

**BAIL SLIP**

1. Ramar S/o.Malayalam aged 26 years (Accused No.4)
2. Sakthivel S/o.Duraiaraj aged 27 years (Accused No.5)  
were released on bail by the order of this Court  
dated 28.10.15 made in MP(MD)No.1/15 in CRL.A(MD).34/14
3. Kirubanandan S/o.Srinivasan aged 24 years (Accused No.1)  
was released on bail by the order of this Court  
dated 04.11.15 made in MP(MD).2/15 in CRL.A(MD).34/14.
4. Vellaiyan @ Muruganandan S/o.Mathivanan aged 26 years  
(Accused No.2)  
was released on bail by the order of this Court dated  
18.11.15 made in MP(MD).3/15 in CRL.A(MD).34/14.
5. Prabhu S/o.Mariyapillai @ Mariappan aged 28 years  
(Accused No.3)  
was released on bail by the order of this Court dated  
28.10.15 made in MP(MD)1/15 in CRL.A(MD).215/14.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.09.2016

PRONOUNCED ON: 19.10.2016

CORAM:

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

Cr1.A.[MD].No.34 and 215 of 2014

1.Kirubanandan

2.Vellaian @ Muruganandan

3.Ramar

4.Sakthivel

: Appellants in  
Cr1.A.(MD).No.34/2014/  
Accused Nos.1, 2, 4 & 5

Prabhu

: Appellant in  
Cr1.A.(MD).No.215/2014/  
Accused No.3



Vs.

The State rep. by  
the Inspector of Police,  
Jeeyarpuram Police Station,  
Trichy.  
(Crime No.22 of 2013)

: Respondent in both  
the appeals/  
Complainant

**COMMON PRAYER:** Criminal Appeals filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 13.12.2013, made in S.C.No.101 of 2013, by the learned Principal Sessions Judge, Trichy.

For appellants in  
Crl.A.(MD).No.34/2014 : Mr.N.Anandha Padmanabhan - A1  
Mr.R.Karunanidhi- A2  
Mr.K.Gandhikumar - A4 and A5

For appellant in  
Crl.A.(MD).No.215 of 2014 : Mr.M.Karunanidhi

For respondent in both  
the petitions : Mr.K.S.Durai Pandian,  
Additional Public Prosecutor

**COMMON JUDGMENT**

**(Judgment of the Court was made by S.NAGAMUTHU, J.)**

The appellants are the accused 1 to 5 in S.C.No.101 of 2013 on the file of the learned Principal Sessions Judge, Tiruchirapalli. The trial Court has framed as many as four charges against them as detailed below:

| Charge Nos. | Against   | Offence U/s.        |
|-------------|-----------|---------------------|
| 1           | A1 to A5  | U/s.147 IPC         |
| 2           | A4 and A5 | U/s.341 IPC         |
| 3           | A1 to A3  | U/s.302 r/w 149 IPC |
| 4           | A4 and A5 | U/s.302 r/w 149 IPC |

2.By judgment dated 13.12.2013, the trial Court convicted all the five accused under the respective charges and sentenced them as detailed below;

| Accused   | Conviction  | Sentence                          |
|-----------|-------------|-----------------------------------|
| A1 to A5  | U/s.147 IPC | Rigorous Imprisonment for 2 years |
| A4 and A5 | U/s.341 IPC | Simple Imprisonment for 1 month   |



|           |                    |     |                                                                                                                                             |
|-----------|--------------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------|
| A1 to A3  | U/s.302<br>149 IPC | r/w | Imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for a further period of six months. |
| A4 and A5 | U/s.302<br>149 IPC | r/w | Imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for a further period of six months. |

Challenging the said conviction and sentence, A1, A2, A4 and A5 have filed CrI.A.(MD).No.34 of 2014 and A3 has filed CrI.A.(MD).No.215 of 2014. Since both the appeals have arisen out of one and the same judgment, they were heard together and disposed of by means of this common judgment.

