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IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, SALEM.

Present: Thiru. Swarnam J. Natarajan, M.L.,
Principal Sessions Judge, Salem.

Tuesday, this the 14th day of July - 2026

Criminal Appeal 221/2024 - in -
CNR.No.TNSA01-004687-2024

Name of the Trial Court	:	Assistant Sessions Judge-cum- Chief Judicial Magistrate Court, Salem.
Trial Court Case No.	:	S.C.No. 159/2022
Criminal Appeal No.	:	C.A.No. 221/2024
Name of the Appellants / Accused	:	1. Elumalai (M/41/2021), S/o. Kandasamy. 2. Peramen @ Paramen, (M/38/2021), S/o. Kandasamy. 3. Palanivel, (M/39/2021), S/o. Kandasamy. 4. Kesavan, (M/39/2021), S/o. Kandasamy. 5. Kandasamy (M/70/2021), S/o. Uthandigounder. <i>Above all are residing at,</i> Near Panchayat Office, Chettichavadi, Kannankurichi, Salem District.
Name of the Respondent / Complainant	:	The State represented by Inspector of Police, Kannankuruchi P.S., Cr.No.195/2021



Order of the Trial Court	: The Trial Court had convicted the 1st accused for the offences under sections 148, 307 (3 counts), 307 r/w. 149 (3 counts) IPC; for the offence u/s.148 IPC fine of Rs.1,000/- imposed to him, in default to undergo Simple Imprisonment for two months, for the offence u/s.307 (3 counts) IPC sentenced him to undergo Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months, and for the offence u/s.307 r/w. 149 (3 counts) IPC sentenced him to undergo Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months. The 2nd accused was convicted for the offences under sections 148, 307 (2 counts), 307 r/w. 149 (4 counts) IPC; for the offence u/s.148 IPC fine of Rs.1,000/- imposed to him, in default to undergo Simple Imprisonment for two months, for the offence u/s.307 (2 counts) IPC sentenced him to undergo
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	Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months, and for the offence u/s.307 r/w. 149 (4 counts) IPC sentenced him to undergo Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months. The 3rd accused was convicted for the offences under sections 148, 307 r/w. 149 (6 counts) IPC; for the offence u/s.148 IPC fine of Rs.1,000/- imposed to him, in default to undergo Simple Imprisonment for two months, and for the offence u/s.307 r/w. 149 (6 counts) IPC sentenced him to undergo Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months. And the 4th and 5th accused were convicted for the offences under sections 148, 307, 307 r/w. 149 (5 counts) IPC, for the offence u/s.148 IPC fine of Rs.1,000/- imposed to them,
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	in default to undergo Simple Imprisonment for two months, for the offence u/s.307 IPC sentenced them to undergo Seven Years Rigorous Imprisonment for and to pay a fine of Rs.5,000/-, in default to undergo imprisonment for four months, and for the offence u/s.307 r/w. 149 (5 counts) IPC sentenced them to undergo Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months. The accused persons were directed to undergo this imprisonment together, and the period already underwent were ordered to be set off. The Material Objects 1 and 2 are ordered to be destroyed after the appeal period.(C.P.No.48/2022).
Whether the trial court order : confirmed or modified or set aside.	In the result, the Criminal Appeal is dismissed. The conviction and sentence imposed by the trial court on accused A-1 to A-5 is confirmed in the present appeal. The appellants are directed to surrender before the trial court and



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	forthwith directed to undergo the remaining period of sentence. In the event the accused persons fail to surrender before the trial court, the trial court as well as the respondent shall secure the accused person in order to undergo the remaining sentence.
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This Criminal Appeal was coming up on 07.07.2026 for final hearing before me in the presence of Thiru.V.Edwin Asirvatham, Advocate for the Appellants / Accused and upon hearing arguments from the appellants' side and perusing the evidence, documents, and the case records held for consideration till this date, this Court delivers the following :

J U D G M E N T

The appellants, Elumalai and 04 others, who were accused persons 1 to 5 in S.C.No.159/2022, had suffered a judgment of conviction and sentence dated 04.09.2024 from the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Salem, for the offences charged as follows:-

(i) Against A-1 under Section 148, 307 IPC (3 counts), 307 r/w. 149 IPC (3 counts), the court imposed a fine of Rs.1,000/- for the offence u/s.148 IPC, in default to undergo Simple Imprisonment for two months, and for the remaining offences u/s.307 IPC (3 counts), 307 r/w. 149 IPC (3 counts), he was



sentenced to undergo Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months.

