

**Bail Slip**

The appellants/Accused viz.,

- |                     |      |
|---------------------|------|
| 1 Logu @ Loganathan | - A1 |
| 2 M.Jeyakumar       | - A3 |
| 3 A.Veerapandian    | - A4 |
| 4 Ponchandran       | - A2 |

were relased on bail as per the order of this Court dated 29.01.2016 and made in Crime Nos.2,3,2 and 2 of 2015 in CRL A(MD) Nos.328/2014, 191 and 230 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU  
AND  
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A[MD].Nos.328 of 2014, 191 and 230 of 2015  
and  
Crl.A(MD).Nos.54 and 82 of 2015

**Crl.A. (MD) .No.328 of 2014:-**

1.Logu @ Loganathan  
2.Jeyakumar : Appellants/Accused Nos.1 & 3

**Crl.A. (MD) .No.191 of 2015:-**

A.Veerapandian : Appellant/Accused No.4

**Crl.A. (MD) .No.230 of 2015:-**

Ponchandran : Appellant/Accused No.2

Vs.

State Rep by  
Inspector of Police,  
C3, SS Colony (L&O),  
Madurai District. : Respondent in CRL.A[MD].Nos.328 of  
Cr.No.963/2008 2014, 191 and 230 of 2015

**Crl.A. (MD) .No.54 of 2015:-**

Senthil : Appellant/PW-1/De facto complainant

Vs.

1.The Inspector of Police,  
SS Colony Police Station, (L&O),  
Madurai District, Crime No.963 of 2008.

<https://hcservices.ecourts.gov.in/hcservices/>

:1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/Complainant.



2.Jayakumar  
3.Veerapandian

: Second Respondent/Accused No.3  
: Third Respondent/Accused No.4

**Cr1.A. (MD) .No.82 of 2015:-**

Senthil : Appellant/PW-1/De facto complainant

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Vs.

1.The Inspector of Police,  
SS Colony Police Station, (L&O),  
Madurai District, Crime No.963 of 2008.

:1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/Complainant.

2.Velu : Second Respondent/Accused No.5  
3.Kannan : Third Respondent/Accused No.6

**PRAYER in CRL.A[MD].Nos.328 of 2014, 191 and 230 of 2015:** Appeals are filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 10.09.2014 made in S.C.No.408 of 2011 on the file of the Fourth Additional District and Sessions Judge, Madurai.

**PRAYER in CRL.A[MD].No.54 of 2015:** Appeal is filed under Section 372 of the Code of Criminal Procedure to call for the records relating to the Judgment dated 10.09.2014, made in S.C.No.408 of 2011, on the file of the Fourth Additional District and Sessions Judge, Madurai and enhance the sentence awarded to the accused Nos.3 and 4 to life sentence.

**PRAYER in CRL.A[MD].No.82 of 2015:** Appeal is filed under Section 372 of the Code of Criminal Procedure to call for the records relating to the Judgment dated 10.09.2014, made in S.C.No.408 of 2011, on the file of the Fourth Additional District and Sessions Judge, Madurai and set aside the same as illegal insofar as acquitting the respondents 2 and 3/accused Nos.5 and 6 and convict them as prayed for by the prosecution.

Cr1.A. (MD) .No.328 of 2014:-

For Appellants : Mr.V.Kathirvel  
Senior Counsel for Mr.K.Prabhu

For Respondent : Mr.K.S.Duraipandian  
Additional Public Prosecutor

Cr1.A. (MD) .No.191 of 2015:-

For Appellant : Mr.K.Chellapandian  
Senior Counsel  
for Mr.D.Shanmugaraja Sethupathi



For Respondent : Mr.K.S.Duraipandian  
Additional Public Prosecutor

Crl.A.(MD).No.230 of 2015:-

For Appellant : Mr.K.Chellapandian  
Senior Counsel  
for Mr.D.Shanmugaraja Sethupathi

For Respondent : Mr.K.S.Duraipandian  
Additional Public Prosecutor

Crl.A.(MD).No.54 of 2015:-

For Appellant : Mr.M.Ajmal Khan  
Senior Counsel  
For Mr.R.Gandhi

For Respondent No.1 : Mr.K.S.Duraipandian  
Additional Public Prosecutor

For Respondent No.3 : Mr.K.Chellapandian  
Senior Counsel  
for Mr.D.Shanmugaraja Sethupathi

