

Ebinezer Vs. State

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Court : Chennai

Decided On : Jul-21-1992

Reported in : 1992CriLJ3543a

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

Appeal No. : Criminal Appeal No. 438 of 1986

Appellant : Ebinezer

Respondent : State

Advocate for Def. : Mr. Partheeban, Govt. Adv.

Advocate for Pet/Ap. : Mr. K. Doraisami, Adv.

Judgement :

Arunachalam, J.

1. Ebinezer alias Bhaskar, who was A-3 in SC No. 141 of 1985 on the file of Court of Session, Chengalpattu is the appellant. He was tried along with Varadan and Nagesh (A-1 and A-2) on a single charge, framed under S. 302 read with S. 34, Indian Penal Code, for having caused the death of deceased Damodaran, by the appellant attacking him with a knife on his left shoulder, right chest and back indiscriminately, A-1 attacking the victim with a knife on his head and A-2 cutting the deceased with a knife on his right shoulder at or about 6 a.m. on 2-9-1984,

near the Block Development Office on the Tiruvottiyur High Road, at Minjur.

2. Learned Sessions Judge found the appellant guilty under S. 302 Indian Penal Code (simpliciter) and sentenced him to undergo imprisonment for life. A-1 and A-2 were acquitted, to our mind, without sufficient cause.

3. The prosecution case in brief is as follows :- Deceased Damodaran and P.W. 5 Chandra are the son and daughter of Puttan, a resident of Lakshmipuram colony. The deceased was the maternal uncle of P.W. 3 Saroja. P.W. 3 was living adjacent to the house of Puttan. Appellant Ebinezar alias Baskar is the son of Krishnan, younger brother of Puttan. He was also residing in Lakshmipuram colony. Puttan and Krishnan has another brother Mannar. P.W. 1 Balaraman is the son of Mannar. P.W. 2 Bonda alias Nagamma is another resident of Lakshmipuram colony. P.W. 5 Chandra, who was married to Ramadoss (not examined) was living with her husband at Gounderpalayam. P.W. 6 Subbamma is the neighbour of P.W. 5. A-1, since acquitted, is the younger brother of the husband of A-3's elder sister. A-2 (since acquitted) is the pangali of A-3, deceased and P.W. 1. P.W. 1 did not reside in Lakshmipuram colony, but was residing at Pongampedu colony in the house of Advocate Damodaran (not examined). P.W. 1 was working under Advocate Damodaran. Advocate Damodaran had lands. They were also taken care of by P.W. 1.

4. Krishnan, the father of the appellant arranged to sell his land to Puttan, father of the deceased. Krishnan also obtained Rs. 500/- from the family of Puttan. However, he did not execute a sale deed. A panchayat was convened, but the dispute could not be settled. On that score, there were disputes between the family of Krishnan and Puttan. About six months prior to occurrence deceased Damodaran along with others beat Krishnan, his wife and two daughters. On a complaint, a crime was registered against deceased Damodaran and others and at the time of this instant occurrence, a prosecution was pending against deceased before the Judicial First class Magistrate, Ponneri. Soon after that occurrence, fearing that the accused may cause harm to her younger brother, P.W. 6 took deceased Damodaran from Lakshmipuram colony and made him live along with her at Goundanpalayam. Deceased Damodaran was in the habit of leaving the

house of P.W. 5 early morning around 5 a.m. on his cycle to Minjur railway station, to entrain therefrom to Enhore, where he was working in Ashok Leyland. After termination of work deceased Damodaran used to return to the house of P.W. 5 at 5 p.m. daily. Once in a way he used to visit his parents at Lakshmipuram colony.

5. On a Wednesday prior to 2-9-1984, which was a Sunday, all the three accused traced the house of P.W. 5, after enquiring P.W. 6. They found that P.W. 5 was not available at her residence. Hence they proceeded towards the bus stand. Meanwhile P.W. 5, arrived at her residence to be told by P.W. 6, about the visit of the accused in search of her. P.W. 5 went towards the bus stand and found all the accused in the company of another person. On seeing the accused she told them as follows :-

(Vernacular matter omitted.)