(ii) Against A-2 under Section 148, 307 IPC (2 counts), 307 r/w. 149 IPC (4 counts), the court imposed a fine of Rs.1,000/- for the offence u/s.148 IPC, in default to undergo Simple Imprisonment for two months, and for the remaining offences u/s.307 IPC (2 counts), 307 r/w. 149 IPC (4 counts), he was sentenced to undergo Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months.

(iii) Against A-3 under Section 148, 307 r/w. 149 IPC (6 counts), the court imposed a fine of Rs.1,000/- for the offence u/s.148 IPC, in default to undergo Simple Imprisonment for two months, and for the remaining offences u/s.307 r/w. 149 IPC (6 counts), he was sentenced to undergo Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months.

(iv) Against A-4 and A-5 under Section 148, 307, 307 r/w. 149 IPC (5 counts), the court imposed a fine of Rs.1,000/- each for the offence u/s.148 IPC, in default to undergo Simple Imprisonment for two months each, and for the remaining offences u/s.307 IPC, 307 r/w. 149 IPC (5 counts), they were



sentenced to undergo Seven Years Rigorous Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default to undergo imprisonment for four months. The accused persons were directed to undergo the imprisonment imposed under various sections together, and the period already underwent were ordered to be set off. The accused persons had filed suspension of sentence, and the said application was allowed by this court by my predecessor. Being aggrieved and dissatisfied with the order of conviction and sentence passed by the trial court, the present appeal has been preferred.

2. The Inspector of Police, Kannankurichi Police Station, Salem Town, in Crime No.195/2021, had laid final report against the accused persons 1 to 5, alleging that on 04.05.2021 at 7.30 a.m., at Kannankurichi, Chettichavadi, near to Manthoppu, in front of the house of the complainant, Murugan, whose mother, Palaniammal, was residing.

(ii) The accused persons 1 to 5, being their relatives, they had enmity with respect to the property enjoyed by Palaniammal, and they were pressurizing her to vacate the property. In continuation of the said enmity, all the accused persons 1 to 5 had assembled together in front of the house of the said Palaniammal, threatening her to vacate the premises.

(iii) At that time, the complainant, his brother, Palani, Venugopal, sister-in-law Chitra, brother's son Jagadeeshkumar, Arunkumar, were all



present. With intent to get rid of them, the accused persons possessed common object, and A-1 and A-2 possessed with an iron pipe, A-3 and A-5 with a stone, and A-4 with wooden log, had formed themselves into an unlawful assembly with deadly weapons.

(iv) The accused persons had shouted at the complainant, Murugan, and A-5 abetted the crime by instigating the other accused persons to get rid of the witnesses who had assembled there, including the complainant, by commanding them that they should get rid of them. On the basis of the instigation, the other accused persons instigated each other with deadly weapons, and uttering words that the complainant as well as the witnesses should be done to death, they had all indiscriminately assaulted, thereby all the six persons had sustained injury in the incident.

(v) They were taken to hospital for treatment. From there, they were referred to private hospitals for the said treatment, wherein they were admitted as inpatient for certain period, where they underwent surgical procedures . Thereby, as against A-1, charges were laid u/s.148, 307 (3 counts), 307 r/w. 149 (3 counts) IPC; against A-2, 148, 307 (2 counts), 307 r/w.149 (4 counts) IPC; and against A-3 to A-5, u/s.148, 307, 307 r/w.149 (5 counts) IPC.

3. The case being taken cognizance by the learned Judicial Magistrate No.IV, Salem and was pleased to issue summons to the accused persons for their



appearance, and the free copies of the police records, as contemplated under Section 207 CrPC, were furnished to the accused persons free of cost. And the learned Judicial Magistrate felt that the case is exclusively triable by the Court of Sessions. Accordingly, the case was made over to this court for further proceedings, which was assigned with S.C.No.159/2022 and made over to the Chief Judicial Magistrate, Salem.

4. After hearing the arguments of the counsel for the defence as well as the learned Additional Public Prosecutor, the learned Chief Judicial Magistrate, Salem was pleased to frame charges against A-1 u/s.148, 307 (3 counts), 307 r/w.149 (3 counts) IPC; against A-2, u/s.148, 307 (2 counts), 307 r/w.149 (4 counts) IPC; against A-3 to A-5, u/s.148, 307, 307 r/w.149 (5 counts) IPC. When the contents of the charge were read over and explained to the accused persons by the learned Chief Judicial Magistrate, Salem, when questioned, they denied the same and claimed to be tried.

