

**B A I L S L I P**

**Crl.A.No.181/07**

The Appellants/Accused A5, A6, A7, A8, A9, A10, A12, A15, A16, A18, A20, A43 viz.,

- 1.Shankar S/o Kaveriappan (A5)
- 2.Sakthivel S/o Krishnan (A6)
- 3.Madappan S/o Kaveriappan (A7)
- 4.Kumar S/o Arjunan (A8)
- 5.Subramani S/o Ponnusamy (A9)
- 6.Panneer S/o Kempuveeran (A10)
- 7.Chickkannan S/o Mariyappan Gounder (A12)
- 8.Sowkari @ Madappan S/o Kaverippan (A15)
- 9.Devarajan S/o Veerappan (A16)
- 10.Rajendran S/o Dhilan (A18)
- 11.Sivam S/o Periapandan (A20)
- 12.Ramakrishnan S/o Athimoolam (A43)

were directed to be released on bail as per order of this Court dated 9.3.2007 and made in Crl.MP.No.1/07 in Crl.Appeal No.181/07 on the file of this Court.

Crl.A.No.181/07

The Appellants/Accused A1, A2 & A4 Viz., 1) K. Sivaraj S/o Kaveriappan (A1) 2) Sekar S/o Periyapandan (A2) (3) Shanmugam S/o Kempuveeran (A4) were directed to be released on bail as per order of this Court dated 17.7.2007 and made in Crl.MP.No.2/07 in Crl.Appeal No.181/07 on the file of this Court.

Crl.A.No.251/07

The Appellants/Accused No.23, Viz., Govindan S/o Veerappan was directed to be released on bail as per order of this Court dated 29.3.2007 made in Crl.MP.No.1/07 in Crl.Appeal No.251/07 on the file of this Court.

Crl.A.No.251/07

The Appellants/Accused No.3 viz., Madesh, S/o Ramar, was directed to be released on bail as per order of this Court dated 19.9.2007 made in Crl.MP.No.2/07 in Crl.Appeal No.251/07 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-1-2009

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM  
AND  
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CRL.A.Nos.181 and 251 of 2007  
and  
CRL.R.C.No.876 of 2007

1.K.Sivaraj  
2.Sekar  
3.Shanmugam  
4.Shankar  
5.Sakthivel  
6.Madappan  
7.Kumar  
8.Subramani  
9.Panneer  
10.Chickkannan  
11.Sowkari @ Madappan  
12.Devarajan  
13.Rajendran  
14.Sivam  
15.Ramakrishnan

... Appellants in  
CA 181/2007/A1, A2, A4 to A10  
A12, A15, A16, A18, A20, A43

1.Madesh  
2.Govindan

... Appellants in  
CA 251/2007/A3 & A23

vs

State represented by  
Inspector of Police  
Pennagaram Police Station  
Dharmapuri District  
(Crime No.783/92)

.. Respondent in  
both appeals/Complainant

CRL.R.C.876/2007:

B.Muniraj

.. Petitioner/PW1

- 1.Saravanan
- 2.Madhu
- 3.Madappan
- 4.Devarajan
- 5.Chikkannan
- 6.Chinnaseluvappan
- 7.Selvam S/o Kembuveeran
- 8.Selvam, S/o.Krishnan
- 9.Kempuveeran
- 10.Rudhiran
- 11.A.Chikkuveeran
- 12.Elangovan
- 13.Samraj
- 14.Danapal
- 15.Munusamy
- 16.Seluvappa Gowdu
- 17.Selvam, S/o.Seluvappa Gowdu
- 18.Lakshmanan
- 19.Raman
- 20.Venkatachalam
- 21.Anumanthan
- 22.Veerappan alias Mondu
- 23.Veeran
- 24.Madhu S/o Veerappan @ Musukannan
- 25.Madhu, S/o.Koothaikoravan
- 26.Veerabadran
- 27.Chinnakutti
- 28.Govindan
- 29.Vajjiram
- 30.Madhu, S/o.Seluvappan
- 31.Narayanan
- 32.SElvam, S/o.Kaveriappan
- 33.The State of Tamil Nadu  
rep. By The Inspector of Police  
Law and Order, Pennagaram  
Police Station, Pennagaram Taluk  
Dharmapuri District  
in Crime No.783/1992.

