

R. Kulandavelu Vs. State

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Court : Chennai

Decided On : Sep-16-1992

Reported in : 1993CriLJ2574

Judge : K.M. Natarajan and;N. Arumugham, JJ.

Appeal No. : C.A. No. 532 of 1986

Appellant : R. Kulandavelu

Respondent : State

Advocate for Def. : Mr. S. Shanmughvelayutham, Addl. P.P.

Advocate for Pet/Ap. : Mr. V. Gopinath, Adv.

Judgement :

K.M. Natarajan, J.

1. This appeal has been preferred by the first accused in S.C. No. 116 of 1985 on the file of the First Additional Sessions Judge, Salem, challenging the legality and correctness of his conviction under Section 302 Indian Penal Code and the sentence to imprisonment for life.

2. The appellant for the offences under sections 120B and 302 I.P.C. and the second accused for the offences under section 120B and 302 read with Section

109 I.P.C. were tried on the allegation that in pursuance of criminal conspiracy and at the instigation of the second accused, on 7-12-1984 at about 5.45 p.m. at Konnaiyar village the appellant drove the lorry bearing registration No. TNF 2124 and ran over Thalaippakaran alias Ramasami Goundar as a result of which he died.

3. In support of the said charges, the prosecution examined P.Ws. 1 to 21, filed Ex. P. 1 to P. 23 and marked M.Os. 1 to 10.

4. The cause of the prosecution as disclosed from the oral and documentary evidence can be succinctly stated as follows :- P.W. 1 is the son of the deceased Thalaipakaran alias Ramasami Goundar. Accused 1 and 2 are brothers. The deceased and his son P.W. 1 entered into an agreement to purchase a land from one Periak Goundar on 27-8-1980 and ever since that date, they have been cultivating the said land. But, the accused obtained a sale deed in respect of the said land from Periak Goundar and in respect of the said purchase, there were proceedings before the Revenue officials, police and Court. It is stated that the deceased filed a suit for specific performance and obtained a decree and he was asked to pay the balance of the sale price. The deceased had also given a criminal complaint against the accused and others and the said case ended in acquittal. It is the further case of the prosecution that the deceased gave a petition Ex. P. 1 on 14-3-1983, and another petition, copy of which is marked as Ex. P. 2 on 11-4-1983 to the Superintendent of Police and yet another petition Ex. P. 17 on 10-11-1982 to Elachipalayam police to the effect that he apprehended danger as the accused threatened to run over him by lorry. In pursuance of the petition Ex. P. 17, it is stated that the police sent for both the parties and obtained the muchalikka Ex. P. 19. Similarly in respect of the petition given under Ex. P. 18, they were enquired. According to the prosecution, the accused on account of the above motive planned to murder the deceased and in pursuance of the said plan, the incident in this case had happened on 7-12-1984 at 5.45 p.m. as alleged.

5. It is the evidence of P.W. 1 that on 7-12-1984 at about 5.45 p.m. in order to supply milk to the milk society, he was proceeding on a cycle along the east-west Tiruchengode Rasipuram main road. At that time he noticed his father, the

deceased, leaving the bunk shop of one Thuruthi (P.W. 6) and proceeding towards Konnaiyar. At that time a yellow colour lorry was parking on the east of the water tank in Tiruchengode-Rasipuram main road. He identified M.O. 1 lorry bearing registration No. TNF 2124 as the said lorry. The first accused who was sitting in the pillayar temple on the southern side of the road got up and was proceeding towards the lorry. While he was standing at the entrance of the milk society, he saw the said lorry being driven by the first accused while two other persons seated by his side. He could identify one of those two persons, namely P.W. 3, and he could not identify the other. He suspected that since his father was proceeding along the road, the first accused would hit the lorry against him. Hence, he went by cycle following the lorry. He noticed his father proceeding about 300 feet away from the milk society on the western side of the road by walk. At that time the first accused who was driving the lorry ran over his father and thereupon sped away towards north. P.W. 2 who was grazing buffalo in her field on the eastern side of the road raised noise. When he went near his father, his intestines came out and he found him dead. Thereupon, after staying there for some time he went to the house of P.W. 5 at Konnaiyar and from there he went in his motor cycle in search of the lorry at Paruthipalli, Mallasamudram. But, he did not see the lorry P.W. 5 dropped him at Elachipalayam police station. After obtaining a paper from the nearby shop, P.W. 1 wrote a complaint in his own handwriting and gave it to the Sub-Inspector of Police, P.W. 20, at the station. The complaint is marked as Ex. P. 4. P.W. 20 on receipt of Ex. P. 4 registered a case in Crime No. 159 of 1984 under section 302 Indian Penal Code and prepared the first information report Ex. P. 20 with copies. He sent Exs. P. 4 and P. 20 to the Judicial Second Class Magistrate's Court. Tiruchengode and the copies to the higher officials. He proceeded to the scene place and was waiting for the arrival of the Inspector of Police. P.W. 21.

6. P.W. 21 on receipt of the copy of the first information report at 1.30 a.m. on 8-12-1984 went to Elachipalayam police station. P.W. 3 produced the lorry TNF 2124 (M.O. 1) at 3 a.m. and he seized the same under Ex. P. 21, Form No. 95, attested by P.W. 3. He took P.W. 3 to the scene place and reached there at about 4 a.m. He inspected the scene place in the presence of P.W. 15 and other and prepared the observation mahazar Ex. P. 10 and drew the rough sketch Ex. P. 22. He seized bloodstained earth M.O. 5, sample earth M.O. 6, towel M.O. 4 and a

pair of chappels M.O. 2 series under cover of mahazar Ex. P. 11 attested by the same witnesses. Between 5.30 a.m. and 9 a.m. he held inquest. During the inquest, he examined P.Ws. 1 to 3 and others. Ex. P. 23 is the inquest report prepared by him. It is stated that one Veerammal was examined at the time of the inquest. She died later. After completing the inquest, he handed over the dead body to the constable P.W. 19 along with a requisition Ex. P. 5, for the purpose of autopsy. He caused photos of the scene place to be taken through P.W. 16 also took photo of the lorry. M.O. 7 series are the photos of the scene place and the lorry and M.O. 8 series are their negatives. On the same day he examined P.Ws. 5, 6 and 15 and others. He searched for the accused and they were not available.

