

Bail Slip

The Petitioner/Accused(i) Thambu S/o.Murthy was directed to be released on bail as per order of this court dated 01/02/2013 in M.P.No.1 of 2013 in CrI.A.No.270/2012 on the file of the High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.02.2019	Pronounced on: 05.03.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.270 of 2012
& M.P.No.1 of 2013

Thambu,
S/o.Murthy,
XI, Government Quarters,
Lawspet, Pondicherry,
Presently confined at
Central Prison, Cuddalore. ... Appellant/Accused
No.1

/versus/

State,
Represented by Inspector of Police,
Auroville Police Station,
Crime No.310 of 2003. ... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, 1973, to set aside the conviction and sentence passed by the Hon'ble Additional District & Sessions Judge, Fast Track Court No.1, Tindivanam in her judgment dated 16.03.2012 made in S.C.No.7 of 2012.

For Appellant : Mr.Arun Anbumani
For Respondent : Ms.P.Kritika Kamal
Government Advocate (CrI.Side)

J U D G M E N T

The appellant Thiru.Thambu S/o.Murthy is one of the accused prosecuted for offences under Sections 302, 307, 147,

148, 149, 452, 326 r/w 149 of I.P.C in a double murder case investigated by the respondent police in Crime No.310 of 2003.

2. Background of the case:-

According to the First Information Report registered by the Auroville Police Station in Cr.No.310 of 2003 dated 16.10.2003, Elumalai 4th ward member of Navarkulam engaged in real estate business. He along with four others jointly promoted a property at Vasanthapuram. Plotted it and was selling. A week before the incident Thambu (the Appellant) and kumar demanded share in the business profit. When Elumalai refused, Thambu threatened him dire consequences. Then on 15.10.2003 Thambu, Kumar, Saravanan, Thagu and four others came with lethal weapons to Elumalai house. Brutally attacked Selvam and Thirunavukarasu who were standing in the ground floor. Then climbed the stairs attacked Ramesh, Dhanuskodi, Palanisamy and Gunasekar with the weapons. When they found Elumalai hiding. They tried to attack him, but Elumalai jumped down and fled from that place. The injured persons were shifted to hospital. At the Jipmer Hospital Selvam was declared brought dead. At Government Hospital Pondicherry, Thirunavukarasu died. Rest of the injured were treated as inpatients. Meanwhile Elumalai gave a complaint to the respondent police. The complaint was registered in Crime No.310 of 2013 and taken up for investigation.

Before the trial Court

3. On completion of investigation, final report was filed against Thambu and 18 others besides One Aadu Arumugam @ Arumugam shown as absconding accused. One of the accused Kumar @ Jayakumar died. Thereafter, the Judicial Magistrate, Vanur took the final report on file in P.R.C.No.8 of 2005. Later, case against Thambu, Saravanan and Aadu Arumugam @ Arumugam got split up from P.R.C.No.8 of 2005. New split up P.R.C.No.34 of 2008 was assigned. 16 accused in P.R.C.No.8/2005 were committed to the Court of session. The case was taken on file and numbered as S.C.No.128 of 2005. The trial ended in acquittal of all these accused. In the split up case 34 of 2003, the appellant Thambu was secured later. The 2 other absconding accused Saravanan and Aadu Arumugam were not able to be secured. Therefore, the Judicial Magistrate split up the case against those two absconding accused. Assigned new P.R.C.No.21 of 2011. Committed A1, Thambu to the Court of Sessions for trial since the offences were exclusively triable by Court of Sessions.

4. In the above background, against Thambu, the Sessions Court framed charges under Sections 147, 148, 149, 452 326, 307 and 302 of I.P.C and tried in S.C.No.7 of 2012 by the I Additional Sessions Court, Tindivanam.

6. To prove the charges, the prosecution has examined 16 witnesses. Marked 20 Exhibits and 6 material objects.

7. The trial Court acquitted him from charges under Sections 302 and 307 of I.P.C. Convicted and sentenced him for offences under Section 147 of I.P.C to undergo 1 year R.I for offences under Section 148 of I.P.C to under 2 years R.I for offences under Section 452 of I.P.C to undergo 5 years R.I and for offences under Section 326 of I.P.C to undergo 10 years R.I.

