

BAIL SLIP

CRL.A.No.539 & 549 OF 2012: The Appellants/Accused namely, 1.Mathaiyan @ Angamuthu, 2.Seeni @ Srinivasan(in Crl.A.No.539/2012) and namely 1) Ramesh, 2)Senthil 3.Muthu @ Angamuthu 4) Rangasami and 5) Muthu(in Crl.A.No.549/2012) were directed to be released on bail as per the order of this Court dated 30.10.2012 in MP.1 & 1 of 2012 in Crl.A.Nos.539 & 549/2012 on the file of this Court.

CRL.A.No.543/2012: The Appellants/Accused namely Saravanan @ Karathe Saravanan, was directed to be released on bail as per the order of this Court dated 05.02.2013 MP.1/2012 in Crl.A.No.543/2012 on the file of this Court.

Crl.A.No.545/2012: The Appellants/Accused namely, 1.Jagadesh, and 2) Lakshmanan, were directed to be released on bail as per the order of this Court dated 14.03.2013 in MP.1/2013 in Crl.A.545/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Crl.A.Nos.539, 543, 545 & 549/2012

1.Mottaiyan @ Angamuthu

2.Seeni @ Srinivasan

.. Appellants/A8 & A14 in
Crl.A.No.539/2012

Saravanan @ Karathe Saravanan

..Appellant/A1 in
Crl.A.No.543/2012

1.Ramesh

2.Senthil

3.Muthu @ Angamuthu

4.Rangasami

5.Muthu

.. Appellants/A5 to
A7, A12 & A13 in
Crl.A.No.549/2012

1.Jagadesh
2.Lakshmanan

.. Appellants/A3&A4
in CrI.A.No.545/2012

Versus

The State represented by
The Superintendent of Police
Pallipalayam Police Station.

.. Respondents in all the appeals

Appeals filed under section 374 [2] Cr.P.C., against the judgment in SC.No.137/2005 on the file of the learned Additional District and Sessions Judge, Namakkal dated 13.08.2012.

For Appellants in
CrI.A.No.539/2012 : Mr.N.Sudharsan

For Appellant in
CrI.A.No.543/2012 : Mr.R.Sankarasubbu

For Appellants in
CrI.A.No.545/2012 : Mr.R.Sankarasubbu

For Appellants in
CrI.A.No.549/2012 : Mr.R.Sankarasubbu

For Respondents in
all the appeals : Mr.M.Maharaja
Additional Public Prosecutor

COMMON JUDGMENT

[Judgment of the Court was delivered by S. NAGAMUTHU, J,]

The appellant in CrI.A.No.543/2012 is A1 ; the appellants in CrI.A.No.545/2012 is A3 and A4 ; the appellants in CrI.A.No.549/2012 are A5, A6, A7, A12 and A13 ; and the appellants in CrI.A.No.539/2012 are A8 and A14 in SC.No.137/2005 on the file of the learned Additional Sessions Judge, Namakkal. The 2nd accused in this case was one Mrs.Sivagami. [Mrs.Sivagami was discharged as per the order of this Court made in CrI.RC.No.508/2006 dated 23.04.2008]. The Trial Court framed as many as seven charges against the accused, which are as follows:-

Sl.No	Rank of the Accused	Charges framed
1	A1 to A10, A12 to A14	120[B] IPC
2	A1, A3 to A7, A12 and A13	364 IPC
3	A1, A3 to A7, A12 and A13	395 IPC
4	A1, A3 and A4	302 IPC
	A5, A6, A7, A12 & A13	302 read with 109 IPC
	A2, A8, A9, A10 & A14	302 read with 120[B] IPC
5	A11	302 read with 109 IPC
6	A15, A16	212 IPC
7	A15	414 IPC

By judgment dated 13.08.2012, the Trial Court convicted the appellants alone as detailed below and acquitted the rest of the accused.

Rank of the Accused	Conviction under section	Sentence Awarded
A1, A3 to A8, A12 to A14	120[B] IPC	Each of the accused were sentenced to undergo 9 months rigorous imprisonment.
A1, A3 to A7, A12 and A13	364 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.2500/- each, in default to undergo 1 year rigorous imprisonment.
A1, A3 to A7, A12 and A13	395 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.2500/- each, in default to undergo 1 year rigorous imprisonment.
A1, A3 and A4	302 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.3000/- each, in default to undergo 2 years rigorous imprisonment.

Rank of the Accused	Conviction under section	Sentence Awarded
A5 to A7, A12, A13	302 r/w 109 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.3000/- each, in default to undergo 2 years rigorous imprisonment.
A8 and A14	302 r/w 120[B] IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.3000/- each, in default to undergo 2 years rigorous imprisonment.
A15	212 IPC	Sentenced to undergo 1 year rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 1 month rigorous imprisonment.
A15	414 IPC	Sentenced to undergo 1 year rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 3 months rigorous imprisonment.

Challenging the said conviction and sentence, the appellants/A1 and A2 are before this Court with this appeal.

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

[A] The deceased in this case, was one Azhagarasan. P.W.1 is his brother-in-law and P.W.2 is his wife. The deceased was residing at Sengodanpalayam Village in Tiruchengode Taluk. The deceased was one of the Councilors of Tiruchengode Municipality for about ten years. He was also a leading politician belonging to a particular regional political party. He had two children. On account of his involvement in politics and his being a Councilor, the people in that locality used to approach him easily for settlement of certain issues among themselves. The deceased used to mediate between them and settle the disputes.

[B] One Mr. Jambu @ Shanmugam, was residing in the opposite house of the deceased. His wife was formerly employed in the Tamil Nadu Electricity Board. Since she died, out of compassionate grounds, Jambu @ Shanmugam was given employment in the Tamil Nadu Electricity Board. He was working at Edappadi office of the Tamil Nadu Electricity Board. Jambu @ Shanmugam was not paid his salary arrears at his office. He, therefore, requested the deceased to meet the officials and to see that the

arrears were paid to him. The deceased had agreed for the same.

[C] On 07.12.2004, at about 06.30 hrs., the deceased was at his house along with P.W.2 and other family members. Jambu @ Shanmugam came to his house and requested him to come to his office to speak to his superiors in respect of salary arrears. The deceased immediately started and went along with Jambu @ Shanmugam. The deceased, as usual, was wearing a gold chain around his neck, a gold bracelet on his right hand, a gold ring with DMK party symbol on the left ring finger and a gold ring with precious stones on the right ring finger. He also had around Rs.5000/- in his pocket. They left together the house at 06.45 hrs.

