In Re: Thangarai and ors.

In Re: Thangarai and ors.

SooperKanoon Citation : sooperkanoon.com/818246

Court : Chennai

Decided On : Aug-25-1971

Reported in : 1973CriLJ1301

Judge : Ramamurti and ;Somasundaram, JJ.

Appellant : In Re: Thangarai and ors.

Advocate for Pet/Ap. : Mr. Vanamamalai

Judgement :

Ramamurti, J.

1. The four appellants 1 to 4 in this appeal are accused 1' to 4 respectively in Sessions Case No. 106 of 1971 on the file of the . Sessions Court, Tirunelveli, the Sessions Case arose out of the murder of one Anthonipandian of Tuticorin at about 9-15 A. M. on 29-3-1971' in the Clinic (Manohar Clinic) of one Dr. Krishnamurthi. In the course of the same transaction one Karuppuswami Thevar (examined as P. W. 1 in the case) was stabbed on his back. The four accused along with one Thavidan alias Sudalai-' mani (a iuvenile) were charged for the offence of rioting armed with deadlv weapons, punishablp under Section 148 I. P-C. Accused 1 to 4 were also charged for the offence of murder under Section 302 read with Section 1491. P. C. and the first accused was charged for attempt to murder Karuppuswami Thevar (P. W. 1) punishable under Section 307 IPC All the accused pleaded not euiltv to all the charges; but the Sessions Judge found them

guilty in respect of all three charges and convicted them- Accused 1 to 4 were each sentenced to imprisonment for life for the conviction under Section 302 read with Section 149 I. P- C. and to rigorous imprisonment for two years for the conviction under Section 148 I. P. C and the first accused was also sentenced to five vears' R. L for the conviction under Section 307 IPC all the sentences of imprisonment imposed were directed to run concurrently.

2. The facts of the case may be briefly stated. The deceased. Anthonipandian was keeping a jutka for his use. whenever he went out, since his left lea had been cut lone aao. On the dav of the occurrence, he had some work (some prohibition case) with his Advocate at Tuti-corin. Thiru Mariappaswami (P. W. 7). The deceased, alone with P. W- 1 went to the lawyer's place at about 8-15 A. M. on 29-3-1961 and, after finishing his work, the deceased and P. W. 1 were returning back in the Jutka from east towards west alone the North Car Street. When they were coming near the brass vessels shop (at about 9.15 A. M.) which is situate about 30 feet east of Manohar Clinic in that street, accused 1 to 4 suddenly appeared at the scene along, with the iuvenile accused, Thavidan and thev obstructed the iutka. It is said that the iuvenile was armed with a vel-stick and the first accused was havine a bichuva while accused 2 to 4 each had an aruval. At that time the fourth shouted savine 'Original in Tamil omitted Ed.' Out of fear, the deceased jumped out from the front portion of the iutka while P- W. 1 lumped out from the back portion of the same. Both the deceased and P. W. 1 ran towards Manohar Clinic. Accused 1 to 4 and the iuvenile accused chased them inside the Clinic. P. W 1 reached the verandah of the Clinic first and subseauently the deceased also followed P. W. 1 and entered into the western room of the verandah. When P. W- 1 reached the verandah, the first accused stabbed him on his back with the bichuva (M. O. 4). At that time, the deceased peeped out from the doorway of the dressine-room in the Clinic. The iuvenile accused at once cut on the forehead of the deceased with the knife attached to the vel-stick, the fourth accused cut on the neck of the deceased with aruval, the third accused cut on the left hand of the deceased with aruval. the second accused cut on the chest of the deceased with aruval and the first accused cut the deceased repeatedlv with the bichuva knife- P. W. 1, out of fear and panic, came out of the Clinir and ran towards east, after having received the stab iniurv from the first accused.

The deceased who sustained several injuries died on the spot: and after thus murdering the deceased by inflicting numerous iniuries, accused 1 to 4 and the iuvenile accused came out of the Clinic and disappeared. P. W. 1, who came out of the Clinic after sustaining the stab injury, engaged a rickshaw and drove towards the hospital. On the way to the hospital, P. W. I saw his brother P. W. 10 Lakshmanan, and conveyed to him the news of the occurrence. P. W. 10 asked P. W. 1 to rush to the hosDital, and after conveying to the police on the phone the news of the oocurrence received from P.W. 1, P. W. 10 ioined P.W 1 in the hospital. The case for the prosecution is that P. W- 2 Francis, P. W. 3 PonPandi and P. W. 4 Subbiah Thevar are the eve-witnesses who were present at the scene at the time of the occurrence and thev actually witnessed the stabbins of P. W. 1 by the first accused with the bichuva and the murderous assault on the deceased by all the accused alone with the iuvenile inflicting numerous iniuries. P. W. 16. the Sub Inspector of Police who received the news of the occurrence on the phone from P. W. 10, went to the hospital at about 10 A. M., and Exhibit P. 1, the first information report was eiven by P. W. 1. It was also attested by P. W. 10 the brother of P. W. 1.

