
(1971) 01 MAD CK 0012
In the Madras High Court

State by Public Prosecutor and Nagammal	APPELLANT
Vs	
Karuppanna Thevar and Others	RESPONDENT

Date of Decision : 25-01-1971

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 417
Evidence Act, 1872 — Section 154
Penal Code, 1860 (IPC) — Section 302

Citation : (1972) 1 MLJ 26

Hon'ble Judges : K.N. Mudaliyar, J

Bench : Division Bench

Judgement

K.N. Mudaliyar, J.—This is an appeal filed by the State against the acquittal of the four accused-respondents for an offence u/s 302, read

with Section 34, Indian Penal Code.

2. (For the sake of convenience we shall refer to the respondents as the accused hereinafter).

3. There is a village called Panaiyur where Thevars are the residents predominantly and where Chettiars also reside. There have been civil actions

and criminal proceedings between the parties. There is evidence that Andar Chettiar (deceased) was taking a leading part in the litigation between

the parties. Aggrieved at the conduct of Andar Chettiar, the case of the prosecution is, accused 1 to 4 who are Thevars made a sudden

appearance near the well inside the nanja land of one Ramaswami Chettiar at about midnight (or past midnight) of 6/7th February, 1969 and

caused his death.

4. A week prior to the death of Andar Chettiar, on a Friday night when P.W. 5 was talking to Andar Chettiar (deceased) about some civil case,

accused 1 to 4 came by that side. P.W. 5 heard accused 1 to 4 state that the Chettiars would be subdued only in the event of Andar Chettiar (is)

offered as a sacrifice to the deity. P.W. 5 appears to have questioned the accused as to why they were fomenting trouble, and P.W. 5 claims that

Andar Chettiar was brought away.

5. P.W. 1 Alagiri Chettiar belongs to Panaiyur. He has got wet lands there. Andar Chettiar also has nanja lands in the village. They are to the

north-east of Panaiyur. P.W. 1 knew accused 1 to 4 as the residents of that village. P.W. 1 and the deceased went to the fields for watching the

paddy crops which were ripe for harvest. They took their food in the night and went out for watch. They sat near the well of Ramaswami Chettiar.

It was past midnight. All of a sudden accused 1 to 4 appeared on the scene. Accused 1 and 3 were armed with velsticks, 2nd accused with an

aruval and the 4th accused with a stick. The 3rd accused stabbed with the vel stick on the back of Andar Chettiar. The 1st accused stabbed with

the vel stick on the stomach and the 2nd accused cut him on the left wrist with a vettaruval. The 4th accused beat him on the head with a mottai

kambu.

6. Naturally P.W. 1 felt unnerved at this sudden attack. He ran along the manthai shouting and went and reported to Ramiah Chettiar, P.W. 5 and

his brother Venkataraman Chettiar (not examined), who were awakened since they were sleeping. The entire attack on Andar Chettiar by all the

accused was related to them by P.W. 1. They proceeded to the scene of occurrence and found Andar Chettiar lying dead in a pool of blood with

his left hand severed at the wrist. Hearing the cries and shouts of P.W. 1 when he was running away from the scene to the hotel of P.W. 5, P.W. 6

went to the scene and saw the dead body. He then went and brought the village munsif P.W. 7 to the scene. Immediately thereafter, P.W. 1 gave

the report Exhibit P-1 to the village munsiff P.W. 7. Exhibit P-1 was attested by P.W. 5.

7. P.Ws. 3 and 4 have nanja lands on the eastern side of the scene of crime. They had gone there to watch the crops on their lands and they were

sleeping on a ridge between their fields. Past midnight, they heard the cries of P.W. 1 and went to the scene of occurrence on the western side and

found Andar Chettiar lying dead with cut and stab injuries. They claim to have

returned to their fields to collect their chappals and blankets and were on their way to the village when they found people gathering at the scene of occurrence. Therefore they went to the scene of crime instead of going to the village. When they reached the scene, the recording of the statement Exhibit P-1 was completed. On hearing P.W. 1 tell the village munsiff about accused 1 to 4 having attacked Andar Chettiar P.Ws. 3 and 4 also gave out that they had seen accused 1 to 4 coming opposite to them with aruval and vel sticks; the 2nd accused had an aruval, accused 1 and 3 had vel sticks and the 4th accused had a stick. The vel portion of the vel stick held by the 3rd accused was missing. They asked accused 1 to 4 as to why they were running like that. They did not reply but went away.

8. That there was bright moonlight at the time of the occurrence, at about 1 A.M. on 7th February, 1969, is a fact proved beyond any doubt.

Therefore P.Ws. 1, 3 and 4 found no difficulty in identifying" accused 1 to 4 with the aid of bright moonlight.

9. P.W. 7 the village munsiff prepared the printed form reports and sent Exhibits P-1 and P-7 to the Police and Exhibit P-4 to the Sub-Magistrate,

Aruppukottai, through P.W. 6. On receipt of Exhibits P-1 and P-3, P.W. 11 the Sub-Inspector of Police, Tiruchuli, registered a case in Grime

No. 14 of 1969 u/s 302, Indian Penal Code. P.W. 12 the Circle Inspector, Aruppukottai, was appraised of the occurrence over the phone. Both

P.Ws. 11 and 12 (Sub-Inspector and the Circle Inspector) went to the scene of occurrence. An inquest was held over the dead body of Andar

Chettiar between 7-30 A.M. to 9-30 A.M. in the course of which P.Ws. 1, 3, 4 and 5 were examined. P.W. 12 examined P.Ws. 6 and 7 also on

the same day. The four accused were found to be absconding.

10. On nth February, 1969, P.W. 12, arrested accused 1 to 4 at the river bed at Illuppaiyur at 8 A.M. As a result of the various confessional

statements made by the accused, P.W. 12 recovered M.O. 3 vel stick in pursuance of the admissible portion of the confessional statement of the

1st accused (Exhibit P-10), M.O. 1 aruval in pursuance of the admissible portion of the confessional statement of the 2nd accused (Exhibit P-11),

M.Os. 4 and 5 parts of vel stick in pursuance of the admissible portion of the confessional statement of the 3rd accused (Exhibit P-12), and M.O.

