

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.01.2019

DELIVERED ON: 30.01.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C.No. 1129 of 2011

1 Rajasekar
2 Anandavel
3 Kandavel
4 Chakrapani

Petitioners

vs.

State
represented by the Inspector of Police
Marudhur Police Station
Cuddalore District
(Cr. No.81 of 2005)

Respondents

The seal of the High Court of Judicature at Madras is a large, circular emblem. It features a central yellow temple gopuram (tower) with intricate carvings. The gopuram is flanked by two green palm trees. The entire emblem is set against a light green background. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the central image. At the bottom of the seal, there is a red stamp of the State Emblem of India, which depicts the Lion Capital of Ashoka.

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. seeking to set aside the judgment dated 07.01.2011 passed by the Additional District Court (Fast Track Court No.I), Chidambaram in Crl.A.No.60 of 2009 modifying the judgment of conviction and sentence dated 03.11.2009 passed by the Assistant Sessions Judge, Chidambaram in S.C. No.284 of 2005.

For petitioners 1 & 4 Mr. A. Raghunathan, Sr. Counsel
for Mr. A. Arasu Ganesan

For 2nd petitioner Mr. S. Ashok Kumar
Amicus Curiae

For respondent Mrs. P. Kritika Kamal
Govt. Advocate (Crl. Side)

ORDER

This criminal revision has been preferred seeking to set aside the judgment dated 07.01.2011 passed by the Additional District Court (Fast Track Court No.I), Chidambaram in CrI.A. No.60 of 2009 modifying the judgment of conviction and sentence dated 03.11.2009 passed by the Assistant Sessions Judge, Chidambaram in S.C. No.284 of 2005.

2 The factual matrix of the case, shorn of unnecessary frills, is as under:

2.1 Pudhurajan (P.W.1) was working as a Clerk in the Panchayat Board and his wife was the Panchayat President. The sister-in-law of Rajasekar (A1), wife of Kolanji (A2) and mother of Chakrapani (A5) contested the Panchayat elections against the wife of Pudhurajan (P.W.1) and lost, on account of which, they were harbouring ill-will.

2.2 On 21.04.2005, one Baskar, a Panchayat member breathed his last. Pudhurajan (P.W.1) went along with his father Rajagopalan (P.W.2), to pay homage to the deceased and *en route*, Rajasekar (A1), Kolanji (A2), Anandavel (A3), Kandavel (A4) and Chakrapani (A5) picked up a quarrel with him and Rajasekar (A1) indiscriminately attacked him with a deadly weapon. When his father Rajagopalan (P.W.2) intervened, he was also attacked. Pudhurajan (P.W.1) and Rajagopalan (P.W.2) were taken to the

Government Hospital and from there, they were referred to Annamalai Medical College and Hospital, Chidambaram, from where, they were admitted to JIPMER Hospital, Puducherry.

2.3 On information from the hospital authorities, the police came to the hospital and recorded the statement (Ex.P.1) of Pudhurajan (P.W.1), which was treated as complaint, based on which, a case in Cr.No.81 of 2005 was registered by the police. After investigation, final report was filed in P.R.C. No.26 of 2005 before the Judicial Magistrate, Parangipettai.

2.4 On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C. No.284 of 2005 and was made over to the Court of the Assistant Sessions Judge, Chidambaram, for trial.

2.5 The Trial Court framed charges under Sections 148, 341, 294, 324, 326 and 307 (2 counts) IPC against Rajasekar (A1) and charges under Sections 148, 341, 324 and 307 read with Section 149 IPC against the accused 2 to 5 and when questioned, all the accused pleaded "not guilty".

2.6 To prove their case, the prosecution examined 10 witnesses and marked 9 exhibits and 1 material object. When the accused were

questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. On the side of the accused, neither any witness was examined nor any document marked.

