

Bail Slip

The Appellant/Accused Viz., 1.D.Robinson S/O Devaraj and 2.Logesh S/O Seker and 3.Mohammed Tariiq S/O Abivur Rahman and 4.Prasanna S/O.Marirajan and 5.M.Periasamy S/O Maruthu, and 6.Shankar S/O.P.Palanisamy was directed to release on Bail as per order of this Court dated 09/04/2013, 4/4/13, 30/4/13, 12/7/13, 25/7/13 respectively in Crl M.P.Nos.MP No.1/13+1/13+1/13+1/13+1/13 in Crl Appeal Nos.178,179,222,301,301,337, and 466/13 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-04-2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal Nos.178, 179, 222, 301, 337 and 466 of 2013

D.Robinson	.. Appellant in Crl.A.No.178 of 2013
Logesh	.. Appellant in Crl.A.No.179 of 2013
Mohammed Tariiq	.. Appellant in Crl.A.No.222 of 2013
Prasanna	.. Appellant in Crl.A.No.301 of 2013
M.Periasamy	.. Appellant in Crl.A.No.337 of 2013
Shankar	.. Appellant in Crl.A.No.466 of 2013

Versus

State represented by Inspector of Police,
Malayampalayam Police Station,
Erode District.

.. Respondent in all the appeals.

Prayer: Appeals filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction and sentence imposed by the Second Additional District and Sessions Judge, Erode, dated 14.2.2013, in S.C.No.158 of 2012.

For Appellant in Crl.Appeal
No.178 of 2013 : Mr.P.Palani Nathan

For Appellant in Crl.Appeal
No.179 of 2013 : Mr.N.Manoharan

For Appellant in Crl.Appeal
No.222 of 2013 : Mr.N.Manoharan

For Appellant in Crl.Appeal
No.301 of 2013

: Mr.Philip Ravindran
Jesudoss

For Appellant in Crl.Appeal
No.337 of 2013

: Mr.S.Palanivelayutham

For Appellant in Crl.Appeal
No.466 of 2013

: Mr.V.Bala Murugan

For Respondent

: Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

(The Judgment of the court was made by M.Jaichandren,J)

The appellants are accused A-1 to A-6, in S.C.No.158 of 2012, on the file of the Second Additional District and Sessions Judge, Erode. They stood charged for various offences as detailed hereunder:

Charge No.	Charged framed against	Charge framed under
1	A-1 - A-6	Section 120(b) of I.P.C.
2	A-2 - A-6	Section 396 of I.P.C.
3	A-1 - A-6	Section 302 r/w 34 of I.P.C.
4	A-1 - A-6	Section 201 of I.P.C.

By the judgment, dated 14.2.2013, the trial Court had convicted all the six accused and sentenced them as detailed hereunder:

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Rank of the Accused	Convicted under	Sentenced to undergo for the offence under Section 120(B), 396, 302 and 201 of I.P.C.	Sentenced to undergo for the offence under Section 201 of I.P.C.
A-1	Section 120(B), 396, 302 of I.P.C	Life Imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.	Three years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.
A-2	Section 120(B), 396, 302 of I.P.C.	Life Imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.	Three years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.
A-3	Section 120(B), 396, 302 r/w 201 of I.P.C	Life Imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.	Three years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.
A-4	Section 120(B), 396, 302 r/w 201 of I.P.C. and 201 I.P.C	Life Imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.	Three years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.

Rank of the Accused	Convicted under	Sentenced to undergo for the offence under Section 120(B), 396, 302 and 201 of I.P.C.	Sentenced to undergo for the offence under Section 201 of I.P.C.
A-5	Section 120(B), 396, 302 r/w 201 of I.P.C.	Life Imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.	Three years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.
A-6	Section 120(B), 396, 302 r/w 201 of I.P.C.	Life Imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.	Three years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment.

Challenging the said conviction and sentence, the accused/appellant are before this Court with this Criminal Appeal.

