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Crl.A.No.178 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2024

PRONOUNCED ON : 09.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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1. Nandiswaran
2. Suriyanarayanan
3. Nagaraj
4. Ravi @ Ravikumar
5. Manjunath
6. Sridhar
7. Lakshmi Devi
8. Geetha
9. Geethammal

... Appellants/A1 to A9

v.

State represented by
Inspector of Police
Veppanahalli Police Station,
Krishnagiri District.

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellants and sentence in S.C. No.122 of 2008 dated 27.02.2018, on the file of the learned Additional District and Sessions Judge, Krishnagiri and set aside the conviction and



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sentence imposed in judgment dated 27.02.2018 and acquit the appellant.

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For Appellant : Mr.V.Gopinath, Sr. Counsel
for Mr.K.Selvarangan

For Respondent : Mr.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by Accused Nos.1 to 9, challenging the conviction and sentence imposed upon them vide judgment dated 27.02.2018 in S.C.No.122 of 2008 on the file of the learned Additional District and Sessions Judge, Krishnagiri.

2(i) The case of the prosecution is that all the accused are closely related to each other; that A1, A2, A7, and A8 are children of one Sambangi Gowdu, who was also an accused and died during the trial; that the said Sambangi Gowdu is the son of one Bethaiyan Gowdu; that Bethaiyan Gowdu and one Munusamy Gowdu are brothers, and PW9 is the daughter of Munusamy Gowdu; that the deceased (Sambangi Gowdu) refused to give property to PW9 since she was a woman; that the deceased in the instant case (Rajendran) was the son of PW9, and hence, there was enmity between



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some of the prosecution witnesses and the accused with regard to the said land dispute.

(ii) It is the further case of the prosecution that PW9 and the deceased-Rajendran, filed a suit for partition in O.S.No.142 of 2004 on the file of the learned Additional Special Judge, Krishnagiri, which ended in favour of PW9 and the deceased-Rajendran; that the accused filed AS No.7 of 2005 before the I Additional District Court, Krishnagiri and the same was allowed on 18.09.2006; that PW9 and the deceased-Rajendran had filed a second appeal before this Court; that while so, on 10.09.2007 at about 7.45am, when the prosecution witnesses along with the deceased were removing sand from the land, which is the subject matter of the dispute and loading them in a lorry, A1, A2 and their father (since deceased) who have come there, questioned as to why they were removing the sand from the land; that a wordy quarrel arose and hearing the noise, the villagers came to the place and tried to pacify them; that thereafter, the father of A1 and A2, instigated the accused to attack the prosecution witnesses.

(iii) It is the further case of the prosecution that A7 to A10 threw



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chilli powder on the face of the deceased; that A4 cut the head of the deceased with an axe (மேட்டி); that when the deceased fell down, A1 cut on the left hand of the deceased with axe (மேட்டி) and the hand was severed; that A2 cut the deceased on the back; that PW2 wife of the deceased came to the occurrence and A9 pushed her and A1 cut her on the chest, back and left side of the head; that when PW3 intervened, A3 cut him on the hand and knee; that A2 attempted to cut PW1 and that PW1 while trying to ward off the attack, his hand was injured; that one Sri Ramachandran since deceased was attacked by A4 and A5 on the hand and chin; that all the accused cut the prosecution witnesses in the melee and A1 was also injured.

(iv) It is the further case of the prosecution that a statement [Ex.P1] was recorded from PW1 by one Sridhar, Sub Inspector of Police, Veppanapalli Police Station at the Government Hospital, Krishnagiri, at about 11.45 a.m. The said Sridhar registered the FIR [Ex.P38] in Cr.No.160 of 2007 at 12.45 p.m., for the offences under Sections 147, 148, 341, 323, 324, 294(b), 307, and 302 IPC (the said Sridhar was not examined, as according to PW24, he suffered from a serious kidney ailment and could not



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be summoned as a witness).

