

(2016) 06 MAD CK 0129

MADRAS HIGH COURT

Case No: Criminal Appeal Nos. 163, 177, 190, 193, 207 and 208 of 2014.

Dhanakandhan (A3) - Appellant
@HASH State by The Inspector of
Police, Neyveli Town Police
Station, Cuddalore District And

APPELLANT

Vs

RESPONDENT

Date of Decision: June 30, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 148, Section 149, Section 302, Section 341

Citation: (2016) 4 MLJCriminal 319

Hon'ble Judges: S. Nagamuthu and V. Bharathidasan, JJ.

Bench: Division Bench

Advocate: Mr. A. Arasu Ganesan for A11, Advocate, for the Appellant; Mr. M. Maharaja
Additional Public Prosecutor, for the Respondent

Final Decision: Partly Allowed

Judgement

S. Nagamuthu, J. - The appellants in CrI.A.No.163 of 2014 are the accused Nos.3, 4 and 7; the appellant in CrI.A.No.177 of 2014 is accused No.6; the appellants in CrI.A.No.190 of 2014 are the accused Nos.1, 2 and 8; the appellant in CrI.A.No.193 of 2014 is accused No.9; the appellant in CrI.A.No.207 of 2014 is accused No.10 and the appellant in CrI.A.No.208 of 2014 is accused No.11 in S.C.No.217 of 2007 on the file of the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam. The 5th accused was one Mr.Thoppiyan @ Dharmaraj, he died during the trial of the case and thus the charges against him stood abated. The trial Court framed as many as ten charges against the above stated 11 accused as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
1	A1 to A11	120(B) of IPC
2	A1 to A11	148 of IPC
3	A1 to A11	341 of IPC
4	A1 to A4, A7 & A9	302 of IPC
5	A5 to A8, A10 & A11	302 r/w 149 of IPC
6	A5	326 of IPC
7	A4	324 of IPC
8	A6 & A8	307 of IPC
9	A10 to A11	294(b) of IPC
10	A1 to A11	3(2) of TNPPDL Act

By judgment dated 18.03.2014, the trial Court convicted these appellants/accused 1 to 4 and 6 to 11 for various offences as detailed below:

Rank of the Accused	Penal provision(s) under which convicted	Sentence
A1	148 of IPC	Rigorous Imprisonment for two years
	341 of IPC	Rigorous Imprisonment for one month
	302 of I.P.C.	Imprisonment for life and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for two years.
A2	148 of IPC	Rigorous Imprisonment for two years
	341 of IPC	Rigorous Imprisonment for one month

	302 of I.P.C.	Imprisonment for life and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for two years.
A3	148 of IPC 341 of IPC 302 of I.P.C.	Rigorous Imprisonment for two years Rigorous Imprisonment for one month Imprisonment for life and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for two years.
A4	148 of IPC 341 of IPC 302 of I.P.C.	Rigorous Imprisonment for two years Rigorous Imprisonment for one month Imprisonment for life and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for two years.
A6	148 of IPC 341 of IPC 302 r/w 149 of I.P.C.	Rigorous Imprisonment for two years Rigorous Imprisonment for one month Imprisonment for life and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for two years.
A7	148 of IPC 341 of IPC	Rigorous Imprisonment for two years Rigorous Imprisonment for one month

	302 of I.P.C.	Imprisonment for life and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for two years.
A8	148 of IPC 341 of IPC 302 r/w 149 of I.P.C.	Rigorous Imprisonment for two years Rigorous Imprisonment for one month Imprisonment for life and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for two years.
A9	148 of IPC 341 of IPC 302 of I.P.C.	Rigorous Imprisonment for two years Rigorous Imprisonment for one month Imprisonment for life and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for two years.
A10	148 of IPC 341 of IPC 302 r/w 149 of I.P.C.	Rigorous Imprisonment for two years Rigorous Imprisonment for one month Imprisonment for life and to pay a fine of Rs. 1000 in default to undergo rigorous imprisonment for two years.
A11	148 of IPC 341 of IPC	Rigorous Imprisonment for two years Rigorous Imprisonment for one month

302 Imprisonment for life and to pay a
r/w fine of Rs. 1000 in default to
149 undergo rigorous imprisonment for
of two years.
I.P.C.