2 stick in pursuance of the admissible portion of the confessional statement of the 4th accused (Exhibit P-13). Later P.W. 12 recovered M.O. 11

the dhoti of the 2nd accused, M.O. 12 the shirt of the 3rd accused, and M.O. 13 the dothi of the 4th accused. It is an undoubted fact proved by

the prosecution that M.Os. 1, 3, 4, 5, 11, 12, 13 have been found to be stained with human blood.

11. P.W. 2, Dr. P. Malayappan, conducted the autopsy over the dead body of Andar Chettiar on 7th February, 1969 at "about 4 P.M. In the

post-mortem certificate marked as Exhibit P-2, there is the description of 13 injuries found on the dead body of Andar Chettiar. Suffice it for our

purpose to notice two injuries, injury N03. 8 and 11, elaborately:

8. The left hand was received separately with the body which has been served by an incised injury. The cut ends of the blood-vessels were gaping

and the deep staining of the tissues were not removed by washing. 11. Deep penetrating incised injury 2" x 1/4" over the left frontal portion of the

scalp. On exploration reflecting (re-flexing?) the scalp the fracture of the left parietal bone was seen and on opening the skull the injury was found

to penetrate the membrane-covering the brain 1" x 1/4" and blood stained brain matter was found oozing out through the injury.

Internally on opening the head of Andar Chettiar, the doctor P.W. 2 found the scalp to be blood-stained and fracture of the parietal bone was also

found. The membrane was punctured 1" x 1/4" which correspond to the external injury No. 11. In the opinion of P.W. 2 death was due to shock

and haemorrhage as a result of a multiple fractures and amputation of the left hand. The death would have been instantaneous. Injury No. 8 is

necessarily a fatal one. Injury No. 11 is sufficient in the ordinary course of nature to cause death. In the opinion of the doctor, injury Nos. 9, 10

and 12 could have been caused by a weapon like M.O. 2; injuries 1 to 4 and 8 are possible by an aruval like M.O. 1 and the rest by a sharp

weapon like a vel stick like M.Os. 3 and 5.

12. The plea of the accused is one of denial.

13. The learned trial Judge found that Andar Chettiar had been brutally attacked and murdered on the night of 6/7th February 1969. The learned

Judge further found that there is a faction between the Thevars and Chettiars of Panaiyur over a temple matter for the past three years. In fact, he

deals with the history of litigation in paragraph 17 of his judgment, which does not need any recapitulation whatsoever. The learned trial Judge,

after elaborately discussing certain discrepancies of minor and trivial importance in paragraphs 19 and 20 found that the evidence of P.W. 1 could

not be believed. He went to the extent of stating that P.W. 1 in all probability was not present at all at the scene of occurrence. The learned trial

Judge did not choose to rely on the evidence of P.Ws. 3, 4 and 6 and also the alleged recovery of M.Os. 1 to 5. Be it noted that the learned trial

Judge has not adverted to the evidence of P.W. 5 and the recovery of M.Os. 11, 12 and 13 from accused, 2, 3 and 4 respectively.

14. The learned Public Prosecutor contended, and contended rightly too, that the learned Judge has approached the evidence of PW. 1 from a

totally wrong angle which has resulted in a gross mis-appreciation of the remainder of the prosecution evidence and therefore the acquittal is

tantamount to a perverse acquittal in the face of strong and reliable evidence adduced by the prosecution in proof of the offence against accused 1

to 4.

15. Inasmuch as this is an appeal against the acquittal of the four accused, we have chosen to remind ourselves of the principles of law that ought

to govern the appreciation of evidence by this Court for the purpose of rejecting the findings of the trial Judge and accepting the testimony of the

prosecution witnesses, P.Ws. 1, 3, 4, 5, 6, 7, 10 11 and 12, in conjunction with the corroborative contents of Exhibit P-1 and the recoveries of

M.Os. 1 to 5 and 11 to 13. In *Sanwat Singh and Others Vs. State of Rajasthan*, . Their Lordships of the Supreme Court observed and as follows:

The scope of the powers of an appellate Court in an appeal against acquittal has been elucidated by the Privy Council in *Sheo Swarup and Others*

vs. *King Emperor* . There Lord Russell observed at page 404 (of I.A.) (at page 230 of A.I.R.) thus; the High Court should and will always give

proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses, (2) the presumption of

innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial... (3) the right of the

accused to the benefit of any doubt, and (4) the lowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the

advantage of seeing the witnesses....

16. Adverting to the facts of the case, the Privy Council proceeded to state,

...They have no reason to think that the High Court failed to take all proper matters into consideration in arriving at their conclusion of fact.

These two passages indicate the principles to be followed by an appellate Court in disposing of an appeal against acquittal and also the proper

care it should take in re-evaluating the evidence. The Privy Council explained its earlier observations in AIR 1945 151 (Privy Council)

Their Lordships do not think it necessary to read it all again, but would like to observe that there really is only one principle, in the strict use of the

word, laid down there; that is that the High Court has full power to review at large all the evidence upon which the order of acquittal was founded,

and to reach the conclusion that upon that evidence the order of acquittal should be reversed.

These two decisions establish that the power of an appellate Court in an appeal against acquittal is not different from that it has in an appeal against

conviction; the difference lies more in the manner of approach and perspective rather than in the content of the power. These decisions defining the

scope of the power of an appellate Court had been followed by all the Courts in India till the year 1951 when, it is said, the Supreme Court in

Surajpal Singh and Others Vs. The State, , laid down a different principle. But a perusal of that judgment does not bear out the construction which

is very often placed thereon. The passage relied upon is found at page 301 of S.C.R.: at page 54 of AIR and it reads thus:

It is well established that in an appeal u/s 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which

the order of acquittal was founded but it is equally well settled that the presumption of innocence of the accused is further reinforced by his

acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be

reversed only for very substantial and compelling reasons.

