

BAIL SLIP

The Appellants/Accused 1 and 2 namely Manickam and Vincent Paulraj were released on bail by this Hon'ble Court made in MP(MD)No.1/2011 in Cr1.A(MD)No.138/2011 dated 20.06.2011.

WEB COPY The Appellant/Accused A3 namely Jesubalan was released on bail by this Hon'ble Court made in MP(MD)No.3/2011 in Cr1.A(MD)No.138/2011 dated 20.12.2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

Cr1.A(MD)No.138 of 2011

1. Manickam
2. Vincent Paulraj
3. Jesubalan

.. Appellants / Accused Nos.1 to 3

Vs.

State rep. By
The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai.
(Crime No.138 of 2007)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying this Court, to call for the records relating to the Judgment delivered in S.C.No.46 of 2008 dated 05.04.2011 on the file of the learned Sessions Judge, Sivagangai and to set aside the same and to acquit all the appellants/accused No.1 to 3 from the charges leveled against them.

For Appellants

: Mr.S.Ashok Kumar, Senior Advocate
for N.Anandakumar, Advocate

For Respondent

: Mr.C.Ramesh,
Additional Public Prosecutor

Judgment reserved on : 16.12.2015

Judgment pronounced on : 25.02.2016

JUDGMENT

The appellants are the accused Nos.1 to 3 on the file of the learned Sessions Judge, Sivagangai. The accused Nos.1 and 2 have been charged for the offence under Sections 307, 302 r/w 34 and 324 r/w 34 I.P.C., and the accused No.3 has been charged for the offence under Section 307 r/w 34, 302 and 324 I.P.C. The trial Court, by Judgment dated 05.04.2011, acquitted the accused No.4 Arul Francis Ammal, from the charges framed under Sections 307 r/w 109, 302 r/w 109 and 324 r/w 109 I.P.C., but convicted the accused Nos.1 and 2, for the offence under Section 307 I.P.C., and sentenced them to undergo Rigorous Imprisonment



for seven years each and also imposed the fine amount of Rs.250/- each and, in default, to undergo Rigorous Imprisonment for the period of one year each and convicted the accused No.3 for the offence under Section 302 I.P.C., and sentenced him to undergo Life Imprisonment and also, imposed the fine amount of Rs.500/- and in default, to undergo Rigorous Imprisonment for the period of two years and also convicted him for the offence under Section 324 I.P.C., imposed the fine amount of Rs.100/- and in default, to undergo Rigorous Imprisonment for the period of two weeks and the accused Nos.1 and 2 have been acquitted for the offence under Sections 302 r/w 34 and 324 r/w 34 I.P.C., and also accused No.3 has been acquitted for the offence under Section 307 r/w 34 I.P.C. Challenging the said conviction Judgment delivered in S.C.No.46 of 2008, the appellants/accused Nos.1 to 3 in Crime No.138 of 2007, are before this Court with the present appeal, praying the above mentioned reliefs.

2.The brief case of the prosecution is as follows;

Even before the period of two years from the date of occurrence, a previous enmity has existed, regarding the house plot, between the P.W.1's family and the accused family and on 27.06.2007 at 7.00 a.m., there arose a wordily quarrel between Susaiyammal, namely, the mother of the accused and Kuzhanthaiammal, namely, the mother-in-law of the P.W.1, and thereafter, at 8.30 a.m., the accused Nos.1 to 3 have come to the place of occurrence and due to the previous enmity, the first accused Manickam has brutally assaulted the husband of the P.W.1, namely, Mariyadass and the second accused Vincent Palraj has brutally assaulted Mahimaidass and the third accused Jesubalan has brutally assaulted Mohandass, with the help of Aruval and also the third accused has assaulted the P.W.1 and thereafter, the accused Nos.1 to 3 have escaped from the place of occurrence, in the two wheeler and Singarayar has taken all the injured persons to Sivagangai Government Hospital and thereby, the accused Nos.1 to 3 have committed the said offences, according to the prosecution.

2.1. In order to prove the case of the prosecution, the prosecution has examined 13 witnesses as P.W.1 to P.W.13 and also marked 31 exhibits as Ex.P.1 to Ex.P.31 and also Material Objects as M.O.1 to M.O.9.

2.2. P.W.1 Aruljothi has stated that she knows the deceased Mohandass and the said Mohandass is the uncle for herself and the injured Mariyadass is her husband and another injured Mahimaidass is her uncle, by relationship and also, she knows the accused Nos.1 to 4 and already, there existed previous enmity between the family of the P.W.1 and the accused family, due to a land dispute. On 27.06.2007 at 7.00 a.m., Susaiyammal, wife of Adaikalam has cleaned the lane in between the P.W.1's house and their house and the said Susaiyammal is the mother of the accused Nos.1 to 3 and at that time of cleaning the lane, the said Susaiyammal has used filthy language, as against the P.W.1's family members and thereafter, the Mahimaidass came to the place and separated both the parties and also, instructed them, to go to their respective houses and thereafter, the P.W.1 and his husband Mariyadass and her uncle Mahimaidass and another uncle Mohandass and mother-in-law Kuzhanthaiammal have spoken to each other, behind the P.W.1's mother-in-law's house and at that time, the accused Nos.1 and 2 came in the TVS



50 and thereafter, they have gone to their house and came out with the third accused and the accused Nos.1 to 3 have got separate Aruvals in their hands and at that time, the accused Nos.4 has instigated the accused Nos.1 to 3 to brutally assault the P.W.1 and others and thereafter, the first accused has assaulted the husband of the P.W.1, namely, Mariyadass, with the help of Aruval and the second accused has assaulted Mahimaidass, with the help of Aruval and the third accused has assaulted Mohandass and also the third accused has assaulted the P.W.1, on her head. Thereafter, the P.W.1's uncle Singarayar has brought one car and admitted all the persons in Sivagangai Government Hospital, and for further medical treatment, Mariyadass, Mahimaidass and Mohandass have been taken to Madurai Government Hospital, and whereas the P.W.1 has taken medical treatment at Sivagangai Government Hospital itself and at that time, the police have come to the said hospital and received the complaint from the P.W.1, as per Ex.P.1 and she has identified the M.O.Nos.1 to 3 as the Aruvals, used by the accused Nos.1 to 3, to assault the said persons.

