

**(2002) 01 MAD CK 0094**

**Madras High Court**

**Case No:** Criminal A. No. 162 of 1994

Sadasivam and 11 Others

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Jan. 25, 2002

**Citation:** (2002) 1 LW(Cri) 293

**Hon'ble Judges:** A.S. Venkatachalamoorthy, J; A. Packiaraj, J

**Bench:** Division Bench

**Advocate:** N.T. Vanamamalai, for Mr. S. Paneerselvam, for the Appellant; V.M.R. Rajendran Addl. Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

A. Packiaraj, J.

This appeal has been preferred by all the 12 accused who have been convicted for an offence u/s 302 read with 149 I.P.C and have been sentenced to life imprisonment among other minor offences. The details of which will be as follows: A1 to A-12 are each convicted and sentenced to imprisonment for life u/s 302 read with 149 I.P.C. A-1 to A-12 has been further convicted for an offence u/s 148 and have been sentenced to undergo imprisonment for one year, while A-5 has been convicted in addition to the above said offences for an offence u/s 326 I.P.C and sentenced to undergo one year rigorous imprisonment and A-3, A-4, A-6, A-7, A-9, A-10 and A-11 have been convicted u/s 324 and sentenced to six months imprisonment. The sentences awarded were directed to run concurrently by the learned Sessions Judge.

2. The substance of the charge levelled against the Appellants who are the accused in the trial court is that on 26.9.90 at about 9.00 p.m, all the accused formed themselves into an unlawful assembly and with the common object to commit the murder of one Kannadasan and other witnesses at Kuchipalayam, attacked the deceased Kannadasan indiscriminately and caused the death of the said Kannadasan, while causing injuries to the witnesses Keshavan, Durai and Elangovan,

thereby committed an offence punishable u/s 302 read with 120B, 147, 148, 341, 307, 302 read with 149 I.P.C and 307 read with 149 I.P.C. The accused denied the charge and hence the trial.

3. The judgment of the trial Court is in English and the facts have been set forth in detail. Suffice it for the purpose of deciding this appeal to narrate the prosecution case in brief as follows:

a) The prosecution party and the deceased are residents of Kattamuthupalayam, while the accused belong to Periakallipatti and Kuchipalayam village. The distance between the two villages is only few furlongs. The accused belong to one political faction, while the deceased and the prosecution party belong to the rival political party. The case of the prosecution is that there was elections of directors for Kandarakottai Cooperative Agricultural Credit Society held on 27.8.90 and 11 candidates were fielded under the leadership of the deceased Kannadasan as against another 11 persons fielded under the leadership of A-2. The candidates fielded by the prosecution (deceased) came out successful and hence there was enmity between the two groups. The prosecution party who won the elections unanimously decided to select Kannadasan the deceased as the President of the Society and the elections was scheduled to take place on 27.9.90. So on the previous night namely on 26.9.90, the prosecution party assembled together in the Nursing home of one Nandagopal and were planning with regard to the nomination of the Vice President and they decided to have a meeting with regard to this in the house of Director Perumal Gounder. P.W. 5-Raghavan was also present at that time. It was at that time, Kannadasan had requested P.W. 1 to convey this matter to all directors and accordingly went in a motor cycle and P.W. 1 returned to Kattamuthupalayam village to his house.

b) At about 9.15 p.m., P.W. 5-Raghavan came running to the house of P.W. 1 with bleeding injuries and informed that Kannadasan, himself and two others were attacked by the accused. He also narrated to him that they had information that the accused had formed themselves into an unlawful assembly and planned to attack them and consequently, they were even advised Kannadasan not to go near Kuchipalayam junction. But in spite of the same, the deceased Kannadasan felt that they have not done any harm to anybody and therefore nothing untoward incident would ever take place and hence was on his way, while the attack was made by the accused persons. It is stated that A-1 was first to attack the deceased Kannadasan on his head with a knife, shouting that he should be done away with. A-6 was armed with the iron pipe and he also beat the deceased on his head. The deceased fell down and A-2 who having a Chillakol (Spear) stabbed him on his stomach and it is also stated that the other accused also indiscriminately beat the deceased. At the same time A-3 beat P.W. 5 on his head and A-7 on his hip back and other places. A-4 and A-11 also attacked him on his head and back with sticks. At that time, P.W. 2 intervened and tried to stop the accused attacking, whereupon he was also

