2024 LiveLaw (SC) 244

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
HRISHIKESH ROY; J., SANJAY KAROL; J.
CRIMINAL APPEAL NO. 270 and 271 OF 2019; 18th March 2024
PERIYASAMY *versus* **THE STATE REP. BY THE INSPECTOR OF POLICE**

Criminal Law– Standard of proof – Beyond reasonable doubt – Various lapses cumulatively affect the overall sanctity of the prosecution case, making it fall short of the threshold of beyond reasonable doubt. The prosecution case stands shaken beyond a point to which no conviction resting thereupon can be said to be just in the eyes of law. *(Para 47)*

Indian Evidence Act, 1872 –Independent witness – No independent witnesses were examined – The non-examination of independent witnesses would not be fatal to a case set up by the prosecution but if witnesses examined are found to be 'interested' then, the examination of independent witnesses would assume importance. It is hard to conceive how the Trial Court concluded that despite being the first cousin of D-1 and himself a person injured in the incident, PW-1 was not an interested witness. Further, considering categorical statement that "the wine shop is in the main road" and "the wine shop would be crowded always" the joining of independent witnesses ought not to have been a difficult task but, yet, it remained unachieved. *(Para 31)*

Court has to strike a balance between testimonies of Injured Witness & Interested Witness. The evidence of an injured witness is considered to be on a higher pedestal than that of a witness simpliciter. *(Para 28 & 34)*

Indian Evidence Act, 1872 – Delay in filing the FIR and delay in examination of prosecution witness – The delay therefore renders the circumstances questionable. Hence, it cannot be said that the prosecution had succeeded in establishing its case against the two accused persons beyond reasonable doubt warranting a conviction under Section 302 IPC. *(Para 42)*

Indian Penal Code, 1860 – The Right of Private Defence – The law provides that the person claiming such a right bears the onus to prove the legitimacy of the actions done in furtherance thereof and it is not for the Court to presume the presence of such circumstances or the truth in such a plea being taken. *(Para 19) Raghbir Singh & Ors. v. State of Haryana, (2008) 16 SCC 33; referred.*

For Appellant(s) Mr. Vipin Kumar Jai, AOR Mr. Vipul Jai, Adv. Mrs. Gurinder Jai, Adv. Ms. Sanjna Dua, Adv. Mr. S. Nagamuthu, Sr. Adv. Mr. B. Balaji, AOR Mr. S. Arun Prakash, Adv.

J U D G M E N T

SANJAY KAROL J.

1. The present appeals arise from the final judgment and order dated 26th November 2014 passed by the Madurai Bench of Madras High Court, in Crl. A. (MD) No. 238 and 240 of 2014, which confirmed the judgment and order dated 31st July 2014 in Sessions Case No. 109 of 2005 passed by the Sessions Court, Tiruchirapalli, *vide* which the present

appellants, Periyasamy[1] and R. Manoharan[2] were convicted in the following terms under the Indian Penal Code[3]:

S.No	Name	Crime	Punishment Awarded
1.	A1 – Periyasamy	IPC – S.302 (2 counts)	Imprisonment for life and Rs. 1,000 fine
		IPC – S.307 (2 counts)	Rigorous Imprisonment for seven years and Rs. 1,000 fine
2.	A2 - R. Manoharan	IPC – S.302 r/w S.109 (1 count)	Imprisonment for life and Rs. 1,000 fine
		IPC – S.307 r/w S.109 (2 counts)	Rigorous Imprisonment for seven years and Rs. 1,000 fine

2. The incident in question relates to the death of two persons after being stabbed, allegedly by A-1 at the instigation of A-2. The prosecution case emerging from the record, as also set out by the Courts below, is as follows:-

2.1 On 3rd March 2002, Dharmalingam[4] had after already having procured liquor in an earlier completed transaction, half an hour later demanded more brandy on credit from the owners and workers of Saravana Wine Shop located in Neithalur Colony. A quarrel arose, and a showcase of the shop was smashed, and the bottles stored therein were damaged. In this course of events, it is alleged that D-1 retrieved a knife and stabbed one Thangavel[5] (one of the owners of the shop). A-1, with a knife, caused fatal injuries to D-1. He also stabbed Sakthivel (son of Muthuveeran)[6] in his stomach repeatedly. When D-2 intervened to prevent the attack, A-1 stabbed him. While the injured persons were being taken to hospital, on the way, both D-1 and D-2 succumbed to injuries.

