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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 25.07.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.519 of 2017

1.Sundarapandi
2.Karthick

... Appellants 2 & 3

vs.

State represented by

1.Deputy Superintendent of Police,
Samayanallur, Madurai District.

2.The Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai District.
Crime No.375 of 2014

...Respondents

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code against the Judgement of the learned III Additional District and Sessions Judge (PCR), Madurai dated 09.11.2017 in Special S.C.No.104 of 2016.

For Appellants : Mr.G.Karuppasamy Pandian

For Respondents : Mr.K.Gnanasekaran
Government Advocate (Crl. Side)



JUDGEMENT

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This appeal has been filed challenging the Judgement of the learned III Additional District and Sessions Judge (PCR), Madurai dated 09.11.2017 in Special S.C.No.104 of 2016.

2. The appellant are A2 and A3, who has been convicted and sentenced by the learned Judge as under.

Accused	Offences under Sections	Punishment	Fine	In default Sentence
A2	Section 307 r/w 34 IPC	7 years RI	Rs.5,000/-	3 months SI
	Section 324 r/w 34 IPC (2 counts)	1 year RI each	Rs.1,000/- each	1 month SI each
	Section 294(b) r/w 34 IPC	-	Rs.500/-	1 week SI
A3	Section 307 r/w 34 IPC	7 years RI	Rs.5,000/-	3 months SI
	Section 324 r/w 34 IPC (2 counts)	1 year RI each	Rs.1,000/- each	1 month SI each
	Section 294(b) r/w 34 IPC	-	Rs.500/-	1 week SI



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3. The case of the prosecution is that the defacto complainant, his father and his brother-in law belong to SC community. A1 to A3 belong to BC community and they have knowledge about the community of the complainant, his father and his brother-in-law. On 10.08.2014, at about 11.00 p.m., the defacto complainant and his brother-in-law were watching TV at the back side shed of their house and the parents of the defacto complainant were sleeping inside the house. At that time, A1 to A3 who had previous enmity came there with a common intention to murder the father of the defacto complainant with deadly weapons and shouted. When the father of the defacto complainant came out of the house, A1 attacked the father of the defacto complainant with sword on his head, A2 attacked with sickle and A3 with knife on the neck, shoulder and back of the father of the defacto complainant. When the defacto complainant came to prevent the same, A1 abused him in filthy language, made caste remarks and asked him why they could not withdraw the complaint. A2 attacked him with sickle on his elbow, thigh, right chest and left leg. A3 attacked the brother-in-law of the defacto complainant with knife over his back and right leg. The injuries suffered by the father of defacto complainant are grievous in nature and the injuries suffered by the defacto complainant and his brother-in-law are simple in nature.

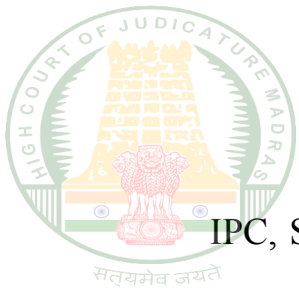


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4. On the complaint given by the defacto complainant, a case has been registered in Crime No.375 of 2014 on the file of the Nagamalai Pudhukkottai Police Station, Madurai. After conclusion of the investigation, charge sheet has been filed and after completing the legal mandates of furnishing copies and all other legal formalities, charges have been framed against A1 to A3 for the offences under Sections 307 IPC r/w Section 34 IPC r/w Section 3(2)(v) of the SC/ST (POA) Act, Section 3(1)(x) of the SC/ST (POA) Act r/w Section 34 IPC and Section 294(b) IPC r/w Section 34 IPC. When the accused were questioned, they denied their involvement and claimed to be tried.

5. Before the Trial Court, on the side of the prosecution PW1 to PW16 have been examined and Exs.P1 to P19 have been marked. Material Objects M.O.1 to M.O.7 have been marked. On the side of the accused, DW1 to DW3 have been examined ad no documentary evidence has been marked.

