

(2012) 03 MAD CK 0113

In the Madras High Court

Case No : Criminal Appeal No. 766 of 2010

Veerappan and Others

APPELLANT

Vs

The Inspector of Police Kirumampakkam Police Station
Puducherry

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 149, 302, 34

Citation : (2012) 03 MAD CK 0113

Hon'ble Judges : K. Mohan Ram, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : V. Gopinath, for Mr. C. Mahendran For A.1 to A.15 and 17 and Mr. R. Sankarasubbu For A.16, for the Appellant; A. Ramesh, Spl. P.P (Pondy), for the Respondent

Judgement

G.M. Akbar Ali, J.—The conviction and sentence passed by the learned III Additional Sessions Judge, Puducherry in S.C.No.34 of 2009 dated 30.11.2010. against the following accused are detailed hereunder:

S.No Offence Against accused Conviction and Sentence 1 148 IPC A.1 to A.17 3 Yrs R.I and fine of Rs.1000/-each, i/d 6 months S.I 2 452 r/w 149 IPC A.1 to A.17 7 Yrs R.I and fine of Rs.1000/-each, i/d 6 months S.I 3 324 r/w 149 IPC A.3, A.8 to A.11, A.15 and A.16 2 Yrs R.I and fine of Rs.1000/-each i/d 6 months S.I 4 326 r/w 149 IPC A.1 to A.5, A.9, A.14, A.16 and A.17 7 yrs R.I and fine of Rs.1000/-each, i/d 6 months S.I 5 302 r/w 34 IPC A.1, A.2, A.10, A.11 Life and fine of Rs.1000/-each, i/d 6 months S.I

The case of the prosecution, in a nutshell, is as follows:

(a) The prosecution party and the appellants belong to Pillaiyar kuppam village of Puducherry. Both belong to two rival political groups.

(b) According to the prosecution, on 27.10.2008, at about 6.00 p.m., when P.W.1

was proceeding towards his home at Pilliyar kuppam village, A.9, A.10, A.11 and A.15, who belong to the opposite group, waylaid and beat him near Angalamman temple with iron pipe and stick. He sustained injuries on his lips. P.W.1 went to his house and informed his father Subramaniam (deceased). Both, PW.1 and the deceased went to the house of the 1st appellant to complain about the incident. Since the 1st appellant was not in his house, they returned back. On the way, they met P.W.2, 3 and 5 who were friends of P.W.1 and they enquired about the attack. They were standing in front of the house of the deceased and were discussing.

(c) P.W.4 the daughter-in-law of the deceased was in the house. At that time, the appellants A.1 to A.17 came as a mob carrying iron pipe, wooden logs, knife and sticks and thereby, formed an unlawful assembly with deadly weapons.

(d) On seeing the mob, P.W.1,2,3 and 5 ran to a safe place and hide themselves behind a bamboo screen of the house of P.W.1's aunt. Appellants 1,2,10 and 11 went to the house of the deceased and enquired him about P.W.1. Stating, if the father is beaten the son will come, they started beating the deceased on his back and chest with iron pipe and stick. P.W.4 intervened and questioned them. 1st appellant beat P.W.4 with iron pipe. The appellants 1 and 2 instigated the other appellants to attack the prosecuting party.

(d) On such instructions, the appellants attacked the witnesses, some of whom sustained fractures and grievous injuries and houses were damaged and articles destroyed.

(e) On receiving such information about the riot over phone, P.W.45, the Sub Inspector of Police, Kirumambakkam Police station, went to the scene of occurrence at 8.40 p.m with the police party and took control of the situation, forwarded the injured to the hospital for treatment and arranged bandobust in the locality.

(f) P.W.1 to 5 and other injured witnesses including the fatally injured Subramaniam were admitted in a private hospital and the said Subramaniam was declared dead.

(g) On 28.10.2008 at 1.00 a.m, P.W.1 went to the Kimambakkam police station and gave a complaint Ex.P.1 which was received by the Sub Inspector of Police, who registered a case in Crime No.280 of 2008 under sec.147,148, 452, 302, 324, 427 r/w 149 IPC against the appellants.

(h) He prepared the printed First Information Report Ex.P.102 and forwarded the same to the learned Judicial Magistrate Court, Puducherry and also to the Inspector of Police.

(i) P.W.42 was the Inspector of Police, Kirumambakkam. He received the First Information Report on 28.10.2008 at around 3.00 a.m, went to the hospital and enquired P.W.2 and other witnesses.

(j) He forwarded the body of the deceased to the Puducherry Government General Hospital. He went to the scene of occurrence at 6.30 a.m, and prepared the observation mahazar and sketch and he also seized various articles as material objects at the scene of occurrence under mahazar in the presence of various witnesses.

(k) He proceeded to the General Hospital and in the presence of witnesses, conducted inquest over the dead body of the deceased and prepared inquest report. He examined the witnesses and recorded their statements. He gave a request for conducting postmortem of the dead body of the deceased.

(l) P.W.39 was the Medical Officer in the Forensic department of Government Hospital, Puducherry. On 28.10.2008, around 2.00 p.m, he conducted the post mortem on the body of the deceased. He found an abrasion on the front middle of the chest. On internal examination, he found fracture of the sternum between the 2nd and 3rd rib and fracture of 2,3 and 4th rib and on dissection he found a contusion over the right article and over the left ventricle of the heart. He opined that the death was due to shock and hemorrhage due to blunt injuries to the chest.

(m) P.W.42 examined all the injured witnesses in the hospital and also P.Ws.1 to 5 and recorded their statements. He seized the blood stained clothes of the injured under mahazar. He examined the mahazar witnesses and recorded their statements.

(n) On 30.10.2008 around 6.00 a.m., he arrested A.12 and A.13 at Narambai Arrack Shop. He recorded their confession statements in front of P.W.28 Village Administrative Officer. Pursuant to their confession, he proceeded to Cuddalore and at the Cuddalore Bus Stand, he arrested A.4 A.11, A.8, A.9, A.10, A.15, A.16 and brought them to the police station. He recorded their confession statements in the presence of the same witness.

(o) In pursuance of confession given by A.11, he recovered a casuarina stick (M.O.50). In pursuant to the confession given by A.13 he recovered another stick (M.O.51). From A.4 iron pipe (M.O.52) A.12 iron pipe (M.O.53) A.10 knife (M.O.54); from A.15 casuarina stick (M.O.55) A.8 another stick (M.O.56), A.9 another stick (M.O.57), A.16 Iron pipe (M.O.58).He remanded all the accused for judicial custody.

(p) On 1.11.2008, he showed the weapons to the doctor who conducted the post mortem and obtained his opinion. He also received the postmortem report. He also examined some more prosecution witnesses and recorded their statements.

