

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 26..02..2016
Judgement Pronounced on : 15..03..2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal Nos.793 and 847 of 2011,
47, 48 and 150 of 2012

Punnivathi [A3]

... Appellant in Crl.A.No.793 of 2011/
Accused 3

Jagadeesan [A2]

... Appellant in Crl.A.No.847 of 2011/
Accused 2

1.Vijai @ Vijaikumar [A8]

2.Mani @ Mamsmani @ R.Manikumar [A9]

3.G.Baskar [A10]

... Appellants in Crl.A.No.47 of 2012

1.K.Vinoth [A4]

2.T.Rajkumar [A5]

3.S.Suresh [A6]

4.K.Damu @ Dhamodharan [A7]

... Appellants in Crl.A.No.48 of 2012

Gobu [A1]

... Appellant in Crl.A.No.150 of 2012/
Accused-1

-Versus-

The Inspector of Police,
Moolanur Police Station,
Thirupur District.
[Crime No.187 of 2008]

... Respondent in all Criminal Appeals

Crl.A.No.793 of 2011: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.III, Dharapuram, in S.C.No. 28 of 2009 dated 30.11.2011.

Crl.A.No.847 of 2011: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.III, Dharapuram, in S.C.No. 28 of 2009 dated 30.11.2011.

Crl.A.No.47 of 2012: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.III, Dharapuram, in S.C.No. 28 of 2009 dated 30.11.2011.

Crl.A.No.48 of 2012: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.III, Dharapuram, in S.C.No. 28 of 2009 dated 30.11.2011.

Crl.A.No.150 of 2012: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.III, Dharapuram, in S.C.No. 28 of 2009 dated 30.11.2011.

For Appellant : Mr.Sundar Mohan for
Mr.Muruganantham for
Appellant[A3] in
Crl.A.No.793 of 2011 and
Appellant [A1]
Crl.A.No.150 of 2012
Mr.S.Ashok Kumar, Senior
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for Appellant [A2] in
Crl.A.No.847 of 2011
Mr.R.John Sathyan for
Appellants [A8 to A10] in
Crl.A.No.47 of 2012 and
Appellants 1 and 4 [A4
and A7] in Crl.A.No.48 of
2012
Mr.A.Raghunathan, Senior
Counsel for
Mr.Su.Srinivasan for
Appellant [A5 & A6] in
Crl.A.No.48 of 2012

For Appellant : Mr.Sundar Mohan for
Mr.Muruganantham for
Appellant[A3] in
Crl.A.No.793 of 2011 and
Appellant [A1]
Crl.A.No.150 of 2012

For Respondent : Mr.M.Maharaja, Addl.
Public Prosecutor for
Respondent in all
Criminal Appeal

COMMON JUDGEMENT

S.NAGAMUTHU.J.,

The appellants are the Accused Nos.1 to 10 in S.C.No.28 of 2009 on the file of the learned Additional Sessions Judge, Fast Track Court No.III, Dharapuram, Tiruppur District. They stood charged as detailed below:-

Serial Number of charge	Charge(s) framed against	Charge(s) framed under
1	A1 to A10	120(B) of IPC
2	A4 to A9	147 of IPC
3	A4 to A9	449 of IPC
4	A4, A5 & A6	302 of IPC
5	A7, A8 & A9	302 r/w 149 of IPC
6	A1 to A3 and A10	302 r/w 120(B) of IPC
7	A7 & A8	394 of IPC
8	A5, A6 and A7	395 of IPC
9	A8 & A9	323 of IPC
10	A7	506(ii) of IPC [Two counts]

2. By Judgement, dated 30.11.2011, the trial court convicted all the ten accused and sentenced them as detailed below:-

Rank of the Accused	Penal provision (s) under which convicted	Sentence
A1 to A10	120 (B) of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for six months

A4 to A9	147 of IPC	Rigorous Imprisonment for one year
A4 to A9	449 of IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for six months
A4 to A6	302 of IPC	Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months
A7 to A9	302 r/w 149 of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months
A1 to A3 and A10	302 r/w 120(B) of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months.
A7 and A8	394 of IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for six months
A5, A6 and A7	395 of IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for six months
A8 & A9	323 of IPC	Simple imprisonment for six months
A7	506(ii) of IPC [Two counts]	Rigorous Imprisonment for seven years on each count

Challenging the above said conviction and sentence, A1 to A10 are now before this court with these Criminal Appeals.

3.0. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Sundaram. A3 is the mother of A1. A2 is a pangali [relative] of A1. For about ten years, there was no love lost between the families of the accused and the deceased. The house of the accused is situated just on the north of the house of the deceased. One Mr.Nithyanandham is a pangali [relative] of the deceased. There was a boundary dispute between Mr.Nithyanandham and A1 to A3. In respect of the said dispute, Mr.Nithyanandham had made a complaint to the police against A3. A1 to A3 were under the mistaken impression that it was only on the instigation of the deceased, Mr.Nithyanandham had made such a complaint to the police against A3. This is yet another reason for the ill feelings between the two families. A3 had a daughter by name Miss.Punniavathi. The efforts taken by A1 to A3 to fix a bridegroom for Miss.Punnivathi could not succeed because the deceased had allegedly given some mischievous information to the prospective bridegrooms who had responded to the said marriage proposal. Thus, the marriage for Miss.Punnivathi was getting delayed. This is yet another reason for the rivalry. Two months prior to the occurrence, the cattle belonging to A3 had entered into the field of the deceased and grazed. This had also resulted in a quarrel between A3 and the wife of the deceased. These are all the incidents which culminated into a very strong motive for A1 and A3 to decide to do away with the deceased, it is alleged.

3.1. It is the further case of the prosecution that A1 to A3 conspired to kill the deceased. In pursuance of the said conspiracy, they decided to engage hirelings for the said purpose. It is the further case of the prosecution that A1, in turn, contacted A4 and A4, who agreed for the said illegal proposal, had taken A5 to A10, who were his close associates, to execute the said illegal plan. For killing the deceased, A1 had paid a sum of Rs.50,000/- to A4. Thus, A1 to A3 had conspired to commit the murder of the deceased and the other accused were engaged by them for the said purpose.

3.2. It is further alleged that on 21.06.2008 at about 08.00 p.m., A4 to A10 had come in a Tata Sumo Car near the house of the deceased. The Tata Sumo Car was driven by A10. A4 to A9 were in the car. A2, who was already lying in wait there, had taken the car near the house of the deceased and shown them the said house. Then, A2 left the said place.

3.3. It is further alleged that A7 and A8 had already purchased chilly powder from a shop and they kept the same ready. A4 to A9, thereafter, trespassed into the compound of the house of the deceased. At that time, a tube light in the compound wall and another tube light on the entrance of the house of the deceased and also an electric bulb were glowing. On the east of the house there was an electric light which was also glowing. Thus, there was a flood of light both inside and outside the house.

3.4. P.W.1 is the daughter of the deceased. She was married and she was residing at Arangapalayam village with her husband. She has a child also. On 18.06.2008, P.W.1 along with her husband, in-laws and child had come to the occurrence village to take part in the full moon pooja. After the pooja was over, her husband and in-laws had returned to Arangapalayam village. P.W.1 and her child stayed back at the house of the deceased.

