

Bail Slip

The Appellant (CRL A.84/16)/Accused No.9 Namely Gunabalan S/o.Aasirvatham was ordered to be released on bail by order of this court dated:10.03.2016 at Made Crl.Mp.No.1316 of 2016 in SRL A.No.84/2016

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 15..12..2016

Judgement Pronounced on: 19..01..2017

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

and

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.83, 84, 85 and 93 of 2016

Crl.A.No.83 of 2016

Sampathkumar [A6]

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
M-1, Periyanaickkenpalayam Police Station,
Coimbatore.
[Crime No.557 of 2009]

... Respondent

Crl.A.No.84 of 2016

Gunabalan [A9]

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
M-1, Periyanaickkenpalayam Police Station,
Coimbatore.
[Crime No.557 of 2009]

... Respondent

Cr1.A.No.85 of 2016

1.Manivannan [A1]
2.Ramamoorthy [A2]
3.Rajendran [A3]
4.Sivakumar [A4]
5.Velmurugan [A5]
6.Saravanakumar [A8]

... Appellants

-Versus-

State Rep. by
The Inspector of Police,
M-1, Periyanaickkenpalayam Police Station,
Coimbatore.
[Crime No.557 of 2009]

... Respondent

Cr1.A.No.93 of 2016

A.Shakthivel [De facto complainant]

... Appellant

-Versus-

1.Gurusamy [A7]
2.S.Kumaraswamy [A10]
3.N.Krishnamoorthy [A11]
4.R.Janakiraman [A12]
5.K.Balasubramaniyam [A13]
6.R.Damodaran [A14]
7. J.Madhan Kumar [A15]
8.D.Balasundaram [A16]
9.K.Subburaj [A17]
10.S.Velliyangiri [A18]
11.R.Devendran [A19]
12.T.Ganesan [A20]
13.M.Senthilkumar [A21]
14.S.Balamurugan [A22]
15.M.Palaniswamy [A23]
16.R.Tamilselvi [A24]
17.G.Malliga [A25]
18.N.Manonmani [A26]
19.M.Indhrani [A27]

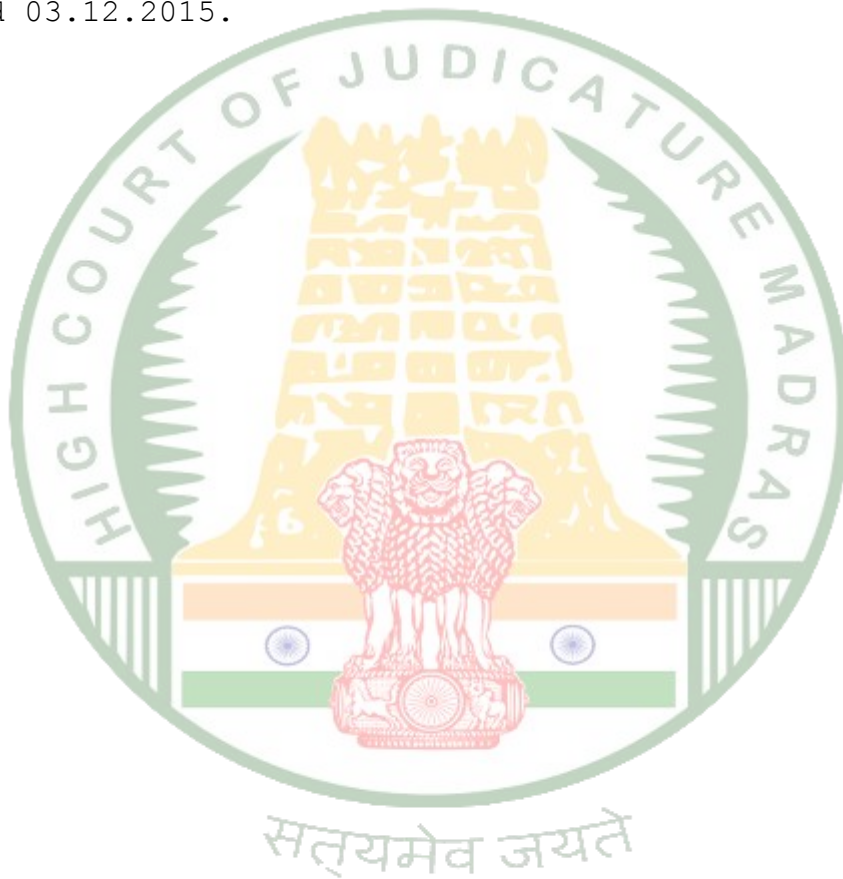
-Versus-

State Rep. by
The Inspector of Police,
M-1, Periyanaickkenpalayam Police Station,
Coimbatore.
[Crime No.557 of 2009]

... Respondents

Crl.A.Nos.83, 84 and 85 of 2016: Criminal Appeals filed under Section 374(2) of Cr.P.C. against the judgement of conviction and sentences passed by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Coimbatore in S.C.No.75 of 2011 dated 03.12.2015.

Crl.A.No.93 of 2016: Criminal Appeal filed under Section 378 of Cr.P.C. against the order of acquittal made by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Coimbatore, in S.C.No.75 of 2011 dated 03.12.2015 insofar as the Accused Nos.7 and 10 to 27 are concerned, in S.C.No.75 of 2011 dated 03.12.2015.



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For Appellant(s) : Mr.S.Ashok Kumar Senior Counsel for Mr.K.Suresh for Appellant/ A6 in Crl.A.No.83 of 2016

Mr.S.Ashok Kumar, Senior Counsel for Mr.K.Bharathi for Appellant/A9 in Crl.A.No.84 of 2016 and A10 to A27 in Crl.A.No.93 of 2016

Ms.R.Sandhiya for Appellants in Crl.A.No.85 of 2016

Mr.N.R.Elango, Senior Counsel for Appellant/De facto complainant in Crl.A.No.93 of 2016

For Respondent(s) : Mr.P.Govindarajan, Addl. Public Prosecutor for Respondent/State in Crl.A.No.83, 84 and 85 of 2016 and 20th Respondent/State in Crl.A.No.93 of 2016

S.NAGAMUTHU, J.

The Appellants in Crl.A.No.85 of 2016 are Accused Nos.1 to 5 and 8; the Appellant in Crl.A.No.83 of 2016 is the Accused No.6; and the Appellant in Crl.A.No.84 of 2016 is the Accused No.9 in S.C.No.75 of 2011 on the file of the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Coimbatore. The Appellant in Crl.A.No.93 of 2016 is the de facto complainant and the prosecution witness No.1 in the said case. Accused No.7 in this case is one Guruswamy, who is the 1st respondent in Crl.A.No.93 of 2016. The respondents 2 to 19 in Crl.A.No.93 of 2016 are Accused Nos.10 to 27. Thus, there were a total number of 27 accused in the said case before the trial court. The trial court, by judgement dated 03.12.2015, acquitted A7, A10 to A27, who are respondents 1 to 19 in Crl.A.No.93 of 2016. Challenging their acquittal, the de facto complainant/P.W.1 has come up with Crl.A.No.93 of 2016. The trial court convicted Accused Nos.1 to 6, 8 and 9 under various

charges and sentenced them accordingly as detailed below:-

Rank of the Accused	Charge under which conviction was recorded	Quantum of Sentence imposed
A1 to A6, A8 & A9	Section 302 of IPC	Imprisonment for life and to fine of Rs.1,000/- each in default to suffer simple imprisonment for six months
A1 to A6, A8 & A9	Section 148 of IPC	Rigorous imprisonment for three year
A1 to A6, A8 & A9	Section 449 of IPC	Imprisonment for life and to fine of 1,000/- each in default to suffer simple imprisonment for six months
A1 to A6, A8 & A9	Section 427 of IPC	Rigorous imprisonment for three years
A1 to A6, A8 & A9	Section 3(1) of The Tamil Nadu Properties [Prevention of Damage and Loss] Act	Rigorous imprisonment for three years and to fine of Rs.1,000/- each in default to suffer simple imprisonment for six months
A1, A3 and A4	Section 324 of IPC	Rigorous imprisonment for one year
A2	Section 324 of IPC [Two counts]	Rigorous imprisonment for one year for each count
A8	Section 323 of IPC	Simple Imprisonment for six months
These sentences have been ordered to run concurrently		

Challenging the above said conviction and sentences, A1 to A6, A8 and A9 have come up with these criminal appeals. That is how, these appeals are before this court for disposal.