2.2 Sakthivel, who was injured in the incident, reported it to A. Rajasekar (PW-20), a Police Inspector at the Hospital. Upon this statement, FIR no. 87/2002 came to be registered. Upon investigation on 1st July 2004, charges were framed against A-1 and A-2, as indicated in the above table.

Trial Court Findings

3. In order to prove the charges, the prosecution examined 22 witnesses; exhibited 33 documents and nine material objects. To repel the charges, the defence produced a solitary witness and three documents.

4. The Trial Court has relied on ocular and medical evidence to establish the charges against the accused persons. PW-1 and K. Sakthivel, son of Kaathaan[7] (PW-2) both deposed that in the quarrel between the deceased and accused persons, though they tried to pacify the situation, A-2 handed a knife to A-1 with which the latter stabbed the deceased persons.

5. The Learned Trial Court found no substance in the challenge put forth by the defence attempting to shake the prosecution's case. A-1 was held guilty on two counts of

[1] Hereinafter 'A-1'
[2] Hereinafter 'A-2'
[3] Hereinafter 'IPC'
[4] Hereinafter 'D1'
[5] Hereinafter 'D2'
[6] Hereinafter 'PW-1
[7] Hereinafter 'PW2'

Section 302, IPC, i.e., for the murder of D-1 and D-2; A-2 was held guilty on one count only, i.e., for abetting the murder of D-1.

6. The charges of attempt to murder were found to be proven against both A-1 and A-2. It relied on the evidence of PW-1, PW-2, and PW-3 to hold that A-2 instigated A-1 to attack the deceased. The learned Trial Court observed that the injuries sustained by PW-1 and K. Sakthivel (PW-2) were of such a nature that the act of the accused would be termed as an act of attempt to murder.

High Court Findings

7. The High Court, in appeal, was faced with the question of the absence of the name of A-2 in the FIR. Having referred to certain decisions of this Court, it was observed that simply because the name was not mentioned in the FIR, an accused can not be absolved of liability for having committed the offence. The next question considered by the Court with respect to A-2 was his involvement or lack thereof in the occurrence of this offence. The argument on his behalf relies on the fact that PW-1's statement did not mention him, and neither did Exhs. P-6 and P-11, was considered unworthy, keeping in view the testimonies of injured eyewitnesses PW-1 and PW-2 as also the statement of PW-3 under Section 161 (3) of the Code of Criminal Procedure, 1973; it was held that the involvement of A-2 stood proved beyond reasonable doubt.

8. For A-1, three primary arguments were put forth, i.e., Dr. Radhakrishnan[8] (PW-17) Doctor at Seahorse Hospital did not give evidence in regard to the surgical procedure undergone by PW-1; the injuries faced by A-1 were not sufficiently explained by the prosecution; and about the occurrence, the owner of the wine shop stood not examined.

9. It was observed that the genuineness of the statement made by PW-1 to the police could not be doubted as he had told PW-17 that he was a victim of an attack by A-1. Such genuineness stands buttressed by the fact that the document reached the court on the same day.

10. On A-1's injuries being unexplained, it was observed that the same would not be sufficient to dispel the entire prosecution case. Reference was made to ***Amar Malla*** v. ***State of Tripura***[9]***.*** It was held that since both PW-1 and PW-2 are consistent on facts, including the place of occurrence, as also the same being an admitted fact, the contention in that regard on behalf of A-1 has to be negatived. Given that the presence of the owner of the shop has nowhere been mentioned, his non-examination cannot be termed fatal to the prosecution case.

11. In such terms, the High Court confirmed the conviction and sentence handed down by the Trial Court as regards A1 and A2.

Submissions

12. The present appeals are a challenge to the judgments of the Trial Court and High Court. We have heard Mr. S Nagamuthu, learned senior counsel, Mr. S. Arun Prakash for A-1, and Mr. Vipin Jai for A-2. Dr. Joseph Aristotle S. was heard for the State.

