IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.9.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

CRIMINAL APPEAL No.1342 OF 2004

1.Yuvaraj
2.Kumar @ Kutty ... Appellants/Accused

Vs.

State, represented by
The Inspector of Police,
R-6 Kumaran Nagar Police Station,
Chennai-600083. ... Respondent/Complainant

* * *

Criminal Appeal preferred under Section 374 of the Code of Criminal Procedure as against the judgment of conviction dated 5.11.2004 rendered in Sessions Case No.621 of 2004 by the learned Additional Sessions Judge (Fast Track Court No.I), Chennai.

* * *

For Appellant No.1 : Mr.S.Jeyakumar

For Appellant No.2 : Mr.V.Madhavan

For Respondent : Mr.C.T.Selvam, A.P.P.

* * *

JUDGMENT

M.THANIKACHALAM, J.

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The accused in Sessions Case No.621 of 2004, on the file of the Additional Sessions Judge (Fast Track Court No.I), Chennai, unable to resist the prosecution case successfully, received conviction and sentence and the result is this criminal appeal.

2. The respondent/police brought the accused/appellants before the trial Court, to face the charge under Section 302 r/w.34 IPC, on the ground that both of them have jointly attacked the deceased Srinivasan due to previous enmity, on 27.8.2004 at about 7.45 p.m.

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in his house, thereby they have terminated the life of Srinivasan prematurely, for which they should be punished under Section 302 r/w.34 IPC.

3. The learned Sessions Judge, satisfying himself to proceed further, framed charges, questioned, which was denied by both the accused, resulting trial, by the examination of witnesses and marking documents and material objects.

4. The evaluation of the materials, produced by the prosecution, brought to surface, according to the learned Sessions Judge, that the charge against the accused is proved, beyond all reasonable doubt, and in this view, he had convicted both the accused under Section 302 r/w.34 IPC, slapping the sentence on them, to undergo life imprisonment and also to pay a fine of Rs.10,000/= each in default, to undergo RI for two years, which is under challenge in this criminal appeal.

5. The brief facts, necessary to dispose of the appeal:

a) the first accused, by name Yuvaraj, is the second son of the deceased Srinivasan. The second accused, by name Kumar @ Kutty is the friend of the first accused. Srinivasan owned a house property in Ellaiamman Koil street, West Mambalam, Chennai-33 where the incident had taken place, which was sold by his wife and sons to one Sudhakaran, as seen from Ex.D.1 sale deed dated 24.11.2003. Even prior to the disposal of the property, there was dispute between the father and sons, in maintaining the house, collecting the rents and enjoying the same. The father, apprehending danger to his property as well as to his person, preferred complaints to the police under Exs.P.21 and P.24, which were enquired and closed under Exs.P.22 and P.25, as spoken to by P.Ws.11 and 13, considering the close relationship between the parties and nature of dispute, viz. civil. Because of the property dispute, there was enmity between father and son.

b) P.Ws.1 to 3 are the tenants of the disputed property. The son/A.1, after the disposal of the property along with others, even prevented the tenants or requested them not to pay the rents to the father. When the same was informed by the tenants (P.Ws.1 and 3) to the deceased, he requested them to pay the rents to him, since he is the owner of the property, which caused more grievance, aggravating the enmity. Therefore, the first accused had decided to commit the murder of his father, to eradicate the problem once for all, with the aid of the second accused.

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c) Both the accused were seen by P.Ws.5 and 6 near the building, before they went to the building of the deceased at about 7.00 p.m. or so.

d) On 27.8.2004, at about 7.45 p.m., when the deceased was in his room, both the accused went there and assaulted Srinivasan, indiscriminately, causing cut injuries, using the weapons-M.Os.1 and 11. The deceased shouted for his life, ended in vain. But, the sound was heard by P.W.2, who was living just opposite to the room, where the incident had taken place. Immediately, on hearing the cry of a dying man, she raised alarm, which attracted P.Ws.1 and 3, who are having auto workshop and tailoring shop in the same building, on the Eastern side. When P.Ws.1 and 3 rushed to the scene of crime, they have seen both the accused running away from the scene of crime and one accused, viz. A.2, armed with knife-M.O.1.

e) When P.Ws.1 and 3, peeped into the room of the deceased, they have seen Srinivasan in a pool of blood, died. Thereafter, ascertaining the name of the second accused also, P.Ws.1 and 3 went to the respondent Police Station where P.W.12 was working as the Sub Inspector of Police.

f) P.W.1 preferred the complaint-Ex.P.1 and on receipt of the same, P.W.12, registered the case in Crime No.693/2004 under Section 302 IPC, for which he prepared Ex.P.23 printed FIR, which was sent to the Court concerned through H.C.7571, marking a copy to the Inspector of Police, then helping him in the investigation.

g) On receipt of the copy of FIR, P.W.14-the Inspector of Police, took the case for investigation, reached the spot at about 20.30 hours, where he has noticed the body of Srinivasan, which was photographed with the help of the Photographer under Ex.P.13. Thereafter, in the presence of the witnesses-P.W.8 and others, P.W.14 prepared Observation Mahazar-Ex.P.8, as well as the sketch-Ex.P.26. From the scene of crime, P.W.14 also recovered material objects-M.Os.2 to 11, under Ex.P.9, in the presence of the same witnesses.

h) In order to ascertain the cause of death, prima facie, as mandated under law, P.W.14 conducted inquest over the body of Srinivasan, on the same day between 22.15 and 23.45 hours and the results are incorporated in the Inquest Report-Ex.P.27.

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i) At the request of the Investigating Officer, the Doctor-P.W.10 conducted autopsy over the body of Srinivasan on 29.8.2004 at 12.50 p.m. The autopsy conducted by P.W.10, including dissection of the body, revealed the following injuries, as noted in Ex.P.20 Post-Mortem Certificate:

"1. Reddish Brown abrasions:

2 x 1 cms. over front of left clavicle
6 x 0.3 cms. seen over front of upper part of right chest

1 x 0.5 cms. seen over back of right elbow.

4 x 0.5 cms. seen over front of middle of right leg.

2 x 0.3 cms. seen over back of upper part of right index finger.

2. An incised wound 12 x 1 cms x bone deep over right side of face extending from outer aspect of right eye to right ear lobe. Cut fracture seen in the outer aspect of right orbit.
3. An incised wound 3 x 2 cms. x Skin deep over right side of face over the cheek with beveling of skin.
4. An incised wound 5 x 1 cms x bone deep over right side of chin. The underlying mandible shows a superficial cut fracture.
5. An oblique chop wound 9 x 5 x 2 cms. over front of upper part of neck with tailing over right side of neck. The underlying neck muscles and thyroid cartilage partially cut.
6. An incised wound 6 x 3 x 3.5 cms. over right side of lower part of neck. The underlying neck muscles, neck veins and arteries of right side of neck found severed. Underlying cervical rib found partly cut and the underlying spinal cord also found partly severed.
7. An incised wound 6 x 1 cms. x skin deep over front of right shoulder with tailing upwards.
8. An incised wound 6 x 1.5 cms x muscle deep on top of right shoulder with tailing medially.
9. An incised wound 5 x 2 cms x muscle deep on back of right shoulder.
10. An incised wound 1.5 x 0.5 x 0.5 cms on back of right index finger near the nuckle.
11. An incised wound 3 x 1 cms x skin deep over back of middle of right hand with tailing backwards.

