

Vanathaiyan and anr. Vs. the State

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Court : Chennai

Decided On : Nov-17-1989

Reported in : 1990CriLJ2767

Judge : T.S. Arunachalam, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 302, 304, 323 and 341; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 731 of 1982

Appellant : Vanathaiyan and anr.

Respondent : The State

Advocate for Def. : A.S. Chakravarthi, Govt. Adv. for Public Prosecutor

Advocate for Pet/Ap. : A.M. Rajan, Adv.

Judgement :

1. A-1 (Vanathaiyan) and A-3 (Arokkiasamy) in SC No. 162 of 1981 on the file of the First Additional Sessions Judge, Tiruchirapalli, are the appellants. The appellants along with three others were tried in the said Sessions case for offences under Sections 147, 148 and 302, I.P.C., for having caused the death of the deceased Susai Mari in the course of rioting by the accused, who were the members of an unlawful assembly, armed with sticks and spade handle. The trial Court acquitted all the accused of the charge of rioting and acquitted the other

accused except the appellants of the charge of murder in pursuance of the common intention between them. The appellants were convicted for an offence under Section 304, Part II, I.P.C., and each one of them was sentenced to undergo rigorous imprisonment for three years.

2. The first charge for an offence under Section 147, I.P.C. was framed against all the five accused on the allegation that on 10-10-1980 at or about 6-45 a.m. at Thennur Village, they were members of an unlawful assembly, whose common object was to cause the death of Susai Mari, the deceased, in pursuance of which object, they committed rioting. The second charge was framed against A-1 (first appellant alone) for an offence under Section 148, I.P.C., in that he was alleged to have been armed with a spade during the course of the said transaction. The third charge was also against A-1 (first appellant alone) for an offence under Section 302, I.P.C., in that he beat on the head of the deceased with the handle portion of the spade in the course of the same transaction, leading to the death of the deceased. The last charge for an offence under Section 302 read with Section 34, IPC was framed against A-2 to A-5, in that they beat the deceased with cart pegs in the course of the same transaction.

3. The brief facts which led to this prosecution has to be now narrated. P.W. 3 P. Adakalawami is the father of the deceased Susai Mari, A-1 and A-3 (appellants) are the sons of A-2, while A-4 and A-5 are her daughters. The deceased had lent Rs. 500/- on a promissory note to A-3, which was not repaid, in spite of demands. The deceased convened a Panchayat in which P.W. 5, Kanakaraj, Participated. The Panchayat decided that A-2 should pay Rs. 300/- to the deceased Susai Mari, for the money borrowed by her son, the third accused (second appellant). D.W. 1, Laser, is a resident of Thennur and an eye witness to this incident along with P.W. 2, V. Adakalawami, another resident of the same village. The occurrence had taken place at or about 6-45 p.m. on 18-10-1980, West of the lands of A-2, on the Ramapuram Thennur road. At or about the time of the occurrence, P.W. 1, after inspecting the crops raised in his lands, was proceeding towards his house. Susai Mari was going ahead of him at a distance of about half a furlong. It was dusk time. The deceased when he neared the lands of A-2 beckoned the latter and asked her to repay the money borrowed by her son. In the process, he hurled

vulgar abuses against A-2. A-2 in her turn abused the deceased. The deceased proceeded further westwards, when A-2 to A-5 went towards him, after collecting cart pegs from the cart belonging to the accused. A-2 obstructed the deceased. The deceased pushed down A-2. A-2 got up and with a cart peg, beat on the left flank of the deceased. A-3, shouting that his mother (A-2) was being beaten, beat with a cart peg on the right ear portion of the deceased. A-4 with a cart peg, which she wielded, beat on the right shoulder of the deceased, while A-5 beat the deceased on his back with the cart peg she possessed. The deceased picked up from the road mud balls and threw them at the accused. It was at that time the first appellant (A-1) came to the scene. The mud balls thrown by the deceased hit A-1 and A-4. The appellant, (A-1) came to the scene. The mud balls thrown by the deceased hit A-1 and A-4. The appellant, (A-1) beat on the back of the head of the deceased with the spade handle once, leading to the deceased falling down. Soon thereafter the accused, after throwing the cart pegs and the spade handle on the southern side of the road ran away to their garden land.

