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ABU THAKIR AND ORS.

v.

STATE REP. BY INSPECTOR OF POLICE, TAMIL NADU
(Criminal Appeal No. 168 of 2008)

B

APRIL 19, 2010

[B. SUDERSHAN REDDY AND SURINDER SINGH
NIJJAR, JJ.]

C *Penal Code, 1860: s.302 – Conviction under, based on evidence of eye witnesses – Challenged on the ground that presence of prosecution witnesses at the place of incident was doubtful and there was delay in submitting their evidence recorded under s.161 Cr.P.C. which would make their statements unacceptable – Held: The presence of eye*
D *witnesses at the place of incident was well established by evidence – Investigating officer explained that delay in sending the s.161 statements was due to two murders in quick succession within his jurisdiction of which he was incharge to maintain law and order – The explanation for delay was*
E *convincing – Thus, conviction was based on proper appreciation of evidence – No reason to interfere with the concurrent findings of facts in exercise of jurisdiction under Article 136 of the Constitution – Constitution of India, 1950 – Article 136 – Code of Criminal Procedure, 1973 – s.161 –*
F *Evidence – Testimony of eye-witnesses.*

Code of Criminal Procedure, 1973: s.161 – Documents such as original report, the printed form of FIR, inquest report, statements of witnesses recorded under inquest and under s.161 – Importance of requirement of sending these
G *documents to the Court without any delay and effect of delay in sending the documents on prosecution case – Discussed.*

Witness: Witness to a murder – Response or behavioral pattern of every person in such situation may not be similar.

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Prosecution case was that the deceased was murdered in pursuance of criminal conspiracy hatched by the appellants and other accused persons to wreck vengeance of the murder of one 'SM' which took place two days prior to the incident. On the fateful day, PW-4 informed, PW-1, brother of the deceased that the deceased and some other persons were quarreling nearby. PW-1 rushed to the place near temple where he found the deceased lying on the ground unconscious with bleeding injuries. PW-5 and PW-28 who were returning from the temple, heard the distress noise and went towards the scene and found deceased lying in pool of blood. Deceased was taken to hospital where he was declared dead. The trial court accepted the case of prosecution and believed the evidence of PWs 2 to 4 and based on their evidence, convicted the appellants under Sections 302, 120B, 148, 341, 147, 302 read with Sections 149 and 109 IPC. The High Court however, confirmed the conviction of the appellants only under Section 302, IPC and acquitted them of the rest of the charges and completely acquitted rest of the accused.

In appeal to this Court, it was contended for the appellants that the presence of PW-2, PW-3 and PW-4 at the place of incident was doubtful; and that there was enormous delay in submitting the statements recorded under Section 161 Cr.P.C. to the Court since they were received by the Court after eleven days of recording the statements.

Dismissing the appeal, the Court

HELD: 1. It was in the evidence of PWs 2 to 4 that after witnessing the ghastly incident of attack, they fled away from the scene of offence due to fear. The response, behavioural pattern of individuals in such a situation differs from person to person and it cannot be said that response of every and any human being would

A be similar on such occasions. May be PWs 2 to 4, were
 reeling under shock and nervousness. They roamed here
 and there and reached their respective houses only in the
 evening after 5 p.m. There was no question put in the
 cross-examination to PW30-Investigating Officer, as to
 B why he did not examine PWs 2, 3 and 4 immediately at
 the time of inquest or thereafter. The mere fact that they
 were not examined during the inquest is of no
 consequence. It was nobody's case that they were
 present at the time of inquest and yet their statements
 C were not recorded by the I.O. On these grounds, the
 presence of PW2 at the scene of occurrence cannot be
 disbelieved. That apart, the evidence of PWs 2 to 4 that
 the appellants were the assailants, would get support
 from the evidence of PWs 5 and 28. While PWs 5 and 28
 D were returning after worship at the temple, they heard a
 hue and cry which made them run towards the scene of
 offence, where they saw three persons running away
 from the scene of offence. PW5, in the test identification
 parade, identified appellant No.2. PW 28 whose evidence
 was more or less same as that of PW5, also identified
 E appellant Nos. 1 and 2 in the test identification parade.
 There was no reason to disbelieve the evidence of PWs
 5 and 28 that they had seen all the three assailants,
 namely, appellants escaping from the scene of offence.
 They were all independent witnesses, whose evidence
 F cannot be rejected on any ground whatsoever. [Para 15]
 [810-G; 811-A-B; 811-C-G]

