

(2009) 02 MAD CK 0079

In the Madras High Court

Case No : Criminal Appeal No. 615 of 2000

Guru @ Gurubaran and Others

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428

Evidence Act, 1872 — Section 145, 161

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2009) 02 MAD CK 0079

Hon'ble Judges : M. Sathyanarayanan, J;D. Murugesan, J

Bench : Division Bench

Advocate : V. Gopinath, S.C. for V. Balu, for the Appellant; V.R. Balasubramanian, Addl. P.P. and V. Anandhamoorthy, for for P.W. 1, for the Respondent

Judgement

M. Sathyanarayanan, J.—The appellants are the accused in S.C. No. 80 of 1999 on the file of the Court of Additional Sessions Judge,

Villupuram. The accused were charged under the following Sections:

A1 to A3 u/s 148 of IPC

A1 to A9 u/s 302 of IPC

A4 to A9 u/s 147 of IPC

A4 to A6, A8 & A9 u/s 323 of IPC

A1 to A3 and A7 u/s 323 read with 149 IPC.

A3 - u/s 324 of IPC (two counts)

A1, A2 & A4 to A9 - u/s 324 r/w 149 of IPC.

2. The Court of Additional Sessions Judge, Villupuram vide judgment dated 26.2.2000 had convicted and sentenced the accused which are as

follows:

A1 and A2 : Two years R.I. u/s 148 IPC and

R.I. for Life Imprisonment and fine of Rs. 1,000/- each with default sentence of 3 months R.I. u/s 302 IPC.

Six months R.I. u/s 323 r/w 149 of IPC and

One year R.I. each u/s 324 r/w 149 of IPC.

A3 : Two years R.I. u/s 148 of IPC,

R.I. for Life Imprisonment and fine of Rs. 1,000/- with default sentence of 3 months R.I. u/s 302 of IPC.

Six months R.I. u/s 323 r/w 149 of IPC.

One year R.I. for each count u/s 324 (two counts)

A4, A5, A6, A8 and A9: One year R.I. u/s 147 of IPC.

R.I. for Life Imprisonment and fine of Rs. 1,000/- each with default sentence of 3 months R.I. u/s 302 of IPC.

Six months R.I. u/s 323 of IPC.

One year R.I. u/s 324 r/w 149 of IPC.

A7: One year R.I. u/s 147 of IPC.

R.I. for Life Imprisonment and fine of Rs. 1,000/- with default sentence of 3 months R.I. u/s 302 of IPC.

Six months R.I. u/s 323 r/w 149 of IPC.

One year R.I. u/s 324 r/w 149 of IPC.

All the sentences imposed against the accused were ordered to be run concurrently.

3. The accused challenging the legality of conviction and sentence passed in S.C.No.80 of 1999 by the Court of Additional Sessions Judge,

Villupuram, preferred an appeal in C.A.No.615 of 2000 before this Court. This Court vide judgment dated 18.8.2005, has allowed the Criminal

Appeal and acquitted all the accused.

4. P.W.1/defacto complainant aggrieved by the said order of acquittal, preferred an appeal in Criminal Appeal No. 1514 of 2008 before the

Hon"ble Supreme Court of India. The Hon"ble Supreme Court of India by the judgment dated 17.9.2008, has set aside the order of acquittal and

remanded the matter to this Court to be decided afresh on merits.

5. The facts which are necessary for the disposal of this Criminal Appeal are as follows:

The deceased in this case namely Tmt. Saroja is wife of P.W.1, viz., Munusamy Pillai and their son is P.W.14 viz., Parasuraman. P.W.2

Nagarajan is the brother of the deceased Saroja and brother-in-law of P.W.1 and P.W.7 Rani is the sister-in-law of deceased Saroja. P.W.14

Parasuraman had love affair with Uma-sister of first accused Guru @ Gurubaran. The first accused Guru and the 4th accused Jayaraman arranged

for the marriage of P.W.14-Parasuraman with Uma and this was not liked by P.W.1 and his wife Saroja (deceased). Parasuraman was with his

wife for some time. Thereafter, due to misunderstanding, he came back to the house of P.W.1 and was staying with him.

6. On 3.3.1998, the accused decided to raise a dispute as regards marital affairs of Uma so that the parents of Parasuraman would come for a

settlement. Therefore, they picked up a quarrel with the brother-in-law of P.W.1 viz., P.W.2-Nagarajan and it was decided to convene a

panchayat to solve the dispute. On 4.3.1998, the wife of P.W.1, Saroja was asked to come regarding the panchayat and therefore Saroja came to

the house of P.W.2. Since the person who is to hold panchayat, was unwell, panchayat was not convened on that day. Hence, P.W.2, P.W.7,

P.W.13, Saroja and minor Naveenkumar aged about 6 years-son of P.W.2 and P.W.7 were standing in East Street which is nearer to the house

of P.W.2 and were conversing there. Naveenkumar was carried by P.W.7.

7. At about 9.00 P.M. on 4.3.1998, when the above said persons were conversing, A1 armed with Koduval (M.O.2), A2 armed with Iron Pipe

(M.O.3) and A3 armed with Koduval (M.O.1) and A4 to A9 were armed with sticks, told Saroja that because of her only Uma was not able to

lead her marital life. A1 with Koduval cut Saroja on her forehead and A2 hit Saroja with Iron Pipe on the rear side of her neck and A4 to A9

armed with sticks hit Saroja repeatedly. P.W.2 made attempt to prevent the same and he was beaten up with sticks by A4 and A5 on his chest

and shoulder. When P.W.7-wife of P.W.2 also made an attempt to prevent the same, she was beaten up with sticks by A6 and A8. A3 cut minor

Naveenkumar on his left hand and when P.W.13 made attempt to prevent it, he was cut with Aruval by A3 on his left ear. A9 beat P.W.13 with a

stick on his right cheek and the beating up by him also caused injury on the left hand of P.W.13. Thereafter, accused ran away from the scene of

occurrence with weapons. P.W.2 tried to administer water to the injured-her sister Saroja and she found her dead. Immediately, P.W.1 went to

P.W.6 Nava Pillai, Village President and P.W.6 through a person, written a complaint and obtained the signature of P.W.1 and went to

Sankarapuram Police Station at about 3.00 A.M. on 5.3.1998 and lodged a complaint with P.W.15, Inspector of Police. The complaint was

marked as Ex.P1 and the printed form of F.I.R. was marked as Ex.P29.

8. P.W.5, Dr. Manimekalai, attached to Kallakurichi Government Hospital and when she was on duty, on 5.3.1998 at about 2.30 A.M., P.W.13

came to the Hospital for treatment and told her that she was attacked by a known person and unknown 7 persons at about 11.00 P.M. on

4.3.1998. P.W.5 noted the following injuries:

1. Lacerated injury extending from the ear lobe to the upper part of the ear through and through 4 x 1 x 1 cm.

2. Contusion 4 x 3 cms over left side of face

3. Abrasion 4 x 1 cm over back of left elbow

P.W.13 was admitted and was given treatment and the injuries were found to be simple. The Accident Register pertaining to P.W.13 was marked

as Ex.P7.

