

BAIL SLIP

The Appellants/Accused (1,2,6,13) namely 1) Kumaresan, S/o.Ramachandran, 2) Manoharan S/o.Thandapani, 3)Neelakantan S/o.Kulanthaivel, 4)Gnanam S/o.Jayaraman, were directed to be released on bail as per the order of this court dated 24.08.2012 in CrI.Mp.No. 1 of 2012 in CrI.A.No. 479 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2019

PRONOUNCED ON : 13.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.479 of 2012

1.Kumaresan
2.Manoharan
3.Pandian
4.Gnanasekaran
5.Manikantan
6.Neelakantan
7.Krishnamoorthy
8.Manimozhi
9.Jothi
10.Ezhil
11.Kasi @ Arunkumar
12.Chandrasekar
13.Gnanam
14.Prabakaran
15.Senguttavan
16.Mohandoss

..

Appellants/Accused

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State by
Inspector of Police,
Kadampuliyur Police Station,
Cuddalore District
(Crime No.224 of 2010)

..

Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the conviction and sentence imposed on them by the Court of Mahila Judge, Cuddalore, by judgment and order dated 21.07.2012, made in S.C.No.198 of 2010.

For Appellants : Mr.S.Ashok Kumar, Senior Counsel
for Mr.A.Sasidharan

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

JUDGMENT

This Criminal Appeal is preferred by the accused persons who were convicted by the learned Sessions Judge, Mahila Court, Cuddalore in S.C.No.198 of 2010 on 21.07.2012.

2.The First Information based on the complaint given by one Indira Kumari has led to registration of Crime No.224 of 2009 on 15.07.2009, by the respondent Police against Kumaresan and 15 others. On completion of the investigation, the final report was filed against 16 accused. The trial Court has framed charges, against the accused persons as below:-

Sl.No	Accused	Charges
1	Accused 1	Sections 148 & 307 I.P.C.,
2	Accused 2	Sections 148 & 307 I.P.C.,
3	Accused 3 to 5	Section 147 I.P.C.,
4	Accused 6	Sections 148 & 307 I.P.C.,
5	Accused 7	Sections 147 & 323 I.P.C.,
6	Accused 8	Section 147 I.P.C.,
7	Accused 9	Sections 147 & 294 (b) I.P.C.,
8	Accused 10	Sections 147 & 323 I.P.C.,
9	Accused 11 & 12	Sections 147 I.P.C., and Section 3 of TNPPDL Act

Sl.No	Accused	Charges
10	Accused 13	Sections 148 & 324 I.P.C.,
11	Accused 14	Sections 148 & 324 I.P.C.,
12	Accused 1 to 10 & 13 to 16	Section 3 of TNPPDL Act
13	Accused 15 & 16	Section 506 (ii) I.P.C.,

3.The prosecution has examined 17 witnesses (P.Ws.1 to 17); marked 16 exhibits (Exs.P.1 to P.16) and two material objects (M.Os.1 and 2). On the side of the defence, two witnesses (D.Ws.1 & 2) and 5 exhibits (Exs.D.1 to D.5) were marked.

4.On appreciating the evidence and the materials placed before it, the trial Court has held the accused guilty and convicted them for proven charges, as below:-

Sl.No	Accused	Conviction	Sentence
1	Accused 1	Sections 148 & 326 I.P.C.,	Rs.1,500/- fine in default to undergo one month rigorous imprisonment for offence under Section 148 I.P.C., 7 years rigorous imprisonment with fine of Rs.5,000/- for offence under Section 326 I.P.C.,

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Sl.No	Accused	Conviction	Sentence
2	Accused 2	Sections 148 & 307 I.P.C.,	Rs.1,500/- fine in default to undergo one month rigorous imprisonment for offence under Section 148 I.P.C., 7 years rigorous imprisonment with fine of Rs.5,000/- for offence under Section 307 I.P.C.,
3	Accused 3 to 5	Section 147 I.P.C.,	Rs.1,000/- fine imposed in default to undergo one month rigorous imprisonment for offence under Section 147 I.P.C.,
4	Accused 6	Sections 148 & 307 I.P.C.,	Rs.1,500/- fine in default to undergo one month rigorous imprisonment for offence under Section 148 I.P.C., 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo one year rigorous imprisonment for offence under section 307 I.P.C.,

Sl.N o	Accused	Conviction	Sentence
5	Accused 7	Sections 147 & 323 I.P.C.,	Rs.1,000/- fine imposed in default to undergo one month rigorous imprisonment for offence under Section 147 I.P.C., Rs.1,000/- fine imposed in default to undergo one month rigorous imprisonment for offence under Section 323 I.P.C.,
6	Accused 8	Section 147 I.P.C.,	Rs.1,000/- fine imposed in default to undergo one month rigorous imprisonment for offence under Section 147 I.P.C.,
7	Accused 9	Sections 147 & 294(b) I.P.C.,	Rs.1,000/- fine imposed in default to undergo one month rigorous imprisonment for offence under Section 147 I.P.C., Rs.500/- fine imposed for offence under Section 294 (b) I.P.C.,

Sl.N o	Accused	Conviction	Sentence
8	Accused 10	Sections 147 & 323 I.P.C.,	Rs.1,000/- fine imposed in default to undergo one month rigorous imprisonment for offence under Section 147 I.P.C., Rs.1,000/- fine imposed in default to undergo one month rigorous imprisonment for offence under Section 323 I.P.C.,
9	Accused 11 & 12	Sections 147 I.P.C., and Section 3 of TNPPDL Act	Rs.1,000/- fine imposed in default to undergo one month rigorous imprisonment for offence under Section 147 I.P.C., Fine of Rs.3,000/- each for offence under section 3 of TNPPDL Act. The total fine amount of Rs.6,000/- to be paid as compensation to the M.O.1 vehicle owner.

