

**State, by Public Prosecutor and Another Vs. Selvaraj and Others**

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**Court :** Chennai

**Decided On :** Jul-17-1992

**Reported in :** 1994CriLJ705

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

**Appeal No. :** Cril. Appeal No. 302 of 1986 and Cril. RC No. 764 of 1985

**Appellant :** State, by Public Prosecutor and Another

**Respondent :** Selvaraj and Others

**Advocate for Def. :** Mr. S. Shanmughavelayutham, Addl. Public Prosecutor, ;Mr. K.V. Sridharan and ;Mr. P. Kulandaivadivelu, Adv.

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

**Judgement :**

**Maruthamuthu, J.**

1. The appeal and the revision had been filed against the judgment of the learned Sessions Judge, Kanyakumari District at Nagercoil in Sessions Case No. 32 of 1984 dated 30-8-1985 in acquitting both the accused.
2. There were two accused against whom four charges were being framed, all relating to one and the same transaction that took place on 28-1-1984 at about 9-

30 p.m. at Mylode, within the limits of Eranial police station.

The first charge was against A-1 under section 302, IPC on the allegation that he committed the murder of Dasan by stabbing him with a kattari knife.

The second charge was against A-2 under S. 302 read with S. 34, IPC on the allegation that he and A-1 had the common intention of committing the murder of Dasan and that in furtherance of the same, A-1 committed the murder of Dasan.

The third charge was against A-1 under S. 307, IPC on the allegation that he attempted to commit the murder of Verghese by stabbing him with kattari knife.

The fourth and the last charge was against A-1 under S. 307 read with S. 109, IPC on the allegation that A-2 committed the offence of abetment to murder by A-1 who stabbed Verghese with a kattari knife.

The accused pleaded not guilty to the charges. (Accused-1 and 2 who figure as respondents in the appeal and in the revision may be referred to A-1 and A-2 as arrayed in the Sessions Case).

3. The prosecution case in brief is as follows :

(i) One Savariyar Adimai residing at Mylode had four sons, namely, Rajamani, Verghese alias Anthonimuthu (P.W. 1), Selvaraj (A-1) and the deceased Dasan. The properties (a house and site of 12 1/2 cents with the trees therein) belonging to the family were not divided and they were being possessed and enjoyed by Savariyar Adimai and one of his sons, namely, Rajamani.

(ii) Savariyar Adimai himself was plucking the tamarind fruits from the tree standing in the land and did not give any share to P.W. 1 and the deceased Dasan. P.W. 1 was insisting on his father Savariyar Adimai to give tamarind fruits to the family of P.W. 1 also as he was giving the same to Rajamani and A-1. Since Savariyar Adimai was not inclined to give any share to P.W. 1 and the deceased Dasan in spite of their demands, there was enmity between both sides for about two years prior to the occurrence. On 11-4-1982, at about 6-30 p.m. a quarrel broke out between the deceased Dasan and P.W. 1 on one side and Savariyar

Adimai and Rajamani and others on the other over the division of the family properties. During that incident, P.W. 1 was attacked by Savariyar Adimai, Rajamani, his son Kalisthar and wife Marianesam and Vasantha, wife of A-1, with stick, aruval and stone. Thereupon, P.W. 1 proceeded to Eranial police station with the deceased Dasan and gave a complaint to Sasidharan (P.W. 16), Sub-Inspector of Police who registered a case in Crime No. 160 of 1982 under Sections 147, 148, 323, 324 and 336, IPC Ex. P-25 is the copy of the printed first information report in that case. Rajamani, son of Savariyar Adimai, Savariyar Adimai, Kalisthar, Murianesam and Vacantha were accused therein. Charge-sheet was laid in that case on 4-5-1982 after investigation. On 28-1-1984, the case was being tried in the Magistrate's Court at Thuckalay and P.W. 1 and the deceased Dasan gave evidence for the prosecution. A-1, though not an accused in that case, was present in Court and watching the proceedings. Deceased Dasan had gone to Thuckalay where he was running a cloth shop, after he gave evidence. P.W. 1 returned to his house in Mylode.

(iii) When P.W. 1 was proceeding in front of the ration shop of Chelladurai at about 5-00 p.m., A-1 came from the opposite direction and shouted, P.W. 1 became afraid of and ran into the ration shop of Chelladurai. Ambrose, Chelladurai, Ramalingam and Maria Soosai (P.W. 7) intervened and prevented A-1 from attacking P.W. 1. However, A-1 challenged and threatened that he would see P.W. 1 and went away. Sometime thereafter, P.W. 1 went to the house of his younger brother deceased Dasan which is 300 feet south of the ration shop mentioned above on Monday Market - Alagiyamandapam Road. The house of deceased Dasan with the compound is situate just west of the road. P.W. 1 was talking to Thangabai, wife of Dasan for sometime till about 8-00 p.m. when Dasan returned home. P.W. 1 reported to deceased Dasan what all happened in the evening in front of the ration shop of Chelladurai. They, at about 9-30 p.m. P.W. 1 and deceased Dasan wanted to go to the house of Annapushpam, their sister, situate at Alangode. At that time, Everster (P.W. 5) and Arumugham Asari (P.W. 6) were talking between themselves near the gate of deceased Dasan's house. P.W. 1 and deceased Dasan also talked to P.Ws. 5 and 6. When they left the house, the tubelight in the portico of the deceased Dasan's house was burning and it was spreading light even outside. At that time, A-1 and A-2 came from the south and

questioned P.W. 1 and deceased Dasan whether P.W. 1 and deceased Dasan were there only, but that the accused were making a search for them elsewhere. A-1 questioned the deceased Dasan whether he was in support of P.W. 1. So saying, A-1 stabbed the deceased Dasan on his left chest with a katari knife (M.O. 1) and pulled it towards the lower side with the result the intestines came out of the abdomen with bleeding. Deceased Dasan fell down. P.W. 1 tried to lift the deceased Dasan, but A-2 the friend of A-1, was standing behind P.W. 1 and prevented P.W. 1 from lifting the deceased. Then, A-1 tried to stab P.W. 1 saying that there would be solace to the family only if P.W. 1 is killed. The stab dealt by A-1 fell on the right upper arm of P.W. 1 at first. Again, when A-1 tried to stab P.W. 1 at his neck, the stab fell below the left iliac fossa. P.W. 1 fell down pressing the injury on the iliac fossa with his hands and raising alarm. P.Ws. 5 and 6 who were witnessing the occurrence also raised alarm. A-2, and A-1 with his weapon ran away from the scene. Thangabai, wife of Dasan Rushed to the scene and bandaged the injury on her husband deceased Dasan on the left chest.

