

Bail Slip

The Appellants/Accused namely 1.Shanmugham, S/o.Chandran, 2.Radhakrishnan, S/o.Chandran, 3.Thirunavukkarasu, S/o.Parasamy @ Paramurthy, 4.Velmurugan, S/o.Kothandapani, 5.Kumaravel, S/o.Chinnathambi, 6.Kandasamy, S/o.Rajamanickam, 7.Sundaramurthy, S/o.Pavadai Nayanar @ Gundumani, 8.Sekar, S/o.Dhanasekar @ Dhanasekaran, 9.Rajakumar, S/o.Sakkarai @ Sakrapani, 10.Veeravel, S/o.Palanivel Chettiar, 11.Manikandan @ Mohan, S/o.Shanmugam were released on bail vide order dated 29/07/2010 in CrI.MP.No.1 of 2010 in CrI.A.No.443/2010 passed by this Hon'ble High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2019

Pronounced on : 11.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.443 of 2010

1.Shanmugham  
2.Radhakrishnan  
3.Thirunavukkarasu  
4.Velmurugan  
5.Kumaravel  
6.Kandasamy  
7.Sundaramurthy  
8.Sekar  
9.Rajakumar  
10.Veeravel  
11.Manikandan @ Mohan

... Appellants

Vs.

State by the Station House Officer,  
Nellikuppam Police Station,  
Cuddalore District.  
(Crime No.746 of 2008)

... Respondent

[Amended as per the order of this  
Court dated 18.08.2010 in  
CrI.M.P.No.2 of 2010 in CrI.A.No.443  
of 2010.]

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the Judgment of the learned

Additional District and Sessions Judge (Fast Track Court No.2) Cuddalore in S.C.No.222 of 2008 dated 08.07.2010 and acquit the appellants/accused herein from the charges.

For Appellant : Mr.C.Prasanna Venkatesh  
For Respondent : M/s.M.Prabhavathy,  
Additional Public Prosecutor

#### JUDGMENT

This appeal arises out of the conviction and sentence imposed by the learned Additional District and Sessions Judge (Fast Track Court No.2) Cuddalore in S.C.No.222 of 2008, dated 08.07.2010. The learned trial Judge convicted the 1<sup>st</sup>, 3<sup>rd</sup> to 8<sup>th</sup> and 12<sup>th</sup> accused for the offence under Sections 148 of IPC and sentenced them to undergo one year rigorous imprisonment and for the offence under Section 147 of IPC, the 9<sup>th</sup> to 11<sup>th</sup> accused were sentenced to undergo six months rigorous imprisonment and under Section 307 r/w 149 of IPC, the 1<sup>st</sup>, 3<sup>rd</sup> to 12<sup>th</sup> accused were sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment. The sentences were ordered to run concurrently. Since the 2<sup>nd</sup> appellant died, charges against him are abated.

2.The learned trial Judge acquitted the 4<sup>th</sup> to 6<sup>th</sup> and 8<sup>th</sup> accused under Section 326 of IPC and acquitted the 1<sup>st</sup> accused under Section 326 (2 counts) of IPC and acquitted the 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 12<sup>th</sup> accused under Section 324 of IPC and acquitted the 4<sup>th</sup> accused under Section 324 (2 counts) of IPC and acquitted the 9<sup>th</sup> and 10<sup>th</sup> accused under Section 323 of IPC and acquitted the 11<sup>th</sup> accused under Section 325 of IPC.

3.The background facts, as projected by the prosecution are as follows:

The appellants/A1 to A12 and PW1/Durairaj/defacto complainant hail from Patteeswaram Village. There was a dispute between both groups with regard to rights over Malaimurugan Temple. PW1's grand father Govindasamy is one group and the appellants/accused as rival group. Due to this enmity, on 09.08.2006 at about 4.00 p.m., when PW1's family members went to offer pongal to the Veeran Temple in the village, where they were restrained by the appellants. Thereafter, there was wordy altercation between the appellants and the PW1's family members. The accused group used abusive language and threatened PW1's group. Despite the same, Pongal was offered to deity and they

came back to the village informed about the act of the appellants group to PW1. At that time, PW1, along with PW2, PW3, PW9 and deceased Murugesan went in search of the appellants group, who present behind the Mariyamman Temple. The 1<sup>st</sup> appellant abused them by stating that they were the reason for the case pending with regard to rights of worship in the Murugan Temple and the 1<sup>st</sup> appellant instigated the other appellants to finish them off. The appellants armed with knife, veecharuval and sticks, attacked and assaulted PW1, PW2, PW3, PW9 and the deceased Murugesan. PW1 ran away from the scene of occurrence, brought Auto and Car. All of them got admitted in the Government Hospital, Cuddalore. PW3 and PW9 were referred to Government Hospital, Chennai and the deceased Murugesan to the Jipmer Hospital, Puducherry. From the Government Hospital, Cuddalore, information was sent to police, who came and received the complaint [Ex.P1] from PW1 and registered a case in Crime No.746 of 2008 [Ex.P18] for the offence under Sections 147, 148, 341, 294, 324, 323, 506(ii) and 307 of IPC. On completion of investigation and filing of charge sheet, the case was tried against the appellants in S.C.No.222 of 2008 by the file of the learned Additional District and Sessions Judge (Fast Track Court No.2) Cuddalore.