7. P.W. 7 was the then Civil Assistant Surgeon attached to the Government Hospital, Tiruchengode. On receipt of the requisition Ex. P. 5 to conduct post-mortem examination on the dead body of the deceased Thalaippakaran alias Ramsami Goundar, he conducted autopsy at about 11.45 a.m. on 8-12-1984. He found the following external injuries :

1. The whole of the left thigh is lacerated in its anterior part. The skin is reflected on both sides exposing the underlying structures. Blood clots are found over the surface.
2. The skin over the left knee is reflected upto upper part of the left leg exposing left knee joint and muscles in the upper part of the left leg. Left knee joint is fractured and separated on its anterior aspect.
3. Right inguinal area is torn exposing underlying structures. Blood clots are seen underneath.
4. Both scrotal sacs are torn exposing testes.
5. Area of left side of the lower abdomen between the symphysis pubis and anterior superior iliac spine is torn through which loops of small intestines are protruding out.
6. Interrupted abrasion resembling tyre marks 10 cm x 8 cm is seen over the right leiu extending into anterior part of right side of abdomen.

7. Interrupted abrasion resembling tyre marks 15 cm, 15 cm over the infra scapular area extending into the right infra auxiliary area.
8. Abrasion 5 x 3 cm. over the upper part of the left shoulder on its outer aspect.
9. Abrasion 5 cm. x 3 cm. in front of left ear.

On dissection :- Corresponding to injury No. 5, blood and blood clots are found over the internal aspect of the left side of the lower abdomen. 50 ml. of blood was collected in peritoneal cavity. Corresponding to injury No. 7, right side ribs are fractured from 3rd rib downwards. Right lung is lacerated in several places. 100 ml. of blood was collected in thoracic cavity. Right lobe of the liver is lacerated in several places. On internal examination, he noticed the stomach containing 200 grams of partially digested food material. Right lobe lacerated in several places. There was no fracture of pelvic bones or skull bones. The hyoid bone was intact. The bladder was empty. P.W. 7 was of the opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries to vital organs about 12 to 24 hours prior to post mortem. He would also opine that the deceased could have received the injuries due to hit by a lorry and after the deceased falling down, the wheels of the lorry could have run over the body. External injuries 5 and 7 with the corresponding injuries are necessarily fatal. The deceased would have died immediately after receipt of the injuries. Ex. P. 6 is the post-mortem certificate issued by him.

8. P.W. 21 continued the investigation. On 9-12-1984 he examined P.Ws. 1, 7, 10, 11, 12, 13, 16, 19 and 20. He would state that when he examined P.W. 1, he produced Exs. P. 1 to 3 and the postal acknowledgment. But, he did not send the postal acknowledgment to the court as he missed it. He sent the seized articles to the court.

9. P.W. 17 is the Headclerk of the Judicial Second Class Magistrate's Court, Tiruchengode. On receipt of the articles and also the requisition Ex. P. 12 from P.W. 21, as per the instructions from the magistrate, they were duly packed, sealed sent to the Chemical Examiner along with the original of Ex. P. 13. Exs. P. 14 and P. 15 are the reports of the Chemical Examiner and the Serologist

respectively. In pursuance of the requisition for inspecting the lorry M.O. 1 by the Motor Vehicles Inspector, the Motor Vehicle Inspector was asked to inspect the same by the magistrate as per the original of Ex. P. 8.

10. P.W. 9 is the Motor Vehicles Inspector, Sankari. In pursuance of the requisition received from the magistrate, he inspected the vehicle M.O. 1 and submitted the report Ex. P. 9.

11. P.W. 21 examined P.W. 14 on 4-1-1985 he gave a petition to the Motor Vehicles Inspector to find out whether the first accused was having any driving licence. P.W. 8 was examined on 14-3-1985, and from him P.W. 21 got Ex. P. 7, extract relating to renewal of driving licence issued to the first accused.

12. Both the accused surrendered before the judicial Second Class Magistrate, Sankari, and P.W. 21 got information of the same. After completing the investigation, he laid the charge-sheet against both the accused on 12-4-1985.

13. When the accused were examined with reference to the incriminating piece of evidence, they totally denied the prosecution evidence. The first accused also filed a written statement to the effect that he purchased the land of one Periak Goundar and has been enjoying the same. He obtained injunction order against the deceased and P.W. 1 and on account of enmity this case has been foisted against him. In defence he examined two witnesses. The Tahsildar, Tiruchengode was examined as D.W. 1. It is his evidence that as per the order of the Sub-Collector, Sankari, he inspected the land on 24-6-1981 and submitted the report Ex. D-1 on 25-6-1981 to the effect that the land in question has been in the possession of Nallaya Goundar, Kulandaivel and seven others. D.W. 2 was the then Sub-Inspector of Police, Elachipalayam, in 1981-82. It is his evidence that Elachipalayam Police Station is within the limits of Sankari Revenue Division and he was asked to submit a report in respect of the property covered in the petition dated 5-11-1981 in M.C. No. 56 of 1981 and he submitted the report Ex. D. 2.

14. The learned Sessions judge after taking into consideration the oral and documentary evidence came to the conclusion that the prosecution has proved the guilt of the appellant, namely, the first accused, in respect of the offence under

Section 302 IPC and consequently convicted him and sentenced him as stated above while acquitting accused 1 and 2 for the offence of criminal conspiracy and also acquitting the second accused in respect of the murder charge. The second accused was set at liberty. It is only the convicted first accused has preferred this appeal.

15. The learned counsel for the appellant, Mr. V. Gopinath, took us through the recorded evidence and made various submissions. According to the learned counsel, the court below having acquitted the second accused erred in convicting the appellant on the same evidence. He would further submit that the motive attributed to the appellant is flimsy and far fetched. According to the learned counsel, motive is a double edged weapon and it is only on account of enmity, the appellant has been falsely implicated in this case. He would submit that the inordinate delay in launching the first information report and in its reaching the court is fatal to the case of the prosecution. According to the learned counsel, the entire case depends upon the evidence of P.W. 1 and P.W. 2, who are none other than the son and grand-daughter of the deceased, whose presence at the scene place is highly improbable. Further P.W. 2 is a child witness. Her evidence is highly improbable and unnatural and certainly no conviction can be had on her evidence. According to the learned counsel, P.W. 3, the driver of the alleged lorry, was treated as hostile and as the owner of the lorry P.W. 10 did not support the case of the prosecution, there is absolutely nothing to connect the accused with the lorry M.O. 1 said to have been involved in the accident. He would submit that though it is stated that three persons were said to have been seated in the lorry, there was no investigation with regard to the other persons besides P.W. 3. who were seated in the cabin of the lorry at the time of the incident. The non-examination of independent witnesses as well as the cleaner of the lorry is also fatal to the case of the prosecution as, even according to the prosecution, the occurrence had happened in the place where there are number of shops and houses and many people witnessed the same. Though P.W. 4 was examined, he was not at all examined by the investigating officer and his evidence is not at all helpful. According to the learned counsel, the occurrence could not have taken place at the time and in the manner alleged, and taking advantage of the fact that the deceased died on account of hit and run by a lorry while he was proceeding in