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(v) PW24, the investigating officer received the FIR at 1.45 p.m., and proceeded to the scene of the occurrence. He took the help of a PW19-photographer to take pictures of the scene of the occurrence, and the pictures are marked as M.O.28 series.

(vi) PW24 prepared Observation Mahazar [Ex.P2] and the Rough Sketch [Ex.P39]. He conducted an inquest in the presence of panchayatars and prepared the inquest report [Ex.P40]. He sent the body of the deceased through PW22 to the Government Hospital, Krishnagiri, after the postmortem. He seized the lungi (M.O.9) that was tied around the head of the deceased, another lungi (M.O.26) worn by him, a turkey towel (M.O.36) and a red coloured towel (M.O.37) that were seized under Ex.P3-Seizure Mahazar.

(vii) Thereafter, PW24 seized the bloodstained earth and the earth that was not bloodstained and seized the knives [M.O.2 and M.O.20]



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broken bangle piece [M.O.39], hair pin [M.O.40], Casuarina (சவுக்கு) stick [M.O.5], chappal [M.O.44], Kerchief [M.O.41], shirt [M.O.43] and oil can [M.O.43]

(viii) Thereafter, PW24 examined the injured eyewitness PW1 and seized the dress materials worn by him under Ex.P6-Seizure Mahazar, which were attested by PW13. He examined PW3 and seized her saree, and petticoat (M.O.7 and M.O.8) under Ex.P7-Seizure Mahazar, which was attested by PW13. He examined PW2 and seized a saree and petticoat under Ex.P4-Seizure Mahazar, which was attested by PW12. He also seized a shirt [M.O.21], and a baniyan [M.O.22] of the witness Ramachandran [since deceased] under Ex.P5-Seizure Mahazar, which was attested by PW13.

(ix) Thereafter, PW24 examined PW18, who treated PW1, PW2, and PW3 and the witness-Ramachandran (since deceased), and issued Accident Registers, viz., Ex.P27, P28, P30, and 29 respectively. Pw18 also examined A1 at 9.30 a.m. for the injuries caused to him and issued an Accident



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Register [Ex.D5]. PW17 conducted a postmortem on the dead body of the deceased on 11.09.2007 at 9.00 a.m. and issued a postmortem certificate [Ex.P26].

(x) PW24 arrested A7 to A10 at 1.00 p.m., on 11.09.2007 and seized a plastic cover [M.O.24] containing chilli powder under Ex.P13-Seizure Mahazar in the presence of PW14 on the confession given by A8. Ex.P9 is the admissible portion of the said confession.

(xi) PW24 arrested A2 to A6 on 12.09.2007 at 6.00am. He seized M.O.2-knife (ஹெட்ருக்கத்தி) on the confession of A4. The admissible portion of the said confession is Ex.P15. On the confession of A2, the admissible portion of which was marked as Ex.P14, PW24 seized a shirt and shawl of A2. On the confession of A3, the admissible portion of which was marked as Ex.P16, he seized a Shirt [M.O.25] and a lungi [M.O.20] of A3 under Ex.P20-Seizure Mahazar. On the confession of A5, the admissible portion of which was marked as Ex.P17, he seized a knife [M.O.3], under Ex.P21-Seizure Mahazar. Similarly, on the confession of A6, he seized one



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dhonai [M.O.4] under the seizure mahazar [Ex.P22] and the admissible portion of the confession was marked as Ex.P18.

(xii) Thereafter, PW24 arrested A1 on 19.02.2007 at 7.00 a.m., and on his confession, he seized the shirt, dhothi and knife, i.e., M.O.27, M.O.28 and M.O.1, under Seizure Mahazar-Ex.P24 in the presence of PW16. The admissible portion of his confession statement is marked as Ex.P23. After examination of all other witnesses PW24 filed a final report against the accused, including Sampangi Gowdu, for the offences under Sections 147, 148, 323, 324, 302, 307, 326, 34 r/w 302, and 355 of the IPC, before the learned Judicial Magistrate No.1, Krishnagiri.

