



Crl A No. 559 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 26.07.2023

Coram

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.559 of 2017

- 1.Dinesh @ Dinesh Kumar
- 2.Velayutham
- 3.Devanathan
- 4.Silambu @ Silambarasan @ Selvakumar
- 5.Chandru
- 6.Raghuraman
- 7.Prakash
- 8.Ramesh

.. Appellants

Versus

State Rep by
The Inspector of Police,
Cuddalore O.T.Police Station,
Cuddalore District
(Crime No.167/2016)

.. Respondent

Criminal Appeal filed under Section 374 (2) Cr.P.C to set aside the judgment dated 28.07.2017 passed in S.C.No.179 of 2016 on the file of the learned I Additional District and Sessions Judge, Cuddalore, Cuddalore District.

For Appellants
For Respondent

..
..

Mr. A. Arasu Ganesan
Mr. V. Meganathan
Government Advocate (Crl. Side)



JUDGMENT

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The Accused 1 to 8 in Sessions Case No. 179 of 2016 on the file of the learned I Additional District and Sessions Judge, Cuddalore, Cuddalore District, are the Appellants in this Appeal. They are aggrieved by the Judgment dated 28.07.2017 passed in the said Sessions Case No. 179 of 2016, by which they are convicted and sentenced to undergo imprisonment as follows:-

i) A-1, A-2, A-3, A-4 and A-6 have been Convicted for the offences under Sections 326 read with 149 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 10 years with fine of Rs.1,000/- in default to undergo simple imprisonment for three months

ii) A-5 was convicted for the offence under Section 324 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/-, in default to undergo simple imprisonment for a period of one month.

iii) A-5 was also convicted for the offence under Section 148 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.500/-, in default to undergo simple imprisonment for a period of one month.

iv) A-7 and A-8 were convicted for the offence under



Sections 148 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of three months and to pay fine of Rs.500/-, in default to undergo simple imprisonment for a period of one month.

2. The case of the Prosecution, as could be culled out from the deposition of P.W-1, is as follows:-

2.1. P.W-1 Arundhadhi is a resident of Beema Nagar Colony, Cuddalore. She is the wife of the deceased Manikandan. P.W-2-Prathap and P.W-3-Saravanan are the sons of P.W-1. P.W-3 married the daughter of Velayutham-A2. According to P.W-1, his son Saravanan and his daughter-in-law lived happily for four years. Later, his son (P.W-2), along with his wife started residing in the house of the second Accused permanently. However, P.W-2, the son of P.W-1 used to often come and meet P.W-2 in her house. It is stated that P.W-2 was invited by the second Accused for a marriage function but P.W-2 refused to attend it. Irked by it, the second Accused along with his henchmen assaulted his son in law (P.W-2). Subsequently, P.W-2 ran to safety and his whereabouts were not known. Therefore, P.W-1, along with her deceased husband went in search of P.W-2 in an autorickshaw at about 9.30 pm and when they reached the house of the second Accused, the deceased was attacked with pipe, knife and stick. According to P.W-1, her husband was



attacked by the second Accused with a pipe on his knee. At the same time, Dinesh – first Accused attacked the deceased with pipe on the head. The third Accused Devanathan had also attacked the deceased with a pipe in his ear. The sixth Accused Raghuraman had hit the deceased with an iron rod on the head of the deceased. Unable to bear the assault, the deceased fell down unconsciously. When P.W-1 went to the rescue of her husband, a cut injury was caused to her by the fifth Accused with a knife in her left hand. Similarly, the first Accused caused a cut injury on her right hand with a knife. At the same time, the eighth Accused hit the P.W-1 with a stick on her head. The seventh Accused Prakash also attacked P.W-1 with a stick in her left shoulder.

2.2. In the same incident, when the sons of P.W-1 Saravanan (P.W-3) and Pratap (P.W-2) attempted to save their parents, they were also attacked by them. On seeing the attack, the Prosecution witnesses Bheeman (P.W-4), Amudhan (P.W-5), one Ramamoorthy and Anandraj came to their rescue and taken them to the Government Hospital, Cuddalore in an auto rickshaw. Upon reaching the hospital and after giving treatment, the Doctors have informed P.W-1 that her husband died at 11.30 pm on 18.03.2016. In this context, an intimation was given to the Police authorities and they reached the hospital where they have recorded the statement of PW1. On the basis of



such statement, P.W-12, Special Sub Inspector of Police, Mudhunagar Police Station, Cuddalore registered a case at about 1.00 am on 19.03.2016 in Crime No. 167 of 2016 against Dinesh and 8 others for the offences punishable under Sections 147, 148, 341, 294 (b), 324 and 302 of Indian Penal Code. The copy of the First Information Report was marked as Ex.P-14.