8. This Criminal Appeal is directed against the above said judgment of conviction and sentence.

9. The appeal filed by the accused Thambu is on the ground that a). when other 16 accused were acquitted in S.C.No.128 of 2005, based on the improvised, embellished testimony of the witnesses, in the split up case the trial Court has convicted this appellant ignoring the fundamental principle of Criminal jurisprudence.

b). The alleged motive spoken by PW.1 not corroborated by his previous statement or in his deposition before the Court in S.C.No.128 of 2005. Even his own wife PW.6 has not whispered about the alleged motive or corroborated PW.1 in this aspect.

c). The previous depositions of PW.1, PW.5, PW.7, PW.9 and PW.10 were confronted and the contradictions were highlighted. Despite that the trial Court has relied upon their testimony which were not worthy of reliance.

d). Contrary to their previous statement on oath in S.C.No.128 of 2005 PW.1, PW.2 PW.3 have implicated the appellant in the subsequent trial. Apart from the contradiction with previous statement, the inherent contradiction among the evidence of PW.1 and PW.2 and among PW.2 and PW.3 were totally failed to draw the attention of the trial Court.

e). The alleged confession of the accused and the recovery of M.O.1 (Veecharuval) pursuant to the alleged confession of the appellant is a fabricated story. The site of its recovery not properly established by the prosecution. While PW.7 say M.O.1 was recovered from the riverbed, PW.15 say it was from an open space and not near riverbed.

f). No independent witnesses has been examined by the prosecution for the occurrence of crime or for any other relevant facts happened thereafter.

g). Without proof of any overt act against the

appellant the trial Court has convicted the appellant for offence under Section 326 of I.P.C.

h). The charges as framed against the accused suffers grave incurable infirmities. So the conviction will not sustain due to the said irregularities.

10. The learned counsel appearing for the appellant would submit that according to the prosecution, Ex.P.1 is the First Information which they received from PW.1 in this case. Based on the complaint given by Elumalai (PW.1), the First Information Report (Ex.P.19) came to be registered on 16.10.2003 at about 8.00 hours in the morning. As per the complaint the alleged incident has occurred on 15.10.2003 at about 10.00 p.m. In the complaint PW.1 has stated that a week before the incident Thambu and Kumar met him and demanded share in the business, since he refused to give share and told he will only pay wage for the work he has done, Thambu got infuriated and threatened him. In the Court, the said Elumalai has not deposed anything about that incident. Whereas, he has introduced a new fact that on the previous day to the occurrence at about 3'o clock in the afternoon Thambu, Kumar, Saravanan and 10 others came to his house in Tata Sumo car in search of him. He was not in the house. They enquired about him with his wife Sarasu. She informed them that PW.1 has gone to the construction site. So they all came to the construction site. Threatened the workers there and left. He therefore informed about this to Rathinam, the Panchayat President over phone. Rathinam informed about the incident to the Auroville Police Station over phone. The police enquired both the parties and told them to come again on the next day. On the next day, he went to the police station at about 8.30 a.m. The Sub-Inspector of Police Mr.Moorthy was present. He compromised both the parties and left them. This portion of his deposition neither found in his complaint nor in his previous statement.

11. PW.15 Mohammed Nazir, Inspector of Police who has recorded 161 statement of PW.1 has admitted in his cross examination that PW.1 has not stated anything about the incident happened on the day previous to the occurrence. Therefore, he submitted that the motive alleged by the PW.1 for the first time in the course of the trial is an afterthought, baseless and sheer embellishment to fix the appellant.

12. PW.1 being the defacto complainant and set the law into motion has deposed before the Court that he was an eye witness to the occurrence. He has attributed overt act to the appellant and others. However, in the earlier proceedings when 16 of the accused persons were tried in S.C.No.128 of 2009 this

witness was treated hostile, since he has not implicated those 16 accused persons and said that except Thambu, Saravanan, Aadu Arumugam and Kumar @ Jayakumar, he could not identify the other persons came with them.

13. In the cross examination, he has stated that he gave a complaint on the night of incident itself to the police against the four named persons and he did not include any other name particularly name of Thagu @ Thagarajan who was arrayed as A7 in S.C.No.128 of 2009. The copy of this deposition was marked through PW.1 during his cross examination. The learned counsel submitted that at every stage of the trial, PW.1 has changed his version about the incident and had contradicted his own previous statement, hence he is not a reliable witness.

