



**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 2030 OF 2022**

**PATCHAIPERUMAL @ PATCHIKUTTI & ANR. ... APPELLANTS**

**VS.**

**STATE REP. BY INSPECTOR OF POLICE & ANR. ...RESPONDENTS**

**WITH**

**CRIMINAL APPEAL NO. 2033 OF 2022**

**KULASEKARAPANDIAN ...APPELLANT**

**VS.**

**P. THILAGAVATHY & ANR. ...RESPONDENTS**

**WITH**

**CRIMINAL APPEAL NO. 2032 OF 2022**

**BILEDY GANESAN @ SELVAGANESAN ...APPELLANT**

**VS.**

**STATE REP. BY INSPECTOR OF POLICE & ANR. ...RESPONDENTS**

**AND**

**CRIMINAL APPEAL NO. 2031 OF 2022**

**MURUGESAN @ SHANMUGASUNDARAM ...APPELLANT**

**VS.**

**STATE REP. BY INSPECTOR OF POLICE & ANR. ...RESPONDENTS**

## **J U D G M E N T**

**DIPANKAR DATTA, J.**

### **THE APPEALS**

1. These appeals, by special leave, take exception to the common appellate judgment and order dated 7<sup>th</sup> December, 2021 of the High Court of Judicature at Madras.
2. While allowing the appeal under Section 374(2), Code of Criminal Procedure, 1973 of the widow of Patchaiperumal<sup>1</sup>, viz. PW-8, and reversing the finding of acquittal recorded by the relevant Sessions Court *vide* its judgment dated 1<sup>st</sup> September, 2009, the High Court sentenced the appellants Murugesan — A-1, Patchaiperumal @ Patchikutti — A-2, Palavesaraj @ Palavesamuthu — A-3, Kulasekarapandian — A-4 and Biledy Ganesan @ Selvaganesan — A-10 to life imprisonment for commission of offences under Section 302 read with Sections 34, 148, and 341, Indian Penal Code, 1860<sup>2</sup>. However, acquittal of the co-accused (A-5 to A-9 and A-11) was not disturbed by the High Court.

### **FACTS**

3. The prosecution case was that at a gathering in the house of A-9 on 10<sup>th</sup> July, 2007, all the accused had planned the murder of the victim

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<sup>1</sup> victim

<sup>2</sup> IPC

(disbelieved by both the courts). FIRs in cases pertaining to prior feuds between the families of the victim on the one hand and those of A-4 and A-9 on the other provided the motive. On 12<sup>th</sup> July, 2007 at about 1.00 p.m., the victim left the school (where he was a teacher) on his motorcycle and was heading home for lunch. PWs 1 (brother-in-law of the victim) and 2 (brother of the victim) were following the victim on a separate motorcycle. The victim was initially waylaid by A-3 and A-4. Striking a ninja chain against the motorcycle which the victim was riding, A-3 ensured that the victim was compelled to stop. A-1, A-2 and A-4 then attacked the victim with sickles. A-5, A-6 and A-8 to A-11 were also attributed the role of attacking the victim with sickles. While PWs 1 and 2 tried to intervene, they were threatened by the multiple accused of dire consequences. To save their lives, PWs 1 and 2 hid behind a tree and witnessed the ghastly attack on the victim. The victim died on the spot as a result of the injuries inflicted on him. He was then pushed into a field by the accused, whereafter some of them left in a car driven by A-7 while the rest ran away from the scene of crime. At around 2.00 p.m., complaint was lodged by PW-2. It was also signed by PW-1. An FIR (Ext. P-41) came to be registered. In the interregnum, PWs 1 and 2 had been to their village and informed family members of the crime. The FIR was sought to be made over to the jurisdictional Judicial Magistrate by a Head Constable (PW-26) on the same date (12<sup>th</sup> July, 2007). However, the Judicial Magistrate was not available on that date. PW-26, therefore, waited overnight and handed

over the FIR to the Judicial Magistrate at 5.30 a.m. on 13<sup>th</sup> July, 2007. The investigating officer (PW-32), however, undertook investigation immediately after the FIR was registered. He visited the scene of crime around 2.45 p.m. and prepared the observation mahazar. The ninja chain (MO-3) was recovered from the scene of crime. PW-32 also collected sample of blood-soaked earth and plain earth as well as clothes worn by the victim. Inquest report was prepared by about 6.00 p.m. A Head Constable (PW-25) received the dead body and handed over the same for post-mortem. The autopsy surgeon (PW-28) conducted autopsy of the victim around 11.00 a.m. on 13<sup>th</sup> July, 2007 and submitted his report (Ext. P-25). Although A-5 to A-12 were not named in the FIR, their names came to be included as additional accused based on further statements of PWs 1 and 2 recorded on 13<sup>th</sup> July, 2007. Upon arrest of A-5 and A-8 on 19<sup>th</sup> July, 2007 and 31<sup>st</sup> July, 2007, respectively, 6 sickles (3+3) were recovered pursuant to their disclosure statements. Such recovery was allegedly made in the presence of PWs 12 and 13; however, PW-13 along with PWs 2, 3, 5 and 6 turned hostile at the trial. Disclosure made by A-7 on 1<sup>st</sup> August, 2007 led to recovery of the Maruti car in the presence of PWs 14 and 15 (both of whom turned hostile at the trial). On 30<sup>th</sup> August, 2007, PW-33 took over the investigation from PW-32. A-1 came to be arrested, whereafter A-2 too was arrested on 6<sup>th</sup> September, 2007. Further arrest of A-11 was effected on 1<sup>st</sup> December, 2007 by PW-34, who had taken over charge of investigation from PW-33. PW-28 in his

report recorded the following external injuries which the victim had suffered:

