

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 29 .06.2016

Coram:-

The Hon'ble Mr. Justice B.GOKULDAS

Criminal Appeal No.364 of 2015 &
M.P.(MD).No.1 of 2015

Jayaraman

... Appellant

vs.

State by the
Inspector of Police,
Keelapalur Police Station,
Ariyalur District
(Crime No.9 of 2014)

... Respondent

Appeal filed under Section 374 (2) Cr.P.C. against the Judgment of conviction and sentence passed by the Additional District and Sessions Judge/CJM, Ariyalur, in S.C. No.72 of 2014 on 16.04.2015.

For Appellant : Mr.V.Parthiban

For Respondent: Mr.C.Prabakar
Govt. Advocate.

Orders Reserved on	27.05.2016
Judgment Pronounced on	29. 06.2016

J U D G M E N T

The appellant/A1, who was charged with offences under Sections-294 (b), 326 and 307 IPC., was tried by the learned Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Ariyalur, and on conclusion of the trial, though the charge under Section 326 IPC. was held to have been 'not proved', the appellant herein/accused was found guilty of the offences under Sections 294(b) and 307 IPC and sentenced to undergo simple imprisonment for 3 months and Rigorous imprisonment for 10 years respectively and also to pay a fine of Rs.500/- and Rs.10,000/- respectively with usual default clause. Aggrieved against the said judgment of conviction and sentence passed by the trial court, the appellant has preferred the present Appeal.

2. The case of the prosecution is that, in view of refusal by the complainant-one Rajangam to repay the loan amount of Rs.16000/- lent to him by the appellant herein, who is none else than the younger brother of the complainant, on 05.02.2012, there ensued a wordy quarrel between them, thereby, there was prior enmity between them and, on account of that, at about 8 P.M. on 14.01.2014, the appellant along with his minor son Selvam @ Selvakumar/A2 went to the house of the complainant at Arungal Village, armed with Aruval, and after scolding him in filthy language, attacked the complainant with Aruval on the lower lip, chin and cheek by uttering 'இத்தோடு ஒழிந்துபோடா', resulting in the complainant sustaining grievous injuries, thus, he was charged under Sections 294 (b), 326 and 307 IPC.

3. To substantiate its case against the accused/appellant herein, the Prosecution examined PWs-1 to 14, marked Exs.P1 to P10 and produced M.Os.1 and 2.

4. PW-1 Rajangam is the complainant, who deposed before the trial court that there was a dispute between him and his younger brother-appellant as the appellant demanded settlement of the property belonging to the complainant in his favour in lieu of the loan amount of Rs.16,000/- which the complainant failed to pay to the accused. As the complainant was not willing for that, the accused had enmity against him and, on 14.01.2014, along with his minor son, the accused/appellant herein came to the residence of the complainant at about 8 pm. armed with aruval and by uttering filthy language and stating that so long the complainant was alive, he would not spare the land to him, inflicted cuts with the aruval on the mouth and lip of the complainant. While he fell down after receiving cut-injures, his family members rushed towards him and took him in an Auto to the Ariyalur Government Hospital, where the Keelapalur Police officials received his statement under Ex.P1.

PWs-2, 3, and 4, who are the wife and sons respectively of PW-1, corroborated his version. PW-5 daughter-in-law of PW-1 speaks about the injuries sustained by PW-1. Pws-6, 7 and 12, not having supported the prosecution case, they were treated as hostile. PW-8 is the mahazar witness for the observation mahazar under Ex.P2 and also the mahazar under Ex.P3 for the recovery of aruvals/M.Os.1 and 2 from the rear portion of the residence of the accused.

PW-10/Dr.Kanmani deposed that, while he was working as Assistant Medical Officer in Ariyalur Government Hospital, on 14.01.2014 at about 10 P.M., PW-1 came to him for treatment by stating that he was attacked by two known persons at about 9 pm. with knife. After examining PW-1 and noting two injuries, he recommended for his treatment at the Tanjore Medical College and Hospital.

PW-9/Dr.Anbarasan deposed that, while he was working as Assistant Professor in Tanjore Medical College and Hospital, on 15.01.2014 at about 12.55 P.M., PW-1, who was brought for treatment, was admitted as in-patient and he stated to him that he was attacked by two male persons with aruval. PW-9 issued Ex.P4 would certificate noting therein 5 wounds and opining that the injury resulting in removal of teeth is grievous in nature while other injuries are simple. He further opined that the injuries might have been caused in the manner as stated by the injured/PW-1.

Through PW.11, the Assistant Professor in the X-ray Section of the Tanjore Medical College and Hospital, the X-ray report under Ex.P4 in respect of PW-1 was marked to the effect that the injured did not suffer any fracture.

