

In Re: Deivendran

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Court : Chennai

Decided On : Oct-31-1995

Reported in : 1996CriLJ2209

Judge : J. Kanakaraj and ;Janarthanam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 120B, 148, 302, 307, 326, 347, 397, 449 and 499; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 162, 164, 173(2), 300, 305, 306, 307, 313, 337, 338, 366, 433A, 460 and 464; Evidence Act - Sections 30, 114 and 133; Arms Act - Sections 25(1)

Appeal No. : Referred Trial No. 3 of 1995

Appellant : In Re: Deivendran

Advocate for Def. : R. Ragupathi, Addl. Public Prosecutor assisted by ;K.V. Sridharan, Adv.

Advocate for Pet/Ap. : Gopalakrishnan Lakshmana Raju, ;M. Jagadeesan and ;K.R. Thiagarajan, Advs.

Judgement :

Kanakaraj, J.

1. This referred trial case arising under S. 366, Cr.P.C. and the Appeal on behalf of three accused/appellants arise under the following circumstances. The three

appellants along with P.W. 1 and the fifth accused stood charged before the Principal Sessions Judge, Madurai, in S.C. No. 91 of 1994 for the following charges :-

The first charge says that all the five accused had conspired together two days prior to 25-11-1992 to commit robbery in the house of P.W. 5 at Dharmathupatti, Mela Gudalur, an offence punishable under S. 120B, IPC. The second charge was that on 25-11-1992 at about 2-00 a.m. accused 1 to 4 had entered the house of P.W. 5 with guns, Iron rods and other weapons and had committed rioting punishable under S. 148, IPC.

The third charge related to accused 1 to 4 in having unlawfully entered into the house of P.W. 5 with deadly weapons for the purpose of committing house trespass and to commit offence punishable with death, thus making themselves, liable under S. 449, IPC.

The fourth charge related to the murder of the first deceased Deivammal by the first accused, with the second and the fourth accused assisting in the act of murder, thus punishable under S. 302 read with S. 34, IPC.

The fifth charge related to the murder of one Saraswathiammal by the first accused by strangling her with accused 2 to 4 assisting him in the act of murder, thus punishable under S. 302 read with S. 34, IPC.

The sixth charge related to the act of the first accused in shooting Nagarajan and thus, committing the murder of Nagarajan and accused 2 to 4 were present during the said act of murder and thus liable under S. 302 read with S. 34, IPC.

The seventh and last charge related to the accused 1 to 4 in shooting of P.W. 5 by the first accused and causing grievous injuries and thus committing an offence punishable under S. 326 read with S. 34, IPC.

2. Learned Sessions Judge by judgment dated 14-7-1995 acquitted the fifth accused of the only charge framed against her under S. 120-B, IPC. The fourth accused applied for pardon and became an approver and was examined as P.W. 1. Accused 1 to 3 were not found guilty under S. 148, IPC. Accused 1 to 3 were,

however, found guilty under S. 449, IPC and sentenced to 10 years rigorous Imprisonment each. They were also found guilty under S. 302 read with S. 34, IPC. for committing the murder of Deivammal and they were imposed a sentence of life imprisonment. Similarly, they were found guilty under S. 302 read with S. 34, IPC for committing the murder of Saraswathi Ammal and were imposed the sentence of life imprisonment. On the sixth charge accused 1 to 3 were found guilty for the murder of Nagarajan and while the first accused was sentenced to the extreme penalty of death, second and the third accused were sentenced to life imprisonment. Similarly, accused 1 to 3 were found guilty under S. 326 read with S. 34, IPC. and sentenced to three years Rigorous Imprisonment each. All the sentences were directed to run concurrently. The reference under S. 366, Cr.P.C. relates to the death sentence imposed on the first accused. Criminal Appeal has been filed by all the three accused, accused 1 to 3 and they are respectively represented by learned counsel Mr. Gopalakrishna Lakshmana Raju, Mr. M. Jagadeesan and Mr. K. R. Thyagarajan.

3. The prosecution case is as follows :-

The first accused is said to be the owner of an S.B.B.L. country gun and the country pistol, M.Os. 1 and in the case. He is also said to be owning certain Ganja fields and engaged in poaching forest elephants for the purpose of getting their tusks. P.W. 1 who was the fourth accused in the case and later turned as approver, had married in Kerala and was blessed with a male and a female child. But for some unknown reason his wife had quarrelled with him and deserted him about four years prior to the occurrence. On account of this P.W. 1 became seriously ill with typhoid fever and had no money even for medical expenses. It is at that time that the first accused had met him and helped him with a sum of Rs. 50/- for taking injections to cure his typhoid fever. After he was restored to normal health, the first accused asked him to work in his house. This happened about 2 1/2 years prior to the occurrence. P.W. 1 was being paid Rs. 10/- or Rs. 5/- for defraying his expenses. About 10 days prior to the occurrence, the second accused was injured in a lorry accident and the first accused went to see the second accused. Thereafter, second and the third accused had come to the house of the first accused and at that time the second accused told the first accused that

there were lot of jewels and cash in the house of P.W. 5 and they could commit robbery in the said house. The first accused responded by saying that without knowing the topography of the house of P.W. 5 it would be difficult to commit robbery. The second accused replied by saying that his mother, fifth accused, was working in the house of P.W. 5 for about 10 years and she knew the topography of the house of P.W. 5. Fifth accused is said to have drawn a sketch of the house by drawing a 'Kolam' with water. The first accused could not understand the topography and therefore, the second accused was deputed to go to the house of P.W. 5 personally to see the topography. Second accused is said to have gone to the house of P.W. 5, apparently under the umbrage of P.W. 5 and had even taken tiffin in the house of P.W. 5. The second accused disclosed that the family members of P.W. 5 were going to Madurai on that day and that it might take two or three days for them to return. He also explained that one could get entry into the house only through the smoke exit or chimney. Thereupon the first accused suggested that the next day namely, 24-11-1992 being a New Moon day, they could go and commit robbery on the night of 24-11-1992. Second and third accused were asked to come at about 11-00 p.m. At about 7-30 p.m. first accused asked P.W. 1 to go to Prabu Cycle shop owned by P.W. 8 and get a cycle for hire. Accordingly, P.W. 1 brought Cycle No. 12 and parked the same in the lane adjoining the house of the first accused. Second and third accused promptly arrived at 11-00 p.m. First accused gave a sum of Rs. 50/- to the second accused and asked P.W. 1 as well as both second and the third accused to have tiffin and come back. They returned within half-an-hour. Accused 2 to 4 were then asked to sleep in the noon meal centre, called as market. At about 1-00 a.m. P.W. 1 was weeping, apparently because he was being involved in a heinous crime, while second and third accused were sleeping. The first accused came there and he is said to have beaten P.W. 1 and told him that he need not commit robbery and it is enough if he could stand outside the house. Second accused had brought a bag which could be hung on the shoulder. He also brought a gun and was also sporting a pistol in his hip. In the bag, he had brought four masks and eight hand gloves, a small knife, a crow-bar, torch light, and four pieces of white ropes. He loaded the pistol and inserted the same in his hip. He took the barrel of the gun separately and gave it to the third accused, and the wooden portion of the gun was

given to the second accused. P.W. 11 was then asked to carry and transport second and third accused in a cycle to be left near the house of P.W. 5. Though P.W. 1 did not know the house of P.W. 5, second accused offered to show the way. P.W. 1 first took the second accused and left him near the house of P.W. 5. He then took the third accused and left him in the same place. Lastly, he took the first accused in the cycle and dropped him near the house of P.W. 5. At the request of the first accused. P.W. 1 took the cycle near the house of one Maharaja and left it in the Chavadi. It is stated that the first accused accompanied P.W. 4 for the purpose of leaving the cycle because the first accused had a doubt that P.W. 4 might run away.

4. P.W. 5's house is a palatial house facing south on the Dharmathupatti street. There is a main gate on the southern side on the junction of Dharmathupatti street and Sowdamman Kovil Street. As one enters the gate, one could see a large pavement area covered by cement concrete and on the western extremity of the cement concrete there is a car shed. On the eastern end of the concrete, there is a cattle-shed, a place for storing fire-woods. There is again a large open space north of the cattle shed and east of the house. There is another portico on the eastern side and a door providing entry into the house. This eastern door leads to the kitchen store-rooms, bath-room and a stair-case leading to the first floor. On the North-Western side there is a door leading to the Kurichi Gounder Street, on the north side of the house. Adjacent to the door-way on the western side there is room for keeping vessels and on the eastern side there is a store-room. The house is practically surrounded on all four sides by streets except on the western side where there is no indication that there is any street. On the other hand, immediately adjoining western wall of P.W. 5's house there is the house of one Ponram, which faces north. According to the prosecution case, the terrace of P.W. 5's house and the house of Ponram and another house on the western side are on the same level and one could walk easily from one terrace to the other. There are as many as five lamp posts shown in the rough sketch Ex. P.65 as well as in the observation Mahazar Ex. P.21.

5. P.W. 1 says that there was a lamp post near the house of P.W. 5 and the first accused climbed the same first. Second accused climbed the lamp post next to

the first accused. From the lamp post the first accused is said to have jumped on the terrace of P.W. 5's house. From there, he is said to have gone to the terrace of the adjacent house. Similarly, the second accused also followed the first accused. P.W. 1 is said to have climbed the lamp post after the second accused. Thereafter, the third accused climbed the lamp post. All the four are said to have gone to the same place to which the first accused had gone. At this stage, all the four covered their faces with masks and hand gloves brought by the first accused. P.W. 1 then says that there was an adjacent house and it is only through the said terrace of the adjacent house that they could go to the chimney of P.W. 5's house. Accordingly, they proceeded to the Chimney in the P.W. 5's house which was covered by a slab. The slab was removed and kept on the terrace by accused 1 to 3. At this stage, the first accused beat P.W. 1 and asked him as to why he was standing simply. So saying, the first accused asked P.W. 1 to tie a rope on the four bricks at the top of the chimney. Accordingly, P.W. 1 tied the rope. The first accused then dropped the rope inside the house. The first accused used the torch-light to look inside the chimney. The first accused then descended into the house through the rope. The second accused followed; after him the third accused went inside the house. Lastly, P.W. 1 also got into the house. They were now inside the kitchen. The first accused then took a tumbler in the kitchen and threw it inside the main hall on the western side of the kitchen. He also cried like kitten. Thereupon, they heard a noise like the unlatching of the door of a room. The first accused asked the second accused, third accused and P.W. 1 to hide inside the bath-room. An old woman came inside the kitchen. P.W. 1 was standing by the side of the bath-room whereas the second and the third accused were very near the first accused. Immediately, the first accused pounced upon the old woman who happened to be the first deceased Deivammal and twisted her neck as if breaking the neck. P.W. 1 says that the first accused adopted a particular tactics in holding the jaw at two extremes and making a fast twist of the neck. Simultaneously, the third accused tied the legs of the first deceased with a rope. P.W. 1 was asked to stand as guard over the first deceased, while other three accused proceeded inside the house. The dying first deceased is said to have asked P.W. 1 to bring water. Before P.W. 1 could get the water, the first deceased passed away. Without knowing whether the first deceased had passed away, P.W. 1 dragged the first deceased to the next

