



BAIL SLIP

The Appellant/Accused Selvam @ Pandi @ Panayan Accused No 1 and Selvam, Accused No.2 was released on bail of this court dated 22.03.2017 and made in CRLMP(MD).No. 1557 on CRL.A.59 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED : 07.07.2021

JUDGMENT PRONOUNCED : 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.A.(MD) No.59 of 2017

1.Selvam @ Pandi @ Panayan

2.Selvam : Appellants/Accused No 1 & 2

-vs-

The State represented by
the Inspector of Police,
Avaniapuram Police Station,
Madurai.

Crime No.163 of 2002 : Respondent

PRAYER:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records pertaining to the judgment made in S.C.No.345 of 2011, dated 25.01.2017 passed by the learned VI Additional District and Sessions Judge, Madurai and set aside the same.

For Appellants : Mr.B.Jameel Arasu

For Respondent : Mr.T.Senthil Kumar

Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed to set aside the judgment dated 25.01.2017 made in S.C.No.345 of 2011 by the learned VI Additional District and Sessions Judge, Madurai.

2.The case of the prosecution is that on 21.03.2002, before the house of one Nagesh situated near Chinthamani Main Road, P.W-1-Pandi @ Pambu Pandi was selling mini quarter bottle wines illegally by evening 07.00 hours. At that time, A-1-Selvam @ Pandi @ Panayan, S/o.John, A-2-Selvam, S/o.Paulraj and A-3-Vijayakumar along with 10 other people having sticks, swords and knives approached P.W-1 and sought money from him. P.W-1 had refused to give money. Agitated over the refusal by P.W-1, the gang consisting of A-1, A-2 and A-3



along with 10 others attacked P.W-1.

3. On being attacked, P.W-1 cried for help. Hearing his cries, the neighbours and passersby ran towards him to his help. On seeing the people of the area running towards the Accused persons, the gang of aggressors ran away. The injured/P.W-1 was taken to the Government Rajaji Hospital, Madurai. He was examined by the Medical Officer in the Causality Ward and admitted in the hospital as inpatient.

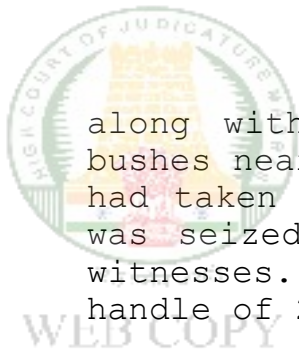
4. From the hospital, the duty Doctor sent a message to the Avaniyapuram Police Station. On receipt of the message, Avaniyapuram Police went to the hospital and examined the injured/P.W-1 in the hospital ward. The injured/P.W-1 had given an oral statement regarding the occurrence and inflicting of injuries on him by the Accused. The oral statement was treated as a complaint of P.W-1 under Ex.P-1, based on which, an FIR under Ex.P-12 had been registered by the Inspector of Police, Avaniyapuram Police Station in Crime No.163 of 2002 for the offences under Sections 147, 148, 324, 307 and 307 against the Accused A-1 to A-7 on 22.03.2002 by 01.00 hours.

5. The original complaint under Ex.P-1 was forwarded to the Court of the learned Judicial Magistrate, Madurai and a copy of the same was sent to the higher officials of the Avaniyapuram Police Station. On receipt of the FIR under Ex.P-12 and the complaint under Ex.P-1, P.W-17-Rajendran, who is the Investigation Officer, had proceeded with the investigation. He had gone to the Government Rajaji Hospital, Madurai and examined the injured/ P.W-1. Further, he went to the scene of occurrence on 22.03.2002 by noon 02.00 hours where the occurrence took place and in the presence of the witnesses, viz., P.W-7-Ramachandran and P.W-8-Somu, he prepared Observation Mahazar under Ex.P-7 and Rough Sketch under Ex.P-22.

6. Also, P.W-17-Investigation Officer had gone to the Government Rajaji Hospital, Madurai and examined the injured persons viz., P.W-2-Murugesan, P.W-3-Maruthupandian, P.W-4-Muthuramalingam, P.W-5-Murugan and recorded their statements. Further, he examined the witnesses viz., P.W-6-Seemaichamy, Nagesh, Selvaraj, Irulappan, P.W-7-Ramachandran, P.W-8-Somu, P.W-11-Saami Rao and Senthur and recorded their statements.

7. On 24.03.2002 by morning 06.00 a.m., P.W-17-Investigation Officer arrested the Accused, namely, Pandi @ Rogue Pandi, Nagarajan, S/o.Jeyapaul, Vijayakumar, S/o.Narayana Kudumban.

8. Pandi @ Rogue Pandi on his arrest had voluntarily confessed to the crime in the presence of the witnesses and also stated that he will hand over the weapons used in the attack, if he is taken to the place of occurrence. Therefore, the arrested persons were taken



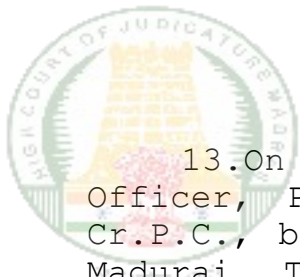
along with the witnesses to the place of occurrence. From the bushes near the President Rice Mill, the Accused Pandi @ Rogue Pandi had taken out the sword, which was hidden by him in the bushes and was seized by P.W-17-Investigation Officer in the presence of the witnesses. The sword was measuring 93 cms., and the blade is having handle of 20 cms with 3 cms length of iron ring.

9.P.W-17-Investigation Officer had also prepared the Seizure Mahazar and obtained attestation from the attesting witnesses. Subsequently, he had brought the Accused to the Avaniyapuram Police Station and he had forwarded the Accused to the Court of the learned Judicial Magistrate, Madurai along with the remand request.

