



Crl.A.(MD)Nos.2, 4 & 151 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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Crl.A.(MD)No.2 of 2021

1.Ganapathy

2.Ramesh

... Appellant / Accused Nos. 4 & 5

Vs.

State represented by
Inspector of Police,
Kadayam Police Station,
Cr.No.226 of 2011,
Tenkasi District.

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records from the lower court in S.C.No.27 of 2014 on the file of the III Additional Sessions Judge, Tirunelveli, Tirunelveli District and set aside the conviction and sentence dated 15.12.2020 imposed on the appellants.



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For Appellant : Mr.K.Prabhu

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor.

Crl.A.(MD)No.4 of 2021

1.Murugan

2.Chellappa

3.Sankarammal

4.Raja @ Rajkumar

5.Thangamari ... Appellants / Accused Nos.1,6,7,8 & 9

Vs.

State represented by
Inspector of Police,
Kadayam Police Station,
Cr.No.226 of 2011,
Tenkasi District.

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records and set aside the Judgment and conviction dated 15.12.2020 passed by the learned 3rd Additional Sessions Judge, Tirunelveli in S.C.No.27 of 2014 and acquit the appellants.



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For Appellant : Mr.G.Karuppasamy Pandian

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor.

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1.Kali @ Kalidoss

2.Mariappan @ Mariraj ... Appellant / Accused Nos. 2 & 3

Vs.

State represented by
Inspector of Police,
Kadayam Police Station,
Cr.No.226 of 2011,
Tenkasi District.

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records from the lower court in S.C.No.27 of 2014 on the file of the III Additional Sessions Judge, Tirunelveli, Tirunelveli District and set aside the conviction and sentence dated 15.12.2020 imposed on the appellants.

For Appellant : Mr.Karthikeyavenkitachalapathy

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor.



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COMMON JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

Murugan and 8 others were prosecuted in S.C.No.27 of 2014 on the file of the 3rd Additional Sessions Judge, Tirunelveli. The charges framed against them were as follows:-

1 st Charge	1 to 9 accused	Rioting. Offence under Section 147 IPC
2 nd Charge	1 to 3 accused	Rioting armed with deadly weapon. -offence under Section 148 IPC
3 rd Charge	1 to 9 accused	Uttered obscene songs at public place -offence under Section 294(b) IPC
4 th Charge	6 th accused	Wrongfully confined Mariappan -offence under Section 342 IPC
5 th Charge	3,7,8 & 9 th accused	Voluntarily causing hurt. -offence under Section 323 IPC
6 th Charge	1 st accused	Murdered Chandrasekar @ Panju -offence under Section 302 IPC
7 th Charge	2 to 9 accused	Murdered Chadrasekar @ Panju along with other persons. -offence under Section 302 r/w 149 IPC.
8 th Charge	2 nd accused	Attempted to murder -offence under Section 307 IPC



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9 th Charge	1,3 to 9 accused	Attempted to murder along with other persons -offence under Section 307 r/w 149
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By the impugned Judgment dated 15.12.2020, they were convicted and sentenced as follows:-

*“A1 to A9 found **not guilty** for the offence under Section 294(b) IPC.*

*A3 found **not guilty** for the offence under Section 148 IPC.*

*A6 found **not guilty** for the offence under Section 342 IPC.*

*A1, A3 to A9 found **not guilty** for the offence under Section 307 r/w 149 IPC.*

*A2 to A9 found **not guilty** for the offence under Section 302 r/w 149 IPC.*

*A1 to A9 **acquitted** from the offence under Section 294(b) IPC,*

*A3 **acquitted** from the offence under Section 148 IPC,*

*A6 **acquitted** from the offence under Section 342 IPC.*

*A1, A3 to A9 **acquitted** from the offence under Section 307 r/w 149 IPC and*



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A2 to A9 acquitted from the offence under Section **302 r/w 149 IPC, under Section 235(1) Cr.P.C.**

A1 to A9 found guilty for the offence under Section **147 IPC** and convicted and sentenced to undergo S.I for **1 year**.

