

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.A.No.780 of 2010

- 1.Kutty @ Neelakandan
- 2.Veerasley
- 3.Baktha @ Bakthavatchalam
- 4.Anbalagan
- 5.Ganesan
- 6.Muniyandi

Appellants/accused
Nos.1 to 4, 11 & 18

Vs.

The State, represented by
Deputy Superintendent of Police,
Kancheepuram Sub Division,
Kancheepuram
(Crime No.225 of 2003) ...Respondent

PRAYER: This Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, against the Judgment of Conviction and Sentence dated 30.11.2010 made in SC.No.686 of 2005, by the Sessions Judge at Kancheepuram District at Chingelput.

For Appellants : Mr.Ramkumar for
M/s.AL.Ganthimathi

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor

JUDGMENT

1. This Criminal Appeal has been filed against the Judgment of Conviction and Sentence, dated 30.11.2010, made in SC.No.686 of 2005, by the Sessions Judge of Kancheepuram District at Chingelput, convicting and sentencing the appellants/A1 to A4, A11 and A18, as tabulated below:-

Rank of the Accused	Conviction under Section	Sentence
A-1	148 IPC 326 IPC (4 counts)	To pay a fine of Rs.200/- and in default, to undergo Simple Imprisonment for a period of 2 weeks. To undergo Rigorous Imprisonment for a period of One year for each count and to pay a fine of Rs.1000/- for each count and in default, to undergo Rigorous Imprisonment for a period of 3 months.
A-2	148 IPC 326 IPC (5 counts)	To pay a fine of Rs.200/- and in default, to undergo Simple Imprisonment for a period of 2 weeks. To undergo Rigorous Imprisonment for a period of One year for each count and to pay a fine of Rs.1000/- for each count and in default, to undergo Rigorous Imprisonment for a period of 3 months.
A-3	148 IPC 326 IPC (4 counts)	To pay a fine of Rs.200/- and in default, to undergo Simple Imprisonment for a period of 2 weeks. To undergo Rigorous Imprisonment for a period of One year for each count and to pay a fine of Rs.1000/- for each count and in default, to undergo Rigorous Imprisonment for a period of 3 months.
A-4	148 IPC 326 IPC (2 counts) 324 IPC	To pay a fine of Rs.200/- and in default, to undergo Simple Imprisonment for a period of 2 weeks. To undergo Rigorous Imprisonment for a period of One year for each count and to pay a fine of Rs.1000/- for each count and in default, to undergo Rigorous Imprisonment for a period of 3 months. To pay a fine of Rs750/- and in default, to under go Simple Imprisonment for a period of One month.

Rank of the Accused	Conviction under Section	Sentence
A-11	148 IPC 323 IPC 326 IPC	To pay a fine of Rs.200/- and in default, to undergo Simple Imprisonment for a period of 2 weeks. to pay a fine of Rs.500/- for each count and in default, to undergo Simple Imprisonment for a period of 1 month. To undergo Rigorous Imprisonment for a period of One year and to pay a fine of Rs.1000/- for each count and in default, to undergo Rigorous Imprisonment for a period of 3 months
A-18	148 IPC 323 IPC 326 IPC	To pay a fine of Rs.200/- and in default, to undergo Simple Imprisonment for a period of 2 weeks. to pay a fine of Rs.500/- for each count and in default, to undergo Simple Imprisonment for a period of 1 month. To undergo Rigorous Imprisonment for a period of One year and to pay a fine of Rs.1000/- and in default, to undergo Rigorous Imprisonment for a period of 3 months.

The sentence imposed on the appellant/accused were ordered to run concurrently and the period of detention was directed to be set off.

2. The brief facts leading to filing of this Criminal Appeal are as follows:-

- (a) The accused parties belong to the Vanniar Community and the complainant party belong to the SC/ST community. An auction was conducted with regard to the fishing rights in Koothirambakkam lake and one Velmurugan, who was examined as PW.17, took the auction for fishing and as he did not know fishing, he made arrangements for appointing fishermen for fishing on behalf of SC/ST Community people.
- (b) On 29.03.2003, due to vengeance as to how Scheduled Caste people could carry on fishing activities in the said lake, the other community people of Koothirambakkam Village also carried on fishing activities through the President, Kasthuri and when they went to Koothirambakkam lake, they assaulted one Duraikannu Nadar and Murugesan, who were fishing at that point of time and brought them and kept in Bajanai Koil and locked the said Bajanai Koil and

thereafter, the accused in the case, came to Koothirambakkam colony armed with wooden logs and sticks and attacked the colony people. In the course of such occurrence, the appellants herein and about 18 others were said to have attacked the colony people and caused damages to their household articles and pursuant to the same, P.W.1 Hamsaveni had lodged a complaint with P.W.47, the Sub Inspector of Police, at about 7.45 p.m.

