



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2018
DELIVERED ON : 18.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.No.1398 of 2004

1.Kesavan
2.Parthiban
3.Baktha alias Bakthavachalam
4.Kulla Kishtan
5.Venkatesan alias Krishnan
6.Muthu
7.Ramachandran
8.Kannan
9.Selvam
10.Sankar
11.Velu
12.Navaneetham
13.Aravi
14.Sarala
15.Nagappan

... Appellant/Accused 1 to 15

Vs

The Station House Officer,
Mappedu Police Station,
Trivellore District.

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 29.11.2004 in S.C.No.50 of 2004 on the file of the Additional District and Sessions Judge, Fast Track Court No.5, Chengalpattu District at Trivellore.

For Appellants : Mr.K.Shankar (for A2)

Mr.R.Sankara Subbu (for A3, A5,
A7, A8, A12, A13 & A14)

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)



JUDGMENT

The instant criminal appeal is preferred by the Appellants who are the accused Nos.1 to 15 in Sessions Case No.50 of 2004 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.V, Chengalpattu District.

2. In this case the 1st appellant suffered with a conviction of 3 months rigorous imprisonment and fine of Rs.300/- with default sentence of one month for the offence under sections 148, 324, and 324 r/w 149 of IPC, further for the offence under section 341 of IPC, the 1st accused/Appellant was imposed upon one month imprisonment along with fine amount of Rs.100/- and in default, he was ordered to suffer with a conviction of one week imprisonment. The 2nd Appellant/Accused was convicted for the offence under sections 148, 324, r/w 149 (2 Counts) and was imposed a sentence of 3 months imprisonment along with a fine of Rs.300/- in default he has undergo one month of Rigorous Imprisonment. Further, for the offence under section 341 he was imposed a sentence of one month of imprisonment, with a fine of Rs.100/- in default he has to undergo one week of imprisonment. Further, the 3rd accused/appellant was convicted for the offence under section 304(II) of IPC and was imposed 4 years of Rigorous Imprisonment with a fine of Rs.1000/-, in default he has to undergo 4 years of imprisonment. The 3rd appellant/accused was convicted for the offence under sections 148, 324, r/w 149 (2 Counts) and was imposed a sentence of 3 months imprisonment along with a fine of Rs.300/- in default he has under go one month of Rigorous Imprisonment. Further, for the offence under section 341 he was imposed one month of imprisonment, with a fine of Rs.100/- in default he has to undergo one week of imprisonment. Further, the 3rd accused/appellant was convicted for the offence under section 304(II) of IPC and was imposed 4 years of Rigorous Imprisonment with a fine of Rs.1000/-, in default he has to undergo 4 years of imprisonment. The 4th appellant/accused was convicted for the offence under sections 148 and 324 of IPC (2 counts) and was imposed 3 months of imprisonment with a fine of Rs.300/- in default, he has to undergo 1 month of imprisonment and for the offence under section 341 of IPC he was imposed 1 month of imprisonment with a fine of Rs.100/- and default to pay the fine, he has to undergo 1 week of imprisonment. For the 5th appellant/accused he was convicted 3 months of imprisonment each for the offence of sections 147, 324, r/w 149 of IPC along with a fine of Rs.300/- with default sentence of 1 month, for the offence under section 341 of IPC 1 month of imprisonment of imposed with a fine of Rs.100/- with a default sentence of 1 week imprisonment. For the 6th Appellant/Accused 3 months imprisonment was imposed each for the offence of under sections 147, 324, r/w 149 of IPC along



with fine of Rs.300/- with default sentence of 1 month, for the offence under section 341 of IPC 1 month of imprisonment was imposed with a fine of Rs.100/- with a default sentence of 1 week imprisonment. For the 7th appellant/accused, he was imposed a sentence of 3 months of imprisonment for the offence under sections 148, and 324 r/w 149 (2 counts) of IPC with a fine of Rs.300/- along with default sentence of 1 month of imprisonment, further for the offence under section 341 of IPC, 1 month of imprisonment was imposed with a fine of Rs.100/- with default sentence of 1 week and he was also convicted for the offence under section 304(II) of IPC and was imposed 4 years of imprisonment with a fine of Rs.1,000/- with default sentence of 3 months of imprisonment was imposed. For the 8th Accused/Appellant and imposed 3 months of imprisonment offence under sections 148, and 324 r/w 149 (2 counts) of IPC with a fine of Rs.300/- along with default sentence of 1 month of imprisonment for the offence under section 341 of IPC 1 month of imprisonment was imposed with a fine of Rs.100/- with default sentence of 1 week and he was also convicted for the offence under section 304(II) of IPC and was imposed 4 years of imprisonment with a fine of Rs.1,000/- with default sentence of 3 months of imprisonment was imposed.