PW-13 would depose that, while working as Sub Inspector of Police in Keelapalur Police Station, after receipt of the information on 15.01.2014, he went to the Government Hospital, Ariyalur, where he recorded the complaint from PW-1 and based on which, an FIR under Ex.P8 was registered in Cr.No.9 of 2014 for offences under Sections 294(b), 326 and 307 IPC. He went to the place of occurrence at 9.30 A.M. and prepared sketch under Ex.P9 as well as observation mahazar and recorded the statement of witnesses available. He seized the weapons in the presence of witnesses and thereafter, the seized items were sent to the magistrate's court concerned under Form-95/Ex.P.10.

PW-14, the Inspector of Police deposed that after receiving the case file from PW-13 for further investigation and after examining the witnesses and medical officers, he concluded the investigation and laid charge sheet against the accused under Sections 294(b), 326 and 307 IPC. on 25.02.2014. In so far as the other accused viz., A2/son of the appellant herein is concerned, being juvenile, the case against him was split up.

5. When questioned under Section 313 Cr.P.C. by putting all the incriminating materials available against him, the accused denied his complicity in the crime and pleaded innocence. Upon hearing both sides and perusing the oral and documentary evidence, the learned trial Judge convicted and sentenced the appellant as aforementioned, resulting in filing of the present Appeal.

6. Now, the point before this Court for consideration is as to whether the judgment of the trial court warrants interference?

7. Learned counsel for the appellant, in his endeavour to assail the judgment of the trial court, would submit that the prosecution case totally revolves around the testimony of interested witnesses like Pws-2 to 5, who are closely related

to PW-1/injured. The judgment of the trial court does not show anything even to suggest that it had exercised extra care and caution while acting upon their evidence. On the contrary, it seems that the trial court simply acted upon their evidence to convict the appellant. He further submitted that, owing to the reason that there was a delay of about two days in sending the FIR to the Court of the Magistrate, the trial court should have discarded the very case of the prosecution. So submitting, he pleaded to set aside the judgment of the trial court.

8. Per contra, learned Government Advocate would submit that the veracity of the account given by the witnesses like Pws-2 to 5 cannot be doubted at all for the reason that all of them are consistent and uniform in their version about the act and overtact of the accused and also about the previous enmity. According to him, the oral testimonies of the eye-witnesses including the injured do not contradict with the medical evidence. Therefore, the trial court was not hesitant to act upon the evidence of those witnesses to hold against the accused. According to him, there being no scope for interference, the Criminal Appeal may have to be dismissed.

9. I have perused the materials available on record and considered the rival contentions projected by the respective counsel.

10. This Court is not able to agree with the submissions of the learned counsel appearing for the appellant for the following reasons. Even though there was a generalized argument that the evidence of closely related witnesses should not be acted upon except with care and caution, a perusal of the trial court judgment would show that the testimonies of the injured witness as well as Pws-2 to 5, who are his close relatives, were examined by the said court with all care and caution. In fact, the trial court took pains to contrast and analyse the ocular evidence with that of medical evidence and there was no major contradiction between the medical and ocular testimonies. The account given by the injured witness and other witnesses, except on some minor/trivial discrepancies, was corroborative, cogent and convincing in respect of the previous enmity, attack and injuries. In other-words, the medical evidence recorded by the Doctor in the Certificates, almost confirms the testimony of the ocular witnesses about the manner in which the injured was attacked by the appellant herein.

11. Further, it is not the case of the defence that there were alterations or changes in the FIR so as to discredit the very document itself. When all materials clearly establish the case of the prosecution beyond any iota of doubt, the mere delay of two days in sending the FIR to the court cannot be seriously viewed particularly when the Investigating Officer thoroughly followed up the investigation on the very same day

resulting in recording the statement of witnesses and even recovery of the weapon of offence on the very next day. Thus, this Court is unable to subscribe the submission of the counsel for the appellant, and finds no ground to interfere with the well-founded judgment of the trial court.

12. In the result, the Criminal Appeal fails and the same is dismissed. The judgment made in S.C.No.72 of 2014, dated 16.04.2015 is confirmed. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District and Sessions Judge & Chief Judicial Magistrate, Ariyalur.
 - 2.The Inspector of Police, Keelapalur Police Station, Ariyalur District.
 3. The Superintendent of Police Central Prison, Tirchy.
 4. The Principal District and Sessions Judge, Ariyalur
 5. The Public prosecutor, High Court, Madras.
- + 1 cc to MR.Sunvikram, Advocate Sr.37027

Cr1.A.No.364 of 2015

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