

Bail Slip

These Appellants/Accused Viz, Muniyandi (A-1) Anandan (A-9), Annamalai (A-10), Narayanan (A-11), Nirmal (A-12), Venkatesan (A-28) and Nandan (A-17) are directed to be released on bail as per the Order of this Court, dated 01/09/2016 in CrI.MP.NO. 6203 of 2016 in CrI.A. 284 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:10.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

CrI.A.No.284 of 2016 & CrI.M.P.No.6203/16
and
CrI.A.No.63 of 2017

- 1.Muniyandi
- 2.Anandan
- 3.Annamalai
- 4.Narayanan
- 5.Nirmala
- 6.Venkatesan,
- 7.Nandan
- 8.Kumaran
- 9.Murugan
- 10.Venkatesan
- 11.Ramesh
- 12.Mani
- 13.Tamil Vanan
- 14.Ramesh

...Appellants in
CrI.A.No.284 of 2016

vs.

State, rep.by
Inspector of Police,
Roshani Police Station,
Thindivanam

.... Respondent in
CrI.A.No.284 of 2016
Appellant in
CrI.A.No.63 of 2017

- 1.Ranjith
- 2.Samikannu
- 3.Kirubananthan
- 4.Rajamani
- 5.Chandiran

6.Elumalai,
7.Manikandan
8.Vinayagam
9.Ekambaram
10.Murali,
11.Senthil
12.Govindan
13.Kothaiammal
14.Raman
15.Subramani
16.Ganesan
17.Kali
18.Kuppan
19.Kathirvel
20.Suresh
21.Thilagaraj
22.Prabhakaran @ Kumaresan
23. Balaji
24.Ilaiyaraja
25.Palanisamy
26.Murali
27.Ettiyan
28.Poyyathu
29.Thangadurai
30.Saravanan
31.Kuppan
32.Tamilmurasu
33.Suseela
34.Andaal
35.Chinthamani
36.Suseela

... Respondents in
Crl.A.No.63 of 2017

Criminal appeals preferred under Sections 374 and 378(1)
(b) Cr.P.C., against the judgment, dated 05.04.2016, passed by
the learned I Additional District and Sessions Judge,
Thindivanam, in S.C.No.324 of 2014.

For Appellants : Mr.R. Ragunathan, Sr.Counsel
for Mr.J. Ramesh
in Crl.A.No.284/16
and for respondents
in Crl.A.No.63 of 2017 : Mr.R.Ragunathan, Sr.counsel
for Mr.K. Karki.

For respondent in
Crl.A.No.284 of 2016
and for appellant in
Crl.A.No.63 of 2017 : Mr.P.Govindarajan, Addl.P.P.

COMMON JUDGMENT

The appellants in CrI.A.No.284 of 2016 are the accused Nos.1, 9, 10, 11, 12, 16, 17, 13, 15, 28, 29, 34, 36 and 26 in S.C.No.324 of 2014, on the file of the I Additional and Sessions Judge, Tindivanam. Including these appellants, there were a total number of 50 accused in the case. By judgment dated 5.4.2016, the trial Court convicted the appellants in CrI.A.No.284 of 2016 and sentenced them accordingly, as detailed below:

Sl.No	Rank of accused	Conviction	sentence
1.	A1, A9, A10, A11, A12, A16 and A17	U/s.302 IPC	Imprisonment for life with fine of Rs.2,500/-, each, in default, two months simple imprisonment.
2.	A13, A15, A16, A28, A29, A34, A36	U/s.324 IPC	Rigorous Imprisonment for three years with a fine of Rs.2,500/-, each, in default, two months simple imprisonment.
3.	A26	U/s.326 IPC	Rigorous Imprisonment for five years with a fine of Rs.2,5000/-, in default, two months simple imprisonment.

They were acquitted from the other charges. Challenging the said conviction and sentences, they have come up with CrI.A.No.284 of 2016. The trial Court, by the said judgment, acquitted the rest of the accused from all the charges framed against them. As against the acquittal of them, the State has come up with Criminal Appeal No.63 of 2017. That is how both these appeals are before us for disposal.