A-3 replied as follows :-

(Vernacular matter omitted.)

Thereafter the accused left the bus stand. On returning home P.W. 5 told the deceased about the vowing of vengeance by A-3 and asked him to be careful.

6. While so, the occurrence had taken place at or about 6 a.m. on 2-9-1984. As usual, the deceased left the house of his elder sister P.W. 5, on a cycle M.O. 6, at or about 5 a.m. on his way to Minjur railway station. He was then wearing M.O. 4 shirt, M.O. 5 Pant, M.O. 7 Banian and M.O. 8 underwear. He possessed a bag containing M.O. 10 series key bunch and M.O. 11 Identity Card. P.W. 1 came over to Minjur at or about 6 a.m. from Pungampedu Colony to arrange for agricultural labourers. At or about that time while he was walking on Tiruvottiyur High Road, at Minjur, he noticed deceased Damodaran proceeding on his cycle, after passing him. The deceased was going towards Minjur Railway station. A few minutes thereafter, P.W. 1 noticed the deceased coming back running towards him. Near Block Development Office, at Minijur, A-1 cut on the head of the deceased twice with a knife; A-2 on the right shoulder of the deceased twice with a knife. The appellant stabbed on the left shoulder of the deceased with a knife initially and

inflicted another stab on his left chest. Injured Damodaran fell down face-downwards. Even after the deceased had fallen down, the appellant inflicted indiscriminate stabs on the back of the fallen victim, with knife. Thereafter all the three accused ran away with their respective weapons of offence. P.W. 2, who was then proceeding on the Tiruvottiyur High Road at Minjur, to buy tea for her husband, noticed all the accused proceeding with blood stained knives near the Veterinary Hospital, adjacent to the Block Development Office. Soon thereafter she saw Damodaran in a pool of blood, with injuries all over his body. P.W. 1, who was present near the victim, told P.W. 2 that there was no breathing and therefore the victim was dead. P.W. 1 proceeded to the house of Advocate Damodaran to inform him about the occurrence. Advocate Damodaran directed Balaraman (P.W. 1) to complain at Minjur police station, promising to follow him a little later. At Minjur P.W. 1 sought the help of P.W. 4 Duraikannu, to draft a complaint. P.W. 4 wrote down the narration of P.W. 1 in a piece of paper and Ex.P. 1 is the report scribed by him. P.W. 1 presented Ex.P. 1 before P.W. 12 Thanigaivelu, then Sub-Inspector of Police, Minjur. P.W. 12 registered crime No. 222 of 1984 under S. 302, Indian Penal Code, on Ex.P. 1 and prepared the express first information report Ex.P. 8. He forwarded Ex.P. 1 and P. 8 to Judicial II Class Magistrate, Ponneri, while forwarding copies of Ex.P. 8 to his superior officers. P.W. 12 also informed over the telephone, the Inspector of Police, Ennore, about the registration of this crime. P.W. 12 thereafter proceeded to the scene of occurrence. At the scene he met P.W. 13 Paramasivam, then Inspector of Police. He handed over a copy of Exs.P. 8 to P.W. 13, who took up investigation. P.W. 13 prepared the observation Mahazar Ex.P. 10 as well as Ex.P. 13 the rough sketch of the scene. At 9-15 a.m. he seized M.O. 14, blood-stained Kerchief, from near the dead body, under Mahazar Ex.P. 11. On the same road, near Pachiamman nagar, P.W. 13 seized M.O. 6 cycle; M.O. 9 Rexine bag with M.O. 11 and M.O. 10, identity card and key bunch, as well M.O. 15 shirt collar, under Mahazar Ex.P. 14. From the same place M.O. 12, an old dhothi, later found to be that of A-1 was also seized. P.W. 13 prepared another observation Mahazar Ex.P. 12. at Panchaiappan Nagar. Between 10 a.m. and 1 p.m., he conducted inquest over the corpse of Damodaran, during the course of which he examined P.Ws. 1, 3, 5 and another. Ex.P. 8 is the inquest report. With the help of photographer Babu (P.W.

