



CRL. A. Nos.316-317-440/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
25.04.2024	03.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NOS. 316, 317 & 440 OF 2021

1. K.Govindaraj
 2. Pappan
 3. Ravikumar
 4. Srinivasan
- 316/2021

.. Appellants in CA

1. Raja

.. Appellant in CA 317/2021

1. Mecheri
2. Murugesan

.. Appellant in CA 440/2021

- Vs -

State, rep. By
The Inspector of Police
Kaveripattinam Police Station
Krishnagiri District.

.. Respondents in all appeals

Criminal Appeals filed under Section 374 of the Code of Criminal
Procedure praying to call for the records in S.C. No.110/2018 on the file of the



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learned Principal Sessions Judge, Krishnagiri and set aside the judgment dated 18.03.2021 as against the appellants.

For Appellants : Mr. T.Naveen Chandar in
CA Nos.316 & 317/2021
Mr. V.Vijayakumar in
CA No.440/2021

For Respondents : Mrs. G.V.Kasthuri, APP

COMMON JUDGMENT

Assailing the judgment in and by which the appellants in the aforesaid appeals have been found to be guilty of the offences charged and stood convicted and sentenced in S.C. No.110/2018 vide judgment of the Principal Sessions Judge, Krishnagiri District, dated 18.03.2021, the present appeals have been filed before this Court.

2. The appellants, who are arrayed as A-1 to A-5, A-8 and A-11 along with four other accused, who were arrayed as A-6, A-7, A-9 and A-10, in all numbering 11, stood charged for the offences as under :-

S. No.	Array of Accused	Section of Offence Charged
1	A-1 to A-11	147 IPC
2	A-1, A-3, A-4 & A-5	148 IPC



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3	A-1	294 (b) IPC
4	A-2	307 IPC
5	A-1 & A-3 to A-11	307 r/w 149 IPC
6	A-1, A-3 to A-5	324 IPC
7	A-2, A-6 to A-11	324 r/w 149 IPC
8	A-6 to A-8, A-10 & A-11	3 (1) TNPPDL Act
9	A-1 to A-5 & A-9	3 (1) TNPPDL Act r/w 149 IPC
10	A-3	506 (ii) IPC
11	A-1, A-2 & A-4 to A-11	506 (ii) r/w 149 IPC

3. After trial, while A-1 to A-5, A-8 and A-11 were found guilty and were convicted and sentenced for the offences as under, A-6, A-7, A-9 and A-10 were found not guilty and acquitted of the aforesaid charges :-

S. No.	Array of Accused	Conviction & Sentence
1	A-3, A-8 & A-11	Convicted u/s 147 IPC and sentenced to undergo RI for two months
	A-1, A-2, A-4 & A-5	Convicted u/s 148 IPC & sentenced to undergo RI for three months & to pay a fine of Rs.500/- each, in default to undergo SI for two weeks
	A-1 & A-3 to A-5	Convicted u/s 324 IPC and sentenced to undergo RI for three months & two weeks and to pay a fine of Rs.500/- each, in default to undergo SI for two weeks
	A-2	Convicted u/s 324 IPC instead of Section 307 IPC and sentenced to undergo RI for



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		four months and to pay a fine of Rs.500/-, in default, SI for two weeks
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4. The sentences were directed to run concurrently. Aggrieved by the said conviction and sentence imposed on the respective accused, the present appeals have been filed assailing the said judgment.

5. For brevity, in this judgment, the accused will be referred to in the same order as they were arrayed before the trial court.

6. Shorn of unnecessary details, the case as put forth by the prosecution is as under :-

6.1. P.W.s 1, 3, 6 and 7 are the sons of P.W.4 and P.W.5 is the wife of P.W.4. P.W.s 2, 8 and 9 are relatives of P.W.4. In respect of a dispute relating to a land between one Lakshmi, who is related to the witnesses and A-1, there were multiple litigations between Lakshmi and A-1 and one such case is also pending before this Court.



