

THE HIGH COURT OF JUDICATURE AT MADRAS

Crl.A.604 of 2012 RESERVED ON : 09.03.2016

Crl.A.92 of 2013 RESERVED ON : 22.04.2016

PRONOUNCED ON : 27.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal Nos.604 of 2012 & 92 of 2013

and

Miscellaneous Petition Nos.2 & 3 of 2014

1. Raja
2. Govindaraj
3. Palani
4. Vandikaran @ Murugan
5. Elumalai

.. Appellants in Crl.A.No.604/12/
Accused- 1to5

Chinnapaian .. Appellant in Crl.A.No.92/13/
Accused-6

- Vs -

State by The Inspector of Police,
Singarapettai Police Station,
Krishnagiri District.
(Crime No.238 of 1999)

.. Respondent in both the cases/
Complainant

Prayer in both the appeals:- Appeals filed under Section 374
of the Code of Criminal Procedure against the judgment passed
by the learned Additional Sessions Judge, Krishnagiri,
Krishnagiri District, in S.C.No.31 of 2000 dated 24.07.2012.

For Appellants 1 & 4 : Mr.R.Sankarasubbu
For Appellants 2, 3 & 5 : Mr.S.T.Raja
for Om Sairam Assts.
For Appellant in Crl.A.
No.92 of 2013 : Mr.L.Mahendran
For Respondent : Mr.M.Maharaja
Additional Public

Prosecutor

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellants are the accused 1 to 6 in S.C.No.31 of 2000, on the file of the learned Additional Sessions Judge, Krishnagiri. The seventh accused, in this case, was one Mr.Arumugam. The trial Court framed as many as ten charges against the above stated seven accused as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under
1	A1 to A6	120(B) of IPC
2	A7	120(B) r/w 109 of IPC
3	A1 to A6	449 of IPC
4	A7	449 r/w 109 of IPC
5	A1, A2 and A4	395 r/w 397 of IPC
6	A7	395 r/w 109 of IPC
7	A1, A3, A5 and A6	394 of IPC
8	A7	394 r/w 109 of IPC
9	A1 to A6	396 of IPC
10	A7	396 r/w 109 of IPC

By judgment dated 24.07.2012, the trial Court acquitted the 7th accused of all charges, however, convicted the appellants / accused 1 to 6 for various offences as detailed below:

Rank of the Accused	Penal provision(s) under which convicted	Sentence
A1	449 of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month
	396 of IPC	Imprisonment for life and to pay a fine of Rs.4,000/- in default to undergo rigorous imprisonment for four months

Rank of the Accused	Penal provision(s) under which convicted	Sentence
	395 r/w 397 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months
A2	449 of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month
	396 of IPC	Imprisonment for life and to pay a fine of Rs.4,000/- in default to undergo rigorous imprisonment for four months
	395 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months
A3	449 of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month
	396 of IPC	Imprisonment for life and to pay a fine of Rs.4,000/- in default to undergo rigorous imprisonment for four months

Rank of the Accused	Penal provision(s) under which convicted	Sentence
	395 r/w 397 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months
A4	449 of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month
	396 of IPC	Imprisonment for life and to pay a fine of Rs.4,000/- in default to undergo rigorous imprisonment for four months
	395 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months
A5	449 of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month
	396 of IPC	Imprisonment for life and to pay a fine of Rs.4,000/- in default to undergo rigorous imprisonment for four months

Rank of the Accused	Penal provision(s) under which convicted	Sentence
	395 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months
A6	449 of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month
	396 of IPC	Imprisonment for life and to pay a fine of Rs.4,000/- in default to undergo rigorous imprisonment for four months
	395 of IPC	Rigorous Imprisonment for seven years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months

Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

2.1. P.Ws.1 to 5 are the residents of Nallavumpatti village in Krishnagiri District. P.Ws.1 and 3 are the sons of P.W.2 Mrs.Irusayi. The deceased Mr.Sengoda Goundar was the father of P.Ws.1 and 3 and husband of P.W.2. P.W.4 is the wife of P.W.3 and the daughter-in-law of the deceased. P.W.5 is the grandson of the deceased and P.W.2. P.Ws.3 and 4 had a child also and all of them were living together under one roof in Nallavumpatti village.

