

# Basheera Begam vs Mohammed Ibrahim And Ors on 31 January, 2020

Equivalent citations: AIR ONLINE 2020 SC 114, (2020) 3 SCALE 53

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Bench: Indira Banerjee, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.417 OF 2010

BASHEERA BEGAM

.....Appellant

versus

MOHAMMED IBRAHIM & ORS.

Respondents

WITH

CRIMINAL APPEAL NO. 416 OF 2010

CRIMINAL APPEAL No. 408-414 of 2010

JUDGMENT

Indira Banerjee, J.

These appeals are against the judgment and order dated 21.11.2006 passed by the Madurai Bench of Madras High Court, allowing Criminal Appeal Nos. 834, 835, 836, 895, 926, 934 and 6.10.1998 of conviction passed by the Additional Sessions Judge, Pudukottai in S.C. No.108/1996, and acquitting

all the eight accused persons (A1 to A8). While all the eight accused had been convicted under Section 120B of the Indian Penal Code of criminal conspiracy, A1, A2 and A7 had also inter alia been convicted under Sections 302/34 of I.P.C for murder of the deceased Raja Mohammed, hereinafter referred to as the first Deceased ('D1'), and his friend Raj Mohammed son of Ibrahim, the Accused No.4 (A4), and hereinafter referred to as the second Deceased ('D2').

2. Criminal Appeal Nos.417 and 416 of 2010 have respectively been filed by Basheera Begum, the wife of D2 who deposed in the trial as the 3rd Prosecution Witness (PW-3) and Sahul Hameedhu uncle of D1, being the complainant, who deposed as the 1st Prosecution Witness (PW-1). Criminal Appeal Nos. 408-414 of 2010 have been preferred by the State, challenging the acquittal of the eight accused.

3. The 1st Accused Jaffer Ali (A1) and D2 are brothers and sons of the 4th Accused, Mohammad Ibrahim (A4). The 3rd Accused, Abdul Hameedhu (A3) is younger brother of A4 and uncle of D-2 and A-1. The 5th Accused Sheikh Dawood (A5) and the 6th Accused, Basheer Ali (A6) are relatives of A1, A3, A4 and D2. The wives of A3 and A6 are sisters. The 2nd Accused Balu @ Balusamy (A2) and the 7th Accused, Krishnan (A7), both residents of Karaikudi are allegedly henchmen of the 8th Accused, Ramasamy Ambalam(A8) of Unjanai Village near Karaikudi, a friend of A3. A4, A5 and A7 have since died. A7 had died while his Appeal before the High Court was pending. The appeals against the acquittal of A4 and A5 in this Court, have abated.

4. It is the case of the Prosecution that D2, son of A4 and D1 nephew of A3 were friends. Sultan alias Sulaiman Rowther, brother of A3 and A4 and uncle of D2, who lived in Malaysia, had properties in India, which were being managed by A3. Enmity arose between A3 and D2 after the said Sulaiman took back his properties from A3 and entrusted D2 with management of the same. Fathima Beevi, daughter of Sulaiman, a Non-Resident Indian (NRI), had also entrusted D2 with her properties in India, as a result of which there was bad blood between A3 and A2. D2's demand for partition of family properties held and/or controlled by A4 gave rise to property disputes between D2 and his father (A4) and his brother (A1). D2 was embroiled in litigation in respect of properties held and/or managed by him.

5. As per the case of the Prosecution, the Accused had booked a room at the Malar Lodge Hotel at Karaikudi on 21.6.1990, where they hatched the conspiracy to kill D2. In pursuance of such conspiracy A1 purchased a lorry bearing the Registration No. TSL 6579 on or about 20/21 December 1990, through brokers, PW-6 and PW-7 under a sale agreement prepared by A5. A6 and A5 were also signatories to the sale agreement.

6. According to the Prosecution, D2 and his friend D1, both residents of Arsarkulam, left for Aranthangi around 8.30 p.m. on 28.12.1990, by Motor Cycle No.TN/1406, owned by the A4, to meet a lawyer engaged by D2. D2 drove the motor cycle and D1 was on the pillion. At about 1.00 a.m. at night, two persons, Kannan and Nagoor Gani (PW2) who had come to Arsarkulam by the last bus, informed the complainant (PW-1), uncle of D1, that D2 and D1 were lying dead in a pool of blood two or three furlongs away from the level crossing at Sarayananthal, Pappakulam and a motor cycle was lying closeby.

7. On receiving the information, PW-1 went to the place of occurrence immediately with his neighbour Mohammedhu Meera and thereafter, at about 2.00 p.m. he went to the Aranthangi Police Station and lodged a complaint.

8. In the complaint, PW-1 stated that he suspected that the deceased might have been murdered by Perumal, Kuzhanthaiyan and Kumar, at the instigation of A3, as there was enmity between D2 and A3 over the eviction of A3 from the place of his residence. A1, brother of D2 and A4, father of D2 were not even named as accused in the complaint. Nor were any of the other accused named.

9. The sub-inspector attached to the Aranthangi Police Station registered the complaint, pursuant to which investigation in Crime No.668 of 1990 commenced under, inter alia, Sections 120B and 302 of the IPC. The Inspector reached the place of occurrence on 29th December, 1990 after sunrise. The bodies of the deceased were sent for postmortem examination.

10. PW-22, a doctor attached to the Government Hospital at Aranthangi performed postmortem on the dead body of D2. Upon postmortem, the following injuries were found on D2:-

“EXTERNAL INJURIES:

1. Contusion injury on upper lip and right maxilla.
2. Teeth in upper and lower jaw displaced.
3. Horizontal incised injury 3 cmx2cmx1cm on chin.
4. Blood clots from mouth and nose.
5. Irregular horizontal abrasion 3 cm diameter on chest.
6. Reddish black, partly rectangular 3 cm x 2cm interrupted impression, continuous from right Hypochondrium crossing sternum termination at left Hypochondrium. Similar impressions on lower part of abdomen diminishing at umbilicus. Distance between two edges is of 27 cms.
7. The above impressions present on front position middle of right forearm.
8. Elliptical shaped lacerated injury on cubital region of left forearm 4 cmx4cmx1cm. When both upper limbs held close to the body injury No.6, 7 & 8 are continuous and are in line.
9. Bluish coloured contusion injury 5 cm diameter on right inguinal regional.
10. Irregular abrasion just above right knee.

11. Irregular abrasion 4 cm diameter below right scapula.

Internal injuries:

Fracture of Nasal bones body of mandible on both sides. Ribs 3 to 7 costal region symmetrical on both sides driving bone ends to lungs, body of sternum, lung surface is lacerated. Stomach contained 200 ml of digested rice particles. Liver posterior surface is ruptured and torn to pieces. Other visceral organs & skull bones normal:

Scrotum: Contained a loop of intestines.”

11. The 23rd Prosecution Witness (PW-23) conducted Postmortem on D1 and found the following Injuries:

“External Injuries :

1. An ante-mortem lacerated injury over the right eye brow horizontally, size 3cm x 1/2 cm x 1/2 cm on examination blood clots underneath the wound present. No bone fracture.

2. An ante mortem lacerated injury semi circular in nature over the anterior aspect of right shoulder size 6 cm\*1cm\*1cm. No bone fracture.

3. An ante mortem lacerated injury over the right arm anteriorly horizontal in nature 5 cm below the shoulder joint size 3 cm\*1cm\* 1/2 cm. No bone fracture.

4. An ante mortem lacerated injury over the right elbow posteriorly horizontal in nature size 2 1/2 cm x 1cm x 1/2cm.

5. Ante mortem abrasion linear, interrupted underneath in nature.

Extending from right chest to right iliac fossa size 25cm x 5cm. On examination extra vastation of blood underneath the skin present. Present. Fracture of 4th and 5th rib anterior angle present.

6. Ante mortem lacerated injury horizontal over the left wrist joint anteromedially size 2 cm x 1/2 cm x 1/2cm. No bone fracture.

7. An ante mortem lacerated injury over the right knee joint antiolaterally size 3 cm x 2cm x 1/2cm horizontal in nature. No bone fracture.

8. Ante mortem abrasion 4 cm in number each 3 cm x 2 cm over the right leg laterally.

9. Ante mortem contusion over the right side scalp over the right temporal region size 7 cm x 9 cm extravasation of blood underneath the scalp present. Fracture right temporal bone, squamosal part

present, Meninges injury subdural haematone present in intracerebral bleeding present.

10. Torn) bridge depressed clots in the nostril present. No fracture. Nasal bone body not decomposed. The general appearance do not tally with police report. Death appear to have occurred about 16 to 20 hours prior to post mortem. Penis circumcised, eye lids closed, jaws clenched. Tongue inside the mouth.

#### Internal Injuries:

Abdomen mild distention present. Position organs normal, pale, no injury to liver Spleen, kidney no fluid or blood in the peritoneal cavity. Stomach contains 30 ml partially digested food. No specific odour. Thorax-position of organs normal pale fracture o right 4 th and 5th ribs present. Heart empty, no injury lungs no injury. No foreign body in the trachea, Larynx, Hyoid bone not broken. Pelvis no fracture skull fracture of right temporal bone membranes congested subdural haematoma, intra cerebral bleeding present. Brain solid Wt.1200 gms deceased blood preserved for chemical analysis.”

12. The Investigating Officer, PW-43, took up the investigation and examined witnesses. The police seized broken glass pieces, plastic pieces and other objects from the place of occurrence. The lorry was later seized. One iron rod alleged to have been used for the murder of D2 and D1 was allegedly recovered by the police on the confession of A7. The passport of A1, who had gone back to Saudi Arabia, where he carried on business, about fifteen days after the incident, was impounded and he was arrested. PW-36, who had taken up the investigation from PW-43 seized registers of Malar Lodge Hotel in Karaikudi (Ex.P24). Further investigation was conducted by PW-45.

13. After completion of investigation, the Inspector of the Crime Investigation Branch, Pudukkottai, filed a Chargesheet before the Judicial Magistrate, Aranthangi. In the chargesheet it was alleged that, on 28th December 1990, A1 had hit the motor cycle on which the deceased were riding, with his lorry bearing the registration No. TSL 6579, near Serayanenthal, Pappakulam. A2 and A7 had got off the lorry and attacked the deceased, who had fallen from their motor cycle, with iron rods and caused their death in pursuance of the conspiracy which had been hatched between A1 to A8 at the Malar Lodge Hotel, Karaikudi, on the night of 21 st June, 1990, owing to enmity of A3, A4 and A1 with one of the deceased, that is, D2.

14. The accused pleaded ‘not guilty’, after which trial commenced. All the accused respondents were tried under Section 120B of the IPC on the charge of hatching a criminal conspiracy at the Malar Lodge Hotel, Karaikudi on 21.6.1990, to murder D2. A1, A2 and A7 were also charged with offence under Section 302 read with Section 34 of the IPC, of murder of D2 and D1.

15. The prosecution examined 45 witnesses. The accused did not examine any defence witness. Nine Prosecution Witnesses (PWs) namely PW-6, PW-9, PW-10, PW-11, PW-12, PW-13, PW-39, PW-40 and PW-42 were declared hostile by the Public Prosecutor and were cross examined on behalf of the State, as they had allegedly retracted from their statements made before the Police in course of investigation.

16. By a judgment and order dated 6 th October, 1998, the Additional Sessions Judge, Pudukottai convicted all the accused under Section 120B IPC and further convicted A1, A2 and A7 under Section 302 read with Section 34 IPC. A1, A2 and A7 were sentenced to life imprisonment and also to fine of Rs.20,000/-

each.

17. Being aggrieved by the judgment and order dated 6th October, 1998 of the Additional Sessions Judge, Pudukottai in SC No.108 of 1996, all the accused filed Criminal Appeals in the High Court, which were numbered as Criminal Appeal Nos.834, 835, 836, 895, 926, 934 and 938 of 1998.

18. By the judgment and order under appeal, the Hon'ble High Court allowed the Criminal Appeals, set aside the judgment and order dated 6th October, 1998 of the Trial Court, of conviction of the accused in SC No.108 of 1996 and acquitted the accused of the charges levelled against them. Since A7 had died while the proceedings in the High Court were pending, the fine amount if any, paid by A7, was directed to be refunded to his legal heirs.

19. The High Court, on consideration of the evidence adduced by the Prosecution, found that the entire prosecution case suffered from serious infirmities, inconsistencies and inherent improbabilities. There were several missing links in the circumstances put forward by the Prosecution and the Prosecution had miserably failed to complete the chain of circumstances by conclusively establishing that each and every circumstance unerringly pointed to the guilt of the accused. Being aggrieved by the judgment and order of the High Court, reversing the conviction of the accused and acquitting all of them, the State, as also the complainants are in appeal.

20. Mr. K.T.S. Tulsi, Senior Advocate appearing on behalf of the appellant in Criminal Appeal No.417 of 2010 submitted that the High Court clearly erred in law as well as facts, in setting aside the judgment and order of conviction of the Trial Court and acquitting the accused of all the charges levelled against them.

21. There can be no doubt, as argued by Mr. Tulsi, that even though the Supreme Court exercises discretionary jurisdiction under Article 136 of the Constitution, such discretion has to be exercised in order to ensure that there is no miscarriage of justice. If the decision of the High Court is mis-conceived and perverse, there is nothing in law which prevents the Supreme Court from exercising its jurisdiction under Article 136 against an order of acquittal, as observed by this Court in State of Rajasthan vs. Islam & Ors.<sup>1</sup> When acquittal cannot be sustained at all, in view of the evidence on record, this Court is duty bound to set aside the acquittal. The question is whether the

acquittal in this case, is liable to be set aside.

