

Bail Slip

That the Appellants/Accused namely Ponnusamy and Sivakumar, was directed to be released on Bail as per the order of this Court dated 1.11.2012 and made in M.P.No.1 of 2012 in CrI.A.No.666 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.666 of 2012

1.Ponnusamy
2.Sivakumar ... Appellants/Accused

Vs.

The Inspector of Police,
Namakkal Police Station,
(I/c) Erumapatty Police Station,
Namakkal District.
Crime No.25 of 2002 ... Respondent/Complainant

Prayer: Appeals filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 13.07.2012 made in S.C.No.132 of 2003, passed by the Principal Sessions Judge, Namakkal.

For Appellants : Mr.S.Thirugnanam

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

The appellants are arrayed as accused 1 and 2 in S.C.No.132 of 2003 on the file of the Principal Sessions Judge, Namakkal and vide judgment dated 13.07.2012, they stood tried and convicted as follows:

Accused	Conviction under Section	Sentence
A1	302 IPC	Imprisonment for life with a fine of Rs.50,000/- in default to undergo 1 year rigorous imprisonment

Accused	Conviction under Section	Sentence
A2	302 IPC	Imprisonment for life with a fine of Rs.50,000/- in default to undergo 1 year rigorous imprisonment
	324 IPC	Imprisonment for 2 years with a fine of Rs.2,000/- in default to undergo one year imprisonment
	323 IPC	Imprisonment for 1 year with a fine of Rs.1,000/- in default to undergo six months imprisonment

Both the sentences were ordered to run concurrently and set off under Section 428 CrPC was also granted.

2. The trial Court though framed charge under Sections 307 and 323 IPC against the second accused, convicted him for the offences under Sections 302, 323 and 324 IPC and sentenced him as stated above. Insofar as the first accused is concerned, though charges framed under Sections 302 r/w. 34 IPC and 307 r/w. 109 IPC for having caught hold of PW1 at the time of assault by the second accused, the trial Court convicted him under Section 302 IPC and awarded sentence as stated above. Both the accused, aggrieved by the conviction and sentence passed by the Trial Court as stated above, had filed this appeal.

3. Originally both the accused, after full fledged trial, were acquitted by the trial Court, vide judgment dated 14.09.2004. The injured witness, namely PW1 filed a revision in CrI.R.C.No.229 of 2005 on the file of this Court and vide judgment dated 08.02.2011, this Court has set aside the said judgment and remanded the matter to the trial Court to dispose of the same in accordance with law. Thereafter, re-trial was held and both of them were convicted and sentenced as stated above.

4. Factual matrix of the case is as follows:

4.1. PWs.1 and 2 are brothers. PWs.1 to 3 and 7 are the sons, daughter-in-law and brother of the deceased Chinnathambikallan respectively. Father of the first accused as well as the deceased were related to each other and they own

lands adjacent to each other and there was prior enmity in respect of said lands. On 11.01.2002, in the morning hours, PW1 was cleaning the lands and at that time, the second accused beat him with broom stick and also threatened him with dire consequences. On the next day i.e., on 12.01.2002 at about 1.30 p.m., the father of PW1 and the deceased were standing in front of his house and the second accused came there and picked up quarrel with him and PW3, wife of PW1 reached the spot and during the course of wordy quarrel, the first accused armed with Velkambi/M.O.2 and the second accused armed with Crowbar/M.O.1, started attacking the deceased and the second accused attacked him with a Crowbar on his chest and the first accused attacked him with M.O.2 on his head stating that he will be finished of. PW1 tried to intervene and the first accused caught hold of him and the second accused attacked on his left wrist, left thigh and on the rear side and cause him injuries and on seeing that her husband was attacked, PW3 tried to intervene and the first accused kicked her on her stomach and on hearing commotion, PWs.2, 5, 6 and 10 rushed to the spot and witnessed the occurrence along with other persons, namely Nallikannu and Thoppooran @ Sankar.

4.2. Due to the said attack, the deceased fallen down with profusely bleeding on his head. Accused 1 and 2, on seeing other persons coming to the spot, fled away from the scene of occurrence along with the weapons. The deceased died on the spot due to the effect of injuries sustained. PW11 made arrangements for transportation of injured PWs.1 and 3 to Namakkal Government Hospital.

