

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 10.01.2017

Judgment Pronounced On : 07.09.2017

CORAM

THE HONOURABLE MR.JUSTICE **S.BASKARAN**

Crl.A.No.746 of 2013

1.P.Suresh
2.Smt.P.Vijaya

... Appellants

vs.

State rep. by
The Inspector of Police,
Arani Taluk Police Station,
Kalambar Police Station,
Thiruvannamalai District.
(Crime No.131 of 2008)

2

... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 28.10.2013 passed by the learned
Assistant Sessions Judge, Arani, Thiruvannamalai District in
S.C.No.197 of 2008.

For Appellant : Mr.C.Venkatesan

For Respondent : Mr.E.Raja
Additional Public Prosecutor

JUDGMENT

There are two accused in this case. The first accused stood charged for offence punishable under Sections 294(b), 307, 323, 325 and 506(i) IPC and the second accused stood charged for offence punishable under Sections 294(b), 307, 323, 325 and 506(i) r/w 34 IPC. Both the accused were found guilty by the trial court and they were convicted and sentenced to undergo simple imprisonment for seven years each with a fine of Rs.5000/- each, in default to undergo 3 months simple imprisonment each for offence under Section 325 of IPC and sentenced to undergo simple imprisonment for Ten years each with a fine of Rs.5000/- each, in default to undergo simple imprisonment for three months each for offence under Section 307 IPC. The accused were acquitted of the offence under Sections 294(b), 323 and 506(i) r/w 34 IPC. Aggrieved by the said verdict of the trial court, the accused have come forward with this criminal appeal seeking to set aside the conviction and sentence imposed on them by the trial court.

2. The case of the prosecution is as follows:-

2.1. The complainant who deposed as P.W.1 stated that about 1-1/2 or 2 years before while he went to his land to secure his cow around 4.00 to 4.30 p.m., he was assaulted by both the

accused, who are his neighbours, with wooden log, causing injuries to his left side head, left hand and also left leg. P.W.1 stated that himself and the accused are residing in Karunkalikuppam Village. P.W.1 further stated that he suffered bleeding injuries in his head and the accused, when assaulting, threatened him that they will kill him One day. P.W.1 stated that he was taken to the hospital by four persons and after getting treatment in Government Hospital, Polur, he went to Government Hospital, Vellore. While she was in Government Hospital, Vellore, the police came there and enquired him and recorded his statement, in which, he signed. The said complaint statement is Ex.P1.

2.2. The person who deposed as P.W.3 stated that she is living in the same village of the accused as well as P.W.1, she knew all of them. According to her, the accused commenced foundation laying work in P.W.1's land and the same was objected by P.W.1 and subsequently P.W.1 levelled the ground. According to her, on the occurrence day at about 4.00 p.m., while P.W.1 went out to secure his cow, both the accused quarrelled with P.W.1 and after she left the place, she came to know that the accused assaulted P.W.1, one Selvaraj intervened to separate them and as the accused said to assault Selvaraj also, he came away and informed P.W.3 about the same. Then, P.W.3 came out of the house and saw

the accused assaulting P.W.1. Then, the said Selvaraj, Rajendran and herself separated the accused and P.W.1. According to P.W.3, then the accused left the place and P.W.1 was seen injured in his head, both hands and legs. Thereafter, she summoned P.W.1's son Babu, who deposed as P.W.4 and he took P.W.1 to the hospital. P.W.3 stated that she forcibly took away the wooden log from the hands of the first accused Suresh and kept it in her house. On the next day, when the police came and enquired around 7.00 p.m., she handed over the said wooden log marked as M.O.1 to the Police.

2.3. The son of the victim who deposed as P.W.4 stated that he is residing in Karunkalikuppam Village with his father P.W.1 in joint family and he knew the accused who also belong to the same village. According to him, there was civil dispute between themselves and accused regarding the land since inspite of their objection, the accused started work lay foundation in their land. Since the accused has no right over the said land, P.W.1 by using JCB levelled the land. While so, on the occurrence day, when P.W.4 was in his Cool drink shop around 4.00 p.m., he was informed by Rajendran that the accused assaulted his father P.W.1. Immediately, P.W.4 rushed to the occurrence spot and saw P.W.3 and other persons, namely, Mahalakshmi, Rajendran and Selvaraj near the spot. When he went there, his father(P.W.1) was unconscious with bleeding injuries in his left side head. He further

stated that there was bleeding injury in the left hand of his father and immediately he took him to Government Hospital, Polur. Thereafter, P.W.1 was sent to Government Hospital, Vellore, there, police examined P.W.1 on the next day. Subsequently, P.W.1 was admitted in CMC Hospital, Vellore and he took treatment for 10 days therein as inpatient.

