

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.02.2017**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Criminal Appeal Nos.**874** of **2016** & **76** of**2017**

1. Raja (A3)
2. Selvam (A4) .. Appellants in Crl.A.No.874/16

1. Mari (A2)
2. Palani (A5) .. Appellants in Crl.A.No.76/17

- Vs -

State rep by
The Inspector of Police,
C-2, Sunguarchathiram Police Station,
Kancheepuram.
(Cr.No.48 of 2012) .. Respondent in both appeals

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned District and Sessions Judge No.II, Kancheepuram in S.C.No.48 of 2012 dated 31.07.2015.

For Appellant : Mr.P.Anbazhagan
in Crl.A.No.874/16
For Appellants : Mr.S.M.Nandhie Devhan
in Crl.A.No.76/17
For Respondent : Mr.P.Govindaraj
Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was delivered by S.Nagamuthu,J.)

The appellants in Crl.A.No.874 of 2016 are accused 3 and 4 and the appellants in Crl.A.No.76 of 2017 are the accused 2 and 5 in S.C.No.48 of 2012 on the file of the learned Sessions Judge No.II, Kancheepuram. The first accused was one Mr.Kumar. The trial Court framed as many as three charges against them as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
1	A1 to A5	450 of IPC
2	A1 to A5	395 r/w 397 of IPC
3	A1 to A5	302 of IPC

By judgment dated 31.07.2015, the trial Court convicted all the five accused under all the three charges and sentenced them to undergo rigorous imprisonment for ten years and pay a fine of Rs.1000/- each in default to undergo rigorous imprisonment for one year for the offence under Section 450 I.P.C.; to undergo imprisonment for life and pay a fine of Rs.1000/- each in default to undergo rigorous imprisonment for one year for offence under Section 397 I.P.C. and to undergo imprisonment for life and pay a fine of Rs.1000/- each in default to undergo rigorous imprisonment for one year for offence under Section 302 I.P.C. Challenging the said conviction and sentence, the accused 2 to 5

are before this Court with these two appeals.

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

There is a temple known as "Pooniamman Temple" at Thirumangalam Kandigai Village in Kancheepuram district. The deceased in this case was one Mr.Subramani. He used to sleep in front of the temple during night hours everyday. On 02.01.2010 around 11.00 p.m., it is alleged that all these five accused, broke open the main door of the temple, trespassed into the same, broke open the hundi kept inside the temple and committed robbery of Rs.500/- from the said hundi. On hearing the noise, the deceased, who was sleeping in front of the temple, tried to raise alarm. All the five accused, with a view to escape from the said place with decamped amount, surrounded him. The accused 3 to 5 caught him hold and the second accused, attacked him with a wooden reaper on the back of the head and the first accused attacked him with a crowbar on his head. The deceased fell down and died instantaneously. Abandoning the dead body at the same place, all the five accused fled away from the scene of occurrence. The occurrence was not witnessed by anyone.

P.W.6 a resident of Kandigai village, used to visit the temple around 06.15 a.m. everyday for darshan. As usual, on 03.01.2010, he went to the temple. Just in front of the temple, he found the deceased lying dead with injuries on his head. Immediately, he rushed to the house of P.W.3 and informed him about the same. P.W.3 in turn informed P.W.1 who was the husband of the then Village Panchayat Board President. P.W.1 rushed to the place of occurrence and found the deceased lying dead. Inside the temple, he found the hundi broken open and the currency notes and coins had been stolen. Then, he went to Sunguarchathiram Police Station at 08.00 a.m. on 03.01.2010 and made a complaint. A case was registered on the same in Crime No.8 of 2010 under Sections 457, 380 and 302 I.P.C. Ex.P1 is the complaint and Ex.P20 is the F.I.R. He forwarded both the documents to the Court and the same was received by the learned Magistrate at 04.30 p.m. on 03.01.2010.

The case was taken up for investigation by P.W.18 the then Inspector of Police. He went to the place of occurrence and prepared an observation mahazar and a rough sketch. At his request, P.W.11, the forensic expert, visited the place of

occurrence and with his assistants, P.W.18 recovered the bloodstain earth and sample earth from the place of occurrence. He held inquest on the body of the deceased and forwarded the same for postmortem.

P.W.14 Dr.Yamuna conducted autopsy on the body of the deceased on 03.11.2010 at 02.15 p.m. She found the following injuries:

"External injuries: Nasal bleeding present, eyes – partially open. Laceration 3x2x1 cm behind right ear. Laceration behind right ear (occipital region) 6x4x3 cm exposing skull bone. Teethes 8/8 | 8/8.

