



Crl.A(MD)No.530 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16/10/2024

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.530 of 2018

K.Prem Anand : Appellant/PW1/Complainant

Vs.

1.The State of Tamil Nadu
represented by
The Inspector of Police,
Melapalayam,
Tirunelveli. : R1/Complainant

2.S.Anbu

3.P.Vellapandi

4.C.Manohar

5.G.Perumal

6.M.Kumar

7.S.Arul

8.S.Samayena Sindha : R2 to R8/A1 to A7

Prayer:-This Criminal Appeal is filed under Section 378 of the Criminal Procedure Code, to call for the records in SC No.217 of 2009, dated 24/11/2011 on the file of the Principal Assistant Sessions Court, Tirunelveli District and set aside the same and pass such further or other orders.

For Appellant : M/s.T.Seeni Syed Amma
for Mr.S.Rajasekar

For 1st Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For R2 to R8 : Mr.P.Praveen Kumar
(Legal Aid Counsel)



J U D G M E N T

WEB COPY

This Criminal Appeal is filed against the order of acquittal passed by the Principal Assistant Sessions Judge, Tirunelveli in SC No.217 of 2020, dated 24/11/2011.

2.The case of the prosecution in brief:-

On 12/05/2008 at about 07.30 am, the de-facto complainant received information from his brother Shanmugaraj that the accused Anbu and others trespassed into the property in Survey Nos.507/2 and 480/5 which belongs to them. The de-facto complainant, his brother Shanmugaraj, Uncle Kadarkaraiyandi and others went to the place of occurrence. At that time, the accused Anbu and others were found in possession of wooden logs and iron bars. They found damaged the thatched shed put up by them. The de-facto complainant and others made objection. At that time, accused abused them in filthy language, started causing assault with wooden logs and iron bars. In the above said assault, the de-facto complainant sustained injuries, so also his brother Shanmugaraj and his Uncle Kadarkaraiyandi. Upon the occurrence, a case in Crime No.377 of 2008 was registered by the 1st respondent police for the offences punishable under sections 147, 148, 294(b), 323, 324, 307 and 506(ii) IPC. After completing the formalities of investigation, filed a final report and it



Cr1.A(MD)No.530 of 2018

was taken cognizance in SC No.217 of 2009 by the Principal Assistant Sessions Judge, Tirunelveli. After completing 207 Cr.P.C proceedings, framed charges against A1 for the offences punishable under sections 447, 148, 149, 307, 324 and 506(ii) IPC; against A2, A3, A4 and A6 for the offences punishable under sections 447, 148, 307 r/w 149 and 506(ii) IPC; against A5 for the offences punishable under sections 447, 148, 149, 326 and 506(ii) IPC; and against A7 for the offences punishable under sections 447, 148, 149, 323 and 506(ii) IPC.

3.The substance of charges framed against the accused persons:-

1.On 12/05/2008 at about 08.15 am in Survey No.507/2 at Melapalayam, Reddiarpatti Road, the accused persons trespassed into the property illegally and thereby A1 to A7 have committed the offences under section 447 of IPC;

2.In continuation of the above said occurrence, the all the accused assembled with wooden logs and iron bars and thereby, they have committed the offence punishable under section 148 of IPC;



3.In continuation of the above said occurrence, at the instigation of A7, with an intention to murder PW2, A1 attacked him in his head with iron rod and thereby he committed the offence under section 307 IPC;

4.In the above said occurrence, when A1 was attempted to murder PW2, A2 attacked him in his right leg; A3 in his left shoulder, left cheek; A4 in his left elbow and A6 in his right hand with iron rod and thereby A2, A3, A4 and A6 have committed the offence punishable under section 307 r/w 149 IPC;

5.In pursuance of the above said occurrence, A5 attacked PW3 Kadarkaraiyandi with iron rod in his left leg and left hand and thereby he committed the offence under section 326 IPC;

6.In pursuance of the above said occurrence, A7 caused injury to Kadarkaraiyandi with iron bar on his left hand shoulder, left forearm, left hand neck, right leg, left forearm, left hand middle finger and thereby he committed the offence punishable under section 323 of IPC; and



WEB COPY



Cr1.A(MD)No.530 of 2018

7.After committing the above said offences, all the accused threatened the witnesses who assembled in the occurrence place with dire consequence and thereby they have committed the offence under section 506(ii) IPC.

4.The accused denied the charges and claimed to be tried.

5.On the side of the prosecution, 11 witnesses were examined and 8 documents were marked. Apart from that, 3 material objects were marked. On the side of the accused, no oral and documentary evidence was adduced.

