(2001) 07 MAD CK 0031

Madras High Court

Case No: Criminal Appeal No. 223 of 1993

State by Public Prosecutor	APPELLANT
Vs	
Murugan and Others	RESPONDENT

Date of Decision: July 20, 2001

Acts Referred:

- Penal Code, 1860 (IPC) - Section 109, 307, 34, 341, 342
- Criminal Procedure Code, 1973 (CrPC) - Section 313, 386

Citation: (2002) CriLJ 670 : (2001) 2 LW(Cri) 815

Hon'ble Judges: N. Karpagavinayagam, J

Bench: Single Bench

Advocate: O. Srinath, for the Appellant; S. Shanmugavelayutham, for the Respondent

Judgement

This Judgment has been overruled by : Murugan and Another Vs. State rep. by Public Prosecutor, Madras, Tamil Nadu and

Another, AIR 2009 SC 72 : (2008) 10 JT 631 : (2008) 13 SCALE 117

N. Karpagavinayagam, J.
The State is the appellant herein. The respondents 1 to 3 (A1 to A3) were tried for the offence u/s 307, IPC

and u/s 307 read with Section 109 IPC. They were acquitted by the trial Judge. Hence, this appeal by the State.

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

(a) P.W. 1 Sankaralingam, P.W. 2 Ramaih and P.W. 6 Paramasivam are brothers. They reside at Marugal Kurichi village. Accused 1 to 3 are

also residing in the same village. Their house is situate very near to the house of P.Ws. 1, 2 and 6. Respondents 1 and 2 are brothers.

(b) On 2-10-1989 at about 5.00 p.m. Kannammal, the mother of P.Ws. 1 and 2, went to the corner of the street to collect water from the

common water pipe. The third respondent''s wife Manickam also came for taking water. While collecting water from the common pipe, there was

a quarrel between Kannammal and Manickam, the wife of third respondent. P.W. 2 Ramaiah, who noticed this, went there and separated them

and took his mother to his house.

(c) Next day (i. e.) 3-10-1989 at about 7-30 a.m., P.W. 2 Ramaiah, P.W. 1 Sankaralingam and one Manickam, wife of another brother, went to

the well, which is situate in Nallakannau Thevar''s garden, in order to take bath. When the first respondent came to know about the occurrence

took place on the earlier day, he had grievance against P.W. 2 thinking that P.W. 2 abused the wife of the third respondent in support of his

mother.

(d) At about 7-30 a.m. when P.Ws. 1 and 2 and another went near the well, the respondents 1 to 3 (Al to A3) waylaid them. A1 and A2 were

having ''Aruval'' with them. A3 caught hold of P.W. 2 from behind his back. At that time, A1 and A2 with ''Aruval'' attacked P.W. 2

indiscriminately on the back, left shoulder, right shoulder, hands, etc. P.W. 2 received number of bleeding injuries all over the body and began to

cry. P.W. 1 Sankaralingam and P.W. 5 Poolu Thevar and two others went near the deceased. The accused persons threatened them that they

would kill them also. P.W. 2 swooned and fell on the ground. Thereafter, the accused took their heels.

(e) P.Ws. 1 and 5 took the victim in a car to Nanguneri Government Hospital at about 8.30 a.m. P.W. 3 Dr. Andiappan examined the victim and

found nine injuries. He also sent Ex. P-2 intimation to the Nanguneri Police Station. P.W. 7 Head Constable came and recorded statement from

P.W. 1. Ex. P-1 is the complaint and the same was registered against the accused for the offences under Sections 341, 342 and 307, IPC. Ex. P-

7 is the printed FIR P.W. 3 Doctor sent the victim to Tirunelveli Hospital for further treatment. He issued Ex. P-3 wound certificate. P.W. 4

Doctor took X-Ray and issued Ex. P-4 X-Ray report and the X-Rays were marked as M.Os. 3 to 9.

