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P. Balaraman Vs. the State

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Court : Chennai

Decided On : Apr-06-1990

Reported in : 1991CriLJ166

Judge : T.S. Arunachalam, J.

Appeal No. : Criminal Appeal No. 382 of 1989

Appellant : P. Balaraman

Respondent : The State

Advocate for Def. : G. Krishnamurthy, Addl. Public Prosecutor

Advocate for Pet/Ap. : N. Jothi, Adv.

Judgement :

1. The Appellant was tried in S.C. No. 125 of 1988 on the file of the 8th Assistant Sessions Judge, Madras, under three heads of charges. The first charge was for an offence under Section 452, I.P.C., on the allegation that on 25-4-1986 between 9 and 10 A.M., when P.W. 1 Frederick Kanakaraj, the District Munsif, Ponneri, was travelling in an electric train from Madras Central to reach his work spot, on the way at Ennore Railway Station, the appellant due to prior enmity trespassed into the first class compartment, where P.W. 1, was seated, after having made preparation to attack him. The second charge was framed for an offence under Section 307, I.P.C. alleging that during the course of the same transaction, the

appellant attacked P.W. 1, with a koduval knife by chasing the victim, who got down from the first class compartment No. 12252 and got into a second class compartment, to escape from the wrath of the appellant. The third charge was framed for an offence under Section 333, I.P.C. alleging that during the course of the same transaction, due to prior enmity, in that, P.W. 1, had decided against him in a case, caused grievous hurt to P.W. 1, a public servant and prevented him from discharging his duties as such public servant.

2. The trial Judge found the appellant guilty of all the charges and sentenced him as hereunder : In respect of the first charge, the appellant was sentenced to under rigorous imprisonment for three years and to pay a fine of Rs. 1000/-, in default to undergo six months' rigorous imprisonment. Under charge No. 2, he was sentenced to ten years rigorous imprisonment and to pay a fine of Rs. 3000/-, in default to undergo rigorous imprisonment for six months. Under charge No. 3, he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1000/-, in default to undergo rigorous imprisonment for six months, all the sentences were directed to run concurrently.

3. The facts which led to this prosecution need narration. P.W. 1. Federick Kanakaraj, at the relevant time, when this incident had occurred, was working as District Munsif at Ponneri. On every working day he used to leave his residence at Kilpauk, Madras, on his motor cycle and reach the Central Railway Station. After parking his motor cycle at the Central Railway Station stand for motor cycles, he used to take an electric train to reach Ponneri. He had obtained permission from this Court, to stay at Madras and go for his work at Ponneri, daily. Ex.P. 1 is such permission dated 5-7-1984. Every day he used to board the electric train leaving Madras Central Railway Station at 8.25 a.m. On the fateful day i.e., on 25-4-1986, after parking his motor cycle, he was unable to board the electric train which left Madras at 8.25 a.m., and therefore, had to necessarily take the next train, which left at 9.05 a.m. P.W. 1, boarded the first class compartment in which he was authorised to travel by virtue of the Season Ticket Ex.P. 2 obtained from the Railways. Ex.P. 3 is the identification card with the photograph of P.W. 1. Ex.P. 4 is the token-cum-pass issued at the Central Railway Cycle Stand, for the parking of the Motor Cycle of P.W. 1, daily. Along with P.W. 1, P.W. 2, Ravichandran, an

Engineer working in the Public Works Department at Gummudipundi and two policemen of whom one has been examined as P.W. 17, travelled in the same compartment. The appellant was known to P.W. 1, earlier. The appellant had filed a redelivery petition in E.A. No. 384 of 1984 in R.C.O.P. No. 34 of 1982 on the file of the Court of the District Munsif, Ponneri. The appellant was known to P.W. 1, since he had deposed before him in the aforementioned proceeding. The appellant was a tenant in the premises, which was the subject-matter of dispute in R.C.O.P. No. 34 of 1982 of R.C.O.P. No. 34 of 1982 related to the eviction of the appellant from the said building. The predecessor of P.W. 1, Thiru Joseph, not examined, had ordered eviction of the appellant and directed execution as well. In pursuance of the eviction order in R.C.O.P. No. 34 of 1982, P.W. 15, the Court Amin, had put the landlord of the premises in possession, after, evicting the appellant. The appellant had thereafter filed E.A. No. 384 of 1984 for re-delivery, which petition was taken up for hearing by P.W. 1, who, after examining the witnesses, dismissed the application on 7-2-1986. Nearly 2 1/2 months thereafter, when P.W. 1 was travelling on 25-4-1986 in the electric train, he was as usual perusing the morning newspaper, inside the compartment. He was seated adjacent to the window. P.W. 2 was seated opposite to him. P.W. 17, and another constable were also seated in the row, opposite to P.W. 1. The train had reached the Ennore Railway Station at or about 9.35 a.m. At that time the appellant got into the first class compartment, where P.W. 1, was seated, with a small brief case and stood near the entrance to the compartment. The appellant wished P.W. 1 which was reciprocated by the latter. Subsequently the appellant nearer the place where P.W. 1 was seated and suddenly, unexpected by P.W. 1, opened the brief case, removed a koduval and stating 'you have written a judgment against me. I will make you write no more Judgments,' forcibly aimed a cut on P.W. 1. The cut landed on the luggage wire mesh and fell on the back of the head of P.W. 1, P.W. 4 on receipt of the first cut, was shocked and perplexed, while the appellant cut him over again twice or thrice, which cuts also fell on the front and back of the head of P.W. 1, after initial obstruction by a the wire mesh. When P.W. 2 and the Police constables, who were in the compartment, attempted to restrain the appellant, he threatened them with his koduval. The frightened P.W. 1, taking advantage of this at little interregnum, when P.Ws. 2 and 17 were restraining the

appellant, got down from the first class compartment, to save himself, and ran towards the room of the station-master at Ennore Railway Station. The appellant got in down from the compartment, chased P.W. 1, and attempted to cut with the koduval, on the back of his head. When P.W. 1 warded of the cut, it fell on the left hand between the palm and the thumb, resulting in a bleeding injury. At that time the room of the station-master was founded locked. The astonished P.W. 1 turned round to escape from the clutches of the appellant. Even then, the appellant chased and the next cut aimed by the appellant fell on the right hand of P.W. 1, between the thumb and the index finger. P.W. 1, further ran and got into a second class compartment. The appellant, who followed P.W. 1, also got into the second class compartment and again attacked P.W. 1 with the Koduval. P.W. 1, attempted to ward of the cuts and in the process sustained injuries in the left and right hands. The right ring finger and half of the little finger were precariously hanging due to the cut injuries inflicted by the appellant. The public who were aghast and who had crumbled away, re-gathered and one of them threw a water drum at the appellant and another beat him with an iron rod. Due to the beating with the iron rod, the koduval held by the appellant fell down. Later several members of the public beat the appellant. Soon thereafter P.W. 3, Jayapalan, the Judicial Second Class Magistrate, Ponneri, P.W. 4, Rasish, the Sub-Divisional Judicial Magistrate, Ponneri, P.W. 5 Munirathinam, the Assistant Public Prosecutor, Ponneri and P.W. 6, Susairaj, an Advocate normally practising at Ponneri and Susheela, not examined, an Examiner in the Court of P.W. 1, helped P.W. 1, to alight from the second class compartment. They boarded him in a tricycle, to take him to the Ennore Police Station. On the way, P.W. 21, the Sub-Inspector of Police, Ennore, came in a Mini Bus. He stopped the bus and put P.W. 1 in the Mini Bus, along with P.Ws. 3, 4 and 5 to be taken to the Government General Hospital, Madras, for treatment.

