
(2006) 12 MAD CK 0146

In the Madras High Court

Case No : Criminal Appeal (MD) No's. 1151, 1153 and 1177 of 2001 and 1914 of 2003 and Criminal R.C. No. 56 of 2002

Kalimuthu and Others

APPELLANT

Vs

State
R. Jones Russo Vs Bose and Others

RESPONDENT

Date of Decision : 14-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Penal Code, 1860 (IPC) — Section 120(B), 143, 147, 148, 212

Citation : (2006) 12 MAD CK 0146

Hon'ble Judges : Prabha Sridevan, J;K.N. Basha, J

Bench : Division Bench

Advocate : B. Sriramulu for A. Uthayakumar, A1 in Criminal A. No. 1151/2001, I. Subramanian for I. Subramanian for B. Muruganandam and K. Saravanan, A2 in Criminal A. No. 1153/2001, S. Ashok Kumar for B. Muruganandam and K. Saravanan, A3 in Criminal A. No. 1177/2001, A. Natarajan for B. Muruganandam and K. Saravanan, A6, A10 and A11 in Criminal A. No. 1177/2001, AR. L. Sundaresan for A.L. Gandhimathi, A4 and A5 in CrI.A. No. 1177/2001, A. Natarajan for K. Jeganathan and A. Uthayakumar, A9 in Criminal A. No. 1914/2003, S. Mahimai Raj and S. Thenmozhi, in Criminal R.C. No. 56/2002, for the Appellant; Raja Elango, Public Prosecutor assisted by S. Mahimai Raj and V. Sasikumar, R. Suresh Kuamr, Kumar, for Respondent No. 4, Raja Elango, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—These appeals have been filed against the conviction and sentence imposed on the appellants by the trial Court in its Judgement dated 17.10.2001 made in S.C. No. 27 of 2000.

2. The conviction and sentence imposed on the appellants are as follows:

Conviction under Section(s) Sentence A1 302 r/w 34 IPC Imprisonment for life and a fine Rs. 10,000/- in default, 1 year rigorous imprisonment. 147 IPC Rigorous Imprisonment for six months 427 IPC Rigorous Imprisonment for one

year A2 to A6 302 r/w 34 IPC Imprisonment for life and a fine Rs. 10,000/- in default, 1 year rigorous imprisonment. 148 IPC Rigorous Imprisonment for six months A9 to A-11 302 r/w 34 IPC Imprisonment for life and a fine Rs. 10,000/- in default, 1 year rigorous imprisonment. 148 IPC Rigorous Imprisonment for six months

The sentences are ordered to be run concurrently. The case of the prosecution are as follows:

3. PWs.1 to 4 are the eye witnesses. PW.1 is the driver of the deceased. He is the author of the report Ex.P.21 but subsequently turned hostile. PWs.2 and 3 are close friends and business partners of the deceased. PWs.4 was working as a salesman in the wine shop, viz., "Shobana Wines" belonging to the deceased. PW.5 was working in Vijaya lodge in which the deceased was a partner. PW.6 is the paternal uncle of the deceased. PWs.5 and 6 were at the scene of occurrence immediately and alleged to have seen the accused running after the occurrence. PWs.7 and 8 are the partners in the wine shop belonging to the deceased.

4. The deceased was a rising star in the D.M.K. Party and the president of the Sivaganga District Youth Wing of that party and held other important positions. There was inner-party rivalry between him and A12, the Ex-MLA of D.M.K. A dispute arose between the deceased group and A-12 group with regard to evicting the occupant from a house in Lakshmipuram in Devakkottai. Cases and counter cases were filed. At the time of the occurrence, the election to the Karaikudi Co-operative Milk Society was imminent and the deceased contested for the Presidentship. The accused group supported one Periyathambi. The indications were that the deceased would be successful in the election. This was resented by the other group. That is the motive according to the prosecution.

5. PW.1, who subsequently turned hostile, joined the services of the deceased as his driver four months prior to the date of occurrence. On 8.11.1998, after visiting Sivagangai, Karaikudi and other places with regard to the election propaganda, the deceased returned to Devakkottai, at about 8.30 p.m.,. At about 8.45 p.m., the deceased was on his way to his residence. He was proceeding in his car driven by PW.1. Then in front of the St.Mary School, two known persons were standing on the Anna Salai as if they were doing some repair work to the vehicle - Bajaj M 80. The deceased asked the driver (PW.1) to stop the vehicle. The car was stopped. At that time, one of the two persons came towards the car staggering as if he was drunk. Therefore, the deceased shouted at him. At that time, the said person came behind and opened the door of the car where the deceased was sitting. The deceased shouted. 8 known persons came from St.Mary's School Street towards the car, damaged the car and pulled the deceased out of the car. There were 10 persons. Each of them was holding knives, aruvals, sticks and other deadly weapons. PW.1 shouted. One of the assailants attacked PW.1 also. Thereafter, another person stabbed him on the left side of the back. PW.1 fell down. Another person attacked the deceased on his head with an aruval. Another person cut the deceased below the left shoulder.

Another cut the deceased above the left knee. Another repeatedly cut the deceased above the right hand elbow. Three others with their knife and aruval cut the deceased on the head repeatedly. Another cut the deceased on the right hand and severed his little finger. The deceased lay in a pool of blood. It was raining at that time. PW.1 sustained injuries on his back on the left side, and on the right side and on the head. He slowly got up. He went to the house of one Bala and told him that the deceased had been attacked. The said Bala came out of his house and on hearing his hue and cry, the mother of the deceased as well as uncle of the deceased (PW.6) also came out. They took the injured to Madurai Jawahar Hospital. They were asked to go to the Apollo Hospital. When they went to Apollo Hospital, they were informed that the deceased had died. They returned to Devakkottai Government Hospital at about 1.30 a.m.,. PW.1 also went to the Government Hospital, Devakkottai without police memo and took treatment.

6. Doctor, PW.21 examined PW.1. PW.1 had stated that at about 8.45p.m., he was attacked with knife and stick and sustained injuries. The injuries found by the Doctor are as follows:

1. A horizontal lacerated wound on the back of left shoulder 3cm x 1 cm depth with 2 c.m. Gaping.
2. A contusion 2 cm x 1 cm on the left parietal scalp.
3. An abrasion below the left axilla on the back side. Ex.P.13 is the Wound Certificate given to PW.1.