hall on the western side. There was another old woman lying in a cot, where accused 1 to 3 had entered. The first accused took a cloth and closed the mouth and nose of the said old woman and pressed, the cloth. The said old woman happens to be the second deceased Saraswathiammal. The second accused was holding the legs of the second deceased while the first accused was pressing the cloth. The second deceased was dragged from the bed to the floor. By that time, the second deceased also passed away. At that stage, P.W. 2 entered the room. The second accused took the pistol from the first accused and held it against P.W. 2's forehead asking her not to shout, as otherwise he would not hesitate to shoot her down. The jewels owned by P.W. 2 was taken by the third accused and deposited in his pocket. The second and the third accused demanded the keys of the house from P.W. 2. P.W. 2 gave one key to them. P.W. 2 had taken the key from a place where several keys were kept. The second and the third accused utilised the said key for opening one of the bureaus. In that bureau there were a lot of jewels and cash. The second and the third accused proceeded to take a suitcase from the house which is marked as M.O. 8 and filled the same with the cash and jewels found in the bureau. When P.W. 2 was asked to give other keys, she denied knowledge of any other key. Thereupon they took the crow-bar and broke the another bureau which was fitted with mirror. At that stage they heard the horn noise of a jeep. P.W. 2 immediately dashed off towards the front door. The second accused relieved the third accused of the pistol and ran behind P.W. 2 asking her to stop. The second accused turned back and told the first accused that the house owner had come back. The first accused asked the others to keep ready, the suit case and proceeded to the front door with the SBBL gun. Two persons were advancing towards the house from the jeep. The first accused aimed at them and fired. One person caught hold of his chest and fell down. Another persons caught hold of his chest and ran outside the house. The person who fell down happens to be the third deceased Nagarajan. All the accused/appellants and P.W. 1 took the stolen jewels and cash and proceeded via stair-case and reached the terrace of the next house. At that stage the suit-case which was held by the second accused fell down. The second accused got down and collected all the fallen jewels and put it back in the suit-case. P.W. 13 who was the resident of the said house is said to have got up on hearing the noise and when he switched on the torch-light, he

could see the four persons coming from eastern side to the western side. They were wearing masks, one of them had fallen down in front of his house along with a suit case M.O. 8. When P.W. 13 and others tried to chase the second accused, the other three persons who were standing on the terrace threatened them. The man with a gun threatened to shoot if anybody tried to catch the second accused. The first accused again beat P.W. 1 and asked him to help the second accused to get up with the suit-case. Accordingly, P.W. 1 helped the second accused to get up with the suit-case and all the four ran away.

6. When they reached a place called pethukottai, the first accused gave Rs. 20/- to P.W. 1 and asked him to return the cycle. It was about 5-30 a.m. P.W. 1 was asked to come back to a place called 'Vatta Kinaru' which is on the outskirts of Gudalur. Accordingly, P.W. 1 returned the cycle and proceeded to 'Vatta Kinaru'. The first accused gave two gold bangles to P.W. 1 and asked him to sell the same after some time and utilise the proceeds for his expenses. P.W. 1 received the bangles and concealed the same in the Noon Meal Centre which is referred to as Market. About three days later the Police had enquired him, but P.W. 1 denied knowledge because the first accused had warned him that he would destroy the entire family with country bombs if he disclosed the occurrence to the Police. P.W. 1 went back to Kerala to continue his fishing trade. About 2 1/2 months later, the third accused met P.W. 1 at Kumizhi. The third accused told P.W. 1 to meet the first accused at Surali Falls near the ladies' cloak room. When P.W. 1 and the third accused went there, cumbum Inspector of Police, came there along with certain others. The third accused gave a confessional statement on the basis of which the police recovered certain jewels, from the third accused. P.W. 1 also gave a confessional statement and produced the two bangles which he had kept concealed.

7. P.W. 1 was kept in the Central Jail, Madurai, for about five months. On 17-11-1994, the Judicial Magistrate, Uthamapalayam, had committed the case for trial before the Sessions Judge, Madurai and posted the case for appearance on 10-2-1994. P.W. 1 was granted bail on 17-6-1994. On 4-8-1994 charges were framed. By a requisition dated 18-8-1994 received from the Inspector of Police, Gudalur, P.W. 17, the Judicial Magistrate, periyakulam, was asked to record a confession

from P.W. 1 u/S. 164, Cr.P.C. After following the procedure prescribed by law and after administering the usual caution, a statement u/S. 164, Cr.P.C. was recorded from P.W. 1 and the proceedings are exhibited as Ex. P.17.

8. P.W. 2 is the daughter of P.W. 5. The second deceased Saraswathi Ammal is her father's mother. The first deceased Deivammal is the younger sister of Saraswathi Ammal. Her marriage with her uncle's son Jaikumar was arranged to take place on 6-12-1992. On 23-11-1992, P.W. 2's father (P.W. 5), mother, brother and a neighbour Mohan had proceeded to Madurai in a Jeep 6666 for purchase of things and articles for the marriage. On 24-11-1992 the only inmates of the house were P.W. 2, the first deceased, second deceased, and P.W. 6 Venkatkumar a servant. The servant was sleeping outside the house. At about 3-30 p.m. they had locked all the doors and retired to sleep. P.W. 2 was sleeping in a hall called 'Pooja Room' which is on the side of the house. The first and the second deceased were sleeping in a room on the eastern side of 'Pooja Room'. Since, P.W. 2 was not able to sleep, she moved over to an office room which is adjacent to the bed room of the first and the second deceased. At about 2-30 a.m. she heard a noise of a person moaning and also the noise of a cat. P.W. 2 went to the second deceased and asked her as to the reason for the noise. Second deceased told her that the first deceased had gone to see it and P.W. 2 could go and sleep. P.W. 2 went back to the office room. A little later she heard the noise of men running towards the bed room and when P.W. 2 went and saw as to what was happening, she found the second deceased was being pressed down by some of the men. She could see four persons standing in the room and two were pressing the second deceased. The body of the first deceased was also dragged inside the room. Two persons approached her and told her that they would shoot her down if she made any noise. All of them were wearing masks. One of them was having a long gun M.O. 1. Another man was having a pistol, M.O. 2. The third man was having an Iron-rod, M.O. 9 and one other man was having a bag. They came to remove her jewels on her body. P.W. 2 told them that she would herself remove the jewels and hand them over to them. Accordingly, a gold chain, M.O. 14, eight bangles, M.O. 13 and a pair of ear-rings, M.O. 15 were removed by her and handed over to the said persons. They received the jewels and put them in the pocket. They wanted the key from P.W. 2. She told them that only her grand-

mother was having the key. They removed the key from a bag belonging to the first deceased and proceeded to open the bureau. From the bureau they removed cash and jewels and loaded them in a blue colour suit-case belonging to her brother. M.O. 8. Since they could not find the key for one of the bureaus, they broke it open. All these bureaus were in the place adjacent to 'Pooja Room'. One of the persons tied her hands in a loose manner. All of them were talking in Tamil. At that time, they heard the noise of the jeep. Immediately, P.W. 2 pushed down the rope loosely tied around her hands and rushed towards the main entrance. The door was slightly open and simply closed without the latches on. As soon as she saw her father, she warned him that the thieves are inside the house and they were armed with a gun. She also told him that they had removed all the jewels from her. Thereupon, her father, P.W. 5 and the driver Nagarajan proceeded into the house. Behind them, her brother and the neighbour Mohan were proceeding. A little later they heard the noise of a gun shot. Her father, P.W. 5 ran out with blood-stains. Her mother and brother attended to her injured father and took him to the house of Mohan. Later she came to know that both her grand-mothers Deivammal, the first deceased and Saraswathiammal, the second deceased had been done to death and the Driver Nagarajan had also died. P.W. 2 and her brother proceeded to Gudalur Police Station. Sub-Inspector, P.W. 23 was there and he recorded a statement from P.W. 2. After verifying the contents, P.W. 2 signed the same, and her brother attested it. Ex. P.1 is the said complaint. P.W. 2 also says that the night lamp was burning in the house.

9. P.W. 3 is the son of P.W. 5 and brother of P.W. 2. He corroborates P.W. 2 with reference to the incident which took place after 2-00 a.m. on the night of 24-11-1992/25-11-1992 relating to P.W. 2 rushing out from the house and the subsequent events leading to the giving of complaint Ex. P.1. Similarly, P.W. 4 is the mother of P.Ws. 2 and 3, who also corroborates the evidence of P.Ws. 2 and 3 and had also identified the jewels. P.W. 5 is the father of P.Ws. 2 and 3 and the husband of P.W. 4 and the owner of the house in which dacoity was committed by the accused. P.W. 6 is the servant of P.W. 5 who was also in the house on the date of occurrence.

10. P.W. 14 was the resident of the cattle-shed of P.W. 5's house. He was working in a Coffee-shop. He speaks to the fact that the fifth accused was working in the house of P.W. 5 and he also speaks to the fact that the second accused, her son was involved in a lorry accident. He refers to the fact that the fifth accused was drawing a 'Kolam' relating to the topography of P.W. 5's house and the same was being witnessed by four persons. P.W. 15 as the person who had advanced a loan of Rs. 12,000/- to the first accused about seven days after the occurrence. He is said to have demanded the money from the first accused. The first accused promised to settle the account on the next day. Accordingly, on the next day, the first accused returned the sum of Rs. 12,000/- in the form of Rs. 50/- currency notes and Rs. 100/- currency notes. These currency notes to the tune of Rs. 20,100/- are M.O. 63 series.

11. P.W. 23 was the Sub-Inspector of Police who was in attendance at the Gudalur Police Station on the early hours of 25-11-1992. He recorded the complaint of P.W. 2 and registered the same as Crime No. 693/92 under Ss. 302, 307, and 397, IPC and Section 25(1)(A) and (B) of the Indian Arms Act. He took the signature of P.W. 2 in the First Information Report Ex. P.64. He gave a telephonic message to the Inspector of Police, Cumbum. Express First Information Reports were sent through P.C. Nos. 1027 and 1024 to the higher authorities. He proceeded to the scene of occurrence and within five minutes the Inspector of Police, Cumbum had also arrived there.

12. P.W. 25 was the Inspector of Police, Cumbum, who received a message from P.W. 23 at about 4-00 a.m. on 25-11-1992. Immediately, he proceeded to Gudalur Police Station and received the First Information Report. By about 5-00 a.m. He reached the scene of occurrence. He prepared the observation mahazar Ex. P.21 in the presence of P.W. 20, who had attested the same. He conducted an inquest on the body of the third deceased. Nagarajan between 7-45 a.m. and 9-45 a.m., Ex. P. 66 being the inquest report. He then conducted an inquest on the body of the second deceased Saraswathi Ammal between 9-45 a.m. and 11-45 a.m., Ex. P.67 being the inquest report. Lastly, he conducted an inquest on the body of the first deceased Deivammal between 11-45 a.m. and 13-45. Ex. P.68 being the inquest report. At the inquest, he examined P.Ws. 2, 3, 6 and others. By about 2-

00 p.m. he entrusted the bodies to P.W. 22 for the conduct of an autopsy at the Cumbum Government Hospital. He recovered from the scene of occurrence the broken glass pieces M.O. 66, a crow-bar about two feet in length (M.O. 9), an aluminium school box, (M.O. 67), a brandy bottle M.O. 68 under Ex. P.22 Mahazar attested by P.W. 20. At about 2-30 p.m. he recovered the blood-stained mosaic flooring where the third deceased was lying and also sample mosaic flooring piece, being M.Os. 69 and respectively, under Ex. P.23 attested by P.W. 20. At about 3-00 p.m. he recovered from the scene an eight feet rope which had been removed from the body of the first deceased and the sari worn by her, being M.Os. 4 and 71 respectively under Ex. P.24 Mahazar. At about 3-30 p.m. he recovered a similar rope removed from the body of the second deceased being M.O. 5 under Ex. P.25. At about 3-45 p.m. he recovered from the door step of the bed-room adjoining the main hall, cartridge zinc rounds (two in number). M.O. 72 and cartridge covering paper, five in number, being M.O. 73 under Ex. P.26 Mahazar. At about 4-00 p.m. on the Southern side of the house at the main entrance near a lavatory, he recovered a woollen gloves M.O. 3 and rope M.O. 6 under Ex. P.27. At about 4-30 p.m. he recovered from the top of the stair-case situate near the bed-room of the first and the second deceased, an empty cartridge relating to 410, musket being M.O. 74 under Ex. P. 28. At about 4-45 p.m. he recovered rope hanging from the chimney in the Kitchen, which was about 36 feet long and was in two rows being M.O. 7 under Ex. P.29. At about 5-00 p.m. on the western side of P.W. 5's house in front of the house of Gunasekaran he recovered a 11" long pistol M.O. 2 under Ex. P.30. He examined P.W. 13 and others after 5-00 p.m. He had also arranged for a dog squad and photographs to be taken.

