

Bail Slip

The following accused were released on bail as per the order of this court mentioned hereunder

Petitioner's name	order dated	made in case Nos.
1. Perumal (A1)	23.4.2015	M.P..3/14 IN CRL.A.NO.667/13
2. Duraisamy @ Valathi Duraisamy (A7)	11/11/14	M.P..2/14 IN CRL.A.NO.667/13
3. Dinesh A (9)	11/11/14	M.P..2/14 IN CRL.A.NO.667/13
4. Raji @ Raju A 10)	11/11/14	M.P..2/14 IN CRL.A.NO.667/13
5. Selvam (A8)	13.7.2014	M.P..1/15 IN CRL.A.NO.667/13
6. Arul Murugan (A5)	18.12.2014	M.P..1/14 IN CRL.A.NO.672/13
7. Karthik (A6)	18.12.2014	M.P..1/14 IN CRL.A.NO.672/13
8. Velmurugan (A11)	18.12.2014	M.P..1/14 IN CRL.A.NO.672/13
9. Ranjith @ Ranjith Kumar (A3)	30.10.2014	M.P..1/14 IN CRL.A.NO.516/13
10. Kozhi @ Sridhar (A4)	30.10.2014	M.P..1/14 IN CRL.A.NO.516/13
11. Duraisamy (A1)	08/06/15	M.P..2/14 IN CRL.A.NO.516/13

(A7, A9, A10, A8- bail ordered as per order dt. 21.04.2016)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 14.06.2016
DELIVERED ON 17.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.516, 672 & 667 of 2013

1.Duraisamy

2.Ranjith @ Ranjith Kumar

3.Kozhi @ Sridhar

.. Appellants/Accused 2,3 & 4 in

Crl.A.No.516/2013

1.Arul Murugan
2.Karthik
3.Velmurugan

.. Appellants/Accused 5,6 & 11 in

Crl.A.No.672/2013

1.Perumal

2.Duraisamy @ Valathi Duraisamy

3.Selvam

4.Dinesh

5.Raji @ Raju

.. Appellants/Accused 1,7,8,9 & 10 in
Crl.A.No.667/2013

vs

State represented by
Inspector of Police,
Annadhanapatty Police Station,
Salem District.
Cr.No.1595/2011

.. Respondent in all
Crl.As

Common Prayer in all Criminal Appeals:- These Criminal Appeals have been filed under Section 374 Cr.P.C., against the judgment passed by the learned II Additional District & Sessions Judge, Salem in S.C.No.179 of 2012 dated 19.6.2013.

In Crl.A.No.516 of 2013:-

For Appellants :Mr.R.Sankarasubbu

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.667 of 2013:-

For Appellants :Mr.A.Arasu Ganesan

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

In Crl.A.No.672 of 2013:-

For Appellants :Mr.A.Arasu Ganesan

For Respondent :Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

(Common Judgement of the Court was delivered by S.Nagamuthu.J)

The appellants in Crl.A.No.516 of 2013 are the accused 2, 3 & 4; the appellants in Crl.A.No.672 of 2013 are the accused 5,6 & 11 and the appellants in Crl.A.No.667 of 2013 are the accused 1, 7, 8, 9 & 10 in S.C.No.179 of 2012 on the file of the learned II Additional District & Sessions Judge, Salem. The trial Court framed charges against all the accused as detailed below:-

Sl.No	Accused	Section of law
1	A.1	120(B) , 147, 364, 302 r/w 149, 201 r/w 302 I.P.C.,
2	A.2	120(B) , 147, 364, 302, 201 r/w 302 I.P.C.,
3	A.3	120(B) , 148, 364, 302 r/w 149, 201 r/w 302 I.P.C.,
4	A.4 to A.7	120(B) , 147, 364 r/w 120(B), 302 r/w 149, 201 r/w 302 I.P.C.,
5	A.8	120(B) , 148, 364 r/w 120(B), 302, 201 r/w 302 I.P.C.,
6	A.9 to A.11	120(B) , 147, 364 r/w 120(B), 302 r/w 149, 201 r/w 302 I.P.C.,