8), P.W. 13 has snaps taken of the corpse. M.O. 13 series are the photographs. After inquest P.W. 13 despatched the dead body with a requisition Ex.P. 2, through police constable Subramaniam (P.W. 9), to the Government Hospital, Ponneri, for the conduct of post-mortem. At 5 p.m. he seized from the scene blood stained earth M.O. 16 and sample earth M.O. 17 under Mahazar Ex.P. 15. P.W. 7 Perumal, a dhobi in Lakshmipuram colony, was examined to speak, that M.O. 12 seized from the scene, belonged to A-1 for whom he had given the dobi mark CM.

7. P.W. 3 has spoken, that on a Sunday morning at about 6 a.m. when she was springling cow dung water on the threshold of her house, she noticed all the three accused getting inside the house of Krishnan, her neighbour. Krishnan is the father of A-3. She heard A-3 informing his father as follows :

(Vernacular matter omitted)

Within a few minutes, all the inmates left the house. Becoming aware of such an occurrence, P.W. 3 rushed towards the Block Development Office, and found Damodaran dead, with several injuries. She stayed at the scene, weeping.

8. P.W. 10 Dr. Periasamy, conducted autopsy on the dead body at 11-45 a.m. on 3-9-1984. Following injuries were found.

'1) An incised wound, right side of forehead 3' x 1' bone deep semi lunar with clean edges, concavity facing downwards.

2) An incised wound with clean edges over right frontal region of scalp 2 1/2' x 1/2' bone deep semi linear concavity towards right.

3) A stab injury wedge shaped with clean edges right side of face below right eye ball 1' x 1/2' x 1' dark blood cozing.

4) An incised wound spindle shaped with clean edges gaping inner and upper part of left upper arm 7' x 2' covered with dark blood and clots muscle deep.

5) On dissection there was 1/2' tear in the left brachial vein about the middle of its course.

- 5-A) An incised wound spindle shaped with clean edges, front of left elbow joint 1' x 1/2' skin deep.
- 6) An incised wound spindle shaped with clean edges below the injury No. 5 1/2' x 1/2' skin deep.
- 7) An incised wound spindle shaped with clean edges middle of back of left upper arm 3' x 1 1/2' x 1 1/2'.
- 8) An incised wound spindle shaped with clean edges upper and outer part of left upper arm 1' x 1/2' skin deep.
- 9) A stab injury wedge shaped with clean edges over the body of left scapula 3/4' x 1/2' x 1' dark blood oozing.
- 10) A stab injury wedge shaped with clean edges over superior angle of left scapula 3/4' x 1/2' x 1' dark blood oozing.
- 11) An incised wound spindle shaped with clean edges over left inter scapular region 2 1/2' x 3/4' x 1 1/2'.
- 12) A stab injury wedge shaped with clean edges over tip of right shoulder 1' x 1/2' x 1' dark blood oozing.
- 13) An incised wound spindle shaped with clean edges back of left shoulder 1/2' x 1/2' skin deep.
- 14) An incised wound spindle shaped with gaping with clean edges inner and upper part of right upper arm muscle deep 3' x 1 1/2' covered with dark blood and clots.
- 15) An incised wound spindle shaped with clean edges back of right shoulder near posterior axillary fold 2 1/2' x 1' x 1'.
- 16) An incised wound spindle shaped, dorsum of right thumb with clean edges 3/4' x 1/4' bone deep.

17) A stab injury wedge shaped with clean edges left side of chest 3 1/2' below left nipple in the intercostal space measuring 2' x 1/2'.

On dissection the injury was directed upwards, traversing the intercostal muscles lower lobe of left lung tissue into the muscle of left ventricle of heart depth 3 1/2'. There was 1' tear in the lung tissue with surrounding area dark and was echymosed. The rest of the area pale.

On dissection the left lower lobe of lung was collapsed. There was 1/2' tear with muscle of left ventricle of heart. The injured portion and surrounding areas were dark and ecchymosed. The injury was communicating with the left ventricular chamber by a slit.