13. On 26-11-1992 he examined P.W. 7 a blacksmith, by showing M.O. 2 to him.

14. On 26-11-1992 at about 4-00 p.m. in the presence of P.W. 20 and others, he searched the house of the first accused. He recovered M.O. 80 being Car No. plates, M.O. 75 cartridge rounds, M.O. 76 Balrus cartridge rounds, M.O. 77 gunpowder in rolls, M.O. 78 an empty 410 cartridge, M.O. 93 paper used for filling up cartridges, M.O. 79 12 bore empty cartridge under Ex. P.31. Ex. P.32 is the inventory taken during the search. He also examined some more witnesses like P.W. 20 and others. On 27-11-1992, he examined P.W. 4 and others. He also

came to Madurai Meenakshi Mill Hospital to examine. P.W. 5 who was taking treatment there.

15. On 3-12-1992, he gave a requisition to the Magistrate to send the viscera of the three deceased for chemical analysis. He also requested the hyoid bone of the first deceased to be sent for chemical analysis. He sent a separate requisition Ex. P.48 for forwarding M.Os. 2, 72 and 74 for examination by Ballistic expert. Ex. P.59 is the requisition for sending certain other material objects for chemical analysis. On 18-12-1992 he examined P.Ws. 9, 10, 11, 22 and 23. He was all the time searching for the accused.

16. On 7-2-1993, on information P.W. 25 proceeded with a police party to Udayar bridge at Karunakka Muthanpatty and arrested the first and the second accused. The first accused gave a confessional statement, admissible portion of which is Ex. P.33, in the presence of P.W. 20 at 10-00 a.m. the first accused produced M.O. 24 double rowed chain with a doller and neckless. Similarly, he seized M.O. 81 being 52 currency notes of Rs. 20/- and the pant worn by the first accused. M.O. 82 under Ex. P.34 Mahazar. At 10-30 a.m. the second accused gave a confessional statement, in pursuance of which he produced from his pocket M.O. 29 'C' design neekless as well as the underwear M.O. 83 under Ex. PP.35 Mahazar. In pursuance of the confession of the first accused, P.W. 25 was taken along with the witnesses to the Thamari Falls, east of Kullappa Goundenpatty and from a hole in the forest tree, he produced a yellow bag containing most of the jewels stolen from the house of P.W. 95. They are M.Os. 16 to 23, 26, 28, 30, 33, 35, 36, 37, 38, 42 to 52, 55, 56, 84 to 86 under Ex. P.36. The first accused look P.W. 5 and witnesses at about 2-00 p.m. on that day to the east of Kullappa Gounder Patty and near the Siluvai tree he produced M.O. 1 gun kept concealed under the earth. The gun was wrapped in a polythin paper M.O. 87. He also produced M.O. 88 a cloth belt for hanging the gun. All of them were recovered under Ex. P.37. The first accused again took them to a round well near the field of Ponniah Gounder and by baling out the water in the well, M.O. 8 the suit case was produced. Inside the suit-case M.Os.89 yellow colour jewel box and M.O. 90 yellow box without lid. They were recovered under Ex. P.38.

17. All the Mahazars were signed by P.W. 20 and others.

18. At about 9-00 a.m. fifth accused was arrested near the cattle-shed of Anbazhagan in the 11th Ward of Gudalur in the Presence of P.W. 20. On 8-2-1993, P.W. 25 went to the Suruli Falls at about 7-15 a.m. Near the Ladies' Cloak room he arrested the third accused and P.W. 1 in the presence of P.W. 20. The third accused gave a confession and in pursuance of the same produced from his underwear M.O. 13 series of bangles, M.O. 14 a chain with collar and M.O. 5 a pair of ear drops. He also produced the underwear M.O. 91 and polythene bag M.O. 92. All of them were seized under Ex. P.39. In pursuance of the confession given by P.W. 1 he produced from his underwear, M.O. 10 series bangles and the underwear M.O. 11. They were seized under Ex. P.40. P.W.25 examined P.Ws. 2 to 5 on that day. The said witnesses also identified the jewels shown to them. From P.W. 5 he recovered the shirt M.O. 61 worn by him at the lime of the occurrence. The accused were sent for remand.

19. On 8-2-1993 P.W. 25 examined P.W. 8 and recovered Ex. P.2, the note-book kept in the cycle shop under Mahazar Ex. P.41. On 10-2-1993 he examined P.W. 6 and others. On 18-2-1993 he examined more witnesses. On 20-2-1993 he examined Doctor, P.W. 16 and the Doctor. P.W. 16 had already entrusted the cartridge zinc rounds M.O. 64 recovered from the body of P.W. 5. On 10-3-1993, he proceeded to Coimbatore and from P.W. 16 he received Ex. P.16. the wound certificate. On 11-3-1993, he examined P.Ws. 20, 23 and others, he also examined the Doctor P.W. 12 and received the wound certificate, Ex. P.30. Ex. P.18 is the treatment file relating to P.W. 5 issued by the Doctor P.W. 18. He gave a requisition to the Magistrate to send M.Os. 1, 62, 64, 72 and 79 chemical analysis. On 11-5-1993 he sent a requisition to send the blood-stained shirt of P.W. 5, M.O. 55 for chemical analysis.

20. Doctor P.W. 9 received the deadbody of Nagarajan on 25-11-1992 with a requisition Ex. P.4 to conduct an autopsy. He found on the deceased six oval shaped injuries on the chest. The skin on the edge of the injuries were protruding inside the body. Four of the injuries were right on the right chest and one was on the centre of the chest. The last one was on the upper portion of the stomach.

There were five more injuries on the left side of the stomach with the skin protruding outside. One cartridge zinc round was taken from the third injury, and it was preserved in a plastic pocket. The opinion of the Doctor is that the third deceased would have died about 10 to 14 hours prior to autopsy, the deceased would have died due to the injuries on the vital parts and loss of the blood. Ex. P.5 is the post-mortem certificate. M.O. 62 series are the cartridge zinc round recovered from his body.

21. P.W. 10 is the Doctor who received the body of the second deceased Saraswathi Ammal with a requisition Ex. PP. 6 (along with the history of the case) to conduct an autopsy. He commenced the autopsy at 4-50 p.m. on 25-11-1992. He found the tongue drawn inside. Blood had oozed out from the mouth and the nose. Hyoid bone was intact. Trachea was found broken above the sternal notch. In the opinion of the Doctor, the second deceased would have died because of the stoppage of oxygen and difficulty in breathing. Death would have been caused about 10 to 14 hours prior to autopsy. Ex. P.7 is the post-mortem certificate and Ex. P.8 is the final opinion.

22. P.W. 11 is the Doctor who received the body of the first deceased Deivammal with a requisition Ex. P.9 to conduct an autopsy. He commenced the autopsy at 4-05 p.m. on 25-11-1992. He found on the body a number of abrasions with contusions. He also found abrasions on the right side of the neck. On the left shoulder there was a contusion to the extent of 7.5 cms. Hyoid bone was broken on the right side. In the opinion of the Doctor, the deceased would have died because of the strangulation and closure of the nose and mouth. Ex. P. 10 is the post-mortem certificate and Ex. P.11 is the final opinion.

23. After the conduct of the post-mortem of all the three deceased, P.W. 22 constable who was in charge of the dead bodies, recovered the clothes worn by the third deceased Nagarajan, namely M.Os. 60, 94, 95, 96 and 97. He also recovered from the body of the first deceased Deivammal, the blood-stained sari of the first deceased M.O. 98, the jacket, M.O. 99, skirt M.O. 100 as well as four gold bangles, M.O. 101. From the body of the second deceased, he recovered the blood-stained sari M.O. 102, Jacket M.O. 103, a gold-ring M.O. 104, a pair of gold

ear drops, M.O. 105 and handed over to the Police Station under Form 95.

24. P.W. 12 was the Doctor in attendance at Cumbum Government Hospital. On 25-11-1992 at about 4-00 p.m. P.W. 5 was brought with injuries. He was told that the injuries were caused on account of a gun shot by certain thieves. He found the injuries caused by gun shots on the chest of P.W. 5. Two of the injuries were grievous in nature. Ex. P.12 is the copy of the Accident Register. Ex. P.13 is the wound certificate. P.W. 12 sent P.W. 5 to the Government Rajaji Hospital, Madurai, for further treatment and management. P.W. 18 is the Surgeon in the Madurai Meenakshi Mission Hospital. On 25-11-1992 at about 12-45 p.m. P.W. 5 was admitted in the hospital as an inpatient. P.W. 18 examined him at 1-15 p.m. He was told that injuries on P.W. 5 were caused by bullets fired from a gun. He found that the bullet had entered on the second right chest bone and near sternum. Though he was discharged on 5-12-1992, he was re-admitted on 8-12-1992. He was instructed to proceed to Coimbatore for further management. Ex. P.18 is the case sheet relating to P.W. 5 and Ex. P.19 is the wound certificate. P.W. 16 is the Surgeon in the Kuppaswamy Naidu Hospital at Coimbatore. The hospital is authorised to take up Medico Legal Cases. P.W. 5 was admitted on 18-12-1992. He found from the records that he had suffered bullet injuries. His lungs had shrunk because of the injuries. X-ray discloses that the bullet might be lodged near the liver. He was operated upon on 23-12-1992 by P.W. 16. The bullet was found in the bottom portion of the liver. It was removed and handed over to the Police and the same is marked as M.O. 64. Ex. P.16 is the wound certificate issued by P.W. 16.

25. P.W. 21 was the Head Clerk working in the Court of the Judicial Magistrate, Uthalapalayam at the time of investigation of the case. He received Ex. P.43 on 3-12-1992 for sending the viscera taken from the first, the second and the third deceased to the Forensic Science Laboratory for chemical analysis. He also received Ex. P.45 for send in the hyoid bone of the first deceased to the Forensic Science Laboratory for opinion. Exs.P. 44 and P.46 are the copy of the letters addressed by the Magistrate to the Forensic Science Laboratory. Ex. P. 47 is the report of the Professor of Forensic Medicines in relation to the hyoid bone. Ex. P.45 is the requisition made by Inspector of Police, Cumbum, to the Judicial

Magistrate, Uthamapalayam, for sending the revolver, M.O. 2, cartridge zinc round, a 410 empty cartridge for the opinion of the Ballistic expert. Ex. P.49 is the copy of the letter addressed by the Magistrate to the Director of Forensic Science Laboratory. Exs. P.50 and Ex. 51 are the opinions of the Ballistic expert. Ex. P.52 is the requisition for sending the S.B.B.L. gun, a pellet, a 12 bore empty case for the opinion of the Ballistic expert. Ex. P.54 is the report of the Ballistic expert regarding S.B.B.L. gun and pellets. Ex. P.55 is the requisition for sending the blood-stained clothes of P.W. 5 for clerical analysis. Ex. P.56 is the copy of the letter addressed by the Magistrate, to the Chemical Analyst. Ex. P.57 is the report of the Chemical Analyst and Ex. P.58 is the report of the serologist. Ex. P.59 is the requisition for sending the several other material objects for chemical analysis. Ex. P.60 is the copy of the letter of the Magistrate to the Chemical Analyst. Ex. P.61 is the report of the Chemical Analyst. Exs. P.62 and P.63 are the preliminary and final reports of serologist.

