

Bail Slip

The Appellants/Accused namely 1.Rajendran S/o.Govindasamy aged 38 years, 2.Mr.Raja Manikam S/o.Govindasamy aged 45 years, 3.Sadanantham S/o. Govindasamy aged 35 years, 4.Veerapandian S/o.Govindasamy aged 42 years, were directed to be released on bail as per order dated 09/08/2011 in M.P.No. 1/2011 in Crl.A.No.450/2011 by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2019

PRONOUNCED ON : 23.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.450 and 563 of 2011 and
Criminal Revision Case Nos.1157 and 1179 of 2011

1.Rajendran
2.Raja Manikam
3.Sadanantham
4.Veerapandian

...Accused 1,2,6&8/
Appellants in Crl.A.No.450 of 2011

R.Rajavel Mani

...Accused No.11/
Appellant in Crl.A.No.563 of 2011

Kandaswamy

..Petitioner in Crl.R.C.Nos.1157 &
1179 of 2011

Vs

State rep. by
Inspector of Police
Nellikuppam Police Station,
Crime No.1020 of 2005

..Respondent in Crl.A.Nos.450
& 563 of 2011

1.State represented by
Inspector of Police
Nellikuppam Police Station,
Crime No.1020 of 2005

..Complainant/1st Respondent

2.Rajendran
3.Rajamanikam
4.Sathanatham

5.Veerapandian
6.Rajvelmani
7.Ganapathi

..Accused Nos.1,2,6,8,11 and 13/
Respondents in Crl.R.C.No.1157 of 2011

1.State represented by
Inspector of Police
Nellikuppam Police Station,
Crime No.1020 of 2005

..Complainant/1st Respondent

2.Jothimanikandan
3.Rajavel
4.Saravanan
5.Vetrivel
6.Vetrivel
7.Rajaram
8.Ramamoorthy

..Accused Nos.3,4,5,7,10,12 & 14 /
2 to 8 Respondents in
Crl.R.C.No.1179 of 2011

Prayer in Crl.A.No.450 of 2011:- This Criminal Appeal is filed under Section 374 Cr.P.C., to set aside against the judgment of the learned Additional District and Sessions Judge, Fast Track Court No.2, Cuddalore made in S.C.No.215 of 2008 dated 28.06.2011.

Prayer in Crl.A.No.563 of 2011:- This Criminal Appeal is filed under Section 374 Cr.P.C., to call for the entire records against the judgment of the learned Additional District and Sessions Judge, Fast Track Court No.2, Cuddalore made in S.C.No.215 of 2008 dated 28.06.2011.

Prayer in Crl.R.C.No.1157 of 2011:- This Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C., to call for the records against the judgment of the learned Additional District and Sessions Judge, Fast Track Court No.2, Cuddalore made in S.C.No.215 of 2008 dated 28.06.2011.

Prayer in Crl.R.C.No.1179 of 2011:- This Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C., to set aside against the judgment of the learned Additional District and Sessions Judge, Fast Track Court No.2, Cuddalore made in S.C.No.215 of 2008 dated 28.06.2011.

In Crl.A.No.450 of 2011

For Appellant : Mr.B.B.Senthilkumar

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

In Crl.A.No.563 of 2011

For Appellant : Mr.C.Prakasam

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

In Crl.R.C.No.1157 of 2011

For Petitioner : Mr.C.Prasanna Venkatesh

For Respondent : Mr.T.Shunmuga Rajeswaran
Government Advocate (crl.side)

In Crl.R.C.No.1179 of 2011

For Petitioner : Mr.C.Prasanna Venkatesh

For Respondent : Mr.T.Shunmuga Rajeswaran
Government Advocate (crl.side)

COMMON JUDGMENT

These two criminal appeals and two criminal revision petitions are directed against the judgment of the learned Additional District and Sessions Judge (FTC No-2) Cuddalore, in S.C.No.215 of 2008 dated 28/06/2011.