2.7 After hearing either side and considering the evidence on record, the Trial Court acquitted Kolanji (A2), but, convicted and sentenced Rajasekar (A1), Anandavel (A3), Kandavel (A4) and Chakrapani (A5) as follows:

Rajasekar (A1):

<i>Provision of law under which convicted</i>	<i>Sentence</i>
S. 148 IPC	Six months rigorous imprisonment
S. 294 (b) IPC	One month rigorous imprisonment
S. 324 IPC	One year rigorous imprisonment
S. 326 IPC	Five years rigorous imprisonment and fine of Rs.500/-, in default to undergo three months simple imprisonment
S. 307 IPC (2 counts)	Five years rigorous imprisonment for each count (totally ten years for two counts) and fine of Rs.500/- for each count (totally Rs.1,000/- for two counts), in default, to undergo three months simple imprisonment

The aforesaid sentences were directed to run concurrently.

Anandavel (A3), Kandavel (A4) and Chakrapani (A5):

<i>Provision of law under which convicted</i>	<i>Sentence</i>
S.341 IPC	Fine of Rs.100/- each, in default, each of them to undergo one week simple imprisonment
S.307 IPC r/w S.149 IPC	Five years rigorous imprisonment and fine of Rs.500/- for each of the accused, in default, each of them to undergo three months simple imprisonment

2.8 Rajasekar (A1), Anandavel (A3), Kandavel (A4) and Chakrapani (A5) preferred Crl.A. No.60 of 2009, which was heard by the Additional District Judge (Fast Track Court No.I), Chidambaram, who, by judgment dated 07.01.2011, acquitted Rajasekar (A1) of the charge under Section 294(b) IPC and modified the conviction and sentence slapped by the Trial Court as under:

Rajasekar (A1):

<i>Provision of law under which convicted</i>	<i>Sentence</i>
S. 324 IPC (2 counts)	One year rigorous imprisonment for each count and fine of Rs.500/- for each count, in default to undergo three months simple imprisonment
S. 307 IPC (2 counts)	Five years rigorous imprisonment for each count and fine of Rs.500/- for each count, in default to undergo three months rigorous imprisonment

Anandavel (A3), Kandavel (A4) and Chakrapani (A5):

<i>Provision of law under which convicted</i>	<i>Sentence</i>
S.341 IPC	Fine of Rs.100/- each, in default, each of them to undergo one week simple imprisonment
S.307 IPC read with S.34 IPC	Five years rigorous imprisonment and fine of Rs.500/- for each of the accused, in default, each of them to undergo three months simple imprisonment

The aforesaid sentences were ordered to run concurrently.

2.9 Challenging the judgments of the Trial Court and the appellate Court, Rajasekar (A1), Anandavel (A3), Kandavel (A4) and Chakrapani (A5) filed the present criminal revision.

3 On 10.01.2019, this Court passed the following order:

"Rajasekar (A1), Kolanji (A2), Anandavel (A3), Kandavel (A4) and Chakrapani (A5) faced prosecution in S.C. No.284 of 2005 before the Sessions Judge, Chidambaram, for the offences under Sections 148, 341, 294(b), 324, 326 and 307 IPC.

2 The Trial Court, by judgment dated 09.11.2009, acquitted Kolanji (A2), but, convicted Rajasekar (A1), Anandavel (A3), Kandavel (A4) and Chakrapani (A5) and sentenced them to various terms of imprisonment, the maximum being 5 years rigorous imprisonment.

3 Therefore, Rajasekar (A1), Anandavel (A3), Kandavel (A4) and Chakrapani (A5) filed CrI.A. No.60 of 2009 before the Court of Session, which was heard by the Additional District and Sessions Judge (Fast Track Court I), Chidambaram, who, by judgment dated 07.01.2011, modified the conviction and sentence.

4 Aggrieved by the said judgment, Rajasekar (A1), Anandavel (A3), Kandavel (A4) and Chakrapani (A5) filed CrI.R.C. No.1129 of 2011 through Mr. Arasu Ganesan, advocate. It appears that they did not surrender before the Trial Court after the dismissal of their appeal in CrI.A. No.60 of 2009 by the appellate Court. After filing and numbering of the revision

petition, Anandavel (A3) represented to his counsel that he is not pressing the revision petition. Therefore, the counsel withdrew the revision petition as not pressed on 07.09.2011 insofar as Anandavel (A3), which was recorded by this Court.