4.3. PW8, Casualty Medical Officer attached to Namakkal Government Hospital, examined PWs.1 and 3 at about 3.40 p.m. on 12.01.2002 and informed that they had sustained injuries during the course of assault at Vadakkumedu, Varadharajapuram and PW8, on examining them, found that PWs.1 and 3 sustained simple injuries and issued Wound Certificates under Exs.P2 and P3.

4.4. PW17 was the Sub-Inspector of Police attached to Erumapatty Police Station and on receipt of information from Namakkal Police Station about the occurrence, went to Namakkal Government Hospital and recorded the statement of PW1 under Ex.P1/complaint, based on which registered a case in Crime No.25/2002 for the commission of offences under Sections 324 and 302 IPC at about 6.00 p.m. on 12.01.2002. The printed F.I.R was marked as Ex.P22. PW17 dispatched the original copy of the F.I.R to the jurisdictional Magistrate and marked copy to higher officials, through PW14, Head Constable.

4.5. PW18, Inspector of Police attached to Namakkal Police Station, in-charge of Erumapatty Police Station, on receipt of the F.I.R., commenced the investigation and proceeded to the

scene of occurrence and reached the spot at about 7.00 p.m. and also requisitioned the services of PW12/Village Administrative Officer of Muuanchetti Village and PW13, his menial, to arrive at the scene of occurrence. PW18 prepared Observation Mahazar/Ex.P8 and Rough Sketch/Ex.P23 in the presence of the said witnesses and obtained the signature of PW13 in Ex.P8. PW18 also summoned the services of photographer and took up the photographs and also held inquest on the body of the deceased in the presence of panchayatdars and prepared Inquest Report under Ex.P24. PW8 sent the body of the deceased for conducting postmortem along with Ex.P20, the requisition through PW15, constable attached to Erumapatty Police Station and also seized M.O.3- Blood stained earth, M.O.4-sample earth under Ex.P9 in the presence of the above said witnesses and also obtained the signature of PW13. PW18 recorded the statement of PW1 and other witnesses.

4.6. PW16, Medical Officer attached to Namakkal Government Hospital, on receipt of the body through PW15 along with the requisition, commenced the postmortem at 10.30 a.m. on 13.01.2002 and noted the following features:

External Injuries:

- 1.A lacerated wound of 2 cm x 1 cm x 1 cm over the occipital region.
- 2.A lacerated wound of 7 x 38cm x 1 cm over parietal region.
- 3.A diffused contusion in front of the chest estenly from right nipple to left nipple
- 4.A diffuse contusion over right side of the abdomen.
- 5.A diffuse contusion over right knee.

Internal Examination:

Skull: Fracture of frontal right temporal bone. Fracture of the base of the skull... fluid covering right hemisphere of the brain. Thorax: Fracture sternum and ribs right 3, 4, 5, 6 and 7 and left side 4, 5, 6 and 7 ribs. Homeothroax: Both the lungs lacerated. Heart: partially filled with blood and lacerated. Abdomen: Pale, Spleen Pale. Smoth partially digested food about 300 ml. Kidney Pale. Bladder empty.

PW16, after completion of postmortem, has given a certificate under Ex.P12 opining that the deceased would appear to have died due to shock and hemorrhage due to poly trauma 18-24 hours before the postmortem examination and after the completion of postmortem, the deceased body was handed over to PW15, who after removing M.O.5 - Black and Yellow colour lungi and M.O.6-Black waist card owned by the deceased.

4.7. PW18 effected the arrest of the accused 1 and 2 at 11.00 a.m. on 13.01.2002 and in the presence of PWs.12 and 13, confession statements were recorded. Exs.P25 and P26 are the admissible portion of the confession given by the accused 1 and 2, based on which M.O.1-Velkambi and M.O.2-Blood stained crow bar from the place of occurrence were seized under Mahazar/Exs.P27 and P28 and the signatures of PWs.12, 16 and 17 were also obtained and thereafter the accused were sent for judicial custody. The case properties were sent to the jurisdictional Magistrate by PW18 under From-95 and the statements of PWs.12 and 13 were also recorded.

4.8. PW18 submitted a requisition under Ex.P14 for sending the case properties for chemical analysis under Ex.P5/covering letter and received Exs.P6 and P7, Biological and Serology report respectively. PW18 also obtained copy of the plaint in O.S.No.397 of 2011 on the file of the District Munsif Court, Namakkal filed by the deceased against Ponnusamy, Thambikalan and another Chinnathambikallanm, marked as Ex.P29. PW18, after completion of investigation, filed final report before the Judicial Magistrate No.1, Namakkal, charging the accused for the commission of offences under Sections 302 r/w. 34, 307, 307 r/w.109 and 323 IPC. A counter case was also registered in Crime No.26 of 2002 on the basis of the complaint given by the first accused against PW1 and after investigation, it was referred as Mistake of Fact, marked as Ex.P32.

