

**Anthony and Others Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/782446](http://sooperkanoon.com/782446)

**Court :** Chennai

**Decided On :** Sep-29-1992

**Reported in :** 1993CriLJ1828

**Judge :** T.S. Arunachalam and;Thangamani, JJ.

**Appeal No. :** C.A. No. 667 of 1986

**Appellant :** Anthony and Others

**Respondent :** The State

**Advocate for Def. :** B. Sriramulu, Public Prosecutor

**Advocate for Pet/Ap. :** N.T. Vanamamalai and ;Mr. Krishnan, Sr. Counsels and ;Mr. Dinakar, Adv.

**Judgement :**

**Arunachalam, J.**

1. 11th June, 1982, was a black day in the annals of Ayyapuram Village, a hamlet of Puliyangudi. Communal disharmony, between muslims and harijans in a group, opposed to caste Hindus, had led to murder, arson, robbery, mischief causing hurt and killing of cattle at Ayyapuram, on the fateful day.

2. The investigating Police charge sheeted 106 adults and a juvenile, as the offenders in this crime. Subsequent death of the juvenile excluded him from this prosecution. Of the 106 accused charge sheeted, Shabmuga Ayya shown as A. 77 in the charge-sheet absconded and the case against him was split up. Though Thangavelu shown as A. 93 in the charge-sheet also absconded, initially, before commencement of trial, he surrendered and was shown as A. 104, Vellachamy Thevar listed as A. 103 in the charge-sheet died before trial. Thus in S.C. 16 of 1985 on the file of the II Additional Sessions Judges, trial was held against 104 accused alone, since one died before trial and the other continued to abscond. Of them, A. 2, Anthony, A. 3 Krishna Thevar alias Ramakrishna Thevar; A. 4 Ayyankutti Thevar; A. 5 Myyalu alias Michal; A. 7 Kasipandi; A. 12 Shanmugha Thevar alias Kasi Pandi; A. 13 Durairaj; A. 17 Seeni and A. 23 Mukkaiya are the appellants. The other accused were acquitted by the trial Court. Details of convictions and sentences recorded and imposed on the appellants will follow.

3. Chandran, Subbiah alias Jayaseelan, Puttan alias Yowan, Masilamani and Madathi, hereinafter referred to as D. 1 to D. 5 in seriatim, were done to death. 24 persons sustained hurt, six grievously of whom Pws. 4, 8, 19 to 26 to 31, 33, 35 and 37 were put in the witness box. 40 houses and a few hayricks were set fire to. From the burnt houses, properties were looted.

4. Totally 31 charges were framed. The first charge was framed against all the accused under section 120B, Indian Penal Code for having entered into a criminal conspiracy, to commit murder, robbery, mischief and arson at Ayyapuram village. A. 1 and A. 28 were shown as main conspirators.

5. Second charge against A. 1 and A. 28, was framed under section 153B, Indian Penal Code, for having caused disharmony and feelings of enmity, hatred and ill-will, between Harijans and Muslims as a unit against Thevars (accused group).

6. Third charge was framed against A. 2 to A. 15, A. 20, A. 23 and A. 27 under section 148 Indian Penal Code for having been members of an unlawful assembly, the common object of which was to commit murder, robbery, arson and mischief at Ayyapuram village. A. 2 to A. 7, A. 10 to A. 15, A. 20, A. 21 and A. 23 were then armed with an aruval each. A. 8 and A. 9 possessed a velstick each. A. 27 was

wielding a torch of fire. Under the same charge, A. 1, A. 16 to A. 19, A. 22, A. 24 to A. 26 and A. 28 to A. 103 were charged under section 147 Indian Penal Code for having shared the common object and participated in rioting.

7. Charge 4 was framed against A. 2 under section 302, Indian Penal Code for having caused the death of D. 1 by cutting him with an aruval on his neck during the course of rioting.

8. The next charge was framed against A. 1 under section 302 read with Section 100, Indian Penal Code for having abetted A. 2 to murder D. 1.

9. Charge 6 was framed under section 302 Indian Penal Code read with Section 149, Indian Penal Code against A. 1 and A. 3 to A. 104 under Section 302 IPC read with Section 149 IPC alleging that in the course of the same transaction, A. 3 cut on the leg of D. 1 with an aruval, while A. 8 and A. 9 stabbed him with a velstick.

10. Charge 7 was framed against A. 4 under section 302 IPC for having caused the death of D. 3 by cutting him with an aruval, on his left neck in the course of the same transaction.

11. Charge 8 was against A. 1 to A. 3 and A. 5 to A. 104 under section 302 IPC read with Section 149 IPC, in relation to the murder of D. 2, A. 5, A. 10 and A. 11 are stated to have cut D. 2 with their aruvals.

12. Charge 9 was framed against A. 12 under section 302 IPC for having caused the death of D. 3, by cutting with an aruval on his neck.

13. Charge 10 was framed against A. 1 to A. 11 and A. 13 to A. 104 under Section 302 IPC read with Section 149 IPC with reference to the murder of D. 3, A. 13 to A. 15 wielding aruvals, are stated to have cut D. 3.

14. Charge 11 was framed against A. 17 for having caused the death of D. 4, by beating him on his head with a stick.

15. Charge 12 was framed against A. 16 under section 302 IPC read with Section 109 IPC for having instigated A. 17, to commit the murder of D. 4.

16. Charge 13 was framed against A. 1 to A. 15 and A. 16 to A. 104 under Section 302 IPC read with Section 149 IPC in relation to the murder of D. 4.
17. Charge 14 was framed against A. 23 under section 302 Indian Penal Code for having caused the death of D. 5 by cutting her on her head, with an aruval.
18. Charge 15 was framed against A. 1 to A. 22 and A. 24 to A. 104 under Section 302 Indian Penal Code read with Section 149 IPC in relation to the murder of D. 5.
19. Charge 25 under section 326 IPC was framed against A. 7 for having casual grievous hurt to PW 4, Joseph.
20. Charge 27 was framed against A. 1 to A. 6 and A. 8 to A. 104 under Section 326 Indian Penal Code read with Section 149 IPC, correlated to charge 25 framed against A. 7.
21. Other charges need no listing for they were held not proved by the trial Court.
22. In this appeal, as stated earlier appellants are A. 2 to A. 5, A. 7, A. 12, A. 13, A. 17 and A. 23. The trial Judge acquitted all the accused of the charge of conspiracy and also exonerated A. 1 and A. 28 of the charge under section 153B IPC. Appellants except A. 17 were found guilty under section 148 IPC and sentenced to undergo rigorous imprisonment for 6 months each. A. 17 was convicted under section 147, IPC and sentenced to undergo rigorous imprisonment for three months.
23. Under charge 4, A. 2 was convicted for the murder of D. 1 and sentenced to undergo imprisonment for life.
24. Under charge 6, A. 3, A. 4, A. 5, A. 7, A. 12, A. 13 A. 17 and A. 23 were convicted under section 302 IPC read with Section 149 IPC (D. 1) and sentenced to undergo imprisonment for life. Other accused were acquitted.
25. Under charge 7, A. 4 was convicted under section 302 Indian Penal Code for the murder of D. 2 and sentenced to undergo imprisonment for life.

26. Under charge 8, A. 2, A. 3, A. 5, A. 12, A. 13, A. 17 and A. 23 were convicted under section 302 IPC read with Section 149 IPC (D2) and sentenced to undergo imprisonment for life. Other accused were acquitted.

27. Under charge 9, A. 12 was convicted under section 302 Indian Penal Code for the murder of D. 3 and sentenced to undergo imprisonment for life.

28. Under charge 10, A. 2 to A. 5, A. 13, A. 17 and A. 23 were found guilty under section Section 302 Indian Penal Code read with Section 149 IPC (D. 3) and sentenced to undergo imprisonment for life.

29. Under charge 11, A. 17 was found guilty under section 302 IPC for the murder of D. 4 and sentenced to undergo imprisonment for life.

30. Under charge 12, A. 16 was acquitted of the abetment charge (D. 4).

31. Under charge 13, A. 2 to A. 5, A. 12, A. 13, A. 17 and A. 23 were found guilty under section 302 IPC read with Section 149 IPC (D4) and sentenced to undergo imprisonment for life. Other accused were acquitted.

32. Under charge 14, A. 23 was found guilty under section 302 Indian Penal Code for the murder of D. 5 and sentenced to undergo imprisonment for life.

33. Under charge 15, A. 2 to A. 5, A. 7, A. 12 and A. 13 were found guilty under section 302 Indian Penal Code read with Section 149 IPC (D5) and sentenced to undergo imprisonment for life. Other accused were acquitted.

34. Under charge 25, A. 7 was found guilty under section 326 IPC for having caused grievous hurt to P.W. 4, Joseph and sentenced to undergo rigorous imprisonment for 3 years.

35. Under charge 27, A. 2 to A. 5, A. 12, A. 13, A. 17 and A. 23 were found guilty under section 326 IPC read with Section 149 IPC in relation to charge 25 and sentenced to undergo rigorous imprisonment for 3 years each. All substantive sentences of imprisonment were directed to run concurrently.

36. A quick scanning of relationship between parties will be relevant. PW 38 Chelliah is the elder brother of PW 1 Annamani Jacob. PW 3 Josuva is the son of PW 2 James. PW 4 Joseph is the son of D. 2 and son-in-law of PW 2. PW 3 is the son-in-law of PW 55 Chinnakaruppan. PW 5 Sorimuthu is the son of D. 3. PW 6 Kovil Pillai is the nephew of D. 3 and cousin of PW 5. Balaiya (not examined) is the son-in-law of D. 2. PW 8 Seeniammal is the sister of Balaiya. PW 9 Velusami is the husband of PW 28. Vollaialammal, Daweed (not examined) who had accompanied PWs. 1 and 2 to the police station is the son of D. 4, PW 57, Sembuli is the father of D. 1. Chinamadan (not examined) and Chellappa (not examined) are the sons of D. 5, D. 4 was the paternal uncle (Vernakular matter omitted) of PW 7. D. 5 was the aunt (Vernakular matter omitted) of PW 2. Agni (not examined) is the wife of D. 3. Muthiah (not examined) is the son of D. 3. Subban (not examined) is the father of PW 9. PW 8 is the wife of PW 63. Samuel. No relationship between the appellants is available in evidence and all that is discernible is that they belonged to Vellaigoundanpatti.

37. Coming events cast their shadows before is the well known saying. Incidents which had taken place on 8.6.1982 and 9.6.1982, were the preludes to the instant occurrence at Ayyapuram on 11-6-1982.

38. PW 42 Madakulathukaran is a resident of Pulliyangudi. On 8-6-1982 when he happened to be at Kadayanallur, he noticed Muslims and Harijans engaged in a public meeting held under the auspices of Sagothara Samathuva Sangam. They had organised a procession as well. During that procession, there was shouting of slogans against caste Hindus. Further Hindu Gods were denigrated. Harijans were enticed to join the Muslims. Slogans were also raised against Bramhins, Thevars and Rashtriya Suyam Sevak Sangh.

39. PW 41 Pannerselvam, a resident of Pulliyangudi was a driver in Kattabomman Transport Corporation. At or about 10.30 p.m. on 8-6-1982, while he was driving a bus, belonging to the said Transport Corporation from Tenkasi to Chokkampatti, at Chokkampatti, the bus was obstructed by a crowds. The crowd was anxious to find out if any Harijans were inside the bus. PW 41 was attacked.

40. PW. 39, Samiya Thevar, a resident of Chokkampatti owned a textile shop at Pulliyangudi. At or about 9.30 a.m. on 9-6-1982, when he attempted to open his shop, 200 persons in a group (Harijans and Muslims) while obstructing him, broke open the lock of his shop committed theft of textiles. At 10.30 a.m., PW. 39 preferred a complaint at Pulliyangudi police station, about this occurrence.

41. PW. 40, Balakrishnan was driving a bus belonging to Kattabomman Transport Corporation at or about 7-45 a.m. to 9-6-1982. When the bus was nearing Pulliyangudi near Kumanthapuram, a crowd of 30 persons travelling in a tractor threw stones at the bus and broke the window panes. P.W. 40 sustained an injury on his chest portion. When the tractor moved away, the offending crowd shouted (Vernakular matter omitted).

42. PW. 14 Murugan, while he was present before the house of Velu Asari at Nelkattum Seval village, at or about 5 p.m. on 10-6-1982, he noticed a crowd of 200 persons, assembled near Ullamudayar Temple. A. 1 in that group exhorted as follows :-

Others joined A. 1 in shouting slogans. The groups also vowed to wreak vengeance for the dacoity committed in the shop of PW. 39. An appeal to offer a volunteer from each house to destroy Harijans and then Muslim helpers was also made. A. 7 persuaded others to be prepared even on the next day, to put their plans into action. While flower offering before the Deity was considered as good omen, for the march to Ayyapuram, on the next day.