[D] The deceased owned an Ambassdor car bearing Registration No.TCZ 3786. P.W.3, Mr.Sivakumar, who was a driver by profession, was frequently called by the deceased as a driver to drive his car. On 07.12.2004, P.W.3 was so requested to drive the said car to take the mother-in-law of the deceased and to leave her at Vaiyyappamalai village. Accordingly, at 05.30 hrs., P.W.3 drove the car carrying Mrs.Kannammal, the mother-in-law of the deceased to Vaiyyappamalai village and after leaving her at her house, he returned with the car to the Sengodampalayam village. At about 07.30 hrs., when the car was passing through the tea shop by name "Arulmurugan Tea Shop", owned by P.W.4, he found the deceased and Jambu @ Shanmugam sitting in the tea shop, taking tea. He stopped the car. The deceased wanted him to leave the car with him and to go and inform the same to P.W.2. P.W.3, accordingly did. Then the deceased and Jambu @ Shanmugam went in the said car towards Edappadi. The car was driven by the deceased and Jambu @ Shanmugam sat in the front seat of the car, by the side of the deceased.

[E] The deceased and Jambu @ Shanmugam reached the TNEB Office at Edappadi, around 08.30 hrs. They met P.Ws.13 and 14, who are the officials of TNEB and thereafter, they went away.

[F] P.W.2, the wife of the deceased, who was at her house, received a phone call from the deceased at 11.30 hrs., on the same day. The deceased told her that he was in Sangagiri and after finishing his work, he would come for lunch. But he did not return. Having waited for him, P.W.2, at 14.30 hrs., contacted him through his cellphone No.9842753278. At that time, the deceased told her that he was then in Erode and the work was not over. He further stated that after finishing the work at Erode, he would return home.

[G] After 14.30 hrs., there was no message from the deceased. He did not return home. P.W.2, having waited for him, restlessly, tried to contact the deceased through his

cellphone at about 20.00 hrs. The deceased responded. He told her that he would immediately return home after purchasing tiffin for the children. P.W.2 was, therefore, waiting for her husband's return. Till 21.30 hrs., he did not return. Therefore, she again tried to contact the deceased through his cellphone. But the cellphone of the deceased was in "switch-off" mode.

[H] Again at 00.00 hrs., P.W.2 tried to contact the deceased through his cellphone. The cellphone was still in "switch-off" mode. Perturbed over the same, she contacted some of the friends of the deceased over phone and tried to find out the whereabouts of the deceased. It proved futile. Believing that her husband would return, she went asleep.

[I] On 08.12.2004, early in the morning, at 05.30 hrs., P.W.2 went to the house of Jambu @ Shanmugam and enquired the mother of Jambu @ Shanmugam, about the whereabouts of her husband and Jambu @ Shanmugam. She also had no information. Then, around 06.00 hrs to 06.15 hrs., P.W.2 contacted her brother [P.W.1], who is a practicing Advocate in Tiruchengode and informed him about the same. P.W.1 pacified her saying that the deceased would have stayed elsewhere on account of his work and he would soon return.

[J] While so, P.W.1 received a phone call from an unknown person at about 08.00 hrs informing him that on the road leading to Kumarapalayam from Tiruchengode, one person was found lying dead with cut injuries. The informant did not disclose his identity including his name. P.W.1 immediately rushed to the said place. At 09.00 hrs., when he reached the place, he found the dead body of the deceased lying 50 ft., away on the South of the said road at a village known as "Ranganoor Naal Road Aruvapulikadu". There were lot of cut injuries on his body. There were currency notes lying near the place of occurrence. Immediately, he informed P.W.2 about the same. P.W.2 also rushed to the place of occurrence. Thereafter, P.W.1 rushed to Pallipalayam Police Station situated at a distance of 10 km from the place of occurrence and made a complaint under Ex.P.1.

[K] P.W.41, the then Inspector of Police attached to Pallipalayam Police Station, received the said complaint and registered a case in Cr.No.1019/2004 u/s.302 IPC. The assailants were not mentioned in the FIR and the details of the assailants were also not mentioned. Ex.P.1 is the complaint and Ex.P.29 is the FIR. He forwarded both the documents to the Court concerned, which were received by the learned Magistrate at 11.40 hrs on 08.12.2004.

[L] P.W.41, taking up the case for investigation, proceeded to the scene of occurrence immediately and at 11.30 hrs., he prepared an Observation Mahazar [Ex.P.2] in the presence of P.W.5 and another witness and also prepared a Rough Sketch [Ex.P.30]. He recovered blood stained earth [M.O.12] and sample earth [M.O.13] from the place of occurrence in the presence of the same witnesses, under a Mahazar. Between 12.15 hrs and 15.00 hrs., he held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.31-Inquest Report. He sent the dead body of the deceased for postmortem.

[M] P.W.25, Dr.Elango, the Assistant Surgeon, attached to the Government Hospital, Pallipalayam, on receipt of the requisition under Ex.P.11, from the Investigating Officer, conducted autopsy on the body of the deceased on 08.12.2004 at 15.40 hrs. He found the following injuries:-

"External Injuries:-

[1] 3x2cm incised wound on the left chest with 3cm deep, the deepness running upwards from the skin upto the 2nd injury.

[2] 14x3x3cm incised wound seen in front of the neck running from the middle right lower jaw running across upto the middle and left side lower jaw.

[3] 14xbone deep incised wound running from right cheek towards the centre of face below the lower lip and upto below left angle of mouth the right side 1 ½ cm broad. Left end ½ cm broad underlying small muscle are cut.

[4] right ear pinna is missing. 6X3cm diameter circular incised wound is seen in the place of right ear.

[5] 19cm lengthx6cm deep incised wound is seen back of the neck from behind the missing ear running across to the left ending 8cm from behind the left ear. Breadth at right 3nd 4 cm left end 1 cm underlying muscle are cut and cervical vertebrae is cut with the spinal cord at the level of C3C4.

[6] 5x2x2cm incised wound at the back of the right with cutting the ulna carnal joint.

[7] 4x1/2x1cm incised wound on the back of left shoulder.

[8] 7x1cm abrasion front of right shoulder at delto parietal junction.