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12. An incised wound 6 x 1 cms x bone deep over outer aspect of back of right hand and back of right little finger exposing the underlying severed muscles, tendons and bones.
13. An incised wound 3 x 0.5 x 0.5 cms. seen on back of left shoulder.
14. An oblique incised wound 5 x 2.5 cms. x bone deep over back of left wrist, exposing the underlying severed muscles, tendons and vessels.
15. An incised wound 7 x 1 cms x bone deep on back of left x middle finger up to the base.
16. An incised wound 4 x 1.5 cms. x bone deep on back of left side of neck with cut fracture over the underlying bone.
17. An incised wound 3 x 1 x 1 cms. on back of right side of neck exposing the underlying severed neck muscles."

The Doctor opined that the deceased would appear to have died of "shock and haemorrhage due to multiple injuries."

j) Thereafter, in continuation of the investigation, P.W.14 examined P.Ws.1 to 3, 6, 8 and other witnesses, recorded their statements, which were submitted to the Court, having jurisdiction.

k) On 28.8.2004 and 29.8.2004, P.W.14 had examined some other witnesses and during the further investigation, he came to know that the accused have surrendered before the Judicial Magistrate, Ambattur on 30.8.2004. Thereafter, the Investigating Officer, filed an application before the Judicial Magistrate, took them into police custody and examined them on 10.9.2004 in the presence of P.W.7 and others. The accused voluntarily, on their own, confessed to the Investigating Officer that they will take him to the place where the weapon is concealed.

l) Pursuant to the confession-Ex.P.6, both the accused took P.Ws.7, 14 and others to a shed nearby a house bearing Door No.3/4, Arunachalam First Street, Senthamil Nagar, Ramapuram, from where they took out a knife-M.O.1 and handed over the same to the Investigating Officer, which was recovered by him under Ex.P.7.

m) In order to ensure that the witnesses who have been examined, should not derail, the Investigating Officer requested the Judicial Magistrate, under Ex.P.11, to record their statements under Section 164 Cr.P.C., which was complied with by P.W.9, recording the statements of the witnesses, as seen from Exs.P.12 to P.18.

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n) As requested by the Investigating Officer, at the instance of the Court, under Ex.P.2, P.W.4 examined the material objects-M.Os.1 to 11 and also ascertained the blood group of the deceased as 'A'. The Forensic Department officials had also noticed 'A' group blood in M.O.1, as disclosed by Ex.P.4. The blood sample of the deceased, which was sent from the hospital was examined, which also revealed the blood group as 'A', as indicated in Ex.P.5.

o) Thus collecting the materials, when P.W.14 analysed the same, it revealed that both the accused should have committed the offence, due to previous property dispute and in this view, a final report came to be filed, before the 23rd Metropolitan Magistrate, Chennai, who committed the case to the Sessions Court, leading to trial, ending in conviction, after the examination of the accused also under Section 313 Cr.P.C., as mandated, which is impugned in this appeal.

6. Heard Mr.S.Jeyakumar, the learned counsel for Appellant No.1, Mr.V.Madhavan, the learned counsel for the Appellant No.2 and Mr.C.T.Selvam, the learned Additional Public Prosecutor for the respondent/State.

7. There is no dispute that in an incident which took place on 27.8.2004, at about 7.45 p.m., in a room situated in D.No.39, Ellaiamman Koil Street, West Mambalam, Chennai, Srinivasan/the father of the first accused, was murdered. This fact was intimated to the police, resulting investigation. During investigation, the cause of death of Srinivasan was ascertained scientifically, by conducting autopsy, as spoken to by P.W.10. The Doctor, who conducted the autopsy over the body of Srinivasan on 29.8.2004, at about 12.50 p.m., had noticed as many as 17 injuries of various dimensions, as described by us supra, which should have been caused by deadly weapons, such as knives, since all the wounds are either incised, chop wound or cut injury etc. The number of injuries inflicted over the body of Srinivasan show the velocity of the attack and the intention of the assailants viz. that there should be no chance for the deceased to escape from the attack. More or less, by chopping the deceased, causing multifarious injuries, it seems, the life of Srinivasan was prematurely terminated at the spot.

8. The Doctor, who conducted the Post-Mortem also certifies that Srinivasan died of shock and haemorrhage due to multiple injuries. The injuries noted by the Doctor, cause of death ascertained by him, exposed before the Court, are not challenged by the defence, when he was in the box as P.W.10. An attempt was made in the cross-examination, to say, as if treatments were given immediately, there might have been a possibility to save the life,

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which cannot be inferred from the injuries sustained by him, which had caused profused bleedings, giving no chance for breathing any more. Therefore, accepting the oral evidence of P.W.10 and the Post-Mortem certificate, where the cause for death is specifically assigned, we conclude that this is a case of homicide, should come within the meaning of 'murder'. Therefore, we have to see, whether the accused had caused the injuries over the body of Srinivasan, which should have terminated his life. If the prosecution makes out a case that both the accused have inflicted those injuries, with common intention and common object, then, certainly, they have to answer the penal provisions of Section 302 r/w.34 IPC.

9. Mr.S.Jeyakumar, the learned counsel appearing for the first appellant and Mr.V.Madhavan, the learned counsel appearing for the second appellant attempt to assail the conviction and sentence of the appellants inter alia on the following grounds, viz.:

i) that the motive alleged, for the commission of the offence, is not at all proved;
ii) that there is inordinate, indelible and unexplained delay in forwarding the printed FIR to the Magistrate concerned, which should raise unquestionable doubt, warranting the benefits of doubt be given to the accused;
iii) that deliberation and consultation should have taken place which caused delay and in that process alone, the names of the appellants are roped in the FIR, including the name of the second appellant/A.2, despite the fact, he is not known to P.W.1, as admitted by him;
iv) that the evidence given by P.Ws.1 to 3 are undependable and not trustworthy, because of the inbuilt contradictions and inherent improbabilities;
v) that there are innumerable and unpardonable lapses committed by the Investigating Officer, while conducting the so-called investigation, thereby spontaneous doubts have arisen and its benefit should go to the accused, in addition to some other minor points, in support of the above contentions which we will discuss then and there.

10. We have heard the learned Additional Public Prosecutor on the above points, who had supported the case of the prosecution, seeking aid from the reasonings assigned by the learned trial Judge.