10.On 29.03.2002 by morning 08.30 hours, A-1-Selvam @ Pandi @ Panayan, S/o.John and one other Accused were arrested in the presence of the witnesses viz., P.W-2-Murugesan and P.W-10-Sekar. In the confession statement, the Accused stated that if he is taken to the place of the occurrence, he will hand over the weapons used to attack the injured. Therefore, P.W-17-Investigation Officer had accompanied the Accused along with the witnesses viz., P.W-2-Murugesan and P.W-10-Sekar to the place of occurrence. Near Chinthamani Main Road situated within the Avaniyapuram Police limit, from the bushes, the 1st Accused had taken out the sword, which is having 47 cms blade and 13 cms handle and was hidden by him in the bushes. Thereafter, the Accused were taken to the Court of the learned Judicial Magistrate, Madurai for remand along with remand request.

11.P.W-13-Dr.Mohan, who had treated the injured/P.W-1, P.W-2-Murugesan, P.W-3-Maruthupandian, P.W-4-Muthuramalingam and P.W-5-Murugan, who were under treatment at Government Rajaji Hospital, Madurai and P.W-15-Dr.Meenakshi Sundaram were examined and their statements were recorded by P.W-17. Dr.Vijaya, Government Rajaji Hospital, Madurai and Dr.Sangeetha, Dentist of Meenakshi Mission Hospital, Madurai, were also examined and their statements were also recorded by P.W-17-Investigation Officer. Subsequent to the transfer, P.W-17-Investigation Officer had handed over the investigation Case Diary to the successor. The successor, P.W-18-Ponsami had proceeded with the investigation.

12.P.W-18-Ponsami examined P.W-15-Dr.Meenakshi Sundaram, Government Rajaji Hospital, Madurai, who gave treatment to the injured/P.W-5 and the wound certificate issued to the injured was received by the P.W-18-Investigation Officer. Subsequently, he was transferred and the successor, P.W-19-Poun had proceeded with the investigation. He had examined all the witnesses, who were examined by P.W-17 and P.W-18-earlier Investigation Officers. The witnesses have stated the same facts as stated in their earlier statement to P.W-17 and P.W-18. Therefore, P.W-19-Poun had not recorded their statements.



13. On completion of the investigation, the Investigation Officer, P.W-19 had laid the final report under Section 173 of Cr.P.C., before the Court of the learned Judicial Magistrate - VI, Madurai. The learned Judicial Magistrate - VI, Madurai on taking cognizance of the same had issued summons to the Accused 1 to 13. On appearance of the Accused, the copies of the final report were furnished to the Accused and the case was made over to the Court of the learned VI Additional District and Sessions Judge, Madurai and the Accused were bound over to the Court of the learned VI Additional District and Sessions Judge, Madurai.

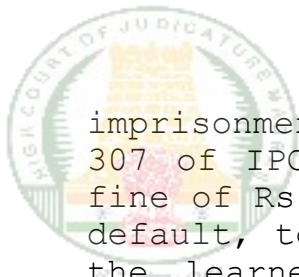
14. On receipt of the case records in P.R.C.No.9 of 2004, the learned VI Additional District and Sessions Judge, Madurai had numbered the sessions case as S.C.No.345 of 2011 and on appearance of the Accused, learned VI Additional District and Sessions Judge, Madurai had framed charges against A-1 to A-7 under Section 147 of IPC and the charges against A-1-Selvam @ Pandi @ Panayan and A-2-Selvam under Section 148 of IPC and also the charges against A-1, A-4 to A-7 under Section 307 of IPC and charges against A-2 and A-3 under Section 307 of IPC (2 counts).

15. The charges were read over and explained in Tamizh to the Accused 1 to 7. The Accused pleaded not guilty to the charges and claimed to be tried. Therefore, trial was ordered. During trial, the Prosecution had examined witnesses P.W-1 to P.W-19, marked documents as Ex.P-1 to Ex.P-22 and M.O-1 to M.O-4.

16. After completion of the oral evidence of P.W-1 to P.W-19 and marking the documents Ex.P-1 to Ex.P-22 and the material objects M.O-1 to M.O-4, the evidence of the prosecution was closed. From the incriminating evidence available, the Accused were questioned under Section 313 of Cr.P.C. The Accused A-1 to A-7 denied the incriminating evidence against them. They did not offer any explanation. They did not examine any witnesses.

17. After considering the arguments of the Prosecution and the Defence and on appreciation of the evidence, the learned VI Additional District and Sessions Judge, Madurai, had arrived at a conclusion that the Accused 1 and 2 were found guilty. Therefore, they were sentenced to pay a fine of Rs.1,000/- each for the offence under Section 148 of IPC, in default, to undergo simple imprisonment for a period of one month.

18. Further, the 1st Accused was sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for a period of 3 months for the offence under Section 307 of IPC. The 2nd Accused was sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.1,000/-, in default, to undergo simple



imprisonment for a period of 3 months for the offence under Section 307 of IPC (2 counts) and the Accused 3 to 7 were imposed with a fine of Rs.1,000/- each for the offence under Section 147 of IPC, in default, to undergo simple imprisonment for a period of one month by the learned VI Additional District and Sessions Judge, Madurai. Aggrieved by the said judgment of conviction and sentence of imprisonment, the Accused 1 and 2 alone had filed the present appeal.

19.Mr.B.Jameel Arasu, learned Counsel for the Appellants appeared through virtual mode and submitted his oral arguments. He had already furnished the written arguments.