4. P.W. 17, Rathinaswamy, a constable attached to the Railway Protection Force, Madras Central Railway Station, who was travelling along with another Railway Reserve-Constable 209 in the Compartment in which P.W. 1, was travelling, had witnessed the attack on P.W. 1 by the appellant, after the latter had uttered the challenging words incorporated earlier in this judgment. He has also spoken about the threat administered by the appellant, when he and others attempted to restrain

him. P.W. 17 noticed P.W. 1, running towards the room of the station-master and the appellant chasing him. Regarding this incident, P.W. 17 informed the Inspector of Police, Central Railway Station, over the telephone. Meanwhile, the public had apprehended the appellant and had kept him in the platform, opposite to the waiting room. He had also noticed P.Ws. 3, 4 and 5 taking P.W. 1 out of the Railway Station.

5. P.Ws. 3 and 5 had P.W. 1 admitted at the General Hospital, Madras, for treatment. P.W. 19 Dr. Rathinaswamy was working as a Casuality Medical Officer, on 25-4-1986, at the Government General Hospital. He examined at 10.30 a.m. the injured P.W. 1, who was alleged to have been attacked by a known person, with knife at Ennore Railway Station at or about 9.35 a.m. on the same day. The injuries noticed by him on P.W. 1, have been noted in Ex.P. 26, the accident Register, which is typed hereunder :-

1) Incised wound over the left elbow on the outer aspect exposing the bone 12 c.m. x 5 c.m.

2) Incised wound in the first web space of right hand up to metacarpus joint 3'. Right little and ring fingers severed at distal phalanx level and less of part of bail of the mid finger.

3) Incised wound over the left frontal parietal region 6' Bone deep.

4) 3 incised wounds over left occipital region crossing each other, like H5' each.

5) Two incised wounds over right occipital region extending up to right ear 6' x 3'.

6) Incised wound over posterior aspect of right arm exposing triceps 3' x 1' near the elbow up to bone.

Abrasion over the abdominal wall.

7) Left hand incised wound over the hypothenar eminence 2' disttal palmer crease 2' thumb 7 cm. sound over the dorsal and outer border. Left index ulnar aspect 2' mid finger over tip. 1' left forearm on dorsum 1'.

P.W. 19 had expressed his opinion that all the injuries found on P.W. 1, could have been caused at the time and in the manner alleged, by a single sharp edged weapon, like M.O. 2. He also opined, that the head injuries noticed by him, would have endangered the life of the person, if immediate and proper treatment had not been given. After giving preliminary treatment for injuries noticed by him, P.W. 26 admitted the victim as an in-patient in Ward No. 1. He had also advised X-ray being taken.

6. P.W. 20 Dr. Kannan, the Emergency Medical Officer at Government General Hospital, examined P.W. 1, at or about 11 a.m. on 25-4-1986. Though the patient was conscious, alert and answered to questions, his condition was serious. Soon after blood groupong was done, blood transfusion was commenced. He was listed as a dangerously ill patient and was referred to various specialists, for further management.

7. P.W. 22, Chinnaswamy, who was the Inspector, Railway Protection Force, Central Railway Station, received the message, of this occurrence, from P.W. 17 at or about 10 a.m. P.W. 2 informed P.W. 17 to guard the place till he reached the scene. The telephonic message was entered into the general diary by P.W. 22. A little later P.W. 17 informed over the telephone, that the injured District Munsif, Ponneri, had been sent in a police van by P.W. 21, the Sub-Inspector of Police, Ennore, for treatment to the hospital, at Madras, P.W. 22 directed P.W. 17 and Constable 209, to keep the apprehended appellant, in proper custody. The second telephonic message was also entered by P.W. 22 in the General Diary. Soon thereafter P.W. 22 proceeded to the Government Stanley Hospital, excepting the victim to be brought over to the said hospital. Since P.W. 1 had not reached the Government Stanley Hospital till 11.45 a.m., over the phone, he contacted the Central Railway Police Station and learnt that P.W. 1, had been taken for treatment to the Government General Hospital, Madras. Immediately P.W. 22 proceeded to the Government General Hospital and found the injured P.W. 1, in Ward No. 1, undergoing treatment. P.W. 1, was conscious. A statement was recorded by P.W. 1, in the presence of Dr. Kannan (P.W. 20), who had certified the statement of P.W. 1, having been recorded in his presence by P.W. 22. Though the actual time of the recording of this statement has not been stated, it is

clear that this statement marked as Ex.P. 6 was registered at or about 1 p.m. at Korukkupet Police Station in Crime No. 129 of 1986 for offences under sections 324, 326 and 307, I.P.C. Ex.P. 29 is the printed form of the F.I.R. P.W. 22 seized M.Os. 3 to 5 the bloodstained pant, banian and shirt of P.W. 1 under a mahazar Ex.P. 28 at or about 12.25 p.m. Thereafter P.W. 22 proceeded to Ennore Railway Station.

8. P.W. 21 the Sub-Inspector of Police, Ennore Police Station, received a message over the telephone, at or about 10 a.m. on 25-4-1986 from the Superintendent, Ennore Railway Station that a person, had cut the Ponneri District Magistrate, leading to chase and confusion and wanted him to go over to the Railway Station immediately. When the phone call was received by P.W. 21, Sundaramurthy, Sub-Inspector of Police, Arambakkam (Not examined) was with him. P.W. 21 took Sundaramurthy along with him in the Police mini bus TTH 2513 driven by Manoharan, not examined, and went towards Ennore Railway Station. As he was leaving for Ennore Railway Station, the same information regarding the incident, was conveyed to him by police constable, who had arrived there then. When the van had travelled about 100 metres, he noticed a tricycle coming in the opposite direction, in which P.W. 1, was being taken by P.Ws. 3 to 5 towards the Ennore Police Station. He found P.W. 1 with several cut injuries. P.W. 21 directed the Sub-Inspector of Police, Sundaramurthy, to accompany the injured, along with P.Ws. 3 to 5 in the mini bus, to the Government General Hospital. P.W. 4 told P.W. 21, that the assailant of P.W. 1, had been kept at the Ennore Railway Station. After the bus left, P.W. 21 went to the Ennore Railway Station. P.W. 17 joined P.W. 21. He found the appellant kept detained opposite to the first class waiting room. He found simple injuries on the appellant. At the main entrance to the station, he found a green drum. A little distance away he noticed an ash colour brief case. As little further away an aruval was found with bloodstains. Members of the public had surrounded the appellant. P.W. 21 noticed bloodstains, near the board 'First Class Ladies', on the Platform. He has identified the brief case M.O. 1, the koduval M.O. 2 and the drum M.O. 6. Soon thereafter from the Ennore Railway Station, he telephoned to the Inspector of Police, Madras Central Railway Station. The latter directed him to keep guard and promised to go over there. At or about 2.15 p.m. P.W. 22 arrived at the Ennore Railway Station.

9. P.W. 22, who had arrived, at the Ennore Railway Station, found the appellant in the custody of P.W. 21, P.W. 17 and another constable. P.W. 22 prepared the observation mahazar Ex.P. 7 in the presence of P.W. 11 and another. The scene sketch Ex.P. 30 was also prepared. He seized the bloodstained kuduval, the ash colour suit case containing a cooling glass and a hacksaw blade. He seized two issues of Murasoli dated 18-4-1986 and 24-4-1986, one issue of Dinamani dated 25-4-1986, four bits of bandages, certain notices, an identity card issued in favour of Balaraman, a dividend cheque for Rs. 90/- in favour of the appellant issued by Ashok Leyland, a comb, a prince blade and two more blades, white pant, a multi-coloured half-arm shirt, a kerchief and a ball-point pen. These articles were seized under the mahazar Ex.P. 8, attested by P.W. 11 and another. These seizures have been identified by P.W. 22 as M.O. 1, M.O. 2, M.O. 7 to 16, M.O. 23 series, M.O. 24, M.O. 25, M.O. 26, M.O. 27, M.O. 28 and M.O. 29. At 2.50 p.m. P.W. 10 seized the green colour drum M.O. 6 under the mahazar Ex.P. 11, attested by P.W. 13 and another. Under the mahazar Ex.P. 9, he seized the bloodstained earth and sample earth in the platform, opposite to the ladies waiting room, M.Os. 17 and 18. Outside the Ennore Railway Station, he found a Rajdoot Motor Cycle M.O. 19 bearing registration No. T.M.Z. 615, which he seized under the mahazar Ex.P. 10, attested by P.W. 12 and another.