[9] 5x2x3cm incised wound above the right collar bone. The deeper tissues is seen in all of the above wounds and they are antemortem in nature.

Internal:-

Skull intact, brain pale. Weight-1200 gms. Thorax-bony cage intact. Hyoid-intact. Heart-pale. 200 gms. Chambers-empty. Lungs-pale [right-500 gm left-400 gm] Abdomen-Intestine-distended with gas. Liver-pale 1500 gms. Spleen-pale 150gms. Kidneys- pale each 100 gms. Stomach-empty. Bladder-empty."

Ex.P.12 is the Postmortem Certificate. He opined that the death of the deceased was due to shock and hemorrhage due to multiple injuries found on the dead body. He further opined that the injuries on the dead body would have been caused by a weapon like Koduval.

[N] P.W.41 recovered blood-stained cloth found on the body of the deceased. At the time of preparation of the Observation Mahazar, he had also summoned the services of P.W.24, to take photographs from various angles at the place of occurrence including the dead body. He examined many witnesses including the doctor and recorded their statements. Then the investigation was taken over by P.W.42, the Deputy Superintendent of Police, as per the order of the Deputy Inspector General of Police.

[O] P.W.42, again went to the place of occurrence on 16.12.2014 and verified the correctness of the Observation Mahazar and the Rough Sketch prepared by P.W.41. He examined P.Ws.1, 2, 5 and few more witnesses and recorded their statements. On 18.12.2004, at Kozhikal Natham village near Maduraiveeran temple, he arrested Seenilal @ Srinivasan [as per judgment, his rank is A14, but in the deposition, he has been mentioned as A13]. Similarly, he also arrested Muthu [as per judgment, his rank is A13, but in the deposition, he has been mentioned as A12], in the very same place. On such arrest, the

accused Seeni @ Srinivasan, gave a voluntary confession in the presence of P.W.6 and another witness, in which, he disclosed the place where he had hidden a Yamaha Crux Motorcycle. Similarly, the accused Muthu also gave a voluntary confession, in which he made a disclosure statement. P.W.42 recorded the same. In pursuance of the said disclosure statement made by the accused Seeni @ Srinivasan, he took the police and the witnesses to the farm of one Rajendran at Kothampadi and produced the Yamaha Crux motorcycle without Registration Number. P.W.42 recovered the same under Ex.P.7 [Mahazar]. But, no discovery of any fact was made out of the confession made by the accused Muthu. Then, he forwarded both the accused to the Court for judicial remand and handed over the material objects to the Court. During the course, of investigation, he examined many more witnesses and on 21.12.2004, P.W.42 along with P.W.9 and other witnesses, had gone to Pollachi. In Pollachi, by 12.00 noon, the accused Govindaraj [as per judgment, his rank is A15, but in the deposition, he has been mentioned as A14] was arrested at Ram Nagar. On such, arrest, he made a voluntary confession, in which, he disclosed that he had pledged two gold chains and two gold rings in a jewelry shop in Kerala by name "Devi Durga Jewelers". In pursuance of the said disclosure statement [vide Ex.P.8], he took the police and the witnesses to Kerala and identified "Devi Durga Shop". P.W.39 was the owner of the Jewelry shop. He produced the said jewels to the police [M.Os.8 to 11]. P.W.42 recovered the same under a Mahazar. On returning to the Police Station, he forwarded the accused to the Court for judicial remand on 22.12.2004. On the same day, he examined many more witnesses and recorded their statements.

[P] On 29.12.2004, P.W.42 was engaged in vehicle check up at Alanganatham village on the main road, leading to Thuraiyur from Namakkal. P.W.29 [VAO] and few others were also present along with him. AT 17.00 hrs on the same day, a Tata Sumo Car bearing Registration No.TN-07-D-4041, was proceeding from the direction of Senthamangalam towards Thuraiyur. P.W.42, intercepted the same. In that vehicle, evidence found A1 to A4 [A2, stands now discharged]. P.W.42 arrested all the four accused, in connection with the present case. On such arrest, A1 gave a voluntary confession. P.W.42 recovered the said Car under a Mahazar in the presence of the same witnesses [vide M.O.19]. He also recovered the Registration Certificate of the said car [vide Ex.P.10]. In the car, there were aruvals and also a folding knife. He recovered the same under a Mahazar. Then A2 [Sivagami, the discharged accused] gave a voluntary confession, out of which, some facts were discovered which have got nothing to do with the present case. A4 [Ramesh] gave a voluntary confession, out of which also, some recoveries of material objects were made, but the same have got nothing to do with the present case. A3 also gave a voluntary confession, in which, he disclosed the place where he had hidden a Koduval. In

pursuance of the same, he took the police and the witnesses to Nanadathattupallam and produced M.O.21-koduval, from the place of hide out. P.W.42 recovered the same under a Mahazar. At 15.30 hrs., on 30.12.2004, the accused Jagadeesh [as per judgment his rank is A3, as per deposition he is A2] was arrested by P.W.42. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden a Koduval. In pursuance of the same, he took the police and the witnesses to Nanadathattupallam and produced M.O.22-koduval, from the place of hide out. P.W.42 recovered the same under a Mahazar. Then he forwarded all the accused to the Court for judicial remand.

[Q] On 01.01.2005, at 09.00 hrs., he arrested the accused Ganesan [as per judgment he is A10 and as per deposition, he is A9] and the accused Palaniappan [as per judgment he is A9, but as per deposition, he is A8] and also the accused Mottaiyan @ Angamuthu [as per judgment he is A8, but as per deposition, he is A7]. They were all arrested from the house of the accused Palaniappan. On the same day, he arrested Mrs.Padmavathy [A10] at Vattur village. Then he forwarded all the accused to the Court for judicial remand. The accused Muthu @ Angamuthu, [as per judgment his rank is A7 and as per deposition, he is A6] had earlier been arrested in connection with the case in CrI.No.1739/2004 u/s.302 IPC on the file of the Namakkal Police Station, on a PT Warrant, issued by the Court, at the request of P.W.42. He was produced before the learned Magistrate and remanded to custody in connection with the present case. Then, on the request made by him, the blood-stained material objects were sent for chemical examination. P.W.42 arrested Rangasamy [as per judgment his rank is A12 and as per deposition he is A11] at Naraikinaru in the presence of P.W.30 and another witness. He was also sent for judicial remand. The accused Damodarasamy [as per judgment his rank is A16 and as per deposition, he is A15] was arrested near Chinnappampalayam village on 09.02.2005 in the presence of P.W.23 and other witnesses and forwarded him to judicial remand on the next day. He recovered Ex.P.19, the telephone bill to prove that the deceased spoke over phone. The accused Muthu @ Angamuthu [as per judgment his rank is A7 and as per deposition, he is A6] was examined by P.W.38 [Revenue Divisional Officer] on 18.12.2004, where he had given a confession regarding his involvement in the present case. Then, on the request made by him, P.W.40, the learned Judicial Magistrate recorded the judicial confession from the said accused. On completing the investigation, he laid the charge sheet against all the 16 accused.