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

2.1) The deceased in this case was one K.M.Elangovan. It is alleged that he was a homo sexual. This came to the knowledge of the second accused. The second accused in turn informed Accused 1, 3 to 6 about the same. Using the same, it is alleged that, on 24.9.2011, all the accused had conspired to do away with the deceased and to commit dacoity.

2.2) In pursuance of the said conspiracy, it is alleged that, on 24.9.2011, at about 10.00 p.m, at the farm house of the deceased, when he was alone, all the six accused came and committed murder of the deceased. Then they took away the Bolero Jeep, bearing Registration No.TN33 AL 3300 , belonging to the deceased worth about Rs.5 lakhs and fled away from the scene of occurrence. The occurrence was not witnessed by anyone.

2.3) P.W.3 was a maid servant in the house of the deceased. On 24.9.2011, in the evening, she had found the deceased and A-1, A-4, A-5 and A-6 coming together in the Bolero Jeep mentioned above, to the house of the deceased. After finishing her work she had left the house. On the next day morning, by about 7.00 a.m, when she had gone to the house of the deceased, she could not see the deceased. The Bolero Jeep was also not seen. The accused, who were in the company of the deceased, were also not seen. She had noticed blood stains at various places in the house. Suspecting foul play, she had immediately called P.W.1, over phone, and had informed him about the occurrence.

2.4) P.W.1, Pambanan, is the brother of the deceased. He was residing near the railway station, at Erode. The deceased was residing in Coimbatore, on account of his business. But he used to visit Erode, frequently, to go to his native village, namely Kilambadi. According to him, on 24.9.2011, at about 9.00 a.m, the deceased came to Erode in his Bolero Jeep, bearing Registration No.TN33 AL 3300 and in the evening he left for Kumarasamy Koundarpalayam, where the deceased owned a farm house and some lands. According to his evidence, at or about 7.00 p.m., on the same day, P.W.3, spoke to him over phone. According to him, P.W.3 had informed him that the deceased was found missing and the Jeep was also missing. He has further stated that P.W.3 had informed him that four persons, who were in the company of the deceased were also missing. Immediately, he had informed the same to P.W.2, Indu Bala, the wife of the deceased. He had then gone to the farm house of the deceased and had found some blood stains in the verandah, hall and the first floor of the house. On hearing about the occurrence P.Ws.4 to 6 had come to the place of occurrence. They had said that they had found the deceased and the six accused together, on the previous day evening. Then P.W.1 had gone to Malayampalayam Police Station and had made a complaint, at 11.00 a.m., on 24.9.2011.

2.5) P.W.13, the then Sub Inspector of Police, Malayampalayam Police Station had registered a case, in Crime No.167 of 2011. The said complaint had been marked as Ex.P-11. He had forwarded the same to the court, which was received at 4.20 p.m., by the Magistrate. P.W.17 took up the case for investigation. He had proceeded to the place of occurrence and had examined P.W.1 to P.W.3 and few other witnesses. While P.W.1, was in search of the deceased along with others, he had found a dead body in the Kalingarayan Kalvai, enroute from Ganapathipalayam to Mannarpalayam road and on identification, he had found that it is the body of the deceased. Immediately, he had gone to the Malayampalayam Police Station and informed the same. Based on the same, P.W.17 altered the case into one under Section 302 and 379 I.P.C. The altered report had been marked as Ex.P-38.

2.6) On coming over to the place where the dead body was found P.W.17, conducted inquest on the body of the deceased and prepared Ex.P-41-Inquest report. Then he forwarded the dead body for postmortem. P.W.16, Dr.Sasirekha, conducted autopsy on the body of the deceased and she had found the following injuries.

