Subbiah vs The Deputy Superintendent Of Police on 19 August, 2016

Author: R.Subbiah

Bench: R.Subbiah

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.08.2016
(Judgment reserved on 05.08.2016)
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBBIAH
Crl.A.Nos.631 and 656 of 2008

Subbiah .. Appellant in Crl.A.No.631 of 2008

1. Arumugam
2. Selvaraj
3. Selvakumar .. Appellants in Crl.A.No.656 of 2008

Vs.
The Deputy Superintendent of Police,
Vellakoil Police Station,
Kangeyam Sub-Division,
Erode District.
(Crime No.372 of 2007) .. Respondent in both the Criminal Appeals

Criminal Appeals filed under Section 374(2) Cr.P.C., against the judgment, dated 20.08.2

For appellant in Crl.A.No.631 of 2008 : Mr.K.Rajasekaran

For appellant in Crl.A.No.656 of 2008 : Mr.D.Selvaraju

For respondent in both the appeals : Mr.P.Govindarajan, Addl.P.P.

COMMON JUDGMENT

Crl.A.No.631 of 2008 is filed by A2 and Crl.A.No.656 of 2008 is fled by A1, A3 and A4, against the same judgment dated 20.08.2008 made in S.C.No.15 of 2008 on the file of the Principal Sessions Court, Erode District. They were charged by the trial Court as tabulated hereunder:

Sl.No. Charges framed against the accused persons Section of Law A1 and A2 Section 3(1)(x) of the SC and ST Act A1 and A3 Section 323 IPC A4 Section 324 IPC A2

Section 307 IPC (2 counts) A3 Section 307 IPC A1 to A4 Section 427 IPC They were convicted and sentenced as follows by the trial Court:

Sl.

No. Rank of accused Conviction under Section Sentence of Imprisonment Fine A1 323 IPC six months rigorous imprisonment

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A2 326 IPC five years rigorous imprisonment Rs.3,000/-, i/d one year rigorous imprisonment 324 IPC two years rigorous imprisonment

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A3 323 IPC six months rigorous imprisonment

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324 IPC two years rigorous imprisonment

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A4 324 IPC two years rigorous imprisonment

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The trial Court ordered the sentences imposed on A2 and A3 to run concurrently. The trial Court acquitted A1 and A2 of the charge under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and A1 to A4 were acquitted of the charge under Section 427 IPC.

2. The case of the prosecution leading to conviction of the appellants/A1 to A4, in brief, is as follows:

P.W.1/de-facto complainant belongs to SC/ST community. He was working in a Mill. On 01.06.2007, there was a temple festival in Arulmighu Mariamman Temple at Muthur. In the said festival, there was a dance programme/light music programme, in which, P.W.1's brother, namely Thangaraj (P.W.4) was assaulted by the accused persons, pursuant to which, on 04.06.2007 at about 1.30 p.m., P.W.1/complainant questioned the said act and enquired about the assault made by the accused persons on P.W.4. While so enquiring, A1 pushed P.W.1 and abused him by mentioning his caste name. When P.W.1 raised a hue and cry, A2 came with Aruval (M.O.1), A3 with wooden log (M.O.3) and A4 with iron pipe (M.O.2) came to the spot and attacked P.W.1 with those weapons. At that time, P.W.1's another brother, P.W.2-Mani came

