

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
11.03.2019	21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH  
AND  
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.A. (MD) No.274 of 2011, CrI.R.C. (MD) No.310 of 2014  
&  
CrI.M.P. (MD) No.11505 of 2016

State represented by  
the Inspector of Police  
CBI/SCB, Chennai

Appellant in CrI.A. (MD) No.274 of 2011

vs.

- 1 V.P. Pandi @ Attack Pandi
- 2 M. Thiruchelvam
- 3 Arockiyaprabu @ Prabhu
- 4 M. Saravanamuthu (Died)
- 5 M. Murugan
- 6 Vijya Pandi
- 7 P. Kandasamy
- 8 M. Ramesh Pandi
- 9 G. Ramaiah Pandian
- 10 M. Vallivittan

- 11 M. Thayamuthu  
12 V. Sudhakar  
13 T. Ramesh Kumar @ Mechanic Ramesh  
14 Thirumurugan  
15 I. Ruban  
16 Malik Batcha  
17 V. Rajaram Respondents in CrI.A. (MD) No.274 of 2011  
Poongodi Petitioner in CrI.R.C. (MD) No.310 of 2014  
vs.  
1 V.P. Pandi @ Attack Pandi  
2 M. Thiruchelvam  
3 Arockiyarabu @ Prabhu  
4 M. Saravanamuthu (Died)  
5 M. Murugan @ Sori Murugan  
6 Vijya Pandi  
7 P. Kandasamy सत्यमेव जयते  
8 M. Ramesh Pandi @ Robert  
9 G. Ramaiah Pandian  
10 M. Vallivittan  
11 M. Thayamuthu  
12 V. Sudhakar

- 13 T. Ramesh Kumar @ Mechanic Ramesh
- 14 Thirumurugan @ Kattuvasi Murugan
- 15 I. Ruban
- 16 Malik Batcha
- 17 V. Rajaram
- 18 State represented by  
the Inspector of Police  
CBI/SCB, Chennai Respondents in CrI.R.C.(MD)No.310/2014

**Prayer in CrI. A. (MD) No.274 of 2011:**

Criminal Appeal filed under Section 378 Cr.P.C. seeking to set aside the judgment of acquittal dated 09.12.2009 passed by the Principal District and Sessions Judge, Madurai in S.C. No.3 of 2009.

**Prayer in CrI. R.C. (MD) No.310 of 2014:**

Criminal Revision filed under Section 397 r/w Section 401 Cr.P.C. seeking to set aside the judgment of acquittal dated 09.12.2009 passed by the Principal District and Sessions Judge in S.C. No.3 of 2009.

**Crl. A. (MD) No.274 of 2011:**

For appellant	Mr. K. Srinivasan Special Public Prosecutor for CBI
For R3	Mr. R. Sankarasubbu
For RR 1,6 & 8	Mr. R. Sankarasubbu for Mr. Ilayaraja Kandasamy
For R4	Mr. K. Balasundaram R4-died
For R5	Mr. V. Karthic, Sr. Counsel for Mr.P. Balasubramanian
For R7	Mr. V. Karthic, Sr. Counsel for Mr. T.J. Ebenezer Charles
RR 9 & 10	Mr. V. Karthic, Sr. Counsel for Ms. S. Devasena
For R2	Mr. Gopalakrishna Lakshmana Raju Sr. Counsel for Mr. R. Venkateswaran
For R12	Mr. A. Ramesh, Sr. Counsel for Mr. S. Pakalavan
For R14	Mr. A. Ramesh, Sr. Counsel for Mr. J. Senthil Kumaraiah
For R15	Mr. A. Ramesh, Sr. Counsel for Mr. M. Natarajan
For R16	Mr. A. Ramesh, Sr. Counsel for Mr. S.M.A. Jinnah
For R17	Mr. M. Ajmal Khan, Sr. Counsel for Mr. T. Sugadev
For R13	Mr. Rupert J. Barnabas for Mr. K. Viralinathan
For R11	Mr. N. Ananthapadmanaban (appointed by Court)
<i>Amicus Curiae</i>	Mr. C. Muthu Saravanan

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**CrI. R.C. (MD) No.310 of 2014:**

For petitioner	Mr. P. Andiraj
For R1	Mr. V. Karthic, Sr. Counsel for Mr. N. Ilango
For R2	Mr. Gopalakrishna Lakshmana Raju Sr. Counsel for Mr. R. Venkateswaran
For R3	Mr. R. Sankarasubbu for Mr. K. Viralinathan
For R4	Mr. K. Balasundaram R4-died
For R5	Mr. V. Karthic, Sr. Counsel for Mr. K. Viralinathan
For R6	Mr. R. Sankarasubbu for Mr. N. Sekar
For R12	Mr. A. Ramesh, Sr. Counsel for Mr. J. Anand Kumar
For R17	Mr. M. Ajmal Khan, Sr. Counsel for Mr. T. Sugadev

**COMMON JUDGMENT**

**P.N. PRAKASH, J.**

CrI. A. (MD) No. 274 of 2011 is filed by the Central Bureau of Investigation (CBI) challenging the judgment and order dated 09.12.2009 passed by the Principal District and Sessions Judge, Madurai, acquitting all the accused in S.C No.3 of 2009. Criminal Revision Case (MD) 310 of 2014 is filed by Poongodi, the mother of the deceased Vinoth Kumar (D1), assailing the aforesaid judgment and order dated 09.12.2009. In view of the commonality of issues involved, the decision in both cases shall be governed by this common judgment.

2 In order to appreciate the issues involved in these cases, we proceed to preface our judgment by setting out certain facts which are indisputably widely known to the public, and which we proceed to take judicial notice in terms of Sections 56 and 57 of the Indian Evidence Act, 1872. In this regard, we draw sustenance from the judgment of Chandrachud, J (as he then was) in **Onkar Nath v. Delhi Administration [(1977) 2 SCC 611]**, wherein it was observed as under:

*“6. One of the points urged before us is whether the courts below were justified in taking judicial notice of the fact that on the date when the appellants delivered their speeches a railway strike was imminent and that such a strike was in fact launched on 8-5-1974. Section 56 of the Evidence Act provides that no fact of which the Court will take judicial notice need be proved. Section 57 enumerates facts of which the Court “shall” take judicial notice and states that on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference. The list of facts mentioned in Section 57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge. (See Taylor, 11th Edn., pp. 3-12; Wigmore, Section 2571, footnote; Stephen's Digest, notes to Article 58; Whitley Stokes' Anglo-Indian Codes, Vol. II, p. 887.) Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, the passing away of a man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact, as a means of establishing notorious and widely known facts it is superior to formal means of proof. Accordingly, the courts below were justified in assuming, without formal evidence, that the Railway strike was imminent on 5-5-1974 and that a strike paralysing the civic life of the Nation was undertaken by a section of workers on 8-5-1974.”*

**3** The Tamil daily “Dinakaran” was founded in Madurai by Mr.K.P Kandasamy in 1977. In 2005, the newspaper was acquired from Mr. Kandaswamy’s son Mr. K.P.K Kumaran by the Sun Network. The Sun Network is a mass media conglomerate founded by Mr.Kalanithi Maran in 1991. Mr. Kalanithi Maran is the Chairman of Sun Network and is the son of the former Union Minister late Mr. Murasoli Maran and grand-nephew of the former Chief Minister late Mr. M. Karunanidhi of the D.M.K.

**4** In May 2004, Mr.Dayanidhi Maran, brother of Mr. Kalanithi Maran, contested and won the Parliamentary elections from the Chennai Central Constituency on a DMK ticket. Shortly afterwards, Mr. Kalanithi Maran was invited to be a part of the Union Cabinet, and on 26.05.2004, he assumed charge as the Union Minister for Communications and Information Technology in the U.P.A.-I, headed by Dr. Manmohan Singh.

**5** In the meantime, in early 2007, a succession battle erupted in the D.M.K. between Messrs. M.K Alagiri and M.K Stalin, the sons of the then Chief Minister Mr. M. Karunanidhi. On 09.05.2007, the

Dinakaran newspaper published the results of a series of opinion polls conducted by A.C Neilsen and Co. which suggested that Mr. M.K Stalin had greater public approval as the political successor of Mr. M. Karunanidhi than his elder brother Mr. M.K Alagiri. This publication infuriated the supporters of Mr. M.K Alagiri, so much so, that protests were staged in different parts of Madurai city. The newspaper and the results of the opinion polls have been marked as Ex.P.3, and the Trial Court has noticed that the contents therein have not been disputed by any of the parties.

**6** The Madurai office of Dinakaran is housed in a building situated in Melur Road, Uthangudi, within the jurisdiction of Othakadai Police Station. Pursuant to the publication of the poll results on 09.05.2007, infuriated supporters of Mr. M.K. Alagiri started protesting near the Dinakaran office in batches by burning copies of the daily and raising slogans condemning the Dinakaran newspaper and its promoters and hailing Mr. M.K. Alagiri. Policemen were posted in large numbers near the Dinakaran office on 09.05.2007. The assailants resorted to indiscriminate vandalism and arson, and in the violence that ensued, the office went up in smoke and three persons unfortunately lost their lives.

**7** In the backdrop of the aforesaid events, the fourth estate went up in arms and cried foul claiming that the attack on the office of the Dinakaran was an attack on the freedom of Press. Candle light processions were held to mourn the deceased. Mr. Kalanithi Maran, Chairman of the SUN TV group went public on the date of the incident and declared that he will not rest until action is taken against the attackers vide Ex.P.80. On 10.05.2007, members of Chennai Reporters Guild, Madras Union of Journalists, Press Club, All Media Journalists Association (AJMA), Press Photographers' Association, *et al* connected with the electronic and print media, conducted a protest meeting and passed resolutions thanking the Chief Minister for ordering the transfer of the case to the CBI and demanding the registration of F.I.R. on the complaint given by Muthupandian (P.W.2), News Editor of the Dinakaran daily, vide Ex.P.80.

**8** In the aftermath of the above incidents, a rift arose between the Maran brothers (Mr. Kalanithi Maran being the owner of the Dinakaran) and the DMK patriarch Mr. M.Karunanidhi, which eventually culminated with the resignation of Mr.Dayanidhi Maran as the Union Minister for Communications and Information Technology on 13.05.2007

i.e., four days after the 09.05.2007 incident. The relations strained further as the DMK dissociated itself with the Sun Network, which had thus far been its media mouthpiece, and founded its own channel “Kalaigiar T.V” in September 2007. The Sun TV office was also shifted out of the D.M.K. headquarters (Anna Arivalayam, Anna Salai, Chennai), to another place.

**9** After the case was transferred to the CBI, investigation was completed and a final report was laid before the Court of the Chief Judicial Magistrate, Madurai on 06.08.2007, which was taken on file as P.R.C. No.1 of 2007. Committal proceedings were delayed as the accused resorted to one dilatory tactic after another.

**10** A few months before the 15<sup>th</sup> General Elections to the Parliament in 2009, the Marans began the process of mending fences with their grand uncle Mr. M. Karunanidhi. As the air of peace began to waft between the Marans and their grand uncle Mr. Karunanidhi and his family, the accused in the case started appearing before the committal Court and the case was committed to the Principal District and Sessions Court, Madurai by order dated 20.11.2008, after 464 days. On

01.12.2008, the Maran brothers formally called on their grand uncle and his sons, viz., Messrs. M.K. Alagiri and M.K. Stalin, signalling a truce between the warring members of the DMK clan. With the Maran brothers having patched up with the D.M.K., Mr. Dayanidhi Maran was once again fielded and re-elected as the DMK candidate from the Chennai Central constituency in May 2009 Parliamentary election. Mr.M.K.Alagiri was also elected to the Parliament on a D.M.K. ticket and was made the Union Minister for Chemicals and Fertilizers in the U.P.A II Government headed by Dr.Manmohan Singh.

**11** Pursuant to the committal proceedings, charges were framed by the Principal Sessions Court, Madurai on 06.04.2009. Trial began with the examination of P.W.1 on 05.08.2009. In all, 83 prosecution witnesses were examined, of whom, 49 turned hostile. Of the said 49, 21 were police officers, 1 was a Revenue officer and 15 witnesses from the Press, including the colleagues of the deceased. The Trial Court delivered the judgment of acquittal on 09.12.2009. The Trial Court examined the aforesaid witnesses, heard arguments and delivered judgment in 127 days, whereas, for committal, the accused adopted several tactics and delayed the process by 464 days!!

**12** At the outset, we must perforce point out that this case bears an eerie similarity with **Zaheera Habibulla Sheikh vs. State of Gujarat and others [(2004) 4 SCC 158]**, infamously called as the **Best Bakery** case. The proceedings before the Trial Court were unique in several ways. All of the principal eye-witnesses, including the employees of “Dinakaran” who witnessed the incident, turned hostile. The newspaper reporters and photographers, who were present on the spot, turned hostile. Several police officials, who had witnessed the incident, were turning hostile. Some of them who did not turn hostile, covertly supported the defence case in the cross-examination. This is, therefore, yet another case where the criminal justice system has been subverted and undermined by the scourge of witnesses turning hostile. Time and again, acquittals are obtained as vital witnesses turn turtle, abandoning their respective stands. We say, without fear of contradiction, that there can be no greater affront to our system of administration of justice than erroneous acquittals in criminal cases resulting from witnesses turning hostile. The very edifice of the criminal law is compromised when the enforcement machinery of the State is subverted and the perpetrators of crime walk out scot free.

**13** In high profile cases, such as the case at hand, this has unfortunately become the norm. We may recall the lament of the Supreme Court in **State v. Sanjeev Nanda [(2012) 8 SCC 450]**, wherein, it was observed thus:

*“99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system.”*

(emphasis supplied)

**14** We now resume the narration of the facts as projected by the prosecution.

**15** It is the case of the prosecution that on 09.05.2007, around 11.45 a.m., a group of persons led by V.P. Pandi, S/o Ponnusamy, who has assumed the moniker “Attack” Pandi, came to the office of the Dinakaran daily in a white colour Tata Sumo car armed with dandas (sticks) and iron rods in hand. These persons entered the Dinakaran premises and set fire to two wheelers parked inside the compound, near the security office. Thereafter, they vandalised the Dinakaran premises and proceeded to set the reception area on fire. The private security guards on duty were no match to resist their aggression. All hell broke

loose as the fire became an inferno and as a sequel, utter pandemonium prevailed.

**16** The Fire Service Station at Thallakulam, Madurai, received information at 11.47 a.m. from the Fire Service headquarters, 101, that a fire has broken out in the Dinakaran office. On getting this information, M.Balasubramanian, (P.W.50) Fire Station Officer, along with a team of fire service personnel and fire engines, left the Fire Station at 11.48 a.m. and reached the Dinakaran office at 12 noon, as could be seen from his evidence as well as the Fire Station Diary (Ex.P.169). The fire service personnel commenced rescue operations and started evacuating the staff members of the Dinakaran office who were caught in the building.

**17** While the fire fighting operations were on, two of the rescued staff members of Dinakaran, viz., Vinoth Kumar (D1) and Gopinath (D2), were found unconscious and were rushed to the nearby Meenakshi Mission Hospital, where, Dr.Nithyanandam (P.W.62), Medical Officer in the Emergency Unit, examined them at 12.30 p.m. They were brought by one Saravanan and on examination, Dr.Nithyanandam (P.W 62) found that both of them were dead. Therefore, he made necessary entries in the Accident Register and issued Accident Register copy (Ex.P.194 qua

Vinoth Kumar) and (Ex.P.192 qua Gopinath). He also sent individual death intimations, viz., Ex.P.195 – death intimation qua Vinoth Kumar (D1) and Ex.P.193 - death intimation qua Gopinath (D2), to the police. Bodies of both Vinoth Kumar (D1) and Gopinath (D2) were sent to the Government Rajaji Hospital, Madurai and kept in the mortuary. As regards Muthuramalingam (D3), security guard, he was found dead beneath an almirah in the A.C. room. Seemingly, there is no material to show as to whether he was taken to Meenakshi Mission Hospital first or directly to the Government Rajaji Hospital, Madurai. However, his body was also in the Government Rajaji Hospital, Madurai.

**18** On a complaint (Ex.P.1) lodged by Aaladiyan, (P.W.1), Sub Inspector of Police, Othakadai Police Station, Lakshmanan (P.W.70), Inspector of Police, Othakadai Police Station registered a case in Othakadai P.S. Cr. No.226 of 2007 at 1.00 p.m. on 09.05.2007 for the offences under Sections 147, 148, 449, 136, 302, 307, 332 and 120-B IPC, Sections 4 and 5 of the Explosive Substances Act, 1908 and Section 4 of the Tamil Nadu Property (Prevention of Damage And Loss) Act, 1992, (for short “the TNPPDL Act”) against Pandi @ Attack Pandi, “Tiger” Pandi, Batcha, Thiruchelvam, Irulandi, Oor Irulandi, Maari and unnamed others and prepared the printed F.I.R. (Ex.P.215), which reached the

jurisdictional Magistrate, viz., Judicial Magistrate, Melur, on 09.05.2007 at 7.10 p.m., as could be seen from the endorsement made thereon.

**19** Thereafter, Lakshmanan (P.W.70), Inspector of Police, went to the Dinakaran office at 1.45 p.m. and found the Fire Service personnel dousing the fire. He received information that the dead bodies of Vinoth Kumar (D1), Gopinath (D2) and Muthuramalingam (D3) were in the mortuary at the Government Rajaji Hospital, Madurai. Lakshmanan (P.W.70) went there and conducted inquest over their bodies. The inquest report relating to Vinoth Kumar (D1) and Gopinath (D2) were marked as Exs.P.216 and P.217 respectively. On the same day, he conducted inquest over the body of Muthuramalingam (D3) and the resultant inquest report was marked as Ex.P.218.

**20** Lakshmanan (P.W.70) gave a requisition to the Government Rajaji Hospital, Madurai, for conducting post-mortem on the three bodies and accordingly, Dr. G. Natarajan (P.W.63) performed autopsy on the bodies of Vinoth Kumar (D1), Gopinath (D2) and Muthuramalingam (D3). The viscera were sent to the Tamil Nadu Forensic Science Laboratory (for brevity "the TNFSL") and after obtaining the viscera reports, he gave a final opinion. The post-mortem certificate, viscera report and final

opinion qua Vinoth Kumar (D1), Gopinath (D2) and Muthuramalingam (D3) respectively were marked as Ex.P.196, Ex.P.197, Ex.P.198, Ex.P.199, Ex.P.200, Ex.P.201, Ex.P.202, Ex.P.203 and Ex.P.204 respectively.

**21** On the body of Vinoth Kumar (D1), the following ante-mortem injuries were noted:

*“On dissection of scalp, skull and dura:*

*Contusion scalp 6 x 4 cms. noted on left parieto occipital region.*

*Diffused subdural haemorrhage and subarachnoid haemorrhage noted over both the cerebral hemispheres.*

*Note: Multiple superficial surface incisions made all over the body reveals nil other injuries.”*

*Final opinion qua Vinoth Kumar (D1) is as under:*

**“Final opinion:**

*The deceased would appear to have died of suffocation associated with head injury, 4-6 hours prior to autopsy.”*  
*(emphasis supplied)*

**22** On the body of Gopinath (D2), the following antemortem injuries were noted:

*“1. Laceration 1.5 x 0.5 cms. x bone deep noted on the right forehead*

*2. Abrasion 2 x 1 cms. noted on the back of right wrist*

*On dissection of scalp, skull and dura:*

*Contusion scalp 5 x 4 cms. noted on left frontal region.*

*Diffused subdural haemorrhage and subarachnoid. haemorrhage noted over both the cerebral hemispheres.*

*Note: Multiple superficial surface incisions made all over the body reveals nil other injuries.”*

**23** The final opinion qua Gopinath (D2) is as under:

**“Final opinion:**

*The deceased would appear to have died of suffocation associated with head injury, 4-6 hours prior to autopsy.”*  
*(emphasis supplied)*

**24** On the body of Muthuramalingam (D3), the following ante-mortem injuries were noted:

*“Following antemortem injuries are noted on the body;*

*On dissection of scalp, skull & dura:  
Contusion scalp 4 x 3 cms on right occipital region  
diffused subdural haemorrhage and subarachnoid haemorrhage  
noted over both the cerebral hemispheres.*

**NOTE:**

*Multiple superficial surface incisions made all over the body reveals nil other injuries.”*

**25** The final opinion qua Muthuramalingam (D3) is as under:

**“Final opinion:**

*The deceased would appear to have died of suffocation associated with head injury, 6-8 hours prior to autopsy.”*

*(emphasis supplied)*

**26** Lakshmanan (P.W.70), Inspector of Police, went to the office of the Dinakaran daily at 7.30 p.m. and in the presence of witnesses, viz., Baskarapandian (P.W.58), Village Administrative Officer, Uthangudi and Karuppiah (not examined), Village Assistant, Uthangudi, prepared the observation mahazar (Ex.P.181) and rough sketch (Ex.P.219).

