



Crl.A.(MD)No.105 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 23.08.2023

Delivered on: 26.09.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.A.(MD)No.105 of 2019

M.Iruthayasamy

... Appellant

Vs.

The State of Tamil Nadu Represented by
The Deputy Superintendent of Police,
Nilakottai Sub Division,
Dindigul District.
(Crime No.259 of 2014)

... Respondent

Prayer : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the records of the judgment dated 20.02.2019 in Special Sessions Case No.28 of 2017 on the file of the Principal Sessions Court, Dindigul District in Crime No.259 of 2014 on the file of the respondent and set aside the same and acquit the appellant/sole accused.

For Appellant : Mr.I.Pinaygash

For Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor



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JUDGMENT

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This criminal appeal has been filed as against the judgment and conviction passed by the Principal Sessions Court, Dindigul District in Special Sessions Case No.28 of 2017 dated 20.02.2019, wherein the trial Court has convicted the accused for the offence under Section 326 IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo one year rigorous imprisonment. Out of the fine amount, Rs.20,000/- was ordered to be paid to P.W.2 as compensation under Section 357(1) Cr.P.C., and the trial Court acquitted the accused for the offence under Sections 294(b), 506(ii) IPC r/w Sections 3(1)(r) (s), 3(2)(va) of SC/ST (POA) Amendment Ordinance 2014.

2.The case of the prosecution is that the accused who is the resident of Mariyayeepalayam, Kottur Village, Nilakottai Taluk belongs to Christian Vanniar community, that is non-schedule caste and the defacto complainant Rakku and her husband Palanisamy are residents of South street Colony, Avvaiampatti, Kottur Village, Nilakottai Taluk are belonging to Hindu Pallar Community, which is schedule caste. The defacto complainant's sister Subbulakshmi, who was under the care and custody of the complainant, had



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records relied by the prosecution were furnished to the accused and thereafter, the trial Court framed charges as against the accused under Section 294(b), 326 and 506(ii) IPC and Section 3(1)(r)(s) of SC/ST (POA) Ordinance 2014. The charges were read over and explained to the accused and he denied the same. Thereafter, the prosecution, in order to prove the case, examined P.W.1 to P.W. 10 and marked Ex.P.1 to Ex.P.9 and also marked material object as MO.1. On the side of the accused, no one was examined and no documents were marked. After completion of prosecution witness, the trial Court has examined the accused with regard to the incriminating circumstances under Section 313(1)(b) Cr.P.C., he denied those allegations. After hearing both sides and perusing materials, the trial Court convicted the accused for the offence under Section 326 IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo one year rigorous imprisonment. Out of the fine amount, Rs.20,000/- was ordered to be paid to P.W.2 as compensation under Section 357(1) Cr.P.C., and the trial Court acquitted the accused for the offence under Sections 294(b), 506(ii) IPC r/w Sections 3(1)(r)(s), 3(2)(va) of SC/ST (POA) Amendment Ordinance 2014.



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4. Aggrieved by the above said judgment and conviction, the present appeal has been preferred on the following grounds:-

i) the judgment and conviction passed by the trial Court is against the law, weight of evidence and probabilities of the case.

ii) the prosecution failed to send the material object for Forensic Laboratory and seizure of aruval itself is highly doubtful and X-Ray of the injured finger was also not produced before the Court. The wound certificate was also not produced before the Court. But the trial Court has failed to consider the above said aspects.

iii) the Doctor also admitted that the injuries may be happened due to fell down on the sharp weapon or fell down on the soil.

iv) the offence under Section 326 IPC was included only after two years from the date of registration of FIR and the trial Court without wound certificate and X-ray, convicted the accused for the offence under Section 326 IPC and the same is un-sustainable. Therefore, the judgment of the trial Court is liable to be set aside.

5. The learned counsel appearing for the appellant would contend that the trial Court correctly acquitted the accused for the



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offence under Sections 294(b), 506(ii) IPC r/w Sections 3(1)(r)(s), 3(2)(va) of SC/ST (POA) Amendment Ordinance 2014, but wrongly convicted the accused for the offence under Section 326 IPC. The prosecution witnesses are highly doubtful and the accused is entitled for benefit of doubt. The prosecution has failed to prove the grievous injury and failed to produce wound certificate and X-ray was also not marked. The recovery of material object also creates serious doubt over the case of the prosecution. The material object has not been sent for chemical analysis. Without considering the above said aspects, the trial Court wrongly convicted the accused and hence, the judgment passed by the trial Court is liable to be set aside by allowing this appeal.

