



.CrI.A.No.351 of 2016.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.351 of 2016

1. Shanmugam
2. Amaravelu
3. Anbazhagan
4. Aasai
5. Thangaraj
6. Sekar
7. Chidambaram

... Appellants/Accused – 1 to 6 & 8

Versus

State Rep by
The Inspector of Police,
Harur Police Station,
Dharmapuri.
(Crime No.334 of 1998) ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the Judgment dated 20.04.2016 in S.C.No.74 of 2014 on the file of the learned Additional Sessions Judge, Dharmapuri.

For Appellant 1	: Mr.R.Sankarasubbu
For Appellants 2 to 7	: Mr.R.Ezhilarasan
For Respondent	: Ms.G.V.Kasthuri
	Additional Public Prosecutor



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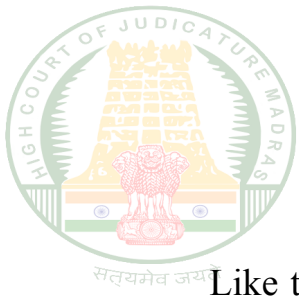
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JUDGMENT

This Criminal Appeal had been filed seeking to set aside the Judgment dated 20.04.2016 in S.C.No.74 of 2014 on the file of the learned Additional Sessions Judge, Dharmapuri.

2. The brief facts, which are necessary for the disposal of this Court, are as follows:

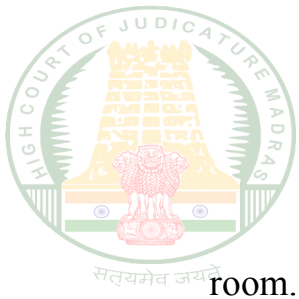
2.1. The Complainant's elder sister's husband/Ponnusamy was the Pump Operator of the Panchayat. Five years prior to the date of occurrence, the uncle of the Complainant/Shanmugam, S/o. Mari @ Puttan wanted his son to be a Pump Operator. On snatching the key of the pump room attached to the Panchayat Office from the Pump Operator, the brother-in-law of the Complainant had handed over the same to his man/Murugan and asked him to operate the pump room. Also, in the Panchayat Office, there was a TV room for common public. The TV Operator job was with the elder brother of P.W-1 by name Venu, P.W-2. Therefore, he was responsible for switching on the TV. On those days, the T.V programmes telecast between 6 p.m., and 9 p.m. Since the TV Operators room key was with P.W-2, the members of the family of P.W-2 were operating the TV on every evening.



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Like the present day, 24 x 7 TV programmes were not available and it was restricted between 6 p.m., and 9 p.m.,. The paternal uncle of P.W-1 and P.W-2 namely Shanmugam had objected to the control of TV operating room with the family of P.W-1 and P.W-2. He wanted it to be under his custody. Already, he had snatched the post of water motor Pump Operator by snatching the key from the brother-in-law of P.W-1 and P.W-2. While situation was such that, on 23.03.1998 by around 9.30 p.m., the uncle of P.W-1 and P.W-2 viz., Shanmugam came along with his men and friend stating that the TV room should not be operated by him/P.W-2. If he violates it, he will be finished off. On such a threat, P.W-2 replied that he would hand over the keys of TV operator's room to the Panchayat President on the next day, from whom the uncle of P.W-1 and P.W-2, can take back the keys. Immediately, Shanmugam locked the TV room with the lock brought by him and P.W-2 went to his elder brother/Palani and informed him that Shanmugam locked the TV room. Palani immediately came back to the TV operators room and asked who had locked the TV room and also he sought the key for opening the lock. At that time, A-1, A-7 and A-5 threatened P.W-2 that “We will do what we want to do”. P.W-2-Venu went near the TV

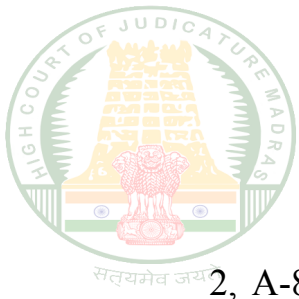


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room. At that time, the above stated persons, A-1, A-5 and A-7 caught hold of him and took him to the backside of the TV room by shouting “you get lost”, the uncle of P.W-1 and P.W-2/A-1 attacked P.W-2/Venu on the head with an iron rod. A-5 Thangaraj hit P.W-1/Dhanapal on the head with wooden stick and with the same stick, he also hit behind the backside head of P.W-2 Venu. A-3 Anbazhagan attacked P.W-2 Venu on the back and on the left side of the body with iron pipe. A-6 attacked with iron rod on the hand of P.W-2 causing injuries on his left thumb. A-12- Dharmalingam pulled P.W-2 by his hair and pushed him to the ground. On seeing this, the father of P.W-1 and P.W-2 came to the rescue of his son. At that time, A-1 hit his brother/Govindan, the father of P.W-1 and P.W-2 on the head by uttering “You get lost”. Immediately, P.W-1 and P.W-2 caught hold of the father who had lost conscious and about to fall. Therefore, P.W-1 and P.W-2 caught hold their father and rescued him and moved out from the scene of occurrence. A-3, A-4 and A-6 hit the father of P.W-1 and P.W-2 on the chest with wooden sticks. A-2 hit the father of P.W-1 and P.W-2 on the wrist with bamboo pole.