.. Respondents/Accused 11, 13, 14,  
17, 19, 21, 22, 24 to 42 & 44 to 49  
and Complainant

Criminal appeals preferred under Sec.374 of Cr.P.C. and Criminal revision case under Sections 397 and 401 of Cr.P.C. against the judgment of the Additional Sessions and Fast Track Court, Dharmapuri, dated 7.2.2007 in S.C.No.358/2005.

For Appellants in  
CA 181/2007

: Mr.G.Krishnan  
Senior Counsel  
for Mr.K.Srinivasan  
for A-1, A-2 & A-4

Mr.V.Gopinath  
Senior Counsel  
for Mr.K.Srinivasan  
for A-5 to A-10, A-12,  
A-15, A-16, A-18, A-20 &  
A-43

For Appellants in  
CA 251/2007 : Mr.S.Doraisamy for A-3

Mr.A.Sirajudeen for A-23

For Petitioner in  
Crl.RC 876/2007 : Mr.V.Nicholas

For Respondent in  
both appeals and  
33<sup>rd</sup> Respondent in  
revision case : Mr.P.Kumaresan  
Additional Public  
Prosecutor

For Respondents in  
Crl.RC 876/2007 : Mr.K.Srinivasan  
for RR1 to 3, 5 to 7, 9 to  
21, 23, 25, 26 and 28 to 32

Mr.A.Sirajudeen  
for RR8, 22, 24 and 27

COMMON JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This judgment shall govern these two criminal appeals in C.A.Nos.181 and 251 of 2007 and also the revision in Crl.R.C.No.876 of 2007. They challenge a judgment of the Additional Sessions Division, Fast Track Court, Dharmapuri, made in S.C.No.358 of 2005 whereby A-1 to A-49 stood charged and tried, and out of them, A-11, A-13, A-14, A-17, A-19, A-21, A-22, A-24 to A-42 and A-44 to A-49 were acquitted of all the charges, while A-1 to A-10, A-12, A-15, A-16, A-18, A-20, A-23 and A-43 were found guilty and awarded punishment as follows:

ACCUSED	CHARGES	FINDING	PUNISHMENT
A-1 to A-49	447 IPC	A-1 to A-10, A-12, A-15, A-16, A-18, A-20, A-23 & A-43 guilty	3 months SI



ACCUSED	CHARGES	FINDING	PUNISHMENT
A-1 to A-4, A-7, A-9, A-10, A-16, A-18 to A-20 and A-43	148 IPC	A-1 to A-4, A-6, A-7, A-9, A-10, A-12, A-16, A-18, A-20 and A-43 guilty	3 years RI
A-5, A-6, A-8, A-11 to A-15, A-17, A-21 to A-42 and A-44 to A-49	147 IPC	A-5, A-8, A-15 and A-23 guilty	2 years RI
A-7, A-16 and A-43	25(1) (b) (a) r/w Sec.3 of Indian Arms Act	A-7 & A-43 guilty	3 years RI
A-1 to A-6 and A-23	302 IPC	Guilty	Life imprisonment with a fine of Rs.1000/- i.d. 3 months RI
A-7 to A-22 and A-24 to A-49	302 r/w 149 IPC	A-7 to A-10, A-12, A-15, A-16, A-18, A-20 and A-43 guilty	Life imprisonment with a fine of Rs.1000/- i.d. 3 months RI
A-7	307 IPC	Guilty	7 years RI with a fine of Rs.1000/- i.d. 3 months RI
A-1 to A-6 and A-8 to A-49	307 r/w 149 IPC	A-1 to A-6, A-8 to A-10, A-12, A-15, A-16, A-18, A-20, A-23 and A-43 guilty	7 years RI with a fine of Rs.1000/- i.d. 3 months RI

2.Out of the said convicted accused, A-3 and A-23 have preferred C.A.No.251/2007, while the remaining convicted accused have brought forth C.A.No.181/2007. Aggrieved over that part of the order of acquittal, CrI.R.C.No.876/2007 has been brought forth by P.W.1. Both these appeals and the revision case were taken up for consideration jointly.

