

(2011) 07 MAD CK 0274

Madras High Court

Case No: Criminal A. No. 237 of 2011

Ekambaram

APPELLANT

Vs

State, Inspector of Police,
Keelapazhur Police Station,
Ariyalur District, Cr. No. 131 of
1994

RESPONDENT

Date of Decision: July 1, 2011

Acts Referred:

- Arms Act, 1959 - Section 25, 27
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 34

Citation: (2012) MLJ(Cri) 236

Hon'ble Judges: V. Periya Karuppiyah, J; R. Banumathi, J

Bench: Division Bench

Advocate: A. Padmanaban, for the Appellant; V.M.R. Rajendran, Additional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

V. Periya Karuppiyah, J.

This appeal is directed against the judgment of conviction and sentence against the fourth accused made in S.C. No. 10 of 1999 dated 30.8.1999 passed by the learned Additional District and Sessions Judge cum Chief Judicial Magistrate, Perambalur, convicting and sentencing the appellant/fourth accused to undergo one year rigorous imprisonment with fine of 1,000/-, in default, to undergo one month rigorous imprisonment u/s 148 IPC, 5 years rigorous imprisonment with a fine of 1,000/-, in default, to undergo 6 months rigorous imprisonment u/s 449 IPC; to undergo life imprisonment with fine of 2,000/-, in default, to undergo 1 year rigorous imprisonment u/s 302 read with 34 IPC; to undergo life imprisonment with fine of ** 2,000/-, in default, to undergo 1 year rigorous imprisonment u/s 302 read with 149 IPC; to undergo life imprisonment with fine of 2,000/-, in default, to

undergo one year rigorous imprisonment u/s 302 read with 149 IPC; to undergo life imprisonment with fine of 2,000/-, in default, to undergo one year rigorous imprisonment u/s 302 read with 149 IPC; and the direction to serve the sentence passed u/s 148 IPC for 1 year and the sentence u/s 449 IPC for 5 years consecutively and thereafter, to serve the sentence of four life imprisonments concurrently. The occurrence was said to have taken place as a massacre, in which, four persons of a single family were done to death in the day light at their house and the accused persons were said to have involved in committing the said crimes.

2. As per the prosecution, originally A1 to A14 were charged for having committed the murder of the said four persons. Five of the accused, out of the said 14 accused were dead before the commencement of trial and therefore, A1 to A9 alone were ranked and tried for the murder of the said four persons. Out of them, A9 was acquitted and other accused were convicted for the offences under Sections 147, 148, 449, 302, 302 read with 149 IPC as aforesaid. A9 was acquitted of the charges under Sections 324 read with 114, 302 read with 149 and Sections 25(1b) and 27 of Fire Arms Act framed against him.

3. The accused persons namely A1 preferred an appeal against the conviction and sentence passed against him in CrI. A. No. 886 of 1999, the accused 2, 5 and 8 preferred an appeal against conviction and sentence passed against them in CrI. A. No. 889 of 1999 and the accused 3, 6 and 7 also preferred an appeal against the conviction and sentence passed against them in CrI. A. No. 773 of 2010 and no appeal was preferred by the State against the acquittal of A9. This Court had taken up all the three appeals for hearing and after a full-fledged hearing, the Bench of this Court had passed the judgment on 20.2.2003, confirming the conviction and sentence passed by the learned Sessions Judge made in S.C. No. 10 of 1999 dated 30.8.1999 and dismissed all the appeals.

4. The present appeal has been filed independently by the fourth accused challenging the judgment of conviction and sentence passed against him.

5. The factual matrix culled out from the prosecution case are as follows:

(i) The fourth deceased Papathi, is the wife of the third deceased Chandrahasan. They had three sons, out of them, two sons viz., Saivarasu and Rathinam are the first and second deceased respectively. The first deceased Saivarasu is the husband of P.W.1 viz., Dhanam @ Dhanalakshmi. She is also the sister of P.W.2 Indira Gandhi. P.W.2 married one Dhanapal, who is the third son of Papathi and Chandrahasan. The second deceased Rathinam is the husband of P.W.3, Chellam. All were residing in the same house as a joint family.

