

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A.No.401 of 2010

1.Boopalan

2.Yogaraj

.. Appellants/A1 & A2

Vs.

State by  
The Inspector of Police,  
K-9, Thiru-Vi-Ka Nagar Police Station,  
Chennai.  
(Crime No.615 of 2009)

.. Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.3, Chennai, in S.C.No.166 of 2010 by Judgment dated 29.06.2010 and acquit the appellant herein from the charges.

For Appellants : Mr.P.Kumaresan  
for M/s.K.Chandru

For Respondent : Mrs.T.P.Savitha  
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed against the sentence and conviction passed by the Additional District and Sessions Judge (Fast Track Court No.III) Chennai dated 29.06.2010 convicting the appellants under Sections 341, 324, 326, 307 read with 34 of IPC, sentencing the appellants to undergo 6 months imprisonment for the offences under Section 341 IPC, for the offence under Section 324 IPC to undergo 2 years Rigorous Imprisonment and further convicted under Section 326 of IPC to undergo 4 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo further period of 6 months Simple Imprisonment and further convicted under Section 307 of IPC and sentenced to undergo 5 years Rigorous Imprisonment and pay a fine of Rs.5,000/- each, in default to undergo 6 months Simple Imprisonment and the said sentences are directed to run concurrently.

2.The case of the prosecution is that on 09.08.2009 while the defacto complainant PW1 along with his friends Pandi PW2 and Prasath PW3 went in a motor cycle through K.C.Garden, 1<sup>st</sup> Street to Thiru.Vi.Ka. Nagar Bus Stand. It appeared that Nagathamman Koil festival was celebrated and since the vessels kept on the road were obstructing the passage of the road, PW1 said to have requested the elderly persons standing on the said street to remove the vessels, but the said elderly persons said to have directed to go through another way. In the said conversation, a quarrel said to have developed between the defacto complainant / PW1 and elderly person. During the said quarrel the Appellants to said to have came with knife and shouted on PW1 with filthy language and the 1<sup>st</sup> appellant attacked the PW1 on his head, neck, hand and leg and caused severe injury. When PW2 and PW3 attempted to prevent, they were also attacked due to which, PW3 sustained injury on his left shoulder and PW2 also sustained injury. On hearing the noise the public gathered and prevented them, since PW1 to PW3 sustained injuries, they were taken up to the Government Hospital at Periyar Nagar for first aid and thereafter, they were referred to Government General Hospital, Chennai.

3.On intimation from the Hospital, K9-Inspector of Police / PW9 proceeded to the General Hospital and recorded the statement of the injured / PW1 and registered a case in Crime No.615 of 2009 for the offence under Sections 341, 324, 326, 307 and 506 (ii) of IPC and proceeded with the investigation. He visited the place of occurrence and prepared observation Mahazar Ex P2, the Rough Sketch Ex. P10. Thereafter he proceeded to the Government Hospital at Periyar Nagar and recorded the statement of Dr.Vishwanathan PW7 and around 06.00 p.m. on 10.08.2009 he arrested the appellants in the presence of PW5 and one Rajan and recorded the confession statements of the appellants and seized the knife M.O.s 1 and 2 under a cover of Mahazar Ex.P4 and thereafter, PW10 had taken up the investigation, as PW9 was transferred and he recorded the statement of PW1 and PW3 and recorded the statement of PW6 and PW8 /Doctors, who examined the PW1 to PW3. Thereafter, the final report was filed and the case was referred to the Sessions Court by the learned v<sup>th</sup> Metropolitan Magistrate, Egmore, Chennai in P.R.C.No.35 of 2010 as a charge leveled against the appellants are triable by Sessions Court.

4. The learned Principal Sessions Judge had made over the case to the learned Additional District and Sessions Judge, Fast Track Court No.3, Chennai, who had later taken up the case on file and proceeded the trial. During trial, the prosecution

examined 10 witnesses and marked 10 documents and two material objects. For conviction of the appellants the learned Sessions Judge mainly relied upon the evidence of PW1 / the defacto complainant and the injured eye witnesses /PW2 and PW3 and convicted the appellants to undergo the said punishments. Against the said judgment, the appellants had preferred this appeal, challenging the conviction and sentence.

5. During the course of arguments the learned counsel appearing for the appellants had stated about the following contradictions in the evidence and filed synopsis to that effect and the same reads as follows :-

- i. Contradiction in time of occurrence:
  - a. P.W.1 deposed that the occurrence took place in the Evening at 06.15 p.m.
  - b. Whereas P.W.3 deposed that the occurrence had taken place in the morning at 06.15 a.m.
- ii. Contradiction in evidences:
  - a. P.W.1. deposed that they are going to Thiru-Vi-Ka Nagar.
  - b. P.W.3 deposed that they are going to Bus stand.
- iii. All P.W.s 1 to 3 deposed that an old man obstructed for going through that way because it blocked the temple festival but that old man was not examined.
- iv. P.W.1 to 3 deposed that the crowd gathered at the time of occurrence but none of the independent witness were examined.
- v. P.W.5 deposed that A1 was arrested on 10.08.2009 at about 06.00 a.m. whereas the F.I.R. reached the Court only on 10.08.2009 at 11.30 a.m.
- vi. In Ex.P2 Observation Mahazar, no traces of blood stains were found in the scene of occurrence and no evidence for the celebration of the temple function.
- vii. No blood stains were also found in the knives as per the Ex.P4.
- viii. P.W.6 Doctor who treated P.W.3 had deposed that P.W.3 informed him at the time of treatment that one unknown person assaulted him near K.C.Garden at 05.30 p.m. on 09.08.2009 (Ex.P5) whereas F.I.R. says that the occurrence took place at 06.15 p.m. on 09.08.2009.
- ix. P.W.7 Doctor who treated P.W.1 had deposed that the P.W.1 informed him at the time of treatment that A1

and A2 along with 10 unknown persons assaulted him with Patta Kathi and 2 small knives (Ex.P6) whereas the F.I.R. says that only 2 persons assaulted.

