

Arjunan and Others Etc. Vs. the State

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Court : Chennai

Decided On : Apr-21-1992

Reported in : 1993CriLJ3113

Judge : K.M. Natarajan and;S. Marimuthu, JJ.

Appeal No. : Criminal Appeal Nos. 739 and 702 of 1985

Appellant : Arjunan and Others Etc.

Respondent : The State

Advocate for Def. : G.M. Syed Fasiuddin, Addl. Public Prosecutor

Advocate for Pet/Ap. : N.T. Vanamamalai, Sr. Counsel for ;V. Gopinath and another

Judgement :

Maruthamuthu, J.

1. Appellants 1 to 4 in C.A. No. 739 of 1985 who were A-1 to A-4 in Sessions Case No. 15 of 1985 on the file of the Sessions Judge, North Arcot at Vellore, stood charged for six offences, all relating to one and the same occurrence that took place on 12-8-1984 at about 5.00 a.m. at Poongulam Mudakku near the hill of Dongumalai, within the limits of Veppankuppam police station. The appellants may be referred to as accused arrayed in the trial Court.

The first charge was under section 302 IPC against A-1 on the allegation that he committed the murder of one Murugesan by cutting him with a vettukathi.

The second charge was under section 302 read with Section 149 IPC against A-2 to A-4 on the allegation that they, along with A-1 and Prakasam, the juvenile accused in Sessions Case No. 16 of 1985, were members of an unlawful assembly with the common object of causing the death of Murugesan and that in furtherance thereof, A-1 committed the murder of Murugesan.

The third charge was under section 302 IPC against A-1 on the allegation that he committed the murder of Sampath by cutting him with a vettukathi.

The fourth charge was against A-2 to A-4 under section 302 read with Section 149 IPC on the allegation that they, along with A-1 and the juvenile accused Prakasam, were members of unlawful assembly with the common object of causing the death of Sampath and that in furtherance thereof, A-1 committed the murder of Sampath.

The fifth charge was against A-1 under section 302 IPC on the allegation that he committed the murder of Sampooranam ammala by cutting her with vettukathi.

The sixth and the last charge was against A-2 to A-4 under section 302 read with Section 149, IPC on the allegation that they along with A-1 and the juvenile accused Prakasam were members of an unlawful assembly with the common object of causing the death of Sampooranam and that in furtherance thereof, A-1 committed her murder.

The accused pleaded not guilty to the charges.

(ii) The appellant in C.A. No. 702 of 1985 who was the juvenile accused in Sessions Case No. 16 of 1985 on the file the same Court, stood charged for three offences, all relating to the same occurrence mentioned above.

All the three charges were under section 302 read with Section 149 IPC on the allegation that he and A-1 to A-4 in Sessions Case No. 15 of 1985 were members of an unlawful assembly having a common object of committing the murder of

Murugesan, Sampath and Sampooram. The juvenile accused pleaded not guilty to the three charges.

(iii) The accused in Sessions Case No. 15 of 1985 and the juvenile accused in Sessions Case No. 16 of 1985 were tried separately and separate judgment were rendered by the learned Sessions Judge on 26-8-1985. All the accused-1 to 4 in Sessions Case No. 15 of 1985 were found guilty of at the six charges and were convicted thereunder. A-1 was sentenced to imprisonment for life (three counts) under Sections 302 IPC. A-2 to A-4 were each sentenced to imprisonment for life (three counts) for the offences under section 302 read with Section 149, IPC. The sentences were ordered to run concurrently.

(vi) The juvenile was found guilty of all the three charges and convicted thereunder. As regards the sentence, the Sessions Judge directed the juvenile accused to be detained in the Senior Approved School, Chengalapattu, for a period of four years on each of the three counts and the same were ordered to run concurrently.

(v) Since both the appeals relate to one and the same occurrence and the accused in Sessions Case No. 15 of 1985 and the juvenile accused in Session Case No. 16 of 1985 are said to have been involved in the said occurrence, both the appeals may be disposed of together by a common judgment.

2. This is a case in which three persons, namely, Murugesan, Sampath and Sampooram are alleged to have been murdered in one and the same occurrence. The prosecution case, briefly stated, is as follows :

(i) Pattammal (P.W. 1) is the wife of the deceased Murugesu Gounder. Chinnapappa (P.W. 2) and the deceased Sampooram are the married daughters of deceased Murugesu Gounder and P.W. 1. The deceased Sampath is the husband of deceased Sampooram. Murugan (P.W. 8) is the husband of P.W. 2. Sivanandam (P.W. 3) is the son of deceased Murugesu Gounder. All of them were residing at Dongumalai. A-4 is the elder sister of P.W. 1. A-2 is the husband of A-4, A-1 is the son of A-2 and A-4. A-3 is the son-in-law of A-2 and A-4 and brother-in-law of A-1. The juvenile accused Prakasam concerned in Sessions Case No. 16 of 1985 is the son of Chockalingam, younger brother of A-4 and P.W. 1. A-3 and

the juvenile accused belong to respectively Surakottai and Toppur villages. Deceased Murugesan owns lands in the foot on Dongumalai and he was living with his wife (P.W. 1), daughter (P.W. 2), son (P.W. 3) and son-in-law (P.W. 8). Deceased Sampornam was married to deceased Sampath in another village and had come to the house of deceased Murugesan and P.W. 1 for confinement. Deceased Sampath also went there to see the deceased Sampornam and stayed there. The house and the land of A-2 are situate in the west of the land of deceased Murugesan. There is road leading to the hill in the south of Murugesan's land and further south of the said road is the sugarcane garden of Ponnusami. The houses of Vellachi (P.W. 4) and Raman (P.W. 5) are situate in the west of the said sugarcane garden. there was enmity between deceased Murugesan and his family and A-2's family for a long time over the land and also in respect of baling out water from the well. There were civil and criminal litigations between both sides.

(ii) On 11-8-1984, at about 4.00 p.m. deceased Murugesan and P.W. 8 were cutting the ridges in their land while P.Ws. 1 and 2 and deceased Sampornam were engaging themselves in clearing the stones and the shrubs. A-1, A-2 and A-4 objected to the cutting of the ridge by the deceased Murugesan and P.Ws. 1 and 2. At that time, A-2 and A-4 had beaten the deceased Murugesan. P.W. 8, the son-in-law of deceased Murugesan, took objection to the conduct of A-2 and A-4 in attacking deceased Murugesan. Questioning whether P.W. 8 was coming in support of deceased Murugesan, A-1 cut P.W. 8 on his left hand with a Vettukathi. P.W. 8 and Murugesan went to Veppankulam police station where P.W. 8 gave a complaint (Ex. P-8). P.W. 8 was sent to the Government Hospital, Vellore, for treatment. Deceased Murugesan returned to his house on that night.

(iii) On the next day (12-8-1984), at about 5-00 a.m. deceased Murugesan, deceased Sampath, P.Ws. 1 and 2 left their houses to see P.W. 8 by taking food packets with them. Deceased Murugesan and deceased Sampath were pushing a bicycle each one behind the other while P.Ws. 1 and 2 followed them by walk. P.W. 3 and deceased Sampornam also followed them to see them off. When all of them were going near the house of A-2, the juvenile accused and A-2 came there and caught hold of the deceased. A-1 cut the deceased Murugesan with a vettukathi on his head, neck, shoulder, leg and right cheek. Deceased Murugesan

fell down. Deceased Sampath who tried to run away and escape was caught hold of by A-3 and A-4, A-1 cut the deceased Sampath with his vettukathi on his neck. On seeing that her husband Sampath was cut, the deceased Sampooram rushed there rising alarm. A-2 saying where Sampooram was coming, caught hold of the tuft of Sampooram. A-1 cut the deceased Sampooram on her neck with vettukathi P.Ws. 1 to 3 witnessed the occurrence. They concealed themselves in the sugarcane garden of Munusami out of fear and for safety. P.W. 4 saw that A-1 had cut the deceased Murugesan, deceased Sampath and deceased Sampooram one after the other. P.Ws. 1 to 3 came to the scene and found all the three, namely, Murugesan, Sampath and Sampooram dead.