26. P.W. 24 is the Assistant Director in the Aris Division of Forensic Science Laboratory who had received the requisition Exs. P.49 and P. 53. He had examined the pistol, two shapeless cartridge Zinc rounds M.O. 72, an empty cartridge, M.O. 74. Ex. P.50 is the report given by him relating to the above items. Similarly, he also examined the cartridge removed from the body of the third deceased namely, M.O. 62 series under the requisition Ex. P.49. Ex. P.51 is the report regarding the same. The opinion is that the pellets could have been fired from a smooth bore gun. Under Ex. P.53 he had examined S.B.B.L. 12 bore gun, shapeless pellets M.O. 64 series removed from the liver of P.W. 5, an empty cartridge, M.O. 79, and Ex. P.54 is his opinion. He was of the opinion that M.O. 79 could have been fired from 12 bore S.B.B.L. gun, M.O. 1.

27. P.W. 17 was the Periyakulam Judicial Magistrate who received, the requisition from Cumbum Inspector of Police on 18-8-1994 for recording a confession from P.W. 1. He sent summons and gave all the necessary warnings and cautions to P.W. 1 before recording the confession. Ex. P.17 is his proceedings containing the confession recorded under Section 164, Cr.P.C. P.W. 19 was the Chief Judicial Magistrate, Madurai, Who received the order of the District and Sessions Judge, Madurai, dated 26-10-1994, for considering the petition seeking pardon filed by

P.W. 1. He also gave necessary warnings and cautions to P.W. 1 before recording his statement. His proceedings are contained in Ex. P.20. By an order dated 14-11-1994, he granted pardon as sought for under the usual conditions.

28. On completion of the investigation, P.W. 25, filed a final report under Section 173(2), Cr.P.C., Under Sections 120B, 302, 307, 347. 397, I.P.C. and under Section 25(1)(a) and (b) of the Arms Act on 11-5-1992.

29. On committal, learned Sessions Judge framed charges as already noticed and on the accused pleading not guilty, he examined twenty five witnesses, marked sixty eight exhibits and listed 106 Material objects. In the meanwhile, he had also directed the application of the fourth accused for pardon to be considered by the Chief Judicial Magistrate, Madurai and after pardon was given to the fourth accused, he was examined as approver. P.W. 1 On the accused being, questioned under Section 313, Cr.P.C. they denied complicity. They examined three defence witnesses and they had marked Exhibits D. 1 to D.16 in support of their defence. After considering the entire evidence, Sessions Judge rendered his finding and convicted accused 1 to 3 for the various offences and imposed punishments as already noticed by us at the beginning of the Judgment.

30. Mr. Gopalakrishna Lakshmana Raju, appearing for the first accused, has taken us through the evidence and has pointed various contradictions and other doubtful circumstances in the prosecution case. His arguments can be reduced to the following important points -

(i) He marks a frontal attack on the proceedings leading to the pardon of the fourth accused and his examination as an approver as P.W. 1. The contention is that after the committal proceedings it is the Sessions Judge and the Sessions Judge alone who can tender pardon to the accused. The grant of pardon by the Chief Judicial Magistrate, P.W. 19, is illegal and not in accordance with law.

(ii) Even assuming that the proceedings are legal it is argued that P.W. 1 was forced to seek pardon taking advantage of his difficult circumstance, and by indirect threats and actions taken against the other accused.

(iii) In any event, it is argued that the evidence of P.W. 1 does not pass the double test of reliability and corroboration in material particulars.

(iv) The prosecution case is not at all, believable because there is no acceptable explanation as to how the accused got entry into the house.

(v) The murder of the first and the second deceased is spoken to only by P.W. 1 and not corroborated by the evidence of P.W. 2. The evidence of P.W. 1 taken along, with P.W. 5 does not prove that it was the first accused who fired a shot from M.O. 1 gun.

(vi) There are material discrepancies between the evidence of P.W. 1 and P.W. 2 on the question of the removal of the jewels not only from the person of P.W. 2 but also from the bureau.

(vii) There are discrepancies between the evidence of P.W. 1 and P.W. 13 regarding the fall of the box M.O. 8 and the spilling of the jewels.

(viii) There are also material discrepancies regarding the availability of light in the house, and degree of visibility at the time of the occurrence.

(ix) Recovery of jewels and other articles in pursuance of the confessional statements of accused 1 to 3 and P.W. 1 are totally unreliable and artificial.

31. We will first deal with the above arguments advanced on behalf of the first accused before taking up the separate arguments advanced by Mr. M. Jagadeesan in appearing for the second accused and Mr. K. R. Thiagarajan, appearing for the third accused. Lastly, we will take up the question of legality of awarding in a the extreme penalty on the first accused.

32. We have already noticed the state and the sequence of events leading to the filing of an application on 20-9-1994 by the fourth accused seeking pardon. The application filed under section 307, Cr.P.C. has been marked as Ex. D.1 and is dated 20-9-1994. The affidavit filed in support of the application is marked as Ex. D.2 and it is seen that the same was sworn to on 8-8-1994. The argument is that Section 300, Cr.P.C. provides for the manner in which the evidence of any person

supposed to have been directly or indirectly concerned, could be procured. In respect of the offence mentioned in sub-section (2) of Section 306, Cr.P.C., Power is given to the Chief Judicial Magistrate or a Metropolitan Magistrate and the same can be exercised at any stage of the investigation or inquiry into or the trial of the offence. Sub-section (3) enjoins on the Magistrate to record his reasons and also to record whether the tender was accepted by the person to whom it was made. Sub-section (4) says that every person accepting tender of pardon shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial. Sub-section (5) calls upon the Magistrate to commit the case for trial to the Court of Session or to a Court of Special Judge as the case may be and in any other case, to make over the case to the Chief Judicial Magistrate who shall try the case himself.

33. Section 307, Cr.P.C. says that at any time after commitment of a case but before Judgment is passed, the Court to which the commitment is made may tender a pardon. It is therefore, argued that once a commitment of the case has been made to the Sessions Judge, it is only the Sessions Judge who can grant pardon. Inasmuch as the pardon has been granted by the Chief Judicial Magistrate, the entire proceedings are vitiated. Factually, we find from the original of Ex. D.1 that after receipt of the petition on 20-9-1994 and after giving notice to the Public Prosecutor, the Sessions Judge passed the following order on 26-10-1994 :-

'Forwarded to the Chief Judicial Magistrate for recording statement and further action.' It is on the basis of the above direction of the learned District and Sessions Judge that P.W. 19 requisitioned the statement of P.W. 1 under Section 164, Cr.P.C. and issued summons to P.W. 1 to appear before him on 11-11-1994. After following the procedure by an order dated 14-11-1994, he granted pardon to P.W. 1. In his final Judgment learned Sessions Judge has referred to this aspect and confirms the grant of pardon and discharges him of the charges levelled against him. The question is whether the above procedure followed by the courts below is in accordance with law. A careful perusal of both Sections 305 and 307, Cr.P.C. indicates that the Chief Judicial Magistrate can grant pardon even during the trial of an offence mentioned in sub-section (2) of S. 306, Cr.P.C. The reference to

sub-section (4) does not in any way mitigate against the above interpretation placed on sub-section (1). Sub-section (4)(a) only says, that the person accepting the pardon shall be examined as a witness in the Court of the Magistrate and in the subsequent trial. Therefore, even though under Section 307, Cr.P.C. the Sessions Judge himself has power to grant pardon, the power of the Chief Judicial Magistrate under Section 306, Cr.P.C. is not taken away especially when the Sessions Judge forwards the paper to the Chief Judicial Magistrate. The argument that after the amendment of the Criminal Procedure Code, especially after the amendment of Section 337 and 338, Cr.P.C. and the introduction of Section 307, the power is exclusively given to the Sessions Judge, is not acceptable. We are also supported in the view taken by us, by the judgment of the Patna High Court in *Suresh Chandra v. State of Bihar*, 1986 Cri LJ 1394 : .

34. Adopting the principle of harmonious construction and having regard to the words 'at any stage of the investigation or enquiry into or the trial of the offence' in sub-section (1) of Section 306 and the words and in the subsequent Trial if any' in sub-Section (4) Section 306 taken along with the director nature of Section 307 by use of the word 'may'. We are of the opinion that the Chief Judicial Magistrate and the Sessions Judge have concurrent Jurisdiction to grant pardon after the commitment of a case. In this case we have the added advantage of a direction by the Sessions Judge to the Chief Judicial Magistrate.

35. We also find from the records and the proceedings of the Courts below that no objection was taken by any of the appellants to the procedure adopted by the trial Judge and the proceedings initiated by P.W. 19. Even after the completion of the trial, while arguing a case for the defence, there was absolutely no argument relating to the validity of the proceedings under Section 307, Cr.P.C. Looked at from another angle also, we find that absolutely no prejudice was caused to the accused appellants on account of the fact that the Chief Judicial Magistrate granted pardon to P.W. 1. In a criminal trial, one must always see that no prejudice is caused to the accused and the accused have a fair and unbiased trial. To this extent we have no hesitation in holding that the accused/appellants were not at all prejudiced by the proceedings of the Courts below. Learned Public Prosecutor rightly relies on Sections 460 and 464, Cr.P.C. and argues that there has been no

failure of justice on account of the Chief Judicial Magistrate granting pardon to the fourth accused. For all the above reasons, we do not accept the arguments advanced on behalf of the defence that the grant of pardon by the Chief Judicial Magistrate, P.W. 19, is vitiated and the evidence of P.W. 1 cannot therefore, be relied upon.

36. We will now consider the allegation whether the application seeking pardon was filed under natural circumstances or P.W. 1 was forced to file such an application on account of the direct and indirect acts of the police authorities. We have already noticed the fact that the case was committed to the Sessions on 27-1-1994 and that P.W. 1 was granted bail on 17-6-1994. There was an application for cancellation of the bail granted to the, second and the third accused on 7-7-1994. In our opinion, this application and the order passed on the cancellation application could not have influenced P.W. 1 in filing an application for the grant of pardon. The cancellation of bail for the second and the third accused was on account of very valid reasons that they did not comply with the conditional order of bail. Orders were passed on the said application for cancellation of bail on 28-7-1994. The application under Section 307, Cr.P.C. was filed on 20-9-1994 and was supported by an affidavit dated 8-8-1994. An argument was advanced that the date of the petition was changed from 8-8-1994 to 20-9-94. There is absolutely no evidence as to who changed the date and whether it has any bearing on the genuineness of the application for grant of bail. We do not accept the defence case that P.W. 1 was indirectly threatened that his bail application would also be cancelled unless he filed an application for the pardon and turned an approver. No such presumption or assumption is possible on the facts and circumstances of the case.

