

Bail Slip

MP.NO. 1 of 2014 in
Crl A NO. 246 of 2014

That the Appellants herein/Accused herein Viz:

- (1) Venkatesan (A-2) aged 53 years S/O Pandurangan.
- (2) Amulraj @ Selvam (A-3) aged 49 years S/O Chinnathambi
- (3) Kumar @ Gopal (A-4) aged 47 years S/O Sellamuthu
- (4) Nallarasu (A-5) aged 43 years S/O Srinivasan
- (5) Senguttuvan @ Savier @ Manimaran (A-7) aged 44 years S/O Chinnatheru, weree directed to be released on bail as per the order of the Court dated 22/12/2014 and made in MP.NO. 1 of 2014 in CRL A NO. 246 of 2014

MP.NO. 1 of 2015 in
Crl A NO. 252 of 2014

That the Appealant herein/Accused 8 Viz Elavarasan @ Pandian @ Vallavan (AS) S/O Balasundaram was directed to be released on bail as per the Order of the Court dated 19/03/2015 and made in MP.NO. 1 of 2015 in Crl A NO. 252 of 2014.

MP.NO. 1 of 2014 in
Crl A NO. 253 of 2014

That the Appellant herein / Accused Viz. Ravi @ Velmurugan S/O Sarangapani, was directed to be released on bail as per the Order of the Court dated 22/12/2014 and made in M.P.NO. 1 of 2014 in CRL A NO. 253 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2017

PRONOUNCED ON: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal Nos.246, 252, 253 & 304 of 2014

1.Venkatesan (A.2)

2. Amulraj @ Selvam (A.3)

3.Kumar @ Gopal (A.4)
4.Nallarasu (A.5)
5.Senguttuvan @ Savier @ Manimaran (A.7)
6.Murugesan (A.9) .. Appellants in
Crl.A.No.246/2014/Accused

Elavarasan @ Pandian
@ Vallavan (A.8)
.. Appellant in Crl.A.No.252/2014/Accused No.8

Ravi @ Velmurugan(A.6)
.. Appellant in Crl.A.No.253/2014/Accused No.6

Soo @ Sundaram @
Ramasamy @ Anbalagan (A.1)
.. Appellant in Crl.A.No.304/2014/Accused

vs

State represented by
Inspector of Police,
Crime Branch, C.I.D.,
Cuddalore.
(Crime No.44/1991 registered
on the file of the Puthur
Police Station) .. Respondent in all Crl.As/Complainant

Common Prayer:- Criminal Appeals filed under Section 374(2)
Cr.P.C., by the appellants against the judgment in S.C.No.12
of 2001 dated 24.03.2014 on the file of the learned Sessions
Judge for Exclusive Trial of Bomb Blast Cases at Poonamallee,
Chennai.

In Crl.A.No.246 of 2014:-

For Appellant/
A.2 to A.5 & A.7 : Mr.C.Vijayakumar

For Respondent : Mr.R.Rajarathinam, Public Prosecutor
Assisted by Mr.P.Govindarajan

Additional Public Prosecutor

In Crl.A.No.252 of 2014:-

For Appellant/A.8 : Mr.S.Ashok Kumar, Senior Counsel
for Mr.K.Gandhikumar

For Respondent: Mr.R.Rajarathinam, Public Prosecutor
Assisted by Mr.P.Govindarajan

Additional Public Prosecutor

In Crl.A.No.253 of 2014:-

For Appellant/A.6 : Mr.R.Gandhikumar

For Respondent : Mr.R.Rajarathinam, Public Prosecutor
Assisted by Mr.P.Govindarajan
Additional Public Prosecutor

In Crl.A.No.304 of 2014:-

For Appellant/A.1 : Mr.S.Sathia Chandran

For Respondent : Mr.R.Rajarathinam, Public Prosecutor
Assisted by Mr.P.Govindarajan
Additional Public Prosecutor

COMMON JUDGEMENT

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

The appellants in Crl.A.No.246 of 2014 are the accused 2 to 5, 7 & 9; the appellant in Crl.A.No.252 of 2014 is the 8th accused; the appellant in Crl.A.No.253 of 2014 is the 6th accused and the appellant in Crl.A.No.304 of 2014 is the 1st accused in S.C.No.12 of 2001 on the file of the learned Sessions Judge for exclusive trial of bomb blast cases, Chennai at Poonamallee. They stood charged for various offences as detailed below:-

Charge No.	Accused	Section of law
1	A.1	120 (B) I.P.C.,
2	A.2	120 (B), 148, 452, 398 332 r/w 149, 309 r/w 149, 307 r/w 149 and 302 r/w 149 I.P.C.