- 1) An incised wound was seen on the left side of the face, crosswise from the lower portion of the left ear upto the chin measuring 11×4×9 cms and there was fracture of the skull bone exposing the internal organs.
- 2) An incised wound measuring 2 inches and was outside wound No.1. It measured 7×2×4 cms.
- 3) An incised wound was found on the left neck from the back of the ear upto the mid portion of the neck, exposing the internal organs and severing the vital nerves and the major arteries, the vertebral column was cut. It measured 18×7×15 cms.
- 4) An incised wound cross-wise was seen on the left side of the head measuring 8×3×2 cms.
- 5) A lacerated wound measuring to an extent of 10×8×4 cm was seen on the inner aspect of the right hand and the thumb was found hanging exposing internal organs.
- 6) The left hand was severed below the wrist.
- 7) A lacerated wound was seen on the lower aspect of the left forearm measuring to an extent of 7×5×3 cms.
- 8) A lacerated wound measuring 5×3×2 cms was seen above the wound no.7.
- 9) A lacerated wound was seen above the left shoulder measuring 4×3×2 cms.
- 10) An incised wound measuring 10×5×5 cms was present on the right shoulder.
- 11) An incised wound was seen at the back of the lower aspect of the left hand measuring to an extent of 6×4×2 cms."

#### **JUDGMENT OF THE HIGH COURT**

4. The High Court proceeded to record conviction against A-1 to A-4 and A-10 mainly relying on the eye-witness account of PWs 1 and 2, the evidence of PW-28 together with his report (Ext. P-25) as well as the recoveries effected at the scene of crime and from the neighbouring bushes and fields, under Section 27 of the Evidence Act, 1872<sup>3</sup>. Though, PW-2 was declared hostile as he resiled from his statement recorded under Section 161, Cr. PC in respect of the overt acts, it was

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<sup>3</sup> Evidence Act

noted by the High Court that the PW-2 was the complainant, which he affirmed in his evidence; not only that, the statement of PW-2 recorded under Section 164 Cr. PC by the Judicial Magistrate (PW-27) explicitly contained the overt acts of all the accused as spoken to by PW-2. *Inter alia*, the victim was attacked by A-1 with a sickle. He had aimed at the victim's neck but when the victim tried to defend himself by raising his left hand, portion of the forearm from the wrist got severed. All the injuries found on the dead body of the victim were corroborated by the report (exhibit P-25) prepared by PW-28.

**5.** On a conspectus of the available evidence (direct/circumstantial), the High Court was of the opinion that the following circumstances were well and truly established:

- a. Existence of prior feuds between the families of A-4 and A-9 on the one hand and the victim on the other.
- b. Evidence of PWs 1, 2, 8 and 9 as well as FIRs registered earlier pertaining to such prior feuds to establish motive.
- c. Complaint lodged by PW-2, which also bore the signature of PW-1, giving rise to the FIR explicitly referred not only to the presence but also the overt acts of A-1 to A-4.
- d. That PWs 1 and 2 were witnesses to the fatal assault was corroborated by the external injuries appearing in the report (Ext. P-25) prepared by PW-28.
- e. Although, A-10 was initially not named in the FIR as an accused, he was attributed the role of assaulting the victim

with sickle on both his shoulders and such injuries are found corroborated by Ext. P-25.

- f. Assault on one of the forearms of the victim by A-1 resulting in severance below the wrist is supported by the finding recorded by PW-28 in exhibit P-25.
- g. The prosecution case of A-3 striking the motorcycle of the victim with a ninja chain in his successful attempt to stall the victim from proceeding ahead and breaking of such chain into two, as spoken by PWs 1 and 2, finds due support from seizure of such broken chain from the scene of crime.
- h. According to PW-23, the sniffer dog brought by PW-32 at the scene of crime ran therefrom to the house of A-4 lending credibility to the prosecution case.

#### **ARGUMENTS ON BEHALF OF A1/MURUGESAN**

6. Mr. Deepak Prakash, learned counsel appearing on behalf of A-1, contended that the High Court erred in not considering the material contradictions in the depositions of the prosecution witnesses in course of the trial, and instead relied on such contradictory evidence to reverse the well-written and well-reasoned order of the Sessions Judge. Reliance was placed on ***Ramesh Babulal Doshi v. State of Gujarat***<sup>4</sup> and ***Sunil Kumar Sambhudayal Gupta v. State of***

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<sup>4</sup> (1996) 9 SCC 225

**Maharashtra**<sup>5</sup> for the proposition that the High Court must examine the reasons given by the trial court while recording an order of acquittal.