43. It is in this background that the impugned occurrence had taken place at Ayyapuram on 11-6-1982 at or about 11 a.m.

44. PW. 1, Annamani Jacob, PW. 2, James and PW 3 Josuva are important and powerful residents of Ayyapuram. PW. 2 is a Priest while PW 3 is the Nattanmai (Head of the village). The evidence of PW. 8 Seeniammal, one of the injured witnesses, shows that the villagers of Ayyapuram cannot go against the wishes and advice of PWs. 1 to 3.

45. At or about 11 a.m. on 11-6-1982, PW 1 was present at his residence. He noticed a mob of 3,000 belonging to Vellagoundanpatti, Thalaivankottai, Malayadikuridhi and Welklattum Seval villages, marching towards Ayyapuram Village, armed with velsticks, aruvals, sticks and lighted torches. PW 1 was stunned. The on-coming crowd, spilt itself into splinter groups. One batch indulged in setting fire to huts, while another group set fire to hayricks. Yet another group committed mischief by breaking tiles in some houses. One such group committed murders of D. 1 to D. 5, caused injuries to several witnesses and committed robbery of jewels and cash. Cattle were also killed. First informant PW. 1 was not an eye witness. After committing a series of crimes, the offending mob moved away northwards. PW. 2 and Daweed (not examined) came out from their respective houses and surveyed the scene of crime. They found dead bodies of D. 1 to D. 5 at some distance from each other. PW. 1 then left for Pulliyangudi police station accompanied by PW 2 and Daweed. At 3 p.m. PW. 1 narrated about this incident to PW. 86, Chellappa, then S.I. of police. The latter reduced into writing the statement of PW 1 and on Ex. P. 1 so scribed, he obtained the signature of PW. 1 and the attestation of PW. 2 and Daweed. On Ex. P. 1, PW. 86 registered crime No. 106 of 1982 under sections 147, 148, 302, 307, 394, 395, 396 and 397 IPC. Ex. P. 75 is the printed first information report. P.W. 86 forwarded Ex. P. 1 and P. 75 through police constable Perumal (P.W. 85) to the concerned Magistrate and his superior officers. After obtaining instructions from the Superintendent of Police, who was camping at Pulliyangudi, he handed over a copy of Ex. P. 75 to PW. 89, Sankara Krishnan, then Inspector of Police.

46. PW. 89 on receipt of a copy of Ex. P. 75 at 3.20 p.m. at Pulliyangudi, took up investigation and proceeded to Ayyapuram Village, which he reached around 3.30 p.m. Between 3.30 p.m. and 4.30 p.m., he took a quick look at the crime venues, multiple as they were. He prepared observation mahazar Ex. P. 2 attested PW. 67, Shanmugavel. He also prepared the rough scene sketch Ex. P. 84. Between 4.30 p.m. and 6 p.m. he conducted inquest on the corpse of D. 1 during the course of which he examined PWs. 3 and others. Ex. P. 85 is the inquest report. After inquest, he despatched the dead body of D. 1 through police constable Ganapathy (PW 81) with a requisition Ex. P. 67 to the Government Hospital, Sankarankovil for the conduct of postmortem.

47. Between 5 p.m. and 7 p.m. on the same day, he held inquest on the corpse of D. 2, during the course of which he examined the same witnesses. Ex. P. 86 is the inquest report. The dead body of D. 2 was despatched to the Hospital for the conduct of post-mortem through police constable Ratnasamy (PW. 82) with a requisition Ex. P. 69.

48. Between 7.15 p.m. and 8 p.m., he held inquest on the corpse of D. 3 and prepared the inquest report Ex. P. 87. He examined PWs. 5 and 6 during this inquest. The dead body of D. 3, with a requisition Ex. P. 57, was sent to the Government Hospital, Sankarankovil for autopsy, through police constable Perumalsamy (PW. 83).

49. Between 8.10 p.m. and 9 p.m., he conducted inquest on the dead body of D. 4 during the course of which he examined PW. 7 and others. Ex. P. 88 is the inquest report. The dead body of D. 4 was also forwarded through police constable Paulraj (PW. 84) with a requisition Ex. P. 63 to the Hospital for autopsy.

50. Between 9 p.m. and 10 p.m., PW. 89 held inquest on the corpse of D. 5 during the course of which he examined PW. 9 and others. Ex. P. 89 is the inquest report. The dead body of D. 5 was sent to the Hospital through police constable Muthumani (PW 80) with a requisition Ex. P. 55 for the conduct of postmortem. The corpses were despatched to the Government Hospital, Sankarankovil, through an ambulance.

51. P.W. 77, Dr. Karunakaran conducted autopsy on the dead body of D-1 at 10 a.m. on 12-06-1982. He found the following external injuries :-

'1. An incised gaping cut injury from the left of thyroid cartilage upto 2' below the left mastoid size 9 x 3 x 4'. The left side of body of C-2 bone is partly out. The major vessels of left side of neck are cut.

2. A cut injury of 6 x 2 x 5' extending from a point 1 1/2' above the angle of mouth. The nose is cut through entirely at its root level. The upper palate or both maxilla are severed.

3. A cut injury of 2 x 1 1/2' present on the left mandible, extending from a point 1/2' below the centre of lower lip upto a point 2' posterior to chin. The bone is cut.
4. An incised gaping injury of 1/4' x 1/4' x 1/4' present at the centre of sternum,
5. An incised wound of 1 x 1 x 1/2' present at the right shoulder.
6. A cut injury of 4 x 3 x 3' present at the back of left arm 3' above left elbow. Left humerus is cut through.
7. A cut injury of 6 x 4 x 3' present at the lateral aspect of left thigh 3' above left knee.
8. An incised gaping injury of 1 x 1/2 x 1/2' on the lower aspect of back of right side of chest.
9. An incised gaping injury of 1 x 1/2 x 1/2' present 1' to the right to umbilicus.'

In the opinion of the Doctor, D-1 would appear to have died 12 to 36 hours prior to autopsy due to shock and haemorrhage as a result of injury No. 1. Injuries 1 to 9 could have been sustained at 11 a.m. on 11-06-1982 due to cutting with aruval. Death would have been instantaneous. Injury No. 1 was fatal. Ex. P. 68 is the postmortem certificate.

52. The same doctor conducted autopsy on the dead body of D-2 at 11.05 a.m. on 12-06-1982. The following injuries were found :-

- (1) a gaping incised wound extending from the middle of the sternum to a point 3' below the middle of left clavicle.
- (2) other gaping incised wound 1/2 x 1/2 x 1/2' situated 4' below the left nipple.
- (3) The head is severed by a cut injury extending from the thyroid cartilage encircling the entire neck. The injury goes via the tip of the C. 2 spine of neck. The neck is freely hanging. The skin is attached on the posterior aspect.
- (4) Another gaping incised wound extending from a point just above the angle of right side of mouth to a point on the left cheek about 2' below the left eye.

(5) Another gaping incised wound 3' x 1/4' x 1/4' on the right side of forehead.

(6) Another gaping incised wound 3' x 1/2 x 2' on the right cheek.

(7) Another gaping incised wound 1/4 x 1/4 x 1/4' on the lobule of right ear.

(8) Another gaping incised wound extending from the middle of the lateral aspect of the right arm to a point 1' below the medial edge of the right elbow humerus is cut through. The limb is freely hanging.

(9) Another gaping incised wound extending from the middles of the medical aspect of the left knee to a point on the middle of the popliteal fossa. On dissection of injury No. 6 alveolar margins are cut through. On dissection of wound No. 9, the femur is fractured. On dissection of injury No. 3, the major blood vessels including muscles are cut through.'

Internally, there was a cut injury on the anterior surface of the left lung measuring 2 x 1/2 x 2'. The stomach contained 3 ounces of Cholam choru. In the opinion of the Doctor, as in the case of D-1, death of D-2 would have occurred 12 to 36 hours prior to autopsy. Death of D-2 was due to shock and haemorrhage as a result of injury No. 3. All the injuries noticed on D. 2 could have been caused by an aruval at 11-30 a.m. on 11-6-1982. Injury No. 3 was necessarily fatal. Ex. P. 70 is the postmortem certificate.

52A. PW. 76, Dr. Abdul Razack commenced autopsy on the dead body of D. 3 at 11-15 p.m. on 12-6-1982. He noticed the following external injuries :-

'1. An incised gaping wound on right infra orbital region oblique in direction extending from medical end of right eye to the middle of cheek 2 x 1 x 1 1/2'. On dissection underlying maxillary bone cut.

2. An incised gaping wound front of neck below thyroid cartridge extending 2' below right ear encircling the front of neck below thyroid extending to the neck 3' below the left ear 7 x 2 x 3 1/2'. On exploration the trachea and oesophagus are totally cut across. Carotid artery is cut on the right side. Vertebra is also cut on the anterior aspect.'

Stomach contained 3 ounces of partly digested food particles. Death would have occurred about 18 to 36 hours prior to autopsy. In the opinion of the doctor, D. 3 would appear to have died of shock and haemorrhage due to injury No. 2. The said injury as also the other injuries could have been sustained, due to cuts with aruval at or about 11.30 a.m. on 11-6-1982. Injury No. 2 was necessarily fatal and death would have been instantaneous. Ex. P. 58 is the postmortem certificate.

53. The same doctor conducted postmortem on the dead body of D. 4 at 10 a.m. on 12-6-1982, and found the following external injuries :-

'1. Swelling left side temporal region. Left eye, left cheek 6 x 5' blood stains discharge from nostrils and ear on left side present. On dissection left temporal bone is depressed and fractured.

2. Peeling of skin cuticle present on anterior abdominal wall 7 x 6'.

3. Blebs present all over abdomen.'

Internally, there were fractures of left temporal bone, depressed type. Extra dural haemotoma was present on left temporal region. Sub dural haemotoma was present on right temporal region. Stomach contained 4 ounces of undigested food particles. Death would have occurred 16 to 36 hours prior to autopsy. In the opinion of the Doctor, D. 4 would appear to have died of shock and haemorrhage due to head injury. Injury on the head could have been caused by forcible beating with a stick at or about 11 a.m. on 11-06-1982. The said injury was necessarily fatal and death would have been instantaneous. Ex. P. 54 is the postmortem certificate.

54. PW. 76 also conducted postmortem of the dead body of D. 5 at 11.10 a.m. on 12-6-1982. He found the following injuries :-

'A gaping incised wound on right side front parietal region extending from outer aspect of right eye brow curving upwards and backwards to end 3 1/2' above ear. On dissection underlines skull bones frontal and parietal right side is fully cut. Membranes are also cut. Brain is protruding through the wound, 2 1/2' x 1' x 2'.

Stomach contained 4 ounces of undigested food particles. In the opinion of the doctor, D. 5 would appear to have died of shock and haemorrhage due to head injury. The said head injury could have been caused by cutting with an aruval at or about 11-30 a.m. on 11-6-1982. The head injury was necessarily fatal. Ex. P. 56 is the postmortem certificate.

55. PW. 78, Williams, Photographer, on the directions of PW. 89 took photographs at the scene, at 10 a.m. on 12-6-1982. M.Os. 71 to 85 are the photographs.

56. After conclusion of postmortem on all the dead bodies, Police constable PW 80 removed M.O. 4 sari from the dead body of D. 5. Police constable PW 81 similar removed M.O. 5 dhoti and M.O. 6 shirt from the corpse of D. 1. PW. 82 who was entrusted with the dead body of D. 2, removed M.O. 1 dhoti found over it. PW. 83 removed M.O. 2 dhoti from the dead body of D. 3. From the corpse of D. 4, PW 84 removed dhoti M.O. 3. All these material objects were handed over by the respective police constables at the Puliangudi police station for further investigation.

57. P.W. 89 took over custody of those material objects.

58. PW. 89 on 12-6-1982 seized between 8 a.m. and 9 a.m. M.Os. 7 to 11 blood stained earth from the places where the five dead bodies were found, on the earlier date under mahazar Ex. P. 3 to P. 7 attested by PW. 67 (Thangasami). He then seized M.Os. 12 to 61 broken tiles, burnt house-hold articles, grains, cloth, etc., under various mahazars which need not have to be listed as the accused concerned have been acquitted of charges of Arson and mischief PW. 89 arrested A. 2 at 4 p.m. on 29-10-1982 near the Court of Sub-Divisional Judicial Magistrate, Shencottah. A. 2 volunteered a statement, the admissible portion of which is Ex. P. 80. In pursuance of his statement, A. 2 took PW. 89 and his party and produced Aruval M.O. 88 from near Shencottah Railway station which was seized under Mahazar Ex. P. 81 attested by PW. 70. A. 3, A. 4, A. 12, A. 13 and A. 23 were arrested at 9 a.m. on 7-10-1982 by PW. 89 opposite to Sangam building at Coutallam. A. 4 and A. 23 on being examined, volunteered statements, the admissible portions of which are Ex. P. 76 and P. 77. In pursuance of their statements, they produced M.Os. 86 and M.O. 87 Aruvals from concealment and

they were seized under Mahazar Ex. P. 78 and P. 79 attested by PW 68. On 15-10-1982 at 7 a.m., PW. 89 arrested A. 5 Shencottah from the kalam of one Kaviah Karaiyalar. A. 7 surrendered before the Judicial II Class Magistrate, Sankaran-koil prior to 1-11-1982. PW. 89 preferred an application on 1-11-1982 before the said Magistrate pleading for police custody of A. 7. On 5-11-1982 police custody was allowed. On being examined, A. 7 volunteered a confession, the admissible portion of which is Ex. P. 82. In pursuance of his statement, A. 7 took PW. 89 to the bye-pass road branching off from Mangalapuram to Karadiakulam and from the thorny bush produced Aruval, M.O. 89 which was seized under Ex. P. 83 attested by PW. 71. A. 17 surrendered before the Additional Chief Judicial Magistrate, Tirunelveli on 3-1-1983. Details of arrest or surrender of the other accused are not stated since we are not concerned with them in this appeal.