2.3. Further, the P.W.2 Mariyadass has stated in his evidence that the P.W.1 is his wife and he has also stated the details as mentioned by the P.W.1, in her evidence. Further, the P.W.3 Dr.Tamilvanan has stated that on 27.06.2007, he has served as Government Doctor at Sivagangai Government Hospital and at 9.10 a.m., he has given treatment to the injured Mahimaidass and the said Mahimaidass has stated to him that three known persons have assaulted him with Aruval, Stick and Knife, at 8.30 a.m., and then, he has issued Accident Register as per Ex.P.2 and thereafter, on 27.06.2007 at 9.30 a.m., Mohandass has been brought to the said hospital by Rayappan and the said Rayappan has informed to him that the said Mahandass has been assaulted by three known persons, with the help of Aruval, Stick and Knife and he has issued Accident Register as per Ex.P.4. Thereafter, on 27.06.2007 at 9.45 a.m., P.W.3 has given medical treatment to Mariyadass and the said Mariyadass has informed to him that three known persons have assaulted him with Aruval, Stick and Knife and the Ex.P.6 is the Accident Register and he has received the intimation as per Ex.P.5, to the effect that Mariyadass has left Madurai Rajaji Government Hospital, without hearing the advise of the Doctor. Thereafter, on 27.06.2007 at 9.45 a.m., he has examined Jothi and the said Jothi has also informed to him that three known persons have assaulted with Knife, Stick and Aruval and he has issued Accident Register as per Ex.P.7. Further, the P.W.4 Dr.Alavudeen, who has conducted Postmortem on the dead body of the deceased Mohandass has stated that he has served as a Doctor in Madurai Rajaji Government Hospital and he has conducted Postmortem on the dead body of the deceased Mohandass, in Crime No.138 of 2007 on 28.06.2007 and he has issued the Postmortem Certificate as per Ex.P.9.

2.4. Further, the P.W.5 Mahimaidass has stated that the deceased Mohandass is the son of his uncle and he knows the accused Nos.1 to 4 and the P.W.1 is related to him and already, there existed a land dispute between the accused family and the P.W.1's family and on 27.06.2007 at 7.30 a.m., there arose a wordily dispute between Susaiyammal, wife of Adaikalam and the mother of the P.W.5, namely, Kuzhanthaiyammal and thereafter, the P.W.4 came to the place of occurrence and also, instructed the said persons to go to their



respective houses and thereafter, the P.W.1, P.W.2, P.W.5 and Kuzhanthaiyammal have spoken to each other, behind the house of the P.W.5 and at that time, the accused Nos.1 and 2 came in a TVS 50, and they have gone to their house and came out from the house along with the third accused, with Aruval in each of their hands and at that time, the fourth accused has instigated the accused Nos.1 to 3, to assault Mariyadass and others and the first accused has assaulted Mariyadass and the second accused has assaulted the P.W.5 and the third accused has assaulted Mohandass, with the help of Aruval and the third accused has also assaulted the P.W.1 Aruljothi, on her head and thereafter, Singarayar has brought one car and admitted them in Sivagangai Government Hospital and thereafter, the P.W.5, Mohandass and Mariyadass have been taken to Madurai Government Hospital, for further medical treatment and the M.O.Nos.1 to 3 are the Aruvals, used by the accused to assault the said persons.

2.5. Further, the P.W.6 Rajendra Kumar has stated that Singarayar is his uncle's son and Pandiyammal is the wife of the said Singarayar and the police have come to the scene of occurrence and prepared the Observation Mahazar as per Ex.P.10 and they have collected the M.O.4 bloodstained earth and M.O.5 sample earth, in the Athatchi as per Ex.P.11 and also, they have recovered the M.O.6 TVS 50 in the said Athatchi. Further, the P.W.7 Savior Jegannathan has stated that the first accused has given voluntary confession statement and the police have recorded the said confession statement and Ex.P.12 is the admissible portion of the confession statement and he has signed in the said confession statement and thereafter, the first accused has taken the Aruval, from the hidden place and produced to the police and the police have recovered the same, in the Athatchi as per Ex.P.13 and the M.O.2 is the said Aruval and also, the first accused has produced the M.O.7, TVS 50 two wheeler to the police and the police have recovered the said two wheeler in the Athatchi as per Ex.P.14 and he has also signed as an attesting witness in the said Athatchi. Further, the P.W.8 Thiru.Sivasubramanian has stated that he has worked as Village Administrative Officer and the police have recorded the voluntary confession statements, from the accused Nos.2 and 3 and the admissible portions of the confession statements given by the accused Nos.2 and 3 are Ex.P.15 and Ex.P.16 and the second accused has taken out the M.O.1 Aruval and produced to the police and the police have recovered the said Aruval, in the Athatchi as per Ex.P.17 and he has signed in the said Athatchi and thereafter, the third accused has also taken the M.O.3 Aruval, near the burial ground and produced it to the police and the police have recovered the said Aruval, in the Athatchi as per Ex.P.17 and the second accused has produced the M.O.8 Lungi and M.O.9 shirt to the police and the police have recorded the same, in the Athatchi as per Ex.P.18 and he has signed in the said Athatchi.