Charge No.	Accused	Section of law
3	A.3	120(B), 148, 452, 332, 333, 307, 302, 398 r/w 149, 332 r/w 149 and 307 r/w 149 I.P.C.
4	A.4	120(B), 148, 452, 332, 307, 333, 332 r/w 149, 307 r/w 149, 302 r/w 149 and 398 r/w 149 I.P.C.
5	A.5	148, 452, 332 r/w 149, 307 r/w 149, 302, 333 r/w 149 and 398 r/w 149 I.P.C.
6	A.6	148, 452, 332 r/w 149, 307 r/w 149, 332, 307, 302 r/w 149, 398 r/w 149 and 333 r/w 149 I.P.C.
7	A.7	148, 452, 332 r/w 149, 307 r/w 149, 307 r/w 149, 302 r/w 149, 333 r/w 149 and 398 I.P.C.
8	A.8	120(B) 148, 452, 332 IPC, 25(1-B) (A) of the Indian Arms Act, 1959, Section 4 of the Explosive Substances Act, 1908, 307, 332 r/w 149, 307 r/w 149, 333, 302 and 398 r/w 149 I.P.C.
9	A.9	148, 452, 332 r/w 149, 307 r/w 149, 302, 333 r/w 149 and 398 r/w 149 I.P.C.

By judgment dated 20.03.2014, the trial Court convicted all the nine accused and sentenced them under various charges as detailed below:-

Sl.No	Section of law	Accused	Sentence
1	120 B I.P.C.,	A.1	Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months.

Sl.No	Section of law	Accused	Sentence
2	120 (B), 148, 452, 398, 332 r/w 149, 307 r/w 149 & 302 r/w 149 I.P.C.,	A.2	Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 120 (B) I.P.C., Rigorous imprisonment for two years, for the offence under Section 148 I.P.C., Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 452 I.P.C., Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 398 I.P.C., rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 332 r/w 149 I.P.C., rigorous imprisonment for 10 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 307 r/w 149 I.P.C., Imprisonment for life and to pay a fine of

Sl.No	Section of law	Accused	Sentence
3	120 (B), 148, 452, 332, 333, 307 (2 counts) 302 398 r/w 149, 332 r/w 149, 307 r/w 149 I.P.C.,	A.3	Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 120 (B) I.P.C., Rigorous imprisonment for two years, for the offence under Section 148 I.P.C., Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 452 I.P.C., rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 332 I.P.C., Rigorous imprisonment for five years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 333 I.P.C., rigorous imprisonment for 10 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for each count, for the offence under Section 307 I.P.C., (2 counts)

Sl.No	Section of law	Accused	Sentence
4	120 (B), 148, 452, 332, 307 (2 counts), 333, 332 r/w 149, 307 r/w 149, 302 r/w 149 & 398 r/w 149 I.P.C.,	A.4	Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 120 (B) I.P.C., Rigorous imprisonment for two years, for the offence under Section 148 I.P.C., Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 452 I.P.C., Rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 332. Rigorous imprisonment for 10 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for each count for the offence under Section 307 (2 counts) Rigorous imprisonment for five years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 333 I.P.C., rigorous imprisonment for two years and to pay a fine of Rs.500/- in

Sl.No	Section of law	Accused	Sentence
5	148, 452, 332 r/w 149, 307 r/w 149 (2 counts), 302, 333 r/w 149, 398 r/w 149 I.P.C.,	A.5	Rigorous imprisonment for two years, for the offence under Section 148 I.P.C., Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 452 I.P.C., rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 332 r/w 149 I.P.C., rigorous imprisonment for 10 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for each count for the offence under Section 307 r/w 149 I.P.C., (2 counts) Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 302 I.P.C., Rigorous imprisonment for five years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 333 r/w 149

Sl.No	Section of law	Accused	Sentence
6	148, 452, 332 r/w 149, 307 r/w 149 332, 307, 302 r/w 149, 398 r/w 149 & 333 r/w 149 I.P.C.,	A.6	Rigorous imprisonment for two years, for the offence under Section 148 I.P.C., Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 452 I.P.C., rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 332 r/w 149 I.P.C., rigorous imprisonment for 10 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for for the offence under Section 307 r/w 149 I.P.C., Rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 332. Rigorous imprisonment for 10 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for each count for the offence under Section 307 I.P.C., Imprisonment for life and

Sl.No	Section of law	Accused	Sentence
7	148, 452, 332 r/w 149, 307 r/w 149, 302 r/w 149, 333 r/w 149, 398 I.P.C.,	A.7	Rigorous imprisonment for two years, for the offence under Section 148 I.P.C., Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 452 I.P.C., rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 332 r/w 149 I.P.C., rigorous imprisonment for 10 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 307 r/w 149 I.P.C., Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 302 r/w 149 I.P.C., Rigorous imprisonment for five years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 333 r/w 149 I.P.C.,

Sl.No	Section of law	Accused	Sentence
8	120 (B), 148, 452, 332 I.P.C., and Section 25 (10B(A) of Indian Arms Act, 1959, 307 (2 counts), 332 r/w 149, 307 r/w 149, 333, 302 & 398 r/w 149 I.P.C.,	A.8	Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 120 (B) I.P.C., Rigorous imprisonment for two years, for the offence under Section 148 I.P.C., Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo six months, for the offence under Section 452 I.P.C., rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for the offence under Section 332 I.P.C., rigorous imprisonment for three years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 25 (1-B(A) of the Indian Arms Act, 1959 rigorous imprisonment for 10 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for each count for the offence under Section

Sl.No	Section of law	Accused	Sentence
9	148, 452, 332 r/w 149 (three counts), 333 r/w 149 (three counts), 307 (four counts), 302 & 398 r/w 149 I.P.C.,	A.9	Rigorous imprisonment for two years, for the offence under Section 148 I.P.C., Rigorous imprisonment for seven years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months, for the offence under Section 452 I.P.C., rigorous imprisonment for two years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for each count for the offence under Section 332 r/w 149 I.P.C., (3 counts) Rigorous imprisonment for five years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for each count for the offence under Section 333 r/w 149 I.P.C., (3 counts) rigorous imprisonment for 10 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for six months for each count for the offence under Section 307 I.P.C., (4 counts) Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for the offence

The 8th accused is acquitted from the charge under Section 4 of the Explosives Substances Act, 1908.