Sl.No	Accused	Conviction	Sentence
10	Accused 13	Sections 148 & 324 I.P.C.,	Rs.1,500/- fine in default to undergo one month rigorous imprisonment for offence under Section 148 I.P.C., One year rigorous imprisonment and Rs.1000/- fine in default to undergo three months rigorous imprisonment for offence under Section 324 I.P.C.,
11	Accused 14 to 16	Section 148 I.P.C.,	Rs.1,500/- fine in default to undergo one month rigorous imprisonment for offence under Section 148 I.P.C.,

5.However, the trial Court acquitted Accused 3 to 5 and 8 for offence under Section 323 I.P.C; Accused 14 for offence under Section 324 I.P.C; Accused 1 to 10, 13 to 16 for offence under Section 3 of TNPPDL Act and under Section 149 I.P.C., and Accused 15 & 16 for offence under Section 506(ii) I.P.C.

6.Aggrrieved by the conviction and sentence, the present Criminal Appeal is preferred by the appellants 1,2,4,6 to 15. Pending Criminal Appeal, the appellants 3, 5 and 15 died.

7.Before advertng to the merits of the Criminal Appeal, it is essential to place on record the brief background of the case.

Sathipattu is a small hamlet within the jurisdiction of Kadambuliur Police station in the Cuddalore District. Regarding the administration and conducting festivals of the Nagathamman Temple, a local deity, there were clash between two groups one called as "olive vagaiyara" and another called as "Korataiyan vagaiyara" .

8.A peace meeting was conducted by the Revenue Officials in connection with the temple festival. While so, on 14.07.2009, when Indira Kumari was standing near her house, opposite to water tank, the accused persons armed with weapons questioned her and her vagaiyara seeking right in the temple administration and attacked her with weapons. When Govindammal, Anjalai and Shakthivel came to her rescue, they were also assaulted indiscriminately by the accused gang. They damaged Hero Honda motor bike parked near the house of Indira Kumari. They threatened them that they should not claim any right in the administration of the temple. When the public gathered, the mob fled from the scene of crime.

9.Indira Kumari, Govindammal, Anjalai and Shakthivel who sustained injuries have identified the assailants and the weapons used by them. They were examined as P.Ws.1 to 4. The Doctor who treated them was examined as P.W.15. The Wound Certificates were marked as Exs.P.8 to P.11.

10.P.W.12 - Pachiyappan, an independent witness has deposed about the confession of A.6 and recovery of weapon, based on his confession. P.Ws.7,8 and 9 were the witnesses to the crime who have corroborated the evidence of the injured witnesses. Relying upon these evidence, the trial Court has convicted the accused persons for their respective overt acts, as mentioned above.

11.The learned Senior Counsel appearing for the appellants would submit that, the prosecution has suppressed the counter case wherein, the members of the prosecution party were accused of grave offence in Crime No.225/2009. The said case was admittedly investigated by the very same Investigation Officer. He has not produced the Wound Certificates of the injured witnesses (some of them are accused herein) in that case.

12.A.1, Kumaresan was one of the injured person in the said counter case. His wound certificate is marked as Ex.D.2 and wound certificate of another injured person Ranganayaki is marked as Ex.D.3. The time of occurrence and place of occurrence as found in these two wound certificates would clearly establish that the accused party, in this case, have sustained injuries. Therefore, for the suppression of the counter case and suppression of the injury sustained by the accused persons, the case of the prosecution has to fail.

13.Based on the complaint given by Indira Kumari, P.W.1, the respondent Police has registered F.I.R., on 15.07.2009 at 6.15 hours. Whereas, the alleged incident has taken place on the previous day, at about 14.00 hours. The delay in registering the F.I.R., coupled with the contradictions in the evidence of the injured victim, the embellishment of these witnesses elicited

through the cross examination of the Investigating Officer would clearly indicate that the prosecution witnesses have taken sufficient time to falsely implicate the accused persons against whom they had enmity. Based on the external advice with falsehood and embellishment, the complaint Ex.P.1, has been given implicating the accused persons for various overt acts of assault against the defacto complainant and other witnesses.

14. Based on this embellished complaint, F.I.R. - Ex.P.13 has been belatedly registered and the statement of the witnesses were recorded, after one week of the incident. In the accident reports pertaining to P.W.1 to P.W.4 which is recorded by P.W.13, P.W.1 informed that she was assaulted by 4 persons; Anjalai - P.W.2 has informed Doctor that she was assaulted by three persons; Govindammal - P.W.3 has informed the Doctor that she was assaulted by four persons and Sakthivel - P.W.4 has informed the Doctor that he was assaulted by two persons. These accident registers were prepared by P.W.13 between 5.20 pm and 5.50 pm on 14.07.2009. Whereas, when the complaint - Ex.P.1 was given by Indira Kumari - P.W.1, on the next day, 16 persons were named with their overt acts thereby all the prominent persons of 'olive vagaiyara' were implicated even though, they were not present in the scene of crime.