4. P.W. 1, who had witnessed this incident from a distance of about 60, proceeded to the house of the deceased and informed about this incident to Anandan (not examined), the younger brother of the deceased. P.W. 1 and Anandan took a double bullock cart to the scene of occurrence, put the injured Susai in it, and took him to his residence. For about 15 minutes first aid was given to the deceased at his house and thereafter in the same cart he was taken to Andimandam situated at a distance of 3 miles, in the eastern direction. From Andimandam P.W. 1, Anandan and P.W. 3, the father of the victim, took the injured Susai to Jayankondam by the last bus and reached Jayankondam bus stand at or about 10 or 10-30 p.m. At or about 1.15 a.m. the victim was taken to the Government Hospital, Jayankondam, situated at a distance of 1 1/2 furlongs from the bus stand.

5. P.W. 7, Dr. Abdul Sadiq, Civil Assistant Surgeon, Government Hospital, Jayankondam, examined the injured Susai, who was accompanied by one Ganesan, on 19-10-1980 at or about 2 a.m. for injuries said to have been sustained by him, due to an assault with sticks by known persons at or about 6 p.m. on 18-10-1980 at Thennur. P.W. 7 has described the injuries he had noticed on

Susai in detail in Ex. P. 9, the copy of the Accident Register issued by him, which is extracted hereunder :-

1. A lacerated injury 1 x 1/2 cm x bone deep on left parietal bone.
2. An abrasion 4 x 2 cm. on the right scapula.
3. An abrasion 2 x 1 cm. over the left shoulder.
4. An abrasion 4 x 2 cm. just below the right scapula.

P.W. 7 found the victim unconscious. He admitted Susai in the Hospital and informed the police about the admission of Susai in the hospital. The condition of Susai was very bad. P.W. 9, Grade 1 Constable, attached to Andimandam Police Station, was on duty on 18-10-1980, when A-2 appeared before him at or about 8-15 p.m. and narrated an oral complaint, which was reduced by him in writing. Ex.P. 13 the complaint of A-2, which was so transcribed, in which the signature of A-2 was obtained, was registered as Crime No. 130 of 1980 for offences under Sections 341 and 323, I.P.C. against the deceased, his younger brother Anandan, P.W. 2 and P.W. 3. P.W. 9 sent the injured, A-1, A-2 and A-4 with a memo to the Government Hospital, Jayankondam, for treatment. He also forwarded Ex. P. 13 to the Sub-Inspector of Police, Andimandam, for investigation.

6. P.W. 10, Ramiah, Sub-Inspector of Police, Andimandam, received Ex. P. 13 at or about 10 p.m. on 18-10-1980 and soon thereafter proceeded to Thennur Village. Since none injured was found at Thennur, he proceeded to the Government Hospital, Jayankondam, which he reached at or about 2.45 a.m. on 19-10-1980. At the hospital he was informed that Susai had expired P.W. 10 examined P.W. 1 who was found near the deceased and to his dictation Ex. P-1 was recorded in which the signature of P.W. 1 was obtained. P.W. 10 registered Ex. P. 1 as Crime No. 131 of 1980 for offences under Sections 147, 323 and 302, I.P.C. He prepared copies of the printed first information report and sent them to his higher authorities and the Court. Again he went to the Government Hospital, Jayankondam, at or about 7.30 a.m.

7. P.W. 11, the Inspector of Police, Jayankondam, on receipt of a copy of the first information report in Crime No. 131 of 1980, when he was at his residence, proceeded to the Government Hospital, Jayankondam, and reached it at 8 a.m. He took up investigation and conducted the inquest on the dead body of Susai between 8 and 10-30 a.m. He examined during inquest P.Ws. 1, 3 and Anandan. Ex. P. 14 is the inquest report. After inquest, he handed over the corpse of the deceased along with the requisition Ex. P. 4, to a police constable to be taken for post mortem examination. At or about 11 a.m. he arrested A-2 and A-4 who were in-patients in the Government Hospital, Jayankondam, and posted a constable to guard them. The next day they were remanded. On 19-10-1980 at or about 1.45 p.m. P.W. 1 arrested A-1, A-3 and A-5 at Thennur village and had them remanded the next day, At 2 p.m. on 19-10-1980 he prepared Ex. P-2, the observation mahazar at the scene. He also seized M.O. 1 and M.O. 2 series from near the scene of occurrence under a mahazar Ex. P. 3 attested by the witnesses who were present. He examined P.Ws 2, 4 and 5 and others. He also prepared the scene sketch Ex. P. 15.