5. In order to bring home the offences charged against the accused persons before the trial court, on the side of the prosecution, P.W.1 to P.W.17 were examined, Ex.P1 to Ex.P31, M.O.1 and M.O.2 were marked.

6. **The case of the prosecution, as elicited from the prosecution witnesses before the trial court, in brief, is as follows:**

(i) The complainant, Murugan, whose mother is P.W.7,



Palaniammal. P.W.2, Palani, P.W.3 Chitra, P.W.4 Venugopal, P.W.5, Arunkumar, and P.W.6, Jagadeeshkumar, are Murugan's brother, brother's wife, brother's children. They all were residing along with Palaniammal, wherein adjacent to their house, the accused person had erected a cow shed and was residing. Palaniammal and the 5th accused, Kandasamy, are brother and sister, whose children are the accused persons 1 to 4.

(ii) Palaniammal and Kandasamy's father had owned a property which had been acquired by the government for the purpose of forming the Central Government industry, and the property vested with the industry. Thereafter, the company felt that the land is no more required for them, and they intend to reconvey the property to its original owner. In this regard, the 5th accused, Kandasamy, intended to purchase the property, and they had requested P.W.7, Palaniammal, to relinquish her right in the property. In this regard, there is a family dispute between the complainant party as well as the accused party with respect to enjoyment of the property. And at last, Kandasamy, A-5, had purchased the property by paying the sale consideration to the company.

(iii) However, Palaniammal continued to occupy the property and refused to vacate the same, which had provoked the accused persons 1 to 5 and frequently caused disturbance to their peaceful possession and enjoyment over the property. In continuation of the said enmity, on the fateful day of



occurrence, the accused persons 1 to 5, at the instigation of the 5th accused, had assembled in front of the house of Palaniammal, had quarreled with the complainant and the witnesses, and A-5 instigated the other accused persons to make the complainant as well as the complainant's relatives who assembled there to done to death. The accused persons 1 to 4, armed with iron rod, brick, as well as wooden stick, had assaulted the complainant party indiscriminately.

(iv) And according to the prosecution witnesses, after they being taken to hospital in an ambulance for treatment, the accused persons also came to hospital, alleging that they also sustained injury in the incident. However, according to the accused persons, it is a self-tale, and they never caused any injury to the accused persons. Only to escape from the criminal prosecution, they had subsequently, after deliberations and discussions, lodged a complaint against the accused persons, and they had not sustained serious injuries in the incident.

(v) Thereby, after full-fledged investigation, the Inspector of police laid final report in this case, and referred the complaint given by the accused persons as mistake of fact. As against the said reference, no protest petition was lodged by the accused persons nor any attempt made on their side to prosecute the complainant party herein as a private complainant. So, the accused persons left the complaint as well as the RCS proceedings to be closed



by the learned Judicial Magistrate, and the same has not been sent to the Sessions Court for further proceedings.

(vi) P.W.1, Murugan, had spoken about the enmity as well as with regard to the unlawful assembly by the accused persons armed with deadly weapons, as well as with regard to the assault made. P.W.10, Saravanan, attached to Salem Mohan Kumaramangalam Government Medical College Hospital, had given treatment to the complainant and issued wound certificate, and also examined other witnesses and recorded the AR.

(vii) P.W.11, Dr.Kesavamoorthy, attached to KMC Hospital, Coimbatore, had provided treatment to Jagadeeshkumar, who had sustained grievous injury. CT scan was taken, and he sustained fracture injury on his skull.

(viii) P.W.14, Dr.Sukumar, attached to Government Medical College Hospital, Salem Ortho Department, had examined the injured person Venugopal, who had sustained fracture injury on his thumb finger. P.W.16, Dr.Kumanan, attached to Kovai Ganga Hospital, who had provided treatment to Krishnakumar and treated his fracture.

(ix) P.W.12, Sub Inspector of Police, Murugesan, had obtained complaint statement from the complainant, Murugan, and registered case in Crime No.195/2021 u/s.147, 148, 323, 324, 307 IPC. Ex.P17 is the FIR.



P.W.15, Inspector of Police, Anbazhagan, had taken up the case for his investigation, prepared observation mahazar and rough sketch, and examined the witnesses and recorded their statements.

7. When the accused persons were questioned with regard to the incriminating circumstances made out against them in the evidence of the prosecution witnesses, the same were denied by the accused persons in specific, and claimed that a false case has been foisted against them. In short, the maccused persons proclaimed their total innocence before the trial court and denied their complicity. On the side of the accused, D.W.1 to D.W.3 were examined, Ex.D1 to Ex.D11 were marked.

