



R.T(MD)No.1 of 2022 and CrI.A(MD)Nos.452, 453 & 454 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 10.08.2022

DELIVERED ON : 30.08.2022

CORAM :

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA**

**R.T(MD)No.1 of 2022
and
CrI.A(MD)Nos.452, 453 & 454 of 2022**

R.T(MD)No.1 of 2022:

State Represented by
The Inspector of Police,
Patteswaram Police Station,
Thanjavur District.
(Crime No.115/2013)

.. Complainant

Vs.

Kattai Raja @ Raja

.. Accused No.1

CrI.A(MD)Nos.452, 453 & 454 of 2022:

Kattai Raja @ Raja

.. Appellant/A1 in
CrI.A(MD)No.452/2022



Selvam

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Arumugam



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.. Appellant/A5 in
Crl.A(MD)No.453/2022

.. Appellant/A3 in
Crl.A(MD)No.454/2022

Vs.

State Represented by
The Inspector of Police,
Patteswaram Police Station,
Thanjavur District.
(Crime No.115/2013)

.. Respondent in all appeals

R.T(MD)No.1 of 2022:

Referred Trial under Clause 15 of the Letters Patent Act on the judgment and order, dated 12.04.2022 passed in Sessions Case No.84 of 2016 on the file of the Additional District and Sessions Judge (Fast Track Court), Kumbakonam.

Crl.A(MD)Nos.452, 453 & 454 of 2022:

Criminal Appeals filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order dated 12.04.2022 made in Sessions Case No.84 of 2016 on the file of the Additional District and Sessions Judge (Fast Track Court), Kumbakonam.



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For Appellants : Mr.V.Gopinath
Senior Counsel for Mr.N.Kannan
for A1

: Mr.V.Gopinath
Senior Counsel for Mr.T.Sugadev
for A3

: Mr.V.Gopinath
Senior Counsel for Mr.E.K.Vinod
for A5

For State : Mr.Hasan Mohamed Jinnah
State Public Prosecutor
assisted by

Mr.A.Thiruvadi Kumar
Additional Public Prosecutor,

Mr.S.Santhosh
Government Advocate (Criminal side)
and
Ms.J.R.Archana

COMMON JUDGMENT

R.HEMALATHA, J.

Referred Trial(MD)No.1 of 2022 is a reference made by the Additional District and Sessions Judge (Fast Track Court), Kumbakonam (for brevity “the trial Court”) under Section 366 Cr.P.C., for confirmation of



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the death sentence awarded to A1 in S.C.No.84 of 2016 vide judgment and order, dated 12.04.2022. These criminal appeals have been filed by the accused challenging the conviction and sentence in the aforesaid Sessions Case.

2. The Trial Court framed charges, as detailed below.

Charge	Penal Provisions	Accused
1	148, 364, 302 r/w 149 IPC	A3 and A5
2	148,294(b), 364, 342, 302 r/w 149 IPC	A1

3. By judgment and order dated 12.04.2022, the Trial Court convicted and sentenced the appellants, as detailed below:

Accused	Section of Law	Sentence of imprisonment	Fine amount
A1	148 IPC	Imprisonment for three years.	Nil
	364IPC	Life Imprisonment	Nil
	342 IPC	Simple Imprisonment for a period of one year.	Nil
	302r/w 149IPC	Death Sentence	Nil



Accused	Section of Law	Sentence of imprisonment	Fine amount
	No fine amount was imposed on A1 since he is in jail. The sentences for the offences u/s.148, 364 & 342 IPC were ordered to be merged with the death sentence awarded for the offence u/s 302 r/w 149 IPC.		
A3	148 IPC	Imprisonment for three years	Rs.2000/-, in default, to undergo imprisonment for six months.
	364 IPC	Life Imprisonment	Rs.5000/-, in default, to undergo imprisonment for one year.
	302 r/w 149 IPC	Life Imprisonment	Rs.5000/-, in default, to undergo imprisonment for one year.
A5	148 IPC	Imprisonment for three years	Rs.2000/-, in default, to undergo imprisonment for six months.
	364 IPC	Life Imprisonment	Rs.5000/-, in default, to undergo imprisonment for one year.
	302 r/w 149 IPC	Life Imprisonment	Rs.5000/-, in default, to undergo imprisonment for one year.