the night in the road where admittedly lorries and other vehicle were playing frequently and taking advantage of the fact that there is enmity between the accused and the deceased, this case has been foisted later after the arrival of police by putting their own people as eye witnesses. According to the learned counsel, nobody could have witnessed the incident. In view of the many improbabilities and inconsistencies, the version of the prosecution ought not to have been accepted and the appellant is entitled to acquittal.

16. Per contra, the learned Additional Public Prosecutor submitted that this is a case of purely the appreciation of the evidence of P.Ws. 1 and 2 and if the court comes to the conclusion that no reliance could be placed on their evidence, certainly the benefit of doubt should be given to the appellant. The learned Additional Public Prosecutor submits that the prosecution has established that there was enmity between the deceased and the accused on account of purchase of land and as such it cannot be said that there is no motive. He would submit that the occurrence in this case took place at about 5.45 p.m. The police station is at a distance of 1 1/2 kilo meter away from the scene place. The written complaint was given by P.W. 1 at the police station at 10 p.m. The first information report was received by the magistrate the next day at 11.25 a.m. The police station is 15 kilo meters from the magistrate's court. The learned Additional Public Prosecutor submitted that the prosecution has explained the delay through P.W. 1 by saying that immediately after the occurrence, he went in search of the lorry involved in the case and as such, it can be said that there was only some delay. No doubt, the constable who took the first information report to the magistrate was not examined and it is not in dispute that mofussil buses and town buses are frequenting from the police station to the magistrate's court and the delay in receipt of the first information report by the magistrate is 18 hours. He would submit that the witness who was examined to connect the accused with the criminal conspiracy turned hostile and as such the connection between the first accused and the lorry was not established and it is only on account of want of evidence, the first accused was acquitted of the offence of criminal conspiracy. He fairly conceded that it is the evidence of P.W. 21 that he did not examine P.W. 4.

17. The question arises for consideration in this appeal is whether the prosecution has proved the guilt of this appellant with respect to the charge of murder beyond all reasonable doubt.

18. That the deceased died as result of homicidal violence is established by the evidence of P.W. 7, Medical Officer attached to the Government Hospital, Tiruchengode, who has conducted autopsy and who issued the post-mortem certificate Ex. P. 6, P.W. 7 was of the opinion that the deceased would appear to have died of shock and haemorrhage due to injuries to vital organs as a result of hit by lorry and after fall, the wheels running over the body, about 12 to 24 hours prior to autopsy which was conducted at about 11.45 a.m. on 8-12-1984. The question is whether the appellant/first accused is responsible for the murder. The prosecution mainly relied on the motive for the crime. It is the evidence of P.W. 1 who is the son of the deceased that he had his father entered into an agreement to purchase the land of one Periak Goundar, which is the adjacent land of the first accused, for Rs. 52,500/- and paid an advance of Rs. 20,000/-. But, accused 1 and 2 who are brothers, managed to gain over the said Periak Goundar and obtained a sale deed in respect of the land. In respect of the same, they filed a civil suit for specific performance before the Sub-Court, Salem and got a decree. They were directed to pay the balance. According to him, in pursuance of the agreement, he and his father were in possession and enjoyment of the property. His father filed a complaint before the Sub-Divisional Judicial Magistrate, Sankari, in C.C. No. 928 of 1981 against the accused and 7 others in respect of an incident which took place in the said property and the said case ended in acquittal. He would state that in respect of the said property, there were enquiries by police authorities and revenue authorities. The prosecution mainly relied on Ext. P1 to P. 3, copies of petitions said to have been given by the deceased on 14-3-1983, 11-4-1983, 14-4-1983 and 14-10-1982 respectively wherein it is stated that the deceased apprehended trouble at the hands of the accused as the accused threatened to kill him by running over by lorry. The marking of the document Ext. P. 1 to P3 was objected to by the defence counsel in the lower court. It is the contention of the accused that those documents were fabricated for the purpose of this case in order to put forward a motive for the occurrence. According to P.W. 1 Ext. P. 1 to P. 3 were sent by registered post, acknowledgment due. The

acknowledgment received from the authorities were also produced before the investigating officer. Significantly, no acknowledgment was produced before court. Though it is stated by the Inspector of Police that the acknowledgment were lost, nothing prevented the investigating officer to take steps to produce the originals which were received by the police authorities at the police station. Hence, we find every force in the contention of the learned counsel for the appellant that Exs. P. 1 to P. 3 were introduced for the purpose of putting forth a motive in this case and no reliance could be placed on them. Further, even P.W. 1 has admitted that he did not know anything about the threat held out by the accused that they would kill the deceased by running over lorry. It is to be noted that if really the accused wanted to kill the deceased by running over lorry, they would not have openly declared the same which led to the filing of so many petitions. Further, they would not have chosen the particular place and the hour of the occurrence which is put forward by the prosecution. As already pointed out, there is nothing to probabalise that such petitions were given and any enquiry was held in this regard. No scrap of paper was produced on behalf of the prosecution. Two other petitions were also relied on by the prosecution, namely, Exx. P. 17 and P. 18. Exx. P. 17 and P. 18 are in respect of the dispute with regard to the enjoyment of the land which is the subject matter of the suit for specific performance, which resulted in Section 145, Cr.P.C proceedings. P.W. 18, Sub-Inspector of Police, has spoken about the receipt of Exx. P. 17 and obtaining muchalikka Ex. P. 19 from the accused. Considering the contentions of Ex. P. 17 and P. 18, they would not in any way advance the case of the prosecution. We find from the muchalikka that the parties agreed to abide by the decision of the civil court and till then they will not create any trouble. P.W. 20 has spoken about Ex. P. 18 petition. Ex. P. 18 petition is dated 24-5-1984 sent by the deceased. According to him, he has obtained a decree for specific performance of agreement of sale. He has stated that inspite of interim orders obtained from court, the accused are giving disturbance. He prayed for protection. That there were proceedings between the parties on account of the said land in respect of which the deceased and P.W. 1 entered into an agreement and subsequently the first accused purchased the land is not in dispute. According to the learned counsel for the appellant, it is only by virtue of the sale, the accused are in possession of the property and the entries in the revenue records were