3.Necessary facts for the disposal of these appeals and the revision can be stated as follows:

(a) P.W.1 is the nephew of the deceased Ramalingam. P.Ws.2 and 3 were the close relatives of the deceased. During the relevant period, the deceased was functioning as the Deputy Secretary of AIADMK party at Pennagaram area, and the accused belonged to the Communist Party of India. In the previous election, one Purushothaman contested for AIADMK in that constituency, and the deceased supported him in the electioneering campaign. On that count also, all the accused were aggrieved on the defeat of the candidate for their Communist Party, and thus, there prevailed enmity between the parties in the past. Number of proceedings were pending against each other during the relevant time.

(b) Due to the previous enmity, on 18.8.1992 at about 9.30 A.M., at Kalappampadi Village, the deceased Ramalingam and P.W.3 were actually doing agricultural operation in the field in Survey No.107/1A. All these named accused persons numbering 49, and also unnamed 20 persons constituted an unlawful assembly, and in furtherance of their common object of murdering Ramalingam, they came to the place. At that time, P.Ws.1 and 2 and others were actually carrying on the agricultural operation in the nearby field. Immediately, A-1 to A-4 assaulted the deceased with aruvals on his head. A-5 and A-23 took the stones nearby and hit him on the head and neck. A-6 assaulted the deceased with a bud of a gun which he was carrying and thus, they caused the death of the deceased instantaneously.

(c) P.Ws.1 and 2 who were actually rushing from the nearby field, witnessed the occurrence, while P.W.3 was actually standing by the side of the deceased at the time of occurrence. P.W.1 was about to intervene, and at that time, A-7 who had a country gun in hand, shot at him, but he escaped and ran away from the place. After sometime, P.Ws.2 and 3 went to the village and informed to P.W.1 that in the said occurrence, Ramalingam died. Immediately, P.W.1 rushed to the respondent police station and gave a written complaint, Ex.P1, to P.W.9, the Sub Inspector of Police, who was on duty at that time, at about 11.30 A.M. On the strength of Ex.P1, a case came to be registered by him in Crime No.783 of 1992 under Sec.302 of IPC. The printed FIR, Ex.P18, was despatched to the Judicial Magistrate, Palacode, through a Constable, and the same was received by the Magistrate at about 2.30 P.M.

(d) P.W.10, the Inspector of Police, on receipt of the copy of the FIR, took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P14, and a rough sketch, Ex.P19. Then, he conducted inquest on the dead body of Ramalingam in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P20. He also recovered the material objects from the place of occurrence under a cover of mahazar. Then, the dead body was sent to the Government Hospital along with a requisition, Ex.P16, for the purpose of postmortem.

(e) P.W.6, the Medical Person, attached to the Government Hospital, Dharmapuri, on receipt of the requisition, conducted autopsy on the dead body of Ramalingam and has given his certificate in Ex.P17 with his opinion that the deceased would appear to have died of shock and haemorrhage due to injuries on the head before 18 to 22 hours prior to autopsy.

(f) P.W.11, the Inspector of Police, took up further investigation. He came to know that A-1 to A-5 and A-23 surrendered before the Judicial Magistrate, Palacode. Then he made an application for police custody, which was ordered. All the six were taken to police custody. While they were under police custody, they volunteered to give confessional statements which were recorded. The admissible parts of the confessional statements given by A-1 to A-5 were marked as Exs.P21 to P25 respectively. Pursuant to the same, they produced aruvals, M.Os.9 to 12 respectively, which were recovered under a cover of mahazar. M.O.13, single barrel gun, was also recovered. They were sent for judicial remand. All the material objects were sent for chemical

analysis. The serologist's report and ballistic report were marked as Exs.P34 and P35 respectively. On completion of investigation, the Investigating Officer filed the final report before the concerned Judicial Magistrate's Court.