15. D.W.1 has deposed about the presence of A.3 at the time of occurrence, at Panruti Municipality and reported duty. This was not been considered by the trial Court. Similarly, the evidence of D.W.2 about the visit of A.7 to the Idhaya Women Engineering College and Hostel on the date of occurrence to see his daughter were not considered by the trial Court.

16. The learned Senior Counsel for the appellants would further submit that the prosecution has not come out with a true picture about the occurrence. There was free for all fight between two groups on the day. Members of both the groups sustained injuries. However, the Police have suppressed the injuries sustained by the accused party. Manipulated complaint, Ex.P.1 belatedly, so as to implicate the innocent persons accused party.

Referring the judgment of this Court rendered in In re Boya Gajji Pedda Venkatanna alias Bodenna and others (AIR 1954 MADRAS 15), the learned Senior Counsel would submit that, when two sparing parties indulge in fight, causing injuries to each other, the prosecution has to register both the complaint and counter complaint. It must investigate fairly and place all the materials before the Court, which try the case. It is the duty of the prosecution to lay before the Court, Exhibits of the counter complaint and the medical certificate of persons wounded on opposite side (accused side). In paragraph No.10 of the said

judgment, it has been held as follows:-

"10. It is clear therefore from the evidence that the injuries on the deceased were caused either as a result of throwing the pole by the first accused or as a result of his throwing a stone at him. It is very significant that the third injury on the deceased and the first injury on D. W. 2 should more or less have been of the Same nature, both of them being of pinkish colour. The injury on the deceased was 4 1/2" in diameter whereas the injury on D. W. 2 was in the jaw 3" x 2". As already stated, the injury No. 3 on the deceased might have been caused by a big smooth stone being thrown at that part of the body. Similarly, all the injuries on D. W. 2 suggest that they are more likely to have been caused by stones hurled at her. Neither side would "admit the injuries on the other side. In fact there is no explanation on the side of the prosecution for the injuries caused to D. W. 2. The defence in Ex. D. 10 has not stated anything about the injuries on the prosecution witnesses. It seems to us that in the course of the quarrel, there was throwing of stones by both sides and one of the stones hit the right temple of the deceased resulting unfortunately in his death. Similarly, the injuries on the person of D. W. 2 were caused by stones thrown by the prosecution party. There was undoubtedly a confused fight in which both sides indulged in stone throwing against each other. In the circumstances it is difficult to fasten the liability on the first accused for the injury on the deceased. But, there can be no doubt that the appellants are guilty of rioting punishable under Section 147, I. P. C. We therefore convict the appellants of the offence under Section 147, I. P. C. and acquit them of other charges. For the offence under Section 147, the sentence is reduced to the period undergone."

17. Further, relying upon the recent judgment of a Division Bench of this Court on the same proposition of law, which is reported in V. Mohan and others State rep. By, The Inspector of Police, Mamallapuram Police Station (2018(1) L.W (crl.) 919),

the learned Senior Counsel for the appellants would submit that in the said case, counter case was registered by the same Police. The suppression of the counter case, non production of the wound certificate and other documents, concern to the counter case, had given scope to screening of material evidence for the Court to arrive at just decision. Therefore, it is difficult to place conviction on the accused based on the version of the prosecution.

18.The Division Bench of this Court in the said judgment while agreeing the said proposition of law laid down in In re Boya Gajji Pedda Venkatanna alias Bodenna and others case (cited supra), in paragraph No.20 has held as follows:-

"We are fully agreeable with the above judgment and in the instant case, the prosecution has not placed the true version before the Court as regards the accused sustaining injuries and the case in counter in the first instance and only cited some interested witnesses, who are supporting the prosecution case and the prosecution also had failed to show who are the aggressors and only from the evidence of the prosecution witnesses, it is revealed that only the prosecution party were the aggressors. In the absence of any materials for the Court to come to the conclusion that whether the accused have exercised right of defence and while exercising such right, had they exceeded the private defence or not and only on such consideration, the Court can come to the right conclusion whereas the prosecution has suppressed one version and projected the other. It is highly difficult to base a conviction on the accused based on one version of the prosecution. Therefore, we are of the view that the prosecution having failed to produce materials with regard to the counter case and that it failed to explain the injuries sustained by the accused, more particularly, on the basis of the homicidal death of the deceased, guilt cannot inferred as against the accused on the basis of the interested witnesses and their evidence is also highly doubtful in view of the serious discrepancies noted above. Hence, the accused are entitled to benefit of doubt."

19. Beside this, the learned Senior Counsel for the appellants would submit that the witnesses for the prosecution have deviated to the previous statement given to the Investigating Officer and the statement given to the Doctor while getting treatment and the F.I.R. They have deposed a new case against these appellants. The Doctor who has treated the injured persons was not examined. Though some of the injuries sustained by the witnesses were opined grievous in nature, no fracture or, x-ray report filed by the prosecution.

