

BAIL SLIP

That the Appellants/Accused Nos. 1 & 2 namely 1.Rajalingam S/o.Kalinathan, 2. Amirthalingam S/o. Kasinathan were directed to be released on bail as per Order of this Court dated 03.01.2011 in CrI.Mp.No. 1/2011 in CrI.A. 6/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 12.06.2018

JUDGMENT PRONOUNCED ON : 06.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.6 of 2011

1.Rajalingam, aged 32 years,
S/o. Kasinathan.

2.Amirthalingam, aged 29 years,
S/o. Kasinathan.

Appellants / Accused No.1and2

Vs

State by the Inspector of Police
Meensuruti Police Station
Ariyalur District.
(Crime No. 220/2007)

Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to set aside the Judgment and conviction dated 22.12.2010 by the learned Additional Sessions Judge, Fast Track Court No:2, Salem in SC No.45 of 2010 and acquit the appellants. सत्यमेव जयते

For Appellant : Mr.K.V.Sridharan

For Respondent : Ms. T.P.Savitha
Government Advocate (Criminal Side)

J U D G M E N T

The appellants are arrayed as accused No.1 and 2 respectively in SC No.45 of 2010 on the file of the learned Additional Sessions Judge, Fast Track Court No.II, Salem, in the trial court along with the appellants three more accused are

jointly faces the trial for the offences under Sections 148, 302, 326 r/w 149, 307 r/w 149, 323 r/w 149, 324 r/w 149. By judgment dated 22.12.2010, the Trial Court convicted the appellants under Section 304(1) IPC and sentenced them to undergo 10 years rigorous imprisonment and to pay a fine of Rs.500/- each in default to undergo three months rigorous imprisonment further the 2nd accused was convicted under Section 324 IPC and sentenced to undergo three years rigorous imprisonment. The Trial Court further ordered that the sentence imposed upon the 2nd accused under Section 304(1) and 324 IPC are ordered to run concurrently. Challenging the said conviction and sentence the appellant is before this court with this Criminal appeal.

2) The Case of the prosecution in brief is as follows:-

Originally there were nine accused in this case. During the pendency of trial proceedings, A3 to A6 died and therefore, in the Trial Court the case is tried against the appellants along with A7 to A9. The case of the prosecution is that all the accused belong to the Vangudi village, further they are all relatives. The deceased Desingu Balan was the president of an organization meant for preventing offences relate to illicit liquor and other offences. He was instrumental in the election of panchayat president. In combined reading of evidences given by the prosecution witnesses in the panchayat election, the wife of the accused Machakendiran, Bala Subramanian, Ravichandran and one DevaRajan contested. But the deceased Desingu Balan supported the said Devarajan. Thereby, he won in the election. Therefore, the accused MachaKendiran developed enmity with the deceased. Similarly the family of one Kasinathan had also developed enmity with the deceased. On 21.10.2007 at about 04.00 p.m. When the deceased was in his land in connection with the ploughing, both the appellants went and pick up the quarrel with the deceased, subsequently both the appellants beat the deceased. After the said occurrence the deceased came to his house and informed to P.W.7 about the assault made by the appellants. On learning about the incident, P.W.4 had sent his daughter-in-law P.W.1, for searching the deceased. P.W.1 came in search of Desingu Balan and found he is talking with P.W.7 Thirugnanam. At the time A1, A2, A4 pokkri and one Sankar chased one Ramesh. P.W.3 Kasthuri the mother of the Ramesh told that Deva Raj chasing the Ramesh to attack him. After hearing the same the deceased ran behind them shouting that not to attack Ramesh P.W.1, P.W.3 and P.W.7 followed the deceased. But, A8 and A9 now acquitted in the Trial Court instigated the other accused for attacking the deceased. Thereby, A4 assaulted the deceased by using the knife. Further, A3 attacking him on his leg, the appellants attacked the deceased by using M.O.1 and M.O.2 Eetti. When, P.W.1 who is the wife of deceased tried to prevent the attack, the younger

brother of A3 attacked her with Uruttu Kattai, when her father-in-law P.W.4 shouted that his son is being murdered, A3 and A5 attacked him, when the witness Kasthuri tried to prevent the attack, she was also attacked. In the same transaction, A3 attacked the Dinesh with Eetti, the second appellant in this case slapped P.W.2 Dinesh by using the Eetti on his left rib. The witness kasturi is also attacked by the first appellant on her head and in the left leg. In the same way P.W.4, P.W.5 have been attacked by the other accused. P.W.6 to P.W.8 corroborated the evidence of P.W.1 to P.W.5 in respect to the injuries. After the incident, all the injured were taken to the hospital. In the hospital the Doctor declared that the Desingu Balan was died. Immediately, P.W.1 lodged a complaint before P.W.20. Ex.P1 is the complaint.