4.The case was committed to Court of Sessions, and necessary charges were framed. In order to substantiate the charges, the prosecution marched 11 witnesses and also relied on 37 exhibits and 13 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which they flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced and took the view that the prosecution has proved the case beyond reasonable doubt as far as the appellants are concerned and hence found them guilty as per the charges and awarded the punishment referred to above. Hence these appeals at the instance of the convicted accused.

5.Advancing arguments on behalf of the appellants, the learned Senior Counsel would submit that in the instant case, the prosecution has miserably failed to prove its case from any angle; that it cannot be stated that it has adduced any evidence though it claimed that it has got direct evidence through P.Ws.1 to 3; that the trial Court was unable to agree with the evidence put forth by the prosecution in respect of A-11, A-13, A-14 and others in respect of whom an order of acquittal has been made; that all the reasons which impelled the trial Court not to believe those evidence are equally applicable to the persons who have been convicted; that if to be so, they should have also been acquitted; but, the trial Court has erroneously found them guilty; that according to the prosecution, the occurrence has taken place at about 11.30 A.M. on 18.8.1992; that first of all, the occurrence could not have taken place as put forth by the prosecution; that P.W.1 is claimed to be an eyewitness along with P.W.2; that even as per the direct evidence adduced through them, they were actually working in the other field, and the distance between the two fields even as per their admission, was 350 feet, and in between the land of the deceased and the land, where P.Ws.1 and 2 were working, there was a pond; that under the circumstances, it would be quite clear that it is actually situated in the other direction, which may be north or south; that if to be so, they could not have seen the occurrence at all; that apart from that, in between the fields, there was a thani bush also; that P.Ws.1 and 2 even after hearing the noise, could not have seen the occurrence; that it would suffice to reject their evidence; that P.W.1 could not be taken as eyewitness for the simple reason that according to him, A-7 attempted at his life, and immediately, being scared and also due to fear, he ran away from the place of occurrence; but, according to the witnesses, no one went and except him, all were available; that it is highly a matter of surprise to note that P.W.1 has escaped from the place of occurrence while all the persons in the mob were available; that if to be so, he would have been chased; that even as per the prosecution case, the entire mob have actually acted in furtherance of the common object of murdering Ramalingam, but no one of the accused and in particular A-7, had anything to do with P.W.1; and that in order to show as if some overt acts have been committed by A-7, such a version has been included.



6.Added further the learned Senior Counsel that even a perusal of Ex.P1, pursuant to which the case has been registered, would clearly indicate that P.W.1 could not have been in the place of occurrence at all; that the occurrence has taken place on 18.8.1992 at 11.30 A.M., and the case has been registered within an hour or two; that the police station is situated 14 kilometers away from the place of occurrence; that according to the prosecution, Ex.P1 was a written complaint prepared by P.W.1 and handed over to the police; that a perusal of Ex.P1 would clearly indicate that 49 names of the accused along with their descriptions have been given and 20 more others; that even as per the evidence adduced by the prosecution, these witnesses have spoken that more than 70 persons were available at that time; that it would be quite clear that either P.W.1 or P.W.2 or P.W.3 could not have seen the exact overt act attributed to them, and thus, it would be quite clear that P.W.1 could not have been in the occurrence place at all; that all these reasons are equally applicable to P.W.2 also; that even according to P.Ws.1 and 2, they have been coming from the other field and thus, they could not have seen the occurrence at all.

7.It is further contended by the learned Senior Counsel that as far as P.W.3 was concerned, according to the prosecution, it was he who along with the deceased plowing the land; that the rough sketch does not indicate that there was any plowing; that if to be so, all the agricultural materials would have been found; but, the Investigator has clearly pointed out that no material was actually found at the time when he went for inspection, and that would clearly indicate that P.W.3 could not have been in the place of occurrence at all; that had it been true that P.W.3 was available at the time of occurrence, he would have either immediately gone to the police station to give a complaint or accompanied the other witnesses; but, he has gone away; that this would also indicate that P.W.3 could not have been in the place of occurrence at all; that the medical evidence also did not support the case of the prosecution; that according to the witnesses, P.Ws.1, 2 and others brought food for the deceased and P.W.3 at about 9.00 A.M., and they took food also namely rice and dal; that if to be so, there should have been partly digested food in the stomach; but, the medical opinion has been canvassed to the effect that the food was found to be fully digested; that if to be so, the time of occurrence could not have been 11.30 A.M. at all; and that the time of occurrence as put forth by the prosecution was nothing but false.