running and prevented A2 from attacking P.W.1. A2 abused P.W.2 by mentioning his caste name and also attacked him with M.O.1 Aruval and caused cut injuries indiscriminately. On seeing this incident, P.W.1's elder brother, namely P.W.3 Palanisamy ran to the spot and when P.W.3 made an attempt to lift P.W.2, A2 caused cut injury on the head of P.W.3 with M.O.1 Aruval. A3 attacked P.W.3 with M.O.3 wooden log indiscriminately on his hands and legs. Similarly, A4 attacked P.W.1 with M.O.2 iron pipe. The accused persons have also damaged a TVS-50 two-wheeler (M.O.4) belonging to P.W.6 Kuppusami, which was brought by P.W.1. In the above occurrence, P.Ws.1 to 3 sustained injuries. On knowing the same, P.W.6 went to the place of occurrence and thereafter, P.Ws.4 and 6 informed about the occurrence to the Police Station over telephone. Subsequently, the injured victims, namely P.Ws.1 to 3 were taken to Government Hospital in an ambulance. P.W.11 Sub-Inspector of Police, on receipt of the intimation from the hospital at about 18 hours, went to the hospital and obtained statement (complaint) from P.W.1/de-facto complainant. Thereafter, P.W.11 came back to the Police Station and registered the FIR in Cr.No.372 of 2007 for the offences punishable under Sections 324, 506 (Part-2), 427, 379 (np) IPC read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On 05.06.2007, P.W.11 took up the case for investigation and went to the place of occurrence and prepared Ex.P-3 observation mahazar and drew Ex.P-18 rough sketch. He also seized the above said Material Objects (M.Os) and recorded the statement of the witnesses. Thereafter, he came to the Government Hospital and recorded the statements of P.Ws.1 to 6 subsequently. He also seized the blood stained clothes (M.Os.5 to 8) of the injured-victims-P.Ws.1 to 3 under a cover of mahazar and also recorded the statement of other witnesses on 05.06.2007. Then, the investigating officer made a request to the jurisdictional Tahsildar for issuance of Community Certificates of the accused persons and the prosecution witnesses, which were duly obtained indicating that they all belong to SC/ST community. Subsequently, the investigating officer also recorded the statements of other witnesses on different dates and filed final report/charge-sheet before the Court. The case was taken on file in S.C.No.15 of 2008. The trial Court framed charges against the accused persons as mentioned in the above tabular column. During the course of trial, on the side of prosecution, P.Ws.1 to 13 were examined, Exs.P-1 to 20 were marked and M.Os.1 to 8 were produced. When the appellants/A1 to A4 were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. They neither examined any witness nor marked any document. Upon hearing the submissions of both sides and considering the oral and documentary evidence available on record, the appellants/A1 to A4 were convicted and sentenced by the trial Court as tabulated above. Challenging the said conviction and sentence, the appellants/A1 to A4 have filed these respective appeals as indicated above.

3. Learned counsel appearing for appellant/A2 in Crl.A.No.631 of 2008 submitted that Ex.P-16 FIR was registered for the alleged offences under Sections 324, 506 (Part-2), 427, 379 (np) IPC read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tries (Prevention of Atrocities) Act, but as

per Rule 7(1) of the S.C. and S.T. (Prevention of Atrocities) Rules, in respect of the offence committed under the said Act, the same shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police and the investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police, after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along the right lines within the shortest possible time. But, in the instant case, for the purpose of investigation, there should be specific order from higher authorities to investigate the case, and hence, according to the learned counsel, there is violation of mandatory provisions of law, which vitiates the entire trial.

4. Learned counsel for the appellant/A2 further submitted that though the appointment order was marked on the side of the prosecution as Ex.P-20 to show that P.W.13 Deputy Superintendent of Police (DSP) was appointed for the purpose of investigating the case registered for the offences under the provisions of the SC and ST Act, but, according to the learned counsel, Ex.P-20 shows that though the said appointment order was issued by the higher authority in favour of P.W.13 DSP, but the same is to investigate a different crime number, namely Cr.No.7 of 2007 in a case registered in Uthiyur Police Station, which is not connected with the present case in Cr.No.372 of 2007. Learned counsel further submitted that in fact P.W.13 Deputy Superintendent of Police in his cross-examination admitted that no order was passed by the higher authorities to investigate the present case.

5. Learned counsel for the appellant/A2 further submitted that P.W.11 Inspector of Police took up the investigation only on 05.06.2007, but the mandatory period of 30 days as prescribed under Rule 7(2) of the SC and ST Rules to complete the investigation has been not followed, as the materials available on record shows that the investigation was not completed within 30 days. This violation of mandatory provision of law vitiates the entire trial. In support of his contentions regarding violation of Rules 7(1) and 7(2) of the said Rules, learned counsel relied on a decision of this Court reported in 2016 (1) LW (Crl) 761 (V.Ponnusamy Vs. State rep. by D.S.P., Palladam Range, Coimbatore), the judgment of this Court reported in 2007 (1) MWN (Crl) 69 (Sambasivam and another Vs. State, rep. by DSP, Mannarkudi) and also the judgment of this Court reported in MANU/TN/0216/2016 (Vadivel Vs. State, rep. by DSP, Palladam, Coimbatore District) (Crl.A.No.1076 of 2007, dated 16.02.2016).

6. That apart, learned counsel for the appellant/A2 invited the attention of this Court to the evidence of P.W.6 Kuppusamy and submitted that P.W.6 had categorically stated in his evidence that on 04.06.2007, immediately after the incident, P.W.6 and P.W.4 informed about the occurrence to the Police Station, and similarly, P.W.1 had also categorically stated in his cross-examination that one Head Constable, by name Naatrayan, visited the hospital and obtained the statement from him on 04.06.2007 itself. P.W.1 further stated in his cross-examination that P.W.11 Sub-Inspector of Police has visited the hospital only on the next day of the occurrence, i.e. 05.06.2007, whereas P.W.11 Sub-Inspector of Police stated that he has reached the Government Hospital even on 04.06.2007 itself at 6 p.m. and recorded the statement of P.W.1, but on the contrary, P.W.1 has categorically stated that the statement was recorded only by the Head Constable and while recording the statement, only the Head Constable was present and only on the next day, i.e. on 05.06.2007,

