

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24-08-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.358 of 2006

1. Muruganantham
2. Chockkalingam
3. Devendran

Appellants

Vs.

State rep. by
The Inspector of Police
Thoothur Police Station
Crime No.270 of 1998
Perambalur Dt.

Respondent

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction passed by the learned Sessions Judge, Perambalur in Special Sessions Case No.28 of 2005 on 29-03-2006.

For appellants :: Mr. V. Rajamohan

For respondent :: Mr. P. Govindarajan

JUDGMENT

The convictions and sentences passed in Sessions Case No.28 of 2005 by the District and Sessions Court, Perambalur are being challenged in the present criminal appeal.

2. The case of the prosecution is that on 02-08-1998 at about 9:30 p.m., in Kamarasavalli Village, the accused Nos.1 to 3 and one Patchamuthu have wrongfully restrained the witnesses viz., Sasikumar and Ayyakkannu and scolded them by using their caste name and also attacked them by using sticks and thereby caused injuries on their persons. After occurrence, the defacto complainant by name Sasikumar has given a complaint to the concerned Head Constable (P.W.8) and the same has been registered in Crime No.270 of 1998 and the said complaint has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer (P.W.12) has taken up investigation, examined connected witnesses and after his transfer, his successor-in-office who is P.W.13 has continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate, Jayamkondam and the same has

been taken on file in P.R.C.No.39 of 2003. The Judicial Magistrate, Jayamkondam after knowing the fact that the offences alleged to have been committed by the accused are triable by Sessions Court has committed the case to Sessions Court and the same has been taken on file in Special Sessions Case No.28 of 2005.

4. The Trial Court after hearing arguments of both sides and upon perusing the available evidence on record has found the accused Nos.1 to 3 guilty under Sections 341, 342, IPC and also under Section 3(1)(X) of the SC/ST Act and also found the accused Nos.1 and 3 guilty under Section 323, IPC and the second accused is found guilty under Sections 323 read with Section 34, IPC and sentenced them to undergo imprisonment along with the fine as mentioned in the judgment. Against the convictions and sentences passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused Nos.1 to 3, as appellants.

5. The learned counsel appearing for the appellants-accused without touching the merits and demerits of conviction and sentences passed by the Trial Court has befittingly drawn the attention of this Court to the charges framed by the Trial Court.

6. The Trial Court after hearing both sides and upon perusing the relevant records has simply framed six charges against the accused even without mentioning the date, time, place of occurrence and also manner of attack alleged to have been made by all the accused.

7. The learned Additional Public Prosecutor has fairly conceded that without furnishing necessary particulars, the Court-below has simply mentioned the sections of law in the charges and therefore, the Court below has not properly framed the charges.

8. At this juncture, the Court has to look into Section 211 and 212, Cr.P.C. Section 211 of the said Act deals with contents of charge. Likewise, Section 212 deals with particulars as to time, place and person.

9. In the instant case, as pointed out earlier, the Court-below without mentioning the time, place and against whom such occurrence has taken place has simply framed charges by way of quoting sections of law. Therefore, it is quite clear that the Court-below has not framed the charges in consonance with the mandatory provisions of Sections 211 and 212 of Cr.P.C.

10. At this stage, it would be apposite to look into Section 215, Cr.P.C. and the same reads as follows:

"No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."

A mere reading of the said section would make clear that when there is an error in the charge with regard to offence or other particulars the same would not affect the charge. But, at the same time, if such error has misled the accused such a charge is erroneous.

11. In the instant case, as pointed out earlier, the Court-below without mentioning the time, place of occurrence, names of the accused as well as affected persons, has simply quoted Sections of law. Therefore, it is needless to say that all the charges framed by the Court-below are erroneous and in fact, the Court-below has failed to frame proper charges against all the accused and due to erroneous attitude of the Court-below, all the accused have been kept in darkness and in the said circumstances, this Court is of the view that the entire proceedings taken by the Court-below in Spl.Case No.28 of 2005 are erroneous. It has already been pointed out that the Court-below has failed to frame charges in accordance with Sections 211 and 212, Cr.P.C. Further, it is observed that all the proceedings taken by the Court-below are erroneous. Since all the proceedings taken by the Court-below are erroneous, the convictions and sentences passed by the Court-below against the appellants-accused are liable to be set aside and the matter is liable to be remitted to the file of the Court-below.