22. Mr. Tulsi argued that there was evidence of property disputes between D2 and A3 and also of property disputes between D2 and A4. A police complaint had been lodged in this regard. However, a compromise was entered on the intervention of the District Collector. On 30.4.1990, A4 had lodged a complaint against D2 which had been compromised in the Civil Court.

1. 2011 (6) SCC 343

23. There was evidence that on 21.6.1990 the accused booked a room at the Malar Lodge Hotel, Karaikudi and conspired to kill D2 with the help of a lorry. Accordingly A1 purchased the lorry No. TSL 6579 with the sinister motive of murdering D2.

24. Mr. Tulsi submitted that on 28.12.1990, D2 and D1 left for Aranthangi. At around 1.00 a.m. complainant was informed of the death of the deceased. As per the post mortem report the deceased died of shock and haemorrhage due to injury on skull, brain and multiple injuries.

25. Mr. Tulsi submitted that where specific roles had been attributed to each of the accused persons, a chain of circumstances linking them to the commission of offence was complete. The High Court ought not to have reversed the Trial Court's judgment. The High Court overlooked the fact that in most cases of circumstantial evidence, direct evidence of conspiracy is never available and existence of conspiracy has to be inferred from the circumstances of the crime.

26. Mr. Tulsi submitted that apart from complete chain of circumstances linking the accused with the crime, expert opinion was also available. The depositions of PW-22 to PW-27 led to irresistible inference of the guilt of the accused. Mr. Tulsi submitted that the High Court ignored the fact that the accused persons alone had the motive and opportunity to commit the offence as established from the testimony of PW-1, PW-3 and PW-29.

27. Mr. Tulsi submitted that depositions of PWs 8, 16, 21, 23 and 24 clearly established that D1 and D2 were killed by the accused persons. They did not die as a result of an accident. PW-8 deposed that the lorry was repaired in his workshop at Arokyam. On the intervening night of 28/29.12.1990 the lorry was brought to the workshop of PW-7 for repairs. Its left bottom light was broken. On 3.1.1991 PW-16 had sold three bulbs for the lorry in question against receipt and on the same day PW-15 had sold a front side light of a heavy motor vehicle.

28. Mr. Tulsi further submitted that there was evidence of PW-21 who deposed that an iron rod was recovered from A7 on 13.2.1991 in his presence. On the basis of the statement of PW-24, the Trial Court rightly came to the conclusion that D2 did not die because of the collision but was murdered. Even PW-23 stated that D1 and D2 had been murdered with the rod( MO-23). Counsel appearing for the State supported Mr. Tulsi.

29. There can be no doubt that direct evidence of conspiracy is almost never available and that existence of conspiracy has necessarily to be inferred from the circumstances of the crime, as held by

this Court in Vijay Shankar vs. State of Haryana 2, Praful Sudhakar Parab vs. State of Maharashtra 3 and Satish

2. 2015 (12) SCC 644

3. 2016 (12) SCC 783 Nirankari vs. State of Rajasthan<sup>4</sup> cited by Mr. Tulsi. It is however doubtful, whether existence of conspiracy can at all be inferred from the circumstances in this case, considering the evidence adduced by the prosecution.

30. The 1st Prosecution Witness M. Sahul Hameed (PW-1), being the complainant deposed that D1 was his sister's son. When the incident occurred Mohamed Meerasa, father of D1, was in Malaysia. D1 had been staying with his mother Aiyeesha @ Aiyeesammal at Aroorkulam. PW-1 deposed that D2 was a friend of his sister's son, D1. D2 was married to PW-3, Basheera Begum.

31. In a nutshell, PW-1 said that he knew all the accused persons. A4 (father of D2), A3, and Sultan @ Sulaimaan Rowthar living in Malaysia were brothers. A3 had been managing the properties of Sulaimaan in India. Disputes however arose between A3 and D2 when Sulaimaan took back his properties from A3 and entrusted the management thereof with D2. Properties in the name of Fathima Beevi, daughter of Sulaimaan were also entrusted to A3 for management.

32. PW-1 has stated that there were 10 to 12 patta holders, and also unauthorised occupants in occupation of land purchased in the name of Fathima Beevi. The occupants were being evicted by

4. 2017 (8) SCC 497 payment of money. However, A3 who was associated with the ruling party at that time, and a Vice-president of the Aranthangi Panchayat Union, instigated occupants not to vacate, and many of them refused to vacate. According to this witness, this gave rise to a quarrel between D2 and A3 and a complaint was filed with the police. The District Collector conducted an inquiry and the disputes were compromised through his intervention.

33. This witness also said that there was a civil case pending in the District Munsif Court at Aranthangi against some occupants of the Palaa Thopu land of Fathima Beevi. D2 used to often go to Aranthangi with D1, being the complainant's sister's son, in connection with the civil case. From the evidence of PW-1 it only transpires that A1, A3 and A4 had property disputes with D2.

34. This witness stated that A4, father of D2 owned a Bajaj Motor Cycle bearing the Registration No.TN55/1406. On 28 th December, 1990 at about 8.30 p.m. when this witness was in his rice mill, D2 left for Aranthangi along with D1, being his sister's son, on the said Bajaj motor cycle bearing the registration No.TN55/1406 owned by A4, to meet his advocate. D2 drove the motor cycle and D1 was the pillion rider.

35. On 29.12.1990 at 1.00 a.m. this witness received information of the death of D1 and D2. He was told that D1 and D2 were lying on the road side with injuries and the motor cycle was also lying nearby.



36. On getting this information PW-1 left for the scene of occurrence along with his neighbour one Mohamed Meera and thereafter he lodged a complaint, stating he suspected that his sister's son being D1 and D2 had been murdered at the instigation of A3.

37. From his evidence, it appears that the motor cycle was identified at the place of occurrence. There were tyre marks of a four wheeler. Broken yellow glass pieces were found at the place of occurrence which appeared to be broken pieces from the side light of a vehicle. There were also broken plastic pieces, which appeared to be the broken pieces of the indicator of a four wheeler.

38. This witness (PW-1) stated that fifteen days after the incident, A1, Jaffar Ali, left for Saudi Arabia, where he had been running a business. PW-1 came to know about the departure of A1, from Mohamed Ali Jinnah and Akbar who had been working in the shop of A1 in Saudi Arabia. The aforesaid employees of A1 gave the xerox copy of the passport of A1 to the police, who later arrested A1.

39. In cross-examination, this witness admitted that he did not mention any names, except the name of A3 in his complaint. During cross-examination, he said he had suspected that P.L. Subbiah, Perumal, Kumar, Kulanthian and some others could have committed the murder. In other words, on his own admission, his complaint was based on suspicion.

40. This witness could not say how many pieces of plastic were found but confirmed that plastic pieces were found scattered. He could not remember whether plastic pieces were seized in his presence or not. He also could not remember whether the glass pieces were recovered in his presence or not, but stated that the glass pieces were yellow in colour. The plastic pieces were yellow and white coloured. He stated that he had not observed Material Object M.O.3 exhibited by the police in Court.

41. It is true that no witness is likely to notice details such as the number of glass pieces found at the site of an accident which left human beings dead. Inability to recall such details does not in itself affect the credibility of the witness. However, in this case, there is nothing at all in the evidence of PW-1, to establish the guilt of the accused persons or any of them, and certainly not beyond reasonable doubt.

42. All that PW-1 has said is that there were disputes between A3 and D2 with regard to the properties of Sulaimaan Rowthar and his daughter. No specific reason for enmity between A1 and D2 or between A4 and D2 has emerged from the evidence of this witness.

43. The 2nd Prosecution Witness (PW-2) M. Nagoor Gani, stated that he had travelled to Arasarkulam from Aranthangi by the last MPTC bus. This witness deposed that on the way he had seen that there were two dead bodies lying at about a distance of one kilometer to the north of Paapankulam, some distance away from the railway gate. The dead bodies were of PW-1's sister's son and A4's son. There was a motorcycle nearby. The Driver stopped the bus at the roadside after which the passengers got down and saw the bodies. Thereafter PW-2 along with one Ganapathy, who had also been travelling in the same bus, went and informed PW-1 of the death. PW-2 said that

the police had examined him 1½ years after the incident. Nothing has emerged from the evidence of this witness to establish the guilt of the accused.

44. The 3rd Prosecution Witness, (PW-3), Basheera Begum, widow of D2 (PW-3), confirmed that there were property disputes giving rise to enmity between her husband and A3 over the properties of Sulaiman and his daughter Fathima which had been taken back from A3 and entrusted to D2. She also stated that there were disputes between her husband and his father (A4) regarding family properties, of which D2 had been demanding partition. D2 had also been insisting upon transfer to him of a petrol bunk held by A4. A4 refused to accede to his demand. PW3 said her husband and his father had not been talking to each other for about two years prior to the incident.

45. PW-3 stated that on the date of the incident, D2 left Arasarkulam along with D1, saying he wanted to meet his lawyer in Aranthangi. He did not return. On 29 th December, 1990, at about 8.00 a.m., she was told that her husband, that is D2, had been found dead near the railway level crossing near Paapankulam, on the road from Aranthangi. She said she told the police that she suspected the involvement of A3 and A4 in view of the disputes over family property. On her own admission what she deposed was based on suspicion. The evidence of PW-3 does not establish any motive to murder D2.

46. The 4th Prosecution Witness, R. Raju (PW-4), is the conductor of the MPTC bus in which PW-2 had been travelling. His evidence only establishes that two bodies were found at a distance of about two furlongs from the railway crossing, near a pond, and a motorcycle was lying on the tar road, near the two dead bodies.

47. The 5th Prosecution Witness, M. Shanmuga Sundaram, a practising advocate in Aranthangi (PW-5), said that he knew D2, who belonged to his neighbouring village. He deposed that PW-5 and A4 were in the same political party in 1990. He denied having conducted any civil case for D2, son of A4. He also asserted that he had not been in Aranthangi on the date of the incident. He had gone to Chennai. Nothing has emerged from the evidence of this witness to establish the guilt of the accused.

48. The 6th Prosecution Witness, M. Balakrishnan alias Chinappu (PW-6), deposed that he was a lorry broker at Puddukotai, who used to arrange for purchase and hire of lorries. He said he knew A5 who had been introduced to him by A1. He stated that in 1990 he had purchased a lorry bearing TDB 9635 for A1 for which A5 had stood as guarantor. A1 had paid the entire money for purchase of the said lorry. PW-6 said that A5 had also helped him to sell that lorry.

49. PW-6 further stated that he had purchased the lorry bearing the Registration No.TSL 6579 from one K. Mayilsami, a broker of Karur (PW-7) for a sum of Rs.3,35,000/-. This witness said that A5 came to Karur on 20.12.1990, that is, the date of purchase of the lorry and signed the agreement for purchase of the lorry, which was drafted by A5. PW-6 signed the agreement as a witness. PW-6 denied knowledge of what had happened to the lorry after its delivery to A1. PW-6 stated that A1 had paid Rs.25,000/- on the date of agreement. He had agreed to pay the balance amount within 15 days, but he did not do so. PW-6 stated that the lorry purchased for A1 was parked outside the Court in a completely changed condition.

50. PW-6 further deposed that he had gone to Arokyam's workshop, near the broker's office at Manapparai, to see the lorry. He said he had gone there alone. PW-6 deposed that the owner of the workshop had asked him to take the lorry away from the workshop.

51. PW-6 said that he contacted Mayilsami (PW-7) through telephone, but he was not in the village. PW-6 took the lorry to the broker's shop. A few days later, the Police came in a car, went to the RVS lorry shed, where the lorry was parked, and seized the lorry. A5 had also come with the police. PW-6 said that he had not seen A1 after 20.12.1990, whereupon he was declared hostile and cross-examined. In his cross-examination he categorically denied having told the police that A1 had come to his house before 6.30 a.m. on 29.12.1990. PW-6 categorically denied as incorrect, the statements to the police attributed to him.

52. The 7th Prosecution Witness N. Mayilsami (PW-7), a broker of Karur engaged in the business of purchase and sale of lorry under the name and style of S.R.N Lorry Service, deposed that he had purchased the lorry with Registration No.TSL 6579 from one Kamakshi of Chennai. On 20.12.1990, A1, A5 and A6 had come to Karur to purchase a lorry for a sum of Rs.3,35,000/-. PW-6 received Rs.25,000/- from A1 and advanced the aforesaid amount to PW-7. A further amount of Rs.25,000/- was to be paid within 4 days. This amount was paid on 24.12.1990. As per agreement, the balance had to be paid before 4.01.1991/-.

53. This witness deposed that the agreement was drafted by A5 and executed between A1 and PW-7, who signed it. PW-6 witnessed the agreement and A5 signed the agreement as scribe.

54. PW-7 deposed that possession of the lorry was given to A1 and A5 on 20.12.1990. However, as full amount had not been paid, PW-7 had only delivered photo copies of the Registration Certificate(RC), Fitness Certificate (FC) and permit to them. PW-7 deposed that as per agreement the balance was to be paid before 4.01.1991 but this was not done. PW-7 stated that when he came back to Karur, he was told that PW-6 had contacted him over telephone. He soon contacted PW-6 whereupon PW-6 told him that Aranthangi police had seized the lorry. PW-7 gave photocopies of the RC, FC and permit to the police.

