

BAIL SLIP

The accused namely 1.Marimuthu, S/o. Vaiyapuri (A1), 2. Amulraj, S/o. Marimuthu(A2), 3. Mohanraj, S/o.Marimuthu (A3) were directed to released on bail made in MP.2 & 3/2014 in Crl.A.729/2013 of this court order dated 16/10/2014 and 2/12/2014

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.729 of 2013

1. Marimuthu (A1)  
2. Amulraj (A2)  
3. Mohanraj (A3) .. Appellants / Accused No.1 to 3

- Vs -

State rep by Inspector of Police,  
Omalur Police Station,  
Salem District.  
(Cr.No.74 of 2010) .. Respondent / Complainant

Prayer:- Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the learned III Additional District and Sessions Judge, Salem in S.C.No.203 of 2011 dated 24.10.2013.

For Appellants 1 & 3 : Mr.N.Manokaran

For Appellant 2 : Mr.Philip Ravindran Jesudoss

For Respondent : Mr.M.Maharaja  
Additional Public Prosecutor

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J U D G M E N T

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

The appellants are accused 1 to 3 in S.C.No.203 of 2011 on the file of the learned III Additional District and Sessions Judge, Salem. The trial Court framed charges against the above stated three accused as detailed below:

| Serial Number of charge | Charge(s) framed against | Charge(s) framed under Section |
|-------------------------|--------------------------|--------------------------------|
| 1                       | A1                       | 294(b) of IPC                  |
| 2                       | A1                       | 324 of IPC                     |
| 3                       | A1                       | 302 r/w 34 of IPC              |
| 4                       | A1                       | 324 r/w 34 of IPC              |
| 5                       | A1                       | 324 r/w 34 of IPC              |

| Serial Number of charge | Charge(s) framed against | Charge(s) framed under Section |
|-------------------------|--------------------------|--------------------------------|
| 1                       | A2                       | 324 r/w 34 of IPC              |
| 2                       | A2                       | 302 of IPC                     |
| 3                       | A2                       | 324 of IPC                     |
| 4                       | A2                       | 324 r/w 34 of IPC              |

| Serial Number of charge | Charge(s) framed against | Charge(s) framed under Section |
|-------------------------|--------------------------|--------------------------------|
| 1                       | A3                       | 324 r/w 34 of IPC              |
| 2                       | A3                       | 302 r/w 34 of IPC              |
| 3                       | A3                       | 324 r/w 34 of IPC              |
| 4                       | A3                       | 324 of IPC                     |

By judgment dated 24.10.2013, the trial Court convicted and sentenced these appellants / accused 1 to 3 for various offences as detailed below:

| Rank of the Accused | Penal provision(s) under which convicted | Sentence                                                                                                       |
|---------------------|------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| A1                  | 302 r/w 34 of IPC                        | Imprisonment for life and to pay a fine of Rs.1000 in default to undergo rigorous imprisonment for six months. |
|                     | 294(b) of IPC                            | Rigorous Imprisonment for three month.                                                                         |
|                     | 324 of I.P.C.                            | Rigorous Imprisonment for three years.                                                                         |
|                     | 324 r/w 34 of IPC (two counts)           | Rigorous Imprisonment for three years for each count.                                                          |

| Rank of the Accused | Penal provision(s) under which convicted | Sentence                                                                                                       |
|---------------------|------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| A2                  | 302 of I.P.C.                            | Imprisonment for life and to pay a fine of Rs.1000 in default to undergo rigorous imprisonment for six months. |
|                     | 324 of I.P.C.                            | Rigorous Imprisonment for three years.                                                                         |
|                     | 324 r/w 34 of IPC (two counts)           | Rigorous Imprisonment for three years for each count.                                                          |
| A3                  | 302 r/w 34 of I.P.C.                     | Imprisonment for life and to pay a fine of Rs.1000 in default to undergo rigorous imprisonment for six months. |
|                     | 324 of I.P.C.                            | Rigorous Imprisonment for three years.                                                                         |
|                     | 324 r/w 34 of IPC (two counts)           | Rigorous Imprisonment for three years for each count.                                                          |