(iv) Everst (P.W. 8), son of P.W. 1 who came to the scene, proceeded to Thiruvithangode and brought a taxi bearing registration number TNK 3241 driven by P.W. 11, Ratnamani. P.W. 1 and deceased Dasan were taken in the taxi to the Government Hospital, Nagercoil at about 10-30 p.m. P.W. 8 and Thangabai also accompanied them to the hospital. P.W. 11 has entered the trip in his tripsheet (Ex. P-19)

(v) On 28-1-1984, at about 10-40 p.m. Dr. Rajapandian (P.W. 3) found Dasan to be brought dead to the Hospital. He examined P.W. 1 for injuries said to have been caused due to assault with katari knife at Mylode at about 9-00 p.m. on the same day and found on him following injuries :

(1) Incised wound 2' x 1' depth not probed over left illiac fossa. Loops of intestines coming out of the wound over the abdomen. Fresh bleeding present from the wound.

(2) Incised wound 1' x 1/2' x 1/2' on the upper 1/3rd of right arm.

Ex. P-6 is the wound certificate issued by P.W. 3.

(vi) On receipt of Exs. P-4 and P-5 from the Hospital, Barnabas (P.W. 12), Head Constable of Kottar Police Station proceeded to the Hospital and recorded a statement (Ex. P-1) from P.W. 1 at 11-15 p.m. and obtained his thumb impression thereon as he was unable to sign due to injuries on his right hand. P.W. 12 returned to the police station and registered a case in Crime No. 95 of 1984 under sections 302 and 307, IPC, prepared the printed first information report (Ex. P-20) and sent Exs. P-1, P-4, P-5 and P-20 to the Judicial Second Class Magistrate, Nagercoil who received them at 1-15 a.m. on 29-1-1984 and forwarded the same to the Judicial Second Class Magistrate, Eraniel. P.W. 12 sent copies of Ex. P-20 to higher officials. He also sent a copy of Ex. P-20 to Eraniel police station as the occurrence had taken place within its jurisdiction. On receipt of Ex. P-20, Selvam (P.W. 13), Sub-Inspector of Police, Eraniel police station, registered a case in Crime No. 23 of 1984 under sections 302 and 307, IPC, prepared the printed first information report (Ex. P-21) and sent Ex. P-21 to the Judicial Second Class Magistrate, Eraniel through police constable Bhaskaran (P.W. 14). After delivering the copy of Ex. P-21 to the Inspector of Police, Eraniel, P.W. 14 proceeded to the Magistrate's Court at Eraniel and found that the Magistrate was on leave and that the Magistrate at Nagercoil was in charge. Thereon, P.W. 14 proceeded to Nagercoil and delivered Ex. P-21 to the Judicial Second Class Magistrate at 10-15 a.m. Manoharan (P.W. 17) Inspector of Police, Eraniel Circle, took up investigation of the case on receipt of copy of Ex. P-21 at 6-35 a.m. he went to the Government Hospital, Nagercoil and conducted inquest on the dead body of Dasan between 8-00 a.m. and 10-30 a.m. and examined P.Ws. 5, 6 and one Vijayakumar at that time. Ex. P-22 is the inquest report prepared by P.W. 17. He examined P.W. 1 and seized his bloodstained dhoti (M.O. 2) under a mahazar (Ex. P-23). He gave a requisition (Ex. P-2) to conduct post-mortem examination on the dead body of Dasan. Police Constable Michael (P.W. 15) was in charge of the dead body.

(vii) Dr. Nagarajan (P.W. 2) commenced autopsy on the corpse of Dasan at 12-30 p.m. on 29-1-1984 and found rigor mortis present in all the four limbs. He found the following injuries :

One injury was found on the abdomen. On the left hypochondrium 2 1/2' left to the midline injury extended 1 1/2' below the costal margin down. Length is 4' and

ended 3' left and lateral to umbilicus. Omentum along with 2 feet of large intestines and 3-4 feet of small intestines seen outside through the injury.

On dissection it was found that the abdomen cavity was completely filled with bloodstained fluid about 2 1/2 litres with blood clots about 400 grams around posterior wall of abdomen and internal organs. There was through and through injury on the descending colon with size of 1' in length and another injury on the left lobe of liver and a small niche on the abdominal aorta at the level of T 12 L 1 vertebrae.

Heart : Chambers empty. The stomach contained 150 ml. of digested food.

P.W. 2 was of the opinion that the deceased would have died of haemorrhage and shock due to injury to the abdominal aorta and that the internal injuries were due to the external injuries, that the protruding of omentum and intestines were due to the external injuries and that the external injuries might be caused by M.O. 1. The injury was fatal. Ex. P-3 is the postmortem certificate issued by P.W. 2. P.W. 15 seized the bloodstained dhoti (M.O. 3), bloodstained shirt (M.O. 4) and towel (M.O. 5) from the dead body and delivered them at the police station. He handed over the dead body to the relations of the deceased.

(viii) Meanwhile, P.W. 17, Inspector of Police, inspected the scene of occurrence at 1-20 p.m. on 29-1-1984, prepared an observation mahazar (Ex. P-15) in the presence of Chidambaradoss (P.W. 9) and drew a rough sketch of the scene (Ex. P-24). He also seized the blood stained earth (M.O. 6) and sample earth (M.O. 7) under a mahazar (Ex. P-16). He examined Chelladurai and Ramalingam on 21-1-1984. On 2-2-1984 he gave a requisition (Ex. P-7) to the Magistrate to send the bloodstained articles for chemical analysis. Accordingly, Yesuvadiyan Thangamani (P.W. 4), the Head Clerk of the Magistrate's Court sent the articles with the covering letter (Ex. P-8) of the Magistrate to the Chemical Examiner. After analysis, the report of the Chemical Examiner (Ex. P-9) and the report of the Serologist (Ex. P-10) were received in Court. On 15-2-1984, P.W. 17 got A-1 to police custody as he had already surrendered himself before Court and was in Palayamcottai prison. On 16-2-1984 P.W. 17 examined A-1 at about 9-00 a.m. in the presence of Chelliyan (P.W. 10). A-1 voluntarily gave a confession statement

of which the admissible portion is Ex. P-17 offering to take P.W. 17 and his party and produce the katari knife (M.O. 1) which was kept buried in the earth. Accordingly, A-1 took P.W. 17 and his party to a place south of his house and produced the katari knife (M.O. 1.). P.W. 17 seized M.O. 1 under a mahazar (Ex. P-18) attested by P.W. 10. On 16-2-1984, P.W. 17 examined P.W. 2 and produced M.O. 1 to P.W. 2. He examined P.W. 3 and others on 22-2-1984. On 9-3-1984, P.W. 17 gave a requisition (Ex. P-11) to the Magistrate to send M.O. 1 for chemical examination. Accordingly, P.W. 4 forwarded M.O. 1 to the Forensic Laboratory with the covering letter (Ex. P-12) of the Magistrate. After analysis, the report of the Serologist (Ex. P-14) were received in Court. P.W. 17 laid the final report in the committal Court on 15-3-1984 on completion of investigation.