2.1. Mere delay in sending the statements of PWs 2
 to 4 *per se* would not make their evidence unacceptable
 G unless there is something glaring to doubt their very
 presence at the scene of offence. As rightly pointed out
 by the High Court, the evidence of PWs 2 to 4 was so
 clinching, wherein they had stated in clear and
 categorical terms that three persons joining together
 H stabbed one individual. That portion of the evidence

remained unshaken. It is true that the assailants were not previously known to PWs 2 to 4. But they later identified the appellants as the persons who stabbed the deceased. [Para 17] [813-B-D] A

2.2. There should be speedy despatch of the documents, such as the original report, the printed form of FIR, inquest report and statement of witnesses recorded during inquest and the statements of witnesses recorded under Section 161(3) Cr.P.C. There is no quarrel with that proposition and the importance of requirement of sending the vital documents to the Court without any delay. But the delay may occur due to variety of factors and circumstances. Delay in despatch of the said documents by itself may not be fatal to the prosecution in each and every case. The question as to what is the effect of delay in sending the vital documents to the Court may have to be assessed and appreciated on the facts and circumstances of each case. It is not possible to lay down that delay in despatch of the vital documents in each and every case defeats the prosecution's case. [Para 19] [814-D-G] B C D E

Thulia Kali v. The State of Tamil Nadu (1972) 3 SCC 393; Marudanal Augusti v. State of Kerala (1980) 4 SCC 425, distinguished.

2.3. There was delay in sending the statements of PWs 2 to 4 recorded under Section 161, Cr.P.C. The explanation was available on record that the Investigating Officer was also in charge of maintaining law and order in the area that got vitiated after two murders in succession leading to a lot of commotion and communal strife. There was no reason to reject the explanation as to why the statements recorded under Section 161 Cr.P.C. could not be promptly despatched to the Court. It was obviously for the reasons beyond control of the Investigating Officer. [Para 18] [813-H; 814-A-C] F G H

A *Karunakaran Jabamani Nadar In re.* 1974 L.W.(Crl) 1190, approved.

B 2.4. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it albeit the investigating officer's suspicious role in the case. [Para 21] [815-D-E]

C *State of Karnataka v. K. Yarappa Reddy* (1999) 8 SCC 715, relied on.

D 3. In the light of the direct evidence of PWs 2 to 4, and 8 and 20, the motive part has no significance. Even otherwise, there is enough material available on record that the motive for the murder was in retaliation to the murder of one 'SM' allegedly by a group of persons belonging to an outfit of which the deceased was stated to be a member. There is no reason whatsoever to interfere with the concurrent finding of fact arrived at by the Courts below in order to convict the appellants for the offence punishable under Section 302, IPC. There is no reason to disbelieve the evidence of PWs 2, 3 and 4 along with the evidence of PWs 8 and 20 and the medical evidence. Once the evidence of these witnesses is found acceptable, the inevitable consequence is to confirm the conviction of the appellants under Section 302, IPC. The High Court in its elaborate judgment critically assessed and analyzed every nuance of the evidence and found a clear case against the appellants. The reappraisal of the evidence by the appellate Court did not result in any manifest injustice. The Courts below did not commit any error whatsoever in accepting the evidence available on record. In the circumstances, the appellants miserably failed to make out any case requiring interference under Article 136 of the Constitution. [Paras 22, 23] [815-G-H; 816-A-E]

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Case Law Reference: A

(1972) 3 SCC 393 distinguished Para 18

(1980) 4 SCC 425 distinguished Para 18

1974 L.W.(Cri) 1190 approved Para 19 B

(1999) 8 SCC 715 relied on Para 21

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 168 of 2008.

From the Judgment & Order dated 18.12.2006 of the High C
Court of Judicature at Madras in Cri. A.No. 338 of 2004

N. Natarajan, Ramesh Babu M.R., Latheef for the
Appellants.

S. Thananjayan for the Respondent. D

The Judgment of the Court was delivered by

B. SUDERSHAN REDDY, J. 1. This appeal by special
leave arises out of judgment and order dated 18th December, E
2006 passed by the High Court of Judicature at Madras,
whereby the High Court confirmed the conviction and sentence
of the appellants herein under Section 302 of the Indian Penal
Code (IPC) while setting aside conviction and sentence under
Sections 120B, 148, 341, 147, 302 read with Sections 149 and F
109, IPC.