The Inspector of Police (P- W. 17) was at once informed about the occurrence and the Inspector reached the scene of occurrence at 11 A. M. and conducted the inquest from 11-30 A.M. to 1-30 P. M. At the inauest. the Inspector of Police examined P W. 8 the Doctor of Manohar Clinic, P. W. 9, the Nurse, P. W. 11 the wife of the deceased and the son of the deceased. After completion of the inauest, the dead body was sent to the hospital. P. W. 6 the Civil Assistant Surgeon, conducted the post-mortem examination on the dead bodv of Anthoninandian at 3-50 P- M. on the same dav, viz., 29-3-1971 and Exhibit P. 3, the post-mortem certificate, contains the details of all the iniuries and the opinion of the Doctor. The Doctor was clearlv of the opinion that the deceased died of shock and haemorrhage due to multiple iniuries. with special reference to the fatal iniuries Nos. 8 and 10 found on the neck. The Doctor was of the view that each of the injuries Nos. 3 and 10 was necessarily fatal and that the death was due to all the injuries inflicted. He was also of opinion that all the incised iniuries could have been caused by cuts with aruval or a knife like M. O. 4. (It is unnecessary to refer at this stage, to the other steas taken by P. W. 17 in the course of the

investigation). The Inspector of Police P. W. 17 thereafter, examined P. W. 1 at the hospital recovered from him, his bloodstained dhoti, the bloodstained shirt and the bloodstained underwear. P, W. 5 the woman Assistant Sureeon examined P. W. 1 and eave the wound certificate (Exhibit P. 2) to the effect that P. W. 1 had sustained an incised wound, 1' x i' x l'i' in the back. In the wound certificate, the Doctor has stated that the iniurv was erie-vous in nature and the samp could have been caused with a weapon like M. O. 4. P. Ws. 2, 7 & 10 were examined by P. W. 17 on the same day, 29-3-1971. but later. The other two eve-witnesses P. Ws. 3 and 4, thoueh thev belonged to Tuticorin and known persons were examined a lone interval after the inauest: P. W- 4 was examined on 31-3-1971 and P. W. 3 was examined much later, on 6-4-1971.

3. While in the hospital, a statement (Exhibit D- 1) was recorded by the Sub Magistrate. Tuticorin from P. W. 1' at about 1-30 P. M on 29-3-1971. evidently as a dying declaration. It is necessary even at this stage, to mention that there are several vital discreDancies in the version aiyen by P. W- 1 about the occurrence, in the F. I. R. and in the statement Exhibit D. 1- In Exhibit P. 1, it was stated that the first accused stabbed P. W. 1 on the back and accused 1,2.3 and 4 along with the iuvenile, murdered the deceased by inflicting several iniuries, the first accused using a knife and accused 2 to 4 using aruvals and the iuvenile using a vel-stick. In Exhibit D. 1, P. W. 1 has stated that the fourth accused, the second accused, the first accused, one Selvarai. Mariappan and Jeeva and the iuvenile accused attacked the deceased and that the first accused stabbed P. W. 1. In more places than one, it is repeated in Ex. D. 1 that all the aforesaid seven persons participated in the murderous assault upon the deceased. So far as the third accused is concerned it is merely stated that the third accused was merelv one in that crowd. It is not stated that the third accused actually participated in the assault (no overt act was ascribed to A. 3).

4. Even though several witnesses were examined on the side of the prosecution, the evidence which calls for scrutiny touching the occurrence lies in a narrow compass because the place of occurrence and the setting in which it took place has been clearly established. The evidence establishes that P. W. 1 and the deceased travelled in the iutka. that the iutka was obstructed in front of Manohar

Clinic, that P. W. 1 and the deceased went inside the Clinic and the assault took place there, and that whoever may be the assailants, thev ran awav from the scene immediately after the occurrence. P. W- 8 the Doctor admittedly did not witness the occurrence because, at that time, he was in the midst of an operation in the operation room upstairs. It is only after the operation, he came downstairs and noticed the dead bodv of the deceased with bleeding iniuries and the assailants had already run awav. The evidence of P. W. 9 the Nurse again does not throw any light about the occurrence. As soon as P. W. I and the deceased entered the Clinic, she bolted the door out of fear and she opened it only when P. W. 8, the Doctor, came down and tapped at the door when the culprits had disappeared from the scene. P. Ws. 1, 2, 3and 4 claim to be eye-witnesses to the occurrence. P. W. 10 the brother of P. W. 1, has played an important part after the event, hp conveyed to the police by phone the news of the occurrence as conveyed to him by P. W. 1. The oral evidence of P. W. 10 calls for scrutiny in the light of the evidence of P. W. 1, the statement (Ex. P. 1) given by P. W. 1' to the police at 10 O'clock and the later statement of P- W. 1 (Exhibit D. 1) given at 1-30 P. M. P. W. 10 admittedly did not witness any portion of the occurrence and therefore he throws no light on it as such. His evidence becomes relevant on other points the motive for the crime, the party faction and the enmitv between the parties. P. W. 11 is the wife of the deceased and shp herself got the news of the murder long after the occurrence and therefore, her evidence is not .useful concerning the actual occurrence. The evidence of P. W. 17, the Inspector of Police, becomes relevant only with regard to the investigation made by him. The result is that the proof of the case of the prosecution would mainly rest upon the evidencp of P. W. 1 and the eye-witnesses, P. Ws. 2, 3 and 4. P. W. 2 turned hostile and he goes out of the picture and the learned Sessions Judge, naturally has not placed any re-liancp whatever on his evidence.