transferred in their names, and it is admitted by P.W. 1 in his evidence that the accused obtained an order of injunction against them restraining them from interfering with the property even after the decree for specific performance was passed. In respect of the criminal case given by the deceased, which ended in acquittal, the accused filed a suit claiming compensation for malicious prosecution in O.S. No. 156 of 1983 on the file of the District Munsif's Court, Tiruchengode and it was pending at the time of the incident, and to that effect the first accused has also filed a written statement along with his 313 Statement. Even in the 145 Cr.P.C. proceedings D.W. 1, Tahsildar, who inspected the property and submitted the report Ex. D. 1, submitted that it is only the accused party who are in possession of the property. In the circumstances, it is only the deceased party who are aggrieved and on account of the enmity, this case has been foisted. There is no necessity for the accused to murder the deceased. Even D.W. 2 Sub-Inspector, who was asked to submit a report in connection with 145 proceedings, reported under Ex. D2 that it was only the accused party who are in possession of the property. As rightly contended by the learned counsel for the appellant, it can be said that there is long standing enmity between the two families in respect of the land purchased by the accused as in respect of the said land the deceased and P.W. 1 also entered into an agreement and that proceedings have been pending from 1980. According to him, because of the enmity this case has been foisted against the accused. It is the settled proposition that enmity is a double weapon. According to the prosecution, it is only because of the said enmity the occurrence took place. According to the defence, because of the enmity this case has been foisted. Hence the motive does not assume any importance in a case of this nature and we have to see whether the prosecution has established the guilt of the accused with regard to the actual occurrence by adducing satisfactory evidence.

19. As regards the actual occurrence, the prosecution mainly relied on the evidence of P.Ws. 1 and 2 and to certain extent the evidence of P.W. 4. The learned counsel for the appellant mainly contended that the occurrence did not take place in the manner spoken to by the prosecution witnesses, that the deceased was hit and run over by a vehicle proceeding along the mainroad and nobody knew as to how he was run over, that throughout the night they were not able to find out the vehicle which was responsible for the incident and that only on

the next day on the arrival of police, on account of enmity, this case has been falsely put up by his own relations, namely, son and grand-daughter of the deceased. To probabilities the defence, the learned counsel for the appellant invited our attention to the inordinate and unexplained delay of more than 18 hours in the first information report reaching the Magistrate. Let us consider the said delay. It is not in dispute that the occurrence took place at 5.45 p.m. on 7-12-1984. P.W. 1 is no other than the son of the deceased. According to him, within a short time after witnessing the incident and after staying near the body, he went to the house of one Subramaniam, P.W. 5, who is said to be his friend. At his request P.W. 5 came in his motor cycle wherein P.W. 1 sat on the pillion. Both of them went in search of the lorry TNF 2124 involved in the case at Paruthipalli, Mallasamudram, etc. They covered a distance of 12 miles. Since they could not find the lorry, P.W. 5 brought P.W. 1 and left him at the police station. P.W. 1 got a paper from the nearby shop and wrote the report and presented it before the Sub-Inspector P.W. 20 at about 10 p.m. The said report is Ex. P. 4. The learned counsel vehemently argued that in view of the answer elicited in cross-examination of P.W. 1, Ex. P. 4 could not have come into existence at 10 p.m. as alleged P.W. 1 has stated in his cross-examination that he went by motor cycle to find out which the lorry involved in the accident and to fetch the same. According to him, in spite of the fact that himself and P.W. 5 went to various places and covered a distance of 10 to 12 miles, they could not find the lorry and their efforts proved to be of no use. Thereupon they returned to the police station. The evidence of P.W. 2 is also to the effect that she did not notice the number of the lorry or the name of lorry involved in the accident. Significantly in the report Ex. P. 4 said to have been given at 10 p.m. we find the number of the lorry as TNF 2124. According to the learned counsel, it is the evidence of P.W. 1 that after the report was given, the Sub-Inspector brought them to the scene placed and then he went in search of the lorry, whereas P.W. 20 Sub-Inspector in his evidence says that after preparing the first information report with copies and sending them to the higher officials and the court, he went to the scene place and was waiting for the arrival of the Inspector of Police P.W. 21 till 4 a.m. when he arrived and thereafter he assisted him. The learned counsel for the appellant vehemently argued that the version of P.W. 1 that he went to the house of P.W. 5 immediately after the occurrence and

thereafter he along with P.W. 5 went on the motor cycle in search of the vehicle involved in the case in order to bring the same back is highly improbable and unnatural. It is the evidence of P.W. 1 that he knew the earlier complaint given to the police and he has also come to the police station which is located at 1 1/2 kilo meters away from the scene place. In view of the longstanding enmity between the two families, if really the accused are responsible for the murder and the appellant drove the lorry and hit and ran over the deceased, one would normally expect him to go and report to the police in respect of the incident and by to secure the lorry involved in the incident. But, strangely P.W. 1 went on his cycle to the house of P.W. 5 and both of them covered a distance of 10 or 12 kilo meters in order to secure the lorry, whose number and name are not known to P.W. 1. According to P.W. 1, the alleged agreement of sale was entered into in the names of the deceased and himself, they were parties to several proceedings before police and court and they were threatened by the accused. In the circumstances, P.W. 1 would not have dared enough to go in search of the lorry and the accused during night, if the version that they were threatened danger to life by the accused is true. Thus, we find every force in the contention of the learned counsel for the appellant that the version of P.W. 1 that he went in search of the lorry for about four hours and thereafter the report was given cannot be accepted. Further, according to P.W. 1, P.W. 5 left him at the police station at 9.25 p.m. and P.W. 5 went away. It is also the version of P.W. 5 that he left P.W. 1 at the police station. In any event if really P.W. 5 accompanied and took P.W. 1 on his motor cycle to the police station after making an attempt to search the lorry, he would not have left him without assisting him in giving the report and afterwards taking him to the village. Though P.W. 20 was in the police station. P.W. 1 did not go and make an oral complaint. He presented the written complaint Ex. P. 4. Now the version is that he got a paper from neighboring shop and wrote the complaint. According to the defence, since the complaint was fabricated, in the village it was written and presented before police. If really P.W. 1 went to the police station as stated by him, he would not have presented the written complaint as he had no time to prepare the written complaint in a calm atmosphere. Even though he is said to have given the report at 10 a.m. and buses are playing from Elachipalayam to Tiruchengode where the Magistrate's court is located, even up to 10.30 p.m. and in the early morning also

