



Bail Slip

1. Pandi, S/o, Iyyadurai, Male, 73 (2016)
2. Ganapathi, S/o, Palanisamy, Male, 63 (2016)
3. Palpandi, S/o, Chinnapandi, Male, 47 (2016)
4. Pethannan, S/o, Durairajthevar, Male, 67 (2016)
5. Dhasan, S/o, Paluthan, Male, 53 (2016)

was released on Bail vide Order of this Court Dated 11/05/2016, in Crl.MP(MD)No.3990 of 2016 in CRL.A.(MD)No.164 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2021
DELIVERED ON : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.(MD)No.164 of 2016

1. Pandi
2. Ganapathi
3. Palpandi
4. Pethannan
5. Dhasan

: Appellants/Accused 1,3,4,6 and 11

Vs.

State through
The Inspector of Police,
Kadupatti Police Station,
Madurai District.

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records of the learned III Additional Sessions Judge cum Special Court for cases under SC & ST (POA) Act, Madurai, dated 02.05.2016 in Special S.C.No.50 of 2007 and to set aside the conviction and sentence order, dated 02.05.2016 by acquitting the appellants herein.

For Appellants : Mr.T.Amjad Khan
for Mr.N.Ananthapadmanabhan

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

**JUDGMENT**

Aggrieved by the judgment of conviction by the learned III Additional District and Sessions Judge, Madurai, in S.C.No.50 of 2007, dated 02.05.2016, the Accused 1, 3, 4, 6 and 11 had preferred this appeal seeking to set aside the judgment of conviction and sentence imposed against them.

2.Heard Mr.T.Amjad Khan, learned Counsel for Mr.N.Ananthapadmanabhan for the Appellants and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent.

3.The case of the prosecution briefly as follows:

3.1.P.W-1, Karuppaiah, son of Veediyan, an employee of the Southern Railway residing at Railway Quarters, Cholavandan, is the hereditary Priest of Kadupatti Vaikkal Karuppasamy Temple. Prior to his taking charge as Priest, his father, Veediyan, was the Priest of the said temple. He belongs to Hindu Parayar community (Scheduled Caste). There had been dispute regarding the right to perform Priest duty between Hindu Parayar community and Piramalai Kallar. The people belonging to Piramalai Kallar had appointed one Dhasan, who belongs to Hindu Parayar community, as a Priest. He threatened the people belong to Hindu Parayar community not come to the temple. Therefore, the people belong to Hindu Parayar community (Scheduled Caste) preferred a complaint against the group that had attempted to take control of the temple.

3.2.Connected with that, on the eve of Sivarathiri, there had been a dispute regarding celebration of Sivarathiri between the people belong to Hindu Parayar community and Piramalai Kallar community. Therefore, the Tahsildar of Vadipatti had proclaimed that both communities shall not enter the temple. On 06.05.2005, by around 11.00 am, when Karupppiah, son of Veediyan, was at home, a group of people came by two lorries from Periyakulam and invited Karupppiah, son of Veediyan to Kadupatti Vaikkal Karuppasamy Temple to perform pooja. He had accompanied them to the Kadupatti Village. By around 12.30 noon, his relative Dhasan protested stating that I am the Priest, how can you come. He had returned to his village and by 12.45 p.m., he brought with him Kadupatti Pandi, P.Pandi, Ganapathi Samy, Paulpandi, Jayaraman, Pethannan. At that time, the leader of the group Ganapathi Samy protested, how you can come and worship. At that time, P.Pandi shouted that these Parayar fellows should be killed. So saying, he had attacked on the head of Dhanapal and he suffered head injury. Dhanapal was attacked by Jeyraman. Ganeshkumar was attacked by Pethannan. The others accompanied him did not come to the rescue. The police came along with Pandi in search of weapon from nearby pond and they took two vehicles bearing Registration No.TN-37-L-2632 and TN-31-5758. The accused damaged the vehicles. The complaint under Ex.P-1 was lodged



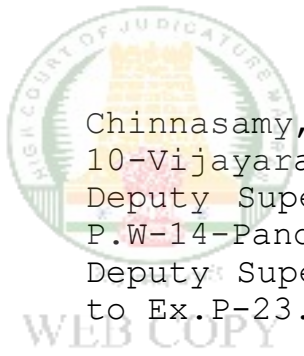
by P.W-1-Karuppiah, before the Kadupatti Police Station. Based on this complaint, P.W-10-Vijayaraghavan, Sub Inspector of Police had registered a case in Cr.No.193 of 2005.

