

Dhandayutham Vs. the State

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Court : Chennai

Decided On : Jan-04-1994

Reported in : 1994CriLJ1587

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

Appeal No. : Referred Trial No. 4 of 1993; Criminal Appeal No. 611 of 1993

Appellant : Dhandayutham

Respondent : The State

Advocate for Def. : B. Sriramulu, Public Prosecutor

Advocate for Pet/Ap. : K.S. Ramachandran, Adv.

Judgement :

Thangamani, J.

1. R.T. No. 4 of 1993 is a reference made by learned Sessions Judge of Dharmapuri District Krishnagiri is S.C. No. 60 of 1992 on his file under section 366 of the Code of Criminal Procedure seeking confirmation of the death sentence passed on A-1 Dhandayutham, while Criminal Appeal No. 611 of 1993 has been preferred by the said A-1 Dhandayutham Challenging his conviction and sentence.

2. A-1 Dhandayutham and A-2 Mani stood charged in the trial Court as indicated below on the allegations that on 27-9-1988 at 9.00 a.m. in the field of Velavallikadu, on account of prior enmity, at the instigation of A-2 Mani, A-1 Dhandayutham attempted to commit the murder of D.W. 2 Raji alias Raji Gounder and his wife P.W. 1 Nandhavanam, that at the same time and place and in the course of the same transaction he caused grievous hurt to P.W. 3 Pandurangan and that he trespassed into the house of P.Ws. 1 and 2 and committed the murder of Lakshmi, the first wife of P.W. 2 Raji and Perumal, the one year old child of P.Ws. 1 and 2.

3. The prosecution examined 19 witnesses, filed 33 documents and marked 32 material objects. They disclose these facts :- P.W. 2 Raji alias Raji Gounder is residing in his field shed in Velavallikadu of Vazhipatti village with his first wife deceased Lakshmi and second wife P.W. 1 Nandhavanam. Deceased Perumal is the one year old child of P.W. 2 Raji through his second wife. The houses of the accused are situate on the rear side of the house of P.Ws. 1 and 2. There was longstanding enmity between A-1 Dhandayutham and P.W. 2 Raji on account of a ridge dispute. Besides, A-1 Dhandayutham was nurturing a grievance that P.W. 2 Raji was having illicit intimacy with his wife P.W. 8 Santhi. A-1 Dhandayutham often used to beat and torture his wife. Once he had snatched away the Mangalyam of P.W. 8 Santhi. The latter complained to P.W. 2 Raji about the conduct of A-1 Dhandayutham. Two years prior to the occurrence A-1 Dhandayutham drove away his wife to her parent's house. While P.W. 8 Santhi chose to reside with her grand mother and eke out her livelihood by making Beedies, her three children were living with A-1 Dhandayutham.

4. On 26-9-1988 Monday A-1 Dhandayutham took his three children to the Employer of P.W. 8 Santhi, enquired about her, entrusted the children with him and went away. On the next day Santhi took custody of the children.

5. On 27-9-1988 Tuesday at about 7 a.m. A-1 Dhandayutham and A-2 Mani were conversing in their backyard. P.W. 1 Nandhavanam was cutting grass near the well in her field there. A-2 Mani instigated A-1 Dhandayutham to do away with his wife. At about 9 a.m. P.W. 2 Raji came there and

Charge	No.	Accused	Nature	of
-----			I A-1 Under Section 307, IPC (for attempting to commit the urder of P.W. 2 Raji).	
			II A-1 Under Section 324, IPC (for causing grievoushurt to P.W. 3 Pandurangan).	
			III A-2 Under Section 307 r/w. 109, IPC IV A-1 Under Section 449, IPC (house trespass).	
			V A-1 Under Section 307, IPC (for attempting tocommit the murder of P.W. 1 Nandhavanam).	
			VI A-2 Under Section 307 r/w. 109, IPC.	
			VII A-2 Under Section 302, IPC (for committing themurder of Lakshmi).	
			VIII A-2 Under Section 302 r/w. 109, IPC.	
			IX A-1 Under Section 302, IPC (for committing themurder of child Perumal).	
			X A-2 Under Section 302 r/w. 109, IPC.	

helped his wife in lifting the grass bundle to her head. When P.W. 1 Nandhavanam proceeded towards her house, P.W. 2 Raji was sitting on the stone near the well. At that time A-1 Dhandayutham came there from behind and cut on the right ear side of P.W. 2 Raji with M.O. 1 Aruval. P.W. 1 turned round and saw her husband running for his life towards a pit inside the well. A-1 Dhandayutham chased him stating that he was going to annihilate the entire family of P.W. 2 Raji. When A-1 Dhandayutham continued to cut P.W. 2 Raji, the latter tried to ward off the blows. Two cuts fell on his left hand. P.W. 2 Raji scaled over the well wall and ran towards the cotton field. A-1 Dhandayutham chased him further and cut on his left head and right shoulder. On hearing the noise, P.W. 3 Pandurangan who had come as guest to the house of one Murugan, came there and tried to prevent A-1 from cutting P.W. 2 Raji. Thereupon A-1 Dhandayutham cut on the right side of the neck of P.W. 3 Pandurangan asking who was he to question his act P.W. 1 Nandhavanam witnessed his incident from at a distance of 10 feet. P.W. 4 Kesavan who came there on hearing the noise also saw the occurrence. A-1 Dhandayutham cut P.W. 2 Raji on his hands and neck shouting (vernacular matter omitted) P.W. 2 Raji fell down then he got up, ran for some distance and swooned in the sugarcane field.