There was about a litre of dark blood in mid-thoracic cavity.

18) An incised wound spindle shaped with clean edges upper and outer part of left thigh 1 1/2' x 1/2' x Muscle deep.

'Internal examination :

Stomach : Distended with gas empty.

Liver : Reddish brown pale on cut section.

Spleen : Brown cut section pale.

Kidneys : Normal in size cut section pale.

Hypid bone : Intact.

Spinal Cord : Intact.

Bladder : Empty.

Brain : Normal in size cut section pale.

Heart : Both sides empty.

Lungs : Right lung normal in size cut section pale.

Left : Lung (Vide injury No. 17).

In the opinion of the doctor, deceased would appear to have died of shock and haemorrhage, due to multiple injuries sustained by him, about 24 to 38 hours prior to post-mortem examination. Injury No. 17, with its corresponding injuries to the lung and heart was necessarily fatal. Death would have been instantaneous. Any one of M.Os. 1 and 3 if used for stabbing could have caused injury No. 17 with its corresponding internal injury to the lung and heart. Ex.P. 3 is the post-mortem certificate. After autopsy the apparel of the deceased, found on the dead body, were removed by P.W. 9 and handed over to the investigating officer, P.W. 13. On 10-9-1984 P.W. 13 had information that all the three accused had surrendered before the 15th Metropolitan Magistrate, Madras. P.W. 13 filed a petition before the Judicial II Class Magistrate, Ponneri for police custody of all the three accused and obtained such custody, on 20-9-1984. He could not examine the accused on 21-9-1984 since he was otherwise engaged. At 7 a.m. on 22-9-1984, he questioned A-1. A-1 volunteered a Statement, the admissible portion of which is Ex. P-16. A-1 offered to point out the knife, he had thrown away in a Velikathan bush, if taken there. A-1 has further stated, that A-2 and A-3 had also thrown their weapons in the same thorny bush. Before taking A-1 to the place of recovery, P.W. 13 examined A-2 and A-3 and recorded their statements. They also offered to produce the knives used by them, from the same thorny bush. P.W. 13 took all the three accused to the thorny bush situated near the hospital, at Minjur colony. A-1 produced M.O. 3 while A-2 produced M.O. 2 to be followed by A-3 with the production of M.O. 1. All the three knives were seized under Mahazar Ex.P. 18. P.W. 13 forwarded the blood stained material objects, to the Magistrate, with a requisition to despatch them for chemical analysis. Exs.P. 6 and P-7 are the reports of Chemical Analyst and Serologist respectively. After completion of investigation, P.W. 13 laid the charge sheet against all the accused, before the Judicial II Class Magistrate, Ponneri on 31-3-1985.

7. When the appellant and the other accused were examined under Section 313, Cr.P.C., on the evidence appearing against them, they admitted their relationship. They further admitted disputes between the family of Krishnan and Puttan. They also admitted the truth of their surrender before 15th Metropolitan Magistrate,

Madras. Otherwise they disputed the truth of the prosecution case. They did not choose to adduce any evidence in defence.

8. The learned trial Judge on appraisal of evidence placed before him, while exonerating A. 1 and A. 2, chose to convict the appellant alone under S. 302, Indian Penal Code. As stated earlier, the appellant was sentenced to undergo imprisonment for life.

9. Mr. T. Munirathnam Naidu, learned Counsel appearing on behalf of the appellant invited us to discard Ex.P. 1, the first information report for, according to P.W. 12, the Sub-Inspector of Police, who registered the crime, the name of Advocate Damodaran, was mentioned in the first information report. Now that Ex.P. 1 does not contain the name of Advocate Damodaran, Ex.P. 1 cannot be the complaint on which P.W. 12 had registered Crime No. 222 of 1984. He then contended that the distance to the police station was only 2 kms. and P.W. 1 need not have gone to Advocate Damodaran, but could have set the law in motion, on his own accord. The conduct of P.W. 1 would indicate that after confabulation, the appellant and the other accused were chosen as the authors of this crime. He argued that there must have been a scuffle, since the terri-cotton collar of the shirt of the deceased was found even at the place where the cycle of the deceased had fallen down. P.W. 1 had not spoken about that. Hence the evidence of P.W. 1 has to be distrusted. He strenuously argued that M.O. 1 knife cannot be held to have been recovered on the information furnished by A. 3. He submitted that there were spindle shaped and wedge shaped injuries on the victim. 11 injuries out of 18 injuries found on the deceased were spindle shaped. According to Dr. Periasamy, P.W. 10, spindle shaped injuries could be caused only due to cut and not by stabs. P.W. 1, who has spoken about the appellant having inflicted stab injuries, alone must therefore be held as non-ocular witness.

