
(2005) 12 KL CK 0002

In the High Court Of Kerala

Case No : Criminal Appeal No's. 710 and 1006 of 2003

Siddique and etc.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Evidence Act, 1872 — Section 25, 27

Penal Code, 1860 (IPC) — Section 100, 101, 143, 147, 148

Citation : (2006) CriLJ 1109 : (2006) 1 ILR (Ker) 409

Hon'ble Judges : M.N. Krishnan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : P. Vijaya Bhanu and Tony Mathew, for the Appellant; Public Prosecutor and Noorji Noushad, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Father and son were charge-sheeted for the offences punishable under Sections 302 and 324 of the Indian Penal Code read with Section 34 IPC for murdering one Kunhimammed and for inflicting injuries on PW-1. PWs-1. to 3 are examined as occurrence witnesses. According to the prosecution, accused No. 1 had cut a chal across the Karuvambalam -- Koranganad Panchayat road and deceased Kunhimammed and PW-1 were trying to fill up the chal at about 6-00 p.m. on 5-2-1998. At that time, in furtherance of the common intention, A1 and A2 pushed Kunhimammed and he fell down on his back and A1 stabbed on his chest with a dagger which was later withdrawn and Kunhimammed sustained injury on his chest and he succumbed to the injury on 9-2-1998 at Moulana Hospital, Perinthalmanna. Accused No. 2 grabbed the dagger from A1 and attempted to commit murder of Muhammedkutty (PW-1) by stabbing with the same dagger and he had sustained injury on his left wrist as he warded off the stab. Ext. P1 is the FI statement given by PW-1. Even though the incident occurred at 6-00 p.m. on 5-2-1998, Ext. P1 FI statement was given only on 6-2-1998 at 9-00 a.m. from Moulana Hospital and accordingly FIR was recorded and registered by PW-9. It is true that there is 15 hours" delay in lodging FIR. In

Thulia Kali Vs. The State of Tamil Nadu, it was observed as follows :

First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence 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 eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained.

This was followed in *Meharaj Singh (L/Nk.) Vs. State of U.P.*, and in *Thanedar Singh Vs. State of Madhya Pradesh*, . In *Rajeevan and Another Vs. State of Kerala*, , the Apex Court held that 12 hours" delay in forwarding the FIR is sufficient to doubt the genuineness of the FIR, but, mere delay itself is not sufficient to discard the case of the prosecution if delay is explained or there are cogent evidence despite delay. However, Ext. P1 is the earliest statement given regarding the incident and, therefore, it is the most important document in this case, even though FIR is not a substantial piece of evidence.

2. According to PW-1 in the FI statement, he stays in Korariganad and in the Panchayat road in front of the house of the accused, a chal was cut by the accused and that was causing nuisance to persons who are using the road. Even though complaints were raised several times, AI did not accede to the same. Therefore, on 5-2-1998 evening he, along with deceased and CWS-4 to 6, went there for filling up the chal. While they were filling up the chal by using a Spade, AI and A2 came and asked that in whose permission they are filling up the chal. They replied that they are filling up the chal because of the inconvenience caused to the public and AI pushed Kunhimammed and Kunhimammed fell down. Then A1 took the dagger and inflicted chest injury on the deceased. He also stated that A2 took the dagger from the father and tried to kill him. Then he cried aloud and AI and A2 left the place. PW-1 when examined in Court made many improvements from his version given in Ext. P1. Contradictions in the statement given before the police and in the deposition before the Court were marked as Exts. D1 and D2. While giving oral evidence, he deposed that he and deceased alone came at 6 O'clock for filling up the chal. Then, AI came and while they were talking, PWs-2 and 3 arrived at the scene. Later, from Korangad side Kuttippara Syed, Makkar, Musthafa etc. came. All the above persons including the deceased are coming from Korangampara two Kms. away from the place of incident. He also deposed that while they were filling up the chal, AI and A2

pushed the deceased and when he fell down. A1 stabbed the deceased by MO1 knife. The knife was withdrawn by A1 and A2 took the same knife and tried to stab PW-1. He ward off the stab and his wrist was injured and the people who came from Korangode took him to the hospital. Kunhimammed died after an operation on the fourth day. He was very specific in his statement that neither he nor the deceased did attack anybody including the accused. During cross-examination, he deposed that house of the accused is just on the side of the place of incident. Accused constructed the house in a paddy field after obtaining permission from the Revenue Divisional Officer. Near his house, there is a canal and this chal is used for the flow of water from the canal and other water coming from the east. He deposed as follows :

(Vernacular text omitted....Ed.)

