

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2012

C O R A M

The Honourable Mr.Justice C.NAGAPPAN
and
The Honourable Mr.Justice P.R.SHIVAKUMAR

Criminal Appeal No.519 of 2011

1.Rajendran
2.Thanjammal
3.Venkatesan

... Appellants/Accused No.
A.1, A.2 & A.4.

Vs.

State represented by
The Inspector of Police
Krishnagiri Taluk & Police Station
Krishnagiri
Krishnagiri District
(Crime No.893/2006)

... Respondent/Complainant.

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the sentence and judgment passed by the learned Principal District and Sessions Judge, Krishnagiri in S.C.No.256/2006 dated 24.06.2011 and set aside the same.

For Appellants : Mr.V.Gopinath, Sr. Counsel
for Mr.V.Rajamohan

For Respondent : Mr.V.M.R.Rajendran
Additional Public Prosecutor

J U D G M E N T

(Judgment of the court was made by P.R.SHIVAKUMAR, J.)

The appellants 1 to 3 (A1, A2 and A4) and one Saroja (A3) were prosecuted before the learned Principal District and Sessions Judge, Krishnagiri in S.C.No.256/2006, respectively for the following offences:

Accused	Offences
Rajendran (A1)	447 IPC (first charge) 324 IPC (second charge) 294(b) IPC (third charge) 302 r/w 34 IPC (fourth charge)
Thanjammal (A2)	447 IPC (first charge) 302 r/w 34 IPC (fourth charge)
Venkatesan (A4)	447 IPC (first charge) 302 r/w 34 IPC (fourth charge) 506(ii) IPC (sixth charge)
Saroja (A3)	447 IPC (first charge) 109 r/w 302 IPC (sixth charge)

The trial court acquitted Saroja (A3) of all the offences with which she stood charged. It also found all the accused not guilty of the offence under section 447 IPC. Rajendran (A1), Thanjammal (A2) and Venkatesan (A4) were found guilty and convicted by the Principal District and Sessions Judge, Krishnagiri vide his judgment dated 24.06.2011 made in S.C.No.256 of 2006 for the following offences.

Accused	Offences	Conviction imposed
Rajendran (A1)	324 IPC 294(b) IPC 302 r/w 34 IPC	Rs.1,000/- fine in default to pay fine six months rigorous imprisonment Rs.500/- fine in default to pay fine three weeks simple imprisonment Life imprisonment and a fine of Rs.2,000/- in default to pay fine one year RI
Thanjammal (A2)	302 r/w 34 IPC	Life imprisonment and a fine of Rs.2,000/- in default to pay fine one year RI

Accused	Offences	Conviction imposed
Venkatesan (A4)	302 r/w 34 IPC	Life imprisonment and a fine of Rs.2,000/- in default to pay fine one year RI
	506(ii) IPC	Two years RI and fine of Rs.1,000/- and in default to pay fine six months RI

Challenging the said judgment with regard to the conviction and sentence, the appellants (A1, A2 and A4) have brought-forth this appeal on various grounds set out in the memorandum of grounds of appeal. For the sake of convenience, the appellants are referred to as accused.

2. The case of the prosecution in brief, is, as follows:-

The accused Rajendran, Thanjammal, Saroja and Venkatesan (A1 to A4) are closely related to the deceased Perumal. PW.1-Vennila and PW.2-Thanjammal are respectively the daughter and wife of the deceased Perumal. Thanjammal (A2), is the sister of deceased Perumal. Rajendran (A1) and Saroja (A4) are respectively the son and daughter of A2. Venkatesan (A4) is the brother of deceased Perumal. There was a land dispute between the family of deceased Perumal and the accused persons. On 20.11.2006 at about 9.00 a.m accused 1 to 4 grazed their cattle in the land of Perumal, wherein they had raised maize crops. On seeing the same, PW.1-Vennila, daughter of Perumal, questioned the propriety of their act, pursuant to which, the first accused Rajendran, using unparliamentary words, assaulted PW.1-Vennila on the left hand, lower part of the back side of the chest and hip using MO.1-stick. On hearing the hue and cry of PW.1-Vennila, the deceased Perumal came to the place of occurrence. The fourth accused Venkatesan attacked Perumal and inflicted cut injuries on the head of the deceased using MO.2-bill-hook. First accused Rajendran again using MO.1-stick attacked the deceased Perumal. Thanjammal (A2) and Saroja (A3) kicked the deceased on the scrotum and abdomen repeatedly. Again on the instructions of Thanjammal (A2), Venkatesan (A4) inflicted cut injuries on the head of the deceased Perumal and ran away from the place of occurrence. PW.1-Vennila also sustained injuries in the occurrence. Besides Vennila (PW.1), PW.2-Thanjammal and PW.3 - Panjali were the eye witnesses for the said occurrence. After being attacked by the accused persons, Perumal fell on the ground. PW.4-Subramani and his wife Madhammal, who came there after the occurrence, took the injured persons in a two wheeler to the Government Hospital, Krishnagiri and got them admitted for treatment. On 20.11.2006 at 3.00 p.m. PW.7-Dr.Senthil examined PW.1-Vennila and found the following injuries:

- 1) A contusion measuring 5 x 5 cm on the left hand; and
- 2) A contusion on the lower part of the backside of the chest measuring 5 x 3 cm

After getting the Radiologist report, he issued Ex.P5-wound certificate opining that the first injury was grievous and the second injury was simple. On the same day at 4.05 p.m, he examined Perumal brought by Madhammal and noted the following injuries:

- 1) A lacerated injury on the right side of the parietal region of the head measuring 1 x 6 cm;
- 2) A contusion on the left hand measuring 5 x 4 cm
- 3) A contusion on the back of the chest measuring 5 x 5 cm and
- 4) A contusion measuring 3 x 3 cm on the right knee