2.3. On receipt of a copy of the First Information Report under Ex.P-14, P.W-13 took up investigation on 19.03.2016 at about 6.00 pm and went to the occurrence spot where he had drawn a rough sketch and observation Mahazar, Ex.P-15 in the presence of witnesses Venkatesan (P.W-6) and one Thanikachalam. Later, he had also enquired and recorded the statement of P.W-6. He also enquired Bheeman (P.W-4), Ramamoorthy, Anandraj, Amudhan (P.W-5) and Vijaya and recorded their statement. Thereafter, P.W-13 proceeded to the Hospital and conducted an inquest between 11.00 and 11.30 am in the presence of witness Arumugam, Poonjolai, Elumalai, Kalpana and Ponni. Ex.P-16 is the Inquest Report. Subsequently, P.W-13 proceeded to the hospital and recorded the statement of P.W-1, P.W-2 and P.W-3, who suffered injuries in the incident. On the same day, he caused the arrest of the Accused at about 6.30 pm. Upon such arrest, he has recorded the confession statement given by A-1 in the presence of witnesses Sathishkumar and Senthil. Similar confession statements were also recorded



by PW13 and on the basis of such confession statement, recorded the weapons used for the commission of offence. Among the Accused, the first Accused Vignesh was a minor, he was sent to Juvenile Justice Board. Upon completion of investigation, he has prepared an Alteration report whereby he had altered the offences punishable under Sections 147, 148, 341, 294 (b), 324, 326 and 302 read with Section 149 of the IPC. Ex.P-22 is the alteration report. Thereafter, P.W-13 filed the charge sheet against Accused 1 to 8 before the Judicial Magistrate No.II, Cuddalore.

2.4. Since the offences for which the Appellants were charged has to be tried by a Court of Sessions, the case was made over to the Court of the I Additional District and Sessions Judge, Cuddalore. Thereafter, summons were issued and on the appearance of the Accused 1 to 8, they were provided with copies of the documents in the case. When the Accused 1 to 8 were questioned about the incriminating materials made available them, they have denied the charges and therefore trial commenced.

2.5. During the course of trial, to prove the case projected against the Accused, the Prosecution examined P.W-1 to P.W-13, marked Ex.P-1 to Ex.P-22 and projected M.O-1 to M.O-12. On behalf of the Accused, neither any witness was examined nor any document was marked. The trial



Court, upon analysing the oral and documentary evidence, convicted the Accused 1 to 8, as set forth in the preceding paragraph of this judgment.

3. Aggrieved by the judgment of conviction and sentence, the instant Criminal Appeal is filed.

4. The learned Counsel for the Appellants would contend that the learned Judge failed to appreciate the materials available in the cross examination of the Prosecution witnesses. Further, the Prosecution failed to explain the injury caused on the Accused and it creates doubt in the credibility of the Prosecution witnesses. There are material contradictions regarding place of occurrence and time of occurrence but those aspects have not been taken note of by the trial Court. Therefore, the Judgment of conviction passed by the learned I Additional District and Sessions Judge is to be set aside and the Accused are to be acquitted.

5. The learned Counsel for the Appellants invited the attention of this Court to the evidence of the witnesses. P.W.1-Arundhadhi who is the wife of the deceased Manikandan had preferred a complaint under Ex.P-1 based on which, FIR under Ex.P-14 was registered by the Special Sub



Inspector of Police-P.W-12. P.W-2-Prathab and P.W-3-Saravanan are the sons of P.W-1, P.W-4-Bheeman is the younger brother of P.W-1. P.W-5-Amudhan is also relative of P.W-1. P.W-6 and P.W-7 are Mahazar witnesses, P.W-8-Dr.Jabica is the one who admitted the injured in the hospital. P.W-9 & P.W-10 are Dr.Natrajan and Dr.Nishanth who had treated the injured. P.W-11-Dr.Saravanan is the one who performed Autopsy on the body of the deceased Manikandan. It is the contention of the learned Counsel for the Appellants that as per the complaint under Ex.P-1, the alleged occurrence is said to have taken place on 18.03.2016 by around 9.45 p.m., in a public place. However, none of the independent witnesses have been cited as witness by the Prosecution.