37. One other theory propounded by the defence is that P.W. 1 had contracted a second marriage just about two months prior to the filing of a petition under Section 307, Cr.P.C. The argument is unless the Police had earlier promised to P.W. 1 that he would be granted pardon, P.W. 1 would not have made bold to contract a second marriage. In other words, even at the time of the second marriage P.W. 1 knew as to what was going to happen so far as his future was concerned. Alternatively it was argued that P.W. 1 was afraid of his second wife

being harassed if he did not accede to the course suggested by the Police. In our opinion, these are all far-fetched arguments, merely based on surmise. No basis had been created for such an argument in the evidence adduced before the trial Judge. Further, these are days when the members of the fair sex are enamoured about marrying criminals who go about trumpeting as heroes, as projected in the film world. The fact that P.W. 1 was on bail at the time when he filed application, is a very strong circumstance to suggest that P.W. 1 had acted independently on his own volition to confess the whole crime and seek pardon.

38. The fact that the bail was granted to P.W. 1 with a condition that he should report to the Gudalur Police Station whereas the other accused were directed to report at Theni Police Station, does not advance the case of the defence. P.W. 25 has categorically denied the suggestion that the bail in respect of accused 1 to 3 was cancelled on false information given by the Police and on the basis of such cancellation P.W. 1 was forced to turn as an approver.

39. We have also seen from the evidence that P.W. 1 is not a strong willed person or a confirmed criminal. By nature he was timid and chicken hearted. He was a victim of circumstances and poverty. He would never have become an associate of the first accused, but for the fact that the first accused had accidentally helped him with Rs. 50/- at the time when P.W. 1 was afflicted with typhoid fever. In more than one place P.W. 1 has given vent to his feelings that his conscience was always pricking him and he wanted to make a clean breast of the whole occurrence. We have, therefore, no hesitation in rejecting the arguments of the defence that P.W. 1 was forced or otherwise influenced to make a confession and seek pardon under Section 307, Cr.P.C.

40. The question whether the evidence of the approver passes the double test of reliability and corroboration can be seen after the discussion of the other evidence. We therefore reserve our opinion on this argument to a later stage. It is however, worthwhile to refer to the provisions of law and see how the evidence of an approver should be appreciated. Section 114(b) of the Indian Evidence Act, 1872, says that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Section 133 of the Indian Evidence Act, 1872 says that an accomplice

shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Even so, Courts have always been insisting on corroboration of evidence of an accomplice in material particulars. As to what are the material particulars on which the Court should look for corroboration is a question which has to be decided on the facts and circumstances of each case. Before advertent to a recent Judgment of the Supreme Court we would like to refer to Section 30 of the Evidence Act relating to the consideration of a proved confession, affecting the person making it and others jointly under trial for the same offence. The evidence of an approver has more sanctity than a mere confession under Section 164, Cr.P.C. because the approver deposed in open Court and he is subject to cross examination by the other accused. We will now refer to a decision of the Supreme Court in Shankar (a) Gouri Shankar v. State of Tamil Nadu. (1994) 2 Crimes 1 :1994 AIR SCW 2083. The Supreme Court observed (at p. 2093 of AIR SCW) :

'The corroboration need not be of a kind which proves the offence against and accused and it would be sufficient if it connects the accused with the crime. What is required is that there should be sufficient corroborative evidence to show that the approver is speaking the truth with regard to the accused whom he seeks to implicate. Such corroboration should be on material particulars and qua each accused. But it is not necessary that there should be independent corroboration of every material circumstances and it need not consist of evidence which standing alone would be sufficient to justify the conviction. In other words, there should be additional evidence by way of corroboration rendering the story of an accomplice probably true and that it is reasonably safe to act upon such evidence. The independent corroboration need not also cover the whole of the prosecution story or even whole of the material particulars, for that would amount to render the story of the accomplice itself superfluous'.

41. We will now well into the facts of the case in the light of the argument of learned counsel for the defence as well as the learned Public Prosecutor. As we deal and sift the facts, we can also appreciate as to what are the material points with respect to which we should look for corroboration. The broad approach in this case is based on the fact that P.W. 1 the approver was a person who could easily

recognise the various overt acts of accused 1 to 3, because he knew them personally for some time. Though the second and the third accused are not associated with him for a long time, he could certainly recognise their individual actions, because at least 10 days prior to the occurrence, second and the third accused had come to see the first accused, and the second accused had reported about the wealth of P.W. 5 and suggested that they could commit robbery in the said house. It was disclosed that the fifth accused was working for about 10 years in the house of P.W. 5. He was also aware of the discussion between accused 1 to 3 regarding the topography of P.W. 5's house as pictured by the fifth accused. Not being satisfied, they sent the second accused to inspect the house of P.W. 5. On the date of occurrence, he was also closely associated with the second and the third accused, because they arrived at the house of fifth accused at about 11.00 p.m. and all the three, namely, P.W. 1, second and the third accused had gone together for taking tiffin. It is, therefore, clear that P.W. 1 had stated that the second and third accused had known them for quite some time. He should have understood their voices and should have been able to recognise them by their stature. So far as the first accused is concerned, there is no difficulty, because he was working in his house for nearly 2-1/2 years. Therefore, so far as, identification of the first, second and the third accused and their individual acts on the night of the occurrence is concerned, P.W. 1 was the most competent person, to speak. Turning now to P.W. 2, she was the queen of P.W. 5's house in the sense that she was about to be married and elaborate arrangements were being made for her marriage. She could easily speak to the identification of each and every item in the house of P.W. 5 as well as the identity of the inmates of P.W. 5's House.

42. It is in the peculiar context of the twin evidence of P.Ws. 1 and 2 that accused 1 to 3 have been pictured and photographed by the oral evidence of P.Ws. 1 and 2 and others. Thus the evidence of P.W. 1 and P.W. 2 corroborate each other in material particulars and while P.W. 1 identifies the action of each of the accused, P.W. 2 identifies the article and inmates of P.W. 5's house. It is in this double knot that accused 1 to 3 have been squarely caught.

43. It was sought to be argued that the accused had entered the house through the western lamp post marked as 'XVII N/33' in the rough sketch Ex. P.65 and

referred to in the observation Mahazar Ex. P.21. But a perusal of the rough sketch gives an impression that the lamp post is situated on the far side of the street and therefore, it could not have been possible for the accused to have jumped from the lamp post to the terrace of the house. This is an argument based on pure surmise because the defence did not elicit any answers from any of the witnesses regarding the actual location of the lamp post. The rough sketch is not substantive evidence and it is not even clear from the rough sketch whether the lamp post is on the far side or the near side of the house. On the other hand, it appears to us that the lamp post is planted near the house of P.W. 5 and it is only the top portion containing electric wires that appears to be shown on the far side in the rough sketch. This is clear from the fact that the stem of the lamp post is shown near the house of P.W. 5. The argument based on the rough sketch has to be rejected and is accordingly, rejected. In the cross-examination of P.W. 1, it has been elicited that there are streets on all the four sides of P.W. 5's house and that they climbed the lamp post on the western side. It has also been elicited that after climbing three-fourth of the lamp post, they jumped over to the terrace. A reference was made to Column No. 9 of the inquest report of the three deceased namely, Exs. P.66, P.67 and P.68, wherein there is a surmise by the Investigation Officer based only on the evidence of P.Ws. 2, 3 and 6 that one of the accused had descended down the chimney and had opened the door for others to enter. It is only after the confession statement of P.W. 1 and after he was examined in Court, it has come to light that all the accused had entered the house only through the chimney. Learned counsel for the appellants seeks to buttress this argument by the fact that one of the doors was open enabling P.W. 2 to rush to the main entrance when the jeep had arrived with the other inmates. It is not for us to surmise as to how the front door was open when the evidence is that they had closed all the doors before they retired to hide. It is quite possible that after all the accused had descended into the house, they had opened one of the doors to enable them to escape in the event of any problem arising in the planned robbery. There is the evidence of P.W. 25 about the hanging of a rope in two rows from the top of the chimney down to the kitchen. The slab over the chimney had been removed and kept on the terrace. The evidence of P.W. 1 is categorical as to the manner in which and the order in which the accused descended into the kitchen. The evidence of P.W. 1 cannot be

rejected on the ground that he had not spoken to the fact as to who opened the door on the southern side. In other words, this is not the material aspect of the case which would falsify the evidence of P.W. 1. The material aspect is the manner in which they entered the house and proceeded to annihilate the first and the second deceased and proceeded to commit robbery and when confronted by P.W. 5 and D-3, fired at them and escaped.

44. There was a further argument on the lack of evidence regarding the manner in which the gun was taken inside the house. But the unfortunate of the defence is that there was no cross-examination on this aspect of this case. It cannot be argued that the defence would not like to venture on questions which may result in an adverse answer. But criminal trial is not a hide and seek game. If the defence wants to make an argument, they should at least create the necessary foundation for the same. P.W. 1 has deposed that the barrel portion of the gun was handed over to the third accused and the butt portion of the gun was handed over to the second accused, even before they commenced their journey from the house of the first accused. We find from the cross-examination that there is one question as to whether the first accused handed over the gun to P.W. 1 before descending the stair-case. He had also deposed that he did not remember as to whether the gun was tied with a rope let down to the kitchen. P.W. 25 has, no doubt, stated that P.W. 1 told him that the gun was let down through the chimney by a rope. But the defence has not taken care to contradict the witness from his statement under Section 164, Cr.P.C. recorded by P.W. 17. On an overall analysis of the situation we are unable to hold that any dent has been caused on the truth of the prosecution case. On the other hand, the evidence of P.W. 1, taken along with the cross-examination, clearly indicates that the gun was taken by letting the same down with a rope. We once again repeat that these are not material questions. For instance, the manner in which they carried, the bag, ropes and the other articles will not affect the prosecution case so long as there is evidence to show that such articles were in fact taken along with the accused and were in fact found in the house of P.W. 5 as seen from the evidence of P.W. 2. The material question is that these articles were in fact taken by the accused to the house of P.W. 5 and there is independent corroboration to show that such articles were in fact utilised by the accused in the house of P.W. 5 at the time of committing robbery and later

covered in pursuance of confessions given by the accused.

45. Considerable arguments were advanced on the availability of light in the house of P.W. 5. It has been elicited that the street lights were not burning and it was a New-Moon day. In Ex. P-1, there is no reference to any light available in the house. But in Court P.W. 2 has categorically stated that there was a night lamp burning in the house of P.W. 5. In the cross-examination of P.W. 1 it has been elicited that it was dark in the place where the first deceased was done to death and P.W. 1 had to pull her out towards the light to see whether she was dead or not. There is categorical statement by P.W. 1 that in the place to which he had dragged the first deceased, there was light. It is also stated that in the light when he dropped the hand of the first deceased, it fell without any action suggesting that she was dead. What is more, P.W. 1 has stated that such light was coming from a night lamp. Therefore, there is sufficient evidence to suggest that even though it was dark outside, within the house there was sufficient light provided by the night lamp.

46. It is next argued that so far as twisting of the neck of the first deceased is concerned, P.W. 1 alone is the witness and therefore, it cannot be said that the overt act attributed to the first accused can be said to be established by acceptable evidence. We do not agree with this contention, because once the evidence of P.W. 1 is found to be trustworthy, there is no reason at all, why his evidence regarding the twisting of the neck of the first deceased by the first accused should not be believed. Further, there is medical evidence of the Doctor as to the Injuries found on her body as well as the post-mortem certificate Ex. P.10 and the final report Ex. P.11. Therefore, the evidence of P.W. 1 is certainly corroborated by the medical evidence in the shape of evidence of P.W. 11 and the post-mortem certificate.

