REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 127-130 OF 2008

C. Muniappan & Ors. ... **Appellants**

Vs.

State of Tamil Nadu ...**Respondents**

WITH

CRIMINAL APPEAL NOS.1632-1634 OF 2010
(Arising out of SLP(Crl.) Nos. 1482-1484 of 2008)

D.K. Rajendran & Ors. etc.etc. ...**Appellants**

Vs.

State of Tamil Nadu ....**Respondent**

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Leave granted in Special Leave Petition (Criminal) Nos. 1482-1484 of 2008.

2. These appeals have been preferred against the Judgment and Order dated 6.12.2007 of the High Court of Madras in

Crl. Appeal Nos. 226, 266 and 267 of 2007, and Death Sentence Reference in Trial No. 1 of 2007.

3. Facts and circumstances giving rise to these cases are that on 22.1.2000, the students of the Horticulture College and Research Centre, Periakulam, affiliated to the Tamil Nadu Agricultural University, Coimbatore (hereinafter called the 'University'), left for an educational tour in two buses. One bus was carrying male students and the other bus was carrying 47 female students. After completing the educational tour, the students came to Paiyur, near Dharmapuri, on 1.2.2000, at about 12.00 midnight, and stayed in the Regional Agricultural Research Centre. On the next day, after visiting the research centre, they left for a tour to Hogenakkal from Dharmapuri, which was the last leg of their tour as per their revised tour programme. They visited a nursery garden on 2.2.2000 and reached Dharmapuri at 12.30 p.m. and parked their buses in front of Saravanabhavan Hotel. The students and the two teachers accompanying them went to the Saravanabhavan Hotel to take their meals and to purchase

parcels of food. Some of the students remained in the bus itself.

4. In view of naxalite movement and activities around Dharmapuri, the Deputy Superintendent of Police at Dharmapuri had promulgated a prohibitory order under Sections 30-A and 61 of the Indian Police Act, 1861, which expired on 31.1.2000, and thus, a fresh prohibitory order was issued on 31.1.2000, for fifteen days. On 2.2.2000, former Chief Minister of Tamil Nadu, Ms. J. Jayalalitha, along with four others was convicted and sentenced to undergo one year imprisonment in the Pleasant Stay Hotel, Kodailkanal, case. According to the prosecution, when the news of her conviction spread, the AIADMK party members resorted to dharnas and took out processions in Dharmapuri and compelled the shop keepers to close their shops by pelting stones. The news of conviction and sentence of the former Chief Minister of Tamil Nadu was being broadcast on T.V. and radio, thus, the students and teachers also came to know about it.

5. According to the prosecution, a procession of 100 to 150 party workers having flags of AIADMK party, armed with sticks and stones passed on the roads nearby the buses, raising slogans. The girl students witnessed the procession but remained in the bus. Dr. Latha (PW.1), the teacher accompanying the students, contacted the Vice-Chancellor of the University and told the students that the Vice-Chancellor had instructed them to stay at a safe place and return to Coimbatore after the situation becomes normal. On this advice, the drivers of both the buses made an attempt to take the buses to the District Collector's office. However, the buses could not reach there because of the obstruction of the traffic on the way, as the political workers staging dharna came on the road. Mr. P. Kandasamy (PW.4), driver of bus no. TN-38-C-5550, which was carrying the girl students, moved the bus to some distance and parked it in a vacant place near an old petrol bunk. The bus carrying the boys was also moved there. The accused, along with other political workers formed an unlawful assembly indulging in a 'road roko agitation', under the leadership of D.K. Rajendran (A.1), violating the

prohibitory order at Illakkiampatti, near the MGR statue on the Salem-Bangalore National Highway, prevented the free flow of traffic and caused nuisance to general public at large. They damaged the government buses having registration nos. TN-29-N-1094, TN-29-N-0543 and TN-29-N-1011 by breaking their glasses and also set fire to the three seats of one of the buses (being a town bus with Route No. 7-B).

6. As per the Prosecution, Nedu @ Nedunchezhian (A.2), Madhu @ Ravindran (A.3) and C. Muniappan (A.4) having the common object to cause damage to the buses, left the aforesaid place and went to the motor workshop of B. Kamal (PW.86), namely "Majestic Auto Garage", and procured petrol in two plastic cans and came to the place where the bus in which the girl students were travelling was parked. It is alleged that Nedu (A.2) and Madhu (A.3) sprinkled petrol inside the bus through the first two shutters on the left-side and Nedu (A.2) lit a match stick and threw it inside the bus. Nedu (A.2) and Madhu (A.3) went towards the motor bike which was already kept ready for running by C. Muniappan

(A.4) and escaped from the scene. The fire lit at the front-side of the bus spread backwards. Dr. Latha (PW.1) and Akila (PW.2) (both teachers) managed to get down from the bus from the front door along with some students. Some girl students stretched their heads and hands through the shutters and the boy students pulled them out. However, three students, namely, Kokilavani, Hemalatha and Gayathri could not escape from the burning bus. They were burnt alive inside the bus. Some of the girl students got burn injuries while getting down from the bus and some were injured while they were being pulled out through the shutters. The injured students were taken to the Government Hospital, Dharmapuri, where they were treated by Dr. K.S. Sampath (PW.30).

7. On the same day, an FIR was lodged at about 1.30 p.m. in the police station regarding the occurrence of the incident involving the Town Bus with route no.7-B. In respect of the other incident, i.e. the Bus burning, an FIR was lodged at about 3.30 p.m. vide written complaint (Exh. P.120) and a case under Sections 147, 148, 149, 436 and 302 of Indian

Penal Code, 1860 (in short the 'IPC') and under Sections 3 and 4 of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 (in short as "TNP (PDL) Act") was registered. In the said FIR, the name of C. Muniappan (A.4) was not mentioned. A general statement was made that "some persons shouting slogans surrounded the bus and broke down the window panes" and Nedu (A.2) and Madhu (A.3) poured the petrol from the front entrance of the bus and set it on fire. As far as the damage caused to the government buses at Illakkiampatti is concerned, on 2.2.2000, Elangovan (PW.60), a Senior Assistant Engineer in the Tamil Nadu Transport Corporation, Dharmapuri, at 8.00 p.m. submitted a written complaint (Exh. P.82) under Sections 147, 148, 341, 436 and 506(ii) IPC and Sections 3 and 4 of the TNP (PDL) Act.

8. On these complaints, investigations were carried out by Ayyasamy, Inspector of Police (PW.81), and he inspected the place of occurrence at about 10.30 p.m. in the presence of witnesses Velayutham (PW.67) and Vetrivel (PW.68) and prepared an Observation Mahazar (Ex. P.107). He also

prepared a rough sketch and recovered broken glass and brick pieces from the place under the Seizure Mahazar (Ex. P.109). The buses were inspected on the next day by Motor Vehicles Inspector and he prepared reports in respect of the same (Exs. P.116 to P.119).

9. Dr. A.C. Natarajan (PW.31) conducted an autopsy on the body of Kokilavani, Dr. N. Govindaraj (PW.35) conducted an autopsy on the body of Gayathri and Dr. Rajkumar (PW.38) conducted an autopsy on the body of Hemalatha and issued Exs. P.23, P.33 and P.28, Post mortem certificates, respectively.

