

Bail Slip

Crl.A.No.484 of 2012:

Accused No.13 Kumar @ Rajkumar S/o. Janakiraman enlarged on Bail by the order of this court in MP No.1 of 2012 in Crl.A.No.484 of 2012, dated 05.10.2012.

Accused No.1 Arul @ Arul Jothi S/o. Janakiraman, enlarged on Bail by the order of this court in MP No.2 of 2012 in Crl.A.484 of 2012, dated 05.10.2012.

Crl.A.No.548 of 2012:

Accused No.8 Sathish @ Sathish Kumar S/o. Kaliyaperumal.
Accused No.9 Vijayarangan S/o. Jayaraman
Accused No.10 Siva @ Sivaraj S/o. Marimuthu
Accused No.12 Kaliyamurthi S/o. Pavadai

are enlarged on Bail by the order of this court in MP No.1 of 2012 in Crl.A.No.548 of 2012, dated 10.10.2012.

Crl.A.No.553 of 2012:

Accused No.2 Sathish @ Sathish Kumar S/o. Arumugam
Accused No.3 Mohan S/o. Arumugam

are enlarged on Bail by the order of this court in MP No.1 of 2012 in Crl.A.553 of 2012, dated 05.10.2012.

Crl.A.No.587 of 2012:

Accused No.4 Pandurangan S/o. Chinnathambi
Accused No.5 Pushpanathan S/o. Chinnathambi

are enlarged on Bail by the order of this court in MP No.1 of 2012 in Crl.A.No.587 of 2012, dated 05.10.2012.

Crl.A.No.605 of 2012:

Accused No.15 Kannan S/o. Kamaraj
Accused No.16 Masco @ Prakash S/o. Murugan
Accused No.17 Rajaguru S/o. Murugan

are enlarged on Bail by the order of this court in MP No.1 of

2012 in CrI.A.605 of 2012, dated 31.10.2012.

CrI.A.No.688 of 2012:

Accused No.6 Devanathan S/o.Goindasamy
Accused No.7 Kumar S/o.Gandhi
Accused No.11 Dhasarathan S/o. Devanathan
Accused No.14 Gunasekaran S/o. Gandhi.

are enlarged on Bail by the order of this court in MP No.1 of 2012 in CrI.A.688 of 2012, dated 10.10.2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
AND
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

CRIMINAL APPEAL Nos. 484, 548, 553, 587, 605
and 688 of 2012

1.Arul @ Arul jothi

2.Kumar @ Raj Kumar .. Appellants/Accused 1&13 in
CrI.A.No.484/2012

1.Sathish @ Sathishkumar

2.Vijayarangan

3.Siva @ Sivaraj

4.Kaliyamurthi .. Appellants/Accused 8,9,10 & 12 in
CrI.A.No.548/2012

1.Sathish @ Sathish Kumar

2.Mohan .. Appellants/Accused 2&3 in
CrI.A.No.553/2012

1.Pandurangan

2.Pushpanathan .. Appellants / Accused 4 & 5 in
Crl.A.No.587/2012

1.Kannan

2.Masco @ Prakash

3.Rajaguru .. Appellants /Accused 15,16 & 17 in
Crl.A.No.605/2012

1.Devanathan

2.Kumar

3.Dhasarathan

4.Gunasekaran ... Appellants/Accused 6,7,11 & 14 in
Crl.A.No.688/2012

Vs.

State by Inspector of Police
Nellikuppam Police Station
Cuddalore District.
(Crime No.676 of 2008)

..Respondent/Complainant in all Appeals

These Criminal Appeals are preferred under Section 374(2)
Cr.P.C against the judgment of conviction and sentence passed by
the learned Principal District & Sessions Judge, Cuddalore, made
in S.C.No. 32 of 2010, dated 30.07.2012.

For Appellants : Mr.A.Natarajan
in Crl.A.Nos.484 Senior Counsel
& 548 of 2012 for Mr.K.Pasupathi
& Mr.R.Thamaraiselvan
respectively.

For Appellants : Ms.D.Prasanna
in Crl.A.Nos.553
of 2012

For Appellants : Mr.V.Gopinath
in Crl.A.Nos.587, Senior Counsel
605 & 688 of 2012for Mr.S.Rajakumar,
for Mr.L.Mahendran &
for Mr.L.Mahendran respectively.

For Respondent : Mr.M.Maharaja
in all Appeals Additional Public Prosecutor

COMMON JUDGMENT

(The judgment of the Court was made by S.NAGAMUTHU, J.)

The appellants are the accused Nos. 1 to 17 in S.C. No. 32 of 2010 on the file of the learned Principal District & Sessions Judge, Cuddalore. The 1st appellant in Crl.A.No.548 of 2012, who is arrayed as accused No.8, died during the pendency of the appeal. The Trial Court framed as many as 19 charges against the accused Nos.1 to 17, as detailed below :-

Sl.No.	Charge Number	Rank of Accused	Penal Provision
1	Charge No.1	Accused Nos. 1 to 17	147 IPC
2	Charge No.2	Accused Nos.1 to 6,9,13 & 14	148 IPC
3	Charge No.3	Accused Nos. 1 to 17	449 IPC
4	Charge No.4	Accused Nos.1, 2,6, 9, 10 & 14	302 IPC
5	Charge No.5	Accused Nos.3 to 5, 7, 8, 11, 12, 13, 15 to 17	302 r/w.149 IPC
6	Charge No.6	Accused Nos.5,6&9	324 IPC
7	Charge No.7	Accused Nos.10 to 12	323 IPC
8	Charge No.8	Accused No.7	323 IPC (2 counts)
9	Charge No.9	Accused No.13	324 IPC (2 counts)
10	Charge No.10	Accused No.2	324 IPC (3 counts)
11	Charge No.11	Accused No.1	324 IPC
12	Charge No.12	Accused No.5	326 IPC
13	Charge No.13	Accused No.3	324 IPC (2 counts)

