

Sampath, and Others Vs. State

Sampath, and Others Vs. State

SooperKanoon Citation : sooperkanoon.com/785703

Court : Chennai

Decided On : Jan-21-1992

Reported in : 1993CriLJ2468

Judge : K.M. Natarajan and; S. Marimuthu, JJ.

Appeal No. : C.A. No. 666 of 1985

Appellant : Sampath, and Others

Respondent : State

Advocate for Def. : Mr. G.M. Syed Fasiuddin, Addl. P.P.

Advocate for Pet/Ap. : Mr. N.T. Vanamamalai, S.C.

Judgement :

K.M. Natarajan, J.

1. This appeal is filed by the accused 1 to 4 in SC 23 of 1985 on the file of the learned Session Judge, Periyar at Erode, challenging the legality and correctness of the respective conviction and sentence, viz., conviction of accused 1 and 4 under S. 302 read with Section. 34, IPC (two counts) and sentence of imprisonment for life for each count and under S. 324, IPC no separate sentence was awarded, while the 2nd accused under S. 324, IPC (two counts) and under S. 326, IPC to undergo R.I. for one year under each count for 324 and under section

326 to undergo R.I. for 3 years, while A-3 was convicted under S. 323 and sentenced to undergo R.I. for six months; the sentences were directed to run concurrently.

2. These appellants were tried for four charges on the allegation that all the four accused on 17-8-1984 at about 5 p.m. on the cart track leading to Minnakkattupalyam Village, in pursuance of a common intention caused the murder of the deceased Chenniappa Gounder, (hereinafter referred to as D. 1) by A-1 cutting with an aruval, while A-2 hit him with an iron pipe and A-4 with the back portion of the spade. During the same transaction; they caused the death of one Nalla Gounder, hereinafter referred to as D-2, by A-1 cutting him with an aruval, by A-2, hitting with an iron pipe, by A-3 hitting with a cart peg and by A-4 hitting with a spade handle and further A-1 also cut Ponnayan with an aruval and A-2 hit him with an iron pipe with an intention to murder him and further in the course of the same transaction, A-2 hit Chenniammal with an iron pipe, and A-4 hit her with the back portion of the spade handle with intention to murder her also. In pursuance of the said act, all of them were liable for an offence under S. 302, read with Section 34, IPC (two counts) and S. 307, IPC read with S. 34, IPC (two counts).

3. To substantiate the above charges, the Prosecution examined P.Ws. 1 to 16, filed Exs. P-1 to P-22 and marked M.Os. 1 to 24. The case of the Prosecution as disclosed from the oral and documentary evidence can be succinctly stated as follows :- A-1 to A-3 are the sons of A-4. The deceased Chonniappan (hereinafter known as D-1) is the brother of P.Ws. 1 and 2. P.W. 3 is the daughter of P.W. 2. The deceased Nalla Gounder is the maternal uncle of D-1. They are all residents of Minnakattupalayam village. The family of the deceased Chenniappan owns land known as Ottankadu Thottam, while the accused own land known as Vaithirasu Kadu, a little away on the south of the land of the family of the 1st deceased. On the east of Ottankadu there is an odai which is running north-south. On the east of Ottankadu, a cart track was proceeding from north to south. The accused are claiming right through the cart track to reach their patta lands for taking their carts, etc. and the deceased Chenniappan and the members of the family were objecting to the same and in respect of the same A-4 who is the father of A-1 to A-3, filed a suit in O.S. 261 of 1983, on the file of the District Munsif's Court,

Gobichettipalayam and obtained a temporary injunction and the proceedings are pending and due to the same, there was enmity between the two families. This is said to be the motive. On the day of the occurrence, viz., on 17-8-1984 at about 4 p.m. P.Ws. 1 to 3 and the deceased were in the Ottankadu Thottam. At that time, D-2 was grazing his goats on the eastern land. Then 1st accused attempted to take his double bullock cart wherein he was transporting manure to his patta land through the cart track in the patta land of the deceased Chenniappan. Chenniappan obstructed the 1st accused from taking the cart. Thereupon, the 1st accused drove the cart on the eastern side, untied the bulls and left the cart there. He proceeded towards west to the village and a little later, he returned to the scene place along with the other accused 2 to 4. At that time, A-1 was having an arrival while A-2 was having an iron pipe. A-3 picked up the cart peg from the cart, while A-4 took the spade from the cart. The 1st accused asked P.W. 1 to come and obstruct them if he can, though he has already obstructed while he was coming alone. When the deceased Chenniappan D-1 was approaching towards the cart, the 1st accused cut him on the head four or five times with an aruval and also on the back and shoulder. A-2 beat him with an iron pipe on the right side of the forehead. A-3 beat him with a cart peg on the back and shoulder four or five times. On receipt of the blows, D-1 fell down. Thereupon A-4 beat him with a spade on his head P.Ws. 1 to 3 and D-2 Nalla Gounder raised a hue and cry and came running towards the place where D-1 was lying. At that time, A-1 questioned D-2 saying as to whether he was coming for the help, cut him on the head twice or thrice with an aruval, when D-2 warded off the cut, it fell on his hand. A-2 beat him with an iron pipe on the left side of the forehead, A-3 beat him with a cart peg on the back and neck, while A-4 beat him with a spade on the head. On receipt of the injuries D-2 fell down. Thereupon, A-1 cut P.W. 1 on his flank and left hand, right shoulder by saying that all these happened, because of P.W. 1. A-2 also beat him on the head with iron Pipe. P.W. 1 on receipt of the injury ran towards the east. A-2 also beat P.W. 2 with the iron pipe on the left elbow and left ankle, while A-4 beat him with a spade on the right shoulder and right hip. A-3 attempted to beat him and the said blow fell on A-1. Thereupon all the accused ran towards south with their respective weapons. P.W. 1 from the scene place directly went to Nambiyur Police Station and gave oral complaint at about 5-45 p.m. to P.W. 14,

the Sub-Inspector, who reduced the same into writing, read over the same and obtained the signature. Ex. P1 is the complaint given by P.W. 1. At about 5-45 p.m. on the basis of the said complaint, P.W. 14 registered a case in crime No. 198/84 under sections 302 and 307, IPC and prepared a printed FIR Ex. P. 19 to the Court and the higher officials. Then, he sent P.Ws. 1 and 2 with a memo to the Government Hospital for treatment of the injuries found on them. P.W. 5, the Civil Assistant Surgeon attached to the Government Hospital, Gobichettipalayam, examined P.W. 1 for certain injuries said to have been caused at 5 p.m. on 17-8-1984 due to assault by four persons with aruval, pipe and spade. He found the following external injuries :-