2.4. According to P.W.5, Rajendran, he is residing in Karunkalikuppam Village. The accused as well as P.W.1 also belongs to the same village. According to him, about 1-1/2 years ago, when he was on his way to bringing his daughter from the school around 4.00 p.m., on hearing huge noise, he went and saw P.W.1 lying down with injuries. The persons near by informed him that the accused assaulted P.W.1 and thereafter he informed the same to the son of P.W.1. After P.W.4 arrived, P.W.1 was taken to Polur Government Hospital.

2.5. Similarly, P.W.6 Mahalakshmi stated that she is doing cooli work and residing in Karukalikuppam village with her husband. She also stated that she knew the accused as well as P.W.1 and they belong to her village. P.W.6 also stated that there was land dispute between the accused and P.W.1 and on the occurrence day around 4.00 p.m., while he was cooking food in front of her house, she saw P.W.1 going with his cow. She also heard the accused abusing P.W.1 in filthy language and the accused attacked P.W.1

with wooden log in his hand and head. P.W.6 Mahalakshmi further stated that P.W.1 suffered bleeding injuries on his head and he became unconscious. According to her, the incident was seen by herself as well as P.W.5 Rajendran and also one Selvaraj. Then, P.W.5 Rajendran went to inform the son of the victim P.W.4 Babu and on his arrival, P.W.1 was taken to the Government Hospital Polur.

2.6. P.W.7, Dr.Kumaravel stated that while he was on duty in Government Hospital, Polur on 01.06.2008 at about 5.10 p.m., P.W.1 Subdullah came there for treatment and he told that he was assaulted on the same day evening at 4.00 p.m., by two persons with Iron rod and wooden stick. On examination, the following injuries were found on P.W.1.

1. Laceration, 5 x 1 x 1 cm centre of parietal region, C/o vomiting O/E PR: 62/min. BP. 130/90m.m. Hg No.H/O LOC/convulsions.
2. Diffuse swelling/tenderness + right had, Metacarpal Bones-ortho opinion.
3. Diffuse swelling/tenderness + left forearm Lower 1/3rd Forearm Bones ortho opinion.

After giving first aid, the said person was referred to Government Hospital, Vellore for further treatment. The Accident Register issued by him is produced as Ex.P4. The other Doctor, Manikandan, who

treated the victim while deposing as P.W.8 stated that on 03.06.2008 while he was on duty in CMC Hospital, Vellore at 6.30 p.m., he examined P.W.1 Subdullah and took X-ray and C.T. Scan and blood test. As per C.T. Scan report there was a blood clot in P.W.1's head and there was a fracture on the right side head. Thereafter, on 07.06.2008, a surgery was done on the head of P.W.1 and he was discharged on 09.06.2008. He opined that the injuries suffered by him is grievous in nature and the wound certificated issued to the victim is Ex.P5.

2.7. P.W.9, the Sub Inspector of Police, Kalambur Police Station stated that on 02.06.2008 while he was on duty, the head constable 766 placed before him the statement of one Subdullah who was taking treatment in Government Hospital, Vellore and on that basis he registered a case in Crime No.131 of 2003 for the offence under Section 294(b), 324 and 506(ii) of IPC and the First Information Report is Ex.P6. Thereafter, P.W.9 took up the investigation and went to the occurrence spot and prepared Ex.P2 Observation Mahazar and Rough Sketch Ex.P7 and also recovered M.O.1 wooden log produced by P.W.3 Venda under seizure mahazer Ex.P3. Thereafter, he examined the witnesses and recorded their statement and on 03.06.2008 at about 12.30 p.m., he arrested the accused near the Bus Stop, Polur and sent them for judicial custody.

M.O.1 wooden log secured by him was sent to Court under Form-95

which is Ex.P8. The alteration report submitted by him is Ex.P9. Thereafter, he handed over the case to the Inspector of Police for further investigation.

