



Crl.A.No.227 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.07.2023

Delivered on: 11.12.2023

CORAM:

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**Crl.A.No.227 of 2018
and Crl.MP.Nos.10339 & 10341 of 2019**

1.Babu
2.Chandru
3.Vijay
4.Sivalingam
5.Kannan
6.Rajkamal

...Appellants

VS.

The State Rep. by its
The Inspector of Police,
Pallikonda Circle,
Anaicut Police Station,
Vellore District.

...Respondent

Prayer: Criminal Appeal filed under Section 374 (2) Cr.P.C., against the judgment and conviction passed by the learned Principal Session Judge, Vellore in S.C.No.1 of 2017, dated 09.03.2018.



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For Appellants : Mr.N.R.Elango, Senior Counsel
for Mr.S.Agilesh Kumar

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John

J U D G M E N T

(Judgment of the Court was delivered by K.KUMARESH BABU, J.)

This Criminal Appeal had been filed as being aggrieved against the conviction and sentence imposed as against them by order of the principal Sessions Judge, Vellore dated 09.03.2018. The appellants herein have been arrayed as accused 1 to 6 for various offences under the Indian Penal Code.

2.A Final Report against the accused was filed under Sections 147, 148, 294(b), 323, 324 & 302 r/w149 of I.P.C.

3.The accused 1 to 6 are the residents of Pudhumai Colony. The accused 1, 2, 5 and 6 are the sons of 4th accused. The 3rd accused is the cousin brother of the



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1st accused. That on 12.03.2016 at about 9.00 P.M., near Ambedkar Statue at Unai

Pallathur Road, Anaicut, the accused 1 to 5 had voluntarily picked up a quarrel with one Kutty Murugan @ Vijayakumar cousin brother of the victim. The defacto complainant/P.W.1 Murugan had interfered and pacified them. Due to which, the accused 1 to 5 had developed an enmity.

4. On 13.03.2016 at about 8.15 P.M. at the same place, the appellants/accused 1 to 6, on seeing the defacto complainant/P.W.1 formed themselves into an unlawful assembly armed with dangerous weapons with a common object of committing murder had abused P.W.1. Murugan. Velu, the victim who is also the brother of P.W.1 and Velu's wife who was examined as P.W.5 intervened. All the appellants/accused had abused them and attacked the victim. The first appellant/A1 had stabbed the victim with a knife on his left abdomen and the third appellant/A3 stabbed the victim on his left ear with a knife and the fifth appellant/A5 had attacked the victim with a ladle. The victim had died due to



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shock and hemorrhage sustained by multiple injuries. P.W.1 & P.W.5 were also injured in the incident. Hence the charge.

5.For better appreciation, the offences against which they were charged are tabulated hereunder together with the punishment that had been imposed as against them.

S.No.	Accused Rank	Offence Charged *Charge 148 converted to 147	Convicted/ Acquitted	Punishment imposed
1	A1	147 294 (b) & 302	Convicted Convicted Acquitted	One year simple imprisonment One year simple imprisonment Life imprisonment, Rs.5,000/- in default one year sentence to run concurrently
2	A2	147 294 (b) 323 & 302	Convicted Convicted Acquitted Acquitted	One year simple imprisonment One year simple imprisonment
3	A3	147 294(b) & 302	Convicted Convicted Convicted	One year simple imprisonment One year simple imprisonment Life imprisonment, Rs.5,000/- in default one year sentence to run concurrently



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S.No.	Accused Rank	Offence Charged *Charge 148 converted to 147	Convicted/ Acquitted	Punishment imposed
4	A4	147 294(b) & 302	Convicted Convicted Acquitted	One year simple imprisonment One year simple imprisonment
5	A5	147 294 (b), 324 & 302	Convicted Convicted Acquitted Convicted	One year simple imprisonment One year simple imprisonment Life imprisonment, Rs.5,000/- in default one year sentence to run concurrently
6	A6	147 294 (b) & 302 r/w 149 IPC	Convicted Convicted Acquitted	One year simple imprisonment One year simple imprisonment

6.Prosecution has examined 14 witnesses, marked 29 exhibits and 8 materials objects. Of the 14 witnesses examined, P.W.1 to P.W.7 spoke about the incident. P.W.8 - Mahazar witness, P.W.9 - the Doctor who conducted the postmortem, P.W.10. - the Village Administrative Officer who was present at the time of the arrest of the accused, P.W.11 - the Judicial Magistrate who had recorded 164 statements, P.W.12. – the Special Sub Inspector of Police who had registered the F.I.R, P.W.13 – the Scientific Officer (Forensic) & PW.14 – the



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Inspector/ Investigation Officer respectively. It is to be noted that P.W.1 to P.W.8 are relatives to the deceased.