8. Meanwhile P.W. 6 Dr. Ganasekaran, Medical Officer, Government Hospital, Jayankondam, on receipt of the requisition Ex. P. 4 from P.W. 11, conducted autopsy on the dead body of Susai at 12-30 noon on 19-10-1980. The internal and external injuries he had noticed on the dead body of the deceased form part of Ex. P. 5, the post mortem certificate, the relevant portions of which, are extracted hereunder :-

"(1) A sutraued wound over the left parietal region of the scalp lies longitudinally;

(2) A contusion over the left frontal 6 x 3 x 1 cms. near to the previous one.

(3) A diffused contusion over the right parietal region.

(4) A contused abrasion of 10 x 3 over the right lumbar region.

(5) An abrasion of 6 x 2 cms. over right scapula.

(6) An abrasion of 2 x 2 cms. over right shoulder top.

(7) A contused abrasion of 3 x 2 cms. over the right chest back below the scapula

Internal appearance : On dissection of the skull subcutaneous haemorrhage and blood clot was present under the subcutaneous tissue. Left parietal bone was fractured longitudinally. Right parietal bone fractured in oblique direction. Extradural blood clot was present over the right half of the brain with depression the brain substance. The blood clot occupies the parietal and temporal lobe. Stomach contains about seven ounces of liquid, smell of arrack. The mucus membrane of the stomach was lacerated. Lungs pale in colour. Liver pale in colour. Cut Section dry. Spleen and kidney are normal. Opening of the skull. Fracture of both parietal bones extradural haemorrhage and blood clot present. Meninges congested. Brain substance normal."

In the opinion of the Doctor, Susai would appear to have died of shock and haemorrhage due to the fracture of the skull bones (rupture of the middle meningeal artery 11 hours prior to the conduct of post mortem. P.W. 6 also found seven ounces of liquid smelling of arrack, in the stomach of the deceased. The mucus membranes of the stomach were lacerated.

9. P.W. 11, the investigating officer, also investigated Crime No. 130 of 1980, registered on the complaint of A-2 and referred it as a mistake of fact. During investigation he examined P.Ws 6 and 7, the Medical Officer, on 23-10-1980. He sent a requisition Ex. P. 10 to the Judicial Second Class Magistrate, Jayankondam, to forward the material objects, to the Laboratory for chemical examination and report. Ex. P. 12 is the report of the Chemical Analyst proved by the Court clerk M. Sabapathy examined as P.W. 8. The Inspector of Police, who succeeded P.W. 11, completed the investigation and filed the final report against all the accused, before the committal court.

10. P.W. 2 was examined in the trial Court as an ocular witness. P.W. 3, the father of the deceased and P.W. 5, Kanakaraj were examined to depose about the loan obtained by A-3 from the deceased, on a promissory note and the later Panchayat, which directed A-2 to pay Rs. 300/- to the deceased, on this score. P.W. 4 is a mahazar witness.

11. The accused when questioned under Section 313, Cr.P.C. by the trial Court, to explain the circumstances appearing against them in the evidence, they denied their complicity in the Crime. A-1 would specially State that P.Ws 1, 2, 3 and 5 were uttering falsehood. He admits having gone to the police station at Andimandam in the company of the other accused on the night of 18-10-1980. He has also filed a written statement. A-2 has admitted having preferred the complainant. Ex. P. 13 and dubs the prosecution version as false. A-3 would State that he was arrested at Andimandam police station when he went there and has added that the prosecution witnesses were uttering lies. A-4 and A-5 have taken the same stand as the other accused.

12. In the written statement filed by the first appellant (A-1) he had stated that P.W. 2, A-3 and A-5 were not present at the scene. He, A-2 and A-4 were working in their lands, when the deceased Susai along with his younger brother Anandan and P.W. 1 came to their lands. The deceased was a State of intoxication. The deceased abused vulgarly the accused and pushed down A-4 by her chest. When A-2 intervened the deceased fisted her on her chest and pushed her down. When A-4 got up, the deceased beat her with a stick. Susai and his younger brother beat him with sticks. The deceased continued to beat his mother, A-2. Suppressing the actual incident, P.Ws 1 and 2 were uttering falsehood in Court.