The sentences imposed against A3 & A5 were ordered to run concurrently. A2 and A4 died after filing of the final report and therefore, the charges against them got abated.

4. The case of the prosecution in a nutshell unfolds as follows:

- i. Swaminathan(P.W-1) is a resident of Kudiyana Street, Chennimangalam Village, Kumabakonam Taluk, Thanjavur



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District. He was living with his wife Valarmathi (P.W-2) and his son Senthilnathan, the victim. P.W-1 also had a daughter, who was married to Kannan(P.W-3), who was brother of P.W-2. The victim had reportedly borrowed Rs.1,00,000/- from Kattai Raja @ Raja (A1) to pursue the business of sale of fertilizer and incurred a loss in the business. A1, who was the creditor used to frequent P.W-1's residence demanding the loan amount which the victim was unable to repay. In the meanwhile, the victim started running a bar selling only snacks in the TASMAL wine shop situated in Chitrakarai, Valangaiman. He was assisted by his father P.W-1 in the bar. On 18.06.2013 between 2.30 p.m., and 3.00 p.m., A1 along with Mariappan (A2-since deceased), Arumugam(A3), Manoharan(A4-since deceased) and Selvam(A5) barged into the bar when both the victim and P.W-1 were present and forcibly took the victim and made him sit in a two wheeler between A2 & A1 with A2 riding the vehicle. A3, A4 and A5 followed them in another two wheeler with P.W-1 following both the vehicles in his own two wheeler. All the accused stopped near Madakudi new bridge



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and made the victim get down from the bike, abused him verbally in foul language and it was A1, who attacked the victim first with a billhook causing injuries on his head and both his hands, while the other four accused A2 to A5 also armed with billhooks attacked the victim in a wild and indiscriminate manner causing severe injuries to the victim, who died instantaneously. After the murder the five accused sped away in their two-wheelers towards Valangaiman carrying the billhooks(M.O-8 to M.O-12) with them. P.W-1 was the helpless eyewitness seeing his son murdered by the accused, cried for help when people gathered at the scene of occurrence. Rajendran (P.W-6), brother of P.W-1 also witnessed the occurrence while he was proceeding towards Kumbakonam for masonry work. His evidence is that all the five accused attacked the victim with bill hooks (M.O8 to M.O12) and before he could rush to the spot for rescue, all the accused made good their escape. Later on P.W-1 accompanied by his wife Valarmathi(P.W-2) went to Patteeswaram Police Station and gave a written complaint Ex.P1, based on which an FIR



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(Ex.P13) in Crime No.115/13 was registered by Karthi (P.W-14), Sub Inspector of Police, Patteeswaram Police Station under Section 147, 148, 294(b) and 302 IPC against all the five accused and which was sent to the Judicial Magistrate Court at 00.30 hours on 19.06.2013 through Parthasarathy (P.W-11), the Head Constable of Police. Thereafter, P.W-11 submitted the entire records before the Inspector of Police for investigation.

- ii. Thiru.Murugavel(P.W-17) took up investigation in Crime No. 115/2013 of Patteeswaram Police Station, went to the scene of offence and prepared an observation mahazar (Ex.P19) in the presence of the witnesses Jeyapal(P.W-4) and Palani (P.W-5) and also a rough sketch(Ex.P18). He then conducted inquest (Ex.P21) on the body of the deceased in the place of occurrence in the presence of Panchayatdhars and sent the body for postmortem through Iyyappan(P.W-12), Grade-I Police Constable attached to Pattesswaram Police Station. He also recovered the bloodstained gravel stones and ordinary gravel stones under the cover of a mahazar (Ex.P20) and sent the same



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to Court under Form 95 (Ex.P23) for transmitting the same to Forensic Laboratory for analysis. Thiru.Ravi(P.W-13), a photographer took photographs (M.O3) of the body of the deceased.

iii. Dr.Suganthi(P.W-15) conducted autopsy on the body of the deceased and found the following injuries:

“External Examination: 1.cut injuries; front of neck-15cmx10cmx8cm inward skull exposing brain, brain muscles and blood vessels; 10cmx3cmx5cm cut injury on the right cheek; 20cmx3cmx7cm cut injury on right temporal region of skull exposing brain, brain muscles and blood vessels; 8cmx3cmx5cm cut injury on right cheek; 10cmx3cmx4cm cut injury on left forehead; 3cmx3cmx3cm occipital region of scalp; 10cmx5cmx5cm post surface of right elbow; 20cmx7cmx10cm cut injury from mid of right arm to right fore-arm exposing blood vessels, muscles; multiple cut injuries on right hand and right stomach; multiple cut injuries 7cmx5cmx5cm on the side of hands; cut injury 10cmx5cmx5cm on the right thigh; abrasion of right leg or lower level exposing both bones of leg muscles and blood vessels. Internal Examination:Hyoid bone:intact.Lungs: no blood;



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*Stomach:empty;Heart:champers-empty;Skull:broken
and exposing brain vessels; Intestine:empty;”*

In the opinion of the postmortem Doctor(P.W-15) “*the deceased would appear to have died of bone fracture and of the vital organ injuries, namely the damage of brain and skull*”. The Postmortem certificate was marked as Ex.P.15.

- iv. On 21.06.2013, P.W-17 arrested the accused Arumugam(A3) and Selvam(A5) near Veeran Temple, northern bank of Kudamuruti River, Thillaiyambur in the presence of Ratchahan (not examined) and Anbazahan(P.W-8), Village Administrative Officer. He recorded the police confessional statement of Arumugam(A3) (admissible portion of which was marked as Ex.P22) in the presence of the same witnesses, based on which Arumugam(A3) was taken to his house where he had hidden 5 billhooks (M.O8 to M.O12) under the cover of a mahazar (Ex.P34). He also recovered a blood stained jeans pant (MO-13), blood stained white colour shirt (M.O14), inner wear



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(M.O15), bloodstained Dhoti(M.O4), bloodstained half arm shirt(M.O5), black bloodstained full arm shirt(M.O6-worn by the accused Selvam) and a bloodstained lungi(M.O7) and submitted all the material objects to Court under Form 95 (Ex.P24) for sending the same to Forensic Laboratory. Thereafter both the accused were produced before the concerned Jurisdictional Magistrate who remanded them to judicial custody.

- v. On 24.06.2013, the accused Mariappan(A2) was arrested near Banyan Tree Bus Stop, Aandithoppu at about 6.00 a.m., by P.W-17 and recorded his confessional statement and recovered a blood stained half shirt (M.O1) worn by the accused on the date of occurrence under the cover of a mahazar (Ex.P26) and submitted the same to the Court under Form 95 (Ex.P25). Subsequently, the accused was sent for judicial custody.
- vi. On 27.06.2013, the investigation officer arrested Manohar(A4) near Ramyanagar and recorded his confessional statement,



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based on which he recovered a white full-arm shirt (M.O2) which was hidden by him behind his house under the cover of a mahazar(Ex.P32). Thereafter, A4 was produced before the concerned jurisdictional Magistrate for judicial custody. The full-arm shirt was sent to Court under Form 95 (Ex.P12). All the material objects were sent to Forensic Laboratory, Chennai. The chemical analysis report (Ex.P29) showed the presence of human A group blood in the blood stained gravel stones , jeans trousers (M.O13), shirt (MO14), inner wear(MO15) and three billhooks. P.W-17 examined the witnesses and recorded their statements under Section 161(3) Cr.P.C. In the meanwhile P.W-17 was transferred and his successor in office Thiru.Ramamoorthy(P.W-18) took up investigation and examined the witnesses once again. Since the witnesses repeated what they had stated earlier before P.W-17, P.W- 18 did not record their statements afresh.

vii.The II-Additional District Munsif cum Judicial Magistrate, Kumbakonam, recorded the 164 Cr.P.C. statements of



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P.W-1(Ex.P2) and one Dakshinamurthy (not examined).