2.2. On seeing this, sister-in-law of P.W-1 came out rushing to the rescue of P.W-1 and father. On seeing her rushing towards P.W-1 and P.W-4/32



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2, A-8 caught hold on her and pushed her to the ground. She was also attacked by A-8 on her back and A-1 attacked her with iron rod on the left thigh. On seeing this, A-4, son of P.W-2 came to the rescue of P.W-1. P.W-4 also attacked by A-6 with iron rod. A-7 attacked on the head of P.W-4. Also they attacked the Complainant P.W-1 who had resisted it. A-2 attacked P.W-1 with iron pipe and this resulted injuries in his left thigh. A-13 had pushed P.W-1 to the ground. A-1 also hit him with iron rod. A-9 and A-13 pushed P.W-1 to the ground and kicked him. The elder brother of P.W-1 and P.W-2 was also attacked. P.W-5 sister-in-law was also attacked by the Accused. A-9 had also attacked P.W-5 with stone and stick. A-10 had attacked P.W-5 with wooden stick. P.W-6 was also attacked by A-7 using wooden stick. When the cousin of P.W-1 and P.W-2 viz., Gopal tried to lift the father of P.W-1 and P.W-2, he was attacked on his back by A-1. The father of P.W-1 and P.W-2 cried in pain. At that time, since buses were not available, P.W-1 and P.W-2 had accompanied in the two-wheeler and all the injured left to the Government Hospital through Auto-rickshaw. Based on the complaint of P.W-1 under Ex.P-17, FIR in Cr.No.334/1998 was filed by the Inspector of Police, Harur Police Station for the offence under Sections 147, 148, 323, 324, 307 of IPC.



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2.3. On registering the case, the Investigation Officer took up the investigation, went to the scene of occurrence and prepared the Rough Sketch under Ex.P-10 and Observation Mahazar under Ex.P-11 in the presence of witnesses. The injured was taken to Harur Hospital from where he was shifted to Dharmapuri District Headquarters Hospital. After two days, he died. Therefore, the case was abated. The Investigation Officer recorded the statement of injured witnesses, visited the place of occurrence and prepared the Observation Mahazar under Ex.P-11 and Rough Sketch under Ex.P-10. P.W-10 had conducted inquest over the body of the deceased in the presence of Panchayatar. Also he sent alteration report under Ex.P-14 to the Headquarters of Judicial Magistrate, Harur. He obtained the statement of the Doctor, who treated the injured witness and the Doctor, who had conducted the autopsy on the body of the deceased. He obtained records from the same authority concerned. After completion of investigation, he laid the final report.

2.4. The learned Judicial Magistrate had committed the case to the Court of the learned Sessions Judge. On appearance of the Accused before the learned Sessions Judge, the learned Sessions Judge had framed charges under Sections 147 against Accused 3 to 5 and 7 to 13; Section 148 against



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Accused 1 to 3 and 6; Section 302 against Accused-1 alone; Section 302 r/w 149 against Accused 2 to 13; Section 307 against Accused-1 alone; Section 324 against Accused 1 to 3 and 6 (Two counts for Accused 3 and 6); Section 324 against Accused-4, 5, 8 to 10, 12 and 13; Section 325 against Accused-7 alone. The Accused denied the charges and claimed to be tried. Therefore, the learned Sessions Judge, Dharmapuri ordered trial.

2.5. During the course of trial, to prove the case projected against the Accused, the Prosecution examined 19 witnesses as P.W-1 to P.W-19, marked 17 documents as Ex.P-1 to Ex.P-17 and projected 9 material objects as M.O-1 to M.O-9. On behalf of the Accused, 4 witnesses were examined as D.W-1 to D.W-4 and marked five documents as Ex.D-1 to Ex.D-5.

2.6. Upon completion of the evidence, after hearing the Prosecution and the learned Counsel for the defence, the learned Additional Sessions Judge, Dharmapuri by judgment dated 20.04.2016 in S.C. No. 74 of 2015 convicted and sentenced the Accused 1 to 8 as follows:

Accused	Conviction	Sentence
A.1	Under Section 148 I.P.C.	Three years rigorous imprisonment.
	Under Section 304(i) I.P.C.	Ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment.