6. After the conclusion of trial, the learned Judge found A1 to A3 not guilty for the offence under Section 307 IPC r/w Section 34 IPC (2 counts) and Sections 3(2)(v) and 3(1)(x) of the SC/ST (POA) Act and found them guilty for the offence under Section 307 IPC r/w Section 34



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IPC, Section 324 IPC r/w Section 34 IPC (2 counts) and Section 294(b)

IPC r/w Section 34 IPC and convicted and sentenced A2 and A3 as mentioned supra. Aggrieved over that, A2 and A3 have preferred the present appeal.

7. A1 has preferred an appeal in Crl.A.(MD)No.511 of 2017 and as he died, during the pendency of the appeal, the appeal was dismissed as abated.

8. Mr.G.Karuppasamy Pandian, learned counsel appearing for the appellants / A2 and A3 submitted that despite the complaint makes an explicit allegation that the accused had attacked the injured persons only at the instigation of Sivapandi, he has not been implicated as an accused in this case; PW8 Doctor has recorded in Accident Register that the father of the defacto complainant told her that he and others have been attacked by unknown persons; as the injuries are only lacerated injuries, it is not possible that M.O.1 to M.O.3 have been used to commit the offence; the intention on the part of the accused to murder the injured witnesses is not established, but the appellants have been convicted for the offence under Section 307 r/w 34 IPC; and the learned Judge has failed to appreciate the above facts.



9. Mr.K.Gnanasekaran, learned Government Advocate (Crl. Side)

appearing for the respondents submitted that when the father of the defacto complainant was suggested about the information given to the Doctor at the time when they were brought to the Hospital, he denied saying that he did not tell the Doctor that they were attacked by unknown persons; PW8 Doctor has clarified that lacerated injuries are possible depending on the force of the attack even though sharp weapons were used; the evidence of the injured witnesses are cogent, consistent and reliable and their testimony clearly points out A1 to A3; the Wound Certificate Ex.P7 also tallies with the injuries suffered by the injured witnesses; there is no material contradiction to disbelieve the evidence of the prosecution witnesses; and the learned Judge has rightly concluded that the appellants are guilty for the offence under Section 307 IPC r/w Section 34 IPC, Section 324 IPC r/w Section 34 IPC (2 counts) and Section 294(b) IPC r/w Section 34 IPC.

10. PW1 is the defacto complainant. PW2 is the father of the PW1. PW3 is the brother-in-law of PW1. In the complaint which is marked as Ex.P1, PW1 has stated that there was a previous case pending against the persons belonging to the community of the accused on the allegation that they abused the SC community people in filthy language



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with caste remarks and criminally intimidated them. Though it is alleged in the complaint that the accused had attacked PW1 to PW3 at the instigation of Sivapandi, the said Sivapandi has not been added as an accused. When this was confronted to PW16 Investigation Officer he has stated that investigation revealed that Sivapandi has not played any role in the offence. So, it has to be presumed that the accused did not come at the instigation of Sivapandi and PW2 has imagined that Sivapandi was the king pin. As PW2 has already given complaint against persons belonging to the community of the accused and the accused have also stated while beating up the PW1 to PW3 that they should have withdrawn the complaint, it is safely accepted by the learned Judge that the motive for the occurrence is due to the enmity arose out of the previous case given by PW2.

11. Even though PW2 has stated that the accused have abused them by making caste remarks, the charges framed against the accused for the offence under the SC/ST (POA) Act were not found to be made out. It is in view of the fact that the prosecution has not established that PW1 to PW3 belong to SC community and the accused belonging to other community have attacked them.

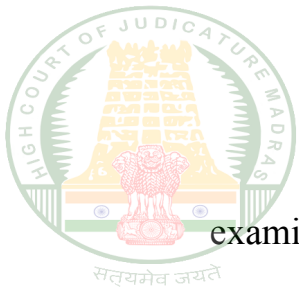


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12. As per the evidence of PW1, the accused came to the house of PW2 and shouted that PW2 should come out of the house. When PW2 came out of the house, A1 attacked him with sword on the head and shoulder. A2 and A3 attacked PW2 with sickle and knife. PW1 was attacked by A3 at the left back of his body. PW3 was attacked by all the accused on his hand, knee and leg. As all the accused had demanded about withdrawing the case filed by PW2, they had the common motive and intention to attack PW1 and PW3. The cross examination of PW1 did not bring out anything which would nullify his evidence given in chief.