1. An incised injury 6 cm x 2 cm x 2 cm on the back of right shoulder.
2. An incised injury 8 cm x 2 cm x 2 cm on the left forearm.
3. A lacerated injury 3 cm x 1 cm x 1 cm on the right of the left thumb.
4. Lacerated injury 4 cm x 1 cm x 1 cm on the right side of occipital region.
5. Lacerated injury 10 cm x 1 cm x 1 cm on the left frontal region. 'J' shape.
6. Abrasion 4 cm x 4 cm on the left back.
7. A contusion 8 cm x 1 cm on the left back.

He was of the opinion that injuries 1 and 2 could have been caused by an aruval, while injuries 3 to 5 and 7 could have been caused by an iron pipe and all the injuries are simple in nature. Ex. P. 4 is the wound certificate issued by him. On the same day, at about 7-10 p.m. he examined P.W. 2 for certain injuries said to have been caused at 5 p.m. on the same day due to assault by 4 persons with iron pipe, aruval and spade handle and found on her the following 7 injuries :-

1. Lacerated injury 8 cm x 1 cm x 1 cm over the left fore-arm.
2. Lacerated injury 3 cm x 1/2 cm x 1 1/4 cm on the left elbow.
3. Incised injury 3 x 1/2 cm x 1/2 cm over the right wrist.

4. Lacerated injury 4 cm x 1 cm x 1/2 cm over the right thumb.
5. Contusion 8 cm x 6 cm over the middle of the left leg.
6. Lacerated injury 2 cm x 1 cm x 1 cm over the lower one third of left leg.
7. Lacerated injury 1 cm x 1/2 cm x 1/4 cm on the back of right shoulder.

She was referred to Government Hospital, Erode for further treatment. X-ray revealed that there was fracture on the left fore-arm and left leg. He was of the opinion that injury No. 3 could have been caused by an aruval, while injuries 1, 2, 4, 5, and 6 could have been caused by an iron pipe and injury No. 7 could have been caused by spade handle. Injuries 1 and 5 are grievous in nature, while the rest are simple in nature. Ex. P. 5 is the wound certificate issued by him P.W. 6 is the Radiologist attached to the Government Hospital, Erode. He took X-rays on 17-8-1984 for the left fore arm and left leg of Chenniammal and on examination of the X-rays, he found fracture of lower one-third both bones on the left fore-arm and fracture of mid one-third both bones of left leg were present. M.O. 11 is the X-ray report along with the cover.

4. P.W. 15 was the Inspector of Pullayampatti Circle and he was in charge of Nambiyur Circle as the concerned Inspector was on leave. At about 7 p.m. on 17-8-1984 he got information by wireless message (VHP) from P.W. 14 and proceeded to the scene place and got the copy of the FIR and took up investigation. He inspected the scene place, prepared an observation mahazar Ex. P-2 to 8-30 a.m. and drew the rough sketch Ex. P-20. He caused the photos of the dead bodies to be taken. Thereupon, he held an inquest over the dead body of Chenniappan, D. 1 and he examined P.W. 3 and 5 others. Ex. P. 21 is the inquest report prepared by him. Thereupon, he held an inquest over the dead body of Nalla Gounder, D-2. He examined six witnesses and recorded their statements. Ex. P. 22 is the inquest report prepared by him. Thereupon, he handed over the dead bodies with requisitions Exs. P-7 and P-9 respectively through P.Ws. 9 and 10. On 18-8-1984, at 4-30 p.m. he seized MOs. 7 to 10 with the bullock cart and two bulls under Ex. P-3 mahazar. He searched for the accused and they were absconding. On the same day, he went to the Government Hospital,

Gobichettipalayam, and examined P.W. 1 Since P.W. 2 was sent to the Government Hospital, Erode, he went there and examined P.W. 2.

5. P.W. 7 is the Civil Assistant Surgeon attached to Government Hospital, Gobichettipalayam. In pursuance of the requisition Ex. P. 7, he commenced the postmortem examination on D-1 at 1-30 p.m. on 18-8-1984 and found on him the following external injuries :-

1. Contusion on the right side of fore-head one inch about the right eye-brow size 5 cm x 3 cm.

2. An incised injury 7 x 2 x bone deep over the right side of parietal region of the scalp, three cm back and at the level of upper border of pinna of the right ear vertical.

3. An incised injury x 1/2 cm x bone deep about two cms. above the ex. injury No. 2, right angle to and two cms above external injury No. 2.

4. Incised injury 10 cm x 1 cm x bone deep over the left side of scalp, eight cm above the left pinna of the ear, obliquely over the parietal region of the scalp from back of the scalp to the front running medial to the lateral side.

5. An incised injury 5 cm x 1/2 cm bone deep about three cms. lateral to external injury No. 4 parallel to the above said injury.

6. A contusion 7 cm x 4 cm over the left side of scalp about three cms. below external injury No. 5.

7. A contusion 10 cm x 7 cm over the right side of scalp and neck three cms behind right pinn of the right ear.

8. An incised injury 11 cm x 3 cm x skin deep over the left side of the shoulder, about 2 cms. below the tip of the shoulder, horizontally.

9. An incised injury 4 cm x 1 cm x 2 cm over the right side of back of the chest, over the middle of the scapula, horizontal.

10. An incised injury 6 cm x 3 cm x muscle deep over the left side of back of chest, over the middle of the scapula, vertical.

11. An abrasion 9 cm x 3 cm over the left side of back of chest, six cms below ex injury No. 10 vertical.

12. A contusion 7 cm x 4 cm over the right side of the back of the chest, about 3 inches medial to the tip of scapula just below the scapula, vertical.

13. A contusion 5 cm x 3 cm over the left side of back of chest, close to the mid-line, vertical.

14. A contusion over the right side of the back of the chest running above and down wards, obliquely and medially about 7 cms below the right side of the axilla to the back of the chest.