Regarding the admission of PW.1-Vennila and Perumal, Ex.P10-Intimation was sent to the police out post functioning in the campus of the Government Hospital, Krishnagiri. PW.10-Mahalingam (Head Constable) received the intimation, recorded Ex.A1-Statement of PW.1-Vennila and sent Ex.P1 and Ex.P10 to KRP Dam police station. PW.11-Tmt.Manickam, the then Sub-Inspector of Police, KRP Dam Police Station, on the basis of Ex.P1, prepared Ex.P11-First Information Report and registered a case in Crime No.893/2006 on the file of the said police station for offences punishable under sections 341, 323, 324, 307 and 506(ii) IPC. After sending the FIR and the complaint to the Jurisdictional Magistrate, she entrusted the case file to the Inspector of Police, Krishnagiri Taluk Police Station for investigation. PW.14-Thiru.S.Rajkumar, the then Inspector of Police, Krishnagiri Taluk Police Station, took up the investigation of the case, visited the place of occurrence and prepared Ex.P2-Observation mahazar and Ex.P12-rough sketch in the presence of witnesses. He also recovered MO.1-Stick, MO.2-bill-hook and M.O.3-Stick from the place of occurrence under Ex.P3 in the presence of PW.6-Natarajan (Village Administrative Officer) and one Govindasamy (Village Assistant) on 21.11.2006 at 11.30 a.m. Meanwhile, Perumal, who had been admitted in the hospital, died on 21.11.2006 at 1.30 p.m and Ex.P13-death intimation was given to police. On receipt of the said death intimation, PW.14-Rajkumar, Inspector of Police, prepared Ex.P14-alteration report and altered the case into one for an offence of murder punishable under section 302 IPC and despatched the same through PW.13-Ramachandran, Gr.I Police to the Judicial Magistrate. Accompanied by Dhanasekaran (Head Constable), PW.14 went to the mortuary in the Government Hospital, Krishnagiri, conducted inquest in the presence of panchayatdars between 6.00 and 9.00 hours on 22.11.2012 and prepared Ex.P15-Inquest Report. He also submitted a request under Ex.P7 for conducting autopsy on the dead body of Perumal. PW.8-Dr.Arivuchelvan conducted autopsy and issued Ex.P9-Postmortem Certificate opining that the deceased Perumal died of shock and haemorrhage due to head injuries and giving the probable time of death to be between 18 to 24 hours prior to autopsy. The following injuries were found by PW.8:

External Injuries:

- 1) Lacerated wound already sutured seen over the right parietal region
- 2) Contusion over the left parietal region

Skull:

- 1) Clotted blood on the left parietal and occipital region of scalp
- 2) Skull bone intact
- 3) Meningeal tear present
- 4) Blood clot seen right frontal and back of parietal region
- 5) Blood clot seen left parietal and occipital region

PW.14 got MOs.5 to 7, the dress materials found on the dead body of Perumal through PW.12-Gnanasekar, Head Constable. On 22.11.2006 at 16.00 hours, PW.14 arrested the accused 1 to 3 (Rajendran, Thanjammal and Saroja) near Pellarampalli bus stop and recorded their confession statements in the presence of PW.6-Natarajan and Govindasamy. After examining the witnesses and collecting the materials, PW.14 completed the investigation and submitted a final report against all the four accused on 23.11.2006 alleging that the accused committed the offence punishable under the Sections as indicated supra.

3. The case was taken on file by the learned Judicial Magistrate, Krishnagiri as P.R.C.No.53/2006 and committed the case for trial to the Sessions Court following the procedure prescribed for the same. On being committed, the case was taken on file as S.C.No.256 of 2006 on the file of Principal District and Sessions Judge, Krishnagiri. The accused, on appearance, denied having committed the offences stated in the final report. Necessary charges were framed, the accused pleaded not guilty. The prosecution examined 14 witnesses as P.Ws.1 to 14, marked 15 documents as Exs.P1 to P15 and produced six material objects as M.Os.1 to 7 in order to prove the charge against the accused. After the evidence on the side of the prosecution was over, the attention of the accused was drawn to the incriminating materials found therein and the accused were questioned under Section 313(1) (b) Cr.P.C. The accused contended that the evidence against them were false and reiterated their plea of innocence. One witness was examined as DW.1 and four documents were marked as Exs.D1 to D4 on the side of the defence.

4. The learned Principal District and Sessions Judge, Krishnagiri, heard the arguments advanced on either side, considered the evidence in the light of the points urged in the arguments and upon such consideration found Saroja (A3) not guilty of any of the offences with which she stood charged, Rajendran, Thanjammal and Venkatesan (A1, A2 & A4) found not guilty of the charge under section 447 IPC and found Rajendran (A1) guilty of the charges under sections 324, 294(b) and 302 r/w 34 IPC, Thanjammal (A2) found guilty of charge under section 302 r/w 34 IPC and Venkatesan (A4) found guilty of the charges for offences under

sections 302 r/w 34 and 506(ii) IPC. After informing the accused 1, 2 and 4 of the decision to hold them guilty, the learned trial judge questioned them regarding punishment under Section 235(2) Cr.P.C and after considering the evidence and the submissions made by the accused regarding the punishment, the trial judge pronounced a judgment acquitting all the four accused in respect of first charge, namely the offence punishable under section 447 IPC, acquitting A3-Saroja in respect of all the charges, namely offences punishable under sections 447 and 109 r/w 302 IPC and convicted A1, A2 and A4 as aforesaid with the punishments indicated supra.

5. The above said conviction and the sentence as against the appellants (A1, A2 and A4) are challenged in the criminal appeal on various grounds set out in the appeal petition.

6. The submissions made by Mr.V.Gopinath, learned counsel for the appellants and by Mr.V.M.R.Rajendran, learned Additional Public Prosecutor representing the respondent were heard. The materials available on record were also perused.

7. The point that arises for consideration in this appeal is "whether the conviction and sentence imposed by the trial court on the appellants/accused are erroneous and infirm requiring interference by this court?"

8. PW-1 Vennila is the daughter of deceased Perumal. Thanjammal (A2) and Venkatesan (A4) are respectively the sister and brother of the deceased Perumal. Rajendran (A1) and Saroja (A3) are the son and daughter Thanjammal (A2). As such all the accused are closely related to the injured witness PW.1-Vennila and the deceased Perumal. PW.1-Vennila, her mother PW.2-Thanjammal and PW.3-Panjali, the sister of PW.1, have clearly spoken about the property dispute they had with the accused persons. The same is projected as a motive for the occurrence in which the accused allegedly assaulted PW.1-Vennila and the deceased Perumal, which resulted in Vennila sustaining simple and grievous injuries and the death of deceased Perumal after brief treatment in the hospital. PW.6 speaks about the alleged motive of the 4th accused Venkatesan. Of course the evidence of the above said witnesses put together will show that there was a property dispute between the accused and the family of deceased Perumal. According to the prosecution version, on 20.11.2006 at 9.00 a.m the accused 1 to 4 allowed their cattle (மாடு) to graze the maize crops raised by the deceased Perumal in his land and PW.1-Vennila raised objection for the same and questioned the propriety of their act. The further case of the prosecution is that, irked by the said intervention of PW.1-Vennila, Rajendran (A1) using unparliamentary words, assaulted PW.1-Vennila on the left hand, left side of lower part of the chest and hip using MO.1-stick and that when the deceased Perumal intervened, he was attacked by the first accused with stick, whereas Venkatesan (A4) cut him repeatedly on the head with bill-hook and the Thanjammal (A2) and Saroja (A3) kicked him on the scrotum and abdomen respectively. They have also deposed to the effect that after receiving the said blows in the hands of the

