

Crl.A.(MD)No.439 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.06.2025

CORAM :

THE HONOURABLE **DR. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.439 of 2017

Kumar

... Appellant/A2

versus

State rep., by
The Inspector of Police,
Mayiladumparai Police Station,
Theni District.
Crime No.26 of 2002

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records of the learned Principal District Sessions Judge, Theni in S.C.No.14 of 2006 and set aside the judgment and conviction dated 05.10.2017 and acquit the appellant.

For Appellant : Mr.Porkodi Karnan

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl.side)

JUDGMENT

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This criminal appeal has been preferred as against the judgment of conviction and sentence, dated 05.10.2017 made in S.C.No.14 of 2006 by



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the learned Principal District Sessions Judge, Theni, thereby convicting and sentencing the appellant to undergo 1 year of simple imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three weeks of simple imprisonment for the offence under Section 148 of IPC; to undergo 1 year of simple imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 1 month of simple imprisonment for the offence under Section 324 of IPC. The sentences were ordered to run concurrently.

2. The case of the prosecution, which had arisen on the basis of the complaint, Ex.P13, First Information Report, given by the defacto complainant, P.W.1, registered in Crime No.26 of 2002 at the Mayiladumparai Police Station, for the offences under Sections 147, 148, 341, 323, 324 and 307 of IPC, are as follows:

(a) On 27.04.2002 at about 06.30 am., the accused persons unlawfully assembled, quarreled with P.W.1 for the reason that P.W.1 did not give the amount as decided in the panchayat with regard to his affair with the sixth accused and attacked P.W.1 using Aruval with an intention of killing him. They also attacked one Muthu, who attempted to rescue P.W.1 from attacking with aruval and thereby P.W.1 and the said Muthu sustained blood injury.



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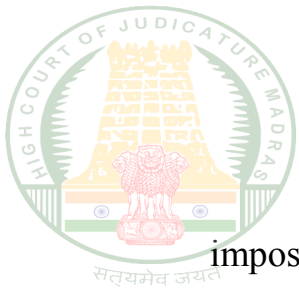
(b) After completion of investigation, charge sheet has been filed.

against the accused for the offences under Sections 147, 148, 323, 324 and 307 of IPC before the District Munsif and Judicial Magistrate, Andipatti.

(c) Since the offence is triable by the Sessions Court, the case was committed to the Sessions Court. The trial Judge had taken cognizance in S.C.No.14 of 2006 and after completing the legal mandate of furnishing copies and all other legal formalities, the trial Judge framed charges against the appellant for the offences under Sections 148 and 324 of IPC. When the accused was questioned, he denied the same and claimed to be tried.

(d) During trial, on the side of the prosecution, P.W.1 to P.W.14 were examined and Exs.P1 to P17 were marked. Besides, M.O.1 to M.O.6 were marked and Exs.C.1 to C.11 were marked. On the side of the defence, no oral and documentary evidence was let in.

(e) There are totally 8 accused. During the pendency of the trial, A1, A3 and A8 died. After completion of trial, based on the oral and documentary evidence, the trial Judge convicted A4 and A5 for the offences under Sections 147 and 323 of IPC and imposed with the punishment of fine alone; A6 and A7 were convicted for the offence under Section 323 and



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imposed with punishment of fine alone; and the appellant/A2 has been convicted and sentenced as stated supra.

3. Aggrieved over the same, this appeal has been preferred by A2 as appellant.

4. Heard both sides.

5. The learned counsel for the appellant submitted that the evidence of P.W.1 and P.W.2 with regard to the incriminating act of the appellant do not tally with the medical evidence and the witness stood for recovery of weapon also did not state anything about the recovery of weapon from the second accused. It is further submitted that if the appellant has caused cut injury on the right hand of P.W.2, that would have left a cut injury, but the Doctor observed that it is a lacerated injury.

6. It is further submitted that the Doctor had stated in his evidence that the said injury can occur, when a person falls down to the ground. Further argument of the learned counsel for the appellant is that the first accused was also injured in the occurrence and he had given a complaint and that has been registered in Crime No.25 of 2002, but the same was not taken up for investigation and the Investigating Officer has acted in a biased manner. He filed a charge sheet against this appellant and other accused alone.

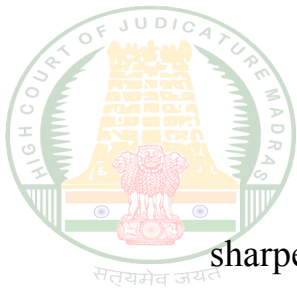


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7. The learned Government Advocate (Crl.side) submitted that the trial Court has rightly relied on the evidence of injured cum eyewitness to the occurrence and their evidence is cogent, consistent and reliable. He further submitted that the Investigating Officer has stated in his evidence about the recovery of aruval from the second accused/appellant. The Investigating Officer has stated before the Court that the other case registered on the complaint given by A1 has been closed as it does not make any offence against the accused.