(f) P.W. 8 Gnana Diraviyam, the Inspector of Police, took up further investigation and went to the scene and examined the witnesses. He prepared

Ex. P-5 observation mahazar and Ex. P-8 rough sketch. He also recovered sample earth and blood stained earth. Thereafter, he went to the

hospital and recorded the statement from P.W. 2. Since P.W. 8 was subsequently transferred, P.W. 9 Periasamy, another Inspector of Police,

took up further investigation and after finishing the investigation, he filed the charge-sheet against all the accused for the offences under Sections

341, 307 read with Section 34, IPC.

3. On being committed, the Sessions Court framed charges against A1 to A2 for the offence u/s 307, IPC and against A3 for the offence u/s 109

read with Section 307, IPC.

4. During the course of trial, P.Ws. 1 to 9 were examined, Exs. P-1 to P-8 were filed and M.Os. 1 to 9 were marked.

5. When the accused were questioned u/s 313, Cr. P.C. they stated that a false case had been foisted against them. A3 would specifically state

that during the time of occurrence, he was attending his work in Sundaram Mill. He had also produced a certificate from the Mill authority to show

that on that day, he was present in the Mill and was working in the Mill from 7.00 a.m. to 3.30 p.m.

6. The trial Court, after consideration of the entire materials, acquitted the respondents holding that the offence was not proved beyond reasonable

doubt. This judgment has been challenged before this Court by the State.

7. Mr. O. Srinath, the learned Government Advocate appearing for the appellant-State would submit that the reasonings given by the trial Court

for acquitting the accused are not valid and the trial Court has misread the evidence and overlooked the vital materials and rendered a wrong

judgment acquitting the accused and as such, the judgment rendered by the trial Court is liable to be set aside and the respondents are laible to be

convicted for the offences with which they were charge-sheeted.

8. Mr. Shanmugavelayutham, the learned counsel appearing for the respondent/accused, in justification of the reasonings given by the trial Court,

would contend that the prosecution did not place true facts before the trial Court and as such, the order of acquittal is justified.

9. I have given my thoughtful consideration to the rival contentions and also perused the records.

10. Before adverting to the merits and reasonings in the judgment of the trial Court, and the submissions made by the respective counsel, this Court

shall remain itself to point out the guidelines given by the Supreme Court to be taken note of by the appellate Court while exercising the powers

conferred u/s 386, Cr. P.C. in dealing with the appeal against acquittal.

11. In an appeal against acquittal, the appellate Court cannot interfere with the order of acquittal unless there are substitutional or compelling

reasons to do so. If the appellate Court is inclined to interfere with the order of acquittal, it would clearly indicate the weighty grounds from the

record, for discarding the reasons of the trial Court in order to be able to reach a contrary conclusion of guilt of the accused. The appellate Court

should be able to point out in its judgment that the trial Court''s reasons are palpably and unerringly shaky and its own reason are demonstrably

cogent.

12. A Division Bench of this Court in State, By Public Prosecutor v. Muthu 1996 (2) LW 636, while elaborating the scope and powers of the

appellate Court in the case of an appeal against the order of acquittal, after referring to the various judgments of the Supreme Court, would point

out the guidelines mentioned above.

13. In short, it is clearly indicated in the above said decision that the appellate Court has first to find out whether the reasonings of the trial Court

are palpably wrong and on that analysis, if those reasonings are unsustainable, the appellate Court may go into the process of re-appreciation of

evidence so as to arrive at its own conclusion.

14. In the light of the above situation, we have to first find out as to whether the grounds of acquittal on the basis of which the trial Court arrived at

the conclusion that the accused were not guilty are correct or not.

