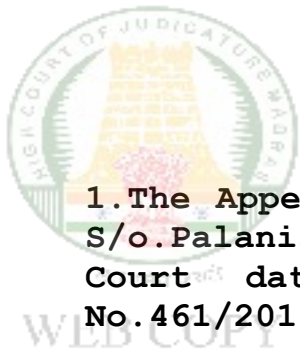




Bail Slip

1.The Appellant/Accused 1.R.Mahalingam, S/o.Ramasamy 2.P.Iyyappan, S/o.Palanisamy was released on bail in and by the order of this Court dated 08.12.2010 made in MP(MD)1/2020 in Cr1.A(MD) No.461/2010.

2.The Appellant/Accused 1.R.Vadivel, S/o.Ramasamy 2.R.Thirumalaisamy, S/o.Ramasamy 3.R.Sekar, S/o.Ramasamy was released on bail in and by the order of this Court dated 08.12.2010 made in MP(MD)1/2010 in Cr1.A(MD)462/2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A.(MD)Nos.461 & 462 of 2010

1. R.Mahalingam

2. P.Iyyappan

... Appellants/Accused Nos.2 & 5
in Cr.A.(MD)No.461 of 2010

1. R.Vadivel

2. R.Thirumalaisamy

3. R.Sekar

... Appellants/Accused Nos.1,3&4
in Cr.A.(MD)Nos.462 of 2010

Vs.

The State rep. by,
The Inspector of Police,
Kallimandayam Police Station,
Dindigul District.

... Respondent/Complainant
in both criminal appeals

Common Prayer: Criminal Appeals are filed under Section 374 (2) of Cr.P.C., to set aside the Judgment made in S.C.No.87 of 2010 by the Fast Track Court, Dindigul, dated 30.11.2010.
(in criminal appeals)



For Appellants

: Mr.Mohan,
for Mr.D.Venkatesh.

For Respondent

: Mr.A.Robinson,
Government Advocate (Crl. Side).

COMMON JUDGMENT

The appellants in these two appeals faced trial in S.C.No.87 of 2010 on the file of the Sessions Judge/Fast Track Court, Dindigul, for the following charges:-

Charges framed against the accused	1. A1 to A5 - under Section 147 IPC A1, A3 & A4 - under Section 148 IPC 2. A1,A3& A4- under Section 302 r/w 34 IPC 3. A2 & A5 - under Section 302 r/w 109 IPC 4. A1 - under Sections 323 & 324 IPC A2 - under Section 323 IPC (4 counts) A3 - under Section 323 IPC A4 - under Section 323 IPC (2 counts) A5 - under Section 323 IPC (2 counts)
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They denied the charges and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Ex.P.1 to Ex.P.17. M.O.1 to M.O.3 were marked. The Court below put all the incriminating circumstances to the accused for obtaining their explanation under Section 313 of Cr.P.C. It finally convicted them. The conviction and sentence rendered by the Court below is as follows:-



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Findings of the trial Court and sentence

A1 to A5 were acquitted of the following charges:

- i) A1-under Section 323 and 324 IPC
- ii) A2-under Section 324 IPC (4 counts)
- iii) A3-under Section 323 IPC
- iv) A4-under Section 323 IPC (2 counts)
- v) A5-under Section 323 IPC (2 counts)
- vi) A1, A3 & A4-under Section 302 r/w 34 IPC
- vii) A2 & A5-under Section 302 r/w 109 IPC

A1 to A5 were instead convicted as follows:

i. A1 to A5 under Section 147 IPC and sentenced to undergo 2 years Rigorous Imprisonment each.

ii. A1, A3 & A4 under Section 148 IPC and sentenced to undergo 3 years Rigorous Imprisonment each.

iii. A1, A3 & A4 under Section 325 IPC and sentenced to undergo 7 years Rigorous Imprisonment each and to pay a fine of Rs.2,000/- each, in default to undergo a further period of 6 months Rigorous Imprisonment.

iv. A2 & A5 under Section 323 IPC and sentenced to undergo 1 year Rigorous Imprisonment each and to pay a fine of Rs.1,000/- each, in default to undergo a further period of 3 months Rigorous Imprisonment

Total fine amount Rs.8,000/-

The sentences of imprisonment for all the offences were ordered to run concurrently. The period already undergone has been directed to be set off under Section 428 Cr.P.C.