3.5. On 21.06.2008, at 08.00 p.m. the child was playing in front of the house under the flood of light within the compound of the house of the deceased. The deceased was sitting on the coir cot just in front of his house, but, within the compound. P.W.1 was standing by the side of the child and she was speaking to someone over cellphone. P.W.2, the wife of the deceased, was inside the house engaged in cooking in the kitchen. At that time, six persons, who were not earlier known to them entered into the compound. [This witness had later identified A4 to A9 as the persons who entered into the house]. One of the persons asked the deceased as to whether he was Mr.Sundaram. When the deceased stood up and enquired as to what was the matter, yet another person in the unlawful assembly asked him as to where was his son. While this conversation was going on, suddenly, much to the shock of P.W.1 and the deceased, A4 threw chilly powder on the face of the deceased. P.W.2 had, by that time, arrived at the scene of occurrence from inside the house. A5 was having iron vallam [rod]; A6 had an arm of a wooden cot; and the others were unarmed. Since they had started attacking the deceased, with a view to save her child, P.W.1 took the child and ran towards west of her house inside the compound. A7 and A8 gave a chase. P.W.2 ran around and reached the Eastern side of the house. To save the child from being beaten up, P.W.1 sat on the ground and bowed by keeping the child underneath her chest. A7 and A8 threw chilly powder on her face also. Then, A7 and A8 attacked P.W.1 with hands. She sustained injuries on various parts of her body. P.W.1 cried for help and begged to the assailants not to harm her and her child and that she was prepared to give what ever they wanted. A7 and A8, by force, snatched her thali chain weighing 5 1/2-sovereigns with the attached gold ornaments and also snatched another gold chain [baby chain] weighing 2-sovereigns and two gold rings weighing 1/2-sovereigns each and a cell phone. Even after that they continued to attack her.

3.6. P.W.2 ran towards P.W.1 and begged to the assailants not to cause any harm to the child as well as P.W.1. She fell on P.W.1 and the child and covered them with her body in order to ward off any further attack on P.W.1 and the child. At that time, P.W.2 was attacked on her head by iron vallam. P.W.2 was attacked by A8 and A9. A5 and A6 attacked the deceased repeatedly. A5 attacked him with iron vallam and A6 attacked him with the wooden cot arm. A7 took the grinding stone lying there and intimidated P.W.1 and P.W.2 not to raise any alarm.

A5 to A7 entered into the house from where A7 took a Nokia cell phone and the same was facilitated by A5 and A6. Since the occurrence was under a flood of light, P.W.1 and P.W.2 could notice the identifying features of the assailants. Then, A4 to A9 fled away from the scene of occurrence.

3.7. After the accused had left, P.Ws.1 and 2 went near the deceased. They found the deceased unconscious in a pool of blood. When P.Ws.1 and 2 wanted to speak to their relatives over cellphone, they found that the telephone had been damaged. The articles in the bureau were all pulled out and extensively damaged. The cellphone of the deceased was also taken away.

3.8. P.Ws.1 and 2, thereafter, went to the house of one Ms.Lakshmi, which is situated at a small distance from the house of the deceased. P.W.1 received the cellphone of Ms.Lakshmi through which she contacted her husband and informed him about the occurrence. Then, on hearing the hue and cry raised by P.Ws.1 and 2, the villagers also gathered at the place of occurrence. P.W.3-Mr.Ramadurai, a villager, who arrived at the place of occurrence immediately after the occurrence, took steps to take all the three injured to the hospital. He arranged for a car. But, P.W.3 and others found it difficult to take all the three injured in a single car. Since P.W.2 was profusely bleeding, P.W.3 took her alone urgently in the said car and rushed her to the hospital. Within a short while, P.W.1's husband, reached the place of occurrence in a car and with an omni van along with a number of people. In the said omni van, he took the deceased to the Government Hospital. P.W.1 and her child stayed back at the place of occurrence. P.W.3 took P.W.2 to a Doctor by name Dr.Kanagaraj at Chinna Dharapuram. Dr.Kanagaraj, came out of his clinic and after having seen P.W.2, since there was a head injury, advised P.W.3 to immediately rush P.W.2 to Amaravathi Hospital at Karur. Even before P.W.3 could start from the clinic of Dr.Kanagaraj at Chinna Dharapuram, the omni van carrying the deceased had come to the clinic of Dr.Kanagaraj. P.W.3 rushed P.W.2 to Amaravathi Hospital at Karur. The omni van which was carrying the deceased also followed and reached Amaravathi Hospital, Karur, within a short while. The Doctors at Amaravathi Hospital found the condition of P.W.2 bad and, therefore, they advised P.W.3 to take her to Kovai Medical Centre at Coimbatore. At the same time, the Doctor on examining the deceased, declared him dead. P.W.2 was taken to Kovai Medical Centre where she was admitted as in patient.

3.9. P.W.1 went to Moolanur police station, which is at a distance of 17 kms from the place of occurrence. By the time, P.W.1's husband spoke to her over cellphone and informed her that the deceased was declared dead. P.W.1 presented a written complaint at the police station under Ex.P.1 on 22.06.2008 at 02.00 a.m. P.W.21, the then Sub Inspector of Police attached to Moolanur P.S., on receipt of Ex.P.1-complaint, registered a

case in Crime No.187 of 2008 under Sections 147, 148, 449, 396, 397, 326 and 506(ii) of IPC. Ex.P.49 is the FIR. He forwarded both the complaint (Ex.P1) and the FIR (Ex.P.49) to the court which were received by the learned Judicial Magistrate at 12.05 p.m. on 22.06.2008. In Ex.P.1-complaint, P.W.1 had told that six unknown persons, who could be identified, came and committed the above offences. She had further stated that the properties extorted from her and robbed from her house would be worth Rs.50,000/-.

3.10. P.W.21 forwarded P.W.2 to the hospital for treatment with a police memo. P.W.24 Dr.Keshavamurthy, Chief Medical Officer, Accident and Emergency, Kovai Medical Centre and Hospital, Coimbatore, examined her on 22.06.2008 at 2.00 a.m. She told the Doctor that around 07.30 p.m. on 21.06.2008, when she was at her house, few unidentifiable persons attacked her. Ex.P.57 is the wound certificate. She had already been given first aid treatment at Amaravathi Hospital, Karur.

3.11. P.W.23, the then Inspector of Police, took up the case for investigation on 22.06.2008 at 03.00 a.m. Since the assailants were not known, he summoned the Sniffer Dog Squad and also the Finger Print Expert to visit the place of occurrence. At 3.45 a.m. on 22.06.2008, at the place of occurrence, he prepared an observation mahazar (Ex.2) and a rough sketch (Ex.P52) in the presence of P.W.7 and another witness. He also recovered as many as 11 material objects from the place of occurrence including the blood stained articles. The sniffer dog which was brought to the place of occurrence ran to a distance, but, could not bring out any clue. P.W.14, the Finger Print Expert, who visited the place of occurrence, found two chance finger prints on the bureau at the house of the deceased. He lifted the chance prints and also took photographs and preserved the same. Those chance finger prints did not tally with the finger prints of any of the inmates of the house and, therefore, there was suspicion that the persons whose chance finger prints were found on the bureau must have participated in the occurrence. During the course of investigation, P.W.23 examined P.W.1 to P.W.3 and many more witnesses and recorded their statements. He conducted inquest on the body of the deceased in the hospital and forwarded the same for post mortem.