3) P.W.20 the Inspector of Police Meensuruti Police Station on 21.10.2007 at about 11.45 p.m. On receipt of the complaint given by P.W.1 registered the case in Cr.No. 220 of 2007 under Sections 147, 148, 324 and 302 IPC. After the registration of case, he made arrangements for sending the First Information Report to the Magistrate Court, Jayamkondam, for which he deputed P.W.15 the Head Constable attached with the same Police Station. Due to the non availability of frequent bus service, the First Information Report was handed over to the Magistrate Court on the next day at about 06.30 a.m. Ex.P12 is the printed First Information Report.

4) Further, P.W.20 visited the occurrence place and in the presence of P.W.12 and P.W.14, he prepared observation Mahazar and rough sketch under Ex.P2 and Ex.P13. Further, in the presence of the same witnesses, he recovered the blood stained soil and sample soil from the scene of occurrence under Ex.P3 Mahazar. The blood stained soil is M.O.8, and the sample soil is M.O.9. He examined the witnesses and recorded their statements. Thereafter, he proceeded to the Annamalai Medical College, Chidambaram, conducted enquiry and prepared the inquest report under Ex.P14.

5) In continuance of the investigation, he sent requisition to the Doctors through P.W.18 Gandhi for conducting the autopsy over the dead body of the deceased Desingu Balan. After completing the process of Postmortem, P.W.18 handed over the T-shirt (M.O.10) Lungi (M.O.11) before P.W.20. Those material objects were removed from the dead body.

6) In the meantime, P.W. 22 Dr.RamaSubramaniyan who is working in Raja Muthaiah Medial College Hospital, on 21.10.2007 at about 08.30 p.m. examined the deceased and found that the deceased had bleeding injury on his head. further, he had a laceration wound on the right side of his head. Mean While,

said Desingu Balan was died. In this regard, he issued an accident register copy under Ex.P18.

7) P.W.16 Dr.Sugumar working as Medical Officer, Government Hospital, Marakkanam. on 21.10.2007 on receipt of requisition letter given by P.W.20 he conducted the postmortem and found the following injuries on the dead body of Desingu Balan.

EXTERNAL INJURIES:

1. 9X2X2 cm oblique reddish gaping cut. Injury found on the right side frontal bone area extending downwards.
2. 7X1/2X1/2 cm reddish laceration found on the lateral side of right arm middle.
3. 8X1X5 cm reddish gaping cut injury found on the medial side of left arm lower end.
4. 12X3X8 cm gaping reddish cut injury found on the lateral side of the left elbow extending downwards. Both bones reddish and ulno#
5. 1X1/2X1-1/2 cm reddish pore wound found on the lateral side of right arm lower end.
6. 2X2 cm reddish abrasion found on the left shoulder
7. 4X1X1-1/2 cm oblique reddish cut injury found on the left seopald.
8. 8X10X3 cm reddish stab found on the left loin
9. 4X6X2 cm stab wound reddish found 4 cm below the previous wound
10. 12X4X5 cm reddish cut injury horizontal on the left leg cutting the calf muscle.
11. 7X3X3 cm reddish gaping cut injury on the posterior side of left knee.
12. 8 cm length linear cut injury found on the chest- Horizontal-right side 3 cm above nipple.
13. 5 cm lengthy linear reddish cut injury horizontal one found on the chest left side 5 cm above nipple.
14. 3X2 cm reddish abrasion found on the chin.
15. 1/2X1-1/4X1-1/4 cm reddish laceration found above the upper lip left side.
16. 1/2X2X1/2 cm reddish laceration found on the neck lateral side right side
17. 1/2X1-1/2X1-1/2 cm reddish laceration found on the right eye brow.

INTERNAL EXAMINATION:

of Throax: symmertrical, Ribs, intact. Lungs pale. Hyoid bone intact. Stomach- empty. Liver, Spleen, Kidney all appeared pale. Intestines: Distended with gas empty. Bladder - Empty. Pelvis-intact. Skull bones intact. Membranes intact. Brain - appeared pale postmortem concluded at 03.00 p.m. On 22.10.2007.

8) He opined that the deceased would have died due to multiple injuries with multiple fracture bones sustained leading to severe haemorrhage and shock. Ex.P6 is the post-mortem

certificate.

9) In the same way, P.W.13 Dr. Elavarasan working as Assistant Medical Officer, Government Hospital, Jayamkondam gave treatment to one Dinesh and on examination he found the following injuries: 1. A cut injury measuring 2X2X1 CM on the front left chest and air got under skin. 2. There were multiple abrasion on his thighs and knees. The accident register copy issued by P.W.13 is Ex.P4. Further, on the same day, he treated A1 to A4. All of them had informed, that On the same day at about 05.30 p.m. near Kali AmmanKovil at Vangudi village, they were attacked by six known persons. He examined them and found the following injuries on them. He gave Ex.D1 to D5 wound certificate with the following details.

