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The Appellant/Accused viz., Chokkalingam S/o.Ekambaram (in S.C.No.290 of 2008 dated 14/12/2011 on the file of the Assistant Sessions Judge, Kanchipuram)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :07.08.2018

Orders Pronounced on: 20.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.822 of 2011

Chokkalingam ... Appellant/Accused

Versus

State rep.by
Inspector of Police,
Sriperambudur Police Station,
Kancheepuram District.
(Crime No.434 of 2005)

... Respondent/Claimant

Appeal filed under Section 374 of Criminal Procedure Code, to call for the records and set aside the Judgment in S.C.No.290 of 2008 dated 14.12.2011 on the file of the Assistant Sessions Judge, Kanchipuram

For Appellant : Mr.R.Singaravelan, Senior Counsel,
for Mrs.M.Srividhya

For Respondent : Mrs.Kritika Kamal.P
Government Advocate (Crl.side)

JUDGMENT

The convicted sole accused is the appellant herein. This appeal is filed against the Judgement of conviction and sentence passed by the learned Assistant Sessions Judge, Kanchipuram dated 14.12.2011 in S.C.No.290 of 2008 convicting the appellant for the offence punishable under Section 324 of IPC (two counts) and sentencing him to undergo two years rigorous imprisonment for each count, however, the sentences were ordered to run concurrently.



2. The respondent Police have filed a charge sheet alleging commission of offence under Sections 324 and 307 of IPC against the accused/appellant herein for causing grievous injuries with lethal weapon to Monisha kumari, who is aged about two years and Gomathi, who is aged about four years..

3. During trial, prosecution witnesses PW's.1 to PW.11 were examined, EX's.P1 to EX.P8 were marked and M.O.1 "Koduval kathi" was produced. On the side of the defence, DW1/Manikkavasagam, who is the Doctor working in the Government Hospital, Kanchipuram during the relevant period, was examined.

4. On a consideration of both oral and documentary evidence adduced before by the prosecution, the Court of Assistant Sessions Judge, Kanchipuram, by an order dated 14.12.2011 convicted and sentenced the appellant for the offence punishable under Section 324 of IPC (2 counts) and sentenced him to undergo two years rigorous imprisonment for each count, however he was acquitted of the offence under Section 307 of IPC.

5. The learned counsel appearing on behalf of the appellant / accused contended that the trial Court had failed to see that the accident register and wound certificate were not marked through the Doctor, who had treated the victims as inpatient immediately after the occurrence. Further, he contended that the prosecution had examined PW.8/ Dr. Chandrasekar and PW.9/Dr.Jagadeesan for the purpose of establishing that the victim had suffered grievous injury due to the act of the accused. Both PW.8 and PW.9 during the cross examination have categorically admitted that the victim was treated by one Dr.Nageswara Rao and he gave a statement to the investigation officer under Section 161 of Cr.P.C immediately after treating the victims. Thus, the evidence of PW.8 and PW.9 has to be rejected on the sole ground that their depositions are pre-mediated in nature and they do not have any knowledge about the Accident Register issued by the Private Hospital. In the Accident Register, it was stated that the wound suffered by the victim is lacerated wound over the right side of the neck. It is pertinent to note that the depth of the injury and the nature of the wound suffered by the victim has not been mentioned in the accident register, which would clearly show that offences under Section 324 against the accused is not attracted.

6. The learned counsel appearing for the appellant / accused would further contend that motive is a double edged



weapon and in this case it was used by the prosecution to falsely implicate the accused. The injury sustained by PW.3 was not proved by the prosecution in a manner known to law. The other injured witness was not examined before the trial court and the medical evidence produced by the Doctor/ PW.8 is inconsistent and bristled with infirmity. Hence, the learned counsel prayed for allowing the appeal and prayed for acquittal of the accused.

7. The learned Government Advocate (Crl.side) made her submissions in support of case of the prosecution.

8. After hearing the rival submissions of both counsels and perusing the materials available on the records, the points that arise for consideration in this appeal is:

(i) Whether the prosecution has established the guilt of the accused for the offence punishable under Sections 324 of IPC (2 counts) .

(ii) Whether the conviction and sentence passed by the trial Court is excessive.

9. This Court gave it's anxious consideration to the above said contentions raised by the learned counsel for the appellant/accused.

10. The case of the prosecution is PW.1 is the father-in-law of PW.2. PW2 is the mother of PW.3/minor victim girl and PW.4 is working as a maid in the house of PW.1. PW.5 is a neighbour who saw the accused running with the weapon and also has seen the two victim children with bleeding injuries. PW.7 is the attester of the observation mahazar and seizure Mahazar, marked as EX.P2. PW.8/Chandrasekaran is the Doctor who had stated in his deposition that Dr. Nagasewara Rao was working previously in the hospital where he is working and he do not know where he is presently working. He has also stated that it was Dr. Nageswara Rao who had given treatment to the victim girls and issued the Accident Register, Ex.P5. PW.9/ Jagadeesan, Doctor had stated in his deposition with regard to the Accident Registers EX's.P5 & 6. He also stated Dr.Nagasewara Rao is his co-worker once upon a time, but now he is not working in the hospital. Further he confirmed that the signature of Dr. Nageswara Rao is in the Accident Register but he did not make any signature thereof. On perusing the signature and on scrutiny of the medical evidence given by the Doctor /PW.8, it is seen that PW8 has not given any treatment at the time of admission to the injured girl in the private hospital. In the cross



examination, he has answered in the affirmative and stated that from the Accident Register, he will be in a position to depose as regards the nature of injury and the treatment given to the patient. Furthermore, in respect of PW.9, through whom Ex.P6 was marked he deposed that a minor surgery has taken place on PW.3 and also stated about the nature of the injury found on PW.3. However, he has stated that he has not given any treatment. Since, the Doctor, who had given treatment is no longer continuing in the hospital. he deposed based upon the copies of Accident Register / Ex.P6.

