



Crl.A.Nos.68 of 2017 & 844 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.Nos.68 of 2017 & 844 of 2016

Veerappan

... Appellant in Crl.A.No.68 of 2017

Muthu @ Pachamuthu

... Appellant in Crl.A.No.844 of 2016

Vs.

State represented by

The Inspector of Police,

Kumarapalayam Police Station,

Namakkal District.

... Respondent in both Criminal Appeals

(Crime No.288/2016)

Common Prayer: Criminal Appeals filed under Section 374 of Criminal Procedure Code, to set aside the Judgment and orders, dated 09.12.2016 passed in S.C.No.25/2003 by the Additional District and Sessions Judge, Namakkal.

For Appellant

in Crl.A.No.844 of 2016

: Mr.S.Jaya Kumar

in Crl.A.No.68 of 2017

: Mr.S.N.Arun Kumar

For Respondents

in both Criminal Appeals

: Mr.S.Raja Kumar,

Additional Public Prosecutor



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COMMON JUDGMENT

Challenging the Judgment and orders passed in S.C.No.25/2003, dated 09.12.2016 on the file of the Additional District and Sessions Judge, Namakkal, the present Criminal Appeal is filed by the appellants / Accused.

2. Initially the learned Additional District and Sessions Judge, Namakkal convicted both the appellants for the offences punishable under Sections 148 and 307 I.P.C., vide his Judgment dated 29.09.2003 in S.C.No.25/2003, as against which, the accused filed a Criminal Appeal in Crl.A.No.1641 of 2003 before this Court. A learned Single Judge of this Court (Hon'ble Mr.Justice A.Selvam, as he then was) remitted the case back to the trial Court to conduct a '*de novo*' trial vide his Judgment dated 07.09.2015.

3. Accordingly, the trial was conducted after framing a charge only for an offence punishable under Section 307 I.P.C., against the



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appellants and they were convicted and sentenced as detailed hereunder:

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1 Veerappan	Section 307 I.P.C	Rigorous Imprisonment for a period of ten years and a fine of Rs.1000/-, in default to undergo Rigorous Imprisonment for three months.
A2 Muthu @ Pachamuthu	Section 307 I.P.C	Rigorous Imprisonment for a period of ten years and a fine of Rs.1000/-, in default to undergo Rigorous Imprisonment for three months.
The period of sentence already undergone by the accused is set off under Section 428 Cr.P.C.		

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

4.1. Thiru.Thangavel (P.W.1) is a resident of Kumarapalayam Village, Tiruchengode Taluk, Namakkal. The first accused Veerappan was working under him and had borrowed a sum of Rs.4,000/- from him. Since the first accused was not regular to work, P.W.1 requested him (A1) to repay Rs.4,000/-. On 03.03.2000, there was an altercation between the two in a public place for which the Police registered an FIR against both of them in Crime No146/2000 of Kumarapalayam Police



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Station under Section 160 I.P.C. Subsequently, it ended in compromise.

4.2. Thereafter, on 10.04.2000, at about 8.30 p.m. when P.W.1 was in a TV show room belonging to one Mohanraj (P.W.2), the first appellant and the second appellant along with four others, trespassed into P.W.2's TV shop and attacked P.W.1 with iron rods and wooden logs. P.W.1 attempted to escape from the place, but was stabbed by the 2nd appellant with a knife while the other persons (not shown as accused) attacked him with iron rods and wooden logs, on account of which, he fell down and was again attacked with an Aruval by the 1st appellant. Since Mohanraj (P.W.2), Chandrasekaran (P.W.3) and Kesavan (P.W.4) and the general public rushed to the spot, all the assailants made good their escape taking their weapons with them.

4.3. P.W.1 was rushed to Government Hospital at Erode. Thiru.Balasubramaniyan, (P.W.7) the then sub Inspector of Police, Kumarapalayam Police Station on receipt of intimation from the Government Hospital, Erode, went over there and recorded the complaint



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statement (Ex.P1) of P.W.1 and registered FIR (Ex.P10) in Crime No.228/2000 against the appellants and four others for the offences punishable under Sections 147, 148, 341, 324 and 307 I.P.C., He then placed the records before Thiru.Lakshmanan, (P.W.8), the then Inspector of Police for investigation.