(q) On 10.11.2008 around 6.30 a.m., he arrested A.17 and on his information, he went to Mandakapatti village and arrested A.7, A.5 and A.14. He brought them to police station and recorded their statements in front of P.W.28. He recovered a casuarina stick from A.11 (M.O.59) from A5 a stick (M.O.60), A.7 a stick (M.O.61) A.14 another stick (M.O.62) in the presence of the same

witnesses and remanded them for judicial custody.

(r) On 13.11.2008, he arrested A.3 at Pachiankuppam around 1.00 p.m. He recorded the statement in the presence of the same witnesses and he recovered an iron suluki (M.O.63) and remanded the accused.

(s) On 19.11.2008 he arrested A.6 and recorded his confession in the presence of the same witnesses and recovered a casuarina stick (M.O.64) and remanded the accused. Thereafter, the investigation was transferred to CB CID.

(t) P.W.44, further investigated the case. On 27.11.2008, P.W.43, on instructions from P.W.44 went in search of the remaining accused. At 4.00 p.m, he arrested A.1 and A.2 at Villupuram and produced them before P.W.44.

(u) P.W.44 examined A.1 and A.2 recorded their confession in the presence of one Subramani and Jayaraman. In pursuance to their confession, he recovered an iron pipe from A.1 and a stick from A.2. He remanded the accused for judicial custody. He examined the witnesses and recorded their statement.

(v) On 18.12.2008 he examined the doctors and obtained wound certificates. He completed the investigation and filed a charge sheet on 13.2.2009 before the Judicial Magistrate No.I, Puducherry.

2. The case was taken on file by the learned Judicial Magistrate No.I, Puducherry, who took the case in PRC 8 of 2009 and later committed to Principal Sessions Court and the same was transferred to III Additional Sessions Judge, Puducherry for trial.

3. To substantiate its case, the prosecution examined 45 witnesses, marked 102 documents and produced 66 Material Objects. On the side of the Defence, 5 documents were marked.

4. On analyzing the oral and documentary evidence, the learned trial Judge found that the prosecution has proved the case beyond reasonable doubt and convicted and sentenced the accused as above. Aggrieved by which all the accused have filed the present appeal.

5. The point for consideration is whether the conviction and sentence passed by the trial court is sustainable in law.

6. Mr.V. Gopinath, the learned Senior Counsel appearing for A.1 to A.15 and A.17 raised the following contentions while arguing for setting aside the order of conviction and sentence.

(a) The genesis of the occurrence was not correctly disclosed by the prosecution. The prosecution party has damaged the house of 10th appellant and there was a case and counter and therefore, the entire incident was a group clash between two rival groups and in a free for all they assaulted each other. Therefore, there is suppression of genesis of the occurrence and the benefit of doubt has to be given to the appellants.

(b)

(i) the earliest information about the occurrence to the police is on 27.10.2008 at 8.40 p.m. P.W.45 (Sub Inspector of Police) received the information regarding the incident and went to the scene of occurrence with police party. He took control of the situation, forwarded the injured to the hospital and examined the witnesses on the spot. That information, being the first information, is suppressed by the prosecution.

(ii) According to P.Ws.1 to 5, they were enquired by the police who were present even in the hospital on the night of the occurrence and P.W.1 and others narrated the occurrence to P.W.42 and P.W.45. They reduced the information in writing and when the police enquired the witnesses, the time was 9.00 p.m. And this information was also suppressed.

c) the genuineness of the First Information Report is highly doubtful. P.W.1 who gave the complaint was present in the scene of occurrence when the police arrived. He was in the hospital where the police enquired and only at 1.00 a.m, P.W.1 alleged to have gone to the police station and gave complaint Ex.P.1 to P.W.45 who received the same and registered a case. However, P.W.30 would claim that as per the instructions of the police, a complaint was written four or five times and then a complaint was finalised and P.W.1 was brought to the police station to sign. According to P.W.45, P.W.1 appeared before him on 28.10.2008 at 1.00 a.m and gave a written complaint. But according to P.W.1, he narrated the complaint and P.W.45 reduced it into writing. The presence of P.W.30 at the time of complaint is mentioned in the complaint itself. The contradictions would show that the complainant is not genuine.

(d) There is an inordinate delay in the FIR reaching the Court. P.W.45 has prepared the FIR Ex.P.102 at 1.00 a.m on 28.10.2008 and he has forwarded the same through the Head Constable at 7.10 a.m but the FIR reached the court only at 12.30 p.m. There is almost a delay of 12 hours in the FIR reaching the Court.

(e) the evidence of P.W.1 to 5 are unbelievable and their presence in the scene of occurrence while the deceased was attacked is doubtful.

i) According to P.W.1, the first incident was that on the day of occurrence around 6.00 p.m, when he was proceeding to his house through Angalamman Koil, the appellants 9, 10, 11 and A.15 assaulted him with iron pipe and stick and he sustained injuries on his lip. He was not examined by a doctor, though he went to the hospital.

ii) According to P.W.1,2,3 and 5, the appellants came in a mob with deadly weapons and therefore, they hide themselves behind the bamboo screen of one Lakshmi's house (P.W.1's aunt). However, in their statement before the Investigating Officer, they have mentioned about one Nithya's house and P.W.1 would admit that the said Nithya,s (P.W.1's elder sister) house is at Karaikadu. In any event none of these house are shown in the sketch.

iii) P.W.3 would state that he was present along with P.W1, 2 and 5 when the deceased was attacked at 8.30 p.m. But in his cross examination, he would admit that at 8.30 p.m, he was in his house when his father and mother (P.W.10 and 11) were attacked. But at the same time, P.W.10 and 11 would state that PW3 was not in the village and he came to know about the attack on the next day.

iv)P.W.5 would state that at 8.30 p.m, when the deceased was attacked and he was with P.Ws 1 to 3. But he would also state he was present at his house when his mother (P.W.7) was attacked.

v)P.W.7 would state that at 8.00 p.m P.W.5 was in her house and only by 8.30 p.m he went out and only after an half an hour, she was attacked.

vi)P.W.4 would state that the deceased was attacked and she interfered and she was attacked by three named accused. But in her cross examination she would state the she has not sustained any injury and she would also state that P.W.1 to 3 and 5 hide themselves in the house of one Ambika. Therefore, the presence of P.Ws.1 to 5 in the scene of occurrence while the deceased sustained injury is doubtful.