For Respondent No.2 : Mr.V.Kathirvel  
Senior Counsel  
For Mr.K.Prabhu

Crl.A.(MD).No.82 of 2015:-

For Appellant : Mr.Veera.Kathiravan  
Senior Counsel  
For Mr.C.Jeganathan

For Respondent No.1 : Mr.K.S.Duraipandian  
Additional Public Prosecutor

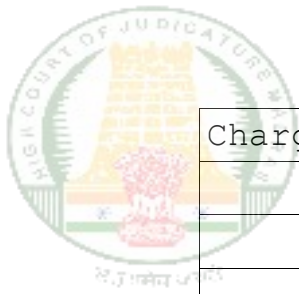
For Respondent Nos.2&3: Mr.K.Samidurai

### COMMON JUDGMENT

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

The appellants in Crl.A.(MD).No.328 of 2014 are the accused Nos.1 and 3, the appellant in Crl.A.(MD).No.191 of 2015 is the fourth accused and the appellant in Crl.A.(MD).No.230 of 2015 is the accused No.2 in S.C.No.408 of 2011, on the file of the learned Fourth Additional District and Sessions Judge, Madurai. There were two other accused, by name, Mr.R.Velu, S/o.Raji and Mr.G.Kannan S/o.Ganesan, arrayed as accused Nos.5 and 6 respectively in the Trial Court framed as many as five charges as against the accused, as detailed below.



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| Charge | Accused | Penal Provisions |
|--------|---------|------------------|
| 1      | 3 to 6  | 120-B IPC        |
| 2      | 1 to 6  | 148 IPC          |
| 3      | 1 and 2 | 302 IPC          |
| 4      | 3 to 6  | 149 IPC          |
| 5      | 1 and 2 | 506(ii) IPC      |

2. By Judgment dated 10.09.2014, the Trial Court acquitted the accused Nos.5 and 6 from all the charges. Challenging the acquittal of the accused Nos.5 and 6, the de facto complainant/PW-1 in the case has come up with CrI.A.(MD).No.82 of 2015. The Trial Court convicted the accused Nos.1 to 4 and sentenced them, as detailed below:-

| Accused | Section of Law | Sentence                                        | Fine amount                                                                                       |
|---------|----------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 1 and 2 | 148 IPC        | To undergo imprisonment for one year.           | No fine.                                                                                          |
| 1 and 2 | 302 IPC        | To undergo imprisonment for life.               | Rs.2,000/- in default to undergo each accused shall undergo simple imprisonment for three months. |
| 1 and 2 | 506(ii) IPC    | To undergo rigorous imprisonment for two years. | No fine.                                                                                          |
| 3 and 4 | 148 IPC        | To undergo imprisonment for one year.           | No fine.                                                                                          |
| 3 and 4 | 302 IPC        | To undergo rigorous imprisonment for ten years. | Rs.2,000/- in default to undergo each accused shall undergo simple imprisonment for three months. |

The sentences have been ordered to run concurrently.

2.2. Seeking enhancement of the sentences for the accused Nos.3 and 4, the de facto complainant/PW-1 in the case has come up with CrI.A.(MD).No.54 of 2015. Challenging the conviction and sentence imposed on them, the accused Nos.1 to 4 have come up with CrI.A[MD].Nos.328 of 2014, 191 and 230 of 2015. Challenging the acquittal of the accused Nos.5 and 6, the de facto complainant/PW-1 has come up with CrI.A.(MD).No.82 of 2015.



2.3. Since all these Criminal Appeals have arisen out of the same Judgment of the Trial Court, they were all heard together and they are disposed of by means of this Common Judgment.

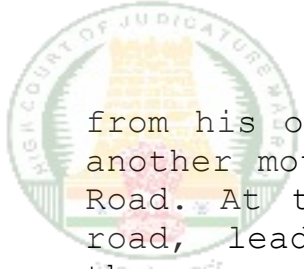
2.4. From the records, it is seen that earlier, another Division Bench of this Court heard Crl.A.(MD).No.54 of 2015 alone filed by the de facto complainant/PW-1 and allowed the same, by Judgment dated 31.03.2015, wherein the Division Bench modified the sentences imposed on the accused Nos.3 and 4 and enhanced the same to that of imprisonment for life and a fine of Rs.5,000/- each, in default to undergo rigorous imprisonment for six months for the offence under Section 302 of the Indian Penal Code. However, the Division Bench did not hear the Criminal Appeal (MD).Nos.328 of 2014, 191 and 230 of 2015 and 82 of 2015.