accused, the deceased Perumal fell unconscious and PW.4-Subramani and his wife Madhammal took the deceased Perumal and injured Vennila to the Government Hospital, Krishnagiri, where they were admitted and given treatment as in-patients. The copies of accident registers relating to PW.1-Vennila and deceased Perumal have been produced as Exs.P5 and P6 respectively. The name of Madhammal is found noted as the person, who brought the injured persons to the hospital for treatment. Ex.P5, coupled with the evidence of PW.8-Dr.Arivuchelvan shows that PW.1 had sustained two injuries, out of which one was grievous and the other was simple. She had suffered fracture of ulna on the left forearm. Hence the injury found on the left forearm was certified to be a grievous one. Though no opinion as to whether injury sustained by deceased Perumal were simple or grievous has been incorporated in Ex.P6, PW.8 has chosen to state that the injuries sustained by him were certified to be simple in nature. Ironically, Perumal had been admitted as an in-patient in AE ward and on the very next day, namely 21.11.2006 at 13.35 hours (1.35 p.m) he died in the hospital as seen from Ex.P13-death intimation.

9. After receiving the death intimation, inquest was conducted and Ex.P15 inquest report was prepared. Based on Ex.P7-requisition for autopsy, PW.8-Dr.Arivuchelvan, conducted postmortem examination and issued Ex.P8-postmortem examination certificate. At the time of conducting the autopsy, he found the following external injuries: 1) a lacerated wound over the right parietal region, which had already been sutured; and 2) a contusion over left parietal and occipital region. On dissection, PW.8 found the following: 1) Clotted blood on the left parietal and occipital region of scalp; 2) no fracture in the skull; 3) Meningeal tear present; 4) Blood clots on the frontal and parieto region of the brain and 5) blood clots on the left occipital region of the brain. He has opined that the death was due to shock and haemorrhage caused by the head injury and the death had occurred 18 to 24 hours prior to autopsy. The autopsy was concluded at 13.15 hours on 22.11.2006. It takes us to 6.15 pm to 12.15 p.m on 21.11.2006. The evidence of PW.8 and Ex.P8 show that the deceased Perumal had sustained superficial injuries on the head without any fracture on the skull, but at the same time due to forcible impact, which led to those external injuries caused meningeal tear and intracerebral haemorrhage, which resulted in the death of Perumal due to shock and haemorrhage. From this we can safely conclude that the injuries found on the head of deceased Perumal alone led to his death. Whether those injuries leading to the death of deceased Perumal would prove homicidal violence as spoken to by the prosecution witnesses, has to be considered.

10. In this regard, the learned senior counsel appearing on behalf of the appellants contended that the prosecution, besides its failure to bring-forth the true genesis of the occurrence, had also suppressed material facts exhibiting perfunctory investigation. Learned senior counsel for the appellants relied on the following aspects to contend that the prosecution had not come forward with the true version of the occurrence. The place of

occurrence as noted by the Investigating Officer in the rough sketch marked as Ex.P12, is shown to be the property of the second accused Thanjammal. According to the submissions made by the learned senior counsel, it was the deceased and PW.1, who were aggressors and they alone started the fight by attacking the first and second accused with sticks. PW.1-Vennila, PW.2-Thanjammal and PW.3-Panjali were the persons projected as eye witnesses, who saw the occurrence in which PW.1 and her father deceased Perumal were attacked by the accused persons. Out of the three persons examined as the eye witnesses for the occurrence on the side of the prosecution, according to the submissions of the learned senior counsel for the appellants, the third witness, namely PW.3-Panjali could not have seen the occurrence.

11. PW.3-Panjali is none other than the elder sister of PW.1-Vennila. As rightly pointed out by the learned senior counsel, there is a vital contradiction in her evidence in chief and her evidence in the cross-examination. In the chief examination she has stated that while she was in their land at 9.00 a.m on 20.11.2006, the accused persons allowed their cattle to graze the maize crops raised in their land; that when PW.1 questioned the propriety of the said act, the first accused Rajendran, using unparliamentary words against PW.1-Vennila, attacked her with stick on the hand and hip; that the deceased Perumal came running to that place on hearing the alarm made by Vennila; that all the four accused advanced towards Perumal and caught hold of him, whereupon A4-Venkatesan cut him with a knife on the head; that A1-Rajendran bet Perumal using the very same stick used for beating Vennila; that A2-Thanjammal kicked Perumal on the scrotum; that A3-Saroja kicked him on his stomach; that after completing the said attack, all the four accused proclaimed that they would kill them if they did not give up their claim in respect of the land and that A4-Venkatesan showing the knife he was holding in his hand, caused threat to them and ran away from that place. The nature of evidence adduced by her in her chief examination is to the effect that she was present in the scene of occurrence right from the beginning till the end of the occurrence and that she actually saw A1-Rajendran attacking PW.1-Vennila with stick, A4-Venkatesan cutting the deceased Perumal with a knife and A2-Thanjammal and A3-Saroja kicking the deceased Perumal on the scrotum and stomach respectively. It is also her assertion in the chief examination that she saw A4-Venkatesan running after causing a threat to kill showing the knife he was holding in his hand. The said version that she saw the accused persons attacking Vennila and deceased Perumal is of doubtful veracity in the light of her answers given in the cross-examination to the effect that she came to the place of occurrence only after the occurrence was over. In the cross-examination she has stated that she heard her sister shouting not to attack her father and on hearing such noise from her sister Vennila, she went to the place from where noise emanated; that by the time she reached the place, her father Perumal had fallen unconscious and she saw two vertical cut injuries on the head of the deceased Perumal and that also saw blood stains in the dress materials of PW.1 and also on the ground. The above said answer will suggest that she was not in the place of

occurrence when the accused persons allegedly attacked PW.1-Vennila and the deceased Perumal and that only after they completed the attack, she reached the place of occurrence, whereupon she saw her father Perumal lying unconscious on the ground with cut injuries on head. PW.3 refers to the weapon allegedly used by A4-Venkatesan to be a knife (கத்தி), whereas the weapon allegedly recovered from the place of occurrence as the one used for cutting the deceased, has been described as a bill-hook (அருவாள்) and it has been produced as M.O.2. Hence we can accept the contention of the learned senior counsel for the appellants that PW.3 - Panjali could not have actually seen the occurrence, in which the accused persons allegedly attacked PW.1 and deceased Perumal.