47. Similarly, it is argued that even the strangulation of the second deceased was spoken to only by P.W. 1 and it cannot be acceptable. By the same reasoning that we have adopted for the first deceased, we have no hesitation in holding that the first accused was responsible for strangulating the second deceased. Here again, the medical evidence supports the oral evidence of P.W. 1. P.W. 10 is the Doctor

who examined the second deceased and found injuries suggesting that there was strangulation and closure of the mouth and the nose resulting in death. Post-mortem certificate is Ex. P.7 and final report is Ex. P.8. The argument of learned counsel for the accused is not quite right on facts, because P.W. 2 has also spoken to the fact that when she got up and saw the second deceased, she found that some persons were pressing her down. Therefore, there is sufficient corroboration of the evidence of P.W. 1 to hold that the first accused was responsible for the death of the second deceased.

48. Regarding the death of Nagarajan, the third deceased, it was argued that the firing of a shot from the gun is no doubt spoken to by P.W. 1, P.W. 2 and P.W. 5, But, neither P.W. 2 nor P.W. 5 has stated that it was the first accused who fired the shot. Here again, once we accept the evidence of P.W. 1, the identification of the person as to who fired the shot can easily be drawn. What is more, it was the first accused who was in possession of the gun and trained in the art of shooting. The very fact that both the third deceased and PW. 5 were injured right on the chest shows that the first accused had taken aim before shooting and there must have been sufficient light to enable the first accused to shoot at the target.

49. We will now take up the question of the manner in which the keys of the bureau were taken, the manner in which the bureaus were opened and how the jewels were removed from the bureaus. There is clear evidence of P.W. 2 that the intruders were trying to remove the jewels on her person and thereupon she offered to remove the jewels by herself and accordingly, handed over M.Os. 13, 14 and 15. The same were collected and stored it a bag. She denied knowledge about the whereabouts of the key, but states that only the grand-mothers were having the keys. Thereupon the intruders, removed the key from the small bag or pouch kept by the grand-mother and with the aid of the key they opened one of the bureaus. They were collecting all the jewels and cash and storing the same in a box M.O. 8 belonging to her brother. No doubt, P.W. 1 in his evidence says that when P.W. 2 was asked for the key, she produced the same. He has further stated that she took the key from a place where all the keys were kept hanging from a locker. When she was asked about the keys for the other bureaus, P.W. 2 denied knowledge. It is only then they broke open, the almirah with glass with the help of

the crow-bar. There is clear evidence to show that the jewels and cash were removed only from the wooden bureau which was opened with a key. According to P.W. 2, the first steel bureau contained documents, the second bureau contained the jewels and the third bureau contained the belongings of P.W. 5. In cross-examination, she has stated that the bureau in which jewels were kept was broken open. But, earlier in cross-examination, she has stated that it was only from the wooden bureau that the jewels were removed. She has also clarified that the grand-mothers were having a small bag with a device to close the same by pulling the strings. It is argued on behalf of the defence that this discrepancy between the evidence of P.Ws. 1 and 2 is every material and therefore, the prosecution case should be rejected. On the other hand, we do not think that this is a material portion of the prosecution case as to which of the bureaus contained the jewels and which was opened by key and which was broken with a crow-bar. One thing is clear that by opening a bureau with a key, the accused were able to get all the jewels and cash. By the time, they broke open the other bureau with glass, the jeep had arrived. One has to visualise the position of P.W. 2 who was only aged about 18 years when the occurrence took place. She must have been dreaming about her marriage which had been arranged to take place. Therefore, when she was suddenly faced with marked robbers, he must have been in a dazed condition. One can easily visualise the pathetic condition of P.W. 2 when she was accosted by the robbers. We do not therefore, attach too much importance to the fact whether she gave the key or whether the key was taken from the grand-mother and whether the jewels were taken from the wooden bureau or some other bureau. The fact that the jewels and cash were stolen, is clearly proved by the subsequent recoveries and that is the most important thing in the case, about which there is no contradiction between the witnesses.

50. Argument were advanced about the recovery of Macdowell empty brandy bottle from one of the bureaus. Ex. P.22 is the Mahazar for the recovery of the bottle, and M.O. 68 is the bottle. The argument was that in the photographs taken at the instance of the police there was a big bottle seen on the bureau and the same has been suppressed. The trial Court has considered this aspect of the case and has stated that the only bottle that was recovered was M.O. 68 under Ex. P.22 and no significance can be attached to the photographs in the absence of any

other evidence. We also feel that the recovery of the brandy bottle and the alleged suppression of another big bottle have no significance to the prosecution case, and these are practically irrelevant matters. They do not affect the prosecution case. The suggestion of the defence is that there were thumb impressions on the brandy bottle and the glass pieces and the prosecution had suppressed the same because they did not tally with the prosecution case. This aspect of the case cannot detain us any further.

51. The next aspect of the case relates to the escape of the accused and the falling of the box. M.O. 8. The evidence of P.W. 1 is that as soon as the, first accused had fired a gun shot the accused collected the jewels and climbed the staircase on the southern side of the kitchen and escaped through the terrace of the neighbour's house. The second accused who was carrying the suitcase M.O. 8 had dropped the same while escaping through the terrace of the neighbour's house, and was engaged in the frantic collection of the jewels and storing them back in the suitcase. P.W. 13 the neighbour opened the door and shouted, but the first accused silenced him by showing his gun. The first accused beat P.W. 1 and asked him to help the second accused in getting up with the suitcase. This aspect of the case is corroborated by the evidence of P.W. 13. He says that at about 3-00 a.m. on the morning of 25-11-1992 he heard the noise of persons running on the terrace of his house. He took a torch-light and opened the door and found the four persons were coming from the east towards west. All of them were wearing masks. One of them fell down in front of the house. He was having a suitcase. P.W. 13 recognised the suit-case as M.O. 8. He also refers to the fact that the person with a gun threatened to shoot him with the gun if he interfered with the second accused struggling with the suitcase. He refers to the fact that one of the persons helped the person who had fallen down and all of them ran away towards west. The second accused had left behind the pistol. M.O. 2 at the place. It is to be remembered that the pistol was recovered by Inspector of Police, P.W. 25. In cross-examination it has been elicited that the terrace of P.W. 5's house, was overlooking empty space on all the four sides. He has also stated that to escape from the house of P.W. 5, one had to jump across the lane. It is further elicited that they jumped across the lane on the western side and reached the neighbour's terrace. They then jumped into Kamatchi Ammal Kovil street and escaped. The

distance between two terraces is said to be only two feet. The suitcase fell down only while going through the neighbour's house. In the cross-examination of P.W. 25 it has been elicited that the house of one Ponram on the north-western corner of P.W. 5's house is abutting the house of P.W. 5 and there is no space between them. It has also been elicited that there is the house of one Gunasekaran on the northern side of the house of P.W. 5 beyond Kurichi Gounden Lane. That Gunasekaran was not examined by P.W. 25 and P.W. 23 is a different Gunasekaran. The argument of the defence is that the taking back of the jewels after the suitcase had fallen down, is not stated in the statement of P.W. 1 recorded under S. 162, Cr.P.C. But, the defence has failed to contradict the witness from his statement under S. 164, Cr.P.C. given before P.W. 17. In any event, these minor discrepancies do not in any way affect the main thrust of the prosecution case. We are clearly of the opinion that the evidence relating to the escape of the accused through the neighbour's house and the falling of the suitcase as spoken to by P.W. 13 are unimpeachable and we have no hesitation in accepting the manner in which the accused had escaped. The evidence of P.W. 1 is fully corroborated on this important aspect of the case.

52. The defence has made much of an alleged earlier statement given to the Police by One Vasakar and contend that the same has been suppressed by the prosecution. P.W. 5 has spoken to the fact that A. P. K. Vasakar is her uncle while taking the injured P.W. 5 to Cumbum, she says that her brother Palanisamy, Ramamurthy and the servant Venkattu (P.W. 6) were also proceeding in the car. She does not remember whether her uncle A. P. K. Vasakar also accompanied them. She does not also remember whether Vasakar got down at the Gudalur Police Station. Similarly, P.W. 6 has also stated that he does not remember whether Vasakar got down at the Gudalur Police Station while they were taking the injured to Cumbum. A contradiction has been elicited by asking P.W. 25 whether P.W. 6 had stated in his statement under S. 162, Cr.P.C. that Vasakar got down at the Gudalur Police Station. P.W. 25 has agreed that he has stated so. P.W. 25 has admitted that he had examined the said Vasakar also on 27-11-1992 and sent his statement to the Magistrate's Court. He has also admitted that P.W. 4 had given a statement that it was Vasakar who gave the First Information Report to the police. On the above evidence the defence seeks to upset the entire

prosecution case. It is no doubt true that the prosecution has not examined the said Vasakar and they are not bound to do so. It was always open to the defence to have examined the said Vasakar, if really he had given any tangible information to the Police. When the defence was careful enough to examine three defence witnesses and marked several documents, they could as well examine the said Vasakar also. On the available evidence, we are not convinced that there was a First Information given by the said Vasakar and that the same had been suppressed by the prosecution.

53. We now come to the last important aspect of the case, namely, recovery of the stolen articles as well as the weapon used at the scene of occurrence. At the outset it was argued that some small items of jewels were found on the body of the deceased 1 and 2. It was therefore, sought to be argued that accused had no intention of committing robbery. We do not accept this case, because those items were in significant when compared to the major items found on the person of P.W. 2 and the jewels kept in the bureau. Secondly, it was pointed out that the list of jewels found missing was given by P.W. 4 only on 27-11-1992 whereas the occurrence had taken place at the early hours of 25-11-1992. We have to remember that P.W. 5 was too seriously injured and he was being taken to Cumbum, Madurai and then to Coimbatore for the removal of the bullet which was lodged near his liver. In fact, he had narrowly escaped death, due to the expert treatment given to him. Therefore, we cannot expect his wife P.W. 5 to be bothered about the items of the jewels stolen from the house and she might have very well taken some time to take a list of the missing items. We are also fully satisfied with the identification of the jewels by P.W. 3 when the police recovered them after 2-1/2 months. It is not necessary for us to give details about the manner in which P.W. 4 has identified the jewels. She was with remarkable remembrance spoken about the colour of the stones imbedded in the various necklaces and we do not propose to load this judgment with her evidence regarding the identification of jewels which runs to nearly two pages. Similarly, P.W. 2 has identified the jewels which are only three in number. An argument was advanced that such minute details of identification could not have been given by P.W. 4 and she cannot be credited with such expert knowledge as to identify her own jewels. The argument has only to be stated to be rejected. There is a useful and instructive

judgment of this Court rendered in Public Prosecutor v. China Lingiah, 1953 Mad WN(Cri)282 : (1954 Cri LJ 583) : . The following passage in the said judgment is apposite and answers the points taken by the defence (at p. 586 of Cri LJ) :-

'it would be factitious to discredit such identification on the ground that reasons are not being formulated for them. It is not the case for accused 1 that these properties belong to him. On the other hand he denies all knowledge of producing them and does not claim any acquaintance with the properties. Therefore, when it is found that respectable witnesses have identified their own articles of use merely by their frequently seeing, handling and using them, it is silly to reject their testimony on the ground that identification parades for these articles were not held and that reasons have not been formulated by these witnesses.'