3. For the 9th appellant/accused he was convicted for the offence under sections 148, 324, and 324 r/w 149 of IPC and was imposed 3 months of imprisonment with a fine of Rs.300/- along with a default sentence of 1 month imprisonment and for the offence 341 of IPC, he was imposed 1 month of imprisonment with a fine of Rs.100/- along with a default sentence of 1 week of imprisonment. For the 10th to 15th Appellants/Accused, they were convicted for the offence under sections 147, 324, r/w 149 of IPC (2 counts) and were imposed a sentence of 3 months of imprisonment with a fine of Rs.300/- along with a default a sentence of 1 month, for the offence under section 341 of IPC 1 month of imprisonment of impose a fine of Rs.100/- along with a default a sentence of 1 week. The learned Trial Court has ordered to run all the sentences concurrently and the period already undergone is ordered to be set-off.

4. Feeling aggrieved over the judgment of conviction, the appellants who are the 1st to 15th accused filed the instant appeal. According to the learned counsel for the appellants the case of the prosecution is that on 01.04.2000 at about 07.15 P.M. followed by previous enmity, all the appellants joined together, intercepted the Government bus plied in route No.160 from Kanchipuram to Thiruvallur pulled down the witnesses and one Chandrasekaran, who was died in the indiscriminate assault, caused injuries when the bus was plying in Koovam Junction road near Ambedkar Statue. The further case of the prosecution is that the deceased Chandrasekaran was brutally assaulted by the



2nd accused Parthiban, 3rd accused Bathan, 7th accused Ramachandran and the 8th accused namely Kannan. As far as the other appellants are concerned, they caused injuries to the other witnesses. In this regard it is alleged from the evidence of the prosecution that the weapons used in the assault were iron rod, knife, and horn. Further, PW1 was assaulted by the 1st, 4th, 9th and 10th appellants, the 3rd to 6th appellants along with the other accused caused injuries to PW2 namely Kutty @ Vijayan. Further the 3rd to 6th accused caused injuries to the PW2 and PW-4 was also assaulted by the appellants/accused. The 11th and 15th appellants/accused caused injuries to PW3 and PW5 was assaulted by the 3rd, 4th and 12th to 14th appellants. Further all the accused indiscriminately assaulted the deceased Chandrasekaran with common intention and all of them were in the unlawful assembly. The charges have been framed as against all the accused that is the charge under section 148 of IPC was framed as against 1st to 9th appellants. The charge under section 147 of IPC was framed as against the remaining accused, the charge under section 341 was framed as against all the appellants, the charge under section 302 of IPC was framed as against the 2nd, 3rd, 7th and 8th appellants. Further, the charge under section 302 r/w 149 of IPC was framed as against all the accused. In addition to that the charge under section 324 of IPC was framed as against 1st, 4th, 9th, 10th appellants. At the same time as against all the appellants/accused the charge under section 324 r/w 149 of IPC was framed and further the offence under sections 324 r/w 149 of IPC and 506(ii) (6 counts) was framed as against all the accused.

5.The learned counsel for the appellants/accused would submit that the learned trial Court has got influenced by the number of the injured and accused. At the same time these appellants have not been involved in the occurrence but they have been wrongly implicated followed by the alleged previous motive.

6.Moreover, it is contended by the learned counsel for the appellants that these accused never involved in the occurrence and the learned trial Court has not appreciated the material discrepancies even in the evidence between the alleged eye witnesses. Further, the learned trial judge has taken the statement given by the witnesses before the investigation officer for consideration which is unknown to criminal law. It is also pointed out that the previous motive as mentioned by the prosecution that is an occurrence on 06.02.2000 has not been proved by the prosecution by examined reliable witnesses. Therefore, he prays this Court to allow the appeal by giving the benefit of doubt to the appellants.