6.The learned Additional Public Prosecutor appearing for the respondent would contend that in this case the injured witness/P.W. 2, has categorically deposed about the occurrence and injuries sustained by him and the trial Court, after taking into consideration of all the evidences, correctly convicted the accused. Non-production of wound certificate and X-ray is no way affected the case of the prosecution. The trial Court, after elaborate discussions, came to a conclusion that the prosecution proved its case and rightly convicted the accused. There is no illegality or



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infirmity in the judgment passed by the trial Court. Hence, this criminal appeal is liable to be dismissed.

7.Heard both sides and perused the materials available in the records.

8.Upon hearing of arguments of both sides and on careful perusal of judgment of the trial Court and grounds of the appeal, the points for determination in this appeal are as follows:-

i)whether the prosecution has proved its case as against the accused for the offence under Section 326 IPC beyond any reasonable doubt?

ii)whether the judgment and conviction passed by the trial Court is sustainable in law and on facts?

9.The prosecution case is that due to previous motive, on 09.02.2014 at about 07.00 pm., when the complainant was in front of her house, the accused came there and abused the complainant in filthy language and abused her caste name and also by asking as to who had preferred the complaint against him and he attempted to attack with aruval (bill hook) and the same was prevented by P.W.2. At that time, he got injury on his index finger of right hand



and further, the accused by showing aruval (bill hook) threatened with dire consequences. Thereby, the accused has been charged for the offence under Sections 294(b), 326, 506(ii) IPC and Section 3(1)(r), 3(1)(s), 3(2)v(a) of SC/ST (POA) Ordinance, 2014. The trial Court, after elaborate discussions, acquitted the accused for the offence under Sections 294(b), 506(ii) IPC r/w Sections 3(1)(r)(s), 3(2)(va) of SC/ST (POA) Amendment Ordinance 2014 and convicted the accused for the offence under Section 326 IPC. As against the conviction, present appeal has been preferred by the appellant.

10. In this case, the trial Court framed charges for the offence under Sections 294(b), 326, 506(ii) IPC and Section 3(1)(r)(s) of SC/ST (POA) Ordinance, 2014. On careful perusal of the charges, it appears that charges for the offence under Sections 3(1)(r), 3(1)(s) of the SC/ST (POA) Ordinance, 2014 were framed together in a single charge. But, the offence under Section 3(1)(r), 3(1)(s) of SC/ST(POA) Ordinance, 2014 are separate offences and two separate charges ought to have been framed by the trial Court for each offence. The trial Court framed single charge for the two separate offences. However, the trial Court has acquitted the accused for the offence under Sections 3(1)(r), 3(1)(s) of ST/ST(POA) Ordinance, 2014.



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11.In this case, P.W.1 is the defacto complainant and she deposed before the trial Court that she belongs to Hindu Pallar Scheduled Caste community and the accused belonged to Christian Vanniyar, which is non-schedule community. Three years ago, one day at about 07.00 pm., when she was in her house along with her husband, the accused came there and abused caste name by stating that “ஏண்டி, பள்ளச்சி தேவிடியா மகளை”and attempted to attack with aruval(bill hook) and when the same was blocked by P.W.2, his index finger was cut. When she raised alarm, the accused caused criminal intimidation and ran away by leaving the aruval.(bill hook) Thereafter, they went to Nilakottai hospital and then, they went to Dindigul Hospital for further treatment. Thereafter, she gave the complaint, on the next day and the same was marked as Ex.P.1.

12.On perusal of Ex.P.1/complaint reveals that on the date of occurrence, the accused abused caste name and attempted to assault with aruval, at that time, P.W.1's husband blocked the same and due to that, he sustained injuries on his index finger. There is no mention in the complaint about the severed finger.