assaulted and then the accused ran away from the scene of occurrence. P.W. 1 tried to give first aid to the injured Raghavan. Then he went to a house nearby and informed the Pudupettai Police about the incident and made arrangements to send the injured to the Government Hospital, Panruti.

c) P.W. 20 was the Inspector of Police, Panruti. On 26.9.90 at about 9.15 p.m as per the information given by P.W. 1 through phone, he went to the house of P.W. 1 at 10.30 p.m, and recorded the statement Ex. P-1. He came back to the police station at 11.30 p.m, and registered the same in crime No. 638 of 1990 for offences u/s 147, 148, 323, 324, 341 and 307 I.P.C. Ex. P-29 is the First Information Report. He caused Ex. P-1 and Ex.P-29 to be sent to the Court through Constable No. 869 and the copies thereof to his superior officers. At about 12.15 a.m. (mid night), he received the death intimation Ex.P-10 from the Government Hospital, Panruti that the said Kannadasan expired and consequently he altered the F.I.R to one u/s 302 I.P.C. Ex. P-30 is the altered F.I.R and he sent the same to the Magistrate. Immediately thereon he went to the Government Hospital, Panruti. But however he found that all the injured witnesses have been shifted to Cuddalore Government Hospital and hence he reached the Government Hospital, Cuddalore at 3.00 a.m on 27.7.90 and examined P.W. 2, P.W. 4 and P.W. 5, the three injured witnesses in the case. He also recovered M.O. 1, M.O.7-the apparels from P.W. 2 and P.W. 4 respectively under mahazar Ex. P-2. Then he went to the scene of occurrence at about 5.15 a.m along with P.W. 8 the photographer and caused photographs to be taken in relation to the scene of occurrence. He prepared an Observation Mahazar Ex. P-3 in the presence of P.W. 9 and a rough sketch Ex. P-31 which has also been attested by P.W. 9. He seized M.O. 12 to 16, the blood stained earth and sample earth and other articles at about 5.30 p.m under mahazar Ex.P-4, in the presence of P.W. 9. Then he conducted inquest from 6.30 a.m, to 9.00 a.m. and examined P.W. 1 and other witnesses. Ex. P-32 is the inquest report. He prepared Ex. P-8, the requisition to conduct post mortem and sent the body along with the requisition through P.W. 18 the constable attached to his department.

d) P.W. 12, Dr. Elangovan on receipt of the requisition and the dead body, conducted the autopsy on the body of the deceased Kannadasan and found the following injuries:

EXTERNAL INJURIES: (1) A vertically placed incised wound on the right side forehead 1 cm to the right of the midline 3 cms x 1 cm x bone depth. (2) An obliquely placed incised wound on the right frontal region of scalp 4 cms above the injury No. 16 cms x 2 cms x bone depth. (3) An obliquely placed incised wound on the frontal (right) region of scalp 3 cms to the right of the injury No. 2, 5 cms x 2 cms x bone depth. (4) An obliquely placed incised wound 5 = cms x 2 cms x bone depth on the right side scalp (right parietal) 3 cms behind the injury No. 3. (5) An incised wound on the right eyebrow and outer cantias of right eye 3 = cm x 1 = cm x bone depth, obliquely placed. (6) Brown Abrasions on it. (7) Right ear lobe torn into two wound 2 = cm x 1

cm (8) Multiple linear contusions on the right shoulder and right upper arm simulating thadi mark. (9) An obliquely placed incised wound on the back of right elbow joint 1 = cm x 1 cm x bone depth. (10) Multiple linear contusions across the chest simulating thadi mark. (11) Multiple linear contusions across the back simulating thadi mark. (12) A punctured wound with Chillkol on the left loin. On removal of Chillkol dimensions found to be 2 cm x 1 cm x 3 cm. (13) Sliced injury on the left foot 1 to 4 toes and the corresponding left foot proximal parts. The slicing injury is up to the half of the bodies of the corresponding metacarpals and phalanges. Great toe phalanges missing. The edges of the incised wound are stained and gaping and the wound covered with blood clots. The above injuries 1 to 13 are antemortem in nature.