(xiii) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.122 of 2008 and was made over to the learned Additional District and Sessions Judge, Krishnagiri, for trial. The trial Court framed charges against the accused, and when questioned, the accused pleaded 'not guilty'.



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(xiv) To prove the case, the prosecution examined 24 witnesses as P.W.1 to P.W.24, marked 41 exhibits as Exs.P1 to P41, and marked 44 Material Objects as M.O.1 to M.O.44. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused examined A1-Nandiswaran as DW1 and marked 6 documents as Ex.D1 to Ex.D6.

(xv) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellants/A1 to A9 guilty of offences charged against them. However, the trial Court acquitted A10. The appellants herein/A1 to A9 were convicted and sentenced as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1	148 IPC	To undergo RI for two years.
	341 IPC	To undergo RI for 1 month
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.1000/-, in default to undergo RI for two years.
	326 IPC	To undergo RI for four years and to pay a fine of Rs.1000/-, in default to undergo RI for six months.



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<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A2	148 IPC	To undergo RI for two years.
	341 IPC	To undergo RI for 1 month.
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.1000/-, in default to undergo RI for two years.
	324 IPC	To undergo RI for one year.
	323 IPC	To undergo RI for six months.

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A3	148 IPC	To undergo RI for two years.
	326 IPC	To undergo RI for four years and to pay a fine of Rs.1000/-, in default to undergo RI for six months.

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A4	148 IPC	To undergo RI for two years.
	302 IPC	To undergo life imprisonment and to pay a fine of Rs.1000/-, in default to undergo RI for two years.
	326 IPC	To undergo RI for four years and to pay a fine of Rs.1000/-, in default to undergo RI for six months.

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A5	148 IPC	To undergo RI for two years.
	324 IPC	To undergo RI for one year.

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A6	148 IPC	To undergo RI for two years.



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<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
	324 IPC	To undergo RI for one year.

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A7	147 IPC	To undergo RI for one year and to pay a fine of Rs.1000/-, in default to undergo RI for two months.
	355 IPC	To undergo RI for one year and to pay a fine of Rs.1000/-, in default to undergo RI for two months.

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A8	147 IPC	To undergo RI for one year and to pay a fine of Rs.1000/-, in default to undergo RI for two months.
	355 IPC	To undergo RI for one year and to pay a fine of Rs.1000/-, in default to undergo RI for two months.

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A9	147 IPC	To undergo RI for one year and to pay a fine of Rs.1000/-, in default to undergo RI for two months.
	355 IPC (2 counts)	To undergo RI for one year and to pay a fine of Rs.2000/-, in default to undergo RI for two months for each count.

The above sentences were ordered to run concurrently. Hence, A1 to A9 have preferred the appeal challenging the said conviction and sentence.



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3. Heard, Mr.V.Gopinath, learned senior counsel appearing for the appellants/A1 to A9, and Mr. Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

4. (i) Mr.V.Gopinath, learned senior counsel appearing for the appellants, submitted that the prosecution and the eyewitnesses have suppressed the injuries suffered by A1, which were on his vital parts; that A1 had given a complaint, on the basis of which an FIR was filed; that PW24, the investigating officer, conducted an investigation in the said FIR in Cr.No.161 of 2007 also and had not filed the final report before the Court; that PW24 though had stated that the said FIR was closed as a 'mistake of fact', he did not remember whether notice was sent to the defacto complainant and whether the final report was filed in Court. In any case, the investigating officer has not filed those vital documents, and the counter case filed by the accused was suppressed by the prosecution.

(ii) The learned senior counsel further submitted that there are several



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vital contradictions in the evidence of eyewitnesses as regards the *overt acts* of the accused and for some of the *overt acts* attributed to the accused, there is no corresponding injury as seen from the Accident Register copies issued to the injured witnesses and from the postmortem certificate of the deceased.

(iii) The learned senior counsel submitted that in any case, the land was in the possession of the accused, and the prosecution witnesses were the aggressors. The accused had exercised their right to private defence of their property and person, and therefore, no offence is made.

