

(2012) 12 MAD CK 0109

Madras High Court

Case No: Criminal A. (MD) No. 632 of 2005

Chitravel

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Dec. 10, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 428
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 324

Citation: (2013) MLJ(Cri) 629**Hon'ble Judges:** M. Venugopal, J**Bench:** Single Bench**Advocate:** S. Deenadhayalan, for the Appellant; P. Kandasamy, Government Advocate, (Crl. Side), for the Respondent**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The conviction and sentence dated 25.11.2005 passed by the Learned Chief Judicial Magistrate, Pudukkottai are now under challenge in the present Appeal filed by the Appellant/A2. The Appellant/A2 was found guilty by the Trial Court in respect of offences under Sections 332 and 324 of I.P.C. and was awarded with the punishment of one year Rigorous Imprisonment each and was also directed to pay a fine of Rs. 2,500/-, each and in default of payment of fine, he was directed to undergo default sentence of three months Rigorous Imprisonment. The period of sentence already undergone by the Appellant/A2 was directed to be set off as per Section 428 of Cr. P.C. However, the Appellant/A2 was acquitted in respect of offences under Sections 148, 353 and 307 I.P.C.

2. The case of the prosecution is that on 6.8.2001 at about 21.30 hours during night time at Karambakudi Seeni shop comer, since the six Accused and other 20

unknown persons are in possession of deadly weapon viz., round wooden log joined as a rioting group and uttered inter alia that "nothing can be done against the Neively man" and they indulged in raucous and affecting the public peace and created traffic obstacle and at that time, the Inspector of Police, Karambakudi Police Station has come along with his police party and warned them, but they heeding the same, indulged in raucous and when they were attempted to be arrested and since the Appellant/A2 asked the witness Jeyaraman as to why he is catching him and so saying pushed him down and at that time, the Appellant/A2 uttered "this Police man cannot be left out without being murdered" and with the possession of round wooden log in his hand beat him and caused simple injury and because of that act, if the witness had expired, then the Appellant/A2 should have been held for the offence of Murder and as such, as against the Appellant/A2 charge sheet has been filed for the offence under Sections 148, 332 and 307 I.P.C. and in regard to other Accused charge sheet has been filed for the offence under Sections 148, 331 and 307 read with 149 of I.P.C., by the Inspector of Police, Karambakudi Police Station, before the Learned Judicial Magistrate, Alangudi.

3. On the basis of the accusation levelled against the Accused 1 to 6 including the Appellant/A2, the Trial Court framed necessary charges for the offences under Sections 148, 353, 307 read with 149 I.P.C. and Section 332 read with 149 I.P.C. against A1, 3, 4, 5 and 6 and as against A2 charges have been framed in respect of the offence under Sections 148, 307, 353 and 332 of I.P.C. and the same were read over and explained to them. The Accused 1 to 6 including the Appellant/A2 denied the charges framed against them and demanded to take trial in the case.

4. Before the Trial Court, on the side of the prosecution, witnesses P.Ws. 1 to 10 were examined and Exhibits P-1 to 6 were marked. On the side of the Accused including the Appellant/A2, no witness was examined and no document was marked.

5. When the Accused including the Appellant/A2 were questioned u/s 313 of Cr. P.C. in regard to the incriminating circumstances appearing in evidence against him, they denied their complicity in the crime.

6. The Trial Court, on an appreciation of both oral and documentary evidence, had consequently found that the Appellant/A2 guilty under Sections 332 and 324 of I.P.C. and sentenced him to undergo one year Rigorous Imprisonment each and also imposed a fine of Rs. 2,500/- each. However, it acquitted the Appellant/A2 in respect of offence under Sections 148, 353 and 307 I.P.C. and insofar as A1, 3, 4, 5 and 6 were concerned, the Trial Court acquitted them from all the charges levelled against them.

7. Feeling aggrieved with the conviction and sentence passed by the Trial Court in S.C. No. 76 of 2004 on the file of the Learned Chief Judicial Magistrate, Pudukkottai, as an aggrieved person, the Appellant/A2 has projected the instant Criminal Appeal

before this Court.

8. The Learned counsel for the Appellant/A2 contends that the judgment of the Trial Court in S.C. No. 76 of 2004 dated 25.11.2005 is contrary to evidence, law and probabilities of the case.

9. According to the Learned counsel for the Appellant/A2, the Trial Court has failed to appreciate the "Motive" behind the alleged occurrence and he has not been established by the prosecution.

10. The Learned counsel for the Appellant/A2 projects a plea that it is the evidence of P.W. 1 Jeyaraman, Head Constable and that he has given a complaint before P.W. 5, Sub Inspector of Police on 6.8.2001 at about 9.30 p.m. and in turn, he issued a medical memo on the same day. But, P.W. 4, Doctor has deposed that P.W. 1 has come to the hospital on 7.8.2001 at about 2.45 a.m.