14. Referring the deposition of PW.6 Sarasu wife of PW.1, the learned counsel would submit that PW.6 in her testimony has not corroborated the evidence of PW.1. According to this witness, when she was in her old thatched house her husband came running exclaiming that somebody been attacked (ahiuNah ntl;b tpl;llh;fs;). So she along with her husband and the village people went to her new house. She saw bloodshed and persons lying injured. The injured persons were taken to the hospital. The accused Thambu was working for her husband (PW.1). He was threatening her husband to give money and her husband refused to give money saying that whenever he has done any work, he has paid for that. Except this PW.6 has not said anything incriminating the appellant to corroborate the statement of PW.1. Therefore the case of the prosecution as against this appellant stands without any evidence. Her previous deposition in S.C.No.128 of 2009 was also marked as Ex.D.1 during her cross examination to expose the contradictions.

15. Referring the deposition of PW.2 Palanisami one of the injured witnesses, the learned counsel for the appellant would submit that in his evidence he says 6 persons surrounding and attacked him. Thambu cut him on the head. Saravanan cut his left hand, so he fainted. He regained conscious only in the hospital. In the cross examination he admits that he said to the doctor, 25 unknown persons attacked him. He also admit that in the previous proceedings S.C.No.128 of 2009, he has deposed that he does not know the 16 persons who stood trial in that case and also admits that he did not deposed before the Court during the trial of S.C.No.128 of 2009 that Thambu hit him on his head. He admits that police came to the hospital on the same day night, recorded his statement. Whereas, the First Information Report came to be recorded only on the next day i.e., 16.10.2003 at about 8.00 hours, based on the complaint given by Elumalai. When witnesses have spoken about the earlier complaint given to the police soon after the incident, the said

complaint has been screened by the police.

16. Referring the accident reports Ex.P.7 to Ex.P.11, the learned counsel for the appellant would submit that in all these wound certificates the doctor has recorded that the victims have alleged to have been assaulted by more than 25 unknown persons by using sharp instruments. This Accident Registers were recorded on 15.10.2003 between 11.00 p.m. to 11.30 p.m. The victims were brought by one Kumar (Friend). The said kumar was not examined by the prosecution, which is fatal to the case of the prosecution. The alleged recovery of M.O.1 from the appellant also very doubtful, since the place of recovery of the weapon and the manner in which the same was recovered carry serious contradictions. While the witness to the recovery mahazar would say that the weapon (M.O.1) was recovered from water tank bed, the accused himself dived into the water tank and took out the Veecharuval. PW.15, Mohammed Nazir, Investigation Officer had deposed that M.O.1 was not recovered near water tank and tank bed. Accused did not dived into the water tank and took out the weapon M.O.1. The arrest of the accused and recovery of M.O.1 was in an open space. Therefore, the evidence of PW.7 contradicting the evidence of PW.15 belies the case of the prosecution the manner in which the accused was arrested and the manner in which weapon M.O.1 was recovered. With these specific contradictions found in the evidence of the prosecution, the learned counsel appearing for the appellant would submit that the finding of the Court below is contra to law and evidence, hence liable to be set aside.

17. Per contra, the learned Government Advocate (Crl.Side) appearing for the state would submit that the prosecution has proved the guilt of this accused through the injured witnesses and other evidences which corroborates testimony of the injured witnesses. The incident which took place on 15.10.2003 at about 10.30 p.m in the night has been spoken by the respective witnesses, after nearly 9 years, therefore contradictions are bound to happen. Further, in this case most of the witnesses are injured witnesses. They were attacked by a group of more than 5 persons with deadly weapon. Two of the injured died and four of were severely wounded. Most of them have lost their conscious when they were taken to the hospital. In the said circumstances, one cannot expect a testimony with precise detail about the number of assailants and other minor facts which have no serious implications.

18. The learned Government Advocate (Crl.Side) would further submit that the person who was facing trial in this case is thambu. Starting from the complaint Ex.P.1 till the deposition of the injured witness at every contest and in every document the role of this accused in the crime is indicated.

PW.2 who has sustained head injury and treated for the same at Jipmer Hospital has deposed that Thambu attack him on the head and soon after, he lost his conscious.