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

These nine accused and one Mr.Lenin @ Mahalingam @ Ganesan, since died, and one Mr.Elangomani (Approver), were all members of a separatist organization known as "Tamilar Vidudalai Padai" (jkkpHh; tpLjiy gil). The said organization was founded to separate the area where Tamil speaking people are living in the country and to form an independent Tamil nation. In order to achieve an independent Tamil Nation, the members of this organization were indulging various anti-national activities and they had a plan to wage a war against the Indian union. They decided to mobilize arms and ammunitions from the police station for the said purpose. It is alleged that as a part of their mission, on 03.04.1991, at Iyappan Naiken Pettai near Kaduveti Village, in the house of one Mr.Dhanasekaran, A.1 to A.9, the deceased Mr.Lenin @ Mahalingam @ Ganesan and Mr.Elangomani (Approver) had conspired to attack Puthur Police Station and to steal away the arms and ammunitions kept in the police station. In pursuance of the said conspiracy, A.2 to A.9 armed with dangerous weapons like country made gun, aruval (sickle) and knives went to Puthur Police Station around 9.00 pm on 06.04.1991. For quite some time, they were waiting outside the police station for an opportune moment. But, they could not do anything due to various reasons. Again at 2.00 am, on 07.04.1991, A.2 to A.9 went to the Puthur Police Station. One Mr.Rajaram (P.W.4), a Police Constable was on guard duty in the Police Station. P.Ws.1 & 3 & one Mr.Rajendran who were also Police Constables, were staying in the police station. A.8 who was armed with an Aruval and A.4 who was armed with a knife, knocked at the door of the Puthur police station which was bolted from inside. P.W.4, came from inside and opened the door. Immediately, A.4 & A.8 attacked P.W.4 with Veecharuval and knife and caused injuries. On hearing the commotion, P.Ws.1 and 3 were awakened. One Mr.Sundaramurthy, yet another Constable who was also inside the police station rushed to the entrance of the police station. One person from the crowd shot him with a country made gun which hit the thigh of Mr.Sundaramurthy. He fell down. Then, A.4 attacked him with knife and A.6 attacked him with pichuva knife. When P.W.3 Mr.Shanmugam, reached the entrance of the police Station, A.3 cut him with veecharuval and A.8 also attacked him with Veecharuval. He sustained injuries and fell down. One Mr.Rajendran, a Police Constable, rushed to the rescue of the injured. A.8 attacked him with aruval followed by A.3. When Mr.Rajendran tried to escape, A.5 and A.9 gave a chase and cut him repeatedly. As a result, Mr.Rajendran died instantaneously. The death of the deceased was caused by A.3, A.5, A.8 & A.9. In the same transaction, it is alleged that P.W.1 - the then Sub Inspector of Police who was in the Puthur Police Station was also attacked by A.3 with aruval. He too sustained injuries. Then A.2 & A.7 made an attempt to steal

the arms and ammunitions from the armory of the police station but, they could not succeed. Then all the accused including the approver, ran away from the scene of occurrence.

3.P.Ws.1, 3 & 4 were taken to the Government Hospital, Chidambaram, where they underwent treatment for a long time. While they were in the Government Hospital at Chidambaram, the Inspector of Police recorded the statement of P.W.1 at 9.00 am on 7.04.1991 and on returning to the Police Station, he registered a case in Crime No.44/1991 for offence under Sections 147, 148, 332, 307 & 302 I.P.C., and Section 3(b) of the Explosive Substances Act and Sections 25 & 27 of Indian Arms Act. F.I.R., was registered at 6.00 am on 07.04.1991 and the same reached the hands of the learned Judicial Magistrate at 11.30 am on 07.04.1991. Ex.P.1 is the complaint and Ex.P.64 is the F.I.R.

4.P.W.47 was the then Inspector of Police of Kattumannargudi circle. Puthur Police Station was under his jurisdiction. According to him, around 2.15 am, on 07.04.1991, he received intimation about the occurrence at Puthur Police Station. Immediately, taking some police personnel for help, he rushed to Kattumannargudi Government Hospital where, he found P.Ws.3 & 4 waiting in front of the hospital with injuries as no Doctor was available in the hospital. Therefore, he immediately made arrangement to shift P.Ws.3 & 4 in a taxi to the Government hospital at Chidambaram. Then he also came to know that P.W.1, the Inspector of Police, Puthur Police Station and one Mr.Sundaramurthy (H.C 313) were in the police station with injuries. He rushed to the Puthur Police Station and made arrangement to take them also to the Government hospital at Chidambaram. Accordingly, P.Ws.1, 3 & 4 and Mr.Sundaramurthy the Head Constable (H.C.313) were rushed to the Government hospital at Chidambaram and admitted as inpatient. The deceased Mr.Rajendran (H.C 1196) was lying in front of the police station. P.W.47, then went to the Government hospital at Chidambaram. Since, P.Ws.1,3 & 4 were on treatment, he waited for some time. On the same day, at 4.30 am, after the first aid treatment was over, he recorded the statement of P.W.1 and on returning to the police station, at 6.00 am, he registered the present case.