11. Yet another submission of the Learned counsel for the Appellant/A2 is that no bloodstained clothes have been seized by the Respondent/Police from P.W. 1 (the injured). That apart, the Learned counsel for the Petitioner strenuously contends that the prosecution has not established its case that the alleged occurrence has taken place when P.W. 1 has been discharging his duties and also the round wooden log has not been seized by the Respondent/Police.

12. Lastly, it is the stand of the Appellant/A2 that when the Trial Court has acquitted A1, A3, A4, A5 and A6, strangely it has convicted the Appellant under Sections 332 and 324 of I.P.C. which cannot be countenanced in the eye of law.

13. Per contra, the Learned Government Advocate (Criminal side) supporting the judgment of the Trial Court and submits that the Trial Court has rightly convicted the Appellant/A2 in respect of the offence under Sections 332 and 324 of I.P.C. and awarded necessary punishments, which does not suffer from any impropriety or illegality in the eye of law and prayed for dismissal of the Appeal.

14. P.W. 1, Jeyaraman (the injured Head Constable) in his evidence has deposed that on 6.8.2001 at about 9.00 a.m., when he has been in the Station, at that time, one Balasubramanian has given a complaint in writing and on that basis, the Inspector of Police, Sub Inspector of Police, Grade I P.C. 920 Selvam and 1028 Ilango and himself have gone to the scene of occurrence and in the Seeni Shop corner at Karambakudi at Neyveli intersection road, the Accused Karnan, Chithiravel (Appellant/A2), Thangaiah, Muthuraj and other 20 persons have been in possession of round wooden log and the Inspector of Police, after seeing them informed them not to indulge in raucous, but, the said persons have not dispersed and continued to indulge in raucous and therefore, the Inspector of Police has ordered for arrest and when they have gone for catching the Accused, the Appellant/A2 asked him as to why he is catching him and he will not leave him without murder him and so uttering these words, beat him with the round wooden log on his head, resultantly,

he fell unconscious, but, the Sub Inspector of Police has caught hold of him and has taken him to Karambakudi Police Station, where he has lodged a complaint and subsequently, he has been sent to the Alangudi Government Hospital for treatment.

15. P.W. 1 in his cross examination has deposed that in the occurrence, he only sustained injury and there is no bloodstain on his clothes and further he had denied the suggestion that in the improper road, if one runs fastly during darkness and if slipped, the injury will be caused.

16. P.W. 5 in his evidence has stated that on 6.8.2001 at about 9"0 clock in the night, one Balasubramanian, working in Anbu Wines Shop has given a complaint and upon receipt of the same registered a case in Police Station Crime No. 257 of 2001 for the offence under Sections 147, 148, 452, 324 and 379 of I.P.C. and also another person over the phone has informed that Neyveli people are creating raucous in Anbu Wines Shop and when he has come to the Karambakudi Seeni Shop corner, the Accused have been running and when he followed them, P.W. 1 coming behind him little slowly and at that time, the Appellant/A2 with the round wooden log in his hand has beat P.W. 1.

17. P.W. 5 in his cross examination has stated that only when P.W. 1 has spoken as to how he has been attacked and he came to know about the injury sustained by him and also that only when P.W. 1 has raised a noise, he turned back and seen him and also that blood has been coming from the head of P.W. 1.

18. P.W. 4 Doctor, who has given treatment to P.W. 1 has stated that on 7.8.2001 at about 12.45 p.m. during the night time, when he has been on duty, P.W. 1 with the police memo has appeared before him and informed that he has been assaulted by more than one persons in which one person is a known person and that they attacked him with round wooden log and P.W. 1 has sustained injury measuring 4 x 1 x 4.1.2013 cm. (no blood has been coming out of the injury).

19. P.W. 10, the Inspector of Police (who has taken up the investigation onwards) has deposed that on 9.8.2001 he received the F.I.R. registered by the Sub Inspector of Police in Crime No. 258 of 2001 for the offence under Sections 147, 148, 324, 332 and 307 of I.P.C. and examined the witnesses Jeyaraman, Head Constable, Perumal, Sub Inspector of Police, Grade I Police Constables Ilango and Selvam, Abbas, Appavu and Karnan and visited the occurrence place and prepared Exhibit P-6 Rough Sketch and also Exhibit P-4 Observation Mahazer and also on 7.8.2011 he examined Sakthivel, Selvam, Jainuladeen and Karuppiyah and also examined Dr. Muthiah on 2.12.2001 who has given treatment to P.W. 1 Jeyaraman and on 7.8.2001 at about 1.00 a.m. in the early morning, he arrested the First Accused Kaman and sent him to the judicial custody and after completion of investigation, laid the charge sheet on 19.12.2001 against all the Accused for the offence u/s 147, 148, 332 and 307 of I.P.C.