7. Next, Mr. Prakash contended that the High Court erred by not considering the settled legal position that if two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the finding of acquittal recorded by the trial court. Reliance was placed on **Sanjeev & Anr. v. State of Himachal Pradesh**<sup>6</sup> in this regard.

8. According to Mr. Prakash, some of the material contradictions are as follows:

a. Paragraph 65 of the trial court's judgment, dated 01<sup>st</sup> September, 2009, records that although the prosecution case rested on the allegation that the murder occurred on the road and the body was thereafter rolled down seven feet into a plantain grove, neither the observation mahazar nor the rough sketch reflected the presence of bloodstained earth at the alleged scene of occurrence.

b. Furthermore, the list of articles sent under seal included "*earth mixed with stones and vegetable matter*" which, the defence argued, could only have been recovered from within a

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<sup>5</sup> (2010) 13 SCC 657

<sup>6</sup> (2022) 6 SCC 294



vegetation grove. This contradicts the prosecution story that the assault occurred on the road.

- c. The rough sketch in the trial court record depicts the dead body lying in the grove below the road, yet, the condition of the victim's clothes does not indicate any rolling down of the body. No bloodstains were found on the roadway, and the Assistant Medical Officer (PW-28), who conducted the post-mortem, admitted in cross-examination that the body bore no injuries consistent with having been dragged or rolled down from the road into the grove.
- d. Additionally, the deposition of the village assistant (Dhirviyam), recorded in the trial court record, states: *"Both the sides of that plantain grove were fenced with barbed wire."* If the body had indeed been rolled down through barbed-wire, corresponding injuries would necessarily have been present; however, the medical evidence reveals no such injuries.

Highlighting these contradictions, Mr. Prakash for A-1 submitted that the investigation was conducted in a hurried and defective manner, and that the trial court was justified in extending the benefit of doubt to all the accused. It was, therefore, urged that the High Court erred in convicting A-1 despite the absence of compelling reasons warranting reversal of his acquittal.

#### **ARGUMENTS ON BEHALF OF A4/KULASEKARAPANDIAN**

9. Learned counsel, Mr. R. Prabhakaran and Ms. Sowmya, appearing for A-4, contended that the Division Bench failed to duly appreciate crucial pieces of physical evidence, most notably the rough sketch dated 12<sup>th</sup> July, 2007, prepared during investigation. It was pointed out that the sketch indicated that the severed left wrist of the victim was found approximately three feet away from the motorcycle, while the body was found seven feet away from the wrist. The sketch further revealed the presence of a thorn fence separating the plantain grove from the road.
10. It was urged that as per the testimonies of PWs 1 and 2, the victim, after collapsing in his own pool of blood, was allegedly pushed into the plantain grove. Given the victim's condition and the distance involved, learned counsel argued that such a version is physically implausible. The expressions "pushed" or "kicked," it was submitted, could only have meant that the body was rolled into the grove. However, PW-28 who conducted post-mortem of the victim, confirmed in his deposition that no thorn injuries were found on the body, thereby rendering it impossible for the victim to have been rolled or pushed through the thorny fence. The rough sketch also depicts a dry irrigation canal separating the grove from the road which, if the prosecution version were to be accepted, would have obstructed any such movement. Further, the absence of bloodstains at the alleged location, as

confirmed by PW-32, undermines the prosecution's narrative. On these counts, it was argued that the statements of PWs 1 and 2 stand contradicted by objective physical evidence and ought not to be relied upon.

11. Learned counsel further submitted that the Division Bench erred in the application of the test laid down in ***Masalti & Ors. v. State of U.P.***<sup>7</sup> which mandates that unless four or more witnesses provide a consistent and cogent account against any particular accused, conviction cannot be sustained. In the present case, only two eyewitnesses (PWs 1 and 2) were examined, whose versions are mutually inconsistent. It was also contended that while it is settled that credible testimony of a single witness may suffice, the converse—untrustworthy testimony of multiple witnesses—cannot form a ground for conviction. The test in ***Masalti*** (supra), it was urged, though mechanical in appearance, remains both rational and necessary for the preservation of fairness in trial.
12. It was further argued that the only eyewitnesses, PWs 1 and 2, while reporting the incident, named only four out of the eleven accused in their report despite being well acquainted with all. They reasoned that they were in a state of shock, which was later contradicted when PW-1 admitted in cross-examination that he was in a clear state of mind

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<sup>7</sup> AIR 1965 SC 202

while lodging the complaint. This, it was contended, casts grave doubt on the veracity of their testimony.

- 13.** Learned counsel drew our attention to the evidence of Ramarani, Sub-Inspector of Narikudi Police Station (PW-22), who deposed that on 12<sup>th</sup> July, 2007 at around 4:20 p.m., A-7, Sathiyaseelan, had approached her to lodge a complaint (File No. 73/20) regarding one Ramesh. It was argued that A-7 was then driving a car bearing no. TN-09 / AK-8444, the same car the prosecution alleged was used to transport A-4, A-5, A-6, A-8, and A-9 to the scene of occurrence. This contradiction, according to the defence, renders it improbable that A-7 could have simultaneously been at the police station and the crime scene.
- 14.** On the issue of the sniffer dog evidence, it was submitted that PW-1 himself admitted that, prior to their arrival, the Inspector of Police, Eral, had already brought the sniffer dog to the scene. The dog did not identify any person from among the assembled crowd and was subsequently taken back to the station. PW-4 corroborated that the dog had been brought specifically to identify suspects. It was thus contended that the sniffer dog evidence fails to incriminate A-4 in any manner, and prayed for the conviction of A-4 to be overturned and acquittal restored.