1. Face is swollen.
2. A lacerated wound of 3 x 0.5 cm bone depth vertical, 5 cm alone. Left Eye brow.
3. A lacerated wound of 4 x 1 x bone depth vertical 2.5 c.m.
4. A lacerated wound of 4 x 1 x 0.5 cm oblique, over Lt. Parietal region. 6 cm alone Left Ear.
5. There are two cut injuries with irregular edges a) 6 x 1.5 cm, b) 5 x 1 x 1 cm Horizontal over lateral and front of Left Wrist
6. Abrasion of 4 x 0.5 cm Lt fore arm 5 cm above Left Wrist.
7. Abrasion of 6 x 3 cm over Left Knee
8. Abrasion of 2 x 1 cm Right Knee
9. Contusion of 1 x 5 c.m. over Left temporal and occipital region 2 cm alone Left Ear.
10. Contusion of 10 x 5 cm with bluish discolouration ones Rt. upper back and right scapular region.
11. Contusion of 7 x 5 cm left upper back and left scapular region.
12. Abrasion of 5 x 5 cm over left Lower back 5 cm alone.
13. Abrasion of 5 x 5 c.m one right buttock
14. 8 x 5 cm contusion with over neck covering the right side of mandible.

She gave her opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the dead body. Ex.P-36 is the postmortem certificate.

2.7) During the course of investigation, P.W.17 along with P.W.15, had stopped the Bolero Jeep bearing Registration No.TN33 AL 3300 near Chennimalai on Kangeyam Road at about 5.00 p.m., on 26.9.2011. They had found the six accused in the said Jeep. P.W.17 had made preliminary enquiries with the accused and since he was convinced that they were the perpetrators of the crime, he had arrested all of them. On such arrest, he had recovered the jeep from the possession of the accused, under a mahazar. While in custody, the first accused had made a voluntary confession, between 6.15 p.m. and 7.30 p.m., in which he had disclosed the place, where he had hidden a blood stained shirt. The second accused had given a voluntary confession, in which he had disclosed the place where he had hidden a blood stained

shirt. Similarly, accused 3 to 6 had also given independent voluntary confessions, in which they had disclosed the place where they had hidden the blood stained shirts. Thus, all the accused had given independent confessions, in which they had disclosed the place, where the respective accused had hidden the blood stained shirts. In pursuance of the disclosure statement made by the first accused, he had produced a suit case, a blood stained wooden log, a blood stained lock, a blood stained pant and a shirt and a seat cover from the hidden place. The fifth accused had shown the place, where the TVS-50 motor cycle, bearing Registration No.TN 33 AJ 2415, was hidden and the same was also recovered, under a mahazar. Thereafter, on returning to the police station, he had forwarded the seized materials to the court.

2.8) On the day of the occurrence, P.W.17 had requested the forensic expert to visit the place of occurrence. He had taken sample finger prints from the house of the deceased. The finger prints taken from the accused 1 to 3 tallied with the same. On the request made by P.W.17, Test Identification Parade was conducted, in which P.Ws.4 to 5 had participated and had identified the accused. On completing the investigation, P.W.17, had laid the charge sheet against the accused.

3. Based on the above materials, the trial court had framed charges, under Sections 302 and 379 I.P.C. The accused had denied the charges. In order to prove the charges, as many as 17 witnesses were examined, 52 documents and 16 material objects were marked on the side of the prosecution. Out of the said witnesses, P.W.1 the brother of the deceased, has stated that P.W.3 had told him, at 7.00 a.m., about the missing of the deceased and the jeep. He had in turn informed P.W.2, the wife of the deceased and when both P.W.1 and P.W.2 went to the place of occurrence, they found blood stains at a number of places in the house. P.W.1 has further stated about the complaint made by him to the police.

4. P.W.3 the maid servant at the farm house of the deceased had stated that on the previous day evening, at about 7.00 p.m, accused 1, 4, 5 and 6 had come in a Bolero Jeep, along with the deceased, to the farm house and had stayed there. On the next day morning, at 7.00 a.m., when she went to the farm house the accused were found missing. The deceased and the Bolero Jeep was also missing. There were blood stains inside the house and that she had informed the same to P.W.1.

