

BAIL SLIP

The Appellants herein/Accused viz., 1.Sridhar, S/o.Babu, 2.Vinoth, S/o.Kumar and 3.Guhan, S/o.Ponmurugan, were directed to be released on bail as per order of this court dated 21.10.2010 (A1) and 31.08.2010 (AA2,3) made in CrI.M.P.Nos.3 of 2010 and 2 of 2010 and 4.Vaidhyalingam, S/o.Periasamy, 5.Desingu, S/o.Selvam, (AA4 to 6), 6.Lakshmanan, S/o.Madhavan, were directed to be released on bail as per order of this court made in MP.NO.1/10 in CRL.A.NO.385 of 2010, dated 07.07.2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.08.2019	Delivered on 27.08.2019
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CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.385/2010

1.Sridhar
2.Vinoth
3.Guhan
4.Vaidhyalingam
5.Desingu
6.Lakshmanan

.. Appellants/
Accused No.1 to 6

Vs

State rep.by:
The Inspector of Police
N2 Kasimedu Police Station
Chennai.(Crime No.273/2009)

..Respondent/Complainant

Prayer:- This Criminal Appeal is filed u/s.374 Cr.P.C., to set aside the order and judgment of the learned Additional Sessions Judge [Fast Track Court IV] at Chennai in SC.No.80/2010 dated 16.06.2010 and to acquit the appellants/accused.

For Appellants 1 & 2 / A-1 and A-2	:	Mr.P.Divakar, Legal Aid Counsel
For 3 rd Appellant/A-3: For Appellants 4 to 6 / A-4 to A-6	:	Mr.K.Shankar Mr.W.M.Abdul Azeez
For Respondent	:	Mr.K.Prabakar, APP

JUDGMENT

1.This Criminal Appeal is filed against the judgment of conviction and sentence, dated 16.06.2019 made in SC.No.80/2010 by the learned Additional Sessions Judge [Fast Track Court IV] at Chennai. The appellants 1 to 4 stood charged and tried for the commission of the offences under sections 147, 148, 307, 326, 506[2], 450 r/w 149 IPC and A5 and A6 stood charged and tried for the commission of the offences under sections 307, 326, 341, 450 r/w 109 IPC and the Trial Court, vide impugned judgment dated 16.06.2019, had acquitted the appellants/A-1 to A-6 for the offences u/s.147, 326 & 506 [ii] IPC and however, convicted and sentenced the appellants as follows:-

Rank of the Accused	Conviction under section	Sentence Awarded
A-1 to A-6	148 r/w 149 IPC	Each of the accused were sentenced to undergo 2 years imprisonment and to pay a fine of Rs.500/- each with a default sentence of one month simple imprisonment.
A-1 to A-6	341 r/w 149 IPC	Each of the accused were sentenced to undergo one month imprisonment and to pay a fine of Rs.500/- each with a default sentence of one week simple imprisonment.
A-1 to A-6	450 r/w 149 IPC	Each of the accused were sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.1000/- each with a default sentence of 6 months simple imprisonment.
A-1 to A-6	307 r/w 149 IPC	Each of the accused were sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1000/- each with a default sentence of 6 month simple imprisonment.

2.The sentences were ordered to run concurrently and set-off was also granted u/s.428 Cr.P.C.

3.The brief facts of the case as per the charges framed against the appellants/accused is that in the ''C'' Block at 154 G.M.Pet Housing Board, Kasimedu, one Ravichandran was holding the post of President and that since his period got expired, a meeting was convened by P.W.2-Lokesh who wanted his brother

Sathishkumar [P.W.4] to be the President and the said proposal was objected to by A-1 to A-4 and that they wanted to nominate a person belonging to their group and there ensued a wordy quarrel between the appellants/accused and P.W.2 and others and exchange of words in a heated passion and thereby, there existed previous enmity between A-1 to A-6 and in continuation of the same, the appellants/accused conspired together to do away with the life of Lokesh [P.W.2] and on 27.08.2009, at the wee hours on 00.30 hours, when the complainant Megala [P.W.1] / wife of Lokesh [P.W.4] were sleeping in their house, they heard the door being knocked and when P.W.1 opened the door, she saw A-1 to A-4 armed with knives and they forcibly entered the house by pushing her down and when the husband of P.W.1 was about to wake up, A-5 and A-6 prevented him from getting up and A-1 by scolding P.W.2 in an abusive language as regards electing of a new President, stabbed him on the left and right side of the chest ; A-2 stabbed P.W.2 on the back ; A-3 had inflicted a cut injury on the left wrist ; A-4 had inflicted cut injuries on both sides of the shoulders. When P.W.1 raised hue and cry, the neighbours gathered and A-1 to A-4 threatened them of dire consequences by brandishing the knives ; thereby the appellants 1 to 4/A-1 to A-4 were charged for offences punishable under Sections 147, 148, 307, 326, 506[ii], 450 read with 149 of IPC and the appellants 5 and 6/A-5 and A-6 were charged for the offences punishable under Sections 341, 326, 307, 450 read with 149 IPC.