11. In respect of grievous injury said to have been suffered by PW.3, DW.1, Dr. Manikavasagam, who is the Doctor working in the Government Hospital, Arignar Anna Cancer Institute, Kanchipuram was examined on the side of the defence. DW1 has narrated about the extent and nature of the injury sustained by PW3 and also the correctness of the deposition given by the two Doctors, PW.8 and PW.9 examined on behalf of the prosecution. DWI/Dr.Manikavasagam has categorically stated that it is not possible to make such kind of injury by the weapon/Mo.1. The trial Court has found that the nature and classification of the injury spoken to the two Doctors / PW.8 and PW.9 would indicate that they did not treat the victims in this case soon after the occurrence, rather, they have deposed on the basis of Accident Register issued by the Doctor who in fact given treatment to the victim girls. .

12. Yet another lacuna by the prosecution is in Ex.P8 sketch prepared by the Inspector of Police / PW.11, the weapon used in the commission of offence was described as Sword (Koduval kathi). It appears that due to mistake committed by the Record Clerk the sword produced by the Investigation officer in other case has been shown to DW.1 and initially DW.1, who is the Doctor, gave the evidence and when he was recalled, in the cross examination, on behalf of the accused, it has been noticed by the learned Assistant Sessions Judge that what had been shown at the time of Chief examination on 22.11.2010 and 10.10.2011 are with regard to the sword produced as the case property in some other case in S.C.No.289 of 2009 and not in this case. Subsequently, the case property that has been produced in this case by the Police has been shown to DW1, based upon the same, DW.1 has categorically stated the nature of the injury as reflected in the Accident Register and further the injury may not be possible by using Mo.1 produced before this Court. On the other hand, both the prosecution witnesses PW.8 & 9 have not deposed that such a nature of injury is possible by using of Mo.1 as projected by the prosecution witnesses and it also assumes significance. Thus, the Doctor/ DW.1 examined on behalf of the defence has categorically stated the nature of the injury



sustained by the victims in this case is not possible with the weapon alleged to have been used in the commission of the offence.

13. As pointed out by the counsel for the appellant, motive is a double edged weapon and the possibility of false implication has to be examined by the Court and it cannot be attributed only on the person who alleged to have committed the offence. In this case, the injury sustained by the victims, whether they are simple injury or grievous injury has not been proved by the prosecution witnesses in the manner known to law and there are material contradictions with regard to the deposition of Doctors examined on the side of prosecution namely PW.8 and the defence evidence DW.1 with regard to the nature of the injury alleged to have been sustained by PW.3. Thus, there are inconsistencies and contradictions in the medical evidence adduced by the prosecution and the defence with respect to the nature of injury sustained by PW3 by using MO1. Further, the attestor of seizure mahazar/Ex.P2, which was prepared by PW.11, has deposed regarding to the location of preparation of seizure mahazar for recovering Mo.1. But in the cross examination, he has stated that the description of the weapon does not tally with material object produced before the trial Court and thus, this Court finds that the seizure of the alleged weapon is not proved in the manner known to law. The case of the prosecution as elicited from the victim and the nature of the crime as established through the medical evidence differs. For such reason, this Court is of the considered view that while sustaining the conviction and sentence awarded under Section 324 of IPC by the trial Court, the sentence awarded to the accused/appellant has to be modified to the period of sentence already undergone with fine amount of Rs.2,500/- for each count i.e., Rs.5,000/- is imposed.

14. Accordingly, the Criminal Appeal is allowed in part confirming the conviction imposed under Section 324 of IPC (2 counts) by the learned Assistant Sessions Judge, Kanchipuram, dated 14.12.2011 in S.C.No.290 of 2008, however, the sentence imposed on the accused/appellant is modified to the period already undergone together with fine amount of Rs.5,000/- at the rate of Rs.2,500/- for each count. The fine amount shall be paid within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



TO:

- 1.The Judicial Magistrate No-I,
Kanchipuram.
- 2.Do Thro The Chief Judicial Magistrate,
Kanchipuram.
- 3.The Assistant Sessions Judge,
Kanchipuram.
- 4.Do Thro The Principal Sessions Judge,
Kanchipuram.
- 5.Inspector of Police,
Sriperambudur Police Station,
Kancheepuram District.
- 6.The Superintendent,
Central Prison,
Vellore.
- 7.The Public Prosecutor,
High Court, Madras.

Crl.A.No.822 of 2011

kk(co)
nr 02/01/2019