2.Before the trial Court, 15 accused (during trial, two of them died) were tried for offences under sections 147,148,323,324,307 and 427 IPC. A-1 and A-6 were held guilty of offences under sections 307 and 148 IPC and sentenced to undergo 3 years rigorous imprisonment and fine of Rs.5,000/- each in default 6 months rigorous imprisonment for offence under section 307 IPC and fine of Rs.2,000/- each in default to undergo 4 months rigorous imprisonment. A-2 held guilty of offences under sections 326 and 148 IPC and sentenced to undergo 3 years rigorous imprisonment and fine of Rs.5,000/- in default to undergo 6 months rigorous imprisonment for offence under section 326 IPC and fine of Rs.2,000/- each in default to undergo 4 months rigorous imprisonment. A-8 and A-11 were held guilty of offences under section 323 and 147 IPC. Sentenced to pay a fine of Rs 1000/- each, in default 2 months rigorous imprisonment for offence under section 323 and fine of Rs.1,000/- each, in default to undergo 2 months rigorous imprisonment each for offence under section 147 IPC. A-13 held guilty of offences under sections 324 and 148 IPC. Sentenced to pay a fine of

Rs.2,000/-, in default 4 months rigorous imprisonment for offence under section 324 and to pay a fine of Rs.2,000/- , in default to undergo 4 months rigorous imprisonment for offence under section 148 IPC.

3. Aggrieved by the above said conviction and sentence A-1, A-2, A-6 and A-8 have preferred Criminal Appeal in CrI.A.No.450/2011. A-11 has preferred criminal appeal in CrI.A.No.563/2011. The defacto complainant, Kandasamy (PW-1) has filed criminal revision petition in CrI.R.C.No.1157/2011 for enhancement of punishment for the above accused and criminal revision petition in CrI.R.C.No.1179/2011 is filed against the order of acquittal of other accused viz., A.3,4,5,7,10, 12 and 13 from the charges under sections 148,307, 323, 324 and 427 IPC.

4. The facts and point for discussion is one and the same. Hence, the common judgment is passed. For the sake of convenience, the parties herein are referred by their name and ranking before the trial Court.

5. Brief facts:

At Patteswaram village in Cuddalore District, a fued between two groups known as 'Govindasamy vagaiyara' and 'Shanmugam Vagaiyara' for a decade busted into clash on 07/08/2005 at about 5.00 pm when 'Govindasamy vagaiyara' lead by Rajendiran son of Govindasamy armed with weapon attacked Kandasamy and others of 'Shanmugam vagaiyara'. The factor which triggered the fight appears to be the incident when the goat reared by Rajendiran ate the rice kept for sun-dry to prepare rice lamp (kh-tpsf;F) as offering to God by Mangalakshmi (PW-2) of 'Shanmugam Vagaiyara'. When she questioned Rajendiran about this, he started abusing her with filthy language. The other accused numbering 15 came with knives, wooden logs and rods, attacked Kandasamy (PW-1), Mangalakshmi (PW-2), Dhansekaran (PW-3), Umabarathi (PW-4) and Virthammal (PW-5). The houses of Radhakrishnan (PW-6), Kothandapani and Jayapal were ransacked and the house hold articles were damaged by the mob. The injured persons were admitted in the hospital. On receipt of the intimation from the hospital, Velayutham (PW-10) Sub-Inspector of Police attached to Nellikuppam Police Station went to the hospital and recorded the statement of Kandasamy (PW-1) and registered the FIR on 07/08/2005 at about 8.30 pm in Crime No.1020/2005 and forwarded the copy of the FIR to the Inspector of Police - Mr.Gurusamy (PW-11). He took up the investigation. Went to the scene of occurrence; prepared the rough sketch Ex.P-10 and recovered the weapons in the presence of witnesses Velmurugan (PW-7) and one Ravichandran (not examined). They were forwarded to the Court under Form - 95.

