



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	15.02.2019
Date of Judgment	25.04.2019

CORAM

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.A. (MD) No.468 of 2016**

- 1.B.Muthuvel
- 2.Ilamparithi
- 3.Preethip
- 4.Kumar
- 5.Senthilmurugan
- 6.Ramesh
- 7.Suresh
- 8.Subbiah
- 9.Vignesh
- 10.Kamaraj
- 11.Suresh

: Appellants/Accused

Vs.

The State rep by
The Deputy Superintendent of Police,
Thiruvadanai Sub Division,
Ramanathapuram District.
(Crime No.146/2012 S.P.Pattinam
Police Station)

: Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment made in S.S.C No.47 of 2014, dated 14.11.2016 on the file of the Principal Sessions Judge, Ramanathapuram.

For Appellants : Mr.K.Gopinath &
Mr.S.Subbiah, Senior Counsel
for Mrs.P.Jessi Jeeva Priya

For Respondent : Mr.A.Robinson,
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Appeal is directed against judgment made in S.S.C No.47 of 2014, dated 14.11.2016 on the file of the Principle Sessions Judge, Ramanathapuram.



2. According to the prosecution, on 13.11.2012, the accused persons standing in front of Pidari Koil at N.Mangalam Village in Thiruvadanai Taluk and beaten the de-facto complainant and used filthy language against their community. The Deputy Superintendent of Police attached to Thiruvadanai Sub-Division, Ramanathapuram District, has filed a final report against the accused examining the witnesses.

3. In the trial court, 12 witnesses were examined and 9 Exhibits were marked. When the accused was questioned about the incriminating circumstances, they denied the same. On the side of the accused, no witness was examined and no document was marked. The trial court convicted the accused and sentenced them to undergo 6 months RI and to pay a fine of Rs.1,000/-, in default to undergo 3 months SI for the offence under Section 148 IPC; under Section 294(b) IPC to pay a fine of Rs.500/- each, in default to undergo 3 months of SI; for the offence under Section 323 IPC to undergo 3 month RI each and to pay Rs.1,000/-, in default to undergo 3 months imprisonment; under Section 341 IPC to pay Rs.500/- as fine, in default to undergo 1 week SI; for the offence under Section 506(ii) IPC to undergo 6 months RI and to pay a fine of Rs.1,000/-, in default to undergo 3 months SI and under Section 3(1)(X) of SC/ST Act to undergo 1 year RI and to pay a fine Rs.1,000/-, in default to undergo 3 months of imprisonment and in addition to the above, with respect to A5, 6, 7 and 10 also punished under Section 355 IPC and sentenced them to undergo 3 months imprisonment and to pay Rs.1,000/- in default to undergo 1 week imprisonment. Aggrieved by the judgment passed by the trial court, the appellants/accused are before this court.

4. The learned counsel for the appellants submitted that in this case earliest typewritten complaint given by the complainant/PW1 was not placed before the Court, which was admitted by PW7 in the cross examination; that the signature of the complainant/PW1 was not found in Ex.P5, which was admitted by PW7 in the cross examination; that the evidence of the complainant/PW1 that he lodged complaint by 8.30 pm on the alleged date of occurrence that is on 19.04.2011 and got receipt for giving the complaint and FIR was registered on the same date, but Ex.P5 bears the date 20.04.2011 and on that score, the Sessions Court ought to have come to the conclusion that the entire case of the prosecution is false and benefit of doubt ought to have been given in favour of the accused and acquitted them instead of convicting them and that in this case, PW1 in his evidence stated that the investigation was done on 19.04.2011 itself and PW1 was enquired into and got his signature, which was contradicted by the Investigating Officer PW7; that there was a delay of 5 days in sending the FIR to the concerned Court and the delay is not properly explained by the prosecution; that the prosecution has suppressed the material fact of photographs of the alleged damage of the property, which was taken by the Investigating Officer and PW6 Engineer has not



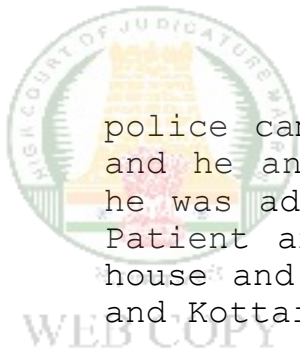
produced the work sheet along with Ex.P4 and not mentioned the extent of the alleged damage caused to the property and that the trial court failed to note that the material object seized under Mahazar (MO1) before the court is glass particles and not the property alleged to be the concrete structure and in this case, there is no documentary evidence to prove that PW1 to PW3 are working in CSI Trust and PW4 is the Auto driver having Auto Stand at Super Bazaar and PW5 doing business at Super Bazaar and in the rough sketch also, the prosecution has not mentioned the Auto Stand and the business place of PW5 and there is no clear evidence as to how the property alleged is damaged by the accused. In view of the above circumstance, the appellants are entitled to acquittal.

5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that trial court appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offences, convicted the appellants and passed proper sentence, which do not require any interference by this court and prays that the criminal appeal has to be dismissed.

