

**Kumar Alias Kumarasamy and ors. Vs. State**

**Kumar Alias Kumarasamy and ors. Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/831565](http://sooperkanoon.com/831565)

**Court :** Chennai

**Decided On :** Jun-30-2004

**Reported in :** 2005CriLJ39

**Judge :** M. Karpagavinayagam and ;S.K. Krishnan, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 364

**Appeal No. :** Cri. A. Nos. 369 of 1996 and 686 of 1997

**Appellant :** Kumar Alias Kumarasamy and ors.

**Respondent :** State

**Advocate for Def. :** E. Raja, Addl. P.P.

**Advocate for Pet/Ap. :** V. Gopinath, Sr. Counsel for ;A.R.L. Sundaresan and ;A. Padmanabhan, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**M. Karpagavinayagam, J.**

1. A mini bus occupied by the villagers was proceeding from Vedaranyam to the village Katharikulam Panayadikutthagai at about 8.30 p.m. on 26-1-1992. The deceased Ramsingam and his son P.W. 1 Mohan were travelling in the mini bus

with the hope of reaching their village safely. Like in a cinema, a white Ambassador car was parked across the road to block the route. Naturally, the mini bus had to stop. The accused persons who were in the Ambassador car, got down from the car, went into the bus and forcibly pulled the deceased down after attacking P.W. 1 Mohan with aruvals and iron rods, when P.W. 1 tried to prevent them. Then the deceased was forcibly taken in the car. On the next day morning, the deceased was found with injuries lying dead in the nearby area and his one hand was found severed. The motive is that deceased Ramasingam contested against the accused party in the election for Katharikulam Panayadikutthagai Vegetable Products Co-operative Society and he got elected as President of the said Society. This high-handed incident of abduction in the presence of public sitting in the mini bus and the brutal killing of the deceased causing serious injuries by the accused, are the subject matter of prosecution.

2. The appellants 1 and 2 in CrI. A. No. 686 of 1997 and the appellants 1 to 12 in CrI. A. No. 369 of 1996, are the accused 1 to 14 respectively. They were charged and tried for the offences under Sections 147, 148, 307, 307 read with 149, 364, 302 and 302 read with 149, IPC. After trial, the trial Court convicted A-1 to A-4 for the offence under Section 324, IPC and sentenced each of them to undergo two and half years rigorous imprisonment; A-1 and A-2 were also convicted for the offence under Section 364, IPC and each sentenced to undergo ten years rigorous imprisonment, A1 and A2 were also convicted for the offence under Section 302, IPC and each sentenced to undergo life imprisonment . A-1 to A-7 were convicted for the offence under Section 148, IPC and each sentenced to undergo one and half year rigorous imprisonment. A-8 to A-14 were convicted for the offence under Section 147, IPC and sentenced to pay a fine of Rs. 1,000/each. In respect of the other charges, they were acquitted. The sentences imposed on the accused were directed to run concurrently. Questioning the correctness of the judgment imposing conviction for various offences, A-3 to A-14 have filed in CrI. A. No. 369 of 1996 and A-1 and A-2 have filed CrI. A. No. 686 of 1997.

3. The factual scenario leading to conviction is summarized as follows :

(a) Deceased Ramasingam was a teacher working in Poosarikkadu Panchayat Union Elementary School. P.W. 1 Mohan is the son of the deceased. Both the accused party and deceased party belong to the same village, namely Katharikulam Panayadikutthagai.

(b) Deceased Ramsingam was elected as the President of Katharikulam Panayadikutthagai Vegetable Products Co-operative Society. The accused party lost their battle in the election. Due to this, there was strong enmity between these two groups. Both the parties frequently indulged in quarrels and used to lodge complaints against each other with Kariyapattinam Police Station. Several complaints were pending against both parties.

(c) On 26-1-1992 morning, deceased Ramasingam proceeded to Vedaranyam to attend his relative's marriage. He was expected to return home in the after noon. But he did not turn up till the evening. Hence, P.W.I Mohan proceeded to Karmedai bus stop at Kariyapattinam in search of his father. The bus came at 8.00 p.m. From that bus, the deceased got down at the bus stop. Then, P.W.I Mohan and the deceased, his father Ramasingam got into another mini bus to go to their village.