2.2. On 27.05.1999, P.Ws.1 to 5, after having their dinner, had fallen asleep. The house of P.W.1 and others is facing towards west. P.W.1 was sleeping in the room situated on the northern portion of the house. P.Ws.3 and 4 along with

the child were sleeping in the room situated on the southern portion of the house. P.W.5 was sleeping on the pial situated on the veranda in front of the said house. Just opposite to the said house, on the western side, the tractor shed belonging to them is situated. The deceased Sengoda Goundar and his wife (P.W.2) were sleeping in the said tractor shed.

2.3. Around 09.30 p.m., they went to the respective place to sleep. When they were fast asleep, around 01.00 a.m. on 28.05.1999, these appellants (accused 1 to 6) came to the house of the deceased in order to commit dacoity. They first went into the tractor shed and started mounting attack with deadly weapons on the deceased. The deceased cried for help which awakened P.W.2. These accused indiscriminately attacked P.W.2 also. She raised alarm and cried for help. On hearing the cry of the deceased and P.W.2, P.W.1 who was sleeping in the room situated on the western portion of the house, opened the main door from inside and came out. On seeing him, some of the accused attacked him with deadly weapons like knife and wooden log. Since the attack was so violent, unable to bear the same and in order to avoid further blows being made, P.W.1 crying for help, tried to rush inside the house. By the time, on hearing the alarm raised, P.W.3 came out of the house. Some of the accused, attacked him with weapons. He sustained bleeding injuries. With a view to save himself from further attack, he rushed into the house and went into the room where his wife was sleeping. The assailants did not stop. They gave a chase, entered into the said room and indiscriminately attacked P.W.3 and his wife (P.W.4) with weapons. Both sustained a number of bleeding injuries. P.W.5 who was sleeping at the Pial, awakened by the cry, rushed out. He was also attacked. Raising alarm, he rushed towards the house of one Thaluka Goundar. These assailants, barged into the house, looted the properties. Number of jewels worn by the witnesses were snatched away by the accused. They broke open the steel bureau in the house and committed theft of the jewels. All happened within a short time. Even before the villagers could gather at the place of occurrence, the accused fled away from the scene of occurrence with decamped valuable jewels and other articles. P.Ws.1 to 5 and the deceased were struggling for life due to the bleeding injuries. The villagers immediately rushed all of them to the Government hospital at Uthangarai.

2.4. One Dr.M.Subramaniam (not examined as witness in the Court) examined the deceased and declared him dead. He examined Mr.Sundarajan (P.W.1) at 04.45 a.m. on 28.09.1999. He found the following injuries.

- "1. Abrasion 4 cm x 4 cm left shoulder.
2. Contusion 10 cm x 10 cm left wrist
3. Contusion 10 cm x 10 cm right wrist

4. Lacerated wound 1 cm x bone deep
horizontal middle head
5. Lacerated wound 10 cm x 1 cm bone
deep oblique left side head."

The injured told the doctor that he was assaulted by seven persons at 01.00 a.m. on 28.05.1999, outside his house. Ex.P25 is the accident register.

2.5. On the same day, he examined Mrs.Irusayi (P.W.2) at 5.45 a.m. He found the following injuries:

- "1. Lacerated wound 2 cm x 1 cm x 1 cm
at right thumb hand
2. Lacerated wound 6 cm x 1 cm x bone
deep
3. Contusion 10 cm x 6 cm left wrist
4. Contusion 10 cm x 10 cm back below
right shoulder."

Ex.P26 is the accident register. The injured told the doctor that she was assaulted by 10 persons at 1.00 a.m. on 28.05.1999 inside her house with koduval and stick.

2.6. On the same day at 4.15 a.m. he examined Mr.Kumar (P.W.3). He told the doctor that he was assaulted by two known persons at 01.00 a.m. inside the house with koduval. he found the following injuries.

- "1. A lacerated wound 10 cm x 6cm x
bone deep oblique left upper arm.
2. A lacerated wound 8 cm x 4 cm x 4 cm
left upper arm below 4 cm wound horizontal
3. A lacerated wound 6 cm x 2 cm x bone
deep lower aspect left upper arm horizontal
4. A lacerated wound 10 cm x 1 cm x
bone deep extending from left ear lobe
horizontally backwards.
5. Lacerated wound above right upper
lip extending upto left side nose 8 cm x 1
cm x bone deep
6. Lacerated wound 4 cm x 1 cm x 1 cm
left eye brow
7. Lacerated wound 16 cm x 2 cm x bone
deep over right shoulder upper aspect
oblique"

Ex.P.27 is the accident register.

