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Crl.A.Nos.69, 77 & 149 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.A.Nos.69, 77 & 149 of 2020

Thalabathi @ Bharath .. Appellant/3rd accused in Crl.A.No.69/2020

Jaison .. Appellant/4th accused in Crl.A.No.77/2020

1.Pushparaj

2.Kathir @ Kathiresan .. Appellants/1st & 2nd accused in
Crl.A.No.149/2020

Vs.

State Rep., by
The Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai.

..Respondent in all the Criminal Appeals

COMMON PRAYER : Criminal Appeals have been filed under sections 374(2) of Criminal Procedure Code to set aside the judgment dated 23.01.2020 in S.C.No.283 of 2016 on the file of XVII Additional Sessions Judge, Chennai.



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For Appellant in Crl.A.No.69/20 : Mr.K.Thenrajan

For Appellant in Crl.A.No.77/20 : Mr.G.Mohanakrishnan

For Appellants in Crl.A.No.149/20 : Mr.R.C.Paul Kanagaraj

For Respondent in all Crl.Appeals : Mr.R.Kishore Kumar
Govt.Advocate (Crl.Side)

COMMON JUDGMENT

These Criminal Appeals are directed against the judgment of the Trial Court in S.C.No.283 of 2016 on the file of XVII Additional Sessions Judge, Chennai, holding the accused 1 to 4 guilty and sentenced them to undergo the following punishment:-

<i>Rank of the accused</i>	<i>Charges</i>	<i>Findings of the Trial Court</i>	<i>Punishment</i>
A1	u/s.307 IPC	Guilty	To undergo R.I., for 10 years and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for 1 year.
A2 to A4	u/s.307 r/w.114 IPC	Guilty	To undergo R.I., for 10 years each and to pay a fine of Rs.5,000/- each, in default to undergo Simple Imprisonment for 1 year.
Total fine imposed Rs.20,000/-			



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The period of imprisonment during the trial is ordered to be set off.

2. Aggrieved by the judgment of conviction and sentence, the Pushparaj [A1] and Kathir @ Kathiresan [A2] have preferred Crl.A.No.149 of 2020. Thalabathi @ Bharath [A3] has preferred Crl.A.No.69 of 2020. Jaison [A4] has preferred Crl.A.No.77 of 2020.

3. The prosecution initially filed final report as against six persons. Pending trial, two of them absconded and the case has been split up and same is pending in P.R.C.No.55 of 2016. Rest of the four accused were charged for the offence under Sections 294(b), 148, 341, 307, 307 r/w.114 I.P.C., and put to trial.

4. To prove the charges, the prosecution has examined 13 witnesses, marked 22 exhibits and 3 Material Objects.

5. The sum and substance of the prosecution case is that on 24.08.2012 at about 10.00 p.m., a two wheeler Honda Activa driven by



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Pushparaj [A1] dashed against Kalaiarasan who is an Auto driver, due to which, there was a wordy altercation between Pushparaj and Kalaiarasan. Jeevarathinam [PW.1] who was a friend of Kalaiarasan, the auto driver was present at the time of occurrence and pacified both of them. However, Pushparaj sworn that he will take revenge left the place. He then after few hours came with his brother-in-law and few others in an Auto in search of Kalaiarasan, by that time Kalaiarasan had left the place Pushparaj showed Jeevarathinam to them and told that he was one who allowed Kalaiarasan to escape and incited them to attack Jeevarathinam, so that they will always fear them. As a consequence, Jeevarathinam was attacked brutally. The assailants stabbed him on his stomach, wrist and thigh. Jeevarathinam was taken to the hospital by one Haridoss and admitted as in-patient. Next day on intimation, the police took the statement of the injured person, registered the First Information Report in Crime No.1743 of 2012 and took up the investigation.

6. The Investigating Officer in the course of investigation arrested the suspected accused based on the confession statement of the



arrested accused recovered the weapons used in the crime. On the completion of the investigation, laid the final report. Two of the accused remained absent and absconded. Hence the case has been split up against A5 and A6 and charges were framed against the remaining four accused.