Internal injuries: Skull-fracture present occipital and right temporal bone, exposing brain tissue. Skull opened – clotted blood present all over the skull. Clotted blood present all over the brain. Right side brain contused. Chest –no fracture; lungs – pale, heart – pale, 30 ml blood found in the chambers. Liver, Spleen, Kidneys – pale. 250 gms undigested food found in the stomach. Pale yellow fluid found in the intestines."

Ex.P6 is the postmortem certificate. She gave opinion that the

death of the deceased was due to shock and hemorrhage due to multiple injuries. She further opined that the injury could have been caused by weapons like crowbar, wooden reaper and knife.

P.W.18 recovered the bloodstained clothes from the body of the deceased. Since he was transferred, at that stage, the investigation was taken over by his successor P.W.19.

On 14.09.2010, around 03.00 p.m. at Sokandi village, P.W.19 arrested the first accused in the presence of the witnesses. On such arrest, he made a voluntary confession, in which he disclosed that he had hidden a crowbar at his house. In pursuance of the same, he took the police and the witness to his house and produced M.O.9-crowbar. Then, from out of the said disclosure statement on the same day at 04.15 p.m. at Pullur village, he arrested the second accused. On such arrest, the second accused made a voluntary confession, in which, he disclosed the place where he had hidden a wooden reaper. In pursuance of the same, he took the police and the witness to the place of hideout and produced M.O.10-wooden reaper. In the same statement, he further stated that he had identified the

shop where he had pledged a gold thali.

The second accused identified the third accused. On the same day at 05.00 p.m. P.W.19 arrested the third accused. While in custody, he made a voluntary confession, in which, he disclosed the place where he had hidden a eye cap made of silver. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.2-silver eye cap.

The first accused then identified the 4th accused and at 05.30 p.m. P.W.19 arrested the 4th accused. While in custody, he made a voluntary confession, in which he disclosed the place where he had hidden a knife. In pursuance of the same he took the police and the witnesses to the place of hide out and produced M.O.3-knife.

On being identified by the first accused, P.W.19 arrested the 5th accused at 05.30 p.m. On such arrest, he made a voluntary confession, in which he disclosed the place where he had hidden a pooja plate. In pursuance of the same, he took

the police and the witnesses to the place of hide out and produced M.O.4-pooja plate.

The second accused then took the police and the witnesses to the pawn broker shop belonging to P.W.13. From P.W.13, M.O.1 gold thali was recovered. On returning to the police station, P.W.19 forwarded all the accused to the Court and also forwarded the material objects to Court. At that time, since he was transferred, the investigation was taken up by his successor P.W.20.

P.W.20 has stated that the material objects which were sent to forensic lab for chemical examination revealed that there were human bloodstains on the material objects. On completing the investigation, he laid chargesheet against all the accused.

Based on the above materials, the trial Court convicted all the five accused and that is how the accused 2 to 5 are before this Court with these appeals.

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

4. This is a case based on circumstantial evidence. The foremost circumstance relied on by the prosecution is that the deceased used to sleep just in front of the temple and his dead body was found around 06.15 a.m. on 03.01.2010 with head injuries. The medical evidence has established that the death of the deceased was due to shock and hemorrhage due to the head injuries and the said injuries could have been caused by hitting with a weapon like crowbar or wooden reaper. From these evidences, the prosecution has clearly established that the death of the deceased was a homicide and that it had taken place some time before 06.15 a.m. on 03.01.2010.

5. Now the question is as to who are the perpetrators of the crime. Since the assailants were not known, rightly on the complaint of P.W.1 a case was registered as against unknown assailants. Though forensic experts were brought to the place of occurrence, except the bloodstained earth, there was no other

scientific clue available at the place of occurrence. None have seen the assailants either at the place of occurrence or anywhere near the place of occurrence.

6. From the place of occurrence, chance fingerprints were lifted by the experts. According to P.W.18, the said fingerprints did not tally with the fingerprints of the accused. Since the temple, where the occurrence had taken place, is a public place, the chance fingerprints lifted could have been that of some devotees. Had the chance fingerprints tallied with the fingerprints of the accused, that would have been a very strong piece of evidence against the accused. Thus the chance fingerprints lifted from the place of occurrence would not help the case of the prosecution in any manner.