12. The learned senior counsel also contended that PW.3-Panjali was admittedly employed as a casual labour in Glory Match factory, Kaveripattinam and hence she could not have been present in the place of occurrence at the time of occurrence. In this regard, the learned senior counsel for the appellants has pointed out the contradiction between the testimony of PW.3 and her statement recorded under section 161 of Cr.P.C. by the Investigating Officer (PW.14). Though PW.3 - Panjali admitted that she was employed in Glory Match factory, Kaveripattinam, she has chosen to hold out that four days prior to the date of occurrence, she had stopped going to the factory. She has also stated that she did not give any statement to the Investigating Officer that she was going to the said Match factory as a casual labour on daily wage and that on the other hand, she gave a statement to the effect that she stopped going to the said factory four days prior to the date of occurrence. The said evidence is proved to be quite contradictory to her statement given to the Investigating Officer under section 161 Cr.P.C. PW.14 has clearly admitted that, in her statement under section 161(3) Cr.P.C., PW.3-Panjali had stated that she was going to Glory Match Factory, Kaveripattinam as a casual labour on daily wage basis and she did not state in her statement that she had stopped going to the match factory four days prior to the date of occurrence. The same, as rightly contended by the learned senior counsel for the appellants, would make the presence of PW.3 at the time of occurrence improbable.

13. PW.2-Thanjammal also claims to have actually seen the occurrence. The injured witness PW.1-Vennila states that, though all the four accused came together for grazing their cattle, it was A1-Rajendran, who alone led the cattle. She did not state how many cattle were lead by him or the other accused for allowing them to graze the maize crops. Quite contrary to the said evidence of PW.1, PW.2-Thanjammal has stated that all the four accused came there leading totally four cattle and all the four (A1 to A4) allowed the cattle to graze the maize crops for about half an hour. While PW.1 would state that A1-Rajendran brought a stick, when he came to the place of occurrence leading cattle, PW.2 would state that A1-Rajendran brought two sticks when coming to the place of occurrence. However, she herself has admitted in her statement

<https://hcservices.gov.in/hcservices> Section 161(3) Cr.P.C. to the Investigating Officer

that A1-Rajendran picked up the stick, which was there in the land and used it for beating. It is also her admission that in her statement under section 161(3) Cr.P.C. that, after PW.1-Vennila was attacked with stick, it was she (PW.2), who called her husband and only on such call made by her, her husband Perumal came to the place of occurrence. It is also her evidence that her dress and the dress materials of PW.1 got stained with blood and when they showed the same to the police, the police seized them. The same is falsified by the testimony of PW.14, who has denied it. PW.1 says that there was a wordy quarrel for about an hour preceding the attack, whereas PW.2 would say that there was no wordy quarrel, which preceded the attack. All the above said aspects, as rightly pointed out by the learned senior counsel for the appellants, will improbably the presence of PW.2-Thanjammal at the time of occurrence or at least it will make the presence of PW.2 in the scene of occurrence at the time of occurrence highly suspicious.

14. Of course it is the evidence of PW.1 that she was bet by Rajendran (A1) with a stick and her father Perumal (deceased) was cut on the head by Venkatesan (A4) using a knife; that he was kicked on the scrotum and stomach by A2 and A3 respectively and that he was attacked by Rajendran (A1) with the very same stick used for attacking PW.1. According to the prosecution version, PW.1, who sustained injury and her father, namely the deceased Perumal, who also sustained injuries in the alleged occurrence, were taken to the Government hospital, Krishnagiri by PW.4-Subramani and his wife Madhammal. The mode of conveyance has been stated to be a two-wheeler. The way used for going to the hospital was admittedly a narrow path (கொடி வழி), as seen from the evidence of PW.4. His wife Madhammal, whose name has been noted in the Accident Register relating to PW.1 and the deceased Perumal, as the person who brought them to the hospital, has not been examined as a witness on prosecution side. Ex.P5 is the Accident Register of PW.1-Vennila. It states that she was brought to the hospital by her aunt Madhammal. It also contains the particulars that the patient, namely PW.1-Vennila, herself informed the Medical Officer that she was assaulted by one known male person using a stick on 20.11.2006 at 9.00 a.m near her residence. Ex.P6 is the Accident Register prepared at the time of admission of the deceased Perumal. In Ex.P6 also, it has been stated that it was Madhammal who brought him to the hospital. It had been informed to the Medical Officer that totally seven unknown persons (3 male and 4 female) using stick and knife assaulted him on 20.11.2006 at about 9.00 a.m near his residence. In this regard, PW.1 in her evidence in cross-examination, has stated that she herself informed the Medical Officer as to the manner in which she sustained injuries and the same was noted by the Medical Officer. However, she denied having informed the medical officer that totally seven persons, out of whom four were male and three were females, attacked her father. On the other hand, she has stated that she informed the Medical Officer that four persons attacked her. This is quite contrary to the particulars noted in Ex.P5 and Ex.P6 - Accident Registers, which stand corroborated by the evidence of PW.7-Dr.Senthil.

15. It is the testimony of PW.4-Subramani that at about 9.00 to 10.00 a.m on 20.11.2006, he along with his wife Madhammal, on hearing the noise on their way to Venkilikanapalli, went to the place of occurrence and saw Vennila and her family members alone present there. It is his further testimony that he got Perumal alone seated on his two-wheeler and pulled it to a distance and thereafter he made both Perumal and Vennila seated on the two-wheeler and took them to the hospital. He has simply stated that in the hospital, PW.1-Vennila narrated to the Medical Officer as to how they got injured. He has not stated anything about what were the injuries found on them, when he picked them and took them to the hospital in his two wheeler.