7. The Trial Court on appreciation of evidence held all the four accused guilty of attempt to commit murder. The injury sustained by PW.1 as per the Accident Register [Ex.P14] held to be caused by A1 and his associates who were found present at the time of occurrence along with A1 and incited him to stab. In respect of the other charges, the Trial Court has held that the evidence is not adequate to hold the accused guilty.

8. The learned counsel appearing for the appellants particularly the 1st accused submitted that the case of the prosecution is unbelievable and not corroborated with adequate reliable evidence. Except PW.1, who is an interested witness, no other eye witness has corroborated the case. PW.2 and PW.3, the relatives of the injured have turned hostile.



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Kalaiarasan, who is according to the prosecution is a cause for the incident, has not supported the case of the prosecution. Even according to the prosecution, he was not present at the spot when the incident occurred and he is not a witness to the said occurrence. The contemporaneous documents, namely the Accident Register [Ex.P14] reveals that the injured was taken to the hospital by one Haridoss. The said Haridoss was not examined by the prosecution. The entry in the Accident Register indicates that PW.1 was attacked by ten unknown persons. However, the FIR, which was registered on the next day at 2.00 p.m., discloses the name of the assailants. This according to the Investigating Officer was based on the statement given by the injured when he had gone to the hospital on receipt of the information and to record the statement. While the doctor who admitted the injured person on the previous day had recorded in the Accident Register that the injured was conscious and he was in a position to talk and he had stated that he was attacked by ten unknown persons. The next day, FIR has been registered after a delay of more than 14 hours indicating the names of the assailants. This clearly shows manipulation in the facts due to the delay



in registering the FIR.

9. The learned counsels appearing for the other appellants submitted that except the testimony of PW.4, who named the accused as the persons who were present at the scene of occurrence, even the injured person has not disclosed the name before the Court in chief examination and therefore, the Trial Court's observation that the prosecution has established the intention of the members of unlawful assembly to commit murder of PW.1 proved and in furtherance of the said intention, A1 has caused injury and A2 to A4 abetted to cause such injury is not inconsonance with the evidence before the Court.

10. The learned counsels appearing for A2 to A4 further submitted that the Trial Court has erroneously concluded that PW.1 and PW.3 evidences prove the presence of A2 to A4 and they were identified by the witnesses. Reading the testimony of PW.1 and PW.3, the learned counsels submitted that nowhere PW.1 and PW.3 have identified A2 to A4 or spoken about them of any other overt act which will amount to



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abetting A1 to constitute an offence of abetment.

11. The learned Government Advocate (Crl.Side) for the State submitted that the delay in registering the FIR no way had prejudiced the accused, since the injured person was brutally attacked by the members of unlawful assembly carrying deadly weapons and the victim was not in state to give statements and therefore, PW.13, who went to the hospital to record the statement of the injured had to wait for the victim to regain to his conscious and to give a statement, thereafter, he registered the FIR marked as Ex.P15. As far as the evidence of prosecution, injured witness PW.1 has narrated about the sequence of events and the cause for the incident, he has specifically identified A1 as a person who stabbed him in his stomach and caused the injury on his left hand. When he tried to defend the attack by A1, A1 attempted to stab on his neck. He has identified the other accused persons who were with A1 at the time and incited A1 to finish him (,tid fhyp gz;Z). Therefore, there is no error in the observation of the Trial Court that the injury found on the body of the victim was inflicted by A1 and at that time A2 to A4 were present and



abetted the commission of the offence of A1.

12. Heard the learned counsels and perused the records.

13. This is a case where the injured who survived the attack appeared before the Court and deposed about the occurrence. The Accident Register marked as Ex.P14 indicates that on 24.08.2012 at about 10.30 p.m., near Karaikudi Restaurant, Besant Nagar, DW.1 was attacked with knife. Injuries on the abdomen, thigh and wrist were noticed by the doctor who treated the injured person, she was examined as PW.12. Her testimony disclosed that PW.1 has sustained the following injuries:-

“ (i) *Stab injury on the left side abdomen 2x1x6 size. Penetrating wound with bowl loop protruding out side.*

(ii) *Lacerated wound 2x5x1 on the left hand*

(iii) *Lacerated wound 5x3x5 on left thigh.*”



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The injured was shifted to emergency ward and surgery was conducted on the next day. He was treated as in-patient and discharged on 05.09.2012 after treatment. The nature of injury sustained by PW.1 was opined as grievous injury.

