

Bail slip

The Appellant / Petitioner nearby Kanagaraj S/O. Karuppusamy was directed to released on bail as per the order of this Court dt:23/6/2014 in CRL.M.D 1/2014 in I.A 340/2014 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.A.No.340 of 2014

Kanagaraj ...Appellant / 1<sup>st</sup> Accused

Vs.

State rep. By  
The Deputy Superintendent of Police,  
Periyanaickanpalayam Sub-Division,  
Coimbatore District. ...Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the Judgment made in Special Sessions Case No.18 of 2012 on the file of Learned Principal District and Sessions Judge, Coimbatore dated 25.02.2014 and acquit the Accused.

For Appellant : Mr.M.Easan  
For Respondent : Mr.R.Ravichandran  
Government Advocate (Crl.Side)

J U D G M E N T

The Appellant / A.1 has focused the instant Criminal Appeal before this Court (as an aggrieved person) as against the Judgment dated 25.02.2014 in Spl.S.C.No.18 of 2012 passed by the Learned Principal District and Sessions Judge, Coimbatore.

Introduction

2. The Learned Principal District and Sessions Judge, Coimbatore while passing the Impugned Judgment in Spl.S.C.No.18 of 2014 on 25.02.2014 at Paragraph No.11 had observed as under:

"11. Both P.W.1 and P.W.2 have categorically stated that A1 assaulted P.W.1 with aruval on his left shoulder. Ext P.5 wound certificate would disclose

that there was a cut injury on the left arm about 12cm x 6cm x 6cm with bone exposed. It is also seen from the document that x-ray was taken and no fracture was found. Thus the medical evidence with regard to cut injury confirms that prosecution version. Though a suggestion was made to P.W.5 that this injury could also be caused when coming into contact with a sharp portion of a bamboo which the witness has answered in the affirmative, it is not adequately brought out in evidence where at SOC this sharp-edged bamboo at shoulder height of P.W.1 was. Secondly, why should P.W.1 falsely implicate A.1? That he might have made some additional allegations which this Court has found not proved does not ipso facto imply that his version as against A.1 is not trustworthy. The defence suggested to P.W.1 and P.W.2 that there was a pathway dispute between the accused persons and the P.W.1 and this dispute perhaps was the motive for P.W.1 to implicate A.1. During Section 313 Cr.P.C., questioning the accused persons reiterate this as the reason for implicating them in a false case. This suggestion even though denied by the witnesses, still even if it is presumed to be true this motive can cut both ways. After all motive can, in a given situation, be a double edged weapon and this particular motive which the defence wants to attribute to P.W.1 could with equal force be tilted against the accused as well. After considering the material evidence available on record this Court holds that prosecution has established beyond all reasonable doubt that A.1 had assaulted P.W.1 with aruval on his left hand/ shoulder. The charge against A.1 for an offence under Section 324 thus stands proved."

and ultimately came to the conclusion that the charge under Section 324 of IPC against the Appellant / A.1 was proved by the prosecution beyond all reasonable doubt. In respect of the other charges against the Appellant / A.1, the trial court had opined that the prosecution had not proved the same against him.

3. Before the trial court in the main case on behalf of the prosecution, Witnesses P.W.1 to P.W.10 were examined and Exhibits P.1 to P.16 were marked. Also M.O.1 to M.O.4 were marked. On the side of the Respondent / Accused, no one was examined as a witness and no document was marked.

4. It transpires that in respect of an offence under Section 324 of IPC, the Appellant / A.1 was convicted by the trial court and he was directed to undergo a punishment of One year Rigorous Imprisonment and also he was imposed with a fine of Rs.2,000/-

in default of payment of fine, he was directed to further undergo One Month Rigorous Imprisonment. Moreover, the sum of Rs.2,000/- (being the fine amount) was ordered to be paid to the victim (P.W.1) as 'Compensation' in terms of Section 357 of Cr.P.C.,

5. It comes to be known that the Appellant / A.1 and A.2 were found not guilty in respect of the offence under Section 294(b) of IPC and under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. To put it precisely, A.2 was found not guilty in respect of an offence under Section 324 of IPC and he was acquitted under Section 235(1) of Cr.P.C.,

6. Being dissatisfied with the Judgment of the trial court in Spl.S.C.No.18 of 2012 dated 25.02.2014, the Appellant / A.1 has preferred the present Criminal Appeal basically contending that the trial court had not considered the material evidence available on record.