7. P.W.18, held investigation till September, 2010. During the said period of about nine months, P.W.18 was not able to make any breakthrough. After the investigation was taken over by P.W.19, in the month of September, 2010 he arrested all these accused on 14.09.2010. It is stated that from out of the disclosure statement made by the accused, from the first

accused M.O.9 (crowbar) was recovered, from A2, M.O.10 (wooden reaper) was recovered, from A3, M.O.2 (Silver eye cap) was recovered, from A4, M.O.3 (knife) was recovered and from A5, M.O.4 (Pooja plate) was recovered. Out of the disclosure statement, a gold thali was recovered from P.W.13. Curiously, there was no whisper about the missing of gold thali, silver eye cap and pooja plate. Only after the arrest of these accused, it was for the first time disclosed that these properties were stolen properties from the temple. In Ex.P20 F.I.R. there is no mention about the missing of these properties. It is not explained to this Court as to why for about nine months the missing of these properties were not disclosed by anyone. This would only go to show that these properties were not at all stolen away from the temple and in order to add strength to the prosecution case, a make belief story has been coined by the police.

8. So far as the crowbar, the wooden reaper and the knife are concerned, there is no link between these weapons and the crime. It is not the discovery of every fact that makes a statement of the accused admissible under Section 27 of the

Evidence Act. To the contrary, it is only the discovery of a relevant fact that makes the statement admissible under Section 27 of the Evidence Act. Here, in this case, the nexus between these weapons and the crime has not been established and therefore the statements of the respective accused would not fall under Section 27 of the Evidence Act and therefore they are liable to be eschewed from consideration. Apart from the above, there is no other evidence against these accused. Therefore, the accused are entitled only for acquittal.

9. Curiously, at the same time, shockingly the trial Court has convicted all these accused not on any legal ground but on mere surmises. Simply because these accused belonged to a particular community the trial Court has concluded that they would have committed the crime as according to the trial Court, the traditional occupation of the people belonging to that community was theft. With heavy heart, we want to extract few portions of the judgment of the trial Court. In paragraph 7 of the judgment, the trial Court has made the opening remarks that before going into the evidences let in by the prosecution, it would be necessary to look into the socio economic background

of all these five accused. The trial Court has observed in "Tamil language" as follows:

"(7) , e; j tHf; fpy;
 Vw; gl; Ls; s gpur; n idf; F j; t[fhz; g jw; F
 Kd; g[Fw; wk; rhl; lg; gl; Ls; s 5
 v jup fs; d; rK.f
 bghUsh jhu g; z; zd iā t; sf; FtJ
 m tñakh Fk/ v jup fs;
 m id tUk; jkH fj; j; y;
 t; y; yau; fs; g{rhy; fs; vd; W gy
 kh tI; l'; fs; y; gy t jkhd bgau; fs; y
 bghJ th f jkH fj; j; d; tlf; F
 kh tI; l'; fs; y; thGk; gH "Fo , dj ijr;
 nru; e; j kf; fs; b jh āapy; k ftk; F iwe j
 vz; z; f; if iā bfhz; L jkH f mund
 tU tha; J iwap du; guhkn jJ tUk;
 g jn tL fs; y; @ , Usu; fs; vd; W
 m iHf; fg; gLk; Schedule Tribe@ , dj ijr
 nru; e; j tu; fs; vd; W Fw; g; g; lg; gLfpw J/
 nk; w; go , Usu; rK jh aj j du; . rK jh aj j d
 i kag; g F j f; F Main Stream? f; F tuhky
 gy Mz; Lfsh f TI; lk; TI; lkh f x tb thU
 t trha fpuhk "fs; Yk. murh "f
 , l'; fs; Yk; j "fSf; F vd tL fs; vJ tk
 fl; of; bfhs; shky; me j e j Cu; fs; y; ey