5.P.W.47, examined all the injured witnesses and recorded their statements between 9.30 am and 10.30 am on 08.04.1991 and on going over to the place of occurrence, he prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered the blood stained earth and the sample earth from the place of occurrence. He recovered an unexploded hand grenade, a fired bullet which were lying in front of the police station under a mahazar. He recovered a blood stained blanket and other blood stained materials found at the police station, in the presence of the same witnesses. He examined the persons residing in the neighbourhood. He forwarded the

material objects to Court. He also forwarded the dead body of the deceased to the hospital for post mortem.

6.P.W.31, Dr.Ramanathan, conducted autopsy on the body of the deceased on 07.04.1991 at 2.20 pm. He found the following injuries:-

- 1.An incised wound over left forearm 6 cm above wrist portion metal aspect (ulna) in 3x2x1cm size.
- 2.An incised wound over right forearm middle 1/3 dorsal aspect measuring 10x5x3 cm size oblique.
- 3.An incised wound over left hypothetic high status just below the wrist (Palm) measuring 2x1x1 cm.
- 4.An incised wound over middle right palm in the ulnar side 2x1cm fracture of 1st and 2nd metatarsal pal bone
- 5.Incised wound over right sub clavicle just rear right shoulder 5x5x3cm.
- 6.Incised wound right scapula 12x3x3cm size
- 7.Incised wound right shoulder 2x1x1cm
- 8.A stab injury over left intestine 3x2cm size part of transversal mesentry came out (A stab injury above the stomach and below the chest measuring 3cm x 2cm)"

P.W.31 gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased. He further opined that the said injuries would have been caused by gun shot.

7. On this request of P.W.47, the material objects were sent for chemical examination. He examined many more witnesses. On 20.05.1991, the investigation was transferred to CB-CID and accordingly, P.W.47 handed over the case diary to the transferee officer.

8.P.W.49, the Inspector of Police, CB-CID, Villupuram District took up a case for investigation on 01.06.1991. On 06.06.1991, A.3 Mr.Amulraj @ Selvam was arrested by the Inspector of Police CBCID, Trichy in connection with Udayarpalayam Police Station Crime No.163/1991 and on being produced before the learned Judicial Magistrate at Jayamkondan, he was remanded to judicial custody. P.W.49, came to know that he was involved in the present case namely, Puthur Police Station Crime No.4/1991 also. Therefore, he made a request to the learned Judicial Magistrate No.1, Chidambaram for the production of A.3 in this case before the said Court for judicial remand. On 08.06.1991, at 5.15 am, he arrested the approver (P.W.2) and A.4-Mr.Kumar @ Gopal. While in custody, the approver (P.W.2) gave a voluntary confession, in which, he disclosed the place where he had hidden a shirt with blood stains. In pursuance of the same, he took the Police and

witnesses to the place of hide out and produced the same. A.4 made a voluntary confession in which, he disclosed the place where he had hidden a blood stained shirt. In pursuance of the same, he took the police and witnesses to his house and produced the shirt. No other material objects were recovered from out of the disclosure statement made by these two persons. On returning to the Police Station, he took the approver (P.W.2) and A.4 to various places in connection with the investigation. On returning to the police station, he forwarded both of them to Court for judicial remand. At this stage, since, he was transferred, the case was taken up for further investigation by his successor (P.W.50).

9. On 24.12.1991, at 2.30 am, the 9th accused was arrested by one Mr. Sethuraman, the Inspector of Police of Chidambaram Town Police Station. P.W.50 arrested him and while in custody, he made a voluntary confession. But, no fact whatsoever was discovered from out of the same. Therefore, P.W.50, sent him to Court for judicial remand. On 08.03.1992, at 3.30 pm, at Vialur Village in Trichirapalli District, the 8th accused was arrested by P.Ws.23 & 24, when he was moving in a suspicious circumstance. From him, a bullet made of iron and few notices containing objectionable messages against the Nation were also seized from them. P.W.50, immediately rushed to the said place and took A.8 into custody. In that event, A.8 made a voluntary confession in which he had disclosed the place where, he had hidden a blood stained Veecharuval and clothes. In pursuance of the same, he took the Police and witnesses to his house and produced M.O.32 series - Veecharuval three in numbers; M.O.33 - Aruval of medium size, M.O.34 - Air gun; M.O.35 - Polyester shirt, M.O.36 - Towel; M.O.37 - Polythene bag; M.O.38 - bullets four in numbers; M.O.39 - E.I.D., parry hand bag and M.O.40 - Torned bag. He recovered all the material objects under a mahazar. Then on returning to the Police station, he forwarded A.8 to Court for judicial remand. At his request, the accused were put up for test identification parade (the details of the test identification parade would be dealt with little later). The material objects were sent for chemical examination and also for ballistic examination. The recovered explosives were defused with the help of the experts. On completing investigation, charge sheet was laid against these accused.

10. Based on the above materials, the trial Court has framed charges as detailed in the first paragraph of this judgment. In order to prove the case, on the side of the prosecution, as many as 50 witnesses were examined and 78 documents were marked besides 40 material objects.

