



Crl.A.No.374 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.374 of 2023
and
Crl.M.P.No.9134 of 2023

1.Manokar
2.Balu
3.Saravanan
4.Sathiskumar @ Sathish
5.Murali

... Appellants/Accused 1 to 5

vs.

State represented by
Inspector of Police,
Mailam Police Station,
Villupuram District.
(Crime No.1502/2020)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to call for the entire records in connection with the S.C.No.147 of 2021 on the file of the learned Principal Sessions Judge, Villupuram, and set aside the Judgment dated 23.03.2023.



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For Appellants : Mr.R.Vivekanandan

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been filed by Accused Nos. 1 to 5, challenging the conviction and sentence imposed upon them vide judgment dated 23.03.2023 in S.C.No.147 of 2021, on the file of the learned Principal Sessions Judge, Villupuram.

2(i) It is the case of the prosecution that on account of prior enmity with the family of PW1, A1 along with 10 others, had gone to the house of PW1 in a SUMO car bearing Regn. No. TN57AJ0244 and a two-wheeler bearing Regn.No.TN16B6220 armed with knives, wooden logs, and iron rods and attacked the witnesses PW1 to PW3 and damaged the articles in the house worth about Rs.3,000/- and threatened the witnesses, stating that they would cause the death of PW5 and one Selvaseeman (not examined). Hence a case was registered by PW13 in Crime No.1502 of 2020 on the file of the respondent police. After investigation and examination of the



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witnesses, PW14, the investigating officer, filed a final report before the learned Judicial Magistrate No. II, Tindivanam, against A1 to A5/appellants herein for the offence under Sections 147, 148, 448, 294(b), 341, 326 and 307 of the IPC r/w Section 3 of TNPPDL Act and against A6 to A15 for the offence under Sections 147, 148, 448, 294(b), 341 and 307 of the IPC r/w Section 3 of TNPPDL Act.

(ii) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with, and the case was committed to the Court of Session in S.C.No.147 of 2021 and was made over to the learned Principal Sessions Judge, Villupuram, for trial. The trial Court framed charges under Sections 148, 448, 294(b), 307, 506 (ii), 341 and 352 of the IPC r/w Section 3 of TNPPDL Act against A1 to A5/appellants herein and under Sections 148, 448, 294(b), 307 r/w 149, 506(ii), 341 and 352 of the IPC r/w Section 3 of TNPPDL Act against A6 to A15 and when questioned, the accused pleaded 'not guilty.'



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(iii) To prove the case, the prosecution examined 14 witnesses as P.W.1 to P.W.14, marked 19 documents as Exs.P1 to P19 and seven material objects as M.O.1 to M.O.7. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. On the side of the defence, no oral or documentary evidence was let in.

(iv) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellants herein, A1 to A5 guilty of offences under Sections 148, 448 and 307 of the IPC and sentenced them as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1 to A5	148 IPC	Each of them to pay a fine of Rs.2,500/-, in default to undergo SI for six months.
	448 IPC	Each of them to pay a fine of Rs.500/-, in default to undergo SI for one month.
	307 IPC	Each of them to undergo SI for three years and to pay a fine of Rs.1,000/-, in default to undergo SI for six months

Challenging the above conviction and sentence, the instant appeal is filed.



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3. Heard, Mr.R.Vivekananthan, learned senior counsel appearing for the appellants/accused and Dr.C.E.Pratap, learned Government Advocate (Crl. Side), appearing for the respondent/State.

4 (i). Mr.R.Vivekananthan, the learned counsel for the appellants/A1 to A5, would submit that the witnesses have suppressed the genesis and origin of the occurrence; that the police had recorded the statement of the *de-facto* complainant much before the alleged complaint, which was suppressed by the prosecution and that the complaint was registered at 6.00 p.m., belatedly in the evening when the alleged occurrence is said to have taken place at 9.40 a.m., in the morning; that the witnesses had suppressed the fact that an FIR was lodged on the complaint given by A1, initially under Section 174 of the Cr.P.C., against the witnesses in this case and thereafter, altered to Section 302 of the IPC; that the complaint against the appellants was lodged as an afterthought and the alleged injuries sustained by the appellants, have not been proved by the prosecution and further pointed out that no specific *overt act* has been attributed to any of the accused and prayed for acquittal of the accused.



