

**Swaminathan and Others Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/786487](http://sooperkanoon.com/786487)

**Court :** Chennai

**Decided On :** Dec-09-1992

**Reported in :** 1993CriLJ2379

**Judge :** K.M. Natarajan and; N. Arumugham, JJ.

**Appeal No. :** Criminal Appeal No. 699 of 1986

**Appellant :** Swaminathan and Others

**Respondent :** State

**Advocate for Def. :** S. Shanmughavelayutham, Addl. Public Prosecutor

**Advocate for Pet/Ap. :** N. T. Vanamamalai, Senior Counsel

**Judgement :**

**Arumugham, J.**

1. The accused 1 to 3 in Sessions Case No. 40 of 1984, on the file of the Session Judge, Thanjavur West, have preferred this Criminal Appeal against the judgment, dated 30-6-1986, convicting accused 1 to 3 for an offence under S. 302 read with 34 of the Indian Penal Code and sentencing each of them, thereunder, to undergo imprisonment for their lives and also convicting accused 2 and 3 for an offence under S. 307 read with 34 of the Indian Penal Code and sentencing each of them thereunder to undergo R.I. for three months and to pay a fine of Rs. 250/-, in

default, to undergo imprisonment for a further period of three months. Both the sentence awarded under S. 302 read with 34 IPC and the substantive sentence of imprisonment awarded under S. 307 read with 34, IPC, with regard to accused 2 and 3, were ordered to run concurrently.

2. The allegations of the prosecution against the accused were that on 5-6-1983, at 8-00 p.m., near the old Palakkarai at Kumbakonam, they along with one Dhanapal, in furtherance of their common intention, caused the death of one Jayaraman, by the accused 2 and 3 cutting him with aruvals and by the first accused stabbing him in his stomach with a sulikki, and thereby committed an offence punishable under S. 302 read with 34 of the Indian Penal Code and at the same time, place and in the course of the same transaction, accused 2 and 3 attempted to commit the murder of one Sekar by cutting him with aruvals and thereby committed an offence punishable under S. 307 read with S. 34 of the Indian Penal Code.

3. The case of the prosecution, as held out from the recorded oral and documentary evidence, in brief, is as follows :- The deceased Jayaraman is the sister's husband of P.W. 1 Sekar. They belong to Kallar community. The accused 1 to 3 and one Dhanapal belong to Padayachi community. All of them were living in Asur village, situate 2 Kms. away from Kumbakonam town. P.Ws. 2, 3, 5 and 8 were also residents of Asur village. In the said village, there were two temples, known as Pattari Amman temple and Mari Amman temple. Initially, the said temples were being maintained by the village panchayat and the panchayat was in charge of them. There were eight nattanmies, seven of whom belonged to padayachi community and one to Kallar community. The temples owned two tanks and up to the year 1975, the said nattanmaidhars themselves were appointing trustees and leasing out the tanks. After the year 1975, three persons belonging to kallar community became Trustees and, therefore, the aggrieved members of the padayachi community insisted the Commissioner of the H.R. & C.E. Board, Thanjavur, not to hand over the charge of the temples to the said Trustees, belonging to kallar community. Being unable to get a stay from there, the padayachi community members preferred an appeal before the Commissioner at Madras and there also their appeal was dismissed. Thereafter, they filed a petition

before the High Court, Madras, and obtained a stay. Notwithstanding the stay granted, the petition was dismissed and it ended in favour of the members of the kallar community. Meanwhile, when the stay was in force, Rasu Padayachi and party filed a suit in the District Munsif's Court, Kumbakonam stating that the Trustees had no right to fish in the tanks belonging to the temples. But, that suit ended in favour of the Trustees and the appeal filed against the said judgment, before the High Court, was also dismissed. Thus, since the lifetime of the old Trustees came to an end, the deceased Jayaraman was appointed as a Trustee, by the H.R. & C.E. Board, in the year 1978. In spite of the protest made by the members of the padayachi community, the deceased leased out the tanks for fishing, for two years. In the year 1983, P.W. 1, the brother-in-law of the deceased, was appointed as the Trustee, by the H.R. & C.E. Department. But the members of padayachi community prevented Jayaraman not to hand over charge to P.W. 1. But ignoring their protest, the deceased handed over charge to P.W. 1. In the year 1983, when a festival was arranged for the temples, the members of the padayachi community demanded their right to dance 'Kali Attam' and in that attempt also they failed. P.W. 1 and the deceased Jayaraman led and conducted the festival which took place on 1-6-1983 and the members of padayachi community did not take part in that festival. Thus, there had been a bitter enmity between the members of padayachi community and kallar community.

4. While so, on 5-6-1983, P.W. 1 and the deceased Jayaraman had been to Kumbakonam in order to purchase padlocks. After purchase, they had been back home by bicycle, M.O. 1. The deceased Jayaraman was riding the bicycle and P.W. 1 had been sitting in the back carrier of the bicycle. The time was 8.00 p.m. when they were proceeding near 'Moorthi Auto Workshop' situated on the side of the Neelathanallur road and at that time the street lights were burning. Suddenly, the accused 1 to 3 and one Dhanapal intercepted them. A-1 Swaminathan was armed with a sulikki and A-2 Rajendran and A-3 Ramachandran were having aruvals in their hands. The other accomplice Dhanapal stood beside them idly. At that time, A-2 cut Jayaraman (the deceased) on his back, by saying, 'It is only because of you that we could not get the Trustee post and conduct festival for Kali Temple'

(Vernacular matter omitted)

When A-3 Ramachandran tried to cut P.W. 1, P.W. 1 jumped out of the cycle and the deceased tried to ward off the cut with his right hand. Consequently, the cut fell on the right palm of the deceased. A-2 Rajendran again cut the deceased on his back with the aruval. The deceased and P.W. 1 took to their heels towards South and at that time A-2 and A-3 obstructed them and A-3 cut the deceased on his left hand with aruval. A-2 also cut the deceased with aruval on his left hand. A-2 again cut P.W. 1 and, since P.W. 1 tried to ward off the cut with his right hand, the cut fell on his right palm. Then, P.W. 1 and the deceased rushed to the four-road-junction. There again, A-3 Ramachandran intercepted them and cut the deceased on his right shoulder and right neck. At that time, A-1 Swaminathan, by saying 'Are you still alive' stabbed the deceased on his stomach with the sulikki armed by him. The intestines of the deceased had emerged out. The deceased fell down by shouting. (Vernacular matter omitted) Thereupon, on a call given by A-1 Jayaraman as, (Vernacular matter omitted.) all the accused had fled away from the scene with their weapons, via the College. The entire occurrence was witnessed by P.W. 4 Sundaresan, who was in his tea stall, situated near the scene of occurrence. P.W. 2 Subramanian, who was returning to Asur village via Neelathanallur at the time of occurrence heard the noise and rushed to the scene. Then he saw the deceased Jayaraman lying on the ground with his intestines out and with cut injuries and P.W. 1 Sekar standing with cut injuries on his right hand. P.W. 3 Thamilarasan, who had been returning home, after seeing his advocate Arumughasamy at Kumbakonam was proceeding towards Neelathanallur road, near the scene of occurrence at the time of occurrence. Then, he heard the noise and rushed to the scene and found the deceased Jayaraman lying there with cut injuries and his intestines out. He also found P.W. 1 Sekar having sustained cut injuries. Likewise, P.W. 5 who had been returning to Asur village after work, from Kumbakonam, and P.W. 6 who had been in his cycle shop near the scene of occurrence, on hearing the noise, went to the scene of occurrence and found the deceased and P.W. 1 having sustained cut injuries. Thereafter, P.Ws. 2 and 3 took the deceased Jayaraman and P.W. 1 to the Kumbakonam Government Hospital, in a cycle rickshaw.

5. On 5-6-1983, at 8-30 p.m., when P.W. 9 Abdul Ajeez was on his duty in the Government Hospital at Kumbakonam, he examined the deceased Jayaraman, who was brought by P.W. 2 Subramanian. At that time the deceased was confused and semiconscious. P.W. 9 found the following injuries on the body of the deceased :-

1. Linear injury 3' x 1' x 1' on the middle of left fore arm with underlying bone exposed. Suspected fracture of bone.
2. Lacerated injury abdomen 3' x 3' with fresh bleeding and faecal matter seen, and bowels protruding out of the wound. Wound needed exploration in theatre.
3. Linear injury 3' x 2' x 1' over the back of upper part of the right upper arm. Shoulder dislocated. Wound sutured.
4. Linear wound 4' x 2' x 1' over the back.
5. Linear wound 2' x 1' x 1' over back 2' away from the wound No. 4.

