

Soundarapandi Vs. State

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Court : Chennai

Decided On : Mar-04-1982

Reported in : 1983CriLJ1199

Judge : Ratnavel pandian and ;Sengottuvelan, JJ.

Appellant : Soundarapandi

Respondent : State

Judgement :

Ratnavel Pandian, J.

1. This appeal is preferred by the accused in S. C. No. 6 of 1980 on the file of the Court of Session, Madurai Division, challenging the correctness and validity of the judgment, convicting him under Section 302, I.P.C. and sentencing him to imprisonment for life.

2. The crux of the indictment of the prosecution is that, on 15-9-1979 at about 1.30 P. M., in the Bazaar Street at Chinnalapatti village, the appellant (accused) caused the death of Kalyani, hereinafter referred to as the deceased, by cutting him with an aruval (bill-hook) M.O. 1 on the upper part of the left shoulder, on the right scapula, on the left side of the neck, on the ankle of the left leg and other parts of the body and thereby made himself liable to be punished under Section 302, I.P.C. To substantiate the above charge, the prosecution has. examined P. Ws. I to 14,

filed Exs. P-i to P-18 and marked M. Os. 1 to 12.

3. The scene village is known as Chin-nalapatti lying within the jurisdiction of Ambathurai Police Station. The deceased Kalyani, aged about 23, was a resident of Marimuthu Asari Lane in Chinnaka-likkam Patti, a suburb of Chinnalapatti. P. W. 3 is the mother of the deceased and he was the only son of his parents. His father died long prior to the occurrence. The deceased was permanently employed by P. W. 1, who had been letting on hire electrical goods, such as mike sets, tube lights, serial sets etc., having his business place in a portion of his house under the name of Rathinam Sound Service. The accused was also having a similar shop and was letting on hire mike sets, tube lights etc., besides having a betel-nut shop cum tea-shoo there. The accused's business premises was situate in the Bazaar Street running east-west. Ex. P-18 the rough sketch of the scene of occurrence gives the detailed location of the houses and shops of the witnesses and the accused and the scene place. No. 5 in Ex. P-18, indicates the shop of the accused. Nos. 7, 4 and 6 indicate the laundry of P.W. 6, the cycle shop of P. W. 7 and the house of P. W. 8 respectively. The shop of P. W. 7 and the house of P. W. 8 are on either side of the shop of the accused, whilst the laundry of P W. 6 is adjacent on the western side of the house of P. W. 8. In front of the house of P. W. 8 and a little away on the north west to the shop of the accused, the occurrence in question took place. It is said now that the business place of P. W. 1 is about 11/2 furlongs to the south of the shop of P. W. 7 and the house of the accused is to the north of the scene place in Angana Asari Lane, which runs south to the north opposite to the shop of the accused.

4. P. W. 8 and one Selvam were under the employment of the accused in that P. W. 8 was a tea master in the tea stall of the accused. 15 days prior to this occurrence, the accused had taken on hire four tube lights from P.'W. 1 but he did not either pay the rental charges or return the tube lights. So P. W. 1 sent his servant Kalyani (the deceased) to collect the necessary rental charges as also to get back the tube lights. The deceased as per the direction of P. W. 1 went to the shop of the accused on the morning of 11-9-1979, and demanded the charges and the tube lights which were hired. In the shop of the accused, P. W. 8 and one Selvam were present. P. W. 2 had also come to the shop of the accused to take

tea. When the deceased demanded the rental charges and the return of the tube lights, a wordy altercation arose between the accused and the deceased during which the accused told, the deceased in a very angry tone that the transaction was between himself and P. W. 1, that the deceased had no business to demand anything from him and that if the deceased persisted in his attempts, the accused would go even to the extent of stabbing him. The deceased, unscared of the threat uttered by the accused, persisted in his attempts. Then the accused, on being aggrieved at the persistent conduct of the deceased, threatened the deceased with dire consequences and said that he would finish his chapter by murdering him. However, at the intervention of P. W. 2, no untoward incident had happened and P- W. 2 separated the accused and the deceased. This was witnessed by P.Ws. 6 and 7. Thereafter, the deceased returned, and informed P. W. 1 what had happened.

5. On 12-9-1979, at about 7 P. M., the accused went to the shop of P. W, 1 and informed him of the incident and asked P. W. 1 to terminate the services of the deceased and threatened him by saying that if he did not accede to the demand of the accused, the accused would stab not only the deceased but also P. W. X. At that time the deceased was not available in the shop.

6. On the next day, i. e. on 13-9-1979, when the deceased came to the shop of P. W. 1, P. W. 1 apprised him by the threat held out by the accused on the previous evening and asked the deceased that it would be better if he did not turn up for work for sometime and also temporarily terminated his service. The deceased had informed his mother P. W. 3 of the termination of the service by P. W. 1 consequent upon the threat held out by the accused.