2.8. P.W.2 Sathiq Batsha who was not an eye witness to the occurrence stated that his father and P.W.1 are brothers and there was land dispute between P.W.1 and the accused. In that regard, P.W.1 took steps to measure the disputed land, but, before that the accused started work to lay foundation in the lands belongs to P.W.1. Subsequently, his uncle P.W.1 using JCB level the same. While so, a week later when P.W.1 was near his land, he was assaulted by the accused and the said occurrence was communicated to him. After hearing about the occurrence, P.W.2 took his uncle P.W.1 to the Hospital and on the next day at about 6.30 p.m., while P.W.2 and his friend Bazeer were present, the police came to the occurrence spot and prepared observation mahazar Ex.P2 wherein he signed it. Thereafter P.W.3 handed over to the police one wooden log used by the accused in the occurrence and the same was seized by the police under Ex.P3 seizure mahazar. In which, P.W.2 and his friend Bazeer signed as witness. The said wooden log is M.O.1.

2.9. According to P.W.10, on 06.06.2008, he received the alteration report from P.W.9, the Sub Inspector of Police and accordingly he examined the witnesses and recorded their

statements. On 01.07.2008 and on 09.07.2008, he examined the Doctors who gave treatment to the victim and recorded their statements. On his transfer, he handed over the case to P.W.11, the Inspector of Police for further investigation.

2.10. P.W.11, the then Inspector of Police, took up the case in Crime No.131 of 2008 for further investigation and on completion of investigation, laid the charge sheet against the accused on 07.09.2008 for the offence under Sections 294(b), 324, 307 and 506(ii) IPC.

3. Based on the above materials, the trial Court framed charges against the first accused under Sections 294(b), 307, 323, 325 and 506(i) IPC and against the second accused under Sections 294(b), 307, 323, 325 and 506(i) r/w 34 IPC. Since the accused denied the charges, they were put on trial. After prosecution examined P.W.1 to P.W.11 and produced Exs.P1 to P9, the incriminating evidence found in the prosecution side was put to the accused under Section 313 Cr.P.C., and they denied the same. The accused did not examine any witness on their side and two documents, namely, Accident Register Exs.D1 and D2 were produced by them. The trial Court, after considering all the materials placed before it, convicted the accused as narrated in the first paragraph of this judgment and imposed punishment.

4. Aggrieved over the said finding of the trial Court, the appellants/accused have come forward with this appeal contending that the trial Court failed to appreciate the fact that the prosecution has not let in sufficient evidence to prove the guilt of the accused. It is also pointed out that there was delay in lodging the first information report and the same was not properly considered by the trial Court. It is also pointed out that apart from the P.W.1 and his son P.W.2 and P.W.4, there is no other independent witness to speak about the occurrence. The prosecution evidence is also contradictory about the weapon used in the alleged occurrence and the same was not considered by the trial Court. While, P.W.3 stated that she took away the wooden log from the accused and kept it in her house before handing over to the police, the Sub Inspector of Police(P.W.9) stated that the weapon used in the occurrence was seized from the incident place in front of two witnesses by him. The said contradiction was not properly considered by the trial Court. Similarly, the fact that P.W.4, the son of the victim is not an eye witness to the occurrence was not considered properly. While, P.W.1 stated that he was assaulted by both the accused with wooden sticks, only one wooden log has been recovered and the same will falsify the prosecution case. Further, none of the prosecution witness, except P.W.1 has spoken about the witnessing

P.W.1 being attacked by the second accused and no specific overtact is alleged against the second accused and the same was not considered by the trial Court. Hence, the learned counsel appearing for the appellant seeks to set aside the finding of the trial Court.

5. On the other hand, the learned Additional Public Prosecutor appearing for the State contends that the prosecution has let in clear and cogent evidence before the trial Court to prove the guilt of the accused and the same has been considered properly and the finding of the trial Court is based on clear cut, cogent and convincing evidence and it needs no interference. Hence, the prosecution seeks dismissal of this appeal.