Sl.No.	Charge Number	Rank of Accused	Penal Provision
14	Charge No.14	Accused No.4	324 IPC (2 counts)
15	Charge No.15	Accused Nos.1 to 17	506 (ii) IPC
16	Charge No.16	Accused Nos.1 to 17	Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992
17	Charge No.17	Accused Nos.1 to 17	Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992
18	Charge No.18	Accused Nos.1 to 17	Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992
19	Charge No.19	Accused Nos.1 to 17	Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992

The Trial Court, by common judgment, dated 30.07.2012, convicted all the 17 accused under the following charges and accordingly, punished them as detailed below:-

Sl. No.	Charge No.	Rank of Accused	Conviction	Sentence
1	Charge No.1	Accused Nos.1 to 17	147 IPC	To undergo two years rigorous imprisonment.
2	Charge No.2	Accused Nos.1 to 6, 9, 13 & 14	148 IPC	To undergo three years rigorous imprisonment.
3	Charge No.3	Accused Nos.1 to 17	449 IPC	To undergo ten years rigorous imprisonment.
4	Charge No.4	Accused Nos.1, 2, 6, 9, 10 and 14	302 IPC	To undergo life imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for 15 days.

Sl. No.	Charge No.	Rank of Accused	Conviction	Sentence
5	Charge No.5	Accused Nos.3, 4,5,7,8,11, 12,13,15,16 &17	Section 302 r/w.149 IPC	To undergo life imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for 15 days.
6	Charge No.6	Accused No.5 Accused No.6 Accused No.9	Section 324 IPC (2 counts) Section 324 IPC Section 324 IPC	Acquitted To undergo rigorous imprisonment for three years. Acquitted
7	Charge No.7	Accused Nos.10,11&12	Section 323 IPC	To undergo rigorous imprisonment for one year.
8	Charge No.8	Accused No.7	Section 323 IPC (2 counts)	Acquitted.
9	Charge No.9	Accused No.13	Section 324 IPC (2 counts)	To undergo three years rigorous imprisonment (one count)
10	Charge No.10	Accused No.2.	Section 324 IPC (3 counts)	Acquitted.
11	Charge No.11	Accused No.1	324 IPC	To undergo rigorous imprisonment for three years.
12	Charge No.12	Accused No.5	326 IPC	To undergo rigorous imprisonment for seven years.
13	Charge No.13	Accused No.3	324 IPC (2 counts)	To undergo rigorous imprisonment for three years (one count)

Sl. No.	Charge No.	Rank of Accused	Conviction	Sentence
14	Charge No.14	Accused No.4	324 IPC (2 counts)	To undergo rigorous imprisonment for three years (one count)
15	Charge No.15	Accused Nos.1 to 17	506 (ii) IPC	To undergo rigorous imprisonment for two years.
16	Charge No.16	Accused Nos.1 to 17	Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992	To undergo rigorous imprisonment for one year.
17	Charge No.17	Accused Nos.1 to 17	Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992	Acquitted
18	Charge No.18	Accused Nos.1 to 17	Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992	To undergo rigorous imprisonment for one year.
19	Charge No.19	Accused Nos.1 to 17	Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992	To undergo rigorous imprisonment for one year.

Challenging the said judgment of conviction and sentence, dated 30.07.2012, the appellants are before this Court with these Criminal Appeals.

2. The case of the prosecution in brief is as follows :-

(i) All the accused belong to Manjakuppam Village in Cuddalore District. The prosecution party belong to T.Kumarapuram Village, Cuddalore District. These two Villages

are neighbouring Villages. There was a long standing enmity between two Villagers in connection with running T.V.Cable operation in T.Kumarapuram Village.

(ii) On 27.10.2008, the accused Nos.2, 5 and 6, on account of the above enmity, attacked P.W.11-Iyyappan. P.W.11 sustained injuries in the said occurrence and he was admitted in the hospital. Enraged over the same, the supporters of Iyyappan (P.W.11) went to the house of the 2nd accused and caused extensive damage to the house. In respect of the said occurrence also, a case was registered against the prosecution party.

(iii) The deceased in this case was one Janarthanan. The accused party felt that the said Janarthanan was the brain behind all these incidents. The 5th accused was arrested in connection with the above case and he was later on released on bail. Because of these incidents, the prosecution party and the accused party were in loggerheads and enmity became more stronger between them.

(iv) While so, it is alleged that on 29.10.2008, around 1.00 a.m., all these 17 accused came near the house of the deceased Janarthanan. P.W.1-Vignesh, who is the son of the deceased, and other inmates were sleeping in the house. Accused Nos.1 to 6, 9, 13 and 14, were all armed with deadly weapons. To be precise, accused Nos.1, 2, 4, 6 and 13 were armed with knives; accused Nos.3, 5 and 9 were armed with iron pipes; and accused No.14 was armed with cycle-chain. The other accused were unarmed. All these 17 accused came in an unlawful assembly to the house of the deceased and forcibly opened the doors and trespassed into the house of the deceased. On finding the deceased inside the house, it is alleged that the 1st accused stabbed the deceased near his right eyebrow; the 2nd accused caused injury on the middle of his head with a knife; the 6th accused cut the deceased on the left side of his head with a knife; the 9th accused attacked the deceased with an iron pipe on his hip and left knee; the 10th accused attacked the deceased with a stick on the left side of the chest of the deceased; and the 14th accused took a brandy bottle and after breaking the same, he stabbed the deceased on his abdomen with the broken bottle.

