

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2017

DELIVERED ON : 12.10.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Appeal No.207 of 2013

Ramadoss

... Appellant / Accused

Vs.

State rep. by
The Inspector of Police,
Needamangalam Police Station,
Crime No.200/2010

... Respondent/complainant

Criminal Appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 06.02.2103 passed by the learned
Sessions Judge, Thiruvarur in S.C.No.44 of 2011.

For Appellant : M/s. N.R. Elango &
R.Vivekananthan

For Respondent : M/s. E.Raja, Additional Public Prosecutor

JUDGMENT

The accused, Ramadass, who is the sole accused, stood charged for offence punishable under Sections 324 and 304(II) IPC. The learned Sessions Judge, Thiruvavur, by its Judgment dated 06.02.2013, in Sessions Case No.44 of 2011, found the accused guilty, convicted and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment for the offence under Section 324 IPC and also convicted and sentenced to undergo rigorous imprisonment for ten years and also to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for offence under Section 304(II) IPC. Aggrieved by the said verdict of the trial court, the accused has come forward with this criminal appeal challenging the judgment of conviction and sentence as stated above.

2.The case of the prosecution is as follows:-

The Accused Ramadoss had married Jansirani in the year 2005. They quarrelled among themselves frequently on dowry disputes and consequently they lived separately. Due to that enmity, on 05.09.2010 at about 9.00 A.M. the accused slapped Anjammal with chappal, who is the mother-in-law of the Accused. A Panchayat was held on 06.09.2010 at about 6.30 P.M. to hear the above issue at

Adambadi Veeran Koil in Rayapuram. In the panchayat, Accused Ramadoss, his mother-in-law Anjammal, father-in-law Ravi, Brother-in-laws Senthil Selvan, Thamizhselvan junior father-in-law (i.e.) father-in-law's brother Pandiyan, other family members and the conciliators were present. During the panchayat proceedings at about 7.00 P.M., there was a heated exchange of words between the Accused and his junior father-in-law viz. Pandiyan. During altercation, the said Pandiyan had beaten the accused. Immediately, on provocation, the Accused stabbed him (Pandiyan) with knife on his left chest and his father-in-law & brother-in-law viz. Ravi and Senthil Selvan intervened the accused to safeguard the said Pandiyan, the Accused stabbed with the same knife on the back side hip of Ravi and on the back side of Senthilselvan, causing injuries to them and fled away from the spot. All the injured persons were admitted at Government Hopsital, Mannargudi, where the doctor examined the said Pandiyan and declared he was dead. While the said Ravi was under treatment, he gave a complaint before the Sub Inspector of Police, Needamangalam and the said Police registered a case in Crime No.200/2013 u/s 302, 326 & 324 of I.P.C. After investigation, final report was laid and charges were framed by the Sessions Judge, Tiruvarur. During trial, on the side of Prosecution, PW1 to PW26 were examined, Ex.P1 to P26 and M.O.1 to M.O.5 were marked. After completion of trial, the learned Sessions Judge delivered Judgment and

found the Accused guilty of offences u/s 304 (Part-II) and 324 I.P.C and convicted and sentenced him to undergo RI for 10 years and to pay a fine of Rs.1,000/- in default to undergo 6 months RI under Section 304 (II); to undergo one year and to pay a fine of Rs.1,000/- in default to undergo 3 months RI under Section 324 of IPC. The Accused was found not guilty under Section 326 of IPC. Aggrieved over the judgment of conviction and sentence, this appeal was filed.

3.The learned Counsel for the Appellant submits that the Lower Court has not properly appreciated the evidence of P.W.2, P.W.3, PW4 and PW6 who are the close relatives of the deceased Pandiyan and they are said to be the eye witnesses to the alleged occurrence. Further he argued that the occurrence took place in the night hours and there was no electricity at the time of the alleged occurrence to identify the culprits who committed the crime and even according to the evidence of grievously injured witnesses who is none other than the brother of the deceased deposed that about 20 to 30 persons assaulted and at that time there was a darkness and the place of occurrence was half kilometer away from Rayapuram and even though he was treated as hostile witness his evidence cannot be eschewed on the ground of hostility and the evidence of hostile witnesses is also relevant if it considered to be true version and added that he sustained grievous injuries at the time of occurrence and the