2.5. Challenging the said Judgment of the Division Bench, the accused Nos.3 and 4 filed Crl.A.No.1642 of 2015 before the Hon'ble Supreme Court. It was contended before the Hon'ble Supreme Court that the Division Bench was in error in disposing of the Criminal Appeal in Crl.A.(MD).No.54 of 2015 filed by the de facto complainant/PW-1 for enhancement of the sentence, without going into the legality and correctness of the conviction of the accused Nos.3 and 4, which is challenged before this Court by the accused in CRL.A[MD].Nos.328 of 2014, 191 and 230 of 2015. The Hon'ble Supreme Court, by Judgment dated 07.12.2015 allowed the said Criminal Appeal, set aside the Judgment of this Court, dated 31.03.2015, made in Crl.A.(MD).No.54 of 2015 and remanded the said Criminal Appeal back to this Court for fresh disposal in accordance with law, along with the other Criminal Appeals pending before this Court. That is how, all these Criminal Appeals are before us for disposal.

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

The deceased, in this case, was one Mr.Ilaiyaraja, aged about 30 years. PW-1 is his brother. PW-1 was running a Travel Agency at Melamarat Street, Madurai. He was residing at Bharathiyar Nagar, Sammattipuram at Madurai. The deceased was also residing along with PW-1 at Bharathiyar Nagar. PW-1 and the deceased were also running a Flour Mill on the main road at Sammattipuram. The first accused was also running a Flour Mill by the side of the Mill run by the deceased and PW-1. On account of the business rivalry, there was some misunderstanding between these two family members. The third accused has a daughter, by name, Abirami. She was studying in a local school. On one occasion, the deceased eve-teased her and started stalking her. This came to the knowledge of the third accused and he got wild. These instances are stated to be the motive for the accused Nos.1 and 3 against the deceased.

<https://hcservices.courts.gov.in/> The services further alleged that the accused Nos.3 to 6 conspired to commit the murder of the deceased. It is also alleged that on 01.07.2008, around 12.30 AM, the deceased was returning



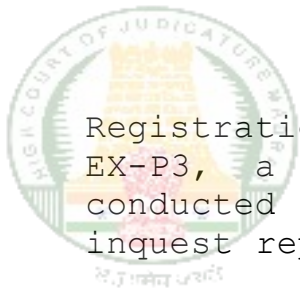
from his office in his motorcycle. PW-1 was also following him in another motorcycle. They proceeded along with Sammapattipuram Main Road. At that time, the deceased took a turn towards the branch road, leading Bharathiyar Nagar. At the place of occurrence, there was a street light. Thus, there was enough light at the time of occurrence. At that time, the accused Nos.5 and 6 suddenly emerged on the branch road, leading to Bharathiyar Nagar and intercepted the motorcycle driven by the deceased.

2.8. As soon as the motorcycle came to a halt, the accused No.5 held the right hand of the deceased and the sixth accused held his left hand. The accused Nos.3 and 4 were still standing on the Sammattipuram Main Road, watching the movement of anybody so as to facilitate the others to cause the death of the deceased. The accused Nos.1 and 2, from the hide out, rushed to the place of occurrence. The first accused was armed with a knife and the second accused was armed with a wire and also a knife. The second accused put the wire around the neck of the deceased and pulled him down from the motorcycle. The first accused took out the knife and stabbed the deceased twice. The second accused with the knife attacked the deceased on his chest thrice. PW-1 was shocked to see the said occurrence. PW-1 cried for help. Then, the accused Nos.1 and 2 criminally intimidated PW-1 of dire consequences, if he tried to rescue the deceased. Therefore, out of fear, PW-1 did not go near them. The occurrence was witnessed by PW-2 and PW-3, who were incidentally standing near the place of occurrence. Then, all the six accused fled away from the scene of occurrence. PW-1 found that the deceased succumbed to the injuries instantaneously. Thereafter, PW-1 went to the S.S.Colony Police Station and made a complaint, at 03.30 AM, on 01.07.2008.