6.PW1 lodged a complaint stating that on 12/05/2008 at about 07.30 am, he received information from his brother Shanmugaraj that the accused Anbu and others trespassed into the property in Survey Nos.507/2 and 480/5 which belongs to them. The de-facto complainant, his brother, Uncle Kadarkaraiyandi and others went to the place of occurrence. At that time, the accused Anbu and others were found in possession of wooden log and iron bar. They found damaged the thatched shed put up by them. The de-facto complainant and others made objection. But the accused abused them in filthy language, started causing assault



Cr1.A(MD)No.530 of 2018

with iron bar. In the above said assault, the de-facto complainant sustained injuries, so also his brother Shanmugaraj and his Uncle Kadarkaraiyandi. Unable to bear the assault, the de-fact complainant and other injured persons ran away from that place, they were taken to the hospital, where from the statement was recorded by PW9, who was working as Sub Inspector of Police in Palayamkottai Police station on 12/05/2007, registered a case in Crime No.377 of 2008 for the offences under sections 147, 148, 294(b), 323, 324, 307 and 506(ii) IPC. He prepared the printed FIR Ex.A6. Similarly, the accused Anbu also gave a complaint which was registered in Crime No.376 of 2008 for the offences under sections 147, 148, 294(b), 323, 324, 307 and 506(ii) IPC. Both documents were placed before the Inspector of Police for further investigation.

7.PW10 the then Inspector of Police attached to Melapalayam Police station took up the further investigation, visited the place of occurrence at about 01.30 am on that date and prepared the rough sketch and parvai mahazar in the presence of the witnesses. He recorded the statement of PW1 and others. He arrested the accused Anbu on the very same day at 09.45 am. He was remanded to judicial custody and thereafter, he recorded the statement of the other witnesses namely the eye witnesses. Similarly, he investigated the complaint given



by accused Anbu. Finding that it is factually incorrect, he filed a report before the trial court.

WEB COPY

8.He handed over the further investigation to his successor namely Ramakrishnan, who was the successor of PW10, took up the further investigation. Again he visited the place of occurrence, verified the documents prepared by PW10. Again examined all the witnesses. They repeated the very same statement given before PW10. After obtaining the Wound Certificates, he recorded the statement of the Medical Officer. After completing the investigation, filed a final report on 17/06/2008.

9.PW2 corroborated PW1 regarding the material particulars. He sustained injuries in the assault made by the accused.

10.PW3 is also another injured, who corroborated PW1 and PW2 in material particulars.

11.PW4 is the driver of the vehicle in which the complainant's party went to the place of occurrence. He also witnessed the occurrence.

12.PW5 was present when PW10 and PW11 visited the



place of occurrence, prepared the parvai mahazar and sketch.

WEB COPY

13.PW6 the Medical Officer attached to the Tirunelveli Medical College Hospital was working as Assistant Sergeant at the relevant point of time and examined the injured Prem Anand. He told that at about 07.30 am, some known and unknown persons caused injury with iron bar. On his examination, he found that there was a lacerated injury 3 x 2 x 1 cm on the right middle finger; lacerated injury 2 x 2 x 2 cm on the right knee portion and abrasion of 7 x 2 cms on the right forearm. He admitted the injured as inpatient and issued a Wound Certificate stating that the injuries are simple in nature. Similarly, PW7 examined Dr.Shanmugaraj. On his examination, he found the following injuries namely (1)Laceration about 6 x 2 cms upto bone depth from centre to back side of the head;(2) Contusion on the left cheek left; (3)Abrasion 3 x 2 cms & contusion on the right elbow; (4)Contusion on the low back bone; (5)Contusion and swelling on the left elbow; (6)Abrasion 3 x 4 cms on the right leg; (7)Contusion on the right ankle; and (8)Abrasion 3 x 2 cms on the left shoulder. So also Kadarkaraiyandi, the following injuries were found viz., (1)Laceration on the right leg 3 x 2 cms; (2)Contusion in the left leg 3 x 2 cms; (3)Laceration in the left little finger 3 x 2 cms; (4)Contusion and swelling



in the upper portion of the left hand; (5)Contusion in the left forearm; (6)Contusion in the right shoulder 3 x 2 cms; (7)Contusion & laceration 4 x 2 x 1 cms in the neck left side; (8)Abrasion 3 x 2 cms in the right elbow, swelling; (9)Contusion and laceration in the right middle finger; and (10)Contusion in the right hand upper portion and swelling.

14.On further examination of Prem Anand, he was referred to further treatment. At that time, he found the following injuries on the body of Prem Anand namely (1)stitched laceration injury on the right hand index finger; (2)stitched laceration injury on the right hand middle finger; (3)stitched laceration injury on the index finger; (4)stitched laceration on the left middle finger; (5)swelling and pain on the right thigh; (6)swelling, pain and laceration found on the left carp leg; (7)laceration and swelling 3 x 2 cms on the left side chest; (8)swelling and pain on the left leg knee and (9)swelling and pain in the right side shoulder.