7.Heard Mr.N.R.Elango, learned Senior Counsel appearing for Mr.S.Agilesh Kumar, learned counsel for the appellants and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent assisted by Mr.M.Sylvester John.

8.Mr.N.R.Elango, learned Senior Counsel appearing for the appellants at the outset would contend that the entire case of the prosecution had been built upon to rope in all the accused. He would submit that even according to the F.I.R as well as the statement of the alleged witnesses, the incident had occurred at about 8.15 P.M. on 13.03.2016. But, however, an F.I.R seems to have been registered only on 14.03.2016 at about 03.30 hours. He would also contend that there is a correction in the F.I.R with regard to the time in which the F.I.R had been registered. According to him, the F.I.R had been registered originally at



07.30 hours but had been modified by overwriting the same as 03.30 hours. He

would also draw the attention of this Court to Ex.P1, the written complaint given by the defacto complainant who had been examined as P.W.1. Even in the said complaint, there is an alteration as regards to the time in which the defacto complainant/P.W.1 had visited the Police Station to lodge a complaint. Therefore, he would contend that the F.I.R itself had been fabricated and had been brought into existence long after the occurrence and the same had been made only to rope in the accused who are all innocents. In that context, he would rely upon a judgment of the Hon'ble Apex Court in the case of *Marudanal Augusti vs. State of Kerala* reported in (1980) 4 SCC 425 and seek indulgence of this Court to set aside conviction and sentence passed by the Court below.

9.Learned Senior Counsel would contend that none of the witnesses that had been examined are independent witnesses and they are all close relatives of the victim. He would further contend that the alleged incident had occurred in a public place and it is very surprising that none of the independent witnesses had



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been examined by the Investigating Officer. He would further contend that even according to P.W.1 & P.W.5., the brother and the wife of the victim during the alleged incident they had been also severely injured and they had not produced any document to substantiate as regards to the treatment that they had taken for the injuries that had been caused to them upon which the Court passed orders of acquittal.

10.He would further contend that there has been contradictions of time in which the witnesses were examined and also the time at which they had visited the Police Station for enquiry. He would particularly rely upon the evidence of P.W.1, P.W.5 & P.W.7 on that aspect. He would further submit that P.W.1 & P.W.5 who claimed to have been injured during the incident had accompanied the victim to the C.M.C Hospital. But, there was no explanation as to why they did not take any treatment for the injuries there and that they had taken treatment in the Hospital at Adukkamparai. He would further submit that there are also contradictions as regards to the time of investigation. He would submit that according to P.W.12,



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the Special Sub Inspector of Police had registered the F.I.R at 3.30 A.M. and had handed over the F.I.R to P.W.14/Inspector at 09.00 A.M. However, the Inspector who was examined as P.W.14 has stated that he was in receipt of F.I.R. at about 4.00 A.M and had visited the spot at about 6.00 A.M. and during his investigation, he had drawn a Mahazar in which P.W.8 was a witness.

11.He would draw the attention of this Court to the evidence of P.W.14, wherein P.W.14 had claimed that after the inspection at the scene of incident at about 6.00 A.M, he had gone to the C.M.C. Hospital at 7.00 A.M. along with P.W.8 where he had collected certain material objects. He would further draw the attention of this Court to the cross-examination of P.W.14, wherein P.W.14 admits to be in the hospital at 7.00 A.M. But, denied meeting the victim as he was under treatment. He would submit that it would be pertinent to note that according to the evidence of other witnesses, the victim had died at 3.40 A.M. Therefore, there is no possibility of the victim being under treatment at 7.00 A.M. He would submit that it could only be true that the victim was alive when P.W.14 visited the



hospital as the evidence of P.W.2 in clear terms states that the Police Officers came immediately to the C.M.C. Hospital. Therefore, he would submit that the Investigating Officer was aware of the incident. But had delayed the registration of the F.I.R only to rope in the appellants herein, for the reasons best known to him.

12.At this juncture, he would draw the attention of this Court to the evidences and witnesses to state that the Police Station was within a short distance from the place of the incident which would only fortify his contention that there was a delay in registering the F.I.R which would only efface the same. In support of his said contention, he would further contend that the written complaint of P.W.1 had been fabricated only to create the offence under Sections 148, 294(b), 323, 324 & 302. He would further submit that reading of Ex.P1, the written complaint as well as Ex.P18, the First Information Report, it is evident that the allegations of the offence under Section 294(b) was only against the first appellant herein. But, however, charges of 294(b) had been framed against all the accused



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and the Court below had convicted and sentenced all the appellants for the offence under Section 294(b).

