



Crl.A. No.743 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	01.04.2025
PRONOUNCED ON	24.06.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

Criminal Appeal No.743 of 2015

1.Karthi @ Karthik

2.Kumaran

.. Appellants/A1 & A2

Vs.

The State represented by
Inspector of Police
Rasipuram Police Station
Namakkal District
(Crime No.592 of 2012)

.. Respondent

Prayer : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of Additional District & Sessions Judge, Namakkal dated 20.11.2015 in S.C. No.21 of 2013 and to set aside the same.

For Appellants : Mr.M.R.Thangavel

For Respondent : Mr.S.Raja Kumar



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Additional Public Prosecutor

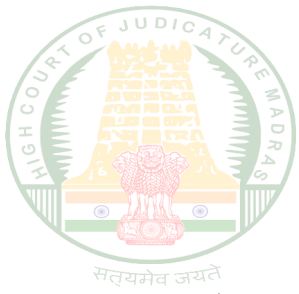
JUDGMENT

N.SENTHILKUMAR, J.

Challenging the judgment of conviction and sentence passed by the learned Additional District & Sessions Judge, Namakkal dated 20.11.2015 passed in S.C. No.21 of 2013, accused 1 and 2 have preferred this criminal appeal.

2. The trial court has acquitted A1 to A4 on the charge under Section 148 IPC and acquitted A1 on the charge under Section 294(b) IPC and acquitted A2 to A4 on the charge under Section 294(b) IPC r/w 149 IPC. The accused 3 and 4 were acquitted on charge under Section 307 (2 counts) IPC. A1 and A2 were convicted and sentenced as follows:

<i>Appellant/Accused</i>	<i>Offence</i>	<i>Sentence</i>
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<i>Karthi & Karthik (A1) and Kumaran (A2)</i>	<i>Section 307 IPC</i>	<i>10 years rigorous imprisonment and a fine of Rs.1,00/-, in default to undergo 1 year rigorous imprisonment</i>
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3. The case of the prosecution is that on 04.07.2012 at about 7.00 a.m, when PW2, Kumaresan called PW1 over cell-phone and informed PW1 that PW3 was assaulted by A2. PW1 asked PW2 to come to the police station. When PW1 reached the police station, PW2 and PW3 were already there in the police station. Thereafter, PW1 to PW3 had gone near Suganthi Hospital to have a cup of tea. According to the prosecution, around 8.00 to 8.30 a.m, when A1 to A4, along with the deceased Natarajan (father of A3 and A4) came from Pattanam, a wordy quarrel ensued between the prosecution witnesses and the accused persons, thereby the accused persons picked up the bullock cart sticks attached to the bullock cart (Molakuchi, 4 in Nos produced as MO1) and attacked the prosecution witnesses.

4. According to the prosecution, A1 attacked PW3 on the forehead and on the right side of the head, A2 attacked the backside of the head of PW3, A4



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attacked PW1 on the front side of his head, A3 attacked PW1 on the right side of his head, right shoulder, face and chest and A4 attacked PW1 on the right side of his head. PW1 to PW3 were taken to the Government Hospital, Rasipuram, where the doctor had advised PW1 and PW2 to go to Government Hospital, Salem and PW3 was taken to Manipal Hospital, Salem. Ex.P9 is the wound certificate issued to PW3 by Manipal Hospital at Salem. Ex.P10 is the Accident Register entry of PW3 and police intimation. Ex.P11 series is the medical report of PW2 and wound certificates issued to PW1 to PW3. Based on the complaint given by PW1, which was marked as Ex.P1, a case was registered in Crime No.592 of 2012 for offences under Sections 147, 148, 294(b), 323, 324 and 307 IPC. The express FIR is Ex.P13.

4. It is the further case of the prosecution that PW3 was originally treated at Government Hospital, Rasipuram and thereafter, he was treated at Manipal Hospital. PW1 to PW3 are the injured eye witnesses. A2 died during appeal. It is to be noted that a counter case was registered, based on the complaint given by A1 in Crime No.591 of 2012, which was taken on file by the learned trial Judge in S.C. No.40 of 2013.



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5. The learned counsel appearing for the appellants contended that though the Head Constable had recorded the statement of PW1, which was marked as Ex.P1-complaint, the said Head Constable was not examined by the prosecution. Similarly, the prosecution had not examined the doctor, who had treated PW1 at Government Hospital, Salem on 04.07.2012 and even the documents were not marked by the prosecution to prove that treatment was given to PW1 at Government Hospital, Salem. The learned counsel contended that when the Head Constable's statement was not recorded to establish the genesis of the complaint, PW1 had admitted in his cross-examination that his statements were recorded by the Head Constable at the Government Hospital, which vitiates the origin and the genesis of the complaint preferred by the complainant. In the absence of any material to establish that PW1 had taken treatment at Government Hospital, Rasipuram and the statement was recorded by the Head Constable, the FIR cannot be taken into consideration and the said FIR is not a reliable and genuine document for the prosecution to establish its case.



