
(2014) 04 MAD CK 0138
In the Madras High Court
Case No : Criminal Appeal No. 99 of 2012

M. Sathiya Prakash

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34

Citation : (2014) 3 MLJ(Cri) 343

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Judgement

V. Dhanapalan, J.—The appellants, arrayed as A. 1 and A. 2, along with A. 3 to A. 5, were tried by the learned Additional District and Sessions Judge, Fast Track Court No. III, Coimbatore, in S.C. No. 138 of 2011 for offences under Sections 148 and 302 read with 34 and 149 I.P.C. By a judgment dated 23.12.2011 while the trial Judge, acquitted A. 3 to A. 5 of all the charges, found both the appellants - A. 1 and A. 2, guilty of offence under Section 302 read with Sec. 34 I.P.C. and sentenced both of them to undergo life imprisonment and also to pay a fine of Rs. 1,000/- each and in default of payment of fine to undergo six months simple imprisonment. Challenging the said judgment, the appellants are before this Court in this appeal. The case of the prosecution is that the deceased Manikandan in this case was residing at Kothavadi Village. He loved Shanmuga Priya, who is the sister of the 1st accused. Shanmuga Priya also accepted his love and was moving with Manikandan. Later, on coming to know about the drinking habit of Manikandan, she started staying away from him. So Manikandan was continuously harassing her. Therefore, Shanmuga Priya complained about this to A. 1. A. 1 along with the other accused called Manikandan to a remote place and was waiting to warn him. Accordingly, on 05.09.2010, they brought Manikandan to Palanisamy Gounder's garden at Kothavady and told him that A. 1 is looking for bridegroom for Shanmuga Priya and therefore Manikandan has to stop his harassment towards Shanmuga Priya.

Manikandan had told them that he would not allow Shanmuga Priya to get married to somebody else. Therefore, all the accused, in an unlawful assembly, attacked Manikandan and killed him on the spot. Thus, all the accused had committed offences punishable under Sections 147, 148 and 302 r/w. 149 I.P.C. is the prosecution's version.

2. In support of its case, Prosecution had examined P.Ws. 1 to 23 and marked exhibits P. 1 to P. 29 and produced M.Os. 1 to 12. Though no witness was examined on behalf of the accused, they had marked one document as D. 1.

3. P.W. 1, Krishnasamy, who is the father of the deceased, is a resident of Harijan Colony at Kothavadi Village. He is a coconut merchant. He has one son - Manikandan and one daughter - Selvi, who is married. His son Manikandan, who is unmarried, was working under Appu @ Karuppusamy. He knows the accused. On 05.09.2010 P.W. 1 was returning home after his work. At that time, Thangaraj - P.W. 4 and Singaram - P.W. 3, came by 33C bus and informed P.W. 1 that his son Manikandan is lying with head injuries near Palanisamy Gounder's garden at the "S" bend between Kondampatty and Kodhavaddy. P.W. 1, along with 5 to 6 persons, including Selvakumar - PW. 5, his daughter Selvi - P.W. 8 and P.W. 3, rushed to that place. There they saw Manikandan lying with severe head injuries. His neck was cut and bones have come out. His right chest was severely injured. There were small injuries in the hands and his ears were bleeding. He was lying dead with both the eyes open. On seeing this, Selvi fainted. They brought Selvi home and gave her first aid. Deceased Manikandan knows Shanmuga Priya, who is his neighbour. Manikandan used to drink. Though, he wanted to marry Shanmuga Priya, since his son had the habit of drinking. P.W. 1 told him to be patient so that he can ask them for marriage. At this time, on 05.09.2010, arrangements were made to look for a bridegroom for Shanmuga Priya. Therefore, on suspicion that Sathyaprakash who is the brother of Shanmuga Priya, would have been the cause for his son's death, P.W. 1 lodged the complaint, Ex. P. 1.