P.W. 9 gave initial treatment to the deceased Jayaraman and referred him to the Thanjavur Medical College Hospital, for further treatment. Ex. P-6 is the Wound Certificate issued by P.W. 9 regarding the injuries found on the deceased.

6. On the same day, at 8-5 p.m. P.W. 9 examined P.W. 1 Sekar for the injuries alleged to have been caused to him by two known persons at about 8-00 p.m. on that day. P.W. 9 found the following injuries on the person of P.W. 1.

1. Linear cut injury 2 1/2' x 1' x 1/2' above the right palm.
2. Incised wound 1' x 1/2' x 1/4' above the right middle finger.
3. Incised wound 1/2' x 1/2' x 1/4' above the right ring finger.
4. Incised wound 2' x 1' x the back of right hand below the above other fingers.

Ex. P-7 is the copy of the Accident Register issued to P.W. 1, by P.W. 9. According to the doctor P.W. 9, the injuries found on the person of the witness P.W. 1 were simple in nature and could have been caused in the manner and at

the time alleged and injuries Nos. 1 to 3 could have been caused with single cut or more than one cut. P.W. 9 sent intimation to police, about his treatment given to the deceased and P.W. 1.

7. P.W. 12, Panneerselvam, the Sub-Inspector of Police attached to the Kumbakonam North Police Station received the intimation sent by P.W. 9 from Kumbakonam Government Hospital, at 9-30 p.m. on 5-6-1983 while he was in charge of the Police Station. He immediately left for the hospital, visited the deceased, who had been in a state of semiconscious, and P.W. 1 Sekar, examined P.W. 1, recorded his statement Ex. P-1 and obtained the signature of P.W. 1 and the doctor P.W. 9 thereon. P.W. 12 returned to the Police Station along with Ex. P-1, got it registered as a case under sections 341, 323 and 307 of the Indian Penal Code in Cr. No. 433/83, prepared Ex. P-11 F.I.R. and sent it along with Ex. P-1 to the Judicial II Class Magistrate, Kumbakonam, through P.W. 13, Police Constable No. 2340, by name Ramadass. He also sent the copies of Ex. P-11 to higher officials for taking up further action.

8. Meanwhile, P.W. 10 Dr. Karthigeyan, attached to the Thanjavur Medical College Hospital admitted the deceased Jayaraman who had been referred from the Government Hospital, Kumbakonam for further treatment, as an in-patient in Ward No. 16, at 10-00 p.m. on 5-6-1983. At that time the deceased was in agony due to pain and in shock due to pain and Hypovolein. He found the following injuries on the person of the deceased.

1. An incised injury, horizontal, extending from the front of right flank extending across the abdomen up to the middle of the upper abdomen (torn) above the umbilicus with protrusion of the loops of small intestines and the (torn).

2. A linear incised injury on the outer aspect of right shoulder 10 cm. x 1.5 cm. x muscle deep (sutured at G.H.K.).

3. Another linear incised injury on the left inter scapular region, oblique, 1.2 cm. x 1.5 cm. x muscle deep. (sutured at G.H.K.).

4. Another sutured injury on the outer aspect of left fore-arm.

Ex. P-8 is the copy of the accident register prepared by P.W. 10, regarding the injuries found on the deceased.

9. P.W. 17 Kumaresan, the Circle Inspector of Police, Kumbakonam, when he was in his office on 5-6-1983 at 10-15 p.m. received the phone message given from Kumbakonam North Police Station about the case. Immediately he went to Kumbakonam North Police Station by 10-30 p.m. and received the copy of express report from P.W. 13. At 10-45 p.m. he went to the Kumbakonam Government Hospital, examined P.W. 1 Sekar and recorded his statement. At 10-50 p.m., he recovered M.O. 3 dhoti, and M.O. 4 shirt which had been worn by P.W. 1, under the cover of Ex. P-22, in the presence of one Ramanujam and one Kaliyamurthy. Then he went to Thanjavur Medical College Hospital, at 2-30 a.m. on 6-6-1983, examined the deceased Jayaraman and recorded his statement Ex. P-23. At 3-30 a.m. on 6-6-1983, he recovered blood stained dhoti M.O. 6, which had been worn by the deceased, under the cover of Mahazar Ex. P-5 in the presence of P.W. 8 Thiyagarajan and one Jayabal.

10. Meanwhile, on 6-6-1983, at 5-45 a.m., when P.W. 1 Dr. Perumal was in charge of Ward No. 16, in Thanjavur Medical College Hospital, where the deceased Jayaraman had been admitted for treatment, the said Jayaraman passed away in spite of the best treatment given to him. Thereupon, P.W. 11 sent death intimation Ex. P-10 to the Police. Ex. P-9 is the case sheet regarding the treatment given to the deceased Jayaraman.

11. Meantime, P.W. 13, the Police Constable 2340, who received Exs. P-1 and P-11 from P.W. 12, the Sub-Inspector of Police, at 10-30 p.m. on 5-6-1983 took them to the residence of the Judicial Second Class Magistrate, Kumbakonam. But since the said Magistrate was in sound sleep, he waited till 5.00 a.m. on the next morning and after the Magistrate woke up, he handed over Exs. P-1 and P-11 to him.

12. On 6-6-1983 at 7-15 a.m., P.W. 17 went to the Kumbakonam North Police Station and received the wireless message about the death of Jayaraman, given by one Lawrance Police Constable No. 457, from the Thanjavur Medical College Hospital Out Post Police Station. Thereupon, he altered the case into one under S.

302 IPC and prepared Ex. P-20 Express Report and sent it to Court through Police Constable Rajendran and its copies to the concerned higher authorities. He then went to the Thanjavur Medical College Hospital and conducted inquest over the body of the deceased from 11-00 a.m. to 2-00 p.m. in the presence of panchayatdars. At that time, he examined P.Ws. 2 and 3 Ex. P-24 is the inquest report prepared by P.W. 17. Then, P.W. 17 entrusted the body of the deceased to P.W. 14 Devendran, Police Constable, alongwith Ex. P-12 requisition for conducting autopsy.

13. On 6-6-1983 at 3-45 p.m., P.W. 15, Dr. K. Palani, Professor, attached to the Medico-legal Department, Medical College Hospital, Thanjavur, received the requisition Ex. P-12 and the body of the deceased from P.W. 14, and started conducting post-mortem examination on the body at 3-55 p.m. on the same day. The condition of the body then was cold and rigor mortis was present all over the body. He found the following injuries on the body :-

1. A pointed cut injury on the left collar bone at its middle  $1/2 \times 1/4 \times 1/4$  cm. found sutured.
2. An incised gaping wound noticed over the outer aspect of right shoulder in its upper part, slightly oblique  $5 \times 2 \times 2$  cms. found sutured. On dissection, the muscles are found to be cut.
3. An incised wound noticed over the front of right little finger at its root  $1 \times 1/4 \times 1/2$  cm.
4. An incised wound noticed over the front of right ring finger at its middle  $1 \times 1/2 \times 1/3$  cm.
5. An incised wound noticed over front of right middle finger at its middle  $1/2 \times 1/4 \times 1/4$  cm.
6. An incised wound noticed over the front of left arm below its middle  $1 \times 1/4 \times 1/4$  cm. found sutured.

7. An incised wound noticed over back of left fore-arm below its middle lengthwise in direction 5 x 1 x 3 cms. found sutured.

8. A small incised wound noticed over the front of left thumb at its middle 1 x 1/4 x 1/4 cm.

9. An incised wound noticed over the front of left palm at its inner part (hypothenar emiaence) 5 x 1/4 x 1/4 cms.

10. An incised wound noticed over the right shoulder blade region. Oblique in direction 7 x 1 x 5 cms. found sutured.

11. An incised sutured wound noticed over the back of left side chest inner to the scapula 9 x 2 x 5 cms. oblique on direction.

12. A sutured wound noticed over the front of abdomen just to the right of midline 26 cms. in length.

On dissection of the wound and on opening the abdomen the following internal injuries were noticed.

Transverse colon is found to be injured. Mesentary is found to be injured at its root.

Inferior vena cava (?) found to be served near its beginning.

Reparative sutures were noticed for the above injuries. Haematoma noticed on the posterior wall of abdomen, on the right side reparative sutures were noticed by the side of ascending colon.

Gauze is found to be kept in the raw-area and one end of it was kept outside the external wound No. 12. (for treatment purpose).