All the accused denied the above charges framed against them. By judgment dated 19.06.2013, the trial Court convicted and sentenced all the accused as detailed below:-

Accused	Section of law	Sentence
A.1 to A.11	120(B) I.P.C.,	Rigorous imprisonment for six months each.
A.1, A.2, A.4 to A.7 and A.9 to A.11	147 I.P.C.,	Rigorous imprisonment for one years each
A.3 & A.8	148 I.P.C.,	Rigorous Imprisonment for two years each

Accused	Section of law	Sentence
A.1 to A.3	364 I.P.C.,	Rigorous Imprisonment for ten years each and to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for one year each.
A.4 to A.11	364 r/w 120(B) I.P.C.,	Rigorous Imprisonment for ten years each and to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for one year each.
A.2 & A.8	302 I.P.C.,	Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one year each.
A.1, A.3 to A.7 and A.9 to A.11	302 r/w 149 I.P.C.,	Imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one year each.
A.1 to A.11	201 r/w 302 I.P.C.,	Rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for six months each.

The trial Court has ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants/accused 1 to 11 are before this Court with these Criminal Appeals.

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

The appellants herein are associates, of whom the first accused is the leader. There is yet another group of rowdy elements like the accused, headed by one Mr.Kozhi Baskar @ Baskar. Between these two groups of rowdy elements, there were clashes frequently. Some time before the occurrence, in a clash there took place, Mr.Kozhi Baskar @ Baskar cut the first accused and amputated his hand. In respect of the said occurrence, on the complaint of the first accused herein, a case was registered against Mr.Kozhi Baskar @ Baskar and the same was pending trial. The first accused was about to be summoned to give evidence against Mr.Kozhi Baskar @ Baskar.

(i) According to the case of the prosecution, Mr.Kozhi Baskar @ Baskar was under the impression that in case the first accused gave evidence against him, he would be convicted by the criminal Court. In order to avoid the same, according to the case of the prosecution, Mr.Kozhi Baskar @ Baskar, along with his associates, decided to eliminate the first accused herein. This plot came to the knowledge of the first accused. Therefore, the first accused decided to do away with the deceased herein Mr.Palani @ Palanisamy who was one of the close associates of Mr.Kozhi Baskar @ Baskar.

(ii) According to the further case of the prosecution, Mr.Kozhi Baskar @ Baskar had instructed the deceased Mr.Palani @ Palanisamy to eliminate the first accused with the help of his other associates. The first accused therefore, decided to eliminate the group of people belonging to Mr.Kozhi Baskar @ Baskar. Accordingly, on 25.11.2011 at about 10.00 am, at Thiruvalluvar Nagar, Moonankaradu Village at the house of the first accused, all these 11 accused sat together and hatched a conspiracy to kill Mr.Palani @ Palanisamy and one Mr.Venkatesan who is the brother of Mr.Kozhi Baskar @ Baskar. Thus, according to the prosecution, the accused are liable for punishment for conspiracy to commit murder.

(iii) It is the further case of the prosecution that on 29.11.2011, in pursuance of the said conspiracy, around 5.00 pm, the accused 1 to 3 met the deceased Mr.Palani @ Palanisamy near Kaliyamman Koil at Taragapatti Gate. They wanted him to accompany them to go over to a wine shop in the bye-pass road, so that all of them could drink. The deceased initially declined to come. He told them that if he came there, there was likelihood of quarrel between them. However, the accused 1 & 2 persuaded him and took him along with them. This was witnessed by P.W.2.