P.W.11 Sub-Inspector of Police recorded the statement from P.W.1. Therefore, according to the learned counsel for the appellant/A2, Ex.P-16 FIR is hit by Section 161 Cr.P.C. and at the most, it could be only stated to be an improvisation of the case. In this regard, learned counsel relied on a judgment of this Court reported in 2015 (2) LW (Crl) 368 = 2015 (3) MLJ (Crl) 573 = MANU/TN/1869/2015 (in Crl.A.No.459 of 2008, dated 10.07.2015) (Periyasamy and another Vs. State, rep. by DSP) and submitted that the FIR in the instant case suffers from the vice of embellishment and improvement and the alleged occurrence ought not to have taken place as put-forth by the prosecution.

7. It is next contended by the learned counsel for the appellant/A2 that in respect of the occurrence in the case on hand, A1 and others were also injured and the accused persons have also preferred a complaint before the jurisdictional Police Station and P.W.11 Sub-Inspector of Police stated that he has received the complaint of the accused persons to show that the accused persons have also been attacked by the prosecution witnesses in this case. Learned counsel further submitted that P.W.11 Sub-Inspector of Police registered Crime No.371 of 2007 against P.Ws.1 to 4 and another and that case ended in acquittal. The said Crime No.371 of 2007 was registered based on the complaint given by the accused persons against the prosecution witnesses in this case and it was registered for the offences under Sections 147, 148, 324 and 506 (Part-2) IPC. The crime number in Cr.No.372 of 2007 pertaining to the case on hand was registered only subsequent to the registration of FIR in Crime No.371 of 2007 based on the complaint preferred by P.W.1. P.W.13 DSP in his evidence in cross-examination stated that with regard to Crime No.372 of 2007, he did not enquire as to how A1 to A3 got injured and the injuries of the accused persons in that case have not been explained by the prosecution in the case. In this context, learned counsel for the appellant/A2 relied on a judgment of a Division Bench of this Court delivered in Crl.A.No.1703 of 2002, dated 28.10.2004, reported in MANU/TN/1289/2004 (Poosari alias Seerangan Vs. State rep. by Inspector of Police) and submitted that in the instant case, P.Ws.1 to 3 are all sons of one Raman and since they are close relatives and interested witnesses, non-explanation of the injuries of the accused persons with regard to Crime No.371 of 2007 registered on the complaint by the accused persons, assumes greater significance. Therefore, the non-explanation makes the prosecution version of the occurrence doubtful and hence, the charges as framed against the appellant/A2 have to be held to be not proved by the prosecution.

8. Learned counsel for the appellant/A2 also submitted that P.W.7 Dr.Rajasekaran in his evidence in cross-examination stated that the injured persons, namely P.Ws.1 to 3 have informed that they were attacked by four unknown persons with crow-bar and there will be stab injury if a person is beaten by the sharp edge of the crow-bar and if a person is attacked by the other side of the crow-bar, there will be only swollen injury. P.W.7 Doctor further stated that there was no cut injury on the above three persons (P.Ws.1 to 3). P.W.7 Doctor further adduced that the above persons have not stated to him that they were attacked with Aruval, Iron pipe or Wooden Log, but whereas, P.W.1 has stated in his evidence in chief examination that A2 attacked P.W.2 with M.O.1 Aruval on his head, hands, legs and left side jaw on arrival of P.W.2. The prosecution witnesses stick to the stand that A2 caused injuries only with Aruval, which is contradictory to the medical evidence adduced by P.W.7 Doctor, who stated that there is no cut injury on any of the three injured persons, who have not told P.W.7 Doctor that any weapons like Aruval, iron pipe and wooden log were used. They said to P.W.7

Doctor that the injury was caused only by using crow-bar. Thus, according to the learned counsel for the appellant/A2, there is contradiction between oral and medical evidence. In this context, learned counsel relied on the judgment of this Court reported in 2015 (2) LW (Crl) 368 (cited supra) (in Crl.A.No.459 of 2008, dated 10.07.2015 (Periyasamy and another Vs. State, rep. by DSP) and submitted that when the FIR itself is in challenge and when there is contradiction between the medical and oral evidence, the oral evidence will prevail and the weapon allegedly used for causing injury as per the prosecution through the evidence of P.W.7 Doctor in this case, cannot be relied upon.

