



Crl.A.Nos.417,439,440,442 & 464 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.04.2023

Pronounced on: 18.05.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.Nos.417, 439, 440, 442 and 464 of 2020

Crl.A.No.417 of 2020:

1.Venkatachalam

2.Balaji

3.Thirumalai

.. Appellants

/versus/

State represented by
The Inspector of Police,
Kaveripattinam Police Station,
Kaveripattinam,
Krishnagiri District.
(Cr.No.245 of 2015)

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374 (2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Krishnagiri District in S.C.No.251 of 2016, dated 08.10.2020.

For Appellant :Mr.V.Rajamohan

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

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Crl.A.Nos.417,439,440,442 & 464 of 2020

Crl.A.No.439 of 2020:

- 1.Periyannan
- 2.Periyasami
- 3.Panneer Selvam
- 4.Govindammal
- 5.Peruma

.. Appellants

/versus/

State rep. by its
Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
Cr.No.245/2015.

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to call for the records in S.C.No.251 of 2016 on the file of the Additional Sessions Judge, Krishnagiri, allow the appeal by setting aside the judgment and conviction in S.C.No.251 of 2016, dated 08.10.2020.

For Appellants :Mr.R.Ganesh Kumar

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

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Crl.A.Nos.417,439,440,442 & 464 of 2020

Crl.A.No.440 of 2020:

Ganesan

.. Appellant

/versus/

State rep. by
The Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
Cr.No.245/2015.

.. Respondent

Prayer : Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to call for the entire records in connection with the S.C.No.251/2016 on the file of the learned Additional Sessions Judge, Krishnagiri, Krishnagiri District and set aside the judgment dated 08.10.2020.

For Appellant :Mr.E.Kannadasan

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

Crl.A.No.442 of 2020:

1.Kannukan
2.Venkatesan
3.Sanguraj
4.Sivaraj
5.Valarmathi

.. Appellants

/versus/

State rep. by its
Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
Cr.No.245/2015.

.. Respondent



Crl.A.Nos.417,439,440,442 & 464 of 2020

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Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., to call for the entire records and set aside the judgment delivered by the Hon'ble Additional Sessions Judge, Krishnagiri in S.C.No.251 of 2016, dated 08.10.2020.

For Appellants :Mr.P.Ezhilnilavan

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

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Crl.A.No.464 of 2020:
Chinnasamy

.. Appellant

/versus/

State rep. by
The Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
Cr.No.245/2015.

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 08.10.2020 passed in S.C.No.251/2016 on the file of the Additional Sessions Judge, Krishnagiri by allowing the present criminal appeal before this Court.

For Appellant :Mr.R.Nalliyappan

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

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Crl.A.Nos.417,439,440,442 & 464 of 2020

COMMON JUDGMENT

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This batch of five Criminal Appeals are against the judgment of the learned Additional Sessions Judge at Krishnagiri in S.C.No:251/2016, dated 08/10/2020.

2. 15 accused were tried for offences under Sections 147,148, 341, 342, 323, 324, 506(i) of IPC and Section 3 (1) of TNPPDL Act, 1992. On appreciation of evidence adduced on the side of the prosecution and the accused, the Trial Court found the accused guilty as below:-

A-1 to A-14: guilty of offences under Sections 147,148,341,342,323,506(i) IPC and Section 3 (1) of PPDL Act; 1992. **A-4 and A-5:** guilty of offence under Section 324 IPC and **A-15:** guilty of offences under Section 147 IPC and Section 3(1) of TNPPDL Act, 1992. The Trial Court sentenced them as below. In so far as the charges u/s 147 and 148 IPC as against A-1 to A-14, though held proved, being a cognate offence, the Trial Court imposed punishment only for the offence under Section 148 IPC.



Rank of the account	Conviction under Section	Sentence imposed by the trial Court
A1-A14	Section 148 IPC	Fine Rs.500/- each, in default, 1 month SI
A1-A14	Section 341 IPC	Fine Rs.500/- each, in default, 1 month 1 week SI
A1-A14	Section 342 IPC	Fine Rs.500/- each, in default 1 month SI
A1-A14	Section 323 IPC	Fine of Rs.1000/- each in default 1 month 1 SI
A1-A14	Section 324 IPC	each 1 year RI and fine of Rs.2000/- each in default, 1 month SI.
A1-A14	Section 506(i)IPC	1 year RI and fine of Rs.500/- in default 3 months SI
A1 to A15	Section 3(1)PPDL Act	Each 1 year RI and fine of Rs.500/- in default one month SI
A15	Section 147 IPC	Fine of Rs.500/- in default, one week SI

The Trial Court ordered the period of sentence to run concurrently and the period of imprisonment already undergone to be set off.