(iv) Some time later, P.W. 1 proceeded to Veppankuppam police station and gave Ex. P-1 to Pattabiraman (P.W. 13), the sub-Inspector of Police at 10.00 a.m. P.W. 13 registered a case in Crime No. 81 of 1984 under sections 147, 148, 341 and 302 IPC, prepared the printed first information report (Ex. P-20) and sent Exs. P-1 and P-20 to the Judicial Second Class Magistrate, Ambur and copies of Ex. P-20 to higher officials. Ilangovan (P.W. 14), the Inspector of police, Ambur Circle took up investigation of the case at 10-30 a.m. He inspected the scene of occurrence at 12-00 noon in the presence of Babu Dakshinamurthi (P.W. 7) and another and prepared observation mahazar (Ex. P-2) and a rough sketch (Ex. P-21). He seized the bicycle (M.O. 1), dhoti (M.O. 3) and bloodstained earth (M.O. 11) under a mahazar (Ex. P-3) and another bicycle (M.O. 2) and bloodstained earth (M.O. 12) under a mahazar (Ex. P-4). He also seized the cut thali string with the gold thali, gundus and nanals (M.O. 13 series), bloodstained earth (M.O. 14) and the broken glass bangles (M.O. 15 series) under a mahazar (Ex. P-5). He conducted inquest on the dead body of Murugesan between 2-00 p.m. and 3-30 p.m., prepared an inquest report (Ex. P-22). He entrusted the body of deceased Murugesan to police constable Tiruvengadam with a requisition (Ex. P-9) for taking it for postmortem examination at the Government Hospital, Vellore. He conducted inquest on the body of deceased Sampath between 3-30 p.m. and 4-30 p.m. and prepared an inquest report (Ex. P-23) and entrusted the body to the police constable Ramulu with a requisition (Ex. P-11) for post-mortem examination in the Government Hospital, Vellore. Between 4-30 p.m. and 5-30 p.m., he conducted inquest on the body of deceased Sampooram and prepared an inquest report (Ex. P-24). Then,

he entrusted the body of deceased Sampooram with police constable Kesavan (P.W. 11) with a requisition (Ex. P-13) for taking it for post-mortem examination at the Government Hospital, Vellore. He examined P.Ws. 1 to 3 during the inquest over the dead body of Murugesan, Sampath and P.Ws. 4 to 6 during the inquest over the body of Sampooram.

(v) At 9.00 p.m. when Babu Dakshinamurthi (P.W. 7), the Village Administrative Officer of Vennanthangal was at Odukathur village chavadi along with one Baigesan, village Administrative Officer of Gururajapalayam, A-1 appeared before him and made a statement (Ex. P-6) confessing that he had committed the murder of his junior paternal uncle, Murugesan, Murugesan's son-in-law Sampath, and his wife Sampooram (daughter of Murugesan) by cutting them with vettukathi, while A-2, A-4, the juvenile accused and A-3 held them, to the satisfaction of his wrath and produced the vettukathi (M.O. 10) before P.W. 7 and a bedsheet (M.O. 16). P.W. 7 took A-1 and Ex. P-6 and M.Os. 10 and 16 to Veppankuppam police station at 10-30 p.m. and produced them. P.W. 14 seized them under a mahazar (Ex. P-7) and arrested A-1.

(vi) On 13-8-1984 at 11-15 a.m. Dr. Kulasekaran (P.W. 9) conducted autopsy on the dead body of deceased Murugesan and found the following injuries :

External injuries :

(1) A curved incised wound 20 cm x 10 cm x 12 cm, on the left side of neck 7 cm. below the angle of left mandible extending from inner end of left clavicle to the right side of the back of neck.

(2) Another curved incised wound 12 cm x 5 cm x 2.5 cm. on the left side of the neck 2.5 cm. below the above wound.

On exploration of the above wounds (a) deeper structures such as muscles, vessels and nerves on the left side of the neck were found to be severed; (b) the intervertebral disc space of C4 and C5 was found to be separated with severing of spring cord at that level.

(3) Another incised wound 6 cm x 1 cm x 1 cm on the parietal region just above the left ear.

(4) Another incised wound 7 cm x 1 cm x 1 cm on the left parietal region 4 cm just above the previous wound;

(5) Another incised wound 4 cm x 1.5 cm x 4.5 cm. on the lateral aspect of the middle of the left arm with fracture of the shaft of left humerus.

(6) Another incised wound 2.5 cm x 1.5 cm. x 1.5 cm. On the lateral aspect of left thigh with a linear abrasion on 10 cm in length.

(7) One more incised wound 2.5 cm x 1 cm x 1 cm on the right side of cheek.

Internal examination :

Abdomen - Stomach : empty. Mucosa : Pale. Liver - 1000 gms. Pale. Spleen : 180 gms. pale. Kidneys : 180 gms. each pale. Bladder : empty. Thorax (right) lung - 500 gms. (Left) lung : 460 gms both pale. Heart : 200 gms. Chamber empty. Skull : Brain - 1200 gms. pale.

P.W. 9 opined that injuries Nos. 1 and 2 were necessarily fatal and that all the external injuries might have been caused by cutting with a weapon like M.O. 10 and death must have been instantaneous. He also expressed the opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries to the great vessels of the neck and spinal cord 30 to 36 hours prior to post-mortem examination. Ex. P-10 is the post-mortem certificate issued by P.W. 9

(vii) At 12-40 p.m. P.W. 9 conducted autopsy on the body of deceased Sampath and found the following injuries :

External injuries :

(1) A curved incised wound 15 cm x 3 cm x 6 cm. on the left side of neck 4 cm. below the left ear exposing the cervical spines.

(2) Another curved incised wound 15 cm x 2 cm x 5 cm. on the left side just 8 cm. below the above wound extending on to the front of right side of the neck exposing the cervical spines.

(3) Another curved incised wound 10 cm x 2 cm x 3 cm. just 1 cm. below and adjoining the above wound in front of the neck extending the left side of neck.

On exploration of the above wounds, the vital structures such as great vessels, muscles and nerves on the left side of the neck and the trachea and oesophagus were found to be served.

(4) Another incised wound 5 cm x 2 cm x 3 cm on the left forearm with fracture of distal 1/3 of radius.

(5) Another incised wound 7 cm x 1.5 cm x 1.5 cm placed obliquely on the inner side of right leg just above the ankle with serving of tendo achilis.

(6) Another incised wound 8 cm x 2 cm x 2 cm on the outer side of left arm about 10 cm below the shoulder exposing the left humerus.

(7) Another obliquely incised wound 10 cm x 15 cm. x 5 cm on the right side of the scalp 3 cm above the right ear with fracture of right parietal bone and exposing the brain.

(8) A linear abrasion measuring 15 cm on the right side of the neck.

Internal examination :

Abdomen : Stomach empty. Mucosa : pale. Liver - 1300 gms. pale. Spleen : 200 gms. pale. Kidneys 190 gms. each - pale. Bladder : empty. Thorax right lung : 500 gms. pale. Left lung - 475 gms. pale. Heart : 225 gms. Chambers empty. Skull : Brain 1200 gms. pale.

P.W. 9 was of the opinion that the injuries Nos. 1 to 3 and 7 were necessarily fatal and that death must have been instantaneous and that all the injuries might have been caused by a vettukathi like M.O. 10. He also opined that the deceased might have died of shock and haemorrhage due to the injuries to the great vessels of the

neck and brain 30 to 36 hours prior to post-mortem. Ex. P-12 is the post-mortem certificate issued by P.W. 9.

(viii) Dr. Sabita Loganathan (P.W. 10) conducted autopsy on the body of the deceased Sampooram at 12-00 noon on 13-8-1984 and found the following injuries :

External injuries :

(1) A curved lacerated wound extending from 1' below the right angle of the mouth running across the right mandible and back of the neck to the left side of the neck 10' x 3' x 3' in size. On deep dissection of the above wound (a) deeper structures such as muscles and vessels were found severed; blood clots were seen; (b) mandible was found cut; (c) a transverse cut across the body of the C4 vertebra and vertebral column into two pieces.

(2) A curved lacerated wound extending from middle of the right shoulder to the upper 1/3rd of the right arm exposing the head of the right humerus 5' x 3' x 2 in size.

(3) A small lacerated wound measuring 1' x 1/2' x 1/2' below the lower lip on the right side.

(4) A lacerated wound 2' x 1 1/2' x 1' on the dorsal side of the right hand 1' above the wrist joint exposing the ulnar bone.

Hyoid bone, ribs skull bones and pelvic bones were in tact.

On internal examination, all the organs were found to be in normal position and to be pale. Stomach was empty.

P.W. 10 was of the opinion that injury No. 1 was necessarily fatal and death must have been instantaneous. The injury might have been caused by cutting with a vettukathi like M.O. 10. She also opined that the deceased would appear to have died of shock and haemorrhage due to the multiple injuries and injuries to spinal column about 30 to 36 hours prior to post-mortem. Ex. P-14 is the post-mortem certificate issued by P.W. 10. P.W. 11 seized the saree (M.O. 8), blouse (M.O. 9)

and thali string with thali gundus and nanals (M.O. 13 series) after the post-mortem examination and delivered them at the police station.

(ix) On 13-8-1984, P.W. 14 gave a requisition (Ex. P-15) to the Magistrate to send M.Os. 3 to 7 and 9 to 15 to the Forensic Laboratory for analysis. Accordingly, Thiru Sivagurunathan (P.W. 12), Head Clerk of the Court of the Judicial Second Class Magistrate, Ambur, forwarded the material objects with the covering letter (Ex. P-16) of the Magistrate to the Laboratory. After analysis, the reports of the Chemical Examiner (Exs. P-17 and P-18) and the report of the Serologist (Ex. P-19) were received by the Magistrate. On 15-8-1984, P.W. 14 arrested A-2, A-3 and A-4 and the juvenile accused and sent them for remand. On completion of investigation, he filed the final report in the committal Court against the four accused concerned in C.A. No. 739 of 1985 and the juvenile accused concerned in C.A. No. 702 of 1985 on 30-9-1984.