11. Out of the said witnesses, P.W.2 is an Approver who has spoken vividly about the entire occurrence. P.Ws.1, 3 & 4 are the injured witnesses who were all police personnel in the police station. P.Ws.1 & 3 have spoken about the entire occurrence. They have identified the accused in Court as

well as during test identification parade. But P.W.1 has identified only A.3 and A.9 during trial. He has not identified any material objects. P.W.3 has identified A.3, A.4, A.8 & A.9 during trial, as the assailants. He has also not identified any of the material objects. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5- the wife of the deceased has stated that she heard the occurrence later. P.W.6 has stated that he rushed to the place of occurrence after the occurrence was over and he did not witness the occurrence at all. P.W.7, the then Village Administrative Officer, has spoken about the preparation of observation mahazar and rough sketch and the recovery of material objects at the place of occurrence. P.W.8 has also spoken about the same fact. P.W.9, a neighbour has stated that he heard the commotion from the police station and rushed to the place of occurrence. But, he did not witness the occurrence. P.W.10 has also stated that he came to the place of occurrence later. P.W.11, a forensic expert, has stated that he diffused the country made bomb which was recovered from the place of occurrence. P.W.12, a Finger Print Expert has stated that he was summoned to the place of occurrence immediately after the occurrence and he thoroughly searched for any chance finger print but, nothing could be found. P.W.13, the head of this sniffer dog Squad of the Police has stated that on the request made by the Investigating Officer, he brought a sniffer dog to the place of occurrence but, it could not get any clue. P.W.14, a Driver of the Bus has stated that he took P.Ws.3 & 4 to the hospital from the Police Station in his Bus. P.W.15 has stated that he treated A.5 in the hospital for certain injuries found on him. P.W.16, the then Village Administrative Officer has spoken about the arrest of A.4 and the arrest of Approver P.W.2 and the consequential recovery of blood stained clothes. P.Ws.17 & 18 gave turned hostile and they have not supported the case of the prosecution in any manner. P.W.19 has spoken about the preparation of sketch, showing the place where according to the prosecution, the conspiracy was hatched. P.W.20 was examined to speak about the hatched conspiracy but, he has turned hostile and he has not supported the case of the prosecution in any manner. P.W.21 has also turned hostile and he has also not supported the case of the prosecution, in any manner. P.W.22 has spoken about the arrest of A.9 and the voluntary confession made by him. P.Ws.23 & 24 have spoken about the arrest of A.8, when he was moving in his cycle, in a suspicious circumstance. They have further spoken about the Air gun from his possession. P.W.25 has spoken about the confession made by A.8 to the Inspector of Police and the consequential recovery of various material objects about which we have already mentioned. P.W.26 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.27 has spoken about the observation mahazar prepared. P.W.28, an expert in the Bomb Squad has stated that he diffused the country made bomb. P.W.29 - Dr.Nagarajan, has stated that A.8 was brought to him for treatment. According to

the case of the prosecution, A.8 tried to escape from the clutches of P.Ws.23 & 24 and there was a scuffle in which, A.8 suffered injuries similarly, P.Ws.23 & 24 also sustained injuries. P.W.30 has spoken about the treatment given to P.Ws.23 & 24. P.W.31 has spoken about the post mortem conducted and his final opinion regarding the cause of death of the deceased. P.W.32 is an Explosive Expert who has spoken about his opinion regarding the explosives recovered in this case. P.W.33, a Ballistic Expert has stated that gun recovered was in a working condition. P.Ws.34 to 38 are gun Experts from Forensic Science Laboratory. They have stated about the chemical examination conducted. P.W.39, the Chief Controller Explosives has stated that he conducted examination on the Air gun recovered from A.8. P.W.40 is also a Forensic Science Expert and he has also stated about the chemical examination conducted on the gun recovered from A.8. P.W.41 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.42, the then Judicial Magistrate has stated about the test identification parade held and also the confession of the Approver - P.W.2, recorded by him. P.W.43 the Clerk of the Court has stated that he forwarded the material objects to the Forensic Science Laboratory, for examination as directed by the learned Judicial Magistrate. P.W.44, the then District Collector, Vallalar District, has spoken about the sanction given for the prosecution. P.W.45, the then Judicial Magistrate has spoken about the pardon given to P.W.2. P.W.46 Mr.Ramakrishnan, has spoken about the sanction given to the prosecution under the Arms Act. P.W.47 has spoken about the registration of the case and the initial investigation done by him. P.Ws.48 to 50 have spoken about the investigation done and the final report filed by them in this case.

12. When the above incriminating materials were put to the accused, they denied the same as false. On their side, two witnesses, one Mr.Rajendran was examined as D.W.1 and Mr.Karunakaran, was examined as D.W.2. D.W.1 is the brother of A.8. He has stated that A.8 Mr.Elavarasan @ Pandian @ Vallavan was taken into custody by the Police from his house, on 02.03.1992 itself. When he went to the CBCID Office at Cuddalore, he found A.8 in the Police Station with serious injuries. According to him, when he enquired the Police, they told that after enquiry, A.8 would be let off. Thus, according to him, A.8 was in Police custody from 02.03.1992 onwards. D.W.2 is a resident of Basasundarapuram Village, Udayar Palayam Taluk. According to him, he knew A.4 as he was his neighbour. He has further stated that on 28.05.1991, A.4 was taken into custody by the Police, from his house. The defence of the accused was a total denial. Having regard to all the above, the trial Court convicted all the accused and that is how they have come up with these appeals, challenging the said conviction and sentence.

