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Crl.A.(MD)No.82 of 2017



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 18.06.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.A.(MD)No.82 of 2017

Rajan

... Appellant

vs.

State Represented by
The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
(Crime No.932 of 1997)

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374 of Criminal Procedure Code praying to call for the records in S.C.No.229 of 2003 relating to the Judgement dated 06.02.2017 passed by the Court of Sessions Judge, Kanyakumari Division at Nagercoil and to set aside the Judgement of the conviction of the appellant / accused.

For Appellant : Mr.P.T.Rameshraj

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Criminal Side)

J U D G E M E N T

This appeal has been filed challenging the Judgement of the learned Judge, Court of Sessions, Kanyakumari at Nagercoil dated 06.02.2017 in S.C.No.229 of 2003.



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2. The appellant is A5. As this appellant has been absconding, this case has been split up from S.C.No.68 of 2001 and tried separately in S.C.No.229 of 2003, in which, the learned Trial Judge found him guilty, convicted and sentenced the appellant as under.

Accused	Offences under Sections	Punishment	Fine	In default Sentence
Appellant / A5	324 IPC	Rigorous Imprisonment for 3 months	Rs.3,000/-	Simple Imprisonment for 2 weeks
	148 IPC	Rigorous Imprisonment for 1 year	-	-
	449 IPC	Rigorous Imprisonment for 5 years	-	-

3.1. As per the case of the prosecution, A2 to A5 are close relatives of A6, who is an illicit arrack seller. A6 is close to A1. Six and half hours prior to the occurrence, the deceased Ramesh and his associates prevented the distillers from selling illicitly distilled arrack to A6, and that resulted in a quarrel between the deceased and A6.

3.2. Due to the above enmity, on 01.10.1997, at about 21.00 hours, A1 to A5 in furtherance of the common object to murder the deceased, formed an unlawful assembly, armed with deadly weapons and trespassed into workshop of Bovas, at the instigation of A6.



3.3. A1 with an intention to murder voluntarily caused injury to the deceased Ramesh by a 'vettaruvaal' on his right wrist and head. A2 attacked the deceased with 'vettaruvaal' and caused injuries on his left forearm and left elbow joint. A3 attacked the deceased with a sword and caused injury on his right thigh. A4 attacked the deceased with 'vettaruvaal' and caused injuries on his left thigh and stomach. A5 attacked the deceased with 'vettaruvaal' on his right leg and caused injury. The deceased died due to shock and hemorrhage caused by the fatal head injury and other injuries suffered by him. Hence, the accused have been charged as under.

Accused	Charges
A1	147, 148, 449 & 302 IPC
A2	147, 148, 449 & 302 r/w 149 IPC
A3	147, 148, 449 & 302 r/w 149 IPC
A4	147, 148, 449 & 302 r/w 149 IPC
A5	147, 148, 449 & 302 r/w 149 IPC
A6	147, 148, 449, 302, 114 r/w 149 IPC

3.4. After filing of charge sheet, the case has been taken on file in S.C.No.68 of 2001. As A4 and A5 were absconding during that time, the case was split up against A4 in S.C.No.73 of 2004 and A5 in S.C.No.229 of 2003 and the trial Court proceeded against the other four accused in S.C.No.68 of 2001.



3.5. In the Judgement pronounced in the main case in S.C.No.68 of 2001, A1 was convicted for the offences under Sections 148, 449 and 302 IPC; A2 and A3 were convicted for the offences under Sections 148, 449 and 302 r/w 149 IPC; and A4 was convicted for the offences under Sections 147, 449 and 302 r/w 109 IPC.

4.1. In the appeal preferred by the above accused, this Court had passed the following Judgement.

(a) Dismissed the appeal in respect of A1 and confirmed the conviction and sentence imposed on him;

(b) Partly allowed the appeal in respect of A2 and A3 and modified the conviction imposed on them under Section 302 r/w 149 IPC to 304(ii) IPC and sentenced them to undergo 5 years rigorous imprisonment, confirmed the conviction under Section 449 IPC and reduced the sentence of 10 years rigorous imprisonment to five years rigorous imprisonment and confirmed the conviction and sentence imposed under Section 148 IPC; and

(c) Allowed the appeal in respect of A4, by name, Thangaleela (originally A6 as per charge sheet) and set aside the conviction and sentence as against her.