9. It is lastly submitted by the learned counsel for the appellant/A2 that P.W.11 Sub-Inspector of Police deposed that he had received the complaint from A1 against P.Ws.1 to 6 who attacked the accused persons and injured them. The said complaint of A1 was registered in FIR in Cr.No.371 of 2007 against P.Ws.1 to 4 and another Chellamuthu for the offences under Sections 147, 148, 324 and 506 (Part-2) IPC, whereas the complaint given by P.W.1 in the case on hand was registered in FIR in Cr.No.372 of 2007 against A1 to A4, which is subsequent to the registration of FIR in Cr.No.371 of 2007 on the complaint of A1. Learned counsel further contended that the above statement of P.W.11 is corroborated by the evidence of P.W.13 DSP, who confirms the registration of the FIR against P.Ws.1 to 4 on the basis of the compliant given by A1. Learned counsel further contended that the mahazar was first prepared only in Cr.No.371 of 2007 registered against P.Ws.1 to 4 and others and the seizure mahazar in the instant case in Cr.No.372 of 2007 was prepared only subsequently. But, in the seizure mahazar in Cr.No.371 of 2007, P.W.13 had not shown or marked any material objects, whereas in the subsequently prepared seizure mahazar in the instant case, M.Os.1 to 4 have been produced. Learned counsel further contended that as the mahazar was prepared earlier in the complaint given by the accused persons in Crime No.371 of 2007 on the same set of facts, the material objects ought to have been seized, if the objects were available and should have been stated in the seizure mahazar in respect of Cr.No.371 of 2007, but the investigating officer had seized and stated the material objects in the mahazar which was prepared subsequently in Cr.No.372 of 2007 in the instant case. Hence, according to learned counsel, the above aspects create doubt that materials which were not available when the mahazar was prepared in Cr.No.371 of 2007 and as to how the weapons can emerge while preparing mahazar for Cr.No.372 of 2007, which shows that the weapons in M.Os.1 to 4 in Cr.No.372 of 2007 would have been planted, thereby, the recovery of weapons by the prosecution could not be believed, as the same is doubtful. For all the above reasons, learned counsel for the appellant/A2 submitted that the prosecution has miserably failed to prove its case beyond reasonable doubt and he prayed for acquittal of the appellant/A2 by setting aside the impugned judgment of conviction and sentence.

10. Learned counsel for the appellants/A1, A3 and A4 in Crl.A.No.656 of 2008, while adopting the arguments of the learned counsel for the appellant/A2 in Crl.A.No.631 of 2008, submitted that the genesis of the occurrence itself is wrongly projected by the prosecution. Only the complainant/P.W.1 and his men are the aggressors who have attacked the accused persons, for which, Crime No.371 of 2007 came to be registered, wherein, the very same investigating officer P.W.13 DSP laid charge sheet against P.Ws.1 to 3 in respect of Cr.No.371 of 2007 and the case was taken on file in C.C.No.224 of 2007 for the offences under Sections 324 and 323 read with 34 IPC and also under Section 352 read with 34 IPC. Learned counsel contended that this aspect has not been properly

considered by the trial Court. Learned counsel further contended that the weapons said to have been used by the accused persons did not tally with the injuries sustained by P.Ws.1 to 3. In this regard, learned counsel made detailed arguments by inviting the attention of this Court to the evidence of the prosecution witnesses and prayed for acquittal of the appellants/A1, A3 and a4.

11. Countering the above submissions of both the learned counsel for the appellants in the respective appeals, the learned Additional Public Prosecutor appearing for the respondent-Police submitted that though no authorisation was given for P.W.13 DSP to conduct the investigation in a particular case, the evidence available on record, namely Ex.P-20 marked on the side of prosecution shows that P.W.13 is in-charge of the other case in the particular District and he investigates the offences under the IPC and also the SC and ST Act. Since Ex.P-20 shows that P.W.13 DSP has not been appointed as the investigating officer to investigate the particular crime number in the case, but that does not mean that he has no power to investigate the present case in Crime No.372 of 2007. Therefore, learned Additional Public Prosecutor submitted that it is incorrect to state that Rule 7 of the SC and ST Rules have not been followed.

12. With regard to the submission made by the learned counsel for the appellant/A2 that though information was given to the Police Station concerned over telephone by P.Ws.4 and 6 with regard to the alleged occurrence, P.W.11 Sub-Inspector of Police reached the hospital only at 6 p.m. and recorded the statement from P.W.1 and others, and therefore, the FIR in the case on hand suffers from the vice of the embellishment and improvisation, it is the reply of the learned Additional Public Prosecutor that the material evidence available on record shows that on receiving the information over telephone from P.Ws.4 and 6, P.W.11 Sub-Inspector of Police rushed to the scene of occurrence and thereafter, he went to the hospital on 04.06.2007 itself and recorded the statement from P.W.1 and others and reduced the same into writing and prepared the printed FIR after reaching the Police Station, and hence, there is absolutely no infirmity in the registration of the FIR and therefore, it is incorrect to state that there is embellishment and improvisation in the FIR registered at 6. p.m. on 04.06.2007.

