

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.734 of 2011

1.Ramasamy
2.Ashok Kumar
3.Prakash @ Jayaprakash ... Appellants/Accused 1 to 3

Vs.

State,by
The Inspector of Police,
Kangayam Police Station,
Tiruppur District. ... Respondent/Complainant

Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment dated 04.05.2011 passed in C.A.No.241 of 2009 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.III), Dharapuram, modifying the judgment dated 12.11.2009 passed in C.C.No.17 of 2005 on the file of the learned Judicial Magistrate, Kangayam.

For Appellants : Mr.K.Selvakumarasami

For Respondent : Mrs.M.F.Shabana
Government Advocate
(Crl. Side)

JUDGMENT

The accused 1 to 3, in C.C.No.17 of 2005, on the file of the learned Judicial Magistrate, Kangayam, are the petitioners herein. Totally, there are five accused in this case. They stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	A-1	U/s.148, 452, 326(2 counts) 324 and 506(ii) IPC
2.	A-2 and A-3	U/s.148, 452, 326, 326 r/w 149, 324 and 506(ii) IPC

Serial number of charges	Charge(s) framed against	Charge(s) framed under
3.	A-4 and A-5	U/s.147, 452, 326, 326 r/w 149, 324 r/w 149 and 506(ii) r/w 149 IPC

The trial Court, after trial, by Judgment dated 12.11.2009, convicted all the accused and sentenced them as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1	U/s. 448 IPC	Sentenced him to pay a fine of Rs.1000/- in default to undergo one month Simple Imprisonment.
	U/s.326 (2 counts) IPC	Sentenced him to undergo one year (each counts) Simple Imprisonment (total two years) and to pay a fine of Rs.2,500/- (each counts) in default to undergo one month (each counts) simple imprisonment.
	U/s.506(ii) IPC	Sentenced him to undergo 5 months rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo one month simple imprisonment.
A-2 and A-3	U/s.448 IPC	Sentenced them to pay a fine of Rs.1000/- each in default to undergo one month Simple Imprisonment each.
	U/s.324 IPC	Sentenced them to undergo three months simple imprisonment each and to pay a fine of Rs.1000/- each in default to undergo one month Simple Imprisonment.
	U/s.506(ii) IPC	Sentenced them to undergo five months simple imprisonment each and to pay a fine of Rs.1000/- each in default to undergo one month Simple Imprisonment.

Rank of the accused	Penal provision(s) under which convicted	Sentence
A4 and A5	U/s.448 IPC U/s.427 IPC U/s.326 IPC	Sentenced them to pay a fine of Rs.1000/- each in default to undergo one month Simple Imprisonment each. Sentenced them to undergo 6 months Simple Imprisonment. Sentenced them to undergo four years Simple Imprisonment and also imposed a fine of Rs.1,000/- , in default to undergo 3 months Simple Imprisonment.

All the sentences are ordered to run concurrently. Challenging the above said conviction and sentence, the accused 1 to 3/petitioners have filed a Criminal Appeal in C.A.No.241 of 2009 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.III), Dharapuram. The lower appellate Court, by its Judgment dated 04.05.2011, partly allowed the appeal, thereby modifying the judgment of the trial Court and acquitted the accused for the offence under Section 506 IPC and confirmed the conviction and sentenced for the other offences. Challenging the above said conviction and sentence, the petitioners/accused 1 to 3 preferred this present criminal revision case.

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

(i) A-1 in this case is P.W.1's brother's son in law. A-2 and A-3 are his sons, A-4 is mother in law and A-5 is wife of A-1. In the year 1985, P.W.1 and his brother, one Ponnuswamy and others have partition their ancestral property. In the said partition two cents of land has been allotted to one Vinayagar Temple. The adjacent land of the temple has been allotted to Ponnuswamy. After the death of said Ponnuswamy, P.W.1 was in possession and enjoyment of the said property. On 13.08.2004, all the accused have measured the property, and they found A-1 fenced the land including the two cents of land reserved for vinayagar temple. P.W.1 and other villagers asked A-1 to leave the land allotted for the Vinayagar temple, and advised him to measure the land with the help of surveyor, thereafter fence the same. Being agitated the same, on the same day at about 11.30 p.m., all the accused came in a ambassador car, entered into the house of P.W.1, carrying wooden log, and Iron rod. Then, A-1 attacked P.W.1 on his shoulder and other parts of the body and A-2 and A-3 attacked him with iron rod on his left hand and hip. P.W.2, a younger brother son of P.W.1, prevented them, at that time, A1 to A3 attacked him with Iron rod and wooden log and throw him in a

drainage near a house. At that time, P.W.4, the mother of P.W.2 came there and prevented them, all the accused attacked P.W.4 and caused grievous injuries. P.W.1 took shelter in a neighbouring house, but all the accused chased P.W.1, attacked him, then all the accused ran away from the scene of occurrence. Immediately, all the injured persons were taken to the Government Hospital, Kangayam.