3.The case of the prosecution in brief is as follows;

(a)PW4 - Mr.Kathaperumal is a resident of Mariamman Kovil Street, Gudaloor, Trichy District. The deceased - Mr.Saranraj was his son. The deceased was residing along with PW4, his brother Karthick and sister Keerthana. All the five accused also hail from the same village. The deceased in this case was a painter by profession. It is alleged that there was a property dispute between the family of the deceased and the first accused. It is stated to be the motive for the occurrence.

(b) It is alleged that on 30.01.2013 around 6.00 p.m., the deceased left for Trichy after informing PW4 that he was going on account of some personal work in Trichy. PW1 is the uncle of the deceased. He was also residing in the same village. PW2 is yet another maternal uncle of the deceased. PW2 was also residing in the same village. PW3 is a villager. PWs.1 to 3, along with the deceased, had gone together to Tiruchirapalli and after completing their work, they returned to Muthuraasanallur. Since it was too late in the night, all the four were standing near the school building at Kaveri Nagar, Muthuraasanallur and discussing as to whether they could go for drinking liquor.

(c) When they were so standing, it is alleged that in a motorcycle the accused 1 and 2 suddenly came to the said place. They had one aruval each in their hands. They were followed by the accused 3 to 5 in another motorcycle. The third accused was armed with a knife. Both the motorcycles were parked near the place where PWs.1 to 3 and the deceased were standing. Menacingly all the five accused rushed towards the deceased. The first accused cut the deceased on his head with aruval. The deceased tried to escape. He ran towards the school and through the steps, he climbed up to the open terrace of the school. All the accused followed and chased him. The accused 4 & 5, on the terrace, held the deceased. Then, the accused 1 and 2 cut the deceased with aruval indiscriminately and the third accused stabbed him



with a knife below the chest. The deceased fell on the terrace in a pool of blood and died. PWs.1 to 3 raised alarm. All the three accused climbed down the stairs and ran away with weapons. Thus, the occurrence was witnessed by PWs.1 to 3.

WEB COPY (d) PW1, immediately, informed PW4 over phone about the occurrence around 11.30 p.m. PW4 was sleeping at his house. On receiving the said information, immediately, he rushed along with the other family members to Mutharasanallur Village and found the deceased lying dead with injuries on the terrace. Thereafter, PW1 went to Jeeyarpuram Police Station and made a complaint at 12.30 a.m. on 31.01.2013.

(e) PW14, the then Sub Inspector of Police, registered a case on the said complaint in Crime No.22 of 2013 under Sections 147, 448, 341 and 302 IPC. Ex.P1 is the complaint and Ex.P20 is the FIR. He handed over both the documents to PW12 with a direction to him to hand over the same to the jurisdictional Magistrate Court. Accordingly, PW12 took the same and handed over the same to the learned Judicial Magistrate No.III, Tiruchirapalli at 7.30 a.m. on 31.01.2013.

(f) The case was taken up for investigation by PW16. Around 2.00 p.m. PW16 went to the place of occurrence. Since there was tense situation, he did not choose to conduct inquest on the body of the deceased at the place of occurrence. Instead, he forwarded the body to the mortuary of the Government Hospital, Tiruchirapalli. At 6.00 a.m., he prepared a rough sketch and at 6.30 a.m. he prepared an observation mahazar in the presence of PW5 and another witness. He recovered the bloodstained cement floor and sample cement floor under the mahazar. He examined PWs.1 to 4 and few more witnesses and recorded their statements. In the hospital, he conducted inquest on the body of the deceased and forwarded the same to the Doctor for postmortem.

(g) PW15, Dr.Ravikumar, conducted autopsy on the body of the deceased on 31.01.2013 at 4.00 p.m. He found the following injuries:

"(1)A transverse cut wound on the front of neck about the level of thyroid cartilage, 13 cm x 6 cm x bone (cervical) deep. O/E, the edges are clean cut. The underlying muscles, blood vessels and nerves are found cut. The upper end of thyroid cartilage exposed. Bruising of wind pipe and food pipe present - Dark red. A cut fracture present on C3 vertebra.

(2)A transverse stab wound, 3 cm x 1 cm x cavity deep on the centre line of front of abdomen, 12 cm above the umbilicus. O/E, the edges are clean cut, both end is sharp. On



further dissection, a stab wound present on the left lobe of liver, 3 cm x 0.5 cm x through and through peritoneum found cut. Peritoneal cavity contains fluid blood.

