

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.10.2016

C O R A M

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Criminal Appeal No.499 of 2015

J.Palanivel ... Appellant/Defacto Complainant

Vs

1.The State rep. by
The Sub Inspector of Police,
Mothikonpalayam Police Station,
Dharmapuri District. 1st Respondent/Complainant

2.Saminathan

3.Chitra Respondents 2 and 3/Accused

Prayer: Criminal Appeal filed under Section 372 Cr.P.C., praying to set aside the judgment dated 06.03.2015 in C.C.No.18 of 2014 on the file of the Judicial Magistrate No.I, Dharmapuri.

For Appellant : Mr.V.R.Annaganthi
For 1st Respondent : Ms.M.F.Shabana
Government Advocate (Crl. Side)
For RR 2 and 3 : Mr.P.Mani

JUDGMENT

The Appellant/Defacto Complainant (P.W.1) has preferred the instant Criminal Appeal before this Court as against the Judgment dated 06.03.2015 in C.C.No.18 of 2014 passed by the Learned Judicial Magistrate No.I, Dharmapuri.

2.The Learned Judicial Magistrate No.I, Dharmapuri, while passing the impugned Judgment in C.C.No.18 of 2014 on 06.03.2015, at paragraph No.10, had, inter alia, observed that '... when no trust can be placed on the Prosecution evidence and when Prosecution failed to prove the guilt of the Accused beyond all reasonable doubts, the Court cannot fix criminal liability on the Accused' and resultantly, found the Accused (R1 and R2/A1 and A2) not guilty in respect of the offences under Section 294 (b), 324 I.P.C. and acquitted them of all the charges under Section 248(1) Cr.P.C.

3.Challenging the Judgment of acquittal dated 06.03.2015 in C.C.No.18 of 2014 passed by the trial Court, the Petitioner/Appellant/ Defacto Complainant/P.W.1 has preferred the present Appeal (as na aggrieved person) mainly contending that the trial Court had failed to consider the evidence of P.W.1 to P.W.7 which support the case of prosecution to the effect that the Accused abused the Defacto Complainant in obscene words, assaulted and caused injuries to him with stones.

4.The Learned Counsel for the Appellant submits that the trial Court had not taken into account Ex.P.2-Wound Certificate which unerringly points out as regards the injury sustained by P.W.1.

5.It is represented on behalf of the Appellant that the trial Court had failed to consider the evidence of P.W.4 that he took the injured P.W.1 to the hospital but the evidence of P.W.4 was discarded stating that the persons at the scene of occurrence was a doubtful one.

6.Advancing his arguments, the Learned Counsel for the Appellant proceeds to project an argument that just because P.W.3 in his evidence had failed to depose about the presence of P.W.4 at the scene of occurrence, it could not be said that the happening of an occurrence was a doubtful one.

7.Per contra, it is the contention of the Learned Counsel for the Respondents 2 and 3/A1 and A2 that the trial Court in the main case in C.C.No.18 of 2014 had examined the witnesses on the side of prosecution viz., P.W.1 to P.W.9 and marked Exs.P.1 to P.6 and after considering the entire oral and documentary evidence available on record had ultimately found the Respondents 2 and 3 (A1 and A2) not guilty in respect of the offence under Section 294(b), 323 I.P.C. and the same is free from legal infirmities. सत्यमेव जयते

8.At this juncture, this Court relevantly points out that it is the case of the 1st Respondent/Prosecution (before the trial Court) that on 07.01.2014 at about 5.00 p.m. when the Defacto Complainant/ Appellant (P.W.1-Palanivel) was grazing his cattle in the land of P.W.4 (Madheswaran) and ploughing his field with a Tractor, the Accused viz., Respondents 2 and 3 scolded P.W.1 in inducing/vulgar language/ words and that the Respondents 2 and 3/A1 and A2 beat him with stone on his back and the 2nd Respondent/A1 beat him with stone in his hand. As a matter of fact, P.W.3 (Palani) and P.W.6 (Meenatchi) separated the fight/quarrel and P.W.4 (Madheswaran) took the P.W.1 (Appellant/ Defacto Complainant) to the hospital and Ex.P.1 - Report was

given to P.W.5 (S.I. of Police) who register the Ex.P.3 - F.I.R. under Sections 294(b), 324 I.P.C. It comes to be known that P.W.5 after visiting the scene of occurrence, prepared Ex.P.4 - Observation Mahazar, Ex.P.5 - Rough Sketch in the presence of witnesses, P.W.7 - Selvaraj and P.W.8 - (Thorani Gounder) and obtained statements from them and other witnesses. Also, P.W.5 had arrested the Respondents 2 and 3/A1 and A2 and subsequently send them to Judicial custody. In fact, P.W.9 (Sub Inspector of Police) took up the case for investigation and he examined P.W.2 - Dr.Kalanivani who treated P.W.1 (Appellant) and obtained Ex.P.2 - Wound Certificate and after completion of his investigation filed a charge sheet. It transpires that the defence taken on behalf of Respondents 2 and 3/A1 and A2 is that because of the previous enmity relating to pathway and also the civil litigation, with a fear of losing the litigation, a false case was foisted against the Respondents 2 and 3/A1 and A2.