7. P.W.26, Inspector of Police, recorded the report, Ex.P.21, from P.W.1 at 1.30 a.m. on 09.11.1998 and registered a case in crime No. 451/1998 under Sections 147, 148, 341, 323, 427, 307 and 302 IPC. Ex.P.22 is the Express F.I.R. He sent the F.I.R. to the Court and to the higher officials.

8. P.W.26 held inquest on the dead body of the deceased between 03.00 and 5.00 a.m., in the hospital in the presence of the panchayatdars PW.2, PW.7 and others. Ex.P.23 is the Inquest Report. He also recorded the statements of PW.1, PW.2, PW.3 and PW.6. Thereafter, he sent a requisition through PW.25 for conducting post-mortem on the dead body of the deceased.

9. PW.22, the Doctor, who received the requisition for post-mortem conducted the autopsy on the dead body of the deceased. The post-mortem commenced at 8.30 a.m. on 9.11.1998. He found the following external injuries:

1. A cut injury found on the left upper arm cutting through the soft tissues, shaft of left Humerus bone encircling the arm 20 x 7 cm depth of Ant. aspect
2. A cut injury lower and of left Femur cutting through soft tissue, Patella and lower end of Femur encircling, just above the left knee joint in ant. Aspect (30 X 15 cms depth)
3. A cut injury 2 cm below the second cut injury in left knee joint 5 x 1 cms bone

deep and punctured wound which is 2 x 1 cms deep laterally.

4. A cut injury on lower part of right arm on lat. Aspect cutting through soft tissues and lower end of right humerus 12 x 5 cms deep.

5. A punctured and lacerated wound just 2 cms above injury 4 which is 5 x 4 cms depth.

6. An oblique cut injury 6 x .5 cms depth in the middle of forehead (scalp)

7. Another old cut injury 6 x .5 cms depth in the upper end of forehead in the middle 2 cms above and parallel to injury No. 6 (7 fracture)

8. A cut injury oblique which is 4 cms x .5 cms depth in the left parietal bone.

9. Another oblique cut injury 5 cm x bone depth in the left parietal bone which is parallel to injury No. 8.

10. Another oblique cut injury 5 cms depth in left parietal area (upper end of wound present in middle of wound No. 9)

11. Another oblique cut injury 5 cms depth in the middle of forehead crossing wound No. 7, 6 and 11 starts from right parietal area to left parital area.

12. A cut injury 4 cm x .5 cm on the left base of left thumb.

13. A cut injury on right little finger distal phalanx chopped off and the chopped portion missing.

14. A punctured wound in the proximal phalanx with fracture right middle finger.

15. A cut injury 4 cms depth in middle of right ring finger in the ant. Aspect.

16. A vertical cut injury 4 x 1 cms in the middle aspect of right elbow.

17. A punctured wound 1 x 1 cms in right side of face which is 3 cms in front of right ear.

Opinion as to cause of death:

The deceased would have appear to have died of due to multiple cut injury and would occurred about 9.00 hrs prior to post-mortem. Ex.P.15 is the Post-Mortem Certificate.

10. In the mean time, PW.26 went to the scene of occurrence and in the presence of witnesses, he prepared the observation mahazar Ex.P.1 and rough sketch Ex.P.24. He recovered the blood stained earth MO.1, sample earth MO.2 under Ex.P.2 mahazar, slippers MO.3 (series) under Ex.P.3 mahazar. On 9.11.1998 at about 7.30 a.m., he recovered the M.80 Bajaj two wheeler bearing Regn. No. T.N.63/8137 (MO.4) in the presence of the same witnesses. On the same day, he examined Bala @ Balamurugan, Doctor Periyasamy, Ganesan, Ilango, and others and recorded their statements. On the next day, i.e. 10.11.1998, he examined some more witnesses and recorded their statements.

On the same day, he sent the Tata Sumo Car T.N.63 Z 6566 to the Motor Vehicle Inspector and thereafter, handed it over to the wife of the deceased. On directions from the CBCID superior officials, he entrusted the further investigation to the CBCID.

11. PW.27 belonging to the CBCID took up the investigation on 12.11.1998 and on the same day, he went to Devakkottai and examined the witnesses PW.4, PW.22 and PW.23 the Motor Vehicle Inspector. He again examined PW.4 and PW.2. On 19.11.1998, he recorded the statement of PW.1 and others. Again he recorded the statement of PW.4. He learnt that A3, A4, A5 and A6 had surrendered to judicial custody and were in Central Jail, Chennai. On 31.11.1998, he filed petitions seeking police custody in respect of A3, A4, A5 and A6. On 23.11.1998, he took custody of them and recorded their confessional statements.

12. The admissible portion of the confessional statement given by A3 is Ex.P.25. The admissible portion of the confessional statement given by A4 is Ex.P.26. He recovered MO.5 and MO.15, MO.16 under Ex.P.6. The admissible portion of the confessional statement given by A5 is Ex.P.27 and from this confession, he recovered MO.17 iron rod under Ex.P.7. From the admissible portion of the confessional statement given by A6, he recovered MO.18 under Ex.P.18. PW.27 also examined PW.19 and PW.20 and again PW.1. On 25.11.1998, he remanded A3 to A6 to the judicial custody. On 26.11.1998 he recorded the statement of PW.5. On 27.11.1998 on information, he arrested A10 in front of the Arappalayam Bus Stop in Madurai. From the admissible portion of the confessional statement under Ex.P.9, he recovered MO.19 knife under Ex.P.10 in the presence of the witnesses. He also recorded the statement of PW.10 and another.

13. On 5.12.1998, he recorded the statement of PW.5 again. On 6.12.1998, he recorded the statement of PW.15. On 11.12.1998, he arrested A9 and A11 in front of the Everest lodge in the Town Hall Road and remanded them to the judicial custody. On 11.12.1998, A13, who was arrested by the CBCID Inspector, Madurai was arrested by him and statement was recorded. He remanded A13 to judicial custody. On 20.12.1998, he recorded the statements of PW.12 and PW.23. He arrested A8 in front of the Madurai Periyar Bus stop near the Kattabomman Statue. On 28.12.1998, he arrested A12 near Dindigul Bus Stand and remanded him to the judicial custody. He also filed a requisition for police custody of A12. On 29.12.1998, he arrested A7 in front of Manamadurai Railway Station and remanded him to the judicial custody. A2 had surrendered before the Judicial Magistrate, Mannargudi and was in Mannargudi Sub Jail. After taking A2 into the police custody, he recorded his confessional statement. From the admissible portion of the confessional statement given by A2 under Ex.P.11, he recovered MO.5 Hero Honda and Bajaj Champion MO.6, and Arual MO.20 aruval and knife under Ex.P.12. Again, he recorded the statement of PW.22. On 7.1.1999, he recorded the witnesses at Chennai and on 11.1.1999, he sent the material objects for chemical analysis. On 28.1.1999, he examined Rajaram,

Azhagaiah and others. On 3.2.1999, he examined some more witnesses. After completing his investigation, on 10.2.1999, he filed charge sheet under Sections 147, 148, 341, 427, 324, 120(B) and 212, 302 r/w 143 IPC.