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7. On 23.08.2017, at about 10.30 p.m., the relatives of P.W.4, after returning back from a bereavement, at that time, A-1 to A-11 came to the house of the P.W.4 by forming themselves into an unlawful assembly with the common object of committing the murder, which was directly attributable to the dispute between Lakshmi and A-1 with regard to a piece of land. While A-1, A-4, and A-5 were armed with a wooden log, A-2 was armed with a Koduval. A-1 abused P.W.s 1 and 2 in filthy language and A-1 instigated A-2 to do away with P.W.1, whereupon, A-2 inflicted a cut injury on the head of P.W.1. At that time, A-1 hit P.W.1 with a stick on his left elbow and shoulder and A-5 beat P.W.5 with the wooden log on his right shoulder and right thigh. When P.W.2 tried to rescue P.W.1, A-1 beat P.W.2 with the wooden log on his left thigh. A-3 got the aruval from A-2 and inflicted cut injury on P.W.3 and beat him with the back side of the aruval. A-6 to A-8, A-10 and A-11 caused damage to the Hero Honda Splendour motor cycle belonging to P.W.3 by pelting stones and also damaged three doors and wooden window by pelting stones. A-3 criminally intimidated P.W.2 and his family members by showing the aruval. On hearing the hue and cry, the villagers came to the place, whereinafter, the accused left the place of occurrence after intimidating the witnesses.



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8. Thereafter, P.W.s 1 to 3 were taken to the Krishnagiri Government Hospital from where intimation was sent to the police authorities relating to the incident. Upon receipt of information, P.W.14, the Sub Inspector of Police attached to Kaveripattinam Police Station, reached the hospital and examined P.W.1, who gave a complaint, Ex.P-1, which was reduced into writing. After examining P.W.s 1 to 3, P.W.14, returned back to the police station and registered the FIR, Ex.P-14. The printed copies of Ex.-14 were sent to the Judicial Magistrate Court and copy of the FIR was also sent to the higher authorities.

9. P.W.1, on appearing before P.W.11, was examined by P.W.11, who found the following injuries on P.W.1 :-

- i) 3 x 1 cm cut injury on the head;*
- ii) A contusion in the left elbow;*
- iii) Complaint of pain on the left leg.*

10. The doctor, P.W.11, issued Exs.P-4 and P-5, accident register and wound certificate in respect of the injuries found on the person of P.W.1.



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11. P.W.2, on appearing before P.W.12, was examined by P.W.12, who found the following injuries on P.W.2 :-

- i) 7 x 3 cm contusion on the left thigh;*
- ii) Complaint of pain on the left leg;*
- 8 x 2 cm contusion on the back left side; and*
- iv) Complaint of pain on the left shoulder.*

12. The doctor, P.W.12, issued Ex.P-7 wound certificate in respect of the injuries found on the person of P.W.2.

13. On receipt of Ex.P-14, P.W.17, the Inspector of Police took up investigation. P.W.17 reached the scene of occurrence on 24.08.2017 at about 6.30 a.m. and in the presence of Palani and P.W.4, prepared Observation Mahazar, Ex.P-8 and drew rough sketch, Ex.P-15 in the presence of the aforesaid witnesses. Thereafter, he recovered the damaged Hero Honda Splendour, blood stained earth, sample earth, a stone, broken fragments of wood, viz., M.O.s 6, 3, 5, 7 and 8 under the cover of mahazar, Ex.P-13 in the presence of witnesses. Thereafter, P.W.17 examined P.W.s 4 to 7, Priya, Chitra and other witnesses and recorded their statements. Accompanied by P.W.4 and Palani, P.W.17 went to



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the Government Hospital and examined P.W.s 1 to 3 and recorded their statements. P.W.17 seized the blood stained shirt and dothi, M.O.s 9 and 10 worn by P.W.1 under the cover of mahazar, Ex.P-10 in the presence of witnesses.