(f) The injury sustained by the deceased, the overt act attributed to the accused and the medical evidence are contradictory.

i)According to P.W.1, A.1,A.2,A.10 and A.11 beat the deceased on his back and chest. He has not mentioned any weapon and no specific overtact is attributed.

ii)According to P.W.2, the same accused enquired the deceased about PW.1 and when he replied that he did not know. They said that "if you are beaten, your son will come" and he had not specifically stated any overtact.

iii)According to P.W.3, at 8.30 p.m, the mob came to his house first and assaulted his parents and thereafter, they went to the house of the deceased and enquired about P.W.1 and beat him and he has not mentioned any specific overt act.

iv)According to P.W.4, the 4 accused assaulted the deceased with iron pipe and no specific overt act attributed.

v) P.W.5, has not specifically implicated A.1,A2,A.10 and A.11, but would state that more than 10 accused came with deadly weapons and assaulted the deceased.

vi) P.W.39, the post mortem doctor found one external injury on the chest and the corresponding internal injury. When there is no specific overact attributed to A.1, A.2, A.10 and A.11 as to who inflicted the fatal blow, the benefit has to be given to the accused.

(g) The evidence of the injured witness is contradictory to entries made in the wound certificate and Accident Registers.

7. According to the learned senior counsel, a close reading of the evidence of all the witnesses would clearly spell out the contradictions in respect of the time of giving the complaint, the delay in the First Information Report reaching the Court and glaring inconsistencies in the evidence of injured witnesses. Thus, as it is apparent that the trial court has grossly erred in accepting the prevaricating evidence of the prosecution witnesses and awarding the sentence as stated above, it is absolutely necessary for this Court to set aside its verdict and extend benefit of doubt to the accused.

8. On the contrary, Mr.A. Ramesh, Senior counsel and the learned Special Public Prosecutor for the respondent pointed out that the ocular testimony of P.Ws.1 to 5, corroborated by the medical evidence would go to show that the appellants A.1, A.2, A.10 and A.11 have voluntarily caused the death of the deceased and therefore, the conviction under Sec.302 r/w 34 is sustainable. He states that the injured witnesses have spoken to about their assailants and the manner in which they attacked and such version having been corroborated by medical evidence, the trial court is absolutely right in relying and acting upon the evidence of the injured witnesses.

9. At this juncture, the learned Special Public Prosecutor, would further argue that the trial court having found that all the appellants 1 to 17 formed an unlawful assembly with deadly weapons and the death of one Subramanian is also caused, strangely, it has not pressed into service Sec.149 of IPC, though has convicted all the appellants for the offence under sec.148.

10. The learned senior counsel pointed out that though the deceased had sustained only one injury, the evidence of the eyewitnesses would go to show that the appellants 1, 2, 10 and 11 assaulted the deceased with iron pipe and stick. Though, the eyewitnesses failed to identify the accused persons who inflicted the fatal blow, the four appellants who assaulted must be held responsible for the offence under Sec.302 r/w 34 IPC. He also pointed out that subsequent to the unfortunate incident that had taken place on 27.10.2008 at 8.30 p.m, P.W.45 the Sub Inspector of Police, who received the information regarding the riot, went to the scene of occurrence and his first duty was to take control of the situation and forward the injured to the Hospital for treatment. Therefore, whatever information he received either before proceeding to the scene of occurrence or at the place of occurrence cannot be treated as first information as he was engaged in basic bandobust duty and only subsequent to such course, he has received the complaint from PW1 at 1.00 a.m and registered the case. The First Information Report was immediately forwarded to the learned Magistrate who received the same in the court at 12.00 p.m. Therefore, according to the learned Special Public Prosecutor, there is no delay either in registering the case or forwarding the FIR to the Court.

11. As regards lack of minute details from the version of injured eyewitnesses the learned Special Public Prosecutor explained that in a riot where the mob is unruly ever minute detail as to the role played by each of the several accused

cannot be narrated exactly by the witnesses and therefore, the evidence of P.Ws.1 to 5 is unassailable for upholding the conviction. The learned Special Public Prosecutor relied on a decision reported in Kishori Vs. State of Delhi, wherein the Apex court has held as follows:

Matters of detail as to the roles attributed to the several persons in the mob or narration as to the succession of events that took place may not be of much relevance.

12. The learned Special Public Prosecutor also relied on a decision reported in 1989 SCC 437 (Lalji and Others vs State of U.P), wherein the Apex Court has held as follows:

10. Thus, once the court holds that certain accused persons formed an unlawful assembly and an offence is committed by any member of that assembly in prosecution of the common object of that assembly, or such as the members of the assembly knew to be likely to be committed in prosecution

13. He also relied on the following case laws for the same preposition of common object.

i) State of A.P. Vs. Thakkidiram Reddy and Others,

ii) Yunis @ Kariya etc. Vs. State of Madhya Pradesh,

14. The learned Special Public Prosecutor summed up by submitting that the evidence of P.Ws.1 and 4 cannot be disregarded on the ground that they did not intervene when the assailants were attacking the father of P.W.1; for the courts, in umpteen number of decisions held that such evidence cannot be disregarded on the ground that he or she did not react in any particular manner. For this preposition he relied on the following case laws:

i) Rana Partap and Others Vs. State of Haryana,

ii) Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another,

iii) 2004 (10) SCC 61 (State of U.P vs Devendra Singh).

15. We have carefully considered the submissions made on either side and perused the materials available on record. For the convenience sake, the appellants are referred to as accused in their ranks.

16. The only fact admitted is that the group of the prosecution party and that of the appellants are opposed to each other because of political rivalry between them. It is the case of the prosecution that on 27.10.2008, appellants 1 to 17 formed an unlawful assembly with deadly weapons like knife, wooden log, iron pipe and suluki with a common object of committing riot, and in the course of the same transaction, they trespassed into the houses of the prosecution witnesses, inflicted simple and grievous injuries to the witnesses. In the course of the same transaction and in furtherance of the common object, A.1, A.2, A.10 and A.11 attacked one Subramani with iron pipe and wooden log on his chest

and back and thereby caused his death and therefore, they were charged for offences under Sec.148, 452, 324 r/w 149, 326 r/w 149, 427 r/w 149. A.1,A.2, A.10 and A.11, 302 r/w 34 IPC while the remaining accused u/s 302 r/w 149 IPC.

17. According to the prosecution, the genesis of the occurrence is, an assault on P.W.1 by A.9, A.10, A.11 and A.15. P.W.1 would state that on 27.10.2008 at 6.00 p.m, he was proceeding to his house via Angalamman Koil street and at that time, the above said accused assaulted him with iron pipe and wooden log and he sustained injuries on the lip.

18. He informed his father, (deceased) who took him to A.1's house to complain and since A.1 was not there, they returned back. P.Ws.2, 3 and 5 joined P.W.1 and they were discussing about the assault in front of the house of the deceased.

19. According to the prosecution witnesses, all the accused came with deadly weapons, formed an unlawful assembly and on seeing the accused, P.Ws.1, 2, 3 and 5 moved out to hide themselves behind the bamboo screen in the house of one Lakshmi.

