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Crl.R.C.No.899 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 27.04.2023)

(Pronounced on : 05.06.2023)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.899 of 2018
and
Crl.M.P.No.10224 of 2018

1.Arumugam
S/o.Seenuvasan

2.Narayanan
S/o.Arumugam

3.Elumalai
S/o.Arumugam

4.Ashok
S/o.Arumugam

5.Asothai
W/o.Arumugam

6.Tamizharasi
W/o.Narayanan

7.Elumalai
S/o.Muthusamy

...Petitioners

.. Vs ..

The State,
Rep.by Inspector of Police,
Tirukoilur Police Station,
Tirukoilur
(Crime No.197/2005)

...Respondent



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PRAYER : Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., to set aside the judgment of conviction and sentence passed in C.A.No.67 of 2013 dated 09.07.2018 on the file of the Court of Additional Sessions Judge, (Fast Track Court), Villupuram.

For petitioners : Dr.A.Thiyagarajan, Senior Advocate

For Mr.S.Ramesh Kumar

For Respondent : Mr.V.J.Priyadarsana

Government Advocate (Crl.Side)

ORDER

All the 7 convicted accused are the revision petitioners herein.

2. The respondent-Police filed a final report in Crime No.197 of 2005 alleging commission of offences under Sections 148, 341, 294(b), 323, 324, 326, 506 (ii) and 307 of I.P.C and the same was taken on file and committed to sessions and numbered as S.C.No.154 of 2010 and made over to the learned Principal Assistant Sessions Judge (Principal Sub-Judge, Villupuram) and by a judgment dated 12.09.2013, all the accused are convicted as detailed below:-



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Sl. No.	Accused	Convicted for the Offence under Section	Sentence
1	A1	148 and 341 I.P.C 294(b) I.P.C 324 I.P.C 506(ii) I.P.C	R.I for two years and one month S.I S.I for three months R.I for three years and fine Rs.1000/- in default 3 months S.I. R.I for three years and fine Rs.500/- in default 2 months S.I.
2	A2	148 and 341 I.P.C 294(b) I.P.C 326 I.P.C 307 I.P.C	R.I for two years and one month S.I S.I for three months R.I for six years and fine Rs.1000/- in default 6 months S.I. R.I for seven years and fine Rs.1000/- in default 6 months S.I.
3	A3	148 and 341 I.P.C 324 I.P.C 506(ii) I.P.C	R.I for two years and one month S.I R.I for three years and fine Rs.1000/- in default 3 months S.I. R.I for three years and fine Rs.500/- in default 2 months S.I.



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Sl. No.	Accused	Convicted for the Offence under Section	Sentence
4	A4	148 and 341 I.P.C 324 I.P.C 506(ii) I.P.C	R.I for two years and one month S.I R.I for three years and fine Rs.1000/- in default 3 months S.I. R.I for three years and fine Rs.500/- in default 2 months S.I.
5	A5	148 and 341 I.P.C 323 I.P.C	R.I for two years and one month S.I R.I for one year and fine Rs.500/- in default one month S.I.
6	A6	148 and 341 I.P.C 323 I.P.C	R.I for two years and one month S.I for three months. R.I for one year and fine Rs.500/- in default one month S.I.
7	A7	148 and 341 I.P.C 323 I.P.C	R.I for two years and one month S.I R.I for one year and fine Rs.500/- in default one month S.I.



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3. The case of the prosecution is that there was previous enmity between P.W.1 and A1 with regard to land dispute. Civil Suit was also pending before the Court. While so, on 25.04.2005 at about 19.00 hours, A1 to A7 formed unlawful assembly armed with Koduval, log and wrongly restrained P.W.2 and abused him in filthy language and that A1 cut on P.W.2's left leg, thigh with Koduval and caused simple injury and threatened him that he would be put to death. A2 cut on his head with Koduval and intimidated him. A4 cut on his left hand with Aruval and intimated him. A5 to A7 assaulted him on his back, head and all over the body with log. A1 to A7 assaulted P.W.2 with an intention to put him to death.

4. After framing of the charges, all the accused have denied the charges and claims to be tried for the charges framed. In the trial, P.W.1 to P.W.13 were examined and Ex.P1 to Ex.P8 were marked. On behalf of the respondent's side, no one was examined and no documents were marked. No material objects were marked.

5. Before the trial Court, prosecution has relied upon the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 and laid the conviction and sentenced them as stated in the above tabular column. The lower



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Appellate Court also concurred with the judgment of the Trial Court.