6. Then A-1 Dhandayutham began to chase P.W. 1 Nandhavanam shouting that he was going to do away with her entire family members. P.W. 1 Nandhavanam ran from that place, entered her house and bolted it from inside. Deceased Lakshmi and Perumal were also available in the house at that time. A-1

Dhandayutham opened the door by kicking the same with his leg and cut on the left palm of P.W. 1 Nandhavanam. Lakshmi shouted not to cut. Thereupon, saying that he would not stop without killing all of them, A-1 cut Lakshmi indiscriminately with M.O. 1 Aruval. He removed the jaw part of Lakshmi from her body and placed it near the threshold of the house. Lakshmi died instantaneously. A-1 Dhandayutham also cut on the chest, right and left shoulders and neck of the child Perumal and the child also died immediately. A-1 Dhandayutham tried to chase away two other persons also. P.W. 5 Kullachi who was plucking grass in her sugarcane field also saw the entire episode from at a distance of 70 feet.

7. A crowd gathered there. P.W. 4 Kesavan also saw Lakshmi and Perumal lying dead in a pool of blood. P.W. 1 and P.W. 4 proceeded to the sugarcane field. There P.W. 2 Raji was lying unconscious with injuries, P.W. 1 and P.W. 4 took P.W. 2 Raji to Government Hospital, Mathur in a bullock cart. Vazhipatti village on the way is 3 K.M away from the scene place. There P.W. 1 Nandhavanam met P.W. 9 village Administrative Officer and gave Ex. P. 1 complaint at about 1-30 p.m. P.W. 9 V.A.O. saw P.W. 2 Raji lying unconscious in the bullock cart. He proceeded to the scene place in a cycle and verified that Lakshmi and Perumal were lying dead. He returned to Vazhipatti and sent P.W. 2 Raji and others to Mathur Police Station. He also followed them in a cycle. At about 3 p.m. they reached the police Station which is at a distance of 6 k.m. from Vazhipatti. P.W. 18 Head Constable was incharge of the Police Station. P.W. 9 V.A.O. handed over Ex. P. 1 complaint and his report Ex. P. 2 to the Head Constable. He received the same and registered the complaint as his Station Crime No. 152/88 under Ss. 302, 307, 326 and 324 read with S. 109, IPC. He also prepared Ex. P. 29 Express F.I.R. and sent the documents to J.S.C.M. Court and the copy of the FIR to his higher authorities. He also sent the injured witnesses P.Ws. 1 and 2 to Government Hospital with Medical Memo.

8. In the Meanwhile, A-1 Dhandayutham had gone to the house of his relative P.W. 6 Pandurangan in Naravandhampatti at 10 a.m. This house is two furlongs away from the house of P.W. 2 Raji. There were blood stains over his body and clothes and M.O. 1 aruval in his hand. He asked for water to drink. With the water provided by P.W. 6 Pandurangan, he washed blood stains. He also confessed to

P.W. 6 Pandurangan that he had done away with the entire family of P.W. 2 Raji. He told him that he was going to surrender in Court and went away. When P.W. 6 Pandurangan went to P.W. 2 Raji's house, he found Lakshmi and Perumal lying dead. Sometime later P.W. 7 Ramasamy an astrologer and palmist by profession saw A-1 Dhandayutham coming from the opposite side along Natham - Naradhampatti road. A-1 Dhandayutham got M.O. 2 cycle which P.W. 7 was riding and rode away. There were blood stains on the shirt worn by A-1 Dhandayutham. P.W. 7 Ramasamy got afraid and did not ask A-1 Dhandayutham anything.

9. On the same day at 5-10 p.m. P.W. 15 Doctor admitted P.W. 2 Raji in Government Head Quarters Hospital, Dharmapuri on police Memo. He found these injuries on him :

1. Incised wound upper third of left forearm encircling the medial, posterior and lateral aspects cutting through both radius and ulna.
2. Incised wound anterior side and lower third of left forearm 3' x 1 1/2' x 1/2'.
(Fracture) both bones.
3. Incised wound medial aspect of left wrist 1' x 1/2' x 1/2'.
4. Incised wound left side upper part of neck 2 1/2' x 1' x 1 1/2'.
5. Incised wound upper side of left shoulder 2' x 1' x 1'.
6. Incised wound behind right ear 1 1/2' x 3/4' x 1/4'.
7. Incised wound vertically placed over the right wrist antaomedial aspect extending to the palm and forearm 3' x 1' x 1/2'.
8. Abrasion portion side of lower third and right forearm 2' x 1'. X-Ray :-
(Fracture) 1/3 radius and ulna (lower 1/3).
(Fracture) upper 3rd ulna with dislocation of radius.

In the opinion of the Doctor, injury Nos. 2 and 1 are grievous and injury Nos. 3, 4, 5, 6, 7 and 8 are simple. Ex. P. 23 is the wound certificate issued by him which

reads that the injured was accompanied by a police Constable for report as to certain injuries said to have been caused on the same day at about 10.00 a.m. and to be due to assault by two persons with koduval at velavalli.

10. On receipt of information P.W. 19 Inspector, Mathur took up investigation of the case and visited the scene village at 5.00 p.m. He prepared Ex. P. 3 observation mahazar regarding the house of P.W. 2 Raji. At about 5.30 p.m. he prepared Ex. P. 4 observation mahazar regarding the scene of crime near the well and cotton field. Ex. P. 30 is the combined rough sketch showing all the relevant places. The Inspector got the scene place photographed. M.O. 31 series and M.O. 32 series are the relevant photographs and negatives. At 6.30 p.m. P.W. 19 Inspector recovered M.O. 3 blood stained stone from near the well under Ex. P. 5 mahazar. From the same place he recovered M.O. 4 blood stained earth and M.O. 5 sample earth under Ex. P. 6 mahazar. At 7.00 p.m. he recovered M.O. 6 and M.O. 7 cement floorings underneath the bodies of Lakshmi and Perumal respectively, M.O. 8 Mangalyam cord, M.O. 9 plaster from the wall of P.W. 2's house, M.O. 10 Key, M.O. 11 hair, M.O. 12 series bangle pieces, M.O. 13 coin, M.O. 14 blood stained dhoti, M.O. 15 slack and M.O. 16 bed sheet under Ex. P. 7 mahazar. P.W. 9 V.A.O. who was present throughout has attested all these mahazars.