R **thd**; **jhuu**; **fSf**; **F** **brhe**; **jkhd** **nkhl**; **lhu**
bfhl; **if** **kw**; **Wk**; **rW** **rW**
Foy; **fs**; **Mfpatw**; **wpy**; **j** **fp** **Muk**; **g** **j**; **jy**;
vy. **ghk**; **gl**; **fPu**; **g**; **gp** **s**; **is**. **Kay**;

nghd; **w** **tw**; **iw**

n **tl**; **ahoa**[k;. **rW** **rW**

Fw; **w** **f** **is**

bra; **Jk**; **gp** **HjJ** **te**; **j** **xU** **rWpa**

Tl; **lj**; **ijr**; **nrh**; **e**; **j** **th**; **fsh** **f** 25

Mz; **L** **fSf**; **F** **Kdg**[**thH**; **e**; **J** **te**; **j** **th**; **fs**;

jw; **bghGJ** **Vw**; **gl**; **Lss** **rKjha**

khw; **w** **j**; **j** **dhy**; **v** **j** **hp** **fs**; **rhh**; **e**; **j** , **Ush**; **fSk**

kw; **w** **th**; **fis** **ngbyn** **t** **j** **iy** **Kof** **is**

fpuhg; **b** **tl**; **of**; **bfhs**; **Sk**; **gHf**; **fj**; **ija**[k;

nky; **rl**; **ikw**; **Wk**; **KGf**; **fhy**; **rl**; **il**

mz **t** **ija**[k;

kw; **w** **th**; **fis** **ngbyn** **t** **gss**; **f**; **F** **bry**; **Yk**;

thf; **fj**; **ija**[k; **bra**; **J** **tu**

Muk; **g** **j**; **Jtl**; **ldh**; / **nkw**; **go** **gH** **Foapd**

kf; **fs**; **tsh**; **r**; **ra**[**wh** **j** **fhy** **j**; **jy**; **m** **th**; **fs**

kw; **w** **rKjha**; **j**; **j** **dnuhL** **b** **jh** **h**; **g**[**bfhz**; **L**

g[**Hf**; **fj**; **ij** **m** **j** **f** **msty**; **itjJf**;

bfhs; **sh** **j** **fhy** **f**; **fsy**; **m** **th**; **fs**; **fhyk**;

fhykh **f** **bra**; **J** **te**; **j** **b** **jh** **H** **ina** **bra**; **J**

te; **Js**; **shh**; **fs**; / **jwng** **J** **kw**; **w** **rKjha**

kf;fīs nghyn *t* r*Kj*h*ajj*d; *ī*kag;

*j*đ;g;l;l *fyhr*;rhuh*j*;i*j* *itjJf*;
bfhz;oUe;j nghJ *m th*;fSf;Fs; *j*Ukzk;
vd;w *rI*°Fk; *i*l*th*;!; (*t*uh*fu**j*;J) *vd*;w
rI°Fk; ,*y*;i*y*/ *j*wn ghJk; *m th*;fSf;F
*nk*w;go *rI*°Ffs; ,Ug;g*h*f ekf;F
*b*at*y*;i*y*/ *nk*w;go *kf*;fSf;F *fd*;đkhh
vd;gJ *Fy* *bja*;tkhFk/ *nk*Yk, *nk*w;go
kf;fs; *j*°fsđ; g(h; *t*Pfj;*j* *i*j *br*hy;Yk
nghJ *m th*;fs; Vn*h* ehL *Ju**j*g;l;l xU
kd;đđđ; *th*đ n*h*đ;wy;fs;
 vd;Wk; *j*°f *is* Twpf;
 bfhz;L *t*Ufpwhh;fs/ ehd;
nkny *t*th*j*J *fhz*;g*j*;Jss *nk*w;go
kf;fsđ; *Fz* *eyd*;fs; ,*ej* *th*f;Ff;F
h;t[*fhz*;g*j*y; *v*t;t *ap*Ykk *gad*;g*h*J
vd;whYk; *TI* *nk*w;go *kf*;fs;
j°fsđ; *fyhr*;rhu*j*;n*h*L *kl*;Lk;
*th*H;e;j nghJ *m th*;fis *bgh*J*th*d
fyhr;rhuk; gh*h*f;fh*j*
ep *iyay*; *v**h*fs; ek; *Kddh*; epw;g *i*j
nghy *bgh*a *Fw*;w °fsy; *v*Jtk; *nk*w;go
,Ush; *rK**h*aj*i*r; *n*rh;e;j*th*;fs
bra;j*h*f g[s;s;sp *t*tu °fs; *v*Jtk; ekf;F
fp *il*f;ft*y*;i*y*/ *nk*w;go *rK**h*aj*i*r;
*n*rh;e;j*th*;fs; *rKf* *bgh*Ush*h*u