4. P.W. 2 is also a resident of Harijan Colony at Koihavadi. He is in the business of cutting coconut. P.W. 1 is his father-in-law. He knows the accused. The deceased Manikandan is his brother-in-law. On 05.09.2010, at about 10'o clock in the night, when he and his family were in their house, P.W. 1 informed him that Singaram and other had told him that Manikandan is lying dead near Palanisamy Gounder's garden at the "S" bend. They immediately went there. They saw Manikandan lying dead with severe head injuries and other severe injuries as spoken to by P.W. 1. One month prior to the date of occurrence, Manikandan asked P.W. 2 to arrange for his marriage with Shanmuga Priya as he likes her. P.W. 2, assuring him that he will speak to P.W. 1, told him to be patient. From the place of occurrence, they went and gave a complaint at the police station.

5. P.W. 3 - Singaram would depose that he is a resident of Koihavadi and is doing coconut business. On 05.09.2010 he was returning from Pollachi in Bus No. 33C.

It was around 10.00 p.m. Near the "S" Bend, the bus was stopped as the driver and conductor got down from the bus to see something. This witness and Thangaraj also got down from the bus to see what was there. They saw Manikandan lying with injuries to his head, right hand and body. His throat was also slit. They went and informed P.W. 1 about this. They returned to the scene of occurrence with P.W. 1. his daughter and P.W. 2. On seeing Manikandan lying with injuries, P.W. 1's daughter fainted. She was brought back to the house for first aid. Then, P.W. 1, with the written complaint, went to the police station to lodge a complaint. He knows the accused. This witness does not know what is the problem between Sathya Prakash and Manikandan. He knows that Shanmuga Priya is the sister of Sathya Prakash. Police enquired him. The evidence of P.W. 4 - Thangaraj is on the same lines as that of P.W. 3 and hence, we are not reiterating the same here again. P.W. 5 - one Selvakumar would depose that he is a resident of Kothavadi village; he works for a firm and that he knows the accused. On 05.09.2010 when he was at home after returning from work, P.W. 1 - elder brother of his father - informed him that Manikandan is lying dead with injuries. P.W. 5 along with other witnesses went to the scene of occurrence. As Manikandan and Shanmugapriya were moving with each other, suspecting that, that would have been the motive for the death of Manikandan, a complaint came to be lodged with the police. P.W. 6 is the photographer, who took the photographs of the dead body and through him, M.O. 5 series, photographs and negatives were marked. P.W. 7 is the mahazar witness who had attested the rough sketch, Ex. P. 2 and the seizure of sample earth and blood stained earth from the scene of occurrence.

6. P.W. 8 - Selvi - is the elder sister of Manikandan. She would depose that she is a resident of Kothavadi. At the time of occurrence, she was employed with M/s. Shenoy and Alloys. P.W. 1 is her father and the deceased is her younger brother. She knows the accused. At that time, the deceased was working as a tractor driver in the garden belonging to Appu Gounder. Some days prior to the alleged occurrence, the deceased had told her that she loves Shanmuga Priya and requested her to finalise their marriage. When she informed her father P.W. 1 about this, he told her that both belong to different section in the religion and hence, advised them to wait for some time. But, as Manikandan was adamant that he would marry only Shanmuga Priya, P.W. 1 told him to be patient for some lime. However, on 2 or 3 occasions, the 1st accused had warned Manikandan that he must not move with his sister. Manikandan had informed his sister about the threat from the accused. On 05.09.2010, family members of Shanmuga Priya, except the 1st accused, went out to see a bridegroom for her. On that day night, P.W. 1, her father, came and told her that Singaram and Thangaraj - P.Ws. 3 and 4 - had stated that Manikandan is lying dead with injuries near the "S" Bend. Immediately, she along with her husband , rushed there. On their way they saw Sathya Prakash coming from the opposite direction. They did not notice Sathya Prakash, as they were going in a hurry. Along with Sathya Prakash. Kalimuthu was also there. When they saw, Manikandan was lying dead with head injury; his

neck was cut and blood was ousing from his chest. P.W. 8 fainted on seeing this. P.W. 1 also swooned. So both of them came back home. After consoling themselves for some time, P.W. 8 wrote the complaint to be lodged with the police as narrated by P.W. 1.