A1- Rajalingam

1. Incised wound on the back of left shoulder measuring 5X2X1 cm.
2. Cut injury on the tip of the right finger shiled through the pulp of about 1X0.5 cm
3. Cut injury on the left parietal region measuring 5X2X0.5 cm.

A2- Amirtha Lingam

1. Contusion on right forearm 3X1X0.5 cm.
2. Pain all over the back.
3. Contusion of the left side of back 2X2X0.5 cm.

A4- Prabhu

1. Cut injury over the forehead measuring 5X2X0.5 cm.
2. Abrasion right palm 0.5X0.5 cm.

A6-Mahalingam

1. Cut injury on the chin of lower jaw measuring 5X2X1 cm
2. Punctured wound over the left eye brow measuring 0.5X0.5X0.5 cm.
3. Cut injury on the palman aspect of left little finger measuring 2X1X0.5 cm.
4. Cut injury over the Ring finger measuring 1X0.5X1 cm. On middle plange on palman aspect.
5. Cut injury over the middle finger 0.5X0.5X0.5 cm
6. Cut injury on the left thigh measuring 2cmX0.5 cmX0.2cm
7. pain with restmetorx of the movements on left elbow
8. Abrasion on the right knee measuring 2X1 cm.

10) On the same day at about 11.20 p.m. P.W.15 Doctor Ashok who is the Lecturer in Annamalai Raja Muthiah Medical College treated P.W.3 Kasthuri and found the bleeding injuries. The lacerated injuries measuring 5X2 cm on her scalp. There was no fracture. He issued Ex.P5 Wound Certificate.

11) P.W.17 Dr. Raj Kumar on the same day at about 11.20 p.m. gave treatment to P.W.5 Ponnammal and found the bleeding injuries. The Wound Certificates of the said witness are marked as Ex.P7 and Ex.P8. Further, on the same day P.W.17 examined

P.W.4 and found the bleeding injuries. The wound certificate and discharge summary of P.W.4 were marked as Ex.P9 and Ex.P11.

12) In the continuance of his investigation on 22.10.2007 P.W.20 arrested A3, A6, A2 and A4 and recorded the voluntary confessional statement of the accused Dharmalingam. In pursuance of the confessional statement A2 took the witness and P.W.20 to Vangudi area and produced 2 veech aruval, 2 eeti, 1 Uruttu Kattai and the same was recovered by P.W.20 in the recovery mahazar Ex.P16 is the admitted portion of confessional statement given by A2 is Ex.P15. After recovering the said material objects, P.W.20 made arrangement for sending the accused to the judicial custody. After arresting some other accused in this case P.W.20 examined the Doctor who gave treatment to the injured and the Doctor who, conduct the autopsy over the dead body on Desingu Balan and recorded their statements.

13) Thereafter, P.W.21 Subbaiah the then Inspector of Police took up the investigation and after perusing the records on 20.03.2008 he filed a charge sheet against the appellants and seven other accused under Sections 147, 148, 323, 324, 302 r/w 120(B) IPC.

14) Based on the above materials, the Trial Court framed the charges and all the accused denied the same. In order to prove the case, on the side of the prosecution as many as 23 witnesses were examined as P.W.1 to P.W.23 and 26 documents were marked as Ex.P1 to Ex.P26. Besides 11 material objects.

15) Out of the said witnesses P.W.1 is the wife of the deceased who, is an eye witness to the occurrence stated in her evidence that previous to the occurrence the deceased supported to Kolinji in panchayat election. Due to which all the accused in this case developed enmity against her husband. On the day of occurrence, when the deceased talking with P.W.7 Thirugnanam all the accused in this case chased one Ramesh. She has further stated after knowing the chasing of Ramesh the deceased ran behind them, and shouting that not to attack Ramesh. On the other hand, the second accused Amirtha Lingam and the 8th accused instigated the other accused for attacking the deceased. According to P.W.1, A4 attacked the deceased with knife A1 and A2 attacked with Eetti when she attempted to prevent the attack. The other accused attacked her by using uruttu kattai. In the said occurrence, apart from the deceased, P.W.1 to P.W.3 are sustained injury. She has further stated, after the occurrence her husband admitted in the hospital. Wherein, it was informed that her husband was died. She went to police station and gave a complaint.