8. On the side of the accused, Dr.Vinothkumar was examined to speak about the injury sustained by the accused person Elumalai. D.W.2, Dr.Goutham Shankar was examined from Government Mohan Kumaramangalam Medical College Hospital, Salem to speak about the injury sustained by one accused, Kesavan. D.W.3, Venkatachalam, is a neighbour, resident of the said locality, who had been examined to speak about the fact that the accused persons also sustained injury in the incident and they are also sustained injury.

9. The trial court, after believing the evidence of the prosecution witnesses, was pleased to convict the accused persons for the offences charged. Being aggrieved and dissatisfied, the present appeal is preferred.



10. The points raised in the grounds of appeal:-

(i) The trial court failed to consider the fact that the prosecution had not proved the case beyond reasonable doubt by establishing the ingredients u/s.148, 307, 307 r/w.149 IPC. The FIR in this case, Ex.P17, was registered by P.W.13, and the same was sent to the court after delay of 9 days on 13.05.2021. No proper explanation was submitted on the side of the prosecution to say as to why the delay had caused.

(ii) The prosecution witnesses had narrated the incident in question according to their whims and fancies, and gone contrary to the complaint and their 161 statement, and created an altogether different story during the course of trial. The trial court failed to consider the fact that a counter case was also registered in the course of the same incident by the very same investigating officer as case in Crime No.196/2021 against the witnesses in the present case, P.W.1 to P.W.6, under Section 147, 323, 324, 506(ii) IPC. The same was referred as mistake of fact.

(iii) The appellants 1 to 5 had sustained grievous injuries on their vital organs, and those injuries were noted by Salem Mohan Kumaramangalam Medical College Hospital Doctors, who were examined before the trial court as D.W.1 and D.W.2. The injuries found on appellant No.1 on the head and hand, and gave opinion that the injuries are grievous in nature. The injuries found on



appellant No.3 was on the head as well as on the hand and back, and marked the particulars as Ex.D7, and gave opinion about the nature of injuries as grievous in nature. D.W.1 found the injuries on appellant No.2's head and marked the treatment particulars as Ex.D8, and gave opinion about the injuries as simple in nature. Appellant No.5 had a punctured wound on the face, and treatment was given, he offered opinion as to the nature of injury as simple in nature. Appellant No.4 sustained injury on his forehead, and the injuries were opined as simple in nature.

(iv) The Investigating Officer, during the course of examination, had admitted the fact that the counter case was registered at the instance of A-1, Elumalai, as against P.W.1 to P.W.6. And P.W.15, frankly, admitted that the accused in counter case were not examined, and treatments provided by the Doctors, they were also not examined. The RCS notices were not served on the accused persons.

(v) None of the witnesses examined before the court whispered about the injuries sustained by the accused person, and the non-explanation of the injuries sustained by the accused at the time of occurrence can draw adverse inference that the prosecution is suppressed the genesis of the occurrence. Thereby, the trial court ought to have rejected the entire prosecution case for suppressing the counter case as well as for non-following the settled principles



of law, however failed to appreciate the defence plea taken and erred in convicting the accused person. Thereby, the appellant counsel prays for allowing the appeal.

11. The points for determination in the appeal are:-

1. Whether the evidence of the injured persons let in on the side of the prosecution is to be discarded or viewed with suspicion merely because they are related or interested in the complainant party and independent witnesses were not examined on the side of the prosecution?
2. Whether the injuries allegedly sustained by the accused persons and registration of a counter complaint establishes a case in counter arising from the same transaction, thereby rendering the prosecution case doubtful?
3. Whether the prosecution had really suppressed the genesis of the occurrence or failed to explain the injuries sustained by the accused person, which would make the court to disbelieve the prosecution case?
4. Whether the alleged delay in forwarding the FIR and other records to the jurisdiction Magistrate in time is fatal to the prosecution case?
5. Whether the prosecution had proved the ingredients of offence u/s.148, 307, 307 r/w.149 IPC beyond reasonable doubt, and whether the conviction and sentence passed by the trial court requires interference in the present appeal?



6. Whether the appeal is to be allowed for the points raised in the grounds of appeal?

12. The learned counsel for the appellants filed his written arguments and contended that no independent witnesses were examined on the side of the prosecution to prove the fact that the incident had really occurred as alleged by the prosecution witnesses. All the 07 witnesses examined on the side of the prosecution are interested witnesses who already have enmity with the accused persons, and out of the said enmity, they have wreaked vengeance and foisted the false case against the accused persons. Their evidence cannot be believed unless it is corroborated by independent testimony. The trial court ought to have disbelieved their evidence, however erred in believing their evidence without any independent corroboration.