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Accused	Conviction	Sentence
	Under Section 324 I.P.C.	Fine of Rs.2,000/-, in default, to undergo six months rigorous imprisonment.
A.2	Sentence 148 I.P.C. Under Section 304(i) I.P.C. read with 149 I.P.C. Under Section 324 I.P.C.	Three years rigorous imprisonment. Ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment. Fine of Rs.2,000/-, in default, to undergo six months rigorous imprisonment.
A.3	Under Section 148 I.P.C. Under Section 304(i) read with 149 I.P.C. Under Section 324 I.P.C. (2 counts)	Three years rigorous imprisonment. Ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment. Fine of Rs.1,000/- each, in default, to undergo six months rigorous imprisonment each.
A.4	Under Section 147 I.P.C. 304(i) read with 149 I.P.C.	Two years rigorous imprisonment. Ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment.
A.5	Under Section 147 I.P.C. Under Section 304(i) read with 149 I.P.C.	Two years rigorous imprisonment. Ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment.
A.6	Under Section 148 I.P.C. Under Section 304(i) read	Three years rigorous imprisonment. Ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months



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Accused	Conviction	Sentence
	with 149 I.P.C.	rigorous imprisonment.
	Under Section 324 I.P.C. (2 counts)	Fine of Rs.1,000/- each, in default, to undergo six months rigorous imprisonment each.
A.8	Under Section 147 I.P.C.	Two years rigorous imprisonment.
	Under Section 304(i) read with 149 I.P.C.	Ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment.
	Under Section 323 I.P.C.	Fine of Rs.1,000/- in default, to undergo six months rigorous imprisonment.

The trial Court found the Accused 9, 10, 11 and 13 not guilty under Sections 147, 302 r/w. 149 and 324 of IPC and acquitted them under Section 235 (1) of Cr.P.C. Since, Accused No.7 was found to be a juvenile and the Court found him guilty, he was directed be produced before the Juvenile Justice Board for imposing sentence.

3. Aggrieved by the judgment of conviction and sentence, the Accused 1 to 6 and 8 had filed this Criminal Appeal.

4. The learned Counsel appearing for the first Appellant has



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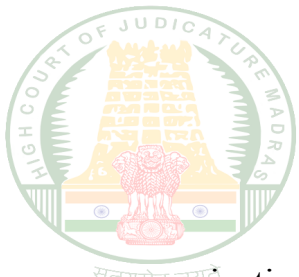
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invited the attention of this Court to the cross-examination of the prosecution witness examined before the trial Court, wherein, P.W-14 Dr.Jeyaraman admitted that on the same day of occurrence, Accused-5 Thangaraj was also admitted in hospital for the injuries. The learned Counsel for the first Appellant has also submitted that inspite of the evidence available in the cross-examination that the Accused were also injured in the same incident, the prosecution was unable to explain the injuries on the Accused.

5. The learned Trial Judge had rejected the defence of the Accused stating that the evidence of the Doctor/P.W-14 who had issued Ex.D-1 Wound Certificate to the Accused-5 Thangaraj, is unacceptable, since he had retired from service and was employed in a private hospital.

6. It is the contention of the learned Counsel for the first Appellant that there is evidence available before the Trial Court that from the group clash between two groups, the prosecution witnesses as well as Accused have suffered injuries, whereas the prosecution failed to place all the materials fairly before the Trial Court, which led to miscarriage of

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7. The learned Counsel for the first Appellant has also invited the attention of this Court to the fact that the 5th Accused Thangaraj was injured and he has also given complaint. Based on it, prosecution witnesses were shown as the Accused in the counter-complaint. Ex.D-5, is the copy of the First Information Report, which was registered at Harur Police Station based on the complaint given by the said Thangaraj 5th Appellant herein.

8. It is the contention of the learned Counsel for the first Appellant that the finding of guilt by the learned Trial Judge is perverse as the learned Trial Judge failed to appreciate the fact that the Accused had also been injured in the group clash. In spite of the evidence available before the Trial Court, during the cross-examination of the prosecution evidence and the evidence on the defence of D.W-1 to D.W-4, particularly in paragraph No.45 of the Judgment, the observation of the learned Trial Judge with reference to Ex.D-1 to Ex.D-5, is perverse.

9. Further, the learned Counsel for the first Appellant also invited



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the attention of this Court to the charges framed by the trial Court which mentioned the time of occurrence in Ex.D-5 First Information Report marked on the part of the accused, which is perverse .