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

(a) All these 50 accused hail from Melpakkam Village, in Tindivanam Taluk. P.Ws.1 to 12 and one Mr.Nagappan also belong to the same village. In the Panchayat Election held in the year 2011, one Mrs.Kasiammal, Mr.Tamilmurasu and Mrs.Annakili contested for the post of Village Panchayat Board President. Finally, Mrs.Kasiammal won the Election. P.W.1 is the son-in-law of Kasiammal. P.Ws.2 to 12 are either relatives or friends of Mrs.Kasiammal, who had worked as a group in support of Mrs.Kasiammal, in the Election. All these accused belong to the opposite group, who lost in the Election. From the time of Election, the village became factions and the prosecution party and the accused party had

become enimical towards each other.

(b) On 11.12.2011, when Nagappan was returning to the village, the accused Nos.1, 9, 17 and 28 intercepted him and quarreled with him. At that time, they also challenged the deceased that they would not spare him alive. The deceased came to the village and informed the same to one Mr. Annathurai (P.W.2). P.W.1 was also present at that time. P.W.2 told the deceased as well as P.W.1 not to take the said challenge so seriously. He persuaded them to go home. Accordingly, the matter was over on that day.

(c) On the next day, that was on 12.12.2011, around 8.00 a.m., P.Ws.1 to 12 along with the deceased and yet another person were proceeding to the house of one Reddiyar to meet him. At that time, all these 50 accused came to the said place in an unlawful assembly and intercepted them. Some of the accused were armed with knives, some with iron pipes, some with iron rods and others with wooden logs (The details have been mentioned in the charge. We do not extract those details, as they may not be necessary at this stage). On reaching the place of occurrence, these 50 accused surrounded P.Ws.1 to 12 and the deceased and started attacking them. It is alleged that the first accused attacked the deceased with knife on his head; the second accused attacked him with knife on his head; the third accused attacked him on the back of chest with iron pipe; the fourth accused attacked him with knife on the head; the fifth accused attacked the deceased with iron pipe on his head; the 6th accused attacked him with wooden log on his back of chest; the seventh accused attacked him with iron pipe on his head; the eighth accused attacked him with wooden log on the back of chest; the ninth accused attacked him with knife on his head; the tenth accused attacked him with iron pipe on his head; the eleventh accused attacked him with knife on his head; the 12th accused attacked him with knife on his head; the 16th accused attacked him with knife on his head; the seventeen accused attacked him with knife on his head and the 35th accused attacked him with knife on his head. In the same transaction, it is alleged that the accused 30 and 47 abused P.W.4 and the deceased in filthy language and the accused 24 and 42 intimidated P.W.8 and P.W.9. The first accused stabbed P.W.8 with knife on his head and attacked P.W.5 with knife on his head and caused grievous hurt. In the same transaction, the first accused attacked Gughan (P.W.8) with knife on his head; the third accused attacked him with knife on his head; the fifth accused attacked him with knife on his right leg; the sixth accused attacked him with knife on his head; the 7th accused attacked him with knife on his head; the 13th accused attacked him with knife on the head; the 14th accused attacked him with knife on the back of chest; the 15th accused attacked him with knife on the back of chest. In the same transaction, the first accused attacked P.W.5 with knife on his head; the 16th accused attacked him with knife on his head; the 17th accused