(ii) Perumal @ Belt Perumal was originally arrayed as an accused but, he died later. A2, A3 and A4 are brothers and they are the sons of the said Perumal @ Belt Perumal. The accused are the residents of the same village where the deceased also lived. A6 Karnan and A7 Dharmaraj are brothers. A1, A5 and A8 are close relatives to

them.

(iii) The brother of the second deceased Karumbayiram was done to death by one Chellaiyan, the brother of Belt Perumal, ten years prior to the date of occurrence. Due to which, a case was registered and Chellaiyan was convicted and sentenced to undergo life imprisonment for the commission of murder. Therefore, there was a long standing enmity between the families of Belt Perumal and the deceased.

(iv) There was also an enmity between the family of the deceased and the family of the accused in exercising the right of lease in the Coconut Thope and right of Fishing in the tank. The family of the accused developed jealous attitude towards the family of the deceased since the family of the deceased successfully obtained the lease right. Even though the accused tried to get the right of fishing in the tank for the current year, they could not get the same. The deceased Chandrahasan had taken the lease of tank in the village for fishing for the current year.

(v) On 9.4.1994 at about 4.30 p.m., the second deceased Rathinam, the third deceased Chandrahasan, father and the fourth deceased Papathi, mother were inside the house. The first deceased Saivatasu was standing outside the house. The wife of the first deceased, P.W.1-Dhanalakshmi, the wife of Dhanapal, P.W.2-Indira Gandhi, the wife of the second deceased, P.W.3-Chellam, and Another son of the third deceased were also inside the kitchen. At that point of time, all the accused came inside the house with dangerous weapons, such as aruvals and pointed poles (Kuthukole). A1 Pauvanraj and A4 Ekambaram, on seeing the first deceased Saivarasu standing outside the house, attacked him with the weapons in their hands and caused his death. Then they went inside the house and attacked the other deceased. Rathinam and Chandrahasan, the second and the third deceased respectively died on the spot. Papathi, the fourth deceased after sustaining injuries, fell down on the ground gasping for breath. When P.W.1 Dhanam @ Dhanalakshmi, the wife of the first deceased, requested the accused not to cut the deceased, the son of the accused attacked P. W.1 also and caused injury on her head. In the mean time, another son of the third deceased viz., Dhanapal, who concealed himself in a room, escaped from the house by removing the tiles of the roof and ran away from the scene of occurrence. He went the police station and gave Exhibit P-27 complaint at about 6.00 p.m. on 9.4.1994 to P.W.14 the Head Constable. On the basis of the complaint, a case was registered in Crime No. 131 of 1994 for the offences under Sections 147, 148, 149, 448, 324 and 302 IPC. Thereafter, a message was sent to P. W.15, Inspector of Police.

(vi) On receipt of a copy of Exhibit P-26 FIR, P.W.15 went to the scene of occurrence and found the dead bodies of the deceased 1 to 3. He prepared the Observation mahazer-Exhibit P-13 and drew the rough sketch-Exhibit P-28. Since the fourth deceased Papathi and P.W.1 Dhanalakshmi sustained injuries, both were sent to the Government Hospital, Thanjavur for treatment.

(vii) The fourth deceased Papathi was admitted and treated by P.W.10 doctor, attached to the Thanjavur Hospital as an in-patient at about 11.00 p.m. and he issued Exhibit P-10 Accident Register. As the health condition of Papathi was very serious, a requisition-Exhibit P-11 was sent to the learned Judicial Magistrate No. I, Thanjavur by P.W. 10 Doctor to record the dying declaration. On the same day at about 11.20 p.m., P.W.10 Doctor admitted P.W.1 Dhanam @ Dhanalakhmi as an in-patient and gave treatment to her and Exhibit P-12-Accident Register was issued in respect of P.W.1 Dhanam @ Dhanalakshmi.

