

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2016

CORAM:

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.791 of 2013

1. Mani @ Anburaj
2. Karuppan @ Karuppannan
3. Muniyan
4. Kaliyammal
5. Jaya ... Appellants / A-1 to A-5

Vs

The State by Inspector of Police,
Pallipalayam Police Station,
Namakkal District,
(Crime No.486 of 2010) ... Respondent / Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the
Criminal Procedure Code praying to set-aside the conviction
imposed in the judgment, dated 21.11.2013, made in S.C.No.96
of 2012 on the file of the Additional District and Sessions
Court, Namakkal, by allowing this Criminal Appeal.

For Appellants : Mr. N.Manokaran

For Respondent : Mr. M.Maharaja,
Additional Public Prosecutor

J U D G E M E N T

(Judgment of the Court was delivered by S.Nagamuthu. J.,)

The appellants are accused 1 to 5 in S.C.No.96 of 2012 on
the file of the Additional District and Sessions Court,
Namakkal. The trial Court framed as many as six charges
against the accused, as detailed below:-

Charges	Accused	Section of law
Charge No.1	Accused 1 to 5	148 I.P.C.,
Charge No.2	Accused 1 to 5	302 r/w 149 I.P.C.,
Charge No.3	Accused 1 and 3	307 I.P.C.,

Charges	Accused	Section of law
Charge No.4	Accused 2, 4 and 5	307 r/w 149 IPC
Charge No.5	Accused 4 and 5	324 I.P.C.,
Charge No.6	Accused 1 to 3	324 r/w 149 IPC

2. By judgment, dated 21.11.2013, the trial Court convicted all the five accused, as detailed below:-

Accused	Section of law	Sentence
A-1 to A-5	U/s 148 IPC	To pay a fine of Rs.500/- each, in default, to undergo three months simple imprisonment.
A-1 to A-3	U/s 302 IPC r/w 149 IPC	Imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for one year.
A-4 and A-5	U/s 324 IPC	To pay a fine of Rs.500 each, in default, to undergo Rigorous Imprisonment for six months.

3. The trial Court has ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

4.The case of the prosecution, in brief, is as follows:-

The deceased in this case was one Mr. Kumarasamy @ Auto Kumar. P.Ws.1, 3 and 4 are the wife, sister's son and sister, respectively, of the deceased. They were all residing at Karattankaadu Village in Namakkal District. All the accused belonged to one and the same family. There was a dispute between the two families in respect of a landed property in the said village. There were five coconut trees on the said disputed land. The accused parties had cut and removed three such trees. In respect of the other two trees, the accused parties were claiming right. Because of the said dispute, there was a long standing enmity between the two families. This is stated to be motive for the said occurrence.

5. On 29.04.2010, the accused parties had put up a small shed on the said disputed property. At the time when the shed was put up, the deceased was not in the village. As he was an auto driver by profession, he was elsewhere. In the evening, at about 07.00 pm, he returned to his house. On coming to know about the shed put up by the accused parties, he went to the house of the accused parties and questioned them as to under what authority they had put up the shed. This resulted

in a quarrel. Accused 1 to 3 gave a chase to the deceased. The deceased returned to his house. Then, along with P.Ws.1 to 5, the deceased went to the place of occurrence. There arose a quarrel again. In the said quarrel, the first accused was armed with aruval, the second accused was armed with a rice pounder, the third accused was armed with an iron pipe and accused 4 and 5 were armed with wooden reapers.

6. In the said quarrel, it is stated that the first accused cut the deceased with Aruval on his neck. The second accused attacked him on his head with rice pounder. The third accused attacked the deceased with iron pipe on his head. Accused 4 and 5 attacked the deceased on his head with wooden reapers. The deceased sustained extensive blood injuries and died on the spot.

7. In the said occurrence, the first accused attacked P.W.2 with aruval on his head and caused injury. The third accused attacked P.W.3 with iron pipe on his head, resulting in injury. The fourth accused attacked P.W.4 with wooden reaper on his chest and neck. The fifth accused attacked him with wooden reaper on his chest and neck. Thus, P.Ws.2, 3 and 4 and the deceased sustained extensive injuries. After the occurrence, the accused fled away from the scene of occurrence.

8. Believing that there was life in the body of the deceased, the deceased was taken to Pallipalayam Government Hospital and the other injured persons were also taken to the hospital. On examining the deceased, the Doctor declared the deceased dead at Pallipalayam Government Hospital itself.

