

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 14.02.2017	Date of pronouncing the Judgment : 12.07.2017
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CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.A.No.66 of 2010

1.Chettiyappan
2.Raji
3.Ashokkumar
4.Manickam
5.Chandra
6.Sivasankar
7.Sivasakthi
8.Rathinammal
9.Kala@Padmavathi

... Appellants

State
rep. By
Inspector of Police
Eriyur,
Dharmapuri
(Cr.No.156/2006)
Eriyur Police Station

Vs

.. Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the conviction and sentence

imposed by judgment dated 07.01.2010 in S.C.No.68 of 2007 by the learned
Additional Sessions Judge/FTC, Dharmapuri.

For Appellants : Mr.R.Thirugnanam
for Mr.CH.Pandian.

For Respondent : E.Raja, Addl. Public Prosecutor

JUDGMENT

The appellants who are arrayed as A-1 to A-9 have come forward with this appeal challenging their conviction and sentence imposed by the learned Additional Sessions Judge/FTC, Dharmapuri, by judgment dated 07.01.2010 made in S.C.No.68 of 2007, convicting and sentencing the appellants as hereunder:-

All the appellants/accused were found guilty for offence under Section 341 of IPC and sentenced them to undergo one month simple imprisonment, and found the accused 6, 7 and 9 guilty under Section 324 IPC instead of 307 IPC and sentenced to undergo two years Rigorous imprisonment and to pay a fine of Rs.500/- each, in default to undergo one month R.I., and also found accused 1 to 5 and 8 guilty for offence under Section 324 IPC read with 149 IPC and sentenced them to undergo 2 years R.I., and to pay a fine of Rs.500/- each, in default to undergo one month R.I., and further found accused 1, 3, 6, 7 and 9 guilty under Section 148 of IPC and sentenced to undergo one year R.I., and also found accused 2, 4, 5 and 8 guilty under Section 147 of IPC and sentenced them to undergo one year R.I. By the said judgment, the Sessions Court also found accused 2, 4, 5 and 8 not guilty under Section 342 IPC and also ordered that the sentence shall run concurrently.

2. The case of the prosecution is that the accused who are the appellants herein and P.W.1-Dhanaraj are relatives and residents of same village and due to land dispute, there was enmity between them for nearly 5 years and previous cases were also pending between them. On the occurrence date i.e., 06.06.2006, at about 1 p.m., when P.W.1 Dhanaraj was proceeding towards Poomani Sami Temple, in his village Chinnavathalapuram to attend Kumbabishekam festival, the accused who were assembled with an intention to assault the accused near Nallathambi house wrongfully restrained P.W.1-Dhanaraj and attempted to murder him by assaulting him with iron rod, knife and stones and caused injuries to P.W.1 and accordingly the case was registered against the accused herein.

3. P.W.1, the complainant states that due to land dispute between himself and the accused, he left the village and was working in Karnataka and on 06.06.2006, he returned to his native village to attend temple festival and while he was proceeding to temple at 1 p.m., the accused who were assembled near the house of Nallathambi with weapons assaulted him. P.W.1 states that accused Nos.5 and 8 viz., Chandra and Rathinammal caught hold of him and 1st accused/Chettiyappan assaulted him with iron rod on his head with an intention to murder him and he suffered two injuries. P.W.1 further stated that A-2 Raji and A-4 Manickam caught hold of him from escaping and at that time, A-6 Sivasankar and A-7 Sivasakthi assaulted him

in the chest and nose with stones and A-3 Ashokkumar took out soorikathi from his pocket and tried to stab him while he tried to prevent the same, he got injured in his right forearm. P.W.1 further stated that A-9 Kala @ Padmavathi assaulted with stone in his leg and he suffered bleeding and so that he shouted due to pain and his cousin brother P.W.2 Vasudevan, his brother Sekar, and another person came there and rescued him. P.W.1 further stated that the accused went away and he went to Dharmapuri G.H., along with P.W.2-Vasudevan and got himself admitted there. While he was in Dharmapuri G.H., Police came and recorded statement and complaint given by him is Ex.P.1. He further stated that on the next day, he was enquired by Sub Inspector of Police and handed over the blood stained dress material worn by him at the time of occurrence and the same is produced as M.O.4 and 5.