7. P.W. 9 is one Raman @ Ramasamy. His evidence is to the effect he is a resident of Kothavady village and is a coolie by work. He knows A. 1 and A. 2. On the date of occurrence, around 7.00 p.m. he was travelling in Bus No. 46 along with Selvaraj. In the same bus, the deceased Manikandan, A. 1 and A. 2 were also there. P.W. 9 got down at Kinathukadavu bus stop and went to the wine shop and then left to his house. At home, he was informed about Manikandan's death. P.W. 10 Selvaraj would also depose that he is a resident of Kothavady Village and is a coolie by work. On date of occurrence, after returning to home after work, he travelled in Bus No. 46 to buy "Brandy". P.W. 9 - Ramasamy Gounder was also in the bus. In the bus, before P.W. 10's seat, the deceased Manikandan, A. 1 and A. 2 were sitting. P.W. 10 returned home around 8.15 p.m. in the same bus. Around 10.00 to 10.30 p.m. he came to know about Manikandan's death. He went saw Manikandan's dead both with injuries. P.W. 11 Appu @ Appusamy is the person under whom the deceased Manikandan was working. His evidence is that, Manikandan is employed under him for about a year; he went to Coimbatore on some other job on the date of occurrence and around 10.00 to 10.30 p.m., P.W. 1 called him up over phone and informed him about Manikandan's death. P.W. 12 is the witness for whom the deceased Manikandan worked on the date of occurrence.

8. P.W. 13 is the conductor of the bus in which Manikandan travelled on the fateful day. He would depose that on 05.09.2010, the bus was plying its second trip from Pollaehi to Kinnathukadavu via. Kovilpalayam. Around 6.45 p.m. Manikandan boarded the bus and asked for Kinnathukadavu bus stop. P.W. 13 told him that this bus is plying through a longer route and that there are other buses which would reach Kinnathukadavu quickly. But Manikandan preferred to travel in the same bus and hence, P.W. 13 gave a ticket for Rs. 5/-. He did not get down at Kothavadi. At Kothavadi, 4 to 5 persons got into the bus. Around 7.40 p.m. the bus reached Kinnathukadavu. After its return, the bus started its trip to Pollaehi again around 9.30 p.m. on the same night. Around 10.15 p.m. P.W. 13 saw Manikandan lying dead at the "S" Bend at Kothavadi.

9. P.W. 14 is a resident of Arasampalayam and is working in Integra Company. He knows the accused. On 05.09.2010 he left for his job via. Kothavady where a "S" bend is there. It was around 8.45 p.m. P.W. 14 saw A. 1 beating Manikandan. All the other accused were present there. They were also beating Manikandan with logs. P.W. 14 asked A. 1 as to why they are beating Manikandan. A. 1 told him to leave that place, otherwise, he would also face the same situation. On that threat, P.W. 14 left that place.

10. P.W. 15 - Jayasimhan - is a resident of Singarampalayam Village and is a paper boy by job. He knows all the accused. On 05.09.2010, on his personal job

he went to Coimbatore and was returning in a car. Near City Bakery, a known person asked him to stop the car. All the five accused were present there. They asked P.W. 15, if he could drop them at their village as the bus had left. Manikandan also travelled with them. A. 2 went and bought fish to eat. After eating the fish, A. 1 - Sathiya Prakash - asked Manikandan - deceased and Nagaraj - A. 2, to travel by bus. Others, viz. A. 1, A3 and A. 4, came in the car along with P.W. 15. A. 1 asked A. 5-Krishnasamy - to follow the car in a TVS 50. While travelling, A. 1 told others that they had seen a bridegroom for his sister and asked them as to what could be done and they were discussing among themselves. On reaching Kondampatty, they paid P.W. 15 Rs. 200/- and asked him to leave. On way back home, P.W. 15 remembered about their talk to attack Manikandan and stopped the vehicle near Kumarala Poultry and waited for some one to come to accompany him. Though, he waited for a long time, none came and P.W. 15 decided to go on his own and went accordingly. There he saw, A. 1, A. 2 and A. 3 beating up Manikandan with logs. At that time, some one came in a TVS 50. He asked them as to what they are doing? A. 1 told him that, it is none of his business and he will also receive the same fate. He also saw P.W. 15 there and left the place in fear. Manikandan fell down and was shouting. A. 1 told Manikandan that they had chosen a bridegroom for his sister and would not he listen to him if he says by words? When P.W. 15 went nearer, Manikandan was throbbing. A. 1 asked him as to why he came there, as they have paid him money for Petrol? He also told P.W. 15 that since they know him they are leaving him and if he dares to open his mouth to any one, he will also receive the same treatment. P.W. 15 reversed the car and went back to home via Kondampatty. The next day, through neighbours, when he came to know about Manikandan's death, he was struck with fever and was lying in bed for three days. On 9th, he read in newspaper about the arrest of the accused and then dared to inform the Investigating Officer about what he knows. P.W. 15 identified M.O. 6, the wooden log.