Heart : Chambers empty. Musculature : pale. Coronary vessels : normal. Lungs : pale. Stomach contains mucus (?). Mucosa : pale. Liver, spleen and kidneys were pale. Small intestine, mucosa : normal. Bladder : empty. Brain : pale.

According to P.W. 15, the deceased would appear to have died of shock and haemorrhage due to multiple injuries sustained by him. Ex. P-13 is the post-mortem certificate issued by P.W. 15. It is the further opinion of P.W. 15 that all the injuries found on the body of the deceased were antemortem in nature, that injuries Nos. 1 to 11 were simple in nature, that injury No. 12 was necessarily fatal and that all the internal injuries found on the internal organs of the abdomen of the deceased were connected with injury No. 12. He has also opined that injuries Nos. 1 to 11 could have been caused by cutting with a sharp edged weapon like aruval and Injury No. 12 could have been caused by stabbing with a weapon like sulikki and pulling the weapon out and that there is possibility of delicate organs found in the abdomen, sustaining injuries during such course as stabbing with a weapon like sulikki and pulling out the same.

P.W. 14 Devendran, Police Constable attached to the Kumbakonam North Police Station escorted the body during autopsy and thereafter, handed over the same to its relatives.

14. P.W. 17 Kumaresan, the Inspector of Police, on 7-6-1983, examined P.Ws. 10, 11 and 15, the doctors, and the Police Constable No. 457 Lawrance. On the same day, at 10.00 a.m. he went to the scene of occurrence, visited the scene and prepared observation mahazar Ex. P-2 in the presence of P.W. Anantharaman and one Chinna. Then he drew rough sketch Ex. P-25 with regard to the scene of occurrence. At 11-30 a.m. on that day, he recovered M.O. 1 bicycle and M.O. 2 (series) iron padlocks, from the scene of occurrence, under the cover of mahazar Ex. P-3, in the presence of the above witnesses. At 12.00 Noon, he recovered M.O. 5 blood stained earth under mahazar Ex. P-4, in the presence of the same witnesses. Then he examined other witnesses and recorded their evidence. Since the accused had surrendered in various courts and had been kept in judicial custody, P.W. 17 gave a requisition Judicial Magistrate, Kumbakonam asking for police custody of the accused 1 and 2 in order to secure the weapons of offence from them. But, the Magistrate had declined to give the accused in police custody. On 25-11-1983, P.W. 17 examined one Chitra, working in the office of the Tahsildar, Kumbakonam and on 29-11-1983, he examined one Anandakrishnan, working as Head Clerk in the office of the Asst. Commissioner, H.R. & C.E. Board,

Kumbakonam.

15. Meanwhile, on the requisition Ex. P-14, given by P.W. 17, the Inspector of Police, dated 16-7-1983, P.W. 16, the Head Clerk attached to the Kumbakonam Judicial Second Class Magistrate's Court, by name Kesavamoorthy, sent M.Os. 3 to 6 for chemical examination, on 22-7-1983 as per the original of Ex. P-15. Accordingly, Chemical Examiner's Report Ex. P-16 and Serologist's Report Ex. P-17 were received in Court. In Ex. P-16, it had been mentioned that in the properties sent for chemical examination there had been human blood stains. In Ex. P-17 also it had been stated that there were human bloodstains in the properties but that the group of the blood had been undetectable.

15A. P.W. 17, the Inspector of Police, after completing investigation laid charge-sheet against the accused before the Judicial Second Class Magistrate, Kumbakonam, under sections 302, 307 and 341 of the Indian Penal Code.

16. When the accused were questioned by the learned trial Judge, under S. 313 of the Criminal Procedure Code, on the basis of the incriminating circumstances appeared against them from the tendered oral and documentary evidence by the prosecution, the accused submitted that there was no enmity between the people of Kallar and Padayachi communities in the scene village, that they had no knowledge about the occurrence and that the prosecution witnesses were giving false evidence. The first accused further stated, while admitting the enmity between himself and the deceased Jayaraman, that he had given a police complaint and that at the instigation of P.W. 8 Thiyagarajan, P.W. 1 Sekar was giving false evidence against him. He has also submitted a file sent for from the H.R. & C.E. Board, in support of his case. Accused 2 and 3 denied their complicity in toto and stated that the case of the prosecution itself is a false one. The accused examined no witness on their behalf.

17. On assessing the entire oral and documentary evidence tendered by the prosecution, the statements made by the appellants/accused and the documents relied on by them and on hearing the rival contentions of both counsel, the learned trial Judge has found the accused guilty of the offences charged against them and sentenced them as stated above, aggrieved against which, the present appeal is

being canvassed by the accused.

18. We have heard Mr. N. T. Vanamamalai, learned Senior Counsel appearing for the appellants, who, though several grounds have been urged in the Grounds of Appeal, confined his arguments on the following main points only :-

1) that the admitted prolonged enmity existing between the prosecution party, belonging to Kallar community, and the appellants party, belonging to Padayachi community, was the only source and basis for P.W. 8, who was the brain behind the prosecution and who instigated P.W. 1 and other prosecution witnesses to implicate the appellants herein in the crime;

2) that there was a delay of about seven hours in sending the FIR Ex. P-1 and the Printed FIR Ex. P-11 from the police station to the Magistrate's Court, which remains inordinate and unexplained and points out the possibility of fabrication of the said documents getting all the accused implicated falsely and that the explanation given by P.W. 13, the Police Constable, who had been entrusted with the job of handing over these vital documents to the Magistrate, cannot at all be believed but to be rejected;

3. that the so called dying declaration Ex. P-23, alleged to have been recorded by P.W. 17 from the deceased, during the night of 6-6-1983 at Thanjavur Medical College Hospital projects very grave doubt upon its genuineness and credibility as a result of which, it is unsafe to record any conviction on the basis of Ex. P-23;

4. that the later part of the investigation claimed to have been done by P.W. 17 in preparing Exs. P-2 to P-5 on the basis of Ex. P-23, clearly demonstrates that these documents were merely make-believe statements created by P.W. 17 on the table of the police station and were not really prepared at the scene of crime as claimed by the prosecution; and

5. that in the context of P.Ws. 2, 3, 5 and 6 having turned hostile before the trial Court, the testimonies of P.Ws. 1 and 4 could not be believed as they had been instigated by P.W. 8 to speak against the appellants herein out of the inimical vendetta.

Urging the above points, the learned Senior Counsel appearing for the appellants, pursued us to reject the prosecution case in toto as highly suspicious.

19. Per contra, the learned Additional Public Prosecutor, Mr. Shanmughavelayutham, by referring to the salient features of the prosecution case, sought to sustain the conviction and sentence.

20. In the light of the above rival contentions being canvassed before us, the only point that has arisen for our consideration is whether the prosecution had established the guilt and the complicity of the appellants herein in committing the murder of the deceased Jayaraman and attempting on the life of P.W. 1 Sekar, beyond all reasonable doubts.

21. While probing the existing physical features and the topography of the scene of crime as projected in the rough sketch Ex. P-25 and the observation mahazar Ex. P-2, prepared by P.W. 17, the recovery of M.O. 1 bicycle and M.O. 2 padlocks under Ex. P-3, the recoveries of M.O. 5 bloodstained earth under Ex. P-4 and the bloodstained dhoti (M.O. 6) under Ex. P-5, from the scene of crime, coupled with the evidence of the attesting witnesses P.Ws. 7 and 8, the evidence of the ocular witnesses P.Ws. 1 and 4 and even the hostile witnesses viz. P.Ws. 2, 3, 5 and 6, we have not even the slightest doubt in our mind about the fact that in the road leading to Neelathanallur village in Kumbakonam town, near the old Palakkarai, at about 8-00 p.m., on 5-6-1983, both the deceased and P.W. 1 have been attacked by the assailants, whoever they may be, with deadly weapons like aruval and sulikki and that whereupon both of them have been brought down to the ground.

22. P.W. 9, Dr. Abdul Ajeez, attached to the Government Hospital, Kumbakonam has testified before the Court that on 5-6-1983 at 9.00 p.m., he examined the deceased Jayaraman at the Government Hospital, Kumbakonam as he was brought by one Subramaniam for treatment of the injuries found on his person, stating by himself that he was attacked by three known persons with aruval and sulikki, near Palakkarai in Kumbakonam town, at about 8-00 p.m. on that day. This witness has stated that at that time the deceased was in a confused and semiconscious stage. He had found the following external injuries on the person of the deceased :-

1. A linear injury 3' x 1' x 1' on the middle of leftfore arm with underlying bone exposed. Suspected fracture of bone.
2. Lacerated injury abdomen 3' x 3' with fresh bleeding and faecal matter seen and bowels were protruding out of the wound. Wound needed exploration in theatre.
3. Linear injury 3' x 2' x 1' over the back of upper part of the right upper arm. Shoulder dislocated. Wound sutured.
4. Linear wound 4' x 2' x 1' over the back.
5. Linear Wound 2' x 1' x 1' over the back 2' away from the wound No. 4

Ex. P-6 is the wound certificate issued by P.W. 9 regarding the injuries found on the body of the deceased. P.W. 9, after giving initial treatment to the deceased, referred him to the Thanjavur Medical College Hospital, for further treatment.

