

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	15.03.2021
Date of Judgment	30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

AND

THE HONOURABLE MR. JUSTICE **G.ILANGO VAN**

Crl.A(MD)No.128 of 2018

M.Elangovan : Appellant/Defacto Complainant/
P.W.1

Vs

1.The Inspector of Police,
Karambakudi Police Station,
Pudukkottai District.
(Crime No.11 of 2007)

2.Sundarrajan

3.Jeyakannan

4.Prabhu

5.Murugan

6.Murugesan

7.Shanmugam

8.Shankar

9.Senthilkumar

10.Ramachandran

11.Rajappa

12.Naveen

13.Murugesan

: Respondent/Accused Nos.1 & 2

Prayer: Criminal Appeal filed under section 372 of the Criminal Procedure Code, against the judgment passed by the Additional District and Sessions Court, Pudukottai, in S.C.No.22 of 2010, dated 16.09.2017.

For Appellant : Mr.K.Baalasundharam

For R1 : Mr.R.Anandha Raj,
Additional Public Prosecutor

For R2 to R13 : Mr.T.Senthilkumar

J U D G M E N T

(Judgment of the Court was made by **G.ILANGO VAN**)

This appeal has been filed against the judgment passed by the Additional District and Sessions Court, Pudukottai, in S.C.No.22 of 2010, dated 16.09.2017.

<https://hservices.courts.gov.in/hservices/>



2. The case of the prosecution before the Trial Court:-

i) In Chokkam Pettai Village, there was a proposal to construct a Pillaiyar Temple at the finance made by the people, who are working in Singapore. Over the construction of the temple, dispute arose among the villagers and due to that, two groups were operating, one under the head of Sudararaj and another under the head of Radhamani. Moreover, Sundararaj was defeated in the panchayat election. The said Sundararaj group was under the impression that because of the non-support of Radhamani group, Sundararaj was defeated. Because of that, there was enmity between these two groups.

ii) On 17.01.2007, at about 01.00 p.m., the accused under the head of Sundararaj group planned to murder one Sekar and the witness Ilangovan and also intended to injure the other people and they formed unlawful assembly and indulged in rioting. In the unlawful assembly, the first accused was armed with aruval, the accused Nos. 2, 4, 5, 10, 11 and 12 armed with sticks, the third accused armed with sickle and the accused Nos. 6, 7 and 8 accused armed with wooden log. In furtherance of the common intention, the first accused assaulted the deceased Sekar with aruval in the middle of the head region. The eighth accused assaulted Sekar with wooden log and the accused No.4, 10 and 11 also attacked him with sticks all over the body. Because of the assault, Sekar suffered severe injuries and died on the spot itself.

iii) In the course of the same transaction, the second accused assaulted the witness Ilangovan with an intention to cause death on the head region. The fifth accused caused injury on the left hand of witness Illangovan and the eighth accused assaulted him with wooden log and caused injury. The first accused caused injury to the witness Ravichandran with aruval, on his head region. The sixth accused caused injury to the witness Shanmugam with stick, on the head region. The seventh accused caused injury to one Radhamani with wooden log. The ninth accused assaulted the witness Balasubramaniam with stick on the left frontal region. The tenth accused caused injury to Sasikumar, on the head region.

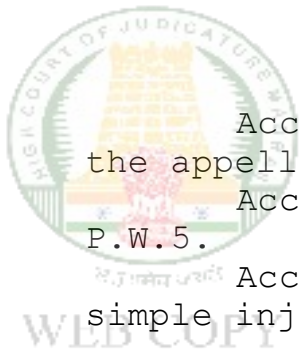
iv) All the accused were charged for the offences punishable under Sections 148, 302, 307, 326, 324 r/w Section 149 IPC.

3. The following charges were framed against the correspondenting accused as under:-

Accused Nos.1 to 12: Offence u/s 147 & 148 IPC

Accused Nos.1 to 8 : Offence u/s 302 IPC

Accused Nos.4, 10 & 11:Offence u/s 302 r/w 34 IPC



Accused No.2: Offence u/s 307 IPCf for causing injury to the appellant/P.W.1.

Accused No.6: Offence u/s 326 IPC for causing injury to P.W.5.

