

Supreme Court of India

Alagarsamy & Ors vs State By Deputy Superintendent Of ... on 22 October, 2009

Author: V Sirpurkar

Bench: V.S. Sirpurkar, Deepak Verma

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"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1984 OF 2008

Alagarsamy & Ors.

.... Appellants

Versus

State By Deputy Superintendent  
of Police

.... Respondent

JUDGMENT

V.S. SIRPURKAR, J.

1. This appeal is at the instance of the appellants, namely, Alagarsamy, original accused No. 1 (A-1), Ponniah, original accused No. 3 (A-3), Jothi, original accused No. 4 (A-4), Manikandan, original accused No. 5 (A-5), Andichami, original accused No. 7 (A-7), Manoharan, original accused No. 8 (A-8), Renganathan, original accused No. 9 (A-9), Markandan, original accused No. 11 (A-11), Rasam @ Ayyavu, original accused No. 12 (A-12), Sakkaramurthy, original accused No. 13 (A-13), Alaghu, original accused No. 14 (A-14), Rajendran, original accused No. 15 (A-15), Sekar, original accused No. 18 (A-18), Chockanathan, original accused No. 20 (A-20), Selvam, original accused No. 21 (A-21), Chinna Odugan @ Chinna Ulunthan, original accused No. 22 (A-22), Ramar, original accused No. 40 (A-40). All these accused persons were convicted by the Trial Court, whose judgment was confirmed by the High Court. All of them were convicted for the offences under Section 302 read with Section 34 of the Indian Penal Code (hereinafter called "IPC" for short) and/or Section 149 IPC alongwith other persons on the allegation that they had committed murder of as many as six persons belonging to Adidravida (a Scheduled Caste) community on 30.6.1997. Basically, the charge against all the 40 accused persons, who were tried, was that they were inimical with the persons of Adidravida community in the Village Melavalavu, as there was an election dispute. This dispute arose on account of the election of Adidravida community person being elected to the post of Pradhan (President), which was not liked by the Caste Hindus. Ultimately, in order to wreck avenges against the people of Adidravida community, an unlawful assembly was formed near a shop in the Village Melavalavu and the persons belonging to Adidravida community were attacked.

The further allegation is that some of the Adidravida community persons including the Pradhan and other office bearers had gone to Madurai to meet the Government officials in pursuance of their demands and while they were returning by bus, some of the accused persons entered into the bus, armed, and when the bus came in the Village Melavalavu near Todi Shop, accused persons who had travelled in the bus and others who had gathered near the spot, assaulted the persons belonging to Adidravida community including the Pradhan and the other office bearers of the Panchayat and murdered as many as six persons belonging to Adidravida community. Various charges were levelled against 40 persons including the charge under Sections 148 IPC, 302 read with Section 149 IPC, 302 read with Section 34 IPC, 302 substantively, as also the charge under Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. As many as 17 persons were held guilty by the Sessions Judge under Sections 148 IPC and also under Section 302 read with Section 34 IPC alongwith offences under some other Sections. Three appeals were filed at the instance of the accused persons. All the appeals were disposed of by a common judgment of the High Court, dismissing all the appeals and that is how the appellants are before us by way of the present appeal, challenging their conviction and the sentences awarded by the Sessions Judge and confirmed by the High Court.

2. Briefly stated, the prosecution case was as follows.

3. The gory incident which took place, had its seeds sown in mid 1996, when Melavalavu Village Panchayat was declared to be reserved for the Scheduled Caste people. This was not liked by the caste Hindus of the Village, generally belonging to Ambalakara community and thus, an inimical feeling was being nurtured by the people of this community against the Adidravida persons. So much so that when the elections were declared in the year 1996, some of the houses belonging to the members of the Scheduled Caste were burnt. The election was conducted on 31.12.1996 and one Scheduled Caste candidate namely Murugesan (Deceased No. 1) was elected as President of Melavalavu Panchayat. Even before this election, twice the election had to be cancelled, as on both occasions, the whole election process was thwarted by the caste Hindus.