4.Before trial Court, prosecution examined 12 witnesses and marked 19 exhibits. None were examined, nor any exhibits marked on the side of the defence.

4.1.PW1 is the son of PW3, PW9 is the junior father of PW1 and PW2 is the cousin of PW1. PW1 stated that on 09.08.2006 at about about 06.00 p.m., his family members went to Veeran Temple to offer pongal and complained to him that they were restrained by the appellants. They were enimically attacked by the appellants, due to a fight for rights over Malaimurugam Temple and a case is pending between them. While offering pongal, the family members of PW1 was abused and threatened by the appellants. Thereafter, PW1 along with PW2, PW3 and the deceased Murugesan went to the village found the accused standing near the Mariyamman Temple and questioned their act. At that time, the 1<sup>st</sup> appellant instigated the other appellants to attack them and PW1 was attacked by A2, A3, A10 and A12. PW1 identified MO1 to MO8. PW1 and PW2 ran from the scene of occurrence, brought Auto and Car, took the injured to the Government Hospital, Cuddalore, where information was sent to police, who had come there, recorded the statements of injured persons/PW1 to PW3, PW9 and the deceased Murugesan and received the complaint [Ex.P1] from PW1.

4.2.PW2 the injured witness was attacked by A9 and A10. PW2 along with PW1 brought the vehicles, taken the injured to the hospital for treatment.

4.3.PW3, the father of PW1 was attacked by A1, A2, A3, A4, A5, A6 and A8. PW4, the villager was present in the scene of occurrence, witnessed the attack, brought the injured persons to the Government Hospital, Cuddalore for treatment.

4.4.PW5, the villager found PW9 was injured and took him to the hospital. PW6, the resident of Konjikuppam Village, he knew both the appellants and the witnesses. On 12.08.2006 at about 08.00 a.m, when he went to Patteeswaram Village, he came to know about the earlier incident. At that time, the police asked him to be a witness for the case along with one Venkatesan in identifying the appellants near the Edayarkuppam bus stand. PW6 identified A2, A4, A5 and A9, who were available there. On their arrest, the 4<sup>th</sup> and 5<sup>th</sup> appellants gave confession and the same were marked as Ex.P2 and Ex.P3. Pursuant to which, the materials objects [MO1 & MO7, MO2] were recovered under the seizure mahazar [Ex.P4 & Ex.P5].

4.5.PW7 is the witness from Konjikuppam Village. On 18.08.2006, PW7 went to Patteswaram Village. He knew the appellants and the witnesses. On the request of police, he had been witness for the arrest and confession of 3<sup>rd</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> accused. The confession statements of 3<sup>rd</sup>, 7<sup>th</sup> and 8<sup>th</sup> accused were marked under Ex.P6 to Ex.P8 respectively. Pursuant to which, the material objects [MO3 & MO8, MO5, MO6] were recovered under the seizure mahazars [Ex.P9 to Ex.P11].

4.6.PW8 is the witness for Observation Mahazar [Ex.P12] along with one Rajaram.

4.7.PW9/Injured Witness is the brother of PW3 and junior father of PW1. PW9 was attacked by A1, A2, A4, A5, A6 and A7 and was taken to Government Hospital, Cuddalore for treatment and thereafter he was admitted in Rajiv Gandhi Government Hospital, Chennai for further treatment.

4.8.PW10 is the Casualty Medical Doctor of the Government Hospital, Cuddalore. On 09.08.2006 about 10.25 p.m., he examined PW3, recorded the injuries sustained by him through Accident Register [Ex.P17] and gave an opinion that "Injuries (1) to (7) are grievous in nature and Injury 8 is simple in nature". On the same day at about 10.45 p.m., he examined PW9, recorded the injuries sustained by him through Accident Register [Ex.P16] and gave an opinion that "Injuries (2) and (3) are

GRIEVOUS in nature and (1) (4) (5) (6) SIMPLE in nature". On the same day at about 10.55 p.m., he examined the deceased Murugesan, recorded the injuries sustained by him through Accident Register [Ex.P13] and gave an opinion that "Injury (1) is GRIVEOUS in nature. Injury(2) is Simple in nature". On the same day at about 11.05 p.m., he examined PW1, recorded the injuries sustained by him through Accident Register [Ex.P14] and gave an opinion that "Injuries (1) (2) (3) (4) are simple in nature". On the same day at about 11.25 p.m., he examined PW2, recorded the injuries sustained by him through Accident Register [Ex.P15] and gave an opinion that "Injury (1) is SIMPLE in nature".