11. P.W. 16 is the Village Administrative Officer working at Kinnathukadavu at the relevant point of time. He knows about Manikandan's death on 05.09.2010 through Newspaper. On 09.09.2010, when he was at his office, A. 2 and A. 3 appeared before him and told him that they were involved in the murder that took place at Kothavady. They gave a voluntary confession statement to the effect that five of them murdered Manikandan; A. 1 is their aunt's son; Manikandan was in love with A. 1's sister which was not liked by the accused and therefore, they planned to murder Manikandan; At the garden belonging to Palanisamy Gounder, near the "S" bend they attacked Manikandan and killed him. The said confession statement was reduced into writing by P.W. 16 in a form of report, in the presence of a witness, and then, A. 2 and A. 3 were produced before the Investigating Officer. Ex. P. 3 is the said report of P.W. 16. The Investigating Officer caused the arrest of A. 2 and A. 3. On enquiry, A. 2 and A. 3 stated that the other three accused are available at Singarampalayam at Kinnathukadavu. The Investigating Officer, with other police personnel, took both

the accused and P.W. 16 to that place. There they say all the other three accused viz. A. 1, A. 4 and A. 5. Police arrested them. It was around 1.30 p.m. A. 1 gave a voluntary confession statement and M.Os. 9 and 10 were recovered from them. All the accused identified the exact place of occurrence. Then, under a bridge, they produced M.Os. 6 to 8, which were recovered under cover of mahazars by the Investigating Officer, in the presence of witnesses.

12. P.W. 17 Shanmuga Priya, who is the sister of A. 1, turned hostile. P.W. 18 is the Judicial Magistrate, Pollachi, at the relevant point of time who speaks about the recording of the statement of witness under Section 164 Cr.P.C. on the request of the Investigating Officer.

13. P.W. 19 by name Rajan would depose that he is a resident of Harijan Colony. He is working in Holo Blocks. He knows the accused. On 05.09.2010 - Sunday being a holiday, he went to buy Grocery at Kinnathukaduvu around 7.00 p.m. and was returning around 9.30 p.m. At that time, near the "S" Bend, at Palani Gounder garden, the accused, with wooden logs in hand, were threatening Manikandan. P.W. 19 asked them as to why they are threatening Manikandan? The accused told him that it was none of his business and he is no way connected with this. At that time. A. 1 beat Manikandan on his head with the log. A. 3 beat him from behind. A. 2 beat him in his chest. Manikandan fell down shouting. All the four accused, pressed him down. A. 1 took out a knife from his waist and cut Manikandan's neck. On seeing this, P.W. 19 ran to a distance out of fear. An omni van came there. With fear, the witness reached home and went to bed. Around 10.30 p.m., he heard the people in the village talking about Manikandan's death. P.W. 19 also went and saw the scene of occurrence. He saw Manikandan lying dead with bleeding injuries. Because of fear emerged by witnessing a murder, P.W. 19 went to his uncle's house at Udumalai and stayed there. On 09.09.2010, on coming to know about the arrest of the accused, he returned home and attended the police enquiry. He also identified M.Os. 6 and 7 in the Court.

14. P.W. 20 is the Doctor who conducted post mortem on the dead body of Manikandan. Ex. P. 19 is the Post Mortem certificate issued by P.W. 20. As Ex. P. 19, is in English, we are not reiterating the same in our judgment to save time. The Post Mortem Doctor had opined that the deceased would appear to have died of CUT INJURY NECK and associated with HEAD INJURY. P.W. 21 is the Chemical Analysts, through whom Exs. P. 20 to 22 are marked. P.W. 22 is the Special Sub Inspector of Police on duty at Kinnathukadavu Police Station on 06.09.2010. He received the complaint Ex. P. 23 given by P.W. 1, registered the same in Crime No. 834 of 2010 and sent the copies of the documents to higher officials and the Court.