15. The case of the prosecution is that on 3-10-1989 at about 7-30 a.m. at Murugal Kurichi village, when P.Ws. 1 and 2 along with another went

to take bath in the well situate in the garden, the respondents 1 and 2 (A1 and A2) attacked P.W. 2 indiscriminately with ''Aruval'', while A3 was

catching-hold of P.W. 2 from behind. Apart from the injured eye-witness P.W. 2, there are other eye-witnesses, namely, P.W. 1 Sankaralingam,

the brother of P.W. 2 and P.W. 5 Poolu Thevar, a local resident. Immediately thereafter, P.W. 2, the victim, was taken to Nanguneri Government

Hospital and from there, he was sent to Tirunelveli Hospital for further treatment. P.Ws. 3 and 4 Doctors would give the particulars and the nature

of the injuries sustained by P.W. 2 victim and also their opinion. P.W. 7 Head Clerk and P.W. 8 Inspector of Police would speak about the initial

investigation and P.W. 9 another Inspector of Police, who conducted further investigation, would speak about the same and the filing of the

charge-sheet.

16. Though the materials referred to above had been placed before the Court through these witnesses, the trial Court acquitted all the accused on

various grounds. The grounds of acquittal are as follows:--

(i) Recording of Ex. P-1 statement given by P.W. 1 by P.W. 7 is doubtful. According to P.W. 3 Doctor, the injured was conscious, when he was

admitted in the hospital. P.Ws. 1 and 7 would state that the complaint was given by P.W. 1, which was recorded by P.W. 7, since P.W. 2 was

unconscious. There is no reason as to why P.W. 7 had to obtain Ex. P-1 complaint from P.W. 1, when P.W. 2 was conscious.

(ii) P.W. 1 could not have seen the occurrence. P.W. 5, an independent eye-witness, would State that P.W. 1 came to the scene only after the

occurrence. Therefore, the evidence of P.W. 1 is unreliable.

(iii) P.W. 6 stated in the Court that he had also seen the occurrence. According to P.W. 8, the Investigating Officer, P.W. 6 was not the eye-

witness and he did not give any statement that he saw the occurrence. Therefore, the evidence of P.W. 6 is unreliable.

(iv) P.W. 7 Head Constable recorded Ex. P-1 and the same was written by him. But, in evidence, he would state that he dictated to a constable

and the said constable had written the same. There is no evidence to show that any constable accompanied P.W. 7 Head Constable, when he

came to the hospital. Therefore, P.W. 7 had not recorded Ex. P-1 at the hospital.

(v) P.W. 5, an independent witness, would state that A1 and A2 alone were present and attacked P.W. 2. He did not refer about A3. Therefore,

A3 could not have been present. Furthermore, A3 produced a certificate along with his statement u/s 313, Cr. P.C. to show that during the

relevant time, he was working in the Mill in which he was employed.

(vi) Both in Ex. P-1 and in the evidence of P.Ws. 1 and 2, there is a reference about one Thangapandi stating that he was also one of the eye-

witnesses. The said eye-witness was not examined. There is no reason for his non-examination.

(vii) According to P.Ws. 1 and 2, both A1 and A2 attacked P.W. 2 indiscriminately. But, according to P.W. 5, after first cut, P.W. 2 ran to a

distance of about 50 feet and thereafter, the further cuts given by the accused with ''Aruval'' fell on P.W. 2 victim. So, there is a contradiction

between the evidence of P.Ws. 1 and 2 on the one side and the evidence of P.W. 5 on the other side.

17. On these reasonings, the trial Court acquitted the accused.

18. At the outset, I shall mention that regarding the part played by A3, there is no acceptable evidence available on record, as correctly pointed

out by the trial Court in ground No. (v). However, it shall be stated that A3 cannot be acquitted merely on the reason that he produced some

certificate from his employer to the effect that he was working in the Mill at the relevant time.

19. It is settled law that once alibi is pleaded by the accused, it shall be proved by him. If such certificate had been produced before the Court by

A3, he must have examined some person on behalf of his employer or should have examined himself in order to mark the said document. This was

not done. Therefore, we cannot hold that A3 cannot be found guilty merely on the basis of the certificate produced by A3 along with the statement

u/s 313, Cr. P.C.

20. However, the acquittal of A3 can be sustained on another ground.

21. P.W. 5 is an independent witness Though P.Ws. 1 and 2 would state that A3 came and caught-hold of P.W. 2 victim at the time when he was

attacked by A1 and A2, P.W. 5 did not refer to about A3 at all. This evidence of P.W. 5 assumes significance, since his name was mentioned in

Ex. P-1 complaint as one of the eye-witnesses.