## **ARGUMENTS ON BEHALF OF A10/BILEYDY GANESAN**

- 15.** Mr. Navin Pahwa, learned senior counsel appearing on behalf of A-10 contended that there exists no consistent or credible evidence linking the said accused to the crime beyond reasonable doubt. A-10 had no prior enmity with the victim or criminal antecedents. The alleged recovery of weapons was not properly proved, as the Investigating Officer failed to identify the same before the trial court. The High Court, it was urged, correctly sustained the trial court's finding disbelieving the prosecution on the aspect of conspiracy.
- 16.** Placing reliance on ***Sharad Birdhichand Sarda v. State of Maharashtra***<sup>8</sup>, learned counsel submitted that in cases based on circumstantial evidence, the chain must be complete and unbroken. In the present case, motive—the first and most vital link in the chain—remains unproven. The absence of established motive and the failure to prove conspiracy break the evidentiary chain necessary to sustain a conviction under Section 302, IPC.
- 17.** It was further submitted that while A-11 has been acquitted by the High Court on similar evidence, A-10 has been convicted, which constitutes discriminatory treatment contrary to the principle laid down in ***Javed Shaukat Ali Qureshi v. State of Gujarat***<sup>9</sup>. The High Court's observation that PWs 1 and 2 had consistently deposed that

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<sup>8</sup> (1984) 4 SCC 116

<sup>9</sup> (2023) SCC OnLine SC 664

A-10 inflicted injuries on the shoulders of the victim was challenged as erroneous. Paragraph 57 of the trial court's judgment, it was pointed out, recorded that PW-2 had in fact attributed the shoulder injury to A-11, thereby evincing an apparent contradiction.

- 18.** Learned counsel further submitted that PWs 1 and 2, being respectively the brother-in-law and brother of the victim, are related and interested witnesses. Relying on **Gangadhar Behera v. State of Orissa**<sup>10</sup> and **Esakkimuthu v. State**<sup>11</sup>, it was contended that their testimonies warrant cautious scrutiny. The prosecution, it was argued, failed to establish beyond reasonable doubt that the act attributed to A-10 was in fact committed by him.
- 19.** The High Court, while extending the benefit of doubt to A-5, A-6, A-8, A-9 and A-11, by applying the ratio in **Masalti** (supra), failed to extend the same to A-10 despite similar evidentiary footing. The FIR named only A-1 to A-4, and A-5 to A-11 were added later. PW-1 admitted that he was in a clear state of mind when naming only the initial four accused; PW-2 conceded that he knew A-5 to A-11 from childhood, yet, did not name them in the earliest report. The later inclusion of A-10 and others was argued to be an afterthought, engineered to align roles with injuries.

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<sup>10</sup> (2002) 8 SCC 381

<sup>11</sup> (2014) 2 MWN (Cr.) 180

- 20.** The defence also highlighted an unexplained delay of nearly fifteen and a half hours in forwarding the FIR to the Magistrate, further weakening the prosecution case.

**ARGUMENTS ON BEHALF OF A-2/ PATCHAIPERUMAL @ PATCHIKUTTI AND A-3/PALAVESARAJ @ PALAVESAMUTHU**

- 21.** Learned counsel for A-2 and A-3 adopted the submissions made by the learned counsel for A-1, A-4 and A-10 and submitted that they have been falsely implicated. According to learned counsel, appreciation of evidence by the trial court was flawless and the High Court, without justification, interfered with the well-considered judgment by reversing it.

**ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 2/THILAGAVATHY**

- 22.** Learned Senior Counsel, Ms. N.S. Nappinai, appearing for the respondent no. 2 (widow of the victim), submitted that the High Court has undertaken a thorough evaluation of the evidence and rightly convicted A-1 to A-4 and A-10. The findings, it was urged, are reasoned, supported by record, and free from perversity.
- 23.** Ms. Nappinai contended that the High Court has appropriately relied upon the testimonies of PW-1, PW-2, PW-4, PW-8, and PW-9, as well as prior FIRs relating to disputes between the families of A-4, A-9, and the victim, to establish motive. It was pointed out, as regards the alleged conspiracy, that the High Court had, in fact, disbelieved the

evidence of PW-1 and PW-7 insofar as they claimed to have overheard a discussion among the accused planning the murder.

