

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.793 of 2013
and Crl.M.P.Nos.1 & 2 of 2012

Alagudurai

... Appellant

Vs.

State
rep.by Inspector of Police,
Kayarlabad Police Station,
Ariyalur District.
(Crime No.16/2011)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to setting aside the judgment and conviction dated 02.11.2012 by the learned Additional District and Sessions Judge, Ariyalur in S.C.No.72 of 2012 and acquit the appellants.

For Appellant : Mr.M.Karunanithi
For Respondent : Ms.Krithika Kamal
Government Advocate

JUDGMENT

The appeal has been filed against the judgment and conviction passed by the learned Additional District and Sessions Judge, Ariyalur in S.C.No.72 of 2012 dated 02.11.2012.

2.Heard the learned counsel appearing for the appellant and the

<http://www.judis.nic.in> learned Government Advocate appearing for the State.

3. The case of the prosecution is that on 16.02.2011 at about 7 p.m., in the evening, when PW.1 was returning home in a cycle after purchasing some grocery, the accused due to previous enmity, stopped him. Abused him in filthy language and attacked with Aruval on his head. When PW.1 fell down from the cycle, the accused punched him on his mouth and uprooted his upper teeth. Then, he took a stone and hit on his head. PW.1 was taken to the hospital by his son and one Rajakumari. From the hospital, on receiving the intimation, Subramanian-PW.8, Sub Inspector of Police attached to Kairlabad Police Station went to the hospital on the next day and recorded the statement of PW.1. Based on the statement of PW.1, he registered the FIR in Crime No.16 of 2011 for the offences under Sections 294(b), 341, 324, 336 and 307 IPC. The victim PW.1, later, shifted to Tanjore Medical College hospital and he was treated for the injuries by the doctor later discharged on 22.02.2011. PW.9- Mayilsamy, Inspector of Police took up the investigation, visited the scene of occurrence, prepared sketch, recorded statement of the witnesses and on his transfer, investigation was continued by PW.10-S.Rengasamy, Inspector of Police. On completion of the investigation, final report was filed against the appellant.

4. The Trial Court, based on the materials has framed charges under Sections 341, 294(b) and 307 IPC. Considering the evidence of the victim PW.1, Rajakumari- PW.2, Chinnadurai-PW.3 who took the victim to

the hospital for treatment and the evidence of the doctor PW.6 and PW.7 who deposed about the accident register pertaining to the injury found on the body of PW.1, the Trial Court found the accused guilty of offences under Sections 341, 294 (b) and 325 IPC. Sentenced the accused to undergo Simple Imprisonment for one month and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week for the offence under Section 341 of IPC, sentence to undergo one month Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for one week for the offence under Section 294 (b) IPC and sentenced to undergo five years R.I. and to pay a fine of Rs.5000/-, in default, to undergo six months R.I., for the offence under Section 325 IPC. The Trial Court ordered the sentences to run concurrently and also granted set-off under section 428 Cr.P.C. Aggrieved against the above conviction and sentence, the present appeal is filed.

5. The learned counsel appearing for the appellant would submit that admittedly, there was enmity between PW.1 and the accused. Pursuant to the enmity, a false complaint was given alleging as if the injury sustained by PW.1 was due to attack by the accused with Aruval. The prosecution neither seized the Aruval nor produced any medical record to show that the accused sustained grievous injury, namely, dislocation of teeth and cut injury on his head. Further, pointing out that there is an

enormous delay in forwarding the FIR to the concerned Court and certain discrepancies in the sketch marked as Ex.P.6 prepared at the scene of crime pleaded that the prosecution failed to prove the case.

6. The learned counsel for the appellant would submit that based on the inconsistent case of the prosecution, the appellant cannot be held guilty and therefore, the benefit of doubt should be extended to him. However, the Court below has not properly appreciated the evidence and despite lacuna in the case of prosecution evidence, the accused was erroneously held guilty.

