



Crl.A.(MD)Nos.104, 135 & 168 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 11.09.2023	Delivered on: 26.09.2023
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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.A.(MD)Nos.104, 135 & 168 of 2017

Crl.A.(MD)No.104 of 2017

Balamurugan

... Appellant

Vs.

State through
The Deputy Superintendent of Police,
Samayanallur Sub Division,
Madurai District.
(Crime No.14 of 2008)

... Respondent

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the records in Special Case No.29 of 2011 on the file of the learned III Additional District and Sessions Judge (PCR Cases) Madurai and set aside the order of conviction and sentence dated 02.03.2017 awarded against the appellant.

For Appellant : Mr.N.Ananthapadmanabhan,
Senior Counsel for Mr.T.Amjadkhan

For Respondent : Mrs.M.Aasha,
Government Advocate(Crl.side) **Crl.A.**



Crl.A.(MD)Nos.104, 135 & 168 of 2017

(MD)No.135 of 2017

Lacham

... Appellant

Vs.

1.State rep by
The Deputy Superintendent of Police,
Samayanallur Sub Division,
Madurai District.

2.The Inspector of Police,
Samayanallur Police Station,
Samyanallur, Madurai District.
In Cr.No.14 of 2008

... Respondents

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment and conviction dated 02.03.2017 by the learned III Additional District and Sessions Judge (PCR), Madurai in SC.No.29 of 2011 and acquit the appellant from all the charges.

For Appellant : Mr.N.Madhavan Govindan

For Respondents : Mrs.M.Aasha,
Government Advocate(Crl.side)

Crl.A.(MD)No.168 of 2017

Karuppiah

... Appellant

Vs.

State through
The Deputy Superintendent of Police,



Crl.A.(MD)Nos.104, 135 & 168 of 2017

Samayanallur Sub Division,
Madurai District.
(in Cr.No.14 of 2008)

... Respondent

Prayer : Criminal Appeal filed under Section 374(1) of the Code of Criminal Procedure, to call for the records pertaining to the order of conviction in Spl.S.C.No.29 of 2011 dated 02.03.2017 passed by the learned III Additional District and Sessions Court(PCR), Madurai and set aside the same by allowing the appeal.

For Appellant : Mr.C.Prabakaran

For Respondent : Mrs.M.Aasha,
Government Advocate(Crl.side)

COMMON JUDGMENT

These Criminal Appeals have been filed as against the judgment and conviction passed by the learned III Additional District and Sessions Judge (PCR Cases) Madurai in S.C.No.29 of 2011 dated 02.03.2017. The appellant/Balamurugan in Crl.A.(MD)No.104 of 2017 was arrayed as A2. The appellant/Lacham in Crl.A.(MD)No.135 of 2017 was arrayed as A3. The appellant/Karuppiah in Crl.A.(MD)No.168 of 2017 was arrayed as A1. In the trial Court, charges were framed as against the accused for the offences under Sections 147, 324 r/w 149(2 counts), 323 r/w 149(4 counts) IPC and Section 3(1)(x) (5 counts) of SC/ST(POA)Act. The trial Court convicted the accused for the offence under



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Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts) IPC and acquitted the accused for the offence under Section 3(1)(x) (5 counts) of SC/ST(POA)Act.

2.The trial Court sentenced the appellants to undergo three months rigorous imprisonment and to pay a fine of Rs.500/- each in default to undergo one week simple imprisonment for the offence under Section 147 IPC and to undergo one year rigorous imprisonment and to pay fine of Rs.1,000/- each for each count in default to undergo one month simple imprisonment for the offence under Section 324 r/w 149 (2 counts) IPC and also sentenced them to undergo six months rigorous imprisonment and to pay fine of Rs.500/- each for each count in default to undergo one month simple imprisonment for the offence under Section 323 r/w 149 (3 counts) and all the sentences will run concurrently. Aggrieved over the above said judgment and conviction, the appellants preferred the above appeals. Since all the three appeals are arising out of same judgment this Court inclined to hear all the appeals together and to pass common judgment.