- 24.** Ms. Nappinai further emphasized that both oral and documentary evidence, including the post-mortem report and the complaint signed by PWs 1 and 2, demonstrate that the victim had succumbed before the witnesses left the scene. The High Court held that minor contradictions in ocular evidence cannot be magnified to discard the prosecution version in its entirety.
- 25.** On the issue of delay in forwarding the FIR to the Magistrate, Ms. Nappinai submitted that the High Court had found the delay satisfactorily explained through PW-26 (Head Constable) and Exhibit P-19 (a document containing the signature of the Magistrate with date and time, acknowledging receipt of the FIR). The finding of the trial court regarding possible manipulation of the FIR was rightly rejected as speculative.
- 26.** It was further urged that although certain witnesses (PWs 2, 3, 5, and 6) turned hostile, the evidence of PWs 1 and 2, being natural and consistent, was rightly accepted by the High Court. Their conduct in not intervening during the attack was found natural, given the circumstances of threat. The High Court's appreciation of the evidence, it was contended, aligns with settled law.
- 27.** Reference was further made to the circumstantial evidence, including the recovery of a ninja chain from the scene, the several sickles



pursuant to confessional statements, and the movement of the sniffer dog from the scene of occurrence to A-4's residence, as deposed by PW-23 (Head Constable), to corroborate the involvement of the accused.

- 28.** It was submitted that the findings of the trial court disbelieving the prosecution version are perverse and contrary to evidence. PW-1 and PW-2 consistently spoke of the overt acts of A-3 and A-10, and their accounts stood corroborated by the post-mortem report, which recorded eleven injuries matching the roles attributed in the FIR. The timing of the post-mortem (11:00 a.m. on 13<sup>th</sup> July, 2007) further supports the contemporaneity of the FIR.
- 29.** On the basis of the above, Ms. Nappinai contended that the High Court rightly found A-1 to A-4 and A-10 guilty of murder with common intention under Section 302 read with Section 34 IPC, observing that when a premeditated act is committed in furtherance of a shared design, liability attaches equally to all, irrespective of individual injury inflicted. It was, thus, prayed that the conviction of A-1 to A-4 and A-10 be affirmed.

**ARGUMENTS ON BEHALF OF THE STATE/RESPONDENT 1**

- 30.** Mr. Krishnamoorthy, learned senior counsel for the State while adopting the submissions made by Ms. Nappinai urged that the error committed by the trial court in acquitting the accused on misappreciation of the evidence was duly corrected by the High Court

in appeal. Since the High Court has sifted the grain from the chaff and found the appellants guilty while maintaining acquittal of rest of the accused by a well-considered judgment, this Court ought to uphold the same.

### **ANALYSIS**

- 31.** We have heard learned senior counsel/counsel for the parties and looked into the materials on record in some depth having regard to the fact that these appeals arise out of reversal of an acquittal recorded by the Sessions Court, which had the occasion to see and hear the witnesses testify as well as look into evidence collected during investigation of the crime leading to the murder of the victim.
- 32.** The question that we are now tasked to decide is whether the High Court was justified in convicting A-1 to A-4 and A-10, upon reversal of the verdict of acquittal recorded by the trial court.
- 33.** We preface our analysis of the evidence to answer the aforesaid question by referring to the law as to how the court ought to read the evidence led by the parties when statements made in court are alleged to be inconsistent with and/or contradictory to previous statements made by the same witness.
- 34.** When oral evidence of eye-witnesses is scrutinised, especially when certain alterations of their previous statements appear during the trial, the court is normally required to focus on the factors of consistency (whether the current statements match the previous statements),

credibility (whether they are reliable, or are there reasons to doubt them), corroboration (whether there is other evidence on record supporting their testimony) and motive (whether there is a reason for them to change their version). Should there be discrepancies or contradictions that are glaring, their testimony has to be viewed as suspect. Since, however, the goal of the criminal justice system is to secure justice for both the victim and the accused, each case has to be evaluated on its own merits, appreciating and analysing all the evidence that is presented.

35. Towards the end of the last century, this Court in ***State of Uttar Pradesh v. Anil Singh***<sup>12</sup> noticed witness behaviour in the Indian context, wherein Hon'ble Justice K. Jagannatha Shetty (as he then was) held as follows:

"15. ... We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. The Privy Council had an occasion to observe this. In *Bankim Bihari Maiti v. Matangini Dasi*, AIR 1919 PC 157, the Privy Council had this to say (at p. 628):

'That in Indian litigation it is not safe to assume that a case must be a false case if some of the evidence in support of it appears to be doubtful or is clearly untrue. There is, on some occasions, a tendency amongst litigants ....to back up a good case by false or exaggerated evidence.'

16. In *Abdul Gani v. State of Madhya Pradesh*, AIR 1954 SC 31, Mahajan, J. speaking for this Court deprecated the tendency of courts

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<sup>12</sup> 1988 Supp SCC 686

to take an easy course of holding the evidence discrepant and discarding the whole case as untrue. The learned Judge said that the court should make an effort to disengage the truth from falsehood and to sift the grain from the chaff.