4. The eyewitness to the occurrence who deposed as P.W.2 corroborated the version of P.W.1 by stating that he was following his uncle P.W.1 to the temple on 06.06.2006 and at about 1 p.m., the accused herein caught hold of and assaulted P.W.1 with iron rod, knife and stone, due to which P.W.1 suffered injuries.

5. The Head Constable, who deposed as P.W.6, stated that on 06.06.2006, on intimation from Dharmapuri G.H., he went there and recorded the statement of P.W.1/Dhanaraj who was taking treatment at

G.H., and handed over the complainant's statement to the then Sub Inspector of Police, who deposed as P.W.7.

6. According to P.W.7, while he was on duty, on 07.06.2007 at Eriyur Police Station, the Head Constable 483 Moorthy handed over the complainant statement of one Dhanaraj and on that basis, he registered the case in Eriyur Police Station Crime No.156 of 2006 under Sections 147, 148, 341, 324, 323 IPC and the said FIR is marked as Ex.P.7. According to P.W.7, he went to Dharmapuri G.H., at 10.30 a.m., and on that date, examined the victim Dhanaraj and recorded the statement of other witnesses immediately. He further stated that around 11.20 a.m., he recovered the blood stained dress material of complainant-Dhanaraj in the presence of Mahazar witness and visited the occurrence spot near Nallathambi house at 2 p.m., and prepared Rough Sketch - Ex.P.8 and prepared Observation Mahazar - Ex.P.2. He also stated that he secured the weapons left behind by the accused at 2.30 p.m., in the presence of witnesses and after recording the statement of witnesses, he altered the section into 307 IPC and alteration report submitted by him is Ex.P.9; thereafter, handed over the investigation to the Inspector of Police, who deposed as P.W.8.

7. According to P.W.8, he received the FIR in Crime No.156 of 2006 on 07.06.2006 and secured the accused A-9 Kala @ Padmavathi from her house

on 11.06.2006 and sent her to judicial custody and on 16.06.2006; examined the doctor who treated the complainant-P.W.1 and handed over the investigation to his successor. He also produced the Wound Certificate as Ex.P.6.

8. The doctor who deposed as P.W.5 stated that while he was on duty at G.H.Dharmapuri on 06.06.2006 at about 3.40 p.m., one Dhanaraj was brought there by another person viz., Vasudevan it was stated that on the same day, he was assaulted by known nine persons at about 1 p.m., and the following injuries were found on him:-

- " (1) sutured wound 5 x 1 fore head
- (2) sutured wound 4 x 1 fore head
- (3) Abrasion (Rt) palm and over (Lt) palm
- (4) Abrasion with contusion 3 x 1 (R) chest
- (5) Abrasion on Neck
- (6) Pain on (Lt) leg. "

The medical expert P.W.5 stated that the above injuries are simple in nature and the X-ray discloses no fracture; the intimation sent from G.H., to Police is produced as Ex.P.5 and the Accident Register copy is produced as Ex.P.6.

9. The Inspector of Police who deposed as P.W.9 has stated that on completion of investigation in Eriyur Police Station Crime No.156 of 2006, he laid the charge sheet under Sections 147, 148, 341, 324, 323 @ 147, 148,

341, 324, 323 and 307 IPC against the accused 1 to 9.

10. The trial court on the basis of oral and documentary evidence let in by the prosecution found the accused guilty and imposed sentences on them as stated earlier. Aggrieved over the same, the accused/appellants have come forward with this criminal appeal.

11. The learned counsel for the appellants/accused contended that the trial court failed to appreciate the oral and documentary evidence properly and failed to note that the prosecution has not established the case beyond doubt. It is also pointed out that the prosecution examined only relatives of the complainant to prove the case inspite of independent witnesses being available and the same was not taken note of by the trial court. The learned counsel for the appellants also pointed out that there was delay in sending FIR as well as statement of witnesses recorded under Section 161 Cr.P.C., to the court concerned and the same was not considered properly by the trial court. According to the learned counsel for the appellants, the trial court also failed to notice the fact that the injuries found on P.W.1 was not sustained as alleged by him and the medical evidence in that regard was not considered properly. The fact that all the members of the accused family including females were implicated falsely in this case and the fact that there was previous enmity and cases were pending between the complainant and

the accused party was also not considered by the trial court. Hence, the learned counsel for the appellants pleads to set aside the conviction and sentence passed by the trial court and sought to allow the appeal.