2. The case of the prosecution in brief is as follows:- "Pricol Limited" is a company incorporated under The Companies Act, 1956. It has six plants. Plant-I is in Periyanaickkenpalayam in Coimbatore District; Plant-III is in Chinnamathampalayam in Coimbatore District; and Plant-IV is in Karamadai in Coimbatore District. The other plants are in other

States. From the year 2009 onwards, one Mr.Roy J George [hereinafter referred to as the deceased] was working as the Vice President of HR Department of the said company. P.W.1 was then working as Assistant Manager in the Plant-I. P.Ws.2 to 6 were also workers in the same plant at Periyanaickkenpalayam. The office of the deceased namely, the HR Department, was in the plant premises at Periyanaickkenpalayam.

3. It is alleged that there was a long standing labour unrest among the workers in the said company. There were five recognized trade unions consisting of the workmen of Pricol Limited. Later on, two other trade unions by name "Kovai District Pricol Employees Trade Union" was started for the workmen in Plant-I at Periyanaickkenpalayam. For the workmen in Plant-III at Chinnamathampalayam, "Kovai District Pricol Workers Trade Union" was established. Kovai District Pricol Employees Trade Union [For Plant-I] was headed by Mr.Kumaraswamy (A10). A11 to A13 were the Office Bearers of the said union. A7-Guruswamy was the President of Kovai District Pricol Workers Trade Union [For Plant-III]. But, these trade unions were not recognized by the management of the company. This resulted in frequent disputes between the members of these trade unions and the management. It was at that juncture, the deceased took over as the Vice President of the HR Department of the company. There were strike calls given by these two trade unions. The deceased as the Vice President of the HR Department spoke to the workmen and as a result, many of the workmen turned in favour of management and then, returned to work. Thus, these two trade unions started to have the feeling that the deceased was responsible for the unrest among the workers and their returning to work despite the strike calls given. In that situation, a total number of 42 workmen belonging to both the trade unions were dismissed from service. Out of 42, later on, the deceased inducted 41 workmen with break in service for five years. All these orders were issued by the deceased. This further aggravated the unrest. Thus, the members of these two trade unions had strong motive against the deceased. On 20.09.2009, these trade unions held a meeting in the trade union's office near Plant-I. A10 to A12 who were leaders were on the dais. All other accused herein and few others totalling around 30 workers participated in the said meeting. It is further alleged that in that meeting, A10 to A12 spoke provocative words and told the workmen that the deceased should be killed as he was responsible for the disciplinary action taken against the workmen. It is also alleged that all the accused who participated in the said meeting agreed for the same. Thus, according to the prosecution, it amounts to conspiracy on the part of these 27 accused to do away with the deceased.

4. On 21.09.2009 around 11.40 a.m., the deceased was in the HR Department of Plant-I at Periyanaickkenpalayam. P.Ws.1 to 6

who are also the staff of the same department, were also in the office with the deceased discussing some issues relating to the company. At that time, it is alleged that A1 to A9, who were members of the above said trade unions, suddenly barged into the office of the deceased. A1 to A9 were all armed with iron rods. On trespassing into the office room of the deceased, it is alleged that A1 shouted at the other accused and directed them to attack the deceased as induced by his leaders, namely, A10 to A12. So shouting, A1 commenced the attack on the deceased with iron rod on his head once; A2 attacked the deceased with iron rod on his head; and A3 to A9 attacked the deceased with iron rods repeatedly. Having sustained injuries, the deceased fell down in a pool of blood. In the same transaction, when P.W.1 tried to rescue the deceased, A1, A3 and A4 attacked him with iron rods. One Sankar [not examined as a witness] who was also in the room was attacked by A1, A2 and A4. He also sustained injuries. P.W.2 who was present also tried to rescue the deceased. A5 and A6 attacked him with iron rods. P.W.3 was attacked in the same transaction by A2 and A3 with iron rods. Then, all the nine accused [A1 to A9] fled away from the scene of occurrence with the weapons. Thus, five persons namely, the deceased, P.W.1 to 3 and one Sankar sustained injuries in the occurrence.

5. P.W.7 and P.W.13 immediately took all the injured to "Ganga Hospital" at Coimbatore for treatment. P.W.20 Dr.Madhu Periyasamy, examined P.W.1 at 03.14 p.m. on 21.09.2009 at Ganga Hospital, Coimbatore. He found the following two injuries on him (1) a lacerated injury measuring 4 cm in length on the middle of the head and there was also a contusion surrounding the said injury and (2) an abrasion near the right wrist. There was also tenderness near the said injury. P.W.20 treated him as inpatient and discharged him on 27.09.2009. The injuries on him, were all simple in nature and the said injuries, according to him, could have been caused by an iron rod.

6. P.W.22, Dr.Sanjay Rajkumar, examined the deceased on 21.09.2009 at 01.22 p.m.. He was brought by his relative by name Mr. Gerold George. He found a lacerated injury on his head correspondingly there was a fracture of skull and brain matter was protruding out. Ex.P.31 is the copy of the Accident Register.

7. P.W.23, Dr.Balasubramanian, conducted surgery on the deceased on the same day for the head injury. From the time of his arrival in the hospital, the deceased was unconscious. After the surgery was over, he was kept in the critical care ward. Despite treatment, the deceased succumbed to the injuries at 01.22 p.m. on 22.09.2009.

8. P.W.19, Dr.Tamilselvi, examined P.W.3 on the same day at

K.R.Hospital at Periyanaickkenpalayam. She found that there was a contusion measuring 8 x 5 cm on her left leg. Ex.P.27 is the copy of Accident Register. The said injury could have been caused by iron rod, she opined. She was treated as out patient. The injuries were, according to the doctor, simple in nature.

9. P.W.24 Dr.Roy Wilson Armstrong, examined the injured Sankar at Ganga Hospital, Coimbatore at 02.30 p.m. He found a contusion on the right forearm. One of the bones was found fractured corresponding to the said external injury. He was discharged from the hospital on 22.09.2009. He opined that the said injury could have been caused by a blow with an iron rod. Ex.P.33 is the wound certificate. M.O.16 is the X-Ray taken on the fractured wound. According to him, the injury was grievous in nature.

10. When P.W.1 and the deceased were in Ganga Hospital at Coimbatore, the hospital authorities gave intimation to Periyanaickkenpalayam Police Station at 04.30 p.m. on 21.09.2009. P.W.27, the then Sub Inspector of Police, Periyanaickkenpalayam, immediately rushed to Ganga Hospital. Since the deceased was unconscious and since P.W.1 was conscious, he recorded the statement from P.W.1 and on returning to the police station, at 06.30 p.m. on 21.09.2009, he registered a case in Crime No.557 of 2009 under Sections 147, 148, 324, 109, 307, 149 of IPC r/w 3(1) of The Tamil Nadu Properties [Prevention of Damage and Loss] Act, 1992. Ex.P.1 is the complaint. Ex.P.40 is the FIR. He forwarded both the complaint(Ex.P1) and the FIR (Ex.P.40) to the court which were received by the learned Magistrate No.VI, Coimbatore on 22.09.2009 at 03.00 p.m. [Vide the endorsement by the learned Magistrate]. In the mean time, he handed over the case diary to the Inspector of Police (P.W.30) for investigation.