Contentions on behalf of A-1

13. The primary ground urged on behalf of A-1 was that nearly all witnesses were "*interested*" in the case's outcome and, therefore, unreliable; and none of the witnesses

---

[8] Hereinafter 'PW-17'
[9] (2002) 7 SCC 91

examined were independent. Further, it was canvassed that the delay in lodging the FIR stands unexplained, more so when the medical evidence does not speak of PW-1 having undergone surgery. Also, it must be noted that there was no prior animosity or reason for discord. The events as they unfolded were the result of a spur-of-the-moment quarrel in which he also sustained grievous injuries. The right of private defence has also been pleaded as an alternate argument.

Contentions on behalf of A-2

14. It was argued on behalf of A-2 that his presence at the scene of the crime was never established. Four limbs of A-1's arguments, i.e., delay in lodging the FIR; almost all witnesses qualifying as "*interested witnesses*"; there being no enmity between the involved persons; and the lack of independent witnesses, were adopted by A-2.

Submissions on behalf of the Respondent

15. The respondent has filed detailed submissions which attempt to discredit as a whole the submissions on behalf of the accused persons. In doing so, the State relied on various judgments from this Court. We have perused the written submissions filed and also examined the cases referred.

Consideration and Conclusion

16. The question that we are called upon to decide is whether, in the sum total of facts, circumstances, and the law applicable, the convictions handed down to A-1 and A-2 are based on the standard of beyond reasonable doubt having been met and, therefore, are sustainable.

17. It would be apposite for this Court to consider the law on the various facets of the penal laws of the land, involved in this case.

The Right of Private Defence

18. A-1 has contended that his actions were covered under the ambit of the right of private defence. The principle is best captured in the following words found in Russel on Crime, 11th Edition Vol.I

"… a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and if in a conflict between them he happens to kill his attacker, such killing is justifiable".

19. The right of private defence is not defined under the IPC. Whether under the circumstances of each case, such a right is available or not is determined within the said boundaries only. No test in the abstract can be laid down for determining whether a person legitimately acted in private defence. The law only provides that the person claiming such a right bears the onus[10] to prove the legitimacy of the actions done in furtherance thereof and it is not for the Court to presume the presence of such circumstances or the truth in such a plea being taken. (See: ***Raghbir Singh & Ors.* v. *State of Haryana***[11].) The burden on the person pleading the right of private defence has been succinctly explained in ***James Martin* v. *State of Kerala***[12]***.*** This right has been held to be "*very valuable, serving*

[10] Section 105 Indian Evidence Act 1872
[11] (2008) 16 SCC 33
[12] (2004) 2 SCC 203

a social purpose" and, therefore, it should not be construed narrowly. (See: ***Vidhya Singh* v. *State of M.P.***[13])

20. This Court has summarised the principles in regard to the exercise of right of private defence in ***Darshan Singh v State of Punjab & Anr***.[14] as referred to in ***Sukumaran v State***[15]

"(*i*) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

However, this Court will only enter into the question of applicability of the right of private defence if the primary submission of complete acquittal fails, for it has been submitted by Mr. Nagamuthu, learned senior counsel that this submission is an alternate to the arguments advanced by Mr. S. Arun Prakash, learned counsel for A-1.

Independent and Related or Interested Witnesses

21. It is a well-recognised principle in law that the non-examination of independent witnesses would not be fatal to a case set up by the prosecution. The difference between a witness who is "*interested*" and one who is "*related*" stand explained by a Bench of three learned Judges in ***State of Rajasthan* v. *Kalki***[16]

"**7.** …"Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in

[13] (1971) 3 SCC 244
[14] (2010) 2 SCC 333
[15] (2019) 15 SCC 117
[16] (1981) 2 SCC 752

seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested."

We may refer to the observation in ***Sarwan Singh* v. *State of Punjab***[17] as under to appreciate the evidentiary value of such testimonies: –

"...Moreover, it is not the law that the evidence of an interested witness should be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration. Indeed there may be circumstances where only interested evidence may be available and no other, e.g. when an occurrence takes place at midnight in the house when the only witnesses who could see the occurrence may be the family members. In such cases it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness…"

In other words, if witnesses examined are found to be '*interested*' then, the examination of independent witnesses would assume importance.