55. The 8th Prosecution Witness, S. Kumar (PW-8) stated that he had been doing welding work with the welding machine installed at the workshop of Arokyam of Manapparai. One night in 1990 when PW-8 was doing welding work at the said workshop of Arokyam, Arokyam informed him that he was going out of town. He instructed PW-8 to repair a lorry which had been brought to the workshop for repair. PW-8 said that after repairing the lorry he went to sleep. The next morning, a Leyland lorry was brought to the workshop for repair before 4.00 a.m. PW-8 could not say what was the registration Number of the lorry. PW-8 said he was not in a position to identify the lorry as eight years had elapsed.

56. PW-8 stated that A1 had come in the said lorry and claimed to be the driver of the lorry. PW-8, had obviously not known the person who had brought the lorry, as otherwise that person would not have asserted that he was the driver of the lorry. PW-8 however, identified A1. It is incredible that PW-8 should be able to recognize the driver of the lorry as A1 after so many years, when he could

not identify the lorry.

57. PW-8 said that A1 had told him that the lorry had been hit by a bull. When PW-8 saw the lorry in the morning, he found the front bottom light on the left was broken. A1 gave him Rs.100/- for repair work and asked him to give the lorry to PW-6 after finishing the work.

58. PW-8 said that he had handed over the amount of Rs.100/- to Arokyam and asked Arokyam to hand over the lorry to A6. Four days later he went to the workshop and enquired about the lorry. He was told that A6 had come and taken the lorry.

59. In cross-examination PW-8 testified that a job card was prepared whenever vehicles were given to the workshop for repair. He did not prepare a job card in this case, as he had been sleeping when the lorry was brought to the workshop. PW-8 stated for the first time, in cross examination, that the man who had brought the lorry was with him till the forenoon. He said he had never seen the man again. The police did not take him for identification parade. He said that there was no evidence of the specific repair carried out in the lorry.

60. The evidence of PW-8, if accepted, would at best, establish that a lorry with a broken side light on the left, had been brought for repair to Arokyam's workshop, early one morning before 4.00 a.m. in the year 1990.

61. PW-8's evidence that A1 had brought the lorry cannot be accepted, because it is virtually impossible that A1 should be able to recognize A1 after so many years, and that too when he has himself said that he had been sleeping when the lorry was brought to the workshop. When confronted in cross-examination, PW-8 tried to improve upon his evidence by saying that the person who had brought the lorry was with him till the forenoon, thereby contradicting his answer to an earlier question, that he could not prepare the job card for repair because he had been sleeping when the lorry was brought. Moreover, if as deposed by PW-8 the driver of the lorry had given him Rs.100/- towards repair charges and instructed him that delivery of the lorry be given to PW-6, there was no reason for the driver to stay at the workshop till forenoon.

62. The 9th Prosecution Witness, Kuppusami (PW-9) denied knowledge of the death of D1 and D2 and stated that he was not in the village on the day of the incident. He said that he had not been examined by the police. This witness was declared hostile and permitted to be cross-examined. In cross-examination by the prosecution this witness refuted the suggestions put to him. He denied having made the statements to the police attributed to him. He denied his presence at the place of occurrence and also denied having been examined by the police. Nothing emerged from the cross examination of PW-9 to establish the guilt of the accused.

63. The 10th Prosecution Witness, M. Abdul Jaffar (PW-10) deposed that he knew A1 and A3 to A6, but did not know A2, A7 and A8. He stated that the prosecution wanted him to be a witness and say something about the death of two persons on the road. This witness was declared hostile and cross-examined by the prosecution. He denied all the material suggestions put to him and denied having made to the police, the statements attributed to him. Nothing emerged from his

cross-examination.

64. The 11th Prosecution Witness, P. Raju (PW-11) engaged in the business of flowers at Kattumavadi deposed that he did not know A1, A3 or A4. He said he had never seen A7 before. He said he did not know how D1 and D2 had died. He, however, knew they had died. He further said that he had not been examined by the police.

65. PW-11 was declared hostile and permitted to be cross-examined. He denied the suggestions put to him in cross-examination. In particular he denied the suggestion that he knew there was enmity between A3 and A4 and D2. In cross-examination, he also denied having seen A1 and two other persons get off from a lorry and go to a tea shop. He denied the statements to the police attributed to him by way of suggestions in cross-examination. He specifically denied having told the police that A1 was in the lorry with A7.

66. The 12th Prosecution Witness A.R. Kittu alias Krishnamoorthy (PW-12), who was a resident of Karaikkudi and ran business in the name of Arun Auto for repairing two wheelers, deposed that he did not know A1. He further deposed that from 28.12.1990 to 31.12.1990 he was not in his town. He had gone to Pondicherry to buy a car. When he returned home on 31.12.1990, one of the boys working in the workshop told him that a man had brought a Suzuki motorcycle for repairs and left it at the workshop. Two days later, the police came to the workshop and asked this witness to identify the person who had kept the two wheeler in the workshop. On 1 st or 2nd January, 1991, two mechanics came to the workshop and asked for return of the motorcycle. Suspecting there might be a police case, this witness asked the mechanics to get a consent letter from the person who had left the motor cycle at the workshop. Accordingly, they obtained and brought the consent letter, whereupon this witness returned the motor cycle. The letter was handed over to the police.

67. This witness deposed that he did not know A2. This witness was also declared hostile and cross-examined by the prosecution. He denied having made to the police the statements attributed to him. In particular, he denied having told the police that a Leyland lorry was kept near National Battery Works from 24.12.1990. He denied that he had seen or spoken to A2. The material suggestions made to him have been denied. Nothing has emerged in his examination to establish the guilt of the accused.

68. The 13th Prosecution Witness V. Marimuthu (PW-13) only stated that he knew the deceased and that the police had examined him about the death of the deceased as he had been looking at the dead bodies. He stated that the police wanted him to fix his thumb impression and he accordingly put his thumb impression on some Paper. This witness was declared hostile and cross-examined by the Prosecution. He flatly refuted all the suggestions made to him.

69. The 14th Prosecution Witness S. Arokyam Raj (PW-14) deposed that he had been running National Welding Works at Manapparai for the last 20 years. He stated that he had known PW-8 who had worked as a tinker in his workshop. He stated that when he remained out of station, his brother managed the workshop and sometimes his employees also managed the workshop.

70. PW-14 deposed that he had gone to Trichy on 28.12.1990 and came back to Manapparai on 29.12.1990. During his absence his brother and PW-8 had managed the workshop. This witness stated that when he returned to his workshop, he saw the lorry TSL 6579 there. This witness (PW-14) stated that PW-6, who used to bring lorries to his workshop for repairs, had requested him to repair the lorry, which had a small dent in the front left side. The bolts and nuts were loose. The repairs were duly carried out. However, nobody turned up to take the lorry back.

71. This deponent stated that 4 or 5 days later, he went to Trichy, where he saw PW-6 at the bus stand. He told PW-6 that nobody had taken back the lorry, which had been left in his workshop for repairs. On the next day PW-6 came to the workshop, identified the lorry, saying that it had been sold by him, gave him the repair charges and took the lorry away. This witness said that receipts were issued for major but not minor work carried out at the workshop. For minor work, money used to be taken, but no receipt issued.

72. The 15th Prosecution Witness, R. Ramamoorthy (PW-15) who had been running Sri Lakshmi Automobiles Spare Parts Shop at Manapparai, stated that he had issued cash receipt No.1253 dated 3.01.1991. He said a front sidelight of a heavy motorcycle had been sold under the said bill, issued in respect of the lorry TSL 6579, for Rs.75/-. No one had signed or initialled the Bill.

73. The 16th Prosecution Witness, J. Chinnasami (PW-16) who had been running Sri Ganesh Agencies Automobiles Spare Parts Shop at Manapparai deposed that on 3.01.1991, he had sold three bulbs for the front side light of a lorry, for Rs.55/- against cash receipt No.5232 dated 3.01.1991. He identified the said cash receipt. The cash receipt records that bulbs were sold for lorry TSL 6579. PW-16 said he had written the particulars of the lorry and signed the bill and had been examined by police.

74. The 17th Prosecution Witness, G. Baskaran (PW-17) deposed that 4 or 5 years ago he had been the manager of the karaikkudi National Battery Company, where batteries were sold and also recharged and serviced. PW-17 stated that on 24.12.1990, when he was working a Leyland lorry with registration No.TSL 6579 was brought to the shop for getting its battery charged and a cash bill of Rs.10/- was issued to him. PW-17 stated that the counterfoil of the receipt (Ex.P6) had been filled and initialled by him. He, however, could not remember who had come to get the battery charged, since many years had elapsed. He said that even after charging the battery, the lorry did not start. He said that he had told the person who had brought the lorry, that the old battery should be replaced by a new one. However, as no new battery was in stock, a serviced battery was fitted in the lorry. He said that the serviced battery was never returned. The evidence of PW-17 only proves that the lorry was brought to the battery shop for getting its battery charged four days before the incident. His evidence is of no help to the Prosecution.

75. The 18th Prosecution Witness, Rasappan (PW-18) stated that at the time of the occurrence he had been working as V.A.O. (Village Administrative Officer) of Thirukkottai, holding additional charge as V.A.O. Pudukkottai south. On 4.2.1991, when he was returning from the Pudukkottai Taluk office, with his Assistant, Kaliamoorthy, he found the Crime Branch Inspector, Aranthangi and two constables making enquiries about the accused Abdul Hameed (A3) and the accused

Mohammed Ibrahim (A4) after arresting them in connection with a double murder. He stated that the two accused were separately making oral statements at around 3.00 p.m. PW-18 said that he and his Assistant signed both the statements.

76. The 19th Prosecution Witness (PW-19) Chitravelu, V.A.O. Athani village, Aranthangi (PW-19) deposed that on 8.2.1991, at around 1.00 p.m. he was going to a hotel along with his Assistant Mariappan. Opposite the Avudayarkoil temple, he saw the Crime Branch Inspector of Aranthangi and some other policemen talking to Sheikh Dawood (A5). A5 told the police that if he were taken to Manapparai, he would show the vehicle. His statement was recorded. PW-19 said that Ex.P7 was the admissible portion of the confessional statement made by A5. This witness said that he and his Assistant had put their signatures in the statement. The number of the lorry was TSL 6579 and the make of the lorry was Leyland. By 3.00 p.m. this witness, along with his Assistant, accompanied the Crime Branch Inspector, Manapparai to the R.V.S. lorry broker shed, where lorry TSL 6579 was parked. A5 identified the lorry and the police seized it. By 7.45 p.m. the recovery Mahazar was prepared and the same was signed by this witness and his Assistant. This witness stated that the lorry which had been seized was Parked outside the Court premises. This witness denied the suggestion made to him in course of his cross examination on behalf of the accused, that his signatures in Exs. P4, P5 and P9, as also the confessional statement had been obtained at the Police Station.

77. The 20th Prosecution Witness Rajendran (PW-20), deposed that at the time of the occurrence he had been VAO Thoothukkudi. Early in the morning on 29.12.1990, his Assistant, Karuppan, came to him and told him that two dead bodies had been found near Paapankulam on the road. On hearing this, he immediately went to the place of occurrence with his Assistant, in a TVS 50 vehicle. He said that the dead bodies were lying on the tar road in Sendurayanendal village, north of Paapankulam and at a short distance there was a black coloured motor cycle. The deceased were PW-1's sister's son and elder son of A4. Bloodstains were spilt on the road. There were glass pieces. The rear view mirror was broken into pieces. To the north of the scene of occurrence, there was a mile stone with the number 8. There were broken teeth, a Reynold ball point pen and some coins on the road. This witness stated that they were at the place of occurrence by 6.00 a.m. in the morning. The police were also there. As it was dark, it was difficult to detect things. The Inspector came at around 8.00 a.m. and prepared a rough sketch. PW-20 said he had helped in preparing the sketch. The place of occurrence was photographed and an observation Mahazar prepared. By 3.00 p.m. the police seized the motor cycle, the glass and plastic pieces found on the road, the coins, broken teeth, a watch, a ball point pen and prepared a Mahazar which was signed by this witness. PW-20 said that he was with the police when they recovered the objects. By 5.00 p.m. the police collected bloodstained soil and small pieces of blood stained tar from the road. PW-20 identified the left side mirror of the motor cycle, left side indicator of the motor cycle, white plastic pieces, orange plastic pieces, ball point pen and other similar articles. Nothing has emerged in the evidence of this witness to establish the guilt of the accused.

78. The 21st Prosecution Witness, Chidambaram (PW-21) stated that at the time of the occurrence he had been VAO, Kummangadu, Aranthangi. One Ramanathan was his Village Assistant. He stated that on 3.2.1991 at around 3.00 a.m. when he had been sleeping in his office, a policeman sent by

Inspector of police, Aranthangi came to him and told him that the Inspector wanted him to assist the Inspector to arrest the persons involved in a double murder. He stated that he went to the police station and from there he went to Kattumavadi corner. The police arrested Krishnan (A7) opposite the Plato TV centre. This witness could not, however, identify A7 in the Court. He was handed over the portion of the confessional statement of the accused Krishnan, marked Ex.P-13 claimed by the Prosecution to be admissible, which he identified. He stated that Krishnan had said that if he were taken to Maangudi, he would show the pond where he had thrown the iron rod. This witness (PW-21) stated that this witness, his Village Assistant, Krishnan(A-7) and the police went to Maangudi. Krishnan (A7) got into the pond, and took out the iron rod and handed it over to the police. The rod was not sent for forensic examination. There were no blood stains or finger prints on the iron rod, recovered from an easily accessible open pond. The recovery, if any, is of no evidentiary value. This witness could not even say whether the pond was filled with water or not. He also could not identify A7. He, however, asserted that M.O.23 was the iron rod. He also stated that a Mahazar was prepared (Ex.P-14) which they signed. Significantly, no other witness examined so far has said anything about recovery of any iron rod from a pond at Maangudi.

