2025 INSC 576

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.1522 OF 2023]

K. P. TAMILMARAN ...APPELLANT(S)

Versus

THE STATE BY DEPUTY SUPERINTENDENT OF POLICE

...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.123 OF 2023]

WITH

CRIMINAL APPEAL NO. OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.11241 OF 2022]

WITH

CRIMINAL APPEAL NO. OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.11242 OF 2022]

WITH

CRIMINAL APPEAL NO. OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.4151 OF 2023]

WITH

CRIMINAL APPEAL NO. OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.126 OF 2023]

WITH

CRIMINAL APPEAL NO. OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO. 124-125 OF 2023]

AND

CRIMINAL APPEAL NO. OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.3616 OF 2023]

J U D G M E N T

SUDHANSHU DHULIA, J.

1. Leave granted.

2. The challenge before this Court in all these Appeals is to the decision of the Madras High Court dated 08.06.2022. Before proceeding to the impugned judgment, it is necessary to trace the trajectory of this case from the Trial Court onwards, since it has passed through a maze of facts.

3. A total of fifteen accused had faced trial, and the Trial Court ultimately convicted thirteen of them. Amongst them, A-1 to A-3, A-5 to A-8, A-10 to A-13 were convicted primarily under Sections 302 read with 149 of the Indian Penal Code (for short 'IPC'). They were all sentenced to life imprisonment, except A-2 (Maruthupandiyan), who was given death sentence by the Trial Court. A-14 and A-15 were the police officers, who were convicted by the Trial Court under Sections 217, 218 of IPC and Sections 3(2)(i), 4 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'SC/ST Act'), and both of them were sentenced to life imprisonment. A-4 (Ayyasamy) and A-9 (Gunasekaran) were acquitted by the Trial Court, and no appeal against their acquittal was filed before the High Court.

4. By the impugned judgment, the High Court has modified the conviction and sentence of A-14 (Sub-inspector K.P. Tamilmaran), acquitting him for offences under Section 3(2)(i) of the SC/ST Act and Section 218 of IPC, but maintaining his conviction for offences under Section 4 of the SC/ST Act and Section 217 of IPC, and thus reducing the sentence imposed from life imprisonment to two years rigorous imprisonment. The

conviction and sentence of another police officer (A-15, Inspector M. Sellamuthu) has been upheld. In the case of A-2, the conviction by the Trial Court has been maintained but the sentence was changed from death penalty to life imprisonment. The High Court has also acquitted two other accused, i.e. A-3 (Rangasamy) and A-13 (Chinnadurai). The remaining appeals of all other co-accused were dismissed, and their conviction and sentence was upheld.

5. No appeal has been filed against the acquittal of the above-mentioned accused by the High Court. Before us, now the remaining eleven accused i.e. A-1, A-2, A-5 to A-8, A-10 to A-12, A-14, A-15, have challenged their conviction and sentence.

6. At this stage, it is necessary to bring a few crucial aspects of this case, in order to have a better perspective.

7. This is a case of a dastardly murder of a young couple, Murugesan and Kannagi, who were only in their early twenties, when they were killed. Both of them were administered poison in full view of a large number of villagers. The masterminds and the main perpetrators of this macabre act were none other than the father and the brother of the girl Kannagi. The reason behind the

murder of this young couple was that Kannagi, belonging to the 'Vanniyar' community, had dared to marry Murugesan, who was a 'Dalit' from the same village. So, at the root of this crime is the deeply entrenched hierarchical caste system in India, and ironically, this most dishonorable act goes by the name of honour-killing!

8. The brief facts of the case are as follows:

i. Kannagi and Murugesan, both residents of village 'Pudukoorapettai' in District Cuddalore, Tamil Nadu, were in love. Murugesan had just completed his B.E. (Chemical Engineering) from a college in Chidambaram, Tamil Nadu, and was employed in Bangalore, whereas Kannagi was completing her B.Com. studies from the same college. Knowing well that the Vanniyar community, to which Kannagi's family belonged, would never allow their union, the two got secretly married before the Registrar of Marriage at Cuddalore on 05.05.2003, and got their marriage registered. The marriage certificate was marked as Exhibit P-1 before the Trial Court.

ii. After performing their marriage, the two returned to their village and were leading a normal life with their respective families, but then in the first week of July, 2003, both left their village quietly without attracting any attention.

iii. On 03.07.2003, A-2 (Maruthupandiyan), brother of Kannagi, reached the house of PW-1 Samikannu (father of Murugesan), with a big sickle in his hand, and ordered PW-1 to bring his son back to the village. The reason why he was looking for Murugesan, A-2 said, was that Murugesan had borrowed money from him which he was now refusing to return. Samikannu (PW-1) leaves his house the same day to look for Murugesan. He goes to his sister-in-law's house in the village Rasapalayam where he met Murugesan and asked Murugesan to send Kannagi to her parents. Thereafter, PW-1 returned to his house that day. After a gap of four days, on 07.07.2003, A-2 again comes to the house of PW-1 and threatens him for the second time to bring Murugesan back to the village. On 07.07.2003, PW-1 again goes in search of Murugesan but he returns only on 08.07.2003, and by that time, his son

and Kannagi had already been murdered. It is further on record that, on 07.07.2003, A-2 also threatened A-4 (Ayyasamy), who was made an accused by the prosecution, though he was the uncle of Murugesan. A-2 repeats the same false story of Murugesan borrowing money from him, which he had refused to return and therefore he was on a lookout for him.

iv. The prosecution story then proceeds to state that on 07.07.2003, A-4 leaves his village Pudukoorapettai for the house of PW-15 (Tamilarasi), sister of Murugesan, in Vannangudikadu village, where Murugesan was hiding. A-4 brings Murugesan back to Pudukoorapettai village and presents him before A-1 (Duraisamy) and A-2 (Maruthupandiyan), father and brother of Kannagi, respectively.

v. By the time Murugesan was brought to the village, it was evening (on 07.07.2003). Thereafter, as per the prosecution story, A-1 to A-13 undressed Murugesan, tied him to a post and then he was mercilessly beaten by the mob including A-1 to A-13. This was done in full view of

many villagers who were present there, yet there was no attempt to stop this savage brutality. A-1 to A-13 continued to torture Murugesan compelling him to reveal the whereabouts of Kannagi. After much physical torture and beating, when Murugesan was unable to bear it any longer, he finally revealed that Kannagi was in PW-23 Saroja's house (who was the mother-in-law of A-4). Immediately a Tata Sumo car was arranged by A-1, which was driven by PW-22 (Jayatharasan), in which A-4 to A-11 climbed and proceeded to Moongilthuraipattu village where PW-23's house was located, with the intention of getting Kannagi back to Pudukoorapettai village.

vi. Kannagi was finally brought to her village, and by this time it was about 5:30 AM in the morning (of 08.07.2003). Both Kannagi and Murugesan were then taken to a cashew grove near the village. Once there, A-1 gets Nuvacron[1] (insecticide/poison) in a steel tumbler and gives it to his

[1] Insecticide with common name "Monocrotophos". Considered highly toxic by all routes of exposure. The ingestion of even 120 mg of Monocrotophos can be fatal.

son A-2, and orders him to administer that to his daughter Kannagi.

vii. A-2 then forced Nuvacron down Kannagi's throat which caused her death in minutes. The prosecution story here though also suggests that A-2 tried to administer the remaining Nuvacron to Murugesan but when Murugesan resisted, this task was assigned to A-4. All the same, we must note that this version of prosecution, that A-4 administered or tried to administer poison to Murugesan, was not accepted in view of the evidence of PW-49 (Chinnapillai, step-mother of Murugesan) who had said that she saw A-2 administering poison to her son Murugesan. Like Kannagi, Murugesan too died minutes after being forced to drink the poison. PW-49 is an eye-witness who has stuck to her deposition that it was A-2 who had administered poison to her son Murugesan, and not A-4. A-4 has ultimately been acquitted by the Trial Court and as stated above, no appeal against his acquittal was filed before the High Court. We will deal with this aspect in greater detail at a later point in this judgment.