2.6. Further, the P.W.9 Tmt.Nagalakshmi has stated that she has worked as Head Clerk of Judicial Magistrate Court No.2, Sivagangai and she has received the material objects and as per the Ex.P.20 requisition letter given by the Inspector of Police, she has sent the material objects for Chemical Analysis test and the Ex.P.21 and Ex.P.22 are the court letters and Ex.P.23 is the Chemical Analysis Report and the Ex.P.24 is the Viscera Report and the Ex.P.25 is the letter given by



the Inspector of Police, with regard to the Aruval. Further, the P.W.10 Dr.Sathyanarayanan has stated that on 10.07.2007, he has served as Doctor under Dr.Muthusamy in Madurai Meenakshi Mission Hospital and he knows the signature of the said Dr.Muthusamy and based upon that he has given his evidence, in the Lower Court and the said Dr.Muthusamy has issued Ex.P.26 Accident Register to Mariyadass, on 22.09.2007. Further, the P.W.11 Thiru.Muthuramalingam has stated that he has served as Sub Inspector of Police on 18.06.2006 at Sivagangai Taluk police station and he has received the petition from Judicial Magistrate No.2, Sivagangai and registered the earlier case in Crime No.193 of 2006 and prepared the First Information Report as per Ex.P.27. Further, the P.W.12 Tmt.Kannathal has stated that she has served as Sub Inspector of Police of Sivagangai Taluk police station and on 27.06.2007, she has received the intimation from Sivagangai Government Hospital and she has gone to the said hospital and received the Ex.P.1 complaint from the P.W.1 Aruljothi and registered the case in Crime No.138 of 2007 and also, she has prepared the First Information Report as per Ex.P.28 and also, she has submitted the said First Information Report to the concerned Court and concerned Higher Officials.

2.7. Further, the P.W.13 Thiru.Murugan has stated that he has served as Inspector of Police on 27.06.2007 in Sivagangai Taluk Police Station and he has received the Ex.P.28 First Information Report in Crime No.138 of 2007 and he has prepared Observation Mahazar as per Ex.P.10 and also, he has recovered the M.O.4 bloodstained earth, M.O.5 sample earth and M.O.6 TVS 50 two wheeler in the Athatchi as per Ex.P.11 and also, he has prepared Rough Sketch as per Ex.P.29 and he has prepared Alteration Report as per Ex.P.30 and also, he has prepared Inquest Report as per Ex.P.31 and he has sent requisition letter as per Ex.P.8, to the hospital, for conducting Postmortem on the dead body of the deceased Mohandass, and he has recorded the confession statements from the accused Nos.1 to 3 and the admissible portion of the confession statements are Ex.P.12, Ex.P.15 and Ex.P.16 respectively and also, he has recovered M.O.2 Aruval, from the first accused, in the Athatchi as per Ex.P.13 and also, he has recovered the M.O.7, TVS 50 two wheeler, from the first accused, in the Athatchi as per Ex.P.14. Further, the P.W.13 has recovered the M.O.1 Aruval from the second accused and M.O.3 Aruval from the third accused, in the Athatchi as per Ex.P.17 and also, he has recovered the M.O.8 lungi and the M.O.9 shirt, from the second accused, in the Athatchi as per Ex.P.18 and after completing the investigation, he has filed final report on 06.10.2007.

3. On completion of the evidences on the side of the prosecution, the accused have been questioned under Section 313 of Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and they have stated that they are innocent persons and they are not involved in the said occurrence, and on the side of defence, Ex.D.1 has been marked

4. Having considered all the above materials on record, the Trial Court has convicted the accused Nos.1 to 3, as mentioned in the beginning of this Judgment and challenging the said Judgment of the Trial Court, the appellants/accused have come forward with the present criminal appeals.



5. It is stated in the Grounds of Appeal, that the conviction granted by the Lower Court is unsustainable, due to the non-explanation of the injury suffered by the first accused by the prosecution. Also, the motive is not proved by the prosecution. Further, the non-examination of the independent witnesses, despite available in the place of occurrence, is fatal to the prosecution case. Further, the genesis of the case has been suppressed by the prosecution and hence, the finding of the Lower Court is unsustainable. Further, the prosecution has failed to follow the proper procedure in the case of, case and counter case. Hence, the Lower Court's finding is unsustainable. The delay in lodging the First Information Report is not properly explained by the prosecution. The non-examination of the father of the deceased and the father of the Church and Rayappan also renders, conviction of the Lower Court, as unsustainable and the evidences of the injured witnesses are contradictory. Hence, the appellants have requested to set aside the Lower Court Judgment and to acquit all the appellants/accused Nos.1 to 3.

6. The points, that arise for consideration in the present Criminal Appeal, are as follows:-

1) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?

ii) Whether the said Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the above mentioned appellants?