3.The prosecution case is that on 16.01.2008, Dr.Ambedkar Youth Federation conducted pongal festival at Gandhi Nagar,



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Samyanallur. At that time, at about 11.00 am., the accused along with others went to the place of occurrence and abused them in obscene words and also abused them by using caste name by stating that “பறையனுக்கு பொங்கல் விழா கேட்குதா” When the same was questioned by the defacto complainant, one Moorthy(died) assaulted them with iron rod and caused injury and the absconding accused Kannan and Manikandan and A1/Karuppaiah assaulted the defacto complainant. When the same was questioned by one Ramesh, the said Moorthy assaulted him with iron road on his head and caused injuries. A2/Balamurugan assaulted one Mari, who is witness in this case, with stick and caused injury on his head. One Kathiravan(Died) assaulted the wife of the defacto complainant with stick on her hip and caused injury. A3 assaulted one Panchavarnam, who is also witness in this case, with stick on her left hand wrist and right leg and caused injuries. Hence, the defacto complainant lodged complaint, and based on the complaint, FIR was registered and then the Investigation Officer investigated the case and then filed final report. Thereafter, the case was committed to the Special Court after furnishing copies under section 207 Cr.P.C.

4.Charges were framed for the offences under Sections 147, 324 r/w 149(2 counts), 323 r/w 149(4 counts) IPC and Section 3(1)



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(x) (5 counts) of SC/ST(POA)Act. After framing of charges, the same were read over and explained to the accused and they were denied the charges. In order to prove the charges, the prosecution examined P.W.1 to P.W.18 and marked Ex.P1 to Ex.P12. No material object were marked. On the side of the accused, no one was examined and no documents were marked. After completion of prosecution side evidences, the trial Court has examined the accused under Section 313 (1)(b) Cr.P.C., with regard to the incriminating circumstances as against them and they denied the same. After evaluating the oral and documentary evidences adduced on either side, the trial Court has found guilty of all the accused for the offence under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts) and acquitted the accused from the charge under section 3(1)(x)(5 counts) of SC/ST POA Act.

5. Aggrieved by the above said conviction and judgment, the appellant/A2 preferred Crl.A.(MD)No.104 of 2017 on the following grounds:-

1) The order of conviction and sentences rendered by the trial Court is neither in accordance with law nor in consonance with



evidence available on record.

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2) The evidence of PW3 Mari that he was beaten by the appellant with the stick on his face has not been corroborated either by medical records or by the evidence of the medical expert who has to speak about the injuries sustained by the witnesses. It is pertinent to point out that in the accident register recorded by P.W.17 he has not stated anything about stick. On the one hand he has not stated anything about the stick and on the other hand, he has categorically mentioned that a crowd of persons came together and attacked him with the pipe at 12 noon on 16.01.2008 which is diametrically contradictory with that of the evidence recorded in the court. In this regard the medical expert is also of the opinion that such an injury can be caused when a person falls down on a rough surface.

3) In the evidence of PW1 it is stated that the occurrence had taken place during Pongal festival and the occurrence was witnessed by P.Ws 5, 6 and 7. It is pertinent to point that the evidence of P.Ws 5, 6 and 7 does not support the prosecution case and also the evidence of PW1 Murugan is totally in contradiction with the medical evidence. Insofar as PW 1 is concerned, as he has not stated anything about the weapon while appearing before the medical expert for treatment.



4) All the injured witness have mentioned different weapons and different timing and different number of assailants as responsible for their injuries.

5) When the evidence of witnesses speak about a quarrel taking place between 2 groups of people Section 147 or 149 cannot be invoked as it is nothing but an incident taking place suddenly without meeting of minds, on an occasion wherein due to festival a place will be filled with crowd.

6) In the absence of overt act attributed to the appellant to show that there was a concerned act on the part of the appellant, particularly, when the individual act attributed to him is not corroborated, finding of guilt for the offences alleged against him is illegal.

7) The evidence of PW3 that on 16.01.2008 at about 11 am., there were sports events taking place makes it amply clear that there was heavy crowd, therefore, there were many number of witnesses available. That being the case, the prosecution has purposefully avoided to examine independent witnesses but chose to examine only those who are interested in the prosecution case.