3. Aggrieved by the conviction and sentence, these Criminal Appeals by the accused filed as below:-

Crl.A.No: 417/2020 :

By Venkatachalam [A-9], Balaji [A-10] and Thirumalai [A-11].

Crl.A.No: 439/2020 :

By Periyannan [A-1], Periyasami [A-3], Pannerselvam [A-5], Govindammal [A-12] and Peruma [A-14].



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Crl.A No: 440/2020 :

By Ganesan [A-15].

Crl.A No: 442/2020:

By Kannukan [A-2], Venkatesan [A-6], Sanguraj [A-7], Sivaraj [A-8] and Valarmathi [A-13].

Crl.A No: 464/2020 :

By Chinnsamy A-4.

4. Case of the prosecution:

The case of the prosecution is that on 31/3/2015 at about 5:30 p.m., 15 persons gathered with weapon in front of the house owned by Govindasamy. The mob used filthy language and aggressively trespassed into the house. By using a JCB bearing registration number TN 10 AJ 4846, damaged the asbestos roof, dredged the front of his house 5 feet depth and 20 feet length.

5. When the aggression was resisted by Govindasamy, his wife and son, the mob tied Govindasamy to a iron pole. His wife and son were pushed inside the house and locked outside. Govindasamy was beaten with bamboo sticks causing injury over his fore arms. on seeing the occurrence, villagers gathered



and thereafter, the assailants left JCB near SOC and fled. The injured Govindasamy was taken to government hospital by his wife Muniamma in a semi conscious state. He was treated by Dr.Hariram. On his reference, he was shifted to the government hospital, Krishnagiri. From the hospital, the respondent police received intimation and the Sub-Inspector Durairaj went to the hospital and recorded the statement of the injured. Case was registered in Cr.No: 245 of 2015 under Sections 147, 148, 294(b), 323, 324, 506(ii) of IPC. The copy of the FIR was sent to the Judicial Magistrate. Investigation was done by Mr.Thangavel, Inspector of Police and then, by Mr.Ravichandran, Inspector of Police. On completion of investigation, final report was filed against 15 persons under Sections 147, 148, 294(b), 323, 324, 341, 342 and 506(ii) IPC and section 3(1) of TNPPDL Act, 1992.

6. To prove the charges, prosecution has examined 13 witnesses, marked 12 Exhibits and 2 material objects. For the accused in defence, the first accused mounted the witness box and the copy of the plaint in O.S.No.75 of 2015 on the file of the Munsif Court, certificate copy of the order and decreetal order passed in I.A.No.389/2015 were marked as Ex.D-1 to Ex.D-3. These exhibits were relied by the accused to show, the sons of the defecto complainant



Govindasamy filed the civil suit against A-1 to A-8 and A-12, with same averments as alleged in the criminal case. Since the allegation of trespass and damage to property found un-proved, the Civil Court refused to grant interim injunction,

7. The Trial Court accepted the prosecution contention that the ocular evidence of PW-2[Gopalakannan] and PW-3[Muniammal] corroborates the evidence of the injured witness-PW-1. Further, the testimony of these witnesses is supported by the evidence of the PW-10 [Dr.Hariram] who gave the wound certificate Ex.P-4 for Govindasamy [PW-1]. The recovery of wooden log from the SOC marked as a M.O.1 which was used by the accused to attack PW-1, the nylon rope M.O 2 in which PW-1 tied in the iron pole.

8. As a result, the trial Court held, A-1 to A-15 formed unlawful assembly in front of PW-1 house on 31/03/2015. A-4 and A-5 caused injury to PW-1. Further, A-1 to A-14, with the help of A-15 damaged the asbestos sheet roof of PW-1 house. A-15, using his JCB to dig the soil in front of PW-1 house by 5 feet depth 20 feet length.



9. These five Criminal Appeals are directed against the said judgement by the respective accused as stated above .

10. In the grounds of appeals, it is specifically stated that the prosecution case stands on the testimony of the interested witnesses, who are the wife and son of the injured PW-1. The civil dispute between the two families had prompted PW-1 to give a false complaint. No independent witness had supported the case of the prosecution.

11. According to the prosecution, PW-2 and PW-3 were pushed inside the house and locked outside. So, there is no possibility of witnessing what happened to PW-1, who claims he was tied to a iron pole and he was later untied by PW-4. Further, PW-4, did not support the version of PW-1. He turned hostile and had not supported the case of the prosecution.

12. Likewise, PW-5[Marimuthu] a close relative of PW-1[Govindasamy] is an outsider and not a resident of the village, he claims by chance he came the the incident village. His evidence introduced to improvise the case to fix A-15, as if, A-15 brought down the bucket of the JCB to attack him and the trees in



front of the PW-1's house was uprooted using JCB. These are facts not found in his previous statement to the police or corroborated by any other prosecution witnesses.