We must also point out here that PW-49 was not mentioned in the charge-sheet as one of the prosecution witnesses. It was only in the middle of the trial that an application was moved under Section 311 of the Code of Criminal Procedure, 1973 (for short 'CrPC') by the prosecution to bring PW-49 as a witness.

viii. Returning to the facts of the case. The two bodies were then burnt in different places-Kannagi in the village cremation ground and Murugesan at a place nearby.

ix. Meanwhile, as per the prosecution case, A-14 and 15 (police officers) not only knew about these events but they had also visited the crime scene, according to some of the witnesses on 08.07.2003 itself, and yet they did not lodge an FIR, which was their statutory duty under Section 154 and Section 157 CrPC. Not only this, but when PW-49 goes to the police station to lodge an FIR on 08.07.2003, she was rebuffed and abused at the police station, and practically thrown out of the station.

x. It was only after a gap of nine days, when some leaders belonging to the Dalit community raised this issue

through Press and Media and a support was gathered from the public, that a case was finally registered on 17.07.2003 as Crime No.356 of 2003 under Sections 147, 302, 201 of IPC at police station Virudhachalam. The FIR, however, was registered on the basis of the extra-judicial confession of A-1 before PW-32 (Ashokan), who was the Village Administrative Officer. In this FIR, eight accused were named, four belonging to the Dalit community and the other four belonging to the Vanniyar community. The Dalits included PW-1 (Samikannu), who was none other than the father of the deceased Murugesan; A-4 (Ayyasamy), who was the uncle of Murugesan and who allegedly brought Murugesan back to Pudukoorapettai village from his sister's house; Ilayaperumal, another uncle of Murugesan, and Kannadasan, who ultimately became a prosecution witness as PW-33. The four Vanniyars who were made accused were A-1, A-2 (who were the father and brother of Kannagi, respectively), A-3 and Anbalagan, who later became a prosecution witness as PW-29.

xi. Based on this FIR, an investigation was done by the local police and a charge-sheet was filed on 16.09.2003 against all the eight above-mentioned accused under Sections 147, 302, 201 of IPC.

xii. Meanwhile, the questionable manner in which the entire investigation was carried out by the local police, compelled the family of the deceased Murugesan to seek interference from the Madras High Court where a petition was filed with a prayer that the investigation in this case must be handed over to the Central Bureau of Investigation (for short 'CBI'). The High Court, by its order dated 22.04.2004, allowed this application and directed that the investigation be handed over to CBI.

xiii. On 21.05.2004, the CBI again registered its FIR under Sections 147, 302, 201 of IPC and started the investigation. A charge-sheet was filed on 14.10.2005 against fifteen accused, which included two Dalits i.e. A-4 (Ayyasamy) and A-9 (Gunasekaran), two police officers i.e. A-14 (K.P Tamilmaran) and A-15 (M. Sellamuthu). The remaining accused belong to the Vanniyar community. As

we have already stated in the beginning, A-4 and A-9 were acquitted by the Trial Court, while accused A-3 and A-13 were later acquitted by the High Court in Appeal.

xiv. There has been an inordinate delay caused in this case. The incident is of 7th and 8th July, 2003, and the Trial was concluded only on 24.09.2021. The delay on account of the belated filing of the FIR, etc. we have already discussed above, but the case was only committed to Sessions on 15.03.2010 i.e. after more than seven years. The proceedings again remained stalled till charges were ultimately framed on 14.07.2017. An additional charge under Section 3 of the SC/ST Act was framed by the Trial Court against A-14 and A-15 in 2020.

As noticed by the High Court, the reason for this long and inordinate delay was because of the multiple petitions filed by the accused for one reason or the other primarily as a challenge to the proceedings itself.

9. As mentioned in the beginning, the High Court in appeal, by the impugned judgment, modified the sentence of A-2 from death penalty to life imprisonment, while upholding his conviction. A-

3 and A-13 were acquitted by the High Court. A-14 was acquitted for offences under Section 3 of SC/ST Act and Section 218 of IPC.

10. The eleven accused who stood convicted and sentenced by the High Court are now before us. Their defence is based primarily on the alleged weaknesses of the prosecution theory, the inconsistencies and frequent contradictions in the statements of key prosecution witnesses, including its star witness PW-49 (Chinnapillai), etc. The learned senior counsels for the appellants, Mrs. Anjana Prakash, Mr. Ratnakar Dash, Mr. M. Sathyanarayanan, Mr. Siddharth Aggarwal and Mr. S. Nagamuthu have tried to convince this Court that the testimonies of the prosecution witnesses are unreliable and there has been a total failure on the part of the prosecution to prove its case beyond reasonable doubt.

11. The contention on behalf of A-14 and A-15 (the two police officers- K.P Tamilmaran and M. Sellamuthu, respectively), raised by learned senior counsel Mr. Siddharth Aggarwal and Mr. Gopal Sankaranarayanan, respectively, is that none of the witnesses have specifically identified them as the officers at the police station who refused to lodge the FIR when apprised of the

incident. It is the contention of A-15, additionally, that merely because he had filed the charge-sheet against persons belonging to both the Dalit and Vanniyar community, the investigation conducted by him cannot be said to be motivated by a desire to falsely implicate members of the Dalit community.

12. We have heard learned senior counsels for the accused as well as the learned counsel, Mr. Rahul Shyam Bhandari, for the family of Murugesan and Mr. Vikramjit Banerjee, the learned Additional Solicitor General representing CBI.

13. In order to appreciate the sequence of events and the role of the accused, it is important to look at the testimonies of PW-1 (Samikannu-father of Murugesan), PW-2 (Velmurugan-younger brother of Murugesan), PW-3 (Palanivel-second younger brother of Murugesan), PW-15 (Tamilarasi-sister of Murugesan), and PW-49 (Chinnapillai-step-mother of Murugesan), who are the main prosecution witnesses.

14. But before we do that, it may be necessary to say a few words about some essential aspects of this case, in order to set the context for the examination of testimonies of these key prosecution witnesses.

Delay in Trial and evidentiary value of so-called "hostile witness"

15. The long and inordinate delay which has been caused in this case, right from the lodging of the FIR, speaks volumes about the gross inefficiency at the hands of the prosecution on the one hand and dilatory tactics employed by the defence on the other hand, which together led to a slow trial.

16. The second and more crucial aspect is that many of the prosecution witnesses in this case have turned, what has come to be known as 'hostile'; a fact which has been strongly pressed by the defence in their favour. The defence would also argue that the Trial Court and High Court have mainly relied on the testimonies of the family members of Murugesan, who are interested witnesses.

17. In our opinion, there is no force in these arguments and as will be seen, there was enough material placed by the prosecution before the Trial Court, which was sufficient to prove the guilt of the accused, beyond a reasonable doubt.