3. The learned Sessions Judge, on committal, split up the case against the four accused and the juvenile accused and numbered them as Sessions Case No. 15 of 1985 and 16 of 1985 respectively and tried the same separately.

4. When the accused concerned in Sessions Case No. 15 of 1985 (C.A. No. 739 of 1985) and the juvenile accused concerned in Sessions Case No. 16 of 1985 (C.A. No. 702 of 1985) were examined under S. 313, Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence, their replies were either 'No' or 'do not know'. A-1 stated that he was taken from his house by police at 11-00 a.m. on Sunday and the police obtained his signature in a paper after assaulting him. Some contradictions in the evidence of P.Ws. 1 and 2 given in C.C. No. 146 of 1984 before the Judicial Second Class Magistrate, Ambur were marked as Exs. D-1 to D-4. No defence witness was examined on their side.

5. After considering the evidence, documents and circumstances, the learned Sessions Judge found the four accused guilty of all the offences charged and dealt with them as mentioned earlier. He also found the juvenile accused guilty of all the three charges and dealt with him as mentioned earlier. The four accused concerned in Sessions Case No. 15 of 1985 have preferred Criminal Appeal No. 739 of 1985 while the juvenile accused concerned in Sessions Case No. 16 of

1985 has preferred Criminal Appeal No. 702 of 1985 challenging the verdicts of the learned Sessions Judge.

6. Mr. N. T. Vanamamalai, the learned Senior Counsel appearing for the accused and the juvenile accused contended that this is a case in which the prosecution has fabricated the first information report on which no reliance should have been placed by the learned Sessions Judge and that P.Ws. 1 to 3 could not be eye-witnesses to the alleged occurrence as their presence at the scene is doubtful. He submitted that P.Ws. 1 and 2 had accompanied P.W. 8 to the Hospital at Vellore on the day prior to occurrence and therefore, they could not have been present at about 5-00 a.m. on the next morning when the occurrence is said to have taken place. He stated that Exs. D-1 and D-4 will support the contention that P.Ws. 1 and 2 would not have been present at the scene at the time of occurrence. He challenged the presence of P.W. 3 by saying that P.W. 1 herself has stated in Ex. P-1 that she and P.W. 2 alone left the house while P.W. 3 was remaining in the house. He contended that there are material contradictions in the evidence of P.Ws. 1 to 3 which cannot be brushed aside as minor discrepancies not affecting the truth of the case. He added that the lacerated injuries on the deceased could be caused only by a blunt weapon and not by a sharp-edged weapon like M.O. 10 and that there is contradiction between the medical evidence and the eye-witness account. He pointed out that the prosecution has made improvement and violent departure and deviation by shifting the place of occurrence from Poongulam Mudakku to the front of the house of the accused to suit the convenience of the prosecution and to show that other witnesses could have witnessed the occurrence. He disputed the evidence of P.Ws. 1 and 2 who have stated that A-2 and the juvenile accused held deceased Murugesan in embracing posture and A-3 and A-4 deceased held Sampath in the same posture when they were said to have been attacked by A-1 with vettukathi and stated that this is highly unnatural as the said accused also who are said to have held the deceased, must have sustained injuries. He contended that there was no motive on the part of the accused to attack the deceased and that there was no pre-plan for that purpose as A-2 to A-4 and the juvenile accused were unarmed at the time of the alleged occurrence. He pointed out that the extra-judicial confession alleged to have been made by A-1 to P.W. 7 is a fabrication on which no reliance should be placed. Another point

urged by the learned counsel was that the testimony of P.W. 5 who deposed to the occurrence, of course, attributing overt act to A-1 along in the matter of causing the death of the three deceased persons, should not be discarded by this Court, even though this witness has been treated as hostile during trial. He contended that there were no materials to frame a charge under S. 302 read with S. 149, IPC against A-2 to A-4 and the juvenile accused and that the convictions and sentences awarded on all the accused are not sustainable.

7. Mr. G. M. Syed Fasiuddin, the learned Additional Public Prosecutor resisted all the contentions raised on behalf of the accused and the juvenile accused and contended that P.Ws. 1 to 3 were actually present at the scene of occurrence and that the account given by them as eye-witnesses is not liable to be questioned on any ground. He submitted that P.W. 1 who had gone to Vellore to see P.W. 8 who was attacked and injured at the hands of the very same A-1, had returned to the village on the same night and that it was only on the following morning at about 5-00 a.m. when he along with deceased Murugesan, deceased Sampath and deceased Sampooram, P.Ws. 1 and 2 were proceeding along the road in front of the house of the accused, deceased Murugesan, deceased Sampath and deceased Sampooram were attacked and murdered. He stated that the evidence of P.Ws. 1 to 3 that A-2 and the juvenile accused held deceased Murugesan, that A-3 and A-4 held deceased Sampath and that A-2 held the tuft of deceased Sampooram and those three were cut by A-1 with vettukathi and murdered at the spot itself, is quite true. He disputed that there are material contradictions in the evidence of P.Ws. 1 to 3 with regard to the occurrence and contended that the presence of P.Ws. 1 to 3 at the time and place of occurrence cannot be questioned. He stated that the prosecution examined P.Ws. 4 to 6 as independent witnesses, but they had turned hostile to the prosecution and that consequently their evidence is not entitled to credence. In this context, the learned Additional Public Prosecutor contended that the evidence of P.Ws. 1 to 3 cannot be discarded on the ground that they are closely related to the deceased persons and interested in the prosecution. He submitted that the extra-judicial confession made by A-1 to P.W. 7 is true and must be taken into consideration along with other evidence and circumstances. He finally submitted that there is no ground whatsoever to take a different view and disturb the finding of the learned Sessions

Judge recorded against A-1 to A-4 and the juvenile accused. We heard the submissions of both sides on their respective contentions.

8. There is no dispute on the point that three persons, namely, Murugesan, Sampath and Sampooram, were murdered at Dongumalai Adivaram at about 5-00 a.m. on 12-8-1984. The nature of the injuries and the seats of the injuries inflicted on them will speak for themselves. P.Ws. 9 who conducted postmortem examination on the bodies of deceased Murugesan and deceased Sampath, and P.W. 10 who conducted postmortem examination on the body of the deceased Sampooram have duly noted the injuries on the deceased. The injuries on Murugesan and Sampath have been mainly on their necks and heads and they have been proved fatal. Death must have been instantaneous to those two deceased, according to P.W. 9. So far as Sampooram is concerned, the serious injuries were affecting her mouth, neck, vertebra and spinal column and she has also died at the spot. Even the defence version is not anything different. Suggestion on behalf of the accused to P.W. 1 is that the villagers of Servadi who were indulging in looting sandalwood trees from the Government forest, were having grouse against deceased Murugesan for the reason that he was acting as a spy to the Forest Department officials and that they had murdered Murugesan, Sampath and Sampooram near Poongulam Modakku in the early hours and that the dead bodies were removed from there and left in the road opposite to the house of the accused. How far this plea of the accused relating to this attack by Servadi village people is true and whether the accused were the assailants can be seen later. Here, the accused would admit that all the three persons were murdered.

9. The accused cannot also dispute the fact that the occurrence in which those three persons were murdered, took place only in the road opposite to the house of the accused. Ex. P-2, the observation mahazar prepared by P.W. 14 soon after the occurrence, mentions that the house of the accused is situate north of the road, that the corpse of Murugesan was lying at a distance of 10' south of that house, that the corpse of Sampooram was lying 10' east of the corpse of Murugesan and that the corpse of Sampath was lying further 5' east of the corpse of Sampooram, all with injuries on vital parts of their bodies. The house of the

deceased persons is said to situate at a distance of 200 feet east of the place where the corpse of Sampath was lying. P.W. 14 has also noted the bloodstains where the corpses were lying and has seized the bloodstained earth from those three places. He has also seized the bicycles possessed by Murugesan and Sampath at the time of occurrence. The mahazar (Ex. P. 3) relates to the seizure of bloodstained earth (M.O. 11) and bicycle (M.O. 1) from near the corpse of Murugesan. Ex. P-4, another mahazar relates to the seizure of bloodstained earth (M.O. 12) and bicycle (M.O. 2) from near the corpse of Sampath. Ex. P-5 is the mahazar for the seizure of the bloodstained earth (M.O. 14) from near the corpse of Sampooram. The rough sketch (Ex. P-21) drawn by P.W. 14 also indicates that all the three dead bodies were lying not far off from each other, but opposite to the house of the accused in the road. It is immaterial if P.W. 14 has not noted in Ex. P-1 and Ex. P-21 about the presence of the bicycles (M.Os. 1 and 2) at the scene. Exs. P-3 and P-4 will satisfy the purpose.

