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Crl.A Nos.297 & 324 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

Coram :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal Nos. 297 and 324 of 2016

Crl.A.No.297 of 2016

Kundamani @ Ganesamoorthy

.. Appellant

Versus

State rep by
The Inspector of Police,
Puduchathiram Police Station,
Cuddalore District.
Crime No.40 of 2004

.. Respondent

Criminal Appeal is filed under Section 374 (2) of Cr.P.C to call for records and set aside the judgment dated 28.03.2016 made in S.C. No. 5 of 2008 on the file of II Additional District and Sessions Judge, Chidambaram.

For Appellant	..	Mr.G.Pugazhenth
For Respondent	..	Mrs. G.V. Kasthuri
		Additional Public Prosecutor



CrL.A Nos.297 & 324 of 2016

CrL. A. No. 324 of 2016

Arumugam

.. Appellant

Versus

State rep by
The Inspector of Police,
Puduchathiram Police Station,
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Criminal Appeal is filed under Section 374 (2) of Cr.P.C to call for records and set aside the judgment dated 28.03.2016 made in S.C. No. 5 of 2008 on the file of II Additional District and Sessions Judge, Chidambaram.

For Appellant	..	Mr.E.Kannadasan
For Respondent	..	Mrs. G.V. Kasthuri Additional Public Prosecutor

COMMON JUDGMENT

The Criminal Appeals have been filed seeking to set aside the judgment dated 28.03.2016 passed in Sessions Case No. 5 of 2008 passed by the learned II Additional District and Sessions Judge, Chidambaram.

2. Totally, there are 10 Accused in S.C. No. 5 of 2008 who have been tried for the offences punishable under Sections 147, 148, 149, 323,



324, 341, 307 r/w. 149 of IPC. After due trial, the Appellant in Crl. A. No.297 of 2016 (Accused No.2) and the Appellant in Crl.A. No. 324 of 2016 (Accused No.1) alone have been convicted and sentenced for the offence punishable under Section 324 of IPC and sentenced to undergo varied terms of imprisonment. By the judgment dated 28.03.2016, the Appellants as well as other Accused Nos. 3 to 10 have been acquitted for the offences to which they were charged.

3. As against the acquittal of the other Accused, the Prosecution has not filed any Appeal. The present Appeals are filed by the Accused Nos. 1 and 2 alone.

4. The brief facts, which are necessary for the disposal of these Criminal Appeals, are as follows:-

4.1. As per the Prosecution case, Accused-1 sought to marry P.W-6, who is the daughter of P.W-7, but P.W-7 refused to give his daughter in marriage to him. Subsequently, P.W-6 was given in marriage to P.W-4, who is the brother of P.W-1. Therefore, there had been enmity between the family



of the Accused and Prosecution witnesses. It is stated that after the marriage

of P.W-6, the first Accused teased P.W-6 wherever he saw her. While so, on

19.01.2014, when P.W-6 went to take for a bath in the Village pond, the first

Accused held her hands, waylaid her and attempted to outrage her modesty.

However, P.W-6 escaped from the clutches of the first Accused and rushed

towards her house and complained the act of the first Accused to P.W-1 and

P.W-4. The matter was taken up to the elders in the Village and they have

also warned the first Accused not to indulge in such acts. This is infuriated

the Accused party. While so, on the next day when P.W-1, P.W-2, P.W-3

and P.W-4 went to the nearby tea shop. At that time, the first Accused along

with ten others came there with deadly weapons. The first Accused hit P.W-

2 in his head with knife by saying “get lost” and he suffered bleeding

injuries. Further, Accused-3 Chidambaranathan also caused cut injuries with

the knife on the backside of his head. The Accused-5 Kamalanathan attacked

P.W-2 with an iron rod. On being attacked, P.W-2 swooned and fell down.

He was taken for treatment to Government Hospital, Cuddalore from where

he was shifted to Government General Hospital, Chennai for better treatment.

In this regard, P.W-1 had given a complaint to the Sub-Inspector of Police,



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Puduchathiram Police Station, Cuddalore District, based on which the case in

Crime No. 40 of 2004 came to be registered for the offences punishable under Sections 147, 148, 341, 324, 323 and 307 of Indian Penal Code.