Ex. P-9 is the post mortem certificate issued by the Doctor. The Doctor was of the opinion that the deceased would have died of Extra dural, intra-cerebral haemorrhage and shock and the death could have occurred about 12-14 hours prior to post mortem. After the post mortem was over the body was handed over to the relations.

e) Meantime the injured persons who had been taken to the Panruti Government Hospital were taken to the Cuddalore Government Hospital where P.W. 10 attended on the witnesses. He examined P.W. 4 at 10.20 p.m, on 26.9.90 who is alleged to have been assaulted by 10 persons, by about 9.00 p.m and he found the following injuries:

- 1) Incised wound over left side fore head 6 x 1.5 cm x bone depth.
- 2) Diffused swelling occipital scalp with multiple injuries (lacerated) scalp reddish.
- 3) Swelling with tenderness over lower right forearm.
- 4) Multiple linear contusions red over the back.

Ex. P-5 is the Accident Register relating to the injuries found on P.W. 4

P.W. 10 examined P.W. 2 at 10.50 p.m and found the following injuries

- 1) Incised wound 7 x 1 x 1.5 cm over the frontal scalp.
- 2) Incised wound on the left side neck 2.5 x 1 x 1.5 cm.

Ex. P-6 is the Accident Register relating to the injuries found on P.W. 2

He also examined P.W. 5 at about 11.30 p.m and found the following injuries:

- 1) Pain with tenderness on left fore arm with multiple abrasions.
- 2) Pain with tenderness on right middle finger.
- 3) Abrasions reddish 3 x 3 cm on the left hip.
- 4) Diffused swelling occipital region with pain and tenderness.

- 5) Pain with tenderness on the upper back
- 6) Diffused swelling on the lower back and right loin.
- 7) Pain with tenderness on the right leg.

Ex. P-7 is the Accident Register issued by him relating to the injuries found on P.W. 5.

f) On 4.10.90, P.W. 20 the Inspector of Police on information arrested A-1, A-3, A-4, A-5 and A-12 in the presence of P.W. 13, P.W. 14 and P.W. 15, near Thiruvathigai Railway Gate. He examined A-3 who volunteered to give a statement, the admissible portion of which has been marked as Ex. P-15, in pursuance of which M.O. 2(B) Casuarina stick was seized from the sugarcane field under mahazar Ex. P-16. A-4 volunteered to give a statement, the admissible portion which has been marked as Ex. P-11 and in pursuance of the statement, he produced M.O. 2(A)-Thadi and the same was recovered under mahazar Ex. P-12. A-5 also gave a statement and volunteered to produce the iron pipe M.O. 3 used by him. The admissible portion of which has been marked as Ex. P-13 and the same has been recovered under Ex. P-14. He caused all the five persons to be sent for judicial custody.

g) On 13.10.90, he arrested A-2, A-6 and A-11, of whom A-2 volunteered to give a statement, the admissible portion of which has been marked as Ex. P-17 and produced the knife M.O. 4(a) and the same was recovered under mahazar Ex. P-19. Similarly A-6 gave a statement, the admissible portion of which has been marked as Ex. P-18. He produced the weapons M.O. 4(b) and M.O. 5, hidden in the same same place, which was recovered under mahazar Ex. P-20. A-11 also gave a voluntary statement marked as Ex. P-21 and produced a stick, which was recovered under mahazar Ex. P-22 in the presence of P.W. 17. After the formalities was over, the accused were sent for judicial custody. A-10 was arrested on 2.11.90 at Rajapalayam. He caused all the amterial objects to be sent to Court for chemical analysis and after receiving all the certificates filed the final report on 4.1.91 against all the accused for the above said offences.