WEB COPY

(3) An oblique stab wound on the right side of face and on the lower part of bridge of nose, 8 cm x 1 cm x cartilage bone deep. O/E, the edges are clean cut.

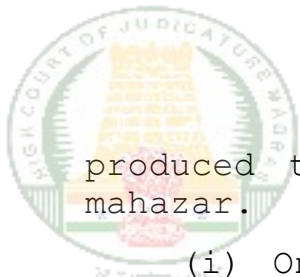
(4) On reflecting the chest wall, bruising of front of both side of chest wall and lower manubrium sterni - Dark red.

(5) Two stab wound each measuring 2 cm x 2 cm x muscle deep on the left side of neck. O/E, the edges are clean cut, both end is sharp.

(6) Slash cut wounds present on the front of left ring finger, 2 cm x 0.5 cm x bone deep and on the front of right thumb, 0.5 cm x 0.5 cm x muscle deep. O/E, the edges are clean cut."

Ex.P23 is the postmortem certificate and Ex.P25 is his final opinion regarding the cause of death. He gave opinion that the cut injuries found on the body of the deceased could have been caused by a weapon like aruval and stab injuries could have been caused by a weapon like knife. He has further opined that the death of the deceased was due to shock and haemorrhage due to multiple injuries found on the deceased.

(h) PW16 recovered the bloodstained clothes from the body of the deceased and forwarded the same to the Court. On 01.02.2013 at 6.00 a.m. near Chathiram Bus-stand, he arrested all the five accused. On such arrest, in the presence of PW9 and another witness, the accused 1 to 3 gave independent voluntary confessions one after the other. The first accused in his confession statement disclosed the place where he had hidden the motorcycle bearing Registration No.TN-48-I-8769. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced the said motorcycle. PW16 recovered the same under mahazar. Then, the first accused, in pursuance of the disclosure statement, produced an aruval and a bloodstained T-shirt. PW16 recovered the same under mahazar. The second accused in his confession statement disclosed the place where he had hidden a bloodstained aruval and a bloodstained T-shirt. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced the same. PW16 recovered the same under mahazar. The third accused in his confession statement disclosed the place where he had hidden a bloodstained knife, a bloodstained Lungi and a Shirt. In pursuance the same he took the Police and the witnesses to the place of hide out and



produced the material objects. PW16 recovered the same under mahazar.

(i) On returning to the Police Station, PW16 forwarded the accused to the Court for judicial remand and forwarded the material objects also to the Court. On his request, the material objects were sent for chemical examination and the report revealed that human blood was found on all the material objects, except on the sample cement floor recovered near the place of occurrence. On completing the investigation, PW16 laid a charge sheet against all the five accused.

(j) Based on the above materials, the trial Court framed four charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 34 documents and 16 material objects were marked.

(k) Out of the said witnesses, PWs.1 to 3 have been examined as eyewitnesses. They have stated that they were with the deceased at the time of occurrence. They have further stated that when the accused 1 and 2 came in a motorcycle armed with aruval, the accused 3 to 5 came in another motorcycle to the place of occurrence. They have further stated that A3 was armed with a knife and on reaching the deceased, the first accused cut the deceased on his head. The deceased tried to escape. He climbed on the top of the terrace of the school building through steps. A4 and A5 gave a chase and surrounded the deceased on the terrace of the school building and then, it is alleged that A1 and A2 indiscriminately cut the deceased and A3 stabbed him with knife below his chest. The deceased died on the spot. All the accused ran away.

(l) PW1 has stated that he informed PW4, the father of the deceased over phone and thereafter, he went to the Police Station and made a complaint. PW4, the father of the deceased, has stated that when he was at his house, around 01.30 p.m. PW1 informed him about the occurrence over phone. Immediately, he rushed to the place of occurrence and found the deceased lying with injuries. Then, PW1 went to the Police Station and made a complaint. PW5 has spoken about the preparation of observation mahazar and rough sketch in the place of occurrence. PW6 has also spoken about the same facts. PW7, a forensic expert, has stated that he examined viscera organ of the deceased and found that there was no poison, however, he found 269 m.g. of ethyl alcohol in the stomach and 173 m.g. of ethyl alcohol in the liver and kidney of the deceased. Thus, according to him, the deceased had consumed liquor.