(d) It was at about 8.30 p.m. on 26-11992. The bus was proceeding towards their village. When the bus came near Manmadan Koil, the bus had to stop , since a white Ambassador Car was found being parked across the road blocking the way. As soon as the bus was stopped, a mob got down from the car and among them, A-1 Kumar and A2 Chozhan got into the bus and tried to pull the deceased down from the bus. P.W.I Mohan came to the rescue and prevented the dragging of the deceased.

(e) A-1 Kumar, with aruval, attempted to cut P.W. 1 on his head, but it fell on the left fore arm. A-2 Chozhan, with aruval, aimed at P.W. I's neck and it was warded off. P.W. I in that process, sustained injuries below his left wrist. A-3 Bose also, with iron rod, beat P.W.1 on his left side back. A4 Natarajan beat P.W. 1 with the iron rod on his left thigh.

During this time, A-5 Sivakumar, A-6 Arjunan and A-7 Muniappan dragged the deceased. On the instigation of A-1 and A-2, the deceased was taken to the car and then A-2 got into the driver seat and drove the car. A-1 to A-7 also got into the car and travelled along with the deceased.

(f) On being shocked over the sudden incident wherein P.W. 1. was attacked and his father was abducted forcibly, P.W. 1 Mohan rushed to his house and informed to his mother and other relatives about the occurrence. Then, he went to Government Hospital, Thiruthuraipoondi and got himself admitted.

(g) P.W. 10 Doctor examined P.W. 1 Mohan at about 12.10 a.m. on 26/27-1-1992 and issued Exs. P6 and P7, the accident register and wound certificate respectively. He then sent intimation to the Police which is Ex.P8. P.W.1 Mohan was thereafter referred to Nagapattinam Government Hospital for further treatment.

(h) P.W. 16 Sub-Inspector of Police went to Nagapattinam Government Hospital on 27-1-1992 and recorded the statement of P.W.1 at about 8 am. on 27-1-1992 and a case was registered in Crime No. 29 of 1992 for the offences under Sections 147, 148, 341, 324, 323, 363, 307, IPC. Then, he, sent the message to the Court as well as to the higher officials.

(i) In the meantime, i.e. on 27-1-1992 at about 8.00 a.m., P.W. 11 V.A.O. received information that a dead body was lying near the canal road with injuries. When he came to the spot and enquired, he found that the dead body was one of Ramasingam. The deceased was found dead with injuries on the body without one hand. He then sent a report to the Police.

(J) P.W. 19 Sub-Inspector of Police, Vedaranyam Police Station, received the report Ex.P-9 from P.W.1 1 V.A.O. and registered a case under Section 302, IPC. Then, he came to the spot and sent message to officials and Court.

(k) On 27-1-1992 at about 12 O'clock, P.W. 22 Inspector of Police received the message and took up investigation. Then, he came to know that in respect of the deceased, an abduction case was already registered by P.W. 16 Sub-Inspector of

Police. Therefore, he took up both the matters and proceeded to continue the investigation. He went to the scene of occurrence where the bus was stopped and prepared observation mahazar and rough sketch and also recovered dhoti, foot wear series, kerchief etc. from the scene of occurrence. Then, the dead body was sent for post mortem.

(i) P.W. 15 Doctor conducted post-mortem on 28-1-1992 and found as many as four injuries on the body of the deceased. He gave an opinion that the deceased would appear to have died of the injuries sustained on the brain. Ex.P-33 is the post mortem certificate.

(m) On 15-2-1992, P.W.22, Inspector of Police arrested A-5 and recovered an aruval. He also arrested A-13 and A-14 and recovered M.Os. 12 and 13. aruvals. He came to know that A-3 and A-4 surrendered before the Court and they were taken to police custody and on the confession of A-3, M.Os. 16 and 17 iron rods, were recovered and M.O. 18 aruval and M.O. 20 aruval were recovered on the confession of A-4. From A-8, A9 and A-II, M.O. 21 aruval and M.Os. 22 and 23 casuarina sticks and M.O.' 24 aruval were recovered.