11. Admittedly, there is no direct eye-witness to prove the actual assault, in the sense, seeing the actual attack and the prosecution mainly relies upon the circumstantial evidence to prove the guilt of the accused. The circumstances are

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(a) motive and the intention to commit the murder because of the property dispute;
(b) the witnesses seeing the accused, just prior to the incident nearby the building, where the incident had taken place;
(c) the witnesses seeing the accused, viz. after the incident coming out from the room of the deceased with bloodstained dresses as well as a knife;
(d) the confession of the accused (A.1) leading to recovery of M.O.1, which does contain the blood group of the deceased and
(e) prompt lodging of FIR wherein names of the accused are given, in addition to other attending circumstances in support of the above main circumstances.

12. Law recognises circumstantial evidence, to record a conviction, since men may lie, but circumstances never. Therefore, when the prosecution relies on circumstantial evidence, the circumstances, so relied on, must be very strong, cogent, connecting with each other, not giving even a slightest doubt to snap the same, targeting or pointing the accused alone, ruling out the possibility or probability of any other persons involvement in the offence. It is the universal law, nothing takes place without cause of action. In this view, motive also takes some pre-dominant role in the case of circumstantial evidence. Therefore, we will deal with the motive part, first.

13. Ex.D.1 is the sale deed executed by the sons of the deceased and wife Kuppammal in favour of Sudhakaran. In Ex.D.1 itself, it is stated that the property originally belonged to Kuppammal and she had settled the same in favour of her husband Srinivasan, under a settlement deed dated 14.2.1980. It also says, the said settlement deed was cancelled under a cancellation deed dated 7.8.2003 and Kuppammal executed two settlement deeds dated 13.8.2003 in favour of her two sons. It is the case of the prosecution that the property belonged to the deceased Srinivasan, which is, in a way, admitted in the sale deed itself, since the execution of the settlement deed by Kuppammal to her husband Srinivasan is admitted. When an irrevocable settlement deed has been executed, it is not ordinarily liable to be cancelled by mere executing a cancellation deed and if at all, it could be cancelled under due process of law on the grounds of misrepresentation, coercion, fraud etc., which we are not much concerned in this case.

14. By Ex.D.1 itself, it is prima facie, made out that there was some dispute between Srinivasan on one hand and his sons and wife on the other hand, claiming title over the disputed property, wherein the deceased was also living in a room, though others had

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vacated the premises after the sale. On 6.4.2003, as evidenced by Ex.P.21, which is spoken to by P.W.11, the deceased Srinivasan had preferred a complaint against his sons and wife, accusing them that they are conspiring together to murder him and further apprehending danger even to his life at any time, requesting to take not only appropriate action but also to provide protection. The complaint was registered as C.S.R. and enquired, which is evident from the oral evidence of P.W.11. After enquiry, on the basis of the undertaking given by the parties, that they will not cause any further problems, as well as considering the near relationship, further action was dropped, closing the petition on 12.4.2003. Thus, it is seen, even in the month of April, 2003, the deceased had the apprehension that his sons may cause injuries to him, in order to eradicate even from the world, which proved to be true at later stage, which we will discuss infra.

15. Thereafter, on 25.3.2004, as seen from Ex.P.24 and as spoken to by P.W.13, Srinivasan preferred a complaint against his sons accusing them, that they have damaged the properties, for which action should be taken. After enquiry, as seen from Ex.P.25, because of the relationship or the assurance given by the sons of deceased, the same was closed as proved by Ex.P.25. From the above documents, it is evident that there was continuous dispute between the father and sons.

16. The learned counsel appearing for the accused/appellants would submit that the above said documents viz. Exs.P.21, P.22, P.24 and P.25 were prepared subsequently, for the occasion to prove the alleged motive, which were not in existence as dated and therefore, on that basis, to add strength to the circumstantial evidence, this alleged motive cannot be taken into consideration. In support of the above submission, our attention was drawn to the non-sealing of the documents by the Court. But, by going through the cross-examination of P.Ws.11 and 13, we are unable to subscribe our view to the said submission and we should disagree with the learned counsel for the appellants since in cross-examination, it is admitted.

17. Opportunity was given to cross-examine P.Ws.11 and 13. If Exs.P.21, P.22, P.24 and P.25 are not the genuine documents or prepared for the occasion, the documents should have challenged at the time of the cross-examination, for which alone opportunities are given. The answers elicited from the mouth of P.W.11 during the cross-examination, would suggest that the complaints given by the father is admitted. It is suggested to P.W.11 that the complaint was given only for the purpose of evicting them from the house, which reads in Tamil:

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"இந்த பகார் மனு அவர்களை வீட்டிலிருந்து காலி செய்ய வேண்டும் என்ற நோக்கத்தோடு கொடுக்கப்பட்டதாகச் சொன்னால் சரிதான்" "

This would suggest that the complaint was given by Srinivasan whether the allegations therein are true or not. Nowhere it is suggested even that Srinivasan has not given any such complaint, Ex.P.21, dated 6.4.2003. In the same manner, when P.W.13 has deposed, preferring Ex.P.24 complaint as per the date, it was not challenged. Therefore, accepting these documents that they should have come into existence on the dates mentioned therein, we are constrained to hold, on the basis of the averments available therein, that there was dispute between father and sons regarding the enjoyment of the property, which was subsequently sold. This conclusion is fortified by the oral evidence of P.Ws.1 and 3 also.

18. Section 155 of the Indian Evidence Act catalogues on what grounds, the credibility of a witness could be impeached as follows:

> "The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:
>
> (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
> ...
> (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

19. A careful reading of the cross-examination of the witnesses, by the defence, makes it crystal clear that they have not even denied the case spoken to by P.Ws.1 to 3, suggestively also, to some extent, which we will discuss then and there, depending upon the occasion. P.Ws.1 and 3 have deposed about the property dispute and the frequent quarrel between father and sons which are not denied positively, though P.W.1 was questioned whether he knew the complaint given by Srinivasan to R-6 Kumaran Nagar Police Station. Under the above said circumstances, if we read the oral evidence of P.Ws.1 and 3, coupled with the documents mentioned above, which are proved by the examination of P.Ws.11 and 13, the only irresistible conclusion that could be drawn by the Court is, that there was motive for the son/A.1 to commit patricide, because of the enmity, which had arisen due to property dispute. We are fully conscious of the law that mere motive alone is not sufficient to rope in a person as culprit, unless it is proved that as per the motive, the person acted and committed the offence and in this view, we have to see the role played by the accused in the alleged incident.

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20. The main thrust of the learned counsel for the appellants/accused in this case is that there is inordinate and unexplained delay, in forwarding the printed FIR to the Judicial Magistrate and the non-explanation should lead to the only conclusion, that the complaint also should have been prepared after deliberations and that is why, the delay could have been caused. It is the further submission that since there was no FIR, followed by registration of a case, no particulars are noted in the inquest report and in this view, it should be held, case was registered later, thereby causing delay in sending the FIR to the Court also, in the meantime fixing the accused.