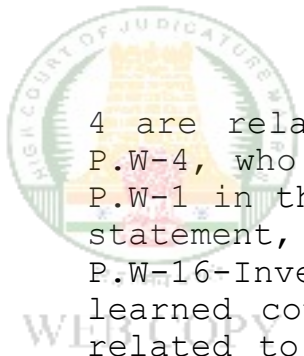
20.As per the submission of the learned Counsel for the Appellants, totally there were 13 Accused out of whom, 6 were absconding. Therefore, the case was split up against the absconding Accused. Those, who faced trial before the learned trial Judge, were arrayed as A-1 to A-7.

21.The charges were framed under Sections 147 of IPC against A-1 to A-7 and the charges were framed under Section 148 of IPC against A-1, Selvam @ Pandi @ Panayan and A-2, Selvam. Also the charges were framed under Section 307 of IPC against A-1, A-4 to A-7. Charges were framed under Section 307 of IPC (2 counts) against A-2 and A-3. The charges were denied and the Accused 1 to 7 claimed to be tried.

22.As per the charges, the Accused 1 and 2, on 21.03.2002 by evening 08.30 hours in front of the house of one Nagesh, which is situated near Chinthamani Main Road, along with other Accused had formed an unlawful assembly. The Accused 1 and 2 have carried the deadly weapons. Therefore, they were charged for the offence under Section 148 of IPC. On the same date and place, the 1st Accused, Selvam @ Pandi @ Panayan, one Pandi @ Pandi Durai and the 6th Accused, namely, Muthukumar, S/o.Dharmaraj, who had stuck in his own hand, hit the witness P.W-1.

23.The Accused 1 and 2, who had billhook in their hands, attacked P.W-4 on his head and forearm, thereby caused cut injuries on him and fracture of bones. The 3rd Accused, Vijayakumar, S/o.Narayana Kudumban, who had a stick in his hand, attacked P.W-4 all over his body. The 2nd Accused, Selvam, S/o.Paulraj, had a billhook in his hand, attacked P.W-2 on the back of his head. The 7th Accused, Kaathaiyan, had a stick in his hand, attacked P.W-2 on his eyebrow. By the conduct of the Accused, they had caused danger to the life of the witnesses, P.W-1-Pandi @ Pambu Pandi and P.W-2-Murugesan. Therefore, the charge under Section 307 of IPC is attracted.

24. It is the case of the Appellants/Accused that P.W-1 to P.W-



4 are related to each other. P.W-1 to P.W-3 are the brothers and P.W-4, who is the injured, is the brother-in-law of P.W-1 to P.W-3. P.W-1 in the Government Rajaji Hospital, Madurai, had given his oral statement, based on which, the FIR under Ex.P-12 was registered by P.W-16-Investigation Officer. Also, it is the submission of the learned counsel for the Appellant/Accused that P.W-1 to P.W-4 are related to each other and they are the interested witnesses. P.W-5 is the common friend of P.W-1 to P.W-4 and known to each of the families. P.W-11-Saami Rao, who is the only independent witness, remained hostile and all other are related to each other.

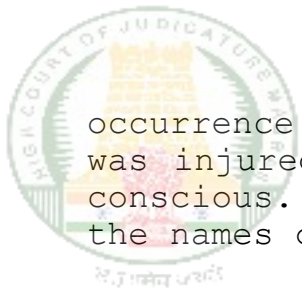
25.It is the submission of the learned Counsel for the Appellants/Accused 1 and 2 that the case of the prosecution had not been proved beyond reasonable doubt. At the earliest point of time, the oral complaint, which was recorded by P.W-16 and treated as complaint, lodged from the hospital bed by P.W-1 describes the names of the Accused, who attacked the injured P.W-1 and others.

26.P.W-1 had mentioned in his oral complaint that one Jeyakumar had attacked him with billhook on his face and thereby, causing injuries in his upper knee and the sons' of the younger brother of Rakkappan had hit him from behind. His brother-in-law, P.W-4 was attacked by Jeyakumar with a billhook on his head. The others had also caused injuries on P.W-4 with billhook. The younger brother of injured, Pandi @ Pambu Pandi, Murugesan and Maruthupandian, P.W-1 to P.W- 3 and his friend, Murugan, were also attacked by the aggressors with billhook and caused bleeding injuries.

27.Further, the learned counsel for the Appellants/Accused 1 and 2 invited the attention of this Court to the wound certificate and the evidence of the Doctors, wherein, the injuries had been noted. But, P.W-14-Dr.Selva Muthukumaran, in his deposition stated that the injuries caused on P.W-4 were noted by the Government Rajaji Hospital, Madurai that the injuries caused on P.W-4 are the cut injuries, but no fractures were seen on him. Bleeding was seen on the left forearm. No movements were observed on the left leg and left arm.

28.The injuries regarding left leg and left arm has been considered as grievous injuries. Ex.P-14 is the opinion of the Doctor regarding P.W-4. P.W-15-Dr.Meenakshi Sundaram, who was working at Government Rajaji Hospital, Madurai. He had also seen the injured P.W-4 in the hospital and also he had observed the injuries caused on him. Since P.W-4 was advised to get admitted in the hospital to take treatment, he declined the same and discharged on his own. The opinion of the Doctor is not given.

29.Further, the learned Counsel for the Appellants/Accused 1 and 2 invited the attention of this Court to the cross-examination of P.W-4, in which, he had stated that he is unable to recollect the



occurrence. As per his own narration, on the date of occurrence, he was injured and the police took him to the hospital and he was not conscious. The police had recorded his statement and informed him the names of the individuals noted by them.