18. When a witness, produced on behalf of prosecution, deposes against the prosecution version and goes against his/her own

previously recorded statements, the prosecution can request the Court to declare such a witness as hostile and seek permission from the Court to cross-examine its own witness. This is the procedure followed in a Trial, as we all know. In the present case, there are as many as fifty-one prosecution witnesses and it is also a fact that many of them have turned hostile by turning against their earlier statements made before the police under section 161 CrPC, and even before the Magistrate under section 164 CrPC, in some cases. This phenomenon is not new, in fact it is sadly a common occurrence in our criminal Courts today, much to the despair and frustration of the prosecution. This case, therefore, is no exception. Despite this, however, there are witnesses in the present case, especially PW-1, PW-2, PW-3, PW-15 and PW-49, whose evidence, in the form of their testimonies before the Court, is more than sufficient to convict the present appellants. A word here about the evidentiary value of a so-called hostile witness.

19. The Indian Evidence Act, 1872 (hereinafter 'Evidence Act') allows a party, with the leave of the Court, to cross-examine its own

witness. Section 154 of the Evidence Act originally read as follows:

> ***"154.Question by party to his own witness***
> *The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party."*

20. The Calcutta High Court, in ***Khijiruddin Sonar*** *v.* ***Emperor 1925 SCC OnLine Cal 259***, while interpreting Section 154 of the Evidence Act, held that "*When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of Section 154 of the Evidence Act, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony*".

21. But this judgment in ***Khijiruddin*** was overruled by a five-Judge bench of the Calcutta High Court in ***Praphullakumar Sarkar*** *v.* ***Emperor 1931 SCC OnLine Cal 7***. The High Court was answering a reference from a Division Bench regarding the specific question of whether the testimony of a witness, who was cross-examined by the party which produced him/her, should be

discarded totally, partially, or not discarded at all. Chief Justice Rankin, speaking for three other Judges and himself, answered the reference in the following terms:

> *"24. In my opinion, the fact that a witness is dealt with under Section 154 of the Evidence Act, even when under that Section he is "cross-examined" to credit, in no way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take no advantage from any part of his evidence. There is, moreover, no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say.*
>
> *Of the seven questions stated by the Division Bench I propose that we should answer four, viz.—*
>
> *(3) whether the evidence of a witness treated as "hostile" must be rejected in whole or in part;*
>
> *(4) whether it must be rejected so far as it is in favour of the party calling the witness;*
>
> *(5) whether it must be rejected so far as it is in favour of the opposite party.*
>
> *These three questions I would answer in the negative.*

> *(6) Whether the whole of the evidence so far as it affects both parties favourably or unfavourably, must go to the jury for what it is worth.*
>
> *25. To this question, I would be content to answer "yes," …"*

22. Justice Buckland, in the above case, in his concurring opinion holds that there is no law which states that the evidence of a witness, who has been cross-examined by its party, should be entirely rejected. In his opinion, it is for the jury (or the Judge) to form an opinion regarding the value of the testimony of such a witness.

23. All the same, later this Court in ***Jagir Singh*** *v.* ***State (Delhi) (1975) 3 SCC 562*** held to the contrary and approved the decision of the Calcutta High Court in ***Khijiruddin***. This is what was said in ***Jagir Singh*** by Justice Bhagwati:

> *"7. Now, it is apparent from the judgment of the High Court that the conviction of the appellant rested entirely on the evidence of Pritam Singh (P.W. 10) and Sajjan Singh (P.W. 13). Swaran Singh (P.W. 11) was also examined on behalf of the prosecution but his evidence is of no help to the prosecution because he went back on the story of the prosecution and was permitted to be cross-examined on behalf of the prosecution. It is now well settled that when a witness, who has*

> *been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit that witness altogether and not merely to get rid of a part of his testimony. See Khijiruddin v. Emperor.…"*

24. However, it is to be noted that ***Jagir Singh*** does not refer to the five-Judge Bench decision of the Calcutta High Court in ***Praphullakumar Sarkar***.

25. But then in a subsequent decision (of which Justice Bhagwati was also a part) i.e., ***Sat Paul*** *v.* ***Delhi Administration (1976) 1 SCC 727,*** it was held differently. Justice Sarkaria, speaking for the Bench, clarified the earlier judgment in ***Jagir Singh***, and held that what has been held in ***Jagir Singh*** would only be applicable where a witness through cross-examination by the party which calls it, is totally discredited. It is only in such a situation that the Court, as matter of prudence, discards his/her evidence in its entirety.

26. As a general rule, the testimony of a witness who has been cross-examined by the party which produced him/her will not stand totally discredited, and it is for the Court to consider what value

should be attached to this testimony. After referring to a series of judgments on this point, the Court in ***Sat Paul*** held as follows:

> *"52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.*
>
> *53. It was in the context of such a case, where, as a result of the cross-examination by the Public, Prosecutor, the prosecution witness concerned stood discredited altogether, that this Court in Jagir Singh v. State (Delhi Admn.) with the aforesaid rule of caution — which is not to be treated as a rule of law — in mind, said that the evidence of such a witness is to be rejected en bloc."*

(Emphasis Provided)

27. An examination of the cases referred above shows that there can be no doubt about the fact that the evidence of a witness, who has been cross-examined by the side which produced him/her, cannot be totally discarded *[Also see:**Neeraj Dutta** v. **State (NCT of Delhi), (2023) 4 SCC 731**].*

28. It may also be worthwhile to mention here that by the Criminal Law Amendment Act of 2005, sub-section 2 was added to section 154 of the Evidence Act. The amended section 154 of the Evidence Act now reads as under:

> ***154. Question by party to his own witness.*** *— (1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.*
> *(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.*
>
> *(Emphasis Provided)*

29. By way of the above amendment, the position which had been reiterated by this Court has now come in the statute itself.

30. The word 'hostile' or 'hostile witness' has not been used anywhere in the Evidence Act. The logic behind this exclusion seems to be

that the declaration of witness as 'hostile witness' carries a specific significance under the English law, from where this term has been derived, where liberty is only granted to a side to cross-examine its own witness when such declaration of 'hostility' is made. The position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of 'hostility'. This has been explained by this Court in ***Sat Paul***:

> *"38. To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, "unfavourable" witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile". Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in Baikuntha Nath v. Prasannamoyi [AIR 1922 PC 409: 72IC 286]). The discretion conferred by Section 154 on the court is unqualified and untrammelled and is apart from any question of "hostility". It is to be liberally*

> *exercised whenever the court from the witnesses demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Courts."*
>
> *(Emphasis Provided)*

31. The phrase 'hostile witness' is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase 'hostile witness' has come to

be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of 'hostility'. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of 'hostility' or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.

32. This can be understood from another aspect. We shall now refer to the definition of the term 'evidence' given under Section 3 of the Evidence Act. It reads as follows:

> ***"Evidence"*** *- "Evidence" means and includes –*
> *(1)all statements which the Court permits or requires to be made before it by witnesses, in*

> *relation to matters of fact under inquiry; such statements are called oral evidence;*
>
> *(2) all documents including electronic records produced for the inspection of the Court; such document are called documentary evidence."*
>
> *(Emphasis Provided)*

33. The statements made by a witness in Court, including in cross-examination, either conducted by the opposite party or by the party who produced the witness, would come under the definition of 'evidence' under Section 3 of the Evidence Act, since this evidence has come before the Court with its permission. Moreover, there is no specific bar under the Evidence Act which mandates that such evidence has to be discarded. Thus, it would form part of the entire evidence which the Court can examine while arriving at its decision, and it is for the Court to determine what value has to be given to that piece of evidence or how such evidence has to be used in a given case.

34. Viewed from a different perspective, the rejection of the entire testimony of a prosecution witness, who has been cross-examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case.

This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case [See: ***Paulmeli*** *v.* ***State of T.N. (2014) 13 SCC 90***, ***Ramesh Harijan*** *v.* ***State of U.P. (2012) 5 SCC 777****]*. In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is totally discarded. It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.

