



Crl.A(MD)Nos.291, 396 & 443 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.09.2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)Nos.291, 396 & 443 of 2018

Cause Title made in Crl.A.(MD).No.291 of 2018

- 1.Narichandran @ Chandran
- 2.Balasubramanian
- 3.Karmegam
- 4.Prabhakaran
- 5.Kathiravan
- 6.Murugesan
- 7.Thillaimuthu
- 8.Mariselvam
- 9.Praveenkumar
- 10.Sethuraman

... Appellants/Accused

Vs.

The State:
represented by Inspector of Police,
Thangachimadam Police Station,
Thangachimadam,
Ramanathapuram District.
(Crime No.53/15)

... Respondent/Complainant



Crl.A(MD)Nos.291, 396 & 443 of 2018

Prayer : This Appeal is filed under Section 374(2) of Cr.P.C. to call for the records from the lower Court and to set aside the Judgment made in S.C.No. 137 of 2016, dated 26.02.2018 on the file of the Additional District and Sessions Court, Ramanathapuram, by allowing this criminal appeal and acquit the appellants/accused from the charges of the above case.

For Appellants : Mr.M.Thirunavukkarasu

For Respondent : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)

Cause Title made in Crl.A.(MD).No.396 of 2018

1.Muniyandi

2.Lakshminathan ... Appellants/Accused Nos.1 & 2

Vs.

The State:

represented by Inspector of Police,
Thangachimadam Police Station,
Thangachimadam,
Ramanathapuram District.
(Crime No.54/15)

... Respondent/Complainant

Prayer : This Appeal is filed under Section 374(2) of Cr.P.C. to call for the records pertaining to the judgment and conviction delivered by the learned Additional District and Sessions Court, Ramanathapuram in S.C.No.169 of 2016 vide his judgment dated 26.02.2018 and set aside the same and consequently acquit the appellants from all the charges put against them in the said case.



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For Appellants : Mr.B.Senthil Kumar
For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)

Cause Title made in Crl.A.(MD).No.443 of 2018

1.Moorthy
2.Rathakrishnan
3.Jehatheesan
4.Ganesan
5.Murugesan ... Appellants/Accused No.3 to 7

Vs.

The State:
represented by Inspector of Police,
Thangachimadam Police Station,
Thangachimadam,
Ramanathapuram District.
(Crime No.54/15)

... Respondent/Complainant

Prayer : This Appeal is filed under Section 374(2) of Cr.P.C. to call for the records pertaining to the judgment and conviction delivered by the learned Additional District and Sessions Court, Ramanathapuram in S.C.No.169 of 2016 vide his judgment dated 26.02.2018 and set aside the same and consequently acquit the appellants from all the charges put against them in the said case.

For Appellants : Mr.B.Senthil Kumar
For Respondent : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



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COMMON JUDGMENT

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These appeals have been filed against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Ramanathapuram, passed in S.C.Nos.137 of 2016 and 169 of 2016, dated 26.02.2018.

2.The case in brief:

The defacto complainant namely K.Mahesh Kumar in S.C.No.137 of 2016 lodged a complaint before the respondent police stating that on 05.07.2015 at about 8.30 p.m., when he was coming near Ujaini Mahali Amman kovil in two wheeler, the accused namely Narichandran, Balasubramanian, Karmegam, Prabakaran, Kathiravan, Murugesan, Thillaimuthu, Mariselvam, Praveenkumar, Sethuraman and others, numbering about 20, with deadly weapons, intercepted them. Among them, Narichandran caused assault with aruval, Balasubramanian with iron rod, others instigated the above said two persons to cause assault. In that process, they stolen away 20 sovereigns of gold jewels and caused severe damage to the two wheeler, criminally intimidated him not to involve in temple administration. He was taken to Rameshwaram Government Hospital, where his statement was recorded. Based upon which, a case in Crime no.53 of 2015 was registered



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for the offences punishable under Sections 147, 148, 341, 294(b), 323, 427, 379(HB), 307 of IPC. After completing the investigation, final report was filed before the Committal Court. Then it was committed to the trial Court and the same was taken cognizance in S.C.No.137 of 2016 on the file of the Additional District and Sessions Judge, Ramanathapuram and the following charges were framed against the accused.