10. In support of his contention, the learned Counsel for the first Appellant relied on the following reported rulings:

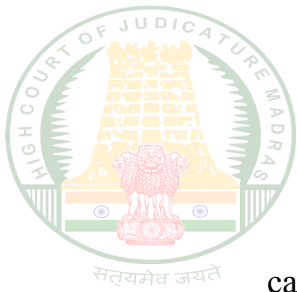
10.1. In *1954 MWN (Cr) 9* in the case of *Thota Ramakrishnayya & Ors., Vs. The State this Court* had observed as under:

“39. ... The net result of this analysis is that the prosecution evidence in this case for bringing home the offence to the accused consists of partisan evidence unsifted by investigation, lopsided in its presentation in court and incapable of being properly tested by reason of not committing to the sessions court both the case and the counter.

40. In these circumstances it cannot be legitimately held that the prosecution has brought home the offences to the accused persons with which they stood charged and for which they have been convicted. The accused are entitled to the benefit of the reasonable doubt arising from the aforesaid factors & their convictions and sentences are set aside and they are acquitted and these appeals are allowed.”

10.2. In *AIR 1957 SC 614* in the case of *Vadivelu Thevar and Ors., Vs. State of Madras* the Hon'ble Supreme Court has observed as follows:

“12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second



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category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.”

10.3. In **1976 (4) SCC 394** in the case of **Lakshmi Singh and Others**

Vs. State of Bihar the Hon'ble Supreme Court has observed as under:

“18. Thus in view of the inherent improbabilities, the serious omissions and infirmities, the Interested or inimical nature of the evidence and other circumstances pointed out by us, we are clearly of the opinion that the prosecution has miserably failed to prove the case against the appellants beyond reasonable doubt. Normally this Court does not interfere in an appeal by special leave with concurrent finding of fact, but this is one of these cases where the judgment of the High Court is manifestly perverse and where the High Court has not considered important circumstances which completely demolish the prosecution case. In fact the High Court has hardly made any real attempt to analyse or discuss the evidence and



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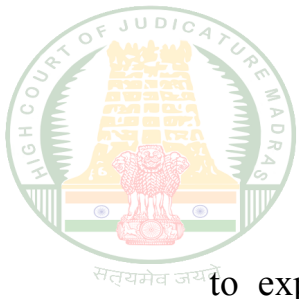
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has merely affirmed the finding of the Sessions Judge by narrating the evidence relied upon by it. We have already pointed out that on one of the most important points arising in : a criminal trial, namely, the non-explanation of the injuries on the person of the accused by the prosecution, the High Court has not only committed an error of fact but an error of law by showing a lack of proper appreciation of the principles decided by this Court. For these reasons, therefore, we think! there are special circumstances in the present case which have compelled us to interfere in this appeal by special leave.”

10.4. In **1987 L.W. (Cri) 400** in the case of ***Pandurangan Vs. The State by Inspector of Police, Thirukazhukundram*** this Court has held as under:

“Held – There is no definition of the term 'case and counter case'. The term in its general important stands for cases registered on the basis of rival versions of the same incident. The same incident may not form a single incident, but also constitute several incidents in the course of the same transaction. To call a series of acts as acts that have taken lace in the course of the same transaction, there must be a connection between the series of acts before they could be regarded as forming part of the same transaction. If several acts committed by several persons, say in a case of a riot, may show unity of purpose or design so as to indicate a strong circumstances that, those acts form part of the same transaction. The connection between a series of acts seems to be essential ingredient for those acts to constitute the 'same transactions'.

11. Relying on the above rulings, the learned Counsel for the first Appellant submitted that in the above decisions, guidelines were given for being followed by the Investigation Officers in a case relating to group clash. In this case, such guidelines have not been followed by the Investigation Officer as well as the Trial Judge. The prosecution also failed



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to explain the injuries of the Accused-5 Thangaraj, therefore, the valid defence of the Accused is probalilized before the Court. Therefore, the learned Counsel for the first Appellant seeks to set aside the Judgment of conviction and order of sentence recorded by the learned Additional Sessions Judge, Dharmapuri made in S.C.No.74 of 2014, dated 20.04.2016.

12. The learned Counsel appearing for Appellants Nos.2 to 7 would submit that he adopts the same submissions made by the learned Counsel for the first Appellant.

13. The learned Additional Public Prosecutor submitted that the occurrence took place in the year 1998. It was with regard to one party asking the another party not to switch on the T.V. as there had been enmity between the two groups in the village. Both groups are related to each other. They are relatives. The Complainant's elder sister's husband, as a Pump Operator in the Panchayat was employed. The complainant had preferred the Complaint.