20. W.4 the daughter-in-law of the deceased was present in her house. The deceased Subramani was standing on the road in front of his house.

21. A.1, A.2, A.10 and A.11 enquired the deceased about the whereabouts of P.W.1. Since he did not answer them, they assaulted the said Subramaniam with iron pipe and wooden log on his chest as well as on his back.

22. When P.W.4 interfered and questioned them A.10, A.11 and A.15 assaulted her. This was witnessed by P.Ws.1 to 3 and 5, who were hiding behind the bamboo screen at Lakshmi's house.

23. Thereafter, the gang moved ahead and started to riot by trespassing into the houses of the witnesses and went on damaging the articles and assaulting the witnesses P.Ws.7 to 13, 15 to 20 and P.W.24.

24. This occurrence took place at around 8 to 8.30 p.m. At 8.40 p.m, P.W.45 Sub Inspector of Police, on receiving the information about the riot, went to the scene of occurrence with police party, took control of the situation and forwarded the injured to the private hospital. P.Ws.1 to 5 had also gone to the hospital where PW1's father was declared dead and around 1 a.m, P.W.1 appeared before P.W.45 and gave the complaint, narrating the incident and implicating all the accused.

25. It is the case of the defence that there was a group clash in the morning in respect of the Kumbabisheka festival of Angalamman koil and the prosecution party had assaulted and damaged the house of A.10, for which a case has been registered against P.Ws.1 to 3 and 5. P.W.1, in his cross examination, would admit that there was a quarrel in respect of the temple festival and with reference to the same, a case has been registered against him and against P.W.2,3 and 5 and he was also arrested.

26. P.W.7, the mother of P.W.5 would also admit in her cross examination that in the morning, there was a quarrel and fight between the two rival groups. She would specifically state that from 8.00 a.m, both the groups were fighting and assaulting each other in the street. According to her, by 8.30 p.m, she was in the house. At that time, A.1 assaulted her with a pipe on her hand and she sustained a fracture. A.2 inflicted cut injury on the thigh; A.3 inflicted cut injury on the head with suluki knife and A.4 assaulted her on the left hand and right leg with pipe.

27. P.W.8 would state that, when he was in his house, he heard loud noise at the house of A.1 and at that time, a group of 10 to 15 persons passed by his house and behind them, the accused party came with weapons and subsequently, A.10 trespassed into his house and cut him on the head; A.4 assaulted him with pipe on his waist while A.13 beat him on the chest.

28. P.W.9 is the wife of P.W.8 who would corroborate the version of her husband. P.W.10, the father of P.W.3, would also state that there was a fight between two groups and the accused party came to him in search of his son and assaulted him and his wife P.W.11.

29. P.W.12 another injured witness also state that from the noon, there was a fight going on between two groups. His version is also corroborated by P.W.13, another injured witness.

30. From the evidence of the prosecution witnesses that too, injured witnesses, it is evident that even prior to the alleged occurrence with reference to which Ex.P.1 came into existence, a group clash, fight, was going on between the two rival groups on the day of occurrence.

31. It is well settled that when the prosecution seem to have suppressed the genesis and origin of the occurrence, courts have to examine the theory of the prosecution very cautiously to find out at the first instance as to whether the prosecution has come up with a true version.

32. Though the entire evidence cannot be discarded in toto, the genesis of the occurrence and the fight between two rival groups should be kept in mind, as the prospects of implicating persons who did not even involve in the crime cannot be ruled out.

33. It is noted that though P.W.1 states that he was assaulted by A.9, A.10, A.11 and A.15 at 6.00 p.m while proceeding via Angalamman Street, unfortunately, there is no eyewitness for such attack and he was also not examined by the doctor. Though, P.Ws.2, 3 and 5, the friends of P.W.1 would state as if they were present when P.W.1 was assaulted, P.W.1 did not state that they were present when he was assaulted. Even if that version is accepted, one would seek explanation as to why the witnesses did not endeavour to prevent the attack on P.W.1.

34. It is pertinent to point out that P.W.1 had admitted that on the same day, a

case was registered against him and also against P.Ws.2,3 and 5 for damaging the house of A.10.

35. Further, according to P.W.1, after returning from A.1's house, they were standing in front of his house along with the deceased when the accused party came there with weapons. He would specifically state that at that time, first they went to P.W.8's house, assaulted him and thereafter only, they came towards his house and, by that time, they could hide themselves at Lakshmi's House.

36. According to P.W.3, fight started at 8.30 p.m. Whereas P.W.12, another witness and P.W.s 4, 5 would state that such fight started even at 7.30 p.m. Conveniently P.Ws.1 and 2 did not mention about the time of occurrence.

37. In the order of examination of witnesses, P.W.7, was the first injured witness to be examined. She would state that when she was in the house at 8.30 p.m, A.1 to A.4 assaulted her and she specified about the individual over acts.

38. The rough sketch of the scene of occurrence has been produced with the type set of papers.

39. The house of the deceased and the injured witnesses 7 to 29 are scattered over the area which are divided into main streets and cross streets. P.Ws.15 to 19 and 21 to 25 and 27 turned hostile and did not support the case of the prosecution. P.W.7 to 14 and 20 are the injured witnesses.

40. Among them, P.W.7 is the mother of P.W.5. P.Ws.10 and 11 are the parents of P.W.3. P.Ws.10 and 11 are residing at Door No.12, as shown in the sketch at Pipdic Street. In the same street the house of deceased also situate.

41. It is the categorical admission of P.Ws.10 and 11 that their son (P.W.3) went out for agricultural operations and he was not in the house at the time of the occurrence, when they were assaulted and that he came to know about the assault only on the next day.

42. P.W.3 would state that at 8.30 p.m, he was standing in front of the deceased's house along with P.Ws.1 to 5 and at that time, the accused persons came there. He moved away from the place and hide himself behind the screen at Lakshmi's house.

43. P.Ws.1,2 and 5 would also state that they hide themselves behind a screen at Lakshmi's house. However it was elicited from P.W.1 and also from the investigating officer that in their statement under sec.161, they have stated that they hide themselves at one Nithya's house. But P.W.4 would state about one Ambika's house. Unfortunately, the above three houses are not shown in the sketch prepared by the investigating officer. P.W.7 would also state that her son was not present when she was assaulted. Her house is situated in a side lane shown in the sketch as door No:8. But she would admit that till 8.00 p.m, P.W.5 was in the house.

44. The evidence of the mother and parents of P.Ws.3 and 5 would show that

there is a contradiction between the evidence of P.Ws.3 and 5 regarding their presence in front of the house of the deceased when he was assaulted.

