

Karuppiah and Others Vs. State

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Court : Chennai

Decided On : Nov-05-1992

Reported in : 1993CriLJ1688

Judge : Janarthanam and;Thangamani, JJ.

Appeal No. : C.A. No. 751 of 1986

Appellant : Karuppiah and Others

Respondent : State

Advocate for Def. : Mr. S. Shanmugha Velayutham, Addl. Public Prosecutor

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

Judgement :

Janarthanam, J.

1. All the accused 1 to 7, aggrieved by their conviction and sentence in S.C. No. 13 of 1986 on the file of Court of Session, Pudukkottai Division, Pudukkottai, have come forward with this appeal.

2. The brief facts are :-

(a) All the accused 1 to 7 are the residents of Melnilaipatti, situate within the jurisdiction of Puduppatti Police Station. They are closely related. Accused 2 and 5

are brothers. Accused 1 and 4 are the sons of accused 2. Accused 3, 6 and 7 are the pangalis of accused 1. One Muthan (since deceased) was also a resident of the said Village. P.Ws. 1 and 2 Muniandi and one Ponnann are his brothers. All the brothers had been living separately. P.W 3, a resident of the said village, is the son of one Sevugan, who is none, else than the paternal uncle of P.Ws. 1 and 2 and the deceased. They and accused 1 to 7 are all Harijans.

(b) There is a temple for the deity going by the name Andhiri Amman in the village. To the east of the temple, there is a mud road running north-south. At the northern dead end of the said road, the houses of the accused, it is said, are located. The houses of the deceased and his brothers, it is said, are located on the east of the said mud road.

(c) It appears that the deceased and his brothers applied for house construction loan and the said loan had been sanctioned by the Government to them. One of the brothers of the deceased, namely, Ponnann was said to have constructed his house, making certain encroachment of the mud road. Accused 5, it is said, objected to the said encroachment and saw action to be taken through the Revenue Department. In fact, a notice emerged from the Revenue Department directing removal of the encroachment made by Ponnann. Ponnann, in turn, it is said filed a suit in O.S. No. 419 of 1983 impleading the Collector and other Revenue Department authorities, as defendants. The said proceeding was stated to be pending.

(d) P.W. 2, Ponnann and Sevugan, it is said, were not allowed to complete the construction of the houses, as a consequence of the institution of civil proceeding by accused 5 in O.S. No. 225 of 1984 on the file of the District Munsif's Court, Pudukkottai and also obtaining an order of interim injunction preventing them from doing so. P.W. 2 Ponnann and Sevugan, it is said, filed I.A. No. 20 of 1985 for vacating the interim order of injunction and the petition so filed faced a colossal failure. Consequently, despite best of efforts made by them, they were unable to commence and complete the construction, although the loan had been sanctioned by the Government in their favour. As a consequence of such proceedings, there came to prevail want of cordial atmosphere between the families of the accused

and the deceased.

(e) On 14-6-1985 at about 6 a.m., accused 5, it is said, drove his cart in the mud road. At that time, P.W. 1 questioned his propriety of taking his cart along the said road, when especially civil proceedings between them had been pending before the competent forums. P.W. 1 was also said to have exclaimed, in an agonising way, that because of accused 5, he and his family members were unable to complete the constructions and live in their own houses. For that, accused 5 was stated to have retorted by saying that he would come and see them off later, thereby impliedly meaning that deleterious consequences were to follow to the life of P.W. 1. and his family members.

(f) At about 3 p.m. P.Ws. 1 and 2. it is said, were coming along the said mud road. At that time, accused 1 to 7 emerged to the scene arming themselves with sticks and velstick, Accsued 1 was in his possession a velstick, M.O. 1. Accused 2 to 7 were armed with sticks, resembling those of the sticks in M. O. 5 series. Accused 1 and 2 were said to have attacked P.W. 1. Causing him bleeding injuries. Accused 3 and 4 attacked Muthan (since deceased) and accused 5 to 7 attacked P.W. 2. As a consequence of the attack, the deceased Muthan fell down fainted. All the accused ran away leaving the weapons of offences there. Thereafter, the deceased Muthan was said to have been taken in a cart to Puduppatti Police Station. In the said cart, P.Ws. 1, 2 and 3, it is said, travelled. They reached the police station at 7.30 p.m.

(g) P.W. 13, the Sub-Inspector of Police, it is said, was in charge of the station. P.W. 1 laid the information Exhibit P. 1, which was registered by P.W. 13 as a case in crime No. 72/85 for offences under Sections 147, 148, 323, 324 and 325, IPC. Exhibit P. 17 is the printed FIR. At 7.35 p.m., P.W. 13 seized the bloodstained dhoties, M.Os. 2 and 3 from the unconscio-victim-deceased Muthan under Exhibit P. 2 mahazar. At 7.40 p.m., he seized from P.W. 1 bloodstained towel, M.O. 4 under Exhibit P. 3 mahazar. Both Exhibits P. 2 and P. 3 were attested by D.W. 3. He despatched the injured P.Ws. 1 and 2 and the unconscious victim-deceased Muthan to Government Hospital, Keelnilai, which is otherwise called K. Puduppatti, through Constable P.W. 10 with a memo, Exhibit P. 4 for treatment.