On the facts of that case the Court held:

we are inclined to hold that the Sessions Judge had taken a reasonable view of the facts of the case, and in our opinion there were no good

reasons for reversing that view.

We think that these observations are nothing more than a restatement of the law laid down by the Privy Council and the application of the same to the facts of the case before the Court.

17. Though in one paragraph the learned Judges used the words "substantial and compelling reasons" and in the next paragraph the words "good reasons", these observations were not intended to record any disagreement with the observations of Lord Russell in *Sheo Swarup and Others vs.*

King Emperor as to matters a High Court would keep in view when exercising its power u/s 417 of the Criminal Procedure Code. If it had been so

intended, the Court would have at least referred to *Sheo Swarup and Others vs. King Emperor* which it did not. The same words were again

repeated by the (Supreme) Court in *Ajmer Singh Vs. The State of Punjab*, . In that case the appellate Court set aside an order of acquittal on the

ground that the accused had failed to explain the circumstances appearing against him. The Supreme Court held that as the presumption of

innocence of an accused is reinforced by the order of acquittal, the appellate Court could have interfered only for substantial and compelling

reasons. The observations made in respect of the earlier decisions applied to this case also. Mahajan, J., as he then was, delivering the judgment of

the Court in *Puran Vs. The State of Punjab (I)*, , again used the words "very substantial and compelling reasons" but immediately thereafter the

learned Judge referred to the decision of *Sheo Swarup and Others vs. King Emperor* and narrated the circumstances Which an appellate Court

should bear in mind in interfering with an order of acquittal. This juxtaposition of the so called formula and the circumstances narrated in *Sheo*

Swarup and Others vs. King Emperor indicate that the learned Judge used those words only to comprehend the statement of law made by the

Privy Council. Mukherjea, J., as he then was, in *Chelloor Mankkal Narayan Ittiravi Nambudiri Vs. State of Travancore-Cochin*, , again referred to

the Privy Council decision and affirmed the wide power of an appellate Court and also the proper approach in an appeal against acquittal. The

learned Judge did not introduce any further limitation on the power of the appellate Court. But it was observed that the High Court had not clearly

kept before it the well settled principles and reversed the decision of the trial Court "without noticing or giving due weight and consideration to

important matters relied upon by that Court". In *Tulsiram Kanu Vs. The State*, , the Court used a different phraseology to describe the approach of an appellate Court against an order of acquittal. There the Sessions Court expressed that there Was clearly reasonable doubt in respect of the guilt of the accused on the evidence put before it. Kania, C.J., observed that it required good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate Court came to a different conclusion. The observation was in connection with High Court's judgment which had not taken into consideration the different detailed reasons given by the Sessions Judge. In *Madan Mohan Singh Vs. State of Uttar Pradesh*, , on appeal by Special Leave, the Court said that the High Court had not kept the rules and principles of administration of criminal justice clearly before it and that therefore the judgment was vitiated by non-advertence to and misappreciation of various material facts transpiring in evidence and the consequent failure to give true weight and consideration to the findings upon which the trial Court based its decision. In *Zwinglee Ariel Vs. State of Madhya Pradesh*, , the Court again cited the passage from the decision of the Privy Council extracted above and applied it to the facts of that case. In *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, Bhagwati, J., speaking for the Court, after referring to the earlier decision of this Court, accepted the principle laid down by the Privy Council and, indeed, restated the observations of the Privy Council in four propositions. It may be noticed that the learned Judge did not use the words ""substantial and, compelling reasons."" In *S.A.A. Biyabani v. State of Madras* AIR 1954 S.C. 332, Jagannadhadas, J., after referring to the earlier decisions,, observed at page 647 thus:

While no doubt on such an appeal the High Court was entitled to go into the facts and arrive at its own estimate of the evidence, it is also settled law that, where the case turns on oral¹ evidence of witnesses, the estimate of such evidence by the trial Court is not to be lightly set aside.

The learned Judge did not repeat the so-called formula but in affect accepted the approach of the Privy Council. The question was again raised prominently in the Supreme Court in *Aher Raja Khima Vs. The State of Saurashtra*, , Bose, J., expressing the majority view, stated at page 1287 (of S.C.R.) (at page 220 of A.I.R.) thus:

It is in our opinion, well settled that, it is not enough for the High Court to take a different view of the evidence; there must also be substantial and

compelling reasons for holding that the trial Court was wrong. *Ajmer Singh Vs. The State of Punjab*, , and if the trial Court takes a reasonable

view of the facts of the case, interference u/s 417 is not justifiable unless there are really strong reasons for reversing that view.

It may be noticed that the learned Judge equated ""substantial and compelling reasons"" with ""strong reasons"". *Kapur, J., in Bhagwandas Vs. The*

State of Rajasthan, referred to the earlier decisions and observed that the High Court should not set aside an acquittal unless there are ""substantial

and compelling reasons"" for doing so. In *Balbir Singh Vs. State of Punjab*, , the Court observed much to the same effect thus at page 222:

It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally

wellsettled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial

judge as to the credibility of the witnesses must be given proper weight and consideration, and the slowness of an appellate Court in disturbing a

finding of fact arrived at by a Judge who had the advantage of seeing the witnesses must also be kept in mind, and there must be substantial and

compelling reasons for the appellate Court to come to a conclusion different from that of the trial judge.

These observations only restate the principles laid down by this Court in earlier decisions. There are other decisions of the Supreme Court where,

without discussion, the Court affirmed the Judgments of the High Courts where they interfered with an order of acquittal without violating the

principles laid down by the Privy Council.