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viii. After collecting various reports from experts and after completing the investigation, Thiru.Ramamurthy(P.W-18), Inspector of Police, filed a final report against the appellants for the offences under Sections 147, 148, 364, 342, 294(b) and 302 r/w 149 IPC., before the Judicial Magistrate, Kumbakonam, in P.R.C.No.6 of 2016 who in turn, committed the case to the Court of Sessions after furnishing copies of documents to the accused under Section 207 of the Code of Criminal Procedure. The learned Principal Sessions Judge, Kumbakonam took up the case on file in S.C.No.84 of 2016 and made over the same to the Additional District and Sessions Judge(FTC), Kumbakonam. Since the accused pleaded not guilty of the charges framed under Sections 148, 364, 342, 294(b) and 302 r/w 149 IPC, the case was posted for trial.

ix. In order to establish the guilt of the accused, the prosecution examined 18 witnesses and marked 34 documents and 15



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material objects.

- x. When the appellants were questioned under Section 313 of the Code of Criminal Procedure, with regard to the circumstances appearing in evidence against them they denied of having committed any offence. However, they examined 2 witnesses (D.W1 & D.W2) and marked 13 documents. (Ex.D1 to Ex.D13).
- xi. Kowsalya (D.W1) is the daughter of Arumugam (A3). Her evidence is that her father is having a contract for road laying and also in the business of sale of fish and coconut. On 17-06-2013, at about 7 to 7.30 am, Patteeswaram police visited their house at Thippirajapuram and took him to the station in a police van in which his brother Manoharan (A4) and his cousin Mariappan (A2) were also there. According to her, her father (A3) after returning from work on the afternoon of 18-06-2013 did not go out of home since it was the birthday of her physically challenged brother on the next day i.e, 19-06-2013.



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xii.Viji(DW2) is the wife of Selvam (A5). According to her, her husband was a contract labour in Meenakshi mill in Annanagar Madurai and on 18-06-2013 and 19-06-2013 he was only in Madurai with her. Only on 19-06-2013 A5 was summoned by Patteeswaram police.

xiii.The photo print outs of various places unconnected with the scene of occurrence (Ex.D1 to Ex.D4), worker ID card (Ex.D5), Salary certificate (Ex.D6), LIC policy (Ex.D7), policy receipt (Ex.D8) of D.W-2 were marked. Similarly, Aadhaar card of D.W-1(Ex.D9), Aadhaar card, Voters ID, Driving License and Canara Bank pass book of A5 (Ex.D10 to Ex.D13) were also marked.

xiv. The learned Additional District and Sessions Judge(FTC), Kumbakonam, after analyzing the oral and documentary evidence adduced on both sides, found the appellants guilty of the offences under Sections 148, 364, 342, 294(b) and 302 r/w



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149 IPC and convicted and sentenced them as stated in paragraph No.1. Challenging the conviction and sentence passed by the trial Court, the present appeals are filed by the appellants along with a petition to condone the delay of 26 days in filing these appeals, in CrI.M.P(MD)Nos.8100, 8101 and 8104 of 2022. The delay was condoned by this Court, vide orders dated 14.07.2022.

xv. Since death sentence has been imposed on Kattai Raja @ Raja(A1), the case in R.T.No.1 of 2022 has been sent up to us under Section 366 Cr.P.C. for confirmation of the death sentence.

5. Heard Mr.V.Gopinath, Learned Senior Counsel assisted by Mr.N.Kannan (for A1), Mr.T.Sugadev (for A3) and Mr.E.K.Vinod (for A5) and Mr.Hasan Mohamed Jinnah, State Public Prosecutor, assisted by Mr.A.Thiruvadi Kumar, Additional Public Prosecutor, Mr.S.Santhosh, Government Advocate (Criminal side) for the State.



