

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.203 of 2008

State Rep.By

The Inspector of Police,

Arangandanallur Police Station,

Villupuram District.

(Crime No.503/1994)

...Appellant

-Vs-

1.Ramachandran
2.Subramanian
3.Poongavanam
4.Rajendiran
5.Kasivel
6.Elumalai
7.Thangarasu
8.Pichaikaran
9.Viswanathan
10.Balu
11.Ganesan
12.Jayaraman
13.Srinivasan
14.Manickam
15.Marimuthu Mudaliar
16.Villumani
17.Elangovan
18.Venkitesan
19.Ramalingam
20.Srinivasan
21.Kovalan
22.Palani
23.Thandavarayan
24.Velmurugan

... Respondents/Accused

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, seeking to set aside the order passed in S.C.No.27/1999 dated 05.03.2004 by the Learned Principal Assistant Sessions Judge, Villupuram, Villupuram District by allowing the appeal.

For Appellant : Mr.R.Ravichandran
Government Advocate (Crl Side)

For Respondents : Mr.K.Srinivasan
Amicus Curiae

J U D G M E N T

The appeal has been filed seeking to set aside the judgment in S.C.No.27 of 1999 dated 05.03.2004 passed by the learned Principal Assistant Sessions Judge, Villupuram, Villupuram District.

2.The brief facts of the case is as follows:

There was a long standing previous enmity between one Veerasamy/ P.W.1 and one Kanniappa Udayar. On 26.11.1994 at around 6.30 a.m, when P.W.1/ Veerasamy was proceeding towards the middle street near the house of one Govindan, the first accused, who was the member of the unlawful assembly picked up quarrel with P.W.1 stating that he had removed the flag of a particular political party and if P.W.1 proposes to give a complaint relating to the same, he would be murdered and also assaulted him with knife both on the right side and on the left side of his head uttering the words with dire consequences. On hearing P.W.1, shouting for help, the other accused A2 to A24 who were also participating in the crime armed with deadly weapons such as knives, sticks in furtherance for unlawful assembly to commit the murder of P.W.1. On seeing P.W.2 to P.W.7 arriving at the place of occurrence, they escaped from that place.

3. Out of which, P.W.1 and other witnesses were injured. Thereby A1 was implicated for the offence punishable under Section 307 of IPC, A2 to A4 and A10 were implicated for the offence punishable under Sections 148 and 324 of IPC, A5 to A9, A11 to A15, A17, A20 to A22 were implicated for the offence punishable under Sections 147 and 323 of IPC, A16, A18, A19 were implicated for the offence punishable under Sections 147 and 336 of IPC and A23 to A26 were implicated for the offence punishable under Sections 147, 427 and 342 of IPC.

4. The case was pending before the learned Judicial Magistrate, Thirukoilur, under PRC.No.15 of 1998. The accused were summoned before the learned Judicial Magistrate, Thirukoilur and free copies were furnished to the accused under Section 207 Cr.P.C. The matter was then committed to the Court of Sessions on 21.05.1999. Since the accused was also charged with the offence under Section 307 of IPC, the case was transmitted to the file of the learned Principal Assistant

Sessions Judge, Villupuram, Villupuram District.

5. Thereafter, the Trial Court framed the following charges as against the accused:

A1 was charged for the offence punishable under Sections 148 and 307 of IPC, A2 to A4 and A8 were charged for the offence punishable under Sections 148 and 324 of IPC, A5, A6, A9 to A15, A17 to A20 were charged for the offence punishable under Sections 147 and 323 of IPC, A7 was charged for the offence punishable under Sections 147 and 323 (2 counts) of IPC, A16 was charged for the offence punishable under Sections 147 and 336 of IPC and A21 to A24 were charged for the offence punishable under Sections 147, 427 and 342 of IPC.

The same was read over and explained to all the accused in Tamil to which all the accused pleaded not guilty.

6. In order to prove the guilt on the accused, Prosecution examined P.W.1 to P.W.11 and marked exhibits Ex.P1 to Ex.P11. and also marked two Atlas cycles and one Hero Cycle (3 series) as material object M.O.1.

7. Based on the evidence adduced and the materials placed before the Trial Court, the learned Trial Judge acquitted the accused on the ground that the prosecution has not proved the case beyond reasonable doubt. As against the order of acquittal, the present Criminal Appeal has been filed.

8. Heard the learned counsel appearing for the appellant. Since no one represented on behalf of the respondents, this Court appoints Mr.K.Srinivasan, learned Advocate, as amicus curiae to contest the case on behalf of the respondents for disposal of the case.

