

Poovan and Another Vs. State

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SooperKanoon Citation : sooperkanoon.com/784758

Court : Chennai

Decided On : Dec-10-1993

Reported in : 1994CriLJ3050

Judge : K.A. Thanikkachalam and;T.S. Arunachalam, JJ.

Appeal No. : Crl. Appeal No. 266 of 1987

Appellant : Poovan and Another

Respondent : State

Advocate for Pet/Ap. : G. Krishnan, Adv.

Judgement :

1. Accused Nos. 1 and 4 in Sessions Case No. 155 of 1986 on the file of the Principal Sessions Judge, Tiruchirapalli Division are the Appellants herein. Accused No. 1 is convicted and sentenced to suffer imprisonment for life for the offence under S. 302 of the Indian Penal Code (hereinafter referred to as IPC) and rigorous imprisonment for three months for the offence punishable under S. 323, IPC, the sentences to run concurrently. Accused No. 4 is convicted and sentenced to suffer rigorous imprisonment for three months for the offence punishable under S. 323, IPC. The 1st accused preferred this appeal challenging the legality and correctness of the conviction under S. 302, IPC read with S. 34 of the IPC and the sentence for imprisonment for life and three months rigorous imprisonment under S. 323, IPC, the 4th accused preferred this appeal challenging the legality

and correctness of the conviction under S. 323, IPC and the sentence for rigorous imprisonment for three months out of the four accused in S.C. No. 155 of 1986, accused Nos. 2 and 3 are acquitted, and State has preferred no appeal against the order of their acquittal. For the sake of convenience, the appellants herein are referred to as accused.

2. The 1st accused was tried for two charges on the allegation that on 28-7-1986 at or about 11.00 a.m. in the pathway proceeding to Thatampatti near the land of the 1st accused in furtherance of common intention did commit murder by intentionally or knowingly causing the death of one Veerappa Goundan and by beating him with stick on his head, face and right hand and thereby committed an offence punishable under S. 302, IPC read with S. 34, IPC. On the same date, time and place, the 1st accused, in the course of the same transaction, intentionally caused hurt to one Chinnasami by beating him with stick on his left shoulder and thereby committed an offence punishable under S. 323, IPC. The 4th accused was tried for two charges on the allegation that on 28-7-1986 at about 11.00 a.m. in the road proceeding to Thatampatti near the land for the 1st accused, in furtherance of common intention committed the murder by intentionally, or knowingly causing the death of one Veerappa Goundan by hitting him with a stick on his head, face and right hand and thereby committed an offence punishable under S. 302, IPC read with S. 34, IPC. On the same date, time and place, in the course of the same transaction, the 4th accused voluntarily caused hurt to one Duraisamy by beating him with a stick and thereby committed an offence punishable under S. 323, IPC.

3. The case of the Prosecution, as culled out from the oral and documentary evidence, which is necessary for disposal of this appeal, can be succinctly stated as under :-

4. P.W. 1 Duraisany and P.W. 2 Chinnaswamy are the sons of Veerappa Goundan, the deceased in this case. All of them were residing at Kunjannaiyankan Palayam in Musiri Thaluk. They were cultivating the land of one Sivarama Mudaliar of the same village on lease. The said land is situate on the eastern side of the pathway leading to Thatampatti from Kunjannaiyankan Palayam. The 1st accused has got a land just west of that pathway. The accused 2 and 3 are the

sons of the 1st accused. The 4th accused is the son-in-law of the 1st accused and all of them have been residing in a farm house situate on the north eastern side of the land belonging to PW 1 and 2 and their father Veerappa Goundan. There had been prior enmity between family of the deceased and the family of the accused regarding the accused having allowed their cattle to graze in the land belonging to the family of the deceased for some time prior to the occurrence. While so, at about 10.30 a.m. on the date of occurrence, P.W. 1 was driving the tractor belonging to their family with a view to go to Thatampatti in order to carry the manure purchased by them from one Periasami of Thatampatti. At that time Pariasamy (P.W. 3) and another Praiasamy, son of Karuppan and Ettikkan were seated in the tractor. While the tractor was proceeding in between the land of the family of P.W. 1 and the land of the accused 1 to 3 in the pathway leading to Thatampatti, the branches of seetha trees were obstructing the pathway and as such the tractor could not proceed in the pathway. In order to clear the way, P.W. 1 cut two branches of the seetha trees, which were obstructing the pathway, and thereafter drove way the tractor. When the tractor had just passed about 10 feet, the wheels of the tractor caught in rut in the pathway and it came to a halt. PW. 1 asked the persons who were sitting on the tractor to get down and remove the mud to enable the tractor to proceed. While they were removing the mud, a person (PW 4) who was travelling on a cycle towards Kunjannaicke Palayam from Thatampatti came there and he stopped his cycle as he could not proceed further because of the tractor standing in the pathway. While the persons who travelled in the tractor were removing the mud, A, the accused came there with sticks in their hands and the 1st accused questioned PW 1 as to why he cut the branches of the seetha tree, for which PW 1 replied that because the branches were obstructing the pathway he had no other option but to cut them. While PW 1 was replying to the 1st accused, the 4th accused beat PW 1 with a seetha stick near his right eye brow and by the side of his right ear and on receipt of the beating PW 1 fell down. By that time, Veerappa Goundan was beaten, Immediately, the 1st accused uttered that Veerappa Goundan must be done to death, then only they can live in peace and so saying the 1st accused beat Veerappa Goundan with the Seetha Stick on his head. On receipt of the beating, Veerappa Gounda feel down and alla the accused started beating him on his head and on other parts of his body with