**27** In the observation mahazar (Ex.P.181), the entries of which are relevant under Section 7 of the Evidence Act, the following aspects were noted and recorded:

*“On the western side of the iron gate, is located the office room of the security guards. The glass panes of the security office were found broken. About 20 feet from the security office room, two two-wheelers, viz., Aactiva and Scooty were found fully brunt. The decorative glass windows at the entrance of the reception area were found broken. The reception area was found burnt.”*

Though there is a reference to other aspects in the observation mahazar (Ex.P.181), we are not adverting to the same as they are not germane to the discussion at hand.

**28** Lakshmanan (P.W.70), Inspector of Police, seized broken glass pieces (M.O.7), burnt wooden log soot pieces (M.O.8), burnt glass pieces stained with soot smoke (M.O.9), 2 nos. of burnt and melted small electric copper metallic wire pieces (M.O.10), 2 nos. of burnt and melted

big electric copper metallic wire pieces (M.O.11) under the cover of mahazar (Ex.P.220). Thereafter, he (P.W.70) proceeded to the printing section of the Dinakaran office from where he seized broken glass pieces (M.O.12) under the cover of mahazar (Ex.P.221). From the western side of the office, he collected broken glass pieces of Minidor and Ambassador car (M.O.13) under the cover of mahazar (Ex.P.222). Near the security office on the western side, he found two burnt two wheelers and collected burnt aluminium pieces (M.O.14) under the cover of mahazar (Ex.P.223). He collected broken glass pieces (M.O.15) from the security room of the Dinakaran office under the cover of mahazar (Ex.P.224). All these clue materials were forwarded to the Judicial Magistrate, Melur.

**29** On 10.05.2007, Lakshmanan (P.W.70), Inspector of Police, arrested Malik Batcha, "Tiger" Pandi, Prabhu and Saravanan. Based on the confession statement of Malik Batcha, he recovered a white colour Tata Sumo car bearing Regn. No. TN 58 E 6066 (M.O.6), five dandas (M.O.30 series) and a long iron rod (M.O.31) under the cover of mahazar (Ex.P.227). On the same day, he arrested Oor Irulandi and Maari @ Kattu Ravi. On 15.05.2007, he arrested "Attack" Pandi (A1) and recovered a casuarina danda (M.O.32) under mahazar Ex.P.229. On 16.05.2007, he arrested Thiruchelvam and Irulandi.

**30** Meanwhile, on 10.05.2007, the State Government ordered transfer of the case to the CBI vide Ex.P.243 and after the concurrence of the Central Government vide Ex.P.244, on 17.05.2007, Lakshmanan (P.W.70), Inspector of Police, Othakadai Police Station, handed over the investigation files to the CBI.

**31** The investigation of the case was taken over by Nandakumar (P.W.81), Deputy Superintendent of Police, CBI and his team comprising Ponnalagan (P.W.71), Inspector of Police, CBI, Raju (P.W.72), Inspector of Police, CBI, Arulandu (P.W.73), Inspector of Police, CBI and Subbian (P.W.74), Inspector of Police, CBI.

**32** Since the Court of the Chief Judicial Magistrate, Madurai is the designated Court for CBI cases, the material objects which were sent to the Judicial Magistrate Court, Melur, were transferred to the file of the Chief Judicial Magistrate Court, Madurai and all further applications were moved by the CBI before the Chief Judicial Magistrate, Madurai.

**33** After the CBI took over the investigation, they requisitioned the services of Dr. Rajender Singh (P.W.76), Principal Scientific Officer, CFSL, New Delhi, who came to the office of Dinakaran on 22.05.2007

and collected clue materials, viz., burnt debris from the right corner of the reception hall (M.O.46), burnt debris collected from the left corner of the reception hall (M.O.47) and burnt debris collected from the portion between right and left corner of the reception hall (M.O.48).

**34** At the request of the CBI, S.K.Chadha (P.W.78), the Finger Print Expert, CFSL, New Delhi, visited the Dinakaran office to collect the clue materials, on 21.05.2007 and 22.05.2017. On 23.05.2007, he examined the Tata Sumo Car (M.O.6), which was parked at Othakadai Police Station and lifted five chance finger prints (Q1 to Q5) from the rear view mirror and one chance finger print (Q6) from the right side rear view mirror. The finger prints of the arrested accused were sent to him for comparison. After comparison, he submitted his report dated 28.09.2007 (Ex.P.240), wherein, he has stated as follows:-

*"6. Result of examination:-*

*1(a) Chance print marked as Q.3 is identical with specimen left thumb impression of M.Saravanam, S/o.Shri.Murugesan, marked here as LTS.7 on the slip marked here as S-7 (Matching ridge characteristics have been found in their relative positions in the chance print and specimen prints. This forms the basis of the opinion that these prints are identical. Eight of them have been marked with projected red lines along with their detailed description is placed at Annexure -I).*

*b. Chance print marked as Q.5 does not contain sufficient number of clear ridge characteristics to establish the identity with specimen left thumb*

impressions of M.Saravanam, S/o.Shri Murugesan marked here as LTS.7 on the slip marked here as S-7.

II. Chance prints marked as Q.1, Q.2, Q.4 & Q.6 are blurred & Smudged and do not contain sufficient number of clear ridge characteristics for comparison".

(emphasis supplied)

**35** On 21.05.2007, Muthupandian (P.W.2), News Editor of the Dinakaran newspaper, handed over six compact discs to the CBI with a covering letter prepared in the letter head of Dinakaran (Ex.P.245), in which, the contents in the compact discs and photos have been vividly stated and for easy reference, the same are extracted below:

<b>Details of CD and Photos</b>	<b>Marking number in Court</b>
<b>I. CD-A (150 photos)</b> 1. Mayor and her husband's act of burning the paper 2. Councillor Manickam's group throwing stones 3. Damaging the office 4. Burning the office	<b>M.O.49</b>
<b>II. CD - B (264 photos)</b> 1. Stone throwing inside the office 2. Staff demonstration 3. Office burning	<b>M.O..50</b>
<b>III CD - C (445 photos)</b> 1. Bus damaging 2. Paper burning 3. Office attack with deadly weapons 4. Stone throwing in front of the office 5. Machine room attack 6. Mr. Gopi's head injured and blood oozing 7. Attack Pandu with his group blocking the road	<b>M.O.51</b>

<p><b>IV Video CD &amp; Photo:</b></p> <p><b>Folder D: (19 photos)</b></p> <ol style="list-style-type: none"> <li>1. Machine room attack</li> <li>2. Office attack</li> </ol> <p><b>Folder D1: (17 photos)</b></p> <ol style="list-style-type: none"> <li>1. Machine room attack in front of police</li> <li>2. Petrol bombs throwing</li> <li>3. Burning paper bundles</li> </ol> <p><b>Outside of folders (121 photos)</b></p> <p><b>Video clippings:</b></p> <ol style="list-style-type: none"> <li>1. q1 – 1.38 min.</li> <li>2. q1(1) – 59 sec.</li> <li>3. q1(2) – 1.34 min.</li> <li>4. q1(3) – 22 sec.</li> <li>5. q1(4) – 2.33 min.</li> <li>6. q1(5) – 3.14 min.</li> <li>7. q1(6) – 47 sec.</li> <li>8. q1(7) – 3.14 min.</li> <li>9. q1(8) – 3.15 min.</li> <li>10. q1(9) – 1.19 min.</li> <li>11. q1(10) – 1.27 min.</li> <li>12. q1(11) – 1.07 min.</li> </ol>	<p><b>M.O.52</b></p>
<p><b>V. Video CD – 2</b></p> <ol style="list-style-type: none"> <li>1. Jaya TV's report – 2.38 min.</li> </ol>	<p><b>M.O.53</b></p>
<p><b>VI. Video cassette – 30 min</b></p>	<p><b>M.O.54</b></p>
<p><b>VII. One copy of Dinakaran daily dated 09.05.2007</b></p>	<p><b>Ex.P.3</b></p>

Thanking you,

Yours faithfully,

for **Dinakaran**

**News Editor”**

**36** On 30.05.2007, the CBI collected a compact disc (M.O.45) containing 31 photographs taken by the reporters of the Nakkeeran, Tamil bi-weekly, from its Editor and Publisher Nakkeeran Gopal (P.W.75) vide Ex.P.236. This compact disc was deposited by the CBI with the Chief Judicial Magistrate, Madurai on 01.06.2007 itself, as could be seen from the property register maintained in the said Court.

**37** The CBI submitted an application dated 28.06.2007 (Ex.P. 251) to the Chief Judicial Magistrate, Madurai, for forwarding the material objects which were collected from the scene of occurrence by Lakshmanan (P.W.70), Inspector of Police, Othakadai Police Station, the clue materials collected by the CBI with the help of Dr. Rajender Singh (P.W.76) and the compact discs containing the photos and videos which were handed over to them by Muthupandian (P.W.2) and Nakkeeran Gopal (P.W.75), to the CFSL, New Delhi, for examination and report. In that application, the CBI appended a questionnaire which is as under:

*“QUESTIONNAIRE IN R.C. No.6/S/2007*

- 1 Is there any residue of petroleum products in the material objects mentioned at Srl.No.1 to 12 forwarded along with?*
- 2 If so, the nature and constitution of the same.*
- 3 Whether the material objects mentioned at Srl.No.1 to 12 forwarded herewith show signs of burning by fire?*
- 4 If so, the origin and cause of fire.*

- 5 Whether it is due to short circuit or due to any other cause?
- 6 Whether the photographs/videographs containing in the CDs mentioned at Srl.No.13 to 19 are original of the same.
- 7 Whether any tampering/obliteration/morphing has been done to the MOs mentioned at Srl. No.13 to 19.
- 8 Any other useful information which the expert may feel like to furnish to aid the investigation.”

**38** Pursuant to the aforesaid application by the CBI, the Chief Judicial Magistrate, Madurai, sent the material objects to the CFSL, New Delhi, along with the questionnaire, given by the CBI for expert opinion.

**39** Dr. Rajinder Singh (P.W.76), Principal Scientific Officer, CFSL, New Delhi, examined the items that were collected by him at the place of occurrence, which were sent to him by the Chief Judicial Magistrate and submitted his report dated 07.08.2007 (Ex.P.237). In his evidence as well in his report (Ex.P.237), he has given the following opinion:

“5. **RESULT OF EXAMINATION:**

**Regarding Query No.3**

*The physical and microscopic examination of exhibits marked 1(ii), 1(iii), 1(viii), 1(x), 1(xi) and 1(xii) show the presence of soot deposits which have resulted due to burning by fire.*

**Regarding Query No.4:**

*The spot inspection on 21.05.2007 and 22.05.2007 reveal that fire started from the reception hall of the building.*

**Regarding Query No.5:**

*The spot and laboratory examination of metallic wires marked exhibits 1(iv) and 1(v) do not reveal any signs of short-circuiting.*

**Regarding query Nos.1,2,6 & 7:**

*The reports from Chemistry Division and Photo Division will follow”*

**40** Gautham Roy (P.W.77), Senior Scientific Officer, CFSL, New Delhi, who examined the compact discs containing the photos and videos which were sent to him by the Chief Judicial Magistrate, Madurai, in his report dated 25.03.2007 (*sic*) 25.03.2008 (Ex.P.239), has given the complete details of the test he performed on the compact discs and the relevant portion of his final opinion is as under:

**“7. LABORATORY PROCEDURE EXPERIMENT AND ANALYSIS:**

*All the compact discs marked exhibits Q-1A, Q-2B, Q-3C, Q-4D, Q-5E, Q6-19 and Q-7VC were played in the computer and the handycam camera. The quality, colour, stability, resolution, sharpness, focus, etc. are so original and realist that it cannot be said duplicated. A1 copying image resolution cannot be similar with the originally taken photographs. There is always a lack of resolution and sharpness. The photographs and one videograph, in all the CDs and cassettes are original beyond reasonable doubts. None of the so called 1000 approximate photographs are reproduced, copied or any trick is there. All the photographs are original.*

*(emphasis supplied by us)*

**8. RESULT OF EXAMINATION:**

(a) Regarding query no.7:

(i) Whether the photograph/videograph are original of the scene:

Ans. All the still digital photographs and videograph, beyond reasonable doubt, are original.

(ii) Whether any tampering/obliteration/morphing has been done?

Ans. None of the photographs are tampered, obliterated, morphed because all the photographs and videographs are original because of its resolution and tampered obliterated and morphed photograph and videograph lack in resolution and they look flat and there is no two or three dimension. After thorough examination, all the parcels were sealed in the following manner with the seal of GR:SSO II:CFSL:CBI:N DELHI”.

Parcel No.A: One CD marked exhibit Q-1A.

Parcel No.B: One CD marked exhibit Q-2B.

Parcel No.C: One CD marked exhibit Q-3C.

Parcel No.D: One CD marked exhibit Q-4D.

Parcel No.E: One CD marked exhibit Q-5E.

Parcel No.F: One CD marked exhibit Q-6/19

Parcel No.G: One VCD marked exhibit Q-7/VC”

**41** The CFSL submitted a report dated 25.06.2008 (Ex.P.252), the relevant portion of which is as under:

“7. Laboratory procedure, experiment & analysis:

The exhibits 1(i), 1(ii), 1(iii), 1(iv), 1(v), 1(vi), 1(vii), 1(vii), 1(viii), 1(ix), 1(x), 1(xi) and 1(xii) were analysed by physico-chemical methods, chemical tests and gas liquid chromatographic technique.

8 Result of examination:

8.1 The exhibits 1(ii), 1(v) and 1(viii) shows the presence of residues of petroleum products.

8.2 The exhibits 1(i), 1(iii), 1(iv), 1(vi), 1(vii), 1(ix), 1(x), 1(xi) and 1(xii) do not show the presence of residues of petroleum products.

Note:

a) This report shall not be reproduced except in full without the written approval of the Director, CFSL (CBI), New Delhi except by the judicial Courts and investigating authorities related with the case.

b) This report is admissible under Section 293 Cr.P.C.

c) The remnants of the exhibits are being returned herewith sealed with the seal impression VBR CHEM DIV CFSL CBI NEW DELHI"

Since the aforesaid report is admissible under Section 293 Cr.P.C., the same can be treated as a substantive piece of evidence.

**42** At the request of the CBI, Ethirajan (P.W.66), Regional Transport Officer, Madurai (South), gave the registration details of the Tata Sumo Vehicle bearing Registration No.TN-58-E-6066 vide Ex.P.211, which shows that the vehicle stands in the name of P.Pandiyan, S/o.Ponnusamy, and contains his photograph. At this juncture itself, it may be relevant to state here that the Tata Sumo Car (M.O.6) was produced before the Chief Judicial Magistrate, Madurai. In the Property Register, (P.R.11 of 2007) of the Chief Judicial Magistrate, Madurai, the description of the Tata Sumo Car has been written in Tamil, the free English translation of which reads thus:-

*"White colour Sumo Car (with key) No.TN-58-E-6066; Chassis No.418005GZZ916935; type 483 DL-47, Engine No.GZZ752407. **The front side bears the sticker "Attack P.Pandi" and stepney is attached to the rear door".***

This shows that the moniker "Attack" Pandi was assumed by V.P. Pandi (A1) and that he had brazenly displayed it in the front windshield of his Tata Sumo car (M.O.6). In the photographs (M.O.45), we saw the D.M.K. party symbol "rising sun" on the rear door windshield of the car.

**43** Attack Pandi (A1) filed an application in CrI.MP.No.1838 of 2007 under Section 451 Cr.P.C. for return of the Tata Sumo car and vide order dated 19.12.2007 passed by the Chief Judicial Magistrate, the Tata Sumo car bearing Regn. No. TN-58-E- 6066, was handed over to him. He produced it during trial as per the condition of the order dated 19.12.2007 (supra) and it was marked as M.O.6. The Trial Court has, by the judgment impugned, handed over the custody of the Tata Sumo car under Section 452 Cr.P.C. to him. Therefore, there can be no scintilla of doubt that the said Tata Sumo car belongs to Attack Pandi.

**44** On 21.01.2008, Mr.S.S.Jawahar, I.A.S, District Collector, Madurai (P.W.68) granted sanction for prosecuting accused Nos.1 to 16

under Sections 4 and 5 of the Explosive Substances Act, vide sanction order dated 16.08.2007 (Ex.P.213).

**45** During the course of investigation, it also came to light that one V.Rajaram (A17), Deputy Superintendent of Police, who was present at the scene of occurrence, did nothing either to prevent the attack or apprehend the attackers, but, was actually acting in their aid. He was, therefore, arraigned as Accused No.17 in the final report and charged with the commission of offences under Sections 217 and 221 IPC.

**46** At this juncture, it may be relevant to place on record the chart showing the date of arrest of the accused, who have been charge sheeted by the CBI and the recoveries effected through them:-

S. No.	RANK	DATE OF ARREST	ARREST EFFECTED BY	CONFESSION	MAHAZAR	RECOVERY	IN THE PRESENCE OF
1.	Pandi (A1)	10.05.2007 at 6.00 am	P.W. 70	Ex. P. 228	Ex.P229	M.O. 32	P.W. 59
2.	Thiruchelvam (A2)	16.05.2007	P.W. 70	Ex. P.233	Ex.P.234	M.O. 33	P.W.60
3.	Prabhu (A3)	10.05.2007 @ 6.am	P.W. 70	No Recovery	-	-	-
4.	Saravanamuthu (A4)	10.05.2007 @ 6.am	P.W. 70	No Recovery	-	-	-
5.	Murugan (A5)	05.06.2007	P.W. 81	No Recovery	-	-	-
6.	Vijya Pandi (A6)	05.06.2007	P.W. 81	No Recovery	-	-	-
7.	Kandasamy (A7)	05.06.2007	P.W. 81	No Recovery	-	-	-
8.	Ramesh Pandi (A8)	05.06.2007	P.W. 81	No Recovery	-	-	-

9.	Ramaiah Pandian (A9)	05.06.2007	P.W. 81	No Recovery	-	-	-
10.	Vallivittan (A10)	05.06.2007	P.W. 81	No Recovery	-	-	-
11.	Thayamuthu (A11)	05.06.2007	P.W. 81	No Recovery	-	-	-
12.	Sudhakar (A12)	05.06.2007	P.W. 81	No Recovery	-	-	-
13.	Ramesh Kumar (A13)	13.06.2007	P.W. 81	No Recovery	-	-	-
14.	Thirumurugan (A14)	Not Arrested	Not Arrested	Not Arrested	Not Arrested	Not Arrested	-
15.	I. Ruban (A15)	28.05.2007	P.W. 81	No Recovery	-	-	-
16.	Malik Batcha (A16)	10.05.2007	P. W. 70	Ex. P. 226	Ex. P.227	M.O.'s. 6, 30, 31	P.W.68
17.	Rajaram (A17)	Not Arrested	Not Arrested	Not Arrested	Not Arrested	Not Arrested	-

**47** At the request of the CBI, Mr.Sai Saravanan, learned Judicial Magistrate, No.II, Madurai, recorded the statements of Aaladiyan (P.W.1), Sub-Inspector of Police, Sebastin, Grade I Police Constable (P.W.37), Sudhakaran, Police Constable, (P.W.42), Senthilkumar, Police Constable, (P.W.48) and J.Selvam, Police Constable (P.W.49) under Section 164 Cr.P.C. and those statements were marked as Ex.P.2, Ex.P.105, Ex.P.128, Ex.P.161 and Ex.P.168 respectively.

**48** After completing the investigation, the CBI filed final report on 06.08.2007, before the Chief Judicial Magistrate, Madurai, for the

offences under Sections 147, 148, 149, 302, 436 and 439 IPC, Sections 4 and 5 of the Explosive Substances Act and Section 4 of the TNPPDL Act against A1 to A16 and as against Rajaram, (A17), Deputy Superintendent of Police, for the offences under Sections 217 and 221 IPC, which was taken on file as P.R.C. No.1 of 2007.

**49** After the final report was filed, the Government of Tamil Nadu, vide G.O.(2D).No.753, Home (Pol.2) Department, dated 13.11.2007 (Ex.P.212), granted sanction under Section 197 Cr.P.C. to prosecute Rajaram (A17), for the offences indicated, supra.

**50** On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with. Though the final report was filed as early as on 06.08.2007, the committal order was passed only on 20.11.2008 and the case was eventually committed to the Court of Session on 06.04.2009 in S.C. No.3 of 2009.

**51** On 06.04.2009, the Principal Sessions Judge, Madurai, framed the following charges:

Charge	Accused	Penal Provisions
1	1 to 16	147 IPC
2	1 to 16	148 IPC
3	1 to 16	302 r/w 149 IPC
4	1 to 16	436 r/w 149 IPC
5	1 to 16	449 IPC
6	1 to 16	4 of the Explosive Substances Act, 1908
7	1 to 16	5 of the Explosive Substances Act, 1908
8	1 to 16	4 of the TNPPDL Act
9	17	217 IPC
10	17	221 IPC

**52** When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 83 witnesses, marked 252 exhibits and 54 material objects. On the side of the accused, a remand extension application and an affidavit were marked as Ex.D.1. When the accused were questioned about the incriminating circumstances against them, they denied the same. No witness was examined on behalf of the accused.

