KUMAR

v.

STATE REPRESENTED BY INSPECTOR OF POLICE

(Criminal Appeal No. 409 of 2017)

MAY 11, 2018

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Penal Code, 1860: ss. 302 and 324 – Conviction by courts below – Prosecution case was that the appellant-accused and the victim-deceased had a verbal spat – On fateful day, appellant came to spot and picked up fight with PW-1 – In the process of interference to prevent assault, PW-2 also got injured – Soon thereafter when victim-deceased appeared at the spot, the appellant pushed him into the canal and hit him with wooden log on his head – Villagers prevented the appellant from assaulting deceased thereby causing injuries to him – Both appellant and the deceased were shifted to hospital where deceased succumbed to injuries – Trial court convicted appellant and awarded life imprisonment – High Court upheld the same – On appeal, held: Most of the prosecution witnesses were hearsay witnesses – They had deposed that both the appellant and the deceased participated in the fight with wooden logs and appellant also got head injury at the hands of deceased – But, prosecution did not produce his medical record, nor the Doctor was examined on the nature of injuries sustained by the appellant – In the circumstances in which the deceased, appellant and also PW-2 got injuries, it was obligatory on the part of IO. to examine the doctor and seek information about the injuries sustained by the accused and the same should have been made part of the record – The injuries alleged to have been caused to appellant were not properly explained, rather an alternative story was set up wherein the injuries were attributed to mob justice, such plea without substantive evidence cannot be accepted – Had there been a strong motive to do away with the life of deceased, generally there would have been more fatal injuries caused on the deceased not by a log but by utilizing more dangerous weapons – These circumstances show that there is no reason to believe that motive was entertained by the accused in the back drop of quarrel that took place prior to

the date of occurrence – In the absence of positive proof of such motive, prosecution failed to prove its case beyond reasonable doubt – Conviction and sentence awarded by courts below set aside.

Investigation: Role of Investigating authority – The investigative authority has a responsibility to investigate in a fair manner and elicit truth – The concerned authorities to take up the investigation in a neutral manner, without having regards to the ultimate result.

Criminal law: Injuries on the accused – A duty is cast on the prosecution to furnish proper explanation to the Court how the person who has been accused of assaulting the victim received injuries on his person in the same occurrence – Penal Code, 1860 – ss.302 and 324.

Criminal law: Motive – Generally, in case prosecution desires to place motive of the accused as a circumstance, like any other incriminating circumstance, it should also be fully established – If the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance – Evidence.

Allowing the appeal, the Court

HELD: 1. Most of the prosecution witnesses are hearsay witnesses. Contrary to what complainant (PW-1) deposed, a combined reading of evidences of PWs 2, 3, 5, 15, 19 and 20 show that both the accused and the deceased participated in the fight with wooden logs, accused got head injury at the hands of deceased, PW-2 himself also received injury at the hands of accused while he was trying to protect PW-1 from assault of the accused. The police reached the place of occurrence within ten minutes of the occurrence, that is well before the arrival of ambulance. At that point of time, Police enquired PW-1, PW2 and other witnesses, drawn report, sketch map etc., and took their signatures and sent the injured persons to hospital. That sequence of incidents shows that already investigation was started by police. That means the information provided by PWs 1, 2 and other witnesses at about 6:30 P.M. at the place of occurrence

should have ideally been the basis of the F.I.R. Whereas the F.I.R. shows that the information was received at police station at 9.30 p.m. on 20th August, 2009. The case involves a fight between two persons – accused and the deceased. Majority of the eye witnesses including PW-1, PW-3, have categorically stated that accused-appellant was the aggressor. There were at least three different versions which substantially weakens the prosecution's case [Paras 19-23] [354-E-H; 355-C-E; 356-B-C]