deceased and another injured person P.W.2 are close relative of P.W.1 and even according to the prosecution P.W-1's daughter got married to the accused and there was a strained relationships prevailed among them and P.W.1 had no necessities at all to depose false evidence if really the accused committed the offence and further P.W.2 to P.W.4 and P.W.6 were having enmity against the accused, they have falsely implicated the accused in this offence since it occurred in the night hours without light and they assaulted by 10 to 20 persons and further argued that P.W.10 doctor who examined P.W.1 deposed that it was alleged that P.W.1 was stabbed by 2 persons with knife and so it is clear that one person did not commit the offence and in fact a group of persons attacked the deceased as well as P.W.1 and P.W.2 in the darkness and no body identified the assailant and since because of enmity prevailing between the P.W.2 to 4 and 6 they have falsely implicated the accused and PW.1 has correctly deposed and his version is a true version and this aspect has not been properly considered by the court below. Further he argued there are lot of contradiction in the evidence of eye witnesses to the occurrence and the complaint has not been marked through P.W.1, but his signature alone is marked through P.W.1 and in these circumstances the author of the complaint has denied the content of the complaint and the law is set to motion on the basis of the complaint and when the complaint fails, the entire case of the prosecution will fail and the interest testimony of P.W.2 to

4 and 6 cannot be relied upon. Further learned counsel for the appellant argued that as per the prosecution case the occurrence said to have been taken place at 7.00 p.m., but the eye witnesses to the occurrence deposed that the occurrence took place at 10.00 p.m., and it is material contradiction which would militate against the prosecution and in these circumstances the finding guilty, conviction and sentences imposed against the appellant is not sustainable in law and the appeal may be allowed and the judgment of conviction and sentences imposed by the trial court may be set-aside and the Appellant may be acquitted.

4. Whereas on the other hand, the learned Additional Public Prosecutor would submit that there is no doubt that P.W1 to 4 and 6 are close relatives and because of the close relationship, their evidence cannot be eschewed and the veracity and genuineness of the evidence of relatives witnesses to be taken in to consideration. In this case though P.W.1 sustained grievous injuries for the reasons best known to him and the accused being the son in law of P.W.1 and in order to safeguard his daughter's welfare he would have not supported the prosecution. But P.W.2 is the one of the injured witness during the course of the occurrence and he also was admitted in the hospital and treated as inpatient and Ex.P8 his wound certificate was marked which was issued by the doctor. He further argued that the occurrence was

taken place at the time of holding panchayat and the accused is not a stranger to the eye witnesses to the occurrence and the Panchayat was held to solve the problems arose between the accused and his wife and his family and even though prosecution witnesses have not stated about the illumination of light in the place of occurrence, in their chief examination, during the cross examination of P.W.2, he has clearly deposed that there was a lights put up for temple festival which was burning at that time and there is no question of more persons attacked the deceased and injured and due to wordy altercation, assault was made by the deceased on the accused and the accused immediately took out a knife and stabbed on the deceased and P.W.1 and P.W.2 who tried to prevent the attack on the deceased also were stabbed by the accused and in these aspects, clear and cogent evidence of P.W.2 to 4 and 6 is available and it is case of murder of junior paternal uncle of P.W.2 and in this circumstances no ordinary person would leave the real culprit and implicate a false person that too the husband of daughter of P.W.1. As far as time of occurrence is concerned, the occurrence took place either 7 p.m. or 10 p.m. and it is not a criteria, since the difference of time is only few hours and the occurrence took place when the panchayat was going on and in this circumstance, it is natural that there would be variation of time of occurrence in the evidence of witnesses. As far as the recording of PW-10 regarding the alleged assault of two persons in Ex.P.6 is concerned