19. PW.3 Gunasekaran has deposed that on hearing the commotion, he looked at the ground of the building from the first floor and saw the gang armed with weapon attacked Selvam and Palanisami (PW.2). The armed gang climbed the stairs and attacked him. PW.4, Ramesh has shown the injury on his head to the Court and had attributed, the accused and Saravanan for causing the said injury. PW.5 Dhanushkodi has also identified this appellant and spoken about the overt act of attacking him on his hands and shoulder. The Accident Registers which discloses the injuries to these witnesses tallies with the version of the injured witnesses PW.2 to PW.5. In the said circumstances, the police after receiving a information with necessary particulars had commenced the investigation, by registering F.I.R. PW.1 who was present at the scene of crime but escaped from the attack had come to the police station after admitting all his associates in the hospital. He has given written complaint with necessary particulars for the police to take further action. Though some of the witnesses have spoken that when they were in hospital, police enquired them and one of the witness say that police came to the scene of crime soon after the incident, the registration of the F.I.R. on 16.10.2003 at 8.00hrs does not mean that the prior information was suppressed. For the registration of the F.I.R, though there is some delay, it has not given any room or scope for suppression of facts or embellishment.

20. Regarding the contention raised by the learned counsel for the appellant that there is embellishment and contradiction in the version of the witnesses, the Learned counsel would submit that the Court should not lose sight of the fact that the witnesses have undergone the trauma of being attacked by armed mob. They were put to test, when 16 of the accused were tried in S.C.No.128 of 2009. Those 16 accused persons were only the accomplice of the four accused whose name found in F.I.R. The present appellant was the first accused in the First Information Report and final report. Since he was absconding, the case against him got split up and tried separately, subsequently. The witnesses were again asked to give evidence for the 2nd time before the Court, after lapse of 9 years. Since they know the accused even prior to incident and got injured by him, they were able to consistently point out the appellant herein.

21. In the instant case, the prosecution able to place before the Court materials which are sufficient to convict the appellant for offences under Sections 147, 148, 452, 326 of

I.P.C. The accused/appellant having fully understood the charge framed against him, contested the case by cross examining the witnesses. He also produced documents Ex.D.1 to Ex.D.5 during the cross examination of the witness. Therefore he cannot plead that the charges framed by the trial Court is defective and seek for acquittal.

22. To buttress his arguments, Mr.Arun Anbumani the learned Counsel for the appellant would rely upon the following judgments.

(i). In A.Anand Vs. A.Perumalsamy reported in 2006(1) CTC 112 :-

28. Section 145 of the Indian Evidence Act also gives the right to cross-examine the Witness (P.W.1)-Second Plaintiff on previous statement made by him before the Sub-Divisional Executive Magistrate, which was recorded by the Executive Magistrate. Although a part of the Statement deposition or other writing may be received for the purpose of impeaching the credit of a Witness, the entire deposition could be received, which would explain the inconsistency or removing the discrepancies. Hence, the whole of deposition of the Second Plaintiff-Perumalsamy is to be received. Though he was not confronted with reference to his earlier statement while he was earlier examined in the Suit, an opportunity is to be afforded to the Defendants to recall and to further examine P.W.1 in the light of his earlier statement recorded in M.C. No. 6 of 1991.

(ii). In Mohanlal Gangaram Gehani Vs. State of Maharashtra reported in 1982 1 SCC 700 :-

Thus, the reason given by the High Court for distrusting the evidence of Dr. Heena is wholly unsustainable. Moreover, the statement of the injured to Dr. Heena being the first statement in point of time must be preferred to any subsequent statement that Shetty may have made. In fact, the admitted position is that Shetty did not know the appellant before the occurrence nor did he know his name which was disclosed to him by one Salim. Therefore, Salim who is now dead, being the source of information of Shetty would be of doubtful admissibility as it is not covered by s. 32 of the Evidence Act. And, once we believe the evidence of P.W. 11, as we must, then the entire bottom out of the prosecution case is knocked out.