[R] Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of this Judgment. The accused denied the same. In order to prove the case on the

side of the prosecution, as many as 42 witnesses were examined ; 32 documents and 22 material objects were marked.

[S] The substance of the facts spoken by the witnesses are as follows:-

[i] P.W.1, the brother-in-law of the deceased has spoken about the motive between A1 and the deceased. It is further stated that on 08.12.2004, at about 06.15 hrs., P.W.2 informed him over phone that the deceased, who had gone along with Jambu @ Shanmugam, was found missing. He has further stated that on the same day at 08.00 hrs., he received an anonymous phone call, informing him that there was a dead body of a male lying at the place of occurrence with cut injuries. He has further stated that he went to the said place and found the dead body of the deceased. Then he informed P.W.2, who had also rushed to the place of occurrence. They found the deceased lying dead, with cut injuries and the jewels worn by the deceased [M.Os.8 to 11] were found missing. He has further stated that he made a complaint to the police at Pallipalayam Police Station under Ex.P.1 at 10.00 hrs on the same day.

[ii] P.W.2, the wife of the deceased has also spoken about the motive and the social status of the deceased. She has further stated that on 07.12.2004 at 06.45 hrs., the deceased went along with Jambu @ Shanmugam, to go over to TNEB office at Edappadi, to speak to the superiors of Jambu @ Shanmugam, in respect of his salary arrears. She has further stated that at 11.30 hrs., the deceased spoke to her and informed her that he was still in Sangagiri and he would return after the work was over. She has also stated that at 14.30 hrs., when she contacted the deceased over phone, he informed that he was in Erode and he would return soon. Then, at 20.00 hrs., when she again contacted the deceased, he told her that he would immediately return with tiffin for the children. According to her, when she again tried to contact the deceased at 21.30 hrs., his cell phone was in "switch-off" mode. Repeatedly, when she tried to contact him, she was not able to succeed as the cellphone of the deceased was in "switch-off" mode. She informed P.W.1, her brother, about the same at about 06.00 hrs to 06.15 hrs on 08.12.2004. At about 09.00 hrs., P.W.1 informed her about the death of the deceased. She rushed to the place of occurrence and they found the deceased lying dead with cut injuries. P.W.2 also stated that M.Os.8 to 11 were found missing from the body of the deceased. She has identified M.Os.8 to 11 as the jewels belonging to the deceased which were lastly worn by him. P.W.3 is the driver, who has stated that on 07.12.2004 at 05.30 hrs., he took the car belonging to the deceased bearing Regn.No.TCZ 3786 to Vaiyappamalai Village, carrying the mother-in-law of the deceased and after leaving her there, when he returned to Sengodanpalayam village, he found

the deceased and Jambu @ Shamugam sitting in the tea stall of Arulmurugan [P.W.4]. P.W.4 has also stated so. The deceased took the car from P.W.3 and along with Jambu @ Shanmugam, went towards Edappadi. This was around 08.30 hrs. P.W.4, the owner of the tea shop, has also stated the same facts.

[iii] P.W.5, the Village Administrative Officer, has stated about the preparation of the Observation Mahazar and Rough Sketch and the recovery of the material objects from the place of occurrence. P.W.6, the Revenue Inspector, at Tiruchengode, at the relevant point of time, has spoken about the arrest of the accused Seeni @ Srinivasan and Muthu. He has stated about the disclosure statement made by the accused Muthu and the recovery of M.O.18-Yamaha Crux motorcycle. P.W.7 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.8-the Village Administrative Officer of Namakkal, has spoken about the confession made by Muthu @ Angamuthu before P.W.38 - Revenue Divisional Officer on 18.12.2004. He has further stated that thereafter, he was produced to the police and on the arrest, he gave a voluntary confession. Apart from the above, he has not stated anything in favour of the prosecution. Therefore, he has also been treated as hostile. P.W.9 has spoken about the arrest of Govindaraj on 21.12.2004 at 06.30 hrs and the disclosure statement made by him. He has further stated about the recovery of M.Os.8 to 11 from the jewelry shop at Palacode.

[iv] P.W.10 has stated that during the relevant time, he was running a telephone booth at Vaikundam village. He has stated that on 07.12.2004, 2 persons came to his telephone booth and using his telephone, spoke to somebody. He has not identified the persons so spoke. P.W.11 has stated that on 07.12.2004 along with Jambu @ Shanmugam, he went to the telephone booth of P.W.10 and from where, Jambu @ Shanmugam tried to speak somebody. But the telephone call did not materialise. At that time, a Tata Sumo Car came to that place, in which, the inmates of the car forced Jambu @ Shanmugam to get in and took away the car. In the said car, A1 and few others were present. This witness has also been treated hostile as he has not supported the case of the prosecution in full. P.W.12 has stated that he was running a telephone booth at Sangagiri. He has stated that on 07.12.2004 at about 17.30 hrs, somebody came and spoke over phone from his booth. He issued a receipt for the same. He has not stated anything incriminating against the accused.

[v] P.W.13 is an Accountant in the TNEB at Edappadi. According to him, on 07.12.2004, Jambu @ Shanmugam came to his office at 08.30 hrs., along with the deceased and introduced the deceased to him. The deceased enquired about the salary arrears in respect of Jambu @ Shanmugam and then they left the office.