13. During the pendency of these appeals, the State has

filed miscellaneous petitions in CrI.M.P.Nos.10645, 10644, 10646 & 10647 of 2016 to receive additional evidence and to examine P.W.2 further so as to prove the deposition of P.W.2 recorded by the learned Chief Judicial Magistrate while granting pardon. The accused had no objection. The said miscellaneous petitions were allowed on 14.12.2016. During further examination, the deposition of P.W.2 made before the learned Chief Judicial Magistrate was marked through P.W.2 as Ex.P.79. All the accused were questioned under Section 313 Cr.P.C., in respect of Ex.P.79 and the oral evidence of P.W.2. They said that they have got nothing to say about the same.

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

15. This is a case based on circumstantial evidence. There is no denial of the fact that in the occurrence that took place on 07.04.1991 at 2.00 am, at Puthur Police Station, the deceased Police Constable - Mr. Rajendran, died due to the cut injuries and that P.Ws.1, 3 & 4 also sustained injuries on the attack made by the assailants. According to the positive case of the prosecution, A.2 to A.9 were the assailants who trespassed into the Police Station and attacked the deceased and the injured in an attempt to decamp the arms and ammunitions kept in the police station. At the earliest point of time, it was reported by P.W.1 that 15 unidentifiable persons came in a crowd and attacked the injured as well as the deceased. The assailants were not then known to anyone. Later on, 11 assailants were identified. Out of the 11 assailants, P.W.2 has been given pardon and one of the accused by name Mr. Lenin @ Mahalingam @ Ganesan, is no more. Thus, these nine accused/appellants herein alone faced the trial.

16. So far as A.1 is concerned, even according to the positive case of the prosecution, he did not come to the place of occurrence at all and thus, he did not participate in the actual attack made. He has been charged only for an offence of conspiracy. To prove that A.2 to A.9 were the assailants, along with the others, the prosecution relies mainly on the evidence of P.W.2 - the Approver.

17. The learned counsel for the appellants would submit that the evidence of the Approver (P.W.2) should be presumed to be unworthy of credit and unless, the same draws corroboration from any other independent source on material particulars, the same cannot be the foundation for conviction. This argument is founded on the illustration (b) to Section 114 of the Indian Evidence Act, 1872. The learned Public Prosecutor would however refer to Section 133 of the Indian Evidence Act, to submit that the conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Though on a bird's-eye view, there appears to be some inconsistency between these two

provisions, a deep analysis of both these provisions would make things so explicitly clear that they go hand-in-hand and there is no conflict.

18. In *Bhuboni Sabu v Emperor* (AIR 1949 PC 257), the Privy Council analyzed these two provisions and explored the cohesion between these two provisions. The Privy Council has held that "on reading Section 133 with illustration (B) to Section 114, it is not illegal to act upon the uncorroborated evidence of an accomplice it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material aspect so as to implicate the accused and further that the evidence of one accomplice cannot be used to corroborate the evidence of another accomplice. This decision of the Privy Council has been recognised by the Hon'ble Supreme Court, post independence, consistently. To cite a few, in *Ravinder Singh v. State of Punjab* (AIR 1975 SC 856), the Hon'ble Supreme Court has held as follows:-

"Every approver comes to give evidence in some such manner seeking to purchase his immunity and that is why to start with he is an unreliable person and the rule of caution calling for material corroboration is constantly kept in mind by the Court by time-worn judicial practice."

In *Haroon Haji v. State of Maharashtra* (AIR 1969 SC 832), the Hon'ble Supreme Court has held as follows:-

"Every detail of the story of the accomplice need not be confirmed by independent evidence although some additional independent evidence must be looked for to see whether the approver is speaking the truth and there must be some evidence, direct or circumstantial which connects the co-accused with the crime independently of the accomplice."

19. From these judgments of the Hon'ble Supreme Court as well as the Privy Council, it is crystal clear that the Court should begin with the presumption that the approver is unworthy of credit and if the Court decides to act upon the said evidence of the Approver, it should look for corroboration, in material particulars. In other words, independently of the accomplice evidence, there should be some evidence against the accused to connect them with the crime. If the presumption is otherwise rebutted by evidence, either direct or circumstantial, then, the said presumption vanishes away and therefore, and in such an event, even in the absence of any corroboration from any material particulars, the evidence of accomplice, can by itself be the foundation for

conviction.

20.Keeping these well settled principles in our mind, let us now analyse the evidence of P.W.2 - the Approver. According to the Police, P.W.2 was arrested on 08.06.1991 at a place known as Padugai near Kollidam river. On his arrest, a blood stained cloth was recovered out of his disclosure statement. He was arrested along with A.4. But P.W.2 in his evidence, during cross examination, has stated that A.4 was in the custody of the Police on 27.05.1991 between 5.00 am and 4.00 pm. Then he was sent for judicial remand.