13.He would also draw the attention of this Court that the offence under Section 148 had been modified by the Court below to an offence under Section 147 since as per the statement of the witnesses, none of the appellants/accused had assembled with dangerous weapons. He would submit that none of the appellants/accused had assembled with a common intention to murder the victim. He would submit that they were all doing their business in their shops during which time, the victim along with Kutty Murugan who was a relative of the victim had come to the shop and engaged themselves in an unruly manner which led to the incident and therefore would submit that the appellants could not be charged either under Section 147 or 302 I.P.C. Therefore, he would seek indulgence of this Court to set aside the conviction and sentence passed by the Court below.



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14. Countering his arguments, learned Additional Public Prosecutor would contend that the appellants have not denied the incident. He would draw the attention of this Court to the cross-examination of certain witnesses where the suggestion on the side of the appellants/accused was that during verbal duel between the victim alongside Kutty Murugan and the appellants/accused, the victim had suffered injuries at the hands of Kutty Murugan and due to such injury, the victim had died. Therefore, he would submit that the appellants/accused impliedly admits to be present at the time of the incident. He would further submit that P.W.1 to P.W.7 in categorical & clear terms had deposed about the incident and the involvement of each of the appellants as to their role in the incident. Therefore, he would submit that the prosecution had proved its case beyond doubt. He would submit that the delay in filing the F.I.R. that itself would not be fatal to the case.



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15.He would draw the attention of this Court and submit that the incident had occurred at about 8.15 P.M. and immediately, the victim had been rushed to the C.M.C. Hospital for treatment. The defacto complainant/P.W.1 was also injured by the appellants/accused along with P.W.5 for which they had to go to Adukkamparai Hospital for treatment and after taking treatment for the injuries that had been inflicted upon them, P.W.1 had visited the Police Station to lodge a complaint and immediately investigation has been initiated on the side of the prosecution. He would further submit that just because the eye witnesses are the relatives of the victim, their evidences cannot be brushed aside as each and every witnesses have spoken about the overt act of the respective appellants/accused and therefore, there was no error on the Court below in passing the orders of conviction and sentence against the respective charges that had been proved against them. Therefore, he would pray this Court to dismiss the appeal and confirm the conviction and sentence passed against the appellants/accused.



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16.We have considered the submissions made by the respective counsel appearing on either side.

17.The appellants 2, 4 & 6 have been convicted and sentenced for the offence under Sections 147 & 294(b) I.P.C and have been sentenced to undergo a simple imprisonment of one year each on both the counts and their sentences to run concurrently. The appellants 1, 3 & 5 apart from being convicted under Sections 147 & 294(b) I.P.C have also been convicted under Section 302 I.P.C for which they have been sentenced to one year on two counts & life imprisonment respectively and the sentences also to run concurrently.

18.Even though all the appellants had been originally charged by the prosecution for the offence under Section 148, the Court below had factually found that none of the evidence suggest that the appellants were armed with dangerous weapons and had converted the offence punishable under Section 148 to an offence under Section 147.



19.A reading of the First Information Report would show that P.W.1 on his way back home was intercepted by the appellants/accused and was abused by them and that when the victim along with his wife P.W.5 had come to support P.W.1, the first appellant had taken a knife from the shop and had stabbed the victim, and the other accused viz., the appellants 3 & 5 had also indulged in causing serious injuries using knife & ladle. As rightly found by the Court below that the evidence of P.W.1 to P.W.7 also did not speak that the appellants were armed. In that context, this Court has to see as to whether the appellants had assembled or continued to be assemble with an intention to commit a crime. The Court below had given a categorical finding that during verbal duel between the appellants, victim, P.W.1 and P.W.5, the appellants had gone back to the shop and brought a knife & ladle with which they caused injuries to the victim.

20.From the narration of the aforesaid facts which had not been controverted to by the appellants in respect of their presence, it is clear that the appellants were assembled at the place of incident. However, the intention to



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commit a crime had not been spoken by any of the witnesses. But, when P.W.1 had arrived at the scene of occurrence, which is near the shop of the first appellant, a verbal duel had been taken place which had provoked the accused viz., the appellants 1, 3 & 5 to draw the weapons from their shops, this fact had been found by the Court below, which would only lead us to the conclusion that the incident had taken place in front of the shop of the appellants.