Challenging the Judgment of conviction and sentence made on 30.11.2010, these two appeals have been filed by the accused.

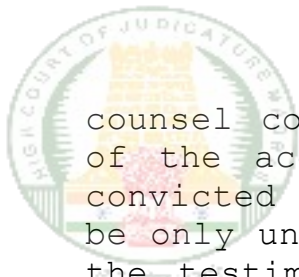
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2. Heard the learned counsel on either side.

3. The deceased in this case is one Rajesh aged about 18 years. He was residing with his widowed mother P.W.1 Kannammal and with P.W.10. The occurrence had taken place near the house of P.W.10. The scene of occurrence is at K.Keeranur. The case of the prosecution is that on 25.04.2008 at about 04.45 p.m., the accused went to the house of P.W.10 and picked up quarrel with those assembled there. Rajesh and the eyewitnesses were said to have been standing there. In the ensuing scuffle, the eyewitnesses suffered injuries, while Rajesh died. P.W.1 Kannammal, the mother of the deceased filed Ex.P.1 complaint. Based on which, Ex.P.15 First Information Report in Crime No.83 of 2008 was registered for the offences under Sections 147, 148 and 302 of I.P.C. P.W.13 investigation officer completed all the usual formalities and laid final report before the learned Judicial Magistrate No.1, Dindigul. Since the case was exclusively triable by the Sessions Judge, it was committed to the Sessions Court in P.R.C.No.15 of 2008. The case was tried in S.C.No.87 of 2010 by the Sessions Judge, Fast Track Court, Dindigul.

4. Accused Nos.1 to 4 are brothers, while accused No.5 is a close relative. The accused and the deceased belong to the same community and are related. From a reading of the testimony of P.W.10, one can come to the conclusion that there was always simmering tension between the two. I do not agree with the submission of the appellants' counsel that there was no motive for the occurrence. In fact motive has been amply established. Accused No.3 Thirumalaisamy had married the daughter of P.W.10 against the wishes of P.W.10. Though this happened several years ago, that had caused a big rift between the two families. P.W.10 speaks about the assault made by accused No.3 on his sons. Earlier on the fateful day, it was alleged that P.W.4 Kannaiyan, Villaali Veeran, Vijayan, Marammal and Palani had attacked accused No.3 Thirumalaisamy. This appears to have furnished a provocation for the evening attack by the accused group. Therefore, it is clear from the testimony of the eyewitnesses and other prosecution witnesses that there was sufficient motive for the occurrence in question.

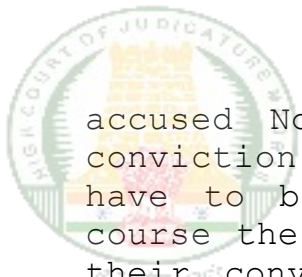
5. The appellants' counsel strongly pleaded that since it was a group attack and there was a scuffle, it is not possible to pinpoint the role played by a particular accused. The appellants'



counsel contended that when it is not possible to say that which of the accused caused the vital injury, none of them can get convicted under Section 325 of I.P.C. and that the conviction can be only under Section 323 of I.P.C. But then, a careful reading of the testimony of the various eyewitnesses would go to show that all the eyewitnesses in unison stated that accused No.1 Vadivel hit the deceased Rajesh with M.O.1 Wooden Log. P.W.1 is the mother of the deceased. P.W.2 is the aunt. P.W.3 is the brother of the deceased. P.W.4 to P.W.7 are the relatives. All the witnesses have suffered injuries, though they are simple in nature. The fact that the said witnesses have suffered injuries cannot be questioned or doubted. The prosecution has marked the relevant Accident Register entries as Ex.P.4 to Ex.P.10. In Ex.P.3 Postmortem Certificate, the injuries found on the body of the deceased have been mentioned. The head injury has been mentioned as one of the injuries found on the body of the deceased. Thus oral evidence stands sustained by the Postmortem Certificate. All the witnesses clearly stated that when the accused were advancing towards the assembled eyewitnesses including the deceased, the deceased challenged accused No.1 Vadivel who hit him on the head. The testimony of the eyewitnesses clearly commands the confidence of this Court. Following the confession of accused No.1, M.O.1 to M.O.3 were recovered. The admissible portion of the confession of accused No.1 was marked as Ex.P.13. The Observation Magazar for M.O.1 to M.O.3 is Ex.P.14.