5 Thereafter, Rajasekar (A1), Kandavel (A4) and Chakrapani (A5) surrendered before the Trial Court and thereafter, filed M.P. No.1 of 2011 in CrI.R.C. No.1129 of 2011 seeking suspension of sentence and bail. This Court, by order dated 30.09.2011 in M.P. No.1 of 2011 in CrI.R.C. No.1129 of 2011, suspended the sentence and released Rajasekar (A1), Kandavel (A4) and Chakrapani (A5) on bail on condition that they should execute a bond for a sum of Rs.10,000/- and appear before the District Munsif-cum-Judicial Magistrate Court, Parangipettai, on the first working day of every month at 10.30 a.m., pending disposal of the revision application. Accordingly, it is reported that they are complying with the said condition.

6 When the main case in CrI. Rev. Case No.1129 of 2011 came up for hearing, the respondent police filed a memo before this Court stating that Kandavel (A4) had died on 16.11.2017 along with a copy of his death certificate. Therefore, the death of Kandavel (A4) is recorded.

7 Today, Mr. Jaisankar, Special Sub Inspector of Police, Maruthur Police Station, Cuddalore District, is present before this Court.

8 It appears that though Anandavel (A3) had withdrawn the revision petition, he has not filed any fresh revision petition before this Court. Ergo, he has to undergo the sentence imposed upon him by the Trial Court as confirmed by the appellate Court. However, the learned Government Advocate (CrI. Side) represented that he is still at large and has not surrendered.

9 Though this Court can proceed with the revision application qua Rajasekar (A1) and Chakrapani (A5), yet, this Court, in exercise of its *suo motu* revisional power, is of the view that the case of Anandavel (A3) should also be considered by this Court while considering the case of Rajasekar (A1) and Chakrapani (A5).

10 Therefore, this Court appoints Mr. S. Ashok Kumar (Enrolment No.1461 of 2000), an advocate of a good standing at the Criminal Bar, as *Amicus Curiae* to argue for Anandavel (A3). Copies of the relevant records were furnished to Mr. S. Ashok Kumar.

Post on 11.01.2019."

4 In view of the aforesaid developments, now, it has to be seen whether the conviction and sentence imposed on Rajasekar (A1), Anandavel (A3) and Chakrapani (A5) warrant interference by this Court in exercise of its powers under Sections 397 and 401 Cr.P.C.

5 Heard Mr. A. Raghunathan, learned Senior Counsel representing Mr. A. Arasu Ganesan, learned counsel on record for the revision petitioners 1 and 4, Mr. Ashok Kumar, learned counsel for Anandavel (A3) and Mr. G. Ramar, learned Government Advocate (Crl.Side) appearing for the respondent State.

6 While dealing with a revision petition under Sections 397 and 401 Cr.P.C., this Court cannot re-appreciate the evidence as a Court of Second Appeal. At this juncture, it is apropos to allude to the following paragraphs of the judgment of the Supreme Court in **State of Maharashtra, etc. vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.**¹:

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power. (emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

“The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.”

Of course, where it is demonstrated that both the Courts below had overlooked certain material evidences, then, the power of this Court to re-appreciate the evidence can be exercised.