(v) In the same occurrence, it is alleged that the son of the deceased (P.W.1-Vignesh) intervened to save his father. The 5th accused attacked him with an iron pipe on the left side of his hip. In the same transaction, the 6th accused attacked P.W.5-Anjalai with a knife on her right knee. The 9th accused attacked the witness Sivajothi with an iron pipe on her hip. The 10th accused attacked P.W.7-Kathiravan with a stick. The 11th

accused attacked P.W.3-Sumathi with a stick on her left thigh. The 12th accused attacked P.W.3-Sumathi near the left ear. In the same transaction, the 7th accused attacked P.W.1-Vignesh with a stick and also kicked the witness Sivajothi by legs on her abdomen. The 13th accused attacked P.W.1-Vignesh with a knife on his head and also caused injury to P.W.2-Kirubakaran. The 2nd accused attacked P.W.4-Pavunambal with a knife. The 2nd accused attacked Sivajothi with a knife on her head and finally, he attacked P.W.7-Kathiravan with a knife on his head. The 1st accused attacked P.W.6-Subramanian with a knife on his head. In the same transaction, the 5th accused attacked P.W.6-Subramanian with an iron pipe on his right shoulder and caused grievous hurt. The 3rd accused attacked P.W.3-Sumathi with an iron pipe on her right side of the head and right forehead. The 3rd accused again attacked P.W.7-Kathiravan with an iron pipe on his right shoulder. The 4th accused attacked P.W.4-Pavunambal with a knife on her left knee and also attacked P.W.5-Anjalai with knife on her right index finger. In the same transaction, all these 17 accused criminally intimidated the prosecution witnesses by uttering the words, "Do not leave anybody alive and kill them all".

(vi) In the same occurrence, it is alleged that all these accused caused extensive damage to the house of P.W.1-Vignesh. The extent of the damage caused to the properties, such as, windowpane, clock, fan, tubelights, was more than Rs.20,000/-. All the 17 accused then went to the house of P.W.11-Iyyappan and caused damage to the gas stove, plastic chairs, tubelights, grinder, plastic plates, steel utensils and Hero Honda motorcycle, worth around Rs.30,000/-. Then, all the accused went to the house of P.W.8-Natarajan and caused damage to the portraits of the political leaders and Hero Honda motorcycle and other properties worth around Rs.15,000/-. In the same occurrence, all the 17 accused went to the house of P.W.9-Sowndhararajan and caused extensive damage to the grinder, fan, wall clock, tubelight, almairah glass and house hold utensils, worth around Rs.15,000/-. After the above occurrence, all the accused fled away from the scene of occurrence. The injured persons, including the deceased, were immediately taken to the Government Hospital at Cuddalore.

(vii) P.W.16-Dr.Senthil Kumar of Government Hospital at Cuddalore District, examined P.W.6-Subramanian, on 29.10.2008, at 2.30 a.m. P.W.6 told him that on the same day at 1.30 a.m., at his residence, ten known persons had attacked him with wooden log, iron rod and iron bar. He found the following injuries on his body :-

- (1) A laceration, measuring 1.5 x 5 x .5 cm over the middle of the scalp.

(2) Complains of pain in right shoulder tenderness
unable to lift it up.

X-ray taken on the right shoulder revealed that there was a fracture. According to P.W.16-Doctor, the injury No.1 was simple in nature and injury No.2 was grievous in nature. Ex.P.5 is the Wound Certificate of P.W.6.

(viii) On the same day i.e., on 29.10.2008, at 2.35 a.m., P.W.16-Dr.Senthil Kumar examined P.W.5-Anjalai. P.W.5 told the Doctor that she was attacked by ten unknown persons with wooden log, iron rod and iron bar. He found the following injuries on her body:-

i. A swelling measuring 10 x 10 cm over the left arm.

ii. Lacerated Wound measuring 2 x .5 x .5 cm over the right index finger.

According to P.W.16-Doctor, both injuries were simple in nature. Ex.P.6 is the Wound Certificate of P.W.5.

(ix) On the same day, i.e., on 29.10.2008, at 2.50 a.m., P.W.16-Dr.Senthil Kumar examined P.W.2-Kirubakaran. P.W.2 told the Doctor that he was attacked by twenty unknown persons with stick, knife and aruval. He found the following injuries on his body :-

i. Lacerated Wound measuring 2 x .5 x 5 cm over the middle of the head.

ii. An abrasion wound measuring 1 x 1 cm over inguinal region.

iii. Swelling 1 x 1 cm on the right forearm.

The Doctor gave opinion that all the injuries were simple in nature. Ex.P.7 is the Wound Certificate of P.W.2.

(x) On the same day i.e., on 29.10.2008, at 2.58 a.m., P.W.16 examined the witness Sivajothi. She told the Doctor that she was attacked by twenty known persons with knife, stick and aruval. He found the following injuries on her body :-

i. Lacerated Wound measuring 1 x 5 x 5 cm on left parietal region.

ii. Complains of generalised body pain.

iii. Complains of abdominal pain.

According to P.W.16-Doctor, all the three injuries were simple in nature. Ex.P.8 is the Wound Certificate of Sivajothi.

(xi) On the same day, i.e., 29.10.2008, at 3.02 a.m., P.W.16-Dr.Senthil Kumar examined P.W.3-Sumathi. P.W.3 told the Doctor that she was attacked by twenty known persons with knife, stick and aruval. He found the following injuries on her body :-

i. A contusion wound measuring 3 x 3 cm on the

right parieto occipital region. It extent upto the back of the head.

ii.A contusion wound measuring 2 x 2 cm on the right forearm.

iii.Left ENT bleeding.

iv.Complains of pain on the left side of the leg.

According to P.W.16- Doctor, all the injuries were simple in nature. Ex.P.9 is the Wound Certificate of P.W.3.