79. Dr. Usen Mastha, Civil Assistant Surgeon, who had been working as a doctor in the Government hospital Aranthangi, and had conducted post mortem of D2 along with one Dr. Sivasubramaniyan, deposed as the 22nd Prosecution Witness (PW-

22).

80. This witness gave the details of external and internal injuries found on the dead body of D2 and opined that D2 could have died 16 to 18 hours prior to the post mortem, as a result of the injuries and oozing of blood. PW-22 identified the post mortem certificate prepared and signed by him and confirmed that the same had also been signed by Dr. Sivasubramaniyan. PW-22 opined that from their appearance, the injuries on the chest and stomach of D2 could be said to have been caused by reason of D2 being run over by a vehicle. There were injuries on the body of D2, which could have been caused if he had been hit by a vehicle and had fallen on hard ground.

81. PW-22 further deposed that it was possible for a person who fell on the ground, after being hit by a vehicle, to sustain simple injuries. He opined that the nature of the injuries would depend on several factors, including the speed of the vehicle, the part of the vehicle which hit the victim, the object which hit the victim when he fell, and also the part of the body which was hit.

82. PW-22 deposed that during the post mortem, both the hands were seen fixed with the body and tyre marks were found in the same measurement. PW opined that if a heavy motor vehicle ran over a person, the tyre marks would not be visible. If a person fell after being hit by a heavy vehicle, there were chances of fracture of the jaw bone and of the teeth being broken.

83. PW-22 deposed that injury Nos. 1 and 3 were simple. Injury No.1 could have been caused if a person fell down on being thrown off a vehicle. PW-22 deposed that injury Nos. 6 to 8 might have caused death. Injury Nos. 9 to 11 might have been caused if a person had been thrown off and had fallen on hard ground. When a person were thrown off the bones in the part of the body which first



hit the ground would break. PW-22 said the injuries in the face could have been caused by the rod shown to him, that is, MO-

23.

84. Even though, PW-22 in effect opined that, it was possible that the injuries on the face could have been caused if the deceased had been beaten on the face with an iron rod similar to M.O.-23, he also said that some of these injuries (Injury Nos.1 and

3) were simple. Injuries 4 and 5 could also have been caused if a person had fallen after being thrown off and that there was no impression of the deceased being hit by M.O.-23. The evidence of this witness suggests the likelihood of D2 having been run over by a heavy vehicle, which caused his death.

85. Dr. Murugesan, Civil Assistant Surgeon who deposed as the 23rd Prosecution Witness (PW-23), had also been working as Assistant Surgeon in the Government Hospital at Aranthangi at the time of occurrence. He said that on 29.12.1990, the Inspector of police, Aranthangi sent the dead body of D1 for autopsy. He said that he conducted post mortem examination of the body along with Dr. Karunakaran, who had been working as Assistant Surgeon in the same hospital. PW-23 said that rigor mortis had set in when the dead body was brought for post mortem. The dead body was lying face upwards. Injuries with blood were found all over the body and there were blood clots in the nose and mouth. There was dried blood all over the face and blood was oozing out through both the ears.

86. PW-23 described the injuries found on D1, and opined that death might have occurred 14 to 20 hours before the post mortem. He said the post mortem had been completed by 5.45. p.m. on 29.12.1990. PW-23 opined that D1 might have died due to injuries sustained in the head and brain and other injuries in the body, and also shock and haemorrhage. The injuries could have been caused if a vehicle had hit the deceased. The injuries in the nose might have been caused by a blunt object. The ribs might have been broken if the body had been thrown off, or if it were run over by a vehicle. There were no tyre marks. This witness stated that there would be no tyre marks if the tyres were worn out. Immediate death would have occurred only due to the head injuries. Injury No.3 might have caused instantaneous death. The injuries over the head and over the bodies might have been suffered at once or one after another. PW-23 stated that he had been examined twice by the Investigating Officer. A rod similar to the rod which MO-23 had been shown to him. He stated that injury Nos. 3 and 4 could have been caused if hit by a rod like MO-23. The rod, if used with force, could cause Injury No.9 and injury No.10.

87. In cross-examination, this witness stated that accident could have occurred if a stationary vehicle were hit by a moving vehicle, or if there was collision between running vehicles. If a person injured in an accident gets thrown off, there is possibility of the wheel running him over. Injury nos. 3 and 4 could have been caused by a vehicle accident. Injury nos. 9 and 10 might have been caused if the deceased were thrown off with violent force. Injury nos. 5 to 8 could have been caused even if a person were thrown off without much force.

88. From the evidence of this witness, it appears that the injuries found on the body of D1 could have been caused if D1 had been thrown off the motorcycle and landed on hard ground after collision with another vehicle. The injuries could also have been caused if D1 were hit by a rod similar to MO2. The opinion of this witness with regard to the cause of D1's death, is inconclusive.

89. The 24th Prosecution Witness Radhakrishnan (PW-24), who had been working as Motor Vehicle Inspector Grade-I, Palani, Dindigul district, described the damages on the motor cycle on which the deceased were riding. He opined that the damages could have been caused either if the motor cycle had been hit by another vehicle or if the motor cycle had fallen. His evidence is of no help to the Prosecution to establish the guilt of the accused.

90. The 25th Prosecution Witness, P. Sivakumar a Scientific Assistant Grade-I, Forensic Laboratory, Pudukkottai (PW-25) deposed that he had inspected the place of occurrence and the motor cycle on which the deceased were travelling (MO-1). There were indications that the vehicle had been hit by another vehicle. He had advised the Investigating Officer to preserve the scraps of paint of the vehicle that had hit the motor cycle (MO-1) and the scraps of paint of MO-1. There were blood stains on the tar road near the motor cycle. There were also signs of dragging the dead body along the road. There were yellow coloured glass pieces, and white and orange coloured plastic pieces(MO-16). This witness had advised that MO-16 and the blood on the tar road be preserved. The witness said that from the tyre marks at the place of occurrence, it could be inferred that a heavy vehicle like a lorry might have been involved. The broken orange and white coloured glass pieces might have been from the indicator and the green, red and white paint scraps might have been from the bumper.

91. PW-25 stated that he had also helped in investigating the lorry being TSL 6579 on 9.2.1991. The left side of the lorry was tinkered. A light coating of black and red could be noticed in the tinkered area. The front bumper of the lorry was covered with two pieces of white metal sheets. The yellow light on the right was found in good condition, but the yellow light on the left was found broken. The number plate in front of the lorry was not in good condition. He said that he had told the Inspector to preserve the number plates. The headlight in front, had the letters T, I, M and E. The other headlight had the word 'LUCAS'. Two of the indicators of the lorry were unscrewed. One had no plastic cover and the other had a white and orange coloured cover. PW-25 stated that he had advised the Inspector to send all the objects for chemical examination.

92. In cross-examination, this witness said that the sample paint scrapings collected from the lorry and the motorbike had not been analyzed by him. The quantity of paint at the place of occurrence was not large. He could not say whether the paint found was mixed with oil or was plastic paint. There was no laboratory in the district for analyzing the paint. PW-25 deposed that heavy vehicles included buses, but a look at the tyre marks at the place of occurrence gave the impression that the vehicle could be a lorry. The tyre marks, which were about 8 inches in breadth, could also correspond to the tyre of a bus.

93. PW-25 said that he did not have special knowledge of heavy vehicles other than lorries and buses. He said the head lights of a bus, lorry and a car were of the same size. The quality of the

headlight as also the glass cover of the indicator would depend on the manufacturer.

94. This witness could not say whether the glass pieces at the place of occurrence were from a lorry, bus or car. This witness said the quality of the paint would depend on the company which manufactured the paint. He could not say which company had manufactured the paint collected in this case. He also could not say when a part of the front side of the lorry had been painted black and red.

95. The 26th Prosecution Witness, A. Subramanian (PW-26) only stated that he had taken photographs of two dead bodies. Nothing much has emerged from his examination.

96. The 27th Prosecution Witness, Thiyagarajan (PW-27) also a photographer, stated that he had taken photographs of the lorry at the Aranthangi Police station. His evidence is of no relevance.

97. The 28th Prosecution Witness, P Sondarajan (PW-28) who was a constable in the Trichy dog squad, stated that on 29.12.1990 he went to Arasarkulam road with the police dog named 'FRUIT'. There were two dead bodies. The dog smelt the blood on the dead body. After smelling the blood, the dog ran a short distance, got into Paapankulam and went up to the water and started barking. The dog then returned to the place where the dead bodies were found. Then it proceeded to Arasarkulam and ran 2 or 3 streets. Suddenly it lay before a house in the East Street, Arasarkulam. PW-28 said he did not know the door number or the owner of the house. The Inspector and the Dy. Superintendent of Police came to the house where the dog lay and directed him to leave the spot. He stated that the dog identified a material object. However, this was objected to by the defence as not admissible under the Evidence Act.

98. In cross-examination, PW-28 stated that he had told the police about the places to which the police dog had gone after smelling the dead body. He denied the suggestion that he was not able to recollect the events, because of the lapse of 7/8 years. He stated that he was giving evidence on the basis of entries in a diary. However, the diary was not brought to Court. If the evidence of this witness with regard to the reactions of the dog, is to be accepted as indicative of the movements of the person/persons who caused the death of D2 and D1, the evidence would contradict the case sought to be made out by the Prosecution that Accused Nos.1,2 and 7 were all in a lorry. If they had all come in a lorry, they would also have left in the lorry. Nothing turns on the evidence of this witness.

99. The 29th Prosecution Witness, P. Govindarajan (PW-29), a constable in Manamelkudi Police Station deposed that on 30.4.1990, A4 had come to the Nagudi police station and complained against his son D1. The complaint was Ex.P-20. The police made inquiries and thereafter advised D2 not to pick quarrels with his father, whereupon D2 had promised that he would not fight with his father over family property. His evidence has no connection with the occurrence of 28/29 December, 1990.

100. The 30th Prosecution Witness, Sub-Inspector, G. Chinnadurai (PW-30) stated that he had worked as Sub-Inspector at Jagadapattinam from 14.9.1997 and sub-Inspector Nagudi from

8.7.1992. In 1989, Sivasubramanian (since deceased) who had then been serving as Inspector Aranthangi, had registered the case, Crime No.160/89 at Nagudi police station under Section 145 of the Code of Criminal Procedure. The complaint which related to land involved One Alaguraj and Kasilingam on one side and Perumal, Kumar Karuppiah and Rangan on the other. This witness said he knew Sivasubramanian's handwriting and signature. In cross-examination this witness could not say if the complaint was lodged because of the refusal of Perumal and others to vacate disputed land. The evidence of this witness also has no bearing on the incident which took place on 28/29 December, 1990.

101. The 31st Prosecution Witness A. Hamsat (PW-31), a Head Constable of Avudayarkoil Police Station, stated that at the time of occurrence he had been a Grade-II constable at Aranthangi and had taken the dead body of D2 to the Government Hospital for post mortem and brought it back after the post mortem. His evidence is of no relevance to the guilt of the accused.

102. The 32nd Prosecution Witness R. Sethu (PW-32), who had been Sub-Inspector at Aranthangi police station on 29.12.1990, had registered the complaint lodged by PW-1, on the basis of which Crime No.668/90 was started. He said that the FIR (Ex.P2) was sent to the Court of the Judicial Magistrate on the same day. His evidence is of no relevance. None of the accused except the A1 were even named in the FIR. Even so far as A1 is concerned, there is nothing concrete in the FIR. A finger of suspicion has only been pointed towards him.

103. Nothing significant has emerged from the examination of the 33rd Prosecution Witness P. Kannappan (PW-33) who had only sent a requisition (Ex P-22) to Court to forward material objects concerning the case for chemical analysis report from the Forensic Science Laboratory, Chennai. He was later transferred.

104. The 34th Prosecution Witness, A.S. Ramu, Chief Scientific Assistant of the Forensic Laboratory at Chennai (PW-34), a handwriting expert with experience of about 20 years in examination of questionable documents stated, that he had been required to compare the handwriting of the entries in Serial No. 942 at Page 54 of a Register belonging to Malar Lodge Hotel Karaikudi (Ex P-24) which he had numbered Q1 and Q2 with the specimen handwriting and signatures of one of the accused (A8). Even assuming, that the signature and handwriting of A8 was there in the register, it only establishes that the said accused may have visited the hotel six months before the incident.