3.Charge against the accused person:-

On 05.07.2015, at about 8.00 p.m., all the accused persons gathered together and made assault upon the defacto complainant party, made assault upon them, abused in filthy language and criminally intimidated, thereby, they committed the offences punishable under sections 148, 341 r/w149, 294(b) r/w 149, 307 r/w 149 of IPC, Sec.3(i) of TNPPDL Act 1992 r/w 149 of IPC. The charges were read over and explained to both the accused and questioned for which they pleaded not guilty, hence trial was ordered and conducted.

4.In pursuance of the above said plea, the trial before the trial Court commenced and to prove the prosecution case, 11 witnesses have been examined on the side of the prosecution and 10 documents marked. One



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material object was marked as M.O.No.1. On the side of the accused persons no witness was examined and no documents were marked.

5. Similarly, in S.C.No.169 of 2016, the Prabakaran, who is the fourth accused in S.C.No.137 of 2016, lodged a complaint stating that over the administration of the temple called Ujaini Mahali Amman Kovil, rival groups are operative in the village. On 05.07.2015 at about 8.30 p.m., Mahesh Kumar was assaulted by some persons. At about 09.30 p.m., when he was walking along the North Street, due to the previous enmity, the accused namely Muniyandi, Lakshmi Nathan, Moorthi, Radhakrishnan, Jegatheesan and some others, assembled in that place with deadly weapons, stating that he has caused assault to Maheshkumar and so they want to take revenge. He was assaulted with iron rod by Muniyandi and when his father tried to intervene, he was also assaulted by Muniyandi and Lakshmi Nathan assaulted him with iron rod and others also joined them and assaulted with iron rods. He sustained injuries. When the neighbours gathered, all the accused persons fled away from that place. He was taken to the hospital. From where, the statement was recorded. Upon which, a case in Crime No.54 of 2015 was registered for the offences under Sections 147, 148, 341, 294(b), 323, 324 and 307 IPC. After completing the investigation, final report was filed before the



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Committal Court. Then it was committed to the trial Court and the same was taken cognizance in S.C.No.169 of 2016 on the file of the Additional District and Sessions Judge, Ramanathapuram and the following charges were framed against the accused.

6.Charge against the accused person:-

On 05.07.2015, at about 8.30 p.m., due to previous enmity, all the accused persons gathered together and made assault upon the defacto complainant party, made assault upon them, abused in filthy language and criminally intimidated, thereby, they committed the offences punishable under sections U/Ss. 148, 341r/w149, 294(b), 307 r/w 149, 323 r/w 149 of IPC. were framed. The charges were read over and explained to both the accused and questioned for which they pleaded not guilty, hence trial was ordered and conducted.

7.In pursuance of the above said plea, the trial before the trial Court commenced and to prove the prosecution case, 10witnesses have been examined on the side of the prosecution and 8 documents marked. No material objects were marked in this case. On the side of the accused persons no witness was examined and no documents were marked.



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8.Both were tried separately and separate judgments were passed by the Judgments dated 26.02.2018. In both the sessions cases, the trial Court recorded a finding of guilt against all the accused. Against which, separate appeals are filed by the accused. Since it is a case and alleged counter attack, for better appreciation of facts both the cases were heard together and common judgment is passed.

9.The case of the prosecution as narrated through the evidence in S.C.No.137 of 2016:

9.1.Since the occurrence stated to have been taken place on 08.30 p.m., over which a case in Crime No.53 of 2015 was filed. This is taken up for narration first.

9.2.PW1 is the Secretary of the Managing Committee, managing the affairs of Ujaini Mahali Amman Kovil Temple, Thangachi Madam. Over the management of the temple there is enmity between their group and accused group. To resolve the issue, the accused invited him with other witnesses namely Ganesan, Radhakrishnan, Murugesan in the Vivekananda school. Talk was undertaken between two groups. At about 8.15 p.m., the accused Nari Chandran wanted to reconvene the meeting on the next day.



