

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.03.2019

PRONOUNCED ON : 20.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.160 and 335 of 2012

1.Subramani
2.Veeramani
3.Shanthi
4.Vijayarangan

..

Appellants in Crl.A.No.160/2012

Thilagavathi

..

Appellant in Crl.A.No.335/2012

Vs

State by,
Inspector of Police,
Virinchipuram Police Station,
Vellore District
(Crime No.227/2009)



Respondent in both Crl.As

Common Prayer:- These Criminal Appeals are filed under Section 374(2) Cr.P.C., against the conviction and sentence passed on the appellants by the learned Additional District and Sessions Judge, Fast Track Court, Vellore in S.C.No.45 of 2010 dated 28.02.2012.

In Crl.A.No.160 of 2012

For Appellant : Ms.S.Santhakumari

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

In Crl.A.No.335 of 2012

For Appellant : Mr.D.A.Sugumar

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

COMMON JUDGMENT

These two criminal appeals are directed against the judgment of the learned Additional District and Sessions Judge, Vellore, passed in S.C.No.45 of 2010 dated 20.02.2012.

2.The accused and victims hail from same village. Vijayarangan (A-6) wished to marry Vani (PW-5). But she loved Sankar (PW-1) and married him on 21.01.2008. In this connection, there was animosity simmering between the family members. On 23.06.2009 at about 10.30 pm, Sankar (P.W.1) and his brother in law Ranjith while proceeding in the Hero Splendor motorcycle, hit Muthu (A-1) and Rajendiran coming in the bicycle. Soon after this incident, at about 10.45 pm Muthu(A-1) and other accused (A-2 to A-6) came to the house of Malar (PW-2) who is the sister of Vani (PW-5) and started abusing the family members of Margabandu (deceased). Hearing this, Margabandu (deceased) his sons Sankar (PW-1) , Babu (PW-3) and Ganesan (PW-6) came to the spot. They all were indiscriminately attacked

by the accused A-1 to A-6 with wooden logs. Margabandu who was admitted in the hospital died on 29.06.2008. The complaint of Sankar (PW-1) was registered by the respondent police on 24.09.2008 in Crime No.227/2008. The complaint of Shanthi (A-5) against Margabandu (deceased), Sankar (PW-1), Ganesan (PW-6), Babu and Ranjith for assaulting Shanthi (A-5) and Vijayarangan(A-6) was registered in Crime No.228/08 on 25.06.2008. After completion of investigation, the complaint of Shanthi (A-5) was closed as mistake of fact.

3. Based on the material records placed by the investigation officer, the trial court framed the following 6 charges against Muthu (A-1), Subramani (A-2), Tilagavathi (A-3), Veeramani (A-4), Shanthi (A-5) and Vijayarangan(A-6).

<i>Sl no</i>	<i>Accused</i>	<i>Charges</i>
1	A-1 to A-6	Section 148 IPC.
2	A-1	Section 294(b) IPC
3	A-1 to A-3	Section 302 IPC
4	A-2 to A-6	Section 352 IPC
5	A-4 to A-6	Section 302 r/w 149 IPC

4. After examining 16 prosecution witnesses (P.Ws.1 to 16), one defence witness (D.W.1), 19 prosecution exhibits (Exs.P.1 to P.19), 4

defence documents (Exs.D.1 to D.4) and 6 material objects (M.Os.1 to 6), the trial Court held A-1 to A-6 guilty of offence under section 148 IPC; A-1 guilty of offence under sections 324 and 294(b) IPC; A-2 guilty of offence under section 324 and A-3 to A-6 guilty of offences under section 324 r/w 149 IPC.

5. Aggrieved by the judgement of conviction and sentence, an appeal in C.A.No.160/2012 is preferred by Accused 2, 4, 5 and 6. Appeal in C.A. No.335/2012 is preferred by A.3. All the appellants were found guilty of offences under section 148 IPC. A-1 and A-2 were found guilty of offence under section 324 IPC. A-3 to A-6 were found guilty of offence under section 324 r/w 149 IPC.

