



Crl.A.No.501 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

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1.Rajesh
2.Nagaraj

... Appellants

Vs.

The Inspector of Police,
R-8 Vadapalani Police Station,
Chennai - 26.

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of conviction and sentence passed by the learned VII Additional Sessions Judge, Chennai, in S.C.No.327 of 2016, dated 10.08.2018.

For Appellants : Mr.J.William Shakesphere

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem



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J U D G M E N T

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Aggrieved over the judgment of conviction and sentence passed by the learned VII Additional Sessions Judge, Chennai, in S.C.No.327 of 2016, dated 10.08.2018, A1 and A2 have filed the present appeal. The appellants/accused were convicted and sentenced by the trial Court as follows :

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1 & A2	Section 307 r/w. 34 IPC	Seven years imprisonment each and fine of Rs.5,000/- each, in default, to undergo three months simple imprisonment
	Section 294(b) IPC	Fine of Rs.500/- each, in default, to undergo simple imprisonment for one week
A1	Section 324 IPC	One year imprisonment
The sentences shall run concurrently.		

2.The case of the prosecution is as follows :

2.1.P.W.1 (Vijayakumar) is a resident of Vadapalani, Chennai. A1 (Rajesh) is running a chit business. P.W.1 has taken a chit of Rs.1 Lakh from A1, in respect of which, A1 used to come frequently to the house of P.W.1, as a result of which, A1 got acquainted with P.W.1's wife Kowsalya



and this developed into an illegal intimacy between them. On 18.05.2016, P.W.1's wife went missing and therefore, P.W.1 lodged a complaint before the Police. The next day, i.e., on 19.05.2016, the Police called upon P.W.1 to come to Police Station and at that time, P.W.1's wife refused to join him and went along with A1 in his motorcycle. On 08.06.2016, when P.W.1's younger son (P.W.4) went to a birthday function, A2 (Nagaraj) humiliated P.W.4. On the same night at 9.30 p.m., A1 (Rajesh), A2 (Nagaraj) and one Nageswara Rao came to P.W.1's house and abused him in a filthy language. Thereafter, at 11.30 p.m., when P.W.1 and his younger son (P.W.4) went to a restaurant near Kumaran Colony to buy food, A1 (Rajesh), A2 (Nagaraj) and Nageswara Rao were standing near Kalpatha Apartments and asked P.W.1 as to what business does he have in their area. A1 (Rajesh) was carrying a knife (M.O.1) in his hand. Saying that P.W.1's wife is still with him, A1 tried to attack P.W.1 with the knife (M.O.1). When P.W.2 (Abishek) tried to prevent the attack, he received cut injuries on his stomach and shoulder. Further, A2 (Nagaraj) attacked P.W.1's younger son (P.W.4) with a wooden log (M.O.2), by which, P.W.4 sustained injuries on head. Thereafter, P.W.2 (Abishek) was taken to hospital by P.W.1's uncle's son Sivakumar and P.W.4



(Rohith) was taken to hospital by P.W.1. Thereafter, P.W.1 visited Vijaya Hospital, where his elder son (P.W.2) was admitted in ICU. Thereafter, at 4.30 a.m., P.W.1 lodged a complaint (Ex.P1) in this regard, before the respondent Police.

3. According to P.W.2 (Abishek - younger son of P.W.1), when he tried to ward off the attack made by A1 on his father (P.W.1), he received injuries on the left hip. P.W.3 (Mari @ Sivakumar) has also witnessed the occurrence.

4. Based on the complaint (Ex.P1) lodged by P.W.1, an FIR (Ex.P11) came to be registered in Crime No.822 of 2016 at 4.00 a.m. on 09.06.2016 by Mr.Pasupathy, Inspector of Police (P.W.19) as against Rajesh (A1) and Nagaraj (A2) for the offences under Sections 294(b), 323, 324 and 307 IPC.

5. After registration of FIR (Ex.P11), P.W.19 took up the investigation and went to the place of occurrence and prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P12) in the presence of witnesses P.W.5 and



P.W.18 and recorded the statements of the witnesses. Thereafter, he arrested the accused A1 (Rajesh) and A2 (Nagaraj) at 16.15 hours on 09.06.2016.

Based on the confession of A1, admitted portion of which is marked as Ex.P3, the Investigating Officer (P.W.19) seized the knife (M.O.1) and wooden log (M.O.2) under Seizure Mahazar (Ex.P4). Thereafter, he sent the collected material objects to the Court under Form-91 (Ex.P13). After recording the statements of the witnesses, he handed over the case file to Mr.Alphin Raj, Inspector of Police (P.W.20) for further investigation.

6.P.W.20, in continuation of investigation, recorded the statements of the Medical Officers who treated the injured. Dr.Senthil (P.W.16) who gave treatment to P.W.4 (Rohith) has noted laceration of 3 x 2 cm on the head and issued Accident Register (Ex.P5). Dr.Senthil Kumar (P.W.17) has opined that it is a simple injury and issued Wound Certificate (Ex.P6) and Discharge Summary (Ex.P7). Dr.Krishnamurthy (P.W.18) who admitted Abishek (P.W.2) in Vijaya Hospital, issued Accident Register (Ex.P8) and Wound Certificate (Ex.P9) noting down lacerated wound on left side of thorax (around 18 cm) and lacerated wound on left shoulder around 5 cm.



