



THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2018

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.A(MD)No.209 of 2011

and

Crl.M.P. (MD)No.7490 of 2018

in

Crl.A(MD)No.SR3330 of 2012

Crl.A(MD)No.209 of 2011

Ahamed Arabu : Appellant/ De facto
Complainant

Vs.

State rep by its,

1.The Inspector of Police,
Jegathapattinam Police Station
Pudukkottai District.
(Crime No.160 of 2003)

:1st Respondent/Complainant

2.Bahrudeen
3.Shiek Dawood
4.Yusoof
5.Farook
6.Yahoob Hussain
7.Naina Mohammed

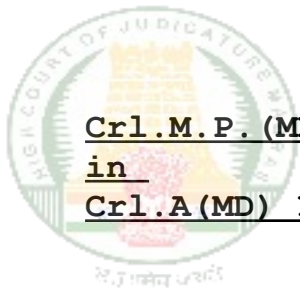
: Respondents 2 to 7/
Accused Nos. 1 to 6

PRAYER : Criminal Appeal is filed under Section 378(4) of the Code of Criminal Procedure, to call for the records relating to the acquittal judgment passed by learned Assistant Sessions Judge cum Sub Court, Pudukkottai in S.C.No.47 of 2006 dated 28.10.2009 and allow the appeal and may convict the accused persons according to law.

For Appellant : Mr.K.P.Narayanakumar

For R-1 : Mr.A.Robinson
Government Advocate (Crl.side)

For R-2 to R-7: Mr.K.Mohamed Eirsath



Crl.M.P. (MD) No.7490 of 2018

in

Crl.A(MD) No.SR3330 of 2012

Farook

: Petitioner/Appellant/ P.W.6

Vs.

State rep by its,

1.The Inspector of Police,
Jegathapattinam Police Station
Pudukkottai District.
(Crime No.161 of 2003)

:1st Respondent/Complainant

2.Ahammed Arabu

3.Farook

4.Sahul Hameed

5.Abbas Khan

6.Ebuthu

: Respondents 2 to 6/
Accused Nos. 1 to 5

PRAYER : Criminal Miscellaneous petition is filed under Section 5 of Limitation Act, to condone the delay of 1316 days in preferring this appeal against the judgment dated 28.10.2009 in S.C.No.81 of 2004 on the file of the learned Assistant Sessions Judge, Pudukottai.

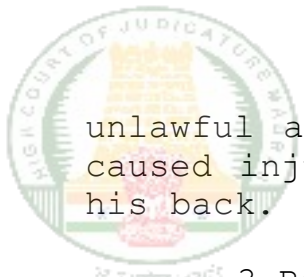
For Petitioner:Mr.K.Mohamed Eirsath

For R-1 : Mr.A.Robinson
Government Advocate (Crl.side)

COMMON JUDGMENT

Crl.A.(MD)No.209 of 2011 arising out of the order of acquittal passed in S.C.No.47 of 2006 and Crl.M.P.(MD) No.7490 of 2018 filed to condone the delay of 1316 days in preferring the appeal against the order of acquittal passed in S.C.No.81 of 2004, both dated 28.10.2009 on the file of the learned Assistant Sessions Judge, Pudukottai, are factually interconnected to each other. Hence, the Common Judgment is passed as below.

2.The parties are residing at Jegathapattinam, Pudukkottai District falling within the jurisdiction of Jegathapattinam police station. On 26.11.2003, Mr.Yusoof, son of Yahoob Hussain, while standing near S.P. cable shop, was attacked by Farook and Shahul Hameed. In retaliation, on the next day i.e., on 27.11.2003 at about 08.00 a.m., when Ahamed Arabu was standing near Jegathapattinam Mosque, Bahrudeen, Shiek Dawood, Yusoof, Farook, Yahoob Hussain and Naina Mohammed came with deadly weapons, formed



unlawful assembly and attacked Farook with sticks and Aruval and caused injury on his left leg and left forearm and cut injury on his back.

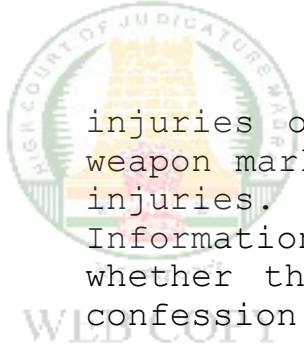
3. Based on the complaint given by Ahamed Arabu, the Inspector of Police, Jegathapattinam Police Station, Pudukkottai District has registered the case in Crime No.160 of 2003 for the offences under Sections 147, 148, 323, 324 and 307 IPC.

4. On the same day, Mr. Yahoob Hussain has lodged a complaint with the respondent police alleging that as a consequence to the fight between his son Yusoof and accused Nos. 2 and 3 / Farook and Sahul Hameed, there was an altercation on 27.11.2003 at 08.00 a.m., near Jegathapattinam Mosque. When he went to take bath in the Mosque tank, accused A1 to A4 / Ahamed Arabu, Farook, Sahul Hameed and Abbas Khan hit him with a stick, causing blood injury, while he defended the attack with his left hand. His son Farook was attacked by second accused with big steel, causing blood injury and was further assaulted by A.1 with stick. When his cousin Shiek Dawood came to rescue, he was also attacked by A1 saying that ",njhL bjhiye;J nghq;flh> ,njhL brj;jlh. Thereafter, some 50 people came for their rescue. The accused persons ran away. While they ran away from the scene of occurrence, they fell upon the construction materials gathered nearby. This Complaint was registered by the Police in Crime No.161 of 2003.

5. Both the complaints were registered and investigated by the Police leading to filing of S.C.No.81 of 2004, based on the complaint given by the Yahoob Hussain in Crime No.161 of 2003 and S.C.No.47 of 2006 based on the complaint given by Ahamed Arabu in Crime No.160 of 2003.