7. Analysis, discussions and findings with regard to the points :-

The learned senior counsel appearing for the appellants has vehemently contended that the genesis of the case has been suppressed by the prosecution and the proper procedure, which has to be followed by the prosecution, in the case and counter case, has not been followed by the prosecution and hence, the conviction Judgment delivered by the Lower Court is not sustainable. Further, the learned senior counsel has submitted that the Ex.P.1 complaint alleged to be lodged by the P.W.1 is highly doubtful, in the light of the evidences of the P.W.1 and P.W.2 and P.W.5. Further, the material witnesses, namely, Singarayar, father of the Church, the father of the deceased and Rayappan have not been examined by the prosecution, to establish the case, beyond reasonable doubts. Further, the mother of the P.W.1 also has not been examined, to establish the case of the prosecution. Further, in the Ex.D.1 itself, the police constable No.1595 has been mentioned and also the Ex.D.1 has been issued by the Doctor, who has examined the first accused Manickam, on the alleged date of incident as on 27.06.2007 at 11.35 a.m. Further, the learned senior counsel has submitted that the confession statement and Athatchi have not been established by the prosecution, in an acceptable manner. Further, the P.W.1 has categorically admitted in her evidence that the accused have not sustained injury. However, in the Ex.D.1 Wound Certificate, issued by the Assistant Surgeon in Government Head Quarters Hospital, Sivagangai, it has been clearly mentioned about the injuries suffered by the first accused, on the alleged date of occurrence, on 27.06.2007 at 11.35 a.m., itself. Further, the learned



senior counsel has submitted that the prosecution has not produced any reliable evidences, to establish the case of the prosecution, as against the appellants herein. Further, the Ex.D.1 Wound Certificate, issued by the Government Doctor, has not been properly considered by the Lower Court, to come to the proper conclusion. Lastly, the learned senior counsel appearing for the appellants has submitted that the said Judgment of conviction has been delivered by the Trial Court, even though, the prosecution has not established the case beyond reasonable doubts, as against the appellants herein.

8. Per contra, the learned Additional Public Prosecutor has submitted that the case of the prosecution has been established by adducing clear and consistent evidences through the eyewitnesses. The learned Additional Public Prosecutor has also contended that the occurrence has taken place in the public place and there is no serious infirmities and inconsistencies between the evidences of eyewitnesses. Further, the material objects have been recovered to substantiate the case of the prosecution. The learned Additional Public Prosecutor has also submitted that though certain discrepancies have been pointed out by the defence in the prosecution case, the same would not affect the main case of the prosecution. The evidence of P.W.1 is natural and trustworthy and cannot be discarded. The F.I.R has been come into existence in usual occurrence, without any loss of time. The evidences of other witnesses have been corroborated with the evidence of P.W.1 and Ex.P.1 complaint and the prosecution has well substantiated the case beyond reasonable doubts. Though, there are slight variations, the evidence of prosecution could not affect the credibility of the prosecution witnesses.

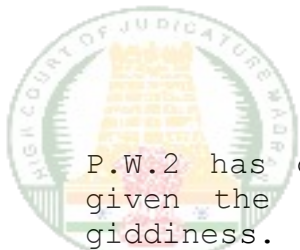
9. The P.W.1 Aruljothi has deposed that the deceased Mohandass is her relative and the P.W.2 injured Mariyadass is her husband and the P.W.5 another injured Mahimaidass is her uncle, by relationship and she knows all the accused and she has given the complaint as per Ex.P.1 to the police, on 27.06.2007, at Sivagangai Government Hospital. Further, the P.W.12 Tmt.Kannathal, Sub Inspector of Police has deposed that she has served as Sub Inspector of Police (Trainee) on 27.06.2007 at Sivagangai Taluk Police Station and she has received the Ex.P.1 complaint from the P.W.1 Aruljothi, at Sivagangai Government Hospital and she has recorded the Ex.P.1 complaint, as per the details given by the P.W.1 and she has read over the contents of the Ex.P.1 to the P.W.1 and the P.W.1 has signed in the said complaint, after acknowledging the correctness of the said statement in the said complaint. However, the P.W.1 has deposed that she does not know the contents of the Ex.P.1 complaint and at that time of showing the Ex.P.1 complaint to the P.W.1, by the police, she has not seen any corrections made in the Ex.P.1. Further, the P.W.1 has deposed that she has used the word left-hand side and right-hand side, as per the village speaking practice. However, in the Ex.P.1 complaint, the said Sub Inspector of Police has admitted in her evidence that she has recorded as per the statement given by the P.W.1 and she has not recorded as left-hand side and right-hand side, as per the village speaking practice, used by the P.W.1. Further, the P.W.12 Sub Inspector of Police has deposed that the Ex.P.1 complaint's contents have been read over to the P.W.1 and the P.W.1 has signed as an acknowledgement of the correctness of the details in the Ex.P.1.



However, the P.W.1 has admitted in her cross examination that she does not know, whether the Ex.P.1 complaint has been read over to her, by the police.