10. The accused cannot seek to contend that the place of occurrence is only Poongulam Modakku, and not the road opposite to accused's house. If Ex. P-1, the complaint given by P.W. 1 after occurrence would refer to the place of occurrence near Poongulam Modakku, it must be a mistake. The dead bodies were not lying at Poongulam Modakku and no bloodstains were found there. All the three dead bodies were found lying only in the road opposite to the house of the accused and bloodstains also have been found and recovered by P.W. 14 only from that place. The bicycles (M.Os. 1 and 2) used by the deceased Murugesan and Sampath were also found in the same place where the dead bodies were lying. It is quite far-fetched to contend that all the three persons were attacked and murdered at Poongulam Modakku and that their dead bodies were lifted and thrown in the road opposite to the house of the accused. If a murder is committed stealthily and discretely, the culprit will try to throw the dead body in a place where there may not be movement of people and one cannot easily and suddenly see it. Here, to say that the murders of all the three persons were committed in a place (Poongulam Modakku) which is one furlong away from the house of the accused and where no houses are situate, and that all the three dead bodies were carried from there and left in the road opposite to the house of the accused, is not at all believable. The defence would make this vain attempt as such, taking advantage

of Ex. P-1 which says that the deceased were attacked when they were going near Poongulam Modakku.

11. The prosecution case is that there was dispute between both the parties over the taking of water for irrigation from the common well for the lands of both the parties situate adjoining to each other and that this gave rise to criminal cases between them in the Judicial Magistrate's Court, Ambur. It is also alleged that on 11-8-1984 at about 4-00 p.m., the day prior to the occurrence, dispute arose between the parties over the cutting of the ridges by the deceased Murugesan and his son-in-law (P.W. 8) in the land of Murugesan. According to the prosecution, A-2 and A-4 objected to the cutting of the ridges by deceased Murugesan and P.W. 8 and assaulted Murugesan and that at that time when P.W. 8 intervened and asked A-2 and A-4 not to assault deceased Murugesan, A-1 cut P.W. 8 on his left arm with a vettukathi and that as the result, P.W. 8 sustained injury and gave a complaint (Ex. P-8) at Veppankuppam police station. It is added that P.W. 8 was sent to Vellore Government Hospital for treatment of the injury after a case was registered against A-1, A-2 and A-4. It is further stated by the prosecution that the deceased Murugesan had returned to the village at 12-00 midnight from Vellore Government Hospital after leaving P.W. 8 there and that on the following early morning at about 5-00 a.m. when he, deceased Sampath, P.W. 1 and deceased Sampooram, followed by P.Ws. 2 and 3, were proceeding along the road opposite to the house of the accused in order to catch a bus at a distance of 3/4 mile away from there and then go to Vellore Government Hospital to see P.W. 8, A-1 to A-4 and the juvenile accused suddenly emerged from the side of the accused's house and made the attack on the deceased Murugesan, Sampath and Sampooram. It is stated that deceased Murugesan and deceased Sampath were taking a bicycle each while others were walking behind them and that A-2 and the juvenile accused caught hold of deceased Murugesan and that A-1 cut the deceased Murugesan on his head, neck and other parts of the body with Vettukathi. As regards deceased Sampath, A-3 and A-4 are said to have caught hold of him and A-1 is said to have cut deceased Sampath with vettukathi on his neck and head. A-2 is said to have caught hold of the tuft of deceased Sampooram and A-1 is said to have cut her on her mouth, neck, vertebra, and spinal column with the same vettukathi. All the three, namely, Murugesan,

Sampath and Sampooram are said to have died at the spot itself as the result of the said attack by A-1 and the catching hold of each of the deceased by others to facilitate A-1 to attack them. Here, there is no dispute on the point that there was enmity between both parties prior to the occurrence which took place on 12-8-1984. In fact, there is admission on the side of the accused also that there was no cordial relationship between both sides till prior to the occurrence. Further, the truth of Ex. P-8 given P.W. 8 at Veppankuppam police station on the day prior to the occurrence has not been disputed on the side of the accused. In the circumstance, it is quite possible to presume that there was motive for the accused and the juvenile accused to attack the deceased Murugesan and his kith and kin on 12-8-1984. It may be stated here that the prosecution has proved the element of notice which becomes the prelude to the occurrence in question.

12. On the occurrence in which Murugesan, Sampath and Sampooram were murdered, the prosecution has placed the evidence of P.Ws. 1, 2 and 3 who are admittedly close relations of the deceased. P.W. 1 is the wife of deceased Murugesan, the mother-in-law of deceased Sampath and mother of deceased Sampooram. P.W. 2 is the daughter of deceased Murugesan and sister of Sampooram and sister-in-law of Sampath. P.W. 3 is the son of deceased Murugesan, brother of Sampooram and brother-in-law of Sampath and he is said to be aged 14 years. The prosecution has also examined P.Ws. 4, 5 and 6 who are said to reside near the scene of occurrence. But, they have been treated by the prosecution as hostile witnesses, probably because they have not supported their alleged S. 161 statement made to P.W. 14 during investigation. P.Ws. 4 and 6 have denied having seen the occurrence. P.W. 5 would confine his evidence only to A-1 as the assailant who attacked and killed all the three persons and he would not seek to say anything about A-2 to A-4 and the juvenile accused who are said to have facilitated A-1 to cut the three deceased persons by catching hold of the deceased. As such, the prosecution would rest content with the evidence of P.Ws. 1 to 3 alone with regard to the occurrence proper.

13. A careful scrutiny of the evidence of these three witnesses reveals that they are consistent and firm in saying that A-1 cut the deceased Murugesan when Murugesan was caught hold of by A-2 and the juvenile accused, that A-1 cut the

deceased Sampath when A-3 and A-4 caught hold of Sampath and that A-1 cut the deceased Sampath when the tuft of Sampath was caught hold of by A-2. Their evidence shows that when Murugesan, Sampath, P.W. 1, P.W. 2, Sampath and P.W. 3 were proceeding along the road opposite to the house of the accused, all the above five accused persons emerged from the side of the accused's house and made the attack. When deceased Sampath raised alarm that the deceased Murugesan was attacked by A-1 after he was held by A-2 and the juvenile accused, A-3 and A-4 caught hold of Sampath and A-1 cut him with vettukathi. Similarly, when the deceased Sampath shouted that her husband deceased Sampath was being attacked after the deceased Murugesan was attacked by A-1 with vettukathi, A-2 caught hold of the tuft of Sampath saying where she was running and that at that time A-1 dealt the cut on Sampath with vettukathi. The circumstance and the sequence in which Murugesan, Sampath and Sampath were attacked have been consistently stated by P.Ws. 1 to 3 without any variation whatsoever.

14. The overt acts of each of the five accused persons including the juvenile accused are clearly spoken by P.Ws. 1 to 3. We find no merit in the contention of the accused that the overt acts attributed to A-2 to A-4 and the juvenile accused are concoctions and that they have been invented by the prosecution with a view to implicate those accused also along with A-1 in this case. P.W. 1 has clearly stated that A-2 and the juvenile accused stood respectively in the front and back side of Murugesan and held him by his hands together when A-1 dealt the cuts on Murugesan. P.W. 1 says that similarly A-3 and A-4 caught hold of the hands of deceased Sampath together when A-1 dealt the cuts on Sampath. As regards Sampath, the uniform evidence of P.Ws. 1 to 3 is that A-2 held her by her tuft when A-1 dealt the cuts on her. There is absolutely no contradiction in the evidence of P.Ws. 1 to 3 with regard to the manner in which A-2 to A-4 and the juvenile accused caught hold of Murugesan, Sampath and Sampath when A-1 dealt the cuts on those three deceased with the vettukathi. The testimony of P.Ws. 2 and 3 is also to the same effect. In fact, no question has been put to P.Ws. 2 and 3 in cross-examination as to what was the position in which A-2 was standing when A-1 dealt the cuts on Sampath. Inasmuch as the occurrence has taken place just opposite to the house of the accused, it is but natural and true that A-2

to A-4 and the juvenile accused also have joined A-1 in their common intention to attack the deceased persons and kill them. The deceased party and the accused party are not living far off from each other as the distance between the residence of these parties is about 200 feet only. Further, it was on the previous evening that deceased Murugesan and P.W. 8 are said to have been beaten by A-2 and A-4 and A-1 is said to have cut P.W. 8 with vettukathi on his left hand over the ridge dispute and P.W. 8 accompanied by the deceased Murugesan, has gone to the police station and given Ex. P-8, the complaint against A-2, A-4 and A-1. On coming to know that the deceased and his relations were taking action against the accused party, the feelings of accused party might have gone more bitter against the deceased party and they must have made the attack on the deceased party in the early morning on 12-8-1984.