10. On these contentions we have heard Mr. Pantheeban, learned Counsel representing the Public Prosecutor. He contended that the occurrence was in good light at or about 6 a.m. and the identity of the appellant cannot be disputed. P.W. 1 was related, both to the appellant and the deceased. He was not likely therefore to support either party unnecessarily. Ex.P. 1 was given promptly and there was

medical corroboration. He pleaded for sustaining the verdict of the learned trial Judge.

11. Before we consider the feasibility or otherwise of sustaining the conviction of the appellant, we are bound to point out that the learned Sessions Judge has erroneously acquitted A. 1 and A. 2 without sufficient grounds. The trial Court has found in several paragraphs of its judgment that it was A. 3 who must have been aggrieved since it was his father who had entered into a transaction with the father of the deceased leading to animosity between the parties. Further it was A. 3 who had specifically vowed vengeance on a Wednesday prior to the occurrence date, when P.W. 5 questioned him and others as to why they were pestering deceased Damodaran, even after he had been taken away to her residence at Gounderpalayam, from Lakshmipuram colony. All that we are able to see from the judgment of the learned trial Judge is that A. 1 and A. 2 had no motive against the deceased and nothing more. Mere absence of motive will not suffice to exonerate A. 1 and A. 2. We have the specific evidence of P.W. 5 that A. 1 and A. 2 were also in the company of A. 3 on a Wednesday prior to the date of occurrence. A. 3 had vowed vengeance against the deceased in their presence and to their knowledge. It is apparent that A. 1 to A. 3 were moving together. Even on the fateful morning P.W. 1 as well as P.W. 2 had seen all the three accused together. P.W. 1 has specifically implicated A. 1 and A. 2 with specific overtacts. Those overtacts have been medically corroborated as well. If that be so, we are unable to visualise how the learned Sessions Judge could have chosen to acquit them. There has been total miscarriage of justice in the acquittal of A. 1 and A. 2. We are unable to remedy the situation at this very late stage. The State ought to have preferred an appeal challenging the acquittal of A. 1 and A. 2. That not having been done, 8 years after the occurrence, we are unable to take up their case on our own. It will be odd in the event of an appeal being preferred by the State now to excuse the delay of 8 years in preferring the appeal. The State ought to have been more vigilant for the interests of society have to be safeguarded. We leave it at that.

12. We will now examine the evidence against the appellant. The motive put forth by the prosecution must be held to have been established. The dispute between

the family of the appellant and the family of the deceased due to land transaction has been admitted. A Panchayat was also convened. But the dispute between Puttan and Krishnan could not be settled. The non-settlement of the dispute resulted in the family members of Krishnan being attacked by deceased Damodaran and his associates. A prosecution against deceased Damodaran was pending in the Magistrate's Court at Ponneri at or about the time of occurrence. Soon after the deceased thought it safer to remove her brother from Lakshmipuram colony to Goundanpalayam to prevent any untoward incident for, obviously the family of Krishnan were against Damodaran not only because of the land dispute, but also because of his having attacked the members of Krishnan family inclusive of the women folk. That the deceased was living along with P.W. 5 at Goundanpalayam for about six months prior to occurrence is also not in dispute. The crowning fact of the motive is the visit of all the accused to the house of P.W. 5 about which we have the evidence of P.W. 6 a neighbour of P.W. 5. At that time, P.W. 5 was not present at her residence and naturally on information being furnished by P.W. 6, she went over to the bus stand and found all the accused in the company of another. When she questioned them as to why they were attempting to pester deceased Damodaran in spite of her having been taken him away from Lakshmipuram colony, A. 3 vowed to do away with the deceased. We can safely take, on these pieces of evidence that the appellant had a motive to attack and kill the deceased.