(n) P.W.23, the Inspector of Police who is the successor to P.W.22, continued further investigation and recorded the statements of other witnesses. The material objects were sent for chemical examination. After completion of investigation, he filed the chargesheet against all the accused for the offences referred to above.

(o) During the course of trial, on the side of prosecution, P.Ws. 1 to 23 were examined, Exs. P-1 to P-46 were filed and M.Os. 1 to 24 were marked.

(p) When the accused were questioned under Section 313, Cr.P.C, they denied their complicity in the crime and they also filed their written statements.

(q) Ultimately, the trial Court convicted A1 to A2 alone for the offence under Section 302, IPC and convicted other accused only for the lesser offences as mentioned above. Challenging the same, these two appeals have been filed.

4. Mr. V. Gopinath, learned Senior Counsel appearing for A-1 and A-2, would make the the following contentions :

(a) The presence of P.W. 1 Mohan is doubtful. There is a discrepancy between Ex.PI complaint and the evidence of P. W. 1 Mohan with reference to the fact as to whether P.W. 1 Mohan went to Vadaranyam bus stop in search of his father, the deceased. The conduct of P.W. 1 in not going to the Police Station immediately is strange. No explanation has been offered as to why he had to go the village first. P.W. 1 himself admitted that he was accompanied by the Constable from Thiruthuraipoondi Hospital to Nagapattinam Hospital. Curiously, the complaint was given only at Nagapattinam Government Hospital. If that be so, there is no reason as to why the Constable had to accompany P.W. 1 from Thiruthuraipoondi, even before the complaint was given. Further, there are cases and counter-cases against both the prosecution party and the accused party on the complaints given by each of the parties. Therefore, P.W.1 had a strong motive to falsely implicate the accused party.

(b) The complaint was recorded on 27-1 1992 at about 8.30 a.m. by P.W. 16 Sub-Inspector of Police. But the same had reached the Magistrate only on 29-1-1992. No material was collected during the course of investigation to explain this delay. The explanation belatedly given by P.W. 16 Sub-Inspector of Police is that he went in person on 29-1-1992 to the Magistrate and handed over the complaint copy, since the Constable to whom the instruction was given to deliver the F.I.R. copy of the Magistrate, had not followed the instruction. This explanation is quite artificial.

(c) The evidence of P.W. 6 Vairakannu and P.W. 7 Sivasankaran, who saw the car at or about the time of occurrence, along with A-1 and A-2, is quite unbelievable. Further, P.W.6 is a interested witness. P.W.7 did not choose to give the information to the Police immediately. He was examined only on 24-2-1992.

(d) Even assuming that A-1 and A-2 had abducted the deceased, there is no evidence to show that A-1 and A-2 alone have committed the murder.

(e) A-3 to A-7, who have been charged for abduction under Section 364, IPC, have been acquitted of the said charge. The same reasonings would be applicable to A-1 and A-2 also. Therefore, A-1 and A-2 are also entitled to be acquitted of the offence under Section 364, IPC and consequently, Section 302, IPC also is not made out against them.

5. Mr. A. Padmanabhan, learned counsel appearing for A-3 to A-14, while adopting the arguments advanced by learned Senior Counsel appearing for A-1 and A-2, would point out various portions of evidence and contend that there are discrepancies in the evidence adduced by P.W. 1 Mohan with reference to the participation of A-3 to A-14 in the occurrence and when these discrepancies were taken into account by the trial Court to acquit A-3 to, A-7 for main charge, A-3 to A-14 ought to have been acquitted in respect of the other minor charges also.

6. In respect of the above submissions advanced by learned counsel for the accused , persons, we have heard the learned Additional Public Prosecutor Mr. E. Raja as well.

7. We have given our anxious consideration to the merits of the rival contentions urged on either side.

8. According to prosecution, both the prosecution and accused party were inimically disposed of against each other after the election held in the Co-operative Society. With reference to that,! case and counter case were filed against each other and the same were pending. Due to this enmity, on 26-11-1992, when the deceased along with P.W.1 Mohan came in a bus at about 8.30 p.m, the accused persons came in an Ambassador car, bearing Registration No. TMP 2999 and stopped the bus on the way. The accused persons got into the bus and dragged the deceased forcibly and took him into the car after attacking P.W. 1. Then, they left the scene of occurrence and went to nearby area and committed the murder of the deceased.

