



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 18.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A.(MD).Nos.392 and 393 of 2016

Saravanan @ Saravanakumar

.. Appellant in Crl.A.(MD).No.392 of 2016/A1

1.Ramar

2.Jayalakshmi

.. Appellants in Crl.A.(MD).Nos.393 of 2016/A2 & A3

Vs.

State,

rep. by Inspector of Police,

Sayalkudi Police Station,

Ramanathapuram District.

.. Respondent/Complainant

(Crime No.53 of 2011)

**PRAYER:** Appeals filed under Section 374 (2) Cr.P.C. to set aside the judgment and conviction dated 05.10.2016 by Additional District Judge (Fast Track Court), Paramakudi, in S.C.No.102 of 2012 and acquit the appellants.

For Appellants : Mr.S.Deenadayalan (Crl.A.(MD) No.392/2106)  
Mr.G.Karuppasamy (Crl.A.(MD).No.393/2016)  
Pandian

For Respondent : Mr.K.S.Duraipandian  
Additional Public Prosecutor

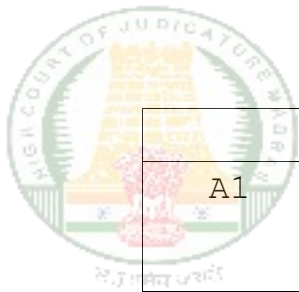
|                        |            |
|------------------------|------------|
| Judgment Reserved on   | 08/09/17   |
| Judgment Pronounced on | 18/09/2017 |

#### COMMON JUDGMENT

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(Common Judgment of the Court was delivered by  
**N. SATHISH KUMAR, J.)**

Aggrieved over the judgment of the learned Additional District Judge, Fast Track Court, Paramakudi, Ramanathapuram District, made in S.C.No.102 of 2012, dated 05.10.2016, the present appeals have been filed, in and by which the appellants/accused have been convicted and sentenced as under:



|    | Conviction             | Sentence                                                     |
|----|------------------------|--------------------------------------------------------------|
| A1 | Section 302 IPC        | Life imprisonment + fine Rs.20,000/- in default 3 years S.I. |
| A2 | Section 342 IPC        | 1 year S.I.                                                  |
|    | Section 302 r/w 34 IPC | Life Imprisonment + fine Rs.10,000/- in default 3 years S.I. |
| A3 | Section 342 IPC        | 1 year S.I.                                                  |
|    | Section 302 r/w 34 IPC | Life Imprisonment + fine Rs.10,000/- in default 3 years S.I. |

2. CrI.A.(MD).No.392 of 2016 is filed by A1 and CrI.A.(MD). No.393 of 2016 is filed by A2 and A3. Since both the appeals are arising out of the same judgment, we are inclined to dispose of both the appeals by this common judgment.

3. The brief case of the prosecution is as follows:-

i) The deceased Selvaraj is the husband of PW1 and brother of PW2 and PW3 and son of PW4 and they are the resident of Vellapatti Village. There was illegal connection between A2 and wife of PW2 one Arumugakani, who was examined as DW2. The deceased has informed the same to PW2. Therefore there was a quarrel started between PW2 and his wife. As the deceased informed the same to PW2, there arose enmity between the accused and deceased.

ii) Accordingly on 04.03.2011 in the morning while the deceased left for his work, DW2 made some general allegation. Thereafter, at about 7.30 p.m. when the deceased Selvaraj came to his house by bicycle and called PW1. At the relevant time PW2 and PW4 also came to PW1 house to see PW1 as she was three month pregnant. At the relevant time, A2 and A3 caught hold the deceased and A1 stabbed the deceased repeatedly with a dagger (MO1). As a result, the deceased succumbed to injury. On seeing PW1 to PW4, the accused run away from the place of occurrence. At that time, A2 fell down and sustained injury on the forehead. PW1 to PW4 also witnessed the occurrence.