(c) PW.47 registered a case in Crime No.225 of 2003 as against the accused herein and 18 others for alleged offences under sections 147, 148, 323, 324, 427, 448, 380 and 307 IPC. PW.48, Dr.Alexander had examined PW.1-Hamsaveni, PW.2-Pandurangan and PW.4-Vanitha and issued Exs.P.24, 23 and 25-Accident Registers respectively. PW.49-Dr.Venkatesh, had examined PW5-Subramani and PW6-Annammal and issued Exs.P26 and P30-Accident Registers and had examined one Krishnaveni and issued the Accident Register, viz., Ex.P27 and thereafter, examined one Duraisamy and issued Ex.P28-Accident Register and thereafter, examined one Karunanithi and issued Ex.P29-Accident Register and he had examined other witnesses and issued Accident Registers, Exs.P31 to P39 respectively and thereafter, the investigation was conducted by PW.51, the Deputy Superintendent of Police, Kancheepuram. On completion of the investigation, charge sheet had been filed, implicating the appellants herein and 18 others for alleged offences u/s.147, 148 and 307 read with 49 IPC and section 3[1] of the Tamil Nadu Property [Prevention of Damage and Loss] Act, 1992, as amended by Act 46/1994 and section 3[1][x] of the SC/ST [Prevention of Atrocities] Act.

(d) The charge sheet was taken on file in PRC.No.28 of 2003, by the Judicial Magistrate, Alandur. After furnishing the copies of records relied on by the prosecution as per the provisions of section 207 Cr.P.C., since the case was exclusively triable by a Court of Sessions, the Judicial Magistrate II, Kancheepuram, had committed the case to the Principal Sessions Court, Kancheepuram District at Chengelpet, which took up the case in SC.No.686 of 2005 and framed necessary charges. The accused pleaded not guilty. To prove the guilt of the accused, the prosecution had examined 51 witnesses as PW.1 to PW.51 and marked Exs.P.1 to 98 and MOs.1 to 103. On the side of the defence, one witness was examined as DW.1 and Ex.D.1 was marked.

(e) The Trial Court by the impugned judgment, had held that the alleged offences under TNPPDL Act, SC/SST [Prevention of Atrocities] Act and the offences u/s.307 IPC were also not established ; but held that the accused persons are guilty of the offences as stated above. The other accused though convicted, were sentenced to pay fine alone and they have paid the fine and have not preferred appeal.

3. This Court heard the learned counsel on either side and also perused the materials placed on record.
4. Mr. Ramkumar, learned counsel appearing for the appellant/accused would submit that the fact remains that the case of the prosecution is in respect of a dispute between two groups belonging to different communities in a village with regard to management of a temple and also with regard to lease of fishing rights pertaining to a lake in the village pursuant to which the appellant/accused are stated to have attacked and caused injuries to the victims.
5. He would submit that the appellants and the witnesses/victims in the case are living in the village for several years together and the incident occurred pursuant to misunderstanding between them and now the appellants and the witnesses belonging to the other group have reconciled with their difference and due to intervention of elders and responsible persons in the village, have buried the hatchet and voluntarily entered into compromise and in view of the compromise, the appellants have agreed and offered to compensate the victims, who suffered injuries in the incident and the victims and the members belonging to their group have also agreed for compounding the offences. He would further submit that after the intervention of the elders, the pending dispute between the communities has been brought to an end and thereafter the persons belonging to both the communities have conducted the temple festivals together in a peaceful manner and that they have also forgotten the earlier incidents and that they are amicably living together in the village.
6. He would submit that during the investigation, the appellants have suffered incarceration for about 27 days and the trial Court had convicted the appellants to undergo rigorous imprisonment for one year. He would submit that though 21 witnesses were injured, injuries on P.Ws. 2, 5, 7, 8, 9 and 13 were grievous in nature and that later PW.5 and P.W.7 had died of natural causes. The appellants have decided to pay compensation to the witnesses who had sustained grievous injuries and since PW.5 and PW.7 have expired, they have decided to pay the compensation to their legal heirs. The appellants have agreed to compensate in the following manner:-
 - i. In respect of PW.2/A. Pandurangan, an amount of Rs.40,000/-.
 - ii. In respect of PW.5/Subramani (who died later due to natural causes), an amount of Rs.25,000/- to Chellammal, legal heir /wife of Subramani (PW5)
 - i. In respect of PW.7/Visalam (PW.7) (who died later due to natural causes), an amount of Rs.25,000/- to Kokila, legal heir/ daughter of Visalam (PW7)