22. Though P.W. 5 did not refer about A3 in his evidence, he was not treated as hostile. Therefore, the participation of A3, as referred to in Ex.

P-1 and the evidence of P.Ws. 1 and 2, cannot be held to be satisfactorily true. On that reason, the acquittal of A3 is sustainable and accordingly,

the same is confirmed.

23. Let us now deal with the other grounds for acquitting the other accused.

24. The first ground is regarding the failure of P.W. 7 to obtain the complaint from P.W. 2, the injured eye-witness, even though he was conscious.

25. On going through the evidence of P.Ws. 1, 2 and 5, it is clear that P.W. 2 was indiscriminately attacked by A1 and A2 with ''Aruval''. As a

result of those injuries, the victim (P.W. 2) fell on the ground.

26. According to P.W. 5, as soon as P.W. 2 fell on the ground, he became unconscious and thereafter, the accused persons ran away from the

scene. This occurrence had taken place at about 7-30 a.m. and the victim was taken to the hospital at about 8.15 a.m. P.W. 3 Doctor would state

that the victim was conscious and the victim stated to him that he was attacked by three persons with ''Aruval''.

27. P.W. 3 Doctor would further state that he gave Ex. P-2 intimation to the police, when P.W. 2 was admitted in the hospital. On receipt of Ex.

P-2, P.W. 7 Head Constable rushed to Nanguneri Government Hospital. At that time, P.W. 1 was present in the hospital and gave Ex. P-1

statement to P.W. 7.

28. It is true that P.W. 7 would state that he obtained Ex. P-1 complaint from P.W. 1, when P.W. 2 was unconscious. P.W. 1 would State that

when P.W. 2 victim was taken to the hospital, he was in unconscious State and after admitting the victim in the hospital, P.W. 3 Doctor gave

treatment to him. So, when treatment was being given by P.W. 3 Doctor, P.W. 7 came and at that time, he was informed by P.W. 1 that P.W. 2

was not in a position to give statement, since he was unconscious. In that context, P.W. 7 had obtained Ex. P-1 complaint from P.W. 1.

29. Even assuming that P.W. 2 was conscious at that time, the nine serious injuries found on various parts of the body of the victim would clearly

show that he could not have been able to give full details to P.W. 7. Under those circumstances, obtaining of Ex. P-1 complaint from P.W. 1 is

quite proper.

30. Merely because P.W. 2 was conscious at that time, it cannot be said that the statement should not have been recorded from P.W. 1 and the

same is doubtful. No law prohibits the police officer from recording complaint relating to the occurrence, that too, from the eye-witness. Therefore,

the first ground is not at all a proper ground.

31. Secondly, according to the trial Court, P.W. 1 could not have seen the occurrence, since P.W. 5 would state that P.W. 1 came to the scene

only after the occurrence.

32. This again, in my view, is not the reasoning based on evidence. According to both P.Ws. 1 and 2, they went to take bath in the well one after

another. P.W. 5 would state that after hearing the cry of P.W. 2, P.W. 1 and others came to the scene. This would not mean that P.W. 1 did not

accompany P.W. 2. As a matter of fact, even according to P.W. 5, P.Ws. 1 and 5 took the victim in a taxi to Nanguneri Hospital.

33. It shall be pointed out that the occurrence took place in daylight at 7.30 a.m. The house of accused and P.Ws. 1 & 2 are situate nearby and

the well also is situate just two furlongs away from the village. Under those circumstances, it cannot be said that P.W. 1 would not have

accompanied P.W. 2 to take bath. Therefore, this ground also would fail.

34. Thirdly, it is stated that P.W. 6 would not have seen the occurrence. As far as this ground is concerned, in my view, the evidence of P.W. 6

before the Court that he saw the occurrence has to be brushed aside, in view of the fact that according to the prosecution, as admitted by P.W. 8,

he was not the eye-witness. Therefore, the finding given by the trial Court with regard P.W. 6 is perfectly correct.