15. The circumstance in which the deceased and other were proceeding, is also convincing as the evidence is that the deceased Murugesan deceased Sampath, P.W. 2, deceased Sampornam wanted to go to Vellore Hospital to see P.W. 8 and that when they were proceeding opposite to the house of the accused, the deceased Murugesan, deceased Sampath and deceased Sampornam were attacked. It cannot be said that the deceased party was proceeding there with a view to attack the accused party. Evidently, the deceased party was unarmed at the time of occurrence and there have been two bicycles, each taken by the deceased Murugesan and deceased Sampath. This shows the bona fide of their purpose to proceed along the road opposite to the house of the accused.

16. It cannot be contended on behalf of the accused that the catching hold of deceased Murugesan, deceased Sampath and deceased Sampornam by other accused at the time of the attack by A-1 with vettukathi is not true. According to the learned counsel for the accused, A-2 to A-4 and the juvenile accused also might have sustained some injuries on their persons if they had caught hold of any one of the three deceased persons at the time of attack by A-1 with vettukathi and that as none of those accused has sustained injuries, the allegation that they caught hold of the three deceased persons to enable A-1 to attack them, should not be believed. In this regard, the learned counsel for the accused cited the decisions in *B. N. Singh v. State of Gujarat* : 1990 CriLJ1601 and *Bejoy Singh v.*

State of W.B., AIR 1990 SC 814 : 1990 Cri LJ 901. But, we find on a perusal of those decisions that the observations therein are not applicable to the present case in which the facts and evidence are different. In B. N. Singh v. State of Gujarat, : 1990 CriLJ1601 there were six accused persons and of them, three accused persons are said to have held the deceased by his both hands and three other accused dealt blows with knives all over the body, one of them on the back and the others in the front. The doctor has found eleven injuries all over the body, namely, on both the sides of chest, clavicular region, hypochondrial region, abdomen, thighs, scapula and paravertebral region. The Supreme Court has observed in that circumstance that it would not have been possible for the three accused persons to cause injuries without causing hurt to the other accused persons so held, and disbelieved the evidence with regard to the holding of the deceased in that respect. In Bejoy Singh v. State of W.B., AIR 1990 SC 814 : 1990 Cri LJ 901 was a case in which one Bejoy Singh and two unknown assailants cut the deceased all over the body with weapons while three other accused persons held the deceased in such a way that he could not move. The injuries sustained by the deceased were particularly on the hands and also on other parts of the body and, therefore, the allegation that deceased was caught hold of by three persons would suffer from a serious infirmity.

17. If we look to the present case, we will find that the fatal and serious injuries inflicted by A-1 on the deceased Murugesan were mainly on his neck, head and vertebra. Apart from those injuries, one incised injury on the middle of the left arm and another injury on the left thigh are seen. So also, of the eight injuries sustained by deceased Sampath, four injuries are found on the neck and head portion. Of the remaining four injuries, two injuries are on the left forearm, one incised injury is on the right leg above the ankle and one is a linear abrasion on the back. Coming to deceased Sampooram, P.W. 10 has noted four injuries and of them, one injury described as curved lacerated wound is on the right ankle of the mouth running across the right mandible and back of neck with severing of muscles and vessels and the cutting of the mandible and the vertebral column. Another curved lacerated injury is found below the lower lip. One curved lacerated wound is found on the upper 1/3rd of the right arm. One lacerated wound is found on the dorsal side of the right hand above the wrist joint. Since the evidence is that

A-2 and the juvenile accused caught hold of deceased Murugesan and A-3 and A-4 caught hold of deceased Sampath by catching hold of the hands of the victims, and A-2 caught hold of deceased Sampooram by her tuft and the fatal and serious injuries resulting in the death of the victims are found on the neck, head, face, mouth and vertebra portions, there would have been no impediment or disability for A-1 to cut the victims with his vettukathi. He might have made the attack on each of the deceased persons straight against the neck and head portions of each and after inflicting injuries on those portions, the cut injuries on the arms and legs might have been inflicted by A-1. Further, when the deceased persons were being held by the other accused persons as mentioned above, A-1 who was bent upon cutting them might have been careful in dealing the cuts on the deceased persons and he would not have caused any injury on the other accused persons who were holding the deceased. Nor the accused persons who were holding the deceased persons would have been negligent so as to allow the cuts dealt by A-1 to fall on them A-1 dealt the cuts on the deceased persons. In fact, the accused persons who caught hold of the deceased would have been careful enough to see that they did not suffer any cuts even accidentally at the hands of A-1. Anyway, the question whether A-1 had dealt the cuts on the deceased persons with his vettukathi would greatly depend upon other factors, namely, the position in which the deceased persons were remaining and the position in which A-1 remained and dealt the cuts with his weapon and the manner in which A-1 had dealt the cuts. It is, therefore, not open to the accused at present to question the evidence of P.Ws. 1 to 3 and contend that A-2 to A-4 and the juvenile accused did not catch hold of the three deceased persons.

18. Further, there is one significant question that will arise in this context. The question is whether A-1 alone, even if armed with vettukathi, would have been able to attack three persons and kill them on the spot unless he had assistance of other accused persons, namely, A-2 to A-4 and the juvenile accused, as mentioned above. If A-1 was alone, even arming himself with a vettukathi, there were two male persons, namely, deceased Murugesan and deceased Sampath and a woman Sampooram. They might have done something to assault A-1 in retaliation or to resist the attack made on them and that is that event, A-1 might have sustained some injury on his person. Strangely enough, we find in the instant

case that A-1 has not sustained any injury on his person. So the natural and necessary presumption will be that all the accused persons including the juvenile accused who are closely related to each other, should have come together to make the attack on the deceased persons and that in that context, A-2 to A-4 and the juvenile accused might have caught hold of one or the other deceased persons to facilitate A-1 attack them with vettukathi. It may also be remembered in this context that A-2 and A-4 were the persons who had assaulted deceased Murugesan and P.W. 8 and A-1 had cut P.W. 8 with a kathi on the previous day for which P.W. 8 has launched a complaint (Ex. P-8) at the police station against A-1, A-2 and A-4. Therefore, A-1, A-2 and A-4 must have had the grudge to attack the deceased persons as stated by the prosecution.

19. The presence of P.Ws. 1 to 3 at the time and place of occurrence is not liable to be questioned at all by the accused. It might be that P.W. 1 and P.W. 2 are respectively the mother-in-law and wife of P.W. 8 and that P.W. 3 is the brother-in-law of P.W. 8 who was injured in the incident that took place on the previous afternoon and who was sent by police to Vellore Government Hospital for treatment. But, it does not mean that P.Ws. 1 and 2 stayed in Vellore Government Hospital after P.W. 8 was sent there. The categorical evidence of P.Ws. 1 to 3 and 8 is that the deceased Murugesan alone accompanied P.W. 8 when he went to the police station to give Ex. P-8 and from there to Vellore Government Hospital and that even the deceased Murugesan returned to the scene village at about 12-00 midnight and informed of P.W. 8 to P.Ws. 1 and 2, the deceased Sampath and the deceased Sampooram, and that on the following early morning at about 5-00 a.m. when the deceased Murugesan, deceased Sampath, P.W. 1 and P.W. 2 proceeded along the road opposite to the house of the accused in order to go to Vellore Government Hospital accompanied by Sampooram and P.W. 3, the deceased Murugesan, deceased Sampath and deceased Sampooram were attacked and murdered. It is stated that P.W. 3 and the deceased Sampooram wanted to accompany others up to the bus stop which is 3/4 mile away, to see them off and come back to the village. The fact that P.Ws. 1 and 2, apart from the deceased Murugesan, deceased Sampath and deceased Sampooram and P.W. 3 went along the road in front of the house of the accused (the scene of occurrence) has been definitely mentioned by P.W. 1 in Ex. P-1 itself at the

earliest after occurrence.

20. P.Ws. 1, 2 and 8 would strongly deny that P.Ws. 1 and 2 stayed in Vellore on the night prior to the occurrence and that they were taken by Veppankuppam police from Vellore. To suggest that P.Ws. 1 and 2 were taken by police from Vellore after the occurrence conveys no sense. It would have been something if it was suggested that some relations of P.Ws. 1 and 2 went to Vellore, informed of the murders of the three persons and brought them to the scene village. That is not the suggestion here. It is also not probable that two ladies (P.Ws. 1 and 2) had stayed in Vellore when P.W. 8 was taken for treatment. P.W. 8 would assert that the deceased Murugesan alone accompanied him to Vellore Government Hospital from Veppankuppam police station and that even he left Vellore at about 7-30 p.m. for the scene village saying that he would come back to Vellore to see P.W. 8 on the next morning. If P.Ws. 1 and 2 had stayed in Vellore to look after P.W. 8 who was being admitted as inpatient in the Government Hospital there, the medical officer concerned in that hospital might have been summoned and examined on the side of the accused. The records in the hospital also may give an indication whether P.Ws. 1 and 2 accompanied P.W. 8 if it was really so. But, no records as such have been produced on the side of the accused. Even otherwise, P.W. 8 did not sustain any injury endangering his life as he sustained only a cut injury on his left hand. The accused seem to rest content with the bare suggestion that P.Ws. 1 and 2 stayed in Vellore on the prior night and that they were not present at the scene to witness the occurrence. This is not enough.