15. Incised injury 2 cm x 3 cm x skin deep over the left side of thigh outer and upper part of thigh, vertical.

In all the incised wounds mentioned above the edges and margins are smooth clean cut and they are spindle shape and gapping.'

On opening of external injury No. 2, there was extravasation of blood on the right side beneath the scalp 9 cm x 5 cm vertical and depressed fracture of right side of temporal bone 'L' shape 2 cm x 2 cm. On opening of the external injuries 4 and 5, he noticed extravasation of blood on the left side beneath the scalp obliquely and on opening of external injury No. 4 over the scalp linear fracture of the left parietal bone, 7 cm in length corresponding to external injury No. 4 was found. On opening the skull, there were extra dural haematoma present over the right temporal and parietal regions of the brain seven cm x five cm, extra dural haematoma present over the left temporal and parietal regions, over the brain, 7 cm x 5 cm and 100 cc of blood stained fluid present in the intracranial cavity. He was of the opinion that external injuries 1 to 3 and 7 are on the right side and 4 to 6 are on the left side of the head and among them, external injuries 2, 3 and 4 are individually sufficient to cause death. External injury No. 1 could have been caused by assault with an iron pipe. External injury Nos. 6 and 7 could have been caused by the iron ring found

on the back of the spade. External injuries 12, 13 and 14 could have been caused by stick like cart-peg. The incised wounds could have been caused by a sharp edged weapon like aruval. He was of the further opinion that the deceased would appear to have died of shock and haemorrhage due to the head injuries about 18 to 30 hours prior to post-mortem examination. Ex. P-8 is the post-mortem certificate issued by him.

6. P.W. 8 is the Civil Assistant Surgeon attached to the Government Hospital, Gobi. In pursuance of the requisition Ex. P. 9 received from the Inspector of Police, P.W. 15, he commenced the postmortem examination at 3-30 p.m. on the same day. He found the following external injuries on the body :-

- '1. A lacerated injury 5 cm x 2 cm bone deep over the occipital region.
2. A lacerated injury 3 cm x 2 cm x bone deep on the left side of vertex.
3. Left eye black in colour with sub conjunctival haemorrhage.
4. An abrasion one cm x one cm over the left side of neck.
5. Lacerated injury 2 cm x 1 cm 1/2 cm over the left dorsum of the hand.

On dissection of external injury No. 1, a depressed fracture of the occipital bone 7 cm x 3 cm was found.

Fracture segment was three in numbers. 100 gms of haematoma present. The posterior cranial fossa is fracture in horizontal direction measuring 5 cm corresponding to external injury No. 2. A depressed fracture of left vertex 2 cm x 2 cm found. A laceration of the brain corresponding to the injury No. 2 was found 3 cm x 2 cm.

Stomach contained 300 grams of partially digested food P.W. 8 was of the opinion that external injuries 1 and 2 could have been caused by the blunt portion of an aruval and it is sufficient to cause death. External injury No. 3 was caused because of the injury to the brain and it is not due to any assault separately. External injury No. 5 could have been caused by any blunt weapon like stick. He was of the opinion that the deceased would appear to have died of the injury to the

brain corresponding to external injury Nos. 1 and 2 about 16 to 24 hours prior to post-mortem examination. Ex. P. 10 is the post-mortem certificate issued by him.

7. On 19-9-1984 at about 5 p.m. at Vemandapalyam Bus stand, on information P.W. 15 arrested A-1 to A-4. A-5 voluntarily gave a confessional statement and the same was reduced into writing in the presence of witnesses, the admissible portion of which is marked as Ex. P. 13 and in pursuance of the same, he took P.W. 15 and party to an odai which is located on the south-east of the scene place and from a thorny bush, he took up M.Os. 2 to 5 and they were sized under a cover of mahazar Ex. P-14. Thereupon, he sent A-1 to the Government Hospital with a memo for treatment of the injuries found on him.

8. P.W. 8, the Civil Assistant Surgeon attached to the Government Hospital examined the 1st accused on 20-8-1984 for certain injuries said to have been caused on 17-8-1984 at 5 p.m. due to assault by a known person with iron pipe and stick at Minnakattupalayam and he found on him the following external injuries :-

- 1) An abrasion 5 cm x 2 cm over the left forearm lateral aspect.
- 2) An Abrasion 7 cm x 2 cm over the left side of back.
- 3) A linear contusion 7 cm x 2 cm over the infra scapular region.

P.W. 8 was of the opinion that the contusion mentioned in Ex. P. 12 could have been caused by cart-peg or a stock. Ex. P. 12 is the copy of the Accident Register issued by him with respect to the injuries found on A-1. Thereupon, P.W. 15 sent all the accused to judicial remand. He examined the Medical Officer on 20-8-1984. P.W. 16 took up further investigation and examined P.Ws. 9, 10, 12 and 14 on 11-9-1984. On 24-10-1984 he examined P.W. 5 and on the next day, P.W. 8 and P.W. 6 on 6-11-1984. P.W. 13 is the Head-clerk attached to the Judicial Second Class Magistrate, Gobichettipalayam. In pursuance of the requisition Ex P. 15 received from the Inspector, M.Os. were sent for chemical analysis under the original of Ex. P. 16 Exs. P. 17 and P. 18 are the reports of the Chemical Analyst and Serologist received by the Department. After completing the investigation,

P.W. 16 laid the charge-sheet against all the accused on 12-11-1984 under section 302, read with S. 34, I.P.C. (Two counts).

9. When the accused were questioned under S. 313, Cr.P.C. in respect of the incriminating circumstances in the evidence, they denied their complicity in the crime. However, A-1 would state that he has got a right to the cart track as passing through Ottankadu belonging to the deceased and one Murugesu Gounder objected to the same and in respect of the same, his father instituted a suit and obtained an injunction. Even after that, they were prevented from taking the cart. Hence, they were taking their cart through the cart track running along the poramboke land. On the day of the occurrence, when he was taking the manure in his cart through the disputed cart track, P.W. 1, deceased Chenniappan and deceased Nalla Gounder obstructed and created trouble and he was beaten with an iron rod and stick. He sustained injuries and he was afraid of danger to his life and hence, he took out a spade from the cart and got down from the cart and attacked them and he also fell down. Thereupon, he was taken by the Police at 6-30 p.m. from the scene place. The accused 2 and 3 though admit that there is enmity, would state that the evidence is false and they do not know anything about the occurrence. According to A-4, there was no enmity and the witnesses are deposing falsely. No witness was examined on the side of the accused.