h) The accused were examined u/s 313 Code of Criminal Procedure with reference to the incriminating materials found against them. They denied having committed any offence and their complicity in the offence. They examined one witness on their side, who is a constable attached to Pudupettai Police station. The said witness has been examined for the purpose of stating that serial number found in Ex. P-29, the printed F.I.R relating to the present case bears the No. 8614, while the serial number found in the printed form belonging to Crime No. 639 of 1990 registered at 12.00 a.m (mid night) on 26/27.9.90 is numbered as 755135. We shall discuss the same at a later stage of the judgment.

i) To establish the case, prosecution has examined P.W. 1 to 20, marked Ex. P-1 to Ex. P-32 and produced M. Os. 1 to 21.

4. P.W. 12 is the Doctor who conducted the autopsy on the body of the said Kannadasan. He has issued the post mortem certificate Ex. P-9 and has narrated in detail, the injuries found on him. The description of these injuries have been already narrated by us in the earlier part of the judgment and hence it may not be necessary for us to reiterate the same. Suffice it to state that the Doctor has opined that the death is due to extra dural, intra-cerebral haemorrhage and shock. He was further of the opinion that the Injury No. 2, 3 and 4 with the corresponding internal injuries along with the cumulative effect are enough to cause death instantaneously. The cause of death is not seriously challenged by the defence and in our opinion the prosecution has clearly established that the deceased in this case died due to homicidal violence.

5. The next question that arises for consideration is whether the accused are responsible for causing the death of the deceased.

P.W. 1 is not an eye-witness, but however his evidence proves the motive and the lodging of the first information report. It is his specific case that the prosecution party belong to one political faction, while the accused belong to the other. It is also stated that 11 persons on each side contested in the elections for the Agricultural Cooperative Societies and it was the prosecution party who came out successful. The election for the president was to be held on 26.7.90 and it was decided that the deceased Kannadasan was to be elected unanimously. It was also decided that they should meet in the house of Director Perumal Gounder with regard to the nomination of the Vice President. At about 9.00 p.m, P.W. 5 came to his house with bleeding injuries and informed that while the deceased, P.W. 2, P.W. 4 and P.W.5 and others were discussing about the situation and they learnt that the accused had already formed themselves into an unlawful assembly near the Kuchipalayam junction and were standing to attack them. But however, the deceased Kannadasan felt that he has not done any harm to anybody and therefore there is no chance for himself to be attacked. Consequently, they were on their way and all of a sudden, persons numbering about 11 armed with deadly weapons way-laid them and attacked them indiscriminately. P.W. 5. Raghavan, sustained serious injuries in the course of the incident. P.W. 5 went to the house of P.W. 1 and narrated the incident to him. P.W. 1 in turn went to the house nearby where the telephone facility was available and informed the Pudupettai police at about 10.30 p.m. The Inspector of Police attached to Panruti, in whose jurisdiction the Pudupettai Police Station also comes, went to the house of P.W. 1 and recorded the statement Ex. P-1 and went to the police station and registered it in Crime No. 638 of 1990. Though this Witness have been elaborately cross examined, we feel that nothing material has been brought out in cross examination, which would discredit his version. It has been elicited from him that in the First Information Report, he has attributed specific overt acts only in respect of A-1 and A-2 are concerned as having attacked the deceased, while naming A-3, A-4 and A-5 with regard to the indiscriminate attack on the deceased.