9. After admitting the injured in the hospital, intimation was sent by the hospital authorities to the Police. On receiving the said intimation, the Sub-Inspector of Police (P.W.12) rushed to the hospital and recorded the statement of P.W.1. On returning to the Police Station at 01.00 am, on 30.04.2010, P.W.12 registered a case in Crime No.486 of 2010 for the offence under Sections 147, 148, 324, 307 and 302 IPC. Ex.P-1 is the complaint and Ex.P-27 is the First Information Report. He forwarded both the documents to the Court, which was received by the learned Judicial Magistrate, at 06.00 am on 30.04.2010.

10. The case was taken up for further investigation by P.W.13. He proceeded to the place of occurrence at 01.45 am on 29.04.2010 and in the presence of P.W.11 and another witness, he prepared observation mahazar and rough sketch, showing the place of the occurrence. Between 04.00 pm and 06.30 am, he conducted inquest on the dead body of the deceased at Pallipalayam Government Hospital and forwarded the body for post-mortem.

11. P.W.8, Dr.Veeramani conducted autopsy on the body of the deceased on 30.04.2010 at 10.05 am. He found the following injuries on the body of the deceased:-

"External Injuries:

1. A lacerated wound on the right frontal parietal region 10 cm x 2 cm x bone depth in size on the right side.
2. A lacerated wound on the right parietal region 7 cm x 3 cm x bone depth (Horizontal).
3. A lacerated wound on parietal region left side 5 cm x 2 cm x bone depth (Horizontal).
4. A lacerated wound on the left frontal region 5 cm x 2 cm x bone depth.
5. A lacerated wound on the forehead above the right eye 5 cm x 2 cm x bone depth. Right eye shows sub-conjunctival hemorrhage.
6. A lacerated wound on the right temporal region 4 cm x 2 cm bone depth. Right side temporal region conjunctival.
7. An increased wound on the right side mid mell Horizontal 10 cm x 3 cm x 3 cm exposing conde lying muscles and vessels.
8. A lacerated wound on the right side hand in the palm and on the base of the thumb 7 cm x 2 cm bone depth.
9. A linear abrasion on the right shoulder region 10 cm x 1 cm in size.
10. An abrasion on the right side Clari culan region 7 cm x 1 cm size.
11. An abrasion on the right shoulder region 2 cm x 2 cm.
12. A lacerated wound on the upper lip 5 cm x 1 cm x 1 cm in size. Firmly coagulated blood clots with extermin in filtration into deeper layers is seen in all the above wounds and they are AM in nature."

12. Ex.P-7 is the post-mortem certificate. The Doctor gave opinion that the death of the deceased was due to shock and hamorrhage caused by extensive injuries on the body of the deceased.

13. During the course of investigation, P.W.13 arrested accused 2 to 4, at 07.30 am on 30.04.2010, at Ranganoor Bus stand. On such arrest, each of the accused gave voluntary confession statement, one after the other. P.W.13 recorded the same. Out of the disclosure statement made by each of the accused, the weapon produced by them were all recovered from the house of the accused. On returning to the Police Station, he forwarded the statements to the learned Judicial Magistrate and also forwarded the Material Objects to the Court. He

recovered the blood stained cloth from the body of the deceased and forwarded the same to the Court.

14. Thereafter, further investigation was taken over by P.W.14, his successor. He collected the medical records, examined the Doctors and recorded their statements. On his request, the material objects were sent for Chemical Examination. The report of the chemical examination revealed that there were human blood stains found on all the material objects, except in the iron pipe recovered from the third accused. On completing the investigation, P.W.14 laid charge sheet against the accused.

15. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 32 documents were exhibited, besides 9 material objects.

16. Out of the prosecution witnesses, P.Ws.1 to 5 are the eye witnesses to the occurrence. In fact, P.Ws.2, 3 and 4 are the injured eye witnesses. They have vividly spoken about the entire evidence, including the overtacts of the accused. P.W.5, the injured has stated that he heard about the occurrence and then came to the place of occurrence. P.W.7, the Doctor, as stated above, has spoken about the treatment given to P.W.2 by him. P.W.8 has spoken about the post-mortem conducted on the body of the deceased and also the treatment given to P.Ws.3 and 4 as well as the accused, namely A-1 to A-5. P.W.9 is the Head Constable, who handed over the First Information Report to the learned Magistrate at 06.00 am on 30.04.2010 and he has spoken about the occurrence vividly. P.W.10 has spoken about the fact that he handed over the dead body to the Doctor for postmortem. P.W.11, the Village Assistant, has spoken about the preparation of Observation Mahazar, the place of rough sketch, the arrest of the accused 1 to 5 and the recovery of material objects. P.W.12 has spoken about the registration of the case. P.Ws.13 and 14 have spoken about the investigation done by them and the final report filed.

17. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. According to them, all the five accused were attacked by the prosecution witnesses. But no case was registered on the complaint in respect of those injuries and no investigation was done. They pleaded innocence.

18. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them as detailed in the first paragraph

of this judgment. Aggrieved over the same, accused 1 to 5 / appellants are before this Court with this Criminal Appeal.

19. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

20. The learned counsel for the appellants would mainly contend that the prosecution has not come forward with the true version of the occurrence. He would point out that there was no investigation done by P.Ws.13 and 14 in respect of the injuries sustained by the accused 1 to 5 at all. He would further submit that the deceased party had quarrel with the accused party, when they came at 09.45 am on 29.04.2010 to the land, which was in possession of the accused and attacked the accused party. Thus, according to the learned counsel for the appellants, the conviction and sentence imposed by the trial court are not sustainable.

21. The learned Additional Public prosecutor for the State would however oppose this appeal. According to him, there is no reason to reject the eye witnesses, namely, P.Ws.1 to 5, more particularly, the injured eye witnesses. He pointed out that the injured eye witnesses have spoken about the overtacts of each accused. He would further submit that the accused were the aggressors. He would also submit that in respect of the injuries sustained by the accused, they were all minor in nature and therefore, there was no investigation done in respect of the same.

22. We have considered the above said submissions made by the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State.

23. Admittedly, in this case, there was a rival claim between the deceased party and the accused party for the land. It is in evidence that the accused party have already cut three coconut trees and there were two coconut trees remaining. It is also in evidence that on the day of occurrence, the accused party had put up a shed on the said property. The deceased was not in the village. Then he came in the evening and according to the evidence available, the deceased, along with his people, went to the place of occurrence and questioned the accused. It quite naturally resulted in a quarrel.

24. Now the question is, as to who were the aggressors. According to the prosecution case, the accused party were the aggressors. The question whether the accused party are the aggressors or the deceased party are the aggressors is a matter for appreciation from the evidences available on record. But, absolutely, there is no evidence available on

record to show that any independent witness has spoken about the fact that the accused party were the aggressors. At any rate, when the prosecution case itself is that, all the five accused have sustained injuries and some of them have sustained injuries on the vital parts, it would have been the bounden duty of the Investigating Officer to register a case in respect of those injuries sustained by the accused and investigated the same. But, P.Ws.13 and 14 had failed to investigate the injuries sustained by the accused. Apart from that, even P.Ws.1 to 5 have not explained about the injuries sustained by the accused.

25. In this regard we may refer to the judgment of the Hon'ble Supreme Court in Lakshmi Singh and others vs. State of Bihar, [(1976) 4 Supreme Court Cases 394], wherein, the Hon'ble Apex Court has held that, in a case of this nature, where the prosecution party fails to explain the injuries sustained by the accused, the natural inference is that the prosecution party is suppressing the vital fact in respect of the occurrence and therefore, it is unbelievable. In the instant case, the trial court has acquitted some of the accused from some charges, disbelieving the version of the eye-witnesses. In our considered view, though it is true that the deceased and his parties sustained injuries in the same occurrence, it is also true that the accused have also sustained injuries. Since there was no proper investigation done in respect of the injuries sustained by the accused, we have to hold that the Investigating Officer has not taken any efforts to unearth the truth. In our considered view, the true version of the accused is not placed before this Court. Therefore, we find it difficult to sustain the judgment passed by the trial court. In such view of the matter, we are inclined to acquit all the accused.

26. Before parting with this case, we would like to make the following observations:-

(i) The trial court has convicted all the accused under Section 148 IPC. But the trial court has convicted accused 1 to 3 alone under Section 302 read with Section 149 IPC. The trial court has not convicted the accused 4 and 5 for the offence under Section 302 IPC read with 149 IPC. Having come to the conclusion that accused 4 and 5 were the members of the unlawful assembly, it is quite surprising as to how the trial court was convinced to acquit accused 4 and 5 from the charge under Section 302 read with Section 149 IPC.