Appellant's submissions

7. The Learned Counsel for the Appellant / A.1 projects an argument that the complaint in the present case was lodged with a delay of three hours and indeed, the Defacto Complainant was admitted after nearly 2½ hours in Government Hospital. It is also represented that the Government Hospital is just at a distance of about 20 minutes from the alleged scene of occurrence.

8. Expatiating his submission, the Learned Counsel for the Appellant / A.1 takes a stand that according to P.W.1, one Shanmugam Chettiyar took him to hospital, but Ex.P.5, Wound Certificate points out that one Arumugam brought the Defacto Complainant to the hospital. Furthermore, both Shanmugam Chettiyar as well as Arumugam were not examined by the prosecution and that apart, 'Accident Register Copy' was not produced before the trial court by the Respondent / Prosecuting Agency.

9. The Learned Counsel for the Appellant / A.1 contends that it is a case of P.W.1 that cut injuries were inflicted upon him by the Appellant / A.1 and his father. But the Wound Certificate (Ex.P.5) clearly mentions that the defacto complainant had sustained only one single incision and one scratch.

10. The Learned Counsel for the Appellant / A.1 brings it to the notice of this Court that as per First Information Report and according to P.W.1, except, the Defacto Complainant's wife others were not present in the place of occurrence. In fact,

P.W.1 had deposed in his evidence that only four family members were present in the place of occurrence.

11. The Learned Counsel for the Appellant / A.1 strenuously submits that it is the stand of the Respondent / Complainant that the weapons used for the commission of crime were the 'Sickle' (Aruval) viz., M.O.1 and M.O.2. However, P.W.3 had testified before the trial court that only the knives were seized in front of him and in view of the difference between the weapon viz., knife and sickle (Aruval), the credibility of the story of the prosecution is not free from doubt.

12. The Learned Counsel for the Appellant / A.1 contends that P.W.1 is the victim and his wife P.W.2 is an interested witness. Apart from that when all the Mahajar witness had turned 'Hostile' there is a lacuna on the side of the Respondent / Prosecution, which aspect was not looked into by the trial court in a proper and real perspective.

13. Besides the above, it is projected on the side of the Appellant / A.1 that P.W.1 (Defacto complainant) in his evidence had stated that the Appellant / A.1 had caused injury on his left elbow using sickle (Aruval) and that the Appellant / A.1's father caused injury on his back using the sickle and in fact two grievous injuries were sustained, but there lies the contradiction, as seen from Ex.P.5, the Wound Certificate, which points out that the Defacto Complainant had sustained only one single incision and some scratches. As such, it is the plea of the Appellant / A.1 that what took place was only an 'Accident and not an Incident'.

#### Respondent's Contentions

14. Conversely, it is the submission of the Learned Government Advocate (CrI.Side) for the Respondent / Complainant that the trial court had appreciated the evidences of P.W.1 to P.W.3 and also by looking into the documents and other evidence of witness (projected on the side of the Prosecution) and also considering M.O.1 to M.O.4 came to the resultant conclusion that the charge levelled against the Appellant / A.1 in respect of an offence under Section 324 of IPC stood proved, but acquitted the Appellant / A.1, since he was not found guilty in respect of the offence under Section 294(b) and under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

15. As a matter of fact, it is brought to the notice on behalf of the Respondent that the trial court had sentenced the Appellant / A.1 for a period of One Year Rigorous Imprisonment in respect of an offence under Section 324 of IPC and imposed a fine of Rs.2,000/- on him and also awarded him the default sentence etc., Furthermore, the 2<sup>nd</sup> accused was acquitted by

the trial court because he was found not guilty in respect of the offence under Section 324 of IPC and furthermore, he was also not found guilty under Section 3(1)(x) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

16. The pith and substance of the plea taken on behalf of the Respondent is that the trial court had appreciated the oral and documentary evidence of the Prosecution Witness, Exhibits and M.O.s marked in the case and ultimately delivered a Judgment in Spl.S.C.No.18 of 2012, which may not be dislodged by this Court sitting in Appellate Jurisdiction, inasmuch as the same does not suffer from any legal infirmities.