8.Added further the learned Senior Counsel that the fact that the dead body of Ramalingam was found in the field and P.Ws.1 to 3 after finding the same, have gone over to the police station was thoroughly imaginary; that the accused belonged to a particular political party; that aggrieved over the accused party, the prosecution witnesses who belonged to the rival party have named the persons belonging to the other political party, and such a false complaint was given.

9.Added further the learned Senior Counsel that in the instant case, as far as the medical opinion is concerned, all the three eyewitnesses have spoken to the fact that A-1 to A-4 had deadly weapons namely aruvals, at the time of occurrence, and all four have attacked



him; that if to be so, corresponding injuries should have been found; but, according to the postmortem Doctor, there was only two injuries found on the skull and another injury found on the mandible, and also other injuries on the different parts of the body which were minor; that had they really seen the occurrence, they would have accounted for the injuries; but, all of them have been parrot like evidence; that if all the persons have actually attacked, number of injuries could have been more, but not to be so, and only two injuries are found; that the witnesses who are claiming to be eyewitnesses could not account for the injuries and could not give the correct version as to by whom the injuries were inflicted; that it can be well stated that it is a case where by whom those injuries were caused could not be fixed, and under such circumstances, benefit should be given to the appellants/accused.

10.The learned Senior Counsel would further submit that according to the prosecution, A-7, A-16 and A-43 were having country guns in respect of whom sanction was also obtained from the District Collector, and they were all filed before the trial Court; that it was brought to the notice of the trial Court that as far as the sanction was concerned, only a true copy was placed, and it did not even bear the seal or the signature of the Officer who gave the same; that it was not even an authenticated one; that what happened to the original remained unknown; that as far as A-16 was concerned, he is said to have got a gun; but, sanction has been obtained for A-17; that this would clearly indicate the non-application of mind; and that under the circumstances, the provisions of Indian Arms Act could not be applied at all.

11.Added further the learned Senior Counsel that due to the political animosity, a false case has been brought forth; that admittedly, they were all rivalry; that they have got number of criminal proceedings pending on both sides; that they have been attending Courts and also police stations; that under the circumstances, it is a false case; that it would clearly indicate that the prosecution was unable to bring forth its case even after marching 3 witnesses as eyewitnesses; and that further, the medical opinion canvassed did not support the prosecution case.

12.It is further submitted by the learned Senior Counsel that though it was claimed that A-1 to A-4 were taken to police custody and during that time, the confessional statements were alleged to have been recorded pursuant to which they produced all aruvals and also a country gun, the lower Court has clearly pointed out that it could not attach much importance to that part of the evidence because the confessional statements were recorded and the recovery was done while they were in police custody, and hence that part of the evidence cannot be given any significance at all; and that under the circumstances, the prosecution has miserably failed to prove its case.

13.Added further the learned Senior Counsel as last contention that in a given case like this, when 70 or 80 persons came in a mob and when they shouted and when there was a hue and cry, no one could identify any accused or narrate their overt acts; that under the circumstances, the lower Court without proper application of the legal position or

appreciation of the factual position has found part of the accused guilty and acquitted the other part, and hence they are also entitled for acquittal in the hands of this Court, and the appeals have got to be allowed by acquitting all the appellants.

14.The learned Counsel appearing for the revision petitioner/P.W.1 would submit that P.Ws.1 to 3 were the eyewitnesses; that they have clearly spoken about the involvement of all the accused persons; that under the circumstances, the trial Court having accepted the evidence in respect of the convicted accused, should have found those accused also guilty; that the medical opinion canvassed was also in favour of the prosecution; that the reasons adduced for acquitting those accused do not stand to reason since they are flimsy, and hence that part of the judgment has got to be set aside, and they should be actually dealt with in accordance with law.