14. The learned Additional Public Prosecutor further submitted that



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the Accused had taken the plea of the defence that they were attacked by the Prosecution Witnesses. Also, in support of defence of the Accused, the Accused examined witnesses D.W1 to D.W-4 and marked documents Ex.D1-1 to Ex.D-5. On completion of trial, arguments were heard. Based on the arguments, the learned Additional Sessions Judge, Dharmapuri, had on appreciation of facts held the whole Accused guilty. The learned Additional Public Prosecutor invited the attention of this Court to the judgment of the learned trial Judge wherein the learned trial Judge had clearly stated that the Accused filed Petition seeking to adduce additional evidence, that was dismissed. The evidence of the Prosecution Witnesses were accepted and attempt of the Accused to let in evidence and to mark additional documents was rejected. The Accused were examined as D.W-1 to D.W-4 and documents Ex.D-1 to Ex.D-5 were marked. The learned trial Judge had rejected the contention of the learned Counsel for the Accused stating that to escape from the criminal liability, the Accused voluntarily obtained documents as though they were attacked. The learned Additional Sessions Judge, Dharmapuri, had rejected the contention of the learned Counsel for the Accused and had convicted the Accused for the offence under Sections, 147, 148, 302, 302 r/w 149, 307, 324 and 325 of IPC.



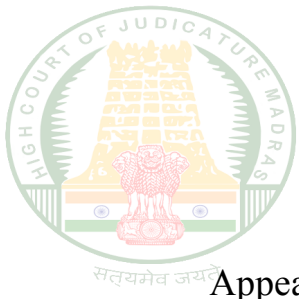
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15. The learned Additional Public Prosecutor invited the attention of this Court to the Judgment of the learned trial Judge who had appreciated the facts and had arrived at a just conclusion by Judgment dated 20.04.2016, by convicting the Accused. The arguments of the learned Counsel for the Appellants is not at all be maintainable, as witnesses had clearly stated about what had happened on the intervening night.

16. The learned Additional Public Prosecutor also submitted that the occurrence took place on 23.03.1998 at about 9.30 p.m., the trial could not be conducted early, due to the dilatory tactics of the Accused. The trial commenced only in the year 2015. Therefore, there are minor contradictions which cannot be taken as an advantage by the Accused. There is medical evidence through Doctors and the learned Additional Sessions Judge had rejected the theory of the Accused that the Accused had also suffered injuries and for the death caused to the father of P.W-1 and P.W-2, the learned Additional Sessions Judge, Dharmapuri, had convicted the Accused for the offence under Section 304 (1) of IPC. The Judgment of conviction recorded by the learned trial Judge is a well-reasoned order. Therefore, this

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Appeal lacks merits and is to be dismissed.

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Point for consideration:

Whether the Judgment dated 20.04.2016 in S.C.No.74 of 2014 on the file of the learned Additional Sessions Judge, Dharmapuri, is to be set aside as perverse?

17. Perused the evidence of Prosecution Witnesses viz., P.W-1 to P.W-19 and the documents under Ex.P-1 to Ex.P-17 and Defence Witnesses viz., D.W-1 to D.W-4 and documents on the side of defence under Ex.D-1 to Ex.D-5 and the Judgment of the learned Sessions Judge in S.C.No.74 of 2014, dated 20.04.2016. On perusal of the evidence of P.W-1 and P.W-2, it is found that they had cogently narrated the occurrence and that all of them are relatives. In the cross-examination, it was stated that on the same day, the Accused were attacked by the Prosecution Witnesses that was effected in the cross-examination. P.W-14-Doctor who had issued wound certificates to P.W-1 and P.W-2 and marked as Ex.P-8 and Ex.P-9 had admitted in his cross-examination that he had issued Ex.D-1 to Accused-5. On the same day, Ex.D-2 to Accused-7, Ex.D-3 to Govindammal, relative of the Prosecution Witness. Also, the Investigation Officer P.W-18 and P.W-19



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had in their cross-examination admitted that on the same day of occurrence, the Accused had also preferred the complaint which was registered as FIR in Cr.No.335/1998 for the offence under Section 394 of IPC. The FIR was registered on the same day and the occurrence time is shown as in Ex.P-17. It is true that there had been clashes between two groups. The victim is the father of P.W-1 and P.W-2, the victim had suffered death due to the attack of A-1. The fact that the Accused also suffered is found acceptable. From the evidence, the fact that the Accused also underwent treatment for the injuries caused by the Prosecution Witnesses are available in Ex.D-1 and Ex.D-2. When there is a case and a case in counter, the Investigation Officer is to investigate fairly and file charge sheet in both the cases fairly before the Court.

18. As per Order No.566 of Tamil Nadu Police Standing Orders, the Investigation Officer has two options (i) to investigate fairly and find out who is the aggressor and who is the victim, based on which, one FIR can be closed or to close both the FIRs. (ii) When the Investigation Officer is unable to arrive at a conclusion as to who the victim is and who the aggressor is, they either close both the cases or investigate both the FIRs

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and file appropriate charge sheet before the Judicial Magistrate concerned.