#### Discussions and Findings

17. At the outset this Court relevantly points out that to prove an offence under Section 324 of IPC, the prosecution is to establish,

(i) that the accused caused voluntarily hurt to another person (viz., caused bodily pain, or disease or infirmity as per Section 319 of IPC to another person)

(ii) the said injury was caused with an intention or knowledge, as the case may be

(iii) It was caused by any instrument either for stabbing, shooting or cutting or with any instrument which was used for the commission of offence is likely to cause death or by any means fire or any heated substance or by means by poison or corrosive substance or by means of any explosive substance or by any means of any substance, which is deleterious to the human body either inhale to swallow or to receive into blood or by any means of any animal

(iv) that the said offence does not come under Section 334 of IPC.

18. To put it precisely, to come within the ambit of Section 324 of IPC, the Accused / Offender should have caused simple hurt and it should have been caused voluntarily. One has to keep in mind that when an injury is simple it will attract Section 324 of IPC. It is to be taken note of that to prove an offence under Section 324 of IPC, the victim is the appropriate witness, since he or she would not ordinarily permit the real culprit to escape from the clutches of Law, in the considered opinion of this Court.

19. P.W.1 (the Defacto complainant) in his evidence had deposed that he knows the Accused and they are carrying on agriculture and in nearby land Accused (Appellant / A.1 and A.2) carry on agricultural operations and that the said land belongs to the Government. Further, he proceeds to state that in his own agricultural land he had put up a Hut House and resides with his family and that he does not have any reading

knowledge.

20. It is the further evidence of P.W.1 that the Appellant / A.1 abused him by referring to his caste name and assaulted him with sickle below the left shoulder and that A.2 assaulted him with sickle on the back side of his neck and his wife, Padma (P.W.2) on seeing the same raised an alarm. Although he had reportedly mentioned about the incident to his relatives over phone, in his evidence before the trial court, he had stated that at the time of his occurrence his brother Vijayan (P.W.3) and his uncle were present. Significantly it is be pointed out that P.W.1 had not mentioned about the presence of others at the scene of occurrence.

21. P.W.2 in her evidence had deposed while the Accused caused injuries to P.W.1 (her husband), and at that time she intervened, but was pushed down and that her Father-In-Law and his son rushed to the place. In this connection, this Court relevantly points out that P.W.9 (Sub-Inspector of Police) who had registered the First Information Report and P.W.10, the Investigating Officer had stated that at the time of occurrence other than P.W.1 and his wife P.W.2 is the one was present. It is to be noted that both P.W.1 and P.W.2 had deposed that P.W.3 and P.W.4 were also there at the scene of occurrence, but in view of the categorical evidence of P.W.9 and P.W.10 to the effect that other than P.W.1 and P.W.2 none were present at the scene of occurrence, it is highly doubtful that P.W.3 was an eye witness to the happening of occurrence, in the considered opinion of this Court.

22. As far as the present case is concerned, after the occurrence, it is the version of P.W.1 (Defacto complainant) that he had met one Shanmugam Chettiyar, who took him to the hospital. At this stage, it cannot be lost sight of that the said Shanmugam Chettiyar was not cited as a witness by the Respondent / Prosecuting Agency. But as seen from Ex.P.5, Wound Certificate, it is clear that one Arumugam had brought P.W.1 to the hospital unfortunately, the said Arumugam was also not examined as a witness. Even the 'Accident Register Copy' was not produced by the Respondent / Prosecution and added further, the Doctor, who examined P.W.1 (who received the patient to the Hospital) was also not examined before the trial court.

23. Dealing with the aspect of the evidence of P.W.1 that the Appellant / A.1 and A.2 had assaulted him with sickle and in this connection, M.O.1 and M.O.2 were produced by the Prosecution and that the Appellant / A.1 had inflicted cut injury on his hand and A.2 had cut him on the back of the neck, the Ex.P.5, Wound Certificate does not in any manner help the P.W.1 because of the simple reason that in the said document there was only one cut injury on the left shoulder of the P.W.1 and there were two lacerated injuries (viz., one behind the neck

and the other on the back of P.W.1).