(m) PW8, the Head Clerk of the jurisdiction Magistrate Court, has stated that he forwarded the material objects for chemical examination, as directed by the learned Magistrate.





PW9, the Village Administrative Officer, has spoken about the arrest of all the five accused, disclosure statement made by the accused 1 to 3 and the consequential recovery of MOs.1 to 3 respectively. PW10 is a relative of the third accused. He has turned hostile and he has not supported the case of the prosecution in any manner. PW11 has also turned hostile and he has not supported the case of the prosecution in any manner. PW12, the Grade-I Police Constable, attached to Jeeyarpuram Police Station, has stated that he handed over the complaint and FIR to the learned Magistrate at 7.30 a.m. on 31.01.2013. He has further stated that the same was handed over to him by the Sub Inspector of Police at 1.30 a.m. on 31.01.2013. He has not spoken as to why he took so much time to handover these documents to the learned Magistrate.

(n) PW13 has stated that he took the dead body and handed over the same to the Doctor for postmortem, as directed by the investigating officer. PW14 has spoken about the registration of the case and the complaint of PW1 at 12.30 p.m. on 31.01.2013. He has further stated that he forwarded the complaint - Ex.P1 and the F.I.R. - Ex.P20 through PW12 to the learned Magistrate. PW15 has spoken about the postmortem conducted and his final opinion regarding the cause of death. PW16 has spoken about the investigation done and final report filed.

(o) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. They denied the same as false. On their side, as many as 10 documents have been marked as Exs.D1 to D10. Ex.D1 to D9 are the photographs taken at the place of occurrence long after the occurrence. Ex.D10 is the partition deed dated 01.12.1993. This has been marked for an attempt to prove that there is no property dispute between the first accused and the deceased. The defence of the accused was a total denial. Having considered all the above, the trial Court convicted all the five accused as detailed in the second paragraph of this judgment. That is how they are before this Court with these appeals.

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

5. This is a case based on the eyewitness account of PWs.1 to 3. So far as the motive is concerned, there is no clear evidence, except the vague evidence of PW4, who has stated that there was some property dispute between his family and that of the first accused. Assuming that there was enmity between the two families, the motive being a double edged weapon solely based on the motive alleged by the prosecution, this Court cannot rush to the conclusion that the accused are the assailants.

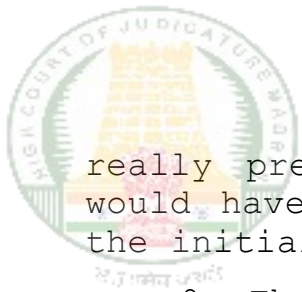


6. Now turning to the eyewitness account of PWs.1 to 3, the learned counsel for the appellants would submit that the presence of PWs.1 to 3 at the place of occurrence is highly unbelievable and therefore, their evidences should be rejected. In order to highlight the doubt in respect of their very presence and witnessing the occurrence, learned counsel Mr. Ananathapadmanabhan would submit that the complaint (Ex.P1) in the case would not have come into being at 12.30 a.m. on 31.01.2013, as it is projected by the prosecution.