attacked him with knife on his head; the 28th accused attacked him with iron pipe on his head and 29th accused attacked him with iron pipe on his head. In the same transaction, the 32nd accused attacked P.W.12 on the left hand finger with knife; the 33rd accused attacked her with knife on the left hand finger and the 34th accused attacked her with knife on the left hand. In the same transaction, the 35th accused attacked P.W.6 on the back of chest with wooden log; the 36th accused attacked her with wooden log on the right elbow; the 37th accused attacked her with wooden log on the head. In the same transaction, the 38th accused attacked P.W.7 with wooden log on his back and the 9th accused attacked P.W.1 with knife on his head. In the same transaction, it is further alleged that the first accused attacked P.W.2 with wooden log on his head; the 9th accused attacked him with wooden log on his head; the 25th accused attacked him with iron pipe on his head and the 26th accused attacked him with iron pipe on his body. The 18th accused attacked P.W.4 with iron pipe on his head; the 19th accused attacked him with iron pipe on his back; the 20th accused attacked him with iron pipe on his back; the 21st accused attacked him with iron pipe on his right shoulder. In the same transaction, the 17th accused attacked P.W.1 with iron pipe on his head and caused grievous hurt. In the same transaction, it is alleged that the second accused attacked P.W.3 with hands on his back and the 22nd accused attacked him with hands on his back. In the same transaction, the 40th accused attacked P.W.10 with hands on his back; 43rd accused attacked P.W.11 with hands on his back, 44th accused attacked him with wooden log and the 45th accused attacked him with iron log and caused simple hurt. In the same transaction, accused 44, 47 and 50 caused damage to the telephone at the house of P.W.7. The accused 27, 44 and 45 caused damage to the movable properties belonged to one Chinnathambi, worth Rs.1000/-. Then, it is the case of the prosecution that the assailants ran away from the scene of occurrence.

(d) All the injured were then taken to the Tindivanam Government Hospital and admitted as inpatients. On receiving intimation from the hospital, P.W.19, the then Sub Inspector of Police, went to the hospital, recorded the statement of P.W.1 and on returning to the police station, registered a case at 11.30 a.m. on 12.12.2011, under Sections 147, 148, 294 (b), 323, 324 and 307 IPC in Crime No.541 of 2011. Ex.P1 is the complaint and Ex.P21 is the FIR. In Ex.P1, P.W.1 had mentioned about the presence and participation of 45 named accused and 20 un-named persons. Thus, the said case was registered against 45 named accused and 20 un-known persons. P.W.19 forwarded Ex.P1 and Ex.P.21 to the Court, which were received by the learned Magistrate at 1.00 p.m. on 12.12.2011.

(e) P.W.24 took up the case for investigation. He visited the place of occurrence at 2.00 p.m., prepared an observation mahazar and a rough sketch, in the presence of witnesses. He recovered the blood stained earth and sample

earth from the place of occurrence, in the presence of the Village Administrative Officer and the Village Menial. He examined P.Ws.1 to 12 and recorded their statements. On the same day, at about 11.20 a.m., the deceased succumbed to the injuries in the hospital. Therefore, he altered the case into one under Section 302 IPC. On going over to the hospital, on the same day, between 5.00 p.m. to 8.00 p.m., he held inquest on the body of the deceased and prepared Ex.P.39-inquest report. He forwarded the body for post-mortem. P.W.22-Dr.Siddharth conducted autopsy on the body of the deceased, on 13.12.2011, at 11.05 a.m. He found the following injuries.

"External Injuries (anti mortem)

1.Sutched wound of length 8 cms containing 4 black coloured sutures starting from a point 11 cms above the left mastoid and going obliquely backwards towards the right occipital region. On cutting the sutures the apposing skin margins are found to be ragged.

2.Sutured wound of length 5.5cms containing 2 black colored sutures placed anteroposteriorly starting from a point 4 cms to the right and 2cms in front of external injury no.11(i). On cutting the sutures the apposing skin margins are found to be ragged.

3.Sutures wound of length 6 cms containing 2 black coloured sutures starting from a point 2 cms to the right of external injury no.11(ii) and going obliquely forwards towards the right parietal region. On cutting the sutures the apposing skin margins are found to be ragged and there is an underlying skull fracture.

4.Lacerated wound of size 6 cm x 1 cm x skull deep starting from a point 12 cms above the right mastoid and placed anteroposteriorly in the right parieto-occipital region.

5.Lacerated wound of size 10 cm x 1.5 cm x brain matter deep starting from a point 15 cms above the tragus of right ear and going obliquely forwards to the right side. There is an underlying depressed fracture of the skull.

