

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.523 of 2009

1. E.Elumalai

2. E.Veda @ Vedagiri

3. E.Vishwanathan

4. E.Rajendran

.. Appellants

State rep. By
The Inspector of Police,
H6, R.K.Nagar Police Station,
Chennai.
(Cr.No.553 of 2008)

Vs

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 22.04.2009 passed in S.C.No.186 of 2008 on the file of the I Additional District cum Sessions Court, Coimbatore.

For Appellant : Mr.C.Rajan

For Respondent : Mr.M.F.Shabana,
Gov. Adv. (Crl. Side)

JUDGEMENT

A1 to A4 in S.C.No.155 of 2009 on the file of the Additional District and Sessions Court, Fast Track Court No.IV, Chennai-1, are the appellants herein. They stood charged for the offences under Sections 341, 353, 336, 427, 307, 506(ii) r/w. 149 IPC. By Judgment dated 11.08.2009, the trial court convicted the appellants/accused under Sections 341, 353, 336, 307, 506(ii) IPC and sentenced them to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/- for the offence under Section 341 IPC, and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- for the offence under Section 353 IPC and sentenced to undergo rigorous imprisonment for 2 months and to pay a fine of Rs.1000/- for the offence under Section 336 IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.7000/- for the offence under Section 307 IPC and to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/- for the offence under Section 506(ii) IPC and acquitted the accused from the offence under Section 427 IPC. The trial Court ordered the sentences to run concurrently. Challenging the above said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

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

The appellants/accused are all accused in a murder case registered in the respondent police in Crime No.551 of 2008. The above crime was registered against the accused on 20.09.2008 at about 10.00 a.m. After registering the complaint, P.W.1, Sub-Inspector of Police and P.W.2, Head Constable along with another constable went in search of the accused. While they were going near the K.N.S.Depot, they saw all the accused walking to that side, and when they tried to apprehend them, they started throwing stones on the police party. While they were trying to catch them, they went inside a cool drink shop and threw the soda bottles, on the police party, the people standing there fled away with fear, the traffic became stand still and all the shop shutters were closed. When, they went near the accused, they threatened the police personnels stating that they would kill them if they came near the accused and then they ran away. Immediately the sub-Inspector of Police went to the police station and submitted a Special Report, Ex.P.1 before the Inspector of Police, P.W.5.

3. P.W.5, Inspector of Police, on receipt of the Special Report, registered a case in Crime No.553 of 2008, for the offences under Sections 341, 336, 427, 353, 307 and 506(ii) IPC and recorded the statements of P.Ws.1 and 2 and other police persons. Thereafter, he proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.3 and drew a Rough Sketch, Ex.P.4 and also recovered broken bottle pieces(M.O.2) and stones (M.O.1) from the scene of occurrence. Subsequently, only on 22.09.2008, he arrested the accused and remanded them to judicial custody. After completion of investigation, charge sheet has been filed in this case.

4. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of the judgement and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 5 witnesses were examined and 5 documents were exhibited, besides 2 material objects were marked.

5. Out of the witness examined, P.W. 1 is the Sub-Inspector of Police, attached to the respondent police station. According to him, on 20.09.2008, at about 10.00 a.m., when he, along with P.W.2, and other constables, went in search of the accused in Crime No.551 of 2008, they saw the accused walking near K.S.Depot. After seeing the police party, all the accused went

into a cool drink shop and started to throw soda bottles on them and they have also threatened them if they try to catch them, they would kill the police persons. P.W.2, Head Constable, also corroborated the evidence of P.W.1. P.W.3, Mahazar witness, turned hostile. P.W.4 is the Sub-Inspector of Police, who registered the case and sent the same to his higher officials. P.W.5, Inspector of Police, conducted investigation, arrested the accused and completed investigation. Subsequently, charge sheet has been filed.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not examine any witness or marked any documents on their side.

7. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

8. Mr.C.Rajesh, learned counsel appearing for the appellant would contend that all the witnesses, P.Ws.1 and 2 are the police witnesses. Even though admittedly, there were number of public present in the scene of occurrence, no independent witness has

been examined by the prosecution. Apart from that, there was a huge delay in preparing Observation Mahazar and rough Sketch and 161 Cr.P.C statements were sent to the Court only on 15.04.2009 i.e., after delay of 8 months, which also creates a clear doubt in the prosecution case. Apart from that, it is admitted by P.W.5, Investigating Officer that he does not know the identity of the accused. In the said circumstances, there is no occasion for them to ask the police party headed by P.W.1 and to arrest them when the identity was not known to them and is highly unbelievable.

9. Learned counsel for the appellant further submitted that from the material available on record, no offence has been made out under Section 307 and 506(ii) IPC and the court below convicted them for the above offences without any evidence. Learned counsel further submitted that now all the accused have been acquitted from the charge under section 427 IPC. and the prosecution did not prove the charges against the appellants/accused and sought for acquittal.