(xii) On the same day, i.e., on 29.10.2008, at 3.07 a.m., P.W.16 examined P.W.7-Kathiravan. He told the Doctor that he was attacked by ten unknown persons with stick and knife. He found the following injuries on him :-

i. A laceration wound measuring 2 x .5 x .5 cm over occipit.

ii.Linear cut injury measuring 7 x .5 cm below right scapula.

iii.Linear cut injury measuring 10 x .5 cm over left scapula.

According to P.W.16, the Doctor, the injuries were simple in nature. Ex.P.10 is the Wound Certificate of P.W.7 .

(xiii) On the same day, i.e., on 29.10.2008, at 3.12 a.m., P.W.16 examined P.W.1-Vignesh. He told the Doctor that he was attacked by twenty five known persons with knife, stick and aruval. He found the following injuries on his body.

i. Pain, swelling in the right arm.

ii.Pain below the right knee.

According to P.W.16-Doctor, both injuries were simple in nature. Ex.P.11 is the Wound Certificate of P.W.1.

(xiv) On the same day, i.e., 29.10.2008, at 3.20 a.m., P.W.16 examined P.W.4-Pavunambal. She told the Doctor that she was attacked by twenty five known persons with knife, stick and aruval. He found the following injuries on her body.

i. Complains of pain left hand tenderness.

ii.Complains of pain left knee tenderness.

According to P.W.16-Doctor, both injuries were simple in nature. Ex.P.12 is the Wound Certificate of P.W.4.

(xv) On 29.10.2008, at about 2.40 a.m., the deceased Janarthanan, was examined by P.W.16-Dr.Senthil Kumar. Since, the deceased was drowsy, he was not able to make any statement about the injuries. But, his brother Mr.Arumugam, who accompanied him told the Doctor that the deceased was attacked by twenty five known persons with knife, stick and aruval on 29.10.2008 at 1.00 p.m. at his residence. He noticed the following injuries on the

body of the deceased :-

- i. A lacerated wound measuring 4 x .5 x 5 cm on the right eye brow.
- ii. A lacerated wound measuring 4 x .5 x 5 cm on the forehead.
- iii. A lacerated wound measuring 4 x .5 x .5 cm over the left chin.
- iv. A lacerated wound measuring 4 x .5 x 5 cm over the left frontal parietal region.
- v. A lacerated wound measuring 2 x .5 x .5 cm over the abdomen.
- vi. A lacerated wound measuring 1 x .5 x .5 cm over the left knee.

The deceased was admitted as an inpatient. Thus, on 29.10.2008, P.W.16-Dr.Senthil Kumar had treated as many as nine injured persons. P.W.16-Doctor also intimated the jurisdictional police about the same.

(xvi) P.W.20-Mr.Gurumurthy, was the Sub-Inspector of Police, Nellikuppam Police Station, at the relevant point of time. According to him, on the night of 28.10.2008, he was on bandobust duty in a Village known as Paalur, where there was likelihood of law and order problem. At 3.00 a.m., on 29.10.2008, he received an information from the Nellikuppam Police Station that in T.Kumarapuram Village, there had happened an occurrence and since, the situation was so tensed, he should immediately go over there along with policemen. Accordingly, he went to T.Kumarapuram Village at 4.00 a.m. on 29.10.2008. In the said Village, he visited the place of occurrence and found extensive damage caused to the houses. The injured had already been taken to the Government Hospital at Cuddalore. According to P.W.20, he enquired some womenfolk in that area about the occurrence. But, no body came forward to say anything useful about the occurrence. Since, there was likelihood of retaliation from the other party, according to P.W.20, he stayed in the said Village along with the policemen. On 29.10.2008, at 1.30 p.m., according to him, he went to the Government Hospital at Cuddalore and recorded the statement of P.W.1. At 2.00 p.m., he returned to the Police Station and registered a case in Crime No.676 of 2008 for the offences under Sections 147, 148, 448, 452, 323, 324, 307 IPC r/w. Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. Ex.P.1 is the complaint and Ex.P.24 is the First Information Report. He forwarded both the documents to the Court through the Police Constable and it was received by the learned Judicial Magistrate No.I, Cuddalore, at 10.45 a.m. on 30.10.2008.

(xvii) P.W.21-Vijikumar, the then Inspector of Police, took up the case for investigation. On 29.10.2008, at about 3.00 p.m., he visited the place of occurrence and at the house of the

deceased, in the presence of witnesses, he prepared one Observation Mahazar & Rough Sketch; then, in front of the house of P.W.11, he prepared another Observation Mahazar & Rough Sketch; and thereafter, in front of the house of P.W.6, he prepared third Observation Mahazar (Exs.P.25, P.30 and P.35 respectively) & Rough Sketch (Exs.P.26, 31, 36 respectively). From the place of occurrence, P.W.21 recovered the Material Objects, such as, the damaged properties under M.Os. 1 to 5; M.Os.30 to 38 and M.Os.39 to 42. From the house of P.W.11-Iyyappan, P.W.21 recovered M.Os.43 to 51 and from the house of one Ramesh, he recovered M.Os. 52 to 55. Then, from the house of P.W.6-Subramanian, P.W.21 recovered M.Os. 20 to 29. Then, P.W.21 examined P.Ws. 8 to 12 and few more witnesses in the Village and recorded their statements. P.W.21, then, visited the Government Hospital at Cuddalore, where, he examined P.Ws. 1, 2, 4 to 7 and recorded their statements. The deceased and P.W.3-Sumathi were by that time shifted to Pondicherry Insite of Medical Sciences (PIMS) hospital at Pondicherry for better treatment. P.W.21 visited the said Hospital on 30.10.2008 and recorded the statement of P.W.3. P.W.13-Nirmala was also examined on the same day.