(h) P.W. 4 is the Civil Assistant Surgeon, Government Hospital; Keelinilai. On receipt of Exhibit P. 4, the doctor P.W. 4 examined Muthan (since deceased) at 7.30 p.m. Exhibit P. 5 is the accident register copy issued for the deceased Muthan. He would opine that injury No. 1 described in Exhibit P. 5 could have been caused by any portion of the sharp portion of the stick described in M. O. 5 series while the other injuries could have been caused by beating with a weapon like M. O. 5 series.

(i) He examined P.W. 1 at 8.05 p.m. and treated him for injuries. Exhibit P. 6 is the wound certificate issued to him. He would opine that injury Nos. 1 to 4 described in Exhibit P. 6 could have been caused by a sharp edged weapon like M. O. 1 while injury Nos. 5 and 6 could have been caused by beating with anyone of the sticks described in M. O. 5 series.

(j) At 8.20 p.m., he examined P.W. 2 and treated him for the injuries. Exhibit P. 7 is the wound certificate issued to him. All the injuries described therein, he would opine, could have been caused by beating with anyone of the sticks described in M.O. 5 series.

(k) The victim-deceased Muthan had been referred for further treatment along with Exhibit P. 5 to the Government Headquarters Hospital, Pudukkottai. P.W. 5 is the Civil Assistant Surgeon, Government Headquarters Hospital Pudukkottai. He admitted the victim-deceased at 9.15 p.m. in the Emergency Ward of the hospital. Exhibit P. 8 is the copy of the accident register. The victim-deceased was again referred to for further treatment to Thanjavur Medical College Hospital.

(l) P.W. 13, rushed and reached the Scene of occurrence at 11.30 p.m. Since there was raining, he could not make any further progress of investigation. He stayed there for the night.

(m) P.W. 6 is the Assistant Surgeon, Thanjavur Medical College Hospital, Thanjavur. He admitted the victim-deceased Muthan in Ward No. 18 of the hospital at 1.15 a.m. on 15-6-1985. His condition then was very bad and he was put in the Danger List. He was stated to have been given emergency treatment. A Neuro Surgeon also attended him. Despite best of treatment, he expired at 3.45

a.m. and Exhibit p. 19 the death intimation had been sent to police.

(n) After the dawned, that is to say, at 6 a.m., P.W. 13, inspected the spot and prepared observation mahazar, Exhibit P.11 in the presence of P.W. 8. At 6.45 a.m., he seized from the scene velstick, M. O. 1 and sticks M. O. 5 series under Exhibit P. 12. Exhibits P. 11 and P. 12 were attested by P.W. 8. He also drew a rough sketch of the scene, Exhibit P. 18. He examined P.Ws. 1 and 2 and others. He searched for the accused and none of them was available. He again returned to the police station.

(o) P.W. 13 on receipt of Exhibit P. 19 death intimation from the hospital at 10.30 a.m., altered the case into one under S. 302, IPC., prepared express reports and sent the same to the concerned officials. Exhibit P. 20 is the express FIR sent to the Judicial Second Class Magistrate, Thirimayam. Exhibit P. 21 is the copy of the express report sent to the Chief Judicial Magistrate, Pudukkottai. Exhibits P. 20, P. 21 and other express reports intended for the concerned officials were Stated to have been despatched through the Constable, P.W. 9, who, in turn, was stated to have handed over Exhibit P. 20 to the Judicial Second Class Magistrate, Thirumayam at 4 p.m.

(p) P.W. 14 is the Inspector of Police, pudukkottai. The Inspector of Police, Thirumayam, in whose jurisdiction, the place of occurrence falls, was on leave and consequently, the Deputy Superintendent of police, directed P.W. 14 to take up investigation in this case and consequently, he took up the investigation in this case at 12.30 p.m., after the receipt of the express reports. He along with P.W. 13 went and reached Thanjavur Medical College Hospital, Thanjavur at 3.30 p.m. Between 4 and 7 p.m., he held inquest over the body of the deceased. Exhibit P. 22 in the inquest report. During inquest, he examined P.Ws. 1 and 3 and others. After inquest, he despatched the body of the deceased for purpose of autopsy through the Constable P.W. 11 along with Exhibit P. 9 requisition.

(q) P.W. 7 is the Tutor in Forensic Science, Thanjavur Medical College, Thanjavur. On receipt of Exhibit P. 9, he commenced autopsy over the body of the deceased at 10.10 a.m. on 16-6-1985. Exhibit p. 10 is the postmortem certificate. The doctor described external as well as internal injuries. The doctor while describing external

as well as internal injuries in the postmortem certificate, inadvertently appeared to have described injury No. 16, namely, contusion noticed over both parietal and frontal regions of the scalp as internal injury. He would opine that injury Nos. 1 to 16 described in Exhibit P. 10 could have been caused by beating or assaulting with one or more of the sticks in M. O. 5 series. He would further opine that external injury Nos. 1, 2 and 16 corresponding to the internal injury Nos. 17 and 18 are sufficient in the ordinary course of nature to cause the death. After autopsy, P.W. 11 handed over the body of the deceased to its relations.