13. The trial Court, on an appreciation of the oral documentary evidence, found A-2, A-4 and A-5 not guilty and acquitted them. A-1 and A-3, the appellants were convicted and sentenced as stated earlier.

14. The only point for consideration in this appeal is whether the prosecution has established the guilt of the appellants beyond reasonable doubt, to safely sustain the convictions and sentences imposed on them, for the offences under Section 304, Part II, I.P.C. ?

15. Thiru A. N. Rajan, the learned counsel for the appellants contended, that the prosecution has suppressed the genesis of the occurrence and had not chosen to explain the injuries found on some of the accused sustained during the course of the same incident. It is his submission that once the trial Judge had not accepted the very same evidence in respect of the acquitted accused and had further found

that the appellants though entitled to a right of private defence, had exceeded it, such finding were not sustainable on the recorded evidence, which showed that the prosecution had not placed the entire truth regarding the incident before the Court. He would also contend that the medical evidence directly contradicted the ocular version and even on this count the appellant were entitled to the benefit of doubt.

16. Per contra, Mr. A. S. Chakravarthi, the learned Government Advocate contended that all these factor's had been taken note of by the trial Judge while arriving at his finding, which needed no interference.

17. The rival contentions will have to be carefully scrutinized, on the basis of the recorded evidence. That an occurrence had taken place at Thennur village during dusk on 18-10-1980 in which the deceased and some of the accused sustained injuries, can admit of no doubt. Soon after the incident A-2, who has been acquitted, who is the mother of A-1 and A-3, had proceeded to Andimandam police Station and preferred the complaint Ex. P. 13, which was recorded by P.W. 9, the first grade constable, who registered her complaint as Crime No. 130 of 1980 and sent the injured A-1, A-2 and A-4 of the Government Hospital, Jayankondam, for treatment. In Ex. P. 13, A-2 has stated that on 18-10-1980 she along with A-1 and A-4 after plucking groundnuts in their lands, were about to return home when the deceased along with his younger brother Anandan, his father P.W. 3 and P.W. 1, came out of the Ramapuram cashewnut thope, wrongfully restrained and abused them, pointing out their inability, purposeful or otherwise, in not repaying the loan. That group also stated to the accused, that they had beaten P.W. 3 on an earlier occasion and were a set of arrogant people. A-2 retorted, so also her son and daughter. The deceased was fully intoxicated. The deceased beat the son of A-2 which was obstructed by A-2 and her son. The deceased beat the in the company of his younger brother. Due to the heating administered by them, A-2 had pain all over the body. When she raised an alarm, the prosecution grip, ran away from the scene. The incidence was known to Arokiaswamy and Yakub. A-1 had also sustain injuries on his right and left hands due to the attack on him, by the prosecution party. Ex. P-13 was lodged at the police station at about 8.15 p.m. approximately two hours after the alleged

incident. The first information report, on which this prosecution was initiated, was recorded at or about Hospital, Jayankondam by P.W. 10, the Sub-Inspector of Police, Andimandam. In this complaint P.W. 1 has settled, that all accused were plucking groundnuts and watering their lands, on the date of occurrence. At or about 6.45 p.m. the deceased came from the direction of the land of A-2, questioned the latter for not having repaid the loan taken by her son, A-3, for trade in sugar, even after the Panchayat had directed her to pay Rs. 300/- to him. The deceased abused the accused and stated that they, who had on a prior occasion beaten his father with a cycle chain, would not have a peaceful life. The deceased shouted at the accused and demanded immediate repayment of the loan. A-2, A-4 and A-5 ran and brought cart pegs from their carts, and abusing the deceased, came near him. A-1, who was working in his land with a spade, came towards the deceased. The deceased pursued down A-2 fell down. A-3 shouted that his mother had been beaten. A-2 got up and beat the deceased with the cart peg she possessed. A-3 to A-5 also beat the deceased with cart pegs. It was at or about this time, that A-1 came running from the field where he was working and beat the deceased once on his head with his spade handle. The deceased fell down. P.W. 1 questioned the accused. The incident was witnessed by P.Ws 1 and 2. The fallen down deceased was unable to speak.