The result is that the proof of the case for the prosecution ultimately rests upon the evidence of P- Ws. 1, 3 and 4. In the course of the cross-examination of P. Ws. 3 and 4. the defence has made out ample grounds that P. Ws. 3 & 4 who admittedly are chance witnesses are unscrupulous persons and have given falsp evidence without any scruples. It is admitted that P. W. 1 knew P. Ws. 3 & 4 very well: he knew them by their names, and if they were present at the scene at the time of the

occurrence, P. W. 1 would have surelv mentioned their names in P. 1' especially when the F. I. R. is recorded by the Sub Inspector, Even though (P. W- 3 and P. W- 4) belong to Tuticorin. they were not examined at the inauest and they were examined several davs later. P. Ws. 3 and 4 know P. W. 11. the wife of the deceased very well, vet thev did not convev the news of the murder to P- W. 11. Even though the police station is very near, they did not inform the police about the occurrence. When reference is made to the evidence of P. Ws. 3 and 4 little later, the infirmities and the artificialities and the falsehood revealed in their evidence will be considered. Indeed, in paragraph 19 of the judgment of the learned Sessions Judge, he has appreciated the serious infirmities and defects in the evidence of P. Ws, 3 and 4 and how it will be unsafe to act upon their evidence- For reasons which we will discuss littlp later, we have not the sliehtest hesitation in rejecting the evidence of P. Ws. 3 and 4 as totally false and worthless, with the net result, that the truth of the case for the prosecution ultimatelv rests upon the sole testimony of P. W. 1 which has to be judged in the light of the discrepancy in Exhibit P. 1 and Exhibit D. I and in the lieht of the numerous discrepancies and infirmities and prevarications elicited in his cross-examination. It is a matter for regret that the learned Sessions Judge has not appreciated that, on the ultimate an-alvsis. the case for the prosecution rests solelv upon the evidence of P. W. 1. If I rnav sav so. in several portions of the judgment of the learned Sessions Judee, hp has given reasons for acauittal, but curiously enough, in the ultimate conclusion he has found all the accused guiltv of all the charges.

If the learned Judge had made a proper effort to sift and analvse the evidence of P. W. 1 hp would have at once seen that P. W. 1 is a thoroughly unreliable person and on his evidence it will be very unsafp and dangerous to find four persons guiltv of the grave offence of murder especiallv when there is partv faction and bitter enmity on the side of the prosecution witnesses and on the side of the accused. Further, the evidence also shows that party-men supporting the case of the prosecution had taken control of the prosecution and had introduced false witnesses with a view to deliberately implicate certain specified persons belonging to the opposite group. If there is any defect or omission in the investigation, it is all because this police did not get any co-ope-ration from disinterested persons who

are residents in the locality and who could have given useful evidence. With these preliminarv observations, we shall now consider the evidence.

4-A. Mr. Vanamamalai, learned Counsel for the appellants urged, P, W. 1 ran away from the scenP out of panir and fear the moment he received the stab iniurv in his back and he either could not or did not see any portion of the rest of the occurrence, and whatever P. W. 1 has said as to the persons who actuallv participated in the occurrence, how the iniuries were inflicted, the particular weapons used by the particular accused is false, and right from the beginning, he is not a free agent and is merelv a tool in the hands of his scheming brother. P. W. 10. learned Counsel further urged that on his own case, when P. W- I ran into the Clinic by instinct of self preservation, the assailants chased him behind his back and he sustained a stab iniurv; in that centext, P. W. 1 would not havp observed who amongst the assailants, inflicted the stab injury. learned Counsel, stressed the extreme improbability of P. W. 1, while running away, noticing the other portions of the occurrence. Indeed, learned Counsel stresses that the moment he received the stab injury. P. W. 1 would have simply fled awav out of panic from the scene. He further contended that from stage to stage, there have been distinct developments and P. W. 1 has been giving discrepant and prevaricating versions. It would be hiphlv unsafe and dangerous to base a conviction upon the sole evidence of such a witness. especiallv when there is abundant background to show the motive for the partv of the prosecution to foist a false case against the accused- The dutv of the prosecution in proving the guilt of the accused in grave offences like murder and the responsibility of the Court in assessing and arriving at the truth is very onerous, much more so, when a number of persons are implicated. The evidence will have to be carefully sifted and if the circumstances raisp a reasonable doubt as to whether all the accused participated or some alone participated in the occurrence and who among them Participated all the accused will have to be acauitted being given the benefit of doubt. Where several persons are implicated, the auestion is not, one of more arithmetic acauitting some and convicting the rest, but whether the evidence, which has been reiected as false or insufficient as against the accused who had been acauitted is sufficient and convincing to make out the guilt of the other accused: as against the latter, the Court should have no doubt whatever. As often said, motive operates as a

powerful influence for the commission of the crime, eau-allv motive operates as a powerful force to falsely implicate the hostile group. The fact that the parties and the witnesses belong to rival factions and arP on terms of pronounced enmitv and hostility is a circumstance in favour of the accused, in a case where several persons are implicated. The les?al position is well settled that, as an abstract rulp of law. the Court is not precluded from basing its conviction upon the evidence of a single witness; what is important is the quality of the evidence, and not the auantitv of the evidence.

It is sufficient to refer to the recent decision of the Supreme Court reported in Vadivelu Thevar v. State of Madras : 1957 CriLJ1000 in which the Supreme Court, after referring to Section 134 of the Evidence Act. which lavs down 'that no particular number of witnesses shall, in any case, be required to prove any fact' (as different from the law in England which reauires plurality of witnesses in certain cases), has held that the conviction can be based upon the evidence of a sinele witness if the testimony of that witness is true and reliable. In that case. Sinha, J. fas he then was) delivering the iudgment. classified the oral testimony into three categories; (1) where the testimony is solelv reliable. (2) where it is solelv unreliable and (3) where it is neither solelv reliable nor solelv unreliable. It was pointed out that in the third category of cases the Court has 'to be circumspect and to look for corroboration in material particulars by reliable testimony', direct or circumstantial- This view that where the evidence of a sole witness, suffers under a serious infirmity of its being partly re-liablp and partly unreliable, there should be 'corroboration in material particulars. by reliable testimony' has been followed in the subseauent decisions of the Supreme Court, with a particular notp of caution that the Court must look for corroboration more so, in cases where several persons have been implicated and the sole witness gives varying and discrepant versions as to the details of the occurrence. We shall first dispose of the evidence of P. Ws. 3 and 4.

