Madras High Court
Murugan vs State By Inspector Of Police, ... on 6 January, 1993
Equivalent citations: 1994 (1) ALT Cri 278, 1993 CriLJ 1259
Author: K Natarajan
Bench: K Thanikkachalam, K Natarajan
JUDGMENT K.M. Natarajan, J.

1. The accused in S.C. No. 119 of 1986 on the file of the II Additional Sessions Judge, Tirunelveli, has preferred this appeal challenging the legality and correctness of the conviction under S. 302 read with S. 34 I.P.C. and sentence of life imprisonment and also under S. 324, I.P.C. and sentence of rigorous imprisonment for one year both the sentences to run concurrently.

2. The appellant was tried for the above two charges on the allegation that on 27-4-1985 at or about 9.15 a.m. at Meenakshipuram, he along with three others caused the death of the deceased Natarajan alias Subbiah-A1 stabbing him on the chest as well as the hip with aruval while A2 attacking him with tharangu on the right arm and during the course of the same transaction the appellant, who is A1, cut P.W. 1 Gurusami with aruval on his left hand above the wrist and caused a simple injury. To substantiate the above two charges the prosecution examined P.Ws. 1 to 7, filed Exs. P1 to P17 and marked M.Os. 1 to 8.

3. The case of the prosecution as disclosed from the oral and documentary evidence can be succinctly stated as follows :

A1 and A2 are brothers and sons of A3. A4 is the brother of A3. The deceased is one Natarajan alias Subbiah. P.W. 5 and the deceased are stepbrothers born through the same father. P.W. 5 married P.W. 1's eldest sister. P.W. 6 is the wife of P.W. 1. They are all residents of Meenakshipuram village. In the year 1981 there was a competition with regard to Kabadi game at Meenakshipuram in which A2 was successful and he defeated the deceased. It is further stated that A1 and A2, on account of a quarrel, beat the deceased Natarajan. This was witnessed by P.Ws. 1 and 5. A few days later, the deceased stabbed A2 with a knife. In respect of the same a complaint was given to Eppothum Vendran Police station and a case was registered in Crime No. 2 of 1981 under S. 324 I.P.C., and the deceased was prosecuted and he was convicted. It is further stated that on appeal he was acquitted. After the said case, the deceased left the village and was staying at Virudunagar and was employed as a taxi driver and he used to come twice or thrice in a month to the village since his family was at Meenakshipuram. It is the further case of the prosecution that the deceased came to the village on the day of occurrence 27-4-1985, and he along with P.Ws. 1 to 5 was heaping hayrick and they used a plank for the said purpose. At that time P.W. 4. came there. A little later, A1 came there armed with a kozhival aruval and called P.W. 6 to accompany him to the house of his master Kumar in order to receive the wages. At that time, the deceased found fault with A1 for having brought the aruval there and questioned him. A1 was murmuring and left the place. After completing the work, P.Ws. 1, 4 and 6 and others left the place for taking their meals. P.W. 1 and the deceased, after taking coffee in the house of Aruna chalam, who is none other than the father-in-law of the deceased and after staying there for some time, were proceeding to answer calls of nature. While they were proceeding from south to north A1 to A4 came in opposite direction and at that time A1 was armed with aruval and

A2 with kuthu tharangu. A2 instigated the other accused to cut and kill the deceased and so A2 shouted by saying that the deceased had come and he should be cut and killed and so saying he stabbed the deceased on his right arm with kuthu tharangu. A1 cut him with aruval on the chest forcefully. At that time P.W. 1 beat A1 with a plank which he was having on the back and broke it into pieces which are marked as M.Os. 1 and 2. Immediately A1 cut P.W. 1 above the left wrist once. A3 threw a stone on the chest of P.W. 1. In the meantime, after receipt of the injury the deceased went to a distance of 4 Bagams (8 yards) and caught hold of the wall and standing. A1 ran towards him and also cut him across the hip twice with aruval. On receipt of the injury the deceased fell down. Thereupon the accused ran away with the respective weapons. P.Ws. 1 and 3 went near the deceased and found him dead. It was at the time 9.15 a.m. A little later, P.W. 4 came there. P.Ws. 1 to 3 requested him to inform P.W. 5 about the occurrence and give a report. Accordingly P.W. 5 took a cycle and met P.W. 5 who was working in the field. P.W. 5 went to Pasuvanthanai police station with the same cycle directly and reached there at about 10.45 a.m. and reported that his younger brother Natarajan alias Subbian was murdered when A1 cut him with aruval and A2 stabbed him with kuthu tharangu and he got the information through P.W. 4. P.W. 14 entered the same in the General Diary in the station. Thereupon, he, along with the constables, went to the Meenakshipuram police station and thereupon to the scene place at about 11 a.m. He recorded a statement, Ex. P1, from P.W. 1 attested by P.W. 5. Thereupon he sent P.W. 1, with a memo to the Government Hospital, Tuticorin and returned to the police station at 12.45 p.m. and on the basis of Ex. P1 complainant registered a case in Crime No. 14 of 1985 under sections 302 and 324, I.P.C. and prepared the first information report Ex. P14 and the copies thereon. He sent Exs. P1 and P14 express report though P.W. 2 to the Judicial II Class Magistrate, Kovilpatti and a copy of the same through P.W. 13 to the Inspector of Police of Ottapidaram, who was in charge of that circle. P.W. 16, who was Inspector of Police (Crimes.) Pudukottai and who was in charge of Ottapidaram circle got information through V.H.S. about the case about 12.40 p.m. from P.W. 14. Thereupon he left Ottapidaram and was proceeding along Pasuvandhanai where he got the copy of Ex. P14 and P.W. 13 at about 1.15 p.m. and he took up investigation. He reached the scene place at 1.30 p.m. inspected the same in the presence of P.W. 8, prepared an observation mahazar, Ex. P2 at about 2 p.m. and drew a rough sketch, Ex. P16 and at about 2.45 p.m. he sent constables to search for the accused. Between 3 and 6 p.m. he held inquest over the dead body of Natarajan alias Subbiah and during the inquest he held inquest over the dead body of Natarajan alias Subbiaih and during the inquest he examined P.Ws. 2 to 5. Ex. P17 is the inquest report he examined prepared by him. After completing the inquest he entrusted the dead body with P.W. 13 constable along with a requisition Ex. P6 to the Medical Officer to conduct autopsy. At 6.45 p.m. he seized the bloodstained earth, M.O. 5 from the place where the dead body was found lying, under Ex. P3 attested by P.W. 8. At about 7 p.m. in front of the Agricultural Seva Sangam he seized M.O. 6 blood-stained earth and M.O. 7 sample earth under cover of a mahazar Ex. P4. He also seized M.O. 1 under cover a mahazar Ex. P5 from the pial of A3's house in the presence of P.W. 8. He examined P.W. 7 to 9 p.m. At that time he produced another broken piece of the plank and he seized the same. P.W. 10 is the Medical Officer attached to the Government Hospital, Tuticorin. He examined P.W. 1 at about 2.30 p.m. on 27-4-1985 for certain injured said to have been caused on 27-4-1985 at 9.15 a.m. and it could be due to cut with an aruval. She noticed the following injury on P.W. 1 :