18. The contents of this first information reported marked as Ex. P. 1, will also indicate that an occurrence had taken place near the land of A-2, and the whole incident was the outcome of the conduct of the deceased, who had authoritatively demanded the repayment of the loan from the accused, during the course of which he had hurled vulgar abuses at the accused.

19. We have, therefore, two versions about the incident, one put forth by the accused at the earliest point of time and the second projected by the prosecution belatedly by Ex. P. 1 and sought to be substantiated by the evidence of the two ocular witnesses, P.Ws 1 and 2.

20. Let us now consider the evidence on the eye-witnesses, P.Ws 1 and

2. The presence of P.W. 1 at the scene cannot be doubted, for his presence had been fixed at the scene at or about the time of the incident, by Ex.P. 13 the

complaint preferred by A-2, P.W. 1, the first informant, who set the law in motion, through Ex. P. 1, seeks to fix his presence at the scene, through this earliest document. The possibility of P.W. 1 returning towards his house after attending to the agricultural operations cannot also be doubted, taking note of the fact that it was the cultivating season and the time of incident was normally the time when agriculturists returned to their houses. All that has to be considered now is whether P.W. 1 has placed the entire truth about the occurrence as it has happened. The over acts in respect of each of the accused, which have been detained earlier, have been spoken to by P.W. 1. As for the over tact attributed to the second appellant (A. 3), that he beat the deceased with a cart peg near the right ear does not get medical corroboration. P.W. 1, who has lodged the belated first information report at the hospital, after the death of the deceased Susai had not stated therein that the deceased throw mud balls, picked up from the scene, at the accused, resulting in A-1 and A-4. sustaining injuries. Obviously during his evidence in Court he has sought to explain the injuries sustained by the accused for the first time. It has been elicited from him, that he had not stated during investigation about this salient aspect. According to him, he did not state this in Ex. P. 1, since P.W. 10 did not question him as to how the accused had sustained injuries. During cross-examination he feigns ignorance, as to whether the mud ball thrown by the deceased hit A. 1 and A. 4 due to which they sustained injuries. This is in direct contradiction with his evidence in chief examination. Though there was a complaint by A. 2 against him, regarding the same incident, it is admitted by him that he is not questioned about it, by the investigating officer. His evidence also very clearly indicates that the accused were carrying on their agricultural operations and it was the deceased, who provoked the whole incident. If the incident had taken place in the manner spoken to by the prosecution witnesses, one would normally expect him to prefer a complaint soon after the incident. P.W. 1, who was an eye witness, claims to have gone along with the brother of the deceased and the father of the deceased, P.W. 3, to Andimandam before they proceed to the Government Hospital. Jayakondam. There was a police station at Andimandam. P.W. 1 could have easily lodged a complaint at the Andimandam police station, since the brother and father of the deceased were available with the injured to take him to the hospital. The conduct of P.W. 1 in not preferring a