the seetha sticks. When PW 1 raised an alarm, his elder brother PW 2 and one Velusamy, the neighbouring land owner, one Marappan and one Kandasamy the brother-in-law of PW 2 as well as one Kalavathi the sister in law of PW 1 all came there. Ameer John (PW 4) who came in a cycle was also witnessing the occurrence. P.W. 2 tried to snatch the stick had by the 2nd accused and at that time the 1st accused beat PW 2 with the seetha stick had by him on the right shoulder of PW 2 and unable to bear the pain P.W. 2 ran away from that place after receiving the beating. Thereafter all the accused began to beat Veerappa Goundan indiscriminately. When the people, who gathered there raised an alarm, the people, who were nearby, also ran to that place and on seeing them all the accused ran away from that place. While running the accused 1 and 4 threw the seetha sticks had by them in a sugarcane field belonging to the family of P.W. 1. P.W. 1 went to see his father who was lying injured and he was not in a position to speak. Thereafter P.Ws. 1 and 2 took their father Veerappa Goundan to the Government Hospital at Musiri after P.W. 2 brought a taxi from Musiri. There was bleeding from the right ear of P.W. 1 due to the injury sustained by him.

5. At Musiri Government Hospital, the Doctor who examined Veerappa Goundan and who was examined as P.W. 14 in this case, advised that Veerappa Goundan should be taken to the Government Head Quarters Hospital at Trichy immediately as his condition was serious. In his evidence he has spoken to the fact of examining Veerappa Goundan at 1.40 p.m. on 28-7-1986 for report as to certain injuries said to have been caused on the same day at 12.10 p.m. due to assault by a group of unknown persons and he has notified the following external injuries viz.

- '1. An incised wound of about 3 cm x 2 cm x 0.5 cm over the right parietal region.
2. A contusion with sub-conjunctival haemorrhage on the right eye measuring 3 cm x 2 cm
3. A contusion with angulation of right fore arm measuring about 5 cm x 3 cm suspected of fracture both bones of right forearm.
4. An abrasion of about 3 cm x 2 cm over right elbow on extensor aspect.'

He has stated that the patient was conscious and he was referred to the Government Hospital at Trichy for further treatment. Ex. P12 as the copy of the accident register.

6. On the same day at 8.40 p.m. he examined P.W. 1 for report as to certain injuries said to have been caused on the same day at about 11.00 a.m. and to be due to assault with stick by a known person and he has found the following external injury viz., a contusion of about 3 cm x 2 cm on his right eye brow with sub-conjunctival haemorrhage with complaint of blood discharge from right ear. According to him he found the patient to be conscious and he has treated him as out patient. He has opined that the injuries noticed by him on the body of P.W. 1 are simple in nature and the same could have been caused at the time and in the manner alleged Ex. P13 is the wound certificate.

7. On the same day at 8.45 p.m. he examined P.W. 2 for report as to certain injuries said to have been caused on the same day at 11.00 a.m. and to be due to assault with a bamboo stick by a known person and he has found a stick mark contusion of about 5 CM x 2 CM over the left chest wall corresponding to 8th rib and a contusion of about 5 cm x 2 cm over the right deltoid region. According to him the patient was conscious and he was treated as out patient. He has opined that the above injuries notice by him are simple in nature and they could have been caused at the time and in the manner alleged. Ex. P14 is the wound certificate issued by him. He has also stated that all the injuries notice by him in Ex. P14 should have been caused by beating with a stick.

8. On the advise of P.W. 14, Veerappa Goundan was taken to Government head Quarters Hospital at Trichy. He was accompanied by one Velusami. P.W. 8 Dr. Murgan, who is working as Assistant Surgeon in the Government Head Quarters Hospital at Trichy has spoken to about the fact that Veerappa Goundan was referred to the Government Head Quarters Hospital at Trichy by the Medical Officer of the Government Hospital at Musiri on 28-7-1986 and the said Veerappa Goundan was admitted at Trichy Hospital at 3.15 p.m. that day and he has examined him at 3.20 p.m. The Surgical Specialist saw Veerappa Goundan at 4.30 p.m. and gave treatment. Veerappa Goundan died at 4.50 p.m. P.W. 9 sent

Ex. P9 death intimation to the out post police station in the Hospital.

9. In the meanwhile, after sending Veerappa Goundan with Velusamy for treatment at Government Head Quarters Hospital at Trichy, P.Ws. 1 and 2 went to Thottiyam Police Station and there P.W. 1 gave a report under Ex. P1. Thereafter they went to their house. That night at about 7.00 p.m. they came to know that their father Veerappa Goundan has died in the Government Head Quarters Hospital at Trichy. But they did not go to Trichy immediately.

10. P.W. 10 who has been working as a constable in the out-post police station in the Government Head Quarters Hospital at Trichy, on 9-7-1986 has spoken to the fact that at 8.00 a.m. on that day Ex. P14 death intimation sent by P.W. 8 was in the out-post station and the same has been received by another constable, who worked earlier to him, but he has not sent hat intimation to the police station concerned. So, on is coming to duty, after knowing that the above death intimation related to Thottiyam Police Station, he tried to contact Thottiyam Police Station through VHF. Since the VHF system at Thottiyam Police Station was not functioning he sent the death intimation to Musiri Police Station with instructions to transmit the same to Thottiyam Police Station. He gave that intimation at 10.35 a.m. on that day. P.W. 11 has been working as a constable in Musiri Police Station. On 29-7-1986 he received the death intimation sent by P.W. 10 from the out-post police station in the Government Head Quarters Hospital at Trichy, and he has informed Thottiyam Police Station as instructed by P.W. 10 at about 10.45 p.m. that day, P.W. 12 Sadayan is the constable who took Ex. P10 requisition given by the Inspector of Police, Musiri for conducting post mortem over the dead body of Veerappa Goundan to P.W. 9. P.W. 9 conducted post mortem at 4.15 p.m. on 29-7-1986. He found the following external injuries over the dead body of Veerappa Goundan.