8) The evidence of PW 14 that the entire Pongal festival was celebrated in the presence and protection given by police. That



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being so no police officer has been examined about this aspect.

The fact that police protection was given during the festival, goes to the root of the prosecution case as it is sufficient to point out that the parties were inimically disposed of and if a festival is conducted the same will lead to quarrel is explicit on the face of the record.

9) When the parties were inimically disposed of, it is the duty of the trial court to eliminate the chances of false implication before convicting any accused.

10) The contradiction between the ocular witness themselves in describing the place, time and manner of occurrence on the one hand and the number of persons involved and the weapon used on the other, ought to have been properly weighed by the trial Court particularly when the medical evidence does not support the prosecution case.

11) The conflict between the evidence of witnesses and contradiction with that of the evidence of the medical expert raises a grave suspicion against the prosecution case and the trial court ought to have given the benefit of doubt to the appellant.

6.The appellant/A3 preferred Crl.A.(MD)No.135 of 2017 on the following grounds:-



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1)The judgment and conviction of the trial Court is contrary to law, weight of evidence and probability of this case.

2)The learned trial Court failed to disbelieve the evidence of PW 1 who is the complainant, which was found with contradictions between the deposition before the Court of law and the complaint Ex.P.1 which contain contradictions, divergent, deviating statement.

3)The learned trial Court failed to see that the occurrence as per FIR 11.00 a.m., whereas the information given to the doctor (PW 17) that the occurrence time was 12 hrs.

4)The learned trial Court rightly acquitted the appellant from Section 3(1)(x) of SC/ST Act which proves that the respondents are motivated and wanted to foist a false complaint as against A1 to A3 thereby convict A1 to A3 illegally.

5)The learned trial Court failed to see that the iron rod alleged to be used for attacking the respondents had not been recovered and produced before the court by investigating officer.

6)The learned trial Court failed to see that the wooden stick alleged to be used for attacking the respondents had not been recovered and produced before the Court by investigating officer.

7)The learned Trial Court failed to appreciate that the 1st



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commotion at the instigation of the deceased/accused Moorthy by attacking the defacto complainant but not by A1 to A3 and they were innocent and the defacto complainant's wife alleged to be attacked by another accused/deceased Kathiravan.

7.The appellant/A1 preferred appeal in Crl.A.(MD)No.168 of 2017 on the following grounds:-

1)The order of conviction as against the appellant is totally against the law and weight of evidence.

2)The learned Judge ought not to have convicted the appellant under Sections 147, 324 r/w 149(2 counts) and 323 r/w 149(3 counts) IPC, since the respondent failed to prove the case of the prosecution.

3)The learned Judge erroneously arrived at conclusion only on the basis of the evidence given by P.W.1 who is the complainant.

4)The evidence of P.W.1 is not corroborated by other prosecution witnesses P.W2 to P.W4 and there is a contradiction and such contradiction was not taken into consideration by the learned Judge.

5)The learned Judge failed to take a note that the prosecution witness P.W.8 who is the eye witness, turned hostile.

6)The learned Judge ought not to have arrived at conclusion



on the basis of the evidence given by P.W.2 to P.W.4 and P.W.14 one Panchavarnam since they are all relative to the P.W.1 one Murugan who was the victim as per the prosecution.

7)The learned Judge erroneously failed to take a note no independent witness was produced by the prosecution agency to strengthen the case of the prosecution and thereby the order of conviction is liable to be set aside.

8)The order of conviction as against the appellant is liable to be set aside since there is contradiction even in the accident report before given by P.W.16 and P.W.17 Doctors who gave the treatment to P.W.1 to P.W.4 and P.W.14 Pachavarnam.