khw;w j; j dhy; kw;w kf;fSf;F vdbdd;d
ey;y bfl;l gHf;f';fs; cssdn th
m j i da[k; Edwin Suther Land kw;Wk;
 Donald Gressey *vd;w , uzL*
mbkhp;fh i t nrh;e j rl;l t?? hdk;
mw;?h;fs; Tw t i j nghy Fw;w ;fs
vd;g Jk; kw;Wk; kw;w gh /';fis nghyn t
fw;Wf; bfhs;S j y; vd;W brhy;yf;Toa
t i apy; m J tk; xU "Learning Process"
vd;g jhy; kw;w kf;fnshL , th;fs
beUf;fk h f nrh;e J thH Muk;g j j j d
t i s th f kw;w kf;fSf;Fss ey;y kw;Wk;
bfl;l gHf;f';fs; Muk;g fhy fl;l';fs y
bfl;l R{H;ep i y fs y; v J t nk <Lglh j
nkw;go Virgin Quality- / bfhz;L nkw;go
v j hp fs; rK j ha j i j r, nrhe j kf;fs; kw;w
kf;fSf;F , Uf;fpd;w Fzeyd;fis fw;Wf;
bfhz;oUf;fpwhh;fs; vd;g i j , e;j t Hf;F
ekf;F b j hp t f;fpd;w J/@ (Emphasis added)

10. In the later part of the judgment, the trial Court has

observed as follows:

"9....., e; j̄ah t̄Yk,
 cyb f̄;fp Yk
 ; Fw;w j̄, ij̄ bra;g tu;fs; rhl;ŋ fis
 mUfpy; ītj̄;Jf; bfhz;L Fw;wk;
 bra;a khl;lhu;fs/ m t;thW rhl;ŋ fis
 mUfpy;
 ītj̄;J t̄;L Fw;w j̄ij̄ bra;tJk,
 Fw;w j̄, ij̄ bra;ahky; , Ug;g Jk; xdnw/
 Fw;w j̄, ij̄ bra;g tu; fis Fw;wk; bra;g tu;fs
 Fw;wk; bra;a[k; , ljj̄y; Fw;wk; bra;j
 neu j̄;jy; m j̄id ahUk; ghu;f; fhky;
 , Uf;f n tz;Lk;
 vd;g j̄w;fh f n j̄itahd
 n j̄j̄ āa[k, n t̄itahd neu j̄ij̄ā[k;
 n j̄ū;e;b j̄Lg;g J Fw;wk; bra;g tu;fs;d;
 īf n j̄ū;e;j f īy/ Fw;g;gh f
 j̄UI;L t̄Hf;Ffs;y;
 m t;t ītahd fhyk
 n j̄ū;e;b j̄L j̄;jy, neuk; n j̄ū;e;b j̄L j̄j̄y
 vd;g J m t̄j̄akh d j̄h Fk/
 , t; t̄Hf;fp Yk; v j̄up fs; 02?01?2010?k;
 n j̄j̄ , u t̄ 11?00 k z̄ ā Fw;wk;
 bra; j̄Uf;f
 n j̄ū;e;b j̄L j̄;j̄Uf;fpd;whu; fs; vd;g ij̄

ghu;f;Fk; nghJK, bfhs īsaog;gJWF

bghd;d|ak;kd; nfh t īy

nJū;e;bJLJ;jUf;fpd;whu;fs; vd;g Jj

ghu;f;Fk; , lJk; m tu;fs; Fw,wk;
 bra;tjy; if nje;jtu;fs; vd;gjh f
 njhd;Wfpwnj xHa mej nfh tpyy;
 vt;ts t bjh if ,Uf;Fk; vd;gJ
 bjupahky; xU gr if;fhu;j;jdkhd
 nfh tpyy; bfhs;isaof;f vj;jdJ
 bfhs;isaof;Fk; nghJ m ij

jLjJ

epd;w Rg;ukzaid bfh iy bra;j gd;gl
 10 khj ;fSf;F gpwF khl;of; bfhz;L
 vg;go bfh iy bra;jhu;fs;. vjw;fh f
 bfh iy bra;jhu;fs;. vdbdd;d
 bfhs;isaoj;jhu;fs;. ve;bje;j bghUshy
 bfh iy bra;jhu;fs;. bfhs;isaoj;j
 bghUs; vd;bdd;d. m it ahuplk; cssJ.
 bfhs;isaog;g jw;F ahu; ahu; brd;whu;fs
 vd;gJ Fwjj t tukhd xg;gjy;
 thf;FK;y ;fis , t;thf;fpy
 trhu;f;fg;gl; l m/rh/15 Fuehjd; Kdgh f
 thf;FK:ykh f bfhLj;J mej
 thf;FK;y ;fs; rw;Wk; lajJf;F , lkd;wp
 m/rh/15 Fuehjd; Kykh f nejhky;

njwhky;
 bfa;g;gp;f;fg;gl;Lss

J////////"