A1 & A2 are found guilty for the offence under Section **148 IPC** and ***A1 & A2*** are convicted and sentenced to undergo ***R.I for 1 year*** for the offence under **Section 148 IPC**.

A3, A7, A8, A9 are found guilty for the offence under Section **323 IPC** and ***A3, A7, A8, A9*** are convicted and sentenced to undergo ***S.I for 6 months*** for the offence under Section **323 IPC**.

A2 has been found guilty for the offence under Section **307 IPC**, ***A2*** is convicted and sentenced to undergo ***R.I for 5 years*** for the offence under Section 307 IPC.

This court has found guilty of ***A1*** for the offence under Section **302 IPC**. ***A1*** is convicted and sentenced to undergo ***R.I for life*** and shall also pay a fine of Rs.1,000/- in default one month S.I for the offence under Section **302 IPC**.

The sentences imposed against ***A1*** for the offences under Sections 147, 148, 302 IPC and the sentences imposed against ***A2*** for the offences under Section 147, 148, 307 IPC and the sentences imposed against ***A3*** for the offences under Sections 147, 323 IPC and the sentences imposed against ***A7, A8, A9*** for the offences under Sections 147, 323 IPC shall run concurrently under Section 427 Cr.P.C.



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The detention period for A1 & A3 from 26.07.2011 to 20.10.2011, for A2 from 26.07.2011 to 20.10.2011, for A4 & A5 from 23.09.2011 to 28.10.2011, for A8 from 19.02.2012 to 16.03.2012 is ordered to be set of under Section 428 of Cr.P.C.”

Questioning the same, **A1, A6 to A9** filed Crl.A.(MD)No.4 of 2021. **A2** & A3 filed Crl.A.(MD)No.151 of 2021. **A4 & A5** filed Crl.A.(MD)No.2 of 2021.

2. The case of the prosecution is as follows:-

On 24.07.2011, at 07.00 pm., a special pooja was conducted at Kadayam, Madhiyur, Muppidathiamman Kovil. The accused conducted themselves in an objectionable manner. This was questioned by Chandrasekar @ Panju and his friends Mariappan and Muthukumar. There arose a quarrel. Due to this motive, on the next day ie., on 25.07.2011 at 03.00 pm., the accused came to the house of one Velmurugan, where Chandrasekar @ Panju, Mariappan and Muthukumar were chatting. A7 grabbed (P.W.1) Mariappan's shirt and pulled him while A8 & A9 beat him with their hands. A3 beat Mariappan with stick and caused him simple injury. A4 instigated A1 to kill Chandrasekar @



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Panju. There upon, A1 stabbed Chandrasekar @ Panju with knife on the back side of his neck. On the instigation of A5 & A7, A2 cut Muthukumar (P.W.2) on the back side of his neck with sickle and caused him grievous injury. P.W.4-Kumar @ Ragavendran took Chandrasekar @ Panju in auto to the Government Hospital, Tenkasi. P.W.2 was taken in another auto by P.W.1 and his wife and P.W.3 to the Government Hospital, Tenkasi. Muthukumar was admitted at around 4.45 pm. P.W.1 who suffered simple injury was also admitted at around 4.50 pm on the same day. Chandrasekar died enroute and instead of going to the hospital, the body was taken to his house. Intimation was given to the Kadayam Police Station about the occurrence. There upon, P.W.12-Subbiah, Special SI of Police went to the Government Hospital, Tenkasi and recorded the statement of P.W.1-Mariappan and obtained his signature (Ex.P4). Based on Ex.P1, Crime No.226 of 2011 was registered for the offences including Section 302 IPC on 25.07.2011 at 6.30 pm. Thiru.K.Radha Krishnan, the Inspector of Police took up investigation. He went to the spot at around 08.00 pm and prepared rough sketch and observation mahazar. He collected the blood stained earth samples from the spot. After examining and recording the