2. On the point of suppression of genesis of the crime, PW-20 (head constable) categorically stated that he was present before the Ambulance reached the place. Even though he was extensively cross-examined, he has not budged from his position that there was no recording of any statement before the Ambulance reached. On the contrary PW-2 categorically remarks that a statement was recorded by PW-20 before the ambulance arrived. Although the High Court has discredited the evidence of PW-2 as the part which provides the aforesaid details was on recalling after few days, therefore, in light of possibility of being won over, the credibility of the statement made by PW-2 needs to be viewed with this background fact. However, there seems to be no logic of such assumption, when the prosecution has not declared the witness as hostile and more so, when his narrative is corroborated by other witnesses. Therefore, PW-2's evidence needs to be taken into fold. [Para 24] [356-C-E]

3. It is matter of record that the alleged accused-appellant, was arrested in a hurried manner after the day of the incident from the hospital. It is also stated that the police authorities in an unusual manner got the appellant discharged from the hospital and kept him illegally confined for a day. The action of investigating authority in pursuing the case in the manner which they have done must be rebuked. The High Court on this aspect, correctly noticed that the police authorities have botched up the arrest for reasons best known to them. [Para 25] [356-E-F; 357-A]

4. The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. In

A **this case at hand, the aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked. Generally failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true.[Paras 26, 27] [357-C-E, F]**

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Mohar Rai and Bharath Rai v. The State of Bihar **1968 CriLJ 1479 – relied on.**

5. Admittedly, the accused-appellant was also injured in the same occurrence and he too was admitted in the hospital. The

C **trial Court, instead of seeking proper explanation from the prosecution for the injuries sustained by the accused, appears to have simply believed what prosecution witnesses deposed in one sentence that the accused had sustained simple injuries only. In the circumstances in which the deceased, accused and also PW-2 got injuries, it was obligatory on the part of I.O. to examine the**

D **Doctor and seek information about the injuries sustained by the accused and the same should have been made part of the record. [Paras 29, 30] [358-E-H; 359-A-B]**

6. Motive of the accused to commit the crime is ascribed to the previous quarrel occasioned between the accused and the

E **deceased during a drama at a village festival. Generally, in case prosecution desires to place motive of the accused as a circumstance, like any other incriminating circumstance, it should also be fully established. But in the case on hand, the evidence of direct witnesses is not satisfactory and on the other hand, it is**

F **demonstrated that the deceased hit the accused on his head with the wooden log besides the testimony from the eye witnesses that there was scuffle. In such a factual situation, certainly motive may act as a double-edged sword. [Para 31] [359-C-F]**

7. There is absence of extreme cruelty, even if it assumed

G **that accused hit the deceased with the log. This show that there is no reason to believe that motive was entertained by the accused in the back drop of quarrel that took place during drama at the village festival, prior to the date of occurrence. In as much as the prosecution laid the foundation for the commission of crime by the accused in the said quarrel as an element of motive, in the**

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absence of proof of such motive, prosecution has to face the peril of failure in establishing that foundation. [Para 32] [359-F-H; 360-A]

8. As regards the other charge under Section 324 of IPC, for causing injuries to PW-2. In light of the deficiencies, it can be easily said that even the charge under Section 324 of IPC is not established. The injured witness himself has attributed the injury on him to the deceased, instead of the accused. In such a situation conviction of the accused on the charge of Section 324 cannot be sustained under law. [Para 33] [360-B-C]

9. Taking stock of the circumstances and depositions of prosecution witnesses in this case, it would be difficult to hold that prosecution has laid the case on real circumstances and proved its case beyond reasonable doubt. Normally this Court does not interfere with the concurrent findings recorded by the Courts below, but in this case considering certain exceptional circumstances, this is a fit case for interference. In the peculiar facts and circumstances of the case, definitely the benefit of doubt goes to the accused-appellant. The judgments of the Courts below awarding conviction and sentence to the accused-appellant requires to be set aside. [Paras 34, 35] [360-C, E-F]

Parbhu v. Emperor **AIR 1944 PC 73 – distinguished.**

Lakshmi Singh and Ors. v. State of Bihar **1976 CriLJ 1736 – relied on.**

Case Law Reference

AIR 1944 PC 73	**distinguished**	**Para 25**
1968 CriLJ 1479	**relied on**	**Para 27**
1976 CriLJ 1736	**relied on**	**Para 28**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 409 of 2017.