1. An incised sutured wound of 4 cm x 1 cm Bone deep over the right parietal region.
2. A horizontal incised wound of 3 cm x 2 cm above the right eyebrow. The wound was sutured.

3. Deformity of right forearm.

He has opined that the deceased would appear to have died of head injury sustained by him. Ex. P11 is the post mortem certificate issued by him. According to him, the external injuries 1 to 3 are necessarily fatal. All the external injuries could have been caused by beating with the weapons like M.O.S. Nos. 1 to 4.

11. P.W. 15 the Head Constable of Thottiyam Police Station has spoken to the face of P.W. 1 appearing before him at 4.00 p.m. on 28-7-1986, when he was on duty and gave a report, which is marked as Ex. P1. After obtaining the report P.W. 15 registered a complaint under crime No. 91 of 1986 under sections 323, 325 and 307 of IPC and prepared a First Information Report, which is marked as Ex. P15, and sent it to the Court. He has also sent the copies of the FIR to the Higher Officials. He has informed about the occurrence to the Inspector through telephone. He has also sent P.Ws. 1 and 2 for treatment to the Government Hospital at Musiri. At 5.30 p.m. he reached the scene of occurrence and he has found the Inspector there. On 29-7-1986 at 10.45 a.m. when he was on duty at the police station, he has received information from Musiri Police Station that Veerappa Goundan died at 4.50 p.m. on 28-7-1986 and on receipt of that information, he changed the offence into one under S. 302, IPC and prepared express report (Ex. P16) and sent the same to court and copies thereof to higher officials.

12. P.W. 16 is the then Head Clerk of the Judicial Second Class Magistrate's Court at Musiri. It is his evidence that he received Ex. P17 requisition for sending the blood stained articles concerned in this case for chemical examination. Therefore under Ex. P18 requisition P.W. 16 sent those articles for chemical analysis. Ex. P19 and Ex. P20 are the reports by chemical examiner and serologist respectively.

13. P.W. 17 is the Inspector of Police at Musiri Police Station. He received the information about the occurrence at 4.30 p.m. on 28-7-1986. Thereafter he proceeded to the scene of occurrence and reached the place at 4.45 p.m. P.W. 17 prepared observation Mahazar (Ex. P2) in the presence of witnesses. He also drew a rough sketch (Ex. P1). At 5.30 p.m. he has recovered M.O. 1 and M.O. 2 sticks under Ex. P3 mahazar from the sugarcane field near the scene of

occurrence. At 5.45 p.m. he has recovered the blood stained earth and sample earth under Ex. P4 mahazar from the scene of occurrence in the presence of witnesses, Ex. P2 to Ex. P4 were attested by P.W. 7. On the same day, P.W. 17 examined P.Ws. 1, 2 and 7. He searched for the accused that night at Musiri and in nearby villagers but he could not trace them. On 29-7-1986 he has sent M.O. 1 and M.O. 2 as well as the blood stained earth and sample earth to the court. On the same day he came to know that Veerappa Goundan died in the Government Head Quarters Hospital at Trichy and he got that information from Thottiyam Police Station. On receipt of copy of Ex. P16 he went to the Government Head Quarters Hospital at Trichy and conducted inquest over the dead body of the deceased between 1.30 p.m. and 3.30 p.m. and during the inquest he examined some witnesses. Ex. P22 is the inquest report prepared by him. Thereafter, he sent the dead body for post mortem with Ex. P10 requisition through P.W. 12. Again he went to the scene village and examined P.Ws. 1 to 3 and some others. Then he went to Musiri and examined P.Ws. 5, 6 and 11. Then he searched for the accused that night, but they could not be traced. On 30-7-1986 at 2.00 p.m., on information that the accused are hiding in the house of the 1st accused, he went there and arrested all the four accused from the house of the 1st accused. Accused 2 and 3 gave voluntarily confessional statements. The 2nd accused in his confession said that he would show the place where the M.Os. were hidden. Based on this information P.W. 17 recovered M.O. 3 from the roof to the house of the 1st accused. The 2nd accused's confessional statement, which led to the recovery of M.O. 3 is marked as Ex. P5. Ex. P6 is the mahazar under which M.O. 3 was recovered. The 3rd accused also gave a voluntarily confessional statement that he would show the place where the M.O. 4 is hidden. Based on the statement given by the 3rd accused. M.O. 4 was recovered from the roof of the house of the 1st accused. The admissible portion of the statement given by the 3rd accused is marked as Ex. P7. Ex. P8 is the mahazar under which M.O. 4 was recovered. In Ex. P5 to Ex. P8, P.W. 7 and one Kandasamy signed as attesting witnesses. On the same day at about 7.30 p.m. all the four accused were remanded to custody in Thottiyam Police Station. On 31-7-1986 M.Os. 3 and 4 were sent to the court with a requisition to send the blood stained articles for chemical examination. On 1-8-1986 on information given by P.Ws. 1 and 2 he has examined P.W. 4. On 7-8-

1986 he has examined P.Ws. 8 and 9 the Medical Officers. On 8-8-1986 he examined P.W. 14. On 9-8-1986 he examined P.W. 13. After completing the investigation, P.W. 17 laid a charge-sheet against all the accused on 13-8-1986.

14. When the accused were examined under S. 313 of Cri.P.C. with regard to the incriminating pieces of evidence appearing against them in the prosecution case, they totally denied the prosecution case as false. No one was examined as witness on the side of the accused. The learned Sessions Judge, after taking into consideration the oral and documentary evidence and for the reasons assigned in the judgment, came to the conclusion as stated hereinabove.