4.9. The Judicial Magistrate No.I, Namakkal, on receipt of the final report, took it up on file in P.R.C.No.11/2002 and summoned both the accused and furnished to them copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, committed the same to the Principal Sessions Judge, Namakkal, who took it on file in S.C.No.132 of 2003. The trial Court, on appearance of the accused, framed charges against the accused for the offences as stated above and questioned them and they pleaded not guilty to the charges framed against them.

4.10. The prosecution, in order to sustain their case, examined PWs.1 to 18, marked Exs.P1 to P32 and also marked M.Os.1 to 6. Both the accused were questioned under Section 313 (1)(b) CrPC with regard to incriminating circumstances made out against them in the evidence rendered by the prosecution and they denied it as false. On behalf of the accused, DWs.1 and 2 were examined and Exs.D1 to D4 were marked.

4.11. The trial Court, originally, vide judgment dated 14.09.2004 has acquitted both of them and CrI.Rc.No.229 of 2005 filed by PW1 was allowed, remanding the matter for fresh trial.

After remand, the prosecution did not examine any additional witness or any document was marked apart from documents already marked. However, on behalf of the accused, the judgment and decree in O.S.No.185 of 1992 was marked as Exs.D1 and D2, the plaint copy in O.S.No.397 of 2001 was marked as Ex.D2 and Judgment copy in AS.No.213 of 1997 was marked as Ex.D4. Prior to the marking of defence side exhibits, the accused were once again questioned under Section 313(1)(b) CrPC and they denied it as false. The trial Court, after remand, has conducted a full fledged trial and found both the accused guilty of the charges and convicted and sentenced them as stated above and hence, this appeal.

5. The learned counsel appearing for the appellant made the following submissions:

(i) The trial Court has not properly appreciated the scope and purport of the order of remand passed by this Court in Crl.R.C.No.229 of 2005 dated 08.02.2011.

(ii) PWs.1 to 3, after remand, taking advantage of the situation has made very many vital improvements with that of their earlier testimony and the said material aspect has been completely overlooked by the trial Court.

(iii) The testimonies of PWs.1 to 3 did not corroborate with each other on material particulars and they are wholly unreliable.

(iv) PWs.1 to 3 did not lodge any complaint immediately after the occurrence to the nearest police station, namely Erumapatty Police Station.

(v) Admittedly the first accused has sustained injuries on account of PW1, which resulted in registration of counter case in Crime No.26/2002 (Ex.D1- Old) and the said case has not been properly investigated and closed as mistake of fact and the prosecution has not properly explained as to how the first accused had sustained injuries.

(vi) As per the testimony of PW17, who registered the F.I.R., he received an information from Namakkal Police Station, based on which he went to Namakkal Government Hospital and recorded the statement of PW1 and thereafter registered the case and no investigation has been done on the first information given to PW17 and admittedly the said first information has been burked to suit the case of the prosecution.

(vii) PW1, in the course of his testimony, made inconsistent version about the subscribing of signature in Ex.P1/complaint.

(viii) The presence of PW1 in the scene of occurrence is highly doubtful and in the Inquest Report/Ex.P24, nothing has been stated.

(ix) There was a contradiction in the evidence of PW3 as the person who made arrangements to take her to the hospital and with regard to the incident happened on the fateful day also, there was inconsistency between her testimony and PW1.

(x) PWs.4 and 5 did not support the case of the prosecution.

(x) PW10 would not have present at all at the scene of occurrence as he was the resident of some other place and the reason for his presence on that day cannot be acceptable for the reason that EB office will be on holiday during second Saturdays and therefore, he could not have come on that day for remitting current consumption charges.

(xi) PWs.12 and 13, who are the witnesses to seizure, arrest and admissible portion of the confession statement, have turned hostile and there was inconsistencies as to the exact time and arrest also.

(xii) The prosecution has not examined any independent witness and admittedly, none of the occupants referred to in Ex.P23/Rough Sketch have not been examined by the police.

(xiii) The prosecution belatedly dispatched the statements of PWs.1 to 3, 5, 6 and 10 and no plausible explanation has been offered as to the belated dispatch of those vital documents.