4. The case was taken on file in PRC No.102/2009 on the file of the learned 16th Metropolitan Magistrate, George Town, Chennai and subsequently, the case was made over to the Trial Court, viz., the learned Additional District and Sessions Judge, Fast Track Court No.4, Chennai, in SC.No.80/2010 and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined 10 witnesses as PW.1 and PW.10 and Exs.P1 to P11 and M.Os.1 to 8 were marked. On the side of the defence, no oral and documentary evidence was let in.
5. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313[1][b] Cr.P.C as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial and stated that they have been falsely implicated in this case.
6. The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, convicted the appellants/accused for the aforesaid offences and awarded punishment, as referred to above, which is challenged in this Criminal Appeal.
7. Mr.P.Divakar, Legal Aid Counsel appearing for the appellants 1 and 2/A-1 and A-2, while assailing the impugned judgment of

conviction and sentence, would put forth the following contentions:-

- a) The Trial Court had erred in taking into consideration the glaring contradictions in between the evidence of P.Ws.1 and 2.
 - b) The Trial Court had failed to take into consideration that there are 2 FIRs in this case, one given at the police station immediately after the incident and another, at the hospital before the Inspector and the prosecution has conveniently suppressed the earlier complaint given by P.W.1 / complainant at the police station and proceeded the case on the basis of the second complaint which has been drafted by the respondent police.
 - c) It is the evidence of P.W.1 that she knows the names of A-1 to A-3 and she does not know the names of the other three persons ; whereas, strangely all the names of the accused have been stated in the complaint-Ex.P.1, thereby suggesting that the complaint has been given after much deliberation and contemplation.
- 8.Mr.K.Shankar, learned counsel for the 3rd appellant/A-3 would submit that the evidence of P.Ws.1 and 2 does not tally with the medical evidence. As per the evidence of P.W.1, A-3 is stated to have inflicted a stab injury in the stomach of the victim/P.W.2. Whereas, there is no corresponding injury as per the medical evidence. It is the evidence of P.W.2 that an attempt was made by A-3 to stab the victim in the stomach and when the victim/P.W.2 warded off, he sustained an injury on the right wrist.
- 9.Mr.W.M.Abdul Azeez, learned counsel appearing for the appellants 4 to 6 / A-4 to A-6 would put forth the following contentions:-
- i. As per the evidence of P.W.1 before the Court, she had stated that she knows A-1 to A-3/appellants 1 to 3 herein and that she had only seen the other three accused when they had come to her house at the time of occurrence. Since she had stated to have seen them for the first time, the prosecution has not proved the case beyond reasonable doubt by failing to conduct the Identification Parade.
 - ii. The allegations levelled against the 4th appellant/A-4 is that he used a knife and inflicted injury on the shoulder and as far as appellants 5 and 6 / A-5 and A-6 are concerned, they are stated to have caught hold of the victim/P.W.2.
 - iii. The other independent witnesses have turned hostile.
10. Per contra, the learned Additional Public Prosecutor appearing for the respondent/State would submit that it is a case where the accused/appellants in the middle of the night, committed house trespass in order to commit the offence by breaking the door of the house of the victim/P.W.2, when they were sleeping and indiscriminately inflicted cut injuries on

the victim/P.W.2. The overt acts of each and every appellants/accused have been categorically spoken by P.Ws.1 and 2. P.W.1 in her evidence had stated that she knows about A-1 to A-3 and that other accused are also known to her when she had seen them coming to their house. He would submit that all the persons belong to the same area and there was no requirement for subjecting other accused for identification parade. P.W.2 / injured victim has also specifically spoken about the overt acts of each accused and that the evidence of P.W.2 has been corroborated by the evidence of the doctors- P.Ws.6 and 7 ; thereby, the prosecution has proved the case beyond reasonable doubt and the trial Court had rightly convicted the appellants/accused based on cogent evidence and would submit that the judgment of the trial Court does not warrant any interference and prays for dismissal of the said appeal.

