



Crl.A(MD)No.461 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.06.2025

CORAM :

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

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1.Prabhu @ Prabhakaran

2.Kannan

... Appellants/Accused 1 &2

Vs.

1.The Deputy Superintendent of Police,
Thilagar Thidal Police Station,
Madurai City.

2. The Inspector of Police,
Karimedu Police Station,
Madurai City

(In Crime No.1849 of 2009)

... Respondents/Complainants

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records in Spl.S.C.No.29 of 2014 on the file of the III Additional District and Sessions Court (PCR), Madurai and set aside the order of judgment dated 25.10.2017.

For Appellants : Mr.T.Sugadev

For Respondents : Mr.K.Gnanasekaran

Government Advocate (Crl.side)



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JUDGMENT

This Criminal Appeal has been filed by the accused 1 and 2 challenging the judgment dated 25.10.2017 passed by the learned III Additional District and Sessions Judge (PCR), Madurai, in Spl.S.C.No. 29 of 2014.

2. The brief facts of the case are as follows:

(i) On 18.11.2009 at about 10.50 a.m, when P.W.1/defact complainant was at his Mappalayam Unorganized Labourers and Farmers Welfare Association Office, the accused 1 and 2, who were the staff of Sri Ram Chit Funds, Madurai Branch, came there in connection with the loan availed by Jeyakumar(P.W.6). As they were quarrelling with P.W.6, P.W.1 asked them not to quarrel at the office. Thereafter, the accused 1 and 2 went away and came along with the accused 3 to 6 with an intention to attack P.W.1 and attacked P.W.1 with the writing pad and with hands and caused simple injuries. They also abused by calling his caste name as he belongs to Scheduled Caste community.



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(ii) After completion of investigation, charge sheet has been filed against the accused 1 to 4 and 6 for the offences under Sections 147, 448, 323, 427 IPC and Section 3(1)(x) of SC/ST Act. Since the fifth respondent belongs to Scheduled Caste Community, charges have been framed against the fifth accused for the offences under Sections 147, 323, 448 and 427 IPC.

(iii) After the trial was concluded, the accused 3 to 6 were acquitted from all the charges. The trial Judge found the accused 1 and 2 not guilty for the offence under Section 3(1)(x) of SC/ST Act and found the accused 1 and 2 guilty for the offences under Sections 147, 448, 323 and 427 IPC and convicted them as follows:

Offence u/s	Punishment
147 IPC	3 months(R.I), fine of Rs.250/- i/d 15 days (S.I)
448 IPC	1 month (R.I), fine of Rs.250/- i/d one week (S.I)
323 IPC	3 months (R.I), fine of Rs.500/- i/d 15 days (S.I)
427 IPC	Fine of Rs.100/- i/d one week (S.I)



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It was ordered that the sentence shall run concurrently. The period of imprisonment already undergone by the accused is ordered to be set off under Section 428 Cr.P.C. Aggrieved over that, the accused 1 and 2 preferred this appeal.

3. The learned counsel for the appellants/A1 and A2 submitted that the trial court has omitted to appreciate the absence of corroboration of evidence between P.W.1 and P.W.2 to P.W.6; P.W.3 is the first informant of the alleged offence but that information was suppressed; the evidence of the Doctor did not corroborate with the evidence of the eye witnesses; the accused are totally strangers but still P.W.1 has mentioned their names, which is impractical; the evidence of P.W.2, P.W.4 and P.W.6 is not worthy of reliance; the prosecution has not established the case beyond reasonable doubt against the appellants and they ought to have been given the benefit of doubt.



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4. The learned Government Advocate submitted that the learned trial Judge has properly appreciated the evidence of the injured witnesses and eye witnesses to the occurrence and had found the accused 1 and 2 guilty and the evidence of P.W.7 Doctor corroborates with the evidence of P.W.1. As the accused formed an unlawful assembly with an intention to commit the criminal offence, it is right for the trial court to conclude that the accused 1 and 2 are guilty. In fact, P.W.1 to P.W.3 have identified the accused 1 and 2 in their evidence and hence, the judgment of the trial court does not warrant any interference.

5. I gave my anxious consideration to the submissions made on either side and perused the materials available on record.

6. In the complaint, which is marked as Ex.P.1, P.W.1 has stated that defacto complainant was working as an employee of Mappalayam Unorganized Labourers and Farmers Welfare Association Office. P.W.6, who had availed loan from Sri Ram Chit Funds, was alleged to have defaulted in repaying the same. The accused 1 and 2, being the staff of



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Sri Ram Chit Funds, had come to the Association office when P.W.6 was there and insisted him to repay the loan. Before quarrel started between them, P.W.1, being an employee of the Association, asked them not to create calamity in the Association office. The accused 1 and 2 went back and brought the accused 3 to 6 and thereafter attacked P.W.1 and abused him.

7. In the evidence, P.W.1 had stated that the accused 1 and 2 had picked up quarrel with P.W.6 even at the time of the first entry in the Association office and had again came back at 11.45 a.m with four other persons and then abused him with caste calling in filthy language and assaulted him with letter pad. This important contradiction in the evidence of P.W.1 and the complaint given by P.W.1 ought to have been weighed by the trial court as there is difference in narrating the occurrence.