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5. The learned Government Advocate (Crl. Side) per contra submitted that the prosecution had proved its case beyond reasonable doubt, that the evidence of the injured witnesses is cogent and convincing, and therefore, there is no reason or infirmity in the judgment of the trial Court and prayed for dismissal of the appeal.

6. I have carefully considered the rival submissions and perused all the relevant materials available on record.

7. This Court has considered the rival submissions and perused the evidence on record.

8. As stated earlier, the prosecution had examined 14 witnesses and marked 19 documents. PW1 to PW3 were, according to the prosecution, in the house of PW1 and were attacked by the accused. PW4 is one of the injured witnesses. PW5 is the husband of PW1 and is a hearsay witness. PW6 and PW7 are two other eyewitnesses who were examined to corroborate the evidence of PW1 and PW3. PW8 is the observation mahazar



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witness. PW9 is the witness to the arrest and confession of A1 who turned hostile. PW10 is the doctor who treated the injured PW2 and had made entries in the Accident Register/Ex.P9. PW11 is the witness to the confession of A7 and A13 who turned hostile. PW12 is another witness to prove the arrest of A1 and had supported the prosecution case. PW13 is the sub-inspector who registered the FIR and had prepared the rough sketch and observation mahazar. PW14 is the investigating officer.

9. The prosecution case primarily rests on the evidence of P.W.1 to P.W.3 and P.W.5 to P.W.7, who were examined as eyewitnesses. The question is whether the conviction can be based on the evidence of these eyewitnesses. P.W.2 is the injured eyewitness, who, according to the prosecution, had sustained injuries on the head. P.W.2 had told the Doctor/P.W.10, who had treated him, that he was attacked by fifteen known persons with an iron rod. The Doctor had deposed in his cross-examination that the injuries sustained by P.W.2 could not have been caused by an iron rod.



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10. Be that as it may. The evidence of P.W.1 would suggest that on information the police had arrived at the scene of occurrence and found the injured witness, P.W.2, in an unconscious state and also helped the witnesses in taking the victim, P.W.2, to the hospital. The presence of police at the scene of occurrence, therefore, indicates that the police were aware of the occurrence even at 10 "o" clock in the morning of 31.08.2020. The presence of the police in the morning raises a serious doubt in the version of the witness that an FIR was lodged in the evening. The probability of suppression of the earliest complaint cannot be ruled out.

11. That apart, the investigating officer had admitted in his cross-examination that he had registered an FIR in Cr.No.1502 of 2020 on the complaint given by A1 against the witnesses in this case. This complaint against the appellants was lodged much later in the evening. However, none of the witnesses had stated anything about the first occurrence or the filing of the FIR against them. When the witnesses were asked about the earlier occurrence, all the witnesses feigned ignorance of the occurrence or the FIR.



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P.W.2, in his deposition in the cross-examination had stated as follows:

“1ம் எதிரியின் மகனை நாங்கள் அடித்து இறந்துவிட்டார் என்று எங்களுக்கு எதிராக திண்டிவனத்தில் வழக்கு உள்ளது என்றால் அது பொய். குற்ற எண் 1501/2020 என்ற வழக்கு எனக்கும் சாட்சி பட்டியலில் உள்ளவருக்கு எதிராக பதியப்பட்டது என்றால் அது பொய் வழக்கு. குற்ற எண் 1502/2020 என்ற வழக்கில் நான் சாட்சி சொல்கிறேன் என்றால் சரியல்ல. 1501/2020 என்ற வழக்கில் தப்பிப்பதற்காக நான் என்னை அடித்ததாக பொய் சொல்கிறேன் என்றால் சரியல்ல. சம்பவம் நடந்து எத்தனை மணி நேரம் கழித்து போலிஸ் வந்தது என்றால் தெரியாது அவர்கள் வந்து தான் என்னை மருத்துவமனைக்கு அழைத்து சென்றார்கள் என்றால் எனக்கு தெரியாது.”