6. The Doctor who admitted the injured witnesses for treatment opined that one of the injuries sustained by Mangalakshmi (PW-2) is a fractured injury and it is greivious in

nature. The other injuries of the witnesses are simple in nature. The wound certificates Exs.P-4 to P-8 were collected by PW-11. Later, handed over the investigation to his successor Mr.Kalimullah (P.W.12), the Inspector of Police. Who after completion of investigation, filed the final report against Rajendiran and 14 others for offences under sections 147,148,323,324,326,307 and 427 IPC.

7.Before framing charges, A.15 - Selvaraj died. Pending trial, A-9 - Govindasamy died. To prove the charges, the prosecution examined 12 witnesses. Marked 10 exhibits and 6 material objects. No witness examined on behalf of the accused.

8.The trial Court, after appreciating the evidence of prosecution held that from the depositions of PWs-1 to 5, the overt act of each accused causing hurt to to the injured witnesses is proved and the intention of the accused persons is proved through the respective injuries and weapons used. Their evidence is corroborated by the other injured persons who were present. PW-8 - Thillai Govindan who has accompanied the injured persons to the hospital has deposed about the incident and injuries. The accident register marked as Exs.P-4 to P-8 proves the injuries sustained by them and it corroborates the prosecution witnesses. Recovery of weapons from the scene of crime is proved through PW-7 Velmurugan.

9.The fractured injury on the forearm and cut injury on the scalp of PW-2, cut injury on occipital region of PW-1, punctured wound on the left leg, cut injury on the right leg, chin and bleeding from the left ear on PW-3 are some of the external major injuries noticed by the Doctor - PW-9, in his Accident reports. The weapons recovered and marked as M.Os.1 to 6 are knife, iron rod and wooden logs.

10.Based on the recovery of weapons, seat of injuries and the nature of injuries, the trial Court has held, A-1 and A-6 for offences under sections 307 and 148 IPC; A-2 for offences under Sections 326 and 148 IPC; A-8 and A-11 for offence under sections 323 and 147 IPC and A-13 for offence under sections 323 and 148 IPC. It is reported that, pending appeal, A-8 died. However no death certificate filed.

11.Heard the learned counsel for the appellants/accused and the defacto complainant/revision petitioner and the learned Government Advocate (crl.side).

12.The learned counsel for the accused/appellants in CrI.A.No.450/2011 contended that, the prosecution failed to investigate the case impartially. It was case and counter. The first aggressor is the prosecution party (shanmugam vagaiyara). When the members of accused group went to temple for worship they were intercepted by the prosecution parties and attacked them with weapon. Rajamanickam (A-2) , his son Durairaj, his brother Rajavelu (A-4) and one Murugesan were seriously

injured. The case against them ended in conviction. Aggrieved by inadequacy of sentence revision for enhanced sentence is filed.

13.The trial Court failed to consider the falsehood in the prosecution case which has emanated out of ill will and vengeance. The contradictions in the prosecution case, the delay in registering the FIR, suppression of the earlier incident and injuries sustained by the accused parties and lack of corroboration not been properly considered by the trial court. The witnesses PWs-1 to 7 are all interested witnesses. The exaggeration, embellishment and falsehood in their testimony are intertwined, to falsely implicate innocent persons merely because they are inimical to them and to get over the criminal complaint filed against them for launching murderous attack on them. The falsehood in the complaint of PW-1 well found through non examination of Kothandapani and Jayapal whose houses alleged to have been damaged. The failure of the prosecution to recover the damaged house-hold articles and cycles as alleged by PW-6 - Radhakrishnan, disprove the case of the prosecution that they committed the offences alleged.

14.The learned counsel for the appellant in Crl.A.No.563/2011 (A-11 Rajavel Mani) would further contend that A.11 was not at all present in the village at the time of alleged incident. He being employed in Government, to wreck vengeance, he has been falsely implicated. The contradictions about the overt act alleged against A-11 by the prosecution witnesses not properly considered by the trial Court. Particularly, PW-3 implicated A-11 that he beaten him on his legs with wooden stick. Whereas, the accident register does not reflects that the injuries could have been caused by the wooden stick. Further, PW-9 the Doctor who has given the certificate has not opined about the object which could have caused the said injuries. The learned counsels appearing for the appellants contented that the suppression of records in the counter case and contradictions in the prosecution case warrants interference of the trial Court judgment.