iii) Thereafter, PW1 went to the police station and gave a statement/Ex.P1. PW12 Sub Inspector of Police, recorded the statement of PW1 at 8 p.m. on 04.03.2011 and registered the crime in Crime No.53 of 2011 for the offence under Sections 342 and 302 IPC. Ex.P9 is the First Information Report and he forwarded the same to the Court and a copy to the higher officials.

iv) PW13 Inspector of Police took up the case for investigation at 8.40 p.m. and went to the place of occurrence at



about 9.15 p.m. and prepared observation mahazar/Ex.P2 in the presence of PW5 and one Aaththimuthu and rough sketch/Ex.P10 and also collected bloodstained earth, ordinary earth and slippers/MO6, MO7 and MO2 respectively in the presence of same witnesses under Ex.P3 mahazar. Thereafter he conducted inquest over the dead body of the deceased from 10.45 p.m. to 12.45 a.m. and prepared inquest report/Ex.P11 and sent the dead body to the hospital through head constable.

v) PW9 is the postmortem doctor who conducted autopsy over the dead body of the deceased and found the following injuries:-

"stab injury in left chest 2 cm x 2 cm (NC) left sternum, stab injury below left clavicle about 2 cm with fracture sternum. Thoracic cavity filled blood. Punctured injury in the heart of pericardial with (NC) in pericardial cavity with opened. Liver normal shows perforate by stab injury. Intestine, Spleen, Kidneys Normal."

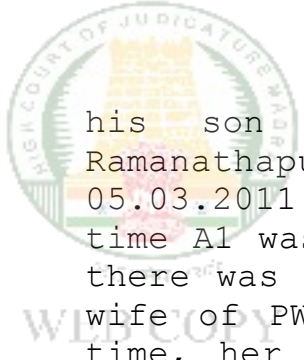
and opined that deceased appear to have died of Hyperclacemia shock lacerated injury with (NC) 12 - 16 hrs before to postmortem and issued Ex.P6/Postmortem certificate.

vi) PW11/Photographer, who took photos on the dead body/Ex.P8 series. PW8, Deputy Director, Forensic Department, has examined the material objects. Biological Report is marked as Ex.P4 and Serologist Report is Ex.P5.

vii) PW13 in continuation of the investigation after inquest examined the witnesses and recorded their statement and also seized the clothes from the dead body under Form -95 after postmortem and sent the property to the Court. On 05.03.2011, he arrested A2 while he being treated as inpatient in the Ramanathapuram Government Hospital at 12.15 p.m. After recording the statement of the witnesses, on 06.03.2011, he arrested A1 at about 10 a.m. at Narippaiyur bus stand in the presence of PW10 Village Assistant and one Thirugnagnam and recorded his voluntary confession. The admissible portion of the confession is Ex.P7. In pursuant to the same, he recovered the dagger/MO1 at 11.30 p.m. from the accused under Ex.P8 mahazar and sent the accused and the properties to the Court and also gave a requisition to the Court to send the material objects to lab. Thereafter, in view of his transfer, he handed over the case diary to PW14.

viii) PW14 took up further investigation on 17.02.2012, examined the photographer, medical officer and other witnesses and finally laid a charge sheet against the accused under Sections 302 and 342 IPC.

<https://hcservices.courts.gov.in/hcservices/> examined as DW1. In his evidence he has stated that on 04.03.2011 at about 6 p.m. the deceased has cut him on the head without any reason. Therefore, he sustained injury and thereafter,



his son took him to the hospital and admitted in the Ramanathapuram Government Hospital and treated as inpatient. On 05.03.2011 he was arrested by the police in the hospital. At that time A1 was also in the hospital. It is further stated by DW1 that there was no connection between himself and DW2, wife of PW2. DW2 wife of PW2 was also examined. According to her, at no point of time, her husband suspected her. There was no illegal connection between herself and A2. Only after the occurrence she and her husband went to the deceased house.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. they pleaded innocence. During trial, on the side of prosecution as many as 14 witnesses were examined and 11 documents were exhibited besides 9 material objects. On the side of the defence two witnesses were examined.