9. P.W.15 on receipt of the complaint, had registered F.I.R. in Crime No. 136 of 1998 for the alleged commission of the offences u/s 147, 148,

323, 324 and 302 of I.P.C., forwarded the same to the Court of Judicial Magistrate Kallakurichi and also despatched copies to the higher

officials. P.W.15 took up the investigation and went to the scene of occurrence at about 4.30 A.M. on 5.3.1998 and in the presence of P.W.6-

Navapillai and one Ramalinga Gounder, prepared Observation Mahazar under Ex.P8 and also prepared rough sketch under Ex.P30. P.W.15

collected blood stained earth (M.O.13) and normal earth (M.O.14) under the cover of Mahazar Ex.P9 in the presence of the above said

witnesses.

10. At about 5.30 A.M. on 5.3.1998, P.W.15 conducted inquest over the body of the deceased Saroja in the presence of P.W.1, P.W.2, P.W.7

and P.W.14, between 5.30 A.M. and 7.00 A.M. and the inquest report was marked as Ex.P31. P.W.15 also examined P.W.1, P.W.2, P.W.7

and P.W.14 and recorded their statements.

11. P.W.15 under the Medical Memo, sent P.W.2-Nagarajan and his wife P.W.7-Rani and Minor Naveenkumar to the Government Hospital,

Kallakurichi for treatment. Thereafter, he examined P.W.6, Ramalinga Gounder, P.W.14-Parasuraman, Alamelu, Chidambaram, Suguna, Govinda

Naicker and Arasi and recorded their statements. P.W.15 sent requisition under Ex.P2 through P.W.11 along with the body of deceased Saroja

to the Government Hospital, Kallakurichi for postmortem. P.W.15 made the search of the accused, but they were not traced.

12. P.W.4, Dr.Udayakumar was the Assistant Surgeon attached to the Government Hospital, Kallakurichi. In pursuant to medical memo given by

P.W.15, he examined minor Naveenkumar at about 12.00 Noon on 5.3.1998 and he noted the following injuries:

1. A lacerated injury of 5 cm x 3 cm x 1 cm over outer dorsal aspect of left wrist and dorsum of left thumb area.

The injuries found to be simple in nature and treatment was given as Out Patient and the copy of the Accident Register pertaining to Minor

Naveenkumar was marked as Ex.P4.

13. On the same day at about 12.10 P.M., P.W.7 was examined by P.W.4 and according to P.W.7, she was attacked by known male persons at

about 9.00 P.M., on 4.3.1998. P.W.4 examined P.W.7 and P.W.7 told her that she is having body pain all over the body. P.W.4 has not noted

any external injuries and he has given treatment and the injury was found to be simple in nature. The copy of Accident Register pertaining to P.W.7

was marked as Ex.P5.

14. On the same day, at about 12.30 P.M. P.W.2 came with a medical memo and he told P.W.4 that he was attacked by two known male

persons with stick and hands in his house at about 9.00 P.M., on 4.3.1998. P.W.4, on examining P.W.2 found the following injuries:

1. C/o: Severe pain over right side chest with tenderness is present.

2. A contusion of 5 cm x 5 cm over right Suprascapular region is present.

P.W.4 given treatment to P.W.2 and the injuries were found to be simple in nature and the copy of Accident Register pertaining to P.W.2 was

marked as Ex.P6.

15. P.W.3, Dr. Rajamani was the Assistant Surgeon attached to the Government Hospital, Kallakurichi. P.W.11 came to the hospital with the

body of the deceased Saroja along with requisition under Ex.P2. P.W.3 received Ex.P2 requisition at about 10.15 A.M., on 5.3.1998 and he has

seen the body at about 12.00 Noon on 5.3.1998 and he commenced post-mortem at 12.00 Noon on that day. On external examination, he noted

the following injuries:

1. An Antemortem red, oblique lacerated wound measuring 6cm x 1cm x 1cm, exposing the bones over the left frontal region of scalp, 1cm away

from the midline with bleeding and blood clots. On Exploring the wound, echymosis seen behind the scalp over the frontal, parietal, temporal and

back of skull. There is a fracture of frontal bone measuring 5cm in length, vertical, para sagittally and 1cm away from midline over the left side,

extended to upwards to fronto parietal junction, and another fracture line which is adjacent to it and slightly oblique from the frontal bone to

towards fronto parietal junction, 4cm x 1/8 on and on exposing the skull bones blood clots seen over the membranes of the left cerebral

hemisphere of brain on the frontal, parietal, temporal and occipital region, of the brain. Both fractures are involving inner and outer table of the

skull.

2. An abrasions varying size from 3cm to 2 1/2cm x 1/4cm with 1/2cm. different from each other, oblique, placed over middle 1/3 of right side

neck.

3. An AM abrasion 2-1/2cm x 1/4cm obliquely placed 1cm away from injury No. 2 on right side of neck.

4. An AM swelling whole of the anterior and lateral side of right side neck. On exposing the injury No. 2, 3, 4 minor black clots under the skin of

neck and congestion of sternomastoid muscle and blood clots seen in anterior and lateral side of right side neck.

Hyoid bone intact.

On dissection, P.W.3 noted the following:

No congestion of trachea and esophagus on opening of thoracic cavity.

Both lungs are pale. Right 450gms. Left 400gms.

Heart: Empty, 250gms. pale, dilated.

On opening of abdominal cavity, Liver -Pale, 1200 gms. Spleen 90gms. Pale.

Kidney: Right 80gms. Left-60gm. Both are pale.

Stomach: Contain partially digested food particle, 300gms. present. No foul smelling. Small and Large intestines are distended with gas. Inner

surface of stomach and intestine normal.

Brain: Cerebral membranes are intact. Blood clots seen over the membranes on frontal, parietal, temporal region of cerebral hemisphere on left

side. Weight 1200 gms.

P.W.3 concluded the post-mortem at about 1.30 P.M., on 5.3.1998 and as per the post-mortem certificate, Ex.P-3, the deceased would appear

to have died of shock and haemorrhage due to injuries sustained 14 to 18 hours prior to post-mortem.

16. P.W.15 on receipt of information, went to Ariyaperumanur bus stop at about 6.00 A.M., on 7.3.1998 arrested A4-Jayaraman in the presence

of P.Ws.8 and 9. A4 after arrest, voluntarily gave a confession statement. As per the admissible portion of the confession statement (Ex.P32),

M.O.4-stick was recovered under the cover of mahazar Ex.P33. Thereafter, A4 was sent to judicial custody.

17. P.W.15 after post-mortem, recovered M.O.10-bloodstained sari, M.O.11-bloodstained petticoat, M.O.12-bloodstained jacket in Form 95

under Ex.P11.