10. In respect of the second incident, regarding bus no. TN-38-C-5550, Crime No. 188 of 2000 was registered on the basis of the complaint given by Village Administrative Officer, C. Ramasundaram (PW.87). Since the officer-in-charge of police station was on court duty, Shanmugaiah, Inspector of Police (PW.116) took up the investigation. However, after two days, i.e. on 4.2.2000, Vilvaranimurugan, Inspector of Police

(PW.119) took over the investigation from Shanmugaiah (PW.116). On 6.2.2000, investigation was transferred to the CBCID and R. Samuthirapandi, Additional Superintendent of Police (PW.123), became the Investigating Officer.

11. After completing the investigation, a report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr.PC"), was filed on 28.4.2000, arraying 31 persons as accused. The case was committed to the Sessions Court, Krishnagiri, vide Order dated 25.7.2000. The Sessions Court, Krishnagiri, framed 21 charges against all accused persons vide order dated 8.10.2001 under Sections 147, 148, 149, 341, 342, 307 read with Sections 302, 114 IPC and Sections 3 and 4 TNP (PDL) Act. During the course of trial, 10 out of 11 witnesses, who had been examined, turned hostile, including C. Ramasundaram (PW.87) who had lodged the complaint in respect of second incident. Being dissatisfied and aggrieved, Veerasamy, father of one of the victims, namely, Kokilavani, approached the High Court of Madras by filing Cr. O.P. No. 23520 of 2001 under Section 407 Cr.PC seeking transfer of

the trial from Krishnagiri to Coimbatore on various grounds, *inter-alia,* that all the accused were from the AIADMK party and were holding the party posts; most of the witnesses who had been examined had turned hostile, including the complainant C. Ramasundaram; all the accused and most of the witnesses were from the Coimbatore District and thus, they would be won over by the accused. Therefore, conduct of an impartial trial was not possible at Krishnagiri. The High Court allowed the said Transfer Petition vide order dated 22.8.2003 issuing some directions, including the appointment of the Special Public Prosecutor and to have a *de-novo* trial. The said order of transfer was challenged by D.K. Rajendran (A.1), by filing SLP(Crl.) No. 4678 of 2003. However, the said SLP was dismissed by this Court vide order dated 17.11.2003.

12. The Special Public Prosecutor was appointed after filing of a contempt petition before the High Court for not complying with its order dated 22.8.2003. The State Government initiated Departmental Proceedings against the Village Administrative Officer, C. Ramasundaram (PW.87), the

complainant, who had been examined at Krishnagiri Court, for not supporting the case of the prosecution. After a long delay, vide order dated 14.3.2005, the Sessions Court, Salem, framed 22 charges against the 31 accused, as the trial was being conducted *de-novo*. During the trial, 123 witnesses were examined and after assessing the facts and the legal issues, the Trial Court delivered the judgment and order dated 16.2.2007.

In total, 31 accused were put to trial. R. Chellakutty (A.22) died during trial. S. Palanisamy (A.15) and A. Madesh @ Madesh Mastheri (A.27) stood acquitted. The remaining 28 accused were convicted under Sections 188, 341 IPC and 3 & 4 of TNP (PDL) Act r/w 149 IPC. In addition, all of them except accused No. 24, Mani @ Member Mani, were convicted for offence u/s 147 IPC, whereas accused No. 24, Mani @ Member Mani was convicted, for an offence u/s 148 IPC. Apart from that accused No. 2, Nedu @ Nedunchezhian, and accused No. 3, Madhu @ Ravindran, were convicted for offences u/s 302 IPC (3 counts) and accused No. 4, C. Muniappan, u/s 302 r/w 114 IPC (3 counts) and the accused

Nos.2 and 3 were convicted also for offences u/s 307 IPC (46 counts) and C. Muniappan (A4) for offences u/s 307 r/w 114 IPC for 46 counts. Accused Nos. 2, 3 and 4 were sentenced to death.

The sentences imposed on accused Nos. 1, 5 to 14, 16 to 21, 23 to 26 and 28 to 31 were ordered to run consecutively which extended to 7 years and 3 months and sentence of 7 years and 9 months to accused No. 24.

13. All the 28 convicts filed appeals before the High Court of Madras. The death sentence references in respect to Nedu (A.2), Madhu (A.3) and C. Muniappan (A.4) were also made. Crl. Revision No. 777 of 2007 was filed by R. Kesava Chandran @ Moorthy, the father of one of the deceased, namely, Hemalatha, for enhancement of punishment imposed on all the accused. As all the appeals, references and Crl. Revision arose out of a common judgment, they were taken up jointly and disposed of by the High Court vide impugned judgment and order dated 6.12.2007.

On hearing the aforesaid Crl. Revision and appeals, the High Court modified the conviction of accused No. 24 under section 148 IPC as being under section 147 IPC. Accused nos. 1, 5 to 14, 16 to 21, 23 to 26 and 28 to 31 were awarded different punishment for different offences, however, maximum punishment remained two years as all the sentences were directed to run concurrently.

Conviction and sentence of death against accused Nos. 2 to 4 was confirmed by the High Court along with all other sentences under different heads.

14. Hence, these seven appeals.

15. Shri Sushil Kumar and Shri Udai U. Lalit, learned senior counsel appearing for all these appellants, have submitted that the facts and circumstances of the case did not warrant any trial. The case of the prosecution had been inherently improbable. There had been material contradictions in the statements of witnesses in respect of the involvement of the accused and the nature of offences committed by them. The

inquest reports were not consistent with the charge-sheets. Confessional statements made by some of the accused before the police, could not be relied upon nor read as a whole in the court, as it is not permissible in law. The reading of the full text thereof, had materially prejudiced the mind of the court. Two separate FIRs, i.e., in respect of Crime No.188/2000 and 190/2000 could not be clubbed, resulting in one consolidated charge sheet. All the accused had been charged by the Salem Court even for the offence under Section 188 IPC. In this respect, as no complaint had been filed by the competent officer whose prohibitory order had been violated, the charge could not have been framed. In any case, as it was not permissible for the trial court to frame any charge under Section 188 IPC in absence of any written complaint by the public servant concerned, the genesis of the prosecution case becomes doubtful and the appellants become entitled to the benefit of doubt. Further, cases under Section 188 I.P.C. are triable by the Magistrate. In this case, it has been tried by the Sessions Court. Such a course has caused great prejudice to the appellants. The statements made by the witnesses

particularly, by Dr. Latha (PW.1), Akila (PW.2), P. Kandasamy, Driver (PW.4) and N. Jagannathan, Cleaner (PW. 5), were full of contradictions and could not be relied upon. Identification of the accused was on the basis of the photographs taken and published by the media. C. Muniappan (A.4) was arrested on 3rd February, 2009, in respect of some other case and, therefore, his arrest shown on 7th February, 2009, was only an act of jugglery. The Forensic Report did not support the case of the prosecution that kerosene oil or petrol had been put to set the bus ablaze. Some of the most material witnesses of the prosecution, like B. Kamal (PW.86), turned hostile, thus could not be relied upon.

16. Four different versions have been given by the different witnesses disclosing the genesis of the main incident.

First, as revealed by the complaint lodged by C. Ramasundaram (PW.87), the incident occurred at 3.30 p.m. on 2.2.2000. According to the complaint, 20 persons named in the F.I.R. armed with wooden sticks and iron rods, shouted slogans and caused damage to the bus. They threatened the

girl students, who were travelling in the bus, with dire consequences. Nedu (A.2) and Madhu (A.3) brought the petrol and sprinkled the same inside the bus as well as on the platform. D.K. Rajendran (A.1) ordered that no one should be allowed to get down from the bus and threatened that the bus will be set on fire along with the inmates. Immediately, both Nedu (A.2) and Madhu (A.3) set the bus on fire with match sticks. Suddenly, the fire engulfed the entire bus and all the accused ran away from the scene. Some girls were trapped inside the bus and charred to death. C. Muniappan (A.4) was not named in the first version.