2.9. PW-17, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.963 of 2008, under Sections 147, 148, 302 and 506(ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P11 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.10. In EX-P1, PW-1 had stated the names of five assailants and he also mentioned that 2 to 3 more unidentifiable persons attacked the deceased. One of the named accused, as per EX-P1, was one Mr.M.Mohan, S/o.Marimuthu. In EX-P1, the names of the accused Nos.5 and 6 were not found. [Mr.M.Mohan was not arrayed as an accused in the final report.

2.11. Taking up the case for investigation, at 04.45 PM, on 01.07.2008, PW-18 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence, the presence of PW-4 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. He also recovered a TVS Motorcycle, bearing



Registration No.TN-58-Q-7367 from the place of occurrence, under EX-P3, a mahazer. Then, between 05.15 PM and 07.15 PM, he conducted inquest on the body of the deceased. EX-P13 is the inquest report. Then, he forwarded the dead body for postmortem.

2.12. PW-12- Dr.G.Natarajan conducted autopsy on the body of the deceased, at 10.30 AM, on 01.07.2008. He noticed the following injuries:-

"1.An oblique stab injury 3 x 0.5 cms/ Pleural Cavity deep noted on the front of right side of chest, 8 cms below the right nipple.

On dissection, the wound passes obliquely downwards and backwards piercing the underlying muscles, vessels, nerves in the 9<sup>th</sup> intercostals space, piercing the underlying pleura, lower lobe of right Lung measuring 2.5 x 0.5 x 2 cms and ends as a point.

2.An oblique stab injury 3 x 0.5 cms/ Pleural Cavity deep noted on the right side of chest, 2 cms above the injury No.1.

On dissection, the wound passes obliquely downwards, and backwards piercing the underlying muscles vessels nerves on the 8<sup>th</sup> intercostals space, piercing the underlying Pleura and lower lobe of Right Lung measuring 2 x 1 x 1 cms and ends as a point. Right Pleural Cavity contains 200 ml of fluid blood with clots. Left Pleural Cavity empty.

3.An oblique stab injury 6 x 2 cms x peritoneal cavity deep noted on the front of left side of middle of abdomen, 8 cms above and lateral to the umbilicus.

On dissection, the wound passes obliquely downwards and backwards, piercing the underlying muscles, vessels, nerves, piercing the mesentery measuring 3 cms x linear x through & through 4 cms away from middle of descending colon. Peritoneal Cavity contains 500 ml of fluid blood with clots.

4.An oblique stab injury 6 x 2 cms x Peritoneal Cavity deep noted on the left side of upper part of abdomen, 4 cms below the costal margin, through which loops of intestines is protruding out.

5.An oblique stab injury 6 x 2 x 1 cms x Peritoneal Cavity deep noted on the middle of left side of abdomen, 6 cms away from the umbilicus, through which loops of intestine is protruding out.

6.An oblique stab injury 4 x 2 cms x Peritoneal cavity deep noted on left loin.

7.Two ligature marks each measuring 14 cms x 0.25 cms, 0.5 cm apart noted on the front of left side of upper part of neck, 5 cms below the left mastoid, and 5 cms below the middle of chin. On dissection, there is extravasation of blood noted on the underlying subcutaneous tissue.



8. An oblique stab injury 4 x 1 x 2 cms along the muscle plane noted on the front of middle of abdomen, 4 cms above the umbilicus.

9. An oblique stab injury 3 x 1 x 2 cms along the muscle plane noted on the lower abdomen, 5 cms below the umbilicus.

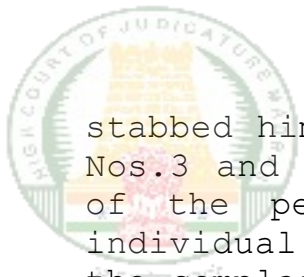
10. An oblique stab injury 2 x 1 x 2 cms along the muscle plane noted on the front of middle of chest.

Note: All the stab injuries are having regular margins and both ends are pointed".

EX-P10 is the postmortem certificate. He gave opinion that the injuries found on the neck of the deceased could have been caused on account of constriction and the other injuries by weapons, like MO-2 and MO-3. He gave further opinion that the deceased would appear to have died of shock and hemorrhage, due to the cumulative effect of all the injuries.