10. On being questioned by P.W. 22, the accused gave a statement, which was recorded by P.W. 22, which was subsequently registered as Crime No. 130 of 1986 for offences under Sections 147, 148, 341, 324 and 336, I.P.C. at 4 p.m. Ex.P. 31 is the printed First Information Report. The accused in the said crime, are stated to be the public. P.W. 22 arrested the appellant. He reached Korukkupet Police Station at 4 p.m. Since P.W. 22 noticed injuries on the appellant, he forwarded him for medical examination with a memo to the Stanley Medical Hospital, Madras.

11. P.W. 23, Dr. Poongothai, examined the appellant produced before her at 6.30 p.m. on 25-4-1986. She noticed certain injuries on the appellant, stated to have been caused due to an assault by 10 unknown persons with iron rods. The injuries noticed on the appellant by P.W. 23 form part of the accident register extract Ex.P. 36, typed down below.

1. Lacerated injury 2' x 1/2' on the left Parietal region.

2. Lacerated wound on the left index finger at M.P. joint level 2' x 1'.

3. Contusion right side forehead 2' x 1'.

4. Lacerated wound vertex 2' x 1'.

5. Bleeding from the nostrils and complains haemolysis.

6. Complains pain on the left hand and the lacerated wound on the left parietal.

P.W. 23 directed X-ray to be taken of the appellant. He was admitted as an in-patient. She has opined, that the injuries found on the appellant, could have been sustained, in the manner and time alleged. She had not expressed any opinion in respect of the nature of injuries sustained by the appellant, and had stated that she would be in a position to offer any opinion only after seeing the case sheet and the subsequent treatment given to the injured at the Hospital. P.W. 22 went to the electric train yard along with the official Photographer, P.W. 16 at 5.30 p.m. on the same day. P.W. 16 took photographs of the first and second class compartments bearing Nos. 12252 and 12502. P.W. 22 also prepared an observation mahazar Ex.P. 32 attested by Narsimhan and sridar, not examined. P.W. 22 noticed bloodstains in both the compartments. He scrapped the bloodstains and seized them under the mahazar Ex.P. 33. He also prepared the sketches of the railway compartments, Exs. P. 34 and P. 35. M.O. 21 series are the photographs of the compartments. At or about 6 p.m. P.W. 22 went to the Government General Hospital over again. He recorded the statements under section 161 of the Criminal Procedure Code from P.W. 1 as well as P.Ws. 2 and 4 to 6, Inspector Sundaramurthy, and Dr. Kannan, P.W. 20. Later in the evening he recorded the statement of P.W. 17 and others. On the same night at Ponneri, he examined P.W. 3, the Judicial Second Class Magistrate. On his requisition, the appellant, who was an in-patient in the Stanley Medical Hospital, Madras, was remanded by P.W. 3. P.W. 22 forwarded the bloodstained articles seized during investigation, through the Judicial Second Class Magistrate, Ponneri, for Chemical analysis.

12. Reverting back to some more facts, the prosecution has exhibited the judgment pronounced by P.W. 1 In E.A. No. 384 of 1984 as Ex.P. 5. P.W. 1 who was admitted in the Hospital on the date of occurrence had to be an in-patient for a period of six months and one week. Due to the injuries sustained by him, even after treatment, P.W. 1, used to experience blackout in his eye-sight, sweating and incessant giddiness, resulting in his inability to perform his duties, as efficiently as done earlier. Apart from P.W. 17, P.Ws. 2 to 6 have also been examined as eye-witnesses. P.W. 10, Bakthavatsalu was a guard of the train, in which P.W. 1, was travelling on 25-4-1986. He had seen P.W. 1 running towards the station-master's room from near the first class compartment. He had also noticed a person chasing him and cutting him with a koduval. When P.W. 10 went to the room of the stationmaster to telephone about the stoppage of the train he found P.W. 1 with bleeding injuries on the neck and hands. P.W. 1 was seen by him being taken out of the railway station by a few persons. The compartment in which P.W. 1 had travelled was sealed by P.W. 10. Before sealing he noticed a suit case inside the compartment which he handed over to a boy nearby with a direction to entrust it to the appellant.

13. P.W. 15, the Amin attached to the Court of the District Munsif, Ponneri, has deposed about his having evicted the appellant in pursuance of the orders in R.C.O.P. No. 34 of 1982.

14. P.W. 18 the Head Clerk attached to the Court of the Judicial Second Class Magistrate, speaks about the bloodstained articles M.Os. 2 to 5 seized during investigation having been sent for chemical analysis and report, to the laboratory and the receipt of the reports after analysis. Ex.P. 18 is the report of the Chemical Analyst and Ex.P. 19 is the report of the Serologist. Similar the Court forwarded the blood scrapings from the train M.O. 20 and the sample scrapings M.O. 21 from the compartment and bloodstained earth M.O. 17 and sample earth M.O. 18 to the laboratory for analysis and report. Exs. P. 24 and P. 25 are the reports of the Chemical Analyst and Serologist respectively. The blood found on the clothes of the accused, the koduval and the scrapings at the Ennore Railway Station and the train compartment, were found to be of human origin.

15. P.W. 14 Dr. Dhanaraj had deposed that P.W. 1 who was admitted in the Government General Hospital on 25-4-1986, was treated as an in-patient till 2-11-1986. At the time of discharge, P.W. 14 issued the certificate Ex.P. 12. The discharge summary regarding the patient has been marked at Ex.P. 13. The X-rays taken, 40 in number, have been produced as M.O. 20 series. He has deposed as follows :-

'On the basis of the injuries sustained by the patient noted in the Accident Register at the time of his admission in the Hospital and also on the basis of the subsequent treatment given to the patient at the hospital I have given my opinion as both injuries of grievous in nature. Almost all the injuries sustained by the patient in that alleged occurrence are grievous in nature. All the grievous injuries sustained by the injured P.W. 1 would possibly having caused by a weapon like M.O. 2 Multiple head injury generally endanger the life of the person who sustained a these injuries, the injuries found on P.W. 1 have created permanent disabilities. Because of these permanent disabilities P.W. 1 is having restricted movements in both of his hands. Because of the head injuries sustained by P.W. 1 out of this alleged occurrence even after treatment he will be having sometimes giddiness, and blackout of eyes.'

16. The subsequent investigation was taken over by the Inspector of Police, Ennore Police Station, Thiru Masilamani, examined as P.W. 24, P.W. 24 took up investigation on 3-5-1986. He examined P.W. 1 on 4-5-1986 and he examined over again some of the other witnesses during the course of his investigation. He examined over again P.W. 3, 4, and 5. He examined the Medical Officers and after completion of investigation, filed the final report before the Judicial Second Class Magistrate, Ponneri on 30-11-1986.

17. The Appellant, when questioned by the trial Court under section 313 of the Criminal Procedure Code, denied his complicity in the crime. He stated that the prosecution witnesses had uttered falsehood. P.W. 15 had dispossessed him contrary to the order of interim stay obtained by him. The motor cycle and the articles seized by the police along with the brief case belonged to him; but they were taken away from his house. He was beaten under a wrong assumption. He

admitted having been sent to Stanley Medical Hospital for treatment and his remand to the Judicial custody thereafter. He has further stated that the police had beaten him and he was innocent. Though initially he represented that he had witnesses to be examined on his side, later he gave up that stand. However, he had marked Exs. D. 1 and D. 2.

18. The learned trial Judge, on an appreciation of the oral and documentary evidence, found the appellant guilty of all the three charges and dealt with him as stated earlier.

19. The only point which deserves consideration in this appeal, is whether the prosecution has established the guilt of the appellant beyond reasonable doubt ?