Accused Nos.3,5 & 7 to 10: Offence u/s 324 IPC for causing simple injury.

4. To prove the charges, the prosecution examined 18 witnesses and marked 24 documents and 7 Material Objects. One witness was examined as Court witness and one document was also marked as a Court document.

5. Narration of facts:-

P.Ws.1, 2, 3, 4, 5 and 6 are the injured eyewitnesses in the occurrence. P.W.1, as mentioned earlier, belonged to another group, when the accused group started constructing Pillaiyar Temple, witness Radhamani, Ravichandran and Sasikumar objected to it stating that temple should not be constructed in a public place. Similarly, some two or three months prior to the date of occurrence, Panchayat Election was held, in which, the accused Sundararaj was defeated by the opposite party namely, Annamalai own the election. Because of that, the first accused was inimical towards injured witnesses. On the date of occurrence, i.e., on 17.01.2007, at about 01.00 p.m, Jallikattu was conducted in the Village. At that time, noise came from the place situated between the School and a Television Room. So, all the witnesses rushed to the place and found that all the accused were standing there with deadly weapons. The first accused assaulted the deceased Sekar with aruval on the head region. The accused Naveen, Rajappa, Murugesan and Senthilkumar also assaulted the deceased Sekar with wooden log. The accused Jeyakannan assaulted P.W.1 with iron rod with an intention to cause death. The accused Murugesan assaulted him on left hand with stick. The accused Senthilkumar assaulted him with stick on his right shoulder region. The accused Shanmugam S/o. Rathana Thevar assaulted one Shanmugam S/o.Kali Thevar, on his shoulder region. The accused Ravichandran assaulted one Balasubramaniam with stick. Rajappa assaulted Sasikumar with stick on the head region. Naveen assaulted P.W.1's brother with stick. Radhamani was assaulted by Sankar on the head region. Prabu assaulted Ravichandran on the head region with sickle.

6. P.W.1 took the deceased Sekar to Kantharvakottai Government Hospital, Pudukottai and there, he was declared dead by Doctors. Injured Shanmugam and Ravichandran were taken by him to Government Hospital, Thanjavur. The injured Balasubramaniam and Radhamani were sent to Pudukkottai Government Hospital.

7. When P.W.1 was admitted in the hospital, police from Kaveri Sub-Station, Police Station, recorded a statement, which is marked



as Ex.P.1.

8. P.W.17, was working as Sub Inspector of Police during the relevant time in Pudukottai, Karambakudi Police Station. He received information at about 04.30 p.m, on 17.01.2007 from the Government Hospital, Thanjavur. He visited the hospital and recorded the statement of P.W.1 and registered a case in Crime No.11 of 2007 for the offences punishable under Sections 147, 148, 323, 324, 307 and 302 IPC. Ex.P.13 is the printed First Information Report.

9. P.W.18 was working as Inspector of Police during the relevant time at Karambakudi Police Station and on 17.01.2007, he received the case file and started investigation. On 18.01.2007, at about 03.00 a.m, he visited the place of occurrence and in the presence of witnesses, he prepared observation mahazar and sketch and recorded the statements of witnesses. From 09.00 a.m., to 12.00 p.m, he conducted inquest, on the body of the deceased Sekar in the presence of Panchayathars. The Inquest Report is marked as Ex.P.15 and sent the body for postmortem.

10. P.W.11 was working as duty Doctor on 18.01.2007 and on receipt of the request from the Investigating Officer, he conducted postmortem on the body of the deceased. He found the following injuries:-

In abrasion on the left ankle region. The lacerated injury on the right side of the head. The contusion on the back side of the head. Examination of the internal organs shows that haemorrhage on the brain region. A fracture on the skull region. He was under the opinion that because of the shock and haemorrhage, death would have been caused to the deceased. Ex.P.6 is the postmortem certificate. Final opinion is Ex.P.7. He was also under the opinion that the injuries would have been caused with aruval and wooden logs.