7 Mr. A. Raghunathan, learned Senior Counsel appearing for the revision petitioners 1 and 4 and Mr. Ashok Kumar, learned counsel for Anandavel (A3) made the following submissions:

i. The complaint in this case itself was given very belatedly at 23 hours.

ii. In the copy of the Accident Register (Ex.P.6), Pudhurajan (P.W.1) has told the doctor who examined him that he was assaulted by one known person with knife and there is no reference to the others; likewise, in the copy of the Accident Register (Ex.P.5), Rajagopalan (P.W.2) has stated that he was assaulted by one known person with knife; thus, both Pudhurajan (P.W.1) and Rajagopalan (P.W.2) have not referred to the presence of the co-accused in the case.

iii. Pudhurajan (P.W.1), in his evidence, has stated that Kolanji (A2) and Chakrapani (A5) held him when Rajasekar (A1) attacked him; when the Trial Court had acquitted Kolanji (A2), the conviction of Chakrapani (A5) on the same evidence, cannot be sustained.

iv. Thathuvarayar (P.W.3), an eye witness, has stated in the cross-examination that he did not notice as to who held Pudhurajan (P.W.1) when Rajasekar (A1) attacked;

v. With the acquittal of Kolanji (A2), the number of accused got reduced to four and therefore, the accused cannot be convicted with the aid of Section 149 IPC.

vi. Section 34 IPC also cannot be invoked because there is no evidence to show that there were prior meeting of minds and Anandavel (A3) was not carrying any weapon.

8 In support of his contention (vi) above, the learned Senior Counsel placed reliance on the judgment of the Supreme Court in **Suresh Sakharam Nangare vs. State of Maharashtra**².

9 *Per contra*, the learned Government Advocate (Crl.Side) refuted the contentions put forth by the learned counsel for the defence.

10 Before adverting to the rival contentions, it may be profitable to briefly refer to the evidence on record.

11 Pudhurajan (P.W.1), in his examination-in-chief, has stated that he was working as a Clerk in the Panchayat Board; his wife contested the Panchayat President election and against her, the sister-in-law of Rajasekar (A1), the wife of Kolanji (A2) and the mother of Chakrapani (A5) contested and lost, after which, the accused were frequently threatening him and abusing him; on 21.04.2005, he went, with his father Rajagopalan (P.W.2) to pay condolence to the house of one Baskar, a Panchayat member, who had died and *en route*, the accused were near the house of one Jayapaul and on seeing him (P.W.1), they made some snide remarks and attacked him; Rajasekar (A1) took out a knife and aimed at his head while he (P.W.1) was held by the other accused; he defended the attack with his left hand, in the course of which, his left wrist got cut; the second attempt aimed at his head was thwarted by defending with his right hand, in the course of which, his thumb got cut and he also sustained injuries on his chin; on seeing this, his father, Rajagopalan (P.W.2) intervened; Anandavel (A3) and Kandavel (A4) held him (P.W.2) and shouted "Cut him also" and immediately, Rajasekar (A1) attacked his father; on seeing this, Ramalingam (P.W.4), Kasinathan (P.W.5) and others came; seeing them, the accused fled; he was taken along with his father, Rajagopalan (P.W.2)

to the Government Hospital, Chidambaram, from where, they were taken to Annamalai Medical College and Hospital and from there, to JIPMER Hospital, Puducherry, for treatment; while he was in the hospital, the police came and recorded his statement (Ex.P.1); he was admitted as inpatient in the hospital for 54 days and was later discharged.

12 Pudhurajan (P.W.1) was not cross-examined on the same day. The chief-examination was on 23.06.2006 and the cross-examination was on 23.07.2007, a little over a year later, on petition filed under Section 311 Cr.P.C.

13 Rajagopalan (P.W.2), the father of Pudhurajan (P.W.1), corroborated the testimony of Pudhurajan (P.W.1) and stated that Kolanji (A2), Anandavel (A3), Kandavel (A4) and Chakrapani (A5) held Pudhurajan (P.W.1) when Rajasekar (A1) attacked and Anandavel (A3) and Kandavel (A4) held him (P.W.2) when Rajasekar (A1) attacked; on seeing Thathuvarayar (P.W.3), Ramalingam (P.W.4) and Kasinathan (P.W.5), the accused fled.