(viii) P.W.15 Inspector of Police conducted inquest on the three dead bodies at the place of occurrence and prepared Exhibits P-29, P-30 and P-31 inquest reports of the respective dead bodies in the presence of witnesses. Then, he made arrangements for sending the dead bodies for postmortem.

(ix) On 10.4.1994 at about 10.30 a.m., P.W.8 Dr. Ilangani, on receipt of Exhibit P-6 requisition, conducted postmortem on the body of the first deceased Saivarasu and found 8 injuries. Exhibit P-7 is the postmortem certificate. He opined that the first deceased would appear to have died of injuries sustained by him.

(x) P.W.6 Dr. Ganesan, on the receipt of Exhibit P-2 requisition, conducted postmortem on the dead body of the second deceased Rathinam at 12.35 p.m. and found 11 injuries. Exhibit P-3 is the postmortem certificate issued by the doctor. He opined that the deceased would appear to have died due to the injuries sustained on the vital parts.

(xi) P.W.9 Dr. Balasanjeevi, another Doctor, on receipt of Exhibit P-8 requisition, conducted postmortem on the body of the third deceased Chandrahasan and found as many as 12 injuries. Exhibit P-9 is the postmortem certificate issued in that regard. The doctor opined that the deceased would appear to have died due to shock, haemorrhage, due to the injuries and loss of blood.

(xii) On 10.4.1994 at about 3.00 p.m., the Judicial Magistrate No. I, Thanjavur, on receipt of the requisition from the Doctor, went to the hospital and recorded the dying declaration of the fourth deceased Papathi under Exhibit P-36 and the same was attested by P.W.16 Doctor Perumal.

(xiii) On the same day at about 6.45 p.m., the fourth deceased Papathi died. Death intimation was sent under Exhibit P-1 by P.W.5 Dr. Thirunavakarasu to P.W.15 Inspector of Police. On receipt of the intimation, P.W.15 Inspector of Police, went to the hospital, conducted inquest on the dead body of Papathi on 11.4.1994 at about 8.00 a.m. and prepared Exhibit P-32 inquest report in the presence of witnesses. Thereafter, he sent the dead body for postmortem.

(xiv) On receipt of the requisition-Exhibit P-4, P.W.7-Dr. Ravi Sankar conducted postmortem on the body of the fourth deceased-Papathi at 2.35 p.m. and found 7 injuries and issued Exhibit P-5 the postmortem certificate. He opined that the

deceased would appear to have died of stab injuries.

(xv) On 14.4.1994 at about 8.15 a.m., P.W.15, Inspector of Police arrested A5-Murugesan and A6-Karnan. On the confession of A6- Kaman, M.Os. 1 to 4 aruvals and M.Os.5 to 7, pointed poles (Kuthu, Kole) were recovered under mahazar Exhibit P-16. No recovery was made from other accused.

(xvi) On 21.4.1994 at 5.00p.m., P.W.15 Inspector of Police arrested A8-Ravi and recovered M.O.15 Cloth bag and M.O.16 country made gun. A9-Ramasamy and A2-Murugesan were arrested by P.W.15-Inspector of Police on 25.4.1994 at about 6.45 a.m. confession was obtained from him. In the mean time, all the other accused surrendered before the Court. P.W.15-Inspector of Police examined other witnesses also. He made arrangements for sending the material objects for chemical examination. After completion of investigation, he filed a charge sheet against the accused A1 to A14. Before framing charges, out of A1 to A14, five accused died. Therefore, charges were framed only as against A1 to A9.

(xvii) In order to substantiate the case of the prosecution, the prosecution examined P.W. 1 to P.W.16, exhibited Exhibits P-1 to P-36 and marked M.Os. 1 to 21.

(xviii) The accused were questioned u/s 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied the same as false and pleaded innocence.

(xiv) On a consideration of the entire materials available on record, the trial Court acquitted A9 alone and found A4 guilty along with A1 to A3, A5 to A8 and convicted and sentenced them as referred supra.

6. Heard Mr. A. Padmanaban, learned counsel appearing for the appellant/4th accused and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor appearing for the State.