15. Learned counsel appearing for the accused 1 and 4 (appellants herein) took us through the evidence of the witnesses examined in this case in extenso and made his submissions as follows :-

The court below held that the prosecution case that all the four accused have beat the deceased with sticks indiscriminately cannot be acceptable and not true. While, so, the lower court erred in coming to the conclusion that the 1st accused is liable for murder without evidence and against the prosecution case itself. In their evidence, P.Ws. 1 and 2 are not telling the truth and their version in this regard is totally unbelievable. P.Ws. 1 and 2 claimed themselves as eye-witnesses and accompanied the injured to the hospital and told the Doctor that the deceased was attacked by unknown persons. This clearly shows that they could not have witnessed the occurrence and that the accused were implicated belatedly and deliberately due to prior enmity with them. The lower court has erred in observing that it may be a mistake by the doctor in recording, but there is no suggestion or evidence to support this finding. The court below ought to have held that the oral evidence is contradicted by the medical evidence and other features in the case. The lower court having held that accused 2 and 3 have not committed any offence has no basis to discriminate the accused 1 and 4 from them in convicting them. The Court below ought to have disbelieved the interested, contradictory and unnatural evidence of the close relatives, viz., P.Ws. 1 and 2 as unacceptable. The lower court ought to have held that the 4th accused was not there at all. The lower court has erred in acting upon the suggestions and also erred in relying

upon a part of the suggestions in convicting the 1st accused. The lower court ought to have accepted the defence case. The lower court ought to have held that the deceased and his men are the aggressors and that the circumstances and the nature of weapon alleged to have been used by them would go to show that the accused party had a right to defend themselves. The ingredients of the offence were not proved. The charge is defective which has caused prejudice to the accused. The deceased party cut the branches of the seetha tree which were obstructing the pathway. The accused party came with sticks and questioned and deceased party as to why they cut the branches of the seetha tree belonging to them. Admittedly the deceased party were carrying aruval. The deceased party attempted to cause injury with aruval on the accused party. The accused party in order to protect themselves, used the sticks which they were carrying with them. They exercised their right of private defence of their person. According to P.W. 14 there were four injuries on the body of the deceased, but according to P.W. 9 there were only three injuries. Veerappa Goundan had already sustained an injury on his right hand and when he fell down on the branches of seetha tree, which were cut down and lying there, that could have caused injury on his head. When Veerappa Goundan was taken to Government Hospital at Musiri, it was told that at 12.10 p.m. on 28-7-1986 they were assaulted by a group of unknown persons. P.W. 1 told to P.W. 14 who examined him at Government Hospital Musiri that he was assaulted with seetha sticks by a known person. So also P.W. 2 said that he was assaulted with a bamboo stick by a known person. P.Ws. 1 and 2 said that they were attacked at 11.00 a.m. Therefore, there is discrepancy in the information with regard to time of occurrence before P.W. 14. After the occurrence P.W. 1 and P.W. 2 did not go to the police station immediately but they went to police station only at about 4.00 p.m. It is not correct to state that the accused party exceeded their right of private defence. There is no evidence on record to show that there is common intention between the accused to commit the offence. So far as the time of occurrence is concerned, two different times were given before P.W. 14. Therefore two incidents would have place, viz. one at 11.00 am and another at 12.10 p.m. The motive for the offence suggested by the prosecution is very weak and remote. Hence, it was submitted that the appellants herein are also entitled for acquittal.

16. On the other hand, learned Public Prosecutor appearing for the respondent, while supporting the prosecution case submitted as under :

The accused party are the aggressors. The motive for committing the crime was clearly made out by the prosecution. It is the 4th accused who beat P.W. 1 with a stick when P.W. 1 was answering the questions put by the 1st accused. Even though the deceased party had aruval, there is no evidence on record to show that they used that weapon. P.W. 1 cut the branches of seetha tree belonging to the accused party since the branches are over hanging and obstructing the pathway and the branches were cut and thrown on the pathway. Hence it would not amount to interfering with the property right of the accused party. The accused party exceeded their right of private defence. The accused party came with sticks in their hands. P.Ws. 1 and 2 are injured witnesses and therefore their evidence cannot be ignored. There is no evidence on record to show that there were two occurrences on the same day. P.W. 1 said in his evidence that the persons accompanying Veerappa Goundan told that some unknown persons have caused the injuries. Hence it is not Veerappa Goundan who said that some unknown persons caused the injuries.

17. Ex. P11 post mortem certificate and the oral evidence given by P.W. 9 doctor who conducted post mortem would go to show that there was fracture in the skull of the deceased Veerappa Goundan and injury No. 1 caused by the 1st accused would have caused his skull fracture, which is fatal in nature. Simply because injury No. 1 was found to be an incised one, it cannot be said that it would not have been caused by the stick. P.W. 14 opined that injury No. 1 found on the deceased could have been caused by a stick since the edges of the injury are irregular. There is no possibility of Veerappa Goundan sustaining such serious injuries on the head by falling on the branches of seetha tree which were cut and thrown by P.W. 1. The presence of the accused party with sticks was admitted by the accused party themselves. The sticks were recovered on the information given by the accused. It is only due to beating of the 1st accused, Veerappa Goundan met with death. When P.W. 2 was trying to snatch the stick from the 1st accused, he beat P.W. 2 with the stick on his right shoulder. The medical evidence given by P.W. 14 and Ex. P14 the wound certificate corroborate with the ocular testimony of

P.W. 1. The 4th accused beat P.W. 1 with stick when P.W. 1 was answering the queries put by the 1st accused. The evidence of P.W. 14 doctor and the wound certificate Ex. P13 along with ocular testimony would therefore amply prove that the 4th accused caused simple injury on P.W. 1. Therefore, the conviction and sentence awarded against accused 1 and 4 are sustainable.