14 Thathuvarayar (P.W.3), an eye witness, has spoken to about the enmity between Pudhurajan (P.W.1) and the accused, in connection with the Panchayat election. He has further stated that on 20.04.2005, (sic) 21.04.2005, one Baskar, a Panchayat Member died; on that day,

Pudhurajan (P.W.1) and Rajagopalan (P.W.2) came for bereavement and at that time, Rajasekar (A1) picked up a quarrel with Pudhurajan (P.W.1) and when Kolanji (A2) and Chakrapani (A5) held Pudhurajan (P.W.1), Rajasekar (A1) attacked him with a knife; when Rajagopalan (P.W.2) intervened, Anandavel (A3) and Kandavel (A4) held him and Rajasekar (A1) attacked him. Similar is the evidence of Ramalingam (P.W.4).

15 Rajagopalan (P.W.2) and Thathuvarayar (P.W.3) were not cross-examined on 27.06.2006 when they were examined-in-chief. They were recalled under Section 311 C.P.C. and were cross examined on 23.07.2007, i.e. after a year. In the cross-examination, the defence were not able to make out any great dent in their evidence.

16 Pudhurajan (P.W.1) admitted in the cross-examination that, when he was examined by the doctor, he stated that he was attacked by one known person. In the statement to the police, he gave the full details of the incident. In the chief-examination of Pudhurajan (P.W.1), he had referred to another incident which had taken place prior to the incident in question. In the cross-examination, he has conceded that he did not say anything about that earlier incident to the police. The police arrested Rajasekar (A1) and recovered the knife (M.O.1), which was identified by Pudhurajan (P.W.1) as the one with which he was attacked by Rajasekar (A1).

17 Dr. Kalaiselvi (P.W.8), in her evidence, has stated that on 21.04.2005, when she was on duty at the Government Hospital, Chidambaram, she examined Rajagopalan (P.W.2) at 1.00 p.m.; he told her that he was attacked by one known person and she noted a lacerated injury measuring 3 cm. X 3 cm. x 1 cm. in his left neck; she immediately referred him for intensive treatment; on 18.07.2005, she examined the medical reports of JIPMER Hospital and issued the copy of the Accident Register (Ex.P.5); she examined the copy of the Accident Register given by JIPMER Hospital and opined that the injury was simple in nature and accordingly, she gave the copy of the Accident Register (Ex.P.5); around the same time, she examined Pudhurajan (P.W.1), who told her that around 10 a.m., he was attacked by a known person and she noted the following injuries on Pudhurajan (P.W.1):

- 1 Abrasion in the chin measuring 1 cm. X 1 cm. X 1 cm.
- 2 Abrasion in the right thumb measuring 2 cm. X 2 cm. X 2 cm.
- 3 Cut injury with fracture on the left wrist

he was also referred for intensive treatment; on 16.06.2005, she received the medical reports from Stanley Medical College and Hospital, Chennai and opined that he had suffered fracture on his left wrist which is grievous in nature; the injuries 1 and 2 are simple in nature; she issued the copy of Accident Register (Ex.P.6).

18 Now, coming to the contention of the defence, it is seen that

Pudhurajan (P.W.1), Rajagopalan (P.W.2), Thathuvarayar (P.W.3) and Ramalingam (P.W.4) have spoken to about the previous enmity between the accused party and Pudhurajan (P.W.1), inasmuch as, Pudhurajan's (P.W.1) wife won the Panchayat election after a bitter contest, which had left a bad taste in the mouth of the defeated side. The place of occurrence was near the house of one Jayapaul which is *en route* the house of one Baskar, Panchayat Member, who had died on 21.04.2005, for whose condolence Pudhurajan (P.W.1) and Rajagopalan (P.W.2) were going.

