

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Cr1.A.No.647 of 2017

1. Arumugam
2. Gopalakrishnan
3. Sakthivel
4. Azagiri
5. Jothilingam
6. Venkatesan
7. Suresh

... Appellants

Vs.

State by
The Inspector of Police,
Sethiyathoppu Police Station.
Crime No.45 of 2011

... Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed against the appellants/accused on 04.10.2017 in S.C.No.185 of 2013 on the file of the II Additional District and Sessions Judge, Chidambaram and acquit the appellants/accused from all the alleged charges.

For Appellants : Mr.V.Gopinath, Senior Counsel
for Mr.A.G.Rajan

For Respondent : Mrs.R.Prabhavathy
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.]

Appellants the accused 1 to 7 in the case tried in SC.No.185 of 2013 on the file of the II Additional District and Sessions Judge, Chidambaram for offences u/s.341, 147, 148, 302 read with 149 IPC. The Trial Court, under impugned Judgment dated 04.10.2017, found them guilty and convicted and sentenced them as follows :

Rank of the accused	Conviction under section	Sentence Awarded
A1 to A5	341 IPC	Each were sentenced to fine of Rs.500/- each, with a default sentence of one week simple imprisonment.
	148 IPC	Each were sentenced to undergo one year rigorous imprisonment and a fine of Rs.500/- each, with a default sentence of six month simple imprisonment.
	302 r/w. 149 IPC	Each were sentenced to undergo imprisonment for life and a fine of Rs.500/- each, with a default sentence of six months simple imprisonment.

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Rank of the accused	Conviction under section	Sentence Awarded
A6 and A7	341 IPC	Each were sentenced to fine of Rs.500/- each, with a default sentence of one week simple imprisonment.
	147 IPC	Each were sentenced to undergo six months simple imprisonment and a fine of Rs.500/- each, with a default sentence of six month simple imprisonment.
	302 r/w. 149 IPC	Each were sentenced to undergo imprisonment for life and a fine of Rs.500/- each, with a default sentence of six months simple imprisonment.

Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellants/accused 1 to 7.

2. The brief facts of the prosecution case, are as follows:-

The deceased Raja is the son of P.W.4 and brother of P.W.1. P.W.2 and P.W.3 are brothers of P.W.4. P.W.6 is the friend of the deceased. Three days prior to 13.03.2011, when P.W.1 went to the Government Sand Quarry to take sand, the local people objected him from taking sand without engaging them in the above work. In the above incident, A1 beat P.W.1, as a result, P.W.1 got injured and went to the Government Hospital and came back to his house.

3. The deceased at the relevant point of time was working in a private concern in Pondicherry as an electrician. On 13.03.2011, at 5.30 p.m., the deceased came from Pondicherry along with P.W.6 in a two wheeler to see P.W.1. When they came near Paramanandam house, in the Ayapettai Village, all the accused waylaid them and A1 shouted that he should be cut and A1 beat the deceased with an iron rod on the neck. A2, A3 and A7 also repeatedly attacked the deceased all over his body with iron rods.

4. P.W.1, P.W.2 and P.W.3 witnessed to the occurrence from certain distance. Despite their request not to beat the deceased, the accused repeatedly beat the deceased, as a result, the deceased sustained injuries and thereafter, the accused fled away from the place of occurrence. P.W.1 immediately informed the same to P.W.4, father of the deceased. Thereafter, P.W.4 came in a car and took the deceased to Chidambaram Government

Hospital where the doctor declared the deceased dead. Thereafter, P.W.4 went to police station at 7 p.m. and lodged Ex.P.1 report.

5. P.W.2 and P.W.3, who are brothers and uncle of P.W.1, were also in the place of occurrence and witnessed the occurrence at the relevant point of time. P.W.4, father of the deceased, on hearing the occurrence, came to the place of occurrence in a TATA Sumo Car and took the deceased to the hospital. P.W.5 has seen A4, A5, A6 and A7 beating the deceased at the time of occurrence. P.W.6, a friend of the deceased came in a two wheeler along with the deceased on the date of occurrence. He was riding the two wheeler and the deceased was seated as a pillion rider. In front of the house of one Paramanandam, all the accused waylaid them and A1 beat the deceased on his neck with an iron pipe and as some body also beat P.W.6 on his back, P.W.6 fell down and became unconscious. The other accused also beat the deceased with iron rod and wooden log. P.W.9 also seen the dead body of the deceased in the hospital.