These principles of law have again received the consideration of the Supreme Court in *Laxman Kalu Nikalje Vs. The State of Maharashtra*, . It has

been held that:

The powers of the High Court in an appeal against the acquittal are not different from the powers of the same Court in hearing an appeal against a

conviction. The High Court in dealing with such an appeal can go into all questions of fact and law and reach its own conclusions on evidence

provided it pays due regard to the fact that the matter had been before the Court

of Sessions and the Sessions Judge had the chance of opportunity of seeing the witnesses depose to the facts. Further, the High Court in reversing the judgment of the Sessions Judge must pay due regard to all the reasons given by the Sessions Judge for disbelieving a particular witness and must attempt to dispel those reasons effectively before taking a contrary view of the matter. It may also be pointed out that an accused starts with a presumption of innocence when he is put up for trial and his acquittal in no sense weakens that presumption, and this presumption must also receive adequate consideration from the High Court.

The learned Judges of the Supreme Court again observed in *Khedu Mohton and Others Vs. State of Bihar*,

It is true that the powers of the High Court in considering the evidence on record in appeals u/s 417, Criminal Procedure Code, are as extensive as its powers in appeals against convictions but that Court at the same time should bear in mind the presumption of innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate Judge has found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusion. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal.

18. Keeping these principles of law in mind, we will now examine the validity of the reasons given by the learned trial Judge who chose to

disbelieve the evidence of P.W. 1, the principal eye-witness to the ghastly occurrence. There is some minor discrepancy elicited in the evidence of

P.W. 1 that the occurrence was after midnight, whereas he is supposed to have stated in the committal Court that it was before midnight. The

occurrence is undoubtedly at about 1 A.M. where the rustic villager like P.W. 1 could still hazard a guess it is just about or after midnight. Villagers

who are self-employed in safeguarding their crops ripe for harvest, do not go about wearing watches to notice exactly the precise time of

occurrence. In our view, this discrepancy is of a triviality. The learned trial Judge ought to have concerned himself more with the intrinsic truth of

the case as spoken to by P.W. 1 in the setting where every fact has fallen in a very coherent and reliable pattern when one looks at the entire

conspectus of the evidence as spoken to by P.Ws. 1 and 5 corroborated by P.Ws. 3 and 4 and also the evidence of P.W. 6 (though treated

hostile). The next minor omission noticed by the learned trial Judge is equally unworthy of any notice, for, the mere omission to state that accused 1

to 4 were seen at the "mandhai" when P.W. 1 and Andar Chettiar (deceased) Were proceeding to their fields is of no, significance whatever. By

this omission in Exhibit P-1, he has not chosen either to suppress any fact of importance or. by mentioning this fact it cannot be stated that P.W. 1

has set up a new case. It is certainly open to the accused who heard this evidence from the dock, to cross-examine P.W. 1 that accused 1 to 4

were really not seated in the "mandhai" when P.W. 1 and Andar Chettiar proceeded to their fields. It is the law of nature that on the night of the

occurrence there was broad moonlight which no amount of suppression could erase the fact of this natural phenomenon nor could it be frustrated

or falsified by any amount of cross-examination. Least of all, there was not even a suggestion that bright moonlight was not there. The learned trial

judge has grievously erred in attaching any importance for this omission of the mention of bright moonlight in Exhibit P-1. The learned trial judge

has again made mention of a minor discrepancy in the evidence of P.W. 1 that he left the scene of occurrence after accused 1 to 4 left the scene. In

Exhibit P-1 it is clearly made out that he left the scene as the attack was proceeding apace against Andar Chettiar. In the stress of cross-

examination he might have stated that he witnessed the occurrence up to the end. But his evidence in chief examination mentions certain overt acts

against the accused which would constitute indubitable proof of his natural conduct in that he witnessed a part of the occurrence and after getting

unnerved at the mounting attack on Andar Chettiar he left the scene of occurrence. There is another argument noticed by the learned trial Judge

and reinforced by the learned Counsel for the accused--respondent, that here is a Chettiar P.W. 1 who has been very lucky in escaping without a

scratch on his body. The fact that there has been no attempt on the part of accused 1 to 4 to attack P.W. 1 would not render automatically

improbable the fact of P.W. 1 witnessing the attack which was gathering momentum by the time P.W. 1 left the scene of occurrence. It is but natural for him to admit that on seeing the accused with weapons he got afraid. But, no doubt, he asserts that he was at the scene of occurrence till all the accused left. But his own evidence and the averments in Exhibit P-1 made by P.W. 1 are consistent with his seeing principally the major part of the occurrence by the time he went away from the scene. The learned trial Judge again noticed the so-called contradiction in Exhibit D-5 in respect of the portion of the stomach where the 3rd accused stabbed whereas in the Court of Session he stated that the 3rd accused stabbed with a vel stick on the stomach of the deceased. There is no doubt some discrepancy in the overt acts attributed against the 3rd accused. But in our view, that is of no material consequence or importance. Then again another small discrepancy about the 2nd accused beating the deceased on the left wrist is noticed by the learned trial Judge in paragraph 19 of his judgment. But there is this evidence that the 2nd accused cut Andar Chettiar on his left wrist, with the result that the wrist was severed. We really place no importance to these minor discrepancies noticed in Exhibit D-6. The learned Judge once again noticed that according to P.W. 1, when he started running away from the scene, he saw the deceased being stabbed again and again by accused 1 to 4. We are unable to follow the conclusion of the learned trial Judge that this is hardly likely as the 2nd accused had only a stick. When P.W. 1 stated that he saw accused 1 to 4 stabbing Andar Chettiar while he was running away, in our view it tantamounts to the deadly attack being continued against the deceased Andar Chettiar. In his chief examination, P.W. 1 does not claim to have seen the entire occurrence. Even a most intelligent spectator cannot make a photographic record of each of the 13 injuries inflicted by these four accused. This is totally high standard applied to a rustic villager's observation of the murderous assault on Andar Chettiar in the bright moonlight while he was seized by a sensation of fear and chose to run away from the scene of occurrence. What does it matter whether Andar Chettiar fell on his back or face upwards or downwards or on his side? It is a pity the learned trial Judge has tried to make so much out of this small discrepancy of totally un-meritorious importance in the light of Exhibit D-7.