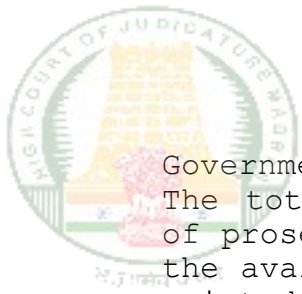


7. Per contra, the learned Government Advocate (Criminal Side) would submit that though 15 accused were arrayed by the prosecution the witnesses examined by the prosecution have categorically deposed that how they have been victimized and the narration of the prosecution witnesses in respect of the manner of the occurrence is unambiguous and very clear. The discussion of the learned trial judge has never crossed the evidence available in connection with the occurrence. Further it is pointed out by the learned government Advocate criminal side that the grounds raised in the memorandum of appeal have not made out any points for consideration. So, according to the learned counsel the appeal itself is not fit for consideration, hence he prays for the dismissal of the appeal.

8. I heard Mr.K.Shankar, learned counsel for the 2nd appellant, Mr.R.Sankara Subbu, learned counsel for the appellant Nos.3, 5, 7, 8, 12, 13 & 14 and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and all the materials available on record are perused.

9. Exhibit-P1 is the complaint statement of PW1 namely Das @ Kannadhasan. In the complaint itself he has stated the manner of occurrence and has mentioned nearly about 15 named accused and also mentioned some unnamed accused, but has not stated anything about the unnamed accused. Apart from that he has not stated anything about the previous motive. When the evidence of PW1 is perused it came into light that he has not stated anything about the previous motive. However, PW1 was not able to mention that by whom he was assaulted and by whom the other persons were assaulted including the deceased Chandrasekaran. It is unsafe to rely on his evidence to come to a conclusion that these appellants were involved in the occurrence. Further as per the evidence of PW1, after the assault all the injured rushed to Thiruvallur Government Hospital and as his father Chandrasekaran sustained grievous injuries he was referred to Government Hospital, Chennai, but this particular version is falsified by the evidence of PW2 and in fact it has created serious doubt over the prosecution case.

10. It is the evidence of PW2 in chief examination that subsequent to the occurrence they went to the Mappedu Police Station, the police authorities only referred all the injured to the Government Hospital. Further there are discrepancies in using the weapons by the accused as pointed out by the learned counsel for the appellants but this will not affect the case of the prosecution when group of persons involved such an occurrence. At the same time, the contradictory version with regard to the lodging of complaint as to whether it was informed to the police station or complaint statement was recorded in



Government Hospital would create serious doubt over the case. The total contradictory version would affect not only the case of prosecution, but also will create serious doubt in respect of the availability of the witnesses at the place of occurrence. As pointed out earlier, no motive is alleged in the complaint. It can be justified that an injured witnesses cannot point out what weapons were holding by each accused but the normal human conduct would point out for what purpose all the witnesses have been assaulted. The absence of motive in the complaint would seriously affect the case of the prosecution; therefore, in the opinion of this Court, it is unsafe to rely on the evidence of the prosecution. Apart from that PW12 and PW13 who are the driver and conductor of the government bus respectively have not supported the case of the prosecution no independent witnesses was examined apart from the injured witnesses to prove the prosecution case. PW9 and PW10 who are the Mahazar witnesses have also turned hostile. At the same time the evidence of PW14 and PW15 is perused as turned as hostile and the evidence of PW16 will not inspire confidence in mind of the Court. They are the residents of the same village of the injured. The evidence of PW19 would show the nature of injuries sustained by the injured but PW19 the doctor would depose that the injured informed him that he was assaulted by 10 known persons. So, the overall appreciation of evidence would not point the accused are guilt.

11. Though motive will not play key role in criminal cases, but there must be reason for the assault that too by group of persons. The scrutiny of the evidence of the injured witnesses and in the complaint statement Exhibit P1 had not disclosed either the motive or the reason for the indiscriminate assault. Apart from that the discussion of the learned trial judge would show that he has been influenced by the statement recorded under section 161(3) of IPC, which cannot be appreciated as it is unknown to criminal jurisprudence, but those statements can be taken up either for corroboration or contradiction.

12. Though in this case charge was framed under section 302 of IPC but conviction was recorded under section 304(II) of IPC absolutely no material is available to sustain the charge under section 304(II) is concerned which deals with the punishment for the commission of murder. Chapter-XXVI, deals with the offences affected the human body. Section 299 of IPC would read as follows "Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injuries as he is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Further as per section 300 of IPC it is explained as follows:

"Culpable homicide when amounts to murder:- When



WEB COPY

the Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder the problem is to be approached in three stages. The question to be considered at first stage is whether the accused has done an act by doing which he has caused the death of another person. Proof of such causal connection between the act of the accused and the death leads to the second stage for consideration whether that act of the accused amounts to culpable homicide as defined in section 299. It the answer of this question of section 300 I.P.Code. This is that stage at which the Court should determine whether the acts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder contained in section 300. If the answer to this question is in the negative the offence would be culpable homicide not amounting to murder punishable under the first or the second part of section 304, depending respectively on whether the second or the third clause of section 299 is applicable. If the question is found to be positive, but comes within any of the exceptions enumerated in section 300, the offence would still be culpable homicide not amounting to murder punishable under the first part of section 304. But sometimes the facts are so intertwined and the second and third stages are so telescoped into each other that it may not be convenient to give a separate treatment to the matters involved in the second and the third stages - State of A.P. Vs R.Punnayya AIR 1977 SC 45, Morcha Vs State of Rajasthan AIR 1979 SC 80.