7. We find some force in the said argument. It is alleged that the occurrence was at 11.00 p.m. on 30.01.2013. Thus, the complaint was made after one and half hours. PW1 has stated that after the arrival of PW4, the father of the deceased, to the place of occurrence, he went to the Police Station and made a complaint. PW12, the Grade-I Police Constable, who took Exs.P1 and P20 to the house of the learned Magistrate has stated that they were handed over to him only at 01.30 a.m. on 31.01.2013. He has further stated that he handed over the same to the learned Judicial Magistrate No.III, Trichy only at 7.30 a.m. on 31.01.2013. Thus, the FIR had reached the hands of the learned Magistrate with an abnormal delay. This delay should have been explained away by the prosecution, more particularly by PW12. But, in the chief examination, PW12 has not stated anything explaining the said delay. During cross-examination, he has admitted that the distance between the Police Station and the house of the learned Magistrate is hardly 16 kilometres and both the places were situated on the Trichy to Karur National Highway. He has further stated that after receiving Exs.P1 and P20, he rushed to Tiruchirapalli by a motorcycle. He has further stated that even for a slow driver, it would take hardly 40 minutes to cover the distance of 16 kilometres to reach the house of the learned Magistrate. If it is true that Exs.P1 and P20 were handed over to PW12 at 1.30 a.m., certainly he would have reached the house of the learned Magistrate within 2.00 a.m. to 2.30 a.m., but he has handed over the FIR and the complaint to the learned Magistrate only at 7.30 a.m. Thus, absolutely, there is no possible explanation for this inordinate delay.

8. In this regard, the learned counsel for the appellant relies on the judgment of the Hon'ble Supreme Court in **Tulia Kali Vs. State of Tamil Nadu** reported in **AIR 1973 SC 501** wherein the Hon'ble Supreme Court has held that if the delay is abnormal and the same remains unexplained by the prosecution, it would create doubt about the time at which F.I.R. had come into being. Applying the said yardstick to the facts and circumstances of the present case, as we have already pointed out, in this case also, there was enormous delay in handing over the FIR to the learned Magistrate which remains unexplained and this, in our considered view, creates doubt as to whether PWs.1 to 3 would have been





really present at the time of the occurrence and whether PW1 would have made complaint at 12.30 a.m. on 31.01.2013. This is the initial doubt in the mind of the Court.

9. The learned counsel for the appellants would submit that PWs.1 to 3 hail from Koodalur Village which is not situated anywhere near the place of occurrence. The place of occurrence was on the open terrace of the school situated at Mutharasanallur Village. As admitted by PW2, the distance between Koodalur Village and Chathiram Bus-stand at Tiruchirappalli is 10 kilometres. It is admitted by PW1 that the distance between the place of occurrence and Koodalur village is two kilometres. The alleged time of occurrence was at 11.00 p.m. Thus, according to them, they were present at the place of occurrence by chance along with the deceased. In a case, where a witness claims to have been present at the place of occurrence at the crucial point of time by chance, it should be explained to the satisfaction of the Court about reasons for his being present by chance. In the instant case, PWs.1 to 3 have stated that they accompanied the deceased to the place of occurrence. The reason stated by PW1 is that he went along with PWs.2 and 3 and the deceased to Trichy and from Trichy, they came to Mutharasanallur and when they were standing near the school, the occurrence had taken place. But, during cross-examination, he has admitted that there is no need to go to Mutharasanallur to go to Koodalur Village. He has further admitted that from Tiruchirappalli Chathiram Bus-stand one can straightaway go to Koodalur Village. Mutharasanallur is situated at a far away place viz., 8 k.ms. away from Chathiram Bus-stand. When that be so, it is not explained to the Court as to why PWs.1 to 3 and the deceased had chosen to go to Mutharasanallur, instead straightaway going to their village. This creates further doubt in the evidences of PWs.1 to 3.

10. PW1 has stated that the deceased and PWs.2 and 3 were with him on 30.01.2013 from 7.00 p.m. onwards. He has further stated that the deceased neither had his dinner nor drunk liquor, during the interregnum period until he was killed. But, PW3 has stated that he did not accompany PWs.1 and 2 and the deceased at all either to Trichy or to Mutharasanallur village. He has stated that he had alone gone to Trichy Fish Market from where he came to Chathiram Bus-stand and from Chathiram Bus-stand, in a mini bus, he went to Mutharasanallur. He has further stated that while he was at Mutharasanallur, he gave a phone call to PW1 and others, and thereafter only, PW1, PW2 and the deceased had come to the place of occurrence around 7.30 p.m. in a motorcycle to Mutharasanallur which is contrary to the evidence of PWs.1 and 2. PWs.1 and 2 had stated that they went to Mutharasanallur by bus and not by motorcycle. According to PWs.1 and 2, PW3 and the deceased were with them and all the four went to Mutharasanallur by bus and got down at the bus-stop. This, in our considered



view, is a major contradiction which creates doubt in the evidences of PWs.1 to 3.