35. Here, we may also take note of Section 155 of the Evidence Act[2] which allows a party, with permission of the Court, to impeach the credibility of its own witness as per the procedure laid down therein.

36. It is though trite and much overstated but the maxim "*falsus in uno, falsus in omnibus*"[3], is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff

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[2] 155. Impeaching credit of witness: The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:
(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted…

[3] false in one thing, false in everything.

while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record. This Court in ***Bhajju*** *v.* ***State of Madhya Pradesh (2012) 4 SCC 327*** discussed the worth of the evidence of a hostile witness in the following words:

> *"36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence…"*

If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable

reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given.

37. One of the many reasons for witnesses turning hostile is the long delay usually caused in a trial. This is again unfortunate but true in our country. The present case is no exception. Here, the incident occurred in the year 2003, the case was committed to Sessions in the year 2010 and charges were framed as late as in the year 2017, and the judgment was finally pronounced by the Trial Court on 24.09.2021. It took eighteen years!

38. The role played here by the accused in delaying the trial cannot be discounted, as already stated. The records also reveal that the depositions of most of the prosecution witnesses were recorded only towards the end of the year 2017. Moreover, CBI in this case had filed its charge-sheet, *inter alia,* against two persons belonging to Dalit community. Although, these two (A-4 and A-9) were finally acquitted by Trial Court as there was absolutely nothing against them, but in the process, prosecution had to

declare many of its witnesses belonging to the Dalit community as hostile simply because these witnesses did not depose against A-4 and A-9. It is also clear now, in any case, that these two were wrongly made accused by the prosecution. All the same, the benefit of such witnesses turning hostile cannot be given to other accused who were found involved in the offence, on the overwhelming weight of other evidence.

Related witnesses are not necessarily interested witnesses

39. Another plea taken by the defence is that many witnesses who have deposed against them, such as PW-49, PW-1, PW-15, are interested witnesses. PW-49 for example being the step-mother of Murugesan, the boy who was killed. Now, so far as witnesses being interested witnesses is concerned, it is a settled position of law that the Court cannot ignore the testimonies of witnesses only because they are close relatives of the victim. A Three-Judge Bench of this Court in ***Jaikam Khan*** *v.* ***State of U.P.*** **(2021) 13 SCC 716** notes:

> *"28…No doubt that, merely because the witnesses are interested and related witnesses, it cannot be a ground to disbelieve their testimony. However, the testimony of such*

> *witnesses has to be scrutinised with due care and caution. Upon scrutiny of the evidence of such witnesses, if the court is satisfied that the evidence is creditworthy, then there is no bar on the court in relying on such evidence."*

In cases where the crime is committed at the residence or a place near the residence of the deceased, it is the close relatives who are likely to be a witness to the crime. They are natural witnesses. This Court in ***State of A.P.*** *v.* ***S. Rayappa*****, (2006) 4 SCC 512**, while noting the difference between interested witness and related witness, observed as follows:

> *"6…By now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons.*
> *7. On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In*

> *such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously…"*

40. Keeping these principles in mind, we shall now discuss the testimonies of prosecution witnesses:

i. PW-1 (Samikannu) is the father of Murugesan who was made an accused in the first FIR filed by the local police when A-15 was the I.O. PW-1 is one of the main witnesses of the prosecution. PW-1 states that, five days prior to the death of Murugesan i.e. on 03.07.2003, at around 5 PM, A-2 (Maruthupandiyan), armed with a big sickle, comes to his house and orders him to find Murugesan and bring him to his house as Murugesan had borrowed money from him which he now refuses to return. A-2 threatened PW-1 with dire consequences, if he did not bring Murugesan. On 03.07.2003 itself, PW-1 leaves his village for his sister-in-

law Dhanavalli's house in Rasapalayam, where he found Murugesan with Kannagi. Murugesan informed PW-1 that Kannagi is A-1's daughter. Upon hearing this, PW-1 pleaded with him to ask Kannagi to return to her family as she belongs to a higher caste. On the same day, i.e. 03.07.2003, PW-1 returns to his village. Thereafter, four days later, on 07.07.2003, A-2 again threatens PW-1 to bring back Murugesan and PW-1 yet again leaves his village in search of Murugesan. This time, since PW-1 could not find Murugesan, he delays his return to his village, and when he reaches his village the next day (on 08.07.2003), Murugesan and Kannagi had already been killed.

ii. PW-2 (Velmurugan), is the younger brother of Murugesan. He was seventeen years old at the time of the incident. In Court, PW-2 had deposed that at 11 AM on 07.07.2003, A-2 and his aides intercepted PW-2 near the village water tank while he was returning to his village from Virudhachalam. They questioned him on the whereabouts of Murugesan, repeating the story of the money which was

lent to Murugesan. PW-2 was then forcibly taken by them and confined in a store-room near the water tank and was only released in the evening, after Murugesan was brought back to the village. When PW-2 went home, his mother PW-49 (Chinnapillai) informed him that A-4 had brought Murugesan back to the village. PW-2 then went to the sugarcane field of A-1, where he was joined by PW-3 (Palanivel). At the sugarcane field, PW-2 saw that A-2 and A-7 were threatening Murugesan to disclose the location of Kannagi. He then saw A-4 (Ayyasamy) asking A-1 (C. Duraisamy) as to why A-1 was inquiring Murugesan regarding Kannagi, when the only reason given to A-4 for their search of Murugesan was the money which was to be recovered from him. To this, A-1 then answered that he had to weave a story of 'loan', in order to bring Murugesan. Later, PW-2 and PW-3 returned home. At around 7 PM on 07.07.2003, the villagers were heard saying that Murugesan was being beaten near Mariamman temple. PW-2 proceeded to the place near Mariamman temple. There, he saw A-1, A-2, A-4, A-5, A-6, A-7, A-9, A-10, A-

11, and hundred other villagers gathered. PW-2 witnessed Murugesan being tortured. He was hung upside down with his leg tied by a rope to a borewell situated near the water tank. PW-2 then states how Murugesan finally disclosed the location of Kannagi who was in the house of PW-23 (Saroja) at Moongilthuraipattu. Having got this information, A-1 asked PW-22 (Jayatharasan) to bring the vehicle, which was a Tata Sumo Jeep, in which A-5, A-6, A-7, A-8, A-9, and A-10 jumped in and also compelled A-4 to sit with them, and then they all left for Moongilthuraipattu. Murugesan was watched by A-1, A-2 and others. A-1 and A-2 then forced PW-2 to go back and PW-2 further states that he, along with his brother PW-3, slept in A-4's motor shed that night, fearing they will be harmed in case Kannagi was not found.

iii. PW-3 (Palanivel) is the second younger brother of Murugesan. In his deposition, PW-3 speaks about A-2 threatening his father (PW-1) on 03.07.2003 to compel PW-1 to bring Murugesan back to Pudukoorapettai village. PW-3 has also testified to the fact that A-2 later threatened

A-4, asking him to bring Murugesan back to the village, and that A-4 was the one who, in fact, brought Murugesan to the village. PW-3 has also spoken about the wrongful detention of PW-2 (Velmurugan) and his subsequent release once Murugesan returned. PW-3 further deposed that A-2 and his men had beaten Murugesan near the water tank and village temple, which was witnessed by nearly fifty villagers. PW-3 also confirmed the presence of A-1, A-2, A-5, A-6, A-7, A-9, A-12, and A-13 at the site where Murugesan was beaten and tortured. He recollects seeing that A-4 (Ayyasamy) (A-4, as we know, belongs to the Dalit community and was the uncle of Murugesan, who was made an accused by the prosecution, but later acquitted by the Trial Court) was also tied along with Murugesan. PW-3 then goes on to speak about the Tata Sumo being driven by PW-22 coming to the scene and A-4, A-5, A-6, A-7, A-8, A-9, A-10 boarding the vehicle, which then headed towards Moongilthuraipattu. Like PW-2, PW-3 also speaks about returning home later, but he says that they (PW-2 and PW-3) slept in their backyard at night. He

also says that when he returned to the house at around 7 AM on 08.07.2003, his mother PW-49 (Chinnapillai), A-4, PW-16 (Amaravathi) informed him that Murugesan had been poisoned and killed.