11. P.W.30, the then Inspector of Police, took up the case for investigation. According to him, at 06.55 p.m. on 21.09.2009, he went to Plant-I of Pricol Limited at Periyanaickkenpalayam to check the armed reserve police on bandobast duty outside the said company premises. At that place, the Sub Inspector of Police (P.W.27) handed over the FIR in the present case to him for investigation. Immediately, he proceeded with the investigation, prepared an observation mahazar and a rough sketch in the presence of P.W.14 and another witness. Between 07.00 p.m. and 07.30 p.m. he recovered movable properties damaged by the accused namely, HCL Digital Monitor, Black Metal Laptop, broken glass panes, blood stained earth and sample earth from the place of occurrence under Ex.P.5 mahazar. Then, he examined many witnesses at the place of occurrence and recorded their statement. On going over to the hospital, he found that the deceased was still undergoing treatment in unconscious state. Then, he examined P.W.1 and others.

12. On the same day, at 10.00 p.m. he arrested A1 to A6. While in custody, A1 to A6, one after the other, gave voluntary disclosure statements wherein they disclosed the place where they had hidden the respective iron rod. In pursuance of the same, they took the police and the witnesses to the respective place of hide out and produced the iron rods. P.W.30 recovered the iron rods [M.Os.1 to 6] under individual mahazars in the presence of the same witnesses. Then, he forwarded A1 to A6 to court for judicial remand. He recovered the blood stained cloths of the injured witnesses. While so, the deceased died at 01.27 p.m. on 22.09.2009. On receiving the intimation from the hospital, P.W.30 altered the case into one under Section 302 of IPC. On the same day, between 01.30 p.m. and 03.45 p.m., he conducted inquest on the body of the deceased and forwarded the same for postmortem.

13. P.W.21 Dr.T.Jayasingh, conducted autopsy on the body of the deceased on 22.09.2009 at 04.15 p.m. He found the following injuries:-

"A vertical stapled laceration (7 staples) measuring 6 cm in length noted on left side forehead, 0.5 cm left to midline. The lower end is 3 cm above to inner aspect of left eye brow. On dissection, A surgical burr hole 1.5 cm in diameter and continuing downwards as a bony defect with irregular margin over the area of 2 x 1 cm noted on left lower frontal bone 1 cm left to midline through which a part of brain tissue found protruded out. The underlying dura found lacerated and laceration of brain 3 x 2 x 1 cm noted on left frontal region.

(2) A curved stapled laceration (6 staples) measuring 5 cm length noted on left frontal region, 3 cm left to midline. The lower end is 5 cm above to left eyebrow.

(3) A vertical stapled laceration (7 staples), measuring 5 cm in length noted on right side forehead, 3 cm right to midline. The lower end is 11 cm above to middle of right eye brow. A surgical burr hole of 1.5 cm in diameter noted on right upper frontal region, 1 cm below to right side coronary suture, and 3 cm right to midline.

On dissection of scalp, skull and dura: Subscalpel contusion of 22 x 10 cm noted on both frontal and left temporal region. Diffused subdural and sub arachnoid hemorrhages noted on both cerebral hemisphere. Subdural clot about 100 grams noted on falx cerebri and 20 grams noted on occipital lobe.

Other findings:

Pleural and peritoneal cavities - empty
 Lungs - cut section - congested
 Larynx and trachea - cut section - normal
 Heart - right side chambers contains few cc
 of fluid blood. Left side chambers empty.
 Coronary arteries patent
 Hyoid bone - intact
 Stomach contains 100 ml of fluid blood with
 clot, no specific smell and mucosa - congested
 Liver, Spleen, Brain & Kidneys - cut section
 congested.
 Urinary bladder - empty."

He gave opinion that these injuries found on the body of the deceased could have been caused by iron rods, like M.Os.1 to 8. He further opined that the death of the deceased was due to shock and hemorrhage due to the injuries on the dead body. After the postmortem was over, P.W.30, recovered the blood stained dress material from the body of the deceased and thereafter, forwarded the same to the court. On 24.09.2009, around 11.00 a.m., he arrested A8. While in custody, he made a voluntary confession in which he disclosed the place where he had hidden an iron rod. In pursuance of the same, A8 took the police and the witnesses to the place of hide out and produced M.O.7 iron rod under a cover of mahazar [Ex.P.47]. Then, P.W.30 forwarded A8 to court for judicial remand. P.W.30 recovered a compact disc containing the recordings of the meetings held on 20.09.2009. But, unfortunately, he could not recover the CCTV footages kept in the company because on 21.09.2009 due to some technical fault, there was no recording. At his request, the materials objects were forwarded for chemical examination which revealed that there were human blood stains on the same. On completing the investigation, he laid charge sheet against the accused.

14. Based on the above materials, the trial court framed charges as detailed below:-

Charge Number	Rank of the Accused	Penal provision under which charges were framed
(1)	A1 to A9	Section 120-B r/w 302 of IPC
(2)	A1 to A9	Section 148 of IPC
(3)	A1 to A9	Section 427 of IPC r/w 3(1) of TNPPDL Act, 1992
(4)	A1 to A9	Section 449 of IPC
(5)	A1 to A9	Section 302 of IPC

Charge Number	Rank of the Accused	Penal provision under which charges were framed
(6)	A1, A3 and A4	Section 326 of IPC
(7)	A1 to A6 and A8	Section 324 of IPC [3 counts]
(8)	A10 to A27	Section 120(B) r/w 302 of IPC
(9)	A10 to A27	Section 302 r/w 109 of IPC

A1 to A27 denied the same and thus, they were put on trial. In order to prove the case, on the side of the prosecution as many as 30 witnesses were examined, 57 documents and 9 materials objects were marked.

15. Out of the said witnesses, P.Ws.1 to 3 are the injured witnesses and P.W.4 to 6 are eye witnesses to the occurrence. P.W.1 has spoken about the motive also. He has stated that around 11.40 a.m. on 21.09.2009, when he was at the Office of the deceased, A1 to A9 trespassed into the HR office. He has further stated about the overt acts of A1 to A9. He has further stated that he and the other injured witnesses were taken to the hospital. He has also stated that he made a complaint to the police around 05.30 p.m. on 21.09.2009. He has identified A1 and A2 in court.

16. P.W.2, yet another injured witnesses, has stated that when he was with the deceased at his Office, a crowd of people trespassed into the office, attacked the deceased and P.Ws.1 to 3 and another. During his chief examination, he has stated that he could not identify the assailants as he was examined after six years. Thus, his evidence is very vague in nature wherein he has stated that a crowd of people came and attacked. He has not implicated any of the accused. Therefore, he was treated as hostile by the prosecution.

17. P.W.3 is yet another injured witness. She has stated that when he was in the office, a crowd of people came and attacked the deceased as well as the injured eye witnesses. But, she has identified A2 as one of the assailants. She has stated that A2 attacked her. She has not implicated any other accused.

18. P.W.4 is not an injured witness. She was working in Plant-I at Periyanaickkenpalayam, during the relevant period. She has stated that around 11.40 a.m. on 21.09.2009 he was

sitting on his chair in the HR Office, which was just opposite to the cabin of the deceased. He has further stated that at that time, A1 to A9 trespassed into the cabin of the deceased, attacked him as well as the other injured witnesses. But, when he was called upon by the court to identify the assailants, he had stated that except A1 and A9, he could not identify any other assailants. Thus, his evidence is only against A1 and A9 and not against the other accused. When he was asked to identify A9-Gunabalan, he wrongly identified A8-Saravanakumar, as A9-Gunabalan. Thus, his evidence incriminates only A1.