15. P.W. 23, is the Investigating Officer, who received information about registration of F.I.R. in this case around 2.30 a.m. on 06.09.2010 and commenced investigation. On receipt of information about registration of a crime around 2.30 a.m. on 06.09.2010, he reached the place of occurrence at 3.00

a.m. Around 4.30 a.m., he caused the photographs to be taken and sent the dead body to CMC Hospital, Vellore, through the Head Constable. Around 6.00 a.m. He prepared the Observation Mahazar, Ex. P. 2 and rough sketch Ex. P. 24 in the presence of witnesses. He recovered blood stained earth and sample earth from the scene of occurrence in the presence of witnesses, under a cover of mahazar. Then he went to the CMC Hospital, Vellore, where, from 7.00 a.m. to 9.30 a.m., he conducted inquest over the dead body in the presence of Panchayatdars. During inquest, he recorded the statements of witnesses. The inquest report is Ex. P. 26. He sent the requisition for conduct of post mortem on the dead body, through the Head Constable. After obtaining the Doctor's opinion that the death of Manikandan would have been caused by a sharp edged weapon, P.W. 23 altered the Section of offence from that of a suspicious to one under Section 302 I.P.C. and sent the report, Ex. P. 27, to Court. On 07.09.2010, the Investigating Officer continued with his investigation and examined P.Ws. 9, 10, 11, 12, 17 and 16 and recorded their statements. On 08.09.2010 also P.W. 23 recorded the evidence of witnesses. On 09.09.2010, P.W. 16, the V.A.O. produced A. 2 and A. 3 before the Investigating Officer along with his special report. He caused their arrest and recorded the voluntary confession statement given by both of them in the presence of witnesses. P.W. 23, took both A. 2 and A. 3, along with P.W. 16 and others, to Singarampalayam where under a bridge, he arrested A. 1, A. 4 and A. 5 identified by the other accused in the presence of witnesses. Upon their respective voluntary confession statements, the Investigating Officer recovered M.Os. 6, 7, 8 and 10 in the presence of witnesses. He returned to the police station and sent the recovered articles for chemical examination. He also subjected the arrested accused to judicial custody. On 10.09.2010, P.W. 23 examined, P.Ws. 14 and 15 and recorded their statements. He received the serologists report - Ex. Ps. 20 to 22. On 17.02.2011, after completing the investigation, he filed the final report in Court against the accused.

16. When the accused were questioned under Section 313 of Cr. P.C. on the incriminating materials made available against them by the prosecution, they denied each and every circumstance as false and contrary to facts. Though no oral evidence was produced on the side of the accused, they marked Ex. D. 1 as a documentary evidence.

17. Mr. C.M. Gunasekaran, learned counsel appearing for the appellants would submit that the trial Court went completely wrong in accepting the case of the prosecution which has so many discrepancies. Firstly, learned counsel submits that even in the F.I.R. P.W. 1 had, on his own, stated that tyre marks were found on the dead body of his son Manikandan and therefore, the cause of Manikandan's death could be an accidental one has to be considered by this Court. Next, according to the learned counsel, the eye witnesses, viz., P.Ws. 14, 15 and 19, who are alleged to have seen the occurrence had given a statement before the Investigating Officer only after five days and this completely shatters the case of the prosecution that it is the accused who are responsible for the

