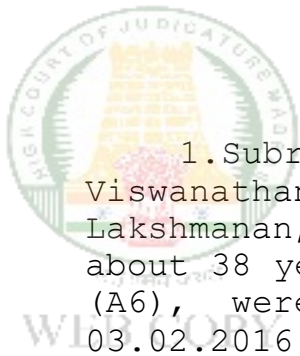




BAIL SLIP

1. Subramani, S/o. Lashmanan, aged about 34 years, (A2), 2) Viswanathan, S/o. Raja, aged About 23 years, (A3), 3) Arumugam, S/o. Lakshmanan, aged about 35 years, (A4), 4) Sambooranam, W/o. Raja, aged about 38 years, (A5), and 5) Anjali, W/o. Raja, aged about 36 years, (A6), were released on Bail Vide order of this Court dated 03.02.2016 in M.P. (MD). No. 1 of 2015 in CRL.A (MD). No. 360 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.10.2020

Pronounced on : 06.11.2020

CORAM

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

Crl.A. (MD) No. 360 of 2015

1. Subramani

2. Viswanathan

3. Arumugam

4. Samboornam

5. Anjalai

.. Appellants

v.

State rep. by
The Inspector of Police,
Pasupathipalayam Circle,
Karur District.
Cr.No.16 of 2014

.. Respondent

PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records in connection with the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Karur, in S.C.No.74 of 2014, dated 29.10.2015, and quash the same.

For Appellants : Mr.V.Kathirvelu,

Senior Counsel

for Mr.P.Murugesan

For Respondent : Mr.A.Robinson,

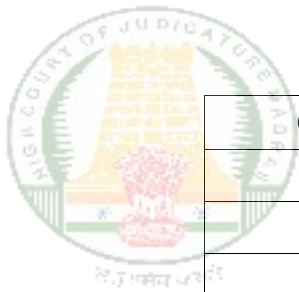
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal is filed by the appellants / accused nos. 2 to 5 as against the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Court, Karur, in S.C.No.74 of 2014, dated 29.10.2015.

2. The accused persons were tried before the trial Court as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



Charge	Accused	Section of Law
I	A4 to A6	147 IPC
II	A1 to A3	148 IPC
III	A1 to A6	448 IPC
IV	A4	323 IPC
V	A1 to A3, A5 & A6	323 r/w 149 IPC
VI	A5 & A6	325 IPC
VII	A1 to A4	325 r/w 149 IPC
VIII	A1	326 IPC
IX	A2 to A6	326 r/w 149 IPC
X	A1 & A2	307 IPC
XI	A3 to A6	307 r/w 149 IPC
XII	A2 & A3	341 IPC
XIII	A1, A4 to A6	341 r/w 149 IPC

Pending trial, the first accused died and therefore, the charge as against the first accused was abated.

3. The trial Court, in conclusion of the trial, found the appellants / accused nos.2 to 6 guilty, convicted and sentenced them as follows:

Section of Law	Accused	Punishment
-	A1	Charge abated.
148 IPC	A2 & A3	To undergo simple imprisonment for two years.
147 IPC	A4 to A6	To undergo simple imprisonment for one year.
448 IPC	A2 to A6	To undergo simple imprisonment for one year.
323 r/w 149 IPC	A2, A3, A5 & A6	To undergo simple imprisonment for six months.
323 IPC	A4	To undergo simple imprisonment for six months.
325 r/w 149 IPC	A2 to A4	To undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/-, each, i/d to undergo simple imprisonment for three months.



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325 IPC	A5 & A6	To undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/-, each, i/d to undergo simple imprisonment for three months.
326 r/w 149 IPC	A2 to A6	To undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/-, each, i/d to undergo simple imprisonment for three months.
307 IPC	A2	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.1000/-, i/d to undergo simple imprisonment for three months.
307 r/w 149 IPC	A3 to A6	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.1000/-, each, i/d to undergo simple imprisonment for three months.

Insofar as the remaining charges are concerned, the accused persons were acquitted. The sentence were ordered to run concurrently. Aggrieved over the conviction and sentence, the appellants / accused nos.2 to 6 have preferred the instant appeal.