2. The facts in brief, according to the prosecution story, are
that on 28th March, 2002 one Murugesan (deceased) was
murdered at about 7.30 a.m. on the way leading to
Badrakaliamman temple on Kovai Pudur Road in pursuance
of a criminal conspiracy hatched by the appellants herein and
other accused forming themselves into unlawful assembly so
as to wreck vengeance of the murder that took place on 26th
March, 2002 of one Sultan Meeran. Before the incident, G
Kanakaraj (PW 1), brother of the deceased went to the barber H

- A shop situated near the place of occurrence to have a shave, where his paternal uncle Subramani (PW 4) told him that the deceased and some other persons were quarrelling at East of Badrakaliamman temple. Immediately, Kanakaraj (PW 1), rushed towards the place of occurrence and found the
- B deceased lying on the ground unconsciously with bleeding injuries. Gopalakrishnan (PW5) and Rathinasamy (PW 28) who were returning from Badrakaliamman temple, on hearing the distress noise ran towards the place of occurrence and found Murugesan (deceased) lying in a pool of blood. They told
- C Kanakaraj (PW 1) that the assailants had fled away after they had attacked the deceased in revenge of earlier murder that took place on 26th March, 2002 of a member of assailants' community. Thereafter within ten minutes Parvathy (PW 6), who owns a fruit vending shop near the temple, told Kanakaraj (PW
- D 1) that earlier in the morning at about 6.30 A.M. she noticed two or three unknown persons near her shop in a car and on a scooter and then proceeding towards temple. In the meanwhile, Ganesan (PW 15) reached at the spot. Thereafter Subramani (PW 4), uncle of Kanakaraj (PW 1), along with Ganesan (PW 15) and others took the injured (deceased) in his car to the
- E Government Hospital, Coimbatore. En route to the hospital, Ganesan (PW 15) gave information about the incident to the concerned police station over his mobile phone. The duty Doctor (PW-21), after examining Murugesan, declared him dead. On the basis of the information given by Ganesan (PW
- F 15), Akbar Khan, Sub-Inspector of Police, Pothanur Police Station (PW 29) reached at the hospital at about 8.45 A.M where he came to know that Murugesan had already died. He examined Kanakaraj (PW 1) and recorded his statement which was registered as Crime No. 271/02 (Ex.P.1). Thereafter the
- G first information report came to be printed as Ex. P.72. Consequent upon the registration of crime, Ramachandran, Inspector of Police, Pothanur Police Station (PW 30) was appointed as Investigating Officer who visited the scene of occurrence at about 10.00 A.M on the very same day and
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prepared the observation mahazar (Ex. P.30), the rough sketch A
of the crime scene (Ex.P.74) and also recovered material
objects including a knife (MO-7) in the presence of
Marudhachalam (PW-20) and other witnesses. Thereafter he
proceeded to the Government Hospital where, in the presence
of panchayatdars and witnesses, prepared inquest report B
(Ex.P.73) and gave requisition (Ex.P.47) to conduct post
mortem. Sundarrajan, Professor, Forensic Science,
Coimbatore Medical College Hospital (PW 23) on receipt of
Ex. P. 47 conducted post mortem (Ex. P. 48) at 12.25 P.M. and
opined that the death was due to haemorrhage and shock C
resulting from multiple stab injuries over chest and
corresponding internal injuries to heart and both lungs.

3. After completion of the investigation, the police filed
charge sheet against the appellants and five other co-accused. D
The prosecution in all examined 30 witnesses (PWs 1 to 30)
and got marked 77 documents in evidence. The prosecution
also produced material objects which were marked as M.O. 1
to 43.

4. The trial court accepted the prosecution's case and E
believed the evidence of PWs 2 to 4 and based on their
evidence, convicted the appellants herein under Sections 302,
120B, 148, 341, 147, 302 read with Sections 149 and 109, of
the Indian Penal Code (IPC) and sentenced to life imprisonment
and various other terms of imprisonment to run concurrently. F
The trial Court also convicted the other accused under various
Sections of the IPC. The trial court held that the prosecution
proved its case beyond reasonable doubt against the
appellants and held them guilty of having entered into a criminal
conspiracy, unlawful assembly and committing murder of the G
deceased. The High court, however, confirmed the conviction
of the appellants only under Section 302, IPC and acquitted
them of the rest of the charges and completely acquitted rest
of the accused.

5. We have heard the learned counsel appearing for the H

A appellants as well as for the State and perused the material available on record.

B 6. Shri N. Natarajan, learned senior counsel appearing on behalf of the appellants submitted that the presence of the so called eyewitnesses (PWs 2 to 4) at the scene of offence is highly doubtful. The submission was, their evidence is totally untrustworthy and suffers from material contradictions. It was further submitted that the theory of conspiracy set up by the prosecution was disbelieved by the High Court and on the same analogy, the High Court ought to have totally disbelieved C PWs 2, 3 and 4 and if their evidence is not taken into consideration, there is no other evidence based on which the appellants could be convicted for the charge under Section 302, IPC. It was also submitted that there is enormous delay in D submitting the statements recorded under Section 161, Cr.P.C. to the Court since they were received by the Court after eleven days of recording the statements. The cumulative effect of these factors makes the whole prosecution case doubtful and the appellants are at least entitled to benefit of doubt.