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13.P.W.2, who is the injured witness in this case, in his evidence has stated that in or about three years ago, at about 07.00 pm., due to previous enmity, the accused scolded his wife and then, attempted to assault with aruval, at that time, he blocked the same and hence, the sustained injuries on the index finger of the right hand and his index finger was amputated. Thereafter, he went to Nilakottai hospital and then, went to Dindigul Hospital. He also identified the aruval. Therefore, from the evidence of P.W.1 and P.W.2, they reveal that P.W.2 sustained injuries due to the assault made by the accused.

14.As per the complaint, there is no averment about the cut of the index finger. In this context, the prosecution examined the Doctor, who treated the injured witness in Nilakottai Hospital, as P.W.6 and he deposed that on 09.12.2014, at about 07.40 pm., when he was on duty, P.W.2 came with injuries and he sustained the following injuries:-

- 1)வலது கைமில் ஆள்காட்டி விரலில் நுனி பகுதி இல்லை.
- 2)வலது கைமின் நடு விரலின் உட்பகுதியில் அடி பகுதியில் 2 * 2 செ.மீ. நீளமும் அகலமும் கூடிய வோட்டு மிளவு காயம் இருந்தது.
- 3)வலது கைமில் மோதிர விரலில் உட்பகுதியில் அடி பகுதியில் 2 * 1 செ.மீ. அளவில் வோட்டு மிளவுக்காயம் இருந்தது.

He gave first aid to him and thereafter, he referred him to Dindigul



Hospital. As per the Dindigul hospital report, the victim sustained grievous injuries.

15. Therefore, from the evidence of P.W1, P.W2 and P.W.6 revealed that P.W.2 sustained injuries at the hands of the accused. Further, according to P.W.6, the injury was grievous in nature. But, no medical records from the Dindigul Hospital were produced before the trial Court and X-ray was also not produced and wound certificate was also not marked by the prosecution. Further, the prosecution failed to examine the Doctor, who treated the injured witness in Dindigul Hospital and they only examined the Doctor, who gave first aid to the victim in Nilakottai Hospital. The prosecution ought to have examined the Doctor who gave treatment to the victim for the injuries sustained by him and no medical records from the Dindigul Hospital where the victim was taken treatment also not produced. More over, P.W.6/Doctor who admitted the victim in Nilakottai hospital also deposed that based on the medical records of Dindigul Hospital only he gave opinion that the injury is grievous in nature. Without marking wound certificate, X-ray and medical records and without examining the Doctor who gave treatment to the victim, it is unsafe to convict the accused for the offence under Section 326 IPC. It is not the case of



the prosecution that the finger was entirely severed, if so, how much of the finger was severed and what about the severed part of the finger, whether it was united or not, have to be explained by the prosecution. Had the part of the finger was severed, then, the separated part has to be identified by the prosecution. But there is no evidence to that regard.

16.In this context, the learned counsel appearing for the appellant has relied the judgments in a case of Avinash Shetty Vs. State of Karnataka and another reported in (2004) 13 SCC 375 wherein the Hon'ble Supreme Court held as follows:-

6.By going through the description of the wound certificate, it is not correct to say that the injury was a grievous one, as there was no fracture to the bone either of the middle finger or of the index finger of the left hand. There is also no case that the victim would have suffered severe body pain during the space of twenty days or would have been unable to follow his ordinary pursuits for that period. There is also no case that there was permanent privation of sight of either eye, permanent privation of hearing of either ear or privation of any member or joint or destruction or permanent impairing of the power of any member or joint. On a plain description of the wound, it would not be grievous hurt coming under



Section 320 IPC. The opinion of the doctor that injury was grievous in nature was erroneous and it is only to be ignored.

7. Therefore the offence committed by the appellant would only come under Section 324 IPC. An application for compounding the offence under Section 320 CrPC is filed. The counsel for the complainant, P.W.1 stated that he has no objection to compounding the offence.

17. In a case of Mathai Vs State of Kerala reported in (2005) 3 SCC 260 wherein the Hon'ble Supreme Court held as follows:-

14. "Grievous hurt" has been defined in Section 320 IPC, which read as follows:

"320 Grievous Hurt # The following kinds of hurt only are designated as "grievous"-

First --Emasculation.

Secondly - Permanent privation of the sight of either eye.

Thirdly-- Permanent privation of the hearing of either ear.

Fourthly -- Privation of any member or joint.