8.The learned counsels appearing for the appellants argued that prosecution has failed to prove charges as against the appellants beyond reasonable doubts. Prosecution witnesses are contradict to each other and there are vast discrepancies. Without considering the discrepancies and contradiction, the trial Court has convicted the accused. The trial Court has acquitted the accused for the offence under Section 3(1)(x) (5 counts) of SC/ST(POA)Act, but wrongly convicted the accused for other offences. According to the prosecution case, occurrence happened in the day light and so many people gathered. While so, there is no chance to see specific



overt act of the accused and the accused are none other than the same villagers. Therefore, the trial Court ought to have acquitted the accused. Evidence of P.W.1 has not been corroborated by the evidence of P.W.2 to 4. The trial Court failed to consider that all the witnesses are related to each other and medical evidence is contra to the evidence of prosecution witnesses. As per Ex.B6, no external injuries and only complaints about pain. P.W.14 has stated that the accused assaulted on her leg and beaten down. P.W.4 has stated that she did not know who assaulted her. According to the prosecution case, witnesses were brought to the hospital by one Dhamodharan. But he was not examined as witness in this case. According to the evidence of P.W.3, one Kumaran assaulted with hands on the back side and one Balamurugan assaulted with stick on the cheek. But the accident register is totally contra to the evidence of P.W.3. In Ex.P.1/FIR there is no whisper about the nature of weapon. P.W.1 has not stated about Balamurugan and admitted that only after the occurrence, the crowd came there. Therefore, there is no chance to see the occurrence by the witnesses. P.W.9 has stated that the accused assaulted with soda bottle, but the same has not been recovered by the investigating officer. Further, the investigating officer failed to recover blood stained cloths. These are all the major discrepancies and the same



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have not been considered by the trial Court.

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9.The learned Government Advocate(Crl.side) appearing for the respondent would contend that in this case, on 16.01.2008, when the schedule caste community people celebrated pongal festival, the accused persons went to the occurrence place and abused caste name and assaulted the victim and thereby, the victims sustained injuries and thereafter, they went to the hospital and accident register also revealed the injuries sustained by the victims and thereby, prosecution has clearly established its case as against the accused. The PW1, PW2, PW3, PW4 and PW14 are the injured witnesses and they categorically deposed about the occurrence and injuries sustained by them. The Doctors PW16 and PW17 who admitted the injured in the hospital also deposed about injuries and corroborated the evidences of injured witnesses. The occurrence took place in the day light and other independent witnesses also deposed about the occurrence and the Investigating Officer also fairly investigated the case and he also deposed about the investigation. There are no major discrepancies in the prosecution evidences. The trial Court, after elaborate discussions, correctly convicted the accused and therefore, these appeals are liable to be dismissed.



WEB COPY 10. Heard both sides and perused the materials available in the records.

11. Upon hearing the arguments of both sides and on perusing records, judgment of the trial Court and grounds of the appeals, points for determination in these appeals are as follows:-

(i). Whether the prosecution has proved charges levelled as against the appellant/1st accused in Crl.A.No.168 of 2017 under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts)IPC?

(ii). Whether the prosecution has proved charges levelled as against the appellant/2nd accused in Crl.A.No.104 of 2017 under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts)IPC?

(iii). Whether the prosecution has proved charges levelled as against the appellant/ 3rd accused in Crl.A.No.135 of 2017 under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts)IPC?

12. All the three appeals are arising out of same judgment and thereby this Court has heard together and inclined to pass common judgment. This case has been split up at the stage of committal itself and committed to the Court as against the appellants herein. In the sessions Court, there are totally five



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accused and one Kannan was absconding and Moorthy died during the investigation. The specific charges are that all the accused formed unlawful assembly and abused the caste name of the victims and assaulted the witnesses Murugan, Ramesh, Mari, Panjavarnam and Muthulakshmi. According to the case of the prosecution, all the accused assaulted the witness Murugan, Ramesh, Mari, Panjavarnam and Muthulakshmi. The said Murugan was examined as P.W.1, Ramesh was examined as P.W.2, Mari was examined as P.W.3, Panjavarnam was examined as P.W.14 and Muthulakshmi was examined as P.W.4.