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They also assured that they can work together amicably. So the meeting was dissolved and he was returning to his house at about 8.30 p.m. as mentioned in the complaint. At that time, the accused numbering about 10 were standing in the road with deadly weapons. They caused damage to the vehicle. Thereafter, he was assaulted, criminally intimidated. He was assaulted with wooden logs, heavily by all the accused. When the neighbours gathered, all those persons fled away from that place. He was admitted in the hospital. From where a statement was recorded under Ex.P1.

9.3. PW10, who was working as Special Sub Inspector of Police in Thangachi Madam Police Station recorded the statement and registered the complaint in FIR No.53 of 2015 for the offences 147, 148, 341, 294(b), 323, 427, 379(HB), 307 of IPC.

9.4. Then the investigation was taken by PW11 on 05.07.2015, who was working as Inspector of Police, who went to the place of occurrence at about 11.55 p.m. In the presence of witnesses, he prepared observation mahazar and rough sketch and recorded the statement of witnesses. He recovered the vehicle bearing registration No.TN 65 G 6836 from the place of occurrence in the presence of Village Administrative Officer.

9.5. On 06.07.2015 at about 05.00 a.m. he arrested the accused Sethuraman and on his confession statement iron rod M.O.1 was recovered



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near Thangachimadam Darka. The damaged vehicle was sent to N.S.Auto Electricals, Ramnad and received Damage Certificate. Later he was transferred.

9.6.Further investigation was undertaken by one Mr.Asok Kumar, the Inspector of Police. He filed alteration report under Ex.P10. After completing the official formalities, final report was filed, charge sheeting the accused for the offence punishable under Sections 147,148, 294(b), 323, 149 IPC and Section 3(1) of TNPPDL Act.

9.7.PW2 is the Doctor, who admitted PW1, when he was working as Civil Surgeon in Government Hospital, Mudukulathur on 05.07.2015 at about 08.30 p.m., On his examination, there was lacerated injury measuring about 5 x 1 x 0.5 c.m. on his back side of the head region. He was admitted as in patient on 11.07.2015. He was referred to Government Hospital, Ramnad for further treatment.

9.8.PW3 has spoken about the management issue and the compromise talk undertaken. PW3 is the eye witness to the occurrence. He took PW1, the injured, to the Government Hospital, Rameshwaram.

9.9.PW4, PW5, PW6 were the eye witness to the occurrence. These are the material witnesses.



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10. After examination of all the witnesses are over, the accused were subjected to Section 313 Cr.P.C proceedings. They denied the facts narrated by the prosecution witnesses. Even though they were granted time to examine defence witnesses, none was examined on their side and no document was marked.

11. From the facts narrated by the witnesses it is seen that over the management of the Ujaini Mahali Amman Kovil in Thangachi Madam, rival groups are operative. One under the head of PW1 and another under the head of the accused. It is also seen that on 05.07.2015 a compromise talk arranged between the two groups. It is also admitted by the accused that there was compromise talk. Till that there is no issue. The meeting ended at about 8.15 p.m. According to PW1 at about 8.30 p.m., the present occurrence stated to have been taken place, in which he was grievously injured and vehicle was also damaged. In the complaint Ex.P4, he has clearly stated about the overt act played by the accused namely Narichandran, Bala Subramanian. But during the course of examination before the trial Court, he has stated that about 10 persons assembled in that place of occurrence with deadly weapons and caused assault with weapons. He is not very particular or specific overt act against each one of the accused. No doubt that it is night occurrence and it



is group of people assembled there. So injured could not identify each and every person's overt act. But, reading of his evidence shows that he has half heartedly gives evidence in respect of the occurrence. Mere bald allegation has been made stating that he was assaulted by all the persons with iron rod and wooden log. Why he deviated from his own statement under Ex.P1 is not clear on record.

12.In this context the learned counsel for the appellant would submit that the bald allegation is not sufficient enough to hold all the accused liable for the assault. He would rely upon the judgment of the Honourable Supreme Court in this regard in the case of ***Durga Prasad and another Vs. The State of Madhya Pradesh*** reported in ***2010 AIR SCW 3673***. So no doubt, when bald allegation is made by PW1 as mentioned above, he has given evidence in half hearted manner.