6. P.W. 2 is an injured eye-witness. It is his specific case that on the night just prior to the occurrence i.e on 26.9.90 at about 8.00 or 8.30 p.m when he was returning from Poondi village after cutting trees, he saw A-1 to A-5 standing at Kuchipalayam Four Cross Road near Ravi Tailor shop and that on hearing from A-2 that the deceased-Kannadasan and Raghavan who were on their way to Kallipattu must be killed, he ran and informed the same to them but however, deceased Kannadasan stating that they would see as to what happens, proceeded on their way and at that time, all the accused armed with deadly weapons such as Koduval, knife, iron pipe and sticks, surrounded Kannadasan. A-1 was the first person to attack the deceased on his head, shouting that he should be done away with immediately. A-6 followed him, hitting with an iron pipe on his head. A-2 stabbed him on his hip. The other accused also attacked the deceased indiscriminately. When these witnesses P.W. 2, P.W. 4 and P.W. 5 tried to intervene, they were also assaulted and P.W. 2 was assaulted by A-12 with the knife. P.W. 2 tried to ward it off, which blow fell on his left neck. A-6 stabbed him on his neck and P.W. 2 swooned at the spot itself. The entire occurrence had taken place under a street light and consequently he was able to witness the entire occurrence.

7. P.W. 4 was an independent witness who at about 8.45 p.m on 26.9.90 was on his way after purchasing provisions for his house and when he went near Kuchipalayam junction road, he found the deceased Kannadasan being attacked by the accused. He raised a noise, whereupon A-5, A-9 and A-10 came chasing at him and A-5 beat him with an iron pipe twice. A-9 and A-10 also followed suit by beating him repeatedly on his body.

P.W. 5 is yet another eye-witness who was all along present with the accused, discussing about the next days election and about the nomination of the Vice President for the Agricultural Cooperative Societies and then he along with the deceased Kannadasan was on his way at Kuchipalayam junction road, where the attack is said to have taken place. He witnessed the deceased Kannadasan being attacked by A-1, A-2 and A-6 on the head and hip and when he tried to intervene he was beaten by A-3 and A-7 on his head, hip back and legs. He was also attacked by A-4 and A-11. Immediately thereon he ran to the house of P.W. 1 and informed the matter to him. Therefore, as far as the occurrence proper is concerned, we have the evidence of P.W. 2, P.W. 4 and P.W. 5 who are injured eye-witnesses in this case.

P.W. 3 is yet another witness who speaks to the effect of the accused standing near the water tank in that village and at that time, P.W. 2 came there and told Kannadasan that the first accused party were planning to stab and beat him and hence requested him not to go through that way, but the deceased Kannadasan had not heeded to his words and that when they proceeded behind them they saw all the accused armed with deadly weapons who surrounded him and started attacking the prosecution party indiscriminately.

8. The learned Counsel for the Appellants would first argue that the First Information Report has been fabricated in this case and once this Court comes to the conclusion that the F.I.R has been fabricated or the genuineness of the F.I.R is doubted, then the entire prosecution case has to be thrown out. To substantiate this, the main attack made by the defence is in relation to the Serial Number found in the printed F.I.R namely Ex. P-29. The defence has examined D.W. 1, the Head Constable attached to the Pudupettai Police station, who on going through Ex. P-29 states the printed number to be as "8164". According to his evidence, the F.I.R book maintained in the said police station would contain a continuous or consecutive number. The Crime No. 638 of 1990 which is the one that is pertaining to the present case has been registered in the printed book bearing No. 8164. However, he has been summoned and answers has been elicited from him to the effect that Crime No. 639 of 1990 which is purported to have been registered at 12.15 a.m by the Sub Inspector of Police Sri Ramulu contains the No. 755135. But strangely though this answer has been elicited by the defence and though the witness has been summoned on the side of the defence, the said printed F.I.R relating to Crime No. 639 of 1990 has not been marked. As to what has happened to that case, whether that was the correct F.I.R or not, has not been either elicited, or even suggested by the defence. Consequently, merely because the numbers differ in the two printed F.I. Rs in relation to the crime numbers which are one after the other, we cannot positively say that the present F.I.R has been fabricated. What is even more surprising is that the present Crime No. 638 of 1990 bears the Sl. No. 8164, but according to D.W. 1 the printed F.I.R containing Crime No. 639 of 1990 bears the Sl. No. 755135. Obviously, there cannot be a difference of more than ten thousand digits between the two forms. If according to the defence, the printed F.I.R has been fabricated at a later stage, it can, at best be at ten or eleven numbers subsequent to the No. 755135. But there is absolutely no correlation between the F.I.R book containing the printed No. 8164 and the F.I.R book containing the No. 755135. Unless both the books are produced this Court cannot come to any decision solely on the numbers not being consecutive. There is yet another circumstance which would show that the F.I.R relating to Crime No. 639 of 1990 may not be correct as seen from the evidence of D.W. 1 himself. According to D.W. 1, Crime No. 639 of 1990 has been registered by the Sub Inspector of Police-Sri Ramulu. But the same witness states that Thiru. Sri Ramulu, the Sub Inspector of Police left the police station at 9.30 a.m on 26.9.90 and the records reveal that he has come to the police station only on the next evening. Then how is it possible for the No. 639 of 1990 to have been registered at 12.15 a.m (mid night) between 26/27.9.90 by the said Sriramulu. Besides the aforesaid reasons, a reading of the evidence of P.W. 20 would make it clear that he is a Circle Inspector, who is in charge of Panruti Police Station as well as Pudupettai Police Station. It is his specific case also that he along with another constable attached to Panruti Police station came to Pudupettai Police Station and then went to the scene of occurrence. He further has stated that he had brought the registers of Panruti Police Station when they came from Panruti to

