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CrI.A.No.497 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CrI.A.No.497 of 2023

Shanmugam

...Appellant

vs.

1. Sridhar (A-1)
2. Devaraj (A-2)
3. Sampath (A-3)
4. Vilvanathan (A-4)
5. Saravanan (A-5)
6. Rajagopal (A-6)
7. Devendiran (A-7)
8. Rangasamy (A-8)
9. Kasi (A-9)
10. Jaiganesh (A-11)
11. Siva @ Sivasankar (A-12)
12. Mohan (A-13)
13. Panchatcharam (A-14)
14. Munirathinam (A-15)
15. Megaraj (A-16)
16. Gnanaprakasam (A-17)
17. The State Represented by
The Inspector Police
Paradarami Police Station
K.V. Kuppam Circle
Vellore District.

...Respondents



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PRAYER: Criminal Appeal filed under Section 372 (Proviso) of the Criminal Procedure Code, 1973 is filed against the judgment dated 16.02.2023 made in S.C.No.166 of 2017 on the file of the I Additional District and Sessions Court, Vellore.

For Appellant : Mr. G. Pugazhenth
For R4 : Mr.M. Sathish Kumar
For R17 : Mr. R.Vinothraja
Government Advocate (Crl. Side)

J U D G M E N T

The present Criminal Appeal is filed by one of the victims Shanmugam (P.W.2) against the judgment dated 16.02.2023 made in S.C.No.166 of 2017 on the file of the I Additional District and Sessions Court, Vellore.

2. The Inspector of Police, K.V. Kuppam Circle, registered an FIR in Crime No.14/2011 of Paradarami Police Station based on the compliant given by one Thirunavukkarasu (P.W.1) against 50 named persons and others.



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3. The case of the prosecution in a condensed form is as follows :

- i. The accused 1 to 18 are the residents of K. Mottur Village, Kallapadi Post, Gudiyatham Taluk, and the complainant Thirunavukkarasu (P.W.1) is also residing in the same village.
- ii. The accused, on account of previous enmity, during a village festival on 16.01.2011 let the bullocks to run through the Bajanai Koil Street, against the Resolution passed in connection with bullock cart race.
- iii. According to the prosecution, all the accused armed with deadly weapon unlawfully assembled and stabbed one Thirunavukkarasu (P.W.1) and the present appellant (P.W.2) with a knife.
- iv. The accused also hit P.W.1 and P.W.2 with wooden logs and iron rods apart from pelting stones on them.
- v. After completing investigation, the Inspector of Police, K.V. Puram Circle filed a final report against A1 to A18 alone before the Judicial Magistrate Court, Gudiyatham, in PRC No.01/2017 for the offences punishable under Sections 147, 148, 307, 307 r/w 149, 323, 324, 294(b) and 506(ii) IPC.
- vi. The learned Judicial Magistrate, Gudiyatham, after furnishing



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copies of records to the accused under Section 207 CrP.C, committed the case to the Court of Principal Sessions Court, under Section 209 Cr.P.C. since the offences are exclusively triable by court of sessions.

vii. The Principal District and Sessions Judge, Vellore, took the case on file in S.C. No.166/2017 and made over the same to I Additional District & Sessions Judge, Vellore.

viii. The following Charges were framed against the accused on their appearance.

<i>S.No.</i>	<i>Rank of Accused</i>	<i>Conviction</i>
1.	A8, A11, A14 & A16	U/s. 147 IPC
2.	A1 to A7, A9, A12, A13, A15, A17 & A18	U/s. 148 IPC
3.	A1	U/s. 307 IPC
4.	A2 to A9, A11 to A18	U/s. 307 r/w 149 IPC
5.	A2 (2 counts), A3 (2 counts), A4(2 counts) & A5 (3 counts)	U/s. 324 IPC
6.	A6 to A9, A12, A13, A17 and A18 (1 count each)	U/s. 324 IPC
7.	A8, A11 and A14	U/s. 323 IPC
8.	A17	U/s. 294(b) IPC
9.	A1 to A9 and A11 to A18	U/s. 506(ii) IPC

ix. In order to bring home the guilt of the accused, the prosecution examined 9 witnesses and marked Ex.P1 to Ex.P10.



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x. The accused were questioned with regard to the circumstances appearing in evidence against them under Section 313 Cr.P.C. All the accused denied of having committed any offence. However, they did not examine any witnesses on their side, except marking Ex.D1 to Ex.D7 during the cross examination of prosecution witnesses.

xi. The learned I Additional District and Sessions Judge, after analysing the evidence adduced on both sides acquitted all the accused under Section 235(1) Cr.P.C, vide her judgment dated 16.02.2023. During the pendency of the trial A10 and A18 died and the case against them got abated.

4. As against the judgement passed by the trial Court, P.W.2, has preferred the present Criminal Appeal.

5. Heard Mr. G. Pugazhenth, learned counsel for the appellant, Mr.M. Sathish Kumar, learned counsel for the fourth respondent and Mr.R.Vinothraja, learned Government Advocate (Crl. Side), appearing for the 17th respondent.



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6. Mr. G. Pugazhenth, learned counsel for the appellant contended that the trial court, without considering the evidence adduced on the side of the prosecution, had erroneously acquitted the accused and therefore, the present criminal appeal should be allowed.