20. Therefore, the learned Senior Counsel for the appellants would sum up that the delay in registering the F.I.R., failure to substantiate the evidence regarding the alleged assault and injuries caused, suppression of the counter case, non inclusion of injury found on the accused persons, the embellishment in the evidence of P.Ws.1 to 4, contradictions in the evidence P.Ws.1 to 4 as against their previous statement cumulatively renders the prosecution case highly unbelievable and therefore, it requires interference.

21. Per contra, the learned Government Advocate (crl.side) would submit that, the two factions in the Sathyapattu Village fighting for the right to administer the Nagathamman Temple is an admitted fact by the accused party. The interim order copy of the Civil Court in respect of the conduct of the temple festival is relied by the accused themselves and marked as Ex.D.1. The enmity between the two groups has led to unlawful gathering of A.1 to A.16 on 14.07.2009 near the Village water tank. P.W.1 has deposed that she belongs to Korattaiyan faction. Two years back, her faction conducted the temple festival. So, there was animosity between 'Korattaiyan faction' and 'olive faction'. Both the factions were called for 'peace meeting' at Taluk Office, Panruti. While so, few days prior to the incident, the temple water pipe was found broken. So on 14.07.2009, at about 4.00 pm, when she was standing in front of the house, A.1 to A.5 came to her and angrily questioned her about their claim of administering the temple. Following this, they attacked P.W.1. When P.Ws.2 to 4 came to her rescue, they were also attacked with knife and wooden log.

22. The injured persons were first taken to the Government hospital at Panruti. Dr. Murugan (P.W.13) gave them first aid, noted the injuries and considering the gravity of the injuries, he referred them to the Government Hospital, Cuddalore. The Wound Certificates were marked as Exs.P.8 to P.11. The oral evidence of the injured witnesses, P.Ws.1 to 4 corroborated by the documentary evidence Exs.P.8 to P.11. The knife used in the crime was recovered based on the information given by A.6 in his confession statement. The mahazar for recovery is Ex.P.5. Through the witness for recovery (P.W.11), the prosecution has proved the case. Therefore, the prosecution has proved through

oral and documentary evidence that P.Ws.1 to 4 sustained grievous injuries during the rioting on 14.07.2009.

23.The appellants herein were the members of the riot. Since, A.2 and A.6 had the intention to cause death and caused injuries on P.W.1 and P.W.3 which are likely to cause death, they were rightly convicted for offence under Section 307 I.P.C. A.11 and A.12 caused damage to the motorcycle Hero Honda bearing registration No.TN 31 AB 3742 parked near the house of P.W.1. The prosecution has proved the overt act of A.11 and A.12 through the witnesses present during the riot. The damage to the vehicle assessed by the Inspector P.W.14 and his report was marked as Ex.P.12. The presence of other appellants armed with weapon and causing hurt also proved through the evidence of the witnesses to the occurrence. Therefore, the judgment of the trial Court has to be sustained.

24.Regarding the argument put forth by the learned Senior Counsel for the appellants on the counter case and suppression of that case, non explanation of injuries on A.1 and one Ranganayaki which are established through Exs.D.2 and D.3, the learned Government Advocate (crl.side) would submit that the investigation on that incident was taken up in Cr.No.225/2009 by the same Investigating Officer. It was not an event occurred during the same transaction. The injured victims in this case are not the accused in that case. That case was tried before the same Court simultaneously and ended in acquittal. There was only minor injuries on A.1 and one Ranganayaki. Those injuries were sustained subsequent to the occurrence which is subject matter of trial in this case. this will not fall within the scope of counter case. P.W.15, Inspector of Police during his cross examination has explained that the incident in this case occurred at 4.00 pm. The other case where A.1 was the complainant occurred at 4.30 pm on 14.07.2009. Both the occurrences are at different point of time and place. Through the witnesses, the prosecution has established that the attack on P.Ws.1 to 4 was by an aggressive mob armed with weapons. It was not during clash between two armed groups, as claimed by the appellants. Therefore, the learned Government Advocate (crl.side) would submit that the judgments cited by the learned Senior Counsel appearing for the appellants has got no application in this case. In support of her arguments, the learned Government Advocate (crl.side) has relied on the following judgments.

(a) In Raj Kishore Jha v. State of Bihar and others (2003 (11) SCC 519), in paragraph No.10, it has been held as follows:-

".....In a case of this nature, when counter case has been registered, the Court

hearing the same has to scrutinize the evidence with greater detail and even in such a situation the evidence which is cogent, credible and trustworthy cannot be totally wiped out because of the only circumstance that they were accused in the counter case. Additionally, we find that PWs. 3, 6 and 9 have not been merely described in the first information to have taken the deceased to the hospital, as observed by the High Court. A bare reading of the first information report clearly shows that they were described as eyewitnesses also. Here again, the High Court has committed error."

(ii) In Subal Ghorai and others vs State of West Bengal (2013 (4) SCC 607), in paragraph No.38, it has been held as follows:-

".....Experience shows that witnesses do exaggerate and this Court has taken note of such exaggeration made by the witnesses and held that on account of embellishments, evidence of witnesses need not be discarded if it is corroborated on material aspects by the other evidence on record. Therefore, the fact that some witnesses have not referred to certain accused in their police statements but have attributed role to them in the court, does not lead us to conclude, in the peculiar facts of this case, that the said witnesses are not credible witnesses. In this connection, we may usefully refer to Leela Ram (Leelaram vs. State of Haryana (1999 (9) SCC 525) on which reliance is placed by learned counsel for the State. The following observations of this Court are material.