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6. Mr.A.Thiyagarajan, learned Senior Advocate appearing for the appellants contended that in the cross-examination of P.W.2, he had admitted that at the time of the occurrence, there is no other witnesses other than the injured and hence, the Trial Court has committed an error in relying upon the evidence of P.W.1 and P.W.4 and ought not to have laid the conviction.

7. In support of charge under Section 326 I.P.C., neither the X-ray copy nor the Scan Report was marked before the Trial Court, so as to demonstrate that the injury alleged to have been sustained by P.W.2 is grievous in nature, learned counsel for the petitioners relied upon the judgment of this Court, dated 14.08.2019 in Crl.A.(MD)No.206 of 2008 [Mayandi and Sankar @ JeySankar Vs.The State of Tamil Nadu, represented by its Inspector of Police]. The Trial Court has committed a gross error in not considering the cross examination of the Investigation Officer-P.W.13 and consequently, erred in not appreciating the material contradiction between the evidence of private prosecution witnesses and the Investigation Officer.



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8. The learned Government Advocate (Crl.Side) made a submissions in support of the judgments of the Courts below.

9. Heard both sides and perused the records.

10. The admitted case is that P.W.1 is the son of the victim (P.W.2). P.W.2 is the father of P.W.1 and the husband of P.W.3. P.W.2 is the mother of P.W.1 and wife of P.W.2. The victim P.W.2 and other private prosecution witnesses are the grand-sons through the second wife of the father of the first accused. While the accused persons belonged to the line of the first wife, the private prosecution witnesses P.W.1 to P.W.6 are the grand-sons of the second wife of one Mr.Srinivasa Konar.

11. As per the prosecution case, the date and time of the occurrence is on 25.04.2015 at about 19.00 hours. As per the documentary evidence produced before the Court, F.I.R was registered on 26.04.2005 at 13.00 hours, as could be seen from the Register and based upon the oral information given by one Elumalai, S/o.Kannan. Elumalai is P.W.1 and Kannan is P.W.2 (injured).



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12. On a bare perusal of the evidence of P.W.1, this Court finds

that "நான் காவல் நிலையத்தில் புகார் கொடுக்கவில்லை. அதன் பின்னர் போலீசார் அப்பாவை விசாரித்தார்களா என்றால் தெரியாது. என்னை போலீசார் விசாரிக்கவில்லை. எனக்கு சம்பவம் பற்றி நேரடியாக பார்க்கவில்லை. சம்பவம் பற்றி கேள்விப்பட்டேன்".

13. P.W.2 who is the injured, has deposed that "சம்பவ சமயம் நான்

மட்டும் தான் இருந்தேன். மற்ற சாட்சிகள் யாரும் அருகில் இல்லை. என்னை திருக்கோவிலுர் அரசு மருத்துவமனையில் போலீசார் விசாரித்தபிறகு, பாண்டி மருத்துவமனையில் 3 ஆம் நாள் போலீசார் என்னை விசாரித்தார்கள்."

14. P.W.7 in the cross examination has deposed that "முதல் காயம்

ஒருவர் வண்டியில் செல்லும்போது கரடுமுரடான பாதையில் சென்று விழுந்தால் முதல்காயம் ஏற்பட வாய்ப்புண்டு. மற்ற காயங்கள் ஒருவர் தடுமாறி கரடுமுரடான பாதையில் விழுந்தால் ஏற்பட வாய்ப்புண்டு என்றால் சரிதான்."

15. P.W.3 who is the wife of P.W.2 had deposed that the first accused is the half brother of P.W.3 and father of P.W.3 and A1 namely Srinivasa Konar had two wives. The first wife's son is A1 and the



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second wife's daughter is P.W.3. His evidence is that he came to know that 2 or 3 persons have assaulted his husband namely P.W.2. The evidence of P.W.4 clearly demonstrates that he is not an eye witness. P.W.5 and P.W.6 have turned hostile. P.W.7 is a medical witness who had given the First-Aid and issued Ex.P4 Accident Register and also stated that the first injury is grievous injury. P.W.8 is the Inspector of Police who had received the information from P.W.1 and registered Ex.P5-F.I.R in the respective sections as stated above. P.W.9 is the hear-say witness and P.W.10 equally appears to be hear-say witness and other alleged occurrence witnesses P.W.11 and P.W.12 have turned hostile.

16. The sum and substance of the evidence of the Investigation Officer P.W.13 is that no ingredient of offence under Section 307 of I.P.C is found place in the statement recorded under Section 161 Cr.P.C. and Ex.P1 complaint given by P.W.1. He has not recovered any weapon alleged to have been involved in the occurrence and no blood stained clothes was recovered from P.W.2 and there is no light in the place of the occurrence.