7. According to the submission of the learned counsel for the appellant the ocular witnesses examined by the prosecution were purely the interested witnesses hailed from the same family said: to have been the victims of the incident and no independent ocular witness was examined to prove the prosecution case. He would further submit that the lower Court had not discussed in its judgment about the information given by the alleged injured witness P.W. 1 and the deceased Papathi to the doctors that they were attacked at their residence but they did not refer regarding persons who attacked them. He would also submit that the said lacunae are serious and the variation in the evidence of P.W.1 to P.W.4, who are stated to be the eye witnesses to the incident would become material discrepancies and therefore, no truth regarding the incident was spoken by the prosecution witnesses before the Court. He would also submit that the dying declaration said to have been given by the 4 deceased Papathi produced in Exhibit P-36 cannot be acted upon since there were so many suspicions over the same and it should not have been

relied by the trial Judge. He would also submit that there was no weapon disclosed or recovered in the confession obtained from the appellant/4th accused and therefore, appellant cannot be considered in the same footing along with A1 and other accused persons. He would further submit in his argument that the alleged incident was said to have been taken place at the time when the family members of the victim family were taking food and if it is so, the evidence of the doctor who did the postmortem disclosing the fact that the partly digested rice in the stomach of the deceased person would make the evidence of eye witnesses unreliable and there could not be any overt act of the appellant/A4 and there would be doubts in respect of the prosecution case and on that basis the accused should have been acquitted after giving benefit of doubt. He would also submit in his argument that the first informant was not examined since he was said to have been died before commencement of trial and the said lacuna was not filled with any other witness. He would also submit in his argument that the appellant who was ranked as A4 in the case, was not involved in the alleged crime and benefit of doubt should be given to the appellant and conviction and sentence passed against him may be set aside. He would also submit that in the event this Court is not convinced with the above submissions, the conviction and sentence passed by the learned trial Judge directing the appellant/A4 to serve the sentence of 1 year imposed u/s 148 IPC and the sentence of 5 years rigorous imprisonment imposed u/s 449 IPC consecutively and to serve the sentence of 4 life imprisonments concurrently may be modified as the sentences imposed against the appellant/4th accused shall run concurrently so as to give relief to the appellant. He would therefore, request the Court to allow the appeal and to acquit or modify the sentence passed against the appellant/A4.

8. Mr. V.M.R. Rajendran, the learned Additional Public Prosecutor would submit in his argument that the trial Court has elaborately discussed and came to the conclusion granting conviction over the overt act of the appellant/A4 along with other accused and for that it relied upon the ocular evidences of P.W.1 to P.W.4 as trustworthy and found the medical evidence corroborated with the prosecution witnesses and also found that the contradiction in the evidence of the prosecution witnesses were minor and natural and had passed a justifiable conviction and sentence. He would also submit that the incident happened was a retaliation one and there was a strong motive to cause the massacre of 4 persons in order to eradicate the family of the victim. He would also submit that the trial Judge had considered the gruesome murder which took place on strong motive and retaliation, had imposed the sentences in such a way to run consecutively and the appellant is not entitled to any concession to have the sentences to run concurrently. He would also submit that the four victims had been massacred in the day light with pre-meditation to quench the previous and present enmity and therefore, there may not be any interference in the conviction and sentence passed by the learned trial Judge. He would also point out that the appeal preferred by the first accused who is on similar footing with the appellant/A4 was dismissed by this

Court in CrI. A. No. 886 of 1999 and the sentence imposed against him to run consecutively by the trial Judge was also confirmed. He would further argue that the accused was carrying deadly weapon in his hand with the common object of murdering the deceased persons and therefore, no mercy could be given to the accused and the sentence imposed against him itself was lesser. Therefore, he would request the Court to dismiss the appeal.

9. We have carefully considered the merits of the case and the submissions made by the learned counsel for the appellant/A4 and the learned Additional Public Prosecutor and have gone through the records carefully.

10. The point for consideration in this appeal would be whether the conviction and sentence passed by the learned Sessions Judge against A4 are liable to be set aside or modified and the appeal is allowable.