E 7. The learned counsel for the State submitted that the evidence of PWs 2 to 4, is cogent and there is no material contradictions in their evidence even though they were subjected to lengthy cross-examination. All of them have identified the appellants in the test identification parade. Their F presence at the scene of occurrence is very well established by the evidence of Savithri (PW 8), Thangaraj (PW 18) and Marudhachalam (PW 20) and there is no reason to disbelieve their evidence. One of the important circumstances highlighted by the learned counsel for the State was matching of blood G group of the deceased with the blood found on the M.O. 6 series *i.e.*, weapons used in the commission of the offence. Further, the same blood group was found on the clothes recovered from the appellants. The delay in not sending the statements immediately was due to the reason that, in quick H succession two murders which were very sensitive in nature,

took place within the jurisdiction of the Investigating Officer who was also entrusted with the duty to maintain law and order in that area. The submission was that mere delay in sending the statements *per se* would not vitiate the entire prosecution case. The counsel further submitted that the Courts below did not commit any error or illegality in appreciating the evidence. The conviction is based on proper appreciation of the evidence and there is no reason or justification to interfere with the concurrent finding of facts by this Court, so far as the appellants are concerned, in exercise of jurisdiction under Article 136 of the Constitution of India.

8. The Courts below held that the death of Murugesan was homicidal in nature. As per post-mortem report (Ex.P-48), the following ante mortem injuries were found on the dead body:

- (1) Vertically oblique stab injury over front of right side of chest measuring 5 cms x 2.5 cms x entering the right thoracic cavity. The upper outer end of the wound is 6 cms above and medial to right nipple. On dissection the wound passes backwards, medially and downwards in the right third inter costal space cutting the inter costal muscles, vessels, nerves and cutting the fourth rib close to sternum. Then it has caused a stab injury in the underlying anterior aspect of lower part of upper lobe of right lung measuring 2.5 cms x 1 cm x 1.5 cms and exited out in the inner aspect of lower part of right lung measuring 2.25 cms x 1 cm. Then it caused a cut in the right side of front of pericardium measuring 1.75 cms x 1 cm and then caused a stab in the anterior aspect of right ventricle measuring 1.5 cms x 1 cm x cavity deep. Pericardial sac contains 50 ml of blood with clots. Right pleural cavity contains 750 ml of blood with clots. The depth of the wound tract is about 10 cms. The margins of the wound are regular and both ends are pointed.

- A (2) Transversely oblique stab injury over back of left side of upper chest measuring 3 cms x 1 cm x entering the left thoracic cavity. The lower medial end of the wound is 4 cms from the middle of T 3 vertebra. The wound passes forward, downwards and medially through the left third inter costal space causing a stab injury in the posterior aspect of upper lobe of left lung measuring 2 cms x 1 cm x 2 cms. The deepest part ending as a point. Both ends of the wound are pointed and the margins are regular. The length of the wound tract is about 8 cms left pleural cavity contains 400 ml of blood with clots.
- B
- C
- D (3) Vertically oblique stab injury over back of right side of upper chest measuring 3 cms x 1 cm x entering the right thoracic cavity. The upper medial end of the wound is 1.5 cms from the middle of T 4 vertebra. The wound passes downwards, laterally and forwards in the fourth right inter costal space cutting the right fourth rib in the posterior aspect and causing a stab injury in the middle lobe of right lung measuring 2.5 cms x 1 cm x 2 cms and the deepest point ending as a point. The length of the wound tract is about 8 cms. Both ends of the wound are pointed and the margins are regular.
- E
- F (4) Transversely oblique stab injury over back of left side of upper chest close to midline measuring 3 cms x 1 cm x 3.5 cms deep in the muscle plane. The lower inner end of the wound is close to middle of T3 vertebra. The wound passes downwards, laterally and forwards. Both ends of the wound are pointed and margins are regular.
- G
- H (5) Vertically oblique stab injury just below the right side of lower lip measuring 1 cm x 0.5 cms through and through and exiting through the buckle surface of the lower lip on the right side, wound measuring 0.75 x 0.5 cm. The wound passes upwards, backwards