105. The 35th Prosecution witness, Mr. Francis Xavier (PW-35) the Assistant Director, Forensic Science Laboratory, Ramanathapuram Range, who had been Assistant Forensic Science Department, Chennai from 13.3.1989 to 15.5.1992 found similarities between objects collected from the place of occurrence and scrapings and/or objects attached to the vehicle being TSL 6579. However, in cross-examination this witness could not say whether the indicators (MO-34 and 35) related to a motor cycle or not. He stated that he had no training in the aforesaid division. He could not say if MO 32-33 were from a bus, lorry or car. He said that every category of paint could not be identified. He did not know how many kinds of paint were available. He said that the paint would have to be sent to a laboratory for analysis and opinion obtained thereafter for ascertaining the category. He stated that the kind of paint received in the laboratory was enamel paint, which is

produced by several companies. He distinguished between similar and identical. He stated that the LUCAS front light could not specifically be related to any particular vehicle. The indicator mentioned in his report was that of a motor cycle. His opinion did not mention which company produced it. The letters in the broken yellow glass pieces, were assembled together and compared with the unbroken yellow glass of the lorry, but the diameter thickness and other physical parameters had not been analysed. He had given his opinion without any physical analysis of the diameter, length, etc. When the 30 broken glass pieces were joined together, the letters DE IN INDIA could be seen.

106. The 36th Prosecution Witness, A. Allimuthu, Inspector of Police (PW-36) had taken up investigation of the case on 3.2.1992. He stated that the accused had not been arrested till 5.6.1992. He searched them. On 24.6.1992 he had gone to Karaikudi with witnesses Chidambaram (PW-21) and Ramanathan and seized the register of Malar Lodge for the period from 5.5.1990 to 11.8.1990 (Ex P-24) under Mahazar (Ex P-28). On 24.6.1992, he had gone to village Unjanai and obtained the handwriting and signatures of Ramasami (A-8) under Mahazar (Ex. P-25). On 24.6.1992, he had examined Chidambaram (PW-21), Ramanathan, Driver Mahalingam and Raju (PW-4) and recorded their statements. On 25.6.1992, he had examined the complainant (PW-1), Nogoora Gani (PW-2) Shanmuga Sundaram (PW-5) and witness Ganapathy and recorded their statements. On 26.6.1992 the seized signatures and hand writings were sent to Court for onward transmission to the chemical laboratory under requisition (P-29). He said that he also examined Sub Inspector Chinnadurai (PW-30), Head Constable Govindarajan (PW-29) and A-4 and recorded their statements. In cross-examination he stated that he had not arrested any of the accused. The 4th accused (A4), had not been cited as an accused and was therefore not arrested. On 24.6.1992, A8 surrendered before the court and was granted bail.

107. The 37th Prosecution Witness Radhika, a scientific Assistant Grade-I in the Forensic Science Laboratory, Chennai (PW-37) stated that the Judicial Magistrate, Aranthangi had sent a letter requesting for a Serology report in Crime No. 668/1990. She identified the Serology Report Ex-32. The report is in respect of clothes, broken teeth, earth, metal rod etc. found at the place of occurrence, and does not relate to the accused in any way.

108. The 38th Prosecution Witness M. Radhamani (PW-38), a Scientific Assistant Grade-I stated that the blood sent for examination was human blood, but grouping was not possible. The blood in two glass tubes, which were of D1 and D2 was examined but the grouping was inconclusive. Some items of the material objects being P1 contained human blood of 'O' group. Grouping of blood found in some other articles was not possible. Her evidence has no relevance to the guilt of the accused.

109. The 39th Prosecution Witness Farooq, a resident of Arasarkulam Melpathi (PW-39) stated that he knew A1 to A7 but he did not know A8. He stated that A4's house was situated to the east of his house. A2 and A7 used to come to A3's house. He also used to go to A3's house. He thus got acquainted with A2 and A7. He knew that D2, son of A4 had died. He knew that D1 was PW-1's sister's son. He had also died. He stated that on the date of the incident, he was in his rice mill at Aranthangi. On the date of the incident, his partner's son, who used to bring his meals from his house, did not come with his meals. His partner went to look for his son, but was told on the way,

that bus services had got disrupted because of a murder. He was also told that D2 and D1 had been murdered by using a lorry. Thereafter, PW-39 went and saw the dead bodies on the roadside.

110. The evidence of PW-39 with regard to the murder of the deceased is apparently based on conjectural hearsay. No other witness has said anything about disruption of bus service or of any rumour of murder. This witness stated that he had not been examined by the police, whereupon he was declared hostile and cross-examined by the prosecution. In cross-examination he denied having told the police that A8 used to visit the house of A3 with A2 and A7. He denied having made the statements to the police, attributed to him by way of suggestions. He denied having told the police that A1 had taken him and PW-10 to Karaikudi to purchase lorry spare parts. He denied having told the police, that after they reached Aranthangi, they were joined by A4 and A5. He denied having told the police that they went to Malar Lodge Hotel. He denied having told the police that the accused had conspired to kill D2. He denied that A1 had asserted that he would kill D2 with the help of a lorry. He denied having made any statement with regard to the accused arranging a lorry. He categorically denied having made the statements allegedly recorded by police under Section 161 Cr.PC. In particular he denied having visited the Malar Lodge Hotel or of having seen or heard the accused conspiring against D2. He denied that he had seen that the accused were in a room which was locked from inside as alleged by the police.

111. The 40th Prosecution Witness, Alagappan (PW-40), who had worked as Manager, Malar Hotel, Karaikkudi from 1989 to 1991 denied that he knew A8. He said that he did not know A2. He said that there was lodging facility in Hotel Malar. The police came and made enquiries. He said that there was an admission register in the Malar Lodge Hotel. On 21.6.1991, the Receptionist had made an endorsement at Sl. 942 of the Register. He said that the Receptionist used to enter the particulars of the persons who used to come and stay in the hotel. This witness was also declared hostile and cross-examined by the prosecution. In cross-examination he denied all the suggestions made to him. He denied having made the statements to the police attributed to him. Nothing has emerged from the examination of this witness to establish the guilt of the accused.

112. The 41st Prosecution Witness, Dr. S. Diwakar (PW-41), a Professor of Forensic Science of Vinayaka Medical College Hospital, Salem certified that the teeth examined by him were of a human body. His evidence is of no relevance to the guilt of the accused.

113. The 42nd Prosecution Witness, Rajagopal (PW-42), Motor Vehicles Inspector stated that he had inspected the lorry at the request of the Inspector of the Crime Branch and had found the left side bumper and grill dented slightly at a height of 2 inches from the ground level. The condition of the brake was 60%. The condition of steering and tyres were satisfactory. He opined that the occurrence was not due to mechanical defect of the vehicle. He said that he had not noticed any other damages in the vehicle kept in Aranthangi police station. He said he could not remember whether he had been examined by the Inspector of Police on 16.2.1991. This witness was also declared hostile and cross-examined by the prosecution. In his cross-examination PW-42 denied having made to the police, the statements attributed to him. He said that tinkering work had been done on the lorry. The headlights on the right had the word 'LUCAS' but on the left side there was a new 'Diamond' light. It was thus apparent that one of the headlights had been changed. This witness denied having

told the police that the damages could have occurred due to an accident. This witness was unable to recollect whether the questions put to him by the prosecution in Court, had been put to him by the police.

114. The 43rd Prosecution Witness, Anbuchelian (PW-43), being the Deputy Superintendent of Police, Oothukottai, Thiruvallur District, from 2.1.1991 to 7.9.1991, had taken up investigation in Crime No. 668/1990 at Aranthangi police station on 25.2.1991. He stated that A1, A2 and A8 were absconding at that time. A8 obtained anticipatory bail from the Sessions Court at Pudukkottai on 26.2.1991. PW-43 said that on 13.3.1991 he had examined witnesses Mohamed Ali Jinnah, Akbar John, Raju (PW-2), Sahul Hameed (PW-1) and Basheera Begum (PW-3) and recorded their statements. On 14.3.1991 he had examined the witnesses Baskaran (PW-17) Sundaresan, Alagappan (PW-40), Chidambaram (PW-2), Kittu @ Krishnamoorthy (PW-12) and recorded their statements. When he examined Alagappan (PW-40) he had given PW-43 a copy of Page 54 of the booking register of Hotel Malar. This witness said that he had compared it with the original. He gave xerox copies of advance receipt No.5825 dated 21.4.1990 and cash receipt No. 7409 dated 22.6.1990.

115. PW-43 said that on 15.3.1991, he had examined witnesses Abu Sali and Dr. Usen Masthan (PW-22) and recorded their statements. On 16.3.1991, he had examined Dr. Karunakaran, Dr. Sivasubramanian, Dr. Murugesan (PW-23) and recorded their statements. On 18.3.1991, he had examined the witness Sivakumar, Scientific Assistant (PW-25). On 26.3.1991 he had examined Prem and Jayakumar and recorded their statements. On 27.3.1991, he had examined witnesses Goyel and Nagari and recorded their statements.

116. This witness said that on 24.4.1991, the anticipatory bail granted to A3 and A4 was cancelled by the Madras High Court and on 29.4.1991 they both surrendered before the Judicial Magistrate No.2, Pudukkottai. On the same day, they were sent to judicial custody after which bail was granted to them by the Sessions Court, Pudukkottai. He said that to secure the presence of A1 who had gone abroad, the Superintendent of Police, Pudukkottai had sent a letter dated 18.4.1991 to the Director General of Police, Chennai, who in turn addressed the Central Government through the Home Secretary of the State, requesting that the passport of A1 be impounded and he be brought back to India. On 20.4.1991, the Superintendent of Police sent a wireless message to all check posts in India including sea ports and airports requesting the concerned authorities to be vigilant and to arrest A1 if he passed through them. Thereafter he was transferred. Further Investigation was done by his successor.

117. This witness deposed that on 13.3.1991 when he had examined PW-11, PW-11 told him that A1 could drive a lorry, a car as well as a motor cycle. PW-11 had stated that he had seen A1 driving a lorry on several occasions. This witness also said that PW-12, Kittu @ Krishnamoorthy had told him that A2 was acquainted to him and that he had seen lorry TSL 6579 standing near the National Battery Works, Maharnonbu Agraharam, Karaikkudi from 24.12.1990 to 27.12.1990. PW-12 told this witness that he had asked A2 why he had kept the lorry in the street, whereupon A2 had told him that he wanted to change the battery of the lorry which belonged to A1. A2 had told PW-12 that the lorry would be in his custody for 2 to 3 days. This witness said that PW-40, Alagappan, had been examined on 14.3.1991.

118. In cross-examination PW-43 admitted that even though the FIR named P.L. Subbiah, Perumal, Kumar, Kulanthaiyan and a few others as suspects, PW-43 did not examine them. He said, he did not examine them because, the Inspector who had earlier been in charge of investigation, had examined them. This witness was unable to say when the persons named above were examined by his predecessor. He also could not recollect whether the persons were arrested, without going through all the files. He said that he had started the investigation after reading the relevant files. Dr. Usen Masthan (PW-22), Dr. Murugesan, PW-11 and PW-12 had been examined by his predecessor. In the FIR, the accused other than A3 were not named. A1 was named as an accused on 4.2.1991 as also A4 to A8.

119. The 44th Prosecution Witness Raja, Inspector of Police, Myladudurai (PW-44) said that on 28.12.1990 he had been working as Crime Branch Inspector, Aranthangi. On 28/29.12.1990, Sahul Hameed S/o Mohammed Maideen (PW-1) lodged a complaint at the Police Station. The Officer in Charge of the Police Station received the complaint and registered the case, Crime No.668/90 under Section 302 of the Indian Penal Code. The complaint was received before 2.00 a.m. PW-44 said that as the Law and Order Inspector was on leave, PW-44 had taken up the investigation. He had gone to the place of occurrence and made security arrangements. Thereafter, he had returned to the station and sent intimation through wireless to the District Record Office, Finger Print Bureau, Photographer and the Dog Squad. Thereafter, he went to the place of occurrence. As the police photographer had not come, he had arranged for a private photographer to take photographs. He said he had prepared an observation Mahazar (Ex. P-10) in the presence of witnesses and a Rough Sketch of the place of occurrence (Ex.P-37). He said that he had served summons to Sahul Hameed (PW-1), Meera, Bashira Begum(PW-3) and Mumtaz Begum and started inquest on the dead body of D1 in the presence of Panchayatdars by 9.00 a.m. and had recorded statements of witnesses. After Inquest he had sent the dead body to the Government Hospital at Aranthangi for post mortem through P.C. No.142 Amjad. He identified the Inquest Report (Ex. P38). This witness said that he thereafter conducted inquest of the dead body of D2 and sent the same for post mortem to the Government Hospital, Aranthangi through P.C. No.638 Chinniah. He identified the Inquest Report in respect of D2.

120. This witness further deposed that from 15:30 hrs to 16:45 hrs this witness seized material objects 1 to 17 with the help of a Scientific Assistant, in the presence of VAO (Village Administrative Officer) Rajendran(PW-20) and Karuppan, the Village Assistant. The Mahazar is Ex. P-11. This witness said he had seized one wrist watch from the place of occurrence (MO-39). On the same day, he had collected blood stained tarred earth, blood stained soil and sample soil and prepared a Mahazar (Ex. P-12).

121. PW-44 said that he had searched for the suspected accused on 30.12.1990, 31.12.1990 and from 1.1.1991 to 4.1.1991. PW-44 said that he had sent a special report regarding the seizure of Bajaj TN55 1406 motor bike and arranged for inspection of the same by the Motor Vehicle Inspector. On 8.1.1991, PW-44 went to Tiruchirapalli (Trichy) and examined two police constables, P.C. 1062, Sondarajan (PW-28) and P.C. 2993, Rajendran (PW-20), and the trainers of police dogs and recorded their statements.