3.3.On registration of the case, the original complaint under Ex.P-1 and original FIR under Ex.P-8 were sent to the Court of the learned Judicial Magistrate and copy of the complaint under Ex.P-1 and FIR under Ex.P-8 were placed before the Inspector of Police for further investigation. The P.W-11-Govindarajan, the then Deputy Superintendent of Police, had promptly taken up the investigation, visited the scene of occurrence and prepared the recovery mahazer under Ex.P-2 and Ex.P-3. He had also prepared observation mahazer under Ex.P-4 and Ex.P-5 and prepared rough sketch under Ex.P-9 and Ex.P-10. He had examined the witnesses P.W-1 to P.W-16. He had examined the witnesses, P.W-1-Karuppiah, P.W-2- Ganeshkumar, P.W-3-Karuppasamy, P.W-4-Murugan, P.W-5-Kulli @ Subramani, P.W-6-Ramamoorthy, P.W-7-Chinnasamy, P.W-8-Dr.Shanmuganathan, P.W-9-Ganesan, Tahsildar, P.W-10-Vijayaragavan, Sub Inspector of Police, P.W-12-Dr.Alagappan, P.W-13-Pandi, P.W-14-Pandi, W-15-Masanam, P.W-16-Dhanapal. After completion of the investigation, the Investigation Officer had laid final report under Section 173(2) before the learned Judicial Magistrate.

3.4.On filing of the charge sheet, the learned Judicial Magistrate taken cognizance of the final report for the offences under the provisions of IPC, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and Tamil Nadu Properties (Prevention of Damage and Loss) Act, and numbered the case as P.R.C.No.120 of 2005 and issued summons to the accused. On receipt of the summons from the Court, the accused appeared before the Court. As per Section 207 Cr.P.C., the accused were furnished with copies and the Court enquired regarding their economic status, whether they can engage a Counsel and to this, they replied with affirmative. Since the case was triable by the learned Sessions Judge, the learned Judicial Magistrate committed the case to the Court of Sessions and bound over the accused to the learned Principal District and Sessions Judge, Madurai.

3.5.The learned Principal District and Sessions Judge, Madurai, on receipt of the case records in P.R.C.No.120 of 2005 had taken cognizance and numbered the case as S.C.No.50 of 2007 and the charges were framed against the accused and the charges were read over and explained in Tamil to the accused. When the charges were read over and explained in Tamil, the accused pleaded not guilty and claimed to be tried. Therefore, the trial was ordered.

3.6.During trial, the prosecution had placed all the relevant materials. The witnesses were examined as P.W-1 to P.W-17, namely, P.W-1-Karuppiah, P.W-2-Ganeshkumar, P.W-3-Karuppasamy, P.W-4-Murugan, P.W-5-Kulli @ Subramani, P.W-6-Ramamoorthy, P.W-7-



Chinnasamy, P.W-8-Dr.Shanmuganathan, P.W-9-Ganesan, Tahsildar, P.W-10-Vijayaragavan, Sub Inspector of Police, P.W-11-Govindarajan, Deputy Superintendent of Police, P.W-12-Dr.Alagappan, P.W-13-Pandi, P.W-14-Pandi, P.W-15-Masanam, P.W-16-Dhanapal and P.W-17-Rengarajan, Deputy Superintendent of Police and exhibits were marked as Ex.P-1 to Ex.P-23. M.O-1 and M.O-2 were marked.