2.7. On the same day at 4.30 a.m., he examined Mrs.Thangammal (P.W.4). P.W.4 told him that she was assaulted by six persons at 01.00 a.m. he found the following injuries:

- "A lacerated wound 10 x 1 cm x bone
deep extending from forehead vertically to
middle head"

Ex. P28 is the accident register.

2.8. On the same day, at 06.00 a.m. he examined Mr.Sengodan (P.W.5). P.W.5 told him that he was assaulted by a single person at 01.00 a.m. He found the following injuries:

- "1. Contusion 10 cm x 10 cm left knee
2. Abrasion 6 cm x 1/4 cm right thigh middle front"

Ex.P29 is the accident register. He gave intimation to the police.

2.9. On receiving the said intimation, the Sub Inspector of Police, Singarapettai Police Station, one Mr.Mohan (P.W.16) went to the hospital and recorded the statement of P.W.1 under Ex.P1. On returning to the police station at 6.00 a.m., he registered a case in Crime No.238/1999 under Sections 395 and 396 I.P.C. against seven persons who could be identified. Ex.P.34 is the F.I.R. He forwarded both the documents to the learned jurisdictional Magistrate and handed over the case diary to the Inspector of Police for investigation.

2.10. Mr.M.Chinnathambi (P.W.17), took up the case for investigation on the same day. He proceeded to the hospital, conducted inquest on the body of the deceased between 07.00 a.m. to 10.00 a.m. on 28.05.1999 and forwarded the body for postmortem. Dr.Baby (P.W.12) conducted autopsy on the body of the deceased on 28.05.1999 at 12.30 p.m. She found the following injuries:

- " 1.Ante mortem lacerated wound on frontal area scalp in center 5cms x 2 cms x bone deep.
- 2.Ante mortem lacerated wound over left parietal area to occipital area straight measuring 10 cms x 1 cm x bone deep.
3. Internal examination: hyoid bone intact.

SKULL:

1. Frontal bone with fracture in its center for 2 cms area corresponding to External injury No.1.
- 2.Left Parietal bone with fracture depressed and comminuted fracture seen corresponding to injury No. 2 of external. Membranes torn up frontal and parietal area epidural, sub dural hemorrhage seen over left half of brain. Brain surface is hemorrhage and crushed. Base of Skull - Normal."

Ex.P24 is the postmortem certificate. She gave opinion that the death would have occurred due to shock and hemorrhage due to the injuries found on the dead body.

2.11. On the same day at 11.00 a.m., P.W.17, on going over to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.8, the Village Administrative Officer and another witness. Ex.P36 is the Observation Mahazar and Ex.P.37 is the Rough Sketch. He recovered a broken gold ear screw (M.O.24) from the tractor shed. He recovered bloodstained lungi (M.O.26) from the tractor shed. Then he recovered bloodstained earth and sample earth from the place of occurrence (M.Os.27 and 28). He also recovered broken pieces of tube light (M.O.29), bloodstained portion of cement floor from the house and sample floor from the house (M.Os.31 and 32); bloodstained steel irusu (M.O.33) from the room of Mr.Kumar (P.W.3); a broken wooden log (M.O.34); a rope with blood stains (M.O.35); bloodstained rice and normal rice (M.Os.36 and 37) under a mahazar (Ex.P.38). Then, he examined many more witnesses including the villagers. On going over to the hospital, he recovered bloodstained cloth of the injured persons. Then he handed over the case diary to his successor Mr.Krishnan (Since Mr.Krishnan died subsequently, he has not been examined as a witness).

2.12. On 21.06.1999, at 6.00 a.m. near Pavakal Ambedkar statute, Mr.Krishnan arrested the accused 1 to 3 in the presence of P.W.8 and another witness. On such arrest, the first accused gave a voluntary confession. He also produced the watch which he was wearing. He disclosed in his statement the place where he had hidden the jewels and koduval. Ex.P39 is the disclosure statement. At 07.15 a.m., he took the Inspector of Police and the witnesses to the place of hideout and produced a white colour half hand shirt (M.O.44) and a lungi (M.O.45). Mr.Krishnan recovered the same in the presence of witnesses.

2.13. The second accused also gave a disclosure statement, in which, he disclosed the place where he had hidden the jewels. Ex.P42 is the disclosure statement. At 8.45 a.m., in the presence of the said witnesses, he produced M.O.12 chain from his house, that was recovered under Ex.P43. Then, he produced half hand shirt (M.O.46) and a lungi (M.O.47). Mr.Krishnan recovered the same under a Mahazar (Ex.P44).