there are buses from Elachipalayam to Tiruchengode, the Magistrate received Ex. P. 4 and the first information report only at about 11.25 a.m. Admittedly the Magistrate's court is only 15 k.m. away from the police station. There is absolutely no explanation on the side of the prosecution for the delay of nearly 13 1/2 hours in reaching the Magistrate. Further, the police constable who had taken Ex. P. 4 and the first information report to the Magistrate, has not been examined. No investigation was done in this regard and no attempt has been made on behalf of the prosecution to explain the delay. On behalf of the defence, a suggestion was put to P.W. 20 and 21, police officials, that the report was fabricated only on the next day morning, as during night nobody knew as to how the deceased met with his death and they did not know the vehicle involved in the incident. It is only on the next day on account of enmity the case has been foisted. In the face of the interested testimony of P.W. 1 and 2. who are said to be the eye witnesses and who could not have been present at the time of the incident, in view of the various answers elicited in their cross-examination, the delay in this case assumes importance and the unexplained and inordinate delay of 18 hours in the first information report reaching the Magistrate is certainly fatal to the case of the prosecution as contended by the learned counsel for the appellant. In this connection, our attention was drawn to the decision of the apex court in Thulia Kali v. State of Tamil Nadu, : 1972 CriLJ1296 , where there was 20 hours delay in receipt of the first information report by the Magistrate. It was held at page 1298 (of Cri LJ) :

'On account of delay the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is therefore essential that the delay in the lodging of the first information report should be satisfactorily explained.'

In K. Vadivelu, In re 1976 (Crl) LW115, this Court after relying the above decision of the Supreme Court held :

'The Tamil Nadu Police Standing Order 577 dealing with the despatch of express reports states that in all cases of murder, culpable homicide, etc., the F.I.R. shall

be sent direct to the local Sub Magistrate and other Police Officials and should be sent in the quickest way possible either by post or hand.'

In Kulandaivelu, In re 1974 (Cri) LW147, the Village Headman's report reached the Sub-Magistrate at 2.15 p.m. while the copy of the first information report sent by the Sub-Inspector to the Court reached at 4.10 p.m. The occurrence took place at 7.30 a.m. it was observed :

'The delay has not been explained which suggests that Ex. P. 1 did not come into existence at 8 a.m. as it purports, but only later, that it was not registered at the police station at 9.01 a.m. as alleged and that the first information report (Ex. P. 1) came into existence only much later.

xx xx xx xx 19. If so much is clear, it should obviously put us on our guard against accepting the evidence of the eye witnesses and, when we come to examine the direct evidence in this background, the numerous features which are themselves suspicious will acquire added significance and, in fact, the impression left in my mind is that the evidence is false and concocted.'

In Gabriel In re. it was held at page 139 (of Cri LJ) :

'It is imperative that the first information report should be despatched immediately without any delay by the investigating officers to the judicial Magistrate who should initial the same, noting therein the time and date of the receipt of the said important documents, and this would provide the only judicial safeguard against any subsequent fabrication of the documents in grave crimes. There is no doubt that delay in lodging the first information report quite often results in embellishment, which is a creature of afterthought. On account of the delay, the vital and valuable piece of evidence, viz. the first information report, not only gets bereft of the advantage of spontaneity, but also danger creeps in by the introduction of coloured version, exaggerated account or concocted story, as a result of deliberation and consultation. If any delay occurred, the prosecution must explain it by adducing satisfactory and acceptable evidence. If no explanation is forthcoming, then it creates a doubt in the minds of the Judicial Officers as to the genuineness of the First Information Report.'

In Johny and five others v. State 1990 LW (CrI) there was delay of 25 hours in receipt of the first information report by the Magistrate and the same was not satisfactorily explained. It was observed as follows :-

'The first information report a document of considerable importance, is produced and proved in criminal trials not as piece of substantive evidence, but with the avowed object of obtaining the early information of the alleged criminal activity and to have a record of the circumstances before there was time for them to be embellished or forgotten. A quick first information report, which reaches the court of the Magistrate with promptitude, will be a towering circumstance which will go a long way to assure the veracity of the prosecution story, of, there can be no time to create and deliberate a false case against the accused. It may be in some cases the delay in lodging the first information report may be inevitable, but such delay may have held that long and unexplained delay not only in lodging first information report but also in its receipt in the Court and suspicious circumstances to be taken into consideration while judging the bona fides of the prosecution story, as delay may bring in a coloured version of the whole incident. A delayed first information report, which gives rise to suspicion, will put the Court on guard to look for a possible and acceptable explanation for the delay. A delayed first information report in prosecutions where there are more accused than one, will require careful scrutiny and more so when the possibility of false implication looms large. (para 24)'

'It is common knowledge that in first information report as soon as it is received by the Magistrate, he puts in his initials along with the date and time of its receipt. It is also admitted in the case by P.W. 10 that the first information report relating to Sessions Cases will not be directly received by him, but, it will be passed on, only after the Magistrate initials them. He also confirms the usual practice of the handing over of the first information reports by the police constables, directly to the Magistrate. He feigns ignorance of the procedure to be followed on holidays and out of office hours. (para 27).'

'The non-production of the details regarding the travel of Exx. P. 1 and P. 26 from 6 p.m. on 9-10-1983 to 5 p.m. on 10-10-1983 is rather unfortunate and at the best

we can conclude that the first information report had reached the Magistrate only 25 hours after the alleged incident though the distance to the police station from the scene of occurrence is 1 k.m. and the distance to the Court is approximately 5 k.m. (Para 27)'.

'On facts we are not satisfied that the delay of 25 Hrs. in the receipt of the first information report by the Magistrate has been satisfactorily explained.'

In *Peddireddy Subbareddi v. States of A.P.* : 1991 CriLJ1391a it was observed at page 1357 :

'The conduct of P.W. 1 in not reporting to any of the villagers about the occurrence throws a considerable doubt on the veracity of his evidence which is incredible. The report about the occurrence was given by a delay of 15 hours.'