16. As per the prosecution case and also as per the evidence of PW.1, she was attacked by Rajendran (A1) alone using a stick. So far as the deceased Perumal was concerned, the case of the prosecution is that he was attacked by Rajendran (A1) with a stick, Thanjammal (A2) and Saroja (A3) kicked him on the scrotum and stomach respectively and Venkatesan (A4) cut him on the head with a bill-hook. Though the weapon allegedly used by Venkatesan (A4) has been produced as MO.2 describing it to be a bill-hook, PW.1 referred to the said weapon only as a knife. None of the prosecution witnesses has stated that Venkatesan (A4), after cutting the deceased Perumal on his head throw the bill-hook on the ground and left that place. On the other hand, it is the evidence of PW.1-Vennila that Venkatesan (A4) cut Perumal with the knife and ran way. It is also her evidence that after cutting Perumal, Venkatesan (A4), showing the knife, caused a threat to annihilate the family of PW.1 and ran away from that place. Her evidence is to the effect that after causing a threat using the knife he left the place. If such a threat is made showing the knife, it would not be effective if the person making the threat throws the weapon on the ground in that place itself, which can be picked up by the opponent. PWs.2 and 3 have also stated that Venkatesan (A4), showing the knife, caused a threat and ran away from the place of occurrence. None of the above said witnesses has stated that Venkatesan (A4) threw the knife or the bill-hook on the ground in the place of occurrence and left that place. PW.4-Subramani also does not say he saw any knife or bill-hook in the place of occurrence. Then it remains a mystery as to how the police were able to recover MO.2-bill-hook from the place of occurrence. The weapons were allegedly seized from the scene of occurrence at 11.30 a.m on 21.11.2006 under Ex.A3-Mahazar in the presence of PW.6-Natarajan, Village Administrative Officer, Pellarampalli and Govindasamy, Village Assistant. It seems as per Ex.P3-Seizure Mahazar, two sticks and a bill-hook were recovered from the scene of occurrence. The sticks were marked as MOs.1 and 3, whereas the bill-hook was marked as MO.2. Though it has been stated in Ex.P3-Seizure Mahazar that blood stain was found on the tip of MO.2-Bill-hook, the same was not confirmed by referring it to the Forensic Department for examination. The blood stain was also not proved to be a human blood.

17. PW.1, in her evidence, has stated that A1-Rajendran used only one stick for beating PW.1 and for beating deceased Perumal. It is her testimony that using the very same stick, which had been used for beating her, Rajendran (A1) repeatedly beat the deceased Perumal. As per the testimonies of persons projected as eye witnesses by the prosecution, Rajendran (A1) alone handled a stick to attack PW.1 and the deceased Perumal and no other accused used a stick. That being so, how a second stick was picked up from the place of occurrence and seized by the police as one of the weapons, has not been explained. In this regard, it shall be apt to point out PW.1's evidence that while Rajendran (A1) was coming to the place of occurrence leading his cattle, he brought the wooden stick, with which he later on attacked PW.1 and the deceased Perumal. However, it is pertinent to note that, in Ex.P1-complaint, she has stated that Rajendran (A1) picked up the stick and attacked her. It has also been elicited from the Investigating Officer that she did not state that Rajendran (A1) brought the stick along with him and on the other hand, her statement was to the effect that he picked up a stick that was available in the scene of occurrence and used it for beating her. She has chosen to deny having made such a statement in the complaint and before the Investigating Officer. PW.1 identified MO.1 alone as the stick used by A1 for attacking her and her father deceased Perumal. None of the witnesses has spoken about the use of MO.3 by any one of the accused for attacking either PW.1 or the deceased Perumal. The same, as rightly pointed out by the learned senior counsel for the appellants will show that PW.1 is not speaking the truth and she has been made to depose in a clever way in an attempt to explain the recovery of two sticks MOs.1 and 3 from the scene of occurrence. In such an attempt alone, PW.2 was also made to state that Rajendran (A1) brought along with him to the scene of occurrence two sticks. However, PW.2 herself in another place admitted that Rajendran (A1) picked up a stick lying on the ground and attacked PW.1. The same gives a reasonable suspicion that the genesis of the occurrence and the manner in which PW.1 and the deceased Perumal sustained injuries, have not been correctly stated by the prosecution and there has been suppression and concoction.

18. The suspicion gets strengthened by the fact that a counter complaint came to be lodged by Rajendran (A1) alleging to have sustained injuries in the hands of deceased Perumal and PW.1-Vennila. On 20.11.2006 itself at 9.00 p.m, he was admitted in the Government Hospital, Krishnagiri for which Ex.D4-Accident Register was prepared. In Ex.D4 it has been stated that the first accused, at the time of admission, informed the Medical Officer that he was attacked by two known persons with sticks at 10.00 a.m on 20.11.2006. The following were the injuries found on him. 1) Simple abrasion and swelling on left knee and 2) pain in the abdomen. It seems he was admitted as an in-patient in AE ward and while he was taking treatment, his statement was recorded at 10.00 p.m (22.00 hrs) on 20.11.2006. The same has been marked as Ex.D2. Similarly, Thanjammal (A2) was admitted in the Government Hospital, Krishnagiri for injuries allegedly caused by the assault made by

two known persons (one male and one female) using stick, hands and foot. The following were the injuries found on Thanjammal (A2). 1) contusion measuring 5 x 3 cm over the left arm and 2) complaint of pain on the left side of fore arm. The Accident Register for her has been marked as Ex.D1. PW.7-Dr.Senthil and DW.1-Dr.Ashok Kumar have spoken about the admission of Thanjammal (A2) and Rajendran (A1). Based on the complaint of Rajendran (A1), a case was registered on the file of K.R.P.Dam OP Police station in Crime No.894/2006 on 21.11.2006 at 8.00 a.m for offences under section 294(b) and 323 IPC against Perumal (deceased) and PW.1-Vennila. The said fact of the registration of the counter complaint has not been brought to the notice of the court by the prosecution. The fact that statement (Ex.D2) was recorded and the said case Crime No.894/2006 was registered were elicited from the prosecution witnesses. Ex.P1-complaint based on which crime No.893/2006 came to be registered and Ex.D2-complaint, based on which the counter case was registered on the very same day assigning the very next FIR number, refer to the occurrences that allegedly took place on 20.11.2006 itself at 9.00 a.m and 10.00 a.m respectively. The same would show that both the cases relate to the very same incident and they are the case and the counter case.

19. As per Police Standing Order No.588, such cases are to be investigated together by the very same Investigating Officer. In the case on hand, though crime No.894/2006 came to be registered on the complaint of Rajendran (A1), PW.11-Manickam, Sub-Inspector of Police and PW.14-Inspector of Police have pleaded absence of knowledge regarding what happened to the investigation of the same. Besides violating the said police standing order, there is also failure on the part of the prosecution to account for the injuries sustained by the accused Nos.1 and 2. When no explanation is forthcoming from the prosecution for the injuries sustained by accused Nos.1 and 2, the accused have come forward with an explanation that they were attacked by PW.1 and the deceased Perumal. Admittedly, PWs.1 to 3 and the accused persons are closely related and there was a land dispute between them and the accused persons. Both the prosecution as well as the accused have come forward with a case that the occurrence took place around 10.00 a.m on 20.11.2006. The prosecution case is that the accused persons allowed their cattle to graze maize crops raised in the land belonging to deceased Perumal and when PW.1 questioned the same, she and her father Perumal were attacked by the accused persons. Per contra, the defence case is that on 20.11.2006 at about 10.00 a.m, Rajendran (A1) and his mother Thanjammal (A2) were grazing their cattle in their Mango grove and at that point of time, PW.1-Vennila and the deceased Perumal came there, scolded them using filthy language and attacked them with sticks, hand and foot. According to the accused, they did it contending that the said land belonged to them and how the accused had guts to graze their cattle in the said land. In this regard, the learned senior counsel for the appellants drew the attention of the court to the fact that there is an admission by the prosecution witnesses that the field in which the occurrence took place was belonged to the second accused Thanjammal.