3.12. P.W.12-the Doctor, who conducted autopsy on the body of the deceased on 22.06.2008 at 2.00 p.m., found the following injuries on the dead body of the deceased:-

"External Injuries:-

(1) 2 x 1 cm abrasion over centre of the parietal area with diffused contusion.

(2) 1 x 1/2 cm abrasion over right forehead.

(3) A diffused contusion over left eye

brow.

(4) 2 x 1/4 cm abrasion on back of middle of left arm.

(5) 7 x 5 cm contusion seen on lateral aspect of left thigh.

(6) 3 x 2 cm abrasion on left lateral chest wall.

On Dissection:- Scalp contains haemotoma on occipital region. Comminuted fracture of occipital bone. Fracture seen in both floor of the cranial fossa. Fracture of left temporal bone. Brain surface covered with blood clots. Cranial cavity contains 100 ml of blood. Hyoid in tact. Fracture of ribs 2-4 on both sides in costo chondrial junction. Multiple areas of contusion seen in both lungs. Heart chambers empty. Stomach contains 100 ml of dark brown coloured liquid. Bladder empty. All other internal organs are pale."

Ex.P.23 is the post mortem certificate. He opined that the death was due to shock and haemorrhage due to the injuries on the head and the chest.

3.13. P.W.23 had no clue about the assailants though he took all sort of efforts. During investigation, P.W.1 and P.W.2 informed about their enmity with A1 and A3. Out of suspicion, in order to verify as to whether A1 would have had any role in the crime, he requested the service provider of the cellphone to furnish the call details of A1. Admittedly, the mobile number of A1 is 9962346817. P.W.23 received the call details of the said mobile number which revealed that on the date of occurrence namely, 21.06.2008, there were a number of calls between the said cellphone and a cellphone bearing mobile number 9787614677. The further details collected from the cellphone service provider revealed that the latter cellphone was registered in the name of A7.

3.14. In continuation of his investigation, P.W.23 arrested A1-Gobu on 31.07.2008 at 11.30 a.m. near "Surya Bakery" at Moolanur, Arasampatty in the presence of P.W.8, the Village Administrative Officer, Chinnamarudur and one Mr.Chandrasekar. On such arrest, A1 made a voluntary confession in which he disclosed that he had hidden a Nokia cellphone with a SIM card bearing mobile number 9962346817. In pursuance of the same, he took P.W.23, P.W.8 and another witness to his house and produced the said cell phone with SIM card. P.W.23 recovered the same under a mahzar (Ex.P.4). The said cellphone is M.O.18 and the Hutch SIM card is M.O.19.

3.15. In pursuance of the confession given by A1 wherein he had disclosed about the involvement of A2, he took P.W.23, P.W.8 and another witness to Bagavathy Amman Temple Street and

identified A2. P.W.23 arrested A2-Jagadeesan at 1.30 p.m. on the same day in the presence of P.W.8 and another witness and recorded his voluntary confession. But, no fact was discovered out of the same. Thereafter, in pursuance of the disclosure statement of A1, he took P.W.23 and the witnesses to Asthampatti in Salem where, he identified A4. P.W.23, in turn, arrested A4-Vinoth at 07.30 p.m. On such arrest, A4 gave a voluntary confession in which he disclosed the details of a cellphone with SIM card belonging to A7. In pursuance of the same, P.W.23, recovered the cellphone (M.O.21), and two SIM cards namely, Vodofone SIM card (M.O.23) and Airtel SIM card (M.O.22) and gold balls (M.O.4). In pursuance of the confession of A4, he took P.W.23 and the witnesses to Salem Gorimedu and identified A6-Suresh at 10.00 p.m. Thereafter, P.W.23 arrested A9 in the presence of the same witnesses at 12.45 a.m. on 01.08.2008. On such arrest, A9 gave a voluntary confession in which he disclosed the place where he had hidden a gold ring weighing 1/2 sovereign at the house of his mother Mrs.Mariammal. In pursuance of the said disclosure statement, he took P.W.23 and the witnesses to the house of his mother and produced the gold ring (M.O.5-one ring out of two rings). P.W.23 recovered the same under Ex.P.11 mahazar in the presence of the same witnesses. On the same day at 3.30 a.m. P.W.23 arrested A10-Baskaran in the presence of the same witnesses. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden a Tata Sumo Car bearing Regn.No. TN 09 H 3472 (M.O.24). P.W.23 seized the same under a mahzar (Ex.P.13). On returning the police station along with the accused and the seized articles, he forwarded the accused to the court for judicial remand and handed over the material objects also to the court. Then, he altered the case into one under Section 120(B), 147, 449, 396, 397, 326 and 506(ii) of IPC. Ex.P.55 is the alteration report.

3.16. A5, A7 and A8 had already been in judicial custody in connection with some other case. Therefore, P.W.23 made a formal arrest of A7 and A8. A5 had surrendered before the Magistrate. He took custody of A5, A7 and A8 on 12.08.2008 as per the orders of the learned jurisdictional Magistrate. While under custody, in the presence of P.W.9 and another witnesses, A5 gave a voluntary confession at 10.00 p.m. on 12.08.2008. On the next day early morning, i.e., on 13.08.2008 at 12.15 a.m., A7 gave a voluntary confession and A8 gave a voluntary confession at 02.30 a.m. In his confession, A5 disclosed that in his house he had hidden 1/2 sovereign gold ring. In pursuance of the same, he took the police and the witnesses to his house and produced the 1/2 sovereign gold ring (M.O.5 - floral designed ring) and the same was recovered under Ex.P.15. A8 in his confession disclosed the place where he had hidden 2 sovereigns of gold chain. In pursuance of the same, he took P.W.23 and P.W.9 and another witness and from his house, he produced a gold baby chain (M.O.2). P.W.23 recovered the same. Then, at 07.30 p.m. in pursuance of the disclosure statement of A7, he took P.W.23 and the witnesses

to his house and produced a 5 sovereigns gold thali chain (M.O.1). P.W.23 recovered the same under a mahazar (Ex.P.19). Thereafter, P.W.23 returned to the police station. On the next day, in pursuance of the disclosure statement of A7, he took P.W.23, P.W.9 and another and another witness to the place of occurrence and produced a grinding stone (M.O.15). P.W.23 recovered the same. Then, P.W.23 forwarded the accused to the court for remand and forwarded the material objects also to the court.

3.17. Lastly, on 14.08.2008 at 3.00 p.m., he arrested A3 in the presence of P.W.10 and another witnesses and forwarded her for judicial remand.