6. Heard both sides and perused the materials available on record.

7. The first contention raised on the side of the appellants/accused is that in the complaint, there is no averment to the effect that due to previous enmity or reason, the accused attacked the de-facto complainant and the complainant narrated that the accused herein had voluntarily attacked the de-facto complainant and hence, it creates doubt about the prosecution case and prays that the accused are entitled to acquittal.

8. PW1 in his complaint and evidence stated that he came to his native place to celebrate Diwali and on 13.11.2012, after finishing his breakfast, he and his Uncle's son Mahalingam proceeded to the town in his bike and when they reached Pidari Kovil, all the accused restrained them and said that 'ஏண்டா பறப்பயலே எங்களுக்கு முன்னாடி வெள்ளை வேஸ்டி வெள்ளை சட்டை போட்டு நெஞ்சை நிமிர்த்து போகிறீர்களா' and assaulted with chappal, stick and stone and asked them to drag their vehicle and when he attempted to start his vehicle, at that time, the accused stated that 'பறத்தாயோலி இவ்வளவு சொல்லியும் கேட்காமல் வண்டியை ஸ்டார்ட் செய்கிறாயா' and abused and then, begun to attacked them. Then, he and Mahalingam went to his house and narrated the alleged occurrence to his parents, brother and uncle and his parent, uncle and his brother went and asked the accused why they attacked PW1 and Mahalingam and further, the accused stated that 'ஆளை கூட்டிவருகிறீர்களா என்று சொல்லி' and they assaulted him with chappal, stick and stone and further, when it was questioned by his brother, the accused attacked him and then, PW1 went to his house and when he attempted to give the complaint to the police, the accused spread thorn in the place so as to prevent them to reach the police station and at that time, one



police came and remove the thorn and asked them to go to hospital and he and Mahalingam went to Tiruvadanai Government Hospital and he was admitted in the hospital and Mahalingam was treated as Out Patient and in the next morning, he went to his uncle Kottaisamy house and complained about the occurrence to his uncle Kottaisamy and Kottaisamy went to the police station and gave the complaint.

9.PW1 either in his compliant or in his evidence, stated that there was previous enmity between him and the accused and due to it, the accused attacked him. There was no explanation given by PW1, why without any reason, all the accused attacked him and his brother. Further PW1 has not stated that the accused had the habit of assaulting the public in their village. Hence, the complaint given by PW1 creates doubt. Therefore, this court is of the considered view that no motive is proved on the side of the prosecution.

10.The next contention raised by the appellants is that there was an inordinate delay in registering the case and no proper explanation was given on the prosecution side for the delay in registering the case and hence, the delay in registering the case is fatal to the prosecution case.

11.In this case, as per the prosecution version, the occurrence took place on 13.11.2012. PW1, during his evidence stated that on the date of the occurrence, he attempted to go to the police station, but the accused restrained them by way of putting thorn in the road and one police came and removed the thorn and asked him and Mahalingam to go to hospital for treatment and then he and Mahalingam went to Government Hospital, Thiruvadanai and in the next day, PW1 went to the police station along with his uncle Kottaisamy and through his Uncle Kottaisamy gave the complaint to the police station on 14.11.2012.

12.In this case, the Sub Inspector of Police, who registered the case was examined as PW7. The PW7 deposed that on 14.11.2012, he received the complaint through Kottaisamy, which was given by PW1 and registered the case only on 05.12.2012.

13.On perusal of Ex.P4 F.I.R., there was no endorsement to the effect that whether the complaint was given directly or through post. Further, there was no endorsement in the complaint that it was brought by Kottaisamy at the request of PW1.

14.In this case, the offence under Section 3(1)(X) of SC/ST (POA) Act, is grave in nature. But, PW7 has not chosen to register the case immediately. Further, PW7 has treated the complaint as petition and further, PW7 treated the complaint as petition and conducted the enquiry. As per the version of PW1, at the direction of police, who came to the place of occurrence on 13.11.2012, he went to the Government Hospital, Tiruvadani for treatment. But, no intimation was sent from Tiruvadanai Government Hospital to S.P.



Pattinam police station. It is admitted that at the time of giving the complaint, PW7 has not received any intimation from Tiruvadanai Government Hospital.

15. At this juncture, it is necessary to refer the cross examination of PW5. PW5 deposed during his cross examination that 'என்னை டி.எஸ்.பி. விசாரித்தார்கள் என்றும், 05.12.2012 அன்று காலை 11 மணி அளவில் நானும் எங்கள் ஊரை சேர்ந்த கணபதி மகன் முத்துகுமாரும் பிராரி கோவில் அருகே நின்று கொண்டிருந்த போது திருவடனை டி.எஸ்.பி. சம்பவ இடத்தை பார்வையிட்டு பார்வை மகஜர் தயாரித்தார் என்றும், அதில் நானும் முத்துகுமாரும் கையெழுத்து செய்தோம் என்றும் சொன்னால் சரியல்ல. எதிரிகளுக்கு பயந்து கொண்டு பொய்யாக சாட்சி சொல்கிறேன் என்றால் சரியல்ல'.