(xviii) On 31.10.2008, at about 7.00 a.m., P.W.21 arrested accused Nos.3 to 5, 8, 10, 11, 14 and 17 at Maruthadu bus stand. On such arrest, the accused No.5, viz., Pushpanathan gave voluntary confession in the presence of P.W.14-Devaraj and another witness, by name, Karthikeyan. In pursuance of the same, the accused No.5 took the police and the witnesses to Muthumariappan Temple and produced the weapons M.Os. 6 to 57. P.W.21 recovered all the weapons under Ex.P.3-Mahazar in the presence of P.W.14 and another witness. In the course of investigation, P.W.21 arrested accused No.15 on 04.11.2008 and forwarded him for judicial remand.

(xix) On 10.11.2008, the deceased Janarthanan, who was undergoing treatment in the Government Hospital at Cuddalore was shifted to the Apollo Hospital at Chennai. On 16.11.2008, despite treatment, he died at 7.10 a.m. On receiving intimation from the hospital, P.W.21 altered the case by including Section 302 IPC. Ex.P.38 is the Alteration Report. He forwarded the same to the Court. Then, on 17.11.2008, between 10.00 to 12.30 a.m., he conducted inquest on the body of the deceased at Apollo Hospital and prepared Ex.P.39-Inquest Report. Then, he forwarded the body for postmortem.

(xx) P.W.18-Dr.R.Baskar conducted autopsy on the body of the deceased at Royapettah Government Hospital at Chennai. He found the following injuries on the body of the deceased :-

1. Sutured wound along sagittal plane over front of head

- 4.5 x 1 cm x bone deep.
2. An elliptical penetrating wound 3 x 1.5 cm x cavity deep over left side of middle 1/3 of abdomen 16 cms away from the midline. The margins are clean cut and the angles are acute.
 3. An oblique sutured wound 10.5x1cm x cavity deep over left side of abdomen extending from the upper end of injury No.2 upto midabdomen 1.5 cms below xyphisternum.
 4. Sutured wound 5 x 1 cm x bone deep over front of head with bruising of surrounding tissues.
 5. Tracheostomy Wound - Surgical - 3 x 2 cms x cavity deep over front of lower 1/3 of neck.
 6. Partially healed laceration 3 x 1 x 0.5 cm over outer 1/3 of left eyebrow.
 7. Partially healed laceration 3 x 1 x 1 cm over front of left knee.

ON DISSECTION:

Scalp pale. Bruising seen over front 4 x 3 cms. Top 4.5 x 3.5 cms and over left side of scalp 5 x 4 cm. Fissured fracture of cranial vault seen involving left frontal and left temporal bone 7.5 cms. Thin diffuse sub dural haemorrhage seen over both cerebral hemispheres. Scattered areas of sub arachnoid haemorrhage seen over top and sides of both hemisphere. Brain appear oedematous. C.S.F. appear cloudy. Hyoid bone and Laryngeal cartilages intact. Tracheostomy wound seen over front of neck at the level between 2nd and 3rd cervical vertebrae. Heart normal in size; Left ventricle hypertrophied. Chambers contain fluid blood. Lungs: Adherent to chest wall. Pleura appear thickened and opaque. Lung appear oedematous. C/S exudes blood stained froth. Areas of consolidation seen exuding turbid fluid. Stomach contained 300 gms of bile stained fluid. Mucosa congested and oedematous. Liver enlarged c/s show bile stasis. Spleen enlarged c/s congested. Kidneys enlarged and show petechial haemorrhage in the deeper cortex. Intestines distended with gas. Bladder empty. Pelvis and spinal column intact."

Ex.P.20 is the postmortem certificate. The Doctor gave opinion that the deceased would appear to have died of head injuries and its complications.

(xxi) Then, in the course of investigation, P.W.21 arrested the rest of the accused on various dates. P.W.21 collected the

medical records of the deceased Janarthanan and others at the Government Hospital at Cuddalore and examined the Doctor and recorded their statement. He examined the Doctor at the PIMS Hospital in respect of the treatment given to P.W.3-Sumathi and the deceased Janarthanan and collected the medical records. From the PIMS hospital, the deceased had been shifted to the Apollo Hospital at Chennai, for better treatment. P.W.21 collected the medical records of the deceased at Apollo Hospital, Chennai. He has examined the Doctor and on completing the investigation, finally, he laid the chargesheet against all the 17 accused.

(xxii) Based on the above materials, the Trial Court framed charges as detailed in the paragraph No.1 of this judgment. The appellants/accused Nos.1 to 17 had denied the same. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 21 witnesses were examined and 39 documents and 57 material objects were exhibited. On the side of the defence as many as six documents were marked as Ex.D.1 to D.6. Out of the above 21 witnesses, P.Ws. 1, 2, 3 and 4, who are the sons, wife and mother-in-law respectively of the deceased are eye witnesses to the occurrence. P.Ws. 5, 7, 9, 10 have also spoken about a part of the occurrence. P.W.6-Subramanian, a Villager, has spoken about the earlier dispute between P.W.1 and accused No.5 in respect of cable T.V. Operation. P.W.8 has spoken about the earlier occurrence on 27.10.2008 and the same is the motive for the occurrence. P.W.11-Iyyappan has spoken about the hearsay information. P.W.12-Arumugam, who is the brother of the deceased, has stated that he took all the injured to the hospital. P.W.14-Devaraj has stated about the arrest of the accused Nos.2, 3, 5, 8, 11, 14 and 17 and the confession of the 5th accused and the consequential recovery of Material Objects. P.W.15-Dr.Joshima Janardhanan has spoken about the treatment given to the deceased between 29.10.2008 to 03.11.2008 and P.W.3-Sumathi at the PIMS Hospital, Pondicherry. P.W.16-Dr.Senthil Kumar has spoken about the treatment given to the injured at the Government Hospital at Cuddalore District. P.W.17-Dr.Syed Ali of Apollo Hospital, Chennai, has spoken about the treatment given to the deceased at the Apollo Hospital, Chennai. He has spoken regarding the fact that the deceased died at 7.10 a.m. on 16.11.2008. P.W.18-Dr.Baskar of Government Royapettah Hospital, Chennai, has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.20-Gurumurthy, the then Sub-Inspector of Police, has spoken about the registration of the case. P.W.21-Vijikumar, the then Inspector of Police, has spoken about the investigation done by him.

