



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.614 of 2010

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1. Kalidass

2. Arumugam

... Appellants/Accused

/Vs/

State rep. by The Inspector of Police,
Mohanur Police Station, Namakkal District.

(Cr.No.241/2008)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the Judgement of the learned Principal Sessions Judge, Namakkal in S.C.No.48 of 2009 by its Judgement dated 23.11.2009.

For Appellants : Mr.S.Ramkumar for M/s.C.D.Johnson

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor

JUDGMENT

- 1.This Criminal Appeal is filed, against the judgement of conviction and sentence, imposed on the appellants/accused, by the learned Principal Sessions Judge, Namakkal, in SC.No.48 of 2009, dated 23.11.2009.
- 2.The appellants/accused stood charged and tried for the offences under Sections 294(b), 307 r/w 341 of IPC and 302 r/w 341 of IPC. The Trial Court vide impugned Judgement, acquitted the appellants/accused for the offence under Section 302 r/w 341 of IPC, however, found the first appellant/A1 guilty for the offences under Sections 294(b) and 324 of IPC and found the second appellant/A2 guilty for the offence under Section 324 of IPC and both the appellants/A1 and A2 were convicted and sentenced to pay a fine of of Rs.2,500/- each, with a default sentence of six months simple imprisonment for the commission of the offences under Section 324 of IPC and the first appellant was convicted and sentenced to pay a fine of Rs.200/- with a default sentence of two weeks simple imprisonment for the commission of the offence under Section 294(b) of IPC.
- 3.The facts leading to filing of this appeal in brief are as follows:-

a) The first appellant is the son of the second appellant.

PW.1 Manoharan, is the son of the deceased Periyannan and he used to visit his father, who is residing at



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Nadutholloor in order to take care of him and there existed a pathway dispute between the families of Periyannan and the accused. On 15.06.2008, when P.W.1 had come to his Village to see his father, A-1 demanded money from him for consuming liquor and P.W.1 gave Rs.50/- and chided the first appellant/A1 for his conduct. Thus, A1 developed enmity against P.W.1. On the same day at about 6.45 p.m., the first appellant/A1 came near the house of Periyannan and abused P.W.1 in a filthy language. The second appellant also joined the first appellant and in the said occurrence, first appellant beat P.W.1 with Iron pipe on his left collar bone, left thumb and left side head. The second appellant also beat P.W.1 with a cot frame on his right leg and hands in order to do away the life of P.W.1. When the father of P.W.1 namely Periyannan intervened, the first appellant pushed him down using the iron pipe and the second appellant attacked the deceased Periyannan with hands, as a result of which Periyannan died on the way to hospital, resulting in the registration of the case.

- b) The case was taken on file in SC.No.48 of 2009, by the Principal District and Sessions Judge, Namakkal and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.7 and also marked Exs.P1 to P.19 and Mos.1 to 7.
 - c) On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial and stated that they had been falsely implicated in this case. On the side of the defence, DW.1 was examined and Ex.D1 and Ex.D2 were marked.
 - d) The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellants guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.
- 4.This court heard the submissions of the learned counsel on either side.
- 5.The learned counsel for the appellant would submit that the case of the prosecution is full of contradictions, exaggerations and embellishments and that though the alleged occurrence was stated to have happened in the Village in the evening time and there were several other persons present, who had witnessed the occurrence and raised alarm, none of the independent witnesses have been examined to prove the prosecution's case. He would further submit that the evidence of PW.1 is not supported by the medical evidence, which is totally contradictory to the overtacts attributed to the accused. Further, even as per the evidence of P.W.1, he was stated to have been admitted in the hospital by his



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friend Kumar and the said Kumar has not been examined by the prosecution and that non examination of Kumar and other Villagers, who are independent witnesses, causes doubt in the prosecution's case. Further, he would submit that the recovery and confession were stated to have been made in the presence of persons from the Village and that though PW.1 had in the complaint stated that during the occurrence, about ten persons who were the neighbours were present and gave evidence before the Court that ten persons came near at the time of occurrence, none of them have been examined by the prosecution, thereby creating a doubt in the prosecution case. Further, the evidence with regard to the occurrence, the weapons used and the recovery of weapons are contradictory with each other and that the evidence of P.W.1 is not corroborated by the medical evidence given by the Doctor D.W.1 Dr.Rajendran.