10. The learned Trial Judge after taking into consideration the oral and documentary evidence, for the reasons assigned in the judgment came to the conclusion that the Prosecution has proved the offence and convicted them as stated in the opening paragraph of the judgment. Hence, this appeal.

11. At the outset, it is to be noted that A-4 died after the filing of the appeal and the appeal in so far as he is concerned, is abated. The question to be considered, in the appeal is only in respect of the conviction and sentence awarded against A-1 to A-3.

12. Learned Senior Counsel Mr. N. T. Vanamamalai appearing for the appellants took us through the records and the evidence of prosecution witnesses and made various submissions. According to the learned counsel the prosecution has not properly explained the injury found on the accused and hence the appellants are

entitled to an acquittal. Learned counsel submitted that in view of the fact that the learned trial Judge disbelieved the case of the prosecution with regard to recovery of material objects in pursuance of the confessional statements, he ought too have rejected the entire prosecution case. He would also submit that the medical evidence adduced in this case does not corroborate the ocular testimony and as such the benefit of doubt has to be given. Learned counsel for the appellants vehemently argued that the overtacts attributed to accused 1 to 4 would only constitute culpable homicide not amounting to murder and it cannot be held to be murder since they can only be convicted for exceeding the right of private defence under S. 304 Part II, IPC and not under S. 302, IPC. He submitted that the evidence of eye witnesses in this case are all interested and as such much weight should not be given to their testimony. Learned counsel vehemently argued that since the first accused obtained injunction against the first deceased Chenniappan restraining him from interfering with his cart track and that he has got a right of private defence and hence learned counsel submitted that the conviction of the first accused under S. 302, IPC is not sustainable.

13. Per contra, learned Additional Public Prosecutor would submit that there has been enmity between the parties with regard to the usage of cart tract and that is not in dispute and that therefore, there is sufficient motive for the crime. He would submit that there cannot be one instance, namely, obstruction and attack simultaneously. But there are acceptable evidence on the side of the prosecution to prove that after the obstruction, the first accused went to the village and brought the accused 2 to 4 and they armed with weapons, deliberately attacked both the deceased and caused injuries to the prosecution witnesses. The version of the defence that the first accused alone was present and others were not present cannot be accepted in view of nature of injuries found on the deceased as well as on the prosecution witnesses. Eventhough the first accused have got injunction in favour of him over the cart tract, he cannot take the law into his own hands but has to seek recourse under law. In this case, the question of exercise of right of private defence does not arise.

14. Learned Additional Public Prosecutor also pointed out the number of injuries found on the person of the deceased 1 and 2 as well as the prosecution witnesses

and the medical evidence and contended that the accused cannot plead right of private defence. Next he vehemently argued that the plea put forward by the first accused has been rightly negated by the trial court and there is absolutely nothing to interfere with the same.

15. The points that arise for consideration in this appeal are (1) whether the conviction of the first accused under S. 302, IPC. (2 counts) for causing the death of the two deceased is sustainable and (2) whether the conviction of accused 2 and 3 in respect of attack on the prosecution witnesses is also sustainable

16. In the instant case, the first deceased Chenniappan owned lands at Minnakattupalayam south of Ottankattu thottam tar road and that the accused 1 to 3 who are the sons of the fourth accused and their family got lands in Vavuthurasikadu on the further south away from Ottankattu thottam and these facts are not in dispute. There is also an odai running on the east of Ottankattu thottam north-south. Minnakattupalayam village is on the west of Ottankattu thottam to which village the accused are belonged. The accused claimed rights over the cart tract on the eastern side of Ottankattu thottam to take their carts to their patta lands and this was objected to by the first deceased and the members of his family on the ground that they have no right to do so and that the fourth accused had preferred civil suit in O.S. No. 261/83 on the file of the District Munsif Court Gobichettipalayam and obtained a temporary injunction on 30-4-1983 against the fourth accused as the head of the family. It is also seen from the statement of the accused under S. 313, Cr.P.C. that even after obtaining injunction order, the father of the first deceased Chenniappa Gounder by name Muruga Gounder obstructed and hence he could not take the carts through the disputed cart track but had been taking the carts only through the poromboku lands. That there was enmity between the two families on account of dispute over cart track is not in dispute and it is the case of both parties that because of the said dispute they were on inimical terms. As regards the actual occurrence is concerned, we have got the direct testimony of P.Ws. 1 to 3 and among them, P.Ws. 1 and 2 are injured. P.W. 1 is the younger brother of the first accused deceased Chenniappan. It is his evidence that on the date of occurrence he went to his thottam and was conversing with the 1st deceased in respect of crops raised in their filed at about 4

p.m. About half an hour or forty five minutes later P.W. 2 his elder sister and P.W. 3 her daughter came there. The second deceased Nalla Gounder was grazing his goats on the eastern side. The first accused drove the double bullock cart from west to east carrying manure through their patta lands. The first deceased Chenniappa Gounder objected to his taking the cart through his patta land and asked him to take the cart through poramboke land. On account of objection, the first accused took the cart on the eastern side and left the cart in the poramboke land in the path way after untying the bullocks. Thereafter, he proceeded towards the village on the west. About 15 minutes later, he came along with the accused 2 to 4 and at that time, the first accused was having an aruval and the second accused was armed with an iron pipe. The fourth accused took up a spade from the cart while the third accused snatched the cart peg from the said bullock cart and thereupon the first accused shouted that while he was coming alone, he was obstructed and they could now come and prevent them and he would see to their preventing. The deceased who was standing at a distance was proceeding towards the place where the cart was left. At that time the first accused cut him on his head four or five times with the aruval. Again he cut him five or six times on his shoulder, back and head. The second accused beat him with the iron pipe on the forehead and the left arm. The third accused beat the first deceased on his back, and shoulder four or five time with the cart peg. The first deceased on receipt of blows fell down. Thereupon, the fourth accused beat the first deceased with the spade on the head. The second deceased Nalla Gounder came running raising a hue and cry. The first accused shouted that he was coming for help and cut him with the aruval on his head two or three times. When he warded off the cut, the cut fell on his right hand. The second accused beat him with the iron pipe on the left forehead. The third accused beat him with the cart peg on the back and neck four or five times. The fourth accused beat him with the spade on the head. On receipt of the injuries. Nalla Gounder (D2) fell down. P.W. 1 was standing at a distance of 10 ft. on the northern side. The first accused saying that he was responsible for all these quarrels, out him with an aruval of his left fore arm and right shoulder. The second accused beat him with the iron pipe on the left side of his head. On receipt of injuries, P.W. 1 was afraid and ran towards east. According to P.W. 1, the occurrence took place at about 5.00 or 5-30 p.m. Thereupon, he went to Nambiyur