The second version is as per the evidence of P. Kandasamy (PW.4), driver of the vehicle and N. Jagannathan (PW.5), Cleaner. According to them, the incident occurred on 2.2.2000, wherein, two persons came on a motor bike and stopped in front of the bus. One of them sprinkled the petrol through left side window and set the bus on fire and went away on the motorbike.

The third version has been as revealed by the Report (Ex.D.14) submitted by P. Kandasamy (PW.4), Driver, dated

7.2.2000, according to which, two persons came on a motor bike and stopped in front of the bus. One of them sprinkled petrol through the left side window and set the bus on fire.

The fourth version is based on the Report (Ex.D.12), dated 6.3.2000, by Dr. Latha (PW.1), according to which, when the bus was parked, at about 2.25 p.m., after two minutes thereof, one person poured the petrol on the front seats and set the bus on fire.

All the aforesaid versions are contradictory to each other. Thus, the case of prosecution is not trustworthy.

Thus, in view of the above, appeals deserve to be allowed.

17. Per contra, Shri Altaf Ahmad, learned senior counsel appearing for the State, has tried to defend the prosecution's case submitting that the contradictions were trivial in nature. He has submitted that framing of charges under Section 188 IPC in absence of written complaint of the public servant concerned, could not be fatal to the prosecution's case. The entire prosecution case cannot be discarded merely on the grounds of improperly framing the charges under Section 188

I.P.C. Clubbing the two crimes, i.e., 188/2000 and 190/2000 did not cause any prejudice to any of the accused. Both the crimes were found to be parts of the same incident. The court has to examine the facts in a proper perspective where the said ghastly crime had been committed, where three university girl students stood roasted and 18 girl students suffered burn injuries. At the initial stage, the investigation was conducted by Shri Shanmugaiah (PW.116), as the Inspector, Shri Vilvaranimurugan (PW.119) was on court duty on 2.2.2000. Thus, PW.119 took over the investigation after being free from the court duty. Considering the gravity of the offences, the investigation was handed over to the CBCID, thus, the change of Investigating Officer was inevitable. The Test Identification Parade was conducted by the experienced Judicial Officer in accordance with law and there was no haste in conducting the same. There is no rule of law that deposition of a hostile witness is to be discarded in toto. The appeals lack merit and are liable to be dismissed.

18. We have considered the rival submissions made by learned counsel for the parties and perused the records.

Charges under Section 188 IPC:

19. Section 195 Cr.PC reads as under :

> *"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence – (1) No Court shall take cognizance –*
>
> *(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or*
>
> *.....*
>
> *except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;"*

20. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks

competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide **Govind Mehta** v. **The State of Bihar,** AIR 1971 SC 1708; **Patel Laljibhai Somabhai** v. **The State of Gujarat**, AIR 1971 SC 1935; **Surjit Singh & Ors**. v. **Balbir Singh,** (1996) 3 SCC 533; **State of Punjab** v. **Raj Singh & Anr., (**1998) 2 SCC 391;

K. Vengadachalam v. **K.C. Palanisamy & Ors**., (2005) 7 SCC 352; and **Iqbal Singh Marwah & Anr.** v. **Meenakshi Marwah & Anr.**, AIR 2005 SC 2119).

21. The test of whether there is evasion or non-compliance of Section 195 Cr.PC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In **Basir-ul-Haq & Ors**. v. **The State of West Bengal**, AIR 1953 SC 293; and **Durgacharan Naik & Ors** v. **State of Orissa**, AIR 1966 SC 1775, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 Cr.PC. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

22. In **M.S. Ahlawat** v. **State of Haryana & Anr.,** AIR 2000 SC 168, this Court considered the matter at length and held as under :

> *"....Provisions of Section 195 CrPC are* ***mandatory*** *and* ***no court has jurisdiction to take cognizance of any of the offences mentioned therein*** *unless there is a complaint in writing as required under that section." (Emphasis added)*

23. In **Sachida Nand Singh & Anr**. v. **State of Bihar & Anr.**, (1998) 2 SCC 493, this Court while dealing with this issue observed as under :

> *"7. ..Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well-recognised canon of interpretation that* ***provision curbing the general jurisdiction of the court must normally receive strict interpretation*** *unless the statute or the context requires otherwise." (Emphasis supplied)*

24. In **Daulat Ram** v. **State of Punjab,** AIR 1962 SC 1206, this Court considered the nature of the provisions of Section 195 Cr.PC. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant, the Tahsildar had not filed any complaint. This Court held as under :

> *"The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case.* ***The trial was thus without jurisdiction ab initio and the conviction cannot be maintained****. The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside." (Emphasis added)*

25 Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the pubic servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such

complaint. In the absence of such a complaint, the trial and conviction will be void *ab initio* being without jurisdiction.

26. Learned counsel for the appellants have submitted that no charge could have been framed under Section 188 IPC in the absence of a written complaint by the officer authorised for that purpose, the conviction under Section 188 IPC is not sustainable. More so, it falsifies the very genesis of the case of the prosecution as the prohibitory orders had not been violated, no subsequent incident could occur. Thus, entire prosecution case falls.

27. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC. However, we do not agree with the further

submission that absence of a complaint under Section 195 Cr.PC falsifies the genesis of the prosecution's case and is fatal to the entire prosecution case. There is ample evidence on record to show that there was a prohibitory order; which had been issued by the competent officer one day before; it had been given due publicity and had been brought to the notice of the public at large; it has been violated as there is no denial even by the accused persons that there was no 'Rasta Roko Andolan'. Unfortunately, the agitation which initially started peacefully turned ugly and violent when the public transport vehicles were subjected to attack and damage. In such an eventuality, we hold that in case the charges under Section 188 IPC are quashed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned.

28. The submission on behalf of the appellants that two crimes bearing Nos. 188 and 190 of 2000 could not be clubbed together, has also no merit for the simple reason that if the cases are considered, keeping in view the totality of the

circumstances and the sequence in which the two incidents occurred, taking into consideration the evidence of drivers and conductors/cleaners of the vehicles involved in the first incident and the evidence of C. Ramasundaram V.A.O., (PW.87), we reach the inescapable conclusion that the second occurrence was nothing but a fall out of the first occurrence. The damage caused to the public transport vehicles and the consequential burning of the University bus remained part of one and the same incident. Merely because two separate complaints had been lodged, did not mean that they could not be clubbed together and one charge sheet could not be filed (**See : T.T. Antony** v. **State of Kerala & Ors. (**2001) 6 SCC 181).

Test Identification Parade :

29. In **Lal Singh & Ors** v. **State of U.P**., AIR 2004 SC 299, this Court held that the court must be conscious of the fact that the witnesses should have sufficient opportunity to see the accused at the time of occurrence of the incident. In case the witness has ample opportunity to see the accused before

the identification parade is held, it may adversely affect the trial and in that case, the evidence as a whole is to be considered. The prosecution should take precautions and should establish before the Court that right from the day of his arrest, the accused was kept **"baparda"** so as to rule out the possibility of his face being seen while in police custody.