6. Heard both sides and perused the materials available on record.

7. The fact that the accused and the victim(P.W.1) are residents of the same village in Karunkalikuppam is not disputed. According to P.W.1, there was previous dispute between himself and accused regarding laying of foundation in the land belonging to the victim(P.W.1). Due to the same, two years back one day evening when he was going to get back his cow from the field around 4.00

or 4.30 p.m., both the accused assaulted him with wooden log causing injuries to the left side of his head and the left hand. P.W.1 stated that he has bleeding injury on his head and he became unconscious and subsequently he was taken to hospital. Thus, P.W.1 has not stated specifically in his deposition as to which of the accused assaulted him in which manner, except for the statement that he was assaulted by the accused with wooden log causing him injuries. Further, P.W.1 stated in his cross examination that during occurrence he alone was present and nobody else was there. P.W.1 also stated that only after hearing about the occurrence, his son P.W.4 Babu @ Navsath, P.W.2 Sathiq Batsha and others came there and took him to the hospital. Thus, P.W.1 categorically stated that there was no other person present at the occurrence spot. P.Ws.2 and 4 also admitted that they were not present at the occurrence spot and they came there only on information. However, P.W.3 Venda stated that on hearing the noise made by one Selvaraj who came shouting that the accused are assaulting the victim(P.W.1), she came out of the house and witnessed the occurrence. She stated that the victim was assaulted with wooden log, but she did not say specifically as to which accused assaulted the victim in which manner. Similarly, P.W.6 Mahalakshmi stated that while she was preparing food out side her house, she saw the accused assaulting P.W.1 with wooden log and the victim suffered bleeding

injuries in his head and fell down unconscious. P.W.6 further stated that the same was witnessed by herself along with one Selvaraj and P.W.5 Rajenderan. However, P.W.6 Mahalakshmi did not say anything about the presence of P.W.3 Venda. Similarly, P.W.3 Venda has not stated anything about the presence of P.W.6 Mahalakshmi at the time of occurrence, while, P.Ws.3 and 6 mentioned about the presence of Selvaraj and Rajendran at the time of occurrence. However, in her cross examination, P.W.6 stated that only on hearing the noise made by P.W.5, she came to the occurrence spot and saw the victim(P.W.1) in the ground with injuries. She also stated that she does not know who was assaulted by whom and whether the accused suffered any injuries. The said Rajendran who deposed as P.W.5 stated that when he went and saw the victim was lying down and the persons near by informed him that both the accused assaulted the victim. According to him, P.W.3 Venda and P.W.6 Mahalakshmi and Selvaraj were there along with him. P.W.5 also stated that when he went and saw the victim, the accused were going into their house and closing the door. Thus, P.W.5 clearly admits about not witnessing to the occurrence, but only informed about the occurrence by other persons. In the light of the above said contradiction among the evidence of P.W.3, P.W.5 and P.W.6 it doubt arises about their presence at the occurrence spot. Further in view of the categorical

statement of victim(P.W.1) that he alone was present when the occurrence took place and nobody else was there creates doubt as to whether really P.Ws.3,5 and 6 were present at the occurrence place.

8. Further, the Sub Inspector of Police, who deposed as P.W.9 stated that in the statement recorded by him as well as Ex.P1 complaint nothing is mentioned about the presence of P.Ws.2,3 and 6. As stated earlier, P.W.4 himself has stated that he came to the occurrence spot only on information. Thus, it is clear that P.W.3, P.W.5 and P.W.6 are giving improved version about their presence at the occurrence spot, in contrary to what was stated in the statement given to the police by them. Thus, except the alleged victim(P.W.1), it is clear that there was no other eye witness to the alleged occurrence. In such circumstances, it is to be seen as to whether the occurrence as alleged by the prosecution really took place.

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9. The victim(P.W.1) in his evidence stated that he was assaulted by both the accused with wooden log. According to him, he suffered bleeding injuries in his head. P.W.1 also stated that on the occurrence spot lot of blood was also found. P.W.1 also stated that he was wearing white colour shirt and lungi and blood stain was

there in both the dress materials. P.W.1 further stated that the police were shown the blood stained dress materials in the Hospital, but he does not remember as to whether he handed over the same to the police. Admittedly, in this case no blood stained dress material has been produced. Thus, as per the deposition of P.W.1, he was assaulted by both the accused with wooden log causing bleeding injuries in his head and the dress materials worn by him were also blood stained.