15.The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

16.It is not in controversy that one Ramalingam, the Deputy Secretary of the AIADMK Party of Pennagaram area, died instantaneously due to the homicidal violence in an incident that took place on 18.8.1992 at the morning hours. Following the complaint, Ex.P1, lodged by P.W.1, the case came to be registered under Sec.302 of IPC and other provisions of law as found in Ex.P18, the FIR. P.W.10, the Inspector of Police, took up investigation, proceeded to the spot, made an inspection and conducted inquest in the presence of witnesses, and after preparation of the inquest report, the dead body was subjected to postmortem by P.W.6, the Doctor, attached to the Government Hospital, Dharmapuri. He has given his opinion in Ex.P17, the postmortem certificate, that he died out of shock and haemorrhage due to the injuries sustained on the head. Apart from this, the cause of death as put forth by the prosecution was never disputed by the appellants before the trial Court, and hence no impediment is felt by this Court in recording so.

17.In order to substantiate the charges levelled against the appellants/accused, the prosecution rested its case entirely on the evidence of P.Ws.1 to 3 as eyewitnesses. The circumstances what are noticed by the Court in favour of the prosecution have got to be mentioned at the outset. The occurrence has taken place on 18.8.1992 at 11.30 A.M. P.Ws.1 to 3 would claim that they were actually at the place of occurrence. According to P.W.1, who was an eyewitness, at the time of occurrence, out of grip of fear, he ran away from the place, and after ascertaining what happened further from the other witnesses, he went to the police station and gave Ex.P1, the complaint, at about 1.30 P.M., and a case came to be registered at about 2.00 P.M. At this juncture, it is pertinent to point out that the respondent police station is situated about 14 kilometers from the place of occurrence. The time by which the case was registered was not a fact disputed, and the FIR has also reached the Judicial Magistrate at 2.30 P.M., as could be seen from the original FIR. Thus, it would be quite clear that within a short span of time, from the place of occurrence P.W.1 has

reached the police station and gave the complaint, and the case came to be registered, and the FIR reached the Judicial Magistrate.

18. Much comment was made that P.Ws.1 and 2 could not have seen the occurrence at all. As could be seen from the evidence of those witnesses, P.Ws.1 and 2 were actually carrying on their agricultural operation in the nearby field. Admittedly, it was situated about 350 feet away from the place where the deceased Ramalingam was plowing his field along with P.W.3. When they were able to witness number of persons coming, it was quite natural at that time and that too in the morning hours, to see the crowd and rush to the place. At this juncture, it can be well stated that since the witnesses were coming from a field situated 350 feet away, they cannot narrate the way in which it happened or they could not give accounting for the injuries sustained. But, it is possible when they rushed over there, they could identify the persons available at the place. According to P.W.1, he saw about 49 accused persons and also 20 persons. Now, at this juncture, the contention put forth by the learned Senior Counsel for the appellants is that the evidence that P.W.1 gave a narration of all 49 persons along with their descriptions within a short span of time would cast a doubt whether he could have been present and knowing all the persons, their identity, names, descriptions etc. This Court is able to see some force in this contention. Equally, according to P.W.2, she also accompanied P.W.1. As far as P.W.1 is concerned, this Court is of the considered opinion that once he witnessed the occurrence and he has given information to the police, and he has set the criminal law in motion, his evidence could be relied to that extent. P.W.2 also would fall in line with P.W.1.

19. As regards P.W.3, on perusal of his evidence, this Court is of the considered opinion that his evidence inspired the confidence of the Court. According to P.W.3, he was also plowing the field along with Ramalingam, and on the previous evening, it was Ramalingam who requested him to come to his field to carry on the agricultural operation, and accordingly he went to the field the next morning along with Ramalingam his close relative, and was also plowing with him, and at that juncture, the occurrence has taken place. When he was examined, his statement was recorded by the Police Officer the very day, and it has reached the Court the next day. The fact that the evidence given before the Court was consistent to the statement given by him and recorded by the Police Officer the very day, and it reached the Court next day would clearly indicate that A-1 to A-4 armed with aruvals attacked him. At the time of chief-examination, he has categorically stated that it was all the four persons who were armed with deadly weapons attacked him. At the time of cross-examination, it was also clarified that it was A-1 who attacked him on the head and the brain matter came out, and following the same, the other accused persons with aruvals attacked him on the skull. Now, at this juncture, the medical opinion canvassed would clearly indicate that there were two injuries found on the skull having measurements 20 cm x 4 cm and 6 cm x 1 cm respectively, and they were on the frontal, parietal, temporal and occipital bones, and the skull was actually broken. Apart from these two injuries, another injury was found on the mandible. Thus, three injuries have been accounted for. In a given case like this, when P.W.3 was actually in the field nearby