54. We have already referred to the manner in which the jewels were recovered in pursuance of the confessional statement of the first accused Ex. P.33. In pursuance of his statement, most of the jewels were recovered under Ex. P.36. The second accused had produced M.O. 29 from his underwear M.O. 83. The same was recovered under Ex. P.35. The third accused and P.W. 1 were arrested near the Ladies' Cloak room of sureli falls in the presence of P.W. 20. The third accused produced from his underwear M.O. 91, the jewels M.Os. 13 to 15 kept concealed in a polythene bag M.O. 92. Similarly, P.W. 1 has produced from his underwear M.O. 11, the jewels M.O. 10 series. An argument was advanced that the second accused, the third accused and P.W. 1 could never have kept the jewels in their underwear pocket, nearly after 2-1/2 months after they were stolen. This argument is again speculative. One does not know as to how the mind of a guilty person who had only taken a secondary part in the commission of robbery, would have reacted and the fear with which they would have been living, when the law was after them. It is quite possible that they did not want to sell or conceal the jewels, but kept it to themselves close to their body, so that no one could discover the same.

55. Coming how to the articles used for the offence, we have already referred to the fact that the pistol M.O. 2 was recovered west of the house of P.W. 5 near P.W. 13's house. This fact has been adequately corroborated by the evidence of

P.W. 13 and the recovery made by P.W. 23 under Ex. P.30 in the presence of the witnesses. The pistol M.O. 2 is directly connected to the first accused, by the evidence of P.W. 7, a blacksmith. He has identified the first accused in Court as the son of Ammasi Thever. He used to sharpen the crow-bars, aruval and showels for the first accused. About two years prior to the occurrence, the first accused had brought the pistol M.O. 2 and asked him to weld the trigger portion of the pistol. He has identified M.O. 2 and the place in which he had made the welding. He was examined by the Police on the very next day of occurrence. All the other items like S.B.B.L. gun, the bag, the suit-case M.O. 8, ropes, crobar, have been recovered by the police on information given by the accused. They were exactly the items which were taken by the accused on the night of 24-11-1992 as clearly spoken to by P.W. 1. Thus on this material aspect of the evidence of P.W. 1, there is adequate corroboration.

56. So far as the use of S.B.B.L. gun is concerned, we have the evidence of the Ballistic expert P.W. 24. In response to the requisition Ex. P.53, he had examined M.O. 1 gun, bullet M.O. 64 recovered from the liver of P.W. 5 and an empty 12 bore cartridge, M.O. 79, recovered from the house of the first accused. He was of the opinion that the gun had been used and there were evidences to prove the same. He was also of the opinion that M.O. 64 zinc round could have been fired from a smooth barrel. He was also of the opinion that M.O. 79 cartridge could have been fired from M.O. 1 gun. In answer to a specific question, he also stated that M.O. 62 zinc round removed from the body of the third deceased, M.O. 64 removed from the injured P.W. 5 and M.O. 72 series zinc rounds found in the house of P.W. 5 and recovered by P.W. 25 could have been fired from the S.B.B.L. gun M.O. 1. While on this aspect, we can as well dispose of a strenuous plea made by the defence that an empty cartridge M.O. 78 recovered by P.W. 25 in the house of P.W. 5 was of the gauge 410 Model. It had been elicited from P.W. 24 that a 410 cartridge cannot be used from the gun M.O. 1. It is therefore, argued that M.O. 1 was not at all used at the scene of occurrence and it must have been a weapon of 410 Model because only a 410 cartridge was recovered from the house of P.W. 5. It has to be remembered that M.O. 79a, 12 bore cartridge was recovered only from the house of the first accused and not at the scene of occurrence. No doubt, the argument is attractive and forceful. It has to be

remembered that P.W. 24, Ballistic expert, has characterised M.O. 1 as a country gun. People accustomed with fire arms, at least for sporting purposes and people accustomed with 'Nari Kuravars' who are licensed to use such country weapons for their livelihood, could easily understand how the country weapons are filled up with zinc rounds emptied from any regular cartridge

A 410 weapon would only have a single or a few rounds whereas in a country weapon people can fill up any number of rounds through the upper opening of the barrel, close it with card-board or paper and fire with gun powder at the trigger end. In this case, the very fact that in a single shot both the third deceased and P.W. 5 were injured shows that the bullets had spread out, unlike a single shot. The mere fact that a 410 cartridge was found in the house of P.W. 5 does not signify or prove that only a 410 musket should have been used at the time of the occurrence. We have enough evidence to prove that the first accused was carrying only an S.B.B.L. gun and he had taken the same to the house of P.W. 5 on the night of 24-11-1992. The recovery of M.O. 73, the paper for covering the zinc rounds found in the house of P.W. 5 adequately establishes this point.

57. What remains is, only to discuss the medical evidence. A careful perusal of the evidence of the Doctors, P.W. 9, P.W. 10 and P.W. 11 shows that the medical evidence completely supports the evidence of P.W. 1 regarding the manner and method in which accused 1 to 3 completed the task of murdering Deceased 1 to 3. So far as the first deceased is concerned, the opinion of P.W. 11 is that the deceased would appear to have died of asphyxia due to suffocation. He had also opined that Injury Nos. 1 and 2 could have been caused by pressing the neck and the mouth with the hands of a person. The nails in the hands of the assailant could have caused such as abrasions. The Doctor had found that the neck had been twisted and at the same time the mouth and nose were closed with a hand. Thus, we see that the evidence of the approver P.W. 1 regarding the peculiar manner in which the first accused had twisted the neck of the first deceased finds corroboration from the Doctor's evidence. Coming to the second deceased, the Doctor P.W. 10 had found that the trachea was found broken just above the sternal nodge. Wind pipe was also found broken and congested with blood. He was of the opinion that the death would have occurred due to the strangulation of

the neck and at the same time closing the mouth and the nose. Ex. P.8 the final report shows that the deceased would appear to have died of asphyxia due to suffocation. In the cross-examination, it was only elicited that the cartilage around the wind-pipe was also found broken. Here again the medical evidence fully corroborates the testimony of P.W. 1. So far as the third deceased is concerned, the Doctor P.W. 9 found six oval shaped injuries on the chest with the outer skin turned inside the body. On dissection a bullet was removed from the third injury on the stomach. The other bullets were also removed from the body and they are marked as M.O. 62 in the case. It is needless to point out that from the person of P.W. 5 also a bullet was taken after surgery conducted by P.W. 16. The Doctor P.W. 12 who examined P.W. 5 at Cumbum Government Hospital had found three injuries. The first was on the right chest between the second and third ribs. It was a bullet injury. The second was a bullet injury on the side of the chest. The third was a bullet injury on the right hand finger. The medical evidence as stated above taken along with the evidence of Ballistic expert, P.W. 24, clearly points out to the fact that the injuries were caused on account of a gun shot from M.O. 1 S.B.B.L. gun and therefore, the evidence of P.W. 1 stands fully Corroborated.

58. We have already reserved our opinion on the question whether the evidence of the approver P.W. 1 has been corroborated by the other witnesses and documents. We have also noticed the recent judgment of the apex Court on the above question. To remind ourselves, we have to be satisfied that the evidence of the approver passes the doubts test of reliability and corroboration in material particulars, having discussed the entire evidence, we are fully satisfied that the evidence of P.W. 1 is totally reliable and had not been procured by any undue influence or coercion. We have also noticed that the confession of P.W. 1 is inculpatory and it is not as if he had tried to exculpate him in any manner. It must, however, be remembered that he had to be goaded at every juncture, because basically he was not for the commission of such a crime. But the fact remains that he had taken the other accused to the place of occurrence, had tied the rope from the chimney, had stood guard over the first deceased, had dragged the first deceased to the place where the second deceased was sleeping, had prepared to escape with the jewels when the jeep arrived and had helped the second accused in collecting the jewels when the suit-case had accidentally fallen down at the time

of escape. He had also tied the hands of the first deceased and had assisted in removing the jewels from the bureau and putting the same in the suitcase, M.O. 8. He had also assisted in taking the bag when they climbed the lamp post to get entry into the house. On an entire assessment of the evidence of P.W. 1 taken along with the answers elicited in cross-examination, we do feel that P.W. 1 was speaking the truth. In other words, P.W. 1 is a reliable witness even though he had taken part in the abominable crime, meaning that he was *particeps criminis*. But we do believe that his conscience was pricking and he was at all times thinking of making a confession without the influence of any third party. In fact, we have adverted to the fact that he made the confession while he was on bail and he had applied for pardon while he was on bail. We have also seen from the evidence of the other witnesses that the testimony of P.W. 1 is corroborated in material particulars. In fine, we are prepared to act on the evidence of P.W. 1 taken along with the other corroborating evidence and circumstances.

59. We, therefore, hold that the evidence of P.W. 1 is not only trustworthy, but is fully corroborated in material particulars. We have also referred to the other witnesses as well as the medical evidence which go to support the entire prosecution case. The recovery of the weapons and articles used in the crime as well as the recovery of cash and jewels and especially the evidence of P.W. 15 regarding the discharge of the loan from out of the cash stolen in the house of P.W. 5 amply establish the guilt of the accused appellants. The medical evidence completely tallied with the evidence of the other witnesses relating to the overt acts attributed to the accused/appellants. All the charges framed against the accused are clearly established and the trial Court was perfectly right in convicting the accused of all the charges except the charge under S. 148, IPC.

60. We therefore, find the first accused guilty of the offence of conspiracy under S. 120-B, IPC as well as the offence of murder punishable under S. 302 read with S. 34, IPC in respect of the death of the first and the second deceased. We also find him guilty of the offence of murder of the third deceased and for causing grievous injury to P.W. 5 and find him guilty under Ss. 302 and 326 read with S. 34, IPC. The ingredients of S. 449, IPC are clearly proved on the facts and in the circumstances of the case. The question 'of sentence on him, will be considered

separately a little later.

61. We will now deal with the case of the second accused and see how far he is liable under the charges framed against him. Learned counsel for the second accused, Mr. M. Jagadeesan adopts the arguments advanced on behalf of the first accused and disputes the entire prosecution case. In any event, it is pointed out that on the evidence adduced, no case of murder under S. 302 read with S. 34, IPC has been proved beyond reasonable doubt. It has to be remembered that it was the second accused who suggested to the first accused that there were lot of jewels and cash in the house of P.W. 5 and they could commit robbery. When his mother the fifth accused was not able to explain the topography of P.W. 5's house, he went to the house himself as the son of the fifth accused who was working in the house of P.W. 5 for 10 years, and completely studied the details and gave the fool proof plan for entry and escape. He cannot feign ignorance of the intention of the first accused to murder people when the situation demanded the same, because the first accused was carrying an S.B.B.L. gun, a loaded pistol, a knife, a crow-bar, masks, ropes etc. When the first accused was closing the mouth and nose of the second deceased and pressing her down, the second accused was holding the legs of the second deceased. There-fore, the second accused had every intention of doing, away with the-second deceased. He certainly shared the common intention of the first accused in murdering all the inmates who were posing problems for the commission of robbery. It was the second and the third accused who look active part in getting the keys and removing the jewels and cash from the bureau. It was argued that the second accused was only interested in committing robbery and did not intend to murder anybody. Such an argument goes against the teeth of S. 34, IPC. To put it crudely if the second accused did not have such an intention, he should have protested and left the house soon after the first deceased was done to death. On the other hand, he takes an active part in murdering the second deceased. It was pointed out that there are certain discrepancies and contradictions in the evidence of P.W. 1 which raise a doubt as to the presence of the second accused. For instance, P.W. 1 has stated that at the time when lie was examined by the police on 27-11-1982 he had not informed that he knew the second and the third accused also apart from the first accused. We do not place any significance on this aspect of the case, because on 27-11-1992

P.W. 1 had not been fully interrogated as a person involved in the case. It was only on 8-2-1993 that the police had sufficient evidence to proceed against P.W. 1. The other discrepancies pointed out by learned counsel do not at all go to the root of the matter. It was pointed out that P.W. 1 was hiding in the bath-room and therefore, could not have seen the first accused twisting the neck of the first deceased. We have carefully perused the evidence and find that P.W. 1 was only hiding by the side of the bath-room and not inside the bath-room. Having regard to the totality of the evidence and the participation of the second accused in the conspiracy and pre-planning of the entire episode, we have no hesitation in holding that under S. 34, IPC the second accused shared the common intention of the first accused in the murder of the first deceased, second deceased and the third deceased in the gun shot injury on P.W. 5 and in the robbery committed at the house of P.W. 5. Second accused is, therefore, found guilty of the offence of murder under S. 302 read with S. 34, IPC (three counts) and under S. 326 read with S. 34, IPC. He is also found guilty of the offence of conspiracy under S. 120-B IPC and of the offence punishable under S. 449 IPC. The sentence imposed the second accused, namely, life sentence under S. 302, read with S. 34, IPC (three counts), the sentence of 10 years Rigorous Imprisonment under S. 120-B, IPC, 10 years Rigorous Imprisonment under S. 449, IPC and three years Rigorous Imprisonment for the offence under S. 326 read with S. 34, IPC and confirmed.