death of Manikandan. He would also submit that there are contradictions in the evidence of P.Ws. 14 and 15 and as such the evidence of the said witnesses had been disbelieved by the trial Court. Next, he would contend that the extrajudicial confession statement alleged to have given to the Village Administrative Officer cannot be accepted as a true statement and consequently, the recovery based on such a statement also falls to the ground. According to him, the motive theory as projected by the prosecution had not been proved and therefore, the implication of the accused in the case itself is unwarranted. Lastly, he would submit that there was enormous delay of sending the statements recorded under Section 161 Cr.P.C. to Court and in the absence of proper explanation for the delay of six months, the trial Court could not have accepted the same to arrive at the conclusion to convict the appellants. By way of elaborating his submissions, learned counsel appearing for the appellants submits that there are no chain of circumstances to link the accused with the crime; the tyre marks found on the dead body creates a doubt as to whether the death could be an accident; no motive is projected and proved by the prosecution; the delay of six months in sending the documents to Court from 07.09.2010 to 16.03.2011, would definitely cast a doubt in the veracity of such statements especially, when the alleged eye witnesses are disbelieved by the trial Court and when the trial Court has acquitted A. 3 to A. 5 on the same set of evidence, it was not correct in convicting the appellants viz. A. 1 and A. 2 alone.

18. We have heard Mr. M. Maharaja, learned Additional Public Prosecutor on the aforesaid submissions. According to the learned Additional Public Prosecutor, the fact of the deceased Manikandan having a love affair with Shanmuga Priya, sister of A. 1, had been culled out in evidence; it is also on record that this affair was not approved by the family of the accused as they belong to different sections of the community though they were residing in the same area and since they had seen a bridegroom for Shanmuga Priya, on the 05.09.2010," A. 1 had planned to eliminate Manikandan. By referring to the various portions of the evidence, Learned Additional Public Prosecutor submits that chain of events completely connects the accused to the crime and the last seen theory, established through the evidence of P.W. 10 - an independent witness, clearly points out the fingers on the accused. As to the point raised by the counsel for the appellants that there was delay in sending the documents to Court, the learned Additional Public Prosecutor on the first instance submits that, the said delay, even if admitted, alone cannot be fatal to the case of the prosecution. He also adds that the appellants had not raised this plea before the Trial Court and therefore, they cannot have it tested before this Court for the first time. Regarding the plea that tyre marks were found on the dead body of the deceased, learned Additional Public Prosecutor submits that the medical evidence brought on record does not support the said plea of the appellants and hence, based on the given set of evidence, the trial Court had correctly arrived at the conclusion to convict the appellants as stated above and no interference is called for from this Court.

19. We have given our thoughtful consideration to the submissions made by the

learned counsel appearing on either side and perused the materials made available on record with due care and caution.

20. Now, let us take up the submission of the learned counsel appearing for the appellants one by one. The first and foremost submission of the counsel for the appellants is that there is enormous delay in sending the material documents to Court. From the records, it is clear that the statements of the witnesses recorded by the Investigating Officer in the course of his investigation had reached the Court on 16.03.2011. The occurrence is said to have taken place on 05.09.2010. Thus, there is a delay of about six months in sending the material documents to Court. The prosecution had not come forward to explain such an enormous delay. When we point out this fact, we are fully aware of the settled legal position that the delay in sending the documents alone cannot be a ground to doubt the prosecution case. In other words, if all the other materials made available on record unerringly points out the guilt of the accused, the delay in sending the materials documents to Court loses its importance. But, unfortunately, in the case on hand, we have other materials available on record.

21. The entire case of the prosecution stands on the evidence of the alleged eye witnesses namely P.Ws. 14, 15 and 19. As the learned trial Judge himself has disbelieved the evidence of P.Ws. 14 and 15, we are left with the evidence of P.W. 19 alone. We went through the evidence of P.W. 19 with care and caution. P.W. 19 is also a resident of the same place. He knows the accused and the deceased as well. In his examination in Chief, he alleges to have witnessed the occurrence; the accused threatened him and therefore, on fear, he went to his house. After some time, about hearing the death of Manikandan, he comes back to the scene of occurrence, sees Manikandan lying in a pool of blood and goes back home. His evidence further is that, on complete fear, he went to his uncle's house at Udumalapet and returned to the village only on 09.09.2010. According to us, the act of P.W. 19 by itself is unnatural. After allegedly witnessing an occurrence, P.W. 19 had not spoken about it to anybody for five days. He says that he lives in a joint family and after seeing the accused beating up Manikandan, with fear, he came home. However, on hearing Manikandan's death he was dare enough to go to the scene of occurrence and there he saw Manikandan lying in a pool of blood. Again he came back home and slept over the night. Next day, he left for Udumalapet. On 09.09.2010, he came back to his village and police enquired him on 10.09.2010. He told them what he saw. P.W. 19 being a person residing in the same area and who knows both the deceased and Manikandan, cannot be believed to hear that he kept quiet for five days, without informing even his family members about what he saw on the fateful night. With this doubt in mind, when we go through the evidence of the Investigating Officer, about the evidence of P.W. 19, we could see that each one completely contradicts the other. According to P.W. 23, Investigating Officer, P.W. 19 was examined by him on 10.09.2010. In his Examination in Cross, P.W. 23 would state as under:

Thus the statement of P.W. 19 that he had seen the occurrence and that he had

informed the investigating officer about it, is contradicted by none else than the Investigating Officer himself. Therefore, we are of the view that it is not safe for us to rely on the evidence of this witness.

22. Now the question left before us is, if not these accused, then who is responsible for Manikandan's death? We have the answer in the form of Ex. P. 1, the complaint. In the complaint and F.I.R., Exs. P. 1 and P. 23, there is a mention that tyre marks were found on the dead body of the deceased Manikandan. The complaint had been lodged by none else than the father of the deceased. The place where the Manikandan was found dead was the main road which runs from Kothavady to Kondampatty. The portion of the complaint lodged by P.W. 1 about the tyre marks found by him in the dead body of his son is as follows:

Thus, even according to Ex. P. 1, the tyre marks were found on the dead body of the deceased. We could see that the Investigating Officer had not made any attempt to explain these tyre marks admittedly found on the dead body of the deceased. In fact, the Investigating Officer, himself has mentioned in the Inquest Report - Ex. P. 26 that there is a doubt whether Manikandan could have died in a road accident. The relevant portion of the inquest report reads as under:

Therefore, the real possibility that Manikandan, who is known to be a drunkard, would have been either hit by a vehicle and had fallen down or he would have been lying in the main road and a vehicle tyre would have rolled over him accidentally, has surfaced as early as on 06.09.2010 at 7.00 a.m. when the Investigating Officer conducted inquest over the dead body of Manikandan. Much to our surprise, in the Post Mortem Report - Ex. P. 18, issued by P.W. 20, the Post Mortem Doctor there is no mention about the tyre marks found on the dead body as stated by P.W. 1 in his complaint. In these circumstances, we cannot accept the case of the prosecution that Manikandan was only done to death and it was not an accident.

23. As to the motive theory projected by the prosecution that the deceased Manikandan had a love affair with Shanmuga Priya, sister of the accused and therefore, the accused had a axe to grind against the deceased also cannot be believed in toto, because, even according to the prosecution though the accused family had gone to see a bridegroom for Shanmugapriya on 05.09.2010, Manikandan had not reported to have picked up any quarrel over that issue on that particular day. On the contrary, the evidence on record shows that both the accused and the deceased travelled in the same bus on 05.09.2010. To prove this fact, we have the evidence of P.W. 10 who has last seen the deceased and the accused together in the bus. He is an independent witness. He had categorically stated in his chief examination that when he got into the bus, the deceased Manikandan, A. 1 Sathya Prakash and A. 2 Nagaraj, were sitting in the front seat to that of his seat. If at all Manikandan had a small doubt that the accused had some vengeance against him, he would not have accompanied them in the bus.

24. With all these discrepancies in the case of the prosecution, when we look at the delay of six months in sending the documents to Court, it assumes importance. This Court has been consistently holding that the statement of important witnesses recorded during investigation should be sent to the Court at the earliest point of time. If there is any delay, then, the evidentiary value of the evidence of such witnesses is open to a serious doubt. In the light of our discussions as referred to above, we have no doubt at all in our mind that the circumstances projected before the Court by the prosecution are far from convincing and in any event, they do not unerringly point out to the guilt of the accused and the benefit of doubt must be given to the accused. Under these circumstances, we have no doubt in our mind that the judgment under challenge is liable to be set aside and accordingly, it is set aside. The appeal is allowed. The accused is acquitted forthwith of the offences for which they are tried and convicted. The bail bonds if any executed by the appellants shall stand terminated forthwith.