2.13. PW-18 arrested the first accused, at 06.00 AM, on 03.07.2008, in the presence of PW-6 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the knife. In pursuance of the same, the first accused took the police and the witnesses to the hide out and produced MO-1, knife. PW-18 recovered the same under a mahazer. On the same day, at 11.30 AM, he arrested the third accused. On returning to the Police Station, he forwarded both the accused to the Court for judicial remand. On 04.07.2008, the fifth accused had surrendered before the learned Judicial Magistrate, Sivagangai. On 05.07.2008, he arrested the sixth accused and forwarded him to the Court for judicial remand. The second accused had also surrendered before the learned Judicial Magistrate, at Thiruppur. On 15.07.2008, PW-18 took police custody of the second accused. On 16.07.2008, while in police custody, the second accused gave a voluntary confession, in which he disclosed the place, where he had hidden the knife. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced MO-3, knife. PW-18 recovered the same under a mahazer. PW-18 recovered bloodstained clothes found on the body of the deceased. On completing the investigation, he laid charge sheet against the accused.

2.14. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 19 witnesses were examined, 14 documents and nine material objects were marked. Out of the said 19 witnesses, PW-1, the brother of the deceased, has stated about the motive. He has further spoken about the fact that he was proceeding in his motorcycle ahead of him. At that time, the accused Nos.5 and 6 intercepted him. The accused Nos.1 and 2



stabbed him and killed him. He has further stated that the accused Nos.3 and 4 were standing on the main road, watching the movement of the people. Thus, PW-1 has specifically stated about the individual overt acts of all the accused. He has also spoken about the complaint made by him to the police.

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2.15. PW-2 and PW-3 have stated that near the place of occurrence, at the crucial point of time, they were standing, incidentally and talking among themselves. They have also stated that at that time, they witnessed the entire occurrence. They have also spoken about the individual overt acts of all the accused. They have further stated that after the occurrence, they went to the house and did not disclose the occurrence to anybody. PW-4 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the recovery of material objects from the place of occurrence. PW-5 has spoken about the alleged confession made by the second accused, while he was in police custody and the consequential recovery of the knife from his possession, in pursuance of the disclosure statement made by him. PW-6 has spoken about the arrest of the first accused and the disclosure statement made by him and the consequential recovery of knife. PW-7, the Head Clerk of the Court of learned Judicial Magistrate, has stated that he forwarded the material objects to the Forensic Lab for chemical examination. The report revealed that there were bloodstains on all the material objects, including the dagger and knife. PW-8, a Forensic Expert, has spoken about the chemical examination conducted on the material objects. PW-9, an official from the Tamil Nadu Electricity Board, has stated that there was enough light facility and there was no electricity failure on the crucial date.

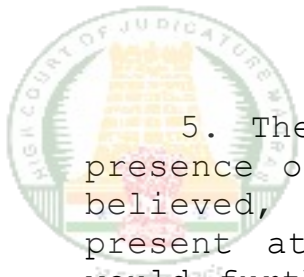
2.16. PW-10, a Head Constable, has stated that he handed over the complaint and the First Information Report to the Court, at 08.10 AM, on 01.07.2008. PW-11, yet another Constable, has stated that he handed over the dead body to the hospital for postmortem, as directed by PW-18. PW-12, has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-13, the father of the deceased, has spoken about the motive between the accused and the deceased. He has further stated that he heard about the occurrence later. PW-14 has spoken about the photograph taken by him at the place of occurrence from various angles, as directed by PW-18. PW-15, a Head Constable, has spoken about the handing over of the material objects to the Forensic Lab, as directed by the learned Judicial Magistrate. PW-16 has turned hostile and he has not supported the case of the prosecution in any manner. PW-17 has spoken about the registration of the case, on the complaint made by PW-1. PW-18 has spoken about the investigation conducted by him and the filing of final report. PW-19, Assistant Director of Forensic Lab at Madurai. He has spoken about the serology examination conducted by him on the material objects. He found that the bloodstains were of 'O' Group.



2.17. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Their defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellants/accused Nos.1 to 4, as detailed in the first paragraph of this Judgment and punished them accordingly. However, the Trial Court acquitted the accused Nos.5 and 6. That is how, the appellants/accused Nos.1 to 4 are now before this Court with CRL.A[MD].Nos.328 of 2014, 191 and 230 of 2015. Aggrieved over the acquittal of the accused Nos.5 and 6 and seeking enhancement of the sentences for the accused Nos.3 and 4, the de facto complainant/PW-1, has come up with CrI.A.(MD).Nos.54 and 82 of 2015.