21.Had the appellants assembled there with an intention to commit murder, then naturally they would have armed themselves. But the Court below had given a categorical finding that the appellants/accused were not armed. Hence, we are of the conclusion that assembling of the appellants were not with an intention to commit a crime. But, however, their assembling would fall under the explanation to Section 141 and therefore, we are of the view that they would be only punishable under Section 143 of I.P.C for which the maximum imprisonment would be six months. In the present case, even though the prosecution had failed



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to prove that they had assembled to commit a crime, the continuance of assembling of the appellants would cause their assembling unlawful.

22. Again reading of the F.I.R along with Ex.P1, the complaint given by P.W.1 would suggest that the appellants having assembled together, on seeing P.W.1 had started to accuse using filthy language. The evidences of P.W.1 & P.W.2 spoke about the use of filthy language by the appellants. Further, the witnesses have not stated as to which of the appellants/accused had spoken in an obscene manner to attract Section 294(b). The Court below had held that the first accused along with other accused had scolded P.W.1 in filthy language in a public place so as to attract offence under Section 294(b) I.P.C. No specific overt act against each of the accused, either had been complained of, spoken to by the witnesses nor has the Court below recorded a finding as to the respective overt act as against each of the appellants/accused. In such an event, the benefit of doubt as regards to the aforesaid offence would have to be given to the appellants/accused.



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Further, it is very surprising that the Court below had sentenced each of the appellants/accused to undergo a simple imprisonment of one year for the offence under Section 294(b). For better appreciation, the said provision is extracted hereunder:

Section 294. Obscene acts and songs

...

(b)“sings, recites or utters any obscene song, ballad or words, in or near any public place shall be punished with imprisonment of either description for a term which may extend to three months, or with fine or with both.”

The said provision would show that the punishment for the aforesaid offence would be an imprisonment which may extend to three months only.

23.We feel that the Court below ought to be more careful while awarding sentence for the offence for which the accused had been convicted.



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24. Offence punishable under Section 302 would arise when act had been committed with an intention of causing death or with an intention of causing a bodily injury as it is likely to cause death which would amount to murder.

25. The appellants have been charged with an offence under Section 302. The Court below had found that the appellants 1, 3 & 5 had caused bodily injury with an intention to cause death. We have already held that the appellants have not assembled to commit any crime, but, continue to be assembled when the incident occurred which made their assembling unlawful. We arrived at the said conclusion based upon the fact that no evidences have been placed before us to come to a conclusion that there was an intention to commit a crime, particularly murder in this case.

26. As rightly pointed out by the learned Senior Counsel there was a huge delay in filing the F.I.R. It is the case of the prosecution that the victim who



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suffered the injuries at the hands of the appellants was rushed to the C.M.C Hospital. In spite of the medical treatment, the victim had died at about 3.40 A.M.

It is very surprising that the Investigating Officer had not examined any of the Doctors who had given treatment to the victim nor had produced any medical records pertaining to the treatment given to the victim at the C.M.C. Hospital. This creates a suspicion in the minds of this Court as to the claims that had been made by the defacto complainant, the witnesses and the Investigating Officer.

27.Further the correction pointed out in the complaint and F.I.R to our naked eyes seems very disturbing. It is also claimed by the witnesses that the victim was taken to the C.M.C. Hospital through a private vehicle and the Investigating Officer had failed to examine the said vehicle owner/driver.

28.Further to substantiate the allegation of previous enmity i.e., the incident that had occurred on 12.03.2016, the Investigating Officer had not enquired Kutty Murugan who was the cause for the incident that had taken place on 12.03.2016 & 13.03.2016.



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29.Further P.W.1 in his evidence had deposed that while he was near

Mariamman Temple on Mottur Road, the appellants had abused him in filthy language and that when his brother the victim had come to rescue, the victim was stabbed. But, however, P.W.3 who is also a relative of the victim speaks that the incident had taken place near the shop belonging to the appellants 1 & 5.

30.Ex.A23 is the sketch that had been marked on the side of the prosecution. A perusal of Ex.A23 would show that Mariamman Temple is not near the place of occurrence. This creates a doubt on the veracity of the statement of P.W.1, who was also the complainant on whose complaint, the F.I.R had been registered. As already noted, there is discrepancy in the statements of P.W.1 to P.W.7 as regards the incident and there is also discrepancy in the statements of P.W.12 & P.W.14, who is the Special Sub Inspector of Police attached to Anaicut Police Station and the Investigating Officer/Inspector of the said Police Station respectively, with regard to the timing on which the Investigating Officer was aware of the occurrence.