(iv) The accused 1 to 3 took the deceased to a place known as 9th Pali Moonankaradu. The accused 4 to 11 were already there and waiting for them. The accused 3 to 8 were armed with deadly weapons like knives and the other accused were not armed with any weapons. In pursuance of the said conspiracy, as soon as the deceased was taken to 9th Pali Moonankaradu, all the 11 accused surrounded the deceased and attacked him with hands and legs. The deceased Palani @ Palanisamy fell down. The seventh accused lifted a huge stone lying there and dropped the same on the chest of the deceased. The eighth accused stabbed the deceased with knife on his forehead, chest and other parts of the body. The deceased died instantaneously, due to the indiscriminate attack made by all the 11 accused.

(v) After the deceased died, the third accused opened the abdomen of the dead body with a knife. He removed all the internal organs from the abdomen of the deceased such as small intestine, large intestine, etc., and threw the same into a

nearby garbage. Then, all the accused took a big stone and put the same into the stomach of the deceased tied the same with a dhoti and threw the dead body into a Well belonging to one Mr.Kalimuthu at Oothakadu Village. Then, all the accused disappeared from the scene of occurrence. This was done to cause disappearance of the evidence.

(vi) P.W.1 is the wife of the deceased. According to her, on 29.11.2011 at 2.00 pm, the deceased went out of his house informing P.W.1 that he was going to a nearby shop. Thereafter, he did not return. P.W.1 along with her son Mr.Manikandan went to Thadagapatti Village in search of her husband. P.W.2 at that time, informed that on 29.11.2011, at 5.00 pm, near Kaliyamman Koil, he found the deceased being taken by the accused 1 to 3 under the pretext of taking him to a wine shop in the bye-pass road for drinking together. Since, the efforts made by P.W.1 to locate the deceased could not succeed, she went to Annadhanapatty Police Station and made a complaint at 7.00 am on 30.11.2011 complaining that her husband was missing. She mentioned in the complaint about the information given by P.W.2 to her.

(vii) P.W.14, the then Special Sub Inspector of Police of the said Police Station, on receipt of the said complaint, registered a case in Crime No.1595/2011 for "man missing". Ex.P.1 is the complaint and Ex.P.14 is the F.I.R. He forwarded both the documents to Court which were received by the learned Jurisdictional Magistrate at 10.30 am on 30.11.2011.

(viii) P.W.15 took up the case for investigation. He went to the house of the deceased at Thadagapatti Village and examined P.Ws.1 & 2 and one Mr.Babu and recorded their statements. At 10.30 am, he returned to the Police Station. Around 11.00 am, P.Ws.3 & 11 appeared before P.W.15 and they told him that they saw the deceased being attacked by all these 11 accused; done to death and that they removed the internal organs from the abdomen of the deceased; tied the stone and threw the dead body into the Well. P.W.15 recorded their statements.

(ix) Based on the said statements made by P.Ws.3 & 11, P.W.15 altered the case into one under Sections 147, 148, 120 (B), 363, 302 & 201 I.P.C., at 1.00 pm on 30.11.2011. Ex.P.9 is the Alteration Report. In pursuance of the said information, P.W.15 went to the Well in question. He found blood stains near the Well. In the Well, there was deep water. He prepared an observation mahazar and a rough sketch, at the place of occurrence, in the presence of P.W.6 and another witness. He recovered a stone with blood stains; another stone without blood stains and a blood stained waist guard of the deceased, at the place of occurrence at 3.00 pm in the presence of the same witnesses. He examined P.Ws.1, 3, 5 & 6 and recorded their statements.

(x) P.W.15 then made a request to the Fire and Rescue Service to come to the place of occurrence to search for the dead body in the Well. He had also summoned a Finger Print Expert and another Forensic Expert to the place of occurrence. At his request, a Police sniffer dog was also brought to the place of occurrence. These experts could not find any tangible evidence. The sniffer dog also could not get any clue.

(xi) The Fire and Rescue Service came to the place of occurrence immediately. They went into the Well and tried to locate the dead body. For the whole night, they could not succeed. On 01.12.2011, at 12.00 noon, with great difficulty, after draining the water by using a motor, they lifted the dead body of the deceased from the Well. On the dead body, there was a stab wound on the forehead. The lower abdomen there was a torn. A dhoti was tied around the neck of the deceased and at the another end, a big stone (M.O.4) was tied. The stone was tied very close to the body. P.W.1 and other family members identified the dead body as that of the deceased.