The above deposition would show that initially he denied the filing of the FIR and thereafter would state that the said FIR is false. He also would state that he did not know whether the police took him to the hospital. P.W.13,



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the investigating officer who registered the FIR, would state that he had registered Crime No. 1501 of 2020, lodged against the witnesses in this case. He had also deposed that pursuant to the registration of the said FIR, the police were sent to the scene of occurrence. All these facts have been suppressed by the complainant, who had lodged a complaint belatedly in the evening.

12. It is well settled that if the genesis and origin of the occurrence is suppressed by the prosecution, then the entire prosecution case would collapse and it would be unsafe to rely upon on the evidence of the eyewitnesses. This position has been enunciated by the Hon'ble Supreme Court in ***Marudanal Augusti vs State Of Kerala*** reported in ***(1980) 4 SCC 425***. The relevant portion reads as follows.

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could



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be added without there being anything to check the authenticity of their evidence.”

13. That apart, in the First Information Report, no specific *overt act* had been attributed to any of the appellants. However, in the deposition, for the first time, specific *overt acts* have been attributed to the appellants and the *overt act* that is sought to be attributed is contrary to the statement made to the Doctor as regards the weapon used.

14. It is also seen that the prosecution had not examined crucial witnesses who had taken the victim/P.W.2 to the hospital. P.W.14, in his deposition, would state that he had not examined one Mr.Ramalingam, who had taken the victim to the hospital and his name is found in the Accident Registrar/Ex.P9. Further, the investigating officer/P.W.14 admitted in the cross-examination that he had collected the discharge summary of the victim/P.W.2, who had taken treatment at JIPMER Hospital, Puducherry. However, the said document has not been filed before the Court. The Doctors, who had treated the victim at JIPMER Hospital, Puducherry, were also not examined. That apart, there is evidence to show that the victim also



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took treatment at Hindu Mission Hospital, and the prosecution has not produced any records relating to the treatment taken by the victim at the said hospital.

15. From the deposition of the investigating officer, it would be clear that this is a case where the accused had lodged a complaint against the witnesses in the morning of 31.08.2020 and the *de-facto* complainant/P.W.1 had lodged the complaint against the appellants in the evening at 6:30 P.M. Though there is evidence to show that the police were aware, admittedly, of both incidents, which took place in the course of the same transaction, the prosecution had not placed the result of the investigation in the FIR lodged by A1 against the witnesses. It is settled law that in a case and counter case, the investigating officer should place all the materials before the Court and the investigating officer cannot assume the role of a Judge and suppress one version totally.



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16. In the light of the above infirmities in the prosecution case, where the complaint against the witnesses has been attempted to be suppressed by the prosecution witnesses, it is highly unsafe to rely upon the testimony of those witnesses to convict the appellants, especially when no specific overt acts had been attributed to any of the appellants in the initial version. As stated earlier, there is infirmity as regards the weapon used. Though the witnesses had stated that the *veechu aruval* (billhook machete) was used, the investigating officer had admitted that he had not seized the *veechu aruval* (billhook machete). It is also seen that this Court had allowed an application filed under Section 391 of the Cr.P.C., by the appellants to mark the FIR in Crime No. 1501 of 2020, which was lodged on the complaint of A2 against the witnesses, and it was marked as Ex.A1 by this Court on 30.07.2024 vide order made in Crl.M.P.No.19380 of 2023 in Crl.A.No.374 of 2023. The said document would probablize the defence of the accused and also confirm the suppression of the genesis and origin of the occurrence. Hence, this Court is of the view that the appellants would be entitled to the benefit of the doubt, as it is unsafe to rely upon the evidence of witnesses to convict the appellants. Therefore, the Judgment of the trial Court convicting



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the appellants is liable to be set aside.

17. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellants/accused in S.C.No.147 of 2021 dated 23.03.2023, on the file of the learned Principal Sessions Judge, Villupuram, are set aside. The appellants/accused are acquitted of the charges. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected miscellaneous petition is closed.

12.12.2024

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
ars/dk



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Copy to:

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1. The Principal Sessions Judge,
Villupuram.
2. The Inspector of Police,
Mailam Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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