Faulty Police Investigation

22. Recently, this Court in ***Rajesh and Anr.* v. *State of Madhya Pradesh*** (**3Judge Bench**)[18], while setting aside the conviction of the three Appellants therein, remarked:

"**39**. Before parting with the case with our verdict, we may note with deep and profound concern the disappointing standards of police investigation that seem to be the invariable norm. As long back as in the year 2003, the Report of Dr. Justice V.S. Malimath's 'Committee on Reforms of Criminal Justice System' had recorded thus:

'The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whether for or against the suspect. Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation and, in fact, the entire Criminal Justice System is to search for truth. ……The standard of police investigation in India remains poor and there is considerable room for improvement. The Bihar Police Commission (1961) noted with dismay that "during the course of tours and examination of witnesses, no complaint has been so universally made before the Commission as that regarding the poor quality of police investigation". Besides inefficiency, the members of public complained of rudeness, intimidation, suppression of evidence, concoction of evidence and malicious padding of cases…..'

40. Echoing the same sentiment in its Report No. 239 in March, 2012, the Law Commission of India observed that the principal causes of low rate of conviction in our country, inter alia, included inept, unscientific investigation by the police and lack of proper coordination between police and prosecution machinery. Despite passage of considerable time since these gloomy insights, we are dismayed to say that they remain sadly true even to this day. This is a case in point…."

23. A perusal of the judgment of the Trial Court shows that for both counts before it, reliance primarily has been placed on PW-1 to PW-3. Apart from these three-star

[17] (1976) 4 SCC 369 (3J)
[18] 2023 SCC OnLine SC 1202

prosecution witnesses, the Investigating Officer (PW-22), by virtue of having been "*in the driver's seat*" of the case, acquires importance. The salient points that can be appreciated from an assay of their respective testimonies may be referred to as follows:-

23.1 PW-1 is Sakthivel, S/o Muthuveeran. It was stated that upon information that D-1 and Senthilkumar were quarreling with the owner of the wine shop, he and Sakthivel, S/o Kathan rushed to the shop. It is there that upon the instigation of A-2, who handed A-1 a knife he stabbed the witness thrice in the stomach of PW-1 and PW-2, D-1, and D-2 as well. SI, Kulithalai, interrogated him at 4.30 a.m. on 4th March 2002, and the statement made thereunder is Exh.P-1. In his cross-examination, it has come forth that upon his arrival at Seahorse Hospital by 10:00 p.m., he was conscious, and it is upon administration of anesthesia for surgery that he became unconscious. Regarding the location of a wine shop, it has been deposed that the same is located in a crowded area and has a regular stream of visitors in and around the area.

23.2 With respect to A-2, it has been deposed that whether or not he was an owner of the wine shop is unclear, but he certainly was a visitor. 23.3 However, he contradicts his earlier version that upon reaching the hospital, he was not in a position to speak and had not informed the doctor of the incident, and instead, it was the people who accompanied him who briefed the doctor.

24. Sakthivel, S/o Kathan (PW-2) stated that A-1 stabbed him in the stomach twice, which was at the instigation of A-2. According to this witness, A-1, A-2, and D-2, along with other persons, worked in the wine shop. His statement was recorded in the evening after the incident. He states that the showcase upon his reaching the wine shop was intact. Further, D-1 was under the influence of alcohol when PW-2 saw him, but, significantly, D-1 had not stabbed A-1, and as such, no blood was seen on the hands of A-1.

25. Senthilkumar (PW-3) states that he was interrogated the morning after the incident at 7.30 a.m. His deposition reveals him not to know as to whether D-1 (Dharmalingam) was in a state of intoxication before going to the wine shop. Nor has he seen the showcase of the shop in a broken condition.