4.9.PW11, the Circle Inspector of Nellikuppam Police Station on 09.08.2006 at about 12.30 a.m., received information from the Government Hospital, Cuddalore, visited the hospital, recorded the statement of PW1, registered F.I.R [Ex.P18] in Crime No.246 of 2006 for the offence under Sections 147, 148, 342, 294, 324, 323, 506(2) and 307 of IPC. Since the villagers were in agitated mood and tension prevailing, PW11 posted police personnel there. On 10.08.2006, PW11 examined PW8, prepared Observation Mahazar [Ex.P12] and Rough Sketch [Ex.P19] and recorded the statements of PW1, PW2 and PW8. On 12.08.2006, PW11 arrested the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 9<sup>th</sup> accused, recorded their confessions and seized the materials objects under the Seizure Mahazar. On 16.08.2006, PW11 examined PW3, PW4, PW5 and other witnesses. On getting information, he arrested the 3<sup>rd</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> accused, recorded their confessions and recovered the material objects. On his transfer, he handed over the case diary to PW12.

4.10.PW12, the Circle Inspector of Nellikuppam Police Station took up the investigation conducted by PW11, forwarded the material objects through form 95 to the Court, received the Accident Registers [Ex.P13 to Ex.P17] of PW1, PW2, PW3, PW9 and the deceased Murugesan. On completion of investigation, he filed the charge sheet. सत्यमेव जयते

5.On questioning under Section 313 Cr.P.C., the appellants denied the charges. On appreciation of evidence, oral and documentary, the trial Court under Judgment dated 08.07.2010, convicted the appellants. Hence, the present appeal.

6.The learned counsel for the appellants submitted that it is admitted by all the witnesses that rivalry and animosity between PW1's grand father and the 1<sup>st</sup> appellant existed for the rights over Malaimurugan Temple and there is a civil case

pending in this regard. PW1, PW2 and PW3 admitted that there is a Sessions Case pending in S.C.No.215 of 2008 against them for attacking one of the appellants in this case. Further, admitted there is another case in C.C.No.516 of 20058 against them. Thus, all the witnesses are interested and enimical, who have uttered falsehood in implicating the appellants. It is to be noted that PW1 and PW2 stated that they ran away from the scene of occurrence, brought Auto and Car for taking the injured to the hospital. On the other hand PW3 has stated that other villagers had taken the injured to the hospital. It is also admitted by the witnesses that police station was on the way to the hospital. None of them thought fit to inform or lodge complaint about the incident.

7.The learned counsel for the appellants further submitted that all the injured/PW1 to PW3 & PW9 have stated that they sustained cut injuries, blood was oozing out and their clothes were blood stained. In this case, no blood stained clothes were seized from them like also no materials were seized from the scene of occurrence, as could be seen from the Observation Mahazar [Ex.P12]. PW10/Doctor has not mentioned about the blood stained clothes. PW10 had opined that if a person falls on a rough and gravel surface, there is a possibility of sustaining such injury. The witnesses admitted they are aggressor, who had gone as a group and questioned the appellants. PW2, PW3 and other witnesses have stated that the appellants were unarmed when they approached to attack them. PW1 stated that the appellants concealed weapon in their shirt and attacked them, on the other hand PW4 stated that weapon were taken from the nearby bush. Further all the witnesses admitted that they saw the material objects first time in the Court after the occurrence. Likewise, PW10 has not shown the weapons to confirm about the nature of injuries and its possibilities by the material objects. Though PW3 and PW9 stated that they were taken for further treatment and admitted in the Rajiv Gandhi Government Hospital, Chennai as in-patient, no medical records have been produced. In this case no case slut or wound certificate produced except the Accident Registers [Ex.P13 to Ex.P17]. Further, it is seen from the evidences that the overtact attributed and the weapons used are all contrary, which would go to show that the occurrence has not taken place in the manner as stated by them. It is also admitted by the witnesses that for the past three years there was no fight between two groups and the offering of Pongal to Veeran Temple has been going on without any problem.

