

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 24 .11.2016

Date of Pronouncement : 13.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

CRL.A.No.64 of 2010

1. Senthil Kumar
2. S.Kesavan

...Appellants

versus

State of Tamil Nadu
Represented by the Inspector of Police,
Thudiyalur Police Station,
Coimbatore.
(Cr.No.1444/2008)

...Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the conviction and sentence passed in Judgment dated 29.12.2009 made in S.C.No.107 of 2009 on the file of the Court of Additional District and Sessions Judge/Fast Track Court No.1, Coimbatore and acquit the appellants/accused Nos.1 and 2.

For Appellants in : Mr.N.S.Sivakumar

For Respondent : Mr. P.Govindarajan
Additional Public Prosecutor

JUDGMENT

The instant appeal has been preferred against the judgment dated 29.12.2009 rendered by the learned Additional

District and Sessions Judge/FTC-I, Coimbatore in S.C.No.107 of 2009 where by the appellant/accused (herein after referred to as accused 1 and 2 for the sake of convenient) who were charged with and tried for commission of offences u/s.307 IPC has been convicted and sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1000/- in default RI for three months for the offence punishable under Section 324 IPC and the accused A2 is convicted and sentenced to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.500/- in default Simple Imprisonment for two months for the offence punishable under Section 323 IPC. The period of sentence already undergone is ordered to be set off under Section 428 Cr.P.C.

2. The case of the prosecution in a nutshell is that one Veerasamy, resident of Thiru.Vi.Ka.Nagar, Urmandampalayam, is working as a Mason. Pappathi is his sister and wife of Murugesan, who is working as a building mason. The accused were working under the said Murugesan. There was a balance of coolly amount due by Murugesan to the accused. The said Murugesan was avoiding payment of coolly. Therefore, the accused along with Alagesan @ Moorthy went to the house of Murugesan on 03.11.2008 at about 7.00 p.m., at Urumandampalayam. Being the wife of Murugesan, Pappathi

obstructed them, A1 and Alagesan @ Moorthy picked quarrel

with Pappathi and beat her. On knowing the said fact, her brother, Veerasamy went to the house and took her to CMCH for treatment. Later, there was a case registered before the Thudiyalur Police Station. Hence A1 developed grudge against the said Veerasamy and decided to close him with the help of A2. Due to such motive, on 09.11.2008 at about 8.00 a.m., near community hall situated at Jeeva Street, Urudmandampalayam within the limits of Thudiyalur Police Station, while Veerasamy was going to work, the accused A1 and A2 joined together with an intention to cause death of Veerasamy, picked quarrel with him by saying as "you should go to death" and A1 cut the said Veerasamy on his neck with Aruval and when veerasamy warded it off with right hand, the cut fell on his right little finger, ring finger and middle finger. Again A1 cut the said Veerasamy on his left back; left elbow, left fore head and left leg with the same Aruval and A2, with an intention to cause death of Veerasamy by saying "you should go to death" beat him on his left leg with wooden log. As a result of the act of the accused 1 and 2, Veerasamy sustained simply injuries. The accused 1 and 2 did the act with such intention and knowledge and under these circumstances, if they by that act caused death, they would be guilty of murder. Thereby, the accused 1 and 2 committed an offence punishable under Section 307 IPC.

3. After the investigation, the Inspector of Police filed charge sheet as mentioned above to the Judicial Magistrate No.I, Coimbatore. The said Magistrate Court has taken the same on file as PRC.No.9/2009 and after completing the formalities, committed the case to the Principal Sessions Judge, Coimbatore. After the committal of the case, the Principal District and Sessions Judge, Coimbatore taken the case on file in S.C.No.107/2009 and the Principal District and Sessions Judge, Coimbatore made over the same to the Additional District and Sessions Judge, FTC-I, Coimbatore.

4. On hearing both side and having perused the records, the Additional District Judge, FTC.No.I, Coimbatore framed charge against the accused 1 and 2 under Section 307 IPC and they were read over to them and explained them in Tamil, for which they denied the charge and pleaded not guilty and claimed to be tried and thereafter, the learned Additional District Judge, FTC.No.1, Coimbatore conducted the trial.