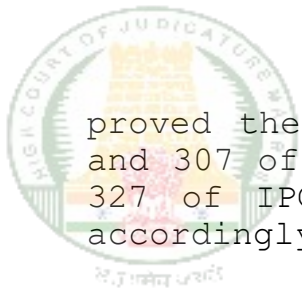
30.P.W-4 had not mentioned the names of Panayan Selvam or Sinna Selvam to the police. If the police had recorded their names, then P.W-4 is not responsible for the same. He informed to the Doctor at the Government Rajaji Hospital, Madurai regarding the attack with swords and he is unable to distinguish between a sword and billhook. He had not mentioned to the Doctor about the attack occurred with billhook or knives.

31.Further, the learned counsel for the Appellants/Accused submitted that the occurrence took place as per the FIR under Ex.P-12 by around 08.30 P.M. in the night. Therefore, in the darkness, the persons could not have seen the alleged occurrence. Not only that, there was no test identification parade conducted by the Investigation Officer. Therefore, the evidence laid before the Court by the Prosecution did not prove the charges beyond reasonable doubt.

32.As per the charge framed by the Court, the charge is against the attack on P.W-4 only and it has not been proved by the cross examination of P.W-4. He had not mentioned the names of A-1 and A-2, as per his own deposition in cross-examination. Therefore, this Court has to set aside the judgment of conviction recorded by the learned trial Judge against A-1 and A-2. They may be acquitted from the charges framed against them. The learned counsel for the Appellants relied on the judgment of the Hon'ble Supreme Court of India in the case of **Ram Swaroop and others Vs. The State of Rajasthan (Appeal (Crl.) 870 of 1997, dated 15.03.2004)** in support of his contention.

33.The learned Government Advocate appearing for the respondent submitted his oral replies to the arguments put forth by the learned counsel for the Appellants/Accused 1 and 2. As per the submission of the learned Government Advocate, the learned trial Judge had properly appreciated the evidence of the prosecution witnesses through P.W-1 to P.W-17 and exhibits Ex.P-1 to Ex.P-22 and the material objects M.O-1 to M.O-4 and arrived at a just logical conclusion that A-1 and A-2 had attacked P.W-4.

34.The learned VI Additional District and Sessions Judge, Madurai in his judgment in paragraph No.16 to 25 had clearly discussed the evidence and rejected the defence of the Accused that the witnesses herein are the interested witnesses, they are related to each other and in the concluding portion, paragraph No.26, the learned trial Judge had clearly arrived at a finding that the medical evidences coupled with the evidence of injured-P.W-4 had



proved the charges against the Accused 1 and 2 under Sections 148 and 307 of IPC and had clearly stated that the charge under Section 327 of IPC had not been proved against the Accused 3 to 7 and accordingly, they were acquitted from the charges.

35.The learned Government Advocate during his reply had invited the attention of this Court to the fact that the occurrence took place in the year 2002 and the date of occurrence is 21.03.2002. The oral statement obtained from P.W-1, Pandi @ Pambu Pandi in the hospital on the intervening night between 21.03.2002 and 22.03.2002 shows that for better treatment, the victim had been discharged and got himself admitted in Meenakshi Mission Hospital, Madurai had been proved by P.W-13-Dr.Mohan of Meenakhsni Mission Hospital.

36.The learned Government Advocate for the respondent had also invited the attention of this Court to the evidence of P.W-13 and to the evidence of P.W-14 wherein he had clearly stated that the P.W-4 was suffering from injuries and also to the evidence of P.W-15.

37.Further, the learned Government Advocate had invited the attention of this Court to the arguments that on the date of examination of the witnesses, P.W-1 to P.W-17, the injured witnesses-P.W-1 to P.W-5 were not cross examined, when they were examined by the prosecution.

38.As per the reported rulings of the Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC)** relied on by the learned Government Advocate, when the witnesses appeared before the Court on the date when the prosecution examined them, the defence has to cross-examine them. If the defence seeks adjournment, the same shall not be granted. However, if the Court grants such adjournment, there is every likelihood of the defence indulging in activities, thereby influencing the witnesses. This had taken place in this case also. When the witnesses were available, the respective learned Counsels did not cross examine the witnesses then and there. Subsequently, the Accused were secured after a long time.

39.When the Accused were secured, the learned Counsel for the Accused had filed a petition to recall the witnesses. The learned trial Judge in the deposition sheets had mentioned that a petition had been filed by the Accused for cross examination. Since the learned Counsel for the Accused did not appear, the evidence had been closed. On 01.02.2016, the witnesses were recalled and they were cross examined on 06.10.2016. Therefore, the witnesses could not recollect the incident, which had happened roughly 15 years ago.

40.As per the evidence recorded by the learned trial Judge and the deposition of P.W-4-the injured witness, it is found that after 15 years, he is unable to recollect all the details. He had stated



that the incident took place 15 years ago and on the date of occurrence, he felt unconscious.

41.The learned Government Advocate invited the attention of this Court to the evidence of P.W-4 in his examination in chief, wherein, he had clearly identified the persons, who attacked him and the weapons used in the attack. Therefore, the charges framed under Section 307 and 148 of IPC against the Accused as framed by the trial Court had been proved regarding P.W-4.

42.The learned Government Advocate also pointed out that if the charges had been properly framed, the charge under Section 307 r/w Section 34 of IPC should have been framed as alternate charge. By using the deadly weapons, the Accused attacked the injured witnesses-P.W-1 to P.W-4 and this had been dismissed by the learned trial Judge in his judgment, since number of counts had not been framed while framing charges. Therefore, the learned trial Judge is unable to convict the Accused regarding number of counts for the murderous attack on P.W-1 to P.W-4.