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

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

2.1. The first accused Mr.Marimuthu is the father of the accused 2 and 3. They were all residing at Nerinjipatti village in Salem district as a joint family. The deceased in this case was one Mr.Selvakumar. The father of Mr.Selvakumar by name Mr.Balasubramani and the first accused are brothers. Mr.Balasubramani is no more. P.W.1 Mr.Sampoornam is the wife of Mr.Balasubramani and mother of the deceased Mr.Selvakumar. Mr.Balasubramani and P.W.1 have got two more sons by name Bakiyakumar (P.W.2) and Saravanakumar (P.W.5). P.W.1 and her three sons namely the deceased, P.W.2 and P.W.5 were also residing as a joint family. The house of the accused and that of P.W.1 and her family members form part of the same building. The western half portion of the building was owned by P.W.1 and her sons, where they were residing. The eastern portion of the house was owned by the accused and they were residing in that portion.

2.2. It is further alleged that after the demise of Mr.Balasubramani, the first accused, on few occasions, made sexual advances towards P.W.1. P.W.1 took exception to the said conduct of the first accused. But P.W.1 did not inform the same to her sons because it would bring shame to the family. It is further stated that because she did not concede to the said sexual advances made by

the first accused, the first accused started abusing her in filthy language. This happened on few occasions. P.W.1 did not inform this also to her sons.

2.3. These two families had a common property measuring 5 cents just by the side of their houses. There was a neem tree and a pipal tree on the said land. The family of P.W.1 was worshipping these two trees as deities. On 17.01.2010, the first accused cut the said trees, which were commonly owned by them. Apprehending that it may result in a fight in the event P.W.1 questioned the same, even after noticing the trees being cut, P.W.1 did not come out and question the same. This happened around 06.30 a.m. All her three sons were not at home at that time. P.W.1 informed the deceased over phone about the same. She complained that the trees which were worshiped by them as deities were ruthlessly cut by the first accused. Out of emotion, she even wept. Having heard the same over phone, the deceased assured that he would come and tackle the issue.

2.4. On the same day, past 01.00 p.m. the deceased returned to his house. The other two sons of P.W.1 were also in their house. He enquired the happenings, found that the trees had been cut, went in front of the house of the first accused and questioned the same. It is the further case of the prosecution, that there was a wordy duel between the first accused and the deceased and on account of the same. It is further stated that thereafter, the deceased returned to his house.

2.5. Within a short while, it is alleged that all the three accused came in front of the house of the deceased; the first and second accused were armed with iron pipes and the third accused was armed with a wooden log. The first accused, shouted and abused P.W.1 calling her a prostitute. On hearing the same, it is alleged that P.W.1 came out of the house. The first accused on seeing her, menacingly rushed towards her with the iron pipe and attacked her with hands and pushed her down. On hearing the alarm raised, the deceased came out of the house. The second accused attacked him with iron pipe on his head. He fell down. P.W.2 intervened. The second accused attacked him also with the iron pipe. Then P.W.5 intervened. The third accused attacked him with a wooden log. Then all the three accused ran away from the scene of occurrence. The alarm raised by all the three, attracted the neighbours. They took all the three injured to the Government hospital at Salem.

2.6. P.W.12 Dr.Sivakumar examined P.W.1 at 04.40 p.m. on 17.01.2010. She told that at 01.30 p.m. on the same day, at her village near her house, she was attacked by three known persons. P.W.12 noticed a small abrasion near the right wrist. But after admission, she deserted the hospital. On the same day, he examined P.W.2. He also told that he was attacked by three known persons at the same place. P.W.12 found a small abrasion on the left knee and a sutured wound on his head. Ex.P6 is the accident register for P.W.1 and Ex.P8 is the accident register of P.W.2. The deceased was examined by the doctor. Since the condition of the deceased was bad, he was referred to the Government hospital at Coimbatore and

accordingly he was admitted there.

