

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.780 of 2009

Srinivasan

.. Appellant/2nd Accused

Vs

State represented by
The Inspector of Police,
S.R.M.C.Police Station,
Crime No.17 of 2008
Chennai Suburban Police

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed upon the appellant by the learned Additional & Sessions Judge-Fast Track Court No.II, Poonamallee in S.C.No.120 of 2009 by a judgment dated 03.11.2009

For Appellant : Mr.A.M.Rahamath Ali

For Respondent : Mr.R.Ravichandran
Government Advocate

JUDGMENT

A2 in S.C.No.120 of 2009 on the file of the Additional & Sessions Judge - Fast Track Court No.II, Poonamallee, is the appellant herein. Totally there are 3 accused and they stood charged for the offences under Sections 341, 294 B and 332 IPC. A3 separately stood charged for the offence under Section 333 IPC and A1 and A2 stood charged for the offence under Section 333 r/w. 34 IPC. The trial Court convicted the Appellant/A2 for the offence under Section 332 IPC and sentenced him to undergo 1 year Rigorous Imprisonment and also to pay a fine of Rs.5,000/- in default to undergo 3 months Rigorous Imprisonment and acquitted A1 and A3 for the offence under Sections 341 and 294 B IPC and acquitted A3 under Section 333 IPC and A1 and A2 were also acquitted under Section 333 r/w. 34 IPC. Now challenging the above said conviction and sentence A2 is before this Court with this criminal appeal.

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

P.W.1 was working as a driver in Metropolitan Transport Corporation, P.W.2 was working as a conductor in Bus Route No.12 B. On 08.01.2008 at about 4.30 P.M., while driving the bus near Ayyapanthangal all the accused came in a motor cycle and dashed against the bus. Thereafter, all the accused came inside the bus and A2/Appellant, attacked P.W.1 in his right chick and shoulder. P.W.2 came there to prevented them; A3 attacked him with the helmet and caused bleeding injuries. Thereafter, P.W.1 along with co-workers went to the police station and given a complaint. P.W.8, Inspector of Police of the respondent police station, on receipt of the complaint, registered a case in Crime No.17 of 2008 under Sections 341, 294 (B) and 332 IPC and prepared First Information Report (Ex.P.6). Then P.W.1 and P.W.2 were sent to the Government Hospital for treatment, P.W.7, Doctor, working in a Government Hospital, Royappettah, Chennai, examined P.W.1 and P.W.2 and found the lacerated injury of the left hand of P.W.1 and issued wound certificate (Ex.P.5) and opined that it is a sample injury, and also examined P.W.2 and given wound certificate, Ex.P.4 and opined that it is grievous injury. Thereafter, P.W.8 arrested the accused, recorded their statement of other witnesses, and after completion of investigation, he filed a final report.

3. Considering all these materials, the trial Court framed the charges as mentioned in the first paragraph of the judgement and the accused denied the same. In order to prove its case, on the side of the prosecution as many as 8 witnesses were examined and 8 documents were exhibited, besides 4 material objects.

4. Out of the witnesses examined, P.W.1 the driver of the bus, according to him, while he was driving the bus, all the accused were came in a motor cycle and dashed against the bus and they fell down. Then A2 came inside the bus and attacked him with hands and when P.W.2, conductor came there A3 attacked him with helmet and caused bleeding injuries. According to P.W.2 all the accused attacked P.W.1 and A2 attacked him with the helmet. P.W.3 is an independent witness, according to him, A1 attacked P.W.2 ran away, he is also an attestor of observation Mahazar and Rough Sketch. P.W.4 a driver, working in Metropolitan Transport Corporation, he along with P.W.1 and P.W.2 given the complaint and he took them to hospital for treatment. P.W.5 and P.W.6 are turned hostile. P.W.7, Doctor, Government Hospital, Royapettah, examined the P.W.1 and P.W.2 and given a wound Certificate as Exs.P.4 and P.5. P.W.8, Inspector of Police, who registered a case, conducted investigation and recorded the statement of witnesses, and after completion of investigation, filed the final report.

5. 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 or mark any documents.

6. Considering all these materials, the trial Court acquitted A1 and A3 and convicted A2 as stated in the first paragraph of this judgment. Now, challenging the above said conviction and sentence the appellant/A2 is before this Court with this Criminal appeal.

7. I have heard, Mr.A.M.Rahamath Ali, learned counsel appearing for the appellant and Mr.R.Ravichandran, learned Government Advocate appearing for the respondent and also perused the records carefully.

8. Totally there are three accused, according to P.W.1 and P.W.2 all the three accused came in a motor cycle and dashed against the bus and fall down. Then, all the three accused came inside the bus and scolded P.W.1 in a filthy language. According to P.W.1, three persons had attacked him in right chicks, shoulders and hands. While, P.W.2 came there to prevent him, at the time, another person attacked P.W.2 with helmet, causing bleeding injuries and he identified him as A3. But, P.W.2 stated that only A2 has attacked him and all the three persons attacked P.W.1. When he prevented them, appellant/A2 only attacked with helmet and caused bleeding injuries. P.W.3 is also witness to the occurrence, according to him, only A1 attacked P.W.1 and others run away.

9. It is the evidence of P.W.1, the appellant/A2 attacked him with hands in his face, chick and shoulders. But, P.W.7, Doctor, who examined P.W.2 found lacerated injury of 1cm in his face and P.W.1, have abrasion of 5*1 cm and he did not found any other injuries. The prosecution did not examine any other witnesses besides the driver and conductor of the bus. Even in the available interested testimony of P.W.1 and P.W.2, there are lot of contradictions. P.W.1 says only appellant/A2 attacked him. P.W.2 has specifically stated that only the appellant/A2 attacked him with helmet. But P.W.1 says that A3 attacked P.W.2, whereas P.W.3, another eye witness stated that only A1 attacked P.W.1 and others ran away.

10. Trial Court disbelieved the evidence of P.W.2, and acquitted A1 and A3, but convicted the appellant/A2. Even though the evidence of injured witness is sufficient to convict the accused, but in view of the contradiction in the evidence of prosecution witnesses it is unsafe to convict the appellant. The trial Court partly disbelieved the evidence of P.W.1 and P.W.2 and acquitted other accused.

11. In the above circumstances, it is highly unsafe to convict the appellant/accused based on the doubtful interested witnesses of P.Ws.1 to 3. Hence, I am of the considered view that the prosecution has failed to establish the guilt of the accused beyond any reasonable doubt, hence the appellant entitled for acquittal.

In the result, the Criminal Appeal is allowed and conviction and sentence imposed by the court below is set aside and the appellant/accused is acquitted. Fine amount, if any, paid by him shall be refunded to him. Bail bond, if any executed by him, shall stand cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

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To

1. The learned Additional & Sessions Judge
-Fast Track Court No.II,
Poonamallee.
2. The Chief Judicial Magistrate,
Chengalpattu.(for information)
3. The Judicial Magistrate No.I, Poonamallee.
4. the Inspector of Police, SRMC police Station, Chennai.
5. The Public Prosecutor, High Court, Madras.

+lcc to Mr.A.M.RAHAMATHALI, Advocate, S.R.No. 86495

CrI.A.No.780 of 2009

SVI (CO)
TR(11/06/2018)

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