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Thereafter, P.W.2 (Abishek) was discharged vide Discharge Summary (Ex.P10).

7.After completing the investigation, P.W.20 laid a final report as against the accused A1 and A2 for the offences under Sections 294(b), 323, 324 and 307 r/w. 34 IPC in P.R.C.No.87 of 2016 before the XVII Metropolitan Magistrate Court, Saidapet, Chennai.

8.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.327 of 2016 and was made over to the VII Additional Sessions Court, Chennai, for trial.

9.The trial Court framed the charges for the offences under Sections 294(b) IPC and 307 r/w. 34 IPC as against A1 and A2; for the offence under Section 324 IPC as against A1; and for the offence under Section 323 IPC as against A2. When questioned, the accused pleaded “not guilty”.



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10.To prove the guilt of the accused, the prosecution examined P.W.1 to P.W.20, marked Exs.P1 to P13, and produced M.Os.1 and 2. On the side of the defence, no witness was examined nor any document marked.

11.The trial Court, after appreciating the oral and documentary evidence and materials on record, by judgment dated 10.08.2018 in S.C.No.327 of 2016, while acquitting A2 of the charge under Section 323 IPC, found A1 and A2 guilty of the offences under Sections 294(b) and 307 r/w. 34 IPC and also found A1 guilty of the offence under Section 324 IPC and thereby, convicted and sentenced the accused as stated *supra*.

12.Challenging the conviction and sentence, the present appeal has been filed by both the accused.

13.Learned counsel appearing for the appellants/accused would submit that the evidence of P.W.1 to P.W.4 cannot be relied upon, since they have been charged for the offence of murder of Nageswara Rao in another



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Wound Certificate (Ex.P9) also clearly shows that P.W.2 (Abhishek) has been severely injured on his chest and shoulder. Further, the learned Additional Public Prosecutor would submit that both the groups have committed acts of aggression and therefore, two separate final reports have been filed as against each group. Since the prosecution has clearly established the guilt of the accused through prosecution witnesses and medical evidence, the trial Court has rightly appreciated the evidence on record and convicted the accused and therefore, the judgment of conviction and sentence passed by the trial Court, warrants no interference.

15.We have perused the entire materials available on record.

16.On a perusal of the entire evidence, we are of the view that the very FIR itself is an afterthought. The evidence of P.W.2 would indicate that, immediately after the occurrence, the Police visited the spot and informed the witnesses to go to the hospital. Thereafter, P.W.1 has given a different story that he went to the Police Station at 4.00 a.m. and lodged a complaint, which clearly indicates that it is only an afterthought.



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17. Admittedly, these accused were examined as P.W.3 and P.W.4 in the other Sessions Case in S.C.No.273 of 2016 in respect of the charge under Section 302 IPC. The other version is totally suppressed by both the groups. Admittedly, the alleged occurrence is said to have taken place near an Apartment. However, the Investigating Officer has not even made an attempt to find out the truth by seizing the CCTV Footages normally available before every apartment in the city. Further, it is not the case of the witnesses that there was source of light and they witnessed the occurrence clearly in light.

18. P.W.4 (Rohith) has informed the Doctor that the occurrence took place at 11.45 p.m. as seen from Ex.P5, whereas, the other injured Abishek (P.W.2) has stated before the Medical Officer that the occurrence took place at 10.00 p.m, as seen from Ex.P9. These facts create serious doubt about the nature of occurrence, exact time of occurrence, place of occurrence and how both groups sustained injuries.



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19. Admittedly, there was a scuffle between two groups. However, who attacked whom, has not been explained. In both the cases, the witnesses have supported only their version, as if nothing happened to the other side. Further, the Investigating Officer has also not made any attempt to find out who are the aggressors and has mechanically filed final reports in both the cases, which is against the very guidelines issued by the Full Bench of this Court in ***T.Balaji v. State [Crl.O.P.Nos.4587 of 2024, etc. and batch, dated 08.08.2024]***. The Hon'ble Full Bench, in the said judgment, has held as follows :

“49. The next question is whether a failure to adhere to PSO 566, ipso facto, vitiate the prosecution? It is well-settled that any defect in the investigation does not automatically vitiate trial unless a miscarriage of justice is shown (vide H.N Rishbud v State, AIR 1955 SC 196). In some cases where a procedural defect is shown at the earliest point of time, it would be possible for the superior court to remedy the situation by setting aside the final reports and issuing directions for proper investigation and filing of the final report. However, where the case is at an advanced stage a plea of non-compliance of PSO 566 cannot be acceded to



automatically unless a miscarriage of justice is demonstrated. Whether miscarriage of justice has occurred or not will depend on facts which must be assessed from case to case, and we need say no more on this aspect at this stage except observing that the directions contained in paragraph 35, would ensure that such cases would be few and far between.