13. We will now scrutinise the ocular version of P.W. 1 Balaraman. P.W. 1, as we have already stated is a relation of the deceased as well as the appellant. To reiterate A. 3; deceased and P.W. 1 are sons of brothers and A. 2 is their pancali. The evidence does not disclose that P.W. 1 had any special affinity for the deceased or particular animosity against the appellant. P.W. 1 is admittedly living at Pungampedu colony working in the house of Advocate Damodaran. Advocate Damodaran also appears to be related to the appellant and the deceased, though not very closely. The presence of P.W. 1 at the scene at 6 a.m. cannot be doubted for it is his categoric case that he went over to Minjur to hire agricultural labourers. Early hours of the morning to fetch labourers would be the most suitable time. It was while P.W. 1 was passing on the Tiruvottiyur High Road at Minjur, he was able to notice the deceased riding on a cycle crossing him and proceeding towards

Minjur Railway station. Within a short time, deceased who was proceeding on a cycle, came running retracing his steps to be followed by all the three accused who had indiscriminately cut him as described in detail earlier while narrating the facts. P.W. 1 was able to witness the occurrence which took place opposite to Block Development Office at Minjur. P.W. 1 went near the fallen down victim and found him dead. P.W. 1 has been cross-examined in extenso. We are unable to find any dent in his evidence. All that was suggested to him was that the occurrence should have taken place in darkness earlier and he was not an eye witness as such and at the instance of Advocate Damodaran, a false complaint was prepared at the police station. We are unable to visualise from the evidence any bitter animosity between the accused and Advocate Damodaran for the former to be pitched upon as the assailants of the deceased. The evidence of P.W. 1 has a ring of truth and his version inspires confidence. The learned Counsel for the appellant commented that P.W. 1 could have proceeded to the police station directly from the scene of occurrence without choosing to go to the house of Advocate Damodaran. P.W. 1 was an employee under the Advocate and it is not surprising that he chose to rush to the house of his Master to take further steps. It was his Master who advised him to proceed to the police station and prefer a complaint. The master also agreed to follow him to the police station a little later. We are unable to doubt the testimony of P.W. 1 on this aspect. P.W. 1 is an illiterate and naturally he has taken the help of P.W. 4, known to him already to prepare Ex.P. 1. P.W. 4 is an employee of the Integral Coach Factory. He had arrived at Minjur from Athipet by train on his personal work. At that time, he noticed P.W. 1 running fast. Since P.W. 1 knew P.W. 4 earlier, he informed him about the occurrence and requested his help to write down a complaint since he did not know to write. P.W. 1 purchased a piece of paper in which P.W. 4 recorded the narration of P.W. 1. Ex.P. 1 is the complaint, scribed by P.W. 4. The evidence of P.Ws. 1 and 4 clearly show that soon after the occurrence P.W. 1 took quick steps to complain about the occurrence at the Minjur police station. Ex.P. 1 was received by P.W. 12 at or about 7.30 a.m. We are unable to hold that there was any delay as such in the preferring of Ex.P. 1. Ex.P. 1 was received by the Magistrate at 11.30 a.m. at Periapalayam where he was then camping. Periapalayam is situated quite far away from Minjur and therefore it can safely be

taken that with promptitude Ex.P. 1 had been despatched to the Magistrate and equally received by the Magistrate without delay. In Ex.P. 1 P.W. 1 has clearly described the occurrence proper and has also narrated the individual overtacts of each one of the accused. The fatal injury has also been attributed to A. 3 in the earliest document. The present evidence of P.W. 1 is fully in tune with the contents of Ex.P. 1. We have no hesitation in accepting the eye-witness account of P.W. 1 regarding this gruesome murder. We have also the evidence *res gestae* in character of P.W. 2 who had seen all the appellants going away from the scene with their respective blood stained weapons soon after the occurrence. The presence of P.W. 2 at or about that time near the scene cannot also be doubted. On seeing the accused proceeding with blood stained weapons, she had proceeded a little further and seen the victim dead with bleeding injuries. She also saw P.W. 1 at the scene. The presence of P.W. 1 as an ocular witness further gets confirmed by the evidence of P.W. 2.