6. Having considered the above materials, the trial Court found the accused guilty as detailed in the first paragraph of this judgment and accordingly, punished them and that is how the appellants are before this Court with the appeal.

7. Heard the learned Counsel for the appellants and the learned Additional Public Prosecutor for the State and also carefully perused the records.

8. The learned counsel appearing for the appellants in both the cases vehemently contended that the entire prosecution case is doubtful. In this case, the genesis of the occurrence has been suppressed. Admittedly, A2 also sustained injury and he was arrested only in the hospital, while he was taking treatment. The Judicial Magistrate himself went to the hospital and remanded A2. The above fact itself clearly shows that A2 was seriously injured. But, the prosecution has deliberately suppressed the nature of injuries sustained by A2 at the relevant point of time. It is the contention of the learned counsel for the appellants that PW1 to PW4, who are family members of the deceased could not be the eyewitnesses at all. Their conduct in keeping silent at the relevant time of occurrence and thereafter not accompanying the dead body to the hospital, itself clearly show that their evidence is unreliable. Further PW2's name as eyewitness is not at all found in the First Information Report. Further, DW2, wife of PW2, has also in her evidence categorically stated that only after the occurrence both of them went to the place of occurrence. Therefore, the presence of PW2 in the place of occurrence is highly doubtful. Similarly PW3 is residing in another Village and, she has also categorically admitted in the cross-examination that only after the occurrence, she came from her village. Therefore, her presence in the place of occurrence is also highly doubtful. The conduct of the eyewitnesses in not making any efforts even to lift the deceased and take him to the hospital clearly show that their version is highly unbelievable. The



previous complaint suppressed by the prosecution and further the recovery and arrest of A1 is also doubtful. The evidence of PW1 herself clearly shows that dagger/MO1 was very much available in the place of occurrence and police recovered it. Further, the prosecution has not even examined DW2 during investigation, who is the main person projected for motive and none of the independent witnesses spoken about the occurrence. The statement under 161 Cr.P.C. and Form 95 mahazar were reached to the Court with inordinate delay. All these facts clearly show that the entire prosecution is highly doubtful. Hence prayed for acquittal.

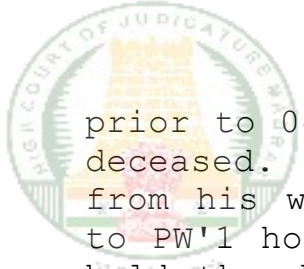
9. On the other hand, the learned Additional Public Prosecutor submitted that the evidence of PW1 to PW4 is natural and merely because they are family members, their evidence cannot be discarded. Their evidence also supported by medical evidence. Therefore the Trial Court has rightly relied upon the evidence of PW1 to PW4. Hence, submitted that no interference is required and prayed for dismissal of the appeals.

10. In the light of the above submissions, now it has to be analysed as to whether the prosecution has proved the guilt of the accused beyond all reasonable doubt.

11. The motive projected by the prosecution that there was illegal connection between DW2/wife of PW2 and A2 and the same has been informed to PW2 by the deceased. Therefore, there arose enmity between the accused and the deceased. Therefore on 04.03.2011 at 7.30 p.m. when the deceased came from his work in bicycle. A2 and A3 caught hold him and A1 repeatedly stabbed him with dagger/MO1 and PW1 to PW4 in their evidence has stated that they had seen the occurrence. At the relevant point of time, PW1 to PW4, in a parrot like manner have stated about the occurrence. Though motive is also relevant, but when the eyewitness version are available, the motive assumes insignificance. However, when the prosecution has come up with the specific motive for the offence, it has to be established by them. The alleged motive projected by the prosecution about the illegal connection between DW2/the wife of PW2, and A2 has not been established. PW2 never stated in his evidence that the deceased has ever informed him about his wife. It is further to be noted that PW'2 wife one Arumugakani was not examined by the Investigation Officer during investigation. She was examined as DW2. of course, she is the sister of A3. She has stated in her evidence that there was no such illegal connection with A2 and she came to the place of occurrence along with her husband/PW2 after the occurrence. The motive for the offence projected by the prosecution is not been established. As already stated when there are eyewitnesses version, the motive assumes insignificance.