4. On the fateful day, Murugesan (deceased No. 1), Mookan, Vice President (deceased No. 2), Chelladurai (deceased No. 5), Sevagamoorthi (deceased No. 3) and some others had gone to Collector's Office, Madurai for claiming compensation for the damage caused to the houses of three persons, which houses were burnt. They could not meet the Collector, as he was not available, therefore, one Kanchivanam (PW-12) was asked to wait in their office and the others boarded the bus from Madurai. Prosecution alleged that one Krishnan (PW-1) was also travelling by the said bus. When the bus reached Melavalavu, one Kumar (PW-2) and Chinnaiya (PW-3) got at the bus and at that time, 5 accused persons, namely, Algarsamy (A-1), Doraipandi (A-2), Jothi (A-4), Manikandan (A-5) and Manivasagam (A-6) boarded the bus. Prosecution alleges that they were armed. When the bus reached Village Melavalavu, Doraipandi (A-2) shouted at R. Nagaraju (PW-14), the Driver, to stop the bus. The Driver (PW-14) stopped the bus and at that time, all the accused persons surrounded the bus with weapons. They started murderous assault on Murugesan (deceased No. 1) and others, who were in the bus, as also some others, who were in the crowd. It has come in the evidence that Murugesan was beheaded and his head was carried by Algarsamy (A-1). This incident was seen by Krishnan (PW-1), Kumar (PW-2) and Chinnaiyya (PW-3), who were also injured,

having been assaulted by some of the accused persons. The incident was also witnessed by Moorthy (PW-4), Periyavar (PW-5), Palani (PW-6), Ganesan (PW-7), Yeghadesi (PW-8), Mayavar (PW-9), Kalyani (PW-10) and Karuppan (PW-

11). Grief and fear stricken Krishnan (PW-1), Kumar (PW-2) and Chinnaiyya (PW-3), who were injured, managed to reach Melur Government Hospital on bicycle. They were given first-aid and were provided transport for being taken to Madurai Government Hospital. The incident came to the knowledge of Rajshekharan (PW-47), Inspector of Police at about 5.30 p.m. He reached the Hospital, recorded the statement of Krishnan (PW-1) and on the basis of the same, registered Crime No. 508 of 1997 for offences under Sections 147, 148, 341, 307 and 302 IPC, as also under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He dispatched the copies of the First Information Report (FIR) to the Judicial Magistrate, Melur, as also to his superior Dy. Superintendent of Police, District Crime Branch, Madurai. The DSP took up the investigation, formed a special team and reached the spot without wasting any time and commenced the investigation. Inquest Panchanamas and Spot Observation Panchanamas were prepared. Blood stained articles were seized from the bus and from other places. The bodies were also sent for Post Mortem. The blood stained articles were sent to the forensic science laboratory and after completing the investigation, the chargesheet came to be filed on 25.9.1997. At the Trial, as many as 50 witnesses were examined and 121 documents were got proved. 55 material objects were also produced. 2 defence witnesses were examined and as many as 19 documents were got proved by the defence, they being D-1 to D-19. The accused pleaded ignorance, however, as has been stated, as many as 17 persons came to be convicted by the Sessions Judge. Their appeals were also dismissed by the High Court. Before the High Court, some private individuals, who were the witnesses, also had filed the revisions, challenging the acquittal of few accused persons. However, the High Court, by a common judgment, dismissed those revisions. Thus, we are left with the appellants before us.

4. Shri Altaf Ahmad, Learned Senior Counsel led the arguments on behalf of the appellants, while Shri Kanagaraj, Learned Senior Counsel represented the State.

5. The Learned Senior Counsel appearing on behalf of the appellants, firstly, pointed out the order passed by this Court, whereby the prosecution was directed to produce the FIR Book of the Melavalavu Police Station, in which the FIR dated 30.6.1997 relating to Crime No. 508 of 1997 was reflected. He then pointed out that the prosecution had not produced the said FIR Books nor was there any plausible explanation for this non-compliance. Based upon this argument, Shri Altaf Ahmad further invited our attention to the two reports, they being, firstly, the report by Tahsildar to Collector of the said date and the second being the one authored by District Collector, Madurai sent to Secretary, Public Law and Order Department, Secretariat at Chennai. Our attention was specifically invited to the fact that though the Crime No. 508 of 1997 was reflected in the said reports and though all the facts were also reflected regarding the ghastly incident alongwith the names of the deceased persons and injured persons, yet the names of the accused persons against whom the FIR was filed, were conspicuously absent. We were taken through the reports, particularly, report of the Tahsildar to Collector being Exhibit D-13 and it was pointed out by the Learned Senior Counsel that there was a graphic description of the incident in that report. The background of the incident was also reflected, but excepting the name of Duraipandi (A-2) no other