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6. He further contended that the prosecution witnesses PWs.1 to 3 were assaulted by the accused, thereafter, PWs.1 to 3 were taken to Government Hospital, Rasipuram, and the accident registers were marked to establish the injuries sustained by PWs.1 to 3 as Ex.P11 series. The evidence of PW12, the doctor who treated PW3 had stated in his chief examination that he treated PW3 as an outpatient and he has referred the patient to the Government Hospital, Salem for further treatment. As PW3 did not go to the Government Hospital, no information was available to show the nature of injuries sustained by him. It is pertinent to note that in the evidence of PW12 he has categorically stated regarding two injuries on the head of PW3 and the fact that he was further referred to the Government Hospital, Salem.

7. The sticks marked under MO1 series were recovered pursuant to the confession of the appellants under Form 95 as Ex.P19. It is relevant to note that the Village Administrative Officer, was examined as DW1 and Ex.D3, field survey sketch was marked to establish that there was no burial ground opposite to the fire station. This factum had become relevant with regard to material objects which were recovered under Ex.P19, from the appellants herein inside



the burial ground. When prosecution had relied upon the material objects which were identified and lifted from the burial ground, the evidence of DW1 and the field survey sketch makes it clear that the recovery of material objects under Ex.P19, Form 95 cannot be taken into consideration as a genuine one.

8. The learned counsel vehemently contended that the prosecution had suppressed the counter case where the accused persons had an altercation with the prosecution witnesses. A case in Crime No.591/2012 was registered against PW1 to PW3 under Section 302 IPC where the said Natarajan was said to have died. The case in Crime No.591/2012, which was taken on file by the Sessions Court in S.C. No.40 of 2013 was not tried as a case in counter case. Though the trial had taken place before the same court, the procedure contemplated under the criminal procedure was not followed which vitiates the trial.

9. The learned counsel pointed out that the prosecution has not projected the correct version of the occurrence and the motive. He contended that non-explanation of the accused injuries and the recovery of material objects at the burial ground, would only show that the prosecution has not proved the case as



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against the appellants herein.

10. Per contra, the learned Additional Public Prosecutor contended that PWs.1 to 3 are the injured eye witnesses and to establish the prosecution case, PW11 and PW12, the doctors of Manipal Hospital and Government Hospital, Salem were examined. Ex.P9 - wound certificate of PW3, Ex.P10, Accident Register of PW3 and police intimation were produced in support of the prosecution case. The evidence of PW12, who had treated PW1 to PW3 and Ex.P11, wound certificate of PW2 and AR copies of PW1 to PW3 coupled with the fact that the Village Administrative officer, who is an independent witness had attested the confession of A1 to A3 marked as Ex.P3 to Ex.P5 along with recovery of material objects under Ex.P6 to P8, seizure mahazar, would show that the case had been established by the prosecution and hence prayed for dismissal of the appeal filed by the accused.

11. Admittedly, PW1 to PW3 are the injured eye witnesses and there cannot be a dispute with regard to the injuries sustained by them and their evidence cannot be discredited. By analysing the entire case of the prosecution, the evidence of PW1 to PW3 would clearly show that there was a free fight



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between the prosecution witnesses and the accused persons. It has to be taken note that the prosecution witnesses have been arrayed as accused in the case in Crime No.591 of 2012 and the materials to establish injuries sustained by the prosecution witnesses are marked as Ex.D1, D6 and D7 in S.C. No.40 of 2013.

12. It is not in dispute that PW1 to PW3 were the injured eye witnesses but, the origin and genesis of the complaint, motive and the discrepancies with regard to the overt act of PW1 to PW3 as against accused/appellants are not explained in the evidence of PW1 to PW3. It is to be noted that PW4 to PW7 are common people, who have witnessed the free fight between the prosecution witnesses and the accused persons. PW9 was examined to establish the case of the prosecution, who was the bullock cart owner from whom the material objects were taken and assaulted PW1 to PW3. PW10, Village Administrative Officer attested as a witness in A1 to A3's confession statement, which were marked as Exs.P3 to P5. Exs.P6 to P8 are seizure mahazars by which the material objects were recovered from the accused.

13. Admittedly, the prosecution witnesses PW1 to PW3 had admitted in the cross examination that there was a free fight between the parties arising out



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of a simmering longstanding dispute with regard to a car festival in a temple.

When there was a wordy quarrel between the witnesses and the accused, both the parties have gone to police station to prefer a complaint and the prosecution witnesses were waiting near Suganthi Hospital and in a fit of anger, the occurrence had taken place, in which the prosecution witnesses as well as the accused got injured. The prosecution has not explained the injuries sustained by the accused, which is fatal to the prosecution case. Interestingly, the Village Administrative Officer, Rasipuram was examined as DW1, through whom Ex.D3, field map was marked to establish that there was no burial ground from where the materials objects (molakuchi) were recovered pursuant to the confession given by A1 to A3 and marked as MO1 as per the prosecution. Exs.P6 to P8 cannot be taken into consideration as the recovery mahazar, refers to the place of recovery of material objects as burial ground and the said recovery is highly discredited by Ex.D3, which cannot be denied. The first accused was examined as DW2, through whom, the death certificate of Natarajan (father in law of A1), was marked as Ex.D4, issued by the Revenue Department, Government of Tamil Nadu, which states the place of death as Vinayaka Mission Hightech Hospital, Veerapandi, Salem.