20. Learned senior counsel contended further that while A1 and A2 were grazing their cattle in their own land, PW.1 and her father Perumal came there, attacked them and caused injuries. In support of his contention, the learned senior counsel pointed out the admissions made by the prosecution witnesses and the rough sketch prepared by the Investigating Officer, in which the place of occurrence is shown to be the land belonging to Thanjammal (A2). PW.1 in her evidence in cross-examination has made the following admission and that portion of her evidence in vernacular is reproduced below:

" எங்கள் நிலமும், ஏதிரிகள் 1, 2 நிலமும் பக்கம் பக்கம் உள்ளது. 1, 2 எதிரிகளுக்குப் பாத்தியப்பட்ட மாந்தோப்பில்தான் ஒரு மாடு மேய்ந்தது."

PW.3 - Panjali has also made an admission that the occurrence took place in the land belonging to the accused 1 and 2. The portion of her evidence in vernacular is extracted here under.

" ராஜேந்திரன்தான் மாடுகளை மேய்த்தார், நிலமானது மாந்தோப்பு நிலம் என்றால் சரிதான். அது ராஜேந்திரன், தஞ்சம்மாளின் கிரயச் சொத்து, அவர்களுக்கு கவாதீனம், அவர்கள் அனுபவித்துவந்தார்கள் என்றால் சரிதான், அந்த நிலத்தில்தான் மாடு மேய்ந்தது."

The said admission will show that the occurrence took place in the land belonging to the second accused Thanjammal. PW.6-Natarajan, Village Administrative Officer, the attestor of the Observation Mahazar and Seizure Mahazar, has admitted that the land in which the occurrence was said to have taken place, belonged to Thanjammal (A2) and maize crops had been raised in the same and the portion of his evidence in vernacular is extracted here under.

" மகசரில் சம்பவம் நடந்தது எதிரி தஞ்சம்மாள் நிலம் என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். சோளப் பயிர் இருந்த இடம்தான் சம்பவம் நடந்த இடம் என்றால் சரிதான்."

In Ex.P2-Observation Mahazar land belonging to Thanjammal (A2) is shown as the occurrence place. The following has been noted in Ex.P2-Observation Mahazar. The same in vernacular is extracted here under

" சம்பவ இடம் எதிரி தஞ்சம்மாள் நிலத்தில் சம்பவம் நடந்துள்ளது சம்பவ இடத்தில் சோளப்பயிர் சிறிய செடி வளர்ந்து உள்ளது. அந்த இடத்தில் தகராறு ஏற்பட்டு நிலத்தில் கால்தடம் உள்ளது."

In Ex.P12 - Rough sketch prepared by the Investigating Officer, occurrence place is shown to be located in the land belonging to Thanjammal (A2). Therefore, as rightly contended by the learned senior counsel for the appellants, the occurrence has taken place not in the land belonging to the deceased Perumal, but in the land belonging to Thanjammal (A2). That is the reason why trial court itself acquitted all the accused of the offence under section 447 IPC.

21. When the accused were grazing their cattle in the land belonging to A2-Thanjammal, PW.1 and her father Perumal (deceased) seem to have picked up quarrel with A1 and A2. The said wordy quarrel, according to the accused, resulted in an attack made by PW.1-Vennila and the deceased Perumal, causing injuries to A1 and A2, as evidenced by Accident Registers marked as Exs.D1 and D4. On the basis of the statement of Rajendran (A1) recorded while he was taking treatment in the Government hospital, crime No.894/2006 was registered. On the basis of the statement of PW.1 recorded while she and her father Perumal (deceased) were taking treatment in the very same hospital, the present case crime number 894/2006 came to be registered. But, curiously both the cases came to be registered on the next day alone i.e. On 21.11.2006 as successive cases. Though first information report in this case was received by the jurisdictional magistrate on 21.11.2006 itself, in the very next case, which is also the counter case registered within a gap of one hour, the first information report reached the jurisdictional magistrate three days later, i.e. only on 24.11.2006 as seen from Ex.D3. Learned senior counsel for the appellants contended that something happened in between and till the police received the death intimation of Perumal, they did not register any case.

22. It is also the contention of the learned senior counsel for the appellants that the original complaint lodged by PW.1 should have been suppressed and a fresh complaint after the death of Perumal should have been pressed into service. In support of his contention, learned senior counsel for the appellants points out the fact that some of the prosecution witnesses have stated that a complaint was lodged with K.R.P.Dam OP Police on the way to Krishnagiri from the place of occurrence and contends that the said complaint should have been suppressed. Learned senior counsel for the appellants argued that the original complaint could have contained the real facts showing some minor injuries sustained by PW.1 and the deceased Perumal and that thereafter on the way to the hospital, the deceased Perumal could have sustained injuries, which proved to be fatal on failure of medical treatment. In support of his contention, learned senior counsel for the appellants pointed out certain discrepancies in the evidence of PWs.1 to 3, which are material according to him.

23. It is the case of the prosecution that from the place of occurrence, PW.1 and deceased Perumal was taken in a two-wheeler by PW.4-Subramani to the hospital. Though PW.1 tried to stick to the said stand in her chief examination, during cross-examination, she stated that she and her father went to Krishnagiri at 3.00 p.m by bus bearing Route No.65. PW.2, the mother of PW.1 also has stated in her evidence that she, her husband (deceased Perumal) and her daughter (PW.1-Vennila) got the bus bearing Route No.65 at 3.00 p.m, got down at K.R.P.Dam at 3.15 p.m and lodged a complaint at 3.15 p.m on the date of occurrence itself. It is also her statement that her daughter Vennila affixed her signature in the complaint. The further evidence of PW.2 is that after receiving the complaint,

police issued a chit (memo) for treatment and taking the chit, they went to the hospital. The relevant portion in vernacular is extracted here under.