it has been held that In **1994 Supreme Court cases (Cri) 424 (Before K. Jayachandra Reddy and G.N. Ray, JJ), P. Babu and Others Vs. State of A.P. in Criminal Appeal No.341 of 1982**, decided on October 1, 1993, "the injury certificate against an entry that the injured was said to have been stabbed by somebody. The doctor stated that the deceased stated so in the first instance and placing reliance on this entry it was contended that the deceased was not aware as to who stabbed him. The content was rejected and it is held it is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and the inquiry would be confined as to how he received the injuries namely the weapons used etc." In another case, **1995 Supreme Court Cases (Cri) 370 (Before M.M. Punchhi, R.M. Sahai and K. Jayachandra Reddy, JJ) B. Bhadriah and others Vs. State of A.P.**, "In Injury report, the Casual way of filling up the column in the medical certificate does not amount to recording a statement of the injured and on facts, correction of the word "Unknown" to "Known" in the sentence "alleged to have been beaten by unknown people" in the injury report not material". So it is clear whatever be the record about the number of assailants on Ex.P.6 is concerned as per the above ruling it cannot taken into consideration

and it can be ignored and in these circumstances, the trial court has correctly and properly appreciated the evidence and came to the correct conclusion and the appeal may be dismissed.

5.The case of the prosecution is that on 06.09.2010 at about 8.00 P.M., the accused assaulted the victim with knife causing him fatal injuries and also assaulted P.W.1 and P.W.2 causing them injuries. The complainant/P.W.1 is the father in law of the accused. While, P.W.2 is the son of complainant/P.W.1. As per the prosecution case, the daughter of P.W.1 was driven in marriage to the accused five years prior to the occurrence date and due to the dowry dispute and misunderstanding, the wife of the accused Jansirani was living separately and there was enmity between the complainant family and the accused. While so, on 05.09.2010, when the wife of the complainant Anjammal, who deposed as P.W.4 was returning home was assaulted by the accused with chappel and in that record a panchayat was arranged on 06.09.2010 at about 6.30 P.M., near Adambadi Veeran Kovil at Rayapuram. The accused as well as the complainant family were residing in that village only. As the panchayat was in progress, in the presence of panchayathar, namely, P.W.7- Jayaraman, P.W.8 Punniyamoorthy, Kaliyamoorthy, Karunanithi, Chinnappa and others, heated exchange took place between deceased Pandiyan who is the brother of P.W.1 and the accused. During the altercation, the deceased assaulted the accused with hands and

interrelation, the accused stabbed the deceased with knife in his left chest resulting in the death of the said Pandian. As the complainant/ P.W.1 and his son P.W.2 try to intervene, they were also stabbed by the accused in the hip causing them grievous injuries. In the confusion arising out of the occurrence, the accused fled away from the spot. Thus, the accused is alleged to have committed offence under Section 324, 326 and 302 IPC.

6. Now it is to be seen whether the said act of the accused is proved beyond reasonable doubt. In the case on hand, the complainant/P.W.1 has turned hostile and he did not support the prosecution. P.W.1 stated in his evidence that on the occurrence day at about 7.00 P.M., himself, his brother deceased Pandiyan and his son P.W.2 went to the land situated half kilometer away from their village, where group of 20 to 30 peoples assaulted them and he fell down and unconscious, he suffered injuries in his hip, while his son P.W.2 Senthamizh Selvan also suffered injury in the hip. While he was taking treatment in the Hospital at Thanjavur, his signature was obtained by the police in white paper. He did not inform the police any thing. His signature is marked as Ex.P1. Thus, the alleged Ex.P17 complaint is given a go by and the complainant itself is in doubt.

7. The Sub Inspector of Police who deposed as P.W.21 stated that on 06.09.2010, while he was on duty, in Needamangalam Police