"12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment - sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion

of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.""

(iii) In Gangappa Ningappa Ugarkohod vs State of Karnataka (2015 (15) SCC 377) wherein, in paragraph No.14, it has been held as follows:-

"14. However, the learned counsel appearing for the appellants strongly submitted that some of the accused had received injuries and those remained unexplained by the prosecution. He, therefore, contended that the occurrence clearly did not take place in the manner presented by the prosecution and for that reason alone the prosecution case deserved to be junked. Both the trial court and the High Court have taken this aspect of the matter in due consideration. The trial court has pointed out, and in our view quite rightly that the defense in this case completely denied the occurrence. According to the defense, the occurrence took place in a different manner and at a completely different place as alleged in the counter case being S.C. No. 71/1993. The trial court further observed that since the accused denied the very occurrence, no reliance could be placed on the alleged injuries suffered by them, insofar as the trial of S.C. No. 84/1993 is concerned. Moreover, the defense story, which was the prosecution case in S.C. No. 71/1993, was disbelieved and hence, the alleged injuries suffered by the accused were of no help to them in this case. "

25. In respect of the discrepancies in the evidence of the injured witnesses and the contradictions, in their previous statements to the Investigating Officer and their testimony before the Court, the learned Government Advocate (crl.side) relying upon the judgment of the Hon'ble Supreme Court in Subal Ghorai and others vs State of West Bengal (cited supra), would submit that when large group attack, minor discrepancies has to be ignored. The evidence of P.Ws.1 to P.W.4 injured witnesses should not be discarded on account of embellishment or exaggeration.

26.It is contended by the learned Senior Counsel for the appellants that the injuries found in Exs.D.1 and D.2 are injuries sustained by the 'olive vagaiyara' in the same clash. The suppression of the counter case is fatal to the prosecution in the light of the judgment cited supra.

27.Heard the learned Senior Counsel appearing for the appellants; learned Government Advocate (crl.side) appearing for the State; records perused; citations considered and the finding of this Court is recorded as under:

28.It is not uncommon for the defence to take the plea that the injuries sustained by them not explained by the prosecution or the counter case filed by them against the defacto complainant is suppressed. This Court as well as the Hon'ble Supreme Court has time and again explained when a case will be construed as counter case and when suppression of counter case or failure to explain the injuries on the accused person, will render the case of the prosecution doubtful. Invariably, in all the cases, the Courts have consciously held that, 'whether any injury sustained by the accused persons; whether such injury was during the same transaction which is subject matter under the trial; whether the prosecution is duty bound to place the wound certificate of the accused person and whether failure to place facts about the counter case to the court is fatal, are all questions to be decided based on facts and circumstances of each case.

29.Whenever the accused persons pleads injury sustained in the same transaction, then the prosecution has to place his wound certificate before the Court to enable to arrive at the truth and just conclusion. In In re Boya Gajji Pedda Venkatanna alias Bodenna and others case (cited supra), relied by the learned Senior Counsel for the appellants, the fact narrated and observed by the court is that, there was undoubtedly a confused fight in which both sides indulged in stone throwing against each other. In the circumstances, the Court held that, "it is difficult to fasten the liability on the first accused for the injury on the deceased. But, there can be no doubt that the appellants are guilty of rioting punishable under Section 147, I. P. C. We therefore convict the appellants of the offence under Section 147, I. P. C. and acquit them of other charges. For the offence under Section 147, the sentence is reduced to the period undergone".

30.The fact of that case is that there was group clash and free for all fight. While a member of one group died and members of other group sustained injuries in stone pelting as retaliation or as defence the Division Bench of this Court has rightly held that, in a complaint and counter-complaint such as

this, obviously arising out of the same transaction, when the prosecution proceeds on the basis of the complaint, we think it is the duty of the prosecution to exhibit the counter-complaint through the police officer who recorded it and also to prove medical certificates of persons wounded on the opposite side also and place before the court a definite case which they ask it to accept. We must deprecate the prosecution in such cases accepting, in toto one complaint and examining only witnesses who support it and give no explanation at all for injuries caused to the other side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the court to enable it to arrive at the truth and a just decision.

31. Similarly, in V. Mohan and others State rep. By, The Inspector of Police, Mamallapuram Police Station case (cited supra), there was a dispute between two fishing groups in the mid sea in respect of fishing. Therefore, following the dicta laid down in In re Boya Gajji Pedda Venkatanna alias Bodenna and others (cited supra), the Division Bench of this Court has held that the injuries sustained by A.5 not explained. Failure to produce materials with regard to counter case makes difficult to base conviction relying upon one version of the prosecution.

