



Crl.A(MD) No.378 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2023

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CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

**CRIMINAL APPEAL(MD)No.83 OF 2017**

1.Ashok @ Ashokan

2.Alagesan @ Chinnappa

... Appellants/Accused Nos.1 & 2

Vs.

State, rep. by  
The Inspector of Police,  
Pattukottai Taluk Police Station,  
Pattukottai,  
Thanjavur District.  
(Crime No.141 of 2013)

...Respondent/Complainant

**PRAYER :** Criminal Appeal is filed under Section 374 of Cr.P.C to call for the Judgment dated 16.02.2017 made in S.C.No.121 of 2014, on the file of the Sessions Judge, Mahila Court (Fast Track Mahila Court), Thanjavur and set aside the same.

For Appellants : Mr.S.Santhakumar  
for Mr.N.Anandakumar

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



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## **JUDGMENT**

This appeal has been preferred against the judgement and conviction passed in S.C.No.121 of 2014 by the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Thanjavur, wherein, these appellants were convicted and sentenced to undergo Simple Imprisonment for a period of three years and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment for an offence under Section 324 of IPC.

2. The appellants 1 & 2 are the accused Nos.1 & 2.

3. The case of the prosecution is that on 23.06.2023 at about 16.30 hours at Thuvarankurichi South Street, when the defacto complainant Malliga, W/o.Chandran along with her daughter-in-law and her grand-sons were in their house, due to previous enmity, the appellants 1 & 2 in order to commit murder abused obscene words and the same was questioned by the defacto complainant, at that time, the accused 3 to 5 pushed down the defacto complainant and caught hold the victim, then, the first accused assaulted the defacto complainant with aruval on the left side of the head by saying “தொலைந்துபோ”, whereby, caused injury. The second accused assaulted her with iron rod and caused simple injury. The same was prevented



by one Menaka, the accused Nos.1 & 2 kicked her thereby, they have been charge-sheeted for the offences under Sections 147, 294(b), 352, 324, 323, 307, 307 r/w 149 IPC r/w Section 4 of Tamilnadu Prohibition of Harassment of Women Act.

4. After the occurrence, the complainant (P.W.1-Malliga) has given a complaint before the respondent police. The respondent police has registered the FIR in Cr.No.141 of 2013 and thereafter, the investigating officer investigated the case and filed the final report as against the accused for the offences under Sections 147, 148, 294(b), 324, 323, 307 IPC r/w Section 4 of Tamilnadu Prohibition of Harassment of Women Act.

5. Thereafter, the learned Judicial Magistrate, Pattukkottai has taken the case on file in P.R.C.No.59 of 2013 and then furnished the copies to the accused under Section 207 Cr.P.C. Thereafter, the case was committed to the Principal District Judge, Thanjavur under Section 209 of Cr.P.C. Thereafter, the said case was made over to the Mahila Court (FTC), Thanjavur for trial and accused also appeared. The learned trial Judge after hearing both sides, framed the charges under Section 147, 294(b), 352, 324, 323, 307, 307 r/w 109 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act as against the accused Nos.1 & 2 and as against the accused Nos.3 to



5 framed the charges under Sections 147, 352, 307 r/w 149 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

6. Thereafter, the charges were read over to the accused and they denied the charges and then the trial Court has examined P.W.1 to P.W.14 and marked Ex.P1 to Ex.P13 and also marked M.Os.1 & 2.

7. After analysing the oral and documentary evidence adduced by either side, the trial Court has acquitted the accused Nos. 3 to 5 from all the charges levelled against them and also acquitted the accused Nos.1 & 2 for the offences under Sections 147, 294(b), 352, 323, 307 and Section 4 of TNPHW Act. However, convicted the accused Nos.1 & 2 under Sections 324 IPC and sentenced them to undergo 3 years Simple Imprisonment and to pay a fine of Rs.5000/- in default to undergo three months simple imprisonment.