6.Lacerated wound of size 2.5 cm x 1 cm x skull deep starting from a point 1 cm to the right of external injury No.11(v) and is placed horizontally over the right frontal region.

7.Incised looking lacerated wound of size 2.8 cm x 0.3 cm x scalp deep placed anteroposteriorly starting from a point 12.6cms above the tragus of left ear.

8.Triangular shaped lacerated wound of size 2 cm x 1.5 cm x 1.3 cm ad skull deep situated just above the left eyebrow. Margin of the upper end of the wound is contused of size 3 x

2 cms

Internal examination of Head

- a) under surface of entire scalp is contused.
- b) Both the temporalis muscles are contused.
- c) Depressed comminuted displaced fracture of the skull bones present.
- d) Dura matter is torn at several places.
- e) Lacerated injury of the brain underlying external injury no.11(iii), 11(iv) and 11(v).
- f) Confluent haemorrhage of the white matter of right frontal lobe of brain present.

Internal examination of Throat and Abdomen found to be pale. Stomach intact, contains 20ml of watery fluids without food. No peculiar smell deducted."

Ex.P22 is the postmortem certificate and Ex.P23 is his final opinion. He opined that the death of the deceased was due to shock and haemorrhage due to the multiple injuries found on the body of the deceased.

(f) P.W.24, during the course of investigation, recovered blood stained clothes from the body of the deceased as well as from the injured witnesses and forwarded the same also to the Court. On the same day, A2 and A9 surrendered before the Village Administrative Officer-Mr.Sathiyar Narayanan (P.W.15). P.W.15 produced them before P.W.24. P.W.24 arrested them at 10.30 p.m. (Though it is the case of the prosecution that the accused Anandhan (A9) gave a voluntary confession to P.W.15, he has not stated so in his evidence. However, such a statement was proved through P.W.24 as Ex.P40). While in custody of the police, the accused 2 and 9 gave independent voluntary confessions. Thereafter, he forwarded both of them to the Court for judicial remand.

(g) Many other accused were arrested on 13.12.2011 at 2.00 a.m. They were all sent to the Court for judicial remand. Then, the investigation was taken over by his successor P.W.25. He arrested some more accused and recovered some material objects from out of their confessions. Since he retired from service on 21.6.2012, the investigation was taken over by his successor P.W.26. He conducted further investigation in the case and finally laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused, as detailed below.

Sl.No	Charges (Section of law)	accused
1.	Under Sections 147, 148 read with Section 149 IPC	A1 to A50
2.	U/s.302 of the Indian Penal Code	A1 to A12, A14, A16, A17 and A35

3.	U/s.294(b) of the Indian Penal Code	A30 to A47
4.	U/s.506(ii) of the Indian Penal Code	A24 & A42
5.	U/s.325 IPC	A1
6.	U/s.324 of the Indian Penal Code	A1, A3, A5 to A7, A9, A13, A14 to A17, A28, A29, A31, A33 to A38
7.	U/s.326 IPC	A1, A19, A17, A18 to A21, A25 and A26
8.	U/s.323 of the Indian Penal Code	A2, A22, A40, A43, A43 & A45
9.	Under Section 3 of PPD L Act	A27, A44, A47 and A50

The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 26 witnesses were examined, 56 documents were marked, besides 27 material objects. Out of the said witnesses, P.Ws.1 to 12 are the injured eyewitnesses, who have spoken about the presence and participation of the accused and their overt acts also. (The details of the overt acts as spoken by these witnesses and the participation of the individual accused will be dealt with little later). P.W.13, the Village Administrative Officer prepared an observation mahazar and a rough sketch. P.Ws.14, 15 and 16 have spoken about the arrest of the accused. P.W.17 has also spoken about the arrest of the accused-Venkatesan and the consequent recovery of a knife. P.W.18 has spoken about the confession made by the accused Venkatesan. P.W.19 has spoken about the registration of the case on the complaint of P.W.1. P.W.20, a Constable, has stated that he handed over the F.I.R. to the Magistrate on the same day. P.W.21, a Constable, has stated that he handed over the deadbody to the Doctor for postmortem. P.W.22 has spoken about the post-mortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.23 has spoken about the treatment given to P.Ws.1 to 12 at the Government hospital and also in respect of the treatment given to the accused Anandhan(A9) and A10. P.Ws.24 to 26 have spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. On the side of the accused one Mr.Selvakumar was examined as D.W.1 and two documents were marked. Their defence was a total denial.