11. According to the prosecution witnesses, for the incident of causing murder of four persons namely Saivaraj, Rathinam, Chandrahasan and Pappathi at the house of Chandrahasan at about 4.30 p.m. on 9.4.1994 by the accused A1 to A9 along with other 5 persons who died subsequent to the incident and prior to the trial, the prosecution has examined P.W.1 to P.W.16 and had produced Exhibit P-1 to P-36 and M.Os.1 to 21. The lower Court had appraised the said evidence and had come to the conclusion of acquitting A9 from all the charges and convicted A1 to A8 including A4 on the charges framed against them as stated supra. The appeals preferred by the other accused persons except A4 were already dismissed by this Court. The present appeal is preferred by A4 as appellant. The submissions made on behalf of A4 that A4 is innocent and not involved in the alleged crime, should be decided on the basis of the evidence adduced by the prosecution.

12. Firstly, the persons died in the incident, which took place on 9.4.1994 at 4.30 p.m. in the house of the deceased person, were Saivaraj, Rathinam, Chandrahasan and Papathi. Among them, Chandrahasan is the father and Papathi is the mother and the other deceased namely Saivaraj and Rathinam were brothers. Yet another brother one Dhanapal had escaped from the scene of occurrence by removing the tiles of the roof and gave a complaint to the police and on that basis, the F.I.R. has been registered. However, the said Dhanapal died subsequent to the incident and prior to the commencement of trial and therefore, he was not examined. In the said incident, 4 persons died and the police took action on the basis of the registration of the complaint and made investigation. In the course of the investigation, the dead bodies of Saivaraj, Rathinam, Chandrahasan and Papathi were handed over to the Government Hospital, Thanjavur and the autopsy was conducted. The doctor who conducted autopsy on the dead body of the deceased Rathinam was examined as P.W.6, in support of which, the postmortem certificate Exhibit P-3 was marked. The doctor who conducted autopsy on the dead body of the deceased Papathi was examined as P.W.7, in support of which, the postmortem certificate Exhibit P-5 was marked. The doctor who conducted autopsy on the dead body of the deceased

Saivaraj was examined as P.W.8, in support of which, the postmortem certificate Exhibit P-7 was marked. The doctor who conducted autopsy on the dead body of the deceased Chandrahasan was examined as P.W.9, in support of which, the postmortem certificate Exhibit P-9 was marked.

13. On a careful perusal of the evidence of the doctors, who conducted autopsy, and the postmortem certificates, it is seen that the death of the victims viz., Saivaraj, Rathinam, Chandrahasan and Papathi were caused due to the injuries caused by lethal weapon like aruvals and pointed poles (Kuthukole). Therefore, there is no difficulty in arriving to a conclusion that the deceased persons viz., Saivaraj, Rathinam, Chandrahasan and Papathi were murdered on the occurrence which took place on 9.4.1994 at 4.30 p.m. in their house.

14. The indisputable fact is that four murders were committed in the house of the deceased at about 4.30 p.m. on 9.4.1994 and three persons died on the spot. The fourth deceased who sustained severe injuries was taken to the hospital and inspite of the treatment given to her she died in the hospital, next day. In order to substantiate the case, the prosecution has examined four eye-witnesses. One Dhanapal, who hid himself inside the house, escaped from the house and gave a complaint to the Police and the said Dhanapal is the first informant in the case. Only based on the complaint given by the said Dhanapal, the Head Constable P.W.12 registered the case. During trial, Dhanapal was not alive and hence, he was not examined in this case. Exhibit P-27 complaint and Exhibit P-26 FIR were marked through P.W.12 Head Constable. According to the learned counsel for the appellant, the contents in the FIR, cannot be taken into consideration, due to the non-examination of the first informant Dhanapal. We cannot reject Exhibit P-26 FIR which has been registered by P.W.12-Head Constable, on the basis of the complaint Exhibit P-27 and the submission of the learned counsel in this regard, cannot be accepted.