Station, on receiving the information from the police out post at Government Hospital, Mannargudi, he went there at 10.45 P.M., he recorded the complaint-statement from P.W.1 Ravi and on returning to the police station at 11.30 P.M., registered a case in Crime No.200 of 2013 for the offence under Section 324 and 302 IPC. The complaint-statement of P.W.1 was marked as Ex.P17 and FIR was marked as Ex.P18. Thus, it is clear from the evidence of P.W.21 that the complaint was recorded in the Government Hospital, Mannargudi at 10.45. P.M., However, the son of the complainant who deposed as P.W.2 stated in his cross examination that the Needamangalam Police Station is situated 5 Kilometers away from their village Royapuram and on the occurrence day, he informed the police from his cell phone about the occurrence and their village people also gave information to the police. P.W.2 also stated that the Needamangalam Police came to the spot immediately and he gave statement to the police near Adambadi Veeran Kovil and the same was written down by the police. Likewise, the police also took the statement of his brother P.W.3 Tamilselvan and also the police took down the statement of his father P.W.1 Ravi. P.W.2 further stated that the police took the signature of his father in the statement written by them. Thus, P.W.2 states that the police took the statement of P.Ws.1 to 3 near the Adambadi Veeran Kovil, near the occurrence spot itself. Likewise, P.W.3 also stated that immediately after the occurrence the police was

informed and they came to the occurrence spot. They enquired P.Ws.2,3 and their mother P.W.4 and recorded the statement given by them. According to him, the police read over the statement and obtained signature of all three of them. Thus, while the complainant himself has not supported the prosecution case and denied lodging in complaint. P.W.21, the Sub Inspector of Police has stated that he took the complaint from P.W.1 at 10.45 P.M., in Government Hospital, Mannargudi. However, P.W.2 and P.W.3 stated that their statement was recorded by the police immediately after the occurrence in the village itself near the Adambadi Veeran Temple. In such circumstances, as rightly pointed out by the learned counsel for the accused doubt arises as to whether really Ex.P17 is the first complaint -statement and whether the same was truly given by P.W.1-complainant as claimed by the prosecution.

8.It is clear from Ex.P17 complaint and Ex.P18 First Information Report that the occurrence took place at 19.00 hours on 06.09.2010 near Adambadi Veeran Kovil in Rayapuram Village. However, P.W.2 one of the person injured in the occurrence and son of P.W.1 stated that the accused stabbed the deceased near Adambadi Veenr Kovil at about 10.00 P.M. Further, he also stated that when police enquired him, he told that the occurrence took place at 10.00 P.M. only. Likewise, P.W.3 also stated that on 06.09.2010, Panchayat

was held near Adambadi Veeran Kovil at 10.00 P.M., and during the Panchayat proceedings, the victim was stabbed by the deceased. P.W.3 also stated that he has studied 10th standard and knew about the date and timings. Further, he stated that he told the police that the occurrence took place on 07.09.2010 only. The wife of the complainant who deposed as P.W.4 stated that the victim is the brother of her husband and three years before panchayat was held near Kali Amman Temple at about 10.00 P.M., and during the Panchayat, the victim was stabbed by the accused. In her cross examination, she stated that she did not told the occurrence took place at 10.00 P.M., but only stated that the incident occurred at 7.00 P.M., While so, the son of the deceased who deposed as P.W.6 stated that the occurrence took place on 05.09.2010 and he does not remember the time of the incident. According to the prosecution, the incident took place at 7.00 P.M., on 06.09.2010. The witnesses have deposed that the occurrence took place around 10.00 P.M., While P.W.6 have stated that the occurrence date was 05.09.2010 and P.W.3 stated that it was 07.09.2010. Thus, there is total contradiction among the prosecution witnesses about the time of the occurrence. The Trial Court held that the Panchayat would have commenced at 7.00 P.M., and the incident could have taken place at 10.00 P.M. So, the evidence of prosecution witnesses cannot be ignored. Refuting the same, it is contended by the learned counsel for the accused that there is such

clarification sought for from any witnesses and therefore the contradiction between the time mentioned in the complaint and the evidence of the above said witnesses is fatal to the prosecution.

9.As per the prosecution case, the Village Panchayat was convened in connection with the incident, in which the accused slapped P.W.4 Anjammal with Chappal on the previous day. While the panchayat was going on, there was a wordy quarrel between the accused and deceased and on provocation, the accused stabbed the deceased with knife. Thus, the occurrence is stated to have taken place in the panchayat which was held near Adambadi Veeran Temple. However, P.W.1-complainant stated that on the occurrence day at about 7.00 P.M., while himself, the victim and his son P.W.2 were going to their land, they were assaulted by 20 to 30 peoples and he suffered injuries. He did not say anything about the injury suffered by the deceased. P.W.1 in his cross examination stated that the occurrence spot was half kilometer away from the Rayapuram Village and in the night hours the occurrence took place. P.W.2 also stated that before the panchayat commenced, the deceased Pandian and his people assaulted the accused Ramadas and they were taken away towards eastern side by the Panchayathars. He also stated that the occurrence took place in the paddy field on the east of Ambedkar road. He also admitted that the complainant and accused were taken away