10. However, it is stated by P.W.7, the Doctor, who treated the victim that the injured told him about being assaulted with iron rod and wooden stick. The Sub Inspector of Police, who deposed as P.W.9 stated that in the Observation Mahazar Ex.P2 as well as Rough Sketch Ex.P7, nothing is mentioned about the blood being found in the occurrence spot. Further, P.W.9, the Sub Inspector of Police admitted in his cross examination that in the complaint and the statement recorded by him, it is only stated by P.W.1 that he was assaulted by both the accused with iron rod and wooden stick. It is further admitted by P.W.9 that it is not stated specifically by P.W.1 in his statement that he was assaulted in his head with wooden log. It is also admitted by P.W.9, the Sub Inspector of Police that M.O.1 wooden log marked in this case was not sent for any chemical analysis to find out whether any blood

stain was found in it. Further, while P.W.1 in his complaint stated that the first accused assaulted him with iron rod and thereafter took the wooden stick lying there and assaulted in his two legs nothing is mentioned about the second accused Vijaya assaulting the victim. Contrary to the averment in Ex.P1 complaint about iron rod and wooden stick being used by the first accused Suresh. P.W.1 in his evidence only stated that both the accused assaulted him with wooden log. As stated earlier, no blood stain was found in M.O.1 wooden log. The blood stained dress materials of P.W.1 is neither seized nor placed before the Court. Similarly, it is admitted by P.W.9, the Sub Inspector of Police that he has not mentioned about the blood stain being found in the occurrence spot. Further, as stated earlier nothing is mentioned specifically about the second accused Vijaya assaulting the victim. Further P.W.9, the Sub Inspector of Police stated that M.O.1 wooden log seized by him on 02.06.2008 was sent to the Court on 20.06.2008 only. In such circumstances, doubt arises as to what weapon was used by the accused and whether really the victim suffered bleeding injuries as claimed by him. In the light of the above said discussions, it is clear that the prosecution has not established beyond doubt the allegation that both the accused assaulted the victim as alleged by them.

11. P.W.1, the alleged victim stated that on the occurrence day when he went to his land to secure the cows, he was assaulted by the accused. According to him, he was coming with two cows and one calf when the occurrence took place. However, P.W.3 who stated that she witnessed the occurrence deposed that the victim(P.W.1) came with only one cow when the occurrence took place. P.W.6 also stated that P.W.1 was coming with only one cow when he was assaulted. However, P.W.6 in her chief examination stated that only on hearing the noise made by P.W.5 Rajendran, she went and saw P.W.1 lying down with injuries. Thus, whether really the so called eye witnesses P.Ws.3 and 6 were present during the alleged occurrence itself is doubtful.

12. According to P.W.1, the occurrence took place in between the house of the accused and the chicken farm situated to the east of the canal. On the other hand, P.W.3, the alleged eye witness stated that the accused were in their house and when P.W.1 came there they assaulted each other, in which P.W.1 suffered injuries. According to P.W.3, the occurrence took place in their street and P.W.1 fell down in the pit. She further stated that the accused did not suffer any injuries. Like wise, the other alleged eye witness P.W.6 Mahalakshmi also stated in her cross examination

that the incident occurred only in front of the house of the accused, in which P.W.1 was assaulted and he fell into the pit. According to P.W.6, her house was in the street next to the accused house and she knew the place. However, P.W.2 stated that the place where his uncle P.W.1 was assaulted in a barren land and no agriculture work is taking place there. He also stated that the occurrence took place about 100 feet east of the chicken farm. However, P.W.9, the Sub Inspector of Police stated that as per Ex.P2 Observation Mahazar, the occurrence spot is stated to be 60 feet away east of the house of the accused and as per his enquiry, the occurrence took place in the complainant's place only. Thus, there is contradiction in the prosecution evidence about the actual place of occurrence itself.

13. Further, it is clear from the evidence of P.W.7, Doctor that on the occurrence day on 01.06.2008 itself both the accused herein were treated by him and Accident Register issued to them are Ex.D1 and Ex.D2. It is admitted by P.W.7 that the accused were stated to have been assaulted on 01.06.2008 in their house at 4.00 p.m., and they have suffered simple injuries as mentioned in Exs.D1 and D2 Accident Register copies. In such circumstances, it is clear that the prosecution has not fixed the place of occurrence correctly and also failed to explain about the injuries suffered by the accused

at the time of alleged occurrence. In the light of the above discussion, it is clear that the prosecution has failed to establish clearly the place of occurrence as well as the weapon used by the accused in the alleged incident.