9.In the instant case, it is the evidence of P.W.1 (Appellant/ Defacto Complainant) before the trial Court that on 07.01.2014 at about 5.00 p.m. in the evening when he was grazing the cattle near his house, i.e. Madheswaran's land at that time, the 3rd Respondent/A2 scolded him in filthy words and immediately the 3rd Respondent/A2 picked up a stone and hit the Appellant/P.W.1 on his back and the 2nd Respondent/A1 took a stone and scratched his hand also uttered the following filthy words "fz;lhu Xyp igah. njtoah igah"and at that time, Meenatchi S/o.Natarajan, Palani S/o.Perumal separated them from quarrelling and Madheswaran (P.W.4) brought him to the Dharmapuri Government Hospital wherein he was admitted for treatment and further, in the hospital, he gave a complaint Ex.P.1 before the police.

10.It is the evidence of P.W.2 (Doctor) that on 07.10.2014 Palanivel (Appellant), aged 27 years, son of Janganathan came to her for treatment and informed that he was attacked by two known persons with stone and on examination, she found the following injuries 'Linear Abrasion 4x0.5 cm over left forearm; Abrasion 0.5 cm x 0.5 cm over right arm' and he was admitted as an inpatient and provided with treatment and the two injuries found in Ex.P.2 Accident Register were of simple nature.

11.P.W.3 in his evidence had deposed that he took the tractor of his brother and went to the house of Palanivel at Nallampatti and at short distance, he ploughed the land and for two times he had ploughed the land and at that time, the 2nd & 3rd Respondents/A1 and A2 and Palanivel (Appellant) were quarrelling and he separated them. Further, the Appellant (P.W.1/Defacto Complainant) sustained a slight injury on his hand and after the problem coming to an end, he had ploughed the land and was

examined by the Police.

12. Significantly, P.W.4 in his evidence (in cross examination) had stated that the land that he ploughed belongs to the Accused and that after the quarrel was over, he came to know that the land belongs to the Accused. It is the evidence of P.W.4 that on 07.01.2014 at about 5 or 6 p.m. when he was in his garden his uncle Jaganathan came to him and informed that the Appellant was beaten by the Accused and immediately, he went to the place of occurrence and at that time, the two Accused were beating the Appellant with stones and he witnesses the same and since the blood was coming out in the hands of P.W.1, he took him to the Dharmapuri Government Hospital in his two wheeler and admitted him and that he was examined by the Police. P.W.4 (in his cross examination) had stated that quite often wordy quarrel would take place between his uncle and the Accused families and this would be compromised by holding talks in the village.

13. P.W.5 (S.I. of Police), in his evidence, had stated that on receipt of information of the Dharmapuri Government Hospital on 08.01.2014 at 16.30 hours he went to the hospital and obtained the intimation of the injured Palanivel aged 27 years son of Jaganathan who was under treatment and after obtaining the intimation and for recording the complaint of the injured at 15 p.m. he registered a case in Mothikonpalayam Crime No.7/2014 under Sections 294(b), 324 I.P.C. and Ex.P.3 was the First Information Report registered by him and on 18.01.2014 at about 17.30 hours he went to Nallampatti and in the presence of witnesses Selvaraj and Thoravanigounder, he inspected the scene of occurrence and prepared an Observation Mahazar-Ex.P.4, Ex.P.5-Sketch and later examined witnesses 1 to 6 and recorded their statements and later after coming to know that the occurrence was really one on 09.01.2014 at about 12.30 hours, he arrested the two Accused with the assistance of H1 4020 and brought them to the Police Station and after conducting a physical charge over their body handed over them to the Para and at about 13 hours, with a Remand Report sent them for Judicial Custody.