5. P.W.4 to P.W.6 are important witnesses for the prosecution. P.W.4 has stated that, on 24.9.2011, at about 6.30 p.m., he had found the deceased sitting in his car, bearing No.TN33 AL 3300, near the L.I.C office, at Erode. He has further stated that he had found four persons sitting with him in the

car and two persons in a TVS-50 motor cycle, bearing Registration No.TN 33 AJ 2415. He has identified the accused 1, 4 to 6, as the persons in the car and the accused 2 and 3, as the persons in the TVS-50 Motor Cycle. He has further stated that all of them had proceeded towards the farm house.

6. P.W.5 has stated that, on 24.9.2011, between 7.00 and 7.30 p.m., he had found the deceased, at Solankapalayam in his Bolero Jeep, bearing No. TN 33 AL 3300 (M.O.6). When he was standing near the tea shop the deceased had got down from the jeep and had purchased a cigarette from the shop. At that time, the deceased had told him that he was proceeding to Kumarasamy Koundanpalayam. He had found four persons along with him in the jeep and two persons in the TVS Motor Cycle. The accused 1, 4 to 6 were in the jeep and the accused 2 and 3 went in the TVS-50 Motor cycle, following the Jeep.

7. P.W.6 has stated that, at about 7.00 p.m., on 24.9.2011, he had found the accused standing near the farm house of the deceased. He had found the deceased near to the house in his Bolero Jeep, bearing Registration No.TN 33 AL 3300 (M.O.6). On getting down from the Jeep he had spoken to P.W.6, at the farm house. He had found four persons sitting in the car and two persons following in the TVS-50 Motor cycle. Thereafter, all of them had gone into the farm house. He has identified the accused, as the persons, who had accompanied the deceased.

8. P.W.7 has spoken about the fact about his taking the dead body for postmortem. P.W.8 is the Assistant Director of the Forensic Laboratory, at Erode. According to him, on the request made by the Inspector of Police, he had gone to the place of occurrence and had assisted the Inspector of Police to collect the blood stained earth from the scene of occurrence. P.W.9 is the finger print expert. He had stated that, on 25.9.2011, at 11.35 p.m, he had visited the scene of occurrence and had lifted two palm impressions, marked as Ex.R-1 and R2. It is further stated that, on 2.10.2011, he had received the palm impressions of the accused 1 and 3 and on examination, he had found that the palm impressions of the accused 1 and 3 tallied with R1 and R2, respectively. Then, he had submitted a report in this regard to the police.

9. P.W.10 has spoken about the conspiracy. According to him, on 24.9.2011, at 6.00 p.m, near old railway station, in particular, near the LIC building, when P.W.10 and one Karthirvel were standing, the six accused persons were sitting together and were talking amongst themselves. At that time, they had stated that by using the home sexual activities of the deceased, they could extract money from the deceased and kill him. They had stated that they could take the Bolero Jeep and sell it. After about ten minutes they had left the scene of

occurrence. P.W.11 has spoken about the observation mahazar and the rough sketch prepared at the place of occurrence.

10. P.W.12 has spoken about the Test Identification Parade conducted. According to him, P.W.4, P.W.5 and P.W.6 had participated in the Test Identification Parade. P.W.4 did not identify A-2 but he had identified all others. P.W.5 did not identify A-1, but had identified the others. P.W.6 was not made to undergo the Test Identification Parade. P.W.13 has spoken about the registration of the case on the complaint given by P.W.1. P.W.14, the Head Clerk of the Court had stated that he had forwarded the material objects seized during the investigation, for chemical examination. P.W.16 has spoken about the postmortem conducted and she has given her opinion about the cause of death. P.W.17 has spoken about the investigation done and on completion of the same, he had filed the final report.

