



Crl.A.(MD)Nos.48 & 49 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 07.08.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)Nos.48 & 49 of 2017

1.N.Venkataraman

2.Murugesan

... Appellants in Crl.A.(MD)No.48 of 2017

1.V.Thirumalai Rajan

2.V.Chandrasekaran

... Appellants in Crl.A.(MD)No.49 of 2017

vs.

The State rep. by

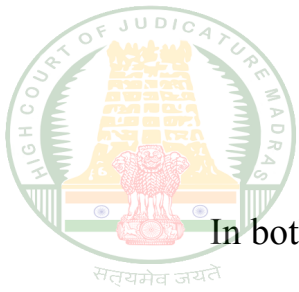
1.The Deputy Superintendent of Police,
Mannargudi Sub Division,
Thiruvarur District.

2.The Inspector of Police,
Paravarkottai Police Station,
Thiruvarur District.

(Crime No.141 of 2006)

...Respondents in both appeals

COMMON PRAYER : These Criminal Appeals have been filed under Section 374(2) of Criminal Procedure Code against the Judgement of the learned I Additional District and Sessions Judge (PCR), Thanjavur dated 06.02.2017 in S.S.C.Nos.44 of 2009 and 61 of 2013 respectively.



In both appeals,

For Appellants : Mr.R.Gandhi, Senior Counsel
for Mr.Ramsundarvijayraj for Veera Associates

For Respondent : Mr.A.Albert James
Government Advocate (Crl. Side)

COMMON JUDGEMENT

These appeals have been filed challenging the Judgement of the learned I Additional District and Sessions Judge (PCR), Thanjavur dated 06.02.2017 in S.S.C.Nos.44 of 2009 and 61 of 2013 respectively.

2. A1 and A4 have filed the appeal in Crl.A.(MD)No.48 of 2017 and A2 and A3 have filed the appeal in Crl.A.(MD)No.49 of 2017. For the sake of clarity, the appellants in Crl.A.(MD)No.48 of 2017 are referred to as the first appellant / A1 and the second appellant / A4 and the appellants in Crl.A.(MD)No.49 of 2017 are referred to as the third appellant / A2 and the fourth appellant / A3.

3. The appellants have been found guilty, convicted and sentenced by the learned trial Judge as under.



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Accused	Offences under Sections	Punishment	Fine	In default Sentence
A1	147 IPC	1 year RI	Rs.1,000/-	3 months SI
	341 IPC	-	Rs.500/-	3 weeks SI
	307 IPC r/w 109 IPC	7 years RI	Rs.2,500/-	6 months SI
A2	148 IPC	2 years RI	Rs.1,500/-	6 months SI
	307 IPC	7 years RI	Rs.2,500/-	6 months SI
A3	148 IPC	2 years RI	Rs.1,500/-	6 months SI
	307 IPC	7 years RI	Rs.2,500/-	6 months SI
A4	148 IPC	2 years RI	Rs.1,500/-	6 months SI
	307 IPC	7 years RI	Rs.2,500/-	6 months SI

4. As per the case of the prosecution, the defacto complainant belongs to Scheduled Caste community and the accused belong to some other community and they are residing at Mahadevapattinam. On 23.08.2006, at about 10.15 p.m., when the defacto complainant was proceeding in his vehicle on Thalikottai - Vadakku Sethasekaram main road, opposite to grave yard of Vadakku Sethasekaram Village, A2 armed with crow bar, A3 armed with casuarina log, A4 and Ayyappan (A5) each armed with wooden logs along with A1 formed an unlawful assembly with a common intention to cause death of the defacto complainant and committed rioting. During that course, the accused abused the defacto



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complainant in a filthy language. A2 had voluntarily attacked the defacto complainant with crow bar on his right forehead; A3 had voluntarily attacked him with casuarina log on his head; A4 had voluntarily attacked him with wooden log on his left elbow; Ayyappan (A5) had voluntarily attacked him with wooden log on his right shoulder and thus caused simple and grievous injuries and attempted to cause the death of the defacto complainant.