18. P.W.15 on receipt of information went to Devapandalam Mariamman Koil Street, at about 4.00 A.M., on 9.3.1998 and near Mariamman

Temple arrested A1-Guru @ Gurubaran, A2-Durai @ Durairaj, A3-Vetri @ Vetrivel, A5-Narayanan, A6-Senthil, A7-Karunakaran, A8-Raja @

Venkatesaran and A9-Srinivasan. A1-Guru @ Gurubaran, voluntarily gave a confession statement in the presence of P.W.10-Govinda Mooper

and one Vaiyapuri and the admissible portion of confession statement was marked as Ex.P34. On the same day, at about 4.20 P.M. A2

voluntarily gave a confession statement in the presence of P.W.10 and another person and the admissible portion of confession statement was

marked as Ex.P35. A3 voluntarily gave a confession statement at 4.40 P.M., in the presence of P.W.10 and another person and the admissible

portion of the same was marked as Ex.P36. On the same day, at about 5.15 P.M., the weapon M.O.2 viz., Koduval used by accused No. 2 was

recovered under the cover of Mahazar Ex.P37. The Iron Pipe (M.O.3) used by A2 was recovered under the cover of Mahazar Ex.P38. The

weapon viz., M.O.1 used by A3 was recovered under the cover of Mahazar Ex.P39. The stick M.O.6 used by A5 was recovered under the

cover of Mahazar Ex.P40. The stick M.O.5 used by A6 was recovered under the cover of Ex.P41. The stick M.O.9 used by A7 was recovered

under the cover of Mahazar Ex.P42. The stick M.O.8 used by A8 was recovered under the cover of Ex.P43. The stick M.O.7 used by A9 was

recovered under the cover of Ex.P44. All the weapons recovered were in pursuant to the admissible portion of the confession statement given by

the respective accused and in all the Mahazars, P.W.10-Govinda Mooper and one Vaiyapuri were subscribed their signatures as witnesses.

19. P.W.15 recorded the statements of P.W.10-Govinda Mooper and Vayyapuri on 9.3.1998 and sent the Material Objects for chemical

analysis. The Serology and chemical analysis reports were marked as Exs.P26, P.27 and P.28 respectively. P.W.15 recorded the statements of

P.W.3-Dr.Rajamani on 20.3.1998 and P.W.4-Dr.Udayakumar on 27.3.1998 and also P.W.5-Dr.Manimekalai Kumar on 31.3.1998. P.W.15

recorded the statement of P.W.11-Head Constable-Arokiyasamy, P.W.12-Gurunathan, Head Clerk. P.W.15 after completion of investigation,

filed a final report charging the accused for the commission of the offence u/s 147, 148, 323, 324, 302, 302 r/w 149 IPC.

20. Munusamy Pillai-husband of deceased Saroja was examined as P.W.1 and according to his chief-examination, he knew the accused very well

and the occurrence took place during night hours of 4.3.1998. P.W.1 had spoken about the motive for the commission of the offence. According

to P.W.1, A1 cut his wife on her forehead with M.O.2-Koduval and A2-Durai @ Durairaj hit his wife on the back side of the neck with Iron pipe

M.O.3 and he, P.W.2, P.W.7 and P.W.13 tried to prevent them and in that process, all of them sustained injuries. Saroja died on the spot and all

the accused ran away from the scene of occurrence with weapons. P.W.1 further deposed in his chief -examination that he went to the house of

P.W.6 and informed him about the occurrence and he and P.W.6 went to Sankarapuram Police Station and told the incident to the person

standing outside to the police station and after it was reduced into writing, he subscribed his signature and lodged Ex.P1 complaint at about 3.00

A.M., on 5.3.1998 and thereafter, he returned to the scene of occurrence. The police came to the spot at about 4.00 A.M., on 5.3.1998. P.W.1

also deposed in the chief-examination that at the time of occurrence, street light was burning and he has seen the occurrence with the help of street

light. P.W.1 also identified the weapons and also identified the accused in the Court at the time of his chief-examination. In cross-examination

P.W.1 deposed among other things that the occurrence happened because of A4 beat P.W.2 a day prior to the occurrence on 4.3.1998. P.W.1

became aware of the same only on 4.3.1998 and therefore at about 8.30 P.M. on 4.3.1998 he came to Nedumanur Village and his wife Saroja

came to the Village at about 4.00 P.M. on 4.3.1998 for the purpose of vending milk. When P.W.1 came to the house of P.W.2 and he and

P.W.14 started leaving for their home, he heard a commotion and they rushed there and found that Saroja was lying in a pool of blood and at that

time, accused were seen running from the scene of occurrence. P.W.1 further deposed in his cross-examination that all of them ran away due to

fear and P.W.2 and P.W.7 were present in the scene of occurrence and they also found with injuries. Immediately, he went to the P.W.6 and

informed the same and P.W.6 in turn summoned the Village Headman and written a report. Thereafter, they went to Sankarapuram Police Station

in a two-wheeler and he went alone to the police station. P.W.1 further deposed that Ex.P1 was written in Police Station and that he is an illiterate

and therefore he was not aware of the contents of Ex.P1. P.W.1 deposed in his cross-examination that he does not know the person who has

prepared Ex.P1 and the contents of Ex.P1 were given by P.W.6 and he was present with P.W.6. A suggestion was put to P.W.1 that earlier

report prepared at the instance of P.W.6 and P.W.1 was suppressed and he has denied the same.

21. P.W.2 is the son of P.W.1 and husband of P.W.7 and in his chief-examination, has spoken about the motive and also the overt act on the part

of the accused and also the sustaining of injuries by himself, P.W.7 and his minor son Naveenkumar. P.W.2 further deposed in the chief-

examination that after the occurrence, his uncle went to P.W.1 to inform him and P.W.1 after came to the scene occurrence, went to the police

station for lodging the complaint. In the cross-examination P.W.2 deposed that after the incident was over, he went to P.W.6 along with P.W.1

and stated the happenings and the Village Headman was also present. P.W.1 and P.W.6 went to the Sankarapuram Police Station in a two-

wheeler. P.W.2 further deposed that he did not see whether the statement under Ex.P1 was signed by P.W.1.

22. P.W.3 Dr.Rajamani has done the post-mortem on the body of deceased Saroja and issued Ex.P3 Post-mortem Certificate.

23. P.W.4 Dr.Udayakumar had treated the Minor Naveenkumar, P.W.2-Nagarajan and his wife-P.W.7. According to his testimony, P.W.7 told

him that she was attacked in his house by two known male persons and P.W.2 told him that he was attacked by two known male persons.

24. P.W.5, Dr.Manimekalai Kumar, treated P.W.13 and according to her testimony, P.W.14 told her that he was attacked at about 11.00 P.M.

on 4.3.1998 by two known persons and 7 unknown persons with sticks and Koduval.

25. P.W.6, Nava Pillai is the Village President of Nedumanur Village. P.W.6 in his chief-examination deposed that the occurrence took place on

4.3.1998 and the motive was with regard to the love marriage of P.W.14-Parasuraman, son of P.W.1 and deceased Saroja with Uma. P.W.6 in

his cross-examination deposed that P.W.1-Munusamy Pillai came to his house on the night hours on 4.3.1998 and informed him about the incident

and immediately, he summoned the Village Headman Arumugham, and thereafter it was reduced into writing and it was signed by P.W.1 and he

along with the Village Headman came to the police station. P.W.6 further deposed that Ex.P1 is not the report prepared by the Village Headman

and Ex.P1 was prepared in the scene of occurrence by the police. P.W.6 further deposed that no power supply was in the street light and right

from 7.00 P.M. onwards on 4.3.1998 there was no electricity supply to the lamp posts. In the re-examination P.W.6 deposed that he has no

proof to show that on 4.3.1998 no electricity supply was made to the lamp posts.