**53** The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 09.12.2009, acquitted the accused of all charges. It is in the aforesaid circumstances that CrI.A. (MD).No.274 of 2011 has been filed by the CBI, and CrI.R.C.(MD).No.310 of 2014 has been filed by Poongodi (P.W.55), mother of Vinothkumar (D1) assailing the judgment and order of acquittal dated 09.12.2009.

**54** Heard Mr. K. Srinivasan, learned Special Public Prosecutor for the CBI, Mr. V. Karthic, learned Senior Counsel representing learned counsel on record, viz., Mr. P. Balasubramanian for Murugan (A5), Mr.T.J.Ebinezer Charles for Kandasamy (A7), Ms. S. Devasena for Ramaiah Pandian (A9) and Vallivittan (A10), Mr. Gopala Krishna Lakshmana Raju, learned Senior Counsel representing Mr. R. Venkateswaran, learned counsel on record for Thiruchelvam (A2), Mr. A. Ramesh, learned Senior Counsel representing Mr. S. Pakalavan, learned counsel on record for V.Sudhakar (A12), Mr J. Senthil Kumaraiah, learned counsel on record for Thirumurugan (A14), Mr. M. Natarajan, learned counsel on record for Ruban (A15) and Mr. S.M.A. Jinnah, learned counsel on record for Malik Batcha (A16), Mr. M. Ajmal Khan, learned Senior Counsel representing Mr. T. Sugadev, learned counsel on record for Rajaram (A17), Mr.R.Sankarasubbu, learned counsel for

Prabhu (A3) and representing Mr. Ilayaraja Kandasamy, learned counsel on record for Attack Pandi (A1), Vijya Pandi (A6) and Ramesh Pandi (A8), Mr. Rupert J. Barnabas, learned counsel representing Mr. K. Viralinathan, learned counsel on record for Ramesh Kumar (A13), Mr. N. Anantha Padmanabhan, learned counsel appointed by the Court to represent Thayamuthu (A11) and Mr.C.Muthu Saravanan, learned *Amicus Curiae* and perused the materials available on record.

**55** At the outset, it is essential to restate that out of 83 witnesses, 49 have turned hostile. The profile of the hostile witnesses is tabulated hereunder:

Categories	Number of prosecution witnesses
Inspector of Police	P.W. 31
Sub- Inspectors of Police	P.W s. 1, 32, 33 & 34
Head Constables	P.Ws. 35, 36, 37(AR), 38(AR – Video Grapher), 39 (AR), 40 & 41
Police Constables AR & Striking Force	P.Ws. 42, 43, 44, 45, 46, 47, 48, 49 & 61
V.A.O.	P.W. 58 Confession & Recovery
Employees of Dinakaran	P.Ws. 2, 5, 6, 8, 9, 10, 11, 13, 14, 16, 17, 18, 19, 20 & 21
Press Reporters	P.Ws. 15 (Sun TV), 22 (Jaya TV), 23 (Vikadan Group), 27 & 28 (Nakeeran)
Employees of SCV	P.Ws. 7, 12
General	P.Ws. 24, 25 (Load Man)
Mahazar Witnesses	P.Ws. 59 (Tata Sumo), 60 (A-2)
164 Cr.P.C Witnesses	P.Ws. 1, 37, 42, 48, 49

**56** Of the 49 witnesses, 21 witnesses are policemen. Of the 21 police witnesses, four witnesses, whose statements were recorded under Section 164 Cr.P.C., also turned hostile. One Revenue Official, viz., Baskarapandian (P.W.58), Village Administrative Officer also turned hostile. 15 witnesses of the Dinakaran office, who had worked with the deceased persons, turned hostile. The Press Reporters of Sun TV, Jaya TV, Vikatan Group and Nakkeeran Group turned hostile. The employees of Sumangali Cable Vision (SCV), a sister concern of Sun TV and whose office is located in the Dinakaran office building, also turned hostile. Two members of public also turned hostile. There are other senior Police Officers, who, though appeared to support the case of the prosecution in examination-in-chief, gave all possible answers in favour of the defence in cross-examination, about which, we will discuss later.

**57** The trial of the case began with the examination of Aaladiyan (P.W.1), on 05.08.2009. The examination of the witnesses was completed at a breakneck speed with the examination of the last witness, viz., Rajagopalan (P.W.83) on 18.11.2009. Examination under Section 313 Cr.P.C. was completed, arguments were heard and the judgment was delivered on 09.12.2009. We can only fervently wish that all Sessions

trials in the State are bestowed the same degree of expedition as was done in this case.

**58** The first argument put forth by Mr R. Sankara Subbu, learned defence counsel before us is that as all the accused were acquitted by the Trial Court in 2009, and that as we are now in 2019, interference with the order of acquittal would infringe their right of speedy trial guaranteed by Article 21 of the Constitution of India. In support of this contention, reliance was placed on the judgment of a Division Bench of the Patna High Court in **State of Bihar Vs. Ramdaras Ahir [1985 Crl LJ 584]**. Our answer to this submission is our order dated 12.02.2019, which is extracted below, the contents of which are self-explanatory:

*“When these cases were taken up for final hearing today, Mr. R. Sudev Kumar, learned Special Public Prosecutor for CBI submitted that he does not know to read and write Tamil and a Prosecutor, who is conversant with Tamil, will place his submissions.*

2 *Mr. Rupert J. Barnabas, learned counsel for V.P. Pandi, @ Attack Pandi/first respondent in CrI.RC.(MD) No.310 of 2014 raised preliminary objections by questioning the very competency of this Court to hear the criminal appeal at hand on the following grounds:*

*a) the very appointment of the Special Public Prosecutor by the CBI is under question.*

*b) a co-ordinate Bench of this Court has passed an order on 07.08.2017 to post CrI. A. (MD) No.274 of 2011 after two of the accused are secured by the CBI.*

3 In support of the aforesaid two contentions, he placed reliance on the following portion of the judgment of the Division Bench of this Court in *Lyca Productions vs. J. Manimaran and others* [2018 (3) CTC 605]:

“42 Judicial discipline demands consistency in rendering judgments. A Bench of the High Court cannot take a view contrary from the one taken by another Bench of co-ordinate strength of the same High Court.”

4 In view of the aforesaid two contentions put forth by Mr. Rupert J. Barnabas, it became imperative for this Court to examine the previous adjudications in this case.

5 On perusal of the previous adjudications, it appears that this case has had a chequered history. This case relates to the alleged death of two persons on 09.05.2007 in the office of “Dinakaran”, a Tamil daily. The CBI took over the investigation of the case and filed final report and the case was tried in S.C. No.3 of 2009 by the Principal District and Sessions Judge, Madurai, who, by judgment dated 09.12.2009, acquitted all the 17 accused. Assailing the acquittal, the CBI preferred an appeal with a delay of 118 days, to condone which, Crl.M.P. No.1 of 2010 in Crl.A. (MD) SR. No.14670 of 2010 was filed. A Division Bench of this Court comprising S. Rajeswaran and G.M. Akbar Ali, JJ, by order dated 14.03.2011, condoned the delay. The CBI also preferred Crl.O.P. No.3617 of 2011 in Crl. A. (MD) SR. No.14670 of 2010, seeking special leave. A Division Bench of this Court comprising S. Rajeswaran and G.M. Akbar Ali, JJ, after hearing the CBI and the respondents, by a detailed order dated 29.06.2011, granted leave. After the grant of leave, the appeal against acquittal was numbered as Crl. A. (MD) No.274 of 2011. While so, Poongodi, the mother of one of the two deceased, filed a criminal revision challenging the acquittal of the accused together with an application for condonation of delay of 1,434 days in M.P. (MD) No.1 of 2014 in Crl.R.C. (MD) SR No.3917 of 2014. The delay was condoned by Brother Justice G.M. Akbar Ali on 12.06.2014, pursuant to which, the criminal revision was numbered as Crl.R.C. (MD) No.310 of 2014, which was directed to be listed along with the appeal against acquittal preferred by the CBI, viz., Crl.A. (MD) No.274 of 2011.

6 Since then, the criminal appeal and criminal revision at hand were getting listed before various Benches from time to time and were getting adjourned primarily on the ground that the counsel for one or the other parties were withdrawing their appearance.

7 When things stood thus, a Division Bench of this Court comprising S. Nagamuthu and V.S. Ravi, JJ, passed the following order on 19.08.2015:

"Mr. M. Karunanidhi, learned counsel, who was on record for the respondents 1 to 5, 8 to 11, 13, 15 and 16, has filed a memo withdrawing his appearance. Similarly, Mr. Veera Kathiravan, learned counsel for the respondents 6,7,12 and 14 has also filed a memo withdrawing his appearance. For R17, Mr. Sugadev, learned counsel undertakes to file memo. But, this appeal has been pending from the year 2011. The revision has been pending from the year 2014. Since these matters have been pending for the past 5 years, we cannot afford to adjourn the matter simply. We are inclined to appoint a legal aid counsel. Accordingly, Mr. N. Anandakumar is appointed as a legal aid counsel for all the respondents, except R1. The Registry shall supply papers to him. Post on 03.09.2015."

8 Thereafter, the same Division Bench passed the following order on 27.10.2015:

"Mr. S. Jeyakumar, learned Special Public Prosecutor, is ready to argue the matter. According to him, one technique or the other is adopted by one accused or the other to simply drag on the case from the year 2011. Therefore, he wants the matter to be disposed of as early as possible, as almost, appeals up to the year 2012 have been disposed of by this Bench.

2 Mr. P. Andiraj, learned counsel for the petitioner in CrI.R.C. (MD) No.310 of 2014, would submit that he is also ready to argue the matter and he also wants disposal of this appeal at the earliest point of time.

3 Mr. M. Ajmal Khan, learned Senior Counsel, who has been engaged for the 17th respondent would submit that he needs time to go through the papers.

4 Mr. R. Alagumani, learned counsel, would submit that he has been engaged for accused no.3. But he is not ready to argue the matter, as he has not gone through the papers.

5 Mr. F. Deepak, learned counsel for the 13th respondent, would submit that he is also not ready to argue the matter, though he assured this Court in the last hearing that he would be ready to argue the matter, today. Therefore, there is justification on the part of the learned Special Public Prosecutor Mr. S. Jeyakumar that one technique or the other is being adopted to drag on the proceedings by the accused from the year 2011 onwards. Anyhow, considering the fact that this Bench is going to break after 30.10.2015, we are unable to post this appeal before this Bench and therefore, we are inclined to adjourn the same to 17.11.2015.

6. Mr.N. Anandkumar, learned counsel appearing as legal aid counsel for some of the accused, Mr. M. Ajmal Khan, learned Senior Counsel for R17, Mr. F. Deepak, learned counsel for R13 and Mr. R. Alagumani, learned counsel, who entered appearance for R3, would assure this Court that they would be ready to argue the case without fail on 17.11.2015. The learned Special Public Prosecutor for the appellant and Mr. P. Andiraj, learned counsel for the revision petitioner would also submit that they would be ready to argue the matter on that day. Therefore, the matter is adjourned to 17.11.2015.”

9 Following the aforesaid order, another Division Bench comprising P.R. Shivakumar and V.S. Ravi JJ, passed the following order on 12.01.2016:

"From a perusal of records, it is seen that the respondents had entered appearance through various counsel. Subsequently, the respondents failed to continue their appearance and the advocate engaged by them were directed to report "no instruction". This Court chose to pass an order appointing a legal aid counsel for the accused at the cost of the State.

2. In view of the same, it cannot be said that the accused persons were not served with notice and they were not aware of the pendency of the appeal. **They simply adopt the practice of keeping away from the Court with ulterior motive of having the case postponed indefinitely.** If such tactics on the part of the accused can be allowed to succeed, there cannot be any other better

*example of the mockery of justice displayed in the Court. Under the said circumstances, if the appellant has genuine interest in prosecuting the appeal, the appellant should have come forward with a petition for the issuance of warrant under Section 390 of the Code of Criminal Procedure, 1973. Hence, the matters are adjourned to 19.01.2016 to find out whether the appellant is prepared to file such a petition for the issuance of the warrant."*

10 On 07.08.2017, a Division Bench comprising M.M. Sundresh and N. Sathish Kumar JJ, passed the following order:

*"The learned Special Public Prosecutor appearing for the respondents would submit that efforts have been made to secure the two accused of which one is living abroad. In such view of the matter, Registry is directed to post this appeal, after the two accused are secured by the appellant."*

11 After we were assigned the current portfolio from 04.02.2019, we directed the Registry to prepare an advance list of cases year-wise and publish the same, so that advocates are not taken by surprise and can get ready for disposal. Accordingly, an advance list of Division Bench Criminal Appeals, year-wise, was prepared and published on 08.02.2019, a perusal of which, reveals that CrI.A. (MD) No.274 of 2011 is the oldest pending criminal appeal and therefore, it has been listed as item no.1 in the advance list. The advance list bears the caption "Advocates are requested to be ready to argue the case without seeking adjournment".

12 Under such circumstances, when the cases at hand were taken up for hearing today, Mr. Rupert J. Barnabas, learned counsel for the first respondent in CrI.A. (MD) No.274 of 2011 and CrI.R.C. (MD) No.310 of 2014, made the submissions delineated in para 2 supra.

13 From a perusal of the records, it is seen that notice has not been served on Thayamuthu, 11th respondent in CrI. A. (MD) No.274 of 2011 preferred by the CBI. It is the contention of the CBI that the said Thayamuthu is abroad and therefore, they have not been able to serve notice on him till date.

14 The question that now arises for the consideration of this Court is whether this Court should wait eternally for service of notice on the said Thayamuthu and thereby cause prejudice to the case of the prosecution and also the case of the respondents who have entered appearance.

15 Guidance given by the Supreme Court on this aspect are a legion. Suffice it to refer to two judgments of the Supreme Court, viz., *K.S. Panduranga vs. State of Karnataka* (2013) 3 SCC 721 and *L.Laxmikanta vs. State* (2015) 4 SCC 222, wherein, it has been held in unequivocal terms that the Court can proceed with the matter by appointing a counsel for the accused and after perusal of the records.

16 Further, be it noted that the powers of the Appellate Court under Section 386 Cr.P.C. would apply to an appeal against acquittal under Section 378 Cr.P.C. also. Therefore, this Court appoints Mr. N. Ananthapadmanaban (Enrolment No.208/1985), an advocate having more than three decades of standing in the Criminal Bar, as counsel for not only Thayamuthu, but also for the other accused, in the event of any of them directing their existing counsel to withdraw their memo of appearance, whenever the matter is taken up for hearing.

17 Now, adverting to the preliminary objections raised by Mr. Rupert J. Barnabas on the competency of the Public Prosecutor, it may be apposite to state here that the following three objections were raised by the respondents in the Special Leave Petition in Crl.O.P. No.3617 of 2011:

"12 There are three contentions raised by the respondents to reject the present application seeking leave to file an appeal:

"i) the appellant, viz., the Inspector of Police CBI/SCB/Chennai is not a competent person to file an appeal.

ii) The Special Public Prosecutor, CBI, is also not the competent person to present the appeal as there was no authorisation by the Central Government.

iii) The subsequent authorisation will not cure the defect. Therefore, the appeal is non-est."

18 The Division Bench of this Court comprising S. Rajeswaran and G.M. Akbar Ali, JJ, rejected the aforesaid contentions by order dated 29.06.2011, which has not been appealed against, before the Supreme Court till now and as such, has attained finality.

19 Now, it is Mr. Rupert J. Barnabas' contention that the Prosecutor has not got legal authority to argue the appeal before this Division Bench. However, Mr. R. Sudev Kumar, learned Special Public Prosecutor for CBI represented that the CBI wants to bring in a Prosecutor who is conversant with Tamil. Therefore, the competency of the person who is going to appear before us on behalf of the CBI can be decided at the time of passing final orders in the appeal, inasmuch as, there is no provision in the Cr.P.C. to raise this as a preliminary issue for adjudication. Even if the CBI adopts delaying tactics, this Court is not helpless, because, Section 386 Cr.P.C. clearly states that even if the Public Prosecutor does not appear, this Court can peruse the records and pass appropriate orders, as enumerated in Section 386(a) Cr.P.C.

20 Coming to the second contention of Mr. Rupert J. Barnabas that this Court has no competency to hear the appeal in the light of the order dated 07.08.2017 passed by the Division Bench of this Court which has been extracted in para 10 supra, we find little substance in the said contention for the following reasons:

(a) The Chief Justice is the master of the roster. The roster assigned to us by the Hon'ble Chief Justice is as under:

Sl.No.	Hon'ble Judges	Subject
2	P.N. Prakash, J. and B. Pugalendhi, J.	Habeas Corpus Petitions – (All stages)  Criminal Appeals to be heard by a Division Bench, including cases relating to Crime against Women and any other criminal matters to be heard by a Division Bench (All Stages)  Criminal Contempt and Appeals relating to orders in Contempt Proceedings (All Stages)

The roster does not exempt the criminal appeal at hand, viz., CrI.A. (MD) No.274 of 2011 and in fact, clearly includes Criminal Appeals to be heard by a Division Bench, including cases relating to crime against women and any other criminal matters to be heard by a Division Bench (all stages).

(b) The order dated 07.08.2017 passed by the Division Bench of this Court is not an order on merits of the case or a final order on a question of fact or law for a coordinate Bench to follow. The said order dated 07.08.2017 passed by the Division Bench is

*only an usual adjudication order, which has no binding force on us. In fact, it is worth pointing out at this juncture that, at paragraph no. 45 in Lyca Productions (supra), relied on by Mr. Rupert J. Barnabas himself, it has been held as follows:*

*"45. According to settled theory of Precedents, every decision contains three basic postulates, - (i) finding of facts, direct and inferential; (ii) statements of the principles of law applicable to the legal problems that arise in the facts of the case; and (iii) judgment based on the combined effect of the above."*

*The order dated 07.08.2017 passed by the Division Bench does not pass muster the three basic postulates laid down in paragraph no.45 of Lyca Productions extracted above and the said order cannot be elevated to the status of a judgment of a coordinate Bench, much less a binding precedent, for this Court to follow.*

*21 Now, qua fixing a date for the final hearing of the cases at hand, we asked the convenience of the prosecution and the defence. The prosecution and the defence, including Mr. Rupert J. Barnabas, stated that 26.02.2019 would be convenient for them for making their submissions.*

*Accordingly, both the matters stand adjourned to 26.02.2019 (Tuesday) for final hearing."*

**59** We have found it necessary to set out the aforesaid sequence of events in this case in order to set the record straight and to demonstrate that the disposal of these cases has been hanging fire since 2011, solely on account of the dilatory tactics deployed by the accused. Even before us, a last ditch attempt was made to somehow short circuit the hearing and prevent a disposal on merits. The argument that the judgment under appeal does not require interference on account of efflux of time is a submission that is stated only to be rejected. When the delay

is solely on account of the dilatory tactics of the accused, they cannot be heard to cry foul and plead that their right to speedy trial has been violated as was held by the Supreme Court in **Niranjan Hemchandra Sashittal and another v State of Maharashtra [(2013) 4 SCC 642]**.

**60** The second submission which was made by Mr. Rupert J.Barnabas is that the Special Public Prosecutor for the CBI is not competent to present the instant appeal against acquittal as he is not a Public Prosecutor within the meaning of Section 24 Cr.P.C. In support of this contention, strong reliance was placed on the judgment of the Supreme Court in **K.Anbazhagan Vs. State of Karnataka [(2015) 6 SCC 86]** and **K.Anbazhagan Vs. State of Karnataka [(2015) 6 SCC 158]**.

**61** In the first place, as was pointed out in paragraph No.17 of our order dated 12.02.2019, extracted supra, leave to appeal was granted by this Court on 29.06.2011 in CrI.OP.No.3617 of 2011 and the issue attained finality. We are afraid that in view of the bar contained in Section 362 of the Cr.P.C., we cannot nullify the order dated 29.06.2011 passed by this Court in CrI.O.P.No.3617 of 2011 in CrI.A (MD)SR. No. 14670 of 2010 and dismiss the appeal by upholding the arguments of Mr.Rupert J.Barnabas.

**62** Mr. Rupert J.Barnabas, learned counsel, contended that after he entered appearance in this appeal for Saravanamuthu (A-4), he has filed CrI.M.P.(MD).No.11505 of 2016 in CrI.A.(MD).No.274 of 2011, in which this preliminary objection has been raised. He, therefore, contended that it is imperative for this Court to pass an order in CrI.M.P.(MD).No.11505 of 2016.