21. The incident took place on 27.8.2004 at 7.45 p.m., as per the case of the prosecution. As per the evidence given by P.W.12, the complaint was received on the same day at about 8.15 p.m., on which basis, the case has been registered under Ex.P.23-printed FIR. As seen from Ex.P.23, it reached the hands of the concerned Magistrate on 28.8.2004 at 1.00 p.m. (13.00 hours). Thus, it is seen, roughly there is a delay of 17.15 hours. This delay has not been explained, either by P.W.12 or by P.W.14. No suggestion also has been put to them, as if no case has been registered till inquest, thereby giving chance for them to explain the delay. P.W.12 would state that immediately after registering the case, Ex.P.23 was sent to the Court through H.C.7571, who has not been examined. Taking advantage of this delay, which is not explained in explicit terms, the learned counsel for the appellants/accused would submit that after deliberations and consultations, the names of the accused were introduced in the FIR, which should create a doubt about the genesis of the case itself and therefore, the benefit of doubt should be extended to the accused, as per the basic jurisprudence of criminal law. In support of the above submission, the learned counsel also invited our attention to the decisions of the Apex Court in THANEDAR SINGH vs. STATE OF M.P. [(2002) SCC (Cri) 153] and RAJEEVAN AND ANOTHER vs. STATE OF KERALA [(2003) 3 SCC 355]. As an answer to the above said submissions, the learned Additional Public Prosecutor invited our attention to the decisions of the Apex Court in RAVI KUMAR vs. STATE OF PUNJAB [(2006) 1 SCC (Cri) 738] and SUNIL KUMAR AND ANOTHER vs. STATE OF RAJASTHAN [(2005) 9 SCC 283].

22. In THANEDAR SINGH vs. STATE OF M.P. [(2002) SCC (Cri) 153], the incident had taken place on the night of May 18/19, 1982, whereas FIR was received by the Court on 21.5.1982 i.e. roughly after three days. It is further seen by the careful reading of the judgment, an opportunity was given to the prosecution to explain the delay, but not utilised, by producing the original record of the Police Station, relating to the receipt and dispatch of the FIR. Further, it was specifically suggested to the SHO concerned, that

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FIR was prepared 2 or 3 days after the occurrence, though denied. In the inquest report also, Crime Number/FIR Number was not noted. Taking the above circumstances into account, it is held by the Apex Court that 'the circumstances, brought to surface, would support the defence version that FIR, in which the names of the accused were mentioned, would have come into existence much later, thereby creating a doubt, to doubt about the genesis or the origin of the case itself'. Quoting the earlier decisions in MEHARAJ SINGH vs. STATE OF U.P. [(1994) 5 SCC 188] and SHIV RAM vs. STATE OF U.P. [(1998) 1 SCC 149], the Apex Court has noted

> "No broad proposition can be said to have been enunciated in that later case that inordinate and unexplained delay in sending the FIR to the Magistrate would be an immaterial factor liable to be ignored altogether."

Thus showing, if the delay is inordinate, it should be explained either by letting in direct evidence or establishing or explaining the circumstances for the delay.

23. In the second case in RAJEEVAN AND ANOTHER vs. STATE OF KERALA [(2003) 3 SCC 355], there was delay, not only in lodging the FIR, but also there was a delay in forwarding the FIR to the Magistrate, which was not satisfactorily explained. Therefore, the Apex Court, reiterating the law already declared, held:

> "The delayed filing of FIR and its consequences were discussed in Thulia Kali V. State of T.N. (1972) 3 SCC 393) wherein the Supreme Court observed that the delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. It was further stated that 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. The delay of 12 hours in filing the FIR in the instant case irrespective of the fact that the police station is situated only at a distance of 100 metres from the spot of incident is another factor sufficient to doubt the genuineness of the FIR."

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It is also further observed, discussing the evidence,

> "... the possibility of subsequent implication of the appellants as a result of an afterthought, may be due to political bitterness, cannot be ruled out."

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24. In the case involved in the above decision, the Sub Inspector of Police, reached the spot within half-an-hour, had definite information and details of the incident, but FIR was not registered, probably on the ground that the names of the assailants were not known. It is also noticed about the availability of the blank-sheets in the counterfoil of the FIR, thereby creating indelible doubt. On that basis alone, it seems to us, the Apex Court has observed that the delay should be explained, if not explained there is every possibility to doubt about the FIR, as well as the genesis of the case itself.

25. In RAVI KUMAR vs. STATE OF PUNJAB [(2006) 1 SCC (Cri) 738], the Apex Court has observed that the delay itself is not fatal and if there was no explanation for the delay, that would put the Court on guard, requiring it to minutely examine the prosecution version, further observing that the delay, by itself, would not render the entire prosecution case doubtful. In Paragraph No.16 of the judgment it is held:

> "Sending the copy of the special report to the Magistrate as required under Section 157 CrPC is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of he FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 CrPC is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not."

26. In the case involved in SUNIL KUMAR AND ANOTHER vs. STATE OF RAJASTHAN [(2005) 9 SCC 283], more or less the same argument was advanced, questioning the delay in forwarding the FIR to the Judicial Magistrate, thereby attempting to create a doubt, even at the time of inquest or the commencement of the investigation, no FIR was in existence. It seems, for the above said argument, no material was made available. Considering this aspect, as well as the repeated assertion of the Apex Court in all the cases, more or less, that whenever there is some delay in forwarding the FIR to the

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Magistrate concerned, the case of the prosecution becomes unreliable, does not deserve acceptance and it all depends upon the facts of the each case. Thus considering, in paragraph No.13 it is held:

> "Great stress was laid on the alleged delay in dispatch of the FIR to the Ilaka Magistrate. FIR was recorded on 29.10.1999 at about 11.00 a.m. and reached the Magistrate on 30.10.1999 at about 12 noon. It cannot be laid down as a rule of universal application that whenever there is some delay in sending the FIR to the Magistrate concerned, the prosecution version becomes unreliable. It would depend upon the facts of each case. In the instant case, as appears from the records the investigation was taken up immediately and certain steps in investigation were taken. Therefore, the plea that there was no FIR in existence at the relevant time has no substance. Additionally, no question was asked of the investigating officer as to the reason for the alleged delayed dispatch of the FIR. Had this been done, the investigating officer could have explained the circumstances. That having not been done, no adverse inference can be drawn."

27. The delay in sending the statements recorded also was considered by the Apex Court in the same judgment, as seen from Paragraph No.14, not drawing any adverse inference. In the case on hand also, no attempt was made, to seek any explanation from the Investigating Officer or from any other witness, how the delay had occurred. If, as observed by the Apex Court, opportunities had been given, the witnesses would have explained the delay and in the absence of such opportunity, the mere delay of 17.15 hours in forwarding the FIR to the Magistrate, cannot be magnified that too, considering the distance between the scene of crime and the police station and from police station to the Court as well as the night hours. It would have been better, if the person, who carried the FIR to the Judicial Magistrate, had been examined to avoid this comment. For the non-examination alone, considering the facts and circumstances of the case, we are unable to draw any adverse inference, considering the delay alone and the delay in this case could be explained from the circumstances available.