4. The brief facts of the case, in a nutshell, are as follows:

4.1. The defacto complainant, Dhanalakshmi [PW1] is the sister of one Ramasamy [PW2]. PW2 got married with the daughter of the first accused, namely, Deepa, in the year 2012 and within nine months from the date of marriage, the said Deepa committed suicide, by self immolation. In this regard, the first accused developed motive as against PW2 and his family. After the demise of Deepa, PW2 left Jegathabi village for Tirupur and started working in a textile company. On 13.01.2014, PW2 returned to Jegathabi village for the purpose of Pongal festival. On 15.01.2014, at about 08.00 pm, when PWs.1 to 4 and one Maruthayee were chatting in front of PW1's house, the accused persons came there and abused them. During that quarrel, the third accused took an Aruval and threatened the prosecution party and the second accused received the Aruval from the third accused and attacked PW2 in his left shoulder. The first accused, thereafter, received the weapon from the second accused and attacked PW2 in both his hands and at that time, the second accused caught hold of PW2. When PW3 attempted to prevent the attack, PW1 attacked her in her right hand fingers, with the weapon.

4.2. When PW1 attempted to prevent the attack, the fourth accused pushed her to the Wall and in that incident, she sustained injuries in her forehead and right hand thumb. The fifth and sixth accused, with a wooden log, attacked PW4 and in that incident, PW4



sustained injuries in her hands and legs. When the witness, Maruthayee and the husband of PW1 attempted to intervene, they were also assaulted. On hearing the hue and cry raised by the prosecution party, the villagers came to their rescue and on seeing them, the accused persons fled away from the place of occurrence.

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4.3. The villagers have arranged for an '108' Ambulance and the injured prosecution witnesses, namely, PWs.1 to 4 were admitted in G.C.Hospital, Karur, as in-patients. Dr.C.Jayaraman [PW9] attended PWs.1 to 4 and according to him, they were brought in a '108' Ambulance, on 15.01.2014, around 09.00 pm and they have informed him that on the same day, around 08.00 pm, they were attacked by known persons, with weapons. He has also intimated the same to the jurisdictional police vide report in Ex.P2.

4.4. The Doctor [PW9] has treated Ramasamy [PW2] and noted down the following injuries:

i) cut injury over the left clavicle region - 3 x 3 cm bone deep.

ii) cut injury over the right cubital fossa measuring approximately 10 x 10 cm bone deep exposing soft tissues and bones, bleeding, brachial artery injury.

iii) cut injury over the left forearm middle third dorsal aspect roughly measuring 7 x 6 cm bone deep exposing fracture bones, contamination, distal vascularity.

iv) compound comminuted fracture radius over the left side.

v) extensa tendon injury in the wrist drop left hand.

According to the Doctor, of the above 5 injuries, injury nos.2, 4 & 5 are grievous in nature. The Accident Register and Wound Certificate issued by the Doctor [PW9] to Ramasamy [PW2] are marked as Ex.P3 and Ex.P4, respectively.

4.5. The Doctor [PW9] has treated Dhanalakshmi [PW1] and has noted down the following injuries:

i) punctured wound over left fronto temporal region.

ii) abrasion over right big toe - dorsal aspect 1 x 1 cm.

iii) contusion right frontal region.

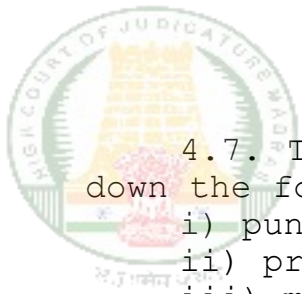
According to the Doctor [PW9], all these three injuries are simple in nature. The Accident Register and the Wound Certificate issued by him to PW2 are marked as Ex.P5 & Ex.P6, respectively.

4.6. The Doctor [PW9] has treated Anjalai [PW3] and has noted down the following injuries:

i) cut injury at DP x level - right index finger - loss of tip and bleeding.

ii) cut injury over the 3rd finger exposing metacarpal head - right hand.

According to the Doctor [PW9], of the two injuries, the first injury is grievous in nature. The Accident Register and the Wound Certificate issued by him to PW3 are marked as Ex.P7 & Ex.P8,



4.7. The Doctor [PW9] has treated Vasantha [PW4] and has noted down the following injuries:

- i) punctured wound - left hand - dorsal aspect.
- ii) proximal phalanx fracture - left ring finger.
- iii) metacarpal fracture - left middle finger.
- iv) abrasion over left foot on the lateral aspect - 3 x 3 cm, bleeding.

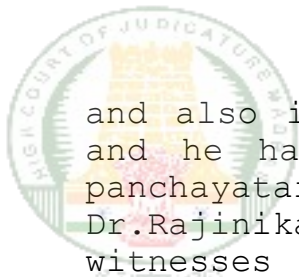
According to the Doctor [PW9], of these four injuries, injury nos. 2 & 3 are grievous in nature. The Accident Register and the Wound Certificate issued by him to PW4 are marked as Ex.P9 & Ex.P10, respectively.