iv. PW-15 (Tamilarasi), who is the sister of Murugesan, deposed that at around 11 AM on 07.07.2003, Murugesan was in her house in Vannangudikadu village. Later when she found him missing, she along with PW-16 (Amaravathi-who also lived in Vannangudikadu village), proceed for Pudukoorapettai, the village of Murugesan. Once they reached the village she saw A-2, A-5 and A-12 beating Murugesan, and hurling casteist abuses at him. PW-15 further says that there was a huge crowd of villagers also present at the spot. Later when Murugesan finally disclosed the location of Kannagi as he could not stand the torture, a Tata Sumo vehicle was brought to the spot, in which some of the accused went to bring Kannagi. PW-15 along with PW-2, PW-3, PW-16, and PW-49 then returned home. The next day i.e. 08.07.2003, PW-15 was told by PW-16 and PW-49 that Murugesan had been killed.

v. PW-16 (Amaravathi), the aunt of Murugesan, has not fully confirmed the prosecution story. She only states that she saw Murugesan in PW-15's house, where he told PW-16 that he had not borrowed any money from A-2. She denies any knowledge of the events that took place thereafter, and states that she was informed of the death of Murugesan by other persons. This witness was also declared, what we call 'hostile'.

vi. PW-49 (Chinnapillai), the step-mother of Murugesan, is the star witness of the prosecution. She states that A-2 threatened her husband, PW-1, to bring back Murugesan, on 03.07.2003, and then how her husband PW-1 left the village to find Murugesan but returns without Murugesan. She further deposes that how again, on 07.07.2003, A-2 threatened PW-1 to bring back Murugesan and PW-1 again left the village in search of Murugesan and returned on 08.07.2003, after the death of Murugesan and Kannagi. PW-49 further testified that it was A-4 who finally brought Murugesan to the village. She specifically identified A-2, A-3, A-8, A-10, A-13 as the accused who had beaten and

tortured her son near the temple. PW-49 also states that A-2, A-6, A-7, A-8, A-10, A-12 assaulted A-4 and compelled him to get into the Tata Sumo vehicle which was requisitioned to bring Kannagi. Thereafter, they forced PW-49 to leave the place.

41. So far, the following facts emerge from the testimonies reproduced above:

i. On 03.07.2003, A-2 (Maruthupandiyan) threatened PW-1 (Samikannu) to bring back Murugesan. PW-1 goes to his sister-in-law's house where he met Murugesan and asked Murugesan to send Kannagi to her parental home. On the same day, PW-1 returns to his village.

ii. On 07.07.2003, A-2 again threatened PW-1 to bring Murugesan back to the village, and PW-1 once again leaves his village in search of Murugesan. But this time, he could not find Murugesan and fearing that A-2 would harm him if he returns without Murugesan, PW-1 did not return to his village that day.

iii. On 07.07.2003, A-2 also threatened A-4 (Ayyasamy) to bring Murugesan back to the village and it was A-4 who finally brought Murugesan back to the village

iv. Murugesan was battered and tortured by A-1, A-2 and their men in order to elicit the location of Kannagi, which he ultimately revealed after he was unable to bear the torture. Many villagers were present when all this was happening.

v. A Tata sumo vehicle, driven by PW-22 (Jayatharasan), went to find Kannagi and bring her back to the village.

42. It is from this point onwards that the case depends mainly on the testimony of PW-49 (Chinnapillai), who is the step-mother of Murugesan, and an eyewitness. She is the most important witness, as she has seen the macabre act of the actual poisoning of the two innocent lives. Although, PW-16 (Amaravathi), the aunt of Murugesan, was also produced by the prosecution as an eye-witness, but she has turned hostile and denies even being present on the spot.

43. PW-49, all the same, states that after PW-2, PW-3, PW-15, PW-16 and she were compelled to leave the place where Murugesan

was tortured, they returned home. At dawn on 08.07.2003, PW-16 and PW-49 went near the temple, but did not find Murugesan there. PW-49 heard some villagers saying that Murugesan would be poisoned. PW-49 and PW-16 ran through the temple when they heard a noise. They followed the sound which led them to a place where PW-49 saw Murugesan tied to a tree in a cashew grove. She says that A-4 was also tied to a tree. PW-49 further states that barring A-14 and A-15, all the accused were present there. She specifically states that A-2 poured poison down her son's throat. She tried to stop A-2 but was held back by the accused. After A-2 had administered poison to Murugesan, PW-49 fainted and it was PW-16 who sprinkled water on her face to bring her back to consciousness. PW-49 then states that she immediately went to the Virudhachalam police station, but no one listened to her. On the contrary, she was given casteist slurs and driven away. After she returned home, PW-1 also came back. Then, A-3 and others told them that Murugesan's body had been set ablaze. Upon hearing this, PW-49, PW-1, PW-15 went to the place where Murugesan's body was being burnt. All that they could recover was a ring that Murugesan used to wear.

44. From a perusal of the evidence, it is also clear that the accused before us had brought Kannagi to Pudukoorapettai village, where she was also killed by administration of poison along with Murugesan.

45. In the present case, PW-49, who is an eyewitness, was not cited as a witness in the charge-sheet submitted by the CBI. What she had said before the police during investigation under Section 161 CrPC is what she later deposed more or less as a witness in the Court. There may be some discrepancies in PW-49's deposition but on overall consideration of the evidence, these will be of no help to the defence.

46. The prosecution, however, was not confident that this witness would withstand the cross-examination, considering she was uneducated and extremely inarticulate. It was only later during the trial that an application was moved on behalf of the prosecution under Section 311 CrPC to summon PW-49 as an additional witness, which was allowed, and PW-49 was made a prosecution witness. This order of the Sessions Court was

challenged before the High Court by none other than PW-1[4], who prayed that PW-49 ought to be examined as a 'Court witness' rather than a prosecution witness. PW-1 approached the High Court with this prayer because the apprehensions weighing in his mind were that if his wife (PW-49, Chinnapillai) is examined as a prosecution witness, she may be declared hostile, and the benefit thereof would ultimately be availed by the accused. However, the High Court dismissed PW-1's petition and affirmed the decision of the Trial Court summoning Chinnapillai as a prosecution witness. The High Court held that these apprehensions have to be disregarded for the reason that the Trial Court is empowered under Section 165 of the Evidence Act to take care of any apprehensions as raised by PW-1 regarding PW-49 turning hostile.

Prosecution Witness and Court Witness, and Section 311 CrPC and Section 165 of the Evidence Act

[4] PW-49 is the wife of PW-1 and step-mother of the deceased Murugesan

47. Before moving further, we consider it necessary to deal with the law relating to section 311 CrPC under which PW-49 was summoned as a witness.