23. The same doctor, P.W. 9, then examined P.W. 1 Sekar at about 8-50 p.m. on 5-6-1983 who was brought by his brother by name Radha stating to have been attacked by five known persons with aruval at 8-00 p.m. on that day near the Palakkarai at Kumbakonam town. At that time, P.W. 1 was fully conscious and the doctor had found the following injuries on his person.

1. Linear cut injury 2 1/2' x 1' x 1/2' above the right pale.
2. Incised wound 1' x 1/2' x 1/4' above the right middle finger.
3. Incised wound 1/2' x 1/2' x 1/4' above the right ring finger.
4. Incised wound 2' x 1' x the back of right hand below the above other fingers.

Ex. P-7 is the copy of the Accident Register issued by P.W. 9 to P. W. 1. Ex. P-8 is the Original Accident Register relating to the deceased Jayaraman. According to this doctor he admitted P.W. 1 as an in-patient in the Government Hospital, Kumbakonam and since it was a medicolegal case, he sent intimation to the police. He has also opined that all the injuries found on the person of P.W. 1 Sekar could have been caused by cutting with a weapon like aruval either by one cut or

by more than one cut at the time and in the manner alleged. Similarly, he would opine that the injuries found on the deceased Jayaraman could have been caused by attacking with weapons like aruval and sulikki.

24. P.W. 10 Dr. Karthigeyan, attached to the Thanjavur Medical College Hospital, claims that he admitted the deceased Jayaraman as an in-patient, at about 10.00 p.m. on 5-6-1983 as he was referred by P.W. 9 for further treatment and the deceased was given treatment in Ward No. 16. In Ex. P-8, P.W. 10 has stated that Jayaraman was alleged to have been assaulted by three persons using pitchuva, sulliki and aruval at about 8.00 p.m. on 5-6-1983 at his place. He has also noted the following four injuries on the person of the deceased :-

1. An incised injury, horizontal, extending from the front of right flank, extending across the abdomen up to the middle of the upper abdomen (torn) above the umbilicus with protrusion of the loops of small intestines and the torn).

2. A linear incised injury on the outer aspect of right shoulder 10 cm. x 1.5 cm. x muscle deep (sutured at G.H.K.).

3. Another linear incised injury on the left interscapular region, oblique, 1.2 cm. x 1.5 cm. x muscle deep. (sutured at G.H.K.)

4. Another sutured injury on the outer aspect of left fore-arm.

P.W. 10 has noted that the patient at that time was conscious, but was in agony due to pain and in shock due to pain and Hypovolein. Ex. P-8 is the original Accident Register issued by this doctor with regard to the injuries found on the deceased. A perusal of this Ex. P-8 along with the oral testimony of P.W. 10, would clearly reveal that it renders full support and corroboration to the evidence of P.W. 9, the doctor attached to the Government Hospital at Kumbakonam, who had in the first instance, examined both the deceased and P.W. 1.

25. P.W. 11 Dr. Perumal, attached to the Thanjavur Medical College Hospital has spoken to the fact that in spite of the best treatment given to Jayaraman, he had died at 5.45 a.m. on 6-6-1983. Ex. P-9 is the case sheet relating to the treatment given to the deceased. Ex. P-10 is the death intimation sent to police by P.W. 11.

P.W. 11 would further state in the cross-examination that on 5-6-1983 at 11.30 p.m., the condition of the deceased was very serious, as per the case sheet Ex. P-9, and therefore, he was kept in the emergency ward. He has also testified that there is nothing in Ex. P-9 to show that the deceased was at that time in speaking condition.

26. A careful scrutiny of the evidence of P.Ws. 9 to 11, coupled with the certificates issued by them, viz. Exs. P-6 to P-10 clinches the fact that at about 8.00 p.m. on 5-6-1983 the deceased and P.W. 1 had been attacked with deadly weapons like aruval and sulikki, near Palakkarai in Kumbakonam town as a result of which, P.W. 1 had been admitted as an inpatient in the Government Hospital at Kumbakonam for treatment of his injuries and the deceased had been referred to the Thanjavur Medical College Hospital for further and better treatment as his condition was precarious then and that in spite of the best treatment given to the deceased at the Thanjavur Medical College Hospital, he had succumbed to the injuries at 5.45 a.m. on 6-6-1983, as per the death intimation Ex. P-10 and the evidence of P.W. 11.

27. P.W. 15 Dr. Palani, Professor, Medicolegal Department, Thanjavur Medical College Hospital had conducted autopsy on the dead body of the deceased on 6-6-1983 at 3.55 p.m., on the requisition given by P.W. 17, under Ex. P-12. During autopsy, the doctor had noted the following injuries on the body of the deceased :-

1. A pointed cut injury noticed on the left collar bone at its middle  $1/2 \times 1/4 \times 1/4$  cm. found sutured.
2. An incised gaping wound noticed over the outer aspect of right shoulder in its upper part, slightly oblique  $5 \times 2 \times 2$  cms. found sutured. On dissection, the muscles are found to be cut.
3. An incised wound noticed over the front of right little finger at its root  $1 \times 1/4 \times 1/2$  cms.
4. An incised wound noticed over the front of right ring finger at its middle  $1 \times 1/2 \times 1/3$  cms.

5. An incised wound noticed over front of right middle finger at its middle  $1/2 \times 1/4 \times 1/4$  cms.
6. An incised wound noticed over the front of left arm below its middle  $1 \times 1/4 \times 1/4$  cms.
7. An incised wound noticed over back of left fore-arm below its middle lengthwise in direction  $5 \times 1 \times 3$  cms. found sutured.
8. A small incised wound noticed over the front of left thumb at its middle  $1 \times 1/4 \times 1/4$  cm.
9. An incised wound noticed over the front of left palm at its inner part (Hypothenar emiaence)  $5 \times 1/4 \times 1/4$  cms.
10. An incised wound noticed over the right shoulder blade region. Oblique in direction  $7 \times 1 \times 5$  cms. found sutured.
11. An incised sutured wound noticed over the back of left side chest inner to the scapula  $9 \times 2 \times 5$  cms. oblique on direction.
12. A sutured wound noticed over the front of abdomen just to the right of midline 26 cms. in length.

On dissection of the wound and on opening the abdomen following internal injuries were noticed. Transverse colon is found to be injured. Mesentery is found to be injured at its root. Inferior vena cava is found to be severed near its beginning.

Reparative sutures were noticed for the above injuries. Haematoma noticed on the posterior wall of abdomen, on the right side reparative sutures were noticed by the side of ascending colon. Gauze is found to be kept in the raw area and one end of it was kept outside the external wound No. 12 (for treatment purpose).

27A. According to the post-mortem doctor, the deceased would appear to have died of shock and haemorrhage due to the multiple injuries sustained by him on 6-6-1983. He would opine that all the injuries found on the person of the deceased were antemortem in nature. It is the further evidence of P.W. 15 that injury No. 12

was necessarily fatal while injuries Nos. 1 to 11 were of simple nature, that all the internal injuries found on the internal organs of the abdomen of the deceased were connected with injury No. 12 and that injury No. 12 might have been expanded during the course of treatment. He has further opined that injury No. 12 could have been caused by stabbing with a weapon like sulikki and pulling out the same and that there is possibility of the delicate organs of the stomach sustaining injuries during the said course. It is the opinion of the doctor that injuries Nos. 1 to 11 could have been caused by cutting with a weapon like aruval. Ex. P-13 is the post-mortem certificate issued by P.W. 15.