5. Having considered all the above, the trial Court convicted all the appellants in CrI.A.No.284 of 2016 alone. That is how they are before this Court with the said appeal

and the State is before us with CrI.A.No.63 of 2017 against the acquittal of the other accused.

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

7. Admittedly, P.Ws.1 to 12 sustained injuries in the same occurrence, in which, the deceased sustained injury and died later. Therefore, the presence of P.Ws.1 to 12, at the place of occurrence, cannot be doubted. Now, the question is whether they can be believed? The learned Senior counsel appearing for the accused would submit that though the presence of P.Ws.1 to 12 cannot be doubted, their veracity needs to be doubted and their evidences should be rejected. In order to substantiate his contention, the learned Senior counsel would commence his argument assailing the complaint made by P.W.1 in the case.

8. The learned Senior counsel would point out that the alleged occurrence was at 8.00 a.m., whereas, the case was registered at 11.30 a.m. on 12.12.2011. The FIR reached the hands of the learned Magistrate at 1.00 p.m. on the same day. As contended by the learned Additional Public Prosecutor, it is true that there is no inordinate delay in either registering the case or in forwarding the complaint to the Court. But, the fact remains that in Ex.P1, P.W.1 has mentioned about the presence and participation of 45 named accused and 20 un-named persons. Now, there are 50 accused facing the prosecution. We are not prepared to give much importance for the contents of Ex.P1, wherein P.W.1 has stated that apart from 45 known persons, there were 20 un-known persons. He would not have been in a position to have a head count at the time of occurrence of the assailants and to give the precise number of the participants. Therefore, the statement of P.W.1, in Ex.P1 that 20 un-named persons participated, is only approximate estimation, which cannot be given any weightage. But, as we have already pointed out, there are 45 named persons mentioned as assailants in Ex.P1. The village is factious. There was strong motive between two groups on account of election. When that be so, though P.Ws.1 to 12 are injured witnesses, the evidences of these witnesses require careful scrutiny, as false implication of some of the people belonging to the opposite group is also possible. In other words, the possibility of false implication of some of the people belonging to the opposite group should be obviated. For that, prompt launching of FIR, without there being any consultation or deliberation would render some assurance. In this regard, we may refer to the decision of the Honourable Supreme Court in Thulia Kali vs. The State of Tamil Nadu (AIR 1973 SC 501), wherein the Hon'ble Supreme Court has held as follows:

"12. . . First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version. Exaggerated account or concocted story as a result of deliberation and consultation. It is therefore essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case Kopia daughter-in-law of Madhandi deceased according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju, step son of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia made any report at the police station for more than 20 hours after the occurrence. Even though the police station is only two miles from the place of occurrence. The said circumstance in our opinion would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused appellant upon it."

9. In the instant case, now we have to examine whether Ex.P1 had been promptly launched or it was launched after deliberation or consultation with others?

10. P.W.1, in the cross-examination itself has stated that when he was undergoing treatment in Tindivanam Government Hospital, he drafted a complaint in his own hand writing, handed over the same to a friend of him and sent the said complaint to the police station. That is how, according to him, the police was informed of the occurrence. Thus, from

his evidence, it is crystal clear that the earliest information, which was passed on by him to the police was in his own handwriting. But, that complaint has been suppressed. He admits that Ex.P1 was the one which was given by him to the police. During cross-examination, he has stated that the complaint was written by someone else and not by him. That complaint, which was drafted in the handwriting of a third party, was handed over to the police. He has further stated that he did not give any complaint to the police. He has further stated that the signature found in Ex.P1 is his signature. Thus, according to the evidence elicited during cross-examination of P.W.1, it is crystal clear that the second complaint was drafted by a third party, in which he affixed his signature and that was given to the police. That complaint also has not seen the light of the day.