(ii) There is an inordinate delay in registration and forwarding the FIR to the jurisdiction Magistrate. The other connected records were also sent with delay before the trial court. The same causes prejudice to the defence, and the deliberations, discussions, and documents subsequently been prepared could not be ruled out. Hence, the appellant counsel contended that the prosecution documents cannot be believed.

(iii) He further contended that there is a counter case registered on the complaint given by the accused persons, which had been referred by the



respondent police without sending RCS notice, and the procedure to be followed when a case and counter is registered has not been meticulously followed in this case, and the Full Bench judgment as well as the police standing orders have been violated by the Investigating Officer, thereby the prosecution case has to be doubted.

(iv) He further contended that the genesis and origin of the case had been suppressed, the injuries sustained by the accused persons were not explained by the prosecution. Under such circumstances, the case of the prosecution has to be doubted. He further contended that the witnesses had exaggerated their version while they were examined before the court, going contrary to the statements given by the complainant as well as the 161 statements recorded by the police. On the above ground, the learned counsel for the appellants prays for acquittal of the accused person.

(v) He relied upon the Full Bench judgment of the Honourable High Court in ***T. Balaji and another vs. State represented by Inspector of Police, New Washermenpet Police Station, Chennai, 2024(5) CTC 1 Full Bench judgment of the Honourable High Court*** with regard to the procedure to be followed when a case and counter is registered. ***2022 (1) MWN (Cr.) 229, the judgment of the Honourable High Court in V. Subramanian and ors. vs. State represented by Inspector of Police, Chozhatharam Police Station,***



Srimushnam, Cuddalore District, with respect to suppression of genesis of occurrence, the prosecution case has to be disbelieved. ***2000-2-L.W. (Crl.) 861, Sampath and others vs. State rep.by Sub Inspector of Police, Dusi Police Station. etc.***, with regard to X-ray not being produced before the trial court. ***2001 Supreme Court Cases (Cri) 439, State of Rajasthan vs. Teja Singh and others***, with regard to delay in sending FIR to the Magistrate. ***2020 (3) MWN (Cr.) 356 (DB), Vikesh Verghese vs. State rep.by Inspector of Police, Choolaimedu Police Station***, with respect to statement of witnesses sent to court only with delay, delay not explained, would give an inference that statements prepared to suit convenience of prosecution. ***2024 (4) MLJ (Crl) 561 (SC), Randeep Singh vs. State of Haryana***, with regard to case and counter. ***2016-1-L.W.(Crl.) 199, Ganesan, S/o.Karunakaran vs. State rep.by The Inspector of Police, Thiruppuvaam***, with regard to right of private defence and aggressor, case and counter. ***2023 CRI. L. J. 2674, Ajmer Singh vs. State of Haryana***, in both parties suffered injuries in free fight and the passage was owned by Gram Panchayat, conviction not sustainable. ***2010 (2) Supreme Court Cases (Cri) 1037, Darshan Singh vs. State of Punjab***, with regard to right of private defence and case were summarized in this regard. ***1976 Supreme Court Cases (Cri) 671, Lakshmi Singh vs. State of Bihar***, with respect to case and counter, failure on the part of the prosecution to explain the



injuries caused to the accused, case might be one of private defence. **2003 Supreme Court Cases (Cri) 326, Raghunath vs. State of Haryana**, failure to explain injuries on the accused, where prosecution evidence consists of interested and inimical witness, defence version competes in probability with that of prosecution, held non-explanation of injuries of grievous nature sustained by accused rendered the prosecution story doubtful. Thereby, the learned counsel for the appellant prays for allowing the appeal.

13. Public Prosecutor not appointed, thereby the case was proceeded further for disposal.

14. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal Courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Court to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before



deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. If the offence has taken place as in the present case, in front of the house of the victim, the fact that on hearing his shouts; his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eye- witnesses cannot be properly characterised as unlikely. If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a



witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. We do not think it would be possible to hold that such witnesses are no better than accomplices and that their evidence, as a matter of law, must receive corroboration before it is accepted. That is not to say that the evidence of such witnesses should be accepted lightheartedly without very close and careful examination, and so, we cannot accept Mr. Bhasin's argument that the High Court committed an error of law in accepting the evidence of the three eye-witnesses without corroboration.