3.7.From the evidence recorded by the Court, the incriminating portion of the evidence was put to the accused and examined under Section 313 Cr.P.C. The accused denied the occurrence and denied the claim. The accused had not examined themselves. After hearing the arguments on both sides, the learned III Additional District and Sessions Judge, Madurai, had arrived at a just conclusion that the accused are found guilty for the offences under the provisions of Indian Penal Code, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and Tamil Nadu Properties (Prevention of Damage and Loss) Act. Aggrieved by the judgment of the learned Trial Judge, the accused/appellants preferred this appeal.

4.Mr.T.Amjad Khan, learned Counsel for the appellants submitted his arguments. It is the case of the appellants that this case had been cooked up against them and they had not involved in any activities, however, they had been arrayed as accused. The witnesses had contradicted each other. Therefore, there is no evidence to meet the charges framed by the learned Trial Judge and the judgment of the learned III Additional District and Sessions Judge, Madurai, is to be set aside and the accused are to be acquitted.

5.Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing on behalf of the prosecution made his submissions. The learned Additional Public Prosecutor submitted that as per the evidence available, the charges had been proved beyond reasonable doubt. Therefore, this Court need not interfere with the findings of the learned Trial Judge. Not only that, once the Trial Court had appreciated the evidence as per the provisions of the Indian Evidence Act and the learned Trial Judge had come to a fair conclusion based on proper appreciation of evidence, the Appellate Judge shall not disturb the findings of the Trial Judge, as the learned Trial Judge had the discretion to observe the demeanor of the witnesses and accused, whereas, the Appellate Court does not have such facility. Therefore, the Appellate Judge shall not be influenced by the evidence. In the same set of facts, where two views are possible, the view taken by the Trial Court will be upheld on the ground that the Appellate Court shall not disturb the findings, as the findings given by the learned Trial Judge is based on proper appreciation of evidence. Based on such principle, the judgment of the learned Trial Judge is not perverse. Therefore, the appeal lacks merits and is to be set aside.

**6.Point for consideration:**

Whether the finding of guilt recorded by the learned III Additional District and Sessions Judge, Madurai, is perverse and is to be set aside warranting inference by this Court?

7.Heard Mr.T.Amjad Khan, learned Counsel for the appellant/accused, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor for the prosecution and perused the charges framed against the accused by the learned trial Judge, the evidence of P.W-1 to P.W-17 and Ex.P-1 to Ex.P-23 and M.O.1 and M.O.2.

8.As per the arguments of the learned Counsel for the appellant/accused, the witnesses had contradicted each other. The prosecution case was not supported and proved beyond reasonable doubt.

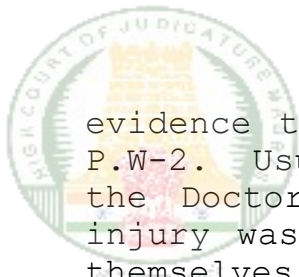
9.Under those circumstances, A1 was convicted only for the offence under Section 307 of I.P.C. A3 was convicted for the offence under Sections 147, 307 and 323 of I.P.C. A4 was convicted for the offence under Sections 148, 307, 307 r/w. 149 and 324 of I.P.C. A6 was convicted for the offence under Section 148 and 307 of I.P.C. A11 was convicted for the offence under Section 147, 307 r/w. 149 of I.P.C. (two counts). All the accused were acquitted under Section 3 of TNPPDL Act r/w. Section 149 of I.P.C., Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act.

10.A11-Dhasan instigated other accused to attack P.W-1-Karuppiah and his accomplices viz., P.W-2-Ganesh Kumar and P.W-3-Karuppasamy. Based on the instigation of A11, A1-Pandi, A3-Ganapathy, A4-Paulpandi and A6-Pethannan had caused injuries on P.W-1-Karuppiah, P.W-2-Ganesh Kumar and P.W-3-Karuppasamy.