(iv) The learned senior counsel relied upon the judgments of the Hon'ble Supreme Court in *Lakshmi Singh and others Vs. State of Bihar*, reported in (1976) 4 SCC 394; *Subramani and Others Vs. State of Tamil Nadu*, reported in 2002 SCC (Cri.) 1659; and *Ravichandran and Others Vs. Inspector of Police, Thittakudi Police Station*, reported in (2006) 2 MLJ (Crl.) 1048 in support of his submissions and prayed for acquittal of the



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appellants.

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5.(i) The learned Additional Public Prosecutor submitted that there are seven eyewitnesses whose evidence has not been discredited by the defence; that the injuries on the accused/A1 are simple in nature; that PW1 in the complaint had stated that A1 had sustained injuries while the other accused were attacking the prosecution witnesses; and that even assuming that the injuries have not been explained, it would not be fatal to the prosecution case, as it is not grievous in nature.

(ii) The learned Additional Public Prosecutor took us through the evidence of eyewitnesses, doctor, and other evidence on record to impress upon the fact that the prosecution proved its case beyond reasonable doubt. He also relied upon the judgment of the Hon'ble Supreme Court in *Rizan and Another Vs. State of Chhattisgarh*, reported in (2003) 3 SCC 661 in support of his submissions and prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions and have



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perused all the relevant records.

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7. As stated earlier, out of the nine appellants, A1, A2 and A4 have been convicted for the offence under Section 302 of the IPC for causing the death of the deceased Rajendran. The learned senior counsel appearing for the appellants has produced the death certificate to show that A4 died on 15.11.2009. The learned Additional Public Prosecutor, on instructions, confirms the death of A4. ***Therefore, the appeal filed by A4 stands dismissed as abated.***

8. The accused, prosecution witnesses, and the deceased are relatives. It is the case of the prosecution that Sambangi Gowdu, who was originally an accused (since deceased), refused to give property to PW9; that there was enmity between the two families; PW9 and her son filed suit for partition and possession in O.S.No.142 of 2004; that the suit was decreed on 18.11.2003 and an appeal was filed in A.S.No.7 of 2005, in which the judgment and decree were reversed on 18.09.2006.



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9. We find from the evidence of prosecution witnesses that the accused were in possession of the disputed land. PW9 and the deceased had challenged the judgment of the first appellate Court by filing a second appeal. A1, who was examined as DW1, has deposed about the above facts. DW1 had stated that a second appeal is pending before this Court. PW3 has confirmed in her evidence that there is a civil case pending between the parties.

10. PW9, has stated that the deceased accused, Sambangi Gowdu, succeeded in the first appellate Court and they have filed a second appeal before this Court. She would also admit that at the time of the occurrence this Court had not passed any interim orders. PW7, who is one of the eyewitnesses has stated that the villagers are aware of the fact that the land belonged to the said Sambangi Gowdu. PW1, PW2, PW4, PW6, PW7, and PW8 have all stated that the prosecution witnesses were removing the sand from the disputed land; they also stated that on the date of occurrence, there were two or three JCBs / lorries for the removal of sand, and there were about 50 or 60 people employed as labourers.



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11. From the evidence of the witnesses, it could be seen that, in respect of disputed land, the prosecution witnesses had taken the sand by JCB and lorries. PW9 had admitted that this Court had not passed any interim orders in their favour, until the date of occurrence. The suit was for partition and possession. This would show that the accused persons were in possession of the property.

12. A1 and A2 are brothers. A7 and A8 are sisters of A1 and A2. A7 is the wife of A4 and A8 is the wife of A3. A9 is the wife of A1 and A10, is the wife of the deceased accused, Sampangi Gowdu. A5 and A6 are the brothers of A4.