It is necessary to bear in mind that there is nothing on the record to show that any person in the locality who actually witnessed the incident had been kept back. No such suggestion has been made to the investigating officer and no other evidence has been brought by the defence in support of such a plea. It is well-known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds, independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that



if the prosecution is not able to bring independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits. In the present case, we see no justification for the assumption that any eyewitness has been kept back from the Court, and so, we feel no hesitation in rejecting the argument that the case should be sent back on the hypothetical ground that the scrutiny of the police diary may disclose the presence of an independent eye-witness such an argument is wholly misconceived and can be characterised as fantastic.

Ruling ([State of Karnataka v. Yarappa Reddy](#)) where Thomas, J. has observed in paragraph 26 as follows :

Where in a murder trial, the evidence of eye-witness was disbelieved by High Court on ground that on seeing the incident she did not shout or cry but remained calm, it would not be proper. Criminal Courts should not expect a set reaction from any eyewitness on seeing an incident like murder. If five persons witness one incident there could be five different types of reactions from each of them. It is neither a tutored impact nor a structured reaction, which the eyewitness can make. It is fallacious to suggest that eyewitness would have done this or that on seeing the incident. Unless the reaction demonstrated by an



eye-witness is so improbable or so inconceivable from any human being pitted in such a situation it is unfair to dub his reactions as unnatural.

Much rigour of the defence suggestions has been taken out because even in this case, the witnesses were asked as to why they did not shout or why they did not try to save the girl or disclose the incident to anyone immediately. In fact, both the eyewitnesses have in their evidence specifically stated that they were shocked. As regards the non-disclosure, the Apex Court has taken a view in 1998 Cri LJ 493 : AIR 1998 SC 275 ([Raju v. State of Maharashtra](#)). Mukherjee, J. has approved the view taken by the High Court [in that case](#) in the following words :

The apathy of even the law-abiding citizens in reporting the outrages, to which they were witnesses, is too notorious to merit a mention, and merely because these witnesses had not reported the matter to the police, it would not follow that they were not telling the truth.

Therefore, merely for their non-disclosure to the concerned persons, the eye-witnesses cannot be dubbed as 'false witnesses'. This we say all the more because these witnesses do not have any enmity with the accused. The witnesses have known the accused since they are the residents of one and the



same place and there is absolutely no cross-examination of the witnesses suggesting that they did not know any of the accused persons. There is absolutely no reason brought out on record why these two eye-witnesses would falsely implicate all the three accused persons in such a serious crime. It was tried to be suggested feebly that these were the witnesses under the thumb of P.W.I Subburaj, father of the deceased Subalakshmi. We have closely examined the evidence and we do not think that any such material has been brought out in the cross-examination of these witnesses, which would show that they were so much under the thumb of the father of the deceased girl and that they were gone to the extent of falsely implicating these accused persons with whom they had hardly anything to do and with whom they had no enmity whatsoever. The learned senior counsel also relied upon the decision reported in 1998 (1) Supreme (Cri) : ([Din Dayal v. Raj Kumar](#) alias Raju) where, the Apex Court had approved of the observations of the High Court regarding the unnatural conduct of the witnesses which led to the witnesses being disbelieved. We find that the facts [in the above case](#) are quite different and the decision cannot be pressed into service in the present case. On the question of non-disclosure, the learned senior counsel also relied on the Supreme Court judgment in ([Peddireddy Subbareddi v. State of A.P.](#)). In that case, the eye-witness P.W. 1 after seeing the incident had run away to his native village. The Apex Court had



held that the conduct of P.W. 1 in not reporting the incident to any of the villagers about the occurrence throws a considerable doubt on the veracity of his evidence. We have gone through the decision and we find that apart from his non-disclosure, the said witness was also an 'interested witness' and it was for that reason also that his evidence came to be disbelieved. We have already shown that it cannot be held as a general rule that merely because the eye-witness has failed to disclose the matter to anybody, his evidence should be dubbed as 'false evidence'. In short, we are convinced that the evidence of these two eye-witnesses is truthful and the Sessions Judge has rightly relied upon the same.

15. It is settled position of law that an appeal against conviction is a continuation of the original proceedings. The appellate court is duty-bound to independently scrutinize, examine the witnesses, and satisfy whether the prosecution had established the guilt of the accused beyond reasonable doubt. The mere fact that the trial court had recorded a conviction does not relieve the appellate court of its obligation to scrutinize the evidence. At the same time, where the trial court had appreciated the evidence in its proper perspective and had taken note of the material circumstances and has arrived at a finding which are reasonably supported by the evidence on record, the appellate jurisdiction is not to be exercised merely for substituting another view which is possible.