11. In the middle portion of paragraph 10, the trial Court has mentioned as follows:

"10.....*nkw;go* *īg;gw;wg;gl; / rhd;W*
bghUl;fs; y; ehd; Kdng Twa[ss thW
vj̄u;fs; m īdtUk; Mj̄ th rfs; vd;g j̄hy
m tu;fSf;F brhe;jkhd ītfsh f
, Ug;g j̄w;F tha;g;g; y; iy vd;g j̄h Yk,
rh/bgh/1 j̄ ;f j̄hy bghl;L. rh/bgh/2
b ts; s; fz; kyu, rh/bgh/4 g; j̄; j̄ is
g{i\$ j̄;L. nfhty;fs; y; cf;fpu f
bja;t ;fs;
gad;gL j̄; Jk; rh/bgh/3 , Uk;g[f j̄ j̄
Mfpa ītfs; vj̄up fSf;F brhe;jkhd īt
vd;g J vj̄up fs; d; th J ā , y īy/ nkW;go
rhd;W bghUl; fis vj̄up fs; lk; j̄z j̄ J.
rk;g; u j̄hakh f xg;g[j̄y; thf;FK; y ;fs
bgwg;gl;L vj̄up fSf;Fk; rk;g t , l j̄ Jf;Fk;
rk;g t j̄; Jf;Fk; b j̄ h lu;g[Vw;gL j̄ j̄ n tzLk;
vd;w epu;g;ge; j̄ j̄; j̄ d; ngu; y; nkWgo rh/bgh/1
K j̄ y; rh/bgh/4 t ā a[ss , e; j bja;t ;fs
my; y J , e; J nfhty;fs; y; , Uf;ff; Toa
t nrckhd bghUl; fis vj̄up fs; d; Kykh f
īg;gw;wg;gl; l j̄ h f xU n\$ h l id bra; jhy
j̄hd; vj̄up fisa[k, rk;g t , l j̄ j̄ a[k,

vj^up fisa[k; nkw;go Fw;wr; bray;fisa[k;
 ,Wf;fkhf gp izf;f Koa[k; vd;w
 epu;g;ge;jj;jd; ngup;y; rh/bgh/19 Ma;thsu
 rh/bgh/15d; Jiz bfhz;L
 bra;jUg;ghu; vd;W ekf;F njhd;w ty;iy/
 mg;go bra;a ntz;oa xU mtr^aKk;
 rh/bgh/19f;F
 ,Ue;jjh^f ekf;F njhd;w ty^h//////////"

In yet another portion in paragraph 10 the trail Court has made the following observation:

".....,e;j bfh^h thf;fh^dJ xU
 mur^aay; Kf;fpajJtk; tha;e;j xU
 bfh^h is thf;fy;y/ rkg^tj;j;y; ,weJ
 nghd Rg;gpukz^h vd;g tu; g^hHa
 ngg;gu;fs;. gpsh^h of; Mfpaitf^his
 bghWf;fp m^hij fp^hij;j bjh^hff;F
 t^hw;W t^hl;L t^hPl;oy
 brd;W cw^h Ftj^hw;F Tl^h tf;fpy;yh^hj
 xU rh^hhu^hzj;jYk; rh^hhu^hz xU
 tw^ha Flk;g^hj;ijr; rhu;e;j xU egu;
 M^hthu;/ m^htu;
 ,we;J nghd my;yJ m^htu; bfh^hiy
 bra;ag;gl;L ,weJ nghd thf;if
 Koj;jhYk; Kof;fh^htl;hYk;
 m^htUf;fh^hf t^hup;e;J fl;of; bfhz;L

vUk; h / ngh y; / y / mg;go

hL f[k;

vj̄up fs; j̄ug;gpy; vt,tj̄khd fUj̄Jf;fSk;
Kd; ītf;fg;g lty;iy//////// " "