45. The contradiction about the place where P.Ws.1 to 3 and 5 were hiding would also go to show that their very presence at the scene of occurrence when the deceased was assaulted is quite doubtful. It is pertinent to point out that on the fateful day, a day long fight ensued and continued between the two rival groups and in that occurrence, these four witnesses were alleged to have damaged the property of A.10 and a case has also been registered against them. As a result of backlash, the accused group came in search of these four accused and also P.W.14 one Sathiamoorthi who belongs to prosecuting party.

46. Another crucial aspect to be adverted to is that P.W.1 had already sustained injuries in the earlier fight. That being so, the evidence of P.W.1 to 3 and 5 that the rioting party directly came to the house of the deceased and on seeing them, the above said four witnesses moved out and hide themselves behind the screen at one Lakshmi's house and from there, they witnessed A.1, A.2, A.10 and A.11 assaulting the deceased appears very doubtful.

47. It is also pertinent to point out that when the above said four accused were assaulting the deceased, P.W.1, the son of the deceased, did not intervene but P.W.4, the daughter-in-law, a woman claims that she intervened.

48. In fact, P.W.3 would state that at the same time he was witnessing the attack on his parents. In the chief examination, he would state that at 8.30 p.m, he was standing in front of the house of the deceased and on seeing the accused, he hide himself without mentioning the place where he went to hide. But in the cross examination, he would state that at 8.30 p.m, when he was in his house, his parents were assaulted by the accused and that he did not interfere.

49. The learned Additional Public Prosecutor relied on the following case laws and stated that different persons will react differently and failure to interfere should not discredit their version.

- i) Rana Partap and Others Vs. State of Haryana,
- ii) Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another,
- iii) 2004 (10) SCC 61 (State of U.P vs Devendra Singh).

50. We have no quarrel with that proposition but the point is when there are conflicting version, whether their presence could be accepted.

51. Looking from any angle, the strange conduct of P.Ws.1 to 3 and 5 goes to the root of the matter, who are the only eyewitness to the assault on the deceased by A.1, A.2, A.10 and A.15. It is also very important that P.W.1 is the complainant who had implicated all the accused.

52. The evidence of P.Ws.1 to 3 and 5 and more particularly, the evidence of P.W.1 should inspire confidence so that ocular testimony can be accepted without

any hesitation to bring home the guilt of the accused so as to sustain the prosecution case in its entirety.

53. In this case, when the defence has to an extent able to demolish the case of the prosecution, the evidence of the so called eye witnesses has to be approached much cautiously. We have already highlighted that the overall circumstances and the conduct of the witnesses do not inspire confidence as the very presence of these witnesses at the scene of occurrence when the deceased was attacked is doubtful.

54. As stated earlier, the genesis of the occurrence is not as claimed by P.Ws.1 to 3 and 5. It is evident that because of group rivalry, the fight has been going on between the parties for the whole day. P.W.s 1 to 3 and 5 are alleged to have caused some damages to the properties of A.10 and thereafter, a group of persons belonging to the accused party seemed to have trespassed, damaged and assaulted the persons belonging to the prosecution party and more particularly they were looking for P.Ws.1 to 3,5 and P.W.14. In that course only, the mother of P.W.5 and parents of P.W.3 seemed to have been assaulted and Door No.10 was also trespassed and damaged while looking for P.W.14 by the gang. Therefore, the genesis of the occurrence is not the one as stated by the prosecution.

55. Since it is already noted that the very presence of A.1 to A.3 and A.5 is doubtful, one has to look about the presence of P.W.4 one Radhika, the daughter in law of the deceased.

56. According to P.W.4 she saw the above said accused assaulting the deceased and when she interfered, A.10, A.11, A.15 assaulted her and she fainted. But she would admit in her cross examination that she did not sustain any injury. Her wound certificate is also not produced. The doctor, who was examined for treating the injured persons, has also not stated that he examined or treated P.W.4.

57. Interestingly, she would corroborate P.W.s 1 to 3 and 5 in all aspects including their presence at the scene of occurrence and these witnesses hiding themselves behind a thatti screen. Though she would state that the thatti screen is at one Ambiga's house, the said place is not shown in the sketch.

58. Thus, among the five ocular witnesses, if the evidence of four of them is held as doubtful since their presence at the scene of occurrence is unbelievable, in such circumstances the corroborative evidence of the remaining ocular witness is also to be weighed in the same scale and in the absence of any other corroborative evidence her solitary evidence cannot be accepted.

59. It is also pertinent to note that there are following infirmities while reporting the occurrence by PW1.

i) according to all the witnesses including the injured witnesses, not only P.W.45, the Sub Inspector of Police and also P.W.42, the inspector of police Ranganathan

was also present at the scene of occurrence by 8.40 p.m. They have dutifully arranged bandobust, forwarded the injured to private hospital for treatment. Though it is not possible and also expected from them to record a statement at that time they could have received a complaint at the hospital from any one of the injured and register a case against the perpetrators. Because all the injured can identify their assailants.

ii) P.W.1 would state that he went to the Hospital by 11.30 p.m and was told that his father was declared dead and as instructed by P.W.45, he went to the police station by 1.00 a.m on 28.10.2008 and has given the complaint Ex.P.1 which implicates all the named accused.

iii) It is very pertinent to note that in his chief examination, P.W.1 would state that it is not correct to state that one Shivakumar (P.W.30) has given the complaint at 1.00 p.m on 28.1.2008. This piece of evidence has come in the chief examination without any prompting. He was the first to go in to box, but has anticipated what P.W.30 going to state.

iv) In Ex.P.1 he would mention the name of P.W.30 and state that he came along with him to give the complaint. Ex.P.1 is a detailed complaint disclosing all the names of the accused more particularly implicating A.1,A.2,A.10 and A.11 for assaulting the deceased.

v) Interestingly, P.W.30 who seemed to have assisted P.W.1 in giving the complaint turned hostile when he was examined as a prosecution witness. In chief examination itself, he would state he is also residing at Angalamman Koil Street and on hearing the noise, he went out and witnessed the occurrence and he went to police station around 12.00 (he did not state whether on the same night or the next day) and as dictated by the Inspector he wrote the complaint and after rewriting four or five complaints, one complaint was finalised and at that time, P.W.1 was not there and was brought from the village and made to sign in Ex.P.1.

vi) According to P.W.1, Ex.P.1 was written by P.W.45, the Sub Inspector of Police. According to P.W.45, P.W.1 gave a written complaint at 1.00 a.m which he received and registered a case. In his cross examination he would state that Ex.P1 was not written by him.

Vii) Ex.P.102 is the printed First Information Report. P.W.45 would state that he forwarded the FIR at 7.00 a.m on 28.10.2008 through Constable No.1079. It was received by the learned Judicial Magistrate No.I at 12.30 p.m on 28.10.2008. It is admitted that from Kriumambakkam the residence and the court of the JM is only 12 kms. There is no explanation from the prosecution as to why it took almost five hours for the FIR to reach the Magistrate.