"Incised wound 4" x 3" x 2" on the posterior aspect of left arm in the middle, underlying muscles hanging. Bone is exposed"

According to her, the above injury is simple in nature and could have been caused due to cut with aruval. She further stated that P.W. 1 was admitted as an in-patient and he was an in-patient till 16-5-1985. Ex. P8 is the wound certificate issued by her. Ex. P9 is the extract of the entries made in the accident register.

4. P.W. 9 is the Assistant Surgeon attached to the Government Hospital, Ottapidaram. In pursuance of the requisition he received from P.W. 16 he conducted autopsy of the dead body of the deceased Natarajan alias Subbiah at about 9 a.m. on 28-4-1985 and he found the following injuries :

1. Incised wound over back of right shoulder of 1" x 1" x 1" deltoid muscle fibres cut.

2. An oblique incised wound of 8" x 3" x 4" extending from above the medial end of left clavicle across the chest up to right nipple.

3. Transverse incised wound extending from right loin to left renal ankle of 9" x 3" x 6".

4. Transverse incised wound of 8" x 4" x 6" extending from lower left loin to back of right lumber region.

Internal examination (1) The medial end of left clavicle, manubrium sterna-medial end of right 3rd and 4th ribs and cartileges are served. Transverse part of arch of Aorta served. Trachea and oesophagus served. Right lung; (2) Incised wound of 1" x 1" x 1" over the annterior border. Haemothorax of 200 ml of dark fluid blood in right plaural cavity.

3. Spinal column and canda equina are served at L2 level. The abdominal aorta and I.V.C. severed. Right kidney severed into two equal halves at the level of hylum severing the right renal artery and vein. Peritonium opened.

4. Spinal column and candy equina are severed at L4 level. Abdominal aorta and I.V.C. severed. Peritonium opened. The terminalilum, transverse column and sigmoid colon are protruding out (intact). Heart : chambers empty and pale. Stomach : empty. Rectum and urinary bladder empty. Hyoid bone and atlas axis intact.

He was of the opinion that the deceased would appear to have died of shock and haemorrhage due to injuries sustained about 24 hours prior to autopsy. Ex. P7 is the post-mortem certificate. P.W. 9 was of the further opinion that injury No. 1 noticed by him could have been caused due to stab with a sharp edged weapon like a kuthu tharangu at about 9.15 a.m. It is possible that the injuries 2, 3 and 4 are possible by cutting with an aruval. He was of the further opinion that the external injuries 2 to 4 with the corresponding internal injuries are necessarily fatal and after receipt of the injuries he should have met with the imminent death.

5. P.W. 16 continued further investigation and he examined certain witnesses on 30-4-1985. On 3-5-1985 he gave a requisition to the judicial Magistrate to record S. 164, Cr.P.C. statement of the witnesses P.Ws 2 and 3. A1, A3 and A4 surrendered before the Judicial Magistrate, Nanguneri on 30-4-1985 and he got information only on 7-5-1985 and A2 surrendered before the Judicial, II Class Magistrate, No. 1, Tirunelveli on 4-5-1985. P.W. 17 took up further investigation. He verified the investigation already done by P.W. 16 and he gave Ex. P. 10 to the court to send the blood-stained articles for chemical analysis. P.W. 11 is the Head-Clerk attached to the Judicial II Class Magistrate's Court Kovilpatti. It is his evidence that in pursuance of Ex. P10 received from P.W. 17 the material objects were sent for chemical analysis along with the original of Ex. A11 letter and also about the receipt of Exs. P12 P 13, reports of the chemical Examiner of and Serologist respectively. P.W. 17 continued further investigation. He examined P.Ws 1, 9, 10, 12, 13 and 14 on 14-6-1985. After completing the investigation P.W. 17 laid the charge-sheet on 24-7-1985 against all the four accused under S. 302 read with Sections 34 and 324, I.P.C. to the Judicial II Class Magistrate, Kovilpatti.