14. Upon receipt of information, P.W.17 along with Palani and P.W.4, went to Natesan Marriage Hall and from near the back side of the bus stop, arrested the accused, Ravikumar, Palani, Srinivasan, Sahadevan, Ramkumar, Govindaraj, upon identification by P.W.4 and upon their accepting and confessing the commission of the crime, remanded them to custody. Upon production of M.O.15, the motor cycle used by Sahadevan, the same was seized under the cover of mahazar. The accused also produced the wooden logs, which were used in the commission offence and the same were seized under the cover of mahazar. Thereafter, upon reaching the police station, the accused were detained under custody and P.W.17 prepared Form – 91 with regard to the materials seized and also recorded the statements of P.W.4 and another. The six accused, who were arrested were sent to the court for the purpose of judicial remand. P.W.17 examined further witnesses and recorded their statements. On transfer, P.W.17, handed over the files to P.W.15 for further investigation. However, as P.W.15



went on leave, the files were returned back to P.W.17, who was given additional charge and he continued with investigation.

15. On 8.9.2017, Murugesan, Mecheri, who are accused in the case, had obtained anticipatory bail before this Court. Two other accused had also obtained anticipatory bail before this Court. P.W.17 examined the doctors, P.W.s 11 and 12, who had treated P.W.s 1 and 2 and recorded their statements. On receipt of information, P.W.17 proceeded to Ramapuram Village, where A-2 Raja was residing and in the presence of witnesses arrested A-2, who came forward to give a voluntary confession statement, the admissible portion of which is marked as Ex.P-2. On the basis of Ex.P-2, A-2 produced the aruval, M.O.1, which was hidden in his house, which was seized under the cover of mahazar. A-2 was brought to the police station and sent to court for the purpose of judicial remand. After examining additional witnesses and recording their statements P.W.17 filed the final report against all the accused for the offences aforesaid.

16. To establish the charges levelled against the accused, the prosecution examined P.W.s 1 to 17 and marked Exs.P-1 to P-15 and marked M.O.s 1 to 11.



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17. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence tendered by the prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked.

18. The trial court, on consideration of oral and documentary evidence and other materials, while convicted and sentenced A-1 to A-5, A-8 and A-11 as aforesaid, however, acquitted A-6, A-7, A-9 and A-10 of the charges which were levelled against them. Aggrieved by the said conviction and sentence, the present appeals have been filed by the appellants. Insofar as the acquittal of A-6 A-7, A-9 and A-10, the prosecution has not filed any appeal.

19. Learned counsel appearing for the respective accused submitted that the offence u/s 324 IPC does not stand countenanced for the reason that the injuries caused by the accused to the prosecution witnesses does not fall within



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the contours of grievous injuries and, therefore, the appellants cannot be convicted for the offence u/s 324 IPC.

20. It is the further submission of the learned counsel that though A-2 stood acquitted for the offence u/s 307 IPC, however, the appellants have been convicted u/s 148 IPC which cannot be sustained on the materials available on record. Further, the said conviction, which leans on Section 307 IPC cannot be sustained once the offence u/s 307 IPC alleged against A-2 is rejected as not proved.

21. It is the further submission of the learned counsel that the prosecution claims that the accused had caused grievous injuries on the witnesses on account of the fact that they had supported one Lakshmi, a relative, who had land dispute with A-1. However, the nature of support has not been specified and in such circumstances the evidence of the witnesses ought to have been properly appreciated by the trial court, which the court miserably failed to do.



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22. It is the further submission of the learned counsel that the evidence of the prosecution witnesses runs counter to the testimony of the doctors, who had treated P.W.s 1 and 2 and the said discrepancy strikes at the root of the prosecution case. Further, it is submitted that the prosecution has not proved the motive to the alleged incident. Further it is the submission of the learned counsel that the injuries on P.W.s 1 and 2 are simple injuries and the analysis of the evidence of the witnesses does not clearly make out a case as against the appellants.