13. PW2 has also stated as to how the occurrence happened and how he was attacked by A1 to A3. His evidence tallies with the evidence of PW8 Doctor who had notice injuries on his body. When PW2 was suggested that the Doctor has recorded in Accident Register that he has stated that unknown persons had attacked him, he stoutly denied the same.

14. PW3 who is the brother-in-law of PW1 has stated in his evidence about the previous enmity between the family of PW1 and the accused and how they have attacked PW1 and PW2. His cross



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examination would reveal that how he has stated to the Doctor about the injuries sustained by him.

15. PW4 is the sister of PW1 and wife of PW3. She has stated in her evidence that the accused came to the house and asked for her father. When she enquired them, they told that they had been there to attend some electrical faults. When her father came, they attacked her father PW2 and her brother PW1. Her cross examination did not falsify her evidence given in chief examination.

16. PW5 who is the mother of PW1 has corroborated the evidence of PW1 and PW2. Curiously PW3 and PW4 had not stated about how PW3 sustained injuries and who had attacked him, though PW1, PW2 and PW5 had stated how the accused had attacked PW3. PW3 has not specifically stated about the injuries sustained by him. PW5 has stated that she had seen the injuries on the body of PW1 to PW3, but she did not see the accused. PW1 to PW3 were subsequently taken to the hospital and this was revealed in the evidence of PW5 (mother of the defacto complainant) and PW6 (a person belonging to the same village as that of the defacto complainant).



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17. PW8 Doctor has certified that the injuries sustained by PW2 are grievous in nature and the injuries found on the body of PW1 and PW3 are simple in nature. The evidence of PW1 as to the manner in which himself and PW3 were attacked by A2 and A3 tallies with their respective Wound Certificates as well. The evidence of PW8 Doctor also probabalize the occurrence. She has stated that even if someone has attacked with sickle, there is no confirmity that it should only cause cut injuries.

18. PW10 is the Doctor who treated PW2 for the injuries sustained by him on his head. He has stated that PW2 had been an inpatient for 21 days and he had even undergone a surgery on his head. He has categorically stated that such injuries sustained by PW2 could have been caused with a weapon like sickle.

19. The motive for the occurrence has been clearly spoken by the prosecution witnesses. The contradictions pointed out by the learned counsel for the appellants are not severe to affect the core content of the prosecution case. The arrival of A1 to A3 to the scene of occurrence on the alleged date and time and the manner in which they had attacked PW1 to PW3 have been proved through consistent, cogent and reliable



evidence of PW1 to PW3, corroborative statements given by other witnesses like PW4 and PW5 and the evidence of the Doctors. The events following the occurrence also proved to be quiet natural and sequential and confirm the case of the prosecution.

20. At the time when the accused had attacked PW1 to PW3, they had only stated about the withdrawal of the earlier complaint given by PW2 and there is no material available on record to show that the accused had intention to kill anyone of the injured witnesses. However, the learned Judge had convicted the appellants under Section 307 IPC r/w Section 34 IPC. Section 307 IPC reads as under.

"307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.—2[When any person offending under this section is under sentence of 1 [imprisonment for life], he may, if hurt is caused, be punished with death.]"



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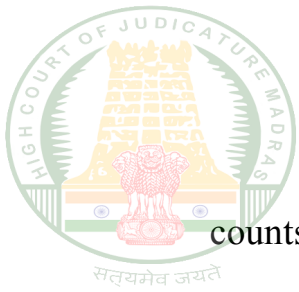
21. As per the above provision, in order to convict the accused under Section 307 IPC, intention or knowledge to cause the murder is a pre-condition and that has to be ascertained from the facts and circumstances of each case. No doubt, A1 to A3 carried deadly weapons like sword, sickle and knife and attacked PW1 to PW3 using those weapons. But, their intention to make out an attempt to murder all of the witnesses cannot be gathered from the circumstances. A1 to A3 who were angry in view of the complaint lodged by PW2 against the persons belonging to their community had the intention to attack PW2. PW1 and PW3 were also instantly attacked when they interfered to save PW2. No doubt, the manner in which the accused came to the spot and attacked the injured would clearly make the common intention. But it has to be ascertained from the situation that the common intention was to murder and they attacked only with such intention and the murder has not occurred and hence, it turned out to be an attempt to murder. Just because the injuries suffered by one of the injured persons is grievous in nature, it cannot be an automatic presumption that the accused had committed the offence of attempt to murder instead of attempt of grievous threat by dangerous weapon.