11. P.W.19, the then Sub-Inspector of Police, has stated that he received intimation from the hospital and immediately went to the hospital and recorded the statement of P.W.1. Though P.W.19 has stated in chief examination that he reduced the statement of P.W.1 into writing in his own handwriting and on that basis registered the complaint Ex.P1, during cross-examination, he has made a clear contrary statement. He has stated in cross-examination that the complaint was dictated by him and the same was reduced into writing by one Mr.Murthy, a Writer in the said police station. Unfortunately, that Murthy has not been examined. Thus, it is doubtful as to whether the complaint, as it was spoken by P.W.1, was reduced into writing by Mr.Murthy or someone else. It is not explained to the Court as to why Mr.Murthy also has not been examined.

12. Quite shockingly, in cross-examination, P.W.19 has further admitted that according to the police records, P.W.1 came to the police station, made a complaint, upon which, the present case was registered. If that be so, what had happened to that complaint, which P.W.1 presented at the Police Station, is also not known. But P.W.1 has stated that he did not go to the police station at all to make a complaint. Thus, there are too many versions about the information passed on to the police. The first complaint, which was written by P.W.1 in his own handwriting, which was sent through a messenger to the police station has been suppressed. The second complaint, which was drafted in the handwriting of someone else, as dictated by P.W.1, which was sent to the police station, has also been suppressed. The other complaint, which was reduced into writing in the handwriting of P.W.19 has also been suppressed. What is available before the Court is the complaint drafted by one Murthy, the then Writer of the Police Station. P.W.1 has admitted his signature in Ex.P1. According to the police records, P.W.1, went to the police station and made a complaint. If that is true, it is not known as to what had happened to that complaint also. Thus, there are enormous doubts in respect of Ex.P1, the complaint. In a case of this nature, where the

village is factious, the witnesses are partisan and there are too many number of accused, such as 50; when there is every likelihood of false implication of some other people due to animosity and when the FIR itself is doubtful, in our considered view, it would not be safe to sustain the conviction of the accused.

13. It is not only on the above ground, but there are also other reasons to acquit the accused. P.W.1, during cross-examination, has admitted that accused Nos.9, 10 and 7 also were taken from the place of occurrence in 108 Ambulance to the hospital. The wound certificates of the accused 9 and 10 have been marked in evidence as Exs.D1 and D2. But, P.W.1 has stated that these two accused did not sustain even a scratch on their body. Though the accused 9 and 10 were undergoing treatment in the same hospital as inpatients, the investigating officer did not care to examine them to record their statements, but held investigation only in respect of the injuries sustained by the prosecution party. Thus, it is inferable that because of the election motive, there was a clash between two groups, in which, both parties sustained injuries, but the investigating officer has suppressed one version, which relates to the injuries sustained by the accused and had preferred to act on the complaint of the prosecution party. Thus, we hold that the prosecution has not come forward with the true version of the occurrence. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Lakshmi Singh Vs. State of Bihar (AIR 1976 SC 2263), where, in an identical situation, the Hon'ble Supreme Court has acquitted the accused even disbelieving the injured eyewitness. Applying the same to the facts of the present case, as we already pointed out, since the prosecution has not come forward with the true version of the occurrence and since a part of the occurrence has been suppressed by the prosecution, it would not be safe to convict any of the accused.