6. The Learned counsel for the appellants reading the depositions of the prosecution witnesses, PW-1 the defacto complainant, PW-2 to whom the accused persons alleged to have first picked quarrel, PW- 16 the Investigating Officer would submit that, the incident occurred opposite to the house of Shanthi (A-5). The defacto complainant (P.W.1) and his family members were the aggressors. They all came with weapons and attacked A -5 and A-6. Knowing that, the other accused came to rescue them. In the

fight, Margabandu fell down on the cement floor of Kalathumedu and sustained head injuries. The Doctor Sivaraj (PW-13) who treated Margabandu on 24.06.2008 did not find any external injuries, on his head. In the accident report Ex P-12, only a contusion on the right forehead and bleeding from nose was found. The patient has reported giddiness and he was in semi-conscious state.

7.The defence exhibits, Exs.D-1 to D-4 disclose the fact that on 25.06.2008 at about 11.00 pm, A-5 and A-6 were assaulted by Margabandu and others. They came drunk and quarrelled with A-5. In the assault, A-5 and A-6 sustained injuries. DW-1 - Doctor Ravichandran treated them as out patients in the Government Hospital, Vellore and issued the wound certificates Exs.D-3 and D-4. Pursuant to the said complaint, Ex D-1 the FIR in Crime No.228/08 was registered. Ganesan (PW-6) and Ranjith were taken into custody and remanded vide Ex.D-2. Despite the said fact, PW-16 suppressed the counter case and laid final report.

8.The trial Court failed to consider the counter complaint and the injuries sustained by the accused. The trial Court failed to consider the suppression of material facts. The delay in lodging complaint and the delay in forwarding the FIR to the court has given room to falsehood. When both

side has sustained injuries and the scene of crime was in front of A.5's house, the present case and case in counter ought to have been investigated properly. As per the police Standing Order, the Investigating Officer ought to have placed before the trial Court all the materials including the FIR in the counter case, the statements of the injured and the wound certificates for the trial court to proper appreciation and to arrive at right decision. Admittedly, the Investigating Officer has screened those material facts connected to the counter case. Hence, the appellants are entitled for acquittal.

9. Per contra, the learned Government Advocate (crl.side) appearing for the State would submit that, the counter case was closed as 'mistake of fact' since, the investigation does not disclose any cognizable offence or criminality to try the persons accused of the offences. Before the trial Court, the prosecution has not placed the materials connected to the counter complaint since, it was not so relevant and significant. Nevertheless, by placing those materials as exhibits and oral evidence by the accused themselves the trial Court had the opportunity of examining those exhibits and had concluded that the victims are not the aggressors. Since, no prejudice is caused to the defence by not placing the documents connected to the counter case.

10.Regarding the delay in registering the FIR, the learned Government Advocate (crl.side) would submit that, the occurrence took place on 23.06.2008 at about 22.45 hrs. The injured Margabandu was brought to the hospital at Vellore Adukambarai from Ampoondi. PW-1 who is the son of Margabandu and injured witness came to the Police Station at Virinjipuram at 23.30 hrs on 24.04.2008 and gave the complaint - Ex P-14. The delay in lodging complaint is due to the time taken for the defacto complainant to arrange medical treatment for his injured father. The trial Court considering the facts and circumstances has held that the delay does not render the prosecution case improbable.

11.Heard the learned counsel for the appellants and the Government Advocate (crl.side) appearing for the respondent. Exhibits and depositions perused.

12.The prosecution witnesses admit that there was animosity between the two families and soon before the occurrence at about 10.45 pm, PW-1 and Rajnith hit their motorcycle on Muthu and Rajendiran. The scene of crime is the Kalathumedu. Which is opposite to the house of Shanthi (A-5) and Malar (PW-2). The complaint of Shanthi (A-5) was received first by the police immediately after the intimation from the hospital where she was

admitted for treatment. The Police has given CSR No.360/08 and had registered the FIR much later after the registration of the FIR given by Shankar (P.W.1) on 24.06.09 at 23.30 hrs.

13.PW-1 in his evidence admits that the Police enquired him at Adukambarai Hospital. PW-13's evidence reveals that Margabandu was admitted in the hospital on the night of 23/24.06.08. He examined Margabandu at about 1.00 am. So, the delay in registering the FIR at 23.30 hrs on 24.06.2008 in the light of the counter complaint arising from the same transaction gains significance. The delay is not an ignorable one. The evidence of PW-2 indicates that, on hearing the abusive words of Muthu, she came out from her house. Thereafter, Margabandu and others come to the spot.