6. The learned counsel for the Appellants/ accused would further submit that it is the case of P.W.5, the Village Administrative Officer that at the time of occurrence, the second appellant was working as Village Assistant and that on 15.06.2008, he had been entrusted with the duty of handing over slips for issuance T.V.sets to the members in the Village and that on the day of occurrence the second appellant had distributed the slips to the members in the Village. He would further submit that the appellants had examined one D.W.1 Dr.Rajendran, to show that the first accused was assaulted by P.W.1 and that he had suffered injuries all over his body and it is the admitted evidence of PW.4 that the respondent failed to register the case on the complaint given by the first accused and no investigation has been done and no explanation has been given by the Respondent with regard to the injuries found on the Appellant/A1. More particularly, as per the evidence of PW.1, the injuries suffered by PW.1 are simple in nature, whereas as per the evidence of DW.1, the injuries suffered by the 1st Appellant are more serious.
7. The learned counsel for the Appellants would submit that it has been admitted by P.W.4 that the first appellant had given a complaint against PW.1 her husband, that the first appellant was assaulted by PW.1, her husband and that when she was enquired by the Police, she did not speak anything about that and admittedly, there was previous enmity between the appellants and the family of P.W.1 and P.W.4 and in such view of the matter, the learned Trial Judge ought to have extended the benefit of doubt and acquitted the appellants/accused accordingly.
8. The learned counsel for the Appellants would further submit that the Trial Court having found that the Prosecution has failed to prove the charges under Sections 302 read with 341 of IPC, ought to have acquitted the Appellants for the offence under Sections 324 and 294(b) of IPC, granting benefit of doubt and that the necessary ingredients of Section 294(b) of IPC are not made out.



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9. On the other hand, the learned Additional Public Prosecutor would submit that there is a categorical evidence that the first appellant had assaulted P.W.1 with Iron pipe, due to which he had sustained injuries. Further, he would fairly submit that there was a quarrel between the first appellant and P.W.1, in which the first appellant also sustained injuries
10. I have considered the submissions of the learned counsel on either and also perused the materials placed on record.
11. The core of the case of the Prosecution is that due to dispute over the pathway right, both the Appellants/ accused assaulted PW.1 and his father and caused injuries to PW.1 and also death to the deceased Periannan, who is the father of PW.1.
12. The defence version is that the Appellants/A1 and A2 never committed the murder of the deceased and never attempted to commit murder of PW.1. In the occurrence, the Appellant/A1 had also sustained injuries.
13. Now, the point to be considered is as to whether the Prosecution has proved the role of the Appellants/A1 and A2, particularly in the commission of murder of Periyannan and in the attempt to murder of PW.1, at the place of occurrence in question by cogent evidence.
14. In order to decide the core point, it is relevant to refer to the relevant deposition of the witnesses and documentary evidence.
15. PW.1, who is the son of the deceased Periyannan, had deposed that there was a previous enmity between his family and the Appellants/ accused, regarding use of pathway and that he used to come and see his father, the deceased on every Sundays, since he was living with his family in the house of his father in law at Karur. He had further deposed that on the day of occurrence, at 6.45 p.m., when he was about to start to go to his house, outside the house, the Appellant/A1 came there and assaulted him with an iron rod on his left collar bone, left thumb and left side head and the Appellant/A2, who is the father of A1, also assaulted with a wooden cot rod on his both legs and that on seeing the assault, the deceased came there and intervened and at that time, the Appellant/A1 pushed down him and the deceased became unconscious and one Sivakumar, friend of PW.1 took both PW.1 and the deceased and admitted in the Government Hospital, Namakkal, at 6.50 p.m. and the deceased died at 7.30 p.m. at the Hospital. He had further deposed that except his wife, there was no other witness and that earlier, electricity connection was taken from the house of the Appellant/A1. He denied the suggestion that since the Appellant/A1 disconnected the electricity connection, he quarrelled and fought in a drunken mood with the accused and that the deceased died due to heart attack. He further deposed that there are around 20 houses in and around the place of occurrence.



- 16.PW.2, Doctor, attached to the Government Hospital, Namakkal, had deposed that PW.1 told that two known persons assaulted him with wooden log and iron rod and that the injuries sustained by PW.1 are simple in nature and that according to the force of assault by an iron rod, the injuries would occur and vary and that the injuries would have occurred due to assault by a wooden log and iron rod.
- 17.PW.3, Doctor, attached to the Government Hospital, Namakkal, who conducted autopsy on the body of the deceased, had deposed about the injuries sustained by the deceased and that it was stated that the deceased would have appeared to be died 14 to 18 hours prior to autopsy due to heart attack and that there is no possibility of death being occurred while falling on ground.
- 18.PW.4, who is the wife of PW.1 had deposed that there was a previous enmity between his family and the Appellants/accused regarding pathway and electricity connection and deposed about the assault by the Appellants/A2 in similar lines as that of PW.1. He had further deposed that at the time occurrence, there were about 10 persons present and that she heard that the Appellant/A1 also sustained injuries and was under treatment and that when she was enquired by the police, she did not spoke as to how the Appellant/A1 sustained injuries.
- 19.PW.5, who is the Village Administrative Officer, had deposed that on identification of the Appellant/A2 by one Suseela at Pudupalayam Bus Stop, he was arrested by the Inspector of Police and his confession statement was obtained and he and the Village Assistant affixed their signatures in the same. He in his cross examination had deposed that on his directions, on the day of occurrence, i.e. on 15.6.2008, the Appellant/A2 Arumugam, who is the Village Assistant, in order to give Free Televisions, had issued slips to the village people and that the place from where the material objects had been seized is not mentioned in the rough sketch.
- 20.DW.1, Doctor, examined on the side of the defence, had deposed that he had examined the Appellant/A1 and that the Appellant/A1 sustained injuries, viz. abrasions, swellings on his shoulders, left hand and left hand fingers and both thighs and he told that the opposite party assaulted him and sent him to Government Hospital, Kumaramangalam, for further treatment and that after treatment, the Appellant/A1 was confined in prison.
- 21.In Ex.P3, post mortem certificate, it is opined that the deceased appeared to have died of myocardial infarction.
- 22.As rightly pointed out by the learned counsel for the Appellants, as per the Accident Register, Ex.P2, Kumar, who was stated to have admitted PW.1 and the deceased, was not examined as a witness and that as per the evidence of the Prosecution, though there are around 20 houses in and around the place of occurrence and though there were about 10 persons present at the time and the place of occurrence,