**63** We perused the records in CrI.M.P.(MD).No.11505 of 2016 and found that the Registry had posted the said petition before a Division Bench of this Court comprising *S. Nagamuthu and M.V. Muralidaran, JJ.* and the learned Judges, vide order dated 21.11.2016, directed the Registry as under:

"Registry is directed to number this petition, subject to maintainability".

**64** Only thereafter, the petition was numbered as CrI.M.P.(MD).No.11505 of 2016. Saravanamuthu (A-4), who is the petitioner in CrI.M.P.(MD).No.11505 of 2016, died on 29.08.2018. Hence, CrI.M.P.(MD).No.11505 of 2016 deserves to be dismissed on this score alone. However, we proceed to dismiss this petition also on the ground that the objections raised therein have already been answered by the Division

Bench of this Court while granting special leave, vide order dated 29.06.2011, in CrI.O.P. No.3617 of 2011 in CrI.A.(MD)SR.No.14670 of 2010, which order, we have no power to revise or review, in view of the bar under Section 362 Cr.P.C. It cannot be possibly argued, with any degree of seriousness, that a change of counsel would give a new cause of action for the Court to review its earlier orders passed in criminal proceedings. If that be so, every convicted accused could persist on a re-trial solely on the ground of change of counsel!

**65** Coming to the appointment of the Special Public Prosecutor, it is seen that the Special Public Prosecutor has not been appointed by the CBI, but, by the Government of India, acting through the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), under whose administrative control, the CBI functions. Mr.S.Rozario Sunder Raj, who filed the present appeal and Mr.Srinivasan, the present Special Public Prosecutor, who argued the case before this Court, have all been appointed by the Central Government and therefore, it cannot be said that they should not be heard by us.

**66** At this juncture, it may not be out of place to extract Section 386 Cr.P.C.:-

**"386. Powers of the Appellate Court.**

*After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may....."*  
(emphasis supplied)

**67** A reading of the above provision would show that the Appellate Court need not be at the mercy of either the Public Prosecutor or the defence counsel and the Appellate Court has the power to peruse the records and pass orders. However, we appointed Mr. G. Muthu Saravanan, learned counsel, as *Amicus Curiae* to assist us in this case.

**68** Coming to the Judgment in **K.Anbazhagan** (supra), relied upon by Mr. Rupert Barnabas, the question before the Supreme Court was whether Mr. Bhavani Singh, who was appointed by the State of Karnataka, as the Special Public Prosecutor to prosecute Ms.J.Jayalalitha in the disproportionate assets case before the Special Court at Bangalore, was competent to represent the State of Karnataka in the appeal before the Karnataka High Court. A close reading of the judgment would reveal that the decision turned on the interpretation of Rule 30 of the Karnataka Law Officers (Appointment and Conditions of

Service) Rules, 1977 and the notification dated 02.02.2013 appointing Mr. Bhavani Singh as the Special Public Prosecutor. In that context, the Supreme Court held that in view of the language used in the appointment order, Mr. Bhavani Singh's appointment was only for the Trial Court and not before the Appellate Court.

**69** In this case, the trial before the Special Court was conducted by Mr.K.Jeyabalan, Special Public Prosecutor, CBI and the appeal was filed by Mr. S. Rozario Sunder Raj, Special Public Prosecutor who is authorized to file appeals for the CBI in the High Court. Therefore, the judgment relied upon by Mr. Rupert J.Barnabas will be of no avail. Hence, this preliminary objection raised by Mr.Rupert J.Barnabas is rejected.

**70** The third argument that was raised on behalf of the accused is that this Court, whilst dealing with an appeal against acquittal, under Section 378 Cr.P.C. should be slow in interfering with the order of the Trial Court, since the accused enjoys a double presumption of innocence coupled with the fact that the Trial Court has had the opportunity of seeing the demeanour of the witnesses. In support of this contention, the following decisions were cited:

- **Chandrappa and others vs. State of Karnataka [(2007) 4 SCC 415]**
- **Arulvelu and another vs. State [(2009) 10 SCC 206]**
- **Murugesan vs. State [(2012) 10 SCC CrI. 383]**
- **Kashiram and others vs. State of M.P. [(2002) 1 SCC 71]**
- **Bhaskarrao vs. State of Maharashtra [(2018) 6 SCC 591]**

**71** We can have no quarrel with the aforesaid submission, as we are constitutionally bound to follow the law laid down by the Supreme Court. However, we would like to take a leaf from and out of the judgment of the Supreme Court in **Chandrappa** (supra), relied upon by the learned counsel and extract the following sapient passage therefrom:-

*"42.(3). Various expressions, such as, "substantial and compelling reasons" "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc, are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion."*  
(emphasis supplied)

In other words, our power to review the evidence has not been stifled, but, we have been cautioned to be more circumspect while dealing with a case under Section 378 Cr.P.C. Recently, in **Anjan Dasgupta v. State of West Bengal (2017) 11 SCC 222**, the Supreme Court has reiterated as under:

*“39. ....It is well settled that in case where an order of acquittal has been made on improper and erroneous appreciation of evidence, it is always open to the court of appeal to make proper and reasonable appreciation of evidence and differ from the order of acquittal and in such event, it shall never hesitate in reversing the same.....”*

**72** The fourth submission of the defence is that the First Information Report, which is the very foundation of this case, has been demolished and therefore, the edifice built therein cannot stand on its own. In support of this contention, the following factors were highlighted:-

- Aaladiyan (P.W.1), Sub-Inspector of Police, who gave the complaint (Ex.P.1), on the basis of which the First Information Report was registered, turned hostile and has stated in the cross-examination that the superior police officers had made ready the First Information Report and had asked him to sign. Though in the printed First Information Report (Ex.P.215), the time of registration of the case has been given as 13 hrs. (1.00 p.m.), yet, according to Aaladiyan (P.W.1), the complaint itself was made ready only at 6.30 p.m. on 09.05.2007, when he went to the Police Station.
- The First Information Report had reached the jurisdictional Magistrate, only at 07.10 p.m. Had the First Information Report been registered at 01.00 p.m. on 09.05.2007, it would not have taken this long for it to reach the jurisdictional Magistrate, whose Court is situated hardly 21 kilometres away from the Police Station.

- In the complaint (Ex.P.1) and the First Information Report Ex.P. 215), apart from Attack Pandi (A1), the names of "Tiger" Pandi, Basha, Thiruselvam, Irulandi, Oor Irulandi and Mari figured whereas, in the final report, the CBI have not included "Tiger" Pandi, Irulandi, Oor Irulandi and Mari, which shows that there has been false implication of persons in the First Information Report.
- In the First Information Report, the vehicle number of Tata Sumo Car has been shown as "TN-58-Y-6066", whereas, the CBI investigation shows that the vehicle number is TN-58-E-6066.

**73** We carefully considered this submission made by the defence. Through the evidence of Muthupandian (P.W.2), the prosecution has proved beyond doubt via Ex.P.3 that on 09.05.2007, the Dinakaran daily published an opinion poll showing the popularity of Mr.M.K.Alagiri in bad light. In fact, the Trial Court has observed that this fact was taken to be admitted as there was no cross-examination on this point. The publication triggered agitations near the Dinakaran office on that day and in the vandalism and arson that followed, the Dinakaran office caught fire and two of its staff members and one security guard lost their lives. Ex.P.225 is the typed written complaint given by Muthupandian (P.W.2), News Editor of Dinakaran to the Inspector of Police, Othakadai

Police Station, wherein, the details of the events, as they transpired, have been set out by Muthupandian (P.W.2). He also alleges that the attack was instigated by Mr. M.K. Alagiri, the Chief Minister's elder son (We will come to the relevancy and admissibility of this document a little later). For the present, it would suffice, if we merely refer to the fact that the police complaint was given by the News Editor of Dinakaran, implicating Mr.M.K.Alagiri in the offence. This is precisely the reason why the journalists, who protested on 10.05.2007 in huge numbers, passed a resolution demanding the registration of the case on the complaint given by Muthupandian (P.W.2), News Editor of Dinakaran. This complaint was available in the Othakadai Police Station and was handed over to the CBI and has been marked as Ex.P.225.

**74** Faced with the version set out in Ex.P.225, how did the police protect Mr. M.K Alagiri? They went about preparing a complaint implicating Attack Pandi (A1), and also threw in a red herring by deliberately giving a wrong car number. The senior police officers made Aaladiyan (P.W.1), Sub-Inspector of Police sign the complaint (Ex.P.1) and had the First Information Report registered around 6.30 p.m., antedating it as if the case was registered at 01.00 p.m. The fact that Muthupandian (P.W.2) later turned hostile during trial and denied the

very giving of the complaint (Ex.P.225) and had joined hands with the accused is a different story, but, his conduct of giving a complaint which has been spoken to by Selvaraj (P.W.30), Addl. Supdt. of Police and Lakshmanan (P.W.70), Inspector of Police, Othakadai Police Station, is relevant under Section 8 of the Evidence Act as evidence of his conduct. Attack Pandi's (A1's) role in the arson was so patently obvious that it was impossible for them to shield him. Had they attempted to do that, it would have amounted to hiding a pumpkin in a morsel of food.

**75** For the present, we are convinced that Aaladiyan (P.W.1), Sub-Inspector of Police, was a scapegoat in the conspiracy that was at large amongst the senior police officers, including Selvaraj (P.W.30), the then Additional Superintendent of Police and Lakshmanan (P.W.70), the then Inspector of Police, Othakadai Police Station. It has been clearly established through the evidence of T.S.Anbu, Superintendent of Police, (P.W.29) that the police pickets, which were posted for protecting the Dinakaran office, were headed by Selvaraj (P.W.30) and assisted by Rajaram (A17), Deputy Superintendent of Police, vide Ex.P.62. Selvaraj (P.W.30) did not turn hostile and in the cross-examination by the defence, he has stated as follows:-

"I (Selvaraj) (P.W.30), Ramalingam -  
Additional Superintendent of Police, Anbu (P.W.  
29), Superintendent of Police and Deputy  
Inspector General of Police discussed about the  
giving of complaint".

**76** It is quite perplexing to find as to why these senior police officers had to discuss, ruminant and deliberate about a simple act of giving a complaint. Admittedly, Rajaram (A17), Dy. Supdt. of Police, was physically present throughout the attack and he would have been asked to give a complaint as to what he saw. On the contrary, why should all the senior officers sit together and discuss for preparing a simple police complaint and make a hapless Sub-Inspector of Police (P.W.1) to be the complainant? The complaint (Ex.P.225) that was given by Muthupandian (P.W.2) was on the file of the Othakadai Police Station, when the CBI took over the case for investigation. Selvaraj (P.W.30), Additional Superintendent of Police, in order to surmount this fact, has stated that he asked Muthupandian (P.W.2), Chief Editor of the Dinakaran office, to give a complaint, but, since he refused, a complaint was obtained from Aaladiyan (P.W.1), Sub Inspector of Police and the FIR was registered at 1.00 p.m. He has further stated in the chief-examination that Muthupandian (P.W.2) came to the police station at 7.30 p.m. and gave

the complaint (Ex.P.225); since already the First Information Report was registered at 1.00 p.m. itself, on the complaint of Aaladiyan (P.W.1), no second First Information Report was registered on the complaint (Ex.P.225) given by Muthupandian (P.W.2).

**77** The aforesaid explanation given by Selvaraj (P.W.30), Addl. Supdt. of Police, at first blush, appears very satisfactory. However, his bluff is called when he unwittingly states in the cross-examination that when he met Muthupandian (P.W.2) and asked him to give a complaint, the time was between 3.30 p.m. and 4.00 p.m. If, according to Selvaraj (P.W.30), the First Information Report had been registered at 01.00 p.m. itself, where then was the necessity for him to ask Muthupandian (P.W.2) between 3.30 p.m. and 4.00 p.m. to give yet another complaint? Therefore, we are of the view that the complaint (Ex.P.225) implicating Mr. M.K. Alagiri in the offence had come into being first and to avoid the embarrassment of including his name as an accused in column No.7 of the First Information Report, the senior police officers deliberately contrived the complaint (Ex.P.1) in the name of Aaladiyan (P.W.1) and had the same registered only around 6.30 p.m. This is precisely why it had reached the jurisdictional Magistrate only at 7.15 p.m.

**78** We are aware that Aaladiyan (P.W.1) has stated in the cross-examination by the Prosecutor that he was forced to give a Section 164 Cr.P.C. statement to the Magistrate. This statement of his initially appeared outrageous to us, but, we are now able to decipher the reason for it. Normally, the Investigating Officer will not ask for recording the Section 164 Cr.P.C. statement of a police officer, because, it is generally presumed that a police officer will not turn hostile. In this case, Aaladiyan (P.W.1) must have been cribbing about the manner in which he was forced to sign the complaint (Ex.P.1) by his superiors. So, the CBI has acted on the basis that he may not support the FIR and if he fails to support the FIR, the entire prosecution case may collapse. So, the CBI had his statement recorded under Section 164 Cr.P.C. before the Magistrate supporting the FIR. When the case came up for his evidence, Aaladiyan (P.W.1) cogently supported the prosecution case upto the stage of identification of the accused. When it came to the complaint (Ex.P.1) and FIR, he refused to toe the police line and instead, gathered the courage to break himself from the shackles of the Sec.164 Cr.P.C. statement and candidly tell the truth to the Court that the senior police officers had prepared the complaint and Selvaraj (P.W.30), Additional Superintendent of Police, forced him to sign it at 6.30 p.m. Thus, it is evident that he did not forsake his conscience and he boldly exposed his

superiors, though he was in service when he gave evidence before the Trial Court on 05.08.2009. Selvaraj (P.W.30), Addl. Supdt. of Police was also in service at that time and we are informed that he retired only sometime in 2011, after being rewarded the post of Deputy Commissioner of Police.

**79** Now, coming to the evidence of Muthupandian (P.W.2), who has turned hostile, he has stated that he had taken a complaint to the police station, but, the police refused to accept it and instead, the police had prepared a typewritten complaint and asked him to sign the same, which he obliged. His signature in Ex.P.225 alone was marked as Ex.P. 40 since he denied that he had given Ex.P.225. In other words, he admitted his signature in Ex.P.225, but stated that the police had prepared it and kept it. Muthupandian (P.W.2), holding a responsible position as the News Editor of the Dinakaran daily, expects this Court to believe that the police had already prepared a complaint in his name implicating the Chief Minister's son-Mr. M.K.Alagiri and that they forcibly obtained the signature (Ex.P.40) on that!! A perusal of the complaint (Ex.P.225) shows that there are three typewritten pages and Muthupandian (P.W.2) has signed in all the three pages and his signature has been marked as Ex.P.40. Some people can be fooled at all

times; all people can be fooled sometimes; but, all people cannot be fooled at all times.

**80** What are the circumstances to show that the complaint (Ex.P.1) and the FIR (Ex.P.225), which followed it, are a sham, as contended by the defence?

- a) The names of one “Tiger” Pandi, Irulandi, Oor Irulandi and Mari shown in the accused column of the FIR were found to be not involved in the attack by the CBI.
- b) The Tata Sumo car number of Attack Pandi has been deliberately given as TN 58 Y 6066 instead of TN 58 E 6066.
- c) To cap it all, the State police even arrested “Tiger” Pandi, Oor Irulandi and Mari named in the FIR, who were eventually found to be unconnected with the incident by the CBI.

**81** The next question is whether a finding that the complaint (Ex.P.1) and the First Information Report (Ex.P.215) were ante-timed documents, would result in the entire prosecution case being jettisoned. The answer is an emphatic “No”. In **State of Uttar Pradesh vs. Jagdeo and Others [(2003) 1 SCC 456]**, the Supreme Court dealt with this precise question and opined as under:

“8. ....The High Court has expressed a doubt about the FIR being lodged at the time alleged by the prosecution and the manner in which it is so stated by the prosecution. The question however is: is it sufficient to acquit all the persons? The Trial Court had discussed all the elements leading to the brutal murder in this case and found them against the accused persons. Unfortunately, the High Court remained on the periphery and never attempted to grapple with the substance of the evidence on record. This peripheral approach of the High Court led to the impugned judgment of acquittal being passed. In the presence of such a strong evidence on record implicating the accused persons, things like alleged improper recording of time of lodging of FIR are not sufficient to dislodge the verdict of convictions passed by the Sessions Court. In our considered view the evidence of the eyewitnesses in the present case completely proves the prosecution case. The doubt thrown by the High Court on the presence of the eyewitnesses at the time of occurrence is totally unacceptable. The impugned judgment of the High Court whereby all the accused persons have been acquitted is hereby set aside.....”

(emphasis supplied)

**82 In State of Madhya Pradesh vs. Mansingh and others [(2003) 10 SCC 414]**, the Supreme Court reiterated the aforesaid view and observed as under:

“15. Merely because there was some change in time of the lodging of the FIR, that does not per se render the prosecution version vulnerable. At the most, the requirement was a careful analysis of the evidence, which has been done by the Trial Court.....”

We are, therefore, duty bound to look into the substance of the matter and to satisfy ourselves that on an overall assessment of the evidence on record, the order of acquittal passed by the Trial Court is consistent with the innocence of the accused.

**83** As stated above, all the policemen who had witnessed the occurrence turned completely hostile excepting Aaladiyan (P.W.1), Sub Inspector of Police, who was declared hostile since he stated that the complaint (Ex.P.1) was made ready at 6.30 p.m. by senior police officers and not by him. Likewise, all the Press men, excepting Nakkeeran Kamaraj (P.W.26) and Nakkeeran Gopal (P.W.75), who wailed that the assault on the Dinakaran office was an assault on democracy and who shed crocodile tears over the bodies of the deceased, and who took out candle light processions (which can be seen in the videos) have conveniently turned hostile. The deceased must be turning in their graves at the perfidy of their colleagues like Muthupandian (P.W.2).

**84** The CBI could have easily impugned the First Information Report and implicated Selvaraj (P.W.30) along with Rajaram (A-17), which they did not do, for which, they may have their own reasons. It is, however, too late in the day for us to concern ourselves with that decision. It is settled law that merely because the witnesses have turned hostile, their testimony need not be discarded in toto in view of Section 154(2) of the Indian Evidence Act, 1872, which came into force with effect from 16.04.2006. Even before its incorporation, the Supreme Court has held that the evidence of hostile witness need not be discarded lock,

stock and barrel and those portions which are all compatible with the case of the prosecution, can be relied upon.