16) P.W.2 Dinesh who is residing on the same village has

stated in his evidence that as on the day of occurrence on 21.10.2007 at about 05.30 hours, When he was talking with one Ilavarasan the accused Tharmalingam and the other accused in this case chased one Ramesh. After seeing the same the deceased followed them and shouted not to attack the Prabhu. He has further stated that A4 Prabhu attacked the deceased on his head by using the Veech Aruval, further the first and second accused attacked the deceased on the rib by using the Eetti. According to him other accused in this case attacked the deceased by using the Uruttu Kattai. He has further stated, due to the said occurrence, his brother in law Desingu Balan was died. Apart from that the witnesses P.W.2 to P.W.4 and some of the accused sustained injury.

17) P.W.3 Kasthuri who is also residing in the same village has stated on the day of occurrence, when she was went to grocery shop. The deceased Desingu Balan is talking with one Thirugnanam, at that time, the wife of the deceased and all the accused in this case came there. At the same time, the first and second accused in this case had assaulted the deceased on his right and left rib by using Eetti. Further he has stated the other accused in this case has assaulted P.W.2 and other persons who are all present in the occurrence place.

18) P.W.4, is the father of deceased is an eye witness to the occurrence has stated in his evidence that, there was a previous enmity between the deceased and the appellants. He has further sated that on the day, of occurrence the 2nd accused in this case assaulted the deceased and subsequently, when P.W.4 is standing near to the Kaliamman Kovil, a mob consisting of 7 to 8 persons chased the deceased. Further, he stated that all the accused in this case were participated in the occurrence, and during the time of occurrence, the first and second accused were attacked the deceased on his right and left rib by using Eetti. Further, he has stated in the same transaction. A4 Prabhu and A5 Kasinathan attacked the deceased by using the wooden lock. Consequently, the first accused attacked P.W.4 on his left leg by Using aruval. Further, he stated that, his son was died in the hospital.

19) P.W.5 Ponnammal is the resident of Vangudi village. He is an eye witness to the occurrence deposed that on the day of occurrence. When, she was standing near to the kaliamman temple, the gang consisting of seven members including A1 to A4, chased the deceased with Eetti, aruval and wooden lock. He has further stated, during the time of occurrence the first and the second accused attacked the deceased by using Eetti and caused injury on his left and right rib.

20) P.W.6 Silambarasan has stated in his evidence that prior to the occurrence the deceased formed an organization

meant for preventing the offences related to the illicit liquor and other offence. In the panchayat election he supported one Deva Raj and he has further stated during the time of occurrence all the accused in this case chased the deceased and by using Eetti A1 and A2 attacking the deceased on his left and right rib. Further, the 3rd and the 4th accused in this case had also attacked the deceased by using aruval and wooden lock.

21) P.W.7 Thiru Gnanam is the resident of the same village, has stated in his evidence that on 21.10.2007 at about 04.30 a.m, when he was talking with the deceased about the attack made by the 1st and 2nd accused in the morning hours, he heard a sound on the western side. Further at the same time, P.W.1 SasiKala and P.W.3 Kasthuri are also talking with him. At that time all the accused in this case chasing the Prabhu who is the son of P.W.3. After seeing the same the deceased ran behind to accused and shouting that not to attack Ramesh. P.W.1, P.W.3 and P.W.7 followed the deceased. He has further stated, due to the instigation of A8 and A9 the other accused in this case attacked the Dhesingu Balan on his rib, some of the accused had attacked the deceased by using aruval and wooden lock. He has further stated that after the occurrence he made arrangement for sending the injured to the hospital.

22) P.W.8 has stated on the day of occurrence both the A1 and A2 attacked the deceased by using Eetti and caused injury on his rib. Further he has stated during the time of occurrence the other accused are also assaulted the deceased by using the wooden lock and aruval.

23) P.W.9 Sankar who is the resident of Vann Kudi Kuppam has stated that prior to the occurrence, on the same day morning hours there was a quarrel between the deceased with the 1st accused.

24) P.W.10 Thurai Appan has stated that prior to the occurrence the deceased formed an organization. Further he stated in the panchayat election the deceased supported the Devarajan and as a result of which, all the accused developed enmity with the deceased. Further, he has stated that on the day of occurrence he went to the hospital along with deceased.

25) P.W.11 belongs to the same village has stated that on the day of occurrence he heard the news and went to the occurrence place. When he reaches the occurrence place he saw the deceased is lying down with multiple injuries. After giving water he made arrangements for admitting the deceased in the Jayankondam Government Hospital.

26) P.W.12 has stated that on 22.07.2007 at about 05.30

p.m. Investigation officer in this case visited the occurrence place and prepared an observation mahazar and rough sketch. Further, he recovered the blood stain soil and the sample soil from the seen of occurrence. He has stated that he stood as an witness to the said documents.