name of the accused persons was mentioned. The other accused persons were referred to as "Fourteen others". The Learned Senior Counsel pointed out that in Exhibit D-18, which was a report from the Collector to the Secretary and D-19, which was a second report from the Collector to the Secretary, reporting the law and order situation in Melavalavu on account of this incident, the names of the accused were not to be seen. The Learned Senior Counsel also invited our attention that it is only in the report dated 17.7.1997 that the Tahsildar has reported the names of as many as 34 accused persons. From this, the Learned Senior Counsel suggests that, in fact, the names of the accused persons were not known to anybody even on that day nor were they reported to the Police Station. The Learned Senior Counsel, therefore, mocked at the prosecution's claim that the names of the accused persons or as the case may be, majority of them, became known to the investigating agency immediately after the incident through the statement of Krishnan (PW-1). Our attention then was invited to the evidence of Krishnan (PW-1), the injured eye-witness, Rajshekharan (PW-47), the Police Officer, who got the offence registered in the Police Station and Nambi (PW-18), the Tahsildar, who was the author of the report regarding the law and order situation in Village Melavalavu. From this, the Learned Senior Counsel urged that the basic story, as revealed in the so-called FIR, Exhibit P-53 was itself shrouded with mystery and there was absolutely no justification for accepting the claim of prosecution that the names of the accused persons became available to the investigating agency almost immediately. The Learned Senior Counsel, therefore, urged that under such circumstances, the FIR was liable to be thrown out on this ground alone and the FIR had lost all its credibility, particularly, because the deliberate attempt on the part of the prosecuting agency to suppress the FIR Book, which though demanded right from Trial Court to this Court, was not supplied by the prosecution nor was its mysterious absence explained.

6. As a sequel to his argument, it was urged that once the FIR itself becomes a doubtful document, then the whole prosecution becomes doubtful and it was obvious that the names of the accused persons surfaced based on imagination. It was further pointed out that the First Information Report was inconsistent with the station diary as the serial number given to that FIR did not tally. In this behalf, our attention was drawn to crime Nos. 506-507 which though earlier, bore subsequent numbers as compared to crime No. 508. It was also pointed out that the Tahsildar, Shri K. Pullani who had made the report Ex. D-13 had turned hostile, so also the so-called author of the FIR, Krishnan (PW-1) also turned hostile was of no use. The Learned Counsel also pressed into service the writ petition filed by Krishnan (PW-1) wherein he had alleged that the real culprits were left out and were never proceeded against by the investigating agency, meaning thereby the present accused persons had in fact nothing to do with the incident. Our attention was also drawn to the evidence of R. Santhanakrishnan (PW-13), the bus Conductor and R. Nagaraju (PW-14), who was the Driver. It was pointed out that these two persons claimed that they had reported the incident much earlier in the same police station. On the basis of this material, the Learned Counsel contended that the whole prosecution case was liable to be thrown as being suspicious and the evidence was bound to be rejected and the Courts below had erred in relying upon the prosecution witnesses and convicting the accused persons. The Learned Counsel heavily relied on the judgment reported as *Sevi & Anr. v. State of Tamil Nadu* in 1981 Suppl. SCC 43 wherein this Court had thrown the prosecution case on the basis of non-production of the FIR Book.

7. As against this Learned Senior Counsel Shri Kanagraj took us through the judgment of the Courts below as well as the relevant evidence. According to Shri Kanagraj, the incident had taken place in broad day light, wherein as many as six dalit persons were slaughtered and, therefore, the eye witnesses had the full opportunity to watch the gory incident. He pointed out that though some witnesses had turned hostile, yet there was enough evidence on record to convict the accused persons and they were rightly convicted. According to Learned Senior Counsel, the FIR was not a be-all and end-all of the matter and in fact, the report made by the Tahsildar to the Collector and the two reports made by the Collector to the Secretary were irrelevant and the whole FIR could not be tested on the backdrop of those reports. He pointed out that these two officers (Tahsildar and Collector) had nothing to do with the investigation and merely because the names of the accused persons were not mentioned in these reports, it did not affect the prosecution case at all. The Learned Senior Counsel also pointed out further that the situation was tense, inasmuch as, six dalit persons had been slaughtered, due to which there was widespread violence in the village and under such circumstances, if the FIR was recorded in some other book than the regular book, that by itself, did not diminish the value of the FIR. It was further pointed out that the evidence of Krishnan (PW-1) was not liable to be thrown altogether, merely because he had turned hostile and it was clear that he turned hostile only at the last stage of cross-examination and, therefore, the part of the evidence was rightly accepted by the Trial Court and the Appellate Court.

8. Shri Kanagraj, the Learned Senior Counsel did fairly accept that the FIR book could not be produced, however, he pointed out that there was an affidavit on record, explaining that in spite of the honest efforts, the said FIR book could not be found and that it could have been mis-placed. However, merely because the FIR book was not found, that by itself did not diminish the evidentiary value of the evidence of eye-witnesses, few of whom were also the injured witnesses. The Learned Senior Counsel invited our attention that the prosecution had fully established the presence of the accused-appellants and their actual participation in the ghastly incident. The prosecution had also examined the doctors, who had proved the injuries of the injured witnesses to suggest that these injured witnesses were actually injured in the incident, thus their presence could not have been doubted.