From the Judgment and Order dated 22.02.2016 of the High Court of Madras Madurai Bench in Criminal Appeal No. 326 of 2013.

S. Nagamuthu, M. P. Parthiban, A. S. Vairawan, S. Parthasarathi, Ankur Prakash, Advs. for the Appellant.

A M. Yogesh Kanna, Ms. Sujatha Bayadhi, Advs. for the Respondent.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. This appeal is filed by the present appellant, aggrieved by the concurrent findings of the court below, which
B has upheld the culpability of the accused for culpable homicide amounting to murder under Section 302 of Indian Penal Code [*hereinafter* '**IPC**' *for brevity*] and voluntary causing hurt by dangerous weapons or means under Section 324 of IPC. This appeal presently impugns the High Court judgment dated 22.02.2016, in Criminal Appeal No. 326 of 2013.

C 2. The prosecution story in a nut shell begins with an earlier scuffle between the accused and deceased (Sakthivel), while watching a street play conducted during a village festival. It is alleged that the accused-appellant was rebuked by the deceased for sitting next to ladies. In this context, on 20.08.2009, at about 6:00 PM the accused came to the spot
D where Rajendran (PW-1), Arumugham (PW-2) and Subramani (PW-3) were savoring idliis from the stall of Sumathi (PW-4), when the accused-appellant arrived with an intention to draw out Sakthivel (deceased), by picking up a quarrel with Rajendran (PW-1), who was his brother-in-law. Accordingly, the accused-appellant arming himself with a wooden log lying nearby, assaulted Arumugham (PW-2), who
E came to the rescue. At that moment the Sakthivel (deceased) is supposed to have intervened. Seeing him, the accused barged on Sakthivel claiming to finish him while kicking and pushing him into the water canal. When he tried to climb up from the canal, the accused hit him with a wooden log on his head. The villagers present at the spot, then prevented the
F accused while assaulting him on his head, thereby causing injuries to the accused. Thereafter, both the injured Sakthivel and accused were shifted to the Government Hospital, Pudukottai in an ambulance. Ultimately the Sakthivel succumbed to the injuries before reaching the Hospital.

3. Sub-Inspector Ramaswamy—PW-23 registered an FIR
G (**Ext. P1**) against the accused for the offences punishable under Sections 302 and 324 of IPC in Crime No. 47 of 2009. Circle Inspector Subhakumar—PW-24, undertook the investigation, visited the place of occurrence, prepared observation mahazar and drew the rough sketch (**Ext. P7**). The alleged weapon (wooden log—stick) (**Ext. P8**) used in the administration of crime was recovered from the spot. On the next
H day, he conducted inquest *vide* report (**Ext.P9**) and dead body of the

deceased Sakthivel was sent for postmortem. Subsequently, the accused—appellant was reported to be arrested on 22nd August, 2009. The I.O. recorded the statements of Dr. Lavanya, the Doctor, who treated PW-2 (Arumugham), and Dr. Illayaraja, who conducted postmortem of the deceased. Thereafter the authorities seized the clothes of the deceased reported in the seizure report being M.O.4 to M.O.6. After completing the investigation, the I.O. submitted his report to the learned District Munsif-cum-Judicial Magistrate levelling charges against the accused for the offences punishable under Sections 324 and 302 of IPC. The learned Judicial Magistrate in turn committed the case to the Sessions Court. The accused pleaded not guilty and claimed to be tried.