15.Per contra, the learned Government Advocate (crl.side) would submit that the trial Court was aware of the complaint given by the accused persons. It has discussed about the facts of that case and recorded that the incident of the counter case is not in the same transaction. It being a different transaction, merely because some of the persons, accused in this case are the prosecution witnesses in that case, it cannot be considered as counter case, to be tried jointly.

16.As far as the appreciation of evidence, the learned Government Advocate (crl.side) submitted that, the mob with dangerous weapons with premeditation gathered in public and caused injuries on 5 persons. Three of them were ladies. PW-2 sustained greivous injury. Her forearm bone got fractured. PWs-1

and 2 were attacked on their head causing cut injuries on the scalp. PW-3 left leg was punctured and he also sustained cut injury.

17.The contention of the counsel appearing for A-11 that the injury found and the weapon alleged to have used by the accused does not correlate is incorrect. The repeated attack with the wooden log on the legs had caused the said injuries. The presence of A-11 is spoken by PWs-1 to 5. The injuries found on PW-3 were caused by A-11 and this also proved through the injured person as well as eye witnesses. The Accident register - Ex P-4 indicates the injuries on PW-3.

18.Therefore, the learned Government Advocate (crl.side) would submit that the trial Court rightly appreciated the evidence and found the accused guilty for their respective overt act and participation in the crime.

19.Regarding the adequacy of sentence, the learned Government Advocate (crl.side) would submit that, it is the discretion of the Court. In any event, the term of sentence cannot be termed as inadequate, in view of the fact that the alleged triggering point for the fight was not premeditated one.

20.The learned counsel for the defacto complainant/revision petitioner would submit that the sentence imposed on the proved charges against the accused persons is not adequate. The ocular evidence of the injured witnesses not been given due weightage by the trial Court. While holding the accused persons formed unlawful assembly armed with deadly weapons and caused injuries to PWs-1 to 5 with common intention to cause death, sentence of 3 years rigorous imprisonment and acquittal of A-2,6,8,11 to 13 for offences under section 427 IPC, A-3 to 5 and 10 for offences under sections 323 and 427 IPC, A-7 for offence under sections 148,323 (2 counts), 324 and 427 IPC, A-12 for offence under sections 148,307 and 427 are not adequate and legal.

21.A perusal of records and evidence clearly proves that there was previous enmity between two groups in the village regarding the temple festival. Prior to this incident happened on 07/08/2005, the accused group has completed their rituals and the prosecution group was preparing for their turn. On that day, PW-2 had quarrel with A-1 for allowing his goat to eat the rice kept for religious purpose to make rice powder lamp (kh-tpsf;F). Irked by her words, the accused persons, all belong to the group of Govindasamy (His sons and pangalies) have gathered, PW-1 in his complaint Ex.P-1 has given the details of persons came to attack them. The injuries he sustained and the damages caused to the houses.

22.The trial Court has rightly rejected the prosecution case against the accused persons as far as charge under section 427 IPC. Though one of the witness, PW-6 has deposed about the damages caused, the damaged material objects not collected by

prosecution. The uncorroborated evidence which could have easily proved if really properties were damaged, have given the benefit of doubt. There is no infirmity in the finding of the trial court, in this regard.