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31.It is also very surprising to note that such an incident had taken place within a very short distance from the Police Station and that the Police were not aware of the incident. It is also surprising to note that there were no documents produced to show that there was intimation that had been received by the Police either from the C.M.C Hospital where the victim being treated for atleast 9 hours and the Hospital at Adukkamparai where P.W.1 & P.W.5 claimed to have taken treatment for the injuries. Both P.W.1 & P.W.5 had not even explained as to why they did not take treatment at the C.M.C. Hospital, which was the first hospital they had visited to admit the victim and they preferred to take treatment in the Hospital at Adukkamparai. These all create a doubt in the minds of the Court in the nature in which the First Information Report itself had been lodged.

32.Be that as it may, the defence during the cross-examination of the respective witness particularly, P.W.1 to P.W.7 had made a suggestion that the victim along with one Kutty Murugan had attempted to create a ruckus at the shop of the appellants and that the said Kutty Murugan attempted to weild a knife and



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in melee, the victim was injured by the said Kutty Murugan would itself suggest that the appellants were present in the scene of the crime. It would also suggest that there was a quarrel between the appellants and the victim. The appellants have also not produced any independent witness to drive home their defence.

33.It is also surprising to note that even though such a suggestion had been made to implicate Kutty Murugan, the appellants have not taken any steps to secure his presence to examine him also. In such an event, we are of the view that the appellants 1, 3 & 5 could not be charged for offence punishable under Section 302. But, utmost could be charged with the offence punishable under Section 304 Part II.

34.In view of the aforesaid reasonings & findings, we are inclined to interfere with the Judgment of the Court below and the Criminal Appeal is partly allowed and the conviction & sentence is modified in the following manner:



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(a)The conviction & sentence of the Court below of the appellants with regard to an offence punishable under Section 147 is modified and they are convicted for an offence punishable under Section 143 I.P.C and are sentenced to undergo a simple imprisonment of six months each.

(b)The conviction & sentence of the appellants 1, 3 & 5 for the offence punishable under Section 302 is modified as offence punishable under Section 304 Part II and they are imposed sentence which they have already undergone. The fine imposed by the Court below is confirmed.

(c)The conviction & sentence imposed against the appellants in respect of the offence punishable under Section 294(b) is set aside.

35.The sentences if any already undergone by the appellants/accused shall be given set off under Section 428 Cr.P.C. The bail bond if any executed by the



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appellants shall stand cancelled. The Trial Court is directed to take appropriate steps to incarcerate the appellants/accused who are in bail/in prison so as to serve the remaining sentence. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (K.B.,J.)
11.12.2023

Index: yes/no
Speaking order:yes/no
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To

- 1.The Principal Session Judge,
Vellore.
- 2.The Public Prosecutor,
High Court of Madras, Chennai – 104.
- 3.The Inspector of Police,
Pallikonda Circle,
Anaicut Police Station,
Vellore District.



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**Pre-delivery judgment in
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11.12.2023



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**Crl.A.No.227 of 2018 and
Crl.M.P. Nos. 10339 & 10341 of 2019**

R.SURESH KUMAR, J.

AND

K.KUMARESH BABU, J.

(Order of the Court was made by **K.KUMARESH BABU, J.**)

Today, the case is listed under the caption "For Being Spoken to" at the instance of the learned counsel for the appellants.

2. It is represented by Mr.E.V.Chandru, learned counsel appearing for the appellants that while passing the judgment in the above criminal appeal on 11.12.2023, in paragraph No.5, in S.No.4., it has been stated as A4 has been 'Acquitted' for the offence under Section 302 of IPC, but, in fact, he had been convicted.

3. Therefore, Registry is directed

(a) to delete the word '**Acquitted**' appearing in S.No.4 as against A4 and replace with the word '**Convicted**' and insert '**Life imprisonment, Rs.5,000/- in default one year sentence to run concurrently**' in the next 'Punishment imposed' column.



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(b) In paragraph Nos. 17, 25, 33 and 34(b), wherever the term 'appellants 1, 3 & 5' occurs, the same shall be deleted and be replaced with '**appellants 1, 3 to 5**'.

4. Hence, Registry is directed to upload the corrected order copy.

(R.S.K., J.) (K.B., J.)
21.12.2023

vji

Note: Registry is directed to issue order copy
on 22.12.2023.

To

The Superintendent of Police,
Central Prison,
Vellore.

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