(ii) P.W.17, an Assistant Doctor, working in the Government Hospital, Kangayam, examined P.W.4, found two injuries and he has issued accident register[Ex.P11]. Then, he examined P.W.1, found his shoulder dislocated, lacerated wound on his back, and referred him to Government Hospital, Erode, to that effect he has issued accident register [Ex.P12]. P.W.17 also examined P.W.2, found as many as nine injuries on his body, took radiology test and he treated as out patient. He has issued accident register[Ex.P13].

(iii) P.W.14, the Head Constable, working in the respondent police station, on receipt of the intimation from the Government Hospital, Kangayam, he went to the Hospital, recorded the statement of P.W.1, based on the statement of P.W.1, registered a case in Crime No.595 of 2004, for the offence under Sections 147, 148, 452, 324 and 506(ii) IPC and prepared first information report [Ex.P6]. He sent the first information report to the higher officials.

(iv) P.W.16, the Inspector of Police, attached to the respondent police station, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar [Ex.P4], a rough sketch [Ex.P10] in the presence of witnesses. He seized a ambassador car [M.O.9] bearing Registration No.T.A.G.7272, two iron rods[M.O.2 series], wooden log [M.O.1] in the presence of witnesses. Then, he went to the Ganga Hospital, Coimbatore, where, he examined P.Ws.1 to 4 and recorded their statements. Subsequently, he examined the Doctor, who has given treatment to P.Ws.1 to 4, and other witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 17 witnesses were examined and exhibited 13 documents and 9 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is a injured eye witness. According to him, there was a family partition, in the partition two cents of land was reserved for one Vinayagar Temple. The adjacent land of the temple has been allotted to Ponnuswamy. After the death of said Ponnuswamy, he was in possession and enjoyment of the same. On 13.08.2004, all the accused have measured the property, at that time they

found A-1 fence the land including the two cents of land reserved for vinayagar temple. P.W.1 and other villagers asked A-1 to vacate the land allotted for the Vinayagar temple, and advised him to measure the land with the help of surveyor and thereafter fencing the same. Being agitated over the same, on the same day at about 11.30 p.m., all the accused came in a ambassador car, entered into the house of P.W.1, attacked him and caused injuries. Then, P.W.1 lodged a complaint before the respondent police. P.W.2 is also another injured witness. According to him, he is the son of P.W.1's another brother. When the accused attacked P.W.1, he intervened and prevented them, at that time, all the accused attacked him indiscriminately and caused serious injuries and they have also attacked his mother P.W.4. P.W.3 is the wife of P.W.1. She is also an eye witness to the occurrence and she spoke about the entire occurrence. P.W.4 is another injured eye witness. P.W.1's brother's wife and P.W.2 is her son. According to her, when the accused attacking P.Ws.1 and 2, she intervened and prevented them, but they have attacked her with wooden log and caused serious injuries. P.W.5 is the villager. He spoke about the fencing of the property by A-1. P.W.6 is another villager, he is only a hearsay evidence. He also spoke about the fencing of property by A.1. P.W.7 is daughter of P.Ws.1 and 3. She spoke about the occurrence. According to her, when the accused attacked her father, she prevented them, all the accused chased her father and attacked him. P.Ws.8 and 9 turned hostile. P.W.10 only a hearsay evidence. P.W.11, is a Radiologist working in the Government Hospital, Kangeyam. He took x-ray for P.W.4. P.W.12 turned hostile. P.W.13 is the witness to observation mahazar. P.W.14 is the Head Constable attached to the respondent Police Station. According to him, on receipt of the intimation from the Government Hospital, Kangeyam, went to the Hospital, recorded the statement of P.W.1, based on the statement of P.W.1, he registered a case, prepared first information report and sent the same to the higher officials. P.W.15 is the Doctor working in Ganga Hospital, Coimbatore. He examined P.Ws.1 and 4 and issued wound certificates. P.W.16, the Inspector of Police attached to the respondent police station. On receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar and rough sketch, seized the material objects, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet. P.W.17 is the Assistant Doctor working in the Government Hospital, Kangeyam. He examined P.Ws.1,2 and 4 and issued accident register.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was total denial. The accused did not examine any witness nor marked any document on their side.