14. The prosecution in order to establish its case, has examined PWs.1 to 27, marked Exs.P1 to P28 and produced Material Objects 1 to 20.

15. The accused when examined u/s 313 Cr.P.C. denied their guilt and participation in the offence.

16. Learned Senior Counsel appearing for the various appellants attacked the judgment under the following grounds:

i) There is a huge, unexplained and unnatural delay in the F.I.R.,. Therefore, Ex.P.21 complaint is not a spontaneous piece of evidence.

ii) Ex.P.21 does not mention names of the accused nor the so-called eye witnesses though all the eye witnesses are closely acquainted with the deceased. The driver of the deceased would definitely know these persons. The non-mention of these names makes their presence at the scene of occurrence very doubtful. Though Ex.P.21 recorded at 1.30 a.m., does not mention the names of the accused and in his S.161 statement recorded soon after, PW.1 had given all the details to PW.26. This shows that the prosecution case has been got up to implicate the accused.

iii) PWs.2 to 4 are chance witnesses and their presence at the scene of occurrence is extremely artificial and the fact that they were not mentioned in Ex.P.21 also falsifies their witnessing the occurrence.

iv) PWs.2 to 4 are also interested witnesses. Their presence is also doubtful as at the time of occurrence it was raining, and no satisfactory explanation has been given regarding their presence outside when it was admittedly raining. Their evidence should be accepted only after careful scrutiny.

v) There is also evidence to show that the street lights were not burning. This is borne out by the evidence of PW.19 and PW.21 electrician and wireman, who turned hostile. So the visibility was poor.

vi) Though the prosecution tried to explain the delay in despatching the F.I.R and reaching the Court by projecting a story that the deceased was taken from Devakkottai to Jawahar Hospital, Madurai, then to Apollo Hospital and from Apollo Hospital, Madurai to Devakkottai, none of the Doctors who saw the deceased at Jawahar Hospital or Apollo Hospital was examined to show that the deceased was actually taken to Madurai and then returned to Devakkottai.

vii) The deceased was a politically prominent person. There is evidence to show that the bandobust police were near the scene of occurrence at the time of occurrence. A large crowd had gathered nearby. Therefore, the fact that no complaint was lodged till 1.45 a.m. when Ex.P.21 was received is unbelievable. This raises a doubt about the presence of the so called eye witnesses at the

scene of occurrence. The prosecution had utilised the time to decide who should be roped in as assailants and as eye witnesses.

viii) The non-examination of the independent witnesses like the watchman of the St.Mary School and Bala in whose Ambassador Car the deceased was taken raises a doubt regarding the prosecution case. It is relevant to note that Ex.P.21 shows that immediately after the attack PW.1, had gone to Bala. This Bala was not examined. The presence of Bala was mentioned by other witnesses also but yet not examined.

ix) The non-examination of the mother of the deceased who came immediately after the occurrence on hearing the hue and cry of P.W.1 is also fatal to the prosecution case.

x) The version given by PWs. 2 to 4 regarding the contents of their S.161 statement is contradictory to what PW.27 has stated in his cross-examination. So, their evidence before the Court is clearly an improved version.

xi) PW.4 was first examined on 12.11.1998 by PW.27 and then on 19.11.1998. In the first statement, he has not referred to the identification of the assailants or their overt-acts, which he has supplemented on 19.11.1998. Therefore, he cannot be believed.

xii) PW.5 claims to have come to the scene of occurrence and had seen the accused immediately after the occurrence. His evidence regarding the accused coming in two vehicles was not found in the statement recorded by the police. PW.5 was examined only on 26.11.1998. Till then he had not informed any one that had seen the accused fleeing the scene of occurrence with the weapons. His conduct is unnatural and his evidence is unreliable.

xiii) PW.6 is the uncle of the deceased. According to him, because it was raining, he closed his shop early and returned to his residence. He heard the cries of the deceased. He came out of his house. He saw 10 persons running Westwards on Thirupathur Road. From rough sketch, it is pointed out that this witness could have seen only the backs of the accused and therefore, could not have identified them. Further it was dark and raining at that time. Therefore, PW.6, could not have seen the accused immediately after the occurrence is also not believable.

xiv) PWs.2, 3, 4 and 6 are closely associated with the deceased, they are either related or they are business partners. But Ex.P.21 mentions only PW.6's presence in the car when the deceased was taken to Apollo Hospital, Madurai and does not refer to the presence of PWs.2 to 4 and this would also cast a doubt on the genuineness of Ex.P.21.

xv) The non-examination of the Doctor Periasamy, who is said to have accompanied the deceased upto the Apollo Hospital, Madurai, is also fatal to the case of the prosecution.

xvi) The manner in which the recovery witnesses PW.9 and PW.10 have

voluntarily gone to the police station raises a doubt regarding the genuineness of recovery.

xvii) It is extremely unnatural that no one thought of lodging a complaint till 1.45 a.m.,. The evidence of PW.2 would go to show that while they were taking the body to Madurai, they shouted to some one to lodge a complaint as they were leaving Dr.Periasamy hospital. PW.3 has also deposed to the effect that he said that a complaint should be given. But no such complaint has been given. Even in PW.1's evidence, who has turned hostile, it is stated that he immediately made a phone call to the police and the police also came to the spot. If this is correct, then Ex.P.21 is not genuine. His evidence shows there are telephones in every house and yet no one had thought of making complaint to the police earlier.

xviii) The inordinate delay in the F.I.R. reaching the Judicial Magistrate raises a doubt about the veracity of the complaint Ex.P.21. The police station and the Judicial Magistrate are within a kilometer's distance of each other.