7. On the morning of the date of occurrence, the deceased went out of his house after informing his mother P. W-3 that he would go to the shop of P. W. 1 and persuade him to get him reinstated in service. After the deceased had left the house, P. W. 3 went to Ambathurai for the purpose of making a courtesy call on the wife of P. W. 2, who had been admitted in a clinic, known as Sarojini Clinic for acute stomach pain, and returned home at about 12.30, that afternoon. Subsequently, as the deceased had not returned home by then, she went in

search of her son through the Bazaar Street. In the meantime, the deceased went to the shop of the accused where P, W. 8 and Selvam were alone present. The accused had been to his house for the purpose of taking his mid-day meal. The deceased asked P. W. 8 and Selvam whether it was proper for their master (the accused) not only to have instigated P. W. 1 to terminate his services but also to threaten his life. So saying, he was standing in front of the shop of the accused, facing west. P. W. 8 sent word to the accused through Selvam.

8. At about 1.30 P. M., the accused emerged from Angana Asari Lane with M.O. 1 and inflicted a cut on the left shoulder of the deceased and on receipt of the cut the deceased turned back. Immediately, the accused inflicted another cut with M.O. 1 on the left shoulder followed by yet another cut on the right shoulder and on the back of the neck in quick succession. When the deceased was about to fall on the ground, the accused gave some more cut on the left leg below the knee, P. W. 3, who by then had reached the Bazaar Street, witnessed the entire occurrence and rushed to the scene, making a distress cry 'Dont cut, don't cut'. After inflicting the injuries, the accused ran away with M.O. 1 towards north through Angana Asari Lane. The accused was chased by one Marimuthu, who is a resident of Samiarpatti and who had come to the Bazaar by chance in search of one of his relations, but in vain. The occurrence was witnessed by P. Ws, 6, 7 and 8 besides P, Ws. 3 and 5. P. W. 3, kept her son. the deceased, on her lap and wept leaning over him. A little later, P. W. 3 went to the house of the Village Munsif along with Marimuthu and found the village Munsif not available. So both P. W. 3 and Marimuthu went to the house of the Kamam P. W. 9 residing in Melakottai, a segment of Ambathurai. P. W. 3 gave a complaint at about 2.30 P. M., to P. W. 9 who reduced the same to writing under Ex. P-I to the narration of P, W. 3. Ex. P-4 is the carbon copy of Ex. P-I'. Then P. W. 9 went to the scene place and made an endorsement on the complaint and sent it through his thalyari, directing him to hand over the original Ex. P-I at the police station and Ex. P-4 in the Court of the Judicial Second Class Magistrate, Dindigul.

9. P. W. 10 the Sub-Inspector of Police, Ambathurai received Ex. P-I at about 3.30 P. M. He registered the same in Crime No. 564 of 1979 and prepared express reports and sent them to the concerned officials. Ex. P-I1 is the printed F.I.R. sent

to the Court. He informed P. W. 14 through wireless message about the incident. Then, on the direction of P. W. 14, P. W. 10 went to the scene place and provided the necessary bandobust and was waiting for the arrival of P. W. 14 who reached the scene at about 4 P. M. and took up further investigation. P. W. 14 prepared an observation mahazar Ex. P-5 attested by P, W. 9 and another. At about 4.30 P.M., he seized M.O. 4 bloodstained earth and M.O. 5 sample earth from the scene place under Ex. P-6. Between 4.45 P.M. and 7 P. M., he held inquest over the dead body of the deceased during which he examined P. Ws. 3 and 5 and others. Ex, P-1 7 is the inquest report. Then he despatched the dead body through P.W. 12 along with Ex. P-2 for the purpose of autopsy.

10. P. W. 4, the then Civil Assistant Surgeon attached to the Headquarters Hospital, Dindigul on receipt of Ex. P-2 commenced the post-mortem examination on 16-9-1979 at about 10.30 A.M. He found the following external injuries:

1. An abrasion about $3/4'$ x $1/2'$ just $1/2'$ behind the left ear in the lower part.
2. An abrasion about $1\ 1/2'$ x $1/4'$ in the upper part of neck, left side.
3. An abrasion about $2\ 1/2'$ x $1/4'$ just $1\ 1/2'$ medial to injury No. 2.
4. An incised wound about $1\ 1/2'$ x $3/4'$ x $2'$ in the upper part of the left shoulder in the medial aspect, probe length about $3\ 1/2'$ in the upward direction from the anterior aspect of the wound.
5. An incised wound about $1\ 1/2'$ x $1/2'$ x $1/2'$ in the upper part of the left scapula.
6. An abrasion about $3/4'$ x $1/2'$ over the upper part of the right scapula.
7. An incised wound about $3/4'$ x $1/2'$ x $11/2'$, in the back of the middle of the left leg. Probe length about $3'$.
8. An incised wound about $1'$ x $1/2'$ x $1\ 1/2'$ just $1\ 1/2'$ below injury No. 7. Probe-length about $3'$.
9. A small ulcer about $1/4'$ x $1/4'$ x $1/2'$ in the base of the 3rd toe right side in the dorsal aspect dressed with plaster. On internal examination, he' found collection of

haematoma in the anterior fold of the axilla, intra clavicular, supra clavicular and on the lateral side of the neck. Axillary artery and vein were found cut. Ex. P-3 is the post-mortem certificate issued by him. He has opined that the deceased would appear to have died of shock and haemorrhage due to the injuries to the axillary artery and vein on the left and that death should have occurred about 20 to 24 hours prior to autopsy.

11. After the autopsy, P. W. 12 seized M. Os. 8 to 12, the garments from the dead body and handed them over at the police station where P. W, 10 seized them under Ex. P-12.