(xxiii) When the appellants/accused Nos.1 to 17 were questioned under Section 313 Cr.P.C. as to the incriminating

circumstances found in the evidence of prosecution witnesses, they denied them as false. However, they have not chosen to examine any witness on their side, but, they marked six documents on their side. Exs. D.1 and D.2 are the information furnished under the Right to Information Act on the application made by P.Ws. 3 and 4 respectively (these documents do not have any relevance to the facts of the present case). Ex.D.3 is the compromise reached between the two groups of people in the Village in the year 2000. Ex.D.4 is the First Information Report in the earlier occurrence in Cr.No.403 of 2008. Ex.D.5 is the First Information Report in the earlier occurrence in Cr.No.670 of 2010, which is stated to be the motive for the present occurrence. Ex.D.6 is the copy of the judgment in the earlier occurrence in C.C.No.319 of 2009 on the file of the Judicial Magistrate No.I, Cuddalore. Their defence was a total denial. Having considered all the above, the Trial Court found the appellants/accused Nos.1 to 17 guilty and convicted them accordingly. That is how, the appellants/accused Nos.1 to 17 are now before this Court with these appeals.

3. We have heard, Mr.A.Natarajan, the learned Senior Counsel appearing for the appellants in Crl.A.Nos.484 and 548 of 2012; Ms.D.Prasanna, the learned counsel appearing for the appellants in Crl.A.No.553 of 2012; Mr.V.Gopinath, the learned Senior Counsel appearing for the appellants in Crl.A.Nos.587, 605 and 688 of 2012 and Mr.V.Maharaja, the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

4. Admittedly, these injured eye witnesses as well as the non-injured eye witnesses belong to one group i.e, the group headed by the deceased Janarthanan. All the accused belong to the rival group. There is no dispute that both these groups were operating against each other, which is evident from the fact that there were earlier occurrences and in one such occurrence happened on 27.10.2008, the house of the accused party was attacked and damaged by the prosecution party.

5. From the above, it is crystal clear that the Villagers were factious and there was a lingering enmity between two group of people in connection with running of T.V. cable operation in T.Kumarapuram Village. When the Villagers are factious and the witnesses are partisan and also inimical towards the accused party, as per the settled law, it is absolutely necessary for this Court to closely scrutinize their evidence. More so, because, when no independent witnesses have been examined to speak about the occurrence. Keeping in mind the said broad principle, let us go into the facts of the present case.

6. According to the positive case of the prosecution, the alleged occurrence in this case was on 29.10.2008 at 1.00 a.m. The First Information Report in this case was registered on 29.10.2008 at 2.00 p.m. and the same has reached the hands of the learned Judicial Magistrate No.I, Cuddalore, on the next day, that was on 30.10.2008, at 10.45 a.m. Admittedly, the distance between the Court and the Police Station is hardly 13 km, as admitted by P.W.20, the then Sub-Inspector of Police, who registered the case. The learned senior counsel appearing for the appellants would submit that absolutely, there is no explanation for the delay both in preferring the complaint as well as in forwarding the First Information Report to the Court.

7. The learned Additional Public Prosecutor would submit that when there are injured witnesses, whose presence cannot be doubted, the above said delay would not loom large.

8. We have considered the above rival submissions. It is not, as though, until 2.00 p.m., on 29.10.2008, either P.W.20, the Sub-Inspector of Police or P.W.21, the Inspector of Police, was not aware of the occurrence. It has been admitted by P.W.20, the then Sub-Inspector of Police, even in chief examination, that on 29.10.2008, at about 3.00 a.m., he was on bandobust duty at a Village known as Paalur. He received an instruction from the jurisdictional Police Station that an occurrence had taken place at T.Kumarapuram Village. Immediately, he reached the place of occurrence at T.Kumarapuram Village at 4.00 a.m. First of all, what was that information, which was received at the Police at 3.00 a.m., has not been spoken by any one. If the information, which was received at the earliest point of time at the Police Station, contains the details of the occurrence, then, that should be treated as the First Information Report in the case and in such an event, Ex.P.1 would not be admissible in evidence, as it could be only treated as a statement falling under Section 161 Cr.P.C. The General Diary of the Police Station, which would contain the earliest information, which was received at 3.00 a.m. on 29.10.2008 has not been proved in evidence by the prosecution. That earliest information, which was received at the Police Station, which prompted the Officer concerned to inform P.W.20 to go over to the Police Station, has been suppressed. This suppression creates initial doubt in the case of the prosecution.

9. P.W.20, the then Sub-Inspector of Police, has further admitted that at 4.00 a.m., when he visited the place of occurrence, he came to know that extensive damage had been caused to the houses of the prosecution party and a number of people had also sustained injuries and all had been taken for

treatment to the Government Hospital at Cuddalore. He has further stated that when he enquired the womenfolk in that area, they did not come forward with any complaint and therefore, he did not register any case.