3.18. Thereafter, he made a request to the learned Judicial Magistrate to hold identification parade in respect of A4 to A9. P.W.25, the then Judicial Magistrate, Kangeyam, conducted Test Identification Parade in respect of A4 to A9 on 29.08.2008. In the test identification parade, P.W.1 identified A4 to A9 on all the three occasions. P.W.2 identified A5 to A9 on all the three occasions, but, did not identify A4.

3.19. P.W.23 received the report from the Finger Print Expert which revealed that the finger prints of A6 tallied with the chance finger prints lifted from the bureau at the place of occurrence. He examined the Doctor besides the other official witnesses, collected the medical records and finally laid charge sheet against the accused on 22.10.2008.

4. Based on the above materials, the trial court framed as many as ten charges against the accused as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 25 witnesses were examined, 62 documents and 29 materials objects were marked.

5.0. Out of the said witnesses, P.W.1 and P.W.2 are the injured eye witnesses to the occurrence. These two witnesses have vividly spoken about the motive between A1's family and that of the family of the deceased and they have spoken about the entire occurrence. They have also identified A4 to A9 in court as the assailants. P.W.1 has also spoken about the complaint preferred by her. P.W.3 is a villager. He has stated that on hearing the alarm raised after the occurrence, he rushed to the house of P.W.1 and P.W.2 and he made arrangements for taking all the three injured to the hospital. Since his car was not sufficient to take all the three injured and since P.W.2 was bleeding profusely, he took P.W.2 alone to the hospital. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner.

hatched between A1 to A3 on 01.06.2008 at the house of A1. P.W.6 has stated that just few minutes before the occurrence, he found A2 near the house of the deceased and leading the rest of the accused and he showed the house of the deceased to A4 to A9. P.W.7 has spoken about the preparation of the observation mahazar, rough sketch and the recovery of material objects from the place of occurrence.

5.2. P.W.8 has spoken about the arrest of A1, A2, A4, A6, A9 and A10 and the disclosure statements made by them and the consequential recoveries of material objects from the respective accused. P.W.9 has spoken about the custody of A5, A7 and A8 and their disclosure statements and also the consequential recoveries of material objects. P.W.10 has spoken about the arrest of A3.

5.3. P.W.11 - the Doctor, has stated that at 07.30 p.m. on 21.06.2008 when he was in Amaravathi Hospital at Karur, he examined P.W.2 and found the injuries and gave treatment to her. Ex.P.22 is the wound certificate. On the same day, at 07.30 p.m. when he examined the deceased, he found him dead.

5.4. P.W.12, a Civil Assistant Surgeon, Government Hospital, Dharapuram, has spoken about the postmortem conducted on the body of the deceased and his final opinion regarding the cause of death of the deceased. P.W.13 - the Doctor has stated that at 07.25 a.m. on 22.06.2008, he examined P.W.1 who came with a police memo and gave treatment for her. He has stated that he found two injuries on her body as follows:-

- (1) a contusion on the left arm; and
- (2) an abrasion on the left leg.

He has stated that the above said injuries were simple in nature. Ex.P.24 is the Copy of Accident Register issued by P.W.13.

5.5. P.W.14 has spoken about the lifting of chance finger prints from the bureau at the house of the deceased and further comparison of the same. On comparison, he found that the chance finger prints tallied with the finger prints of A6. P.W.15 has spoken about the photographs taken at the place of occurrence. P.W.16, an official from the Vodofone Limited, has spoken about the call details between the cellphones referred to hereinabove. P.W.17 is the Head Constable. He has stated that he carried both the complaint and the FIR from the police station and handed over the same to the court at 12.05 p.m. on 22.06.2008. P.W.18, the Head Clerk of the Judicial Magistrate Court, Dharapuram, has stated that he forwarded the material objects for chemical examination and the chemical analyst report received from the forensic lab revealed that there were blood stains on some of the material objects. P.W.20 has spoken about the registration of the case which relates to the motive occurrence. P.W.21 has spoken about the registration of the FIR in the present case. P.W.22 is an official from

Bharti Airtel Limited. He has also spoken about the call details. P.W.24, the Doctor, has spoken about the treatment given to P.W.2 at Koavi Medical Centre and Hospital at Coimbatore. P.W.25, the learned Magistrate has spoken about the test identification parade conducted by him. P.W.23 has spoken about the entire investigation done and the filing of final report.

6. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, they denied the same. However, they did not choose to examine any witness on their side nor did they mark any document. Their defence was a total denial.

7. Having considered all the above, the trial court found A1 to A10 guilty and accordingly punished them as detailed in the second paragraph of this judgement. That is how, the accused are now before this court with these criminal appeals.

8. We have heard the learned counsel for the respective appellant/accused and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

9. The alleged occurrence was on 21.06.2008. The motive for the occurrence has been spoken by P.W.1 and P.W.2. P.W.1 and P.W.2 have narrated the events which led to the enmity between the two families. There is no dispute regarding the same. Thus, we hold that the prosecution has succeeded in proving that A1 and A3 had strong motive against the deceased and his family members.

10. Now turning to the occurrence, so far as A1 to A3 are concerned, admittedly, they did not participate in the actual occurrence in which the deceased was killed and P.W.1 and P.W.2 were injured. They have been arrayed as accused only on the allegation that they had hatched a conspiracy on 01.06.2008 to commit the murder of the deceased. In order to prove the said conspiracy, the prosecution relies on the evidence of P.W.5. P.W.5 is not a stranger to the deceased. As admitted by him in his evidence, he is a pangali (a relative) of the deceased. According to him, the conspiracy was hatched on 01.06.2008 at 05.00 p.m. at the house of A1. He has stated that when he went to the house of A1, he found A1 to A3 in the house engaged in discussion. At that time, without noticing the arrival of P.W.5, it is alleged that A3 told A2 to do away with the deceased and his family members. And A1 intervened and told that he would engage hirelings by paying money and he would ensure that the deceased and his family members were killed. Now the question is, whether to believe P.W.5 or not. P.W.5 had earlier contested in the parliament election and he is an educated man. It is not as if he did not come to know about the occurrence soon after the

occurrence. He has admitted that he was aware of the death of the deceased and he went to the house of the deceased for condolence within a five days after the death of the deceased. At that time, according to him, all the family members of the deceased were there, but, he did not choose to inform any of them about the above said conspiracy though he was aware of the fact that till then the assailants were not known. Some of the assailants were arrested only on 31.07.2008. Thus, for about two months, the assailants were not known. P.W.23 had even circulated pamphlets in that area requesting the public to give any information they had about the occurrence or the assailants. Had it been true that there was conspiracy between A1 to A3 on 01.06.2008, that too, in the presence of P.W.5, by all means, he would have disclosed the same either to the family members of the deceased or to some other interested persons including the police. He has not offered any explanation as to why he did not disclose about the same to anybody for two months. He was examined by P.W.23 only on 06.08.2008. In view of the above said conduct of P.W.5, we find it difficult to believe P.W.5. As a matter of fact, even the trial court has expressed that it was too difficult to believe P.W.5. In view of the same, we reject the evidence of P.W.5. If once his evidence is so rejected, then, the accused 2 and 3 are entitled for acquittal as there is no other evidence against them. As against the others there are other evidences even in respect of conspiracy about which we will discuss a little later.