He also deposed that that chal was made two days before the incident, but, in Ext. P1 he has stated that they have requested for filling up of the chal several times and he was not aware whether the chal was in existence from 1986. He also deposed that the property near the house of the accused is paddy field. He further deposed that there is a case C. C. No. 471 of 1998 for setting fire of the house of the accused. Even though FIR was registered for setting fire, when final chargesheet was made, it was only for mischief. He again deposed that the deceased, CWs-4 to 6 etc. are all neighbours. He denied the suggestion that all of them came there with weapons to kill the accused. He deposed as follows :

(Vernacular text omitted....Ed.)

He further deposed that the chal was filled up by a spade brought by the deceased Kunhirammed. Even though he denied that the deceased caused skull fracture to the accused, he deposed that he is not aware of the same. He again deposed that he is not aware whether A1 was injured with cut injuries in the incident. (Vernacular text omitted....Ed.) To a definite question that the deceased got injuries in a scuffle due to private defence, he answered that he is not aware.

(Vernacular text omitted....Ed.)

He further deposed that the FIR was registered against him and three others in the same incident u/s 307, but, finally, it was registered u/s 324, IPC. He further stated that when the house of the accused was set fire he was in the hospital. He also deposed that CW-3 stood for election. Accused No. 1 was a rebel candidate against him.

3. Evidence of PW-2 as well as PW-3 is almost on the same lines. All of them have deposed that they are not aware of the injuries on A1 and A2. PW-4 came to the place after the incident and he accompanied the injured to the hospital. PW-5 is an attester to Ext. P3 inquest report, PW-6 is an attester to Ext. P4 scene mahazar, PW-7 is an attester to recovery mahazar of MO1 and PW-8 is the Village Assistant. The Village Assistant who prepared the scene mahazar has

deposed that the road belonged to panchayat and the Panchayat has made the chal and not the accused. Earlier, it was a ridge of a paddy field and when Panchayat road was made it was made as a chal.

(Vernacular text omitted....Ed.)

PW-9 registered Ext. P1 FIR after recording the FI statement. PW-10 has conducted initial investigation. He recovered MO1 knife. The disclosure statement is as follows :

(Vernacular text omitted....Ed.)

So, it only shows that if he is taken he will show the place where the knife is kept. He has not stated that he has kept the same. There is no authorship of concealment. Incidentally, we also note that in the chemical examination report it is stated that MO2 was not stained with human blood. Further, the recovery which can be used as a corroborative evidence is not very much relevant in this case because of the defence taken by the accused. Presence of PWs-1, 2 and 3 etc. are not denied and the scuffle between the prosecution witnesses on the one side and A1 and A2 on the other side are also conceded. Therefore, we are not going to the defects in the recovery.

4. Even though PW-10, Investigating Officer, in his deposition reiterated only the relevant portion of the disclosure statement, the trial Court marked the entire confession statement of A1 and A2 as Ext. P8. It may be noted that on the basis of the disclosure of A1 nothing was found out. Ext. P10 was the chemical examination report produced by the Investigating Officer. In cross-examination, he admitted that there was a counter case and he investigated that matter and in that case the deceased, PWs-1 and 2 and CWs-4 to 6 etc. were mentioned as accused in the FIR and the case was registered under Sections 143 147 148 307 and 323, IPC. It is also deposed that section 307 is a sessions offence. He further admitted that A1 had got skull fracture and it is a grievous injury. He further deposed that in that case, he filed final report u/s 324 only. He also changed five persons from the list of accused persons and made one Syed as the accused in that case. Relevant portion of evidence is as follows :

(Vernacular text omitted....Ed.)

He further deposed that he forgot to alter the offence from Section 344 to Section 326.

(Vernacular text omitted....Ed.)

He again deposed that there was another case and as per the FIR investigated by him, PW-1 etc. set fire to the house of the accused.

(Vernacular text omitted....Ed.)

He further deposed that FIR was registered in that case u/s 424 which is a sessions offence, but, later, that offence was altered to that of one u/s 427 as

can be seen from Ext. D I1. The wound certificate of A1 was marked as Ext. D9 and that of A2 was marked as Ext. D12. Ext. D9 shows that A1 had skull fracture, parietal dowsy and haemotoma and fracture on either side and various other injuries. In fact, A1 was arrested when he was discharged from the hospital on 20-2-1993 and he was in the hospital from the time of the incident. He was also examined on the date of incident by the doctor. Ext. D12 wound certificate also shows that A2 also sustained serious injuries. PW-10 in cross-examination admitted that A1 suffered serious injuries:

(Vernacular text omitted....Ed.)