6. P.W.13, Sub Inspector of Police, received Ex.P.1 report from P.W.1 at 7.30 p.m. and registered a crime in Crime No.45 of 2011 of for the offences under section 147, 148, 341, 302 of IPC under Ex.P.14 printed First Information Report and forwarded the First Information Report to the Court and a copy to the superior officers.

7. P.W.15, Inspector of Police, took up the case for investigation at 10 p.m. and went to the place of occurrence along with the Assistant Director of Forensic Laboratory and seen the place of occurrence. On the next day, he conducted inquest on the dead body of the deceased and sent the body along with a requisition to the Government Hospital for postmortem. Thereafter, he went to the place of occurrence and prepared Observation Mahazar Ex.P.7 and Rough Sketch Ex.P.16 in the presence of P.W.8 and also seized blood stained earth and ordinary earth under Ex.P.8 Mahazar.

8. P.W.11 Medical Officer attached to the Chidambaram Government Hospital conducted autopsy over the dead body of the deceased on 14.03.2011 and found the following injuries:

"Bony deformity chin. 2. bony deformity left cheek.

Laceration 1 x 1cm left hceek.

Skull - Hametoma under slalp # occipital bone, Hematoma over occipital lobe # mandible # left Maxila @ nasal bone

and issued Ex.P.13 Postmortem Certificate opining that the deceased died of hypovolence shock due to multiple injuries including head injury.

9. P.W.15, in continuation of the investigation, seized blood stained dresses from the dead body of the deceased and sent to the Court. On 15.3.2014, at about 4.45 a.m., he arrested A1, A2, A3, A4, A5 and A6 in the presence of P.W.7 and one of his menial and recorded their confession and on the basis of the admissible portion of the confession of A1 Ex.P.2, A2 Ex.P.3, A3 Ex.P.4, A4 Ex.P.5, he has seized the material objects namely iron rods and wooden logs and examined the witnesses and sent the accused to judicial custody and the case properties to the Court. After examination of the Medical Officer, he also gave a requisition to the Judicial Magistrate for recording 164 Cr.P.C. Statement of the witnesses. He also altered the sections under alteration report Ex.P.19. P.W.16, successor of P.W.15, on perusing the case file, laid final report against the accused for the offences under sections 147, 148, 341, 302 read with 149 of IPC.

10. The prosecution examined P.W.1 to P.W.16 and marked Ex.P.1 to Ex.P.20 and M.O.1 to M.O.10 were marked.

11. The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. On side of defence. D.W.1 was examined and Ex.D.1 was marked.

12. The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellants as stated in the first paragraph of this Appeal. As against which, the present appeal came to be filed.

13. The learned Senior Counsel submitted that the entire case of the prosecution highly doubtful and the prosecution has suppressed serious injuries sustained by one of the accused. Ex.D.1 shows that A3 has sustained head injury at the time of occurrence. The prosecution has conveniently suppressed the same. The investigation Officer casually filed the charge sheet and he has not recorded any confession and that itself clearly show that the accused have been roped in unnecessarily. It is the contention of the learned Senior Counsel that P.W.1, P.W.2, P.W.3 and P.W.6, who are said to be eye witnesses, their conduct creates serious doubt about the entire occurrence. They remained mere spectators and they have not even made any attempt to take the injured to the hospital or intervened in the

occurrence. That itself clearly show that their evidence is unreliable.

14. It is the further contention of the learned Senior Counsel that due to previous incident took place three days back, when P.W.1 is said to have been injured, in order to take revenge on that, the deceased and his friends came in a motor cycle in a drunken stage and caused injury on A3. When the villagers chased them, the deceased and P.W.6, who were in an intoxicated stage, drove the two wheeler in a high speed and fell down, as a result the deceased succumbed to the injuries. However, the prosecution suppressed the entire occurrence and falsely implicated the accused.

15. One Paramanandam, in front of whose house the alleged occurrence took place, has not been examined and none of the villagers have been examined. All these facts create serious doubt about the prosecution case. Further, the injuries stated by the eye witnesses is totally contradictory to the version of the medical officer. Hence submitted that the entire prosecution case is shrouded with serious doubt and the accused are entitled to benefit of doubt.