122. PW-44 deposed that on 12.1.1991, the suspected accused, named in the FIR, Subbiah, Perumal Kumar and Kulanthaiyan surrendered before the Magistrate, Orathanadu and were detained in the sub jail, Pudukkottai. On 15.1.1991, PW-44 examined post mortem doctors and recorded their statements.

123. PW-44 stated that on 17.1.1991, he came to learn that on 30.10.1990 one Balasundaram S/o Darmalingam had purchased a lorry with the Registration Number TB 9635 from A-1. On 29.1.1991 PW-44 examined Fakrudeen, Marimuthu and recorded their statements. On 2.2.1991, he examined Saathiah and PW-9 Kuppusamy and recorded their statements.

124. PW-44 stated that, on 4.2.1991 he arrested Abdul Hameed( A-3) in the presence of Rajappan and Kaliamoorthy in front of Taluk office, Pudukkottai and obtained a confessional statement from him. On the same day at 5.00 p.m., he arrested Md. Ibrahim (A4) and recorded his statement. Thereafter, he went to Aranthangi police station and put the accused in the lock up by about 10 p.m.

125. PW 44 deposed that on 5.2.1991 both the accused were sent to Court with the remand report. On 7.2.1991 this witness examined PW-40 C.T. Alagapan and recorded his statement. On 8.2.1991 at 1.30 p.m., PW-44 arrested A-5 Sheikh Dawood in the presence of PW-19 Chitravelu and C. Mariappan and recorded his statement. He identified the admissible portion of the confessional statement which is Ex.P7.

126. PW-44 deposed that he took A5 to Manapparai with the witnesses and seized lorry no. TSL 6579, which was in the custody of PW-6 Chinappu, from the RVS lorry broker shed at Manapparai. He said that in the Mahazar he had stated that the registration number in the number plate in front of the lorry (MO-40), was scraped and erased. PW-44 further said that by 8.30 p.m., he had recovered two cash bills from PW-6 under a Mahazar (Ex.P-4 and Ex.P-9). He said he had examined witnesses PW-19 Chitravelu, Mariappan, PW-6 Balakrishnan, PW-14 Arockiyaraj, PW-8 S.Kumar, PW-15 Ramamoorthy, PW-16 Chinnasami and recorded their statements. He had, thereafter, returned to Aranthangi with A5 and put him in the lock up. On 9.2.1991, he sent A5 to the Judicial Magistrate along with remand report.

127. PW-44 deposed that, on 13.2.1991 he examined witnesses Chidambaram (PW-21), Ramanathan, Raju (PW-11), Challakkannu and A.R. Kittu (PW-12) and recorded their statements. On the same day by 3.30 a.m., he arrested A7 Krishnan in the presence of Chidambaram (PW-21) and Ramanathan in front of the Plato T.V. Centre at Taluk office Road, and recorded his confessional statement. He identified the admissible portion of the statement as Ex.P-13. He said that by 6.30 p.m. he brought A-7 to Maangudi village and seized M.O.23 in the presence of witnesses. Thereafter, he returned to the police station and sent the accused back to judicial custody on the same day.

128. PW-44 deposed that on 12.2.1991 he had sent a special report to the Motor Vehicle Inspector for inspection of the seized lorry TSL 6579. On 15.2.1991, he examined Mayilsami and recorded his statement. On 16.2.1991, he examined P.C 142 and PC 638 and recorded their statements. On 18.2.1991, he examined Kaliamoorthy and Rajagopal (PW-42) regarding inspection of the Motor

vehicle and recorded their statements. On the same day, he sent the seized objects to the Court. On 25.2.1991 the Inspector, Law and Order resumed duty, whereupon he handed over the file to the said Inspector, Law and order for further investigation.

129. In his deposition, PW-44 said that during examination PW-6 Chinnappu @ Balakrishnan had told him that on 29.12.1990 at 6.30 a.m. A1 came to his house and informed him that he had left the lorry purchased by him in the workshop of Arokyam at Mannapparai. This has, however been denied by PW-6. PW-6 told PW-44 that A-1 had told him that the head lamps and side light of the lorry had broken. PW-6 also told PW-44 that A1 had given Rs.100/- to the workshop for necessary repairs. PW-44 said that PW-6 had told him that A1 had requested PW-6 to pay the balance and arrange to sell the lorry and settle the accounts. PW-44 also said that PW-6 had told him that A1 had come to his house after two days, paid him Rs.25,000/- and asked him to sell the lorry with the help of A5 and to adjust the accounts, as there was possibility of his going abroad. PW-44 said that PW-6 told him that he had handed over the amount of Rs. 25,000/- to Mayilsami of Karur (PW-

7). PW-44 deposed that PW-6 had told him that the next day PW-6 stayed in the VRS lorry shed and on the following morning he went to Arokyam's workshop where the lorry was kept and enquired whether the repairs had been carried out. The workshop boy told him that the necessary repairs had been carried out. The following day, PW-6 came to the workshop, paid Rs.75/- towards repair charges and took the lorry away by engaging a driver. PW-44 said that PW-6 had also told him that A5 had asked PW-6 whether A1 had seen PW-6 and settled the accounts. PW-44 said that A5 had requested PW-6 to arrange to get the lorry sold. PW-44 stated that PW-6 had told him that the police had brought A5 and seized the lorry. PW-6 handed over 2 cash bills for Rs.75/- and Rs.50/- both dated 3.1.1991 to the police.

130. PW-44 said that he had examined Kuppusami (PW-9), who had told him that he knew both D2 and D1. PW-9 told PW-44 that, on 29.12.1990 one Saathiah had requested him to accompany him to the cinema. As it was late, they both rode a single bicycle. When they reached Paapankulam at 10.30 p.m., they saw a lorry bearing Regn. No.6579 standing on the road side. They presumed that the lorry might have been parked on the road for repair. PW 9 told PW-44 that when he and Saathiah were proceeding to Pervurani cross road, they saw D1 riding a motor cycle and when they crossed, they asked D1 whether the cinema had begun whereupon he replied that it was about to end. PW-9 and Saathiah, therefore returned. While returning PW-9 felt pain in the stomach and so he went to the side of the tank to answer the call of nature. By that time, the lorry which was standing at the road side was started by A1 and driven by him towards Aranthangi. Within a few minutes an MPTC bus crossed them on the Arasarkulam road. While returning PW-9 saw two dead bodies lying on the road and a motor cycle lying near them. This was, however, categorically denied by PW-9 in his evidence.

131. PW-44 deposed that when he examined PW-11 Raju, he told PW-44 that he knew that there had been enmity between Abdul Hameed (A-3) Mohamed Ibrahim (A4) and Raja Mohamed (D2) over land. He knew Jafar Ali (A-1) as well. PW-44 deposed that PW-11 told him that when PW-11 was in his shop at around 9.00 p.m. on 28.12.1990, a Leyland lorry came and stopped at the kattumavadi corner and Jafar Ali(A1) and 2 others got down from the lorry and proceeded towards a tea shop.

PW-11 told PW-44 that PW-11 had called Jafar Ali (A1) and asked if he had purchased a new lorry. Jafar Ali (A1) replied that the lorry belonged to his friend. When PW-11 asked A-1 who were the persons accompanying A1, he replied that they belonged to Karaikkudi. PW-11 told PW-44 that he had noted the Registration No. of the lorry as TSL 6579. PW-44 deposed that PW-11 had also told him that he had known one of the 2 persons accompanying A1, whom he identified.

132. PW-44 said that he examined PW-13, V. Marimuthu, who told him that on 28.12.1990 he had been returning from Aranthangi in an MPTC bus. At around 11.45 p.m. when the bus was approaching Paravurani Road west of Arsarkulam diversion, he saw that Saathiah who belonged to his village was standing and when the bus crossed the railway gate and was proceeding near the bank of Paapankulam he saw 2 persons lying on the road and a motor cycle was lying by their side. Saathiah has not been examined as a witness in the trial.

133. PW-44 said that during his examination PW-12 Kittu @ Krishnamoorthy, had told him that Jafar Ali (A1) used visit his workshop for repair of his motor cycle, so he knew him very well. On 28.12.1990 at 6.00 p.m., Jafar Ali (A1) had brought his TVS Suzuki motor cycle bearing Registration No.TCO 8561 for repairs and left it in the workshop. On 1.1.1991, the said Jafar Ali had come to the workshop and asked whether the repairing work had been completed. On being told that the repair would take 2 more days, Jafar Ali (A1) told PW-12 to hand over the vehicle to the person who would come with his letter. On 4.1.1991 one mechanic Kumar came with a letter and on seeing the letter PW-12 handed over the motorcycle and the letter to Kumar.

134. PW-44 said that he had examined. PW-39, Farooq who told him that one Ramasamy Ambalam @Unjanai Ramasamy (A8), Balu @ Balusamy(A2) and Krishnan(A7) used to visit A3, Hameed Rowther's house. PW-39 therefore knew them well. He said that five months before 4.2.1991, Jafar Ali (A1) had asked PW-39 Farooq, PW-10 and M. Abdul Jafar to accompany him to Karaikudi for purchasing lorry spare parts. After they arrived at Aranthangi, Dawood(A5) and Ibrahim(A4) joined him and then they went to Malar Lodge, karaikudi, where Balu(A2), Abdul Hameed(A3), Bashir Ali, Krishnan(A7), Unjanai Ramasamy(A8) were also there. They locked the door and had a discussion. PW-39 told PW-44 that Jafar Ali, Abdul Hameed, Mohamed Ibrahim and Sheikh Dawood spoke ill of Raj Mohamed (D2) and decided to murder him. Jafar Ali said that he would kill Raj Mohamed by hitting him with a lorry for which he required assistance. Unjanai Ramasamy asked Balu and Krishnan to assist Jafar Ali. The conspiracy took place at 10.30 p.m. after which they dispersed. PW-44 stated that PW-39 told him that PW-39 did not sleep the whole night. The next morning PW-39 and PW-10 Abdul Jafar went to the house of Abdul Hameed. Farooq Ali told Abdul Hameed that they had gone to Karaikudi as requested by Jafar Ali. Everyone conspired to kill D2. Abdul Hameed told them not to reveal this to anyone. However, PW-39 denied having made such statements to the police and was declared hostile.

135. PW-44 said that he had examined PW-40 Alagappan, Manager, Malar Lodge Hotel who had told him that on 21.6.1990 Unjani Ramasamy had come to the lodge to book Room No.401 and made entries in the register. When Alagappan asked him why he was reserving a room, Ramasamy had replied that there would be a panchayat and parties would come.

136. In cross-examination PW-44 said that after inspecting the place of occurrence he was of the view that the persons lying dead must have been murdered and he continued his investigation on that basis. PW-44 said that, even before examination of the doctors, who had conducted the post mortem, PW-44 had come to conclusion that the deceased had been murdered. After examining the doctors PW-44 became certain. He took up investigation on the basis that the case was of murder. After examining Mumtaz Begum, he arrived at the final conclusion that the deceased persons had been murdered. He added the offence of Section 120B of IPC on 4.2.1991. He said after examining PW-39 Farooq and PW-10 Abdul Jafar he knew that there was a conspiracy behind the murder, which had taken place on 21.6.1990 in the Malar Lodge Hotel at Karaikudi. Significantly both PW-39 and PW-10 denied this and were declared hostile. PW-44 said that when he arrested the accused and recorded their confessional statement, the Village Administrative Officer and his Assistant concerned signed as witnesses. No signature was obtained from any uninterested and/or independent witness. In the case file PW-44 did not state that no independent witness had come forward to sign the confessional statement. PW-44 said that he had not examined Sethu, the Sub-Inspector of Police. Nor had he asked him why he had straight away registered the case under Section 302 on the basis of the complaint of the PW-1. PW-44 denied the suggestion that he had conducted the investigation at the dictates of PW-1 and his supporters.

137. The 45th Prosecution Witness, Kalairaj, Inspector of Police (PW-45) said that he had been the Inspector of Police, Crime Branch, Pudukkottai and had received information that the case Crime No. 668/1990 under Section 302 and 120B IPC of Aranthangi Police Station had been transferred for investigation to another Investigation Officer. On 15.7.1992, PW-45 had received the order of DGP dated 16.6.1992 to continue the investigation after which he received the case files and continued with the investigation as ordered. PW-45 deposed that on 25.7.1992, PW-45 inspected the place of occurrence, examined the complainant and searched for A1 and A2. From 1.9.1992 till 28.12.1992, he gathered information about A1 and A2 and he sent reports through his superior officers to facilitate the return of A1 to India from Bahrain and A2 from Singapore to India.

138. This witness said that on 30.12.1992, he had examined Meera, Bashira Begum (PW-3), Mumtaz Begum, Raja, Durai and karuppan but he had not recorded their statements. On 16.3.1993, he had examined Dr. Hussain Masthan (PW-22), Dr. Murugesan (PW-23), Faqrudin, Manimuthu, Saathiah and Kuppusamy (PW-9). On 27.5.1993 he had examined Baskaran (PW-17), Alagappan (PW-40), Sundaresan, Chidambaram (PW-21), Rajendran (PW-20) and Chokklingam. On 4.6.1993 he had examined Chitravelu (PW-19), Mariappan, Chidambaram (PW-21), Ramanathan, Raju (PW-4) and Chellappan. On 12.7.1993, he had gone to Karur and examined Mayilsamy (PW-7). On 14.7.1993 he had examined P. Sondarajan (PW-28), Rajendran (PW-20), Dr. Radha Krishnan (PW-24), Arokya Raj (PW-14), Kumar (PW-8), Ramamoorthy (PW-15) and Chinnasamy (PW-16). On 15.7.1993 he had examined Amjad, Chinniah, Subraminian, Abu Sali. On 14.10.1993 he had examined Raju (PW-4), Mahaligam, Rajappa, Balakrishnan (PW-6) and Kaliamoorthy. On 17.7.1993 he had examined non-resident Indian Fathima and recorded her statement. On 30.8.1993 he had applied for copies of documents in the Court of Judicial Magistrate, Aranthangi. He perused the documents and handed over the case file to the Public Prosecutor to prepare a rough chargesheet. On 3.11.1993 he submitted the rough chargesheet received from office of Public Prosecutor to the CBCID Superintendent. On 10.12.1993 he examined Dr. Thiyagarajan (PW-27), S.I Sethu (PW-32)

and recorded their statements.