60. Ex.P.1 is shrouded in mystery and there is an inordinate delay in forwarding the printed FIR to the Court. When there is group rivalry and both parties throwing allegations each other even a small delay has to be seriously viewed as

it tend to lead to omissions and inclusions to implicate the persons of their choice.

61. Therefore, in the given circumstances, the inordinate delay in the FIR reaching the Court is fatal to the prosecution.

62. It is also pertinent to note that a series of occurrence have taken place where many persons were assaulted and properties were damaged and only those injured persons who were in the scene of occurrence could identify the assailants and the failure of the prosecution to take a complaint from the injured either at the scene of occurrence or at the hospital at the earliest point of time throws a doubt in the contents of FIR.

63. It is also pertinent to note that the contents of the FIR does not reveal those incidents of trespass, assault and damage to the properties of the injured witnesses, who had supported the case of the prosecution and deposed before this Court.

64. It is well settled that in a melee where several people are giving blows at one and the same time it will be impossible to particularize the blows. If any witness attempts to do it, his veracity will be doubtful. But it is simpler to make an omnibus statement that all the accused assaulted with their weapons because that obviates close cross-examination. Therefore, the nature of the injuries inflicted on the victim assumes importance.

65. According to PWS.1 to 5, A.1,A.2,A.10 ad A.11 have assaulted the deceased with iron pipe and wooden log. As extracted earlier, the postmortem report would reveal a single blow on the chest of the deceased with an external contusion and internal broken ribs at the sternum and corresponding internal injury in the heart which was the cause of the death.

66. According to them the occurrence took place at 8.30 p.m. At the same time, P.W.7 to 11 would also state that A.1 and A.2 were in their house at the same time assaulting them. Moreover, the ocular witnesses have not stated who has inflicted the fatal injury. It is true that it is not possible from the ocular evidence to record a definite finding of the fact that which appellant has caused the fatal injury.

67. It is also not always possible for the ocular witnesses to spell out in definite terms, which of the assailants inflicted which of the injury, when there are number of assailants/accused. When there is a common object of committing an offence it is not necessary to record a definite finding of the fact as to which of the assailants caused fatal injury.

68. The trial court seemed to have sought the aid of Sec.34 of IPC and convicted A.1,A.2,A.10 and A.11 for an offence under Sec.302 IPC. Though there were four assailants, there is only one blow. If there are several blows and one blow happened to be a fatal one, irrespective of a definite finding of the fact of which of the assailant had caused the fatal injury, the court can seek the aid of Sec.34 or Sec.149 of IPC for punishing all the appellants for the offence under Sec.302

IPC. When there is no other injuries except one and the assailants are more than one, it is not safe to seek the aid of Sec.34 or 149 IPC.

69. When the ocular testimony is doubtful and the presence of the said witnesses in the scene of occurrence is unbelievable and when all the witnesses say that the four assailants have assaulted the deceased with iron pipe and wooden log either simultaneously or one by one on the chest and back and when there is only one blow which caused both external and internal injury and when the FIR is not genuine, it is not safe to draw the aid of Sec.34 or sec.149 IPC to punish the carefully chosen accused for the offence under Sec.302 IPC.

70. It is very pertinent to point out that there are more than 15 injured witnesses. P.W.7 the mother of P.W.5 would state that when she was in the house A.1 to A.4 trespassed into her house with knife, iron pipe, wooden log and suluki knife. She would assert that when they came it was 8.30 p.m. P.W.8 would state that at 8.00 pm he was assaulted by A.10 on his head and A.4 assaulted him on his waist. Therefore, the injured witness would state A.,1, A.2 and A.10 were in their house at 8.30 p.m, but the ocular witnesses would state that A.1,A.2,A.10 and A.11 at 8.30 p.m were assaulting the deceased in a different place.

71. Therefore, we are of the considered view that the charge against A.1,A.2,A.10 and A.11 for an offence under Sec.302 r/34 IPC and against other accused under Sec.302 r/w 149 IPC are not proved beyond reasonable doubt by the prosecution for the various reasons and circumstances discussed above.

72. Mr. V. Gopinath, the learned Senior Counsel submitted that once, the ocular testimony is rejected and the FIR is found to be not genuine, the entire case of the prosecution has to be thrown out and the accused are entitled for an acquittal.

73. The argument of the Mr. A.Ramesh, is that once the prosecution is able to establish through injured witnesses that the accused have formed an unlawful assembly, committed trespass, damage the properties, assaulted the injured and a death of a person is proved in the same course of action, Sec.149 IPC is attracted and every member is punishable.

74. To attract 149 IPC there must be some evidence to show that one of the members of unlawful assembly has caused fatal injury and there must be an act done in pursuance of a common object of the unlawful assembly. In a case of group clash, such vicarious criminal liability cannot be imported in the absence of a member of unlawful assembly held responsible, as a principal for the act, so as to fasten the liability on the other members, though they have not done any act except being a member.

75. In 1990 CRL.LJ.248 (Ori) (Chinu Patel and Others vs State of Orissa), the High Court of Orissa held as follows:

23. In view of the finding of the trial Court that the prosecution has suppressed part of the truth regarding the occurrence with which I agree, it is difficult to

hold that the assault on the deceased was the outcome of a planned attack on him by accused Chinu and his sons. On the other hand as earlier pointed out, the probabilities are that as the accused demanded for the return of the "Dhair" and as the deceased refused to return the same, a quarrel ensued which ultimately resulted in a free fight between the parties during the course of which both sides were injured. In such a situation as there is no scope for a pre-planned attack by the accused, the question of the accused persons forming an unlawful assembly having a common object to do any of the acts mentioned in the 5 clauses of S.141, I.P.C, does not arise for consideration. In Lalji and Others Vs. The State of U.P., the Supreme Court held that where a sudden quarrel arises between the parties as a result of remonstrance and counter remonstrance and an unpremeditated free fight takes place between them it cannot be said that the accused who were present there formed an unlawful assembly. In such a case each of the accused persons should be held liable for his own act and not vicariously liable for the acts of others. So on a careful scrutiny of the evidence placed on record I find that the prosecution failed to prove satisfactorily that all the appellants formed themselves into an unlawful assembly at the time of occurrence, and therefore the charge against the appellants under S.325 read with S.149, I.P.C and S.323 read with S.149, I.P.C must fail. However, each of the appellants would be held liable for the individual acts proved against him"

76. In 1996 CrI.L.J 1908 (M.P.) (D.B.) (Mangalsingh and others vs State of Madhya Pradesh), the High Court of Madhya Pradesh held as follows:

8..... Since, it is a case of free fight between the two parties, the question of formation of unlawful assembly and common intention does not arise. Each accused is, therefore, responsible of the individual act committed by him. We may also mention that conviction u/s 149, I.P.C is otherwise also not sustainable as on careful examination of record by us, we find that no charge u/s 149 IPC was framed against the accused.