7. In reply, the learned Government Advocate would submit that PW.1 is the injured witness, who has cogently spoken about the incident, the overt act of the accused and the injury sustained by him due to the attack by the accused. PW.2-Rajakumari, who was an eyewitness, has deposed about the fact that the accused restrained PW.1 while he was coming in the cycle. After abusing him, attacked on his head. She took PW.1 in an auto and admitted in the hospital. PW.3-Chinnadurai, son of PW.1 had corroborated the evidence of PW.1 and PW.2 to the effect that on hearing about the attack on his father, he rushed to the scene of occurrence and got his father admitted in the hospital. He found the cut injury on his father's head and the teeth was uprooted. Reading out the

deposition of these witnesses and the evidence of PW.6 and PW.7 the doctors, who examined the victim and given the accident register, the learned Government Advocate submitted that the appeal has no substance.

8. The learned Government Advocate would further submit that the accused was admitted in the hospital with three lacerated wound over the parietal region of his scalp and on his right side cheek. He complained about loss of hearing. He lost teeth due to the alleged assault by a known male person on 16-02-2011 at around 7.00 p.m. on the main road of PeriyanaGalur. The learned Government advocate would submit that relying upon these material evidences which collectively proved the accused, the trial court held him guilty and the minor discrepancy regarding the location will not disprove, the case of prosecution since the sketch Ex.P6 would indicate that the scene of occurrence was almost near the junction of three roads. While in the FIR it is mentioned as North Street, PeriyanaGalur, in the accident register, the scene of crime is mentioned as main road, periyanaGalur. Though there is some differences in identifying the road, it does not mean that there are two different places. Pointing out the portion of the cross examination, regarding the location, the defence could not establish that North Road and Main Road are two different places. Therefore, the learned Government advocate would submit that the minor variation in the prosecution case which is natural, only enforce and endorse

the genuineness of the prosecution case and not otherwise. Hence, submitted that the appeal has to be dismissed.

9. Heard both sides. Records perused.

10. On 16.02.2011, Karuppusamy-PW1 was brought to Ariyalur hospital at about 10:15 p.m., by his son Chinnadurai (PW.3). It has been informed to the doctor PW.7- Revathi that Karuppasamy was assaulted by a known person. The medical examination of the victim has indicated the following four wounds:

- (i) Lacerated wound over the right parietal region of the scalp-about 4 c.m.X 2 c.m.X 2 c.m
- (ii) Lacerated wound over the left parietal region of the scalp-about 3 c.m X 1 c.m X 1 c.m.
- (iii) Lacerated wound over the right side cheek close to the right eye-about 5 c.m. X 2 c.m. X 2 c.m.
- (iv) loss of hearing -left ear, loss of tooth

11. Later the Patient has been shifted to Tanjore Medical College Hospital. He was admitted as in-patient at the Tanjore Medical Hospital. After treatment, he was discharged on 22.02.2011. Dr. N. Balasundaram attached to Tanjore Medical Hospital has opined that the injury sustained

by the victim is grievous in nature. PW.7 after perusing the case sheet has opined the injury Nos.1 and 4 are grievous in nature and the other two injuries are simple. He has been subjected to examination and cross-examination by the accused. He has deposed about the entries made in the accident register Ex.P3. Therefore the contention of the learned counsel for the appellant that non-examination of Dr. N. Balasundaram, who treated the injured victim is fatal to the prosecution case does not stand the test of legal scrutiny.

12. The only point which requires some consideration is whether the delay in forwarding the FIR to the Magistrate is fatal and will lead to reject the case of prosecution in toto. Subramaniam-PW.8, who registered the FIR in his chief examination has deposed that after registering the FIR, he has forwarded the copy to the court on the same day. But, the endorsement found in the FIR Ex.P4 and from the seal of the Judicial Magistrate, Ariyalur, it is seen that the said Court received the FIR only on 22.03.2011. For an occurrence which took place on 16.02.2011, the Police has registered the FIR on 17.02.2011. After recording the statement of the victim in the hospital, had taken their own time to forward the FIR along with other documents to the Magistrate. The delay in forwarding the FIR can be doubted if there is no other documents or any other document contrary to the vital facts found in the FIR. But in this case, the accident

register at the hospital which is a contemporaneous document recorded on the date of occurrence tally with the information recorded in the FIR. So, the lapse of investigating officer and the police cannot take away the truthfulness of the injured victim.