28. The incident took place at night hours. Immediately, the FIR was lodged, not challenged when the witnesses spoken about the same, though it was challenged in the arguments, followed by the registration of the case, as spoken to by the Investigating Officer, investigation commenced, not challenged before the trial Court, requesting the learned trial Judge to send for the case diary, to find out the lapses, now sought to be introduced, to doubt about the genesis of the case. After the investigation, when other documents

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are ready, it might have been dispatched forthwith and Magistrate should have also received all the documents at the same time, as seen from the endorsement of the Magistrate. Thus considering the fact, the investigation had already commenced, we are of the firm and considered opinion that FIR was very well available at the time of the inquest and the crime number or other details are not noted in the inquest report will not eclipse the evidentiary value of the FIR, as ruled by the Courts also.

29. From the above Rulings, it is clear that only on the basis of the alleged delay, which is not explained, a case cannot be thrown out unceremoniously, doubting about the genesis of the case, as if concocted that too when there is motive for the same, even suggestively, if the same is otherwise acceptable on the basis of the evidence adduced.

30. What is the 'reasonable doubt' is explained in SUCHA SINGH vs. STATE OF PUNJAB (2003 SCC (Cri) 1697)] by the Honourable Apex Court as under:

> "A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Vague hunches cannot take the place of judicial evaluation. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth."

Having the above principles in mind, now we have to see whether, by the delay in forwarding the FIR, assuming it is not explained, can we doubt about the genesis of the FIR/complaint in this case.

31. Opportunities are given to the defence/accused to cross-examine the witnesses and the purpose is to shatter the same, if possible, or to make it disbelieved, as contemplated under Section 155 of the Evidence Act. Without the base of evidence, the argument of the learned counsel for the accused alone will not serve the purpose, to doubt the evidence adduced by the witnesses. In the case on hand, admittedly, P.Ws.1 to 3 were residing or having their shops in the same building. No infirmity of any kind and no motive of any nature are suggested to P.Ws.1 to 3, why they should favour the prosecution, disfavour the defence, giving false testimony, which they have not seen. In the absence of such materials, even by

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way of suggestion, the normal rule should be, that the evidence given by P.Ws.1 to 3, if acceptable otherwise, should be accepted and acted upon.

32. By going through the cross-examination of P.Ws.1 and 3, including P.W.2, we are unable to find any suggestion, for giving false evidence, preferring the prosecution, adverse to the accused, except a formal suggestion that they are deposing falsely because of the pressure exerted by the police, which we are unable to accept. P.W.1 has categorically deposed that after ascertaining the death of Srinivasan, on hearing the noise of P.W.2, then reaching the scene of crime, he preferred a complaint, going to the Police Station along with P.W.3. The complaint spoken to by P.W.1, viz. Ex.P.1, was received by P.W.12 and a case has been registered at about 20.15 hours on 27.8.2004, thereby showing there is absolutely no delay. But, the same is criticised otherwise, arguing how is it possible to register the case within the short time and how is it possible for the Investigating Officer to come to the place so quickly, to commence the investigation. The answer is available in Sucha Singh case. Further, it is not necessary for the prosecution to answer all the questions or hypothesis projected by the defence, if it is shown, otherwise dependable and correct. When P.W.1 has spoken about his preferring the complaint, it is not even suggested to him that it was not lodged on 27.8.2004, at about 8.15 p.m., whereas this was received or recorded from him only after inquest and other formalities are over, fixing the accused on 27.8.2004 at later point of time. When P.W.3 has given evidence, that he along with P.W.1 went to the police station and gave the complaint, it is also not suggested to him that Ex.P.1 was not given on 27.8.2004 at 20.15 hours. P.W.12 has spoken about the receipt of Ex.P.1, time etc. Only to him it was suggested, that the complaint was prepared as per the instructions given by the Inspector of Police, after the preliminary enquiry is over, probably fixing the accused, for which we are unable to find any supporting evidence.

33. On the basis of Ex.P.1, a case came to be registered under Section 302 IPC. In Ex.P.1, the name of the second accused also is given. P.W.1, during the cross-examination, admits, he did not know the second accused prior to the incident. Stray answer was elicited from P.W.1, as if Srinivasan was alive, when they left the scene of crime, to prefer a complaint. On the basis of the above answers given by P.W.1, an attempt was made, to say that if Ex.P.1 had been registered at 20.15 hours, there is no possibility to register a case under Section 302 IPC. The above said submission is made, in our considered opinion, without reading the entire evidence and without understanding how the evidence given by a witness should be appreciated in its proper perspective. It is well settled law that when the Courts appreciate and apprise the evidence of a witness, it should be read as a whole and picking or choosing a particular line

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alone and giving different meaning should be avoided. P.W.1 repeatedly said that when he left the scene of crime, to prefer a complaint to the police station, Srinivasan died and the relevant portion in his deposition reads:

> "அப்போது இரத்தக் காயம் பட்ட சீனிவாசன் இறந்து விட்டார். எனவே, ருது சம்பந்தமாக காவல் நிலையத்தில் நான் ப,கார் கொடுத்தேன்."

In the cross-examination also, he has reiterated, that when he and Kesavan (P.W.3) went to the room of the deceased, Srinivasan died and the relevant portion in Tamil reads:

> "சீனிவாசன் அறை அப்போது திறந்திருந்தது. நான் பார்க்கும் போது சீனிவாசன் இறந்து விட்டார்."

34. But, it seems, repeatedly, a question was put to the witness, whether Srinivasan was dead or he was in an unconscious state and under this context, P.W.1 has stated that he was unable to say, whether Srinivasan died or he was unconscious when he saw him. This stray answer, in our opinion, certainly, had no power to eclipse the previous evidence given by him, where he was definite and certain about the death of Srinivasan, which he reported to the police under Ex.P.1 also, resulting registration of the case under Section 302 IPC. Therefore, we are unable to entertain any doubt, as if there was no possibility to register a case under Section 302 IPC or since FIR was prepared at later point of time, case was registered under Section 302 IPC. In this context, we have to remember, what is a 'reasonable doubt'. As held in Sucha Singh case, quoted above, a doubt must be reasonable and it should not be exaggerated, as clarified in the same judgment as follows:

> "Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law."

Therefore, a fanciful doubt, as claimed, to make a crack in the prosecution case, if possible, cannot be allowed to be entertained.