11. On the same day P.W. 19 Inspector held inquest over the dead body of Lakshmi from 8.00 p.m. to 9.00 p.m. At that time he examined P.W. 1 Nandhavanam and others. Ex. P.31 is the inquest report. From 12.00 midnight to 3.00 a.m. on 28-9-1988 he held inquest over the body of child Perumal in the presence of some Panchayatdars and witnesses. Ex. P. 32 is the inquest report. Then he handed over the bodies to P.Ws. 10 and 11 police Constables with Exs. P. 16 and P. 18 requisitions for post-mortem.

12. On 28-9-1988 at 7.00 a.m. P.W. 19 Inspector arrested A-2 Mani in Thippampatti Road and produced him in the court on the same day.

13. On 28-9-1988 at 11.00 a.m. P.W. 14 Doctor examined P.W. 1 Nandhavanam at the Government Hospital, Krishnagiri and found :

An incised wound 5' x 1' x 1' extending from distal portion of left middle finger to the distal portion of left thumb-palmer aspect. X-ray Left hand 1 X AP/tat No bony injury.

The injury was simple in nature. Ex. P. 22 is the wound certificate issued by him which discloses that P.W. 1 was accompanied by a police constable for report as to certain injuries said to have been caused on 27-9-1988 at about 9.00 a.m. and to be due to assault by a known person with knife near her house.

14. On the same day at 12.00 Noon P.W. 13 Doctor commenced post-mortem over the body of Lakshmi at Government Hospital, Uthangarai. She found these injuries :

External Injuries :

1. A linear incised wound seen over left angle of eye up to left ear 8' x 1/2' x 1/2' size. Bloodscap present.
2. An incised wound seen over left lower part of ear 2' x 1' x 1/2'. Bloodscap present.
3. Another incised wound 2' x 1/2' x 1/2' size in between right mandible and right side of lower lip. The left lower 4 teeth divided from jaw.
4. Incised wound seen above right mandible ravius starts from chin up to mandible joint 9' x 1/2' x 1' size.
5. Right ear lobe is cut and is missing.
6. Three punctured wound one below the another just below the left ear 2' x 1' x 1/2' size each.
7. An incised wound over right temporal region about 3' x 1/2' x 1/4' size. Scalp bone is exposed.
8. Just 1/2' below the 7th wound, another incised wound is seen 4' x 1/2' x 1/4'. Scalp bone is seen.

9. A big punctured wound 3' x 2' x 2' size over nape of neck.
10. Another punctured wound seen over right supra-clavicular region 2' x 1' x 1' size.
11. Incised wound seen over right upper lip 3' x 1/2' x 1/2' size. Blood scalp present.
12. Punctured wound seen over left cheek 2' x 1/2' x 1/2' size.
13. Another punctured wound 2' x 1' x 1' size over parietal region.
14. A long incised wound about 9' x 1' x 1/2' seen over left upper part of left neck.
15. Another punctured wound seen just 1/2' below the 14th wound about 2' x 1' x 1' size.
16. Another incised wound seen 1/2' below the 15th wound size about 2' x 1' x 1' size.
17. An incised wound seen over left shoulder. Bone deep 5' x 1' x 1' size.
18. Another incised wound left supra-scapular region 3' x 1' x 1' size.
19. Multiple punctured wound about 6 in number each about 1' x 1/2' x 1/2' size over right and left scapular regions.
20. Incised wound over left wrist joint both radius and ulna bones divided 5' x 1' x 1' size.
21. Incised wound over left elbow joint 2' x 1' x 1/4' size.

Internal Examination of Injuries : Hyoid bone intact. Stomach empty. Right lung 450 gms. Left Lung 400 gms. C. S. Pale. Heart 110 gms. C. S. Pale. Liver 150 gms. C. S. Pale. Spleen 90 gms. C. S. Pale. Kidney 90 gms. each. Urinary Bladder empty. Uterus and Ovaries normal. All other internal organs are normal in shape and size. Spinal Cord intact. Brain 1500 gms. C. S. Pale. Post-mortem was concluded at 1.00 p.m. In the opinion of the Doctor, the deceased would appear to

have died of shock and hemorrhage due to multiple punctured wounds and multiple injuries and fractures of major bones and great damage to major blood vessels about 28 to 30 hours prior to autopsy. The injuries are sufficient to cause death in the ordinary course of nature and they could have been inflicted by a weapon like M.O. 1 aruval. Ex. P. 21 is the post-mortem certificate issued by her. After post-mortem was over, P.W. 10 constable removed M.O. 23 saree, M.O. 24 Skirt, M.O. 25 colour towel, M.O. 26 jacket, M.O. 27 bangle pieces, M.O. 28 nose ring and M.O. 29 metti from the body and entrusted the same in Mathur Police Station. The Sub-Inspector seized them under Ex. P. 17 Form No. 95.

15. At 1.00 p.m. P.W. 19 Inspector examined P.W. 2 Raji at the Government Head-quarters Hospital, Dharmapuri and recorded his statement. P.W. 2 Raji produced M.O. 17 bloodstained towel. The Inspector recovered the same under Ex. P. 9 mahazar which was attested by P.W. 9 V.A.O.

16. On the same day at 1.30 p.m. P.W. 12 Doctor commenced post-mortem over the body of child Perumal at Government Hospital, Uthangarai. He noticed these injuries on the child :-

Rigor Mortis was seen in all limbs.