5. On the complaint given by the defacto complainant (PW1), a case has been registered in Crime No.141 of 2006 on the file of the Paravakkottai Police Station, Thiruvavarur District. After conclusion of the investigation, charge sheet has been filed against the accused and after completing the legal mandates of furnishing copies and all other legal formalities, charges have been framed against A1 for the offences under Sections 148, 341, 307 r/w 109 IPC and Sections 3(i)(x) and 3(2)(v) of SC/ST (POA) Act; against A2 for the offences under Sections 147, 148, 341, 294(b), 326, 307 IPC and Sections 3(i)(x) and 3(2)(v) of SC/ST (POA) Act; against A3 for the offences under Sections 147, 148, 341, 294(b), 324, 307 IPC and Sections 3(i)(x) and 3(2)(v) of SC/ST (POA) Act; against A4 for the offences under Sections 148, 341, 307 IPC and Sections 3(1)(x) and 3(2)(v) of the SC/ST (POA) Act; and against A5 for



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the offences under Sections 148, 341, 307 IPC and Sections 3(1)(x) and 3(2)(v) of the SC/ST (POA) Act.

6. Due to the non-execution of NBW against one of the accused, namely, Ayyappan - A5, the case against him was split up in S.S.C.No.47 of 2016 and the trial Court proceeded against A1 to A4 in S.S.C.Nos.44 of 2009 and 61 of 2013. When A1 to A4 were questioned, they denied their involvement and claimed to be tried.

7. Before the Trial Court, on the side of the prosecution PW1 to PW17 have been examined and Exs.P1 to P23 have been marked. Material Objects M.O.1 to M.O.4 have been marked. On the side of the accused, no oral or documentary evidence has been marked.

8. After the conclusion of trial, the learned trial Judge found A1 not guilty for the offences under Sections 3(i)(x) and 3(2)(v) of SC/ST (POA) Act; A2 not guilty for the offences under Sections 147, 341, 294(b), 324, 326 IPC and Sections 3(i)(x) and 3(2)(v) of SC/ST (POA) Act; A3 not guilty for the offences under Sections 147, 341, 294(b), 324, 326 IPC and Sections 3(i)(x) and 3(2)(v) of SC/ST (POA) Act; and A4 not guilty for the offences under Sections 147, 341, 294(b), 324, 326 IPC



and Sections 3(i)(x) and 3(2)(v) of the SC/ST (POA) Act and found A1 to A4 guilty, convicted and sentenced them as mentioned *supra*. Aggrieved over that, the appellants / A1 to A4 have preferred this appeal.

9. Mr.R.Gandhi, learned senior counsel appearing for Mr.Ramsundarvijayaraj, learned counsel for the appellants submitted that there is a delay in registering the FIR and that creates a doubt with regard to the occurrence; there is a delay in sending the FIR to the Court also; PW1 - defacto complainant has stated in his evidence that he has given a complaint in the place of occurrence itself, however, in Ex.P18 FIR, it is recorded that PW1 has given the complaint at the Hospital when he was taking treatment and this creates a doubt whether the earlier complaint has been suppressed; bicycle involved in the occurrence was not recovered; in the Accident Register, the place of occurrence has not been mentioned; PW12 Doctor has stated in his evidence that this type of injuries can be inflicted due to motor accident also; the prosecution has not proved the nature of injury; and hence the prosecution has not proved the guilt against the accused beyond reasonable doubt.

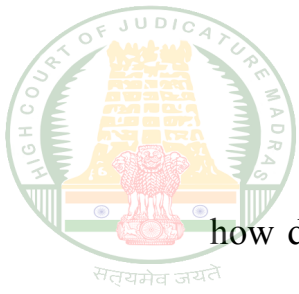


10. Mr.A.Albert James, learned Government Advocate (Crl. Side)

appearing for the respondents submitted that the evidence of the injured witness is the base evidence and he has stated about the manner in which the occurrence had happened; the Court has no reason to reject the evidence of the injured witness; mandatory procedures have been followed and the evidence of all the witnesses point towards the accused; medical evidence has corroborated the evidence of the injured in all material aspects; hence, the trial Court has rightly recorded the finding as to the guilt of the appellants / A1 to A4.