13. The prosecution examined as many as 24 witnesses, and PW1 to PW7 are eyewitnesses to the occurrence. Out of which, PW1 to PW3 are injured eyewitnesses. That apart, one Ramachandran, who was injured subsequently died. PW9 is the mother of the deceased, and PW8 is son of the deceased. PW10 is the Village Administrative Officer, who was a



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witness to the Seizure Mahazar-Ex.P3 for seizure of M.O.1 to M.O.4 i.e., knives and bloodstained earth. PW11 is the son-in-law of the deceased-Rajendran. PW12 is the witness to Seizure Mahazar-Ex.P4 for the seizure of bloodstained clothes from PW2. PW13 is the witness for the seizure of clothes from PW1. PW14 is the witness to the confession of A7 to A9. PW15 witnessed the arrest of A2 to A6. PW16 speaks about the seizure of M.O.2-knife (வெட்டுக்கத்தி) pursuant to A1's confession. PW17 is the postmortem doctor. PW18 is the doctor who treated PW1 to PW3, the deceased Ramachandran, and issued Accident Registers. PW19 is the photographer. PW20 is the Court Clerk who sent the bloodstained articles to the Forensic Science authorities. PW21 dispatched the printed FIR to the Court. PW22 is the corpse constable. PW23 is the Inspector of Police who handed over the case properties to the Court under Form-95. PW24 is the investigating officer, as stated earlier.

14. Ex.P1 is the statement of PW1 recorded by the Sub Inspector of Police. In the said statement, PW1 attempted to explain the injuries to A1 and stated that when A1 and others attacked the witnesses and the deceased,



certain blows accidentally fell on A1, and he sustained injuries. However, none of the witnesses in their deposition have explained the injuries on A1.

PW18, the doctor who first examined the prosecution witnesses and made entries in the accident register, also examined A1, and made entries in the accident register. However, the prosecution had suppressed the said document. The defence had filed it through PW18 and marked it as Ex.D5. The doctor had noted the following injuries on A1.

- 1)abrasion on the left chest 3 x 2 cm
- 2)pain in the left shoulder
- 3)wound in the left wrist.
- 4)Right side back contusion measuring 4 cm
- 5)laceration on the left side of the head.
- 6)Pain in the left hip

15. Further, A1 was admitted at 9.30am. The nature of the injuries enumerated above would show that they are not minor and superficial, so as to be ignored. The prosecution ought to have explained the injuries on A1. Though there is reference, as stated earlier in Ex.P1 complaint, none of the witnesses have explained the injuries, except for PW5, who had stated that



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A1 also sustained a cut injury on the head. However, he could not say as to how that injury was caused. On the other hand, the prosecution suppressed Ex.D5, the entries in the Accident Register. That apart, the FIR in Cr.No.161 of 2007 lodged by A1 was investigated by PW24. Strangely, he would say that though he had closed the said FIR as a 'mistake of fact', he did not remember whether the final report was sent to Court. The defence has marked the copy application filed before the Judicial Magistrate No.II, Krishnagiri, as Ex.D6. The said application was returned by Judicial Magistrate No.II, Krishnagiri, on the ground that there was no final report relating to Cr.No.161 of 2007. This would further establish that the investigating officer had not filed a final report in Cr.No.161 of 2007. Above all, the investigating officer had violated the Police Standing Orders relating to how a case and counter-case have to be investigated. The investigating officer had not only burked the Accident Register of A1 and not explained the injuries on A1, but had also not produced the case details and the final report filed in Cr.No.161 of 2007, lodged at the instance of A1.



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16. In this regard, it would be useful to refer to the observations of Hon'ble this Court in ***Ravichandran and Others Vs. Inspector of Police, Thittakudi Police Station*** reported in (2006) 2 MLJ (CrL.) 1048, which reads as follows:

“14. This Court has been repeatedly holding that when there is a case and counter the investigating officer has to investigate both the complaints in a manner known to law and file the final report in one case and exhibit the materials collected by him during investigation in the connected complaint before the Court, leaving the entire issue namely, which is true or false to be decided by the Court. This is not done in this case namely, the complaint given by A.1 is not marked; the statement of witnesses recorded during investigation on that complaint is not marked and on top of it the final report is also not marked. Therefore it appears that the police officer namely, P.W.12 holding back the entire records with him, wants the Court to believe his evidence, that the complaint given by A.1 is false and therefore it deserved to be rejected, as a gospel truth. The police officer is only an investigating officer and he is not the adjudicator. On the other hand it is for the Court to decide which complaint is true and who are the aggressors. ...”