5. In order to prove the guilt of the accused, on the side of the prosecution, though 15 witnesses were cited in the charge sheet, out of which 11 witnesses were examined as PW1 to PW11 and Exs.P1 to P7 were marked and MO1 and MO2 were exhibited.

6. The victim Veerasamy was examined as PW1 and he has spoken about the offence committed by the accused 1 and 2. His sister Pappathi was examined as PW8. She has spoken about the motive of the offence. The doctor who has given treatment to Veerasamy was examined as PW2. He has spoken about the injuries sustained by Veerasamy and wound certificate given by him and entry made in the Accident Register. PW9 is the Sub-Inspector of Police and has spoken about the receipt of intimation from the hospital and registration of FIR. PW10 is the Inspector of Police, Thudiyalur Police Station, who has spoken about the investigation done by him. PW11 is one of the Inspectors of Police, Thudiyalur Police Station, who has spoken about the further investigation and filing of charge sheet.

7. After completion of trial, when the accused were examined under Section 313 Cr.P.C., with reference to incriminating circumstances were found against them, from the above referred prosecution witnesses and they denied the same as false. The denial is a total denial. Though they said initially that they have defence witnesses, but they have not produced either oral or documentary evidence. After the completion of trial, after hearing both sides, the trial court has found guilt of the accused 1 and 2 and convicted and sentenced them as referred above.

8. Aggrieved by the judgment of conviction and sentence passed by the trial court, the appellants have preferred the present appeal before this court.

9. Learned counsel for the appellant would submit that Pws.1, 3 and 4 are interested witnesses and they could not have been present in the scene of occurrence and their evidences were not inspiring confident to convict the appellants since their evidences suffer with serious contradictions and untrustworthiness. There is a contradiction between the evidence of PWs.1 and 2. The evidence of Doctor/PW2 with whom the occurrence was reported at the first instance, was informed by PW1 that he was assaulted by three known persons and two unknown persons with Aruval and the same was entered in the Ex.P2 – Accident Register. Further PW2 in cross examination, admits that PW1 injured was conscious and the same was recorded in Ex.P2. Therefore, the material contradictions cannot be ignored.

10. Further, he would submit that admittedly the injuries are simple in nature and the evidence of PW2 in his cross examination has stated that the injuries might have been caused to him by falling down in the drainage with brobed wire. There is a previous motive with regard to non-payment of coolly between the brother-

<http://www.judis.nic.in> in-law of the Veerasamy, one Murugesan and accused. Therefore,

there is a material contradictions between the evidence of witnesses and the medical evidence is not correlating with evidence of PW1. Therefore, the prosecution has not proved its case beyond reasonable doubt. Hence, the benefit of doubt should go in favour of the appellant/accused. The trial court failed to consider all the material contradictions and mechanically convicted the accused and therefore, the conviction and sentence passed by the trial court are liable to be set aside and the appeal has to be allowed.

11. Learned Additional Public Prosecutor would submit that the injured witness has been examined as PW1, who has spoken clearly about scene of occurrence and PW8, the sister has spoken about the motive between the accused and the Veerasamy and material objects were recovered from the accused and they have used MO1 for commission of offences. The prosecution has proved its case beyond reasonable doubt. The trial court has correctly accepted the case of the prosecution and passed conviction and sentence and there is no reason to interfere with the judgment of the trial court.

12. On perusal of the records submitted before the trial court and oral and documentary evidence and the judgment passed by