20. Mr. N. Jothi, the learned counsel, appearing for the appellant, contended that the trial Court, as Assistant Sessions Judge, had no power to impose a sentence of 11 1/2 years, which included the default sentences and, therefore, in view of the exceeding of jurisdiction by the trial Judge, the whole judgment was vitiated, necessitating its being set aside. He further contended that the compartment in the train can never be construed as a building used as a human dwelling or a place of worship or a place for custody of property and further it cannot be deemed to be the property in the possession of P.W. 1 to attract the ingredients of Section 452, I.P.C. On that sole ground, conviction for the offence under section 452, I.P.C. will have to be necessarily set aside. In respect of the offence under section 333, I.P.C., he urged that the public servant was not attacked in the discharge of his duty as such public servant or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant and, therefore, the prosecution had not established the offence under this section as well. With regard to the offence under section 307, I.P.C., it is his submission, that the prosecution had suppressed material evidence and indulged in exaggerated versions at every stage, casting a suspicion, that the entire truth had not been placed before the Court, which would be sufficient to enter a verdict in favour of the appellant. He referred to the evidence of some of the witnesses to substantiate his contention, which will be referred to a little later. He also contended, that the injuries on the accused had not been explained by the prosecution, which was an

additional factor enuring in favour of the appellant. According to him, Ex.P. 6 cannot be treated as the first in formation report, since the telephonic message of P.W. 17 had reached P.W. 22 much earlier and he had commenced investigation as well, on such telephonic message. Ex.P. 6, according to him, would be hit by section 162 of the Criminal Procedure Code. He pointed out that Ex.P. 12, the discharge certificate, had been produced by P.W. 14 for the first time when he was in the witness box, and that had substantially prejudiced the defence. He would rely on the remand report Ex. D. 2 and submit that if; as stated therein, the appellant had travelled from Kathivakkam Railway station, the present prosecution version, as though he had commenced the journey only from Ennore Railway Station will have to be rejected. He would point out the hostility of P.Ws. 8 and 9 and contend that there was infirmity in the prosecution case, in every facet.

21. On the evidence of eye-witnesses, he submitted that P.W. 2, an Engineer, who had travelled even without a ticket and whose statement could not have been recorded during investigation as claimed by P.W. 22, smacks improbability of his having been an eye-witness to this incident, especially when P.W. 2 had not been mentioned by P.W. 1 in the first information report. He would urge that P.Ws. 3 to 6 had given prevaricating answers and somehow had chosen to support the version of P.W. 1. He would also submit, that the appointment of a special Prosecutor to conduct this prosecution; taken along with the case properties having been sent for chemical analysis through a Magistrate, who is a witness in this case, coupled with the examination of witnesses in Court before appointment of counsel by the accused, necessitating the appellant approaching this Court for transfer, would indicate as a special procedure adopted in this case, since a judicial officer happened to be the victim. He would further contend, that the general diary of the Central Railway Police Station had been purposely suppressed in spite of repeated orders and that taken along with, confiscation of the motor cycle belonging to the appellant, which was not the subject-matter of the offence, would positively show that at every stage prejudice to the appellant was patent. Finally, he contended that on the aspect of sentence, this Court cannot overlook, excessive sentence awarded, which is rather unusual in a case under section 307, I.P.C. and further the possible reformation of the appellant, cannot be ignored, especially when he has repented for his act, through his counsel.

22. Mr. G. Krishnamurthy, the learned Additional Public Prosecutor appearing on behalf of the Respondent would contend that the default sentence awarded for non-payment of fine will merely be a penalty and cannot be taken along with the substantive sentence imposed for the offence and, therefore, the contention of lack of jurisdiction, in the trial Court to award default sentence over and above 10 years imposed for substantive offences, could not be said to be illegal or without jurisdiction. He would strenuously urge that P.W. 1, a first class pass holder, was legitimately travelling in the train, and entering into that compartment by the appellant, would be trespass sufficient to attract the ingredients of Section 452, I.P.C. In respect of the offence under section 333, I.P.C., it is his contention that the appellant had voluntarily caused grievous hurt to P.W. 1, a public servant, in consequence of something done by that person in the lawful discharge of his duty as such public servant. He would substantiate it by submitting that the public servant, P.W. 1, had passed an order, dismissing E.A. No. 384 of 1984 against the interests of the appellant in the lawful discharge of his duty as a public servant, which was referred to by the appellant while attacking P.W. 1. In respect of the offence under section 307, I.P.C., he would submit that the very words of the appellant while he attacked P.W. 1, that he can deliver no more judgment coupled with P.W. 1 having been chased and attacked would be sufficient to sustain the conviction, on this count. He would emphatically argue that in a day light occurrence where the appellant had been caught red handed and the prosecution had substantiated the occurrence by examining several eye-witnesses, there was practically no scope for suppression of any material evidence by the prosecution to either gain undue advantage, because the victim was a Judicial Officer, or to cause prejudice to the case of the appellant. On the question of sentence, he submitted that the Court can take note of the motive and the manner of attack and decide the suitable sentence that could be awarded and the State as contended by the learned counsel for the appellant was not vindictive.

23. Before entering into a detailed discussion on the inherent merits of the prosecution case, it would be better to initially dispose of the argument relating to lack of jurisdiction of the trial judge in having imposed 11 1/2 years imprisonment totally, 1 1/2 years over and above the substantive sentence of 10 years awarded.

24. Section 63 of the Indian Penal Code reads that where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive. Section 64 of the Indian Penal Code refers to sentence of imprisonment for non-payment of fine. The section reads as hereunder :-

'64. Sentence of imprisonment for non-payment of fine - In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine.

It shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.'

It is apparent that the default imprisonment, would be in excess of any other imprisonment to which the person may have been sentenced or to which he may be liable under a commutation of a sentence.

25. Turning to the relevant provisions of the Criminal Procedure Code, Section 28(3) provides, that an Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years. Therefore, the Assistant Sessions Judge will be competent to sentence an accused to undergo imprisonment for ten years. That is exactly what the trial Judge had done in this case, while sentencing the appellant to undergo ten years' rigorous imprisonment under charge 2 framed for an offence under section 307, I.P.C.

26. Section 30 of the Criminal Procedure Code refers to sentence of imprisonment in default of fine. It is worthwhile to extract the section :-

'30. Sentences of imprisonment in default of fine - (1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law.

Provided that the term -

(a) is not in excess of the powers of the Magistrate under section 29;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under the section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 29.'

A reading of the section makes it clear, that the provisions contained therein are applicable only to Magistrate and not the other Courts. This is quite in consonance with Section 29 of the Code, which deals with sentences which a Magistrate may pass. Section 29 of the Criminal Procedure Code prescribes, the maximum limit of fine, apart from the sentence of imprisonment, the various classes of Magistrate can impose. As far as the Chief Judicial Magistrate and the Chief Metropolitan Magistrate are concerned, the maximum sentence of fine had not been prescribed, thereby implying that they have powers to award the sentence of fine without limit, as in the case of the Courts contemplated in Section 28 of the Criminal Procedure Code. Section 31(3) of the Criminal Procedure Code was specifically relied upon by the learned counsel for the appellant, to contend that for the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under that section should be deemed to be a single sentence and, therefore, it must be deemed that the appellant had been sentenced to 11 1/2 years rigorous imprisonment, for the default sentence will run consecutively with the substantive sentence of imprisonment awarded. On this aspect, certain decisions were placed before me.

27. A Full Bench of this Court in Reg. v. Muhammad Saib, ILR (1877) Mad 277 held that the Cantonment Magistrate, who had imposed a sentence of fine of Rs. 25/- each on two persons convicted by him for committing an affray, an offence punishable under section 160 of the Indian Penal Code and sentenced to pay a fine of Rs. 25/- each, in default to undergo rigorous imprisonment for 30 days, had not committed any illegality. Referring to Section 309 of the then Criminal Procedure Code (corresponding to Section 30(1)(a) of the present Code) the Full Bench took the view that where a person was sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as was allowed by law, provided the amount does not exceed the Magistrate's power under the Act. It was also stated in the ruling that it appeared to the High Court that the proper construction of this clause was as follows :-

'If imprisonment and fine, and further imprisonment in default of payment of fine is the sentence, the imprisonment in default cannot exceed one-fourth of the period of imprisonment which the Magistrate is competent to inflict for the offence, but if the sentence is fine only, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence, but if the sentence is fine only, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence.'