18. The point that arises for consideration in this appeal is whether the prosecution has made out a case under section 302, IPC against the 1st proceeding and under S. 323, IPC against each of the accused 1 and 4 beyond all reasonable doubt.

19. In so far as the motive aspect is concerned, that must be clearly established by the prosecution, P.W. 1 states that prior enmity is the cause for the occurrence which was also admitted by the accused. Veerappa Goundan family is cultivating the lands belonging to one Sivarama Mudaliar of Kunjannaickenpalayam. The said land is situate east of the pathway leading to Thatampatti from Kunjannacickenpalayam and the 1st accused has got his land west of that pathway. There has been prior enmity between the family of the Veerappa Goundan and the family of the accused regarding the accused party having allowed their cattle to graze in the lands belonging to the family of Veerappa Goundan. There was also cases pending between the accused party and the deceased party. The deceased already gave a complaint against the accused party stating that they have accused the patta land belonging to the accused party with their lands about 20 years prior to the occurrence. The accused party gave a complaint against the deceased party stating that their dog killed four goats belonging to the accused party. All these aspects would go to show that even though there was prior enmity between the family of the deceased and the accused party, the proximate cause for the occurrence is cutting the breaches of seetha tree by P.W. 1. Therefore, the motive is very weak.

20. P.Ws. 1 and 2 are the sons of the deceased. Accused 2 and 3 are the sons of the 1st accused. The 4th accused is the son-in-law of the 1st accused. All of them have been residing in a farm house situate on the northeastern side of the land belonging to P.Ws. 1 and 2 and thereafter. According to P.W. 1 that he along with other persons went in a tractor to get to Thatampatti to carry the manure

purchased by them and while the tractor was proceeding in between the land of the family of P.W. 1 and the land of the accused 1 to 3 in the pathway leading to Thatampatti, the branches of the Seetha tree were obstruction the pathway. Hence, the tractor could not move further. P.Ws. 1 and 2 cut two branches of the seetha tree belonging to the accused party and threw them on the pathway. Thereafter the tractor move a little further and it was caught in a rut. While P.W. 1 and the other persons in the tractor were removing the mud from the tractor, the accused party came with sticks in their hands. According to P.W. 1 the 1st accused questioned him as to why he cut the breaches of the seetha tree. P.W. 1 replied that since the branches were obstructing the pathway, he had no other option but to cut them off. While P.W. 1 was replying to the 1st accused the 4th accused beat P.W. 1 with a seetha stick near his right eyebrow and by the side of his right ear and on receipt of the beating P.W. 1 fell down. By that time Veerappa Goundan the father of P.W. 1 who came there was also beaten. According to P.W. 1 the 1st accused said that Veerappa Goundan the old man should be beaten and only if he was done to death, they could live peacefully and so saying the 1st accused beat Veerappa Goundan with a seetha stick had by him on the head of Veerappa Goundan. On receipt of beating Veerappa Goundan fell down. Then all the four accused bet Veerappa Goundan on his head and other parts of his body with Seetha sticks. When P.W. 1 raised an alarm his elder brother P.W. 2 and one Velusamy the neighbouring land owner and one Marappan, one Kandasamy brother-in-law of P.W. 2 as well as one Kalavathy sister-in-law of P.W. 2 came there. Ameer John P.W. 4 was also witnessing the occurrence. P.W. 1 further said that P.W. 2 tired to snatch the seetha stick from the hands of the 2nd accused and at that time the 1st accused beat P.W. 2 with a seetha stick had by him on the right shoulder of P.W. 2 unable to bear the beating. P.W. 2 ran away from that place. According to P.W. 1 thereafter all the four accused were indiscriminately beating Veerappa Goundan.

21. P.W. 14 the Doctor who examined Veerappa Goundan at the first instance in the Government Hospital at Musiri, in his evidence stated that he has found only four injuries on the body of Veerappa Goundan, viz. one incised wound, two contusions and an abrasion. It is pointed out by learned counsel appearing for the accused that if all the accused were beating Veerappa Goundan indiscriminately

as spoken by P.W. 1, P.W. 14 (Doctor) would have found many injuries on the body of Veerappa Goundan. On the other hand, he found only four injuries. Therefore, according to the learned counsel for the accused the version of P.W. 1 regarding the attack by all the four accused cannot be true. It remains to be seen that postmortem was conducted by Dr. Mahalingam (P.W. 9). He notice only three injuries and he seems to have omitted to notice another one. Therefore, the lower court pointed out that all the four accused would not have beaten indiscriminately Veerappa Goundan as alleged by P.W. 1. Further, according to P.W. 1 as soon as P.W. 2 received the injuries he ran away from the scene of occurrence unable to bear the injuries. Therefore, P.W. 2 would not have been subsequently the beating of Veerappa Goundan by all the accused indiscriminately.

22. It remains to be seen that PW-1 and PW-2 are injured witnesses. They are the sons of Veerappa Goundan. According to PW-1 as soon as PW-2 received injury he ran away from the scene of occurrence since he is unable to bear the beating. While PW-1 was in the witness box a suggestion was made that Veerappa Goundan, PW-1 and PW-2 went to the place of occurrence each armed with an aruval and they were cutting branches of the seetha tree in the land of accused 1 to 3 and at that time the 1st accused came there after leaving his sheep for grazing at Thiruvangi Malai with a stick in his hand and he questioned them for which Veerappa Goundan replied that they would do like that and he began to attack the 1st accused and in order to prevent it the 1st accused used the stick and at that time Veerappa Goundan fell down over the branches of the seetha tree which were laying down on the ground after they were thrown by them on account of that Veerappa Goundan sustained injuries. This defence put forward by the accused party is also not acceptable in view of the nature of the injuries sustained by Veerappa Goundan as can be seen from the post mortem certificate (Ex. P-11) issued by PW-9. Ex. P-11 relates the falling injuries on the body of Veerappa Goundan. PW-14 is the Doctor who first examined Veerappa Goundan at Government Hospital at Musiri. Ex. P-12 is the copy of the accident register. According to Ex. P.-12 injury No. 1 on the body of Veerappa Goundan is an incised wound. According to the learned counsel for the appellant the incised wound could not have been caused by using a stick. But according to the lower court injury No. 1 was caused on the bony part of the head and hence it was

irregular in shape. Therefore according to the lower court injury No. 1 could have been caused by a stick. This reasoning of the lower court is not based upon the medical evidence.