The trial Court acquitted these appellants from the rest of the charges. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

2.1. The deceased in this case was one Mr. V.T. Jothi Rajendhiran. The first accused Mr. Super @ Subrayan and the deceased were arch rivals. The post of Village Panchayat President for Vadakkumelur village was reserved for Scheduled Caste. In the election held few years before the occurrence, two candidates belonging to the Scheduled Caste contested in the election. The deceased V.T. Jothi Rajendhiran supported one candidate and the opposite candidate was supported by the first accused. In the said election, the candidate supported by the deceased won. This had developed into a motive.

2.2. On 05.01.2007, in connection with a quarrel, on account of grazing of goats in the sugarcane field, there was a complaint and a counter complaint between the first accused and the deceased. This has further aggravated the enmity between them.

2.3. On 06.01.2007, the birthday of the grandchild of the brother of the deceased was celebrated. As P.Ws.1 to 3 are close to the deceased, he invited them also for the said family function. They all went to the house of the brother of the deceased in a Tata Indica car. The car was driven by P.W.1, in which, the deceased, P.W.2 (brother's son of the deceased) and others travelled. They went to Vadakkumelur village and participated in the function. After the function was over, they started their journey back to their native place. The car was again driven by P.W.1. In the car the deceased, the mother of P.W.2 Mrs. Alamelu and the wife of the deceased Mrs. Danalakshmi also travelled. P.W.2 and his uncle one Mr. Selvabalan were returning in a Tata Sumo car bearing Registration No. TN.27 U 0499. The said car was following Tata Indica car in which the deceased was travelling.

2.4. When the car reached Neyveli arch, the deceased stopped the car in a petrol bunk known as "Meenachi petrol bunk and filled diesel. Then both the cars started their journey. Both the cars straightaway proceeded to the house of the deceased, where the wife of the deceased Mrs. Dhanalakshmi got down. Then, both the cars went to the house of P.W.2 where the mother of P.W.2 Mrs. Alamelu got down and then both the cars were proceeding further. When the car was negotiating towards Indira Gandhi statue, one Maruthi Omni van bearing Registration No. TN 31 J 4542,

came from behind, overtook the car in which the deceased was travelling and came to a halt in front of the same by blocking the said car. P.W.2 stopped the Tata Sumo car and the headlight was flashing. The car in which the deceased was travelling was also stopped. Suddenly, it is alleged that all these eleven accused got down from the Maruthi Omni van. They were all armed with weapons like Veech Aruvol, knife, kodali (axe), iron rod and wooden logs. They opened the door of the Tata Indica Car, pulled the deceased from the car down and then the accused started mounting attack on the deceased. The first accused cut the deceased on his hand with Veech Aruvol; the second accused cut him with the Veech Aruvol on his right forearm; the third accused snatched the Veech Aruvol from the second accused and cut the deceased on his left hand indiscriminately; the fourth accused attacked the deceased with a "kodali" (axe) on his head, chest and face indiscriminately; the seventh accused stabbed the deceased with axe on his right wrist and the ninth accused attacked the deceased with iron rod on his right thigh and right shoulder.

2.5. P.W.1 attempted to save the deceased. The 5th accused, shouted at him and attacked him with a knife on his face and right chest and right hand. The fourth accused attacked P.W.1 with knife. The accused 6 and 8 shouted thereby inducing the other accused to kill P.W.1 also. The eight accused attacked P.W.1 with wooden log. The sixth accused attacked him with iron rod. Then, all the accused attacked the car belonging to the deceased and caused extensive damage to the tune of Rs. 10,000/-. The occurrence was witnessed by P.Ws.2 and 3 also. Then, all the accused fled away from the scene of occurrence in the Maruthi Omni van.