**85** The following passage from the decision of the Supreme Court in ***Bathula Nagamalleswara Rao and others v. State* [(2008) 11 SCC 722,]** would suffice to indicate the nature of the enquiry that we are called upon to undertake:

*“56. It is settled that even if a major portion of the evidence is found to be deficient, in case the residue is sufficient to prove guilt of an accused, conviction can be maintained. It is the duty of the court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence of some of the witnesses has been found to be deficient. Falsity of a particular material witness or material particular would not ruin it from the beginning to the end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars.”*

Bearing this legal principle in mind, we now place reliance on the testimony of Aaladiyan (P.W.1), the free English translation of which is as under:

**“Chief Examination:-**

*I have been working as Sub Inspector in Othakadai Police Station since January 2007. Thiru.Mariappan, S.I., Thiru.Kaatturaja, S.I., Tmt.Tamilselvi, W.S.I., were working along with me. Thiru.Lakshmanan was the Inspector there. At that time, Thiru.Rajaram was the D.S.P., of Oomachikulam Division. The*

above said D.S.P., who has now appeared before the Court, is A-17. On 9.5.2007 at 8.00 a.m., when Roll call was conducted at Othakadai Police Station, a phone call came to the Police Station from the District Office of the Special Branch, Madurai, informing that the Dinakaran Newspaper is being burnt at Othakadai Bazaar and also in front of the Dinakaran office with regard to the Survey Report published in Dinakaran Newspaper. Thiru.Mariappan, Sub Inspector, has received the said information. Immediately, the said matter was informed to all and I was instructed to go to Othakadai Bazaar along with Grade-I Constable Ananth and others went to Dinakaran office. When I went to Othakadai Bazaar along with Constable Ananth, they burnt the Dinakaran Newspaper and left the place. Since no one was there, I was there in the bazaar for some time. At that time, Sub Inspector Mariappan contacted me over cell phone and told me to come to Dinakaran office immediately. I went to Dinakaran office along with Grade-I Constable Ananth. The above said office is situated at Madurai-Melur Road, Uthangudi. Thereafter, from 8.30 hours, I was on bandobust duty in front of Dinakaran office along with the other Sub Inspectors, Head Constable 1380 Martin William, Head Constable 813 Regunathakalaimani, Head Constable 891 Selvaraj and Grade-I Constable Ananth. About 9.00 a.m., Tmt.Thenmozhi, Mayor of Madurai, came in a vehicle with some men and tried to burn Dinakaran Newspaper in front of the gate of Dinakaran office. Though they were stopped, they did not heed to it and raised slogans against Dinakaran Newspaper and then they burnt the Dinakaran Newspaper on the road side and left the place. The said act took place in that place for about ¼ hour. The traffic on both the sides of the road came to a standstill. We were regulating the traffic. Within a short time, Thiru.Rajaram, Deputy Superintendent of Police, Oomachikulam, reached the Dinakaran

office along with police party. 4/5 local men came with the D.S.P., At that time, Thiru.Ambikapathi, Sub Inspector of Karuppayurani Police Station, Thiru.Deiveegapandian, Inspector of Oomachikulam Police Station, Thiru.Saravanakumar, Sub Inspector of Oomachikulam Police Station, came there along with Police party. After some time, about 10 Constables of Madurai Armed Reserve came there in a vehicle. The DSP instructed that the police vehicles should be parked on the roadsides. He also told all of us not to stand in one place and asked us to spread out and stand. About 10.00 a.m., about 50 men came in Sumo, Autos and in Two Wheelers headed by former Youth Wing Secretary Saravanan. They came in front of Dinakaran office and raised slogans against Dinakaran Newspaper and Dinakaran Management and damaged the glasses on the front side of the office by pelting stones from outside. Some men entered into the compound and damaged the glasses with stones and sticks. At that time, Thiru.Selvaraj, Additional Superintendent of Police, came there with striking force. All of us, officers, Constables and the Deputy Superintendent of Police chased them away. They escaped in the vehicles in which they came. Again, there was some tense situation in that place and hence the traffic on both sides came to a standstill. Along with some policemen I was regulating the traffic. After half an hour, the above said Saravanan group came to Dinakaran office again and damaged the glasses in the office by throwing stones. Some of them went to the roadside tea shop in front of the Office, took soda bottles and threw them on the glasses in the office and caused damage. Some of them jumped over the compound wall and damaged the windows and glasses with sticks. We along with the Police party and DSP chased them away. They escaped in the vehicles they came. After some time, around 11.00 a.m., one Tmt.Devaki Ayyavoo of Uthangudi came in an Auto along with 6

men, raised slogans against Dinkaran Newspaper and burnt Dinakaran Newspaper and went away in the said Auto. About 11.45 a.m., a group of men came from Madurai in Sumo and Auto. They came in a white colour Tata Sumo. It was parked in front of the gate and about 9 men alighted from the vehicle. At that time, myself, Sub Inspector Ambikapathi and other police men were regulating the traffic. While we were informing the DSP on seeing their arrival, some men in the above said Sumo took wooden sticks and some of them took white color plastic bottle containing petrol like liquid and entered through the front gate. The security stopped them. They pushed down the Security, entered inside and set fire to two-wheelers inside the gate by pouring the above said liquid. A few went to the reception and set fire by pouring the above said liquid. The DSP, myself, Sub Inspector Ambikapathi, Sub Inspector Saravanakumar along with Policemen chased them away. They damaged the vehicles, glasses and doors till the end of the office and set fire to them and escaped. As it was set fire by pouring the liquid, it was burning inside. The persons who are now in the Court look like the persons who set fire. I am able to identify that the accused present before the Court are the ones who came on that day. (emphasis supplied)

As the entire office was engulfed in smoke, Fire Service vehicles came there and doused the fire. We were assisting them. They brought out two persons from the office in an unconscious state. Immediately, they were rushed to Madurai Meenakshi Mission Hospital in a car. We were informed that the Doctors there who examined them declared them as dead. As crowd had gathered in the hospital, the DSP asked me to go there with a Constable and I went. I along with Grade-I Constable 1213 Ananth took the two bodies in a vehicle and went to Government Rajaji

Hospital. After some time, it was said that a security has died inside Dinakaran office and his body was brought to the Government Rajaji Hospital. About 6.30 p.m., the Additional Superintendent of Police Thiru.Selvaraj directed me to come to Othakadai Police Station and hence I went there. A complaint in this regard was written there. The Additional Superintendent of Police told me to sign it. I read it. It was mentioned therein as if the complaint was lodged at 13.00 hours. (Meanwhile, the Advocate for A1 raised objection that the witness has affixed his signature only and that it will not prove the document. Proof of the document is in the preliminary stage. Hence, this objection is recorded).

I signed in that because the account of the incident narrated in that was true. However, I told them that I have come only at 7 o' clock, but, it is written therein as if I had given the report at 13 hrs. for which, they said that you better sign now, rest we will see later and therefore, I signed. (What he means by seven o' clock is 7 p.m. which is the time he says that he went to the police station). This is the complaint petition which was read out and signed by me. The said complaint petition is Ex.P.1. (The Advocate for A-1 raised objection to mark this exhibit. It is marked subject to objection). No local police enquired me with regard to the lodging of complaint.

The CBI Officers told me to come to the CBI office. I went there 2, 3 times. They enquired me by showing the photo. I signed in the photo as a proof that I have seen it.

I signed in 5 photos out of the photos shown to me. I don't know who are the persons in the above said 5 photos. They enquired me by showing the photo. I have told that I don't know. The above said 5 photos are M.O.1 to 5. (Marked with the objection

*of the Advocate for A-1) . I can identify the white color Tata Sumo Car which was seen by me on that day. The said white color Tata Sumo Car is M.O.6. I don't remember the registration number of the vehicle. On that day, about 8 men were on bandobust duty at the time when the above said persons came. On 17.07.2007, I was asked to come to the CBI Office. They told me that I have to give 161 Statement as told by them, otherwise I will be implicated in this case as an accused. Therefore, I gave the statement as told by them. I do not know the proper identification of the accused.*

*Permission was granted to the Public Prosecutor to cross-examine the witness as hostile witness."*

Since he had stated in the chief-examination that when he went to the police station at 6.30 p.m., a complaint was already made ready and he was forced to sign it by Selvaraj (P.W.30), Additional Superintendent of Police despite his protests, the prosecution moved to have him declared hostile.

**86** We carefully analysed the evidence of Aaladiyan (P.W.1). He has narrated the entire sequence of events which took place in Dinakaran office from 9.00 a.m. onwards on 09.05.2007. His evidence shows that on 09.05.2007, at 9.00 a.m, a group led by Mrs.Thenmozhi, Mayor of Madurai, came to the Dinakaran office and burnt the newspaper in front of the office and left the place after half an hour; after

her group left, Rajaram (A17), Deputy Superintendent of Police, came there with police party; around 10.00 a.m., a group of around 50 persons led by Saravanan, ex-Youth Wing Secretary, came to the Dinakaran office and shouted slogans and damaged the glass panes; at that time, Selvaraj (P.W.30), Additional Superintendent of Police, came there and chased away the group; half an hour later, once again, Saravanan and his group returned and pelted stones; Rajaram (A17) and his party chased them away; around 11.00 a.m., a group led by Devaki Ayyavoo came by autos and shouted slogans in and around the Dinakaran office and left; around 11.45 a.m., a white colour Tata Sumo car and auto came there; from the vehicles, 9 persons alighted; on seeing them, he (P.W.1) passed on the information to Rajaram (A17); in the group which came by the Tata Sumo car, some were taking casuarina dandas and a few were having a white plastic bottle with petrol-like substance and tried to enter into the Dinakaran office through the front gate; when the security guards stopped them, they pushed them and entered the campus; they first set fire to 2 two-wheelers parked near the security office; a few of them went towards the reception area and threw the inflammable substance and set fire.

**87** Coming to the identification of the accused, Aaladiyan (P.W. 1) first stated that the accused standing in the dock are like the persons who were involved in the attack. In the next line, he has stated that the accused are the persons who came to the place of occurrence. He adds that a little later, a fire engine came to the Dinakaran office and two persons, who were unconscious, were removed and sent to Meenakshi Mission Hospital.

**88** When it came to the question of the complaint and the FIR, he stated that the complaint was signed by him only at 6.30 p.m. in the police station, whereas, it is the case of Lakshmanan (P.W.70) that the complaint was given at 1.00 p.m. and the FIR was registered at that time. Since this part of the evidence was not compatible with the prosecution case, he was declared hostile. However, Aaladiyan (P.W.1) has specifically identified the Tata Sumo car (M.O.6) as the vehicle in which the attackers came. The fact that the Tata Sumo car belonged to Attack Pandi (A1) has been established beyond cavil vide the evidence of the Regional Transport Officer and copy of the R.C. Book (Ex.P.211) showing that the White Tata Sumo Car bearing registration number TN 58 E 6606 belonged to Attack Pandi (A1).

**89** It is the argument of the defence that in the complaint (Ex.P. 1), the number of the Tata Sumo car has been given as TN 58 Y 6066, which is not that of Attack Pandi (A1). In the discussion, supra, we have disbelieved the mode and manner in which the complaint (Ex.P.1) has come into existence. Attack Pandi (A1) has not denied that the Tata Sumo car (M.O.6) bearing Registration No.TN 58 E 6066 belongs to him. In fact, as pointed out, supra, he had exercised his right of ownership and filed an application under Section 451 Cr.P.C. and has taken interim custody of the car from the Court.

**90** The next powerful evidence to show the involvement of Attack Pandi's (A1's) Tata Sumo car is the photo bearing the description "DSC\_4750" in the compact disc (M.O.45). The said photo shows the Tata Sumo car which bears the DMK party symbol i.e., rising sun, on the rear door windshield and four persons are found removing dandas from the car and policemen are found watching the same. When we magnified the picture, we could find the Registration Number as TN 58 E 606, but, the last digit was not visible from the angle of the shot. On an overall assessment, we have no hesitation in returning a finding that the Tata Sumo car that came to the place of occurrence had the Registration No.TN 58 E 6066 and not TN 58 Y 6066.

**91** The learned counsel for the defence contended that in the latter portion of the chief-examination, Aaladiyan (P.W.1) has stated “*I do not know the identification of the accused properly*” and after he was declared hostile, in the cross-examination by the accused, he has stated “*I do not know any of the accused present in the Court.*” Relying upon these two statements, the defence counsel and the Trial Court have criticised the evidence of Aaladiyan (P.W.1). But, we are not inclined to reject the evidence of Aaladiyan (P.W.1) in toto as done by the Trial Court. In the chief-examination, he has stated that the accused standing in the dock are the persons who came there and he can identify them. That does not mean that he knew them, for, if he had known them, he would have obviously given all of their names in the complaint. He has taken very serious exception to the complaint (Ex.P.1), because, he felt that his superior officers were making him sign in a complaint by giving the names of persons whom he did not know.

**92** The defence took a plea that the Test Identification Parade (TIP) should have been conducted to identify the accused. In our opinion, the group, which came in the Tata Sumo car, did not conduct a lightning attack and retreat in a jiffy. They took their own sweet time in

vandalising the premises and committing acts of arson under the very gaze of persons entrusted with the duty of protecting law and order. The accused entered the campus after pushing the security guards, set fire to 2 two-wheelers parked nearby and set fire to the reception hall of the office of the Dinakaran daily and walked around vandalising the office and after their mission was accomplished, left the place in the Tata Sumo car. This incident was videographed by the Press men, who had gathered in huge number there and was published in the newspapers, magazines and telecast in television channels across the State, as could be seen from Ex.P.80 and Ex.P.81. Ex.P.80 is the copy of Nakkeeran, a Tamil bi-weekly dated 16.05.2007, which contains the photos of the attackers clearly. Ex.P.81 is an advertisement wall poster of Nakkeeran magazine to promote sales of their magazine, which clearly shows the face of the accused with dandas in action. Therefore, when once the photos of the attackers in action are in the public domain, the conduct of TIP is merely an empty formality and carries no meaning at all.

**93** In **Vijayan vs. State of Kerala, [(1999) 3 SCC 54]**, the Supreme Court has rejected the TIP proceedings on the ground that the photos of the accused had appeared in the newspaper. Further, interestingly, in **Ravi vs. State [(2007) 15 SCC 372]**, the photograph of

the accused therein was published in the **Dinakaran** daily and the TIP was conducted later. In the said case, the **Dinakaran** daily was marked through D.W.1. The Supreme Court rejected the TIP proceedings on account of prior disclosure of the accused in the Dinakaran daily.

**94** The above being the settled legal position, had the CBI conducted TIP, it would have been a charade and the CBI would have been a laughing stock. We, therefore, have no hesitation in accepting the identification of the accused in the dock by Aaladiyan (P.W.1) as the persons who were responsible for the arson, which resulted in the loss of three innocent lives. That apart, in the observation mahazar (Ex.P.181) that was prepared by Lakshmanan (P.W.70), Inspector of Police, Othakadai Police Station, which is relevant under Section 7 of the Evidence Act, there is a specific mention about the two completely burnt two-wheelers near the security guard office, the fire in the reception area and breakage of glass and window panes, which amply corroborates the evidence of Aaladiyan (P.W.1).

**95** Mr. K. Srinivasan, Special Public Prosecutor for C.B.I placed strong reliance on the photographs and videos and requested this Court to view them and thereafter, come to a conclusion. However, the learned

counsel for the defence vehemently persuaded us not to view them on the following grounds:

- No witness had identified the picture of the accused in the photographs and videos during their evidence in the Court and have correlated them with the accused standing in the dock.
- The Press men who had taken photos and videos turned hostile and have stated that they never took photos and videos and therefore, the photos and videos have not been proved in a manner known to law.
- The photos and videos are electronic evidence and in the absence of certification under Section 65-B of the Evidence Act, the same is inadmissible in view of the judgment of the Supreme Court in **Anvar P.V. vs. P.K. Basheer and others [(2014) 10 SCC 473]**.
- The negatives of the photographs have not been marked.

**96** It is common knowledge that Hindustan Photo Films Manufacturing Company Ltd., (for short “Hindustan Photo Films”) was manufacturing and supplying film rolls for cameras. The liberalisation policy of the Government introduced in the year 1992 under the stewardship of Dr. Manmohan Singh, the then Finance Minister of India, ushered in a paradigm shift in photo technology, resulting in our indigenous Hindustan Photo Films going red in 1995. Since then,

Hindustan Photo Films almost stopped manufacturing film rolls for cameras and none was seriously affected, because, digital cameras occupied the vacuum. Today, every smart phone has a digital camera for which no film is required.

**97** In this case, Muthupandian (P.W.2) handed over six compact discs, viz., M.Os.49 to 54 with a covering letter dated 21.05.2007 containing the photos and video clippings of the attack, to the CBI. Similarly, Nakkeeran Gopal (P.W.75) has stated that Annal (P.W.27), his Press Photographer and Oliraja (P.W.28), his News Reporter at Madurai, covered the Dinakaran office attack and sent the news and photographs to him for publication in Nakkeeran, based on which, he published an advertisement wall poster (Ex.P.81) and published a cover story with photographs in his Nakkeeran magazine in the issue dated 16.05.2007 (Ex.P.80) and he handed over a compact disc containing 31 photographs (M.O.45), to the CBI with a covering letter dated 30.05.2007 (Ex.P.236). It may be appropriate to extract the relevant portion of Ex.P.236:

*“We refer your letter (fax) dated on 23.05.2007 requiring as to submit the unedited version of photograph or audiographs before you in respect of Madurai Dinakaran incident.*

*In the interest of justice and in the interest of upholding journalistic ethics, I am submitting one C.D. containing about 31 photographs of the particular incident covered by us. Receive the same and acknowledge.”* (emphasis supplied)

**98** Unlike Muthupandian (P.W.2), who gave the compact discs and later turned hostile, Nakkeeran Gopal (P.W.75) and his Editor Kamaraj (P.W.26) did not turn hostile, though their Press Photographer Annal (P.W.27) and News Reporter - Oliraja (P.W.28) turned hostile. All the compact discs, viz., M.Os. 45, 49, 50, 51, 52 and 53 were sent by the CBI, through the Chief Judicial Magistrate, Madurai, to the CFSL, for examination and report. We have alluded to the report of Gautham Roy (P.W.77) above, which shows that the photos and videos have not been doctored. These compact discs are electronic records.

**99** It must be noted that the judgment under appeal was rendered at a time when the judgment of the Supreme Court in **State vs. Navjot Sandhu [(2005) 11 SCC 600]** was holding the field. In that case, the Supreme Court had held that secondary evidence of electronic records may be proved *de hors* the provisions of Section 65-B of the Evidence Act. However, in **Anvar** (supra), a three Judge Bench overruled the aforesaid dictum in **Navjot Sandhu** (supra) and held that the reception of electronic records as evidence was wholly governed by the special provision in Section 65-B of the Evidence Act, and that the electronic record is admissible, without further proof, if the same satisfies the requirements of the said provision.

**100** For example, when photographers were taking videos of a scene of crime by using roll film camera, the photographer will have to be examined and the negative should be marked as primary evidence and the print developed therefrom, should be marked as secondary evidence. But, when photographs are taken in digital cameras and transmitted electronically, the question of examining the photographer for proving the digital record would not arise and it would suffice if the certification is given by the person, who has the management of the device which generated the electronic record. This is popularly alluded to as the Section 65-B (4) certification.

**101** The defence counsel did not object to the relevancy of the photographs and videos, because, the same are relevant under Section 7 of the Evidence Act. Since it may prove to be dangerous to their case, they were only taking shelter under the requirement of a certificate under Section 65-B (4) as to the mode of proof. It may be pertinent to state here that at the time of admitting these material objects, the defence did not take any objection before the Trial Court with regard to the requirement of Section 65-B(4) certification.

**102** In **Sonu alias Amar vs. State of Haryana [(2017) 8 SCC 570]**, the Supreme Court has crystallised the position in the following terms:

*“32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the Trial Court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.”*

(emphasis supplied)

**103** As stated above, in this case, no specific objection with regard to the absence of certification under Section 65-B(4) of the Evidence Act was taken by the defence during trial and the compact discs were marked as M.Os.45,49,50,51,52 and 53. Therefore, in the

light of the judgment of the Supreme Court in **Sonu alias Amar** (supra), the defence cannot be permitted to raise a plea of the requirement of a Section 65-B (4) certification at this stage, as the same relates to the mode and manner of proof.

**104** Even otherwise, more recently in **Shafhi Mohammad vs. State of Himachal Pradesh [(2018) 2 SCC 801]**, the Supreme Court, has clarified the requirements of Section 65-B(4) and has held as under:

*“29. The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65-B(4) is not always mandatory.”*

*30. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.”*

*(emphasis supplied)*

**105** Our understanding of the judgment of the Supreme Court commencing from **Anvar** (supra) to **Shafhi Mohammad** (supra) is that a piece of evidence which is authentic and is not opposed to the test of relevancy, should not be kept out of the Court's consideration on the ground that a Section 65-B(4) certificate is unavailable, because, the ultimate objective of a criminal prosecution is to arrive at the truth. It could have never been the Supreme Court's intention to sacrifice the truth on the altar of procedural technicalities. Needless it is to state that procedure is only a handmaid of justice. When humans have, for extraneous reasons, like the case at hand, failed to be on the side of the truth, the evidence collected by machines like cameras, cannot be kept out of judicial scrutiny, on specious reasonings. After all, the law of evidence is an adjectival law intended to promote and not subvert the cause of truth and justice.

**106** This issue can be viewed from yet another dimension. As alluded to by the Supreme Court in **Sonu alias Amar** (supra), had an objection been taken with regard to Section 65-B(4) of the Evidence Act during trial, then, the prosecution would have had an opportunity to rectify the deficiency. Even in appeal, additional evidence can be taken under Section 391 Cr.P.C. to set right this deficiency. However, in this

case, the persons who were in possession of the device, viz., News Editor Muthupandian (P.W.2), Press Photographer Annal (P.W.27) and News Reporter Oliraja (P.W.28), crossed the floor and defected to the side of the accused by turning hostile. Therefore, in the light of the judgment of the Supreme Court in **Shafhi Mohammad** (supra), a certification need not be produced in respect of a device which is in the hands of the adverse party.

**107** The defence wanted this Court to start off with the presumption that the compact discs (M.Os.45,49,50,51,52 and 53) are *per se* doctored. Unfortunately, the law does not permit the Court to draw such a negative presumption and on the contrary, Section 114 of the Evidence Act permits the Court to presume the existence of any fact which, it thinks, is likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (f) of Section 114 of the Evidence Act is extracted hereunder:

“The Court may presume that the common course of business has been followed in particular cases.”

**108** Bearing this in mind, let us analyse the conduct and evidence of Muthupandian (P.W.2), Annal (P.W.27) and Oliraja (P.W.28).