5. PW-13 had conducted post-mortem examination and issued Ext. P-13 post-mortem certificate. The following ante-mortem injuries were noted in the post-mortem certificate.

1. Sutured incised wound 6 c.m. long oblique on mid chest with right upper end 16 c.m. below right collar bone and 1.3 c.m. outer to the midline, lower left end 1 c.m. to the left of costal margin. The right upper end was square cut and the other end was sharp cut. From the lower 4/5 the part of this injury an incised wound extended downwards vertically (right paramedially) 16 c.m. long lower end of which was 1 c.m. above umbilicus which was found sutured (surgical). There was tension relieving sutures 5 in number on either side of this injury. On removal of the sutures the abdomen was found sutured inn layers peritoneal lining was dull intestine 80 c.m. below gastroduodenal Junction showed a cut injury and was found sutured at the antimesentric border. There was flakes of pus and blood clots in between the coils of intestine. Then intestine was dull looking and congested.

The Xiphisternum was found cut for a length of 3 c.m. corresponding to the obliquely placed injury on mid chest. The diaphragm underneath the cut on sternum showed a cut which was found sutured for a length of 3 c.m. Lasser currature both walls of stomach showed a cut 6 c.m. long which was found sutured. Liver showed a through and through cut 7.5, 1.5 x 6 c.m. involving the left lobe of liver. The wound was directed backwards downwards and to the left chest wall thickness at the level of sternum was 1.5 c.m. Total minimum depth of wound was 8.5 c.m.

2. Sutured incised wound on left side of abdomen 1 x 0.8 c.m., 5.3 c.m. to the left of midline and 6.5 c.m. above umbilicus at 2 O'clock position.

3. Sutured wound 0.3 c.m. long, superficial 4 c.m. below previous injury.

4. Sutured wound 1 c.m. x 0.5 c.m. communicating into peritoneal cavity on left side of abdomen 5.5 c.m. outer to midline.

5. Sutured incised wound 1 c.m. x 0.3 c.m. on right side of abdomen 1 c.m. below costal margin 9 c.m. outer to umbilicus at 10 O'clock position communicating into the peritoneal cavity.

6. Incised sutured wound 6 c.m. right side of abdomen 1 c.m. long x 0.3 c.m. x 10.5 c.m. outer to midline and 4 c.m. above anterior superior iliac spine.

Injury Nos. 4, 5 and 6 were communicating into peritoneal cavity. Injury Nos. 2, 4, 5 and 6 appeared as surgical wounds.

7. Linear abrasion 1 c.m. long transverse on back of left hand 5 c.m. above knuckle of index finger.

Out of the above, injury No. 2 was a sutured wound. The doctor has deposed that injury No. 3 can be caused while withdrawing the weapon and injury No. 1 was stated to be a fatal injury. There was infliction on the abdominal cavity. He also deposed that injury No. 1 can be caused by MO1.

6-7. PW-14 doctor, who treated the deceased, deposed as follows :

I agree that there was only one injury (No. 1) which extending from abdominal wall, piercing other organs in liver, sternum, pancreas etc. I agree that this injury could be caused either accidentally or intentionally with sharp edged instrument.

He further deposed as follows :

I agree that I had not assessed the depth of that injury. (The witness voluntarily added) It was not possible for me to ascertain the depth of the wound at that point of time.

He was not aware of the danger as he was conscious when he was admitted to the hospital. He deposed as follows :

Moreover, the patient was conscious. After the operation, he was stable, post-operatively. Stable means that his pulse was normal, but, it does not mean that he was out of danger. At that time, other systems were working. Haemorrhage pancreatitis means it is an injury of the pancreas due to an abdominal trauma because of the release enzymes or toxin or it can also be due to an infection. Haemorrhage pancreatitis may be one of the reasons for deterioration of the condition.

PW-11 proved wound certificate of PW-1. He deposed that PW-1 suffered only superficial injuries and such injuries could be caused if that portion had contact with sharp edged weapon.