11. Now, turning to the evidence regarding the actual occurrence, P.W.6 has stated that just before a few minutes of the occurrence, he found A4 to A10 in the car and A2 had led them to the house of the deceased and showed the same. Thereafter, according to him, A2 left the place. This witness also cannot be believed inasmuch as he also did not disclose about the same to anybody, including the family members of the deceased for about two months. He is also not a stranger and he is a pangali [a relative] of the deceased. He has stated that on 22.06.2008, he had left for Pune and returned only in the first week of August, 2008. But, this explanation does not persuade us inasmuch as there is no material to show that he was not available in the village and he had gone to Pune. During cross examination, he has stated that that in the interregnum he came to the village on two occasions and stayed for a few days. As a matter of fact, on 22.06.2008, he was very much in the village. It is not known as to why he did not disclose about the above fact to anybody including the family members of the deceased. Further, there was no Test Identification Parade held, though, A4 to A10 were not previously known to him. Thus, the identification made for the first time after several years cannot be relied on. For these reasons, the evidence of P.W.6 is liable to be rejected and we, accordingly, reject the same.

12. Now, turning to the case against A10, it is alleged

that he was the driver of the Tata Sumo Car in which A4 to A9 had gone to the house of the deceased and after the occurrence they escaped from the scene of occurrence. But, nobody had seen the tata sumo car anywhere near the scene of occurrence except P.W.6. As we have already concluded, P.W.6, the only witness who claimed to have seen the Tata Sumo Car has been disbelieved. In his evidence, P.W.6 has, in a very vague manner, stated that he had seen the said vehicle in which there were a number of people. He has not specifically stated that he saw A10. Thus, there is no evidence at all as against A10 to prove that he had accompanied A4 to A9 to commit the crime as alleged by the prosecution. The recovery of the Tata Sumo Car on the disclosure statement made by him would not in any manner incriminate A10, for, the connection between the Tata Sumo Car (M.O.24) and the crime has not been established by the prosecution. Thus, A10 is entitled for acquittal from all the charges.

13. Turning to the case against A4 to A9, the prosecution mainly relies on the eyewitness account of P.W.1 and P.W.2. P.W.1 and P.W.2 are the injured eye witnesses. The occurrence had taken place just within the compound of the house of the deceased and also inside the house. P.W.1, the daughter of the deceased was in the house as she had come to the village to take part in a local festival. The presence of P.W.1 and P.W.2 at the place of occurrence and at the time of occurrence cannot, therefore, be doubted at all.

14. Now the question is, whether P.W.1 and P.W.2 could be believed so as to sustain the conviction of A4 to A9. These two witnesses had not seen A4 to A9 on any occasion prior to the occurrence. Admittedly, for the first time, they saw these accused only at the time of occurrence. After the arrest of the accused, they were put up for Test Identification Parade. P.W.25, the learned Magistrate, conducted the test identification parade on 29.08.2008. In that identification parade, P.W.1 had correctly identified A4 to A9 on all the three occasions. P.W.2 had identified A5 to A9 on all the three occasions, but did not identify A4. These two witnesses, namely, P.W.1 and P.W.2 have correctly identified, A4 to A9 in court while under examination.

15. The learned counsel appearing for the appellants/accused would submit that no weightage could be given to the identification made by P.W.1 and P.W.2, both during the test identification parade as well as in court. According to them, there was no sufficient light at the time of occurrence and, therefore, they would not have noticed the identifying features of the assailants. But, we find it difficult to accept the said argument for, P.W.1 and P.W.2 have categorically stated that there were a number of tube lights and other lights glowing inside the house of the deceased and within the compound of the deceased. P.W.1 has stated that these accused had barged into the compound of the

house and asked the deceased as to where his son was and when he stood up from the cot and enquired, suddenly, A4 threw chilly powder on his face and the accused started attacking him. In the same occurrence, P.W.1 and P.W.2 were also attacked by the accused. Thus, we find that there was sufficient light available and, therefore, these two witnesses would have been in a position to notice the identifying features of the assailants.

16. The learned senior counsel, Mr.A.Raghunathan, appearing for some of the the appellants/accused would next point out that the identifying features of these accused were not mentioned by these two witnesses during investigation and therefore, the identification made during the test identification parade cannot be given weightage of. Though there appears to be some force in the said argument, it does not persuade us at all.

17. In the instant case, the identification parade was conducted not very belatedly. As soon as the accused were secured, test identification parade was conducted promptly in which these witnesses have identified the accused. At this juncture, we wish to state that it is not illegal to believe the identification made for the first time in court, if it satisfies the judicial conscience of the court even in the absence of prior test identification parade. The prior test identification parade is conducted only to ensure the identity. It only corroborates the identification that is made in court. Further, in the instant case, since the accused were engaged in conversation with the deceased for some time and since the accused remained at the place of occurrence for a long time, they would have had sufficient opportunity to note the identifying features. When that be the position, simply because, the identifying features of the assailants were not earlier mentioned by P.W.1 and P.W.2, the identification made by them, both during the test identification parade as well as before the court during trial, cannot be doubted. Going by the various peculiar circumstances, though in this case, the identifying features of the accused were not mentioned earlier by P.W.1 and P.W.2, we find no difficulty in giving weightage for the identification made by P.W.1 and P.W.2, both during test identification parade as well as in court during trial.

18. Mr.John Sathyan, the learned counsel appearing for some of the accused, would submit that at the time, when the test identification parade was conducted, these accused told the learned Magistrate that they were shown to the witnesses by the police before the identification parade. But, we find that no such fact was elicited either from P.W.1 or from P.W.2 or at least from P.W.23, the investigating officer. It was not even suggested to P.W.1 and P.W.2 that the accused were earlier shown to them before the test identification parade so that the said witnesses could have explained the truth. In the

absence of any such evidence elicited from P.W.1, P.W.2 or P.W.23, the investigating officer or in the absence of even a suggestion made to these witnesses affording an opportunity for them to explain, it is not open for the appellants/accused, for the first time, to contend before this court that they were shown to P.W.1 and P.W.2 before the test identification parade was held. Mere statement of the accused to the Magistrate at the time of test identification parade would not take the shape of evidence so as to draw weightage for the said statement. Therefore, this argument of the learned counsel Mr. John Sathyan is rejected.

19. Mr. A. Raghunathan, the learned senior counsel would next contend that when P.W.1 had gone to the Doctor, she told that 15 assailants participated in the occurrence whereas there are only six accused as assailants now before the court. This, according to the learned senior counsel, is a material contradiction. Of course, P.W.1 has been contradicted by this statement recorded in the accident register by the Doctor who treated P.W.1. But, the fact remains that even before the said statement was made to the Doctor, P.W.1, in the complaint, has specifically stated that the assailants were only six. In our considered view, this minor contradiction will not carry any undue weightage so as to doubt the credibility of the witnesses.