Section 311 CrPC reads as follows:

> "***311. Power to summon material witness, or examine person present.—*** *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."*

This Section 311 of CrPC provides wide powers to a Criminal Court, to do the following:

i. Summon any person as a witness, or

ii. Examine any person present in court, though not summoned as witness, or

iii. Recall and re-examine any person already examined

The above powers can be exercised *'at any stage of any inquiry, trial or other proceeding'* under the CrPC. The provision can be

divided into two parts. The word *'may'* is used in the first part of the section which grants the Court the discretion to summon a witness. In contrast, the second part of the Section uses the word *'shall'* which casts a duty on the Court to summon and examine or recall or re-examine any such person as a witness when it appears to the Court that it is essential to do so for a just decision in the case. In other words, the second part is mandatory, and Courts are obligated to exercise their powers under Section 311 CrPC when the evidence of any person is essential for a just decision of the case. ***(See: Jamatraj Kewalji Govani*** *v.* ***State of Maharashtra 1967 SCC OnLine SC 19)***

48. As is clear from the language of the provision itself, there is a wide discretion with the Courts under Section 311 CrPC. These powers can be exercised *suo moto* or on an application moved by either side. After all, the object is that the Court must not be deprived of the benefit of any valuable evidence. It is absolutely necessary that the Court must be apprised of the best evidence available. Thus, Courts have been given wide powers to decide on their own if a witness is required to be called or recalled for examination or re-examination. This power under Section 311

CrPC can be invoked at any stage of the trial, even after the closing of the evidence. Section 311 CrPC can also be read along with Section 165 of the Evidence Act, as the powers of the Court under Section 165 of the Evidence Act are complementary to Section 311 of CrPC. As discussed above, powers under Section 311 CrPC can either be exercised on an application moved by either side to the case or *suo moto* by the Court. In case a person is not listed as a witness in the charge-sheet but later, the prosecution desires to bring that person as an additional prosecution witness, then the prosecution can move an application to bring this person as a prosecution witness. It is then for the Court to decide whether such a person is required as a witness or not. If the Court finds that such a person should have been examined as a prosecution witness and he/she was omitted from the list of witnesses due to some oversight, mistake or for any other reason, the Court may allow the application and such a person can be examined as a prosecution witness. Thereafter, the normal course of examination-in-chief, cross-examination, etc. would follow as per the procedure. On the other hand, when the Court calls a person as a *Court witness,* there

are some restrictions regarding the cross-examination of such witness.

49. In a case where neither party is interested in examining a person as a witness yet the Court feels that the evidence of such a person is necessary for a just decision, the Court though cannot compel either the prosecution or the defence to call a witness, but it can invoke its power under Section 311 CrPC, read with Section 165 of the Evidence Act and call such a person as a *Court witness*. Whether a person is required to be examined as a witness for a just decision is again a question which has to be decided by the Court on the basis of the facts of that particular case. ***(See: Rama Paswan*** *v.* ***State of Jharkhand (2007) 11 SCC 191)***

50. As far as cross-examination of a Court witness is concerned, no party can claim cross-examination of a Court witness as a matter of right. A Court witness can only be examined with the leave of the Court ***[See: Zahira Habibullah Sheikh & Anr.*** *v.* ***State of Gujarat & Ors. (2006) 3 SCC 374*** *and* ***Jamatraj (Supra)]***. Where a Court witness says something prejudicial to any party, then such a party must be allowed to cross-examine that witness.

51. Also, as discussed earlier, Court witnesses can be cross-examined by either side but only with the leave of the Court. Further, the cross-examination is to be restricted only to what was stated by this witness in his/her reply to the questions of the Court, and a Court witness cannot be contradicted to his/her previous statements made before the police i.e. statements under section 161 of CrPC. The proviso to section 162(1)[5] of CrPC makes it very clear that only prosecution witnesses can be contradicted against their previous Section 161 CrPC statements. Under the proviso to Section 162(1) of CrPC, Section 161 CrPC statements of any prosecution witness can be used by the defence to contradict such a witness during the cross-examination. The prosecution may also contradict its own witness during cross-examination regarding the previous statements made before the

[5] **162. Statements to police not to be signed: Use of statements in evidence.**

(1)No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement of record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:
Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

police, but again it can only be done with the leave of the Court. [See: ***Mahabir Mandal & Ors.*** *v.* ***State of Bihar*** **(1972) 1 SCC 748**, ***Dipakbhai Jagdishchandra Patel*** *v.* ***State of Gujarat & Anr.*** **(2019) 16 SCC 547**]

All the same, none of these restrictions apply to the Court, which has wide power under Section 165 of the Evidence Act to ask any questions. The Courts are not barred from putting questions which may contradict the witness with the previous statements made before the police. The special powers of the Court under Section 165 of the Evidence Act are not impaired or controlled by the provisions of Section 162 of the CrPC. ***(See: Raghunandan*** *v.* ***State of U.P. (1974) 4 SCC 186)***

52. The powers of a Court under Section 165 of the Evidence Act and the importance of Section 165 in the meaningful conduct of a trial is brilliantly explained by Justice O. Chinnappa Reddy with distinctive clarity of his letters in ***Ram Chander*** *v.* ***State of Haryana (1981) 3 SCC 191***:

> *"What is the true role of a Judge trying a criminal case? Is he to assume the role of a referee in a football match or an umpire in a cricket match, occasionally answering, as Pollock and Maitland [Pollock and Maitland :*

The History of English Law] point out, the question "How is that", or, is he to, in the words of Lord Denning "drop the mantle of a Judge and assume the robe of an advocate?" [Jones v. National Coal Board, (1957) 2 All ER 155 : (1957) 2 WLR 760] Is he to be a spectator or a participant at the trial? Is passivity or activity to mark his attitude? If he desires to question any of the witnesses, how far can he go? Can he put on the gloves and 'have a go' at the witness who he suspects is lying or is he to be soft and suave? These are some of the questions which we are compelled to ask ourselves in this appeal on account of the manner in which the Judge who tried the case put questions to some of the witnesses.

2. *The adversary system of trial being what it is, there is an unfortunate tendency for a Judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:*

> *"Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth*

> *and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial."*
>
> ***3.*** *With such wide powers, the court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the Counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the Judge must be so as not to frighten, coerce, confuse or intimidate the witnesses..."*

53. Justice O. Chinnappa Reddy then goes on to say that a judge can *"ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant"*. But then while

doing this the Judge must take both the prosecution and the defence with him.

54. In the present case, in our opinion, the High Court was right in dismissing the apprehensions of PW-1 that the prosecution would get PW-49 declared hostile to the benefit of the accused. These apprehensions were not well-founded. PW-49 is an eyewitness, she ought to have been made a prosecution witness in the first instance. Theoretically speaking, the Trial Court could have called her as a Court witness, in light of the facts of the present case, as her evidence was absolutely essential for the just decision of the case. All the same, before the Trial Court could have done it, the prosecution itself moved an application to summon her as a prosecution witness and therefore, in our opinion, the Trial Court rightly made her a prosecution witness by allowing such an application. In the present case, PW-49 did not support the case of prosecution on some aspects, such as the role of A-4 and A-9 (Dalits who were made accused), yet her evidence in respect of other accused was correctly relied upon by the Trial Court in convicting the other accused.

The findings of the Court on the role of A-14 & A-15 - the Police Officers

55. Now coming to the role of A-14 (K.P. Tamilmaran) and A-15 (M. Sellamuthu), who were the Sub-Inspector and Inspector, respectively, of the Virudhachalam police station at the relevant point of time.

56. A-14 and A-15 were convicted by the Trial Court under Sections 217 & 218 of IPC and Sections 3(2)(i) & 4 of SC/ST Act. However, the High Court acquitted A-14 for offences under Sections 218 and Section 3(2)(i) of SC/ST Act. Whereas conviction and sentence under other provisions were upheld by the High Court.