43.Also, for the attack by the unidentified persons or unidentified weapons, Section 307 r/w 34 of IPC would have been framed as an alternate charge, in which case there is ample evidence to convict all the Accused under Section 307 r/w 34 of IPC. The learned trial Judge in his judgment discussed the same and on that score, the learned trial Judge had convicted the Accused 1 and 2 herein for the offence under Section 307 IPC alone and not the other Accused. If the charge under Section 307 r/w 34 of IPC was an alternate charge, it would have helped the Court to convict the Accused 1 and 2 herein for the said offences or in the alternate charge under Section 326 of IPC, when the victim-P.W-3 had not mentioned who attacked him.

44.Mr.T.Senthil Kumar, learned Government Advocate also relied on the rulings of the Hon'ble Supreme Court regarding the identity of the Accused as well as regarding the defence of the learned counsel for the Appellants/Accused that the test identification parade was not conducted properly by the prosecution. Therefore, the evidences of P.W-1 to P.W-4 does not stand judicial scrutiny. Therefore, the contention that the Appellants herein/A-1 and A-2 are entitled to acquittal is not accepted.

45.There are rulings of the Hon'ble Supreme Court that if the witnesses had identified the Accused in Court during trial, the Court shall convict the Accused. Also, the learned Government Advocate submitted that for shoddy investigation, the Court cannot grant benefit to the Accused based on the rulings of the Hon'ble Supreme Court.

46.Further, Mr.T.Senthil Kumar, learned Government Advocate submitted that when the injured witnesses are before the trial



Court, it is for the Accused to prove as to why the victim of crime implicates him and leave out the original aggressor. Further, the learned Government Advocate submitted that the evidence of P.W-4 itself is sufficient for the trial Court to convict the Accused.

47.All the witnesses including the witnesses for Seizure Mahazar and Observation Mahazar had cogently supported the evidence of the prosecution except P.W-11. The only defence of the Accused is that the witnesses had not cogently spoken about the incident in the cross-examination. The Court shall take into consideration the dilatory tactics played by the Accused by delaying the trial and the cross-examination of the witnesses conducted after a period of nearly 15 years from the date of occurrence.

48.Mr.T.Senthil Kumar, learned Government Advocate also relied on the part of the cross-examination, wherein P.W-4 had stated that after the incident, he is unable to use his arms and he had undergone treatment for more than a month because of the injuries suffered by him. Subsequent to the treatment, he had lost his mobility in his right hand. He is unable to wear his dress or remove the dress with his own hand. He needs support from others for his day-to-day activities.

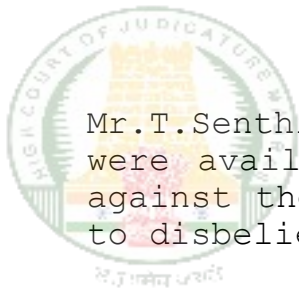
49.The learned Government Advocate also invited the attention of this Court to the part of the cross-examination, wherein P.W-4 had stated that he fainted after the incident. P.W-1 to P.W-3, who are the relatives of P.W-4, had been in the place of occurrence and they were also attacked by the very same Accused and they had also suffered injuries. Therefore, the arguments of the learned counsel for the Appellants/Accused 1 and 2 that P.W-1 to P.W-3 are the interested witnesses will not hold good. They have clearly stated that they are the relatives. All the five persons were in the place of occurrence. They had also suffered injuries because of the brutal attack by the aggressors.

50.The learned trial Judge had relied on the medical evidences of the Doctors P.W-14 and P.W-15 which proves the charges against the Accused.

51.The point for consideration:

Whether the judgment of conviction recorded by the learned trial Judge/the VI Additional District and Sessions Judge, Madurai in his judgment dated 25.01.2017 is to be set aside as perverse and the Appellants herein/Accused 1 and 2 are to be acquitted?

52.On consideration of the entire materials in S.C.No.345 of 2011, it is found that the charges framed against the Accused had been proved by the prosecution through the evidence of P.W-.1 to 17, Ex.P-1 to Ex.P-22 and M.O-1 to M.O-4. As rightly pointed out by



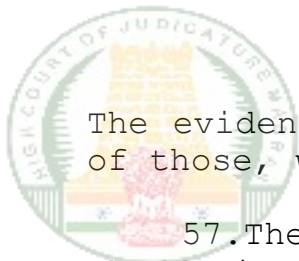
Mr.T.Senthilkumar, learned Government Advocate, when the witnesses were available before the Court and when they had clearly deposed against the Accused, there is no reason for the learned trial Judge to disbelieve the evidence of P.W-1 to P.W-4.

53.On consideration of the evidence let in by the witnesses, it is found that P.W-1 to P.W-5 had cogently spoken about the attack by the Accused 1 to 7. The learned trial Judge had assessed the evidence and clearly arrived at a conclusion that regarding Section 307 of IPC, the charge as framed by the then trial Judge had been proved through the evidence of P.W-1 to P.W-4.

54.As rightly pointed out by the learned Government Advocate, from the discussion of the evidence by the learned trial Judge from paragraph Nos.16 to 26, it is found that the learned trial Judge had assessed the evidence properly as per the provisions of Indian Evidence Act. In the criminal trials involving murderous attacks, the common people, who have witnessed the occurrence, will not come forward to depose as witness before the Court. Considering the present conditions in the Society, the common people are not ready and willing to depose evidence before the Court as there is no witness protection scheme available here as in European Union or in the United States of America. Therefore, the defence that there are no independent witness will not hold good.