4.8. On receipt of information from the Hospital, the Sub-Inspector of Police, Velliyanai Police Station [PW11] reached the Hospital around 10.00 pm, enquired PW1, obtained her statement in Ex.P1, returned to the police station and registered the case in Crime No.16 of 2014, as against the accused, for the offence under Sections 147, 148, 324 & 307 IPC, around 11.30 pm. He has also forwarded the printed FIR [Ex.P15] to the concerned Magistrate as well as to the higher officials.

4.9. The Inspector of Police [PW12], on receipt of intimation as to the registration of the case, proceeded to the place of occurrence on 16.01.2014 at about 01.45 pm in the small hours, prepared the observation mahazar [Ex.P11] and the rough sketch [Ex.P16], in the presence of PW10 and another. The Investigation Officer [PW12] recovered earth with and without blood in MOs.3 & 4, respectively; the bloodstained lungi [MO5] of PW2; and two pieces of roof tiles with blood [MO6], under a cover of mahazar.

4.10. She arrested the accused nos.1 to 5 on 16.01.2014, around 08.45 am and recorded the confession statement of the first accused in the presence of the Village Administrative Officer [PW10] and another. The admissible portion of the confession statement is marked as Ex.P13 and pursuant to the confession statement, the investigation officer has recovered the Weapons - Aruval [MO1] and Wooden Log [MO2] as well as the shirt [MO7] of the first accused, under a cover of mahazar in Ex.P14. She had also arrested the sixth accused on 16.02.2014, around 07.30 am, in Jegathabi Bus Stop. The investigation officer [PW12], in conclusion of the investigation, has filed the alteration report [Ex.P17] and thereafter, filed the final report as against the accused persons.

5. In support of the prosecution evidence, as many as twelve witnesses were examined and seventeen documents were marked, besides seven material objects. PW1, Dhanalakshmi, is the injured eye witness and she speaks about the lodging of the complaint [Ex.P1]. PW2, Ramasamy, is the injured eye witness and husband of the deceased Deepa, who is the daughter of the first accused. PW3, Anjali, is the sister and PW4, Vasantha, is the mother of PWs.1 & 2



and also injured witnesses. PW5, Saravanan, is the husband of PW1 and he has witnessed PW2 with bloodstains. PWs.6 to 8 are the panchayatars and are treated as hostile witnesses. PW9, Dr.Rajinikanth, is the Doctor, who treated the injured prosecution witnesses and issued the Accident Registers as well as Wound Certificates in Ex.P2 to Ex.P10. PW10, Tmt.Mangaiyarkarasi, is the Village Administrative Officer, who speaks about the arrest of the accused persons and the recovery of material objects. PW11, Tmt.Ananthi, is the then Sub-Inspector of Police, who recorded the statement from PW1 in Ex.P1 and registered the case in Ex.P15. PW12, Tmt.Arulmozhi Arasu, is the then Inspector of Police, who conducted the investigation and filed the final report in this case.

6. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C. The accused, though stated that there are evidence in support of their case, neither examined any witnesses nor produced any documents. The trial Court, in conclusion of the trial, found the appellants / accused guilty, convicted and sentenced them, as stated supra.

7. Heard Mr.V.Kathirvelu, learned Senior Counsel for Mr.P.Murugesan, learned Counsel for the appellants / accused nos.2 to 6 and Mr.A.Robinson, learned Government Advocate (Crl. Side) for the respondent / State.

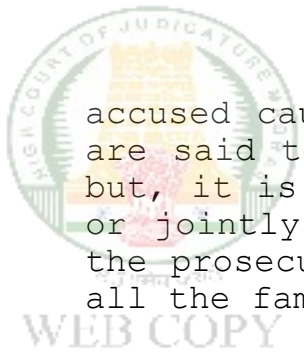
8. The learned Senior Counsel appearing for the appellants / accused nos.2 to 6 made his submissions as follows:

8.1. Admittedly, the first accused's daughter, namely, Deepa and Ramasamy [PW2] got married and within nine months of marriage, the said Deepa committed suicide. But the first accused has not reported as against the prosecution parties in this regard and in fact, he himself requested the prosecution parties to cremate the body. After the demise of Deepa, the Sridhana articles were also returned in the presence of the panchayatars.