77. If a quarrel between the parties is ensued which ultimately resulted in a free for all between them and during the course of the free fight, injuries caused, in such a situation, there is no scope for preplanned attack by the accused and there is no question of the accused persons forming unlawful assembly having common object. Since it is a case of free fight between two parties, the question of formation of unlawful assembly and common object does not arise. Each accused is therefore, responsible for the individual act committed by him.

78. It is appropriate to refer below the relevant portion of the evidence of the injured witnesses, viz., P.Ws.7, 8, 9, 10, 12, 13, 20, 21, 23 from both Chief and Cross:

P.W.7 (Cross):

VERNACULAR (TAMIL) PORTION DELETED

P.W.8 (Chief)

VERNACULAR (TAMIL) PORTION DELETED

P.W.9 (Chief)

VERNACULAR (TAMIL) PORTION DELETED

P.W.10 (Chief)

VERNACULAR (TAMIL) PORTION DELETED

P.W.12 (Chief)

VERNACULAR (TAMIL) PORTION DELETED

P.W.13 (Chief)

VERNACULAR (TAMIL) PORTION DELETED

P.W.20 (Chief)

VERNACULAR (TAMIL) PORTION DELETED

P.W.21 (Chief)

VERNACULAR (TAMIL) PORTION DELETED

P.W.23 (Cross)

VERNACULAR (TAMIL) PORTION DELETED

79. Therefore, we are of the considered view that the evidence of the injured witnesses would show that the fight between the two groups was going for the whole day, and by 8.30 p.m. the injured were attacked by individual accused and there is no common object to form an unlawful assembly for an offence u/s 148 IPC and therefore, the aid of section 149 IPC is not available. It is also pertinent point out that the injured witnesses would state that they gave independent statements to P.W. 45 when they were examined. As far as the injured witnesses are concerned separate and distinct offenses have to be considered individually.

80. The individual testimony of the injured witnesses, corroborated by Medical evidence cannot be simply brushed aside for the fault in FIR or in the contradiction of the evidences of ocular witnesses which has a bearing only as far as the assault on the deceased is concerned.

81. On the defence side, the Accident Registers dated 27.10.2008 are marked as Ex.D.1 to D.5. In the history of the case, it is stated that "alleged to have been assaulted by unknown persons at 10.00 p.m on 27.10.2008" Mr.V.Gopinath, the learned senior counsel pointed out that the evidence of the injured can not be believed as they have stated that they have been assaulted by unknown persons. No doubt, in the Accident Register it is stated so and in the wound certificate it is stated as "known" persons. The Doctors were also cross examined on this aspect. It is pertinent to point out that the injured were taken to a private hospital thereafter shifted to government hospital. The private hospital A R

shows an entry as " assaulted by unknown persons" . It can not be correct for the simple reason that both parties are known to each other and are residing in the same locality. Therefore, we have to go only by Government hospital record.

82. P.W.7 is an injured witnesses. She would state that A.1 to A.4 trespassed into her house with knife, iron pipe, wooden log and suluki knife. She would state that A.1 assaulted her with iron pipe on her left hand which caused fracture. A.2 assaulted her with wooden log at her right thigh and caused contusions. A.3 stabbed on her head with suluki knife and caused incised injury. A.4 had assaulted her with iron pipe on her left hand and right thigh.

83. P.W.35 Dr.Prabhu would state that on 28.10.2008 at 3.17 a.m, he examined P.W.7. It is alleged that she was assaulted by six known persons at 8.00 p.m on 27.10.2008. He has found a contusion and a cut injury on the left elbow, a contusion and cut injury on the left hand, an abrasion and contusion on the left knee, a cut injury on the right side of the head and taking an x-ray it is found that there is a fracture on the left elbow which is a grievous injury and has issued Ex.P.38 wound Certificate. The injuries as spoken by her are corroborated by the medical evidence. The injury inflicted by A.1 is a grievous injury and the other injuries are simple.

84. P.W.8 Madamsamy would state that A.10 assaulted on his head with a knife. A.4 assaulted him with iron pipe on his waist. A.13 assaulted him on his chest with iron pipe.

85. P.W.34, Dr.Swaminathan, would state that he examined P.W.8 at 11.05 p.m on 27.10.2008. He found a cut injury on the left elbow and there is no fracture. Therefore, he issued EX.P.35 stating the he has suffered simple injury. The evidence of PW.8 is not corroborated by the medical evidence. He has implicated A.4 for assaulting him with a pipe on his waist but there is no corresponding injury; he has implicated A.10 giving cut injury on the head, and there is no corresponding injury; he has implicated A.13 for beating him on the chest with iron pipe. There is no corresponding injury. Therefore the offenses against A4, A10 and A13 can not be sustained.

86. According to P.W.9, A.9 assaulted her on the left hand with an iron pipe and she suffered fracture. A.16 assaulted her with iron pipe on her head. A.4 assaulted her on the right side of the stomach on the ribs.

87. P.W.34 the doctor who had examined P.W.9 at 11.10 a.m, found the contusion on the left wrist, a contusion on the left cheek, contusion on the left side of the head. An ultra sound was taken on the abdomen and it was found that a laceration on the spleen and blood injuries on the inner side of the stomach. The doctor has opined that it is a grievous injury and issued Ex.P.33. The grievous injury caused by A4 and simple injury caused by A9 are established. The alleged assault by A16 on the head is not established.

88. P.W.10 Mariappan would state that A.5 and A.17 inflicted cut injuries on the

right leg with knife. A.2 and A.14 assaulted with iron pipe on the left leg and A.3 assaulted with suluki knife. However, the doctor who treated this witness was not examined and the wound certificate was also not produced. However, the defence has relied upon the accident register of Mariappan which is marked as Ex.D.4. It reads as follows;

89. On examination, it is found;

- i) laceration over left vertex of scalp- bone deep" no fracture
- ii) puncture wound over left supra pateller region
- iii) tenderness of swelling over left femur
- iv) laceration over left pre tibial region & tenderness over tibia
- v) tenderness and swelling over left para spinal region on left DL region and it is also stated that the scalp injury was sutured.

90. There is no grievous injuries. However, from the description of the injury, it is evident that he has suffered simple injuries, caused by A2 and A14 on the left leg and A3 on the head. The injury caused by A.5 and A.17 not proved.