2.6. P.Ws.1 to 3 cried for help. The general public gathered there and they took the deceased and P.W.1 in the Tata Sumo car to Neyveli Township NLC hospital. On examining the deceased, the doctor declared that the deceased was already dead. P.W.1 was treated and considering the seriousness of the injuries, he was referred to the Pondicherry Institute of Medical Sciences hospital at Puducherry.

2.7. When P.W.1 was undergoing treatment at the Neyveli NLC hospital, on receiving intimation from the hospital, P.W.37 the then Sub-Inspector of Police of Neyveli Township Police Station rushed to the hospital and recorded the statement of P.W.1 and on returning to the police station at 11.30 p.m. on 06.01.2007 registered a case in Crime No.8 of 2007 under Sections 147, 148, 341, 294, 307 and 302 I.P.C. against the accused 1 to 6 and 8. Ex.P50 is the F.I.R. He forwarded both the documents to the Court and the same was received by the learned Magistrate at 02.50 a.m. on 07.01.2007.

2.8. P.W.40, the then Inspector of Police took up the case for investigation. He went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.17 and another witness. Then, he recovered three iron rods, a wooden log, axe and the car in which the deceased travelled from the place of occurrence. He also recovered the bloodstained earth and sample earth from the place of occurrence under a mahazar vide M.Os.20 to 21. Then, between 06.00 a.m.

and 08.00 a.m. on 07.01.2007, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.9. P.W.33 Dr.Malargodi, conducted autopsy on the body of the deceased on 07.01.2007 at 08.00 a.m. She found the following injuries:

"External Injuries: (1) An incised wound of 8x3x3 cm situated in the forehead vertically # of frontal bone present, brain matter exposed.

(2) An incised wound 11x3x3 cm. Right side head with of# frontal & parietal bone.

(3) An irregular lacerated circular wound of 9x11 cm bone depth present over the top of the head, skin and soft tissue absent over the injury, bone exposed # of parietal bone on the left side.

(4) An incised wound 4x2x3 cm in the right shoulder.

(5) An incised wound 8x2x1 cm in left upper arm.

(6) A lacerated injury 3x1x1 cm in left thumb with # fracture and hanging.

(7) An incised wound of 3x1x1 cm in left forearm in the anterior aspect.

(8) An incised wound 3x1x1 cm in left forearm in the posterior aspect of elbow.

(9) An irregular lacerated wound over the chin 5x5 cm bone exposed lower jaw exposed (incisors) teeth broken, # mandible and right maxilla.

(10) Lacerated injury irregular in shape 8x4 cm x  of FA of middle of forearm right side # of both bone present and hanging.

(11) An incised wound 3x1x1 cm in the right wrist.

(12) Lacerated injury 8x3x1 cms on the right thigh.

(13) Lacerated injury in left knee 2x1x1 cm.

(14) Incised wound of 4x1 trachea depth in front of neck hyoid bone # present.

All injuries are antemortem in nature. Clotted blood present. Ribs no#. Heart all chamber empty. Lungs pale, kidney pale, undigested food particles present in the stomach 500 gm present. Intestine distended, bladder empty, skull bone # of frontal, parietal bones present, membranes torn, brain matter exposed."

Ex.P46 is the postmortem certificate. She gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased.

2.10. During the course of investigation on 08.01.2007, during the routine vehicle checkup, P.W.40 found suspicious movement of the accused 10 and 11. He arrested them in the presence of witnesses. He recovered the motorcycle bearing Registration No.TN 31 E 6952 from them under a mahazar. The tenth accused in his

confession disclosed the place where he had hidden the Maruthi Omni van bearing registration No.TN 31 J 4542. In pursuance of the same, he took the police and the witnesses to a cashew grove and produced the said vehicle. The same was recovered under a mahazar. Then, he produced the wooden logs and stones. He recovered the same under a mahazar. Then, the tenth accused produced the Veech Aruvol and an iron pipe.