'In the present case as we have come to the conclusion that the evidence of the P.W. 1 is clouded with strong suspicion and as the first information report was lodged by a delay of 15 hours, the false implication of appellants in the present case cannot be completely ruled out. On going through the judgments of both the courts below, we are unable to share with the finding rendered by the two courts holding the appellants are guilty of the charges with which they stand convicted.'

Relying on the above decision, a Bench of this Court, to which one of us (K. M. Natarajan, J.) was a party, in *Palaniswamy and 2 others v. State* 1992 Cri LW 105, held :

'We have no hesitation in coming to the conclusion that the unexplained and inordinate delay in despatching the first information report to the Magistrate is fatal to the case of the prosecution. There are doubts regarding the giving of the report by P.W. 1 and the indication of fabrication. As such, the delay assumes importance in this case and there is considerable doubt on the version of the prosecution. There are clear indications of fabrication and false implication of accused 4 to 7 and also eye-witnesses belonging to different places were planted.'

Applying the ratio laid down in the above quoted decisions to the facts of this case, we have no hesitation in holding that in the instant case the unexplained and

inordinate delay in despatching the first information report to the Magistrate is fatal to the case of the prosecution.

Next we have to see whether the prosecution has adduced any satisfactory evidence with regard to the actual occurrence. As already stated the prosecution mainly relied on the evidence of P.Ws. 1 and 2 and also the evidence of P.W. 4 to some extent. It is the evidence P.W. 1 that on the date of occurrence i.e. 7-12-1984, at about 5.45 p.m. he went to the milk society for supply of milk on a cycle. At that time his father, the deceased, left the bunk shop of P.W. 6 and was proceeding towards Konnaiyar. A yellow colour lorry was parked on the east of the water tank in Tiruchengode-Rasipuram main Road and he identified that lorry as M.O. 1 bearing registration No. TNF 2124. The first accused who was sitting in the pillayar temple on the southern side of the road got up and was proceeding towards the side of the lorry. While he was standing at the entrance of the society, he noticed the first accused driving M.O. 1 lorry and by his side, two persons were seated. Among the two, he can identify one and he cannot identify the other. He went behind the lorry suspecting that the first accused would dash the lorry against his father. His father was proceeding by walk about 300 feet away from the milk society on the western side of the road. The first accused drove the lorry and hit against his father and ran over his father P.W. 2 who was grazing buffaloe in her field on the east side of the road raised noise. The lorry did not stop; but sped away. When he went there, his father was dead. Thereupon he went to the house of P.W. 5 and after searching for the lorry in his motor cycle, he gave the report. His evidence was attacked by the defence on the ground that he is no other than the son of the deceased, that he is a partisan witness, that admittedly he is a party to the sale agreement and also the court proceedings and that his evidence cannot be accepted and it should be scrutinised with utmost care and caution. According to the defence, the occurrence did not take place at 5.45 p.m. as alleged and during midnight the deceased who was proceeding in the road to go to his village was knocked down by a vehicle proceeding along the road and nobody witnessed the same and only on the next morning after coming to know of the incident, they tried to find out the lorry which was involved in the accident and also its driver and then foisted the case against the accused taking advantage of the long-standing enmity between them. The learned counsel for the appellant

submitted that if really P.W. 1 is a member of the society and went to the society on that day for supply of milk, the investigating officer should have probed into the matter and investigated as to whether P.W. 1 was the member of the society and whether he has been there at that time. According to P.W. 1, the secretary and tester of the society were also present. He was standing in the queue and in front of him and behind him also there were persons standing in the queue. At that time the secretary and tester were purchasing milk. It was only at that time, the lorry was proceeding towards Konnaiyar village, and in that lorry, besides the driver, there were two persons and he saw them only for the first time. If that is so, the prosecution should have examined the Secretary or the tester of the milk society to confirm the presence of P.W. 1 at the society for the supply of milk. There is absolutely nothing to show what happened to the milk or can or the cycle in which he travelled. It is highly improbable for him to witness an incident which was happening in the road, if he was in the middle of the queue for supply of milk inside the society. Though he would say in chief-examination that he was standing at the entrance of the society and he happened to see the incident, it was falsified by his own answer in cross-examination wherein he has admitted that he was inside the society and he was in the middle of the queue of the persons who came for supply of milk. The prosecution has not chosen to examine any of the persons who were said to have been standing in the queue for supply of milk and who actually supplied, milk. A question was put to investigating officer whether he had done any investigation to find out whether P.W. 1 was a member of the society. He fairly conceded that he did not do so. Though according to him two other persons were in the cabin besides the driver and he saw them only at that time of the incident for the first time, his evidence is falsified by the report Ex. P4 wherein he has given a different version as if he noticed the driver and cleaner getting into the lorry on seeing his father proceeding to Konnaiyar village and since he suspected, he followed them and witnessed the incident. Significantly the prosecution did not choose to trace the alleged cleaner who was also seated in the lorry and examine him even during the investigation. There is no explanation for not examining the cleaner or the other person who was so to have been seated in the cabin at the time of the incident. According to him, he does not know P.W. 3 previously and no identification marks have been given. He has also completely disowned his

statement in Ex. P. 4 wherein it is stated that he has seen the first accused and P.W. 3 getting into the lorry and his father leaving P.W. 6's shop. He has also stated to that effect to the investigating officer and he has also now denied the same. The learned counsel drew our attention to the admission made by P.W. 1 in cross-examination wherein he has stated that he went to the house of P.W. 5 who is his friend in order to take him to find out which is the lorry involved in the incident and also to catch hold of the lorry. If really he was a witness to the occurrence and he was aware of the number of the lorry involved in the incident, he would not have made such a statement. If he was aware of the number of the lorry involved in the accident as he was given the number of the lorry in his complaint, there was no necessity for him to go in search of the lorry and on the other hand, he would have immediately rushed to the police station and gave the report. According to him, he was proceeding at a distance of 200 behind the lorry which was driven fast and it hit against his father and sped away. As such he could have seen the actual hit against his father. He has fairly conceded which portion of the lorry hit against his father and he cannot say what his father was doing at the time of hit. He has also fairly admitted that if anybody was in the front yard of the society, it is not possible to see what is happening on the west of the society as the society building would obstruct the view. The evidence of P.W. 2 that P.W. 2 was grazing buffalo in her father's field on the eastern side of the road is sought to be falsified by the evidence of P.W. 1 that P.W. 2 is not owning any land on the eastern side. The conduct of P.W. 1 in not informing his mother after witnessing the occurrence or other relations before ever he proceeded in search of the lorry is rightly commented upon by the learned counsel for the appellant. We find every force in the contention of the learned counsel for the appellant that if really P.W. 1 happened to be an eye-witness to the occurrence, he would not have kept quiet without informing his mother who was living in the same village and other relations and he would have failed to immediately report the matter to the police and seek their help. According to him, he saw the driver of the vehicle P.W. 3 and the lorry on the next day at 10 a.m. at the police station where the Sub-Inspector was examining him. That has been falsified by the evidence of P.W. 21, Inspector of Police, that P.W. 3 produced the lorry M.O. 1 at 3 a.m. and thereupon P.W. 3 was taken to the scene place and he was also examined at the