21.P.W.2 was produced before the learned Judicial Magistrate on 14.06.1991. On that day, P.W.2 told P.W.42, the then Judicial Magistrate that he was arrested by the Police on 27.05.1991 at 9.15 pm itself. When the statutory warning by the learned Judicial Magistrate under Section 164 Cr.P.C. was given, P.W.2 told the Magistrate that from 27.05.1991 onwards, he was kept in custody by the Police and he was produced before the Magistrate only on 08.06.1991 for judicial remand. Further on 14.06.1991, he declined to give any confession and therefore, he was sent back to prison. It is alleged that from the jail, he wrote a letter to the Magistrate that expressing his willingness to make a confession. Therefore, on his order, P.W.2 was again produced before him for recording voluntary confession. On 15.07.1991, after giving statutory warning, as required under Section 164 Cr.P.C., he gave him time to relax. Again he was produced before him on 17.07.1991. On that day, again statutory warning was given to P.W.2 and then, P.W.2 gave voluntary confession. The learned Judicial Magistrate satisfied his judicial conscience, and believed that the confession was voluntary. The foot note as required under Section 164 Cr.P.C., was appended by the learned Judicial Magistrate. In that confession, P.W.2 has spoken about the conspiracy hatched by them including A.1 and the other accused and his actual participation in the occurrence which took place in the police station involving A.2 to A.9, the deceased accused Mr.Lenin @ Mahalingam @ Ganesan and the approver (P.W.2) himself.

22.The learned counsel for the appellants would submit that since, on the first occasion, when P.W.2 was produced before P.W.42 - on 14.06.1991, he told the Magistrate that, he was kept in illegal custody from the police station from 27.05.1991 onwards and since, he declined to give any judicial confession on 14.06.1991, he cannot be believed. We find it difficult to accept this contention, since in his evidence he has stated that later on, he himself had a realization and wanted to confess. That is the reason why he sent a letter to the learned Judicial Magistrate upon which, he was produced before the learned Judicial Magistrate and despite the statutory warning, he gave voluntary confession on 17.07.1991. Simply because on 14.06.1991, he declined to give a judicial confession and simply because he told that he was

kept in illegal custody from 27.05.1991 onwards, his evidence cannot be outright rejected. At the most, his evidence can be viewed only with suspicion which would give rise to a presumption of a fact that he is unworthy of credit. As held by the Privy Council in *Bhuboni Sabu v Emperor's case* (cited supra), as a rule of caution, since, P.W.2 is unworthy of credit, we should look for corroboration from any other independent source on material particulars. If there is no corroboration from any other independent source, on material particulars, then, we cannot convict the accused solely based on the above evidence of P.W.2 who is presumed to be unworthy of credit.

23. Now, let us take up the evidence against each accused. So far as A.1 is concerned, the prosecution relies on the evidence of approver (P.W.2) alone and there is no evidence against him. As we have already stated, there is no other evidence to corroborate the evidence of the approver. As held by the Hon'ble Supreme Court in *Haroon haji's case* (cited supra), we look for evidence, independently of P.W.2, to connect A.1 with the crime namely, conspiracy, allegedly hatched. Unfortunately, P.W.20 who was examined to speak about the conspiracy has turned hostile. Thus, absolutely there is no evidence against A.1 except the evidence of approver (P.W.2) which draws no corroboration from any other source. Therefore, A.1 cannot be convicted solely based on the above approver's evidence. Therefore, he is entitled for acquittal.

24. Now turning to the case against A.2, here again, the prosecution relies only on the evidence of Approver (P.W.2) and there is no other evidence against him from any other source. None of the injured witnesses have identified him as one of the assailants. Therefore, he is also entitled for acquittal.

25. According to the case of the prosecution, as against A.3, the evidence of approver (P.W.2) draws corroboration from the evidence of P.Ws.1 and 3. But, P.W.1 even in chief examination has stated that he could not identify A.3 due to lapse of time and fading of memory. Though, it is true that earlier, he identified A.3 during test identification parade, that would not amount to a substantive evidence. The identification made in the Court alone is the substantive evidence. Since, P.W.1 could not identify A.3 in Court, his evidence is of no use to corroborate the evidence of P.Ws.2. Yet another injured witness (P.W.3) has identified A.3 both during test identification parade as well as in Court. There is no reason to reject his evidence. Thus, the evidence of P.W.3 duly corroborates the evidence of P.W.2 by which, the prosecution has established the guilt of A.3. Hence, A.3 is liable for conviction.

26. Now, turning to the case against A.4, according to the case of the prosecution, the evidence of P.W.2 is

corroborated by the evidences of P.Ws.3 & 4. As we have already stated, P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. However, P.W.3 has identified A.4 as one of the assailants both during test identification parade as well as in Court. We find no reason to reject the evidence of P.W.3. Thus, the evidence of P.W.3 duly corroborates the evidence of P.W.2, by which the prosecution, in our considered view, has established the guilt of A.4 and hence, he is liable for conviction.

27. So far as A.5, A.6, A.7 & A.9 are concerned, the prosecution relies only on the evidence of approver (P.W.2) to prove their guilt. There is no other evidence against them. There is no corroboration coming forward from any independent source against them. As we have already concluded, the evidence of P.W.2 cannot be the sole foundation to convict these accused. Therefore, A.5, A.6, A.7 & A.9 are entitled for acquittal.