19. P.W.5 was a Senior Officer in the HR Department of Plant-I of Pricol Limited during the relevant period. He has stated that on 21.09.2009, he was very much in his office at 11.40 a.m. He has stated that A1 to A9 came, trespassed into the office of the deceased, attacked him as well as the other injured witnesses. He has identified A1 to A9 in court as the assailants. He has further stated that in Plant-I of Pricol Company Limited, CCTV camera had been erected. M.O.12 is the company disc containing recordings on 21.09.2009.

20. P.W.6 is yet another eye witnesses to the occurrence. He was also working in HR Department of Plant-I of Pricol Company Limited during the relevant time. According to him, at 11.40 a.m. when he was in the office, A1 to A9 trespassed into the office of the deceased, attacked the deceased as well as the injured witnesses. He has identified A1 and A9 as the assailants. P.W.7 has stated that he took all the injured to Ganga Hospital and admitted them as inpatient.

21. P.W.8 was working in the plant-I of Pricol Limited at Periyanaickkenpalayam during the relevant time. A2 was working as Assembly Operator in the said plant. Between 11.10 a.m. and 11.40 a.m. there was a leisure time for the workmen. On 21.09.2009, according to him, A2 turned up for duty at 08.30 a.m. itself. Till 11.10 a.m. he was engaged in his work. At 11.10 a.m., he left the work spot to spend his leisure time. He should have returned at 11.40 a.m., but, he did not return.

22. P.W.9 was working as Senior Engineer in the Machine Shock Section of Plant-I at Periyanaickkenpalayam. A6 was working in his department. On 21.09.2009 at 07.00 a.m. A6 has turned up for duty. The leisure time was between 11.10 a.m. and 11.40 a.m. A6 in order to spend his leisure time, went out of the work spot. He should have returned by 11.40 a.m. but, he returned only at 12.00 p.m. and worked till 02.30 p.m. Thereafter, he did not see A6.

23. P.W.10 was the Production Manager of Plant-I at Periyanaickkenpalayam where A3 was working. According to P.W.10, on 21.09.2009, A3 had turned up for duty at 07.25 a.m.

itself. The leisure time was between 11.10 a.m. and 11.40 a.m. A3 left the work spot to spend his leisure time, but he did not return after the leisure time was over.

24. P.Ws.11 and 12 have spoken about the meeting held on 20.09.2009. According to them, A10 to A12 spoke in the meeting held on 20.09.2009 provoking the other accused who participated in the meeting. In that meeting, according to him, A10 to A12 told the other accused that the deceased should be killed as he was responsible for the disciplinary action taken against the workmen. They have spoken about the alleged conspiracy. P.W.3 has spoken that he took the deceased and the other injured persons with the help of P.W.7 to the hospital.

25. P.W.14 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence. P.W.15 has spoken about the arrest of A15 and the consequential recovery of the material object. P.W.16 has spoken about the arrest of A9 and the consequential recovery of iron rod. P.W.17 has stated that he took videograph of the trade union meeting that was held on 20.09.2009 in the trade union's office. P.W.8 has spoken about the arrest of A1 to A6, their disclosure statements and the consequential recoveries of M.Os.1 to 6. P.W.19 has spoken about the treatment given to P.W.3. P.W.20 has spoken about the treatment given to P.W.1. P.W.22 has spoken about the treatment given to the deceased at Ganga Hospital. P.W.23 has spoken about the surgery conducted on the deceased and the death of the deceased at 01.22 p.m. on 22.09.2009. P.W.21 has spoken about the post-mortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.24 has spoken about the treatment given to one Sankar, who has not been examined as prosecution witnesses. P.W.25 and P.W.26 are the Head Clerks of the Court of the Judicial Magistrate concerned. They have spoken to the effect that they forwarded the material objects produced by the police on the orders of the learned Judicial Magistrate for chemical analysis. P.W.27, the then Sub Inspector of Police has spoken about the registration of the case. P.W.28, the Head Constable has stated that he took the dead body after the inquest was over and handed over the same to the doctor for post-mortem as directed by Inspector of Police. P.W.29 has spoken about the fact that he assisted P.W.30 during investigation. P.W.30 has spoken about the entire investigation done by him in this case and the filing of charge sheet against the accused.

26. 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, A7, A9 and A10 have been examined as D.Ws.1 to 3 respectively. D.W.1 has stated that on 03.03.2007, on account labour dispute, he was transferred to the plant at Uttaranchal along with A11 and A12 and few others. Ex.P.26 is

the transfer order. According to him, on 20.09.2009, there was no meeting at all held and he was not aware of the happenings on 21.09.2009 as he was not present at all. D.W.2 is A9 in the case. He has stated that his mother was seriously ill from 21.09.2009 onwards. Thus, he was on leave between 21.09.2009 and 23.09.2009. Ex.D.7 is the leave slip. According to him, during the relevant period, he had gone to Dindigul to attend on his ailing mother at a hospital. His plea is one of alibi.

27. D.W.3 is A10. He has stated that he is an Advocate by profession and also a member of a Political Outfit known as "Communist Party of India (Marxist-Leninist)". He has done a number of cases for the workers who are members of the above said trade unions both before the High Court as well as the Subordinate Courts. Because he was actively assisting the workmen, according to him, he has been falsely implicated. On the side of the accused as many as 14 documents have been marked. Thus, the defence was a total denial.

28. Having considered all the above, the trial court convicted the Appellants/A1 to A6, A8 and A9 as detailed in the first paragraph of this judgement and sentenced them accordingly. Challenging the above said conviction and sentences, A1 to A6, A8 and A9 are now before this Court with Crl.A.Nos.83 to 85 of 2016 and challenging the judgement of the trial court acquitting A7 and A10 to A27, the de facto complainant has come up with Crl.A.No.93 of 2016. There is no appeal preferred either by the State or by P.W.1 as against the acquittal of A1 to A6 and A8 to A9 from the other charges.

29. We have heard the learned counsel appearing for the appellants/Accused and the learned Additional Public Prosecutor appearing for the State and the learned counsel for the de facto complainant and we have also perused the records carefully.

30. For the sake of convenience, let us take up the case against A10 to A27 at the first. Admittedly, these accused did not participate in the occurrence which took place on 21.09.2009. According to the charge, they participated in the meeting held on 20.09.2009 at the trade union's office which was addressed by A10 to A12. It is alleged that in that meeting A10 to A12 spoke in a provocative manner and declared that they should do away with the deceased. The trial court has disbelieved this part of the case of the prosecution. To speak about the said meeting, the prosecution examined P.Ws.11 and 12. These two witnesses have stated that they also participated in the meeting. If that be so, though they have not been arrayed as accused, they are only accomplices. As per Section 114 of the Evidence Act, the court may presume that these two accomplices are unworthy of credit. As per the same provision, the evidence

of an accomplice is unworthy of credit and unless there is corroboration in general particulars from independent sources, it cannot be the foundation for conviction. On this legal principle, the evidences of P.Ws.11 and 12 should be rejected as the same could not form the sole basis for conviction. Apart from that, the trial court has disbelieved these two witnesses because of their conduct. Had it been true that they witnessed the conspiracy, which was hatched on 20.09.2009, they would not have kept mum until they were examined by the police. Going by the natural human conduct, they would have had instinct to tell about the same either to the deceased or to any other worker or any responsible officer in the company. They did not do so. From this, the trial court has come to the conclusion that these two witnesses have been planted. Thus, we agree with the findings of the trial court that these two witnesses are unbelievable. Apart from that, the trial court relies on the video recordings of the meeting recorded by P.W.17. But, what is available before the court is only the Compact Disc (M.O.11). Admittedly, M.O.11 does not satisfy the legal requirements of Section 65-B of The Evidence Act. As per the Judgement of the Hon'ble Supreme Court in P.V.Anvar v. P.K.Basheer, (2014) 10 SCC 473, M.O.11-Compact Disc is not admissible in evidence. If once M.O.11 is eschewed from consideration and the evidence of P.Ws.11 and 12 are rejected as unbelievable, then there remains no other evidence against A10 to A27 except the fact that they were the members of the trade unions in question and that there had been labour unrest. Thus, the trial court was right in acquitting A10 to A27 which does not require any interference at the hands of this court.