23.A-1 and A-6 are found guilty of offence under sections 307 and 148 IPC. The injured witnesses PWs-1 and 2 have spoken about the injuries caused by these two accused. The cut injury on the scalp of PW-2 has been caused by A-1. The cut injuries on the occipital region of PW-1 has been caused by A-6. The fractured injury on the forearm of PW-2 has been caused by A-2. The cut injuries and punctured injury on the legs of PW-3 has been caused by A-11. These are major injuries sustained by the witnesses. The weapon used by them are marked as M.Os-1 to 6. They are all dangerous weapons sufficient to cause death. Therefore, the trial Court has after careful consideration of the evidence placed before it has rightly held A-1 and A-6 for their attempt to murder PWs-1 and 2 using dangerous object. A-2 for causing grievous hurt on PW-2 with dangerous object. A-8 for causing hurt to PW-2, A-11 for causing hurt to PW-3 and A-13 for causing hurt by dangerous weapon on PW-3. The other injured persons have also implicated these accused persons for causing hurt. They were either armed with dangerous weapon or without weapon had formed unlawful assembly to commit an illegal act. Their guilty are proved by evidence and the trial Court after due consideration of the facts had imposed punishment adequate to the proved crime.

24.As far as the counter case alleging A-1 sustained injuries in the same fight, where the prosecution parties were the aggressors, the trial Court has considered the plea at length. It is a fact that A-1 has sustained injury and a case has been registered by the respondent police in this connection. When, PWs-1 to 5 unarmed were assaulted by a mob of about 15 armed persons. Detail about the injury sustained by any one of the assailant not placed before the trial court. Hence, this will not ipso facto render the trial bad. It all depends upon the nature of the injuries and the context of the injuries sustained.

25.During the cross examination, the prosecution witnesses PW-1 and PW-7 admit that there was a case against them in S.C.No.222/2008 which ended in conviction and they have preferred appeal. The perusal of records pertaining to CrI.R.C.No.613/2012 which was heard along with these batch of cases (Order delivered separately) filed for enhancement of sentence reveals that, a case in S.C.No.222/2008 regarding dispute between two groups in respect of celebration at Malaimurugan temple on 09/08/2005, was tried and concluded. That is regarding the offence two days after the present case in hand. The present case is with respect to the dispute in celebrating the Mariamman festival held on 07/08/2005.

Therefore, these two cases are not case and counter and they are not of same transaction.

26.The other criminal case referred in C.C.No.516 of 2005. PW-6 has admitted that on the complaint given by A-1 Rajendiran, he along with Sanmugam, Kumaravel, and Thirunavukarasu facing trial in the same Court in C.C.No.516/2005. The trial court was not oblivious of the other case in which one of the prosecution witness facing trial for causing injury to the accused persons. The accused have not produced any wound certificate or material to substantiate the plea that the injuries he sustained was in the same transaction and caused by one of the witnesses in this case. In the absence of contra evidence, when the court has found that they are not from same transaction, no prejudice to the accused made out. Hence, the question of joint trial does not arise.

27.Therefore, from the appreciation of records , this court finds that the finding of the trial court is in accordance with law and facts. The conviction of the accused persons for the proven overt act and extension of the benefit of doubt where the prosecution has failed to prove beyond doubt is well found and deserve to be confirmed.

28.In the result, both the criminal appeals Crl.A.Nos.450 and 563 of 2011 directed against the conviction are dismissed. Both the Criminal Revision Petitions in Crl.R.C.Nos. 1157 and 1179 of 2011 questioning the adequacy of sentence and acquittal are also dismissed. Accordingly, the trial court judgment in S.C.No.215/2008 is confirmed. The accused are directed to surrender before the trial Court to undergo the remaining period of sentence, if any. The period of sentence already undergone shall be given set off, as provided under section 428 of Cr.P.C. Bail bonds, if any, shall stand cancelled.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Additional District and Sessions Judge
Fast Track Court No.2,
Cuddalore.

2.The Chief Judicial Magistrate,
Cuddalore.

3.The Judicial Magistrate,
Cuddalore.

4.The Public Prosecutor,
High Court, Chennai.

5.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.39299

+1cc to Mr.B.B.Senthikumar, Advocate, S.R.No.39578

CrI.A.Nos.450 and 563 of 2011 and
CrI.R.C.Nos.1157 and 1179 of 2011

SJ(CO)

RRS (20/06/2019)



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