inquest wherein P.W. 1 was also examined between 5.30 a.m. and 9 a.m. at the scene place. P.W. 1 fairly conceded that number of buses and lorries used to ply in Tiruchengode and Rasipuram Road. The learned counsel pointed out that if really the occurrence took place at about 5.45 p.m. near the milk society in the presence of number of members and officials of the said society which is surrounded by dwelling houses and shops, certainly the failure to examine independent witnesses throws considerable doubt on the case of the prosecution as well as the evidence of P.Ws. 1 and 2. The learned counsel for the vehemently argued that it is highly improbable for P.W. 1 who was alleged to have been in the milk society, to witness a person driving a lorry in the road and that it is highly improbable to witness the incident by following in his cycle behind the lorry which was admittedly proceeding at a speed. The medical evidence adduced through P.W. 7 also probabilities the defence version that the occurrence could have taken place at any time before 12 mid night and that the deceased met with his death as a result of running over by lorry. Thus, in view of the various intrinsic improbabilities and in view of the fact that the evidence of P.W. 1 is demonstrated to be false in many aspects, no reliance could be placed on his evidence. We find every force in the contention of the learned counsel that P.W. 1 could not be the actual eye witness to the occurrence.

20. Next comes the evidence of P.W. 2 who is a child witness who was aged about 12 years at the time of incident. She is no other than the grand-daughter of the deceased. She had admitted that her grandfather and the deceased are brothers. According to her, she was grazing buffalo in their field which is located on the eastern side of the road near the scene place. Her grandfather was proceeding towards Kunnaiyar on the western side of the road. A lorry having yellow paint came fast behind him and it was driven by the first accused. Besides the first accused, there were two persons and she cannot say who were they. The lorry ran over her grandfather and sped away towards north. She raised noise that her grandfather was being run over by lorry. P.W. 1 also came behind in a cycle. The deceased succumbed to the injuries. According to her, she was at a distance of 10 feet on the eastern side of the road when the lorry hit her grandfather and she witnessed the incident. In cross-examination she has categorically admitted that she knew that there was long standing enmity between the accused and her

senior grandfather, the deceased. A suggestion was put to her that her father has no land at all near the scene place and she never grazed buffalo. She has emphatically denied the suggestion. Her evidence is proved to be false by the evidence of the investigating officer who fairly submitted that during investigation he came to know that the land on the eastern side of the roads belongs to the deceased and that the land wherein P.W. 2 was said to have been grazing buffalo was not shown in the plan. P.W. 21 would say that the father of P.W. 2 has no land and that only the deceased has got land on the eastern side of the road. That her father has no land has been established by the evidence of the investigating officer and that only the deceased has got land on the eastern side clearly falsified her evidence that she was grazing buffalo in her father's land and as such she happened to witness the incident. Though she would state that she was standing at a distance of 10' on the eastern side of the road and she also asserted that she has stated so to the police, the investigating officer has admitted that she has not stated so. In cross-examination it has been elicited that when she first saw the lorry, there was smoke and dust behind the lorry and at that time she was at a distance of 100 feet away from the lorry and the deceased was at a distance of 50 feet away on the western side. She would also state that when her grandfather was hit by the lorry, for the first time she saw the persons inside the lorry and three persons were sitting facing towards north. Though she states that she was studying 9th standard at that time, she did not notice the number of the lorry, both in the front and back side place. Though the lorry has got a name, she did not read the name or number. She has categorically admitted that in Konnaiyar Road, where the occurrence took place, lorries and buses used to ply. She would state that she would see the drivers of those vehicles. Her evidence in the regard is highly unnatural and improbable. There was no necessity for a person grazing buffalo in the field by the side of the road to see the drivers of the vehicles proceeding along the road. It is admitted by both P.Ws. 1 and 2 that the lorry was proceeding very fast and it did not stop even after hitting the deceased. If that is so, it is highly improbable for P.W. 2, even if she was grazing buffalo in the field, to notice the driver or other person inside the cabin especially when she herself has admitted that she saw the persons in the lorry only at the time of hitting the deceased. It is not the case that they stopped the lorry and then the lorry was

taken. Her conduct after the occurrence is highly improbable and unnatural. She also admitted that she does not know which portion of the lorry hit the deceased. Though she would state that there was no bend in the road, P.W. 6 has categorically admitted there was a bend in the road near the scene place. She has also admitted that the lorry did not stop after the incident. She did not go and inform any of the inmates of her house immediately after the occurrence. She has admitted that nobody asked her to go and report to the police. On a careful reading of the evidence of this witness, we have no hesitation in holding that it is highly improbable for this witness to have witnessed the incident and her evidence is not natural and probable. Admittedly she is related to the deceased as his granddaughter and she is also a child witness. Hence no reliance could be placed on her testimony.