External injuries :-

1. A big incised wound seen over upper part of right neck semi-circular in nature, stab from chin upto region. Major V.S., N.S., Muscles are cut.
2. Right shoulder cut upto bone, size 6' x 1' x 2'.
3. Another incised wound size 2' x 1/4' x 1/4' seen over right clavicle.
4. Punctured wound seen over right chest 1/2' x 1/2' x 1/2'.
5. Incised wound seen on right scapular region 1' x 1/2' x 1/2'.
6. Incised wound 2' x 1/2' x 1/2' right forearm muscle.

Internal Examination :-

Stomach contains digested food particles, Heart, Lungs, Liver, Spleen are normal and no injuries seen. Spinal Column intact. Pelvis intact.

In the opinion of the Doctor, the deceased would appear to have died of shock, and hemorrhage due to multiple injuries about 25 to 30 hours prior to post-mortem. The injuries are sufficient to cause death in the ordinary course of nature and they could have been inflicted by a weapon like M.O. 1 aruval. Ex. P. 20 is the post-mortem certificate issued by him. After post-mortem, P.W. 11 Constable removed M.O. 30 silver waist-cord and handed it over in Mathur Police Station. The Sub-Inspector seized the same under Ex. P. 19 Form No. 95.

17. At 3.00 p.m. P.W. 19 Inspector arrested A-1 Dhandayutham on the tank bund of Uthangarai and examined him. He gave a confession statement, the admissible portion of which is Ex. P. 10 This reads that if he is taken, he would produce the handless aruval concealed in a bush near Echampadi and he would also show the place where the cycle is kept. He produced M.O. 18 cycle key which was recovered by the Inspector under Ex. P. 11 mahazar. Thereafter he took the police party to the bridge in Echampadi and produced M.O. 1 aruval from under the bush. The Inspector seized the same under Ex. P. 12 mahazar. At 6.30 p.m. on the same day A-1 Dhandayutham produced M.O. 2 cycle kept under a tamarind tree near the Laundry of one Kulla Maistry on Echampadi main road. The Inspector recovered the same under Ex. P. 15 mahazar. P.W. 9 V.A.O. who was present has attested Exs. P. 10, P. 11, P. 12 and P. 15.

18. Thereafter A-1 Dhandayutham took the police party to Velavalli Panchayat Road and produced M.O. 10 the handle of aruval. P.W. 19 Inspector recovered the same under Ex. P. 13 mahazar which was also attested by P.W. 9, V.A.O. Ex. P. 33 is the sketch of the aruval prepared by the Inspector. The Inspector examined P.Ws. 1, 2, 9, 10, 11, 12 and 13 and recorded their statements.

19. At 10.00 p.m. on that day the Inspector brought A-1 to the Police Station, gave him clothes to exchange and recovered M.O. 20 dhoti, M.O. 21 banian and M.O. 22 slack shirt worn by him under Ex. P. 14 Form No. 95, P.W. 9 V.A.O. who was present has attested this Form also.

20. On 4-10-1988 the Inspector examined P.W. 3 Pandurangan and sent him to Government Hospital, Mathur for treatment of the injury found on him. P.W. 16 Doctor examined him at 11.30 a.m. at the Primary Health Centre, Mathur. He noticed :

A healed wound over the right side of the neck.

The injury is simple in nature and there was no other injury. Ex. P. 24 is the wound certificate issued by the Doctor. It was represented to the Doctor that the injury was sustained due to assault by known persons with kathi at about 9.00 a.m. on 27-9-1988 at Velavalli Kattu Kottai.

21. On 17-11-1988, P.W. 17 Head Clerk of J.S.C.M. Court, Arur, on receipt of Ex. P. 25 Requisition from the Inspector arranged to send M.Os. 1, 3 to 17 and 20 to 30 for chemical examination under the original of Ex. P. 26 covering letter. Exs. P. 27 and P. 28 are the reports of the Chemical Examiner and Serologist. They disclose that M.O. 8 Mangalyam cord pieces, M.O. 20 dhoti M.O. 21, skirt, M.O. 22 shirt, M.O. 23 saree, M.O. 25 cloth pieces and M.O. 26 blouse contain same 'B' Group of human blood.

22. On 29-4-1989 the Inspector completed the investigation and laid the charge sheet.

23. When examined under S. 313, Cr.P.C. the accused denied the allegations against them. They did not examine any defence witness.

24. After trial, learned Sessions Judge absolved A-2 Mani of all the charges and acquitted him. He found A-1 Dhandayutham guilty under Sections 302 (2 counts), 307 (2 counts), 449 and 324, IPC and convicted him accordingly. Since he sentenced him to death on two counts under section 302, IPC he did not award any separate sentence under Ss. 307 (2 counts), 449 and 324, IPC.

25. An old ridge dispute between A-1 Dhandayutham and P.W. 2 Raji and suspicion entertained by A-1 Dhandayutham that there is illicit intimacy between P.W. 2 Raji and his wife P.W. 8 Santhi are stated to be the motive for his dastardly crime. The evidence of P.W. 2 Raji on the ridge dispute is not challenged in his

cross-examination. This witness as well as P.W. 1 Nandhavanam and P.W. 8 Santhi speak about A-1 Dhandayutham ill-treating his wife often alleging that there was intimacy between P.Ws. 2 and 8. P.W. 8 Santhi while denying the intimacy states in her evidence that besides making the insinuation, her husband had driven her away from his house two years prior to the occurrence for this reason. Her evidence discloses that thereafter she was living apart from her husband and eking out her livelihood by making beedies. From the testimonies of P.Ws. 1, 2 and 8, it is seen that A-1 Dhandayutham was under the impression that P.W. 2 Raji was responsible for his unhappiness in domestic life. It is immaterial whether his grievance is real or imaginary. Suffice there is reason to hold that A-1 Dhandayutham was having sufficient motive to do away with P.W. 2 Raji. And his conduct in taking the children to his wife's place and entrusting them with the boss of P.W. 8 Santhi on the day prior to the occurrence indicates that he was having some plan in his mind as to his action on Tuesday.