20. The learned senior counsel would further point out that P.W.1 and P.W.2 have, now, stated that A5 attacked the deceased with iron vallam and A6 attacked him with the arm of a wooden cot, but, according to the learned senior counsel, nothing was stated by these witnesses either in Ex.P.1 or in their statements to the police during investigation about the said weapon. Thus, according to the learned senior counsel, this is only an improvement. Of course, it is true, that P.W.1 had not stated anything about the weapons used by A5 and A7, both in Ex.P.1 as well as during interrogation. In our considered view, it is only a negligible omission on the part of P.W.1. Such contradictions or omissions are explainable by the said witnesses or by circumstances. As we have already narrated, in the instant case, the assailants, who were strangers, had trespassed into their compound and after throwing chilly powder had attacked and in such a situation, it is quite natural for the witnesses to omit certain facts in the complaint as well as during interrogation in that tense mood. This natural omission would not in any manner create a doubt in the veracity of P.W.1. Proving the contradictory statements and omissions to state certain facts may, if so vital, impeach the credibility of a witness as provided in Section 155 of the Evidence Act. But, Section 155 of the Evidence Act, does not mandate that invariably in all cases, on proof of the previous contradictory statement, the witness should be disbelieved. Section 155 of the Evidence Act is only a rule regulating or guiding the court in the matter of appreciating the evidence of the said witness. In the instant

case, going by the nature of the occurrence and going by the turbulent situation in which P.W.1 and P.W.2 were placed at the time of occurrence, we are of the view that on the ground of the above said omission on the part of P.W.1 to mention about the weapons used by A5 and A6, the credibility of the said witness cannot be doubted. Therefore, this argument of the learned senior counsel is also rejected.

21. The learned counsel Mr. John Sathyan would next contend that there is an interpolation in Ex.P.1 which would again create a doubt in the case of the prosecution. We are not at all persuaded by the said argument. By simply reading Ex.P.1, we cannot give a finding that there is an interpolation in Ex.P.1 and on that score there is a doubt in the case of the prosecution. Any correction or interpolation, if really found in Ex.P.1, is a matter to be explained by the maker of the statement namely, P.W.1. If really, it is the stand of the accused that such interpolation was made subsequently, that too, without the knowledge of P.W.1, it should have been brought to the notice of P.W.1, while under examination in court, calling upon her to explain the same. In the absence of any such opportunity afforded to P.W.1, we cannot rush to the conclusion that there is interpolation and that the said interpolation was made without the knowledge of P.W.1. Therefore, this argument is also rejected.

22. As against A6, there is yet another evidence, upon which, the prosecution makes reliance i.e., the chance Finger Prints. According to P.W.14, he lifted four finger prints found on the bureau at the house of the deceased. [P.W.1 has stated that the accused entered into the house, threw away the materials from the bureau]. Out of the four finger prints lifted from the house of the deceased, one finger print tallied with one of the inmates and yet another finger print was not sufficient for the purpose of comparison. The rest of the two chance finger prints found on the bureau at the house of the deceased tallied with the finger prints of A6, it is stated by the prosecution.

23. The learned senior counsel Mr. A. Raghunathan, would submit that the evidence of P.W.14 cannot be given any weightage. According to him, the enlarged photographs of the chance finger prints lifted and the alleged finger prints taken from A6 were not furnished to the accused and thus, the accused was deprived of examining as to whether the opinion of P.W.14 is correct or not. We find force in the said argument. It is the settled law that to enable the accused to have effective defence, by way of affording fair procedure, the accused should have been furnished with the enlarged copies of the chance finger prints as well as finger prints taken from the accused. It is also well settled that the reasons for coming to the conclusion that the chance finger prints tallied with the finger prints of the accused should also be furnished to the accused and the same should also be proved in evidence.

The opinion of a scientific expert cannot be simply accepted unless the expert gives reasons for his opinion. After all, under Section 45 of the Evidence Act, the opinion of the expert could be accepted and acted upon by the court provided the court is satisfied with the reasons given by the witness to come to a particular opinion. In the instant case, the evidence of P.W.14 which is bereft of any reason does not satisfy the judicial conscience of this court. Since the reasons for the opinion arrived at by P.W.14 have not been either spoken by him or furnished to the accused or proved in evidence, we hold that the evidence of P.W.14 cannot be accepted.

24. Apart from that, there is yet another strong circumstance against P.W.14's evidence. P.W.14 has stated that he compared the chance finger prints with the finger prints stated to be that of A6 received by him from the police. But, absolutely, there is no evidence that at any point of time the finger prints of A6 were taken. Even P.W.23 has not stated anywhere in his evidence that the finger prints of A6 were taken either by him or anybody else. The finger prints alleged to be that of A6 which were used for the purpose of comparison have not been marked in evidence also. For these reasons, as rightly pointed out by the learned senior counsel, the evidence of P.W.14 cannot be acted upon. Accordingly, we reject the same.

25. Next comes the arrest of the accused, the disclosure statements made and the recoveries of the material objects. A1 was arrested on 31.07.2008 out of suspicion. The suspicion arose on account of several mobile conversations between A1 and A7. Ex.P.27 is the record of details of incoming and outgoing calls with tower location of the Cellphone bearing No. 9962346817. This was issued by P.W.16. According to P.W.16, the registered owner of the mobile phone number 9962346817 was A1. The registered name and address of the owner of the said mobile number was Mr.Gobu.G, No.8/269, Rahuman Golden Chat Nagar, Nerkundram 600107. This address is that of A1. When A1 was questioned in respect of the same, he did not deny the same. The learned counsel appearing for A1 would tacitly admit, that there is no dispute raised that the said mobile number belonged to A1. A1 also has not taken any plea anywhere that he was not using the said mobile number. P.W.16 has further stated that the mobile number 9787614677 belonged to one Mr.Damodharan. Its registered address is 6-1, Kollamandapam Street, Ward-16, Tiruchengodu, Namakkal 637211. According to him, the said mobile number was activated on 11.03.2008. From the evidence of P.W.16, the prosecution has proved beyond reasonable doubt, that A1 during the relevant period, was the owner of the mobile number 9962346817 and A7 was the owner of the mobile number 9787614677.

number belonging to A1 for the relevant period. Ex.P.27 is the details of incoming and outgoing calls with tower locations for cell phone number 9962346817 provided by P.W.16. A perusal of Ex.P.27 would go to show that there were calls from the mobile number of A1 to the mobile number of A7 at 3.16 pm; 3.33 pm; 4.52 pm; 5.37 pm; 6.20 pm; 6.22 pm; 6.29 pm; 6.50 pm; 7.20 pm; 7.50 pm; 7.58 pm; 8.09 pm; 8.22 pm; 8.40 pm; 8.41 pm; 8.42 pm; 8.48 pm; 8.57 pm; 9.21 pm; 10.20 pm; and 10.26 pm on 04.06.2008. Ex.P.28 is the call details of vodofone mobile number 9781614677 belonged to A7. A perusal of Ex.P.28 would tally with the above calls made. Ex.P.29 is the SMS details from 21.06.2008 between 5.00 p.m. and 08.00 p.m. from Chinnamarudur-1 Cellphone Tower location. Ex.P.30 is the details of ownership of the SIM card for the mobile number 9962346817. This document clearly shows that it is in the name of A1. Similarly, Ex.P.31 is the customer address relating to mobile number 9787614677. This stands in the name of A7.