8.2. Even according to the prosecution case, Ramasamy [PW2] returned to the village on 13.01.2014 and there was no untoward incident till 15.01.2014 and the occurrence took place only on 15.01.2014, in the night hours. Therefore, the motive projected by the prosecution is false.

8.3. According to the prosecution, PWs.2 & 3 sustained grievous injuries and this overtact has been attributed to the first accused, who is no more. But, since the first accused is no more, with the help of Section 149 IPC, this act has been shifted to other accused.

8.4. The case of the prosecution is that the second accused received the Aruval [MO1] from the third accused and assaulted Ramasamy [PW2] on his left shoulder with the weapon. Thereafter, the first accused received the Aruval [MO1] from the second accused, assaulted PW2 on his hands and at that time, the second and third



accused caught hold of PW2. Similarly, the fifth and sixth accused are said to have assaulted Vasantha [PW4] with a Wooden log [MO2], but, it is not known whether each one is having separate Wooden log or jointly assaulted with a single Wooden log. This allegation of the prosecution itself is highly artificial and in order to rope-in all the family members, a false case has been foisted.

8.5. The Doctor [PW9], who treated the injured witnesses, is a private Doctor and he has not referred the injured to the Government Hospital after giving first aid. That apart, in the Wound Certificates and Accident Registers [Ex.P3 to Ex.P10], the time of attending the injured and issuance of the Certificates are one and the same. The investigation officer has failed to collect the case sheets of each injured witnesses and though six accused were implicated as accused, only two weapons were recovered.

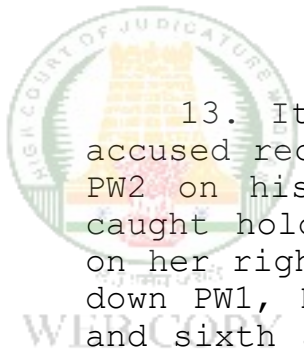
Therefore, the learned Senior Counsel prays for interference.

9. Per contra, Mr.A.Robinson, learned Government Advocate (Crl. Side) made his submissions based on the prosecution evidence and would submit that the prosecution had clearly established the guilt against the accused. Therefore, the conviction and sentence imposed by the trial Court on the accused does not require any interference.

10. This Court has paid it's anxious consideration to the rival submissions and also the materials placed on record.

11. The accused and the prosecution witnesses are close relatives and are also residents of same village. PW2, Ramasamy, married the daughter of the first accused, namely, Deepa and they lived happily for nine months. But, the said Deepa has committed suicide in the matrimonial home, within nine months from the date of their marriage. In this regard, the first accused wanted to lodge a complaint as against his son-in-law, Ramasamy [PW2] and his parents, for the unnatural death of his daughter, Deepa. The said attempt was prevented by the village panchayatars on the undertaking of PW2 that he would leave the village.

12. As agreed in the panchayat, PW2 left the village and was working at Tirupur in a textile company and returned to the village on 13.01.2014, for celebrating the pongal festival. On 15.01.2014, at about 08.00 pm, PW1 to PW4 and one Maruthayi were chatting in front of PW1's house and at that time, the first accused came to the place and PW2, Ramasamy, raised a question as to what they have achieved by excommunicating them from the village. There was a wordy quarrel in this regard and pursuant to the same, the second accused is said to have assaulted PW2 on his left shoulder with the Aruval [MO1].



13. It is the further case of the prosecution that the first accused received the Aruval [MO1] from the second accused, assaulted PW2 on his hands and at that time, the second and third accused caught hold of PW2. The first accused also assaulted PW3, Anjalai, on her right hand and caused a cut injury. The fourth accused pushed down PW1, Dhanalakshmi, and PW1 sustained three injuries. The fifth and sixth accused assaulted PW4, with a Stick [MO2] and the fourth accused assaulted the witness, Maruthayi, on her Cheek.

14. The injured in this case were taken to a Private Hospital, namely, Dr.G.C.Hospital, Karur, on 15.01.2014 at about 09.00 pm, in a 108 Ambulance. Dr.C.G.Jeyaraman [PW9], Orthospecialist, at Dr.G.C.Hospital, Karur, treated the injured and issued the Accident Register [Ex.P3] and Wound Certificate [Ex.P4] for the treatment provided to Ramasamy [PW2]; Accident Register [Ex.P5] and Wound Certificate [Ex.P6] for the treatment provided to Dhanalakshmi [PW1]; Accident Register [Ex.P7] and Wound Certificate [Ex.P8] for the treatment provided to Anjali [PW3]; Accident Register [Ex.P9] and Wound Certificate [Ex.P10] for the treatment provided to Vasantha [PW4]. The Doctor has also sent a medical intimation to the Velliyani Police Station on 15.01.2014 itself.