17. Reliance was placed on the following decisions by the learned Senior Counsel:

i) Mangamma Avva alias Nese Yesodamma and Ors. v. State of Andhra Pradesh 1995 CrL.L.J 2921 for the purpose of highlighting the conduct of the witnesses not informing about the incident at the earliest point of time.

ii) Joseph alias Jose Vs. State of Kerala, in respect of the unnatural conduct of the eye witnesses and also in respect of visibility of the scene of occurrence and availability of light.

iii) Babu Lal v. State of Uttar Pradesh 1981 SCC (Cri) 640 in respect of the unnatural conduct of the eye witnesses and also in respect of visibility of the scene of occurrence and availability of light.

iv) State of Madhya Pradesh Vs. Ghudan, regarding the non-mention of light in the scene of occurrence in the site plan.

v) Rajeevan and Another Vs. State of Kerala, , in respect of the delay in reaching the F.I.R to the Court.

vi) Thulia Kali Vs. The State of Tamil Nadu, in respect of the delay reaching the F.I.R to the Court.

vii) Marudanal Augusti Vs. State of Kerala, in respect of omission to mention names of eye witnesses in F.I.R giving minute details, and unexplained delay in despatch of the F.I.R. to Magistrate.

viii) Dharam Pal v. State of Uttar Pradesh 1981 SCC (Cri) 640 in respect of possibility of mistake in identifying the assailants when there is no visibility.

18. In reply, learned Public Prosecutor submitted that none of these grounds are sustainable:

a) The delay in F.I.R. is irrelevant. If the prosecution wanted to implicate all the

accused, the names and addresses of the accused and the specific overt acts would have been given in Ex.P.21 whereas the very fact that Ex.P.21 is silent in this regard would show that this is a genuine document. The immediate concern of every one was to save the deceased, so no complaint was lodged.

b) PW.1 had turned hostile. His evidence cannot be relied on since it is clear that the witness had taken prevaricating stand at every juncture. So the variations between Ex.P.21, his S.161 statement and his testimony in Court must be ignored.

c) The presence of PWs. 2 to 4 are extremely natural. The occurrence took place just before the election of co-operative milk society. Normally, the candidates would do their propaganda work and return to their residences. Only thereafter, the candidate's associates and friends would meet together. This had happened in the instant case. In these circumstances, PW.2 had been asked by the deceased to come to the deceased's residence at about 9.00 "O" clock to talk about same business. Therefore, he had taken the motor cycle and proceeded to the house of the deceased at 8.30 p.m. on the day of occurrence. Since it was raining, he left the motor cycle in one of his relatives' house and borrowed an umbrella and went to the house of the deceased. He was thus proceeding on the Thirupathur - Karaikkudi road towards the north when he saw the occurrence. He is an extremely a believable witness.

d) PW.3 is a close relative and friend of the deceased and he had also gone to the house of the deceased at about 8.30 p.m., and found that the deceased had not come home, so he was waiting outside the house of the deceased under a tree since it was raining and thus, at that time, he saw the occurrence. This is also natural and believable.

e) PW.4 is a sales man in Shobhana Wine Shop of the deceased. As such, he would often go to the house of the deceased. Thus, on that day, he went to the house of the deceased at about 8.30 p.m. since the deceased had not returned he was waiting outside the house of the deceased near a compound wall and he saw the occurrence at that time. Therefore, the learned Public Prosecutor submitted that there is no reason to reject the cogent and believable evidence of Pws.2 to 4.

f) The ocular evidence of PWs.2 to 4 is supported by PWs.5 and 6 who immediately came to the spot and also saw the accused carrying deadly weapons and running away from the scene of occurrence after committing the offence.

g) It is also submitted by him that it is not necessary to examine each and every person who resides in and around the scene of occurrence if the witnesses who give evidence are believable. It is the quality of the evidence that is important and not the number of witnesses. Therefore, the non-examination of Bala or the parents of the deceased cannot weaken the prosecution case.

h) The minor variations between S.161 statements and the evidence cannot

detract from the credibility of the evidence. Merely because the witnesses had not given all the particulars in detail before the police and there are some minor and trivial variations cannot be the reason for rejecting the evidence of all these witnesses.

i) The overt-acts referred to by the witnesses, synchronise with the medical evidence and that would clearly show that the occurrence had taken place in the manner spoken to by the eye witnesses.

j) The social back ground of the occurrence must be borne in mind while examining the prosecution case. A majority community which was resentful of the popularity of the deceased had decided to put an end to him and the difficulty in finding witnesses to testify in such a case must be visualised. Merely because the witnesses are closely connected with the deceased cannot be a reason to discard their evidence especially when their evidence inspires confidence.

19. The following decisions are cited by the learned Public Prosecutor:

i) Baitullah and Anr. v. State of U.P. 1998 SCC (Cri) 411 to show that motive pales into insignificance when there is other acceptable evidence.

ii) Shamsheer Singh v. State of Haryana 2003 SCC Cri 53 in respect of motive - absence of - would not benefit the accused when reliable and acceptable version of the eye witnesses and conflict between medical evidence and ocular evidence.

iii) Israr v. State of U.P. 2005 SCC Cri. 1260 to show that known persons can be identified from a distance even without much light.

iv) Kahka Tiwari v. State of Bihar 1997 SCC Cri 600 to show that standard visibility capacity of urban people should not be applied to villagers who are accustomed to such light.

v) Ramesh v. State of M.P. 2000 SCC Cri 206 to show the relevance of delay in examining the witnesses by police u/s 161 Cr.P.C.

vi) Hukam Singh and Ors. v. State of Rajasthan 2000 SCC (Cri) 1416 as regards power of public prosecutor to examine the witness.

vii) Rammi v. State of M.P. 2000 SCC Cri 26 for appreciation of evidence - post - event conduct of witness cannot be predicted.

Viii) Sheelam Ramesh v. State of A.P. 2000 CrLJ 51 in respect of delay in F.I.R.

ix) Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P., in respect of necessary contents of inquest report - held said investigation is limited in scope and is confined to ascertainment of apparent cause of death.

20. Learned Counsel appearing for the Revision Petitioner also filed his written submission while adopting the arguments of the learned Additional Public Prosecutor.

21. We have given our careful and anxious consideration to the rival contentions put forward by either side and also perused the entire materials available on record.

22. This is a case of internecine rivalry within a political party. The accused group and the deceased group are involved in numerous criminal and civil litigation. There was no love lost between them and therefore, the motive angle is really not crucial since it could cut both ways. Let us see if the defence succeeded in dislodging the prosecution's case.

23. PW.2 is a business partner with the deceased in the wine shop business, lodging business and real estate business. PW.3 is related to the deceased. PW.4 works as a salesman in the wine shop belonging to the deceased. PW.5 is working in the lodge where the deceased is a partner and PW.6 is the paternal uncle of the deceased. Therefore, all these witnesses are interested witnesses and inimical to the accused. As such we have to scrutinise their evidence with great care and caution.