27. From these call details, the prosecution has attempted to prove that on 21.06.2008, from 01.34 p.m. onwards, there were frequent out going and incoming calls from the mobile number of A1 to that of A7. Ex.P.27 reveals that between 01.34 p.m. and 10.26 p.m. there were 25 incoming and out going calls. On few occasions, the calls lasted for more than six minutes, more particularly, just before and after the occurrence, several incoming and out going calls have been recorded between these two mobile numbers. Neither A1 nor A7 has got any explanation for the same. These mobile phone conversations would clearly go to give an inference, which is very reasonable, that A1 and A7 were in close contact during the crucial time and this itself would give rise to a presumption that A1 had instigated A7 to commit the murder of the deceased provided that these documents have been proved in accordance with law.

28. But, the learned counsel for A1 would submit that Ex.P.27 to P.29 cannot be accepted as they are not admissible in evidence in view of section 65B of the Evidence Act. P.W.16, during cross examination has admitted that Ex.P.27 to Ex.P.29 do not contain even the signature of any of the officials of the company and they do not even contain the office seals. Section 65-B of the Evidence Act mandates that in order to admit any electronic evidence, one of the requisite conditions is that there has to be a certificate issued by the competent authority.

29. In this case, according to the learned counsel for A1, there was no such certificate at all issued as required under sub-section (4) of Section 65-B of the Evidence Act. Therefore, Ex.P.27 to Ex.P.29 are not at all admissible in evidence, the learned senior counsel contended. In this regard, he makes reliance on the judgement of the Hon'ble Supreme Court, in Anvar.P.V. v. P.K.Basheer and others, 2014

(10) SCC 473 wherein the Hon'ble Supreme Court has held that in the absence of any certificate under Section 65-B of the Evidence Act from the competent authority, the electronic evidence is not admissible. In view of the law laid down by the Hon'ble Supreme Court, we find force in the said argument and accordingly, we hold that Ex.P.27 to Ex.P.29 are not admissible in evidence. It is unfortunate that though these documents, more particularly, Ex.P.27 shows that immediately before and after the occurrence, A1 and A7 were frequently talking to each other through their respective cellphones which may give rise to the presumption that A1 had instigated the other accused to commit the murder, since Ex.P.27 to Ex.P.29 are liable to be eschewed from consideration as they are inadmissible in evidence, the said presumption could not be drawn.

30. Now, turning to the arrest of A1, it was, of course, on the basis of suspicion, which arose out of Ex.P.27 to Ex.P.29 that A1 was arrested at 11.00 a.m. on 31.07.2008. On such arrest, he made a disclosure statement and out of the said disclosure statement, the mobile phone belonging to him was recovered. It was only out of the disclosure statement made by A1, the involvement of A4 to A9 came to the knowledge of P.W.23. In consequence of the said disclosure statement, the other accused were identified and arrested by P.W.23. A1 has got no explanation for his exclusive knowledge in respect of the involvement of A4 to A9. The above conduct of A1 squarely falls under Section 8 of the Evidence Act and that the presumption, which could be raised under Section 114 of the Evidence Act, is that A1 had closely moved with A4 to A9 during the relevant point of time and going by the fact that A4 to A9 had no direct motive with the deceased and his family members, we hold that A1 had only conspired with A4 to A9 to commit the murder of the deceased.

31. Now, turning to the recoveries of material objects, the recoveries of gold jewels on the disclosure statements made by the respective accused have been duly identified by P.W.1 as that of her own belongings. P.W.1 had mentioned about these jewels at the earliest point of time in the complaint itself when the assailants were not even known. These accused have got no explanation for the possession of these gold jewels. The learned counsel Mr. John Sathyan submitted it is highly unbelievable that the accused would have kept the alleged stolen jewels for two months. The learned senior counsel Mr. A. Raghunathan would submit that there was no test identification conducted in respect of the gold jewels which were recovered from A5, A7, A8, A9, and, therefore, no weightage could be given for the identification made in respect of these jewels for the first time by P.W.1.

32. In this regard, the learned senior counsel Mr. A. Raghunathan relies on a judgement of the Hon'ble Supreme Court in *Pannayyar v. State of TN*, 2009 Cri.L.J. 4454, wherein

in para 11, the Hon'ble Supreme Court has held as follows:-

"11. This takes us against to the apathy on the part of the investigating officer in not getting the ornaments identified by holding test identification parade. We do not know why that was not done and why such a weak type of evidence (identification for the first time in the court) was introduced. Therefore, in our opinion, along with the first circumstances, second and third circumstance also loses its significance and it cannot be said that the accused was in possession of the ornaments of Thilagavalli immediately after her death."

33. We have gone through the entire judgement, cited supra. In that judgement, mainly on two grounds, the Hon'ble Supreme Court has rejected the case of the prosecution. The first one was that the accused would not have been moving with the stolen articles for twelve days after the occurrence. Going by the evidence let in in the said case, on facts, the Hon'ble Supreme Court found that it was not natural for the accused to keep the stolen goods in his pocket for twelve days. But, in the instant case, the gold jewels were kept by the accused very safely in the house of the respective accused. It cannot be held that under all circumstances the accused would dispose of the stolen properties as it is submitted by the learned counsel Mr. John Sathyan. Thus, there was nothing unnatural on the part of these accused in keeping the jewels intact for two two months.

34. The other ground upon which the Hon'ble Supreme Court has rejected the case of the prosecution was that there was no test identification parade conducted for the properties. Per contra, the learned Additional Public Prosecutor would make reliance on the judgement of the Hon'ble Supreme Court in Earabhadrapa alias Krishnappa v. State of Karnataka, (1983) 2 SCC 330, wherein the Hon'ble Supreme Court in para 12 has held as follows:-

"12. Our attention was drawn to the testimony of P.W. 13 Narayanareddy who, during his cross-examination, stated that ornaments similar to the gold rope chain and the pair of gold bangles were available everywhere and that other ornaments were also in his house. From this it is sought to be argued that the seized ornaments cannot be treated to be stolen property as they are ordinary ornaments in common use. Nothing really turns on this because P.W. 2 Smt. Bayamma, mother-in-law of the deceased, her husband P.W. 13 Makarappa and

son P.W. 4 G.M. Prakash have categorically stated that the seized ornaments belonged to the deceased Smt. Bachamma. There is no reason why the testimony of these witnesses should not be relied upon particularly when P.W. 2 Smt. Baymma was not cross-examined at all as regards her identification of the seized ornaments and clothes as belonging to the deceased. Even if the seized ornaments could be treated to be ornaments in common use, this witness could never make a mistake in identifying the seized six silk sarees (M.Os. 10 to 15). It is a matter of common knowledge that ladies have an uncanny sense of identifying their own belongings, particularly articles of personal use in the family. That apart, the description of the silk sarees in question shows that they were expensive sarees with distinctive designs. There is no merit in the contention that the testimony of these witnesses as regards the identity of the seized articles to be stolen property cannot be relied upon for want of prior test identification. There is no such legal requirement."