15. Though the FIR [Ex.P15] was registered on the same day, ie., on 15.01.2014, at about 11.30 pm, the FIR reached the Court only on 16.01.2014 at 05.50 pm, with an inordinate delay of 17 hours, despite the fact that the case was registered for the offence under Section 307 IPC. This inordinate delay of 17 hours in FIR reaching the Court is not properly explained by the prosecution.

16. The prosecution witnesses have attributed the following overtact to the accused:

16.1. A1 is said to have assaulted with Aruval [MO1] and caused injury to PWs.2 & 3. The weapon Aruval [MO1] was also recovered from A1, from his house. The wooden log [MO2] was also recovered from A1, pursuant to his confession statement and that apart, a blood stained shirt [MO7] was also recovered from A1. There is no recovery from the other accused.

16.2. The prosecution is not clear with regard to the overtact attributed to the other accused. The overtact of A2 is narrated as if he received the Aruval [MO1] from A3 and attacked PW2 on his shoulders and thereafter, A1 received the same Aruval from A2 and caused injury to PW2. This narration by the prosecution witnesses is artificial and it appears it has been projected in order to attribute overtact to all the family members of A1. Similarly, A5 & A6 are said to have attacked PW4 with the same weapon by collecting the weapon from each other.



17. The daughter of the first accused, Deepa and PW2 got married. But, within nine months from the marriage, Deepa committed suicide in the matrimonial house. The body of Deepa / first accused's daughter was cremated without a police complaint. A1, when attempted to lodge a complaint, was prevented by the village panchayat members from lodging a complaint and on the undertaking of PW2 that he would leave the village.

18. After this occurrence, PW2 left the village for Tirupur and thereafter, returned to the village on 13.01.2014 for Pongal festival. Though PW2 returned to the village on 13.01.2014 itself, there was no incident from 13.01.2014 to 15.01.2014, till 08.00 pm. The occurrence was taken place on 15.01.2014 at about 08.00 pm, when A1 was crossing the house of PW1 and when they were chatting in front of PW1's house. Even according to PW1, it was PW2, who raised an issue by questioning A1 what he achieved by excommunicating him from the village. She also admit that the weapon MO1 was available in the place for cutting coconut in the punja land.

19. The available evidence disclose that the occurrence had taken place out of a sudden wordy quarrel. A1 with Aruval [MO1], which was also found from the place of occurrence, attacked PW2 and PW3. But, the entire family members were roped-in as if all the family members have joined together, went to the place of occurrence and assaulted the prosecution party. Even according to the prosecution case, though six persons are roped-in as accused, only two weapons [MOs.1 & 2] are projected as weapons used by the accused. These weapons were also recovered only from Raja [A1], but, all the family members are roped-in as accused that the other accused received the weapon from one another and caused one injury to the prosecution witnesses. The manner in which the overtact attributed to other accused appears to be artificial.

20. In view of the foregoing discussions and reasonings, this Court holds the first accused guilty for the charges levelled against him, however, in view of the fact that the first accused is no more, the charge as against him stands abated. Considering the inordinate delay of 17 hours in FIR reaching the Court and the manner in which the overtact is attributed, this Court is of the view that the impugned judgment passed by the Court below warrants interference.

21. Accordingly, the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Court, Karur, in S.C.No.74 of 2014, dated 29.10.2015, is set aside and the appellants / accused nos. 2 to 6 are acquitted from the charges levelled against them.



Bail bonds, if any, executed shall stand terminated and fine amount, if any paid, shall be refunded.

In fine, the Criminal Appeal is allowed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Sessions Judge,
Fast Track Mahila Court,
Karur.
2. The Judicial Magistrate No.II, Karur.
3. The Chief Judicial Magistrate, Karur.
4. The Superintendent, Central Prison, Trichy.
5. The Superintendent, Special Prison for Women, Trichy.
6. The Inspector of Police,
Pasupathipalayam Circle,
Karur District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Record Keeper Criminal Section, (2C)
Madurai Bench of Madras High Court,
Madurai.

Crl.A. (MD) No.360 of 2015
06.11.2020

KUN (CO)
KB (24.04.2021) 10P 10C