Police Station which is located at a distance of 5 k.m. by boarding a bus and reached there at 5-45 p.m. and reported the matter orally to P.W. 14. P.W. 14 reduced the same into writing and that is Ex. P-1. Thereafter, he along with P.W. 2 were sent to Government Hospital for treatment to the injuries and certificate. He identified M.O. 2 as the aruval used by the first accused. M.O. 3 as the iron pipe used by the second accused, M.O. 2 as the cart peg used by the third accused and M.O. 5 as the spade used by the fourth accused in the occurrence. His version is fully corroborated by the evidence of P.W. 2 and 3. Among them, P.W. 2 is the injured. In addition to this, P.Ws. 2 and 3 have spoken about the attack on the deceased and also injuries on the deceased. The earliest report given by P.W. 1 was received by the Magistrate on the same night at 9 p.m. The said report contains all the details. It includes the particulars of the accused as well as their attack on the deceased and P.W. 1. The evidence of P.W. 1 is corroborated in all material particulars by the injured witness P.W. 2 and her daughter P.W. 3. In addition to the evidence of P.W. 1, P.W. 2 would state that the second accused beat her on the left elbow and the upper arm with the iron pipe and thereupon on the left leg ankle. The third accused beat her with a cart peg and it fell on the hand of the first accused. He too also sustained injury on the right thumb. The fourth accused also beat her with a spade on the right shoulder and right hip. Thereupon she fell down. It is the evidence of P.Ws. 2 and 3 that after receipt of the injury, they went to the police station. Before they arrived there, P.W. 1 was there and he had already given a complaint. The evidence of P.Ws. 1 to 3 were attacked on two grounds. They are related to each other and their evidence is interested and as such no reliance can be placed. It is the evidence of P.W. 3 that she came to Minnakattupalayam in connection with the puberty ceremony of the daughter of Chenniappan, the first deceased and that she did not cook food in the house and she alone had to go to her house and prepare food for her husband and in the circumstance, it is not possible for her to be present at the time of occurrence at 5-30 p.m. and witness the occurrence. It is to be noted among the witnesses P.Ws. 1 and 2 are injured. P.W. 3 is the daughter of P.W. 2 and she has given reasons for her presence on the date of occurrence. It is not in dispute that on the date of occurrence she came to the village in connection with the puberty ceremony of the daughter of the first deceased and it is also her evidence that after the function

was over, she along with her mother, went to the field to meet the deceased and P.W. 1 and to take leave of them. There is nothing improbable in the evidence of P.W. 1 with regard to her presence in the scene of place and her witnessing the occurrence. Her presence has been mentioned even in the earliest report given by P.W. 1 which reached the Magistrate at the earliest point of time.

17. As regards P.Ws. 1 and 2, their presence cannot be disputed as they have been injured. The only comment made is that they are related to the deceased. The mere fact that they are related to each other is not a ground to reject their testimony. On going through the evidence of P.Ws. 1 to 3, we are satisfied that they are natural and probable evidence and their evidence is cogent and trustworthy. There is nothing tangible elicited in cross-examination to discredit their testimony. Their evidence is amply corroborated by the earliest report as well as the medical evidence adduced in this case.

18. P.W. 5 is the Medical Officer attached to Government hospital, Gopi. He examined P.Ws. 1 and 2 at the earliest point of time, namely at 7-25 p.m. within one and a half hour of the occurrence and to him also P.W. 1 has stated that he sustained injuries at the hands of four persons. P.W. 5 found as many as seven injuries on the person of P.W. 1 as described in the wound certificate Ex. P. 4. Among them, injuries 1 and 2 are incised injuries while injuries 3 and 5 are lacerated injuries. Injury No. 6 is abrasion and injury No. 7 is a contusion. He has categorically stated that the injury Nos. 1 and 2 could have been caused by an aruval while injury No. 3 and 7 could have been caused by an iron pipe. Similarly, as regards injuries found on P.W. 2, P.W. 5 has categorically stated that P.W. 2 told him that he sustained injuries by assault by four persons with aruval, iron pipe and spade handle. P.W. 5 noted as many as seven injuries. Among them injuries 1, 2, 4 and 6 are lacerated injuries while injury No. 3 is an incised injury and injury No. 5 is a contusion. As per the report of X-ray, there was a fracture on the left fore arm, and left flank. He has given his opinion that injury Nos. 1 and 5 are grievous in nature. It is the further evidence that injury No. 3 is an incised injury on the left wrist and it could have been caused by an aruval while injury Nos. 1, 2, 4 and 5 and 6 could have been caused by an iron pipe and injury No. 7 could have been caused by a spade handle. This opinion of P.W. 5 with regard to the injury

found on P.Ws. 1 and 2 amply corroborate the ocular testimony of P.Ws. 1 and 2. Nothing has been elicited in the cross-examination to discredit the testimony of P.W. 5 or the opinion tendered by him.

19. P.W. 7 is also a Civil Assistant Surgeon attached to the said hospital who conducted autopsy over the dead body of the first deceased Chenniappa Gounder and he found as many as 15 external injuries as described in the post mortem certificate Ex. P. 8. He was of the opinion that the external injuries could have been caused by an iron pipe while external injuries 6 and 7 could have been caused by the iron ring found on the back of the spade. External injuries 12, 13 and 14 could have been caused by a stick like cart peg. The incised wounds noticed by him could have been caused by a sharp edged weapon like aruval. According to P.W. 7, the deceased appeared to have died of shock and haemorrhage due to the head injuries about 18 to 30 hours prior to the post mortem examination.