4.2. On receipt of copy of the First Information Report under Ex.P-1, P.W-16, Inspector of Police had taken up investigation and proceeded to the scene of occurrence, where he had drawn a rough sketch under Ex.P-15 and observation mahazar under Ex.P-2 in the presence of witnesses Kandeepan, Kadhivel P.W-12 and Arjunan P.W-11. He also enquired Tamilselvi P.W-6, Ramalingam P.W-7, Balamurugan P.W-8, Muthuvel, Gunasekaran, Arjunan P.W-11, Siva Anandan and recorded their statement. On the same day at about 16.00 hours, he has arrested Chidambaranathan A-3, Renganathan A-7, Dharmaraj A-8, Hussain A-9, Karunakaran A-10 and on such arrest, they have given a voluntary confession statement which led to the recovery of the weapons used by them in the commission of offence. Ex.P-16, Ex.P-17 and Ex.P-18 are the confession statements recorded from the Accused. Thereafter, he had sent the Accused person to the Court for their remand. He had also prepared Form-95 and sent the material objects collected in this case



to the Court. On 21.01.2004 he went to the Cuddalore Government Hospital where he recorded the statement of P.W-1, P.W-2, P.W-3, P.W-4, P.W-5 and Thiruvengadam. He also enquired Doctor Sayee Leela P.W-13 on 19.05.2004 and recorded her statement. After completing the investigation in this case, P.W-16 filed the final report on 25.05.2004 against the Accused 1 to Accused 10 for the offences punishable under Sections 147, 148, 341, 324, 323 and 307 of IPC before the learned District Munsif-cum-Judicial Magistrate, Parangipettai. Based on the charge sheet, summons have been issued to the Accused and on their appearance, the copies were furnished to them under Section 207 Cr.P.C. Thereafter, the case was made over to the Court of Sessions and the Accused have been bound over to the said Court and charges were framed against them. Thereafter, when the Accused have been enquired about the incriminating materials made available against them under Section 313 of the Code of Criminal Procedure, they denied the charges and claimed to be tried. Therefore, trial was ordered. During trial, on the side of Prosecution 16 witnesses were examined by the Prosecution as P.W-1 to P.W-16 and 22 documents were marked as Ex.P-1 to Ex.P-22 besides five material objects as M.O-1 to M.O-5 have been projected.



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4.3. On appreciation of the oral and documentary evidence, the learned II Additional District and Sessions Judge, Chidambaram, by the Judgment dated 28.03.2016, acquitted the Accused 3 to 10 of all the offences, but convicted the first Accused for the offence under Section 324 of IPC and sentenced to undergo three years rigorous imprisonment with fine of Rs.5,000/- failing which to undergo 3 months simple imprisonment. As regards the second Accused, he was convicted for the offence under Section 324 of IPC and sentenced to undergo two years rigorous imprisonment with fine of Rs.2,000/- failing which to undergo 2 months simple imprisonment.

4.4. Challenging the aforesaid Judgment dated 28.03.2016 made in S.C. No. 5 of 2008 on the file of II Additional District and Sessions Judge, Chidambaram, the present Appeals have been preferred by the Accused Nos.1 and 2 respectively.

5. The learned Counsel for the Appellants submitted that the Prosecution had laid the charge sheet only against the Accused but did not



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investigate the complaint preferred by Accused-1. Even before the trial Court, the defence of the Accused was that the case was a foisted case. There were no dangerous weapons involved in this case at all, but the case was foisted as though the Prosecution witnesses were attacked by the Accused with knives. In the course of the trial before the trial Court, P.W-1 to P.W-4 supported the Prosecution case. P.W-5 who was also injured had turned hostile. P.W-6/daughter of P.W-7 was hearsay witness and was not a witness to the occurrence. The evidence of P.W-13 does not support the case of the Prosecution. According to the learned Counsel for the Appellants, if the version of the Prosecution witness is to be believed that the Prosecution witnesses were attacked with machete, Veechu aruvaal, the injury caused by machete Veechu aruvaal will be different and the injured would not have suffered a mere laceration. The Doctor/P.W-13 had clearly stated in her cross-examination that the injuries found on the injured witnesses were lacerations and not cut injuries. Therefore, the Prosecution miserably failed to prove the case of the Prosecution beyond reasonable doubt that due to use of deadly weapons, serious injury has been caused to P.W-2. The learned II Additional District and Sessions Judge, Chidambaram on a misconception of



the facts, convicted Accused-1 and Accused-2 for the offence under Section 324 of I.P.C. Furthermore, while convicting the first Accused for the offence under Section 324 of IPC, he was sentenced for a period of 3 years, but for the same commission of offence under Section 324 of IPC, the second Accused was sentenced to undergo 2 years of imprisonment. The evidence made available before the Court below against all the Accused are one and the same while so, the Sessions Court is legally not justified to impose 3 years sentence to the first Accused and 2 years for the second Accused.