3. We have heard the learned Senior Counsel appearing for the appellants/accused Nos.1 to 4, the learned Senior Counsel appearing for the de facto complainant/PW-1, the learned counsel appearing for the accused Nos.5 and 6 and the learned Additional Public Prosecutor appearing on behalf of the State and also perused the records carefully.

4. The learned Senior Counsel for the appellants/accused Nos.1 to 4 would submit that the Trial Court has committed a serious error in relying on the evidences of PW-1 to PW-3. They would further submit that the presence of PW-1 to PW-3, at the crucial point of time, at the place of occurrence, is highly doubtful and the Trial Court ought to have rejected their evidences. The learned Senior Counsel would further point out that in EX-P1, PW-1 had mentioned about the presence and participation of one Mr.M.Mohan, S/o.Marimuthu. But, Mr.Mohan, S/o.Marimuthu has not been arrayed as an accused in this case. Absolutely, there is no explanation as to why Mr.M.Mohan, S/o.Marimuthu, has not been arrayed as an accused in the case. The learned Senior Counsel would further point out that in EX-P1, the presence and participation of the accused Nos.5 and 6 have not been mentioned at all, for which also, there is no explanation. The learned Senior Counsel would further point out that there was enormous delay in making the complaint to the police and forwarding the First Information Report to the Court. The learned Senior Counsel would further contend that absolutely, there is no explanation offered for the said delay. They would further submit that according to the First Information Report, a crowd of people attacked the deceased with knife and aruval. However, there is no evidence as to who were all the people, who formed the said group and who were the deceased.



5. The learned Senior Counsel would next point out that the presence of PW-2 and PW-3, at the place of occurrence, cannot be believed, because, there was no need or occasion for them to be present at the place of occurrence. The learned Senior Counsel would further point out that PW-3 has stated that one person, by name, Mr.Kali was the one, who attacked the deceased. However, he has not been arrayed as an accused in the case. Thus, according to the learned Senior Counsel, the prosecution has not come forward with the true version of the occurrence. Therefore, according to the learned Senior Counsel, the Trial Court was right in acquitting the accused Nos.5 and 6, but, the Trial Court was not right in convicting the accused Nos.1 to 4.

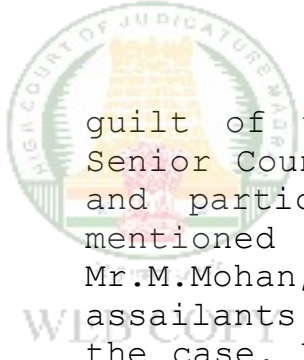
6. The learned Additional Public Prosecutor would, however, vehemently oppose the Criminal Appeals filed by the accused against conviction and sentence. According to him, the presence of PW-1 to PW-3, at the place of occurrence, cannot be doubted, because, they have explained as to why and how they came to the place of occurrence at the crucial point of time. The learned Additional Public Prosecutor would further contend that though Mr.M.Mohan, had been mentioned as one of the assailants, he was omitted to be included in the case, because the investigation revealed that he did not participate in the occurrence. On that score, the evidences of PW-1 to PW-3 cannot be disbelieved. He would further submit that PW-1 has spoken about the presence and participation of the accused Nos.5 and 6 in a vivid fashion. Thus, according to him, there is no reason to reject the eye-witness account of PW-1 to PW-3 and their evidences are also duly corroborated by the medical evidence. Thus, according to the learned Additional Public Prosecutor, the Trial Court was right in convicting the accused Nos.1 to 4. However, the Trial Court was not right in imposing lesser punishment on the accused Nos.3 and 4 and the Trial Court was not right in acquitting the accused Nos.5 and 6.

7. The learned Senior Counsel for the de facto complainant/ PW-1 would submit that PW-1 to PW-3 have stated, in a vivid fashion, about the presence and participation of the accused Nos.5 and 6 in the occurrence. There is no reason to reject their evidences. According to them, the Trial Court was not right in acquitting the accused Nos.5 and 6. He would further submit that the Trial Court has committed a serious illegality in imposing lesser punishment on the accused Nos.3 and 4, for the offence under Section 302 of the Indian Penal Code. On other aspects, the learned Senior Counsel adopted the arguments advanced by the learned Additional Public Prosecutor.