14. It is also pointed out that apart from the interested witness of P.W.1, who himself has given contradictory evidence, there is no other eye witness to the occurrence. As stated earlier, P.Ws.2 and 4 have admitted in their evidence that they were not present in the occurrence spot at the time of occurrence. While, P.Ws.3 and 6 have deposed in their chief examination that they witnessed the occurrence, but their admission in the cross examination makes it doubtful as to whether really they saw the occurrence. P.W.5 Rajendran has categorically admitted in his cross examination that he did not see the accused assaulting the victim(P.W.1). As stated earlier, there is no allegation against the second accused in Ex.P1 complaint of assault, except the allegation that she abused the victim in filthy language. P.W.1 in his evidence also has not stated specifically as to which accused assaulted him with what weapon. He only stated that he was assaulted by the accused. In such circumstances, the contention of the learned counsel appearing for the appellant that there is no acceptable corroborative evidence on the side of prosecution to substantiate

Ex.P1 complaint and to prove the occurrence has to be accepted.

15. According to the learned counsel appearing for the appellant it is only the complainant and his men have attacked the accused and that is why they took treatment as evidenced by Ex.D1 and Ex.D2. It is clear from the evidence of P.W.7, Doctor Kumaravel that the accused came for treatment on 01.06.2008 alleging that they were assaulted in their house around 3.00 to 4.00 p.m., on the same day when the present occurrence allegedly took place. P.W.11, the Inspector of Police admitted that both the accused were injured on the same date and time of the present occurrence and they have taken medical treatment for the same. In such circumstances, in the absence of any thing on the side of prosecution to explain about the injuries suffered by the accused, the claim of the defence that they were assaulted by P.W.1 and his men and they never indulged in the aggression as alleged by the prosecution appears to be probable and acceptable.

16. According to the prosecution, there was civil dispute between the accused and the complainant and consequent to the same, the present occurrence is stated to have taken place. P.W.1 stated that there was dispute over the attempt made by the accused to lay foundation in the land belonging to P.W.1. However, it is admitted by the complainant/P.W.1 in his cross examination

that on the basis of the complaint given by the accused against P.W.1 on 15.05.2008 in Kalambur Police station regarding the land dispute, himself and his son were summoned by the police and enquired. It is stated by the learned counsel for the appellant that already they have given legal notice on 30.05.2008 to P.W.1 about the encroachment made by him. It is also stated that a civil suit has been laid against the complainant/P.W.1 in District Munsif Court, Polur. However, P.W.1 in his cross examination only stated that he is not aware of the said suit, but he has not denied existence of the same. It is apparent that there was civil dispute between the parties and due to that enmity between them in the absence of any independent evidence and in view of the contradiction in P.W.1's evidence itself, it appears doubtful as to whether really the alleged occurrence took place.

17. The occurrence is stated to have taken place on 01.06.2008 around 4.00 p.m., and immediately the victim(P.W.1) has been to Polur Government Hospital, where P.W.7, Doctor Kumaravel has treated him at 5.10.p.m. However, the Ex.P1 complaint is lodged only on the next day on 02.06.2008 by 6.00 p.m., inspite of the complainant is stated to have been in Government Hospital, Vellore and thereafter CMC, Vellore on that day. No reason stated by the complainant/P.W.1 or any other

witness for such delay in lodging the complaint. Further, it is admitted by P.W.9, the Sub Inspector of Police that the statements recorded by him on 02.06.2008 was sent to the Court only on 30.09.2008. Similarly, M.O.1 wooden log seized on 02.06.2008 was sent to the Court on 20.06.2008 only. The reason for such delay in lodging the complaint as well as in forwarding the statement of witness and M.O.1 recovered from the occurrence spot to the concerned Court is not explained by the prosecution. Pointing it out, the learned counsel appearing for the appellant contended that the victim has gone to Government Hospital, Polur at first where he was given treatment by P.W.7 Doctor Kumaravel by 5.10 p.m., itself and in such circumstances, it is creates doubt as to why no complaint was lodged on that day itself. There is no explanation on the side of prosecution for the delay in lodging the complaint. In such circumstances, as the delay in lodging the complaint is not explained and there is delay in forwarding the witness statement and material object recovered from the occurrence spot to the Court which is also not explained, doubt arises as to whether really the statements were recorded on the alleged date and the M.O.1 was recovered as claimed by the prosecution. As stated above, there was previous civil dispute between the parties and in the absence of any independent evidence to corroborate the claim of P.W.1 and also in view of the unbelievable evidence of P.Ws.2 to 4 and the fact