6. When the accused were examined under S. 313, Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence, they totally denied the prosecution case. A1 in addition would state that the case put up against him is false. A2 would state that he was falsely implicated in view of the earlier case instituted against the deceased. A3 and A4 had nothing to say.

7. Learned trial Judge, after taking into consideration the oral and documentary evidence and for the reasons assigned in the judgment, came to the conclusion that the prosecution has proved the charge against A1 viz., the appellant herein under sections 302 and 324, I.P.C. and convicted him thereunder as stated in the opening paragraph of the judgment while acquitting A2 to A4 holding that the prosecution has not established the case against them beyond all reasonable doubt. Aggrieved by the same A1 has preferred this appeal.

8. Mr. T. Arulraj, learned counsel for the appellant took us through the recorded evidence and made various statements. According to learned counsel, the first information report under Ex. P1 is inadmissible in evidence as it is hit under S. 161, Cr.P.C. and further even if it admissible it is highly belated and hence no conviction can be imposed on the basis of the said case put forth in the first information report. He would further submit that the earlier report give in the case has been suppressed and that this case has been foisted against the appellant on account of the prolonged enmity. Learned counsel also vehemently argued that the witnesses who were examined in this case are all related and interested and that in view of the various answers elicited in cross-examination no reliance could be placed on their evidence. He would submit that the medical certificates issued in this case do not also support the case of the prosecution and particularly the ocular testimony of P.Ws 1 to 3. Learned counsel urged that there is absolutely no motive for the appellant to commit the occurrence of murder as even according to the prosecution, there was enmity between the deceased and A1 in respect of Kabadi game and that was in the year 1981. Learned counsel also submitted that the occurrence took place in a broad day light where there are number of shops and houses and the non-examination of independent witnesses also throws considerable doubt about the version of the prosecution and it is fatal. He would also submit that the learned trial Judge having disbelieved the major portion of the prosecution case, and acquitted A2 to A4, ought not to have accepted the evidence of P.Ws 1 to 3 and convicted the appellant. Learned counsel further submitted

that the recovery of M.Os. 1 and 2 cannot be incriminating pieces of evidence to connect the appellant with the crime and the Court below erred in relying on the same for convicting the appellant.

9. Per contra, learned Additional Public Prosecutor would submit that in the instant case the delay in lodging the first information report has been explained by the prosecution through the evidence of P.Ws 14 and 12. According to him, it is the evidence of P.W. 14 that he entered the statement given by P.W. 5 in the General Diary as P.W. 5 is not and eye-witness of the occurrence and further P.W. 12, who took the first information report, was examined in order to explain the delay and it is for this court to consider from the said evidence whether the delay has been properly explained or not. No doubt, he fairly submitted that the prosecution ought to have produced the General Diary which was relied on by the prosecution very much to explain the delay as well as to get over the contention that the earlier report was suppressed wherein the earlier statement of P.W. 5 was recorded. He would further submit that merely because P.Ws 1 to 3 are interested and related their evidence cannot be rejected and it is for this Court to consider whether the evidence has to be taken into consideration only with due care and caution and if ultimately the Court comes to the conclusion that the evidence is not reliable, then only the accused are entitled to the benefit of doubt, and it is purely an appreciation of the evidence of P.Ws 1 to 3 According to him, the medical evidence so far as the attack on the deceased by A1 is consistent with the ocular testimony and it cannot be said that there is a material discrepancy which goes to be root of the case. He would further submit that the recovery of M.Os. 1 and 2 cannot be a clinching circumstance to connect the appellant with the crime. When once the evidence of P.Ws 1 to 3 is held to be acceptable, then, the same can be taken into consideration as a corroborative piece of evidence. Learned Additional Public Prosecutor also submits that on the mere fact that A2 to A4 were acquitted it cannot be said that A1 also ought to have been acquitted, and it is for the Court to consider as to how far the evidence of the witnesses can be believed so far as this appellant is concerned.

10. Now, the points for consideration in this appeal are :

1) Whether the prosecution has proved the guilt of this appellant beyond all reasonable doubt by acceptable evidence ?

2) Whether the inordinate delay in lodging the first information report has been explained and whether the earlier report has been suppressed as contended by the defence ?

11. POINTS 1 AND 2 : The prosecution mainly relied on the evidence of the eye-wintnesses, P.Ws 1 to 3 and the medical evidence adduced through P.Ws 9 and 10 for establishing the guilt of the appellant, who is A1. We have already set out the details of the case and the evidence adduced by the prosecution through P.Ws 1 to 3 and other witnesses. While narrating the prosecution case. Hence we do not propose to reiterate the same once again except such of those portions which are relevant and necessary for consideration of the various submissions made by learned counsel for the appellant as well as learn. Additional Public Prosecutor. Now let us consider the contention raised on behalf of the appellant with regard to the suppression of the earlier first information report and inordinate and unexplained delay in lodging the first information report in this case. According to

prosecution, the occurrence took place at 9.15 a.m. P.Ws 1 to 3 are the eye-witnesses. P.W. 1 is admittedly related to the deceased as P.W. 5, the step-brother of the deceased was his brother-in-law and further he (P.W. 1) and the deceased were friends and they used to play Silambu game and both of them were closely moving.