13. Similarly, PW-6 the daughter of PW-1 residing at Kettur Village, admits that she came to Sevalur village only after hearing the incident. In her chief examination, on 23/03/2017, she had deposed that she saw her father tied to the iron pole. His back and hip injured. Her mother and brother were locked inside the house. She opened the house and rescued them. She saw JCB parked near her house and in front of his house, the soil was dug 50 feet deep for 20 feet length. This witness was recalled again by the prosecution, after charges against A-15 altered to Section 147 IPC and Section 3(1) of TNPPDL Act. This time, she had given a different story implicating A-4,A-5 and A-15. She during the examination on 10/10/2019 had admitted that on hearing the incident she came to Sevalur and came to know that the house was damaged by A-15 using JCB and his father was attacked by A-4 and A-5 and he was taken to the hospital by her mother for treatment. Being a hearsay, her testimony is inadmissible.



14. PW-7, who is the signatory of observation mahazar and recovery mahazar Ex.P-6 and Ex.P-8 turned hostile and not supported the case of the prosecution. PW-8, Kamaraj, the resident living opposite to the house of the defacto complainant also turned hostile. PW-9[Mohankumar], who is a staff working in Sriram Traders, is not a competent witness, his evidence about the purchase of 7 asbestos sheet by PW-1 three years ago from Sriram Traders and Ex.P-3 receipt is in admissible, since he is not the owner of the shop Sriram Traders nor Ex.P-3 is invoice for goods sold. It is a slip in the letter head of Sriram Traders and not even a cash receipt.

15. Therefore the Learned Counsels for the accused/appellants contended that it was a false complaint against the family members of A-1. To create record for the civil suit, this false complaint was lodged to show as if an attempt made by the accused persons to encroach his land and damage the property.

16. The contention made in the plaint and in the interim injunction application found false by the Civil Court. The contradictions and embellishment of facts by the interested witnesses not properly appreciated by the trial court. Hence, these appeals are to be allowed.



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17. Heard the learned counsels appearing for the appellant in their respective cases and the learned Government Advocate (Crl.Side) appearing for the State and perused the records.

18. The defacto complainant family and the accused family are related to each other. The incident had taken place in the village during day time and the only tell tale evidence available to prove the incident is the wound certificate marked as Ex.P-4. The independent witnesses like, the neighbours and residents of the village have turned hostile and did not support the case of the prosecution.

19. Particularly, as per the prosecution case, PW-1 was tied to the iron pole and it was untied by PW-4. The observation mahazar and recovery mahazar was prepared in the presence of PW-8. These two crucial witnesses for prosecution had turned hostile and the allegation that PW-1 was tied to the iron pole with M.O 2 nylon rope recovered from SOC, remains uncorroborated.



20. PW-6 the daughter of PW-1 had admittedly after hearing the incident at about 5.45 to 6.00 pm, came to Sevalur village. She could not have seen his father tied in the iron pole or his mother and brother locked inside the house. As per Ex.P-4 wound certificate, PW-1 was brought to the hospital at Kaveripattinam at about 7.00 pm by his wife Muniammal. Though PW-6 had earlier deposed that when she came to Sevalur Village she saw her father tied to iron pole and his mother and brother found locked inside the house, after two years when she was recalled, she has retracted her earlier version. The retraction after two years leaves her evidence not only unreliable also inadmissible being a hearsay.

21. Likewise, to prove the allegation of causing damage to the property using JCB the testimony of PW-1 to PW-3, PW-5 and PW-6 are relied. They are oral evidence about damage to the properties. However, during the investigation, no material evidence collected by the Investigating Officer from SOC to substantiate the allegation. Photographs or indication of the nature of damage in the rough sketch to lend credence to the prosecution evidence, not produced. In the absence of such evidence, the higher degree of embellishment and falsehood in the testimony of the interested witnesses, renders the



prosecution case unbelievable.

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22. In the said circumstance, the delay in registering the FIR and further delay in forwarding it to the Judicial Magistrate also gains significance. While it is alleged that occurrence took place on 31/03/2015 at about 17:30 hours, the case in Crime Number No.245/2015 was registered at 21:30 hours and a copy forwarded to the Magistrate on the next day that is on 01/04/2015. The copy received by the Magistrate at 7:50 p.m. The Investigating Officer admits that there was a delay in forwarding the First Information Report to the Judicial Magistrate, however, no explanation given by the prosecution for the inordinate delay in forwarding the First Information Report. The incurable inconsistency and contradiction in the evidence for prosecution, pave way to doubt that the delay in forwarding the First Information Report might be due to manipulation of the First Information Report.