(xii) P.W.15 thereafter, conducted inquest on the body of the deceased. He examined P.Ws.1 to 5, 11 and few more witnesses and recorded their statements. Then he forwarded the dead body for post mortem.

(xiii) P.W.12, conducted autopsy on the body of the deceased at 4.00 pm on 01.12.2011. He found the following injuries:-

"Injuries:-

- 1.Right eye is black eye.
- 2.An irregular laceration seen on the centre of fore head middle, 4.5cm x 4cm x bone deep, exposing underlying depressed fracture in the centre, surrounded by comminuted fracture of frontal bones.
- 3.A contusion seen on the right side upper part of chest middle 11cm x 6cm x 2cm and left side upper part of chest middle, 5 cm x 4cm x 1.5 cm
- 4.A clean incised wound extending from 11 cm below supra sternal notch upto the base of penis middle, 52 cms, exposing underlying rib cage and abdominal and pelvic cavity. The abdominal and pelvic cavity are devoid of organs pale. The edges of incised wound is pale with no extra vasation of blood (post mortem)
- 5.Crush injury of tip of left index finger with uprooting of left index finger nail."

Ex.P.12 is the post mortem certificate. He gave opinion that the death was due to multiple injuries found on the body of the deceased. He further opined that the injuries found on the

body of the deceased would have been caused by a weapon like M.O.5 (stone). He further opined that two lacerated wounds found on the body of the deceased would have been caused by weapons like knives (M.O.1 & 2).

(xiv) On the said day, at 10.00 pm, in the presence of P.W.6 and another witness, P.W.15 arrested the accused 2 & 8. On such arrest, they made independent confessions. But, no discovery of any fact was made out of the same. On 02.12.2011, at 3.15 am, P.W.15 arrested the accused 3 & 4. On such arrest, in the presence of the same witnesses, they also made independent confessions in which, the third accused disclosed the place where he had hidden a TVS motor cycle (this vehicle has got nothing to do with the present case and according to the case of the prosecution, it is the property involved in Crime No.1482/2011, yet another murder case). He forwarded these two accused to Court for judicial remand. The accused 1, 2, 5, 6, 9 & 10 were already in judicial custody in connection with yet another murder case registered in Crime No.1482/2011, on the file of the C.Sasipalayam Police Station. On 03.12.2011, at 4.05 pm, P.W.15 made a formal arrest of these accused in the Central Prison, Salem. Later on they were remanded to the judicial custody. On completing investigation, he laid charge sheet against all the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case of the prosecution, as many as 15 witnesses were examined and 18 documents were exhibited besides 8 Material Objects.

4. Out of the said witnesses, P.W.1 is the wife of the deceased. She has stated that on 29.11.2011, at 2.00 pm, the deceased left the house informing her that he was going to a shop and thereafter, he did not return. She has further stated that P.W.2 told her that the accused 1 to 3 had taken the deceased towards the bye-pass road for drinking together in a wine shop. Since, the deceased did not return alive, according to her, she made a complaint to the Police on 30.11.2011 at 7.00 am. She has further stated that at 10.30 am on 30.11.2011, P.Ws.3 & 11, told that all these 11 accused attacked the deceased, killed him, opened the abdomen, pulled the vital organs like small intestine and large intestine and threw the same into a garbage and then tied the body into a stone and threw it into a Well. P.W.2 has stated that on 29.11.2011, at 5.00 pm, when he was standing near Kaliyamman Temple, the accused 1 to 3 were seen there and the deceased was also there. They wanted the deceased to come with them to go to the bye-pass road to a wine shop to have liquor together. Though initially, the deceased declined, they persuaded him and then the deceased accompanied them towards the bye pass road. He has further stated that, on the next day, at 5.00 am, when P.W.1 went in search of the deceased, he told the above information to her. P.Ws.3 & 11 are the eye