11. When the incriminating materials were put to the accused, under Section 313 Cr.P.C, they had denied the same, as false. Though, they did not choose to examine any witness on their side, they had marked Ex.D-1 to D-5, in their favour. Their defence was a total denial and they had stated that a false case had been foisted against them. Having considered all the above, the trial Court had convicted them, under Sections 120(B), 396, 302 and 201 I.P.C., and had sentenced them to undergo imprisonment, as detailed in the first paragraph of this judgment. Challenging the same, they are now before this Court, with this appeal.

12. The learned counsel appearing for the appellant would submit that the evidence of P.W.10, who has spoken about the conspiracy, cannot be believed. According to the learned counsel had it been true that the accused had spoken about the plan to kill the deceased and take away the properties of the deceased, in the presence of P.W.10, he would not have kept quiet without informing the same to any one. He would further submit that it is highly unnatural for the conspiracy to have been hatched by the accused, in the presence of P.W.10, and in a manner that it would have been heard by him. We find some force in the said argument of the learned counsel.

13. As it is seen from the evidence, the place where these accused were allegedly speaking and conspiring to commit the offence is a crowded public place. When that being so, it is highly unbelievable that these accused would have spoken to commit the murder of the deceased in public, that too in the presence of P.W.10. Therefore, we reject the evidence of P.W.10.

14. However, on that score the accused cannot be acquitted from the charge of conspiracy. Conspiracy is in general hatched in secrecy. The court cannot expect direct eye witnesses to the

conspiracy. In this case, though the prosecution has attempted to prove the conspiracy, by means of direct eye witness, through the evidence of P.W.10, we are of the view that the evidence of P.W.10 is liable to be rejected. But at the same time, it is a matter of inference, as to whether there was a conspiracy hatched by these accused to commit the murder of the deceased. No doubt, we are going to hold that the prosecution has proved the conspiracy, which conclusion is based on inference, from the materials available on record.

15. With regard to the other circumstance P.W.2, Madhu Bala, the wife of the deceased had stated that the deceased had left Coimbatore to Erode, in the Bolero Jeep (M.O.6). P.W.1, the brother of the deceased has stated that the deceased left Erode to Coimbatore and to his farm in Kumarasamy Koundanpalayam in the very same Jeep. P.Ws.4, 5 and 6 have seen the deceased in the said Jeep, lastly. Thereafter, P.W.3, the maid servant of the deceased had seen the deceased alive, by about 7.00 p.m., on 24.9.2011. As such, the jeep was in his possession. Therefore, the prosecution has clearly established the fact that the Jeep, bearing Registration No.TN 33 AL 3300, belongs to the deceased, which was in his possession, lastly, and that the deceased was found missing, from around 7.30 p.m., on 24.9.2011, from his farm house at Kumarasamy Koundanpalayam.

16. The next circumstance is that the deceased was found missing, at 7.00 a.m, on 25.9.2011, from the farm house. The jeep was also found missing. This was noticed by P.W.3. P.W.3 in turn had informed P.W.1. P.W.1 had rushed to the place and he had found the same to be true. On information by P.W.1, P.W.2 the wife of the deceased had also come to the place of occurrence. They had found that the deceased was missing and the Bolero Jeep (M.O.6) was also missing. There were blood stains at three places on the floor of the house. The blood stains were recovered by the Inspector of Police with the help of P.W.8. The Chemical analysis report has revealed that these blood stains tallied with the blood stains of the deceased, which is evidenced from the blood stained clothes. Thus, it is clear that the deceased had been done to death, some time before 7.00 a.m., on 25.9.2011 and after 7.30 p.m., on 24.9.2011. The dead body had a number of injuries. The Doctor who had conducted the postmortem had opined that the death was due to shock and hemorrhage, due to the stab injuries found on the deceased. Thus, the prosecution has proved that the deceased had died due to homicidal violence. From this circumstance, the prosecution has clearly established that the deceased had died due to homicidal violence, some time between 7.30 p.m., on 24.9.2011 and before 7.00 a.m., on 25.9.2011.