11.The learned Additional Public Prosecutor would submit that the appellants 1 to 4/A-1 to A-4 have been charged for the offences u/s.147, 148, 307, 326, 506[2], 450 r/w 149 IPC and that the appellants 5 & 6/A-5 and A-6 have been charged for the offences u/s.307, 326, 341, 450 r/w 149 IPC and all the accused have trespassed into the house of the victim/P.W.2 and attacked him. A-4 and A-5, being a members of the unlawful assembly are guilty of the offences committed with common object and that the Trial Court, finding that the appellants/A-1 to A-6 had, with a common object of murdering the victim/P.W.2 had trespassed into the house and cut him and thereby, rightly convicted them. He would further submit that there was a motive for the accused persons, attempting to kill the victim/P.W.2 and that, they had come out with a common intention and object and since the occurrence had happened in the night, the witnesses cannot be expected to explain the infliction of injuries by each one of the accused individually and weapons used. He would submit that such conduct would be opposed to normal conduct of human being and when the victim / P.W.2 is fearing for his own life and in such a situation, the victim cannot be expected to speak with precision on behalf of injuries inflicted on him and role attributable to each of the appellants/accused. Learned Additional Public Prosecutor also submitted that it is a case where the evidence has been let in by the victim/P.W.2 who is an injured witness and that, there could not be any reason for him to falsely implicate other persons other than the actual assailants.

12.In support of his contentions, the learned Additional Public Prosecutor has placed reliance upon the following decisions:-

- 1998 [5] SCC 150 [J.S.Valia Vs. State of Punjab] ;
- 2014 [14] SCC 615 [para 14]
- 2017 [3] SCC 152

13.I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of conviction, including the relevant provisions of Law and authorities of various Courts.

14.The points for consideration are:

[a]Whether the prosecution has proved the case beyond all reasonable doubts?; and

[b]Whether the evidence of the witnesses adduced on the side of the prosecution, can be believed?

[c]Whether the Trial Court was right in convicting and sentencing the appellants/accused?

15.While analyzing the evidence of the witnesses, P.W.1/Megala, wife of the victim / P.W.2 had stated that on 27.08.2009 / 28.08.2009 at about 12.00 midnight, she along her husband and children were sleeping in the house and at that time, she heard the door being knocked. When she attempted to open the door, the door was forcibly opened by five persons and one of them had caught hold of her neck and was standing outside. P.W.1 raised an alarm. She had further stated that A-1/Sridhar was wearing white coloured half sleeve shirt ; A-2/Vinoth was wearing black colour shirt ; A-3/Gugan was wearing banian and that, all the accused came inside. She had also stated that she knew A-1 to A-3 and she saw the other three accused for the first time during the occurrence and that, all the accused except one, were armed with knives. P.W.1 had stated about the specific overt acts on the part of each of the accused, viz., [1] A-1/Sridhar stabbed P.W.2 on the left side of the chest ; [2] A-3/Gugan stabbed P.W.2 on his stomach ; [3] A-2/Vinoth stabbed on the back ; and the other two accused were holding the shoulders of P.W.2 tightly with knives and that when P.W.1 came out and raised an alarm, the public gathered and on seeing them, the appellants/accused ran away from the scene of crime. She had stated that P.W.3-Saravanan and one Manimaran took the injured P.W.2 in an auto to the police station and an oral complaint was given in the police station. Thereafter, the injured victim/P.W.2 was sent to hospital for treatment and the police came to the hospital and enquired P.W.1 and recorded her statement. The complaint given by her was marked as Ex.P.1. In the cross examination, she had stated that within few minutes of the occurrence, she went to call her mother who was residing four streets apart and by the time she returned, all the accused had fled away from the scene and that her mother-in-law Sundari [not examined] also accompanied P.W.1 and that, she along with her mother and mother-in-law to the police station and when they were enquired by the police, she had stated about the occurrence orally and went to the hospital for

treatment. She had further stated that within ten minutes, the police had come to the hospital and enquired the injured/P.W.2, her mother-in-law and brothers-in-law. She had further stated that she does not know about the complaint given by the 2nd appellant/A-2 against the brother of the victim/P.W.2 on the file of Kasimedu Police Station.