5. There are several circumstances brought out in the course of the cross-examination, demonstrating that these two witnesses P- Ws. 3 and 4, have absolutely no regard for truth, that thev are most unreliable and have been uttering lies quite freely. P. W. 3 claims to be a mason. P. W- 4 is a watchman in a school

in the locality and it is very easy to Dro-cure such evidence. Further, P. W. 3 is admittedly, involved in a prohibition case at the time when he was contacted by the police. At the time of the occurrence P. W, 4 would have been in the school as a watchman and it is absurd to sav that he was waiting at the scene of occurrence to meet P. W. 3 to secure a painting iob for the latter. The version siven by P. Ws. 3 and 4 as to when and how thev met at the scene of occurrence bristles with artificialities and falsehood. Thev are chance witnesses and their evidence cannot be accented unless their version as to whv thev happened to be at the scene is natural, convincing and acceptable. The infirmities and artificialities in their version as to how they came to be at the scene of occurrence are sufficient to hold that thev never witnessed the occurrence and that their version is introduced as an afterthought. There is the further fact that both of them belong to the same Thevar Community as the partv of the prosecution and it has been suggested to P. W. 3 that, in the local election, he was working for the partv raneed against the accused- P. W. 3 has admitted that he was standing outside and that he could not observe anything that took place inside the Clinic (Original in Tamil Omitted Ed.) So far as P. W. 4 is concerned, he is involved in some criminal cases alone with the deceased.

6. It is in the background of these serious infirmities and unsavoury features in the evidence of P. Ws. 3 and 4 the great significance of the absence of any reference to their names in the F. I- R. calls for scrutiny, P. W. 1 has clearly admitted in his evidencp (Page 5 of the typed papers) that P. Ws. 3 and 4 are very well known to P- W. 1 and were present at the time of the occurrence. It is obvious that, if P. W. 1 knows P. Ws. 3 and 4 and if thev were eye-witnesses witnessing the occurrence P. W. 1' would certainly have referred to their names in Exhibit P. 1. It must be borne in mind that the F. I. R. was recorded by P. W-16, the Sub Inspector, and the first thing a Sub Inspector of Police would have asked while recording a F. I. R. in a grave offence like murder is about the eye-witnesses. The bald and vague statement at the end of Exhibit P. 1 that the occurrence is known to the people in the street in general, without referring to P. Ws. 3 and 4 betravs that the statement is so made, to later on introduce convenient obliging eve-witnesses. The matter does not stop there. The inquest took place immediately after the occurrence, between 11-30 A. M. and 1-30 P. M. and P. Ws. 3 and 4 are residents of Tuticorin.

P. W. 4 is a watchman in a school and there cannot possibly be any difficulty in tracing him and examining him. P. W. 3's address is also known to the police officer and resides in Tuticorin. The Inspector of Police examined P. Ws. 8. 9 and II at the inquest and P- Ws. 2 7 and 10 on the same dav later: how does it happen that P. Ws. 3 and 4, the most important eve-witnesses, are not examined at the inquest? The auestion naturally arises that the police would certainly have asked P. W. 1 as to who the eye-witnesses were that were referred to in Exhibit P. 1, and in the course of the cross-examination, when P. W 1 was confronted with respect to that situation, he gave the false answer that he had told the police that P. Ws. 3 and 4 had witnessed the occurrence. The utter falsity of this answer of P. W. 1 is exposed by the evidence of P. W. 17 the Inspector of Police, who savs that P. W-1 never mentioned to him the names of P. Ws. 3 and 4 as eve-witnesses.

7. The prosecution has miserably failed to explain the delav in the examination of these crucial witnesses P. W. 4 a watchman in a school, who can easily be traced, was examined only on 31-3-1971 and P. W. 3 was examined a week later. The prosecution save a futile explanation that, for over a week P. W. 3 was absent and could not bp examined. Except a bare statement, P- W. 3 does not sav whv he was absent, for what purpose and to which place he had gone. Asain. the Sub Inspector and the Inspector of Police have given no evidence as to what step thev took in examining P. W, 3 as earlv as possible. Even though admittedly, the police station is very near, P. Ws. 3 and 4 admittedly evinced no interest in reporting the matter to the police- P. W. 3 has admitted that he was in the hospital when the F. I. R. was given. If so. it passes one's comprehension how his name was not mentioned in the F. I. R. and how he was not examined at the inauest. The story of P. W. 3 suddenly disappearing from the scene i. e. hospital immediately after the occurrence for about a week is worse than a fairy-tale, even to narrate. When .Pressed in cross-examination he gave the false answer that immediately after the occurrence he went and informed P. W. 11, the wife of the deceased, about the occurrence. This answer is demonstrated to be false because P. W-11, the wife of the deceased, does not corroborate P. W. 3: further, if P. W. 11 had been told by P. W. 3 about the occurrence. P. W- 11' would at least have informed the Inspector at the inauest that the news of the murder of her husband was conveyed to her by P. W. 3, a witness alleged to have witnessed the occurrence. P. Ws. 3