In sum and substance, it is the submission of the learned counsel appearing for the appellants that since the case of the prosecution bristled with very many infirmities and inconsistencies and there are very many loose ends, the trial Court ought to have awarded benefit of doubt and acquitted the appellant/accused and prays for setting aside the impugned judgment and Hon'ble Acquittal of both the accused.

6. Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor would contend that this Court having found that on earlier occasion, no proper reason have been given for acquitting the accused, have remanded the matter and after remand, the evidence of the witnesses were once again recorded and due to passage of time, some discrepancies bound to occur and the inconsistencies pointed out by the defence in the testimonies of eye witnesses did not affect the case of the prosecution for the reason that they are minor and trivial in nature and the testimonies of the injured witnesses, namely PWs.3 and 4 carry a great weight and the trial Court, based on their testimonies coupled with other materials such as Accident Register and Postmortem Certificate, has rightly reached the conclusion and though the witnesses to Seizure Mahazar and Recovery had turned hostile, they did not affect the core of the prosecution and prays for confirming the judgment of conviction and sentence passed by the trial Court and dismissal of this appeal.

7. This Court paid its best attention and anxious consideration to the rival submissions and also perused the oral and documentary evidence as well as the original documents.

8. PW1 is the son of the deceased Chinnathambikalan and he would admit that there was enmity on account of land dispute and his father was attacked by the accused 1 and 2 and he was also attacked by the accused 1 and 2 and his wife PW3 tried to intervene and she was also attacked and on hearing the commotion, PWs.4,5 and 6 and one Nallikannu and Thoppooran came there to rescue them and on seeing them, both the accused fled away from the scene with weapons and he was admitted by PW11. In the cross examination, PW1 pleaded ignorance about civil litigation filed by them in O.S.No.185/1992 as well as filing of

the case in O.S.No.397/2001/Ex.D3 and denied the suggestion that the accused were falsely implicated. PW1 would further admit that Erumapatty Police Station is only 4 Kms. away and they reached Namakkal via Erumapatty Police Station only and when he reached the Namakkal Government Hospital between 3.00 and 3.45 p.m., he did not know the person who accompanied him and he was in an unconscious state of mind. PW1 would further depose in the cross examination that immediately after the occurrence, Village Munsif came there at 4.00 p.m. and he examined all of them, but he did not obtain his signature and he did not lodge any complaint to Erumapatty Police Station and was not aware as to any whether other person has lodged complaint and the police came to the spot at about 4.00 p.m and he was examined by Namakkal Police and also lodged a complaint to them and he did not know who prepared the report and when he was asked to put his signature, he put his signature in English. Attention of the witness/PW1 was drawn to Ex.P1 and though he would state that he only put his signature, later on stated that he did not subscribe his signature and on going through Ex.P1, once again has admitted that he subscribed his signature in the police station and when he was examined by police, Doctor was also present.

9. PW1, in the cross examination, with regard to counter case, marked as Ex.D1 (old), has denied the suggestion that they only started attacking the accused and prior to attack, there was a wordy altercation between his father and the accused for 5 minutes and thereafter, his father was attacked by the accused and on hearing the commotion only, he came to the spot and even prior to that, the second accused was present. PW1 denied the suggestion that on account of accidental fall only, his father sustained injuries. PW2 is the brother of PW1 and son of the deceased and he also spoke about the occurrence and he was conversing at the time of occurrence with PW10 and was about 60 feet away from the occurrence and he did not know where his brother was and PW4 and other witnesses were at about 500 feet away, cutting trees and police came to the spot at about 6.00 p.m. and he informed the police through telephone at about 2.00 p.m. and police came to the spot at about 6.00 p.m. He would further depose that on the date of occurrence on 12.01.2002, at about 5.00 p.m. the accused were caught by the police. It is to be noted at this juncture that the presence of PW17 was not spoken to by PW11 even in Ex.P1/complaint as well as in his evidence. It is very pertinent to point out at this juncture that according to PW17, the Sub-Inspector of Police attached to Erumapatty Police Station at about 4.00 p.m. he received an information from Namakkal Police Station, based on which he went to Namakkal Government Hospital and examined and recorded the statement of PW1 under Ex.P1 and thereafter, registered the F.I.R. The presence of PW2 at the time of occurrence was doubtful for the above said reason and it is his evidence that

he only lodged the complaint to Namakkal Police Station through telephone at about 2.00 p.m. and during the occurrence, police came to the spot at about 6.00 p.m.