27) P.W.13 is a Doctor attached with Jayankondam Government hospital has stated in his evidence that, on 20.10.2007 he examined one Dinesh. Further, P.W.13 advised him to go to Pandicherry Jipmer hospital for further treatment.

28) P.W.14 is the witness to the observation Mahazar and to the confession statement given by the first accused. He was treated as a hostile witness and he has not supported the case of prosecution in any manner.

29) P.W.15 Doctor D. Ashok has stated about the treatment given to P.W.3 and about the issuance of an Accident Register copy.

30) P.W.16 is also the Doctor now working in Marakonam Government hospital has stated about the process of Postmortem. He has stated in his evidence about the external and internal injuries sustained by the deceased. Further he gave opinion in respect to the death of Desingu Balan.

31) P.W.17 is the Doctor attached with Jipmer Hospital Pandicherry has stated about the treatment given to P.W.5 Ponammal. Further he stated in respect to the treatment given to P.W.4 Chandra.

32) P.W.18 is the Head Constable Andi Madam Police Station has stated, as per the instruction given by P.W.20 he entrusted the dead body in Chidhambaram Government Hospital for postmortem. Further he has stated after completing the Postmortem he received the dresses removed from the dead body and handed over the same to P.W.20 through special report.

33) P.W.19 is the Head Constable working in MeenSuruty Police Station has stated on the day of occurrence, after receiving the First Information Report from P.W.20. He went to the Jayankondam on the next day morning and gave the First Information Report to the learned Magistrate, Jayankondam. He has further stated due to the non availability of the bus, in the night hours, he went to the Jayankondam on next day morning.

34) P.W.20 and P.W.21 are the police officers had stated in their evidence about the receipt of complaint, registration of the case, details of investigation, arresting the accused, and about the filing of charge sheet.

35) P.W.22 is the Doctor working in Raja Muthaiah Medical College has stated that, on 21.10.2007 at about 08.30 hours the deceased was admitted in the hospital. Thereafter even after giving treatment he was died on the same day. He issued a treatment certificate and the death certificate to that effect.

36) P.W.23 is the Head Clerk Jayankondam Magistrate Court has stated in his evidence that based on the requisition given by the Investigation Officer and upon the order passed by the learned Magistrate he sent the material objects to the forensic department Trichy, for chemical examination.

37) The learned trial Judge, with reference to the incriminating materials adduced by the prosecution, questioned the accused under section 313 Cr.P.C. and for which, all the accused pleaded not guilty.

38) Subsequently, on the side of the accused one Kasi Nathan was examined as DW1. He has stated that on 21.10.2007 at about 05.00 p.m., when he was sitting in the stone bench, the deceased, P.W.7 one Ramesh, Prabakaran P.W.2 and one Vijay Came from the eastern side of the street, at that time the deceased had Veechu aruval, P.W.7 and all other accused are with the aruval, wooden lock and Eetti. After seeing those persons, the first and second accused in this case and their two brothers are ran west. After chasing them the deceased attacked the first and second accused with veechu aruval and the other accused has also attacked the other persons who are accompanying with the A1 and A2. On seeing the occurrence the meeting is great, hence after seeing the crowd all the accused ran away from the seen of occurrence, he has further stated after the occurrence he along with the injured went to the Meensuruty police station in which the Police Officers advised them for taking treatment. Further he stated that the incident was informed to the Inspector of Police JayanKondam.

39) The learned trial judge on perusal of the materials placed and considering the arguments advanced on both sides convicted and sentenced the appellants/accused as stated supra Challenging the same, the present criminal appeal has been filed.

40) I have heard Mr. K.V.Sridharan the learned counsel for the appellant and M/s. T.P.Savitha, Government Advocate, (Crl.Side) the learned public prosecutor for the respondent and perused the records carefully.

41) Learned counsel for the appellant would contend that there are lot of contradictions in the evidence of P.W.1 and P.W.2. During the time of occurrence, along with the appellants

the other accused now acquitted by the Trial Court also assaulted the deceased. In the said circumstances, the Doctor who conducted the Post Mortem gave opinion that the deceased would have died due to the shock and hemorrhage of multiple injuries. It shows, only due to the multiple injuries found in the dead body the deceased would have died. But, as per the evidence given by the injured both the appellants stabbed the deceased in rib only. So, holding the appellants alone responsible for the death is not correct and found erroneous. He contented that there is a delay in sending the First Information Report to the Court. He would further content that the above contradictions create doubt on the prosecution case.

42) Per contra, the learned Additional Public Prosecutor would content that P.W.1 to P.W.5 are the eye witnesses to the occurrence who are the villagers not related to the deceased has stated in their evidence about the occurrence clearly and cogently. Further, he would content that the minor contradictions arising out of the evidence is not at all relevant for considering the case in favour of accused. He would content that the evidence given by the eye witness is corroborated through the medical evidence. Further the delay is also properly explained by the prosecution. Considering the above facts and circumstances the Trial Court has rightly convicted the appellants under Section 304(1) IPC, since the occurrence took place out of provocation. Therefore, there is no need for interference with the conviction and sentence passed by the Trial Court.