complaint is rather inexplicable. It is in this context that the evidence of P.W. 7 Dr. Abdul Sadiq, who examined the injured Susai first, assumes some significance. P.W. 7 has deposed, and his evidence is confirmed by the entry in Ex. P. 9, that the victim Susai was accompanied by one Ganesan. This Ganesan has not been examined by P.W. 7, P.W. 1 was specifically questioned about the identity of this Ganesan, whose name has been mentioned in Ex.P. 9 P.W. 1 has stated that after they alighted at Jayankondam from tea bus, this Ganesan joined them near the Gandhi Park. None of them who were in the company of the deceased, knew who he was or to which place he belonged, In spite of it, P.W. 1 would State that Ganesan accompanied them to render assistance. On this aspect one cannot overlook the extraordinary delay in the taking of the victim to the hospital from Jayankondam bus stand. Admittedly P.W. 1 along with the deceased. P.W. 3 and Anandan, had reached Jayankondam by the last bus at or about 10.30 p.m. on 18-10-1980. Gandhi Park is situated adjacent to the bus stand. The distance between Gandhi Park and the Government hospital is stated to be 1 1/2 furlongs. It is the case of P.W. 1 that the injured Susai was taken to the hospital at 1.15 a.m. and why no steps were taken to give prompt medical attention to the injured Susai. On a perusal of the evidence of the Medical Officer, P.W. 7, it is seen that the victim had been taken to the hospital only at or about 2 a.m. This slight difference in time between the Medical Officer and P.W. 1 may not loom large, of course why suspicion, (sic) but the delay between 10.30 p.m. and 1.15 a.m. is certainly suspicious, throwing a considerable doubt that in all probability they had left the village very much later and reached the hospital only at or about 1.15 a.m. and to give an explanation for the belated complaint, an excuse had been trotted out. The prosecution party must have been aware of the injuries sustained by some of the accused during this incident, which had occurred near their land, in the course of which, the deceased, who was intoxicated, had behaved in an unruly and arrogant manner, while demanding repayment of the loan by A. 2. It is possible to conceive that P.W. 1 and others who had taken the injured victim to their house and offered first aid, belatedly took him to the hospital, when they lost hopes of his survival. In that advent, there was sufficient time available for the prosecution party to have set the law in motion. To the Doctor P.W. 7 at the earliest point of time, the user of the spade handle had not been stated. Though this aspect was vehemently urged

by the learned counsel for the appellant, I do not find anything serious in this contention, for a spade handle is also a stick, though probably thicker in dimension. P.W. 1's evidence also makes it clear that there could not have been any common intention between A. 1 and A. 3, the appellants, since A. 1 was not at the scene, when the initial quarrel, picked up by the deceased with A. 2 to A. 5, was in progress. Only at a later point of time after exchange of blows between both the parties A. 1 had arrived from his land and soon thereafter the deceased threw much balls at him. It was at this juncture, according to P.W. 1, that A. 1 attacked with the spade handle, on the back of the head of the deceased. As far as the medical evidence is concerned neither P.W. 6 nor P.W. 7 had noticed any injury on the occipital region of the head of the deceased to furnish/corroboation, to the overt act attributed only one beating on the back of the head of the deceased by A. 1. It will be relevant to notice the medical evidence furnished by P.W. 6 at this stage. To a question put by Court relating to the skull fractures found on the deceased, P.W. 6 has stated that it was not possible to cause those fractures found on the head of the deceased by assaulting at the occipital region. Apart from there being no corresponding injury on the occipital region, as spoken to by P.W. 1. It is apparent that even if A. 1. had hit on the back of the head of the deceased, these fractures could not have been caused. Further P.W. 6 is certain that the fractures of the skull on the right and left side could have been caused by one blow on each side with a spade handle. It is not the prosecution case that A. 1 hit on the right and left side of the head of the deceased (twice to account for the fractures found on the skull of the deceased, by the Medical Officer. It is, therefore, apparent that the oral and medical evidence are violently divergent.

21. It is rather doubtful if P.W. 1 had accompanied the injured Susai to the Hospital on the fateful night. If he had accompanied the victim and a statement had been recorded at the hospital at or about 3 a.m. on 19-10-1980, there is no satisfactory explanation as to why the first information report (Ex. P. 1) had been received by the Magistrate at 9.30 p.m. on 19-10-1980. Though no explanation had been offered by the prosecution the learned trial Judge has observed that on a perusal of the file, he had noticed that the Judicial Second Class Magistrate, Jayankondam was the judicial Second Class Magistrate, Tiruchirapalli and the in charge Magistrate had received the first information report from the police constable 2672.

Tiruchirapalli is situated approximately at a distance of 50 miles from Jayankondam and the extraordinary delay in the reaching of the first information report, even if it had to be attempted to be explained. The accused must have been furnished with an opportunity to cross-examine the witness, who was responsible for the transit of the first information report to the Judicial Second Class Magistrate, Tiruchirapalli. This factor assumes importance on the facts of this case, since there was an earlier complaint by the accused at the Andimandam police station, involving P.W. 1 as one of the accused. This factor also furnishes one more ground to suspect the truth of the prosecution case as put forth before the Court. Though P.W. 11 has stated that he took P.W. 1 on 19-10-1980, the point out the scene of occurrence, P.W. 1 contradicts him, that he was never taken to the place to identify the scene of incident by P.W.