<https://hcservices.ecourts.gov.in/hcservices/>

12. Be that as it may, now it has to be analysed whether PW1 to PW4 evidence could be believed. It is the evidence of PW1 that



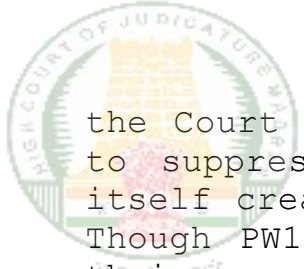
prior to 04.03.2011 itself, the accused have conspired to kill the deceased. On 04.03.2011 at about 7.30 p.m. when the deceased came from his work, and called PW1, at that time PW2 to PW4 also came to PW1's house. When PW1 came out from her house, A2 and A3 caught hold the deceased and A1 repeatedly caused stab injury with M01. Though the family members are the natural witnesses, their evidence cannot be disbelieved merely because they are close relatives. But, it has to be analysed, whether such witnesses have witnessed the occurrence to believe their version. The entire evidence of PW1 when carefully scanned, she has stated that A2 and A3 caught hold the deceased from front and back side, at that time A1 caused repeated injury in the front side and back side. However, they have not made any attempt to prevent the attack. Thereafter, PW2 to PW4 sent the dead body of deceased in the ambulance and PW1 went to the police station. It is to be noted that PW1's evidence is against normal human conduct, when the husband of any wife who was attacked brutally in front of her eyes, the normal conduct of any wife is to make hue and cry and also to make some efforts to save him from the repeated attack. Even assuming that she was also threatened by the accused, her normal conduct would be at least to take the deceased to the hospital immediately. Whereas, PW1 not even accompanied the dead body of her husband to the hospital. According to her, she went to the police station and gave a complaint at 8 p.m. When her evidence carefully scanned, in the cross-examination she has stated that the police also came to her house and obtained a signature. Besides the police also recovered dagger in the place of occurrence and slippers of her husband. Her evidence makes it clear that immediately after the occurrence, the body was kept in the ambulance and the police also reached the place of occurrence and obtained her signature in the statement. Therefore, the First Information Report now projected by the prosecution itself creates a serious doubt. When Ex.P1/First Information Report carefully seen, in the earlier statement PW1 has never stated about the presence of PW2 as eyewitness. Though the First Information need not contain minute details, the fact remains that such omission cannot be ignored altogether, in view of evidence of DW2. It is further to be noted that Ex.P1 is also silent about PW2 to PW4 came to PW1's house only to see PW1 at the relevant point of time. The above omission also makes the evidence of PW1 doubtful.

13. Yet another factor to be taken note of is that PW1 in her complaint stated that she was with her children and she was sitting in front of her house at the time of occurrence. But in her evidence she was totally silent about her children in this regard. There is no explanation whatsoever. It is further to be noted that according to PW1 her husband came in a cycle at the time the occurrence took place and cycle was also found in the place of occurrence, whereas the observation mahazar/Ex.P2 and the evidence of Investigation Officer shows that no cycle was found in the place of occurrence. PW3 was residing in another village and