59. All that had happened soon after PW 1 preferred a complaint Ex. P. 1 at 3.30 p.m. on the occurrence date will have to be stated. Police Constable Perumal (PW. 85) who was entrusted with Ex. P. 1 and P. 75 by PW. 86, handed over a copy of Ex. P. 75 to the Superintendent of Police who was camping at Puliyan gudi village and thereafter proceeded to Sankarankoil to handover Ex. P. 1 and P. 75 to the Magistrate at Sankarankoil. He became aware that Judicial II Class Magistrate was on leave and therefore he proceeded to Koilpatti and handed over both the documents to Judicial II Class Magistrate, Koilpatti, who was in charge of Sankarankoil Court as well, at 11-30 p.m.

60. PW. 87 Venkatasalu then Assistant Sub-Inspector of Police was patrolling Chokkampatti; Puliangudi and Mullikulam area due to prior incidents which had taken place earlier. While proceeding at or about 2 p.m. on 11-6-1982 on the Puliangudi-Sankarankoil main road he found 8 persons (men and women) with bleeding injuries at Pambukoil Junction. He stopped the police van and enquired the injured persons as to what had happened. They told him that Harijans belonging to Ayyapuram village were attacked and killed by Thevars of neighbouring villages during the course of which transaction, they also committed Arson and robbery. PW. 87 took the injured persons in his van to the Government Hospital, Sankarankoil. PW. 87 also handed over Ex. P. 59 a memo to PW. 76 Dr. Abdul Razack to examine and treat the injured. PW. 8 is one of these 8 persons

referred to in the memo. PW. 76 examined PW 8 at 3.30 p.m. on 11-6-1982 and found on her a lacerated wound on the right temporal region of scalp 3 x 1/4' x 1/4'. The injury was simple in nature. The said injury could have been sustained when attacked by the back portion of an aruval at the time and in the manner alleged. Ex. P. 45 is the wound certificate. PW. 87 and PW. 88 Asstt. Sub-Inspector and Head Constable assisted PW 89 in the investigation.

61. PW. 4 who was one of the eye witnesses for the murder of D. 1 and D. 2, claims to have gone on his own in a van to the Government Hospital, Sankrankoil. He was examined at 2.30 p.m. on 11-6-1982 by PW. 76. The following injuries were found on him.

(1) Incised gaping wound over left shoulder of antero postero direction 6 x 4 x 4'.

(2) Incised wound over front of right middle of leg 1 1/2' x 1/4 x 1/4'.

(3) Incised wound over left side chin 1/2 x 1/4'.

X-ray revealed fracture of left corocoid, left clavicle and left glenoid. There was fracture of left mandible also. In the option of the doctor injuries 1 and 3 were grievous and injury No. 2 was simple. Injuries 1 and 2 could have caused by cutting with an aruval. Injury No. 3 on the left mandible could have been caused only by sharp edged weapon. Ex. P. 33 is the wound certificate. PW. 76 did not receive any memo from the police for examination of PW. 4 though he was brought in a police van for treatment.

62. PWs. 3 and 4 claimed to have witnessed, D. 1 and D. 2 being attacked by A. 2 to A. 5 along with other accused, referred to in the specific charges. PW. 5 and PW. 6 were examined as ocular witnesses for the murder of D. 3. They have implicated A. 12 to A. 15 the said murder. A. 14 and A. 15 having been acquitted by the trial Court, we are now concerned with A. 12 and A. 13 alone in this murder. PWs. 7 and 8 speak of the murder of D. 4. They implicate A. 17. A. 16 who was charged for abetment of this murder was exonerated by the trial Judge. PW. 9 is the only eye-witness, to speak of the murder of D. 5 and A. 23 is the only accused, now in this appeal, stated to be concerned in this murder. PW. 4 connects A. 7 as

his assailant, with reference to charge No. 25 framed under section 326, Indian Penal Code. It will be better to have a bird's eye view of the ocular versions of these witnesses, for completion of facts.

63. PW. 3 around 11 a.m. on 11-6-1982 was on his way home from his land and ahead of him D. 2 Jayaseelan, PW 4 Joseph and Balaiah (not examined) were proceeding. There was hue and cry at Ayapuram village. PW. 3 noticed A. 2 to A. 7 armed with aruvals, A. 8, A. 9 wielding velsticks, under the leadership of A. 1 and accompanied by villagers from Thalaivankottai, Nelkattaumseval and Desikankatti, proceeding towards Ayyapuram. He also saw the said mob chasing D. 1 northwards. When D. 1 reached Sahul Rowther's Punja land, A. 3 cut on his left leg with an aruval. A. 2 cut on the left neck of D. 1 with an aruval and the other accused also inflicted cut injuries on D. 1. The latter fell down. PW. 4 who was accompanying PW. 3 also witnessed the attack on D. 1 PWs. 3 and 4 shouted. The mob chased them. In the land of Mathew, PWs. 3 and 4 witnessed A. 4 cutting on the left neck of D. 2 with an aruval. A. 5 inflicted a cut with an aruval on the face of D. 2, while A. 10 caused an injury with an aruval on the left neck of D. 2 to be followed by A. 11 inflicting an injury on his right arm with an aruval.

64. We have already stated that D. 2 is the father of PW. 4. Out of fear, PW 4 was running away from the scene. A. 7 then inflicted cut injuries on the left shoulder and right knee of PW. 4 with an aruval. When PW. 4 reached the village, he found in enveloped in smoke.

65. In the early hours of the morning, PW. 5 Sorimuthu and his father D. 3 accompanied by PW. 6 went over to their land. While they were returning home, at or about 11 a.m., they found smoke and fire emanating from the village, apart from woeful cries. A. 12 to A. 15 chased them. A. 12 cut on the neck of D. 3 with an aruval forcibly. A. 13 inflicted injuries with an aruval on the face of D. 3, while A. 14 and A. 15 inflicted indiscriminate cuts on him. PWs. 5 and 6 shouted. They were also chased by A. 12 to A. 15.

66. PW. 7 Baliah was available at his resident at 11 a.m. on 11-6-1982. He noticed a mob of 500 Thevars coming into his village. Being afraid, he ran away to Madasamivillai. At or about the same time D. 4 also came to the same area. A. 16

instigated others to kill D. 4. A. 17 with a stick beat forcibly on the head of D. 4. D. 4 sustained an injury and fell down. Apart from PW. 7, PW. 8 had witnessed the attack on D. 4. PW. 8 was in her house along with her husband when a mob threw stones at her residence. Out of fear they ran away from the house, PW. 8 was then pregnant. While she was running in Cholakkadu, a person from the offending mob beat her on her head with the back portion of an aruval and robbed her of Rs. 500/- which she had with her, as well her ear and nose screws.

67. PW. 9 Veluchamy was available in his field at or about 12 noon on 11-6-1982. People from the village were rushing out of it, as a result of Arson committed by the Mob. Among the accused, he knew A. 23 already. A. 23 cut Madathy D. 5 who was grazing her sheep, on her head with an aruval. Madathy fell down. PW. 9 was also chased. An hour later when PW. 9 returned to the place, where D. 5 was attacked, he found that she was lingering for life. He carried her to the cattle shed of Chinnamadan, where she breathed her last.

68. Out of 89 witnesses examined by the prosecution, P.Ws. 10, 12, 13, 15, 16 to 18 and 68 to 71 were treated hostile. P.Ws. 1 and 2 are the witnesses who set the law in motion. P.Ws. 3 to 9 are the ocular witnesses for one or other of the murders. P.W. 11 speaks of Arson to his house committed by acquitted A. 27. P.W. 14 has deposed about hatching of conspiracy, under the leadership of A. 1. Apart from P.Ws. 4 and 8, P.Ws. 19 to 37 are the injured witnesses. P.Ws. 38 and 43 to 66 are the witnesses whose house were burnt down in the communal strife. P.W. 67 is a Mahazar witness. P.W. 72 Subramanian was the van driver, who removed most of the injured witnesses to Sankarankoil Government hospital. P.Ws. 73 to 77 are the medical officers. P.W. 78 is the Photographer. P.W. 79 is the Court clerk. P.Ws. 80 to 84 are the constables, who were entrusted with dead bodies of D. 1 to D. 5, to be presented for the conduct of postmortem. P.Ws. 85 to 89 are the police officials who had taken part in the investigation of this crime.

69. P.W. 89 forwarded blood stained material objects seized during investigation to the Court of the Judicial II Class Magistrate, Sankarankoil, with a requisition to despatch them for chemical analysis. Ex. P. 73 and P. 74 are the reports of the Chemical Analyst and Serologist, proved through P.W. 79 Court Clerk.

70. After completing investigation, P.W. 89 laid the final report on 28-12-1982.

71. When the appellants and the other accused were examined under S. 313, Cr.P.C. to explain the incriminating circumstances appearing against them in evidence, they chose to deny their complicity in the crime. A. 1 stated that Ramasamy Inspector of Police, Pullyangudi took him away from his house on 12-6-1982 under the guise of his being required by the Superintendent of Police, Tirunelveli. At Puliangudi police station several police officers were present. They requested his help for fabricating evidence. His refusal led to his being implicated in this crime. A. 2, A. 9, A. 12, A. 13, A. 17, A. 18, A. 23 and A. 27 filed a written statement. They have stated therein, that they were residents of Vellaiagoundanpatti, situated one furlong away from Ayyapuram. Velliagoundanpatti harijans and Harijans of Ayyapuram were closely related. Muthukaruppan is the leader of Velliangoundanpatti harijans. Muthukaruppan's elder brother's son Muthiah was the husband of P.W. 1's sister. For about two years, there were disputes between them and Ayyapuram Harijans, as a result of litigation. P.W. 7 has deposed in a prosecution instituted by his father-in-law against A. 3, A. 4, A. 6, A. 17 and A. 23, alleging mischief to his grilling implements. The accused therein were acquitted. As an off-shot of the same prosecution, P.W. 7 initiated another prosecution before the Sub-Divisional Judicial Magistrate, Kovilpatti against A. 4, A. 6, A. 8, A. 14 and A. 27. This prosecution was also thrown out. Balaiah, son of Kuppan, was sentenced to pay a fine of Rs. 500/- for having caused hurt to A. 18. The same Balaiah lost a case preferred by him against Velliahgoundanpatti Thevars. P.W. 8 Seeniammal is the sister of the said Balaiah. Balaiah had married the daughter of D. 2. The relationship between the other prosecution witness and the deceased, detailed by us earlier, forms part of this written statement. These accused would have it, that out of prior animosity and police pressure, they were falsely implicated. P.Ws. 5 and 6 had not implicated A. 12, even during investigation. The accused did not examine any witnesses in defence, but marked Ex. D. 1 to D. 4 which are respectively van travel particulars, attestation of Deputy Superintendent of Police, therein memo issued by Sub-Inspector of Police, Puliangudi and petitions for remand.

72. On appraisal of the oral and documentary evidence, learned trial Judge, while exonerating all the other accused, found appellants alone guilty and dealt with them as stated earlier.

73. Mr. N. T. Vanamamalai, learned Senior Counsel appearing on behalf of A. 2 to A. 5 and A. 7; Mr. G. Krishnan, learned Senior Counsel representing A. 12, A. 13 and A. 17 and Mr. N. Dinakar learned Counsel appearing on behalf of A. 23 contended, that Ex. P. 1 could not have come into existence at 3.30 p.m. and there was intrinsic evidence available to indicate that policeman had arrived at the scene long prior to Ex. P. 1 and had made enquiries, of the manner in which this occurrence had taken place. In spite of such enquiry, though the appellants are stated to be known, they had not been implicated either by their names or even by their villages, in the earliest document. All the appellants belong to Velliahgoundanpatti village. P.W. 1 who had witnessed the arrival of a mob, had not implicated in Ex. P. 1, any villager from Velliangoundanpatti, as persons present in the offending mob. They strenuously contended, that in every one of the inquest reports, persons mentioned as having seen the respective deceased last alive or soon after death, had not been put in the witness-box, but persons who have not been mentioned as ocular witnesses in the inquest report, have been examined as though they had seen the occurrence. There was lack of medical corroboration to the eye witness account. It was doubtful if any of the eye witnesses could have ever seen any part of the occurrence be it murder, robbery, arson or mischief. In a mammoth rioting that had taken place, not having been in a position to know the assailants of the deceased, out of prior animosity one or other accused, had been picked out, to be implicated in this grave crime. They emphatically contended, that infirmities were in multitude, which affected the basic foundation of the prosecution case. They pleaded for exoneration of all the appellants, since connecting link between them and the crime was not available.

