

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.636 of 2007

- 1.Aanaa @ Abdhul Kadhar (died)
 - 2.K.S.Kasim
 - 3.Kazhutahi Jamal @ Jamal Maideen (died)
 - 4.Embi @ Ahamadhu Kanu (died)
... Appellants/Accused Nos.1 to 4
- (A.1, A.3 and A.4 dismissed as abated
vide order, dated 23.06.2018)

Vs.

The Inspector of Police,
Meemisal,
Kottaipattinam Police Station,
Pudukkottai District.
Crime No.118 of 2004.

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374 of Cr.P.C to set aside the conviction and sentence imposed on the appellants in S.C.No.64 of 2006 on the file of the Additional District and Sessions Judge cum Fast Track Court, Pudukkottai, dated 23.11.2007 and acquit the accused by allowing this appeal.

For A – 2	: Mr.R.Anand
For Respondent	: Mr.T.Senthil Kumar Additional Public Prosecutor

JUDGMENT

This appeal has been preferred as against the Judgment dated 23.11.2007 passed in S.C.No.64 of 2006 on the file of the Additional District and Sessions Court cum Fast Track Court, Pudukkottai.

2.Pending the appeal, the appellants 1, 3 and 4/A.1, A.12 and A.24 died and as such, the entire charges abated against them and the appeal is dismissed as abated. The second appellant/Accused No.3 is contesting the appeal.

3.The case of the prosecution is that on 04.11.2004 at about 09.30 a.m., when the fish were auctioned, the accused persons came there with deadly weapons such as a knife, stick, iron rod and cycle chain and attacked the victims in order to do away their life and caused grievous hurt to them. Immediately they were taken to the Government Hospital, Aranthangi for taking treatment. After recording the accident register by way of wound certificate and

recording their statement, F.I.R was registered in Crime No.118 of 2004 for the offences under Sections 147, 148, 323, 324 and 307 of I.P.C as against 27 accused persons. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance in S.C.No.64 of 2006 on the file of the Additional District and Sessions Court cum Fast Track Court, Pudukkottai.

4.In order to prove the case, the prosecution had examined P.W.1 to P.W.11 and marked Exs.P.1 to P.8. On the side of the accused, no one was examined and no documents were marked.

5.On perusal of the oral and documentary evidence, the trial Court convicted A.1 and A.3 for the offence punishable under Section 324 of I.P.C and sentenced them to undergo one year Rigorous Imprisonment and to pay a fine of Rs.2,000/- each and in default, to undergo three months Rigorous Imprisonment and convicted A.12 and A.24 for the offence punishable under Section 323 of I.P.C and to pay a fine of Rs.1,000/- each and in default, to undergo three months Simple Imprisonment and other accused were acquitted. Aggrieved by the same, the present Appeal.

6.The learned counsel appearing for the second appellant/Accused No.3 would submit that in the said occurrence initially the second appellant and others were attacked by the complainant and others. Therefore, they only lodged the first complaint and the same was registered by the respondent in Crime No.117 of 2004 for the very same offence. Suppressing the said complaint, P.W.6 lodged the counter complaint and the same had been registered in Crime No.118 of 2004. Unfortunately, the respondent without following the procedure as contemplated under the Police Standing Orders 588-A filed a final report in both the F.I.Rs' and conducted a trial only as against the second appellant and other accused alone in respect of Crime No.118 of 2004. P.W.6 categorically admitted that when they reached the Police Station, the second appellant along with other accused was in the police station and the same was registered in Crime No.117 of 2004. Even after filing the charge-sheet, no simultaneous trial was conducted by the trial Court. The charge sheet filed in their complaint had been taken cognizance only in the year 2009 and subsequently some of the accused were convicted and some of the accused were acquitted by the trial Court. Further P.W.6 stated before the Hospital that 25 to 30 accused persons attacked them whereas, in the F.I.R, he had stated specific overtact as against 27 accused persons with all weapons. It is an artificial one and no human being can lodge a

complaint with a specific overtact as against 27 accused persons. That apart, the prosecution did not even recover any single weapon which was allegedly used in the occurrence and now except the third accused, other accused persons died and entire charges abated as against them.