12. The report in this case, Ex. P1 as well as the first information report, Ex. P14, were received by the learned Judicial Magistrate only at about 7.30 p.m. and there is a delay of 10 hours and 15 minutes. According to the prosecution, P.W. 4 came to the scene place immediately after the occurrence when P.Ws 1 to 3 informed P.W. 4. who requested him to go and report to P.W. 5, and P.W. 5, in turn, went to Pasuvandhanai police station at about 10.45 p.m. and reported the matter. But, according to P.W. 14, reported to him the fact that his brother Natarajan alias Subbiah was murdered when A1 cut him with an aruval and A2 stabbed him with Kuthu tharangu and that he got the information through P.W. 4 and he recorded the same in the General Diary and thereupon he proceeded to the scene place along with constables and recorded the statement Ex. P1 from P.W. 1, who was there P.Ws 1 to 3 had also stated that they gave the details of the incident to P.W. 4 and requested him to convey it to P.W. 5 P.W. 4 also informed P.W. 5 about the details of the occurrence. P.W. 5 also in his evidence stated that at about 10-15 a.m. P.W. 4 came to him and informed that his brother Natarajan was murdered by A1 to A4 and he in turn made the same report to Pasuvandhanai police station. It is to be noted that though it is stated that the same was entered in the General Diary, the General Diary was not even Produced in this case, exhibited and marked. Further, even P.W. 14 admitted that he did not show the General Diary to the Inspector. P.W. 16, and even in his statement he did not refer to anything about the entry made in the P.W. 16 P.W. 16 had categorically stated that and P.W. 14 ought to have recorded the complaint and registered the case. But, when he was further questioned whether he has taken any action against P.W. 14 for not taking the complaint and registering the case, he categorically admitted that he did not do so. It is the contention of the appellant that earliest first information report was suppressed and Ex. P1 came into existence long after the arrival of the Inspector and it was fabricated after due deliberation and consultation and on account of enmity the appellant was also impleaded as an accused. It is also to be noted that when an informant came and reported about the murder and also the names of the assailants and details of the occurrence, even though he is not an eye-witness, it is the duty of the Station House Officer to record the same and register a case. In the instant case it is stated on behalf of the prosecution that P.W. 5 was unable to give the full details of the incident, that he entered his statement in the General Diary and then proceeded to the scene place. Even P.W. 14 himself has stated that P.W. 5 complained that his brother was murdered when A1 cut him with an aruval and A2 stabbed him with Kuthu tharangu. If that be the case, it is the duty of P.W. 14 to record his statement and register case on the basis of the same and above all, even accepting his explanation, when he has chosen to record the in the General Diary, that is the very first document which came into existence where it is stated that the appellant was implicated, that should have been produced before Court. The failure to produce the said document even before the investigating officer is certainly fatal and there is every force in the contention put forward by the learned counsel for the defence that the appellant was implicated, that should have been produced before, Court. The failure to produce the said document even before the investigating officer is certainly fatal and there is every force in the contention put forward by the learned counsel for the defence that the entries made in the General Diary will go against the present version of the prosecution case and hence the

earlier report also was suppressed. Even with regard to the recording of Ex. P1 from P.W. 1, there is no consistent version with regard to the time and also the circumstances under which it was recorded. According to P.W. 14, he wen to the scene place at about 11 a.m., saw P.W. 1 there and recorded a statement from him. There-upon he returned to the police station at about 11.45 a.m. and registered a case in Cr. No. 14 of 1985 whereas the first information report, Ex. P14, would show that the statement is said to have been recorded only from 11.45 a.m. to 12.15 p.m. Thereupon he returned to the police station. The police station is about 3 k.m. from the scene place. In the cross-examination of P.W. 14 it has been elicited that when he went to the scene place the Inspector of Police was already there. He has also fairly admitted in the cross-examination that in the investigation he did not say that since the details of the occurrence were not correctly known he went to the scene place. It is the evidence of P.W. 16 that at 12.40 p.m. he got the message from the police station about the case by V.H.S. from P.W. 14 and he reached the scene place at 1.30 p.m. When a question was put to P.W. 14 also as to whether P.W. 1 was brought from Tuticorin after he went there, he would state that he did not know.

13. Learned Counsel for the appellant drew our attention to the evidence of P.W. 1 and also the wound certificate issued to P.W. 1 as well as the Accident Register. P.W. 1 categorically admitted in his evidence that he went to the Pasuvandhanai police station even at 9-30 a.m. and he was there for about two hours.

Four of five persons were also there at that time. No signature was taken from him at the police station at that time. Another explanation put forward on behalf of the prosecution was that P.W. 1 was injured and hence he could not proceed to the police station and give a report. That has been falsified by the admission of P.W. 1 himself, who had categorically stated that he went to the police station by cycle and there is absolutely no explanation for his not reporting to the police station immediately. He also admitted that the Village Administrative Officer is also living in the village. Further, even though he was as in-patient in the hospital for nearly about twenty days, it cannot be said that he was not in a position to go to the police station immediately after the occurrence to give a report as it is seen from the Accident Register and the wound certificate that he of his own accord not being accompanied by any constable or anybody went to the hospital at recorded in Ex. P8 that the deceased accompanied by self for report as to certain injuries said to have been caused on 27-4-1985 and P.W. 1 was seen by him at 2.30 p.m. Learned counsel also drew our attention to the entries made in Ex. P9 wherein it is stated that he is alleged to have been assaulted with aruval at 9.15 a.m. On 27-4-1985 at Meenakshipuram by four known persons. According to learned counsel, since P.W. 1 has made such a statement it is only in order to support the said version Ex. P1 was later fabricated by implicating four persons and without attributing any overt act and three persons have been now acquitted. Further, in view of the finding of the trial court and in view of the evidence adduced in this case, even the trial court had not accepted the evidence of the prosecution with regard to the attack of P.W. 1 by four known persons. According to him, A3 pelted a stone on him and he sustained an injury. But, their is no injury on his chest due to pelting of stone and no stone was recovered. It is worthwhile to quote the evidence of P.W. 14 did not obtain any complaint from P.W. 1 though he was there. Only after the Inspector arrived at the scene place a statement was obtained from P.W. 1. This probabilises the version of the defence that Ex. P1 came into existence only long after the arrival of the Inspector. Learned counsel also submitted that even according to