13. Learned Additional Public Prosecutor further submitted that it is incorrect to state that the injuries sustained by the victims were not properly explained by the prosecution. P.W.13 DSP investigated the case in Crime No.372 of 2007 registered in respect of the complaint given by P.W.1 and also with regard to Crime No.371 of 2007 registered in respect of the complaint given by A1, and in both the cases, the charge sheets have been filed only after investigation. Therefore, since the prosecution has not properly explained the injuries, the same would not affect the origin of the genesis of the case. For these reasons, learned Additional Public Prosecutor prayed for confirming the conviction and sentence and dismissal of the appeals.

14. I have given my anxious consideration to the submissions made by the learned counsel on either side and perused the materials available on record.

15. It is the main submission of the learned counsel for the appellants/accused that there was no authorisation to P.W.13 DSP to investigate the case as mandated under Rule 7 of the SC and ST Rules. Before entering into the discussion on this aspect, it would be appropriate to extract Rules

7(1) and 7(2) of the SC and ST Rules, which reads as follows:

> "Rule 7: Investigating Officer:
>
> (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director-General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. (2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government."

16. On a reading of the above Rules, it is seen that in respect of an offence committed under the SC and ST Act, the same shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police and the investigating officer shall be appointed by the State Government/Director-General of Police/Superintendent of Police, after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along the right lines within the shortest possible time. In the instant case, Ex.P-20 document was produced to show that P.W.13 DSP was empowered to investigate the case in respect of the offence under the provisions of SC and ST Act. It is useful to quote the relevant portion of Ex.P-20, which is the proceedings of the Superintendent of Police, Erode District, dated 13.01.2007:

> "I hereby appoint Thiru.P.Jaganathan, Deputy Superintendent of Police, Kangayam Sub-Division, Kangayam after taking into account of his past experience, sense of ability and justice to perceive the implications of the case, to investigate the cases relating to the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as contemplated in 7(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, arising in Uthiyur P.S. Cr.No.07/2007 u/s 147, 341, 323, 435 IPC and 3(2)(iv) of SC/ST Act, 1989.
>
> 2. He is instructed to investigate such cases with right lines and file final report before the jurisdiction courts, within the shortest possible time."

17. According to the learned counsel for the appellants/accused, Ex.P-20 was given only to investigate Crime No.07 of 2007 with regard to Uthiyur Police Station for the offences stated therein. But, learned Additional Public Prosecutor submitted that it is not necessary to issue a separate order for each and every case for the offences to be investigated by the DSP in respect of the SC and ST Act. Learned Additional Public Prosecutor further contended that once in six months, Superintendent of Police of particular District has to appoint one DSP to investigate SC and ST Act cases, and in this case also, P.W.13 DSP was appointed and hence, it is his submission that the prosecution has duly followed the provisions of Rule 7 of the said Rules in appointing P.W.13 DSP to investigate the case. On a reading of the contents of Ex.P-20, it is seen that only by considering

P.W.13 DSP's past experience, sense of ability and justice to perceive the implications of the case, he has been appointed to investigate the case. The second paragraph of Ex.P-20 shows that P.W.13 DSP has been instructed to investigate such cases (i.e. SC and ST Act cases) along the right lines and file final report before the jurisdictional Courts within the shortest possible time. Therefore, it is clear that P.W.13 was appointed to investigate not only the case registered in P.S.Cr.No.07/2007, but also in respect of the other cases registered under the SC and ST Act. Hence, on the aspect of not following the mandatory Rules in Rule 7, I am not inclined to accept the submissions made by the learned counsel for the appellants/accused that there is no specific order appointing P.W.13 DSP to investigate the case and in fact, in this case, Rule 7(1) had been duly complied with by the prosecution by empowering P.W.13 DSP to investigate the cases of such nature under the SC and ST Act.

18. Further, it is the case of the learned counsel for the appellants/accused that as per Rule 7(2) of the said Rules, the final report will have to be filed within 30 days from the date of appointment as the investigating officer and since the said mandatory provisions prescribed under Rule 7(2) had been violated, the same would vitiate the entire trial. From a perusal of the evidence available on record, I find that ultimately, in the instant case, the appellants/accused have actually been acquitted by the trial Court in respect of the offence under Section 3(1)(x) of the SC and ST Act, and therefore, the said submission of the learned counsel does not attach any significance.