**109** Muthupandian (P.W.2), in his evidence, has stated that at the relevant point of time, he was working as the News Editor of the Dinakaran daily. Annal (P.W.27) has stated that he is a Press Photographer of Nakkeeran bi-weekly, stationed at Madurai. Oliraja (P.W.28) has stated that he is a resident of Madurai and News Reporter of Nakkeeran bi-weekly. Therefore, the nature of business of these three witnesses was to collect news and transmit them for publication in the newspaper/magazines where they were employed. The Investigating Officer has stated that Muthupandian (P.W.2) handed over six compact discs (M.Os.45,49,50,51,52 and 53) with a covering letter (Ex.P.245). Ex.P.245 is in the letter head of the Dinakaran daily. Muthupandian (P.W.2) defected to the side of the accused and stated that he did not hand over the compact discs to the CBI. However, when he was confronted with the covering letter (Ex.P.245), he admitted his signatures which were marked as Exs.P.4, P.5 and P.6. The main letter was marked as Ex.P.245 through the Investigating Officer. What is the need for the CBI to prepare a covering letter on the letter head of the Dinakaran daily and concoct compact discs? It was not suggested to the Investigating Officer in the cross-examination that the CBI had personal animosity or ill-motive towards the accused. Likewise, Annal (P.W.27) and Oliraja

(P.W.28) have stated that they did not cover the incident at all, though they admitted that they were the Press Photographer and News Reporter respectively, based at Madurai, for the Nakkeeran bi-weekly. On the contrary, Nakkeeran Gopal (P.W.75), Chief Editor of Nakkeeran magazine, did not turn hostile and stated that the photographs were sent to him by his Press Photographer Annal (P.W.27). At the risk of repetition, Muthupandian (P.W.2), Annal (P.W.27) and Oliraja (P.W.28) are Press men themselves and they would have taken the photographs and videos in the course of their business, which have come into the hands of the CBI vide covering letter (Ex.P.245) and covering letter (Ex.P.236). It is not open for us to discredit and suspect every act of a police officer merely on the basis of surmises.

**110** In this regard, it may be apropos to refer to the following passage from the judgment of the Supreme Court in **Aher Raja Khima vs. State of Saurashtra [AIR 1956 SC 217]** alluded to by the Supreme Court in **Jameel Ahmad and another vs. State of Rajasthan [(2003) 9 SCC 673]**.

*“40 .....The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.”* (emphasis supplied)

**111** On their part, the CBI have sent the compact discs through the Chief Judicial Magistrate to the CFSL for their opinion and report, which has been proved by Gautham Roy (P.W.77) clearly indicating that there was no tampering of evidence. The Trial Court has rejected the evidence of Gautham Roy (P.W.77) by holding that the compact discs were not examined by him with advanced machines. This finding of the Trial Court, in our opinion, smacks of perversity, and we are extracting the relevant portion of the answer given by him in the cross-examination to demonstrate this:

“I received only CDs. Never received any individual photos or negatives. There are advanced machineries available to show whether there is any manipulation and result to be given in digital. At present, we are having such machineries, but, at the time of examination of the articles regarding this case, such machineries were not available.”

**112** The Trial Court has ignored the second part of his evidence, wherein, he has stated that those advanced machineries were not available at the time he examined the material objects and were available subsequently. The learned counsel for the defence placed reliance on the following answers given by him in the cross-examination:

“With regard to distance of object from the depth, you can tell whether it is added or not. In that case, we can say that from the distance between the foreground and the

objects. There are cameras which can adjust the distance by zooming or minimizing that. In M.O.45, in the picture showing fire inside the building, there is long distance between the fire and the base and entrance of the building. Below the fire there is some object. On the object, the fire is there. It is not correct to say in that case the fire manipulated.

That C.D. is only a copy. I cannot say nature of original is manipulated or not.”

**113** It is true that the cameraman can zoom or minimize an image. It is also true that trick photography is possible. In **Suo Motu taken up (PIL) WP Chief Secretary to the Government of Tamil Nadu v The Government of Tamil Nadu and others (WP 3335 etc. of 2009)** decided on 29.10.2009, a Division Bench of this Court (F.M Ibrahim Kalifulla and R. Banumathi, JJ) held that bald denials are insufficient to discredit the authenticity of video footage. In her lead judgment, Banumathi, J (as she then was) has opined as under:

*“349. That a bald denial of the contents of a video tape is not adequate to doubt its authenticity; there should be material to show that the video clippings are doctored or morphed”*

The Division Bench proceeded to look into the video tape as a corroborative piece of evidence and held as under:

*“350. The respondents have not disputed that the video clippings filed by the petitioners relate to the occurrence. Even though video clippings filed by the petitioners do not have the*

*running time, we have watched the videos and looked into the photos as corroborative piece of evidence.”*

**114** In the case at hand, the learned trial judge has noticed the aforesaid judgment of the Division Bench, at paragraph 29 of the impugned judgment, and has, in fact, taken note of the very same extract that we have set out, supra. Despite the fact that there was nothing but bald allegations of tampering, the learned trial judge has proceeded to disregard the video footage and the photos contained in the compact disc on a specious and presumptuous ground that the same could have been doctored. The aforesaid approach can only be termed as patently perverse as it has perfunctoriness written all over it.

**115** We may also incidentally notice the developments in the law on video and photographic evidence in the West where the “silent witness” theory is deployed to admit video and photographic evidence. The theory proceeds on the footing that photographic and video evidence are “silent witnesses” which speak for themselves. They are substantive evidence of what they portray. Two examples may be noticed.

(a) **State of Nevada vs. Archanian, [145 P 3d 1008 (2006)]** was a murder case before the Supreme Court of Nevada, where, a key

piece of evidence was the digital video recorded by the store's surveillance system. The accused attacked the authenticity of the video footage on the ground that the VHS tape given to the police video technician was not the original and that the technician had isolated the relevant camera view and highlighted certain portions of the video. It was this composite videotape that was shown to the jury. In the trial, the prosecution acknowledged that they had no way of knowing whether the images were accurately transferred from the original digital recording to the VHS version but testified that they appeared to be the same. The Supreme Court of Nevada admitted the video evidence under the silent witness theory and held as under:

*“There is no evidence suggesting that the composite videotape was inaccurate, that any relevant or exculpatory information had been deleted from it, or that the modifications made to it adversely affected or obscured the content.”*

(b) More recently, in **Her Majesty vs. Jaiyhi He, [2017 ONCJ 790,]** Kenkel, J. of the Ontario Court of Justice in Canada formulated a test, very similar to our own and that has been alluded to by us in **para 105** (supra). The Court opined:

*“The party seeking to tender a video in evidence must show two things to meet the threshold test of admissibility:*

- *They must prove the video is relevant, showing the crime scene or other evidence linked to the issues at trial.*

- *They must prove the video is authentic – that it accurately represents the events depicted.”*

Referring to the Alberta Court of Appeal’s decision in **R. vs. Bulldog (2015 ABCA 251)**, the Ontario Court said:

*“Circumstantial evidence may be used to authenticate real evidence – Bulldog at para 35. There is no particular evidence or class of witness that must be called to authenticate a video provided the whole of the evidence establishes that the video in question is substantially accurate and a fair depiction.”*

The Ontario Court has held that in a given case, whether the two part test (supra) is satisfied or not, would have to be decided on a balance of probabilities. The Court found that the testimony of the police officer was in sync with the narrative contained in the video, thereby establishing its authenticity on a balance of probabilities. The Ontario Court further observed:

*“7. While the circumstantial evidence is sufficient, in this case, there is further direct evidence that independently shows the video is accurate. The surveillance video is in sync with all of the other evidence at trial. The officers’ testimony as to the scene when they arrived, the times the various officers arrived, their actions, the position of the accused, the departure of other parties, the arrival of the ambulance is all consistent with this video. The two police in-car videos are also consistent with this surveillance video.”*

We have referred to these decisions in order to reiterate that a pragmatic and purposive interpretation of the law governing the admission of electronic evidence is consistent with the development of the law in international jurisdictions as well.

**116** We, therefore, unhesitatingly hold that the photos and videos in M.Os.45,49,50,51,52 and 53 were taken contemporaneously when the attack was taking place and have not been doctored and can be read in evidence.

**117** We may, at this juncture, allude to the evidence of some of the photographers and Press men, who had turned hostile.

**a) N.S. Gopi (P.W.15)–Sun Network videographer:**

*“I was asked by Chief Editor to cover the incidents taking place in Dinakaran office on 09.05.2007. I took my camera and went there. But, my camera did not work.”*

**b) M. Gnanasekaran (P.W.38)-Police Photographer:**

*“On the instructions from the office of the Superintendent of Police, I went with my camera to Dinakaran office on 09.05.2007 at 10.40 a.m. My camera did not work.”*

**c) Annal (P.W.27)-Nakeeran Photographer:**

*“I am the photographer for the Tamil magazine Nakkeeran in Madurai. I am aware of the incident that took place on 09.05.2007 at Dinakaran office. Since I suffered stomach ache, I went there only at 2.00 p.m.*

**d) Murugan (P.W.22) - Jaya TV Videographer:**

*“I have completed M.A. in Journalism and was working as News Reporter for Jaya TV in Madurai. I did not cover the Dinakaran attack incident nor take any photographs.”*

However, when we viewed the C.D. (M.O.53), we were able to see the Jaya TV logo at the left bottom of the screen. If the Jaya TV reporter had not captured the incident live, who else would have done it?

**e) Krishnamurthy (P.W.23) – Vikatan Group:**

*“I am the Photographer for Vikatan group of journals in Madurai. On 09.05.2007, I went to Dinakaran office at 1.00 p.m. I did not go at 11.45 a.m. and take photographs.”*

**f) Muthupandian (P.W.2)-News Editor, Dinakaran:**

*“Around 9.30 a.m., some persons set fire to our office and the other employees were busy trying to douse it. I was busy working on the evening edition of Tamil Murasu.”*

Literally and allegorically, Muthupandian's (P.W.2's) above statement reminds us of the classical quote “Nero fiddled when Rome burned”. Fortunately, Muthupandian (P.W.2) and the other colleagues of the deceased did not say that the trio committed suicide by self-immolation in the Dinakaran office and that is why the office went ablaze.

**Viewing of photographs and M.Os.:**

**118** At the time of examination of Nakkeeran Gopal (P.W.75), the Trial Court has played the compact disc (M.O.45) and has viewed the

contents of it. Extensive cross-examination of Nakkeeran Gopal (P.W.75) has been done by the defence based on the photographs. It is the finding of the Trial Court that no witness came into the witness box and looked at the photographs and identified the persons in the photographs and videos as the persons who are standing in the dock and therefore, the persons standing in the dock are not the persons in the photos and videos.

**119** We are at a loss to understand the rationale of this reasoning. The compact discs were marked as material objects and constituted another piece of evidence like any other exhibit. If the defence wants the Court to look at an exhibit, the Court obliges the defence by taking the exhibit and perusing it. Likewise, if the prosecution or the defence wants to view a material object, it is the duty of the Court to examine it. We propose to expatiate this with an illustration. A rape victim, while giving evidence, says that she hit the accused with an iron rod on his head in frustration after she was deflowered by him. Is it not open to the Trial Judge to examine the head of the accused to verify if there is any trace of injury? The fact that the Trial Judges, unfortunately, do not exercise this power is another matter. But, that does not mean that the Court is not empowered to look into it.

In this context, the word “proved” in Section 3 of the Evidence Act is worth referring to and the same reads as under:

*“Proved”. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”*

*(emphasis supplied)*

The expression in Section 3 of the Evidence Act is “*after considering the matters before it*” and not “*evidence before it*”. The expression “matters” is larger in its sweep than the expression “evidence” which has been defined by the Act. We hasten to add that the Court cannot bring in anything and everything within the sweep of the expression “matters”. For example, the answers given by an accused under Section 313 Cr.P.C. are not *stricto sensu* evidence within the meaning of the word “evidence”, as defined by the Evidence Act, but, they would fall within the domain of the expression “matters”. So too, a perusal of the material objects and the appreciation of evidence to relate these material objects either with the accused or witness, would fall within the sweep of the expression “*after considering the matters before it*”. Instead of making a witness look at the photograph and identify the person in the dock, nothing prevented the Trial Judge to use his own eyes to see the person standing in the dock and the person seen in the photographs/videos and arrive at a just conclusion. Perhaps, the Trial Judge was labouring under a belief that

since the Goddess of Justice is a blind-folded lady with a physical balance in one hand and a sword in the other, he could follow suit and turn a Nelson's eye to the electronic records that were before him. The trial judge could have very well used his own eyes to correlate the accused present before him with those found in the material objects.

**120** When we proposed to undertake this exercise at the insistence of Mr. K. Srinivasan, learned Special Public Prosecutor for the CBI, objections were raised as referred to above. However, brushing aside those objections, we passed an order on 05.03.2019 directing the presence of all the respondents/accused before this Court on 08.03.2019. We were informed by the prosecution that Attack Pandi (A1) has been arrested in another case and is lodged in the Central Prison, Palayamkottai. We, therefore, issued directions for producing him before us. While so, on 06.03.2019, the Commissioner of Police, Madurai, submitted a confidential report to the Registrar (Judicial) of this Court stating that there is a threat to the life of Attack Pandi (A1), if he is brought to Madurai, inasmuch as some of the co-accused in this case have fallen out with him. Therefore, we directed the Registry to arrange the presence of Attack Pandi (A1) via video conferencing.

**121** Accordingly, on 08.03.2019, arrangements were made in Court Hall No.2 of this Court. LED screens were installed in Court by the Registry. Two separate entrances were provided for the advocates and accused, besides two separate enclosures for the advocates and accused to sit. The accused were made to sit facing us as per their array in the charge sheet. Two C.I.S.F. personnel in uniform between each accused were deployed so as to prevent any untoward incident in the Court hall. That apart, by seating a civilian between uniformed personnel on either side, we were able to clearly note the features of the civilian. We did not sit in the dais and instead, sat in the space between the advocates' enclosure and the LED screen facing the accused in order to have a better view of their face. Attack Pandi (A1) was in the Central Prison, Palayamkottai and he came on the screen via video conferencing. We ensured that he also had a view of the videos and photos that were seen by us here. Except Saravanamuthu (A4) who is no more and Thayamuthu (A11), who is abroad, the other 14 accused were physically present. M.Os.45, 49, 50, 51, 52 and 53 were played in their presence. We sought the assistance of the Investigating Officer of the CBI to name the accused seen on the screen. On his naming the accused, we called out the name of the accused and made them stand before us. We looked

at their face and looked at their photo on the screen in order to satisfy ourselves. During the course of the said process, the learned counsel for the defence started raising objections by saying that we are taking additional evidence under Section 391 Cr.P.C. and that we cannot take the assistance of the Investigating Officer.

**122** The objections raised by the defence in this regard are clearly without substance. The Indian Evidence Act has armed the Courts with sufficient powers to get to the truth of the matter, and for this purpose the Court is empowered to call upon the prosecution to clarify certain aspects of the record if the need arises. Under Section 165 of the Evidence Act, the Court is vested with plenary power to put any question to any witness or the parties or to order the production of any document or thing “*in order to discover or obtain proper proof of relevant facts.*” We draw sustenance from the judgment of the Supreme Court in ***Mina Lalita Baruwa v. State of Orissa, [(2013) 16 SCC 173]***, wherein, it was held as under:

*“19. In criminal jurisprudence, while the offence is against the society, it is the unfortunate victim who is the actual sufferer and therefore, it is imperative for the State and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, duty and responsibility of the court to be alive and alert in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law reflect upon every bit of vital information placed before it. It can also be said that in that process the court should be conscious of its responsibility and at times when the prosecution*

*either deliberately or inadvertently omit to bring forth a notable piece of evidence or a conspicuous statement of any witness with a view to either support or prejudice the case of any party, should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight. Neither the prosecution nor the court should remain a silent spectator in such situations. Like in the present case where there is a wrong statement made by a witness contrary to his own record and the prosecution failed to note the situation at that moment or later when it was brought to light and whereafter also the prosecution remained silent, the court should have acted promptly and taken necessary steps to rectify the situation appropriately. The whole scheme of the Code of Criminal Procedure envisages foolproof system in dealing with a crime alleged against the accused and thereby ensure that the guilty does not escape and the innocent is not punished. It is with the above background, we feel that the present issue involved in the case on hand should be dealt with.”*

**123** The object and purpose of Section 165 of the Evidence Act was outlined by Sir James Fritz Stephen, in his speech on 31.03.1871, presenting the report of the Select Committee on the Bill to define and amend the law of Evidence. Stephen observes:

*“Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.*

*“That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the existence of a well educated Bar, co-operating with the Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases – probably the vast numerical majority – the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more*

*distinctly then he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter."*

**124** It is trite that appeal is a continuation of trial and the appellate Court is not denuded of the power under Section 165 of the Evidence Act to call upon the prosecution to clarify certain aspects of the case, if the need arises.

**125** We could have easily directed the accused to stand by the screen against their photograph and identified them without the aid of the Investigating Officer. That, however, would have consumed the Court's time and we, therefore, sought clarifications from the Investigating Officer. When objections were raised by the advocates appearing for the accused, we stopped taking the aid of the Investigating Officer and we ourselves were able to identify three of the accused, viz., Attack Pandi (A1), Sudhakar (A12) and Rajaram (A17), D.S.P., besides the six accused, viz., Prabhu (A3), Vijya Pandi (A6), Kandasamy (A7), Ramaiah Pandian (A9), Thirumurugan @ Kattuvasi Murugan (A14) and

Ruban (A15), who were identified with the aid of the Investigating Officer. The photos and videos clearly show that Prabhu (A3) was wearing a black and red t-shirt with the number “5” on the chest. He was sporting a tuft then and has now cropped his hair, but, that hardly mattered for us while identifying him. We saw the Tata Sumo car from where dandas were taken. The group headed by Attack Pandi (A1) proceed towards the iron gate of Dinakaran office; even before entering the campus, Prabhu (A3) holds a petrol bomb; some of them jump over the main gate and the others enter through the wicket gate; all of them get into the campus; they initially set fire to 2 two-wheelers parked near the security cabin; then, they proceed towards the reception area; Prabhu (A3) holds a petrol bomb and another person appears to light it; Attack Pandi (A1) is seen giving some instructions; one from the group enters the reception area with an Aqua Fina bottle containing a liquid; another from the group enters the reception area and comes out; the reception area catches fire; the group smashes the glass panes near the reception area and proceeds around the building indiscriminately smashing the window panes; dandas are used by Prabhu (A3), Vijya Pandian (A6), Kandasamy (A7), Ramaiah Pandian (A9), Thirumurugan @ Kattuvasi Murugan (A14) and Ruban (A15) for perpetrating the violence; the police headed by Rajaram (A17) who are in large numbers, walk around the group, as if they are

escorting the miscreants who go about unabashedly committing ghastly acts. We find this to be consistent with the version set out by Aaladiyan (P.W.1) in his chief-examination.

**126** Now, let us advert to one of the submissions made by Mr. Gopala Krishna Lakshmana Raju, learned Senior Counsel. He drew our attention to photograph DSC\_4767 in M.O.45 and submitted that two dandas are held between fingers of one person which is not possible and therefore, the photograph is doctored. He also stated that this question was put to Nakkeeran Gopal (P.W.75), who has stated that the dandas are within the fingers. To satisfy ourselves, we viewed the photograph in zoom mode and found that the contention of the learned Senior Counsel is not factually correct. Attack Pandi (A1) was not carrying any danda himself. Just behind him is Ruban (A15) with a danda in his left hand. Immediately behind Ruban (A15) and Attack Pandi (A1), there is another person wearing a white shirt and carrying a danda, whose face is not visible. His danda is projecting between Ruban (A15) and Attack Pandi (A1) and that is why, it appears as if two dandas are held between fingers of one person. Therefore, we respectfully disagree with the contention of Mr. Gopala Krishna Lakshmana Raju, learned Senior Counsel, that the photos and videos have been morphed.

**Time of Incident:**

**127** Much was said by the defence counsel with regard to the time of the act of arson. According to the prosecution, the act of arson commenced after the advent of Attack Pandi (A1) group at 11.45 a.m. The defence counsel placed reliance on the evidence of Poongodi (P.W.55), mother of Vinoth Kumar (D1), who has stated that she received information around 11.30 a.m. on 09.05.2007 from the Dinakaran office that her son has been admitted to the hospital. The defence also placed reliance on the evidence of Muthupandian (P.W.2), News Editor of Dinakaran, who has stated that around 9.30 a.m., some people entered the Dinakaran office and set fire. Some of the policemen, who have turned hostile have also stated that the burning took place before 11.00 a.m. We do not want to club the evidence of Poongodi (P.W.55), mother of Vinoth Kumar (D1) with the evidence of the tainted witnesses like Muthupandian (P.W.2) and the policemen, who turned hostile. Poongodi (P.W.55) is not an occurrence witness. She was the unfortunate mother of Vinoth Kumar (D1), who lost his life in the incident. She stated that her son went for work at 9.00 a.m. on 09.05.2007; she received information around 10.30 a.m. that her son was not in the office; so, she tried to contact him in his mobile, but, she was not able to get the line;

she called her younger son Karthick Pandian and asked him to go and find out; after he went, she received information that her son Vinoth Kumar was not in the office; she contacted her sister's husband Vadivel, who was also a staff of Dinakaran; he told her that her son is alright, but just that he has been taken to the hospital. அப்போது நேரம் 11.30 மணி இருக்கும் (the time then could have been 11.30 a.m.). In the cross-examination, she has been asked questions as to whether she watches TV, for which, she answered in the affirmative. She was asked as to how films are taken and shown in TV, for which, she stated that she does not know. She has stated that she knows that cinemas are taken, but she does not know how movies are taken and shown. We are not able to understand why this witness should know how movies are taken and telecast in TV channels and why these queries were relevant to decide the facts in issue in the case at hand.