3A. When the accused were examined under S. 313, Cr.P.C., they denied their complicity in the Crime. A.L. denied that he stabbed the deceased Dasan and P.W. 1 or that he gave a confession statement (Ex. P-17) leading to the recovery of M.O. 1. He pleaded that there was enmity between one side and P.Ws. 1, 5 and 6 on the other and that their evidence is false. A-2 denied that he held P.W. 1 as stated by P.W. 1 and alleged that he has been falsely implicated. No defence witness was examined on their side.

4. After trial, considering the evidence and documents, the learned Sessions Judge found both the accused as not guilty of the offences and acquitted them. The State has preferred the present appeal C.A. No. 302 of 1986 while P.W. 1 who was injured during the occurrence has preferred Crl.R.C. No. 764 of 1985 challenging the verdict of acquittal of the accused made by the Sessions Judge.

5. Mr. G. M. Syed Fasiuddin, Additional Public Prosecutor appearing for the appellant in C.A. No. 302 of 1986 and the third respondent in Crl.R.C. No. 764 of 1985 and Mr. V. Gopinath appearing for the petitioner (P.W. 1) in Crl.R.C. No. 764 of 1985 would raise almost the same contentions as both would challenge the judgment of acquittal rendered by the learned Sessions Judge. They contended that the learned Sessions Judge ought to have accepted the evidence of P.W. 1 who has been injured during the occurrence, and P.Ws. 5 and 6 who are eye-witnesses who have deposed to the occurrence consistently and based a

conviction on the accused. They also submitted that the eye-witness account of P.Ws. 1, 5 and 6 has been corroborated by the medical evidence of P.Ws. 2 and 3 and that deceased Dasan and P.W. 1 were attacked with katari knife (M.O. 1). They added that the first information report given by P.W. 1 contains all the material facts and the circumstances leading to the occurrence and the death of Dasan and the causing of injury on P.W. 1 and that the learned Sessions Judge should not have expected the first information report as an encyclopedia so as to contain everything. They further pointed out that there is no discrepancy between the first information report (Ex. P-1) and the dying declaration of P.W. 1 (Ex. D-1) as Ex. D-1 would corroborate Ex. P-1 and that the learned Sessions Judge is not correct in holding that Ex. P-1 was prepared by P.W. 12 after Ex. D-1 so as to implicate A-1 with the murder of deceased Dasan. They submitted that Ex. P-1 was the first information report which came into existence at the earliest point of time and that it contains all the relevant facts relating to the role of A-1 and A-2 in the occurrence in which deceased Dasan and P.W. 1 were attacked by A-1 with the katari knife (M.O. 1) and as the result deceased Dasan died on his way to hospital. Another argument is that M.O. 1, the weapon used by A-1 to attack the deceased and P.W. 1 had been recovered by P.W. 17 during investigation in pursuance of the confession made by A-1 under S. 27 of the Evidence Act and that it would also connect A-1 with the crime. They pointed out that there was enmity between the deceased and P.W. 1 on one side and A-1 on the other prior to the occurrence and that therefore A-1 along with A-2, his friend, had sufficient motive to attack deceased Dasan and P.W. 1 on the fateful day and cause and death of Dasan and that there was no reason at all to make false implication of A-1 by P.W. 1 as they are brothers. In this context, the learned counsel for the State and P.W. 1 stated that the learned Sessions Judge has not properly appreciated the evidence of P.Ws. 1 and 7 who have spoken to the incident that took place at about 5-00 p.m. a few hours prior to the occurrence proper. The learned counsel in both the matters submitted that the learned Sessions Judge has committed a serious mistake in confusing between P.Ws. 5 and 8 who bore almost similar names and holding that P.W. 5 was not an eye-witness. They stated that the name of P.W. 5 is Everester, not related to P.W. 1 and the deceased and that the name of P.W. 8 is Everest, son of P.W. 1 himself and that these details have been

clearly set forth in the first information report itself apart from the evidence and that the learned Sessions Judge has not properly appreciated the difference in names and relationship and misread the evidence of P.Ws. 5 and 8 and got confused.

6. Mr. K. V. Sridharan, learned counsel appearing for A-1 and Mr. Kulandaivadivelu for A-2 resisted all the contentions raised on behalf of the State and P.W. 1 and contended that the learned Sessions Judge has rightly appreciated the evidence and has found the accused not guilty and acquitted them both and there is no reason to interfere with this judgment. In substance, they would adopt what all reasonings that have been made by the learned Sessions Judge in his judgment, as their arguments. They submitted that the High Court should be reluctant to interfere with the judgment of acquittal unless the judgment is perverse, manifestly illegal or grossly unjust. We heard the submissions of both side on their respective claims and contentions.

7. It is common ground that Savariyar Adimai had four sons, namely, Rajamani, P.W. 1, deceased Dasan and A-1 and that a house property with a side said to belong to the family was in the possession of Savariyar Adimai and that P.W. 1 and the deceased Dasan were making claim for their shares in the said property, but that it was not given to them by Savariyar Adimai. It is stated that a tamarind tree situate in the vacant site is yielding fruits and that when the fruits were plucked, no share of the produce was given to P.W. 1 and the deceased Dasan in spite of their demands and that as the result, there was enmity between P.W. 1 and deceased Dasan on one side and Savariyar Adimai on the other. It is also stated that Rajamani and A-1, two other sons of Savariyar Adimai, were being favoured by him to the exclusion of P.W. 1 and deceased Dasan. According to P.W. 1, the dispute relating to the property existed for about two years prior to the occurrence. Here, we are not concerned with the question whether the said property is the family property belonging to Savariyar Adimai and his sons or whether it is the absolute property of Savariyar Adimai. We are concerned with the question what was the relationship between the parties prior to the occurrence.