15. P.W.15, Inspector of Police came to the scene of occurrence immediately on receipt of the copy of the FIR and found three dead bodies of the deceased 1 to 3. In the said incident, P.W.1 and Papathi-fourth deceased sustained serious injuries and hence, they were sent to Thanjavur Hospital for treatment. P.W.10 -Doctor who gave treatment to P.W.1 and Papathi, issued accident registers Exhibits P-10 and P-12 respectively. Since the condition of Papathi was serious, the doctor who examined her sent a requisition Exhibit P-11 to the Judicial Magistrate No. I, Thanjavur to record the dying declaration. Accordingly, Judicial Magistrate No. I, Thanjavur went to the hospital and recorded the dying declaration-Exhibit P-36 of the fourth deceased at about 3.30 p.m. on 10.4.1994. P.W. 16-Doctor, who attested the said dying declaration was examined in respect of the same, since the Judicial Magistrate No. I, Thanjavur, who recorded the dying declaration was not alive during the trial. While P.W.1 was in hospital, on 11.4.1994, she was examined by P.W.15. Thus, it has been clearly mentioned, both in the dying declaration and the statement given by

P.W.1, that the occurrence took place on 9.4.1994 at about 4.30 p.m. in the house of the deceased. Therefore, the non-examination of Dhanapal, who is the first informant, will not in any way affect the prosecution case.

16. It is pertinent to point out that in Exhibit P-26 FIR, the presence of P.W. 1 to 4 was mentioned. P.W.1 has clearly stated in her evidence that A1 to A8 came with dangerous weapons and attacked the first deceased who was standing outside the house and they entered inside the house and indiscriminately cut the other deceased. Even in the cross examination, nothing has been brought forth that she was speaking false against the accused. She has also stated in the cross-examination that her family has no motive against any of the accused.

17. The animosity of the accused party against the deceased family has been established by the prosecution by stating that the family of the deceased was successful in getting the lease right of Coconut Thope and fishing right in the tank. In the current year also, the deceased party became the successful bidders and this is the immediate motive for the occurrence, according to the prosecution. P.Ws.2 and 3 have stated that the occurrence took place when the deceased were taking food but the food plates were not recovered. From the evidence of the doctor who conducted postmortem of the deceased persons, it is seen that partially digested rice were found in their stomach. Thus, the occurrence must have taken place only some time later after taking food. However, P.W.1 did not state that the occurrence had taken place when the food was taken. Therefore, no credibility could be given to the evidence of P.W.2 and P.W.3 who has stated that the occurrence had taken while the deceased were taking food.

18. The overt acts of all the accused were spoken to by P. W.4 in detail as if she had seen the occurrence when deceased 2 to 4 were attacked inside the house. On the contrary P.W.15, Inspector of Police would admit that P.W.4 had seen the occurrence, which took place outside the house but she did not tell anything about the occurrence that took place inside the house. Therefore, from their evidence, it is clear that she saw the first occurrence when the first deceased was attacked outside the house since her house is situated just opposite to the house of the deceased. Therefore, even assuming that the portion of the evidence of P.W.4 relating to the occurrence that took place inside the house when the other deceased were attacked cannot be accepted, the same will not affect the prosecution case spoken to by the other witnesses. As far as P.W.1 is concerned, she went near the accused and tried to prevent the attack and requested the accused not to attack the deceased, as a result of which, she sustained injury. Hence, she is the natural witness. The failure on the part of the fourth deceased to mention to the Doctor that she was attacked by known persons would not be a ground to disbelieve the prosecution case. Moreover, the fourth deceased has given a detailed statement in the dying declaration to the Judicial Magistrate about the occurrence and the names of some of the accused.

19. It is also pertinent to point out that Papathi, the fourth deceased in her dying declaration- Exhibit P-36 has stated about the motive also. It is true that seven weapons have been recovered from A6 alone and the aruval was not recovered from A8. It is to be pointed out that some of the accused surrendered before the Court and few of the accused were arrested. Therefore, the non recovery of weapons from each of the accused would not help the defence case. It was submitted that no overt act was attributed against A6 and A8. But this submission is not correct since P.W.1 would categorically state that after attacking and causing the death of the first deceased outside the house, all the accused came inside the house and gave indiscriminate cuts to the second, third and fourth deceased.

