

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.937 of 2017
and
Crl.M.P No.683 of 2017

T.Arokia Arputha Raj

...Petitioner

Vs.

The State represented
by the Inspector of Police,
S-1, St. Thomas Mount Police Station,
Chennai 600 016

..Respondent/ Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to quash the charge sheet filed in SC No.38 of 2020 on the file of District and Sessions Judge, Chengalpet.

For Petitioner : S.Hemanand
For Respondents : MR.C.Raghavan
Government Advocate

ORDER

This petition has been filed to quash the proceedings in S.C.No.38 of 2011 on the file of the learned District and Sessions Court, Chengalpet.

2. The case of the prosecution is that on 14.05.2006 at about 10.00 am, there was a wordy quarrel between A3 and the elder brother son of the deceased. It is stated that the accused persons had also beaten one Paduvai raj, who is the elder brother's son of the deceased. In continuation of this incident, the accused persons are said to have called the deceased in order to talk about the incident and it ended in blows exchanged between the parties and the deceased is said to have been attacked and stabbed with knife. He was taken to the hospital and he was declared dead.

3. Based on the complaint given by the wife of the deceased, an FIR came to be registered for an offence under Section 341, 323, 324 & 302 IPC against George and two others. On completion of the investigation, a final report was filed and

the Court below took cognizance of the final report for an offence under Section 307, 302 of IPC r/w 34 IPC. The petitioner was arrayed as A2 in the final report.

4. Heard the learned counsel for the petitioner and Mr.C.Raghavan, learned Government Advocate for respondent.

5. The main ground that has been raised by the petitioner is that he was attacked with a wooden log by the deceased in his head and he fell down and thereafter, the other accused persons had attacked the deceased and he was also stabbed by A1. The petitioner who fell down on being attacked, never got up thereafter and he was not aware as to what happened to the deceased. In spite of the same, the petitioner has been roped in this case with the aid of Section 34 of IPC.

6. The prosecution has examined nearly 32 witnesses during the stage of investigation and their statements have been recorded. The eye witnesses speak about the manner in which the incident took place.

7. Section 34 of IPC in a way brings in the concept of vicarious liability into a criminal case. It ropes in persons who participate in a crime in furtherance of the common intention. It is a rule of evidence and this provision does not create any substantive offense. The allegations made in the final report as well as the evidence of eye-witness shows that the petitioner was also attacked in his head by a wooden log by the deceased. The entire incident took place in a melee and the specific overt act that are attributable to the accused persons will get clearer only in the course of evidence. Even in the best case scenario, probably the petitioner may not have participated during the time when the deceased was attacked with knife by A1. That does not mean that he need not face the charges for the other offence. A case of this nature, requires appreciation of evidence in the course of trial and this Court deems it fit not to interfere with the proceedings at this stage. It is left open to the petitioner to raise all the grounds before the Court below and establish his defense.

8. In the result, this Criminal Original Petition is dismissed and there shall be a direction to the Court below to complete the proceedings within a period of three months from the date of receipt of copy of this order. The trial shall be conducted on a day to day basis in accordance with the guidelines given by Hon'ble Supreme Court reported in Vinod Kumar Vs State of Punjab [2015 (1) MLJ (Cr1) 288 SC]. If the petitioner adopts any dilatory tactics, it is open to the trial Court to insist upon the presence of the petitioner and remand him to custody as per the judgment of the Hon'ble

Supreme Court in STATE OF UTTAR PRADESH VS. SHAMBHU NATH SINGH (JT 2001 (4) SC 3191). Consequently, connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

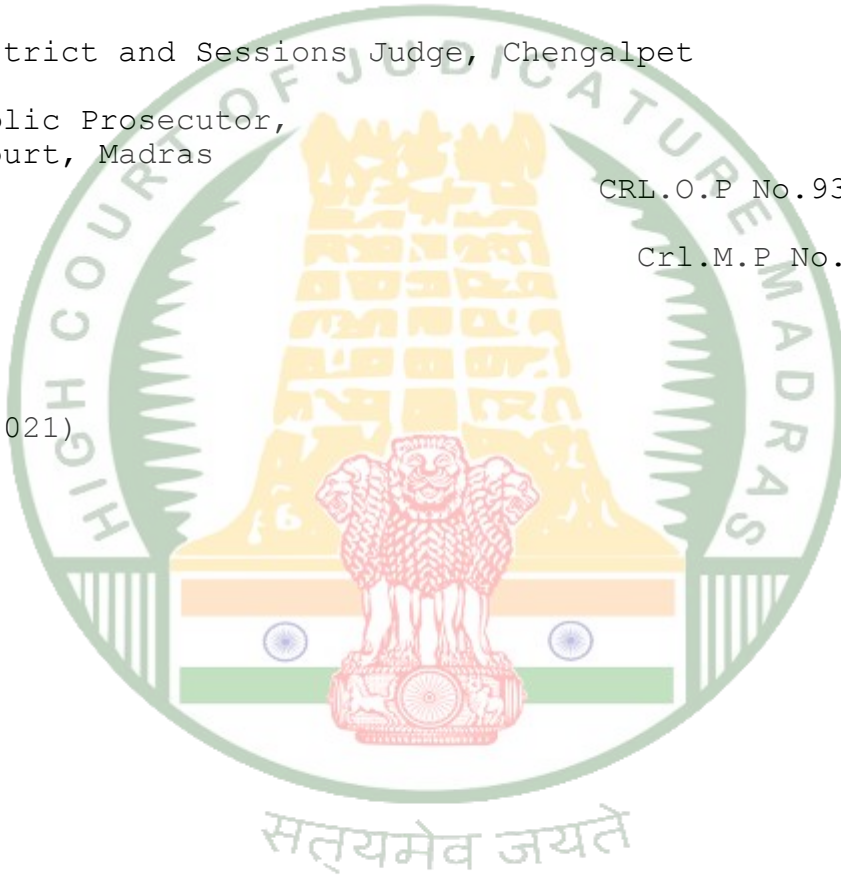
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To

1. The District and Sessions Judge, Chengalpet
2. The Public Prosecutor,
High Court, Madras

CRL.O.P No.937 of 2017
and
Crl.M.P No.683 of 2017

RGN (CO)
SP (03/03/2021)



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