- and laterally. The length of the wound tract is about 1 cm. The upper inner end of the wound is 1 cm right to midline of chin. The ends of the wound are pointed (both) and the margins are regular. A
- (6) Vertically oblique stab injury over the middle third of back of left arm measuring 4.5 cms x 2 cms x 6 cms deep in the muscle plane. The distal outer end of the wound is 8 cms above left elbow. The wound passes upwards, forwards and medially. Both the ends of the wound are pointed and margins are regular. B
- (7) Oblique stab injury over the posterior aspect of left hip measuring 3 cms x 1 cm x 5 cms deep in the muscle plane. Both ends of the wound are pointed and the margins are regular. The lower outer end of the wound is 7 cms below and behind the left anterior superior iliac spine. The wound passes forwards, upwards and laterally. C
- (8) An oblique cut injury over left side of upper lip measuring 3 cms x 1 cm x 1 cm muscle deep. D
- (9) An oblique cut injury over left side of lower lip measuring 4 cms x 1 cm x 1 cm muscle deep. E
- (10) Transversely oblique incised wound over front of upper part of neck just above thyroid cartilage measuring 3 cms x 1 cm x skin deep. F
- (11) Oblique incised wound in the middle of right infra clavicular region measuring 1 cm x 0.5 cm x skin deep. The upper inner end of the wound is 6 cms from the medial end of right clavicle. G
- (12) Transversely oblique skin deep incised wounds four in number in the left sub scapular region measuring 5 cms x 1 cm, 3 cms x 1 cm, 2 cms x 0.5 cm and 1 cm x 0.5 cm. H
- (13) Transversely oblique skin deep incised wound over

- A upper inter scapular region on the right side measuring 2 cms x 1 cm.
- (14) Transversely oblique skin deep incised wound over the back of right lower chest measuring 2 cms x 0.5 cms.
- B (15) Vertically oblique skin deep incised wound over the upper inter scapular region on the left side measuring 4 cms x 0.5 cm.
- (16) Vertically oblique skin deep incised wound over the upper inter scapular region on the right side measuring 2 cms x 0.5 cms.
- C (17) Transversely oblique skin deep incised wound over the back of left side of upper abdomen measuring 2 cms x 1 cm.
- D (18) Transversely oblique skin deep incised wound over the dorsum of right wrist measuring 5 cms x 0.5 cm.
- (19) Oblique cut injury over the dorsum right hand measuring 5 cms x 1 cm x bone deep.
- E (20) Another transversely oblique cut injury over the dorsum of right hand close to right index finger measuring 3 cms x 1 cm x bone deep.
- (21) Oblique cut injury over the radial aspect of right palm measuring 2 cms x 0.5 cm x 1 cm muscle deep.
- F (22) Oblique cut injury over the medial aspect of lower third of right thigh 5 cms above right knee measuring 7 cms x 2 cms x 1 cm deep in the subcutaneous plane.
- G (23) Transversely oblique cut injury over the front of upper part of left arm 12 cms below the top of left shoulder measuring 2 cms x 1 cm x 1 cm deep in the muscle plane.
- H (24) Oblique incised wound over the front of upper part

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- of left forearm 8 cms below left elbow measuring 3 cms x 0.5 cm x skin deep. A
- (25) Abrasions seen in the following regions:
- 1 cm x 1 cm, 0.5 x 0.5 cm over right side of forehead. B
- 3 cm x 0.25 cm over right lateral aspect of lower chest.
- 2 cm x 1 cm, 0.5 cm x 0.5 cm over dorsum of proximal part of right forearm. C
- 2 cm x 1 cm over back of right elbow.
- 3 cm x 1 cm, 2 cm x 1 cm over lateral aspect of upper part of right leg.
- 4 cm x 3 cm over lateral aspect of middle third of right thigh. D
- 2 cm x 1 cm over the lateral aspect of right hip.
- 7 cm x 4 cm over the lateral aspect of right gluteal region.
- 3 cm x 1 cm just below left mastoid. E
- 4 cm x 1 cm and 3 cm x 1 cm over left lateral aspect of neck.
- 3 cm x 1 cm over left supra scapular region.
- 4 cm x 0.5 cm and 1 cm x 1 cm over lateral aspect of upper part of left arm. F
- 1 cm x 1 cm over posterior aspect of lower part of left arm.
- 5 cm x 4 cm and 0.5 cm x 0.5 cm over posterior aspect of left elbow. G
- 4 cm x 2 cm over lateral aspect of left hip.
- Multiple tiny scratch abrasions over left knee, lower part of left forearm, right hand, right side of face, left side of forehead, dorsum of nose and over front H

- A of neck.
Other findings:
Peritoneal cavity empty.
Lungs cut section pale.
- B Heart all chambers empty. Coronaries patent.
Hyoid bone intact.
Stomach contains 150 ml of brown colour fluid without any specific smell. Mucosa pale.
- C Small intestine contains 20 ml bile stained fluid without any specific smell. Mucosa pale.
Liver, spleen, kidneys and brain cut section pale.
Urinary bladder empty.
- D External genitalia nil injury. Right hydrocele present.