2.14. At 09.15 a.m., the third accused gave a voluntary confession, in which, he disclosed the place where he had hidden the jewels. He produced the red colour full hand shirt (M.O.48) and a lungi (M.O.49). Mr.Krishnan recovered the same under Ex.P46 mahazar.

2.15. At 11.00 a.m. the first accused took the Inspector of Police and witnesses to Pommanthanchematy village and from

near his well, he took out gold ring (M.O.5) and also bloodstained koduval (M.O.50). He also produced silver anklet (M.O.4), waist cord made of silver (M.O.3), a gold ring (M.O.7), pair of gold drops (M.O.2). Mr.Krishnan recovered all the properties under Ex.P47 mahazar.

2.16. At 11.45 a.m. the second accused took Mr.Krishnan and witnesses to his village and from the bathroom near his well, he produced Thali Karai (M.O.11), Thali (M.O.21), Thali Balls 4 Nos. (M.O.24), Ear studs (M.O.23). Mr.Krishnan recovered all these jewels under Ex.P48 Mahazar.

2.17. At 12.15 p.m. the third accused took Mr.Krishnan and other witnesses to Pommanthanchematy Village and there, from his field, he produced the tape recorder (M.O.20). Mr.Krishnan recovered the same under Ex.P49 mahazar.

2.18. On the same day at 1.30 p.m. Mr.Krishnan arrested the 4th and 5th accused in the presence of P.W.8 and another witness. On such arrest, the 4th accused gave a voluntary confession, in which, he disclosed the place where he had hidden the jewels. He produced the half hand shirt (M.O.51) and a lungi (M.O.52). Mr.Krishnan recovered the same under Ex.P51 mahazar.

2.19. At 2.45 p.m., the fifth accused gave a voluntary confession and he produced M.O.53 half hand shirt and a lungi (M.O.54). In his confession, he disclosed the place where he had hidden the jewels.

2.20. On the same day, at 3.45 p.m. Mr.Krishnan arrested the 7th accused in the presence of the same witnesses. The seventh accused produced the ear stud (M.O.15), Chain (M.O.14), Silver anklet (M.O.13) and camera (M.O.19) from his possession. Mr.Krishnan recovered all of them under a mahazar under Ex.P54.

2.21. The 5th accused took the police and the witnesses to his field and produced silver anklet-one pair (M.O.13), baby waist cord made of silver (M.O.16) and a melagu dappa (M.O.55). Mr.Krishnan recovered all of them under Exs. P54 and P55 mahazar.

2.22. On 21.06.1999 at 12 p.m. the first accused took Mr.Krishnan and witnesses to his field and produced Nose screws with stones (M.O.10), ordinary nose ring without stones (M.O.9), a pair of ear studs with stones (M.O.8) and he recovered the same under a mahazar Ex.P60. Then, he forwarded the accused to Court for judicial remand and handed over the material objects also to the Court.

2.23. On 22.06.1999, the sixth accused surrendered before the learned Judicial Magistrate at Vellore. Mr.Krishnan took police custody of the sixth accused on the orders of the

learned Magistrate on 27.06.1999.

2.24. Then at the request of the Investigating Officer, P.W.11 the learned Judicial Magistrate conducted test identification parade on 01.07.1999, in which, the accused 1 to 5 were put up. In the said test identification parade, P.Ws.1, 3 to 5 identified the accused 1 to 5 correctly. At the request of the investigating officer, the learned Magistrate forwarded the material objects for chemical examination. The report revealed that the material objects recovered from the place of occurrence and the dress materials recovered from the accused on their arrest, contained human blood and many of them were of 'A' group. On completing the investigation, he laid the charge sheet against the accused.

2.25. Based on the above materials, the Trial Court framed appropriate charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined, 60 documents and 57 material objects were marked.

2.26. Out of the said witnesses, P.Ws.1 to 5 are the injured eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. They have stated that there was enough light available at the place of occurrence and therefore, they could identify all the appellants. They have further stated that in the test identification parade, they have identified the accused 1 to 5. P.Ws.6 and 7 are not eyewitnesses to the occurrence. They have stated that on hearing the alarm raised, they came to the house of the deceased, found the deceased dead and P.Ws.1 to 5 with injuries and then they took them to the hospital.

