

Bil Slip

That the Appellant/Accused No.2 Viz., N. Manimaran, aged 40 years S/o. Munusamy, was directed to be released on bail as per order dated 24.2.2016 made in CrI.MP.NO.588 of 2016 made in CrI.A.No.56/16.

That the Appellants/Accused 14 to 27, Viz., Bala @ Balamahendhiran aged 37 years (A14) S/o. Nagalingam Anbu, aged 39 years, (A.15) S/o. Sittrampakkathan @ Krishnan, Baskar, aged 38 years (A16) S/o. Murugesan, Bala Shankar, aged 34 years (A17) S/o. Nagalingam, Thirunavukarasu, aged 33 years (A18) S/o. Kanniappan, Saravanan, aged 48 years (A19) S/o. Kollapuri, Vengu @ Vengatesan, aged 35 years (A20) S/o Mani @ Veedukolluthy Mani, Prem @ Premkumar, aged 32 years, (A21), S/o. Palayam, Vimal @ Vimal Raj, aged 32 years (A22) S/o. Somasundaram, Anbarasu, aged not know, (A23) S/o. Murugesan, Kumar @ Kutta Kumar, aged 34 years (A24), S/o. Ezhumalai, Arivazhagan @ Arivu, aged 32 years (A25), Dilli, aged not Know (A26) S/o. Rathinam, Munusamy, aged 32 years (A27) S/o. Krishnan, were directed to be released on bail as per order dated 1.3.2016 made in CrI.MP.NO.1410/16 in CrI.A.No.95 of 2016.

The Appellant/Accused 4&5 Viz., Anbazhagan @ Anbu, aged 54 years, S/o. Ranganathan and Velayutham, aged 45 years S/o. Elumalai were directed to be released on bail as per order dated 1.3.2016 made in CrI.MP.NO.1438/2016 in CrI.A.No.99 of 2016.

The Appellant/Accused (A1, A3, A6, to A12) Viz., Jeeva @ Jeevarathinam, age Not known, S/o. Krishnan (A1) Uruthiran @ Urudhira Kukar, aged not known, S/o. Kuppan, Raj @ Auto Raj, aged not Known, S/o. Sathyanathan, Rajini @ Parthiban, aged 36 years, S/o. Rathinam, Sethu @ Ilango, aged 34 years, S/o. Govindasamy, Nagaraj, aged 33 years, S/o. Palayan, Kali @ Kalidoss, aged 39 years, S/o. Raji, Prakash, aged 33 years, S/o. Munusamy were directed to be released on bail as per order dated 13.2016 made in CrI.MP.No.1440/16 in CrI.A. 101/16.

The Appellant/Accused 28, Viz., Nagarraj @ Sappai Nagaraj, aged 31 years, S/o. Krishnan was hereby directed be released on bail as per order dated 1.4.2016 made in CrI.MP.NO.1937 /16 in CrI.A.No.138/16.

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2016

PRONOUNCED ON : 31.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.56, 95, 99, 101 and 138 of 2016

M.Manimaran (A2) ..Appellant in Crl.A.No.56/16(A2)

1. Bala @ Balamahendhiran (A14)
2. Anbu (A15)
3. Baskar (A16)
4. Bala Shankar (A17)
5. Thirunavukarasu (A18)
6. Saravanan (A19)
7. Vengu @ Vengatesan (A20)
8. Prem @ Premkumar (A21)
9. Vimal @ Vimal Raj (A22)
10. Anbarasu (A23)
11. Kumar @ Kutta Kumar (A24)
12. Arivazhagan (A25)@ Arivu
13. Dilli (A26)
14. Munusamy (A27) .. Appellants in Crl.A.No.95/16
(A14 to 27)

1. Anbazhagan @ Anbu (A4)
2. Velayudham (A5) .. Appellants in Crl.A.No.99/16
(A4 to 5)

1. Jeeva @ Jeevarathinam (A1)
2. Uruthiran @ Urithira Kumar (A3)
3. Raj @ Auto Raj (A6)
4. Iyyaapan @ Balraj (A7)
5. Rajini @ Parthiban (A8)
6. Settu @ Illango (A9)
7. Nagaraj (A10)
8. Kali @ Kalidoss (A11)
9. Prakash (A12) .. Appellants in Crl.A.No.101/16
(A1, A3, A6 to A12)

Nagaraj @ Sappai Nagaraj (A28).. Appellant in Crl.A.No.138/16

The State of Tamil Nadu,
Rep. by The Inspector of Police,
B-4 Police Station,
Sevvapet, Tiruvallur.
(Crime No.49 of 2003)

.. Respondent in all the cases

Prayer in all the appeals:- Appeals filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned I Additional Sessions Judge, Tiruvallur, in S.C.No.142 of 2007 dated 21.12.2015.