24. The prosecution mainly placed reliance on the eye witnesses PWs.1 to 4. Among them, PW.1 turned hostile. Apart from that, the prosecution has placed reliance on the evidence of PW.5 and PW.6 who claimed to have seen the accused immediately after the occurrence.

25. (i) Delay in lodging the F.I.R:

(a) The occurrence took place allegedly at about 8.45 p.m.,. The deceased was a very well known person. He was a politically prominent person. From the scene of occurrence, he was taken to Anbu Clinic, which is very short distance from the bus stand where there was a bandobust police at that time. PW.2 has stated in his evidence that they were waiting in Anbu Clinic for about 45 minutes and during that time people came. PW.2 has stated that he and others went along with the deceased to Madurai. On their way to Madurai from Devakkottai, they have requested some body to make a complaint to the police. PW.3 has also deposed to the effect that he had requested some one to give complaint but yet no complaint was given until 1.45 a.m. nearly after five hours after the occurrence. No doubt, learned Public Prosecutor submitted that if the prosecution had wanted to fabricate a false complaint, they would have given all the names of the assailants and also fixed the overt-acts. On behalf of the defence, it is stated that even at the time of lodging Ex.P.21, the police had not decided who should be fixed as the assailants and therefore, to provide a "safety cushion" Ex.P.21 was prepared as if eight known persons had attacked the deceased and PW.1 would be able to identify the assailants if he saw them.

(b) The importance of the first information report in a criminal case can hardly be overestimated from the stand point of the accused. The object of insisting upon prompt lodging of the report of the police is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye witnesses

present at the scene of occurrence. The delay in lodging the first information report quite often results in embellishment. On account of delay the report not only gets benefits of the advantage of spontaneity but the danger of introduction of concocted story as a result, deliberation and consultation also creeps in. It is therefore, essential that the delay in lodging of the first information report should be satisfactorily explained (vide *Thulia Kali Vs. The State of Tamil Nadu*, .

26. PW.26 has admitted in his cross-examination that there was tension in the area after the occurrence and that the normal police bandobust from about 6.00 p.m. to 10.00 p.m. was also there. It must be remembered that PW.2 and PW.3 are not illiterate persons. They are all business partners, who are associated with the deceased. If PW.2 and PW.3 had really seen the occurrence and it was known to them that the assailants were the accused who had inimical feelings towards them, immediate reaction would have been to give a police complaint fixing all the accused. The very fact that in spite of lapse of five hours during which period not only PW.1 but PW.2, PW.3, PW.6, Bala and others were in the car proceeding from Devakkottai to Madurai at which point they would have definitely discussed the occurrence. It is indeed difficult to believe that at 1.45 a.m., PW.1 too in his complaint does not mention the names of the accused but merely says that eight known persons. This was attempted to be explained by the prosecution by stating that PW.1 was recently recruited driver and could not be expected to know the names of the assailants. But, it is in this context the delay assumes importance if PW.2 or PW.3 had really seen the occurrence and had also known the identity of the assailants and when allegedly they went from Devakkottai to Madurai and came back to Devakkottai where Ex.P.21 was recorded. It is indeed surprising that it is PW.1 from whom the complaint is received and not PW.2 or PW.3. The delay in lodging the complaint has not been satisfactorily explained by the prosecution. Merely stating that all of them were concerned with the life of the deceased and that is the reason why they did not lodge a complaint is not believable. This is a case where according to the eye witnesses, the enemies of the deceased had fatally injured the deceased. The normal conduct would be for the F.I.R. to be lodged naming the assailants. There is something very contrived and unnatural about Ex.P.21 because of the delay.

28. It is further noted that PW.1 is a hostile witness. In the complaint Ex.P.21 he had not named the assailants. But, according to PW.26 who recorded the S.161 statement from PW.1, he had given the names of the assailants and their respective overt acts. Learned Senior Counsel appearing for the appellants would submit that this would itself show that the crucial period was used by the the prosecution to decide who would be "fixed" as accused. Though this witness had turned hostile, this probabalises the doubts raised on behalf of the defence.

29. The delay in reaching of F.I.R, is really not crucial in the sense, that only 3 hours had lapsed from the time of occurrence till recording of Ex.P.21 and it is true that prosecution has not attempted to give minute particulars and fill up Ex.P.21 with full details. Therefore, in that sense, Ex.P.21 is not fabricated. But,

still it will not be possible to rule out as baseless the submissions made, on behalf of the appellants, that the mention of PW.6 along with the vague words "Mfpnahu;" have been introduced in Ex.P.21, also the averment that there was enmity between the deceased and some persons "xU rpyUf;Fk;;", only to provide room for the prosecution to rope the persons to be arrayed as accused at a later point of time.

29. It is also seen from Ex.P.21 that PW.1 went along with the deceased all the way to the hospitals at Madurai. While being examined PW.1 had categorically stated in the chief examination that immediately after the occurrence he made a phone call to Matha Medical Shop and also to the police station and thereafter the police came to the scene of occurrence, from the scene he was taken to police station and he has narrated about the occurrence but the police not recorded the same but only obtained his signature in the blank papers. Learned Public Prosecutor objected to state that this witness (P.W.1) is not a reliable witness and it would be unsafe to give weight to his evidence.

30. It is well settled that though PW.1 turned hostile, his evidence cannot be eschewed wholly and the relevant portions in favour of the prosecution or in favour of the defence may be taken into consideration. The undisputed fact remains that the statement of P.W.1 in his chief examination to the effect that he informed the police over the phone immediately after the occurrence and police came to the scene and took him to the police station and there he had narrated about the occurrence, but the police has not recorded the same and obtained his signature only in the blank papers remains to be unchallenged by the prosecution during its cross-examination after P.W.1 was treated hostile.

31. The case of the defence basically is that the deceased did not die at the time and in the manner spoken to by the prosecution witnesses. He had died earlier but the story that he was taken to Madurai and died only at 1.45 a.m. is given to explain the delay during which time a decision has been arrived at as to how to fix the guilt. It was a sensational occurrence and news must have spread like wild fire and the case that no one thought it fit to lodge a complaint immediately after the attack is too much to swallow.

32. For all these reasons, the genesis of the F.I.R is doubted, and for the delay in lodging F.I.R is held to be fatal to the prosecution case.