8. The prosecution has proved by the examination of P.Ws. 1 and 16 and the production of Ex. P.25 that the relationship between Savariyar Adimai, Rajamani

and A-1 on one side and P.W. 1 and the deceased on the other was not cordial and that even P.W. 1 was assaulted by Savariyar Adimai and his sons Rajamani and A-1 and Rajamani's son and wife on 11-4-1982, P.W. 1 has deposed in his evidence that the occurrence in which he was assaulted by Savariyar Adimai and four others on 11-4-1982, took place over the dispute in respect of the family property. He would state that he was assaulted by Savariyar Adimai and others when he demanded a share in the produce of the tamarind tree and that he had to give a complaint at Eranial Police Station on the same day against Savariyar Adimai, Rajamani, A-1 and two others. P.W. 16, the Sub-Inspector of Police who received the complaint and prepared the printed first information report (Ex. P.25) has also subscribed his evidence in this regard and stated that he laid the charge-sheet against Savariyar Adimai and four others. P.W. 1 would further state that on 28-1-1984, the date on which the present occurrence took place the trial of the criminal case against Savariyar Adimai and others was conducted in the Court of the Judicial Second Class Magistrate, Thuckalay and that P.W. 1 and deceased Dasan gave evidence. He would also state that A-1 was present in that Court and was watching the proceedings on that day, though he was not actually an accused in that criminal case. Of course, he happened to go there, because his wife Vasantha was one of the accused therein and he was on the side of his father Savariyar Adimai. The categorical evidence of P.W. 1 is that at about 5.00 p.m. when he alighted from the bus at Mylode near the ration shop of Challadurai, A-1 had tried to assault P.W. 1 saying that he was giving trouble to A-1 and the family by starting litigation and that the trouble would be over only if P.W. 1 was done away with. It is stated by P.W. 1 that but for the intervention of Chelladurai, Ramalingam and Mariasoosai (P.W. 7), P.W. 1 would have been assaulted by A-1. P.W. 1 is said to have taken asylum by entering into the ration shop of Chelladurai at that time. The criminal case launched by P.W. 1 in the Court of the Judicial Second Class Magistrate, Thuckalay and the giving of evidence by P.W. 1 and the deceased Dasan in the forenoon of the date of occurrence are said to have caused irritation to A-1 and that as the result, A-1 had tried to attack P.W. 1 at about 5 p.m. near the ration shop of Chelladurai.

9. It cannot be contended on behalf of the accused that there was no enmity between P.W. 1 and Dasan on one side and A-1 on the other, prior to the

occurrence in the face of the clear evidence of P.Ws. 1 and the documentary evidence in Ex. P-25. If P.W. 1 would state in his evidence that there was no enmity between him and A-1 and that they were on talking terms till the date of occurrence, it is liable to be ignored as we clearly find that there was enmity between the parties till prior to the occurrence. Various suggestions have been put to P.W. 1 on the side of A-1 to show that there was enmity between P.W. 1 and A-1 and that as the result, P.W. 1 has falsely implicated A-1. It is immaterial if Chelladurai, the owner of the ration shop and who was said to be one of the persons who prevented A-1 from attacking P.W. 1 at about 5-00 p.m. preceding the occurrence is not examined as a witness. P.W. 7 who was one of the persons present on that occasion has come forward and given evidence stating that A-1 had tried to attack P.W. 1 at about 5-00 p.m. on 28-1-1984 near the ration shop of Chelladurai saying that P.W. 1 was troubling A-1 and his family by launching criminal litigation in Court and that he should be finished off if the trouble is to end. It is also stated by P.W. 7 that A-1 did not simply go away after he was separated but that he even challenged to see P.W. 1 later. This piece of evidence of P.W. 7 along with that of P.W. 1 would give an indication that it was in pursuance of the challenge and threat that P.W. 1 and the deceased Dasan came to be attacked at about 9-30 p.m. on the same day, namely, 28-1-1984.

10. The learned Sessions Judge is not correct in finding fault with the prosecution for not adducing the evidence of Chelladurai or for not mentioning the names of Chelladurai or for not mentioning the names of Chelladurai, Ramalingam and P.W. 7 in Ex. P.1, the first information report. P.W. 1 has mentioned in Ex. P.1 that the incident took place near the ration shop and that the persons who remained there intervened and prevented A.1 from assaulting P.W. 1. Failure to mention the names of P.W. 7 and others in Ex. P.1 itself cannot be said to be a fatal omission. After all the incident that is said to have taken place at 5-00 p.m. has been stated by P.W. 1 as the prelude to the occurrence and one in continuity of the inimical relationship between the parties. If we consider the fact that P.W. 1 and deceased Dasan gave evidence in the Magistrate's Court at Thuckalay in the forenoon of the date of occurrence and A.1 was witnessing the proceedings by being present there, it will be quite possible and probable to hold that the incident said to have taken place at 5-00 p.m. near the ration shop of Chelladurai must be true. Even

otherwise, we have to observe that the motive part of the prosecution is not material in the present case as there are eye-witnesses to speak to the occurrence. If there are eye-witnesses to speak to the occurrence, the motive part of the prosecution will normally pale into insignificance.

11. The prosecution case is that at about 9-30 p.m., P.W. 1 and deceased Dasan came out of the house of the deceased, that P.Ws. 5 and 6 were talking between themselves near the gate of the deceased Dasan's house compound and that at that time both the accused came from the south, that A-1 remarked on seeing both P.W. 1 and deceased Dasan that he was surprised to see them both there as he was making a search for them elsewhere, that A-1 remarked at deceased Dasan whether he was a supporter of P.W. 1, that A-1 stabbed the deceased Dasan below the left side chest and pulled the knife downwards and that as the result deceased Dasan sustained bleeding injury and his intestines came out and he fell down. It is also stated that when P.W. 1 tried to lift the deceased Dasan, he was prevented by A-2 from doing so. At that time, A-1 is said to have proclaimed that there would be peace and solace in the family only if P.W. 1 was killed and stabbed P.W. 1 on his right upper arm and left iliac fossa. Loops of intestines were said to be coming out of the wound over the abdomen with bleeding. P.Ws. 5 and 6 are said to have been present there and to have witnessed the occurrence. It is also stated that after both the deceased Dasan and P.W. 1 were attacked, P.W. 8, the son of the deceased Dasan, came there and arranged to take both the victims to the Government Hospital, Nagercoi, in a taxi driven by P.W. 11. At about 10-30 p.m. when both the victims were brought to the Hospital, deceased Dasan was already found dead and P.W. 1 was examined by P.W. 3, the Medical Officer, and was treated for his injuries.