6. Further, the learned Counsel for the Appellants invited the attention of this Court to the earliest document recorded by P.W-8 Dr.Jabica viz., Ex.P-7 wherein, P.W-1 is alleged to have stated that the occurrence took place in front of their house, whereas, Ex.P-1/complaint states that the occurrence took place in front of the house of the Accused-2. Further, the learned Counsel for the Appellants invited the attention of this Court to the wound certificate issued by Jail doctor to A1 wherein, it is stated that on 18.03.2016, A1 was attacked by his relatives when he objected to their attacking the pregnant wife of his relative. It is stated that during such



commotion, first Accused suffered injuries which was recorded by the Jail doctor as an injury measuring 2x1/2 x1/2 cm over the left eyebrow and treatment was given on 23.03.2016 at Central Prison, Cuddalore. However, no explanation is forthcoming from the Prosecution about the injuries suffered by the Accused party.

7. The learned Counsel for the Appellants submit that sufficient materials were not made available before the trial Court. The learned Trial Judge also failed to appreciate the materials available in the evidence of the Prosecution witnesses through the evidence of the Doctors who treated the injured. The learned Judge had acquitted the Accused for the offence under Section 302 IPC however, on the basis of the same evidence, convicted the Accused for the offences under Sections 324 IPC.

8. The learned Counsel for the Appellants further invited the attention of this Court to Ex.P.1/complaint wherein P.W.1 had stated about the injuries caused by each of the Accused. However, in the cross examination there had been contradiction between the evidence of Prosecution witnesses. The time by which the alleged occurrence took place also differs. Saravanan-P.W3 had brought the injured Manikandan to the hospital and he was also



admitted in hospital. As per his statement, the occurrence took place in front of their house in the morning at 10.00 a.m. whereas, the complaint states that the occurrence took place by 18.03.2016 by around 9.30 p.m. If the earliest document viz., the Accident Registered is to be accepted, then the FIR is belated. In those circumstances, the conviction recorded by the learned Judge is to be treated as perverse. Accordingly, the learned Counsel seeks to set aside the judgement of conviction recorded by the learned I Additional District and Sessions Judge, Cuddalore in S.C.No.179 of 2016 and to acquit the Appellant-Accused of the charges.

9. Per contra, the learned Government Advocate (Crl. Side) vehemently objected to the line of arguments of the learned Counsel for the Appellants and submitted that P.W-1 is the injured witness and she had clearly narrated the occurrence as occurred. The other witnesses P.W-2 and P.W-3 are injured witness and their evidence corroborates the testimony of P.W-1. There is nothing to disbelieve the version of P.W-1 to P.W-3 and on the basis of the same, the learned Trial Judge arrived at a conclusion that through the injured witnesses the charges framed against the Accused are proved. Thus, the Judgment recorded by the learned I Additional District and Sessions Judge, Cuddalore, is based on proper appreciation of the evidence and well reasoned



judgment.

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10. The learned Government Advocate (Crl. Side) further submits that merely because independent witnesses are not examined in this case, it will not weaken the case projected by the Prosecution. When the witnesses P.W-1 to P.W-3 also suffered injury in the same incident, their testimony itself is sufficient to convict the Accused. Further, in all the cases, the Prosecution cannot be expected to examine independent witnesses when the witnesses already examined have clearly spoken to about the overt act attributable on the part of the Accused in committing the offence. The Prosecution, through the Prosecution witnesses, have proved the guilt of the Accused beyond reasonable doubt. Therefore, the appeal filed by the Accused/Appellant does not warrant any interference by this Court. The appeal lacks merits and therefore, he prayed to dismiss the same.

Point for consideration:

Whether the Judgment of conviction recorded by the learned I Additional District and Sessions Judge, Cuddalore against the Appellant-Accused 1 to 8 is perverse and is to be interfered with by this Court?



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11. Perused the evidence of P.W-1 to P.W-13, the documents marked as Ex.P-1 to Ex.P-22 and the judgement of the learned trial Judge.

12. It is seen from the records that initially the Appellants-Accused were charged for the offence under Section 302 of IPC and subsequently, an alteration report was filed under Ex.P-22 to include the offences such as Sections 147, 148, 341, 294 (b), 324, 326 and 302 read with Section 149 of the IPC. Ultimately, after trial, the trial court acquitted all the Accused for the offence under Section 302 of IPC but convicted and sentenced them to the other offences. Admittedly, the Prosecution has not preferred any appeal as against the acquittal of the Accused for the offence under Sec.302 of IPC. The present appeal is only filed by the Appellants-Accused questioning the correctness of the judgment of conviction passed against them by the trial court.