9. The motive aspect is sought to be proved by the prosecution through the evidence of P.W. 1, the son of the deceased and P.Ws. 16, 17, and 18, the Sub-Inspectors of Police. On 1-12-1991, A-5 Sivakumar filed a complaint against the son of the deceased and the same was registered in Crime No. 292 of 1991 for the offences under Sections 323, 324, and 506(ii) IPC and Ex. P-34 is the F.I.R. On 16-12-1991, the deceased Ramasigam gave a complaint against A-1 Kumar, A-2 Chozhan, A-6 Arjunan, A-7 Muniappan A-8 Venu and A-10 Sadasivam and others and the same was registered in Crime No. 307 of 1991 for the offences under Sections 147, 148, 341, 506(ii), IPC, by P.W. 16 Sub-Inspector of Police

and the F.I.R. is Ex. P-35. Another Sub-Inspector of Police P.W. 17' registered one more complaint on the report given by one Ravichandran, another son of the deceased against some of the accused on 18-6-1991 and the same was registered in Crime No. 138 of 1991 for the offences under Sections 147, 341 and 506(ii), IPC. Ex. P-36 is the F.I.R. copy of the same. Similarly, on 21-6-1991, P.W.17, Sub-Inspector of Police registered another complaint from the deceased Ramasingam against A-1 and A-2 in Crime No. 140 of 1991 for the offences under Sections 341, 323, and 307, IPC and the F.I.R. is Ex. P-37. On 28-7-1985, Ramasingam, the deceased gave a complaint against A-4 Natarajan and other accused and the same was registered in Crime No. 86 of 1985 for the offences under Sections 147, 341, 323 and 379, IPC and Ex. P-38 is the F.I.R. registered by P.W. 18 Sub-Inspector of Police.

10. Thus, the evidence of P.Ws. 16, 17 and 18, coupled with Ex. P-1 and the deposition of P.W.1, would clearly indicate that there was a strong enmity between these two groups . As a matter of fact, P.W. 1 would state that in the Temple function held recently, on coming to know that the accused party decided to commit the murder of the deceased, the deceased did not choose to participate in the same. This would show that there was an apprehension in the minds of the prosecution party that the accused party would cause harm to the life of the deceased.

11. In the cross-examination of these witnesses, namely P.Ws. 1, 16, 17 and 18, there is no serious challenge about the strong enmity. On the other hand, admittedly, for the evidence for enmity, it was argued that the motive being a double-edged weapon, has been used by P.W.1 to falsely ' implicate the accused. At the outset, it shall be stated that merely because a strong enmity was prevailing between two parties, the complaint given by P.W. 1 cannot be rejected holding that it is a motivated complaint. At the most , it may be stated that the evidence of P.W. 1 with whose family the accused were inimically disposed of, has to be approached with care and caution. Further, P.W. 1 is an injured eye-witness. If his evidence is reliable and the same is corroborated by the other acceptable evidence through P.Ws. 16, 17 and 18, then there is no difficulty for this Court to act upon the evidence of P. W.1.

12. In the light of the above fact situation, as stated above, there was a motive for the accused to attack the deceased, especially when P.W. 1 would state that the deceased avoided attending the Temple function, since he apprehended danger at the hands of the accused. Further, P.W. 1 would state that he felt apprehended as the deceased did not turn up to the village after attending the relative's marriage till the evening. According to him, the deceased left the village in the morning and went to Vedaranyam to attend his relative's marriage and from there, he had to go to the Training College in which P.W. 1 was studying II year course, to pay the term fees for P.W. 1 and since the deceased was not returning home in time, P.W. 1 went to Vadaranyam bus stop and waited for his father, the deceased and after the deceased got down at the bus stop at Vedaranyam, both of them got into the mini bus to proceed to their village and on the way, the occurrence had taken place,