9. The learned Government Advocate, Criminal Side, appearing for the appellant submits that Ex.P1 complaint clearly corroborate with the evidence of P.W.1. He would further submit that the accused persons unlawfully assembled in the middle street at Melkondur Village, in order to commit murder of the complainant, P.W.1. Since P.W.1 questioned the removal of the flag post of a particular political party, with a vengeance, the accused persons unlawfully assembled and attacked P.W.1. In order to safeguard P.W.1, the other family members of P.W.1 reached the spot and the accused persons also attacked the relatives of P.W.1 who are arrayed as P.W.2 to P.W.7. Thereby, they sustained grievous injuries and admitted in hospital and gave a complaint before the Inspector Police, Arangandanallur Police station.

10. However, without considering the evidence of prosecution witnesses and documents particularly, the wound

certificate issued by the Doctor/ P.W.11, the learned Trial Judge acquitted the accused is non est in law. Accordingly he prayed allowing the appeal.

11. The learned Amicus Curiae appearing for the respondents would submit that Ex.P1 complaint itself shows that on seeing P.W.2 to P.W.7, all the accused escaped from the scene of occurrence. He would further submit that even mere comparison of the evidence of P.W.1 and P.W.10, is totally contrary. P.W.10/ Investigating Officer clearly deposed that on receiving telephonic message, he reached the spot and found P.W.1 to P.W.7 locked themselves in the house of one Govindhan. Thereafter P.W.10 released them and admitted them in the hospital and registered a case. However, P.W.1 in his complaint has stated that he went to the police station and registered a case and the same was admitted during the cross examination of P.W.10. The evidence of P.W.2 to P.W.7 is contrary to each other and there is no corroboration of prosecution witnesses and P.W.10 Investigating Officer.

12. The learned Amicus Curiae appearing for the respondents would further submit that P.W.1 deliberately suppressed the fact that P.W.1's family attacked the accused family and thereby sustained injuries and filed complaint before the appellant police in Crime No.502 of 1994. In the said complaint, P.W.1 and other witnesses were arrested. The said fact was suppressed in the later complaint given by prosecution witness. Considering the fact that the genesis of the complaint itself is doubtful, the trial court acquitted the accused. Hence, the well considered judgment of the Trial Court need not be interfered with.

13. Heard the arguments advanced on either side and perused the materials available on record.

14. In the light of the above submissions, now it has to be analyzed whether the order of acquittal is liable to be interfered with.

15. Admittedly, there was political enmity in between the respondent/accused and P.W.1 in respect of posting the flag. On a perusal of evidence of P.W.1, on 26.11.1994, when he proceeded at Melkondur village in the Middle street near the house of one Govindhan, the first accused, who was a member of the unlawful assembly picked up quarrel with him stating that he had removed the flag of particular political party and also stated that if P.W.1 revealed it to anyone, he will finish the life of P.W.1. Immediately, he shouted and sought for help of other persons. On hearing his voice, family members of P.W.1 reached the spot. The accused also assaulted prosecution witnesses P.W.2 to P.W.6. Thereby, they sustained injuries and were taken to hospital for

treatment.

16. Though in his evidence P.W.1 has named only 6 persons, however, he implicated 24 persons as accused in this case. Even on a close perusal of the evidence of P.W.2 to P.W.6, they named only two persons and they categorically admitted only 10 persons assembled in the scene of occurrence and attacked P.W.5. Whereas, prosecution implicated 24 persons as accused in the present case and no evidence was adduced implicating 24 persons either in the prosecution witness or in the documents.

17. It is also relevant to note that P.W.10 is the Investigating officer in the case on hand and his evidence clearly indicate that they reached the spot on receiving the telephonic information where they found the prosecution witnesses P.W.1 to P.W.7 locked themselves in the house of one Shanmugam/ Head Constable, whereas P.W.1 says that they locked themselves in the house of one Govindhan. However the prosecution has not corroborated in which house they locked themselves. There is confusion as to the house in which they locked.

18. Further, there is no proper explanation for not disclosing the earlier complaint filed by the accused against P.W.1 and other accused. Admittedly, P.W.1 and other witnesses were already implicated in Crime No.502/1994 u/s.323 and 324 IPC and subsequently P.W.1 gave a complaint. That complaint is registered as Crime No.503 / 1994. It is relevant to note that no weapons were seized from the accused persons except the damaged cycles.

19. On perusal of Ex.P.1, it would disclose that Ex.P1 was registered based on the complaint of P.W.1 as if the P.W1 himself lodged a complaint in the Police Station. In his complaint, he has specifically stated that on seeing P.W.2 to P.W.7 all the accused escaped. However, in his evidence itself, he has also stated that the other accused persons nearly 24 persons assaulted P.W1 and other witnesses. The glaring discrepancy is not clarified by the prosecution before the trial court. Further P.W.1 and other eye witnesses had not identified all the accused persons and they have referred to only few accused persons having participated in the offence, which is contrary to Ex.P1.