and 4 have admitted that after the occurrence thev never met and discussed which would not have been the normal conduct if thev had both witnessed the occurrence and thev had known P. W. 1 very well. The conduct of P- Ws. 3 and 4 again is unnatural that they never made enauiries as to what happened after the occurrence. P. W. 4 could not withstand the cross-examination and he admitted that he did not tell the Inspector of police that the fourth accused instigated other three accused to cut the deceased, which is the crux of the case of the prosecution. From the evidence of P. W. 1, P. W. 10 and P.W 11, ample material had been brought out to show that P. Ws. 3 and 4 are obliging partisan witnesses and thev have been tutored to eive this evidence at the instance of the leader of the party of the prosecution ranged against the oartv of the accused. The evidence of the Inspector shows that there is a party faction on account of municipal elections and the Partv of one Mariappan on the side of the accused is ranged against the partv of Av-yasamv on the side of the prosecution. The prosecution evidence also shows that P. W. 10 is a staunch supporter of the party of Avvasamv. The several answers elicited in the course of the cross-examination of the Inspector of Police show that the evidence given by P. Ws. 3 and 4 is false from start to finish- At page 43 of the typed papers the Inspector has admitted that P, W. 3 did not tell the Inspector that he (P. W. 3) saw P. W. 1 running out of Manohar Clinif with bleeding iniurv and again, he did not tell the Inspector that he went inside the Clinic and saw the deceased with bleeding iniuries. Again, the Inspector has admitted that P. W. 4 did not tell him about his (P. W. 4's) seeing P. W. 1 running awav from the Clinic with bleeding iniurv-These crucial adrnissions of the Inspector clearly show that P. Ws. 3 and 4 never witnessed the occurrence, for if thev had witnessed, thev would have stated these crucial things to the Inspector. From the foregoing it is demonstrablv clear that it is impossible to place any reliance upon the evidence of P. Ws. 3 and 4. It is difficult to understand how the learned Sessions Judge has so slightlv slurred over the uniustifiable and unexplained long de-lav on the part of the investigating officer in recording the statements of material eye-witnesses during the investigation of a murder case like this- In paragraph 19 of the iudgment the learned Sessions Judge refers to these aspects, the infirmities in the evidence, and winds up by saving 'because of the said facts, it will not be fair to disbelieve their evidence'. I am sorrv to sav that this

is not sitting or analysing the evidence, but betravs a predetermination to accept their evidence, whatever may be the infirmities and falsehood which the defence had clearlv and undoubtedly established.

It is necessarv to refer to the recent decision of the Supreme Court reported in Balakrushna v. State of Orissa : 1971 CriLJ670 in which the Supreme Court has observed that 'unjustified and unexplained long delay on the part of the investigating officer in recording the statement of a material eve-witness during the investigation of a murder case will render the evidence of such witness unreliable- In that case too the Supreme Court commented upon the fact that the Inspector of Police was not able to explain the delav in the examination of the crucial eye-witnesses and the fact that these eye-witnesses Save prevaricating, unsatisfactory answers.

8. Thus the defence has clearly made out that, under the aforesaid circumstances, the truth or otherwise of the prosecution version has to be adiudged, solelv with reference to one single witness i- e. P. W. 1. The learned Public Prosecutor submitted that the evidence of this witness is natural and rings true as he is an iniured witness and there is no motive for him to leave out the real assailant and falselv implicate others and when the evidence of this witness is scrutinised with care and caution as indicated by the decision of the Supreme Court referred to above, there is no reason to re-iect his evidence. On the facts found and proved by the defence, it is impossible to accept this contention. In the first place, the incident is not a frontal attack in the sense, in front of P. W. I, when he could have witnessed the assailant. P. W. 1 received a stab injury at the back and he at once, ran awav from the scene out of panic and fear. It is very doubtful whether he could have even noticed his own assailant. It is worse so far as his capacity and facility to notice the assailants of the deceased because im-mediatelv after the stab injury inflicted on him P. W. 1 ran away. Abundant material has been brought out in the course of the cross-examination, how the locality is faction-ridden and how motive and open hostility and enmity would act both ways. If P. W. 1 had witnessed the occurrence, he would not have told his brother, P. W- 10 on the way to the hospital that the stabbing was by the fourth accused Vagaivara. It passes my comprehension that if P. W. 1 had actually observed the occurrence and his

assailant, he would not have so mentioned to P- W. 10, but would have mentioned A. 4 Vaeai-yara. This clearly proves two things: (i) P. W. 1 had not witnessed the occurrence and (ii) not having witnessed the occurrence, who the assailants were, guesswork and speculation came in, and naturally, the name of the fourth accused appeared uppermost in their minds, in view of the prior disputes and incidents concerning the fourth accused and his brother etc on the one side and P. W. 10 on the other. I find it impossible to ignore what P. W. 1 conveyed to P. W. 10 on his way to the hospital as inconseauential. In my view, it has a vital impact and I have not the slightest hesitation in holding that P. W. 1 said 'fourth accused' Vagaivara' for the excellent reason that he never saw and could not have seen who his assailant was which means that he never witnessed any portion of the occurrence because he at once ran awav from the scene.