19. The next point raised by the learned counsel for the appellants/accused is that the accused persons have also sustained injuries in the same occurrence, and hence, in the first instance, they have also preferred a complaint against the prosecution witnesses before the jurisdictional Police, which has been registered in Cr.No.371 of 2007, after which, the prosecution witnesses have preferred the present complaint in the case which has been registered in Cr.No.372 of 2007. But, it is the contention of the learned counsel that the injuries sustained by the accused persons have not been explained by the prosecution in Cr.No.371 of 2007. In this regard, learned counsel for the appellants relied on a judgment of a Division Bench of this Court in the case of Poosari alias Seerangan Vs. State, dated 28.10.2004 in Crl.A.No.1703 of 2002, reported in MANU/TN/1289/2004 (cited supra), wherein the Division Bench held as follows:

> "23. In a situation like this, when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any one of the three results may follow:
>
> (i) that the accused had inflicted the injuries on the member of the prosecution party in exercise of the right of defence.
>
> (ii) it makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubts.
>
> (iii) it will not affect the prosecution case at all.

....

24. Mere non-explanation of injuries on the person of the accused by the prosecution does not ipso-facto in all cases be termed as not representing the truthful version or not giving the gist of the case. But, non-explanation of the injuries on the accused assumes greater significance when the evidence consists of interested witnesses or where the defence gives a version which competes in probability with that of the prosecution."

20. In this regard, learned counsel for the appellants submitted that when the evidence in the present case consisted of interested witnesses (P.Ws.1 to 3), non-explanation of injuries on the person of the accused by the prosecution, will assume greater significance. Learned counsel further submitted that when P.Ws.1 to 3 are interested and related witnesses, who are the sons of one Mr.Raman, and when that being so, non-explanation of the injuries sustained by the appellants/accused persons in respect of their complaint, by the prosecution, is fatal to the case of the prosecution in the case on hand.

21. In the instant case, the evidence available on record shows that the investigating officer has investigated both the crime numbers, namely Cr.No.371 of 2007 preferred by the accused in that case and also pertaining to Cr.No.372 of 2007 preferred by the prosecution witnesses in this case and both the complaints have been simultaneously registered and investigated and after the FIR in Cr.No.371 of 2007 is registered against P.Ws.1 to 4 and others, subsequently the Police had acted upon the complaint preferred by the prosecution witnesses in the present case in Cr.No.372 of 2007. Mere non-explanation of the injuries on the person of the accused in the earlier crime in Cr.No.371 of 2007, will not assume greater significance on the factual background of this case, more particularly, when the charge sheet has been filed as against the prosecution witnesses also in Crime No.371 of 2007. Therefore, the above submission made by the learned counsel for the appellants/accused cannot be countenanced in the factual background of this case.

22. It is also submitted by the learned counsel for the appellants/accused that the FIR in the instant case suffers from the vice of embellishment and improvisation. In this regard, learned counsel submitted that though P.W.6 has stated in his evidence that himself and P.W.4 have informed the Police about the occurrence over telephone, however, P.W.11 Sub-Inspector of Police recorded the statement of P.W.1/complainant only after reaching the Government Hospital at Erode. In reply, learned Additional Public Prosecutor submitted that there was fight between two groups and hence, P.W.11 rushed to the scene of occurrence and subsequently recorded the statement of P.W.1 from the hospital, which was reduced into writing and the printed FIR was prepared and hence, this will not affect the prosecution case and it cannot be stated that there is vice of embellishment and improvisation in the FIR. But, on an analysis of the evidence available on record, I find that P.W.1 has also stated in his evidence that on 04.06.2007, one Naatrayan, Head Constable earlier recorded the statement from P.W.1 in the hospital and only thereafter, i.e. on the next day, P.W.11 Sub-Inspector of Police recorded another statement from P.W.1 in the Government Hospital, Erode and prepared the printed FIR. P.W.1 further stated in his evidence that P.W.11 came only on the next day, i.e. on 05.06.2007 and recorded the statement of P.W.1. According to P.W.11, he went around 6 p.m. on 04.06.2007 itself and recorded the statement of P.W.1. Therefore, learned counsel for the appellants/accused submitted that it has to be inferred that the earlier statement was only recorded by the Head Constable and according to the learned counsel, this piece of contradictory

evidence of P.W.1 clearly supports his contention that the FIR could have been fabricated, as it does not reflect the true and earliest version.