However, a Full Bench of the Allahabad High Court in the Empress of India v. Darba, ILR (1877) All 461 differed from the Madras view and held that in the case of canal offence, which was punishable with fine and imprisonment, the maximum period of imprisonment in default of payment of fine allowed by law was one-fourth of one month, and if the Magistrate punished an offender for such an offence with fine only, he could award, in default of payment of the fine, no longer term. In that case the accused were convicted for an offence under section 70 of the Northern Indian Canal and Drainage Act, Act VIII of 1873, and sentenced to pay a fine, but the sentences of imprisonment awarded in default of payment of the fine inflicted were all in excess of one-fourth of the maximum period of imprisonment allowed by Section 70 of the Act.

28. In a later Full Bench of this Court in Queen Empress v. Venkatesagadu, ILR (1887) Mad 165 this Court overruled the earlier decision in Muhammad Saib's case, ILR (1877) Mad 277. The Full Bench held that the construction adopted by the Allahabad High Court in the Empress of India v. Darba, ILR (1877) All 461 was a natural construction. In Venkatesagadu's case, ILR (1887) Mad 165 the Second Class Magistrate sentenced the accused to pay a fine of Rs. 10/- in default to suffer one month simple imprisonment for an offence under section 510, I.P.C., Section 510, I.P.C. provided punishment which may extend to twenty-four hours simple imprisonment or with fine which may extend to Rs. 10/- or with both. This Court held that the sentence as it stood was illegal.

29. In re, Kanda Moopan, AIR 1937 Madras 406 : (1937-38 Cri LJ 796). Pandrang Row, J., held that order directing sentence of imprisonment in default of fines to run concurrently was illegal.

30. To the same effect is the ruling of the Lahore High Court in Emperor v. Chanan Singh, AIR 1940 Lah388 : 1941 Cri LJ 33

31. In Ram Jas v. State of U.P., : 1974 CriLJ1261 the Supreme Court construing Section 65 of the Indian Penal Code, held that if the conviction was altered by the appellate Court maintaining the sentence of fine, in the absence of direction as to imprisonment in lieu of fine, the period of imprisonment fixed by the trial Court in lieu of fine, had to be taken as impliedly affirmed. Such period if in excess of one-fourth of the maximum fixed for the offence, under altered conviction, it would be illegal.

32. In Chhajulal v. State of Rajasthan, : 1972 CriLJ1184 the Supreme Court, while dealing with Sections 32 and 33 of the Criminal Procedure Code and Section 65 of the Indian Penal Code, held that Section 65 of the Indian Penal Code only fixed a maximum period of imprisonment which could be awarded for default of payment of fine, whenever any Court convicted. On the other hand, Section 33 of the Criminal Procedure Code governed specifically the powers of the Magistrates on this matter. A Magistrate cannot award imprisonment by resorting to Section 65 of the Indian Penal Code, because his powers for awarding imprisonment are limited by Section 32 of the Criminal Procedure Code. Sections 32 and 33 of the Criminal

Procedure Code will have to be read together.

33. In Emperor v. Mitho Maroo Machi, AIR 1942 Sin 80 : 1942 Cri LJ 779. A Division Bench, dealing with Section 35 of the Criminal Procedure Code and Section 64 of the Indian Penal Code, held that if sub-stantive sentence of imprisonment with fine was imposed, the sentence in default of payment of fine must be consecutive to the substantive sentence of imprisonment.

34. All these cases do not support the contention raised by the learned counsel for the appellant, since they concerned themselves with the quantum of default sentence, that could be imposed. There is no dispute that the default sentence imposed by the trial Judge, is within his powers, for the respective offences for which the sentence of fine had been imposed, apart from imprisonment.

35. In cannot be overlooked, that the term of imprisonment in default of payment of fine, cannot be deemed to be a sentence, but a penalty, which is incurred on account of non-payment of fine. A sentence is something which must be undergone unless it is remitted in part or in whole, on appeal or otherwise. When however, a term of imprisonment is imposed in default of payment of fine, the accused may always avoid it, by paying the fine. In such a case, of sentence of fine, the imprisonment in default is merely a penalty for non-payment of fine. Therefore, the imprisonment awarded in the event of default of payment of fine, cannot be added up to the substantive sentence of imprisonment to negative the jurisdiction of the trial Judge and contend that 11 1/2 years rigorous imprisonment had been awarded. Section 31(2) of the Criminal Procedure Code, will also be relevant. It reads, that in the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court, provided in no case such person shall be sentences to imprisonment for a longer period than fourteen years and the aggregate punishment did not exceed twice the amount of punishment, which the Court was competent to inflict for a single offence.

36. Section 30 of the Criminal Procedure Code makes Sections 64 and 65 of the Indian Penal Code applicable not only to offences punishable under the Penal Code, but to offences punishable under any law in force for the time being. Section 30 does not extend the period of imprisonment which may be awarded under section 65 of the Indian Penal Code, otherwise they would not be confined to Magistrate, but would be extended to all Criminal Courts. The provisions were enacted to regulate the proceedings of the Magistrates whose powers are limited.

37. The first hurdle having been crossed, the recorded evidence will have to be carefully scrutinised, to find out whether the prosecution has established the guilt of the appellant beyond doubt.

38. While appreciating the evidence, certain basic facts cannot be overlooked. The occurrence was in broad day light, witnessed by several ocular witnesses. The assailant was caught, even while he was attacking the victim and kept under guard to be handed over to the investigating agency. The seizure, of the weapon of offence and certain other articles belonging to the appellant, was made at the scene soon thereafter. Further there is no doubt that both the victim P.W. 1 and the appellant had sustained injuries, during the same occurrence.

39. The prosecution has examined apart from the victim P.Ws. 2 to 6, 10 and 17 as eye-witnesses to the incident. These ocular witnesses, who were all travelling in the train of which P.W. 10 was the guard, had seen some part of the occurrence, though not the whole. However, they had seen the appellant inflicting cut injuries on P.W. 1 with the Koduval, M.O. 2.

40. Of these eye-witnesses, the learned counsel for the appellant took me extensively through the version of P.W. 17, a Railway Reserve Constable, who had travelled in the same first class compartment along with P.W. 1. P.W. 17 had deposed that he got into the train along with another police constable 209 at Korukkupet, in the first class compartment where P.W. 1 was seated. P.W. 17 has fixed the presence of P.W. 2 in the said compartment. As soon as the train started at Ennore Railway Station, a person wearing a cement colour pant and shirt with an identical coloured suit case, got into the compartment and stood at the entrance. After the train, started moving, the person, who got into the train, offered