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6. It is the case of the prosecution that the ghastly murder was committed by one Kattairaja @ Raja (A1) ably aided by four of his accomplices A2 to A5, out of which A2 and A4 are no more. It is also pertinent to note that all the five accused were related to each other. There are two eyewitnesses to the crime, namely P.W-1 and P.W-6. P.W-1, who is the father of the victim was not only an eyewitness to the mindless hacking of the victim by the accused but was also present in the bar from where the accused had forcibly taken out the victim in their motorcycle. P.W-1 had clearly deposed as to how the victim was bundled out and taken for a short ride till all of them reached the spot of the crime. P.W-1, had followed the assailants, who were armed with billhooks but could not do much to rescue his son in the fast paced murder sequence. The evidence of P.W-1 is that on 18-06-2013 between 2.30 pm and 3.00 pm when he was with his son (victim) in the bar run by his son, Kattai Raja (A1) called his son and picked up a quarrel and immediately thereafter took his son in a motorcycle which Mariappan (A2) rode and the victim was made to sit in between him and Mariappan (A2). Arumugam (A3), Manoharan(A4) and Selvam (A5) followed in another two wheeler which P.W-1 followed in his vehicle. Once they reached Madakudi new bridge, the victim was made to get down and



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A1 after abusing the victim attacked him with a billhook on his head and two hands repeatedly. Subsequently the remaining four accused also joined and hacked the victim indiscriminately and before P.W-1 could raise an alarm the villagers gathered there and the five accused fled the scene. The presence of P.W-1 with the victim in the bar was confirmed by P.W-2 (wife of P.W-1) in her deposition. The attack was so brutal as is evidenced by postmortem certificate (Ex.P15).

7. Dr.Suganthi (P.W-15), who performed autopsy on the body of the deceased, in her deposition had narrated the nature of the injuries which exposed the brutality of the killing. The oral evidence of P.W-1 as to the injuries sustained by the victim corroborates with the contents of the post-mortem report. Rajendran (P.W-6) is another eyewitness, who has seen the deadly assault on the victim by the five accused near the Madakudi new bridge. According to him, he along with one Dakshinamurthy and Pakkirisamy (both not examined) were proceeding towards Kumbakonam for a masonry work, when he witnessed the murder. His evidence is that all the three of them were in a two wheeler and saw the hacking of the victim by the five accused and before they could rush for rescue, the accused had



made good their escape.

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8. Valarmathi (P.W-2) and Kannan(P.W-3) were hearsay witnesses and were present in the police station to lodge the complaint authored and signed by P.W-1. According to the prosecution, A1 and his gang were notorious and A1 himself had the dubious distinction of about 17 criminal cases against him, ten of which were murder cases.

9. Mr.V.Gopinath, learned Senior Counsel for the appellants was critical of the prosecution case. He pointed out as to the inconsistencies and glaring deficiencies in the oral evidence of P.W-1 and P.W-6. While P.W- 6 claimed to have witnessed the murder at close quarters, P.W- 1 has not mentioned about the presence of P.W- 6 in his deposition. According to the learned counsel, P.W-1 was also not having any personal knowledge regarding the alleged loan, non-repayment of which is said to have caused the murder of the victim. P.W-2, P.W-3 and Murugavel (P.W-17) (first I.O) had also expressed their lack of knowledge about the said loan. It was also the contention of the learned counsel for the appellants that the delay in sending FIR to the concerned Magistrate Court, the absence of



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documentary evidence pertaining to the license of the bar and also the absence of any details of the vehicle said to have been used by P.W-1 are all fatal to the case of the prosecution. Therefore, according to him, the prosecution has failed to prove the guilt of the accused beyond reasonable doubts.

10. Per contra, Mr.Hasan Mohammed Jinnah, State Public Prosecutor argued that the clarity with which two eyewitnesses have deposed overwhelmingly about the murder proves the guilt of the accused and whatever alleged deficiencies pointed out by the learned counsel for the appellant do not alter either the gravity of the offence or the involvement of the accused in the crime. He also highlighted the criminal track record of A1. According to him. A1 was a threat to the society and it was a fit case to convict and impose the maximum punishment of death sentence on him and his gang.