16. P.W.2/Logesh had stated that P.W.1/Megala is his wife and that he is selling fish and that he is a resident of Indhira Nagar, G.M.Pet ; that, there existed a practice of selecting a leader for that Nagar and that, during Vinayaga Chaturthi, an election was being conducted for selection of the leader and at that time, the people of the locality told to select the brother of P.W.2, viz., Sathish/P.W.4, for the said post and that the appellants/accused, belonging to the same area, opposed for the selection of P.W.4 and that, they had given a complaint against P.W.2 an P.W.4 and P.W.2 had also preferred a complaint against the appellants and the matter was compromised in the police station. P.W.2 had further stated that on 27.08.2009, when he was sleeping, at about 00.00 hours, he heard the door being knocked and that, when P.W.1, his wife went and opened, all the appellants/accused entered the house and A-1 to A-3 were armed with knives ; A-5 pressed the neck of his wife/P.W.1 ; A-3 and A-4 caught hold of the hands of P.W.2. A-2-Vinoth, by saying that P.W.2 should not left alive, had inflicted cut injury on his hand ; A-3 had inflicted a cut injury in his stomach and when, P.W.2 warded off the attack, he sustained injuries on his hand and forehead and when P.W.2 raised an alarm, P.W.1/his wife ran out and brought her mother and mother-in-law. On hearing the hue and cry, P.W.3 also rushed to the spot and the accused ran away from the scene. On account of injuries sustained, P.W.2 fell down and P.W.3 caught hold of P.W.2 and that, the elder brother of P.W.2 came and P.W.2 was taken to Stanley Hospital by P.W.4 in an auto. He had further stated that the police came to the hospital and recorded the statement of his wife/P.W.1. In the cross examination, P.W.2 had stated that he is not aware as to when he was taken to the hospital and that the police did not enquire the neighbours of P.W.2. He had further stated that P.W.4, one Prabhu and his mother-in-law accompanied him to the hospital and that nobody else had accompanied him. He had also stated that when the doctor enquired him, he had told that he was attacked by 7 persons.

17.P.W.3-Saravanan, is a resident of Indira Nagar, Kasimedu and that he is the neighbour of P.Ws.1 and 2 and is residing in the fourth floor and that P.Ws.1 and 2 were residing in the 2nd floor. He had stated that he does not know about the occurrence and he does not know about the assailants who had attacked P.W.2. He had further stated that on the date and

time of occurrence, when he was sleeping in his house, he heard a noise from the 2nd floor of the house and when he came down, he saw the victim/P.W.2 lying down with bleeding injuries and on seeing the victim, P.W.3 stood motionless. Thereafter, he helped the injured victim/P.W.2 to board the auto and came back to his home. He had also stated that he did not know as to what had happened thereafter. Since he did not support the case of the prosecution, he was treated as a hostile witness.

18. P.W.4-Sathish Kumar, the elder brother of P.W.2/injured victim Lokesh, is a resident of Indira Nagar, Kasimedu and that, during the midnight on 27.08.2009, while he was sleeping, he heard the knocking of the doors and when he peeped out through the bathroom, he saw the A-1 to A-3 and A-6 were standing outside, armed with knives. He had told his wife not to open the doors and that, he called his brother Tamizhselvan [P.W.5] / son of the junior paternal uncle of P.W.4, over phone and informed him that the accused, armed with knives, were knocking the doors and that the same has to be informed to the police station. Subsequently, he heard the hue and cry of the ladies and P.W.5 called P.W.4 and informed him that the accused had cut P.W.2-Lokesh. When P.W.4 went to the house of P.W.2, he saw P.W.3 lifting the injured / P.W.2. He had further stated that the wife of the injured victim / P.W.1, her mother and mother-in-law went in one auto and that in another auto, the injured P.W.2, P.W.4, P.W.5 and one Prabhukumar went to the police station at the first instance and narrated the incident orally and that the police instructed them to take the injured to the hospital immediately. Thereafter, the injured was taken to Stanley Hospital. He had further stated that, the injured was caught hold by three persons and that the cut injuries was inflicted by the other three accused persons, as stated by P.W.1. He had also stated that he was not an eyewitness to the occurrence.