23. Ex. P-11 is the copy of the post mortem examination. Ex. P-11 states as under :-

'Regarding the body of a male aged about 60 years, named Veerappa Goundan. Requisition received at 4.00 p.m. on 29-7-1986 from the Inspector of Police, Musiri, Thottiam Police with his letter No. 91-86 - IPC 302 dated 29-7-1986.

Body is charge of Police Constable No. 1336 named Sadayan. Identification and Caste marks;

1) A black mole right side chest

2) A black mole left side chest

The body was first seen by the undersigned at 4.10 p.m. on 29-7-1986. Its condition then was cold, rigor mortis present all over. Post mortem commenced at 4.15 p.m. on 29-7-1985, appearance found at the post mortem - moderately nourished body of a male lying on its back was present in the mortuary. The body was symmetrically with black skin and black iris.

Injuries :

I External :

1) An incised sutured wound 4 x 1 cms., Bone deep over the right parietal region.

2) Horizontal incised wound 3 x 2 cm. above the right eyebrow. The wound was sutured.

3) Deforming of the right forearm.

II) Internal Injuries :

1. On opening the scalp, there was extensive haematoma involving the right half of the skull. The haematoma was found extending down to the upper half of the right side of face.

2) Fracture of the skull involving the frontal bone, parietal bone, and temporal bone on the right side. The fracture line starts 3 cms. to the right of middle line in the frontal bone extending back to the parietal bone, 12 cms, long and horizontally the fracture extends to the temporal bone. The fracture line was found extending into the anterior and middle cranial fossae on the right side.

3) Extra dural and subdural haemorrhage involving the right hemisphere of brain.

4) On opening of the forearm (right) there was fracture of the radius and ulna on the lower end with dislocation at wrist and elbow joint.

The deceased would appear to have died of head injury sustained by him.'

According to Ex. P-11 there are only three injuries on the body of Veerappa Goundan. Therefore according to the learned counsel for the appellants if all the four accused beat Veerappa Goundan indiscriminately, how can there be only three injuries on the body of the deceased. This line of argument advanced by the learned counsel for the appellant is well founded. Ex. P-19 and Ex. P-20 are Chemical examiner's report and Serologist's report. According to Ex. P-20 Mo-1 stick contains human blood not sufficient for the test. So far as Mo-2 is concerned result of grouping test is inconclusive. Therefore it is doubtful whether these are the sticks used by A-1 and A-4 causing injuries on Veerappa Goundan. PW-1 and PW-2.

24. According to the learned counsel appearing for the accused at the earliest point of time when PW-14 examined Veerappa Goundan in the Government Hospital at Musiri, it has been represented to him that some unknown persons had caused the injuries and hence the benefit of doubt should be given to the accused. PW-14 in his evidence stated that only the persons who accompanied Veerappa Goundan said about the fact that some unknown persons have caused the injuries. Therefore, who furnished this information PW-14 is not known. PWs 1 and

2 also accompanied Veerappa Goundan to Musiri Government Hospital. They, never said that Veerappa Goundan was attacked by known persons. For the injuries caused on them PWs 1 and 2 stated that some known persons have caused the injuries. If that is so, it is not known as to what prevented PWs 1 and 2 to state that their father was attacked by known persons. This circumstance also creates a doubt whether accused 1 and 4 would have caused injuries on Veerappa Goundan. Therefore the 1st accused is entitled to get the benefit of doubt in his favour as pleaded by the learned counsel for the appellant.

25. PW-3 is one Periasamy, who was in the tractor driven by PW-1. He admitted the fact that he was in the tractor at the time of occurrence. He also admitted that the branches of seetha tree were cut by PW-1 and the 1st accused having come there and questioned Veerappa Goundan who was present then. He also admitted the quarrel between the 1st accused and Veerappa Goundan. But he denied the knowledge about the actual occurrence that took place. Hence he was treated as hostile by the prosecution. PW-4 is one Amir John. According to him he was coming from Thatampatti at about 11 a.m. in the pathway leading to Kunjannaickenpalayam on his bicycle. He found a tractor was standing in the pathway leading to Kunjannaickenpalayam. According to PW-4 he stopped his cycle and witnessed the occurrence. But he appears to be a chance witness. Though he is a stranger who does not know PW-1 no identification parade was done. Therefore, the evidence of PW-3 and PW-4 would not give much assistance to the prosecution to establish their case.