by difference place. Likewise, P.W.3 in his cross examination stated that the occurrence day, his father P.W.1 and the victim Pandian were under the influence of alcohol and the accused was assaulted by the deceased Pandian with hands and immediately quarrel broke out and both were separated by the villagers. P.W.2 also stated that there was about 20 to 25 peoples and immediately after the quarrel between the deceased and accused they were separated and taken away towards Ambedcar road eastern side. Likewise, P.W.4 Anjammal also stated that in the beginning of panchayat itself quarrel took place and the accused was assaulted by the deceased Pandian. Both of them were separated by the panchayathars and taken away separately. She further stated that immediately after the quarrel between the accused and the victim both groups were separated by the Panchayatars and taken away towards Ambedcar street eastern side. P.W.3 also stated that the accused Ramadas, his father and their group was chased towards land on the eastern side of Ambedcar street. Thus, it is apparent that even the Panchayat commenced, there was dispute and both the group were separated and taken away by the villagers. In such circumstances, doubt arises as to where really the occurrence took place.

10.Admittedly, there was a number of houses near the alleged occurrence spot. It is stated by P.W.4 Anjammal that there are

20 houses in the Ambedkar street and all the residents know about the occurrence. She also stated that there was no enmity with any one of them. However, apart from the interested evidence of P.W.1 to P.W.4 who are all belongs to same family. There is no independent witness to prove the occurrence. The so called panchayathars who deposed as P.W.7, 8 and 14 have turned hostile and did not support the prosecution. P.W.7 Jayaraman is one of the Panchayatar stated that he knew the accused and the deceased as well as P.W.1 to P.W.5 and all of them belongs to Rayapuram Village. On the occurrence date at about 7.30 P.M., all of them Rayapuram Village, Adambadi Veern Kovil to conduct panchayat, while the accused, his father as well as P.W.1 to P.W.4 and the deceased came to the temple. He told them that panchayat can be conducted after one hour, while he was inside the temple there was cue and cry and the people belongs to both the group pushed each other and move towards eastern side and at that time there was no current supply. The electricity was restored one hour later only. He did not know any thing about the occurrence. The deceased was brought dead. P.W.7 further stated that he did not know where the victim was assaulted. Likewise, P.W.8 also corroborated P.W.7 version and stated that there was no current supply at the time and apart from the deceased Pandian anybody else was injured. P.W.14 Chinnappa also denied any knowledge of the occurrence and stated he was not at the alleged occurrence spot.

Thus, the so called panchayathars have denied any knowledge of the occurrence and failed to support the prosecution.

11.The occurrence is stated to have taken place at 7.00 p.m., in the complaint. But, P.W.1 to P.W.4 stated that the same occurred at 10.00 P.M. It is stated by P.W.1 that they were assaulted in their lands half kilometer away from Adambadi Veeran Temple. While other witness has stated that both the groups were pushed towards half kilometer away to the eastern side of Ambedcar Street and they indulged in assaulting each other. In any case, the alleged incident took place only after 7.00 P.M. and there is nothing on record except P.W.2 evidence to show that there was street lights and temple lights was burning at that time. The evidence of P.W.2 is contradicted by P.W.7 and P.W.8, who stated that there was no current supply at the time and electricity was restored only after one hour. The Inspector of Police of the case who deposed as P.W.22 stated that he did not examine any electricity employee as to whether current supply was in force at that point of time and none of the employees of Electricity Board was examined before the Court. As such, it is clear that the prosecution failed to prove that there was sufficient light at the time of occurrence. It is contended by the prosecution that normally when panchayat is held, there will be sufficient lights and as such there is no need to prove the same. However, in the case on hand, as stated

earlier, the panchayatars examined as P.W.7, 8 and 14 have turned hostile and did not say anything to prove that the panchayat was held at that point of time. According to them, they were inside the temple and told the people that panchayat held after one hour. Thus, the contention of the prosecution that there should have been lighting as panchayat was going on, when the incident occurred is unsustainable.