12. P.W. 14, after despatch of the dead body for post-mortem examination, seized from P. W. 3 M.O. 2 saree and M.O. 3 jacket at about 7.15 P. M. under Ex. P-7 attested by P. W. 9 and another. He prepared a rough sketch of the scene place Ex. P-10 and searched for the accused, but the accused was absconding. Then he examined P. W. 2 and others. He visited the houses of P. Ws. 6, 7 and 8 and found neither of them present. On 16-9-1979, he examined P. Ws. 1, 6 to 8 and 12 and others. On the same day at about 2.45 P. M., on information he arrested the accused at Melakottai Kanmoi in the presence of P. W. 9. On interrogation the accused gave a voluntary statement, the admissible portion of which is Ex. P-8. In pursuance of the confession, the accused took P. W. 14 and his party to the pump-set room of his father-in-law wherefrom he took out M.O. 1 aruval from the eaves of the pump-set room and the same had been seized at 4 P. M. under Ex. P-9 attested by P. W. 9 and another. P. W. 14 then took the accused to the station. with M. O, 1, On reaching the police station he seized from the accused M.O. 6 dhoti and M.O. 7 shirt under Ex. P-10. After search, the accused was kept in the lock-up and was sent for remand to the Court on the next day, namely, 17-9-1979. 'On 18-9-1979, P. W. 14 examined P. W. 4 and sent a requisition to the Court to make arrangements for recording the 164 statements of the witnesses. He sent Ex. P-13 to the Court requesting the Court to send bloodstained articles for chemical examination.

13. P. W. 13 an Assistant, attached to the Judicial Second Class Magistrate's Court, Dindigul states that on receipt of Ex. P-13 M. Os. 1 to 4 and 6 to 12 were

sent for chemical examination under the original of Ex. P-14. Exs. P-15 and P-16 are the reports of the Chemical Examiner and the Serologist respectively which were later received by the Court, On 20-9-1975, P. W. 14 produced the witnesses before the Judicial Second Class Magistrate, Nilakottai for recording statements under Section 164, Cr. P.C. After completing the investigation, P. W. 14 laid the charge-sheet against the accused on 19-10-1979.

14. The accused when questioned under Section 313, Cr. P.C. with reference to the incriminating pieces of evidence appearing against him, denied his complicity in the offence in question. He would state that four days prior to the occurrence while he was in his shop, the deceased came there and told him that P. W. 1 had asked him to collect the rental charges and fetch the tube lights hired to him and he, in turn, told the deceased that he would settle the transaction with P. W. 1 directly. No sooner did he say like that, the deceased got wild and proclaimed that both of them belonged to Kallar community and he knew how, to extract things from him. So saying, the deceased went away. On the day of occurrence, he had been to his garden land and on his way back he was informed that there was a rioting and stabbing incident in the bazaar. He denies of having given any confession to the police or of having produced M. O, 1. According to him he was taken by the police while he was in his house and he did not know anything about this occurrence.

15. The learned Sessions Judge who has unhesitatingly accepted the ocular testimony of the prosecution witnesses Nos. 3, 5, 6, 7 and 8 and also accepted the evidence relating to the motive for the occurrence, has held that the prosecution has satisfactorily and convincingly established the charge against the-appellant-accused and consequently convicted and sentence him as aforementioned. Mr, A. S. Selvam, learned Counsel appearing on behalf of the appellant-would raise the following contentions:

(1) The evidence of P. W. 3 who is-none other than the mother of the deceased, is not credible, as her testimony is tainted with the flavour of artificiality and improbability.

(2) As none had come forward to lay a report in respect of this offence though; it had occurred in a bazaar, P. W. 3 was pressed into service by the prosecution to speak about the occurrence as an eye-witness and figure as the complainant.

(3) P. W. 5 whose name does not find a place in Ex. P-I is a chance witness, and his evidence is not worthy of acceptance.

(4) The testimony of P. Ws. 6, 7 and 8 cannot command the acceptance of this court as these three witnesses were not available for examination during the inquest or immediately thereafter on 15-9-1979 but have made themselves available for examination only on 16-9-1979 and they are not speaking the truth but are made to fall in line with the prosecution case as trotted out in Ex. P-I.

(5) As the medical evidence given by P. W. 4 is totally in conflict with the oral testimony of the eye witnesses and spells out that the deceased should have received the injury not by an aruval M.O. 1, but by a different weapon, namely, a stabbing instrument, the entire ocular testimony of witnesses has to be totally rejected.

(6) The evidence of P. W. 4 given before the trial Judge as well as before this court on his further examination and the averments in column No. 7 of the inquest report Ex. P-17 belie the version of the eye witnesses and therefore in view of the inconsistent and diametrically contradictory evidence of the medical expert as against the testimony of the witnesses, this court has no other option except to throw out the entire case as unacceptable.

(7) In support of the above contentions, the learned Counsel has cited a number of decisions, which we would like to refer at the appropriate place.

16. Before advertng to the arguments advanced by the learned Counsel we would like to bring the totality of the evidence into the following categories (1) the motive for the occurrence; (2) the ocular testimony of the eye witnesses; (3) medical evidence and (4) the circumstantial evidence.