7.Per contra, the learned Public Prosecutor appearing for the respondent would submit that the first complaint lodged by the appellant and others and the same was registered in Crime No.117 of 2004. After completion of the investigation, filed a final report. Since some of the accused were in abroad and as such, on three occasions, the case was split up and some of the accused persons were imposed with fine and some of the accused persons were acquitted. In so far as the second appellant/third accused is concerned, he attacked P.W.1 and he categorically deposed that the third accused attacked him on his head with an iron rod. Therefore, he sustained grievous injury on his head and seven stitches were put up on his head. Therefore, the trial Court rightly convicted the third accused and prayed for the dismissal of the appeal.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.Admittedly on 04.11.2004 at about 09.30 a.m., at the scene of the crime there was a fishing auction. In the auction both parties participated, in which there were quarrels between them. Therefore, each group attacked with each other and sustained injuries. Initially, the second appellant's side lodged a complaint and the same was registered in Crime No.117 of 2004 for the very same offences in Crime No.118 of 2004. However, the respondent completed the investigation and filed a final report in Crime No.118 of 2004 and the same was taken cognizance by the trial Court in S.C.No.64 of 2006 as against 27 accused persons. Though each and every accused had a specific overt act except A.1, A.3, A.12 and A. 24, other accused were acquitted by the trial Court.

10.In so far as A.1, A.12 and A.24 are concerned, they died and as such, the entire charges abated against them and the appeal is dismissed as abated.

11.In so far as the second appellant/A.3 is concerned, he attacked P.W.1. On perusal of the deposition of P.W.1 revealed that the third accused attacked him on his head with an iron rod.

Therefore, he sustained injuries on his head. He also deposed that other accused persons attacked him on his shoulder and his leg with a wooden log and chain. However, other accused persons were acquitted and third accused convicted by the trial Court for the offence punishable under Section 324 of I.P.C. That apart, admittedly, the present complaint was a counter complaint to the original complaint lodged by the second appellant's group, which was registered in Crime No.117 of 2004 for the very same offence. However, the respondent failed to file a final report, at the same time filed a final report only in the counter claim and the same had been taken cognizance by the trial Court and proceeded with the trial. After two years, the respondent completed the investigation and filed a final report and the same had been taken cognizance by the trial Court. However, some of the accused were abroad and as such, the case was split up on three occasions and acquitted some of the accused and convicted some of the accused to pay fines.

12.It is also seen that there are discrepancies between prosecution witnesses in so far as the specific overt act of the third accused is concerned, Further, the prosecution also suppressed the fact before the trial Court that an earlier complaint was registered in Crime No.117 of 2004 and no charge sheet was laid at the time of filing the charge sheet in Crime No.118 of 2004. It is a settled

position of law that once counter complaint is there, the police have to follow the procedure laid down under Police Standing Orders 588-A. Once the Police filed aggressor in both the F.I.R and filed final report, the trial Court has to conduct a simultaneous trial in both cases. Whereas in the case on hand, the trial Court conducted a trial only on the counter complaint and no cognizance had been taken of the first complaint lodged by the second appellant's group.

13.It is also seen that the prosecution suppressed the first complaint and charge sheeted before the trial Court. Hence, once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused, the only possible and probable course left open was to grant the benefit of doubt to the second appellant.

14.In the case on hand, the third accused also sustained injuries and it was suppressed by the prosecution. Therefore, the third accused is entitled to have the benefit of doubt. Hence, the prosecution failed to prove the case beyond any doubt and benefit of doubt cause in favour of the third accused and the conviction under Section 324 of I.P.C cannot be sustained as against the third accused and the same is liable to be set aside.

15. Accordingly, the Criminal Appeal is allowed and the Judgment in S.C.No.64 of 2006 on the file of the Additional District and Sessions Judge cum Fast Track Court, Pudukkottai, dated 23.11.2007, is set aside. The second appellant/third accused is acquitted. Bail bond if any executed by the second appellant/third accused shall stand cancelled and fine amount if paid is ordered to be refunded to the second appellant/third accused forthwith.

29.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

1. The Additional District and Sessions Court
cum Fast Track Court,
Pudukkottai.
2. The Inspector of Police,
Meemisal,
Kottaiappattinam Police Station,
Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.K.ILANTHIRAIYAN, J.

ps

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