P.W.14 is also an employee of TNEB. During the relevant time, he was at Edappadi Office. He has stated about the arrival of the deceased and Jambu @ Shanmugam to the office at 0.8.30 hrs. on 07.12.2004 and left office at 12.00 noon. P.W.15 is also an employee of TNEB at Edappadi. He has also been treated as hostile. P.W.16 was working as a Watchman in a private school known as "Navasakthi Matriculation School". According to him, on one day, six years before his deposition, there were three people standing by the side of the school. There was a car parked by their side. At that time, yet another car came and pulled a person from the car that was already parked and pushed him to the second car and thereafter, left the place of occurrence. This witness has also been treated as a hostile witness as he has not stated anything incriminating the accused or anything in favour of the prosecution. P.W.19 has spoken about the ownership of the car bearing Regn.No.TN-07-T-4041. According to him, he owned the said car and sold it later, to one Jailapudin, of Salem. P.Ws.20, 21 and 22 have also spoken about the same fact. These witnesses have been examined to speak about the motive on account of the above car transaction. P.W.23 has also turned hostile and he has not supported the case of the prosecution in any manner. P.W.24 has spoken about the photographs taken at the place of occurrence on the request of P.W.41. P.W.25 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.26 has also turned hostile and he has not supported the case of the prosecution in any manner. P.W.27, is the police constable, who has stated that P.W.41 had handed over Exs.P.1 and 29 [complaint and FIR] to him, and he in turn, had handed over the same to the learned Judicial Magistrate concerned at 11.40 hrs on the same day. P.W.28 has spoken about the fact that he carried the dead body from the place of occurrence to the hospital and handed over the same to the doctor for postmortem. He has further stated that he removed the material objects found on the body of the deceased, viz., the cloth worn by the deceased, and handed over the same to P.W.41. P.W.29, the Village Administrative Officer, has stated about the arrest of A1 to A4 and the consequential recovery of the material objects as narrated already. P.Ws.30 and 31 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.32 is the father of Jambu @ Shanmugam. He has not stated anything incriminating against the accused. He has stated that after the death of the deceased in this case, the death of Jambu @ Shanmugam after four days, came to light, within the police limits of Chalakudi Police Station in Kerala State. He has further stated that a case has been registered in connection with the death of Jambu @ Shanmugam at Chalakudi Police Station. P.W.33 is the employee in Woodlands Hotel at Chottanikara in Kerala State. He has stated that on 08.12.2004, 7 people came to the Hotel and stayed in two rooms. They had come in a car bearing Regn.No.TN-07-D-4041 and they vacated the rooms on the

next day. P.W.34, is the Deputy Superintendent of Police at Malapuzham District in Kerala State. He has stated about the registration of the case in Cr.No.640/2004 u/s.302 IPC on the file of the Chalakudi Police Station, in connection with the death of Jambu @ Shanmugam. He has also spoken about the recovery of M.O.19 [Tata Sumo Car bearing Regn. No.TN-07-D-4041] and the telephone receipt from the pant pocket of Jambu @ Shanmugam, mentioning the Booth name as "Dhanam Telecom, Sangagiri, Booth No.242046".

[vi] P.W.35 was working as the then Deputy Postmaster at Coimbatore. He has further stated about the Cable TV Network business conducted by A1. P.W.36, a Clerk at Naraikinaru Panchayat, has stated about the arrest of A3, A8, A9, A10, A14 and A15. P.W.37, the Head Clerk of the learned Judicial Magistrate, Tiruchengode, has stated that he forwarded all the material objects for chemical examination and he received Ex.P.23 [Report], which revealed human blood stains on the material objects recovered from the place of occurrence. P.W.38 was the Revenue Divisional Officer of Namakkal during the relevant point of time. He has stated that on 18.12.2004, at 12.30 hrs., when he was in his office, the Panchayat Board President of Naraikinaru Panchayat, by name A.Subramaniam, produced the accused Muthu @ Angamuthu before him and the said accused gave a voluntary confession in respect of present case, which he reduced into writing. It is Ex.P.26. He has further stated that the accused was sent to the Police Station. P.W.39 has turned hostile and he has not supported the case of the prosecution in any manner.

[vii] P.W.40 is the star witness for the prosecution. He was the then learned Judicial Magistrate, at Paramathi. He has stated that on the request made by the Investigating Officer, he recorded the judicial confession of the accused Muthu @ Angamuthu [as per judgment, his rank is A7, as per deposition he is A6]. He has stated that after following the legal requirements, he recorded the judicial confession of Muthu @ Angamuthu on 28.12.2004 and the same is marked as Ex.P.25. P.Ws.41 and 42 have spoken about the investigation done by them and the filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side nor marked any document.

4 Having considered all the above, the Trial Court convicted and sentenced them as detailed in the first paragraph of this judgment. That is how, they are before this Court, with these appeals.

5 We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 This is a case based on the circumstantial evidence, wherein the prosecution is required to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances, should form a complete chain without any break, unerringly pointing to the guilt of the accused and there shall be no alternative hypothesis which would be inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us go into the circumstances projected by the prosecution.

7 The enmity between A1 and the deceased has been spoken by P.Ws.1 and 2. We do not find any reason to reject their evidences in this regard. Thus, we hold that the prosecution has proved that A1 had motive against the deceased.

8 The next circumstance is, as spoken by P.W.2, the deceased left his house along with Jambu @ Shanmugam on 07.12.2004 at 06.45 hrs. Thereafter, on the same day at 07.30 hrs., the deceased and Jambu @ Shanmugam, were found in the tea shop of P.W.4, taking tea. P.Ws.3 and 4 have spoken about the same. The deceased took the car from P.W.3. Then, the deceased and Jambu @ Shanmugam left for Edappadi. The car was driven by the deceased. There is no reason to reject the evidences of P.Ws.3 and 4 in this regard. According to them, the deceased and Jambu @ Shanmugam, left the tea shop at 08.30 hrs. From these evidences, it has been clearly established by the prosecution that the deceased and Jambu @ Shanmugam, were at Sengodanpalayam village and that they proceeded towards Edappadi in the car at 08.30 a.m.

9 The officials of TNEB, at Edappadi, viz., P.Ws.13, 14 and 15, have stated that Jambu @ Shanmugam came to their office at 08.30 hrs., along with the deceased and introduced him and thereafter, they left the office at 12.00 noon. There is no reason to reject the evidences of these independent witnesses. Thus, the prosecution has clearly established that the deceased and Jambu @ Shanmugam, left the TNEB office at Edappadi, by 12.00 noon on 07.12.2004.