10. Mrs.F.Shabana, learned Government Advocate(Crl. side) appearing for the respondent submits that P.Ws.1 and 2 are Sub-Inspector of Police and Head Constable, attached to the respondent police and admittedly, a crime has been registered in Crime No.551

of 2008 against all the accused and on the date of occurrence morning 10.00 a.m., after registering the First Information Report, they all went in search of the accused. At that time, the occurrence had taken place. Even though public were present, since the accused are rowdy elements, out of fear, nobody came forward to give evidence. Hence, the prosecution was not able to examine any witness. Apart from that, the evidence of P.W.1 is truthful and trustworthy and there is no reason to disbelieve their evidence.

11. I have considered the rival submissions and perused the materials available on record carefully.

12. It is an admitted case that all the appellants were accused in a criminal case and a crime has been registered against them in Crime No.551 of 2008 for the offence under Section 341 and 302 IPC. In furtherance of investigation in the above crime, P.Ws.1 and 2 along with other two witnesses went in search of the accused. It is the consistent evidence of P.Ws.1 and 2 that after seeing the police party, all the accused threw stones and when the police party went near the accused and tried to apprehend the accused, the accused went inside a shop and started throwing Soda bottles on them and the accused also threatened them with dire consequences with broken bottles and ran away. Immediately, at about 10.30

a.m., they came to the police station and P.W.1 filed a special report, based on that a case in Crime No.553 of 2008 has been registered against all the four accused and the name of the accused were found place in the First Information Report. During the investigation, P.W.5, investigating officer, recovered the broken bottle pieces and stones M.O.s1 and 2.

13. P.Ws.1 and 2 are police personnels. It is not the law that police witnesses cannot be believed. The credibility of the witness has to be decided only on the truthfulness and trustworthiness. In the instant case, P.Ws.1 and 2, Sub Inspector of Police and the Head Constable, on the instructions of P.W.5, Inspector of Police, went in search of the accused. At that time, occurrence is said to have taken place. Immediately, a crime was registered, where all the four accused names were found place in the First Information Report. Hence, there is no reason to disbelieve the evidence of P.Ws.1 and 2. So far as the contention of the learned counsel for the appellant that the occurrence took place in a busy main road in the city and admittedly, there were number of public were present and no independent witness has been examined by prosecution. The accused are notorious criminals in that area and were already involved in a murder case, subsequently, they involved in the present case also. It is natural that nobody would come

forward to give evidence against persons like the accused. In such circumstances, merely because the independent witnesses were not examined, it cannot be held that the prosecution has not proved their case and non examination of the independent witness in the instant case is not fatal.

14. So far as the conviction under Section 307 IPC is concerned, from the evidence of P.Ws.1 and 2, none of the ingredients of 307 IPC is present in this case. In order to bring home an offence under Section 307 IPC, the prosecution has to prove the following essential ingredients:

i) that the death of a human being was attempted;

ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and

iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) as sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused

having no excuse for incurring the risk of causing such death or injury.

15. But, none of the above ingredients is established by the prosecution. Hence, the appellant cannot be convicted under Section 307 IPC.

16. So far as the charge under Section 506(ii) IPC is concerned, the evidence of P.Ws.1 and 2 clearly says that all the accused had thrown the soda bottles and also threatened them with broken bottles. Hence, the prosecution has established the charge under Section 506(ii) IPC. So far as the other charges under Sections 341, 352 and 336 IPC is concerned, I am of the considered view that the prosecution has clearly established the charges beyond all reasonable doubt. Hence, there is no reason to interfere with the judgment of the court below.

17. So far as the quantum of sentence is concerned, all the four accused are young and poor people and they are also having family to maintain. In the above circumstances, considering the mitigating as well as aggravating circumstances, sentence imposed on the appellants/accused is modified to undergo rigorous

and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for four weeks for the offence under Section 353 IPC , sentenced to undergo rigorous imprisonment for rigorous imprisonment for two months and to pay a fine of Rs.500/- in default, to undergo rigorous imprisonment for four weeks for the offence under Section 336 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks.

18. In the result, the Criminal Appeal is partly allowed and the conviction imposed on the appellant in S.C.No.155 of 2009 under Sections 341, 353, 336 and 506(ii) IPC is confirmed and the sentence is modified to undergo rigorous imprisonment for one month for the offence under Section 341 IPC, and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for four weeks for the offence under Section 353 IPC and sentenced to undergo rigorous imprisonment for two months and to pay a fine of Rs.500/- in default, to undergo rigorous imprisonment for four weeks for the offence under Section 336 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks for the

offence under Section 506(ii) IPC. The appellants are acquitted of the charge under Section 307 IPC. The period of sentence already undergone by the appellants/accused shall be set off under Section 428 Cr.P.C and all the sentences are directed to run concurrently.