8. On going through the evidence, we are of the opinion that there was a deliberate intention on the part of the prosecution to suppress the injuries on the accused. PW-16 intentionally changed the nature of offence mentioned in Ext. D8 FIR while final report was filed without any reason whatsoever. He admitted that skull fracture was caused to A1. Till he was cross-examined he did not disclose that injuries were caused to the accused by PWs-1, 2 and 3 in the same incident. All the prosecution witnesses suppressed the causing of injuries on the accused. The effect of suppression of serious injuries on the accused are summarised by the Supreme Court in Lakshmi Singh and Others Vs. State of Bihar, after

considering the earlier decisions including the decision in Mohar Rai and Bharath Rai Vs. The State of Bihar, . the Apex Court held as follows (Para 11 of Cri LJ):

...where the prosecution fails to explain the injuries on the accused, two results follows : (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabalise the plea taken by the appellants... in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one... (However) there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

In State of Rajasthan Vs. Madho and another, it. was held as follows (Para 2) :

The fact remains that both the respondents had sustained serious injuries, Kishna mainly on the skull whereas Madho on the skull as well as scapular region. If the prosecution witnesses shy away from the reality and do not explain the injuries caused to the respondents herein it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident. The High Court was, therefore, of the opinion that having regard to the fact that they have failed to explain the injuries sustained by the two respondents in the course of the same transaction, the respondents were entitled to the benefit of the doubt as it was hazardous to place implicit reliance on the testimony of the injured PW-2.

The Apex Court, in State of M.P. Vs. Mishrilal (Dead) and Others, observed that when the Investigating Officer submitted challan against both the parties, he has duty to prove correct facts. Obligation of the prosecution or Investigating Officer

is to make an endeavour to find out the truth. Anyway, Court, has to cull out truth from falsehood and if the Investigating Officer and prosecution witnesses are trying to suppress the truth their evidence cannot be believed. In the above case, the Supreme Court observed as follows :

19. In Ext. P1, as already noticed, there is no explanation about the injuries sustained by the three accused. None of the prosecution witnesses explained the injuries sustained by the accused. The injuries sustained by Mishrilal were dangerous to life. The prosecution witnesses consist of interested and inimical witnesses. We are, therefore, of the view that the prosecution has not presented the true version on the most material part of the story. Their evidential value does not inspire confidence and it cannot be accepted on its face value and relied upon. It is in these circumstances that non-explanation of the injuries sustained by the accused proved fatal to the prosecution case.

Here, PWs-1, 2, 3 etc. came together at 6 O'clock from a place 2 k.ms. away with the intention to fill up the chal in front of the house of the accused. They came with spade etc. Even according to their own admission CWs (sic) to 6 were also with them. Since house of the accused will be flooded with water if there is no chal, naturally, A1 and A2 objected to this. Then the attack started. Skull of A2 was fractured. Fracture of A2 was also serious and a scuffle followed. In that scuffle, injury caused. Deceased party was the aggressor. They came with the preparation to fill the chal. Occurrence witnesses deposed that the chal was cut by the accused few days ago. Village Officer deposed that the chal was constructed much earlier when Panchayat road was constructed. That evidence cannot be denied by the prosecution as the village officer was not declared hostile. When a group of persons living 2 k.ms. away came to fill up a chal with spade etc. and when accused opposed the same as it will flood over the property, they were attacked and scuffle followed. A group of persons with weapons came and attacked the accused and it is probable that they were frightened. Merely because one injury caused to the deceased was fatal, it cannot be stated that accused are the aggressors and they are guilty of offence u/s 302, IPC. Right of private defence cannot be measured in a golden scale. In Buta Singh Vs. The State of Punjab, , it was held by the Supreme Court that a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hypertechnical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in

view normal human reaction and conduct, where self-preservation is the paramount consideration. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that there is reasonable apprehension and causing harm from the side of the accused. It is true that the burden of establishing his defence is on the accused, but, the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See : *Munshi Ram and Others Vs. Delhi Administration*, ; *State of Gujarat Vs. Bai Fatima and Another*, ; *State of U.P. Vs. Mohammad Musheer Khan and Others*, and *Mohinder Pal Jolly Vs. State of Punjab*, . Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body u/s 97, that right extends u/s 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. In *Salim Zia Vs. State of Uttar Pradesh*, , the Apex Court observed as follows (Para 9) :

It is true that the burden on an accused person to establish the plea of self defence is not as onerous as the one which lies on the prosecution and, that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence.