11. As per the FIR the time of the complaint was 3.30 p.m., on 18-06-2013. However the FIR reached the concerned Magistrate only at 00.30 hrs. on 19-06-2013. In a catena of decisions, on a given set of facts,

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this Court as well the Apex Court has held that “delayed FIR” even by some hours would not by itself adversely affect the case of the prosecution and in some instances it may not be treated fatal to the prosecution. In **Ravinder Kumar and another vs. State of Punjab**, the Supreme Court has categorically held that a delayed FIR is not illegal and in fact, has also gone to the extent of holding that even an FIR registered with promptitude and dispatch is not an unreserved guarantee for it being genuine. The relevant passage from the said judgment reads as under:

"13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an



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unreserved guarantee for the genuineness of the version incorporated therein." (emphasis supplied)

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In the instant case the FIR was registered immediately after the occurrence and the evidence adduced by the prosecution had clinchingly proved the commission of the crime by the accused. In such circumstances few hours delay in dispatching the FIR may by itself not render the whole of the prosecution case doubtful. Pertinent, it is to point out that P.W-11 the Head Constable of police, who handed over the FIR to the Magistrate had deposed that he was in bandobust duty before handing over FIR to the Judicial Magistrate No.II Kumbakonam. Thus, the delay is properly explained by the prosecution.

12. As regards the contention that P.W-1 neither in his complaint (Ex.P1) nor in his deposition had stated that his brother Rajendran (P.W-6) also witnessed the murder. It is pertinent to mention that the name of Rajendran finds a place in the complaint. However the word brother has not been mentioned. This can be only be construed as a bonafide omission when P.W-1 himself has been in extreme anxiety and sorrow having lost his son in the incident. Similarly, P.W-1 to P.W-3 knew the obtainment of loan by the



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victim from the appellant and what they had deposed was that they were not physically present during the loan transaction. Hence, it cannot be stated that they had no knowledge of the obtaining of loan by the victim.

13.As regards the non-production of the licence of the bar run by the victim and his father, it cannot be stated that it is fatal to the case of the prosecution for the simple reason, that it is not the case of the prosecution that the victim and his father took the licence of the bar in their names. The registration number of the vehicle and other details, in which P.W-1 followed the victim and the accused, are not at all necessary as far as this case is concerned since the ocular testimony of P.W-1 matches with the medical evidence. Moreover, merely because the witnesses happened to be the close relatives of the victim, their evidence cannot be thrown out. P.W-1 is the father of the victim and he would try to prosecute the real culprits by stating the truth. With regard to the contention of relative witness, it is useful to extract the decision of the Hon'ble Supreme Court in the case of ***Dalip Singh vs. State of Punjab (AIR 1953 SC 364)*** as under:

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be



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tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

14. A careful scrutiny of the oral and documentary evidence adduced on both sides reveals one conspicuous aspect and that is the brutal nature of the assault on the victim. The wild and bizarre attack and the resultant injuries are heart rending. There have been multiple fractures on the two thighs and the skull and the neck got opened up in the attack exposing the brain, blood vessels and other internal organs.

15. There were suggestions made to the prime eyewitnesses regarding the presence of a row of houses, shops, marriage hall etc., in and around the scene of occurrence, how and why there were no other witnesses other than



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P.W-1 and P.W-6, who were closely related to the victim and to each other

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16.Thiru.Mohammed Faizal (P.W-7), who owns a grocery shop just opposite the place of occurrence of the crime had deposed that it was lunch time for his shop and that it had happened during the lunch break when he had closed the shop. However, P.W-1's deposition is very strong and cannot be brushed aside merely citing the reason that he could not provide details of the loan his son had taken from A1. Similarly, his deposition does not lose significance just because he was unable to narrate the details of the two wheeler which he had used to follow the assailants. These details in a crisis situation cannot be expected to be recalled precisely, especially, where P.W-1 lost his son right in front of his own eyes. A1 was not a professional money lender and absence or non-recovery of documentary evidence for the loan cannot weaken the case of the prosecution.

17. Though DW1 and DW2 have stepped in, to plead Alibi for A3 & A5 respectively, no acceptable evidence have been produced to strengthen their plea. The documents adduced by them are irrelevant and did not help

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them prove that they were not present in the scene of crime on that day.

Mere statement of Alibi by DW1 and DW2 do not carry any evidentiary value and moreover both A3 & A5 did not cross-examine the prosecution witnesses on these lines at all. For the first time in 313 Cr.P.C. both A3 & A5 have taken the plea of Alibi.