12. Continuing in paragraph 10, the trial Court has made the following observations :

".....mz; īkf; fhykhf murh ;fnk
xU tHf;if fz;Lgof;fhky;
t̄l;lhYk;
me;j tHf;if fzLgof;f Koaty īy
vd;W murh ;fk; ,e;ja crr e;jkd;wk;
Mfpa filn̄ ePj̄kd;wj; j̄y; brhd;dhYk;
mj̄id ,e;ja crr e;jkd;wk; Mfpa
filn̄ e;jkd;wj; j̄y; brhd;dhYk; mj̄id
,e;ja cr,r e;jkd;wk; j̄wnghJss 4tJ
v;l;nl; vd;W brhy;yf; Toa vyf;l;uhd;f;
kPoah bra;fpd;w @Media Trial@ bra;a[k;
mj̄ifg;goahd mGj̄j̄j; j̄hy; r̄gp l̄ nghd;W
cau;ju me;j!J tha;e;j egu;fis
@closure report@ FtKr ḡup t̄l 173d;
fPH; j̄hf;fy; bra;a[k;
nghJ mj̄id th ;f
kWj;J kW t̄rhu īzf;F c; j̄j̄u t̄l;L
tut̄ij̄ ek;khy; fhz Kof̄wJ/ mz īk
fhyj; j̄y; bly;ȳp t̄l;lhuj; j̄y; lhf;lu
j̄y;thu; j̄k,gj̄fSf;F ,Uej̄ xnu mU

kfshd MUCi vd;w 14 taJ Fhe ij
g{l;lg;gl;I tPl;Lf;Fs; ,weJ nghd
tHf;fpy; rhjhuZ nghyPl; Jg;g[Jyf;fhky
jif;F Kf;fhoa nghJ mej tHf;if
,e;ja cr,r ejkd,wk; nrgpI trk;
xg;g ilj;J nrgl?a[k; czik fz,owma[lk
nrhjizf;F lhf;lu; jy;thu; jkgjfs
cl;gLj;ja[k; czik fz;lwma KHahky;
jif;F Kf;fhoa gpwF nrgl?a[k; nkw;go
tHf;fpy; Jg;g[Jy ;f;y;iy vd;w
 Negative Final Report ? *I trhu iz*
ejkd,wj;jl;k; jhf;fy; bra;jij
MI;nrgp;J bghJ eyd; kDf;fs; ,eja
cr,r ePj;kd,wj;jl;k; jhf;fy; bra;jij
MI;nrgp;J bghJ eyd; kDf;fs; ,eja
cr,r ePj;kd,wj;jij jl;oa nghJ ,e;ja
cr,r ePj;kd,wk; nkw;go Negative Final
 Report? *I bgwhky; kWgoa[k; trhu iz*
bra;a c;j;ju tL;L me;j trhu izapd
 ngu;y; Positive Final Report
jhf;fy; bra;ag;gl;L tHf;F trhu iz
bra;agl;L MUCp;apd; je; ij kw;Wk;
jha; mjhtJ jy;thh; jk;gjfs;
,UtUk; bfh iy Fw;wk;

bra;ijw;fhf jz,of;fg;gl;Lssh;fs

vd;g ij ehk; cs; th ;fpf; bfhz;L

ghhf;Fk; nghJ bghJ ey m ikg;g[fSk,

Free media-f;fSk; mGjjk; bfhLf;Fk;

nghJ tYty,yh j tHf;Ff;F TI tY

gpwe;JtLfpwJ/ mg;gog;gl;/ xU mGjjk;

,e;j tHf;fpy; trhu iz m jfhhf;F

bfhLf;fg;gl; jhf ekf;F njhd;w ty iy/

mg;gog;gl;/ e; iyapy; ,t;tHf;if

Kog;g jw;F m/rh/15 / gad;gLjjp Ritualistic

Compliance vd;W brhy;yf; Toa

t iyapy; m ikej rkgpujha ifJ.

rk;gpujhaj;Jf;F xg;g[jy; thf;FKyk,

rk;gpujhaj;Jf;fF kf\$;h;fs/

rk;gpujhaj;Jf;fhf rhd;W bghUl;fs

Mfpa itfis 1 Kjy; 5 v jhpfSf;fF

v juh f m/rh/19 Ma;thsh; cw;gjj bra;a

n tz,oa m trak; ,y iy/ mg;go

v;t;t jkhd munay; mGj;inkh. gz gyk;

Mfpa itfs;d; mGj;inkh my;yJ

kPoahf;fs;d; mGj;inkh ,y;yh j e; iyay;

v jh;fs; jhd; ,e;j bfh iy ia

bra;jhh;fs; vd;W v;t;t jkhd

mg;gGf;Fkw;w vjho fis ,e;j bfh iy
tHf;fpy; nf;f itf;f ntz,oa mtnaKk;
m/rh/19f;F ,y;iy/ (Emphasis added)

13. In paragraph 24 of the judgment, the trial Court has extracted the alleged confession statement of all the accused in full ignoring the bar contained in Section 25 of the Evidence Act and has concluded that the accused 3 to 5 held the deceased and accused 2 attacked the deceased with a wooden rod and the first accused accused attacked the deceased with crowbar.