For Appellant in Crl.A. : Mr.V.Prakash
No.56 of 2016 SC for Mr.K.Sudalaikannu

For Appellants in Crl.A.: Mr.V.Gopinath
No.95 of 2016 SC for Mr.M.R.Senthil Kumar

For Appellants in Crl.A.: Mr.T.Muniratnam Naidu
No.99 of 2016

For Appellants in Crl.A.: Mr.N.Panchaksharamoorthy
No.101 of 2016

For Appellant in Crl.A. : Mr.C.S.S.Pillai
No.138 of 2016 for Mr.V.Devendhiran

For Respondent : Mr.V.M.R.Rajendran
in all the appeals Additional Public Prosecutor

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellants are the accused 1 to 12 and 14 to 28 in S.C.No.142 of 2007 on the file of the learned I Additional Sessions Judge, Tiruvallur. The trial Court framed as many as 10 charges against the accused as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
1	A1 to A28	148 of IPC
2	A1 to A28	120 (B) of IPC
3	A6 to A28	452 of IPC
4	A1 to A5	452 r/w 149 of IPC
5	A6 to A28	341 of IPC
6	A1 to A5	341 r/w 149 of IPC
7	A6 to A28	3(1) of TNPPDL Act

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
8	A1 to A5	3(1) of TNPPDL Act r/w 149 of IPC
9	A6 to A28	506(ii) of IPC
10	A1 to A5	506(ii) r/w 149 of IPC

The accused No.13 Mr.Kannan @ Thiruttu Kannan died during the pendency of the trial and thus the charges framed against him stood abated. By judgment dated 21.12.2015, the trial Court convicted these appellants for various charges and accordingly sentenced them as detailed below:

Rank of the Accused	Penal provision(s) under which convicted	Sentence
A1 to A5	148 of IPC	Rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
	120 (B) of IPC	Rigorous Imprisonment for six months and pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
	452 r/w 149 of IPC	Rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
	341 r/w 149 of IPC	Simple imprisonment for one month and pay a fine of Rs.500/-.
	3(1) of TNPPDL Act r/w 149 of IPC	Rigorous Imprisonment for five years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for six months.

Rank of the Accused	Penal provision(s) under which convicted	Sentence
	506(ii) r/w 149 of IPC	Rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months.
A6 to A28	148 of IPC	Rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
	120 (B) of IPC	Rigorous Imprisonment for six months and pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
	452 of IPC	Rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months.
	341 of IPC	Simple imprisonment for one month and pay a fine of Rs.500/-.
	3(1) of TNPPDL Act	Rigorous Imprisonment for five years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for six months.
	506(ii) of IPC	Rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months.

Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

2.1. P.W.1 Mr.Muthu @ Muthukumar is a resident of Tiruvur village in Tiruvallur district. He owned agriculture lands in the said village. There was a motor pump set on one of the lands for irrigation purpose. The accused belong to the same village. Communally, there was enmity between the accused and P.W.1.

2.2. It is alleged that on 01.02.2003, at about 10.30 a.m. when P.W.1 was in his field near the motor pump set, all these 28 accused came to the said motor pump set and caused extensive damage to the same resulting in loss to the tune of Rs.20,000/-. P.W.1 witnessed the said occurrence. Immediately, he rushed to Sevvapet Police Station at 12.00 noon on 01.02.2003.