139. In cross-examination this witness said that the case files were with him from the date of commencement of investigation by him till date. He had examined S.I. Sethu (PW-32) who had received the complaint and registered the case being Crime Number 668/1990. This witness had not asked Sethu why he had registered the case under Section 302 IPC at the initial stage itself. This witness said he had not examined PW-39 Farooq and PW-10 about the conspiracy. He denied that he had supported PW-1 Sahul Hameed as he belonged to the ruling party and had colluded to implicate A2 to A8 in the offence of conspiracy. He said he had recorded the statements of those witnesses whom he had examined and not those who had been examined earlier. He said he had examined Fathima Beevi and recorded her statement. He said he had not recorded the statements of witnesses who had been examined earlier and re-examined by him. He denied that he had not seen A2 till the chargesheet was filed. He denied that A2 was not in India at the time of the conspiracy.

140. As stated above, no defence witness was examined on behalf of the accused. All the accused persons offered themselves for examination under Section 313 of the Code of the Criminal Procedure Code. They denied their guilt and claimed to be innocent.

141. The Prosecution was required to prove beyond reasonable doubt, that pursuant to a conspiracy between A1 to A8, A1, A2 and A3 murdered D2 and D1. A1 driving his lorry No.TSL 6579, dashed against the motor cycle which D2 and D1 were riding, and thereafter A-2 and A-7 beat them to death with iron rods.

142. The Prosecution has only been able to conclusively establish that, on 28.12.1990 at around 8.30 p.m., D2 rode out of Arsarkulam, towards Aranthangi on Motorcycle No. TN 55/1406 owned by his father, A-4, with D1 on the pillion. The two were seen lying dead on the road, in a pool of blood, a few furlongs away from the level crossing at Sarayanenthal, Pappakulam and their motorcycle was lying close by.

143. The evidence of PW-22 and PW-23, who performed the post mortem examination of the dead bodies of D2 and D1 respectively, proves that D2 and D1 both died of injuries, and consequential loss of blood and shock.

144. From the evidence of PW-22 and PW-23, being the two post mortem doctors, and the evidence of PW-1, PW-20, PW-24, PW-25 and PW-35, it may reasonably be inferred that there was a collision between the motorcycle, which the deceased were riding, and some other vehicle. The broken glass and plastic pieces recovered from the scene of occurrence confirm that there was a collision. However, there being no ocular evidence, it is not known whether the collision was head on or whether the motor cycle was hit from the back. There is also no expert opinion in this regard.

145. The evidence of PW-22 indicates that D2 fell off his motorcycle on hard ground, after a collision and got run over by a vehicle. He may also have hit a solid blunt object. Some of the injuries were caused by the impact of the collision or fall and others due to being run over. The post mortem doctor said that the dead body of D2 did not bear any impression of being hit by the rod being MO

23.

146. This witness, however, stated that it was also possible, that some of the fatal injuries might have been inflicted on D2 by hitting him hard with a rod similar to MO.23. The opinion of the post mortem doctor, PW-22, on the cause of the injuries in the body of D2 is not conclusive. The prosecution has not been able to establish that D2 had been beaten to death by a rod.

147. Similarly, PW-23 opined that D1 is likely to have died of injuries sustained in the head, brain and other vital parts of the body, as a result of collision of the motorcycle with some other vehicle, and of shock and haemorrhage. It is likely that the impact of collision with a fast-moving vehicle might have flung D1 off the motorcycle on which he was pillion rider, and caused him to fall on hard ground or hit some hard object. He might also have been run over.

148. PW-23 said that one of the injuries which caused instantaneous death may have been inflicted by a rod similar to MO-23, but in his cross examination he stated that the injury/injuries may have been caused as a result of collision between two vehicles. D1 may have incurred the injury/injuries by getting flung off the motor cycle and hitting hard ground or some blunt object, or by getting run over by a vehicle. The opinion of PW-23 on the cause of the injuries in the body of D1 is also not conclusive.

149. On a careful analysis of the post mortem reports and the oral evidence of the post mortem doctors, we find it unlikely that the deceased were beaten to death with an iron rod. PW-22 was of the opinion D2 fell off the motor cycle after a collision and got run over. The Prosecution has miserably failed to prove that the deceased were beaten to death with a rod. The Prosecution has also not been able to rule out the possibility of D1 and D2 being killed in a 'hit and run' accident involving some unknown vehicle.

150. There are also inherent improbabilities and inconsistencies in the evidence which demolishes the case of the Prosecution that the deceased were beaten to death with iron rods by A2 and A7. It does not stand to reason why A2 and A7 should have risked getting off the lorry and beating D2 and D1 with iron rods, when A1 had dashed his lorry against their motor cycle, fatally injured them and run at least one(D2), if not both of them over. It is not the case of the Prosecution that the accused had any motive to kill D1.

151. Moreover, while it is alleged that A2 and A7 had hit both the deceased with iron rods, only one iron rod has allegedly been recovered from an open, easily accessible pond, over a month after the incident on the alleged confession of A7 made before the police after arrest. There is no whisper in the evidence of any other iron rod. PW-29, the sole witness who testified that A2 made a confession to the police in his presence, took the police to Maangudi and brought the iron rod out of a pond in his presence, could not even remember if there was any water in the pond. Nor could he identify A7. The rod was never sent for forensic examination. It would be dangerous to convict A2 or A7 on the basis of the testimony of PW-29 or for that matter, any other witness. There can be no question of interference with the acquittal of A2 and A7 from the charges against them.

152. There was no eyewitness to the incident. The Prosecution has made an attempt to connect the lorry No. TSL 6579 to the incident through circumstantial evidence, by examining PW-6, PW-7, PW-8, PW-11, PW-12, PW-14, PW-15, PW-16, PW-17, PW-19, PW-25, PW-27, PW-35, PW-42, PW-43, PW-44 and PW-45 and also relying on material objects such as broken glass pieces, broken plastic pieces, paint scrapings seized from the place of occurrence as also the number plate of a lorry with the number TSL 6579, an indicator with bulb and a partly orange and partly transparent plastic cover, an indicator without bulb and cover, a circular lamp 14.5 cm in diameter with lamp and yellow glass cover and a circular lamp holder 14.5 cm in diameter without lamp and cover. The number plate, indicators and lamps were not seized from the place of occurrence.

153. The evidence of PW-6, PW-7 and PW-17 only establishes that A1 purchased lorry No. TSL 6579 through brokers PW-6 and PW-7 with the assistance of A5 and A6 about 7/8 days before the incident. About four days before the incident, the lorry had been brought to Karaikuddi National Battery company for getting its battery charged. Since the battery needed replacement, but a new battery was not in stock, a serviced battery was fitted in the lorry, which was never returned.

154. Significantly, the evidence of PW-6 reveals that A1 had earlier, long before the alleged conspiracy at the Malar Lodge Hotel on 21.6.1990 purchased a lorry with the Registration No TDB 9635 for which A5 had stood guarantor. This lorry was sold some time in October, 1990, about four months after the date of the alleged conspiracy, and in less than two months, on or about 20/21 December, 1990 Lorry No.TSL 6579 was purchased. It is, therefore, evident that A1 used to have a lorry, or at least had one since January 1990 with a short break, possibly for the purpose of his business. It would be preposterous to attribute the purchase of the lorry to the sinister motive of murdering D2. The Prosecution has made no attempt to explain why A1 should have sold the lorry he already had if there were a conspiracy to kill D2 by hitting him or running him over with a lorry.

155. From the evidence of aforesaid witnesses as also the evidence of PW-8, PW-14, PW-15, PW-16 and PW-17 it transpires that the lorry was brought to Arokyam's workshop at Mannaparai on 29.12.1990 for minor repairs. After the repairs were done PW-6 took delivery of the same and left it at a lorry shed near the office of A7, who had sold the lorry to A1 through A6. PW-14, the owner of the workshop deposed that PW-6 had instructed him to repair a minor dent. There is nothing in the evidence of PW-6 or PW-7 to link the lorry with the death of D2 and D1. Incidentally, PW-6 said he had not seen A1 after 20.12.1991, whereupon he was declared hostile and subjected to cross-examination. PW-6 said the lorry had been seized by the police.

156. Much emphasis has been placed by the Appellants, on the evidence of PW-8, an employee of workshop of Arokyam, who deposed that a lorry had been brought to the workshop for repair one morning in 1990 before 4.00 a.m. PW-8 could not say what was the Registration Number of the lorry. He, however, said that A1, had brought the lorry claiming to be its driver. PW-8 also stated that A1 had told him that the lorry had been hit by a bull.

157. There is serious lacuna in the evidence of this witness who seems to have been tutored. It is incredible that this witness should be able to recognize and identify A1 whom he obviously did not know, and that too when he had seen him only once, before 4.00 a.m. in the morning, on being

woken up from his sleep. If PW-8 had known A1 from before, it would not have been necessary for A1 to introduce himself to PW-8 as the driver of lorry No. TSL 6579. Moreover, PW-8 has not, in his evidence, stated that he recognized A1 as had had known him from before.

158. There are other notable inconsistencies in the evidence of PW-8. He said that ordinarily a job card is prepared when a lorry is brought for repair. In this case no job card had been prepared as he had been sleeping when the lorry had been brought. In cross-examination he said that the person who had brought the lorry was with him till the forenoon. This was obviously an improvement in evidence, in cross-examination, to explain how he could recognize A1.

159. Through the evidence of this witness and through PW Nos. PW-8, PW-25 and PW-35 the Prosecution has made a desperate attempt to link lorry No. TSL 6579 to the death of D1 and D2. From the evidence of PW-8 read with the evidence of PW-14, the Prosecution has tried to show that A1 brought the lorry for repair early in the morning before 4.00 a.m. on 29.12.1990 suggesting that the lorry had been involved in the incident which took place the previous night, of which of course, there is no direct evidence. The lorry was damaged on the left side. This in itself does not establish any link between lorry and the incident. Incidentally, this witness also stated that A1 had told him that the lorry had been hit by a Bull. There is no evidence to suggest that the damage that was found on lorry TSL 6579 could not have been caused by a bull.

160. PWs 11, 12 and 13 were all declared hostile. Nothing has emerged from their cross-examination to link lorry No. TSL 6579 with the death of D2 and D1. PW-11 said that he did not know A1, A3 or A4. He had never seen A7 before. He denied having seen A1 and two others get off from the lorry and go to a tea shop. PW-12 said that he was not in town on the date of the incident. He had gone to Pondicherry to buy a car. He denied having told the police that a Leyland lorry had been kept parked near National Battery Works from 24.12.1990, which statement, even if made, does not connect the lorry to the incident which occurred on 28.12.1990. This witness also denied having seen or spoken to A2. PW-13 stated that he had fixed his thumb impression on certain documents as the police asked him to do so.

161. PW-14 the owner of a workshop identified PW-8 who had worked as a tinker at his shop. He said he had gone to Trichy on 28.12.1990 and came back to Mannaparai on 29.12.1990. When he returned, he saw that the lorry TSL 6579 had been kept in his workshop for repair. PW-6 had requested him to repair the lorry. There was a small dent in the front left side of the lorry, and the bolts and nuts were loose. The repairs were carried out. However, nobody came to take the lorry. After 4 or 5 days he met PW-6 at a bus stand at Trichy, and told him the lorry had been repaired. PW-6 took the lorry away after paying him the balance repair charges. This witness did not say that the lorry was left at the workshop at 4.00 a.m. The 6th and 7th Prosecution Witnesses only identified the Cash Memos/bills issued by them for lorry No. TSL 6579 and confirmed, deposed that they had sold side lights/lamps for the front side of a lorry under those cash memos/bills.

162. PW-25 only stated that the left side of the lorry No. TSL 6579 was tinkered with a light coating of a black and red. The yellow light on the right was found in good condition. The yellow light on the left was found broken. However, the cash memos indicate that the bulbs and side lights was sold on



3.1.1991. Arokyam (PW-14), deposed that the lorry had been delivered to PW-6 after repair work had been carried out. The lorry was seized from the lorry shed near PW-7's office on 8.2.1991. The evidence of PW-42 indicates there were dents in the lorry and in particular its grill in front. If on 9.2.1991 any sidelights or lamps of the lorry were damaged or any part of the lorry were found dented, the damage must have occurred subsequently. An attempt was made to relate the lorry to the incident by comparison of glass pieces, plastic pieces, paint scraping etc. In cross-examination, PW-25 could not even say whether the glass pieces found at the scene of occurrence were from a lorry, bus or a car. He could not conclusively say that paint scrapings found at the place of occurrence were of lorry No. TSL 6579. There was never any comparative analysis of the width, volume, quality etc. of the glass and plastic pieces recovered from the place of occurrence with the side light, indicator or headlight covers found on the lorry, as admitted by PW-25.