15.PW8 examined x-ray of Dr.Shanmugaraj, Kadarkaraiyandi and Prem Anand and found that there was no fracture injuries to Shanmugaraj. But Kadarkaraiyandu and Prem Anand were found fracture injuries on the left humerus bone, apart from fracture in the left first finger and 5th finger. Prem Anand x-ray did not indicate any fracture.



With that, the prosecution side evidence was closed.

WEB COPY

16.The accused were questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against them. They denied the evidence of the witnesses as false and stated that a false case has been foisted. No witness was examined on the defence side.

17.At the conclusion of the trial process, the trial court found that the prosecution failed to establish the case and acquitted the accused.

18.Against which, this criminal appeal is preferred by the de-facto complainant namely Prem Anand.

19.Heard both sides.

20.It is an issue between two group of complainants namely the de-facto complainant on the one side and the accused on the other side over the property issue.

21.It is the case of the complainant namely the appellant herein that he was brutally attacked by the accused; He sustained grievous injuries; Even though the witnesses on the side of the prosecution was given and



relied, the trial court by picking up loopholes two important points, recorded the judgment of acquittal. So, according to him, it must be interfered.

22.Per contra, it is the contention of the accused that the judgment of acquittal was passed by the trial court on the materials placed before it; Contradictions noted by the trial court are material in nature, which affects the prosecution case. So, no interference is called for.

23.It is a judgment of acquittal.

24.As mentioned in the preamble portion of the judgment, there were two complaints. One by PW1, over which the present case was registered. Another in Crime No.376 of 2008 and registered against PW1 and others parties.

25.The Investigating Officer would say that after investigation, he found that the counter complaint given by the accused Anbu was not true. He referred the same as 'Mistake of Fact'. Curiously enough, final report copy is not made available to the court. Only FIR copy was filed on the side of the prosecution. No final report copy is produced.



26. In case of a case and counter, it is the duty of the Investigation Officer to enquire both or investigate both the complainants and must be find out who are the aggressors. If the Investigating Officer is not in a position to find out the same, he must place all the materials before the court. It is for the court to decide the issue.

27. Here, the complaint has been given by the accused Anbu has been closed as 'Mistake of Fact'. On what ground, closure report was made ought to have been explained by the prosecution before the trial court by producing the relevant records. Those records were not, as noted above, submitted to the court. So, the trial court was handicapped with the material collected during the course of the investigation.

28. In respect of the counter case, as mentioned above, the first FIR is the complaint given by the accused Anbu. Later only, the present subject FIR was registered on the basis of the complaint given by PW1. PW9 has admitted that he sent the accused Anbu for medical treatment along with intimation. Whether any injury was sustained by the accused Anbu is not clear on record. But, it is admitted by PW10 the Investigating Officer that Anbu was arrested on 18/08/2008 at about 09.45 pm in the Government Hospital



where he was admitted. PW11-Final Report Laying Officer has admitted that the counter case documents were not submitted along with the final report. But he admitted that as per PSO-588-A, it is the duty of the Investigating Officer to produce the counter case documents also. Even during the course of the evidence, he was not referring the counter case. So, the above said defect is apparent on the face of the record.

29.Now, we will go to the findings of the trial court.

30.The trial court has pointed out some of the manipulations made in respect of the prosecution records in Ex.P3. Apart from that, there is no explanation on the side of the prosecution over the injuries sustained by Anbu one of the accused and finally, by referring to PSO 588-A. Apart from that, contradictions were found in the prosecution side witnesses.

31.From the evidence of the Medical Officer namely PW6, PW7 and PW8, it stands established on the side of the prosecution that several injuries suffered by the prosecution side witnesses, that cannot be disputed and denied. But at the same time, it is improper investigation conducted by PW10 and PW11.



Cr1.A(MD)No.530 of 2018

32.Regarding the counter case, it affects the prosecution case. When there is a clear violation of settled principle of law, then the trial court was left with no other option except recording the finding of acquittal. Against which, no material is placed before this court to interfere into the judgment of acquittal.

33.So, I find no reason to differ from the view taken by trial court.

34.In the result, this criminal appeal is **dismissed**, confirming the judgment of the acquittal passed by the trial court.

16/10/2024

Index : Yes/No
Internet : Yes/No
er

To,

- 1.The Principal Assistant Sessions Judge,
Tirunelveli.
- 2.The Inspector of Police,
Melapalayam,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Cr1.A(MD)No.530 of 2018

G. ILANGO VAN, J

er

Cr1.A(MD)No.530 of 2018

16/10/2024