2.11. The eleventh accused, in his disclosure statement, disclosed the place where he had hidden the motorcycles. In pursuance of the same, he produced a Hero Honda motorcycle (black colour), a TVS Suzuki motorcycle (red colour) and another TVS Suzuki motorcycle (blue colour). He recovered all the three vehicles viz., M.Os.22 to 24 under a mahazar.

2.12. During the course of investigation, the forensic science expert examined the Maruthi Omni van and found blood stains in the same. He recovered the same for the purpose of examination. Then, P.W.40 collected the broken pieces of the glass from the said van vide M.Os.26 to 31. He forwarded the same also for the purpose of comparison by the experts.

2.13. On 12.01.2007, he arrested the first accused in the presence of P.W.21 and another witness. On such arrest, he disclosed the place where he had hidden the Veech Aruvol. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the same. It was recovered under a mahazar.

2.14. Then, he made a request to the learned Judicial Magistrate for holding Test Identification Parade. Accordingly, Test Identification Parade was conducted by the learned Magistrate in which P.Ws.1 to 3 participated.

2.15. The accused Nos.3 to 7 had surrendered before the Court. On 18.01.2007, P.W.40 took custody of these accused on the orders of the learned Magistrate. While in police custody, the 4th accused gave a voluntary confession, in which, he disclosed the place where he had hidden the weapons. In pursuance of the said disclosure statement made, the fourth accused took the police and the witnesses to the place of hideout and produced a knife measuring 43 cms of length (M.O.6). The fifth accused, in his confession, disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced a knife measuring 44 cms of length (M.O.7). The seventh accused in his confession disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the knife measuring 37 cms(M.O.5). P.W.40 recovered the same under independent mahazars and then forwarded the accused for judicial remand.

2.16. On 18.01.2007, the sixth accused gave voluntary confession, in which, he disclosed the place where he had hidden the iron rod. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced an iron rod measuring 57 cms (M.O.14). Then he produced the motorcycle bearing registration

No.TN 31 E 6952 (M.O.32), P.W.40 recovered the same under a mahazar.

2.17. The accused Nos.8, 9 and 2 had also surrendered before the Court. On 24.01.2007, P.W.40 took police custody of these accused. While in custody, in the presence of one Ramachandran and Velayutham, the 9th accused gave a voluntary confession, in which, he disclosed the place where he had hidden the iron rod. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the iron rod measuring 100 cms (M.O.15). The 8th accused gave voluntary confession, but no discovery to any fact was made out of the same. The second accused gave voluntary confession, in which he disclosed the place where he had hidden the iron rod and in pursuance of the same, he produced the iron rod (M.O.15). He forwarded all the material objects to the Court with a request to forward the same to chemical examination. The Analyst report revealed that there was bloodstains on the material objects including the swabs taken from the car. On completing the investigation, he laid the charge-sheet against the accused.

2.18. Based on the above materials, the Trial Court framed appropriate charges as detailed in the first paragraph of the judgment. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 40 witnesses were examined, 72 documents and 33 material objects were marked.