witnesses to the occurrence. They have stated that when they were near the place of occurrence, all these accused were there. The accused 3 & 8 were armed with knife and the others are not armed with any weapon. They have further stated that all the accused attacked the deceased with hands and legs and pushed him down. After the deceased fell down, A.7 took a big stone lying there and dropped the same on the chest of the deceased. The eighth accused, Mr.Selvam with the knife, which he had, stabbed the deceased on his forehead. Then all the 11 accused carried the dead body of the deceased towards a Well situated somewhere near the place of occurrence. Near the Well, the third accused with a knife he had, opened the abdomen of the deceased, pulled down the internal organs such as small intestine and the large intestine and threw them all into a nearby garbage. They have further stated that thereafter, they put a stone on the abdomen of the deceased and tied the same with a white dhothi and threw the body into a Well. He has further stated that thereafter, all the 11 accused vanished away from the scene of occurrence. They have further stated that out of fear, for these accused, they did not immediately inform the occurrence to anybody. They informed the occurrence later. P.Ws.4 & 5 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.6, the then Village Administrative Officer has spoken about the preparation of the Observation Mahazar and the rough sketch prepared at the place of occurrence. He also spoken about the recovery of material objects such as blood stained earth; sample earth; blood stained stone; stone without blood and the blood stained waist guard. According to him, since, there was deep water in the Well, they could not reach the dead body of the deceased from the Well. He has further stated that the Fire and Rescue service officials came to the spot and for the whole night though they made all efforts, they could not reach the dead body into the water and to bring out the same. After drying the water by 12.00 noon on 01.12.2011, they took out the body. He has further stated that thereafter, inquest was conducted by P.W.15. He has further stated that on 02.12.2011, about 9.30 pm, P.W.15 arrested the accused 2 & 8. On such arrest, according to this witness, both the accused gave independent voluntary confession. Then they also disclosed the place where three other accused were hiding. In pursuance of the same, they took the Police and witnesses to the Soudeswari College, where the accused 3, 4 & 11 were arrested. On such arrest, all these three accused also gave independent voluntary confession. In pursuance of the disclosure statement made by the third accused, a TVS Motor Cycle and a knife were recovered as produced by him from the place of hide out. Then he has also spoken about the recovery of knife on the disclosure statement made by the eighth accused. P.W.7 has spoken only on hearsay information. P.W.8 is the Fire & Rescue Officer in the Salem Sevapet Fire and Rescue Fire station. On 30.11.2011 as requested by P.W.15, he came to the place of occurrence and for the whole night, he along with his men searched for the

body in the Well. But, he could not reach the body as the Well was full of water. He has further stated that it was only on 12.00 noon, the dead body of the deceased was retrieved. P.W.9, the then Head Constable has stated that he handed over the Alteration Report to the learned Judicial Magistrate. P.W.10 has stated that he handed over the dead body to the Doctor for post mortem as directed by P.W.15. P.W.11 as I have already pointed out, is an eye witness to the occurrence and he has vividly spoken about the entire occurrence. P.W.12, Dr.Gokularaman, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.13, the then Head Constable has spoken about the photographs taken by him at the place of occurrence. P.W.14, the then Special Sub Inspector has spoken about the registration of the case on the complaint of P.W.1 for "man missing". P.W.15 has spoken about the investigation done and the final report filed in this case.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not chose to examine any witness on their side. Further, on their side, three documents were marked as Ex.D.1 to D.3, which are the photograph of the Well; photograph of the Muniappan Temple and another photograph of Well respectively. In short, their defence was a total denial.

6. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. Challenging the same, the appellants/accused 1 to 11 are before this Court with these Criminal Appeals.