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14. According to the appellants, the prosecution had miserably failed to establish the place of death of the deceased Natarajan, who was originally arrayed as A5 in Crime No.592 of 2012. In the absence of explanation of injuries sustained by the deceased and the factum of recovery of material objects under Ex.P6 to Ex.P8 from the burial ground which was disproved by production of Ex.D3, survey sketch demonstrates that the prosecution had not proved its case beyond reasonable doubt. It is to be noted that when two views are possible with regard to the guilt as against the accused, then the view which will benefit the accused has to be taken. The case of the prosecution has literally failed with regard to the recovery and due to non-explanation of the injuries sustained by the accused.

15. In this regard, it is useful to rely on the decision of the Hon'ble Apex Court in *Nandlal and others vs. State of Chhattishgarh* reported in (2023) 10 SCC 470, wherein the Hon'ble Apex Court has dealt with the importance of non-explanation of injuries sustained by the accused. The relevant paragraphs are extracted hereunder:

25. We will first consider the issue with regard to non-



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explanation of injuries sustained by Accused 11 Naresh Kumar. In Lakshmi Singh v. State of Bihar [Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394 : 1976 SCC (Cri) 671] , which case also arose out of a conviction under Section 302 read with Section 149IPC, this Court had an occasion to consider the issue of non-explanation of injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus : (SCC pp. 401-402, para 12)

“12. ... It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater



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importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima [State of Gujarat v. Bai Fatima, (1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

26. A similar view with regard to non-explanation of injuries



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has been taken by this Court in State of Rajasthan v. Madho [State of Rajasthan v. Madho, 1991 Supp (2) SCC 396 : 1991 SCC (Cri) 1048] , State of M.P. v. Mishrilal [State of M.P. v. Mishrilal, (2003) 9 SCC 426 : 2003 SCC (Cri) 1829] and Nagarathinam v. State [Nagarathinam v. State, (2006) 9 SCC 57 : (2006) 3 SCC (Cri) 212] .

27. Undisputedly, in the present case, the injuries sustained by Accused 11 Naresh Kumar cannot be considered to be minor or superficial. The witnesses are also interested witnesses, inasmuch as they are close relatives of the deceased. That there was previous enmity between the two families, on account of election of sarpanch, has come on record. As observed by this Court in Ramashish Rai v. Jagdish Singh [Ramashish Rai v. Jagdish Singh, (2005) 10 SCC 498 : 2005 SCC (Cri) 1611] , previous enmity is a double-edged sword. On one hand, it can provide motive and on the other hand, the possibility of false implication cannot be ruled out.

28. We have already seen hereinabove the injuries sustained by Accused 11 Naresh Kumar. Much prior to lodging of the FIR at 3.15 a.m. on 4-11-2006 by Khomlal, the police had taken Accused 11 Naresh Kumar for medical examination. The memo forwarding Accused 11 Naresh Kumar for medical examination to medical officer mentions that Accused 11 had informed the police that at around 8.30 p.m., he was assaulted by Atmaram (PW 1). Undisputedly, the prosecution has suppressed information with regard to the said incident. The prosecution has



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also suppressed the FIR lodged by Atmaram (PW 1). It is thus clear that the prosecution has attempted to suppress the real genesis of the incident. Taking into consideration this aspect of the matter, coupled with the non-explanation of the injuries sustained by Accused 11 Naresh Kumar, we are of the considered view that Accused 11 Naresh Kumar is entitled to benefit of doubt.

16. In view of the settled legal position, we are inclined to allow this appeal. Accordingly, the criminal appeal is allowed. The judgment of conviction and sentence rendered by the learned Additional District & Sessions Judge, Namakkal dated 20.11.2015 in S.C. No.21 of 2013 is set aside. The appellants are directed to be set at liberty, in case their presence is not required in connection with any other case. The fine amount, if any, paid by the appellants, shall be returned to the appellants forthwith and the material objects shall be destroyed.

[M.S.R., J.] [N.S., J.]

Issue on 26/6/25

24.06.2025

Asr

Index : Yes/No

Neutral Citation : Yes/No

To



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1.The Additional Disrict & Sessions Judge, Namakkal

2.The Inspector of Police
Rasipuram Police Station
Namakkal District
(Crime No.592 of 2012)

3.The Public Prosecutor, High Court, Madras

Copy to:

The Superintendent of Prisons
Central Prison, Salem

M.S.RAMESH, J.
and
N.SENTHILKUMAR, J.
Asr

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Dated : 24.06.2025