23. It is the further submission of the learned counsel that the common object has not been properly proved and once some of the accused are acquitted of the charges, the formation of an unlawful assembly itself has not been established and, therefore, the appellants cannot be convicted for the offence u/s 148 IPC. It is the further submission of the learned counsel that the object of the common unlawful assembly should be proved through evidence and such evidence should show the common object before a conviction can be recorded. However, the common object has not been proved.



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24. Further, the appellants were acquitted of the charges u/s 307 IPC r/w 3

(1) of TNPPDL Act and once such an acquittal is recorded, the mere presence of the appellants at the scene of occurrence cannot lead to a presumption that they had indulged in the overt acts attributed to the appellants by the prosecution witnesses. Accordingly, it is submitted that the prosecution has miserably failed to prove the case against the appellants, which the trial court has not properly appreciated and, therefore, the conviction and sentence recorded by the trial court against the appellants are liable to be set aside by allowing the appeals.

25. Per contra, learned Addl. Public Prosecutor appearing for the respondents submit that the court below has rightly appreciated the oral and documentary evidence in proper perspective and had recorded the conviction and sentence, which does not warrant any interference. It is the further submission of the learned Addl. Public Prosecutor that the evidence of P.W.s 1 to 3, the injured witness, coupled with the evidence of P.W.s 4 to 7, the relatives of the witnesses and the injuries found on the person of P.W.s 1 and 2 as spoken to by P.W.s 11 and 12, the doctors, conclusively prove the occurrence and the commission of offence and the defence has in no way shaken the testimony of



the said witnesses and, therefore, the findings recorded by the trial court leading to the conviction and sentence does not suffer any infirmity and the same deserves to be confirmed.

26. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

27. The occurrence on 23.08.2017, at about 10.30 p.m., in which P.W.s 1 to 3 suffered injuries stands established through Exs. P-4, P-6 and P-7, the accident registers issued in respect of P.W.s 1 to 3 and also the wound certificate, Ex.P-5, which was issued in respect of P.W.1. The evidence of the doctors, P.W.s 11 and 12 also confirms the wound which they found on the body of P.W.s 1 to 3. In fact, P.W.s 1 to 3 on being questioned by P.W.s 11 and 12 about how they suffered the injuries have clearly spoken about the fact that they were attacked by five known persons. The said part of the deposition of P.W.s 1 to 3 is unshaken by the defence. In fact, inspite of searching cross-examination by the



defence, the evidence of P.W.s 1 to 3 had withstood the onslaught and P.W.s 1 to 3 have clearly spoken about the overt acts of the individual accused.

28. May be that P.W.s 1 to 3 are related to each other, but that alone cannot be the basis to doubt their deposition, as their deposition before the Court is in consonance with Ex.P-1 complaint, given by P.W.1 to P.W.14, the Sub Inspector of Police at the earliest point of time, which complaint is in line with the deposition before court. Further, the deposition of P.W.s 4 to 7, who are relatives of P.W.s 1 to 3 also corroborates the deposition of P.W.s 1 to 3. May be the prosecution witnesses are related to each other, but that alone cannot be the basis to doubt their evidence, when the defence has not been able to make inroads into their evidence to show that the said evidences bristles with contradictions.

29. To put it more precisely, except for making bald claims, no contradictions have been pointed out by the defence which would render the evidence of the prosecution witnesses to be doubtful and unreliable. The overt acts of the appellants spelt out by the prosecution witnesses clearly finds



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corroboration in the wound certificate and accident registers, Exs.P-5, P-4, P-6 and P-7. Further, there is no delay in information being sent to the police and the police reaching the hospital and recording the complaint of P.W.1.

