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PADMANABAN

v.

STATE BY INSPECTOR OF POLICE, TAMIL NADU
(Criminal Appeal No. 1375 of 2009 etc.)

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JULY 31, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

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*Penal Code, 1860 – ss. 147, 148, 452, 431 and 302 –
Prosecution under – Death caused with deadly weapons –
Eye-witnesses to the incident – Conviction by courts below –
On appeal, held: Conviction confirmed – Evidence of the eye-
witnesses are reliable – Their depositions corroborated by
medical evidence – Motive for the offence proved – Offence
not covered u/s. 304 (Part I) IPC.*

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Appellants-accused, along with other accused were prosecuted for having killed one person. As per prosecution, there was long-standing enmity between the two groups in the village to which the accused and the deceased belonged. The accused and deceased were from the same group. The accused assaulted the deceased because he supplied electricity line to the people of the other community for their festival. Pws 1, 2 and 3 were the three eye-witnesses to the incident. Accused No. 1 absconded and accused No. 3 died during pendency of the trial. Trial court convicted accused Nos. 2 and 4 to 8 u/ss. 147, 148, 452, 431 and 302 IPC. High Court, in appeal, acquitted accused Nos. 6 to 8 on the ground that no overt act had been attributed to them; and that PW 3 did not assign any specific role so far as they were concerned. However, conviction of appellants-accused was confirmed. Hence the present appeals, by appellants-accused.

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Dismissing the appeals, the Court

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HELD: 1.1. Both the courts below have placed implicit reliance on the evidence of PWs 1, 2 and 3. In view of their depositions, there is no reason to differ therewith. [Para 15] [261-G]

1.2. PWs 1 and 2 may be closely related to the deceased but the same, by itself, would not be a ground for rejecting their testimonies outright. PW-3 was not related to the deceased. The injuries suffered by the deceased have been proved. The medical evidences in no uncertain terms corroborate the depositions of the eye-witnesses. The injuries on the person of the deceased were found to have been inflicted by the appellants and the appellants alone. [Para 16] [261-H; 262-A-B]

1.3. The eye-witnesses account clearly proved the motive on the part of the accused to commit the said offence. The deceased being a member of the Naidu Community was reprimanded by his community member as he had tried to do something for the members of the other community. The fact that the shop of the deceased was located near the residential colony of the members of the Adi Dravida Community is not in dispute. It is also not in dispute that they held a function on the Republic Day. The fact that electrical connection was taken from the shop premises of the deceased wherefor a case for theft of electrical energy was recorded has been established. [Para 16] [262-A-D]

1.4. The plea that PW-1 could not have seen the occurrence from a distance of 10 feet cannot be accepted. The occurrence has taken place inside a shop and not inside a residential house. The shop being open, there is no reason to disbelieve the deposition of PW-1 to state in details in regard to the manner in which the occurrence had taken place. Presence of PWs 2 and 3 at the place of occurrence has also been found to be

A acceptable by the courts below. [Para 17] [262-G-H; 263-A-B]

B 1.5. Some delay might have been caused in lodging of the First Information Report, but, the same has sufficiently been explained. No doubt lodging of a First Information Report at the earliest possible opportunity is desirable, but, the courts cannot also ignore the ground realities that the relatives of the deceased would give priority to the treatment of a severely injured person. The action on the part of the prosecution witnesses, in giving C priority to the treatment to the injured was wholly justifiable. [Paras 18 and 19] [263-B-E]

D 1.6. It cannot be said that PWs 2 and 3 are chance witnesses. PW-3 is owner of a shop which is situated by the side of the shop belonging to the deceased. The place of occurrence is a small village. PW-2's presence, therefore, at the place of occurrence, cannot be doubted or disputed. [Para 21] [264-B-C]

E 2. It cannot be said that the case is covered u/s 304 (Part II) IPC. Appellants had formed an unlawful assembly. They came to the place of occurrence with deadly weapons. The overt acts attributed to them resulted in causing serious injuries on the head of the deceased. F They not only were grievous in nature, the skull of the deceased was also found fractured. When three injuries have been caused on vital parts of the body, there is no doubt that the appellants knew that the said injuries were likely to cause death or cause such bodily injury which may result in death. [Para 23] [264-E-F]

G *Virsa Singh v. State of Punjab* AIR 1958 SC 465; *Kesar Singh and Anr. v. State of Haryana* 2008 (6) SCALE 433, relied on.