9. Lastly, the Learned Senior Counsel urged that the view taken by this Court in *Sevi & Anr. v. State of Tamil Nadu* (cited supra) was restricted to the facts in that case. According to the Learned Senior Counsel, it was undoubtedly true that FIR book was an important document and it was correct that the said FIR book would have been extremely important in deciding upon the genuineness of the FIR in this case, yet merely because the said book could not be made available, that by itself, would not result in the whole prosecution case being thrown out. Learned Senior Counsel was at pains to point out that the Court in the above cited decision had disbelieved the evidence of the eye-witnesses on the ground that they were partisan witnesses. The Court had also commented upon the dramatic nature of the evidence of witnesses and the case of the prosecution. According to Learned Senior Counsel, such was not the situation in the present case and the evidence was not only credible but unmistakably pointed out to the guilt of the accused persons. Learned Senior Counsel, therefore, contended that it was not possible to throw the whole prosecution case for the failure of the prosecution to produce the FIR book. He, however, pointed out that the accused persons were rightly convicted and the Trial Court and the Appellate Court had properly appreciated the evidence

of the prosecution and convicted the accused persons.

10. On these rival contentions, it is to be seen whether the whole prosecution case is liable to be discarded on the basis of the aforementioned irregularities, which mostly pertain to the FIR. The importance of FIR cannot be underestimated, as it is first version, on the basis of which the investigation proceeds. This Court, has from time to time, emphasized the importance of the FIR and as such, there can be no question about the necessity to examine the credibility of the FIR. In the present case, by its order dated 8.3.2007, this Court held that :-

"The respondent State is directed to place before this Court FIR Diary within two weeks. Post the matter after two weeks for final hearing on any non-miscellaneous day."

This was obviously on the prayer to that effect made by the defence, inasmuch as the defence, all through contended that everything was not alright with the document of FIR. It was the basic contention of the defence before the High Court, as also before us that the FIR in this case was not a genuine document. This was based on the contention that the FIR Book was not made available to the defence, though was asked for. Section 154 (1) Cr.P.C. provides that the substance of FIR, when it is registered, has to reflect in the FIR Book maintained by the Police Station. Our attention was drawn to Exhibits D-9 and D-10, bearing Crime No. 506 of 1997 and Crime No. 507 of 1997 respectively and it was pointed out that they were given the numbers 614642 and 614643 respectively. It was then pointed out by the Learned Senior Counsel for the appellants that Crime No. 508 of 1997, vide which the present FIR was registered, however, bears No. 610327 and, therefore, according to the defence, it is obvious that the FIR in this case was not taken in the regular FIR Book. According to the defence, this is the first suspicious circumstance. The Learned Senior Counsel suggested that the real FIR might have been suppressed and in its place, the present FIR might have been substituted. All this is on account of the circumstance that in the present FIR, on the basis of which the present prosecution has proceeded, the names of 34 accused persons are reflected and the present appellants' names are found in those 34 accused persons. Perhaps that is why the Court had ordered that "this diary of FIR, or as the case may be, FIR, to be produced before us".

11. Shri Kanagaraj, Learned Senior Counsel for the respondent State, however, very frankly and fairly admitted that the said FIR Book is not available. Our attention was invited to the Counter Affidavit placed on record, sworn by one S. Maran, working as Dy. Superintendent of Police, Melur Police Sub Division, Madurai District, Tamil Nadu, wherein the Deponent has referred to such mix up of the numbers and in his reply to the Ground No. XXX and XXXI, pointed out that Exhibit P-53, which is the present FIR, was the only FIR in this case. The Affidavit further goes on to say that the Serial number of the FIR has also been proved. However, the Deponent asserts that merely because the preceding Crime Numbers do not tally, it cannot be concluded that the earlier FIR has been burked. It is then pointed out in that affidavit that Krishnan (PW-1), who is the author of the FIR, though had turned hostile, had not denied lodging of complaint to the Police by him, marked as Exhibit P-1 and this is the basis of the printed FIR (Exhibit P-53), which bore S.No. 610327. It is then asserted that though Exhibit D-9 and D-10 carried out S.Nos. 614642 and 614643, that by