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22. It ought to have been proved by the prosecution that the accused had some prior consultations between themselves to cause the murder of PW2 or any other injured witnesses and they came to the place of occurrence only to execute the said offence. Even the words uttered by the accused during the course of occurrence did not disclose that they had the intention to kill any of the injured witnesses and it appears that they were only angry and attacked the injured with deadly weapons and caused serious injuries. Even though the nature of the injuries can be of limited assistance to presume the intention, something more is needed in the case of attempt to murder that the persons who attacked the injured had the intention and knowledge to cause death of the person assaulted. Unless the intention couples with the overt act, it cannot be concluded that the offence under Section 307 IPC has been proved.

23. As all the accused have acted with the common intention, each of the accused has to be convicted for the offences committed by each of the accused. Hence, I feel in all fairness, A1 to A3 ought to have been convicted under Section 326 IPC r/w Section 34 IPC for the offence of grievous injury instead of Section 307 IPC r/w Section 34 IPC for the offence of attempt to murder. The finding of guilt of A1 to A3 by the learned Judge for the offence under Section 324 IPC r/w 34 IPC (2



counts) and Section 294(b) IPC r/w 34 IPC ought to be confirmed.

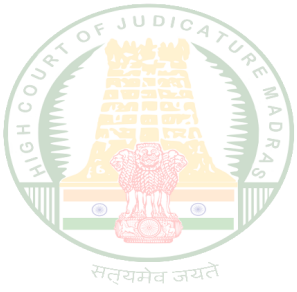
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24. At this juncture, the learned counsel for the appellants submitted that the appellants are first offenders and some leniency should be shown in the matter of punishment. The occurrence is said to have taken place in the year 2014 and the matter is pending before the Court for several years. Taking into consideration of the said fact and also the age of the appellants and their first involvement in criminal act, I feel some indulgence should be shown in respect of the punishment for the offences proved to have been committed by them.

25. In the result,

(i) this Criminal Appeal is **partly allowed** by modifying the finding of the guilt of A2 and A3 for a lesser offence under Section 326 IPC r/w 34 IPC instead of Section 307 IPC r/w 34 IPC and the appellants / A2 and A3 are convicted and sentenced to undergo 1 year RI each and to pay a fine of Rs.50,000/- each, in default to undergo 3 months SI each for the offence under Section 326 IPC r/w 34 IPC.

(ii) the finding of the guilt, conviction and sentence imposed by the learned trial Judge in respect of offences under Section 324 r/w 34 IPC and Section 294(b) r/w 34 IPC remains unaltered.



(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 on the part of the appellants to pay the fine amount shall cause them to lose the benefit of this modification order.

(iv) the entire fine amount shall be paid as compensation to the father of the defacto complainant (PW2) on his application.

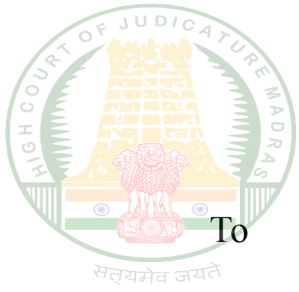
v) the sentence imposed on the appellants / A2 and A3 for the offences under Section 326 IPC r/w 34 IPC and Section 324 IPC r/w 34 IPC are ordered to run concurrently.

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 appellants / A2 and A3 for undergoing the remaining period of sentence, if any.

25.07.2025

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Crl.A.(MD)No.519 of 2017



To

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1.The III Additional District and Sessions Judge (PCR),
Madurai.

2.Deputy Superintendent of Police,
Samayanallur, Madurai District.

3.The Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai District.

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



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Dr.R.N.MANJULA, J.

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