163. Even assuming for the sake of argument that the lorry TSL 6579 had been brought to the workshop for repair with minor dent and a broken sidelight or lamp and the colour of some broken glass pieces at the scene of occurrence matched the colour of the side light and or indicators of the lorry, that does not prove involvement of the lorry in the same incident. Many lorries have the same kind of lamp/indicator covers. Moreover the lorry was purchased second hand and there is no evidence at all of the condition of the lorry at the time of its delivery to A1.

164. Significantly the accident took place on the night of 28/29.12.1990. The tenor of the evidence suggests that the lorry had been lying at the workshop for 4 to 5 days. The repairs had been completed. Both the bills/cash memos in respect of bulbs and side lights with the number of the lorry are dated 3.1.1991. PW-35 has in his evidence stated that the vehicle was seized as late as on 8.2.1991. If the lorry was found with any broken lamps, loose screws and bolts or dents almost a month and a half after the incident, long after purchase of replacement parts, the lorry in all probability got damaged while it was parked at the shed from which it was seized or may be afterwards.

165. In any case, even assuming for the sake of argument that lorry No. TSL 6579 was the lorry, which knocked down the motorcycle which the deceased were riding, and ran over the deceased, that in itself cannot lead to the conviction of any of the accused under Section 302 of the Indian Penal Code. There is not an iota of evidence to establish that A1, A2 or A7 were in the lorry, except for the alleged extra judicial confession of A7 made in the presence of the police, which cannot be accepted for the reasons discussed. The mere fact that A1 might have been driving the lorry also does not establish that he committed murder.

166. To establish motive for the murder the Prosecution has tried to build up a case of enmity between A3 and D2 and also of disputes between A1 and A3 and D2. A3 was named as a possible suspect in the FIR. There may have been enmity between D2 and A-3, but A-3 was not there at the scene of occurrence. It is not the case of the Prosecution that A3 committed the murder. There is no evidence of his involvement in the murder of D2 and D1. In any case, he could not have had any motive to kill D1. Furthermore, the evidence of PW-1 indicates that disputes with A3 were compromised with the intervention of the District Collector.

167. The allegations of disputes between A1 and D2, his own brother, are totally vague and devoid of any particulars. There is no evidence at all, of any specific reason for discord between A1 and D2, not to speak of evidence of dispute of a kind that could lead to a murder.

168. There is some evidence of differences between D2 and his father A4. PW-3, widow of D2 deposed that D2 and his father A4 had not been on talking terms for about 2 years, since A4 had not agreed to partition family properties as demanded by D2, or to make over his petrol bunk to D2.

169. A4 had also made a complaint to the police. The dispute was apparently settled on 30.4.1990 on the advice of PW-29, and D2 promised not to quarrel with his father over property matters. There is no evidence that he breached such promise.

170. Even assuming that there were some differences between D2 and his father A4 over D2's demand for partition of family properties, to which A4 did not accede, no compelling reason has been made out by the Prosecution for A4 to plot the murder of his own son.

171. Property disputes amongst family members is not uncommon. There may also be quarrels between members of a family. They may not be on talking terms. However, to attribute motive to a father to plot the murder of his own son, there would have to be more compelling reasons. The case made out by the Prosecution is speculative and unsubstantiated.

172. In any event, it is not the case of the Prosecution that either A3 or A4 committed the murder, or was even present at the place of occurrence. Furthermore, it is nobody's case that A2, A5, A6, A7 and A8 or any of them had any enmity with D2.

173. To implicate the accused, the Prosecution has propounded the case of conspiracy hatched by all the accused at Malar Lodge Hotel on the night of 21.6.1990, to bump off D2, by using a lorry.

174. The Prosecution has miserably failed to prove that there was any conspiracy to kill D2 at the Malar Lodge Hotel, Karaikudi, or anywhere else. Mr. Tulsi's submission that there was evidence that on 21.6.1990, the accused had booked a room at Malar Lodge Hotel, Karaikudi, and conspired to kill D2 with the help of a lorry, cannot be sustained.

175. The only evidence with regard to the alleged conspiracy is the absolutely inadmissible hearsay evidence of PW-44, a police officer who investigated the crime. PW-44 stated that he had examined PW-39, who had in course of his examination stated that A1 had asked PW-39 and PW-10 to accompany him to Karaikudi for purchase of lorry spare parts.

176. PW-44 deposed that PW-39 had stated that when they arrived at Aranthangi, A5 and A4 joined them and they went to the Malar Lodge Hotel, Karaikudi, at around 8.00 p.m. A2, A3, A6, A7 and A8 were also there. They all went into a room, locked the door from inside and took a decision to murder D2. A1 had said that he was prepared to kill D2 by hitting him with a lorry for which he required assistance and he requested A8, A2 and A7 to provide him with assistance. PW-44 said that PW-39 had told him that PW-39 and PW-10 were sitting in the same room when the conspiracy was

hatched.

177. According to PW-44, PW-39, had told him that PW-39 could not sleep all night. The next day PW-39 and PW-10 went to the house of A3 and told A3 about what had happened at the Malar Lodge Hotel, Karaikudi. A3 advised them not to disclose what had happened to anyone.

178. Significantly, PW-10 has in his evidence denied that he knew A2, A7 or A8. He said he knew A1 and A3 to A6. PW-10 deposed that he only knew that D2 and D1 had died but nothing further. He said that Police had examined him. He deposed that the Police wanted him to be a witness to depose about the death of D2 and D1 on the road. This witness, as stated above, was declared hostile and cross-examined. In his cross-examination he categorically denied knowing A2, A7 A8 or of their alleged contact with A-3. He categorically denied having gone to Karaikudi with any of the accused. He also categorically denied that he had told the police about any conspiracy.

179. PW-39, Farooq deposed that he knew A2 and A7 but he did not know A8. He said A2 and A7 used to come to the house of A3. In Court he deposed that the police had not examined him whereupon he was declared hostile and cross-examined. In his cross-examination he denied having told the police that he and PW-10 had been taken to Karaikudi for purchasing lorry spare parts. He denied having told the police that he had gone to Malar Lodge Hotel, Karaikudi. He also denied having told the police anything about any conspiracy. He categorically denied having told the police that he and PW-10 had sat in the last row while the others conspired to murder D2.

180. PW-39 denied that A2 and A7 had asked A-1 to arrange for a lorry. In any case, there could be no need for A-1 to arrange a lorry, since already A1 had a lorry TDB 9635, which was sold about four months later.

181. PW-39 categorically denied knowledge of conspiracy. He even denied having gone to Karaikudi at the request of A1.

182. Apart from the fact that PW-10 and PW-39 have categorically denied their presence at Karaikudi on 21.6.1990, there are patent inconsistencies in the evidence of PW-44 in this regard. If A3 was present at the Malar Lodge Hotel, Karaikudi at the time of the conspiracy on 21.6.1990, there could be no reason for PW-10 or PW-39 to go to A3's house and tell him about the conspiracy. Nor would A3 advise PW-10 and PW-39 not to divulge the conspiracy to others.

183. Even otherwise, it is inconceivable that the accused should hatch a conspiracy to commit murder, in the presence of witnesses who were not part of the conspiracy.

184. It is also difficult to fathom why PW-10 and PW-39 were never arrayed as co-accused, if they were present at the time of the conspiracy and they chose to keep quiet about the conspiracy. No credence can be given to the evidence of PW-44.

185. It is well settled that statements made to the police under Section 161 of the of the Criminal Procedure Code in course of investigation are inadmissible in evidence. The evidence of PW-44 with

regard to what two witnesses namely, Abdul Jafar (PW-10) and Farooq (PW-39) told him in course of investigation is inadmissible in evidence, and of no value. Significantly, both PW- 10 and PW-39 categorically denied having made to the police, the statements attributed to them.

186. PW-40 who had worked as Manager, Malar Lodge Hotel, Karaikudi from 1989 to 1991 denied knowing A8 or A2. He said that the endorsement at Sl.942 of the Register had been made by the Receptionist of the hotel. It was the Receptionist who used to enter particulars of persons who stayed in the hotel. The Manager of the hotel was also declared hostile and cross- examined by the witness. In cross-examination he denied all the suggestions made to him. In particular, he denied having made the statements to the police, attributed to him.

187. The appellants have relied on the evidence of PW-34, a handwriting expert, to prove that the accused had taken part in a conspiracy at the Malar Lodge Hotel on 21.6.1990. Evidence of experts is not always conclusive. As observed by this Court in *Murari Lal vs. State of Madhya Pradesh*<sup>5</sup> there is hazard in accepting the opinion of an expert, not because an expert is not reliable as a witness, but because human judgment is fallible. While the science of identification of finger-prints has attained perfection, with practically no risk of an incorrect opinion, the science of identification of handwriting is not so perfect. In this case the evidence of PW-40, manager of Malar Lodge Hotel contradicts the evidence of PW-34.

188. In any case, the evidence of the hand writing expert (PW-34) establishes at the highest, that one of the accused that is A-8, who

5. 1980 (1) SCC 704 had no enmity with the deceased, had made entries in and signed the admission register of the Malar Lodge Hotel. The evidence of PW-34, at best proves that A8 may have checked into Malar Lodge Hotel, Karaikudi on 21.6.1990, six months before the incident and nothing more. There could be numerous reasons for A8 to go to Karaikudi. The Prosecution has not been able to satisfactorily explain the gap of over six months between the incident and the date on which the alleged meeting took place at the Malar Lodge.

189. It is well settled that under the criminal jurisprudence prevalent in this country an accused is presumed innocent, unless proved guilty beyond all reasonable doubt. As held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*<sup>6</sup>, “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.” For conviction on the basis of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should fully be established. The circumstances should be conclusive. The circumstances established should definitely point to the guilt of the accused, and not be explainable on any other hypothesis. The circumstances should exclude any other possible hypothesis except the one to be proved.

6. (1973) 2 SCC 793

190. In *Sharad Birdhichand Sarda vs. State of Maharastra* <sup>7</sup> the Supreme Court held that where there is no eye witness to the occurrence and the entire case is based upon circumstantial evidence, the normal principal is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; these circumstances should be of a definite tendency, unerringly pointing towards the guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that in all human probability the crime was committed by the accused and they should be incapable of any explanation or of any hypothesis other than or inconsistent with the guilt of the accused. The same view was reiterated in *Bablu vs. State of Rajasthan*<sup>8</sup> and in *Vijay Shankar vs. State of Haryana* <sup>9</sup>. The judgment in *Praful Sudhakar Parab vs. State of Maharashtra*<sup>10</sup> cited by Mr. Tulsi was rendered in the particular facts and circumstances of the case where this Court found that the High Court had, after elaborately considering all the evidence on record, rightly affirmed the conviction.

191. In *Satish Nirankari vs. State of Rajasthan*<sup>11</sup>, this Court reiterated that criminal cases cannot be decided on the basis of hypothesis. It is for the prosecution to prove the guilt of the

7. (1984) 4 SCC 116

8. 2006 (13) SCC 116

9. 2015 (12) SCC 644

10. 2016 (12) SCC 783

11. 2017 (8) SCC 497 accused beyond reasonable doubt. It is for the prosecution to prove all circumstances which leave no doubt of the guilt of the accused. The chain of circumstances must be complete and must clearly point to the guilt of the accused. The chain cannot get broken in between.

192. It is well settled, suspicion however strong cannot substitute proof beyond reasonable doubt. Enmity as a result of property related disputes may give rise to suspicion. However, conviction can never be based on suspicion unless the prosecution clearly proves circumstances conclusively and all circumstances proved should only point to the guilt of the accused. Possibility of any conclusion other than the conclusion of guilt of the accused would vitiate a conviction.

193. At the cost of repetition, it is reiterated that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If upon analysis of evidence two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the Court might reverse an order of acquittal if the Court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be 'not guilty'. When there is circumstantial evidence pointing to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

194. In *Sadhu Saran Singh vs. State of U.P.* 12, this Court observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the Appellate Court would interfere with the order of acquittal only when there is perversity. In this case, it cannot be said that the reasons given by the High Court to reverse the conviction of the accused are flimsy, untenable or bordering on perverse appreciation of evidence.

195. Before a case against an accused can be said to be fully established on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn must fully be established and the facts so established should be consistent only with the hypothesis of the guilt of the accused. There has to be a chain of evidence so complete as not to leave any reasonable doubt for any conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

12. 2016 (4) SCC 357

196. In *Shanti Devi v. State of Rajasthan*<sup>13</sup> this Court held that the principles for conviction of accused based on circumstantial evidence are :-

“10.1 The circumstances from which an inference of guilt is sought to be proved must be cogently or firmly established.

10.2 The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. 10.3 the circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else.

10.4 the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

197. Keeping the above test in mind we have no option but to hold that the prosecution has miserably failed to establish the guilt of the accused persons beyond reasonable doubt. There is a strong possibility that the motorcycle which the deceased were riding, might have been hit by an unknown vehicle, killing the deceased. The death may have been accidental. The High Court has rightly set aside the judgment and order of conviction of the Trial Court and acquitted the accused.

13. (2012) 12 SCC 158

198. We do not find any merit in the appeals. The appeals fail and the same are dismissed.

.....J (R. BANUMATHI) .....J (INDIRA BANERJEE) JANUARY 31, 2020;

NEW DELHI.