(r) P.W. 14 went to the scene village, examined P.Ws. 2 and 8 and recorded their statements. He returned to the police station and examined P.Ws. 9 and 11 in the station. On 19-6-85 at 10 p.m. P.W. 13 arrested accused 2 and 5 at Melnilaipatti and brought them to the police station at 1.30 a.m. on 20-6-1985. They, it is said, were searched and put up in the lock-up. Since he found injuries on the person of accused 2 and 5, he sent them to the hospital for treatment. Thereafter they had been sent to Court for remand. The rest of the accused, namely, accused 1, 3, 4, 6 and 7 surrendered before Court. P.W. 14 examined P.Ws. 4 and 5 on that day. On 27-6-1985, he examined P.Ws. 6, 7 and others. On 29-6-1985, he sent Exhibit P. 13 requisition to court for sending the incriminating material objects for the purpose of examination to the Chemical Examiner.

(s) P.W. 12 is the Assistant attached to the Judicial Second Class Magistrate's Court, Thirumayam. On receipt of Exhibit P. 13 requisition, he despatched M. Os. 2 and 3 to the Chemical Examiner, after separately packing them under the directions of the Magistrate along with the original of Exhibit P. 14 letter. Exhibits P. 15 and P. 16 are respectively the reports of the Chemical Examiner and the Serologist.

(t) The investigation in this case thereafter had been taken up by the Inspector, Ponnamaravathi, who was then in charge of Thirumayam circle. He supervised the earlier investigation done by P.Ws. 13 and 14 and laid the final report under S. 173(2), Cri.P.C. before the Judicial Second Class Magistrate, Thirumayam on 10-1-1986 against accused 1 to 7 for offences appeared to have been committed by them.

3. Upon committal, learned Sessions Judge, upon perusal of the materials, framed the following charges against the accused.

(1) Under Section 148, 1PC against accused 1;

(2) Under Section 147, IPC against accused 2 to 7;

(3) Under Section 302, IPC against accused 3 and 4;

(4) Under Section 302 read with Section 149, IPC against accused 1, 2 and 5 to 7;

(5) Under Section 324, IPC against accused 1;

(6) Under Section 323, IPC against accused 2; and

(7) Under Section 323, IPC against accused 5 to 7.

4. The prosecution, in a bid to prove the charges framed against the accused, examined P.Ws. 1 to 14, filed Exhibits P1 to P22 and marked M.OS. 1 to 5.

5. The accused, when questioned under Section 313, CrI.P.C. as to the incriminating circumstances appearing in evidence against them, denied their complicity in the crime. The sum and substance of the statement of all the accused, excepting accused 6, to the omnibus question put as to whether they wanted to state anything regarding case is to the following effect : There was an ear-boring ceremony as well as a marriage of their relations at Nampooranippatti village. They had been to the said village for attending those two functions on the day of the occurrence and returned home at about 3 p.m. While they were nearing their home, P.Ws. 1 and 2, deceased Muthan and their brother Ponnann, who were lying in wait for them with sticks attacked them and in the process of such an attack, accused 2 and 5 sustained injuries on their person. They subsequently went to Puduppatti Police Station along with one Vellaichamy and one Veerappan. In the police station, accused 5 lodged an information about the said occurrence. They were detained in the police station for about five days. Vellaichamy and Veerappan had been freed by the police and accused 2 and 5 alone were sent to Court for the purpose of remand five days thereafter. Because of the pendency of a civil dispute between them, the case has been foisted.

6. They also filed two documents. One is the copy of the order dismissing the petition in I.A. No. 20 of 1985 filed by Ponnann, brother of the deceased, Sevugan, father of P.W. 3 and P.W. 2 for vacating the interim order of injunction obtained by accused 5 in the suit in O.S. No. 225 of 1984. The other document is the Commissioner's report and plan in the said suit dated 30-3-1984 and they had been filed to point out the encroachment made by the prosecution party in the mud road in the process of construction of their house. This apart, they also marked Exhibit D. 1 dated 20-6-1985, medical memo; Exhibit D. 2 dated 20-6-1985, accident register copy for the injuries sustained by accused 2 and Exhibit D. 3 dated 20-6-1985, accident register copy for the injuries sustained by accused 5 through the doctor P.W. 4. 7. Accused 6 would specifically plead alibi by stating that he had been to Nampooranipatti day prior to the occurrence for attending the marriage of his relation and he did not return for about three days to the village and the case had been foisted upon him. They however did not choose to examine any witness on their behalf.