31. Now, turning to the case against A7 who stands acquitted by the trial court, again we find no infirmity in the judgement of the trial court. The learned senior counsel appearing for Accused No.7 would submit that because he was an active member of the trade union, his name came to be implicated in the FIR as an after thought. Apart from that he has examined himself as D.W.1 where he has stated that he was not present at the place of occurrence and he also did not participate in the meeting allegedly held on 20.09.2009. He has stated that even in the year 2007 itself, he was transferred to Uttaranchal.

32. The trial court has accepted these two contentions advanced on behalf of A7 and has acquitted him from the charges. In order to verify the correctness of the said conclusion arrived at by the trial court, we have gone through the complaint-Ex.P.1. The alleged occurrence was at 11.40 a.m. on 21.09.2009 whereas the FIR was allegedly registered at 06.30 p.m. on 21.09.2009. The FIR had reached the hands of the learned Magistrate at Coimbatore on the next day, that was, on 22.09.2009, that too, at 03.00 p.m. Absolutely, there is no explanation for this inordinate delay. That apart, in Ex.P.1-

Complaint, the name of A7 was obviously interpolated as an assailant between the names of Velmurugan and Sampathkumar. It is stated in Ex.P.1 that A7 also came with the other accused namely, A1 to A6, A8 and A9. In Ex.P.1 no other overt act whatsoever has been attributed against A7. But, strangely, besides shockingly, Ex.P.40-FIR shows that the name of A7 was interpolated between the names of accused Sampathkumar and Saravanakumar. This interpolation was made after the name of Sampathkumar because in Ex.P.40 there is no space before the name of Sampathkumar so as to interpolate the name of A7. In the body of Ex.P.40, interpolation of the name of A7 has been made. As we have already stated, no overt act has been attributed to A7 in Ex.P.1, except stating that he came along with the other accused to the office of the deceased. But, in Ex.P.40, it is stated that A7 also attacked the deceased with iron rod. Similarly, though in Ex.P.1, it is stated by means of interpolation that A7 came along with the other accused, there is no such interpolation found in Ex.P.40 so as to say that A7 also came along with the other accused. In fact, Ex.P.40-FIR should be strictly the replica of Ex.P.1-Complaint and there should not be any variance. But, shockingly, Ex.P.1-Complaint and Ex.P.40-FIR, are in variance. As we have already elaborated, absolutely, there is no explanation for the same. Ex.P.40 further reflects that originally there were ten named accused. But, A7-Guruswamy's name was interpolated after the name of A6-Sampathkumar and thereafter the serial number of the other accused have been corrected in Ex.P.40. These interpolations and corrections would clearly go to show that after the case was registered under Ex.P.40, as an after thought the name of A7 was interpolated in Ex.P.1 as well as in Ex.P.40. Absolutely, there is no explanation for these interpolations except the explanation by P.W.1 that after Ex.P.1 was drafted and read over to him since he found the name of A7 missing, he wanted the same to be inserted in Ex.P.1. If this version is true, there is no chance at all for any such interpolation in Ex.P.40 which was registered later based on Ex.P.1. But, as we have already pointed out, there were interpolations and corrections in Ex.P.40 also and the same would go to clearly prove that the interpolations and corrections both in Ex.P.1 and Ex.P.40 were made after the case was registered. This would give rise to a natural presumption that A7's name was included, later on, by means of interpolation and correction because he also happened to be an active member of the trade union. Had he been present at the time of occurrence, had he got any overt act, certainly, these facts would have been mentioned in Ex.P.1 without there being any interpolation. For these reasons, the trial court has rejected the case against A7. We find no infirmity in the said conclusion arrived at by the trial court at all calling for interference at our hands. Thus, the appeal, challenging the acquittal of A7 also deserves to be dismissed.

33. In conclusion, we find no merit at all in CrI.A.No.93 of 2016 challenging the acquittal of A7 and A10 to A27 and therefore, we are inclined to dismiss the above said criminal appeal filed by the de facto complainant [P.W.1] in the case.

34. Now, turning to the case against A1 to A6, A8 and A9, the learned senior counsel would submit that truth is not before the court and on that score the entire case of the prosecution should be rejected. In order to substantiate his contention, the learned senior counsel would make reliance on Ex.P.1-Complaint and Ex.P.40-FIR. He would submit that there are interpolations and corrections in these two documents. We have already concluded in agreement with the learned senior counsel that there were interpolations as well as corrections in Ex.P.1-Complaint and Ex.P.40 FIR which would certainly create an initial doubt in the mind of this court.

35. Apart from that, the learned senior counsel would submit that P.W.30 has admitted that just 50 feet away from the HR Office, which is situated in the Plant-I premises at Periyanaickkenpalayam, there were police men on bandobast duty because there was unrest among workers for a long time. P.W.30 has further admitted that he was present at the place of occurrence at the time of occurrence. The place of occurrence is at a distance of hardly 1/2 km from the police station which has been admitted by P.W.20, the Sub Inspector of Police also. Admittedly, it was a big rioting in which at least five persons sustained injuries and one was very seriously injured in the Office premises. Pricol Company Limited is a big establishment where there would have been a number of workers on duty including the officers. When the policemen were on bandobast duty just 50 feet away from the place of occurrence and the distance between the police station and the place of occurrence is hardly 1/2 km, it is highly doubtful that the occurrence was not known or reported to the police until 06.30 p.m. on 21.09.2009. We believe that the police should have had information immediately after the occurrence because there were police men on duty near the place of occurrence and that there would have been some other information to the police. In our considered opinion that earliest information has been suppressed by the police. This creates further doubt in the case of the prosecution.

36. According to P.W.27, he received an intimation from the hospital at 04.30 p.m. on the day of occurrence and thereafter only, he went to the hospital, recorded the statement of P.W.1 and on returning to the police station he registered the case at 06.30 p.m. As we have already pointed out, it is highly unbelievable that there was no other information to the police about the occurrence till 06.30 p.m. on 21.09.2009. The learned senior counsel Mr.Ashok Kumar would submit that Ex.P1-Complaint

and Ex.P.40-FIR would have come into being at 06.30 p.m. on 21.09.2009. We find force in the said argument also.

37. Both Ex.P.1 and Ex.P.40 reached the hands of the learned Magistrate only at 03.00 p.m. on 22.09.2009. After all, the distance between Periyanaickkenpalayam Police Station and the court of learned Magistrate is hardly about 15 km. But, the FIR, which was allegedly registered at 06.30 p.m. on 21.09.2009, reached the hands of the learned Magistrate only at 03.00 p.m. on the next day, that is, after 21 1/2 hours. Absolutely there is no explanation for such inordinate delay. P.W.27, the then Sub Inspector of Police has nothing to say about the delay. The police constable who carried the FIR and handed over the same to court has also not been examined. Thus, the above said unexplained delay coupled with the manipulations and corrections made in the FIR and the suppression of initial information, as we have already discussed hereinabove, would all go to create further doubt regarding the case of the prosecution.

38. Now, the question is, whether the entire case of the prosecution should be doubted and thrown out on that score? We find it difficult to do so. It is true that Ex.P.1-Complaint and Ex.P.40-FIR do not reflect the true version of the occurrence. But, when there are injured witnesses, who have spoken about the occurrence and if the court is able to separate the grains from the chaff, the entire case of the prosecution cannot be rejected solely on the ground that the FIR creates doubts.

