

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 07.06.2018

JUDGMENT PRONOUNCED ON : 25.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No.343 of 2010

Mari @ Auto Mari

.. Appellant / Accused

versus

The State of Tamil Nadu,
Represented by
The Inspector of Police,
H-4, Korukkupet Police Station,
Chennai - 600 021.

.. Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 16.12.2009 made in S.C.No.400 of 2008 by the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai.

For Appellant : Mr.V.Bhiman

For Respondent : M/s.T.P.Savitha

Government Advocate [Criminal Side]

J U D G M E N T

The present appeal has been directed against the conviction and sentence awarded by the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai in S.C.No.400 of 2008 dated 16.12.2009.

2. The appellant herein is the sole accused in the above said case. After concluding the trial, the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai, convicted him for the offences under Sections 341 and 323 I.P.C. and sentenced to undergo one week imprisonment with a fine of Rs.500/- for the offence under Section 341 I.P.C. and to undergo one week imprisonment with a fine of Rs.1,000/-, in default to undergo one week imprisonment for the offence under Section 323 I.P.C. Now, against the said conviction and sentence, the present appeal has been preferred by the appellant praying to set aside the same.

3. The case of the prosecution in the Trial Court, is as follows:

[i]. The appellant and the P.W.1 [Irumbu Devan] belong to different political parties. Previous to the occurrence, P.W.1 said to have written an anonymous petition against one Mr.Perumal, Assistant Engineer of Tamil Nadu Electricity Board, copy of the same has been forwarded to the Honourable Chief Minister of Tamil Nadu. So, the said Perumal was having the enmity with P.W.1. On 24.08.2007 at about 2.15p.m., the said Perumal had identified the P.W.1 to the appellant and thereafter, the appellant along with three persons had attacked by using soda bottle [M.O.2] and threatened him with knife [M.O.1] and thereby, P.W.1 had lost two sovereigns of gold and a sum of Rs.3,800/-. Due to the shouting made by P.W.1, crowd gathered, the appellant and other three persons shown the knife [M.O.1] to the P.W.1 and threatened with dire consequences. Further, they created a panic among the people and ran away from the scene of occurrence. Thereafter, P.W.1 was admitted in the Government Stanley Hospital for getting treatment. In the said Hospital, he was treated by Dr.M.P.Kumaran [P.W.7]. Further another one Dr.Tr.Dhinakaran Moses [P.W.8] found the following injury as on him:

"1.lacerated injury of head 1 x 3 cm

2.shoulder pain"

Further, he issued a copy of the Accident Register under Ex.P.5.

[ii]. Thereafter, when P.W.1 was in the Hospital, P.W.10 [S.Thomsan], the then Inspector of Police, Korukkupet Police Station received the intimation and went to the Government Stanley Hospital. After recording the statement [Ex.P.1] from P.W.1, he registered a case in Crime No.339 of 2007 for the offences under Sections 341, 323, 307 and 506[ii] I.P.C. Ex.P.6 is the First Information Report.

[iii]. After the registration of the case, P.W.10 [Investigating Officer] proceeded to the scene of occurrence and prepared an Observation Mahazar [Ex.P.7]. Further, he draw Rough Sketch [Ex.P.8]. In the presence of one Munusamy [P.W.5] and Deenadhayalan [P.W.6], he recovered the knife and the broken soda bottle, which were used for the commission of offence. They have been marked as M.O.1 and M.O.2 respectively. Thereafter, he examined the witnesses and recorded their statements. On the next day, he arrested the appellant and after giving treatment in the Government Royapettah Hospital, he made arrangement for sending him to the judicial custody. After concluding the investigation, he filed a final report for the offences as stated above.

[iv]. After receiving the final report, the learned XV Metropolitan Magistrate, George Town, Chennai, has taken the case on file as P.R.C.No.60 of 2008. Thereafter, he committed

the same to the Court of Session, Chennai Division. Thereafter, the case was assigned with case number as S.C.No.400 of 2008 and made it over to the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai for disposal. During the time of trial, the appellant was questioned with the allegation levelled in the final report, for which, he pleaded not guilty, further, the charges have been framed for the offences under Sections 341, 307 and 506[ii] I.P.C. Subsequent to the framing of charges in order to prove the case, 10 witnesses were examined as P.W.1 to P.W.10 on the side of the prosecution, besides 10 documents and 2 Material Objects were marked as Ex.P.1 to Ex.P.10 and M.O.1 and M.O.2 respectively.