55.The learned trial Judge had appreciated the evidence available before him to arrive at a just conclusion. The learned trial Judge had also observed that if the charges had been properly framed at the earlier stage including the alternate charge under Section 307 r/w 34 of IPC and under Section 326 r/w 34 of IPC, the Appellants herein/Accused 1 and 2 could have been convicted for those charges. Also, if the charge under Section 307 of IPC with number of counts had also been included, the Accused 1 and 2 could have been convicted under Section 307 of IPC for 4 counts. That shows that the learned trial Judge had analyzed the evidence available before him with all the materials available before him that was placed by the prosecution through the witnesses, P.W-1 to P.W-17, the documents Ex.P-1 to Ex.P-22 and the material objects M.O-1 to M.O-4.

56.The arguments of the learned counsel for the Appellants/Accused 1 and 2 that the test identification parade was not conducted does not hold good. Therefore, the argument of the learned Counsel for the Appellants/Accused that in the absence of identification parade, the evidence of P.W-1 to P.W-4 incriminating the Accused has to be rejected, cannot be accepted. The arguments of the learned Counsel for the Appellants are rejected in the light of the rulings of the Hon'ble Supreme Court that even in the absence of identification parade if the witnesses had identified the Accused in Court during trial the same can be accepted by the trial Court.



The evidence of P.W-1 to P.W-4 regarding identification test parade of those, who attacked them, also will not hold good.

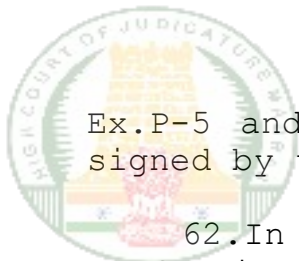
57. There are judgments of the Hon'ble Supreme Court that the shoddy investigation by the Investigation Officer cannot be a ground to grant benefit of doubt to the Accused. When the witnesses speak the truth regarding the crime before the Court, the Presiding Judge, the trial Judge believes the testimony of each and every witnesses regarding that part of the evidence, which supports the prosecution case, particularly, the evidence of the victim, who suffered the crime. It gives confidence to the learned trial Judge and that itself will be sufficient to convict the Accused. Here there are ample materials. Each of the victim P.W-1 to P.W-5 had identified the Accused in the Court and had also identified the weapons. P.W-5, who is the relative of P.W-1 to P.W-4, Pandi @ Pambu Pandi, Murugesan, Maruthupandian and Muthuramalingam was treated as hostile.

58. P.W-5, in his deposition had narrated the incident, wherein he had stated that he forgot the names of the individuals, who attacked him. The person, who sought money from P.W-1, on refusal by P.W-1, came along with more than 12 persons and attacked all of them including P.W-5. He had clearly stated that Pandi @ Rok Pandi had attacked him. He had also stated that he was examined by the police when he was taking treatment in the hospital. Even for argument's sake it cannot be held that P.W-5 was not present in the scene of occurrence as he had clearly stated that he was injured, was taken to the hospital and was examined by the Police Officer in the hospital. Therefore, the occurrence is true and P.W-5 had supported the prosecution in his cross-examination.

59. When the statement of P.W-5 was recorded by the police and was read over to him, he had stated that due to the long time duration, he was unable to recollect the details. Therefore, the hostile witness has also supported the prosecution case.

60. P.W-6, in his deposition, had stated that he had gone to the hospital hearing the fact that P.W-1 to P.W-4 had been injured and admitted in the hospital. When P.W-6 was in the hospital, the police came and recorded the statement from P.W-1. As witness to the same, P.W-6 had affixed his signature on Ex.P-1-complaint.

61. P.W-7 is the witness to the recovery of weapon, M.O-1, based on the confession leading to recovery by one Jeyakumar. Jeyakumar is an absconding Accused and he was not before the Court. Ex.P-3 is the admissible portion of the confession statement of the Accused, Jeyakumar. Ex.P-4 is the Mahazar regarding seizure of the weapon. Likewise, A-2 had also given confession statement, based on which, recovery of sword was made by the Investigation Officer. The admissible portion of confession statement leading to recovery is



Ex.P-5 and the Seizure Mahazar for the same is Ex.P-6, which was signed by the witness, P.W-7.

62. In the cross-examination, P.W-7 had stated that the confession statement and the Mahazar were prepared near the place of occurrence by the Investigation Officer. P.W-8 was the witness along with P.W-7 to the rough sketch, Ex.P-22 and the Observation Mahazar, Ex.P-17 prepared by the Investigation Officer. P.W-9 was the witness along with P.W-7 to the Seizure Mahazar and confession leading to recovery. P.W-10 was the witness to Ex.P-10 and Ex.P-11. Based on the confession given by A-1, recovery of sword was made and in the Seizure Mahazar, P.W-10 had affixed his signature.

63. P.W-11 remained hostile. P.W-12 is the Sub Inspector of Police, who had registered First Information Report under Ex.P-12. He had gone to the hospital and obtained oral statement from P.W-1 which was recorded in writing by him. P.W-13 to P.W-15 were the Doctors and as already discussed, P.W-14 and P.W-15, who were working at Government Rajaji Hospital, Madurai, had clearly deposed regarding the injuries observed from P.W-1 to P.W-4. P.W-15, in his evidence, had stated that P.W-1 to P.W-4 were admitted in the hospital, but against the medical advise, they had got discharged themselves and left on their own. Therefore, the opinion of P.W-15 could not be given.

64. P.W-16 is the Mahazar witness. P.W-17 is the Investigation Officer, who had examined the witnesses, P.W-1 to P.W-15. P.W-17 had recovered the weapon on arrest of the Accused and prepared the Mahazar. He had also visited the place of occurrence and prepared the rough sketch under Ex.P-22 and Observation Mahazar under Ex.P-7. On transfer, the case diary was handed over to P.W-18. On taking up the investigation, since all the witnesses had already given the statements to P.W-17, P.W-18 had not recorded the statements afresh. P.W-19 was also the Investigation Officer and had laid the charge sheet in this case.