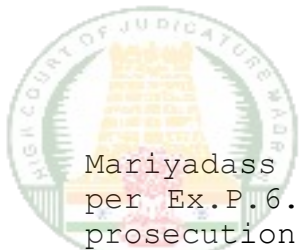
10. Further, the P.W.1 has admitted in her evidence that she has seen the M.O.1 to 3, in the hands of the accused at the date of occurrence and thereafter, she has seen the said Aruvals, only at the time of giving evidence before the Lower Court and she has not deposed about the details and particulars of the said three Aruvals in the hands of the three accused and also, she has specifically admitted that the M.O.Nos.1 to 3 are in three different sizes. Further, the P.W.1 has categorically admitted in her evidence that she knows about the difference between the Aruval, knife and stick and in Sivagangai Government Hospital, the P.W.3 Doctor has enquired her about the incident and she has not stated to the said Doctor that the P.W.1 has been assaulted with Knife and Stick. However, the P.W.3 Dr.Tamilvanan, who has served as Government Doctor at Sivagangai Government Hospital on 27.06.2007, has categorically deposed that the injured Mahimaidass, Mohandass, the P.W.2 Mariyadass and the P.W.1 Jothi have stated to him that they have been assaulted by three known persons, with the help of Aruval, Knife and Stick and he has recorded the said details in the Accident Registers, namely, Ex.P.2, Ex.P.4, Ex.P.6 and Ex.P.7. Hence, it is crystal clear that in the first statement given before the said Doctor, the P.W.1 has stated to him that she and others have been assaulted, with the help of Aruval, Knife and Stick. However, the case of the prosecution is that the accused have assaulted the deceased and others, only with the help of M.O.Nos.1 to 3 Aruvals. Further, the P.W.1 has deposed that in her Ex.P.1 complaint, she has stated that the fourth accused has instigated others to brutally assault the P.W.1 and others and the fourth accused has supplied weapons to the other accused. However, in the Ex.P.1 complaint, no such complaint details have been specifically mentioned by the P.W.1. Hence, it is found that the P.W.1 is improving her statement, from her earlier statements made to the P.W.3 Doctor and also in the Ex.P.1 complaint lodged with the P.W.12 Sub Inspector of Police. Further, the P.W.1 has deposed in her cross examination that the fourth accused has instigated others to attack and assault the P.W.1 and others, as per the details mentioned in Ex.P.1 complaint and the police enquiry. However, no such details have been stated in the Ex.P.1 complaint.

11. Further, the P.W.1 has clearly admitted in her evidence that she does not know the meaning of TVS 50 and the P.W.1 and her husband, have gone to the place of occurrence, only after hearing the noise. Hence, there are serious doubts, regarding the evidences given by the eyewitnesses, in the present case. Further, the P.W.1 has admitted in her cross examination that the accused Nos.1 to 3 have come to the place of occurrence and they have talked to each other, for certain time and thereafter, the fourth accused came there and instigated them to assault the P.W.1 and others and thereafter only, the accused Nos.1 to 3 have assaulted them one after another. However, the P.W.2 Mariyadass, namely, the husband of the P.W.1 has deposed in his cross examination that he knows all the accused and the accused Nos.1 to 3 have talked to the P.W.1 and others, and at the same time, they have not assaulted the P.W.1 and others, one after another. Further, the



P.W.2 has deposed that at Sivagangai Government Hospital, he has not given the details of the occurrence, to the police, as he has got giddiness. Further, the P.W.1 has admitted that the blood from the body of the deceased Mohandass has fallen in the dresses of the P.W.1. However, in the present case, the prosecution has not produced any bloodstained cloth, recovered from the P.W.1. Further, the P.W.1 has distinctly deposed that during the course of occurrence, no one has assaulted the P.W.1 and others, with Knife or Stick and during the course of the incident, the first accused Manickam has not suffered any injury. Further, the P.W.3 Dr. Tamilvanan has clearly deposed that he has issued the Ex.D.1 Wound Certificate on 27.06.2007, to the effect that the first accused has suffered injury and he has issued the said Wound Certificate to the first accused Manickam, as per the Ex.D.1 and in the said Wound Certificate itself, it has been clearly pointed out that the first accused has been assaulted by 7 known persons, near at his house, at 8.45 a.m., with Aruval and Stick and the first accused has been admitted in the Government Headquarters Hospital, at Sivagangai on 27.06.2007 and he has been discharged only on 02.07.2007 and in-patient number has been furnished as 8855, in the said Wound Certificate with No.116567, issued by the said Government Doctor, namely, the P.W.3. In such circumstances, it is seen that the P.W.1 is not correct in deposing in her evidence, to the effect that during the course of occurrence, the first accused has not suffered any injury. On that ground only, the learned senior counsel appearing for the first accused has categorically pointed out that the present case is that of, the case and counter case and the prosecution has not proceeded in proper manner, in conducting the case and the counter case, in accordance with law, and entire injury suffered by the accused No.1, during the course of the alleged occurrence, as per the Ex.D.1 Wound Certificate, issued by the P.W.3 Government Doctor, has been suppressed by the prosecution. On a careful scrutiny of the entire materials available on record, it is found that there is significant force in the said contention made on behalf of the appellants herein.

12. Further, the P.W.1 has deposed that at the time of going to Sivagangai Government Hospital, for taking medical treatment, the deceased, physical condition is not in fit condition, to speak. However, the P.W.3 Doctor attached to Sivagangai Government Hospital has deposed in his evidence that on 27.06.2007 at 9.30 a.m., he has examined the deceased Mohandass and also he has given first aid to the said Mohandass and Rayappan, who has admitted the said Mohandass, has stated to him that three known persons have attacked the deceased Mohandass, with Knife, Aruval and Stick. However, in the present case, the said Rayappan has not been examined, by the prosecution and also, for not examining the said crucial witness also, the prosecution has not furnished any acceptable reasons. Further, the P.W.1 has clearly admitted that due to the land dispute, there existed a dispute between the family of the P.W.1 and the accused family and they are not in talking terms. In such circumstances, the evidences of the P.W.1, P.W.2 and the P.W.5 have to be examined with due care and caution. Further, the P.W.1 has admitted that immediately, after the occurrence, her uncle, by name, Singarayar has brought one car and taken all of them to Sivagangai Government Hospital. Further, the P.W.3 has also deposed that on 27.06.2007 at 9.45 a.m., Singarayar has brought the injured



Mariyadass and he has given treatment and issued Accident Register as per Ex.P.6. However, the said Singarayar has not been examined by the prosecution. For, not examining the said Singarayar, also the prosecution has not furnished any sufficient reasons. Further, the P.W.1 has admitted that though the accused Nos.1 to 3 have got three separate Aruvals in their hands and she has manifestly admitted in her evidence that she has not identified the particular Aruval in the hands of the particular accused.