6. After elaborate trial, the trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above said conviction and sentence, the petitioners have filed a Criminal Appeal in C.A.No.241 of 2009 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.III), Dharapuram. The lower appellate Court, by its judgment dated 04.05.2011, partly allowed the appeal, modifying the conviction and sentence imposed by the trial Court and acquitted the accused for the offence under Section 506 IPC and confirmed the conviction and sentenced for the other offences. Challenging the above said conviction and sentence, the petitioners preferred this present criminal revision case.

7. I have heard Mr.K.Selvakumaraswamy, the learned counsel appearing for the revision petitioners and Mrs.M.F.Shabana, the learned Government Advocate(Crl. Side) appearing for the respondent.

8. The learned counsel appearing for the petitioners would submit that all the eye witnesses, namely, P.Ws.1 to 4 and 7 are the interested witnesses and no independent witness was examined by the prosecution to corroborate the evidence of the interested eye witnesses. Apart from that the medical evidence also not corroborate the evidence of P.Ws.1,2 and 4. P.W.15, the Doctor, working in the Government Hospital, Kangeyam, after examined P.W.1 found that it is only dislocation of shoulder, no fracture was found and he was treated as inpatient. In her evidence, P.W.4 stated that the accused pushed P.W.1, near by drainage channel, where, he suffered lacerated injuries on his back. So far as the evidence of P.W.2 is concerned, he sustained minor injury like contusion and lacerated injuries and the Doctor is of the opinion that all the injuries are simple in nature. Apart from that the presence of A-4 and A-5 in the scene of occurrence is also highly doubtful, they are being ladies, and they have been falsely implicated in this case and hence he sought for allowing this case.

9. Per contra, the learned Government Advocate (Crl. Side) appearing for the state would submit that P.Ws.1 to 4 are an eye witness to the occurrence, all of them suffered grievous injuries, P.W.1 suffered dislocation of shoulder and other injuries, P.W.3 is being a lady, she suffered fracture in her radial bone. P.Ws.15 and 17, the Doctors also corroborate the evidence of P.Ws.1,2 and 4 the injured witness. Apart from that the occurrence took place in front of the house of P.W.1 and the presence of eye witnesses in the scene of occurrence is natural and there is no reason to disbelieve the evidence of P.Ws.1 to 4. Both the Courts below concurrently found guilt of the accused and there is no reason to interfere with the judgment of the courts below and she sought for dismissal of the criminal revision case.

10. I have considered the rival submissions.

11. P.Ws.1,2 and 4 are injured eye witnesses. According to P.W.1, there was a family partition between the parties. At the time of partition, two cents of land was reserved for one Vinayagar Temple. The adjacent land of the temple has been allotted to Ponnuswamy one of the brothers of P.W.1. After the death of said Ponnuswamy, P.W.1 enjoying the same. On 13.08.2004, all the accused have measured the property, where they found A-1 had encroached the two cents of land allotted for vinayagar temple. P.W.1 and other villagers asked A-1 to remove the encroachment and advised him to measure the land with the help of surveyor and thereafter fence him land. Being agitated over the same, all the accused came in a car, entered into the house of P.W.1, attacked him indiscriminately and caused injuries. P.Ws.5 and 6 are villagers, they are the independent witnesses and they have also spoke about the encroachment and fencing the property by A-1. Hence, the prosecution has proved that there is a civil dispute between the accused and P.W.1's family, which is motive for the occurrence. So far as the overt act the accused, even though P.W.1 stated that all the accused came in the Ambassador car, entered into his house, A-1 attacked him on his shoulder with wooden log and A-2 and A-3 attacked with Iron rod, at that time, P.W.2 came there and prevented them, the accused attacked him with wooden log and Iron rod and pushed him in a drainage ditch, P.W.4 came there to prevented them and the accused also attacked her with wooden log and she sustained grievous injuries. P.W.17, the Doctor working in the Government Hospital, Kangeyam, examined the victims and issued accident register. He has stated in his evidence that he examined P.W.4 and found only two contusions in her hand and lacerated wound on her back and she also complained pain all over the body. P.W.15, the Doctor working in the Ganga Hospital, Coimbatore stated that he examined P.W.1 and found only dislocation of shoulder. Hence, from the evidence of P.Ws.15 and 17, P.W.1 did not suffer any fracture, and only a dislocation of shoulder, and also two abrasions in his left hand and lacerated injuries on his back. So far as the injuries on P.W.2 is concerned, according to him all the accused attacked him indiscriminately. Even though P.W.15, doctor found only small contusion and abrasions and complaining or pain, to that effect P.W.15, also issued accident register. So far as P.W.4 is concerned. P.W.15, examined her, and stated that she suffered a fracture in the radial bone, but the x-ray was not marked to that effect. P.W.4, even though in the chief examination, has stated that accused 1 to 3 attacked her with wooden log and iron rod, in her cross examination she has stated that there was a quarrel between the parties and during the quarrel, the accused pushed her in the drainage ditch and she suffered fracture. From her evidence it could be seen that she suffered fracture while she was falling down in the drainage and not attacked by the accused.