**17.** It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.”

**36.** Not too long ago, Hon’ble Sanjib Banerjee, CJ., Meghalaya High Court (as he then was) speaking for the Division Bench in ***Kimland Thyрниang v. State of Meghalaya***<sup>13</sup>, affirmed by us on 11<sup>th</sup> August, 2025<sup>14</sup>, poignantly observed:

“Evidence is not read with a fine tooth comb to find out the discrepancies and contradictions therein. The entirety of the oral evidence may be read or heard, and the overall impression that it renders must be appreciated. There are the usual instances of imperfect recollection, the attempt at embellishment and, sometimes, even an element of motive to improve upon or detract from the previous statement rendered by the same person. These are usual and when witnesses with little or no education are examined and the evidence is crassly translated, there are bound to be some discrepancies in the manner of description or in the details. Indeed, if the description is too perfect, that should raise some suspicion.”

**37.** Having given thoughtful consideration, in our opinion, a nuanced approach is essential for evaluating testimony of witnesses in the Indian context, acknowledging human imperfections and contextual factors. While looking at statements of witnesses given in court, every

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<sup>13</sup> judgment and order dated 1<sup>st</sup> March, 2022 in CRA No.5 of 2021

<sup>14</sup> in SLP (Criminal) Diary No.35970 of 2025

detail need not be nitpicked; the overall impact that the testimony generates has to be considered. Witnesses are prone to forget events and things; they are likely to exaggerate or even have motives to change their story. This seems to be normal especially for uneducated witnesses who might struggle to describe events perfectly. As this Court said in **Anil Singh** (supra), the witnesses add embroidery to the prosecution story, perhaps for the fear of being disbelieved. Should the version be flawless, that might raise eyebrows about the quality of their testimony. After all, it is the duty of the court to sift the grain from the chaff!

**38.** Bearing in mind the above guiding principle, we have scanned the evidence on record.

**39.** It would be appropriate to note in brief, at this stage, the deposition of each of the vital witnesses.

- a. P.W.1, the brother-in-law of the victim, deposed about the existence of prior animosity between the victim and A-4 and his sons arising out of a land transaction with one Aravazhi Subbiah, during which compound walls erected on the said property were twice demolished, resulting in police complaints and litigation. As regards the occurrence, he stated that on 12<sup>th</sup> July, 2007, while he and PW-2 were following the victim on their motorcycle near Kodunkani Vilakku, the accused, armed with sickles and a ninja rod, intercepted the victim.

According to him, A-3 struck the victim's motorcycle with the ninja rod, A-1 delivered a blow aimed at the neck which severed the left wrist when deflected, A-2 cut the victim near the left ear, A-4 caused an injury on the right hand, A-5 and A-8 struck the left jaw, A-9 hacked the victim's wrist and elbow, A-10 hacked the victim's both shoulders, and A-6 caused an injury on the neck. The victim fell into the banana field. PW-1 stated that when he and PW-2 attempted to intervene, they were threatened with dire consequences, compelling them to hide behind a tree. He deposed that they thereafter proceeded to Eral Police Station where a written complaint was lodged by PW-2 bearing his signature. In cross-examination, PW-1 admitted several omissions in his police statement, including non-disclosure of names of several assailants and inability to attribute specific weapons and acknowledged that the sniffer dog had not identified any assailant. He denied suggestions of tutoring or false implication.

- b. PW-2, the younger brother of the victim, stated that on the date of occurrence he and PW-1 visited the school where the victim was employed and followed him as he left for home. At Kodukani Vilakku, A-4, armed with a sickle, intercepted the victim while A-3 obstructed him with a ninja rod, after which several persons emerged from the eastern side. He further

stated that A-5, A-6 and A-9 boarded a car and fled, whereas A-11 pushed the victim into a banana field. PW-1 and he informed others and then lodged the complaint at Eral P.S. bearing his signature and that of PW-1. Upon being declared hostile, he affirmed that when the victim attempted to ward off the first blow aimed at his neck, his left wrist was severed; that A-2 struck near the left ear; A-4 cut the palm; A-5 cut the left side of the neck; A-8 struck the left jaw; A-9 cut the left knee; and A-11 again cut the left wrist. He affirmed that blood was seen on the road, the victim's clothing and the weapons. In cross-examination, he admitted delay in recording his police statement (Ext. P-2) and inability to identify weapons with certainty, but denied deposing falsely or due to external influence.

- c. PW-4, a co-brother of the victim, reiterated the land dispute between the victim and A-4 and spoke also of discord between the wives of the parties. He stated that on 12<sup>th</sup> July, 2007, at about 1.00 p.m., while he and others were standing near Kodunkani Vilakku, the victim was intercepted by Palavesaraj/A-3, causing the victim to fall. According to him, Murugesan/A-1 attempted to strike the victim on the neck but the blow severed the left wrist, after which Patchaiparumal @ Patchikutti/A-2 inflicted a cut on the left ear. Six others then emerged from the adjacent banana grove and indiscriminately

cut the victim on the jaw, hands and shoulders. Particularly, A-9 cut off the left arm of the victim, and A-10 cut in the left shoulder and right shoulder. He stated that PWs 1 and 2 were also present, and that the victim died at the spot. In cross-examination, PW-4 acknowledged that in his earlier statement before the Magistrate he had disowned knowledge of the occurrence, and that his previous police statement omitted material particulars including the presence of PWs 1 and 2 and the precise location of the assault.