26. P.W. 1 Nandhavanam, P.W. 2 Raji, P.W. 3 Pandurangan, P.W. 4 Kesavan and P.W. 5 Kullachi are all eye-witnesses to the occurrence herein. Of them P.W. 1, P.W. 2 and P.W. 3 have sustained injuries. P.Ws. 1 and 2 are husband and wife and as per their evidence, on 27-9-1988 at about 9.00 a.m. A-1 Dhandayutham dealt the first blow on the right side of the head of P.W. 2 Raji with aruval near the well in their field. That P.W. 19 Inspector had recovered M.O. 3 blood stained stone and M.O. 4 blood stained earth from this place shows that this is also a scene of crime. These two witnesses state that P.W. 1 Nandhavanam was cutting grass in her field on that morning. P.W. 2 Raji who came there helped his wife in lifting the grass bundle to her head. Soon after he was assaulted by A-1 Dhandayutham. Similarly P.W. 4 Kesavan was working in the field of one Dhanabagyam which is one field away from the well of P.Ws. 1 and 2. He had run to the scene place on hearing the noise of P.W. 2 Raji pleading with A-1 Dhandayutham not to cut him. P.W. 3 Pandurangan had come to the house of one Murugan as guest from his village Vellaiyampathi. He also rushed to the field of P.W. 2 Raji on hearing the same noise. And he was injured by A-1 Dhandayutham when he went to protect P.W. 2 Raji from the assault of A-1 Dhandayutham. All the four are natural witnesses and they satisfactorily account for their presence there at the time of occurrence.

27. That P.Ws. 1 to 3 had been treated by Doctors P.Ws. 14, 15 and 16 of their wounds and that they had represented before their respective Doctors that they were assaulted at the time and place and in the manners spoken to by them in the witness box give credence to their testimonies. The nature of injuries sustained by the three witnesses and the two deceased as disclosed from Exs. P. 22, P. 23, and P. 24 wound certificates and Exs. P. 20 and P. 21 post-mortem certificates also support their ocular versions.

28. P.W. 2 Raji appears to be the main target of attack by A-1 Dhandayutham. He was chased and assaulted till he fell down swooned in the sugarcane field. P.W. 3 Pandurangan and seen this part of the incident only. After P.W. 2 Raji fell down the wrath of A-1 turned on P.W. 1 Nandhavanam who was witnessing helplessly her husband being attacked. A-1 Dhandayutham began to chase her when she ran for her life, entered her house and bolted it from inside. Besides speaking about the assault on her husband, she narrates how she was chased by A-1 and how he broke open the door, came inside and cut her with M.O. 1 aruval. According to her version, when Lakshmi pleaded not to cut this witness, A-1 Dhandayutham attacked not only Lakshmi indiscriminately but also he butchered child Perumal and caused their death. P.W. 4 Kesavan had seen A-1 Dhandayutham chasing P.W. 2 Raji and cutting him till he swooned. The narration of this witness covers the sustaining of injury by P.W. 3 Pandurangan, chasing of P.W. 1 Nandhavanam, her bolting the house from inside and A-1 Dhandayutham trespassing into it. Though in chief examination he deposes that A-1 Dhandayutham cut Lakshmi and ran towards child Perumal, saying that he was going to do away with him also, he admits in cross-examination that he did not see what had happened inside the house. But immediately after A-1 Dhandayutham had run away from that place, he went inside and saw Lakshmi and Perumal lying dead in a pool of blood. That he had accompanied P.W. 2 Raji and P.W. 1 Nandhavanam to the police station lends credence to his version.

29. P.W. 5 Kullachi was weeding grass in her sugarcane field at 9.00 a.m. on that day. The field was 70 feet away from the well where P.W. 1 Nandhavanam was cutting grass. On hearing the noise she also had come to the scene place and found A-1 Dhandayutham cutting on the right neck of P.W. 2 Raji and chasing him

till he fell down in the cotton field. She had also seen the assault on P.W. 3 Pandu when he tried to intervene. She ran along with P.W. 4 Kesavan and others to the house of P.W. 1 Nandhavanam when the latter was chased by A-1 Dhandayutham. According to P.W. 5 Kullachi, she had witnessed the occurrence inside the house since the door was not closed after A-1 Dhandayutham broke open it and went inside. She is also a trust worthy witness whose version has not been discredited in any manner during her cross-examination. Learned counsel for A-1 submitted that Ex. P. 1 complaint does not contain the name of this witness. Besides, her 161 statement had reached the court only on 9-4-1989. None of the other eye witnesses speaks about the presence of this witness on the scene of crime. But it is significant to note that according to P.W. 5 Kullachi, she was only a spectator watching the episode from at a distance of 70 feet. So P.Ws. 1 to 4 would not have had any occasion to notice her presence.

30. P.W. 1 Nandhavanam has lodged Ex. P. 1 complaint with P.W. 9 V.A.O. on her way to the hospital. And after verifying the correctness of her version, the Village Administrative Officer has handed over Ex. P. 1 complaint as well as Ex. P. 2 his report in Mathur Police Station at about 3.00 p.m. P.W. 18 Head Constable who has registered the complaint has despatched them to J.S.C.M. Court immediately and they have been received there at 6.00 p.m. on the same day. This complaint which has been lodged promptly narrates the events as spoken to by the eye witnesses in the witness box. The presence of P.W. 2 Raji, P.W. 3 Pandurangan and P.W. 4 Kesavan is made mention herein. And this complaint amply corroborates the verbal testimonies of the above said witnesses. And we are not impressed with the contention of learned counsel for M. 1 that the omission of P.W. 9 V.A.O. to mention in Ex. P. 1 complaint at what time he recorded the same affects in any manner the sanctity of this document.