2.7. On receiving intimation from the Government hospital at Salem, P.W.16 the then Sub Inspector of Police, Omalur police station went to the said hospital, recorded the statement of P.W.1 and on returning to the police station at 09.00 a.m on 18.01.2010, he registered a case in Crime No.74 of 2010 under Sections 294 (b), 323, 324 and 506(2) of I.P.C. Ex.P1 is the complaint and Ex.P10 is the F.I.R. He forwarded both the documents to Court, which were received by the learned Magistrate at 08.00 p.m. on 19.01.2010.

2.8. P.W.16, took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.14 and another witness. He examined some of the neighbours and recorded their statements. He went to the hospital and recorded the statements of P.Ws.1 and 2.

2.9. On 19.01.2010 at 02.00 p.m. he arrested the third accused at Swaminayakanpatti bus stop in the presence of P.W.8 and another witness. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden the iron pipe and a wooden log. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.Os.2 and 3. He recovered the same under a mahazar. Then, he handed over the case diary to P.W.18 for further investigation.

2.10. The deceased, who was admitted at the Government Hospital at Coimbatore on 18.01.2010, underwent treatment as inpatient, but died on 23.01.2010 at 05.30 a.m. On receiving the said intimation, P.W.18 altered the case into one under Section 302 I.P.C. and forwarded the alteration report to the Court. On the same day, between 12.30 p.m. and 03.30 p.m. he conducted inquest on the body of the deceased in the hospital and forwarded the same for postmortem.

2.11. P.W.11 Dr.Kulandaivelu conducted autopsy on the body of the deceased on 23.01.2010 at 03.45 p.m. He found the following injuries:

*"Injuries: (1) Abrasions with black scab 6x1 cm noted on back of right forearm. (2) Lacerated wound 1.5x.05x0.25 cm scalp deep with healing margins noted over front of left side head, 11 cm above the outer aspect of left eyebrow.*

*Internal injuries: Sub scalp contusion of variegated colour 24x23 cm noted on both fronto temporo parietal region. Communitated fracture 17x8-3 cm involving left fronto temporo parietal and right posterior parietal region with multiple elevation and depression of bones. Extra dural hemorrhages weighing about 100 to 200 grams noted on both anterior parietal and anterior temporal lobe. Radiating crack fracture seen in right middle cranial fossa 7 cm in length and it*

continues into right anterior cranial fossa 4 cms length. Laceration of brain with surrounding softening of tissue measuring 0.5x0.5x0.5 cm noted on left frontal lobe, 0.5x0.5x0.5 cm noted on left temporal lobe, 0.5x0.5x0.5 cm noted on left posterior frontal lobe. Thin sub dural and sub arachnoid hemorrhages noted over entire brain.

Other findings: Pleural and peritoneal cavities: empty; Lungs cut section congested and edematous. Heart: right side chambers contain few cc of fluid blood, left side chambers empty. Coronaries patent. Hyoid bone intact. Stomach contains about 50 ml of thick bile stained fluid, no specific smell, mucosa congested. Small intestine contains about 20 ml of bile stained fluid. No specific smell, mucosa congested. Liver, spleen and kidneys : cut section contested. Urinary bladder - empty."

Ex.P5 is the postmortem certificate. He gave opinion that the deceased had died due to shock and hemorrhage due to the injuries found on the body of the deceased. He further opined that the injuries on the body of the deceased could have been caused by a weapon like M.O.2. (Iron pipe).

2.12. On 24.01.2010, he arrested the accused 1 and 2 at Dalmiyapuram bus stop in the presence of witnesses. On such arrest, the first accused gave a voluntary confession, in which he disclosed the place where he had hidden the iron pipe. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the said weapon. On returning to the police station he forwarded the accused to Court for judicial remand. At his request, the material objects were sent for chemical examination. On completing the investigation, he laid the chargesheet against the accused.

2.13. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution as many as 19 witnesses were examined, 18 documents and 3 material objects were marked.