the same was not at all denied. Further she also stated while PW3 and PW4 came to the place of occurrence, the deceased already lying down. She has also stated in her evidence that A2 and A3 caught hold of the deceased from both sides. This evidence of PW1 makes her evidence very doubtful for the simple reason that the deceased not only suffered a stab injury on the front side, but also on the back side. When a person is caught in both sides, possibility of causing stab injury on the back side is also doubtful. PW1 further stated in her evidence that A2 after occurrence while running, he fell down and sustained injuries. Whereas, PW2 has given a different version in this regard. His evidence is to the effect, that the accused while running dashed against the fence and sustained head injury. PW3 and PW4 have supported the version of PW1 as if A2 fell down and sustained injuries. It is to be noted that the injuries sustained by A2 was introduced only at the later point of time. The same has not been found place in the earlier statement Ex.P1. Though minor discrepancy not always vital to the prosecution, but when witnesses tried to give explanation at later point of time, particular act as to the omission cannot be ignored all together. Further, PW1 in her evidence also stated that the accused caused injury on the hand and also caused repeated stab injury. But in the Medical Officer evidence only 2 stab injuries found. These facts also create some doubt about the version of PW1 about witnessing the occurrence. PW2 is none other then the brother of the deceased. According to him, he himself and PW3 to PW4, while talking in front of the deceased house, the accused were preparing to beat somebody with aruval. However, PW2 did not take it seriously and they thought accused aiming some other third party. Thereafter when the deceased came in a cycle A2 and A3, caught hold the deceased on both sides and A1 caused repeated injury on the chest and back. Thereafter, the accused ran away from the place of occurrence. While A2 running, dashed against the fence and sustained head injury. His evidence also clearly show that he never made any attempt to prevent such attack. His evidence that despite knowing the accused were preparing to do away somebody, on a particular date, PW2 did not take it seriously, is also against the normal human conduct. Further his presence is not at all mentioned in the First Information Report. His wife's evidence clearly shows that he reached the place of occurrence only after the occurrence. Similarly PW2 being the brother of the deceased is also a mute spectator. He has not made any attempt and he did not even go to the hospital with the dead body. His conduct in not taking any efforts and not even accompanying the deceased to the hospital also creates doubt. It is not the case of PW2 that he was threatened by the accused at the relevant point of time. His evidence is also against normal human conduct. Hence, his presence as eyewitness is also highly doubtful and his version that accused dashed against the fence and sustained injuries also contradict the evidence of PW1 and the prosecution. PW3/the sister of the deceased and according to her, she also came to the place of

occurrence at the relevant time to see PW1, as the later is pregnant. In her evidence, she has stated that accused had caused 4 stab injuries. But it is found to be false in view of medical examination report. But, she in her cross-examination has stated that she is residing in some other village. It is also admitted in the cross-examination that only after hearing the occurrence, she came to the place of occurrence. Therefore PW3's evidence that she witnessed the occurrence is also doubtful. Her evidence further proceeded that the dead body was removed to the hospital at 8.30 p.m. in the ambulance. However, nobody is accompanying the dead body. This is quite unnatural, since PW1 to PW3, being wife, brother and sister of the deceased. PW4/mother of the deceased, admittedly she is residing in Arch street. Though, she has also spoken about the occurrence, she has also stated that despite hearing the fact at 6 p.m. that the accused were talking with each other to kill somebody, they took it casually and never acted for that. Despite knowing something about the plan of the accused and taking it very slightly by the witnesses is also quite unnatural and against the normal human conduct. She has also admitted that the police came to the place of occurrence immediately and examined PW1. Further if PW1 to PW4 present in the place of occurrence, the normal conduct would be take some steps to admit the injured to the hospital, but they did not make any such attempt. Though PW1 and PW4 stated that they also shifted the deceased and their dresses also got bloodstained. Absolutely there is no materials on this regard. The prosecution has not even made any attempt to collect the bloodstain dresses of PW1 and PW4. It is further to be noted the occurrence took in the evening hours at about 7.30 p.m. none of the witnesses have been spoken about the light burning anywhere near the place of occurrence. However, PW1 to PW4 in unison voice tried to explain the injury sustained by A2 at the relevant time. The prosecution deliberately suppressed the nature of injury sustained by A2. It is the evidence of A2 that he was cut by the deceased at 6 p.m. Thereafter, immediately he was taken to the hospital by his son. While he was in the hospital as inpatient, he was arrested and remanded in the hospital itself and A1 also arrested in the hospital. The defence side evidence cannot be rejected altogether. His evidence has also been squarely corroborated by the Investigation Officer about the arrest and remand in the hospital. Besides, the remand report when seen, the same makes it clear that in fact the learned Judicial Magistrate went to the hospital and remanded A2. The fact that learned Judicial Magistrate went to the hospital and made remand itself indicate that A2 was not in a position to move or brought to the Court and he was severely injured and treated in the hospital. But the prosecution has failed to establish the nature of injuries sustained by A2. Though it is not always necessary to explain the minor injuries on the side of the accused, when the injury is of