8. Aggrieved over the said conviction and sentence, the present appeal has been filed by the accused Nos.1 & 2.

9. The learned counsel appearing for the appellants has contended that the trial Court had acquitted the other accused by giving benefit of doubt and the same benefit of doubt has to be extended to this petitioners also. As per the prosecution, the



petitioners have assaulted the victim with aruval and iron rod, but the victim sustained only one injury and there is no explanation that who caused the said injury and there is no direct evidence that said injury was caused by whom. Ex.P.7 wound certificate also reveals that the defacto complainant only sustained injury 3 x 0.5 x 0.5 cm and the same is also a simple injury. But the evidence of P.W.1 is totally contrary to the medical evidence and the trial Court has not considered the same, hence, he prayed for allowing the appeal.

10. The learned Additional Public Prosecutor appearing for the respondent would contend that the appellants along with others have assaulted the victim, particularly, A1 assaulted the victim on the head, A2 assaulted the victim on forehead and caused injury. P.W.1 clearly deposed about the injury and the medical evidence corroborates the evidence of P.W.1. The weapons involved in the occurrence, namely, Aruval also recovered by the investigating officer, thereby, the trial Court has correctly convicted the accused under Section 324 of IPC. Therefore, the appeal is liable to be dismissed.

11. Upon hearing both sides and perused the records of the trial Court grounds and trial Court judgment, the point for



determination in this appeal is whether the offence under Section 324 IPC has been proved by the prosecution beyond reasonable doubt and that the judgment and conviction passed by the trial Court is sustainable in law and facts.

12. The prosecution case is that on 23.06.2013 at about 16.30 hours when the defacto complainant along with her family members were in the house, the accused Nos.1 & 2 came there and abused the abscene words and when the same was questioned by the defacto complainant, the accused nos.3 to 5 caught hold her, at the time, the first accused assaulted the victim on her head with aruval by saying “தொலைந்துபோ” and the second accused assaulted the victim on her forehead by saying “தொலைந்துபோ”, thereby, she sustained injuries. Hence, the accused have committed the offences under Sections 147, 148, 294(b), 324, 323, 307 IPC r/w Section 4 of Tamilnadu Prohibition of Harassment of Women Act. The trial Court framed the charges as against the appellants under Sections 147, 294(b), 352, 324, 323, 307, 307 r/w 149 IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act.

13. The trial Court has acquitted the other accused from all the charges levelled against them. With regard to this appellants, the



trial Court acquitted them for other offences and only convicted them under Section 324 IPC.

14. In this case, the trial Court has not framed proper charges when the A1 and A2 had deadly weapons, the charge under Section 148 of IPC ought to have been framed, but the charge under Section 147 of IPC was framed. As far as charge under Section 307 of IPC is concerned there is no word mentioned in the charge as attempt to murder and in the charge under Section 307 r/w 149 of IPC the word mentioned as abetted (உடந்தையாக) and no word mentioned as being member of unlawful assembly.

15. In this case, P.W.1 is the victim as well as the defacto complainant and she only had given a complaint before the police and based on the complaint, FIR has been registered, thereafter, investigation has been completed.

16. The conviction for main charge is under Section 324 of IPC for the injuries sustained by the accused. The injured was examined as P.W.1 and she deposed before the trial Court that 1 ½ years ago when she was in the house at 4.30 p.m., the accused 1 & 2 came there and abused the abscene words and when the same was



questioned by the defacto complainant, the accused Nos.3 to 5 caught her and the first accused assaulted her on her head with aruval (billhook) by saying "தொலைந்துபோ" and the second accused assaulted her with iron rod on her left ear. Therefore, according to the evidence of P.W.1, she sustained injuries on her left side head and ear. But the medical evidence shows that the doctor P.W.11, who initially admitted the victim in the hospital, on 23.06.2013 has stated that when he was working as doctor in Government Hospital, Pattukkottai, the victim came with injuries alleging that two known persons assaulted with aruval and iron rod on the head. On examination, he found the injuries on the forehead 3x0.5x0.5 cm lacerated injury, therefore, admitted her as inpatient and thereafter, referred to Thanjavur Medical College Hospital. The said accident register was marked as Ex.P7.