2.14. Out of the said witnesses, P.Ws.1 and 2, are admittedly, the injured witnesses. P.W.5, though claimed to have sustained injuries in the very same occurrence, there is no proof for the same as he did not undergo any treatment. These three witnesses have vividly spoken about the entire occurrence. P.W.3 is the wife of the deceased and P.W.4 is the brother of P.W.1. They have also spoken about the entire occurrence as eyewitnesses. P.Ws.6 to 9 turned hostile and they have not supported the case of the

2.15. P.W.10 has spoken about the arrest of the accused 1 and 2 and the confession made by the first accused and consequential recovery of the iron pipe. P.W.11 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.12 has spoken about the treatment given to P.Ws.1 and 2 at the Government Hospital at Salem. P.Ws.13 and 14 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.15, a constable, has stated that he took the dead body of the deceased after inquest was over and handed over the same to the doctor for postmortem as directed by P.W.18.

2.16. P.W.16 has spoken about the registration of the case on the complaint made by P.W.1 and the initial investigation done by him until the demise of the deceased. P.W.17 has stated that he recorded the statement of P.W.1 at the hospital and handed over the same to P.W.16 who in turn registered the case. P.Ws.18 and 19 have spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, they examined three witnesses as D.Ws.1 to 3 and marked 8 documents. D.W.1 is the employer of the second accused. He has stated that on 17.01.2010, the second accused had come to his company. Ex.D1 is the attendance register which show that the second accused was on duty on 17.01.2010 throughout the daytime. Ex.D2 and D4 are the other records maintained in the company which also reveal that the second accused was on duty in the company. Thus, the second accused has pleaded alibi.

4. D.W.2 is a neighbour of the accused and the deceased. He has stated that on the day of occurrence at around 02.45 p.m. the deceased, P.W.2 and P.W.5 came to the house of the first accused, dragged the first accused out of his house and attacked him with stones and sticks. The second accused, incidentally came to the place of occurrence and he tried to rescue his father and in that process, he pushed the deceased. The deceased fell down and his head hit against the floor. P.W.1 and the second accused were exchanging blows. The neighbours gathered there and they separated them. Thereafter, the injured were taken to the hospital. Thus, according to him, the deceased party were the aggressors.

5. D.W.3 Dr.Saravanan has stated that on 17.01.2010 one Dr.N.Bharat Senthilkumar was on duty at the Government Hospital at Omalur. Dr.N.Bharat Senthilkumar was no more in service. D.W.3 was then working as a doctor in the same hospital and thus he knew the handwriting of Dr.N.Bharat Senthilkumar. According to this witness, as per the accident register recorded by Dr.N.Bharat Senthilkumar, the first accused had come the said hospital for treatment at about 05.30 p.m. He told that at 02.45 p.m. at Nerinjipatti village at his house, four persons attacked him with sticks, stones and aruval. He was admitted as inpatient but there were no visible external injuries. He was inpatient till 19.01.2010. Then, he was taken to the Government, Mohan Kumaramangalam Hospital for further treatment

on 19.01.2010 at 11.00 a.m.

6. On 17.01.2010, the second accused had come to the Government hospital at Omalur for treatment. He also told that he was attacked by four known persons with sticks at his house at Nerinjipatti village. He found an abrasion measuring 1x1cm on the right thigh. He was also treated as inpatient. On 19.01.2010 at 11.00 a.m. he got discharged voluntarily. Ex.D6 is the accident register for A1 and Ex.D7 is the accident register for A2.

7. Having considered all the above, the trial Court convicted all the three accused as detailed in the first paragraph of this judgment and that is how, they are before this Court with this appeal.