Pudupettai Police Station on the night of 26/27.9.90. It may be that the F.I.R would have been inadvertently registered in the book that has been brought from Panruti Police Station. This is obvious because the numbers which are 6 digits for Crime No. 639 of 1990, but only 4 digits for Crime No. 638 of

990 and consequently different books are used. This in our opinion, does not falsify the prosecution case.

9. The learned Counsel would further contend that according to P.W. 20 the report Ex. P-1 was written by a constable in his presence, but P.W. 1 would say that it was the Inspector who wrote and from that he wants us to infer that Ex. P-1 has not been written or numbered as alleged now. It has to be remembered that P.W. 1 gives evidence after two years after the occurrence and consequently he would not be remembering as to who wrote the report. Therefore, in our view there is no fabrication of the First Information Report. It must also be remembered that this report had reached the Judicial Magistrate, Pudupettai at 12.30 midnight of 26/27.9.90. This clinches the issue beyond all doubt. The occurrence had taken place at 9.15 p.m, the scene of occurrence is about 8 kms from the Pudupettai Police Station and the same has been registered at 11.30 p.m and it has reached the Magistrate within one hour and consequently we have no shed of doubt regarding the genuineness of the F.I.R.

10. The learned Counsel would then argue that the witnesses examined in the case are all partisan witnesses and they all belong to the same political party, which the deceased belonged to. It is true that they all belong to the same group. Just because they are partisan witnesses, their evidence cannot be eschewed. The Supreme Court has time and again held that in a case where there are only partisan witnesses, their evidence has to be viewed with care and caution. At the same time, Supreme Court has also stated that witnesses closely attached to the deceased, will not leave out the real assailants, but on the other hand will see that the real culprits are booked. In this case, the occurrence had taken place at about 9.00 p.m. It is not the case of the defence or for that matter, the incident had been witnessed by several other persons. The prosecution can examine witnesses only who have had occasion to witness the occurrence. If the defence has been able to show that there were also other persons who had witnessed the occurrence and in spite of that the prosecution failed to do so, then a doubt may arise. But that does not appear to be the case here. On the other hand, the witnesses who have been examined in this case barring P.W. 3 are injured witnesses. So their presence in the scene of occurrence cannot be doubted and though these witnesses have been cross examined in detail, materially nothing has been brought out in cross examination which would discredit their version.