32. Whereas, the facts in the present case in hand, it was not a group clash. It is nobodies case that the witnesses P.Ws.1 to 4 have indulged in fight and caused injuries to A.1 and others in the same transaction. The suggestion put to the injured witnesses P.Ws.1 to 4 that nearly 25 persons from each group gathered and exchanged blows. This suggestion is emphatically denied by them. P.W.15 - the Sub Inspector of Police who received information and registered F.I.Rs., for both the cases in Cr.Nos.224 and 225/2009 had explained in the cross examination that the occurrence was not in the course of same transaction and not at the same transaction. The Police Standing order and the judgments relied by the appellants deals about case and counter arising from same transaction. Crime No.224/2009 and Cr.No.225 of 2009 does not arise for same transaction. So, the prosecution is not bound to place any materials in connection with Cr.No.225 of 2009. The case has been tried by the same Judge. The injured witnesses were asked about the case during the cross examination, they were not certain about the facts of that case. This clearly indicate that the injured witnesses in this case are noway connected with the case tried in Cr.No.225 of 2009.

33. The facts of this case is that, due to previous enmity, the accused persons gathered unlawfully with weapons before P.W.1's house and assaulted her. When P.Ws.2 and 3 came to her rescue, they were also attacked. Subsequently, P.W. 4 came and

questioned the rioting mob as to why they are attacking womenfolks (P.Ws.1, 2 and 3). For questioning them, they attacked P.W.4 also. They damaged the vehicle parked nearby. Villagers came hearing commotion then they fled away from the scene of occurrence. Now, if one look at the wound certificates of A.1 marked as Ex.D.2, and the wound certificate of Ranganayaki Ex.D.3, which were placed by the defence for the Court to appreciate, we find Ex.D.2 wound certificate indicates A.1 was assaulted by 5 persons using pipe, knife, near water tank around 4.30 pm on 14.07.2009. The wound certificate of Ranganayaki indicates that she was assaulted by two persons with stones at the same place and time. As already pointed, the injured witnesses, A.1 has suggested that there was free for all fight between the two groups and from each group, 25 persons were involved. Whereas, his own wound certificate relied by him, he has deposed that he sustained injury by 5 persons. Therefore, it is clear that the injuries found on A.1 was not during the same transaction which is the subject matter of the present case. To add, along with A.1 one Ranganayaki was also sustained injury. She is not an accused or a witness in this case. This also shows that D.W.1 and Ranganayaki did not sustain the injuries during the same transaction.

34.It is not always necessary a counter case should arise during the same transaction. Any offence committed after commission of the earlier offence as a retaliation may also result in a counter case, but it is not a counter case in same transaction. The proximity between two occurrence must also be nearer by time and place, even then, if it is not during the same transaction or between same parties, the dicta of In re Boya Gajji Pedda Venkatanna alias Bodenna and others (cited supra) will not apply.

35.Regarding contradictions in the prosecution version, it is suffice to extract the observation of the Hon'ble Supreme Court in Subal Ghorai and others vs State of West Bengal (cited supra) :-

"It is true that the prosecution has relied on the evidence of interested witnesses but, interested witness is not necessarily a bad witness. In fact, if the witness is related to the deceased, there is less chance of his leaving aside the real assailants. The evidence of interested witness has to be analyzed with care. But, once the court comes to the conclusion that it is truthful and in accord with the relevant circumstances on record, the court should not hesitate to accept it and record conviction on the basis thereof....."

36.The evidence placed by the prosecution and spoken through the witnesses reveals that, P.W.1 - Indira Kumari w/o Murugavel is the defacto complainant. Her complaint - Ex.P.1 was recorded at the Kannan Hospital, Cuddalore where P.W.1 was admitted. It was recorded on 15.07.2009 at 5.00 am. Based on her statement, the F.I.R., was registered in Cr.No.224/2009 by the respondent Police on 15.07.2009 at 6.15 am. In her deposition, P.W.1 has stated that A.1 attacked her on the head with knife; A.3 attacked her hit her with wooden log on the left leg, saying she should not have legs to stand. A.4 and A.5 hit her on both the legs repeatedly. This evidence has also corroborated the evidence of other injured witnesses P.Ws.2 to 4. The injuries sustained by P.W.1 is found in the Accident Register - Ex.P.8. To the Doctor - P.W.14, she has informed that four persons assaulted her with knife and wooden log. She was referred to Cuddalore Government Hospital for further treatment. She got admitted in Kannan Hospital. She was treated as inpatient from 14.07.2009 to 23.07.2009. P.W.13 - Dr.Murugan has stated that the 'X' ray reveal fracture at mid third left ulna and scalp injury with hemorrhage in left parietal region. The above injuries are grievous in nature. The Investigating Officer has not produced the 'X' ray report or CT scan report of P.W.1. The knife - M.O.1 is recovered based on A.6 confession statement. P.W.1 has not identified the knife in the Court.

37.P.W.3 Govindammal is another witness who sustained grievous hurt in the riot. She has identified the assailants and also spoken about the injuries caused by them to her. She has identified A.6 - Neelakandan who caused cut injury on her left side head, A.7 Krishna Moorthy hit her left hand with wooden log, A.8 Manimozhi hit her on the left leg saying she should not have legs to walk.

38.P.W.2 - Anjalai has identified the assailants and injuries caused by them. She has identified Gnanam who hit her head with knife, A.14 Prabakaran hit her with iron rod.