" நான் 65ம் நம்பர் பேருந்தில் 3மணிக்கு சென்றேன், அந்த பேருந்து கே.ஆர்.பிடேம் வழியாக சென்றது, அங்கு இறங்கி 3.15மணிக்கு புகார் கொடுத்தோம். புகாரில் என் மகள் வெண்ணிலா கையொப்பம் செய்தார். என் கணவரையும், என் மகளையும் மருத்துவமனைக்கு கொண்டுசெல்லுமாறு போலீசார் சீட்டு எழுதிக்கொடுத்தார்கள்.... "

Similarly, PW.3 - Panjali has also stated that PW.1-Vennila lodged a complaint in the K.R.P.Dam Police station on the date of occurrence. The relevant portion in vernacular is extracted here under:

" கே.ஆர்.பிடேம் காவல்நிலையத்திற்கு சென்றபோது காலை 10 மணி இருக்கும். அங்கு வெண்ணிலா காலை 10 மணிக்கு புகார் கொடுத்தார், அதில் அவருடைய கையொப்பம் பெற்றுக்கொண்டார்கள்... "

The said evidence of PWs.1 to 3 in their cross-examination would cause a serious doubt on the prosecution version that Ex.P1 is not the first information. As rightly pointed out by the learned senior counsel for the appellants, there is a high degree of probability that a complaint lodged in the police station on the date of occurrence itself was burked and later on, after the death of Perumal, Ex.P1-complaint was brought into existence.

24. However, the learned Additional Public Prosecutor argued that the non-explanation of the injuries found on the accused person will not be fatal to the prosecution, if the evidence on the side of the prosecution is clear, cogent and credit worthy and in such cases, the non-explanation of certain injuries sustained by the deceased or by the accused ipso facto cannot be the basis to discard the entire prosecution case. In support of his contention, the learned Additional Public Prosecutor relied on Waman and Others vs. State of Maharashtra reported in (2011) 7 SCC 295. It is the further submission of the learned Additional Public Prosecutor that when there is an injured eye witness, the testimony of such eye witness has to be believed and accepted as a very reliable one. In support of the said contention, the learned Additional Public Prosecutor relies on the judgment in Bhajan Singh Alias Harbhajan Singh vs. State of Haryana reported in (2011) 7 SCC 421. The further submission of the learned Additional Public Prosecutor is that the delay in filing the FIR alone shall not affect the credibility of the prosecution case. In this regard, the learned Additional Public Prosecutor relies on the judgment of the Apex Court in Velu alias Velmurugan & Ors. v. State through Inspector of Police reported in 2012 CRI.L.J. 1228.

25. There cannot be any quarrel over the proposition that the delay in lodging first information report alone cannot be the ground on which the prosecution case can be disbelieved. In the absence of the probability of a theory of concoction, the evidence of the injured eye witnesses corroborated by medical evidence would

make the case of the prosecution probable. As pointed out by the learned senior counsel for the appellants, apart from there being a delay in lodging the first information, which has not been explained, the defence case of the accused that the original first information should have been buried and Ex.P1 should have been brought into existence only after the death of deceased Perumal, cannot be discarded as improbable. When the facts of the case make two hypothesis, one pointing out the guilt of the accused and the other pointing out the innocence of the accused, the second one should be preferred. In this case, as pointed out supra, not only there has been a delay in lodging the first information, but also there are materials to show that Ex.P1 could not be the first information and the first information lodged by PW.1 earlier in point of time, should have been suppressed.

26. The second judgment relied on by the learned Additional Public Prosecutor can be distinguished from the facts of the case on hand. In this case, not only the prosecution failed to explain the injuries found on A1 and A2, as evidenced by Exs.D1 and D4 - Accident Registers, but also there has been a failure on the part of the investigating agency to investigate the counter case registered based on the complaint of A1 along with the main case. In fact, nothing seems to have been done in the counter case registered based on the complaint of the first accused. The police officers and the investigating officer concerned in this case, to the utter dismay of this court, have pleaded absence of knowledge regarding what was done in the counter case. Apart from that, when there is absence of explanation on the part of the prosecution regarding injuries sustained by the accused and the accused have come forward with a plausible explanation regarding the occurrence, the same would put the court on guard to approach the evidence of prosecution witnesses, even the injured witness, with caution, especially when there are materials to show that Ex.P1 could not have been the first information lodged with the police and the original first information could have been buried. Hence the judgments relied on by the learned Additional Public Prosecutor are distinguishable from the case on hand.

27. At the cost of repetition, this court wants to point out that the following discrepancies in the prosecution case causing serious doubts are also found. According to PWs.1 to 3, the deceased Perumal, after receiving injuries in the hands of the accused, fell unconscious. When did he regain conscious, has not been spoken to by anyone. If the deceased Perumal had fallen unconscious and he did not regain consciousness, it would not have been possible to take him in a two-wheeler, namely TVS-50 vehicle. It has also been claimed by PW.1 that since her father was unconscious and was not in a position to speak, it was she who gave the statement forming the basis of the FIR. When that is so, it is highly improbable that the deceased after having fallen unconscious, would have been transported in a two-wheeler to the hospital. The occurrence, according to the prosecution theory, took place at 9.00 a.m on 20.11.2006. Accused have also come forward with a plea that an occurrence took place at that point of time, in

which A1 and A2 were attacked by PW.1 and deceased Perumal. If at all deceased Perumal lost his consciousness in the place of occurrences itself, is it probable that PWs.1 to 3 would have waited for about 5 hours without taking steps to bring consciousness to him and thereafter take him to the hospital?. The reason assigned by the prosecution is that the son of Perumal was employed in Hosur and they waited for his arrival after informing him over phone. The son of Perumal has not figured as a witness for the prosecution. There is no evidence that, only on the arrival of his son, Perumal was taken to the hospital. When a person has lost consciousness after receiving head injuries, nobody will venture to take a risk by causing a delay in taking him to the hospital for the arrival of his son, when the wife and daughters are available. It is quite natural to expect in such circumstances the injured to succumb to the injuries, if medical treatment or at least, first aid is not given. Therefore, the theory of the prosecution that PWs.1 to 3 waited for the arrival of the son of Perumal and thereby a delay was caused in taking him to the hospital for treatment is an unacceptable one.

28. It has also been elicited from the Medical Officer (PW.7), who treated the deceased Perumal and also from PW.8, the medical officer who conducted autopsy that intracerebral injuries found on the head of the deceased Perumal could have been caused, when struck with a heavy object or due to a forcible fall on a rock or heavy stone. The medical evidence does not prove the case of the prosecution that the injuries found on the head of the deceased were the injuries caused by a bill-hook. The injuries were not correlated to MO.2-Bill-hook. In short, there is no clinching evidence to show that the injuries were cut injuries caused with MO.2-bill-hook.

