



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	17.02.2020
Date of Judgment	19.06.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.A(MD)No.26 of 2015**

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Arjunan (died) : Appellant/Victim/De-facto complainant
A.Mohan
(Substituted as per the
order, dated 17.02.2020)

Vs.

1.Kandasamy
2.Panneer Selvam
3.Sivakumar
4.Thirunavukkarasu
5.Karthick
6.Saravanan
7.Revathi
8.State represented by the Inspector of Police,
Jeeyapuram,
Vaathalai Police Station
(Crime No.210 of 2005) : Respondents/A1 to A7

Prayer: Criminal Appeal filed under section 372 of the Criminal Procedure Code, against the order passed in SC No.244 of 2007 by the III Additional District Judge, Trichirappalli, dated 21.03.2014.

For Appellant : Mr.A.P.Muthupandian
For R1 to R4, R7 : Mr.T.Senthil Kumar
For 5th Respondent : Mr.P.T.Ramesh Raja
For 6th Respondent : Mr.R.Pon Karthikeyan
For 8th Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the order passed in SC No.244 of 2007 by the III Additional District Judge, Trichirappalli, dated 21.03.2014.

2.The case of the prosecution is that on 20.08.2005 at about 6.00 pm, near Amur Periyar Street, while the de-facto complainant along with other witnesses Rajendran, Kathirvel were talking, the 1st



accused came there and enquired about the gravel stones, which were heaped near the temple for construction work and when the de-facto complainant questioned, the accused 1 to 4 with aruval and A5 to A7 unlawfully assembled in the occurrence place and attacked the de-facto complainant and also caused danger to the witnesses. The Inspector of Police attached to Jeeyapuram, Vathalai Police Station has filed a final report against the accused persons examining the witnesses.

3.The trial court after careful perusal of the entire materials available on record, acquitted the accused persons from the charges levelled against them. Aggrieved by the judgment of the trial court, the de-facto complainant as appellant is before this court.

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

5.The main contention raised on the side of the appellant/de-facto complainant is that the evidence of the prosecution witnesses, which is cogent and trustworthy with regard to manner of occurrence and overtacts played by the respondents/accused against them and the evidence of the injured witnesses materially corroborated with the medical evidence and the evidence of the injured witnesses is legally sufficient to mulct the accused for the charges made against them by the prosecution and the evidence of the injured witnesses with regard to active unlawful assembly of all the accused was not considered by the trial court and prays for allowing the criminal appeal.

6.PW1 to PW10 are the injured. PW1 gave Ex.P1 complaint in respect of the occurrence. PW1 in his complaint stated that on 20.08.2005 at 6.00 pm, when he, Kathirvel, Rajendran talking near to his house, at that time, all the accused came and asked who took away the gravel stones and for that, he said “நீ யார் கேட்பதற்கு” and then, the accused Sivakumar with aruval caused injury on the right hand of Rajendran and the accused Paneer Selvam with aruval caused injury on his back side left shoulder and the accused Thirunavukarasu caused injury on his left hand and the accused Karthick get the aruval from the accused Kandasamy and caused injury on his left wrist and the accused Saravanan and Revathi said “இவங்களை கொல்லுங்கடா” and when he and other injured fell down, the accused ran way and then, he gave this complaint to the police. But PW1 during his evidence stated that on 20.08.2005 at 6.00 that he, Kathirvel and Rajendran were talking in Periyar Street, at that time the accused Panneer Selvam, Sivakumar and Thirunavukarau came with aruval and asked who took away the gravel stones and for that, he replied “நீ யார் கேட்பதற்கு” and then, all the accused used filthy language and all the above three persons with aruval caused injury on his left shoulder, left leg and when it was resisted by Rajendran, it caused injury on his right hand and the accused Kandasamy assaulted Kathirvel and the accused Panneer Selvam caused injury on the wrist of Kathirvel and the accused Panneer Selvam's

wife Revathi and Saravanan said “இவர்களை வெட்டி கொல்லுங்கடா” and then, all the accused ran away. PW1 in his complaint stated that all the accused came and assaulted the injured. Hence, the evidence of PW1 is not corroborated with the contents found in Ex.P1.

7.PW2 and PW3 are the injured. PW2 deposed that on the date of the occurrence he, PW1 and Rajendran were talking near the house of PW1, at that time, the accused Kandasamy, Panneer Selvam, Sivakumar and Tirunavukarasu came with aruval and the accused Kandasamy said that who took away the gravel stones and for that, Panneer Selvam said “நீ யார் கேட்பது” and then, the accused Panneer Selvam with aruval caused injury on PW1's left shoulder, the accused Thirunavukarasu caused injury on the left of PW1 and when, he attempted to restrain the accused Karthick caused injury on his left wrist and the accused Panneer Selvam caused injury on his left forearm. PW1 in his complaint stated that all the accused caused the injuries. PW2 in his evidence stated that only four accused came at first and assaulted him and PW1. There are contradictions in the evidence of PW1 and PW2.