16. The learned Additional Public Prosecutor submitted that the motive has been clearly established and P.W.1 to P.W.3 and P.W.6, who are eye witnesses, have spoken about the specific role of the accused and arrest and recovery also effected by the investigating Officer and hence submitted that the prosecution has proved the guilt of the accused beyond all reasonable doubt.

17. In the light of the above submissions, it has to be seen whether guilt of the accused has been proved by the prosecution beyond all reasonable doubt.

18. The motive alleged by the prosecution against the accused is that three days prior to the occurrence, i.e., on 13.03.2011, P.W.1 was attacked by A1 in connection with lifting of sand in the Government sand quarry. P.W.1 was injured and got treatment and came to his house. The deceased being the brother of P.W.1, came to visit P.W.1 in his two wheeler along with P.W.6 on the date of occurrence at 5.30 p.m. At that time, all the accused way laid them and severely beat the deceased all over his body. The law was set in motion on the basis of Ex.P.1 said to have been given at 7.30 p.m.

19. The motive is a double edged weapon. Therefore, we have to scan the entire evidence of the prosecution to find out whether the prosecution has come out with a true version. P.W.1, in his evidence has sated that in view of the previous injuries sustained by his brother, the deceased came to the

village to see him on 13.03.2011 along with P.W.6 in a two wheeler at 5.30 p.m. At that time, all the accused surrounded the deceased and A1 beat on the body of the deceased with an iron rod and other accused also repeatedly caused injury on the face and all over the body of the deceased. It is the evidence of P.W.1 that the accused repeatedly caused injuries for 8 minutes. P.W.1, brother of the deceased, in his evidence has stated as if when P.W.2 went to the place of occurrence, P.W.3 also came there and at that time the deceased came in a two wheeler and all the accused waylaid them and beat the deceased on his face, chest and back. P.W.3 also in his evidence has stated that A1 beat the deceased on his neck and others repeatedly beat the deceased.

20. It is to be noted that P.W.1 to 3 never stated anything about P.W.6 also beaten by one of the accused and he fell down from the bike. P.W.1 to P.W.3 in their evidence have not at all stated anything about the alleged injury on P.W.6 or he has fallen from the bike. Whereas, P.W.6 in his evidence would depose as if all the accused surrounded them and A1 beat the deceased on the neck. Immediately the deceased got down from the bike and ran away. However, the accused chased the deceased and repeatedly beat him. In the milie, P.W.6 was also attacked on his back and he fell down from the bike and he became unconscious.

21. P.W.1 to P.W.3 in one voice have stated that all the accused beat the deceased repeatedly. But, they had never stated in their evidence that the deceased was chased and was beaten by the accused. Similarly, they have not whispered anything about P.W.6 falling from the bike.

22. It is to be noted that all the eye witnesses in one voice have stated that all the accused have beaten the deceased with an iron rod repeatedly all over his body. But the medical evidence and postmortem report, when carefully seen, except injuries on the cheek, chin and nose and fracture on the occipital region, no other external injuries whatsoever was noted by the medical officer. If the version of the eye witnesses are true that the deceased was beaten in black and blue all over the body, there must be some corresponding injury on other parts of the body also. But the medical officer's evidence, in fact, shows only major injuries on the face and head. It is curious to note that none of the eye witnesses have deposed that any of the accused causing head injury. These facts create serious doubt about the version of the eye witnesses.

23. It is further to be noted that P.W.1 is the brother of the deceased. His conduct assumes significance. Though P.W.2 and P.W.3, uncles of the deceased, are also very much present, all of them have not made any attempt even to take the deceased to the hospital. Whereas, P.W.4, who has gone some where else, came to the place of occurrence, after half an hour and took the deceased to the hospital. Further, neither P.W.1 nor P.W.2 and P.W.3 informed the same to the police, despite the serious injuries allegedly caused on the deceased. All these facts creates serious doubt about their version. This doubt is further fortified by the fact that the prosecution has infact suppressed the serious injuries on A3.