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Here in this case, there is no explanation regarding the FIR preferred by the Accused, registered in Cr.No.335/1998. P.W-14-Doctor had clearly stated that on the same day, Accused-5 also came for treatment. He also issued wound certificate which was marked during the course of evidence of Doctor.

19. On appreciation of evidence, the learned trial Judge had stated clearly that the wound certificate was marked under Ex.D-1 to Accused-1 and Ex.D-2 to Accused-7 and Ex.D-3 to Govindammal who is not an Accused and who is a relative of the family of the Accused and who is the Witness for the Defence. On cross-examination of D.W-4, he had stated in his cross-examination that Ex.D-1 wound certificate of D.W-4 was obtained from the private Hospital of Dr.Jayaraman. He had retired from Government Service. To the pointed question that whether D.W-4 had obtained seal from the Government Hospital regarding wound certificate issued by Dr.Jayaraman under Ex.D-4, it is stated that he had not obtained seal. Therefore, it was suggested by the learned Public Prosecutor before the trial Court that the Accused/A-5 was not at all treated in the Government

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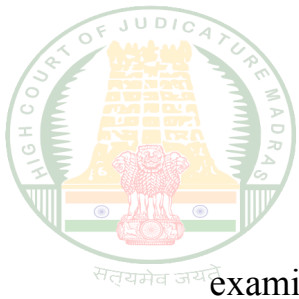
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Hospital either at Harur or Dharmapuri which he had denied. Only as a defence, the documents had been obtained surreptitiously from the Doctor who had treated the Witnesses P.W-1 and P.W-2 in the Government Hospital. The suggestion that after his retirement, he was working in a Private Hospital, was denied by D.W-4/Accused-5. Therefore, the learned Judge had discussed about the defence of the Accused that in the clashes, the Accused also suffered injuries and therefore, the Prosecution had not placed fairly all the materials before the trial Court. Under those circumstances, the Prosecution case has to be rejected was not accepted by the learned trial Judge on the ground that the documents under Ex.D-1 to Ex.D-3 were obtained long after the occurrence, after the retirement of P.W-14-Doctor.

20. On perusal of the evidence, the Doctor who had issued Ex.P-6-wound certificate of P.W-2, Ex.P-7-wound certificate of P.W-4, Ex.P-8-wound certificate of P.W-1 and Ex.P-9-wound certificate of P.W-3 had admitted in cross examination that he had issued wound certificates to Accused-5 and Accused-7. Ex.D-1 is the wound certificate of A-7-Juvenile in this case and Ex.D-3 is the wound certificate for D.W-1 in which cross-

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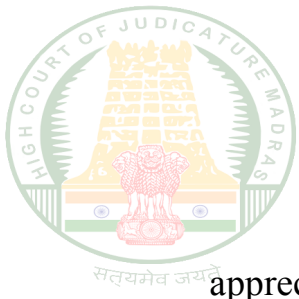


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examination of Doctor clearly admitted that he had issued it after his retirement. When A-5 and A-7 requested to issue wound certificate to the pointed question by the learned Public Prosecutor before the trial Court, after his retirement, he had in obedience to issue as though he issued as Medical Officer by the Government, he claims ignorance of such act. He also added to verify the records of the Government Hospital to be issued to A-5 to A-7. Had it been so, the defence ought to have summoned the documents from the Government Hospital containing particulars regarding the registration number of those who had been admitted or treated in the Government Hospital with the records maintained in the Government Hospital either at Harur or Dharmapuri. The Accused in this case could have done so. Therefore, the learned Judge had on appreciation of evidence from the cross-examination of D.W-4 and re-examination of P.W-14-Doctor, after the documents were shown to him admitted that he had issued it after his retirement. The documents marked as Ex.D-1 to Ex.D-3 does not have seal of the Government Hospital. Under those circumstances, the learned trial Judge had on appreciation of evidence arrived at a conclusion that the Accused had created documents to set the defence and rejected the contention of the Accused that they also suffered injuries. In the light of the

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appreciation of evidence, the learned Judge had rejected the evidence let in by the D.W-1 to D.W-4 as they suffered injuries.