10 The next circumstance is spoken by P.W.2, the wife of the deceased. She has stated that when she contacted her husband, the deceased at 11.30 hrs., the deceased told that he was in Sangagiri and the work was not yet over. At 14.30 hrs., when she again contacted the deceased through his cellphone, the deceased told her that he was in Erode. Again at 20.00 hrs., when she contacted the deceased through his cellphone, the

deceased told that he would return immediately with tiffin for the children. Thus, the voice of the deceased was lastly heard at 20.00 hrs., on 07.12.2004. But, unfortunately, the call details of the cellphone of the deceased bearing No.9842753278, have not been collected by the police and proved in evidence. Had this been done, the movement of the deceased until 20.00 hrs., or beyond that, would have been easily proved scientifically by the prosecution. But, in this case, the Investigating Officer had chosen to adopt the Orthodox method of investigation to rely on the oral evidence of the witnesses, instead of proving the facts by means of available scientific evidence. At any rate, from the evidence of P.W.2, that she heard the voice of the deceased at 20.00 hrs on 07.12.2004, the prosecution has at least proved that the deceased was alive till 20.00 hrs on that day. The Investigating Officer had failed to collect any other evidence about the presence of the deceased either in Sangagiri or at Erode as it has been spoken by P.W.2. However, we do not find any reason to reject the evidence of P.W.2 that the voice of the deceased was lastly heard at 20.00 hrs., from which, we can infer that the deceased was alive at least till 20.00 hrs. on 07.12.2004.

11 The next circumstance is a vital circumstance. According to P.W.2, she tried to contact the deceased repeatedly from 21.30 hrs on 07.12.2004 onwards. But the cellphone of the deceased was in "switch-off" mode. Thus, she was not able to contact the deceased. Unfortunately, the Investigating Officer had failed to collect the call details of the deceased and his location details from the Service Provider. Thus, the movement of the deceased after 20.00 hrs on 07.12.2004, which could have been otherwise proved by means of scientific evidence, has been lost by the prosecution and thus, absolutely, there is no evidence about the movement of the deceased and Jambu @ Shanmugam beyond 20.00 hrs on 07.12.2004.

12 The next circumstance is spoken by P.W.1. He has stated that at 08.00 hrs on 08.12.2004, he received an anonymous cellphone call informing him that there was a dead body of a male, lying at the place of occurrence with cut injuries. Immediately, he rushed to the place of occurrence and found the deceased lying dead with cut injuries and on his information, P.W.2 also rushed there and found the dead body of her husband at 09.00 hrs. Thus, the prosecution has proved beyond reasonable doubt that the deceased had died some time between 20.00 hrs on 07.12.2004 and 09.00 hrs on 08.12.2004.

13 P.W.2, the wife of the deceased has further stated that at the time when the deceased left the house at 06.45 hrs on 07.12.2004, he was wearing a gold chain around his neck, a gold bracelet, a gold ring with a political party symbol and another gold ring with precious stones. These gold jeweleries

[M.Os.8 to 11] were found missing on the body. The doctor who has conducted the autopsy, had found a number of cut injuries on the body of the deceased and he has opined that the death was due to homicidal violence, due to shock and hemorrhage, as a result of the cut injuries. Thus, the prosecution has clearly proved that the death of the deceased was due to homicidal violence and that in the same occurrence, M.Os.8 to 11 had been stolen away in the course of the same transaction. Upto this extent, we have no hesitation to accept the case of the prosecution as the prosecution has clearly proved all the above circumstances.

14 Now, the next question is as to who are the perpetrators of the crime. In order to prove that these appellants were the perpetrators of the crime, the prosecution relies on the recovery of certain material objects on the disclosure statements made by some of the accused and the extra-judicial confession given by the accused Muthu @ Angamuthu to P.W.38 and the judicial confession given by him to P.W.40, the learned Judicial Magistrate. Let us now first take up the extra-judicial confession given by Muthu @ Angamuthu allegedly to P.W.38.

15 According to P.W.38, on 18.12.2004, one Mr.A.Subramaniam, Panchayat Board President of Naraikinaru Panchayat Board, appeared before him at 12.30 noon along with the accused Muthu @ Angamuthu. The accused Muthu @ Angamuthu wanted to give a voluntary confession. After giving him warning that the said confession could be used against him, he recorded the said confession of the accused, which has been marked as Ex.P.27. We find it difficult to accept the said extra-judicial confession given by Muthu @ Angamuthu to P.W.38. Mr.Balasubramaniam, who is stated to have produced the accused before P.W.38, has not been examined and no explanation, whatsoever, has been given by the prosecution for the same. This only creates a doubt in the veracity of the evidence of P.W.38. According to him, when the confession was recorded, P.W.7, the Revenue Inspector of Namakkal, was also present at his office as a witness. But, P.W.7, in his chief-examination, has stated that on 18.12.2004, when he was at his office at Namakkal, P.W.38, the Revenue Divisional Officer called him to his office. Therefore, he went to the office of P.W.38. At that time, according to him, P.W.8, the then Village Administrative Officer of Namakkal was also present. It is the evidence of P.W.38 that in the presence of P.Ws.7 and 8, the accused gave a voluntary confession. But, P.Ws.7 and 8, in their chief-examination, have stated that at the time when they went to the office of P.W.38, the Inspector of Police was also present and the confession was recorded only in the presence of the Inspector of Police. They have stated that the confession statement was typed out by a

Typist in the presence of the Inspector of Police. Of course these two witnesses have been treated as hostile and they have been cross-examined. But the fact spoken by these two witnesses that the Inspector of Police was very much present at the time when the alleged confession was recorded by P.W.38, has not been disputed at all. Though these two witnesses have been cross-examined by the learned Public Prosecutor, we find that he had not chosen to dispute the fact that the Inspector of Police was present at the time when the confession was given. Thus, the above fact that the Inspector of Police was present when the confession was given by the accused Muthu @ Angamuthu, remains unchallenged and therefore, we find no reason to reject the same. These two witnesses, viz., P.Ws.7 and 8, are also equally responsible witnesses belonging to the Revenue Department. P.W.38 himself has admitted during cross-examination that when he forwarded the said extra-judicial confession recorded by him to the Court, he has mentioned the crime number of the case as Cr.No.1739/2004. He has not explained as to how did he come to know about the crime number of the case. This would only go to support the evidences of P.Ws.7 and 8 that at the time of recording the extra-judicial confession, the Inspector of Police was present and he should have only supplied the crime number of the case to P.W.38. Thus, we have got reasonable doubt about the evidence of P.W.38 that the accused Muthu @ Angamuthu gave a voluntary confession to him. Since we have got every reasonable belief that the said confession was recorded in the presence of the Inspector of Police, the same is an inadmissible evidence as per the bar contained in section 25 of the Evidence Act and therefore, the same is rejected.