itself, did not falsify the prosecution case, since Krishnan (PW-1) was not confronted with this position that he had given any other FIR than the one which has surfaced in this case. On this basis, Shri Kanagaraj, Learned Senior Counsel for the respondent suggested that because of the prevailing tension and the terrible chaos, which had been caused due to slaughtering of 6 Dalits and the further violence which followed the unfortunate incident, the Investigating Officer might have used a different Book for recording the present FIR. The Learned Senior Counsel argued that the concerned FIR is based on complaint Exhibit P-1, which was given to Rajshekharan (Investigating Officer) (PW-47) only in the hospital. When we see the original FIR, it is apparent that the date and time of information mentioned in the same is 30.6.1997 at 20.00 Hrs., whereas when we see the original complaint, it is recorded at 18.30 Hrs. in Madurai Rajaji Hospital and is sent to the Melur Police Station at 20.00 Hrs. when the offence is registered. It is a long complaint, in which Krishnan (PW-1) has specifically spoken about the attack at one place. It is stated in the complaint that:-

"When that Bus stopped at Melur Bus Stand, the Ambalakara community people of Melavalavu Doraipandi, Jayaraman, Ex. President Alagarsamy, Ponniah, Muthuvel and Jothi of Nagappanpaddi, Manikandan and our community people Kumar, Chinniah boarded in that bus. When the bus was nearing the Kallukadai Medu Bus Stop, one Doraipandi was standing and shouting near the seat of the driver. The driver stopped the bus.

About 40 persons under the leadership of one Ramar, Panchayat President of Sennagarampatti stood around the bus with aruval and knife with them. Alagarsamy who was in the bus, questioned Murugesan by saying "you down caste fellow need the President Post and compensation" and stabbed in the shoulder of Murugesan with a lengthy knife. Ourselves, the injured Murugesan and the passengers scattered, deboarded from the bus and ran away. Alagarsamy who was standing in the backside steps held the head of Murugesan and cut on his neck and head repeatedly. The head of Murugesan was beheaded. Ramar hacked on the left side head of Raja. Jothi chased Mookan with aruval in the field side. Manikandan stabbed in the left side of the neck and left hib of Chelladurai. One Manivasagam of Malamapatti hacked in the back portion of the neck and in the right side ear of Sevugamoorthy. Sevugamoorthy fell down with alarming sound. Ponniah hacked on the ear and neck of Boopathy. Jayaraman stabbed in the stomach of Boopathy. Doraipandi hacked me in the right shoulder in the back side. Manivasagam, Andichamay, Manoharan, Ranganathan, Alagarsamy, Manoharan, Dinakaran, Markandan, Rasam @ Ayyavu, Sarkaraimoorthy, Alagu, Rajendran, Baskaran, Karanthamalai, Sekar, Tamilan, Selvam, Chinna Odungan, Chockanathan, Elavarsan, Amblam, Sethu, Kalangiam, Mani, Sevugaperumal and 10 other unidentifiable persons were there and rounded up the bus with lethal weapons. They assaulted Kumar and Chinniah and the above said injured persons with aruval and patta knife repeatedly. Alagarsamy holding the head of Murugesan, ran away to the field of one Paganeri Chettiar in the western side. The persons who were with lethal weapons threatened one Periyavar, Egathesi, Mayavar, Kalyani, Karuppan and the people from other community by saying that we will kill you if you come closer to us and to run away back. The persons who were having the lethal weapons went towards the western side. The Driver and Conductor of the bus who got afraid of the incident took the vacant bus towards Melur."

12. Thus, it is obvious that the witness had lodged a complaint with Rajshekharan (PW-47) with this graphic description of the assault. The witness himself was injured and with great difficulty, had gone to the hospital on a bicycle. When we visualize the whole scene, it is obvious that the fear-stricken witness, who had seen 6 persons being slaughtered ruthlessly, had with great difficulty managed to run away in an injured condition to the hospital and getting the cue of the whole incident, the Investigating Officer went and recorded his complaint there in the hospital itself barely within one and half hours from the incident. That certainly would have taken some time and without wasting any time further, the said FIR was sent not only to the Police Station, but the copies thereof were sent immediately to the Magistrate. The sending of the FIR to the Magistrate could not be disputed by the defence either before the Trial and Appellate Court or even before us. Therefore, thought from any angle, it cannot be imagined that in such a short time, a fake FIR can be prepared with graphic description, not only of the incident, but the occurrences which took place prior to the incident and subsequent thereto also, with the names of the accused persons, the weapons handled by them and the role played by them, individually, as well as, collectively. We have very carefully seen the evidence of Krishnan (PW-1). We do not find in his evidence, any suggestion that he had not made the said complaint to Rajshekharan (PW-47) in the hospital. There can be no dispute that the witness, at the fag end of his evidence, was declared hostile. There can also be no dispute that after the evidence commenced, he went to Madras and also filed a Writ Petition. We shall consider that part of the evidence in the later stage of this judgment, but the fact of the matter, which emerges is that the witness had certainly written the complaint, duly signed by him, which complaint, without any waste of time, was sent to the Police Station, on the basis of which the printed FIR was registered and then a copy thereof was sent to the Magistrate instantaneously. It completely rules out the FIR being a bogus document or a doctored document. We have already referred to an affidavit of Dy. Superintendent of Police, Melur Police Sub Division, Madurai District, Tamil Nadu, who has given his reasons. However, we have also another affidavit on record, explaining that the said FIR Book was lost and was not traceable in the Police Station record.