The next is the statement (Exhibit D. 1) given by him in the hospital. Exhibit D. 1 shows that P. W. 1 is prepared to freely implicate others in a grave offence like murder. Here again, abundant material had been placed to show that these persons who are implicated are all persons belonging to the opposite party led by Councillor Mariappan. What better or further proof is necessary to show that P. W-I is an unscrupulous person, has no regard for truth and is merely a tool in the hands of his partv-men. besides his scheming brother, P. W. 10? How does it happen that when further persons are impleaded they happen to be leaders of the party in the opposite side? In my opinion, the note of warnine by the Supreme Court that the Court should be very circumspect in assessing P. W. l's evidence and look for corroboration in material particulars by reliable testimony, clearlv applies. Exhibit D. 1 gives an entirely different version and. so far as the third accused is concerned, it is merely stated that the third accused was in the crowd (Original in Tamil omitted-Ed.) Does it mean 'outside the Clinic' or does it mean 'inside the Clinic?' If inside the Clinic, how could P. W. 1 make the statement because according to Exhibit P. 1 he also cut the deceased with aruval? Does it reauire any further elaboration to show that P. W. 1 did not witness the occurrence, but ran awav in panic as soon as he received the stab iniurv in the back? At every stage of the discussion, we are emphasizing that P. W. 1 did not witness and could not have witnessed the occurrence, to show that the theory that an in-iured witness would not normally falselv implicate persons leaving out the

real assailants has no application to the instant case. That argument would aPolv only in a case in which the prosecution has established beyond any reasonable doubt that the iniured witness actually witnessed the occurrence and there is no controversy about his being able and having facility to observe the occurrence. The particular facts of this case ought not to be ignored and some general rule applied, in the abstract, in adiudging the truth of the case of the prosecution. Exhibit D. 1 bears ample evidence that P. W. 1 is not giving a natural or a true account of the episode. Not only has he falselv implicated other persons in Exhibit D- 1 but. even in his evidence in the trial, he has been shown to be an unscrupulous person uttering lies auite freelv. He had no scruples whatever in introducing two persons as eye-witnesses to the occurrence, which, as pointed out above, is obvious falsehood. It is settled law that the evidence of such a witness who falsely introduces eve-witnesses to the occurrence is not to be readilv accented but the Court should be very cautious and look for corroboration.

The next aspect is that, in Exhibit D. 1, an attempt is made to shift the scene of occurrence (from inside the Clinic) to the street in front of Manohar Clinic. This is a deliberate, obvious falsehood and after-thought; the reason is obvious. Seeing that the murderous assault on the deceased took place inside the Clinic and also realising that neither he (P. W. 1) nor other persons could have witnessed if everything happened inside the Clinic, this vital change is introduced in Exhibit D. 1 to create a background that the occurrence took place in the road so that in the course of the evidence, witnesses can be introduced to sav that they witnessed the occurrence while standing on the road. The version in Exhibit D. 1 is that the accused engulfed the iutka both in the front and in the rear. and. as P. W. 1 iumped out of the iutka. he was attacked on the road. Again, on an integral oortion of the case it is seen that P. W. 1 is uttering lies Quite freelv in the trial, evidence was given in a discrepant and prevaricating manner, in a futile attempt to reconcile the version in Exhibit P. 1 and that in Exhibit D. 1. This again emphasises that P. W. 1 is a thoroughly unreliable witness. He save thoroughly useless and unsatisfactory answers- He said that he did not mention to the Inspector of Police that Mariappan and Jeeva etc.. were in the group. Indeed he could not withstand any portion of the cross-examination about his falsely im-licatins threp other people in Exhibit D. 1. The Inspector in his evidence (at page 43 of the typed

papers) has stated that P. W. 1' told him that the oartv of the accused, along with Mariappan and Jeeva, inflicted cut iniuries indiscriminately upon the deceased. There is absolutely no scope for any theory that when Exhibit D. 1 'was recorded P. W. 1 was not normal in the sense on account of some operation and treatment or on account of any sleeping pill that was given to him he was in a delirium and gave any such statement. There is no evidence whatever for that theory either in the evidence of P. W. 1 or that of the Doctor or the Inspector of Police- Further the evidence does not admit of any such theory on the facts of the case. At, the time of the investigation which admittedly took place after Exhibit D. 1. P. W. 1 has persisted in sticking on to the statement when he told the Inspector in the course of investigation that MariaoDan and Jeeva and others also participated in the murderous assault. At that stage, there is no auestion of any speculation of any delirium in the mental condition of P. W. 1. What further proof is necessary to show that it will be dangerous in the extreme to accept the evidence of P. W. 1. There is one other serious impact flowing from this false and prevaricating version of P. W. 1'. If, in the investigation stage, he told the police that seven people participated in the murderous assault and inflicted cut iniuries with aruvals, on what basis can the Court hold that it is the four accused alone who are euiltv of the offence? How is it possible to hold that the other three people did nothing and that the four accused alone are the real assailants? How was P. W. 1 able to identify and locate these four accused as the real assailants? It is not a case of simple arithmetic. 7 minus 3 eauals 4. The argument that it freauentlv happens that more people are freelv implicated in offences and that, for that reason, the Court should not throw away the entire case for the prosecution, but can convict such persons as are proved to have committed the offences, has hardlv any application to the instant case. The application of such a rule would result in gross miscarriage of iustice unless the Court is satisfied that the evidence of the witness who falselv implicates other people has been corroborated by other convincing satisfactory evidence with reference to these accused who are proved to have been the real offenders.

In this connection, Imav refer to the recent Bench decision of this Court reported in In re Narayanaswami. in which the note of warning given by the Supreme Court as to what weight should be attached in the case of the prosecution, where the

Prosecution relies upon threp prevaricating dvins declarations one after another and more persons are implicated in one than in the other, and where therp is material discrepancy revealed in the dying declarations as to the number of persons who participated in the crime. The following head-not in that decision brings out the note of warning given by the Supreme Court in T. Pompiah v. State of Mysore : 1965 CriLJ31 .