35. Fourthly, the trial Court would state that P.W. 7 stated in his evidence that he dictated to the constable the statement given by P.W. 1. But, in

Ex. P-1, it is stated that P.W. 7 had written Ex. P-1.

36. This reasoning is quite wrong. According to P.W. 1, P.W. 7 came to the hospital and his statement was reduced into writing and the same

read over to him and then his signature was obtained. In Ex. P-1, below the signature of P.W. 1, it is written as ""recorded by me and registered a

case in Crime No. 843/89 u/s 341, 342 & 307, IPC on 3-10-1989 at 9-15 hrs."" P.W. 7, in cross-examination, would state that on the basis of

the statement given by P.W. 1, he dictated to the Constable accompanied him to the hospital, who, in turn, wrote the same. He would further state

that the writing in English in Ex. P-1 below the signature of P.W. 1 was written by him at the police station. Therefore, it cannot be said that Ex. P-

1 had been written only at the police station. As such, this ground, in my view, would fail.

37. The next ground is that the non-examination of one Thangapandi, who was referred to as one of the eye-witnesses in Ex. P-1 and in the

evidence of P.Ws. 1 and 2.

38. When there are three eye-witnesses including the injured, it is not necessary to examine all the eye-witnesses in the Court. It is true that his

name was mentioned in Ex. P-1. P.W. 2 also would state that one Thangapandi, who was present at the scene, shouted against the accused ""not

to cut"".

39. But, the said witness was not examined before the Court, since during the course of investigation, he was not available in the village, as spoken

to by P.W. 9 Inspector of Police. When there is an exmplanation given for the non-examination of one other eye-witness, the trial Court is wrong

in holding that the prosecution case was not true because of the non-examination of said Thangapandi.

40. As noted above, the prosecution need not examine each and every witness, who happened to see the occurrence. We have only to see

whether the evidence given by the eye-witness examined before the Court is reliable or not. Therefore, the non-examination of said Thangapandi,

that too, on the reason that he was not available in the village, would not in any way affect the prosecution case. Hence, this ground also would fail.

41. Lastly, it is contended by the trial Court that P.W. 5 had stated that after receiving the first cut, P.W. 2 was running to a considerable distance

of about 50 feet and thereafter, further cuts were given and this factor was not spoken to by P.Ws. 1 and 2.

42. This reasoning also, in my view, would not affect the credibility of the evidence of P.W. 2, who is the injured witness. This sort of contradiction

would assume significance, if the injured witness was not available for examination. According to P.W. 2, both the accused gave cuts

indiscriminately on his hands, shoulders, back, etc. Then, naturally, the injured victim would have tried to escape from the scene in order to save his

life.

43. However, both the accused gave cuts repeatedly on P.W. 2 all over the body and as soon as the victim fell on the ground with bleeding

injuries, the accused ran away from the scene. In Ex. P-5 observation mahazar, it is mentioned that the blood was found at the scene of

occurrence. In Ex. P-5, it is stated (Vernacular text omitted.... Ed.)

44. Therefore, the discrepancy with regard to the running of P.W. 2 to a distance of about 50 feet at the time of attack cannot affect the

prosecution case. The fact remains that A1 and A2 gave cuts indiscriminately on the vital parts of P.W. 2 and this was witnessed by P.W. 5.

45. In regard to the appreciation of evidence available on record, it shall be stated that the testimony tendered by P.W. 2 injured eye-witness is

fully corroborated by the medical testimony through P.Ws. 3 and 4 Doctors. In Ex. P-3, the following injuries are mentioned :--

(1) A bleeding lacerated wound 10 cm. x 5 cm. x 4 cm. on medial aspect of right forearm muscles and (N.C.) exposed.

(2) A bleeding lacerated wound 3 cm x 1 cm x 1 cm in middle right forearm.