13.P.W.1 in his evidence stated that on 16.01.2008 at about 11.00 am., when they were celebrating pongal festival, one Karuppiyah's sons Mani, Balamurugan, Lacham, Kumaran were in a drunkent mode, abused the caste name by saying that “பறையனுக்கு பொங்கல் விழா கேட்குதா” and when the same was questioned by him, one Moorthy assaulted with iron rod on his head. At that time, Ramesh, Mari, Panjavarnam and his wife were prevented him. The accused persons assaulted them also. Thereafter, he gave a complaint before the police and then, he admitted in the hospital.

14.The above said complaint was marked as Ex.P.1. As per



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Ex.P.1, on 16.01.2008, at about 11.00 am., when they were celebrating pongal festival, the accused Moorthy, Kannan, Karuppiyah, Manikandan, Kumaran, Balamurugan, Vinothkumar, Asai, Kathiravan, Chinniah, Lacham assaulted them with weapons and they also planned to assault them. Therefore, as per Ex.P1/complaint, there is no reference about the injuries sustained by the victims. P.W.1 is the author of the complaint and he has not stated about the injures sustained by him. The Doctor, who treated the victims was examined as P.W.17 and he deposed before the trial Court that on 16.01.2008, at about 1.25 hours, P.W.1 was appeared with injuries for taking treatment. At that time, he noticed that he sustained 1 x 9 x 8 cm., lacerated wound and also sustained injury on his left leg thump. But in the FIR and complaint, no whisper about the injuries sustained by him. In the evidence of P.W.1, he has stated that he was assaulted by one Moorthy and no any specific overt act as against the appellants herein. Further, the Doctor gave certificate/Ex.P.9 stating that the injury is simple in nature.

15.Yet another witness is P.W.2. He also in his evidence stated that on 16.01.2008, at about 11.00 am., when they were in pongal



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festival celebration, Moorthy, Kannan, Karuppiah, Manikandan, Kumaran, Balamurugan, Vinothkumar, Asai, Kathiravan, Chinniah, Lacham came there and abused caste name and Moorthy assaulted Murugan with iron rod and he sustained injury. When he attempted to prevent the occurrence, Karuppiah assaulted him with stick on his right hand and sustained injury on head. Therefore, from the evidence of P.W.2, it reveals that he sustained injuries, due to assault made by one Karuppiah. P.W.17 also in his evidence stated that on 16.01.2008, at about 1.25 hours, P.W.2 appeared for taking treatments, at that time, he sustained injury on his right hand and 1x1 cm lacerated wound on the head and left leg thumb and thereafter, issued Ex.P.10 wound certificate by stating that these injuries are simple in nature. Therefore, from the evidence of P.W. 2, P.W.17 and Ex.P.10, they revealed that P.W.2 sustained simple injuries and the same was caused through one Karuppiah with stick. But the prosecution failed to recover the above said iron rod and the stick and the witnesses also failed to mention about the weapons from where they got the weapons.

16.Yet another witness is P.W.3 and he deposed before the trial Court that on 16.01.2008 at about 11.00 am., when they were



celebrating pongal festival, the accused persons assaulted P.W.1 with pipe. Moorthy assaulted P.W.1 with pipe and thereby, he sustained injuries on his head. Immediately, he along with one Ramesh/P.W.2 rushed to the spot and attempted to prevent them, at that time, he was also assaulted with pipe and he sustained injuries on his head and one Karuppiah assaulted with hands on his back and one Balamurugan assaulted with stick on her cheek. The Doctor, who treated him, was examined as P.W.17 and he deposed that on 16.01.2008, at about 1.25 pm., one Mari appeared for treatment and he sustained 2x2x3 cm lacerated wound on his forehead and swelling at his left eye and there was bleeding from his nose and also he complained about pain over left shoulder. Thereafter, he issued Ex.P.8 by stating that the injury is simple in nature. Therefore, according to P.W.3, he sustained injuries, due to the assault made by Moorthy and no specific overt act as against the appellants herein.

17.Yet another witness P.W.4 also stated that on 16.01.2008, at about 11.00 am., when they were celebrating pongal festival, all the accused persons came there and abused their caste name and also assaulted her husband and she did not know who assaulted her husband. In the crowd she was also assaulted and Ramesh, Mari,



Panjavarnam were also assaulted by the mob. The Doctor/P.W.16, who treated P.W.4 has stated in his evidence that no external injury and she only complained pain on the back side. She also issued Ex.P.7 wound certificate by stating that the above said injury is simple in nature. According to P.W.4, she did not know who assaulted her and she did not state about the injury sustained by her.