2.27. P.W.8, the Village Administrative Officer, who was examined to speak about the preparation of the observation mahazar, rough sketch and the recovery of the material objects at the place of occurrence also about the arrest of the accused and the disclosure statement and the consequential recovery of the material objects, has turned completely hostile and he has not supported the case of the prosecution. P.Ws.9 and 10 have also turned hostile and they have not supported the case of the prosecution in any manner.

2.28. P.W.11 has spoken about the test identification parade conducted by him. P.W.12 has spoken about the postmortem conducted on the body of the deceased. He has stated about his final opinion regarding the injuries on P.Ws.1 to 5 and the cause of death of the deceased. P.W.13 is the constable who carried the dead body to the hospital for postmortem. P.W.14 is the constable who carried the F.I.R. from the police station and handed over the same to the

learned Judicial Magistrate. P.W.15 is another constable who carried the material objects to the Court and handed over the same. P.W.16 has spoken about the registration of the case on the complaint of P.W.1. P.W.17 has spoken about the entire investigation done and the filing of the final report.

2.29. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side nor mark any documents. Their defense was a total denial. Having considered all the above, the trial Court convicted the appellants as detailed in the first paragraph of this judgment and that is how, they are before this Court with these appeals.

3. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records, carefully.

4. Admittedly, P.Ws.1 to 5 and the deceased were residing at Nalluvampatti Village. The occurrence had taken place around 01.00 a.m. Admittedly, the assailants were not earlier known. Therefore, in the F.I.R. itself, P.W.1 had stated that the accused were unknown persons, but they could be identified. At the earliest point of time, in the complaint itself, P.W.1 has narrated vividly about the properties which were stolen from the prosecution witnesses as well as from the house. All the injured witnesses have spoken about the attack made on them and on the deceased as well as the removal of properties by the accused. There was no motive for these witnesses to depose against the accused. The motive for the occurrence was only to gain by committing theft. Thus, we hold that the prosecution has succeeded in establishing that in one and same occurrence, the deceased was killed, these witnesses P.Ws.1 to 5 were brutally attacked, in which they sustained injuries and the properties were also stolen away.

5. Though the investigation was taken up and it was conducted for several days, the investigating officer could not make any breakthrough, until the accused 1 to 3 were arrested on 21.06.1999 at 06.00 a.m. On such arrest, all the three accused gave voluntary confessions. Out of the voluntary confession made by each accused, the dress materials worn by them and the jewels were recovered (the details of the material objects recovered from each accused has already been elaborately narrated in the previous paragraphs of this judgment and therefore the same is not repeated). Similarly, from the other accused also, their respective clothings and the jewels were recovered from their possession. The jewels recovered from them were identified by the prosecution party as the stolen goods.

6. The learned counsel for the appellants would submit that P.W.8, the Village Administrative Officer has turned hostile and he has not supported the case of the prosecution and therefore the so called recovery of these material objects from the possession of the accused should be rejected. We do not find any force at all in this argument. Mr.Krishnan who effected the arrest of these accused and recovered the material objects could not be examined because he died before the trial could commence. At any rate, P.W.17 has spoken about the recovery of the stolen properties and the blood stained clothe by referring to the case diary. We do not find any reason to reject the said evidence. Though, it is secondary in nature, the same is admissible since the primarily evidence could not be secured as Mr.Krishnan had already passed away. In order to prove a fact under dispute, it is not the quantity of evidence but, it is only the quality of evidence that matters. Though quantity wise, the evidence let in is very smaller, going by the quality of the evidence, if the Court is satisfied about its reliability and also sufficiency, there can be no legal impediment to act upon the said qualitative evidence.

7. In the instant case, though P.W.8, for his own reasons, has turned hostile, despite the fact that he happened to be a responsible public servant, on that score, we are not prepared to reject the evidence of the investigating officer who has vividly spoken about the recovery of the stolen articles as well as the bloodstained clothes from the possession of the accused.

8. Since, it has been established by the prosecution that the murder and the robbery had taken place in one and the same transaction, the presumption under Section 114 of the Evidence Act is that the persons who were found in possession of the stolen goods soon after the theft, are the perpetrators of the entire crime. Here, in this case, since these stolen goods were found in the possession of these accused, for which, there was no explanation by the accused, the natural presumption is that these accused had committed murder of the deceased, caused extensive injuries to P.Ws.1 to 5 and had stolen away the properties.