8. Learned Sessions Judge, on perusing the materials placed on record and after hearing learned Public Prosecutor as well as learned counsel for the defence, found all the accused guilty in respect of all the charges framed against them and convicted them thereunder. He sentenced.

accused 1. to rigorous imprisonment for two years under S. 148, IPC, rigorous imprisonment for two years under S. 324, IPC and imprisonment for life under S. 302 read with S. 149, IPC;

accused 2. to rigorous imprisonment for two years under S. 147, IPC., rigorous imprisonment for one year under S. 323, IPC and imprisonment for life under S. 302 read with S. 149, IPC;

each of accused 3 and 4 to rigorous imprisonment for two years under S. 147, IPC and imprisonment for life under S. 302, IPC; and

each of accused 5 to 7 to rigorous imprisonment for two years under S. 147, IPC., rigorous imprisonment for one year under S. 323, IPC and to imprisonment for life under S. 302 read with S. 149, IPC.

with a direction for all the sentence imposed on all the accused to run concurrently. Hence the appeal.

9. Learned counsel appearing for the appellants-accused would contend that the credibility of the case of the prosecution had been twisted and tinkered to such an extent by the presence of existence of plethora of imponderable factors getting reflected from the materials available on record, as is not possible to fasten or mulct criminal liability upon any of the appellants-accused for any offence whatever, as had been done by the Court below, the consequence of which is that there is no other go except to acquit them by giving them the benefit of reasonable doubt and such factors, he would say, consist of the following :-

(1) The origin and genesis of the case had not been made and known by the suppression of the earliest information given by P.W. 1 to P.W. 13 and Exhibit P. 1 had been substituted in its place, giving a metamorphic change to the case of the prosecution;

(2) The story of the prosecution is getting developed from stage to stage by the testimony of P.Ws. 1 to 3, besides their testimony is beset with inherent improbabilities and bristling with material contradictions not deriving the solidified support of the medical testimony available on record;

(3) No reliance, much less safe reliance can be placed on the case of the prosecution, as unfolded by the direct testimony of the witnesses, P.Ws. 1 to 3, inasmuch as they are interested witnesses, in the sense of their not only being closely related to each other but also partaken the character of the partisan witnesses, as there was no love-lost between the family of the deceased and the accused, as a consequence of pendency of civil litigations before Court; and

(4) The investigation in this case besides not being impartial is rather slipshod and perfunct and that perhaps was the reason for not placing all the cards before the table, in the sense of secreting the earliest information as respects the occurrence given by accused 5 to the police and not making any investigation therefor, besides not even resorting to explain the injuries found on the person of accused 2 and 5 stated to have been sustained during the course of the occurrence by the

examination of the doctor, who treated them for their injuries.

10. Learned Additional Public Prosecutor would however strive his level best, on the face of the materials available on record, to repel those submissions.

11. We may now delve deep into the fang of submission revolving on the suppression or secretion of the earliest information given by P.W. 1 to the Sub-Inspector of Police, P.W. 13 as respects the manner of occurrence. The defence in this regard did not rest content in hurling a suggestion to the investigating agency eliciting a stout denial as is usual in every case. They were able to probabalise such a theory by eliciting certain favourable answers from P.W. 1 himself, apart from eliciting certain answers from the doctor, P.W. 4, who treated initially the deceased, P.W. 1 and P.W. 2 and from the investigating officers, P.Ws. 13 and 14.

12. The version, as projected by P.W. 1, reveals that it was he, who laid the first information, Exhibit P. 1 before P.W. 13 at 7.30 p.m. on the day of the occurrence. It is not as if Exhibit P. 1 complaint had been reduced to writing before ever it was presented to P.W. 13. He would specifically state that he narrated to P.W. 13 the manner of occurrence and he, in turn, reduced the same into writing by his own hand and thereafter, the same had been read out to him. He would further say that the thumb impression of P.W. 2 has also been taken in the said information so reduced into writing. In Exhibit P. 1, we have on the record, there is no attestation by P.W. 2 either by affixing his thumb impression or by subscribing his signature. P.W. 13 would also make an endorsement in Exhibit P. 1 with regard to the registration of the case by him at 7.30 p.m. To our dismay, we are unable to find that P.Ws. 1, 2 and the deceased had been produced before P.W. 4 by the constable P.W. 10 with a medical memo, Exhibit P. 4. It is not as if P.W. 13 despatched the injured and the deceased to the hospital without seizing the bloodstained clothes from them. As already adverted to, in the summation of facts, he had seized the bloodstained clothes under the cover of mahazar and then only despatched them from the police station to the hospital for the purpose of treatment. He himself would say that they were sent to the hospital at 8 p.m. In such a situation, we are rather puzzled how those injured and the deceased could have been present at 7.30 p.m. before P.W. 4 that is at one and the same time at