35. In Ex.P.1, the name of the second accused also does find a place. Guardedly it is said, in Ex.P.1 itself, that P.W.1 ascertained the name of second accused, after enquiry, though the kind of enquiry conducted is not detailed. P.W.3 also accompanied P.W.1 to the police station. True, P.W.1 said that second accused is not known to him prior to the incident. But, the fact remains, he had seen two persons, one is very well known, viz. A.1. P.W.3, who

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was also present, when both the accused ran from the scene of crime, would state that the second accused was residing in the same building, as tenant, about 2 or 3 years ago, thereby making it clear that the second accused is also known to him, though not to P.W.1 and he must have acquaintance with the first accused, the son of the deceased. P.W.3, though has not stated in the examination-in-chief, about the living of second accused in the disputed building, it was elicited only during the cross-examination and having elicited, it is not even denied, suggestively also, that he is giving false evidence to rope in second accused. On the other hand, a suggestion was put to him, that he has not stated so, while giving the statement under Section 161 Cr.P.C., before the police, forgetting the fact that the answers elicited during the cross-examination will not find place in 161 Cr.P.C. statement and therefore, the non-mentioning of certain particulars, which came to surface during the cross-examination, that too, at the instance of the accused, will not be fatal to disbelieve or impeach the credibility of the witnesses. In this view, accepting the answers elicited during the cross-examination of P.W.3, about the identity of A.2, we are inclined to conclude, that at the time of preferring Ex.P.1 complaint itself, both the accused were known to at least P.W.3 and on the information furnished by P.W.3, regarding A.2, P.W.1 should have preferred the complaint, naming both the accused, in which we are unable to entertain any doubt, so as to give the benefit of doubt to A.2 at least.

36. Section 174 Cr.P.C. contemplates, inquest in the presence of two or more respectable inhabitants of the neighborhood and to draw up a report of the apparent cause of death, describing wounds, fractures, bruises and other marks of injury as may be found on the body, stating in what manner or by what weapon or instrument such marks appear to have been inflicted. Section does not say that the inquest report shall contain the crime number, accused name, name of the eye-witnesses etc. However, the learned counsel appearing for the appellants, drawing our attention to Thanedar Singh case (supra), would submit that in the inquest report also, the details of FIR and the gist of the evidence recorded during the inquest, should be reflected and the absence of those details should be construed, that the prosecution story was still in an embryo state, not given any shape and in that case, the FIR came to be recorded at a later point of time, after due deliberations, thereby giving a chance to draw an inference, that the FIR must be ante-timed and had not been recorded till the inquest proceedings were over. In the above Ruling, reaffirming the decision in MEHARAJ SINGH vs. STATE OF U.P. [(1994) 5 SCC 188], it is held:

> "Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the

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> FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded alter on after due deliberations and consultations and was then ante-timed to give it the colour of a prompty lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by P.W.8."

37. In the case on hand, admittedly, though it is said, after the registration of the case in the Police Station, on the basis of Ex.P.1, investigation commenced, admittedly, in the inquest Report/Ex.P.27, we do not find the crime number or the examination of P.Ws.1 to 3 etc. Therefore, it was urged that only after the inquest report was prepared, FIR was taken and that is why, there was delay in dispatching the same to the Court and that is the reason, for not incorporating the crime number and gist of the statements recorded, since case itself could have been registered after inquest and in this view, it was urged, the genesis of the case itself should be doubted. As we have already pointed out, when the person, who had preferred the complaint to the Sub Inspector of Police, viz. P.W.1 had spoken about the preferring of the complaint, it is not even suggested to him that the complaint was received from him or recorded from him after the inquest and this being the evidence on record, under surmises, we are reluctant to entertain a fanciful doubt to benefit the accused.

38. In MAHENDRA RAI vs. MITHILESH RAI AND OTHERS [1997 SCC (Cri) 899], the effect of Section 174 Cr.P.C. as well as the non-mentioning of the name of the assailants in the inquest report was considered by the Apex Court, and it is held:

> "Section 174 CrPC contemplates the preparation of an inquest report by the police officer in the presence of two or more responsible inhabitants of the neighbourhood and draw up a report of apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body stating in what manner or by what weapon or instrument (if any) such marks appeared to have been inflicted. A perusal of the section would go to show that it does not require anywhere to mention the names of the assailants. It was, therefore, neither incumbent on the police officer who prepared the inquest report, to mention the names of the assailants, nor was it necessary for the eye witnesses, P.Ws.7 and 8,

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> who are witnesses to the said inquest, to insist upon the mention of names of the assailants in the said inquest report. As regards the time of preparation of the inquest report, it is hardly of any consequence in the present case. It is just possible that the witnesses did not remember the exact time of preparation of the inquest after a long lapse of time. Their testimony, therefore, cannot be rejected on this ground alone."

In view of this decision and in view of the evidence acceptable in nature, both on record, it is not possible to hold that FIR should have come into existence after the inquest is over and that is why, no details are given in the inquest report.

39. The weapon, said to have been used for assaulting Srinivasan by A.2, is exhibited as M.O.1, which is said to have been recovered, pursuant to the confession statement-Ex.P.6 given by A.1 under Ex.P.7. One of the witnesses, who was present at the time of the recovery, has been examined as P.W.7. His case is that the Investigating Officer had examined A.1 in the police station and at that time, he has given the confession statement-Ex.P.6. It is the further case of this witness that at the instance of the accused, M.O.1 was recovered under Ex.P.7. During the cross-examination it was elicited, that the shed, where M.O.1 recovered, was closed, ordinarily, and not locked. It is in evidence, when the accused and Inspector of Police went inside, P.W.7 was standing outside, thereby making it clear that when M.O.1 was actually said to have been recovered, P.W.7 was not nearby, seeing the same. Ex.P.6 reads, as if the confession statement (admissible portion) was given by both the accused, since it reads plural. But, only at the instance of A.1, M.O.1 was recovered. No witness has been examined, as to where from the recovery was made and even the witness, who accompanied the Investigating Officer and the accused to the place where M.O.1 was recovered viz. P.W.7, has admitted that he has not gone inside. On the basis of the above evidence, inviting our attention to the decision of the Apex Court in PEERAPPA AND OTHERS vs. STATE OF KARNATAKA [(2006) 1 SCC (Cri) 586], it was urged by the learned counsel for the appellants/accused, since the place from which the accused produced M.O.1 was accessible to the public, no reliance could be placed on such recovery. From the evidence of P.W.7 and the Investigating Officer, it is not possible to say, the place, from where the accused produced M.O.1, was accessible to the public. The fact, that there was no lock, would not mean, automatically, it is a public place, where each and every one can enter as they like and on facts, we are of the view, the above decision is well distinguishable.

