

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2019

PRONOUNCED ON : 23.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.613 of 2012

Durairaj

...Petitioner

vs

1.State rep. By
S.H.O Nellikuppam Police Station,
Villupuram District.
(Crime No.746 of 2008).

2.Shanmugam
3.Radhakrishnan
4.Thirunavukkarasu
5.Velmurugan
6.Kumaravel
7.Kandasamy
8.Sundaramurthy
9.Sekar
10.Rajakumar
11.Veeravel
12.Manikandan @ Mohan

...Respondents

Prayer:- This Criminal Revision is filed under Section 397 r/w 401 Cr.P.C., against the order made in S.C.No.222 of 2008 dated 05.07.2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.2, Cuddalore.

For Petitioner : Mr.B.B.Sendhilkumar

For R.1 : Mr.T.Shunmuga Rajeswaran,
Government Advocate (crl.side)

For RR.2 to 12 : Mr.C.Prasanna Venkatesh

ORDER

The respondents 2 to 12 herein are the accused in S.C.No.222/2008 on the file of the learned Additional District and Sessions Judge, Fast Track Court - 2, Cuddalore. Durairaj

(the revision petitioner herein) lodged a complaint to the first respondent Police on 09/08/2005 alleging that there was rival between his family (Govindasamy group) and the respondents 2 to 12 (Shanmugam vagaiyara) regarding the administration of Malaimurugan Temple in their village.

2. On 09/08/2005 when the family members of Govindasamy group went to the temple to offer pongal, the accused persons/respondents 2 to 12 restrained them. On the same day, in continuation of the dispute, at about 6.00 pm, when the petitioner herein along with his father, Rajamanickam and others passing through the South Street of the village, the respondents 2 to 13 herein armed with weapons attacked the father of the petitioner saying that he is the root cause for the dispute, so, he must be done away.

3. The second respondent cut the left hand of Rajamanickam with knife; the third respondent cut his left leg; the fourth respondent cut his left thigh; the 5th respondent cut his left leg; the 6th and 7th respondents cut his left hand and the 9th respondent cut his right hand. When one Rajavelu tried to prevent Rajamanickam getting hurt, Rajavelu was attacked by second respondent with knife on the left hand; the 3rd respondent attacked him with knife on left hand shoulder; the 5th respondent attacked him with knife on left leg; the 6th and 7th respondents attacked him on left hand; the 9th respondent attacked him on his left hand and the 8th respondent attacked him on the left hand fingers.

4. In the same incident, one Murugesan was assaulted with knife by the 5th respondent on his head and the 12th respondent attacked him with wooden log on his left hand. The defacto complainant Durairaj (revision petitioner) was attacked by the 4th respondent with knife on his left side scalp; the 11th respondent attacked him with wooden log on his left collar bone and the 10th respondent attacked him with wooden log on his left shoulder.

5. Based on the complaint preferred by the defacto complainant, the first respondent Police has taken up the investigation and filed final report against the respondents 2 to 12 for offences under sections 147, 148, 323, 324, 325, 326, 307 r/w 149 IPC.

6. Before the trial Court, the prosecution has examined 12 witnesses. 19 exhibits and 8 material objects were marked. Pending trial, one of the accused Senthil kumar (A-2) died. Murugesan one of the injured person also died. PW-1 Durairaj who is the defacto complainant had deposed about the specific overt acts of each of the accused persons causing injuries to him, to his father Rajamanickam (PW-3) and to Murugesan (deceased). He has identified the weapons used by the accused persons for assault.

7. The other injured witnesses Rajamanickam (PW-3) and Rajavelu (PW-9) have deposed about the injuries they sustained and the persons who caused the injuries on them. Whereas, PW-4 Arumugam, who accompanied these injured witnesses to the Temple in the morning and in the evening to talk peace with Shanmugam vagaiyara (the accused party) had deposed corroborating the other prosecution witnesses. He has implicated A-1 for inciting the attack on PWs-1 to 3, PW-9 and Murugesan. The injured persons were taken to the hospital by one Kaliyaperumal who was examined as PW-5. The Doctor who treated the injured persons was examined as PW-10. The wound certificates issued by him pertaining to the injured persons were marked as Exs.P-13 to P-17.

8. The accused persons were arrested and based on their confession statements, material objects were recovered in the presence of independent witness Elanchezian (PW-6). The admissible portion of the confession statements of the accused persons, Radhakrishnan, Kandasamy and Sundaramoorthy are marked as Exs. P-6,7 and 8 respectively. The recovery mahazars are marked as Exs.P-9 to P-11.

9. The trial Court on appreciation of evidence has held that, the prosecution has proved that the accused persons 1 to 12 (A-2 died pending trial) have formed unlawful assembly with common knowledge. A-1, A-3 to A-8 and A-12 were found to be armed with dangerous weapons. With the deadly weapons, they have attacked PWs-1,2,3,9 and one Murugesan. The injuries caused with knowledge and are likely to cause death. They all shared the common knowledge of causing death. Hence, they were found guilty of offence under section 307 r/w 149 IPC.

