



Crl.A.No.636 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.10.2022

Pronounced on : 26.10.2022

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.636 of 2014

1. Devaraji,
S/o.Arumugam.

2. Suresh,
S/o.Devaraji.

3. Lakshmi,
W/o.Devaraji.

4. Sumithra,
D/o.Devaraji.

5. Tamilselvi,
D/o.Devaraji.

... Petitioners/Appellants.

/versus/

State by:
The Inspector of Police,
Wallajabad Police Station,
Kancheepuram.
(Crime No.1228 of 2011)

... Respondent

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to call for the records pertaining to the judgment and sentence in S.C.No.103 of 2012 by Sessions Court No.2, Kancheepuram dated 07.11.2014 convicting the



Crl.A.No.636 of 2014

appellants 1 and 2 under Section 294(b) of I.P.C and imposing a fine of Rs.1000/- each in default, to undergo simple imprisonment for one month and convicting the appellants 1 to 5 under Section 147 of I.P.C and imposing a fine of Rs.1,000/- each in default, to undergo simple imprisonment for one month and convicting them under Section 148 of I.P.C and imposing a fine of Rs.1000/- each in default, to undergo simple imprisonment for one month and convicting them under Section 304(ii) r/w 149 of I.P.C and sentencing them to undergo rigorous imprisonment for ten years and convicting the appellants 3 to 5 under Section 324 of I.P.C and imposing a fine of Rs.1000/- each in default, to undergo simple imprisonment for one month and to set aside the same.

For A1 to A4 : Mr.K.Kannan, for
Mr.A.Balamurugan

For Respondent : Mr.R.Kishore Kumar,
Government Advocate (Crl.Side)

J U D G M E N T

The dispute regarding a piece of land is the cause for the occurrence which happened on 03.11.2011, at about 17.00 hours ended in death of one Subramani, who is none other than younger brother of the 1st appellant. The other appellants are wife and children of the 1st accused.



Crl.A.No.636 of 2014

WEB COPY

2. The case of the prosecution as spoken by the witnesses is that on the eventful day P.W.1, the daughter of the deceased Subramani put waste garbage in the vacant site near the house of A1. That was questioned by A1 and A2 and they scolded her in filthy language. On hearing that, Subramani (the deceased) came out and tried to pacify them. But, A1 attacked Subramani with wooden log on the head and A2 attacked Subramani with knife on the forehead. The other accused A3 to A5 pelted stones. Subramani (deceased) sustained grievous injuries and P.W.1 sustained simple injuries. Both Subramani and P.W.1 were taken to the hospital at Kancheepuram, then referred to Government Hospital, Chennai. P.W.1 (Nirosha) after recovery from injuries got discharged. Whereas, Subramani did not regain his conscious and therefore, for better treatment, he was sifted to Ramachandra Hospital at Porur. On 12.11.2011, Subramani died. Based on the complaint given by P.W.1, when she was taking treatment at Government Hospital, Chennai, F.I.R was registered and taken up for investigation.

3. On completion of investigation, Final Report filed against five accused who are the appellants herein.



Crl.A.No.636 of 2014

WEB COPY

4. The trial Court, on perusing the documents, framed charges against the accused persons as below:-

<i>Charges</i>	<i>Accused</i>	<i>Offence under Section</i>
1	A1 & A2	294(b) of I.P.C
2.	A2	323 of I.P.C
3.	A1 to A5	147 of I.P.C
4.	A1 to A5	148 of I.P.C
5.	A1 to A5	302 r/w 149 of I.P.C
6.	A3 to A5	324 of I.P.C

5. To prove the charges, prosecution examined 13 Witnesses marked 17 Exhibits and 2 Material Objects.

6. The trial Court convicted and sentenced A1 & A2 for offence under Section 294(b) of I.P.C and imposed with fine of Rs.1,000/- in default one month S.I. A1 to A5 for offence under Section 147 of I.P.C and imposed with fine of Rs.1000/- each, in default one month S.I. A1 to A5 were held guilty of offence under Section 148 of I.P.C and imposed with fine of Rs.1000/- each, in default to undergo 1 month S.I. A1 to A5 were held guilty of offence under Section 304 (ii) r/w 149 of I.P.C sentenced to undergo 10 years R.I. A1 to A5 held guilty of offence under Section 148 of I.P.C with fine of Rs.1000/- each in



Crl.A.No.636 of 2014

default to undergo one month S.I. A3 to A5 found guilty for offence under Section 324 and imposed fine of Rs.1000/- each, in default one month S.I. The period of imprisonment already undergone by the accused ordered to be set off under Section 428 of Cr.P.C.