[v]. Out of the said witnesses, P.W.1 gave evidence with regard to the previous enmity with the appellant and about the treatment given to him in the Stanley Hospital. Further he stated about the lodging of complaint before the police officers. P.W.2 is the eye-witness and friend of the injured deposed that at the time of occurrence, the appellant came to the scene of occurrence by using one bike and assaulted P.W.1. P.W.3 to P.W.6 alleged to be the eye-witnesses to the occurrence had not stated anything in support of the prosecution.

[vi] P.W.7 and P.W.8 are the Doctors attached with the Stanley Hospital stated in their evidences about the treatment given to the P.W.1. Further they stated that since the P.W.1 has went out from the Hospital against the medical advise, the opinion with regard to the injury would not be given.

[vii] P.W.9, who is the friend of P.W.1 deposed that the appellant by using blade had himself caused injury in his hand. P.W.10 is the Sub-Inspector of Police gave evidence with regard to the registration of the case, investigation and about the laying of final report.

[viii] The learned trial Judge with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 of Cr.P.C., for which, he pleaded not guilty, however, he did not choose to examine any witnesses nor did he mark any documents on his side.

[ix]. After concluding the trial, the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai, came to the conclusion that the appellant is found guilty of offences under Sections 341 and 323 of IPC and sentenced him as stated above. Now, challenging the said conviction and sentence, the appellant is before this Court.

4. Today, when the appeal is taken up for hearing, I have heard the arguments of Mr.V.Bhiman, learned counsel appearing for the appellant, Ms.T.P.Savitha, learned Government Advocate [Criminal Side] appearing for the State and also perused the records carefully.

5. The first and foremost contention raised by the learned counsel appearing for the appellant is that as per the evidence given by the Investigating Officer [P.W.10], two complaints have been received in respect to the same offence, now the earlier complaint given by the P.W.1 was suppressed without any reason. Further, he submits that the suppression of complaint itself is sufficient to hold that the prosecution had implicated the appellant falsely in this case.

6. On considering the said arguments with the evidence of P.W.10, it was suggested by the appellant that before recording the statement from P.W.1, at about 8.30p.m., on the same day, the Sub-Inspector of Police [Rangareddy], recorded the statement and obtained the signature from P.W.1. Since the story put-forth by the defense is specifically denied by the Investigating Officer [P.W.10], it is the duty of the appellant to show the details about the suppression of earlier complaint. Particularly the said individual, who recorded the statement was working as Sub-Inspector of Police, summoning the said person as a witness to this case is not difficult to the appellant but without taking any steps to examining him, the mere suggestion before the investigating officer is nothing but baseless allegation. Hence, it is not sufficient to hold that the two complaints were received from P.W.1.

7. The next contention raised by the learned counsel appearing for the appellant is that during the time of occurrence the appellant has also sustained injury. According to the evidence given by P.W.4 [Vijay], both the appellant and the P.W.1 were quarrelled with each other and therefore, registering a separate case for the injury sustained by the appellant is necessary to find out the truth. But, the Investigating Officer had not followed Rule 588-A of the Madras Police Standing Order and laid a charge sheet against the appellant is nothing but fatal to prosecution.

8. Now, on considering the said arguments along with the prosecution evidence, except P.W.4, other eye-witnesses examined on the side of the prosecution does not say anything about the assault made by P.W.1. and about the injury sustained by the appellant. However, on the same day of occurrence, at about 5.00p.m., the appellant was admitted in the Stanley Government Hospital. During the time of admission, he stated before the Doctor [P.W.8] that 3 known persons by using the knife [M.O.1] and the broken soda bottle [M.O.2] assaulted him. Further as per the evidence of Dr.Dhinakaran Moses [P.W.8], the

injury sustained by the appellant is simple in nature. Accordingly, the prosecution proves that the appellant has also sustained simple injury in the alleged occurrence. However at the same time as per the case of prosecution, P.W.1 has also sustained simple injury.