14. P.W.6, in his evidence, had deposed that during January 1st 2014 at about 5.00 p.m. in the evening he was returning from his brick works and P.W.1 (Palanivel) was grazing the cattle only Madheswaran's (P.W.4) land and at that time the Accused were creating problem with Palanivel (P.W.1) and he spoke to the Accused and informed them that a compromise could be arrived at but that was not heeded to by them and 2nd Accused Chitra (3rd Respondent) picked up a stone and punched on the back of P.W.1 (Appellant) and the other Accused Saminathan (2nd Respondent/A1) punched the Appellant with stone on his hand and back and the Appellant (P.W.1) had sustained a blood injury and later

Madheswaran (P.W.4) took the injured to the Hospital and that he was examined by the Police. P.W.6 (in his cross examination) had stated that to reach his house he had pass through the disputed land viz., patta land belongs to A1.

15.P.W.7 in his evidence had deposed that on 08.01.2014 at about evening 5.30 p.m. the Police of Mothikonpalayam in connection with a case inspected the scene of occurrence and prepared an Observation Mahazar, Rough Sketch and in the Observation Mahazar (Ex.P.4), he and one Poorani affixed their signature as witnesses Ex.P.6 and the first signature (Ex.P.6) was that of his and that he was examined by the Police.

16.P.W.8 in his evidence had stated that the signature found in Observation Mahazar belonged to him and in the place of occurrence, the Police was drawing something and they called him and asked him to affix his signature as a witness and therefore, he had affixed his signature.

17.P.W.9 (S.I. of Police), in his evidence, had stated that he took up the file relating to Crime No.7/2014 under Section 294(b), 324 which was preliminarily investigated by Rajagopal of Mothikonpalayam on 26.01.2014 and went to the scene of occurrence and he had not recorded the statement of witnesses 1 to 6 because of the reason that they had uttered the same thing on being examined by the S.I. of Police - P.W.5 (Rajagopal) and also examined Doctor Kalaivani (P.W.2) who gave treatment to the Complainant and obtained a certificate from her and also examined P.W.5, who had registered the First Information Report and after completion of investigation, laid a final report against Saminathan S/o.Subbu Gounder, Chitra W/o.Saminathan under Sections 294(b), 324 I.P.C.

18.It is to be borne in mind that in a criminal case, it is the duty of the prosecution to establish the case of prosecution beyond all reasonable doubt viz., to the effect that the Accused alone had committed the offence(s) in question. From this onus, the prosecution cannot wriggle out of the situation that it is in.

19.Besides these, it is to be remembered that in the instant case, P.W.2 (Doctor), who had treated P.W.1 (Appellant), had stated that the injuries seen on P.W.1 would have occurred two or three days before the purported date of occurrence. If the evidence of P.W.3 is taken into account, then, it is the version of P.W.3 that both the Complainant and the Accused had a fight and he got separated them. Moreover, P.W.3 had not spoken anything about the presence of P.W.4 (Madheswaran), who visited the scene of occurrence and taking P.W.1 (Appellant) to the Hospital. The witnesses to the Observation Mahazar - Ex.P.4 were

not the eyewitnesses and they signed only acceding to the request of the Police. P.W.5 had also uttered in his evidence that P.W.1 and P.W.4 had informed him that the land belonged to P.W.4 which is at variance to the evidence of other prosecution witnesses.

20. Apart from the above, P.W.9 (S.I. of Police) had stated in his evidence that he had conducted the investigation on 26.01.2014 and obtained statements from the witnesses on that day itself but in cross examination, he had admitted that he was on other duty because of 'Republic Day'. In reality, P.W.6 and P.W.3 had not stated about the presence of other purported eyewitnesses at the time of occurrence.

21. It is to be pointed out that to prove an offence under Section 294 I.P.C., the prosecution is to prove that (i) the accused did any obscene act in any public place or (ii) sang, recited or uttered any obscene songs, ballad, or words in or near any public place and (iii) that the aforesaid act or acts caused annoyance of others.

22. In order to establish the offence punishable under Section 324 I.P.C., the prosecution is to prove: (i) that the accused caused hurt i.e., caused bodily pain, or disease or infirmity (vide Section 319 I.P.C.) to another, (ii) that it has been caused voluntarily i.e., with knowledge or intention to cause; (c) that it has been caused by any instrument for shooting, or stabbing or cutting, or by any instrument which qua weapon of offence is likely to cause death, or by means of fire or any heated substance or by means of any poison or any corrosive substance or by means of any explosive substance or by means of any substance which is deleterious to the human body to inhale to swallow or to receive into blood or by means of any animal, and (iv) that the offence does not attract Section 334 I.P.C."