7. Aggrieved by the judgment of conviction and sentence, this appeal is filed on the following grounds:-

a). The trial Court has failed to appreciate the evidences of P.W.1 to P.W.5. Without any appreciation of evidence of P.W 1 to P.W.5, the trial Court has come to a conclusion that they are the eye witnesses to the injuries caused to the deceased Subramani the cause of which he died after ten days of occurrence.

b). The statement of P.W.1 which was registered as F.I.R does not speak of any of them witnessing the occurrence. The evidences of P.W 4 and P.W.5 does not speak of the presence of P.W 2 and P.W.3 witnessing the occurrence. Likewise, the evidence of P.W.2 and P.W.3 does not speak of the presence of P.W.4 and P.W.5 witnessing the occurrence. The combined reading



Crl.A.No.636 of 2014

of the evidences of P.W 1 to P.W.5 would negate their presence in the alleged place of occurrence.

c) P.W.1 to P.W.5 are close relatives to each other. Hence, they are interested witnesses. None of them speaks about the motive nor prove there existed a property dispute between the two families. In the absence of any motive and evidence to prove the same, there is no possibility of common object to commit the crime.

d) Mohandass, the former president of the Panchayat who was instrumental in sending the injured by 108 ambulance is not examined. He is the only independent and impartial person who could have stated i). Whether P.W.1 and the deceased were injured in the same occurrence, ii). Whether both of them were sent to hospital by the same 108 ambulance and iii). Whether other eye witnesses were present at the time and place of occurrence or not. The non examination of this person who is cited as a witness in the memo of evidence is fatal to the case of the prosecution.



Crl.A.No.636 of 2014

WEB COPY

e) There is no evidence to corroborate the eye witness that the deceased was injured in the occurrence and was taken in 108 ambulance service either to the hospital at Kancheepuram or to Rajiv Gandhi Government General Hospital at Chennai.

f). There is also no corroboration that the deceased was admitted in Ramachandra Hospital at Porur on 07-11-2011.

g) By the Post-mortem examination, the trial Court has erroneously come to the conclusion that the deceased died at Ramachandra Hospital at Porur on 12-11-2011 due to the injuries caused to him by the accused on the date of alleged occurrence.

i) Neither the eye witnesses nor the Investigating Officer have helped the trial Court to prove that the deceased died as deposed by P.W.1 to P.W.5.

j). Ex.P-10, the Accident Register issued by Rajiv Gandhi Government General Hospital at Chennai for the injuries caused on P.W.1



Crl.A.No.636 of 2014

neither helps to find out who caused the injuries nor how the injuries were caused to P.W1.

k). The prosecution has failed to substantiate the fact that how the deceased was injured as stated by the witnesses.

l) M.O-2, the knife supposed to have been used by A2 and recovered from him with blood stains under Ex.P-7 contains no blood stains. PW-10 Dr.Jayanthi Sakthisekaran deposed that the knife had no blood stains.

m) The recovery of M.O-1 and M.O-2 were not proved.

n). The Karungal stones allegedly used by the appellants 3 to 5 were not recovered and produced.

o) The presence of members of a dwelling house does not mean assembly. Hence, there is no possibility of them turning into an unlawful assembly.

8. The Learned Counsel appearing for the appellants would submit that omission to produce medical records of the injured deceased from the date



Crl.A.No.636 of 2014

of injury till the date of death is fatal to the case of the prosecution. The missing link regarding the treatment given to him in the hospitals at Kancheepuram, Chennai and Porur, in the light of the fact that Subramani died after 10 days of the occurrence coupled with the delay in registration of F.I.R places the case of the prosecution more suspicious. As against A3 to A5, there is no specific overt act. The alleged pelting of stones not been proved beyond doubt. The injuries found on deceased or on P.W.1 is not specifically attributed to stone pelting and it is highly improbable that A3 to A5 also joined A1 & A2 to form unlawful assembly. If A1 & A2 were near the victim Subramani and P.W.1 causing injuries to them, A3 to A5 could not have thrown stones at them which might have caused injury to A1 and A2 also.

9. It is the case of the defence that due to previous enmity over a piece of land, entire family members of A1 are roped in. There is no evidence to show that there was a riot or unlawful assembly or the family members of A1 had a common object to kill Subramani.