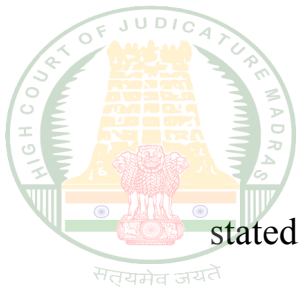
11. It is reported on either side that pending these appeals, the first appellant / A1 died. Death Certificate is also produced before the Court. In view of the same, the Crl.A.(MD)No.48 of 2017 is **dismissed as abated as against the first appellant / A1.**

12. The case has been registered on the complaint given by the injured witness / defacto complainant (PW1). In the complaint Ex.P1, the defacto complainant has stated that one week prior to the occurrence, A2 and A4 threatened him that he should withdraw the PCR case otherwise they would kill him. PW1 has taken auction in respect of a pond. While so, A1 had abused him by making caste remarks and asked



how dare he to take auction by standing against non-SC/ST people. On 23.08.2006, at about 10.15 p.m., when PW1 was returning after working in the pond and disbursing salary, A1 to A5 unlawfully restrained him and A1 instigated the other accused to attack him. A2 hit him on his head with iron road, A3 attacked him with casuarina log at the centre of his head, A4 attacked his left elbow and A5 had also attacked him on his right thigh.

13. PW1 in his evidence has stated that on the day of occurrence, when he was proceeding towards Nanasahib Garden through Vadakku Seethaselam in a bicycle, A1 to A5 unlawfully restrained him. A2 was having an iron rod in his hand. Other three accused were having wooden logs. A1 abused him saying that he was working against him and instigated other accused to attack and kill him. A2 attacked him with iron rod on his right side head due to which his head had broken. A2 also attacked his wrist and caused a fracture. The other accused A3 to A5 attacked him with wooden logs and caused a fracture below his knees. They also attacked him on the left hand shoulder and all over his body. PW1 has not stated that A3 had attacked him with casuarina log on his head. So, there is a contradiction between the complaint and the evidence of PW1 in respect of the alleged attack made by A3. PW1 has



stated that except A2, all other accused have attacked him below his knee and all over his body. The weapons used for the occurrence have been recovered and marked as M.O.1 to M.O.4.

14. Sofaras the occurrence is concerned, the evidence of other witnesses who have stated about the events subsequent to the occurrence is very relevant. PW2 has stated in his evidence that on hearing the information that PW1 was injured in the occurrence, he immediately called one Kumar to arrange a car and he proceeded to the place of occurrence. While going there, he also took some other persons for help. After some time, a car has arrived. Before the car arrived, PW1 was taken in an auto and later shifted to car. The evidence of PW1 is similar on these aspects.

15. PW3 has also arrived to the spot on hearing the occurrence. PW2 has stated that he had seen PW1 sitting with blood while PW3 has stated that PW1 was lying on the floor and he tested whether he was alive or not. It might be true that PW1 could be sitting or lying in accordance with the pain impact due to the injuries and hence that cannot be considered as a major contradiction.



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16. PW4 is the person whom PW2 contacted in order to arrange the car and PW4 in turn has contacted another person by name Poyyamozhi in order to send a car. The evidence of the witnesses in this aspect is quiet natural, spontaneous and consequential to the occurrence.

17. PW5 is the wife of the defacto complainant and she also reached the place of occurrence along with her children after knowing that her husband was attacked. PW5 has also accompanied her husband while he was taken to the Hospital.

18. PW12 is the Doctor who had registered the Accident Register and he has stated in his evidence that PW1 was brought to the Hospital for treatment by one Raja. When he enquired PW1, he has stated that five known persons had attacked him with iron rod and wooden logs on 23.08.2006 at about 10.15 p.m. at Vadaku Seethasekaram. The statement of PW1 about the occurrence and the involvement of the accused has been consistent and hence the trial Court is right in holding that the occurrence was true. Sofaras the injuries caused by the accused on the body of PW1 is concerned, the trial Court has proceeded to rely on the evidence of PW12 Doctor who has noted down the following injuries on the body of PW1.