8.The learned counsel for the appellants further submitted that there was dispute between PW9's daughter Dhanalakshmi and

one Rajadurai brother of Rathanakumari. Due to which there was a fight between two groups and the said Rathanakumari sustained injuries and admitted in the hospital. This fight has been used to implicate the appellants due to previous enmity. PW3, the Vice President of the village panchayat using his clout has implicated the appellants. The evidence of witnesses are contrary to each other with lot of improvement and embellishment. The witnesses/PW6 to PW8 for arrest and recovery are unbelievable, since they are from the next village for identifying the appellants to police to arrest them. Further, the lower Court on the same set of facts had given a finding of acquittal for some charges and convicted the appellants for other charges, which cannot be done on the charges framed against them. Hence, the prosecution has failed to prove its case against the appellants beyond all reasonable doubt and the benefit of doubt has to be given to them.

9. The learned Additional Public Prosecutor appearing for the respondent submitted that in this case the witnesses namely PW1, PW2, PW3, PW9 and the deceased Murugesan sustained serious injuries and were immediately taken to the hospital. PW10, the Doctor had examined and treated PW1, PW2, PW3, PW9 and the deceased Murugesan and issued Accident Registers [Ex.P13 to Ex.P17]. The Accident Registers clearly mention about the incident being taken place at the relevant point of time and victims have been attacked by the ten known persons. The appellants group had strong motive to attack the witnesses due to prior enmity with regard to rights over Malaimurugam Temple. Further, prior to the occurrence the family members of PW1 were not allowed to perform pooja at Veeran Temple, which led to the assault. All the appellants used deadly weapons like knife, Veecharuval and sticks [MO1 to MO8] during the incident. The injuries of the witnesses/PW1, PW2, PW3, PW9 and the deceased Murugesan sustained are recorded in Ex.P13 to Ex.P17, which has been proved by PW10.

10. The learned counsel for the respondent prayed for dismissal of the appeal and the trial Court Judgment is well reasoned needs no interference.

11. This Court considered the rival submissions and perused the materials on record.

12. The appellants and the witnesses are two groups in Patteeswaram Village have sustained animosity between them on the rights over Malaimurugan Temple. Though PW1, PW2, PW3, PW9 and the deceased Murugesan are said to be injured, the evidence

of injured witnesses/PW1, PW2, PW3, PW9 and other witnesses are contrary to each other with embellishment and improvement. Hence, the possibility of false implication is there. The witnesses had given exaggerated version suppressing the actual happenings. Further, there is no blood stain in the material objects [MO1 to MO8] and no blood stained clothes have been seized from the scene of occurrence, which creates doubt about the manner in which the occurrence had taken place.

13.The witnesses have admitted that they went through the police station before reaching the hospital. But, none of them gave any complaint to the police. The occurrence is said to have taken place on 09.08.2006 at 06.00 p.m and F.I.R in Crime No.746 of 2006 [Ex.P18] came to be registered at about 12.30 a.m on 10.08.2006 after six hours. No reason has been given for the delay in registering the case, which creates suspicion with regard to false implications, forfeited with the sustained rivalry between the two groups. In this case, no X-ray or wound certificate of the injured witnesses were produced. It is also seen that the witnesses to the occurrence have stated that no weapons was seen in the hands of the appellants, when they approached. The place where the weapons taken is also contradictory. Hence, the manner in which the weapons came into existence is also highly doubtful. The arrest and recovery is also highly doubtful.

14.The rivalry between the groups and the exaggeration of the witnesses and the medical evidence does not corroborate with the ocular evidence. The lower Court has given a finding that the witnesses were unable to specify the specific overtact of the appellants, the weapons used and who attacked whom with what weapon and what are the injuries sustained by them.

15.On the above facts and circumstances and available evidence, this Court finds that the prosecution has failed to establish the guilt of accused/appellants beyond reasonable doubt and therefore, the accused/appellants are liable to be acquitted by giving them benefit of doubt.

16.In the light of the above it would be unsafe to place reliance upon the motivated witnesses as regards the appellants and to convict them. Hence, the charges against the appellants have not been proved. The conviction and sentence imposed on the appellants in S.C.No.222 of 2008 by the learned Additional District and Sessions Judge (Fast Track Court No.2), Cuddalore are set-aside and this Criminal Appeal is allowed. The appellants are acquitted of all the charges levelled against them and the fine amount, if any paid, shall be refunded to him.

The appellants are directed to be released forthwith, unless their custody is required in connection with any other case. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District and Sessions Court  
(Fast Track Court No.2),  
Cuddalore.
- 2.The Judicial Magistrate No.I,  
Cuddalore.
- 3.-Do-Thro' The Chief Judicial Magistrate,  
Cuddalore.
- 4.The Station House Officer,  
Nellikuppam Police Station,  
Cuddalore District.
- 5.The Public Prosecutor,  
High Court, Madras.

AKM/11.12.19 /9P-5C/

JUDGEMENT IN  
Crl.A.No.443 of 2010

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