16 Then comes the judicial confession recorded by P.W.40 vide Ex.P.25. The learned Magistrate has stated that the accused Muthu @ Angamuthu was produced before him from the Central Prison, Salem, for the purpose of recording judicial confession on 27.12.2004. According to him, on 27.12.2004, he gave a statutory warning as required u/s.164 Cr.P.C. and sent him back to the Prison, by giving him a cooling time of 24 hours. He has further stated that the said accused was again produced before him on 28.12.2004 at 16.30 hrs from the Central Prison, Salem. He has further stated that he enquired from the accused as to whether he was willing to give confession voluntarily or whether he was pressurized to give such a confession. The accused told him that he was willing to give confession voluntarily. But, P.W.40 has not stated that he appraised the accused of the fact that any confession that would be given by him, could be used against him as an evidence in the trial, which is mandatory as per section 164 Cr.P.C. As required u/s.164 Cr.P.C., the learned Magistrate has not recorded a footnote, thereby recording his belief that the confession was voluntarily made. He has not recorded any footnote. But, he has obtained a declaration from the accused

at the footnote of the judicial confession which runs as follows:-

"The above statement was read over to me and it is according to my statement."

Except this, there is no other footnote recorded by the learned Magistrate. In this regard, we may refer to sub-section [4] of section 164 Cr.P.C., which reads as follows:-

"164:-Recording of confessions and statements:-

.....

[4]Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession and the Magistrate shall make a memorandum at the foot of such record to the following effect:-

"I have explained to [name] that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

[signed] ---
Magistrate."

17 The necessity to follow the mandate of sub-section [4] of section 164 Cr.P.C., came to be considered by the Hon'ble Apex Court in several judgments. In Chandran Vs. State of Madras reported in AIR 1978 SC 157, the Hon'ble Supreme Court noticed a footnote recorded by the learned Magistrate after recording a judicial confession of the accused. In that case, in the footnote, the learned Magistrate, in stead of recording his "belief" that the confession was made voluntarily, had recorded his "hope" that the confession was voluntarily made. The Hon'ble Apex Court has dealt with these two expressions, "belief" and "hope" in detail and has come to the conclusion that to ensure the voluntariness of the judicial confession, the Magistrate should have recorded his "belief". But, in the said case, since the learned Magistrate had advisedly chosen to use the word "hope" in stead of "belief", the Hon'ble Supreme Court held that the learned Magistrate was not fully convinced that

the confession had been voluntarily made. For better understanding, let us now extract paragraphs 29 to 31 of the said judgment, which reads thus:-

"29.A comparison of the memorandum, Ex.P.28 recorded by the Magistrate with the one prescribed by S.164[3] will show that the former [Ex.P.28] suffers from two patent defects. Firstly, in stead of certifying that he believed that this confession Ex.P.27 was voluntarily made, the Magistrate has merely said ; "I hope that this statement was made by him voluntarily". Secondly, he omitted to certify that 'this confession was taken in his presence and hearing, and was read over to the person making it and it is admitted by him to be correct, and it contains a full and true account of the statement made by him'. The latter was obviously a defect of form. In the case of the former, it was open to the prosecution to show that the use of the word "hope" was merely due to an inadvertent error, although in substance and reality, the Magistrate was fully satisfied that the confession [Ex.P.27] was voluntarily made by the accused. The best informed person who could explain whether the use of the word "hope" in Ex.P.28 was inadvertent or deliberate, was the Magistrate who recorded it. Although the Magistrate was examined as a witness [P.W.28] at the trial, yet, no attempt was made by the prosecution to establish from his word of mouth that the use of the word by him was inadvertent or accidental. In the witness-box, also, the Magistrate did not go whole hog to vouch for the voluntariness of the confession. He did not go further than saying that on February 8, 1974, when he repeated the warning of the accused, the latter was found " in a position" to give a voluntary statement. To say that the accused was ' in a position' or mood to give a voluntary statement, falls far short of vouching that upon questioning the accused, the (Magistrate) had "reason to believe that the confession is being voluntarily made", which under S.164 is a sine qua non for the exercise of jurisdiction to record the confession. But that section does not make it obligatory for the Magistrate to append at the end of the record of the preliminary questioning, a certificate as to the anticipated voluntariness of the confession about to be

recorded. But the law does peremptorily require that after recording the confession of the accused, the Magistrate must append at the foot of the record a memorandum certifying that he believes that the confession was voluntarily made. The reason for requiring compliance with this mandatory requirement at the close of the recording of the confession, appears to be that it is only after hearing the confession and observing the demeanour of the person making it, that the Magistrate is in the best position to append the requisite memorandum certifying the voluntariness of the confession made before him. If, the Magistrate recording a confession of an accused person produced before him in the course of police investigation, does not, on the face of the record, certify in clear, categorical terms his satisfaction or belief as to the voluntary nature of the confession recorded by him, nor testifies orally, as to such satisfaction or belief, the defect would be fatal to the admissibility and use of the confession against the accused at the trial.

30. In the instant case, the Magistrate, has nowhere in the record of the confession, certified his satisfaction or belief about the voluntariness of the confession. In the Memorandum [Ex.P.28] appended by him at the foot of the confession, he has merely expressed a "hope" that the confession was voluntarily made. Even in his oral evidence at the trial, the Magistrate [P.W.18] did not vouch for the voluntariness of the confession. He did not say that the use of the word "hope" by him in the memorandum [Ex.P.28] was due to some accidental slip or heedless error. P.W.28 is a Sub-Divisional Magistrate and a member of the Judicial service. He is supposed to be a judicial officer of standing and experience. The memo, Ex.P.28, is in English and in the handwriting of the Magistrate. It is, therefore, not possible to hold that the Magistrate was ignorant of the difference in the meaning of the words "hope" and "believe" and that he unwittingly chose the former, while in reality, he intended to express what was meant by the latter. There is every probability that the use of the word "hope" instead of "believe". In the memorandum, Ex.P.28, by the Magistrate was deliberate and not inadvertent. There is a

marked difference in what is connoted by "hope" and "believe" ; "to hope" means "to want and expect" ; "to look forward with expectation and desire". "Hope" is a wishful feeling floating on nebulous foams projected into the unknown future. Deep hidden in "hope" dwells a lingering doubt, a speck of suspicion, that what is desired and expected may not turn out true. Not unoften, in the mind of the person hoping, there lurks subconscious fear that the "hope" may turn out a "dupe". In the sense in which, it is used in S.164, has 'logical confidence' or 'rational conviction' as its essential element. It imports a very high degree of expectation wrought by reason, a satisfaction fast-rooted interra firma, free from doubt as to the truth of the fact perceived and believed.