13. It is pointed out by learned counsel for the appellants that there is a discrepancy between Ex.P-I complaint given by; P.W. 1 and the evidence of P.W. I with regard to the purpose for which P.W. 1 went in search of the deceased, his father. According to Ex. P-1 both P.W. 1 and the deceased went together to Vedaranyam and came back in a bus and as per the evidence of P.W. 1, the deceased alone went to attend his relative's marriage and since he did not turn up in the evening, P.W. 1 went to Vedaranyam bus stop. This, in our view, cannot be considered to be a serious discrepancy/The fact, as disclosed from the evidence, is that both P.W.1 and the deceased got into the mini bus from Vedaranyam at about 8.30 pm. and proceeded to go to their village. On the way, the bus was blocked by an Ambassador car bearing Reg. No. TMP 2999. The accused people got into the bus and A-1 to A-4 tried to pull the deceased down from the bus and at that time, P.W. 1 prevented them from doing so. At that juncture, A-1 to A-4 attacked P.W.1 and caused injuries. This has been corroborated by the evidence of P.W. 10 Doctor who examined P.W. 1 at about 12.10 am. on 26/27-1-1992 at Thiruthuraipoondi Government Hospital. He issued Exs. P-6 and 7, the accident register and wound certificate respectively, which show that P.W. 1 sustained four injuries on the respective parts of his body, as stated by P.W. 1 in Ex. P-1. 13-A. Though it is pointed out that P.W. 1 stated that when he went to Nagapattlanam Government Hospital, he was accompanied by a Constable, it is purely a mistake,

because P.W. 10 Doctor would state that he sent intimation to Thiruthuraipoondi Police and then referred the victim to the Nagapattinam Government Hospital immediately. P.W. 10 Doctor examined P.W. 1 on 26/27-1-1992 at about 12.10 a.m. P.W. 10 Doctor would also state in Ex.P-6 accident register that P.W. 1 was brought by a relative, namely Muthukrishnan and not by the Constable. According to P.W. 16 Sub-Inspector of Police, the complaint was registered on the statement given by P.W.1 to him only at the Nagapattinam Government Hospital on 27-1-1992 morning.

14. It is true that P.Ws. 2 to 4 , the other eye-witnesses, have turned hostile. But, that does mean that the evidence of P.W. 1 has to be rejected on that score. It is the consistent evidence of P.W. 1 with reference to the part played by A-1 to A-4 who attacked P.W.1, while preventing their act of pulling the deceased down from the bus. After the attack on P.W.1 was over, on the instructions of A-1 and A-2, the other accused took the deceased in the car and A-2 who set on the driver seat, drove the car and A-1 and others took the seat inside the car along with the deceased.

15. According to P.W.1, both in Ex.P-1 and in his deposition, A-1 Kumar, with aruval, attempted to cut P.W. 1 on his head, but it fell on the left fore-arm, A-2 Chozhan , with aruval, aimed at P.W. 1s neck and it was warded off. P.W. 1 sustained injuries below the left wrist. A-3 Bose also, with iron rod, beat P.W.1 on his left side back. A-4 Natarajan beat P.W. 1 with the iron rod on his left thigh. During this time , A-5 Sivakumar, A-6 Arjunan and A-7 Muniappan dragged the deceased.

16. The injuries found on P.W.1 by P.W. 10 Doctor as per Exs. P-6 and P-7 are as follows :

' 1. An incised wound of about 3 cm x 2 cm x 2 cm over the lateral aspect of left elbow. Blood spurting from the wound.

2. An abrasion of about 1 1/2 X 1/2 X 1/2 cm over the dorsum of left hand.

3. 3 Nos. of liner abrasion of about 3 x 1/2 x 1/4 cm over (N.C.) the left side of back.

4. A contusion of about 5 cm diameter over left thigh.'

17. The original charge framed for the attack on P.W.1 is under Section 307, IPC. But the trial Court came to the conclusion that it is not a case falling under Section 307, IPC, and however believed the evidence of P.W. 1 in respect of the overt acts attributed to A-1 to A-4 and convicted them for the offence under Section 324, IPC correctly.