10. Having held guilty of major offence of attempt to commit murder, the other charges under sections 323, 324, 325 and 326 IPC, the trial court held that the prosecution has failed to prove beyond doubt the specific overt act to attract these offences.

11.The revision is filed by the defacto complainant (PW-1) on the ground that, having found guilty of offence of attempt to commit murder, the trial Court has imposed a flee bite sentence of 3 year Rigorous imprisonment instead of imposing maximum sentence prescribed under the act. The medical evidence and the ocular evidence clearly proves that the accused persons were armed with weapons and attacked the prosecution witnesses who went to have peace talk. The nature of the weapons, place of attack and the premeditation to commit offence not been considered by the trial Court while imposing sentence.

12.The learned counsel for the revision petitioner would submit that, it was a planned murderous attack on PW-3 and others. The previous enmity between the two groups led to deadly attack on PWs-1,2,3,9 and one Murugesan. The said Murugesan lost his speech in the said attack and died later. The accident report of Murugesan marked as Ex P-13 and the deposition of PW-10 - Doctor Senthil Kumar clearly proves that Murugesan sustained fracture in to the attack. Likewise, the injuries sustained by Rajavelu (PW-9) were grievous in nature as per Ex.P-16. The other injured persons were also sustained injuries and treated by PW-10. Therefore, for the proved facts, the sentence imposed on the accused is very less and inadequate.

13.Per contra, the learned counsel for the respondents 2 to 12 would submit that, the trial court has failed to consider the fact that the accused persons were attacked by the prosecution witnesses two days earlier and facing trial. To escape from prosecution, they have come up with a false allegation that the injuries they sustained on 09/08/2005 was due to the alleged assault by the respondents 2 to 12. In fact, the respondents have preferred appeal against the sentence and the same is pending. In so far the injuries found on the witnesses, it is the defence theory that on the date of occurrence, the prosecution parties had fight with one Indirakumari group and sustained injuries. The said Indirakumari was also sustained injuries and admitted in the same hospital at the same time. The trial court has failed to give due consideration about this fact.

14.Heard the learned counsel for both parties and their rival submissions.

15.This Court had the advantage of deciding the appeals and revisions arising from S.C.No.215/2008 on the file of the

learned Additional Sessions Judge, Fast Track Court - 2, Cuddalore, the case against prosecution parties in this case launched by the accused parties. Conveniently referred as Govindasamy vagaiyara and Shanmugam Vagaiyara respectively.

16. It is clear case of in builded rivalry between these two groups under the garb of temple management. This case is fall out of the other case referred above. Rajamanickam (PW-3), who is the father of the revision petitioner is 2nd accused in that case. Rajavelu (PW-9) is the 4th accused in that case. Saravanan (PW-2) is the 5th accused in that case. Veerapandi (PW-8) is the 8th accused in that case.

17. In the said background, the trial court has considered the factors like delayed FIR; embellishments; exaggerations found in the prosecution case; the injuries sustained by the injured witnesses and the weapons used. Since, the prosecution witnesses not able to correlate specific injuries to specific overt acts of an accused and the weapon used, but, could only able to prove that they all shared common object of causing death, had rightly held them all guilty of offence under sections 307 r/w 149 IPC., and sentenced A-1, A-3 to A-8 and A-12 to undergo one year rigorous imprisonment for offence under section 148 IPC; sentenced A-9 to A-11 to undergo 6 months rigorous imprisonment for offence under section 147 IPC; sentenced A-1, A-3 to A-12 to undergo 3 years rigorous imprisonment and fine of Rs.1,000/- each in default 6 months rigorous imprisonment for the offence under sections 307 r/w 149 IPC. The period of substantive sentence ordered to run concurrently. Period of imprisonment already undergone to be set off.

18. The cumulative assessment of fact and act of the accused persons had led to impose the above sentences by the trial Court. There is no undue leniency apparently found in the sentence imposed. It is neither inadequate nor excessive. After lapse of 14 years from the occurrence, the victim and the accused who are hailing from same village should be allowed to suffer the punishment without alteration so as to avoid exhuming their difference. The trial court which had the opportunity of noting the demeanour of the witnesses and the accused who were vice versa in the other case had rendered a well balanced judgment of conviction and sentenced, on proper appreciation. There is no ground to interfere the same.

19.In the result, the Criminal Revision is dismissed and the order passed in S.C.No.222 of 2008 dated 05.07.2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.2, Cuddalore is confirmed. The trial Court is directed to secure the presence of the accused persons to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm

- 1.The Additional District and Sessions Judge,
Fast Track Court No.2,
Cuddalore.
 - 2.The Inspector of Police,
SHO, Nellikuppam Police Station,
Villupuram District.
 - 3.The Public Prosecutor,
High Court, Madras.
 - 4.The Criminal Section,
High Court, Madras.
- +1cc to Mr.B.B.Senthilkumar, Advocate, Sr.NO.39577

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Order made in
Cr1.R.C.No.613 of 2012

KK(CO)
MP(28/05/2019)