20. The Trial Court, on an appreciation of the entire oral and documentary evidence on record, has come to a conclusion that the injury sustained by P.W. 1 (Head

Constable) is a simple one as seen from Exhibit P-3 Wound Certificate given by P.W. 4 Doctor. Unfortunately, the round wooden log, purported to have been used in the commission of offence has not been produced before this Court. Even though the Trial Court, after analysing the evidence has held that there is no evidence to show that all the Accused have pushed P.W. 1 and therefore, it opined that it cannot be construed that an offence has been made out as per Section 353 of I.P.C. and also that all the Accused have been charged u/s 307 of I.P.C., the Appellant/A2 only has beat P.W. 1 with the round wooden log in his hand at the time of occurrence and therefore, the injury sustained by him is only a simple injury as per Exhibit P3 Wound Certificate furnished by P.W. 4 Doctor. Ultimately, the Trial Court, while acquitting all the Accused (other than the Appellant/A2) has held that the offence u/s 324 of I.P.C. against the Appellant/A2 has been proved. Further, inasmuch as the Appellant/A2 has beat P.W. 1 on the head with round wooden log P.W. 1 has been prevented from discharge his duty and hence, the charge against the Appellant/A2 for the offence u/s 332 of I.P.C. has been proved by the prosecution and only for the proved offences, the Appellant/A2 has been punished as stated earlier.

21. In Criminal Law, it is not essential that the manner of use of the weapon must be such as is likely to cause death. The object of Section 324 of I.P.C. is to make a simple hurt mere grievous one and such is liable to a mere severe punishment. For an offence u/s 324 of I.P.C. the prosecution has to prove (i) that the Accused caused by his act bodily pain, disease or infirmity to the complainant; (ii) that he did such act intentionally or with knowledge that it would cause the pain, etc.; (iii) that it was unprovoked and (iv) that the accused caused it by means of an instrument for shooting, stabbing or cutting; or by an instrument, which used as a weapon is likely to cause death; or by means of fire, etc.. There can be a conviction even in the absence of a wound certificate or the opinion of a medical officer where the oral evidence is safe and reliable in providing the nature of the weapon used as per decision in [State of Kerala Vs. Haridasan](#), Insofar as the offence u/s 332 of I.P.C., is concerned, the prosecution must prove (i) that the accused voluntarily caused hurt; (ii) that the person so hurt was a public servant; (iii) that such public servant was then discharging his duty as such. Or prove (i) and (ii) as above, and further, (iii) that the accused did so with intent to prevent or deter such public servant or any other public servant, from discharging his duty; or that he did so in consequence of something done, or attempted to be done, by such public servant, from discharging of his duty.

22. Indeed the expression "any instrument which used as a weapon of offence is likely to cause death" means according in Section 324 of I.P.C. means "dangerous weapon which if used by the offender is likely to cause death".

23. As far as the present case is concerned, on an overall assessment of the facts and circumstances of the case, in an integral fashion, this Court holds that the charges in respect of the Appellant/A2 under Sections 332 and 324 of I.P.C. have

been proved by the prosecution beyond reasonable doubt and in this regard, this Court is in complete agreement with a view taken by the Trial Court in holding the Appellant/A2 guilty for the offence u/s 332 and 324 of I.P.C., As a matter of fact, the Trial Court convicted the Appellant/A2 for the offence u/s 332 and 324 of I.P.C. and sentenced him for one year Rigorous Imprisonment each in respect of both the offence and has also awarded a fine of Rs. 2,500/- each and also imposed a punishment of three months Rigorous Imprisonment as default sentence in the event of failure of payment of fine amount.

24. However, in regard to the proved charges for the offence under Sections 332 and 324 of I.P.C., this Court, to meet the ends of justice, awards a punishment of nine months Rigorous Imprisonment each for the offences under Sections 332 and 324 of I.P.C. However, the fine amount imposed by the Trial Court is left undisturbed by this Court in this regard. In the result, the criminal appeal is allowed in part and the conviction passed by the Learned Chief Judicial Magistrate dated 25.11.2005 in S.C. No. 76 of 2004 is confirmed and the sentence alone imposed on the Appellant/A2 that he is to undergo one year Rigorous Imprisonment each for the offence u/s 332 and Section 324 of I.P.C. is modified and sentenced to undergo nine months Rigorous Imprisonment each for the offence under Sections 332 and 324 of I.P.C. In all other respects, the Trial Court judgment is affirmed. If the Appellant/Accused is not in duress, the Trial Court is directed to take appropriate steps to confine the Appellant/A2 in prison so as to serve the remaining period of sentence.