7. We have heard Mr.R.Sankarasubbu, learned counsel for the appellants in CrI.A.No.516/2013; Mr.A.Arasu Ganesan, learned counsel for the appellants in CrI.A.Nos.667 & 672 of 2013; Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. During the course of argument, Mr.A.Arasu Ganesan, learned counsel for the appellants in CrI.A.No.672 of 2013 submitted that the 11th accused/Mr.Velmurugan, in this case has passed away. The said statement is recorded. As of now, no one has come on record to prosecute the matter further on behalf of the 11th accused.

9. The learned counsel for the appellants would submit that the evidence of P.Ws.2 & 11 cannot be believed as they did not disclose about the occurrence to anybody immediately after the occurrence. The learned counsel would point out that had it been true that they had witnessed the occurrence, they would not have kept silent for a long time without raising any alarm at the place of occurrence or immediately rushing to the house of the deceased informing his relatives about the occurrence.

The learned counsel would further submit that P.Ws.2 & 11 are interested witnesses and coupled with the fact that they did not disclose the occurrence for a long time to anybody, their evidence should be rejected. In support of the said contention, the learned counsel for the appellants would rely on the following judgments:-

"(i) Surjit Singh and another v. State of Punjab (AIR 1994 SC 110);

(ii) Sonia bahera v. State of Orissa (AIR 1983 SC 491) and

(iii) Chanan Singh son of Kartar Singh v. State of Haryana (AIR 1971 SC 1554)"

In the said judgments, the the Hon'ble Supreme Court has taken the view that the delay in disclosure of the vital information by an eye witness, for a long time, would make his evidence doubtful. Provided, there is not satisfactory explanation for such silence.

10. The learned counsel would further submit that the evidence of P.W.2 also cannot be believed. He is also an interested witness, the learned counsel contended. So far as the recovery of the material objects are concerned, the learned counsel would submit that they would not in any manner advance the case of the prosecution as any connection between the recovered material objects and the crime has not been established. The learned counsel therefore prayed for acquittal of the accused.

11. The learned Additional Public Prosecutor appearing for the State would vehemently oppose these Criminal Appeals. According to him, P.W.2 has seen lastly the deceased being taken by these accused near the Kaliyamman temple towards the wine shop on the bye-pass road. According to him, P.W.2 is an independent witness, who has got no axe to grind against these accused. The learned Additional Public Prosecutor would further submit that P.Ws.3 & 11 have witnessed the entire occurrence. He would further add that though, it is true that they did not immediately raise any alarm about the occurrence, they have explained their conduct by stating that out of fear, they did not inform the occurrence to anybody. He would further submit that because, these accused are rowdy elements, having number of cases including murder cases to their credit and since, the deceased was also hailing from another group of rowdy elements, it would have been quite natural for these witnesses to have fear for these accused. Therefore, according to the learned counsel, the trial Court was right in accepting the evidences of P.Ws.3 & 11. So far as the recovery of material objects are concerned, the learned Additional Public Prosecutor would submit that it only adds strength to the case of the prosecution. At any rate, according to him,

the judgment of the trial Court does not require any interference at the hands of this Court.

12. We have considered the above submissions.

13. P.W.1, the wife of the deceased has stated that on 29.11.2011, at 2.00 pm, the deceased lastly left his house by informing her that he was going to a shop. Thereafter, P.W.1 did not see him alive at all. Thereafter, P.W.2 had seen him near the Kaliyamman Temple. The accused 1 to 3 were there. They persuaded him to come with them to go to the wine shop on the bye-pass road to have drinks together. Though, it is contended by the learned counsel for the appellants that this witness is an interested witness, we do not find any material at all even to infer that P.W.2 is an interested witness. It was only on his information, P.W.1 went to the Police Station and made a complaint after having made a search for her husband. The F.I.R., was registered at 7.00 am. Till 7.00 am, the whereabouts of the deceased was not known. The only information available with P.W.1 was from P.W.2 that around 5.00pm, on 29.11.2011, the deceased was taken by the accused 1 to 3 towards the bye-pass road. Thus, we do not find any reason to reject the evidence of P.W.2. From these evidences, we hold that the deceased was lastly seen alive at 5.00 pm on 29.11.2011.