the deceased, and when he found all the four persons attacking the deceased, these three injuries have been actually found, and thus, out of four, three have caused the injuries which were found as per the medical opinion canvassed. This Court is of the considered opinion that no doubt could be cast on the evidence of P.W.3 in respect of the occurrence spot. It is further added that it was A-6 who had a country gun in hand, and he has also attacked the deceased who actually sustained injury on the little finger, and the corresponding injuries are also found in the postmortem certificate, and that injury was also caused by A-6 with the bud.

20. Further, the learned Senior Counsel would contend that according to the witnesses, the deceased Ramalingam took food at about 9.00 A.M., and the occurrence has taken place at about 11.30 A.M., and if really he had taken food, only there should have been partly digested rice food; but, it was found by the medical opinion that it was actually fully digested, and hence, the occurrence could have taken place earlier. Now at this juncture, it can be stated that the time when he has taken the food could have been even earlier, and even the time namely 9.00 A.M., is not a one given by the witnesses looking at the watch. It is quite natural in a village, the villagers would take food in the early hours of the morning. Thus, the time factor would not cast a doubt on the prosecution case.

21. As far as P.W.1's evidence that he was shot by A-7, but he escaped is concerned, this Court is unable to appreciate the same for the simple reason that when the accused came to the spot, the person to be attacked by them was only Ramalingam. Therefore, A-7 or anybody for the matter had nothing to do with P.W.1, and under the circumstances, it also cast a doubt. As rightly pointed out by the learned Senior Counsel, the case that A-7 attempted at the life of P.W.1 with the country gun, but he escaped and ran away from the place would have been introduced in order to make him as an eyewitness for the entire occurrence. As pointed out earlier, P.W.1's evidence can be taken to the extent that he has spoken about the incident that has taken place only, and he could set the criminal law in motion. Apart from that, there was no reason for A-7 to attempt at the life of P.W.1 while the deceased Ramalingam himself was aimed. Had it been the common object, A-7 would have attempted at the life of Ramalingam and not of P.W.1. In such circumstances, that part of the evidence that A-7 attempted at the life of P.W.1 cannot countenance and has got to be rejected.

22. Further, in the instant case, as far as the recovery of the material objects is concerned, it is true that those accused were in judicial custody. The Investigator has filed an application for police custody, and it has been ordered. Accordingly, they were enquired, and they gave confessional statements, pursuant to which, they have actually produced the weapons of crime namely aruvals and also the country gun which was in the hands of A-6 with which he caused the injury. They have actually been recovered, and they were all placed before the Court. Merely because confessional statements were recorded from the accused when they were taken to police custody, it cannot be stated that it has got to be rejected as false. In the instant case, when the evidence is



available to indicate the factual position, the Court has to necessarily accept the same.

23.The contention put forth by the appellants' side that the medical opinion canvassed was not in favour of the prosecution has got to be rejected. According to the learned Senior Counsel, in the face of the evidence brought forth by the prosecution and also in view of the fact that there were number of accused persons, and no overt acts were attributed, and they remained unarmed, they cannot be taken as members of the unlawful assembly having common object to cause the death of Ramalingam. In the case on hand, when the evidence is marshaled, this Court is able to see from the evidence of P.W.3 and the medical evidence canvassed that it was A-1 to A-4 who attacked the deceased with aruvals and caused his death, and it was A-6 who attacked him with the rifle bud and caused injuries, and thus, these five persons have constituted an unlawful assembly with the common object of murdering him and caused his death. Hence, A-1 to A-4 and A-6 have got to be found guilty under Sec.302 read with 149 of IPC.