21. Because the dresses of P.Ws. 1 and 2 were not seized and produced as bloodstained, it cannot be argued that they were not present at the scene. They might have wept touching or not touching the bodies of the deceased persons at the scene and there might or might not have been bloodstains in their dresses. But that is not a conclusive circumstance to decide their presence at the time and place of occurrence. Certainly, P.Ws. 1 and 2 who must have been grief-stricken and terribly shocked over the murder of three persons together in their family and the sight of three dead bodies lying at the scene. It cannot be said that P.Ws. 1 and 2 did not weep in the circumstance. Even if they were sent for by the police from Vellore to the scene of occurrence as suggested on the side of the accused,

P.Ws. 1 and 2 might have wept and given vent to their feelings. So also it has to be pointed out that the absence of bloodstains in the bicycles (M.Os. 1 and 2) taken by the deceased Murugesan and deceased Sampath at the place of occurrence will not help the defence anyway. It is the definite version of the prosecution that the deceased Murugesan and Sampath were taking bicycles each along the scene of occurrence and that at that time they and Sampooram were attacked by the accused party. This fact is noted by P.W. 1 in Ex. P-1 also. The bicycles (M.Os. 1 and 2) have been seized by P.W. 14 from the place of occurrence. It is not the case of the prosecution that the deceased Murugesan and deceased Sampath were attacked by A-1 with vettukathi while they were being seated on the bicycle so as to give room for the contention that there must have been bloodstains in the bicycle. The evidence shows that as the deceased Murugesan was caught hold of by A-2 and the juvenile accused and was cut by A-1 with vettukathi, Sampath, his son-in-law rushed towards him leaving his bicycle and raising alarm and that at that time, Sampath was attacked by A-1. Therefore, there was no chance of bloodstains being present on the bicycles. The failure of P.W. 14 to seize the food parcels with the bag (container) is of little consequence. That the deceased were carrying food prepared in their house early morning when they were on their way to Vellore Government Hospital is found to be true even otherwise.

22. The learned Senior Counsel for the accused would seek to rely on certain alleged contradictions (Exs. D-1 to D-4) in the evidence of P.Ws. 1 and 2 given by them in C.C. No. 146 of 1984 in the Court of the Judicial Second Class Magistrate, Ambur in support of the contention that P.Ws. 1 and 2 were not present at the time and place of occurrence and that therefore, they cannot be characterised as ocular witnesses. That was a case in which A-2 and A-4 were alleged to have assaulted the deceased Murugesan, and A-1 was alleged to have cut P.W. 8 with a vettukathi over the ridge dispute in the prior afternoon and for which P.W. 8 made the complaint (Ex. P-8) at the police station. On a careful consideration, we find that Exs. D-1 to D-4 are not helpful to the accused. They are extracted hereunder and their English translation is given within brackets. Exs. D-1 and D-2 which occur in the evidence of P.W. 1 are :

Ex. D-1

(We came to the police station on that day evening at 4-00 p.m.) Ex. D-2

(On the next day morning, at about 10-00 a.m. police brought and examined us). Exs. D-3 and D-4 occurring in the evidence of P.W. 2 are :

Ex. D-3

(In connection with this case, police examined me at 10-00 a.m. on Sunday morning. I came to the police station to complain about the murder case. When I came there at 8-00 a.m., I was detained there till 10-00 a.m. and examined by police) Ex. D-4 (We had come to the police station.)

23. If Exs. D-1 to D-4 are interpreted carefully, they will not indicate that P.Ws. 1 and 2 were staying at Vellore on 11-8-1984 (Saturday) night and 12-8-1984 (Sunday) morning and that they were taken by police from there to police station or the scene of occurrence at 8-00 a.m. after the occurrence in question on 12-8-1984. P.W. 1 has just deposed in that case that she and others went to police station on the evening prior to the present occurrence of murders and that they were taken to police station on the next morning at 10-00 a.m. and examined. It might be that P.Ws. 1 and others were at police station when P.W. 8 went there and gave the complaint (Ex. P-8) and that they had returned to their residence after P.W. 8 was sent to Vellore Government Hospital. If P.W. 1 would make a statement (Ex. D-2) that she and others were taken to police station on the next morning at 10-00 a.m., she might have referred to the examination by the investigation agency of the case of murders as by that time, the occurrence of Murugan, Sampath and Sampooram being murdered, had taken place. (This occurrence of murders has taken place even at about 5-00 a.m. on Sunday 12-8-1984). Further, P.W. 1 has not stated that she and others were taken from Vellore on the next day (12-8-1984) and examined at 10-00 a.m. at the police station.

24. So far as P.W. 2's statement is concerned, it does not admit any ambiguity. She would refer to both the case of assault caused by A-1 on 11-9-1984 and the case of murders which took place on the next early morning (12-8-1984). She

might have been examined by the investigating agency on 12-8-1984 morning in connection with both the cases as she is said to have gone to the police station at 8-00 a.m. on 12-8-1984 to report of the occurrence of murders. She is categoric in her deposition that she went to the police station to report of the occurrence of murders and that she was detained there till 10-00 a.m. and examined. Her statement shows that she had proceeded from her residence in the scene village to the police station on 12-8-1984 at 8-00 a.m. and not from Vellore. Further, she would single out herself and state that she went to the police station. She does not include P.W. 2. She is not speaking in plural. Though P.W. 1 would speak in plural as if she and some others went to the police station on 11-8-1984 evening and 12-8-1984 morning, it is not clear who else are referred to by P.W. 1 in her statements (Exs. D-1 and D-2). In the circumstances, it is impossible to accept the plea of the accused that P.Ws. 1 and 2 were not at the scene of occurrence and were not eye-witnesses and that they were elsewhere. At the same time, we have to see the evidence of P.Ws. 1 and 2 and 3 who would affirm that P.Ws. 1 and 2 were at the time and place of occurrence and witnessed the occurrence. We find that the presence of not only P.Ws. 1 and 2, but also P.W. 3, the young boy aged about 14, at the time and place of occurrence is quite true and that they are ocular witnesses.

25. P.Ws. 1 to 3 have stated that as they witnessed the occurrence of A-1 attacking Murugesan, Sampath and Sampooram, one after the other as and when each of those three deceased persons was caught hold of by other accused, entertained fear that they might also be attacked and killed by A-1 and that therefore, they had gone into the sugarcane garden nearby, concealed themselves for some time and then came to the scene and saw that all the three whom A-1 attacked with vettukathi had died. The sugarcane garden is situate just south of the road and the scene of occurrence and it belongs to one Munusami. There could be nothing improbable if P.Ws. 1 to 3 withdrew themselves from the scene and hid themselves in the sugarcane garden. They have actually seen A-1 to attack Murugesan, Sampath and Sampooram, one after the other with his vettukathi as each of them was held by the other accused. Therefore, they might have been in the grip of fear of their lives also being lost at the hands of A-1, P.W. 1 is said to have remarked at the time of herself, P.W. 2 and P.W. 3 going to the

sugarcane garden, that A-1 would also take their lives if they would remain at the scene and that therefore they had better go into the sugarcane garden and conceal themselves. The Supreme Court has observed in *Narayan Singh v. State of M.P.*, : 1985 CriLJ1862 that it is not uncommon for persons when they see a ghastly and dastardly murder being committed in their presence that they almost lost their sense of balance and remain dumb-founded until they are able to compose themselves. P.Ws. 1 to 3 in the present case who had actually seen A-1 to make the dastardly attack and commit the murder of three persons who were held by the other accused might have been in a state of fear, shock, grief and mental imbalance without knowing exactly what to do and that therefore they might have gone into the sugarcane garden and hid themselves after witnessing the occurrence.

26. That apart, one should not lose sight of the circumstances in which P.Ws. 1 and 2 had given evidence in that case (C.C. No. 146 of 1984). P.Ws. 1 and 2 have given evidence therein in respect of the assault said to have been made by A-1, A-2 and A-4 on 11-8-1984 afternoon which is the day prior to the occurrence in the present case, and they have given their evidence on 13-12-1984 in the Court of the Judicial Second Class Magistrate, Ambur. By that time, the murders of three persons, namely, Murugesan, Sampath and Sampooram, in the family of P.Ws. 1 and 2 have taken place. (The occurrence of murders took place on the following morning after the assault made by A-1, A-2 and A-4 on Murugesan and P.W. 8). It might be that because both the incidents have taken place consecutively on 11-8-1984 and 12-8-1984 and both cases were investigated by the police and P.Ws. 1 and 2 were examined in that context, they might have made some statements this way or that way out of confusion. Their minds ought to have been in a state of despair as the lives of three persons in their family had been taken away in one day, when they gave evidence in that Court on 13-12-1984. By taking the statements of P.Ws. 1 and 2 in piecemeal here and there, the accused cannot build up in arguments that P.Ws. 1 and 2 were not present at the time and place of occurrence. The Supreme Court has held in *Bharwada Bhoginbhai Hirijibhai v. State of Gujarat*, : 1983 CriLJ1096 :

'In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.

Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused or mixed up when interrogated later on.'

The observation of the Supreme Court in another case reported in *Maqsoodan v. State of U.P.*, : [1983]2SCR45 is that improvements made by witness and variations in their earlier and later statements are not by themselves sufficient to hold their testimony to be infirm.

27. In *Sohrab v. State of M.P.* : 1972 CriLJ1302 the Supreme Court has stated as follows (para 7) :

'This Court has held that *falsus in uno in omnibus* is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered though where the substratum of the prosecution case or material part of the evidence is disbelievable it will not be permissible for the Court to reconstruct a story of its own out of the rest.'

On the same point of appreciation of evidence, the observations of the Supreme Court in yet another case reported in *Bhimrao v. State of Maharashtra*, : 1980 CriLJ958 may be usefully extracted here (para 11) :

'It is not unoften that improvement in an earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. But that does not

mean that falsity of testimony in one material particular would ruin it from beginning to end. On the other hand, the circumstances will be good reason merely for the court to be put on guard and sift the evidence with extraordinary caution and to accept those portions of it which appear fully trustworthy either intrinsically or by reason of corroboration from other trust worthy source.'

In view of the principles stated above, we have to hold that if even there are minor discrepancies in the evidence of P.Ws. 1 and 2, they may be ignored and we have to find out whether their evidence as eye-witnesses in relation to the occurrence in question is true. We have to answer this point only in the affirmative and hold that P.Ws. 1 and 2 also P.W. 3 are ocular witnesses and that their testimony inspires confidence and truth.

28. It cannot be contended on the side of the accused that the testimony of P.Ws. 1 to 3 should not be relied for the reason that they are closely related to the deceased. Of course, there is no dispute on the point that P.Ws. 1 to 3 are closely related to the three deceased person and are interested witnesses in the prosecution. But, that by itself is not a ground to discard their evidence. It has been held by the Supreme Court in *State of U.P. v. Ballabh Das*, : 1985 CriLJ2009 as follows (para 3) :

'There is no law which says that in the absence of any independent witness, the evidence of interested witnesses should be thrown out at the behest or should not be relied upon for convicting an accused. What the law requires is that where the witnesses are interested, the court should approach their evidence with care and caution in order to exclude the possibility of false implication. We might also mention that the evidence of interested witnesses is not like that of an approve which is presumed to be tainted and requires corroboration but the said evidence is as good as any other evidence.'

It has been observed in *Dalip Singh v. State of Punjab*, : [1954]1SCR145 that ordinarily a close relative would be the last person to screen the real culprit and falsely implicate an innocent person and hence the mere fact of relationship, far from being the foundation for criticism of the evidence, is often a sure guarantee of truth. The same principle as has been stated in *Bishan Singh v. State of Punjab* :

1973 CriLJ1596 and State of U.P. v. Suresh, : 1982 CriLJ850 . In the latest case reported in Brathi v. State of Punjab, : 1991 CriLJ402 the Supreme Court has observed that there is no doubt that when a criminal court has to appreciate evidence given by witnesses who are closely related given by witnesses who are closely related to the deceased, it has to be very careful in evaluating such evidence but the mechanical rejection of the evidence on the sole ground that it is interested, would invariably lead to failure of justice.

29. On the point as to how the testimony of the witnesses who are interested in the deceased and inimical to the accused, should be appreciated, the Supreme Court has observed in Babu v. State of U.P. : 1980 CriLJ392 that reliance on the testimony of witnesses belonging to the party of the deceased and inimical to the accused may be placed after careful scrutiny and on corroboration and that is not improper. In Ram Ashrit Ram v. State of Bihar : 1981 CriLJ484 the Supreme Court has held that the testimony of highly interested, inimical and partisan witness nor corroborated to a material extent in all material particular and suffering from improbabilities and material infirmities, is unreliable.

30. In the present case, we find, after scrutiny of the evidence of P.Ws. 1 and 3 with care and cautions, that it leaves an indelible impression of truth and reliability notwithstanding the fact that they are closely related to the deceased persons and might be inimical to the accused persons. No infirmity or discrepancy of a material character affecting the truth of the prosecution case has been pointed out in their evidence. Therefore, we have to accept the evidence of P.Ws. 1 to 3 as all the more true and sufficient to base the conviction against the accused persons. This is not a case in which corroboration of the evidence in material particulars is wanting.

31. There is also the extra-judicial confession made by A-1 to P.W. 7, the village Administrative Officer of Vannanthangal village in the presence of Baigesan, another village Administrative Officer of Gururajapuram village, after the occurrence on the same day. The said confession statement recorded by P.W. 7 has marked as Ex. P-6 and it is to the effect that A-1 had murdered Murugesan, Sampath and Sampooram when they were caught hold of by A-2, A-4, the

juvenile accused and A-3. A-1 had also produced the vettukathi (M.O. 10) wrapped in a bed-sheet (M.O. 16) stating that it was the weapon with which he had committed the murders. Since A-1 has appeared before P.W. 7 before he was arrested by police and has made the extra-judicial confession statement (Ex. P-6) that he had committed the murders of Murugesan, Sampath and Sampooram when they were caught hold of by A-2 to A-4 and the juvenile accused, the said confession statement in its entirety is admissible and valid. It has been held by the Supreme Court in *Darshanlal v. State of Jammu and Kashmir* : 1975 CriLJ774 that an extra-judicial confession made by an accused to a person not in authority, does not suffer from any legal infirmity. A Division Bench of Madras High Court has expressed the view in *Valanjiya Chinnammal v. State* 1987 MLW 375 that the village Headman is not exercising the powers of a Magistrate under the Code of Criminal Procedure and that the confession to the Village Headman by an accused before he comes into the custody of a police officer is admissible and that the weight to be attached to such a confession would depend upon the facts of each and every case. In the present case, we find that the extra-judicial confession made by A-1 to P.W. 7 is true, valid and may be acted upon. The weapon (M.O. 10) produced by A-1 is found to contain bloodstain and after analysis by the Serologist, the bloodstains in M.O. 10 and the bloodstained earth (M.O. 11) seized by P.W. 14 from the scene, are found to belong to 'B' group blood of human origin. This would well connect A-1 with the crime of murders apart from his extra-judicial confession statement and eye-witness account of P.Ws. 1 to 3. The Supreme Court has held in *Narayan Singh v. State of M.P.*, : 1985 CriLJ1862 that it is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence as that would depend on the nature and circumstances, the time when the confession was made and the credibility of the witness to speak to such a confession. Here, there is no circumstances at all to view the testimony of P.W. 7 with suspicious when he would bear testimony to the effect that A-1 made the extra-judicial confession statement as per Ex. P-6 and produced the Vettukathi (M.O. 10) and the bed-sheet (M.O. 16).

32. We may point out here that this is a case in which the accused cannot make criticism that the prosecution has not examined independent witness to speak to the occurrence. The prosecution has really examined P.Ws. 4 to 6 who are

persons residing in the neighbourhood of the scene of occurrence and who may be called as independent witnesses. But, they have turned hostile to the prosecution and their evidence has been treated so by the prosecution. The prosecution would allege that though these witnesses have given statements to P.W. 14 as having witnessed the occurrence and as deposed by P.Ws. 1 and 3, they have not chosen to stick to their statements during trial. It is stated that P.Ws. 4 and 5 have denied having seen the occurrence outright, while P.W. 5 has chosen to restrict his evidence only against A-1 as if A-1 attacked all the three, namely, Murugesan, Sampath and Sampooram and killed them and as if the accused, namely, A-2 to A-4 and juvenile accused were not in the scene and did nothing at all to those three deceased persons. Here, Mr. Vanamamalai, the learned Senior Counsel would argue that the evidence of P.W. 5 who has implicated A-1 alone may be relied by this Court, though P.W. 5 has been treated as a hostile witness by the prosecution. The decision of the Supreme Court in *Syed Akbar v. State of Karnataka*, : 1979 CriLJ1374 was relied upon the learned Senior Counsel. The Head Note reads thus :

'The evidence of the prosecution witnesses cannot be rejected wholesale merely on the ground that the prosecution had dubbed them hostile and has cross-examined them. Even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot be, as a matter of law, treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If, in a given case, the whole of the testimony of the witness is impugned and in the process the witness stands totally discredited, the Judge should as a matter of prudence discard his evidence in toto.'