17. The facts that the occurrence took place in broad day-light on 15-9-1979 in the Bazar Street at Chinnalapatti village and that the deceased succumbed to the

injuries sustained by him as detailed under Ex. P-3, the post mortem certificate, are not in dispute. Therefore, the question that would arise for our consideration in the case on hand is, whether the injuries to which the deceased had succumbed instantaneously were inflicted by the appellant and the appellant alone in the manner as spoken to by P. Ws. 3, 5, 6, 7 and 8 or in different circumstances as opposed to the version given by the prosecution. The motive for the occurrence is spoken to by P. Ws, 1, 2 and 6 to 8.

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(Evidence of the witnesses were discussed),

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18. Mr. A. A. Selvam, learned Counsel for the accused would vehemently and forcefully contend that Ex. P-I and Ex. P-II should have been prepared only after the arrival of the police at the scene and they have been sent to the Court thereafter and this is the reason for the delay of nearly 6-1/2 hours in handing over the First Information Report to the Magistrate at 10 p. m. He would further submit that the delay had occasioned on account of the inability of the police to secure any witness from that locality and that the police who were not conversant with the true facts of the case had, ultimately, on seeing the injuries on the dead body, trotted out a story as averred in Ex. P-I purely drawing it out from their imagination that the deceased was cut with an aruval and done to death, without knowing the nature of the weapon, the manner of attack and the real assailant etc. According to the defence, P. W. 3 could not have gone to the Bazar Street at the psychological moment when the deceased was attacked and witnessed the occurrence. The reason given by P. W. 3 that she went to the Bazar in search of his son as he had not returned for his midday meal, is quite improbable and unacceptable, because in a village part people could not be expected to take their midday meal on every day at 1-30 or 2 p. m. and that no mother would go in search of her son, simply for the reason that her son had not come to the house to take his meal by 1-30 p. m, Had not P. W. 3 gone in search of her son, she could not have got the chance of witnessing the occurrence. Admittedly she did not know anything about her son creating any galata in front of the shop of the

deceased. A close examination and survey of the evidence of P. Ws. 3 and 9 and the circumstances regarding the registration of the case and the receipt of the first information report by the Magistrate do really generate a suspicion in our mind that Ex. P-I would not have come into existence as now deposed by P. W, 3.

....

(After discussing the evidence His Lordship proceeded)

The normal course of conduct one would expect of a person, more so a woman, would be to approach the police authorities and report the matter of death and seek their help and protection, In the present case, the conduct of the woman in not going to the police but only to the Karnam who normally did not take the complaint of a murder, is quite unnatural and improbable. Further, P. W. 5 would not accompany P. W. 3 nor would he go to the police station. Whatever might be the reason for P. W. 3 for approaching the Karnam P. W. 9, instead of the police, the telling and attendant circumstances do create a suspicion in our mind whether Ex. P-II would have been prepared in the manner as put forth by the prosecution and whether P. Ws. 3 and 5 would have witnessed the occurrence at all. This conduct of P, W. 3 in not approaching the police and the conduct of P. W. 5 in not accompanying P. W. 3 compel us to hold that the defence suggestion cannot be brushed aside as devoid of any merit.

19. Now, let us examine the evidence of P. Ws. 3 and 5 firstly and see whether the deceased had been attacked with an aruval now identified by these witnesses as M.O. 1. Much incisive argument was advanced by Mr. A. A. Selvam, forcefully contending that the injuries found on the deceased would not have been caused by a weapon like M.O. 1, but all these injuries should have been inflicted by the assailant, whomsoever he was only by a stabbing instrument. According to him when it is- shown beyond all reasonable doubt that M.O. 1 was not the weapon used by the assailant in causing the injuries to the deceased, then the Court has to come to the conclusion that the evidence of P. Ws. 3 and 5 as well as that of P. Ws. 6 to 8 is nothing but a bundle of falsehood.

20. Now, in order to appreciate the above argument we shall advert to the medical evidence. P. W. 4 who conducted the necropsy on the dead body of the deceased had found 9 injuries of which injury Nos. 1, 2, 3 and 6 are all abrasions as noted in the post-mortem certificate Ex. P-3. Injury No. 9 is a small ulcer (old one). The major injuries are injury Nos. 4, 5, 7 and 8. Injury No. 4 is described as an incised wound measuring 1 1/2' x 3/4' x 2' in the upper part of the left shoulder in the medial aspect. The probe length of that injury was about 3 1/2' in the upward direction from the anterior aspect of the wound. Injury No. 5 is an incised wound measuring 1 1/2' x 1/2' x 1/2' in the upper part of the left scapula. Injury No. 7 is another incised wound measuring 3/4' x 1/2' x 1 1/2' in the back of the middle of the left leg. The probe length of this injury was about 3'. Injury No. 8 is described as an incised wound measuring 1' x 1/2' x 1 1/2' just 1/2' below injury No. 7 and the probe length of this injury was 3'. On exploring injury No. 4 the Medical Officer found collection of haematoma in the anterior fold of axilla, intra, clavicular, supra clavicular and on the lateral side of the neck. The axillary artery and vein base had been cut. On exploring injury Nos. 7 and 8, there were no blood vessels injured and there was no collection of haematoma in the subcutaneous region. When the doctor was asked his opinion about the nature of the injuries and their cause and effect, he has given the following answers even in the chief-examination. We would like to extract the evidence as found in the deposition so that we could appreciate the argument of the learned Counsel for the defence while assessing the medical evidence and the testimony of the eyewitnesses:

Question: Whether injury Nos. 4, 5, 7 and 8 could have been caused by infliction of separate cuts by a weapon like M.O. 1?