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- i. lacerated injury of 7 x 4 x 4 cm on right head.
- ii. lacerated injury of 3 x 4 x 4 cm on left elbow
- iii. contusion on the right shoulder

19. As PW12 Doctor sensed a fracture on the left hand of PW1, he has issued the Wound Certificate stating that the injury suffered by PW1 is grievous in nature. PW15 Doctor who is the Radiologist had examined the X-rays taken for PW1. She has stated in her evidence that the fracture was seen on the left elbow. As per the PW1's evidence, A2 has attacked him on the left wrist, but the Doctor has not noticed any injury on the left wrist. However, it can be possible that the fracture on the elbow could have been the impact of the attack made on his forehead.

20. Though the charges have been framed as though A4 has attacked PW1 on his forehead, in the evidence of PW1 he has not stated that A4 had attacked his forehead. He has stated that A3 to A5 had attacked him all over the body. As per the evidence of PW1, it was A2 who has attacked his wrist and on the wrist bone there was no fracture.

21. The learned trial Judge proceeded to find the accused guilty for the offence under Section 307 IPC. However, in order to prove the



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offence under Section 307 IPC, certain ingredients should have been present. In this regard, it is appropriate to refer the Judgement of the Apex Court in the case of **State of Maharashtra vs. Kashirao and others reported in (2003) 10 SCC 434**, wherein it is held as under.

"20. So far as the assaults on PW1 are concerned, the nature of the assaults and the injuries found clearly bring in application of Section 307 IPC. The trial Court was therefore justified in convicting accused-Respondent 1 under Section 307 IPC. The essential ingredients required to be proved in the case of an offence under Section 307 are:

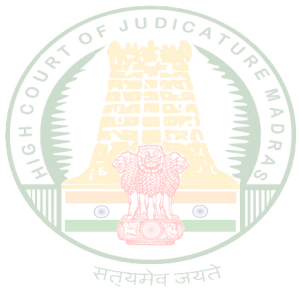
- (i) that the death of a human being was attempted;*
- (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and*
- (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury."*

22. As per the above Judgement, in order to make out the offence under Section 307 IPC, even in the absence of any injury capable of causing death, the injuries sustained, the manner of assaults and weapons used should be capable of making a case under Section 307 IPC. In other



words, the accused should have committed the offence with an intention or knowledge that their act would cause the death of a person, but due to some intervening circumstances, the result could not be achieved and the injured survived.

23. But, in the instant case, the accused left the place after attacking PW1 and they did not wait to confirm whether PW1 died. In fact, PW1 has stated in his evidence that after he fell down with injuries, he cried at a person who was going in a bullet to save him. So, the intention of the accused appears only to threaten PW1 by attacking him that he should not dare to interfere or act against their interest. In the absence of such an intention to cause the death of PW1, the act of attacking PW1 cannot be considered as 'attempt to murder' punishable under Section 307 IPC. PW1 has not stated that the accused had a common intention of killing him at the time of the occurrence. So, the trial Court wrongly arrived at a conclusion that the accused had the intention to cause the death of PW1 and that has ended in failure. As there is no intention to cause the death of PW1, the act of the accused attacking PW1 can be considered as an offence of causing injuries either simple or grievous in nature.



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24. As the accused are totally five in numbers, who have unlawfully assembled with a common object, armed with deadly weapons and threatened PW1 not to participate in the acts like taking auction of pond etc., I feel that they are guilty for the offence under Section 148 IPC. So, the finding of the guilt rendered by the trial Court for the offence under Section 148 IPC has to be upheld.

25. The learned senior counsel for the appellants submitted that it was a 'no moon day' and PW1 has exaggerated in his evidence that he found the accused in the moon light. As the accused are known persons to PW1 by the dialects and act, it could not have been impossible for PW1 to not recognize them. In the instant case, as there is no eye witness to the occurrence, nothing wrong on the part of the trial Court to believe the version of PW1 who is the injured witness because his evidence is more significant as he would not dare to point out someone else instead of the person who had actually caused injury on him. Hence, there cannot be any doubt as regards the identity of the accused.