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40. In STATE OF U.P. vs. ARUN KUMAR GUPTA [(2003) 2 SCC 202], the Apex Court has observed that 'no reasonable explanation for not summoning any independent witness residing in the locality, where from the recovery was made and where large number of people present at the time of recovery and the witness chosen by the prosecution, who was not a resident of that locality cannot be believed.' From the evidence of P.W.7, it is seen, from the place where the accused was examined viz. in the police station, P.W.7 was taken and there is nothing to show, that he is interested or he is the stock witness of the police etc. or there was some other person near the place where M.O.1 was recovered. Therefore, non-summoning of the witnesses from nearby place or taking a witness who was present at the time of the confession to recover the property, pursuant to the confession, cannot be doubted, since no suggestion has been thrown even to P.W.7 that he is an obliging witness for the police or interested witness or having some animosity against the accused. The fact that P.W.7 has not gone inside the shed, alone is insufficient to disbelieve the recovery, when, in our view, the oral evidence of P.W.14 can be accepted.

41. As rightly pointed out by the learned counsel for the appellants, there is some inconsistency in the oral evidence of the Post-Mortem Doctor, regarding the weapon shown to him, while he was examined. The Investigating Officer, would state that the Doctor was examined only on 29.9.2004, whose statement reached the Court only on 4.10.2004. Before the date of the alleged examination, as pointed out, knives recovered were submitted to the Court and the Investigating Officer had no chance to show the same to the Doctor, since it is not the case, he sought the permission of the Court or taken away etc. On the above said basis, a submission was made, to doubt about the entire prosecution case, which we are unable to agree, since, if at all, it has to be ignored as over-enthusiasm or exaggeration, as the case may be.

42. Even assuming that recovery is not proved, as held by the Apex Court in BIRENDRA RAI AND OTHERS vs. STATE OF BIHAR [(2005) 9 SCC 719], 'the seizures made must be ignored and the case should be decided on the basis of other evidence and testimony of eye-witnesses.'

43. Admittedly, when the incident had taken place, in the same building, there were many persons apart from P.Ws.1 to 3. All of them have not been examined, to prove the presence of the accused or to prove the overt-acts of the accused. Therefore, a comment was made on behalf of the appellants, that the non-examination of other independent witnesses should be construed as fatal, which is answered by the learned Additional Public Prosecutor, by bringing to our notice the following decisions of the Apex Court in

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(1) TAKHAJI HIRAJI vs. THAKORE KUBERSING CHAMANSING AND OTHERS (AIR 2001 SC 2328),
(2) BIRENDRA RAI AND OTHERS vs. STATE OF BIHAR [(2005) 9 SCC 719] and
(3) HEM RAJ AND OTHERS vs. STATE OF HARYANA [(2005) 10 SCC 614].

44. In the first case, a three Judges Bench of the Apex Court has held, when the evidence of other witnesses was consistent and reliable regarding narration of incident, non-examination of other witnesses would not cause any infirmity to the case of the prosecution, for which Court cannot draw any adverse inference against the prosecution, as if, by holding that if the witnesses would have been examined, they would not have supported the prosecution case. In this regard, it is observed:

> "It is true that if a material witness, which would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which would have been supplied or made good by examining a witness which though available is not examined, the prosecution case can be termed as a suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined would not have supported the prosecution case. On the other hand, if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the Court ought to scrutinise the worth of the evidence adduced. The Court of facts must ask itself - whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the Court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the Court can safely act upon it uninfluenced by the factum of non-examination of other witnesses."

45. In the second case i.e. in BIRENDRA RAI AND OTHERS vs. STATE OF BIHAR [(2005) 9 SCC 719], the Apex Court has held in paragraph No.13:

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".... Mere failure to examine all the witnesses who may have witnessed the occurrence will not result in outright rejection of the prosecution case if the witnesses examined by the prosecution are found to be truthful and reliable. Moreover, we cannot ignore the reality that many eyewitnesses shy away from giving evidence for obvious reasons."

46. In HEM RAJ AND OTHERS vs. STATE OF HARYANA [(2005) 10 SCC 614], when no independent witness, though available was examined and not even an explanation was sought to be given for their non-examination, the Honourable Apex Court has held, reiterating the judgment in TAKHAJI HIRAJI vs. THAKORE KUBERSING CHAMANSING AND OTHERS (AIR 2001 SC 2328) (cited supra):

"Non-examination of independent witness by itself may not give rise to adverse inference against the prosecution. However, when the evidence of the alleged eyewitnesses raises serious doubts on the point of their presence at the time of actual occurrence, the unexplained omission to examine the independent witness Kapur Singh, would assume significance."

Based upon the above settled proposition of law, only on the ground of non-examination of other witnesses, whether interested or otherwise, no adverse inference can be drawn, that too, in view of the fact that nothing is materially suggested against P.Ws.1 to 3, to discard their evidence, as unworthy of credence.

47. The delay in forwarding the FIR to the Court or any lapses committed by the Investigating Officer during investigation, should not come in the way of rejecting the case of the prosecution in toto, as held by the Apex Court in DHANRAJ SINGH vs. STATE OF PUNJAB (2004 (3) SCC 654) that 'the defective investigation is not fatal to the prosecution where ocular testimony is found credible, cogent and acceptable'.

48. In STATE OF KARNATAKA vs. K. YARAPPA REDDY [(1999) 8 SCC 715), the Apex Court has held as follows:

"If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the

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probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and preeminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case". (Emphasis supplied)

49. The same is the dictum in 1996 also in STATE OF RAJASTHAN vs. KISHORE [(1996) 8 SCC 217] as reiterated in LEELA RAM vs. STATE OF HARYANA [(1999) 9 SCC 525] wherein it is observed:

"It is now a well-settled principle that any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case and we need not dilate on the issue excepting referring to a decision of this Court (vide STATE OF RAJASTHAN v. KISHORE – 1996 (8) SCC 217)."

50. Therefore, on the basis of the discrepancy, material irregularities, pointed out by the learned counsel for the appellants/accused, even if we have to note that there were some lapses on the part of the Investigating Officer, that alone should not be the cause to reject the case of the prosecution totally, and in this view, ruling out the defence raised by the learned counsel for the appellants/accused, we would see whether the evidence could be relied on for proving the guilt of the accused beyond all reasonable doubt.

51. The submission of the learned counsel for the appellants/accused, that P.Ws.1 and 3 would not have seen the accused, while running from the scene of crime, because of absence of light, also is not based upon any acceptable materials. As seen from Ex.P.26-sketch, on the Eastern side of the building, where P.Ws.1 to 3 are residing, where the incident had taken place, there is Ellaiamman Koil street. In the building, there are rows of houses or shops on either side on the North and South, leaving a space between these two, in order to have access to the back side. On the Southern side of the building, there is a lane through which also, some of the people living on the Southern side of the building can have access only to the portions which are in their occupation,

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not to the entire building. Therefore, if any person has to reach the room, where the deceased was residing, he has to go only through the lane or the varanda left in between the Northern and Southern rows of houses. Since there are houses on each side as well as shops, certainly, there would be light. Therefore, even in the absence of separate light in the varanda, one can easily identify the person from the light emanated or radiated from the shops or houses on each side viz. North and South. There is no evidence, to say positively, that the accused or the assailants entered into the building to reach the portion where Srinivasan was living through the lane on the South where, it appears, there is no light. Therefore, the submission of the learned counsel for the appellants/accused, that the witnesses would not have seen or identified the assailants/accused, deserves rejection.