12.As stated earlier, there was variation about the time of occurrence in the First Information Report and oral evidence of the prosecution witnesses. Further, P.W.2 in his cross examination stated that he was examined by the police after 9.00 P.M., in his village. P.W.3 stated that the statement given by himself, his brother P.W.2 and his mother P.W.4 was recorded by the police and the same was read over them at 7.30 p.m., on the occurrence day. In such circumstances, doubt arises as to when really the occurrence took place and police was informed and they reached the occurrence spot.

13.According to the prosecution, the victim as well as P.W.1 and P.W.2 were assaulted by the accused with M.O.1 knife. None of the witnesses, except P.W.6 who is the son of the deceased identified the weapon. According to P.W.6, his father deceased Pandian was assaulted with M.O.1 knife. However, he stated that the police did not enquire him by showing M.O.1 knife and during the police enquiry, he

did not told them about the temple and street lights was burning. The said M.O.1 was recovered by P.W.22 Inspector of Police. According to him, he secured the accused on 07.09.2010 at 14.00 hours and recorded the confession statement given voluntarily by him in the presence of P.W.15 Madhavan and P.W.16 Rajagopal. As per the confession given by him, the admitted portion of the confession is marked as Ex.P23 and knife identified by the accused was recovered near Rayapuram bridge at 15.30 hours under Ex.P24 Mahazar in the presence of same witness. However, the Inspector of Police P.W.22 in his cross examination stated that in Ex.P23 confession statement it is stated that at 12.00 noon, the statement was recorded and as per the arrest memo, the time of arrest is stated as 14.00 hours. Pointing it out, the learned counsel for the accused contended that the confession was never recorded as claimed by the prosecution. Further, the alleged witness to the confession who deposed as P.W.15 and P.W.16 have turned hostile and denied any knowledge about the confession given by the accused and recovery of M.O.1 knife. They have denied the witness signature in the seizure mahazar as well as the confession statement. Thus, doubt arises as to whether really M.O.1 was recovered as claimed by the prosecution.

14.Further, the Doctor who deposed as P.W.10 stated that on

06.09.2010 while he was in duty at Government Hospital, Mannargudi

at about 7.00 P.M., one Pandian was brought to the hospital at 9.20 P.M., by Rayapuram Village Panchayatars stating that he was assaulted by one unknown person. On examination, he was found dead and the body was kept in mortuary. Accident Register copy issued by him is marked as Ex.P5. Further, P.W.10 stated that on 06.09.2010 itself at 9.45 P.M., one Ravi S/o.Palani came to the hospital and on examination, he found the following injury. 1) Lacerated wound over left chest size of 4 cm x 3.5 cm x 3 cm depth. Accident Register copy issued by him is marked as Ex.P6. He opined that the injuries suffered by him is grievous in nature. Likewise, at about 10.00 P.M., one Senthil Selvan came to the Hospital for treatment and on examination, he found the following injury. 1)Abrasion over abdomen left side hip. 2)Abrasion over right side chest. Accident Register copy issued by him is marked as Ex.P7. He opined that the injuries suffered by him is simple in nature. In his cross examination, P.W.10 stated that in Ex.P6 Accident Register Copy, he has mentioned that the victim was assaulted by two known persons. Likewise, in Ex.P5 also it is mentioned that the victim was assaulted by two known persons. According to him, he was informed about the persons by Jayaraman, Chinnappa and Karunanithi are came with the victims that two known persons assaulted them. It is admitted by P.W.10 that in Ex.P6 and Ex.P7 A.R copies, there is a correction regarding the number of persons assaulted as one from 2. He also stated that the police did

not examine by showing M.O.1 knife. It is further stated by P.W.10 that in Ex.P5 it is mentioned that the victim was assaulted with unidentified weapon. Thus, while the recovery of the weapon itself is doubtful, the weapon produced also is not identified except by the son of the victim who deposed as P.W.6. Further, there is no evidence to prove that there was enough lighting at the occurrence spot and also there is contradiction as to where really the occurrence took place. Doubt arises as to whether really M.O.1 weapon used by the accused in the occurrence.