27B. Pertinent at this stage to note that all the respective four medicos who admitted the deceased and P.W. 1, immediately after the accident, in the Government Hospital, Kumbakonam and the Thanjavur Medical College Hospital have clearly spoken to the fact that the deceased and P.W. 1 have been attacked at 8-00 p.m. on 5-6-1983 with deadly weapons like aruval and sulikki as a result of which they had sustained the various injuries noticed by the doctors and noted in their respective medical certificates and that in spite of the best treatment given to the deceased Jayaraman he had died at 5.45 a.m. on 6-6-1983, as is evident from Ex. P-10, the death intimation sent to police by P.W. 11. Though, the said four doctors have been cross-examined to considerable length, nothing seems to have been brought out to discredit or falsify their testimony. Consequently, we are fully satisfied to believe the evidence of the medicos and their respective medical certificates and hold that the deceased Jayaraman and P.W. 1 Sekar had been attacked with deadly weapons like aruval and sulikki, near Palakkarai, Kumbakonam town, at 8.00 p.m. on 5-6-1983 and that whereupon both of them had been brought down to the ground.

27C. At this juncture, however, we may point out certain aspects as found in Ex. P-7, noted by P.W. 9, in his original Accident Register Ex. P-7, pertaining to the statement alleged to have been made by P.W. 1 as stating that P.W. 1 was assaulted by five known persons on 5-6-1983 at about 8-00 p.m. near Palakkarai, Kumbakonam town. But, in Ex. P-8, the original Accident Register, prepared by P.W. 10, regarding the deceased Jayaraman, in the Thanjavur Medical College Hospital, it has been mentioned that the deceased was alleged to have been

assaulted by three known persons using pitchuva, sulikki and aruval at 8.00 p.m. on 5-6-1983 at his place. In this context, much was argued by the learned Senior Counsel appearing on behalf of the appellants, stating that if the said statement were to be taken as true, then one can see that a weapon called pitchuva had also been used, which has not been recovered and produced before the Court, by the prosecution, and that more than three persons had involved in the crime, which raises every grave doubt regarding the prosecution case. Though this kind of argument appears to be less attractive, yet on the closure scrutiny of the attendant circumstances, we are of the firm view that the said argument bears no significance and force in the context that the deceased Jayaraman was not found in a normal pursuit either when he was found by P.W. 9 at the Government Hospital, Kumbakonam or when P.W. 10 examined him in Thanjavur Medical College Hospital, at different points of time as spoken to by P.Ws. 9 and 10. But, however, on a closure scrutiny of the evidence of P.W. 10, it is seen that the deceased was, at that time, in a semi-conscious stage and was in agony due to pain. As such, the trivial mistake in referring to the place and time pertaining to the alleged attack perpetrated upon the deceased, the number of persons involved in the crime and the description of weapons as noted down by the doctor assumes no significance and the same cannot and would not, in our view affect the prosecution case. Even assuming that the said error would really amount to an unignorable mistake, it cannot be taken to undermine the very fabric of the prosecution case. Therefore, we are fully constrained to hold that in so far as the time and the place of the occurrence, the number of persons involved in the crime and the weapons of offence used are concerned, we have no hesitation or doubt in our mind to accept the positive, natural and clinching evidence of P.Ws. 9, 10, 11 and 15 which renders full support and corroboration to the recoveries of the material objects made by P.W. 17 as we have indicated above. In this regard we cannot but hold that at about 8-00 p.m. on 5-6-1983, in Kumbakonam town, near the old Palakkurai, both the deceased and P.W. 1 had been attacked by the assailants, whoever it may be, with deadly weapons like aruval and sulikki and that whereupon both of them had been brought down to the ground and consequently, in spite of the best treatment given to the said Jayaraman, he had succumbed to the injuries when P.W. 1 had survived.

28. Further, as was rightly observed by the learned trial Judge, Exs. P-16 and P-17, the report of the Chemical Examiner as well as the report of the Serologist stating that there were human bloodstains in the material objects sent for chemical examination on the requisition given by P.W. 17 and as spoken to by the Court Clerk. P.W. 16 render full support, and corroboration to our conclusion given above.

29. Coming to the motive portion of the prosecution case, it transpires that there had been a prolonged enmity between the two communities in the village, viz. kallar community and padayachi community in relation to the appointment of trustees to the temple situated in Asur village, conducting festivals to the temple and auctioning the fishing right of the tanks belonging to the said temple. In this regard, we see every justification to place reliance on the documents contained in the file sent for from the H.R. & C.E. Board on behalf of the first appellant herein. The documents are quite consistent with the claim of P.W. 8 as well as P.Ws. 1 and 4. However, we are able to see this part of the enmity that existed between the two parties, clearly exposed by the evidence of P.W. 8. Though P.W. 8 is said to have been the brain behind this case, yet his testimony appears to be quite consistent with the plea put forward by the first appellant during the course of questioning under S. 313 of the Cr.P.C. It is the natural, cogent and convincing evidence of P.W. 8 that since the deceased Jayaraman was responsible for the appellants not getting the post of Trustee and for conducting festivals for the temple and auctioning the fishing right of the tank belonging to the temple, by the minority kallar community, in spite of the objections raised by the first appellant, the appellants who belong to the padayachi community had developed a serious grudge against the deceased Jayaraman. We are, therefore, satisfied to hold that the prosecution had established the clear motive for the appellants to do away with the deceased Jayaraman and to attack P.W. 1 as claimed in the instant case. Though an attempt was made by the learned Senior Counsel appearing for the appellant that P.W. 8 was the brain behind the prosecution and only on whose instigation P.Ws. 1 and 4 have spoken against the appellants herein, we are totally unable to countenance the same as it lacks any basis, spelt out against him. On the basis of his selfservient imagination in the context of the prolonged enmity as admitted, nothing has been pointed out or brought out against the evidence of

P.W. 8 to suspect or reject his testimony about the motive portion of the prosecution case, against the appellant herein.

30. Considering the evidence by P.W. 8 alone, apart from the statement given by the first appellant when he was questioned under S. 313 of the Cr.P.C. and the documents relied on by him, we are able to see that the motive aspects of the prosecution case has been clearly spelt out and established by the prosecution through the evidence of P.Ws. 1 and 8. In this regard, we do not come across any material infirmity upon the testimonies of the witnesses above referred to with a view to gain support to the arguments advanced on behalf of the appellants herein. On the other hand, we are of the firm view that the prosecution had succeeded in establishing the motive for the appellants herein to get themselves involved in the offence.

31. Coming to the legal proof offered by the prosecution against the complicity of the appellants herein for the murder of the deceased Jayaram and the attack perpetrated on P.W. 1 by means of homicidal violence, it appears that the prosecution dwells upon the evidence of P.Ws. 1 to 6 out of whom, P.Ws. 2, 3, 5 and 6, though claimed to be ocular witnesses for the occurrence had not rendered their support to the prosecution case as a result of which they have been treated hostile by the prosecution resulting in their evidence being of no use for the prosecution case. Then, there remains the evidence of P.Ws. 1 and 4 alone regarding the occurrence proper. The learned trial Judge has accepted the evidence of these witnesses in toto and though much was canvassed before us against their oral testimonies, we are of the view that nothing is available to differ from the view taken by the learned Trial Judge upon their testimonies. P.W. 1 was the person who had accompanied the deceased during the occurrence by sitting in the carrier of the bicycle driven by the deceased. According to P.W. 1, when they were proceeding to their village from Kumbakonam, after purchasing the iron padlocks, M.O. 2 (series), on their bicycle M.O. 2 by himself sitting on the carrier and by the deceased Jayaraman riding the cycle, near Murthy Auto Workshop, on the side of the Neelathanallur road, they were intercepted by the appellants herein and one Dhanapalan. At that time the first appellant was armed with a Sulikki and the appellants 2 and 3 were having aruvals in their hand. The 2nd appellant, by

stating, 'It is only because of you that we could not get Trusteeship and conduct festival for the Kali temple', cut the deceased on his back. The third appellant cut P.W. 1 with the aruval in his hand. When P.W. 1 jumped out of the cycle, the cut fell on the deceased and when the deceased tried to ward off the cut with his right hand, it fell in his right hand. The second appellant again cut the deceased on his back with the aruval. Soon after getting the cuts, the deceased and P.W. 1 ran towards South to some extent after having left the cycle and there again, they were intercepted by the appellant 2 and 3. The third appellant cut the deceased on his left hand. The 2nd appellant also cut the deceased on his left hand. Again, the 2nd appellant cut P.W. 1 and when he tried to ward off the cut, it fell in his right palm. Then, P.W. 1 and the deceased ran towards the four road junction and there also, the third appellant intercepted them and cut the deceased on his right shoulder and right neck indiscriminately. At that time the first appellant, by saying 'Are you still alive' ?, stabbed the deceased on his stomach with the sulikki armed by him. The deceased, by shouting 'vernacular matter omitted' fell down and on a call given by the first appellant stating all the appellants fled away from the scene through the college road. This categorical evidence of P.W. 1 clinches the fact that all the three appellants herein had perpetrated the violence against P.W. 1 and the deceased Jayaraman at three places in the scene of crime on three instalments and during the course of the said transaction, all the appellants had got themselves involved in attacking the deceased and P.W. 1 indiscriminately one and the same time. The said P.W. 1 had also sustained injuries occurrence and even with regard to the injuries sustained by him his narration of the events is quite convincing. He has stated that when the third appellant tried to cut him, he jumped out of the cycle and, therefore, the cut fell on the deceased. This, he claims to have taken place where they were intercepted on the first instance. Then, when they ran from the said place to some distance both of them were overpowered by the appellants herein and then again, the 2nd appellant cut him with aruval and when he tried to ward off the cut, he sustained the cut injury on the palmar aspect of his right hand. This portion of his ocular testimony derives full support from the evidence of P.W. 9, the doctor who examined him and issued the original Accident Register Ex. P-7. The doctor has noticed three injuries on the person of P.W. 1 viz. on the right pale, right middle finger and the right ring finger