Crl.A.No.636 of 2014

WEB COPY

10. Per contra, the Learned Government Advocate (Crl.Side) for the respondent would submit that P.W.1 is the injured witness. P.W.2 & P.W.3 are the sons-in-law and P.W.4 and P.W.5 are the daughters of the deceased Subramani. They were present at the house of A1 during the occurrence. These witnesses have deposed about the overt act of the respective accused persons. The Accident Register of P.W.1, which is marked as Ex.P.10 as well as the Post-mortem certificate of Subramani which is marked as Ex.P.8 reveals the gravity of the injuries caused by the appellants/accused. Since the incident occurred near the residence of the respective families of P.W.2 to P.W.5, who were present in the house and witnessed the occurrence had come forward to give evidence. Their evidence stands unimpeached. Therefore, the trial Court judgment has to be confirmed.

11. Heard the Learned Counsel for the appellants and the Learned Government Advocate (Crl.Side) for the respondent. Records perused.

12. P.W.1 is the star witness to the prosecution who is not only injured witness but in a way her action was the trigger to the entire occurrence.



Crl.A.No.636 of 2014

In her deposition, she had stated that, on 03.11.2011 at about 7.00 p.m., she dropped garbage waste in the vacant land next to the accused house. A1 & A2, on seeing her dropping garbage shouted at her saying “ஏண்டி தேவடியா, எங்கள் வீட்டில் குப்பையை கொட்டுகிறாய்” at that time Subramani (since deceased) had questioned them why they are quarrelling. This has provoked A1 to hit the deceased on the head with wooden log and A2 to cut the forehead of the deceased with a knife. A3, A4 and A5 have pelted stones causing injuries on the head, forehead, cheek and on the right elbow of the deceased Subramani.

13. P.W.1 has sustained lacerated wound on her right side lobe and abrasion on the right side neck. P.W.1 has further stated that the incident was witnessed by Sankar (P.W.2) and Murugan (P.W.3) and one Mohandoss. However, the said Mohandass not examined and this is one of the grounds raised by the Learned Counsel for the appellants that except P.W.2 to P.W.5, who are close relatives to P.W.1, none of the independent witness on the said of the prosecution witnessed to the alleged occurrence were examined. Particularly, non-examination of Mohandoss who happened to be the President of the Village Panchayat alleged to be present at the time of incident and called



Crl.A.No.636 of 2014

108 Ambulance to shift the injured Subramani to the hospital. Therefore, the prosecution case lack credible corroboration hence, fatal to the case of the prosecution.

14. This Court, on considering the above submission of the Learned Counsel for the appellants is of the view that though it is preferable to examine the independent witnesses regarding the incident, non-examination of Mohandoss cannot be taken as a grave omission fatal in the process of proving the charges. The case of the prosecution as spoken by P.W.1 is even otherwise well proved through medical evidence such as Ex.P.10 the wound certificate issued by P.W.11, who treated the injured at Government Hospital, Chennai. According to this evidence, P.W.1 has sustained the following injuries.

(i). 2 x 0.5 x 0.5 cm lacerated injury on the right side lobe.

(ii). 10 x 5 cm abrasion on the right side neck.

and the Post-mortem certificate of deceased Subramani marked as Ex.P.8 which is spoken by P.W.9 Dr.P.SampathKumar and the injuries noticed



in the post-mortem, which reads as below:-

1). *Horizontal sutured wound over centre of forehead 6cm from glabella and 4.75cm in length and containing 3 sutures.*

On Dissection: Bewelled wound from above downwards semi lunar shaped and edges and margin clean cut and partly infected with pus.

2) *Dark brown abrasion 3cms x1.5cm over right forehead, longitudinally placed.*

3). *Contused abrasion dark brown in colour longitudinally placed 3.5cms x 1cm Infected lacerated wound over right parietal region, 2.5cms transversely and 1.5cm horizontally surrounded by on semilunar sutured wound*

On dissection: Semilunar wound 6.5cm in length with concavity towards right ear and 12cm from right pinna with Bewelling from above downwound, The margin and edges were sharps x skull deep

4) *Healed circular lacerated wound with an circumference of 1.5cm and muscle deep over left cheek.*



Crl.A.No.636 of 2014

5) Two obliquely placed linear brown coloured abrasion over outer aspect of lower 1/3 left arm

1). 9.5cm in length

2) 4.5cm in length and 1 cm between them.

6) Healed grazed abrasion over outer border of lower 2/3 of left arm 12cms x 1.5cm.

7) Dark brown 2 parallel linear abrasions over anterior axillary area on right side 3.5cms and 4.5cms present 1cm apart and parallel to each other.