the trial court and grounds of appeal filed by the appellants before

this court in this appeal and rival submissions made by the counsel for both the parties, the case of the prosecution is that PW1 Veereasamy is the injured witness in this case, who is the resident of Thiru.Vi.Ka. Nagar, Urumandampalayam and working as mason. Pappathi/PW8 sister of the said Veerasamy and her husband by name, Murugesan is working as a building mason. On 03.11.2008 at about 7.00 p.m., while PW8 was in her house, a quarrel had taken place. In resolving it, PW8 sustained injuries and the same was informed to PW1. Having known about the incident, PW8 was brought to the Government Hospital by PW1 and admitted her in the hospital. It is stated that A1 and Alagesan @ Moorthi trespassed in the house of PW8 and inflicted the injuries on her for which reason PW8 was admitted in the hospital and PW1 made complaint before police station. On 09.11.2008 at about 8.00 a.m., when PW1 was going to work along the Jeeva street near community hall, Urumandampalayam, the first accused with possession of Aruval, at that time A1 and A2 jointly came across and restrained PW1 and A1 cut him with Aruval by saying that "he should go to death" and A2 beat him with wooden log by saying the very same word resulting in warding it off, with right hand, the cut was fell with right hand resulting injuries on middle finger, ring finger and two cut injuries below left knee and also cut injuries on his left leg. Accused No.1 cut PW1 on his left hand, right fingers and left leg with Aruval. A2 beat his back with

wooden log by once again saying "you should go to death". Due to the injuries, PW1 fell down unconscious. At that time, PW3, resident of Urumandampalayam working in Mill was going along with Jeeva street near community hall. When he was going across PW1 and saw that the accused asked PW1 as to why he was giving police complaint and A1 took the Aruval kept in the hiding place, cut PW1, at that time, it was warded off, the cut was fell on right hand resulting injuries and once again on cutting PW1 sustained injury on back, hand and leg. When PW3 was nearing the scene of occurrence, the accused Kesavan and Senthil ran away with Aruval and wooden log. Immediately the same was intimated to his wife, Thirumathal- PW6 and he brought her to the occurrence place where PW1 is lying on the ground with injuries and PW1 was taken to the Government Hospital through call taxi by PW3 and PW6 and admitted PW1 in the hospital and was given treatment by the Doctor.

13. The PW4 also, the resident of Harijan Colony, Urumandampalayam, was going along the Jeeva Street on 09.11.2008 at about 7.30 a.m., after taking tea, at that time, he saw A1 cut the PW1 with Aruval and A2 beat him with wooden log when the people assembled there, the accused escaped from the scene of occurrence towards the west. After sustaining the

cut injuries, immediately PW1 fell unconscious, thereafter PW3

took PW1 by car to the hospital.

14. PW2-Doctor attached to the Coimbatore Medical College Hospital was on duty in emergency ward on 09.11.2008 at 8.30 a.m., the injured Veerasamy PW1 was brought by his wife Thirumathal as alleged he was assaulted by three known persons and two unknown persons at 8.00 a.m., on 09.11.2008 by Aruval, on examination, he was conscious and he found injuries as stated in the accident register.

15. PW9, Selvaraj, Sub-Inspector of Police, Thudiyalur, on receipt of intimation of IR.No.7434 of 2008 from CMC hospital on 09.11.2008, went to the hospital where the injured Veerasamy was admitted as in patient and recorded the statement of PW1 at 11.45 a.m., marked as Ex.P1 and based on the statement Ex.P1, he registered the case in Cr.No.1444/2008 under Section 307 IPC and prepared the FIR-Ex.P6 and he sent the original complaint and forwarded the FIR to the Judicial Magistrate Court and copies thereof submitted to the Higher Police official immediately. The case file was submitted to the Inspector of Police for investigation.

16. PW10 Murugesan, Inspector of Police, Thudiyalur took it

<http://www.judis.nic.in> up for investigation and went to the place of occurrence and

prepared the Observation Mahazar Ex.P3 and Rough Sketch Ex.P7 in the presence of witness PW5 and Murugan. He also examined witnesses Veerasamy and Krishnan, Karuppan, Maran, Thirumathal, Raju and Murugan and recorded their statements under Section 161 Cr.PC. On Search, on the same day, the accused were arrested at about 5.40 p.m., at Cheran Nagar., In the presence of witnesses Manoharan and Mayilsamy statement and recorded the voluntarily confession statement and also recovered MO1 and MO2 and accused were brought to the police station and after completing the formalities, they were sent for Judicial custody.

17. Since PW10 was transferred from the said station, the PW11, Inspector of Police, Thudiyalur took up this case for further investigation on 06.03.2009 and after completing further investigation and examined the witnesses and he laid the charge sheet before the Judicial Magistrate No.1, Coimbatore.