as is evident from Ex. P-7. It has to be noticed at this stage that P.W. 9, the doctor who got P.W. 1 admitted in the hospital for injuries has stated in Ex. P-7 itself that P.W. 1 was stated to have been assaulted with aruval by five known persons on 5-6-1987 at about 8.00 p.m. near Palakkarai, Kumbakonam. Perhaps, this noting down of P.W. 9 in Ex. P-7 was taken advantage of on behalf of the appellants herein to contend that P.W. 1 was not speaking truth and that was the reason why the number of persons stated to have been involved in attacking him had been referred to as five in Ex. P-7. But, a closure scrutiny of Ex. P-7 clinches the fact that he was brought to the doctor P.W. 9 by a person by name Radha, the brother of P.W. 1. It is not the claim of P.W. 9, the author of Ex. P-7 that P.W. 1 himself narrated the event relating to the occurrence by stating that he was attacked by five known persons, as found in Ex. P-7. It is more significant at this juncture to note that when P.W. 9 was in the box, he was not even confronted with regard to the said aspect as found in Ex. P-7. But, however, the doctor P.W. 9 was firm in his view that the injuries found on the person of P.W. 1 could have been caused not by a single cut but were due to more than one cut. In the context of the established circumstances and supporting nature of the medical evidence to the claim of P.W. 1 since he happened to be the injured who had been more promptly, without any delay, admitted in the hospital and treated by P.W. 9, we find no reason to suspect or discredit the ocular testimony of P.W. 1 in giving the accounting of the overt acts of the appellants herein in the instant case.

32. The narration of P.W. 1, the injured witness, derives every support in substratum to his ocular testimony, by the evidence of P.W. 4 Sundaresan. According to P.W. 4, at the time of occurrence, when he was standing in front of his father-in-law's rice mill, situated on the side of Neelathanallur road, near the Palakkarai, the deceased and P.W. 1 were proceeding along the road on their bicycle, by the deceased riding the cycle and P.W. 1 sitting on the carrier of the cycle, towards North. At that time, the appellants herein along with one Dhanapalan, intercepted them and the third appellant, by saying. 'It is only because of you that we could not get trusteeship', cut the deceased on his right shoulder. Then, the third accused proceeded to cut P.W. 1 and as P.W. 1 jumped out of the cycle, the cut fell on the right hand of the deceased. The deceased and P.W. 1 turned back and ran away. Thereagain, the 2nd accused overpowered

them and tried to cut the deceased. When P.W. 1 tried to ward off the cut, it fell on the right hand of P.W. 1. Again the third appellant cut the deceased on the right shoulder with aruval. When the first appellant intercepted the deceased, the third appellant came before him and cut the deceased on the left shoulder with aruval. At that time, the first appellant, by saying, '(vernacular matter omitted)', stabbed the deceased on his stomach with the sulikki armed by him. Then, all the appellants fled away from the scene along with their respective weapons. Thus, in narrating the various overt acts of the appellants herein in attacking the deceased Jayaraman and P.W. 1, this witness P.W. 4 clearly lends every support and corroboration to the ocular testimony of P.W. 1.

33. Further, we find that though P.Ws. 1 and 4 have been subjected to rigorous cross examination, they have withstood the same and never failed to establish the prosecution case. P.W. 4 claims that he was examined by the police at 12.00 Noon, on the day of the occurrence itself. We do not find any merit in the argument advanced on behalf of the appellants that P.Ws. 1 and 4 are not the true witnesses who could have seen the occurrence and that therefore, their versions could not be believed, simply because a suggestion had been made apparently attributing something with no basis or indication. In the context of four witnesses viz. P.Ws. 2, 3, 5, and 6 not supporting the prosecution and turning hostile, we have scrutinised the oral testimonies of the ocular witnesses viz P.Ws. 1 and 4 with great care and caution. It is the claim of P.W. 9, the doctor, who had no cause to speak against any of the parties herein, that he has seen P.W. 1 within half-an-hour after the occurrence at the hospital along with the deceased Jayaraman, the deceased. Thus, the medical evidence in this case renders every support and corroboration to the ocular testimonies of P.Ws. 1 and 4. Since no material has been made available to disbelieve the ocular testimonies of P.Ws. 1 and 4 and the corroborative medical testimonies of the medicos P.Ws. 9 to 11 and 15 in this case we are subscribing our view to that of the learned trial Judge in accepting the ocular testimonies of P.Ws. 1 and 4 as they were the truth speaking witnesses.

34. Coming to the aspect of investigation in this case, much strain was exercised by the learned Senior Counsel in commenting the mode of investigation conducted in the instant case, which would, according to him, raise every grave suspicion and

the credit of which should be given to the appellants herein. It was the main flank of attack made by the learned Senior Counsel at the first instance against the despatch of Exs. P-1 and P-11 from the police station to the Court after a delay of seven hours, which according to him, remains inordinate and unexplained. It appears that P.W. 9 had sent an intimation to the Police, on the basis of which P.W. 12, the Sub-Inspector of Police had gone to the Government Hospital at Kumbakonam and examined P.W. 1 who had been admitted as an in-patient there and recorded his statement Ex. P-1 at 9.45 p.m. on 5-6-1983. P.W. 12 then came to the Police Station got Ex. P-1 registered as a case under Cr. 433/83 for offences under sections 341, 323 and 307, I.P.C., prepared Ex. P-11, the First Information Report and sent both Ex. P-1 and P-11 to the Magistrate's Court, Kumbakonam through P.W. 13, the Police Constable No. 2340, by name Ramadas. It transpires from the evidence of P.W. 12 and from Ex. P-1 that Ex. P-1 had been recorded by P.W. 12 in the presence of the doctor P.W. 9 at about 9.45 p.m. on 5-6-1983. His evidence further clinches the fact that he could not get any statement from Jayaraman, the deceased, as he was unable to speak due to his injuries. But, however, the Sub-Inspector would admit in his cross-examination that the distance between the Kumbakonam North Police Station and the residence of the Judicial Second Class Magistrate Kumbakonam is about one kilometer which can be covered by travelling in a cycle within five minutes and by walk within ten minutes. But, he could not remember the exact time at which he sent Exs. P-1 and P-11 to the Court. He would admit that he registered the case by 10.00 p.m. on that day. However, it is found that Exs. P-1 and P-11 were received by the Judicial Magistrate by 5.00 a.m. on the next day i.e. on 6-6-1983 as is evident from the initials put by the Magistrate on these documents which have been marked as Exs. P-18 and 19. The Express Report Ex. P-20 sent by P.W. 17, the Inspector of Police has also been received in Court by 4.45 p.m. on 7-6-1983 only as evident from Ex. P-20 and Ex. P-23. It was the consistent evidence of both the Court Clerk P.W. 16 and the Police Constable P.W. 13 who took Exs. P-1 and P-11 to the Court, that during the hard hours of night if the Magistrates were found asleep the Police Constable could disturb him and handover the First Information Report or any urgent posts to him at his residence. But, the explanation for handing over the F.I.R. to the Magistrate at 5.00 a.m. on 6-6-1983, after a delay of seven hours,

given by the Police Constable is that since the Magistrate was sleeping at that time when he reached his residence, he waited till the Magistrate got up at 5.00 a.m. next morning and handed over the F.I.R. However, since the Police Constable has come forward with an explanation which, though not in a position to be accepted we have to see that the said delay in handing over the F.I.R. to the Magistrate whose residence is situated within a distance of one furlong, we have to see whether the said delay would affect the prosecution case to any extent.