4. The Sessions court by order, dated 07.10.2013, awarded conviction to the accused and directed him to suffer rigorous imprisonment for life for the offence under Section 302 of IPC and to pay a fine of Rs. 5,000/-, in default of payment of fine, to further suffer an imprisonment for a period of one year. The accused was also sentenced to suffer rigorous imprisonment for a period of one year for the offence under Section 324 of IPC. Both the sentences were however directed to run concurrently. The main reasons given by the trail court for maintaining the conviction against the appellant-accused are-

i. That the motive concerning the verbal spat between the accused and the deceased Sakthivel is proved by PW-1, PW-6, PW-8 and PW-7.

ii. That the delay was sufficiently explained, as the police were busy in conducting investigation in other case.

iii. That the recovered objects from the scene of crime has been proved before the court.

iv. That the injury on the accused has been attributed to a scuffle between the deceased and the crowd, which stands corroborated by the witness, statement of PW-2, PW-3 and PW-5.

v. The trial recognizes that there were no step taken to identify the injury on the accused.

vi. That the mere wrong entry of timing in the inquest report, would not vitiate the post mortem report much less the prosecution case itself.

A vii. That on the aspect of arrest, it is an acceptable inference, that the accused was forcefully discharged by the police personnel on 21.08.2009, and was confined by the police for one whole day, and the arrest was only shown on 22.08.2009. Further as there was no confession obtained due to such action by the police, the entire case cannot be vitiated.

B viii. That publication of the story in a newspaper cannot be relied on, as the defense has not taken steps to mark the evidence or examine the editor.

ix. That the case was proved by the prosecution beyond reasonable doubt.

C 5. Aggrieved, the accused-appellant approached the High Court. By the impugned order, the High Court dismissed the appeal of the accused on the following grounds-

i. That the contention of the defense concerning the statement of the PW-2 about recording by the police, just after the incident is a *flimsy contradiction*, which does not have the force to dislodge the entire case.

D ii. That PW-2's cross examination after re-calling the witness, cannot be taken into consideration.

E iii. That failure to provide reasons for the injuries sustained by the accused, would not be sufficient to dislodge the prosecution's case.

iv. That the nature of weapon and the injury would not mandate reduction in the sentence from the charge of murder to grievous injury.

F 6. Aggrieved, by the concurrent finding of the fact, the accused has approached this court.

7. The main thrust of argument by the learned counsel for the G appellant is that the entire prosecution case is a fabricated in such a way so as to implicate the appellant in the case as culprit. The real circumstances of the case have been concealed by the prosecution in order to help the complainant. Even the motive projected by the prosecution is false. There was no complaint lodged by the deceased or

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his wife against the accused, which itself proves that the motive ascribed to be the alleged verbal spat between the deceased and accused at the drama in the village on the eve of Kaliammantemple festival. Secondly, there was huge delay in registering the FIR and the delay was caused only to implicate the appellant. On the fateful day i.e. 20.8.2009 at about 6:23 P.M. police got the information about the occurrence, but no FIR was lodged. At about 7:30 P.M.police visited the spot, conducted enquiry, suspected PWs 1 to 3 to be the real culprits and took them into their custody. Even PW2 informed police that he received injuries due to the attack made by the deceased. The appellant has also injured in the fight at the hands of deceased. But, police did not register the complaint on the basis of actual occurrence, and the courts below failed to appreciate the true aspects of the case particularly non-explanation by the prosecution as to the injuries sustained by the accused. Thereafter, the accused—appellant and deceased were sent to the hospital in same ambulance and till the discharge of the appellant from hospital, police did not suspect him as a culprit. It is only thereafter, police in connivance with complainant cooked up a case against the appellant, the complaint was suitably prepared and FIR (Ext. P1) registered. Even at the time of framing charges against the accused a charge under Section, 323, IPC was first charged but the trial Court convicted the appellant under Section 324, IPC. The trial Court as well as the High Court failed to notice the suppression of facts by the prosecution and came to a wrong conclusion without appreciating the evidence in accordance with settled principles of law, and thereby rendered a perverse judgment which is required to be set aside by the interference of this Court.

8. On the other hand, learned counsel for the State supported the view taken by the Courts below and submitted that having regard to the facts and circumstances, the trial Court assessed them in proper perspective and delivered a reasoned judgment. The conviction and sentence passed against the accused has also been affirmed by the High Court by categorical findings which does not require interference of this Court.