Inference is warranted where appreciation is manifestly erroneous, material evidence has been ignored, inadmissible material had influenced the decision, or the conclusions are perverse or contrary to settled principles of criminal jurisprudence.

16. By keeping in mind the above judgments and the points, this court finds that the main challenge on the evidence of the complainant and the injured persons is that the witnesses are members of the same family, they are interested in the success of the prosecution, and no independent person from the locality had been examined. The said contention requires to be examined in the light of fundamental distinction recognized in criminal jurisprudence between the word "interested witness" and a witness who is merely related to the victim. Relationship by itself is not a ground to discard testimony. A related witness becomes an interested witness only when it is demonstrated that the witness has a direct interest in securing a conviction of the accused for some extraneous reasons. More importantly, the witnesses in the present case are not merely eyewitnesses, they are also injured persons. The injuries sustained on their body constitutes an important assurance regarding their presence in the scene of crime during the said occurrence.

17. The testimony of an injured person is generally accepted on special status since his presence is proved and he would be the last person to leave the



real assailant. A person who has himself suffered injury in the occurrence would ordinarily not expected to substitute the real assailant with an innocent person, and he would not permit the actual offender to escape. This is not an inflexible presumption of law; the evidence of the injured witnesses had to withstand the cross-examination and must be tested against the surrounding circumstances. In the present case, all the six witnesses have spoken about the occurrence in a cogent and trustworthy manner. Their evidence cannot be rejected merely by describing them collectively as interested witnesses. This court had carefully examined the evidence let in by the injured persons and found that their evidence does not suffer from material contradictions with regard to identity of the assailant, the manner of the attack, the weapon used, as well as the broad spectrum of the incident. On such examination, this court finds that the core prosecution case remains consistent. The witnesses speak to the arrival and participation of the accused persons in the crime scene, the use of iron rod, stone, and wooden log, and the assault made by the accused persons by forming themselves into unlawful object.

18. When an occurrence took place involving several assailants and several victims, it would be unrealistic for the court to expect from the witnesses a photographic precision from every witness regarding each and every accused person and witnesses' movements. Human memory does not record a



violent occurrence as though it were a mechanical device. Variations concerning peripheral details, particularly when witnesses themselves are under attack, are natural. The test is whether the discrepancies affect the substratum of the prosecution case. In the present case, the discrepancies pointed out by the defence do not destroy the narrative evidence let in by the prosecution witnesses concerning the attack and injury sustained by them.

19. All the ocular witnesses had sustained injuries and underwent medical treatment in various hospitals. The wound certificate issued by the hospital, the treatment records, and discharge summaries would lend support to the fact that they had sustained injury in the incident. The medical evidence let in on the side of the prosecution is found to be consistent with the evidence adduced on the side of the prosecution. The medical evidence and the injured persons' testimony when found to be credible, and the court would not be justified in discarding the prosecution case on speculative possibilities.

20. Criminal law does not insist upon numerical plurality of witnesses. The evidence let in before the court has to be weighed and not to be counted. The court is concerned with quality, intrinsic worth, and reliability of the testimony. The question is whether the witnesses actually examined before the court inspires confidence. If the evidence of the injured witness is found to be cogent, natural, supported by medical evidence, the prosecution case cannot be



discarded solely because the neighbors, passersby, or other independent witnesses were not examined. In the present case, all six injured persons were examined. They have spoken about the incident. Their presence in the scene of crime is supported by the injury sustained, and they had deposed in detail with regard to the incident with material particulars and their evidence is corroborated with medical evidence. Thereby, the defence plea taken that the independent witnesses were not examined does not create a reasonable doubt in the prosecution case.

21. The main defence taken by the accused is that the persons belonging to accused party also had sustained injuries in the incident and in this regard a counter complaint was registered. According to the appellants, the prosecution had suppressed the counter complaint and the Investigating Officer had improperly closed the counter case as mistake of fact. Heavy reliance was placed on the ***Full Bench judgment of the Honourable High Court in T. Balaji and another v. State.*** There is no quarrel with regard to the legal principles laid down in the Full Bench judgment as well as in the other judgments relied upon by the learned counsel for the defence. The same would apply only in criminal cases arising out of the same incident or transaction contain rival versions of same occurrence wherein the investigating agency as well as the court must deal with them in a manner which prevents conflicting findings.