74. On these contentions, we have heard Mr. B. Sriramulu, learned Public Prosecutor. Being conscious of the multifarious infirmities, which touch the core of the prosecution case, he submitted, that it was the duty of the Court to find out if the prosecution case, can still be salvaged, in spite of such lacuna.

75. Decision making in this appeal may not pose a serious problem. Our Country famed for unity in diversity is tendering to reach a stage of disunity and rivalry. Petty and worthless quarrels, centered round caste and religion, seek to crush the Society, beyond redemption. Disputes which could have been solved by mutual talks, were allowed to assume huge proportions, leading to beating of harijans committing of dacoity in a shop etc., two days prior of occurrence. A meeting was organised by the Harijans and Muslims, under the auspices of Samathuva Sagotharathathuva Sangam. Caste Hindus were abused in the said meeting, and Hindu Gods were denigrated. Though a substantial percentage of human beings, by force or circumstances, are trained to control their tempers and emotions, there are still many who believe in retribution, theory of the pre-historic days. What had been achieved by mob fury on 11-6-1982, was only destruction of human beings, animals and houses. It can easily be comprehended, as to how much more time must have been spent, to restore normalcy at Ayyapuram, after this scathing attack. All these are words of anguish, for without any rhyme or reason, murders have been committed. While examining, scrutinising or analysing evidence, Courts cannot be guided by the seriousness of the crime committed, but must be in a position to dispassionately approach the evidence, to arrive at a conclusion, if on law and facts, appellants can safely be connected with the offences, which they are stated to have committed.

76. Before we traverse in detail into the ocular versions, we will focus our attention initially on the first information report and the likelihood of its having had its genesis at 3-30 p.m. as claimed by PWs. 1 and 2, who are the informant and attestor respectively and PW. 86 who recorded Ex. P. 1 and registered the crime, on it. In Ex. P. 1 P.W. 1 has referred to the ransacking of the shop of P.W. 39, on 9-6-1982, by Harijans and Muslims. His knowledge was hear-say. P.W. 1 has presumed, that the accused under the mistaken impression, that they were hand in glove with Puliangudi pallars, had chosen to raid their village. 3000 persons were in the offending group armed with dangerous weapons like aruvals, velsticks and sticks. He is specific in Ex. P. 1 that 3000 members in the mob, belonged to Thalaivankottai, Malaiyodi Kurichi, Nelkattumseval and other neighbouring villages. Not a word has been mentioned in Ex. P. 1, about any villager from Velliahgoundanpatti having been present in that huge crowd of 300. It may be, that

when the group is so huge, it may not be possible for P.W. 1 to give out specific details of the offenders and the villages to which they belonged. That usual rule, cannot be applied to P.W. 1, for, he has admitted that even prior to attack in the shop of P.W. 39, there was enmity between Velliahgoundanpatti Thevars and harijans of his village. Enmity existed for over 2 years. He knew the names of Thevars of Velliahgoundanpatti who were opposed to them. Some of them are A. 2 to A. 9, A. 12, A. 13, A. 17, A. 18, A. 23 and A. 27. He has categorically admitted that he took a close look at the group, and he was able to identify 7 or 8 persons in that group. All these 7 or 8 persons were residents of Velliahgoundanpatti. He was also aware of the names of those 7 or 8 persons even before preferring the first information report. Those seven or eight persons were also present inside the Court hall, while he was deposing. However, he was able to identify only A. 3, A. 5, A. 7 and A. 18. If in fact P.W. 1 had noticed in the offending mob, persons whom he had already known and were enimically disposed against them, and those were the residents of Velliahgoundanpatti, he would not have omitted to mention them by their names or at least by their village in the earliest document. To crown all these, P.W. 1 has further stated, that he had narrated to P.W. 36 all that he knew about the occurrence. He has not mentioned in Ex. P. 1 that A. 3, A. 5, A. 7 and A. 18 were members of that unlawful assembly. He has further stated that before scribing the complaint, he was asked by P.W. 86 if he was aware of the rioters and he replied that he did not know them. Even if it be taken, that P.W. 1 was totally shocked and stunned, when he set the law in motion by preferring Ex. P. 1, we are unable to comprehend, how he failed to mention these four known persons, identified by him in the Court hall, as the persons who were present in the offending group of accused, even during investigation. In this state of evidence, if P.W. 1 had not mentioned the known offenders in Ex. P. 1, either by their names or their village, it stands to reason, that in all possibility he was unable to notice any person, known to him and whom he could identify, in that enormous mob.

77. In Ex. P. 1 P.W. 1 has stated about his having seen the dead body of D. 1 to D. 5 with stab and cut injuries. He has also referred to injuries sustained by P.Ws. 19, 20, 21 and 37. He has referred to house of P.W. 38 his elder brother having been damaged. Ex. P. 1 also mentions about the injuries sustained by P.W. 8 at

Cholakkollai. Robbery committed of the ear ornaments of Madathi ammal (not examined) has also been mentioned in Ex. P. 1. It is possible to visualise from the contents of Ex. P. 1, that before P.W. 1 had proceeded to the police station, if in fact Ex. P. 1 had been preferred at the time claimed by him, he had collected some information prior to his choosing to initiate investigation, regarding this occurrence. It is in this backdrop, we must examine the possibility of Ex. P. 1 having come into existence at 3.30 p.m. It must also be examined, if investigation could have commenced only after registration of this crime, for even prior to registration of the complaint, police men were already at the village and they became aware of many facets of this occurrence long prior to Ex. P. 1. P.W. 36 Dharmaraj a resident of Ayyapuram, whose wife and daughter had sustained injuries in this occurrence apart from losing their gold ornaments, has deposed when cross-examined, that within 30 minutes after the occurrence, he proceeded to Puliangudi. Many persons from his village one after another were proceeding in the same direction. To avoid group clash, at Puliangudi, the Superintendent of Police, District Collector and other superior officers were then camping. Puliangudi police station is situated adjacent to the houses of the harijans. He complained about the mass rioting in his village, to some of the villagers at Puliangudi, who informed the camping officials immediately and soon thereafter Ayyapuram was protected. P.W. 36 has crisply added, that but for quick police intervention, the damage to his village must have been much more. Those high officials despatched injured persons for treatment, to the hospital. The evidence of P.W. 36 presupposes information about this rioting having reached the top officials of the District, within a shortwhile, for Puliangudi is situated within a few kilo meters from Ayyapuram. P.W. 29 Chelliah another resident of Ayyapuram has fixed the time of arrival of police men to his village, as 1 p.m. He has further deposed, that several villagers from Ayyapuram went over to the police station and brought policemen to the scene. The policemen who arrived, inspected the whole area. At that time all the injured persons were seated under tree shade. Those injured persons included P.Ws. 4, 8 and 28. To recapitulate P.W. 4 is an eye witness for the murder of D. 1 and D. 2 while P.W. 8 speaks of the murder of D. 4. One would normally expect examination of injured witnesses, at least one or other of them, by policemen who had assembled there. It will be logical to expect obtaining of a complaint from one

of them, to facilitate commencement of investigation. That obviously has not been done.

78. We will now probe a little deeper, into the evidence of P.W. 1, on this aspect. P.W. 1 in his substantive evidence has not only included Velliahgoundanpatti villagers, but has also added that the entire offending group were thevars. In Ex. P. 1 he has nowhere stated that Thevars, of the villages mentioned by him, were the offenders. Curiously, though no mention has been made in Ex. P. 1, that the 3000 mob included Thevars, surprisingly in column '6' of Ex. P. 75 the printed first information report, P.W. 86 has made an entry that the offenders were thevars whose names were not known. Ex. P. 75 presupposes, that all the 3000 offenders were thevars. P.W. 86 was specifically, cross-examined on this aspect. He has stated, that in Ex. P. 1 all that was stated was, that 3000 persons had arrived. The community or caste of those 3000 persons was not stated in Ex. P. 1. Ex. P. 1 does not refer to the presence of Velliahgoundanpatti people, in the offending group. Ex. P. 1 does not also reveal, that the offending group had thevars also as participants. A strange explanation has been offered by P.W. 86, for entry in Column '6' in Ex. P. 75 that he had so entered the word Thevars since in the villages of Thalaivankottai, Malayadikurichi and Nelkattumseval, they were the majority community. The next admission of P.W. 1 is rather revealing. He has deposed, that he was brought in a police van to the village, to gather details about the injured persons. He was thereafter taken back to the police station and subsequently Ex. P. 1 was recorded. He claims to have reached the scene with policemen at 3.30 p.m. At the time of preparing the complaint, villagers told the police officials, as to manner in which several persons had sustained injuries. Not only that, P.W. 1 further admits, that he along with P.W. 2 and Daweed were taken in a police van to Sankarankoil hospital. The purpose was to notice the site of the injuries sustained by several witnesses, to facilitate recording of details on such basis. P.W. 1 was detained at the police station over night. If P.W. 1 had preferred Ex. P. 1 at 3 p.m. and a crime was registered after it was scribed, it will not have been possible for P.W. 89 to have been present at the scene at 3.30 p.m. We have already stated, that even around noon or certainly by 1 p.m., policemen should have arrived at Ayyapuram and commenced questioning injured witnesses about the manner in which the incident had taken place. To avoid being pinned,

down to the admitted presence of police officials at the scene and in the nearby village, P.W. 1 had even chosen to deny camping of superior officers at Puliangudi and its suburbs to prevent any group clash, in view of the earlier incidents. That P.W. 1 is not speaking the truth is obvious for, we have referred to the evidence of P.W. 36, who had spoken about camping of high officials, at Puliangudi.

79. Let us now examine if P.W. 2 had seen any resident of Velliahgoundanpatti in the rioting mob. In his substantive evidence, he claims to have seen a few residents of Velliahgoundanpatti. While he was proceeding along with P.W. 1 to the police station, P.W. 1 did not enquire him as to composition of the rioters. However, he is certain, that P.W. 1 mentioned to P.W. 86, that residents of Velliahgoundanpatti were in the mob. P.W. 2 then states, that he, P.W. 1 and Daweed were proceeding to police station, conversing between themselves, of the presence of Velliahgoundanpatti villagers in the group of offenders. P.W. 1 and Daweed asked him regarding the identity of Velliahgoundanpatti villagers who were present in the mob and known to him; he gave out the list and those names were furnished by P.W. 1 to P.W. 86. P.W. 2 has further stated, that when Ex. P. 1 was read out by P.W. 86, before P.W. 1 affixed his signature and he attested it, the names of Velliahgoundanpatti residents were mentioned in the document. P.W. 2 knew A. 2 to A. 6, A. 12, A. 17 and A. 18 by their names. Those accused were present in the mob. These names were mentioned to P.W. 1 by him, on their way to the police station. Those were the names which were furnished to P.W. 86 by P.W. 1. In spite of such assertion by P.W. 2 it is nor disputed, that the names of Velliahgoundanpatti residents specifically mentioned by him, have not been stated as offending persons in the mob, even when he was examined during investigation, leave alone such glaring omission in Ex. P. 1. Obviously P.Ws. 1 and 2 had chosen to implicate Velliahgoundanpatti residents for the first time in Court. The admissions of P.W. 2, lead to a logical inference, that the document which was read over to him at the police station is obviously not Ex. P. 1, now presented before Court. If Ex. P. 1 had come into existence at the time and in the manner alleged, such vital divergence between the evidence of P.Ws. 1 and 2 and 86 cannot at all have surfaced.

80. Yet another way of looking at it, will be still more damaging for the prosecution. We will assume that the police officers must have come to the scene of occurrence much earlier to the registration of this crime of Ex. P. 1. In that event, they must have examined one or other of the injured witness and obtained information from them. The information so obtained must have formed the basis for initiating action and certainly not the belated Ex. P. 1. Even otherwise, if the investigating officer had arrived earlier at the scene, he must have collected information about the accused and that must have been incorporated in Ex. P. 1. All these latches only show that even after questioning several injured witnesses and examining them at the hospital, a clear picture was not available to the police, about the identity of the offenders and hence a bald first information, which could take in further details at any point of time, was contemplated, and then the crime was sought to be registered. This conclusion appears to be inescapable on the available facts.