20. Similarly P.W. 8 who conducted autopsy over the dead body of the second deceased noticed as many as five injuries and he was of the opinion that the external injuries 1 and 2 could have been caused by the blunt portion of an aruval and external injury No. 3 was caused because of the injury to the brain and not due to any assault separately. Injury No. 5 could have been caused by any blunt portion of weapon like stick. According to him, external injury Nos. 1 and 2 are sufficient to cause the death. He is also of opinion that the death could have occurred about 16 to 24 hours prior to his examination. The evidence of medical officers is not shaken in any way in the cross-examination. On the other hand, the various answers elicited in their cross-examination only strengthen the version of the prosecution and as such, the medical evidence adduced in this case, amply corroborates the ocular testimony of P.W. 1 with regard to the attack on the deceased as well as P.Ws. 1 and 2 and also with regard to the manner and the weapon and the time of occurrence. Learned Counsel for the appellants only commented upon the injuries found on the second deceased as they were only lacerated injuries and there were no incised injuries and as such those injuries could not have been caused with an aruval. It is to be noted that injury Nos. 1 and 2 are lacerated injuries measuring 5 cm x 2 cm x bone deep over the occipital

retion and 3 cm x 2 cm bone deep on the left side of vertex respectively. P.W. 8 has given the categorical opinion that these two injuries could have been caused by the blunt portion of an aruval. When a suggestion was put that those injuries could not have been caused with the back portion of an aruval, he has categorically denied in the cross-examination. No doubt, he has also stated that those injuries could have been caused by an attack with a stick with rough edge. The doctor has not ruled out the possibility of those injuries with a blunt portion of an aruval.

21. Similarly, learned counsel had commented upon with regard to the incised injury found on the first deceased by stating that it is not possible to detect whether the injury is an incised injury or incised looking injury. The doctor has stated that there is no difference between an incised wound and an incised looking wound. On a careful analysis of the medical evidence, we are of the view that the medical evidence, fully supports the ocular testimony as already stated.

22. It is vehemently argued by the learned counsel for the appellant that the injury found on the accused has not been explained by the prosecution and as such the benefit should be given to the accused. It is to be noted that P.W. 8 is the doctor who examined the first accused on 20-9-1984 for certain injuries said to have been caused at 5 p.m. on 17-8-1984 by a known person with iron pipe and stick at Minnakattupalayam and found on him an abrasion 5 cm x 2 cm over the left forearm lateral aspect and another abrasion 7 cm x 2 cm over the left side of back and the third injury, a linear contusion 7 cm x 2 cm over the infra scapular region as described in Ex. P.11 wound certificate. He is of the opinion that those injuries are simple in nature and the contusion noted by him could have been caused by a stick. The prosecution sought to explain the injury through the evidence of P.W. 2 who would state that when the third accused beat her, the first accused intervened and the blow fell on him. It has been vehemently argued by the learned counsel that the injury found on the accused has not been mentioned in the earliest report Ex. P. 1 and the failure to mention the same is fatal to the prosecution case. As rightly contended by the learned Public Prosecutor and also as held by the trial court, it is the evidence of P.W. 1 that immediately after the receipt of injury, he ran away from the scene place and went straight to the police station by boarding a

bus which came there by that time and a gave report Ex. P. 1 narrating the details of the attack on him as well as on the deceased. In such circumstances, learned Public Prosecutor contended, P.W. 1 could not have noticed the injury on the amused and so he has not noted in the first information report Ex. P. 1 about the injury found on the accused. P.Ws. 2 and 3 are the competent witnesses who were there in the scene of occurrence and who are injured in the occurrence and their evidence as stated above is that the when the third accused beat her, the first accused intervened and the blow fell on him and the first accused sustained injury. Even otherwise, as rightly contended by the learned Public Prosecutor, those injuries found on the first accused are simple in nature. When once it is found that the evidence of P.Ws. 1 and 2 is cogent, convincing and trustworthy, the failure to explain the trivial injuries found on the accused is of no consequence and on that ground it cannot be stated that the entire prosecution has to be thrown out as false. In this case, an attempt has been made to show that the prosecution has explained the injuries found on the first accused. Even otherwise, in view of the nature of injuries found on the first accused and the fact that he had not reported the matter to anybody, would itself show that the non-explanation of the injuries found on the first accused would not affect the case of the prosecution.

23. In this connection, it is worthwhile to quote the decision of the Supreme Court in Hare Krishna Singh v. State of Bihar : 1988 CriLJ925 wherein it was held, after considering the earlier decisions, that when the prosecution witnesses are believed by Court in the proof of the guilt of the accused beyond doubt, reasonable question of obligation on the part of the Prosecution to explain injuries does not arise and that when Prosecution comes out with a definite case, it is not necessary for them to explain the injuries on the accused. It has also been observed that the question as to the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In paragraph 9 of the judgment, it has been observed as follows :

'..... Indeed, it has been laid down in Lakshmi Singh's case : 1976 CriLJ1736 that the non-explanation of the injuries by the prosecution will not affect the prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and

disinterested, so probable, consistent and creditworthy that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.'

Applying the ratio of the above decision to the present case also, we are of the view that there is no force in the contention of the learned counsel for the appellants that the injuries on the first accused have not been explained and therefore such non-explanation is fatal to the case of the prosecution. Lastly it was contended by the learned counsel for the appellants that the occurrence took place when A-1 went with a cart and only when he was prevented from driving the cart and attacked, in exercise of the right of private defence, he attacked the deceased, that A-2 and A-4 were not there at that time and that if at all anything can be said in that A-1 exceeded his right of private defence, he cannot be convicted under S. 302, IPC but only under S. 304, Part I, IPC. According to him, the version of the prosecution that A-1 was prevented from driving the cart and thereafter he went to the village and brought A-2 to A-4 is not true.

24. On a careful consideration of the entire materials produced by the Prosecution, we find that it is clearly established by oral as well as documentary evidence and also by the earliest report given by P.W. 1 that A-1 drove the cart through the patta land of the first deceased and when he was prevented from doing so, he drove the cart to the nearby poramboke land and leaving the cart there after untying the bulls, he went to the village and brought his brothers and his father who came to the scene of occurrence armed with weapons in order to attack the deceased as well as P.W. 1 and P.W. 2. It is also the case of the prosecution that after their coming to the scene of occurrence, A-1 called and told the first deceased that previously he prevented him from driving the cart and if he was bold enough to do it again, he could do so now and so saying, the accused began to attack the first deceased and when the second deceased intervened, he was also attacked and similarly P.Ws. 1 and 2 who were also present at the scene of occurrence at the time of occurrence and who questioned the accused about their acts were also attacked.