Ex. P1, P.W. 1 immediately after the occurrence ran away from the scene place towards south and he nowhere stated that subsequently he returned and also he had taken the broken pieces of the plank to his house. According to him, P.W. 1 could not have been the author of Ex. P1 but Ex. P1 could have been prepared much later after the arrival of the Inspector and the Sub-Inspector and after due consideration and deliberation on account of prior enmity between the deceased and the family of the accused. According to the defence, when the occurrence took place the deceased might have met with death much earlier to the alleged, in the morning, and nobody would have witnessed the occurrence and PW 1 would not have sustained injury at the time of the occurrence and in any event, having given an earlier report and suppressed the same they have now come forward with the present version by fabricating Ex. P1. In these circumstances, the delay in sending the first information report assumes much importance.

14. Further, on the face of admission of P.W. 1 himself that he was in the police station from 9.30 a.m. for about two hours, the entire version of the prosecution now put forward before this Court that P.W. 1 did not go there and that they sent information to P.W. 5 and the Sub-Inspector came to the scene place and obtained a statement Ex. P. 1 and on the basis of the same a case was registered are all contrary to truth. We have no hesitation in holding that no reliance could be placed with the present version of the prosecution. On the other hand, we find every force in the contention of the learned counsel for the appellant that the first information report could not have come into existence at about 11.45 a.m. as stated by the prosecution. That P.W. 1 was brought from the hospital and thereupon Ex. P1 could have been prepared is also probabilised by the admission of P.W. 2 who would state that immediately after the assault on P.W. 1 he was lying unconscious and he was taken in an unconscious state to Tuticorin hospital in a bus.

15. Now the prosecution also relied on the evidence of P.W. 12 to explain the delay in the despatch of the report to the Judicial II Class Magistrate, Kovilpatti. It is the evidence of P.W. 12 that at about 1 p.m. he got the first information report and he handed over the same to the Judicial II Class Magistrate at about 7.30 p.m. Thereupon he gave the copies of the same to the higher officials. When he was cross-examined he would state that it would take only 45 minutes to reach Kovilpatti from Pasuvandhanai by bus. He would state that he went by A.K.S.R. Bus on that day from Pasuvandhanai to Kovilpatti. When he was further questioned he fairly admitted that he did not purchase any ticket or there was no 'bus warrant' to support his version that he travelled in the said bus. He would further state that the said bus broke down and it was repaired only at 4.30 p.m. Thereupon he got another but at 6 O'clock. When he was asked whether he has stated all these things in his Section 162 Cr.P.C., statement to the Inspector, P.W. 16, he fairly admitted that he did not say so. We have also perused his Section 162 Cr.P.C., statement and there is absolutely no explanation whatsoever for the delay and the version now put forward by him for the first time in Court is nothing but an invention and without any basis. Further, it is also in evidence that on the day in question P.W. 14 admittedly had been to Ottapidaram and he was with P.W. 16 in connection with the bandobust for the celebration in the temple at Pasuvendhanai. This probabilises the version of the defence that P.M. 14 could have accompanied the Inspector and only after the arrival of the Inspector. Ex. P1 could have come into existence. From the version answers elicited in the evidence of witnesses and also the materials we find that the earliest versions put forward in this case has been suppressed and further the delay of nearly ten hours in lodging the first information report is

inordinate and unexplained and this delay is certainly fatal in the circumstances of the case. In this connection, it is worthwhile to refer to the decisions of the Apex Court of the land. In Thulia Kali v. State of Tamil Nadu, it is held as follows :

"First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained".

In Sevi v. State of Tamil Nadu, it is held as follows :

"Though he claimed that relevant entries had been made in the general diary at the Station the Sub-Inspector did not also produce the general diary in Court. The production of the general diary would have certainly dispelled suspicion. In the circumstances we think that there is great force in the submission of the learned counsel for the accused that the original F.I.R. has been suppressed and, in its place some other document has been substituted. If that is so, the entire prosecution case becomes suspect. All the eye-witnesses are partisan witnesses and not withstanding the fact that four of them were injured we are unable to accept their evidence in the peculiar circumstances of the case".

In Ramasamy v. State of Tamil Nadu (DB), 1982 LW Crl 63 : (1983 Cri LJ NOC 45 (Mad)) it is observed as follows :

"The FIR is a statement which can only be used to corroborate or contradict the version of the maker of it and if is not substantive evidence. If there is a doubt about the F.I.R. being fabricated or brought into existence to deliberation, the entire fabric of the prosecution case collapses. Fourteen accused have been implicated in this case who belong to the opposite group of the prosecution party. The court must, of course, make an attempt to separate grain from the chaff if it is possible. We are satisfied that, on the facts of this case and having regard to the interested evidence of the prosecution witnesses, it would be unsafe to convict the accused".