8. We have considered the above submissions.

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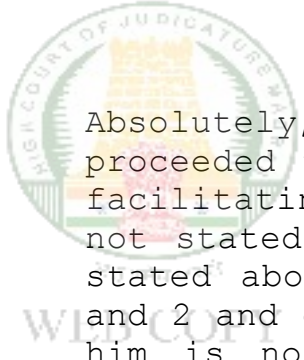
9. As we have already pointed out, the prosecution mainly relies on the eye-witness account of PW-1 to PW-3 to prove the



guilt of these accused. As rightly pointed out by the learned Senior Counsel for the appellants/accused Nos.1 to 4, the presence and participation of the accused Nos.5 and 6 have not been mentioned in EX-P1. As we have already pointed out, in EX-P1, one Mr.M.Mohan, S/o.Marimuthu has been mentioned as one of the assailants. But, Mr.M.Mohan has not been arrayed as an accused in the case. Even during trial of the case, neither PW-1 nor PW-2 and PW-3 have spoken about the presence and participation of Mr.M.Mohan, S/o.Marimuthu. When that be so, it is not known as to why PW-1 had mentioned in EX-P1 that Mr.M.Mohan actively participated in the occurrence and he had also attacked the deceased with deadly weapon along with the others. It still remains to be a mystery as to who was that Mr.M.Mohan. There was no investigation at all in respect of the involvement of Mr.M.Mohan. Even the Investigating Officer has not stated as to why he omitted to array Mr.M.Mohan as an accused in this case. PW-1 has not explained as to why he included Mr.M.Mohan as one of the assailants in EX-P1.

10. Apart from the above, it is not as though the accused Nos.5 and 6 were not known to PW-1. Had it been true that the accused Nos.5 and 6 also actively participated in the occurrence and they held the deceased, as it is now projected by the prosecution, certainly, PW-1 would not have omitted to mention the presence and participation of the accused Nos.5 and 6 as the accused in EX-P1. Absolutely, he has got no explanation as to why PW-1 had omitted to mention the presence and participation of the accused Nos.5 and 6 in EX-P1. PW-2 and PW-3 are not strangers. They were also known to PW-1, as it is found in the evidence. After the occurrence, certainly, PW-2 and PW-3 would have had some deliberation for sometime. That is the reason why, for the occurrence which allegedly took place at 12.30 AM, on 01.07.2008, the First Information Report was registered at 03.30 AM, i.e., after three hours, though the distance between the Police Station and the place of occurrence is hardly two and half kilometres. Further, the First Information Report had reached the hands of the learned Judicial Magistrate, at 08.30 AM, on 01.07.2008, for which also, absolutely, there is no explanation.

11. PW-3, in his evidence, has stated that when he was standing near the place of occurrence along with PW-2, he found the deceased coming in the motorcycle. He was intercepted by two persons, namely, one Mr.Kali and Mr.Kannan. Even in chief-examination, when he was called upon to identify the accused - Mr.Kannan, instead of identifying the sixth accused, who is Mr.Kannan, he wrongly identified the fifth accused Mr.Velu as "Mr.Kannan". According to the prosecution, the accused Nos.5 and 6 intercepted the deceased and held the hands of the deceased. But, <https://hccs.ecmss.gov.in/tcstvcsl> that one Mr.Kali [Not an accused] and Mr.Kannan intercepted the deceased. Who is Mr.Kali?. This has not been explained away by the prosecution. Mr.Kali is not an accused.



Absolutely, there is no explanation for the same. He has further proceeded to say that Mr.Kali held the right hand of the deceased facilitating the accused Nos.1 and 2 to kill the deceased. He has not stated anything against the accused Nos.3 and 4. He has only stated about the presence and participation of the accused Nos.1 and 2 and one Mr.Kali [not A-6]. Obviously, Mr.Kali referred to by him is not the accused No.6. He has not identified the sixth accused as one of the assailants. Absolutely, there is no explanation for the above contradictions. He has further stated that after the occurrence, he went to his house and did not disclose about the occurrence to anyone. This conduct of PW-3 creates doubt in his evidence.