(ii) The trial court has convicted accused 4 and 5 under Section 324 IPC, but has failed to convict the rest of the accused under Section 324 read with 149 IPC, though accused 1 to 3 were members of the unlawful assembly. The charges framed by the trial court are highly defective.

(iii) To be precise, charge No.3 is for the offence under Section 307 IPC against accused 1 to 3. It is not known as to

why there was no charge framed against the rest of the accused under Section 307 read with 149 IPC. Similarly, charge No.4 is against Accused 4 and 5 for the offence under Section 324 IPC. Here also, it is not known as to why the trial court has not framed charges against rest of the accused under Section 324 and 149 IPC.

(iv) Time and again, the Hon 'ble Supreme Court as well as this Court have been impressing upon the trial courts that the framing of charges is a serious judicial function of the courts and any lapse on the part of the trial court to frame appropriate charges may result in failure of justice. We are only hopeful that the trial courts will show their best attention in framing appropriate charges based on the records.

27. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants / A-1 to A-5 by the learned Additional District and Sessions Judge, Namakkal, in SC.No.96 of 2012, by the judgment, dated 21.11.2013, are hereby set-aside. The appellants are acquitted of all the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

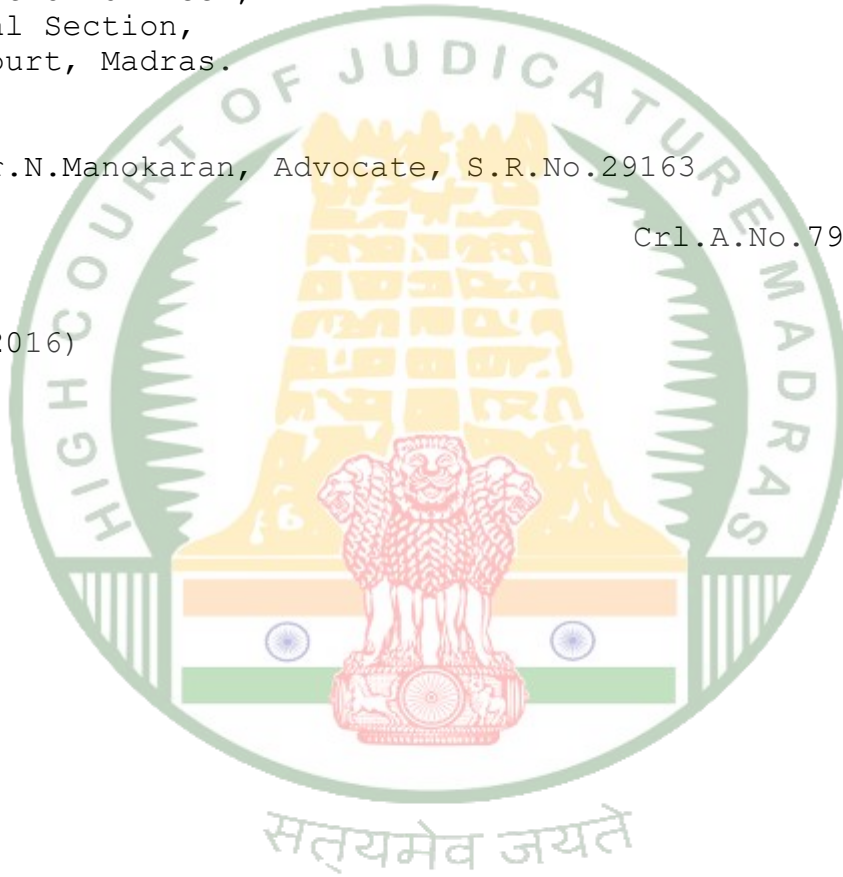
1. The Additional District and Sessions Court,
Namakkal.
2. The Principal and District Judge,
Namakkal.
3. The Judicial Magistrate,
Thiruchengode.
4. The Chief Judicial Magistrate,
Namakkal.
5. The District Collector,
Namakkal.

6. The Superintendent,
Central Prison,
Coimbatore.
7. The Director General of Police,
Mylapore, Chennai.
8. The Public Prosecutor,
High Court, Madras.
9. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.29163

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