This view is supported by another Division Bench of this Court in Johny and Five others v. State, 1990 LW Crl 175, wherein it is held as follows :

"The first information report a document of considerable importance, is produced and proved in criminal trials not as a piece of substantive evidence, but with the avowed object of obtaining the early information of the alleged criminal activity and to have a record of the circumstances before

there was time for them to be embellished or forgotten. A quick first information report, which reaches the Court of the Magistrate with promptitute, will be a towering circumstance which will go a long way to assure the veracity of the prosecution story if, there can be no time to create and deliberate a false case against the accused. It may be in some cases the delay in lodging the first information report may be inevitable, but such delay may have to be satisfactorily explained. Courts have held that long and unexplained delay not only in lodging the first information report but also in its receipt in the Court and suspicious circumstances to be taken into consideration while judging the bona fides of the prosecution story, as delay may bring in a coloured version of the whole incident. A delayed first information report, which gives rise to suspicion, will put the Court on guard to look for a possible and acceptable explanation for the delay. A delayed first information report in prosecutions where there are more accused than one will require careful scrutiny and more so when the possibility of false implication looms large".

Applying the ratio of the above decisions to the facts of this case, we have also no hesitation in holding that in the instant case Ex. P1 came into existence in a suspicious circumstance and there is every force in the contention of the learned counsel for the appellant that by non-production of the alleged entry made in the general diary, the prosecution has Ex. P1 cannot be the first information report and it is not safe to rely upon Ex. P1 and in view of the inordinate and unexplained delay also, the contention put forward on behalf of the appellant that the version of the prosecution throws considerable doubt with regard to the participation of this appellant in this occurrence and that it is not safe to rely on the evidence of the eye-witnesses who are interested in the prosecution.

16. As regards the motive aspect is concerned, the prosecution relied on the earlier incident which is said to have taken place in the year 1981. Even according to the prosecution, in respect of a competition in the kabadi game A2 alone took part in the said game and he competed the deceased, and, on account of the same, a dispute arose and consequently A2 was stabbed by the deceased and it was only A2 who gave a complaint to P.W. 15, Sub-Inspector of Police, on 3-1-1981 at Eppothum Vendran police station and a case was registered in Cr. No. 2 of 1981 under section in 324 I.P.C., which is evidenced by Ex. P15 and consequently it ended in conviction and the deceased was convicted and sentenced to undergo rigorous imprisonment for six months. Though it is stated that on appeal he was acquitted, no documentary evidence whatsoever was produced before Court to substantiate the same. Even P.W. 15 is unable to say as to what happened after conviction. Whatsoever it may be, even according to the prosecution, after the incident the deceased left the village and he was employed as a taxi driver at Virudunagar and he used to attend the village two or three times in a month as his family was located at Meenakshipuram village. Further three is absolutely no dispute between A2 and the deceased after the said case. There is absolutely no reason whatsoever for this accused/appellant to attack the deceased and would go even to the extent of murdering him. Next the prosecution relies on the incident which is said to have taken place at about 8.15 a.m. when A1 went to the land of the father-in-law of the deceased where the deceased, P.W. 1 and P.W. 4 were attending to heaping up the hay-stalk and P.W. 6 was there and A1 called P.W. 6 to accompany him to the house of his master in order to secure the wages, and it is stated that it was at that time since A1 was having an aruval the deceased found fault with him and quarrelled and questioned him as to how he can bring aruval and A1 left murmuring. As rightly contended by learned counsel for the appellant we find that from these materials it cannot be said

that A1 had adequate and sufficient motive to murder the deceased whatever it may be, since the alleged occurrence is said to have taken place in a broad day light and there are direct eye-witnesses to the occurrence, motive does not assume importance if the evidence of the eye-witnesses are otherwise trust-worthy and acceptable.

17. Now let us consider the evidence of the eye-witnesses, P.Ws. 1 to 3. P.W. 1 is admittedly related to the deceased as his elder sister Subbulakshmi is given in marriage to P.W. 5. P.W. 5 is the step-brother of the deceased viz., that P.W. 5 was born to another wife of the deceased's father. It is to be noted that though P.W. 1 was a witness to the occurrence and the occurrence is said to have taken place on 27-4-1985 he was examined only for the first time in respect of the occurrence only on 14-6-1985 by P.W. 17. There is no explanation for not examining him on a prior occasion and for the first time his Section 161 Cr.P.C. statement was recorded, nearly about 1 1/2 months and the statement was sent only along with the charge-sheet. There is no explanation for not examining him at the earliest point of times as even though he was admitted as an in-patient in the Government Hospital by P.W. 10 on 27-4-1985 and he was discharged on 16-5-1985 itself and he sustained only simple injury and that too on the left arm and it is not the case that he was unconscious and he was unable to give any statement. The fact that his statement itself was recorded nearly after 1 1/2 months itself is sufficient to reject his evidence as no reliance could be placed on such a belated version during investigation and especially in respect of the important eye-witness to the occurrence who is the informant in this case. It is also in evidence that he is closely associated with the deceased, he is very much interested in the deceased, that both of them were always found together and they used to play Silambu. Learned counsel for the appellant drew the attention of this Court to the statement during inquest that at the time of occurrence he was actually collecting the hay-stalk, it is the case of the prosecution that the collecting of hay-stalk was only in the premises of the father-in-law of the deceased while the occurrence is said to have taken place on the road inside the village. P.W. 1 categorically admitted that he had stated to the Inspector when he was examined at the time of occurrence he was arranging the hay-stalk. If that be the case, he would not have been an eye-witness to the occurrence and he would not have sustained injury during the said incident. On the other hand, a suggestion was put to these witnesses that whether the deceased himself and others indulged in a quarrel in the village in the early morning and during the quarrel between them and the Devar community people the deceased would have met death and he also sustained injuries. We have already held that this version during his giving report at 11.45 a.m. is highly doubtful. His evidence with regard to the attack by A-3 on him by pelting a stone has been disbelieved and A3 has been acquitted on this ground. His conduct in the reporting the matter to the village Administrative Officer and as well as in the police station or to report others also throws considerable doubt in respect of his version now before Court. Further, learned counsel also drew our attention to his evidence that he and the deceased took coffee about a few minutes prior to the incident in the house of the father-in-law of the deceased. But, significantly P.W. 9, the Medical Officer attached to the Government Hospital, who conducted the autopsy did not find any liquid contents in the stomach and he had categorically stated that if any coffee or liquid has been taken it would have taken three hours for digestion. But, he found that the stomach was empty. This also was pointed out by learned counsel for the appellant that P.W. 1 would not have accompanied the deceased or the occurrence could not have taken place at the time and in the manner spoken to by this witness and no reliance could be placed. Further, learned counsel also relied on the evidence of P.W. 9 and the post-mortem