Ans.: These injuries could not have been caused by the infliction of cut by a weapon like M.O. 1

Ques.: - Whether injury No. 4 could have been caused by the tip of M.O. 1

Ans.: Not possible.

Ques.: Whether injury Nos. 5, 7 and 8 could have been caused by infliction of separate cuts with a weapon like M.O. 1?

Ans.: Not possible.

The above answers given by the Medical Officer P. W. 4 unambiguously show that the Medical Officer is assertive in his opinion that none of the injury Nos. 4, 5, 7 and 8 could have been inflicted by cut by a weapon like M.O. 1 aruval, nor by the tip portion of the aruval coming into contact with the particular part of the body of the deceased. In other words, the opinion of P. W. 4 completely rules out the evidence of the witnesses that these injuries were caused only by cut with an aruval like M.O. 1. To a general question addressed to the Medical Officer, he has stated that incised wounds can be caused by a sharp edged weapon like an aruval M.O. 1. But coming to the injuries found on the deceased, he would not agree with the suggestion made by the learned Public Prosecutor, but would reiterate what he had opined already, stating that injuries 4, 5, 7 and 8 could not have been caused by cut with an aruval. The last question addressed by the learned Public Prosecutor reads thus:

Question: I put it to you that the injury Nos. 4, 5, 7 and 8 being incised wounds could have been caused by infliction of cut with a weapon like M. O, 1. What do you say ?

Ans.: Not possible.

In the cross-examination P. W. 4 states that on probe of injury No. 4 he found the direction of the injury upwards and adds that as the tip of the aruval M.O. 1 is about 2', the tip portion of the aruval cannot penetrate to a depth of more than 2' and therefore the injury whose depth is more than 3' could not have been caused by the tip of the aruval M.O. 1. Of course, he stated that, barring injury-No. 4, which in his opinion was necessarily fatal, the other injuries were simple. As the answer given by the Medical Officer before the trial Court is not supporting the prosecution version but, on the other hand, is in conflict with the oral evidence of the eye-witnesses P. Ws. 3 and 5 to 8, we were inclined to call for the Medical Officer for finding out the reasons of his opinion given before the trial Court. Accordingly, the case was adjourned and the Medical Officer was summoned and examined on 19-1-1982.

21. Before this Court P. W. 4 has deposed that he inserted a pointed instrument from the surface of injury No. 4 to the actual bottom of the wound, that it measured 3 1/2 inches and that the injury was in the upper direction and not in the downward direction, He would further add that the depth of the injury measuring 3 1/2' was not seen through the naked eye, but it was below the bottom of the depth of the injury visible to the naked eye, In other words, the depth of the injury visible to the eye was 1 1/2' and the probe depth of the injury measuring 3 1/2' was from the bottom of the depth of the injury visible to naked eye and therefore the total depth was 5', out of which the depth of 3 1/2' measured by a probing instrument was completely covered by the muscle and skin and that it was below the skin, superficial fascia subcutaneous tissue. When he was asked whether he is assertive in his view that this injury could not have been caused by the tip of an aruval, the Medical Officer gives an affirmative answer. Similarly he would hold his same view in respect of injury Nos. 5, 7 and 8 also and reiterate that none of these injuries could have been caused by cut with an aruval or the tip of the aruval coming into contact with the particular part of the body of the deceased and ultimately he would state that injury Nos. 4, 7 and 3 are more likely to have been caused by a sharp-edged weapon like a knife, and not either by the blade portion or tip portion of M.O. 1. In this court P. W. 4 would again state in so far as injury No. 5 is concerned that it is possible that this particular injury could have been caused by a cut with an aruval. As the depth of the injury was only 1/2', we too feel that it cannot be completely ruled out that this injury could have been caused by an aruval. Notwithstanding the opinion of the expert P. W. 4, realising our greater responsibility, we examined the opinion of the medical expert. Taking into consideration the nature of the weapon and the nature of the injuries, ultimately we are forced to Come to the same conclusion as that arrived at by the Medical Officer. The tip of the aruval M, O. 1 is very blunt, measuring 0.3'. If one draws a horizontal line in line with the sharp edged blade portion of the aruval, the curved portion of the aruval from that horizontal line to the tip measures only 2', The bottom of the curved portion measures 2,8'. If M.O. I was used and if the tip portion of M.O. 1, had caused the injury the depth of that injury could be only 2' and the length of the injury would be longer than the length of the injury noted in Ex. p-3, because when the entire tip portion of the aruval goes inside, then the entire blade portion of the aruval would come into

