



Crl.A.No.99 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.99 of 2018

1.Karthik

2.Kamatchinathan

3.Kumar

... Appellants

vs.

1.State Rep.,
Inspector of Police
B-10, Selvapuram Police Station
Coimbatore
Crime No.315 of 2014

2.Karthikraja

3.Mukesh

4.Rajammal

5.Vinod Kumar

6.Arun Kumar

... Respondents

PRAYER: Criminal Appeal filed under Section 372 of Criminal Procedure Code, 1973, against the judgment and orders dated 24.07.2017 passed in Special S.C.No.203 of 2014 by the I Additional Assistant Sessions Court, Coimbatore.



WEB COPY



Crl.A.No.99 of 2018

For Appellants : M/s.S.S.Jothivani
Legal Aid Counsel

For R1 : Mr.S.Rajakumar
Additional Public Prosecutor

For R2 to R6 : M/s.S.Varshini
Legal Aid Counsel

J U D G M E N T

Challenging the order of acquittal dated 24.07.2017 passed by the I Additional Assistant Sessions Court, Coimbatore, in S.C.No.203 of 2014, the present criminal appeal is filed by the victims.

2. The case of the prosecution in a condensed form is as follows:

2.1. Thiru.Karthik (P.W.1), is the son of Kamatchinathan (P.W.2) and Thiru.Kumar (P.W.3), is the brother of P.W.2. They are all residents of Panaimarathur, Coimbatore District. P.W.1 is working for HDFC Bank. He was previously associated with Home Guard, Coimbatore. According to P.W.1, the accused used to play cards for money and indulged in rooster fight also on account of which the police arrested them and filed a case against them. They pleaded guilty and paid fine amount. They were all under the impression that P.W.1, who happens to be with the Home Guard, Coimbatore had informed the concerned police about their activities and therefore, they were always inimical towards



Crl.A.No.99 of 2018

him. On 29.05.2014, there was a Temple Festival in their Village. In the said festival, the accused picked up a quarrel with P.W.1 to P.W.3.

However, they were pacified by the other Villagers. On 30.05.2014 at about 7.00 a.m., when P.W.1 and his paternal uncle Kumar (P.W.3) were talking to each other near Vinayagar Temple, the accused 1 to 5 came over there and picked up a wordy quarrel. Subsequently, it turned violent and according to P.W.1, Karthikraja (A1) and his brother Mukesh (A2) attacked Kumar (P.W.3) with a knife (M.O.2), as a result of which, Kumar (P.W.3) sustained injuries on his face, hand and abdomen. When P.W.1 prevented the accused from attacking P.W.3, the accused Arun Kumar (A5) and Vinod Kumar (A4) attacked him with a wooden log (M.O.1). Thiru.Kamatchinathan (P.W.2) on hearing the quarrel between the accused on one side and his son and brother on the other went to the place of occurrence when he was also attacked by Rajammal (A3) with a knife (M.O.3) and P.W.2 sustained injuries on his hands. Since the Villagers intervened all the accused made good their escape taking the weapons used by them for attacking P.W.1 to P.W.3.



2.2. P.W.1 took his father (P.W.2) and paternal uncle (P.W.3) in an Auto driven by Suresh (P.W.4) to the Government Medical College and Hospital, Coimbatore. P.W.3 was admitted in ICU.

2.3. Dr.Bhuvana (P.W.9) examined Kamatchinathan (P.W.2) and Kumar (P.W.3) on 30.05.2014 at about 7.30 a.m., and found the following injuries:-

P.W.2	A cut injury of 3x2x1 cm over (L) forearm
P.W.3	(i) Laceration 7x3x2 cm over left side of face.
	(ii) Cut injury on the abdomen (left side)
	(iii) Laceration 5x4x2 cm over left arm.

She admitted both P.W.2 and P.W.3 as inpatients. In the opinion of P.W.9, the injuries sustained by P.W.3 were grievous in nature and the injuries sustained by P.W.2 were simple in nature.

2.4. Thiru.Balachandar (P.W.10), the then Sub-Inspector of Police, Selvapuram Police Station, Coimbatore District, on receipt of the information from Government Hospital, Coimbatore, went over there and recorded the statement of Karthik (P.W.1) and registered an FIR (Ex.P11) in Crime No.315 of 2014 of Selvapuram Police Station against the



Crl.A.No.99 of 2018

respondents 2 to 6 (accused 1 to 5) for the offences punishable under Sections 147, 148, 324 and 307 of IPC. He then placed the records before Thiru.Ravikumar (P.W.11), the Inspector of Police.

