

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.216 of 2008

R.Sakthivel

.. Appellant

Vs

State

Represented by  
The Inspector of Police,  
Avinashipalayam Police Station,  
Coimbatore District.  
(Crime No.2 of 2006)

.. Respondent

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., praying to set aside the order of conviction and sentence imposed on the appellant in S.C.No.136 of 2007, dated 05.12.2007 by the learned Additional District cum Sessions Judge (Fast Track Court No.IV), Coimbatore, Tiruppur.

For Appellant : Mr.K.Thilageswaran

For Respondent : Ms.M.F.Shabana,  
Govt. Advocate (Crl. side)

JUDGMENT

The present appeal has been filed by A.3 against the conviction and sentence imposed on him, in S.C.No.136 of 2007, dated 05.12.2007 by the learned Additional District cum Sessions Judge (Fast Track Court No.IV), Coimbatore, Tiruppur.

2. Accused No.3, in S.C.No.136 of 2007 is the appellant herein. Totally, there are five accused in this case. A.1 stood charged for the offences under Sections 148, 324, 307 IPC and 323 and 324 r/w 149 IPC. A.2 stood charged for the offences under Sections 148, 324 (2 counts) and 324, 323, 307 r/w 149 IPC. A.3 stood charged for the offences under Sections 148, 307 and 324, 323 r/w 149 IPC. A.4 and A.5 stood charged

for the offences under Sections 147, 323 and 307, 323 and 324 r/w 149 IPC.

3. By judgment, dated 05.12.2007, the trial Court convicted A.1 and A.2 under Section 148 IPC, and imposed a fine of Rs.1,000/- each in default, to undergo Simple Imprisonment for three months and convicted them under Section 324 IPC and imposed a fine of Rs.2,000/- each in default, to undergo Simple Imprisonment for six months. A.4 and A.5 were convicted under Section 147 IPC and imposed with a fine of Rs.500/- each in default, to undergo Simple Imprisonment for one month and convicted under Section 323 IPC, imposed with a fine of Rs.1,000/- each in default to undergo three months Simple Imprisonment. A.3 was convicted under Section 148 IPC and sentenced to undergo Rigorous imprisonment for three months, and convicted under Section 326 IPC, and sentenced to undergo Rigorous imprisonment for one year and also to pay a fine of Rs.1000/- in default, to undergo Simple Imprisonment for three months. The trial Court ordered the sentences, to run concurrently, in respect of A3.

4. The trial Court acquitted A.1 and A.3 under Sections 307, 323, 324 r/w 149, A.2 under Sections 307, 324 and 324 r/w 149 IPC and acquitted A.4 and A.5 for the offences under Sections 307, 323 and 324 r/w 149 IPC. Challenging the said conviction and sentence, the appellant/A.3 is before this Court with this Criminal Appeal.

5. The case of the prosecution, in brief, is as follows:-

(i) There was a dispute between P.W.1's family and the sister of the appellant. Six months prior to the occurrence, there was a quarrel between the family of P.W.1, and the sons and daughter of P.W.1's brother. In respect of the same, a complaint was lodged before the Avaniashipalayam police station and a case is pending before the Judicial Magistrate, Palladam. On 1.1.2006, at about 6.30 p.m, A.1, the son of P.W.1's brother, removed the fence in P.W.1's house and ran away. On the same day at about 8.00 p.m, all the accused came with dangerous weapons to P.W.1's house and A.1 attacked P.W.1 with Aruval at the back side of his knee twice and A.3 attacked him with knife near left eye. A.1 again attacked him with Aruval. A.1 and A.2 attacked P.W.2, the daughter of P.W.1, with Aruval on her head. A.4 and A.5 also beat P.W.2 with wooden log all over her body. A.2 attacked P.W.8, the another daughter of P.W.1 with knife. Thereafter, P.W.1 was taken to Palladam Government Hospital. P.W.10, who was a Doctor in Palladam Government Hospital, after giving first aid to P.W.1, referred him to Tirupur Government Hospital. P.W.11 a Head Constable in Avinasi Police Station on receipt of information from the hospital, went there and recorded the statement of P.W.1 at 7.00 p.m. Based on his statement, he registered a case in Cr.No.2 of 2006, under