19. It is true there is one important admission made by P.W. 1 noticed by the learned trial Judge in paragraph 20 about which we are inclined to

deal at some length. The learned trial Judge notices that in respect of the assessment of the evidence of P.W. 1 it may be noticed that P.W. 1

belongs to the same community as the deceased. But in view of the unmitigated faction ever existing between the two parties of Chettiar on one

side and Thevars on the other side, Andar Chettiar could certainly not have gone alone with any other community man than his own community

Chettiar. P.W. 1 who happened to have his nanja land ripe for harvest. It was not suggested in the course of cross-examination of P.W. 1 that

P.W. 1 did not have any land whatever. There is also the further evidence that P.W. 1 had land on waram too. The learned trial Judge appears to

consider the evidence of P.W. 1 that immediately after the occurrence he ran shouting that accused 1 to 4 had cut the deceased while he and the

deceased were sitting near Ramaswami Chettiar's well. We are unable to find any material in the entire recorded evidence of P.W. 1 that while he

ran shouting he shouted that accused 1 to 4 had cut the deceased. The only evidence we find is that he ran shouting "Ayyo"! Appah! There is

some confusion, in the mind of the learned trial Judge in equating the shouting with his relating the details of the occurrence to P.W. 5 after waking

P.W. 5. In fact, the conduct of P.W. 1 running from the scene of occurrence shouting all the way is but natural. If it were otherwise, his conduct

would rather savour of an improbability. The learned Sessions Judge observed as follows in para. 20:

Another significant factor which to a great extent undermines the prosecution case is the fact that he had admitted before committal Court that after

seeing the dead body near the well himself, P.W. 5 and Venkataraman Chettiar went to their respective houses and that after the Inspector and

Sub-Inspector came, he went again to the place of occurrence, that the day had dawned by then, that on seeing the police he followed them,

reached the scene, that the village munsif was already there and that thereupon he gave the statement Exhibit P-1. This, is totally contradictory to

the present prosecution case, that Exhibit P-1 statement was given by P.W. 1 at about 2-30 A.M. on 7th February, 1969.

The learned trial Judge appears to conclude that Exhibit P-1 statement given by P.W. 1 was certainly not at about 2-30 A.M. on 7th February,

1969. This conclusion is arrived at by the learned trial Judge with reference to Exhibit D-10. If one follows the sequence of the evidence both in chief-examination of P.W. 1 and also the material in cross-examination, that would show that P.W. 1, after the Inspector and the Sub-Inspector came, went again to the place of occurrence, that when the Inspector and Sub-Inspector came the day had dawned, that on seeing the police P.W. 1 followed them and reached the scene, that the village munsif P.W. 7 was already there at the scene, that when P.W. 1 reached the place of occurrence with the Inspector and the Sub-Inspector (P.Ws. 11 and 12) P.W. 1 gave a statement to the village munsif and that Exhibit P-1 is the statement. The learned Counsel for the accused-respondents strongly relied on this so-called admission of P.W. 1, marked Exhibit D-10 and contended that this would indicate that P.W. 1 really did not know the names of the assailants as he was not the eye-witnesses to the occurrence.

We have taken pains to go through the deposition of P.W. 1 in the Court of the Committing Magistrate. It is a great pity the Assistant Public Prosecutor who was in charge of the prosecution in the Court of the Committing Magistrate, did not bestir himself as to further clarification of the matter in re-examination in the light of the contents of Exhibit P-1 and the material in the chief-examination of P.W. 1. Nor did the Sub-Magistrate choose to be alert in getting the matter clarified by further questions put to P.W. 1, nor has it been attempted by the learned Public Prosecutor in the Court of Session; nor the trial Judge chose to be alert in subjecting P.W. 1 to further questioning in the light of this apparent contradictory position found in the evidence of P.W. 1 and Exhibit P-1 as corroborated by the testimony of P.Ws. 5, 6, 7 and 11 who received Exhibits P-1 and P-3. In our view, P.W. 1 was evidently kept under the impression that he was only being questioned about the statement during the inquest and he must have been suddenly taken unawares by dangling Exhibit P-1 before him in the Court of the Committing Magistrate. Otherwise, any other rational explanation is impassible in the context of the evidence of P.Ws. 1, 3, 4, 5, 6, 7, 11 and 12 and the contents of Exhibit P-1. We will examine now how far the conclusion of the trial Judge that Exhibit P-1 was not given by P.W. 1 at about 2-30 A.M. on 7th February, 1969, is sustainable. P.W. 1 states in his evidence that after witnessing this deadly murderous assault on Andar Chettiar, he went along the "mandhai"

shouting and went and reported to Ramiah Chettiar (P.W. 5) and his brother Venkatarama Chettiar (not examined) about the occurrence. This

evidence certainly discloses P.W. 1 as an eye-witness long prior to the recording of Exhibit P-1 at 2-30 A.M. on 7th February, 1969. There is not

even a particle of material in the cross-examination of these witnesses challenging the fact proved in the evidence of P.W. 1. This fact is further

proved and corroborated by the testimony of P.W. 5 who speaks that P.W. 1 came uttering cries and he woke him up. P.W. 1 stated to s P.W. 5

that he and the deceased had gone to their fields and were sitting near the well of Ramaswami Chettiar when accused 1 to 4 came there, cut and

stabbed t the deceased and that P.W. 5 should - come and see. Then P.W. 5 says in his evidence that he woke up his brother, Venkatarama