31. P.W. 19. Inspector has held inquest over the dead bodies from 8.00 p.m. on 27-9-1988 to 3.00 a.m. on the next day. During inquest P.W. 1. Nandhavanam alone has been examined since the other two injured witnesses had to undergo treatment in the hospital. That P.Ws. 1 to 3 have sustained injuries finds a place in these inquest reports. And it is significant to note that the inquest reports along with the statement of P.W. 1 Nandhavanam as well as the 161 statement of P.W.

2 Raji have reached the Court at 12.00 noon on 28-9-1988 itself.

32. We find from Ex. P. 28 the report of the Serologist that M.O. 8 cord pieces, M.O. 21 skirt, M.O. 23, saree and M.O. 26 blouse worn by deceased Lakshmi and M.O. 20 dhoti and M.O. 22 shirt seized from A. 1. Dhandayutham contained same 'B' group of human blood. And this actor also goes to establish the involvement of A. 1. Dhandayutham in the crime.

33. Yet another piece of evidence which goes in support of the prosecution version is the testimony of P.W. 7 Ramasamy. His evidence discloses that immediately after the occurrence on that Tuesday, in the forenoon he had seen A. 1. Dhandayutham coming along Natham - Naradhampatti road with blood stained clothes. He further states that A. 1 Dhandayutham got the cycle from him and rode fast. Nothing has been elicited in the cross-examination of this witness as to why his evidence also should not be accepted.

34. No doubt, P.W. 19, Inspector states that pursuant to Ex. P. 10 confession A. 1. Dhandayutham produced M.O. 1 aruval concealed in a bush near the bridge in Echampadi. Since the Serologist's report does not throw any light on the group of human blood found on the same, the confession and the consequential recovery are not of any assistance to the prosecution. Similarly the evidence of P.W. 6 Pandurangan that soon after the occurrence A. 1. Dhandayutham came to his house with blood stained clothes and M.O. 1 aruval and confessed his guilt is also of no avail since admittedly there is long-standing enmity between the family of this witness and A. 1 While so, it is impossible to believe that of all the persons A. 1. Dhandayutham chose P.W. 6 Pandurangan to make this extra judicial confession.

35. Learned counsel for A. 1 submitted that the medical evidence in this case does not support the ocular versions of the eye witnesses. According to him, out of the 21 injuries found on Lakshmi 12 were incised, 8 were lacerated and injury No. 6 comprised of three punctured wounds one beneath the other near left ear and it is not possible to cause these punctured wounds with an aruval like M.O. I. However, during the cross-examination of P.W. 13. Doctor this question was not specifically put to him. Besides, we have examined M.O. I. aruval in Court and we are of the

view that there is no substance in the claim of A. 1. Learned counsel for A. 1. is unable to assail in any manner the veracity of the ocular versions of the eye witness herein. Their evidence appears to have a ring of truth. The manner of narration of the entire episode by the five eye witnesses without exaggeration or embellishment is quite convincing. P.Ws. 3, 4 and 5 are independent witnesses and there is absolutely no reason for them to speak against the accused. They overwhelmingly corroborate the evidence of P.Ws. 1 and 2, the victims of assault. P.Ws. 1 and 2 the victims of assault. P.Ws. 1 and 2 are the parents of deceased child Perumal and P.W. 2 Raji happens to be the husband of deceased Lakshmi. Their testimonies stand the test of close scrutiny with great care and caution. There is absolutely no reason for them to implicate A. 1. Dhandayutham falsely in crime like this. The prosecution evidence is overwhelming in this case to establish the guilt of A. 1. Dhandayutham.

36. The next submission of learned counsel for the 1st accused is that in any event the act was committed as a consequence of sustained provocation entertained by him. However, he was unable to elaborate how the doctrine of sustained provocation to be brought in here. In which case the theory of sustained provocation can be applied depends upon the facts and situation of each given case. Exception I under S. 300, IPC states that culpable homicide is not murder if the offender whilst deprived of the power of self control by grave and sudden provocation caused the death of a person who gave the provocation or causes the death of any other person by mistake or accident. It is common knowledge that the term 'self-control' in the said provision is a subjective phenomena and it can be inferred from the surrounding circumstances of a given case. In order to find out whether the last act of provocation on which the offender caused the death was sufficiently grave to deprive him of the power of self control, we can always take into consideration the previous act of provocation caused by the deceased person. As the Supreme Court had to point out in *K. M. Nanavati v. State of Maharashtra*, : AIR 1962 SC605 the mental background created by the previous act of the victim is a fact that has to be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. This principle of sustained provocation has been considered by this Court in a number of decisions following the above said observation of the Supreme Court.

What Exception I contemplates is a grave and sudden provocation whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking the camel's back may even be a very trifling one. However, in the present case except for the fact that A. 1. Dhandayutham entertained suspicion of illicit intimacy between his wife and P.W. 2. Raji, there is practically no material to invoke this doctrine, and we have already seen that the grievance of A. 1. appears to be more imaginary than real. There is no evidence to indicate that either P.W. 8. Santhi or P.W. 2. Raji by their conduct had given room for A. 1. to nurture a grouse against them. In any event both the deceased had nothing to do with A. 1. And we find no merit in this contention of learned counsel for A. 1.