certificate and submitted that when the stomack itself was empty the question of P.W. 1. and the deceased proceeding to answer calls of nature would not arise and as such his version that when he and the deceased were proceeding to answer calls of nature and at that time the deceased was attacked and when he intervened he was also attacked cannot be accepted. In any event, these aspects throw doubt about his version regarding the occurrence wherein he was an eye-witness. It is also to be noted that according to his evidence that he beat A1 with M.Os. 1 and 2 and A1 sustained bleeding injury on the back. If that be the case, certainly, the investigating officer should have given requisition to examine A1 by the Medical Officer, since A1 himself surrendered before Court within three days of the occurrence. There is absolutely nothing to show that he beat A1 and A1 sustained injuries and that M.Os. 1 and 2 were broken only in that circumstance. In any event, the failure on the part of the investigating officer to probe further and in the absence of any evidence with regard to the sustaining of injuries on the part of the person said to have been injured. This version cannot be accepted. The learned trial Judge is also not right in relying on the presence of blood-stains on M.Os. 1 and 2 as there is absolutely nothing to show that A1 sustained any bleeding injuries. Even otherwise, the mere fact that M.Os. 1 and 2 contained human blood, it is not sufficient to connect the same with the attack either on the deceased or on A1 unless in the absence of any detection of blood group which tallied with that of A1 or that of the deceased. Learned counsel also drew our our attention to the earlier version of this witness, P.W. 10, who is sustained injuries due to the cut with aruval by four known persons while his evidence Before Court is contra to the same. Thus, on a careful consideration of the above aspects, we have no hesitation in holding that the evidence P.W. 1 though injured is not reliable and no conviction can be given on the basis of the said evidence. The version of P.W. 1 now before court that after the occurrence he returned to the scene place and he was there till the police came is falsified by the earlier report wherein he had only stated that he ran towards south after the occurrence and there is absolutely nothing to show about his return. Similarly there is nothing about his taking the broken pieces of M.O. 1 and kept in his house. On the other hand, there is evidence to show that M.Os. 1 and 2 were available at the scene place when the Sub-Inspector came and as such on that score also his evidence is proved to be untrue.

18. Next we have to see the evidence of PW. 2. PW. 2 is a chance witness. He is a resident of Seekampatti. It is his evidence that on the day of occurrence he came to his elder brother's house in connection with a feast and while he was in the shop of PW 3 he happened to witness the occurrence. Admittedly there is a deformity in his leg and he cannot walk. He was actually sitting in the shop and witnessed the occurrence. It has been elicited in the cross-examination that it is not possible to witness the occurrence from the shop of PW 3. Only if one comes to the junction of the middle road can witness the occurrence. Since he is a lame man he cannot stand and he was actually sitting in the shop, he could not have witnessed the occurrence. Even he himself admits that he could not stand continuously for five minutes. According to his version in S. 161, Cr.P.C. statement nobody cut the deceased on the back, which is contrary to the case of the prosecution. He had categorically stated that the stone pelted by A3 may lying there and he pointed out to PW 14, Sub-Inspector and he took him and this has been falsified by the evidence of PW. 14. He did not see any such stone in the scene place. According to this witness, M.Os. 1 and 2 were blood-stained and they were taken from the scene place by PW 14 which is also contrary to the prosecution case. It is further admitted by him that PW 1 immediately after the occurrence ran towards south and the present version that PW 1 was at the scene place is contrary to his evidence. It was put to this

witness that he never came to the village and he was only dependent upon the father-in-law of the deceased and it was only at his instance he was deposing falsely. Even the trial court pointed out while giving evidence he was sitting in a chair, he was aged 55 years and he was getting old age pension from the Government on the ground that he is an orphan. According to PW 3, this witness was sitting in his shop and he was conversing with him at the time of occurrence. PW 2 did not say that he was standing and witnessed the occurrence, but, on the other hand he would say that he was actually sitting in the shop at the time of occurrence. If that be the case, he could not have witnessed the occurrence. The various answers elicited in cross-examination of this witness clearly show that he could not have witnessed the occurrence and his presence also on that day in the village is highly doubtful.