14.It is candidly admitted by PWs-1 and 2 that till Margabandu and others came to the spot, there was no violence. In the accident report Ex P-12, recorded at about 1.00 am on 24.06.2008, the Doctor has recorded that Margabandu informed that he was attacked by 4 known persons. In the FIR, which came to be registered 24 hours after the incident, it was mentioned that 6 persons attacked with specific overt acts. Therefore, possibility for embellishment, falsehood and fake informations cannot be ruled out.

15.The incident has taken place at Kalathumedu (a piece of land open to sky, used to dry grains, particularly paddy). The rough sketch - Ex P-15 indicates that the kalathumedu is cement floored. PW-13 - Doctor who first saw Margabandu has recorded the injuries found no external injury on the head. The sutures noted on the head in the post mortem certificate are surgical injuries. PW-12 - the post mortem Doctor has categorically deposed that the injuries found on the head is due to surgery. Therefore, it is clear that, Margabandu has sustained internal injuries on his head during the melee. That is the reason, he was bleeding through nose and no external injury on the head noted by PW-13.

16.The defence exhibits, Exs.D-3 and D-4 reveal A.5 and A.6 sustained injuries. They have gone to the Government Hospital at Vellore on the next day by 10.45 am. Before going to the Government Hospital, A-5 and A-6 were treated by the Doctor locally. DW-1 has noticed lacerated wounds on the head of A-5 and A-6. Sutures on the head of A-6 were done by the private Doctor. From the evidence of DW-1 and PW-13, it is clearly established that on the night of 23/24.06.08 at Ampoodi village Kalathumedu, two groups have indulged in fight. Members from both groups have sustained injuries. The police have initially found that the defacto complainant and his family members are the aggressors. Later, knowing that

the health condition of Margabandu has become critical and was shifted to Chennai Government Hospital and subsequently died on 29.06.2008, dropped the proceedings against PW-1 and others as 'mistake of fact'.

17. In a case and case in counter, arising from out of same transaction, the Investigating Officer even if is of the opinion that, one among the two cases is a 'mistake of fact', he cannot withhold the material evidences against the other side. The duty of the Investigating Officer is to place all the materials incriminating both the parties and allow the judiciary to take the decision.

18. It is improper on the part of the Investigating Officer to screen the materials relating to the injuries found on the accused persons and closing the complaint without further investigation. In support of his contention, the learned counsel for the appellants would rely on the judgment in **Sudhir & Ors. Etc. vs State Of M.P. Etc.** ((2001) 2 SCC 688), wherein, the Hon'ble Supreme Court has observed that, it is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter case" by some High Courts and

"cross cases" by some other High Courts. Way back in Nineteen hundred and Twenties, a Division Bench of the Madras High Court (Waller, and Cornish, JJ) made a suggestion (**In Re Goriparthi Krishtamma - 1929 Madras Weekly Notes 881**) that, "a case and counter case" arising out of the same affair should always, if practicable, be tried by the same Court, and each party would represent themselves as having been the innocent victims of the aggression of the other."

19. In **In re Boya Gajji Pedda Venkatanna alias Bodenna and others** (AIR 1954 MADRAS 15), a Division Bench of this Court subsequent to **In Re Goriparthi Krishtamma's** case (cited supra), in paragraph No.12, it has been held as follows:-

"12. In a compliant and counter-complaint such as this obviously arising out of the same transaction when the prosecution proceeds on the basis of the complaint, we think it is the duty of the prosecution to exhibit the counter-complaint through the police officer who recorded it and also to prove medical certificates of persons wounded on the opposite side also and before the court a definite case which they ask it to accept. We must deprecate the prosecution in such cases accepting in toto one complaint and examining only witnesses who support it and give no

explanation at all for injuries caused to the other side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary to enable it to arrive at the truth and a just decision. If in the present case, Ex.D.10 was in the opinion of the investigating police a false complaint laid for defence purposes and the injuries on D.W.2 self-inflicted, the prosecution should none the less have filed Ex.D.10 and D.W.2's medical certificate asking the court to reject them. The fact that a complaint Ex.D.10 was filed, that it was treated as false or undetectable and that D.W.2 did have injuries on his person are relevant facts which the prosecution itself should have placed before the court in the first instance instead of waiting for the defence to disclose them."