10. It is really shocking that P.W.20, the then Sub-Inspector of Police, even after having come to know that such a heinous crime had been committed involving several victims and also properties, did not care to make a special report to his immediate superior so as to ensure that the case was registered without delay. The explanation offered by P.W.20, even in chief-examination, is that since, there was tense situation in the Village, he was waiting in the same Village on 29.10.2008, till 12.00 noon, without either making a special report to the Inspector of Police to register a case or instructing some one to go to the hospital to record the statement from any one of the injured so as to register a case at the earliest point of time. The said conduct of P.W.20 in keeping silence till 12.00 noon on 29.10.2008 i.e., for about 9 hours creates further doubt in the case of the prosecution.

11. The evidence of P.W.21, the then Inspector of Police, is in no way better than the evidence of P.W.20, the then Sub-Inspector of Police. It is not as if he was not aware of the occurrence as soon as it had taken place. P.W.21 has admitted during cross-examination that on 29.10.2008 at 2.45 a.m., itself, he received information about the occurrence. But, he has not stated as to who gave that information and what exactly was the said information. It is also not explained by him as to why he had not recorded as to whether the said information was given to him in writing or did he reduce the same to writing. At any rate, the said information, which was received by him at the earliest point of time immediately after the occurrence around 3.00 a.m. has been suppressed by him, for which, he has not offered any explanation. This creates further doubt in the case of the prosecution.

12. P.W.21, the then Inspector of Police, has further admitted during cross-examination that at 4.30 a.m., P.W.20, the Sub-Inspector of Police after having visited the place of occurrence spoke to him and told him that extensive damage had been caused to the house of the prosecution party and number of people had sustained injuries. Even then, he did not prefer to go either to the place of occurrence or to the hospital to record the statement of an injured person, so as to register the case. Thus, it is crystal clear that P.W.21 was also aware of the occurrence at the earliest point of time immediately after the occurrence was over and further information was given immediately by the Sub-Inspector of Police after having visited

the place of occurrence. Even then, there was no case registered by the police. The explanation of the learned Additional Public Prosecutor that since nobody came forward to give any complaint, no case was registered at the earliest point of time cannot be accepted. P.W.21 has admitted that P.W.20 at 4.30 a.m., reported to him about the occurrence and based on the same, P.W.21 should have registered a case atleast at 4.30 a.m., and commenced the investigation.

13. P.W.20, the then Sub-Inspector of Police, has stated that he went to the hospital at 12.00 noon on 29.10.2008 and at 1.30 p.m., he recorded the statement of P.W.1, then he returned to the Police Station and registered a case at 2.00 p.m., Thus, even according to the positive case of the prosecution, there was a delay of about 9 hours in registering the case. Though, there were several persons who were helping the injured in the hospital and though, there were several people in the Village, who belong to the prosecution party, no body came forward to give a complaint to the police for such a long time. This only gives an impression that since the occurrence was during night hours, the assailants were either not known or the prosecution party were engaged in deliberations to fix the accused so as to make a comprehensive report to register a case. This doubt is very reasonable and the same has not been obviated by the prosecution.

14. Next, the learned senior counsel appearing for the appellants would submit that the present First Information Report would not have come into being on 29.10.2008, at 2.00 p.m. also. The learned senior counsel would point out that the First Information Report had reached the Court only on 30.10.2008, at 10.45 a.m. It is not explained to the Court as to why it took about 20 hours for the First Information Report to reach the hands of the learned Judicial Magistrate No.I, Cuddalore, though, the Court of learned Magistrate is only at a distance of 13 km from the Police Station. The Police Constable, who carried the First Information Report, from the Police Station has also not been examined. This also justifies the argument of the learned senior counsel that it is doubtful that the First Information Report would have come into being at 2.00 p.m., on 29.10.2008.

15. Apart from that, in the First Information Report there were only 15 named accused, but, 17 accused were ultimately prosecuted before the Trial Court. It is not, as though, these 17 accused were not known to P.W.1. It is not explained to the Court as to why the First Information Report contains the name of 15 accused alone. This would also go to show that an attempt has been made to rope in as many as number of people as accused from the opposite group.

16. In this regard, the learned senior counsel appearing for the appellants relied on the judgment of the Hon'ble Apex Court reported in AIR 1973 Supreme Court 501, Thulia Kali vs. The State of Tamil Nadu. The facts of the said case are almost similar to the facts of the present case. That was a case where on facts, the Supreme Court found that there was a delay of 20 hours in preferring the complaint and there was a further delay in forwarding the First Information Report to the Court. The said delay was not explained. The Hon'ble Apex Court taking note of the same in paragraph No.12 of the judgment has held as follows:-

"12.....First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorially explained. In the present case Kopia daughter-in-law of Madhandi deceased according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju, step-son of the deceased is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance in our opinion would raise considerable doubt regarding the veracity of the

evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it."

17. Similarly, a Division Bench of this Court in the judgment reported in 1990 Law Weekly Criminal 175, Johny and five others Vs. State, has held that the case of the prosecution is doubtful on the ground of an unexplained delay. That was also a case where there was a delay of 25 hours in preferring the complaint to the police, though, the distance was hardly 1 ½ km between the place of occurrence and the Police Station. There was a further delay in forwarding the documents to Court also. Taking note of the same in paragraph No.24, the Division Bench of this Court has held as follows:-

"24.... The first information report a document of considerable importance, is produced and proved in criminal trials not as a piece of substantive evidence, but with the avowed object of obtaining the early information of the alleged criminal activity and to have a record of the circumstances before there was time for them to be embellished or forgotten. A quick first information report, which reaches the Court of the Magistrate with promptitude, will be a towering circumstance which will go a long way to assure the veracity of the prosecution story for, there can be no time to create and deliberate a false case against the accused. It may be in some cases the delay in lodging the first information report may be inevitable, but such delay may have to be satisfactorily explained. Courts have held that long and unexplained delay not only in lodging the first information report but also in its receipt in the Court and suspicious circumstances to be taken into consideration while judging the bonafides of the prosecution story, as delay may bring in a coloured version of the whole incident. A delayed first information report, which gives rise to suspicion, will put the Court on guard to look for a possible and acceptable explanation for the delay. A delayed first information report in prosecutions where there are more accused than one, will require careful scrutiny and more so when the possibility of false implication looms large."