19 Pudhurajan (P.W.1) and Rajagopalan (P.W.2) have identified all the five accused and have stated that they also belong to the same village. Pudhurajan (P.W.1) has spoken to about the motive for the attack. The fact that Rajasekar (A1) was armed with a knife itself is a proof that the group had anticipated that Pudhurajan (P.W.1) would come to the house of the deceased Baskar for paying homage and their scores can be settled there. Pudhurajan (P.W.1) and Rajagopalan (P.W.2) are injured witnesses and Thathuvarayar (P.W.3) and Ramalingam (P.W.4) who are not injured witnesses, have stated that Kolanji (A2) and Chakrapani (A5) held Pudhurajan (P.W.1) when Rajasekar (A1) attacked. The attack was aimed at the head of Pudhurajan (P.W.1) and so, Pudhurajan (P.W.1) spontaneously defended the attack with his left hand, resulting in cut injury coupled with a fracture of his left wrist. Pudhurajan's (P.W.1) father Rajagopalan (P.W.2) naturally interceded and he also suffered attack by

Rajasekar (A1). All the witnesses have stated that Kolanji (A2) and Chakrapani (A5) held Pudhurajan (P.W.1) when Rajasekar (A1) attacked and Anandavel (A3) and Kandavel (A4) held Rajagopalan (P.W.2) when Rajasekar (A1) attacked. Strangely, the Trial Court has acquitted Kolanji (A2) of all the charges.

20 On perusal of paragraph no.63 of the judgment of the Trial Court, it is seen that the Trial Court has just given a sweeping one line finding that there is no evidence against Kolanji (A2), which, in the opinion of this Court, is a deliberate and perverse mis-appreciation of fact. Unfortunately, the State did not assail this finding and paved the way for Kolanji (A2) to escape from the clutches of law. Though there cannot be a reversal of this finding in this revision application, yet, the evidence on record against Kolanji (A2) will not stand effaced on his wrongful acquittal by the Trial Court. The evidence on record can be relied upon by this Court for holding that there were five persons in the group that attacked Pudhurajan (P.W.1) and Rajagopalan (P.W.2) so as to invoke Section 149 IPC. In this context, it may be profitable to extract paragraph nos.22 and 24 of the judgment of the Supreme Court in **Nallabothu Venkaiah vs.**

State of Andhra Pradesh³:

"22. In *Marachalil Pakku v. State of Madras* [AIR 1954 SC 648 : 1954 Cri LJ 1668] seven accused were charged under Section 302 read with Section 149 IPC. The trial court convicted two appellants along with five others of having constituted an unlawful assembly and committed murder and they were convicted under Section 302 read with Section 149 IPC. The High Court, on appeal, gave benefit of doubt to five accused and acquitted

them. In the appeal before this Court, it was argued that the said five accused having been acquitted and in the absence of a charge that five other unknown persons constituted an unlawful assembly, the two appellants could not be held members of the unlawful assembly which had the common object, the three-Judge Bench of this Court said: (AIR p. 652)

"We have not been able to understand how the High Court could acquit these persons having held that the evidence of PWs 5 and 6 as to how Kannan was murdered by Accused 1 and 2 stabbing him and the others holding him by his hands and legs, was true. It also said that with regard to participation of Accused 3 to 7 they could not say that the prosecution evidence was unreliable. On these findings, in our opinion, no scope was left for introducing into the case the theory of the benefit of doubt. We think that Accused 3 to 7 were wrongfully acquitted. Though their acquittal stands, that circumstance cannot affect the conviction of the appellants under Section 302 read with Section 149 IPC."

24. On an analytical reading of a catena of decisions of this Court, the following broad proposition of law clearly emerges: (a) the conviction under Section 302 simpliciter without aid of Section 149 is permissible if overt act is attributed to the accused resulting in the fatal injury which is independently sufficient in the ordinary course of nature to cause the death of the deceased and is supported by medical evidence; (b) wrongful acquittal recorded by the High Court, even if it stood, that circumstances would not impede the conviction of the appellant under Section 302 read with Section 149 IPC; (c) charge under Section 302 with the aid of Section 149 could be converted into one under Section 302 read with Section 34 if the criminal act done by several persons less than five in number in furtherance of common intention is proved. (emphasis supplied)

Though the Trial Court had convicted the four accused with the aid of Section 149 IPC, the Appellate Court has rightly invoked Section 34 IPC to convict Anandavelu (A3), Kandavel (A4) and Chakrapani (A5).