8.PW3 deposed that on the date of the occurrence, when he, PW1 and PW2 were talking near PW1's house, all the accused came and the accused Kandasamy, Panneer Selvam, Sivakumar had aruval in their hands and they asked PW1 who took away the gravel stones and for that, he replied that it is public gravel stones and then, the accused Panneer Selvam caused injury on the left shoulder of PW1, the accused Thirunavukarasu caused injury on the left leg of PW1 and when, he tried to resist, the accused Sivakumar caused injury on his hand and the accused Karthick caused injury on the wrist and Revathi and Saravanan threatened them. But during his evidence stated at first the accused Panneer Selvam, Sivakumar, Thirunavukarasu came and assaulted him and Rajendran and then, the accused Kathirvel came and assaulted Kathirvel. On careful perusal of the evidence of PW1 and PW3, there are lot of contradictions.

9.PW4 and PW5 are cited as eye witnesses. PW4 turned hostile and did not support the case of the prosecution. PW5 is the wife of PW1. PW5 deposed that on the date of the occurrence, seven accused came and the accused Panneer Selvam assaulted PW1 and caused injury on the left hand and the accused Thirunavukarasu caused injury on her left leg and when she resisted it, the accused Sivakumar caused injury on the hand of Rajendran and when it was questioned by Kathirvel, Karthick, Kandasany, caused injury on his neck and Karthick caused injury on his wrist. But the above was not spoken by PW1. On careful perusal of the evidence of PW1 to PW5, there are lot of contradictions.

10.The Doctor, who gave treatment to PW1 to PW3 and the Doctor who served on him was examined as PW8. PW8 deposed that when the Doctor Mohana Bhaskar was on duty, PW1 to PW3 came and he found the following injuries on the body of PW1 to PW3:-



PW1 (Arjunan) : (i) A lacerated injury measuring 10 x 5 x 1 cm on the left shoulder and left fracture.

PW2 (Kathirvel) : (i) cut incised wound measuring 12 x 6 x 5 x 6 x 10 cm on the back of the neck:

(ii) cut injury on the left wrist measuring 6 x 3 x 3 cm and

PW3 (Rajendran) : (i) a cut injury 10 x 5 x 10 cm seen on the back of left hand.

11. The Doctor, who gave treatment, found lacerated injury on the back side of left shoulder and right leg of PW1. PW1 in his complaint stated that the accused Tirunavukarasu caused injury on his right leg. The Doctor, who gave treatment to PW1 has not found any injury on the right leg of PW1 and the above Doctor only found the injury on the left leg of PW1. The Doctor, who gave treatment to PW1 found injuries on the back side of the neck and left wrist. PW1 in his complaint stated that the accused Kandasamy with aruval caused injury on the neck of PW2. But PW1 during his evidence stated that the accused Kandasamy assaulted PW2. But he has not specifically stated in which part of the body, the accused Kandasamy caused injury. PW2 deposed that the accused Kandasamy caused injury on the neck, the accused Karthick caused injury on the left wrist and the accused Panneer Selvam caused injury on the left forearm and the accused Thirunavukarasu assaulted on the right hand. The Doctor, who gave treatment to PW2 has not found any injury on the right hand and left forearm of PW2. The Doctor, who gave treatment to PW3 found injuries on the back of right hand. PW1 in his complaint stated that the accused Sivakumar caused injury on the right hand of PW3. PW2 has not stated that PW3 was assaulted by the accused. PW3 deposed that the accused Sivakumar assaulted on his head. He has not stated that the accused Sivakumar, in which part he caused injury. PW1 to PW3 told the Doctor, who gave treatment that they were assaulted by several persons with shovel, iron bar, aruval. But PW1 in his complaint and PW1 to PW3 during their evidence have not stated that they were assaulted with shovel and iron bar. PW1 to PW3 stated that they were assaulted by four persons. But they told the Doctor, who gave treatment that they were assaulted by seven persons. Hence, on perusal of the evidence of PW1 to PW3 and PW8, the oral evidence of PW1 to PW3 is not corroborated with the evidence of PW8. Hence the argument put forth on the side of the appellant stating that the oral evidence of PW1 to PW3 is corroborated with the evidence of PW8 is not at all acceptable.

12. Further, there are lot of contradictions in the evidence of PW1 to PW3 and PW5 in respect of the occurrence. Hence, it is held that the evidence of PW1 to PW3 and PW5 is not cogent, trustworthy and reliable. The trial court, after proper appreciation of the entire materials available on record, had



correctly given a finding, which requires no interference of this court.

13. In the result, this criminal appeal fails and the same is **dismissed.**

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Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To,

1. The III Additional District Judge,
Tiruchirappalli
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Inspector of Police,
Jeeyapuram,
Vaathalai Police Station

Cr1.A. (MD) No.26 of 2015
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VB (18.08.2020) 5P 4C