26. P.W.7 is wife of P.W.2, who along with P.W.2 and P.W.13 sustained injuries when they tried to prevent the occurrence. P.W.7 in his chief-

examination has spoken about the motive and also spoken about the overt act on the part of the accused. P.W.7 had deposed that at the time of

occurrence, P.W.1 and P.W.13 were present and after it was over, P.W.1 went to P.W.6 and brought him and thereafter they proceeded to

Sankarapuram Police Station. Police came to the spot at about 4.00 A.M. on 4.3.1998 and examined them and thereafter the injured were sent to

Kallakurichi Government Hospital. P.W.7 had deposed that near the scene of occurrence street light was burning and through the light emanated,

they have seen the occurrence. P.W.7 also identified the weapons in the Court.

27. In her cross-examination P.W.7 deposed that even prior to the occurrence, family of the deceased and accused were not on talking terms.

P.W.7 further deposed that accused No. 1 cut the deceased and thereafter others attacked her and she along with her husband P.W.2 were also

attacked. The incident was over within 15 minutes and P.W.1 after came to know that his wife died, went to P.W.6. P.W.7 specifically denied the

suggestion that police prepared the report only in the scene of occurrence. P.W.8 who was a witness to the confession statement given by A4, had

turned hostile. P.W.9 who was a signatory to the recovery mahazar pertaining to A4 has also turned hostile. P.W.10, who was the signatory to the

confession statements of A1, A2, A3, A5, A6, A7, A8, A9 and the recoveries effected pursuant to the admitted portion of the confession

statements had also turned hostile. In his cross-examination, P.W.10 deposed that the other signatory to the said documents viz., Vaiyapuri is

unwell and therefore, he is unable to come to the court to give evidence.

28. P.W.11 was the Head Constable attached to the Sankarapuram police station and he took the body of the deceased Saroja to the

Government Hospital, Kallakurichi for post-mortem.

29. P.W.12 was the Head Clerk attached to the Court of Judicial Magistrate No. 2, Villupuram and he forwarded the requisition to the

Government Forensic Lab for chemical and serologic examination of the seized Material Objects.

30. P.W.13 was also an injured witness and he is the brother-in-law of deceased Saroja. In his chief-examination, P.W.13 deposed that at the

time of occurrence street light was burning and all the accused numbering 9 came to the spot. A1 was armed with Koduval, A2 was armed with

Iron Pipe, A3 was armed with Aruval and other accused were armed with sticks. A1 cut the deceased with Koduval on her forehead and A2 hit

the deceased with Iron Pipe on the right side of the neck and immediately Saroja fallen down and thereafter other accused beat her with sticks.

When he, P.W.2 and P.W.7 went there to prevent the occurrence, they were also attacked by the accused and sustained injuries and so also the

minor son of P.W.2 and P.W.7. After the occurrence, the husband of the deceased Saroja viz., P.W.1 went to the police station and lodged a

complaint. P.W.13 in his cross-examination has deposed that he knew all the accused and A1 attacked the deceased Saroja with Koduval and

another person hit her with an Iron Pipe and when Saroja was fallen down, she was beaten by other accused and the incident was over within 5

minutes. P.W.13 further deposed that police came to the scene of occurrence at about 4.00 A.M. on 4.3.1998 and they recorded the statement of

P.W.1. P.W.13 further deposed in the cross-examination that Ex.P1 was not prepared on the scene of occurrence and he does not know as to

when P.W.1 signed Ex.P1.

31. P.W.14 is the son of P.W.1 and deceased Saroja. In his chief-examination he deposed about the motive and that he and his father P.W.1

having meals in his grandmother's house and about 50 feet from that house near Chidambaram's house, his mother-deceased Saroja, P.W.13,

P.W.7 and P.W.2 were conversing with each other and there was a wordy altercations and on hearing that, he and his father rushed to the spot

and found that A1 attacked his mother with Koduval on her head and A2 attacked her with Iron Pipe on the right side of the neck and other

accused, repeatedly beat her and when he, P.W.2, P.W.7, P.W.13 prevented the blow, they sustained injuries and also the minor child of P.W.2

and P.W.7. When they ran to catch the accused, they ran away with the weapons. In his cross-examination P.W.14 deposed that somebody was

telling him and his father about the altercation and immediately they rushed to the scene of occurrence and found that his mother was having

altercation with the accused. Apart from them there were 20 persons were present. At that juncture, A1 started to cut his mother and A2 beat her

with a Iron Pipe and immediately his mother fallen down and when P.W.2, P.W.7, P.W.13 tried to prevent it, they were also attacked and he was

also attacked. P.W.14 further deposed that he was not aware where Ex.P1 complaint was prepared at the scene of occurrence and the signature

of his father was obtained.

32. P.W.15 is the Investigating Officer and he deposed in his cross-examination that he has not made enquiries as to the person who was written

Ex.P1 and he also denied the suggestion that Ex.P1 was prepared in the scene of occurrence. P.W.15 further deposed that he was not aware

whether the report was written by the Village Headman and it was suppressed and he denied the suggestion that the said report was suppressed as

it was unfavourable to the prosecution. P.W.15 further deposed that he has also noted in the rough sketch about the burning of the street lamps.

33. All the accused were questioned u/s 313 of Cr.P.C. with regard to the incriminating circumstances made out against them by the prosecution

and they denied it as false. No witnesses were examined on the side of the accused and no documents were marked.

34. The trial Court on a consideration of oral and documentary evidence, had convicted and sentenced all the accused as set out above, vide

judgment dated 22.6.2000.

35. This Court on the appeal preferred by the accused vide Judgment dated 18.8.2005, has held as follows:

On consideration of the arguments of the learned senior Counsel for the appellants and the Counsel for the State and on scrutiny of the materials

placed before the Court, we fully agree with the contentions of the learned Counsel for the appellants, since the prosecution failed to establish as to

whether P.W.1 actually witnessed the occurrence; as to whether Ex.P1 was the first information in this case; as to where the occurrence took

place and as to how many persons attacked the deceased and the witnesses. In view of the doubts that arise in the case of the prosecution, the

Court is of the considered opinion that the prosecution has not proved its case beyond reasonable doubts and the accused are entitled to the

benefit of such doubts and accordingly we give them the benefit of doubts. The judgment of the lower Court has, therefore, to be set aside and it is

accordingly set aside.

The said order of acquittal was challenged by P.W.1 before the Apex Court and it was set aside and was remanded to this Court for fresh

decision on merits.

36. After remand by the Hon"ble Supreme Court of India, the appeal was heard.

Since the appeal preferred to the Hon''ble Supreme Court of India was at the instance of P.W.1, we heard P.W.1, who was present in the Court. P.W.1 represented before us that he is unable to engage a Counsel to putforth his case and the Court may appoint a Counsel on his behalf. Accordingly, we appointed Thiru. V. Anandhamoorthy, advocate to argue on behalf of P.W.1.