two places. It is not as if some in advertent mistake had been crept into the records, as respects the noting of time either by P.W. 13 or the doctor, P.W. 4. The agonizing factor is that though P.W. 13 would depose to in his chief-examination to make it appear that he was the person responsible for reducing Exhibit P. 1 into writing, for reasons best known to him, he would concede and admit, in the course of cross-examination, that the person who wrote exhibit P. 1 was none else than the Head Constable of the Police Station. It is in this context a suggestion hurled by the defence that the earliest information given by P.W. 1 to P.W. 13 had been secreted and Exhibit P. 1 had been later created after the death of Muthan in the hospital, suiting to the exigencies of the case of the prosecution, utilising the services of the Head Constable, assumes signal importance. The absence of attestation by P.W. 2 in Exhibit P. 1, as positively deposed to by P.W. 1, probabalise the defence theory of the suppression of the earliest information given by P.W. 1 to P.W. 13 respecting the occurrence.

13. This is further reinforced and strengthened by the admission made by P.W. 1 in his evidence that he alone went to the police station in cycle with the avowed purpose of laying the information to the police. This sort of an admission had been elicited by the defence during the course of cross-examination as against his positive evidence in his chief examination that he had travelled in the cart in which P.W. 2 and the deceased travelled to the police station. P.Ws. 1 to 3 had categorically stated in their chief-examination that inclusive of P.W. 1, all of them had been to the police station by travelling in the cart along with the deceased. From such changing stand taken by P.W. 1 as to whether he was travelling in the cart in which the deceased was taken or was going in a cycle ahead, for launching the information, it is thus clear, the attempt made to make it appears that only one information had been placed before the police by P.W. 1, in the circumstances of the case, we feel, cannot at all be countenanced.

14. The case of the prosecution getting developed from stage to stage and the version projected by the ocular witnesses suffering from serious infirmity of material contradictions not having the corroborative support of the medical evidence may fall for consideration in the arena of discussion. In exhibit P. 1, nothing had been stated as to accused 5, whilst he was driving his cart along the

road on the morning of the day of occurrence repressing as to his returning at a later point of time to see the prosecution witnesses, thereby impliedly stating that there was likelihood of some harm being caused to them. This aspect of the matter had been introduced during the course of investigation and these factors had been duly proved by the defence, utilising the provisions of Section 145 of the Evidence Act, by putting relevant questions to the persons concerned. Besides in Exhibit P. 1, no specific overt-act is attributable to any of the accused as relatable to causation of injuries to P.Ws. 1, 2 and the deceased. What all stated therein is that accused 1 and 2 attacked him with velstick and stick on his hands and head. Similarly, accused 3 and 4 are stated to have attacked the deceased by means of an iron rod on his head, nose and chest. Likewise, accused 5 to 7 were stated to have attacked P.W. 2 by means of sticks on his head and on both his forearms. From such description of the attacks on P.Ws. 1, 2 and the deceased by all the accused, we are unable to find as to which accused was responsible for causing which injury on the person on whom the attack was made. This apart, there is no mention as to which of the accused between accused 1 and 2, was in possession of velstick while mounting an attack by them on the person of P.W. 1.

15. During the course of evidence, P.W. 1 would ascribe specific overt acts to all the accused. He would say that accused 1 beat P.W. 1 with velstick M.O. 1 on his head, right hand and left hand ring fingers. Accused 2, he would state, beat him on his right and left shoulders and causes bleeding injuries. He would further change the weapon as respects the attack stated to have been mounted by accused 3 and 4 on the deceased Muthan. He would state that both of them possessed sticks like M.O. 5 series and beat the deceased Muthan on his head, nose, both hands, chest, back and also his testicles. Here also, as respects the attack by accused 3 and 4 on the deceased Muthan, he would not give the specific overt acts of accused 3 and 4, in the sense of which of the injuries as found on the person of the deceased was caused by either of them. Not only the change of weapon was there, but also the place on which the beatings were resorted to be given by accused 3 and 4, there was improvement.

16. Coming to the attack by accused 5 to 7 on P.W. 2, he would specify the individual overt acts of each of them, as relatable to P.W. 2. Accused 6 was stated

to have beaten P.W. 2 by means of a stick on his head and both shoulders; accused 7 by means of a stick on his forehead, back and hand accused 5 by means of a stick on his back and hand.

17. When we come to the evidence of P.W. 2, his version as respects the individual overt acts of all the accused is not toeing in line as projected by P.W. 1. He would improve the version of P.W. 1 as respects the overt act of accused 1 in stating that he also gave a beating on his right index finger, apart from beatings given by him as stated by P.W. 1.

18. As respects the overt acts of accused 2 relatable to P.W. 1, what he would state was that he did inflict of beating by means of a stick on his back-bone, chest and shoulder. Coming to the attack on the deceased by accused 3 and 4, what he would say was that the deceased was also beaten at his testicles. Coming to the attack mounted on him by accused 5 to 7, he would state contrary to what P.W. 1 has stated, in the sense of himself having been beaten by accused 5 on his flank and back of his head. It can be recapitulated here that according to P.W. 1, accused 5 beat P.W. 2 by means of a stick on his back and hand. P.W. 2 would however, states that accused 6 was responsible for stabbing him by means of a stick on his head, besides beating him on his legs and hands, which is not in tune with the version projected by P.W. 1, as respects the attack mounted by accused 6 on P.W. 2. Accused 7, according to P.W. 2, beat him on his neck and right hand by means of a stick while the version of P.W. 1, as already stated, was that accused 7 was responsible for beating P.W. 2 on his forehead, back and hand.