<https://hse.servecourts.gov.in/hse-service>, which is also more probalised by the fact that the learned Judicial Magistrate has visited the hospital and remanded him, it is the duty of the prosecution to bring before



the Court the true version. When the prosecution made any attempt to suppress the true version and project their own story that itself create a serious doubt about the genesis of the occurrence. Though PW1 to PW4 tried to explain the injuries sustained by A2, their version is also very much doubtful in view of their conduct and also various infirmities found in their evidence. Therefore, any attempt made by the witnesses to explain the injuries, their version also found to be untrue. The only inference this Court can draw is that the prosecution has suppressed the genesis and origin of the occurrence. Further, inference also arises that the accused are lying on a most material point and therefore their evidence is unreliable.

14. It is useful to refer a judgment of the Hon'ble Supreme Court reported in **(1976) 4 SCC case 394 (Lakshmi Singh v. State of Bihar)**, wherein at paragraph 12 it has been held as follows:-

"12. ... According to the Doctor injury No. 1 was grievous in nature as it resulted in compound fracture of the fibula bone. The other two injuries were also serious injuries which had been inflicted by a sharp-cutting weapon. Having regard to the circumstances of the case there can be no doubt that Dasrath Singh must have received these injuries in the course of the assault, because it has not been suggested or contended that the injuries could be self-inflicted nor it is believable. In these circumstances, therefore, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. Not only the prosecution has given no explanation, but some of the witnesses have made a clear statement that they did not see any injuries on the person of the accused. Indeed if the eye-witnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe



brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very Doctor who examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasrath Singh also. In the case referred to above, this Court clearly observed as follows:

The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W. 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabilised. Under these circumstances the prosecution had a duty to explain those injuries.... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants.

This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the pre-sent case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In *Puran Singh v. The State of Punjab* Criminal Appeal No. 266 of 1971 decided on April 25, 1975 : which was also a murder case, this Court, while following an earlier case, observed as follows:

In *State of Gujarat v. Bai Fatima* Criminal Appeal No 67 of 1971 decided on March 19, 1975 : ) one of us (Untwalia, J., speaking for the Court, observed as follows:

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.



(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

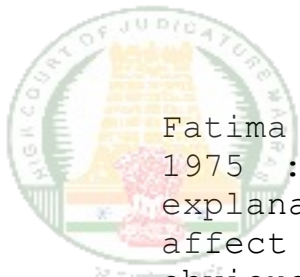
The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

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

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

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

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs. 1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai*



Fatima Criminal Appeal No. 67 of 1971 decided on March 19, 1975 : Reported in there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."

15. It is the definite evidence of A2 that he suffered cut injury at the hands of the deceased and he sustained cut injury at 6 p.m. by the deceased and this evidence is not denied in the cross-examination by the prosecution side. The prosecution also admitted about the cut injuries on the head. However, it is suggested by the prosecution that during the occurrence, while A1 was stabbing the deceased one of the attack fell on the neck of A2 and therefore, A2 suffered injury. The very version of the Public Prosecution as to manner in which injuries sustained by A2 is totally contradictory to the version spoken to by PW1 to PW4. Hence, as discussed above, we are of the view that PW1 to PW4 evidence highly unbelievable in view of their conduct and discrepancies as discussed above.