9. According to the medical opinion, the death of Murugesan was caused due to excessive haemorrhage and shock on account of multiple stab injuries over chest and corresponding internal injuries to heart and both lungs.

10. The short question that arises for our consideration in this appeal is as to whether the courts below committed any manifest error in relying on the evidence of eye witnesses, Natarajan (PW-2), Rajendran (PW-3) and Subramani (PW-4) to convict the appellants for the charge under Section 302, IPC.

11. Before analysing the evidence of PWs-2 to 4, let us have a look at the evidence of Savithri (PW 8) whose version is important to appreciate the contention regarding the very presence of PWs - 2 to 4 at the scene of offence.

12. PW 8-Savithiri, was residing nearby Badrakaliamman Koil at Kovai Pudur Pirivu and her husband is a transport operator owning a lorry. It is in her evidence that on 28th March, 2002 at about 7 a.m. Natarajan (PW 2) along with two other

persons came to her house when her husband was away, stating that they have come to know that her husband desired to dispose of his lorry owned by him which they wanted to purchase, and therefore, wanted to have a look at the lorry. The lorry was stationed at a distance of about 30 feet from her house. The distance between the lorry where it was stationed and the footpath was about 20 to 25 feet. That, after finishing her household work, she came out of the house at about 9 a.m. and found that there was a heavy crowd near the footpath. Meanwhile, her husband also reached the home. She was examined on the same evening and she narrated the incident to the police. She was not subjected to any cross-examination by the appellants. Marudhachalam (PW 20) is the husband of PW8-Savithiri. It is in his evidence that he was in deep financial problems and proposed to dispose of his lorry and for that purpose sought the assistance of some brokers including that of Natarajan-PW2. He stated in his evidence that by the time he returned home at about 9 a.m., he saw that there was a crowd at a distance of 50 feet away from his house. He went to the scene of occurrence at about 10 a.m. along with his brother Paramasivam. The police were investigating the matter and the mahazar (Ext. P30) was prepared in which his brother Paramasivam had signed. It is also in his evidence that his wife Savithri (PW8) informed him about Natarajan (PW2) and two others came to inspect the lorry stating that they were interested to purchase the same.

13. Natarajan (PW2), is an automobile broker dealing with the sale and purchase of old trucks and cars. It is in his evidence that his friend Subramani (PW 4), who at the relevant time was doing business in sale and purchase of tomato in wholesale, intended to purchase a lorry and in that connection went to the house of Marudhachalam (PW 20), at Kovai Pudur. At that time, they have heard noise "ayyo amma" and he along with other two went running there and found that three persons were stabbing the deceased repeatedly and the time was 7.00 or 7.30 a.m. It is also in his evidence that one among the accused

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A sustained a cut injury on his right wrist. On seeing the incident, they ran away from the place and went to several places. They have reached their house at about 5 p.m. and in the evening at about 8.30 p.m., the Inspector of Pothanur police inquired from him as to what he had seen in the morning of that fateful day. His statement was recorded. Thereafter, he was required to attend the identification parade to be held on 23rd April, 2002 at Salem prison and on that day, he identified the appellants 1 and 2 before the Judicial Magistrate and later identified appellant No.3 in the Court. He further deposed that he is assisted by Rajendran (PW-3) in his business. It is in his evidence that Subramani (PW-4) came to him to purchase a lorry sometime before the incident of the fateful day. He further stated that he knew that one lorry was available for sale with Marudhachalam (PW-20) and in that connection, he along with PWs-2 and 4 visited the residence of PW-20 at about 6.00 A.M. on the day of occurrence for the inspection of the lorry. It is in his evidence that at about 7.00 or 7.30 a.m. when they were verifying the general condition of the lorry, three persons crossed them towards West and ten minutes thereafter, they heard a cry in pain from that side, which made them to run towards that place, where they saw the deceased being stabbed by the accused with the knives in their hands. He specifically stated that one among the three assailants got a cut injury on the right hand. It is worthwhile to mention that he asserted in his statement that he could identify the three assailants which he did in the test identification parade.