35. Before proceeding further, we have proposed to consider the legal aspect in the context of the case laws relied on in this case. In a case 'Sone Lal v. The State of Uttar Pradesh' : 1978 CriLJ1122 , the Apex Court has held as follows (at page 1127 (of Cri LJ) :-

'Once the prosecution had shown that regular entries were made in public document, namely, the general diary regarding the registration of the case and the forwarding of the special report to the higher authorities and of the return of the person, who had taken the special report, to the Police Station, the legal presumption would be that official acts must have been duly performed. Of course, it would have been better if the prosecution would have been completed the link in the chain by examining the person who had taken the special report to show the exact time when the F.I.R. was received by the Magistrate or the S.P., but if it did not do so that was not sufficient to put the prosecution out of Court.'

36. In *Gabrial, In re, , Ratnavel Pandian, J.* (as he then was) has held as follows (at page 139) :

'It is imperative that the first information report should be despatched immediately without any delay by the investigating officers to the judicial Magistrates who should initial the same, noting therein the time and date of the receipt of the said important documents, and this would provide the only judicial safeguard against any subsequent fabrication of the documents in grave crimes. There is no doubt that delay in lodging the first information report quite often results in embellishment, which is a creature of afterthought. On account of the delay, the vital and valuable piece of evidence, viz., the first information report, not only gets bereft of the advantage of spontaneity, but also danger creeps in by the

introduction of coloured version exaggerated account or concocted story, as a result of deliberation and consultation. If any delay occurred the prosecution must explain it by adducing satisfactory and acceptable evidence. If no explanation is forthcoming, when it creates a doubt in the minds of the Judicial Officers as to the genuineness of the First Information Report.'

37. In 'K. Vadivelu, In re', 1976 LW 115, the learned Judge after relying the decisions made in : 1972 CriLJ1296 ; Thulia Kali v. State of Tamil Nadu and , Karunakaran Jabamani, In re held as follows :-

'The Tamil Nadu Police standing Order 577 dealing with the despatch of express reports states that in all cases of murder, culpable homicide, etc., the F.I.R. shall be sent direct to the local Sub Magistrate and other Police officials and should be sent in the quickest way possible either by post or hand'.

38. The Supreme Court in Thulia Kali v. State of Tamil Nadu, : 1972 CriLJ1296 has observed as follows (at page 1298 (of Cri LJ)) :-

'On account of delay the report not only gets benefit of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or connected story as a result of deliberation and consultation. It is therefore essential that the delay in the lodging of the first information report should be satisfactorily explained.'

39. In 'Rajan v. State of Kerala', the Kerala High Court has observed as follows (at page 577 (of Cri LJ)) :-

'The non-compliance with the direction that F.I.R. should be forwarded to the Magistrate forthwith need not necessarily provide room for an inference that FIR was concocted. In such cases court must scrutinise the first information statement and attending circumstance carefully to ascertain whether there is any truth in the allegation that it was actually brought into existence later. A delayed first information and delay in despatching the FIR to the Magistrate are two different aspects. Of course, in a case where there is allegation that first information statement was subsequently manipulated by putting an earlier time in it, the delay

in despatching FIR to the Court may have a bearing on the allegation. But mere delay in receiving the FIR by the Magistrate is not sufficient to raise a presumption that there was delay in preparing the FIR. The endorsement made by the Magistrate on the FIR showing the date or time of receipt thereof may raise a presumption that the FIR was forwarded to him only then. But, no presumption can be drawn from the mere fact of delay in receiving the FIR that it came into existence after such delay.'

40. 'In *Johny and five others v. State* 1990 LW 175 in which case there involved a delay of 25 hours in receipt of the first information report by the Magistrate and the same was not satisfactorily explained the Court has held as follows :-

'The first information report a document of considerable importance, is produced and proved in criminal trials not as a piece of substantive evidence, but with the avowed object of obtaining the early information of the alleged criminal activity and to have a record of the circumstances before there was time for them to be embellished or forgotten. A quick first information report, which reaches the Court of the Magistrate with promptitude, will be a towering circumstance which will go a long way to assure the veracity of the prosecution story of, there can be no time to create and deliberate a release false case against the accused. It may be in some cases the delay in lodging the first information report may be inevitable, but such delay may have to be satisfactorily explained. Courts have held that long and unexplained delay not only in lodging the first information report but also in its receipt in the Court and suspicious circumstances to be taken into consideration while judging the bona fides of the prosecution story, as delay may be bring in a coloured version of the whole incident. A delayed first information report, which gives rise to suspicion, will put the Court guard to look for a possible and acceptable explanation for the delay. A delayed first information report in prosecutions where there are more accused than one, will require careful scrutiny and more so when the possibility of false implication looms large.'

'It is common knowledge that in first information report as soon as it is received by the Magistrate, he puts in his initials along with the date and time of its receipt. It is also admitted in the case by P.W. 20 that the first information report relating to

Session Cases, will not be directly received by him, but, it will be passed on, only after the Magistrate initials them. He also confirms the usual practice of the handing over of the first information reports by the police constables, directly to the Magistrates. He feigns ignorance of the procedure to be followed on holidays and out of office hours.'

'The non-production of the details regarding the travel of Ex. P-1 and P-26 from 6-00 p.m. on 9-10-1983 to 5-00 p.m. on 10-10-1983 is rather unfortunate and at the best we can conclude that the first information had reached the Magistrate only 25 hours after the alleged incident though the distance to the police station from the scene of occurrence is 1 Km. and the distance to the Court is approximately 5 Km.'

41. In an another case in 'Peddi Reddy Subbareddi v. State of A.P.' : 1991 CriLJ1391 it has been observed as follows at page 1392 :-

'The conduct of P.W. 1 in not reporting to any of the villagers about the occurrence throws a considerable doubt on the veracity of his evidence which is incredible. The report about the occurrence was given by a delay of 15 hours.'

'In the present case as we have come to the conclusion that the evidence of the P.W. 1 is clouded with strong suspicion and as the first information report was lodged by a delay of 15 hours, the false implication of appellants in the present case cannot be completely ruled out. On going through the judgment of both the courts below, we are unable to share with the finding rendered by the two courts holding the appellants are guilty of the charges with which they stand convicted.'

42. In case held between 'Palaniswamy and two others v. State' 1992 LW (Cri.), 105, the Division Bench of this Court, wherein one of us was a party (K. M. Natarajan, J.), has held that the unexplained and inordinate delay in sending the FIR to the Magistrate is fatal to the case of the prosecution in the context that there were grave doubts regarding the lodging of the report by P.W. 1 and the indication of fabrication and in such circumstances, the delay assumed much importance in that case, resulting in considerable doubts on the version of the prosecution.

43. The Supreme Court, in 'Zahoor v. The State of U.P.' : 1991 CriLJ56 has held that unless the testimonies of the ocular witnesses were corroborated by the medical evidence and found reliable in all material particulars mentioned in the FIR with no indication of fabrication or embellishment, the delay in sending the FIR was of no significance and to be held that the offence was proved beyond all reasonable doubts against the accused.

44. In the light of the above legal ratio enunciated by the Apex Court and the other High Courts of our land, it is thus made clear that the mere delay in sending the first information report to the Court from the police station, though promptly lodged and registered and thereby set the law in motion to investigate the particular crime in a given case, it cannot be deemed in the context of such delay that it would affect the very fabric of the prosecution case. This would, however, in our view not mean that how much of the delay happened can be allowed to remain on evidence without any explanation and in such case, the prosecution is duty bound to explain the delay in sending the report to the Court with a view to avoid any bereft of or embellishments.

45. We have extracted already the evidence of P.W. 13 by way of some sort of explanation for the seven hours delay in this case. But, as we have observed already, there was no laches of any kind in lodging the FIR. Ex. P-1 with every promptitude and quickness at about 9-30 p.m. on the date of the occurrence and getting it registered by 10-00 a.m. as claimed by P.W. 12. Therefore, there cannot be any two views with regard to the setting of law in motion by registering Ex. P-1 in this case. But, the delay in sending Exs. P-1 and P-11 after the registration of the case by 10-00 p.m. on that day till it reaches the residence of the Magistrate by 5-00 a.m. on the next day i.e. on 6-6-1983 with a delay of seven hours for which P.W. 13 has put forward an explanation that he had to wait till 5-00 a.m. on the next day since the Magistrate was sleeping at the time when he reached the residence of the Magistrate. Though the explanation of P.W. 13 is not convincing, however, in the context that there is no indication of any fabrication of Ex. P-1 with a view to getting the appellant implicated, this delay of seven hours in sending the FIR to the Magistrate, in our view assumes no significance.