2.19. Out of the said witnesses, P.Ws.1 to 3 have been examined as eyewitness. P.Ws.1 and 2 have vividly spoken about the entire occurrence. They also spoke about the motive and the enmity between the first accused and the deceased. P.W.1 has further spoken about the complaint made by him when he was undergoing treatment at NLC hospital at Neyveli. P.W.3 has turned hostile and he has not stated anything in favour of the prosecution. P.W.4 the brother of the deceased has stated that on hearing the alarm raised, he rushed to the place of occurrence and took P.W.1 and the deceased to the hospital. P.W.5 has stated that she went for the family function at Vadakkumelur along with the deceased in the car. She has further stated that after the function they returned and she got down from the car at her house and thereafter, the deceased went in the car. After sometime, she came know about the occurrence and she went to the place of occurrence. P.W.6, the wife of P.W.4 has also spoken about her travelling in the car after the family function and she has further stated that she got down at her house. P.W.7 the neighbour of the deceased has stated that on 06.01.2007, when he was at his house, watching T.V. he heard a commotion from the place of occurrence and when he rushed to the place of occurrence, he found Tata Indica car of the deceased, but has not stated anything incriminating against the accused. He has not even stated that he saw the car in which the accused had come. P.W.8 also has stated the same facts. P.W.9, who was examined to spoke about the conspiracy which was allegedly hatched by all the eleven accused on 06.01.2007, has spoken about the same, but he was disbelieved by the trial Court. P.Ws.10 and 11 have turned hostile and they have not supported the case of the prosecution in any manner.

2.20. P.W.12 has spoken about the fact that in the petrol bunk in which he was working, just before the occurrence, the deceased came in a car and filled diesel. P.Ws.13 and 14 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.15 is an employee of the electricity division of NLC, Neyveli and he has stated that at the on the day of occurrence, the street light was burning, at the place of occurrence and there was no electricity cut. P.W.16 has spoken about the photographs taken by him at the place of occurrence. P.W.17 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.Ws.18 to 20 have turned hostile and they have not supported the case of the prosecution in any manner.

2.21. P.W.21 has spoken about the arrest of the first accused and the consequential recovery of M.Os.22 to 24 on his alleged confession. P.W.22 has spoken about the recovery of the Maruthi Omni van. P.Ws.23 to 26 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.27 Motor Vehicle Inspector has stated that he examined the car belonging to the deceased and gave opinion regarding the extent of damage caused to the car. P.W.28 Grade-I Assistant in the Forensic Science Department, Villupuram has stated that he examined the car allegedly used by the accused and found bloodstains on the same. P.Ws.29 and 30 have turned hostile and they have not supported the case of the prosecution in any manner.

2.22. P.W.31 Dr.Anjugam has stated that at 10.00 p.m. on the day of occurrence, she admitted P.W.1 in the hospital and she has further stated that she declared the deceased dead. P.W.32 Dr.Malathi has spoken about the treatment given to P.W.1 at the hospital. P.W.33 Dr. Malarkodi has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.34 is the Scientific Assistant in the Forensic Science Department, Villupuram and she has stated that she examined the material objects and found bloodstains on the same. P.W.35 is the constable who is stated to have taken the dead body and handed over the same to the Doctor for postmortem as directed by the Investigating Officer. P.W.36 the Head Clerk of DM-cum-JM Court, Neyveli has stated that he sent the material objects for chemical examination on the orders of the learned Magistrate. P.W.37 the then Sub Inspector of Police has spoken about the registration of the case on 06.01.2007 at 11.30 p.m. based on the complaint of P.W.1. P.W.38 the learned Judicial Magistrate has spoken about the Test Identification Parade conducted for accused Nos.10 and 11, in which, P.W.1 identified A10. Though P.Ws.2 and 3 also participated in the Test Identification Parade, they did not identify the accused. P.W.39 has spoken about the treatment given to P.W.1 at Pondicherry Institute of Medical Science hospital, Puducherry. P.W.40 has spoken about the entire investigation done and the final report filed by him.

3. 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, one Mr.Elangovan,

Grade-I Security at N.L.C., was examined. He has stated that on 06.01.2007, at about 09.40 p.m., he was on duty at the N.L.C. hospital. According to him, though P.W.1 and the deceased were brought, the deceased was found dead. According to him, P.W.1 told that he was attacked by unknown persons. He made entries in the General Diary of N.L.C. which is Ex.D1.