12. A careful consideration of the evidence of P.Ws. 1, 5 and 6 shows that the occurrence mentioned above has taken place only in the manner spoken by them and that their evidence is all the more true and reliable. P.W. 1 is none else than the injured and, therefore, his presence at the scene of occurrence is confirmed. He would consistently state how A-1 attacked the deceased Dasan at first and then P.W. 1 with a knife. He is quite consistent with his statement given in Ex. P.1, which forms the first information report in this case. We scarcely find any

discrepancy of a material character in between his evidence and his statement in Ex. P-1. His evidence is that deceased Dasan had gone to Thuckalay to attend to his business in the cloth shop and returned after 8-00 p.m. to his residence at Mylode and that it was only thereafter at about 9-30 p.m. when he and P.W. 1 came out of the house of Dasan, A-1 attacked both the deceased Dasan and P.W. 1 with knife. The occurrence has taken place at 9-30 p.m. and P.W. 1 has given Ex. P.1 to P.W. 12 at about 11-15 p.m. after P.W. 3 had sent an intimation (Ex. P.4) to Kottar police station and P.W. 12, the Head Constable of that station has visited the Hospital, P.W. 12 who recorded Ex. P.1 at 11-15 p.m. from P.W. 1, has returned to Kottar police station and registered a case in Crime No. 95 of 1984 and prepared the printed first information report (Ex. P.20) and has forwarded a copy of Ex. P.20 to Eraniel police station within the jurisdiction of which the occurrence in question has taken place. Copy of Ex. P.20 has been received by P.W. 13, Sub-Inspector of Police, Eraniel police station at 6-00 a.m. on the following morning (29-1-1984). He in turn has registered a case in Crime No. 23 of 1984 and prepared the first information report (Ex. P.21) and sent a copy of (Ex. P.21) to P.W. 17, Inspector of Police, for taking up investigation. Exs. P.1, P.W. 4, P.5 and P.20 have been sent by P.W. 12 from Kottar Police Station to the Judicial Second Class Magistrate, Nagercoil and the same have been received by the Magistrate at 1-15 a.m. (29-1-1984). All these make it clear that P.W. 1 has given Ex. P.1 promptly with true facts to P.W. 12 soon after the occurrence and that due reliance has to be attached to Ex. P.1 and the evidence of P.W. 1.

13. The observation of the learned Sessions Judge that Ex. P.1 cannot be construed as the statement given by P.W. 1 is not warranted at all in this case in view of the facts stated above. Because Ex. P.1 recorded by P.W. 12 occupies about three pages and the dying declaration (Ex. D.1) recorded by the Magistrate at Nagercoil subsequent to Ex. P.1 occupies 1 1/2 pages only and Ex. P.1 has not been certified by the Medical Officer to the effect that P.W. 1 was conscious to make the statement and Ex. D.1 makes no reference to the overt act of A.1 in relation to the deceased Dasan, it cannot be stated that Ex. P.1 is a suspicious document and that P.W. 1 is not giving evidence truly and that no reliance should be placed on Ex. P.1 and the evidence of P.W. 1. We have already seen when and how Ex. P.1 came to be recorded and the printed first information report (Ex.

P-20) came to be prepared and it reached the concerned Eraniel police station. Because the date '28' in Ex. P.20 has been corrected into '29' as the date of despatch of the first information report to the Court and other superior officers and there is correction in the mention of Crime No. 95 of 1984 in Ex. P.20, it is not possible to attribute any design for the prosecution since the case has been registered at 11-55 p.m. at night and Ex. P.20 has been forwarded by P.W. 12 from Kottar police station to Eraniel Police station thereafter. He has probably mentioned the date 29-1-1984 correctly after altering the date 28-1-1984. There were only five minutes to go after the registration of the case at Kotta police station and it is therefore but natural that the date 29-1-1984 was mentioned in Ex. P.20 as the date of despatch of the first Information Report. The testimony of P.W. 12 is also to the same effect and the first information report is said to have been sent to Eraniel police station in the following morning. As already found, Ex. P.20 has been received at Eraniel police station at 6.00 a.m. on 29-1-1984. If P.W. 12 did not inform Eraniel police station through phone or V.H.F. after 11-55 p.m. on 28-1-1984, no motive can be attributed therefore. Since it was midnight, P.W. 12 might have thought that no useful purpose could be served immediately even if the information was sent through those sources and therefore he had sent a copy of Ex. P.20 through a police constable to Eraniel police station. The learned Sessions Judge is not at all correct in taking the view that Ex. P.1 must have come into existence after Ex. D.1.

14. We find that after Ex. P.1 was recorded by P.W. 12 at 11-15 p.m. in the hospital, Ex. D.1 has been recorded by P.W. 12 Magistrate only at 00.55 hour on 29-1-1984, that is, at the midnight of 28-1-1984. It implies that even about 1 hour 40 minutes prior to recording of dying declaration (Ex. D-1) by the Magistrate, Ex. P.1 has come into existence and action has been taken by the police officers concerned thereon and it has reached the concerned Eraniel police station at 6-00 a.m. itself. Ex. P.1 along with Exs. P-4, P-5 and P-20 has reached the hands of the Magistrate at Nagercoil at 1-15 a.m. (29-1-1984) itself, that is, on the same night and within about two hours after the recording of Ex. P.1 given by P.W. 1 to P.W. 12 and within about 20 minutes after the recording of the dying declaration (Ex. D.1) by the Magistrate at the hospital. Therefore, the questions whether the statement in Ex. P.1 is lengthier than Ex. D.1 and whether P.W. 1 could have been

conscious to make such a lengthy statement in Ex. P.1 and whether Ex. P.1 should be taken as true, do not arise. If Ex. P.1 has not been certified by the Medical Officer, it is not a ground of view it with suspicion. P.W. 12 would state that he proceeded to record Ex. P.1 from P.W. 1 after P.W. 1 was pointed out by the Medical Officer concerned. Because P.W. 3 has sent Ex. P.5 for recording a dying declaration by a Magistrate from P.W. 1, it is not possible to hold that P.W. 1 must have been in a dangerous condition unable to make any statement to P.W. 12 and that the statement in Ex. P.1 could not have been made by P.W. 1. The learned Sessions Judge is not correct in holding that the condition of P.W. 1 must have been precarious as not to make any statement in Ex. P.1. P.W. 3 might have sent Ex. P.5 to the Magistrate for recording a dying declaration from P.W. 1 from the point of view of safety and not for the reason that the condition of P.W. 1 was serious. Evidently, P.W. 3 had certified in Ex. D.1 that P.W. 1 was conscious during he making of the statement (Ex. D.1). This would only mean and imply that P.W. 1 was conscious even at the time of his making of Ex. P.1 to P.W. 12 at 11-15 p.m. The learned Sessions Judge has gone wrong in holding that the condition of P.W. 1 must have been serious and that he would not have been conscious to make the statement in Ex. P.1 and that Ex. P.1 should not be accepted as true. Of course, P.W. 1 has not stated in Ex. D.1 about the attack made by A-1 on the deceased Dasan and the causing of injury on the abdomen below the left side chest. But, it does not mean that P.W. 1 did not see the occurrence relating to the attack made by A-1 on the deceased Dasan, as earlier to Ex. D.1, P.W. 1 has clearly stated in Ex. P.1 that A-1 stabbed the deceased Dasan on his abdomen below the left side chest with a katari knife. The explanation offered by P.W. 1 for his not mentioning the role of A-1 in relation to the attack on the deceased Dasan must be taken into consideration. His evidence is that as he was in a state of horror and despair after the sustaining of the injuries on his person at the hands of A-1 and as he thought that he should make the statement to the Magistrate only in relation to himself, he did not choose to mention about the attack made by A-1 on the deceased Dasan in Ex. D-1. This explanation offered by P.W. 1 has to be taken into consideration in a right spirit considering the circumstance in which he was being placed. In any event, there is no justification at all for the learned Sessions Judge to place reliance wholly on Ex. D-1 and rejected Ex. P.1. The