Fifthly--Destruction or permanent impairing of the powers of any members or joint.



Sixthly -- Permanent disfiguration of the head or face.

Seventhly-- Fracture or dislocation of a bone or tooth.

Eighthly -- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

15. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.

18. In a case of G.Shopana Vs. State represented by The Inspector of Police, Tallakulam Police Station, Madurai, in Crl.R.C. (MD)No.59 of 2017, this Court held as follows:-

14. As rightly contended by the defence, the prosecution has neither furnished any particulars nor produced any materials to show that the injury



sustained by P.W.1 was grievous in nature. As already pointed out, the prosecution has not produced the X-ray nor assigned any reason for non production of the same. In the absence of any evidence to show that the accused had caused grievous injury on P.W.1, the conviction under Section 325 IPC passed by the Courts below cannot be sustained. But at the same time, as already pointed out, since the prosecution has proved that P.W.1 suffered contusion injury on her left shoulder and that the same was caused by the accused, the accused is liable to be convicted for the offence under Section 323 IPC and is convicted accordingly and sentenced to pay a fine of Rs.1,000/- in default to undergo two months imprisonment.

19.On careful perusal of the above said judgments it is clear that before conviction for the sentence of grievous hurt can be passed one of the injuries defined in Section 320 IPC must be strictly proved and without medical records the Court cannot convict the accused for the grievous hurt. In this case on hand also no wound certificate, X-ray and medical records were not produced and the Doctor who examined the victim was also not examined. Therefore, the above said case laws squarely applicable to the present facts of the case. While so, conviction under Section 326 IPC is un-sustainable, but at the same time, the prosecution



evidences shows that the victim sustained injuries at the hands of the accused.

20.In the absence of medical records, wound certificate and X-ray, the Court cannot convict the accused for the offence under Section 326 IPC.

21.The trial Court in the judgement held that the injury comes under fourth category of the Section 320 IPC. But, without proper medical evidence, the trial Court wrongly came to the conclusion. The trial Court also while recording evidence saw the finger, but on seeing naked eye, the Court cannot come to conclusion about the grievous injury. According to the medical evidence, the tip of the index finger was injured and not amputated entire finger. Mere causing injury on the tip of the finger, without producing X-ray and examination of Doctor, who treated the victim, the Court cannot form any medical opinion, since the Court is not an expert in that regard. There is no clarity as to how much of the part of the finger was damaged and whether the finger was united or not and whether separated part of the finger was traced out or not. While so the Doctor who gave treatment is the competent person to speak about the nature of the injury, but unfortunately, the prosecution has failed to examine the Doctor to prove the



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nature of the injury. The offence under Section 326 IPC is serious but no main witness, that is, the Doctor was examined. In this case, the trial Court has come to conclusion that the injury will come under the fourth category of the Section 320 IPC, i.e., privation of any member on joint, but as per medical records, the tip of the index finger was cut. If so, certainly the bone would be fractured, but no X-ray and other medical records were produced. Without clear cut evidence, the privation of any member of joint cannot be proved.

22.However, offence under Section 324 IPC is made out and thereby, the conviction passed by the trial Court under Section 326 IPC is hereby modified and the accused is hereby convicted for the offence under Section 324 IPC. As far as the punishment is concerned, the accused already undergone custody for 15 days and the days already undergone by the accused is sufficient to meet the ends of the justice. Accordingly, this Court is inclined to award punishment of 15 days and to pay a fine of Rs.25,000/- for the offence under Section 324 IPC.

23.In the result, this criminal appeal is partly-allowed and the conviction under Section 326 IPC is hereby set aside and the



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accused is convicted under Section 324 Ipc and he sentenced to undergo 15 days and to pay a fine of Rs.25,000/- and fine amount was already paid. Out of Rs.25,000/-, Rs.20,000/- has to be awarded to P.W.2. The period of sentence already undergone by the accused shall be set off as per Section 428 of Cr.P.C.

26.09.2023

Index :yes/No
Internet:yes/No
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To

- 1.The Principal Sessions Court,
Dindigul District.
- 2.The Deputy Superintendent of Police,
Nilakottai Sub Division,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J

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Pre-Delivery Order
made in
Crl.A.(MD)No.105 of 2019

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