6. It is the contention of the learned Counsel for the Appellant in both the Appeals that the learned Trial Judge had failed to consider the defence of the Accused that the Accused also had suffered injuries in the same transaction, but it was not investigated by the Investigation Officer. The Prosecution did not place all relevant materials fairly before the trial Court with respect to the injuries suffered by the Accused party. When there is a case and a counter case, the Investigation Officer is bound to investigate both the cases. However, in the present case, the Investigation Officer did not investigate the counter case and therefore, it vitiates the judgment of the trial



Court. In any event, there is no credible and clinching evidence made available to prove the offence under Section 324 of IPC as against the Accused 1 and 2. Therefore, the learned Trial Judge ought to have acquitted the Accused. Further, there is no antecedent for both the Accused and taking note of the above, the learned Counsel for the respective Appellant seeks to set aside the judgment dated 28.03.2016 passed in S.C.No. 5 of 2008 on the file of the learned II Additional District and Sessions Judge, Chidambaram by allowing these Criminal Appeals.

7. Per contra, the learned Additional Public Prosecutor Mrs.G.V.Kasthuri appearing for the State vehemently objected to the line of arguments of the learned Counsel for the Appellants stating that the Prosecution had proved the charges through witnesses P.W-1 to P.W-4, P.W-6/Wife of P.W-4. P.W-6 who was a hearsay witness, but the motive for the occurrence was stated through her evidence. In fact, P.W-6 was not treated as hostile and she has clearly stated about the overt act on the part of the first Accused in teasing her wherever he saw her. The learned Additional Public Prosecutor further submitted that on proper appreciation of evidence, the learned II Additional District and Sessions Judge, Chidambaram convicted



the Appellants for the offence under Section 324 of IPC and therefore, she would submit that there is no merit in these Appeals and the Appeals have to be dismissed.

Point for Consideration:

Whether the judgment of conviction dated 28.03.2016 recorded by the learned II Additional District and Sessions Judge, Chidambaram in S.C.No.5 of 2008 is to be set aside as perverse?

8. Heard the learned Counsel for the respective Appellant and the learned Additional Public Prosecutor. Perused the judgment of the learned II Additional District and Sessions Judge, Chidambaram.

9. From the evidence before the trial Court, it was found that the Accused were also injured. When the Investigation Officer was cross examined by the defence, the suggestion of the defence was that the Accused were arrested from the Hospital when they were undergoing treatment for the injuries and it was reflected in the Registers of the Prison. They were taken for remand from the hospital but it was suppressed by the Investigation



Officer stating that he was unaware of it. When the Investigation Officer was confronted with such a question as regards the place of the arrest of the Accused, it should be a definite answer, either denying such suggestion or accepting. However, in this case, the Investigation Officer had evaded to answer it. That shows he was aware that the Accused were also injured.

10. There were two groups who indulged in attacking each other. In an incident of this nature, one group alone cannot not suffer the injuries and in such case, as per Order 566 of Tamil Nadu Police Standing Orders action has to be resorted against both the groups and the injuries, if any, suffered by the other party also has to be investigated. In such case, the Investigation Officer has to register the First Information Report and investigate it to find out who was the aggressor and who was the victim. After investigation, based on the evidence collected, one of the cases has to be dropped and the other case has to be investigated and final report to be laid. If he was unable to find out who was the aggressor, both cases had to be investigated by the same Investigation Officer and in both cases Final Report has to be filed before the Court concerned herein. But in this case, such a course has not been resorted



to by P.W-16, Investigation Officer.