26. The learned Trial Court found sufficient evidence to convict both A-1 and A-2 based on these three testimonies.

27. K. Raajasekar (PW-22) (the Investigating Officer) at the relevant time Inspector of Police, Kulithalai, took charge of the investigation of the incident on 4th March 2002. In his examination-in-chief, he has described how the investigation proceeded. It was deposed that on 5th March 2002 at about 12 noon, he arrested A-2 from the Pettavaithalai bus stand. He also deposed, having visited the scene of the crime twice and interrogated several witnesses. On 9th April 2002, he examined the witnesses (medical evidence) who had allegedly furnished wound certificates for A-1 and A-2. Further witnesses were examined on 10th July 2002, and a chargesheet was filed on 15th July 2002.

28. It is undisputed that PWs 1 and 2 are injured witnesses. It is a wellestablished principle of law, not requiring any underscoring or reiteration, that the evidence of an injured witness is considered to be on a higher pedestal than that of a witness simpliciter.

29. The learned Trial Court observed that for the reasons, ***(a)*** that the witnesses had nothing to gain from deposing against the accused persons; ***(b)*** there is no suggestion that any rival business interest was to be benefitted by Sarvana Wines being embroiled in the controversy; ***(c)*** A-2 was in fact a "*good Samaritan*" ; ***(d)*** that the witnesses were deposing the accused persons at the behest of the police being an unsubstantiated claim;

and ***(e)*** that the witnesses cannot be said to be "*interested*". The concept of interested witness, as referred to hereinabove, shows that for a person to be such, he ought to have an interest in seeing the accused persons punished.

30. There is a direct statement by PW-1 that D-1 was his relative, i.e., son of his paternal uncle. D-2 was a relative of the owner of the wine shop, who, according to him, was A-1, but in another instance, he states that A-1 was only a worker. In respect of A-2, the only statement is that it was upon his instigation that A-1 stabbed them.

31. It is hard to conceive how the Trial Court concluded that despite being the first cousin of D-1 and himself a person injured in the incident, PW-1 was not an interested witness. Further, we find a categorical statement that, "*the wine shop is in the main road*" and "*the wine shop would be crowded always*". In such a situation, the joining of independent witnesses ought not to have been a difficult task but, yet, it remained unachieved.

32. Further, we note that he admits variation in his statement (Exh.P-1) in different ink and hand. He further states that there wasn't much light at the spot of the incident, but then denies it to be "*too dark*" when the occurrence has happened.

33. This Court has to strike a balance between the testimony of the injured witness and that of an interested witness. It is also not a case that PW-1 was a natural witness, as he stated that he had not been to the wine shop and was only near the STD booth where the ensuing quarrel was separated. In striking the above-stated balance, other factors must also be considered, which will be discussed subsequently.

34. PW-2 was a neighbour of D-1. Upon being informed of the quarrel between A-1 and D-1, he and PW-1 allegedly went there and separated the parties. He claims to be an eyewitness to the incident. After having undergone surgery, he regained consciousness the next day at 6.30 a.m.

35. It was that evening when the police recorded his statement. At the time of recording these statements in Court, i.e., 14th November 2005, a separate case preferred by the accused persons was under trial and PW-2 was made an accused thereunder. Now, having been made an accused in a case, as also having been injured with two stabs in the stomach and additionally being the neighbour of D-1, it is difficult to reconcile that PW-2 would be a witness of unquestionable integrity upon whose statement convictions can be based. Once again, we find that in regard to A2 the only thing stated is that upon the instigation of A-2, A-1 stabbed them. There is no other statement as to what may have been said by A-2 to enrage him enough that even after the quarrelling parties were separated and they had dispersed in their respective directions, A-1 went ahead angrily and repeatedly stabbed them.

36. He has also deposed that there were about 50 persons at the scene of the crime, then, how has the non-examination of independent witness been countenanced by the prosecution and "*approved*" by the Courts below, is something that escapes us, or rather confounds us.

37. Another essential aspect to be examined is that the statement of PW-1 was recorded at 4.30 a.m. on 4th March 2002 wherein as summarised above, he has clearly mentioned the role of PW-2, however, the latter's examination by the police was only at 5.00 p.m., that too when per his own statement he had regained consciousness from his surgery at 6.30 a.m. itself. This gap is entirely unexplained and wholly overlooked by the Courts below.