6. In S.C.No.47 of 2006, the prosecution has examined 14 witnesses and marked 13 exhibits and one material object. On the side of the defence, 3 exhibits were marked.

7. The evidence of P.W.1, who was sustained injury, has indicated about the individual overt act against the accused persons for the injuries sustained by him and his brother Farook. P.W.3 has deposed about the treatment given to P.W.2 and the relevant medical certificate (Ex.P.3) and he has certified that the injuries sustained by P.W.2 is grievous in nature. The trial Court on appreciation of the evidence, considered the evidence of P.W.2, who has denied M.O.1 / Aruval as the weapon used to attack him. The other witnesses, who have implicated the accused persons, have not identified the weapons and the prosecution has failed to recover those weapons alleged to have been used to attack the A.2. Considering that P.W.6 has not corroborated the evidence of P.W.1 and P.W.2, the trial Court has arrived at a conclusion that though the prosecution has proved the



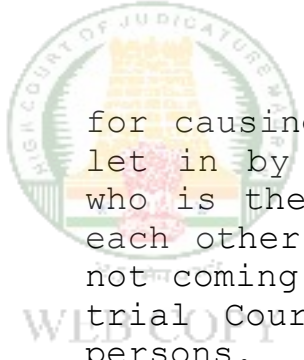
injuries of P.W.1 and P.W.2, they have not correlated with the weapon marked as M.O.1 as well as the accused persons for the said injuries. The discrepancy in the timing of recording the First Information Report and the arrest of A.3, lead to doubt as to whether the third accused was arrested on 27.11.2003 and gave a confession statement at 05.30 p.m., leading to recovery of M.O.1.

8.The Court has also pointed out from the evidence of P.W.1/de facto complainant that the incidence which took place on 27.11.2003 was the consequence of the event which took place on the earlier date wherein his son Farook was attacked. Whereas, Farook/P.W.2 has not whispered anything about the incident which alleged who have happened on 26.11.2003 and caused for the next day altercation. The Court has also considered the medical certificate produced by the defence to show that they were sustained injuries and they have given a complaint against the de facto complainant and others in Crime No.161 of 2003. So, the trial Court pointed out that in a free for all fight, each of the groups has came out with the complaint against the other group and the police have registered two cases. They should be conducted in a composite investigation and the police should have identified who is the aggressors and who is the victim. So far as the failure of the prosecution to prove that injuries found on P.W.1 and P.W.2 were caused by the accused and for the failure to the prosecution to recover the actual weapon used in the crime but produced the weapon M.O.1 which was used for the crime even according to the prosecution witnesses, the Trial Court acquitted the accused of all charges for want of proof. Almost on identical reason the counter complaint arising out of Crime No.161 of 2003 was also dismissed by the trial Court.

9.While appeal against the acquittal in S.C.No.47 of 2006 admitted and kept pending since 2011, P.W.6/Farook, who is one of the injured witness and son of de facto complainant in Crime No.161 of 2003 taken on file as S.C.No.81 of 2004, has preferred appeal against the acquittal with delay of 1316 days.

10.Heard the learned counsel for the appellants in the respective appeals and the learned Government Advocate(Crl.Side) for the first respondent.

11.From the ocular evidence as well as the medical evidence relied by the respective parties clearly indicate that on 27.11.2003 near Jegathapattinam Mosque two groups have clashed with each other. On either side, both have sustained injuries. But the prosecution is unable to correlate the injuries and the person who has caused the injuries. The witnesses are also not cogent and consistence in their evidence so as to fix any of the accused persons for the injury caused in free for all fight. It is difficult to identify the aggressor. At the same time, there must be adequate evidence to fix the responsibility upon a person



for causing injury. On the cumulative assessment of the evidence let in by both sides, the trial Court has found difficult as to who is the aggressor and who is the victim. Both have assaulted each other, both sides have sustained injury and both of them are not coming out with the true fact. In the said circumstances, the trial Court has no other go, except to acquit all the accused persons. The grounds of appeals raised by the respective victims also do not make out any point to interfere the findings of the trial Court.

12. In the light of the above facts, this Court is of the opinion that there is no material in Crl.A.(MD) No.209 of 2011 filed against the order of acquittal in S.C.No.47 of 2006 and this Court finds no reasonable cause to condone the delay of 1316 days in preferring the appeal against the judgment dated 28.10.2009 in S.C.No.81 of 2004 on the file of the learned Assistant Sessions Judge, Pudukottai. Since both the matters are arising out of case in counter, in free for all fight, neither of them are able to prove that the injuries sustained are due to unprovoked act or by particular accused in a particular manner with a particular weapon. Hence, Crl.A. (MD) No.209 of 2011 is dismissed and Crl.M.P.(MD) No.7490 of 2018 to condone the delay of 1316 days is also dismissed and consequently connected Crl.A(MD) No.SR3330 of 2012 is rejected at SR stage itself.

Sd/-

Assistant Registrar (T&P)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1. The Judicial Magistrate, Aranthangi.
2. The Chief Judicial Magistrate, Pudukkottai.
3. The Assistant Sessions Judge cum Sub Court,
Pudukkottai.
4. The Inspector of Police,
Jegathapattinam Police Station
Pudukkottai District. .
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



6.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

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+ 1 CC TO MR.K.P.NARAYANA KUMAR, ADVOCATE IN SR NO.86269

CP

BU/PM/SAR-I :25.10.2018 : 6P/9C

COMMON JUDGMENT MADE IN
Crl.A(MD)No.209 of 2011
and
Crl.M.P.(MD) No.7490 of 2018
in
Crl.A(MD) No.SR3330 of 2012
20.09.2018