43) I have heard the rival submissions made on either side:

Admittedly, the witnesses examined on the side of the prosecution, the appellants and other accused in this case are all the resident of same village. According to the case of prosecution, prior to the occurrence the deceased is the president of an organization meant for preventing offences related to illicit liquor and other offences. He was instrumental in the election of panchayat president. The said fact was disputed on the side of the accused.

44) With regard to the delay in sending the First Information Report to the Court, the Investigation Officer has stated after the registration of the case the First Information Report has been dispatched to the Court through P.W.19 Anbalagan, in the Trial Court, the said Anbalagan was examined as P.W.19 and he has stated, due to the non availability of the bus next day early morning he reaches the JayanKondam and handed over the First Information Report in the Court.

45) Now, according to the evidence of P.W.22, who is the Doctor gave the first treatment to the deceased, the deceased was

died after 08.30 a.m. on 21.10.2007, further in the first information report it was mentioned that information was received to the police station on 21.10.2007 at 23.45 hours subsequently as per the endorsement made by the learned Magistrate, first Information Report was received in the court on 22.10.2007 at about 06.30a.m. So, immediately within 06.00 hours from the time of registration. The First Information Report had reached the learned Magistrate, so there is no delay in sending the First Information Report to the Court. Even assuming the First Information Report was reached six hours belatedly from the time of registration, the explanation offered by the head constable is sufficient to hold that there is no delay in sending the First Information Report to the Court .

46) Consequently, it is true the Doctor who conducted the Postmortem has stated that the death is due to multiple fractures and injuries sustained by the accused. In this regard, all the eye witnesses who are all examined on the side of the prosecution has stated that the appellants are attacking the deceased with Eetti and caused injury on the left and right side of the rib. In the said circumstances, on go through the Ex.P6 Postmortem report, the deceased sustained 17 ante mortem injuries all over the body in which No. 8 and 9 are the insisted wound found near to the rib of deceased. Further, both the injuries are having depth of 4 centi meters. Apart from the said injuries the deceased sustained cut injury on the head, lacerated wound on his hand, fracture in the alma and so many injuries over the body. In the said circumstances, it is difficult to identify whether the injury found in the rib alone is sufficient to cause the death. However, during the time of giving opinion the Doctor who conducted the postmortem has stated that the injuries sustained by the accused are all sufficient to cause death. In the said circumstances, during the time of cross examination, before the Doctor no suggestion was put fourth by the accused stating that the injury found in the rib alone is not sufficient to cause death. Accordingly, it presumes that the injury found in the rib also likely to cause the death. Further, it is an admitted fact that due to the panchayat election the deceased and the appellants are having the previous enmity. It may leads to create a intention to the appellant for killing the deceased.

47) In the Trial Court both the accused are convicted under Section 304(ii) IPC.

48) In this regard the section 299 IPC reads as follows.

"Culpable homicide. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to

cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide"

applying the said provision with the case in hand, in this case also the evidence of P.W.1 to P.W.4 clearly established that both accused are having the intention to causing death to Desingu Balan and causing bodily injury as is likely to cause death.

49) The counsel appearing for the appellants would further content that the evidence given by P.W.8 Thiru. Ravi shows that he is running a grocery shop. He is the independent witness not related, either to the accused nor to the deceased. He has clearly stated that the deceased alone attacked one Rajalingam who is the brother of appellants. The said evidence clearly corroborated through the evidence of DW1. But, the Trial Court without considering the said aspect came to the conclusion that the appellant alone found guilty as alleged by the prosecution.

50) Now, on considering the said submission with the relevant records. It is true according to the evidence of P.W.8 at the time of occurrence the deceased attacked the Raja Lingam. Who is the brother of appellants. Further, it is established that during the time of occurrence a mob containing 20 members are participated in two groups and attacked themselves. Now, on go through the evidence given by DW1 he corroborated the evidence given by P.W.8. More over the Wound Certificate pertaining to the accused are marked as Ex.D1 to Ex.D5. and the Doctor who gave treatment to the accused was examined in this case as P.W.13. He has clearly stated that the injuries found on the accused are all simple in nature and accordingly his evidence proves all the accused in this case sustained only simple injuries and are all superficial in nature. Even though, the witness examined on the side of the prosecution has not explained the details of injury sustained by the accused considering the fact that the injuries found on the accused are superficial in nature, the said aspect has not diverted the case of prosecution in support of Appellants.