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11. The Investigation Officer when confronted by the learned Counsel for the Accused before the trial Court regarding injuries suffered by the Accused, he had not denied the suggestion but only evaded to reply stating he does not know. The defence of the Accused before the trial Court as well as this Court was that the Accused also had suffered injuries in the same incident which was not investigated by the Investigation Officer. Therefore, any unexplained injury on the Accused by the Prosecution is fatal to the case of the Prosecution as it would affect the very credibility of the investigation conducted in the case.

12. The learned Counsel for the Appellant invited the attention of this Court to the evidence of the Doctor P.W-13. The injured in this case had not stated in which village they were attacked. Also the injuries found on the injured were not caused by sharp edged weapons or Machete. When the injuries on the injured were found to be not due to any weapon mentioned in the Charge Sheet, then the Medical evidence does not corroborate with the



Prosecution Evidence. As it is clear that the Prosecution Witness No.2 did not suffer any serious injury, much less an injury caused by using a deadly weapon, the invocation of Section 324 of IPC to convict the Accused Nos.1 and 2 is not proper. Therefore, this Court is of the view that benefit of doubt has to be extended in favour of the Accused Nos. 1 and 2.

13. As per Prosecution case, the Accused have alleged to have caused injuries on the Prosecution Witnesses P.W-1 to P.W-4 using Machete which was not being corroborated by P.W-13/Doctor. There were injuries on the injured which were only abrasions and cut injuries. Therefore, the ground of Appeal raised by the learned Counsel for the Appellant regarding the conviction imposed by the learned trial Judge for offence under Section 324 of I.P.C was found to be acceptable and reasonable.

14. On perusal of the judgment of the learned II Additional District and Sessions Judge, Chidambaram, it was found that the learned Judge had not considered the defence of the Accused that the Accused also had suffered injuries which was not explained by the Prosecution. The learned Judge had



not considered the ruling cited by the learned Counsel for the Appellant in

2012 (3) M.W.N. (Cri.) 277 in the case of *Devendran -vs- The State*,

regarding the injuries suffered by the Accused in the Criminal Case. When the Prosecution had not placed all the relevant materials fairly before the trial Court, and the investigation conducted was found to be shoddy, then, interest of justice would demand that benefit of doubt has to be granted to the Accused.

15. In this Case, the learned II Additional District and Sessions Judge, Chidambaram had rejected the defence of the Accused stating that shoddy investigation cannot be a ground to acquit the Accused. Such an observation cannot be accepted inasmuch as when a defective or perfunctory investigation is conducted, it would affect the liberty of the Accused. In Paragraph 19, the learned II Additional District and Sessions Judge, Chidambaram had discussed about the injuries on the Accused, but rejected the defence of the Accused without any valid reasons. It was specifically stated that in the remand report of Accused No. 7, it was stated that “*alleged to sustain injury (fracture) on his leg*”. On the basis of the above, the Trial



Court observed that there was a suppression of the injuries said to have been suffered by the Accused party. However, the trial Court proceeded to convict the appellants herein. The Prosecution has a duty to place all the materials fairly before the trial Court. In this case, the Prosecution was not able to explain the injuries suffered by the Accused. In a group clash, naturally, both sides are bound to suffer injuries. While so, the injuries caused on the Accused by the Prosecution witnesses cannot be ignored under the principles of fair trial.

16. In the light of the above discussion, the point for consideration is answered in favour of the Appellants and against the Prosecution. The conviction recorded by the learned II Additional District and Sessions Judge, Chidambaram in S.C.No.5 of 2008 dated 28.03.2016 is found perverse.

In the result, **both the Criminal Appeals are allowed.** The Judgment of conviction and sentence of imprisonment imposed on the Appellants/Accused in S.C. No. 5 of 2008, dated 28.03.2016, by the learned II Additional District and Sessions Judge, Chidambaram, is set aside and the



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Accused are acquitted. The Bail bond executed by the Accused shall stand cancelled and the fine amount, if any, paid is to be refunded to the Appellants.

21.12.2023

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To:

1. The II Additional District and Sessions Judge
Chidambaram, Cuddalore District
2. The Section Officer, VR Records,
High Court, Madras.
3. The Public Prosecutor
Madras High Court, Chennai – 600 104.



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SATHI KUMAR SUKUMARA KURUP, J

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Judgment in
Criminal Appeal Nos. 297 & 324/2016

21.12.2023