39.P.W.4 Sakthivel has identified A.10 Ezhil who hit him in the head using a wooden log when he questioned the mob why they are attacking the women. These four witnesses besides identify the respective accused who attacked them and the nature of the injuries caused by them have also deposed about the injuries caused to the other persons and the nature of injuries and weapons used by them to cause the injuries.

40.It is doubted by the learned Senior Counsel for the appellants that the evidence for the prosecution is full of embellishment and bundle of false. When a mob attack, even

identifying the assailant itself is difficult whereas, in this case, P.Ws.1 to 4 have not only identified the persons who attacked them but also the accused who attacked others. This is not humanly possible, if really, they had sustained injuries in the manner they have deposed. Further, what they have deposed before the Court is regarding the injuries sustained by other witnesses and their assailants not found in their previous statements given to the Investigating Officer - P.W.16. The omissions and embellishments found in the deposition of P.Ws.1 to 4 is admitted by P.W.16 in his cross examination.

41.As far as this contradiction and embellishments, when the respective witnesses have spoken about the injuries they sustained and the assailants who caused the said injuries, the alleged embellishment is only in respect of corroboration of the injured witness by other eye witnesses. Even if that portion of the evidence is to be ignored, the substantive evidence of the victims about the injuries they sustained and the identification of the assailants stand corroborated by documentary evidence namely, the wound certificates Exs.P.8 to 11. The only lapse in the investigation which this Court could find is that, the prosecution has not examined any Doctor from Kannan Hospital where the victims P.Ws.1 to 4 got the treatment. The prosecution has not placed the 'x' ray and scan reports for P.W.1. However, the Doctor who first treated the injured witnesses has been examined and the wound certificates which were prepared by her at the time of their treatment and reference to Government Hospital for further treatment, are on record. This evidence is only sufficient to hold A.2 caused grievous hurt on P.W.1 and A.6 caused grievous hurt on P.W.3 but, it is not sufficient to hold them guilty of attempt to murder. The mens rea to commit murder not proved.

42.Regarding weapons or thing alleged to have used, it is pertinent to note that the injured witnesses have alleged that knife, iron rods and wooden logs were used by the assailants. The prosecution was able to recover only one knife which is marked as M.O.1. This was recovered based on the confession statement of A.6. Govindammal - P.W.3 has deposed that A.6 attacked her with knife on her left side of the head, saying 'get lost'. She has also identified the knife - M.O.2. So, the prosecution has proved the guilt as against A.6 that he has caused grievous hurt to P.W.3 with dangerous weapon - M.O.2. This offence falls under section 326 I.P.C., and not under Section 307 I.P.C since, the evidence are not adequate to prove the attack was with intention to cause death.

43.As far as A.1 and A.2 are concerned, P.W.1 the injured witnesses has deposed that A.1 hit her on the left hand with iron rod and A.2 hit her on the head with knife, though, the

prosecution not able to recover any weapon, the Doctor - P.W.13, has opined that the injuries on P.W.1 cut injury on head and her left forearm ulna was found fractured. These injuries could not be caused without dangerous weapon. Therefore, A.2 is to be held guilty for offence only under Section 326 I.P.C., and not for offence under section 307 I.P.C. As a result, the finding of the trial Court that A.1 is guilty of offence under Section 326 I.P.C., is confirmed. Whereas, the trial Court finding against A.2 guilty of offence under Section 307 I.P.C., is modified as guilty of offence under Section 326 I.P.C..

44.Since A.1, A.2 and A.6 are proved to be present with deadly weapons along with other member of the unlawful assembly with a common intention, A.1, A.2 and A.6 are guilty of offence under Section 148 I.P.C. The conviction of trial Court A.1, A.2 and A.6 for the offence under Section 148 I.P.C., is confirmed.

45.The presence of A.3 to A.5 along with A.1, A.2 and A.6 is deposed by P.W.1. The trial Court has held that the prosecution has failed to prove any other overt act against them except they being members of the unlawful assembly. Though, P.W.1 has implicated them, absence of any injuries on her tallying her oral evidence, the trial Court has held A.3 to A.5 for offence under Section 147 I.P.C. This finding is based on reliable evidence hence, confirmed.

46.P.W.3 - Govindammal has sustained cut injury on her scalp. The Doctor found blood oozing and her parietal region exposed. P.W.3 has deposed that the head injury was caused by A.6. Though, she has deposed that A.7 and A.8 hit her on her hands and legs with wooden logs, no injuries noted by the Doctor - P.W.13. Ex.P.9 - wound certificate does not corresponds the said attacks. So, A.7 and A.8 are guilty only for offence under Section 147 I.P.C. The conviction of A.7 for offence under Section 323 I.P.C., by the trial Court is set aside, for want of proof.

47.The charge against A.9 - Jothi is that, he as a member of the unlawful assembly, scolded P.W.3 using the language that "இந்த வல்லார ஓரியை வெட்டுங்கடா என்று ஜோதி என்னை பார்த்து திட்டினார் " There is no reliable evidence to hold A.9 uttered the above words. Therefore, benefit of doubt has to be given to A.9 in respect of offence under Section 294(b) I.P.C. His presence in scene of occurrence along with other members of unlawful assembly alone is prove. So, while confirming his conviction for offence under Section 147 I.P.C., the conviction for offence under Section 294(b) I.P.C., is set aside.

