



Crl.A.No.200 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.200 of 2017

1. Thangamani

2. Karunanidhi

3. Kaliasammal

... Appellants

Vs.

The State Represented by
The Inspector of Police,
Padalur Police Station,
Perambalur, Perambalur District.

... Respondent

PRAYER : Criminal Appeal filed under Section 374 of Code of Criminal Procedure to set aside the judgment dated 24.03.2017 in S.C.No.18 of 2012 on the file of the Mahila Court, Perambalur.

For Appellants : Mr.Selvaraj, Senior Counsel
For Mr.D.Jayasingh

For Respondent : Mr.L.Baskaran
Government Advocate (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed against the judgment rendered by the Mahila Court, Perambalur, in S.C.No.18 of 2012 dated 24.03.2017, against the appellants.



WEB COPY 2. The conviction and sentence imposed against the appellants as follows :-

Accused	Under Section	Sentence
A1	2 94(b) of IPC	Three months simple imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
	307 of IPC (2 counts)	Seven years rigorous imprisonment (two counts) and a fine of Rs.3,000/-(two counts), in default, to undergo one year rigorous imprisonment.
	506(i) of IPC	Two years simple imprisonment and a fine of Rs.3,000/-, in default, to undergo six months simple imprisonment.
A2	307 of IPC	Seven years rigorous imprisonment and a fine of Rs.3,000/-, in default, to undergo one year rigorous imprisonment.
A3	324 of IPC	Three years simple imprisonment (two counts) and a fine of Rs.2,000/- (two counts), in default, to undergo six months simple imprisonment.

3. It is the case of the prosecution that the appellants and the witnesses, PW1 to PW3 are neighbours and that they had prior enmity with regard to the drawing of water from the public tap situated in the street, where both the parties were residing; that on 27.02.2011, at about 7.00p.m, the first accused, who came on a bicycle, dashed against PW2;



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as a result, wordy quarrel ensued between the first accused and PW2; that subsequently, the other accused as well as PW1 and her daughter, came out of their respective houses; that appellants 1 and 2 (A1 & A2) were armed with a knife and an iron pipe and attacked the hands of PW1 and PW2, caused grievous injury to PW1 and simple injuries to PW2 and PW3, who is the daughter of PW1. It is the further case that A4 and A5 also joined the other accused and attacked the witnesses; and thus, they committed the offences under Sections 147, 148, 294(b), 323, 324, 307 of IPC.

4. According to the prosecution, after the occurrence, PW1 and PW2 went to the hospital and were treated as inpatients; that the hospital authorities informed the Police about the occurrence on 01.03.2011 at about 01.00 p.m. Thereafter, PW11 had recorded the statement of PW1 and registered the First Information Report in Crime No.40 of 2011 dated 01.03.2011. PW13, the Inspector of Police, took up the investigation, prepared rough sketch and observation mahazar, examined the witnesses and filed the final report against the appellants and two other accused before the jurisdictional Magistrate for the offences punishable under Sections 147, 148, 294(b), 323, 324, 307 of IPC.



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WEB COPY 5. After the accused were served with the copies as per Section 207 of Cr.P.C., the case was committed to the Sessions Court and made over to the Mahila Court, Perambalur, in S.C.No.18 of 2012.

6. Before the trial Court, the prosecution examined PW1 to PW13, marked Ex.P1 to Ex.P20 and M.O.1 to M.O.3. The accused neither examined any witness nor marked any documents.

7. The trial Court, had framed 11 charges against all the accused. It acquitted A4 and A5 of all the charges. The first appellant/A1 was convicted for the charges under Sections 294(b), 307 (2 counts) and 506(i) of IPC and sentenced as stated above; the second appellant/A2 was convicted for the offence under Section 307 IPC and sentenced 7 years rigorous imprisonment, and the third appellant/A3 was convicted for the offence under Section 324 of IPC (2 counts) and they were acquitted of all the remaining charges.

8. Aggrieved by the said judgment of conviction, the appellants are before this Court. Before the appeal was taken up for final hearing, the



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learned Senior Counsel appearing for the appellants brought to the notice of this Court that the appellants had filed a petition in Crl.M.P.No.1142 of 2024 seeking production of two documents, namely, the extracts of Accident Register pertains to appellants 1 and 2. The learned Government Advocate (Criminal Side), on instructions, fairly submitted that the documents sought by the appellants were genuine and produced the certified copies of the extracts of the Accident Registers relating to the appellants. Therefore, this Court marked the extracts of the Accident Register by consent as Ex.C1 and Ex.C2 respectively and allowed the said miscellaneous petition.