9. Having heard learned counsels for both parties, we acknowledge that this case is a direct evidence case and based on statement of eyewitnesses which mandates us to observe statements of certain eye witnesses for the disposal of this case at hand.

A 10. A bare perusal of the evidence deposed by the complainant—PW-1 (Rajendran) shows that while the complainant was in the company of Arumugham (PW2) and Subramanian (PW-3)having idliis sold by Sumathi (PW4), the accused appeared and picked up the assault on him. In the process of interference to prevent the assault, PW2 also got injured. Soon thereafter, with the appearance of his brother-in-law
B (Sakthivel—deceased) at the spot, the accused pushed him into canal and assaulted with a wooden log on the forehead of Sakthivel. Then Rajinikanth (PW15) and Balasundaram (PW19)—another co-brother of the complainant, called the ambulance and took the accused and Sakthivel to the hospital while the complainant followed them on two-
C wheeler and at the hospital he came to know about the death of the deceased, then he went to Udayalipatti police station and lodged complaint (Ext.P1).

11. The deposition of PW-2—Arumugham @ Iyyer, an eyewitness to the incident, is to the effect that when he was preventing the accused
D who was about to assault PW1, he sustained injuries. At that point of time, the deceased came with a wooden log in his hand and fought with the accused. He has also asserted that the ambulance came after police examined him and took his signature. He has further made it clear that many persons, including nearby shop owners, witnessed the incident,
E but it is a matter of record that except himself, two brothers-in-law of the deceased and Rasu, no one else was made witness. He further deposed that the deceased assaulted the accused with the wooden log on head due to which the accused got injury. When the deceased was trying to hit the accused for a second time, he intervened due to which he got injury on his wrist. On suspicion, police took him along with PWs
F 1 and 3 to the Keeranur Police Station where they detained him for the night and then sent to Government Hospital on the next day morning. Before his examination in chief, they warned him that if he does not depose as instructed, they will foist a case against him.

12. In his cross-examination PW-2 reveals as under-

G Immediately after the occurrence, Udayalipatti police came to the place of occurrence and enquired about the incident and get my signature after recording my statement. They recorded my statement, before the arrival of 108 ambulance and before we took Sakthivel and Kumar. At the time, rajendra was also presented

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and the police recorded his statement and obtained his signature. The police examined me only prior to the arrival of 108 ambulance and never examined me after the arrival of 108 ambulance.

On recalling the PW-2, he states as under-

The deceased Sakthivel assaulted the accused in his head with the wooden log. I cam there and the accused sustained injuries in his head before I reached there. When I intervene the second blow by the Sakthivel, I sustained injuries in my writ. The accused Kumar also sustained injuries on his head. The Sakthivel fell down in the channel due to the forceful attack by him and the accused also fell down.

(**emphasis supplied**)

It may be noted that PW-2 is not declared as hostile by the prosecution.

13. In his cross-examination, PW3—Subramanian, another eyewitness and close relative of the deceased, also admitted that the occurrence took place at 6 p.m. and the scuffle between the accused and deceased was for five minutes. By the time the occurrence was completed, there was darkness. He further admits that he was examined by the Inspector of Police at the place of occurrence and PWs 1 & 2 were also present at that time. He was later taken to the Keeranur police station along with PWs 1 and 2.

14. That PW-4 (Sumathi), who is alleged to be selling idliis, has not supported the case of the prosecution.

15. PW5—Rasu, corroborates the version of PW-2, wherein he states that both the accused and the deceased had held sticks. During the scuffle both of them fell into the channel and both were unconscious by the time they were pulled up.

16. Rajinikanth—PW-15 deposed that at 7:15 P.M., he went to Kurunthankudi bridge upon hearing about the occurrence and found the accused and deceased lying there and took them to Government Hospital in ambulance. Then he came back to the place of occurrence along with Village Administrative Officer (PW-14) where police prepared a rough sketch and took his signature. However, in his cross-examination he deposed that, by the time he reached the place of occurrence, police had

A already arrived there and thereafter ambulance came. He further stated that PW-1—Rajendran narrated to the police everything about the incident and police reduced it into writing and his signature was also obtained.