18.Yet another witness P.W.14 and she deposed that 7 years ago during pongal festival, there was quarrel between two groups and she also sustained injuries. But, she did not state about the presence of the accused. According to the prosecution case, P.W.1 was assaulted by one Moorthy, P.W.2 was assaulted by one Karuppaiah, P.W.3 was assaulted by the above said Moorthy and P.W.4 did not know who assaulted her. P.W.14 also did not state about the presence of the appellants. Even according to the prosecution witness, P.W.2 alone stated about the accused Karuppaiah. According to his evidence, he sustained injury on his right hand, but Ex.P.10 reveals that he sustained head injury and left leg thump. There is no reference in his evidence about the injury sustained by him on his leg. As per evidence of PW1 and PW3, they were assaulted by Moorthy and sustained injuries and



the said Moorthy died during pending proceedings.

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19.As far as offence under Section 147 IPC is concerned, there is no evidence about the common object for unlawful assembly. Further, according to the prosecution case, more than five persons involved in this case. But there is no evidence to prove the object of the unlawful assembly. Mere assembling of more than five persons itself is not sufficient to constitute the offence under Section 147 IPC and there is no evidence to prove what is the common object for forming unlawful assembly. In this regard, the learned counsels appearing for the appellants relied upon the judgment of the Hon'ble Supreme Court in a case of Vijay Pandurang Thakre and others Vs. State of Maharashtra reported in (2017) 4 Supreme Court Cases 377 wherein, Hon'ble Supreme Court held as follows:-

16.As is clear from the plain language, in order to attract the provision of the Section, following ingredients are to be essentially established.

- (i) There must be an unlawful assembly.*
- (ii) Commission of an offence by any member of an unlawful assembly.*
- (iii) Such offence must have been committed in prosecution of the common object of the assembly; or*



must be such as the members of the assembly knew to be likely to be committed.

If these three elements are satisfied, then only a conviction under Section 149, I.P.C., may be substantiated, and not otherwise. None of the Sections 147, 148 and 149 applies to a person who is merely present in any unlawful assembly, unless he actively participates in the rioting or does some overt act with the necessary criminal intention or shares the common object of the unlawful assembly.

17. In the facts of the present case, we find that common object of the assembly, even if it is presumed that there was an unlawful assembly, has not been proved. The expression 'in prosecution of the common object' occurring in this Section postulates that the act must be one which have been done with a view to accomplish the common object attributed to the members of the unlawful assembly. This expression is to be strictly construed as equivalent to in order to attain common object. It must be immediately connected with common object by virtue of nature of object. In the instant case, even the evidence is not laid on this aspect. As pointed out above, the courts below were influenced by the fact that one of the injuries on the person of Ashok was on his head which became the cause of death and from this, common object is inferred.



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20. On careful reading of the above said judgment, it is clear that in order to attract Section 147 and 149 IPC, there must be unlawful assembly, commission of an offence by any member of an unlawful assembly, such offence must have been committed in prosecution of the common object of the assembly; or must be such as the members of the assembly knew to be likely to be committed. In the case on hand also, there is no evidence to prove the common object and unlawful assembly and thereby, the above said case law is squarely applicable to the present facts of the case.

21. As far as offence under Section 324 IPC is concerned, the same is only as against the said Moorthy and he already died. As far as offence under Section 324 r/w 149 IPC is concerned, the prosecution failed to prove the unlawful assembly and the common object and also failed to recover the weapon used in the alleged occurrence. According to the evidence of P.W.1, he was assaulted with iron rod and P.W.2 was assaulted with stick and P.W.3 was assaulted with pipe. But no weapons were recovered and no reference about the nature of weapon and how they carried weapons and where the weapons were thrown after occurrence and in the absence of recovery of weapons, that too in the mob, it is



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unsafe to convict the accused under Section 324 of IPC. There is no reference in the FIR and the complaint about the weapons and they only stated vaguely that the accused attacked them with deadly weapons and the nature of the weapon has not been stated and no reference in the accident register about the weapons. Therefore, reasonable doubt would arise about the occurrence and it is unsafe to convict the accused with the available evidences.