16. Further, the arrest and recovery spoken by PW7 and Investigation Officer cannot be believable for the simple reason that as per the evidence of PW1 dagger/MO1 was recovered from the place of occurrence on the same day. DW1 in his evidence has stated that A1 also taken to custody on 05.03.2011. The above evidence coupled with the admission of PW1 about the seizure of dagger/MO1 from the place of occurrence makes the evidence of PW7 and Investigation Officer cannot be believed at all. Therefore, the recovery and arrest is also highly doubtful in this case. It is further to be noted that though the investigation Officer would claim to have recorded the statement of witnesses on the date of occurrence itself, statement under Section 161 Cr.P.C. were reached to the Court only on 15.03.2011 for which there was no explanation whatsoever by the prosecution. Similarly, observation mahazar and rough sketch said to have been prepared on the same day also reached the Court with inordinate delay. The inquest report is also sent to the Court on 15.03.2011. It is relevant to note that according to Investigation Officer, he conducted the inquest on the dead body in the place of occurrence from 10.45 p.m. to 12.45 a.m. whereas PW1 to PW4 in their evidence in one voice stated that after the occurrence, the body was taken in ambulance to the hospital. The above fact also creates a serious

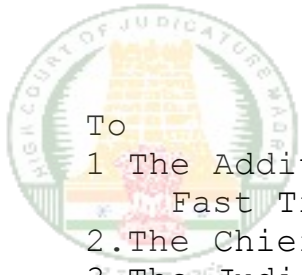
doubt about the version of the eyewitness.

17. At any event it is to be noted the eyewitnesses are family members who stated to have been in the place of occurrence, their names are not found in the inquest report. Of course mere absence of names of witnesses in the inquest report alone cannot make their evidence doubtful as the object of the inquest proceedings is merely to ascertain a person death is a natural death or unnatural death or if so what is the cause of death. But at the same, time, the inquest report prepared by the Investigation Officer as to the time when the deceased was seen alive or found dead cannot be likely ignored. In the column No.4 of the inquest report there is a specific finding by the Investigation Officer that the deceased was last seen alive by her wife at about 18.45 hours, whereas in the column No.3, the specific finding of the Investigation Officer is that the dead body of the deceased lying near the fence was first seen by PW1 at about 19.15 hours i.e. 7.15 p.m.. From the inquest report it is found that PW1 in fact has found the dead body at about 7.15 p.m. The above fact, in fact creates a serious doubt about the prosecution version that the occurrence took place at 7.30 p.m. The time of the occurrence is also doubtful and the nature of injuries sustained by A2 is also convincingly suppressed by the prosecution. DW1 in his evidence in fact probabilised that there was a scuffle in which he was also attacked at 6 p.m. In view of the serious doubt entertained by us as discussed above, we are of the considered view that the eyewitness namely PW1 and chance witnesses namely PW2 to PW4 have not passed the test of improbabilities and inconsistencies. The truth and falsehood are so inextricably mixed together it is difficult to separate them. We are of the view that the entire prosecution case has to be rejected in *toto*. Accordingly, from the circumstances available as discussed above, we are of the considered view that the prosecution version is highly doubtful and they have not come up with true version and genesis and origin of the occurrence is also suppressed by them. The evidence of PW1 to PW4, cannot be believable. Hence, we have no other options except to extend the benefit of doubt to the accused and to acquit them.

18. In the result, both the criminal appeals are allowed. The conviction and sentence imposed on the appellants vide judgment dated 05.10.2016 by the Trial Court in S.C.No.102 of 2012 are hereby set aside and the appellants are acquitted from all the charges. The fine amount if any paid by the appellants shall be refunded to them. If the appellants are in custody they shall be set at liberty forthwith if they are not required in connection with any other case or proceedings. Bail bond if any executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar (AE)



To

- 1 The Additional District Court  
Fast Track Court, Paramakudi.
2. The Chief Judicial Magistrate, Ramanathapuram.
3. The Judicial Magistrate, Muthukulathur.
4. The District Collector, Ramanathapuram.
5. The Superintendent of Police, Ramanathapuram.
6. The Superintendent, Central Prison, Madurai.
7. The Inspector of Police,  
Sayalkudi Police Station,  
Ramanathapuram District.
8. The Director General of Police, Mylapore, Chennai-4.
9. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+2cc to Mr.S.DEENADHAYALAN, ADVOCATE, SR.79411,79412

CRL.A. (MD) .Nos.392 and 393 of 2016  
18.09.2017

KK/SKN RSK/SAR4/19.09.2017/14P-12C/