35. A cursory reading of these two judgments would go to show that the requirement for test identification depends upon the nature of the properties, the person who owned the properties and who made use of them. As held by the Hon'ble Supreme Court in Earabhadrapa alias Krishnappa's case, cited supra, it is quite common that the women folk have an uncanny sense of identifying their own belongings particularly articles of personal use in the family. That is how in the instant case, P.W.1 has identified the stolen properties which were her personal belongings. Therefore, the argument of the learned senior counsel Mr.A.Raghunathan is rejected.

36. From the foregoing discussions, it is crystal clear that the prosecution has proved that on the instigation made by A1, the Accused 4 to 9 had gone in an unlawful assembly and trespassed into the house of the deceased with a view to commit the murder of the deceased and some of them attacked the deceased that resulted in his death and some others attacked P.W.1 and P.W.2 and committed robbery.

37. Before concluding this judgement, we would like to express our displeasure and anguish over the way in which the trial court had framed charges in the instant case. A cursory reading of the charges, as extracted in paragraph No.1 of this judgement, would clearly go to show that the trial court had shown callous attitude while framing charges without realizing the greater responsibility which the court should have had

while framing appropriate charges. The Charge No.2 is against Accused 4 to 9 for offence under Section 147 of IPC. Though some of the accused were armed with deadly weapons, instead of framing charge under Section 148 of IPC, the trial court had framed charge under Section 147 of IPC against them also. Therefore, for the graver offence they could not be convicted. Further, the trial court had framed a charge under Section 395 of IPC as against A5, A6 and A7, but, framed a charge under Section 394 of IPC against A7. Similarly, A8 was a member of the group of people who committed dacoity . It is not known as to why the trial court framed charge as against A8 only for the offence under Section 394 of IPC. Similarly, it is not known as to why the trial court had not framed charge against A9 under Section 395 of IPC. When the murder had occurred in the same occurrence, it is not known as to why no charge has been framed under Section 396 of IPC and instead the trial court had chosen to frame charge for lesser offence. The Charge No.9 is against A8 and A9 for offence under Section 323 of IPC. Since the offences under Sections 394 and 395 of IPC include causing hurt, it is not known as to why the trial court had framed a separate charge under Section 323 of IPC as against A8 and A9. At any rate, the trial court could have done well by framing appropriate charges going by the allegations against each accused and the materials available against them. With pain, we state that while confirming the conviction and sentence against the accused, we have found that many of them escape either without punishment for the offence committed by them or with lesser punishment though the offences committed by them were graver in nature. We, believe that it is more because of the shady investigation and also because of the lapses committed by the trial court as pointed out thus far.

38. In the result,

(1) CrI.A.No.150 of 2012: This Criminal Appeal is dismissed. The conviction and sentence imposed on the Appellant/First Accused-Mr.Gobu for offences under Section 120 (B) of IPC and Section 302 r/w 120(B) of IPC by the trial court are confirmed.

(2) CrI.A.No.847 of 2011: This Criminal Appeal is allowed. The conviction and sentence imposed on the Appellant/Second Accused-Mr.Jagadeesan are set aside and he is acquitted of all the charges. Fine amount paid, if any, shall be refunded to him. His bail bond shall stand cancelled.

(3) CrI.A.No.793 of 2011: This Criminal Appeal is allowed. The conviction and sentence imposed on the Appellant/Third Accused-Mrs.Punniavathi are set aside and she is acquitted of all the charges. Fine amount paid, if any shall be refunded to her. Her bail bond shall stand cancelled.

38.(4)(i) CrI.A.No.48 of 2012: This Criminal Appeal is dismissed as against the 1st Appellant/Fourth Accused-Mr.K.Vinoth. The conviction and sentence imposed on him for the offences under Sections 120(B), 147, 449 and 302 of IPC by the trial court are confirmed.

(ii) This Criminal Appeal is dismissed as against the 2nd Appellant/Fifth Accused-T.Rajkumar. The conviction and sentence imposed on him for the offence under Sections 120(B), 147, 449, 302 and 395 of IPC by the trial court are confirmed.

(iii) This Criminal Appeal is dismissed as against the 3rd Appellant/Sixth Accused-Suresh. The conviction and sentence imposed on him for the offence under Sections 120(B), 147, 449, 302 and 395 of IPC by the trial court are confirmed.

(iv) This Criminal Appeal is partly allowed in respect of the 4th Appellant/Seventh Accused-K.Damu @ Dhamodharan. The conviction and sentence imposed on him for the offences u/s.120(B), 147, 449, 302 r/w 149, 395 and 506 (ii) of IPC [Two counts] by the trial court are confirmed. The conviction and sentence imposed on him for the offence u/s.394 of IPC is set aside and he is acquitted of the said charge. Fine amount paid, if any, by the Seventh Accused, as against the sentence under Section 394 of IPC shall be refunded to him.

38.(5)(i) CrI.A.No.47 of 2012: This Criminal Appeal is partly allowed in respect of the 1st Appellant/Eighth Accused-Vijai @ Vijaikumar. The conviction and sentence imposed on him for the offence under Sections 120(B), 147, 449, 302 r/w 149, 394 of IPC are confirmed, however, the conviction and sentence imposed on him for offence under Section 323 of IPC is set aside and he is acquitted of the said charge.

(ii) This Criminal Appeal is partly allowed in respect of the 2nd Appellant/Ninth Accused-Mani @ Mamsmani @ R.Manikumar. The conviction and sentence imposed on him for the offence under Section 120(B), 147, 449, 302 r/w 149 of IPC by the trial court are confirmed, however, the conviction and sentence imposed on him for the offence under Section 323 of IPC is set aside and he is acquitted of the said charge.

(iii) This Criminal Appeal is allowed in respect of the 3rd Appellant/Tenth Accused-G.Baskar. The conviction and sentence imposed on him by the trial court is set aside and he is acquitted of all the charges. Fine amount paid, if any, shall be refunded to him. His bail bond shall stand cancelled.

It is reported that A1 and A4 to A9 are on bail, therefore, the learned Additional Sessions Judge, Fast Track Court No.III, Dharapuram, shall take necessary steps to secure them and to commit them to prison to undergo the unexpired portion of the sentence.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The Additional Sessions Judge, FTC-III, Dharapuram, Tirupur District.
2. The Inspector of Police, Moolanur Police Station, Thirupur District.
3. The Public Prosecutor, High Court, Madras.
4. The Judicial Magistrate, Dharapuram.
5. The Chief Judicial Magistrate, Erode (for information)
6. The Superintendent, Central Prison, Coimbatore.
7. The Director General of Police, Mylapore, Madras-4.
8. The District Collector, Erode, District.

- + 1 cc to Mr.R. Sundar Mohan, Advocate Sr.16862
- + 1 cc to Mr.A. Amarnath, Advocate Sr.16979
- + 1 cc to Mr.R. John Sathyan, Advocate SR.17225
- + 1 cc to M/s. Vanathi Srinivasan, Advocate SR.16865
- + 1 cc to Mr.Su. Srinivasan, Advocate SR.16486

CrI. Appeal Nos.793 & 847 of 2011, 47,
48 and 150 of 2012

VSN(CO)
EU 28.03.16

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