contact with the particular portion of the body. The length of the injury Nos. 4 and 5 is each 1 1/2' and injury No. 7 is 3/4' and injury No. 8 is 1'. On probing, the depth of injury Nos. 7 and 8 was 3' each and that measurement is from the bottom of the depth of the injury as visible to the naked eye. In other words, to find out the total depth of the injury, one has to add the depth of the injury found on probe to the depth of the injury noted in the post-mortem certificate, which depth was found by the naked eye. We would like to point out here that, while examining the weapon M.O. 1, we have also elicited all answers about the description of the weapon M.; O. 1, through the medical officer. Under these circumstances, we have no hesitation in coming to an irresistible and inescapable conclusion that the assailant, whomsoever he was, should have used only a sharp-edged pointed weapon like knife as opined by the Medical Officer and that these injuries as noted in the post-mortem Certificate could not have been caused by a weapon like M.O. 1, except injury No. 5, the depth of which is only 1/2'. In addition to these, we feel that one should not lose sight of the fact that injury No. 4 was in the upward direction from the anterior aspect of the wound. The doctor has explained this injury saying that it was in the upward direction and not in the downward direction. If a man is cut with an aruval while standing whether the sharp-edged portion of the aruval or the tip portion of the aruval comes into contact with the body of the victim, the injury would be only down-wards and not upwards, unless that injury is caused upwards.. This injury No. 4 the probe length of which is in. the upward direction from the anterior aspect of the wound, is more likely to have been caused by the assailant either by stabbing the victim from downwards to upwards while the victim was standing or he should have inflicted the injury by sitting on the chest of the victim while latter was falling on his back. Now, the question is when the testimony of the ocular witnesses is irreconcilably in conflict with the medical evidence, can the Court brush aside the medical evidence, and record a conviction only on the basis of the ocular testimony of P. Ws. 3 and 5 to 8, holding that these injuries had been inflicted by the accused with M.O. 1, while the deceased was standing.

22. In this context we feel that it would be appropriate to refer to the description of the injuries as found in column No. VII of the inquest report Ex. P-17. Injury Nos. 3 and 4 under that column are described- as perforated injuries and injury No. 7 is

found above the right leg as an old one to which a plaster had been pasted. Injury Nos. 3 and 4 noted in the above column of the inquest report are referable to injury Nos. 4 and 5 in Ex. P-3. This supports the medical experts evidence that injury No. 4 had been caused only by a pointed sharp-edged weapon like a knife, but not by an aruval like M.O. 1.

23. The learned trial Judge in paragraph 22 of his judgment, while discussing the evidence of the medical expert P. W. 4 has made the following observations.:

So far as the incised injuries are concerned the doctor would have, the tenacity and guts to say that those injuries could not at all have been caused by a weapon like M.O. 1, But I am for one unable to agree with the opinion of the doctor on this aspect. He himself though would agree that incised wounds are capable of being caused by a weapon like M.O. 1, yet we would state that so far as the case on hand is concerned, the incised wounds he found on the person of the deceased could not at all have been caused by the infliction of cuts with weapon like aruval on him and the reason given by him is that the injury of the description having a depth as found by him on probe could not have been caused by a weapon like aruval. Even when the attention of the doctor was drawn that this aruval was having tip and if the tip was utilised in inflicting cuts whether such injuries could have been caused, he would even then say that all those incised injuries could not have been caused by M. O, 1 in such fashion. His evidence on this aspect is not without suspicion and beyond reproach. Worthy it is to note that the doctor who described the incised injuries 4, 5, 7 and 8 giving the dimension of length, breadth and depth, would give the depth of injury No. 4 as 2', injury No. 5 as 1/2', injury No. 7 as 1 1/2' and injury No. 8 as 1'. But at the same time he would give the probe depth for injury No. 4 as 3 1/2' and 3' for injuries 7 and 8. It is not as if the doctor was dealing with a person lingering for his life with cut injuries so that he was unable to measure the depth of the wound initially by-means of a probe; but the fact is that he was doing post-mortem. This apart even a layman can say that the tip of aruval could have caused these injuries having a depth of 2'. As such I reject the testimony of the doctor P. W. 4....'In our view, the above observation is totally bereft of any substance or of any sound reasoning. It seems that the learned trial Judge has unjustly entertained a provocation as he could not reconcile the conflict

between the testimony of the eye-witnesses and the medical expert P. W. 4 and has found fault with P. W. 4 and held that he (the Medical Officer) had 'the tenacity and guts' to give such evidence which is diametrically opposite to the evidence of the eye-witnesses that M.O. 1 was the weapon of offence used by the accused and which cuts at the very root of the prosecution case. It should be noted here that this Medical Officer has not been treated hostile, obviously for the reason that he has not resiled from his statement given before the investigating officer. In order to satisfy ourselves whether P. W. 4 was disinclined to support the prosecution version only at the time when he got into the witness-box in the trial court, we went through his statement recorded under Section 161 Cr. P.C. by the investigating officer P. W. 14. On perusing the statement, we understand that the investigating officer has not made any attempt to get the opinion of the Medical Officer as to the nature of the weapon that could have been used in this case. Though, strictly, speaking, the court would not be justified in looking into the 161 statement of the witness and observe the omissions or contradictions, in this particular case, as the learned Public Prosecutor before the trial court or before this Court on further examination, has not confronted P. W. 4 with his earlier statement, we out of curiosity went through that statement and found that even at the earliest point of time. P. W. 4 had not come forward to state that the injuries could have been caused by a cutting instrument. We are shocked to note the unwarranted remark made by 'the trial judge about the evidence of 'P. W. 4 in this aspect, observing that 'his evidence on this aspect is not without suspicion and beyond reproach.' Evidently, the learned judge has not looked into the description of the injuries noted in column No. VII of Ex. P-17. More likely, had he been the description of injury Nos. 3 and 4 in column No. VII of Ex. P. 17 corresponding to injury Nos. 4 and 5 in Ex. P. 3, he would 'have made a similar remark about the investigating officer also. We are not able to understand as to why the trial judge had not put any question either ?by way of clarification or for elucidation to P. W. 4 by resorting to Section 165 of the Evidence Act, in case the Court was not satisfied that the answer given by the Medical Officer even at the time when the answer was recorded. The learned trial Judge having kept silent at the time when the evidence was recorded and without giving any opportunity to P. W. 4 to give the reason for his opinion, we are constrained to observe that he is not at all correct