17. On perusal of Ex.P7 it reveals that on the date of occurrence, the victim sustained injury on the left front parental region lacerated wound measuring about 3x0.5x0.5 cm. Apart from that, no injury is found as per the wound certificate. But the same victim, on the next day i.e., on 24.06.2013 admitted in the Ilangovan Hospital, Thanjavur, where, the doctor has issued a certificate under Ex.P8 stating that the victim came along with stitched wound of 14



cm., and she was admitted in the hospital on 24.06.2013 till 28.06.2013 and he also issued a certificate that the injury is simple in nature.

18. According to the evidence of P.W.1, both the accused assaulted with separate weapons and the defacto complainant sustained injury. But a perusal of wound certificate shows that she sustained only one injury. The prosecution has to establish that which accused has caused the said injury. But no any explanation on the side of the prosecution as to who caused the injury to the victim (P.W.1). As per the previous wound certificate Ex.P7 shows that there is only one injury 3x0.5x0.5 cm, but the Ex.P8 shows that 14 cm length of sutured wound. This also creates a serious doubt over the prosecution case.

19. In this context, the trial Court also discussed in the judgment in Para 8.8, but wrongly came to the conclusion that though the injuries by the victim is one injury since the injury was caused by one accused, the other accused also held liable. But there is no charge for the offence under Section 324 r/w 34 IPC and the charge is only under Section 324 of IPC as against each accused.



20. The specific case of the prosecution is that both the accused assaulted and caused injuries, but the medical evidence totally contrary to the oral evidence of the P.W.1 and thereby, the prosecution has failed to prove the case beyond reasonable doubt. Further, in this case, the investigating officer has produced the Material Objects stating that the material objects were seized through mahazar in the presence of witnesses and those mahazar witnesses P.W.6 and P.W.10 have not supported the case of the prosecution. In this context, the Investigating Officer P.W.14 in his evidence stated that on 24.06.2013 at about 14.30 hours the first accused Ashok gave a voluntary confession in the presence of witnesses Balasubramanian P.W.6 and Veeraiyan P.W.10. Based on the disclosure statement, the said accused Ashok taken them to his house and produced the Aruval M.O.1 and Iron rod M.O.2 from his thatched roof of his house. Therefore, from the evidence of P.W.14 it reveals that the M.O.1 and M.O.2 were recovered from A1. But as per prosecution, M.O.1 was used by A1 and M.O.2 was used by A2, while so, how the M.O.1 and M.O.2 were recovered from A1 alone has to be examined by the prosecution, but no any explanation to that regard. Therefore, the recovery of alleged Material Objects are also creates a serious doubt about the prosecution.



21. Without analysing the above said facts, the trial Court wrongly came to the conclusion and convicted the accused. Therefore, the prosecution has failed to prove the charge under Section 324 of IPC and the prosecution evidences are filled with doubts. With the available evidence, it is unsafe to convict the accused. The trial Court acquitted the other accused by giving benefit of doubt and the same benefit also ought to have extended to these accused, but failed to do so.

22. Hence, the judgment of conviction and sentence passed by the trial Court are not sustainable in law and facts and the same are liable to be set aside. Accordingly, the appeal is allowed and the judgment and conviction passed in in S.C.No.121 of 2014 on the file of the Mahila Court (FTC), Thanjavur is hereby set aside and the appellants are acquitted from the charge under Section 324 IPC and they be set at liberty subject to other cases if any. The bail bonds if any executed by the accused shall stand cancelled. The fine amount, if any, paid by the appellants shall be refunded to them.

Index : Yes/No  
Internet : Yes/No  
NCC : Yes/No  
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**09.08.2023**



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To

- 1.The Sessions Judge,  
Mahila Court  
(Fast Track Mahila Court),  
Thanjavur.
2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.DHANABAL, J.**

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