30. In **Suresh Chandra Bahri** v. **State of Bihar,** AIR 1994 SC 2420, this Court held that the object of conducting Test Identification Parade is to enable witnesses to satisfy themselves that the accused whom they suspect is really one who was seen by them in connection with commission of crime and to satisfy investigating authorities that suspect is really the person whom witnesses had seen in connection with said occurrence. It furnishes an assurance that the investigation is proceeding on right lines, in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. Therefore, the Test Identification Parade is primarily meant for investigation purposes. (vide **Malkhan Singh** v. **State of M.P.,** AIR 2003 SC 2669; **Ankush Maruti**

Shinde & Ors. v. **State of Maharashtra,** (2009) 6 SCC 667; and **Jarnail Singh & Ors.** v. **State of Punjab,** (2009) 9 SCC 719).

But the position would be entirely different when the accused or culprit who stands trial has been seen a number of times by the witness, as it may do away with the necessity of identification parade. Where the accused has been arrested in presence of the witness or accused has been shown to the witness or even his photograph has been shown by the Investigating Officer prior to Test Identification Parade, holding an identification parade in such facts and circumstances remains inconsequential. (vide **Shaikh Umar Ahmed Shaikh & Anr.** v. **State of Maharashtra,** AIR 1998 SC 1922; **Lalli @ Jagdeep Singh** v. **State of Rajasthan,** (2003) 12 SCC 666; **Dastagir Sab & Anr**. v. **State of Karnataka,** (2004) 3 SCC 106; **Maya Kaur Baldevsingh Sardar & Anr**. v. **State of Maharashtra,** (2007) 12 SCC 654; and **Aslam @ Deewan** v. **State of Rajasthan,** (2008) 9 SCC 227).

31. In **Yuvaraj Ambar Mohite** v. **State of Maharashtra,** (2006) 12 SCC 512, this Court placed reliance upon its earlier judgment in **D. Gopalakrishnan** v. **Sadanand Naik & Ors.,** AIR 2004 SC 4965, and held that if the photograph of the accused has been shown to the witness before the Test Identification Parade, the identification itself looses its purpose. If the suspect is available for identification or for video identification, the photograph should never be shown to the witness.

32. Holding the Test Identification Parade is not a substantive piece of evidence, yet it may be used for the purpose of corroboration; for believing that a person brought before the Court is the real person involved in the commission of the crime. However, the Test Identification Parade, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of the accused can be sustained. It is a rule of prudence which is required to be followed in cases where the accused is not known to the

witness or the complainant. (Vide **State of H.P.** v. **Lekh Raj** AIR 1999 SC 3916).

33. In **Mulla & Anr.** v. **State of Uttar Pradesh,** (2010) 3 SCC 508, this Court placed reliance on **Matru @ Girish Chandra** v. **The State of Uttar Pradesh,** AIR 1971 SC 1050**;** and **Santokh Singh** v. **Izhar Hussain & Anr.,** AIR 1973 SC 2190 and observed as under :-

> *"The evidence of test identification is admissible under Section 9 of the Indian Evidence Act. The Identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by witnesses in Court. There is no provision in the Cr.P.C. entitling the accused to demand that an identification parade should be held at or before the inquiry of the trial. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in Court."*

34. In **Kartar Singh** v. **State of Punjab,** (1994) 3 SCC 569, a Constitution Bench of this Court has *suo moto* examined the validity of Section 22 of Terrorist and Disruptive Activities (Prevention) Act, 1987 and held that:

> *"If the evidence regarding the identification on the basis of a photograph is to be held to have the same value as the evidence of a test identification parade, we feel that gross injustice to the detriment of the persons suspected may result".*

This Court, thus, struck down the provision of Section 22 of the said Act.

35. The said judgment was considered by this Court in **Umar Abdul Sakoor Sorathia** v. **Intelligence Officer, Narcotic Control Bureau,** AIR 1999 SC 2562, and the Court observed that in the said case, the evidence of a witness regarding identification of a proclaimed offender involved in a terrorist case was in issue. The courts below had taken a view that evidence by showing photographs must have the same value as evidence of a Test Identification Parade. The Court

distinguished the aforesaid case on facts. The Court further held that the court must bear in mind that in a case where the accused is not a proclaimed offender and the person who had taken the photographs was making deposition before the court was being examined by the prosecution as a witness, and he identified the accused in the court, that may be treated as a substantive evidence. However, courts should be conscious of the fact that during investigation, the photograph of the accused was shown to the witness and he identified that person as a one whom he saw at the relevant time.

36. Thus, it is evident from the above, that the Test Identification Parade is a part of the investigation and is very useful in a case where the accused are not known before-hand to the witnesses. It is used only to corroborate the evidence recorded in the court. Therefore, it is not substantive evidence. The actual evidence is what is given by the witnesses in the court. The Test Identification Parade provides for an assurance that the investigation is proceeding in the right direction and it enables the witnesses to satisfy themselves

that the accused whom they suspect is really one who was seen by them at the time of commission of offence. The accused should not be shown to any of the witnesses after arrest, and before holding the Test Identification Parade, he is required to be kept “baparda”.

37. In the Test Identification Parades held in the Jail, Nedu (A.2) was identified by P. Kandasamy (PW.4); N. Jagannathan (PW.5); G. Gayathiri (PW.11); N. Thilagavathi (PW.13); and S. Anitha (PW.14). Madhu (A.3) was identified by Dr. Latha (PW.1); and Akila (PW.2). C. Muniappan (A.4) was identified by N. Jagannathan (PW.5); S. Anitha (PW.14); and B. Kamal (PW.86).

38. In the court, Nedu (A.2) was identified by P. Kandasamy (PW.4); Jaganathan (PW.5); G. Gayathiri (PW.11); Thilagavathi (PW.13); and Anitha (PW-14). Madhu (A.3) was identified by Dr. Latha (PW.1); Akila (PW.2); Jaganathan (PW.5); G. Gayathiri (PW.11); and Suganthi (PW.12). C. Muniappan (A.4)

was identified by Kandasamy (PW.4); Jaganathan (PW.5); and Anitha (PW.14).

39. Thus, it is evident that all the accused for whom Test Identification Parades were conducted were identified by some of the witnesses in the jail. They were also identified by some of the eye witnesses/injured witnesses in the court.

Shri Sushil Kumar, learned senior counsel appearing for the appellants raised an objection that the entire proceedings of identification on 22.2.2000 had been concluded within a short span of 2 hours and 25 minutes. Eighteen witnesses were there, having three rounds each. Therefore, one round was completed in three minutes, i.e., the Test Identification Parade was conducted in full haste and thus, could not be treated to be a proper identification.

40. It is evident from the evidence of Shri Kalaimathi, Judicial Magistrate (PW.89), who conducted the Test Identification Parade, that all the witnesses had reached the Central Prison, Salem, before 10.30 a.m. All

preparations/arrangements had been made in advance by the Jail authorities as per direction of the said officer. Arrangements of standing of the accused along with other inmates in jail of the same height and complexion had already been made. There had been no haste or hurry on the part of Shri Kalaimathi, Judicial Magistrate (PW.89) to conclude the proceedings. More so, for reasons best known to the defence, no question had been asked to the said Judicial Magistrate (PW.89) in his cross-examination as to how he could conclude the said proceedings within such a short span of time. Thus, the submission is not worth consideration.