23. The wound certificate Ex.P-4 and the testimony of PW-10 [Dr.Hariram], who examined the injured PW-1 and given the wound certificate indicates only two external injuries were found on PW-1 and both the injuries are aberrations and simple in nature. The patient was admitted with alleged



history of assaulted by 10 men and 5 women using wooden log and hands. The prosecution recovered only one wooden log, 4 feet length (M.O.1). Witnesses had deposed that it was bamboo stick used by the accused to attack PW-1 and they saw the bamboo sticks in the Court. However, no bamboo stick marked during trial. No reason given by the prosecution, why they have not marked the bamboo stick. While PW-1 has deposed that he was attacked on the back of his head by A-4 with bamboo stick, the Doctor, who physically examined PW-1, did not notice any injury on the back side of PW-1 head. Therefore, it could be easily seen that highly exaggerated complaint attributing serious allegations against 15 persons made, but no evidence substantial to corroborate the allegations placed before the Court by the prosecution. This omission renders the case of the prosecution unreliable. The Trial Court erred holding the accused guilty, without collaboration, based on the flimsy evidence of interested witnesses, who were nurturing animosity over the appellants.

24. Regarding the offence of damage to property alleged against the appellants, it is contended that using JCB the front portion of the defacto complainant property was dug to a length of 20 feet and 5 feet depth. Also it is alleged that 7 asbestos sheets were damaged. PW-1 had deposed that each sheet



cost about Rs.1100/-. To corroborate his evidence, the prosecution has marked Ex.P-3 a slip in the name of Sriram Traders and PW-9.

25. No photograph evidence relied to show the damage to the property. Had Investigating Officer taken photograph of the scene of occurrence, it would have substantially corroborated the evidence of prosecution witnesses regarding damages to the property alleged to have caused. No remnants of the damages collected from the SOC during the investigation. The observation mahazar, which is marked as Ex.P-6 does not mention about pit dug in front of PW-1 house or the nature of damage in the house of PW-1. The rough sketch (Ex.P-7) shows a portion on the north-west of the house as a portion damaged using JCB. However, there is no indication, what was damaged. Also, there is no indication in Ex.P-7 that the front portion of the house was dug 5 feet depth to 20 feet length using JCB.

26. Recovery of the remnants of the damaged asbestos sheet or a photograph, which will evident the damage, would have been easily proved the nature of damage, if any. The embellishment in the evidence of PW-1 regarding the value of the asbestos sheet, which he claims to have purchased and the



evidence of PW-9, who claims that he sold seven asbestos sheets for Rs.3500/- and the receipt Ex.P-3, do no way prove the case of the prosecution that those asbestos sheets were damaged on 31/03/2015 by the appellants.

27. Ex.P-3 is a memo slip dated 11/02/2015, quoting the value of 7 steel sheets each Rs.500/-. The slip is issued to PW-1. This is not an invoice of that shop or it was not deposed by the owner of the shop or person authorized to give evidence on his behalf. Further, a memo slip quoting price for steel sheet, can not be of any evidenciary value in this case, when the allegation of damage is to asbestos sheets and not steel sheets,

28. To sum up, since PW-4 and PW-8 the crucial witnesses for prosecution has turned hostile, the case of the prosecution is highly unbelievable. The wound certificate Ex.P-4, indicates two aberrations. The prosecution witnesses not consistent regarding the seat of injuries or the person who caused the injuries or the weapon used to cause the injuries. Two minor aberrations on the forearm could not have caused by all the 14 accused. Roping 15 persons and prosecuting them, based on allegations, which are highly embellished and also mixed with falsehood makes impossible the duty of



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the Court to separate the chaffs from the grain to find out the truth.

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29. In the result, **these Criminal Appeals Nos:417/2020, 439/2020, 440/2020, 442/2020 and 464/2020 are allowed.** The judgement of conviction and sentence passed by the Additional Sessions Court, Krishnagiri in S.C.No.251 of 2016, dated 08.10.2020, is set-aside. The Fine amount if any paid by the accused shall be refunded to them. Bail bond executed by the appellants shall stand cancelled.

18.05.2023

Index:yes/no

Speaking order/non speaking order

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To:

- 1.The Additional Sessions Judge, Krishnagiri.
- 2.The Inspector of Police, Kaveripattinam Police Station, Kaveripattinam, Krishnagiri District.
- 3.The Public Prosecutor, High Court, Madras.



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Crl.A.Nos.417,439,440,442 & 464 of 2020

Dr.G.JAYACHANDRAN, J.

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delivery Common Judgment made in
Crl.A.Nos.417,439,440,442 & 464 of 2020

18.05.2023