17. In ***Lakshmi Singh's case*** [cited supra], Hon'ble Supreme Court



stated that a non explanation of the injuries by accused would be fatal to the prosecution unless the injuries sustained by the accused were minor and superficial.

18. We may also find that, though there are eyewitnesses, there are contradictions with regard to the *overt acts* attributed to the accused 1, 2 and 4 on the deceased and witnesses; we are not concerned with A4 as he is no more as stated earlier. Let us analyse the *overt acts* attributed to A1 and A2 on the deceased and the witnesses.

19. (i) It is the prosecution case that A2 attacked the deceased, PW1 and PW2. As regards the attack on the deceased, PW1, PW2, PW4, and PW5 have stated that A2 had cut the deceased on his back with an axe (மேயு). However, we find from Ex.P26, the postmortem certificate issued by the doctor, that no injuries are found on the back of the deceased, much less a cut injury. PW3, PW6, and PW7 who are the other eyewitnesses, have not spoken about the *overt acts* of A2 on the deceased.



(ii) Similarly, A2 is said to have attacked PW1 on his head and when PW1 attempted to ward off the attack, he sustained a simple injury, to the head. PW1 himself has stated about the alleged attack of A2 on the head. PW3, PW4, PW5, PW6, and PW7 have all stated that A2 attacked PW1 on his head. PW2 admitted that he did not see who attacked PW1. The accident register copy pertaining to PW1 was marked as Ex.P27. However, we find that from the injuries noted in the Accident Register, there is no corresponding injury on PW1. A complaint of pain in the chest and left shoulder and an injury were found in the upper lip of 3 cms in length, which was found to be simple in nature by the Doctor.

(iii) A2 is said to have attacked PW2 on her flank and hip; however, there is no corresponding injury to PW2.

(iv) Thus, we find that, as regards the *overt acts* attributed to A2, the ocular evidence and the medical evidence do not match at all.

20. Be that as it may, as regards the *overt act* attributed to A1, it is the



version of PW1, PW2, PW4, PW5, PW6, and PW7 that A1 cut the deceased on his left hand and his left hand was severed. A1 is attributed with the *overt act* of attacking PW2 and causing injury to her chest. PW1 had stated that A1 cut PW2 on her right breast. The version of PW2, PW3, PW4, PW5, PW6, and PW7, is also similar. The Doctor who examined PW2, viz., PW18, and issued Accident Register-Ex.P28 in respect of PW2 had found the following injuries:

- “1. Injury measuring 10x3 cm on the chest;
2. Injury on the right face 3x2x1cm; and
3. Injury on the centre of the chest measuring 2x1 cm.

21. As regards A3, it is the prosecution case that he attacked PW3. PW1's version is that A3 cut PW3 on her right wrist, palm and knee. PW3 corroborates the said version. However, PW4, PW6, and PW7 only speak about the A3's attack on the right forearm of PW3. PW2 and PW5 do not specifically state about A3's *overt act*. Ex.P30 is the accident register pertaining to PW3 issued by PW18 and it refers to the following two injuries

- (i) Laceration on the right face measuring 8x3cm.
- (ii) Injury on the right knee measuring 3x2cm.



Thus, we find that medical evidence does not corroborate the ocular evidence. Further, PW18 had opined that Injury No.ii stated above, was grievous. However, in the cross examination, he would admit that he has not given any basis for opining Injury No.ii, as grievous, and he would also admit that he had not produced an x-ray certificate to show that the injury No.ii, was grievous in nature.