14. The next circumstance is the evidence spoken by P.Ws.3 & 11. They have stated that all these 11 accused attacked the deceased with hands and legs and pushed him down. After he had fallen, A.8 stabbed the deceased with knife on his forehead. The others attacked him indiscriminately with hands and legs. After the deceased died, A.3 opened the stomach by cutting with the knife which he had and pulled out the internal organs from the abdomen and threw the same into a garbage. This was supported by the medical evidence. Thereafter, the dead body was tied with a stone by all these accused and was thrown into the Well. Thus, these two witnesses have vividly spoken about the entire occurrence. In an attempt to assail these two witnesses namely P.Ws.3 & 11, the learned counsel would submit that they did not raise an alarm at the time of occurrence and they did not disclose about the occurrence immediately to anybody and therefore, their evidences should be disbelieved.

15. From the silence of the witness without disclosing about the occurrence to anybody, going by the natural human conduct, generally, it is presumed that the said witness is unworthy of credit. The reason is that any man of ordinary prudence, would raise alarm on seeing the occurrence and then try to save the deceased if he is so courageous or at least to go and inform the same to the relatives of the deceased. In general, this is the natural human conduct. In this case, ofcourse, P.Ws.3 & 11 did not do so. From out of that, the learned counsel for the appellant would try to establish that it was an unnatural conduct on the part of these two

witnesses. But, we are not persuaded by the said argument. In our considered view, the silence of these two witnesses without raising any alarm at the time of occurrence and without rushing to the house of the deceased to inform is quite natural. These accused are rowdy elements having murder cases and other cases to their credit. The deceased was the leader of the other group of rowdy elements. The offence was executed in a very gruesome manner by 11 people. In these circumstances, these two witnesses would have certainly been silenced by fear for these people. Had they tried to raise alarm or to go to the house of the deceased to inform, it was possible that these accused would have attacked them also, as the accused are all rowdy elements. Thus, the explanation offered by P.Ws.3 & 11 that out of fear for these accused, they do not raise alarm and they do not immediately rushed to the house of the deceased, shall be acceptable. P.W.1's statement is quite natural and the same is consistent with the explanation offered by the above prosecution witnesses. Thus, we do not find any reason to reject the evidences of P.Ws.3 & 11 at all.

16. There is yet another very strong circumstance against the accused. P.W.1 went in search of the deceased and she was not able to get any clue for quite some time. For the first time, it was P.W.2 who informed her that the deceased was taken by the accused 1 to 3 at about 5.00 pm on 29.11.2011. When P.W.1 was searching for the deceased, P.W.2, promptly informed the same to her. This act is mentioned even in Ex.P.1. Till the complaint was made to the Police at 7.00 am, it was not known either to P.W.1 or to P.W.2 that the deceased had been done to death. That is why P.W.1 in her complaint disclosed that her husband was missing.

17. After 7.00 am, on 30.11.2011, when P.W.1 went in search of her husband, P.Ws.3 & 11 promptly informed her the fact that the deceased was killed by these 11 accused and the abdominal internal organs were pulled and they were thrown into a garbage and thereafter, the accused tied the dead body in a white dhoti and tied the same with a big stone and threw the same into a Well. This fact that the dead body was lying in the Well was not known to anybody until it was disclosed by P.Ws.3 & 11 to P.W.1 and the Police. After the said statement of these two witnesses only, Fire and Rescue Service officials were brought to the place of occurrence and for the whole night, they searched for the dead body of the deceased in the water but, they could not succeed. The dead body was recovered from the Well only after draining the water. The search succeeded only at 12.00 noon. Thus, the dead body of the deceased was not seen by anybody until it was recovered from the Well at 12.00 noon on 30.11.2011. The search was conducted in the Well with the help of Fire and Rescue Service Officials because, of the information passed on by P.Ws.3 & 11 to P.W.1 and to the Police. Similarly, a blood stained stone was found near the Well. The very fact that the dead body was

recovered from the Well on the statement made by P.Ws.3 & 11 would go a long way to prove that P.Ws.3 & 11 are the eye witnesses to the occurrence and there is no reason to reject their evidences. Thus, we make full reliance on the evidences of P.Ws.3 & 11.