13. Considering the unprecedented nature of this prosecution, the chaos that it caused in the otherwise peaceful life of the Village and the enormousness of the whole affair, the number of persons murdered, the number of witnesses collected and the enormousness of the investigation, we cannot blame the investigating agency and the prosecution for not being able to trace out the FIR Book. There are always wheels within the wheels and, therefore, there can also be possibility of some interested person, secreting the said FIR Book, though in the absence of any concrete or positive evidence, we would not be justified in so holding. However, possibility of such eventuality cannot be ruled out altogether, still the question is whether the non-availability of the FIR Book, by itself, could invite the suspicious glance from the Court. In our opinion, that circumstance, by itself, will not persuade us to throw the whole prosecution case.

14. This brings us to the other leg of the argument of Shri Altaf Ahmad, Learned Senior Counsel for the appellants, whereby the Learned Senior Counsel drew our attention to the report Exhibit D-13, by Shri K. Pullani, Tahsildar, Melur, which is the first report regarding the incident, sent by him to the Collector. Shri Ahmad pointed out that in this report, there is a detailed description of how the incident took place, the names of the persons who lost their lives and the names of 3 persons who were injured and were admitted in the Melur Government Hospital. Significantly enough, the name



of Krishnan (PW-1) is to be found in this report also. Our attention was specifically invited by the Learned Senior Counsel that the report contained the basic reasons for these untoward incident. It was also pointed out that the wounded victim Krishnan (PW-1) had lodged a complaint with the Melur Police Station and a case was registered in the Crime No. 508 of 1997. The Learned Senior Counsel further pointed out that the report says that the case was registered against Doraipandi S/o Markandan and 14 others. Thereby the Learned Senior Counsel said that by that time, the FIR was registered and yet there were no names mentioned of the accused persons. Our attention was also invited to Exhibit D-18, which is a report from the District Collector to the Secretary, Public (Law and Order) Department, Secretariat, Chennai, which is of the same date. The Learned Senior Counsel also pointed out that even this report is totally silent about the names of the accused persons. Our attention then was invited to the report of the same date, marked as Exhibit D-19, sent by Kasinathan, District Collector, Madurai to the Secretary to Chief Minister, Chennai and which is a second report and a more detailed report, as compared to the earlier report of the Collector. The Learned Senior Counsel pointed out that excepting the name of Doraipandi and 14 other known persons, the report is silent. Lastly, our attention was also invited to D-14, the report dated 17.7.1997, sent by Shri K. Pullani, Tahsildar, Melur to the District Collector, Madurai, where, for the first time, the names of the 34 accused persons surfaced. From this, the Learned Senior Counsel suggested that till 17.7.1997, these responsible Revenue Officers, who were in charge of the whole law and order situation in the Village, did not disclose the names of the accused persons. Learned Senior Counsel pointed out that had the FIR (Exhibit P-53) been a genuine document, then such thing could not have happened and the names of at least those persons who had surfaced in the complaint of Krishnan (PW-1), would certainly have found place in the report of the Tahsildar, as well as, the Collector. According to the Learned Senior Counsel, the absence of these names puts the FIR in the darkness of suspicion. The Learned Senior Counsel pointed out that in the backdrop of the fact that there is mix up of the Serial numbers of the FIR, this situation assumes great importance.