31. In the light of the above discussion, we are of opinion, that the Magistrate advisedly chose to use the word "hope", instead of "believe", in the Memorandum Ex.P.28, because he was not fully convinced that the confession, Ex.P.27 had been voluntarily made, the Magistrate's mind being troubled by suspicion and doubt as to the voluntariness of the confession. The retracted confession, Ex.P.27, therefore, must be excluded from consideration."
[Emphasis supplied]

18 Applying the said dictum laid down by the Hon'ble Supreme Court, when we analyse the evidence of P.W.40 and Ex.P.25, it is crystal clear that in the oral evidence, the learned Magistrate has not stated that he believed that the confession was made by the accused voluntarily. He has not appended the footnote as required under sub-section [4] of Section 164 Cr.P.C. In Chandran's case, the Hon'ble Apex Court, though a footnote was recorded, finding that the learned Magistrate had chosen to use the expression "hope" in stead of "belief", has held that the learned Magistrate was not satisfied about the voluntariness of the confession. Here is the case where the learned Magistrate neither has stated in the oral evidence nor has recorded his belief that the confession was voluntary by recording the footnote as required u/s.164[4] Cr.P.C. Therefore, we find it difficult to hold that Ex.P.25 was a voluntary confession. Therefore, the same needs to be rejected.

19 The prosecution next relies on the recovery of the material objects. Except the recovery of M.Os.8 to 11, the recovery of other material objects on the disclosure statements

made by the respective accused are irrelevant and therefore, they are inadmissible because the prosecution has failed to establish the connection between the crime and the discovered facts. Therefore, we need not dwell more upon the disclosure statements made by various accused except the accused Govindaraj [A15]. According to the case of the prosecution, the said accused was arrested on 21.12.2004 at 12.00 noon in the presence of P.W.9 and another witness. On such arrest, it is alleged that the accused Govindaraj gave a voluntary confession. It is the case of the prosecution that in pursuance of the said disclosure statement made by the accused Govindaraj, they went to the jewelry shop of P.W.39, from where M.Os.8 to 11 were recovered. But, P.W.39 [Mr.Vinoth] has turned hostile and he has not supported the case of the prosecution. Thus, the prosecution has failed to prove as to how the jewels came to be in the possessions of P.W.39. M.Os.8 to 11 were not recovered from the possession of the accused Govindaraj ; but they were recovered from the possession of P.W.39. No record, whatsoever, for the pledging of M.Os.8 to 11 to P.W.39 were recovered by the police. It is not explained to the Court as to why no document, whatsoever, has been recovered to prove the pledging of M.Os.8 to 11 with P.W.39 if really M.Os.8 to 11 were really pledged by the said accused. In the light of the fact that P.W.39 has turned hostile and in the light of the failure of the prosecution to produce the pawn receipt ; the pawn register and other documents maintained at the shop of P.W.39, we have to hold that the prosecution has failed to prove that M.Os.8 to 11 were pledged with P.W.39 only by the accused Govindaraj. Therefore, in our considered view, even assuming that M.Os.8 to 11 were recovered from the shop of P.W.39, in the absence of any evidence that the accused Govindaraj alone had pledged the jewels with P.W.39, no presumption as required u/s.114 of the Evidence Act, could be raised against the accused Govindaraj.

20 The prosecution has further failed to collect any evidence regarding the movement of the accused in Kerala. Even the employee of the Hotel at Chottanikara, where it is alleged that these accused had stayed on the crucial date, has not identified any of the accused. No documents pertaining to the booking of the rooms in the said Hotel, have been seized by the police for the reason best known to them. Though it is alleged that the deceased and Jambu @ Shanmugam were lastly seen together and though it is alleged that the dead body of Jambu @ Shanmugam was found within the Kerala State after four days of the present occurrence, no materials have been produced in this case as to what is the case relating to the death of Jambu @ Shanmugam and the prosecution has failed to establish as to when, where and how Jambu @ Shanmugam was disconnected from the deceased and how and by whom he was killed. Absolutely, no evidence has been let in before this Court that these accused had anything to do with the death of Jambu @ Shanmugam.

21 Of course, this is a very sensational case where a Councilor of a Municipality has been done to death in a gruesome manner and the properties had been stolen. It appears that there were chain of murders including Jambu @ Shanmugam. But, unfortunately, there are lot of missing links in the chain of circumstances projected by the prosecution and the proved circumstances would only go to prove the motive and that the deceased was lastly heard alive at 20.00 hrs on 07.12.2004. Except that, to establish that this accused are the perpetrators of the crime, the prosecution has failed to let in convincing evidence. Therefore, we are constrained to acquit all the appellants as the prosecution has failed to prove the case beyond reasonable doubts.

22 In the result, the criminal appeals are allowed. The conviction and sentence imposed on the appellants by the Trial Court for the aforesaid offences, in SC.No.137/2005, vide judgment dated 13.08.2012, are hereby set aside and the appellants are acquitted of the charges leveled against them. Since it is reported that the appellants are on bail, the bail bonds executed by them, shall stand discharged. Fine amounts if any paid, shall be refunded to the appellants.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

AP
To

- 1 The Additional District and Sessions Judge,
Namakkal.
- 2 The Inspector of Police
Pallipalayam Police Station
Namakkal District.
- 3 The Judicial Magistrate
Tiruchengode.
- 4 The Chief Judicial Magistrate
Namakkal.

- 5 The Superintendent
Central Prison,
Coimbatore
- 6 The Public Prosecutor
High Court, Chennai.

Common Judgment in
Crl.A.Nos.539, 543, 545 & 549/2012

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