18. The first complaint which had been given by P.W. 1 to P.W. 16 was registered for Section 307, IPC. At that time, he did not know that the deceased was done to death by the accused. Next day morning after the occurrence, P.W. 11 V.A.O., on receipt of information that a dead body, was lying down in his area, went and found that the deceased was lying down with injuries and sent a report which is Ex. P-9 to P.W.22 Inspector of Police, who registered a case for the offence under Section 302, IPC and conducted inquest over the body of the deceased. He also found out from the statement of witnesses that the body of the deceased belong to Ramasingam, the father of P.W. 1. After coming to know complaint registered on the report of P.W.1 by P.W. 16 Sub-Inspector of Police and the report Ex. P-9 given by P.W. 11 V.A.O. to P.W. 22 Inspector of Police would both relate to the same occurrence, P.W.22 clubbed both the complaints and conducted common investigation.

19. It was strenuously argued that there was delay in Ex. P1 complaint given by P.W. 1 and Ex.P15 F.I.R., reaching the Judicial Magistrate. This is sought to be explained by P.W. 16 Sub-Inspector of Police who stated that though he sent a Constable along with the complaint and the F.I.R. copy to the Magistrate on the same day, the Constable did not comply with the said instruction and therefore, P.W. 16 himself went to the Magistrate two days later and handed over the same. Though it is a belated explanation, it cannot be said that on that reason, Ex.P-1 could not have come into existence on 27-1-1992.

20. The earliest document in this case is Ex.P-6 accident register, which was recorded by P.W.10 Doctor who examined P.W.1 at Thiruthuraipoondi Government Hospital. According to P.W. 10 Doctor, P.W.1 Mohan was examined by him and he stated to the Doctor that he was attacked on 26-1-1992 by 13 persons. According to P.W. 10 Doctor, Ex.P-8 intimation was sent to the Police. Further, P.W.22 Inspector of Police, on receipt of this report, on 27-1-1992 itself, went to the scene of occurrence where the abduction had taken place and prepared observation mahazar and rough sketch. As such the delay in the F.I.R. reaching the Magistrate, would not affect the prosecution case, especially, when the evidence of P.W. 1 is in consonance with Ex.P-1 complaint and the same is also corroborated by the medical evidence of P.W. 10 Doctor and the evidence relating to the Investigation conducted by P.W. 16 Sub-Inspector of Police and P.W.22 Inspector of Police.

21. While considering the aspect of delay in the F.I.R. reaching the Magistrate, the Supreme Court in the case of Balram Singh v. State of Punjab, : AIR 2003 SC2213 would make the following observation :

"10..... At any rate, while considering the complaint of the appellants in regard to the delay in the F.I.R. reaching the Jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the jurisdictional Magistrate by itself would not in any manner weaken the prosecution case.'

22. In this case, we feel that the ocular evidence adduced by P.W. 1 is worthy of acceptance and therefore, the delay in sending the F.I.R. to the Magistrate concerned, even assuming that the explanation was belatedly given, would not in any manner affect the prosecution case.

23. It is further contended that the evidence of P.Ws.6 and 7, who saw the car with A-1 and A-2 at or about the time of occurrence, is artificial. According to P.W. 7, he saw A-1 and A-2 in a car on 26-1 -1992 at or about 7.30 p.m., bearing Reg. No. TMP-2999 near Karumadai bus stop along with some unknown perspns. P.W. 6

also would state that he saw the car at about 8.45 p.m. on 26-1-1992 and near the said car, A-1 and A-2 and some other persons also were there. It is also contended that P.W.6 is an interested witness, as he is very close relative to prosecution party. Similarly, it is stated that P.W.7, though saw A-1 and A-2 on 26-1-1992 night, did not choose to inform the Police on 27-1-1992. On these reasons, we cannot hold that the evidence of P.Ws.6 and 7 is liable to be rejected.

24. It is seen that P.W.6 was examined without any delay. As pointed out by learned Senior Counsel for A-1 and A-2, P.W.7 was examined only on 24-2-1992. Non-disclosure of the presence of A-1 and A-2 in the car by P.W.7 the next day, would not affect his evidence. Admittedly, P.W.7 did not notice the deceased inside the car. He saw A-1 and A-2 only in the car. Hence, he did not entertain any suspicion against A-1 and A-2 at that time and therefore, P.W.7 would not have mentioned the same to the Police. But, when he came to know subsequently that the deceased was abducted by A-1 and A-2, he thought it fit to inform the Police. As a matter of fact, his evidence adds strength to the evidence of P.W. 1 who stated that A-1 and A-2 and others came in a car and took the deceased forcibly in the car.