9. The proof of involvement of these accused in the crime on the above presumption is further strengthened by the substantive eye witness account of P.Ws.1 to 5. They have stated that there was enough light available at the place of occurrence. The occurrence went on for quite some time, they had noticed the physical features of the accused and when the accused were put up for test identification parade, P.Ws.1, 3 to 5 have correctly identified them.

10. The learned counsel would further submit that the identification of the accused made by these witnesses in the

test identification parade cannot be given any weightage, because according to him, some of the witnesses have admitted that they saw the accused at the police station. We have carefully gone through the evidences of these witnesses viz., P.Ws.1 and 3. They have, of course, stated that they saw the accused at the police station but they have not stated that they saw the accused at the police station before the test identification parade. When a specific suggestion was made to them that they had seen the accused at the police station before the test identification parade and therefore, they were able to identify the accused in the test identification parade, they have denied the same. P.W.1 has further admitted that he saw the photographs of the accused in the newspaper. But it has not been elicited from him that he saw the photograph in the newspaper before he was taken for test identification parade. When it was suggested to him that because he had seen the photograph in the newspaper, he had identified the accused in the test identification parade, he denied the same. Thus, it is crystal clear that though P.Ws.1 and 3 have seen the accused in the police station, there is no evidence that they had seen the accused in the police station before the test identification parade. In such view of the matter, we hold that the test identification parade has not lost its significance, in this case. There was no infirmity in the test identification parade conducted by the learned Magistrate. The witnesses have identified these accused as their assailants, in the Court also thus from the eye witnesses account of P.Ws.1 to 5, the prosecution has again proved that these appellants are the assailants, who committed the crime.

11. The learned counsel for the appellants would further submit that when they were examined by the doctor at the earliest point of time, they made a contradictory statement about the number of accused who participated in the crime. It is true. But, in our considered view, it is a very minor contradiction because, in such a traumatic situation where one had been killed and other inmates in the house had been brutally attacked, they would have been in trauma and shock and due to the traumatic pressure, they would have made some discrepant statements to the Doctor about the number of assailants. This, in our considered view, in no manner, would affect the credibility of these witnesses.

12. In view of the foregoing discussions, we hold that the prosecution has clearly established the guilt of the accused under all the charges framed beyond any semblance of doubt. Thus, we do not find any reason to interfere with the conviction of these accused.

13. The learned counsel for the appellants would submit that these appellants have been in jail from the date of

conviction and since for the offence under Section 396 I.P.C., there is no minimum punishment prescribed, having regard to the mitigating circumstances, the quantum of punishment could be reduced.

14. In this regard, we have to state that the trial Court had failed to frame a charge for murder, which is a greater offence than an offence under Section 396 I.P.C. The accused should have been convicted for the offence under Section 302 I.P.C. r/w Section 149 I.P.C. as well as for offence under Section 396 I.P.C. Because there was no proper charge framed by the lower Court, these accused escape without punishment for murder. At this length of time, on this score, we are not inclined to remand the matter to the trial Court to frame appropriate charge for murder also and then dispose of the case.

15. In our considered view, such remand would not serve any purpose at this length of time because the occurrence was in the year 1999 and further remanding the matter for fresh trial at this stage would be violative of the right to have fair trial by the accused.

16. In view of all the above, we are inclined to sustain the conviction as well as the sentence as imposed by the trial Court. We do not find any merit at all in these appeals.

17. In the result, the appeals fail and the same are accordingly dismissed. The conviction and sentence imposed against the accused 1 to 6 by the learned Additional Sessions Judge, Krishnagiri in S.C.No.31 of 2000 dated 24.07.2012 are confirmed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kk

To

1. The Additional Sessions Judge,
Krishnagiri, Krishnagiri District.
- 2.-do- Through The Principal Sessions Judge,
Krishnagiri District.
3. The Judicial Magistrate Krishnagiri
4. -do- Through The Chief Judicial Magistrate, Krishnagiri.
5. The Judicial Magistrate, Uthangarai.
6. The Inspector of Police,
Singarapettai Police Station, Krishnagiri District.
7. The Superintendent, Central Prison, Vellore.
8. The District Collector, Vellore.
9. The Director General of Police,
Mylapore, Chennai.-4.
10. The Public Prosecutor,
Madras High Court.

+3ccs to Mr.S.T. Raja, Advocate, S.R.No.26694
+1cc to M/s.R. Sankarasubbu, Advocate, S.R.No.26512

UG(CO)
EU(6/07/2016)

in Crl.A.Nos.604/2012 and 92/2013
and M.P.Nos.2 & 3 of 2014

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