(iii). In Nallabothu Ramulu Vs.State of A.P reported in (2014) 12 SCC 261

13. According to the prosecution, after admitting PW-19 at Sattenapally Government Hospital, PW-1 to PW-16, the two deceased and others were returning to Tondepi village. At that time, at Dammalapadu Donka, the incident occurred. PW-1 is an important witness because he was injured in the incident. His dying declaration was recorded, which is at Ex-P/1. On the basis of that dying declaration, Ex-P/26, the FIR was registered at P.S. Sattenapally. PW-1 stated that the police came to the spot immediately and within 15 minutes of their arrival, they were shifted to Sattenapally Government Hospital. He stated that PW-28 S.I., P.S. Muppala came there. He also stated that there was a police camp at Gram Panchayat Office of Tondepi village. PW-28 S.I., P.S. Muppala confirmed that there was police camp at the Gram Panchayat Office. He was posted on bandobast duty on account of the incident in which PW-19 was injured. He had recorded the statements of witnesses in the earlier case from 5.00 p.m. to 8.00 p.m. on 16/3/1993. Evidence of witnesses shows that they had informed the police about the incident in question. PW-2 an injured eye-witness stated that he informed the police about the incident, but his statement was not recorded. PW-3 the Head Constable, who had accompanied PW-19 to the hospital on 16/3/1993 stated that PW-28 S.I., P.S. Muppala and other police staff came to the place of occurrence and injured were taken to the village and then to the hospital within an hour. He stated that PW-28 S.I., P.S. Muppala did not record his statement. PW-3 was attached to P.S. Muppala. PW-28 S.I., P.S. Muppala should have recorded his statement and registered a case but he did not do so. PW-8 stated that S.I., P.S. Muppala came to the spot but he did not record his statement. PW-9 and PW-10 made similar statements. PW-12 stated that he escaped from the scene of offence, went to the village and came back to the scene of offence with the villagers. He stated that he informed the police about the incident. PW-13 stated that he escaped from the scene of offence and returned with the police. He stated that when he revealed the incident to the police, they recorded his statement. PW-14 stated that he had informed about the incident to the

police but he does not know whether the police had reduced his information into writing. PW-15 stated that he had witnessed the occurrence for about three minutes. He had informed the police about the incident but the police did not record his statement.

14. PW-28 S.I., P.S. Muppala admitted that he shifted the injured to the hospital and the injured informed him that the opposite group had attacked them. He stated that when he went to the village to get a tractor to shift the injured, he had informed his superiors about the incident on phone. He further stated that PW-29 Circle Inspector (IO) came to the village at 3.00 a.m. and he assisted him in the investigation at the spot. Thereafter, he proceeded to the Police Station, Muppala and there, he received copy of the FIR from S.H.O., Sattenapally. The evidence of all these witnesses read with evidence of PW-28 S.I., P.S. Muppala show that the witnesses had informed PW-28 about the incident and the fact that the opposite party had attacked them. While statements of some witnesses were not recorded, statements of some witnesses were recorded, but they were not produced. PW- 28 S.I., P.S. Muppala ought to have registered the FIR on the basis of statements of injured eye-witnesses. PW-3 Head Constable was, in fact, attached to the P.S., Muppala and was working under him. It is not understood why his FIR was not recorded. The omission to record the statement of any of the injured witnesses as FIR or to record statements of witnesses under Section 161 of the Cr.P.C. by PW-28 casts a shadow of doubt on the prosecution case. There was no need for the police to wait for recording of the statement of PW-1, treat that as dying declaration and then register the FIR on that basis. While, according to the prosecution, the incident took place at 1.00 a.m. on 17/3/1993, PW-1's statement [Ex- P/1] was recorded at 3.15 a.m. In the facts of this case, not registering FIR on the basis of statement of injured witnesses at the spot of incident and the delay in registering FIR give rise to a suspicion that the injured witnesses were unable to name the accused on account of darkness and that the FIR was doctored in the form of dying declaration of PW-1 which was subsequently converted into Ex.P-26.

23. In support of her submission, Mrs.Kirithika Kamal the learned Government Advocate would submit that the following judgments.

(i). In B.Bhadriah and others Vs. State of A.P reported in 1995 Supp (1) SCC 262:-

"P.W.1 who is an injured witness and P.W.4 who is also a relation of the deceased took prompt steps to shift the deceased to the hospital P.W 1 was also examined for his injuries. Naturally he was not expected to give a report to the Doctor. The casual way of filling up the column in the medical certificate does not in any manner amount to recording a statement of the injured witness. Further P.W. 1 has given Ex.P.1 to P.W 10 at the earliest moment. In Ex.P.1 all the necessary details are given. It is specifically mentioned that at about 11.15 P.M. A-1 to A-5 and five others came to the arrack shop and attacked the deceased. The names of the other eye-witnesses are also mentioned. A reading of Ex.P.1 would show that it contains a true and natural version of the incident."