Chettiar (not examined) who was sleeping in his rice mill nearby. P.W. 1 repeated to Venkatarama Chettiar what he told him. Then the three of

them went to the scene. Again in the course of cross-examination of P.W. 5 this fact has not been challenged. This is at least an hour anterior to the

actual recording of Exhibit P-1 by the brother-in-law of P.W. 7 in the immediate presence of P.W. 7 and it was attested by P.W. 5. This fact

receives further corroboration from the testimony of P.W. 6, thalayati, whose evidence is that at about 1-30 A.M. P.W. 1 was crying "Ayyo" and

coming along. He was crying out that he and the deceased Andar Chettiar were at Ramaswami Chettiar's field adjoining the well and that the

deceased had been cut and killed. There was bright moonlight then. He went and saw the corpse of Andar Chettiar. He then went and informed

the village munsif of what he saw and took P.W. 7 and his nephew or brother-in-law to the place of occurrence taking a hurricane light and his

memo book. P.W. 1 gave a statement against accused 1 to 4 to the Village Munsif. The conduct of P.W. 1 in his shouting stating that the deceased

had been cut and killed would certainly be worthy of belief in the light of his evidence that subsequently a statement against accused 1 to 4 was

given by P.W. 1 to the village munsif. This receives further corroboration from a, contradiction proved from the evidence of P.W. 12 who states

that P.W. 6 stated before him that P.W. 1 was telling to P.W. 5 and his brother aloud that while he and the deceased were at Ramaswami

Chettiar's well, accused 1 to 4 had cut and stabbed the deceased. The evidence of P.W. 6 would corroborate the fact proved by P.W. 1 that he

related the entire occurrence implicating accused 1 to 4 in the deadly assault against Andar Chettiar. This fact again receives corroboration from

the testimony of P.W. 7 who give evidence that P.W. 1 gave him a statement which is Exhibit P-1 attested by P.W. 5. He further stated that at

about 2 O'clock on the night of 6/7th February, 1969, his thalayari P.W. 6 stated to him that he heard the shouts of P.W. 1 that at the time when

he and Andar Chettiar had gone for kaval work in Ramaswami Chettiar's well, Andar Chettiar was attacked and done to death by accused 1 to 4

and the same being stated by P.W. 1 to P.W. 5 and his brother. Fortunately it has been elicited in the cross-examination of P.W. 7 who states that

he stated in Exhibits P-3 and P-4 about P.W. 6. having heard what P.W. 1 stated to P.W. 5 and his brother. Be it remembered that the evidence

of P.W. 11 would make it clear that P.W. 6, appeared at the Police Station of Thiruchuli at 5 A.M. and handed over the carbon copy of Exhibits

P-1 and P-3. He states that he registered a case in Grime No. 14 of 1969, u/s 302, Indian Penal Code. P.W. 11 was not subjected to any cross-

examination that this copy of Exhibit P-1 is not the copy of Exhibit P-1. that was handed over by P.W. 6 at the Police Station. We will later on

deal with the suggestions in regard to Exhibit P-1 at the appropriate place presently. If it is a fact that P.W. 1 came running shouting all the way to

the hotel of P.W. 5 and woke him up and related to him about accused 1 to 4 cutting and stabbing Andar Chettiar - which fact has been

corroborated by the testimony of P.Ws. 5, 6 and 7 and in a sense by P.W. 10 and also by the contents of Exhibit P-1 - is there any

understandable reason why P.W. 1 should have desisted from giving the statement Exhibit P-1 at 2-30 A.M. and postponed the same till 7-30

A.M. until P.W. 12, Circle Inspector, dawned on the scene? We are unable to see any valid reason for P.W. 1 to defer giving the complaint to

P.W. 7 till the next morning. Therefore, we attach absolutely. no importance whatever to the contents of Exhibit D-10. It is interesting to notice

two suggestions put to P.W. 1. One is that P.W. 1 did tell the thalayari P.W. 6 that someone has cut Andar Chettiar and that he may go and see.

This very suggestion furnishes the ground for believing that at that unearthly hour of about 1 A.M. on 7th. February, 1969, the thalayari and P.W. 1

met and talked about this occurrence. The suggestion has been refuted by P.W. 6. The endeavour on the part of the defence was that P.W. 1 did

not know the real assailants. On that basis this suggestion has been put. But P.W. 6 has not been subjected to cross-examination, that P.W. r did

tell him that someone had cut Andar Chettiar and not accused 1 to 4. The defence did not put any suggestion to P.W. 6. The second suggestion

put to P.W. 1 is that he returned after seeing the corpse or that he went with the Police on the morning and had Exhibit P-1 written. In this very

suggestion is implicit that P.W. 1 at least saw the corpse and returned home and there is no reason why P.W. 1 should go without giving complaint

to P.W. 7 if he had returned home after seeing the corpse. It has not been suggested to P.W. 1 that he has no lands and therefore he did not go for

"kaval" work regarding his paddy ripe for harvest. The defence shifted its ground in the course of cross-examination of P.W. 12 when it chose to

suggest that Exhibit P-1 had been obtained only after they reached Thiruchuli in the morning. Specifically we are unable to see any consistency in

the suggestion put to P.Ws. 1, 7, 11 and 12. We are constrained to observe that even the suggestions have not been consistent in respect of the

recording of Exhibit P-1. It has not been suggested to P.W. 1 as to why he was motivated particularly to single out these four accused out of the

community of Thevars for false implication in this heinous crime. It is true, it has been suggested that some persons in the village, out of enmity, had

cut and stabbed the deceased and P.W. 1 did not witness the occurrence. This suggestion has been refuted by P.W. 1. We find no material, to

substantiate this suggestion. In respect of the testimony of P.W. 4 the only suggestion was that he was deposing falsely as he was closely related to

Andar Chettiar. That was the very reason why P.W. 1 would naturally run from the scene of occurrence to narrate the details of the murder to

P.W. 5. It has been suggested to P.W. 5 that he and his brother, Venkatarama Chettiar (not examined) have falsely implicated these accused. This

suggestion has been refuted by P.W. 5. Be it noted that P.W. 1 was not subjected to any cross-examination that at the instance of P.W. 5 and his

brother he implicated the four accused falsely in this crime. Quite inconsistent with at the suggestion put to P.W. 1, it has been suggested to P.W.