17. In his evidence, PW19—Balasundaramhas also stated categorically that the ambulance came to the place of occurrence after
B the arrival of police and they seized the wooden log. According to him doctors declared the death of Sakthivel at about 8.45 p.m. and Rajendran—complainant—PW1 was not present at that time, but Inspector, Sub-Inspector and Head Constable were present who examined him and PW15, but did not obtain his signature.

C 18. Head Constable Mohan—PW20, in his chief examination adduced that at 6.23 p.m. on the day of incident, while he was going towards Ulaghanathapatti in connection with investigation in some other case, he received a call on his mobile phone about the occurrence. He immediately passed on the message to his seniors and called an ambulance. At 7:00P.M., when he reached the place of occurrence,
D they found the deceased lying at Bridge Stone, Kurunkulam with injuries while the accused was lying at road side. He immediately sent them to Government Hospital at 7:05 P.M. However, in the cross examination, he stated that he had enquired PW-1—brother-in-law of the deceased and did not see the wounded accused and deceased when he reached
E the place of occurrence.

19. We have also gone through the statements of PWs 6, 7, 8, 9, 10, 11, 12, 13, 16, 22 etc. Most of them are hearsay witnesses and nothing important seem to come out from their depositions.

20. Contrary to what Rajendran—Complainant (PW-1) deposed,
F a combined reading of the evidences adduced by PWs 2, 3, 5, 15, 19 and 20 would make it abundantly clear that both the accused and the deceased have participated in the fight with wooden logs, accused has got head injury at the hands of deceased, PW2 (Arumugham) himself also received injury at the hands of accused while he was trying to protect PW1
G (Rajendran) from the assault of the accused, police reached the place of occurrence within ten minutes of the occurrence, that is well before the arrival of ambulance and Rajendran—PW1 (complainant), Arumugham @ Ayyar (PW2), Subramanian (PW3) and other witnesses described the incident to the police who then examined the persons present there, rough sketch was prepared and their signatures were also obtained.

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21. Having observed the various depositions, we are of the considered opinion that there are four crucial aspects herein, which should be discussed and elaborated upon. The above evidence if examined from the perspective of time, the overall impression that can be drawn from the foregoing discussion is that the occurrence took place at around 6.15 p.m., and the Head Constable Mohan (PW-20) received information of occurrence at 6:23 P.M. and he passed on the message to Sub-Inspector and Circle Inspector at 6:26 P.M., soon thereafter ambulance arrived at the spot of occurrence at 6.30 p.m. At that point of time, Police have enquired PW-1, PW2 and other witnesses, drawn report, sketch map etc., and took their signatures and sent the injured persons to hospital. That sequence of incidents shows that already investigation was started by police. That means the information provided by PWs 1, 2 and other witnesses at about 6:30 P.M. at the place of occurrence should have ideally been the basis of the F.I.R. Whereas the F.I.R. (Ext.P1) shows that the information was received at police station at 9.30 p.m. on 20th August, 2009.

22. We may note that this case involves a fight between two persons-accused and the deceased.Majority of the eye witnesses including PW-1, PW-3, have categorically stated that accused-appellant was the aggressor. Interestingly, the PW-2 states that, even the Sakthivel assaulted the accused by a wooden log on the head, his statement should be given credence for eight major reasons-

i. That the Police has subdued the statement of PW-2 taken moments after the incident.

ii. That PW-4 corroborates the version of PW-2.

iii. That the injury on the accused has not be accounted for.

iv. That the accused was also noted to be injured by all the prosecution witness, without specific statements as to the nature and all the prosecution witnesses state that the injury on the accused were imputed by the by-standers without much clarity.

v. That the mode of arrest by the police to have unauthorizedly discharged the accused from the hospital and illegally confining him for a day in police custody.

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vi. Active botch-up of investigation by the police authorities.

vii. Unexplained delay in registering the FIR in the police station.

viii. He is alleged to be the person, who had been injured in the incident.