25. The learned counsel for the appellants vehemently contended that since A-4 obtained an order of interim injunction from the civil Court enabling him to take the

cart through the cart track running through the patta land of the first deceased and since A-1 was prevented from doing so, he is entitled to the right of private defence. But, we do not find anything in support of the said contention. It has to be noted that in the statement of the accused it has been specifically stated that both the deceased as well as P.Ws. 1 and 2 who sustained injuries at the hands of the accused came to attack the first accused and only in exercise of the right of private defence, A-1 retaliated and attacked and caused the death of both the deceased besides causing injuries to P.Ws. 1 and 2. It is to be noted further that when he was examined by the doctor P.W. 8, A-1 had specifically stated that he was attacked by a 'known person' with iron pipe and stick and due to that attack, he sustained injuries. This version of A-1 falsifies his defence. Further, as rightly contended by the learned Public Prosecutor, the first deceased received as many as 15 injuries of different types which consisted of incised injuries, contusions as well as abrasions. According to the doctor, those injuries could have been caused by different weapons like Aruval, iron pipe, cart peg etc., as put forward by the prosecution. Hence, the version of the first accused that he alone retaliated and beat the deceased with stick and iron rod is proved to be false. Similarly, the second deceased sustained five injuries which are lacerations and abrasion and according to the doctor, those injuries could have been caused by the blunt portion of an aruval. P.Ws. 1 and 2 also sustained different types of injuries and they could have been caused by different weapons and that is the medical evidence. From the nature of the injuries sustained by the deceased well as by P.Ws. 1 and 2 as opined by the doctors, the plea of private defence is not probalised and it stands falsified. When once it is held that after A-1 was prevented from driving the cart ahead and he has left the cart in the nearby poramboke land and went to the village and brought the other accused and attacked the deceased as well as P.Ws. 1 and 2 and he had time to recourse, to the protection of public authority the question of exercising the right of private defence does not arise. The decisions relied on by the learned counsel for the appellants in support of this contention are not at all helpful.

26. Pachkauri v. Queen-Empress ILR 24 Cal 686 is a case wherein the accused were charged under sections 147, 149 and 325 of the Indian Penal Code for the offences of unlawful assembly, using force and violence in the prosecution of the

common object of that assembly and causing grievous hurt. That was a case where the accused on receiving information that the complainant's party were about to take forcible possession of a plot of land which was found by the Court to be in the possession of the accused, collected a large number of men, some of whom were armed, and went through the village to the land involved therein and while they were engaged in ploughing, the complainant's party came up, some of them being armed, and interfered with the ploughing. A fight ensued in the course of which one of the complainant's party was grievously injured and subsequently died. It was only in such circumstances it was held that the accused were rightly in possession of the land and therefore found it necessary to protect themselves from aggression on the part of another body of men and therefore, they were justified in taking such precautions as they thought were required and using such force or violence as was necessary to prevent the aggression. Ultimately, it was held that the accused therein in such circumstances were not liable to be convicted for the offence of unlawful assembly. The ratio of the said decision is not applicable to the facts of the present case. In the instant case, there is no evidence to show that any of the deceased or P.Ws. 1 and 2 were armed with any weapons or that they attacked any of the accused and it is also to be noted that there is no evidence to show that in spite of the interim injunction alleged to have been obtained long back by A-4 the accused were prevented from using the cart track and that they were using only the poramboke cart track. Therefore, the question of exercise of right of private defence does not arise. Further, it is the case of the first accused that he was driving the cart through the poramboke land and that he was prevented from doing so. There is absolutely nothing to substantiate the same.

27. The decision in Emperor v. Hira, ILR 45 ALL 250 : 1923 (24) Cri LJ 189 is also not helpful to the case of the appellants as in that case there was a severe fight between both the parties during the course of which both the parties sustained injuries. Since it was found that the accused were in lawful possession as tenants of a certain agricultural land, they were within their rights in holding themselves in readiness to repel an attack if and when it should come and therefore they were protected by Section 97 of the Indian Penal Code.

28. In *Fouzdar Rai v. Emperor* 1918-19 Law Weekly (Criminal) 241, the Head-note reads as follows :

'The right of private defence extends to section 141 and subsequent sections of the Penal Code just as much as it extends to any other offence punishable under the Penal Code. Where a person in possession of property sees an actual invasion of his rights to that property, if that invasion amounts to an offence under the Code, he is entitled to resist it by force and to collect for that purpose such numbers and such arms as may be absolutely necessary for this purpose, provided only that there is no time to have recourse to the protection of the police authorities.'

It is clear from the above decision that if there is any time to have recourse to seek protection from the police authorities, then the right of private defence is not available. In the instant case it has been established that when the first accused was prevented from taking his cart through the cart track, he did not approach the police authorities to seek redress but went to the village and came to the scene of occurrence along with the other accused fully armed and attacked the deceased and P.Ws. 1 and 2 and caused the death of the deceased besides causing injuries to P.Ws. 1 and 2. Hence, the question of exercising private defence does not arise in this case.

28A. The learned counsel for the appellants also relied on the decision in *Hukam Singh v. State of U.P.* : [1962]1SCR601 . We have gone through the said decision. But that decision is not helpful to the case of the appellants in any way as that decision was rendered on the facts and circumstances of that case which are different from the facts and circumstances of the present case.

29. Per contra, the learned Public Prosecutor drew our attention to certain decisions. In *Ram Rattan v. State of U.P.* : 1977 CriLJ433 , it has been held as follows :

'Where in prosecution for offence of murder it was found concurrently by the lower courts that the complainant after having encroached upon the disputed land (i.e. a public road) in the village, had converted it into culturable field and had grown

paddy crop which complainant's party was trying to weed out on the day of occurrence, the accused party had no right to commit trespass on the land and engage the complainant's party in a serious fight. The accused were not entitled to claim the right of private defence, nor could it be said that in causing the murderous assault on the deceased they had merely exceeded their right of private defence of property. The fact that the accused were exercising their lawful right over a portion of land left apart as a public road for use of villagers by Revenue Authorities was immaterial. When a complaint had already been filed before the Panchayat the accused should have allowed the law to make its course instead of taking the law in their own hands by making an armed trespass into the property.'

