

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.390 of 2008

1.Murugan
S/o.Devaraj

2.Prakash
S/o.Devaraj

3.Mageshwaran
S/o.Murugesan

4.Pancha @ Panchatcharam
S/o.Mani

5.Nagaraj
S/o.Munuswamy

.. Appellants

State represented by
Inspector of Police,
ICE House Police Station,
Chennai.

Crime No.363 of 2003

.. Respondent

Criminal Appeal preferred under Section 374 of Cr.P.C against the judgment of learned VII Additional Sessions Judge, Chennai, passed in S.C.No.505 of 2005 on 22.04.2008.

For Appellants : Mr.S.Ananthanarayanan, senior counsel
for Mr.G.Mohanakrishnan

For Respondent : Mr.V.Arul
Additional Public Prosecutor

J U D G M E N T

This appeal arises against the judgment of learned VII Additional Sessions Judge, Chennai, passed in S.C.No.505 of 2005 on 22.04.2008.

2. The case of the prosecution is that PW-1, who is running an electrical shop, sent PW-4, a person working under him, to obtain xerox copies of particular papers. PW-4 proceeded on a cycle and fell down on the way. The accused persons rebuked him on riding the cycle in a drunken state and one of them caused a blow to his head. PW-4 went back and reported the matter to PW-1. PW-1 took along PWs.2 to 4 to question the accused on the manner in which they dealt with PW-4. In the course of argument that ensued, first accused took out a knife and dealt a blow to PW-1 causing injury to three fingers of the right hand. The incident took place at about 8.30 p.m. PW-1 was taken to the Royapettah Government Hospital at 09.00 p.m. and from there he was referred to the Stanley Medical College Hospital. Upon intimation had from such hospital, PW-12, Sub-Inspector of Police, went over to the hospital, recorded PW-1's statement and a case in Crime No.363 of 2003 on the file of

respondent for offences u/s.147, 148, 323, 326, 307 and 506(ii) IPC was registered. Printed First Information Report is Ex.P7.

3. PW-13, Inspector of Police, took up investigation on 03.05.2003 at about 23.15 hours. At about 23.30 hours, he visited the place of occurrence and in the presence of PW-8 and another, he prepared Ex.P8 - Observation Mahazar and Ex.P9 - Rough Sketch. PW-13 examined PWs.2, 4, 5, 8, 9 and others and recorded their statements. On 11.05.2003 at about 10.30 a.m., PW-13 arrested accused 2 and 3 and recorded their confessional statement in the presence of PWs.6 and 7. On such basis, PW-13 took the accused 2 and 3 to a footwear shop at V.P.Naicken Street and seized a knife in the presence of PWs.6 and 7. Admissible portion of confession statements of accused 2 and 3 are Exs.P10 and P11. Seizure mahazar is Ex.P12. PW-13 required PW-1 to appear at the police station on 11.05.2003. PW-1 identified the accused. Additional statement of PW-1 was recorded. On 11.05.2003, PW-13 sent accused 2 and 3 to judicial custody. PW-13 examined PWs.6 and 7 and recorded their statements. On his transfer, PW-14, Inspector of Police, took up further investigation on 22.08.2003. PW-14 arrested first accused on 22.08.2003 at about 11.30 a.m. at the Jambazaar Market and recorded his confessional statement in the presence of witnesses. PW-14 sent first accused to judicial custody. On 22.08.2003 at about 15.30 hours, PW-14 arrested fourth

accused at Jambazaar Market and sent him to judicial custody. PW-14 examined PW-10, Doctor, and recorded his statement. Upon completion of investigation on 01.06.2005 and filing of charge sheet informing commission of offences u/s.147, 341, 323, 326, 307 and 506(ii) IPC, the case, upon committal, was tried in S.C.No.505 of 2005 on the file of learned VII Additional Sessions Judge, Chennai.

4. Before the trial Court, prosecution examined fourteen witnesses and marked twelve exhibits and one material object. None were examined on the side of the defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 22.04.2008, while acquitting first accused of offences u/s.307, 326 and 506(ii) IPC and accused 2 to 5 of offences u/s.307 r/w 149, 326 r/w 149 and 506(ii) IPC, convicted the first accused for offences u/s.148 and 324 IPC and accused 2 to 5 for offences u/s.147, 324 r/w 149 IPC and sentenced them as follows:

Accused	Sections of law	Sentence
A1	148 IPC	3 years R.I. and fine of Rs.5,000/- i/d 6 months R.I.
	324 IPC	3 years R.I. and fine of Rs.5,000/- i/d 6 months R.I.
A2 to A5	147 IPC	2 years R.I. and fine of Rs.2,000/- i/d 4 months R.I.
	324 r/w 149 IPC	3 years R.I. and fine of Rs.5,000/- i/d 6 months R.I.

Trial Court directed that the sentences run concurrently.

5. Heard learned senior counsel for appellants and learned Additional Public Prosecutor.

6. Learned senior counsel for appellants submitted that Ex.P4, Accident Register, recorded at the Royapettah Government Hospital, informed of attack on PW-1 by five unknown persons. Quite contrarily, Ex.P6, Accident Register recorded at the Stanley Medical College Hospital, informed an attack by one unknown person. PW-11, Doctor, treated PW-1 at the Stanley Medical College Hospital. In chief, PW-11 had spoken to having been informed by PW-1 that he was attacked by unknown persons but in cross, had admitted to being informed of involvement of one known person. Though the prosecution would aver that Ex.P1, complaint was registered on 03.05.2003, the printed First Information Report, has reached the Magistrate only on 05.05.2003 at 05.00 p.m. i.e., after two days. PW-13, Investigating Officer, had deposed that the Court was at a 45 minutes distance from the police station. Learned senior counsel submitted that the initial information recorded at the Royapettah Government Hospital in Ex.P4 having informed the attack on PWs.1 to 4 as that of unknown persons, the naming of first accused in Ex.P1 and the same reaching the Court with a delay of two days from the alleged time of registration pointed to foisting of a

false case. The benefit of doubt ought to be afforded to appellants. For good measure, learned senior counsel added that PWs.2 and 3 examined as eye witnesses to the occurrence have turned hostile.

7. Learned Additional Public Prosecutor submitted that Ex.P6 - Accident Register recorded at the Stanley Medical College Hospital, informed that PW-1 had been attacked by known persons. PW-1 duly had informed the name of first accused in Ex.P1. PW-1 being an injured witness, his testimony was not to be easily discarded. Court below has rightly arrived at a finding of conviction and the same ought not to be interfered with.

8. On consideration of rival submissions, this Court finds that Accident Register in Ex.P4 has been recorded at the Royapettah Government Hospital and the same informs attack by unknown persons. This Court is of the view that being unwilling to depose falsely PWs.2 and 3 have refused to support the prosecution. The delay in Ex.P7, Printed First Information Report, reaching the Court two days after the alleged registration and the absence of any explanation there regards is, in the circumstances of the case, fatal to the prosecution.

The Criminal Appeal shall stand allowed. The judgment of learned VII Additional Sessions Judge, Chennai, passed in S.C.No.505 of 2005 on 22.04.2008, shall stand set aside. Appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

17.07.2017

Index : Yes/No
Internet : Yes
gm

To

- 1.The VII Additional Sessions Judge,
Chennai.
- 2.The Inspector of Police,
ICE House Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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C.T.SELVAM, J

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