- d. PW-8, the widow of the victim, spoke of existence of prior enmity arising out of the property dispute involving A-4 and his sons and a separate quarrel with A-12's wife over a water dispute in which threats were allegedly issued. She stated that on 12<sup>th</sup> July, 2007, she was informed of the attack over telephone by the Headmaster of the school, and upon reaching the spot found the motorcycle on the road and the body of her husband with the left wrist lying severed nearby. In cross-examination she admitted that she did not disclose all particulars initially and acknowledged exchange of social visits between the families, but denied fabricating allegations.
- e. PW-9, a retired Superintendent of the H.R. & C.E. Department, affirmed the land transaction with the victim, the demolition of the compound wall in 2003 and again in 2005, and the



lodging of related police complaints. He, however, admitted absence of documentary proof of title.

- f. PW-10, the Village Assistant of Korkai, spoke about the preparation of the observation mahazar, seizure of blood-stained earth, sample earth, the motorcycle and two ninja rods at the scene, and the presence of sniffer dog and forensic teams.
- g. PW-26, Head Constable in the Eral P.S., stated that he received the FIR and produced it before the Judicial Magistrate the next morning at 05.30 hours. According to him, the magistrate was not available in the late afternoon for which he stayed overnight and handed it over in the early morning hours.
- h. PW-28 was the Assistant Medical Officer, Government Hospital, Srivaikundam, who conducted the post-mortem on 13<sup>th</sup> July, 2007 at 11:00 hours. The details of the multiple incised injuries on the face, neck, and limbs, including a deep injury extending from the left ear to the chin, fracture of the skull and vertebral column, and severance of the left wrist, that PW-28 found have been noted above. He opined that death resulted from shock and haemorrhage due to multiple injuries approximately 20–26 hours prior to autopsy, and that the injuries could have been caused by sickles (M.O.1 series).

- i. PW-29, Head Clerk in the court of the Judicial Magistrate confirmed receipt of the FIR in Court on 13<sup>th</sup> July, 2007 and subsequent submission of witness statements.
- j. PW-32, Inspector of Police, stated that he prepared the observation mahazar and sketch, seized material objects, conducted inquest, examined witnesses, and effected arrests on the basis of voluntary statements leading to recovery of weapons, including two ninja sticks and a chain with a ring. He further deposed that A-8 surrendered on 31<sup>st</sup> July, 2007 and furnished a confession leading to the recovery of additional blood-stained sickles from a banana grove near Kurangani Vilakku. Likewise, A-7 was taken into custody on 01<sup>st</sup> August, 2007 and gave a statement resulting in the seizure of a Maruti vehicle from one Lakshmikanthan's house under Ext. P-37. In cross-examination, he admitted that the forensic and fingerprint reports were not produced and that the sketch did not indicate the exact locations of bloodstains, but denied fabricating the FIR or recovering weapons at the police station.

**40.** Insofar as direct evidence is concerned, PWs 1 and 2 are eye-witnesses. Their versions are wholly consistent with regard to the successful effort of A-3 to stop the victim from proceeding ahead with the striking of the motorcycle by using a ninja chain as well as the fatal attack on the victim by the appellants resulting in the several wounds

being found on his person. Indeed, there are certain minor contradictions which, however, in our opinion are not sufficient to disbelieve the prosecution story altogether and throw it out. PW-4 also claimed to have witnessed the incident of crime but we are not too impressed with such claim. His version does not inspire confidence and was rightly disbelieved by the trial court and the High Court. PW-8 is a post occurrence witness. Her evidence of finding the victim lying dead with a severed wrist on the road as well as the motorcycle is relevant, considering the advantage sought to be taken by the defence of the other version of the dead body of the victim being rolled over to the plantain grove.

- 41.** Regarding documentary evidence, Exts. P-38, P-39 and P-42 are the FIRs in cases pertaining to prior feuds between the victim and the family of A-4 and A-9. Reading these documents together with the evidence of PWs 1, 2 and 8, existence of animosity between the rival groups has been conclusively proved. Thus, there was a motive to commit the crime.
- 42.** Moving on to the written complaint of PW-2 (Ext. P-2), duly signed by PW-1, the specific overt acts of A-1 to A-4 have been alleged together with the presence of other accused. Reporting of the crime has been promptly made. Though PW-2 was declared hostile, his evidence cannot be wholly discarded. Evidence of a hostile witness can be utilised by the prosecution or the defence if spoken in their favour. One

may refer to the decision of this Court in ***State of U.P. v. Ramesh Prasad Misra***<sup>15</sup> wherein it was held that the evidence of a hostile witness would not be outright rejected but would rather have to be subjected to closer scrutiny.