39. Let us, now, examine, whether the grains from the chaff could be separated. In this regard, let us now, analyse the eye witness account of P.Ws.1 to 6. Out of these witnesses, P.W.2 has not supported the case of the prosecution in full. He has stated when he was in the office of the deceased, a crowd of people came and attacked the deceased and the injured. He did not identify any of the accused as assailants though, he was specifically called upon to do so. He has stated that since he was examined after six years of the occurrence, he was not in a position to identify any of the assailants. Thus, his evidence would not go to prove the guilt of any of these accused, however, it would only go to prove that a crowd of people came around 11.40 a.m. with iron rods and attacked the deceased as well as the injured witnesses.

40. P.W.3, the other injured eye witness has stated that a crowd of people came with iron rods and attacked the deceased as well as the injured witnesses. She identified A2 and A8 alone. there is no evidence that these witnesses knew these accused previously. According to the case of the prosecution, she knew all the nine accused [A1 to A9], but she had not chosen to identify the rest of the accused. Thus, in our considered view, she is not a reliable witness and, therefore, her evidence implicating A2 and A8 alone deserves to be rejected. Her

evidence could, at the most, be believed to the extent that a crowd of people came with iron rods and attacked the deceased as well as the injured witnesses.

41. P.W.1, the vital injured witness for the prosecution, has stated only about the over acts attributed to A1 to A9. More specifically, he has spoken about the presence of P.W.7 and participation of A9-Gunabalan. A7-Guruswamy's name, as we have already concluded, was interpolated later and, A9-Gunabalan's name does not find a place in Ex.P.1 at all. Had it been true that A9 participated in the occurrence on 21.09.2009, P.W.1 would have mentioned his name in Ex.P.1 itself. When he has stated that since after the complaint-Ex.P.1 was drafted and read over to him, he found missing of the name of A7 and, therefore, he wanted A1's name to be interpolated, he would have similarly asked the person who drafted the complaint to interpolate the name of A9 also in Ex.P.1. At the same time, he implicated A9 only during investigation. There is no explanation from him as to why he did not implicate A9 in the complaint-Ex.P.1. Thus, this witness also cannot be fully believed. He has rendered himself only as partly believable.

42. A9 has examined himself as D.W.2. He has stated that during the relevant time, he was in Dindigul attending on his ailing mother in a private hospital. Ex.D7 is his leave slip. Though, this witness was cross examined at length, nothing has been elicited from him to disbelieve his evidence. The only point taken by the prosecution is that no medical records pertaining to the treatment made to his mother at Dindigul Hospital has been produced. When the prosecution has got no explanation as to why his name was not included as stated in Ex.P.1 complaint, the evidence of D.W.2 (A9) seems to be probable and acceptable. For these reasons only, we have concluded that P.W.10 also only partly believable. Above all, according to him, A1 and A2 gave one blow each on the head of the deceased and the other accused attacked the deceased repeatedly. But, there were no corresponding injuries at all on the head of the deceased, except the injuries allegedly caused by A1 and A2. Thus, the medical evidence contradicts his evidence as against A2 and A9 and corroborates his evidence only as against A1 and A2.

43. Now, turning to the evidence of P.W.4, he has stated about the presence and participation of A1 to A9. When he was asked to identify A1 to A9, he identified A8 as A9. It is not as though he knew all the accused previously. He has further spoken that since the occurrence had taken place six years before he was not able to identify the accused. Therefore, his evidence also cannot go to prove the guilt of the accused namely, A1 to A9 and, at the most, his evidence can go only to prove that a crowd of people came and attacked. P.W.5 claims to have seen the

occurrence. He has identified A1 to A9. He has spoken only about the damages caused to the properties and he has not seen the injured and the deceased being attacked by any one. Thus, his evidence would not go to prove as to who actually attacked the deceased and the injured eye witnesses.

44. P.W.6, yet another eye witness, has, of course, stated about the overt acts of A1 to A9. But, his evidence is highly doubtful as he has stated that each one accused inflicted one injury either on the head of the deceased or the injured witnesses one after the other in a seriatim. He is a witness belonging to the management of Pricol Limited. His evidence also does not impress us. Thus, we reject his evidence also.

45. From the foregoing discussion what remains is the evidence of P.W.1 against A1 and A2 alone. We have already held that his evidence as against the other accused is not corroborated by medical evidence and there are also other reasons which we have discussed to reject his evidence as against A3 to A9. So far as A1 and A2 are concerned, we are of the view that the presence and participation of A1 and A2 stands proved.

46. The learned counsel appearing for the accused would submit that CCTV camera erected at the HR department of Pricol Limited, would have recorded the entire occurrence. Had the same been seized, according to the learned counsel, it would have proved the truth. But, the same has not been seized by P.W.30. P.W.3 has explained that CCTV camera that was installed had been recording the events prior to 21.09.2009 and on 21.09.2009, it did not record anything. M.O.12 is the Compact Disc taken out from the recordings of the CCTV camera. M.O.12 does not contain the certificate as required under Section 65-B of the Evidence Act and therefore, the same is to be rejected. Except, the ipso facto evidence of P.W.30 that there was no CCTV camera recording on 21.09.2009, we do not have any other evidence to prove the same. Though the learned senior counsel would call it as a suppression of an important evidence, we are of the view that it only reflects the ignorance of P.W.30 in respect of collection of scientific evidences and we are not in agreement with the senior counsel that it would amount to suppression. Under Section 114 of the Evidence Act a presumption may be drawn adverse to the prosecution, if only there is suppression of any evidence. In this case, we do not find anything to show that the CCTV recordings have been suppressed and since we hold that this was a sheer ignorance of P.W.30 to collect the CCTV recordings, we are unable to draw any adverse presumption as provided in Section 114 of the Evidence Act.

47. In view of the above discussion, from the evidences of the eye witnesses including the injured witnesses, we find that

the prosecution has clearly proved that a crowd of people barged into the office of the deceased where the injured witnesses were sitting and the crowd of people mounted attack on the deceased. In that, more specifically, A1 and A2 participated and that they caused the death of the deceased by attacking him with iron rods. So far as the attack on the others are concerned, we find the evidences of the injured witnesses unbelievable. Therefore, we hold that the prosecution has proved the charges against A1 and A2 under Section 148, 302 r/w 149 and 449 of IPC alone. Though the other accused are acquitted, it cannot be said that A1 and A2 cannot be convicted under Section 148 of IPC as well as by invoking Section 149 of IPC. As we have already pointed out, there is enough evidence to prove that there was an unlawful assembly of the assailants and the accused A1 and A2 were the members of the said unlawful assembly. The other members of the assembly are not known for want of evidence. Similarly, there is evidence that the crowd of people only attacked the deceased, more particularly, A1 and A2, attacked the deceased. Therefore, they are also liable for punishment under Section 302 r/w 149 of IPC.