Sections 147, 148, 323 and 307 IPC, and he sent the First Information Report to the Court and the Inspector of police. P.W.12, who was working as Inspector of Police, in the respondent's police station, on receipt of the said F.I.R, started investigation, proceeded to the scene of occurrence and prepared Observation Mahazar Ex.P.7 and Rough Sketch Ex.P.8. He also seized the sample soil from the scene of occurrence. Then, he recorded the statement of witnesses on 03.01.2016. Thereafter, he arrested A.5 on 3.1.2006. Since A.2 was admitted in the Government Hospital, Coimbatore, he sustained grievous injuries, P.W.12 recorded the statement of A.2, in the hospital, and registered a case under Sections 147, 148, 323 and 324 IPC. A.3, who has also injured, admitted in the Government Hospital. P.W.12 arrested them in the hospital itself. On 3.1.2006, he also arrested A.5. Thereafter, P.W.12 arrested A.4, on 05.01.2006 on such arrest, he voluntarily given a confession, and based on the disclosure statement, he recovered M.Os.4 and 5, namely Aruval and knife, and recorded the statement of other witnesses. After completing his investigation, on 5.3.2006, he filed a charge sheet for the offence under Sections 147, 148, 307, 326, 324, 323 r/w 149 IPC.

(ii) At the time of conducting investigation in Cr.No.3 of 2006, he came to know that A.2 and A.3 also sustained injuries, and he has also registered a case in Cr.No.3 of 2016, and after investigation, he referred the said case as mistake of fact.

(iii) Considering all the above materials, the trial Court framed the charges as mentioned in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 17 documents were exhibited, besides three Material Objects were marked.

(iv) Out of the witnesses examined, P.W.1 is the injured eye witness. According to him, there is a dispute between the accused family and P.W.1's family and on the day of occurrence, all the accused came to P.W.1's house with dangerous weapons and attacked him. Subsequently, he was taken to hospital, wherein his statement was recorded, and based on that, a case has been registered. P.W.2 is the daughter of P.W.1, she is also an injured eye witness. She has specifically spoken about the overt act of A.3. P.W.3 is the son of P.W.1. He is also an eye witness to the occurrence. According to him, A.3 attacked P.W.1, with knife near his left eye and caused injuries. P.W.4 is the person running a shop near the scene of occurrence. According to him, all the accused chased P.W.1, and P.W.1 went into P.W.4's shop, and he has closed the shop. P.W.5 is also running a shop near the scene of occurrence. According to him, there was a quarrel between the accused and P.W.1's family.

P.W.6 and P.W.7 have turned hostile. P.W.8 is the another daughter of P.W.1. She has also spoken about the overt act against A.3. P.W.9 is a witness to the observation mahazar.

(v) P.W.10, a Doctor working in Palladam Government Hospital, deposed that P.W.1, came to the hospital at about 10.20 p.m, and he told him that he was attacked by known persons with wooden logs and dangerous weapons. P.W.10 examined P.W.1 and found three grievous injuries and simple injuries. P.W.10 examined P.W.2, wherein P.W.2 told that at about 10.00 p.m she was attacked by known persons with wooden logs and dangerous weapons and certified that she sustained simple injuries. P.W.10 after giving first aid, he referred both P.W.1 and P.W.2 to Tiruppur Government Hospital. P.W.10 also examined P.W.3 and P.W.8. P.W.10 after giving first aid, referred them to Tiruppur Government Hospital. P.W.11, the Head Constable went to Tiruppur Government Hospital and recorded the statement of P.W.1 and registered a case in Cr.No.2 of 2006 under Sections 147, 148, 323 and 307 IPC. Thereafter, P.W.11 sent the First Information Report to P.W.12, the Inspector of Police.