iii. In respect of PW.8/Karunanidhi, an amount of Rs.50,000/-

iv. In respect of PW.9/Roopavathi, an amount of Rs.25,000/-

v. In respect of PW.13/Chellammal, an amount of Rs.40,000/-

7. He would further submit that though the offences for which the appellants have been convicted are non-compoundable in nature, this Court, taking into consideration the compromise between the parties and present peaceful situation in the village may consider for reduction of sentences insofar as the appellants are concerned.
8. The injured witnesses PW.2, PW8, PW9 and PW.13 and the legal heirs of PW.5 and PW.7 are also present before this Court. They have also filed their individual affidavits stating that due to the intervention of elders and well-wishers in the village, they have compromised the issues between themselves and that they have buried their hatchet and that they are willing to compound the case with the appellants and that they have also condoned and pardoned the appellants. Further they have also stated that the incident had taken place during the year 2003 and thereafter, they have developed cordiality and they have celebrated temple festivals together and they are living peacefully in the village peacefully and that, after that incident there had been no communal disturbances between the parties.
9. This Court had on an earlier occasion directed the respondent/police to enquire and report about the prevailing situation in the village.
10. The learned Additional Public Prosecutor representing the respondents/State, on instructions would submit that enquiry conducted in the village shows that the parties are living together amicably in peace and that there is no kind of pressure on either party.
11. This Court also takes into consideration the individual affidavits filed by the parties and the compromise arrived at between the parties pursuant to which the compensation has been received by them in the following manner:

PW.2/A.Pandurangan	Rs.40,000/-
Chellammal, legal heir /wife of Subramani (PW5)	
Rs.25,000/-	
Kokila, legal heir/ daughter of Visalam (PW7)	
Rs.25,000/-	
PW.8/Karunanidhi	Rs.50,000/-
PW.9/Roopavathi,	Rs.25,000/-
PW.13/Chellammal	Rs.40,000/-

12. The Station House Officer of the respondent Police Station is also present before this Court. On enquiry, he submitted

that the appellants and the witnesses who belongs to two different communities have patched up the differences between themselves and that they have been celebrating temple festivals together for the past few years and that no incidences of communal misunderstanding had been reported for the past few years.

13. This Court is aware that the appellants are convicted for offences which are non-compoundable and in such circumstance it would not be proper to compound the offences which are non-compoundable ignoring the statutory provisions. However in several matters the Hon'ble Apex Court as well as this Court had held that the voluntarily compromise entered into between the parties can be taken as the relevant factor for consideration of quantum of sentence.

14. The Hon'ble Apex Court in a recent decision reported in 2019(5) SCC 166 [Shankar and others V. State of Maharashtra and another], by referring to various earlier decisions, taking into consideration the compromise between the parties in non compoundable offences and had reduced the sentences. It would be relevant to refer to the following paragraphs of the above judgment:

"9. The appellants have filed a memo of compromise stating therein that they have compromised the matter with the second respondent Namdeo (complainant). Mr. Shakul R. Ghatole, learned counsel appearing for the second respondent has stated that the second respondent Namdeo (complainant) is an aged person and he has reconciled with his brother Appellant 1, Shankar Harale and voluntarily entered into compromise and submitted that the said compromise be taken into consideration.

10. In *Ishwar Singh v. State of M.P.* [Ishwar Singh v. State of M.P., (2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153], this Court held that in a non-compoundable offence the compromise between the parties is a relevant factor to be taken into consideration in considering the quantum of sentence. In paras 13 and 14 of *Ishwar Singh v. State of M.P.*, (2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153 it was held as under: (SCC p. 670)

13. In *Jetha Ram v. State of Rajasthan* [Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255 : (2006) 2 SCC (Cri) 561], *Murugesan v. Ganapathy Velar* [Murugesan v. Ganapathy Velar, (2001) 10 SCC 504 : 2003 SCC (Cri) 1032] and *Ishwarlal v. State of M.P.* [Ishwarlal v. State of M.P., (2008) 15

SCC 671 : (2009) 3 SCC (Cri) 1156] this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v.State of Rajasthan [Mahesh Chand v.State of Rajasthan, 1990 Supp SCC 681 : 1991 SCC (Cri) 159] such offence was ordered to be compounded."

14.In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind."

15.In view of the above, the criminal Appeal is partly allowed and while the conviction and sentence imposed on the appellants for the offences under Sections 148, 323, 324 of IPC and the conviction under Section 326 of IPC are confirmed and the sentences of fine is confirmed however the sentence of imprisonment imposed upon them for the said offence alone is modified and reduced to the period already undergone. The appellants need not surrender.

16.Before parting with the matter, this Court appreciate Mr.Asai Thambi, Advocate, a resident of the village, who has relentlessly taken efforts to bring about peace between the two groups in the village.

Sd/-

Assistant Registrar

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge, Kancheepuram District at Chengalpattu.
 - 2.The Judicial Magistrate No.II, Kancheepuram.
 - 3.The Deputy Superintendent of Police, Kancheepuram Sub Division, Kancheepuram.
 - 4.The Public Prosecutor, Madras High Court, Chennai.
- Copy to : The Section Officer, Criminal Section, High Court, Madras.

+1 cc to M/s.AL.Ganthimathi,Advocate Sr.No. 64371

AKM/16.09.19/4P- 7C /AKM/18.11.19

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