learned Sessions Judge is not at all correct in taking the view that Ex. P.1 must have come into existence after Ex. D.1.

15. P.Ws. 5 and 6 are consistent in their evidence that A-1 stabbed the deceased Dasan on his abdomen with a katari knife and that thereafter he stabbed P.W. 1 also who was seen with the deceased Dasan in front of the house of the deceased Dasan. The stabs dealt by A-1 on P.W. 1 are said to have fallen on the abdomen below the left loin and right upper arm and caused injuries, P.Ws. 5 and 6 would specifically state that the intestines came out of the abdomen of the deceased as the result of the stab dealt by A-1. They would claim to have witnessed the occurrence as they were talking in front of the house of the deceased. Evidently, both the witnesses belong to the locality, and the house of P.W. 2 is just north of the house of the deceased Dasan at some distance. The location of the house of P.W. 6 has also been indicated in the sketch (Ex. P.24) and observation mahazar (Ex. P.15). Nothing has been proved on the side of the accused to show that these witnesses are interested in the deceased and P.W. 1 or biased against the accused. They have clearly denied all the suggestions made to them on the side of the accused attributing motive to depose in this case. P.W. 6 would assert that he had come forward to give evidence as he had actually seen the occurrence. He seems to have been impelled by his conscience to depose. Normally, the eye witness account would require a careful and independent assessment and evaluation for the credibility. The evidence must be tested for inherent consistency and inherent probability of the story. The evidence of the eyewitness, if accepted, is sufficient to warrant conviction, though in appropriate cases, the Court may seek some confirming circumstances from other sources as measure of caution. It is also well settled that it is the duty of the Court to disengage the truth from falsehood and to sift the grain from the chaff instead of taking an easy course of rejecting the prosecution case in its entirety merely on the basis of a few infirmities. The testimony of P.Ws. 5 and 6, if scrutinised along with that of P.W. 1, clearly leaves an impression that it is true and reliable.

16. It appears to us that though the occurrence took place during night at about 9-30 p.m., there was no difficulty for P.Ws. 1, 5 and 6 to identify A-1 as the assailant who stabbed both the deceased Dasan and P.W. 1. The definite evidence of

P.Ws. 1, 5 and 6 is that an electric tubelight was burning in the portico of the house of the deceased Dasan spreading light even at the place of occurrence. P.W. 17 has noted in Ex. P.15 that the tubelight was being fixed in the eastern border of the portico and that the distance between the portico and the scene of occurrence was only 38 feet. The compound wall of the house of the deceased Dasan is just 4 feet high and so there was no obstruction of the electric light from the portico of 9 1/2 feet high to the scene of occurrence. Further, the place of occurrence is nothing else except the mud portion of the road and 4 feet from the gate of house of the deceased Dasan. P.Ws. 5 and 6 are said to have remained at a distance of about 15 feet from the scene of occurrence. They are also not outsiders or strangers to A-1. In the circumstance, it has to be held that P.Ws. 5 and 6 are the ocular witnesses and their evidence is credible.

17. The learned Sessions Judge has committed the serious error in branding P.Ws. 5 and 6 as not eye-witnesses, he has not properly scrutinised the oral evidence of P.Ws. 1, 5 and 6 and the documentary evidence in Ex. P.1 which forms the first information report in this case. First of all, the learned Judge has not understood the correct name of P.W. 5 and tried to know whether he was the eye-witness figuring in Ex. P.1. The name of P.W. 5 is Everester and not Everest and he is not related to the deceased and P.W. 1. The name of P.W. 8 is Everest and he is the son of the deceased Dasan. He was not an eye-witness. The only role played by him is that he arrived at the scene after occurrence and arranged to take the deceased Dasan and P.W. 1 in a taxi driven by P.W. 11 to the Government Hospital, Nagercoil. But, the learned Sessions Judge has grossly confused himself between P.W. 5 and P.W. 6 and has held that P.W. 5 is not an eye-witness. Of course, Ex. P.1 mentions that 'Everest' was one of the eye-witnesses. It also mentions that one Everest was the person who came to the scene after occurrence and who took the deceased and P.W. 1 in a taxi to Government Hospital, Nagercoil. But, the description of Everest in both the contexts should be noted. When Everest is referred as the eye-witness in Ex. P.1. P.W. 1 says that he (Everest) belongs to his village (vernacular matter omitted) and that he was the person who was talking with P.W. 6 in front of the house of the deceased Dasan. When Everest who came to the scene after occurrence and who took the deceased and injured to Hospital, is referred to, P.W. 1 says in Ex. P.1 itself that

he is the son of himself. (Vernacular matter omitted). If only the learned trial Judge had just bestowed his attention for a while as to why two persons of the same name appear in Ex. P.1, but in different context and with different roles to play, he could have seen that P.W. 5 is Everester who was an eye-witness with P.W. 6 and that P.W. 8 is the person who came to the scene after occurrence and who took the deceased and P.W. 1 to the Hospital at Nagercoil. Because the learned Judge has not distinguished between P.W. 5 and P.W. 8 with regard to their roles played in this case, he has been misled to think that P.W. 5 is not an eye-witness. Even if the names of both P.Ws. 5 and 8 are mentioned to be the same in Ex. P.1, a perusal of their depositions will make it clear that they are two different persons and that P.W. 5 actually bearing the name Everester, not Everest, is the eye-witness. The names of the fathers of P.W. 5 and P.W. 8 are also mentioned differently in their depositions.