4. Having considered all the above, the trial Court convicted the accused 1 to 4 and 6 to 11 as detailed in the first paragraph of this judgment and that is how, they are before this Court with these appeals.

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

6. The learned counsel appearing for the appellants would submit that in this case, absolutely there is no proof as to the presence of these accused at the place of occurrence. The learned counsel would further submit that the presence of P.Ws.1 to 3 at the place of occurrence is highly doubtful. They would further submit that the medical evidence also does not corroborate the eye witnesses account. The learned counsel would thus submit that the accused should be acquitted.

7. The learned Additional Public Prosecutor would however oppose these appeals stoutly. According to him, the presence of P.Ws.1 and 2 at the place of occurrence was quite natural and there are no reasons to doubt the same. He would further submit that the evidence of P.Ws.1 and 2 are so cogent and convincing. He would point out that though there are some discrepancies in their evidences, as against the charges framed against the accused, on that score, their evidences cannot be rejected in to. He would dispute the contention of the learned counsel for the appellants that there are contradictions between the eyewitness account and the medical evidence. He would further submit that the recovery of the material objects on the disclosure statements made by the accused would also further strengthen the case of the prosecution. Thus, according to the learned Additional Public Prosecutor, the Trial Court was right in convicting the accused and therefore no interference is called for at the hands of this Court.

8. We have considered the above submissions.

9. Admittedly, the prosecution has examined P.Ws.1 to 3 as eyewitnesses. But, for his own reasons, P.W.3 has not supported the case of the prosecution and therefore, he has been treated as hostile. Thus, the prosecution is left with the eyewitness account of P.Ws.1 and 2 alone.

10. The foremost contention of the learned counsel for the appellants is that their presence at the scene of occurrence is highly doubtful. But we find no force at all in their argument. There is no denial of the fact that there was a family function at Vadamelur village, in which P.Ws.1 to 6 participated. P.Ws.5 and 6 have stated that

they returned along with the deceased in two cars and they got down at their houses respectively. Thereafter, the deceased went in his car along with P.Ws.1 and 2. P.W.3 went in another car. P.W.1 sustained injury in the very same occurrence. He was taken to the hospital by P.W.2. The car in which they travelled was found at the place of occurrence in a damaged condition. From these evidences, we find that there is no substance in the argument of the learned counsel for the appellants doubting the very presence of P.Ws.1 and 2 at the place of occurrence. We hold that P.Ws.1 and 2 were very much present at the place of occurrence and in the very same occurrence P.W.1 sustained injuries.

11. Next, we have to examine whether solely based on the evidences of P.Ws.1 and 2, we could confirm the conviction imposed by the Trial Court. In the complaint, P.W.1 has mentioned about the presence and participation of the accused 1 to 6 and 8 alone. He has not mentioned even the presence of the rest of the accused. This being the earliest statement of P.W.1, which has been duly used to contradict P.W.1, needs to be given weight age. There is no explanation offered by P.W.1 as to why he failed to mention the presence and participation of those accused whose names have been omitted in the F.I.R. For a moment, we do not intend to say that the F.I.R. is an encyclopedia which should contain all the details. But when there are multiple number of accused and when very strong motive is attributed to the witnesses, the omission to mention certain vital particulars in the F.I.R. more particularly the presence and participation of some of the accused assumes importance.

12. With the above background, let us analyse the evidences of P.Ws.1 and 2. So far as the accused 10 (Ramkumar) and 11 (Prasad) are concerned, P.Ws.1 and 2 have not stated anything against them in their evidence. They have not even stated about the presence and participation of P.Ws.10 and 11. During the Test Identification Parade conducted, P.W.1 identified A10 as one of the assailants. But, he has not stated anything against him in Court nor did he identify him during trial. The identification made by him during the Test Identification Parade cannot be treated as substantive evidence. At any rate, since the presence and participation of the accused 10 and 11 has not been stated by P.Ws.1 and 2, they are entitled for acquittal. Though it is stated that some material objects were recovered based on the disclosure statements made by them, based on that alone, they cannot be convicted. Therefore, we hold that the accused 10 and 11 are entitled for acquittal.