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23. From the account of eye witness, we may observe that there are at least three different versions which substantially weakens the prosecution's case.

24. On the point of suppression of genesis of the crime, PW-20 (head constable) categorically states that he was present before the

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Ambulance had reached the place. Even though he was extensively cross-examined, he has not budged from his position that there was no recording of any statement before the Ambulance recorded. On the contrary PW-2 categorically remarks that a statement was recorded by PW-20 before the ambulance arrived. Although the High Court has discredited the evidence of PW-2 as the part which provides the aforesaid

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details was on recalling after few days, therefore, in light of possibility of being won over, the credibility of the statement made by PW-2 needs to be viewed with this background fact. However, we fail to understand internal logic of such assumption, when the prosecution has not declared the witness as hostile and more so, when his narrative is corroborated

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by other witnesses.Therefore, PW-2's evidence needs to be taken into fold.

25. It is matter of record that the alleged accused-appellant, was arrested in a hurried manner after the day of the incident from the hospital. It is also stated that the police authorities in an unusual manner got the

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appellant discharged from the hospital and kept him illegally confined for a day. Moreover, PW-2 has categorically stated the following on the action of the police-

> The police enquired me about the incident and I narrated the same. The police and the Sub-inspector of Police on suspicion taken myself, PW-1 (Rajendran) and PW-3 (Subramanian) to Keeranur Police Station. I was detained in Keeranur police station during the night and on the next day morning, **I was sent to Keeranur Government Hospital for treatment. Before I was examined in chief, they warned me that if I have not deposed as**

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instructed them, they will foist a case against me and only for that reason, I have stated like that.

(emphasis supplied)

The action of investigating authority in pursuing the case in the manner which they have done must be rebuked. The High Court on this aspect, correctly notices that the police authorities have botched up the arrest for reasons best known to them. Although we are aware of the ratio laid down in ***Parbhu v. Emperor***, AIR 1944 PC 73, wherein the court had ruled that irregularity and illegality of arrest would not affect the culpability of the offence if the same is proved by cogent evidence, yet in this case at hand, such irregularity should be shown deference as the investigating authorities are responsible for suppression of facts.

26. The criminal justice must be above reproach. It is irrelevant whether the falsity lie in the statement of witnesses or the guilt of the accused. The investigative authority has a responsibility to investigate in a fair manner and elicit truth. At the cost of repetition, I must remind the concerned authorities to take up the investigation in a neutral manner, without having regards to the ultimate result. In this case at hand, we cannot close our eyes to what has happened; regardless of guilt or the asserted persuasiveness of the evidence, the aspect wherein the police has actively connived to suppress the facts, cannot be ignored or overlooked.

27. Another point put forth by the learned counsel on behalf of the accused—appellant is that the prosecution has not explained the injuries suffered by the accused and hence prosecution case should not be believed. At the outset, it would be relevant to note the settled principles of law on this aspect. Generally failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true [*See :**Mohar Rai and Bharath Rai*** v. ***The State of Bihar,*** 1968 CriLJ 1479].

28. In ***Lakshmi Singh and Ors.*** v. ***State of Bihar***, 1976 CriLJ 1736 this Court observed:

> "Where the prosecution fails to explain the injuries on the accused, two results follow :

A **(1) that the evidence of the prosecution witnesses is untrue; and**

(2) that the injuries probabilise the plea taken by the appellants.

It was further observed that:

B In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :

C (1) **that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version**;

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

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(3) that in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

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29. In the case on hand, admittedly, the accused—appellant was also injured in the same occurrence and he too was admitted in the hospital. But, prosecution did not produce his medical record, nor the Doctor was examined on the nature of injuries sustained by the accused. The trial Court, instead of seeking proper explanation from the prosecution for the injuries sustained by the accused, appears to have simply believed what prosecution witnesses deposed in one sentence that the accused had sustained simple injuries only.