46. Then, the learned Senior Counsel, appearing for the appellants contended that the dying declaration claimed to have been recorded by P.W. 17, on the night of 5-6-1983 at Thanjavur Medical College Hospital from the deceased Jayaraman cannot at all be relied upon since according to P.W. 10, the doctor, the deceased was not in a speaking condition at that time and that on this score alone the entire prosecution case has to fail. It is true that the evidence of P.Ws. 10 and 11 and the Case Sheet relating to the treatment given to the deceased reveal that the deceased was not in speaking condition on the night of 5-6-1992 and his condition then was precarious. In this context we find that the evidence of the Drs. P.W. 10 and P.W. 11 runs counter to the evidence of P.W. 17 who claims that Ex. P-23 dying declaration was recorded by him from the deceased Jayaraman at 2-30 a.m. on 6-6-1983. For the above said reason we are able to find some force in the argument advanced by the learned Senior Counsel in this regard. At this juncture, we are inclined to refer to a case law enunciated by the Supreme Court in 'Munnu Raja v. State of M.P.' : 1976 CriLJ1718 it has been held as follows : (at page 1740 (of Cri LJ)) :-

'After making the statements before the police the deceased succumbed to his injuries and, therefore, the statement can be treated as a dying declaration and is admissible under S. 32(1) of the Evidence Act. The maker of the statement is dead and the statement relates to the cause of his death.

It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subjected to cross-examination, here is neither a rule of law nor a rule of prudence that a dying declaration cannot be acted upon unless it is corroborated.

Law does not require that the maker of the dying declaration must cover the whole incident or narrate the case history. What is necessary is that the whole of the statement made by the deceased must be laid before the court without tampering with its terms or its tenor.'

Therefore, in the light of the above legal norm envisaged by the Apex Court and applying the same to the instant case and for the reasons referred to above we decline to place any reliance on the statement said to have been recorded by P.W.

17 from deceased, which has been marked as Ex. P-23, and that therefore, we reject the same. But, however, in the light of the clearly established circumstances revealing the complicity and guilt of the appellants herein we are inclined to subscribe our view to the finding of the learned trial Judge against the appellants herein.

47. While doing so, it may not be proper on our part to leave the mode of investigation claimed to have been done by P.W. 17 in this case, though we have subscribed our view with the learned Trial Judge in sustaining the finding of conviction and sentence recorded against the appellants herein. It was the case P.W. 17 that on the receipt of the Express Report in this case he reached Kumbakonam Government Hospital by about 10-45 a.m. on 5-6-1983 and examined P.W. 1 in the hospital, recorded his statement, then recovered M.O. 3 and 4 at about 10-50 a.m. under the cover of Ex. P-22 mahazar, attested by the witnesses, then he had been to the Thanjavur Medical College Hospital, examined the deceased Jayaraman and recorded his statement at about 2-30 a.m. which has been marked as Ex. P-23. Then, at about 3-30 a.m. on that day, he recovered M.O. 6 under the cover of Ex. P-5 mahazar and at 7-15 a.m. on 6-6-1983 he examined witnesses and went to Kumbakonam and on receipt of the death intimation regarding the death of the deceased Jayaraman, he altered the section of the case into one under S. 302, IPC prepared the Express report Ex. P-20 and sent the same to the Court. Then, between 11-00 a.m. to 2-00 p.m. on 6-6-1983 he conducted inquest over the dead body of the deceased Jayaraman in the presence of witnesses at the Thanjavur Medical College Hospital and prepared Ex. P-24, the inquest report. He also examined P.Ws. 2 and 3 and others. Then he handed over the body for post-mortem examination through P.C. No. 211, examined as P.W. 14, with a requisition for conducting autopsy. Thus, by about 3-00 p.m. on 6-6-1983 his part of the investigation was over and that thereafter, the said Inspector of Police came to the investigation scene only on the next day i.e. on 7-6-1983 at about 10-00 a.m. when he had been to the scene of crime and prepared the observation mahazar Ex. P-2 in the presence of P.W. 7 and another and drew the rough sketch Ex. P-25. Then at about 11-30 a.m. he recovered M.O. 1 cycle and M.O. 2 series iron padlocks under the cover of mahazar Ex. P-3 from the scene of crime followed by the recovery of the blood stained earth M.O. 5

under mahazar Ex. P-4 as attested by P.W. 7 and another.

48. It is rather strange and curious that a responsible Inspector of Police who was found engaged in the investigation of a murder case did not visit the scene of crime from 10-45 p.m. on 5-6-1983 till 10-00 a.m. on 7-6-1983. Though he has recovered the blood stained earth and the cycle and the iron padlocks from the scene of occurrence under the cover of mahazar attested by P.W. 7 and another he ought to have visited the scene of crime and recovered the material objects at the earliest point of time. P.W. 17, however, has not given any explanation for having not visited the scene of crime in the middle. Of course the preparation of the observation mahazar Ex. P-2 and the rough sketch P. 25 only appear to have done after 10-00 a.m. on 7-6-1983. This kind of inaction on the part of P.W. 17 is highly deplorable in the light of a grave crime committed in this case. As such, a fool proof investigation is expected by law and the procedure. But, we may at this stage not inclined to accept any of the contentions made on behalf of the appellants herein on the basis of the said in action on the part of the investigating officer, which, in our view, rather appears to be the carelessness and negligence on the part of P.W. 17 and nothing else. But, it would not in any way affect the very fabric of the prosecution case. In other words, we find that the guilt and the complicity of the appellants herein have been fully established by the prosecution beyond all reasonable doubts, in this case.

49. On a careful consideration of the tendered oral and documentary evidence by the prosecution in establishing the guilt and complicity of the appellants herein for the offences charged against them we are fully satisfied to hold that each of the appellant accused had his own intention in intercepting the deceased and P.W. 1 on the four road junction near the old palakkarai in Kumbakonam at 8-00 p.m. on 5-6-1983 and in attacking the deceased Jayaraman and P.W. 1 Sekar with deadly weapons like aruval and sulikki and thereby caused the death of the deceased Jayaraman and injuries to P.W. 1. But, we are not able to identify any evidence regarding the period in which P.W. 1 was under treatment in the hospital. But, the evidence of P.W. 9, the doctor reveals that the injuries found on the person of P.W. 1 are simple in nature. But, it is clear that P.W. 1 had sustained the said injuries during the occurrence and inflicted by the appellants 2 and 3 as is clear

from the evidence of P.Ws. 1 and 4, the injured witness as well as the ocular witness. Viewed in this context, the attack said to have been committed on P.W. 1, in our view had not inflicted any grievous injuries amounting to the commission of the offence under S. 307, IPC. But, in the context that the attack had been made by appellants 2 and 3 on the witness P.W. 1 with weapons like aruval, we feel that the ends of justice would be met if the offence against the appellant 2 and 3 on the second count is modified into one under S. 324 read with 34 of the Indian Penal Code. Accordingly, we are inclined to modify the offence said to have been committed by appellants 2 and 3 under S. 307 read with Section 34 IPC into one under S. 324 read with S. 34 IPC and to sentence the appellants 2 and 3 thereunder to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 250/- each, in default to undergo imprisonment for a further period of three months.

50. Thus, having cogitated the entire prosecution case on the basis of the tendered oral and documentary evidence by the prosecution and the rival contentions of the respective counsel we are fully satisfied to hold that the prosecution has proved its case against all the appellants herein by acceptable and sufficient evidence, beyond any reasonable doubt, and we are therefore inclined to maintain the conviction and sentence imposed by the learned trial Judge, against all the appellants herein with the modification of the offence as against the 2nd and 3rd appellants herein on the second count from S. 307 read with S. 34 IPC to one under S. 324 read with S. 34 IPC, as stated above.

51. In the result, the appeal fails and is accordingly dismissed. However, the charge against the appellants 2 and 3 under which they have been found guilty by the learned trial Judge, for the second count is modified from under S. 307 read with S. 34 IPC to one under S. 324 read with S. 34 IPC and the appellants 2 and 3 are convicted thereunder and sentenced to undergo R.I. for a period of one year and to pay a fine of Rs. 250/- (Rupees two hundred and fifty only) each, in default to undergo R.I. for a further period of three months. The substantive sentence of imprisonment imposed under this section shall run concurrently with the sentence imposed under S. 302 read with S. 34 IPC against the appellants 2 and 3. In other respects, the conviction and sentence imposed by the learned trial Judge against

the appellants herein are hereby maintained.

52. Appeal dismissed.

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