9. In the above circumstances, it is the duty of the prosecution to explain under what circumstances the appellant has sustained injury. But in this case, the witnesses examined on the side of the prosecution does not say anything about the injury sustained by the appellant, only P.W.2 and P.W.4, who are the eye-witnesses stated in their evidences as the appellant and the P.W.1 were quarrelled with each other. So, the entire evidence putforth by the prosecution witnesses clearly shows that the act committed by the appellant constituted the offence of 160 I.P.C. alone. But the trial Court without seeing the said aspect convicted the appellant for the offences under Sections 341 and 323 I.P.C. which needs interference.

10. In the result, this Criminal Appeal is allowed, the conviction and sentence imposed upon the appellant by the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai, in S.C.No.400 of 2008, dated 16.12.2009 are hereby set aside and the appellant is acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge
[Fast Track Court No.III], Chennai.

2.The Metropolitan Magistrate,
George Town, Chennai

3.Do-Thro Chief Metropolitan
Magistrate, Egmore, Chennai

4.The Inspector of Police,
Government of Tamil Nadu,
H-4, Korukkupet Police Station,
Chennai - 600 021.

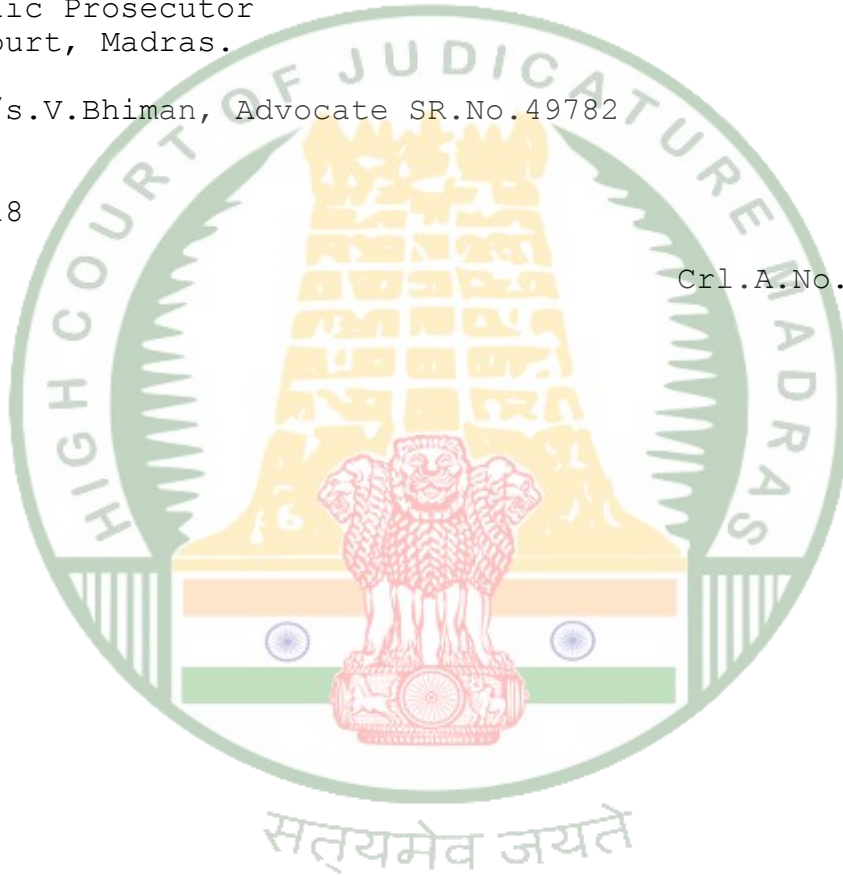
5.The Section Officer,
Criminal Section,
Madras High Court,
Chennai.

6.The Public Prosecutor
High Court, Madras.

+1cc to M/s.V.Bhiman, Advocate SR.No.49782

VSNII(CO)
sm:9.8.2018

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