14. The evidence of Rajendran-PW3 and Subramani (PW 4) is more or less the same as that of PW2-Natarajan.

15. It is in the evidence of PWs 2 to 4 that after witnessing the ghastly incident of attack, they fled away from the scene of offence due to fear. We are unable to appreciate the criticism levelled by the learned senior counsel appearing for the appellants that if PWs 2 to 4 were really present at the scene of occurrence, nothing prevented them from informing the

police. The response, behavioural patterns of individuals in such a situation differs from person to person and it cannot be said that response of every and any human being would be similar on such occasions. May be PWs 2 to 4, were reeling under shock and nervousness. They were roaming here and there and as is evident from their evidence, they have reached their respective houses only in the evening after 5 p.m. The further criticism was that they were examined only in the evening of 28th March, 2002 and there is no reason offered by the I.O. for not examining them immediately but only in the night of 28th March, 2002. Be it noted, there was no question put in the cross-examination to PW30-Investigating Officer, as to why he did not chose to examine PWs 2, 3 and 4 immediately at the time of inquest or thereafter. The mere fact that they were not examined during the inquest is of no consequence. It is nobody's case that they were present at the time of inquest and yet their statement was not recorded by the I.O. On these grounds, the presence of PW2 at the scene of occurrence cannot be disbelieved. That apart, the evidence of PWs 2 to 4 that the appellants are the assailants, gets support from the evidence of PWs 5 and 28. While PWs 5 and 28 were returning after worship at the temple, they heard a hue and cry which made them to run towards the scene of offence, where they saw three persons running away from the scene of offence. PW5, in the test identification parade, identified appellant No.2. PW28 (Rathinasamy), whose evidence is more or less same as that of PW5, had also identified appellant Nos. 1 and 2 in the test identification parade held on 23rd April, 2002. It is in the evidence of PWs 5 and 28, that they have seen Murugesan (since deceased) just crossing the temple while they were going into the temple to offer prayers. There is no reason to disbelieve the evidence of PWs 5 and 28 that they have seen all the three assailants, namely, appellants herein escaping from the scene of offence. They are all independent witnesses, whose evidence cannot be rejected on any ground whatsoever.

16. There is no reason to reject or disbelieve the evidence

A of Gopalakrishnan (PW-5) and Rathinasamy (PW-28) altogether as both of them gave similar version in their evidence. Gopalakrishnan (PW-5) who is a resident of Palakadu-Coimbatore road at Kovai Pudur Pirivu road, B Badrakaliamman temple for worshipping on 28.3.2002 and at the same time Rathinasamy, who is also a resident of the same locality came to the said temple. He further stated that when both of them were returning after worship, Murugesan (deceased) was found crossing the temple. It is in his evidence C that at the same time they heard the accused shouting "yesterday you closed one Sultan Meeran, as a retaliation we are closing you now". On hearing the said dialogue, they rushed towards the place of occurrence and found Murugesan lying on the ground in a pool of blood while the assailants were running D towards South of the scene of occurrence. He further stated in his evidence that on seeing the said Murugesan lying in a pool of blood, they were shocked and stood there itself for a while. He knew that the deceased Murugesan belonged to RSS and therefore, he alongwith Rathinasamy (PW28) were proceeding to inform Ganesan (PW 15) who was in charge of BJP party in E the area and found that Ganesan (PW 15) was coming in the opposite direction. Two or three persons came running along with Ganesan and all of them took the injured Murugesan in a car to the hospital. Subramani (PW 4), uncle of Murugesan was one amongst them. F

17. Now we proceed to consider the submission of the learned senior counsel that the statements of PWs 2 to 4 (eyewitnesses), though purported to have been recorded on 29th March, 2002, had reached the Court only on 11.4.2002 G which according to him makes the whole prosecution story doubtful. In fact, PW30-the Investigating Officer explained that in the case of murder of Sultan Meeran on 26th March, 2002, and the murder of Murugesan (deceased) on 28th March, 2002 in succession, the entire city of Coimbatore and surrounding H areas were in a highly disturbed state and widespread

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bandobasth was arranged in surrounding areas. Adverting to this aspect of the matter, the High Court in clear and categorical terms, upon reappraisal of the evidence, held that in such a situation, no one could find fault with the Investigating Officer in not sending the statements of PWs 2, 3 and 4 to the Court before 11th April, 2002. Mere delay in sending the statements of PWs 2 to 4 *per se* would not make their evidence unacceptable unless something glaring is brought to our notice to doubt their very presence at the scene of offence. As rightly pointed out by the High Court, the evidence of PWs 2 to 4 is so clinching, wherein they have stated in clear and categorical terms that three persons joining together stabbed one individual. That portion of the evidence remains unshaken. It is true that the assailants were not previously known to PWs 2 to 4. But they have later identified the appellants as the persons who stabbed the deceased.