37. Heard the submissions of Thiru. V. Gopinath, learned senior Counsel appearing for Mr. V. Balu, learned Counsel appearing for the appellants,

Mr. V.R. Balasubramanian, learned Additional Public Prosecutor and Mr. V. Anandhamoorthy, learned Counsel for P.W.1.

38. The main plank of attack forced by all the appellants/accused is about the presence of P.W.1 at the time and the place of occurrence and the

lodging of Ex.P1 complaint to P.W.15 the Investigating Officer and absence of blood stains on the weapons alleged to have been used by the accused.

39. A perusal of Ex.P1 complaint lodge by P.W.1 to P.W.15 on 5.3.1998 at about 3.00 A.M. would reveal that there was enmity between the

accused and P.W.1 and his wife Saroja on account of the love marriage between their son viz., Parasuraman-P.W.14 and Uma-sister of Accused

No. 1 and leaving away of P.W.1 from his wife Uma. As per Ex.P1, a panchayat was convened on 4.3.1998 to solve it and it could not took

place on account of the illness of the Village President. Therefore, P.W.1 was taking food along with his son P.W.14 in his mother-in-law's house.

P.W.1's wife Saroja was conversing with P.W.2, P.W.7 and P.W.13 and at that juncture, A1, A3 armed with Koduvals and A2 armed with Iron

Pipe and other accused armed with sticks were having altercations with P.W.1's wife and on becoming aware of the same, P.W.1 and P.W.13

rushed to the spot and they saw the occurrence. Ex.P1 would further reveal that immediately after the occurrence, P.W.1 informed P.W.6 and

thereafter came to the police station and lodged Ex.P1 complaint, based on which P.W.15 prepared the express F.I.R. under Ex.P29 and

forwarded the same to the jurisdictional Magistrate and to the higher officials.

40. P.W.1 in his chief-examination deposed based on the contents of Ex.P1. In the cross-examination he deposed that he became aware of

beating of P.W.2 by A4 and thereafter came to the Village and his wife Saroja

came earlier to the Village for the purpose of vending milk. P.W.1

further deposed that he and his son P.W.14 started proceeding to the home and on hearing the commotion he and his son rushed to the spot and

he found his wife Saroja was in a pool of blood and at that juncture accused were running away. P.W.1 also deposed that because of fear

everybody ran away and near the scene of occurrence P.W.2 and P.W.7 were present and they were found with injuries. Thereafter, he went and

met P.W.6, who in turn summoned Village Headman and prepared a report and he alone went to the police station. P.W.6 further deposed in the

cross-examination that Ex.P1 was prepared in the police station and since he is an illiterate, he is not aware of the contents of Ex.P1 and he does

not know the person who prepared Ex.P1. The contents of Ex.P1 was dictated by P.W.6 and he was present. P.W.1 also denied the suggestion

that Ex.P1 was prepared in the scene of occurrence and earlier report was suppressed.

41. P.W.2 is the brother-in-law of P.W.1 and he also sustained injury when he tried to prevent the occurrence. According to P.W.2, he was beat

by P.W.4 and A5 and when his wife P.W.7 tried to prevent it, she was also attacked by them. A3 has also attacked his minor son Naveenkumar

by inflicting the cut injury on his left hand. P.W.2 further deposed in his chief-examination that he went to ""Kattukadai"" and informed P.W.1 and he

came to the spot and thereafter went to the police station and lodged the complaint. P.W.2 in his cross-examination has specifically spoken about

the overt act on the part of the accused and deposed that after the incident was over he went and informed P.W.6 and P.W.1 and then they

proceeded to police station.

42. P.W.7 is the wife of P.W.2 and she is also an injured witness. P.W.7 both in his chief as well as cross-examination, has spoken about the

overt act on the part of the accused. P.W.7 further deposed in his chief-examination that at the time of occurrence P.W.1 and P.W.13 were

present and after it was over, P.W.1 went and brought P.W.6 and she has witnessed the occurrence with the help of the street light. In the cross-

examination, P.W.7 has deposed about the specific overt act played by each of the accused and the incident was over within 15 minutes and

thereafter, P.W.1 went to meet P.W.6. P.W.7 specifically denied the suggestion

that police went to the spot and recorded Ex.P1. P.W.13 is the brother-in-law of the deceased Saroja and he has also an injured witness. In his chief-examination, P.W.13 has spoken about the overt act and after the incident was over, P.W.1 went to the police station and lodged the complaint. In his cross-examination, P.W.13 has deposed that he has seen the occurrence with the help of street light and he knows all the accused. In his cross-examination, P.W.13 deposed that the police came to the spot at about 4.00 A.M. on 5.3.1998 and recorded statement of P.W.1. P.W.13 has specifically answered that Ex.P1 was not prepared in the scene of occurrence and he does not know as to the person who has written Ex.P1.

43. P.W.14 is the son of P.W.1 and deceased Saroja and according to his testimony, he and his father were taking food in his grandmother's house and on hearing the commotion, he and P.W.1 came out and found that his mother was attacked by A1, A2 and A3 with Koduvals and Iron Pipe and other accused with sticks. In his cross-examination also he deposed about his presence as well as the presence of his father P.W.1 and further deposed that his father along with P.W.6 went to the police station. P.W.14 deposed that he was not aware as to whether Ex.P1 was prepared in the scene of occurrence as he did not notice the same.

44. According to P.W.15, investigating officer P.W.1 came to the police station at about 3.00 A.M. on 5.3.1998 and lodged Ex.P1 complaint based on which, he prepared printed FIR Ex.29 and forwarded the same to the jurisdictional Magistrate and higher officials. In his cross-examination P.W.15 deposed that he has not investigated the fact with regard to the person who written the contents of Ex.P1 and he denied the suggestion that it was prepared in the scene of occurrence. P.W.15 also denied that even prior to the Ex.P1 there was an earlier report which was suppressed since it was adverse to the interest of the prosecution.

45. P.W.6 was the Village Head of Perumanur Village at the relevant point of time and he has spoken about the motive. He further deposed in his chief-examination that police prepared Observation Mahazar - Ex.P8 at about 3.45/4.00 A.M. on 5.3.1998, which was signed by him and one Ramalingam as witnesses. In his cross-examination, P.W.6 deposed that on the same date of occurrence P.W.1 came to his house and informed

about the occurrence and immediately he summoned the Village Headman Arumugham and a report was prepared in which the signature of P.W.1

was obtained and Village Headman along with P.W.13 sent to the police station. P.W.6 further deposed that Ex.P1 is not a report prepared by

the Village Headman and in Ex.P1 signature of P.W.1 was obtained in the scene of occurrence. P.W.6 also deposed that there was no electricity

connection to the lamp post and there was no electricity supply right from 7.00 P.M. on that day 5.3.1998.