H *State of Andhra Pradesh v. Rayavarapu Punnayya and*

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Anr. (1976) 4SCC 382; Mohd. Asif v. State of Uttaranchal JT 2009 (4) SC 1; Bala Baine Linga Raju v. State of A.P. 2009 (7) SCALE 73, referred to. A

Case Law Reference:

AIR 1958 SC 465 Relied on. Para 24 B

2008 (6) SCALE 433 Relied on. Para 25

(1976) 4 SCC 382 Referred to. Para 25

JT 2009 (4) SC 1 Referred to. Para 25 C

2009 (7) SCALE 73 Referred to. Para 25

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1375 of 2009.

From the Judgment & Order dated 7.8.2006 of the High Court of Madras in Crl. Appeal No. 1868 of 2003. D

WITH

Crl. A. No. 1376 of 2009. E

V. Kanagraj, S. Thananjayan, P.R. Kovilan Poongkuntran, Nituja Prakash, Naresh Kumar for the Appellants.

R. Nedumaran, V.G. Pragasam for the Respondents. F

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Bammiyampatti is a small village situated in the District of Salem in the State of Tamil Nadu. Amongst others, it is inhabited by two communities known as 'Naidu' community and 'Adi Dravida' community. The fact that there has been longstanding enmity between the members of the said communities is not in dispute. G

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A 3. A function was to be organized by Adi Dravida
 community. Rangasamy, deceased was having a grocery shop.
 He despite being belonging to the Naidu community, permitted
 the members of the other community to take electricity from his
 shop. Having come to learn of the same, the accused persons,
 B originally eight in number, got infuriated. Rangasamy was
 threatened with dire consequences for his act in supplying
 electrical energy to the members belonging to the Adi-Dravida
 community at about 10 p.m. on 29.03.1997. Next morning, i.e.,
 on 30.03.1997, at about 11.30 a.m., the accused persons
 C came to his shop with casuarina sticks, trespassed therein and
 at the instigation of Accused No. 1 T. Purushothaman Accused
 No. 3 Murugan and Accused Nos. 6 to 8 caught him whereafter
 Accused No. 2 Ravi hit the deceased with a casuarina stick
 on the left side of the head, Accused No. 4 Mohan assaulted
 D him on the right side of the head with a casuarina stick and
 Accused No. 5 V. Padmanaban assaulted him on the right side
 of the face near the eye causing grievous injuries to him. The
 incident was witnessed by PW-1 Viswanathan, PW-2 Chandra
 and PW-3 Raman.

E It is not much in dispute that PWs 1 and 2 along with one
 Govindasamy took the injured Rangasamy to the Omalur
 Government Hospital at about 12.20 p.m. He was treated by
 Dr. Kumudha Rani, PW-7. Mention of the incident found place
 in the accident register (Exhibit P-14). The deceased was
 F referred to the Government Hospital, Salem for further treatment
 by PW-7, upon taking into consideration the seriousness of the
 injuries suffered by him.

The Omalur Government Hospital at Salem was situated
 at a distance of about 23 kms. from the place of occurrence.
 G The deceased was examined by Dr. G. Sundaramurthy, PW-8
 at about 1.00 p.m. It is evidenced by the entries in the Accident
 Register which was marked as Exhibit P-15. However, the
 injured was taken to a private nursing home known as
 Shanmuga Nursing Home. It is also not in dispute that despite
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making entries in the accident registers both by the attending doctors at the Omalur Government Hospital as also Salem Government Hospital, the SHO of the concerned police station was not intimated thereabout. Dr. Murugavel, PW-9 examined Rangasamy. He, however, did not respond to the treatment. He expired at about 4.00 a.m. on 31.03.1997.

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4. PW-1 lodged a First Information Report at about 8.30 p.m. on 30.03.1997. The said First Information Report was recorded by PW-13 V. Shanmugham, Inspector of Police of Theevattippatti Police Station. It was registered as Crime Case No. 184 of 1997 under Sections 147, 148, 452, 341 and 307 of the Indian Penal Code. On the death of Rangasamy, however, the charge was altered by PW-13 to Sections 147, 148, 452, 341 and 302 of the Indian Penal Code. The body of the deceased was sent for post mortem examination. The post mortem report suggests that he died because of head injuries sustained by him.

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5. At the outset, we may place on record that the Accused No. 1 absconded. He did not face trial. Accused No. 3 died during pendency of the trial and, thus, the case against him abated.