17. According to him, P.W.2 victim alone was present in the



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place of the occurrence, and no other person had witnessed the occurrence and he had examined the other witnesses, only 3 days after the incident.

18. At this juncture, it remains to be stated that P.W.7 Doctor who had given initial treatment and also referred him to the JIPMER Hospital, stated that the victim at the time of the treatment, stated that he was assaulted by two known persons. 5 persons have been charged in the final report assumes significance and hence, from the above discussion, I find that as per the victim's statement, both in the witness box as well as by the Investigation Officer-P.W.13, except him, no other person had witnessed the occurrence and even according to him, P.W.7 has told the Doctor that only two persons have assaulted him and hence, in view of the answer elicited from P.W.1, P.W.7 and P.W.13, I find that the presence of P.W.1, P.W.3, P.W.4, P.W.9 and P.W.10 appears to be artificial. Besides, as stated supra one Srinivasa Konar had two wives. While, the first accused is the son of the first wife, P.W.3 is the daughter of the second wife.

19. Had there been any such incident at the instance of A1. P.W.2 who is the husband of P.W.3 would have mentioned the



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involvement of all the accused at the first instance before the Doctor. It is the specific evidence of the victim P.W.2 that except him, no one was present at the scene of the occurrence and the statement of all the other witnesses, appears to be repetition, i.e., parrot-like statement in the witness box and hence, both the Courts below have committed a concurrent error in not appreciating the evidence of the prosecution in the proper manner.

20. Here, the suggestive case of the defence is of total denial. The victim and the accused hail from common ancestor, namely Srinivasa Konar who had two wives. The first wife's son is Arumugam-A1. A2 to A5 are the sons and wives respectively. A6 is the wife of A2. A1 is not related person and hence, I find that entire family of Arumugam, who is the son of the first wife of Srinivasa Konar, has been implicated and roped up to face the prosecution. In the cross-examination, P.W.7 Doctor has stated that such an injury is possible on fall.

21. Admittedly, no X-ray copy or scan report is filed to prove that the injury sustained is a grievous injury and hence, the conviction under Section 326 I.P.C is not sustainable in law.



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22. In view of the law laid down by this Court which is followed by me in Crl.A.(MD)No.206 of 2008, the conviction under Section 326 I.P.C is hereby set aside. Whether P.W.2 had sustained injury in the hands of the accused is doubtful, in view of the material contradiction elicited with the Investigation Officer. As stated supra, except P.W.2, none had witnessed the occurrence. In the evidence of P.W.2, there is a vital variation with regard to the information with the Investigation Officer's version and hence, I find that the version of P.W.2 regarding the alleged injury said to have been caused by the accused, is also doubtful.

23. At this juncture, in view of the suggestive case that both the witnesses and the accused are hailing from common ancestor and there is a previous enmity between the parties and Civil Suits are pending before the Civil Court, raised as motive for the occurrence. 'Motive is a double edged weapon' and in the instance case, it appears to be false implication of the accused herein and hence, I find that in view of the material contradiction as stated supra and also hearsay evidence of other witnesses which is nothing but it is not even witness to the occurrence and the version of P.W.2 victim appears to be on exaggeration and the same amounts to material contradictions with



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the version of the Investigation Officer P.W.13 and hence, I find that the suggestive case of the defence is more probable than the prosecution case. Therefore, in view of the material contradiction as stated supra, I find that the prosecution has failed to prove the charges beyond reasonable doubt and no positive evidence to show that the injuries found on P.W.2 were caused by the accused herein and hence, by operation of law, 'benefit of doubt' goes to the accused. By giving benefit of doubt to the accused, they all stand acquitted.

24. In the result,

(i) This Criminal Revision Petition is allowed.

(ii) The judgment of conviction and sentence passed by the first appellate court is set aside.

(iii) All the accused are set at liberty forthwith, unless their presence is required in connection with any other case.

(iv) Bail bond if any executed by the appellants/accused shall stand cancelled. Fine amount if any paid by the appellants/accused shall be refunded to them.

(v) No material object was not produced before this Court and therefore, there is no order on the material objects.

(vi) Consequently, connected Crl.M.P is closed.

05.06.2023



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Internet:Yes/No
Speaking Order:Yes/No
Neutral Citation: Yes/No

To

1. The Additional Sessions Judge, (Fast Track Court), Villupuram.
2. The Public Prosecutor
High Court, Madras.
3. The Inspector of Police,
Tirukoilur Police Station,
Tirukoilur.



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RMT.TEEKAA RAMAN, J.

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order in
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