21. It is to be noted that the documents under Ex.D-1 to Ex.D-3- wound certificates of A-5 to A-7 and relative of the Accused were obtained after the retirement of P.W-14-Doctor. He had in his re-examination, after cross-examination of the defence witnesses by the learned Public Prosecutor admitted that he had retired on 31.01.2008. The Ex.D-1 is signed on 20.12.2014 and it contains the seal and sign. On that date, how the wound certificate was obtained was stated by the A-5/D.W-4. During cross-examination he stated that he obtained wound certificate from the Government Hospital. If it had been true, it should contain the name of the Doctor, date of admission and date of discharge. Further, if the records are available in the Hospital, they should have summoned the documents from the Government Hospital. It is to be noted that the date on which the victims suffered injuries were on 23.03.1998 whereas the documents under Ex.D-1 to Ex.D-3 were issued on 20.12.2014. After the alleged occurrence in the absence of original records will be produced before the Government Hospital in the light of the evidence of P.W-14 in re-examination by the

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learned Public Prosecutor and in the light of the cross-examination of A-5 as D.W-4, the learned Additional District Judge had rejected the defence of the Accused. Therefore, in the light of the evidence of victims viz., P.W-1 to P.W-6 and P.W-10, the learned Judge had convicted the Accused for the offence framed against them.

22. On perusal of the Judgment of the learned trial Judge, it is found that nothing is found perverse. If the defence of the Accused had been true, the Investigation Officer would have dropped the FIR marked in Ex.D-4 and Ex.D-5 and would not have proceeded further. That be so the Accused in this case should have approached the learned Judicial Magistrate and proceeded further, either by filing protest petition or private complaint. The injuries suffered by D.W-4 is found to be only simple injury whereas the injury caused on the father of P.W-1 and P.W-2 resulted in death. Therefore, the Accused in this case are aggressor as per the evidence available before the trial Court.

23. As per Police Standing Order, Investigation Officer has a discretion to investigate and lay the final report either to drop the case as the

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complainants are aggressor and the other one aggressor, and proceed with the complaint or investigation if it is found that the victim are aggressor. The Second option is that he has to close it as not found true. Third option is that if both the parties have suffered injuries that resulted in grievous injuries or death on both sides, it is to be proceeded with fair investigation and then lay the final report before the Court concerned. It is for the Court after the conclusion of trial to arrive at a conclusion as to who really the aggressor is and who the victim is, and to deliver judgment accordingly and to punish the Accused for the offence. Here in this case, in the cross-examination of P.W-17-Investigation officer who conducted investigation, had stated in the investigation to the pointed question that two FIRs were registered but they are not proceeded with the investigation in Cr.No.335/1998. He stated that he had on his investigation found that the Accused herein was the aggressor. It is to be noted that the Investigation Officer had retired from service on the date of examination of the Investigation Officer on 10.07.2015. In the cross-examination, he has stated that the details regarding closure of Cr.No.335/1998 will be only on perusal of the original records from the Police Station. He had given a clear statement that on his investigation, the Accused herein were aggressors.



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Therefore, he had not proceeded with the Cr.No.335/1998 based on the complaint of A-5.

24. The learned Counsel for the Appellants Thiru.R.Sankarasubbu placed reliance on the reported decision of the Hon'ble High Court in **1954-M.W.N.(Cr.) 9 [Thota Ramakrishnayya and others -vs- The State]** which was a case involving clash between two groups where one of the group alone was proceeded against by the Investigation Officer in which there was evidence in the Court that it was a group clash in which the Accused were also injured. In this case, there was evidence before the trial Court that the Accused was also injured but the learned Additional Sessions Judge, Dharmapuri rejected the evidence claiming it was made only for the purpose of defence.

25. It is true that the medical document under Ex.D-1 to D-3 were procured after the retirement of Dr.Jayaraman. In the cross-examination the Investigation Officer, P.W-17 Thiru.Balaraman had admitted that he had registered the case in Crime No.335 of 1998 based on the complaint of the Accused No.5 Thangaraj. He had evaded direct question that as per his

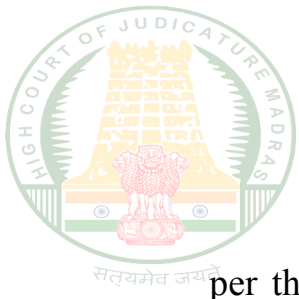
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evidence, he had arrested Accused 5 Thangaraj from the at Harur. Whereas there was evidence that Accused 5 had been under treatment for four days at Dharmapuri Government Hospital as he was forwarded to Dharmapuri Government Hospital after treatment at Harur. To the specific question, whether he had verified the medical records pertaining to Thangaraj, he was unable to give a specific answer. In the subsequent part of his cross-examination, he admits that A-5 Thangaraj and A-7 Udhayasuriyan were in treatment was informed to him. To the pointed question, whether he had examined the Doctor who treated the Prosecution Witness 1 and 2, the same Doctor who had treated A-5 and -7, he would submit that since he had retired from service, he is unable to answer the Cross-examination without the help of CD file. As per the Prosecution case, the Accused herein recognised the Prosecution witness. The deceased Govindan is the elder brother of Accused-1 Shanmugam. If there had been clash between two groups, there is every likelihood of the Accused also suffering injuries. That is the presumption from the normal human conduct. When there are clashes between relatives one group will not remain to be at the receiving end. They would also be retaliated and inflicted by the other group. Under those circumstances, even if the documents procured by the Accused is as