25. Learned counsel for the appellants would further state that when the trial Court acquitted A-3 to A-14 in respect of the offence of abduction under Section 364, IPC and murder under Section 302, IPC, A-1 and A-2 also must have been acquitted for the same reasons. This submission, in our view, lacks substance. A-3 to A-14 were acquitted in respect of abduction for the reason that there is no consistency in the evidence of P.W. 1 as against these persons. But there is consistency in the evidence of P.W. 1 with regard to the offence of abduction as against A-1 and A-2. Therefore, that ground may not be a valid one to reject the evidence of P. Ws. 1 and 2 in toto as against A-1 and A-2 also. On the other hand, the trial Court discussed the evidence adduced by prosecution in threadbare and convicted A-1 to A-7 for the offence under Section 148, IPC alone, since they were armed with weapons which were recovered during the course of investigation and convicted A-8 to A-14 for the offence under Section 147, IPC, alone since they formed themselves into an unlawful assembly at the scene of occurrence where the abduction had taken place. Hence, the acquittal of the accused in respect of

the main offence, would not be of any use to A-1 and A-2.

26. Lastly, it was contended that even assuming that A-1 and A-2 abducted the deceased along with others in the car and even though there are materials to show that the death of the deceased was due to injuries as per the medical testimony, there is no evidence to show that A-1 and A-2 alone have caused those injuries, which resulted in the death of the deceased, and as such, the conviction of A-1 and A-2 for the offence under Section 302, IPC is not sustainable.

27. This argument, in our view, does not merit consideration. It is a well established rule that when once prosecution has established that the accused persons had abducted the deceased and they were last seen in the company of the deceased, then it is for the accused to establish as to how those injuries were caused, in other words, the burden of proving that plea as to what happened to the deceased subsequent to the abduction lays upon the accused persons. This is clear from the provisions of Sections 103 and 106 of the Indian Evidence Act.

28. Section 103 of the Indian Evidence Act reads as follows :

'The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.'

29. Section 106 of the Indian Evidence Act provides thus :

'When any fact is especially within the knowledge of any person, the burden of providing that fact is upon him.'

30. There are number of decisions of the Supreme Court interpreting the above sections, wherein number of guidelines while evaluating the said aspect, have been given. The said decisions are as follows :

(i) State of West Bengal v. Mir Mohammad Omar, ;

(ii) Ram Gulam Choudhary v. State of Bihar, ;

(iii) Sahadevan v. State, and

(iv) Hira Lal v. State (Govt. of NCT) Delhi . Following are the guidelines :

(i) It has become obligatory on the part of the accused to satisfy the Court as to how Where and what manner the deceased parted company with them. This is on the principle that if person is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which he parted company.,

(ii) The subsequent conduct of the accused lends assurance to the homicide theory. The conduct of absconding of the accused is a factor which can be used for cementing the prosecution case,

(iii) Incriminating links of facts should have been explained only by the accused and nobody else as they are exclusively within the knowledge of the accused,

(iv) Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused, but the section would apply to cases like the present, where the prosecution has succeeded in proving the facts from which a reasonable inference can be drawn regarding death. The accused persons by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference

(v) When it is proved to the satisfaction of the Court that the victim was abducted by the accused persons and they took Him out of the area, the accused alone knew what happened to him until he was with them) If he is found murdered within a short time after the abduction, the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to the victim at least until he was in their custody.

31. On going through the guidelines referred to above, it is clear that when once the prosecution has established that there was abduction of the deceased by the accused and, if he was found murdered within short time after abduction, then irresistible presumption is that the accused have murdered the deceased in the absence of any explanation.