41. In court, B. Kamal (PW.86) did not support the case of the prosecution as he deposed that during the identification he was forced by the police to identify C. Muniappan (A.4) by showing his photograph only. He was declared hostile.

42. The trial Court and the High Court have considered the issue elaborately and discussed the statements made by the prosecution witnesses in the court, along with the fact of

identification by the witnesses in the Test Identification Parades. Both the Courts came to the conclusion that identification of A.2 to A.4 by the witnesses, if examined, in conjunction with the evidence of the Judicial Magistrate, R. Kalaimathi, (PW.89) and his reports, particularly, the Exh. P.137 and P.142, leave no room for doubt regarding the involvement of A.2 to A.4 in the crime. We do not find any cogent reason to take a view contrary to the same. Not supporting the prosecution's case by B. Kamal (PW.86) would not tilt the balance of the case in favour of the appellants.

43. Serious issues have been raised by learned senior counsel appearing for the appellants, submitting that inquest report was defective as there has been much irregularity in the inquest itself. Undoubtedly, three Investigating Officers, namely, T. Shanmugaiah, Police Inspector (PW.116); S. Palanimuthu (PW.121); and John Basha (PW.122) had conducted the investigation at the initial stage. The occurrence was so ugly and awful that the I.Os. had conducted the investigation under great anxiety and tension.

The seizure memos were also prepared in the same state of affairs. Therefore, when the investigation had been conducted in such a charged atmosphere, some irregularities were bound to occur. There is ample evidence on record to show that after burning of the University bus, when the students came to know that three girls had been charred and large number of girl students had suffered burn injuries, they became so violent that they damaged the ambulance which had been brought to take bodies of the deceased girls for conducting autopsy. The State Authorities, after keeping all these factors in mind and realizing that the investigation had not been conducted in proper manner, had taken a decision to transfer the investigation to the CBCID. Therefore, the irregularities committed in the investigation by the earlier I.Os. has too little relevance on the merits of the case. The evidence collected by the said three I.Os. was not worth placing reliance on and has rightly been not relied upon by the subsequent Investigating Officer.

44. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the I.O. and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. (Vide **Chandra Kanth Lakshmi** v. **State of Maharashtra,** AIR 1974 SC 220;

Karnel Singh v. **State of Madhya Pradesh**, (1995) 5 SCC 518; **Ram Bihari Yadav** v. **State of Bihar**, AIR 1998 SC 1850; **Paras Yadav** v. **State of Bihar**, AIR 1999 SC 644; **State of Karnataka** v. **K. Yarappa Reddy**, AIR 2000 SC 185; **Amar Singh** v. **Balwinder Singh,** AIR 2003 SC 1164; **Allarakha K. Mansuri** v. **State of Gujarat**, AIR 2002 SC 1051; and **Ram Bali** v. **State of U.P**., AIR 2004 SC 2329).

Arrest of A-4

45. Shri Sushil Kumar, learned senior counsel has raised the issue vehemently that arrest of C. Muniappan (A.4) is totally false. However, the evidence on record reveals that he was arrested at 1.30 a.m. on 3.2.2000, as is evident from the evidence of D. Poongavanam (PW.108), according to which when he was attending patrol duty along with other police officials on the highway from Dharmapuri to Tirupathur, near P. Mottupatti lake bridge, he got information that some one was present beneath the bridge. Thus, the said witness went to the place along with the other officers and he was taken into police custody in Crime No.115/2000 of Mathikonepalayam

Police Station under Section 151 Cr.P.C. read with Section 7(1)(A) of C.L. Act, and thus he was sent to jail. He had been released on bail on 9.2.2000 and the I.O. had been searching for him and he was arrested at New Bus Stand, Salem, where the Dharmapuri bus was to be parked, by P. Krishnaraj (PW.109). He tendered a confessional statement which was recorded in presence of Revenue Inspector, Manickam and Village Administrative Officer, C. Ramasundaram (PW.87).

There has been no cross-examination independently on behalf of A.4 on this issue. Even in cross-examination on behalf of other accused nothing has been elicited qua irregularity or improbability of the arrest of A.4. Therefore, we do not see any reason to disbelieve the arrest of C. Muniappan (A.4) as shown by the I.O.

46. So far as the issue of damage to the buses and the main incident of setting the bus on fire are concerned, both the courts have proceeded on the finding, after appreciating the entire evidence on record, that there was no common object between Nedu @ Nedunchezhian (A.2), Madhu @Ravindran

(A.3) and C. Muniappan (A.4) and the other accused regarding murder of the students and burning of the bus. Therefore, all of them had been convicted under different sections. However, the High Court directed the sentence to run concurrently so far as A.1, A.5 to A.14, A.16 to A.21, A.23 to A.26 and A.28 to A.31 are concerned. There has been sufficient material to show participation in the "Rasto Roko Andolan" and indulging in the incident of damaging the local route bus. Both courts have recorded the concurrent findings of fact in this regard. We have also gone through the evidence. Their presence is established on the spot and we do not see any reason to interfere with the concurrent findings of fact recorded in that respect. We do not find any material on record, which may warrant interference with the said findings.

47. So far as A.2 to A.4 (Nedu, Madhu and C. Muniappan respectively) are concerned, the Trial Court recorded the following findings of fact:-

> *"Accused 2 and 3 had poured petrol into the bus through the front door steps and set fire to it resulting in the death of the*

abovesaid three students and causing injuries to some of the students. Knowing that students are inside the bus, they had set fire to the bus as stated above, knowing fully well that some of the students or all the inmates of the bus would meet their death inside the bus. Nobody could deny this fact. There was clear intention on the part of A2 and A3 to kill the inmates of the bus and thus A2 and A3 have murdered three girl students with the intention of killing them. Hence A2 and A3 are liable to be punished u/s 302 IPC (3 counts)…… ….Presence of the 4th accused in the occurrence place has been amply proved. Though the fact that he gave matchbox to A2 to set fire to the bus had not been established, yet the fact that he aided A2 and A3 to come to the occurrence place in his motor cycle after the occurrence is over, is clearly proved, because he was the person who drove the motor cycle and thus aided A2 and A3 in the commission of the offence u/s 4 of the TNP (PDL) Act and 302 IPC and 114 IPC could be invoked in this case since as per Section 107 IPC vide third definition whoever intentionally aids by any act or illegal omission the doing of the thing is an offender as defined in 107 IPC. Hence, A4 Muniappan has committed the offences punishable u/s 4 of TNP (PDL) Act r/w 114 IPC and 302 IPC r/w 114 IPC (3 counts).

Further, the High Court after appreciating the evidence on record found that :-

> *"The identification of the A2 to A4 by the witnesses coupled with the evidence of the learned Magistrate PW-89 and the reports of PW89 produced in Exs. P-137 and P-142 would go a long way to show that A-2 to A-4 were involved in the crime as spoken to by the prosecution witnesses."*

From the record, it is evident that so far as A2 to A4 are concerned, their involvement in the incident has been substantiated by the evidence of PWs.61,62,63,97&99 (Santhamurthy, Madhaiyan, G. Manickam, Udayasuriyan and R. Karunanidhi respectively) as some of those said witnesses had identified D.K. Rajendran, Nedu, Madhu, C. Muniappan, D.K. Murugesan, D.A. Dowlath Basha, (A.1 to A.6 respectively), K. Ravi (A.9), Sampath (A.13), K. Chandran (A.21), R. Chellakutty (A.22), K. Mani (A.24), K. Veeramani (A.30) & Udayakumar (A.31). All the witnesses have also deposed that some of the members had been in the demonstration while K. Mani (A.24) damaged the Hosur bus stand. M. Kaveri (A.23) prevented the people from dousing the fire.