24. P.W.3 had deposed that the knives were seized in his presence and another and the Respondent / Prosecution places reliance on M.O.1 and M.O.2 (Sickle) used in the commission of the offence. Even though the M.O.1 and M.O.2 were not sent to the concerned Forensic Science Laboratory to find out any blood stains were there and even the Blood Stained Sand, M.O.3 was not sent to the Lab to find out the comparison of blood group, but the omissions in this regard on the side of the Respondent / Prosecution, in the considered opinion of this Court does not affect the credibility of the prosecution story, as far as the present case is concerned, as opined by this Court.

25. In regard to the registration of First Information Report with a delay of about 3 Hours and 15 Minutes, it is the stand of the Appellant / A.1, that the said FIR was transmitted to the Learned Judicial Magistrate more than 24 hours after the occurrence and this aspect was very much admitted by P.W.9 (Sub-Inspector of Police, who registered FIR) and P.W.10 (Investigating Officer) was also brought to the fore that it would take only an hour to reach the learned Judicial Magistrate from the police station.

26. It is to be pointed out that the aspect of delay in lodging a FIR in a given case is to be viewed in the back ground of an HOMO-SAPIEN'S different factors involved i.e., the time taken by the individual concerned to compose themselves before arriving at a future course of action to be taken.

27. A mere running of the eye over the Ex.P.12 - First Information Report would point out that the date of occurrence was on 16.02.2012 (Thursday), that the information was received at the police station on the same day at 20.30 hrs and that the information received was only an oral one. The complainant is P.W.1 and the suspected Accused are (Appellant/ A.1 and A.2). In Ex.P.12, FIR (in Crime No.38 of 2012) in S.No.17 of 2012, the Learned Judicial Magistrate had made an endorsement to the effect that received original complaint at 11.00 p.m. and affixed his signature in token thereof on 17.02.2012. It is quite clear from Ex.P.12 (FIR) that the place of occurrence was at a distance of approximately 12 kilometers from the police station. Even though the occurrence took place at 5.00 p.m. on 16.02.2012 and notwithstanding the fact that FIR was registered at 8.30 p.m., the real fact is that the P.W.1/ Victim (injured) was taken to the Mettupalayam Government Hospital at 7.15 P.M, P.W.9 (Sub Inspector of Police) went to the hospital and recorded the statement of P.W.1 (victim) at 19.45 hrs on the date of occurrence viz., on 16.02.2012 itself.

28. Considering the fact that P.W.1 was taken to the Mettupalayam Government Hospital at 7.15 P.m, and both the incident had taken place at 5.00 p.m. on 16.02.2012 and FIR

registered at 8.30 p.m, the delay in question was properly explained before the trial court on behalf of the Respondent / Prosecution and as such, the said delay is not fatal to the case of the prosecution, looking at from any point of view in the considered opinion of this Court.

29. In regard to the plea that P.W.2 (being the wife of P.W.1 / Injured) is an interested witness and therefore, her deposition will have to be looked into with care and caution, it is to be pertinently point out by this Court that even though P.W.2 is the wife of Victim / P.W.1, who had witnessed the occurrence and also had raised a alarm / noise. The mere fact that she being the wife of P.W.1, in the considered opinion of this Court does not shake the case of the prosecution by any means whatsoever. Furthermore, when P.W.2 (wife of P.W.1) had seen the occurrence and raised an alarm, then the plea of the Appellant that P.W.2 is the wife of P.W.1 (injured / victim) does not affect the edifice of the prosecution story.

30. Before the trial court, no one had deposed that A.2 had assaulted P.W.1 (Injured / Victim - Defacto complainant). In fact, as per Ex.P.5, Wound Certificate, the injury on the neck of P.W.1 was a lacerated one and not a cut injury. According to P.W.1, Defacto complainant, the Appellant / A.1 had caused a cut injury upon him and also A.2 had caused a similar injury on his neck. But the evidence of PW.1 in this regard does not find support from Ex.P.5- Wound Certificate as stated supra.