17. Now the question is as to who had caused the death of the deceased. In order to prove this vital fact, the prosecution

relies on the various circumstances. P.W.4 is a vital witness. He has stated that, on 24.9.2011, at about 6.30 p.m., he had found the deceased in the Bolero Car (M.O.6), near the L.I.C office, at Erode. He has further stated that at that time, he found the accused 1 and 4 to 6 in the shop and the accused 2 and 3 in the TVS 50 Motor cycle. From this evidence, the prosecution tries to establish the fact these accused were found in the company of the deceased, at 6.30 p.m., on 24.9.2011, at Erode.

18. Mr.Asokan, the learned Senior counsel would state that, though P.W.4 knew about the presence of the deceased, along with the accused persons, he did not disclose about this vital fact to the Inspector of Police, or to any of his relatives, even after coming to know that the deceased had been done to death. We find some force in the said argument.

19. Had it been true that this witness had seen these accused in the company of the deceased, he would have certainly informed this vital fact, either to the police or to the witnesses. But he did not do so. P.W.4 had stated in the cross examination that he was examined in the hospital, during inquest. Whereas, during the chief examination, he has stated that he does not know as to where he was examined. Of course this creates some doubt in the evidence of P.W.4. But on that score, the evidence of P.W.4 cannot be rejected, totally. If the evidence of P.W.4 is the only circumstance in this case, we may hold that this would not, by itself, be sufficient to prove the guilt of the accused, as it is shrouded with doubts. But there are other circumstances which would duly corroborate the evidence of P.W.4.

20. The next circumstance is the evidence of P.W.5. He has stated that he had found the deceased in his jeep, between 7.00 p.m. to 7.30 p.m., at Solangapalayam, enroute to Kumarasamy Koundanpalayam. The deceased had stopped the vehicle, near a shop, to purchase cigarettes. P.W.5 was standing near the same shop. At that time, he had found A-1, A-4 and A-6 were in the jeep and A-2 and A-3 were on TVS-50 motor cycle. The learned counsel would submit that these witnesses would have been planted to improve the case of the prosecution. The fact remains that he was examined at the time of inquest itself. During the Test Identification Parade, he had identified all the accused, except Ex.A-1. P.W.4 had identified all the accused during Test Identification Parade, except Ex.A-2. P.W.5 had not identified A-5 in court. Thus, as rightly pointed out by the learned counsel, in respect of the identity of A-5 made by P.W.5, there is some discrepancy. But on that score, the evidence of P.W.5 cannot be rejected out right. As we have already pointed out, the evidence of P.W.5 is not the only evidence upon which reliance is made by the prosecution. There are other circumstances which corroborate the evidence of P.W.5. Then

comes the evidence of P.W.6. He has stated that, at 7.00 p.m., he was standing in front of the farm house of the deceased, at Kumarasamy Koundanpalayam. At that time, he had found the deceased going into the farm house in his jeep and after stopping the same he had got down. He had spoken with P.W.6, for some time. He had found A-1, A-4 to A-6 in the jeep and A-2 and A-3 on the TVS-50 Motor Cycle and thereafter, all of them had gone into the farm house.

21. The learned Senior Counsel would submit that P.W.6 was examined by the police only on 26.9.2011. The learned Senior Counsel would further submit that there is no explanation as to why he did not come forward with the above statement, to any one, till 26.9.2011. He had further submitted that the statement of these witnesses recorded under Section 161 Cr.P.C had reached the court only on 20.1.2012. Of course there is no explanation as to why this witness did not come forward to make any statement to the police, on 25.4.2011. But going by the fact that he is an independent man, this delay, by itself, cannot be a ground to reject his evidence.