51) Now, the learned counsel appearing for the appellant would submit that, in order to find out the aggressor. The Investigating Officer has not registered a case for the injuries sustained by the accused, the said lapse on the part of the Investigation Officer is the best reason for allowing the appeal. Further, he relied on the judgment of R.Velladurai and another Vs. State reported in 2016 CRI.L.J. 3985 in which this court held that:

"Now, we have to examine the proper procedure to be followed while conducting the trial of

both the cases. In this regard, we may also refer to a judgment of the Hon'ble Supreme Court in Nathi Lal v. State of U.P., 1990 (Supp) SCC 145 wherein the Hon'ble Supreme Court has in para 2 has held as follows:-

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross case one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the case, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in the particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other".

21. One of us (Justice S. Nagamuthu), while sitting single in Ganesan v. State, 2011 (5) CTC 747, had occasion to consider the similar issue wherein the legal issues have been summed up as follows:-

"58. To sum up the legal issues involved in the case:-

(i) No court of Session shall take cognizance of any offence unless the case has been committed to it by the jurisdictional Magistrate.

(ii) The Court of Session has no power to direct a Magistrate to commit any case to his file nor can a Court of Session withdraw a case from a Magistrate to his file.

(iii) If any of the offences in a given case is exclusively triable by a Court of Session then, the legal duty of the Magistrate is to commit the case to the Court of Session for trial as provided in Section 209 of Cr.P.C.

(iv) In cross cases, where one of the cases involves offences exclusively triable by a Court of Session and in the other case none of the offence is exclusively triable by a Court of Session, then, as provided in Section 323 of Cr.P.C. The jurisdictional Magistrate should commit both the cases for trial to the Court of Session.

(v) On such committal of cross cases arising out of the same occurrence, the Session Court shall scrupulously follow the procedure laid down by the Hon'ble Supreme Court in *Nathi Lal v. State of U.P.*, 1990 Supp. SCC 145.

(vi) In any other case involving offences which are not exclusively triable by a Court of Session and if it appears to the jurisdictional Magistrate that for any of the grounds enumerated under Section 407(1) of Cr.P.C. That the case needs to be tried by a Court of Session, the learned Magistrate shall submit a report to the High Court and on such report the High Court may order for committal of such case to the Court of Session for trial and there upon on committal, the Sessions Court shall try the same as per the Chapter XVIII of the Code of Criminal Procedure.

(vii) In any event, the trial Court shall not record common evidence or substitute the evidence recorded in one case as evidence in the other case and shall not consider the evidence recorded in one case in the other case.

(viii) In no case, the trial Court shall deliver a common judgment in two or more cases (vide *Nathi Lal's case* cited supra)

(ix) In respect of the cases where trial has not already commenced before the Court of Session without the case being committed, the accused shall be at liberty to raise objection at the earliest opportunity or else, the Court shall follow the dictum laid down in *State of Madhya Pradesh v. Bhooraji*, 2001 Cri LJ 4228(1).

(x) In respect of the cross cases, for each case there has to be a separate public prosecutor to conduct the prosecution."

1. Now considering the said principle with this case in our hand, and on go through the entire materials submitted on the side of the prosecution. It appears for the injuries

sustained by the accused a separate case has been registered in crime No.221 of 2007 further P.W.20 has stated in the said case, after completing the investigation final report had also prepared. He has further stated he instructed the other officers attached with the Police Station to send the final report to the court. But, in the said situation the records pertaining to the said case have not been produced Before the Trial Court. The said circumstances shows pertaining to the said case final report have not been produced before the Trial court. However, on go through the evidence of Doctor who treated the accused they are all sustained only simple injuries.

53) In this regard, reliance is placed in the judgment of our honourable Apex Court in a case of DASHRATH ALIAS JOLO AND ANOTHER Vs. STATE OF CHHATTISGARH reported in (2018) 4 Supreme Court Cases 428 observed as follows:

"The next contention urged by the learned counsel is that the prosecution has not chosen to explain the injuries on the person of the appellants and this is fatal to the case of the prosecution. It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before holding that non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses my affect the prosecution case, the court has to be satisfied of the existence of two conditions:

1. that the injury on the person of the accused was of a serious nature;
2. that such injuries must have been caused at the time of the occurrence is question.

By going through the judgment of the trial court as well as the High Court, it is seen that the injuries sustained by the appellants were simple in nature and while so it was not incumbent upon the prosecution to explain those injuries. It is also relevant to note the answers elicited from the doctors that those injuries found on the accused could be self - inflicted."

54) So, applying the principles laid down by the honourable Apex Court, in this case also accused sustained only with the simple injury and all are simple in nature. Further,

it has been stated by P.W.13. That it is possible, to take these injuries automatically.