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statements of the witnesses, he arranged inquest of the deceased Chandra Sekar @ Panju on 26.07.2011. Thereafter, the body was sent for post mortem. He then arrested the accused and obtained their confession statements. Based on the same, the weapons used for committing the crime were recovered. P.W.19 was then working as the jurisdictional Deputy superintendent of Police. He took over investigation from Radha Krishnan and after examining few more witnesses and arresting some more accused, he filed final report on 26.06.2012 before the learned Judicial Magistrate, Ambasamudram. It was taken on file in P.R.C.No.13 of 2012. It was committed to the Sessions Court and made over to the III Additional Sessions Judge, Tirunelveli in S.C.No.27 of 2014 for trial. The prosecution examined P.W.1 to P.W.19 and marked Ex.P1 to Ex.P27. M.O.1 to M.O.7 were also marked. Incriminating circumstances were put to all the accused. During their examination under Section 313 of Cr.P.C., the accused characterised them as false. On the side of the accused, Ex.D1 & Ex.D2 were marked. After hearing both sides and considering the evidence on record, the trial court vide Judgment dated 15.12.2020 convicted and sentenced the accused as mentioned above.



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3. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds of appeal. They submitted that the prosecution did not establish the case against the accused beyond reasonable doubt. He called upon this Court to set aside the impugned Judgment and allow these appeals.

4. Per contra, the learned Additional Public Prosecutor submitted that the impugned Judgment is well reasoned and that it does not call for interference.

5. We carefully considered the rival contentions and went through the evidence on record.

6. The case of the prosecution is that there arose quarrel between the accused on the one side and the deceased, P.W.1 and P.W.2 on the other on 24.07.2021 during temple festival and that this was the cause for the fatal occurrence on the next day. P.W.1 to P.W.3 and P.W.8 have deposed as to what happened on 24.07.2011. P.W.8 worked as Village Administrative Officer of Kadayam East. He was the village head of



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Mandhiyur during 2011. He testified that he organised the festival for invoking the rain god. The deity was taken around to the village in the evening. The sons of Madasamy were beating drums and dancing. It appears that some petty quarrel arose between the deceased, P.W.1 & P.W.2 on the one hand and A1 to A3 on the other. There upon, P.W.8 and other village elders compromised the issue. Formal suggestion was put to these witnesses that no such occurrence took place. P.W.8 is an independent witness and there is no reason for him to speak falsely against the accused. We are therefore satisfied that the prosecution had established that the accused had a motive.

7. The question that calls for consideration is whether all the accused formed an unlawful assembly outside the house of Velmurugan on the next day at 03.00 pm. Admittedly, P.W.1 is an injured witness. He witnessed the entire occurrence. Ex.P1 is the complaint containing his statement. FIR in Crime No.226 of 2011 was registered on the strength of P.W.1's statement. In Ex.P1, P.W.1 had only stated that Murugan(A1) inflicted stab injury on the back of Chandrasekar's neck and Kalidas (A2) inflicted cut injury on Muthukumar's back with aruval



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and that Mariraj(A3) beat him with stick (M.O.3). Those only three persons were named in the FIR. It is true that FIR is not an encyclopedia. It is to be noted that P.W.1 did suffer only a simple injury. If the complainant had suffered grievous injury, it is quite possible to leave out some details. Considering the nature of injury suffered by PW.1 the omission to mention the presence of the other accused assumes significance. We are therefore of the view that in the occurrence, A1 to A3 alone had taken part and the presence of others is doubtful. This is probalised by the fact that only three weapons were recovered. Out of them, only two can be said to be deadly. If all the nine had formed an unlawful assembly, it is improbable that only two of them were armed with deadly weapons. We therefore come to the conclusion that the names of A4 to A9 had subsequently been added. The prosecution version had undergone a clear improvement.