that P.W.1 himself has not spoken specifically about the overtacts of both the accused and that only one wooden log was secured and no blood stain was found in it, this Court is of the view that the prosecution has not produced sufficient materials to establish the guilt of the accused and as such they are entitled to get the benefit of doubt as claimed by them. It is therefore clear from the above said discussion that there is no enough material to prove the guilt of the accused beyond reasonable doubt and as such the finding of the trial Court and the reasoning for the same are unsustainable and they are liable to be set aside.

18. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Assistant Sessions Judge, Arani, Thiruvannamalai District, in Sessions Case No.197 of 2008 dated 28.10.2013 is set aside and the appellants/accused are acquitted and bail bond, if any executed by them shall stand cancelled and the fine amounts, if any, paid by them are ordered to be refunded forthwith.

07.09.2017

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To

- 1.The Assistant Sessions Judge,
Arani,
Thiruvannamalai District.
- 2.The Inspector of Police,
Arani Taluk Police Station,
Kalambur Police Station,
Thiruvannamalai District.
- 3.The Public Prosecutor,
High Court, Madras.



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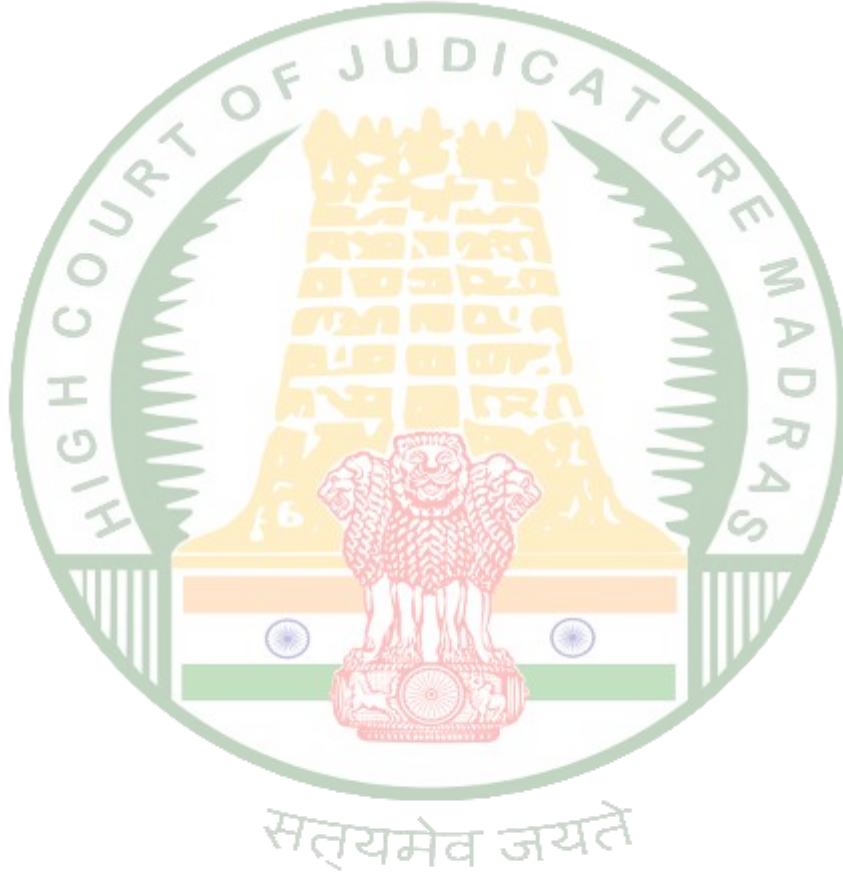
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