13. Further, the P.W.2 Mariyadass has admitted that he is the husband of the P.W.1 and he has also pointed out in his evidence that on 02.07.2007, during the course of enquiry conducted by the police, he is not in a physical condition to give statement to the police. However, the P.W.13 Thiru.Murugan, Inspector of Police has deposed that in his investigation, the P.W.1 Aruljothi has admitted that due to shock and fear, she could not tell the entire details to the police and other witnesses have also stated the said details in their statements. In such circumstances also, the Ex.P.1 complaint, alleged to be given by the P.W.1, with full pages of details, is also highly doubtful. On that ground only, it has been suggested on behalf of the appellants, to the effect that during the first stage of investigation, the P.W.1 has not stated anything material to the police and thereafter, the P.W.1, Singarayar and others have suppressed the prior details and thereafter, furnished statements, in order to suit the present case of the prosecution. Further, the P.W.2 has clearly admitted that already there existed dispute between the accused family and the P.W.1's family, due to property dispute. Further, the P.W.2 has admitted that at the place of occurrence, he has seen his brother Singarayar and the said Singarayar has brought one taxi and at the time of getting into the said taxi, he has seen Rayappan and the said Rayappan has only admitted the deceased Mohandass in Sivagangai Government Hospital. However, the said Rayappan has only stated that the accused has been assaulted with Knife, Aruval and Stick, to the P.W.3 Government Doctor. Further, the P.W.2 has also admitted that he knows about the Knife, Stick and Aruval and however, he has stated to the Doctor that he has been assaulted with Knife and Stick. Further, the P.W.3 has deposed that the P.W.2 has stated to him that the said P.W.2 has been assaulted, with Aruval, Knife and Stick, as per Ex.P.6 Accident Register. Further, the P.W.2 has also deposed that the accused have not kept Knife or Stick in their hands and the accused have not assaulted them with Knife or Stick. However, immediately, after the occurrence, as per the Accident Registers, they have stated to the P.W.3 Doctor that the accused have been assaulted with Knife, Stick and Aruval. Further, the P.W.5 Mahimaidass has also stated to the P.W.3 Doctor about the nature of injuries suffered by him, due to the brutal assault caused with the help of Aruval, Knife and Stick.

14. Further, the P.W.3 Doctor has deposed that the first accused has clearly stated to him that on 27.06.2007, namely, the date of occurrence at 11.30 a.m., itself, he has been assaulted by seven known persons, with the help of Aruval and he has mentioned the same in the Ex.P.1 Wound Certificate. However, the said details have not been investigated properly, by the prosecution. Even the P.W.13 Investigation Officer has deposed that he does not know about the



complaint lodged by the mother of the first accused, regarding the injury suffered by the first accused. However, the P.W.3 Doctor has categorically deposed that on the date of occurrence, namely, 27.06.2007 itself, the first accused has been treated by him and the Accident Register issued by him, for the injury suffered by the first accused. Further, the P.W.13 Inspector of Police has distinctly pointed out in his cross examination that he has not got any knowledge about the injury suffered by the first accused and also, the complaint lodged by the mother of the first accused, to the police station. Further, the P.W.4 Dr. Alavudeen has deposed that he has conducted Postmortem on the dead body of the deceased Mohandass and issued Postmortem Certificate as per Ex.P.9 and in the said Postmortem Certificate, he has given his opinion that the deceased would appear to have died of shock and haemorrhage due to wound No.2 and the cumulative effect of other injuries. However, the prosecution has failed to establish that the accused only have caused the brutal injury to the deceased, with the help of the material objects, beyond reasonable doubt.

15. The P.W.5 Mahimaidass has deposed that the deceased Mohandass is his uncle's son and he knows the accused, and the fourth accused has instigated the other accused to assault the deceased Mohandass. However, the P.W.1 has not stated the said particulars and details in the Ex.P.1 complaint. Further, the P.W.5 Mahimaidass has unequivocally deposed in his cross examination that it is not correct to say that there is a property dispute between the his family and the deceased Mohandass's family. Further, the P.W.5 has deposed that he has not informed to the P.W.3 Doctor that he has been assaulted with Knife and Stick. However, the said Doctor has deposed that the P.W.5 Mahimaidass has stated to him that three known persons have assaulted with Aruval, Knife and Stick, as per the details mentioned in the Ex.P.2 Accident Register. Further, the P.W.6 Rajendrakumar has admitted that Singarayar is his uncle's son and he knows the deceased Mohandass. Hence, his evidence has to be examined with great care and further, he has deposed that he has signed in the Observation Mahazar of Ex.P.10 and he has also signed in the Athatchi of Ex.P.11, for the recovery of M.O.4 bloodstained earth, M.O.5 sample earth and the M.O.6 TVS 50 two wheeler. However, he has admitted in his cross examination that Adaikalam is the father of the accused Nos.1 to 3 and there is a criminal case pending, as against him in C.C.No.50 of 2006, regarding the murder caused to the said Adaikalam and during the said criminal case and before and after the said criminal case, there is no talking terms between the P.W.6 and the accused. On that ground also, his evidence has to be examined with great caution.