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6. Before the Additional District and Sessions Court – cum – First Fast Track Court, Salem, the prosecution examined 13 witnesses to prove its case against the accused person. A large number of documents being Exhibits P-1 to P-32 were also marked. Material exhibits brought on record were marked as MOs 1 to 12.

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The learned Sessions Judge recorded a judgment of conviction against Accused Nos. 2 and 4 to 8. They were sentenced to undergo rigorous imprisonment for life. A fine of Rs. 500/- was also imposed on them and in default thereof to undergo rigorous imprisonment for 50 days.

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7. Accused Nos. 2 and 4 to 8 preferred appeals before

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A the High Court questioning the correctness of the said judgment of conviction and sentence. By reason of the impugned judgment, whereas the High Court accepted the appeals preferred by the Accused Nos. 6 to 8 on the premise that no overt act had been attributed to them as also on the ground that
 B PW-3 did not assign any specific role so far as they are concerned, dismissed the appeals of the appellants herein.

8. Appellants are, thus, before us.

C 9. Mr. P.R. Kovilan Poongkuntran, learned counsel appearing on behalf of Accused No. 2 Ravi and Accused No. 4 Mohan, Mr. V. Kanagraj, learned senior counsel appearing on behalf of the Accused No. 5 Padmanaban submitted:

D (i) The prosecution having regard to the genesis of the occurrence cannot be said to have proved its case beyond all reasonable doubt.

E (ii) The conduct of the prosecution witnesses should be held to be suspicious as they had taken the deceased to a hospital which is 23 kms. away from the place of occurrence.

F (iii) Despite the fact that the police station was adjacent to the hospital, no First Information Report was lodged although the concerned prosecution witnesses had sufficient time therefor.

(iv) The delay in lodging the First Information Report has not been explained.

G (v) The doctors PWs 7 and 8 who were said to have treated the deceased even did not inform the police although the incident was recorded in the accident registers [Exhibits P-14 and P-15].

H (vi) All the accused persons having allegedly gone to the shop of the deceased with a common intention,

there was absolutely no reason as to why all of them were not treated alike having regard to the fact that the Accused Nos. 6 to 8 were acquitted of the charges levelled against them by the High Court. A

(vii) The High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration the individual overt acts of the appellants herein in the light of deposition of PWs 1, 2 and 3. B

(viii) No reliance ought to have been placed on the deposition of PW-1 as occurrence having been taken place inside a structure, he could not have witnessed the incident in its minutest details from a distance of 10 feet. C

(ix) PWs 1 and 2 being closely related to the deceased, no reliance should have been placed on their testimonies by the High Court without any corroborative evidence. PW-3, who otherwise is a chance witness, also should not have been relied upon. D E

(x) The prosecution having failed to establish existence of any strong motive on the part of the appellants to join their hands together in committing the offence, the High Court should have recorded a judgment of acquittal. F

(xi) In any event, the appellants having no intention to cause death of the deceased, at best, a case under Section 304, Part II of the Indian Penal Code has been made out. G

10. Mr. R. Nedumaran, learned counsel appearing on behalf of the State, however, supported the impugned judgment.

11. PW-1 Vishwanathan, in his deposition, stated in details H

A as to how all the accused persons came to the grocery shop of the deceased and vandalized the same.

B The shop of the PW-1 was adjacent to the shop of the deceased. According to him, the appellants were armed with casuarina sticks. He furthermore stated that it was at the instance of Accused No. 1 Purushothaman, Accused No. 4 Mohan struck a blow on the right side of the head of the deceased as a result whereof he fell down whereafter Accused No. 2 Ravi assaulted him on the left side of the head and
C Accused No. 5 Padmanaban assaulted him on his face near the right eye.

The evidence of PW-1 is sufficiently corroborated by PW-2 Chandra and PW-3 Raman.

D 12. It is also not in dispute that the deceased at the earliest possible opportunity was taken to the Omalur Government Hospital and on being referred to the Government Hospital, Salem was taken there. As the Chief Medical Officer of the Government Hospital, Salem was not available, for better
E medical treatment, the deceased was taken to the Shanmuga Nursing Home.

13. PW-7 Dr. Kumudha Rani, who was an Assistant Surgeon in the Omalur Government Hospital found the following injuries on the person of the deceased:

F "1. A lacerated wound 10 cm x 1 cm x ½ cm over right parietal bone near midline.