18. Further, the father of the victim had witnessed the occurrence and his evidence is very clear on the overt act committed by A3 & A5. He further deposed that A3 & A5 followed A1, A2 and the victim and once they reached the bridge, all the accused made the victim to get down from the two-wheeler and when A1 attacked him with a billhook on his head, the remaining four accused, who were also armed with billhooks, joined A1 and hacked the victim indiscriminately. P.W-1 also withstood the testimony of cross examination and there is no good ground to discard his evidence as regards A3 & A5. Apart from the evidence of P.W-1, another eyewitness Rajendran (P.W-6) had narrated the incident and his evidence is corroborated with the version of P.W-1. As already observed, the medical evidence matched with the eyewitness account of P.W-1 and P.W-6.



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19. P.W-1 being the affected person cannot be found fault with for not having called any one immediately after the victim was forcibly taken away by the accused. There is every possibility that he would not have thought that such a tragic end would befall his son unexpectedly.

20. The trial Court after convicting the accused had concluded that this murder would fall under the 'rarest of rare' category and therefore, A1 deserves death penalty while the other can be inflicted upon with Life Imprisonment as they had committed the act at the behest of A1. The criminal track record of A1 appear to have been weighed by the trial Court for awarding death sentence. According to the prosecution, he is involved in 10 murder cases.

21. A peep into the history of death sentence in 'rarest of rare' cases would show that only in *Machhi Singh and other vs. State of Punjab* (1983 SCR(3) 413) the term 'rarest of rare case' was first coined by the Apex Court. The Apex Court in this case laid out certain specific grounds on the basis of which it can be determined if a case is falling under the umbrella of 'rarest of rare case' or not.

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1. *Way of commission of homicide-murder* committed in an imaginable manner with extreme cruelty and heinousness creating the anger in the society.
2. *Crime deserving hatred in the society-* where the crime is so atrocious and barbarous and it is socially reprehensible.
3. *Intensity of the crime-*when the crime is much bigger than it can be usually expected to be.
4. *Character of casualty of homicide-* A crime committed against an innocent person or against an unprotected and a vulnerable lady etc.

22. From then onwards there have been several cases in which this doctrine was applied and the Apex Court upheld the capital punishment awarded by the trial Court as well as High Court.

23. There is no straight-jacket formula for the 'rarest of rare doctrine'. The 'rarest rare doctrine' can be divided into two sub-parts; aggravating circumstances and mitigating circumstances. In the instant case, the aggravating circumstances are evidently disturbing especially with A1



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having such a notorious track record and criminal background. Mr.Hasan

Mohammed Jinnah has effectively brought in a list of criminal cases pending against A1. It is also argued by him that the society in which he lived was so petrified of him that no one dared to antagonize him and that the injuries listed out in the postmortem certificate (Ex.P15) in the instant case speak volumes of his grotesque vileness. It was further contended by Mr.Hasan Mohammed Jinnah that the victim was done to death with extreme depravity and in broad day light and that the fact that the murder took place on the main road abutting many shops and houses and yet not a single person mustered the courage to come to the witness box against A1 was proof of this fear.

24. In cases like the present one, the attempt to drag the legal proceedings to the maximum extent and intimidate people has been the standard *modus operandi*. It is disturbing to see that in the instant case, the trial commenced nine years after the murder and A1 not only jumped the bail but also went into hiding for prolonged period during which also he was very active in committing heinous crime including murder. The ghastly murder in this case exhibited premeditation and meticulous execution and



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the attack was a calculated one to annihilate the victim. Notwithstanding all the above factors, the case does not satisfy the “rarest of rare cases” criteria for awarding death penalty. The victim himself had borrowed money from A1 knowing fully well the credentials of the latter. The sad end he met is unfortunate. Murders for disputes involving money, land and women are very common. This murder, though is shocking, is not the one which would warrant a death penalty.

25. In the instant case, we are convinced that this case does not come within the category of “rarest of rare cases” for awarding capital punishment, by applying the principles laid down by the Supreme Court in **Bachan Singh vs. State of Punjab [(1980) 2 SCC 684]**. Though Mr.Hasan Mohammed Jinnah, State Public Prosecutor pointed out the notorious track record and criminal background of A1, we still feel that this is yet another run-of-the mill case and not a case falling under the category of “rarest of rare cases” for sending A1 to the gallows for it has not been demonstrated to us that A1 is a menace to the society thereby ruling out any possibility of reformation.