48.Ezhil - A.10, has caused head injury on P.W.4 who came to the rescue of P.Ws.1 to 3. When P.W.4 questioned the mob why

they are attacking women, A.10 has hit him on the head with wooden log. In the Accident register - Ex.P.10, the Doctor has noted a deep lacerated wound 7 x 2 cm in frontal region of the scalp. The Doctor has opined that this injury is simple in nature. The presence of A.10 along with other members of unlawful assembly and causing hurt is proved through P.W.4. Hence, the conviction of A.10 for offence under Sections 147 and 323 I.P.C., are confirmed.

49.The overt acts of A.11 and A.12 causing damage to the two wheeler, Hero Honda is consistently spoken by P.Ws.1 to 4. The damage caused to the said two wheeler is noted by the Motor Vehicle Inspector - P.W.14. In his report - Ex. D.12. The damage hero honda motor cycle is seized under mahazar and marked as M.O.1. Therefore, their presence among the members of the unlawful assembly and for causing damage to the hero honda motor cycle are found proved and accordingly, the conviction for offence under Sections 147 I.P.C., and Section 3(1)(a) of PPDL Act are confirmed.

50.A.13 Gnanam attacked Anjalai -P.W.2 with knife on her hand. The wound certificate issued for A.2 reveals she sustained one deep laceration measuring 15x2 cm in the middle of the scalp extending from frontal region to parietal region. The Doctor has referred Anjalai - P.W.2 to the Government Hospital Cuddalore, to take 'x' ray of the skull but no 'x' ray was marked during trial. The Doctor has opined the said injury sustained by Anjalai - P.W.2 was simple in nature. With this evidence, A.13, is held guilty of offence under Sections 148 and 324 I.P.C. This finding and sentence is confirmed.

51.As far as A.14 is concerned, P.W.2 has attributed some overt act. But, there is no corresponding injuries found in P.W.2 when P.W. 13 Doctor examined her. Charge under Section 324 I.P.C., against A.14 not found proved. His presence along with the other accused assembled unlawfully alone is proved. So, conviction of A.14 for offence under Section 148 I.P.C., is confirmed.

53.The charge against A.15 and A.16 is that, they were members of the unlawful assembly armed with deadly weapons and intimidated the victims. To prove A.15 to A.16 were present, at the place of occurrence and they both were found in possession of weapons, the prosecution has not let in any trust worthy evidence. Therefore, A.15 and A.16 are entitled for acquitted. Therefore, the conviction against A.15 and A.16 for offence under Section 148 I.P.C., is set aside.

54.In the result, the Criminal Appeal is partly allowed in the following terms:-

(i)The conviction and sentence passed against A.1, A.2,

A.6, A.13 and A.14 for the offence under Section 148 I.P.C., are confirmed;

(ii)The conviction on A.2 and A.6 for offence under Section 307 I.P.C., is modified as offence under Section 326 I.P.C. A.2 and A.6 are sentenced to undergo three years rigorous imprisonment for offence under Section 326 I.P.C., and to pay a fine of Rs.5,000/- in default to undergo two months rigorous imprisonment. Similarly, for A.1, who is found guilty of Section 326 I.P.C., the period of sentence for offence u/s 326 I.P.C., is modified to 3 years and to pay fine of Rs.5,000/- in default 2 months R.I.

(iii)The Conviction and sentence imposed on A.3 to A.5 and A.7 to A.12 for offence under Section 147 I.P.C., is confirmed;

(iv)The conviction and sentence imposed on A.9 for offence under Section 294(b) I.P.C., is set aside. Fine amount paid, if any, shall be refunded.

(v)The conviction and sentence imposed on A.10 for offence under Section 323 I.P.C., is confirmed;

(vi)The conviction and sentence imposed on A.11 and A.12 for offences under Section 3 of TNPPDL Act, is confirmed.

(vii)The conviction and sentence imposed on A.13 for offence under Section 324 I.P.C., is confirmed.

(viii)The Conviction and sentence imposed on A.15 & A.16 for offence under Section 148 I.P.C., is set aside. The fine amount, if any paid shall be refunded and the bail bond, if any, shall stand cancelled.

(ix)The above sentences imposed on appellants/accused shall run concurrently.

(x)The period of sentence already undergone by the appellants/accused shall be given set off as provided under Section 428 Cr.P.C.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

jbm

To

- 1.The Mahila Judge,
The Mahila Court(Sessions Court),
Cuddalore.
 - 2.The Judicial magistrate,
No.II, Panruti, Cuddalore District.
 - 3.The Chief Judicial Magistrate,
Cuddalore.
 - 4.The Inspector of Police,
Kadampuliyur Police Station,
Cuddalore District.
 - 5.The Superintendent,
Central Prison, Cuddalore.
 - 6.The District Collector/
District Magistrate,
Cuddalore.
 - 7.The Director General of Police,
Tamilnadu, Mylapore, Chennai-4.
 - 8.The Public Prosecutor,
High Court, Madras.
 - 9.The Section Officer,
Criminal Section Records,
High Court, Madras (+2 Copies)
- +1cc to Mr.A.Sasidharan, Advocate, S.R.No. 24062

सत्यमेव जयते

Cr1.A.No.479 of 2012

BR(CO)
GN(22/04/2019)

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