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

9. As we have already pointed out, P.Ws.1, 2 and 5 claimed to be injured eyewitnesses. P.Ws.3 and 4 also claimed that they have witnessed the occurrence. Though, it is stated that P.W.5 sustained injury, there is no medical record to prove the same. But on that score, we cannot disbelieve his presence at the place of occurrence. In our considered view, the presence of P.Ws.1 to 5 at the place of occurrence was quite natural and it was believable. They have stated in one voice and without any inconsistency that the first accused attacked P.W.1, the second accused attacked the deceased and P.W.2 and the third accused attacked P.W.5. The occurrence had taken place just in front of the houses of both the accused and the deceased. P.Ws.1 and 2 have sustained only small abrasions. In the same occurrence, the accused 1 and 2 also had sustained injuries. They had gone to the Government hospital at Omalur and D.W.3 has treated them. D.W.2 has stated that the deceased party came in front of the house of the accused, dragged the first accused out of the house and attacked him. At that time, the second accused came and he was also attacked. They have further stated that the third accused was employed and not available at the place of occurrence.

10. Thus, there are two versions now before this Court. One alleging that the accused party were the aggressors and the other alleging that the deceased party were the aggressors. But unfortunately, there was no investigation done in respect of the allegations made by the accused party though according to D.W.3, intimation was sent to the police after admission of the accused 1 and 2 in the Government hospital at Omalur. There was no statement recorded from A1 or A2 and no case was registered. The injuries on the accused 1 and 2 were also not explained. This gives initial impression that the prosecution has not come forward with clean hands.

11. Now going to the background of the events, the occurrence was as a sequel to the cutting of trees by the first accused. The cutting of the trees happened at around 06.30 a.m. in the morning.

P.W.1 alone was at her house and her sons were not at home. She informed the same to the deceased over phone. Out of emotion, she also wept, because she was sentimentally attached the trees as they were worshiped as deities. P.W.1 has admitted that the deceased had assured her that he would come and sort out the issue and wanted her to stop weeping.

12. Past 01.00 p.m. the deceased came to his house. P.W.1 has admitted that there were deliberations between him and his brothers viz., P.Ws.2 and 5 and P.W.1. After that he only went to the house of the accused. It is not as though the house of the accused and the deceased are situated at any far off place. They are part of the same building. They came in front of the house and there only the occurrence had taken place. From this fact, it is crystal clear that aggrieved over the cutting of the trees in the morning at 06.30 a.m. the deceased party alone had gone to the house of the accused party and developed a quarrel. Thus, from the evidences of P.Ws.1 to 5 and D.W.2 there was a clash between the two groups. In that clash, both parties sustained injuries. Unfortunately the deceased had sustained injuries on his head. It is more probable that the deceased party alone were the aggressors. Though the accused have not pleaded right of private defence explicitly, from the evidences available on record, we are able to gather that since the deceased party were the aggressors and since the accused 1 and 2 were attacked, in exercise of right of private defence the accused would have acted, which resulted in injuries to P.Ws.1, 2 and the deceased. Going by the nature of the injuries sustained by P.Ws.1, 2 and the deceased, it cannot be said that the accused have exceeded their right of private defence of body. Thus, the act of the accused squarely fall within the general exception under Section 100 I.P.C. Therefore, the appellants / accused 1 to 3 are entitled for acquittal.

13. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellants by the learned III Additional District and Sessions Judge, Salem in S.C.No.203 of 2011 dated 24.10.2013 is set aside and they are acquitted.

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

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

Jbm/kk

Sd/-  
Assistant Registrar (CS- )

/TRUE COPY/

Sub-Assistant Registrar

To

1. The III Additional District and Sessions Judge,  
Salem.
2. The Principal District and Sessions Judge  
Salem.
3. The Inspector of Police,  
Omalur Police Station,  
Salem District.
4. The Judicial Magistrate, Salem.
5. The Chief Judicial Magistrate, Salem.
6. The Judicial Magistrate No.I, Tiruchirapalli.
7. The Chief Judicial Magistrate, Tiruchirapalli.
8. The Superintendent, Central Prison, Coimbatore
9. The District Collector, Salem, Salem District
10. The Director General of Police,  
Mylopore, Chennai -4
11. The Superintendent of Police, Salem, Salem District
12. The Public Prosecutor,  
Madras High Court.

+1 CC Mr.N.Manokaran Advocate SR.No.41974

+1 CC Mr.Philip Ravindran Jesudoss Advocate SR.No.41791

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NRJK

MSI 25/10/2016