In other words, the accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea. In this case, deceased only came with weapons for filling up an existing chal. PWs-1, 2 and 3 are not only partisan, but, interested as otherwise there is a chance that they will be found guilty in the counter case. With regard to the injury of PW-1, it was only very minor which can be caused in the scuffle and for that AI cannot be convicted u/s 307, IPC. In the above circumstances, we are of the view that prosecution was not able to prove the charges alleged against the accused and the prosecution case appears to be one sided. This is a case more or less similar to the facts in the decision of the Supreme Court in *State of M.P. Vs. Mishrilal (Dead) and Others*, . It is true that if the injuries are minor or if the injuries occurred in another incident, there is no duty for the prosecution to explain the injuries. Here, serious injuries were caused to accused and those injuries were suppressed by the prosecution. Deceased party were the aggressors.

9. In *Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Others*, , a three member Bench of the Supreme Court observed as follows (Para 17 of Cri LJ) :

...the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the

prosecution witnesses may affect the prosecution case, the Court has to be satisfied of the existence of two conditions: (1) that the injury on the person of the accused was of a serious nature; and (2) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution.

The same view was taken by the Apex Court in *Dashrath Singh v. State of U.P.* AIR 2004 SC 4488. Here, there is no clear, cogent and creditworthy evidence to convict the accused. A mechanical or isolated approach cannot be taken while examining the question of non-explanation of injuries by the prosecution. In this case, in view of the very serious injuries on A1 and A2, which occurred in the same incident and the interest shown by the Investigating Officer and occurrence witness for suppressing the above shows that non-explanation of injuries is fatal.

10. Prosecution failed to establish the genesis of the incident or to prove that the incident occurred in the manner as described in the charge-sheet. We have already seen that the entire alleged confession statement made by A1 and A2 before the police officer was marked as Ext. P8. It was relied on by the trial Judge in convicting the accused. While convicting A1 u/s 302, the Court observed as follows :

Finally I find that the confession statement marked on Ext. P8 would operate as a corroborative piece of evidence. Ext. P8 is not challenged in the cross-examination. Hence I have no hesitation to hold that Accused No. 1 had stabbed the victim with deliberate and aimed motive attracting Section 302.

While convicting A2 u/s 307, it was observed as follows :

As far as section 307 is concerned, the injury sustained by the victim is irrelevant and immaterial. In these circumstances, I hold that the accused No. 2 has attempted to commit murder of PW-1 as alleged by the prosecution. Here also, the confession statement made by him before PW-10 would corroborate the prosecution case. Accordingly, accused No. 2 is found guilty of the offence punishable u/s 307.

Section 25 of the Evidence Act provides that no confession made to a police officer should be proved as against a person accused of any offence. u/s 25, a confession made to any police officer under any circumstance is absolutely excluded. Section 26 prohibits proof of confession made while in custody even to third parties unless it is made in the immediate presence of a Magistrate. Section 27 is actually a proviso to sections 25 and 26 as held by the Apex Court in *Delhi Administration Vs. Bal Krishan and Others*, . Section 27 only allows so much of such information received from the accused, regarding discovery of fact whether it is confession or not. That portion of the information which is direct or immediate course of disclosure of same material or concrete object is admissible and rest of the statement has to be excluded as held by the Privy Council in

Pulukuri Kottaya v. R. AIR 1947 PC 67 : 1947 Cri LJ 533. Court cannot take into account inculpable part of confession made to police officer in view of Sections 25 and 26. No facts or objects were recorded on the basis of information given by A1. But, entire confession statements allegedly given to the police officer by A1 and A2 were marked as Ext. P8 and relied by the trial Court to corroborate the evidence which is clearly illegal.

11. In this case, there is unexplained delay in lodging the FIR. The incident occurred in front of the house of the accused. Even going by the evidence of occurrence witnesses, deceased's party are residing 2 k.m. away from the place of incident and they came armed with weapons to fill up the chal in the panchayat road in front of the house of the accused. Party of the deceased were more than five in number. PWs-1 to 3 are partisan and interested witnesses. There was improvement in Ext. P1 version while giving evidence. Prosecution failed to explain the serious injuries on the accused. There was skull fracture of A2 and investigating officer was very much interested in suppressing the injury. Genesis of the incident was not proved before the Court. Prosecution failed to prove the correct version before the Court and, in fact, there was deliberate attempt to bring in correct facts before the Court. Version of the accused regarding exercise of the right of private defence is more probable considering the preponderance of probabilities. In any event, prosecution failed to prove the guilt of the accused beyond reasonable doubt.

In the result, conviction and sentence of A1 and A2 are set aside and bail bond of A2 is cancelled and A1 should be released forthwith from prison, if he is not required in any other case. Both appeals are allowed.