21 Coming to the statement of Pudhurajan (P.W.1) and Rajagopalan (P.W.2) to Dr. Kalaiselvi (P.W.8) that they were attacked by one known person, this Court does not find any infirmity in the same, because, it is the specific case of Pudhurajan (P.W.1) and Rajagopalan (P.W.2) that Rajasekar (A1) had attacked them and the remaining four

accused were only part of the unlawful assembly and were assisting Rajasekar (A1) by holding them. It is not necessary for an injured victim to narrate the entire history of the attack to the doctor at the time of medical examination. In fact, at this juncture, it is worth pointing out that the Supreme Court, in **B. Bhadriah and Others vs. State of Andhra Pradesh**⁴, has held that the casual way of filling up the column in the medical certificate, does not, in any manner, amount to recording a statement of the injured witness. Ergo, much significance cannot be attached to the entry in the copy of Accident Registers (Exs.P.5 and P.6) qua the number of the attackers.

22 The fact remains that the incident took place at 10 a.m. at Jayamkondan and the injured were rushed to the Government Hospital at Chidambaram, which is a little away, where they were examined by Dr.Kalaiselvi (P.W.8) at 1 p.m. and the injuries found on them have been entered in the copy of Accident Registers (Exs.P.5 and P.6), about which, Dr. Kalaiselvi (P.W.8) has given evidence.

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23 Mr. Ashok Kumar, learned counsel for Anandavel (A3) submitted that Anandavel (A3) was not even armed with any weapon and there is no evidence to the effect that there was any pre-arranged meeting of minds for mulcting criminal liability with the aid of Section 149 or 34 IPC. Be it noted that it is not necessary that all the members of the unlawful assembly should be armed with weapons. The fact that Rajasekar (A1) was armed with a knife and the incident had taken place when Pudhurajan (P.W.1) and Rajagopalan (P.W.2) were going to the house of the deceased Baskaran to pay homage itself shows that the five accused had assembled there with the common object of liquidating Pudhurajan (P.W.1). Further, the accused 2 to 5 were heard exhorting Rajasekar (A1) to finish off Pudhurajan (P.W.1) and when Rajagopalan (P.W.2) intervened, their anger turned at him and he was also attacked. The intensity of the attack by Rajasekar (A1) is evident from the nature of injury sustained by the victims.

24 Mr. Raghunathan, learned Senior Counsel, contended that in the absence of the prosecution marking x-ray and other records to show that Pudhurajan (P.W.1) had suffered fracture, the *ipse dixit* of Dr.Kalaiselvi (P.W.8) that Pudhurajan (P.W.1) suffered fracture should not be accepted. The Trial Court has convicted and sentenced Rajasekar (A1) under Section 326 IPC, but, the Appellate Court has not given any finding on this aspect. As rightly contended by Mr. A. Raghunathan, in the absence

of satisfactory evidence to prove that Pudhurajan (P.W.1) suffered grievous injuries, the conviction of Rajasekar (A1) under Section 326 IPC by the Trial Court warrants interference and accordingly, the conviction and sentence under Section 326 IPC qua Rajasekar (A1) are set aside. However, it is made clear that his conviction for the offence under Section 324 IPC is sustained.

25 Pudhurajan (P.W.1) has stated that Rajasekar (A1) aimed the first blow at his head and so, he defended the attack by raising his left hand; the second blow was also aimed at his head, which he defended with his right hand. There is no reason to disbelieve the testimony of Pudhurajan (P.W.1) on this aspect. His evidence stands corroborated by the evidence of Dr.Kalaiselvi (P.W.8), who has noted one cut injury in the left wrist and abrasion in the right thumb. For the offence under Section 307 IPC, the intention of the attacker is more relevant than the injury suffered by the victim.