43. Turning to the post-mortem report (Ext. P-25), what we find is that the several injuries inflicted on the victim, as spoken to by PWs 1 and 2, almost nearly match with those found by PW-28.
44. Complaint (Ext. P-2) lodged by PW-2 was also signed by PW-1 levelling allegations of explicit overt acts of A-1 to A-4; it also adverted to the presence of other accused. Evidently, the victim was dead before the scene of crime was left by PWs 1 and 2 to inform family members. Immediately thereafter, they complained to the police. Reporting of the crime has been prompt, ruling out possibility of false implication.
45. Insofar as the question of delay in forwarding the FIR to the Judicial Magistrate on 13<sup>th</sup> July, 2007 at 05.30 hours is concerned, i.e., about 14 hours after the registration thereof and the inference drawn by the trial court of manipulation of the FIR, we agree with the High Court that the delay is not fatal to the case of the prosecution. There is justification provided through the evidence of PW-26 (Head Constable). He stayed overnight to ensure that the FIR reaches the magistrate, which stands proved by reason of the document, being

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<sup>15</sup> (1996) 10 SCC 360

Ext. P-19, containing the signature of the Magistrate with date and time, acknowledging receipt of the FIR.

- 46.** Presence of PWs 1 and 2 at the scene of crime was disbelieved by the trial court on two counts: first, they were close relatives of the victim and secondly, they did not attempt to rescue the victim or to check whether he was alive or dead. We see no reason to hold that their evidence was not creditworthy. Merely because PWs 1 and 2 were related to the victim can afford no ground to discredit their evidence. In fact, we agree with the High Court that the conduct of PWs 1 and 2 was natural, faced with the threat of being physically harmed by the appellants and the others who were armed with sickles. We also agree with the High Court that the trial court based its conclusions on imaginary and illusionary reasons and that it was right in rejecting the trial court's finding on alleged contradictions in respect of the injuries to the victim between the evidence of PWs 1 and 2, as being contrary to settled law.
- 47.** Apart from direct evidence, there was circumstantial evidence too to nail the appellants. Recovery of the ninja chain from the scene of crime and recovery of 9 (nine) sickles under Section 27 of the Evidence Act are evidence of clinching nature. Also, sight cannot be lost of the sniffer dog reaching the house of A-4 from the scene of crime, as stated by PW-23 (Head Constable) who remained firm.

**48.** Turning to the medical evidence, the version of the autopsy surgeon (PW-28) did not suffer from any contradiction, far less material contradiction. Post-mortem report (Ext. P-25) prepared by PW-28 revealed 11 (eleven) distinct injuries sustained by the victim. The overt acts attributed to A-1 to A-4 in the FIR, which is the earliest document, is corroborated by the corresponding injuries found by PW-28. Significantly, the post-mortem examination was conducted on 13<sup>th</sup> July, 2007 at 11.00 hours, i.e., after the FIR was handed over to the magistrate. Question of manipulation did not, thus, arise which we find to have swayed the trial court to a substantial extent.

**49.** Much has been argued on behalf of A-10 basing on the omission of his name in the FIR and the evidence of PWs 1 and 2 to the effect that they well knew A-10. Question that has been posed is, why did they not name A-10 as one of the assailants particularly when it is in the evidence of PW-1 that even at the time of lodging the complaint, he and PW-2 were in their senses and not too overawed by the incident. Ordinarily, we would have formed the opinion that the point is well taken and proceeded to consider whether A-10 deserves an acquittal. Notably, A-10 was named by PWs 1 and 2 as one among the several accused on the day following the incident of crime, i.e., on 13<sup>th</sup> July, 2007 before even the post-mortem report could be accessed by the private parties. Thus, having regard to the nature of injuries inflicted on the victim (blows on his shoulders) attributed to A-10 by PWs 1 and 2, which finds corroboration from the evidence of PW-28 together with

his report on post-mortem (Ext. P-25), we find it difficult to disagree with the High Court on this aspect.

**50.** On behalf of all the appellants, exception was sought to be taken by pointing out that PW-28 did not find any injury on the dead body of the victim which could have been caused by rolling down of his body from the road to the plantain grove; hence, whatever was spoken by PWs 1 and 2 is wholly unreliable. Having considered the evidence on record in its totality, we are not impressed. PW-8, immediately after obtaining information, rushed to the place of occurrence. What she found has been noticed above, i.e., her husband lying dead on the road with his wrist severed from the forearm and the ninja chain. This, though in stark contrast with what PWs 1 and 2 spoke of, is accepted by us. We feel persuaded to discard the evidence of PWs 1 and 2 in this behalf as embroidery of the nature referred to in the decision in **Anil Singh** (supra). As warned by this Court, any embroidery found cannot *per se* be a ground for throwing the prosecution case overboard, if there is a ring of truth in the main. It is the duty of the court to sift the grain from the chaff unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses.

**51.** There is merit in the argument of Ms. Nappinai that premeditated murder with common intention has been irrefutably established by the prosecution based on the evidence on record and the findings returned

by the High Court, on a fair and proper appreciation and analysis of the evidence on record, point unerringly towards the guilt of the appellants and that there is no perversity in the decision of the High Court.

**CONCLUSION**

**52.** Having regard to prompt lodging of the FIR, the evidence of the eye witnesses as also circumstantial evidence including medical evidence, the charges against A-1 to A-4 and A-10 are duly proved. We see no reason to interfere with the common appellate judgment of the High Court, impugned in these appeals.

**53.** Consequently, we dismiss all the appeals.

.....J.  
(DIPANKAR DATTA)

.....J.  
(AUGUSTINE GEORGE MASIH)

**NEW DELHI;  
DECEMBER 19, 2025.**