48. In view of the fact that Udayasuriyan (PW.97) and R. Karunanidhi (PW.99) had not been dis-believed by the court below and their evidence was found natural and trustworthy as they did not falsely implicate all the accused for causing damages to the bus and they were local and independent witnesses and knowing some of the accused persons; the High Court held as under:

> *"Though, both the witnesses have spoken about the demonstration and implicated most of the accused, they have spoken only about Nedu (A.2) for having set fire to the Route No.7-B town bus and there is absolutely no material to show as to why both PWs 97 & 99 should falsely implicate Nedu (A.2). Equally, for the same reason, the implication of M. Kaveri (A.23) for having prevented the persons in and around the bus from dousing the fire also cannot be dis-believed. There is ample evidence to show that Nedu (A.2) and M. Kaveri (A.23) were part of the demonstrators as has been stated by some of the witnesses. In fact, PW.62 stated that even when he saw the demonstrators sitting on the road, he also saw the damaged buses parked nearby. None of the witnesses have implicated any of the accused except Nedu (A.2) and M. Kaveri (A.23) for causing damage to the buses. Though, PW.97 implicated K. Mani (A.24) as well for causing damage to the bus, A.24 was not spoken to by PW.99. In the absence of any corroboration, it cannot be held that K. Mani (A.24) also damaged the bus.*

49. Therefore, the presence of the accused had also been established by press and media persons who were present at the scene of the occurrence, as well as by the complainant, and those persons had not named all the accused for setting the bus on fire and only few of them had been involved. But as the said persons were not having any arm/weapon, the offence of Section 148 IPC was not found sustainable and thus, their conviction under Section 148 IPC has been rightly set aside. Some of the accused had been convicted under Section 147 IPC.

50. It has been submitted that the witnesses PWs. 1, 2 and 4 have not disclosed the identities of the accused at the initial stage of investigation. Therefore, they cannot be relied upon for conviction of A.2 to A.4. However, it has been proved that there was no initial investigation and therefore the question of disclosing identity of the accused to Shri Shanmugaiah (PW.116), who had done the initial investigation, could not arise. More so, as has been mentioned hereinabove, the initial

investigation was conducted in a panicked situation, therefore, the government thought it proper to scrap it out and hand over to a higher officer through the CBCID. The presence of A.2 to A.4 with the other accused at the place of agitation stands established.

51. R. Karunanidhi (PW.99) had spoken about A.2 to A.4. He is an advocate and belongs to Dharamapuri. He has deposed that Nedu (A.2) had set the fire to the Route No.7-B town bus. He has also corroborated the evidence of Udayasuriyan (PW.97) that while the bus was in flames, some persons tried to douse the fire but they were prevented by M. Kaveri (A.23). Nedu (A.2) remained present in the earlier occurrence as well as the subsequent occurrence.

52. We cannot ignore one more fact, namely, that C. Muniappan (A.4) had kept the engine of the motor cycle (M.O.5) running only to escape from the scene of occurrence along with Nedu (A.2) and Madhu (A.3) after the occurrence. The said fact would also indicate the mind of the accused to

commit the offence and to flee from the scene of occurrence to avoid the clutches of law. But for PWs 1, 2, 4 & 5 and some other students who became alert immediately after the bus was set on fire, the consequence could have been disastrous and more deaths could have occurred.

53. P. Kandasamy, the bus driver (PW.4) has deposed that at the time of incident, a bike coming from the right side of the bus stopped near the left side headlight at a distance of about 12 ft. Three persons were riding on the said motor cycle. Two persons who were sitting on the rear seat of the motor cycle came towards the bus and each of them was carrying a yellow coloured can. One of them came to the left side of the bus and sprinkled liquid contained in the can inside the bus through the first window shutter. The other poured the liquid from the can through the second window. From the smell, he could understand that they had sprinkled petrol. Dr. Latha (PW.1) and Akila (PW.2) begged those persons and pleaded not to do any harm. At that time there was a shout "*set fire on them, then only they will realise".* Students started coming out of the

bus from the front entrance. The bus was put to fire immediately. The persons who poured the petrol proceeded towards the motor cycle and escaped.

54. P. Kandasamy (PW.4) has identified Nedu (A.2) and C. Muniappan (A.4) in the court and pointed out that C. Muniappan (A.4) was the person who was sitting on the motor cycle, keeping engine running at the time of occurrence. He also disclosed that the number of the maroon coloured motor cycle was TN-29-C-2487 and identified the vehicle parked outside the court. In cross-examination again and again he was asked large number of questions, but his deposition remained trustworthy throughout.

55. The deposition of N. Jagannathan, cleaner (PW.5) corroborated the evidence of P. Kandasamy (PW.4). He identified A.2 to A.4. He also identified the motor cycle but could not identify the colour and registration number. He has identified the accused in the Test Identification Parade. He has denied the suggestion that he had ever been shown any

photograph of either of A.2 to A.4. He deposed that A.2 to A.4 were the persons who sprinkled the petrol inside the bus and he had given a version of events explaining how the girl students got burn injuries and some of them died because they could not come out of the vehicle. He denied the suggestion that he could identify A.2 to A.4 as he had been shown their photographs.

56. Dr. Latha (PW.1) had deposed that she had seen the man who was pouring the petrol. She had identified A.3 in the court as the man who sprinkled petrol in the bus. She deposed that it was A.3 who had shouted "*set fire to all, then only they will realize*" and at that time there was a fire from the front left side.

57. Akila (PW.2) had given same version and corroborated the evidence of Dr. Latha (PW.1), P. Kandasamy (PW.4) and N. Jagannathan (PW.5) and deposed that petrol was sprinkled near the seat which was occupied by PW.5. She identified Madhu (A.3) as the person who sprinkled the petrol and stated

that another person lit the match stick and threw it in the bus and the bus was burnt into flames. Three girl students were charred to death.

58. Preetha (PW.8), a B.Sc. 2nd year student, aged 19 years had deposed that she was sitting on the double seat just before the front entrance on the window side. A man sprinkled petrol from a yellow can which he was holding on the seat in front of her seat through the window shutter. At the same time another person came and poured petrol inside the bus through the window shutter which was near the first seat. PWs. 1 and 2 begged them not to harm students. However, in the meantime, the front side of the bus caught fire. She had suffered some burn injuries over her left foot. She had identified Madhu (A.3) in the court as a person who had sprinkled petrol. She denied the suggestion that she was deposing falsely or identified the accused D.K. Rajendran (A.1) and Nedu (A.2) as she had been tutored by the police.

59. Gayathri G. (PW.11), another injured witness identified Nedu (A.2) and Madhu (A.3) in the Court. She explained how the petrol was sprinkled by A.2 and A.3 and how PWs. 1 and 2 begged them not to harm the girls. However, at the same time, there was fire at the place where the petrol had been poured. She denied any suggestion made by the defence that she was deposing falsely or she had identified any of the accused by showing their photographs.

60. R. Suganthi (PW.12) another injured witness had given the same version. She had identified Madhu (A.3) in the court as a person who had sprinkled the petrol inside the bus and N. Thilagavathi (PW.12) another injured witness corroborated the genesis of the case as given by the other witnesses. She identified Nedu (A.2) in the court as a person who had sprinkled the petrol and denied all suggestions made by the defence.