13. On perusal of the judgment of the learned I Additional District and Sessions Judge, Cuddalore, in the light of the deposition of the Prosecution witnesses, it is noticed that the points raised by the learned Counsel for the Appellants in this appeal were lost sight of by the learned I



Additional District and Sessions Judge, Cuddalore. In other words, the learned Trial Judge did not notice that when the alleged commission of offence was committed in glaring public view, then the Prosecution is expected to examine independent witnesses to lend support to their case. In the present case, P.W-1 is the mother of P.W-2 and P.W-3. P.W-4 is the younger brother of P.W-1. P.W-5 is also relative of P.W-1. P.W-6 and P.W-7 are Mahazar witnesses. P.W-8 to P.W-13 are official witnesses such as Postmortem Doctor, Special Sub Inspector of Police and the Investigation Officer. In a case of this nature, the Prosecution is expected to examine at least one independent witness to cement their case well. This is more so that it is stated that the occurrence had taken place in a public road. Even though the Prosecution need not examine several witnesses, it is just and necessary to examine at least one witness. To be specific, in this case, it is stated that when P.W-1 and deceased came by an autorickshaw, atleast the driver of the autorickshaw could have been examined. However, the Prosecution did not do so. It is well settled that the quantity of witnesses is not material, but the quality of material is. If this principle is adopted, this Court is of the view that the deposition of the witnesses are interested testimony and it did not inspire the confidence of this Court.



14. The learned Counsel for the Appellants pointed out certain contradictions in the testimony of P.W-1, P.W-2, P.W-4 and P.W-5 and contended that they goes to the root of the case of the Prosecution. This Court, on going through such testimony finds that there are inconsistencies in the time at which the occurrence had taken place or the time at which the Prosecution witnesses reached the hospital. These are minor inconsistencies to which no credence can be given by this Court. The fact remains that P.W-1, in her Chief examination has stated above several cut injuries said to have been caused by the Accused with a knife. But on going through the Accident Register issued to her under Ex.P-7 only shows that she suffered laceration in her wrist, swelling and tenderness in her wrist. Thus, the medical evidence under Ex.P-7 is in contradictions to the oral testimony of P.W-1, which again creates doubt in the credibility of the Prosecution case.

15. Next it is pointed out by the learned Counsel for the Appellants that in the same transaction, the first Accused also suffered injuries but there is no explanation offered by the Prosecution. On considering this submission of the learned Counsel for the Appellants, in para No.20 of the impugned judgment of the trial court, it is seen that the trial court dealt with this issue. It is stated that in para No.20 of the judgment by the trial court that



the medical report of first Accused would show that he sustained injury measuring 2 X ½ X ½ cm over left eye brow for which he had taken treatment in Central Prison, Cuddalore on 23.03.2016. However, the trial court rejected such submission on the ground that the first Accused has not stated the time and place of occurrence or who had inflicted such injury on the first Accused. The trial court also stated that there is no material to show that the victims were carrying on any weapons with them. Accordingly, the trial court rejected the submission of the defence Counsel. On considering the above, this Court is of the view that the first Accused did not file the medical report dated 23.03.2016 as a defence document. Secondly, even according to the said report, after four days of the occurrence on 18.03.2016, on 23.03.2016 only, treatment was given to the first Accused. Therefore, this Court is not inclined to accept this submission of the Counsel for the Appellants.

16. To summarise, the Prosecution has miserably failed to examine any independent witness to prove the overt act as against the Accused-Appellants. The Prosecution only examined witnesses, who are associated and having interest towards the deceased. When the occurrence had taken place at about 9.15 pm in a public road, soon after P.W-1 and the deceased got down from the autorickshaw, the non-examination of



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independent witness is fatal to the case projected by the Prosecution.

Therefore, this Court is of the view that the judgment of conviction recorded against the Accused is not legally sustainable.

17. In the light of the above discussion, the point for consideration is answered in favour of the Appellants/Accused and against the Prosecution. The Judgment of conviction recorded by the learned I Additional District and Sessions Judge, Cuddalore against the Appellant-Accused 1 to 8 is found perverse and the same is to be set aside.

In the result, **this Criminal Appeal is allowed.** The conviction recorded by the learned I Additional District and Sessions Judge, Cuddalore, in S.C. No. 179 of 2016 vide Judgment dated 28.07.2017 is set aside. The Appellants/Accused are acquitted of all charges. The fine amount, if any, paid by the Appellants shall be refunded to them. The bail bond, if any, executed by the Appellants/Accused shall stand discharged.

26.07.2023

vsn

Internet : Yes/No.

Index : Yes/No.

Speaking Order / Non-speaking Order



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To

- 1.The I Additional District and Sessions Judge
Cuddalore
- 2.The Inspector of Police,
Cuddalore O.T.Police Station,
Cuddalore District



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SATHI KUMAR SUKUMARA KURUP, J

vsn

Crl.A.No.559 of 2017

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