12. As stated above, the complainant/P.W.1 and the accused are all related and belong to same village. It is also admitted by P.W.1 and P.W.2 that there was land dispute between the accused party and the complainant for over 5 years and a civil case was also pending between them. It is also admitted by the prosecution witnesses that complaint regarding assault by the complainant/P.W.1 herein on the accused herein is also pending. Thus there is previous enmity between both groups is apparent. The prosecution examined the alleged victim P.W.1 and to corroborate the occurrence, the prosecution examined only P.W.2 who is brother's son of complainant P.W.1. Likewise, the prosecution examined P.W.3 and P.W.4 as Mahazar witness and they also admitted that they are close relatives of P.W.1. Thus the witnesses examined by the prosecution are all close relatives and in the background of previous enmity between both sides, this court has to scrutinize their evidence with great care and caution.

13. As stated above, P.W.1 has stated that due to land dispute, he was staying away from the village and he returned to the village on 06.06.2006 to attend a temple festival. He further stated that while he was going to temple

at around 1 p.m., he was assaulted by the accused herein near the house of Nallathambi. P.W.1 stated that occurrence took place at about 10 feet from Nallathambi house and there was not much movement at that time. P.W.1 also stated that he was unaware of who were all present at the house of Nallathambi. However, when he was further cross examined, he admitted that on the occurrence day, there was lot of crowd in the village in contrast to the earlier version. Likewise the alleged eyewitness to the occurrence viz., P.W.2 has stated that as Kumbabishekam was held on the occurrence day, there was lot of crowd from temple to the road. P.W.7, Sub Inspector of Police stated that he was shown the occurrence spot as near the house of Nallathambi and as Temple Kumbabishekam was held on that day, lot of people were present. He came to know about the same during the investigation and the witnesses examined by him were all relatives of P.W.1. It is thus clear that on the fateful day due to temple festival, there was lot of crowd in the village where the occurrence is stated to have taken place. Further as rightly contended by the learned counsel for the appellants as the complainant was not living in the village, it is unbelievable that the accused were waiting in a group expecting P.W.1 to come there. Further it was pointed out that there was lot of people around the temple on that day and as bundobust arrangements were in place, it is unbelievable that the accused would have assembled near the temple place and tried to assault the complainant.

14. Taking into consideration the above said points raised by the learned counsel for the appellants and the fact that inspite of lot of people being present there at the occurrence spot at that time, the prosecution has failed to examine any independent witness including so called Nallathambi whose house was 10 feet away from the occurrence spot, which creates doubt over the nature of occurrence alleged by the prosecution.

15. The complainant P.W.1 has stated categorically that while he was assaulted by the accused, he was rescued by his relatives P.W.2 Vasudevan, one Sekar and another person and he thereafter went by bus to Dharmapuri G.H., for taking treatment and prior to that he did not take any treatment from any other person or hospital. The doctor who treated the victim in G.H., Dharmapuri, while deposing as P.W.5 has stated that he found several injuries as stated earlier and also stated that he found stitched injuries in the forehead of victim. He also stated that he found abrasions in the chest portion and nothing is mentioned about bleeding injury by him as claimed by the complainant/P.W.1. The learned counsel for the appellants has contended when the victim has not taken treatment prior to G.H, Dharmapuri, no explanation is given as to how stitched injuries were found on forehead and that itself will go to show that the injury was suffered not on the occurrence day; but injuries sustained at some other point of time has been made use of to lodge a false complaint against the accused due to previous enmity

between them. The said contention appears to be acceptable in the absence of any proper explanation by the prosecution as to how P.W.1-Dhanaraj was found with stitched wounds when he categorically stated that he did not take any treatment prior to treatment taken at G.H., Dharmapuri on the occurrence date.