61. S. Anitha (PW.14) supported the prosecution version thoroughly and stated that two persons came to the front of

the bus and sprinkled the petrol. She had identified A.2 to A.4 in Test Identification Parade denying all suggestions made by the defence.

62. A large number of injured witnesses (students) were examined. They supported the prosecution case but did not identify any person either in the Test Identification Parade or in the Court. M. Kalaivani, M. Krithika, G. Gayathiri and R. Suganthi (PWs.9 to 12), R. Banuchitra, Chitra, C. Susma, S. Thilagam, P.T. Sutha, M. Vasantha Gokilam, R. Abirami, P. Geetha and S. Gayathiri (PWs.15 to 23), K. Sumathi, M. Deivani and N. Anbuselvi (PWs. 26 to 28) got injuries, and were treated in the hospital. They were examined in the court. Their seating position in the bus had been such that they could not see as who had sprinkled the petrol in the bus. They could see the motorcycle or C. Muniappan (A.4) on the scene. They did not depose anything in this regard.

63. R. Maruthu (PW.51), photographer, deposed that he was contacted by Dowlat Basha (A.6) to cover the “Road Roko Agitation” at Illakkiampatti in stills and video. He reached

there on a motorcycle. There he found D.K. Rajendran (A.1) engaged in an agitation with four or five persons. They were raising slogans. He photographed and videographed the spot of the agitation. He deposed that along with (A.1), Muthu (A.8), Ravi (A.9), A.P. Murugan (A.11) and Vadivelu (A.12) were also present there. Their photographs and negatives were exhibited in the court. He also photographed the burning bus. He reached the spot when the bus was burning. Students were shouting. The bus was full of black smoke. Some persons were trying to break open the rear side glass panes and some were dragging the girls from the rear side shutters. The fire spread from the front portion and engulfed the whole bus to the rear and he had been taking photographs continuously. These photographs were exhibited as Ex.P.78 and Ex.P.80. He watched the video prepared by him in the court and identified the same. In the cross-examination, he denied knowing the accused persons, particularly, Madhu (A.3), Velayutham (A.7), Sampath (A.13), Selvam (A.26), Selvaraj (A.28) and Veeramani (A.30). However, they were shown in the photographs taken by him. He was declared

hostile.

64. The shirt (M.O.4), which was worn by Nedu (A.2) at the time of incident, had been identified by most of the eye-witnesses in the court. It is stated that this shirt belonged to A.2.

65. In **Aloke Nath Dutta & Ors.** v. **State of West Bengal,** (2007) 12 SCC 230, this Court disapproved the exhibiting and reading of confessional statement of the accused before the police as a whole before the court, as it had not been brought on record in a manner contemplated by law. The Court held as under :

> *"Law does not envisage taking on record the entire confession by making it an exhibit incorporating both the admissible or inadmissible part thereof together. We have to point out that only that part of confession is admissible, which could be leading to the recovery of dead body and/or recovery of articles……; the confession proceeded to state even the mode and manner in which they allegedly killed. It should not have been done. It may influence the mind of the Court."*

66. While deciding the said case, this Court placed reliance on the judgments in **Pulukuri Kotayya** v. **King-Emperor,** AIR 1947 PC 67; the **State of Maharashtra** v. **Damu Gopinath Shinde & Ors.,** AIR 2000 SC 1691; and **Anter Singh** v. **State of Rajasthan,** AIR 2004 SC 2865.

67. Thus, it is evident from the above that only the admissible part of extra-judicial confessional statement can be exhibited. The statement as a whole, if exhibited and relied upon by the prosecution, leads to the possibility of the court getting prejudiced against the accused. Thus, it has to be avoided.

68. In the instant case, as has rightly been pointed out by Shri Sushil Kumar, learned senior counsel that confessional statement of C. Muniappan (A.4) had been exhibited in the court in its full text. It was neither required or warranted nor was permissible. However, in view of the fact that there had been other sufficient material on record to show his involvement in the crime, we are of the opinion that full

exhibition of the statement had not prejudiced the case against him.

Hostile Witness:

69. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (vide **Bhagwan Singh** v. **The State of Haryana,** AIR 1976 SC 202; **Rabindra Kumar Dey** v. **State of Orissa,** AIR 1977 SC 170; **Syad Akbar** v. **State of Karnataka,** AIR 1979 SC 1848; and **Khujji @ Surendra Tiwari** v. **State of Madhya Pradesh,** AIR 1991 SC 1853).

70. In **State of U.P.** v. **Ramesh Prasad Misra & Anr.,** AIR 1996 SC 2766, this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to

close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in **Balu Sonba Shinde** v. **State of Maharashtra,** (2002) 7 SCC 543; **Gagan Kanojia & Anr.** v. **State of Punjab,** (2006) 13 SCC 516; **Radha Mohan Singh @ Lal Saheb & Ors.** v. **State of U.P.,** AIR 2006 SC 951; **Sarvesh Naraian Shukla** v. **Daroga Singh & Ors.,** AIR 2008 SC 320; and **Subbu Singh** v. **State,** (2009) 6 SCC 462.

Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

In the instant case, some of the material witnesses i.e. B. Kamal (PW.86); and R. Maruthu (PW.51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law.

Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

71. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (vide **Sohrab & Anr.** v. **The State of M.P.,** AIR 1972 SC 2020; **State of U.P.** v. **M.K. Anthony,** AIR 1985 SC 48; **Bharwada Bhogini Bhai Hirji Bhai** v. **State of Gujarat,** AIR 1983 SC 753; **State of Rajasthan** v. **Om Prakash** AIR 2007 SC 2257; **Prithu @ Prithi Chand & Anr.** v. **State of Himachal Pradesh,** (2009) 11 SCC 588; **State of U.P.** v.

Santosh Kumar & Ors., (2009) 9 SCC 626; and **State** v. **Saravanan & Anr.**, AIR 2009 SC 151).

Death sentence

72. The guidelines laid down by this Court for awarding death sentence in **Bachan Singh** v. **State of Punjab,** AIR 1980 SC 898, may be culled out as under:

> (a) The extreme penalty of death may be inflicted in gravest cases of extreme culpability;
>
> (b) While imposing death sentence the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime;
>
> (c) Death sentence be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime; and
>
> (d) Extreme penalty can be imposed after striking the balance between aggravating and mitigating circumstances found in the case.
>
> **Aggravating circumstances** include:
>
> (a) If the murder has been committed after previous planning and involves extreme brutality; or

(b) If the murder involves exceptional depravity.

Mitigating circumstances include:

(a) That the offence was committed under the influence of extreme mental or emotional disturbance;

(b) The age of the accused. If the accused is young or old, he shall not be sentenced to death;

(c) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society;

(d) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (c) and (d) above;

(e) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence;

(f) That the accused acted under the duress or domination of another person; and

(g) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

73. In **Machhi Singh & Ors.** v. **State of Punjab,** AIR 1983 SC 957, this Court expanded the "rarest of rare" formulation

beyond the aggravating factors listed in **Bachan Singh** (supra) to cases where the "collective conscience" of a community is so shocked that it will expect the holders of the judicial powers to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty, and stated that in these cases such a penalty should be inflicted. But the Bench in this case underlined that full weightage must be accorded to the mitigating circumstances in a case and a just balance had to be struck between aggravating and mitigating circumstances. The Court further held that the relevant factors to be taken into consideration may be motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as:-

(i) Murder is in extremely brutal manner so as to arouse intense and extreme indignation of the community.