32. As mentioned above, it is A-1 and A-2 along with others, who took the deceased forcibly in a car. Next day morning to the occurrence, the deceased was found murdered in the nearby area. P.W. 11 V.A.O, went to the spot on receipt of the information at about 8.00 a.m. on 27-1-1992 and saw the dead body of the deceased Ramasingam and sent the report Ex. P-9. Immediately, on receipt of the said report, P.W. 19 Sub-Inspector of Police came to the spot and registered a case for the offence under Section 302 IPC and sent the F.I.R. Ex. P-39 is the F.I.R. sent to the Court as well as to the senior officials. P.W. 22 Inspector of Police took up investigation and went to the spot and observed all formalities. He conducted inquest over dead body. Similarly, he received a message about the complaint given by P,W. 1 which was registered in Cr. No. 29 of 1992 for the offences of abduction and attempt to murder. On receipt of this report, he went to the place opposite to the Mannmdan Kail where the bus was blocked by the Ambassadors car and from where the deceased was abducted, P.W. 22 prepared observation mahazar and rough sketch and also recovered M.Os. 5, 6, 7 and 9 (dhoti foot wear, blood stained towel and blood stained earth) from the scene of occurrence.

33. P.W. 15 Doctor conducted post mortem on the body of the deceased and issued Ex. P-33 post-mortem certificate. Ex. P-33 would contain the following injuries :

- ' 1. Incised wound right Side of the chin 1.5 x .1 cms.
2. Incised wound left side of the chin 1.5 x 0.1 cm.
3. Right fore arm cut below the elbow.

Both bones of the right fore arm cut near the elbow. The distal part of the fore-arm lying separately.

4. Contusion over the top of the scalp 3 x 2 cm.'

P.W. 15 Doctor was of the opinion that the deceased would appear to have died of the injuries to the brain.

34. Therefore, there is no difficulty in holding that the deceased died due to the injuries sustained by him. According to P.W. 15 Doctor, these injuries would have been caused at the time 24 to 36 hours prior to the time of on set of the post-mortem. The post mortem was conducted on 28-1-1992 at about 6.30 a.m. So, it is clear that the accused was done to death on the mid-night of 26-1-1992 or 27-1-1992 in the early morning. Admittedly, there is no explanation as to what happened to the deceased after the abduction.

35. As stated by the Supreme Court, if the prosecution is based on reliable evidence and if it is established that the missing person was last seen in the company of the accused and was never seen thereafter, it is obligatory on the part of the accused to explain the circumstances in which the missing person and the accused parted company with. As laid down in (cited supra), in the absence of any explanation, it is the bounden duty of the Court to draw an inference against the accused that they alone have committed the murder of the deceased.

36. In this case, as stated above, there is consistent evidence with regard to the abduction of the deceased by A-1 and A-2 as adduced by P.W. 1 as well as the documentary evidence, namely Ex.P1 and also Ex. P-6 accident register, which is the earliest document in this case recorded at 12.10 am. on 26/27-1-1992 by P.W. 10 Doctor who examined P.W. 1, who stated to him that he was assaulted with aruval, iron rod by 13 known persons at about 8.30 p.m. on 26-1-1992 near Manmathan Koil. When these materials would show that A-1 and A-2 have abducted the deceased forcibly, thereby committed the offence under Section 364, IPC, then the trial Court is correct in holding A-1 and A-2 guilty of the offence under Section 302, IPC also.

37. However, in this context, one aspect is to be noticed. It is seen that the trial Court imposed Section 302, IPC simpliciter. Since two persons are involved, it would be appropriate to alter the offence of Section 302, IPC simpliciter to one under Section 302 read with 34, IPC and accordingly, they are convicted for the same.

38. To sum up :

(i) A-1 and A-2 are convicted for the offence under Section 302 read with 34, IPC and each sentenced to undergo life imprisonment.

(ii) A-1 and A-2 are also convicted for the offence under Section 364 IPC and each sentenced to undergo ten years rigorous imprisonment.

(iii) A-1 and A-4 are convicted for the offence under Section 324, IPC and each sentenced to undergo two and half years rigorous imprisonment.

(iv) A-1 and A-7 are convicted for the offence under Section 148, IPC and each sentenced to undergo rigorous imprisonment for one and half year.

(v) A-8 and A-14 are convicted for the offence under Section 147, IPC and sentenced to pay a fine of Rs. 1,000/- (Rupees one thousand only) each, in default, each to undergo six months simple imprisonment.

(iv) In respect of the other charges, the accused are acquitted.

(vii) The sentences imposed on the accused shall run concurrently.

39. With the above observations, the appeals are dismissed. Since the appellants in both the appeals/accused persons, are on bail, the trial Court is directed to take steps to secure their custody to undergo the remaining period of sentence.