18. Another reason stated by the learned Sessions Judge for rejecting the evidence of P.Ws. 5 and 6 is also not sound. He states that P.W. 17 who conducted inquest on the dead body of Dasan on 29-1-1984, has not recorded the statements of P.Ws. 5 and 6 as witnesses who had seen the occurrence. This is also obviously wrong. Mention has been made in column IV of the inquest report (Ex. P-22) that P.Ws. 5 and 6 are persons who were found with the deceased Dasan and P.W. 1 at the place of occurrence when the deceased Dasan was alive. P.W. 17 states that he examined P.Ws. 5 and 6 also during inquest and the same is confirmed by P.Ws. 5 and 6 also. That apart, the names of P.Ws. 5 and 6 would figure as eye-witnesses even in Exs. P.1 and D.1 at the earliest. Probably, the learned Sessions Judge has failed to take note of this aspect of the evidence. P.W. 17 had to examine P.W. 1 only on the next day (29-1-1984) of the occurrence as he had received the first information report (Ex. P.20) in this case from Kottar Police station only at 6-35 a.m. However, P.W. 1 has already made a statement (Ex. P.1) to P.W. 12 and a dying declaration (Ex. D.1) to the Magistrate.

19. The medical evidence is also in corroboration of the oral evidence of P.Ws. 1, 5 and 6 who have stated that A.1 stabbed the deceased Dasan with a katari knife on his abdomen below left chest and that he also stabbed P.W. 1 on his abdomen below the left loin and right upper arm with the same weapon. So far as the attack

on A.1 is concerned, the uniform evidence of P.Ws. 1, 5 and 6 is that A-1 stabbed the deceased on his abdomen below left chest and pulled downward and that as the result, the intestines came out. P.W. 2 who conducted postmortem on the corpse of the deceased Dasan and P.W. 3 who examined P.W. 1 for his injury have clearly stated that all those injuries on the deceased as well as P.W. 11 could have been caused by a weapon like M.O. 1. M.O. 1. is called as katari knife. The Serologist would describe it as a clasp knife. It has got sharpness in one side of the blade while it is blunt on the other. Its blade portion alone is 12 cm. apart from the handle portion of 15-2 cm. according to Ex. P.18. P.W. 2 says that a stab with M.O. 1 followed by drag will cause an injury with greater width on the top and less lower down and that M.O. 1 after stabbing should have been drawn to a length of 3.2 inches. If he would say that M.O. 1 will also cause wedge shape injury, it is his opinion on the possibilities. Any way, there was no wedge shape injury on the deceased. It would only show that the injury on the deceased might have been caused by A.1 in the manner stated by P.Ws. 1, 5 and 6. Ex. P.1 itself, the first information report given by P.W. 1 contains an averment that A-1 stabbed the deceased below his chest and pulled it downwards. (Vernacular matter omitted). The word (Vernacular matter omitted) will normally mean 'pulled'.

20. P.W. 3 who examined P.W. 1 for his injury has stated that injury No. 1 might have been caused by stabbing with M.O. 1 and pulling it. If he has also stated in his evidence that a stab with M.O. 1 may cause a 'V' shaped injury and that it is not found in the case of P.W. 1, it is his opinion on various possibilities. Any way, he has not noted the shape of the injuries as 'V' shaped. This only confirms the fact that the injuries on P.W. 1 should have been caused by stab with M.O. 1 and pulling it. He is definite that both the injuries found on P.W. 1 could have been caused by stab with M.O. 1. We find that questions which are wholly irrelevant and meaningless have been put to P.Ws. 2 and 3 during their cross-examination such as how was the knife, how A-1 was holding the knife when he sought to stab the deceased and P.W. 1, at what height and towards which direction of the organ of the deceased and P.W. 1, the knife was found when A.1 lifted his hand to stab, to what amount of depth the stab dealt by A.1 pierced in the body and to what extent A.1 pulled down the knife after dealing the blow in the organ and whether A.1 stood in the front or the right or left side of the deceased at the time of dealing the

blows. We wonder how such questions have been allowed by the learned Sessions Judge to be put to P.Ws. 2 and 3. In general, we must state that the nature of an injury caused to a victim will depend upon the way in which the assailant and the victim position themselves at the time of attack, the amount of force used by the assailant, the particular part of the body on which the injury is caused and the reaction of the victim at the time of receiving the blow etc. In fact, this is also accepted by P.W. 2 in his evidence. The medical evidence of P.Ws. 2 and 3 is found to corroborate fully the oral evidence of P.Ws. 1, 5 and 6.

21. The observation of the learned Sessions Judge that the medical evidence is not in corroboration of the oral evidence, but is contradictory to the oral evidence, is not acceptable in the face of what we have seen above. It has been held by the Supreme Court in *Solanki Chimanbhai Ukabhai v. State of Gujarat*, : 1983 CriLJ822 :

'Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses, the testimony of the eye witness cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.'

However, we find in the instant case that there is no inconsistency in between the medical evidence and the oral evidence and that on the other hand the medical evidence is fully in corroboration of the oral evidence.

22. This is a case in which we also find that P.W. 17 has been able to seize M.O. 1, the weapon used by A.1 to attack the deceased Dasan and P.W. 1. A.1 seems to have surrendered in Court after the occurrence. Still P.W. 17 has taken A.1 to his custody and examined him in the presence of P.W. 10 on 16-2-1984 at about 9.00 a.m. A.1 has given a confession statement (Ex. P.17) voluntarily offering to produce the weapon which was kept concealed by him in a place south of his