62. Similar arguments were advanced on behalf of the third accused. It was pointed out that he was not at all involved in the conspiracy or planning. The third accused was present when the second accused suggested robbery of P.W. 5's house. P.W. 1 has spoken to the fact that the accused 1 to 3 went to see the fifth accused to get the topography of the house and accused 1 to 3 were discussing about the topography. Second and the third accused had assembled in the house of the first accused, at 11-00 p.m. and with the money provided by the first accused had tiffin before coming back for implementing the plan. All the reasons we have given for holding the second accused liable under S. 34, IPC will equally apply to the third accused. Further, the third accused had tied the legs of the first deceased with a rope when the first accused twisted the neck of the first deceased. He was willingly taking part in all the subsequent events leading to murder of the second deceased, the robbery and the murder of the third

deceased. It was he who took the loaded pistol from the first accused, held it against the forehead of P.W. 2 and threatened P.W. 2 not to make any noise. The third accused is also found guilty of the offence of murder under S. 302 read with S. 34, IPC (three counts) and under S. 326 read with S. 34, IPC. He is also found guilty of the offence of conspiracy under S. 120B, IPC and of the offence punishable under S. 449, IPC. The sentence imposed on the second accused, namely, life sentence under S. 302 read with S. 34, IPC (three counts), the sentence of 10 years Rigorous Imprisonment under S. 129-B, IPC, 10 years Rigorous Imprisonment under S. 499, IPC and three years Rigorous Imprisonment for the offence under S. 326 read with S. 34, IPC are confirmed. Neither the defence witnesses nor the documents filed on their behalf improve their case or throw doubt or suspicion in the prosecution case as established by the prosecution witnesses and documents.

63. We now come to an important aspect of the case, as to whether the extreme penalty of death sentence imposed on the first accused is justified on the facts and in the circumstances of the case and the legal position prevailing in the country. In a recent judgment rendered by us on 16-10-1995 in R.T. 4. of 1995 we have observed :

'Taking into account his life, as a whole, upto the time of the commission of the offence of murder, there was no antecedent of such a magnitude as to point out that by his being allowed to have a fresh lease of life, after undergoing the incarceration for a period of fourteen years as per S. 433(A) of the Code of Criming procedure, without his being annihilated by the imposition of sentence of death, there would be no risk at all to the societal members at his hand and in that view of the matter, we rather feel that the interests of justice would be best served by commuting his sentence of death into one of imprisonment for life, and accordingly, we sentence him.'

64. Could be say the same thing about the first accused in this case having regard to his antecedents and the manner in which he committed the three murders in this case ?. Before examining the circumstances we will also refer to the guidelines prescribed by the apex Court in Shankar (a) Gauri Shankar v. State of

Tamil Nadu (1994) 2 Crimes, 1 1994 AIR SCW 2083 where they give importance to the parameters laid down in Bachan Singh v. State of Punjab, : 1980 CriLJ636 and the weight to be attached to the circumstances of the criminal. We may also add that the impact that is likely to be caused to the societal members or the public by the imposition of a lesser sentence and the moral that is likely to be drawn by the public of Gudalur Town from the triple murder for gain, should be kept in mind before deciding the issue. From the guide-line given by the apex court, we have culled out the following circumstances which should enable us to decide the issue :-

(i) It is a pre-planned robbery, with equipment to commit murder.

(ii) The first accused was particularly aware of encountering some resistance and he was mentally prepared for annihilating anybody who came between him and his avowed object.

(iii) It is not as if he asked the first and the second deceased to keep quiet so that he could peacefully commit robbery and they refused, thus forcing him to resort to violence. On the other-hand, he cleverly made a sound and brought the first deceased into the kitchen and without any provocation he simply twisted the neck of the helpless old lady, the very moment that she entered the kitchen. He had absolutely no regard for human values and his only thought was to commit robbery . In the same way, when he found another old lady sleeping (D. 2), without any provocation he strangled her with the help of the other accused, just to remove any obstacle in his attaining the goal of committing robbery. Again absolutely no regard for the life of a human being. After committing robbery, when he was confronted by the owner of the house and another (D. 3) approaching them, he did not hesitate to fire a shot without any warning at the two approaching persons, killing one of them and injuring another and thus enabling themselves to run away from the scene. We could see nothing but a depraved mind in the first accused who has no respect or regard for human lives. Has such a person any right to live in an organised society Would it be safe if he is allowed to come back and live in the town

(iv) The ruthless manner in which the first accused had planned to annihilate any one coming in his way of committing robbery is proved by the fact that he took an S.B.B.L. gun and a pistol apart from other lethal weapons.

65. Thus, we are able to see most of the aggravating circumstances adverted to in Bachan Singh's case : 1980 CriLJ636 are present in this case, Coming to mitigating circumstances, we are unable to see any except one relating to the mercy shown on P.W. 2 It was not really mercy because, they ascertained from her that there was nobody else inside the house and they could get the keys only through her. Without her they could not have traced the jewels and cash so easily in the palatial house. There was no other reason as to why she alone was spared.

66. One other circumstance which we are called upon to consider is the probability that the accused can be reformed and rehabilitated. On this aspect, learned public prosecutor relied on certain pending cases against the accused and his attempt to escape once when he was being taken to the Court. These materials are available in a counter memo filed by the State in a Bail application filed in the Lower Courts. We passed an order on 20-10-1995 calling those papers from the Sessions Court. That document is at page 619 of the immaterial papers sent in pursuance of our order. It is dated 12-7-1994 and bears the Court seal on the same date. We extract below the contents of the said memo.

'6. It is submitted that the accused, Deivandran, moved bail before this Honourable Court and the State strongly objected the bail application on several grounds. The accused Deivendran (A.1) is concerned in several case, such as (1) Nadukandam P.C. (Kerala) Cr. No. 216/91, u/s. 397 and 402, IPC, (2) Vandamedu P.S. (Kerala) Cr. No. 119/91 U/s. 379, IPC, (3) Kumuli Lower Camp P.S. (Tamil Nadu) Cr. No. 94/92 u/S. 301, IPC and 25(1)(a) of Indian Arms Act, (4) Kumuli Lower Camp P.S. (Tamil Nadu) Cr. No. 210/85 u/S. 25(1)(a) of Indian Arms Act, (5) Kumuli Lower Camp P.S. Cr. No. 209/86 u/S. 379, 352, 336, IPC and 21(1)(a) of Indian Arms Act, (6) Negamam P.S. (Tamil Nadu) Cr. No. 65/92 u/S. 397, IPC., (7) Gudalur Range O.R. No. 1/85, C.C. No. 214/91 on the file of Judicial Magistrate, Uthamapalayam, u/S. 21(4), 15, 17(1), 45(1) of Animal Protection Act, (8) Gudalur Range W.L.O.R. No. 1/86-87 C.C. No. 215/91 (on the file of Judicial Magistrate,

Uthamapalayam, (9) Cumbum Range O.T. No. 181/90-91 in C.C. No. 304/93 on the file of Judicial Magistrate, Uthampalayam. The above cases are still pending trial in different courts due to his non-appearance in Court. The Investigation Officer secured the Accused, Deivendran, with great difficulties. Then, he was detained under Goondas Act (Act 14/82). Accused, Deivandran will definitely abscond. It is a very difficult task for prosecuting agency to secure his presence. Hence, the State objected the bail application on the grounds mentioned supra.

7. The accused, Deivendran, moved his bail application before the High Court of Judicature at Madras, in Cr. M.P. No. 3866/94. His Lordship dismissed the bail application in Cr. M.P. No. 3866/94 only, on 16-6-1994.

8. It is further submitted, when the accused Deivendran was escorted to the Court for attending the hearing, his associates attempted to take him away from Police custody. By the vigilant act, the Police spoiled their attempt. In that connection, a case was registered u/S. 5 of Explosive Substance Act read with S. 9(b) of Indian Explosive Act, on 12-7-1993 in Andipatti P.S. Cr., No. 18/93.

9. It is humbly submitted that the accused, Deivendran, has threatened the witnesses through his henchmen. The prosecution apprehends that the accused Deivendran, will abscond if released on bail.'

Besides, there are several representations., filed by the first accused with the sole idea of stalling the proceedings and the very commencement of the trial.

67. The above extract eloquently answers the question whether there is any chance of the first accused's reformation and rehabilitation. No doubt, most of the cases are pending but we cannot ignore the allegations and the style of living of the first accused as spoken to by P.W. 1 and the past records. Having given our anxious consideration to all the relevant circumstances, we are constrained to come to the conclusion that the first accused not only deserves the extreme penalty of death sentence but also does not have a right to live among the organised society of people who always cherish basic human values and human rights. We, therefore, confirm the sentence of death imposed on the first accused by the Sessions Judge. The other sentences under S. 120-B (10 years R.I.), S.

449 (10 years R.I.), S. 326 read with S. 34 (3 years R.I.) and life sentence for the murder of D.1 and D.2 under S. 302 read with S. 34, IPC are confirmed since there are no materials to hold that they are excessive and they shall get merged with the sentence of death.

68. We also accept the judgment of the trial Court that accused 1 to 3 are not liable to be convicted for the offence of S. 148, IPC.

69. One disturbing feature of the case is the failure of the Sessions Judge who framed the charges to frame a charge under S. 25(a) and (b) of the Arms Act, even though the final report of P.W. 25 under S. 173(2), Cr.P.C. did make out a case under the Arms Act and also annexed the sanction obtained from the competent Authority apart from citing the necessary witness to prove the charge. It is a serious lapse on the part of the Sessions Judge who framed the charges. We are told that the particular Sessions Judge is not in service now. Even the Sessions Judge who tried the case could have framed the charge if he had applied his mind. We were ourselves seriously thinking of framing an additional charge but reserved our decision to be taken at the end of the arguments. After hearing both sides and after taking a decision on the main charges, prudence impels us not to undertake the ordeal of bringing the accused from Madurai Jail to Madras and confining them here till the trial under a new charge is over. We also consider that there is some risk of the accused trying to escape in the process, having regard to his past conduct, to which we have made a reference already.

70. In fine, we confirm the convictions of the accused/appellants in respect of the charges found proved against them and also confirm the sentence of death imposed on the first accused and the other sentences imposed on them to which we have already made a detailed reference. The Reference is answered accordingly and the appeal is dismissed.

71. Appeal dismissed.