14. The above extractions, which we have made from the judgment of the trial Court would go a long way to expose the prejudice the learned trial Judge had against the people belonging to a particular community. It is not understandable as to how a Court could presume that the people belonging to a particular community will traditionally indulge in the commission of a particular type of crimes. It is also shocking to note that the trial judge had the strong conviction that the particular community people would indulge in a particular type of crimes and the same could be inherited like a family trade. It is not

also understandable as to how the trial Court could come to the conclusion that the traditional occupation of the people belonging to that particular community was stealing. Assuming that during the primitive period, the people belonging to the said community were indulging in thefts, it is ridiculous on the part of the trial Court to conclude that in the instant case, these accused had committed murder and robbery because they belong to the said community. It is also shocking to note that the trial Court had expressed its surprise over the fact that the people belonging to this community have now come to the main stream of the society and they have started cutting their hairs, trimming their beards, wearing full hand shirt and pants.

15. Judiciary cannot afford to decide the cases by tracing the criminal activities of the forefathers of the accused. No Court of Law can stigmatize a community as a whole. Proof beyond reasonable doubt of the guilt of an accused should be reached on the basis of the evidence on record. Any finding of guilt based on no evidence but on communal considerations is unconstitutional. In the instant case, the trial Court has traced the socio economic as well as the communal background of the

accused and has come to the conclusion that these accused have committed the crime solely because they belong to a particular community. This judgment is a classic example as to how a Court of Law in this Country should not pen down a judgment. In our little experience, we have not come across this kind of worst judgment. Let this be the last judgment ever written on communal consideration.

16. As we have already pointed out, though the first accused has not made any appeal, since he stands in the same footing like the appellants herein and since there is no evidence whatsoever against him also, but he has been convicted on communal consideration, we are inclined to acquit the first accused also while acquitting these appellants. This we do as per the law laid down by the Hon'ble Supreme Court in ***Dandu Lakshmi Reddy vs. State of A.P.*** reported in **1999 (7) SCC 69.**

17. In the result,

(i) the appeals are allowed and the conviction and sentence imposed on the

appellants / accused 2 to 5 by the learned District and Sessions Judge No.II, Kancheepuram in S.C.No.48 of 2013 dated 31.07.2015 is set aside and the appellants / accused 2 to 5 are acquitted.

(ii) Though the first accused Mr.N.Kumar S/o Mr.Natesan has not filed any appeal, the conviction and sentence imposed on him by the learned District and Sessions Judge No.II, Kancheepuram in S.C.No.48 of 2013 dated 31.07.2015 is also set aside and the first accused Mr.N.Kumar S/o Mr.Natesan is acquitted.

(iii) The fine amount, if any paid, shall be refunded to them.

(iv) Since the appellants / accused 2 to 5 and the first accused Mr.N.Kumar S/o Mr.Natesan are in jail, they are directed to

be set at liberty forthwith, unless their detention is required in connection with any other case.

(S.N.J.) (N.S.S.J.)
15.02.2017

Speaking Order / Non Speaking Order
Index : Yes / No
kk

Note: *The Registry is directed to circulate a copy of the judgment of the trial Court along with a copy of this judgment to all the Principal Session Judges in the State of Tamil Nadu as well as in the Union Territory of Puducherry for being circulated to the other Session Judges so as to impress upon them that in the years to come, let there be no judgment based on extraneous considerations like communal background, social background etc.,.*

S.NAGAMUTHU,J.

&

N.SESHASAYEE,J.

kk

To

1. The District and Sessions Judge No.II,
Kancheepuram.
2. The Inspector of Police,
C-2, Sunguarchathiram Police Station,
Kancheepuram.
3. The Public Prosecutor,
Madras High Court.
4. The Registrar General,
Madras High Court.

Crl.A.Nos.874 of 2016 & 76 of 2017

15.02.2017

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