57. Before we proceed to examine their role, it is necessary to state that the police station, where these two officers were posted and which has the jurisdiction of the village, is not very far from the village in any case as noticed by the High Court, it was about 3 kilometres from the village. It is very difficult to believe that a dastardly double murder takes place in the village, and those in-charge of the police station remain unaware of the crime. To the contrary, it has come in the evidence that the police refused to lodge the FIR against the accused villagers belonging to the

Vanniyar community, when the incident was reported by a Dalit (PW-49). Further, as stated above, even though the incident takes place on 07/08.07.2003, the police only registered the FIR on 17.07.2003 i.e. after a delay of nine days, after political pressure and the news having caught the attention of Press and the Media.

58. PW-2, PW-3, PW-15, PW-49 have all spoken about going to the Virudhachalam police station but being driven out after being given casteist slurs by the policemen who were there.

59. The fact that A-14 and A-15 had knowledge of the incident, and that A-15 purposely conducted a wrong and misleading investigation, has been disclosed in the statements of PW-38 to PW-44 and PW-47 to PW-49, to the CBI, though they did not support the prosecution on this aspect in the Court. What they said before the Court is as follows:

i. PW-38 (Sundarapandiyan) served as Head Constable in Virudhachalam police station between 2002 and 2004. He deposed that he had heard of A-14 having visited the scene of crime upon receiving information regarding the incident.

PW-38 further states that FIR No. 356 of 2003 was registered by A-14, and A-15 conducted the investigation.

ii. PW-39 (Ramamoorthy) also served as Head Constable in Virudhachalam police station at the time of the incident. He deposed that he was the one who submitted the evidence in the case, and that A-14 and A-15 were in-charge of the police station at the relevant time.

iii. PW-40 (Antonysamy) served as Sub-Inspector in the Special Branch when the incident dated 07/08.07.2003 had taken place. He was informed about the incident by one PW-47 (Rajendran), Head Constable in the Special Branch. PW-40 ordered PW-47 to visit the scene of crime. PW-47 told PW-40 that he had visited the scene of crime, that it was not known whether such an occurrence had taken place, and that he would inquire further. PW-40 asked as to why the FIR has not been lodged yet, to which PW-47 responded that nobody has come forward to file a complaint yet.

iv. PW-41 (Anwar Baig) served as Head Constable in Virudhachalam police station at the time of the incident. He denies any knowledge of the complaint being received on

08.07.2003 or FIR being registered on 17.07.2003, but admits that he prepared the Observation Mahazar, to which A-15 has attested his signatures.

v. PW-44 (Dhanapaul) was Sub-Inspector of Avinankudi police station at the time of the incident. He deposed that the DSP, Virudhachalam asked him to go to Virudhachalam police station on 17.07.2003. When PW-44 reached there at around 4 PM, A-14 and A-15 were on duty. A-15 asked PW-44 to assist A-14 with writing work. The FIR No. 356 of 2003 was written by PW-44, on which A-14 put his signatures.

vi. PW-47 (Rajendran) worked as Head Constable in the Special Branch when the incident occurred. While on duty, he overheard people saying that two persons had died by taking poison in Pudukoorapettai village. PW-47 gave this information to his superior PW-40, who asked PW-47 to look into the matter. When PW-47 went to Pudukoorapettai village and inquired, he claims that nobody gave him correct information. When PW-47 asked at the police station, he was told that no complaint had been filed.

vii. PW-48 (Harishankar), who was a Head Constable in the Virudhachalam police station when the double murders took place, has said in his deposition that he came to know 3-4 days after 08.07.2003 that upon receiving information about the incident, A-14 had gone to the spot but since nobody lodged a complaint, he returned and kept quiet.

60. It is true that PW-49 has not specifically said that A-14 and A-15 were the same police officers who refused to register the FIR based on her complaint, hurled casteist abuses at her, and sent her away on 08.07.2003. Also, though the police witnesses did not completely support the prosecution's case, but from their evidence, it is clear that A-14 and A-15 both had knowledge of the incident. Considering the proximity of the police station from the village, it is also highly unlikely that the police officers in-charge of the police station would not have known about the incident. Besides, the investigation done by the local police itself was motivated and downright dishonest, where the intention was to show that the crime was jointly committed by the Vanniyar and Dalit community, which is far from the truth. It puts the perpetrators and the victim together as accused. The

investigation of CBI discloses quite another story which, by and large, has placed the pieces together, except for a few discrepancies here and there. The local police had also made PW-1, who was none other than the father of the deceased Murugesan, as one of the co-accused. This was a ruse.

61. In this regard, evidence given by PW-32 (Ashokan), who was the suspended Village Administrative Officer at the relevant point in time, assumes great significance. According to the investigation done by A-15, PW-32 was the person before whom A-1 had given an extra-judicial confession. According to the version of the local police, it was PW-32 who took A-1 to the police station and on the basis of the extra-judicial confession given before PW-32 by A-1, the FIR was registered by the local police on 17.07.2003. However, the deposition of this witness in Court will be of some interest.

62. In his examination-in-chief, which was conducted on 18.09.2017, PW-32 states that during the relevant time he was a Village Administrative Officer, but under suspension. In the evening of 16.07.2003, he was asked by the Tahsildar to meet the Deputy Superintendent of Police, who further asked PW-32

to meet the inspector of Virudhachalam police station i.e. A-15. The next day i.e. 17.07.2003, PW-32 went to the police station where he met A-15. PW-32 states that A-15 gave him two sheets of paper with something written on them already and asked PW-32 to write down the same contents on another sheet of paper. Initially, PW-32 refused to oblige by saying that he is under suspension but thereafter, the Revenue Officer directed PW-32 to comply. Finally, PW-32 agreed to do what was told to him. A-15 gave the sheets of paper with something written on them to PW-32 and whatever was written on those papers was copied by PW-32 on another piece of paper, which PW-32 was later asked to sign. This was the so called 'extra-judicial confession' of A-1, on the basis of which the FIR was registered. A-1 signed the same papers immediately thereafter.

63. Thus, it is clear from examination-in-chief of PW-32 that neither did A-1 make any extra-judicial confession before PW-32, nor was A-1 taken to the police station by PW-32 to make him surrender. Contrary to this, the version put forth by A-15 in the initial investigation was that, at some point in time the conscience of A-1 started nagging him, after he had killed his

own daughter and thus he made an extra judicial confession before a government servant, who was an officer connected with the functioning of his village. The reality, however, is quite different. It was all planned and executed to perfection, since the registration of FIR became a necessity due to political and media pressure.

64. Immediately after his examination-in-chief, PW-32 was cross-examined on behalf of A-14 and A-15, but PW-32 stood by whatever he had deposed in his examination-in-chief.

Four years after the cross-examination was over, PW-32 was recalled for cross-examination on 03.03.2021 on an application moved by A-14 & A-15. This time, PW-32 differs from his earlier examination-in-chief and cross-examination recorded on 18.09.2017, as he now states that he recorded the confession as made before him and gave it to the Police.

65. Similarly, examination-in-chief of PW-34, who was the Village Administrative Officer of Virudhachalam, was conducted on 18.09.2017 where he deposed that at 4:30 pm on 17.07.2003, he was summoned by A-15 to the police station. There, A-15 made PW-34 affix his signatures on several documents relating to the

double murders. These included Mahazar, confessions etc. which were shown to be signed at late night of 17.07.2003 and early morning of 18.07.2003 at different places.

66. A-15 was behind this devious and dishonest investigation from the very beginning, and he had falsely implicated the family members of Murugesan, who belonged to a Schedule Caste community of Tamil Nadu. There is conclusive evidence in this regard.