16. Further, the P.W.7 Savior Jeganathan has deposed that he has signed in the admissible portion of the confession statement given by the accused Nos.1, as per Ex.P.12 and also, he has signed in the Athatchi of Ex.P.13, for the recovery of the M.O.2 Aruval, from the first accused, and also, he has signed in the Athatchi of Ex.P.14, for the recovery of M.O.7 TVS 50 two wheeler. However, he has admitted in his evidence that he could not remember as to, whether, in the police investigation the first accused has given confession statement at Sivagangai Government Hospital. Further, the P.W.7 has admitted that the police have parked the vehicle in the road itself and the first



accused has gone and returned back, with Aruval and the police have recorded the said Aruval, as per the Athatchi. Hence, it is found that there is no proper recovery made by the police, as per the provisions of Section 27. Further, the P.W.8 Thiru.Sivasubramanian has deposed that the accused Nos.2 and 3 have given confession statements and the P.W.8 and the Village Assistant have signed in the admissible portions of the confession statements as per Ex.P.15 and Ex.P.16 respectively and also, they have signed in the Athatchi of Ex.P.17, for the recovery of the M.O.1 Aruval from the second accused and the M.O.3 Aruval, from the third accused and also, the police have recovered the M.O.8 lungi and the M.O.9 shirt, from the second accused in the Athatchi as per Ex.P.18. However, he has admitted in the cross examination that the Aruval has been recovered from the open place and in the said place anybody can go and come and the police jeep has been parked in the road and the accused have gone and returned back with the material object and thereafter, the police have prepared the Athatchi and recovered the material objects. Further, in the judgment of Hon'ble Supreme Court, in the case of **State of U.P V. Deoman Upadhaya**, reported in **AIR 1960 SC 1125**, it is clearly observed as follows:-

"The various requirements of the Section 27, are as follows:-

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

In the present case also, it is seen that the prosecution has failed to establish the proper recovery and confession statements, in accordance with the provisions of the Law.

<https://hcservices.ecourts.gov.in/hcservices/> 17. Further, the P.W.9 Tmt.Nagalakshmi has deposed that she has worked as Head Clerk of Judicial Magistrate No.2, Sivagangai on 17.07.2007 and the First Information Report has been received by the



learned Judicial Magistrate on 27.06.2007 at 7.00 p.m., and also, the statement of the P.W.1 Aruljothi has been recorded on 27.06.2007 and the said statement has been received by the Court only on 03.07.2007 and also the statements of the P.W.2 Mariyadass and P.W.5 Mahimaidass have been recorded by the police on 28.06.2007 and the said statements have been received by the Court on 30.06.2007 and also the statements of the P.W.1 and others have been recorded by the police on 02.07.2007 and the said statements have been received by the Court on 06.11.2007 and the Form-95 dated 02.07.2007 has been received by the learned Judicial Magistrate on 12.07.2007. Hence, it is found that the material records have not been submitted to the learned Judicial Magistrate, immediately, by the police. Further, the P.W.10 Dr.Sathyanarayanan has deposed that he has served as Doctor under Dr.Muthusamy in Madurai Meenakshi Mission Hospital and he knows the signature of the said Dr.Muthusamy and on 10.07.2007, the P.W.2 injured Mariyadass has taken treatment in Madurai Meenakshi Mission Hospital and the said Dr.Muthusamy has issued the Wound Certificate as per Ex.P.26. However, he has admitted in the cross examination that he has deposed, as per the records only, and there are no records in the said hospital, regarding the nature of treatment given to the said Mariyadass, before coming to Madurai Meenakshi Mission Hospital.

18. Further, the P.W.11 Thiru.Muthuramalingam, Inspector of Police has deposed that he has received petition on 18.06.2006 at 8.00 a.m., from the Judicial Magistrate Court No.2, Sivagangai, by post and registered the case in Crime No.193 of 2006 and the copy of the First Information Report is Ex.P.27. However, in the cross examination, he has deposed that the Ex.P.27 is only a xerox copy and the complaint relating to the Ex.P.27 has been given by Adaikalam. However, in the present case, the appropriate person has not been examined. Further, the P.W.11 has admitted that he has been examined in the said case in Crime No.193 of 2006 by the P.W.13 Investigation Officer. On that ground only, a suggestion has been put on behalf of the appellants to the effect that Sivagangai Taluk police have suppressed the Crime No.193 of 2006 and only the xerox copy has been filed as Ex.P.27 by the prosecution. On a careful scrutiny of the entire materials available on record, it is seen that there is significant force in the said contention made on behalf of the appellants herein. Further, the P.W.13 has admitted that he has received the intimation regarding the death of the deceased Mohandass and prepared Alteration Report as per Ex.P.30. However, it is found that the prosecution has not proved that the accused are only responsible for the death caused to the deceased Mohandass, beyond reasonable doubts. Further, the P.W.13 has admitted in his cross examination that he has mentioned about the compound wall in two places in the Ex.P.10 Observation Mahazar. However, he has admitted that he has mentioned about the houses, near the place of occurrence and the houses are not having any compound wall. On that ground only, the suggestion has been put on behalf of the appellants, to the effect that the P.W.13 has not prepared the Ex.P.29 Rough Sketch and Ex.P.10 observation Mahazar, with full and relevant particulars. Further, the P.W.13 has admitted that he has not shown the P.W.1's house in the Ex.P.29 Rough Sketch and Susaiyammal's house also has not been shown in the said Rough Sketch and Ex.P.10 Observation Mahazar.