81. We will not evaluate, if P.Ws. 1 and 2 could have been so blank even without minimum material about this occurrence, when they decided to proceed to Puliangudi police station to prefer Ex. P. 1. P.W. 1 has admitted, that after the occurrence, he spent about two hours at Ayyapuram village, and make himself aware of the damages caused, as a result of this occurrence. During such survey he not only noticed the corpses but also came across several injured persons. He did not choose to enquire the injured persons as to how they came by those injuries. He admits that he met P.W. 4 one of the injured witnesses, who is now an eye witness for the murder of D. 1. In spite of the fact that P.W. 4 is the son-in-law of P.W. 2 and the son of D. 2, P.W. 1 did not even attempt to question him as to who his assailant was. P.W. 1 claims to have seen P.W. 4 at 1.30 p.m. near his well, situated north of the village and adjacent to the church. P.W. 1 is certain that he went over to the house of P.W. 38, his elder brother, before proceeding to the police station. The house of P.W. 38, was also a target of attack, by the offenders. Stones were thrown at his house and tiles were broken with stones and sticks resulting in a damage valued at Rs. 3,000/-. The offenders also set fire to his hayrick. In spite of P.W. 38 having been one of the affected parties in this riot, P.W. 1 has deposed that he did not enquire his elder brother as to how the occurrence had happened and the latter also did not volunteer to speak about the

incident as such. P.W. 1 was not even inclined to inform his elder brother of all that he had seen, before he met him. P.W. 38 who later took over as a village natanmai, did not suggest to P.W. 1 to prefer a complaint at the police station. P.W. 1 has admitted that he was inquisitive to find out from the injured persons as to how they had sustained injuries as well to ascertain from them the participants in the crime. Even then he did not choose to enquire the 28 injured persons, whom he met, about these facts, and those injured persons also did not seek to identify their assailants or the others, whom to their knowledge, were participants in the crime. P.W. 1 is also categorical that he met injured P.W. 8 before proceeding to the police station. Neither did he inquire about the manner in which she had sustained injuries and the identity of her assailants nor did she volunteer information about the same. P.W. 1 is further sure that the venue in which P.W. 8 was attacked was not known to him at all. Contrary to the claim of P.W. 1, in Ex. P. 1, P.W. 1 has stated that P.W. 8 was cut with an aruval on her head while she was grazing sheep in her cholam field. Similarly P.W. 1 has furnished specific information in Ex. P. 1 that P.W. 19 was cut on her head and neck by the offenders who had also cut and killed two goats. He has further mentioned in the first information report that damage to the house of his brother P.W. 38 had been caused by the rioters and the loss was estimated at Rs. 4,000/- Ex. P. 1 also contains details of injuries sustained by Madathi wife of Murugan (not examined) who also lost her gold ornaments valued at Rs. 3,000/- during the course of the same transaction. Reference has also been made to injuries sustained by Grace (not examined) on her left leg, while she was at her residence and theft of cotton and vessels committed from her residence. Passing reference has been made of injuries sustained by P.Ws. 36 and 37, on their heads and left hands, before P.W. 37 was relieved of her gold chain with gundoos. Information furnished by P.W. 1 in the first information report, refers to some of the injured persons, but seeks to suppress information he must have had from P.Ws. 4 and 8, who now figure as ocular witnesses, for one or other of the murders. If clear details of the injured persons with their age and the portions of their bodies where they had sustained injuries, have been incorporated in Ex. P. 1, it is possible to visualise, on the admission of P.W. 1, that he was taken to the hospital, by police men, to find out details before suitably recording the first information report. The ages of some of the witnesses

mentioned in the first information report, tally with the ages of those witnesses given by the medical officers, in the respective wound certificates. P.W. 1 has deposed in Court, that he was unaware of a buffalo having been charred to death in the course of this occurrence. However, in the original first information report we find the word 'buffalo' written in tamil as and later sought to be struck off. P.W. 1 has also categorically admitted, that he saw P.Ws. 3, 4, 5 and 8 soon after the occurrence at the scene village. This meeting was obviously prior to his travel to the police station to prefer Ex. P. 1. If he had really come across these witnesses, who are all now examined as eye witnesses, it appears rather odd, that they had not furnished him information, about all that they had seen, in respect of one or other of the murders. P.W. 1 has further deposed, that after preferring Ex. P. 1 when he returned to the village with P.W. 89, injured P.Ws. 3 to 6 and others were still there. Injured persons were sent to the hospital by the police officials from Ayyapuram. If in fact Ex. P. 1 was registered at 3.30 p.m. and thereafter the investigating officer had arrived at Ayyapuram village and then despatched injured persons in a van to the hospital, it would not have been possible for the medical officers P.Ws. 76 and 77 to have examined quite a number of witnesses between 2-30 p.m. and 4 p.m., even if it appears possible to visualise, that such of those witnesses examined after 4 or 4-30 p.m. could have very well been sent to the hospital, after the investigating officer had reached the scene village. P.W. 8 was examined by Dr. Abdul Razack (PW. 76) at 3-30 p.m. Similarly P.W. 4 Joseph was examined by P.W. 76 at 2-30 p.m. on 11-6-1982. Even excluding other injured witnesses from consideration when P.W. 1 has affirmed presence of P.Ws. 4 and 8 at the village, on his arrival with the Sub-Inspector of police after preferring Ex. P. 1 at 3-30 p.m. It is rather amazing that even earlier, these two witnesses along with other have been examined by the medical officers, they having reached the hospital in a police van, as is clear from the contents of various wound certificates. Hence the logical conclusion, infallible as it ought to be, is that the police had arrived long before the registration of this crime at Ayyapuram village and commenced despatching injured witnesses in a police van to the hospital. The evidence of P.W. 72 the van driver, coupled with Exs. D. 1 to D. 4 would indisputably indicate, that from 11-15 a.m. onwards on 11-6-1982, the police van was utilised for transporting injured persons to the hospital and the van had

travelled 244 Kms. on that day alone. P.W. 89, the investigating officer has also admitted, that Ex. D. 1, written by him in his own writing, showed, that the van had left Tenkasi at 11-15 a.m. and it was utilised for making several trips between Ayyapuram, Sankarankoil and Puliangudi. The entries in Ex. D. 1, brought out in substantive evidence of P.W. 72 and P.W. 89 is one more indication that the investigating agency, must have been aware of details of this crime, much earlier than 3-30 p.m., when Ex. P. 1 was sought to be registered.

82. We will test the claim of registration of Ex. P. 1, from yet another angle. Assuming that crime was registered at 3-30 p.m. and thereafter injured witnesses were forwarded to the medical officers, for examination and treatment, we will examine such possibility, on the basis of the evidence of medical officers in respect of 2 or 3 injured witnesses, as a test case. Injured Madatheey not put in the witness-box, was first seen by P.W. 74 Dr. Palsamy at 7-45 p.m. on 11-6-1982, Ex. P. 27 is the requisition sent for her examination by the Sub-Inspector of Police, Puliangudi. P.W. 74 has admitted, that crime number had not been noted in Ex. P. 27 and a perusal of Ex. P. 27 confirms the said position. If a crime had been registered at 3-30 p.m. there is not reason why the said crime number had not been incorporated in the medical memo. Similar is the position in relation to P.Ws. 32 and 33.

83. We will now have a quick look at the conduct of P.W. 2 before he proceeded to the police station with P.W. 1. He had proceeded to the police station admittedly after noticing the five corpses. He knew the location of these corpses and such location was also known to P.W. 1 and Daweed. In spite of all the three of them being fully aware of the venue of attack of the deceased, the first information report is silent on this vital aspect. P.W. 2 has admitted that he met the injured witnesses before he proceeded to the police station. He also did not enquire the injured persons as to how they had sustained injuries and the latter also did not come out with any information. We have to recapitulate at this juncture that P.Ws. 1 and 2 are important persons in the village, the latter being a priest, whose advice was binding on all villagers in terms of the evidence of P.W. 8. If such an important persons, on his way to the police station, had met the injured persons, it is rather surprising that neither the victims told him about the occurrence nor was he

inclined to find out clear details from them. Even ignoring the other injured witnesses, the conduct of P.W. 2 in relation to his own son-in-law injured Joseph (P.W. 4) is rather astonishing. Before proceeding to the police station, he met his son-in-law at his residence and he learnt from him that he had sustained injuries on his shoulder and leg due to cut with an aruval. P.W. 4 also told him, that he had sustained a stone throw injury on his cheek. In spite of such information, P.W. 2 one of the leaders of the village, did not seek to obtain information from his son-in-law regarding the identity of his assailants, inclusive of the village to which that assailant belonged. P.W. 2 has conceded, that P.W. 4 did not tell him that any identifiable person was his assailant. In spite of such evidence A. 7 has been found guilty under charge No. 25 for having caused grievous hurt to P.W. 4. P.W. 2 also admits that he did not seek to ascertain from the injured witnesses, or from the relations of the deceased, about the identity of the assailants. If in fact P.W. 1 and P.W. 2 had met injured witnesses before proceeding to the police station, it cannot be easily explained away why neither they had questioned the injured persons about the occurrence and their assailants nor why the latter failed to furnish information about the same for, such conduct is totally opposed to normal human behaviour. An indelible impression gets glued, that the prosecution has either suppressed the earliest information or was not anxious to place the entire truth as to the genesis of this occurrence and the manner in which several humans were either lost or inflicted with injuries. It is possible to visualise, that when a mob of 3000 raid a village easy identification will not be possible and all the more an onerous duty was cast on the investigating agency, to find out threadbare, if any or all of the accused could be connected, with one or other of the several transactions which had taken place, in the course of mob rioting. We are also able to comprehend that if some policemen on patrol duty were able to find some of the injured witnesses on the way, they were justified, in removing them to the hospital, before seeking to register a complaint. In that event, in fairness a complaint ought to have been registered from one of the injured persons either in the hospital or at the scene, and then investigation should have commenced. The difficulty in this prosecution is that we are unable to have a clear picture as to whether after the injured persons were removed to the hospital, a complaint was sought to be registered or as claimed by P.W. 89 and P.W. 1, only after the registration of the

crime, investigation commenced. We have already listed out several reasons, which impel us to conclude, that long prior to the claimed registration of the first information report, investigation must have commenced. Though further more available infirmities on this score, can form an endless stream, we do not think it necessary to multiply more and more of such grounds, when all that we have stated above will suffice on this facet of the prosecution case.

84. Stage is now set to examine the ocular evidence in respect of the five murders. P.Ws. 3 and 4 are the eye witnesses, who speak out the murderous attack on D. 1 and D. 2, by the convicted accused 2 and 3. The other accused, who were implicated in this crime, were acquitted by the trial Court, and there will be no need to the delve over the overtacts attributed to those acquitted accused.

85. P.W. 3 is the son of P.W. 2, who went to over to the police station along with W. 1 to prefer a complaint. P.W. 3, had seen, while returning home from his land at 11 a.m. on 11-6-1982, D. 2, P.W. 4 and Baliah (not examined) proceeding ahead of him. He is also a witness who speaks about P.W. 4 having sustained injuries, on cuts being inflicted by A. 7. If P.W. 3 was an eye witness to the cutting of P.W. 4, P.W. 4 who is none other than the brother-in-law of P.W. 3, must have been aware of his presence and told P.W. 2 about the presence of P.W. 3, when he had conversed with P.W. 2, before he left for the police station. P.W. 3 claims to have seen A. 1 to A. 9 in the offending groups, A. 2 to A. 7 armed with aruvals and A. 8 and A. 9 armed with Velsticks. He also noticed, that A. 1 was the leader of this group. He witnessed these accused chasing D. 1 northwards from the village. According to P.W. 3, A. 3 cut on the left knee of D. 1 with an aruval while A. 2 cut D. 1 with another aruval on his left neck. The other accused surrounded D. 1 and cut him indiscriminately. On seeing such a dastardly attack, he and D. 2 along with others shouted. Offending group chased him. He was then able to witness, A. 4 cutting D. 2, in the land of Mathew, on the left neck, with an aruval and A. 5 cutting D. 2 on his face, with another aruval. He further witnessed A. 10 and A. 11 inflicting injuries on D. 2. As he was again running, he witnessed the attack on P.W. 4. When he was so near D. 2, it looks artificial that he was able to escape unscathed though the rioters were so huge in number. He has admitted in cross-examination, that one month prior to occurrence, in his village, a meeting

was organised by Sagothara Samuthuva Sangam in which Sahul Hameed M.L.A. and other muslim leader spoke. He was one of those organisers along with Balaiah (not examined), P.W. 4, P.W. 5, P.W. 6, P.W. 7 and P.W. 9. These witnesses who had either organised or taken part in the meeting conducted by Sagothara Samuthuva Sangam in their village, figure as eye witnesses, for the various murders. During investigation he has stated that there was disaffection between them and Thevars of their village in relation to their caste. He has conceded that there was no prior animosity between Velliahgoundanpatti Thevars and Harijans of Ayyapuram. He claims that even his father was not aware, leave alone others, about his having proceeded to his land early on the occurrence morning. He was able to meet his father only at 8 or 9 p.m. in the occurrence night. He is certain that he was in the village at 12-00 or 12-30 noon. Though he had witnessed P.W. 4 having been attacked he did not attempt to find out if his brother-in-law P.W. 4 was available at his residence. He learnt at 9 p.m. that P.W. 4 had been taken to the hospital. He was not even inclined to find out from his sister as to the whereabouts of P.W. 4 soon after the occurrence. He claims to have been examined between 5 and 7 p.m. by P.W. 89. He was sent for by the Inspector of police for examination. It is not known how P.W. 89 was aware, that he is one of the occurrence witnesses, for being traced. P.W. 3 concedes, that if an occurrence of this nature takes place, information should be forwarded to the police station. Neither did he ask anyone to prefer a complaint nor attempted to find out if anyone-else had chosen to proceed to the police station. He returned home and kept himself confined at his residence, as though nothing had happened. P.W. 3 has further stated, that he did not meet P.W. 57 Jambuli, the father of D. 1, on the whole of the occurrence day. Between 4-30 and 7-30 p.m. on 11-6-1982, when he was at the scene, he did not notice P.W. 57. After having seen D. 1 having been done to death, he did not pass an information to the parents of D. 1. Similarly he did not inform the wife and son of D. 2, of has having seen D. 2 been fatally attacked. P.W. 57 is certain that he was not examined by the Inspector of Police on the occurrence day. As a matter of fact he did even see Inspector of Police on that day. If as claimed by P.W. 3, he had not seen or met P.W. 57, throughout the occurrence day, it is amazing to find entries. In Ex. P. 85, inquest report in respect of D. 1, that P.W. 3 and Balaiah had told the investigating