18. The facts of the present case are more or less similar. As we have already pointed out the enormous delay in preferring

the complaint and also the delay in forwarding the First Information Report to the Court remains unexplained and the fact that no case was registered at the earliest point of time, though the police officers were aware of the occurrence and they were also present at the place of occurrence and because the original information which was received by the jurisdictional Police Station as soon as the occurrence was over has been suppressed, we are of the view that in the present case also, the case of the prosecution as propounded by the prosecution is highly doubtful. When there are multiple number of accused, when the witnesses are partisan and the Villagers are factious and when the witnesses examined are inimical towards the accused party and interested towards the prosecution party, the above said doubt arising out the delay assumes much importance. The possibility of false implication cannot be ruled out and it looms large.

19. So far as the eye witnesses account is concerned, it is seen from the evidence that almost all the eye witnesses have stated about the individual role played by each and every accused as though each one accused came up on the stage attacked one victim to be followed by other and so on. It is humanly impossible for a witness, who is simultaneously getting hit, to closely watch the assault being made on the others with minute microscopic details, which makes the evidence of such witnesses doubtful. Though, in the instant case, the presence of injured witnesses cannot be doubted, on that score, we cannot come to a conclusion that their evidence contains only gospel truth. In our considered view, though, these witnesses are injured witnesses, we find it difficult to believe them, for false implication of the accused on account of enmity, as we have already concluded, cannot be ruled out.

20. The learned senior counsel appearing for the appellants would lastly point out that it is doubtful as to whether there would have been light at the time of occurrence as it was around 1.00 a.m. It is in evidence that the deceased and the other family members were sleeping inside the house. It is stated by the injured eye witnesses that on hearing the noise, the deceased switched on the tubelight and only in that light, they could have witnessed the identity of the assailants. The learned senior counsel pointed out that this is nothing but an improvement as the witnesses had not stated anything about the availability of light in their statement during investigation. Though, they have been duly contradicted, in respect of the same, they have not offered any explanation. As rightly pointed out by the learned senior counsel, going by the size of the room, it is highly doubtful that 17 people had entered into the room, where there were already number of people. This

is also something difficult to be believed.

21. For all the above reasons, we are of the view that though, this incident would have created lot of sensation in that area and though number of people had sustained injuries and though extensive damages have been caused to the house of the prosecution party, we find it difficult to sustain the conviction against accused Nos.1 to 17, as the prosecution has failed to prove the case beyond all reasonable doubts. We hold that the accused Nos. 1 to 7 and 9 to 17, are entitled for acquittal. As the accused No.8 died during the pendency of these appeals, his appeal in CrI.A.No.548 of 2012, stands dismissed as abated as against him alone.

22. Before concluding this judgment, if we ignore to express our displeasure over the way in which, the Trial Court has framed charges and also punished the accused, it may be mistaken, as if, we were satisfied with the charges and so, we are constrained to make the following remarks :-

- i. The Trial Court has framed a charge under Section 148 IPC against accused Nos.1 to 6, 9, 13 and 14 and punished them under the said charge. Again, the Trial Court has punished them under Section 147 IPC also. This amounts to double jeopardy, as an offence under Section 148 IPC includes an offence under Section 147 IPC also.
- ii. Next, the Trial Court, while convicting some of the accused under Section 302 IPC, has convicted others under Section 302 read with 149 IPC. But, strangely, while convicting some of the accused under Sections 323, 324 and 326, under a number of counts, has failed to frame charges against the others by invoking Section 149 IPC in respect of these offences and has consequently failed to convict them appropriately by invoking Section 149 IPC. Obviously, the Trial Court has not understood the concept of constructive liability for punishment as provided under Section 149 IPC. This case, in our view, shall remain as a standing lesson, as to how the Trial Courts have to be circumspect and meticulous in framing charges, as failure to do so may result in failure of justice.

23. In the result,

- i. these Appeals are allowed and the conviction and sentence imposed on the appellants by the Trial Court in S.C.No. 32 of 2010, dated 30.07.2012, are set aside and the accused Nos.1 to 7 and 9 to 17, are acquitted;
- ii. As the accused No.8 died during the pendency of these appeals, his appeal in CrI.A.No.548 of 2012, stands dismissed as abated as against him alone.

- iii.The fine amount, if any paid, shall be refunded to them.
iv.The bail bond, if any executed by the appellants/accused Nos.1 to 17, shall stand discharged.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

paa

To

- 1.The Principal District & Sessions Judge,
Cuddalore.
- 2.The Judicial Magistrate No.I,
Cuddalore.
- 3.Thro'The Chief Judicial Magistrate,
Cuddalore.
4. The Inspector of Police
Nellikuppam Police Station
Cuddalore District.
- 5.The Superintendent,
Central Prison, Cuddalore.
- 6.The Additional Public Prosecutor,
High Court, Chennai.

- +2 ccs to Mr.L.Mahendran, Advocate, sr.13050, 13049
+1 cc to Mr.S.Rajkumar, Advocate, sr.13048
+1 cc to Mr.D.Prasanna, Advocate, sr.12898
+2 ccs to Mr.K.Pasupathy, Advocate, sr. 13203
+3 ccs to Mr.R.Thamarai Selvan, Advocate, sr.13296

CRIMINAL APPEAL Nos.
484, 548, 553, 587, 605
and 688 of 2012

cnr co
kra 22.03.2016