18. On perusal of the entire records, as projected by the prosecution before the trial court and also on perusal of the Judgment passed by the trial court, the specific case of the prosecution is that due to arrears of coolly, when A1 and Alagesan went to the house of PW8 on 03.11.2008 at 7.00 p.m.,

since PW8 obstructed them, there was a wordy quarrel. At the

time of quarrel, A1 and Alagesan caused injury to PW8, who is the sister of injured witness, PW1, Veerasamy. After hearing the said incident, the injured witness PW1 Veerasamy went to the place and took her sister to the hospital, admitted and preferred a police complaint. Due to the said motive, on 09.11.2008 at 8.00 a.m., near community hall situated at Jeeva street, Urmandampalayam, when PW1 was passing the land, Accused 1 and 2 interrupted him and A1 attacked with Aruval. A2 attacked with wooden log by saying "you should go to death" and caused injuries. At that time, PW3 and PW4 were the eye witnesses and PW3 immediately intimated to PW6, wife of PW1 and PW6 took and admitted him in the hospital. At that time, PW2, Doctor, who examined and admitted him in the hospital. From the evidences of PWs.1, 2 and 3, the prosecution has proved that A1 and A2 attacked PW1 with Aruval and wooden log. The doctor, who examined the injured has stated that the injuries sustained by him is simple injury.

19. Though the learned counsel appearing for the appellant has stated that the alleged injuries are simple in nature and PW1 and PW8 are the interested witnesses and PW3 and PW4 are not at all the eye witnesses to speak about the occurrence, the intimation received from the hospital was not produced and marked

<http://www.judis.nic.in> Exhibits. The Doctor PW2 was told that he was assaulted by

three known persons and two unknown persons with Aruval. The earlier hospital report was suppressed by the prosecution if the Aruval was used only injuries would have been caused to PW1. But simple injuries was caused and so that using Aruval was falsely implicated.

20. On perusal of the entire records, according to PW1, who is an injured as well as witness at the time of occurrence and according to PW3 and PW4 who were eye witnesses at the time of occurrence and have taken steps to admit PW1 in the hospital so that in their presence at the time of occurrence, PW1 was attacked by A1 and A2 with Aruval and wooden log and injury sustained by PW1. PW3 and PW4 has deposed before the trial court and clearly spoken about the incident that there is no reason to disbelieve the evidence of PW3 and PW4. Their evidences have not been shaken by the defence counsel during the cross examination.

21. Though the learned counsel for appellant would submit that since the injury is simple in nature, it could not have been caused by the deadly weapon like Aruval. If at all, Aruval was used, there could have been cut injury or more grievous injury. Since it is a simple injury, the said MO1 - Aruval could not have been used

<http://www.judis.nic.in> in this alleged occurrence. Perusal of the evidences of PW1 and

PW3 clearly would go to show that A1 attacked PW1. Since he warded off with hands or prevented, he sustained injuries in the fingers. Otherwise, it would have been caused injury in other vital parts. Though, the injury is not a grievous in nature or his vital part is not attacked, if he would not have prevented with hand, the injury would have been inflicted in some other vital parts.

22. On perusal of the record, the evidences of PWs.1, 3 and 4, A1 used deadly weapon and the evidences of PW1 clearly shows that while attacking PW1 with Aruval said "you should go to death". Therefore, the combined reading of these things using deadly weapons by attacking PW1 by saying "he should go to death" definitely Section 307 IPC would attract. Further the motive was established through PW8, the sister of PW1.

23. Under these circumstances, though the case under Section 307 IPC is made out, the trial court found that there is only a simple injury and therefore convicted the accused under Section 322 IPC. The trial court held that the prosecution has not proved the charge under Section 307 IPC and the offences committed are proved under Section 324 IPC against A1 and under Section 323 IPC against A2 beyond any reasonable doubt.