23. On the above aspects, learned counsel for the appellants/accused relied on the judgment of this Court in the case of Periyasamy and another Vs. State, represented by DSP, in Crl.A.No.459 of 2008, dated 10.07.2015, reported in 2015 (2) LW (Crl) 368 (cited supra), wherein, it was observed as follows:

> "42. FIR in a criminal case is an important document. Although it is not a substantive piece of evidence, it sets the criminal law in motion. It is like blue print for a building. If the basement of the building is not alright, then the building will collapse. Likewise if the FIR is not free from doubt, the very genuineness of the prosecution case built in the FIR is open to doubt, consequently there will be casualty of the prosecution case becoming a casualty unless the doubt has been cleared by the prosecution.
>
> 43. Now in the present case, as per the prosecution version, the FIR has been recorded by PW-11 at the Hospital on 25.4.2007 from PW-1. In his chief-examination, PW-1 had stated that after the occurrence an Head Constable visited him at the Hospital, recorded his statement and also obtained his thumb impression. In his cross-examination, PW-1 also stated that subsequently the Inspector of Police visited him at the Hospital, recorded his statement and obtained his signature. PW-1's evidence shows that already FIR has been obtained from PW-1 by an Head Constable besides that subsequently PW-11 Inspector also obtained a complaint from him. Thus, in such circumstances, the earliest version as to this case made by PW-1 to the Head Constable has been suppressed.
>
> 44. Thus in this case the FIR is fabricated. It does not reflect the true and earliest version. Thus, the possibility of embellishment cannot be ruled out. Thus the FIR in this case is not free from doubt. Consequently, the case of the prosecution projected through its witnesses with reference to the said FIR shaken the credit worthiness of PWs-1 to 5.
>
> 45. PW-1 has been examined by PW-9 Dr.Saravana Kumar and he issued him Ex.P-6 Accident Register copy. PW-9 noticed some abrasions on his scalp. PW-9 stated that PW-1 had stated to him that three known persons have assaulted him. The oral evidence of PW-1 does not corroborate the medical evidence. When there is conflict between the oral evidence and the medical evidence, the oral evidence will prevail. Medical evidence has been pressed into service in a criminal case for the purpose of corroboration. Medical evidence cannot be elevated to the status of a substantive piece of evidence. As a corroborative piece, medical evidence has been introduced to test the veracity of oral evidence of injured person. But under certain circumstances inconsistency between the evidence of ocular witness/ injured/affected witness with that of the medical evidence may result in doubting the very credit worthiness of the ocular witness. Now in this case, in view of the fact that the FIR is not free from

> doubt, the variation as to the evidence of PW-1 and the medical evidence of PW-9 also assumes signal importance."

24. Therefore, I am of the opinion that the FIR in this case suffers from vice of embellishment and it is a mere improvisation of the case. Moreover, the prosecution has also not proved its case beyond reasonable doubt with regard to the contents of the FIR. This shows that the alleged occurrence ought not have taken place in the manner put-forth by the prosecution.

25. It is another submission of the learned counsel for the appellants/accused that the injuries sustained by the prosecution witnesses do not tally with the weapons used by the accused persons. According to the appellants/A1 to A4, they were attacked by the prosecution witnesses with aruval, kambi, kattai, etc. But Ex.P-5 accident register states that, @04/06/2007 md;W kjpak; 1/30 kzpf;F Kj;J}h; bfhLKo nuhl;oy /// /// Kd;ng bjhpahj 4 ngh;fs; flg;ghiwahy; moj;jjhy; ////@ P.W.7 Doctor deposed that the injured persons, namely P.Ws.1 to 3 informed him that they were attacked by four unknown persons with crow-bar and hence, as per the version of P.Ws.1 to 3 to P.W.7 Doctor, the injury was only because of attacking them with crow-bar. But P.W.7 Doctor also deposed that the above persons did not have any cut injury. He further deposed that the above four injured persons had not stated that they were attacked with Aruval, Kambhi, Kattai, etc. But, the prosecution has produced M.O.1 Aruval, M.O.2 iron pipe and M.O.3 wooden log.

26. In this regard, it is appropriate to analyse the injuries sustained by the prosecution witnesses. The case of the prosecution is that A2 attacked P.W.2 with M.O.1 Aruval and A2 also caused cut injury on the head of P.W.3 with M.O.1 Aruval. A3 attacked P.W.1 with M.O.2 iron pipe indiscriminately on his knee. Similarly, A4 attacked P.W.1 with M.O.3 wooden log. Moreover, it is the case of the prosecution that A1 attacked P.W.1 with the hands on his back and pushed him down. But, according to P.W.7 Doctor, no where the injuries were found on the back of P.W.1. Further, according to the prosecution case, A3 beat P.W.1 below his right knee with M.O.2 iron pipe, but P.W.7 Doctor did not specify any injury below P.W.1's right knee. Moreover, A2 attacked P.W.2 on his hands and legs with M.O.2 iron pipe, whereas P.W.7 Doctor did not specify about the injury found either on the hands or legs of P.W.2. P.W.1 in his evidence adduced that A4 has given a blow with M.O.3 wooden log on his hip, whereas, P.W.7 Doctor did not specify any injury found either on the parts as specified in the charges or on the parts specified by P.W.1 in his evidence. Thus, P.W.7 Doctor did not state anything about these attacks as complained of by the injured persons, namely P.Ws.1 to 3. In the above context, it is worthwhile to extract the evidence of P.W.7 Doctor in his cross-examination, as follows:

> @K:d;W egh;fSk; j';fis milahsk; bjhpahj ehd;F egh;fs; flg;ghiwahy; jhf;fpajhf Twpa[s;sh;/ flg;ghiwapy; Th;ikahd Kidahy; Fj;Jk;nghJ Fj;Jf;fhak; Vw;gLk;/ flg;ghiwapd; kW Kidapy; mof;Fk;nghJ bghJthf tPf;fk; Vw;gLk;/ K:d;W egh;fSf;Fk; btl;Lf;fhak; ,y;iy/ rp/o/!;nfd; glj;ij fhty; Jiwapdh; ifg;gw;wtpy;iy/ gy; kUj;Jth; fUj;ij Jizf; fz;fhdpg;ghsh; vd;dplkpUe;J bgwtpy;iy/ K:d;W egh;fSf;Fk; midj;J fha';fisa[k; ehd; ghh;itapl;L Fwpg;g[vGjpndd;/ K:d;W egh;fSk; j';fis fk;gp. mUths;. fl;ilahy; jhf;fpajhf brhy;ytpy;iy/ fuL Kulhd jiuapy; js;SKs;S Vw;gl;L fPnH tpGk;nghJ nkw;fz;l fha';fs; Vw;gl tha;g[z;L/ kzp vd;gth; rprpf;irf;F te;jnghJ Raepidt[ld; ,Ue;jhh;/@

27. Therefore, it is the case of the prosecution that the appellants/accused attacked the prosecution witnesses with M.Os.1 to 3 (Aruval, iron pipe and wooden log). But, the medical evidence adduced by P.W.7 Doctor did not support the same, i.e. with the oral evidence of P.Ws.1 to 3. Therefore, in my considered opinion, there are lots of contradictions in the case of the prosecution with regard to the nature of injuries sustained by P.Ws.1 to 3 and also with regard to the weapons alleged to have been used by the appellants/accused persons. Hence, I am of the view that the prosecution has not proved its case by cogent and convincing evidence with regard to the nature of the injuries sustained by P.Ws.1 to 3.

28. It is lastly submitted by the learned counsel for the appellants/accused that the seizure mahazar was prepared initially in respect of Crime No.371 of 2007 registered on the basis of the complaint given by the accused persons against the prosecution witnesses. The seizure mahazar in the instant case in respect of Crime No.372 of 2007 registered on the basis of the complaint given by P.W.1 against the accused persons, was prepared only subsequently. In the earlier seizure mahazar prepared in Cr.No.371 of 2007, the material objects have not been shown, whereas in the subsequently registered seizure mahazar in the instant case, the material objects have been shown. Though on the same set of facts, both the crime numbers have been registered, but based on the complaints by the opposite parties against each other, but the earlier mahazar in respect of Cr.No.371 of 2007 did not indicate any seizure of material objects, but in the subsequent mahazar in Cr.No.372 of 2007 pertaining to the present complaint of P.W.1, the material objects have been just shown and hence, M.Os.1 to 3 in this case would have been simply shown and planted by the prosecution. Hence, according to the learned counsel for the appellants, the above non-recovery of weapons in the mahazar of the earlier crime number, doubts the case of the prosecution in the present crime number. Even this Court find some force in the said submission with regard to the seizure mahazar. Therefore, even on this ground, the appellants are entitled to be given the benefit of doubt and has to be acquitted of the charges levelled against them.

29. Therefore, in view of the discussion made above, it has to be concluded that the prosecution has failed to prove its case beyond reasonable doubt, thereby, the benefit of doubt has to be given in favour of the appellants/A1 to A4. Hence, the impugned judgment of conviction and sentence is not sustainable and they are liable to be set aside.

30. Accordingly, both the Criminal Appeals are allowed, setting aside the impugned judgment of conviction and sentence. The appellants/A1 to A4 are acquitted of the charges framed against them. The bail bond, if any executed by the appellants/A1 to A4 shall stand cancelled. The fine amount(s) if paid by them, shall be refunded to them.

19-08-2016 Index : Yes Internet: Yes cs Copy to

1. The Principal Sessions Judge, Erode, Erode District.

2. The Public Prosecutor, High Court, Madras.

3. The Deputy Superintendent of Police, Vellakoil Police Station, Kangeyam Sub-Division, Erode District.

(Crime No.372 of 2007)

4. The Record Keeper, Criminal Section, High Court, Madras.

R.SUBBIAH,J cs Judgment in Crl.A.Nos.631 and 656 of 2008 19.08.2016