19. The version, as projected by P.W. 3, as respects the overt act attributed to all accused, we feel need not be recapitulated here for the simple reason that his presence in the scene was not at all adverted to either by P.W. 1 or by P.W. 2.

20. Top of all, the version as projected by the ocular witnesses is not all receiving necessary corroborative support from the medical evidence available on record. The post-mortem certificate, Exhibit p. 10 reveals the presence of as many as 16 external injuries on the person of the deceased on various portions of his body. All those injuries were not at all accounted for as a result of the overt acts of any or by all the accused. The presence of 16 injuries, we feel, creates about as to the

manner of occurrence. If the occurrence had taken place in the manner suggested by the ocular witnesses, it is beyond one's comprehension as to how it was possible for the deceased to have sustained as many as 16 injuries on his person. It is to be noted here that in the accident register copy, Exhibit P. 5 it is stated that the deceased had been attacked by stick, velstick and aruval. It is further revealed that the deceased Muthan had been taken to the hospital by his younger brother Ponniah. The victim, at that time, was stated to be unconscious. The information as to the manner of attack on him had been given by his younger brother Ponniah, who was admittedly present in the scene and examined during the course of investigation as a witness to the occurrence, though not examined in Court. We are asked to believe that the deceased Muthan had been sent to the hospital initially for treatment through the Constable, P.W. 10 along with the memo, Exhibit P. 4. This had been belied from the entry found in Exhibit P. 5 that immediately after the admission of the victim-deceased Muthan in the hospital, the police had been duly intimated. All these aspects of the matter do indicate, we feel, manipulation had been done at every stage to suit the exigencies of the case of the prosecution.

20A. A cursory perusal of Exhibit P. 6 wound certificate issued to P.W. 1 reveals that he sustained four incised injuries, which are of the following description :

'(1) An incised wound about 6 cm. x 0.5 cm. x 9.5 cm. on the left side of the occipital region;

(2) An incised wound about 3 cm. x 0.1 cm. x 0.1 cm on the right side of the parietal bone on the top of the head;

(3) An incised wound about 2 cm x 0.1 cm. x 0.1 cm. on the left ring finger at the root;

(4) An incised wound about 2 cm x 0.1 cm x 0.1 cm on the left index finger at the root.'

Two more injuries described therein, namely, injury Nos. 5 and 6 are only complaints of pain on both the upper and lower limbs. From a cursory perusal of

the description of the injuries, as stated above, it is rather crystal clear that they are clearcut incised wounds. The first two incised injuries had been caused on the head while the other two injuries, namely, Injury Nos. 3 and 4 had been caused at the left ring and index fingers at the root.

21. If we recapitulate the evidence of P.W. 3 leave alone the other ocular witnesses, he had stated that P.W. 1 was given a beating on the head right hand and left ring finger by accused 1 by means of M.O. 1 velstick, besides his being beaten up by accused 2 by means of a stick like M.O. 5 series on his right and left shoulder, which resulted in bleeding injuries. It is not as if P.W. 1 has stated that he had been either cut or stabbed with the iron portion of the velstick. What all he would state was that he was simply beaten with the velstick. This aspect of the matter had been clarified during the course of cross-examination. Definite questions had been hurled to P.W. 3, as to his understanding as to what is meant by beating (Words in vernacular omitted), stabbing (Words in vernacular omitted) and cutting (Words in vernacular omitted) To all those questions, he was able to reply that he understood the niceties of beating, cutting and stabbing. In such state of affairs, he, having deposed to in a positive fashion that P.W. 1 was beaten by means of the velstick, M.O. 1, should have meant what he had stated, in the sense of P.W. 1 being beaten up with the stick portion of velstick, M.O. 1. In such state of affairs, we are unable to understand as to how P.W. 1 should have sustained the aforesaid clearcut four incised wounds, as extracted above. The reason is obvious. He had not at all deposed as to what really happened on the day of the occurrence. Of course, the doctor had stated that P.W. 1 could have sustained those injuries in the manner accounted for by the prosecution. But nonetheless, we are unable to share the opinion of the doctor, in the facts and circumstances of the case.