22. The object of the law laid down by the Honourable Full Bench in laying down the procedure while investigating a case and counter is to ensure a fair investigation, and where rival prosecutions concerning the same occurrence reach the court, to secure their trial before the same judge one after the other so that inconsistent judgments are avoided. Merely because two complaints have been lodged by rival groups, the same does not automatically make them a case and counter. The court must examine whether both versions relate to the same occurrence or forms part of one continuous transaction. Proximity of time, place, and continuity of action, as well as the intervening break, are relevant circumstances to see whether the complaint given by the accused person falls under the category of counter case. If one occurrence had come to an end and a subsequent incident take place thereafter, the later does not become a counter case merely because the parties are same or because the second incident had its origin in the hostility generated by the first. So, the expression "case and counter" cannot be mechanically applied to cases where two FIRs were registered by two rival groups.

23. In the present case, on examination of the evidence, this court is unable to accept the defence contention that the injuries on the side of the accused were sustained during the very same assault in which six prosecution witnesses had also sustained injury. The materials relied upon by the defence



does not establish that the injuries on the accused side were caused simultaneously in a mutual and indiscriminate fight. On the contrary, the evidence indicates a temporal separation between the assault forming the subject matter of the present prosecution and the subsequent incident in which persons belonging to the accused side allegedly sustained the injuries.

24. The present case does not disclose a situation of free fight which ordinarily postulates a situation where both groups voluntarily engage in mutual fight. The evidence establishes an initial concerted assault upon the complainant party. Six persons sustained injuries, the occurrence constituting the present prosecution had substantially taken place before the subsequent events relied upon by the defence. Thereby, this court finds that the occurrence forming the subject matter of the present prosecution and the incident relied upon in the counter complaint are not shown to constitute rival versions of one simultaneous or continuous occurrence. Hence, the procedural safeguards governing a true case and counter case do not, on the facts of the present case, invalidate the prosecution case.

25. Though the prosecution witnesses had not spoken about the injuries sustained by the accused person, the defence failed to prove that they sustained injury on the same occurrence during the time when six prosecution witnesses were attacked. Thereby, this court finds that there is no suppression of genesis



or origin of the incident which is sufficient to create a reasonable doubt in the mind of the court.

26. During the time of incident, COVID lockdown was prevailing and only box filing was implemented. Thereby, FIRs could not be received in hand by the learned Judicial Magistrates and the connected papers would be sent belatedly. Due to the above reasons, there was a delay in sending the FIR to the jurisdiction magistrate and delay in forwarding the papers. During cross-examination of the Investigating Officer with regard to delay, there is no cross-examination and it cannot be suggested in the appeal for the first time that the delay caused prejudice to the defence. Thereby, the defence plea taken cannot be accepted. The ingredients of section 307 has been proved by the prosecution.

27. The occurrence was preceded by existing hostility concerning the property. The assault was not confined to a mere push and pull. The accused persons assembled in front of the house of the complainant with iron rod, stones, and wooden log and they had directed the assault on all the six injured persons and in the said incident all the six had sustained injury. Thereby, the cumulative effect of the evidence let in would unerringly pointing out towards the guilt of the accused persons and the evidence reveals that the accused persons had assaulted the injured persons 1 to 6 with the intent to cause attempt to murder, and the trial court having been satisfied with the evidence let in had



rightly held that the ingredients necessary to attract section 307 IPC had been made out. All the accused persons had formed themselves into unlawful assembly and assaulted the injured persons. Thereby, this court finds no convincing reasons to set aside or modify the conviction order.

In the result, the Criminal Appeal is dismissed. The conviction and sentence imposed by the trial court on accused A-1 to A-5 is confirmed in the present appeal. The appellants are directed to surrender before the trial court and forthwith directed to undergo the remaining period of sentence. In the event the accused persons fail to surrender before the trial court, the trial court as well as the respondent shall secure the accused person in order to undergo the remaining sentence.

Dictated to the Steno-Typist, taken by her in shorthand, transcribed and typed by her with the help of voice recorder, and Microsoft 365, corrected and pronounced by me, in the open court, this the 14th day of July - 2026.

**Principal Sessions Judge,
Salem.**

Annexure:-

Appellants' side witnesses and documents:-

-Nil-

Respondent's side witnesses and documents:-

-Nil-

**Principal Sessions Judge,
Salem.**

Copy to:-

The Chief Judicial Magistrate-cum-
Assistant Sessions Judge, Salem.

14.07.2026

Principal Sessions Judge, Salem.



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C.A.No.221/2024

Principal Sessions Court,
Salem.

C.A.No. 221/2024

Draft/Fair Judgment

Dated : 14.07.2026

14.07.2026

Principal Sessions Judge, Salem.