13. It is suggested to the injured witness as well as the Doctor that the injury found in the body might have caused due to fall in the cycle. This suggestion is not a point to disbelieve the case of PW.1. The four injuries sustained by PW.1 noted by the Doctor and recorded in Ex.P3. These injuries simultaneously could not have happened while a person falling from cycle. The injuries are at different part of the parietal region of the head. Lacerated wound over the right side cheek close to the right eye and on the various side of the head. The injury sustained by PW.1 seen cumulative the probability of it occurring by fall from cycle is impossible.

11. Therefore, points raised by the appellant cannot be accepted. Hence, I find no merits in this appeal. The appellant and the victim are known to each other. They both are hailing from same locality. Due to civil dispute, the accused has attacked the victim. Considering the age and the other factors involved in this case, this Court is of the opinion that the period of imprisonment under Section 325 IPC to be modified the period of imprisonment 5 years Rigorous Imprisonment is reduced to 3 years Rigorous

Imprisonment. The period of sentence already under gone shall be set off.

12. In the result, the appeal is partly allowed. The conviction passed against the appellant by the trial Court vide judgment dated 02.11.2012 in S.C.No.72 of 2012 on the file of the the Additional District and Sessions Court, Ariyalur is confirmed. The sentence imposed on the appellant is modified 5 years R.I reduced to 3 years R.I. Fine amount imposed, remains unaltered. Consequently, the connected miscellaneous petitions are closed.

19.02.2019

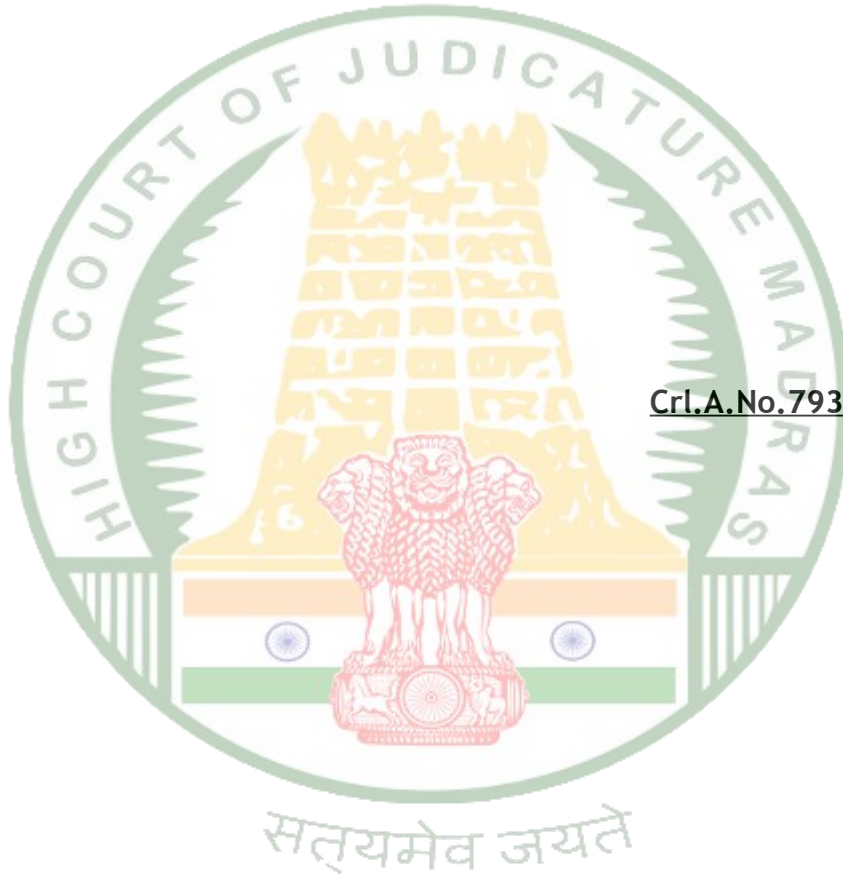
Index : Yes/No
Speaking order/ Non speaking order
rpl

To

- 1 The Additional District and Sessions Judge, Ariyalur
- 2 The Public Prosecutor,
High Court, Madras.

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Dr.G.JAYACHANDRAN,J.
rpl



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