G 2. A lacerated wound 8 cm x 1 cm x ½ cm over left parietal bone near midline.

3. Contusion 4 cm x 3 cm right upper eye lid."

H 14. Dr. G. Sundaramurthy, PW-8 who was working at Government Hospital, Salem admittedly treated the deceased as an in patient. The deceased was admitted in the Shanmugha

Nursing Home at about 6.35 p.m.

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PW-13 V. Shanmugham, Inspector of Police of Theevattippatti Police Station received a telephonic message from the Nursing Home. He arrived at the Nursing Home at about 7 O'Clock, recorded the statement of Viswanathan, brother-in-law of the deceased (PW-1). The First Information Report was registered by him after coming back to the police station at about 8.30 p.m. He visited the place of occurrence on the next day. By that time, as noticed hereinbefore, the deceased breathed his last.

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15. The post-mortem examination of the deceased was conducted by PW-11 Dr. Vallinayagam. The injuries found by him on the person of the deceased are as under:

"1. A lacerated wound on the right side of the crown of the head.

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2. A lacerated wound on the left side of the crown of the head.

3. Contusion over the right eye brow.

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4. Further, on the crown of the head, a lacerated wound on the right side.

5. Contusion on the back side of the head."

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PW-11 also recorded the manner in which the incident had taken place as also the weapons of attack. Indisputably, the casuarina sticks were recovered on the basis of the statements of the appellants. Both the courts below have placed implicit reliance on the evidence of PWs 1, 2 and 3. We have been taken through their depositions and we do not find any reason to differ therewith.

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16. PWs 1 and 2 may be closely related to the deceased but the same, in our opinion, by itself, would not be a ground

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A for rejecting their testimonies outright. PW-3 was not related to the deceased. The injuries suffered by the deceased have been proved. The medical evidences in no uncertain terms corroborate the depositions of the eye-witnesses. The injuries on the person of the deceased were found to have been inflicted by the appellants and the appellants alone. The fact that the shop of the deceased was located near the residential colony of the members of the Adi Dravida Community is not in dispute. It is also not in dispute that they held a function on the Republic Day. The fact that electrical connection was taken from the shop premises of the deceased wherefor a case for theft of electrical energy was recorded has been established.

The eye-witnesses account clearly proved the motive on the part of the accused to commit the said offence. The deceased being a member of the Naidu Community was reprimanded by his community member as he had tried to do something for the members of the other community.

Appellants along with others were members of an unlawful assembly. They came to the shop of the deceased with deadly weapons. It was witnessed, apart from PWs 1 and 2 also, by PW-3 who was owner of a tailoring shop which was situated by the side of the shop of the deceased. PW-3 was a witness to both part of the occurrence, viz., the action on the part of the accused to come to the shop of the deceased and threatening him in the night of 29.03.1997 and their visit on the following morning and assaulting the deceased ultimately resulting in his death. The occurrence might have taken place on Sunday but there is nothing to show that the shops were closed.

17. Submission of Mr. Kanagraj that PW-1 could not have seen the occurrence from a distance of 10 feet cannot be accepted. The occurrence has taken place inside a shop and not inside a residential house. The shop being open, we find no reason to disbelieve the deposition of PW-1 to state in details in regard to the manner in which the occurrence had taken place.

Presence of PWs 2 and 3 at the place of occurrence has also been found to be acceptable by the courts below. A

18. Some delay might have been caused in lodging of the First Information Report, but, the same has sufficiently been explained. It is true that PW-7 in his evidence stated that he had sent the information to the police station but he also admitted that the same was not recorded in the accident register. PW-7 was examined on 22.04.2003., i.e., after a period of more than six years from the date of the incident. At the time of his deposition, he was working in the ESI Hospital, Salem as Medical Officer. The Inspector of Police PW-13 in his evidence categorically stated that he received the telephonic message at about 6 O'Clock in the evening from the Nursing Home and he reached there at about 7 O'Clock. We do not find any reason to disbelieve the said evidence brought on record by the prosecution. B C D

19. No doubt lodging of a First Information Report at the earliest possible opportunity is desirable. But, the courts cannot also ignore the ground realities that the relatives of the deceased would give priority to the treatment of a severely injured person. All attempts would first be made to save his life. The action on the part of the prosecution witnesses, in our considered opinion, in giving priority to the treatment to the injured was wholly justifiable. E