20. It is pertinent to point out that in the dying declaration, the fourth deceased Papathi who had opportunity to witness the incident had spoken to the effect that the accused Selladurai (A3), Panneer (A2), Sampath, Ekambaram (A4), Perumal, Murugappan, Pounraj had entered into their house and caused murder of her two sons and husband and when she questioned, the accused persons, A2/Panneer stabbed her with knife. She had clearly spoken that the appellant/A4 was also present along with the accused who invaded the house for committing the murder of her two sons and husband. The said dying declaration was corroborated by the ocular evidences spoken by P.W.1 to P.W.4 and the medical evidence also supported the same. The 4th deceased Papathi had given such dying declaration a day after the incident and she also died on the said day. We do not find any irregularities in recording the dying declaration by the learned Magistrate and we are very much convinced with the statement given by the deceased in the dying declaration.

21. The learned Additional Public Prosecutor would submit that the trial Judge had gone in detail and had satisfied his conscience in respect of the offences committed by the appellant/A4 under Sections 148, 449 I.P.C. and also u/s 302 read with 34 IPC and u/s 302 read with 149 IPC (3 counts) for sound reasons. He would also cite the judgment of the Honourable Apex Court in Maranadu and Another v. State by Inspector of Police, Tamilnadu (2010) 3 SCC (Cri.) 338 : LNIND 2008 SC 1840 : (2009) 1 MLJ (Cr) 61 in respect of the principle of having common intention to commit the crime u/s 149 IPC. He would also submit yet another judgment of the Honourable Apex Court in Gunnana Pentayya v. State of A.P. (2010) 2 SCC (Cri.) 148 : LNIND 2008 SC 1655 for enlightening the same principle. The relevant passage would run thus:

13. A plea which was emphasized by the appellants relates to the question whether Section 149, IPC has any application for fastening the constructive liability which is the sine qua non for its operation.

12.... The emphasis is on the common object and not on common intention. Mere presence in art unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149.

The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "In prosecution of common object" as appearing in Section 149 have to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object upto certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149, IPC may be different on different members of the same assembly.

.....

15. In *State of U.P. v. Dan Singh and Others* it was observed that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. Reference was made to *Lalji v. State of U.P.* where it was observed that:

9. while overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability u/s 149.

22. On a careful reading of the aforesaid judgment, we are satisfied that the appellant/A4 had also participated along with other accused so as to commit the offence in a common intention to commit the murder of the four deceased persons and accordingly, committed the crime. Therefore, the appellant/A4 is liable to be convicted for the offence of murder of three other deceased persons in which no overt act has been spoken against the appellant. The overt act of A4 in causing the death of Saivaraj was clearly spoken to by P.W.1 and his presence was also

corroborated and spoken in the dying declaration made by the 4th deceased Papathi and in the said statement, she also stated that the appellant/A4 had caused the death of all the first three deceased persons and therefore, we are not inclined to disturb the conviction and sentence passed by the learned Sessions Judge against the appellant/A4.

23. As regards the serving of sentence is concerned, we are in total acceptance of the arguments of the learned Additional Public Prosecutor that in a case of gruesome day light massacre caused against the family of the victims, which may fall in rarest of rare cases, the sentence imposed by the learned Sessions Judge would be a minimum one and the sentence regarding conviction under Sections 148 and 449 which were ordered to be served consecutively would be just and proper. There is no special reason mentioned on the side of the appellant for modifying the said order. Therefore, we have no inclination even to modify the sentence as sought for. For the foregoing discussions, we are of the confirmed opinion that appellant/A4 came with other accused A1 to A3, A5 to A8 with a common object to murder the deceased persons, and accordingly, committed the murder of four members of the same family. The conviction and sentence imposed against the appellant by the trial Judge, cannot be said to be illegal or unjust. Therefore, we find that the appeal is devoid of merits and accordingly, the appeal is dismissed confirming the conviction and sentence imposed on the appellant by the trial Judge.