11. PW3 has stated that from Chathiram Bus-stand at Trichy, there are many buses to his village viz., Koodalur. After finishing all the work, for returning to Koodalur Village from Chathiram Bus-stand, there was no need for them to go to Mutharasanallur by bus. The reason for going to Mutharasanallur has not been explained by PW1. PW3 has categorically stated that PWs.1 and 2 had a motorcycle. He has further stated that they came by a motorcycle to Srirangam Government Hospital and during cross-examination, he has further developed and said he also had a motorcycle. Thus, all the four accused had two motor cycles and they went in two motorcycles to Srirangam Government Hospital. When that be so, instead of going to Koodalur village by the motorcycles, as to why PWs.1 and 2 had chosen to go to Mutharasanallur by bus is also a mystery. It needs to be remembered that PW3 has stated that PWs.1 and 2 came to Mutharasanallur Village in a motorcycle. If the intention of PWs.1 and 2 was not to go to Koodalur village, they would have gone from Chathiram Bus-stand to Koodalur village and there was no need to go to Mutharasanallur village. During cross-examination, PW3 has stated that at 9.00 p.m. he, along with PWs.1 and 2 and the deceased, went in two motorcycles to Srirangam Government Hospital and then, came to Chathiram Bus-stand. If that be so, why they chose to go by bus to Mutharasanallur village is a mystery. During cross examination, PW3 has further stated that from Mutharasanallur bus-stop, he gave a phone call to PWs.1 and 2 and the deceased, and then, PWs.1 and 2 came there in a motorcycle. Why he gave them a phone call to come to Mutharasanallur Village is again a mystery. Thus, the movement of PWs.1 to 3 along with the deceased to Mutharasanallur Village is highly doubtful.

12. As already pointed out, PWs.1 to 3 had stated that the deceased was with them from 07.00 p.m. onwards and that the deceased neither had dinner nor drunk liquor. But, PW7, the Scientific Officer, has stated that there were 269 m.g. of ethyl alcohol in the stomach and 173 m.g. of ethyl alcohol in the liver and kidney of the deceased. This scientific evidence would go to show that the deceased had taken liquor before his death. This would falsify the evidence of PWs.1 to 3 that the deceased was with them all through and he did not take any liquor at all.

13. Now turning to the place of occurrence, there are lot of houses near the school. It is the evidence of PWs.1 and 2 that they raised alarm for about 5 to 10 minutes. Certainly, it would have attracted the people from nearby locality. But, nobody has been examined from that location to speak about the subsequent events ie., immediately following the actual occurrence. Had any person from that locality been examined, they would have





shall stand cancelled. The fine amount, if any, paid by them shall be refunded.

Sd/  
Assistant Registrar(C.S-II)

WEB COPY

/TRUE COPY/

Sub Assistant Registrar

To

1. THE JUDICIAL MAGISTRATE NO.III, TRICHY.
2. THE CHIEF JUDICIAL MAGISTRATE, TRICHY.
3. THE PRINCIPAL SESSIONS JUDGE, TRICHY.
4. THE INSPECTOR OF POLICE,  
JEEYARPURAM POLICE STATION, TRICHY.
5. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
6. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
7. THE INSPECTOR GENERAL OF PRISONS, CHENNAI-9.
8. THE DIRECTOR GENERAL OF POLICE, CHENNAI-4.
9. THE SECRETARY TO GOVERNMENT,  
HOME DEPARTMENT, SECRETARIAT, CHENNAI-9.

+1CC TO M/S.GANTHIKUMAR, ADVOCATE IN SR.NO.62031.

+1CC TO M/S.R,KARUNANIDHI, ADVOCATE IN SR.NO.61896.

+1CC TO M/S.N.ANANTHAPADMANABAN, ADVOCATE IN SR.NO.61843.

common judgment in  
Crl.A.(MD).Nos.34 and 215 of 2014  
Dated:19.10.2016

gcg  
msm/ss3/sar3/03.11.16/p12/13c