22. Apart from the above, P.W.3's evidence would also go to prove that the deceased returned to the house, by 7.00 p.m., along with A-1 and A-4 to A-6. Therefore, in our considered view, the prosecution has proved that all these accused were in the company of the deceased, till 7.00 p.m., on 24.9.2011, through the evidence of P.W.4 to P.W.6. P.W.3's evidence becomes very vital at this juncture. According to her, when she had left the house, the deceased and the accused were in the farm house and the Bolera Jeep was also there. On the next day, at 7.00 a.m., when she had gone there she had found the deceased missing in the house and the jeep was also missing. The accused had no explanation as to when they had left the house of the deceased and in the absence of any such explanation, the conduct of these accused also plays a vital role. After the missing of the deceased and the Bolero Jeep, she had noticed that these accused could not be seen anywhere. Thereafter, these accused were arrested, only on 26.9.2011, at 6.00 p.m. P.W.15, an independent witness, has spoken to about the seizure of the Bolero Jeep and the arrest of the accused, by P.W.17, the Inspector of Police. Thus it stands proved through the evidence of P.W.15 and P.W.17 that all the accused were seen together in the Bolero Jeep, on 26.9.2011, at 6.00 p.m.

23. The learned counsel for the appellant would submit that there are some corrections made in the mahazars which would prove that the accused would not have been arrested, at 6.00 p.m., on 26.9.2011. We had gone through the mahazars prepared for the recovery of the material objects. Of course, there are some corrections. But these corrections, in our considered view, pertains to the engine number and the chasis number of the

Bolero Jeep and this would not, in any manner, make the evidence of P.W.15 and P.W.17 unbelievable. The accused has got no explanation as to how they had come to possess the Bolero Jeep in question.

24. At this juncture, we need to state that, as per Section 114 of the Indian Evidence Act, 1872, since the accused had failed to give an explanation as to how they had come to possess the stolen property, namely, the Bolero Jeep, the presumption arising out of the same is that they had only committed the murder of the deceased and had taken away the Jeep. Though the said presumptions under Section 114 of the Evidence Act, is rebuttable, such rebuttal could be made, either by direct evidence or by means of circumstance from the materials available on record. However, in this case, the accused had failed to rebut the said presumption, in any manner. This presumption arising out of Section 114 of the Indian Evidence Act, 1872, from out of the fact that these accused were found in the possession of the stolen property and from the circumstance that these accused were in the company of the deceased before the occurrence, at three places, in our considered view would conclusively prove that these accused had committed the murder and had also committed the offence of dacoity. Similarly, by disposing of the body, at a distant place, they have caused disappearance of the accused.

25. Now, with regard to the charge of conspiracy, as we have already pointed out, it is a matter which could be inferred. Here in this case, as we have already pointed out, it has been established that all these six accused were moving together before the occurrence, that too in the company of the deceased. The jeep was later seen in their possession. From these facts, prima facie, it could be concluded that there was a conspiracy. Under Section 10 of the evidence Act, anything said or done during the period of conspiracy will prove the conspiracy itself. Here in this case, the act of the accused in moving together and taking the accused to the farm house of the deceased would itself prove the conspiracy. Thus, we hold that the prosecution has proved the existence of conspiracy, though the evidence of P.W.10 is rejected. Now turning to the quantum of sentence, in our considered view, the trial court has imposed only a very reasonable punishment, which does not require any interference at the hands of this court.

26. Thus, we do not find any merit in these appeals. In the result, all the appeals fail and they are dismissed. The conviction and sentence imposed by the trial Court stands confirmed. The trial Court is directed to secure the presence of the accused and commit them in prison to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Munsif Cum Judicial Magistrate,
Kodumudi, Erode District.
- 2.The Chief Judicial Magistrate,
Erode(for Information).
3. The Second Additional District and Sessions Judge,
Erode.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Inspector of Police,
Malayampalayam Police Station,
Erode.
6. The Public Prosecutor,
Madras High Court,
Chennai.

Copy to

The Section Officer,
(CrI Records Section)
High Court, Chennai.

Criminal Appeal Nos.178, 179,
222, 301, 337 and 466 of 2013

ad(CO)
srg(24/05/2016)

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