14. Learned Sessions Judge has also relied upon the evidence of P.W. 3 who has deposed about the conversation between the appellant and his father Krishnan soon after the occurrence. The appellant is stated to have told his father that 'they' have committed the murder of Damodaran and all of them have to run away. The trial Court had taken the words of A. 3 (appellant) as an extra judicial confession. It will be very doubtful if the words spoken by the appellant to his father (not examined) can be treated as an extra judicial confession made to P.W. 3. P.W. 3 has only heard from her residence the conversation that took place between the appellant and his father. On hearing such conversation, the conduct of P.W. 3 also appears natural in that she had proceeded to the scene and found the victim dead. She continued to stay near the corpse weeping. However we are unable to take the statement of A. 3 to his father as an extra judicial confession to safely connect him with the crime. Even sans the evidence of P.W. 3, other evidence is overwhelming to clinchingly connect the appellant as one of the authors of this crime.

15. We then have the medical evidence of P.W. 10 Dr. Periasamy. The Medical Officer had noted as many as 18 external injuries which were possible to be caused by sharp edged instruments like MOs. 1 and 3. We are unable to accede to

the argument of the learned defence Counsel that P.W. 1 could not have been an eye witness, since in the opinion of the doctor, spindle shaped injuries could only be caused by cuts and not by using the instrument to stab. Merely because P.W. 1 he stated that stab injuries were inflicted by A. 3, we cannot suspect his evidence. These instruments produced before Court can be used as a cutting as well as a stabbing instrument. The manner in which all the accused had attacked the deceased clearly shows that indiscriminately the weapons were used. In such indiscriminate use of the weapons, cuts as well as stab can result. On the hypothetical opinion evidence of P.W. 10, we are not prepared to discredit the version of P.W. 1.

16. It was then pointed out that all the injuries found on the deceased had not been accounted for by P.W. 1. When an occurrence of this nature takes place, it would be difficult for the eye-witness to account for each and every injury. It is not arithmetics with which we are concerned. It will be unfair to indulge in numerical calculation regarding the indiscriminate attack on the victim. We are unable to hold that the medical evidence contradicts the ocular evidence.

17. Equally we are not impressed with the argument that Ex.P. 1 could not have been the first information report merely because P.W. 12 has stated that the name of Advocate Damodaran was mentioned in the complaint by P.W. 1. P.W. 12 was not the scribe of Ex.P. 1 and he was giving evidence in Court nearly two years after the occurrence. This minor variation in his evidence cannot be magnified to doubt the genesis of Ex.P. 1. Without hesitation we reject this contention.

18. We are further unable to find any infirmity in the collar of the shirt of the deceased having been found near his cycle. Deceased Damodaran was going on his cycle as usual for his work. The accused had way-laid him and dealt with him indiscriminately with sharp edged weapons. The deceased had dropped his cycle and was running for his life. The manner in which the deceased was treated by the appellant and others can easily be visualised. P.W. 1 was able to see the incident only when he noticed the deceased retracing his steps and coming running towards him chased by all the accused. There was no scope for any scuffle as such for, the unarmed deceased has been mercilessly attacked by several

persons.

19. We agree with the learned defence Counsel that recovery evidence cannot be safely used against the appellant. We find that discovery was already made on the statement of A. 1. If that be so, it will be odd to connect discovery with the further statement of A. 3, the recovery being from the very same place. There is overwhelming evidence against the appellant and the learned Sessions Judge has found him correctly guilty of murder. The conviction and sentence imposed on the appellant under S. 302, Indian Penal Code, shall stand confirmed. This appeal is dismissed.

20. Appeal dismissed.

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