26. PW-7 is the Village Administrative Officer who was present when the Inspector of Musiri Police Station visited the scene of occurrence at 5.00 p.m. He was present at the place of occurrence when the Inspector recovered M.Os. 1 and 2 sticks from the place of occurrence under Ex. P-3 Mahazar. He was also present when the Inspector recovered blood stained earth and sample earth under Ex. P. 4 mahazar. He further said that the 2nd accused gave a confession voluntarily to the Inspector of Police. In the course of his confession he stated that if he was taken to a particular place he would locate the bamboo stick. Accordingly, when he was taken to a tiled shed in front of the house of the 1st accused he took out M.O. 3 bamboo stick and produced the same and the admissible portion of the confession

statement of the 2nd accused which led to the recovery of M.O. 3 has been marked as Ex. P-5 and the mahazar under which M.O. 3 was recovered has been marked as Ex. P-6. According to PW-7 the 3rd accused also gave a confession statement voluntarily. In his confession statement, the 3rd accused stated that if he was taken to a particular place he would locate the weapon used in the occurrence. Accordingly when he was taken to a shed opposite to the house of the 1st accused, from where he took out M.O. 4 bamboo stick from the western side of the shed and produced the same before the Inspector and the admissible portion of the confessional statement of the 3rd accused, which led to the recovery of M.O. 4 has been marked as Ex. P-7 and the mahazar under which it was recovered has been marked by Ex. P-8, Ex. P-2 to Ex. P-8 were attested by PW-7 and one Kandasamy. Since the lower Court was convinced with the evidence of PWs 1 and 2 and the Medical evidence available in this case. It came to the conclusion that the 1st accused is responsible for the murder of Veerappa Goundan and therefore it did not attach much importance to the evidence of PW 7 and the consequent recovery Mos. 3 and 4 used by accused 2 and 3 in the course of the occurrence and accordingly the lower Court acquitted accused 2 and 3.

27. Learned counsel appearing for the accused submitted that there is discrepancy in stating the time of occurrence. Learned counsel pointed out that when Veerappa Goundan was taken to Government Hospital at Musiri, it was stated that at 12.10 p.m. on 28-7-1986 they were assaulted by a group of unknown persons, whereas P.Ws. 1 and 2 said that they were attacked on 28-7-1986 at 11.00 a.m. Therefore, according to the learned Counsel for the accused two occurrences could have taken place, one at 11.00 am. and another at 12.10 p.m. on 28-7-1986. It is significant to note that P.Ws. 1 and 2 accompanied Veerappa Goundan to the Government Hospital at Musiri. If it is so, it is not known as to how this discrepancy in furnishing the time of occurrence has taken place as alleged by the leaned Counsel for the appellant and since there is doubt with regard to the exact time of occurrence, the benefit of that doubt should go to the accused.

28. Another contention put forward by the learned counsel appearing for the appellants was that there was delay in giving the complaint by P.W. 1 on 28-7-1986. Ex. P1 was stated to be recorded on 28-7-1986 at 16.00 hrs. The

occurrence was stated to have been taken place at 11.00 am. According to P.W. 1 and P.W. 2 after the occurrence took place at 11.00 am P.W. 2 brought a taxi from Musiri and P.Ws. 1 and 2 took their father to Government Hospital at Musiri, where P.W. 14 asked P.Ws. 1 and 2 to take Veerappa Goundan to Government Head Quarters Hospital at Trichy since his condition was serious. Hence, P.Ws. 1 and 2 made arrangements to send Veerappa Goundan to Government Head Quarters Hospital at Trichy with one Velusamy. Thereafter, P.W. 14 examined P.Ws. 1 and 2 and after medical examination was over, they went to Thottiyam Police Station and gave the complaint. After giving the complaint, they went to their house. Therefore, the occurrence took place at 11.00 am. A taxi from Musiri was brought and Veerappa Goundan was taken to Musiri Government Hospital. From there arrangements were made to send him to Government Head Quarters Hospital at Trichy. Thereafter P.Ws. 1 and 2 submitted themselves for medical examination by P.W. 14. After the Medical examination was over they came to Thottiyam Police Station. All these events would have taken place in between 11.00 am and 4.00 p.m. Soon after the occurrence one cannot expect P.Ws. 1 and 2 to go to the police station instead of taking their father to the hospital to save his life. A question was raised that any one among the persons who were present at the scene of occurrence could have been asked to give a complaint to police. It is to be remembered that in a matter like this unless some one it interested nobody would come forward to involve himself by giving a complaint to the police. Therefore, we consider that there is no delay in giving the complaint (Ex. P1) to the Police and even assuming if there is any delay that was properly explained by the prosecution.

29. Learned counsel for the appellants contended that the deceased party is the aggressors and in order to protect their property the accused party rightly, exercised their right of private defence and they did not exceed their private defence. The fact remains that when the tractor was unable to move further in the pathway because of the obstruction by the branches of the seetha tree, P.W. 1 cut two branches of seetha tree and threw them on the pathway. According to P.W. 1 it is at that time all the accused came with sticks in their hands. According to the accused party, P.Ws. 1 and 2 and their father came with aruvals and cut seetha tree in their land. According to learned counsel for the appellants, the accused

party came to defend their right over their property and therefore they did not exceed their right of private defence.

30. Admittedly, P.W. 1 was having an aruval. According to the accused 1 and 4, P.Ws. 1 and 2 and their father are armed with aruvals and when the accused party questioned them as to why they cut the branches of the seetha tree belonging to them, P.Ws. 1 and 2 and their father wielded the aruvals against the accused party and it is at that time the accused party prevented the deceased party from using the aruvals. According to the learned counsel for the appellants every person has a right to defend himself subject to the restrictions contained in S. 99 of IPC of his body and property belonging to him. On the other hand, learned Public Prosecutor contended that cutting the throwing away two branches of a seetha tree would not cause any apprehension in the minds of the accused that such an act may lead to grievous hurt or death and therefore by causing the death of Veerappa Goundan, the accused party exceeded their right of private defence. It remains to be seen that the right of private defence of the body commences as soon as reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed and it continues as long as such apprehension of danger to the body continues. The right of private defence of property extends under the restrictions mentioned in S. 99, IPC to the voluntary causing of death or of any other harm to the wrong doer, if the offence, the committing of which, or the attempting to commit which, occasions, the exercise of the right becomes of offence viz. mischief under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised. The right of private defence of property against mischief continues as long as the offender continues in the commission of criminal trespass or mischief. In the instant case, P.W. 1, was having an aruval with which he cut the seetha tree. According to the accused party aruval was wielded by him. This action on the part of P.W. 1 would have caused apprehension in the mind of the accused party that P.W. 1 may cause grievous hurt to him. In order to defend their rights the accused party would have used their sticks by way of exercising their right of private defence. Admittedly it is P.W. 1 who first cut the branches of seetha tree belonging to the accused party and therefore the deceased party are the aggressors and the accused party while