14. The learned counsel appearing for the 1st accused pointing out the third injury though mentioned on the thigh, the injured person has stated that he was stabbed by the brother-in-law of A1 on his back. This discrepancy regarding the injury and the person who caused the injury was not taken by the Trial Court. Further he submitted that the recovery of three weapons which are marked as M.O.1 to M.O.3 based on the alleged confession statement of the accused persons not been proved in the manner known to law and the prosecution evidence does not co-relate with the weapon and the injury found on the body of PW.1.

15. This Court does not find much merit in the above submissions. The doctor who treated PW.1 had noticed the injuries and spoken about the nature of injuries. PW.1, the person who sustained



injury has identified A1 by name as the person who has caused the injury.

Two injuries out of three is attributed to A1 by PW.1. In so far as the charge of abetment in respect of the other three accused are concerned, this Court does not find much corroboration to implicate them in the crime, though their presence been spoken by PW.1 and PW.3. Whether they can be convicted for offence under Section 307 r/w. 114 merely based on their presence at the time of occurrence is highly doubtful, since there is no evidence to show that they shared the intention of A1 to cause death of PW.1.

16. To attract Section 114 of IPC the ingredients mentioned in Section 107 IPC has to be satisfied. In this case, none of the prosecution witnesses had attributed overt act against the accused, who were arrayed as A2 to A4. PW.1 has identified them as persons who were present along with A1 and uttered to finish him. Whereas PW.2 has not whispered anything about the presence of A2 to A4 and so he was treated hostile. PW.3 had deposed that he and his uncle PW.2 Pachiappan came out from hotel Karaikudi between 9.30 p.m., to 10.00 p.m. He saw a crowd



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out side the hotel where Pushparaj/A1, Kathir/A2, Thalabathi/A3 and Jaison/A4 stabbing PW.1. Before he could reach his brother Jeevarathinam, they all fled away and he took his injured brother to the Rayapettah hospital and admitted him. He has also stated the he does not know the name of the other two assailants who are brothers-in-law of A1. Though PW.3 says that he was at the scene of occurrence, his evidence does not corroborate by PW.2. Further his testimony that he took the injured to the hospital and admitted also not corroborated by the entry in the Accident Register, which says that one Haridoss brought the victim to the hospital. Therefore, the reliability of the PW.3 who implicate A2 is highly doubtful.

17. In the said circumstances, the benefit of doubt ought to have been given to A2 to A4, since the required ingredients mentioned in Section 109 of IPC is not satisfactorily proved by the prosecution to sentence these three accused under Section 307 r/w.114 of IPC.

18. Therefore, this Court while confirming the conviction of A1



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for the offence under Section 307 IPC, set aside the conviction of A2 to A4 for the offence under Section 307 r/w.114 IPC.

19. As far as the sentence imposed on A1, this Court taking note of the fact that the incident has taken place among the auto drivers of the same locality and due to the sudden fight which occurred few hours earlier, the period of imprisonment is reduced to 7 years R.I., instead of 10 years R.I.

20. With the above modification, the Criminal Appeal in Crl.A.No.149 of 2020 as against 1st appellant is partly allowed. As against the 2nd appellant, the Criminal Appeal is allowed. The other Criminal Appeals in Crl.A.No.69 and 77 of 2020 preferred by A2 to A4 are allowed. The conviction and sentence of the Trial Court as against A2 to A4 is hereby set aside. The appellant in Crl.A.No.69 and 77 of 2020 and the 2nd appellant in Crl.A.No.149 of 2020 are set at liberty. Fine amount, if any paid by the accused shall be refunded to them. Bail bond if any executed by the accused shall stand discharged.



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Internet : Yes/No

Index: Yes/No

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To

1.The XVII Additional Sessions Judge, Chennai.

2.The Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

Dr.G.JAYACHANDRAN, J.

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