13.As mentioned above counter complaint has been registered in Crime No.54 of 2015. That occurrence have been taken place at about 09.00 a.m. on the very same day. A suggestion was made to him that on that particular day, he along with others assaulted Prabakaran, during that time only he fell down and sustained injuries. So according to the accused, it is



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case in counter case, even though time are mentioned differently in both the complaints.

14.Now we will go to the evidence of PW2, Doctor at the time of admission. In the evidence, he has not specifically stated about the time of admission of PW1. But in Ex.P2 we find that 05.07.2015 at about 09.08 p.m. PW1 was admitted in the hospital. In fact there was a lacerated injury on the right oxipital region, it appears to be a simple injury. In the counter complaint, the time of occurrence stated to be on 09.30 p.m. on the very same day. So the contention on the part of the accused, who are the complaint party in S.C.No.169 of 2016, may not be correct with regard to the time. As mentioned above PW2, Jeyaraman is residing from one Kilo meter away from the place of occurrence. He has supported PW1 with regard to the occurrence. Another eye witness namely Murugesan namely PW4 is also not having any residence in that place and he has also having house ½ kilo meter away from the place of occurrence. So the evidence of PW3 and PW4 cannot be taken into account, since they have been brought by the prosecution to support the case, since they are relatives.

15.PW6, has stated that near the place of occurrence, there was a



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commotion. He went to that place. At that time they found PW1 with head injury. All the accused caused assault with iron rod and wooden log. So when PW1 himself is not fully supporting his own complaint with regard to the specific overt acts, evidence of PW6 may not assume any importance.

16.Now we will see the damage of the vehicle. PW1 again speak with regard to the specific damage caused to the two wheeler which belongs to him. PW11 Inspector of Police is also not specific with regard to the damage caused to the vehicle. He has stated that from the place of occurrence he did not recover any damaged portion or parts of the vehicle. He is not even mentioned the availability of the damaged parts in the Mahazar and as well as the sketch. So it also son that no proper investigation was undertaken even with regard to the damage caused to the vehicle and more importantly the damaged vehicle was not sent to the motor vehicles Inspector's inspection and report. PW9 is running an auto electric workshop. He inspected the vehicle and issued Damage Certificate under Ex.P6. He has also not specific with the parts of the damage. So this evidence cannot be taken into account at all. He is not authorised person to issue any Damage Certificate for the vehicles.

17.The learned counsel for the appellant would submit that even



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with regard to the registration of the FIR there is contradiction on the side of the prosecution. PW1 has stated in his evidence that when he was admitted in the hospital, the Special Sub Inspector came to the hospital on intimation. He wrote the complaint and handed over the same to the Special Sub Inspector of Police. PW10, the Special Sub Inspector submitted that when he went to the hospital, the complaint was already written. But on record there is no doubt with regard to the lodging the FIR or registration of the complaint as the case may be. The reading of the evidence on record, does indicates that because of the group rivalry over the temple administration, the present occurrence stated to have been taken place, in which PW1 was assaulted and his vehicle was damaged. But the problem lies in the identification of the accused, who were present in the place of occurrence, as mentioned above it is night occurrence. Some 10 or 20 people gathered in that place and picked up quarrel. Subsequent to that as mentioned above, Prabakaran was seriously injured by the defacto complaints parties, namely the PW1 party here. By stopping the discussion in this case for a moment, we will go to S.C.No.169 of 2016.

18.Narration of facts in S.C.No.169 of 2016 as per the witnesses:

18.1.Here PW1 is Prabakaran, who is the accused in S.C.No.137 of 2016. On 05.07.2015 at about 09.00 p.m., they were returning to the house,



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near Mariamman temple, the accused along with Mahesh kumar intercepted them, abusing them in filthy language, Muniyandi caused assault with iron rod. The second accused caused assault with iron road. Again Muniyandi assaulted him. When his father tried to avoid the attack, Muniyandi caused him assault on his head. Both sustained injuries. When Marimuthu and Mariselvam came there, the accused fled away from that place. He was taken to the Government Hospital, Rameshwaram, wherein, he gave a complaint of statement under Ex.P1.