91. P.W.11 would categorically state that A.1 assaulted her with iron pipe on her left hand. A.14 and A.17 assaulted her on her back. A.2 assaulted her on her head with iron pipe. The doctor who treated her was not examined and the wound certificate was not produced. However, on the side of the defence, the accident register, Ex.D1, relating to her is produced. On examination, it is found that a deep laceration on the scalp, a fracture on both the bones on the left forearm and a fracture on the right femur. Though the wound certificate is not produced she has suffered two fractures and thereby grievous injury and there is a sutured wound on the scalp. A1 has caused the grievous injury and A2 has caused the simple injury.

92. P.W.12 would state that A.3 assaulted with suluki knife on the head. A.16 assaulted her with an iron pipe on the shoulder and also on the waist. She was examined by P.W.34 doctor. He has found a contusion on the left hand and a sutured wound on the right scalp with contusion. However, he has not opined about the nature of injury however, has given Ex.P.32 Wound Certificate. But the injuries would suggest that they are simple in nature. A.3 and A.16 has caused such injuries.

93. P.W.13 would state that A.10 assaulted him with knife on the head and other accused damaged the property. He was examined by P.W.34. He found a lacerated wound on the right scalp. He opined that the injuries are simple in nature and issued ExP.31 Wound Certificate. A.10 has caused the said injury.

94. P.W.20 would state that A.8 assaulted her with wooden log on the left shoulder. P.W.35 found a contusion on the left shoulder which is a simple injury. Ex.P.36 is the Wound Certificate. A.8 has caused the said injury.

95. Therefore, all these above injured witnesses have specifically stated about the injuries sustained by them and the overtact attributed against the accused which is corroborated by the medical evidence. The weapons have also been seized from the accused in pursuant to their statements under which is admissible u/s 27 of the Evidence Act. These witnesses had also stated that the above said accused trespassed into their house.

96. P.W.14,23,26,28 and 29 had stated about the damage to the property. However, their evidence is not specific and their accusation is very general in nature against the accused. Though the investigating officer has produced the damaged material objects, in the absence of specific evidence against the accused the u/s 427 r/w 149 has not been made out.

97. From the evidence of the injured witnesses, we are of the considered view that only the above said accused/appellants have committed the offence under Sec.324 and 326 and sec. 452 of IPC. The prosecution has not made out a case for offence under Sec.302 r/w 34 IPC against A.1,A.2,A.10 and A.11. And except the above offenses the other charges are not proved.

98. The trial court has already held that A.3 to A.9 and A.12 to A.17 are not found guilty for offence under Sec.302 r/w 149 IPC and we are not inclined to interfere.

99. In respect of other offences on analysing the evidence of the prosecution witnesses corroborated by the medical evidence, it is found that the accused/appellants have inflicted simple and grievous injuries on the prosecution witnesses as detailed below.

PROSECUTION WITNESS	ACCUSED/APPELLANT	NATURE OF INJURY	INFLICTED
P.W.7	A.1 A2, A3, A4	Grievous - proved	Simple - proved
P.W.8	Not identified	Simple- not proved	
P.W.9	A4 A9	Grievous - proved	Simple - proved
P.W.10	A2, A3, A14	Simple -proved	
P.W.11	A1 A2	Grievous - proved	Simple - proved
P.W.12	A3, A16	Simple - proved	
P.W.13	A10	Simple - proved	
P.W.20	A8	Simple - proved	

100. Therefore, A.1 has caused grievous injuries with deadly weapon to P.W.7 and P.W.11 and thereby punishable for an offence u/s 326 IPC (2 counts)

A.2. has caused simple injury to P.W.7 and 10 and thereby punishable for an offence u/s 324 IPC (two counts)

A.3. has caused simple injury to P.W.7, 10 and 13 and thereby punishable for an offence u/s 324 IPC (three counts)

A.4. has caused grievous injury with deadly weapon to P.W.9 and thereby punishable for an offence u/s 326 IPC. and has caused simple injury to P.W.7 and thereby punishable for an offence u/s 324 IPC.

A.8,9,10,14 and 16 have caused simple injuries to P.W.9,10,12,13 and 20 and thereby punishable for an offence u/s 324 IPC.

A.1 to A.4, A8 to A10, A14 and A16 are punishable for offence u/s 452 IPC.

A.5 to A.7, A.11 to A.13, A.15 and A.17 are acquitted.

In the result, the appeal is partly allowed and the conviction and sentence of the trial court S.C.No.34 of 2009 dated 30.11.2010. are set aside and;

A.1. is convicted for an offence u/s 326 IPC (two counts) and sentenced to undergo rigorous imprisonment for a period of four years and a fine Rs. 1000/- imposed by the trial court is confirmed. In addition to the above sentence and fine, A.1 is directed to make a payment of Rs.10,000/- each as compensation to P.W.7 and P.W.11, under Sec.357(3)(4) of Cr.P.C., directly by way of Demand Draft within a period of one month from the date of receipt of copy of this judgment, in default of such payment, he is further directed to undergo 3 months S.I.

A.2 is convicted for an offence u/s 324 IPC (two counts) and sentenced to undergo rigorous imprisonment for a period of two years and a fine Rs. 1000/- imposed by the trial court is confirmed.

A.3. is convicted for an offence u/s 324 IPC (three counts) and sentenced to undergo rigorous imprisonment for a period of two years and a fine Rs. 1000/- imposed by the trial court is confirmed.

A.4 is convicted for an offence u/s 324 IPC and sentenced to undergo rigorous imprisonment for a period of two years and a fine Rs. 1000/- imposed by the trial court is confirmed and also is convicted for an offence u/s 326 IPC and sentenced to undergo rigorous imprisonment for a period of four years and a fine Rs. 1000/- imposed by the trial court is confirmed. In addition to the above sentence and fine, A4 is directed to make a payment of Rs.10,000/- to P.W.9, under Sec.357(3)(4) of Cr.P.C. directly by way of Demand Draft within a period of one month from the date of receipt of copy of this judgment in default of such payment, he is further directed to undergo 3 month R.I.

A.8 to A.10, A.14 and A.16 are convicted for an offence u/s 324 IPC and sentenced to undergo rigorous imprisonment for a period of two years and a fine Rs. 1000/- imposed by the trial court is confirmed.

A.1 to A.4, A.8 to A.10, A.14 and A.16 are convicted for an offence u/s 452 IPC and sentenced to under rigorous imprisonment for a period of two years and a fine Rs. 1000/- imposed by the trial court is confirmed.

All the sentences are ordered to run concurrently. A.5 to A.7, A.11 to A.13, A.15 and A.17 are acquitted and fine amount if paid, is ordered to be refunded. The period of imprisonment undergone by all the accused is directed to be set off against the sentence imposed above under Sec.428 Cr.P.C.