16. The prosecution examined P.W.1, the victim and the eyewitness as P.W.2 to prove the nature of occurrence. According to P.W.1, while he was on his way to temple, he saw all the accused standing together near house of Nallathambi and he was caught hold of by A-5 Chandra and A-8 Rathinammal. However, the eyewitness P.W.2 did not say anything about P.W.1 being caught hold by A-5, A-8 or by A-4 and A-2. P.W.2 only stated that P.W.1 was assaulted by A-1 with iron rod in his forehead and stabbed with knife by A-3 Ashokkumar. According to P.W.2, the complainant was assaulted by all other accused with stones. Thus while P.W.1 stated that he was caught hold of by A-5 Chandra and A-8 Rathinammal and assaulted by A-1 Chettiyappan and A-3 Ashokkumar and thereafter as he tried to escape, he was caught hold of by A-4 Manickam and A-2 Raji and he was assaulted in his neck by A-6 Sivasankar and A-7 Sivasakthi with stones. The evidence of P.W.2 is contrary as nothing is mentioned about the victim being caught hold of by the accused as stated above. It is also pointed out by the learned counsel for the appellants that the version as given by P.W.1 is not stated by

him in his statement to the Police and it is only improved version that is given before the court. Likewise it is pointed out that the eyewitness P.W.2 has also not stated before the Police while giving statement the details as stated by him before the court. It is further pointed out that there is delay in sending the FIR and also the statement of witnesses recorded under Section 161 Cr.P.C., to the court and it is fatal for the prosecution.

17. It is admitted by P.W.7 Sub Inspector of Police that on 11.06.2006, he recorded the statement of the witnesses and the same was forwarded to the court concerned on 26.10.2006 only. It is also admitted by P.W.11 that the M.Os., seized by him was sent to the court on 30.10.2006 nearly after 4 months of seizure. It is also pointed out that the FIR was registered on 07.06.2006 and the same was sent to the court only on 09.06.2006 nearly 3 days after the case was registered. The learned counsel for the appellants pointed out that the inordinate delay in forwarding the FIR and the statement recorded under Section 161 Cr.P.C., to the court is fatal and the same will create doubt over the prosecution case and especially when the witnesses to the occurrence are only relatives and previous enmity existed between parties. In support of this contention, he also relied upon a Division Bench decision of this court reported in the case of **Ramachandran Vs.State by Inspector of Police, Tiruppur North Police Station, Tiruppur [2012(3) MWN (Cr.,)266 (DB)]**, wherein, this court, in paragraph 26, has held as follows:-

"27. Right from the moment FIR was registered under Section 154 Cr.P.C., the FIR, the documents seized, the case-properties recovered and statement of witnesses recorded under Section 161 Cr.PC., must reach the concerned Court with least delay. As already stated it is to prevent embellishment of true version as to the occurrence and false implication of innocent persons. Because, every delay in submitting these documents to the Court will give much scope and chance for interpolation, story telling and any unreasonable and unexplained delay on this account will affect the credibility and the quality of the evidence of prosecution witnesses, more particularly eye-witnesses and key-witnesses in a case."

18. In that background, when the material placed before the court is examined, doubt arises as to whether really the occurrence took place as claimed by the prosecution.

19. According to the prosecution, on the date of occurrence, i.e., 06.06.2006 itself, the complainant statement was recorded but the blood stained dress materials of the victim marked as M.O.4 and 5 was recovered from him only on the next day by the Sub Inspector of Police. There is nothing on record to show that any serological report was obtained with regard to blood stained materials seized by the Police. Further, according to

P.W.7, Sub Inspector of Police, after recording the statement of witnesses on 07.06.2006, the day after the alleged occurrence, he went to the occurrence spot and recovered M.O.1 to M.O.3, the weapons allegedly used by the accused in assaulting P.W.1, in the presence of Mahazar witness P.W.3. Admittedly the said P.W.3 is a close relative of P.W.1. Nothing is stated by P.W.1 and P.W.3 in their evidence with respect to the accused leaving behind their weapons at the alleged occurrence spot where lot of people were present. Further it is also pointed out that due to temple festival, there was lot of crowd and hence it is surprising that the weapons including M.O.2 stone remained in the same place even after a day till the time it was seized. There is nothing on record about any blood being found in M.O.1 to M.O.3. As stated earlier, the doctor has not stated about any bleeding injury on P.W.1. In such circumstances, doubt arises as to whether M.O.1 to M.O.3 was used in the occurrence and the same was recovered as alleged by the prosecution.