48. We, in fact, called upon the learned senior counsel to make his submissions as to whether in the absence of a charge under Section 149 of IPC, A1 and A2 could be convicted by invoking Section 149 of IPC. In this regard, we may refer to the judgement of the Hon'ble Supreme Court in Dumpala Chandra Reddy v. Nimakayala Balireddy, 2008 (8) SCC 339, wherein in a similar circumstance, the Hon'ble Supreme Court in para 18 to 21 has held as follows:-

"18. This Court, in the oft repeated case of Willie (William) Slaney Vs. State of Madhya Pradesh (1955 (2) SCR 1140) had highlighted the aspect of prejudice. This decision has been referred to in a large number of subsequent cases dealing with the question of prejudice in the background of Section 464 of the Code of Criminal Procedure, 1973 (in short 'the Code'). In Ramkishan and Ors. Vs. State of Rajasthan (1997 (7) SCC 518), it was noted as follows:

"In view of the findings recorded by the learned Sessions Judge and the material on record, we are unable to ascribe to the finding that the appellants' intention was to cause death of Bhura deceased. The finding betrays the observation of the trial court as noticed above. The medical evidence also does not support the ultimate finding recorded by the trial court and

upheld by the High Court. The offence in the established facts and circumstances of the case in the case of the appellants would only fall under Section 304 Part II IPC read with Section 149 IPC and not under Section 302 IPC. Indeed no specific charge indicating the applicability of Section 149IPC was framed, but all the ingredients of Section 149 IPC were clearly indicated in the charge framed against the appellants and as held by the Constitution Bench of this Court in Willie (William) Slaney Vs. State of M.P. the omission to mention Section 149IPC specifically in the charge is only an irregularity and since no prejudice is shown to have been caused to the appellants by that omission it cannot affect their conviction."

19. Similar view was also taken in B.N. Srikantiah and Ors. Vs. The State of Mysore (1959 SCR 496) in the background of Section 34, viz-a-viz Section 149, IPC. In Dalbir Singh Vs. State of U.P. (2004 (5) SCC 334), it was noted as follows.

"15. In Willie (William) Slaney Vs. State of M.P. a Constitution Bench examined the question of absence of charge in considerable detail. The observations made in paras 6 and 7, which are of general application, are being reproduced below: (AIR P 121 6)

"6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a Code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial

along certain well established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venial by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

7. Now, here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions.

15.1 After analysing the provisions of Sections 225, 232, 535 and 537 of the Code of Criminal Procedure, 1898 which correspond to Sections 215, 464(2), 464 and 465 of the 1973 Code, the Court held as under in para 44 of the Report: (AIR p.128)

"44. Now, as we have said, Sections 225, 232, 535 and 537(a)

between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The code is emphatic that 'whatever' the irregularity it is not to be regarded as fatal unless there is prejudice.

It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction.

Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

If all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one."

16. This question was again examined by a three Judge Bench in Gurbachan Singh Vs. State of Punjab in which it was held as under: (AIR p.626, para 7) "In judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."

17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464Cr.P.C., it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself."

20. The High Court, as has been rightly pointed out by learned counsel for the appellant, lost sight of the fact that if its view is accepted in the absence of charge under Section 149, conviction in terms of Section 326 could not have been done.

21. The High Court appears to have misconstrued the decision of this Court in Rewa Ram Vs. Teja and Ors. (AIR 1998 SC 2883). In that case, the High Court held that the accused persons could be held guilty only under Section 326 IPC, particularly, when it was stated in the charge that their common object was to assault the deceased and commit rioting with deadly weapons. The position is entirely different here. In fact, while framing charge and combined reading of charge No.1 and charge No.3 makes it clear, that the Court specified that the accused persons were members of unlawful assembly and in prosecution of the common object of such assembly, i.e., in order to commit murder of the deceased, committed the offence and at that time they were armed with daggers etc. to bring in the application of IPC. In Charge No.3, there is a specific reference to the transactions, as mentioned in the first charge, and the object to commit murder by hacking on the body of the deceased with daggers and causing his intentional death and thereby committing offence punishable under Section 302 IPC. Therefore, the charge in relation to offence punishable under Section 149 IPC is not only implicit but also patent in the charges."

Similar view has been taken by the Hon'ble Supreme Court in Vitukuru Lakshmaiah v. State of Andhra Pradesh, 2015 (11) SCC 102 also.

49. In the instant case, since, there is a charge under Section 148 of IPC and since A1 and A2 were put on notice that they were members of the unlawful assembly, which caused the death of the deceased, the conviction of A1 and A2 by invoking Section 149 of IPC would be lawful and permissible.

50. Now, turning to the quantum of punishment for the offence under Section 302 r/w 149 of IPC, we are inclined to impose the minimum punishment of imprisonment for life and to pay a fine of Rs.1,000/- each in default to suffer rigorous

imprisonment for six weeks and for the offence under Section 148 of IPC, we deem it appropriate to impose rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for 6 weeks. In so far as offence under Section 449 of IPC is concerned, in our considered view, sentencing A1 and A2 to rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for six weeks would meet the ends of justice.

51. Before parting with this case, we wish to record our displeasure with the fond hope that the stake-holders concerned would realise their responsibilities and correct themselves so as to ensure that there is no flaw resulted in the system of administration of justice. As we have already extracted the charges framed in the instant case are not appropriate. We do not want to elaborate the same again, except saying that the charges framed did not satisfy the legal requirements. It appears that the case was not opened by the Public Prosecutor as required under Section 226 of Cr.P.C. It is not known as to why there was no charge framed by invoking Section 149 of IPC for causing the death of the deceased and for causing grievous hurts as well as simple hurts by some of the assailants. So far as the conspiracy is concerned, charges can be read as though there were two different conspiracies, one involving A1 to A9 and the other involving A10 to A27. We expect, the prosecuting agency to scrupulously comply with Section 226 of Cr.P.C. at least in future.

52. The investigating officer in this case, in our considered view, had not discharged his function properly. As we have already pointed out, the FIR in this case is not a contemporaneous document as it is only a fabricated document by the Sub Inspector of Police (P.W.27) and the Inspector of Police (P.W.30). The importance of launching of prompt FIR and dispatching the same to the court is repeatedly impressed upon by Hon'ble Supreme Court as well as by this court. Despite that, as we have already discussed, it is not explained to the court as to what made the police to suppress the original information and why there was an inordinate delay in registering the case and why there was enormous delay in forwarding the same to the court. It is also not known as to why P.W.30 has not chosen to examine the policemen on duty near the place of occurrence. He has not collected the medical records also properly. He has not collected the scientific evidences namely, CCTV Camera recordings by following the established procedure. Had the CCTV camera recordings been recovered and proved in evidence, the same would have brought the truth before the court. Men may lie but not the science.

53. Above all, the conduct of the accused in this case is highly deplorable and condemnable. The occurrence was in the

year 2009. The case was pending before the Court of Sessions from the year 2011 onwards. For four years, due to non cooperation of the accused, charges could not be framed by the trial court. The charges were framed by the trial court only on 29.01.2015. P.Ws.1 to 5 were examined on 04.05.2015 and P.W.6 was examined on 05.05.2015. The records received from the trial court would go to show that on the day of examination of these witnesses, the counsel for A1 to A11 was not present. The counsel for A12 to A23 were present, but, he refused to cross examine the witnesses. Similarly, the counsel for A24 to A27 also did not appear. On an application made, by order dated 15.05.2015, P.W.1 was recalled and he was cross examined on 22.05.2015. The counsel for A12 to A23 cross examined him. The cross examination commenced at 10.45 a.m. The learned counsel finished the cross examination at 01.30 p.m. which runs to 15 pages. After lunch break, the counsel for A24 to A24 commenced the cross examination. It went up to 05.30 p.m. which runs to 12 pages. On that day, A1 to A11 did not cross examine P.W.1. They approached the High Court and as per the orders of the High Court dated 18.08.2015, P.W.1 was again recalled on 27.08.2015. On that day, the learned counsel for A1 to A11 cross examined him which runs to 16 pages. Thus, the cross examination of these witnesses covers 45 pages. We have gone through the entire cross examination, line by line and word by word. We are, at a loss to find anything elicited in favour of the accused during cross examination though it runs to 45 pages. Many of the questions are in the nature of harassing the witnesses. It reflected as though there is no law regulating the questions during cross examination. It was ignored by the counsel that the Evidence Act speaks of questions which are lawful during cross examination which could be compelled to be answered by a witness and the questions which could be refused to be answered by the witness. The learned counsel has also ignored when the witnesses could be compelled by the court to answer and when the witnesses can use his discretion to answer though there is no compulsion. The learned counsel had overlooked these statutory mandates contained in the Evidence Act. The learned counsel had virtually harassed P.W.1 for days together by asking all irrelevant, unnecessary and scandalous questions.