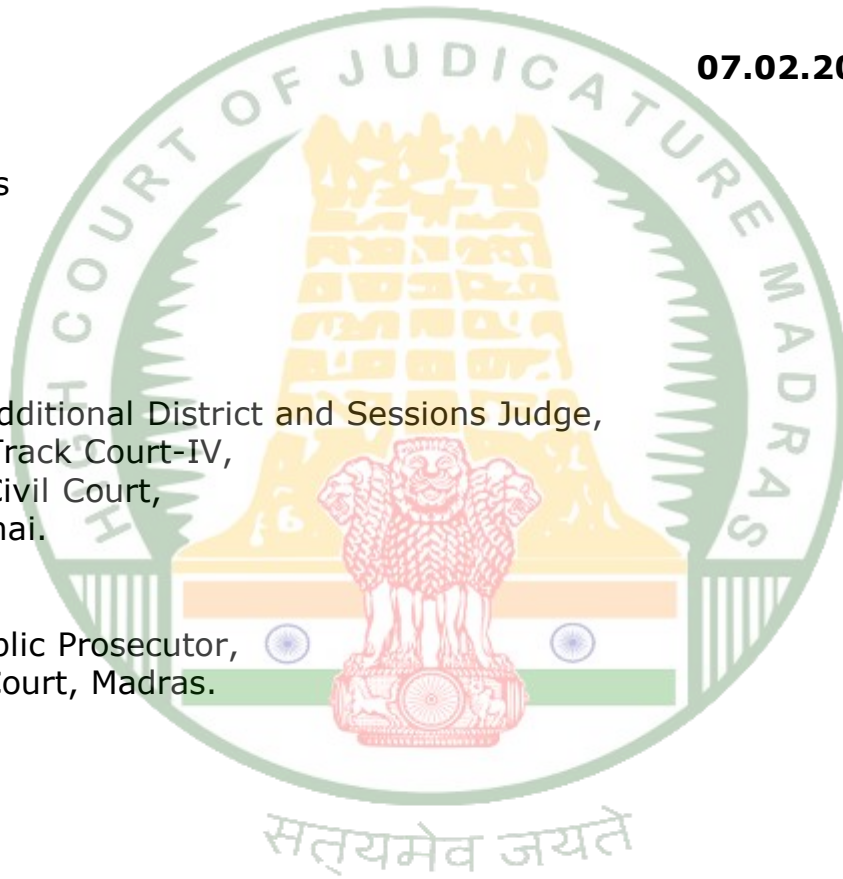
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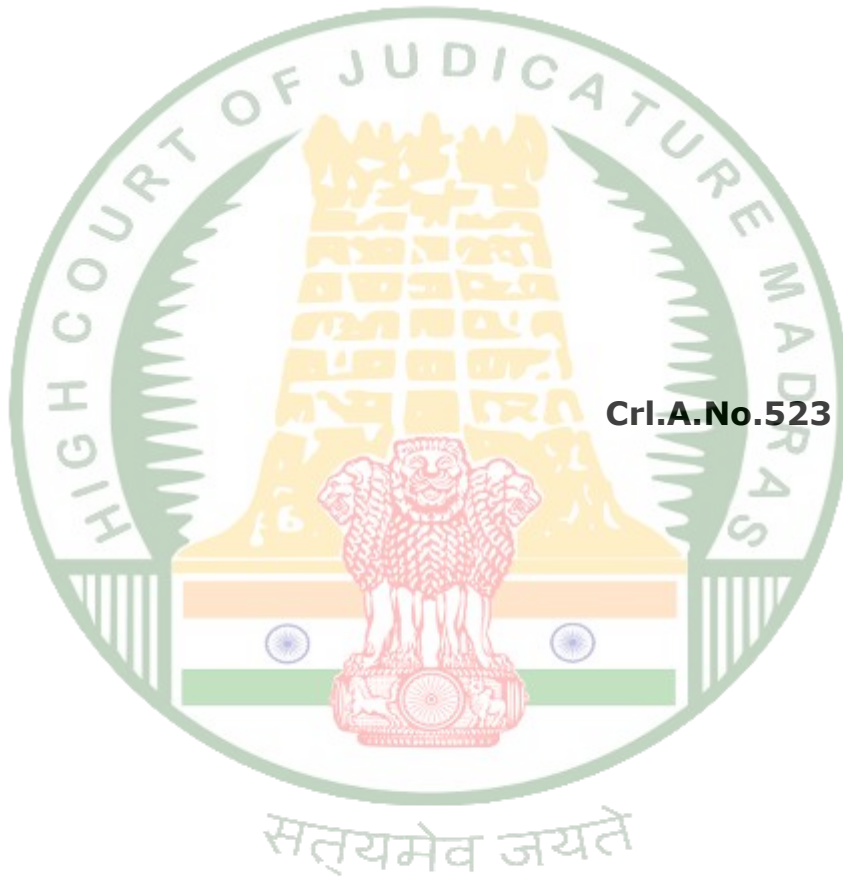
1. The Additional District and Sessions Judge,
Fast Track Court-IV,
City Civil Court,
Chennai.
2. The Public Prosecutor,
High Court, Madras.



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V.BHARATHIDASAN.J.,

mrp



Crl.A.No.523 of 2009

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