(ii). In Dalbir Singh Vs. State of Haryana reported on 15 May 2008:-

8. It is emphatically urged that the evidence is partisan, lacks cogency and credibility. Acquittal of other accused persons is the foundation for such plea.

9. Coming to applicability of the principle of falsus in uno falsus in omnibus, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However, where large number of other persons are accused, the Court has to carefully screen the evidence. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in Indian and the witnesses cannot be branded as liar.

10. The maxim "falsus in uno falsus in omnibus" (false in one thing, false in everything) has not received general acceptance in different jurisdiction in India, nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Alli v. The State of Uttar Pradesh: AIR 1957 SC 366). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate the accused who had been acquitted from those who were convicted. (See Gurucharan Singh and another v. State of Punjab: AIR 1956 SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. The witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care.

(iii). In Yashwant Etc. Vs. The State of Maharashtra reported on 04 September 2018:-

27. It is wrought in our criminal law tradition that the Courts have the responsibility to separate chaff from the husk and dredge out truth. It may not be out of context to note that the legal maxim 'falsus in uno, falsus in omnibus' is not applicable in India, thereby the courts are mandated to separate truth from falsehood. [refer Kulwinder Singh v. State of Punjab, (2007) 10 SCC 455; Ganesh v. State of Karnataka, (2008) 17 SCC

152; Jayaseelan v. State of Tamil Nadu, (2009) 12 SCC 275] It is not uncommon that in some cases witnesses in the jealousy to see all the accused get conviction, may stretch the facts or twist them.

24. Heard the learned Counsels for the Appellant and the respondent. Records and judgments referred perused.

25. The Appellant herein is not a stranger to the prosecution witnesses, PW.1 to PW.6. He was close associate of PW.1 in his real estate business. On the fateful day the presence of the appellant at the scene of crime has been spoken by PW.1 to PW.5. The overt act of the appellant causing cut injury on the head of PW.1 and cut injuries on the hands and shoulders of PW.5 are spoken by the respective injured witnesses. Whether it is the Accident Register or the F.I.R or the previous statements or the testimony before the Court invariably in all these documents the prosecution witnesses have stated that the appellant Thambu came to the newly constructed house of PW.1 with deadly weapon along with known and unknown persons. The earliest record in this case happens to be the accident register marked as Ex.P.7 to Ex.P.11.

26. The doctor has recorded that more than 25 persons assaulted them using sharp instruments. The injured persons (PW.2 to PW.5) and the deceased Thirunaukarasu were all brought to the hospital by one Kumar. He was not examined by the prosecution. Most of these injured persons were not conscious after the attack as per their evidence. So what was recorded by the doctor in Accident Register, is the version of the attender Kumar who brought the injured to the hospital.

27. The next document is the F.I.R recorded on 16.10.2003 at 8.00 a.m based on the written complaint given by PW.1. In this complaint it is stated that four known persons and four unknown persons came and attacked causing the death of two persons and injuries to four others. In this complaint, details of the four known persons and the details of the persons died and sustained injuries are mentioned. The information given by the attender (Kumar) to the doctor at the time of admitting the injured in the hospital or the injured persons has to be appreciated in the light of the fact under what circumstances it was stated to the doctor and the circumstances the statement likely to have been recorded. The information given in a tensed and surcharged moment may miss certain facts. No doubt the information given after substantial delay may also sometime give room for consultation, embellishment and falsehood. That is why Courts in India consistently follow the principle of chaff and Grain and refuse to apply the maxim

"Falsus in uno, Falsus in omnibus"

28. In the instant case, the Appellant is convicted for offences under Section 147, 148, 452 & 326 of I.P.C by the trial Court. For the said purpose whether the appellant was a member of unlawful assembly and guilty of rioting, whether he committed house trespass put any person in fear of hurt or caused hurt, whether he voluntarily caused grievous hurt to any person are to be considered.

29. The facts proved without doubt through evidence before the Court are:-

(i). On the night of 15.10.2003 there was rioting by a mob armed with deadly weapon at the house of Elumalai [Evidence of PW.1 to PW.5].