24. The Investigating Officer in his evidence, though admitted that A3 was attacked by the deceased and his men, he has not done any investigation on that regard. He has not made any attempt to find out the true version. Further, his evidence indicate that all the alleged confession of the accused were recorded by somebody else and he does not even know who has recorded the confession. When the prosecution has come out with a definite arrest and recovery, it is the Investigating Officer, who is a competent person to speak about the arrest and recovery of material objects after recording the confession. All these facts creates serious doubt about the entire prosecution case.

25. The evidence of D.W.1, medical Officer, examined on the side of the defence side shows that A3 was admitted in the hospital at 6.p.m. on the same day and he has sustained 5 x 2 cm lacerated injury on his head and he was admitted in the hospital and original of Accident Register was handed over to the police. Despite receipt of a copy of the above Accident Register, the prosecution has suppressed the same in the final report. In fact, the Investigating Officer has not even made an attempt to find out who are the aggressors or whether there was a group clash.

26. Further, it is to be noted that it is the case of the defence that only the deceased and his men attacked A3 on revenge over the previous attack on P.W.1. On seeing A3 being attacked, the villagers chased the vehicle of the deceased and P.W.6 and at that time, the two wheeler was driven in high speed by P.W.6, who is alleged to be in a drunken stage, as a result, the two wheeler hit on the stone and he and the deceased fell on the stone and sustained injuries. In line with the above theory of defence, when the evidence of P.W.6, with whom the deceased came in a two wheeler, when carefully seen, P.W.6 himself has stated that he has also sustained injury. But the prosecution has not proved the same and he has not been treated in the

hospital. P.W.6 himself has stated that at the relevant time, he was in an intoxicated stage and he fell from the bike and became unconscious. His cross examination further shows that the deceased and P.W.6, before going to the place of occurrence had alcohol and left to the place of occurrence and he has also in his evidence has stated that while they were entering into the village, 20 people were present in front of the house of one Paramanandam and he fell in an unconscious stage and the deceased fell near the milestone with injuries. The above evidence coupled with the suppression of material facts by the prosecution and also coupled with the evidence of D.W.1, infact probabilize the defence theory that A3 being attacked, vehicle of the deceased and P.W.6 was chased by the villagers and the vehicle dashed against a stone and the deceased fell down and sustained injuries. The above view cannot be ruled out.

27. P.W.5 has stated in his evidence that three of the accused have beat the deceased. But his evidence does not show that what are the weapons used by the accused. Further his evidence also shows that his evidence is nothing but improvement and his evidence cannot be given much importance and his evidence also does not show the presence of P.W.6. The same itself makes his evidence unreliable.

28. However, the prosecution has not examined any independent witness in this case and the said Paramanandam, in front of whose house, the alleged occurrence took place, also has not been examined and the investigation has also been done in a casual manner. All these facts creates serious doubt about the entire prosecution case. When two views are possible, a view in favour of the accused has to be taken and they should be given benefit of doubt.

29. The Investigating Officer's evidence further shows that he has not even collected any blood stained earth from the place of occurrence on the date of occurrence and only on the next day, he has allegedly collected the blood stained earth and the manner in which he has recorded the confessions, as discussed above, and his ignorance about the person who wrote the confession and suppression of injury on A3, we are of the view that the defence theory is more probable and this appeal has to fail.

30. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants for offences under Sections 341, 147, 148, 302 read with 149 I.P.C. by the learned II Additional District and Sessions Judge, Chidambaram in S.C.No.185 of 2013 on 04.10.2017 is set aside and the appellants/accused are acquitted of all the charges. The accused shall be released forthwith from the prison, if they are no longer required in connection with any other case.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

vrc
TO

1. THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIDAMBARAM.
2. DO THRO THE PRL. SESSIONS JUDGE, CHIDAMBARAM
3. THE JUDICIAL MAGISTRATE II, CHIDAMBARAM.
4. THE CHIEF JUDICIAL MAGISTRATE, CHIDAMBARAM.
5. THE DGP, MYLAPORE, CHENNAI
6. THE DISTRICT COLLECTOR, CUDDALORE.
- 7.THE INSPECTOR OF POLICE,
SETHIYATHOPPU POLICE STATION.
8. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.
9. THE SUPERINTENDENT, CENTRAL PRISON, CUDDALORE.

+1cc to Mr.A.G.RAJAN, Advocate, S.R.No. 19943

CrI.A.No.647 of 2017

NRI(CO)
TR(12/04/2018)