15.It is clear from Ex.P3 Postmortem certificate and Ex.P4 final opinion given by the Doctor, the deceased would appear to have died of injuries to lungs and arch of aorta. The Doctor who deposed as P.W.10 physician examined P.W.1 and P.W.2 and also the deceased who was brought dead in the hospital.

16.Even though, the learned Additional Public Prosecutor contended that the entries made in the AR copy by the Doctor is not a statement and any omission cannot be fatal to the prosecution case and in support of that he relied upon number of rulings. In the case on hand, it is not only the correction i.e., made in the AR copies, but also the contradiction in the evidence of the prosecution witnesses and also variation between the contents of AR copy and the oral evidence

of the eye witness create doubt over version of the prosecution. Thus the offence alleged under Section 302 IPC is not established by the prosecution beyond reasonable doubt.

17.While P.W.2 stated that himself and his father suffered injuries in their hip, his uncle, the deceased Pandian suffered injuries in his left chest. P.W.3 also stated likewise. According to P.W.10, he found two injuries on the body of deceased Pandian. Nothing is stated by P.W.1 to P.W.5 about the Pandian suffering two injuries. Likewise, it is clear from Ex.P6 that P.W.1 Ravi suffered injury on the lower back measuring 4cm x 3.5cm x 3cm. It is evident from Ex.P7 that P.W.2 suffered injury measuring 3cm x 2cm x 2cm on the lower back. Further, P.W.2 in his cross examination stated that he told the Doctor in Government Hospital, Mannargudi that he was assaulted by two persons with an unidentified weapon. As such, it is clear that the evidence of P.W.2 to P.W.5 does not establish the fact of injuries caused by the accused as claimed by the prosecution.

18.The Head Constable who deposed as P.W.20 stated that after the postmortem, he handed over the body to the relative of the deceased and filed a special report which was marked as Ex.P16. The tress materials recovered from the body of the deceased produced as M.Os.2 and 3. The Inspector of Police who deposed as P.W.22 deposed

that M.Os. recovered as M.Os.1 to 3 was sent for chemical analyse as per Ex.P25 requisition letter and requisition given by chemical analyse as Ex.P26. The Forensic expert who deposed as P.W.19 stated that M.O.1 to 3 were analysed and the report given by her is marked as Ex.P14. According to P.W.19, human blood was found in M.O.1 as well as M.Os.2 and 3 and the grouping of the blood in M.O.2 and 3 is 'O' group. But, the blood found in M.O.1 weapon could not be classified. The said report was marked as Ex.P15. Even though, it is contended by the prosecution that the blood found in the knife and dress materials of the deceased is identified as 'O' group, the same itself will prove the guilt of the accused. However, as discussed earlier, the recovery of M.O.1 knife itself is not proved. Further, there is doubt over the occurrence and involvement of the accused as alleged by the prosecution. In such circumstances, the finding of the same group of blood in the dress materials of the deceased and M.O.1 knife will not be sufficient to prove the guilt of the accused.

19.The trial Court has found the accused has assaulted P.W.2, thereby caused him injury and held him guilty of offence under Section 324 IPC. As stated earlier, P.W.2 who is the son of the complainant, stated that himself and his father P.W.1 suffered injuries in the middle of the back and subsequently stated that both were stabbed in the hip. The Doctor, who examined P.W.2 as well as P.W.1