11. P.W.18 continued the investigation and on 19.01.2007, at about 3.30 a.m, he arrested the accused Murugesan, Naveen, Jeyakanan and Prabu. After that, he recorded the statements from them and also recovered the articles as per the Disclosure Statement. On 21.01.2007, at about 01.30 p.m, he arrested the accused Shanmugam, Sankar and Ramachandran and recorded their confession statements. Similarly, he arrested the accused Sundararajan, Senthilkumar near Vellala Hostel Bus Stop and he completed the other formalities.

12. Further investigation was undertaken by P.W.16, Inspector of Police, Karambakudi, at the relevant time and on 17.03.2008, he recorded the statement of Doctor Raja, Dr.Abdul Gathaboos, Dr. Subramanian and Dr.Jerold Parisudham and recorded the



statement of other witnesses and after completing the investigation, he filed a final report making the allegation against the accused persons stated above.

13. P.W.13 - Doctor was working as duty medical officer in Kandarovakottai Government Hospital and on 17.01.2007, at about 04.10 p.m, he examined P.W.1 - Illangovan and on his examination, he found a cut injury. Moreover, 4 x 3 x 3 cm on head region. He told him that he was assaulted by known persons with aruval, stone, stick etc., The injuries are simple in nature. On the very same day, he examined the Ravichandran and found a cut injury measuring 3 x 3 x 3 cm on the head region. So, as per his opinion, the injuries were simple in nature.

14. P.W.14 - Doctor, who was working as duty medical officer in Kandarovakottai Government Hospital, examined P.W.4 Radhamani on 17.01.2007 and found lacerated injury on the forehead measuring 10 x 2 x 1 cm. The injuries were simple in nature.

15. P.W.15, Doctor, examined P.W.8 Murugesan took the injured Shanmugam for treatment on 17.01.2007 at about 05.35 p.m, and he found that the suture wound measuring 7 x 2 cm on the forehead region. The injury was grievous in nature.

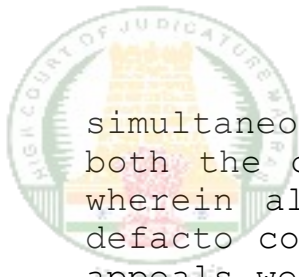
16. After completion of the prosecution side evidence, the accused were put on questions under Section 313 Cr.P.C., and they denied the facts stated by the witnesses. No witness was examined and no document was marked on the side of the accused.

17. On the side of the Court, Assistant from the Additional District Court, Pudukottai was examined and the judgment in S.C.No.104 of 2004 dated 22.06.2006 was marked.

18. So, at the conclusion of the trial, the Trial Court came to the conclusion that charges against all the accused persons were not proved beyond all reasonable doubts and accordingly, it acquitted all the accused persons. Challenging the judgment of the acquittal, this appeal is preferred by P.W.1 - Illangovan.

19. According to P.W.1, the Trial Court failed to believe the injured witnesses, P.W.3 and P.W.6. P.W.2, who have deposed clearly about the occurrence.

20. From the facts narrated above and from the evidence of P.Ws.1, 2, 3, 4, 5 and 6, it is seen that there was enmity between the two groups in the Village, and on the particular day of the occurrence, both the groups involved in a clash. Even though it is a case and counter, both the cases were tried separately and



simultaneously, trial was conducted and judgment was rendered in both the cases. A counter case was tried in Crime No.12 of 2007 wherein also, all the accused were acquitted against which, the defacto complainant filed Crl.A.(MD)No.104 of 2020. So, both these appeals were heard together.

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21. P.W.1 Illangovan is arrayed as accused No.7 in the counter case. Similarly, P.W.2 as accused No.11. P.W.3 as accused No.13. P.W.4 as accused No.8 and P.W.6 also as accused No.5.

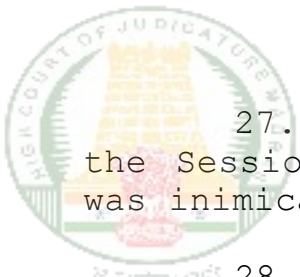
22. It was also brought on record to show that on both sides, several people were injured. In the clash, the brother of P.W.1, namely, Sekar, the deceased, injured and died on the spot.