(ii). Selvam and Thirunavukarau died in the riot. The postmortem reports Ex.P.6 and Ex.P.12 respectively proves it was homicide.

(iii). PW.2 to PW.5 sustained grievous injuries. The respective medical certificates are Ex.P.7 to Ex.P.10.

(iv). PW.1 gave complaint to the police and F.I.R was registered based on his complaint.

(v) PW.6 wife of PW.1 had deposed that immediately after the occurrence she saw her husband come running shouting someone been attacked (ahiuNah ntl;b tpl;lhh;fs;). This portion of PW.6 evidence stands unimpeached. It is res getae evidence by a by stander shortly after the occurrence. The learned counsel for the appellant contents that PW.1 not sure who was attacked, so it is not probable he witnessed the incident. The deposition of PW.1 and PW.6 read in conjunction it could be seen that, PW.1 was present in the SOC, saw the ruthless attack by the mob lead by the appellant Thambu. The mob was lynching the persons, so he has fled from that place and ran to his house screaming which his wife (PW.6) saw and heard. If PW.1 has said "(ahNuh ntl;b tpl;lhh;fs;)" then it may convey that he was not sure about the assailant. But he has said "ahiuNah ntl;b tpl;lhh;fs;" which means he was not sure of the victim at that time.

30. In his complaint given to the police subsequently PW.1 soon after the dust of riot settled has given the names of the known assailants. In the said complaint this appellant is the first among them. The events happened a day earlier or 10 days earlier have little bearing in this case, since the deposition of the injured witnesses will prevail upon the

evidenciary value of the informant.

31. When the witnesses were asked to be deposed in the earlier proceedings, they did not identify the persons who stood trial in those cases as the members of the riot mob. So prosecution has treated them hostile. Their previous deposition in the proceedings of S.C.No.128 of 2009 has been marked for the purpose of contradiction under Section 145 of Indian Evidence Act. The statement of the witnesses in the previous proceedings can be used for contradiction. A close reading of the previous statement made by these witnesses PW.1 to PW.6, (Ex.D.1 to Ex.D.5) this Court does not find any grave contradiction in respect of the incriminating evidence against the present appellant.

32. As pointed out by the learned Government Advocate (Crl.Side) for the respondent/state the injured witnesses having stood the trauma of gruesome attack by a mob armed with deadly weapon cannot be expected to retain the shocking memory photographically and repeat verbatim time and again, for the years to come. This appellant had absconded after the arrest and released on bail. So, he was not tried along with the other accused at the first instance. Later he has been secured and subjected to trial. This has forced the prosecution and the prosecution witnesses to repeat the process of trial. By this time nearly 9 years have gone. Despite the said fact the prosecution witnesses PW.2 to PW.5 had cogently and emphatically identified this appellant as the assailants who led the rioting mob.

33. As pointed out earlier, the prosecution has proved the presence of appellant among the rioting mob carrying deadly weapon. He has been identified by the witnesses, the weapon carried by him. The injury caused by him is spoken by the injured persons PW.1 and PW.5 same is substantiated and corroborated by medical evidence namely respective wound certificates. Hence, in such circumstances, this Court finds no error in the manner the trial Court appreciated the evidence.

34. This Court finds no error in trial Court judgment either in appreciation of law or the facts. Therefore, no ground to interfere in the conviction or sentence imposed by trial Court. The gruesome crime causing death of two persons and grievous injuries on four persons for the sake of extorting money by a gang led by the appellant is proved beyond doubt by the prosecution through its witnesses.

35. Hence, the Criminal Appeal is dismissed. Conviction and Sentence imposed by the trial Court is confirmed. The respondent police is directed to secure the Appellant and

commit him to prison, to undergo remaining period of sentence.
Consequently, Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Additional District & Sessions Judge, Fast Track Court
No.1,
Tindivanam.

2. The Public Prosecutor, High Court, Madras.

3. The Inspector of Police, Auroville Police Station, Villupuram
District.

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

5.The Superintendent,
Central Prision,
Cuddalore.

+lcc to Mr.Arun Anbumani, Advocate sr.no.20090

Criminal Appeal No.270 of 2012

nr 06/05/2019

सत्यमेव जयते

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