house. Accordingly, he has produced M.O. 1 by taking it out from near a poultry cage south of his house and the same has been seized by P.W. 17 in the presence of P.W. 10 under a mahazar (Ex. P.18). P.W. 17 has noted bloodstains with mud in M.O. 1 even then. The recovery of M.O. 1 as such made by P.W. 17 under S. 27 of the Evidence Act is not to be doubted at all as P.W. 10 would subscribe his evidence in corroboration of the evidence of P.W. 17 and the same is evidenced by Ex. P.17 and Ex. P.18. After M.O. 1 was sent for analysis to the Forensic Laboratory, the Serologist has found it to contain human blood and the same has been noted in Ex. P.14. Of course, the blood group of the bloodstains found in M.O. 1 could not be ascertained as the test was inconclusive. The dress (M.Os. 4 and 5) of the deceased have contained bloodstains of 'O' group. Though similar 'O' group of human blood could not be seen in M.O. 1, the fact that M.O. 1 contained human blood and the evidence that it was the weapon with which A.1 attacked the deceased Dasan and P.W. 1 would eventually lead to presume that M.O. 1 was the weapon used by A-1 to attack the deceased Dasan and P.W. 1. The testimony adduced on the side of the prosecution and which has been discussed above clearly proves that A.1 was the assailant who attacked the deceased Dasan and P.W. 1 with a Katari knife (M.O.). There can be no doubt that the offence committed by A.1 in causing the death of deceased Dasan will amount to murder under S. 302, IPC. A.1 has indicated his intention to kill the deceased Dasan more than once prior to the occurrence and this pre-meditation coupled with the attack made by him on the vital organ of the deceased Dasan with a lethal weapon would be sufficient to prove that he had the intention to murder Dasan. So far as P.W. 1 is concerned, A.1 must be held to have committed the offence under S. 326, IPC. P.W. 3 has opined that the injury on the abdomen below the left flank of P.W. 1 was grievous and was endangering life. Therefore, the offence committed by A.1 as against P.W. 1 will come under S. 326, IPC.

23. So far as A.2 is concerned, we have to hold that the charges against him have not been proved. P.Ws. 1 and 2 would state that when deceased Dasan fell down after the infliction of the stab on his abdomen by A.1, P.W. 1 tried to lift the deceased Dasan, but that A-2 had prevented P.W. 1 from doing so and that is all. No other overt act has been attributed to A.2. Preventing P.W. 1 from lifting the deceased Dasan cannot be construed a crime. It is not possible to hold that the

A.2 was there having a common intention with A.1 to commit the murder of deceased Dasan. There is absolutely no evidence to show that A-2 abetted A-1 to stab P.W. 1. P.W. 5 gives a go-by to the version of the prosecution by saying that A-2 was not present at the scene of occurrence. In the circumstances we have to hold that A-2 is not guilty of any of the offences charged.

24. Before we part with this case, we wish to state that we are quite alive to the principles to be followed in an appeal or revision, as the case may be, against the judgment of acquittal. It has been held in *Lalit Kumar Sharma v. Superintendent of Remembrancer of L.A. Government of W.B.* : 1989 CriLJ2297 :-

'It is now well settled that the power of an appellate Court to review evidence in appeals against acquittal is as extensive as its power in appeals against convictions, but that power is with a note of caution that the appellate Court should be slow in interfering with the orders of acquittal unless there are compelling reasons to do so ..... If a finding reached by the trial Judge cannot be said to be an unreasonable finding, then the appellate Court should not disturb the finding even if it is possible to reach a different conclusion on the basis of the material on record.'

In *Khujji v. State of M.P.* : 1991 CriLJ2653 it has been observed (at page 2666 (of Cri LJ) :

'..... this Court is not bound by the facts found proved on the appreciation of evidence by the courts below and is, in law, entitled to reach its own conclusion different from the one recorded by the courts below on a review of the evidence.'

The Supreme Court has expressed a similar view in *P. Narayana v. State of A.P.* : AIR 1975 SC1252 stating that 'where the learned Additional Sessions Judge had given untenable reasons and where his approach was not only perverse, but also legally erroneous and in such circumstances, it cannot be disputed that the High Court has ample powers to reverse the order of acquittal under S. 417 of the Code of Criminal Procedure.' In *Awaddhesh v. State of M.P.* : 1988 CriLJ1154 the Supreme Court has held as follows (at page 1156 (of Cri LJ) :-

'Although the powers of the High Court to reassess the evidence and reach its own conclusion are as extensive as, in an appeal against the order of conviction, yet, as a rule of prudence, the High Court should always give proper weight and consideration to matters e.g. (i) the view of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt, and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses ..... If on appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible, one as held by the trial court for acquitting the accused, and the other for convicting the accused in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial Court. Unless the conclusions of the trial court drawn on the evidence on record are found to be unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal. The High Court has in the instant case made an attempt to explain away the infirmities in the testimony of eye-witnesses in setting aside the order of acquittal. The High Court has in our opinion disregarded the rule of judicial prudence in converting the order of acquittal to conviction.'

In *State of U.P. v. Anil Singh* : 1989 CriLJ88 the observation of the Supreme Court is as follows (at page 91 of Cri LJ) :

'The scope of appeals under Art. 136 of the Constitution is undisputedly very much limited. The Supreme Court does not exercise its overriding powers under Art. 136 to reweigh the evidence. The Supreme Court does not disturb the concurrent finding of facts reached upon proper appreciation. Even if two views are reasonably possible, one indication conviction and other acquittal, the Court will not interfere with the order of acquittal. But, the Supreme Court will not hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust.'

In *P. Venkaiah v. State of A.P.* : 1985 CriLJ2012 the Supreme Court has held that where the trial Court by merely misreading the medical evidence, which in fact was consistent with the evidence of eye witnesses, disbelieved the eye-witnesses and acquitted the accused, the judgment of the trial Court was extremely perverse and no other reasonable view was possible than the guilt of the accused and their conviction by the High Court was proper.

25. In *Tara Singh v. State of Madhya Pradesh* : 1981 CriLJ483 it has been observed that it is well settled that if two views of the evidence are reasonably possible, one supporting the acquittal and the other indicating conviction, the High Court should not in such a situation reverse the order of acquittal recorded by the trial Court. Similar view has been expressed by the Supreme Court in *Babu v. State of U.P.* : 1983 CriLJ334 .

26. In *S. M. Nair v. State of Kerala* : 1974 CriLJ1279 the Supreme Court has observed (at page 1283 (of Cri LJ) :

'In an appeal under S. 417 of the Code of Criminal Procedure against an order of acquittal, the High Court has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; (2) the presumption in innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any real and reasonable doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. The High Court should also take into account the reasons given by the court below in support of its order of acquittal and must express its reasons in the judgment which lead it to hold that the acquittal is not justified. Further, if two conclusions can be based upon the evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial Court. It would

follow as a corollary from that if the view taken by the trial Court in acquitting the accused is not unreasonable, the occasion for reversal of that view would not arise.'

27. Bearing the above principles in mind we have no hesitation in holding that the present case is one in which the learned Sessions Judge has not properly appreciated the evidence and the documents and has come to the conclusions which are perverse and manifestly illegal and grossly unjust. Therefore, this Court is well justified in interfering with the finding of acquittal recorded by the Sessions Court against A.1 and reverse the finding into one of conviction under S. 302, IPC. So far as A.2 is concerned, we agree that no offence is made out against him and that the finding of not guilty recorded by the Sessions Court is acceptable.

28. Appeal partly allowed.

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