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4.2. While modifying the conviction and sentence as against A2 and A3 under Section 302 r/w 149 IPC to 304(ii) IPC, it has been observed that there was no common intention and object for A2 and A3, due to the reason that they did not have any personal animosity with the deceased.

5. So far as, A5, the present appellant is concerned, it appears from the evidence of PW1 that he had inflicted injuries on the right knee of the deceased with 'vettaruvaal'. When the weapons which have been marked as M.O.1 to M.O.4 were shown to PW1 during the trial, he was not able to identify the weapon used by A5. But, this fact alone cannot be taken against the prosecution, in view of the reason that the occurrence had happened in the year 1997 and the appellant / A5 was facing the trial after six years. So, it is quite possible for PW1 not to remember the exact weapon used by the appellant / A5 for attacking the deceased.

6. As stated above, the appeal preferred by A4, Thangaleela before this Court was allowed and she was acquitted from all charges. It is seen from the records that the case against Abimanniu (originally A4 as per charge sheet) was split up in S.C.No.73 of 2004 and he was also acquitted of all charges. In view of the above fact, as there are no five



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persons to constitute an offence of unlawful assembly punishable under Section 148 IPC, the conviction and sentence imposed as against the appellant / A5 under Section 148 IPC is liable to be set aside.

7. PW8, who had issued Post Mortem Certificate Ex.P5, had deposed that he had noticed that the deceased had 'one cut injury 4 x 2 x 1 cm on the medial aspect of upper 1/3rd of right leg 5cm below knee joint' and another 'cut injury 2 x 1 x 1/2 cm on the lower 1/3rd of left ante above the knee joint'. These injuries on the body of the deceased matches with the evidence of PW1 with regard to the involvement of this appellant in attacking the deceased.

8. The learned Trial Judge has also referred the Judgement in S.C.No.68 of 2001 and appreciated the evidence of the eye witnesses with regard to the causing of injury over the right leg of the deceased below knee. As the said injury was not a fatal one and in the earlier appeal filed by the other accused, this Court has observed that there was no common intention and object, the learned Trial Judge convicted the accused for the offences under Section 324 IPC.



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9. So far as the sentence for the offence under Section 449 is concerned, it is about the house trespass made in order to commit the offence punishable with death. As the offence under Section 324 IPC is punishable not with death, but only with an imprisonment for a term which may extend to three years or with fine or with both, the appellant / A5 ought to have been convicted for the offence under Section 452 IPC instead of 449 IPC.

10. The learned counsel for the appellant / A5 claimed that the accused ought to have been punished for the offence under Section 451 IPC. But, in my considered view, the appellant / A5 has to be punished under Section 452 IPC instead of 449 IPC, because the appellant / A5 armed himself with weapons with an intention to hurt a person.

11. In view of the above discussions,

i) This Criminal Appeal is **partly allowed**, by modifying the Judgement of the learned Sessions Judge in respect of the finding of the guilt and punishment imposed against this appellant / A5 as below.



Findings and Punishment imposed by the Trial Court	Modification Now Made
<u>Section 148 IPC</u> Found guilty, convicted and sentenced to undergo One year Rigorous Imprisonment	Found not guilty - Acquitted
<u>Section 449 IPC</u> Found guilty, convicted and sentenced to undergo Five years Rigorous Imprisonment	Found guilty and the substantive sentence is reduced to Two years Rigorous Imprisonment
<u>Section 324 IPC</u> Found guilty, convicted and sentenced to undergo Three months Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo Two weeks Simple Imprisonment	Confirmed

ii) the sentence imposed for the charges under Sections 449 and 324 IPC are ordered to run concurrently.

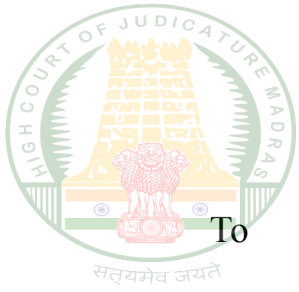
iii) The period of imprisonment already undergone is ordered to be set off under Section 428 Cr.P.C.

iv) The Trial Court shall take steps to secure the appellant / A5 for undergoing the remaining period of sentence, if any.

18.06.2025

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To

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1. The Judge,
Court of Sessions,
Kanyakumari at Nagercoil.
2. The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.N.MANJULA, J.

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