20. P.W.11/ Doctor deposed that P.W.1 and other persons sustained on lacerated injuries. In view of the above, no evidence is available implicating the accused in the case and the prosecution has failed to establish the case against the

accused persons as if they formed unlawful assembly and committed the offence as alleged by the prosecution.

21. No doubt to justify conviction under Section 307 of IPC it is not essential bodily injury capable of causing death should have been inflicted an attempt of murder. It is sufficient in law if there is a person and intend coupled with some overtact in execution thereof the said act being proximate to crime intend and attempt have gone so far that it has complete but for extraneous intention but frustrated its consummation. The attempt to commit murder there are different stages in crime: first, intention to commit it; second, preparation to commit it; third, attempt to commit it. If the third stage attempt fails, crime not complete, but the law punishes in attempting the same. An attempt to commit crime must be distinguished from the intent to commit it or preparation of its commission.

22. In the present case, the prosecution has not proved that the accused have intention to commit murder of P.W.1. In the absence of any positive material with regard to the intention of the accused persons to commit murder of P.W.1 implicating the accused for the offence under Section 307 of IPC is not established.

23. Order of acquittal cannot be interfered with in a mechanical manner unless there is any procedural irregularity or material evidence has been overlooked or misread by the Trial Court. Hence, I do not find any error in the judgment dated 05.03.2004 made in S.C.No.27 of 1999 by the learned Principal Assistant Sessions Judge, Villupuram, Villupuram District.

24. The criminal appeal is accordingly dismissed. The judgment dated 05.03.2004 made in S.C.No.27 of 1999 by the learned Principal Assistant Sessions Judge, Villupuram, Villupuram District, is hereby confirmed.

Sd/-

Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

mfa/pri

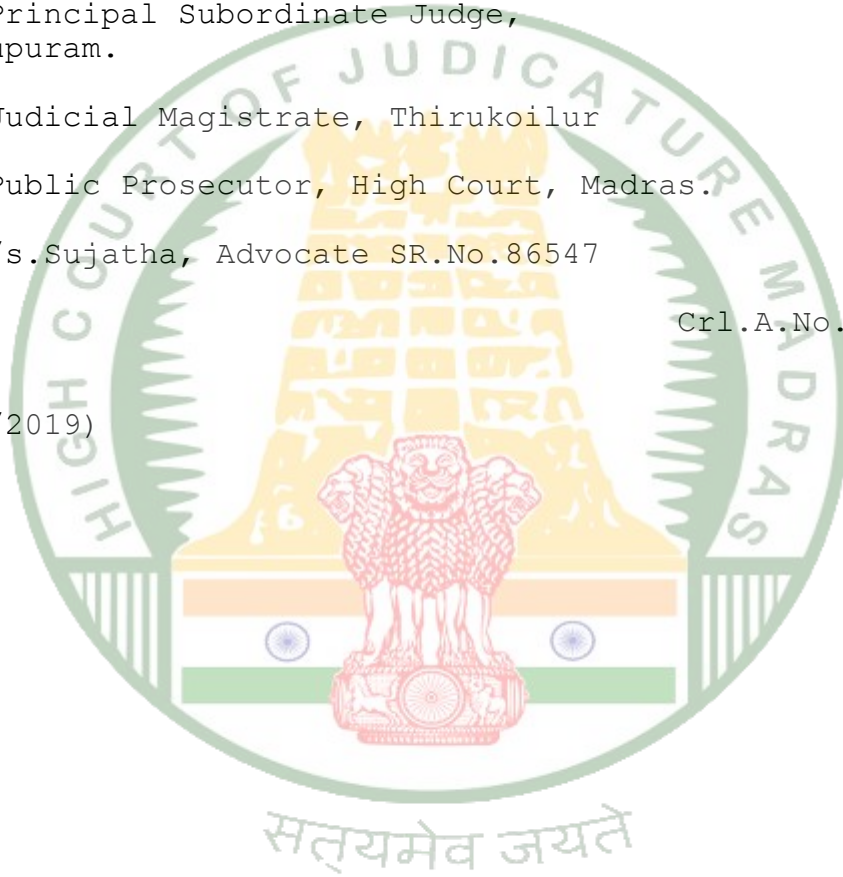
To

1. The Principal Assistant Sessions Judge,
Principal District Court,
Villupuram,
Villupuram District.
2. The Inspector of Police,
Arangandanallur Police Station,
Villupuram District.
3. The Principal Subordinate Judge,
Villupuram.
4. The Judicial Magistrate, Thirukoilur
5. The Public Prosecutor, High Court, Madras.

+2cc to M/s.Sujatha, Advocate SR.No.86547

Cr1.A.No.203 of 2008

NRI (CO)
GMY (01/02/2019)



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