his respects to P.W. 1, who reciprocated. Soon thereafter, the person, who got into the train identified as the appellant, placed the suit case on the seat and removed out of it a koduval 1 1/2 in length and stating 'Have you given a judgment against me, you shall not give judgments like that against anybody hereafter', cut on the head of P.W. 1. The cut fell on the wire mesh in the compartment and then landed on the head of P.W. 1. P.W. 17 attempted to catch hold of the appellant but before that, the latter had inflicted two more cuts on P.W. 1. P.W. 2 also joined P.W. 17 to restrain the appellant; but the appellant waving his koduval attempted to cut them. Meanwhile P.W. 1 go out of the compartment and went towards the station-master's room, shouting 'he is cutting'. The appellant chased P.W. 1. After witnessing this part of the occurrence, P.W. 17, informed over the telephone from the office of the A.S.I. to P.W. 22, the Inspector of Police, Central Railway Station. On coming out from the office of the A.S.I., soon after telephoning to. P.W. 22, he found that the appellant had been caught by the Public and kept near the first class waiting room. The appellant had also injuries on him. P.W. 1 who was tottering due to the injuries sustained by him, was being taken out off the railway station by three Magistrates. The train in which P.W. 1 travelled left the station after sometime and before that P.W. 10, the railway guard had sealed the compartment. A little later, P.W. 21, the Sub-Inspector of Police, arrived at the railway station and P.W. 17 along with P.W. 21 awaited the arrival of P.W. 22, the Inspector of Police, Central Railway Police Station. It has been elicited in cross-examination of P.W. 17 that while he gave the message, he did not inform that the victim was a Magistrate and all that he was able to say was that one person had cut another. A contradiction was pointed that the first paragraph of Ex.P. 29 read as though, that P.W. 17 (P.C. 345) had given a message entered in the General Diary stating, that Balaraman (who was the assailant) had cut indiscriminately the Pon neri District Munsif in the compartment and the platform, at Ennore Railway Station, resulting in tension and disturbance and that the accused Balaraman had been beaten and apprehended by the public. This contradiction can have no relevance, since P.W. 17 had deposed in Court more than a year and a half after the alleged occurrence and these minute details, may not have stuck in the memory of P.W. 17. When the fact remains that P.W. 17 had given a message to P.W. 22, that the assailant had been caught, while the victim had been sent to the

hospital, nothing serious can turn out, on this alleged discrepancy. It was also pointed out that, according to P.W. 17, P.W. 21 had arrived at Ennore Railway Station only after the train had left, but still P.W. 17 would have it that he saw P.W. 2 talking with P.W. 21 at the railway station, which could not be true, for admittedly P.W. 2 had left in the same train, for Gummudi-pundi. It was further pointed out that Ex. D. 2 the remand report showed that the appellant was travelling in the train even from Kathivakkam, a railway station situated before Ennore Railway Station between Madras and Ennore and, therefore, if the appellant had been in the train earlier, he could not have got into the train for the first time at Ennore Railway Station and, therefore, the evidence of P.W. 17 had to be suspected. The admission of P.W. 17, that he could not normally travel in a first class compartment, was also pressed into service to discredit his version. I am of the view that the discrepancies pointed out are minor and immaterial and they do not affect the crux of the prosecution case. P.W. 17 had admitted that though he cannot normally travel in the first class compartment, due to crowd he got into the first class compartment, since he was in uniform. It is a matter of common experience that such things happen. In the remand report it has been stated that the accused was travelling in the train from Kathivakkam, but it does not say that he was travelling in the same compartment as the victim, from Kathivakkam. P.W. 22 had prepared the remand report, on the evidence collected till then during investigation. It may be that the appellant travelled from Kathivakkam in another compartment, for in the evidence, it is clear as deposed to by P.Ws. 1, 2 and 17 that the appellant had got into the first class compartment only at Ennore Railway Station. There is overwhelming evidence connecting the appellant with the crime inclusive of his having been apprehended soon thereafter and, therefore, these contradictions though do exist, cannot exculpate the appellant from the crime.

41. The learned counsel for the appellant was unable to seriously challenge the ocular version of the other eye-witnesses including the victim. As far as the victim is concerned, he contended, that the presence of P.W. 2 had not been mentioned in the first information report and specifically the words alleged to have been used by the appellant while he had attacked him had not been mentioned in the earliest document. If we take note of the shock and fright that should have been experienced by P.W. 1, who had been mercilessly attacked, resulting in several

injuries, the non-mention of these details, cannot be taken to throw a doubt on the substratum of the prosecution case, which is not only natural, but rings true as well.

P.W. 17 has corroborated the version of P.W. 1, that the appellant had stated those words, that he would make P.W. 1 not to write such judgments any more, while inflicting the cuts. I am satisfied that P.Ws. 1 and 17 had spoken the truth, not only relating to the words spoken by the appellant during the course of the attack, but also its subsequent facets. Of the other eye-witnesses, P.W. 3 was the then Judicial Second Class Magistrate at Ponneri, while P.W. 4 was the Sub-Divisional Judicial Magistrate, Ponneri. P.W. 5 was the Assistant Public Prosecutor in the Court of Sub Divisional Judicial Magistrate, Ponneri, while P.W. 6 was an Advocate practising in the Courts situated at Ponneri. These four witnesses were travelling in a second class compartment from Madras, their destination being Ponneri. P.W. 4 alone had got into the train at Basin Bridge Junction. All these witnesses have uniformly deposed, that at the Ennore Railway Station at or about 9.45 a.m. when the train had halted, they heard a noise, which made them to peep out. They found P.W. 1, who was bleeding in his head, face, and neck, running towards the room of the Station Master shouting 'he is cutting'. They also found the appellant running behind P.W. 1 with a koduval 1 1/2 in length. They attempted to obstruct the appellant by getting out of the compartment, but they failed in their attempts, since the appellant was brandishing the koduval. They actually saw the appellant cutting P.W. 1 not only in the platform, but also in the second class compartment where P.W. 1 took refuge after he found, that the room of the Station Master had been locked. P.Ws. 3 to 5 had taken the victim to the Government General Hospital in a mini bus provided by P.W. 21. Except a general suggestion that these witnesses were desirous of helping a Judicial Officer and, therefore, had uttered falsehood, nothing further has been alleged against them. The presence of these witnesses appears to be natural and the further fact of P.Ws. 3 to 5 having taken the injured from Ennore Railway Station to the Government General Hospital, which had been noticed by several of the witnesses, affords additional assurance that they must have seen the incident as spoken to by them. It is rather unfortunate that P.W. 3 had received the first information report from the investigating agency in his Court and had also chosen to reject the petition filed by

the appellant for the return of the motor cycle, though he must have been aware that he was an eye-witness to the incident. It appears that P.W. 3 was under the bona fide impression, that in the course of his discharge of duties he had to receive the first information report and pass orders in the return of property petition, though he had taken steps after the filing of the final report, to have the committal proceedings transferred to some other Court. Equally P.W. 4 could have been a little more vigilant in not having accepted the referred charge sheet in the complaint preferred by the appellant in respect of the same incident, since justice must not only be done, but also must appear to have been done. P.Ws. 3 and 4 should have avoided the roles they had played in receiving certain records during investigation. However, I am unable to attribute any sinister motive to these two public servants, who had meticulously deposed about all that they had seen.

42. As far as P.W's 5 and 6 are concerned, one an Assistant Public Prosecutor and the other a member of the Bar, nothing serious had been elicited to discredit their versions. Their versions proclaim them to be witnesses of truth. P.Ws. 5 and 6 fully corroborate P.Ws. 3 and 4. The names of P.Ws. 3, 5 and 6 had been stated even in the first information report.

43. As far as P.W. 2 is concerned, who is an Engineer working in the Public Works Department at Gummudipundi, the comment was that he had travelled without a ticket and his name does not find a place in the first information report. It was also commented, that though P.W. 22 claims to have examined him at the General Hospital between 7.30 and 8 p.m. on the date of the occurrence, P.W. 2 would have it, that he was examined by a Police Inspector at his office, on the next day. This contradiction is, of course, there. We cannot overlook that P.W. 2 had admitted that he was available at the Government General Hospital on the evening of the occurrence. It was on the same day at the Hospital P.W. 22 had examined the other witnesses, P.Ws. 3 to 6. Therefore, it is quite possible that P.W. 2 was also examined along with other witnesses at the Government General Hospital, since his statement had also reached the Court along with the statements of the other eye-witnesses, on the same date. The non-mentioning of the name of P.W. 2 in the first information report is not a serious lacuna, since P.W. 1 was in great distress when his complaint was recorded. The reason why P.W. 2 had to travel

without a ticket on that particular day had not been elicited. The presence of P.W. 2 had been affirmed by P.W. 17. I do not have any doubt, that P.W. 2 as confirmed by P.Ws. 1 and 17, must have travelled in the compartment along with them on the fateful morning. Even if the version of P.W. 2 is erased from consideration, the other evidence on record is clear, consistent and overwhelming, that the omission of the version of P.W. 2, would not in any event, make a difference while deciding the guilt or otherwise of the appellant.