The learned Counsel would then argue that the First Information Report contains the names of only A-1 to A-5 and specific overt acts has been attributed only to A-1 and A-2 in relation to the deceased, while there is an omnibus statement in relation

to A-3, A-4 and A-5. It is true that it is only A-1 and A-2 who have been attributed with specific overt acts on the deceased. Though presently all the eye-witnesses namely P.W. 2, P.W. 3 and P.W. 5 have stated that A-6 beat the deceased several times on his head and body with the iron pipe, the same has not been mentioned in the FIR. But the fact remains that the report has not been given by the eye-witnesses. P.W. 5 is an eyewitness who after sustaining injuries went to the house of P.W. 1 narrated the incident to P.W. 1 and P.W. 1 in turn gave the report to the police. In fact P.W. 1 has not been cross examined to the effect of not having mentioned the name of A-6 or that the omission was because P.W. 5 had not mentioned the name of A-6. Neither was P.W. 5 cross examined to the effect that he has not mentioned the name of A-6 to P.W. 1. Therefore the omission of the name of A-6 in Ex. P-1 does not doubt the presence of A-6 or his involvement in the incident. P.W. 2 has categorically stated that immediately after A-1 struck a blow with the koduval on the head of the deceased Kannadasan, it was A-6 who hit him on the head with the pipe and he fell down and A-2 followed him with the stab on the deceased; after which again A-6 attacked the deceased with the iron pipe. This has been corroborated by the evidence of P.W. 3 and P.W. 5. Consequently, we have no hesitation to hold that A-6 has taken part in the incident and the injuries found on the deceased has spoken to by P.W. 12 the Doctor who conducted the post mortem offers sufficient corroboration to the version of the eye-witness. We are of the clear opinion that A-1, 2 and 6 attacked the deceased as stated by P. Ws. 2, 3 and 5 and have intended to cause the death of Kannadasan and hence have committed offence punishable u/s 302 read with 34 I.P.C.

11. The next contention raised by the counsel appearing for the accused is that the injured witnesses had given varied versions to

12. The next question that arises for consideration is as to the nature of the offence and if so, who are the person who are responsible for having committed the offence. The learned trial Judge has convicted all the twelve accused for offences u/s 302 read with 149 among other offences and sentenced to undergo imprisonment for life. In order to establish the common object, the prosecution has not examined any independent witnesses, but has relied on the evidence of P.W. 2 alone and has left the Court for inferring the common object that the accused had come there with the common object of doing away with the deceased. The evidence of P.W. 2 would disclose that at about 8.00 or 8.30 p.m when the deceased and other witnesses were talking on the night of 26.9.90, he came and informed that A-1 had planned to attack them. But however there is no semblance of any evidence as to how he came to know about this fact. Whatever he told is only an hearsay evidence and consequently we cannot act upon the same. The common object has to be inferred only from the incident. The prosecution case in relation to the occurrence proper concerned is that the deceased Kannadasan was coming in a motor cycle and the injured witnesses were following him and at that stage the accused numbering about 12 persons stopped him and A-1 attacked the deceased with the Koduval on

his head, followed by A-6 who attacked him with the iron pipe and A-3 in turn stabbed him with the Chillakol. Thereafter the witnesses were attacked by the other accused and finally it is also stated that the other accused also beat the deceased. There does not appear to be any evidence of the other accused knowing that A-1 and A-2 were armed with the deadly weapons and that they are going to stab him to death. There is no evidence that they knew that the deceased is likely to come that way and that they were going to assault him to death. Consequently, we cannot saddle with the common object of murder in so far as A-3, A-4, A-5, A-7 to A-12 are concerned. However, they have taken active part in the incident proper by beating the deceased and the injuries in relation to the overt acts attributed to these accused are simple in nature and consequently they can at best be convicted only for an offence u/s 325 read with 149 I.P.C. All the witnesses unanimously state that the accused indiscriminately beat the deceased. Therefore in the above said circumstances, we hold that A-1, A-2 and A-6 are guilty of offence u/s 302 read with 34 I.P.C among other offences of which they have already been convicted and the rest of the accused u/s 325 read with 149 instead of 302 read with 149 among other offences already convicted by the trial Court, sentencing them to undergo rigorous imprisonment for two years.

13. Thus the appeal preferred by A-1, A-2 and A-6 are dismissed, while the appeal preferred by the other accused have been modified as already stated and hence is partly allowed.