(vi) P.W.12, who was working as Inspector in Avinashi Police Station, after receiving F.I.R, started investigation. He proceeded to the scene of occurrence and prepared observation Mahazar (Ex.P.7) and rough sketch (Ex.P.8) and he seized the material objects and recorded the evidences of other witnesses. He arrested A.5 on 3.1.2006. P.W.12 also arrested A.2, A.3 and A.4 and, recorded statement of witness and after completing the investigation, he filed a charge sheet.

(vii) When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness, but they marked three documents as Ex.D.1 to D.3. on their side.

(viii) The trial Court, having considered all the above materials, convicted the accused as detailed in the first paragraph of the judgment. Aggrieved by the said judgment, the present Criminal Appeal has been filed by A3.

6. I have heard Mr.Thilageswaran, learned counsel appearing for the appellant and Ms.M.F.Shabana, learned Government Advocate (Criminal side) and I have also perused the records, carefully.

7. There are four eye witnesses to the occurrence. P.W.1 is the injured witness, according to him, at the time of occurrence, all the five accused came to his house and attacked him with Aruval. Appellant/A.3, attacked him with knife near the left eye and caused serious injury. P.W.2 is the daughter of P.W.1. She is also an eye witness. Her evidence corroborates

with the evidence of P.W.1. P.W.3 is the son of P.W.1, another eye witness to the occurrence. He also spoke about the overt act of A.3 and others. P.W.8 is another daughter of P.W.1. She also categorically stated that the appellant attacked P.W.1 with knife near left eye. All the above four eye witnesses consistently stated that the appellant attacked P.W.1 with knife near his left eye. Even though all the above witnesses are interesting witnesses, all the eye witnesses have consistently spoken about the occurrence and overt act of the appellant, the occurrence took place in the house of P.W.1, and their presence in the scene of occurrence is natural, and there is no reason to disbelieve evidence of all the four eye witnesses. P.W.10, the Doctor deposed that P.W.1, sustained injury near his left eye and he issued Accident Register, his evidence also corroborates the evidence of eye witnesses. In the above circumstances, I am of the considered opinion that the prosecution has clearly established that only the appellant/A.3 attacked P.W.1. with knife near the left eye.

8. So far as the injury caused by A.3 to P.W.1 is concerned, P.W.10, the Doctor who treated P.W.1 issued the Accident Register, and thereafter, he referred him to the Tirupur Government Hospital, where X-ray was taken. Though P.W.10 has deposed that there was a fracture near left eye of P.W.1 and issued a wound certificate to that effect. But the said X-ray and wound certificates were not marked by the prosecution. In the above said circumstances, the prosecution has failed to establish the fact that there was a fracture in the face of P.W.1. Since the prosecution has failed to establish that there is a grievous hurt on P.W.1 and he has only suffered simple injuries, he is liable to be convicted only under Section 324 IPC.

9. So far as the quantum of sentence is concerned, the trial Court, taking into consideration all the facts and circumstances of the case, imposed only fine amount on the other accused. But the trial Court convicted the appellant/A3 under Section 148 IPC and sentenced him to undergo Rigorous Imprisonment for 3 months and he was also convicted under Section 326 IPC and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months. Since the appellant is now convicted under Section 324 IPC instead of 326 IPC and he has also been inside the jail for a considerable time, considering the mitigating circumstances, the sentence imposed by the trial Court is modified to the period of sentence already undergone by him and he is also directed to pay a fine of Rs.1,000/- for the offence under Section 148 IPC.

10.The appeal is partly allowed in the above terms.

sd/-  
Assistant Registrar

/True Copy/

Sub Assistant Registrar

cla

To

1 The District Munsif cum,  
Judicial Magistrate, palladam

2 The Chief Judicial Magistrate,  
palladam, Coimbatore.

3. The Additional District cum  
Sessions Judge  
(Fast Track Court No.IV),  
Coimbatore at Tiruppur.

4. The Inspector of Police  
Avinashipalayam Police Station  
Coimbatore District.  
(CRIME NO.2 OF 2006)

5.The Principal and District Sessions Judge,  
coimbatore.

6.The Public Prosecutor,  
High Court, Madras.

+1 CC Mr.K.Thilageswaran Advocate SR.No.8454

kji(co)  
EGR 17/11/2017

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