33. Witnesses: We will examine the evidence of the witnesses in the light of the submission made on behalf of the appellants. The witnesses PW.2, PW.3, PW.4 and PW.6 all speak of them taking the deceased for Devakkottai to Madurai. Their evidence tallies with regard to these details. Yet their evidence cannot be believed for reasons to be given below. It must be remembered while considering their evidence that the deceased was politically powerful, the witnesses were close to the deceased, and the accused were rivals in the party. If the witnesses had really seen the accused attacking the deceased, they would have lost no time in setting the investigation machinery in motion. Their conduct becomes

unnatural in this context, the delay in F.I.R becomes unbelievable in this context.

34. Eye Witnesses:

a) PW.2 claims to have gone to the house of the deceased at about 9.00 p.m. since he was asked by the deceased to come to his residence at about 9.00 "O" clock to talk about some business. Therefore, he had taken the motor cycle and proceeded to the house of the deceased at 8.30 p.m. on the day of occurrence. Since it was raining, leaving the motor cycle in one of his relatives, he went taking an umbrella to the house of the deceased. He was thus proceeding on the Thirupathur - Karaikkudi road towards the north. It is a main road and on the north side of the road Annasalai gets separated. At that juncture, the Tata Sumo car belonging to the deceased overtook him and crossed at Annasalai. In the head light of the car, he saw the deceased shouting at two persons, who were standing at the scene of occurrence as if they were doing repair work to one M 80 two wheeler. The deceased asked the car to be stopped and one man came towards the deceased, immediately, A4 and A5 and four or five persons came with deadly weapons and stick, damaged the car and also hit the driver. He saw them pulling out the deceased and cutting him. PW.2 shouted at that time, A3 cut the deceased on his left elbow. A3 cut him on his left leg. PW.2 shouted again. From the house PW.6 came running. PWs.3 and 4 came out. As soon as they came to the deceased, the accused ran away. Thereafter, Bala also came. In his Ambassador Car, they took the body of the deceased to Dr.Periasamy Hospital at Devakottai, who told them that if the deceased was taken to the Apollo Hospital at Madurai within two hours, there is possibility of survival. Therefore, they took the deceased on the Tata Sumo Car from Anbu Medical Shop, PW.2 went along with the deceased. One Kutbuddin drove the car. PW.6, 3, 7 and one Ilango also came with them in the case. They first went to Jawahar Hospital at Madurai and they were informed that the senior Doctor was not there. They requested some body to make a complaint to the police and thereafter, they went to the Apollo Hospital and Doctors saw the deceased in the car and informed them that the deceased had died and they went back to Devakottai Hospital and till the morning at about 1.30 a.m., PW.2 fainted and was lying down on the bench. Thereafter, police enquired him and then, CBCID enquired him. In cross-examination PW.2 has admitted that he does not remember if he had stated to the police that the deceased should be taken within two hours to Madurai to keep him alive. He claims he stated to the police. He requested somebody to inform the police and give a complaint. But he has not stated so during his examination by the police as per the evidence of P.W.26, Investigating Officer. Though he has claimed in his chief examination that he has witnessed the occurrence through the headlight of the car, he has not stated so during his examination by the police as per the evidence of P.W.26, Investigating Officer. It is categorically admitted by P.W.2 that there are telephones in his house and in the house of the deceased and P.W.6. But curiously he has not informed anyone or made any report to the police over the phone. P.W.2 claimed that while he was proceeding to the house of the deceased in a motorcycle at 8.30 p.m. on the

date of occurrence it was raining and therefore he left his motorcycle in one of his relatives' house, nearby and taken an umbrella from there. But he has not stated this during his examination by the police as per the evidence of P.W.26, Investigating Officer. It is also pertinent to note that he has wrongly identified A-10 as A-5. PW.2 is a close partner of the deceased but yet his name is not mentioned in Ex.P.21. It has been elicited in the examination of PW.27 that PW.2 has not mentioned in his statement to the police that they went to Dr.Periasamy's hospital and were asked to go to Madurai or that he requested some one to give a complaint or that he saw the occurrence under the car head light. The discrepancy between the statement made to the police and the evidence is crucial and not trivial. It basically raises a doubt whether PW.2 could have been present at the scene of occurrence. Conveniently, this witness claims he fainted in Devakkottai hospital after the deceased died. The evidence of PW.2 does not inspire our confidence.

(b) PW.3 is a friend and is closely related. He is also an eye witness, who happened to go on the relevant date at the relevant time. He has made only general allegation regarding the occurrence. He has not spoken of any specific overt-act with regard to any one. He has deposed that 7 to 8 persons came with aruval and stick and broke the car and pulled out the deceased and cut him. He has specifically stated that after the attack two of the assailants pushed the M 80 moving away from the scene of occurrence and that after the assailants had cut the deceased and ran away from the scene of occurrence. PWs.4, 6 and the mother of the deceased came running from the house. Bala brought Tata Sumo and took the deceased to Anbu Clinic, Devakottai, and after 45 minutes, they went to Apollo Hospital, Madurai, and the doctors saw the deceased in the car and told him that the deceased had already died and therefore, they came back to Devakottai. This witness also admits that he had not stated to the police during their investigation that he was standing under a tree in the house of the deceased. He admits that no one gave any complaint. Admittedly, there were STD booths and telephone facilities nearby. Even after returning to Devakottai, he had not ascertained whether any police complaint was given. He has also stated that once the news that the deceased had been injured spread, crowd gathered at Anbu Clinic, Devakottai, including the known persons of the deceased. It is also admitted by P.W.3 that he has not asked anyone to give a report to the police and he was along with the deceased at Devakottai for 45 minutes and he is not able to remember whether the police came there during that period. This evidence should be read in conjunction with the evidence of PW.26 who in his cross-examination had admitted that there was tension in the area after the occurrence, and that normally, there would be police bandobust from about 6.00 p.m., to 10.00 p.m., and on the date of occurrence also, there was police bandobust and the police bandobust and the scene of occurrence are on the same road and there is a police station at about 1 or 1/2 km from Anbu Clinic. But, in spite of this, PW.3 had not made any attempt to give any report. He also admits that on the way from Devakottai to Madurai, there are several

police stations on the way but yet none of the persons who were with the deceased in the same car thought it fit to give police complaint. It is also admitted that there are civil and criminal cases pending in respect of the witnesses and the accused. He claims that he knew some of the witnesses. The deceased is a relative of this witness. It is also pertinent to note that PW.3 says that he saw the occurrence, but he does not give any reason why he was there at that time. His evidence seems to be general in nature and therefore, it is not of much use to the prosecution. There are discrepancies in his evidence and his statement made before the police. His name is not found in Ex.P.21. For the reasons stated above we are not inclined to believe the evidence of this witness as having been present at the time of occurrence and at the scene of occurrence.