10. PW17, the Sub-Inspector of Police, who registered the F.I.R., would admit with regard to receipt of information by Namakkal Police Station that he did not note it in the Station Diary as well as in other records and he cannot give any reason. PW18/Investigating Officer, in the cross examination, would admit that even in the F.I.R., the intimation received from Namakkal Police Station found place and he did not investigate the said aspect. As rightly contended by the learned counsel appearing for the appellants that even prior to Ex.P1/complaint recorded by PW17, there was an anterior information as to the commission of offences received by Namakkal Police Station and the said information has been burked and it also assumes importance for the reason that it is the evidence of PW2 that he only lodged a complaint at about 2.00 p.m. on the fateful day and police came to the spot at about 6.00 p.m. There is also discrepancies in the testimonies of PWs.1 and 2 as to the presence of police in the scene for the reason that according to PW1, Village Munsif came to the spot at about 4.00 p.m. and he examined all the witnesses and it also substantiate the defence projected by the accused that there was a prior information. The prosecution did not come out with any clear and plausible explanation as to the investigation done on the prior complaint and as to the action taken. In the considered opinion of the Court, the said prior information has been burked by the prosecution for the reasons best known to them.

11. It is to be noted at this juncture that PW1 was also inconsistent as to his signature in Ex.P1 for the reason that he was not very categorical as to his signature in Ex.P1/complaint. Therefore, this Court is of the considered view that Ex.P1/complaint is highly doubtful and the prior information as to the commission of offence has been suppressed by the prosecution. PW3 is the wife of PW1 and he has spoken about the overt act on the part of the accused and she would say that the occurrence was witnessed by PW5 and three others. In the cross examination, PW3 would depose that after hearing the commotion, she came out after two minutes and when she prevented the accused from attacking her husband, she was also beaten and when the police came to the hospital at about 4.00 or 4.30 p.m., she did not know as to the person who lodged the complaint and they (PWs.1 and 3) did not lodge any complaint as they were unconscious and three days after only she was examined by police and she was unconscious for two days. Therefore, according to PW3, her husband, PW1 or himself did not lodge any complaint as they were unconscious and they were admitted by Duraisamy, Pennatchiammal, Sivakumar (witnesses not examined).

12. PW5 was the another eye-witness and he knows both PWs.1 and 3 and on hearing the sound, he saw the attack inflicted by the accused and in the cross examination, he would depose that he witnessed the occurrence at about 10 to 15 feet away and there was a blood stain in the cloth wore by PW1 and the police came to the spot at about 5.00 or 6.00 p.m. and he did not know other persons, who might have witnessed the occurrence. PW6 was cited as another eye-witness, but he turned hostile. PW7 was the elder brother of the deceased and in the cross examination, he would depose that police came to the spot at about 4.00 p.m. and only after their arrival only, PW1 was taken to the hospital and the police did not examine anybody. The testimony of PW7 is quite contradictory to the testimony of PWs.1 and 3 as to their admission in the hospital as well as time and arrival of the police.

13. PW8 was the Casualty Medical Officer, who treated both PWs.1 and 3 and in the cross examination, he would depose that the said witnesses did not speak anything about the number of persons attacked them and they came on their own to the hospital. It is to be pointed out at this juncture that as per the testimony of PWs.1 and 3, they were taken to hospital by somebody, whereas the testimony of PW8 is otherwise.

14. PW10 was also cited as an eye witness and he speaks about the overt act of three accused, namely Ponnusamy, Sivakumar and Udayakumar and he was cross examined with regard to his presence in the scene of occurrence and he would state that for the purpose of paying electricity bill, he went to that place and he has also spoken about the presence of PW2 and further deposed that PW11 had contacted the police and police only took PWs.1 and 3 to the hospital. As far as admission of PWs.1 and 3 in the hospital is concerned, the evidence of PW10 is in consonance with the evidence of PW7 and it is contradictory to the testimonies of the injured witnesses, namely PWs.1 and 3.

15. It is the submission of the learned counsel appearing for the appellant that the date on which the occurrence took place is a 2nd Saturday where no Electricity Office would function and therefore, his presence was highly doubtful. Even otherwise, the testimonies of PWs.7 and 9 disclosed that the appellant came to the spot much earlier and they only took PWs.1 and 3 to the hospital for treatment and if it is so, there was an earlier information as to the commission of offences and as already pointed out in the earlier paragraphs, the said information has been totally suppressed and burked by the prosecution and PW8 did not come out with any plausible explanation as to the complaint, which came into existence at the earliest point of time.