37. The accused in this case has been questioned under S. 235(2), Cr.P.C. on the question of sentence on 14-9-1993 and the judgment has been pronounced on the same day. Learned counsel for the accused contends that the trial Court should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounced the sentence to be imposed on the offender. Learned Session Judge has treated the requirement for giving of opportunity to accused as a mere formality in that after recording finding of guilty on charge of murder, on the same day before the accused could absorb and over come the shock of conviction was asked if he had anything to say on the question of sentence and immediately thereafter pronounced the decision imposing the death penalty. So he has not attached sufficient importance to the mandatory requirement of sub-section (2) of S. 235. In the instant case the Sessions Judge while complying with the form and letter of the obligation which S. 235 imposes forgot the spirit and substance of that obligation. In *Muniappan v. State of Tamil Nadu*, : 1981 CriLJ726 on which reliance was placed, the appellant accused was convicted by the Sessions Court under S. 302, IPC. and sentenced to death on the charge of murder of his mother's brother and his son. When he was asked on the question of sentence, he did not say anything. Thereupon, the Sessions Court imposed sentence of death which was confirmed by the High Court. The Supreme Court held as under (at p. 727 of Cri LJ) :-

'The obligation to hear the accused on the question of sentence which is imposed by S. 235(2) of the Criminal Procedure Code is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. All admissible evidence is before the Judge but that evidence itself often furnishes a clue to the genesis of the crime and the motivation of the criminal. It is the bounden duty of the Judge to cast aside the formalities of the court scene and approach the question of sentence from a broad, sociological point of view. The occasion to apply the provisions of S. 235(2) arises only after the conviction is recorded. What then remains is the question of sentence in which not merely the accused but the whole society has a stake. Questions which the Judge can put to the accused under S. 235(2) and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act. The court, while on the question of sentence, is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question conviction. The Sessions Judge, in the instant case, complied with the form and letter of the obligation which S. 235(2) imposes, forgetting the spirit and substance of that obligation.'

38. In *Allauddin Mian v. State of Bihar* the Supreme Court has observed (Para 10) :-

'To assist the court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to S. 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality. In a case of life or death as in the case of punishment for murder, the presiding officer must show a high degree of concern for the statutory right of the accused and should not treat it as a

mere formality to be crossed before making the choice of sentence. If the choice is made without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the Court, the Court's decision on the sentence would be vulnerable. It need hardly be mentioned that in many cases a sentencing decision has for more serious consequences on the offender and his family members than in the case of a purely administrative decision; a fortiori, therefore, the principle of a fair play must apply with greater vigour in the case of the former than the latter. An administrative decision having civil consequences, if taken without giving a hearing is generally struck down as violative of the rule of natural justice. Likewise a sentencing decision taken without following the requirements of sub-sec. (2) of S. 235 in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order. The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence. As a general rule the trial courts should after recording the conviction adjourn matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender.'

39. Learned Public Prosecutor drew our attention to the decision in *State of Maharashtra v. Sukhdev Singh* : 1992 CriLJ3454 where placing reliance on the decision in *Allauddin Mian v. State of Bihar* : 1989 CriLJ1466 (SC) referred to above it was argued that since the conviction and sentence were pronounced on the same day, the capital sentence awarded to the accused should not be confirmed. His Lordship Ahmadi, J. who also spoke for the Court in *Allauddin's* case, explained the ratio therein in this manner in paragraphs 55 and 56 :-

'It was emphasised that S. 235(2) of the Code being mandatory in character, the accused must be given an adequate opportunity of placing material bearing on the question of sentence before the Court. It was pointed out that the choice of sentence had to be made after giving the accused an effective and real

opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the court for otherwise the court's decision may be vulnerable Reliance was then placed on the third proviso to S. 309 of the Code which reads as under :-

'Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him. This proviso must be read in the context of the general policy of expeditious inquiry and trial manifested by the main part of the section. That section emphasises that an inquiry or trial once it was begun should proceed from day to day till the evidence of all the witnesses in attendance has been recorded so that they may not be unnecessarily vexed. The underlying object is to discourage frequent adjournments. But that does not mean that the proviso precludes the court from adjourning the matter even where the interest of justice so demands. The proviso may not entitle an accused to an adjournment but it does not prohibit or preclude the court from granting one in such serious cases of life and death to satisfy the requirement of justice as enshrined in S. 235(2) of the Code. Expeditious disposal of a criminal case is indeed the requirement of Art. 21 of the Constitution; so also a fair opportunity to place all relevant material before the court is equally the requirement of the said Article. Therefore, if the court feels that the interest of justice demands that the matter should be adjourned to enable both sides to place the relevant material touching on the question of sentence before the court, the above extracted proviso cannot preclude the court from doing so.' In *Sevaka Perumal v. State of Tamil Nadu* : 1991 CriLJ1845 cited by learned Public Prosecutor, the scope of S. 235(2) of the Code of Criminal Procedure is stated as under (Para 11) :

'Undoubtedly under section 235(2) of Code of Criminal Procedure, the accused is entitled to an opportunity to adduce evidence and if need be the case is to be adjourned to another date. There is illegality to convict and to impose sentence on the same day. It is true as contended for the State that under S. 309, third proviso brought by Amendment Act, 1978 that no adjournment should be granted for the purpose only of enabling the accused person to show cause against sentence to be imposed upon him. Under S. 235(2) when the accused has been given right to

be heard on the question of sentence it is valuable right. To make that right meaningful the procedure adopted would be suitably moulded and given an opportunity to adduce evidence on the nature of the sentence. The hearing may be on the same day if the parties are ready or to a next day but once the court after giving opportunity propose to impose appropriate sentence, against there is no need to adjourn the case any further thereon.'

40. In the instant case adequate opportunity has been given to the accused to make his submissions by learned Sessions Judge when questioned under section 235(2), Cr.P.C. He had expressly pleaded for mercy when he was questioned on sentence. That would disclose that he had nothing more to say on the nature of punishment to be awarded to him. We also find that even under S. 313, Cr.P.C. he had placed before the court his family circumstances stating that he was aged about 37. His parents are no more. He is an illiterate doing agricultural coolie work. So it cannot be said that without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances before the court learned Sessions Judge went on to award the sentence. It does not appear from the records that the accused desired adjournment of the case to make any further submissions on the question of sentence. The purpose of adjourning the case to a next date as envisaged in Allauddin Mian's case : 1989 CriLJ1466 (SC) appears to be to enable the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it. When all the relevant facts are placed before the court and the accused no longer wanted any postponement, the date of awarding of sentence need not be taken to a later date as if it is a ritual. A conjoined reading of Allauddin Mian's case : 1989 CriLJ1466 (SC) and Sukhdev Singh's case : 1992 CriLJ3454 (SC) would reveal that S. 235(2) enjoins the Presiding Officer to make a genuine endeavour to get from the accused the necessary information which will weigh with the Judge in deciding the nature of sentence. Both the decisions emphasise that the Sessions Judge should not under section 235(2), Cr.P.C. stop with putting a formal question to the accused as to what he has to say on the question of sentence. Taking the entire circumstances of the present case into account, we are of the view that the Sessions Judge has complied with the provisions of S. 235(2), Cr.P.C. both in letter and spirit.