**128** As regards Muthupandian (P.W.2) and the other hostile witnesses, they have decided to turn turtle and torpedo the case and therefore, they have conveniently shifted the time of incident to 9.30 a.m. However, we have the evidence of Aaladiyan (P.W.1), who has clearly stated that around 11.45 a.m., a group came by a white colour Tata Sumo car and that group had set fire to the building. We have the

evidence of M.Balasubramanian (P.W.50) Fire Station Officer, who has stated that at 11.47 a.m., he received information from Fire Station Control Room that there is fire in Dinakaran office and so, he left the fire station at 11.48 a.m. He has marked the Fire Station General Diary, (Ex.P.169) wherein, there is an entry at 11.47 a.m. referring to the fire in Dinakaran office in Melur Road. He has also submitted a special report (Ex.P.171) to the Director General of Fire Services, wherein, he has stated that information was received at 11.47 a.m. and he left the station with fire engine to the Dinakaran office and began the fire fighting operation. In the report, he has stated that the firemen wore special oxygen masks and went inside and brought out Gopinath (D2) who was lifeless and Vinoth kumar (D1), who was unconscious. Both of them were rushed to the hospital and it was then learnt that Vinoth Kumar (D1) had also succumbed. It is also stated that the body of Muthuramalingam (D3) was found beneath an almirah in the A.C room and that the corpse was removed and sent to the hospital. Had the fire broken out at 9.30 a.m., as deposed by Muthupandian (P.W.2), News Editor, it would appear that the fire service personnel were only requisitioned roughly over two hours later at 11.47 a.m. The absurdity of Muthupandian's (P.W.2's) claim is self evident and this, by itself, would demonstrate that people like Muthupandian (P.W.2) can lie with finesse.

**129** We also have the evidence of Anbu (P.W.29), Spdt. of Police, Madurai, who has stated that on 09.05.2007, after the publication of the news item by Dinakaran, there were sporadic incidents of violence in various places of Madurai and also at Dinakaran office; therefore, he directed Rajaram (A17), Deputy Superintendent of Police, to take precautionary steps to prevent any untoward incident in the office of Dinakaran; he received information that the group headed by Thenmozhi, Mayor of Madurai, came there and agitated; so, he directed Selvaraj (P.W.30), Additional Superintendent of Police, to immediately rush there and take precautionary steps; he also sent the Armed Reserve Police there. Then, a group headed by Saravanan came there and pelted stones. On coming to know of it, he sent his Rapid Action Force with guns and other equipment and instructed Rajaram (A17) to ensure that no untoward incident takes place. Anbu (P.W.29), Supdt. of Police, has further stated that at 11.45 a.m., he received a call from Ramnarayan (P.W.33) Sub Inspector of police, who informed that a group headed by Attack Pandi (A1) has entered the office of Dinakaran with petrol and dandas and have burnt two two-wheelers there. He informed Ramnarayan (P.W.33) to tell Rajaram (A17), Dy. Supdt. of Police, to take immediate action and to prevent them and he rushed to the place of

occurrence; he reached the place of occurrence at 12.15 p.m. and found that the people have been rescued from the office. Though he has spoken to about the steps taken thereafter, it may not be necessary to advert to that.

**130** The learned counsel for the defence have objected to the statement of Anbu (P.W.29) that at 11.45 a.m., he received a phone call from Ramnarayan (P.W.33), who told him that a group led by Attack Pandi (A1) has entered the office with petrol and danda and has set fire to two two-wheelers. This evidence of T.S.Anbu (P.W.29) is relevant as *res gestae* under Section 6 of the Evidence Act. Ramnarayan (P.W.33), Sub Inspector of Police, has stated that on 09.05.2007, he left the office of the Superintendent of Police and went to the Dinakaran office at 10.30 a.m. and that he saw people vandalizing the office; he observed that smoke was emanating from the office; he informed the Superintendent of Police. Thereafter, he has stated that he does not know anything. He was declared hostile and was cross-examined by the Public Prosecutor. Sifting through his evidence we find that, at the very least, his presence at the place of occurrence on 09.05.2007 has been clearly established. The evidence of T.S.Anbu (P.W.29) is not hearsay. Normally, hearsay evidence is inadmissible, an exception being a case falling within the

ambit of Section 6 of the Evidence Act. Illustration (a) to Section 6 is as follows:

*“A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.”*

**131** Attack Pandi group was busy vandalizing the Dinakaran premises and setting it on fire. The statement of Ramnarayan (P.W.33) over phone to his Superintendent of Police T.S.Anbu (P.W.29) at the time when the incident was taking place is a relevant fact, as it forms a part of the transaction and is, therefore, *res gestae* within the meaning of Section 6 of the Evidence Act. It is not necessary to examine the bystander, because, if the bystander gives evidence in the Court of law, as to what he himself saw and heard, then, there is no necessity for any other evidence. Only to carve out an exception to the hearsay rule, Section 6 has been engrafted to state that anything said or done by the accused or by a victim or by a bystander as heard or seen by the witness would become relevant and admissible as *res gestae* evidence. (*emphasis supplied*).

**132** We can illustrate this with another example. “John stabs Stella in her apartment at 6.30 p.m. Stella cries “*John do not kill me, do*

*not kill me*”; Stella’s exhortation is heard by Peter, who lives in the next door. By the time Peter comes to Stella’s house, Stella is dead and John had fled the scene; In the trial of John for the murder of Stella, the evidence of Peter that he heard Stella shouting “John do not kill me, do not kill me” will be relevant as *res gestae* evidence under Section 6 of the Evidence Act. Whether this evidence of Peter, by itself, is enough to convict John is a question that has to be assessed on the cumulative facts of the case.

**133** We have no hesitation in accepting the evidence of T.S.Anbu, I.P.S., (P.W.29) that Ramnarayan (P.W.33) called him at 11.45 a.m., and told him that Attack Pandi (A1) and group have entered the office of Dinakaran and have set fire to two motor cycles. His version is also corroborated by the photographs and videos available on record as material objects.

**134** Lastly, we also have the evidence of the Trojan Horse, Selvaraj (P.W.30), Addl. Supdt. of Police, who has stated that he saw smoke coming from the Dinakaran office at 11.45 a.m. while he was stationed near the High Court. It is a fact that the Dinakaran office is less than a kilometer away from the High Court in Melur Road,

Uthangudi. Hence, we have no hesitation in holding that the fire broke out only around 11.45 a.m.

**Use of Explosives:**

**135** We have the chemical examination report (Ex.P.252) of the CFSL (CBI), about which, we have alluded to earlier. The report clearly indicates the presence of residues of petroleum products in three objects, which were recovered at the Dinakaran office by Lakshmanan (P.W.70). The report of the CFSL (CBI), New Delhi, has been issued under Section 293 Cr.P.C. and hence, the same can be treated as substantive evidence. This report scientifically corroborates what we saw in the photos and videos, which we have alluded to above. The prosecution has also examined Mr. S.S.Jawahar, I.A.S. (P.W.68) District Collector of Madurai, who gave the sanction dated 16.08.2007 (Ex.P.213) for prosecuting the accused under the Explosive Substances Act.

**Injuries on the body of Vinoth Kumar (D1) and Gopinath (D2):**

**136** The postmortem reports, viz., Exs.P.196 to P.201 show that both Vinoth Kumar (D1) and Gopinath (D2) respectively have suffered head injuries before succumbing. The video shows the Attack Pandi group going around the Dinakaran office armed with dandas and rods,

and it is fairly obvious that these persons have caused the injuries to the person of the deceased, thereby resulting in their death. However, in view of the other overwhelming evidence on record, we need not adumbrate any further on this aspect except to point out the aforesaid facts.

**Recovery of Tata Sumo car and dandas:**

**137** On the next day of the incident, i.e. on 10.05.2007, Lakshmanan (P.W.70), arrested Malik Batcha (A16), driver of Attack Pandi (A1) and recovered the Tata Sumo car TN 58 E 6066 (M.O.6) and five dandas and one iron rod (M.Os.30 series and 31 respectively), which indubitably incriminate him in the offence, along with the others.

**Section 313 Cr.P.C. questioning :**

**138** The learned counsel for the defence took this Court through Section 313 Cr.P.C. examination by the Trial Court and contended that no questions were put to the accused with regard to their photos and videos that were viewed by us and therefore, undue prejudice was caused to them. In support of this contention, they placed reliance upon certain judgments of the Supreme Court, wherein, it has been held that failure to question the accused about the incriminating circumstance could

result in prejudice. We can have no quarrel with those line of judgments. However, the golden thread that runs through those judgments is that the accused must have been prejudiced by a defect in the Section 313 Cr.P.C. examination. But, the *locus classicus* is, and has been, the judgment of the Supreme Court in **K.C. Mathew and others vs. State of Travancore – Cochin (AIR 1956 SC 241)**, where, Vivian Bose, J., in his inimitable style, observed as under:

*“10. Another strong circumstance is this: the petition for appeal does not set out the questions that, according to the appellants, they should have been asked nor does it indicate the answers that they would have given if they had been asked.*

*Again, though that is not necessarily fatal ordinarily it will be very difficult to sustain a plea of prejudice unless the Court is told just where the shoe pinches. It is true that in certain exceptional cases prejudice, or a reasonable likelihood of prejudice, may be so patent on the face of the facts that nothing more is needed; but that class of case must be exceptional.*

*After all, the only person who can really tell us whether he was in fact prejudiced is the accused; and if there is real prejudice he can at once state the facts and leave the Court to judge their worth. But if the attitude of the accused, whether in person or through the mouth of his counsel, is: “I don't know what I would have said. I still have to think that up. But I might have said this, that or the other”, then there will ordinarily be little difficulty in concluding that there neither was, nor could have been, prejudice.*

*Here, as elsewhere, the Court is entitled to conclude that a person who deliberately withholds facts within his special knowledge and refuses to give the Court that assistance which is its right and due, has nothing of value which he can disclose and that if he did disclose anything that would at once expose the hollowness of his cause.*

*11. The purpose of Section 342 is set out in its opening words:*

*“for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.”*

*If the accused is not afforded that opportunity, he is entitled to ask the appellate court to place him in the same position as he would have been in had he been asked. In other words, he is entitled to ask the appellate court, which is the ultimate Court of fact, to take the explanation that he would have given in the first Court into consideration when weighing the evidence in just the same way as it would have done if it had been there all along.*

*But if he does not ask this in the last Court of fact he is in little better position when the case comes here than he would be in had he, say, omitted to call, in his defence, a witness who, he says, would have deposed in his favour. In very exceptional cases he might be allowed to call such a witness even at such a stage, but if he does not ask or that when his case is under appeal he would normally have but slender hope of succeeding here.*

*It is true he is in a stronger position when Section 342 is in question because the section places a solemn and serious duty on the Court, and the accused can very rightly and properly complain if the Court fails to do its duty; but when all is said and done, he cannot claim to be placed in a better position than he would have been in had the Court discharged its duty at the outset.*

*Therefore, all he is entitled to say on appeal is, “I was not asked to explain this matter. Here is my explanation; this is what I would have said: please consider it”. But if he does not take up that position at the appellate stage and complains of prejudice for the first time here, the inference is strong that the plea is an after-thought and that there was no real prejudice.”*

*(emphasis supplied)*

**139** Even during the course of arguments, we openly requested the counsel that if they want to explain any particular circumstance appearing against them, which was likely to cause prejudice to their respective clients, they could very well submit their explanations in

writing under Section 313 Cr.P.C. For example, if any one of them had wanted to say that the person in the photo/video is his twin brother, he could have filed his explanation under Section 313 Cr.P.C. In fact, even in the oral argument, no effort was made to seriously dispute the identity of the accused in the material objects. At the risk of repetition, we did not take any additional evidence under Section 391 Cr.P.C., but, only saw the faces of the accused, who were sitting in front of us and matched the same with their photos on the LED screen in order to satisfy our conscience. As the final Court on facts, it is our duty to use our powers to zealously scrutinize the material on record and to get to the truth of the matter.

**The case against Rajaram, Deputy Superintendent of Police (A17):**

**140** Rajaram (A17) was charged for the offence under Sections 217 and 221 IPC which read as under:

***“217.Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture:***

*Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term*

*which may extend to two years, or with fine, or with both.”*

**“221.Intentional omission to apprehend on the part of public servant bound to apprehend:**

*Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids, such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say,*

*with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or*

*with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended was charged with, or liable to be apprehended for, an offence punishable with [imprisonment for life] or imprisonment for a term which may extend to ten years; or*

*with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.”*

**141** The learned Senior Counsel for Rajaram (A17) contended that the head of the team was not Rajaram (A17), but Selvaraj (P.W.30), as could be seen from the evidence of T.S.Anbu (P.W.29), Supdt. of Police and letter (Ex.P.82) of T.S. Anbu (P.W.29). The learned counsel contended that for attracting Section 217 IPC, the public servant should have knowingly disobeyed any direction of law and for mulcting criminal liability under Section 221 IPC, the public servant should be legally

bound to apprehend and must have intentionally omitted to apprehend. The learned counsel built up his arguments by saying that in **Joginder Kumar vs. State of U.P. [(1994) 4 SCC 260]**, the Supreme Court has stated that the Investigating Officer has a discretion to arrest a person and that Rajaram (A17) cannot be faulted for not exercising his discretion to arrest the Attack Pandi group.

**142** As regards sanction under Section 197 Cr.P.C., the learned Senior Counsel contended that the sanction order dated 13.11.2007 (Ex. 212) was issued by the State of Tamil Nadu only after the Magistrate had taken cognizance of the offence and therefore, the Trial Court ought not to have framed any charge against Rajaram (A17).

**143** This Court gave its anxious consideration to the aforesaid submissions.

**144** Before adverting to the legal aspects, it is necessary to narrate the evidence against Rajaram (A17). Admittedly, Rajaram (A17) was the Dy. Supdt. of Police of the said Sub Division. Overwhelming evidence of witnesses including that of T.S.Anbu, I.P.S., (P.W.29), Supdt. of Police and Selvaraj (P.W.30), Addl. Supdt. of Police and Aaladiyan

(P.W.1) show that Rajaram (A17) was present in the scene of occurrence from 9.30 a.m. We are appalled to find from the photographs and the video footage that during the course of the incident, Rajaram (A17) went along with Attack Pandi (A1) as if he was giving him a police escort!! It is in the evidence of Anbu, (P.W.29), Supdt. of Police, that he has instructed Rajaram (A17) to use the force at his command to prevent the carnage. This is not a case where the offenders outnumbered the police. Photographs and video footage vividly show the presence of a huge police force at the command of the Superintendent of Police and the Deputy Superintendent of Police. Ex.P.82 is a list furnished by T.S.Anbu,I.P.S. (P.W.29), Supdt. of Police, which shows that there were totally 41 policemen posted at the Dinakaran office. The attackers were only a fraction of that number. From the video footage, we were able to see Attack Pandi and his group walking around and committing offence with impunity and Rajaram (A17) walking beside him, as though the police had become one with the assailants!! It is, of course true, that Selvaraj (P.W.30) is also equally culpable, but, the failure of the CBI to prosecute Selvaraj (P.W.30) cannot absolve Rajaram (A17) from criminal liability. The argument grounded on equal treatment is misconceived, since the principle of equality cannot be stretched to perpetuate an illegality.

**145** In our view, Rajaram (A17) could have easily prevented the arson and arrested Attack Pandi and his group, when they unabashedly went about committing cognizable offences right under his nose. He could have even opened fire in the air with his weapon to scare the arsonists. On account of his supine indifference and his wilful and intentional failure to prevent the attack or arrest the attackers, three precious lives were lost.

**146** Now, we will advert to the legal position.

**147** The source of power of a police officer in a District in the State of Tamil Nadu flows from Section 21 of the Tamil Nadu District Police Act, 1859, which reads as under:

***“Duties of Police Officers:*** *Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty and shall have the powers of a police-officer in every part of the General Police District. It shall be his duty to use his best endeavours and ability to prevent all crimes, offences and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him.”*

**148** Section 23 of the Chennai City Police Act, 1888, reads as under:

“Duties of Police Officers: Every police-officer shall, for the purposes of this Act, be considered to be always on duty. He shall not engage, without the written permission of the Commissioner, in any duty other than his duties under this Act. It shall be his duty to use his best endeavours and ability to prevent offences and public nuisances; to preserve the peace; apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to take charge of all unclaimed property; to seize and impound and stray cattle; to collect and communicate intelligence affecting the public peace, and promptly to obey and execute all orders and warrants lawfully issued to him; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant to enter and inspect any drinking shop, gaming-house or other place of resort of loose or disorderly characters.”

**149** The Tamil Nadu District Police Act and the Chennai City Police Act are substantive laws governing the powers of the police in the State.

**150** Sections 149 and 41(1)(a) Cr.P.C. read as under:

*“149. Police to prevent cognizable offences.- Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.*

***41. When police may arrest without warrant-***

*(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-*

*(a) who commits, in the presence of a police officer, a cognizable offence;”*

**151** In our view, the statement of law by the Supreme Court in **Joginder Kumar** (supra) cannot be distorted to say that a police officer can remain a mute spectator and abdicate his duty by deliberately refraining from arresting a dangerous law breaker who possesses a serious threat, by his overt acts, to the members of the public.

**152** Rajaram (A17) Deputy Superintendent of Police of the area cannot be heard to say that he was blissfully unaware of the fact that the Dinakaran office had women employees and staff who were hopelessly stranded in the surging fire that engulfed the premises. The video footage seen by us shows that after the fire was extinguished, the staff and employees of Dinakaran office took out a road-roko demanding action against the police for standing as mute spectators. From Ex.P80, it appears that Muthuramalingam (D3), security guard saved the lives of five women employees of Dinakaran and in that process, he lost his life. In our view, Section 21 of the Tamil Nadu District Police Act and Section 23 of the Chennai City Police Act, which have been extended to Madurai City and Section 149 Cr.P.C. cast a legal duty on Rajaram (A17) to take every possible step to protect the lives and properties of common people. As seen by us in the photographs and video footage, Rajaram (A17) was

found protecting the arsonists instead of protecting the innocent employees who had become mere playthings in the hands of the assailants. We have no manner of doubt that the acts in question render Rajaram (A17) to be punished under Sections 217 and 221 IPC.

**153** Coming to the question of sanction, the same can be viewed from two angles:

**(i)** First, the fact remains that the Government of Tamil Nadu has granted sanction under Section 197 Cr.P.C. (Ex.P.212). It is to be noted that when the Sessions Court took cognizance after committal, the sanction order was there. In **Dharam Pal and others vs. State of Haryana and another [(2014) 3 SCC 306]**, a Constitution Bench of the Supreme Court has opined that the Sessions Court takes cognizance under Section 193 Cr.P.C. only after committal by the Magistrate. Hence, when the Sessions Court took cognizance of this case, the sanction order was there on record.

**(ii)** Secondly, the question is whether sanction is required in the case at hand. Sanction under Section 197 Cr.P.C. was conceived as a measure to protect honest public servants from vexatious and oppressive

prosecutions on account of the commission of an offence in the course of the discharge of their official duties. Whether a particular case would require sanction or not, would largely depend on the facts of each case. There can be no straightjacket formula.

**154** We may profitably refer to the following passage of *Vivian Bose, J.* in **Shreekantaiah Ramayya Munipalli vs. State of Bombay [AIR 1955 SC 287]**, wherein, the erudite Judge has quoted *Varadachariar, J.* in **Hori Ram Singh vs. Crown [1939 FCR 159]** and observed:

“17. What this argument overlooks is that the stress in the passage quoted is on the word “necessarily” which we have underlined. A later passage at p. 187 explains this:

“I would observe at the outset that the question is substantially one of fact, to be determined with reference to the act complained of and the attendant circumstances; it seems neither useful nor desirable to paraphrase the language of the section in attempting to lay down hard and fast tests.”

With that we respectfully agree. There are cases and cases and each must be decided on its own facts.”