13. So far as the accused No.9 (Packiaraj) is concerned, the charge framed against him states that he participated in the occurrence and attacked the deceased with iron rod. What was recovered from him allegedly on the disclosure statement made by him was an iron rod. But, P.Ws.1 and 2 have stated that he attacked the deceased with Veech Aruvol. P.W.1 was contradicted by Ex.P1, since in Ex.P1 he has stated that the 9th accused attacked the deceased with an iron rod. Absolutely, there is no explanation in respect of this vital contradiction. This creates doubt in the case of the prosecution in respect of the presence and participation of the 9th accused. For

this reason, we hold that it is not safe to sustain the conviction of the 9th accused.

14. So far as the accused No.8 (Sabapathy) is concerned, the charge is that he attacked P.W.1 with wooden log and caused injury. It is the positive case of the prosecution that he did not cause any injury at all on the deceased. But, P.Ws.1 and 2 have stated in their evidence that he attacked P.W.1 with the wooden log on the right forearm. But, P.W.2 has stated that the 8th accused attacked the deceased also. He has further stated that the 8th accused caught hold of P.W.1 and thereafter he attacked the deceased with "kattai (wooden log) and "kambi" (iron rod). Thus, in respect of the presence and participation of the 8th accused also there is no consistent evidence. In such view of the matter, we are of the view that it is difficult to sustain the conviction of the 8th accused also.

15. Now, turning to the case against the 7th accused (Kamal @ Kamalakkannan), his name has not been mentioned in the F.I.R. as one of the assailants. P.W.2 has not stated anything in respect of the presence and participation of this accused. P.W.1 has stated that he attacked the deceased with Veech Aruvol. But so far as A7 is concerned, the charge is that he attacked the deceased with knife and there is no explanation for this change in the version. The evidence of P.W.1 is not in tune with the charge. As we have already stated, P.W.2 has not stated anything against him. Thus, solely based on the evidence of P.W.1, in the light of the fact that his name was not mentioned in the F.I.R. and further that the evidence is not in tune with the charge, we find it difficult to sustain the conviction of the 7th accused also.

16. Now, turning to the case against the 6th accused (Ayyappan @ Devanathan), according to the charge, he attacked the deceased with iron rod. But, P.W.1 has stated that he attacked the deceased with Veech Aruvol on the head. P.W.2 has made only a general statement that he also attacked the deceased. He has further stated that A6 held P.W.1 to facilitate the others to attack him. Absolutely this is not the case of the prosecution. Thus, there is no consistency between the evidence of P.Ws.1 and 2 and their evidence do not fall in line with the charge framed against the 6th accused. Therefore, the 6th accused is also entitled for acquittal as we find it difficult to sustain his conviction.

17. Now turning to the case against the 4th accused (Manivarma), according to the charge, he attacked the deceased with iron axe on his head and chest repeatedly. But, P.W.1 has stated that he attacked the deceased only with an Veech Aruvol. P.W.2 has not specifically stated that this accused attacked the deceased. What was recovered from him on the alleged disclosure statement is only a "kodali"(Axe) (M.O.2). Thus, so far as the accused No.4 is concerned, there is no evidence in tune with the charge. There is no consistency between the evidence of P.Ws.1 and 2. Therefore, we find it difficult to sustain the conviction of the fourth accused also.

18. Now turning to the case against A1 to A3, the charge is that they attacked the deceased with Veech Aruvol on the left hand of the deceased indiscriminately.