18. Learned senior counsel relied upon the judgment of this Court in *Thulia Kali vs. The State of Tamil Nadu*¹ and *Marudanal Augusti vs. State of Kerala*² in support of his submission that the delay in sending the statements recorded under Section 161, Cr.P.C. to the Court is fatal to the prosecution's case. *Thulia Kali* deals with importance of timely despatch of the first information report which is an extremely vital and valuable piece of evidence for the purpose of corroborating oral evidence adduced at the trial. In *Marudanal Augusti*, this Court on the facts held that there was a delay of as many as 28 hours in submitting FIR to the Special Magistrate which remained unexplained by the Investigating Officer in spite of being questioned. The Court came to the conclusion that there was no proper explanation as to why there was delay in sending the FIR to the Court. We fail to appreciate as to how those judgments would help the defence in this case since there is no delay in sending the FIR in the present case. There is a delay in sending the statements of PWs 2 to 4

1. (1992) 3 SCC 393.

2. (1980) 4 scc 425.

- A recorded under Section 161, Cr.P.C. There is a clear explanation available on record that the Investigating Officer was also in charge of maintaining law and order in the area that got vitiated after two murders in succession leading to a lot of commotion and communal strife. There is no reason to
- B reject the explanation as to why the statements recorded under Section 161 Cr.P.C. could not be promptly despatched to the Court. It was obviously for the reasons beyond control of the Investigating Officer. Nothing is further suggested to accept the theory propounded by the learned senior counsel. It is nobody's
- C case that such statements were not recorded by the Investigating Officer at all. The suggestion made in this regard to PWs 2 to 4 was denied by them.

19. The learned senior counsel placed heavy reliance on judgment of the Madras High Court in *Karunakaran Jabamani*
- D *Nadar In re.*³ where the Madras High Court underscored the importance of speedy despatch of the documents, such as the original report, the printed form of FIR, inquest report and statement of witnesses recorded during inquest and the statements of witnesses recorded under Section 161(3) of
- E Cr.P.C. There is no quarrel with that proposition and the importance of requirement of sending the vital documents to the Court without any delay. But the delay may occur due to variety of facts and circumstances. Delay in despatch of the said documents by itself may not be fatal to the prosecution in
- F each and every case. The question as to what is the effect of delay in sending the vital documents to the Court may have to be assessed and appreciated on the facts and circumstances of each case. It is not possible to lay down that delay in despatch of the vital documents in each and every case defeats
- G the prosecution's case.

20. We do not find any material on record to accept the submissions made during the course of hearing of this appeal that PW 20, did not own any lorry with him so as to be sold

H ³. 1974 L.W. (Cri) 1190.

and the said lorry was not stationed nearby the scene of occurrence. We do not find any reason to disbelieve the statement of PWs 8 and 20 in this regard which is clear, categorical and forthcoming which we have discussed in the preceding paragraphs. The submission is accordingly rejected. A

21. We may have to deal with yet another submission made by the learned senior counsel for the appellants that the investigation was not fair as there were many missing links in the process of investigation. This submission was made by the learned counsel contending that the investigation does not reveal as to how the Investigating Officer came to know about the presence of PWs 2 to 4 at the scene of occurrence and for recording their statements in that regard. This Court in *State of Karnataka vs. K. Yarappa Reddy*⁴ held that "even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. ... Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it albeit the investigating officer's suspicious role in the case". The ratio of the judgment in that case is the complete answer to the submission made by the learned senior counsel for the appellants. B
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22. One more submission of the learned senior counsel was that the prosecution failed to establish the motive for committing the crime by the appellants. In the light of the direct evidence of PWs 2 to 4, and 8 and 20, the motive part has no significance. Even otherwise there is enough material available on record in the present case that the motive for the present murder was in retaliation to the murder of one Sultan Meeran allegedly by a group of persons belonging to an outfit of which the deceased was stated to be a member. F
G

4. (1999) 8 SCC 715.

A 23. We do not find any reason whatsoever to interfere with
the concurrent finding of fact arrived at by the Courts below in
order to convict the appellants for the offence punishable under
Section 302, IPC. We do not find any reason or justification to
disbelieve the evidence of PWs 2, 3 and 4 along with the
B evidence of PWs 8 and 20 and the medical evidence. Once
the evidence of these witnesses is found acceptable, the
inevitable consequence is to confirm the conviction of the
appellants under Section 302, IPC. The High Court in its
elaborate judgment critically assessed and analyzed every
C nuance of the evidence and found a clear case against the
appellants. The reappraisal of the evidence by the appellate
Court did not result in any manifest injustice. We have looked
into the evidence to satisfy ourselves as to whether the Courts
below have committed any manifest error in appreciating the
evidence available on record and on such scrutiny, we find that
D the Courts below did not commit any error whatsoever in
accepting the evidence available on record. In the
circumstances, we hold that the appellants miserably failed to
make out any case requiring our interference under Article 136
of the Constitution.

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24. We accordingly find no merit in the appeal and the
same is accordingly dismissed.

D.G.

Appeal dismissed.