24. As already stated, the trial court has come to the conclusion from the injuries sustained by injured witness PW1 and PW2 doctor evidence that the accused has committed the offence by using MO1-Aruval and MO2-wooden log holding that there is no intention to cause death simply because the injured, who sustained only simple injuries. As stated earlier, deadly weapon was used and while A1 cut PW1, he prevented the said cut with hand. Therefore, he sustained injuries on the fingers as referred above. Otherwise, it would have fallen on the vital parts and would have caused grievous injuries. Therefore, since he has sustained only simple injury, one cannot say that he has no intention to cause death. Since used deadly weapon - Aruval and since because he prevented the same, the intention will not take away. Once the trial court believed that the accused caused injuries by using deadly weapons by saying "he should go to death" should have convicted the appellant under Section 307 IPC. However, the prosecution has not file any appeal against finding of the trial court for enhancement of sentence. Therefore, this court cannot interfere with the finding of the trial court. As stated earlier, the trial court has correctly come to the conclusion that the accused who have committed the offence and caused injuries to the PW1 however, as per the evidence of PW2 doctor and the accident register and opinion of the doctor and since injuries sustained by the accused is simple in nature and convicted under Sections

324 and 323, there is no reason to interfere with the judgment and sentence passed by the trial court.

In the result, the appeal fails and the same is dismissed and conviction and sentence passed by the trial court is confirmed. The bail bond, if any, executed by them shall stand cancelled. The trial court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence.

13.07.2017

Speaking/Non-Speaking order

Index : Yes/No

gv

To

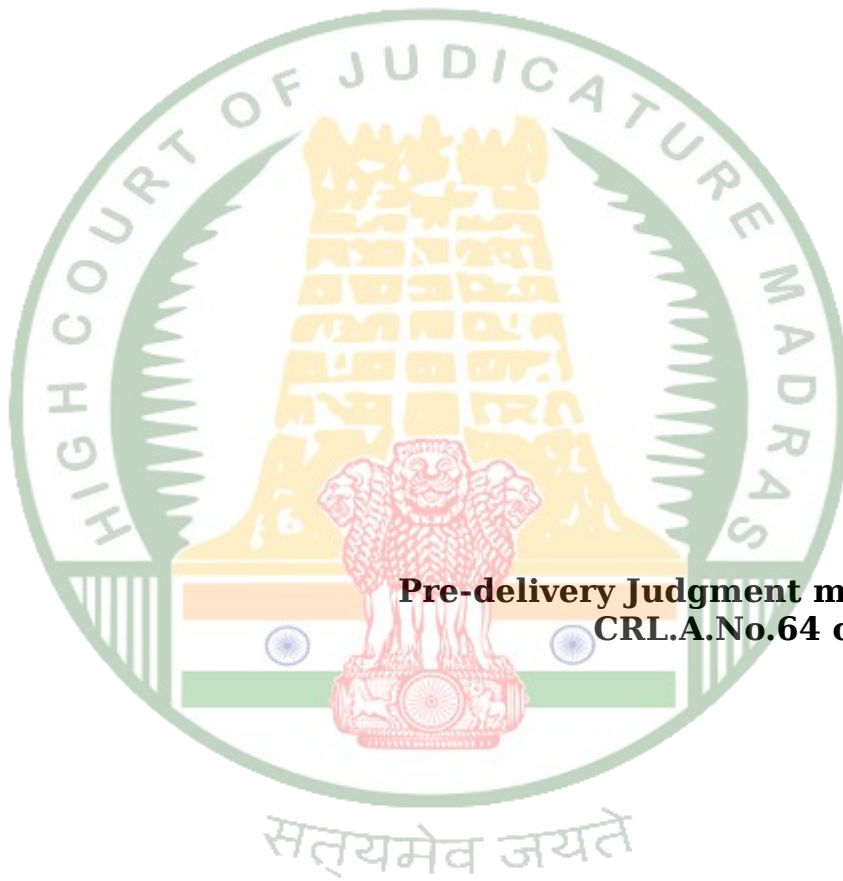
1. The Court of Additional District and Sessions Judge/
Fast Track Court No.1,
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2. The Public Prosecutor,
High Court,
Madras.

3. State of Tamil Nadu
Represented by the Inspector of Police,
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(Cr.No.1444/2008)

P.VELMURUGAN, J.

gv



**Pre-delivery Judgment made in
CRL.A.No.64 of 2010**

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