19. Next comes the evidence of PW 3. PW 3 is aged about 52 years. Admittedly he is related to the deceased as his elder sister's daughter is given in marriage to the deceased. Further, while he was in witness box he was asked to identify the accused one by one. But, he was unable to do so though the witness box is about 25 feet from the place where the accused were standing. Learned counsel for the appellant rightly argued that if the witness was unable to identify the accused who was standing at a distance of 25 feet, this witness could not have witnessed the incident which is said to have taken place at 8 yards i.e., 24 feet away from his shop. We find every force in the contention of the learned counsel in this regard. When he is unable to see the accused who were at a distance of 25 feet, when he gave evidence in court, he could not have witnessed the incident and would not have seen this accused who was at a distance of 24 feet from the place where he was standing at the time of the alleged occurrence. Further, the shop of PW 3 was not shown in the rough sketch, Ex. P16 prepared by the investigating officer and it has been categorically admitted that it is not possible to witness the occurrence from his shop. He categorically admitted that he did not inform this incident to anybody who came immediately after the occurrence, including the father-in-law of the deceased. In view of the various answers elicited from the evidence of this witness, certainly, he could not have witnessed the occurrence. On the other hand, learned counsel for the appellant vehemently argued that according to the prosecution, the occurrence took place in the broad-day light and at the place of occurrence there were number of houses and shops. The investigating officer did not choose to examine any of the independent witnesses, particularly neighbours and there is absolutely no explanation for not examining them as witnesses in this case. Learned counsel for the appellant is perfectly justified in his submission that since those witnesses are not willing to depose falsely to support the version of the prosecution, they were not cited and examined and certainly in the absence of any explanation for not citing and examining their witnesses, an adverse inference can be drawn. It is not the case of the prosecution that though they have witnessed the occurrence they were not willing to depose. It is the duty of the prosecution to examine those witnesses and to cite them as witnesses and if they are not able to examine them in Court they should have given reasons for not examining them. In the instant case admittedly no attempt has been made to examine any of these independent witnesses and cited and examine them before the Court. Hence we are of the opinion that the non-examination of the independent witnesses is also fatal to the case of the prosecution besides the witnesses already examined, the evidence of PWs 1 to 3 is not reliable and acceptable.

20. Next we have to see the medical evidence. The medical evidence adduced through PW 9 who conducted the autopsy also did not support the case of the prosecution. PW 9 conducted the autopsy and noticed as many as four external injuries and issued the post-mortem certificate, Ex. P7. He would state that the deceased would have died as a result of the shock and hemorrhage due to injuries sustained by him before 24 hours and the injuries 2 to 4 are necessarily fatal. According to him, injury No. 1 could not have been caused by the Kuthu Tharangu and his evidence was accepted and A2 was acquitted on that ground. As regards injury No. 2, the evidence of PW 9 was that the said injury was fatal. After receipt of the injuries he could not have moved or walked and the death would have been instantaneous. According to the version of the prosecution, after receipt of the injuries he walked to a distance of 30 feet and thereafter he was attacked again by A1, who cut him twice on his back and the hip. This version has been falsified by the medical evidence and according to the medical evidence if injury No. 2 was caused first, injuries Nos. 3 and 4 are only post-mortem injuries. If that be the case, the present version that after receipt of injury No. 2 the deceased went to a distance and thereafter he was inflicted with injuries Nos. 3 and 4 only after receipt of the injuries Nos. 3 and 4 he died, cannot be accepted. The Medical Officer, PW 9 also probabilises the defence version that the deceased would have died about two hours prior to the time alleged by him. If that is accepted, the occurrence could have taken place at the early morning of that day. As already stated, the Medical Officer also ruled out the possibility of the deceased taking coffee prior to the occurrence since he had stated that if he had taken coffee prior to the incident. As regards the injury found on PW 1 also, the doctor opined that the injury found on PW 1 also, the doctor opined that the injury is a simple one and could have been caused about 2 to 3 hours prior to the alleged time for the injured and he himself admitted before the doctor. If already a case was registered and he was sent by the Sub-Inspector, certainly, he could have accompanied by a constable. This answer also clearly shows that till about 2.30 p.m. when he was present no case has been lodged and registered. Next the prosecution relied on the recovery of M.Os. 1 and 2 to connect this accused with the crime. We do not find any justification in the same. M.O. 1 is a plank. According to the prosecution, PW 16, has seized M.O. 1 from the house of A3 on the day of occurrence under Ex. P5. M.O. 2 was produced by PW 7, wife of PW 1 to PW 16 and both M.Os. 1 and 2 contained only human blood. It is to be noted that A3 from whose house M.O. 1 was seized was acquitted, and it is not the case of the prosecution that M.O. 1 was seized from the house of A1. Though he has stated that M.O. 2 was produced by PW 7, wife of PW1, we have got the evidence of the eye-witnesses that M.Os. 1 and 2 were lying at the scene place when the Sub-Inspector came. There is no consistent evidence with regard to the seizure of M.O. 2 on being produced by PW 7. In view of the answers elicited in cross-examination that M.Os. 1 and 2 which were lying in the scene place, the seizure by PW 16 during investigation from the house of A3 and from PW 7 there is considerable doubt and in any event, the fact that M.Os. 1 and 2 contained only human blood and the blood group could not be ascertained, and that they were seized during investigation from A3's house and being produced by PW 7, it cannot be said that the seizure of those M.Os. 1 and 2 which had not been used by A1 can be an incriminating circumstance against the accused to hold that he is liable for the offence of murdering the deceased. Thus, on a careful consideration of the entire materials, we are of the view that the prosecution has miserably failed to prove the guilt of this accused in respect of both and he deserves to be acquitted and his conviction is not sustainable.

21. In the result, the appeal is allowed, the conviction and sentence are set aside and the appellant is acquitted. Bail bonds, if any, shall stand cancelled.

22. Appeal allowed.