- x. P.W.7 Doctor who treated P.W.2 had endorsed in Ex.P7 that the victim was assaulted by unknown persons with knife. Thus P.W.1 to 3 had given different version regarding the assault and hence the occurrence is unbelievable.
- xi. In the accident register Ex.P6, A1 and A2 names are found. But according to the medical code names of the accused person should not be written and it should be noted whether known or unknown.

6. On perusal of the said evidence and documents it is seen that the evidence of PW1 to PW3 are common in nature. In their evidence, they had not specifically stated that which appellant had caused the injuries. Further, there seems to be previous enmity between the appellants and the witnesses, PW1 to PW3. In order to implicate them, they said to have stated before the Police that the appellants had caused the injuries at the time of occurrence. Further, the prosecution had not examined any independent witnesses. According to the prosecution at the place of occurrence, there were more than 50 persons present and there was temple festival celebration at the time of occurrence and the dispute was only between PW1 and elderly person and the prosecution had not established as to what is the basis for the appellants to come to the place of occurrence. Further, PW1, after the incident were said to have given treatment at Abhipiya Private Hospital and their accident register was marked as Ex.P5 in which, it is stated that they were assaulted by unknown persons. Further, Ex.P6, accident register issued by the Government Hospital also stated that the injury was caused by two known persons and 10 unknown persons. Therefore, it clearly establishes that the prosecution had not properly investigated the case found the true persons, who had caused injuries. Only based on the statement of PW1 to PW3, the appellants were arrayed as the accused. सत्यमेव जयते

7. Further, the evidence of PW3, with regard to the time of occurrence, it also refers that PW3 had stated that the time of occurrence was 06.00 a.m. whereas the other witnesses, PW1 and PW2 had stated the time as evening 06.15 p.m. Therefore, the said contradiction goes to the root of the case and grants the benefits of doubts to the appellants. The prosecution had not properly investigated the case and examined independent witnesses to prosecute the appellants. Therefore, the appellant are entitled for acquittal.

8. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellants by the learned Additional District Sessions Judge (Fast Track Court No. III)

Chennai are set aside and they are acquitted of the charges leveled against them. The appellants are directed to be set at liberty forthwith unless their custody is required in connection with any other case. The bail bonds, if any executed by the appellants, shall stand cancelled. The fine amount, paid by the appellants shall be refunded.

s/d-  
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

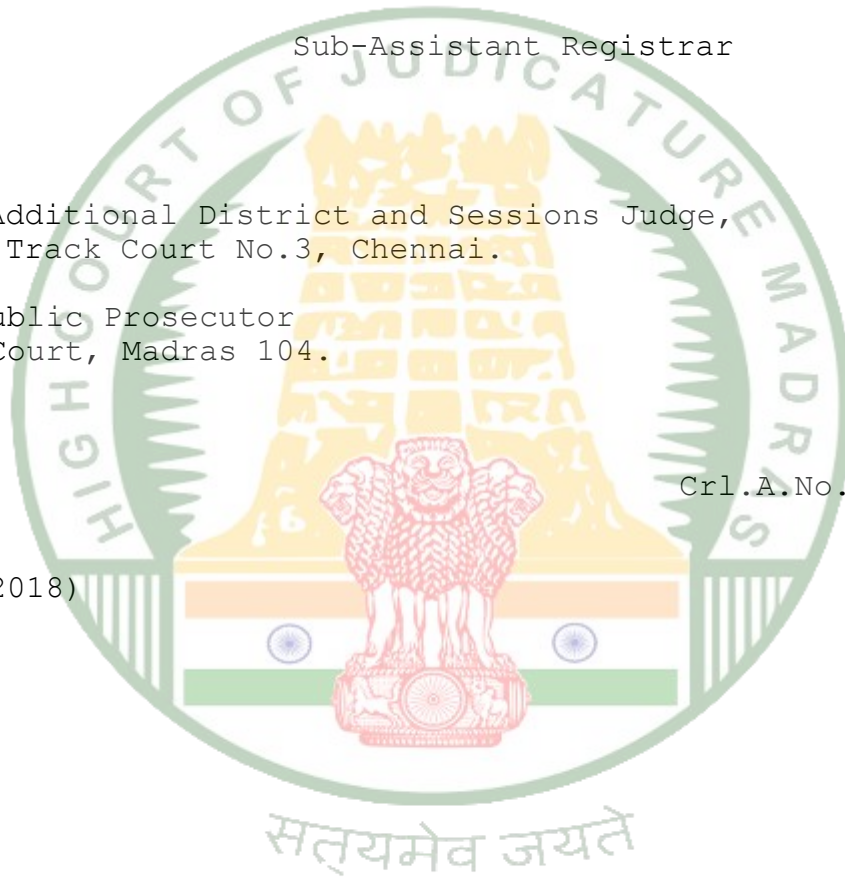
vs

To

1. The Additional District and Sessions Judge,  
Fast Track Court No.3, Chennai.
2. The Public Prosecutor  
High Court, Madras 104.

Crl.A.No.401 of 2010

KJ(CO)  
SP(19/06/2018)



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