

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.96 of 2012
& Crl.M.P.No.3682 of 2019

1. Annamalai,
S/o.Singaram.
2. Gajapathy,
S/o.Thangaraj.
3. Saravanan,
S/o.Annamalai.
4. Kennedy,
S/o.Annamalai.
5. Rajan,
S/o.Gajendran.
6. Kutty @ Jagadeesan,
S/o.Thangaraj.
7. Damodharan,
S/o.Thangaraj.
8. Karthick,
S/o.Rajendran. Appellants/Accused 1 to 8
All resident of Amman Koil Street,
Vellavedu New Colony, Poonamallee
9. Kumar,
So.Elumalai.
- 10.Vetrikumar,
Thingaran. Appellants/Accused 9 & 10
Both residents of Perumal Koil Street,
Kuthamabakkam (North Part)

/versus/

State by the Inspector of Police,
Vellavedu Police Station,
Tiruvellore District.
(Crime No.31 of 2010)

... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C, praying against to set aside the judgment of the learned Additional Sessions Judge, F.T.C.I, Poonamalee in S.C.No.148 of 2011 dated 29.12.2011 and acquit the accused/appellants herein

For Appellants : Mr.R.Karunakaran
Legal Aid Counsel

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl.Side)

J U D G M E N T

The charge against the appellants is that on 24.01.2010 at about 8.00 p.m near Vellavedu Amman Koil, Bangaru canal, the appellants herein with intention to riot armed with deadly weapon, formed unlawful assembly and restrained Rajesh, Devanathan and Prabhu from proceeding. The 1st Accused Annamalai attacked Rajesh on his head with knife. The 2nd Accused Gajapathy attacked Rajesh on the left hand finger with knife. The 3rd Accused Saravanan and 4th Accused Kennady attacked Rajesh with wooden log all over his body, at the same time 1st accused Annamalai and 2nd accused Gajapathy also assaulted Prabhu with knife over the head and forehead. A1 and A2 assaulted Devanathan on the head and face. The Accused 5 to 10 assaulted David with wooden log. The accused were charged for offences under Sections 147, 148, 341, 323, 324, 307 r/w 149 of I.P.C.

2. To prove the charges, the prosecution has examined Rajesh (PW.1), Devanathan (PW.2), Prabhu (PW.3) and David (PW.4) who were injured in the rioting. Besides these four injured witnesses, PW.5 to PW.8 were also examined to corroborate the evidence of PW.1 to PW.4 regarding the injury they sustained, the nature of the injury, the recovery of material objects like auto, bike and weapon used to cause grievous hurt to PW.2 and simple injury to others. The material objects were marked as M.O.1 to M.O.4. The documents Ex.P.1 to Ex.P.10 were marked in support of the prosecution case. On the side of the defence one Arivazhagan was examined as DW.1.

3. The trial Court after considering the evidence has held the accused 1 to 10 who are the appellants herein guilty of offence under Section 148 of I.P.C. Unlawful assembly armed with deadly weapon; for offence under Section 341 of I.P.C.: Punishment of wrongful restraint; and for offence under Section 324 of I.P.C.: Voluntarily causing hurt by dangerous weapon. The accused were convicted and sentenced to undergo 2 years R.I and to pay a fine of Rs.1,000/- for offence under Section 148 of I.P.C., for default in payment of fine further simple imprisonment for 3 months was ordered. For offence under

Section 341 of I.P.C, the accused were sentenced to pay fine of Rs.500/- in default 1 weeks S.I. For offence under Section 324 of I.P.C, the accused were sentenced to undergo 2 years R.I and to pay a fine of Rs.2,500/- in default in payment of fine simple imprisonment 3 months was ordered. The period of imprisonment was ordered to run concurrently. The period of imprisonment already undergone was ordered to be set off under Section 428 of Cr.P.C.

4. Aggrieved by the conviction and sentence the present is Appeal is preferred by all the 10 accused.

5. The main contention raised in the appeal is that the evidence of DW.1 was not properly appreciated by the trial Court. The non-production of x-ray report for Court perusal renders the evidence of PW.7 Dr.Prabu Sankar unreliable. The failure of the prosecution to collect R.C book and other connected documents pertaining to the vehicles marked as M.O.3 and M.O.4 to link the vehicle and the accused create suspicion. Apart from the above contentions, Mr.R.Karunakaran, the learned Counsel appointed by the Legal Service Authority to defend the case of the appellants would submit that the appellants/accused and the de facto complainant/party are hailing from same village and related to each other. Due to some misunderstanding, the incident has occurred. Now, they have reconciled and living peacefully. To buy peace, they have entered into a compromise and therefore, the offence may be compounded, recording the compromise. To the said effect an application also filed to permit the accused 1 to 10 to compound the offence with the victims who are PW.1 (Rajesh), PW.2 (Devanathan) and PW.3 (Prabhu). As far as the other injured witness who was examined as PW.4, it is reported he is died. The compound petition is signed by the appellants as well as Rajesh (PW.1), Devanathan (PW.2), Prabhu (PW.3).

6. The perusal of the impugned order and the case record indicates that a day prior to the incident, there was some wordy quarrel between PW.1 (Rajesh) and A2 (Gajapathi) which has brewed into rioting on the next day when PW.1 (Rajesh) was passing through Velavedu Mariamman Koil Street, Poonamallee. It an admitted fact that the accused persons and the injured persons are related to each other.

7. In the above said circumstances, the warring parties have now decided to compound the offence, after being found guilty and convicted. Considering the nature of the offence for which they have been found guilty, this Court permits the appellants 1 to 10 to compound the offence with the victims PW.1 to PW.3 in S.C.No.148 of 2011 on the file of the learned Additional Sessions Judge, F.T.C.No.1, Poonamallee, Chennai in

CrI.A.No.96 of 2012. Accordingly, the Criminal Miscellaneous Petition No.3682 of 2019 filed by the appellants and the injured victims PW.1 to PW.3 is Allowed. Invoking the power under Section 320 (5) Cr.P.C the case is compounded. The Criminal Appeal No.96 of 2012 is accordingly disposed of.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

bsm

To

- 1.The Additional Sessions Judge, F.T.C.I, Poonamalee.
 - 2.The Judicial Magistrate No.2, Poonamalee.
 - 3.The Chief Judicial Magistrate, Thiruvallur.
 - 4.The Government Advocate, (CrI.Side), High Court, Madras.
 5. The Inspector of Police, Vellavedu Police Station, Tiruvellore District.
 6. The Section Officer, Criminal Section, High Court, Madras.
- +2 ccs to Mr.R.Karunakaran, Advocate, S.R.No.22969

Criminal Appeal No.96 of 2012
& CrI.M.P.No.3682 of 2019

EV(CO)
SSM(22/04/2019).
SSM(08/05/2019).

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