44. P.W. 10 the Guard of the train in which P.W. 1 was travelling on 25-4-1986, has deposed to the limited extent that he saw a Judge going towards the room of the Assistant Station Master and the appellant cutting him. P.W. 10 proceeded to the office of the Assistant Station Master to inform his higher authorities about the stoppage of the train at Ennore Railway Station. He noticed a police man conversing over the phone with them. He saw P.W. 1 with injuries near his neck and on his hands. He further noticed the bloodstained Judge being taken from the second class compartment, outside the railway station. He has spoken about the sealing of the First Class Compartment before the train left Ennore Railway Station. His evidence in relation to that part of the occurrence witnessed by him is certainly credible.

45. If the eye-witness account can be unhesitatingly accepted, nothing further would be needed to find the appellant guilty. However, the learned counsel for the appellant pointed out that P.Ws. 8 and 9, who were examined to speak about the throwing of the drum M.O. 6 at the accused or having beaten him with an iron rod had not supported the prosecution version. I have perused the evidence P.W. 8 and 9. It is not, as though, they have deposed in favour of the accused. All that they had said is that they were remand prisoners in the same jail where the appellant had been kept and only after they were freed from jail, they would be able to depose in this prosecution. It looks as though that both the witnesses were afraid that harm would befall them if they chose to depose against the appellant, who was a co-prisoner with them.

46. The seizure of the weapon of offence and the suit case of the appellant containing several other articles not only fixes the presence of the appellant at the

scene, but also supports the manner in which the appellant had entered into the train, taken out the koduval from the suit case and had thereafter attacked P.W. 1.

47. The medical evidence furnished by P.Ws. 19, 20 and 14 certainly support the oral evidence of the ocular witnesses in confirming the portroyal of the occurrence as putforth by the prosecution. P.W. 19 Dr. Rathinaswamy, had seen the injured initially and he had noticed five incised injuries on the head. Injuries 3, 4 and 5 are these incised injuries, Injury No. 3 itself accounting for three incised injuries on the left occipital region crossing each other 5' each. P.W. 19 had also noticed incised injuries on the left and right hands of the victim, coupled with right little finger and ring finger severed at distal phalanx level and loss of part of nail of the middle finger. P.Ws. 20 and 14 had treated P.W. 1. It is also apparent from the medical evidence that P.W. 1 was an inpatient in the hospital from 25-4-1986 till 2-11-1986. Further the medical evidence discloses, that certain permanent disabilities had resulted to P.W. 1, in view of the attack by the appellant. The bloodstains taken from the scene of occurrence and from the compartment further lend assurance to the truth of the prosecution case. The apprehension of the accused at the scene immediately after the incident, coupled with the injuries sustained by him due to the attack by the public in general, further affirm that the appellant and the appellant alone was the assailant of P.W. 1.

48. The learned counsel for the appellant contended that the injuries on the accused had not been explained and that would constitute a serious lacuna. I am unable to agree. The prosecution had come out with a version that the accused was assaulted by members of the public at the Ennore Railway Station platform, soon after he was disarmed by the throw of the drum M.O. 6. at him. The medical evidence furnished by Dr. Poongothai, P.W. 23, affirms that the accused could have sustained injuries at the time and in the manner as put forth by the prosecution.

49. The next argument of the learned counsel for the appellant, which needs consideration, is about the suppression of the earlier reports regarding the incident and the non-admissibility of Ex.P. 6 as the first information report, since it would be hit by Section 162 of the Criminal Procedure Code. The first information report is a

well-known technical description of a report, under section 154 of the Criminal Procedure Code, giving the earliest information of a cognizable crime. When the information which is first given to the police is vague or indefinite, it cannot be treated as one given under section 154 of the Criminal Procedure Code. Whether a particular information, would constitute F.I.R., will always be a question of fact, depending upon the circumstances of each case. A telephonic information received at the Police Station, need not in all circumstances be deemed to be the first information and when no formal investigation is commenced upon such an information, it cannot be held to be an information under Section 154 of the Criminal Procedure Code, and a statement recorded by the Police till they commenced investigation does not attract Section 162 of the Criminal Procedure Code. On facts, it is apparent, that after the receipt of the telephonic information, P.W. 22 was awaiting the arrival of the victim at the Stanley Medical Hospital to record the first information from him and since it was learnt later, that the victim had been taken to the Government General Hospital, Madras, he had promptly proceeded there and recorded the information from P.W. 1. That the entire facts, had been placed before the Court, even at the initial stage, is apparent from the fact the message of P.W. 17, forming part of the printed F.I.R. marked as Ex.P. 29. As contended by the learned counsel for the appellant, it is true that the general diary of the Central Railway Police Station had not been produced in spite of Court's orders and the reason given therefor was, that it was not traceable. There can be no doubt that if the General diary had been produced, it would have certainly dispelled unnecessary suspicion. However, on facts unfurled in this case, there is nothing to be doubted and the entire happenings at the Ennore Railway Station is on record, crystal clear, natural and cogent that any other alternate theory, will be absolutely impossible.

50. The motive for the occurrence has also been established through the evidence of P.Ws. 1 and 15. P.W. 15 is the Amin who had dispossessed the appellant in pursuance of the earlier orders of the predecessor of P.W. 1 and P.W. 1 had himself dismissed the prayer for restoration of possession, sought for by the appellant on 7-2-1986, proved by Ex.P. 5, the judgment pronounced by P.W. 1. This motive showing the animosity of the appellant towards P.W. 1, gets exhibited by the words attributed to the appellant, before he attacked P.W. 1.

51. Having found that the appellant, was the author of the crime, the nature of offence committed by him needs probe. To postulate an offence under section 452 of the Indian Penal Code, it has to be established :

(a) That the accused committed house trespass :

(b) That the same was committed after making preparation for causing hurt to, or for assaulting or for wrongfully restraining, some person, or for putting some person in fear of hurt, or of assault, or of wrongful restraint.

House trespass itself, has been defined in Section 442 of the Indian Penal Code. A person, who commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for custody of property, is said to commit 'house trespass'. Criminal trespass would be complete if a person enters into or upon the property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. Criminal trespass will also take in its fold, lawful entry into or upon such property, but unlawful remaining therein, with the aforesaid mens rea. Trespass into property, which it is so desirable to guard against unlawful intrusion, as the habitation in which men reside and the building in which they keep their goods was designated as an aggravated from of a criminal trespass. The word 'vessel' has been defined in Section 48 of the Indian Penal Code to denote anything made for the conveyance by water of human beings or of property. The train compartment in which P.W. 1 was travelling is neither a building, tent or vessel used as a human building or a place for worship or a place used for the custody of property. It cannot also be stated that the train compartment was the property in the possession of P.W. 1, to attract the ingredients of this offence. The learned Additional Prosecutor would submit that P.W. 1, a first class pass holder had a legitimate right to travel in the compartment and the appellant, who entered into the compartment must be deemed to have trespassed, since his mens rea was to attack P.W. 1. Apart from there being no evidence as to whether the appellant did possess a season ticket or a train ticket to travel in the first class compartment. I am unable to hold that the first class compartment was the property in the

possession of P.W. 1, who had only a right to travel and that property could be christened as a building, tent or vessel used as a human building, place for worship or a place for custody of property. Therefore, the conviction of the appellant under section 452 of the Indian Penal Code cannot be sustained and he has to be necessarily acquitted of that charge. The conviction and sentence imposed on the appellant on charge No. 1 is, therefore, set aside and he is acquitted of that charge.

52. The offence under section 333 of the Indian Penal Code to my mind, has been established beyond doubt. The learned counsel for the appellant had placed before me two decisions to canvass the proposition, that on facts, the offence under section 333 of the to Indian Penal Code does not get attracted.