11. Though it is possible that P.W. 1 was present at the scene during the incident, his evidence does not inspire confidence, for there is a lurking suspicion that he had not placed the entire truth regarding the incident as it had occurred.

22. The next ocular witness is P.W. 2. He has not been admittedly examined during inquest. His name has been mentioned in the first information report Ex. P. 4, as the person, who came during the course of the incident and went away towards Ramapuram after shouting "do not beat". P.W. 2 claims to have passed the scene of occurrence, since he was proceeding to Ramapuram to collect monies. P.W. 2, therefore, was a chance witness and the fact that he had not stated during investigation to P.W. 11 that he was proceeding at or about the time of the incident to Ramapuram to collect funds casts a serious doubt on the truth of his version. He has also not stated about the deceased throwing mud balls at the accused during investigation, which he has chosen now to depose. The further conduct of P.W. 2 going away without rendering any assistance to the injured Susai does not fit in with the normal course of human conduct. To crown all these defects, it is seen that his statement said to have been recorded by P.W. 11 on 19-10-1980 had reached the Court only on 23-11-1981, 13 months after the alleged recording of his statement. Though P.W. 2 has been mentioned in Ex. P. 1, the genesis of which itself at the time and in the manner spoken to by P.W. 1 is doubtful, the version of P.W. 2 has to be rejected, since no sanctity can be

attached to his evidence when his statement had reached the Court after such an extraordinary delay for which no explanation is for the coming. The evidence of P.W. 2 deserves rejection and is accordingly rejected.

23. P.Ws. 3 and speak about the loan transaction the accused and the deceased and the Panchayat, which has been put forth as the motive for the incident. On facts, their evidence neither helps the defence nor the prosecution.

24. The medical evidence which has already been discussed, in respect of the injuries sustained by the deceased, is material in yet another angles as well. P.W. 6 has found seven ounces of liquid smelling aback in the stomach contents of the deceased. This fits in with the defence case that the deceased was intoxicated during the incident and throws a doubt on the evidence of P.W. 1 that the deceased was not intoxicated during the occurrence. Further, P.W. 6 has stated that external injury No. 1 on the left parietal region of the skull of the deceased, with the corresponding fracture, could have been caused if that portion of the head came into contact with a hard object violently and by a fall depending on the direction of the landing. Injury No. 1 must be fatal injury, because admittedly there was no correspond in internal injury to external injury No. 2. External injury No. 2, according to the Doctor was a superficial injury. The Doctor has also presumed that external injury No. 4 was superficial. He did not find any injury on the rights ear of the deceased to connect it with the over tact of A. 3 (second appellant). The fracture on the left side of the head can also cause a fracture on the right side, according to the Doctor, which is termed as contra coup. When it has been admitted by the prosecution that Susai, the deceased, fell down during the course of the incident, when he must have been admittedly drunk, his having sustained the injuries noticed on him by the Medical Officer in an altogether different pattern cannot be ruled out.

25. Now a discussion about the injuries sustained by the accused needs consideration P.W. 6, the Doctor, who conducted autopsy on the corpse of the deceased examined A. 1, A. 2, and A. 4 on 19-10-1980. He noticed on A. 1 a contusion 3 x 4 x 1/2 cm on the left chest back below the scapula and a contusion/abrasion over the left haper arm 3 x 2 x 1/2 cm. These injuries were

stated to have been sustained due to an attack with bamboo sticks and iron and by vice known person at 6 p.m. on 18-10-1980. In the opinion of the doctor, they could have been caused as alleged. Ex. P. 6 is the wound certificate relating to A. 1. A. 2, who claimed to have been assaulted at 6 p.m. on 18-10-1980 with bamboo sticks by five known persons had three injuries respectively on the forehead, right forearm and last shoulder region. A. 2, complained of pain and the Medical Officer found tenderness in those regions. According to the Doctor the injuries could have been sustained by A. 2 in the manner alleged Ex. P. 7 is the wound certificate.

26. The fourth accused had a contusion 5 x 3 x 1 cm. on the left hand dorsum and tenderness over the front of the chest was noticed by P.W.