In a case in which therp is a single dying declaration and also oral evidence, one corroborating the other, the problem before the Court may not be very difficult of solution, though there may be some embellishments and discrepancies brought out in the oral evidence, because, due weight will have to be piven to the statement of the deceased as to the real circumstances under which he met with his death and in the light thereof the oral evidence will have to be assessed makine due allowance for discrepancies and inaccuracies. Complete and perfect harmonv between the dying declaration and the oral evidence cannot alwavs be secured. Problems would arise where the deceased had made two or more statements constituting dying declarations as to the circumstances under which he met with his death- Here too immateral discrepancies and inconseauential inaccuracies between one statement and another will have to be ignored as of no conseauence. if the main core of the casp is found in the dying declaration of the deceased... The crucial test in all cases of plurality of dying declarations is whether the deceased's version is Droved to be false in respect of an integral portion of the case and that the test whether the deceased has given a true version is not to be iudsed with reference to any one dvinff declaration, but it should bp iudeed in the light of the several declarations made by him. It is only in extreme cases that the court can safelv convict reiving upon the first dying declaration, provided there is convincing and adequate corroborate evidence.

In the case before the Supreme Court : 1965 CriLJ31 (referred to above) the deceased Eranna who was murdered, gave three dying declarations, marked as Exhibits P. 2, P. 1 (a) and Exhibit P. 9 in that case. The point for decision turned upon the probative valup of the two dying declarations, Exhibits P. 2 and P. 9. In the first dying declaration, Exhibit P, 2, the deceased implicated one Pompiah and Hussaini as the real assailants, but in the second dying declaration Exhibit P. 9,

which was given a few hours later, he implicated two more persons, Siddaiah arad Rudramani. The Hieh Court was not inclined to act upon the second dying declaration, Exhibit P. 9 and therefore, found only the two accused Pompiah and Hussaini, guilty of the offence charged on the basis of earlier dying declaration. On appeal by these two persons the Supreme Court acquitted them- The Supreme Court distinguished the earlier decision of the Supreme Court in Khusal Rao v. State of Bombay : 1958 CriLJ106 in which case there was a plurality of dving declarations on the ground that no part of the dvine declarations has been found to be false and the court had no reason to doubt the truth of the dying declarations and their reliability. The Supreme Court observed as follows:

In the instant case, the declarations recorded in Exhibit P. 2 and Exhibit P. 1 (a) were made almost simultaneously and the declaration recorded in Exhibit P- 9 was made shortly thereafter. In Exhibit P. 2 Erranna named Pompiah and Hussaini only as his assailants, whereas in Exhibit P. 1' (a) and Exhibit P. 9 he names not only Pompiah and Hussain but aslo Siddaiah and Rudramani as his assailants. Now, his version that Siddaiah and Rudramani attacked him has been found to be an afterthought. We thus find that a material and integral portion of the deceased's version of the entire occurrence is unreliable. The truthfulness of the dying declaration as a whole is not free from 'doubt. The prosecution case as a whole does not inspire confidence. The prosecution produced eve-witnesses, who have been found to be unreliable'. In view of this decision it is clear that it is not a simple arithmetic of addition or subtraction and no conviction can rest upon such versions, where a material, integral portion of the version is unreliable- The decision of the Supreme Court dealt with a dying declaration. The Position applies a fortiori in the case of a party who appears in Court and gives evidence which is false from start to finish.

The next integral portion of the occurrence, where P. W. 1 gives unreliable evidence uttering lies freely, is the overt acts which he attributes to the various accused. In his evidence in Court he mentioned specific overt acts referable to each of the four accused. He stated that the iuvenile stabbed the deceased with vel stick on the face, the fourth accused cut the deceased with an aruval in the neck, the third accused cut the deceased with an aruval on the left hand, the

second accused cut the deceased with an aruval in the chest and the first accused cut the deceased with M. O. 4 indiscriminately. He also gave evidence that these people inflicted injuries with aruvals indiscriminately. In cross-examination, he had to admit that it was only in the Sessions Court, for the first time, he was giving these particulars and hp admitted that he never mentioned these particulars either in Exhibit P- 1 or in Exhibit D. 1 or to the Inspector, nor even in the committal Court. (Vide: Paee 8 of his deposition). What further proof is necessary to demonstrate that this witness is an unreliable person. The learned Judge adverts to the false answers which P. W. 1 save in cross-examination and at the same time, the Judge makes the extra-ordinary statement, 'because of these, we, cannot brush aside the entire evidence of P. W. 1.

I have already made my comment that in Exhibit P. 1, the words 'fourth accused vagairah' had been mentioned making the fourth accused as the leader of the Party because of the hostility and enmity existing between the party of the Drosecution and the party of the accused- The accused in their statements under Section 342 Cr.PC have referred to the bitter enmity prevailing between P- W. 10 and the accused's party. The first accused has stated that he belongs to Corsress Partv and the Councillor Avvasami and P. Ws-3 4 and 10 belong to the D. M. K. Party. During the last General Elections, the first accused worked for the Congress Partv candidate. Therefore, at the instigation of the said Awasami. he has been falsely implicated in this case. The first accused filed along with his statement in the Sessions Court the certified copv of the Judgment in C. C No. 87 of 1971 on the file of the Sub Divisional Magistrate, Tuticorin- The second accused stated that he belongs to the Congress Party and worked for the Congress candidate in the last General Elections. Councillor Avva-sami belongs to the D. M. K. Partv and P. Ws. 1, 3. 4 and 10 belonging to the D. M. C. Partv asked him not to work for the Congress candidate. He did not comply with their reauest and hence at the instigation of Avvasami he has been falsely implicated. The third accused stated that, about five vears prior to the occurrence, P. W. 10 cut the fourth accused, and in the criminal case in that connection he (the third accused) figured as a prosecution witness against P. W. 10 who was sentenced to imprisonment. During the last General Elections, he worked for the Congress candidate and, on account of the enmitv. he has been falsely implicated- The fourth accused stated that P. W.