30. In *Munney Khan v. State of Madhya Pradesh* : [1971]1SCR943 , it has been held as follows at page 1494 of AIR :

'..... There is also no right of private defence in cases where there is time to have recourse to the protection of public authorities. The right of private defence is essentially a defensive right circumscribed by the statute available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed of as a pretext for a vindictive, aggressive or retributive purpose. According to Section 97 this right vests even in strangers for the defence of the body and property of other persons against offences mentioned therein. The Courts have therefore to be careful in seeing that no one on the mere pretext of the exercise of the right of private defence takes side in a quarrel between two or more persons and inflict injuries, on the one or the other. In a case when two parties are having a free fight without disclosing as to who is the initial aggressor it may be dangerous as a general rule to clothe either of them or his sympathiser with a right of private defence. If however one of them is shown to be committing an offence affecting human body then that would of course seem to give rise to such a right. If there is no initial right of private defence then there can hardly be any question of exceeding that right.'

31. In *Vishvas v. State of Maharashtra* : 1978 CriLJ484 it has been held as follows at page 489 of Cri LJ :

'To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him.

In the instant case the accused persons have manifestly failed to discharge this burden. They have not at all been able to establish that the deceased R and his brother S came to the Bazar Peth from their house armed to wreak vengeance on them or that they made any assault on them or on their confederate. The evidence on record does not show the existence of any circumstance on the basis of which the accused and their confederate could have any reasonable apprehension in their mind that any bodily harm extending to either death or grievous hurt would be caused to them if they did not act in time and cause the death of R. On the other hand, the unrebutted testimony of S which does not suffer from any infirmity and has been rightly relied upon by the courts below clearly establishes that the accused and their confederate were themselves the aggressors and they mercilessly dealt with R and the witness both of whom had hastened to the Bazar Peth not with any sinister motive but in their natural solicitude for J who according to the information in their possession had been assaulted by the party of the accused. If S and R had any intention of assaulting and causing any bodily harm to the accused, they would have surely come armed with some weapon. The fact that they came unarmed and took to their heels on seeing the accused and their confederate pursuing them in an excited mood knocks the bottom out of the plea of right of private defence vainly tried to be advanced on behalf of the accused. In the circumstances, the accused cannot be said to have even a semblance of the right of private defence.'

32. In *Hari Meghji v. State of Gujarat* : 1983 CriLJ826 , it has been observed as follows at page 828 of Cri LJ :

'Lastly, it was argued by Mr. Bhasme that on the evidence adduced by the prosecution the accused had assaulted the deceased in exercise of the right of private defence but exceeded the same as found by the Sessions Judge and hence they could not be convicted under section 302. We are however unable to

agree with this argument. The nature of the injuries viz., 22 on one, 12 on the other and 13 on the third deceased clearly show that there could be no question of a plea of private defence. The accused party had come to teach the deceased a lesson for having raised dispute in respect of land about which they had hinted even a month back when the report Ext. 14 was lodged. The manner of the assault, the consequence of which was the death of three persons cannot for a moment give rise to a justification for pleading a right of private defence. Moreover, Exception (ii) of Section 300 clearly enjoins that there cannot be any question of exceeding the right of private defence where the accused causes more harm than it is necessary for the purpose of his defence. The clear evidence of P.Ws. 2 and 3 in this case is that even after Bhika Bhimji and Kadu Kala had fallen down on the ground and were rendered harmless and were not in a position to offer any resistance, the accused continued to assault them until they had inflicted all the injuries mentioned above. In these circumstances, therefore, the plea of the right of private defence could not be accepted for a moment'.

33. In *Laxman Sahu v. State of Orissa* : 1988 CriLJ188 it has been held as follows at page 189 : of Cri LJ :

'It is needless to point out in this connection that the right of private defence is available only to one who is suddenly confronted with immediate necessity of averting an impending danger not of his creation. The necessity must be present, real or apparent.'

34. Applying the ratio laid down in the above decision to the facts of the present case, it cannot be said that the first accused had no time to have recourse to the protection of the public authorities. But, instead of having recourse to the protection of the public authorities, he has taken the law into his own hands by bringing his men, namely A2 to A4 to the scene of occurrence and attacking and causing the death of two persons besides causing severe injuries to P.Ws. 1 and 2. Further, there is absolutely nothing to show that there was any reason for apprehension of danger to the life or grievous hurt to the person of the accused warranting the causing of death of two persons and the infliction of many injuries on P.Ws. 1 and 2. Further, the version of A1 that he was attacked by four persons

with different weapons is falsified from the injuries found on his person and if his version is true, he would have sustained serious injuries of different nature than those found on his person. This fact also falsifies the plea of private defence put forward by him. There is absolutely nothing on record to probabalise the version of the first accused that there was reason for him to apprehend danger to his life or property so as to cause the death of the two persons and injuries to P.Ws. 1 and 2 in the exercise of the right of private defence.

35. The learned trial Judge has rightly rejected the plea of the right of private defence and we are in entire agreement with the conclusion of the learned trial Judge. There is absolutely nothing to substantiate the contention based on the plea of the right of private defence. Further, when once it is held that the accused are not at all entitled to any right of private defence, the question of exceeding such right does not arise. Since the accused attacked the deceased even after they fell down, the offence would clearly fall under S. 302 read with S. 34, I.P.C. and not under S. 304, Part I, I.P.C. as contended by the learned counsel for the appellants.

36. As regards the other offences which the accused have committed, as discussed already, the prosecution has established the same by acceptable evidence and the learned counsel for the appellants is unable to point out as to how the conviction for the said offence is not sustainable both in law and on facts. On the other hand, on going through the materials placed before us, we are of the view that the prosecution has satisfactorily established the guilt of the accused-appellants in respect of which they were convicted beyond all reasonable doubt. No case has been made out to interfere with the finding of the learned trial Judge.

37. In the result, we confirm the convictions and the sentences awarded to the appellants and consequently, we dismiss the appeal. So far as A4 is concerned, the appeal is dismissed as having abated since he died subsequent to the filing of this appeal.

38. Appeal dismissed.