12. All the injured eye witnesses consistently said that only A1 to A3 attacked them and caused injuries and the medical evidence also corroborate their testimony and there is no reason to disbelieve their evidence. Hence, this court is of the considered view, that A1 to A3 have attacked P.Ws.1,2 and 4 and caused minor injuries. In the above circumstances, A1 to A3 are liable to be convicted for the offence under Section 448 and 323(two counts) IPC.

13. Now, with regard to the quantum of sentence is concerned, the accused and injured witnesses are close relatives, due to some civil dispute, there was a wordy quarrel, being provoked by the words, the accused 1 to 3 lost their mental balance, and attacked the injured witnesses, and they have also no bad antecedents. Considering the mitigating as well as aggravating circumstance, I am of the considered view that sentencing them to pay a fine of Rs.1000/- for each counts would meet the ends of justice

14. In the result, the criminal revision case is partly allowed. The conviction and sentence imposed on the petitioners/accused 1 to 3 for the offence under Section 448 IPC is confirmed and the conviction and sentence imposed on the petitioner/first accused for the offence under Section 326(2 counts IPC) is set aside and instead he is convicted under Section 323(two counts) IPC and sentencing him to pay a fine of Rs.1000/- for each counts, in default, to undergo four weeks rigorous imprisonment and the conviction and sentence imposed on the petitioners/ accused 2 and 3 for the offence under Section 324 is set aside and instead they are convicted under Section 323 IPC and sentencing them to pay a fine of Rs.1000/-, in default, to undergo four weeks rigorous imprisonment.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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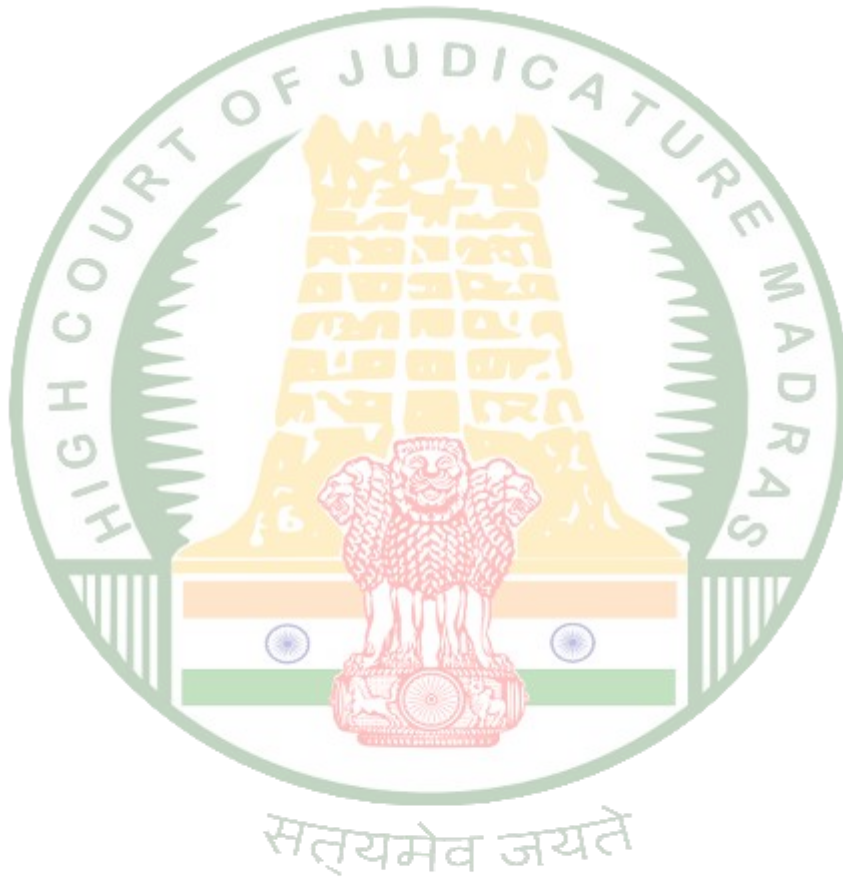
1. The Additional District and Sessions Judge,
Fast Track Court No.III,
Dharapuram.
2. The Judicial Magistrate,
kangeyam.
3. The Inspector of Police,
Kangeyam Police Station,
Tiruppur District.

4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.C.S.Saravanan, Advocate, S.R.No.12941

Crl.RC.No.734 of 2011

KJ (CO)
CA(15/06/2017)



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