20. Taking into consideration the above facts, it is clear that the prosecution has not explained properly the delay in forwarding the FIR and Section 161 Cr.P.C., statement to the court and also failed to examine any independent witness to prove the occurrence.

21. As stated earlier, there was previous enmity between the

complainant and the accused party. In such circumstances, the contention of the appellants that due to previous enmity, this false complaint was lodged against them making use of injuries suffered by P.W.1 somewhere else appears to be acceptable. In such circumstances, the reasons stated by the trial court to conclude that the accused are guilty of the offence alleged against them is unsustainable and the same is liable to be set aside.

22. In the result, the criminal appeal is allowed. The conviction and sentence passed in Sessions Case No.68 of 2007 passed by Additional Sessions Judge, Fast Track Court, Dharmapuri, are set aside. The appellants/accused are acquitted. Bail bond, if any executed by them shall stand cancelled. Fine amount, if any paid by them is ordered to be refunded forthwith.

12.07.2017

Index : No
Internet : Yes

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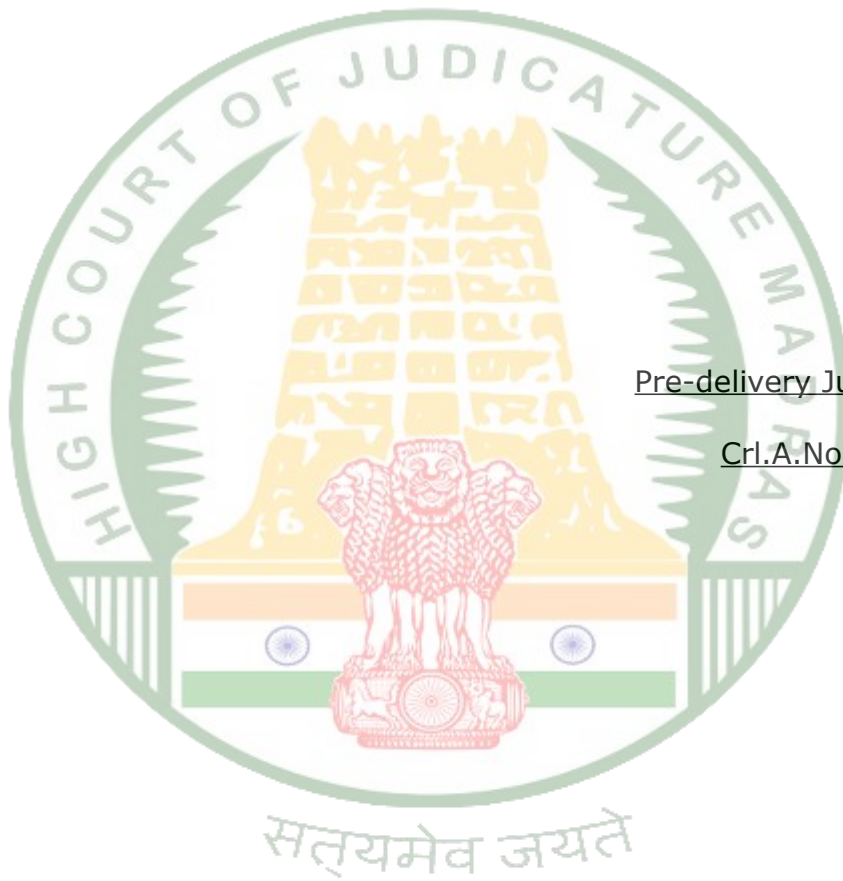
To

- 1.The learned Additional Sessions Judge/FTC, Dharmapuri.
- 2.The Public Prosecutor,High Court, Madras.
- 3.The Section officer, V.R.Section, High Court, Madras.

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S.BASKARAN, J.

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Pre-delivery Judgment in

Crl.A.No.66 of 2010

12.07.2017

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