officer, that P. 57 had seen his son D. 1 'alive last' and 'dead first'. If information had not been furnished about P.W. 57 by P.W. 3, P.W. 89 could not have made such entries in the inquest report Ex. P. 85. Such entry in Ex. P. 85 indicates that P.W. 57 had seen his son 'alive last' and 'dead first'. He must therefore have been an ocular witness for the incident. Contrary to this entry, P.W. 57 has deposed that his son was found dead in the garden land. Apart from fixing P.W. 57 as a possible occurrence witness, the names of P.W. 3 and Balaiah do not figure as ocular witnesses in Ex. P. 85. P.W. 89 has categorically stated that the names of P.W. 3 and Balaiah are not even referred to in any portion of the inquest report. P.W. 3 has further deposed that P.W. 89 did not enquire him as to whether he had seen P.W. 57 on the occurrence day. He has conceded, that he had told the investigating officer, that he had heard that D. 1 to D. 5 had been murdered. Such admission postulates, that he was not an eye witness to the occurrence and probably because of his close connection with Sagothara Samathuva Sangam, he had been pushed to the fore-front as an occurrence witness. He has further deposed, that P.W. 89 specifically asked him about the assailants of D. 1 and D. 2. If he had in fact stated about the assailants of the deceased to P.W. 89, Ex. P. 85 the inquest report, would not have totally eclipsed. P.W. 3. On the way home, P.W. 3 found a crowd weeping near the dead bodies of D. 3 to D. 5. He also heard in passing the conversation in which the weeping crowd was engaged. He was able to visualise from the conversation that D. 2 to D. 5 had been done to death. In spite of such information he had gathered, he did not think it necessary to inform those group of persons about his having witnessed the fatal attack on D. 1 and D. 2. The conduct of P.W. 3 appears so unusual that attaching credibility to his evidence will be an useless exercise.

86. The next witness for these two murders, is P.W. 4. We have already noticed that P.W. 4 is the son of D. 2 and brother-in-law of P.W. 3. According to this witness, he was also returning home around 11 am on the occurrence morning from his hand. He was accompanied by his brother-in-law, Balaiah and slightly behind him, P.W. 3 was following. He had noticed A. 2 to A. 7 armed with aruvals and A. 8 and A. 9 armed with velsticks in the company of 500 rioters coming towards them. He was able to identify, by names, in Court, A. 2 to A. 7 and A. 9. He witnessed A. 3 cutting D. 1 on his left knee with an aruval and A. 2 inflicting a

cut with his aruval on the left neck of D. 1. The other six persons cut the victim indiscriminately by surrounding him. He claims that P.W. 3; Baliah, himself and his father D. 2 shouted. On hearing their hue and cry, the offending mob chased them. Then he witnessed his father (D. 2) being cut on his neck by A. 4 with an aruval. He has also spoken of A. 5 inflicting a cut with an aruval on his father's face. He has implicated A. 10 and A. 11 also connecting them with the death of his father, but since they have been acquitted, no serious scrutiny of their roles in this crime can now arise. He has further implicated A. 7 as his assailant who had caused a cut injury on his left shoulder and another cut injury on his right knee. He has spoken of his having sustained an injury on his cheek (left) due to stone hit, but he was unable to identify the author of the said injury. While he was proceeding towards the road, he was taken in a van to the Government hospital, Sankarankoil. We have already referred to the evidence of P.W. 87 of his having seen, few of the injured witnesses at the junction of Pamboo kollai, which impelled him to take them in the van to the Government hospital, Sankarankoil. P.W. 87 had also furnished a medical memo Ex. P. 59, for the examination of the injured witnesses he had taken to the hospital, in his van. Ex. P. 59 though refers to P.W. 8 Seeniammal, does not include the name of P.W. 4. We have already seen that P.W. 1 has spoken about the presence of P.W. 8 and P.W. 4 along with other injured witnesses, when he arrived at the village along with P.W. 89. Wound certificate issued to P.W. 4 shows that he was brought in a police van to the hospital. Therefore the claim of P.W. 4 as if he had gone on his own to the hospital in a van and he was not aware if other injured persons were with him cannot but be suppression of material facts. In one or other of the trips which the van driven by P.W. 72 made, P.W. 4 must have been obviously taken to the Government hospital, Sankarankoil. When specifically confronted, he has deposed that in the van, he noticed the driver, but he did not see other persons. He was not aware to the village to which the other occupants of the van belonged to. He did not enquire them of the injuries sustained by them. He did not inform them either about the death of the deceased or his assailants. He claims to have told the medical officer at Sankarankoil details about the occurrence. Contrary to his claim, P.W. 77 has stated, that the injured persons did not tell him the specific individuals, who had attacked them, but informed him, that a mob had attacked them. He is further

specific that P.W. 4 told him that he was attacked by a mob and did not choose to mention any name of any persons as his assailant. P.W. 4 was examined only six days later by P.W. 89 at Palayamkottai Government Hospital. If P.W. 89 had become aware, that P.W. 4 was an ocular witness, he would not have delayed his examination by six days though he was fully aware that P.W. 4 was an inpatient in the Government hospital, Palayamkottai. In Ex. P. 33, the wound certificate issued to P.W. 4, no mention has been made that his assailant was either known or unknown. P.W. 4 claims to have proceeded to his garden land along with his father D. 2, after taking their morning meal at 6 a.m. Admittedly he was residing along with his father. Thereafter on their way back home his father D. 2 had met with his death. Therefore there was no possibility of D. 2 having taken any meal subsequent to 6 a.m. in the morning. P.W. 77, Dr. Karunakaran, who conducted autopsy on the dead body of D. 2, found that the stomach contained three ounces of Cholachoru. He has further offered his opinion, that D. 2 must have taken his last meal within half an hour prior to his death. It, therefore stands to reason, that P.W. 4 would not have had his last meal with his father at 6 a.m. or in any event his father must have had his meal shortly prior to his death which P.W. 4 could not have been unaware, if he was throughout with his father, commencing from 6 a.m. in the morning, till his death. This is one another indication, that in all probability P.W. 4 had not witnessed the attack on his father. From Ex. P. 70, post-mortem certificate relating to D. 2, we find as many as 9 injuries found on him. P.W. 4 if he had been present at the time of occurrence, would have been in a position to account for all the injuries found on the victim. If the acquittal of the other accused excludes them from this attack, this will be one more lacuna in the evidence of P.W. 4. This aspect though vehemently argued, we do not want to take it as a vital infirmity for it is easily possible to visualise, that an eye witness may not be in a position to account for each and every injury inflicted on the victim by several accused surrounding the fallen down deceased. This we mention in passing, because the defence Counsel harped on this aspect. This infirmity cannot therefore enure in favour of the appellants. P.W. 4 has also not admittedly stated during investigation that he proceeded up to Madhapatti road and then took a van to the hospital. We have already noticed that P.W. 4 has not been mentioned either as a person who had seen D. 2 dead first, or alive last. His name does not

find a place in the inquest report as one of the ocular witnesses. Though he has mentioned the names of Muthipandi and Paramasiva Thevar as assailants of his father D. 2, he had not identified them in Court. The argument of the learned defence counsel, that in all possibility, P.W. 4 must have given a complaint earlier to Ex. P. 1, cannot easily be rejected as one without merit. No more need be said about the evidence of P.W. 4, which even remotely does not inspire confidence. If the evidence of P.Ws. 3 and 4 has to be discredited, A. 2 and A. 3 who have been convicted for the murder of D. 1 and D. 2, will have to be necessarily exonerated. The other accused who have been convicted with the aid of Section 149, IPC for the murder of these two deceased will also have to be necessarily acquitted.

87. P.W. 5 and P.W. 6 are the witnesses who speak about the murder of D. 3. A. 12 and A. 13 have been convicted by the trial Court in relation to this murder, while A. 14 and A. 15 were acquitted. P.W. 5 Sorimuthu is the son of D. 3 while the other eye witness P.W. 6 Kovilpillai is the brother's son of the same deceased. According to P.W. 5, he along with his father D. 3 and cousin P.W. 6, were as their garden land situated 2 furlongs away from the village, when they heard hue and cry from the village apart from witnessing flames. Flames noticed impelled all the three of them to rush towards their village. They then noticed A. 12 to A. 15 armed with aruvals in the process of chasing them. As they were running, A. 12 obstructed D. 3 and cut on his neck with an aruval. On receiving the cut inflicted by A. 12, D. 3 fell down. The fallen down deceased was cut by A. 13, on his face. Thereafter A. 14 and A. 15 indiscriminately cut his father (D. 3). When he and P.W. 6 shouted, they were also chased, but they managed to escape. An hour later, they returned to the venue and were in tears. At or about 3.30 p.m. P.W. 89 arrived at the scene. When D. 3 breathed his last, he was wearing M.O. 2 black bordered Dhoti. Contrary to the evidence of P.W. 5, P.W. 89 has stated that no record has been made in the inquest report Ex. P. 87 of the availability of any cloth on the dead body. Even the place where the dead body was found has not been recorded in Ex. P. 87. Though P.W. 5 has deposed that indiscriminate cuts were inflicted on the fallen down deceased, by A. 14 and A. 15, only 2 injuries were noticed on the dead body by medical officer P.W. 76, who conducted autopsy. One injury incised and gaping was found on the right infra orbital region while another similar wound was found on the front of the neck below the thyroid

cartilage. The evidence of P.W. 5 as though he had witnessed indiscriminate cutting by several accused on D. 3, therefore loses significance, and a natural suspicion looms large if he could have been present at all at the scene, to have witnessed the murderous attack on his father. He was examined between 7 and 8 p.m. on the occurrence evening by P.W. 89. Till he was examined by P.W. 89, neither he nor P.W. 6 informed anyone else including his co-villagers, about how his father had met with his death. P.W. 5 asserts that he noticed at 3-30 p.m. P.W. 89 at the venue, where his father had been murdered in the company of P.Ws. 1 and 2. In spite of his having seen the investigating officer, even at 3-30 p.m., he did not choose to inform him about his having witnessed the attack on his father in the company of P.W. 6, till very late in the evening. This conduct also pre-supposes, that he could not have been an ocular witness. P.W. 5 has asserted that during investigation he told P.W. 89 that he and P.W. 6 were the two persons who last saw his father alive. This affirmation by P.W. 5 is not supported by the entries in Ex. P. 87, inquest report prepared in relation to D. 3. P.W. 89 has asserted that information recorded in columns 3 and 4 of Ex. P. 87 was based on the material furnished by P.Ws. 5 and 6. In Columns 9 and 15, names of A. 14 and A. 15 have not been mentioned. Those columns do not even contain any entry that Shanmugayya Thevar (A. 12) cut D. 3. Further it is the categorical admission of P.W. 89 that P.Ws. 5 and 6 had not told him during investigation that Shanmugayya Thevar (A. 12) cut D. 3. In columns 9 and 15 of Ex. P. 87 the entry is that other Thevars had attacked D. 3 with aruvals and sticks. Who were 'the other Thevars' who had cut and bear D. 3 was not discovered during investigation. In columns 3 and 4 of Ex. P. 87 Agni wife of D. 3 and Muthiah son of D. 3 have been mentioned as 'witnesses' who had seen D. 3 'alive last' and 'dead first' in point of time. If that be so Agni and Muthiah must have been ocular witnesses. The prosecution did not choose to put them in the witness-box. It is the specific admission of P.W. 5, that he and his father went over to their land, without taking food and in the usual course, his mother Agni would serve food for them at 10 a.m., in their land. However, on the fateful morning his mother did not fetch them food. He saw his mother last when he left along with his father, in the morning to his land, and thereafter he met her over again only on the next evening. When P.W. 89 arrived at the scene village, his mother was not available. In this context,