14. Next, turning to the overt-acts, as we have extracted in the earlier paragraph of this judgment, for each accused, numbering 50, one overt-act is attributed. According to the charges, every one accused caused one single blow on a victim. It is as though the accused came upon the stage one after the other and attacked the assailants also in order, by causing one injury each. This narration of events by the eyewitnesses is highly dramatic and artificial. Going by the natural human conduct, as can be presumed under Section 114 of the Indian Evidence Act, we presume that the occurrence would not have occurred in the manner as it is projected by P.Ws.1 to 12. When there are too many victims, there would have been lot of commotion and so, the witnesses would not have been in a position to meticulously watch each and every one overt-act of the accused. But in this case, the witnesses have claimed that they watched the entire occurrence and they noticed each and every overt-act of the accused. This is highly

unbelievable. Therefore, though P.Ws.1 to 12 are injured witnesses, we are unable to act upon their evidences. It also needs to be mentioned that there is no other independent evidence in this case. In view of the discussion thus far made, we hold that Criminal Appeal No.284 of 2016 deserves to be allowed and Criminal Appeal No.63 of 2017 deserves to be dismissed.

15. Before concluding the judgment, we wish to record our displeasure over the way in which the trial Court has framed charges and recorded conviction against the accused. As we have already extracted, the trial Court had framed as many as nine charges. The charge No.1 is against all the 50 accused under Sections 147, 148 read with Section 149 IPC. We are unable to appreciate the said charge, because there cannot be a charge under Section 147 read with Section 149 and Section 148 read with Section 149 IPC. Sections 147 and 148 are independent penal provisions and Section 149 would create only constructive liability. It shows that the learned trial Judge was not even aware of the basic concept of constructive liability as dealt with in Section 149 IPC.

16. The second charge, as we have already extracted, is for offence under Section 302 IPC simpliciter against accused 1 to 12, 14, 16, 17 and 35. Though the trial Court had framed charges against all the other accused under Sections 147 and 148 IPC, it is unfortunate that there was no charge framed against the rest of the accused by invoking Section 149 IPC. It is not as though it were the prosecution case that there was no unlawful assembly. Charge No.1 reflects that the trial Court was convinced that there was unlawful assembly. When that be so, though it may be true that the accused 1 to 12, 14, 16, 17 and 35 were responsible for causing the death of the deceased, the others would also be equally liable to be punished under Section 302 read with Section 149 IPC, but unfortunately there was no charge.

17. The fifth charge is against the accused No.1 under Section 325 IPC. The statement of charge goes to the effect that the first accused attacked P.W.8 with knife on his head and caused grievous hurt. Similarly he cut P.W.5 with knife on his head and caused grievous hurt. When the weapon used was knife, which is undoubtedly a dangerous weapon and when the injury caused was a grievous hurt, it is not understandable as to how the trial Court framed charge only under Section 325 IPC against the first accused. Though the first accused has caused grievous hurt with knife on two victims, charge under Section 325 IPC was framed for single count. It is again deplorable.

18. The 6th charge had been framed as against the accused 1, 3, 5, 6, 7, 9, 13, 14, 15, 16, 17, 28, 29, 31, 33, 34, 35, 36, 37 and 38 under section 324 IPC. But it is not known as to why as against the other accused there was no charge framed

under Section 324 read with Section 149 IPC.

19. The 7th charge is against the accused 1, 9, 17, 18, 19, 20, 21, 25 and 26 under Section 326 IPC. There were three victims. But charge was framed only for a single count under Section 326 IPC. There was no charge framed against others by invoking Section 149 IPC.

20. Similarly in respect of the offence under Section 323 and Section 427 IPC and under Section 3 of the the Tamil Nadu Public Property Damages and Loss Act also Section 149 was not invoked.

21. The charges framed would go to show that the learned trial Judge had not bestowed his attention in the matter of framing charges. It is needless to say that the accused are liable to answer the charges and they should be convicted for the charges framed against them. It is all the more, therefore, necessary for the Court to bestow its attention to frame appropriate charges, going by the records. In our considered view the failure of the trial Judge, in the instant case, to frame appropriate charges, amounts to a gross dereliction of judicial function. This Court as well as the Honourable Supreme Court have been repeatedly insisting upon the trial Courts and in fact a Circular has also been issued by this Court impressing upon the trial Courts to hear the Public Prosecutor, as required under Section 226 of Cr.P.C., before framing charges, by way of opening the case. In the instant case, it is highly shocking that the Public Prosecutor, who conducted the case, was so ignorant of the provisions, which is reflected from the fact that he did not raise any objection regarding the correctness of the charges framed. Had the Public Prosecutor bestowed his attention before the commencement of the examination of witnesses, the charges would have been appropriately altered.