54. Similarly, P.W.2 had not implicated any of the accused in chief examination and therefore, he was treated as hostile. But, she was not cross examined by the defence on the same day. After chief examination on 04.05.2015, he was recalled and cross examined by the counsel for A12 to A23 on 20.05.2015 and A23 to A27 on the same day. A perusal of the cross examination of this witness would go to show that it is nothing but a harassment. When he was recalled on 20.05.2015, the learned counsel for A1 to A11 did not cross examine. On the day of examination in chief though the counsel were present, they were not ready to cross examine him. On 08.09.2015, pursuant to the orders of this

court, P.W.2 was recalled and cross examined by A1 to A11. This witness was again harassed and cross examined which runs to 8 pages. Most of the questions appear to be relevant relating to the fact in issue or relevant fact. All unnecessary scandalous and harassing questions have been asked to him. Similarly, P.W.3 was examined in chief on 04.05.2015 on which date no counsel for the accused was ready to cross examine without assigning any reason whatsoever. He was recalled and cross examined and again recalled on the orders of this court and cross examined. This had happened in almost to all the witnesses. When we invited the learned senior counsel appearing for the accused to explain, as to how the counsel for the accused were justified to ignore the ethics of the profession by refusing to cross examine any witness and to recall them on a later date in a phased manner and to harass them by asking such unnecessary questions, the learned senior counsel felt sad about it reflecting his fairness. When we invited him to point out anything elicited during the cross examination of these witnesses in favour of the accused, he was unable to point out anything. Thus, it is crystal clear that most of the questions were in the nature of harassment to the witnesses.

55. Gone are the days that the defence counsel would take trial proceedings so seriously and cross examine the witnesses on the same day and also avoiding unnecessary questions by extending fullest cooperation to the court for trial and disposal of the cases. The case on hand is a classic illustration as to how there is a complete change in the attitude of some of the counsel and as to how they take it as a platform to harass the witnesses. We are really anguished by going through the cross examination of the witnesses in this case. We do not understand as to how the Judge was a silent spectator without making any intervention when the witnesses were harassed like anything. The expression of our anguish in this judgement is only to convey our hope to all concerned that the justice delivery system cannot be taken for a ride by anyone. The time tested system will withstand all such attempts in the war waged against the system by unscrupulous people

56. In the result, (i) CrI.A.No.93 of 2016:- The criminal appeal is dismissed.

(ii) CrI.A.No.84 and 83 of 2016:- Both the Criminal Appeals are allowed; the conviction and sentences imposed on A9-Gunapalan, the appellant in CrI.A.No.84 of 2016 and A6-Sampathkumar, the appellant in CrI.A.No.83 of 2016 are set aside; and they are acquitted from all the charges. Fine amount already paid if any, shall be refunded to them. Bail Bond executed by the appellant/A9 in CrI.A.No.84 of 2016 shall stand terminated.

(iii) CrI.A.No.85 of 2016: This criminal appeal is partly allowed; the conviction and sentences imposed on A3 Rajendran, A4-Sivakumar, A5-Velumurugan and A8-Saravanakumar, the appellants 3 to 5 and 6 in CrI.A.No.85 of 2016 by the trial court are set aside and they are acquitted from all the charges. Insofar as A1-Manivannan and A2-Ramamoorthy, the appellants 1 and 2 in CrI.A.No.85 of 2016 are concerned, they are convicted for the offences under Section 148, 302 r/w 149 and 449 of IPC and they are sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for 6 weeks for the offence under Section 148 of IPC; to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for six weeks for the offence under Section 302 r/w 149 of IPC; and to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for six weeks for the offence under Section 449 of IPC. They are, however, acquitted from the other charges. It is directed that the sentences imposed herein above on A1 and A2 shall run concurrently. The period of sentence already undergone by them shall be given set off under Sections 428 and 433-A of Cr.P.C.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

- 1.The Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Coimbatore, Coimbatore District.
- 2.Do-Thro, The Principal Sessions judge, Coimbatore.
- 3.The Superintendent, Central Prison, Coimbatore.
- 4.The Inspector of Police, M-1, Periyanaickkenpalayam Police Station, Coimbatore, Coimbatore District.
- 5.The Public Prosecutor, High Court, Madras.
- 6.The District Collector, Coimbatore District.
7. The Director General of Police, Mylapore, Chennai-4

8.The Judicial Magistrate No.6,
Coimbatore.

9.Do-Thro-The Chief Judicial Magistrate,
Coimbatore.

Copy to

The Section Officer,
Criminal Section, High Court,
Madras-104.

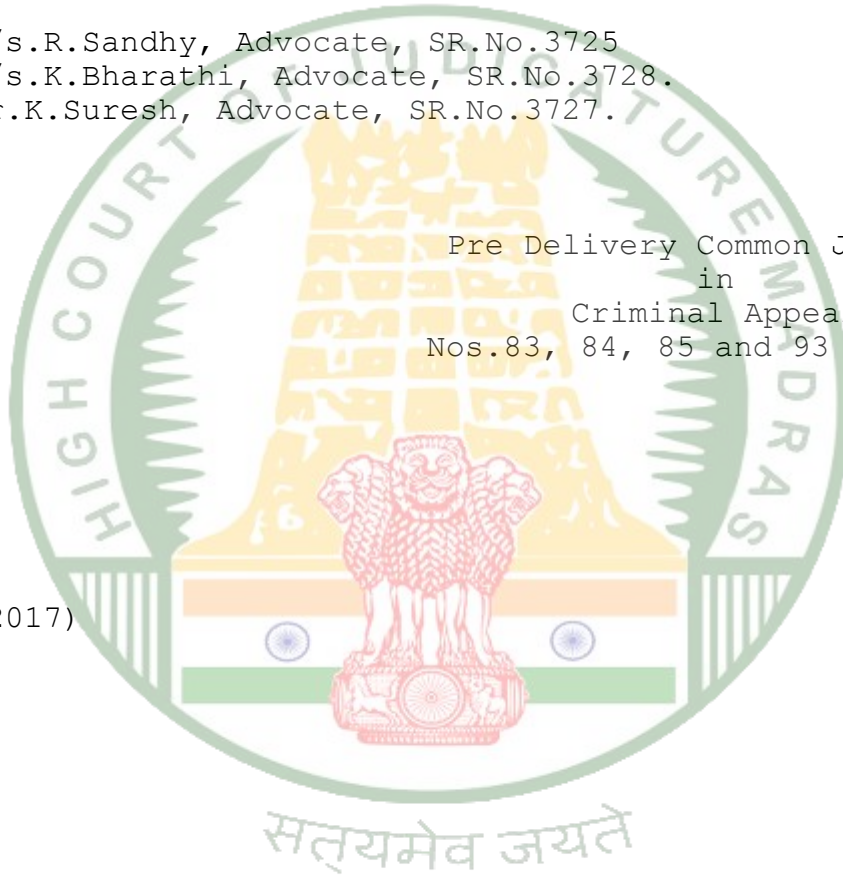
+1cc to M/s.R.Sandhy, Advocate, SR.No.3725

+2cc to M/s.K.Bharathi, Advocate, SR.No.3728.

+1cc to Mr.K.Suresh, Advocate, SR.No.3727.

Pre Delivery Common Judgment
in
Criminal Appeal
Nos.83, 84, 85 and 93 of 2016

SV (CO)
GN (02/02/2017)



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