29. It is the further evidence of PWs.1 to 3 that the deceased was forcibly kicked on the scrotum and abdomen by Thanjammal (A2) and Saroja (A3) respectively. Medical evidence rule out any injury on the abdomen or scrotum. That is the reason why even the trial court chose to acquit Saroja (A3). But the learned trial judge did not apply the very same yardstick to Thanjammal (A2), may be because she has admitted to have sustained injuries in the hands of PW.1 and Perumal (deceased) in the occurrence, as per Ex.D1. When no injury corresponding to the alleged overt act on the part of the second accused is proved to have found on the deceased, then the very same benefit given to the third accused should have been given to the second accused.

30. It is the contention raised on behalf of the appellants/accused that after having assaulted by Rajendran (A1) and Thanjammal (A2) and perhaps after sustaining simple injuries in the said occurrence, a complaint was lodged with the police and thereafter while proceeding to the police station, the deceased might have fallen on a rock or a heavy object and thus sustained the head injury, which ultimately resulted in his death and that the earlier complaint should have been suppressed. The said theory cannot be rejected as improbable, especially in the light of the

admission made by PW.1 that PW.1 went to K.R.P. Dam police station and lodged a complaint and the admission made by PW.7 - Medical officer that the injuries found on the body of the deceased were not cut injuries caused by a bill-hook and that though injury No.1 found on the deceased could have been caused, if attacked with an irregular wooden log, all the injuries found on the deceased could have been caused due to a fall from a speeding vehicle. There is no cogent evidence to rule out such a possibility and the hypothesis propounded by the accused. For all the reasons stated above, we come to the conclusion that the prosecution failed to prove its case that the accused persons caused injuries, especially the head injury leading to the death of the deceased Perumal. The learned trial judge failed to properly appreciate the same and the same has resulted in a finding holding the accused Rajendiran (A1), Thanjammal (A2) and Venkatesan (A4) guilty of the offence punishable under section 302 r/w 34 IPC. Such a finding is discrepant and the conviction for the offence under section 302 r/w 34 IPC has got to be upset.

31. That does not mean that there was no occurrence that took place on 20.11.2006 and the accused person did not attack PW.1 and the deceased Perumal. The accused themselves have admitted that there was a wordy quarrel on 20.11.2006. They proceeded further to contend that, following the wordy quarrel, PW.1 and the deceased Perumal attacked them with sticks. There is no cogent evidence to prove that a bill-hook was used, much less MO.2-bill-hook was used by the fourth accused. In the light of the admission made by the accused, it can be inferred that while being attacked, the appellants 1 and 2 would not have kept quiet and received the blows without any resistance. When they were attacked by PW.1 and the deceased Perumal with sticks, it is quite probable for them to have resisted the same and even retorted by snatching the sticks from them and attacking them with the sticks. That is the reason why two sticks (MO.1 and MO.3) were found and they were recovered under Ex.P3-Seizure Mahazar from the place of occurrence. It has been pointed out supra that only one stick was used by the first accused Rajendran for attacking both PW.1 and the deceased Perumal. If it was so, there would have been no occasion for the identification of the other stick also as a weapon used in the occurrence, leading to the recovery of the same. Since both the sticks were identified as the weapons used in the occurrence, the theory of the accused that PW.1 and deceased Perumal were the aggressors seems to be more probable than the genesis of the occurrence projected by the prosecution.

32. There is also evidence to show that the occurrence took place in the land belonging to Thanjammal (A2) and PW.1 picked up quarrel with A1 while he was allowing his cattle to graze in the land belonging to A2. If the evidence in this regard is analysed in proper perspective, it will give rise to a plausible hypothesis that PW.1 and the deceased Perumal happened to be the assailants, who started the fight and started attacking the accused 1 and 2. During the course of melee, the accused 1 and 2 could have snatched the sticks from them and beat them causing injuries. The said

injuries could not have been caused with the necessary animus to bring their act within the definition of culpable homicide amounting to or culpable homicide not amounting to murder. No intention to cause death or such bodily injury as is likely to cause death could be imputed. Knowledge required under section 299 and 300 also cannot be imputed. At the best, it can be stated that the act of accused 1 and 2, would amount to causing injuries on PW.1 and Perumal in exercise of their right of private defence. Such a hypothesis and such a theory propounded on behalf of the accused cannot be rejected as improbable or untenable, especially in the light of the number of defects and infirmities found in the prosecution case and in the light of the fact that the true genesis of the case has not been brought-forth by the prosecution. Hence it can be held that, barring the injury, which led to the death of Perumal regarding which there is a serious doubt as to how the same could have been sustained, the other injuries alone could have been caused by A1. The other injuries found on the deceased could be attributed to the act of A1. The act of causing such injuries cannot amount to an act of voluntarily causing the death. In view of the same, it can be even held that the accused 1 and 2 could have acted only in self-defence within the ambit allowed by law. It cannot also be said that they exceeded the right of self-defence.

33. So far as injuries found on PW.1 is also concerned, the same observations will get attracted. The above observations regarding private defence are made in order to show that there exists a reasonable doubt regarding prosecution case and the prosecution case in respect of the charge for an offence under section 302 r/w 34 IPC and that regarding the other offences, namely an offence punishable under section 324 IPC, the same could have been caused by way of a right of private defence and that hence, the accused are entitled to acquittal. Regarding the other offences, namely offences under sections 294(b) and 506(ii), the respective accused are entitled to the benefit of doubt and acquitted.

34. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused Rajendran (A1), Thanjammal (A2) and Venkatesan (A4) in Sessions Case No.256 of 2006 on the file of the Principal District and Sessions Judge, Krishnagiri are set aside and the appellants/accused Rajendran (A1), Thanjammal (A2) and Venkatesan (A4) are acquitted of all the charges with which they stood charged. The fine amount paid, if any, is to be refunded to them. The appellants/accused Rajendran

(A1), Thanjammal (A2) and Venkatesan (A4) are directed to be released forthwith, if their custody is not required in any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

asr/

To

- 1.The Principal District and Sessions Judge, Krishnagiri
- 2.The Judicial Magistrate, Krishnagiri
- 3.The Chief Judicial Magistrate, Krishnagiri
- 4.The Inspector of Police, Krishnagiri Taluk Police Station,
Krishnagiri, Krishnagiri District
- 5.The Superintendent of Prisons
Central Prison, Vellore - 632 002
- 6.The Superintendent,
Special Prison for Women, Vellore-632 002
- 7.The District Collector, Krishnagiri
Krishnagiri District
- 8.The Director General of Police
Mylapore, Chennai-4
- 9.The Public Prosecutor, High Court, Madras
- 10.The Section Officer, Criminal Section, High Court, Madras

1 CC To Mr.N.Mohideen Basha, Advocate SR NO.78549

ad[co]
gp/4.1

CRL.A.No.519 of 2011

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