28. Now, turning to the case against A.8, the evidence of P.W.2 (approver) is duly corroborated by the evidence of P.Ws.1, 3 & 4. They have identified him as one of the assailants. Further, on 08.03.1992 when he was taken into custody by P.Ws.23 and 24, he was found in possession of M.Os.17 to 23. But, the learned counsel for the appellants would submit that according to the evidence of D.W.1, A.8 was arrested by the Police from his house long before and they kept A.8 in illegal custody and then, produced him before the learned Judicial Magistrate for judicial remand. Thus, according to D.W.1, the arrest of A.8 on 08.03.1992, as alleged by the Police and the consequential recoveries cannot be true. D.W.1 is the brother of A.8. Had it been true that A.8 was kept in illegal custody, certainly, some legal action would have been taken by D.W.1 in this regard. The very fact that he kept silence for years and he has come forward with such a statement for the first time only in court would go to show that he is not trust worthy. We find no reason to reject the evidence of P.Ws.23 & 24. The evidences of P.Ws. 1, 3 & 4 and 23 & 24 would duly corroborate the evidence of P.W.2. Thus, the guilt of A.8, in our considered view, stands proved and hence, he is liable for conviction.

29. From the foregoing discussions, it is crystal clear that A.3, A.4 & A.8 along with their companions had conspiracy and in pursuance of the said conspiracy, trespassed into the Puthur Police Station and the members of the said unlawful assembly attacked P.Ws.1, 3 & 4 and the deceased and caused the death of the deceased. P.W.2 also participated in this conspiracy and in this occurrence. Therefore, A.3 is liable for punishment for offences under Sections 120(B), 148, 452, 332, 333, 307 (2 counts) 302 398 r/w 149, 332 r/w 149, 307 r/w 149 I.P.C., and A.4 is liable for punishment for offences under Sections 120(B), 148, 452, 332, 307 (2 counts) 333, 332 r/w 149, 307 r/w 149, 302 r/w

149 & 398 I.P.C. and A.8 is liable for punishment for offences under Sections 120(B), 148, 452, 332 I.P.C., and Section 25(10B(A) of Indian Arms Act, 1959, 307 (2 counts), 332 r/w 149, 307 r/w 149, 333, 302 & 398 r/w 149 I.P.C.

30. Now turning to the quantum of punishment, the trial court has imposed only proportionate punishment having regard to the aggravating as well as instigating circumstances. Thus, we find no reason to interfere with the punishment also.

31. In the result:-

(i) Crl.A.No.246 of 2014 is allowed in so far as it relates to A.2 - Venkatesan, A.5 - Nallarasu, A.7 - Senguttuvan @ Xavier @ Manimaran & A.9 - Murugesan, are concerned. The conviction and sentence imposed on them by the learned Sessions Judge in S.C.No.12 of 2001 dated 20.03.2014 are set aside and they are acquitted from all the charges. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by them, shall stand discharged.

(ii) Crl.A.No.246 of 2014 is dismissed in so far as it relates to A.3 - Amulraj @ Selvam & A.4 - Kumar @ Gopal are concerned and the conviction and sentence imposed on them by the learned Sessions Judge in S.C.No.12 of 2001 dated 20.03.2014 are confirmed.

(iii) Crl.A.No.252 of 2014 is dismissed and the conviction and sentence imposed on the appellant/A.8 - Elavarasan @ Pandian @ Vallavan, by the learned Sessions Judge in S.C.No.12 of 2001 dated 20.03.2014 are confirmed.

(iv) Crl.A.No.253 of 2014 is allowed and the conviction and sentence imposed on the appellant/A.6 - Ravi @ Velmurugan, by the learned Sessions Judge in S.C.No.12 of 2001 dated 20.03.2014 are set aside and he is acquitted from all the charges. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by him, shall stand discharged.

(v) Crl.A.No.304 of 2014 is allowed and the conviction and sentence imposed on the appellant/A.1 - Soo @ Sundaram @ Ramasamy @ Anbalagan, by the learned Sessions Judge in S.C.No.12 of 2001 dated 20.03.2014 are set aside and he is acquitted from all the charges. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by him, shall stand discharged.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Sessions Court for
Exclusive Trial of Bomb Blast Cases,
Poonamallee, Chennai.
 - 2.-do- Thro The Principal Sessioons Judge,
Chennai.
 - 3.The Judicial Magistrate No.1
Chidambaram (P.R.C. No. 33/93)
 - 4.-do- Thro The Chief Judicial Magistrate,
Cuddalore District.
 - 5.The Inspector of Pollice,
Crime Branch C.I.D.
Cuddalore No. 44/1991.
 - 6.The Superintendent Central Prison,
Puzhal, Chennai.
 - 7.The District Collector,
Chennai.
 - 8.The Director General of police
Mylapore, Chennai.
 - 9.The Public Prosecutor,
High Court, Madras.
- +1cc to M/S. S. Sathiya Chandran, Advocate SR.NO. 7063
- 1cc to Mr. K. Gandhi Kumar, Advocate SR.No. 7038
- 1cc to M/S. C. Vijayakumar, Advocate SR.No. 6885
- 1cc to the Public Prosecutor SR.No. 7301

UG(CO)
VR(14/02/2017)

Criminal Appeal Nos.246, 252,
253 & 304 of 2014