26. In the facts and circumstances of the present case, interests of

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justice would be subserved if the death sentence imposed on Kattai Raja @ Raja (A1) is reduced to Imprisonment for life, with a fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for a period of six months. He shall not be entitled to any remission benefits for a period of 25 years in the light of the decision in ***Sahib Hussain Alias Sahib Jan vs. State of Rajasthan*** [2013(9) SCC 778], wherein the Hon'ble Supreme Court has held as follows:

“30) It is clear that in Swamy Shraddananda (supra), this Court noted the observations made by this Court in Jagmohan Singh vs. State of U.P., (1973) 1 SCC 20 and 5 years after the judgment in Jagmohan’s case, Section 433-A was inserted in the Code imposing a restriction on the power of remission or commutation in certain cases. After the introduction of Section 433(A) another Constitution Bench of this Court in Bachan Singh vs. State of Punjab, (1980) 2 SCC 684, with reference to power with regard to Section 433-A which restricts the power of remission and commutation conferred on the appropriate Government, noted various provisions of Prisons Act, Jail Manual etc. and concluded that reasonable and



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proper course would be to expand the option between 14 years imprisonment and death. The larger Bench has also emphasized that “the Court would take recourse to the extended option primarily because in the facts of the case the sentence of 14 years’ imprisonment would amount to no punishment at all.” In the light of the detailed discussion by the larger Bench, we are of the view that the observations made in Sangeet’s case (supra) are not warranted. Even otherwise, the above principles, as enunciated in Swami Shraddananda (supra) are applicable only when death sentence is commuted to life imprisonment and not in all cases where the Court imposes sentence for life.”

27. Having regard to the nature of the crime, this Court strongly feels that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. In the instant case, there is good and strong basis for the Court to substitute the death sentence by Life Imprisonment without any remission benefits for 25 years and to pay a fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for a period of six months and it is ordered accordingly.



WEB COPY 28. We place on record our appreciation to Mr.V.Gopinath, learned Senior Counsel. His presentation in this Court is highly appreciable as he brought out the nitty gritty of the facts of the case.

29. The Public Prosecutor Mr.Hasan Mohammed Jinnah deserves a special mention for his remarkable presentation of the case of the prosecution. His tireless and sincere efforts definitely are commendable.

30. In the result,

i. To sum up, the Criminal Appeal preferred by Kattairaja @ Raja (A1) in Crl.A(MD)No.452 of 2022 is partly allowed and the death sentence imposed on him is substituted by Life Imprisonment without any remission benefits for 25 years and to pay a fine of Rs.10,000/-, in default, to undergo Rigorous Imprisonment for a period of six months. The conviction and sentence passed by the learned Additional District and Sessions Judge (Fast Track Court), Kumbakonam, against him(A1) for the offences punishable under Sections 148, 342 and 364 IPC in S.C.No.84 of 2016 dated 12.04.2022, stand confirmed. All the sentences shall run concurrently.



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ii. The Criminal Appeals preferred by A3 and A5 in CrI.A(MD)Nos.

454 of 2022 and 453 of 2022 respectively, are dismissed. The conviction and sentence passed by the learned Additional District and Sessions Judge (Fast Track Court), Kumbakonam, against the appellants, Arumugam(A3) and Selvam(A5) in S.C.No.84 of 2016 dated 12.04.2022, is hereby confirmed.

iii. The reference under Section 366 Cr.P.C., in R.T(MD)No.1 of 2022 is answered as stated in paragraph No.26.

[P.N.P., J.] & [R.H., J.]
30.08.2022

Index : Yes/No
Internet : Yes/No
PJJ

To

1. Additional District and Sessions Judge(Fast Track Court),
Kumbakonam.

2.The Inspector of Police,
Patteswaram Police Station,
Thanjavur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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P.N.PRAKASH, J

AND

R.HEMALATHA, J

PJL

Pre-delivery Judgment made in
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and
CrI.A(MD)Nos.452, 453 & 454 of 2022

30.08.2022