67. The purpose of an investigation, like the purpose of a trial, is to reach to the truth. The duty of an Investigating Officer is to lawfully collect evidence. In the present case, the Investigating Officer (A-15) not only covered evidence but fabricated his own. Instead of collecting evidence, he created evidence and tried to implicate the innocent and set the guilty loose. In order to fulfil his wicked design, he has deliberately and willfully violated the mandate of Sections 154 and 157(1) of CrPC as well as Section 23 and 24 of the Police Act, 1861.

68. Section 154(1) of CrPC provides that when an officer-in-charge of a police station receives any information regarding the commission of a cognizable offence, such information shall be

reduced in writing and be read over to the informant. The relevant part of section 154(1) reads as follows:

> *"**154. Information in cognizable cases**.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf…"*

69. Reading of the above provision should not be misunderstood to mean that the police is empowered to register FIR only in cases where some informant comes forward and provides information regarding the commission of a cognizable offence to the police.

Once the police gets information regarding the commission of a cognizable offence, whether it is through any informant/complainant or otherwise, police is empowered to register the case and proceed with the investigation. This becomes clear from the bare reading of Sections 156 and 157 of CrPC. Section 156(1) reads as under:

> *"**156. Police officer's power to investigate cognizable case**.—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII."*

Relevant portion of Section 157(1) reads as follows:

> *"**157. Procedure for investigation**.—(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender..."*
>
> *(Emphasis Supplied)*

The above provisions make it very clear that where an officer-in-charge of a police station, from information received or otherwise, has reason to suspect that a cognizable offence has

been committed, he shall forthwith send a report to a Magistrate and shall start the investigation.

A Constitution Bench of this Court in ***Lalita Kumari*** *v.* ***Govt. of U.P. (2014) 2 SCC 1*** made it absolutely clear that an FIR can be registered even if there is no formal informant. In fact, it is obligatory for police to register the FIR when they receive any information which is sufficient to suspect that some cognizable offence has been committed. This is exactly what was said by this Court:

> *"97. The Code contemplates two kinds of FIRs: the duly signed FIR under Section 154(1) is by the informant to the officer concerned at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory…"*

It is not the case that ***Lalita Kumari (Supra)*** had made the registration of FIR obligatory for the first time; it was always there in the statute. Thus, even in the absence of a formal informant,

the police is duty-bound to register the case whenever they receive any information regarding the commission of a cognizable offence.

In the present case, as discussed earlier, there is no doubt that A-14 and A-15 had the information regarding the death of Murugesan and Kannagi on the day of the incident itself i.e. on 08.07.2003. However, they did not register the FIR, thereby acting in violation of the provisions of law. Their defence that nobody came forward to lodge a complaint for registration of FIR cannot be accepted for two reasons. *Firstly*, when members from Murugesan's family went to the police station to register an FIR, they were rebuffed and were given caste-based abuses. Thus, their plea that nobody came forward to lodge a complaint is unsustainable in light of the facts of the case. *Secondly,* even if we assume for the sake of argument that nobody went to the police station to report the double murders, it was the duty of A-14 and A-15 to register the FIR as it cannot be doubted that they had information regarding the crime. Hence, their defence is unacceptable in light of the law as well as the facts of the case, and has rightly been disbelieved by the High Court.

70. When public, political, and media pressure builds up, A-15 (nine days after the double murders had taken place), manufactures an extra-judicial confession of A-1 and registers the FIR against four Dalits (family members of Murugesan) and four Vanniyars. A-15 then went further and manufactured the confessions of the other accused. These facts are particularly glaring in light of the fact that A-15 knew about the incident right from the date of its occurrence i.e. 08.07.2003, but still took no action and made no effort whatsoever to uncover the truth.

71. We have examined the provisions of law and the facts of the case, particularly the role of A-15 in detail. Mr. Gopal Sankaranarayanan, the learned Senior Counsel for A-15 would argue that at worst, the case of A-15 can be treated on the same footing as that of A-14, who has been acquitted of charges under Section 3(2)(i) of the SC/ST Act and Section 218 of IPC though convicted under other charges. All the same, we see no reason how that can be done.

72. Sections 217 and 218 of IPC 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."

*"**218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—**Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

(Emphasis provided)

73. Here, we would also like to reproduce the provisions of SC/ST Act under which both the policemen (A-14 and A-15) were

convicted by the Trial Court. The relevant portions of sections 3(2)(i) and 4 of SC/ST Act are as follows:

> *"**3. Punishments for offences of atrocities.—***
>
> *.....*
>
> *(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*
>
> *(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;"*
>
> *"4. **Punishment for neglect of duties.—**(1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.*
>
> *(2) The duties of public servant referred to in sub-section (1) shall include—*
>
> *(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;*

(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;
(c) to furnish a copy of the information so recorded forthwith to the informant;
(d) to record the statement of the victims or witnesses;
(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;
(f) to correctly prepare, frame and translate any document or electronic record;
(g) to perform any other duty specified in this Act or the rules made thereunder:..."

(Emphasis provided)

74. Analyzing the above-quoted provisions of law in light of the facts of the case, the following position would emerge:

(a) A-14 (K.P Tamilmaran) and A-15 (M. Sellamuthu) both had committed the offences under Section 217 IPC and Section 4 of the SC/ST Act as they neglected their duties and disobeyed the law by not registering the FIR at the first instance with the intention to save the culprits.

(b) Now, coming to the role of A-15. Like A-14, A-15 too is guilty of offences under section 217 of the IPC and under section 4 of the SC/ST Act but, in addition to these wrongdoings, it is

also borne out from the record that it was A-15 who was the main architect behind the FIR dated 17.07.2003, which falsely implicated the four members of Schedule Caste community. Further, it was A-15 who was in-charge of the investigation which led to the filing of the chargesheet against the innocent persons belonging to Dalit community. There is no doubt that A-15 did this entire exercise to absolve culprits belonging to the Vanniyar community of their complicity in the crime, and he knowingly and deliberately falsely implicated some of the Dalits in an offence punishable with death. Evidence, as discussed earlier, makes it clear that A-15 manufactured the extra-judicial confessions and evidence and thereafter, filed the chargesheet against Dalits on the basis of that evidence. Hence, the High Court rightly upheld the conviction of A-15 under Sections 217, 218 of IPC and Sections 4, 3(2)(i) of the SC/ST Act and the sentence of life imprisonment. There is no doubt in our mind that A-15 is guilty of the offences as held both by the Trial Court as well as the High Court in appeal.

75. We have also looked into the aspect of victim compensation in this case. A crime is an act against the State. But a wicked and odious crime, as the one we have just dealt with, is the ugly reality of our deeply entrenched caste structure. Honour-killing, as these are called, must get a strong measure of punishment. We are also of the opinion that victim compensation here is warranted. We thus award compensation of Rs. 5,00,000/- (Rupees Five Lakhs) to PW-1 (Samikannu-father of Murugesan) and PW-49 (Chinnapillai – step-mother of Murugesan) jointly, or to the nearest of their kins. This compensation is liable to be paid by the State of Tamil Nadu to the above-mentioned persons. We further clarify that this compensation would be in addition to the amount awarded or directed to be paid as compensation by the Sessions Court and High Court.

76. We see no reason to interfere with the impugned judgment of the Madras High Court, and these appeals are, accordingly, dismissed.

77. All those appellants, who are on bail, are directed to surrender within two weeks from today to undergo their remaining sentence.

78. Interim order(s), if any, stand(s) vacated. Interlocutory application(s), if any, stand(s) disposed of.

....., J.
[SUDHANSHU DHULIA]

....., J.
[PRASHANT KUMAR MISHRA]

April 28, 2025;
New Delhi.