65. P.W-18 had examined P.W-15 and recorded his statements, which is the only work done by him on taking up the investigation. Based on the case diary and completed the investigation, P.W-19 had laid a charge sheet.

66. The arguments of the learned Counsel for the Appellants/Accused 1 and 2 that the injured-P.W-4 had clearly admitted in his cross-examination that on the date of occurrence, due to the injuries, he lost his consciousness. He regained the consciousness only in the hospital cannot be considered by this Court and the same is found unreasonable, considering the fact that P.W-4 had in his examination in chief clearly stated that the injury caused on him by the Accused 1 and 2 and he had also identified the Accused 1 and 2 in Court. Subsequently, after a long gap of 15 years



after the date of occurrence when P.W-4 was cross-examined, there is a possibility to lose his memory.

67.Further, it is to be noted that P.W-4 was suffering from injury because his limbs had lost mobility even at the earliest stage after the occurrence. When P.W-4 was examined by P.W-14, P.W-14 had noted that the injury No.6 is grievous and the injured had lost his mobility in his right leg and right arm. The injuries suffered by P.W-4 had been stated by P.W-1 and P.W-2 in their evidences.

68.P.W-4 had clearly stated in his examination in chief that the Accused 1 and 2 had attacked him. After 15 years from the date of occurrence, P.W-4 was cross-examined. Therefore, the evidence in the cross-examination need not be considered, as per the reported rulings of the Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **(2015) 1 MLJ (Cr1) 288 (SC)**. The admission made by P.W-4 in his cross-examination that he fainted immediately after the occurrence and he was unable to recollect the name of the persons, who were attacked him, will not be of help to the Accused 1 and 2 from the culpability of causing injuries to P.W-1 to P.W-4. As per the charge framed by the Court, the Accused 1 and 2 are alleged to have attacked P.W-4 with billhook and thereby causing him death threat.

69.The complaint under Ex.P-1 and the FIR under Ex.P-12 proceeds on the ground that one Pandi @ Rok Pandi had told his gang members, who accompanied him, to attack and kill P.W-1 to P.W-4 (nfhy;Yq;flh). Therefore, the intention was to cause death. As per the report of the Doctors, P.W-4 was brought unconscious. Therefore, the witnesses P.W-1 to P.W-4 in their evidence examination-in-chief had clearly identified the Accused 1 and 2, who had attacked them. Subsequently, after several days i.e., from the date of examination-in-chief and after a period of 15 years from the date of occurrence, P.W-4 was cross-examined by the learned Counsel for the Accused. Therefore, he is unable to give out the details. That will not be of help to the Accused 1 and 2.

70.Over a period of time, the Courts in India have been Accused friendly and so many crimes have been registered throughout India, which are considered as unsafe for the common man to live. Since the cases like, day-light robbery and murderous attack, had been registered in this country, the common man is afraid to lodge a complaint to the Police and also to depose as a witness in Court. Therefore, the situation prevailing in this country need to be considered by the Courts. Of late, the Hon'ble Supreme Court laid down rules, considering the present situation available throughout India. If the Court believes the evidence of the injured witnesses, that will be sufficient to convict the Accused.



71.As per the Constitution of India, one of the guaranteed rights to its citizens is the right to speedy trial and right to fair trial. The right to speedy trial and the right to fair trial are hijacked by the Accused, thereby creating hurdles in early disposal of the cases in the trial Courts.

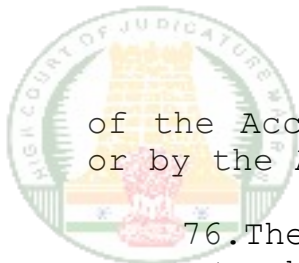
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72.When the trial gets delayed due to the pendency of the cases in the Courts, with the good intention that the Accused shall not suffer in the Prison and also to avoid over crowding in the Prison, the Accused are granted bail leniently by the Courts. After the release of the Accused on bail, they fail to appear before the Court till the summons are issued against them. When the trial is fixed after a period of 10 years from the date of occurrence, which causes pain to the victim, who forget the incident, it is very painful to recollect those incidents after 15 years. This has happened in this case.

73.By the principle of speedy trial and fair trial, the Accused had been benefited ignoring the right of the victim, in such manner, now a days, the Accused/criminals have the courage to attack anyone in this country. They are sure that the people will not come forward to depose before the Court out of fear for the criminals. Therefore, it is the right time to put an end to the same. The cries of the victim are unheard or treated with indifference by the Courts. Therefore, the Hon'ble Supreme Court, of late, have laid down rules that the principle of speedy trial and fair trial is not only for the Accused but also for the victims of crimes and his/her family, who are the witnesses before the Court. In this case, herein the rights to speedy and fair trial was hijacked by the Accused, is a glaring example of the principle of Article 21 of the Constitution of India, having been misused.

74.In the course of trial, the trial Court can allow the petition under Section 311 Cr.P.C., to recall the witnesses so that the Accused does not suffer injustice for not exercising the right to cross-examination, which is a valuable right of defence for the Accused. Once the petition is allowed, still the Accused and his counsels do not proceed with cross-examination and remain indifferent to the victim of crime, who were available as witness throughout the day before the Court. This also happened in this case.