**155** In this case, we have carefully examined the material on record and satisfied ourselves that on the date of the incident, Rajaram (A17) was found to be actively protecting the arsonists as they went about committing offences with impunity. The law would be reduced to a

laughing stock, if this Court were to opine that this conduct of Rajaram (A17) must be afforded the ring of protection contemplated under Section 197 Cr.P.C. A statutory provision cannot be interpreted in a manner that it would operate as a rogue's charter. Rajaram (A17) was found giving protection to Attack Pandi and group, which was no part of his official duty. In fact, he should have been arrayed as abettor under Section 109 IPC. Therefore, we have no hesitation in holding that on the facts and circumstances of the case, no sanction is required to prosecute Rajaram (A17) for the offences under Sections 217 and 221 Cr.P.C. as was observed by the Supreme Court in **Chowdhury Parveen Sultana vs. State of West Bengal [(2009) 3 SCC 398:**

*“18. The direction which had been given by this Court, as far back as in 1971 in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : (1971) 1 SCR 317] holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 CrPC. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in Bhagwan Prasad Srivastava case [(1970) 2 SCC 56 : 1970 SCC (Cri) 292 : (1971) 1 SCR 317] the underlying object of Section 197 CrPC is to enable the authorities to scrutinise the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 CrPC and have to be considered de hors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.”*

**Perversity:**

**156** Having perused the record and the findings of the learned trial Judge in the judgment under appeal, we have no manner of doubt that the conclusions reached by the trial Judge are palpably erroneous and suffer from manifest perversity. We find that the learned Judge has perfunctorily rejected valuable material and has based his findings on an incomplete evaluation of the evidence on record resulting in total miscarriage of justice.

**157** We have recorded our conclusions on several aspects, supra, which would indicate the perfunctory manner in which the Trial Court has gone about appreciating the evidence in this case. However, we have found it necessary to set out some of the findings so as to drive home the point that the judgment under appeal is riddled with legal and factual errors warranting interference to prevent miscarriage of justice.

**158** We proceed to set out hereinbelow, a few instances where the learned Trial Judge has manifestly erred in appreciating the material before him leaving no manner of doubt that the findings returned by him must incur the epithet of manifest perversity.

**159(i)** For instance, the trial judge appears to have discarded the evidence of Aaladiyan (P.W.1) solely on the ground that he had turned hostile. It is settled law that even if a witness has turned hostile, the Court can place reliance on his testimony if the same inspires the confidence of the Court. We have subjected the evidence of Aaladiyan (P.W.1) to a zealous scrutiny and we find that the same commends acceptance. The core of Aaladiyan's (P.W.1's) case is also corroborated by the video footage and the photographs which have unfortunately been rejected by the learned judge.

**159(ii)** We also cannot endorse the approach of the trial Judge that the identification of an accused for the first time in Court cannot be taken as proof of identity. This finding, at paragraph 30, is as under

*“But unfortunately the prosecution has not taken any steps to conduct test identification parade. As far as the identification in Court is concerned, when the accused are not known to the witnesses, identifying for the first time in court after a long period would not prove the identity of the accused. It cannot be accepted as proof of identity of the accused. It is reported in 1999 MLJ CrI 508 (Vijayan and Rajan v State of Kerala) as follows:*

*“Since the accused ‘V’ was not known to P.W 3 and the first identification parade having been discarded, the substantive evidence of identification in the Court after so many years cannot be relied upon.”*

The aforesaid sentence from **Vijayan and Rajan vs. State of Kerala [1999 MLJ Cr1 508]** is not a statement of law. It is a conclusion reached on the facts of that particular case. There can be no precedent on facts as was felicitously pointed out by *Vivian Bose, J.* in **Willie (William) Slaney v. State of M.P., [(1955) 2 SCR 1140]** in the following words

*“But these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases “however” alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if there were.”*

We cannot help conclude that the trial Judge has fallen into the very same error that Bose, J had cautioned against in **Willie Slaney** (supra).

**159(iii)** We now turn to the Trial Court’s assessment of the electronic evidence before it. At paragraph 29 of its judgment, the Trial Court says:

*“From the above discussion it is brought out that though the prosecution has produced photos and CD’s; the persons who took the photos and CD’s and photos have not deposed about the MO’s produced before Court.”*

We have discussed this in detail in paragraph 99 and 100 (supra) by placing reliance on the judgments of the Supreme Court in **Sonu alias Amar** (supra) and **Shafhi Mohammad** (supra).

**159(iv)** As regards the origin of fire, the Trial Judge has placed reliance on tainted witnesses like Muthupandian (P.W.2), to conclude that fire broke out much before 11.45 a.m., ignoring the overwhelming evidence on record which shows that fire was set by the Attack Pandi (A1) group after their arrival at or about 11.45 a.m.

**159(v)(a)** The trial Judge discards the evidence of Dr. Rajinder Singh (P.W.76), Principal Scientific Officer, CFSL who had inspected the premises, collected the damaged material from the reception alone and subjected them to examination. Dr. Rajinder Singh (P.W.76) had found soot particles and had observed that the damage was caused due to burning by fire. He had also stated that there was no short circuiting. The Trial Court rejects this evidence and says:

*“Only on the basis of visual inspection the scientist has reported that the origin and cause of fire started from the reception hall. This court feels that this is not the correct answer to the query placed before the scientist.”*

The aforesaid conclusions could only be termed as puzzling. Not stopping there, the Trial Court observes:

*“Though he has given opinion that there was no short circuiting this is not based on any research work.”*

The Trial Court concludes:

*“The origin of fire is important to find out from where the fire started. But he has not mentioned it. So this court is not able to attach much weight to the report of PW 76”.*

**159(v)(b)** In matters of appreciation of evidence, the Trial Court is not required to abandon common sense and persist in non-existent hyper technicalities like a rudderless boat in an endless sea. Dr.Rajender Singh (P.W.76) had found that the damage had been caused due to fire. The origin and cause of the fire as a direct result of the acts of arson committed by the accused have been spoken to by Aaladiyan (P.W.1), and is vividly captured in the photos and video footages contained in M.O.45 and M.Os.49 to M.O.53, the latter being telecast in all TV channels. The Trial Court appears to have been aware of the effect of the aforesaid evidence and is driven to conclude, at paragraph 79 as under:

*“Now the evidence produced has proved that some occurrence took place in the Dinakaran office. But no witness has come forward to depose about the occurrence”*

*(emphasis supplied)*

It is most unfortunate that the Trial Court has abdicated its judicial responsibility to seek the truth and had deployed a specious line of reasoning to arrive at a verdict of acquittal. In matters, such as the case at hand, Courts must remind themselves of the clarion call issued by the Supreme Court in **State v. Sanjeev Nanda, [(2012) 8 SCC 450]**, holding as under:

*Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation.* (emphasis supplied)

**159(v)(c)** Reliance placed upon the decision in **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra [(2005) 5 SCC 294]**, by the Trial Judge to reject the evidence of the scientific expert is equally misconceived. That decision dealt with the issue of whether the brain mapping test will have any probative value. The Supreme Court found that as the prosecution did not place any reliance on the report, there was no necessity for it to give a finding on the same. What we find from the impugned judgment is that the learned trial judge has culled out an extract from paragraph 76 of **Ranjitsing Brahmajeetsing Sharma** (supra) making a reference to the decision of the US Supreme Court in **Daubert v Merrell Dow Pharmaceuticals (113 S Ct 2786=509 US**

**579)**, without appreciating the fact that the Supreme Court in **Ranjitsing Brahmajeetsing Sharma** (supra) had merely quoted the test and had not laid down any proposition of law. What is more curious still is the fact that the learned trial Judge has extracted the six questions forming a part of the test laid down in **Daubert** (supra) and, without answering any of them, has mechanically concluded that “*the report of PW 76 cannot be considered as a scientific expert report.*”

**159(v)(d)** Precisely, the same reasons have been deployed, at paragraph 34, to jettison the report of Gautham Roy (P.W.77), Senior Scientific Officer, CFSL who had opined that the electronic evidence before the Court was free from tampering. In the words of the learned judge “*No scientific machineries is applied to decide whether there is tampering or not*”. This conclusion is patently perverse as nothing, except vague and bald denials, have been brought on record to establish, even remotely, that there was any tampering with the CDs/photos and videos.

**159(vi)** In dealing with the case of V. Rajaram (A17), the Trial Court, at paragraph 68, observes as under:

*“The main crux of a sanction is the satisfaction of the official who issue the sanction order. But in this case on hand the Principal Secretary who satisfied herself before issuing the sanction order is not examined before Court. The examination of PW- 67 is not*

*sufficient to prove the satisfaction of the Secretary who signed in Ex P 212.”*

The aforesaid observations suffer from manifest perversity, as the Trial Court appears to have overlooked the fact that a sanction order is a public document within the meaning of Section 74 of the Evidence Act vide **State v K. Narasimhachary [(2005) 8 SCC 364]**. The observation of the trial judge that the satisfaction of the sanctioning authority must be proved by summoning her to lead evidence is a finding that borders on the bizzare. In fact, it is contrary to the judgment in **Narasimhachary** (supra), wherein, it was held that an order of valid sanction can be proved by the sanctioning authority by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction, as has been done in the present case.

**160** Before drawing the curtains on the incongruities and perversities in the impugned judgment of the Trial Court, we are constrained to refer to the following sagely observation of the Supreme Court in **State of Haryana vs. Bhagirath and others [(1999) 5 SCC 96]**:

*“7..... The pristine doctrine of benefit of doubt can be invoked when there is reasonable doubt regarding the guilt of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which affords the benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal*

dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of the accused.”

(emphasis supplied)

In this case, the Trial Judge has munificently administered the legal dosage of benefit of doubt at every segment of the evidence and has smelt doubt for the sake of giving its benefit to the accused.

**CONCLUSION:**

**161** In view of the foregoing, we hold that the prosecution has proved beyond doubt that:

- a) an unlawful assembly comprising V.P. Pandi @ Attack Pandi (A1), Prabhu @ Arogyaprabhu (A3), Vijya Pandi (A6), P.Kandasamy (A7), G.Ramaiah Pandian (A9), V. Sudhakar (A12), Thirumurugan @ Kattuvasi Murugan (A14), I.Ruban (A15) Malik Batcha (A16) and others, most of whom, armed with deadly weapons, including petrol bombs and inflammable substances, came to the Dinakaran office about 11.45 a.m. on 09.05.2007 with the common object of committing arson for having published the opinion poll showing Mr. M.K. Alagiri in bad light and in furtherance of the said common object, vandalised, set fire to two motorbikes and the Dinakaran office, resulting in the death of Vinoth Kumar (D1), Gopinath (D2) and Muthuramalingam (D3). The act of these persons will squarely fall within the sweep of Section 300 (Fourthly) IPC, punishable under Section 302 read with Section 149 IPC (3 counts);

- b) the accused named in para 161(a) above have committed the offence of rioting punishable under Section 147 IPC;
- c) Prabhu @ Arogyaprabhu (A3), Vijya Pandi (A6), P.Kandasamy (A7), G. Ramaiah Pandian (A9), Thirumurugan @ Kattuvasi Murugan (A14) and I. Ruban (A15) were armed with deadly weapons, viz., dandas and petrol bombs, are punishable under Section 148 IPC;
- d) the accused named in para no.161(a) above, have committed the offence of criminal trespass and mischief punishable under Section 449 IPC;
- e) the accused named in para no.161(a) above, have committed the offence of setting fire to the Dinakaran office punishable under Section 436 read with Section 149 IPC;
- f) the accused named in para no.161 (a) above, were in possession of explosives, i.e., petrol bombs and petrol filled in bottles and they endangered human lives and property, which are offences punishable under Sections 4 and 5 of the Explosive Substances Act;
- g) Prabhu @ Arogyaprabhu (A3), Vijya Pandi (A6), P. Kandasamy (A7), G. Ramaiah Pandian (A9), Thirumurugan @ Kattuvasi Murugan (A14) and I. Ruban (A15) have vandalised the Dinakaran office, which is punishable under Section 4 of the

TNPPDL Act. V.P. Pandi @ Attack Pandi (A1), V. Sudhakar (A12) and Malik Batcha (A16) are liable for conviction under Section 4 of the TNPPDL Act read with Section 34 IPC; and

h) V. Rajaram (A17) has committed the offence under Sections 217 and 221 IPC.

**162** The evidence on record shows that the unlawful assembly had a common object to vandalise and set fire to the Dinakaran office and while individual overt acts were being done by a member of the said assembly, the others also shared the common intention. Though Section 34 IPC was not included in the charges framed by the Trial Court, yet, the accused can be convicted with the aid of Section 34 IPC, since it is not a substantive penal provision but a rule of evidence. (See **Ramji Singh and another vs. State of Bihar [(2001) 9 SCC 528]**).

**163** As regards questioning the accused on sentence, since we are imposing the minimum sentence of imprisonment for life prescribed under Section 302 IPC, we feel that it may not be necessary to question them. As regards questioning them qua the other offences, since we are imposing terms of imprisonment less than ten years, which we are directing to run concurrently with the life sentence, we are dispensing with this legal formality.

**Conviction and Sentence:**

**164** In fine, Crl. A.(MD) No.274 of 2011 is partly allowed and the judgment and order of acquittal dated 09.12.2009 passed by the Principal District and Sessions Judge, Madurai in S.C. No.3 of 2009 qua V.P. Pandi @ Attack Pandi (A1), Prabhu @ Arogyaprabhu (A3), Vijya Pandi (A6), P.Kandasamy (A7), G.Ramaiah Pandian (A9), V. Sudhakar (A12), Thirumurugan @ Kattuvasi Murugan (A14), I. Ruban (A15) and Malik Batcha (A16) is set aside and each of them is convicted and sentenced as follows:

- 1 Under Section 449 IPC : 5 years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo five months simple imprisonment each
- 2 Under Section 436 r/w Section 149 IPC : 5 years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo five months simple imprisonment each
- 3 Under Section 4 of the Explosive Substances Act read with Section 34 IPC : 5 years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo five months simple imprisonment each
- 4 Under Section 5 of the Explosive Substances Act read with Section 34 IPC : 5 years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo five months simple imprisonment each

- 5 Under Section 4 of the TNPPDL Act read with under Section 34 IPC : 5 years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo five months simple imprisonment each
- 6 Under Section 302 read with Section 149 IPC (3 counts) : Imprisonment for life for each count and fine of Rs.10,000/- for each count, in default to undergo one year simple imprisonment for each count (totally 3 life sentences)

**165** V.P. Pandi @ Attack Pandi (A1), V. Sudhakar (A12) and Malik Batcha (A16), who were part of the unlawful assembly with the others, but not armed with deadly weapons, are convicted under Section 147 IPC and sentenced to undergo one year rigorous imprisonment and pay a fine of Rs.2,000/-, in default to undergo three months simple imprisonment.

**166** Prabhu @ Arogyaprabhu (A3), Vijya Pandi (A6), P.Kandasamy (A7), G. Ramaiah Pandian (A9), Thirumurugan @ Kattuvasi Murugan (A14) and I. Ruban (A15) who were part of the unlawful assembly with the others and armed with deadly weapons, are convicted under Section 148 IPC and sentenced to undergo 2 years rigorous imprisonment and pay a fine of Rs.2,000/- each, in default to undergo three months simple imprisonment.

**167** All the aforesaid sentences imposed on the accused are ordered to run concurrently.

**168** The Trial Court is directed to secure the accused convicted hereinabove, except V.P. Pandi @ Attack Pandi (A1) and commit them to prison to undergo the aforesaid sentences. The Registry is directed to send ten true copies of this judgment to the Trial Court so that free copies are furnished to the convicted accused as and when they appear / are produced for committing them to prison. As regards V.P. Pandi @ Attack Pandi (A1), we direct the Registry to send two true copies of this judgment to the Principal District and Sessions Court, Tirunelveli. Since there is threat to the life of V.P. Pandi @ Attack Pandi (A1) in Madurai, the Superintendent, Central Prison, Palayamkottai, is directed to produce him under proper escort before the Principal District and Sessions Judge, Tirunelveli, who shall furnish him a free copy of this judgment and commit him to prison for undergoing the sentence. Thereafter, the Principal District and Sessions Judge, Tirunelveli, shall retain photocopies of the commitment to prison records on his file and send the originals to the Principal District and Sessions Judge, Madurai (Trial Court).

**169** Now, coming to the case of V.Rajaram (A17), we set aside the order of acquittal dated 09.12.2009 passed in his favour by the Principal District and Sessions Judge, Madurai in S.C. No.3 of 2009 and we convict him for the offences under Sections 217 and 221 IPC.

**170** We direct V.Rajaram (A17) to be present before this Court on 25.03.2019, for the purpose of questioning him on sentence. Call on 25.03.2019.

**171** The order of acquittal passed by the Trial Court qua the others, who are not convicted by this Court vide this judgment, stands confirmed.

**172** For the supine indifference shown by the police in failing to protect the lives of Vinoth Kumar (D1), Gopinath (D2) and Muthuramalingam (D3), we impose vicarious liability and direct the State of Tamil Nadu to pay a compensation of Rs.5 lakhs each to the families of the bereaved, within a period of three months from the date of receipt of a copy of this judgment.

**173** As regards Crl.R.C. (MD) No. 310 of 2014 preferred by Poongodi, mother of Vinoth Kumar (D1), in view of the judgment passed in Crl.A. (MD) No.274 of 2011, no order needs to be passed separately. Hence, Crl.R.C. (MD) No. 310 of 2014 stands closed.

**174** To sum up, Crl. A. (MD) No.274 of 2011 stands partly allowed and Crl.R.C. (MD) No.310 of 2014 stands closed. Crl.M.P. (MD) No.11505 of 2016 stands dismissed.

[P.N.P.J.] & [B.P.J.]  
21.03.2019

cad/rr  
Index : Yes/No  
Speaking order/Non-speaking order

**Note:**

The Registrar (Judicial) and Registrar (Administration), Madurai Bench are directed to take a back up of M.O.45 and M.O.49 to M.O.53 and keep them in safe custody before sending them to the Trial Court.

सत्यमेव जयते

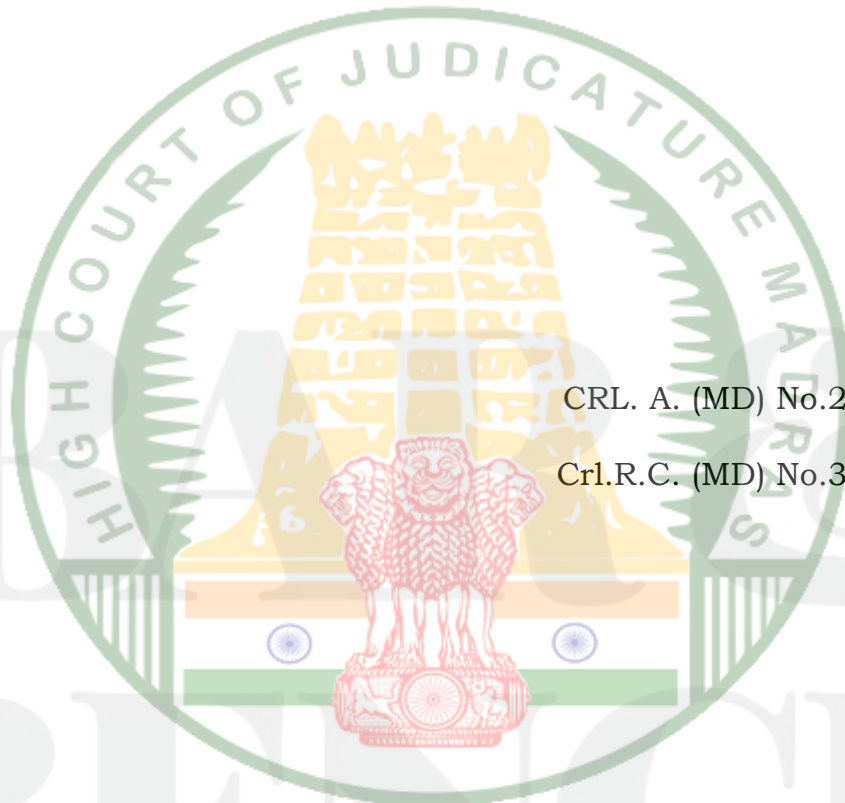
WEB COPY

To

- 1 The Registrar (Judicial)  
Madurai Bench of Madras High Court  
Madurai
- 2 The Registrar (Administration)  
Madurai Bench of Madras High Court  
Madurai
- 3 The Chief Secretary to  
Government of Tamil Nadu  
Fort St. George  
Chennai 600 006
- 4 The Principal District and Sessions Judge  
Madurai
- 5 The Principal District and Sessions Judge  
Tirunelveli
- 6 The Inspector of Police  
Central Bureau of Investigation, SCB  
Chennai
- 7 The Public Prosecutor  
High Court  
Madras
- 8 The Special Public Prosecutor for C.B.I.  
High Court
- 9 The Superintendent  
Central Prison  
Palayamkottai
- 10 The Record Keeper  
Vernacular Records Section  
Madurai Bench of Madras High Court  
Madurai

**P.N.PRAKASH, J.**  
and  
**B.PUGALENDHI, J.**

cad/rr



CRL. A. (MD) No.274 of 2011  
and  
CrI.R.C. (MD) No.310 of 2014

सत्यमेव जयते

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21.03.2019