16. PW11, according to the prosecution, took PW1 for treatment to the Government Hospital at Namakkal and in the cross examination, he would depose that within ten minutes, he went to the scene of occurrence and found that PWs.1 and 3 were lying with injuries and also the body of Chinnathambikallan/deceased and he contacted Erumapatty Police Station and admitted them in the hospital between 01.30 and 02.00 p.m. and police came to the spot at about 04.30 p.m. and when he reached the spot, he found that Village Munsif was present and crowd was also assembled.

17. The testimonies of PW10 is contradictory to the evidence of PWs.3 and 7 as to the lodging of the complaint as well as the presence of police. It is also to be noted that Village Munsif was present even at that time. PW12 was the Village Administrative Officer and he reached the spot at about 6.00 to 6.30 p.m. and at that time, police was present and thereafter, he did not support the case of the prosecution and was treated as hostile witness and so also his menial, who was examined as PW13. The testimonies of the above said witnesses are crucial to support the prosecution case for the reason that they were witnesses to the scene of crime, arrest, confession and recovery of weapons and it is the categorical submission of PWs.3, 7 and 9 that the Village Munsif was present even on an earlier occasion.

18. This Court in the earlier paragraphs held that the earlier information as to the commission of the crime has been burked, but for that information, the Village Administrative Officer could not have been present even much prior to the registration of the F.I.R and unfortunately for the prosecution, both the witnesses became hostile.

19. It is the submission of the learned counsel appearing for the appellant by inviting the attention of this Court to Ex.D1 (Old) and Exs.P30 and 31 that it is a case in counter and though the first accused was attacked by PW1, the case was registered belatedly in Cr.No.26/2002 and the injuries to the first accused have not been properly explained. According to the prosecution, during the course of attack, the first accused got accidentally injured and it was accepted by the jurisdictional Magistrate through Closure Report, marked as Ex.P31 and the injuries are also simple in nature and therefore, it cannot be said that no proper investigation has been conducted in respect of the counter case. However, the appellants are entitled to succeed for the reason that a grave doubt has been created as to the first information, based on which the case has been registered. This Court, on analyzing and scrutinizing the testimonies of the above said witnesses, has expressed opinion that even prior to Ex.P1, Namakkal Police Station has received the first information which was passed on

to Erumapatty Police Station and thereafter, PW17 went to Namakkal Government Hospital to record the statement/Ex.P1 from PW1 and registered the F.I.R under Ex.P22 and it was also admitted by PW17 with regard to receipt of information from Namakkal Police Station and he did not record the same either in his diary or station diary and the availability of earlier information is also fortified by the fact that according to PWs.7 and 9, police were present and they only took PWs.1 and 3 to the hospital and whereas the oral testimony of PW17 is even otherwise. Thus the origin of the complaint itself is highly doubtful.

20. The Hon'ble Supreme Court of India in the decision in Marudanal Augusti v. State of Kerala [1980 SCC (Cr1.) 985] held that once the F.I.R is held to be fabricated and brought into existence long after the occurrence, the entire prosecution case would collapse. No doubt, the case of the prosecution is built up on the testimonies of the injured witnesses, namely PWs.1 and 3, but in the light of the infirmities pointed out above, it is not safe to rely on their testimonies and that apart, their testimonies did not corroborate with each other on material particulars and important aspects and as a consequence, the benefit of doubt enures in favour of the appellant/accused.

21. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants, vide Judgment dated 13.07.2012 made in S.C.No.132 of 2003 by the Principal Sessions Judge, Namakkal are hereby set aside and the appellants/accused are acquitted of the charges levelled against them. It is reported that the appellants/accused are on bail. The bail bonds shall stand terminated. Fine amount, if any paid, shall be refunded to the appellants.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.Principal Sessions Judge,
Namakkal.
- 2.The Inspector of Police,
Namakkal Police Station,
(I/c) Erumapatty Police Station,
Namakkal District.

3. The Public Prosecutor,
Madras High Court, Chennai.
4. The Judicial Magistrate No.I,
Namakkal.
5. The Chief Judicial Magistrate,
Namakkal (For Information).
6. The Superintendent,
Central Prison,
Coimbatore.

+1cc to Mr.R.Thirugnanam, Advocate Sr.11703

Criminal Appeal No.666 of 2012

svi (CO)
srg (18/03/2016)



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