and justified in-observing that the evidence of the Medical Officer is 'not without suspicion and beyond reproach'. It is to be noted here that the learned trial Judge would not point out the failure on the part of the investigating officer in getting the opinion of the Medical Officer as to the nature of the weapon used in this case. As stated supra, we have also examined the weapon very carefully and took further evidence from P. W. 4 so as to enable him to give out his reason for his conclusion. On a meticulous examination of the nature of the weapon M.O. 1 now available in Court and the evidence of the Medical Officer, we hold that injury Nos. 4, 7 and 8 could have been caused only by any stabbing instrument but not by a cutting instrument like M.O. 1. Hence, we feel that the remark of the learned Sessions Judge that 'his (P. W. 4's) evidence on this aspect is not without suspicion and beyond reproach' has' to be expunged and it is -accordingly expunged.

24. The opinion given in general, by P. W. 4 that a sharp-edged weapon can cause incised wound will not improve the case of the prosecution, because it is common knowledge that incised wounds can be caused by cut with any sharp-edged weapon, whether it is an aruval or knife. From this general answer, no Court can immediately jump to a conclusion, as done by the trial Court, that the particular injuries, namely, injury Nos. 4, 7 and 8 mentioned in Ex. P-3 could have been caused by a sharp-edged weapon. Mr. A. A. Selvam, the learned Counsel appearing for the appellant-accused cited a number of decisions of the Supreme Court and of the High Courts in support of his contention that, when there is an irreconcilable conflict between the medical evidence and the evidence of the ocular witnesses, the Court has to give the benefit of doubt to the accused. We feel that we need not swell this judgment by citing all these decisions, but it is suffice to mention only a few of them.

25. The first decision is the one in *In re Madivalappa* AIR 1966 Mys 142. In that case a single Judge of the Karnataka High Court, after having referred to various judgments of the Supreme Court touching on this point has observed that where the medical evidence was such as to completely rule out all possibility that injuries had been caused in the manner as alleged by the prosecution, such medical evidence was a very important factor in assessing the testimony of eye-witnesses

and in determining whether the testimony of the eye-witnesses could safely be accepted. On the basis of the above observation, the learned Judge held on facts that it was unsafe to accept the testimony of the eye-witnesses, in spite of their apparently consistent version, in view of the medical evidence,

26. Reference was to *Anneppa v. State of Karnataka*. A Division Bench of the Karnataka High Court in that case held that it is unsafe to rely upon the direct evidence of the eyewitnesses when it is in conflict with the medical evidence.

27. The decision of the Supreme Court in *Hallu v. M. P. State* : 1974 CriLJ1385, has also-been referred to. In that case the postmortem certificate revealed that on the body of one of the victims, viz., Jagdeo three bruises and a haematoma were found and on another body of one Padum there were four lacerated wounds and two bruises. According to eye-witnesses the two victims were attacked with lathis, spears and axes; but that clearly stood falsified by the medical evidence. The medical evidence was that none of the injuries found on both the persons could be caused by a spear or an axe. The High Court of Madhya Pradesh however refused to attach any importance to this aspect of the matter by saying that the witnesses had not stated that the miscreants dealt axe blows from the sharp-side or used the spears as a piercing weapon. According to the High Court axes and spears might have been used from the blunt-side and therefore the evidence of the eye-witnesses could safely be accepted. Their Lordships of the Supreme Court while examining the appeal preferred by the appellants made the following observations:

We should have thought that normally when the witness says that an axe or a spear is used there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or a piercing instrument was used as blunt weapon.' On the above observation, the Supreme Court allowed the appeal and acquitted the appellants.

28. When we test the facts of the present case in the light of the observations of the above judgments, we are of the strong view that there is warrant for holding that the eye-witnesses P. Ws. 3 and 5 to 8 meant only a stabbing instrument or that these injuries found on the deceased were possible by a weapon like M.O. 1',

A careful reading of the evidence shows that the prosecution did not have an adequate explanation in the oral evidence for certain apparent puzzling features of the injuries on the deceased. It seems to us that the evidence adduced falls short of proof in regard to a very material part of the prosecution case. In a case where it was alleged that death was due to injuries or wounds caused by an aruval, it is the primary duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused in the manner alleged. In other words, it is elementary that where the prosecution has a definite and positive case it must prove the whole of that case. When P. W. 4 in the case on hand is very assertive in his view that injury Nos. 4, 7 and 8 could not have been caused by a weapon like M.O. 1, the Court cannot by implication in the absence of any evidence to the contrary accept the oral testimony of the witnesses. If that be the implication it is the duty of the prosecution to obtain a clarification by calling some other more competent and experienced expert with the permission of the Court to establish the fact that the injuries 4, 7 and 8 detailed under the post-mortem certificate Ex. P-3 could be caused by M.O.1. It has to be noted here that not even a suggestion has been put by the prosecution to P. W. 4 that M.O. 1 could cause these injuries. So when the evidence of the eye-witnesses is tested on the anvil of objective circumstances in this case, not only did the learned trial Judge not do that by examining an expert or by getting a clarification from P. W. 4 but by persuading itself to the view that the eyewitnesses are implicitly reliable had denied to himself the benefit of a judicial consideration of the infirmities to which we have already referred. The conclusion would be that the evidence of the eye-witnesses cannot be safely relied upon.