12. In fine, this criminal appeal is allowed. The convictions and sentences passed by the Court-below are set aside and Special Sessions Case No.28 of 2005 is remitted to the file of the Court-below. The Court-below is directed to frame charges properly against all the accused and conduct a de novo trial and after hearing both sides passed judgment in accordance with law before the end of December 2015 and report the same to the Registry without fail. The appellants/accused are directed to make their appearance in person by 28-09-2015. Registry is directed to send all the records forthwith to the District and Sessions Court, Perambalur.

सत्यमेव जयते
Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

glp

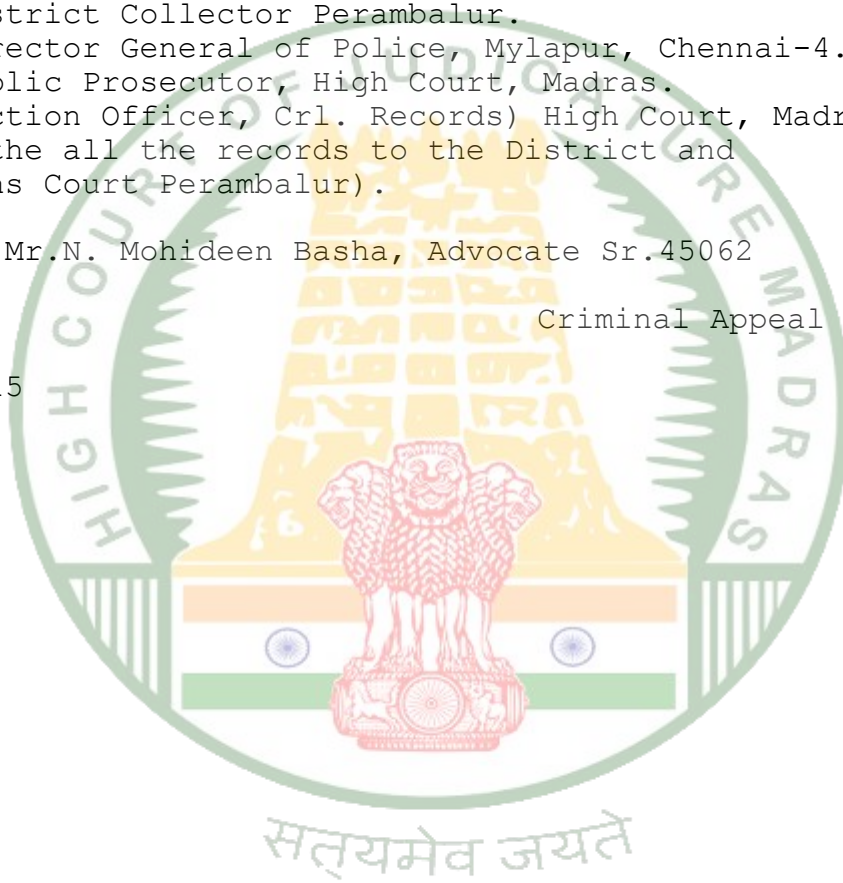
To

1. The Judicial Magistrate, Jeyankondam.
2. The Sessions Judge, Perambalur.
3. The Sessions Judge, Perambalur.
4. -do- Through The Principal Sessions Judge, Perambalur.
5. The Inspector of Police, Thoothur Police Station
Perambalur Dt.
6. The District Collector Perambalur.
7. The Director General of Police, Mylapur, Chennai-4.
8. The Public Prosecutor, High Court, Madras.
9. The Section Officer, Crl. Records) High Court, Madras.
(to sent the all the records to the District and
Sessions Court Perambalur).

+ 1 cc to Mr.N. Mohideen Basha, Advocate Sr.45062

Criminal Appeal No.358 of 2006

TEJ(CO)
Eu 04.09.15



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