46. It is contended by the learned senior Counsel appearing for the appellants that since the origin was geniuses as information report is very

doubtful, the case projected by the prosecution is unsustainable. It is further submitted by the learned senior Counsel that there was an earlier

report prepared by the Village Headman Arumugham and the same havenot came into light and it was suppressed. Therefore, the suppression of

the earlier information which could treated as first information, also throws a serious doubt about the case of the prosecution. The learned senior

Counsel appearing for the appellants also drawn our attention to the testimonies of P.W.1, P.W.2, P.W.6, P.W.7, P.W.13 and P.W.14 and

pointed out the discrepancies in their testimonies. It is further submitted by the learned senior Counsel appearing for the appellants that the injured

witnesses had spoken about the attack on their part by some persons and the same is not in consonance with the copies of Accident Register

marked as Exs.P5 to P7. It is also submitted by the learned senior Counsel appearing for the appellants that the witnesses to the confession

statement and recovery of weapons had turned hostile and as per Ex.P27 serological report, no blood stains were noted in M.O.1 and M.O.2 and

so also the sticks used by A4 to A9. Therefore, the prosecution has miserably failed to establish that the accused had caused fatal injuries on the

wife of P.W.1 which resulted in her death.

47. In view of the serious discrepancies in the testimonies of prosecution witnesses, the lower Court ought to have awarded benefit of doubt and

acquitted the appellants/accused according to the learned senior Counsel for appellants.

48. Per contra, Mr. V.R. Balasubramanian, learned Additional Public Prosecutor, would submit that the discrepancies pointed out on behalf of the

appellants are trivial in nature and the same would not in any way shake the foundation laid by the prosecution. That apart, testimonies of injured

witnesses viz., P.W.2, P.W.7 and P.W.13 had inspired confidence and they had specifically spoken about the overt act on the part of the accused

and nothing useful or contraverse elicited in the cross-examination in favour of the appellants/accused. It is further submitted by the learned

Additional Public Prosecutor, that the occurrence took place on 4.3.1998 at about 9.00 A.M. and the complaint under Ex.P1 came to be lodged

by P.W.1 at the earliest point of time i.e. 3.00 P.M. on 5.3.1998 and the F.I.R. reached the jurisdictional Magistrate without any delay and

therefore there is no possibility of tampering or interpolation in the complaint. The testimonies of P.Ws. 4 and 5 - Assistant Surgeons attached to

Kallakurichi Government Hospital would confirm the fact that P.W.2, P.W.7 and P.W.13 and Minor son of P.W.2 and P.W.7 viz., Naveenkumar

sustained injuries. The evidence of P.W.3 Dr. Rajamani, who conducted autopsy on the body of the deceased Saroja would also confirm that the

death was due to homicidal violence. Since the prosecution has proved their case beyond reasonable doubt, the trial Court has rightly convicted all

the accused and no interference is warranted in this appeal is the sum and substance of the submissions made by the learned Additional Public

Prosecutor.

49. Mr. A. Anandhamoorthy, learned Counsel appointed by this Court to argue on behalf of P.W.1 has submitted that the presence of P.W.1 has

been spoken by P.W.7 wife of P.W.2, P.W.14-son of P.W.1 and deceased Saroja viz., Parasuraman, who was examined as P.W.14. The

discrepancies in the evidence of P.W.2 with regard to the presence of P.W.1 in the scene of occurrence is a minor one as P.W.2 has given

evidence after nearly two years from the date of occurrence. As regards the testimony of P.W.6, it is submitted by the learned Counsel appearing

for P.W.1 that P.W.1 came to the house of P.W.6 and narrated the incident and Village Headman was directed to prepare a report, which was

signed by P.W.1 and thereafter, P.W.1 and Village Headman proceeded to the police station. The testimony of P.W.6 will in no way help or

advance the defence projected by the appellant as according to the learned Counsel appearing for P.W.1, that though P.W.6 deposed that a

report was prepared by V.A.O. which was signed by P.W.1 the fact remains that the F.I.R. came to be lodged at the earliest point of time at

about 3.00 P.M. on 5.3.1998 and it has also reached the Court without any loss of time and therefore, it cannot be said that earlier report was

suppressed. That apart, it is submitted by the learned Counsel appearing for the P.W.1 that the testimonies of P.W.2, P.W.7, P.W.13 who are all

injured witnesses carry great weight and they corroborate that each other as regards the individual overt act played by each of the accused. The

above testimonies were also corroborated by the son of the deceased and P.W.1 viz., Parasuraman who was examined as P.W.14, and he has

also spoken about the motive for the commission of the occurrence.

50. It is further submitted by the learned Counsel appearing for the P.W.1, that at the time of occurrence street light was burning and that was

spoken by the P.W. 7, P.W.13 and moreover since all the accused are known to the individual witnesses and there is no need to doubt veracity of

their evidence. The Observation Mahazar also disclosed the location and burning of the street light near the scene of occurrence. Hence, there is

every possibility that eye-witnesses had seen the commission of the offence. Therefore, the learned Counsel appearing for the P.W.1 prays for

confirmation of the conviction and sentence passed against the accused/ appellants by the trial Court.

51. We have carefully considered the submissions made by the learned senior Counsel for the appellants, learned Additional Public Prosecutor, the

learned Counsel appearing for the P.W.1 and also perused the materials available on record in the form of typed set of documents and also the

original records. We have also gone through the order of remand passed by the Hon'ble Supreme Court of India the Criminal Appeal No. 1514

of 2008.

52. It is not disputed that the wife of P.W.1 viz., Saroja is the mother of P.W.14- Parasuraman died due to homicidal violence on 14.3.1998 at

about 9.00 P.M. P.W.1 is the husband of the deceased Saroja and according to him, he witnessed the occurrence along with P.W.2, P.W.7,

P.W.13 and P.W.14-his son and after informing P.W.6, he lodged the complaint under Ex.P1. In his cross-examination, P.W.1 deposed that

immediately on informing P.W.6, he summoned the Village Headman and

prepared a report and he went to the police station at the later point of time. The Village Headman came to the police station and Ex.P1 was prepared in the police station. P.W.1 further deposed that he is an illiterate and hence he does not know the contents of Ex.P1 and he was not aware of the person who has written Ex.P1. He specifically denied the suggestion that Ex.P1 was prepared in the scene of occurrence by the police. Brother-in-law of P.W.1 viz., P.W.2 would depose in his cross-examination that after the occurrence was over he went and informed P.W.6 and P.W.1 and thereafter P.W.6 and P.W.1 proceeded to the police station in a two-wheeler. P.W.2 denied the suggestion that Ex.P1 was prepared in the scene of occurrence. P.W.2 is also an injured witness. As according to his testimony, he was attacked by A4 and A5 with sticks and his wife P.W.7 was also attacked by A4 and A5 and his minor son Naveenkumar was inflicted with cut injury on his left hand by A3. P.W.7-wife of P.W.2 is also an injured witness and she deposed that at the time of occurrence P.W.1 and P.W.14 came to the spot and after the occurrence was over P.W.1 went to meet P.W.6 and she has witnessed the occurrence with the help of the street light. P.W.7 denied the suggestion that the report was prepared in the scene of occurrence. P.W.13 is the brother-in-law of the deceased Saroja and he has also corroborated the testimonies of P.W.1, P.W.2 and P.W.7 with regard to the overt act played by each of the accused and he is also an injured witness. P.W.13 also identified all the accused in the Court and he has also spoken about the fact of seeing the occurrence with the help of street light. P.W.13 also denied the suggestion that Ex.P1 prepared in the scene of occurrence. P.W.14 son of P.W.1 deposed that his mother left in the evening hours on 4.3.1998 for the purpose of vending milk and later he and his father P.W.1 proceeded to Nedumanur Village and they were taking their food in the mother-in-laws house of P.W.1 who is the grandmother of P.W.14 and on hearing the commotion, they came out and saw the occurrence in which deceased Saroja was attacked by A1, A2 and A3 with Aruvals, Iron Pipe respectively and A5 to A9 attacked her with sticks.