29. Now, coming to the presence of P. W. 5 at the scene place, it is urged that P. W. 5 is a chance witness and as-such his evidence is not worthy of acceptance. A suggestion is made to this-witness that he is closely related to the deceased's family; but this suggestion is denied. But P, W. 3 in the cross-examination would admit that P. W. 5 her maternal uncle, P. W. 3 denies a suggestion that he has married P. W. 3's senior paternal uncle's daughter. However this admission of P. W. 3 falsifies the denial of the suggestion made to P. W. 5 that he is the maternal uncle of P. W. 3. In other words, P. W. 5 goes even to the extent of suppressing this admitted relationship with P. W. 3 and the deceased. In addition to this there is

another glaring infirmity in the evidence of P. W. 5 in that he is very emphatic that all the injuries found on the deceased were caused only by M.O. 1, 'We have made an elaborate discussion' as to the nature of the weapon that would have been used in this case by the assailant. Hence all the reasons given for rejection of the evidence of P. W. 3 on this aspect would squarely apply to the evidence of P. W. 5 also. As pointed out supra, P. W. 5 though he is a direct brother of the mother of P. W. 3 would neither accompany P. W. 3 nor report this incident to any authority.

30. Now, turning to the evidence of P. Ws. 6, 7 and 8, it is significant to note that none of these three witnesses were available for examination on the date of the occurrence but they were examined only on 16th September, 1979, that is to say on the next day of the occurrence. The explanation given by P. Ws. 6 to 8 for their non-availability in the village on that day is that they all got frightened and left the scene place after closing their shops. It is more Probable and natural that perhaps P. Ws. 6 and 7 could have been in their respective shops and P. W. 8 in his house. But the question is, whether these witnesses also speak only the truth and nothing but the truth. Presumably, had anyone of these witnesses been examined on the date of the occurrence itself, anyone or all of them would have given the true version of what had happened and as to what was the weapon of offence handled by the assailant. It is very unfortunate that these three witnesses also fall in line with the pro-prosecution case and assert that only the aruval M.O. 1 was used by the accused. As rightly pointed out by the learned defence counsel these three witnesses are now presumably made to fall in line with the earlier untrue version of P. W. 3 given in Ex. P1. Because of this intrinsic defect in the evidence of these three witnesses with regard to the nature of the weapon used, we have no other alternative than to discard their evidence also as unworthy of any safe acceptance. In Ex. P1 the names of P. Ws. 6 and 7 are not found, Marimu-thu, who is cited as an eye-witness to the occurrence in Ex. P-I and who is also an attester to such a document, has not been examined and the reason for the non-examination of this witness is known only to the prosecution. When the evidence of P. Ws. 6 and 7 is tested in the light of the evidence of the medical expert P. W. 4, the only conclusion that this Court could arrive at is that all the injuries Nos. 4,5, 7 and 8 could have been caused by the assailant with a sharpened weapon like

knife or that the assailant should have used two kinds of weapons (1) a cutting instrument like M.O. 1', which would have caused injury No. 5 and (2) necessarily a knife-for causing injuries Nos. 4,7 and 8. Assuming that the accused had cut the deceased, only injury No. 5, could be attributed to have been caused by him with the aruval M.O. 1, which is said to have been recovered by P. W. 14 consequent upon the confession made by the accused and which is shown to have been stained with human blood of AB group as per Ex -P-16 and, in that case, there ought to have been some other person with a knife to cause the rest of the injuries, namely injuries Nos. 4, 7 and 8. Thus, a grave suspicion is generated on account of the direct conflict in the testimony of the medical expert and that of the eye-witnesses. We have, therefore, to hold that the prosecution has not satisfactorily established the guilt of the accused beyond all reasonable doubt. No doubt, it is highly regrettable that the real assailant, whomsoever, he was, escapes the clutches-of law because of the grave-and serious flaws and infirmities in the-evidence now available, despite the fact that this unfortunate incident had happened in broad daylight in a bazar. But this court, which is burdened with a heavy responsibility of administering Justice according to law on the evidence available on record, will not be justified' in ignoring all the serious infirmities found in this case and recording or sustaining a conviction only on being morally satisfied that the accused perhaps might have been the perpetrator. Needless to say that the cardinal principle of criminal jurisprudence is that the guilt of the accused should be proved beyond all reasonable doubt by letting in implicitly reliable evidence.

31. In the result, disagreeing with the conclusion arrived at by the trial Court, we set aside the conviction of the accused under Section 302 I.P.C. and the; sentence passed thereunder and acquit the accused, giving the benefit of doubt to him, The criminal appeal is allowed.