8. On perusal of the records, it is seen that in the complaint as well as the evidence of P.W.1 and P.W.2, there is specific statement about the overtact as against the appellant. The injured witnesses, who was examined as P.W.1 and his brother, who was examined as P.W.2, have stated in their evidence that the appellant/second accused had attacked P.W.2 with aruval on his right hand. In-fact, the right hand of P.W.2 has been deformed in view of strong injury suffered by him. It is right that the Doctor had observed the injury over the right hand of P.W.2 as lacerated injury measuring 2 X 6 ½ cm. So, it is argued by the learned counsel for the appellant that there is no possibility to inflict the lacerated injury by aruval and hence, there is a doubt. Even when someone inflicts injury with



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sharpedge weapon, it can cause lacerated injury depending upon the force on which, the attack is made. The Doctor has stated in his evidence that it is possible that the injury can occur in the body of P.W.2 in the manner stated by the prosecution. As in the case of P.W.1, the injury inflicted on his right hand was a grievous injury, which had even deformed his hand as noticed by the Doctor, the force on which, he was attacked was very high and hence, the presence of lacerated injury cannot be ignored as something not related to the occurrence as stated by the prosecution.

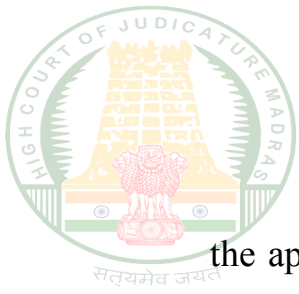
9. Time and again, it is held that the evidence of the injured witness is very much reliable, because the injured is not only giving evidence with regard to his injuries, but also as a witness who have witnessed the occurrence. When someone had deeply injured P.W.2, there is absolutely no necessary for him to falsely implicate anyone other than the person, who had actually injured him. Apart from the evidence of P.W.1, P.W.2 and P.W.3, who are brother and mother of P.W.1, have also corroborated his evidence and they are also eyewitnesses to the occurrence. Just because P.W.1, P.W.2 and P.W.3 are relatives, the evidence in respect of injury caused to P.W.1 cannot be rejected when their evidence are consistent, cogent and credible. Though P.W.10 has stated in his evidence, he had seen only one revolver has been recovered, he has not mentioned anything about



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the weapon recovered from A2/appellant. The Investigating Officer has stated clearly in his evidence about the recovery made by him from the appellant/A2. So far as the counter case is concerned, P.W.12, the Investigating Officer has stated that the other case registered on the complaint given by the accused was also investigated and was closed that the same did not make out any charge against anyone. In fact, such an answer has been given by P.W.12 to the Court when a question was posed in this regard.

10. P.W.12 had taken out the counter case also for investigation and when he found that there is no incriminating materials against the accused, it is only proper for him to file a final report to drop the proceedings. The presence of the accused in the place of the occurrence has been proved beyond reasonable doubt through the evidence of prosecution witnesses P.W.1 to P.W.3. His overtact has been narrated by the injured and eyewitnesses P.W.1 and P.W.2. The Doctor's evidence also would show that there was an injury found to be seen on his right hand and that also correlates with the evidence of eyewitness and injured witness. The nature of the injury has spoken by the Doctor is lacerated injury, but it depends upon the force in which the cut injury was inflicted and hence, absence of cut injury alone cannot improbabilise the evidence of injured witnesses that



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the appellant had attacked P.W.2 with aruval. As the Investigating Officer has given clarification as to why the other case has not resulted in filing a positive final report, it is right for the trial Court not to dwell much on this aspect. So far as the recovery is concerned, the evidence of Investigating Officer is very much clear and there is no reason to doubt his evidence.

11. Since the injury caused by the appellant on the hands of P.W.2 was very serious and grievous, the learned trial Judge thought it fit to convict him for the offences under Sections 324 and 148 of IPC. As there are materials on records to show that the accused also form part of the unlawful assembly along with other accused with an intention to commit the offence, the trial Court has rightly found the appellant guilty for the offences under Sections 148 and 324 of IPC.

12. Even though, I do not find any merits in the grounds raised by the learned counsel for the appellant, considering the fact that the appellant is the first offender and he was 25 years old at the time of occurrence, the trial Court could have shown lenience in the matter of punishment. Considering the above limited aspect alone, I feel the punishment can be modified.



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13. In result,

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(i) this Criminal Appeal is partly allowed.

(ii) Though the finding of guilt and conviction for the offences under Sections 148 and 324 IPC is confirmed, the sentence of imprisonment is reduced to six months(S.I) for each offence. The sentences shall run concurrently. As the fine amount is concerned, the same is enhanced to **Rs.27,000/-** (Rupees Twenty Seven Thousand Only), out of which, Rs.25,000/- shall be paid to P.W.2 within a period of one week from the date of receipt of a copy of this judgment. Failure on the part of the appellant to pay the enhanced fine amount, the appellant shall lose the benefit of the modification of punishment as aforesaid. If fine amount as imposed by the Sessions Court has already been paid, the same shall be adjusted with the fine amount now imposed. P.W.2/the injured witness is permitted to withdraw the compensation amount by following the due process of law.

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Index : Yes/No

NCC : Yes/No.

Rmk



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To

- 1.The Principal District Sessions Judge, Theni.
- 2.The Inspector of Police,
Mayiladumparai Police STation,
Theni District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.VR Section.
Madurai Bench of Madras High Court,
Madurai.



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DR.R.N.MANJULA, J.,

Rmk

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