22.As far as offence under Section 323 r/w 149 IPC is concerned, already this Court previously discussed about the unlawful assembly and there is no evidence to prove the common object of the unlawful assembly. When the unlawful assembly was not proved by the prosecution, Section 149 IPC would not attract and there is no specific overt act as against the appellants herein. P.W.2 alone has stated about accused Karuppaiah and he assaulted with stick. But the said stick was not recovered, and no evidence about the particulars of stick and in the mob, how the accused carried the stick and after occurrence what about the stick, whether it was carried by the accused or left from the place of occurrence has to be explained by the prosecution, but no explanation on the side of the prosecution in this regard.



23.As far as injuries sustained by P.W4 and P.W.14 are concerned, they have not stated about the overt act and they are unable to see through whom they got injuries. Therefore, the prosecution has failed to prove the charges as against the appellants beyond reasonable doubts and the appellants herein are entitled to get the benefits of the doubt. The trial Court also acquitted the accused from other offences but without considering the said aspects discussed in the previous paras wrongly held that the prosecution has proved the charges under section 147, 323 r/w. 149 and 324 r/w 149 of IPC. Even as per prosecution case the Pw1, PW2 and PW3 were assaulted with weapons, and thereby the charges would be for 324 r/w 149 (2 counts) and PW4 and PW14 have not stated about the overt-act of accused and not stated about the weapon, while so charges would be 323 r/w. 149 (2 counts), but the trial Court convicted the accused for the offences under section of IPC for 324 r/w 149 (2 counts), 323 r/w 149 (3 counts), forming of unlawful assembly itself has not been proved by the prosecution and no specific overt-act against these appellants and the evidences of injured witnesses are not tallied with the medical evidence with regard to the injuries. Therefore, the conviction and sentence passed by the trial Court are un-sustainable and liable to be set aside.



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i) Appeal in Crl.A.(MD)No.104 of 2017 is allowed and the judgment and conviction passed against this appellant under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts) IPC by the learned III Additional District and Sessions Judge (PCR), Madurai in Spl.S.C.No.29 of 2011 are hereby set aside and the appellant/accused(A2) is acquitted from the charges under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts) IPC and he be set at liberty subject to other cases if any. Fine amount if any paid by the appellants, the same shall be refunded to him. Bail bond if any executed by the appellants, the same shall stand cancelled.

ii) Appeal in Crl.A.(MD)No.135 of 2017 is allowed and the judgment and conviction passed as against this appellant under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts) IPC by the learned III Additional District and Sessions Judge (PCR), Madurai in Spl.S.C.No.29 of 2011 are hereby set aside and the appellant/accused(A3) is acquitted from the charges under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts) IPC and he be set at liberty subject to other cases if any. Fine amount if any paid by the appellants, the same shall be refunded to him. Bail bond if any executed by the appellants, the same shall stand cancelled.



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iii) Appeal in Crl.A.(MD)No.168 of 2017 is allowed and the judgment and conviction passed as against this appellant under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts) IPC by the learned III Additional District and Sessions Judge (PCR), Madurai in Spl.S.C.No.29 of 2011 are hereby set aside and the appellant/accused(A1) is acquitted from the charges under Sections 147, 324 r/w 149 (2 counts), 323 r/w 149 (3 counts) IPC and he be set at liberty subject to other cases if any. Fine amount if any paid by the appellants, the same shall be refunded to him. Bail bond if any executed by the appellants, the same shall stand cancelled.

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P.DHANABAL, J

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To

- 1.The III Additional District and Sessions Judge (PCR Cases)
Madurai.
- 2.The Deputy Superintendent of Police,
Samayanallur Sub Division,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order
made in
Crl.A.(MD)Nos.104, 135 & 168 of 2017

26.09.2023