11.The injuries caused on P.W-1-Karuppiah, P.W-2-Ganesh Kumar and P.W-3-Karuppasamy had been proved through the evidence of P.W-8-Dr.Shanmuganathan who examined P.W-1 and issued medical certificate under Ex.P-6 and P.W-12-Dr.Alagappan had issued Ex.P-11 to P.W-2-Ganesh Kumar.

12.P.W-2-Ganesh Kumar, in his evidence, had stated that A6-Pethannan had attacked him with bill-hook on the head. A3-Ganapathy had attacked him with wooden log. A1-Pandi had attacked him with wooden log on his shoulders and hand.

13.The occurrence took place on the same transaction, on the same day and at the same time when A1-Pandi is also attacked P.W-1-Karuppiah with bill-hook on the head and caused injuries. The evidence of P.W-2 that A1-Pandi attacked P.W-2-Ganesh Kumar with wooden log cannot at all be accepted. Not only that, the medical



evidence through P.W-12-Alagappan is not supported the evidence of P.W-2. Usually when patients who have been injured attend hospital, the Doctor on duty enquires the injured patients as to how the injury was caused and based on the facts mentioned by the patient themselves, the Doctor enter the cause of injury in the accident register or in the medical certificate. Here P.W-12-Dr.Alagappan had stated that when he was working at Senthil Hospital, P.W-2-Ganesh Kumar came with injuries on the head and right radial bone of his right hand. On enquiry, he reported that he suffered injuries in a road accident and therefore, he was admitted in the hospital. Therefore, the evidence of P.W-2-Ganesh Kumar does not inspire confidence of the Court and hence, the same is rejected. On that score, the implication by P.W-2-Ganesh Kumar against A1-Pandi and A3-Ganapathy and A6-Pethannan is also rejected. The evidence of P.W-2-Ganesh Kumar is totally rejected. The same fact stated by P.W-3-Karuppasamy that he was attacked with wooden log by A4-Paulpandi, A3-Ganapathy is not corroborated by any of the witnesses. Medical evidence is not available regarding the injuries suffered by P.W-3-Karuppasamy. P.W-1-Karuppiah as per his evidence had stated that on the date of occurrence A4-Paulpandi had attacked P.W-1-Karuppiah with bill-hook on his head. A11-Dhasan had attacked P.W-1-Karuppiah with wooden log on his hand is not supported by the evidence of P.W-8-Dr.Shanmuganathan who had issued Ex.P-6-Wound Certificate regarding the injuries suffered by P.W-1. He had lodged FIR at the earliest point of time and he had clearly deposed regarding the injuries caused on him. Therefore, the conviction imposed against A1, A3, A4, A6 and A11 is found to be not proved cogently.

14. The admission of the learned Counsel that the learned Third Additional District and Sessions Judge had not assessed the evidence properly will not hold good. Learned Judge had clearly recorded that the injured victim P.W-1 was supported by P.W-2 and P.W-3 also with the evidence of Doctor. The injury caused on the head by the bill-hook by which A1 was treated for 14 days in the hospital was considered as offence under Section 307 of I.P.C. In **Dhani -vs- State (Delhi Administration)** reported in **1990 Cr1.L.J. Notes On Cases 53 (Del)** it is held that only one stab injury on vital part may not be dangerous to life. When the Doctor who opined the injury to be dangerous when has not been examined, hospital record not produced, but the victim was confined to hospital for 20 days, conviction from 307 I.P.C. should be altered to Section 326 of I.P.C., as per the commentaries in the Indian Penal Code by Ratanlal and Dhirajlal [33rd Edition - Pg-2061]. Here in this case, the learned trial Judge had in his discussion mentioned that the evidence of P.W-1 was supported with the evidence of P.W-2-Ganesh Kumar and P.W-3-Karuppasamy along with the evidence of the Doctor/P.W.8-Shanmuganathan who treated P.W-1. P.W-1 was in hospital for 14 days, as per Ex.P-1. P.W-1, after the occurrence, had given oral complaint to the police. When he was examined by P.W-8, it was