35. PW.4 is working as a salesman in the wine shop of the deceased, viz., Shobana Wines and according to him, he used to go to the house of the deceased frequently. It was contended on behalf of the prosecution that PW.1 having joined the office of the deceased only four months prior to the date of occurrence could not identify all the witnesses and therefore, not much importance could be given to the fact of non-mentioning of PWs.2 to 4 in Ex.P.21. But, these witnesses are persons who are closely associated and frequently visit house of the deceased. His driver PW.1 would definitely have known them and mentioned them in Ex.P.21 if they had been there at the scene of the occurrence. It is difficult to believe the case of the prosecution that PW.1 did not mention Pws.2, 3 and 4 because he could not have known them. According to PW.4, he went to the house of the deceased at about 8.30 p.m.,. Since the deceased was not there, PW.4 was standing in front of the compound wall. He saw the car of the deceased approaching the house and he saw PW.3 standing under a tree. There were two persons standing as if they were repairing a M.80 two wheeler and following a wordy quarrel, some 10 or 15 persons came with aruval and deadly weapons and A1, A2, A3, A5 and A6 were there. A1 broke the wind shield of the car and assailants attacked the deceased. Though there is reference to the attack on PW.1, it is not stated, who attacked him. PW.4 claims to have gone to the scene of occurrence and he noticed the presence of PW.2 and PW.3. According to him, when he went near the scene of occurrence, the accused threatened him that he would also meet the same fate and ran away. This is not mentioned by any other of the so-called eye witnesses PW.2 and PW.3 nor is it mentioned in Ex.P.21. According to PW.4, A2 cut the deceased on the left leg and A3 cut the deceased on the left leg and all of them jointly attacked the deceased. In that group A5 and A6 were also there. The two persons pushed the M.80 two wheeler moving away from the scene of occurrence and Bala took the deceased in his car. This witness claims to have gone back to his home town because he was afraid and only when CBCID had taken up investigation he voluntarily came and gave the details after a week. P.W.4 has not stated during investigation that he was frightened after the occurrence and therefore he left for his home town. This witness was examined on 12.11.1998. Further, he admits that he was examined after a week of the occurrence and that he voluntarily

went to the CBCID police after the CBCID had taken up the case. According to the witness, PW.3 came soon after the occurrence. It was not stated before the police that PW.4 was standing outside house in front of the compound wall of the deceased. It is also not stated by P.W.4 during investigation that he has witnessed the occurrence with the help of the car head light. He had also not given details of the overt-acts of A1, A2 and A3 in respect of breaking the car of the deceased and the attack on the deceased when he was first examined by the CBCID Police. It has been elicited that there are several criminal and civil cases pending against this witness also. He was arrested in respect of the very same case as a preventive measure but even then he had not disclosed to the police that he had witnessed the occurrence. The presence of this witness has been excluded by the evidence of PW.3. PW.4's presence is not mentioned in Ex.P.21. Apart from that, the overt acts alleged by this witness implicates A1, A2, and A3 but he had not stated anything about the overt-acts of any other accused. He had not stated so on the first occasion when he was enquired by the CBCID. It is only thereafter, he had come out with the overt-acts with regard to A1, A2 and A3 as and he had given a voluntary statement. It is admitted by P.W.4 that till he was examined by the police after a week as he had appeared before them voluntarily, he has not informed anyone about the occurrence except to his parents. Therefore, P.W.4's evidence is highly artificial and unbelievable and we have no hesitation to hold that his evidence is unreliable and untrustworthy.

So, the alleged eye witnesses, P.Ws.2 to 4 are not trustworthy.

Other witnesses:

36. PW.5 claims to have gone to the scene, immediately after the occurrence. He was working in the Vijaya Lodge at Devakottai, in which the deceased is a partner. At about 8.50 p.m., he was coming along with the Kizhamel Road from the West to the East. This is a main road. Tubelights were burning. At that time, two vehicles was coming. One was a Hero Honda and the other was Kawasaki and four person in each vehicle came up. A2, A3, A11 and A9 in the first vehicle were holding blood stained deadly weapons and their shirts also got blood stains. In the next vehicle, A10, and three others were holding blood stained deadly weapons and their shirts also got blood stains. Two persons moved away the M.80 two wheeler. When he was coming nearer to the Annasalai Arch, he saw the damaged car of the deceased and the deceased was lying in a pool of blood. The deceased was taken to the hospital by one Bala. PW.5 went to the house of the deceased to inform this and at that time the wife and mother-in-law of the deceased had gone to Madras and he gave information to them. Thereafter, he went back to his home town. It is only after 10 days later this witness was enquired. This witness was working in the lodge owned by the deceased and he is an interested witness. Though he had stated in his chief examination that he saw the accused coming in Hero Honda, Kawasaki, he had not stated in his statement to the police about the vehicles in which the accused came and that he saw the accused going away in the motor cycle in the blood stained vehicle. It

was pointed on behalf of the appellants that it was raining so heavily on that date and it is difficult to believe that the blood stained weapons would have been covered with blood since the rain would have washed away. He had not disclosed about seeing the accused till he was examined by the police on 26.11.1998. He had not stated anything about the two persons pushing out M.80 two wheeler. There are material and vital differences between the statements recorded and the evidence given by him. Even when he went to the house of the deceased to pay his last respects, he had not told any one regarding what he had seen. According to the witness, it was because of his grief. This conduct is very unnatural, considering the fact that the deceased was a politically important person. As already stated, P.W.5 was examined by the police nearly after two weeks and in view of the above said infirmities, we are of the considered view that P.W.5 is not a reliable witness.

37. PW.6 is the uncle of the deceased and therefore, his evidence is also to be scrutinised with great care and caution. According to PW.6, he heard cries of the deceased and PW.1 at about 8.45 p.m., and came out of the house and he saw the damaged car of the deceased and he also saw 10 persons running Westwards from Annasalai towards Thirupathur Road. According to him they were holding sticks and other weapons. He saw two persons pushing away M.80 two wheeler and 10 other persons. He claims to have known A1, A2, A3, A5, A7 and A8. According to this witness, when he came to the spot, PW.2, PW.3 were there and Bala came there took the deceased in his Ambassador car to one Anbu Clinic, where the Doctor requested to them to take the deceased to Madurai and they went to Jawahar Hospital. Since the senior doctor was not there, they were asked to take the deceased to the Apollo Hospital, Madurai. The Doctor at Apollo Hospital examined the deceased in the car and told them that the deceased had already died and they reached Devakkottai at 1.30 a.m. on the next day. The sketch map shows the position of the house of PW.6. He says he came out of the house and saw everything. According to him, the accused were running the Westwards on the Karaikudi - Devakkottai, if so from where, he stood, he could have seen only the backs of the accused. It was raining, it was night time even if he saw some persons running he could not have identified them just by seeing their backs. Therefore, the evidence of P.W.6 is also unreliable and it is highly doubtful that he could have seen the accused running immediately after the occurrence.