22. The case of P.W. 2 is no less different. Exhibit P. 7 is the wound certificate relatable to him. Of the three injuries mentioned therein, the first injury is an incised wound about 2 cm. x 0.5 cm. x 0.5 cm. on the forehead. It is nobody's case that he was attacked by means of a sharp edged weapon. What all had been projected by the prosecution through the ocular testimony of the witnesses, inclusive of himself, was that he was beaten with a stick by accused 5 to 7. The

other two injuries are only contusions found on the right wrist joint and left elbow and on those places, he was not beaten by any of the accused, accused 5 to 7. But what all he had stated was that by their attack, he received beatings on the head, both shoulders, forehead, rights flank back and hand. No doubt true it is that one of the places mentioned by him for receipt of the beatings in his hand, left or right not mentioned. But none-the-less, two contusions, as found described in Exhibit P.7, as earlier stated, had been at the right wrist joint and on the left elbow. On the other portions of the body, on which he received threshing, at the hands of accused 5 to 7, he had not received any injuries. No doubt true it is that every bullet fired at need not necessarily result in a bullet injury. Such a saying need not necessarily be true in all eventualities and situations. It depends upon variable factors associated in the manner of attack. If the bullet emerges from a short-range and hits the target of attack, there is every reason for a bullet injury to be caused and if it emerges attacking the target at a longer range, the possibility of missing the target may be there and consequently, there may not be any resultant bullet injury. But in the case of an attack with a weapon like stick in close quarters aiming at the vulnerable portions of human anatomy, with such ferocity, it is but natural to expect that every hit is resulting in an injury either in the form of a contusion or some sort of bleeding injury. In the case on hand, it is the positive evidence of the ocular witnesses that P.W. 2 had been attacked by accused 5 to 7 with sticks like M.O. 5 series on various portions of his body, as already stated. But alas ! no resultant injury as a result of the attack had been traced to the wound certificate Exhibit P.7 relatable to him. In such circumstances, we are of the view that the version of P.W. 2 is not at all reflecting the reality of the situation as respects the occurrence.

23. We may now divert our attention to the interestedness and partisan character of the ocular witnesses put up in this case. It is not as if the occurrence happened in wilderness. The sordid fact is that the occurrence happened in the thick and thin of the colony, that is to say, in the mud road abutting the colony. It is in evidence that here are about 30 to 40 houses in the Harijan Colony abutting the said mud road and about 500 houses belonging to the caste Hindus. It is admitted by all the ocular witnesses, P.Ws. 1 to 3 that many a people came to the scene of occurrence, attracted by the hue and cries emerged from there. The people

gathered, they would say, were round about 20 to 25 in number. After making such an admission, they had the audacity and guts to say that all those people belonged to the faction of the accused. They would further say that the other persons emerged to the scene are the respective house wives of all the accused and none excepting those people, others from the Colony or from the caste Hindu locality emerged to the scene at the time when the occurrence took place. We are unable to understand the hue and cry attracting the female members of the accused alone and not attracting the other independent witnesses either from the Colony or from the caste Hindu Locality. To such a facile explanation resorted to have been offered by the ocular witnesses, we are unable to affix our seal of approval.

24. As already indicated, P.Ws. 1 and 2, the deceased one Muniandi and Ponnann are brothers. P.W. 3's father is one Sevugan, who is none-else than the paternal uncle of the deceased, P.Ws. 1 and 2. Even the mahazar witness put up, namely, P.W. 2 is none-else than the sister's son of P.Ws. 1 and 2 and the deceased. These witnesses put up are all interested in the cause and welfare of the family of the deceased.

25. The matter did not stop there. All of them are inimically disposed of towards accused 1 to 7. As already indicated, accused 1 to 7 are closely related to each other. A tussle had been going on between the families of the deceased and accused, in the shape of litigations before civil forums, as respects the construction of house, after availing of Government loan by the family members of the deceased as well as Sevugan. As already indicated, accused 5 had sent petition to the Revenue authorities for removal of the encroachment by the construction of the house on the mud road by Ponnann, and the revenue authorities also caused notice to be served on him for removal of the encroachment made and Ponnann had to necessarily file a suit in O.S. No. 419 of 1983 for protection of his interests as against the revenue authorities. Besides accused 5 had also filed a suit in O.S. No. 225 of 1984 as against Ponnann, Sevugan and P.W. 2 and obtained an order of interim injunction preventing them from putting up construction of their houses abutting the mud road. The efforts made by them in vacating the order of interim injunction by filing I.A. No. 20 of 1985 were in vain, in

the sense of the said petition having been dismissed. The result was that they could not construct their respective houses, despite the fact that they were possessed of fluid cash resources for the construction by availing of the Government loan. The members of the family of the deceased and his other relations could therefore seem to be nurturing so much of a grievance against the accused. In such a situation, it is very likely that the members of the family of the deceased could be nurturing a grievance of grudge against accused rather than the other way about. In such circumstances, the evidence of interested and partisan ocular witnesses, in the absence of any testimony emerging from any independent quarters, has to be weighed in golden scales before ever the same is relied upon.