9. Mr.Selvaraj, learned Senior Counsel appearing for the appellants, submitted that the prosecution had suppressed the injuries sustained by the accused; that the witnesses have concealed the genesis and origin of the occurrence by not explaining the injuries on the accused; that the place of occurrence as projected by the prosecution is also doubtful; that the prosecution's claim of having received intimation only on 01.03.2011, two days after the alleged occurrence cannot be believed; that the complaint, on the basis of which the prosecution was initiated, is an after thought; and that the complaint of the accused has



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not been investigated in accordance with the principles laid down by the Hon'ble Full Bench of this Court in Crl.O.P.No.4587 etc. of 2023 dated 08.08.2024. He also pointed out to several inconsistencies in the deposition of the injured witnesses and sought for acquittal.

10 (a). Mr.L.Baskaran, the learned Government Advocate (Criminal Side), *per contra*, submitted that the prosecution had proved its case beyond any reasonable doubt; that mere non explanation of the simple injuries sustained by A1 and A2 would not be fatal to the prosecution; and that the delay in registering the FIR was due to the delay caused by the hospital authorities in sending the intimation about the occurrence; that hence the delay cannot be held against the prosecution or the witnesses to disbelieve their version. Referring to the deposition of PW1 to PW3, he submitted that they were cogent and convincing and therefore, the trial Court rightly convicted the appellants for the aforesaid offences.

10(b). On instructions, he further submitted that in fact, the complaint lodged by A1 was registered as an FIR in Crime No.41 of 2011 and after a thorough investigation, it was closed as mistake of fact.



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He also fairly conceded that this aspect was not brought to the notice of the trial Court either by the prosecution or by the defence.

11. As stated earlier, the prosecution had examined 13 witnesses. PW1 to PW3 are the injured witnesses. PW4 to PW8 were examined as eye witnesses, turned hostile. PW9 is the Doctor who treated the victims PW1 to PW3, made entries in the Accident Registers and observed that the injuries sustained by PW1 and PW3 were simple and the injuries sustained by PW2 were grievous. PW10 is the witness who attested the confession statement of the accused and also the mahazar. PW11 is the Sub-Inspector of Police who had registered the First Information Report. PW12 is another eye witness who turned hostile. PW13 is the Investigating Officer.

12. From the above, it is clear that the prosecution case rests on the evidence of PW1 to PW3. If PW1 to PW3 are believed, then the finding of guilt has to be sustained. The question is whether these witnesses can be believed.

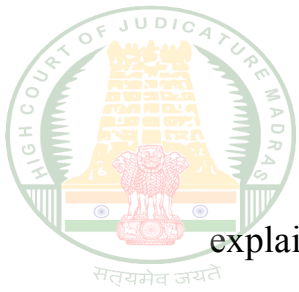


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WEB COPY 13. The extract of the Accident Registers relating to A1 and A2 were marked by this Court, as stated above, as Ex.C1 and Ex.C2 with the consent of prosecution. Therefore, the fact that A1 and A2 were injured in the occurrence is not disputed by the prosecution. The Investigating Officer and PW1 had admitted that A1 and A2 were also admitted in the hospital when PW1 and PW2 were taking treatment.

14. The deposition of PW1 to PW3 suggests that the occurrence took place on a public road, whereas, the entries made in the Accident Registers relating to PW1 and PW2 show that both PW1 and PW2 had informed the Doctor that the occurrence took place at their residence on 27.02.2011 at about 7.00 p.m. It is the further case of the prosecution that the house of the witnesses, PW1 and PW2, was located 10 feet away from the place of occurrence. This Court is of the view that this cannot be a reason to hold that the witnesses falsely deposed the place of occurrence. It is only a minor variation.

15. Be that as it may, the prosecution has admitted that accused 1 and 2 sustained injuries at the occurrence. None of the witnesses have



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explained the injuries sustained by accused 1 and 2. The accused 1 and 2 had sustained only simple injuries and it is trite that mere non explanation of such injuries by itself would not render the version of the prosecution improbable. However, in the facts and circumstances of the case, the suppression of injuries sustained by the accused would assume significance in view of the other discrepancies found in the evidence.