15. We have deeply considered the above mentioned three reports, as also the contentions raised that coupled with earlier circumstance of the FIR Book not being made available, the whole prosecution story would be rendered extremely suspicious. We are unable to agree. All the three reports would be of no consequence, as the two concerned Officers had nothing to do with the investigation of the offence. The mere fact that in his (Tahsildar's) report Exhibit D-13 and also the second report, the names of the accused persons did not figure, does not, in our opinion, amount to a very clinching circumstance. Law and order in the village was the prime concern of this Revenue Officer, who sent these two reports. It was not his task to investigate the offence. He was merely reporting the prevailing situation in his village to his superiors as per his duty. Therefore, merely because the names of the accused persons did not figure in his report, would not, in our opinion, matter. It is nobody's case that he was actively assisting or was directly connected or cooperating with the Investigating Officer. By these reports, he merely did his duty of informing his Collector, the prevalent situation, which was undoubtedly tense. Therefore, the non- mention of those names in the aforementioned reports, would, in our opinion, be of no consequence. Similarly, for the report by the Collector to the Secretary, the same comment is applicable. The Collector was not a man on the spot. He was merely acting on the basis of the report sent to him by the local officer. Therefore, his report is also of no consequence. The High Court has considered these contentions in Paras 14

and 15 of the impugned judgment and the High Court has come to the conclusion that the contention that original FIR was suppressed and the present FIR is a concocted FIR, was liable to be rejected. The High Court, has in its finding, accepted the explanation given by Rajshekharan (PW-47) and has recorded his satisfaction on that explanation. We do not agree with some expression in Para 15 of the impugned judgment, which is to the following effect:-

"As rightly pointed out, when the entire village was under the grip of fear on account of 6 murders, that too between two communities in the same village, it cannot be said that the Investigating Officer was sitting idle in doing the investigation systematically and as per rules."

We do not think that the Investigating Officer was expected to act contrary to the rules and we do not think that in the investigation, he has acted contrary to the rules. We agree with the High Court's subsequent comment that Rajshekharan (PW-47) had acted diligently and quickly and, therefore, the confusion regarding the FIR could not be such a discrepancy, which would taint the FIR with illegality. The High Court has correctly relied on the reported Judgment in the case of State of Karnataka Vs. K. Yarappa Reddy [1999 (8) SCC 715], where this Court observed:-

"But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well-high settled 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. The Court must have predominance and pre-eminence in criminal trials over the action taken by Investigating Officers. Criminal justice should not be made a casualty for the wrongs committed by the Investigating Officers in this 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."

16. The other decisions relied upon by the High Court, for example, decision in the case of Nirmal Singh Vs. State of Bihar reported in 2005(9) SCC 725 and Sanganagouda A. Vs. Veeranagouda Vs. State of Karnataka reported in 2005(12) SCC 468 also give out the position that merely because doubts are raised about the FIR and the nature of prosecution case, that by itself, would be fatal to the prosecution case.

17. After all, the FIR is not a be-all and end-all of the matter, though it is undoubtedly, a very important document. In most of the cases, the FIR provides corroboration to the evidence of the maker thereof. It provides a direction to the Investigating Officer and the necessary clues about the

crime and the perpetrator thereof. True it is that a concocted FIR, wherein some innocent persons are deliberately introduced as the accused persons, raises a reasonable doubt about the prosecution story, however, a vigilant, competent and searching investigation can despoil all the doubts of the Court and on the basis of the evidence led before the Court, the Court can weigh the inconsistencies in the FIR and the direct evidence led by the prosecution. It is not a universal rule that once FIR is found to be with discrepancies, the whole prosecution case, as a rule, has to be thrown. Such can never be the law. In the decision relied upon by Shri Altaf Ahmad, Learned Senior Counsel for the appellants in *Sevi & Anr. v. State of Tamil Nadu* (cited supra), it is clear that the Court had thrown the prosecution case not merely because the FIR was doubtful, but as the Court found that the prosecution case and the evidence of the eye-witnesses, even otherwise, was liable to be rejected, as they were the partisan witnesses. The Court took into account the dramatic pattern of the evidence of the witnesses and, therefore, thrown the prosecution case because of the non-availability of the FIR Book. The importance of the FIR Book cannot be under-estimated. At the same time, however, if the investigating agency is able to collect reasonable evidence against the accused persons and such evidence stands the scrutiny of the Court, then such a discrepancy, as shown in that case, need not be fatal. The High Court has precisely taken that view. The reasons given by the High Court in Paras 15 to 20 of the impugned order, are the cogent and correct reasons. We are in complete agreement with the High Court's finding that the evidence of eye-witnesses, which included injured eye-witnesses, was supported and corroborated by the other witnesses and such evidence could not be disturbed or ignored for the mere reason that FIR Book was not produced or that there was doubt regarding the names of the accused persons, which were to be found in Exhibit P-1 (complaint). Those accused persons, against whom the evidence was not acceptable, have been accredited, in spite of their names figuring in the FIR. If the argument of the Learned Senior Counsel to the effect that a suspicious and doubtful FIR would have the effect of throwing out the whole prosecution case, is accepted, then there would be no necessity of leading any evidence. The correct view would be to weigh all the situations including the discrepancies found in the FIR, as also the other evidences made available before the Court and after carefully appreciating the same, to come to the correct conclusion. That is precisely what has been done in this case.