38. Coming to the version of PW-2 again, we notice him to be extremely evasive on the issue as to whether the police had visited the spot in the night intervening 3/4th March 2002 or not. He denies being interrogated by the police before 4th March 2002 till about 5.00 p.m. He admits having visited a private hospital and, yet, as discussed earlier, failed to report the matter to the police, more so the cause of injuries sustained by him or for that matter others present on the spot.

39. The evidence of PW-3, upon which the counsel has laid considerable emphasis for the respondent, appears to us to be fraught with contradictions. In his examination-in-chief, it is recorded that D-1 had asked A-2 and A-1 for a bottle of liquor on credit, which the latter two refused and scolded him, upon which he pushed down the showcase, leading A-1 to grab a beer bottle and break it on the head of D-1. When he was cross-examined he deposed as follows:

"The police recorded what all I have stated and obtained my signature. It is not correct to state that Dharmalingam asked 1st Accused in the wine shop to provide bottle on credit; that as he has refused, Dharmalingam picked up the quarrel, pushed the show case and broken into pieces; that Thangavel appeared there to question it; that we and Dharmalingam stabbed his relatives and Thangavel;…."

40. As is apparent, he states, for one, that D-1 had indeed broken the showcase but subsequently states that to depose the same would be incorrect. Furthermore, we find his actions not to be akin to that of a prudent man. When A-1 had allegedly broken a bottle on the head of D-1, PW-3 took the injured D-1 not to the hospital but to an STD booth located nearby, where a quarrel ensued between him and A-1, which was eventually separated by PWs 1 and 2. Even more so, when A-1 was allegedly stabbing PW-2, he was still at the STD booth with D-1, yet not having gone to the hospital and also not having made any attempt to stop such stabbing. Why a person would "*hold*" a person with a grievous head injury near an STD booth and not take him to the hospital or, additionally, not try and stop others from being grievously injured is something that compromises, in our mind, the credibility of the version of PW-3.

41. Apart from the three star witnesses of the prosecution, in our considered view, failing the standard of scrutiny applied to a criminal proceeding, a perusal of the records reveals another facet, compromising in nature to the prosecution case. It has come forth in the evidence of PW-1 that upon his arrival at the hospital, he was in a conscious state, so why the recording of the statement delayed till 4.30 a.m. is unsubstantiated. This is further so because while PW-1 speaks of being operated upon, none of the witnesses examined as medical witnesses corroborate such a statement. For emphasis, we may refer to the statement of PW-17, the medical officer in the Seahorse Hospital, at the relevant time. He stated that upon admission, PW-1 was fully conscious. The wound certificate was issued by Dr. Pon Shanthi, who has not been examined.

42. The delay therefore renders the circumstances questionable. Also, as we have alluded to earlier, there is a significant gap in the examination of PW-2 as well. For all the aforesaid reasons, it cannot be said that the prosecution had succeeded in establishing its case against the two accused persons beyond reasonable doubt warranting a conviction under Section 302 IPC.

43. We further examine the role of the I.O. The investigation officer of a case is the charioteer tasked with using the resources and personnel at his disposal to ensure law and order as also that a person who has committed a crime is brought to the book. In other words, the role of an investigating officer is that of the backbone of the entire criminal proceeding in respect of the particular offence(s) he is charged with investigating. A

perusal of his testimony reveals certain problematic statements. Nowhere has it come on record as to how the investigation reached the bus stand from where A-2 was arrested – who informed the authorities about A-2's movement by bus? Further, he has deposed that he made two visits to the scene of the crime and that he also examined several witnesses. Then how is there a striking lack of independent witnesses to lend credence to the prosecution's version of events? He does not know where D-1 had expired. How? He also did not conduct any scientific investigation at the spot of crime. Such an investigation carried out most casually and callously is sought to be made the basis by the police in seeking the conviction of the accused.

44. Another direct contradiction concerns his examination of the doctors who allegedly gave wound certificates for PWs 1 and 2. In the testimony of PW-17, it is clear that he was not the one who gave the wound certificate as he was only on duty from 9 a.m. to 9 p.m., and PW-1 was brought to the hospital at 10 p.m. The wound certificate was issued by Dr. Pon Shanthi, who had not been examined in the instant proceedings.