10 cut his leg five vears back. His vouneer brother Parama-sivam, who belonged to the Congress Partv. was murdered last vear. During the last General Elections, this accused, along with the second and the third accused, worked for the Congress candidate. After the Elections, his elder brother Sudalaimuthu was murdered by one Komban and others- Municipal Councillor Avvasami belongs to the D. M. K. Partv and at his instigation, this accused has been implicated in this case. The evidence adduced on the side of the prosecution also refers to the aforesaid instances showing the enmitv. To sum up, the net result is the evidence of P. W. 1 is false and unreliable and in any event, it is impossible to act upon his sole evidence without sufficient, independent corrobora-tion by reliable and acceptable testimony and otherwise.

Far from therp being any corroborative circumstance everything tends to the inference that the evidence of P. W. 1 should not be accepted; (a) Exhibit D-l does not corroborate the evidence of P. W. 1, but. on the other hand, proceeds on a different line: (b) P. W. 1 falselv introduced eve-witnesses which shows that on the integral portion of the case, he is uttering lies and this is not a circumstance which corroborates P. W. l's evidence, (c) He utters lies freelv in attributing overt acts to the several accused, which, again, does not constitute corroborative evidence: and (d) He falsely alleges that he told about the presence of P. Ws. 3 and 4 at the scene to the Inspector of Police. (2) He attempts to shift the scene of occurrence in Exhibit D-l'. Thus we find that in every integral portion or link of the case, P. W. 1 has proved himself to be a liar. At this stage, reference may be made to the recent decision of the Supreme Court reported in Masalti v. State of Uttar Pradesh : [1964]8SCR133 . in which it was held that it will be a prudent test to apply, though it is mechanical not to act upon a single witness but to insist upon three or four witnesses giving a consistent account of the incident. Gajendra-gadkar, C. J-. delivering the iudgment, observed as follows:

That, no doubt, is true: but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offences and a larger number of victims it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as

mechanical; but it is difficult to see how it can be treated as irrational or unreasonable. Therefore, we do not think that any grievance can be made by the appellants against the adoption of this test. If at all, the prosecution may be entitled to sav that the seven accused persons were acauitted because their cases did not satisfy the mechanical test of four witnesses and if the test had not been applied, they might as well have been convicted. It is. no doubt, the quality of the evidence that matters and not the number of witnesses who gave such evidence.

The instant case is a fortiori case: it is dangerous to act upon the sole testimonv of such an unreliable witness as P. W. 1 and sentence four persons to imprisonment for life.

9. There is vet one other aspect emerging from the evidence of P. W. 6, the Doctor who conducted the post-mortem examination. He is of the opinion that all the iniuries could have been caused with aruval or knife including a knife like M. O. 4. It is not the Doctor's opinion that the iniuries are such that they could have been caused only by using two weapons, a knife and an aruval. According to the evidence of the Doctor it may be that two weapons were used or it may be that only one weapon was used. The Doctor's evidence does not deci-sively show that two weapons ought to have been used, i. e., two persons have participated in the occurrence. The prosecution has not established that aspect, namely more than one assailant must have participated, bevond reasonable doubt. This assumes greater importance when we notice that the Inspector of Police (P. W. 17) has stated that the charge-sheet was filed only as against accused 1 to 4 and the other three persons Mari-appan, Jeeva and Selvarai. had been left out, because the so-called eve-witnesses P. Ws. 3 and 4 did not mention to the Inspector that those persons also participated in the occurrence. The Inspector is making an extra-ordinary statement that. as against the statement in Exhibit D-l in which P. W. 1 has unambiguously implicated seven peoplp as the real assailants, all of them cutting with aruvals indiscriminately, the Inspector has taken the responsibility by confining the charge only in respect of accused 1 to 4. basing his iudgment upon the evidence of P. Ws. 3 and 4.

We have said enough to show that no reliancp can be placed upon the evidence of P. Ws. 3 and 4-That aeain shows that the Inspector had not exercised any iudgment in the matter and filed the charge-sheet against the four accused, leaving out the others. In such a situation, when seven people are alleged to have participated in the occurrence and all the iniuries could have been inflicted by one individual, one or morP of the rest facilitating the infliction of the iniuries, serious doubts occur as to how the occurrence itself took place, again throwing serious doubts upon the truth of the evidence of P. W. 1. In other words, a reasonable dpubt as to who all participated and a reasonable doubt &s; to how exactlv the occurrence took place, makes it unsafe to ant upon the sole testimony of P- W. 1. In view of what has been mentioned above we are not inclined to attach any value to the discoverv evidence. For all these reasons, We have no hesitation whatever in holding that there are serious doubts about the truth, of the prosecution version and the guilt of the accused has not been established bevond reasonable doubt, in respect of any of the charges. All the four accused are acauitted of all the charges and the Criminal Anneal is allowed. All the appellants are set at liberty.