33. At the same time, the learned Additional Public Prosecutor who has not disputed the principle laid down in the aforesaid decision of the Supreme Court, cited another judgment of the Supreme Court in *Khuji v. State of M.P.*, : 1991 CriLJ2653 which says that the evidence of a hostile witness cannot be treated as effaced or washed off the record altogether, but that the same can be accepted to

the extent their version is found to be dependable on a careful scrutiny thereof. After citing this judgment of the Supreme Court, the learned Additional Public Prosecutor chose to argue that even P.W. 5 who has been treated as hostile and whose evidence is now sought to be relied on by the accused for the reason that P.W. 5 implicates A-1 alone, has stated during cross-examination by the learned counsel for the accused that P.Ws. 1 and 3 fled into the sugarcane garden out of fear when A-1 cut the deceased Murugesan with a vettukathi in the road outside the house of P.W. 5 (The house of P.W. 5 and accused are situate opposite to each other with the road situating in between). According to the learned Prosecutor, presence of P.Ws. 1 to 3 at the time and place of occurrence is all the more true and that they are really ocular witnesses and that consequently their entire evidence will deserve credibility and will help rejection of the plea of the accused that A-1 alone was the assailant. We have no doubt that the learned Senior Counsel for the accused has raised the contention that P.W. 5's evidence should be relied for the obvious reason that it exonerates four other accused persons from the culpability of the crime, no matter if one (A-1) is sacrificed. We fail to see any reason or merit in this contention. We hold on a careful scrutiny that neither side can possibly depend on the evidence of P.W. 5 to support their respective contention. It may be noted here that the defence has not put any suggestion to any of the prosecution witnesses that it was only A-1 who was the assailant and that others are falsely implicated. No such plea is found in the statement of any of the accused given under S. 313, Cr.P.C. on the other hand, the plea of all the accused is one of outright denial and that the allegation is that the three deceased persons were murdered near Poongulam Modakku by some persons of Serkudi and that all three dead bodies were taken and placed in the south of accused's house on the road.

34. We have to add that the medical evidence is also fully in corroboration of the oral evidence of P.Ws. 1 to 3 with regard to the injuries inflicted on the three deceased persons. P.W. 9 has conducted autopsy on the bodies of deceased Murugesan and Sampath while P.W. 10 had conducted autopsy on the body of deceased Sampornam. There have been seven injuries on deceased Murugesan and all of them are incised injuries. As regards Sampath, there have been eight injuries and all of them except one injury on the back of the deceased Sampath,

have been incised wounds. The only injury differently noted by P.W. 9 was an abrasion on the back of deceased Sampath. P.W. 9 has categorically stated that all the incised wounds might have been caused by a sharp-edged weapon like M.O. 1 which is a vettukathi produced by A-1 to P.W. 7 after the occurrence. The injuries 1 and 2 that were found in the neck of deceased Murugesan and the injuries 1 to 3 and 7 found on the neck and parietal region of the head of deceased Sampath, were fatal.

35. Coming to Sampooram, P.W. 10 has noted four injuries on her and of them, injury No. 1 on the right mandible and neck and vertebra and injury No. 2 on the right shoulder exposing the head of the right humerus have been described as curved lacerated wounds. Injury No. 3 situate below the lower lip on the right side and injury No. 4 situate on the dorsal of the right hand above the wrist joint have described as lacerated wounds. It appears to us that though these injuries found on Sampooram have been described by P.W. 10 as curved lacerated wounds or lacerated wounds, they must be really incised wounds caused by cutting with sharp-edged weapons such as M.O. 10. P.W. 10 herself who conducted the post-mortem examination has stated that all the injuries on deceased Sampooram might have been caused by the weapon (M.O. 10) which is a vettukathi having a sharp-edge. Even otherwise, a look at the nature of the injuries and the seat of injuries, will clearly show that they ought to have been caused by sharp-edged weapon like M.O. 10 and not by a blunt weapon. It is common knowledge that lacerated wounds may be caused by weapons having blunt edge. The injury No. 1 will show that the injury caused on the neck has resulted in the severing of the deeper structures such as muscles and vessels and cutting of mandible. Injury No. 2 shows that it extended from the middle of the right shoulder to the upper 1/3rd of right exposing the head of the right humerus, 5' x 2' x 3' in size. These injuries can certainly be caused by cutting with sharp-edged weapon and not otherwise. A faint suggestion has been made to P.W. 10 during her cross-examination that the lacerated wounds can be caused only by blunt edged weapons, taking advantage of the fact that P.W. 10 has described the injuries as curved lacerated wounds or lacerated wounds. Even though P.W. 10 has described the injuries on Sampooram as such, they must have been caused only by cutting with sharp-edged weapon as admitted by P.W. 10 herself in evidence. We clearly find in the

instant case that there is no contradiction between the medical evidence and the oral evidence with regard to the injuries caused on the three deceased persons. It has been held by the Supreme Court in Punjab Singh v. State of Haryana, : 1984 CriLJ921 that medical evidence cannot override direct evidence about assault by particular weapon when the direct evidence is satisfactory and reliable. In another case in State of U.P. v. Krishna Gopal, : 1989 CriLJ288 the Supreme Court has observed (Para 13) :

'It is trite that where the eye-witnesses' account is credible and trustworthy, medical opinion pointing to alternate possibility is not accepted as conclusive. Witnesses, as Banthum said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial process. Eye-witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely pre-judged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts and 'credit' of the witnesses; their performance in the witness-box; their power of observation etc. Then the probative value of the evidence becomes eligible to be put into the scales for the cumulative evaluation.'

In the present case, the medical evidence of P.Ws. 9 and 10 fully corroborates the eye-witness account of P.Ws. 1 to 3 who have deposed to the effect that A-1 cut the three deceased persons with vettukathi while each of those deceased persons was caught hold of by one or two other accused. Who are the accused who caught hold of each of the deceased, has already been discussed. All the three deceased persons have been killed at the spot by infliction of fatal injuries on the vital parts of the organs. Therefore, the offences committed by the accused persons in this case will not be anything short of murders.

36. No criticism can be possibly made by the accused in this case that Ex. P-1 which forms the first information report, has come into existence designedly belated. P.W. 1 has seen her own kith and kin, that is, her husband, son-in-law

and daughter being slaughtered in her very presence. Therefore, she must have been in a state of shock, grief, confusion and helplessness without knowing what to do immediately after occurrence and she might have taken some time to recover herself and to go to the police station to give the complaint. She has evidently given the complaint (Ex. P-1) at 10-00 a.m. after going to a distance of about 12 km. from the scene village. Ex. P-1 along with Ex. P-10 has reached the Judicial Second Class Magistrate at Ambur at 3-45 p.m. on the same day as they were sent from Veppankuppam police station. If one takes into consideration the circumstances in this case, no allegation affecting the truth of Ex. P-1 can be made against the prosecution.

37. The facts of the case are clear that A-1 to A-4 and the juvenile accused had the common object of committing the murders of the three deceased persons, namely, Murugesan, Sampath and Sampooram. If A-1 had committed the murders, A-2 to A-4 and the juvenile accused must be held to have shared the common object of committing the murders by A-1. We have already seen what are the overt acts each of A-2 to A-4 and the juvenile accused when A-1 dealt the attack on the three deceased persons. The learned Session Judge is perfectly correct in holding that A-1 is guilty of offences under S. 302, IPC. (three counts) and A-2 to A-4 and the juvenile accused are guilty of the offences under S. 302 read with S. 149, IPC (three counts each). He has awarded the sentence of imprisonment for life to A-1 to A-4 for each count and has directed the juvenile accused to be detained in the Senior Approved School at Chengalpattu for a period of four years.

38. But, we are not convinced with the sentences awarded by the learned Session Judge, particularly to A-1. This is a case in which three person in a family have been murdered together in a few minutes in one and the same place for which A-1 has played the main role. He is the person who has attacked all the three with vettukathi, one after the other and killed them on the spot. He has acted as a butcher in a slaughter house. Even if there was dispute between the parties over the enjoyment of the well or over the ridge in between their lands, A-1 should not have resorted to such brutal violence and taken away the lives of three persons in a family. In the circumstances, we feel that the Sessions Judge might not have

been wrong if he had awarded the maximum penalty of death sentence to A-1. But, he has not bestowed his attention on this aspect. Even the State has not vigilant in preferring an appeal on the question of sentence. The purpose of sending copies of judgments of the Sessions Court to the State Public Prosecutor, Collector of the District, Superintendent of Police, District Public Prosecutor, Vellore, seems to have been taken by those authorities as an empty formality.

39. In the result, we confirm the conviction and the sentences imposed on A-1 to A-4 in Sessions Case No. 15 of 1985 (Criminal Appeal No. 739 of 1985) and the conviction and the direction to detain the juvenile accused in Sessions Case No. 16 of 1985 (Criminal Appeal No. 702 of 1985) in the Senior Approved School for a period of four years. These appeals shall stand dismissed.

40. Appeals dismissed.

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