18.The evidence of P.Ws.3 & 11 is duly corroborated by the medical evidence as spoken by the Doctor who conducted autopsy on the body of the deceased. The recovery of the material objects also would, to some extent, add strength to the case of the prosecution. From these evidences, more particularly, the evidences of P.Ws.1,2, 3 & 11, we are of the view that the prosecution has proved the case against the accused beyond reasonable doubt. The motive for the occurrence has also been proved.

19.The very fact that the death of the deceased was caused instantaneously, thereafter, the abdomen was opened by one of the accused and the internal organs were pulled out and thrown into a garbage and the dead body was thrown into a Well by tying the same with a big stone which was lying there would clearly prove the clear intention of the accused that they intended to cause the death of the deceased. The motive for the occurrence is group rivalry between two groups of rowdy elements. Thus, the act of these accused would fall squarely within the ambit of Section 300 I.P.C., and therefore, they are liable to be punished.

20.The trial Court has convicted these accused for the offence of conspiracy. The learned counsel for the appellants would submit that there is no direct evidence to prove the conspiracy. In our considered view, as soon as the conspiracy in general is hatched in secrecy, direct evidence may not be available under all circumstances. Conspiracy is a matter that has to be inferred from various materials produced by way of evidence by the prosecution. Here, in this case, going by the motive, the close association between all these accused; the accused 1 to 3 took the deceased to the place of occurrence under the pretext of taking liquor; the fact that the accused 4 to 11 were waiting there armed with weapons like knife for the arrival of the deceased along with the accused 1 to 3 and the fact that the dead body of the deceased was given a disposal would all give a legal presumption that there was conspiracy to do away with the deceased.

21.Thus, in our considered view, the trial Court was right in convicting the accused under all the above charges. We do not find any perversity in the judgment of the trial Court warranting interference at the hands of this Court. The quantum of punishment imposed by the trial Court also cannot be stated to be disproportionate. Thus, we do not find any merit in these appeals.

22.In the result :-

(i) Crl.A.No.516 of 2013 is dismissed as against A.2, A.3 & 4 and the conviction and sentence imposed on them are hereby confirmed

(ii) Crl.A.No.672 of 2013 is dismissed as abated as against A.11 - Mr.Velmurugan, alone;

(iii) Crl.A.No.672 of 2013 is dismissed as against A.5 & A.6 and the conviction and sentence imposed on them are hereby confirmed;

(iv) Crl.A.No.667 of 2013 is dismissed as against A.1, A.7, A.8, A.9 & A.10 and the conviction and sentence imposed on them are hereby confirmed.

(v) It is represented that some of the appellants are on bail, so, the trial Court is directed to take steps to secure the presence of those accused to commit them to prison to undergo the remaining period of sentence, if any.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

jbm

To

1.The II Additional District & Sessions Judge,
Salem.

2. The Judicial Magistrate NO.I
Virudhunagar

3. The Judicial Magistrate I
Thirunelveli

4. The Judicial Magistrate IV
Salem

5. The Chief Judicial Magistrate
Salem

6. The Inspector of Police
Annadhanapatty Police Station
Salem District

7. The Superintendent
Central Prison, Salem

8. The District Collector
Salem

9. The Director General of Police
Mylapore, Chennai-4

10. The Public Prosecutor,
High Court, Madras.

11. The Section Officer
Crl. Section,
High Court, Madras

4 ccs to Mr. A. Arasugaesan, Advocate, Sr. 34331

Crl. A. Nos. 516, 672 & 667 of 2013

SKS (CO)
Eu 11.7.16



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