Further, the P.W.13 has deposed that during his investigation, the P.W.1 in her statement, has not used the left hand side, and right hand side, in the village speaking practice. However, the P.W.1 has stated that left hand side and right hand side has been mentioned by her, in the village speaking practice only and she has lodged the Ex.P.1 complaint, by stating so, only and the same has been written by the Sub Inspector of Police. Further, in the Ex.P.1 complaint itself, it is clearly pointed out that for the past two years before lodging the Ex.P.1 complaint, there is a land dispute between the P.W.1's family and the accused family and the said complaint has been received by the P.W.12 Sub Inspector of Police on 27.06.2007 at 10.45 hours, at Sivagangai Government Hospital.

19. Further, it is useful to refer the following decisions for the proper appreciation of the above mentioned facts and circumstances of the present case:-

i) In the decision of this Court, reported in **(2011) 3 MLJ (Crl.), in the case of Kangaraj and others Vs. State, represented by the Inspector of Police, Pasuvandhanai Police Station, Tuticorin District**, it is clearly held as follows:-

".. This specific admission of P.W.1 clearly shows that involvement of other persons in attacking D1 and D2 and P.Ws.3 and 4 cannot be ruled out.

Yet another disturbing feature in the prosecution case is the non-examination of the independent witnesses and the same is also fatal to the prosecution case. P.W.2 has categorically admitted in the cross examination that there are 25 houses situated in the same street, wherein, the occurrence is said to have taken place and all the persons, who are residing in those houses, have witnessed the occurrence. ... But none of them have been examined by the prosecution to substantiate its version.

.. The witnesses, who have been examined to speak about the arrest and recoveries, namely, P.Ws. 7 and 8 have not supported the case of the prosecution and they have turned hostile and apart from the said factor, the aruvals have not been found to be stained with human blood as per the serology report, Exhibit P.17.

In view of the aforesaid infirmities inconsistencies and improbabilities, we have come to the irresistible conclusion that the impugned Judgment of conviction is unsustainable in law."

ii) In the decision of this Court, reported in **(2013) 2 MLJ (Crl.) 39, in the case of Meeran @ Ashok V. State rep. By the Inspector of Police, Tuticorin North Police Station, Tuticorin District**, it is



clearly observed as follows:-

"Yet another piece of evidence relied on by the prosecution is the recovery of material objects (Aruvals) from the appellant, we are unable to attach any importance to this piece of evidence, because, P.Ws.1 and 2, the alleged eyewitness to the occurrence have not at all identified the weapons.

For all the above reasons, we are of the view that it is not safe to convict the appellant, based on the evidences of P.Ws.1 and 2 alone. Therefore, we hold that the prosecution has failed to prove the case beyond all reasonable doubts."

iii) In the decision of Honourable Supreme Court reported in **1995 SCC (Cr1.) 151, in the case of State of Haryana V. Inderaj and another**, it is clearly held as follows:-

"Prosecution case based on evidence of highly interested witnesses. There presence at the scene of occurrence doubtful - Witnesses making certain improvements regarding nature of weapon used - No other person of locality examined by the prosecution. Evidence of defence witness who resided near the place of occurrence found reliable - Held. In the circumstances, it is highly unsafe to convict the accused in appeal."

In the present case also, on a careful scrutiny of the entire materials on record, it is found that the prosecution has not established the guilt of the appellants/accused beyond all reasonable doubts. Further, the contradictions as pointed out by the appellants are material and can be held to go to the root of the case.

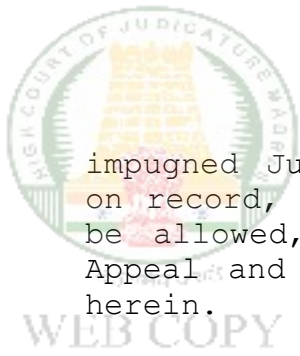
iv) **Dr.Sunil Kumar Sambhudayal Gupta and others V. State of Maharashtra (2010) 13 SCC 657**, wherein it is specifically held as follows:-

"Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witnesses also make material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence."

On a careful scrutiny of the entire materials on record of the present case, it is found that the above Judgments are applicable to the facts and circumstances of the present case.

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20. For the above mentioned reasons, facts and circumstances and situations, it is held that the Lower Court has not delivered the



impugned Judgment, after properly appreciating the materials available on record, in proper perspective and the present Criminal Appeal has to be allowed, for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellants herein.

21. **In the result**, this Criminal Appeal is allowed and the conviction and sentence imposed by the learned Sessions Judge, Sivagangai, by Judgment dated 05.04.2011 delivered in S.C.No.46 of 2008 is set aside and the appellant No.1/accused No.1/Manickam, appellant No.2/accused No.2/Vincent Paulraj and the appellant No.3/accused No.3 Jesubalan in Crime No.138 of 2007 are acquitted. The bail bond, if any, executed by them shall stand cancelled and fine amount, if any, paid by them shall be repaid to them.

Sd/
Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar(C.S)
Madurai Bench of Madras High Court,
Madurai.

To

- 1.The Judicial Magistrate No.II,Sivagangai.
- 2.Do-Thro' The Chief Judicial Magistrate, Sivagangai.
- 3.The Sessions Judge,Sivagangai.
- 4.The District Collector,Sivagangai District.
- 5.The Director General of Police,Mylapore,Chennai - 4.
- 6.The Inspector of Police,
Sivagangai Taluk Police Station, Sivagangai.
- 7.The Superintendent,Central Prison,Trichy.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+4ccs to M/S.N.Anandakumar, Advocate in SR.No.10846

PRE-DELIVERY JUDGMENT
MADE IN
Crl.A. (MD)No.138 of 2011
25.02.2016

pmu
PA/GSV-PM/SAR I/01.03.2016/16P/13C