30. The appellants have pointed out certain infirmities in the appreciation of evidence, but the said infirmities, in no way strikes at the root of the prosecution version so as to enable this Court to doubt the prosecution version. It is to be pointed out that there are prone to be miniscule infirmities in the prosecution evidence, as due to passage of time, the witnesses are bound to commit certain errors in their deposition. So long as the said errors do not strike at the crux of the deposition and the deposition of the witnesses holds together the said depositions have to be given their due weight while analysing the guilt of the accused. In the present case, the trial court, giving proper weight to the evidence of the witnesses and also considering the infirmities, has rightly come to the conclusion that the appellants have committed the offence.

31. This Court, on an independent appreciation of the evidence, is of the considered opinion that the evidence of P.W.s 1 to 3 coupled with the evidence



of P.W.s 4 to 7 and the doctors, P.W.s 11 and 12, is not only convincing and cogent, but corroborates each other on all material particulars and unerringly point that the appellants had indeed caused the injuries by forming themselves as an unlawful assembly.

32. In fact, the trial court has properly appreciated the evidence, which is evident from the fact that the charge, though made against A-2 was for 307 IPC, however, finding the nature of injury found on P.W.1 and also on the other witnesses, which are simple in nature, the charge was modified to 324 IPC. Further, Section 324 IPC does not speak about grievous hurt; rather it only speaks about the use of dangerous weapons. In the present case, the weapon used to cause the injury is an aruval and, therefore, attraction of offence u/s 324 IPC cannot be said to be erroneous.

33. Further, one of the contentions raised by the appellants is that some of the accused have been acquitted and, therefore, to bring home the charge u/s 148, a minimum of five persons is needed and there being less than five persons, unlawful assembly is not established and, therefore, the charge fails. However,



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the said contention cannot be accepted for the simple reason that mere acquittal of certain accused of the offence charged against them does not mean that they were not present at the scene of occurrence and they were not members of the unlawful assembly. It is only that the charge against them has not been established properly by the prosecution. Therefore, the mere acquittal of the said accused cannot be taken to mean that they were not there when the offence was committed and, therefore, the offence u/s 148 IPC which requires the presence of five or more persons has not been established, miserably fails, as their presence has not been negated by the trial court. Therefore, the said contention deserves to be dismissed.

34. However, it is evident from the sentences imposed that while A-1, A-3, A-4 and A-5 were found guilty of the offence u/s 324 IPC and were convicted and sentenced to rigorous imprisonment for a period of three months and two weeks, however, on modification of the offence from 307 IPC to 324 IPC, A-2 was convicted and sentenced to rigorous imprisonment for a period of four months. This Court is of the view that for the very same offence committed by different persons, different yardstick in the form of sentence cannot be adopted and it



would be against equality even in penal application, as sentence has to be maintained equally amongst the persons, forming the same group in the commission of the offence and the courts cannot act differently. In such a backdrop, this Court feels that in the interest of justice, the sentence imposed on A-1, A-3, A-4 and A-5 for the offence u/s 324 IPC shall stand modified from three months two weeks to three months and similarly, the sentence imposed on A-2 for the offence u/s 324 IPC shall stand modified from four months to three months. The conviction and sentence imposed on the appellants for the other offences stand confirmed.

35. Accordingly, all the aforesaid appeals are dismissed by confirming the conviction imposed on the appellants. However, the sentence imposed on A-1, A-3, A-4 and A-5 and as also A-2 for the offence u/s 324 IPC alone stands modified to three months, while confirming the fine imposed u/s 324 IPC on the appellants. The sentence and fine imposed on the appellants for the other offences are confirmed. The sentences are directed to run concurrently. The period of incarceration already undergone by the appellants is ordered to be set off u/s 428 Cr.P.C.



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Index : Yes / No

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To

1. The Principal Sessions Judge
Krishnagiri.
2. The Inspector of Police
Kaveripattinam Police Station
Krishnagiri District.
3. The Public Prosecutor
High Court, Madras.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT
IN
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**Pronounced on
03.06.2024**