16. Admittedly, witnesses PW1 and PW2 were taken to the hospital on 27.02.2011 i.e., on the same day of the occurrence. The Doctor made entries in the Accident Registers, where it is observed that they stated that they were attacked by three women and two men. Therefore, it is a medico-legal case. It is the case of the prosecution that they received intimation from the hospital only on 01.03.2011 at about 01.00 pm. However, the prosecution has not produced the intimation sent by the hospital on 01.03.2011. It is highly improbable that the hospital would have waited for two days and inform the police about the occurrence. The non-production of such intimation also raises serious doubts about the prosecution version that the intimation was received only on 01.03.2011, two days after the occurrence. The delay in registering the First Information Report has not been explained properly



by the prosecution. The possibility of deliberations and attributing overt

acts to the accused, therefore, cannot be ruled out.

17. That apart, it is PW2's case that she was beaten by A3 with the wooden handle of a knife and also with an iron pipe (ஊதாங்குழல்), which was marked as M.O.2. The seizure of the said iron pipe is said to have been made from the residence of the accused, based on their confession. The witnesses have deposed that the iron pipe was brought by the accused from their house to attack the witness. However, PW2 in her cross examination, stated that MO2 marked by the prosecution, actually belonged to her. The relevant portion of her cross examination reads as follows :-

“பின் எதிரிகள் தரப்பு வழக்குரைஞர் சாட்சியிடம்
ஊதாங்குழலை காட்டி அது எங்கேயிருந்து
கொண்டுவரப்பட்டது என்று கேட்டதற்கு சாட்சி அந்த
ஊதாங்குழல் தன்னுடையது என்று கூறியதாக மேற்படி
விவரத்தை இந்நீதிமன்றம் பதிவு செய்து கொள்ள
கேட்டுக்கொண்டார்.”

This portion of the evidence disproves the case of the prosecution that the accused had brought MO2 from their house to attack the witnesses or



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also suggests that the occurrence could not have been placed in the manner alleged by the prosecution.

18. Further, though PW9 opined that one of the injuries sustained by PW2 was grievous namely, a fracture in the left ankle, there is no reference to such a fracture in the Accident Register, Ex.P4 pertaining to PW2.

19. It is also the case of the prosecution that all the witnesses namely PW1 to PW3, sustained blood stained injuries. PW1 stated that she did not hand over the blood stained clothes to the Police as she had discarded them at the hospital. PW3, however, stated that she handed over the blood stained clothes of all the witnesses to the police, who refused to receive them. PW13, the Investigating Officer admitted that he had not seized the blood stained clothes. There is no reason why the Investigating Officer chose not to seize the blood stained clothes, which could have corroborated the evidence of the witnesses. The prosecution also admits that there were no blood stains on the weapons marked before the Court.



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WEB COPY 20. Though the complaint filed by the first accused against the witnesses was marked before the trial Court, the Government Advocate (Criminal Side) fairly submitted that an FIR was, in fact, registered in Crime No.41 of 2011 and the case was closed as a mistake of fact. Thus, it is clear that the respondent had also not followed the Police Standing Order 566 and the judgments of this Court, which mandate that when there is a case in counter, even if the police choose to close it, the closure report has to be forwarded to the jurisdictional magistrate and must form part of the records. The prosecution has admittedly not complied with the said direction.

21. In Ex.C1 and Ex.C2, it is seen that both A1 and A2 have informed the Doctor that the occurrence at their residence at 8 pm on the same day. The above facts would indicate that there were a scuffle between two groups namely, the appellants and the witnesses and it was not an one sided attack by the appellants on the witnesses as claimed by the prosecution. The witnesses have suppressed the genesis and origin of the occurrence.



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22. The Hon'ble Supreme Court in ***Marudanal Augusti vs State of***

Kerala reported in ***(1980) 4 SCC 425***, held that if the genesis and origin of the occurrence are suppressed, the witnesses cannot be believed and a conviction cannot be based on the deposition of such witnesses. The relevant portion reads as follows:-

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the F.I.R. is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.”

23. Therefore, this Court is of the view that, in the facts of the case, the non explanation of injuries sustained by A1 and A2, the delay in lodging the First Information Report, the non exhibiting of the Report in the counter case and the inherent contradictions in the evidence of all the witnesses, as pointed above, make it highly unsafe to rely on the evidence of the witnesses to convict the appellants.

24. In the light of the above facts, the judgment of the trial Court convicting the appellants is liable to be set aside.



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WEB COPY 25. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellants/accused in S.C.No.18 of 2012 dated 24.03.2017 on the file of the Mahila Court, Perambalur, are set aside. The appellants/accused are acquitted of the charges. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

18.07.2025

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

1. The Sessions Judge,
Mahila Court,
Perambalur.
2. The Inspector of Police,
Padalur Police Station,
Perambalur District.
3. The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN, J.

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