2.5. Thiru.Ravikumar (P.W.11), the then Inspector of Police, Selvapuram Police Station took up investigation in Crime No.315 of 2014, went to the place of occurrence on 30.05.2014 at about 10.45 a.m., and prepared an Observation Mahazar (Ex.P3) and a Rough Sketch (Ex.P12) in the presence of the witnesses Balamurugan (not examined) and Anandababu (P.W.6). He examined the witnesses and recorded their statements individually under Section 161 (3) of Cr.P.C. He arrested the accused Karthikraja (A1), Mukesh (A2) and Rajammal (A3) near Poosaripalayam Bus Stop at about 03.00 P.M. on the same date and recorded their confessional statements in the presence of the witnesses Kumar (not examined) and Abinesh (P.W.8). Based on the confessional statement of the 1st accused, P.W.11 recovered three knives (M.O.2, M.O.3 and M.O.6) under the cover of a Mahazar (Ex.P6) from the house of the 1st accused-Karthikraja, at Door No.39, Panaimarathur, Vinayagar Kovil Street, in the presence of the same witnesses. P.W.11 thereafter arrested Vinod Kumar (A4) and Arunkumar (A5) at about 4.30 p.m., on



Crl.A.No.99 of 2018

the same date and recorded their confessional statements and recovered 2 wooden logs (M.O.1) hidden by them near Kovai Panaimarathur Bus Stop under the cover of a Mahazar Ex.P8. On 05.06.2014, he recovered the dress worn by P.W.3 (M.O.4 and M.O.5) at the time of occurrence and sent the same to court under Form - 95

2.6. Thiru.Suresh (P.W.4) in his evidence had stated that Kumar (P.W.3) was attacked by Karthikraja (A1), Mukesh (A2) and Rajammal (A3) with a knife, as a result of which, he sustained grievous injuries. It is also his deposition that he took him in his Auto to the Government Hospital, Coimbatore. Bhuvaneshwari (P.W.5), the wife of P.W.4 also witnessed the occurrence and she corroborated the evidence of P.W.4.

2.7. The Investigation Officer (P.W.11), after completing investigation, laid a final report in P.R.C.No.26 of 2014 before the learned Judicial Magistrate No.V, Coimbatore against the accused 1 to 5 for the offences punishable under Sections 147, 148, 324 and 307 of IPC. The learned Judicial Magistrate, after furnishing copies of records to the accused 1 to 5 under Section 207 Cr.P.C., committed the case to the Court of Sessions.



WEB COPY

2.8. The learned Principal Sessions Judge, Coimbatore, took the case on file in S.C. No.203 of 2014 and made over the same to the I Additional Assistant Sessions Judge, Coimbatore. The learned I Additional Assistant Sessions Judge, Coimbatore, framed the following charges :

A1 to A3	Sections 147, 148 and 307 IPC
A4 and A5	Sections 147, 148 and 307 r/w 149 and 324 IPC

2.9. In order to bring home the guilt of the accused, the prosecution examined 11 witnesses and marked 12 documents and 6 material objects.

2.10. When the respondents 2 to 6 (accused 1 to 5) were questioned with regard to the circumstances appearing in evidence against them under Section 313(1) of Cr.PC, they denied of having committed any offence. However, they did not examine any witness on their side.

2.11. The learned I Additional Assistant Sessions Court, Coimbatore, after analysing the oral and documentary evidence on



Crl.A.No.99 of 2018

record, acquitted all the accused of the offences of which they are charged vide her judgment and orders dated 24.07.2017, as against which, the present Criminal Appeal is filed by the victims.

3. There was no representation for the appellants / victims and the respondents / accused, though Mrs.S.S.Jothivani, was appointed as Legal Aid Counsel for the appellants / victims and Ms.S.Varshini, was appointed as Legal Aid Counsel for the respondents / accused.

4. Heard Mrs.S.S.Jothivani, learned Legal Aid Counsel for the appellants/victims, Mr.S. Rajakumar, learned Additional Public Prosecutor for the 1st respondent/state and Ms.S.Varshini, learned Legal Aid Counsel for the respondents 2 to 6/accused 1 to 5.

5. Mrs.S.S.Jothivani, learned Legal Aid Counsel appearing for the appellants/victims contended that P.W.1 to P.W.3 had narrated the sequence of events cogently and the minor discrepancies appearing in their evidence had been blown out of proportion by the Trial Court Judge. It is her further contention that immediately after the occurrence, P.W.2 and P.W.3 were admitted in the hospital and P.W.3 had sustained



CrI.A.No.99 of 2018

grievous injuries as is evidenced by the Wound Certificate (Ex.P9). Her specific contention is that the Trial Court without analysing the evidence of P.W.1 to P.W.3 and also the medical evidence had acquitted all the accused. Therefore, she prayed for setting aside the order of acquittal passed by the Trial Court Judge.

6. Per contra, Ms.S.Varshini, learned Legal Aid Counsel appearing for the respondents 2 to 6/accused 1 to 5 would contend that the trial court had, after analysing the oral/documentary evidence adduced on the side of the prosecution, had rightly come to the conclusion that the accused 1 to 5 had not committed any offence and acquitted them. She also pointed out the glaring discrepancies in the evidence of P.W.1 to P.W.4. It is her further contention that when the intimation from the hospital was sent by P.W.9 only at about 7.35 a.m., on 30.05.2014, the Sub-Inspector of Police, who registered FIR (Ex.P11) had deposed that he went to the hospital by 7.00 a.m., on 30.05.2014 and recorded the complaint statement of P.W.1.