52. P.W.2 is the person, who had seen the accused or heard the noise of the deceased at the first instance, since she was residing just opposite to the portion where the incident had taken place. She came to this building only recently. Therefore, it is not known to her that the first accused is the son of the deceased. There is no possibility for her to identify, at the first instance, by name, both the accused. Because of this reason, when she was questioned about the identity of the person, very fairly she conceded that she has not identified them even in the police station, when the police requested her to identify the assailants. But, her evidence, proves that two persons have attacked the deceased Srinivasan at about 7.45 p.m. on 27.8.2004. Because of her failure to connect the accused, she was treated as hostile. But, when she was cross-examined by the prosecution, she has accepted the statement given by her before the Police, which may not have much evidentiary value, since she was treated hostile, making her undependable. In this view, though she admits, in the cross-examination, that she has identified both the accused, that fails to inspire our confidence and in this view, her evidence is to be ignored.

53. As far as P.Ws.1 and 3 are concerned, we find no reason at all to discard their evidence as unworthy. As we have already pointed out, it is not even suggested to P.Ws.1 and 3, that they are having some motive to depose against the accused or they are giving false evidence against the reality. The suggestion, that P.Ws.1 and 3 are deposing falsehood, because of the pressure exerted by the police, appears to be an attempted explanation to doubt, if possible for which we cannot affix our seal of approval. Both P.Ws.1 and 3 were unable to say how both the accused escaped from the scene of occurrence, when asked, which will not militate the evidence given by them, since it is normal as they were taken by the surprise by the incident and therefore, there would not have been any

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possibility for them to observe further keenly what is happening in and around.

54. P.W.1 has stated that on hearing the alarm raised by P.W.2, which is spoken to by P.W.2 also, though she was treated as hostile, he and P.W.3 went to the portion where Srinivasan was living and at that time, they have seen both the accused coming out from the said portion with bloodstained clothes and the second accused was having a knife in his hand. That knife, which is recovered pursuant to the confession given by A.1, was identified by P.W.1 as M.O.1. The above evidence given by P.W.1, connecting both the accused, as well as linking M.O.1 with the incident, is not denied, except saying that some other persons would have run from the scene of crime. The evidence, so given by P.W.1, is fully corroborated and affirmed by the evidence of P.W.3, who was also admittedly present there immediately after the actual assault. P.W.3 would state that on 27.8.2004 at about 7.30 p.m., he had seen both the accused, while they were proceeding towards Srinivasan's residence as well as the cry raised by P.W.2 thereafter. It is the further evidence from the mouth of P.W.3 that when he and P.W.1 went to the portion, where Srinivasan was residing, they have seen both the accused coming out with bloodstains, in addition to seeing Srinivasan struggling for life. It is also stated by him that he had seen the second accused with Aruval and identified the same as M.O.1 in the Court. The fact that A.2 is known to P.W.3 is elicited, as indicated above, in the cross-examination. The above evidence, regarding the presence of A.1 and A.2 is some what strengthened by P.Ws.5 and 6 also.

55. P.W.6 has stated that at about 7.00 p.m. on 27.8.2004, he had seen both the accused standing in front of Srinivasan's house. It is also spoken to by P.W.5 that he heard conversation between two persons on the same day at about 7.00 p.m. near the wine shop where one person said, since father fails to give the amount, he should not be allowed to live and should be done away with. Though the evidence given by P.W.5 appears to be somewhat artificial, we do not find any reason to discard the evidence of P.W.6, since it has the corroboration from the uninterested testimony of P.W.3. Thus, reading the entire evidence of P.Ws.1,3 and 6 carefully, coupled with the motive of enmity proved, with other attending circumstances, it should be held, in our considered view, the evidence given by P.Ws.1 and 3 is quite convincing, inspiring, commanding confidence and the acceptance of the same, as did by the trial Court, is well founded legally also, since no acceptable reasons have been made out to eschew their testimony, in view of the further fact, we are unable to find any inconsistency, omission or mutual contradictions in their evidence, cutting the case of the prosecution, taking it as unworthy.

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56. In M.O.1, as per the serology report-Ex.P.4, there was human blood of group 'A'. The blood group of the deceased Srinivasan is also 'A'. As submitted by the learned counsel for the appellants, there is no clinching evidence, how the blood was taken from the body of the deceased, sent for serologist's opinion, as per Ex.P.5. But, there are materials to show that the dresses worne by the deceased viz. dhoti, shirt, banian, which contained bloodstains were also sent for chemical analysis, including grouping the blood, in addition to cement plaster pieces and newspaper magazines recovered from the scene of crime, which would reveal that those M.Os. contain the blood of group 'A'. In this view of the matter, we do not find any difficulty to conclude, unhesitatingly also, that the blood group of the deceased is only 'A' group. In M.O.1, as per the serology report, the Forensic Department authorities have noted the existence of 'A' group blood comparing with the blood group of the deceased. If we read both, the possible and the only inference could be drawn is, since M.O.1 was used by A.2, it should have contained the blood of the deceased and there is no possibility to take any other view. In this context, it is to be remembered that when P.Ws.1 and 3 have spoken that they have seen M.O.1 in the hands of A.2, the same is not very much irrevocably challenged by the defence. Thus, the blood group noticed in M.O.1, which was in the hands of the second accused also prove the guilt of the accused to some extent, since we have concluded already, the recovery could be accepted.

57. In the light of the above discussion, it is certain, starting from the incident, the prosecution was successful in collecting the circumstantial evidence, so as to encircle the accused, not giving a chance, even to imagine that somebody should have committed the offence. In this view, it should be held that there is no snap or doubt in the circumstances relied on by the prosecution and the circle is well completed.

58. The learned trial Judge, considering all these facts elaborately, from the proper perspective also, in tune with the law established, has rightly, in our opinion, convicted the accused and sentenced them adequately, not warranting our interference in any manner. For these reasons, the appeal deserves to be dismissed, as devoid of merits.

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In the result, confirming the conviction and sentence passed and awarded against the appellants/accused in Sessions Case No.621 of 2004 by the learned Additional Sessions Judge (Fast Track Court No.I), Chennai, dated 5.11.2004, the appeal is dismissed.

Rao

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE REGISTRAR
CITY CIVIL COURT
CHENNAI.

2. THE DIRECTOR GENERAL OF POLICE
CHENNAI-4

3. THE DISTRICT COLLECTOR,
CHENNAI.

4. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS

5. THE SUPERINTENDENT
CENTRAL PRISON
VELLORE.

6. THE INSPECTOR OF POLICE
R-6,KUMARAN NAGAR POLICE STATION,
CHENNAI-83

4 ccs to Mr.S.Jeyakumar, Advocate, SR.46323

ng (co)

dv/25.10.06 Judgment in Crl.A.1342/2004

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