(3) A lacerated bleeding wound in the palmar aspect of 2 cm. x 1 cm. x 1 cm of right middle and index finger seen and lacerated wound on the tip

of right ring and little finger measuring 1 cm x 1 cm x 1 cm.

(4) An incised wound 3 cm x 2 cm x 1 cm in upper aspect of right arm.

(5) A bleeding lacerated wound in the left shoulder outer to the lateral end of the left collar bone 4 cm x 2 cm x 1 cm seen.

(6) A bleeding incised wound in the upper part of left arm 3 cm x 1 cm x ï¿½ cm.

(7) A bleeding incised wound 15 cm x 6 cm x 4 cm left side of back of chest just below left infrascapular angle.

(8) A bleeding incised wound in the palman aspect of left index middle and ring finger and thumb each measured 6 cm x 2 cm 1 cm fracture of

middle finger MCP joint.

(9) A bleeding lacerated wound in the lateral aspect of left forearm 3 cm x 1 cm.

46. In Ex. P-3, it is further stated ""Left forearm fracture lower 1/3 of ulna. Right hand fracture proximal phalanx of thumb and second and third

fingers and fracture lower 13 of ulna. Injuries 3 and 9 are grievous in nature.

47. The particulars given in Ex. P-3 wound certificate are also confirmed by the evidence of P.W. 4 Doctor through whom Ex. P-4 X-Ray Report

and M.Os. 1 to 9 X-Rays had been marked. Accordingly to P.W. 3, but for the immediate treatment for the serious injuries on P.W. 2, especially,

injuries Nos. 1 and 7, the victim would have died.

48. Regarding the motive, it had been stated that one day earlier to the date of occurrence, there was a quarrel between the mother of P.W. 2 and

the wife of the third respondent (A-3) while taking water in the common pipe. When P.W. 2 separated them and took his mother to his house,

A3''s wife had complained to the accused about the intervention of P.W. 2. This had provoked the accused to have a design to make a brutal

attack on P.W. 2. In execution of the said design, A1 and A2 came to the scene and attacked P.W. 2 with ''Aruval'' and caused serious injuries.

They inflicted 9 injuries on the victim and when the injured fell down unconscious, they ran away from the scene. This had been spoken to by P.W.

5 also.

49. There is no dispute in the fact that P.W. 5 is a local resident and he is related to both the parties. There is no axe to grind for him to speak

falsehood against A1 and A2. As a matter of fact, he omitted to mention A3. In that view of the matter, it is noticed that P.W. 5 is not only an

independent witness, but also a truthful witness and he is neither interested with the prosecution party nor inimical to the accused party.

50. Even assuming that Ex. P-1 and the evidence of P.W. 1 can be brushed aside, the evidence of P.W. 2, which is corroborated by the evidence

of the truthful witness P.W. 5 and the medical evidence adduced through P.Ws. 3 and 4 Doctors would clearly show that the respondents 1 and 2

(A1 and A2) had committed the Act of attempt to murder P.W. 2.

51. No doubt, there may be some contradiction between the evidence of P.W. 2 and P.W. 5. As indicated above, the entire evidence adduced by

P.W. 5 can be accepted as true. He implicated only respondents 1 and 2 (A1 and A2). On the other hand, P.W. 2 has implicated all the three

accused. In view of the above contradiction, it cannot be said that the entire case of the prosecution is untrue.

52. The Apex Court has laid down in Chand Khan and another Vs. State of Uttar Pradesh, that it is imperative for the Court to consider the case

of the individual accused on their respective merits in the light of other evidence on record and not to reject outright the evidence of two witnesses

in its entirety for it is settled law that the principle ''falsus in uno, falsus in omnibus'' does not apply to criminal trials and it is the duty of the Court to

disengage the truth from falsehood.

53. In the light of the above well considered view of the Apex Court in the above decision, this Court cannot totally disregard the testimony of

P.Ws. 2 and 5.

54. In view of the above discussion, the reasonings and findings given by the trial Court for acquitting the accused 1 and 2 are not only palpably

wrong, but also perverse.