26 Lastly, Mr. A. Raghunathan placed reliance on a judgment of this Court in **Natarajan vs. Deputy Superintendent of Police, Sathyamangalam Sub Division, Erode District**⁵, wherein, this Court held that the offence committed by the accused therein would not fall under Section 307 IPC, but, 324 IPC and prayed for applying the same

standards to the case at hand. In that case, in paragraphs 11 and 12, this Court has discussed the evidence on record and has held that the attack was not a pre-meditated one, inasmuch as, in the quarrel between the accused and the victim, in a fit of anger, the accused took out a knife from a nearby butcher's shop and attacked the victim who suffered only simply injuries. In that case, this Court held so. However, the evidence in this case shows that the attack was a pre-meditated one.

27 In view of the foregoing discussion, this Court does not find any infirmity in the conclusions of the Trial Court and the appellate Court warranting interference.

28 To sum up:

- The conviction and the sentence of imprisonment imposed by the Trial Court and the Sessions Court under Section 324 IPC (2 counts) on **Rajasekar (A1)** for his attack on Pudhurajan (P.W.2) and Ramalingam (P.W.2) stand confirmed. The sentence of fine and default sentence imposed by the appellate Court are set aside.
- The conviction and sentence imposed by the Trial on **Rajasekar (A1)** under Section 326 IPC, which has not been adverted to by the appellate Court, are set aside.

- The conviction and sentence imposed by the Trial Court and the appellate Court on **Rajasekar (A1)** under Section 307 IPC (2 counts) for attempt to murder Pudhurajan (P.W.1) and Ramalingam (P.W.2) stand confirmed. The sentences shall run concurrently. The default sentence shall be three months rigorous imprisonment as held by the appellate Court.
- Qua **Anandavel (A3)**, the modification of the conviction under Section 307 read with Section 149 IPC (2 counts) to Section 307 read with Section 34 IPC (2 counts) by the appellate Court stands confirmed. As regards the sentence of five years rigorous imprisonment (2 counts) viz., for the attack on Pudhurajan (P.W.1) and Ramalingam (P.W.2), slapped by the Trial Court and the appellate Court, the same is reduced to three years rigorous imprisonment, to run concurrently. The sentence of fine and default sentence remain intact.
- Qua **Anandavel (A3)**, the conviction and sentence of fine imposed by the Trial Court and the appellate Court under Section 341 IPC stand confirmed and the default sentence shall remain intact.
- Qua **Chakrapani (A5)**, the modification of the conviction under Section 307 read with Section 149 IPC (2 counts) to Section 307 read with Section 34 IPC (2 counts) by the appellate Court stands confirmed. As regards the sentence of five years rigorous imprisonment (2 counts) viz., for the attack on Pudhurajan (P.W.1) and

Ramalingam (P.W.2), slapped by the Trial Court and the appellate Court, the same is reduced to three years rigorous imprisonment, given the nature of their participation in the attack and the said sentences shall run concurrently. The sentence of fine and default sentence remain intact.

- Qua **Chakrapani (A5)**, the conviction and sentence of fine imposed by the Trial Court and the appellate Court under Section 341 IPC stand confirmed and the default sentence shall remain intact.
- Insofar as **Kandavel (A4)**, he has died on 16.11.2017 during the pendency of this revision petition and no steps have been taken by his legal heirs to prosecute this revision petition. This is recorded.

The Trial Court is directed to secure the presence of Rajasekar (A1), Anandavel (A3) and Chakrapani (A5) and commit them to prison to undergo the remaining period of sentence.

In fine, this criminal revision stands allowed in part.

30.01.2019

cad

P.N. PRAKASH, J.

cad

To

- 1 The Additional District Judge
(Fast Track Court No.I)
Chidambaram
- 2 The Assistant Sessions Judge
Chidambaram
- 3 The Inspector of Police
Marudhur Police Station
Cuddalore District
- 4 The Public Prosecutor
Madras High Court
Chennai 600 104
- 5 The Deputy Registrar (Crl. Side) with a direction to return
Madras High Court the original records to the
Chennai 600 104 Trial Court

सत्यमेव जयते

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Crl.R.C. No.1129 of 2011

30.01.2019