23. As mentioned earlier, the evidence of P.W.11, it is seen that the deceased Sekar had injuries on the right temporal region measuring 10 x 1 x 0.5 cm, which caused the haemorrhage on the brain region and because of the shock and Haemorrhage, he died. So, as per the evidence of P.W.1, the deceased was attacked by the accused namely, Sundararajan, on the head region. The accused Naveen, Rajakannan, Murugesan and Sentilkumar assaulted him with wooden logs. The death occurred instantaneously, on the spot itself.

24. Moreover, as mentioned earlier, only a lacerated injury was found on the right temporal region. But, as per the evidence of P.W.1, he was assaulted by the first accused with aruval. As per the evidence of P.W.11, this lacerated injury can be caused by stones. A cut injury will be caused by an aruval. So, the medical evidence is quite contra, to the evidence of P.W.1 and other eye-witness to the occurrence.

25. The Trial Court on the basis of the evidence, recorded the findings to the effect that there was a group clash during the relevant time, in which, both the sides got injured and who were the aggressors, were not explained by the prosecution and that was not found in the course of investigation.

26. P.Ws. 4 and 5, who were eyewitnesses during the course of evidence admitted that both the groups clashed with each other by coming in the opposite direction and quarrel broke out between the groups and also evidence to show that the deceased came to the Village only in the morning on the date of occurrence. This is also in evidence to show that he was an accused in a murder case in S.C.No.104 of 2004 on the file of the Additional District and Sessions Court, Pudukkottai and he was acquitted on the ground that he was insane on the date of occurrence.



27. According to the accused, because of the acquittal from the Sessions Case, the complainant party namely, Manickam family was inimical against the deceased.

28. But, whatever it may be, it is seen that the deceased person was already affected by mental insanity and he came to the village only in the morning, on the date of occurrence. Somehow or other, he got himself involved in the group clash and sustained injuries. When there is a group clash, it is the duty of the prosecution to clearly establish, who were the aggressors and who assaulted whom. But, it may not be absolutely possible in group clash to clearly prove with regard to the injury suffered by every individual and assailants. So, that is why it is repeatedly held that case of case in counter and group clash the aggressors must be clearly fixed. But, here, absolutely, there is no evidence on record. So, there is a clear doubt with regard to the identity of the person, who assaulted the deceased.

29. Moreover, as mentioned earlier, the nature of injury suffered by the deceased also did not correlate with that of the alleged overt act and the weapon used by the first accused to assault the deceased. So, rightly, the Trial Court has given the benefit of doubt to the accused.

30. Even though, in the occurrence, P.W.1 P.W.5 and P.W.6 were also injured in the occurrence and corroborated by the medical evidence as narrated above, it was admitted on the side of the defacto complainant during the course of arguments that with regard to the injury suffered by the other witnesses, prosecution has not established the case beyond doubt. It is also admitted that there are several contradictions and omissions in the prosecution case with regard to the injuries suffered by the above said witnesses.

31. The learned counsel for the defacto complainant was very fair in his submissions. So, looking this submission in the back ground of the evidence on record and in the light of the findings recorded by the Trial Court, we are of the considered view that the prosecution failed to establish the overt act of each accused against P.Ws.1, 4, 5 and 6. So, the judgment of the acquittal passed by the Trial Court, against these persons requires no interference.

32. Even though, it is very unfortunate that the person, who was affected due to insanity, killed in the occurrence. But, unfortunately, the possibility of hitting by stone, cannot also be ruled. This was a weighty reason, given by the Trial Court on this aspect. So, the over all occurrence shows that the quarrel broke out suddenly, in which, both the groups involved in



exchanging in blows and stone throwing etc., We find nothing on record to show that appreciation of evidence done by the Trial Court is perverse or without any proper consideration.

33. So, considering the facts and circumstances of the case, we are of the considered view that the judgment of the acquittal, passed by the Trial Court, requires no interference.

34. In the result, this Criminal Appeal stands dismissed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional District and Sessions Court, Pudukottai,

2.The Inspector of Police, Karambakudi Police Station,
Pudukkottai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.SENTHIL KUMAR, Advocate (SR-14300[F] dated
30/03/2021)

Judgment made in
Cr1.A(MD)No.128 of 2018
30.03.2021

TR(19.05.2021) 8P 5C