19. P.W.5-Tamilselvan, a resident of G.M.Pet Housing Board, had stated that 27/28.08.2009 at about 00.00 hours, P.W.4-Sathish Kumar, had called him over phone and informed him that some persons were knocking the doors of his house and P.W.5 came out of his house and was going near Sengalamman Temple and at that time, A-1, A-3 and yet another person, were coming near the temple. Once again, P.W.5 called P.W.4 over phone and informed him that there was a ruckus at Lokesh [P.W.2] house and thereafter, P.Ws.4 and 5 went to the house of Lokesh [P.W.2] and P.W.2 was taken to the hospital. The police came to the scene of crime and prepared the Observation Mahazar [Ex.P.2]. The police also recovered Floor Mat [M.O.5], blood stained earth [M.O.7] and the cotton swab with blood stains [M.O.8] under the Mahazar [Ex.P.3] and P.W.5 stood as a witness to the said seizure and preparation of the Observation Mahazar.

20.P.W.6-Dr.Thirumuruganand, the Assistant Professor attached to the Stanley Hospital, had stated that on 28.08.2009 at about 10.00 a.m., while he was on duty, he saw P.W.2-Lokesh, aged about 29 years, being admitted in the hospital, with the complaints of high blood pressure ; heart beat and low pulse rate and the reason being the injury sustained in the stomach. On examining the depth of the injury found in the stomach, suspecting that the said injury went till peritoneal cavity, due to which, the intestines, pancreas and liver might be injured, he decided to perform a surgery and on surgery, he found a tear in the falciform ligament 2 measuring about 2 x 2 cm and a subcapsular laceration over the right lobe of the liver and on examination, the other organs were found to be normal. He also found the following injuries [1]injuries on the chest and the back ; [2] a cut injury on the webspace between the index finger and the thumb finger on the right hand measuring 2x1x2cm ; [3] a cut injury on the webspace between the index finger and the thumb finger on the left hand measuring 4x2x2cm ; [4] a cut injury on the chest measuring 15x8x4cm ; [5] a laceration on the back of the right shoulder measuring 2x1x0.5cm ; and [6] more than one laceration on the back of the body. He had stated that the injured was admitted as an in-patient for nearly about 12 days and the Medical Legal Opinion given by him in this regard, is marked as Ex.P.4 and he had opined that the injuries are grievous in nature.

21.P.W.7-Dr.Kumaresan, is also the Assistant Professor attached to the said hospital and he had stated that on 28.08.2009 at about 12.40 p.m., while was on his duty as an Instructor, P.W.1 admitted her husband, P.W.2, in the Casualty and he was in an unconscious stage and P.W.1 had stated that 7 known persons had attacked her husband using aruvals. On examination, P.W.7 found the following injuries:-

- A lacerated injury measuring 5x4x2 cm in the left chest.
- A lacerated injury measuring 3x2x1 cm in the epigastrium.
- A lacerated injury measuring 3x2 cm in the left hand 1st web space.
- A lacerated injury measuring 3x1x0.5cm in the right wrist.
- A lacerated injury measuring 7x1x0.5cm in the right hand dorsum.
- A lacerated injury measuring 2x1x0.5cm in the right shoulder.
- A lacerated injury measuring 2x1x0.5 cm in the left shoulder.
- Multiple lacerations 2x0.5x0.5cm in the back.

P.W.7 had further stated that after giving first-aid, he had sent P.W.2 for taking X-Ray and the Accident Register issued by him is marked as Ex.P.5.

22. P.W.8-Sekar, had stated that he is a resident of Block No.485, 'G' Block, V.O.C.Nagar, Tondiarpet and that he is a fisherman by profession. He had stated that on 28.08.2009 between 09.30 a.m. and 10.30 a.m., he was conversing with one Gopi and at that time, a police jeep came and enquiring as to why they are standing there, the police personnel took them to the police station and they were made to affix their signatures in blank papers and thereafter, P.W.8 came to his house. He was treated as a hostile witness.

23. P.W.9-Gopi, also deposed/stated in the same lines as that of P.W.8-Sekar and he was also treated as a hostile witness.