18.2.PW7, who is the PW10 in S.C.No.137 of 2016 received information at about 09.30 p.m., in the night and about 10.00 p.m. he recorded the statement of PW1 under Ex.P3. He handed over the case bundle to the Inspector of Police.

18.3.PW9 is the Doctor working in Government Hospital, Rameshwaram. On that date at about 9.15 p.m. he admitted Jeyaraman. On his examination he found a lacerated injury measuring about 7 x 1 x 1 c.m. on his left head region. He referred him to Government Hospital, Rameshwaram for further treatment.

18.4.PW10 is also the Investigating Officer in the connected matter, who took up the investigation and went to the place of occurrence and in the presence of witnesses, he prepared Observation Mahazar and rough sketch,



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recorded the statement of witnesses and recorded the statement of Doctor, who treated the injured, received the wound certificate. In the meantime he was transferred and his successor namely Mr.Asok Kumar, Inspector of Police, filed the final report.

18.5.PW2 Jeyaraman, who is the father of the PW1 supports PW1 to some extent. PW3 Marimuthu witnessed the occurrence. PW4, PW5 supported the evidence of PW1 and PW2.

18.6.PW8, is the Doctor, who admitted Prabakaran on 06.07.2015 at about 8.40 p.m. On his examination he found a incised wound measured 7 x 1 x 1 cm on the left fore head and 5 x 1 x 1 cm on the right fore head, a contusion on the left shoulder region measured about 10 x 2 cm. He issued Wound Certificate stating that all the injuries are simple in nature. The injured Jeyaraman namely PW2 without taking further treatment from the Government Hospital, Rameshwaram, absconded.

19.Now we will see the time of admission of PW2 Jeyaraman in the very same hospital. From the evidence of PW3, it is seen that he was admitted at 09.15 p.m. on 05.07.2015. At the time of admission, he alleged to have stated that the occurrence said to have been taken at 09.00 p.m. In the previous case the occurrence stated to have been taken place at 08.30 p.m.



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20.From the evidence of PW1, PW2 and the Doctors, who treated them shows that both sustained lacerated and incised wound on the head region. Now who caused the assault and who are the aggressors is the point to be decided. Reading of evidence of PW1 shows that it is nothing but a group clash. Even though Mahesh Kumar was injured some half an hour prior to the present occurrence, reading of the entire evidence in both the matters does indicate the above said fact. The reason is that as mentioned above Jeyaraman was admitted in the hospital at about 9.15 p.m. on the very same day. Maheshkumar was also admitted in the very same hospital at about 09.08 p.m. Time of admission of Maheshkumar and Jeyaraman shows that it is nothing but a group clash even though it has been differently stated by the injured with reference to the time of occurrence.

21.So naturally it is the duty of the Investigating Officer, who investigated both the matters to find out who are the aggressors. But it appears that he completed the investigation in both the matters independently and filed the final report in both the matters. Both the parties in both cases are not telling the truth with reference to the manner of occurrence.

22.As mentioned above, it is night occurrence and it is a clash



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between two groups of people. So, naturally it is not possible to find out or see the specific overt act of every accused person. But, the trial Court has recorded a finding of guilt in both the matters without recording a finding with regard to the real aggressors.

23.As mentioned above, the Investigating Officer has taken independent investigation in both the matters separately without even referring the other matter. As mentioned above both the accused persons are not telling the truth before the Court. So both failed to prove the other parties are the aggressors. In view of the above said, finding recorded by the trial Court in both the matters requires to be interfered. Accordingly, interfered.

24.In the result, all the appeals are allowed. The Judgment of conviction and sentence passed in both the S.C.Nos.137 and 169 of 2016, dated 26.02.2018, by the learned Additional District and Sessions Judge, Ramanathapuram, are hereby set aside and the accused persons in both the cases are hereby acquitted from the charges framed against them. Fine amount paid, if any, shall be refunded.

06.09.2024



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Index : Yes/No

Internet : Yes/No

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To

1.The Additional District and Sessions Judge, Ramanathapuram.

2.The Inspector of Police,
Thangachimadam Police Station,
Thangachimadam,
Ramanathapuram District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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