31. As regards the non examination of Doctor, who examined P.W.1 (who received him at the hospital) is not fatal to the case of the prosecution, in the considered opinion of this Court. Similarly the non-examination of one Arumugam (who brought P.W.1 to the hospital) in the present case does not effect the prosecution case.

32. Be that as it may, P.W.1 and P.W.2 had in a crystalline manner deposed Appellant / A./1 assaulted him (P.W.1) with sickle on his left shoulder but the Ex.P.5, Wound Certificate unerringly point out that there was a cut injury on the left arm measuring 12 Cm X 6 Cm X 6 Cm with bone being exposed. It appears that no fracture was seen from the X-ray taken by the hospital authorities. In regard to the cut injury, the medical evidence supports the case of the Respondent / Prosecution.

33. At this juncture, this Court significantly points out that P.W.5 (Doctor) in his evidence had clearly deposed that the injury found in Ex.P.5, Wound Certificate would be caused when coming into contact with a bamboo's sharp portion. Moreover, although the P.W.1 had deposed in an improved fashion, before the trail court, yet his evidence against the Appellant / A.1 cannot be thrown overboard by this Court on that score alone. Per contra, this Court comes to an inevitable and irresistible conclusion that the evidence of P.W.1 (Defato complainant/

Victim) was to the effect that he was assaulted by Appellant / A.1 with sickle upon his left hand / shoulder clearly proves the charge that levelled against the Appellant / A.1 in respect of an offence under Section 324 of Indian Penal Code.

34. Insofar as the evidence of P.W.1 and P.W.2 pertaining to charge under Section 3(1)(x) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 their evidence do not point out that the incident took place within public gaze. Apart from the evidence of P.W.1 and P.W.2, no other disinterested evidence was tendered on behalf of the Respondent / Prosecution on this aspect.

35. In regard to the charge under Section 294(b) of IPC, the same was not made out against both the Appellant / A.1 and A.2. Resultantly, this Court holds that the charges under Section 3(1)(x) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 294(b) of Indian Penal code were not made out by the Respondent / Prosecution before the trial court and rightly they were not found guilty by the trial court. In respect of an offence under Section 324 of IPC, this Court unhesitatingly holds that the said charge was proved by the Respondent / Prosecution against the Appellant / A.1 beyond all shadow of doubt.

36. In view of the foregoing and this Court taking note of the attendant facts and circumstances of the instant case in an integral manner comes to a consequent conclusion that the trial court had rightly convicted the Appellant / A.1 in respect of an offence under Section 324 of Indian Penal Code and the same is free from any flaw. But this Court is of the earnest view that the imposition of punishment of One Year Rigorous Imprisonment upon the Appellant / A.1 is marginally on the higher side and as such, this Court reduces the same to that of Five Months Rigorous Imprisonment to secure the ends of justice. Furthermore, this Court also opines that the imposition of fine of Rs.2,000/- upon the Appellant / A.1 is little bit higher and therefore reduces the same to Rs.1,000/-

37. Apart from that, the sum of Rs.1,000/- (from and out of the imposition of Rs.2,000/- by the trial court) shall be paid to P.W.1 / Defacto complainant (injured / victim) as compensation under Section 357 of Cr.P.C., The Learned Principal District and Sessions Judge, Coimbatore is directed to secure the presence of the Appellant / A.1 and to immure him in prison.

38. In fine, the Criminal Appeal is allowed in part on above terms. The trial court is directed to refund the sum of Rs.1,000/- (Rupees One Thousand only) to the Appellant / A.1 upon necessary Application / Petition being filed for return of the said amount as per Criminal Rules of Practice.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. Learned Principal District and Sessions Judge,  
Coimbatore
2. The Deputy Superintendent of Police,  
Periyanaickanpalayam Sub-Division,  
Coimbatore District.
3. The Public Prosecutor,  
High Court, Madras

+1cc to Mr.M. Easan, Advocate, S.R.No.73163

SR(CO)  
RS(03/01/2017)

सत्यमेव जयते

Cr1.A.No.340 of 2014

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