21. The prosecution next places reliance on the evidence of P.W. 4 with regard to the occurrence. It is the evidence of P.W. 4 that he is a resident of Elachipalayam and that he went to Athumedu near the milk society in order to purchase milk at about 5.30 p.m. The deceased who was sitting in the grocery shop of P.W. 6 was proceeding along Konnaiyar road. The lorry which was parked in Thiruchengode-Rasipuram main road was taken through Konnaiyar road. In the lorry there were three persons. He does not know the identification of those persons. Again, he changed and said that the said lorry was driven by the first accused. A little later, he heard the noise that the deceased was murdered by the first accused by running over the lorry. He along with four persons went there. The deceased was found lying dead on the western side of the road. He was examined by the Inspector next day. It is to be noted that this witness was not mentioned in Ex. P. 4 and his presence was not spoken to by P.W. 1 or P.W. 2 in their evidence. According to P.W. 4, he was living one mile away from the scene place at Elachipalayam. He would state that after the occurrence at about 8 p.m. he was proceeding along with Elachipalayam police station in order to go his village. He did not inform the police in respect of the occurrence. His conduct is very much unnatural and improbable. If really he witnessed the occurrence, he would have given information at the police station. Above all, according to him, he is not a member of the milk society. Only a member of the society can sell milk. He would state that his father's name is Sengoda Gounder and he has stated so to the

Inspector of Police also; where the Inspector of Police examined one Karuppana Gounder son of Kalianna Gounder who is cited as a witness in the charge-sheet. When he was confronted whether he had stated to the Inspector that he went to the Society in order to sell milk, he denied. But that has been contradicted by the evidence of the Inspector. The reason for his going back to the said statement is that he is not a member of the society and he cannot sell milk to the society. He now changed his version and said that he went there to purchase milk and not to sell. A suggestion was put to this witness that he is a history sheeted K.D.; of Elachipalayam police station and that a number of cases are against him. He would admit that there was an arson case as well as a case of robbery of money from a person who came on a motor cycle by beating him, put up against him. When he was asked whether he actually purchased milk, he answered that he did not purchase. He also admitted that subsequently also he did not go to the society to purchase milk. It was pointed out to the witness that there was no sale of milk at all in the society; but there was only purchase of milk by the society. He fairly admitted that he does not know the identification of two persons in the cabin of the lorry. Though he has stated in chief-examination that he heard a noise that the deceased was done to death by the first accused by running over the lorry, he has admitted that he does not remember whether he has stated so to the Inspector. P.W. 21 has asserted that P.W. 4 has not stated so. It has been specifically elicited in the cross-examination of P.W. 21 that he did not examine P.W. 4 (Karuppana Gounder son of Sengoda Gounder) during the investigation. P.W. 4 was not a witness examined at the inquest. On a careful reading of the evidence of P.W. 4, we have no hesitation in holding that he could not have witnessed the occurrence and he was subsequently introduced to probabilities the version of P.Ws. 1 and 2. The prosecution has only miserably failed in its attempt. The case of the prosecution is that the deceased came to the shop of P.W. 6 at about 5.30 p.m. and at that time the first accused also came and drank soda. P.W. 6 was running a beeda stall in Athumedu on the northern side of Tiruchengode-Rasipuram main road. It is his evidence in chief-examination that at about 5.30 p.m. the deceased came to his shop as usual and was reading newspaper. At that time the first accused came to his shop and took soda and thereupon he went to Pillayar koil. Subsequently P.W. 6 did not notice where he has gone. The

deceased read newspaper for 10 minutes and thereafter he was proceeding along Konnaiyar Road. Ten minutes later the people who brought milk to the society came running and were talking about the incident. But P.W. 6 did not go out of his shop. When he closed his shop at about 7 p.m. and was proceeding towards his house, he found the deceased lying dead on the western side of the road. He has fairly admitted in cross-examination that after obtaining permission from the first accused, he put a house in poramboke. Subsequently he negotiated to sell the house to one Manickam. The first accused found fault with him. P.W. 6 fairly admitted that the first accused dismantled the root saying that he has given permission to him only for staying there and not to sell it away to others. Though he admitted the same, he denied that there was enmity between him and the first accused. Even though he admitted that the deceased came to his shop in order to read newspaper, when he was asked about the particulars of the newspaper, he is unable to give the same. He is unable to say who are all the persons who came to his shop to purchase soda etc. According to him, there was a crowd of school boys in his shop when the deceased was in his shop. He says that the school boys came at 4 or 4.15 p.m. Though he would state that he told the police that the deceased read the newspaper in his shop and then left for his house, his evidence is falsified by the evidence of P.W. 21 that he has not stated so. According to him, the scene place is about one furlong from his shop at Athumedu and before the scene place, the road was bent towards west. He would state that he was having poor vision after sun set. His evidence is not of any help to the prosecution and there is nothing to probabilities the case of the prosecution that at or about the time of the occurrence that both the first accused and the deceased came there and thereafter the occurrence took place. Even according to P.W. 6, it is usual for the deceased to come and read newspaper and leave the bunk shop and the accused also used to come and take soda and there is nothing unusual. He would state that long before the deceased left his shop, the first accused left the shop and he does not know where he had gone. It is clear from his evidence that he is inimically disposed towards the first accused because of the demolition of the house put up by P.W. 6.

22. There is absolutely nothing to probabilities the version of the prosecution as to how M.O. 1 lorry was involved in the incident and how the first accused happened

to drive the vehicle. There is absolutely no evidence on the side of the prosecution to show that the first accused brought M.O. 1 lorry and that he drove the lorry at the time of the occurrence. Admittedly P.W. 3 was the driver of the vehicle. His evidence did not support the prosecution. The owner of the vehicle was examined as P.W. 10. His evidence also did not support the prosecution as his evidence only corroborated the evidence of P.W. 3 driver of the vehicle TNF 2124 that he used to take the lorry and give the collections once in a week. After coming to know that the lorry was parked at the police station, P.W. 10 went there and enquired P.W. 3. Subsequently he filed a petition before the court and got the lorry. P.W. 21 admitted that there were no bloodstains in the lorry and he did not prepare any mahazar for inspecting the lorry. He did not make any note in the case diary or general diary. As already observed, there is absolutely no investigation with regard to the other persons in the cabin at the time of the occurrence. The non-examination of independent witness at the scene is fatal to the case of the prosecution as even. According to the prosecution the incident took place in broad day light and there were number of persons near the milk society and scene place, which is known as Athimedu. There is absolutely no investigation as to how P.W. 3 brought the lorry to the police station at 3 a.m. when it was seized by the inspector. Admittedly P. W. 3 did not give any statement or report. It is the evidence of P.W. 1 that only on the next day at 10 a.m. he first saw the lorry and P.W. 3 at the police station and subsequently also he was found there and examined by the Inspector. As such, the prosecution has failed to establish any connection between the first accused and the lorry M.O. 1 (which is said to be involved in the case) of which P.W. 3 was the driver. Thus on a careful consideration of the entire materials, we have no hesitation in holding that the prosecution has not proved the guilt of the appellant beyond all reasonable doubt and his conviction is not sustainable.

23. In the result, the appeal is allowed, the conviction and sentence awarded to the appellant are set aside and he is acquitted. His bail bond shall stand cancelled.

24. Appeal allowed.