20. PW-4 Sekaran, son of the deceased in his deposition, who has not been cross-examined, categorically stated that he had been working in a company known as Power Held Corporation of India at K.R. Thoppur. He was informed about the incident by his maternal aunt Chandra (PW-2) when she came in a car and took him to the Shanmugha Nursing Home where the deceased was admitted in its Intensive Care Unit. The fact that he had to be brought to the Nursing Home by PWs is again a pointer to the fact that they were busy in not only making arrangements for proper medical treatment of the F G H

A deceased but also intimating the son of the deceased (PW-4) and bringing him to the hospital at the earliest possible opportunity. We, therefore, are of the opinion that the delay in lodging the First Information Report has sufficiently been explained.

B 21. Submission of Mr. Kanagraj that PWs 2 and 3 are
 C chance witnesses again cannot be accepted. PW-3, as noticed
 D hereinbefore, is owner of a tailoring shop which is situated by
 the side of the shop belonging to the deceased. The place of
 occurrence is a small village. PW-2's presence, therefore, at
 the place of occurrence, cannot be doubted or disputed.

22. It is also idle to contend that the appellants had no
 motive to kill the deceased. Prosecution witnesses in their
 depositions clearly brought out the motive on the part of the
 accused to commit the crime.

23. Submission of Mr. Kanagraj that the appellants had
 committed an offence only under Section 304, Part II of the
 Indian Penal Code cannot be accepted for more than one
 reason. Appellants had formed an unlawful assembly. They
 came to the place of occurrence with deadly weapons. The
 overt acts attributed to them resulted in causing serious injuries
 on the head of the deceased. They not only were grievous in
 nature, the skull of the deceased was also found fractured. The
 intensity of the assault on the person of the deceased by the
 appellants, therefore, can be well imagined. When three injuries
 have been caused on vital parts of the body, we have no doubt
 in our mind that the appellants knew that the said injuries were
 likely to cause death or cause such bodily injury which may
 result in death.

G 24. In *Virsa Singh v. State of Punjab* [AIR 1958 SC 465]
 H Bose, J. laid down the legal principle in this behalf in the
 following terms:

"In considering whether the intention was to inflict the injury

found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convict, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense; the kind of enquiry that 'twelve good men and true' could readily appreciate and understand." A B C

25. The aforementioned dicta has been followed by this Court in a large number of decisions including *Kesar Singh & Anr. v. State of Haryana* [2008 (6) SCALE 433]. In view of the well-settled legal position, we need not refer to all the decisions of this Court operating in the field, but, we may notice *Kesar Singh* (supra). D E

Therein this Court considered a large number of decisions and stated the law in the following terms:

"To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "3rdly": F

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations. G

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of H

A injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and,

B Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

C Once these four elements are established by the prosecution (and, indisputably, the burden is on the prosecution throughout) the offence is murder under Section 300, "3rdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury is actually found to be proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death..."

F In *Kesar Singh* (supra), this Court noticed the deviation from *Virsa Singh* tests beginning from *State of Andhra Pradesh v. Rayavarapu Punnayya and Anr*, [(1976) 4 SCC 382], to hold:

G "Unfortunately, the propositions in *Virsa Singh* have not been rigidly followed subsequently. For example, in *State of Andhra Pradesh v. Rayavarapu Punnayya and Anr*, [(1976) 4 SCC 382], the enquiry became one of whether the accused intended to cause the ultimate internal injury that led to death i.e. the Court inferred, from the surrounding facts and circumstances in that case that the accused had intended to cause the hemorrhage etc that

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ultimately led to death.”

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This Court furthermore noticed the importance of the term “fight” used in Section 299 of the Indian Penal Code to opine:

“The word “fight” is used to convey something more than a verbal quarrel. It postulates a bilateral transaction in which blows are exchanged. In order to constitute a fight, it is necessary that blows should be exchanged even if they all do not find their target. [Ratanlal and Dhirajlal, Vol 2, page 1364, Footnote 4] No material in this regard has been brought on record.”

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[See also *Mohd. Asif v. State of Uttaranchal* JT 2009 (4) SC 1 and *Bala Baine Linga Raju v. State of A.P.*, 2009 (7) SCALE 73]

26. For the reasons aforementioned, we do not find any merit in these appeals. They are dismissed accordingly.

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K.K.T.

Appeals dismissed.