24. P.W.10-Sampath, is the Inspector of Police [Law and Order] attached to N2 Kasimedu Police Station and on 27.08.2009/28.08.2009 at about 1.00 a.m., while he was on duty, upon receipt of information from the Stanley Hospital, he went there and saw the injured victim/Lokesh [P.W.2] in Ward No.201 and as he was unconscious, he received a written complaint from his wife, Megala - P.W.1 and thereafter, returned to the police station, registered a case in Cr.No.273/2009 for the offences u/s.147, 148, 448, 341, 324, 307, 506[2] IPC and took up the case for investigation. Ex.P.6 is the Printed FIR. He went to the scene of occurrence on 28.08.2009 at 02.30 a.m., and prepared the Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.7] in the presence of P.W.5 and one Saravanan and also seized blood stained Mat [M.O.5] ; Blood stained earth [M.O.7] and blood stained cotton swab [M.O.8] under the Mahazar [Ex.P.3] in the presence of the same witnesses. He also examined P.Ws.1, 2, 3, 4, 5, Prabhukumar, Kasthuri, and Rajendran and recorded their statements. He also examined the doctor [P.W.7] and recorded his statement. On 28.08.2009 at about 9.45 a.m., he effected the arrest of A-1 to A-3, A-5 and A-6 and in the presence of P.Ws.8 and 9, A-1 to A-3 voluntarily came forward to give confession statements, the admissible portions of which are marked as Exs.P8, 9 and 10, in pursuant to which, four knives [M.Os.1 to 4] were seized under the Mahazar [Ex.P.11]. The accused persons were sent for judicial remand and the material objects were sent to the Court under Form 95 for chemical analysis. P.W.10 also examined the doctor [P.W.6] and recorded his statement and received the Accident Register [Ex.P.4] issued by him. On completion of the investigation, he laid the charge sheet against the accused persons for the alleged offences punishable under sections 147, 148, 341, 326, 307, 506[2] r/w 149 IPC.

25. Insofar as the contention of the learned counsel appearing for the appellants/accused that there exist two FIRs in this case, upon perusal, consideration and analysis of the evidence adduced on the side of the prosecution, more particularly, the

evidence of P.Ws.1, 2 and 4, it is the categorical version of the witnesses that after the incident, they first went to the respondent police station and gave an oral complaint and upon the instructions from the police, they went to Stanley hospital for giving treatment to the injured victim/P.W.2 and within ten minutes, the police rushed to the hospital and since P.W.2 was unconscious, the statement of his wife, P.W.1 was reduced to writing, based on which, the case came to be registered and in the considered opinion of this Court, the said lapse on the part of the prosecution to immediately register the case, does not affect the prosecution case in its entirety and within few minutes of the victim reaching hospital, the police went and recorded the statement/complaint from the wife of the victim.

26.As regards the contradictions in respect of the overt acts attributed to each and every accused in the evidence of P.Ws.1 and 2, it is the evidence of P.W.1 that A-1 to A-3 inflicted cut injuries using knives on the left side of the chest, stomach and on the back of her husband/P.W.2 and that two other accused caught hold of P.W.2 while the other accused was pressing the neck of P.W.1. It is the evidence of the injured victim/P.W.2 that A-5 caught hold of the neck of his wife/P.W.1 while A-4 and A-6 caught hold of him and A-2 inflicted a cut injury in the hand of P.W.2 while A-3 stabbed in the stomach of P.W.2 using a knife and when P.W.2 tried to ward off the cut, he sustained an injury on his forehead. Hence, the overt acts against each of the appellants/accused has been categorically and specifically spoken to by P.Ws.1 and 2 and this Court is of the considered view that there are no contradictions in between their evidence regarding the alleged overt acts.

27.If the evidence of the injured victim inspires confidence of the Court, then the minor discrepancies found in the case of the prosecution will not corrode the credibility of the testimony of the injured witness and the same stands on a higher pedestal.

28.The Hon'ble Supreme Court of India in the decision reported in 2017 [3] SCC 152 [Baleshwar Mahto and another Vs. State of Bihar and Another] has held, in paragraph No.12, thus:-

12.Here, PW7 is also an injured witness. When the eyewitness is also an injured person, due credence to his version needs to be accorded. On this aspect, we may refer to the following observations in Abdul Sayeed V. State of M.P. [2010 [10] SCC 259 : 2010 [3] SCC [Cri] 1262]:-