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30. From the evidence of I.O.—PW24 it is apparent that in the scuffle PW2 (Arumugham) received "simple" injuries and he had taken the statement of Dr. Lavanya (PW17) who treated PW2. He had also examined Dr. Illayaraj (PW18) who conducted postmortem on the body of the deceased. But, in the case of accused—appellant, PW24—I.O. admits that he was aware of the fact that the accused-appellant was admitted as in-patient and the accused-appellant had sustained injuries.He

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further states that neither did he arrest the accused nor he examined the Doctor in regard to the injuries of accused. In the circumstances in which the deceased, accused and also PW-2 (Arumugham) got injuries, it is obligatory on the part of I.O. to examine the Doctor and seek information about the injuries sustained by the accused and the same should have been made part of the record. A duty is cast on the prosecution to furnish proper explanation to the Court how the person who has been accused of assaulting the deceased, received injuries on his person in the same occurrence. We may note that the injuries alleged to have been caused are not properly explained. An alternative story is set up wherein the injuries are attributed to mob justice, such allegations without substantive evidence cannot be accepted.

31. Coming to the other aspect of the case, motive of the accused to commit the crime is ascribed to the previous quarrel occasioned between the accused and the deceased during a drama at a village festival. Generally, in case prosecution desires to place motive of the accused as a circumstance, like any other incriminating circumstance, it should also be fully established. We are alive to the fact that if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. But in the case on hand, as we have already discussed in the above paragraphs, the evidence of direct witnesses is not satisfactory and on the other hand, it is demonstrated that the deceased hit the accused on his head with the wooden log besides the testimony from the eye witnesses that there was scuffle. In such a factual situation, certainly motive may act as a double-edged sword.

32. In the light of the settled law thus by this Court and also from what is clear from the evidence, there is absence of extreme cruelty, even if it assumed that accused hit the deceased with the log. Had there been a strong motive to do away with the life of deceased, generally there would have been more fatal injuries caused on the deceased not by a log but by utilizing more dangerous weapons. These circumstances would tell us that there is no reason to believe that motive was entertained by the accused in the back drop of quarrel that took place during drama at the village festival, prior to the date of occurrence. In as much as the prosecution laid the foundation for the commission of crime by the accused in the said quarrel as an element of motive, in the absence of positive

A proof of such motive, prosecution has to face the peril of failure in establishing that foundation.

33. Now coming to other charge under Section 324 of IPC, for causing injuries to Arumugham @ Ayyar [PW-2]. In light of the deficiencies noted above, it can be easily said that even the charge under
B Section 324 of IPC is not established. The aforesaid conclusion is clearly buttressed by the fact that the injured witness himself has attributed the injury on him to the deceased, instead of the accused. In such a situation conviction of the accused on the charge of Section 324 cannot be sustained under law.

C 34. Taking stock of the circumstances and depositions of prosecution witnesses in this case, it would be difficult to hold that prosecution has laid the case on real circumstances and proved its case beyond reasonable doubt. We are surprised at the way in which Courts below have perceived the facts and circumstances of this case. We are not in agreement with the views drawn by the trial Court as well as the
D High Court while dealing with the matter.

35. Normally this Court does not interfere with the concurrent findings recorded by the Courts below, but in this case we find certain exceptional circumstances as narrated above, considering these aspects we feel that this is a fit case for our interference. In our opinion, instead
E of dealing with the intrinsic merits of the evidence of witnesses, both the Courts below have acted perversely. Once we arrive at the conclusion that we cannot lend credence to the genuineness of the F.I.R. and the prosecution case, there is no need of further enquiry as the assertion made by the prosecution are notproved beyond reasonable doubt. In the
F peculiar facts and circumstances of the case, definitely the benefit of doubt goes to the accused—appellant. Viewed in that angle, the judgments of the Courts below awarding conviction and sentence to the accused—appellant requires to be set aside.

36. In the result, the appeal is allowed and the conviction and
G sentence awarded by the Courts below is set aside. The accused—appellant stands acquitted from all the charges levelled against him. The appellant is stated to be in jail. He may be set at liberty forthwith, if not required in any other case.

Devika Gujral Appeal allowed.