8. We carefully went through the contents of the complaint. It talks only about the presence of three persons ie., A1 to A3 alone. The presence of others is not even alluded or adverted to. We therefore straight away come to the conclusion that others were not present on the



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spot. Merely because A4 to A9 are related to A1 to A3, one cannot jump to the conclusion that they also must have accompanied A1 to A3. Therefore, Crl.A.(MD)No.2 of 2021 filed by A4 & A5 is allowed. Crl.A.(MD)No.4 of 2021 is allowed insofar as A6 to A9 are concerned.

9. Section 141 of IPC states that an assembly of five or more persons is designated an "unlawful assembly", if there is an unlawful common object. In this case, we have already held that A4 to A9 could not have been present in the occurrence spot. Therefore, the charges framed under Sections 147 & 148 will have to go.

10. A1-Murugan inflicted stab injury with M.O.2 on the back neck of the deceased. The learned counsel for A1 would plead that it was only a single stab and that therefore, he should not be found guilty of the offence under Section 302 IPC. We reject this contention. This is for more than one reason. A1 had inflicted injury on a vital part. Ex.P11-postmortem certificate records that the stab injury reached the oesophagus of the deceased. It means that it was a very deep stab. It measured 3 cm X 2cm. The intention of A1 was to cause the death of



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Chandrasekar @ Panju. Therefore, the trial court rightly found him guilty of the offence under Section 302 of IPC. We are of the view that interference is clearly not warranted.

11. That A1 inflicted such a stab injury on Chandrasekar @ Panju is clearly spoken to by P.W.1-Mariappan, P.W.2-Muthukumar, P.W.3-Pitchai. Their testimony commands credibility because P.W.1 as well as P.W.2 suffered injuries during the occurrence. P.W.2 suffered very grievous injuries. The occurrence had taken place at 3.00 pm. The complaint was recorded by SSI, Kadayam Police Station in the hospital at 5.30 pm itself. A1 had been named in the complaint and the overt act attributed to him is also spelt out therein. The medical evidence also corroborates the ocular testimony.

12. As regards A2, he was charged that he had inflicted cut injury on P.W.2 on the back. P.W.2 deposed in clear and categorical terms that kalidas cut him on the back of his neck with M.O.1-aruvai. His name is also mentioned in Ex.P1-complaint. The testimony of the injured witness could not be shaken in the cross-examination. Since A2 inflicted



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cut injury on the vital part of the body which caused grievance injury, we are of the view that conviction under Section 307 of IPC is justified.

However, taking into account the fact that A1 to A3 are brothers and more than 13 years have elapsed since occurrence took place, the ***sentence of RI imposed on A2 is reduced to three years RI.***

13. Coming to A3, he is said to have used stick-M.O.3. He inflicted only a simple injury. Therefore, even while sustaining the conviction under Section 323 IPC imposed on A3, the ***sentence of imprisonment is reduced to the period already undergone by him.***

14. The conviction and sentence imposed on ***A1*** by the court below is confirmed. Even while sustaining the conviction under Section 323 IPC imposed on A3, the ***sentence of imprisonment is reduced to the period already undergone by A3.*** The sentence imposed on A2 is reduced to ***three years RI.*** The period of incarceration already undergone by A2 will be set off in terms of Section 428 of I.P.C. The appellants ***A4 to A9 are acquitted*** of all charges. The fine amount, if any paid by him shall be refunded forthwith. The bail bonds, if any,



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executed by them shall stand cancelled. Crl.A.(MD)No.2 of 2021 is allowed. Crl.A.(MD)No.4 of 2021 is allowed insofar as A6, A7, A8 & A9 are concerned. Crl.A.(MD)No.4 of 2021 is dismissed as regards A1. Crl.A.(MD)No.151 of 2021 is partly allowed. No costs.

**(G.R.S. J.) & (R.P. J.)
16.12.2024**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The III Additional Sessions Judge, Tirunelveli,
Tirunelveli District
- 2.The Inspector of Police,
Kadayam Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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