53. Thus, the presence of P.W.1 in the scene of occurrence had been spoken to by P.Ws. 7 to 14. Though P.W.2 says that after the occurrence he went and informed the V.A.O. and P.W.1, the oral testimony of P.W.1 would

reveal that he was very much present in the scene of occurrence.

Even though it is vehemently contended by the learned senior Counsel appearing for the appellants that the very origin of FIR came to be

registered based on the Ex.P1 is highly doubtful, we are not inclined to accept the said argument for the reason that the FIR came to be lodged at

3.00 A.M. on 5.3.1998 with regard to the occurrence which took place at about 9.00 P.M. on 4.3.1998. In Ex.P1, the overt acts played by each

of the accused had been clearly set out and the FIR has reached the jurisdictional Magistrate Court without any loss of time. Though P.W.6

deposed that a report was written by Village Headman and Ex.P1 is not the report prepared by Village Headman, we are not inclined to accept

his testimony as he totally veered away from his chief-examination. As deposed by P.Ws. 2, 7 and 13, Ex.P1 was not prepared in the scene of

occurrence and P.W.15-Investigating Officer would also depose that Ex.P1 was lodged in the police station based on which Ex.P29 printed F.I.R.

came to be prepared and copies were despatched to higher officials and jurisdictional Magistrate immediately and the copies of F.I.R. reached the

respective officials without any delay. Even assuming that there was an earlier report in the report prepared by the Village Headman, in the light of

testimonies of P.Ws. 7 and 13 who are injured witnesses and corroborated by P.W.14-son of P.W.1 and deceased Saroja, that Ex.P1 was not

prepared in the scene of occurrence and in view of the explanation offered by P.W.15-Investigating Officer, we hold that the alleged suppression

of the earlier report would in no way affect the credibility of the case of the prosecution.

54. The answers elicited in the cross-examination of P.W.1 would reveal that he is an illiterate and in his chief-examination he has very

categorically deposed that Ex.P1 was prepared in the police station. In the cross-examination also he confirmed the overt act on the part of each

of the accused and we are of the opinion that the discrepancies pointed out in the cross-examination of P.W.1 are trivial or minor in nature which in

any way affect the case of the prosecution.

55. P.W.2 is also an injured witness and though he deposed in his cross-examination that after the occurrence was over he went and informed

P.W.6 and P.W.1, no answer was elicited as to which place he went and informed

P.W.1 and P.W.6. P.W.2 further deposed in the cross-

examination that P.W.1 and P.W.6 were proceeded to the police station and he has not seen as to whether Ex.P1 was obtained by the police in

the scene of occurrence. P.W.2 had also spoken about the overt acts on the part of the appellants/accused.

56. P.W.7 is also an injured eye-witness and she is the wife of P.W.2 and mother of Minor Naveenkumar who sustained cut injury. P.W.7 has

spoken about the individual overt act on the part of the accused and deposed that she has seen the occurrence in the street light and in her chief-

examination she has deposed that at the time of occurrence P.W.6 came to the spot. She has also spoken about the attack of P.W.2 and P.W.13.

No specific questions were put to her as regard to the non presence of P.W.1 and P.W.14 in the scene of occurrence and she also denied the

suggestion that Ex.P1 was prepared in the scene of occurrence by police.

57. P.W.13 another injured witness would depose about the overt acts on the part of the accused, and stated that after the occurrence P.W.1

went to the police station to lodge a complaint and he has also seen the occurrence in the street light and he also knows all the accused. P.W.13

specifically denied the suggestion that Ex.P1 was prepared in the scene of occurrence by police and deposed that he does not know the person

who has written Ex.P1.

58. P.W.1. P.W.14 is the son of P.W.1 and deceased Saroja and he deposed that his mother left during the evening hours and his father P.W.1

came to his grandmother's house to have meals and on hearing the commotion they went out and saw the occurrence. He has also spoken about

the overt act on the part of the accused No. 1, and accused No. 2. Thus the above witnesses had spoken cogently about the overt act on the part

of the accused and though certain discrepancies were pointed out with regard to the lodging of Ex.P1, we for the above said reasons hold that the

same would not in any affect the credibility of the case of the prosecution.

59. It is trite law that the evidence of injured witnesses has greater evidentiary value and it cannot be discarded lightly unless compelling reasons

exist. The Court has to ascertain the possibility of false implication of the accused and in that context, probable physical and mental condition of

informant is relevant. Since the presence of P.W.1 was spoken by P.W.7 and

P.W.14 and evidence of P.W.2 is to that effect that after the occurrence he went and informed P.W.6 and P.W.1 would in no way help the case of the appellants that P.W.1 was not present in the scene of occurrence. Since Ex.P1 came to be lodged earlier point of time and F.I.R. reached the jurisdictional Magistrate Court without any loss of time, it cannot be said that some concoction took place whereby the accused came to be implicated falsely. It is useful to refer the decision reported in *Dharma Rama Bhagare Vs. The State of Maharashtra*, wherein it has been held as follows:

The first information report is never treated as a substantive piece of evidence. It can only be used for corroborating or contradicting its maker when he appears in court as a witness. Its value must always depend on the facts and circumstances of a given case. The F.I.R. can only discredit the testimony of the maker thereof. It can by no means be utilised for contradicting or discrediting the other witnesses who obviously could not have any desire to spare the real culprit and to falsely implicate an innocent person. Prosecution case cannot be thrown out on the mere ground that in the first information report an altogether version was given by the informant.

60. In *Ravi Kumar Vs. State of Punjab*, the question came up for consideration was to the unreasonable delay in lodging the FIR and sending the special report to the Magistrate and in paragraph No. 15, it has been held as follows:

The first information report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be reduced to writing by the officer in charge of the police station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. The registration of the FIR empowers the officer in charge of the police station to commence investigation with respect to the crime reported to him. A copy of the FIR is required to be sent forthwith to the Magistrate empowered to take cognizance of such offence.

After recording the FIR, the officer in charge of the police station is obliged to proceed in person or depute one of his subordinate officers not

below such rank as the State Government may, by general or special order, prescribe in that behalf to proceed to the spot to investigate the facts

and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. It has been held time and again that

the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker u/s 161 of the Evidence Act, 1872

(in short "the Evidence Act") or to contradict him u/s 145 of that Act. It can neither be used as evidence against the maker at the trial if he himself

becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minute details be recorded in the

FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim

himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be

kept in mind. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was

committed.

61. The testimonies of injured witnesses in our considered opinion are found to be authentic, credible and cogent and though some discrepancies,

are trivial and minor in nature and looking at the case of the prosecution as a whole, we feel that it has not affected or shaken the foundation laid

down by the prosecution. The Hon'ble Supreme Court of India in a decision reported in 2001 (8) SCC (Cri.) 86 - Sukhdev Yadav and Ors. v.