(ii) Murder of a large number of persons of a particular caste, community, or locality, is committed.

(iii) Murder of an innocent child; a helpless woman, is committed.

74. In **Devender Pal Singh** v. **State of NCT of Delhi,** AIR 2002 SC 1661, this Court referred to both these cases and held that death sentence may be warranted when the murder is committed in an extremely brutal manner; or for a motive which evinces total depravity and meanness e.g. murder by hired assassin for money or reward, or cold blooded murder for gains. Death sentence may also be justified:

> *"(i) When the crime is enormous in proportion. For instance, when multiple murders, say of all or almost all the members of a family or a large number of persons or a particular caste, community, or locality are committed.*
>
> *(ii) When the victim of murder is an innocent child or a helpless woman or old or infirm person or a person vis-à-vis, whom the murderer is in a dominating position, or a public figure generally loved and respected by the community."*

(See also **Atbir** v. **Govt. of N.C.T. of Delhi**, JT 2010 (8) SC 372).

75. In **Mahesh** v. **State of M.P.,** AIR 1987 SC 1346, this court deprecated the practice of taking a lenient view and not imposing the appropriate punishment observing that it will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and

such cruel acts. The court held that "To give a lesser punishment to the appellants would be to render the justice system of this country suspect. The common man will lose faith in the courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon". (See also **State of Punjab** v. **Rakesh Kumar,** AIR 2009 SC 391; and **Sahdev** v. **Jaibar @ Jai Dev & Ors.,** (2009) 11 SCC 798).

In **Bantu** v. **State of U.P.,** (2008) 11 SCC 113, this Court placing reliance on **Sevaka Perumal** *v.* **State of T.N.** AIR 1991 SC 1463, re-iterated the same view observing as under :

> *"Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."*

Thus, it is evident that Criminal Law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of

criminal conduct keeping in mind the effect of not awarding just punishment on the society.

The "Rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful co-existence of the society. Where an accused does not act on any spur-of-the-moment provocation and he indulged himself in a deliberately planned crime and meticulously executed it, the death sentence may be the most appropriate punishment for such a ghastly crime.

76. Life imprisonment is the rule and death penalty an exception. Therefore, the Court must satisfy itself that death penalty would be the only punishment which can be meted out to a convict. The Court has to consider whether any other punishment would be completely inadequate and what would be the mitigating and aggravating circumstances in the case. Murder is always foul, however, the degree of brutality, depravity and diabolic nature differ in each case. Circumstances under which murders take place also differ from case to case and there cannot be a straitjacket formula

for deciding upon circumstances under which death penalty must be awarded. In such matters, it is not only a nature of crime, but the background of criminal, his psychology, his social conditions, his mindset for committing offence and effect of imposing alternative punishment on the society are also relevant factors.

77. In the instant case, the girl students of the University, while on tour had been the victims of a heinous crime at the tail end of their programme. The appellants may have had a grievance and a right of peaceful demonstration, but they cannot claim a right to cause grave inconvenience and humiliation to others, merely because a competent criminal court has handed down a judicial pronouncement that is not to their liking. A demonstration by the appellants which had started peacefully, took an ugly turn when the appellants started damaging public transport vehicles. Damaging the public transport vehicles did not satisfy them and the appellants became the law unto themselves. There had been no provocation of any kind by any person whatsoever. Some

of the appellants had evil designs to cause damage to a greater extent so that people may learn a “lesson”. In order to succeed in their mission, Nedu @ Nedunchezhian (A.2), Madhu @ Ravindran(A.3) and C. Muniappan (A.4) went to the extent of sprinkling petrol in a bus full of girl students and setting it on fire with the students still inside the bus. They were fully aware that the girls might not be able to escape, when they set the bus on fire. As it happened, some of the girls did not escape the burning bus. No provocation had been offered by any of the girls. Nedu @ Nedunchezhian (A.2), Madhu @ Ravindran(A.3) and C. Muniappan (A.4) did not pay any heed to the pleas made by Dr. Latha (PW1) and Akila (PW2), the teacher, to spare the girls. As a consequence of the actions of Nedu @ Nedunchezhian (A.2), Madhu @ Ravindran (A.3) and C. Muniappan (A.4), three girls stood to death and about 20 girls received burn injuries on several parts of their bodies. There can be absolutely no justification for the commission of such a brutal offence. Causing the death of three innocent young girls and causing burn injuries to another twenty is an act that shows the highest degree of depravity and brutality on

the part of Nedu @ Nedunchezhian (A.2), Madhu @ Ravindran (A.3) and C. Muniappan (A.4).

The aggravating circumstances in the case of Nedu @ Nedunchezhian (A.2), Madhu @ Ravindran (A.3) and C. Muniappan (A.4) are that this offence had been committed after previous planning and with extreme brutality. These murders involved exceptional depravity on the part of Nedu @ Nedunchezhian (A.2), Madhu @ Ravindran (A.3) and C. Muniappan (A.4). These were the murders of helpless, innocent, unarmed, young girl students in a totally unprovoked situation. No mitigating circumstances could be pointed to us, which would convince us to impose a lesser sentence on them. Their activities were not only barbaric but inhuman of the highest degree. Thus, the manner of the commission of the offence in the present case is extremely brutal, diabolical, grotesque and cruel. It is shocking to the collective conscience of society. We do not see any cogent reason to interfere with the punishment of death sentence awarded to Nedu @ Nedunchezhian (A.2), Madhu @ Ravindran

(A.3) and C. Muniappan (A.4) by the courts below. Their appeals are liable to be dismissed.

So far as the other appellants are concerned, the maximum sentence to be served by them as per the Judgment of the High Court is two years. Most of these appellants have already served more than 14 months of their sentence and they are presently on bail. The incident occurred on 2.2.2000, so more than ten and a half years have already elapsed since the incident. These appellants have already suffered a lot. Thus, their sentences deserve to be reduced.

78. Before parting with this case, we would like to take note of the fact that this crime occurred right in the middle of a busy city. Innocent girls trapped in a burning bus were shouting for help and only the male students from their University came to their rescue and succeeded in saving some of them. There were large number of people including the shopkeepers, media persons and on-duty police personnel, present at the place of the "Rasta Roko Andolan", which was very close to the place of the occurrence of the crime, and

none of them considered it proper to help in their rescue. Even if the common man fails to respond to the call of his conscience, the police should not have remained inactive. The so-called administration did not bother to find out why the police did not intervene and assist in the rescue of the girl students. It is clear that the so-called protectors of the society stood there and witnessed such a heinous crime being committed and allowed the burning of the bus and roasting of the innocent children without being reprimanded for failing in their duty. If the common citizens and public officials present at the scene of the crime had done their duty, the death of three innocent young girls could have been prevented.

79. In view of the above, all the appeals are dismissed. So far as Nedu @ Nedunchezhian (A.2), Madhu @ Ravindran (A.3) and C. Muniappan (A.4) are concerned, sentence of death imposed on them is confirmed and the same be executed in accordance with law.

However, in Criminal Appeal Nos.1632-1634 of 2010 (arising out of SLP (Crl.) Nos. 1482-1484 of 2008), the

sentences are reduced as undergone. All of them are on bail, their bail bonds stand discharged. These criminal appeals stand disposed of accordingly.

.....J.
(G. S. SINGHVI)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
August 30, 2010