26. As A3 and A4 had caused simple injuries on the body of PW1 with wooden logs and A2 had caused grievous injury by using iron rod, I feel the Judgement of the trial Court requires modification and A2 to A4



have to be found guilty for the offence under Section 324 IPC instead of the Section 307 IPC.

27. At this juncture, the learned senior counsel for the appellants submitted that the appellants 2 to 4 are first offenders and some leniency should be shown in the matter of punishment. The occurrence is said to have taken place in the year 2006 and the matter is pending before the Court for several years. Taking into consideration of the same and the fact that the appellants 2 to 4 have no bad antecedents, I feel it is appropriate to reduce the punishment of imprisonment by enhancing the fine amount.

28. The Criminal Appeal in Crl.A.(MD)No.48 of 2017 is **partly allowed** in respect of the second appellant / A4 by modifying the Judgement of the trial Court in S.S.C.No.44 of 2009 as below.

(i) second appellant / A4 is found guilty for a lesser offence under Section 324 IPC instead of Section 307 IPC and he is convicted and sentenced to undergo 6 months RI and to pay a fine of Rs.25,000/-, in default to undergo 6 weeks SI for the offence under Section 324 IPC.

(ii) The finding of the guilt for the offence under Section 148 IPC is confirmed by reducing the substantive sentence imposed and



enhancing the fine amount. Thus, the second appellant / A4 is convicted and sentenced to undergo 3 months RI and to pay a fine of Rs.5,000/-, in default to undergo 2 weeks SI for the offence under Section 148 IPC.

(iii) the entire fine amount shall be paid within a period of one week from the date on which this Judgement is uploaded in the official website. Failure to pay the fine amount shall cause to lose the benefit of this modification order.

(iv) the entire fine amount shall be paid as compensation to the defacto complainant (PW1) on his application.

(v) the sentence imposed on the second appellant / A4 for the offences under Sections 148 and 324 IPC are ordered to run concurrently.

(vi) the period of imprisonment already undergone is ordered to be set off under Section 428 Cr.P.C.

(vii) the Trial Court shall take steps to secure the second appellant / A4 for undergoing the remaining period of sentence, if any.

29. The Criminal Appeal in Crl.A.(MD)No.49 of 2017 is **partly allowed** by modifying the Judgement of the trial Court in S.S.C.No.61 of 2013 as below.



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(i) third appellant / A2 and fourth appellant / A3 are found guilty for a lesser offence under Section 324 IPC instead of Section 307 IPC and they are convicted and sentenced to undergo 6 months RI each and to pay a fine of Rs.25,000/- each, in default to undergo 6 weeks SI each for the offence under Section 324 IPC.

(ii) The finding of the guilt for the offence under Section 148 IPC is confirmed by reducing the substantive sentence imposed and enhancing the fine amount. Thus, third appellant / A2 and fourth appellant / A3 are convicted and sentenced to undergo 3 months RI each and to pay a fine of Rs.5,000/- each, in default to undergo 2 weeks SI each for the offence under Section 148 IPC.

(iii) the entire fine amount shall be paid within a period of one week from the date on which this Judgement is uploaded in the official website. Failure to pay the fine amount shall cause to lose the benefit of this modification order.

(iv) the entire fine amount shall be paid as compensation to the defacto complainant (PW1) on his application.

(v) the sentence imposed on third appellant / A2 and fourth appellant / A3 for the offences under Sections 148 and 324 IPC are ordered to run concurrently.



(vi) the period of imprisonment already undergone is ordered to be set off under Section 428 Cr.P.C.

(vii) the Trial Court shall take steps to secure third appellant / A2 and fourth appellant / A3 for undergoing the remaining period of sentence, if any.

07.08.2025

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To

1.The I Additional District and Sessions Judge (PCR),
Thanjavur.

2.The Deputy Superintendent of Police,
Mannargudi Sub Division,
Thiruvarur District.

3.The Inspector of Police,
Paravarkottai Police Station,
Thiruvarur District.

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



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Crl.A.(MD)Nos.48 & 49 of 2017

Dr.R.N.MANJULA, J.

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Crl.A.(MD)Nos.48 & 49 of 2017

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