'28.The question of the weight to be attached to the evidence of a witness that was himself injured in the course of

the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in-guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant[s] in order to falsely implicate someone. 'Convincing evidence is required to discredit an injured witness.' [Vide Ramlagan Singh V. State of Bihar [1973 [3] CC 881], Malkhan Singh V. State of U.P. [1975 [3] SCC 470], Machhi Singh V. State of Punjab [1983 [3] SCC 470], Appabhai V. State of Gujarat [1988 Supp SCC 241], Bonkya V. State of Maharashtra [1995 [6] SCC 447], Bhag Singh, Mohar Vs. State of U.P. [1997 [7] SCC 712], Dinesh Kumar V. State of Rajasthan [2008 [8] SCC 270], Vishnu V. State of Rajasthan [2009 [10] SCC 477], Annareddy Sambasiva Reddy V. State of A.P. [2009 [12] SCC 546], and Balraje V State of Maharashtra [2010 [6] SCC 673].

29.While deciding this issue, a similar view was taken in Jarnail singh V. State of Punjab [2009 [9] SCC 719], where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:-

''28.Darshan Singh [PW4] was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa V. State of Karnataka [1994 SCC [Cri] 1694, this Court has held that the deposition of the injured witness should be relied upon unless there are strong ground for rejection of his evidence on the basis of major contractions and discrepancies, for the reason that his presence on the scene

stand established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. V. V.Kishan Chand [2004 [7] SCC 629, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross examination and nothing can be elicited to discard his testimony, it should be relied upon [vide Krishan V. State of Haryana [2006 [12] SCC 459]. Thus, we are of the considered opinion that evidence of Darshan Singh [PW4] has rightly been relied upon by the Courts below.'

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.'

29. In PARGAN SINGH AND OTHERS Vs. STATE OF PUNJAB reported in 2014 [14] SCC 619, the Hon'ble Apex Court has held thus:

'22 In the present case, the circumstances in which PW2 had seen the accused persons even for 90 seconds, that was sufficient to absorb their faces. In contrast, things would be different if it is a case of some large get together where two unknown persons have a chance meeting for 90 seconds. Therefore, we reject the

argument of the learned counsel for the appellants that PW2 could not recollect the face of the appellants after 7 1/2 years and thus, he was not telling the truth. We have to keep in mind that PW2 suffered serious injury because of the shot fired at him by the assailants and seriousness of the injury has resulted into conviction under section 307 IPC as well. The testimony of an injured witness requires a higher degree of credibility and they have to be strong reasons to discard the same. The appellants have not been able to demonstrate that the Courts below unreasonably reached the conclusion as to the admissibility of the testimony of PW2. Apart from a very feeble submission that this witness identified the appellants 7 1/2 years after the incident, their arguments do not address the issue of whether testimony of PW2 was false. We are, thus, not at all impressed by this argument of the learned counsel for the appellants. Except that PW3 is not an injured eyewitness, he has also seen the occurrence and the reasons given in support of attaching credibility to the statement of PW2 would apply in this case as well.'

[Emphasis supplied]

30. In the case on hand, P.W.2 is the injured witness. It is his version that there existed enmity between himself and his brother on one side and the appellants/accused on the other side on account of election of President of Indira Nagar. He had stated that on the date of occurrence, i.e., during the midnight of 27/28.08.2009, at about 00.30 hours, the appellants/accused came and knocked the doors of his house and that when he opened the door, A-5 pressed her neck while A-4 and A-6 caught hold of him and A-1 to A-3 inflicted cut injuries on his body using knives and that he was taken to the hospital by P.W.1, P.W.4 and others after giving an oral complaint in the police station. It is his categorical evidence that it was the appellants/accused who had attacked him and that nothing has been elicited in the cross-examination to disbelieve his evidence. Thus, the evidence/testimony of an injured witness is accorded a special status in law and the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein. Here, the ocular testimony of the injured witness/P.W.2 is also supported by the medical evidence adduced on the side of the prosecution through P.Ws.6 and 7-the doctors who treated the

injured victim/P.W.2 and Exs.P.4 and P.5-Medical Legal Opinion and the Accident Register] issued by them. The overt acts attributed against each of the appellants/accused is also corroborated by the corresponding injuries found by the doctors.