deposed as P.W.10 stated that on examination of P.W.2 Senthamizh Selvan, he found injury on his lower back portion measuring 3cm x 2cm x 2cm and the same was simple injury. The Accident Register copy issued by him is marked as Ex.P7. He also stated that P.W.1 Ravi was examined by him and found on his lower back an injury measuring 3.5cm x 2cm x 2cm, the same was assessed by him as grievous and the Accident Register copy issued by him is Ex.P6. As stated earlier, P.W.1 turned hostile and he did not support the prosecution. Thus, there is nothing on record against the accused as far as the injury suffered by P.W.1 Ravi. It is stated by P.W.10 Doctor that he was informed by P.W.1 Ravi and persons accompanying him that two known persons assaulted him with unidentified weapon. In Ex.P7, it is stated that the details of injury is as per the injury in AR copy No.15774 given to P.W.1 Ravi and marked as Ex.P6. In Ex.P6 the word "two" is strike off and no attesting initial is found. As stated earlier, there is contradiction about the place of occurrence, time of occurrence and number of persons involved in the occurrence. Further, the recovery of M.O.1 knife itself is doubtful. As such, the evidence of P.W.2 regarding assault of him by the accused does not inspire confidence of this Court. Thus, for the reasons stated earlier, the conclusion of the trial Court that the accused committed offence under Section 324 IPC is unsustainable and the same is liable to be set aside.

Thus, in view of the above said discussion, it is apparent that the

prosecution has failed to prove the guilt of the accused beyond reasonable doubt. For the reasons stated above, the benefit of doubt is to be given to the accused and it is concluded that the charge is not proved against him. Hence, the appeal is to be entertained.

20. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Sessions Judge, Thiruvarur, in Sessions Case No.44 of 2011 dated 06.02.2013 is set aside and the appellant/accused is acquitted and bail bond, if any executed by him shall stand cancelled and the fine amounts, if any, paid by him is ordered to be refunded forthwith.

12.10.2018

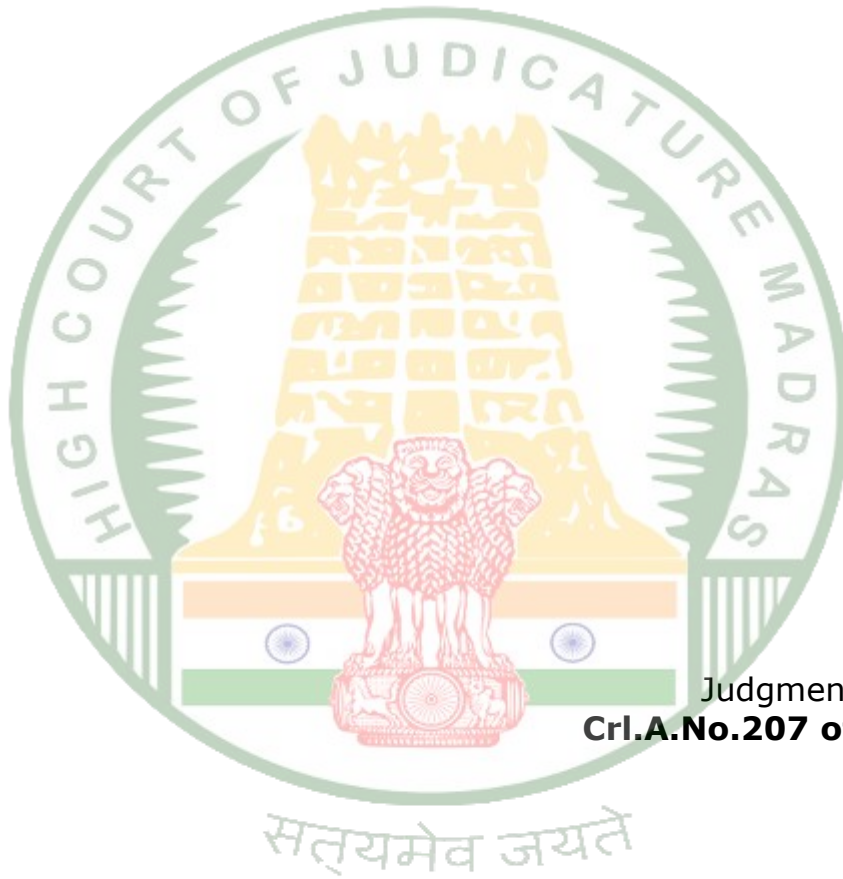
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To

1. The Sessions Judge,
Thiruvarur.
2. The Inspector of Police,
Needamangalam Police Station, Needamangalam.
3. The Public Prosecutor, High Court, Madras.

S.BASKARAN.J.,

rrg



Judgment in
Crl.A.No.207 of 2013

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