6. The learned trial Judge after a detailed consideration of the evidence on record, convicted all the accused for the offence under Section 147 of I.P.C., and sentenced them to undergo two years Rigorous Imprisonment each and convicted accused Nos.1,3 and 4 for the offence under Section 148 of I.P.C. and sentenced to undergo three years Rigorous Imprisonment each. Accused Nos.1, 3 and 4 have also been convicted for the offence under Section 325 and sentenced to undergo seven years Rigorous Imprisonment each. Accused Nos.2 and 5 have been found guilty under Section 323 of I.P.C. and sentenced to undergo one year Rigorous Imprisonment and they were also levied with a fine of Rs.8,000/- totally.

7. I am of the view that accused Nos.3 and 4 cannot be found guilty for the offence under Section 325 of I.P.C. It emerges from the evidence on record that on the day in question, accused No.3 had been attacked by some of the family members of the deceased. Therefore, the accused party had come to the spot in question to pick up quarrel. Even the attack on Rajesh by accused No.1 Vadivel appears to have happened more out of provocation, because the evidence clearly states that when the accused party were coming towards them, it was Rajesh, who darted in front and challenged accused No.1 Vadivel. Therefore, I am of the view of that even while sustaining the conviction against



accused No.1 for the offence under Section 325 of I.P.C, the conviction of accused Nos.3 and 4 deserves to be modified and they have to be found guilty only under Section 323 of I.P.C. Of course the accused formed an unlawful assembly and that therefore, their conviction under Section 147 will have to be necessarily sustained. Since the accused had used force and violence, their conviction under Section 148 of I.P.C. also has to be sustained.

8. It is however evident from the record that it was only the fatal injury caused by accused No.1 that caused the death of Rajesh. Therefore, others cannot be placed on par with accused No.1 in the matter of sentence. In fact the learned counsel appearing for the appellants after arguing at length submitted that having regard to the evidence on record, he would not challenge the finding of guilt passed by the Courts below on the appellants herein and that he would only seek leniency in the matter of sentence. He also submitted that the appellants belonged to a very ordinary strata and that they are eking out their livelihood by breaking stones. The appellants' counsel would also submit that if this Court gives two months time, they would remit a sum of Rs.50,000/- to the credit of S.C.No.87 of 2010 on the file of the Additional District and Sessions Judge/Fast Track Court, Dindigul. The said amount can be paid as compensation to P.W.1 Kannammal.

9. Taking note of the mitigating circumstances, this Court modifies the sentence of conviction against accused Nos.3 and 4 under Section 325 of I.P.C., to one under Section 323 of I.P.C. Since the accused Nos.2 to 5 have spent about 92 days in prison, the sentence imposed on them on various heads is modified and reduced to the period already undergone. As regards accused No.1, the sentence of imprisonment imposed on him is reduced to 18 months Rigorous Imprisonment. Accused No.1 is given two months time from the date of receipt of a copy of this order, to surrender before the trial Court.

10. With this modification, the appellants are directed to deposit jointly a sum of Rs.50,000/- (Rupees Fifty Thousand only) as compensation to the credit of S.C.No.87 of 2010 within a period of two months from the date of receipt of a copy of this order. If the appellants fail to do so, they will have to undergo the default sentence of six months Simple Imprisonment. The sentence of fine imposed by the trial Court is set aside. However, the learned counsel appearing for the appellants make a mention that the appellants will not apply for refund of the fine amount.



11. With this modification, the Criminal Appeals stand partly allowed. The bail bond if any executed by them shall stand cancelled. No costs.

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Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

To:

1. The Additional District and Sessions Judge,
Fast Track Court, Dindigul.
- 2.The Principal Sessions Judge, Dindigul.
- 3.The Judicial Magistrate No.I, Dindigul.
- 4.Do Thro'
The Chief Judicial Magistrate, Dindigul.
5. The Inspector of Police,
Kallimandayam Police Station,
Dindigul District.
- 6.The Superintendent, Central Prison, Madurai.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer,-2 copies
Criminal Section/Records,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.D.VENKATESH, Advocate (SR-75390[F] dated 16/07/2019)

Cr1.A.(MD)Nos.461 & 462 of 2010
15.07.2019

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