31.The next contention put forth by the learned counsel for the appellants/accused is that no test identification parade was conducted in respect of A-4 to A-6 as it is the evidence of P.W.1 before the Court that she saw A-4 to A-6 for the first time in her house on the occurrence date. However, the names of all the accused were mentioned in the FIR. This contention has been strongly opposed by the learned Additional Public Prosecutor by submitting that the accused persons belong to the same area and that no requirement arise for conducting the test identification parade. In Pargan Singh's case [cited supra], the Hon'ble Apex Court has held that 'persons encountering such experience are not likely to forget faces of assailants even for a life time'. In the instant case, it is the specific evidence of P.Ws.1 and 2 that apart from A-1 to A-3, there were three other accused and one of them pressed the neck of P.W.1 while the remaining two accused caught hold of P.W.2/injured victim and those persons were identified by P.Ws.1 and 2 in Court. In the considered opinion of the Court, it is highly impossible for P.Ws.1 and 2 to forget the faces of the assailants, in particular, the evidence of P.W.1 as she was in a shock state of mind when she saw the assailants stabbing her husband/P.W.2 with knives and it is not possible for her to forget the faces of the appellants/accused.

32.In view of the foregoing discussions and reasonings, this Court is of the considered view that the prosecution has proved its case beyond reasonable doubt that it was the appellants/accused who had attacked the victim/P.W.2 and caused grievous injuries on him and this Court has no hesitation to hold that the Trial Court is right in convicting the appellants/accused for the aforesaid offences.

33.At this juncture, the learned counsel for the appellants/accused submitted that the appellants/accused would submit that the appellants and the victim belong to the same area and that due to the intervention of elders and well wishers in the area, the dispute between them have been compromised and thereafter, there had been relationship between them due to marriages in the family and would pray that some leniency may be shown on the appellants/accused and that the sentence awarded, may be modified.

34.Though this Court is not inclined to accede to the said prayer of the learned counsel for the appellants/accused,

considering the fact that the occurrence was of the year 2009 and that much water has flown under the bridge and further, the motive for the occurrence itself would have had died its natural death and considering the other attended circumstances, this Court is inclined to modify the sentence.

35.* "In the result, the criminal appeal is partly allowed and the judgment of conviction imposed on the appellants 1 to 6/A-1 to A-6 for the offences under Section 148 r/w Section 149, Section 341 r/w Section 149, Section 450 r/w Section 149 and Section 307 read with Section 149 IPC by the Trial Court in SC.No.80/2010 vide judgment dated 16.06.2010 is hereby confirmed, however, the sentences imposed under Section 450 read with Section 149 and Section 307 read with Section 149 IPC are reduced to one of Rigorous Imprisonment for three years. The sentences shall run concurrently. Sentence of Fine amounts shall stand confirmed."

36.It is reported that the appellants/accused are on bail. The respondent police/State is directed to secure the presence of the appellants/accused in the prison, so as to enable them to undergo the remaining period of sentence. The period of sentence already undergone by them, is given set off u/s.428 Cr.P.C.

37.Before parting with the matter, this Court place it on record the commendable service rendered by Mr.P.Divakar, learned counsel as Legal Aid Counsel for the appellants 1 and 2/A-1 and A-2. He is entitled to remuneration from the Tamilnadu State Legal Services Authority as per the norms.

Sd/-

Assistant Registrar(CO)
dated: 16.09.2019

//True Copy//

*** Amended as per the Order
dated 23.02.2022 made in
Crl.M.P.No.1738 of 2022
in Crl.A.No.385 of 2010**

Sd/-

**Assistant Registrar
dated: 24.02.2022**

Sub Assistant Registrar

AP

To:

1. The Additional Sessions Judge
Fast Track Court, No.4
Chennai.
2. The Principal Judge, Chennai.
3. The 16th Metropolitan Magistrate,
George Town, Chennai.
4. The Chief Metropolitan Magistrate,
Chennai.
5. The Inspector of Police
N2 Kasimedu Police Station, Chennai.
6. The Superintendent of Prisons
Central Prison, Puzhal, Chennai.
7. The Public Prosecutor,
High Court, Madras.
8. The Secretary,
Tamil Nadu State Legal Services Authority,
Chennai.

+1cc to Mr.P.Divakar, Advocate, S.R.No.72982

+1cc to Mr.K.Shankar, Advocate, S.R.No.73036

+1cc to Mr.W.M.Abdul Azeez, Advocate, S.R.No.1194

*** To be substituted
to the order already
despatched in
21.02.2020**

CrI.A.No.385 of 2010

MR(CO)
CS/11/10/2019
SU(24/02/2022)