12. Similarly, PW-2 has stated that two persons intercepted the deceased. In the chief-examination, he has stated that those two persons were the accused Nos.5 and 6. But, during cross-examination, he has stated that he did not know those two persons previously and later on, he came to know about the names of those two persons. He has further stated that he came to the place of occurrence at that odd hour to speak to PW-3. This, in our considered view, is highly unbelievable. He has stated that after the occurrence, he silently went to his house and did not inform about the occurrence to anybody. Thus, the evidence of PW-2 is also doubtful.

13. PW-1 to PW-3 are chance witnesses. It is the law that unless the reason for their presence at the place of occurrence is explained to the satisfaction of the Court, their presence cannot be believed. In the instant case, absolutely, there was no cause for PW-2 and PW-3 to be present at the place of occurrence. Their explanation was that casually, they came to the place of occurrence just to have a talk among themselves. This explanation is hard to be accepted. In our considered view, the contradictions and the improbabilities, which we have dealt with hereinabove, would go to show that PW-1 to PW-3 would not have seen the occurrence at all.

14. Now, turning to the medical evidence, according to the charge, both the accused stabbed the deceased with knife. PW-1 has stated that the second accused also stabbed the deceased with a knife. However, according to the doctor, who conducted autopsy on the body of the deceased, he found a number of cut injuries. But, according to EX-P1, some of the assailants used aruvals and caused injuries and one of the weapons is a dagger. Absolutely, there is no explanation for the same, because, the injuries found on the body of the deceased were all stab injuries. However, the case has been developed as though there was no aruval used by any of the accused. Above all, in EX-P1, the overt act of any of the accused is not stated at all. It has been, in a vague manner, stated that some unknown persons also participated in the occurrence and attacked the deceased. But, those persons, who had participated in



the occurrence and attacked the deceased, have not been identified and arrayed as the accused in the case.

15. In view of the foregoing discussions, we are unable to believe the evidences of PW-1 to PW-3. Mere recovery of the weapons from the accused on the disclosure statements made by them, would not, in any manner, go to improve the case of the prosecution. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants/accused Nos.1 to 4 are entitled for acquittal and the acquittal of the accused Nos.5 and 6 needs to be confirmed.

16. In the result, the Criminal Appeals in CRL.A[MD].Nos.328 of 2014, 191 and 230 of 2015 filed by the appellants/accused Nos.1 to 4 are allowed; the conviction and sentence imposed on the appellants/accused Nos.1 to 4, by Judgment dated 10.09.2014, made in S.C.No.408 of 2011, on the file of the learned Fourth Additional District and Sessions Judge, Madurai, is set aside and the appellants/accused Nos.1 to 4 are acquitted of all charges. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond executed by the appellants and the sureties shall stand terminated. The Criminal Appeals in Crl.A(MD).Nos.54 and 82 of 2015 filed by the de facto complainant/PW-1 are dismissed. The acquittal of the accused Nos.5 and 6 by the Trial Court is hereby confirmed.

Sd/  
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

- 1 The Secretary to Government, Home Department, Secretariat, Chennai-9
- 2 The IV Additional Sessions Judge, Madurai, Madurai District.
- 3 Do Thro' The Principal District Sessions Judge, Madurai.
- 4 The Judicial Magistrate No.5, Madurai.
- 5 The Superintendent of Prison, Central Prison, Madurai.
- 6 The District Collector, Madurai.
- 7 The Commissioner of Police, Madurai.
- 8 The Director General of Police, Chennai.



9 The Inspector of Police, C3, S.S.Colony (L&O)  
Madurai District.

10 The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

**Copy to:** The Section Officer,  
Criminal Section/Records,  
Madurai Bench of Madras High court, Madurai.

+1CC to M/S.K.Samidurai, Advocate, SR.No. 55765

+1CC to M/S.C.Jeganathan, Advocate, SR.No. 55851

+1CC to M/S.R.Gandhi, Advocate, SR.No. 55048

+2CC to M/S.D.Shanmugarajasetupathy, Advocate, SR.No. 55008

JUDGMENT MADE IN  
CRL.A[MD].Nos.328 of 2014, 191 and 230 of 2015  
and  
Crl.A(MD).Nos.54 and 82 of 2015  
22.09.2016

NB

AM/SS3/SAR-1/04.11.2016/15P/17C