defending their person and property, death of Veerappa Goundan would have taken place. Admittedly, the accused party were not armed with aruval. Therefore, when the accused party exercise their right of private defence they are well within their limits. Therefore, the prosecution failed to establish its case beyond all reasonable doubt. Hence, 1st accused is entitled to an order of acquittal with regard to the conviction and sentence made under S. 302, IPC.

31. As against the 1st accused a charge was levelled under S. 323, IPC. It is stated that the 1st accused attacked P.W. 2 when P.W. 2 tried to snatch the stick from the hands of the 2nd accused. P.W. 14 is the Doctor who examined P.W. 2. Ex. P14 is the copy of the wound certificate. According to P.W. 14 the injuries are simple in nature. So also a charge was levelled against the 4th accused under S. 323, IPC. According to P.W. 1 when he was answering that 1st accused, 4th accused beat him with a seetha stick near his right eye-brow by the side of his right ear. On account of that P.W. 1 fell down. PW-14 is the Doctor who examined PW-1. Ex. P13 is the copy of the wound certificate. According to P.W. 14, the injury is simple in nature.

32. According to the prosecution, P.W. 1 and P.W. 2 are injured witnesses and P.W. 1's evidence corroborates with the evidence of P.W. 2 and the oral evidence of P.Ws. 1 and 2 is supported by medical evidence. Therefore, the prosecution said that the offence under S. 323, IPC is proved beyond all reasonable doubts against A1 and A4 and hence the lower court was correct in awarding the sentence. But according to the learned counsel for the appellants P.W. 1 cut the branches of Seetha tree belonging to their family and P.Ws. 1 and 2 and their father were armed with aruval. When the accused party questioned them as to the cutting of the branches of the seetha tree, admittedly P.W. 1 was having an aruval. According to the appellants P.W. 1, P.W. 2 and their father wielded the aruvals, and in order to protect their right to their property and their persons, the appellants used the sticks by way of private defence. Admittedly the appellants are not armed with aruval.

33. The right of private defence of the property against mischief continues as long as the offender continues in the commission of mischief. The right of private

defence of property commences when a reasonable apprehension of danger to the property commences. According to the learned Counsel for the appellants, cutting the throwing away two branches of seetha tree belonging to them would have caused apprehension in the mind of the accused party. But the offence which is committed by P.W. 1 to the branches of the tree belonging to the appellants would entitle them to exercise their right to private defence and in course of such action if P.Ws. 1 and 2 received simple injuries it cannot be said that accused 1 and 4 exceeded their right of private defence. Therefore, we hold that the prosecution failed to prove beyond all reasonable doubt, the accused 1 and 4 caused simple injuries on the bodies of P.Ws. 1 and 2 which is punishable under S. 323, IPC. Accused 3 and 4 are already acquitted by the Court below on the charge levelled against them under S. 302 read with S. 34, IPC. Since other accused are acquitted against the charges levelled against them under S. 302 read with S. 34, IPC, the 1st accused also cannot be convicted under S. 302 read with S. 34, IPC.

34. To sum up, it is the definite prosecution case, that not only A1 but also the other accused beat on the head of the deceased with sticks. Even at the outset, it is clear that no particular accused can be attributed the fatal injury. This aspect becomes important since A2 to A4 have been acquitted of the murder charge and the same has become final. Of the four eye-witnesses, P.W. 3 was treated hospital and the evidence of P.W. 4 did not impress the trial court, as credible. On the evidence of P.W. 1 and the contents of Ex. P1, P.W. 2 had arrived on hearing the hue and cry. Obviously he cannot be elevated to the pedestal of a full ocular witness. If P.Ws. 1 and 2 were injured in the same occurrence, it is surprising as to why they did not get treated along with their father at 1.40 p.m. or thereabouts but offered for treatment only at 8.40 or 8.45 p.m. on their statements to the Doctor it is possible that they were not injured when the deceased was attacked, apparently by unknown persons (Ex. D1). That information could have been furnished by the deceased who was then conscious or P.Ws. 1 and 2. Who had accompanied the deceased. Conduct of P.Ws. 1 and 2 in not having accompanied their father who were serious, to the hospital at Trichy is rather astonishing. Even after preferring Ex. P1, they returned to their homes-surprising indeed. The coming into being of Ex. P1 at 4.00 p.m. appears doubtful on a careful reading of the evidence of P.W.

1, who claims to have reached the Police Station at 5.30 p.m. P.W. 2 has a different story to offer. Medical evidence also casts a doubt about the manner in which occurrence had taken place. The genesis of the occurrence as portrayed by the prosecution appears to be doubtful. It is possible to visualise that two different incidents had been clubbed together to project P.Ws. 1 and 2 as eye-witnesses. The defence case certainly appears probable, and if that be so, when the prosecution case is totally infirm, the appellants will be entitled to the benefit of doubt.

35. In view of the reasons stated above, we set aside the conviction and sentence imposed against the 1st accused under S. 302, IPC and under S. 323, IPC and also we set aside the conviction and sentence imposed against the 4th accused under S. 323, IPC. In that view of the matter the appeal filed by accused 1 and 4 is allowed. If there are any bail bonds executed by accused 1 and 4, they shall stand cancelled.

36. Appeal allowed.