53. In D. Chattaiah v. State of A.P., : AIR 1978 SC1441 , the Supreme Court, while considering a charge under second Part of Section 332, I.P.C., held that the intent to prevent or deter a public servant from discharging his duties as such in public servant was an essential ingredient of the charge under the second part of Section 332, I.P.C. Where the facts disclose that a public servant was assaulted while in office, as a sequel of an earlier private quarrel and the assault had no real nexus or casual connection, or consequential relation with the performance of the Public Servant's duty as a public servant, the accused could not be charged and convicted under section 332, I.P.C. That was a case in which the complainant was a typist in a Panchayat. In the same office the accused were working as Health Inspector, Lower Division Clerk and Health-Worker, respectively. The First Information Report did not disclose that the incident was the outcome of anything connected with the performance of the complainant's duty as public servant. There was not even an obliquitous allegation, suggesting that he was assaulted with intent to prevent or deter him from doing his official duty.

54. In Suresh Narayan Roy v. State of Arunachal Pradesh, . The Gauhati High Court while considering the commission of an offence under section 353, I.P.C., held on facts that the assault on the public servant, was not committed in consequence of anything done or attempted to be done as a public servant, but was due to personal grudge against him.

55. To constitute an offence under section 333, I.P.C. it must be proved :

(1) that the accused voluntarily caused grievous hurt;

(2) that person so hurt was a public servant; and

(3) that such public servant was then discharging his duty or that the accused did so with intent to prevent or deter such public servant or any other public servant from discharging his duty, or the accused did so in consequence of something done or attempted to be done by such public servant, in the lawful discharge of his duty.

The first part of Section 333, I.P.C. cannot be attracted, since at the time when grievous hurt was caused to P.W. 1, he was not discharging his public duty. The second part of Section 333, I.P.C. can come into operation, because the appellant must be deemed to be aware of P.W. 1 travelling daily by electric train to reach Ponneri, to do his duty as a public servant, since he was at the relevant time, the District Munsif, Ponneri. The appellant by attacking P.W. 1 in the train, while the latter was on his way to discharge his duty as a public servant, the intention to prevent or deter P.W. 1 as contemplated in Section 333, I.P.C. can be deemed to have been spelt out. In any event, the third part of Section 333, I.P.C. is most certainly attracted, without any doubt whatsoever. The attack was in consequence of the judgment pronounced against the appellant, in the lawful discharge of his duty as a public servant by P.W. 1. The evidence of P.Ws. 1, 15 and 17 taken along with the words of challenge thrown by the appellant, while attacking P.W. 1 would clearly attract the third part of Section 333, I.P.C. The two rulings aforementioned obviously, therefore, cannot apply to the facts of this case. The conviction for an offence under section 333, I.P.C. imposed by the trial Court has to be necessarily confirmed.

56. The only charge, that remains for consideration relates to the offence under section 307, I.P.C. The evidence, to constitute an offence under section 307 of the Indian Penal Code, must disclose that the death of a human being was attempted and that death was attempted to be caused by or in consequence of the act of the accused and that such act was done with the intention of causing death or that it

was done with the intention of causing such bodily injury as the accused knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death or that the accused had attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury. To find a person guilty of an offence under section 407, (307 ?) I.P.C. actual injury on the victim may not be necessary. The totality of the circumstances will have to be taken note of by the Court to find out, if, on facts placed, an offence under section 307, I.P.C. was attracted. The intention or knowledge of the accused, must be such as was necessary, to constitute murder. The nature of attack on the victim, coupled with the words uttered by the appellant, that the victim would not be allowed to live for writing any more judgments, clearly postulate, the mens rea on the part of the appellant to do away with P.W. 1. I have no hesitation in holding that the trial Judge had rightly convicted the appellant for an offence under section 307, I.P.C.

57. The sentence to be awarded to the appellant for the offences under Section 333, I.P.C. and Section 307 of the Indian Penal Code, will have to be next considered. The stand taken by the defence and the prosecution has already been stated. The correlation between crime and punishment, has always been a subject of perennial problem. The question, that had agitated the Courts, the criminologists and social scientists was whether immediate aim of criminal law was to punish, with a view to deter likeminded persons or deter the wrong doer from repeating his conduct or reform him by suffering the pain of punishment. The society today has more or less eschewed retribution as an aim of punishment. Crime is now considered as a disease, a problem of social hygiene, in that the emphasis has moved from retribution to cure and reform and to reclaim the ailing member of the society, into the society itself. The modern approach to penology is that the sentence must inhere a humanitarian approach. This poses a complex problem requiring a compromise between reformation, deterrence and retribution. Disproportionately heavy sentence can be deemed arbitrary and at the same time too light a sentence bearing no proportion to the gravity of the offence charged, can bring the administration of criminal justice to ridicule. Soft sentencing justice, may even be gross injustice where many innocents are the potential victims.

58. The Supreme Court in Adamji Umar v. State of Bombay, : 1953 CriLJ542 observed that the determination of the right measure of punishment was often a point of great difficulty and no hard and fast rule can be laid down, it being a matter of discretion which is to be guided by a variety of considerations, but the Court has always to bear in mind the necessity of the proportion between an offence and the penalty. In imposing a fine it was necessary to have as much regard to the pecuniary circumstances of the accused persons as to the character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not accompany it, except in exceptional cases.

59. Keeping the aforesaid principles in mind, let us turn to the facts in this appeal. There cannot be a discordant note, if it were to be stated, that the motivated appellant, had vindictively attacked a public servant, since the latter's judgment delivered in the course of his duty as a public servant, went against him or was not to his liking. Imposition of light sentence, would bring the administration of justice, into scorn. At the same time the need to confirm a stringent sentence of ten years rigourous imprisonment may still deserve, diligent and careful scruting the (sic) of which must not only reflect firmness, but compassion as well. The trial Judge had taken note of the contents of a petition filed by the appellant on 20-8-1987 before the Assistant Sessions Judge, Trivellore, vowing vengeance against P.W. 15, the police official and others for the injustice rendered to him on 17-4-1984, when P.W. 1's predecessor had decided against him. A perusal of the records does not indicate, that while sentencing the accused, this memo had been put to him to elicit an answer. The learned counsel for the appellant contended that the memo was not voluntary and there was a background, under which it was coerced from him. The appellant has expressed his repentance through his counsel, which I am unable to brush aside as an insignificant factor. It has also to be kept in mind, that the appellant had not been released on bail after he was arrested on 25-4-1986 and the trial and the appeal had been conducted, while he continued to be incarcerated. The appellant has already spent about four years in jail. The appellant has also been acquitted of one count of charge, for an offence under section 452, I.P.C. Taking all these factors into consideration, I am of the view, that the sentence of imprisonment awarded under charge No. 2 for the offence under section 307, I.P.C. could be reduced from 10 years rigorous imprisonment

to 7 years rigorous imprisonment. The learned counsel for the appellant contended, that the appellant had not been in a position to pay the varying amounts of fine imposed on him. I do not think, that on facts any sentence of fine, has to be awarded. In that view, the sentences of fine imposed on the appellant under charges 2 and 3 are set aside. The sentence of imprisonment under charge No. 2 for an offence under section 307, I.P.C. is reduced from 10 years rigorous imprisonment to 7 years rigorous imprisonment. In respect of charge No. 1, for the offence under section 452, I.P.C., the appellant is acquitted. In respect of the third charge for the offence under section 333, I.P.C., I confirm the sentence of 3 years rigorous imprisonment imposed by the trial Judge. The sentences in respect of charges 2 and 3 shall run concurrently.

60. The return of M.O. 19, the Rajdoot Motor Cycle bearing registration No. T.M.Z. 615 admittedly belonging to the appellant, has been sought for. M.O. 19 has been confiscated by the trial Court, to the State. There is no evidence to show, that M.O. 19 has been used for commission of the crime. This fact is also conceded by the prosecution. I set aside the confiscation of M.O. 19 and direct its return to the appellant. This appeal is partly allowed.

61. Appeal partly allowed.

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