24.As far as the conviction and sentence imposed on A-7 and others by the lower Court under Sec.302 read with 149 of IPC are concerned, the same have got to be set aside since this Court is unable to find that they were members of unlawful assembly having any common object to do.

25.As far as the conviction and sentence imposed by the lower Court under the provisions of Indian Arms Act are concerned, as rightly pointed out by the learned Senior Counsel for the appellants, the original sanction alleged to have been made by the District Collector, were not filed, and those filed were only true copies. They did not even bear the seal or the signature of the Officer producing the same. That apart, no explanation is tendered for the non-production of the originals. Not even the authenticated copy was filed. Under the circumstances, it was without sanction. Hence the case of the prosecution in that regard has got to be negatived.

26.Accordingly, the conviction of A-1 to A-4 and A-6 by the trial Court under Sec.302 of IPC is modified, and instead, they are convicted under Sec.302 read with 149 of IPC. The life imprisonment along with a fine and default sentence awarded by the trial Court in that regard is confirmed.

27.The conviction and sentence imposed by the trial Court under Sec.447 IPC are set aside, and A-1 to A-10, A-12, A-15, A-16, A-18, A-20, A-23 and A-43 are acquitted. The conviction and sentence imposed by the lower Court under Sec.148 IPC are set aside, and A-1 to A-4, A-6, A-7, A-9, A-10, A-12, A-16, A-18, A-20 and A-43 are acquitted. As regards the conviction and sentence imposed under Sec.147 IPC by the trial Court, they are set aside, and A-5, A-8, A-15 and A-23 are acquitted. The judgment of conviction and sentence passed by the trial Court under Sec.25(1)(b)(a) read with Sec.3 of the Indian Arms Act, is set aside, and A-7 and A-43 are acquitted. The conviction and sentence imposed on A-5 and A-23 under Sec.302 IPC are set aside, and they are acquitted. The fine amount paid by A-5 and A-23 will be refunded to him. The conviction and sentence imposed on A-7 to A-10, A-12, A-15,

A-16, A-18, A-20 and A-43 under Sec.302 read with 149 IPC are set aside, and they are acquitted. The fine amount paid by them will be refunded to them. As regards the conviction and sentence imposed on A-7 under Sec.307 IPC, they are set aside, and he is acquitted. The fine amount paid by him will be refunded to him. The conviction and sentence imposed on A-1 to A-6, A-8 to A-10, A-12, A-15, A-16, A-18, A-20, A-23 and A-43 under Sec.307 read with 149 IPC are set aside, and they are acquitted. The fine amount paid by them will be refunded to them.

28. In the result both the criminal appeals are partly allowed. It is reported that A-1 to A-4 and A-6 are on bail. Hence the Sessions Judge shall take steps to commit them to prison to undergo the sentence. The bail bonds executed by the accused/appellants who are acquitted by this Court, shall stand terminated.

29. As far as the revision is concerned, this Court is unable to see any merit in the same for the reasons stated supra. Accordingly, criminal revision case is dismissed.

Nsv/

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Judicial Magistrate, Pennagaram.
2. Do Through the Chief Judicial Magistrate, Dharmapuri at Krishnagiri.
3. The Additional Sessions Judge, Fast Track Court, Dharmapuri.
4. Do Through The Principal Sessions Judge, FTC, Dharmapuri at Krishnagiri
5. The Inspector of Police, Pennagaram Police Station Dharmapuri District.
6. The Superintendent, Central Prison, Vellore.
7. The Superintendent, Central Prison, Salem.
8. The District Collector, Dharmapuri.
9. The Director General of Police, Mylapore, Chennai.
10. The Public Prosecutor, High Court, Madras.

Copy to:-

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

- 2 ccs to Mr. K. Srinivasan, Advocate SR No.4193
- 1 cc to MR. V. Nicholas, Advocate SR No.4428
- 1 cc to Mr. S. Doraisamy, Advocate SR No.4495
- 1 cc to M/s. Siraj & Siraj, Advocates SR No.4422

CK(CO)  
SR/10.2.2009

CRL.A.Nos.181 and 251 of  
2007 and  
CRL.R.C.No.876 of 2007



WEB COPY