if we peruse the evidence of P.W. 76, the medical officer who conducted autopsy on D. 3, we find that 3 ounces of partly digested food particles were found in the stomach of the corpse. P.W. 76 has further clarified, that D. 3 could have died, within one hour after taking his meals or in any event within 2 hours after taking his meals. The evidence of P.W. 5 rules out the possibility of the deceased having taken food till he died. That it could not be so, and that medical evidence will have some relevance, is clear from the fact of mention made in Ex. P. 87 that Agni, wife of the deceased and Muthiah son of the deceased were those who had seen the victim 'last alive' and dead primarily. Logically it stands to reason that an usual, Agni, wife of D. 3 had taken food to the garden land and D. 3 had also consumed it one or 2 hours prior to his death. P.Ws. 5 and 6 not having been mentioned as eye witnesses in the inquest report, certainly removes them from the pedestal of eye witnesses. Still more curious is the conduct of P.W. 5, who speaks of his having been present at the venue, where his father was done to death till the inquest was over. Till 3-30 p.m. none of the villagers came anywhere near them. Neither he nor P.W. 6 went into the village to tell anyone else including his kind about the death of his father. Even till 7-30 p.m. none of the villagers came anywhere near the scene of occurrence. Contrary to these statements, he claims to have known, even while he was near the corpse of his father about other deaths in the village and several houses having been set fire to. P.W. 5 has further stated, that P.W. 67 Shanmugavel who is an attester to the observation Mahazar Ex. P. 2, did not arrive there between 11 a.m. and 10 p.m. on the occurrence day. However, we find that Ex. P. 2 prepared at 3-30 p.m. by P.W. 89 at the scene bears the signature of P.W. 67. Either P.W. 5 was not available at the scene or the observation mahazar was prepared else-where. P.W. 5 is further certain that only four persons mentioned by him cut his father. He was not aware as to how many cuts A. 14 had inflicted. It may be 2 or 3 cuts. A very strange answer was furnished by P.W. 5, that A. 15 might have cut his father. He admits of having told P.W. 89, that other members in the crowd also, cut his father indiscriminately. Though he has spoken in Court of having mentioned A. 12 (Shanmugha Thevar) belonging to Velliahgoundanpatti as the assailant of the deceased (D. 3), P.W. 89 is certain that the name of Shanmugha Thevar was not referred to by P.W. 5 during investigation. Similarly though P.W. 5 claims to have mentioned the name

of A. 14 during investigation, it is contradicted by P.W. 39. A. 12 was sought to be connected with an alias name Kasipandi to pin point him as the assailant of the deceased (D. 3). P.Ws. 5 and 6 have not spoken of A. 12 having an alias name Kasipandi. Further P.W. 89 Investigating officer has categorically asserted that during investigation at no point of time, any witness gave out the alias name of any of the accused. He did not even attempt to inquire the village Administration officer, and find out, if any of the accused had any alias name. If that be so, it will be unfair to hold that A. 12 whose name has not been mentioned as one of the assailants of D. 3, and further that he had an alias name, was also not sought to be brought out in evidence, was one of the assailants of the deceased. P.W. 89 has further deposed that at the venue where D. 3 was attacked, he did not find any damage to crops or evidence of movement of persons. This in a way would improbabilise D. 3 having been attacked at the spot where P.W. 5 claims that his father was done to death. This aspect is only by the way and has not been taken into consideration as a vital ground to distrust the prosecution case. P.W. 6, relation and companion of P.W. 5 has done no better in the witness-box, than P.W. 5. He has mentioned the names of Durairaj Thevar Shanmugha Thevar, Chinna Durai and Desikampatti Mangala as the four persons who had attacked D. 3. He was able to identify out of those four persons only A. 12 A. 14 and A. 15 in Court. He did not seek to identify A. 13. So it can safely be taken, that on the evidence of P.W. 6, A. 13 cannot be held to be one of assailants of D. 3. He has spoken of A. 12 (mentions the name of Shanmugha Thevar as Shanmughayya Thevar), having cut on the neck of D. 3, with an aruval. Thereafter Durai Raj not identified by him, cut on his face and then all the four accused indiscriminately inflicted cuts on the fallen down victim. We have already stated that P.W. 76 had found only two injuries on D. 3, and therefore indiscriminate cutting by 4 persons, apart from specific cutting by A. 12 and A. 13, to the knowledge of this witness, cannot be taken at its face value. He has asserted that he knew the name of A. 12 as Shanmughayya Thevar for a very long time and he has mentioned the name of A. 12 to the investigating Officer. Unfortunately for P.W. 6, P.W. 89 contradicts him and asserts that P.W. 6 had not told him during investigation that Shanmughayya Thevar cut D. 3. Contrary to P.W. 5, P.W. 6 has deposed that number of villagers came near the dead body of D. 3 and noticed his presence and that of P.W. 5, at

the said spot. Even then both of them did not even whisper as to how D. 3 was done to death. When policemen arrived at 3-30 p.m., they were near the corpse and even then they did not choose to inform the police officers about the assailants of D. 3. P.W. 6 had an apprehension that persons in his house might have been attacked and his house could also have been set fire to by the mob. In spite of it, he did not choose to proceed to his village, to find out if any vandalism had resulted in damage to his house. It was not as though his house was situated very far away, for on his admission in or about 5 minutes he could have gone to his house and returned, shortly thereafter. In spite of his awareness that a complaint must be lodged at the police station, he did not seek either to prefer a complaint by himself or advise anyone else to do so. It is rather curious that he saw houses burnt by fire only on the next day. If he had been present at the village, on the fateful day, he could not have missed his vital fact. P.W. 6 is very sure that on 11-6-1982, he did not meet P.Ws. 1 and 2 and Daweed. This is contradicted by P.W. 1. P.W. 1 affirms that he had seen P.W. 5 and P.W. 6 standing near the dead body of D. 3. If in fact P.W. 6 had been at the scene, he could not have missed P.W. 1 for admittedly P.W. 1 was one of the village leaders. P.W. 6 had deposed, that he met his wife and children late on that night. Neither he went in search of them earlier nor they attempted to trace him. Even after they met, they did not seek to find out from each other as to how they had escaped from the wrath of the mob. P.W. 6 has also stated that the wife of D. 3 Agni, was not available near the corpse till 10 p.m. This piece of evidence of P.W. 6 contradicts the entries found in Ex. P. 87. Less said about this witness, it will be better for the prosecution. By any standard, it will be impossible to accept the evidence of P.W. 6. If the evidence of P.Ws. 5 and 6 cannot be held to be credible A. 12 and A. 13 who have been convicted for the murder of D. 3 cannot but be exonerated. As already stated A. 12 has not been spoken to as one of the assailants during investigation and that he had an alias name too, has neither been spoken to by the witnesses nor was discerned during investigation. Of the two witnesses, P.W. 6 was not able even to identify A. 13. A. 12 and A. 13 will certainly be entitled to an acquittal.

88. P.Ws. 7 and 8 have been examined to connect A. 17 with the murder of D. 4. A. 16, who was charged for having abetted this murder was acquitted by the trial

Judge. D. 4 is paternal uncle to P.W. 7. D. 4 is also the father of Daweed (not examined) who has accompanied P.Ws. 1 and 2, to the police station to prefer Ex. P. 1. Daweed is also an attester to Ex. P. 1. P.W. 8 is the sister of Balaiah who as stated earlier is the son-in-law of D. 2. Obviously both of them are interested witnesses. P.W. 7, though mentions the names of A. 16, A. 17, A. 18, A. 20 and A. 21, has identified A. 16 to A. 18 alone in Court. On the abetment of A. 16, P.W. 7 would have it, that A. 17 beat on the head of D. 4 forcibly with an iron rod. A. 21 cut two goats owned by Thirumalai. A. 20 also helped A. 21 in cutting the goats. He ran away from the scene and was examined by the Investigating officer at 8 p.m. on that night. He has admitted that if he had been confined to his house at or about the time of the occurrence, he could not have seen the attack on D. 4. He is certain that he was present at his residence when he heard the hue and cry. It was such cry which prompted him to get out of his residence. D. 4 was attacked near Madasamivillai. He was standing near the village tank while the attack took place. The tank was situated a furlong away from the village and if one stands near the tank, he will not be in a position to see all that happens inside the village. He returned home only at 6 p.m. He went over to the scene only because he was sent for by the police. It has not been explained how P.W. 7 was traced as an eye witness. P.W. 7 also admits that till he was examined by the investigating officer, he did not inform anyone else of his having witnessed the attack on D. 4. He did not seek to inform the brothers of D. 4 about the incident he had witnessed leading to the unfortunate demise of D. 4. He is categorical that he did not see Annathai and Muthiah throughout 11-6-1982. Even on the next day, he did not see them. Annathai is none other than the daughter of D. 4 and Muthiah is the elder brother D. 4. P.W. 7 claims to have casually mentioned to Annathai, the next morning at 8 a.m. as to manner in which he father was done to death. In spite of such specific evidence of P.W. 7, Ex. P. 88 inquest report prepared in relation to D. 4, Annathai and Muthiah have been shown as persons 'who had last seen the deceased alive and first seen the deceased dead, in columns 3 and 4. P.W. 89 claims to have obtained such information from P.W. 7 and P.W. 63. If P.W. 7 had been present at the scene of occurrence, he could not have missed Annathai and Muthiah, who are the persons mentioned in Ex. P. 88, the inquest report. It is therefore possible to conclude that P.W. 7 could not have been an ocular witness. It is strange that

inspite of entry in Ex. P. 88, P.W. 7 claims that on the next morning Muthiah and Annathai were in great distress for not having been present in the village on the earlier day. If in fact both of them were absent from the village, they could not have been mentioned as the persons who had seen the deceased last or first when alive or dead. P.W. 7 was a witness in a prosecution instituted by his father-in-law against A. 3, A. 4, A. 6, A. 17 and A. 23. They were all acquitted after trial. There was another prosecution in which A. 4, A. 6, A. 17 and A. 27 were prosecuted. He was not the first information in that crime, but he was aware of such prosecution. Even in that case, the concerned accused were acquitted. Though P.W. 7 claims that he pointed out to P.W. 89 the Inspector of police, the place where the goats were cut, P.W. 89 is certain that there was no trace of goats having been cut, at that venue. He claims to have told P.W. 89 that someone might have removed the dead goats. Even if it be so, P.W. 89 would have noticed some symptoms of an offence having taken place at that point, which as fairly stated by him, was not available. Again P.W. 7 asserts that D. 4 did not have any burn injuries on him. Skin was not peeling off from his body. Divergent to the version of P.W. 7, P.W. 76 Dr. Abdul Razack who conducted autopsy on the corpse of D. 4, has noticed peeling of skin coticle present on anterior abdominal wall 7' x 6' and blebs present all over the abdomen. P.W. 76 has also stated that second degree burns can cause blisters. The injuries noticed by P.W. 76, renders it possible to hold, that in all probability D. 4 came by those injuries, when huts were sought to be destroyed by fire and not in the manner spoken to by P.W. 7. It is of course true, that there was swelling on the left side temporal region with blood discharge from nostrils and ear and there was further fracture of the temporal bone. When truth is sought to be bartered away, merely because one injury spoken to by P.W. 7 gets medical corroboration, it cannot immediately be held, that P.W. 7 is the personification of truth. P.W. 7 has specifically stated that till he left the scene, he did not notice any flames in the vicinity of dead body of D. 4. P.W. 7 has also spoken of A. 17, A. 18 and A. 21 having inflicted injure with sticks on the fallen down D. 4. The medical evidence discloses, only one injury, which can be connected with beating by a blunt weapon. Even that assertion of P.W. 7, puts a blot on the credibility of his version. Further P.W. 7 was not examined during inquest, but was examined only on the next day. He is not only an interested and enimical witness, but also a

witness of untruth. We reject his evidence without any hesitation whatever.