55. Therefore, in my view, the respondents 1 and 2 (A1 and A2) are liable to be convicted for the offence u/s 307, IPC. Consequently, the order

of acquittal in respect of A1 and A2 relating to the offence u/s 307, IPC is set aside and accordingly, respondents 1 and 2 are convicted for the

offence u/s 307, IPC.

56. Before imposing sentence upon the respondents 1 and 2 (A1 and A2), they have to be given an opportunity of being heard on question of

sentence. Therefore, post the matter on 3-8-2001, on that day, A1 & A2 shall be present.

57. In the result, the appeal is partly allowed by convicting the respondents 1 and 2 (A1 and A2) for the offence u/s 307, IPC and confirming the

order of acquittal in respect of the respondent 3 (A3).

58. This Court on 20-7-2001 pronounced the judgment in this case convicting the respondents 1 and 2 (A1 and A2) for the offence u/s 307, IPC

and directed the matter to be posted on 3-8-2001 to hear the respondents 1 and 2 (A1 and A2) on the question of sentence.

59. On 3-8-2001, at the request of the counsel for the respondents, this Court directed P.W. 2, the injured, and P.W. 1, the first informant, to

appear before this Court on 17-8-2001 for the purpose of fixing compensation in lieu of sentence to be imposed upon the respondents 1 and 2

(A1 and A2).

60. Today, the learned Government Advocate has produced a certificate issued by the Village Administrative Officer to the effect that the injured

Ramaiah (P.W. 2) has became mentally deranged.

61. Under those circumstances, this Court is unable to fix the quantum of compensation. Therefore, this Court is constrained to impose sentence

upon the respondents 1 and 2 (A1 and A2).

62. In regard to sentence, Mr. Shanmughavelayutham, the learned counsel for the respondents, would submit that the occurrence took place on 3-

10-1989 and the case ended in acquittal on 12-11-1991 and the present appeal has been filed in the year 1993 and the same has been disposed

of now in the year 2001 and as such, long number of years have elapsed and that may be taken into consideration in imposition of sentence upon

the respondents 1 and 2 (A1 and A2).

63. Section 307, IPC provides sentence of both imprisonment and fine. The imprisonment may extend to 10 years along with fine. The reading of

Section 307, IPC would make it clear that there is no minimum sentence, but imposition of imprisonment and fine is mandatory.

64. This is a case where P.W. 2 was attacked by the respondents 1 and 2 (A1 and A2) with ''Aruval'', while he was going to the well along with

P.W. 1 to take bath. Both respondents 1 and 2 gave indiscriminate cuts on the vital parts of the body of P.W. 2. According to Ex. P-3 wound

certificate issued by P.W. 3 Doctor, P.W. 2 sustained nine injuries. A perusal of Ex. P-3 wound certificate would show that the injuries are very

serious.

65. Under these circumstances, this Court is of the view that the respondents 1 and 2 (A1 and A2) may be suitably dealt with.

66. The learned counsel for the respondents would submit that the respondents 1 and 2 are prepared to pay any amount of fine and the same may

be ordered to be paid to the relative of P.W. 2 as compensation.

67. The learned Government Advocate would submit that since the occurrence took place in a daylight and the respondents 1 and 2 (A1 and A2)

used dangerous weapon and caused very serious injuries on the vital parts of the body of P.W. 2, the respondents 1 and 2 (A1 and A2) may be

sentenced to undergo R.I. for 5 years.

68. In view of the fact that the occurrence had taken place in the year 1989 and that the appeal has been disposed of by this Court in the year

2001 by setting aside the judgment of acquittal rendered by the trial Court, I deem it fit to impose the sentence to undergo R.I. for four years and

to pay a fine of Rs. 1,000/- each.

69. Accordingly, the respondents 1 and 2 (A1 and A2) are convicted for the offence u/s 307, IPC and sentenced to undergo R.I. for four years

and to pay a fine of Rs. 1,000/- each, in default, to undergo R.I. for three months. So, the respondents 1 and 2 (Al and A2) are remanded to the

Central Prison, Chennai, today itself.