7. The trial court in paragraph Nos. 17,18,20,29, 30, 44 and 47 of its judgment had observed thus:

17. For which, PW.1/Thirunavukkarasu injured stated in his evidence that A1 cut on the right side of his head with the knife. In his evidence nothing stated as against other accused that they were also joint with A1 and they abetted A1 to commit the offence of attempt to murder. The Doctor PW.6 stated in her evidence that P.W.1 stated to her that,

"தன்னை தெரிந்த 45 பேர் கொண்ட கும்பல் வீச்சருவாள், கட்டை, செங்கல் அடித்ததாகவும் கூறினார். வலது பிராண்டல், பெரைட்டல் மண்டை ஒரு பகுதியில் ஒரு கிழிந்த காயம், நீளவாக்கில் இருந்தது 8 x 2 செ.மீ. எலும்பு ஆழத்திற்கு ரத்தம் கசிந்து காணப்பட்டது. அவருக்கு ஏற்பட்ட காயங்கள் சொற்ப காயங்கள் என சான்றளித்தேன். அந்த சான்று அ.த.சா.ஆ.2"

18. From the Doctor/PW.6 evidence it is clear that the injury is simple in nature. Further he stated that he was assaulted by 45 persons. But in this case, case was filed



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only against 17 accused. The said knife was not recovered.

If a person was assaulted by 45 persons definitely the injuries will be more. PW.2 and PW.5 have also stated that A1 Sridhar assaulted PW.1. PW.4 stated that " வீடியோ படம் எடுத்தவுடன் மாடு விடுவதை நிறுத்திவிட்டார்கள். அதற்குப் பிறகு குழப்பம் ஆகி சண்டை வந்தது. டேய் தேவிடியா பையா என வில்வநாதனும் ஆஜர் எதிரிகளும் சொல்லி இவங்க யார் மீட்டிங் போடறது கால் கையை உடைச்சிறனும் என சொல்லி சண்டை ஆனது."

20. Hence from the evidence of doctor it is also clear that if more than 45 persons fight with each others these sort of injuries will be happened. Further there was quarrel occurred and they were all fighting with each others and already they were having rivalry with each others and further as per PW.1's version more than 45 persons involved in the occurrence and the properties were not recovered and the prosecution failed to prove the charge in a concrete manner against the A1 u/s 307 IPC., and also the charge against against A2 to A9 and A11 to A17 u/s 307 r/w 149 IPC., beyond all the reasonable doubts. Whether Charges u/s 324 & 323 of IPC.,are proved?

29. From the evidence of PW.6 it is evident that one



abrasion injury and two contusion injuries and one incised injury found on PW.2/Shanmugam. These injuries are also happened when both parties fight with each others and fell down. It is to be noted that while he was examined by the doctor he has stated that he was assaulted by 100 persons. If a man was assaulted by 100 persons, the result of injuries will be more and the injuries will also be grave in nature. But the simple injuries might have happened even any body fell on the rough space. Further the said weapons such as iron rod, wooden log, knife were not recovered by the concerned police.

30. Further, in the course of same transaction, on the same date, time and place, the charge was framed as against A17 as that he scolded the witness P.W.3/Kuppu in a filthy language and assaulted her with a brick on her back and A2 assaulted the said witness Kuppu with knife and caused cut injury in her head, A9 assaulted her with an iron rod and thus caused simple injury in her head and A3 and A4 assaulted her with wooden logs in her back and right shoulder and thereby A17, A2, A9, A3 & A4 caused simple injuries.

44. From the evidence of PW.6 it is evident that three contusion injuries and one abrasion injury found on PW.5/



Thirilogachandar . These injuries are simple injuries and they might have happened when more persons fight with each others and while he was examined by the doctor he stated that he was assaulted by 100 persons. If he was assaulted by 100 persons the injuries will not be simple injuries. Further the said weapons such as wooden log, knife were not recovered by the concerned police. In his cross examination he stated that he is having yet two another cases .

47. The Inspector of Police registered the FIR based on the complaint given by PW.1, stating that on 16.01.2011 at 05:30 P.M., Rajamanickam party have let out bullocks in the street as against the resolution and he took photograph of that in the cell phone for evidence and so the problem started and the accused assaulted him and other witnesses and they were admitted in the Government Hospital. In this case the injured alone examined. No other independent witnesses were examined. In the complaint the father name of the accused were not stated. But how the prosecution fixed the case upon the accused is not explained. No Identification Parade was conducted to that effect. It is admitted fact that in that place more than 200 to 250 peoples were gathered. To the doctor the injured have stated that they were assaulted by 100 persons. But the



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charge sheet was filed only against 18 persons. During the time of trial A10 and A17 were died and the charge as against them were abated. The Observation Mahazer prepared in presence of M. Govindasamy and Gajendiren. But it was signed as Govindaraju. The witnesses to the Observation Mahazer was examined as PW.7. In the observation Mahazer it was stated as it was prepared in the presence of Govindasamy. But the signature was affixed as Govindaraju. So he was questioned in this regard and he answered as " என் பெயர் கோவிந்தராஜ் என்றால் சரி. என் பெயர் கோவிந்தசாமி கிடையாது. கோவிந்தராஜீயும் கிடையாது." But there was no explanation from the prosecution in this regard. Further the case properties were not recovered through Seizure Mahazar

8. Thus it is seen that the trial court had analysed threadbare the evidence adduced on both sides. verily, a successful prosecution of a criminal action largely depends on proof of things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.



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