found that he was drenched in blood. There was loss of blood all over his body bleeding from his head had been recorded and he was forwarded to Government Rajaji Hospital, Madurai, for admission and he was discharged only after 14 days. Therefore, it is a dangerous injury on the vital part-head attracting 307 of I.P.C. Similarly, the learned Judge had found the injury caused on P.W-2-Ganesh Kumar by the accused attracting Section 307 of IPC against the third accused and injury caused on the P.W-3 by the fourth accused which was also supported by the evidence of Doctor-P.W.12 based on which the accused 3, 4 and 6 were convicted. Already, the learned Judge had arrived at a finding on all the accused had formed an unlawful assembly and for the common intention Section 149 is attracted.

15.Only on appreciation of evidence, the learned Judge had acquitted all others and also the very same accused from the charges under Section 3(2)(v) of the SC/ST Prevention of Atrocities Act and Section 3 of TNPPDL Act r/w. Section 149 of I.P.C.

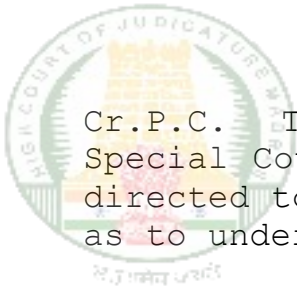
16.As rightly pointed out by learned Counsel for the appellants/accused, the offence alleged against A1, A3, A6 and A11 had not been proved beyond reasonable doubt. The offence against A4 had been proved through evidence of P.W-1-Karuppiah. The injury caused on P.W-1 by A4-Paulpandi had been proved through the evidence of P.W-8-Dr.Shanmuganathan. The charges against other accused had not been proved. Therefore, A1, A3 and A6 are acquitted under Section 235 of Cr.P.C.

17. In the result, the appeal is partly allowed. The judgment of conviction against A-4 and A-11 alone are modified.

The conviction as against **A-4** under Sections 148, 307, 307 r/w. 149, 324 of IPC is modified as under Sections 148 and 324 of IPC and sentenced him to undergo six months Rigorous Imprisonment for the offence under Section 148 of IPC and to pay fine of Rs.500/- and sentenced him to undergo six months Rigorous Imprisonment for the offence under Section 324 of IPC and to pay fine of Rs.1,000/-.

The conviction as against **A-11** under Sections 147, 307 r/w. 149 of IPC is modified as under Sections 147 and 324 r/w. 149 of IPC and sentenced him to undergo six months Rigorous Imprisonment for the offence under Section 147 of IPC and to pay fine of Rs.250/- and sentenced him to undergo six months Rigorous Imprisonment for the offence under Section 324 r/w. Section 149 IPC and to pay fine of Rs.1,000/-.

The other accused viz., **A-1** for the offences under Section 307 of IPC, **A-3** for the offences under Section 147, 307 and 323 of IPC and **A-6** for the offences under Sections 148 and 307 of IPC, are acquitted under Section 235 of Cr.P.C. The period of detention already undergone by **A-4** and **A-11** are set off under Section 428 of



Cr.P.C. The learned Third Additional District and Sessions Judge, Special Court for SC/ST (Prevention of Atrocities) Act, Madurai, is directed to issue warrant against the appellants/**Accused 4** and **11** so as to undergo the remaining period of conviction.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr/SRM

To

- 1.The III Additional Sessions Judge
Special Court for cases under SC & ST (POA) Act,
Madurai.
- 2.The Principal District Judge, Madurai.
- 3.The Inspector of Police,
Kadupatti Police Station,
Madurai District.
- 4.the Superintendent, Central Prison, Madurai.
- 5.The Superintendent of Police, Madurai District.
- 6.The Judicial Magistrate No.4, Madurai.
- 7.The Chief Judicial Magistrate, Madurai.
- 8.The District Collector, Madurai.
- 9.The Director General of Police, Mylapore, Chennai.
- 10.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:-

The Section officer, Criminal Records,
Madurai Bench Of Madras High Court, Madurai.

CRL.A.(MD)No.164 of 2016

03.09.2021

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