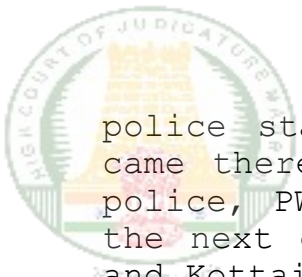
16. In this case, PW7 the Sub Inspector of Police, during his cross examination stated that the case comes under Section SC/ST (POA) Act and he registered the case only after attaining permission from his superior officer. But to prove it, no document was filed on the side of the prosecution.

17. In this case, the Investigating Officer was examined as PW12. PW12 stated that he gave a complaint to the police through his uncle Kottaisamy. But, PW12 during cross examination stated that he came to understand that the complaint was given by PW1 directly. In this case, in the charge sheet, it is stated that it was filed on 09.12.2012. But, the Public Prosecutor gave his opinion only on 10.12.2012. Further PW12 examined the witnesses Paneerselvam (Doctor) and the Special Sub-Inspector of Police on 20.12.2012. It is to be noted that only after completing the examination of the witnesses, the Public Prosecutor gave the opinion to file the charge sheet. Hence, there are discrepancies found in the charge sheet.

18. Further, PW12 during his cross examination admitted that for the occurrence, even though the complaint was given by PW1 on 14.11.2012, he registered the case only 05.12.2012. No explanation was given by PW12 for the delay in registering the case. Hence, the delay in registering the case is fatal to the prosecution.

19. Further, the learned counsel for the appellants/accused submitted that there are contradictions in the evidence of PW1 to PW4 and they have not stated the real dispute. Hence, the accused are entitled to acquittal.

20. In this case, PW1 in his evidence stated that on 13.11.2012, he and his uncle's son Mahalingam proceeded to town and when they reached Pidari Kovil, 15 accused restrained them and called their caste name and assaulted them with chappal, stick and stone and then, they went to their house and inform the above occurrence to the parents of PW1 and the relatives of PW1 and his parents and relative came and questioned the occurrence to the accused. PW1 stated that the accused with stone, chappal and stick assaulted them and when, it was questioned by his brother, the accused assaulted him also and when they attempted to go to the



police station, the accused spread thorn on the road and police came there and removed the thorn and as per the direction of the police, PW1 alone with one Mahalingam went to the hospital and in the next day, PW1 gave the complaint through his uncle Kottaisamy and Kottaisamy submitted the complaint in the police station.

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21. PW2 is the brother of PW1. PW2 deposed that after hearing the occurrence narrated by PW1, he and his parents went to the place of occurrence and when they questioned about the occurrence, the accused assaulted him and his brother, by chappal, stick and stone and when they attempted to proceed their home, the accused threatened them. But, it was not stated by PW1 during his evidence.

22. PW3 is the Uncle of PW1. PW3 deposed that PW1 and Mahalingam came to their house and narrated the occurrence and when he and the parents of PW1 proceeded to the place of occurrence and when they questioned about the occurrence, the accused assaulted PW1 and PW2. PW3 has not stated during his evidence that by which weapon, they assaulted PW1 and PW2.

23. PW4 is the person, who accompanied along with PW1. PW4 during his evidence stated that when he and PW1 proceeded in the bike of PW1 and when they reached Pidari Kovil, the accused came and restrained them and assaulted him and PW1. But, the above fact was not spoken by PW1 during his evidence.

24. PW5 and PW6 are the mahazar witnesses, but they turned hostile and did not support the prosecution case.

25. The Doctor, who gave treatment to PW1 was examined as PW9. PW9 stated that PW1 told him that on 13.11.2012 at 3.00 p.m, he was assaulted by two known persons and he found 5 cm abrasion near right ear and 5 x 5 cm abrasion in right knee. PW1 either in his complaint or his evidence has stated that the accused caused injuries on his left ear, left knee. Further, PW1 during his evidence stated that at the time of occurrence, 15 accused were present and he told to the Doctor PW9 that he was assaulted by two person. Hence, PW1 evidence is not corroborated the evidence of PW9. On careful perusal of the evidence of PW1 to 4, there was no evidence for intentional insult or intimidation of PW1 by the accused.

26. For all the reasons stated above, this court is of the considered view that the prosecution has failed to prove the case beyond reasonable doubt. Hence, the judgment of the trial court is liable to be set aside and accordingly, it is set aside.



27. In the result, the Criminal Appeal is **allowed**. The impugned judgment of conviction and sentence are set aside. The appellants/Accused are acquitted of the charges levelled against them. The bail bond, if any executed by them shall stand cancelled and the fine amount if any paid by them shall be refunded to them.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Principle Sessions Judge,
Ramanathapuram.
2. The Deputy Superintendent of Police,
Thiruvadanai Sub Division,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.P.JESSI JEEVA PRIYA, Advocate Sr. No. 62778

Judgment made in
Crl.A. (MD) No. 468 of 2016
25.04.2019

KMV (CO)

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