6. According to her, she was assaulted with bamboo and mango sticks by five known persons at 6 p.m. on 18-10-1980 which, according to the doctor, was feasible. Ex. P. 8 is the wound certificate issued to A. 4.

27. It is no doubt true that minor injuries sustained by the accused need not have to be explained in every case. However, in a case of this nature when the defence has come out with a specific version earlier in put in of time to the complaint lodged by the prosecution party, and the prosecution does not seek to explain satisfactorily the several injuries, though simple, sustained by three of the accused in the course of the same transaction, it is a matter, which cannot be just ignored or erased from consideration. The trial Judge has found that the accused were entitled to the right of private defense, but they had exceeded the right. To claim the right of the private defense, the accused party need not have to sustain injuries and an apprehension of death or grievous hurt would be sufficient to entitle them to successfully put forth such a plea. When the accused themselves had sustain injuries during the course of the incident in which, according to the trial Judge, the caused had a right of private defense, it is all the more necessary that the prosecution must explain the injuries sustained by the accused. In the first information report and during investigation had been offered. During evidence in Court, for first time, P.W. 1 has spoken about the deceased having thrown mud balls at A. 1 and A. 4, which had hurt them. But in cross examination he would dilute his version in the chief examination. There may be cases where the non-

explanation of the injuries by the prosecution may not affect its version, but it would be a question of fact depending upon the circumstances of each case. There may be cases where the evidence is so clear and cogent so independent and distrusted, so probable, consistent and credit worthy that it far out weighed the affect of the omission on part of the prosecution to explain the injuries sustained by the accused. On the detailed discussion earlier, it is clear that this is not one of such cases.

28. In a murder case, the non-explanation of the injuries sustained by the accused at or about the time of the occurrence or in the course of an altercations a very important circumstances from which the Court can infer that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version. It can also be inferred that the witnesses who do not speak of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable. Last put not the least when there is a defence version which explains the injuries on the person of the accused which is rendered probable on facts so as to throw a doubt on the prosecution case, especially when the defence version competes in probability with that of the prosecution, the accused would certainly be entitled to the benefit of doubt.

29. In a situation as in this case, when the prosecution fails to explain the injuries on the person of the accused, three results may follow :-

(a) that the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence;

(b) it makes the prosecution version of the occurrence doubtful, and the charge against the accused cannot be held to have been proved beyond reasonable doubt; and

(c) it does not affect the prosecution case at all.

The fact of the present case clearly fall within the four corners of the first two categories enumerated above. The trial Judge had also held that the accused were entitled to the right of private defence, but had exceeded while exercising it.

30. On the totality of the evidence, the entire prosecution case is doubtful. Though the genesis has been portrayed as the outcome of the aggression of the deceased, the subsequent facets put forth by the prosecution are unreliable, sufficient to demolish its case in its entirety. The defence case appears probable. Useful reference can be made to the observations of the Supreme Court in *Lakshmi Singh v. State of Bihar*, , in this context.

31. Apart from the non-explanation of the injuries found on the accused, the oral evidence, is not supported by medical evidence, but is violently contradicted. The Supreme Court in *Narpal Singh v. State of Haryana* had observed that where there is any

direct conflict between the ocular and medical evidence, the Court has to reject the prosecution case. In *Ram Barain v. State of Punjab*, 1976 Mad LW (Cri) (SN) 2 : (1975 Cri LJ 1500) (SC) it had been observed that where the direct evidence is not supported by the expert evidence, it would be difficult to convict the accused on the basis of such evidence. A similar view was expressed by Rantnavel Pandian, J., as he then was, speaking for the Bench in *Sivalingam In re* 1986 Mad LW (Cri.) (SN) 75.

32. I have already discussed in detail the irreconcilable conflict between the ocular and the medical evidence. The eye witness account of P.Ws 1 and 2 has to be rejected on this ground as well, apart from other grounds stated earlier.

33. For all these reason as stated above. I hold that the prosecution has miserably failed to prove the guilt of the accuse beyond reasonable doubt.

34. In the result, giving the benefit of doubt on the appellants, I allow this appeal, set aside the conviction and sentences imposed do them by the trial Judge and acquit them. The bail bonds, if any, executed by them shall stand canceled. This Criminal appeal is allowed.

35. Appeal allowed.