23. Also, in the decision Preethimon and another V. State of Kerala, 2008 CRI.L.J. 1233, at special page 1235, at paragraph 11, it is observed as follows:

"A vague or general statement in the FIR that the accused showered obscene words is not enough to constitute an offence under Section 294(b). It is necessary to state the words uttered by the accused. The prosecution would not be justified in bringing in the evidence for the first time the words allegedly spoken to by the accused, when the same is not recorded in the First Information Statement in a case

instituted upon police report. The complaint or the FIR, as the case may be, shall contain the words spoken to by the accused, which, according to the prosecution, would attract the offence under Section 294(b) of the Indian Penal Code. Or else, there is every possibility of evidence being tendered putting forth any words as the prosecution witnesses may wish to put forward improving upon or adding to the allegation in the complaint or FIR causing great prejudice to the accused and depriving his right to have a fair trial."

24. In Criminal Law, the onus is on the prosecution to prove against the Accused beyond all reasonable doubts. Even if there is a simmering doubt, then, the story of the prosecution cannot be believed by a Court of Law. Suffice it for this Court to point out that the criminal liability could not be fastened on the Accused either in a causal or cavalier fashion.

25. In view of the foregoing and in the instant case the evidence of prosecution witnesses are at variance with one another and as such, this Court, bearing in mind yet another fact that the stones used at the time of occurrence were not seized by the 1st Respondent/Prosecution and looking at from any angle and on consideration of the entire available materials on record both oral and documentary, this Court comes to an irresistible conclusion that the trial Court had rightly found the Accused/Respondents 2 and 3 not guilty in respect of an offences under Sections 294(b), 324 I.P.C. and acquitted them of all charges under Section 248(1) Cr.P.C. and the same, in the considered opinion of this Court, are free from any legal infirmities. Resultantly, the Criminal Appeal fails.

26. In fine, the Criminal Appeal is dismissed. The Judgment of the trial Court in C.C.No.18 of 2014 dated 06.03.2015 is affirmed by this Court for the reasons assigned by this Court in this Appeal.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Dharmapuri.

2. do through the chief judicial magistrate
Dhamapuri.

3.The Sub Inspector of Police,
Mothikonpalayam Police Station,
Dharmapuri District.

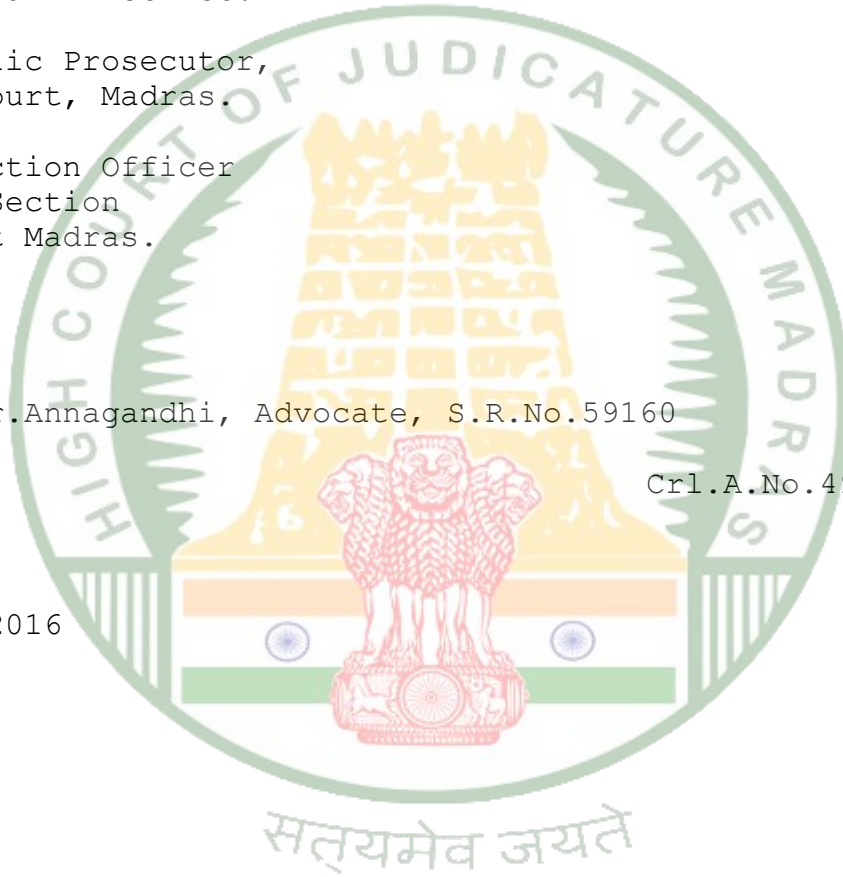
4.The Public Prosecutor,
High Court, Madras.

5. The Section Officer
Criminal Section
High court Madras.

+lcc to Mr.Annagandhi, Advocate, S.R.No.59160

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cp 12/11/2016



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