8. P.W.1 had stated in the evidence that when the accused 1 and 2 came along with other accused for the second time, he was writing and



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his evidence as against the accused with regard to assault is that all the accused along with the first accused had attacked him on his head, back and left hand. The trial court, having found the accused 3 to 6 not guilty by giving them the benefit of doubt, acquitted them. Hence, the finding of guilt revolves around the accused 1 and 2. Even though P.W.1 identified the first accused during his evidence, he was not able to identify the other accused specifically.

9. The trial court has proceeded to record the guilt against the accused 1 and 2 for the offence under Section 147 IPC also by relying on the various judgments of this Court and the Supreme Court especially in **Dharam Pal and Others vs. State of Uttar Pradesh** reported in **1975 (2) SCC 596**. In the said case, it is held that even though benefit of doubt is given to one among the five of unlawful assembly, it will not result in giving advantage to other accused from the finding of guilt for the offence of unlawful assembly. It is further held that mere fact that several accused were acquitted does not enable the rest of the accused to contend that Section 149 IPC is inapplicable.



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10. So, it is held that the offence committed by any member of an unlawful assembly in pursuance of common object of the assembly or such as the members of that assembly knew to be likely committed in pursuance of common object. However, a person, who at the time of committing that offence, is a member of the unlawful assembly and hence, he is guilty of that offence.

11. In the instant case, for the reasons best known to the trial Judge, he had given clean chit to the accused 3 to 6 from all the charges including the offence under Section 147 IPC. The trial court found that the accused 3 to 6 did not do any overt act but were present at the time of occurrence along with the accused 1 and 2. It appears that the trial court had exempted the accused 3 to 6 from all the charges because it believed that the accused 3 to 6 did not have any common object or intention and had executed certain actions in pursuance to the common object of the assembly.



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12. One of the reasons acquitting the accused 3 to 6 by the trial court is that the witnesses did not identify the accused 3 to 6. This will affect the very root of their presence in the alleged assembly. Only if the accused were found to be present, but they have acquitted in view of the absence of any common object or intention, then, the very ingredients of unlawful assembly as defined in Section 147 IPC are not applicable. The trial court was convinced that when the witnesses did not identify the accused 3 to 6, the very presence of the unlawful assembly itself is doubtful.

13. In such circumstances, either the participants were less than five in number or the sixth accused would have been falsely implicated in the case. So, it is wrong for the trial court to find out the guilt under Section 147 IPC also without rendering any clarity as to the presence of other accused namely, the accused 3 to 6.



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14. In view of the above discussion, I feel that the finding of guilt as against the accused 1 and 2 for the offence under Section 147 IPC is set aside.

15. The evidence of P.W.1, which is a material evidence about the occurrence, would simply state that the first accused had come with another person for the first time on 18.11.2011 to his Association Office. Even as per his evidence, there was a person with the first accused and quarrel arose between them. Both the first accused and other person were present. P.W.1 did not identify the second accused is a person, who accompanied with the first accused on both occasions. He had clearly identified the first accused and had simply stated that the other person accompanied him. P.W.2, who is an eye witness, had stated that the names of some accused including the first accused but her evidence does not make any reference to the second accused. P.W.3 had told the names of the first and second accused. Even if the second accused was present, the evidence of witnesses does not speak anything incriminating as against the second accused. P.W.3 had stated that he had gone to Police



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Station immediately to the occurrence and had given a complaint but this was not confronted by P.W.12, who has registered First Information Report on the complaint given by P.W.1. Even investigating officer, who was examined as P.W.13 also was not confronted about the alleged complaint given by P.W.3 even before P.W.1 went to the Police Station to lodge a complaint. In fact, P.W.3 was examined by the investigating officer. P.W.3 stated that he had given a complaint and that forms part of the evidence of P.W.13, the investigating officer as well. So the allegation that the prosecution had suppressed the earliest information has not been substantiated.

16. P.W.4 was not able to identify the accused except the fifth accused. Even his evidence is in generalized manner and not specific to the accused. P.W.5 is the hearsay witness, who accompanied P.W.1 to the police Station.

17. The evidence of P.W.6 does not tally with the evidence of P.W.1 in material object. Though he stated about the accused came in



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group he stated that he could not enter into the room, where the occurrence had taken place, because it was too small. Even he could not identify any other accused except the third accused. He had not stated anything incriminating against the third accused. He had seen the third accused. These infirmities in the evidence of the witnesses as regards the second accused ought to have been properly appreciated by the trial court before proceeding to find the second accused also guilty.

18. The evidence of eye witness and injured witnesses seem to be made direct reference to the first accused. Their evidence are not sufficient enough to prove the guilt of the second accused. As the trial court has not appreciated the evidence in a right perspective, I feel the judgment of the trial court requires interference and modification.

19(i). In the result, this appeal is partly allowed and the finding of guilt and conviction made against the second accused is set aside and the second accused is found not guilty for all the charges levelled against him and he is acquitted. Bail bond of the 2nd accused shall stand cancelled.



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18.06.2025

Index : Yes/No
Internet : Yes/No
CM

To,
1. III Additional District and Sessions Court (PCR), Madurai

2. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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DR.R.N.MANJULA, J

CM

Judgment made in
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