State of Bihar, has held that once the trustworthiness of evidence stated in a case stands satisfied, the court should not hesitate in accepting the

same. As already stated above, the testimonies of witnesses in its entirety in our opinion appear to be trustworthy, though some discrepancies were

pointed out, it cannot be discarded merely on the ground of some minor variations and despite that, the case of the prosecution is believable. It is

settled position of law that FIR is not an encyclopaedia of the facts concerning the crime; but it must contain some definite information vis-a-vis the

crime. In the case on hand, the FIR came to be lodged within a short span of time and it also reached the jurisdictional Magistrate without any

delay and therefore, no substantive material has been made out to disbelieve Ex.P1- complaint, Ex.P29-FIR and the oral evidence of P.W.1

cannot be discarded on the ground that there was variation between the FIR and the testimonies. We, on a careful consideration of the entire

materials available on record, hold that the discrepancies pointed out by the defence are trivial in nature and therefore, the benefit of doubt cannot

be awarded to the appellants.

62. The learned senior Counsel appearing for the appellants would submit that the injured witnesses viz., P.Ws. 2, 7, 13 at the time of treatment

were not clear about the number of persons who had attacked them and therefor, their testimonies lack credence and therefore the same cannot be

believed to convict the appellants. In our opinion, the said submission lacks merit.

63. The Doctor who treats the injured, is not at all concerned as to who has committed the offence, as his primary effort is only to save the life of

the injured and it is useful to refer to the decision of the Hon''ble Supreme Court of India reported in Pattipati Venkaiah Vs. State of Andhra

Pradesh, held as follows:

It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration

or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not

permissible.

Further, the doctor can also ignore any statements made by persons who brought the injured for treatment either to the occurrence or as to the

name of the assailants, whether known or unknown.

64. Though the weapons used by the appellants were not found to be bloodstained as per Ex.P27, it cannot be a ground to disbelieve the case of

the prosecution as according to the testimony of P.W.3, and the post-mortem report issued by him under Ex.P3 would confirm the fact that the

death of Saroja was due to homicidal violence. In a case rest upon circumstantial evidence, doubtness as regard to the recovery and non

availability of blood stains on the weapons assumes importance. But this is a case rest upon the testimonies of eye-witnesses especially the injured

witnesses and as already stated above, their testimonies are found to be cogent, trustworthy and believable. The said testimonies are corroborated

by medical witnesses also. Therefore, the submission made by the learned senior Counsel appearing for the appellants that witnesses who were

spoken about the recovery turned hostile and non availability of blood stains on the weapons create a grave doubt on the prosecution case, in our

opinion, lacks merit. In the case on and, the testimonies of injured witnesses corroborated by medical evidence also. On a careful consideration

and appreciation of testimonies of P.W.1, and injured witnesses viz., P.W.2, P.W.7 and P.W.13 coupled with the testimonies of P.W.14 - son of

the deceased, we are of the considered view that their evidence inspires confidence. We are also of the view that the injured witnesses had no

reason to falsely implicate the appellants/accused. The discrepancies pointed out by the learned senior Counsel appearing for the appellants on an

overall view of the matter can be termed as trivial in nature which has not affected the foundation laid down by the prosecution.

65. Therefore, A1 and A2 are liable to be convicted u/s 302 of IPC.

66. As per the testimonies of eye-witnesses, first accused cut the deceased with a Koduval on her forehead and the second accused hit her on the

rear side of the neck with an Iron Pipe. Accused No. 3 was also armed with a lethal weapon viz., Koduval and Accused No. 4 to 9 beat the

deceased with sticks. Accused No. 4 and 5 beat P.W.2 on his chest and shoulder and they also attacked the wife of P.W.2 viz., P.W.7. Accused

No. 3 cut the minor son of P.W.2 and P.W.7 viz., Naveenkumar who was aged about 6 years at the time of occurrence. P.W.13 was attacked by

accused No. 3 and 9. The injured witnesses viz., P.W.2, P.W.7, P.W.13 and minor Naveenkumar sustained simple injuries.

67. In so far as the Accused No. 3 is concerned, apart from inflicting injury on P.W.7, he has also cut her Minor son Naveenkumar aged about 6

years on his left rib and dorsum of left thumb area. Therefore, he was rightly convicted for the commission of the offence u/s 324 of the IPC (2

counts) and imposed a sentence of 1 year R.I. for each count. Though, A3 was armed with billhook (Koduval), he has not inflicted injury on the

deceased and testimonies of eye-witnesses and Ex.P3-Postmortem Certificate confirm the said fact. There was no utterance by A3 to finish off the

deceased and evidence as to the formation of unlawful assembly is found wanting. Therefore, we set aside the conviction and sentence passed

against A3 u/s 148, 302 and Section 323 r/w 149 IPC.

68. In so far as A4 to A9 are concerned, they were armed with sticks. A4 and A5 attacked P.W.2 and as per Ex.P6-copy of A.R., he sustained

simple injury. A6 to A8 attacked P.W.7 and as per Ex.P5-copy of A.R., she sustained simple injury and she was treated as out patient. A9 along

with A3 attacked P.W.13 and as per Ex.P7-copy of A.R., he sustained simple injuries. Even as per the version of the prosecution, A4 to A9 were

armed with sticks. The postmortem report Ex.P3 issued by P.W.3 would disclose only four injuries, which as per the evidence of the prosecution,

caused by A1 and A2. Therefore, the prosecution has not made out a case against A4 to A9 for the commission of the offence u/s 302 of IPC.

and there is no cogent evidence available as to the formation of unlawful assembly. Hence, conviction and sentence passed against them u/s 302 of

IPC is set aside and so also conviction and sentence u/s 323 r/w 149 of IPC. and 324 r/w 149 of IPC. Since A4 to A9 caused injuries to P.W.2,

P.W.7 and P.W.13 respectively which are simple in nature, they are liable to be convicted u/s 323 of IPC.

69. In the result, A1 to A9 are convicted and sentenced as follows:

A1 and A2 - R.I. for Life and fine of Rs. 1,000/- each u/s 302 of IPC. with default sentence of 3 months R.I.

A3 - One year R.I. for each count u/s 324 of IPC (two counts) and fine of Rs. 1,000/- on each count with a default sentence of 3 months R.I for

each count.

A4 to A9 - 6 months R.I. and fine of Rs. 1,000/- each u/s 323 of IPC. with default sentence of 3 months R.I.

The sentences are ordered to be run concurrently.

70. This Criminal Appeal in so far as A1 and A2 are dismissed in terms of the above order and the conviction and sentence passed against A3 to

A9 by the trial Court is modified as stated above and this appeal so far they are concerned, is partly allowed. The bail bonds stand cancelled. The

court of Additional Sessions Judge, Villupuram is required to secure the custody of the appellants/accused to undergo the remaining part of their

sentence.

71. The period of detention already undergone by the accused is to be set-off against the sentence of imprisonment awarded by this Court in terms

of Section 428 of Cr.P.C.

Post this Criminal Appeal on 27.02.2009 for reporting compliance.