20. Thus, on a careful examination of the above facts with the support of the available materials and evidence, it can be safely presumed that a counter case in Crime No.228/2008 registered against deceased, PWs.1, 6, Ranjith and Babu connected with the same incident which alleged against the appellants/accused in the present case.

21. According to the defence, A.5 & A.6 in the present case, sustained injuries in the said incident and the prosecution has suppressed the material

facts about that in this case. In the light of the above referred materials and evidences, the plea of the defence cannot be ruled out. From the prosecution materials and evidence and other facts and material referred to above, the defence has succeeded in probalising its defence.

22. In the result, the Criminal appeals are allowed. Trial court judgment dated 20.02.2012 is set aside. The appellants/accused are acquitted and they are set at liberty, unless, their presence is required with in connection with any other case. Fine amount paid, if any, shall be refunded. Bail bond, if any, shall stand cancelled.

jbm

Index: Yes

Speaking order/non speaking order

20.03.2019

To

1. The Additional District and Sessions Judge,
Fast Track Court,
Vellore.

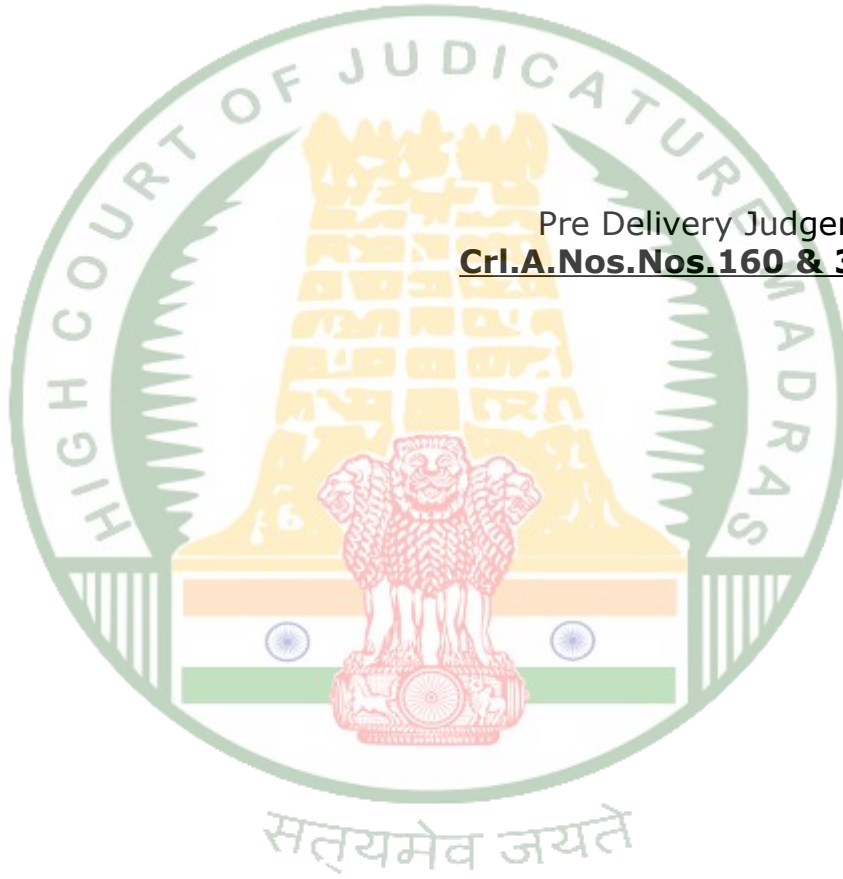
2. The Public Prosecutor,
High Court, Chennai.

3. The Criminal Section,
High Court, Madras.

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G.JAYACHANDRAN.J.,

jbm



Pre Delivery Judgement made in
Crl.A.Nos.Nos.160 & 335 of 2012

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20.03.2019