89. P.W. 8 is the other eye witness who was also injured in the very same occurrence. She was not able to identify her own assailant but seeks to connect A. 16 and A. 17 in the attack of D. 4. She sought to implicate A. 16 to A. 21 but all the other accused except A. 17 were acquitted. She has deposed that A. 17 beat on the head of D. 4 forcibly with an iron rod. She has claimed that P.W. 7 was also running along with her. She was in the company of her husband and she advised him to run away to save himself though as a pregnant woman, she was unable to move fast. It is unfortunate that her husband was so chivalrous, that he ran away leaving his wife, to be attacked. She has also spoken having lost Rs. 500/- in cash due to theft committed by the mob, which also relieved her of her ear and nose ornaments. After spending about an hour and a half at the scene, she returned home. She was shocked to find her house totally damaged. She claims to have seen two goats having been cut while she was running away from her house. She has also admitted, that if she had been present in her house, she could not have witnessed the cutting of goats. P.W. 39 when questioned, has deposed, that P.W. 8 told him during investigation that while she was at her residence A. 16 to A. 18 in a group of 200 persons armed with deadly weapons, proceeded east of her house northwards. She has further told the investigating officer that when she was inside the house after having closed the doors, she had witnessed beating on the head of D. 4 and goats having been cut. On her own admission, if she had been inside her house, she could not have witnessed either of the incidents. She was examined only on the next day at the hospital. It does not stand to reason, that she left her house after seeing the crowd, if as claimed by her, 20 persons had chased her from her house up to Cholakollai, she could not have escaped with such a minor injury, when the wrath of the offenders was of such a great magnitude. She claims, that P.Ws. 1 and 2 did not see her in the village with injuries. This part of her evidence is contradicted by P.W. 1. If as claimed by her, she had not seen or stated to P.W. 1 about theft of her gold ornaments, it is not known how P.W. 1 was able to specifically state in Ex. P. 1 that she was attacked on her head with an aruval in her chollakkolai, while she was grazing sheep. She has admitted that there was a case against her brother of having attacked A. 2 in which her brother was sentenced to pay in fine of Rs. 500/-. Though she denies in the witness-box

that she had told during investigation that P.Ws. 1 and 2 had joined the harijans and muslims in a procession to Kadayanallur, P.W. 89 has stated that she has so spoken during investigation. Though she admits having gone to the hospital in a van, she disclaims knowledge of presence of policemen in the said van. We have already noticed that the policemen, who had arrived at the village were despatching injured witnesses, in groups, to the hospital and this denial of P.W. 8 though innocuous by itself, lends validity to the defence argument that she was not inclined to speak the whole truth. She has also admitted, that none in the village can disobey the advice or command of P.Ws. 1 to 3. She claims to have been beaten on her left shoulder also, with a stick by one in the mob, apart from beating sustained with back portion of an aruval. Medical officer had not noticed any injury on her shoulder. It is possible to conclude that to fit in with the contents of Ex. P. 1, probably at the instance of P.W. 1, P.W. 8 has chosen to speak of her having run away from her house after seeing a mob, to be present as an eye witness, to the murderous assault on D. 4. To recapitulate Ex. P. 1 states, the place of hurt caused to P.W. 8 as Cholakkollai and to lend assurance to the said statement, P.W. 8 has chosen to shift the venue, contrary to her statement during investigation. We have already noticed, that witnesses who had seen D. 4 alive last and dead first in point of time, were Annathai and Muthiah. Such entry in Ex. P. 88 was also not based on the version of P.W. 8, but on the versions of P.W. 7 and P.W. 63. P.W. 63 is none other than the husband of P.W. 8. The infirmities are so serious in nature, that it will not be possible to accept the versions of P.Ws. 7 and 8 as trustworthy. If P.W. 8 was running away to save herself and was unable to identify her own assailant, it appears illogical that even while running she was able to witness the attack on D. 4 and was also in a position to identify his assailant.

90. P.W. 9 Velusamy is the only witness who connects A. 23 with the murder of D. 5. P.W. 9 is a nephew of D. 5 and husband of P.W. 28 Vellaiammal. P.W. 9 claims to have been in his hand situated west of Ayyapuram at or about 12 noon on the occurrence day. He noticed his village in flames and cries of woe. He ran towards his village. He then noticed A. 23, Velusami, Muthupandi another Velusami and Shanmugha Thevar armed with sticks and aruvals in the riotous mob, in his village. Though he has mentioned the names of A. 20, A. 25 and A. 26. He had identified only A. 23 and none-else. He then noticed in the ridge of Muthiah, D. 5

holding a lamb. He witnessed A. 23 inflicting a cut with an aruval on the head of D. 5. D. 5 fell down. The group of accused named by him, chased him. He managed to escape and returned to the scene an hour later. The place where D. 5 was but was near the vaikal of Muthiah. On his return, he noticed Chinamadan son of D. 5 weeping near his injured mother. D. 5 then had life. He and Chinnamadan lifted D. 5 and placed her in the cattle shed of Chinnamadan. Only in the cattle shed D. 5 died. He was examined during inquest. We have varying versions as to the place at which D. 5 breathed her last. PW. 1, the first informant has deposed, that when he and PW. 2 saw Madathi (D. 5), her corpse was in the vaikal. One or two persons were standing near her. He was not able to remember whether Chinnamadan or PW. 9 were those persons. PW. 2 has affirmed that when he saw D. 5 in the vaikkal, there was no life in her. Only some children were near her and no adult member was present near the dead body. A little later in his evidence PW. 2 has against confirmed, that when he went near her, D. 5 was lingering for life and in his presence, she died. At that time he neither saw Chinnamadan nor PW. 9. He did not see both of them on that day. PW. 80 Muthumani, then police constable, Sankarankoil police station claims to have seen the dead body of D. 5 in the village chavadi. PW 67 Shanmughavel, Mahazar witness had also noticed the corpse of D. 5 in the vaikkal. We therefore have 3 various as to where exactly the dead body of D. 5 was found namely near (a) Vaikkal (b) cattle shed of Chinnamadan and (c) Oor Chavadi. PW. 89 the investigating officer, has recovered blood stained earth under Ex. P. 7, to fix the venue of the attack on D. 5. Blood stained earth in terms of Ex. P. 7 was seized from the vaikal situated adjacent to the land of Muthiah, northwards of the village. Ex. P. 7 was prepared on 12-6-1982 at 9 a.m. The place from which blood stained earth was seized, was vaikal adjacent to Muthia's land. Ofcourse Ex. P. 7 will fix the place of attack on D. 5 as vaikal. PW. 39 is certain that he had not recorded statements of witnesses during inquest prior to preparing Ex. P. 2. However, Ex. P. 2 observation mahazar which was prepared even at 3.30 p.m. on 11-6-1982 shows that the dead body of D. 5 was seen in the cattle shed of Chellappa kept on a plank. The contents of the observation mahazar may also probabalise the case of PW. 9, of having removed D. 5 who had life lingering in her from the scene of attack to the cattle shed. But what is intriguing in Ex. P. 2, is the mention of the place of death of D. 5 as vaikkal.

We have already extracted that place of death of D. 5 has not been spoken to consistently. An observation mahazar is intended to note all that had been observed and nothing more. This observation mahazar obviously must have come into existence very much later and therefore an attempt has been made to compromise divergent versions regarding the place where the dead body of D. 5 was found. Probably that is the reason why Ex. P. 2 had not been despatched to the Magistrate till about January 1983, though some of the other documents and reached the Magistrate earlier. P.W. 89 in his substantive evidence has stated that he seized blood stained earth from the place where the dead body of D. 5 was found. On this admission, it is apparent that Ex. P. 7 and Ex. P. 2 contradict each other. This substantive evidence of PW 89 would tend to show that dead body was still available when blood stained earth was seized. PW 9 is very sure that when D. 5 died, he and Chinnamadan were present and Chellappa (not examined) was not available. He has further affirmed, that while D, 5 breathed her last, Chellappa was not present. Contrary to the evidence of PW. 9, Ex. P. 89 the inquest report portrays a different picture. In column 3 of Ex. P. 89 the entry is that Chellappa and Chinnamadan had seen D. 5 last alive and dead first. Ex. P. 89 admittedly does not mention anywhere about the presence of PW 9. Ex. P. 89 is also silent as to where exactly the dead body of D. 5 was found and the venue at which inquest was conducted. Ex. P. 89 while probalising Chinnamadan and Chellappa as ocular witnesses, excludes the possibility of PW. 9 having been an eye witness. Chinnamadan and Chellappa have not been examined. We have already stated, that though PW. 9 claims to have been present at the cattle shed when D. 5 expired, PW. 2 is equally categorical, that he saw D. 5 dying near the vaikal. PW. 9 has deposed, that he had gone over to his cotton field on the occurrence day. He has further affirmed that in his cotton field his father also was present. It was later that his father Subban (since deceased) has sustained injuries of which he was not aware. He returned from his cotton field around 12 noon, but did not choose to go in search of his father. The defence suggestion to PW. 9 was, that he was not available in the village, on the occurrence day. PW. 9 has categorically stated, that for about 3 days, inclusive of the day of occurrence, he was not on tour in any other village. However, his wife, PW. 28 has deposed that she was not aware as to the village to which her husband had gone on the occurrence day. PW. 28 does

not stop there, but claims to have gone alone to the cotton field at or about 8 a.m. on that unfortunate day. She neither met her husband or his father in the cotton field till she returned home. She did not even meet PW. 8 or PW. 19 who were also injured in this occurrence. On the evidence of PW. 28, the presence of PW. 9 in this cotton field cannot be readily accepted. He is specific that he did not inform any one of his having witnessed the attack on D. 5, till he was examined by the investigating officer at 10 p.m. He was informed that police had arrived at 3.30 p.m. at Ayyapuram. He was then present in his house. He did not choose to meet the police officers and further claims, that it did not strike him to inform the policemen of his having seen, commission of murder of D. 5. He had become aware of the death of the other four persons only at 9 p.m. that night. Enmity between Velliahgoundanpatti Thevars and them, has been admitted by this witness. The conduct of PW. 9 cannot be easily explained away for, he was the Oor Natanmai. The evidence of PW. 9 does not commend itself for acceptance.

91. It is thus apparent, on the basis of our discussion, that the eye witness account in respect of there five murders, is totally unacceptable. If so, it will be very difficult to connect the appellants with this grave crime.

92. Yet another infirmity strikes the eye. When the corpses were sent for postmortem, PW. 89 is certain that he forwarded separate requisitions to the medical officer for the conduct of post-mortem. Such requisitions contained details as to the identity of the assailants of the respective deceased. Contrary to the assertion of PW. 89, PW. 76 Dr. Razack has stated when cross-examined, that in relation to conduct of postmortem on D. 3, D. 4 and D. 5, there was no requisition. Ex. P. 57, 53 and 55 contained only history of the case. When we peruse Ex. P. 57, P. 53 and P. 55, they only show the history of the case as well as reference to the accused involved in the attack of the deceased. No request has been in these three documents for the conduct of autopsy. If these exhibits were requisitions as well, which included history of the crime, there would practically be no difficulty, in accepting the prosecution case, to connect one or other of accused mentioned in these documents as the probable assailants of the various deceased. The hitch is really in the admission of PW. 89, that separate requisitions were sent, containing the details of the assailants of the deceased. None production such separate

requisitions, permits an inference being drawn, that probably if those documents had been produced, they may show a different set of assailants of the deceased. This lacuna also, enures in favour of the appellants. It is further admitted that no separate requisition was sent for the conduct of postmortem on D. 1 and D. 2. It is again surprising, that though commission of arson has been mentioned in Ex. P. 1, PW. 86 did not choose to include Sections 435 and 436 Indian Penal Code, while registering the crime. When cross-examined, PW. 86 had admitted, that it was not done so, but had no reason to offer for such a lapse. This is yet another aspect which casts a shadow of doubt, if Ex. P. 1 was really the basis for registration of a crime, in connection with this grave occurrence.

93. P.W. 89 has admitted, that the general diary entries in respect of the occurrences, which had taken place two days prior to the occurrence, were relevant, but still he neither chose to seize them or keep them in safe custody, for the purpose of this case. When the general diary was summoned, a reply was received under Ex. D. 3, that not only the general diary of Puliangudi police station dated 1-6-1982 to 26-6-1982 was not traceable but also medical memo book of the same police station between 11-6-1982 and 15-6-1982 was not traceable. The reply also shows, that those documents might have been sent for destruction of records as per Police Standing Order 227. The callousness in investigation is therefore apparent. P.W. 89 has also deposed that on 25-6-1982, when he chose to plead for further remand of the accused, he has stated, that further eye witnesses were available, and they were being searched for, since they had fled away from the village. Though he has stated so, in the extension of remand requisitions, he is certain, that after 25-6-1982, he did not examine any one else.

94. Let us see, why the prosecution had picked out, these appellants to be fastened with specific overtacts to connect them with one or other of the murders. We have already noticed from the evidence of P.W. 1 that even two years prior to occurrence there was enmity between Thevars of Vellagoundanpatti and Harijans of their village, and more specifically with reference to A. 2 to A. 09, A. 12, A. 13, A. 17, A. 18, A. 23 and A. 27. Further P.W. 2 has spoken about Baliah, son-in-law of D. 2 having complained against Thevars of Velliagoundanpatti and a counter case against him. A. 3 and A. 4 were also implicated earlier in a case of mischief

by Ayyapuram villagers. P.W. 7 has deposed about prior prosecutions instituted by them against A. 3, A. 4, A. 6, A. 8, A. 17, A. 23 and A. 27. Baliah also gave a complaint against A. 18. Overt acts have been thus sought to be attributed to these accused, who are mostly, the appellants. Further intrinsic material is available in evidence to show that P.Ws. 3 to 7 and P.W. 9 were active participants in the deliberations of the Sahottara Samathuva Sangam. These enimical persons have been chosen as eye witnesses. Further P.W. 8 has stated during investigation that P.Ws. 1 and 2 were briskly connected with the muslims, in sangam activities. Those are the two, who have set the law in motion.

95. A shrewd and impartial investigator would have collected as much information as possible, as soon as he had reached the scene, and put forth before Court the material so collected, without exaggeration or embellishment, to facilitate the Court to arrive at logical conclusions, on such materials. Since the rioting mob was so huge, if only facts had been placed in the same form as was available from commencement of investigation, it would have at least been possible, to fix some of the identifiable accused as participants in the unlawful assembly. Even that minimum inference has been rendered impossible. Crime committed of course is very grave. But without clinching proof, on surmises, conjectures and suspicion, appellants cannot be convicted for any of the offences, with which they were charged. There can be no second opinion that the appellants are entitled to an acquittal. We set aside the convictions and sentences imposed on the appellants by the trial Judge and acquit them of all the charges.

96. This appeal is allowed.

97. Appeal allowed.