41. The next and most important question which we have to address ourselves is the presence or otherwise of special reasons, if any, as envisaged under S. 354(3), Cr.P.C. for awarding the extreme sentence of death in this case. This extreme penalty can be invoked only in extreme situations. In other words, the death sentence is called for only in rarest of rare cases. It is difficult to define the expression 'special reasons'. It cannot be put in a straight jacket. Each case must depend on its own particular facts. The question of sentence must be left to the discretion of the Sessions Judge trying the accused. In *Machhi Singh v. State of Punjab*, : 1983 CriLJ1457 the Supreme Court has laid down certain guidelines as to when a sentence of death has to be awarded. They are as follows (Para 32) :

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance;

(i) When the house of the victim is set aflame with the end in view or roast him alive in the house;

(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death;

(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

(2) When the murder is committed for a motive which evidenced total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward; (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property or a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust; (c) a murder is committed in the course of betrayal of the motherland.

(3) (a) When murder of a member of a scheduled caste or minority community, etc., is committed not for personal reasons, but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize

such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality are committed.

(5) When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation for murder, (b) a helpless woman or a person of old age or infirmity.

(c) When the victim is a person vis-a-vis whom the murderer is in a position of domination or trust.

(d) When the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons. the murder was committed out of personal animosity, where the community at large is not affected. This is not done of those gravest of grave cases of extreme culpability.

42. Section 302, IPC casts a heavy duty on the court to choose between death and imprisonment for life. In our justice delivery system several difficult decisions are left to the presiding officers, sometimes without providing the scales or the weights for the same. In cases of murder, however, since the choice is between capital punishment and life imprisonment the legislature has provided a guide line in the form of sub-section (3) of S. 354 of the Criminal Procedure Code which makes it obligatory to assign special reasons when the Judge awards the death penalty. So the judge is under a legal obligation to explain his choice of the sentence. Where a sentence of severity is imposed, it is imperative that the Judge should indicate the basis upon which he considers a sentence of that magnitude

justified.

43. In the present case for an imaginary grievance entertained by him against P.W. 2 Raji, the accused had chosen to do away with two other innocent persons, a hapless woman and an infant. Deceased Lakshmi had only come to the rescue of P.W. 1 Wandhavanam when she was chased and assaulted by the accused. He has simply butchered the lady inflicting as many as 21 cut injuries. He went to the extent of removing the jaw portion and placing it on the threshold of the house exhibiting sadism. He did not stop with this. He also caused the death of 1 1/2 years old child Perumal by inflicting six punctured and incised wounds. The evidence on record reveals that from the inception his intention was to annihilate the entire family members of P.W. 2 Raji, Initially when he chased P.W. 2 Raji he had proclaimed that he would not stop without doing away his entire family members. When he next chased P.W. 1 Nandhavanam he had given out that his aim was to commit the murder of all the family members. Even when he chose to attack Lakshmi he had uttered that her entire family should be done away with. This would establish his depravity and hardened criminality. He has no regard for lives of innocent women and children. His leaving the children in the custody of his wife's boss on the previous day reflects the planned motivation to commit the crime. This is not an incident which had happened on the spur of the moment. Society survives by security for ordinary life. The present one is a grave case the brutality of which shocks the judicial conscience which casts duty on the court to impose the death sentence. The imposition of such penalty depending upon the degree of criminality is a measure of social necessity as a means of deterring other potential offenders. Failure to impose a death sentence in such a grave crime as this will bring to nought the sentence of death provided by section 302 of the Indian Penal Code. As pointed out in *Rajendra Prasad v. State of U.P.*, : 1979 CriLJ792 , the criminality of a crime consists not only in the criminal act but in what that signifies. Its immediately apparent features, the obvious damage to person or property or to public security, are symptoms of a deeper disorder. It betokens, and it fosters, an attitude in man to man, of reckless selfishness, deceit or malice, which is incompatible in the long run with any decent social life. In any advanced society it is, in part at least, on account of this wider character, less easily discerned, that the graver offences are punished. All punishment properly implies

moral accountability. It is related to injury and not only to damage or danger however great. Capital punishment does so in an eminent degree. It is directed against one who is ex-hypothesi an inhuman brute, i.e., it is imposed simply to eliminate one who is held to have become irretrievably a liability or a menace to society.

44. Mere compassionate sentiments of a human's feeling cannot be a sufficient reason for not confirming a sentence of death but altering it into a sentence of imprisonment for life. In awarding sentence, the Court must, as it should, concern itself with justice, that is, with answering obedience to established law. It is, and must be, also concerned with the probable effect of its sentence both on the general public and the culprit. The humanistic approach should not obscure our sense of realities. When a man commits a crime against the society by committing a diabolical, cold blooded, pre-planned murder, of an innocent person the brutality of which shocks the conscience of the Court, he must face the consequences of his act. Such a person forfeits his right to life. So, in our view, learned Sessions Judge has rightly awarded the extreme penalty of law in this case and it must be confirmed.

45. In the result, the reference under S. 366 of the Code of Criminal Procedure in R.T. No. 4 of 1993 is answered by confirming the death sentence and the appeal is dismissed.

46. Appeal dismissed.