55) So, this Court come to the conclusion that, the grounds raised by the accused are all not created a considerable doubt over the case of prosecution in otherwise the evidence given by P.W.1 to P.W.5 clearly establish that during the time of occurrence both the appellants assaulted the deceased by using Eetti and cause injury on his rib. Which likely to cause death the said evidence is clearly corroborated through the evidence given by the Doctor who conducted the Postmortem. Further, the Trial Court convicted the second appellant under Section 324 of IPC for causing simple injury to P.W.2 Dinesh by using the dangerous weapon. In this regard the evidence given by P.W.2 is natural and also corroborated through the medical evidence. Actually, in a group fight it is difficult to account the overt act of each of the accused. Moreover, in the Trial Court the witnesses are gave evidence after the lapse of two years from the date of occurrence. So, we cannot expect accurate incident from the mouth of witnesses in this regard our honourable Apex Court has held in 2010 4 MCJ Cri Page 498 as follows:

"As the mental abilities of a human being cannot be expected to attuned to absorb all the details of the incident Minor discrepancies are bound to occur in the statement of witness"

Accordingly, convicted the both appellants for the offence under Section 304(1) IPC and convicting the second appellant under Section 324 IPC does not need any interference. The Trial Court having considered the all, rightly convicted the appellants.

56) In the result, the appeal is dismissed and the conviction imposed upon the appellants for the offence under Section 304(1) IPC is confirmed. Further, the conviction imposed upon the second appellant for the offence under Section 324 of IPC is also confirmed. It is ordered that the period of sentence already under gone by the appellants, if any, shall be given set off as required under Section 428 Cr.P.C. It is further ordered that sentence awarded to the appellants is to run concurrently

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

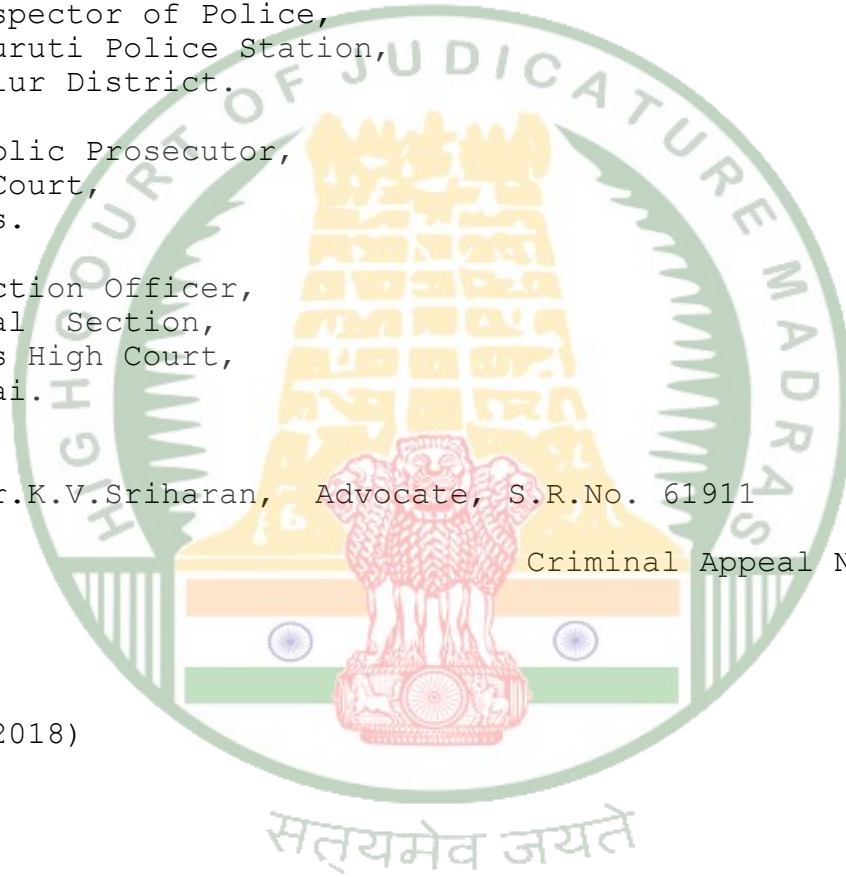
To

1. The Additional Sessions Judge, Fast Track Court No.2,
Salem.
2. Do thro the Principle Sessions Judge,
Salem.
3. The Superintendent,
Central Prison,
Coimbatore.
4. The Inspector of Police,
Meensuruti Police Station,
Ariyalur District.
5. The Public Prosecutor,
High Court,
Madras.
6. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.

+1cc to Mr.K.V.Sriharan, Advocate, S.R.No. 61911

Criminal Appeal No.6 of 2011

MG (CO)
GN (24/09/2018)



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