6, the thalayari, that Exhibit P-1 was got written in the village on the morning of 7th February, 1969, which has been refuted by him. If P.W. 6 had

delivered a copy Exhibit P-1 at Tiruchuli Police Station at 5 A.M., it is incomprehensible to imagine as to how Exhibit P-1 could have been got

written in the village on the morning on 7th February, 1969. Even P.W. 7 refuted the suggestion that Exhibit P-1 was obtained from P.W. 1 only

after the Police arrived at the scene. We hold that the evidence of P.W. 1 is worthy of total belief and we place unhesitatingly complete reliance on

the testimony of P.W. 1, corroborated by the contents of Exhibit P-1. On the evidence of P.W. 1 alone we are prepared to reverse the findings of

the learned trial Judge and convict the four accused of the offence of murder u/s 302, Indian Penal Code, read with Section 34. Inasmuch as we

have already held that the so-called discrepancies as borne out by Exhibits D-1 to D-10 are of no material consequence, it is sufficient for our

purpose to hold that the evidence of P.W. 1 is candid, natural and convincing. Exhibit P-1 and the contents thereof have got a ring of truth for

P.W. 1 spoke as undoubtedly a real eye-witness to the entire occurrence. The movements of P.W. 5, his brother and P.W. 6, the thalayari,

examined in their natural setting are appropriately convincing and natural in the wake of the report from P.W. 1 about the occurrence. P.Ws. 3 and

4 are undoubtedly owners of the two nanja lands on the eastern side of the scene of the crime and they went when they heard shouts of P.W. 1.

As they moved towards the scene of the crime towards west they saw A-1 to A-4 and they even speak about the attempted conversation with the

four accused. There is absolutely no material for us to distrust the testimony of P.Ws. 3 and 4 who were engaged in the ""kaval"" work in their own

fields and who were aroused from their sleep by the shouts of P.W. 1. Their evidence is that by the time they reached the place of occurrence

Exhibit P-1 was recorded to the dictation of P.W. 1 but there is no cross-examination of these two witnesses in respect of the completion of the

recording of Exhibit P-1 even after the defence succeeded in getting Exhibit D-10 in the course of cross-examination of P.W. 1. We have already

dealt with the extraordinary importance of the fact of P.W. 1 waking up P.W. 5 Ramiah Chettiar and narrating to him that A-1 to A-4 came there,

cut and stabbed the deceased and that P.W. 5 should go and see. Particularly the evidence regarding this fact as spoken to by P.Ws. 1 to 5 goes

unchallenged in cross-examination and this is at least an hour anterior in point of time judged from the various facts and circumstances of the case

as called out from the testimony of P.Ws. 1, 3, 4, 5, 6 and 7. In respect of the acceptance of the testimony of P.W. 6 the learned Counsel for the

accused respondents argued that P.W. 6 is a hostile witness by his evidence relating to his having stated before P.W. 12 that P.W. 1 was telling

P.W. 5 and his brother aloud that while he and the deceased were at Ramaswami Chettiar's well. A-1 to A-4 had cut and stabbed the deceased.

The evidence of P.Ws. 1 and 5 would receive the strongest corroboration from this contradiction marked through the testimony of P.W. 12 when

P.W. 6 has turned hostile. Evidently the vital importance of this fact was realised by the defence and the only way to create doubt was to make

P.W. 6 resile from such a statement. Even assuming for one moment that the evidence of P.W. 6 is not worthy of acceptance, the testimony of

P.W. 1 receives corroboration from the evidence of P.W. 5. But we are unable to see on the basis of any principle of law as to why we should not

choose to act, as we do in this case, on the testimony of P.W. 6. In Ammathayarammal Vs. The Official Assignee, a Division Bench of this Court

consisting of Sir Owen Beasley, C.J., and Cornish, J., the learned Chief Justice considers the position of law and observes as follows:

In Praphullakumar Sarkar v. Emperor ILR (1931) Cal. 1404, this question has been very fully dealt with by a Full Bench of five Judges of that

Court. I have already referred to this case for another purpose. It was there held that the fact that a witness is dealt with u/s 154 of the Indian

Evidence Act, even when under that section he is cross-examined as to credit, in no way warrants a direction to the jury that they are bound in law

to place no reliance on his evidence or that the party who called and cross-examined him, or any other party, can take no advantage from any part

of his evidence and that there is no rule of law that, if a jury thinks that a witness has been discredited on one point, they may not give credit to him

on another. I entirely agree with the decision in this case and with the reasoning in the judgments of Rankin, C.J., and Buckland, J. It is in all cases

a question for the jury or for the Judge in a civil case to decide what weight is to be given to the testimony of a witness so dealt with and I cannot

accede to the contentions put forward by the appellant that a different principle is to be applied in such matters when the testimony is being

considered by a Judge alone. In one case the jury are the Judges of fact and in the other the Judge alone is and it is for the jury in the one case and

the judge in the other to attach such weight as is right to that evidence. In my opinion, therefore, Waller, J., was entitled to accept or reject such

parts of the evidence of the first defendant as he did.

In the light of the position of law in respect of the acceptability of the testimony of a witness treated as hostile, we have no hesitation in acting on

the testimony of P.W. 6. In fact his evidence throughout would sound rather natural and convincing. Further, the evidence of P.W. 6 corroborates

the testimony of P.W. 1 in respect of the anterior narration of the occurrence to P.W. 5 by P.W. 1 and also recording of Exhibit P-1 by 2-30

A.M. on 7th February, 1969. We believe the evidence of P.Ws. 1, 3, 4, 5, 6, 7, 11 and 12 and hold that the four accused committed the murder

of Andar Chettiar on 7th February, 1969 at about 1 A.M. and hold them guilty for an offence u/s 302, Indian Penal Code, read with Section 34.