22. Now turning to the punishment imposed, as we have already pointed out, the trial Court has convicted the accused 1, 9, 10, 11, 12, 16 and 17 under Section 302 IPC. It is not as though, the trial Court had either invoked Section 149 or Section 34 IPC. When it is not clear as to who caused the death of the deceased, it is not understandable as to how the trial Court has convicted these accused under Section 302 IPC, individually. Similarly, the trial Court has convicted the accused 13, 15, 16, 28, 29, 34 and 36 under Section 324 IPC., though there is no acceptable evidence, that too without even invoking Sections 34 or 149 IPC. The trial Court has convicted the 26th accused under Section 326 IPC, as though he caused grievous hurt on the witness Kumar. But, there was no charge against the 26 th accused as though he caused grievous hurt with dangerous weapon on Mr.Kumar. Thus, the conviction of the 26th accused under Section 326 IPC is without charge.

23. Similarly, on going through the evidences recorded by

the trial Court, we find that there are lot of anomalies. The marking of documents and Material Objects have not been done properly. All these shortcomings, which we have pointed out herein above, would all go to show that the learned trial Judge, the Public Prosecutor, who conducted the trial and the learned counsel, who defended the accused, did not bestow their attention to ensure that justice is done to the parties. Because of the contribution made by all the three, now, we are unable to even separate the grain from the chaff. In fact, when we dealt with the application filed by some of the accused under Section 389 Cr.P.C., for suspension of sentence, we directed the Registrar to send the learned Judge Mr.Bharanidharan, I Additional District & Sessions Judge, Tindivanam, for judicial training in the judicial academy. We are informed that he accordingly underwent judicial training. We believe that at least now he would have learnt his judicial responsibilities. We are also pained to caution the judicial officers that in future, if we come across any such dereliction on the part of the judicial officers, we may have to recommend for appropriate departmental action against such officers when his service comes up for review, under Service Rules, at the age 50 of and 55 and when it comes up for extension at the age of 58. We regret to make these harsh remarks.

24. In the result, Criminal Appeal No.284 of 2016 is allowed; the conviction and sentences imposed on the appellants by the trial Court are set aside and the appellants are acquitted from all the charges. Bail bonds, if any, executed by the accused shall stand cancelled. Fine amount, if any, paid by them are ordered to be refunded to the respective accused. Connected miscellaneous petition is closed.

25. Criminal Appeal No.63 of 2017 is dismissed and the acquittal of the respondents is hereby confirmed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. Inspector of Police,
Roshani Police Station,
Thindivanam

2. The I Additional Sessions Judge, Thindivanam

3. The Public Prosecutor,
High Court, Madras.

- 4.The Judicial Magistrate, NO.1,
Tindivanam.
 - 5.The Chief Judicial Magistrate,
Villupuram.
 - 6.The I Additional District and Sessions Judge,
Tindivanam.
 - 7.ThePrincipal Sessions Judge,
Villupuram.
 - 8.The Director,
Judicial Training in the Tamil Nadu
State Judicial Academy,
Chennai.
 - 9.The Director General of Police,
Mylapore, Chennai.
 - 10.The District Collector,
Villupuram.
 - 11.The Superintendent of Central Prison,
Cuddalore.
- +4ccs to Mr.K. Karki, Advocate SR. 8675 & 9080
- +3ccs to Mr.J. Ramesh, Advocate SR. 8676

PA (CO)
VR(24/02/2017)

Crl.A.Nos.284 of 2016
and Crl.A.No.63 of 2017

सत्यमेव जयते

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