8) Dark brown longitudinally placed over outer aspect of right arm 10cm in length and 4cm, present 1.5cm apart and parallel to each other.

9) Dark brown graze abrasion seen over outer aspect of right palm 14 cms and 3cms.

10) Dark brown graze abrasion seen over upper 1/3 of left leg 10cm x 4.5cm

11) Dark brown coloured scratch abrasion seen over inner 1/3 of left leg 4.5cm and longitudinally placed.



Crl.A.No.636 of 2014

12) Dark brown linear abrasion seen over right hypochondrium 5 cm in length.

15. According to the prosecution, these injuries were caused using M.O.1 and M.O.2, which were recovered based on the confession given by the accused persons.

16. Reverting back to the evidence of P.W.1 which is corroborated by the evidences of P.W.2 to P.W.5, the injuries on head is caused by A1 using M.O.1. The injury on the forehead is caused by A2 using M.O.2. The overt act attributed by A3 to A5 is pelting stones and causing two injuries to P.W.1. The nature of the two injuries are identified, one as lacerated and another as abrasion. Three persons namely A3 to A5 are implicated for causing these two injuries which are different in nature.

17. From the evidence, it could be seen that the incident occurred after P.W.1 had thrown garbage in the disputed land. The trigger been pressed by P.W.1 and thereafter, A1 and his family members had picked quarrel. In the course of the said quarrel, A1 & A2 has caused the fatal injury. There is no



Crl.A.No.636 of 2014

element of evidence to infer that all the five accused persons had a common object to form an unlawful assembly to cause riot near the house of P.W.1. When one of the family members engaged in the quarrel with others, it is not unnatural that other members come out for rescue or pacify or to assist. The action of one of the accused person cannot be treated as done in furtherance of common intention or in furtherance of common object on behalf of the other members present unless, there is material evidence to indicate persons present at the scene of occurrence also shared the common object of the actual assailants. More so, when the trial Court itself has arrived at conclusion that A1 & A2 had no intention to cause death though had knowledge that the injury sufficient to cause death or like to cause death. Therefore, convicting them under Section 304(ii) of I.P.C roping A3 to A5 under Section 149 of I.P.C, is baseless and lack evidence. There is a lack of evidence to attribute sharing of common object between A1 to A5. The fact that, they all form unlawful assembly carrying deadly weapon is not proved.

18. From the evidence of P.W.1 which is corroborated by P.W.2 to P.W.5, the prosecution has proved that A1 & A2 had deadly weapon and



Crl.A.No.636 of 2014

attacked the deceased Subramani, causing injuries as found in the Post-mortem marked as Ex.P.8. Regarding other three accused namely A3 to A5, they were not even near the deceased or P.W.1. They were at a distance throwing stone which has caused injury to P.W.1 as found in Ex.P.10 wound certificate. Their acts as per the prosecution does not indicate that they formed unlawful assembly or they had shared common object to cause death or had knowledge the injury will cause death. The act of A3 to A5 proves they voluntarily caused hurt with corrosive substance. Hence, this Court holds that A1 & A2 are guilty for offence under Section 304(ii) r/w 34 of I.P.C and A3 to A5 are guilty of offence under Section 324 of I.P.C. The other charges are not proved beyond doubt.

19. In tune of the above finding, the judgment of the trial Court passed by Learned Sessions Judge, Sessions Court No.2, Kancheepuram is partly modified as below:-



Crl.A.No.636 of 2014

<i>Accused</i>	<i>Offences</i>	<i>Conviction and Sentence modified by this Court as below:-</i>
A1 & A2	294(b) of I.P.C	To pay fine of Rs.1000/- each, in default to undergo one month S.I.
A1 & A2	304 (ii) r/w 34 of I.P.C	To undergo 2 years R.I
A3 to A5	324 of I.P.C	To pay fine of Rs.1000/- each, in default to undergo 15 days imprisonment

20. With the above modification, this *Criminal Appeal is Partly allowed*. The period of imprisonment already undergone ordered to be set off under Section 428 of Cr.P.C. Bail bond stands cancelled. A1 & A2 ordered to be secured and committed to the prison to undergo the remaining period of imprisonment.

26.10.2022

Index : Yes.

Internet :Yes.

bsm

To,

1. The Learned Sessions Judge, Kancheepuram.
2. The Inspector of Police, Wallajabad Police Station, Kancheepuram.
3. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.A.No.636 of 2014

Dr.G.Jayachandran, J

bsm

Pre-Delivery judgment made in
Crl.A.No.636 of 2014

26.10.2022