20. The learned Counsel for the accused-respondents argued that the post-mortem conducted by P.W. 2 over the dead body was at about 4

P.M. P.W. 2 the doctor states that death would have taken place between 18 to 24 hours prior to the postmortem examination. His argument is

that that would place the time of the deadly assault resulting in the death of Andar Chettiar between 4 P.M. and 10 P.M. on the previous night. The

learned trial Judge has not chosen to notice the other important piece of evidence of P.W. 2 to the effect that the death would have occurred four

hours after the deceased taking his last meals. Mr. Santhanam's argument is that had the murder taken place at about 10 P.M., there could not

have been an eye-witness. It may be noticed that the evidence of P.W. 1 is that after taking food in the night (when the people would go to sleep)

P.W. 1 and Andar Chettiar went to the fields for watching the paddy crops. This evidence has not been challenged in cross-examination of P.W. 1

and, therefore, it would follow that P.W. 1 and Andar Chettiar took their meal fairly late in the night, at any rate, at the time when people would go

to sleep and in the context of the other evidence that death would have occurred four hours after the deceased taking his last meal, it would

naturally follow that the approximate time of the death would be 1 A.M. on 7th February, 1969. In the cross-examination of P.W. 2 it has been

elicited that the deceased would have taken his last meal about 3 or 4 hours before his death. This would be in harmony with the fact proved by

the prosecution about the hour of death of Andar Chettiar to be approximately 1 A.M. on 7th February, 1969. We are unable to find any

substance in the argument of the learned Counsel founded on the evidence of P.W. 2 already noticed by us. We reject this argument as containing no substance.

21. The learned Counsel for the accused-respondents (Mr. R. Santhanam) was not enthusiastic or vigorous in respect of inference that ought to be drawn from the undoubted recoveries made in pursuance of the admissible portions of A-1, A-2, A-3 and A-4 marked as Exhibits P-10, P-11, P-12 and P-13 respectively with the result that the recoveries of M.Os. 1, 3, 4, 5 and 2 and the bloodstained clothes of A-2, A-3 and A-4, namely, M.Os. 11, 12 and 13 respectively would be a strong circumstance of the guilt of the accused in the participation of the offence of murder of Andar Chettiar. The learned Counsel stated that the recoveries from these accused of M.Os. 1, 2, 3, 4, 5, 11, 12 and 13 would be tantamount to the proof of moral guilt. We are unable to appreciate the subtleties of moral guilt as contrasted with the legal proof of guilt or conviction of the accused-respondents. We have no hesitation in holding that the recoveries would constitute undoubted proof of the four accused participating in this gruesome crime of the murder of Andar Chettiar.

22. It is also argued by Mr. R. Santhanam that P.W. 1 did not choose to contact any other community man whose house was situated near the mandhai". It is the very case of the accused that P.W. 1 is a Chettiar and therefore his testimony is interested. That is the very reason why we considered the conduct of P.W. 1 to be absolutely natural when he ran to the hotel of P.W. 5 who is another Chettiar and who was awakened by P.W. 1 for his narrating the full details of the occurrence to him at the earliest opportunity. We are unable to find any vitiating circumstance to affect the evidence of P.W. 1 adversely merely by reason of the fact that he did not choose to go to any non-Chettiar resident near the ""mandhai"".

23. We have to see whether the elements of Section 34, Indian Penal Code, have been proved in the context of the murder of Andar Chettiar. The law is stated by the Supreme Court of India by their Lordships of the Supreme Court in Criminal Appeal No. 24 of 1968 dated 24th March, 1970, as follows:

So far as Section 34, Indian Penal Code, is concerned, it embodies the principle of joint liability in the doing of a criminal act, the essence of that

liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application.

We have no hesitation in holding that all the four accused have participated in the commission of the offence in furtherance of the common intention

which can be inferred from the following facts and circumstances. All the four accused do belong to the community of Thevars. At least some of

the relations of some of the accused were aggrieved at the pending civil and criminal proceedings or the past proceedings. There was undoubtedly

a faction between Chettiers and Thevars. The fact that all the four accused were found seated in the mandhai just prior to the occurrence would be

a circumstance showing a pre-concerted plan. This fact has not been challenged in cross-examination. It has not been suggested to P.W. 1 either

that at the time when P.W. 1 and Andar Chettiar set out for their fields and reached the well in Ramaswami Chettiar's land, A-1 to A-4 were not in

the mandhai. Such a suggestion was not forthcoming in the cross-examination of P.W. 1. Then their emergence and appearance at the scene of the

occurrence from behind the thatti near the well in Ramaswami Chettiar's land would also spell out common intention. All the four accused were

armed with lethal weapons and all the four participated in the murderous attack of Andar Chettiar who died instantaneously. All the accused

inflicted cumulatively no less than 13 injuries which have resulted in multiple fractures and at least one of them was a necessarily fatal injury and

another was sufficient in the ordinary course of nature to cause death. All the four accused left the scene of occurrence at one time and proceeded

towards the eastern side when P.Ws. 3 and 4 on hearing the shouts of P.W. 1 proceeded towards the Western side and saw the four accused

armed with the weapons leaving the scene of the crime. They were also arrested by P.W. 12 at one time later on 11th February 1969 at 8 A.M. at

the river bed at Iluppaiyur. All these facts and circumstances would constitute indubitable proof of the common intention which actuated the four

accused to commit the murder of Andar Chettiar. We reverse the finding of the learned trial Judge and we set aside the order of acquittal of the

four accused. We convict them of the offence of murder u/s 302, Indian Penal Code, read with Section 34, Indian Penal Code. Normally in an

offence of this gravity perpetrated as a result of pre-planned deliberation we would not be hesitating to award death sentence to each of the

accused; but inasmuch as this is an appeal against acquittal, we award the sentence of life imprisonment against each of the accused. The appeal

filed by the State is allowed.

24. In view of our Judgment in Criminal Appeal No. 568 of 1970, no orders are necessary in the Revision Petition filed by Mr. C.K.

Venkatanarasimhan.