18. In fact, barring the aforementioned argument regarding the FIR, no arguments were led before us, assailing the evidence of the eye-witnesses, as also the injured witnesses and the other corroborating circumstances relied on by the Courts below.

19. As many as 11 witnesses were examined by the prosecution, which included 3 injured witnesses. The evidence of Krishnan (PW-1), Kumar (PW-2) and Chinnaiya (PW-3) was of paramount importance, as they were the injured eye-witnesses. The other eye-witnesses were Moorthy (PW-4), Periyavar (PW-5), Palani (PW-6), Ganesan (PW-7), Yeghadesi (PW-8), Myavar (PW-9), Kalyani (PW-10) and Karuppan (PW-11). We have checked the evidence of these witnesses. Though some of them hostile, however, on the basis of the appreciation of these witnesses, the case against the present appellants was accepted by the High Court. With these, we have also considered the evidence of Rajshekharan (PW-47), the Investigating Officer, who has rightly been believed by the High Court. The evidence of Dr. Venkatachalam (PW-23), who was the Assistant Duty Officer of the Casualty Ward, was also extremely important and provide corroboration to the evidence of Krishnan (PW-1). Much was said against Krishnan (PW-1), who was declared hostile at the fag end of his

cross- examination. He was also taken to Chennai to file a Writ Petition, questioning the correctness of the prosecution. However, the Courts below have chosen to rely on part of the evidence. The High Court has noted that his Examination-in-Chief was recorded on 2.4.2001 and on the same day, he was cross-examined by the three defence counsel. Then only later, on 26.6.2001, when he was recalled, he was treated as a hostile witness. We agree with the comment of the High Court that the witness was tried to be won-over after his cross examination. Much was made about Exhibit D-1, which is the affidavit of Krishnan (PW-1) in the Writ Petition filed by him, wherein he had stated that he was afraid of the prosecution party. Strangely enough, this affidavit was sworn for the first time after one and half years of the incident. Even in his cross- examination on 2.4.2001, he had stated that he was taken and his signatures were obtained under threat. He appears to be a poor villager and his affidavit appears to have been "obtained" and there is much to be stated about this affidavit. The High Court has dealt with it and had chosen to rely on the earlier part of his evidence. The law is now well settled that merely because the witness is declared as hostile witness, whole of his evidence is not liable to be thrown away [See reported decisions in Syed Akbar Vs. State of Karnataka reported in 1980 (1) SCC 30, Rabindra Kumar Dey Vs. State of Orissa reported in 1976 (4) SCC 233 and Bhagwan Singh Vs. State of Haryana reported in 1976 (1) SCC 389]. We agree with the High Court in its appreciation of the evidence of this witness and the acceptance thereof. Even the evidence of Palani (PW-6) and Ganesan (PW-7) was relied upon by the High Court besides the first three witnesses, though that evidence was rejected by the Trial Court. The High Court has given good reasons why it has chosen to accept the evidence of Palani (PW-6) and Ganesan (PW-7). The High Court has also referred to the evidence of Periyavar (PW-5), Yeghadesi (PW-8), Mayavar (PW-9) and Kalyani (PW-10) and has accepted that their evidence corroborate the evidence of Krishnan (PW-1), Kumar (PW-2) and Chinnaiya (PW-3). Again in Para 45 of the impugned judgment, the High Court has referred to the aspect of FIR Register and Exhibits D-13 (report of the Tahsildar to Collector), D-18 (report from the District Collector to Secretary, Public (Law and Order) Department, Secretariat, Chennai) and D-19 (second report from the Collector to the Secretary) and had chosen to accept the explanation given by Rajshekharan (PW-47) in his evidence.

20. In short, the High Court has considered the whole matter in details and has recorded its finding that inspite of the discrepancies about non- availability of the FIR Book, the confusion about the principles of FIR, some inconsistencies in the evidence of Krishnan (PW-1) and the Writ Petition filed by him and his affidavit (Exhibit D-1) therein, there was ample evidence available to come to the conclusion regarding the guilt of the appellants.

21. We are convinced that the findings of the Trial Court and the Appellate Court are correct findings in law. We find that there is no merit in the Appeal and it deserves to be dismissed. It is accordingly dismissed.

.....J.

[V.S. SIRPURKAR] .....

[DEEPAK VERMA] New Delhi;

October 22, 2009