38. PW.9 is a mahazar witness. He is a resident of Devakkottai. According to PW.9, he heard about the death of Russo and that A3 to A6 had surrendered before Court and that CBCID had taken them into custody, and so he and one Kalimuthu went to CBCID office, Madurai on 3.11.1998. There he saw the four accused whom he named. He has admitted that he has no other reason to go to Madurai. The reason given by him for voluntarily going to the CBCID office all the way from Devakkottai to Madurai does not appear plausible.

39. Similarly, PW.10, who is a resident of Madurai, claims that on 27.11.1998 he

was unwell and so he asked a substitute watch man to take his place and went to Arappalam to have tea. At that time, the police requested to assist them. In spite of illness, he was with the the police from 4.00 a.m. for 6 hours. This too sounds artificial. Further, he had not identified A10 properly.

The non-examination of independent witnesses and the parents of the deceased:

40. Doctor Periasamy, who is said to have accompanied the deceased to Madurai has not been examined. If he had been examined, the nature of the attack and condition of the deceased at that time could have been proved. The non-examination of the father and mother of the deceased also assumes importance. It is the categorical version of P.W.1 that soon he has informed the parents of the deceased about the occurrence. P.W.3 categorically stated in the chief examination that the mother of the deceased immediately rushed to the scene after the occurrence. P.W.6 also stated in his chief examination that the parents of the deceased were present in their house at the time of occurrence. The mother of the deceased would have immediately made enquiries about the identity of the assailants. She came to the scene at once. If the eye witnesses had identified the assailants she would have spoken about it. She was cited as witness but not examined. Like wise, Bala was also not examined. It is in Bala's car that the deceased was taken at once to Anbu Clinic. The prosecution is unable to explain why all these important witnesses have not been examined. It is true that it is not the number of witnesses which count. But the evidence of Bala would have definitely strengthened the prosecution's case.

41. It has been held in Chandrasekhar Sureshchandra Bhatt and Others Vs. State of Maharashtra, that the marginal variations between the statement of the prosecution witness recorded u/s 161 Cr.P.C. and the testimony given in Court, cannot be dubbed as improvements made with any sinister motive. But, in this case, the variations are in respect of the material particulars which cast a doubt on the very presence of the eye witnesses and they cannot be ignored.

42. In Rajeevan and Another Vs. State of Kerala, , on the facts of that case, the Supreme Court observed that the possibility of sudden implication of the appellants as a result of an afterthought, may be due to political bitterness, cannot be ruled out. In the present case, Ex.P.21 does not mention PW.2 and PW.3, as they are closely connected to the deceased and, therefore, most likely to be familiar to PW.1. Yet they have not been mentioned in Ex.P.21. Subsequently, the complaint was lodged with much delay. The independent person, whose name has been mentioned in Ex.P.21 viz., Bala whose presence is indisputable and whose statement was also recorded by the police was not brought to testify before the Court. Therefore, we have to conclude that the possibility of implicating the accused on account of political enmity cannot be ruled out in this case also.

43. Learned Public Prosecutor relied on Israr v. State of U.P. 2005 SCC CrI 1260 to support his case that known persons can be identified even without much light

and on Kahka Tiwari v. State of Bihar 1997 SCC CrI 600 to support his case that the standard of visibility which the villager is capable of higher than the capacity of the urban people and on S. Sudershan Reddy and Others Vs. State of Andhra Pradesh, to the effect that mere absence of indication about source of light in F.I.R. for identifying assailants does not in any way affect prosecution version. But, these cases cannot really help the prosecution in this case. Because, it is not so much the source of light, but the presence of PW.2 and PW.3 itself that is doubtful. If PW.2 and PW.3 had identified the assailants since they were the eye witnesses why was the F.I.R. silent about the identities of the assailants. No reasonable and probable explanation given by P.Ws.2 and 3 as to why they have not given report to the police. And as regards, PW.6 from where he was standing he could not have seen the assailants, he could have only seen their backs. Therefore, these judgments cannot be helpful to the prosecution.

44. Reliance was placed on several decisions to show how the evidence should be appreciated and in particular reference was made to the case of Leela Ram v. State of Haryana 2000 SCC CrI 222 where it was held that minor embellishment should not render the evidence of the eye witnesses unbelievable and that Court shift the chaff from the grain and find out the truth from the testimony of the witness and the evidence has to be considered from the point of view of trustworthiness. If this element is satisfied it ought to inspire confidence in the mind of the Court, and that different witnesses react differently in different circumstances and the courts should not discard a piece of evidence on the ground that the reaction of particular witness does not fall within certain fixed standards.

45. In this case, we have already dealt in detail regarding why we are not able to accept the evidence of the eye witnesses and other witnesses. The discrepancies are not small. They are material discrepancies. The main feature which disturbs us is the fact that men who were in politics, who were in business did not choose to lodge a complaint immediately especially when they claim that their close acquaintance had been murdered by his enemies. Even if we accept that different people react differently in different circumstances, the conduct of PW.2, PW.3, PW.4 and PW.6 is unnatural. It is indeed surprising that both PW.2 and PW.3 who claim to be eye witnesses stated that they fainted in the hospital and did not recover for some time. This is very artificial and unbelievable. The whole scenario appears stage managed and the prosecution's case is shaky and falters at every stage. The case against the appellants has not been proved beyond reasonable doubt.

46. For all the foregoing reasons, the appeals are allowed the judgment of conviction and sentence dated 17.10.2001 passed in S.C.NO.27 of 2000 on the file of the Sessions Judge-cum-Chief Judicial Magistrate, Sivaganga is set aside. The Criminal Revision Case is dismissed in view of allowing the appeals.

47. It is represented by learned Senior Counsel as well as the Public Prosecutor that A4 and A5 are in prison. They are directed to be released forthwith if they

are not required in connection with any other case. Fine amount, if any paid by the appellants, shall be refunded to them forthwith. Bail Bonds if any executed by the appellants shall stand terminated and sureties are discharged.