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per the evidence of A-5 after the retirement of P.W-14 Dr.Jayaraman, it is surreptitiously procured. At the same time, they should have summoned the Documents from the Government Hospital, Harur or from the Government Hospital, Dharmapuri. The evidence of P.W-17 Investigation Officer hints that he had been acted fairly. As per the reported decision in **1954-M.W.N.(Cr.) 9 [Thota Ramakrishnayya and others -vs- The State]** the Investigation Officer had to place all the materials before the Court and it is for the Court, based on the evidence let in by the witnesses, to arrive at a conclusion as to who are the aggressors and who are the victims.

26. The submission of the learned Counsel for the Appellants/Accused probablise the case that there was a group clash. Since the father of P.W-1 and P.W-2 in S.C.No.74 of 2014 died in the hospital, the Accused in this case were treated as Accused and the injury suffered on the side of the Accused were suppressed by the Prosecution. The Prosecution has to explain the injury suffered by the Accused. The observation of the learned Sessions Judge that the documents were procured subsequently is true but that cannot be rejected in its entirety. Even if the documents are rejected the existence of the case and counter case is made out from the fact,

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and the Prosecution has to explain whether further investigation was done or not regarding the Crime No.335 of 1998.

27. The learned Counsel for the Appellants also invited the attention of this Court to the reported decision in **1957 SCR 981 [Vadivel Thevar vs. State of Madras]** regarding corroborating witness. The learned Counsel for the Appellants invited the attention of this Court to the reported decision of the Hon'ble Supreme Court in **(1976) 4 SCC 394 [Lakshmi Singh and others vs. State of Bihar]** regarding the failure of Prosecution to explain the injuries caused to the Accused. Here, it is true that the father of P.W-1 and P.W-2 died in the clash in which the first Accused hit him on the head. Since the Prosecution failed to place all the relevant materials fairly before the Court and had acted partially by placing incriminating materials against the Accused alone and not the incriminating materials against the Prosecution witnesses, the conviction by the learned Sessions Judge, Dharmapuri in convicting the Accused is found unreasonable, unacceptable considering the criminal conspiracy. Therefore, the judgment of the learned Sessions Judge, Dharmapuri in S.C.No.74 of 2014 dated 20.04.2016 is perverse and is to be set aside.

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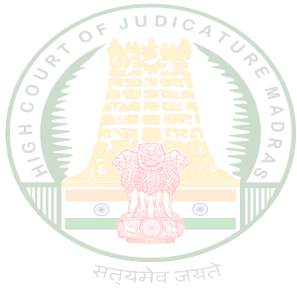


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28. In the light of the above discussion, the conduct of the Prosecution before the trial Court is found to be not attracting the principles of fair trial. They had not placed all materials available regarding the riot that took place in the year 1998. Further, on perusal of the judgment, it is found that the occurrence took place in the year 1998, FIR was lodged on both parties on the same day. Final report was laid in 1999. The Sessions Case was numbered only in 2014. Charges were framed on 18.09.2014. The judgment was pronounced on 20.04.2016. By the conduct of the Accused only the case was not tried at the earliest point of time. Even though final report was laid in the year 1999, the trial commenced only in the year 2015.

29. In the light of the above discussion, the Point for consideration is answered in favour of the Appellants and against the Prosecution. The Judgment dated 20.04.2016 in S.C.No.74 of 2014 on the file of the learned Additional Sessions Judge, Dharmapuri, is found perverse and the same is to be set aside.



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In the result, **this Criminal Appeal is allowed.** The Judgment dated 20.04.2016 in S.C.No.74 of 2014 on the file of the learned Additional Sessions Judge, Dharmapuri, is set aside. The Appellants/Accused are acquitted from all the charges. The bail bond, if any, executed by the Appellants/Accused shall stand cancelled. The fine amount, if any, paid by the Appellant/Accused shall be refunded to them.

21.12.2024

dh/srm

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Additional Sessions Judge, Dharmapuri.
2. The Judicial Magistrate, Harur.
3. The Inspector of Police,
Harur Police Station,
Dharmapuri.
4. The Superintendent,
Central Prison, Vellore.
5. The Public Prosecutor,
High Court, Madras.
6. The Section Officer,
Criminal Section,
High Court, Madras.

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SATHI KUMAR SUKUMARA KURUP, J

dh/srm

Judgment made in
Crl.A.No.351 of 2016

21.12.2024