4.4. P.W.8 took up investigation, went to the scene of occurrence, prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P11) in the presence of the witnesses Masilamani (P.W.5) and one Saravanan (not examined). He examined the witnesses and recorded their statements individually under section 161(3) Cr.P.C.,

4.5. P.W.1, thereafter got himself admitted in L.K.M. Hospital, Erode (a Private hospital) where Dr.Natesan (P.W.6) issued a wound certificate (Ex.P8). In the wound certificate, the following injuries are mentioned:

- i. Lacerated injury on left elbow and forearm 2"x1/2"x1/2"*
- ii. Contusion Abrasion Right Fore arm 3"x1"*



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- iii. Lacerated injury Left side chest posterior aspect 2"x1/2"x1/2"*
- iv. Lacerated injury over dorsal spine 2"x1/2"x1/2"*
- v. Lacerated injury Left hypochondrium 2"x1/2"x1/2"*
- vi. Lacerated injury left leg lateral aspect 2"x1"x1"*
- vii. Lacerated injury Right leg anterior aspect 2"x1"x1/2"*
- viii. Contusion Right Leg lateral aspect 3"x1"*
- ix. Abrasion and contusion left upper arm 3"x1"*

According to the doctor, injury (i) is grievous in nature and the other injuries are simple in nature.

4.6. P.W.8 after completing investigation, laid a final report in P.R.C.No.7/2001 before the Judicial Magistrate I, Sankagiri against the appellants for the offences punishable under Sections 147, 148, 341, 324 and 307 I.P.C.



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4.7. In order to bring home the guilt of the accused, the prosecution examined 8 witnesses, marked 16 documents and 3 Material Objects.

4.8. The accused, when questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. The 1st appellant examined himself as D.W.1 and one another witness as D.W.2.

4.9. The sum and substance of the evidence of D.W.1 is that the he was taken to a secluded place by a group of persons and was assaulted.

5. Heard Mr.S.N.Arun Kumar, learned counsel for the appellant in Crl.A.No.68 of 2017, Mr.S.Jaya Kumar, learned counsel for the appellant in Crl.A.No.844 of 2018 and Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing for the Respondent in both cases.



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6. The learned counsel for the appellants contended that the case of the prosecution is not free from infirmities. They stressed the following points in support of their contentions:

- i. There are contradictions in the evidence of P.W.1 to P.W.5 in material particulars.
- ii. P.W.1's evidence does not fit in with his own deposition before the Court which he had made on 25.08.2003.
- iii. Though the Sub Inspector of Police who registered FIR had stated that he received an intimation from the hospital (Ex.P9), the signature of the doctor does not find place in Ex.P9, which creates a suspicion as to the genuineness of the said intimation.
- iv. The prosecution has failed to adduce a copy of the Accident Register recorded by the Government Hospital, Erode.
- v. All the statements of the witnesses including the wound certificate are sent to Court after lapse of one year.
- vi. The doctor (P.W.6) who treated P.W.1 on 10.04.2000 had stated that P.W.1 sustained a fracture on his fore arm. This fracture has



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not been indicated in the wound certificate (Ex.P.8). He therefore prayed for setting aside the conviction and sentence passed by the trial Court.

7. Per contra, Mr.S.Rajakumar, learned Additional Public Prosecutor would contend that the trial Court after analysing the evidence on record, rightly convicted the appellants and hence, there is absolutely no reason for this Court to interfere with the same. It is also his contention that P.W.1 is an injured witness and his evidence is sufficient to convict both the appellants.

8. P.W.1 in his evidence had deposed that he was attacked by the appellants and four others on the night of 10.04.2000. He had stated that he sustained bleeding injuries. However, it is to be seen that the Police had not recovered the blood stained clothes of P.W.1. The observation mahazer also does not speak about the existence of blood stain on the floor. More over, there are contradictions in the evidence of P.W.1 and P.W.2. P.W.2 in his evidence had stated that Sekar (P.W.4) was not



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present in the scene of occurrence whereas he was shown as an eyewitness to the occurrence. It is also pertinent to point out that the prosecution did not take steps to get a copy of the Accident Register from the Government Hospital, Erode where the victim initially took treatment. The doctor in the Government Hospital, Erode who gave treatment to P.W.1 also, was not examined. Similarly, the discharge summary issued by L.K.M. Hospital has not been filed by the prosecution. More over, the wound certificate (Ex.P8) and the statements of the witnesses were all sent to Court after lapse of one year and the prosecution had failed to explain this delay. Apart from this, the investigation officer in his evidence had stated that he could not trace out the whereabouts of the other four accused. Thus there are several infirmities in the case of the prosecution and therefore it is not safe to rely on the evidence of P.W.1. Accordingly, the Criminal Appeals are liable to be allowed.

9. In the result,

i. This Criminal Appeals are allowed.



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- ii. The Judgment and Orders dated 09.12.2016 in Spl.S.C.No.25/2003 passed by the Additional District and Sessions Judge, Namakkal is set aside.
- iii. The appellants / accused are acquitted from the offence punishable under Section 307 I.P.C. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

16.07.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
vum

To

1. The Additional District and Sessions Judge,
Namakkal District.
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.



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R.HEMALATHA, J.

vum

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