case of the Prosecution that the motive for this double murder was the communal enmity. When that is so, and when on account of communal feeling people were killed, it is difficult to expect witnesses and that too witnesses such as PW3, who had nothing to do with even the place of occurrence to come forward to speak about the occurrence. Moreover, they will not be easily identified by the police until some evidence surfaces to link them or witnesses come forward to report to the police about what they had seen or heard. That there was all round panic in Dindigul is spoken of not just by one witness, but many. The atmosphere was tension-charged and it is extremely natural for a person, who had witnessed something or who had knowledge about the conspiracy to be guarded before disclosing the game to the police. PW2 was present at the time of Inquest. It is only, when he was examined by PW33, that he came out with what he had seen. In this regard, he stated that soon after the occurrence, his uncle died and therefore, he went away to Periyakulam and stayed there 10 to 15 days. During this period the police had come to his house several times. Therefore, his landlord asked him to vacate the house. This is a very natural reaction. In such situation, people do not want to have any connection with possible chance of trouble. This further strengthens the prosecution case that no one was readily willing to give statement to the police. The tension had to die down, and after mustering courage, people slowly started giving whatever information they had. When the Special Investigating Team started investigation, they assured PW2 that he could tell them freely and frankly whatever he knew and it is thereafter, he had come forward with his statement. He was shown an album with full of photographs and on 16.04.2011, he identified A-2 to R-6. It is elicited in his cross-examination that he did

not tell all the details because he was scared. "...I did not tell Dindigul police on 10.01.1997 night what I told in the chief-examination. I was afraid and agitated because I had withered the murder. I could not speak anything at that time. So I did tell the police anything properly. After Dindigul police enquiry, I wanted to say all that I said in chief-examination, but because of fear, I did not..."

- 29) In the same manner, deposition of PW-3, PW-6 and other witnesses is considered and convincing reasons are given for arriving at a conclusion that the evidence given by these witnesses for not coming forward with their statements at the early stage was quite understandable and natural and the so called delay did not in any way discredit thier credibility. The High Court also relied upon the decision of this Court in ***Dr. Krishna Pal and another v. State of U.P.***⁴.
- 30) We do not see any reason to interfere with the analysis and conclusion of the High Court. We, thus, are of the view that judgment of the Courts below does not call for any intereference, finding no merit in these appeals and the same are dismissed.

.....J.
(A.K. SIKRI)

.....J.
(R.K. AGRAWAL)

**NEW DELHI;
JULY 15, 2016**

⁴ (1996) 7 SCC 194