P.Ws.1 and 2 have stated that A1 to A3 attacked the deceased along with others with Veech Aruvol. Correspondingly there are also injuries. Their names find a place in the F.I.R. as the assailants. So far as these accused 1 to 3 are concerned, the charge is that they attacked the deceased with Veech Aruvol. P.Ws.1 and 2 have categorically stated about the same. The medical evidence duly corroborate their evidences. The recovery of the weapons on the disclosure statements made by them would further strengthen the case of the prosecution. Thus, so far as the accused 1 to 3 are concerned, there is cogent and convincing evidence let in by the prosecution to prove the presence and the participation of these accused in the occurrence.

19. The learned senior counsel Mr.S.Ashok Kumar, appearing for the accused, would submit that the trial Court itself has disbelieved the case of the prosecution in respect of the charge of conspiracy. He has further stated that since these two witnesses are highly interested and motivated, their evidences should be rejected because they have proved themselves to be unbelievable as against the rest of the accused. We are conscious of the legal position that when the witnesses are partisan, interested and motivated, their evidences require a very close scrutiny. But simply because they happened to be interested, motivated and partisan, their evidences cannot be outright rejected.

20. In this case, on such close scrutiny, we have found that these two witnesses can be believed as against A1 (Super @ Subrayan), A2 (Gnanamoorthy) and A3 (Dhanakandhan) alone. The principle "falsus in uno falsus in omnibus" has not been recognised by Indian Courts. In the Indian scenario, the law is, if the Court is able to separate the grain from the chaff, there is no legal impediment for the Court to act upon the grain. In the instant case, by doing the said exercise, we are able to separate the grain from the evidences of P.Ws.1 and 2 and the other evidences. We have found from these evidences, the presence and participation of the accused 1 to 3. The prosecution has, thus proved beyond any doubt that A1 to A3 wrongfully restrained the deceased and caused his death. Therefore, the accused 1 to 3 are liable for punishment under Sections 341 and 302 I.P.C.

21. Now turning to the quantum of punishment, for these charges, the trial Court has imposed only the minimum punishment which does not require any interference.

22. In the result,

(i) The CrI.A.No.190 of 2014 is partly allowed,

(a) the conviction and sentence imposed on the 8th accused (Sabapathy) by the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam in S.C.No.217 of 2007 dated 18.03.2014 is set aside and he is acquitted of all charges. The fine amount, if any paid, shall be refunded to him. The bail bond, if any executed, by the appellant/accused, shall stand discharged.

(b) So far as the accused 1 (Super @ Subrayan) and 2 (Gnanamoorthy) are concerned, the conviction and sentence imposed by the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam in S.C.No.217 of 2007 dated 18.03.2014 for offences under Sections 341 and 302 I.P.C. are confirmed. He is acquitted from the charge under Section 148 I.P.C.

(ii) The Crl.A.No.163 of 2014 is partly allowed,

(a) the conviction and sentence imposed on the accused 4 (Manivarma) and 7 (Kamal @ Kamalakkannan) by the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam in S.C.No.217 of 2007 dated 18.03.2014 are set aside and they are acquitted of all charges. Since the appellants/A4 & A7 are in jail, they are directed to be set at liberty forthwith, unless their presence is required in connection with any other case. The fine amount, if any paid, shall be refunded to the appellants/A4 & A7.

(b) So far as A3 (Dhanakandhan) is concerned, the conviction and sentence imposed by the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam in S.C.No.217 of 2007 dated 18.03.2014 for offences under Sections 341 and 302 I.P.C. are confirmed. They are acquitted from the charge under Section 148 I.P.C.

(iii) The Crl.A.Nos.177, 193, 207 and 208 of 2014 are allowed and the conviction and sentence imposed on the accused 6 (Ayyappan @ Devanathan), 9 (Packiaraj), 10 (Ramkumar) and 11 (Prasad) respectively, by the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam in S.C.No.217 of 2007 dated 18.03.2014 are set aside and they are acquitted of all charges. The fine amount, if any paid, shall be refunded to them. The bail bond, if any executed, by the appellants/accused, shall stand discharged.