7. Per contra, Mr.S. Raja Kumar, learned Additional Public Prosecutor appearing for the 1st respondent would contend that the trial



Crl.A.No.99 of 2018

court had not properly appreciated the evidence on record and therefore, he prayed for setting aside the order of acquittal passed by the Trial Court. The State did not think it fit to file an appeal against the order of acquittal.

8. It is seen from the records that the intimation from the hospital was sent to Selvapuram Police Station at about 7.35 a.m., on 30.05.2014. This intimation has been marked on the side of the defence as Ex.D1. Dr.Bhuvana (P.W.9), admitted her signature on the Ex.D1.

9. A perusal of Ex.D1 shows that P.W.1 to P.W.3 have stated before the Doctor they were attacked by three unknown persons at about 7.00 a.m., on 30.05.2014. However, in the complaint, P.W.1 had stated that Karthikraja (A1) and Mukesh (A2) attacked his paternal uncle Kumar (P.W.3) on his face, abdomen and right hand and when he attempted to prevent the same, Vinod Kumar (A4) and Arun Kumar (A5) attacked him with wooden logs. According to him, his father-Kamatchinathan (P.W.2) was also not spared by the accused and he was attacked by Rajammal (A3) with a knife. The statements given to a doctor can impact the prosecution case in criminal cases. Contradictory



Crl.A.No.99 of 2018

statements made by the injured to the police and the doctor who examined them can render the prosecution evidence unacceptable.

Moreover, there are glaring contradictions in the evidence of P.W.1 to P.W.3. When P.W.1 stated that his father came to the place of occurrence after P.W.3 was stabbed, P.W.2 had stated that he witnessed the entire occurrence. P.W.1 had further deposed that he was attacked by Vinodkumar (A4) and Arunkumar (A5) with a wooden log on account of which he sustained injuries. But he was not given any treatment in the hospital even as an out-patient. It is also his deposition that he took P.W.2 and P.W.3 in the auto driven by P.W.4 and P.W.3 was on his lap in the said auto. However, it is his contention that there was no blood stain in his dress. The evidence of P.W.3 also does not fit in with the evidence of P.W.1 and P.W.2. Moreover, it is admitted that there was previous enmity between the two parties and on the previous day there was a wordy quarrel between both the parties. The accused had also sustained injuries on the date of occurrence and this is admitted by the Investigation Officer in his evidence. They were not given any treatment in the hospital. It is not the case of the prosecution that the injuries on the accused were self inflicted. The prosecution has infact, failed to explain the injuries on the accused. Such a non-explanation assumes greater



importance where the evidence consists of inimical witness. It is in the evidence that both the parties were inimical towards each other and several cases were filed by them against each other. P.W.1 also admitted that he was removed from Home-guard service as a criminal case was lodged against him. Moreover the Investigation Officer has not taken steps to find out as to who the aggressor was.

10. As already observed that the intimation to the police (Ex.D1) was given only at about 7.35 am. In any event, when the intimation states that the PW.1 to P.W.3 were attacked by three unknown persons, it is not known how the names of 5 accused appeared in FIR (Ex.P11).

11. Moreover, it is settled law that when two views are possible, the view in favour of the accused should be taken into consideration and the Trial Court Judge after analysing the oral and documentary evidence on record had come to the conclusion that the accused 1 to 5 had not committed any offences punishable under Sections 147, 148, 324 and 307 of IPC and acquitted all the accused. I do not find any reason to interfere with the findings recorded by the Trial Court.



Crl.A.No.99 of 2018

12. In the result,

WEB COPY

- (i) This Criminal Appeal is dismissed.
- (ii) The judgment and orders dated 24.07.2017 passed in S.C.No.203 of 2014 by the learned I Additional Assistant Sessions Court, Coimbatore, is confirmed.
- (iii) This Court places on record its appreciation to M/s.S.S.Jothivani and M/s.S.Varshini, learned Legal Aid Counsel, for their valuable assistance in deciding this case. The High Court Legal Services Committee shall pay a sum of Rs.10,000/- each to the said counsel towards their fee.

11.06.2024

Index : yes/no

Speaking /Non speaking Order

Neutral Citation : yes / no

dm

Note: As directed by RHJ, Issue order copy on 18.06.2024.

Copy to:

The Secretary, High Court Legal Services Committee,
High Court Campus, Chennai – 600 104.

To

1.The I Additional Assistant Sessions Court,
Coimbatore.

2.The Inspector of Police,



Crl.A.No.99 of 2018

B-10, Selvapuram Police Station,
Coimbatore.

WEB COPY

3.The Additional Public Prosecutor,
High Court, Madras.

4.The Section Officer,
Criminal Section,
High Court, Madras.



WEB COPY



Crl.A.No.99 of 2018

R.HEMALATHA, J.

dm

Crl.A.No.99 of 2018

11.06.2024