Murder- Under clause thirdly of section 300, I.P.Code culpable homicide is murder, if both the following conditions are satisfied, i.e., (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing death or is done with the intention of causing a bodily injury and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death - State of U.P. V Virendra Prasad AIR 2004 SC 1517: 2004 Cr LJ 1373. What distinguishes between murder and culpable homicide not amounting to murder is the presence of a special mens rea which consists of four mental attitudes and the presence of any one of which distinguishes murder from culpable homicide. Those four mental attitudes are stated in the four clauses of section 300- Rajwant singh Vs- State of Kerala AIR 1966 SC 1874.

Intention to cause death.- The intention is the state of mind which has to be inferred from the facts and



circumstances of each case particularly the nature of the weapon and how it was used and the injuries inflicted. When the appellant though armed with an axe caused only simple incised injuries some of them are superficial and not causing any damage to the internal organs of the body of the deceased, the accused cannot have the intention to cause the death of the deceased - Ankeri V State of Rajasthan AIR 1994 SC 842: 1994 Cr LJ 957. The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused the weapon used in causing such injury, which are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not - State of Rajasthan V Dhool Singh AIR 2004 SC 1264 : 2004 Cr LJ 931.

Culpable homicide not amounting to murder. -When the case of the accused comes within any of the five exceptions specified in section 300, I.P.Code, then the offence committed is not murder but culpable homicide not amounting to murder.

When the death took place by the accused giving a single blow with a pharsa as a result of sudden fight when the deceased objected to the grazing of the cattle and the assault took place without any pre mediation, exception 4 to section 300 is attracted and conviction of the accused under section 304, Part I, I.P.Code is proper - Mahesh V State of M.P. (1996) 10 Scc 668, 1997 SCC (Cri) 181.

13.The perusal of the aforesaid provision of law would make it clear that for the offence of culpable homicide, intention is one of the important criterions according to section 299 of IPC. Here in the instant case none of the injured witnesses would come to depose any previous motive or enmity as far as the cases arising out of the offence under the provisions of Indian Penal Code. The burden of proof wholly lies only on the prosecution. At the same time it is the evidence of PW5 that when they went for compromise, the occurrence had taken place but the prosecution has not elucidated on account of what reason or followed by which motive, the occurrence had happened in the absence of this criterion, this Court is unable to appreciate the case of the prosecution. At the same time, it is also relevant to discuss here that though among other several charges, the charge of 302 of IPC is also framed the learned trial Judge ought to have given effective discussions as to how the charge was altered into 304(II) of IPC



14.This is not the case of sudden provocation when the prosecution has not come with a case of sudden provocation then it is for the learned trial Court to distinguish the charges for which conviction is recorded.

WEB COPY

15.The perusal of the records would show that in the instant case nearly about 6 persons have sustained injuries and the father of PW1 namely Chandrasekaran was died, but the case has not been properly projected to link the appellants /accused with the case. In the absence of independent evidence to the effect of proving the offence, this Court is unable to appreciate the surroundings circumstances.

16.In the result:

(a) this Criminal Appeal is allowed by setting aside the conviction and sentence imposed in S.C.No.50 of 2004, dated 29.11.2004, on the file of the learned Additional District and Sessions Judge, Fast Track Court No.V, Chengalpattu District at Tiruvellore;

(b) the appellants/accused are acquitted from all the charges;

(c) the bail bond, if any, executed by them shall stand cancelled and the fine amount, if any paid by the appellants/accused shall be refunded.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
Fast Track Court No.5,
Chengalpattu District at Trivelllore.

2.The Station House Officer,
Mappedu Police Station,
Trivelllore District.

3.The Public Prosecutor,
High Court, Madras

+1cc to Mr.K.Shankar, Advocate, S.R.No.87986

Cr1.A.No.1398 of 2004

KS (CO)
GSP(23/01/2019)