2.3. P.W.5, the Inspector of Police, registered a case on the said complaint in Crime No.49 of 2003 under Sections 147, 148, 427 and 506(ii) I.P.C. Ex.P1 is the complaint and Ex.P5 is the F.I.R. He forwarded both the documents to Court. He went to the place of occurrence at 06.30 p.m. on 01.02.2003 and prepared an observation mahazar and a rough sketch in the presence of witnesses. Then, he recovered the damaged material objects (M.O.1 series) from the place of occurrence. He arranged for a photographer to take photographs. He examined many more witnesses including P.Ws.1 to 4 and recorded their statements. Then the investigation was continued by P.W.6. He examined few more witnesses and finally he laid charge sheet against the accused.

2.4. Based on the above materials, the Trial Court framed appropriate charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 6 witnesses were examined, 18 documents and 11 material objects were marked.

2.5. Out of the said witnesses, P.W.1 the owner of the motor pump set has spoken about the occurrence as an eyewitness. But in his evidence, he has not stated anything about the accused. He has simply stated that a mob of people came and damaged the motor pump set. He has been treated as hostile. P.W.2 is a villager, he has stated that around 10.30 a.m. on 01.02.2003, he heard that in the same village one Sukumar and one another person was killed by somebody. When he went to the field, he found a mob of people causing damage to the motor pump set of P.W.1. In the crowd, he found A6 to A8, A11, A13, A14 and A17.

2.6. P.W.3 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence and recovery of material objects. P.W.4 has spoken about the arrest of some of the accused and consequential recoveries of the wooden logs and aruval from them. P.W.5 has

spoken about the registration of the case and the initial investigation done by him. P.W.6 has spoken about the further investigation done and the final report filed.

3. When the above incriminating materials were put to the accused, under Section 313 of Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the trial Court convicted these appellants as detailed in the first paragraph of this judgment and that is how, they are before this Court with these appeals.

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

5. P.Ws.1 and 2 have stated that a mob of people came and caused damage to the motor pump set. P.W.1, the owner of the motor pump set has turned hostile. He has not stated that these accused were in the mob which caused damage to the motor pump set. These accused were all already known to P.W.1. Had it been true that these accused were members of the said unlawful assembly which caused damage to the motor pump set, P.W.1 would not have omitted to speak about the same. The very fact that he has not stated that these accused were in the assembly of people would go to show that there is no truth in the allegation made by P.W.2. P.W.2 also has not spoken about the presence and participation of all the accused. He has only spoken about the accused 6 to 8, A11, A13, A14 and A17. When 28 people have been prosecuted, based on the solitary evidence of P.W.2 alone, we cannot sustain the conviction of A6 to A8, A11, A13, A14 and 17. In respect of other accused, absolutely, there is no evidence. In a case of this nature, where villagers are partisan, false implication cannot be overruled. When the evidence of P.W.2 is doubtful, as a rule of prudence, the Court has to look for corroboration from any independent source. But unfortunately there is no other evidence let in by the prosecution to corroborate the evidence of P.W.2. In such view of the matter, we hold that it is not safe to sustain the conviction solely based on the evidence of P.W.2. Therefore we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore the appellants are entitled for acquittal.

6. In the result, the Criminal Appeal Nos.56, 95, 99, 101 and 138 of 2016 are allowed;

(i) The conviction and sentence imposed on the appellants/A1 to A12, A14 to A28 by the learned I Additional Sessions Judge, Tiruvallur, in S.C.No.142 of 2007 dated 21.12.2015, is set aside and they are acquitted from all the charges.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) The bail bond, if any executed by them, shall stand discharged.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The District Sessions Judge, Thiruvallur.
2. The I Additional Sessions Judge,
Tiruvallur.
3. The Judicial Magistrate, Thiruvallur.
4. The Chief Judicial Magistrate, Thiruvallur.
5. The Superintendent, Central Prison-I, Puzhal, Chennai.
6. The Inspector of Police,
B-4 Police Station, Sevvapet, Thiruvallur.
7. The Public Prosecutor,
Madras High Court.

+1cc to Mr.K. Sudalaikannu, Advocate, S.R.No.49986

+1cc to Mr.T. Munirathnam Naidu, Advocate, S.R.No.50100

+1cc to Mr. V. Devendhiran, Advocate S.R.No.49415

+5ccs to Mr. M.R. Senthilkumar, Advocate Sr.49563

VGI(CO)
EU(23/09/2016)

सत्यमेव जयते
Crl.A.Nos.56, 95, 99, 101 & 138 of 2016

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