...

(b) At the stage of completion of investigation :

On completion of investigation, the investigation officer may adopt any one of the below course of action :

i. Where the rival versions of the same incident are inconsistent with each other ie., if one is true the other must be false, the investigation officer is duty-bound to come forward with a definitive case and cannot file final reports under Section 193 BNSS 2023 in both cases (PSO 566).

ii. If the investigation officer after investigation finds that one version is true and the other is false he shall file a final report in the former case and refer the latter case as a mistake of fact/law. While filing the final report the IO must specifically state the gist of the counter case and the result of the investigation in that case. He shall also ensure that the FIR and the materials collected in the counter case are annexed to the final report and forwarded to the Jurisdictional Magistrate



who can take cognizance of the offence.

iii. Where the investigation officer finds from the investigation that the divergent versions of the same incident are not absolutely inconsistent with each other but however finds that one party is an aggressor and the other party has acted in self-defence, he should ordinarily file a final report only against the aggressor.

iv. The party whose complaint is found to be false or is found to be the aggressor by the IO resulting in the case being referred as a mistake of fact, shall serve RCS notice to the complainant. The complainant/victim may file a protest petition and proceed further in a manner known to law.

v. Where after a thorough investigation he is unable to find the real aggressor or where both parties are aggressors and have exceeded the bounds of the law and committed independent offences against each other, he may file a final report in each of the cases. For the sake of clarity, we repeat that these are cases which are not inconsistent with each other. They are no doubt rival versions of the same incident but are cases where both parties are found to have acted lawlessly or committed acts of aggression. It is not necessary for the IO to



obtain an opinion from the Public Prosecutor before filing two final reports in such cases. However, the IO must assign proper reasons indicating the factual reasons for filing two final reports in such cases.

vi. In case and counter cases arising out of factious rioting, communal and political clashes etc., the IO will scrupulously follow PSO 703(i) and investigate the case thoroughly. It is the duty of the IO to investigate and identify the real aggressor keeping in mind the directions contained in the said PSO. The filing of two final reports in such cases must be confined to cases where both parties are found to have acted lawlessly and committed acts of aggression.

vii. The aforesaid directions shall be adhered to scrupulously and failure to follow the aforesaid directions will expose the concerned investigation officer to departmental action.”

(emphasis supplied)

20. In the present case, the Investigating Officer has not followed the procedure as per PSO 566. When it is a case and case-in-counter, normally, the Investigating Officer has to investigate into the matter and find out who



is the real aggressor and file a final report as against the aggressor and close the other FIR as mistake of fact. However, the Investigating Officer, has mechanically filed final report in both the cases, one for the offence under Section 307 IPC and other for the offence under Section 302 IPC.

21. Further, even when two final reports are filed, the learned Magistrate can scrutinize the final reports carefully and if it is found that the Investigating Officer has mechanically filed two final reports without properly investigating the matter, the learned Magistrate can return the final reports and direct the Investigating Officer to come up with a definitive case. In this regard, the Full Bench of this Court in *T. Balaji v. State (supra)*, has held as follows :

“B. For the Courts

(a) Pre-Cognizance stage :

...

iv. Where two final reports are filed in a case and counter case, it is the duty of the Magistrate to scrutinize the final reports carefully. If it is found that the final reports put forward inconsistent rival versions of the same incident (ie., if one version is true the other must necessarily be false), or



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where it is found that the IO has filed two final reports mechanically without properly investigating and finding out the true aggressor the Magistrate shall return the final reports and direct the IO to come up with a definitive case.”

However, this has also not been done in this case.

22.The fact that the very FIR itself has been registered after the Police visited the spot earlier and the possibility of improvement of the case later to suit the convenience of the injured, cannot be ruled out. The injuries sustained by the witnesses herein are only simple injuries, whereas, the appellants and the witnesses herein are charged for the offence of murder in the other case. In the absence of a complete investigation or any clinching evidence as to who is the aggressor and having regard to the fact that the Investigating Officer has mechanically filed final reports in both the cases without following the procedure as per PSO 566, we are of the view that it is highly unsafe to rely upon the prosecution version alone and convict the accused for such a grave crime. Therefore, the appellants are entitled to benefit of doubt and the judgment of the trial Court convicting the accused without properly assessing the nature of injuries sustained on either side, is



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liable to be interfered with.

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23. Accordingly, this Criminal Appeal is allowed and the judgment of conviction and sentence passed by the learned VII Additional Sessions Judge, Chennai, in S.C.No.327 of 2016 dated 10.08.2018, is set aside and the appellants/accused are acquitted of all the charges framed against them. Fine amount, if any, paid by the appellants/accused, shall be refunded to them. Bail bond executed by the appellants shall stand discharged.

(N.S.K., J.) (M.J.R., J.)
27.10.2025
(2/2)

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Index : Yes / No
Neutral Citation : Yes

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