26. We may now proceed to consider the nature and character of the investigation done in the instant case. The investigation, we rather feel, in the circumstances of the case, cannot be stated to be impartial. Apart from the defence theory of accused 2 and 5 rushing to the police Station immediately after the occurrence and lodging of an information as respects the occurrence, there is the candid admission made by P.W. 1 during the course of cross-examination that before even he reached the police Station, accused 2 and 5 were found available there alone with one Veerappan and Vellaichamy. He would further state that accused 2 and 5 were detained in the police Station for about five days and thereafter alone they were remanded to judicial custody and the other two persons, namely, Vellaichamy and Veerappan had been freed by the police from their detention. Though P.W. 1 was quite willing to admit the presence of accused 2 and 5 in the police Station, yet he was not prepared to admit the presence of any injuries on their person. The fact that he denied the presence of the injuries on their person did not at all improve matters. The sordid fact is that those two accused, namely, accused 2 and 5 had been sent to the doctor by name Pancharatnam, Government Hospital, Keelnilai for treatment of their injuries by means of medical memo, Exhibit D.1. The doctor in fact treated them for their injuries and issued the wound certificates, namely, Exhibits D.2 and D.3. Though accused 2 and 5 had been sent to the hospital for treatment of the injuries, the investigating agency did not place on record their wound certificates and also did not opt to cite the doctor, who treated them as a witnesses. It is their bounden duty to explain the injuries

found on the person of accused 2 and 5 stated to have been sustained by them during the course of the occurrence.

27. It is at this juncture, we have to take notice of certain revelations brought to the surface by P.W. 1. He infact categorically deposed that when he went to the police Station for the purpose of lodging the first information, P.W. 13 beat him with a lathi and remonstrated his conduct of lodging an information against accused after having laid a complaint as respects the morning occurrence in the police station by one Ponnann. The so-called complaint stated to have been laid by Ponnann had not seen the light of the day. It is perhaps at that time, P.W. 13 could have been entertaining a feeling that the prosecution party were taking the law into their own hands in a bid to subdue accused to succumb to their wishes. It is perhaps after the death of the deceased in the hospital, 12 hours later, the entire matter could have been viewed in a topsyturvy fashion throwing the case as projected by accused at the earlier point of time as respects the matters of the occurrence.

28. Worthy it is to note at this juncture, P.W. 13 would candidly admit that he did not investigate the case, as projected by accused. What is further worse is even the Inspector, P.W. 14 did not at all conduct investigation in a fair and impartial manner. When he was confronted with the question during the course of cross-examination as to whether he investigated the case, as projected by the defence, he rather blinked and stated that those aspects of the matter were not at all put up before him by earlier investigating officer, P.W. 13 and by stating so, he wanted to throw the burden upon the shoulders of P.W. 13. The explanation so offered by him, we feel, had been given with a view to wriggle out of the predicament situation he had been placed and nothing more. The plain fact is that the accused had not been given a fair deal at all by the investigating agency, in the sense of registering the case, as projected by them and making an investigating therefor. If they had registered their case and after due investigating referred it as false or mistake of fact, that is altogether a different matter. Very vital question, in such a circumstance, is as to who started the game of attack.

29. In the absence of the materials projected by the defence before the investigating officer, we are not in position to come to any conclusion as to

whether the deceased Party was the aggressor of the other way about, namely, the accused party. With agony and anguish, we have to point out that the investigating officer, P.W. 13 was forced to say, in the course of chief-examination itself that as accused 2 and 5 complained of certain injuries on their person, he had sent them to the hospital for treatment before even they were remanded to Judicial custody, as the defence with a view to mal the prosecuting agency had already marked Exhibits D.1 to D.3 through the doctor P.W. 4 before ever P.W. 13, Sub-Inspector was called to the box. Here also, we have to point out that the arrest of accused 2 and 5 on 19-6-1985 at 10 p.m. at Melnilaipatti, as stated by P.W. 13, could not reflect the reality of the situation, inasmuch as there is positive evidence through the medium of P.W. 1 that accused 2 and 5 were available in the police station on and from the day of the occurrence upto 20-6-1985. This shows that all is not well with the prosecuting agency.

30. We are also at a loss to understand as to why the investigating agency failed to send requisition to the Court for sending of M.Os. 1 and 5 series, the so-called weapons of offences wielded by accused at the time of occurrence to the Chemical Examiner and this really creates a suspicion in our mind as to the plausibility of putting up those weapons, as weapons of offences stated to have been wielded by accused at the time of occurrence for the purpose of this case. Thus, the investigation in this case, we are of the view, is not inspiring confidence of court, as the same cannot be stated to be impartial, besides being slipshod and perfunct.

31. In view of the imponderable factors and other infirmities, as we have referred to and discussed, as above, we are unable to place any reliance, much less safe reliance on the ocular testimony of P.Ws. 1 to 3, who are interested and partisan in character in fastening or mulcting criminal liability for any offence whatever on any of the accused, as had been done by the court below.

32. In the result, the appeal is allowed. The conviction and sentence, as imposed on all the accused for various offences by the Court below, are set aside and the accused are acquitted. The bail bonds, if any, executed by them shall stand cancelled.

33. Appeal allowed.

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