22. Similarly, A5 is stated to have attacked the left cheek of deceased witness Sri Ramachandran with a knife. PW1, PW3, PW4 and PW7 would state that A5 stabbed the left cheek of the said witness, Sri Ramachandran (since deceased). PW2, PW5, and PW6 have not specifically stated A5's *overt act*. Ex.P29, the Accident Register pertaining to the deceased witness Sri Ramachandran, does not refer to any injury on the cheek or mouth. He had noted the following injuries.

- (i) Left side head laceration 3x2x1cm;
- (ii) Lacerated injury on the Centre of head 4x3x2cm;
- (iii) Injury on skull 2x1cm;
- (iv) 3 scratches on the body; and
- (v) Scratches in the right knee 4x3cm



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23. A6 is stated to have attacked PW3 with a wooden log. However, PW3 admits in her evidence that she did not know who attacked her.

24. A7 to A9 have been charged for the offences under Sections 147 and 355 of the IPC for throwing chilli powder on the prosecution witnesses.

25. Thus, we find that, as regards the *overt acts* against A2, A3 and A5, who are said to have used the weapons, there is no corresponding injury found by the doctor. As stated earlier, the prosecution has failed to explain the injuries to A1. The nature of the injuries enumerated above does not suggest that they are simple and superficial. He was the first to be treated by PW18 and the Accident Register Ex.D5 suggests that he went to the hospital at 9.30 a.m., on 10.09.2007. Though a faint attempt was made in the complaint to show that A1 sustained injuries in the melee when the accused were attacking the prosecution witnesses, none of the witnesses have spoken about A1's injury in their deposition before the Court. The investigating officer himself, having admitted that A1 sustained injuries;



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that A1 gave a complaint in Cr.No.161 of 2007; and that he has filed a final report, has not produced the FIR or the final report filed in the case in counter case, given by A1. It is settled law that in a case and counter case, the investigating officer should place all the materials before the Court and cannot assume the role of a Judge and suppress one version totally, which he has done in the instant case. The investigating officer without producing the final report filed in the counter-case, wants to accept his oral testimony as to what happened in the counter case, which cannot be accepted.

26. The evidence also suggests that the accused were in possession of the land, and they succeeded before the first appellate court. PW9 admits that there is no interim order in the second appeal filed before this Court. There is also evidence to show that the prosecution witnesses had removed sand from the disputed land and were removing the sand on the date of occurrence. Therefore, they have exercised their right to defend their property and person. The fact that the prosecution has suppressed the version in the counter case; injuries on A1; and the prosecution witnesses have feigned totally the injuries on A1 would make it highly unsafe to rely



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on the witnesses even to hold that the accused had exceeded their right of private defence.

27. That apart as stated earlier, the deposition of the witnesses is parrot-like and the *overt act* attributed to most of the accused do not correspond to the injuries noted in the postmortem certificate of the deceased or the Accident Register of the injured witnesses. Therefore, we are of the view that we cannot safely conclude that the prosecution version is true and hold the appellants guilty of the offences charged against them. Therefore, we are of the considered view that the judgment of conviction and sentence cannot be sustained and is liable to be set aside.

28. Accordingly, the Criminal Appeal is allowed, and the appellants/A1 to A9 are acquitted of all the charges. The conviction and sentence imposed upon the appellant in S.C. No.122 of 2008, dated 27.02.2018, on the file of the learned Additional District and Sessions Judge, Krishnagiri, are set aside. The fine amount, if any, paid by the appellants shall be refunded. Bail bonds, if any, executed shall stand



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discharged.

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(M.S.R.,J.) (S.M.,J.)
09.02.2024

Index : yes
Neutral citation : yes
ars

M.S.RAMESH,J.
AND
SUNDER MOHAN,J.
ars

To

1. The Additional District and Sessions Judge,
Krishnagiri.

2. The Inspector of Police,
Veppanahalli Police Station,
Krishnagiri District.

3. The Superintendent,
Central Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
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