75.The trial Court had clearly stated that instead of allowing the petition filed under Section 311 Cr.P.C., the witnesses can be cross-examined in the Court by the counsel for the Accused. Till the closing of the Court hours, the Accused and his Counsel did not cross examine the witnesses, who was already examined as prosecution witnesses. Therefore, the cross-examination was closed by the Court. Thereafter, the witnesses had been recalled and cross-examined, thereby causing harassment to the victim of the crime. The conduct



of the Accused cannot at all be condoned either by the Trial Court or by the Appellate Court. It is to be condemned.

76.The principles of the Constitution regarding the right guaranteed by the Constitution to its citizens includes the victim and not the Accused alone. Article 21 of the Constitution of India gives the right to speedy and fair trial. If the Accused had been in Prison, in this case, the trial could have been completed in the year 2002 itself and the appeal could have been filed between the years 2004 and 2005. For the occurrence that took place in the year 2002, the appeal had been filed in the year 2017 before this Court and the appeal was delayed wantonly till 2021 by cleverly misusing the provisions of bail. After filing of the Appeal, the Accused are released on bail. If the bail had been rejected, the Accused had been in Prison, the appeal would have been disposed of by 2017 itself.

77.It is experienced in the trial Courts that the Accused, who are granted bail, will not be available for trial causing pain to the victim of crime and suffering in the belief that the Court will punish the Accused. The Accused will come to the Court only after several years. By then, the victim of crime had forgotten every details. In so many cases, the victims of the crime are not willing to come to the Court as it causes harassment and pain. Only in few cases, like POCSO cases and the crime as against the women, there are Special Courts. In all other cases, the Accused have the upper hand and they can control the Court proceedings through the members of the Bar. These are the glaring incidents of delaying the criminal trial.

78.In the light of the above discussions, this Court rejects the contentions put forth by the learned counsel for the Appellants/Accused 1 and 2 that the charges framed against the Accused 1 and 2 had not been proved by the prosecution beyond any reasonable doubt. The fact that the test identification parade was not held will not help the Accused 1 and 2 in this case. As per the ruling of the Hon'ble Supreme Court in the case of **Dana Yadav @ Dahu and others Vs. State of Bihar** reported in **(2002) 7 Supreme Court Cases 295** failure to hold test identification parade does not make the evidence of identification in court inadmissible rather the same is very much admissible in law. The relevant portion of the above judgment reads as follows:

"C.Evidence Act, 1872 - S.9 - Test identification parade - Failure to hold - Identification of accused before Court - Probative value of - Even if TI parade is not held and witnesses identify the accused for the first time before Court, evidence regarding identification in court does not become inadmissible and cannot be discarded on ground of not being preceded by TI parade, when court finds the same to be trustworthy - But evidence of identification



of accused before court should not, ordinarily, form the basis of conviction unless corroborated by previous identification in TI parade or any other evidence, though there are exceptions to this rule - Further identification before court should not normally be relied upon if the name of accused is neither mentioned in FIR or before police."

79.As rightly pointed out by the learned Government Advocate that it is enough, if the Accused is identified by the witnesses in open Court and for the shoddy investigation, the benefit shall not be extended to the Accused. Therefore, what had been laid down in Seventies and Eighties will not hold good in the year 2020. The rules are changing according to the social conditions. The conduct of the Accused in delaying the trial and then subjecting the victim to cross-examination after a period of 15 years, wherein the witness P.W-4 is unable to recollect all the details will not help them. In the chief examination that was recorded by the Court in the presence of the Accused 1 and 2, P.W-4 had clearly identified the Accused 1 and 2, who had caused injuries on his head and hand. Immediately after the occurrence, when the victim, P.W-4 was brought to the hospital, the Doctor at the causality ward had examined P.W-4-Muthuramalingam and stated that his right hand and right leg had lost mobility and it can be safely presumed, but for this time, he is not able to speak about the occurrence and speak about the aggressors, who attacked him. Therefore, it clearly attracts the ingredients of Section 307 of IPC. Therefore, the Accused 1 and 2 are criminally liable for their brutal attack on P.W-4.

80.Further, the evidence available before the trial Court had been rightly appreciated by the learned trial Judge in the light of the Indian Evidence Act. There is nothing perverse to consider that the Accused 1 and 2 had not committed the culpable act causing injuries on P.W-4. Therefore, the arguments put forth by the learned counsel for the Appellants/Accused 1 and 2 is rejected. The rulings relied on by the learned counsel for the Appellants/Accused 1 and 2 will not help the case of the Appellants/Accused.

81.The point for consideration is answered against the Appellants/Accused-1 and 2 and in favour of Prosecution. The judgment of conviction recorded by the learned VI Additional District and Sessions Judge, Madurai in S.C.No.345 of 2011, dated 25.01.2017 is not perverse warranting interference by this Court as Appellate Court.

In the result, the Appeal is dismissed as having no merits.

The learned VI Additional District Judge, Madurai is directed to issue warrant to the Appellants herein/Accused 1 and 2 and the other Accused 3 to 7, if they had not filed any appeal, so as to send them to Prison to undergo the remaining period of sentence of imprisonment as per the judgment of the learned VI Additional District and Sessions Judge, Madurai in S.C.No.345 of 2011, dated



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25.01.2017. The period of detention already undergone by the accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

- 1.The VI Additional District Judge,
Madurai.
- 2.The Judicial Magistrate No. 6,Madurai.
3. The Chief Judicial Magistrate,, Madurai.
4. The Superintendent, Central prison, Madurai.
5. The Inspector of police,
Avaniyapuram Police Station,
Madurai.
- 6.The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai
- 7.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.JAMEEL ARASU, Advocate (SR-29722[F] dated 21/09/2021

Crl.A.(MD) No.59 of 2017
20.09.2021

NSN(CO)
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