45. For the charges under Section 307 IPC, the learned Trial Court also considered the evidence of PWs 1, 2, and 3. We have considered the evidence of these three witnesses in detail and are of the opinion that for the reasons aforestated, the said witnesses cannot be relied upon.

46. In addition to the person who led the investigation, we must consider the testimonies of the people who aided in it.

46.1 PW-20 was the Sub-Inspector, Kulithalai Police Station, at the relevant time. His testimony appears to be evasive and full of improvements, needing to explain the material interpolations on the medical record. He admits not having recorded any information received from the Seahorse Hospital on the night of 3rd of March, 2022 at 11.00 hours. He admits not to have added a version in the sentence - Exhs. P-1 and P-24, which, as we notice, record the name of the assailant. He admits the jurisdictional police station to carry out the investigation, was not his (Tirupathur Town Police Station) but only Kulithalai. He admits that neither he nor any one of the police officers from any of the police stations visited the spot till the morning after the date of the incident, despite the travel distance being less than half an hour. No explanation is forthcoming as to why one of the most essential aspects of the criminal investigation was ignored or delayed. We notice the witness to have admitted having informed the details of the incident both to the Deputy Superintendent of Police and K. Rajasekar (PW-22). Was it that the initial investigation was being managed so as to shield the real assailants, which could have been the complainant party themselves? Or was it that the police were trying to frame the accused? Particularly when, as the record reveals, as is so admitted by PW-22 of A-2 being a practicing advocate who has been, ***(i)*** pursuing the matters against the officials of the police station; ***(ii)*** has been lodging complaints against the police officials for inaction; and ***(iii)*** had nothing to do with the ownership, management or control of the wine shop.

46.2 There is yet another disturbing feature emanating from his statement. Why is it that the police used a private vehicle for carrying out the investigation, as was admitted by this witness in any case, whose owner and driver in any event not examined during trial or investigation? The prosecution doesn't contend that at the relevant time, no government vehicle was available at the police station or that the said private vehicle was hired by them. It is also significant that PW-21 admits that PW-1 had not named A-2 in his statement, and, PW-22 when speaking about A-2, only states, "*On 5.3.2002 at 12.00 noon, I arrested the accused Manoharan at Pettavaithalai Bus Stand after enquired sent him to the Court Custody on the same day*."

46.3 In respect of PW-21, we find him to have not denied but feigned ignorance of the fact that Sundaravadivel had held Paramasivam S/o Kaalimoopan against whom a false case stood fastened by Inspector Sundaravadivel, under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders, Forest Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982[19] . He only states that "*being an Advocate the 2nd accused came to the area police stations.*" This in no way discloses what led either PW-22 or him to suspect and thence, act on the complicity of A-2 in the crime.

47. Various lapses such as these cumulatively affect the overall sanctity of the prosecution case, making it fall short of the threshold of beyond reasonable doubt. It is in such circumstances, on analysis of the record, that we are unable to sustain the conviction handed down by the Courts below to A-1 and A-2. The injured witnesses and the Investigation Officer in their testimony together are not inspiring confidence, and in our own estimation the prosecution case stands shaken beyond a point to which no conviction resting thereupon can be said to be just in the eyes of law.

48. We sustain the challenge on the grounds, among others that, ***(a)*** examined private persons were interested witnesses, with inconsistencies amongst them; ***(b)*** no independent witnesses were examined; ***(c)*** there was a delay in filing the FIR; ***(d)*** there were interpolations on record; ***(e)*** there were numerous lapses in the investigation; and ***(f)*** the medical and scientific evidence on record does not support the prosecution's version of events.

49. During the course of submissions on behalf of A-1, the learned senior counsel appearing on his behalf had urged the right of private defence as a secondary submission, in the event of the arguments in favour of complete acquittal on finding favour with the court. Given that, upon consideration and analysis of the submissions made and the material on record, we have found that the convictions cannot stand in the eyes of law, we need not delineate on that submission.

50. In that view of the matter, the appeals are allowed and the convictions subject matter thereof, are accordingly set aside. Both appellants are directed to be released forthwith, if not required in any other case. Pending application(s), if any, shall stand disposed of.

[19] Hereinafter referred to as 'Goondas Act'