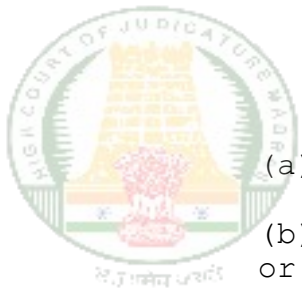
none of them had been summoned and examined as a witness. Non examination of the persons, who were present at the time of the occurrence, creates a doubt in the case of the Prosecution.

23. On an overall analysis of the entire evidence, it is seen that PW.1 is the son of deceased Periyannan and he had deposed that he had married and settled at Nadutholloor Village along with his father in law and that his father was living alone and that there was previous enmity between them with regard to the pathway and that he used to come every Sunday to his Village to see his father. On the day of occurrence, in the morning, the appellant/A1 had demanded money for drinking and that he had paid Rs.50/- to him. Thereafter, his wife and children came from Karur afternoon and while it was around 6.45p.m. he was get ready to go back to Karur. At that time, the Appellant/A1 had come there and quarreled with him, saying that he has come from outside and creating a problem and saying so, hit him with the Iron pipe, resulting injuries in his left thumb and thereafter, he had once again hit him with the Iron pipe resulting PW.1 sustaining bleeding injury. Further evidence is that the second appellant took out a cot frame and hit him on his right leg and right hand and at that time, the deceased father came in between and intervened and that the second appellant had stamped on the chest of the deceased father, due to which, the deceased fell down and did not get up. Thereafter, the friend of P.W.1 named Kumar had taken PW.1 and his father in a car to Namakkal Government Hospital at 6.15 p.m., and his father died on 7.30 p.m. and P.W.1 got himself admitted in Government Hospital. His further evidence is that since he was precipitated, he had stated that the weapon used was the Iron rod instead of Iron pipe and that he has wrongly stated the injury at the rip instead of injury on the parietal region and hat he was not aware that his father died.

24. PW.2 Doctor would admit that on 17.06.2007 while she was in duty, P.W.1 had stated that two known persons had assaulted him with stick and Iron rod and she had found a lacerated wound measuring 7x3x3C.m., on the left temporo parietal region and an abrasion on the left colour bone and an abrasion in between left thumb and index finger and that she had opined that the injuries were simple in nature. During the cross, she had stated that the injuries could have been sustained by P.W.1 due to assault by wooden log and iron rod. P.W.3 Doctor, who conducted postmortem on the body of the deceased/father of PW.1 had found the injuries such as contusion over the left upper arm measuring about 4x3 cm and contusion over the occipital area of head about 6x4 cm and he had opined that the victim had died of myocardial infarction.

25. Section 294 of the Indian Penal Code reads as follows:-

"294. Obscene acts and songs.—Whoever, to the annoyance of others,



(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

26. In order to prove the offence under Section 294(b) of IPC, the Prosecution should prove the necessary ingredients of Section 294(b) of IPC, viz. (i) an obscene act must have been done in a public place, or (ii) acts were done by the accused causing annoyance to others.

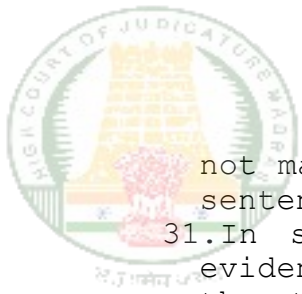
27. In 1996 4 SCC 17 (Pawan Kumar Vs. State of Haryana), the Honourable Supreme Court had held thus:-

9. In order to secure a conviction the provision requires two particulars to be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed."

28. In (2010) 8 SCC 628 (Madan Mohan Singh Vs. State of Gujarat and Ors), it was held that where FIR itself did not have any material or was not capable of being viewed as having material for offence under Sections 306 and 294(b) IPC, the First Information Report was liable to be quashed.

29. In this case, when the Prosecution, by letting in valid oral and documentary evidence, has not proved that by the acts of the Appellants/ accused, the public were annoyed, it can be stated that no offence under Section 294(b) is committed and consequently, the conviction by the Trial Court under Section 294(b) of IPC cannot be sustained.

30. Thus, in so far as the Appellant/A1 is concerned, the evidence of the witnesses, particularly, the evidence of PW.1 and PW.4 in respect of overt act attributed to the Appellant/A1 for the offence under Section 324 of IPC alone, is cogent and convincing. However, the medical evidence of PW.2 and Ex.P2 with regard to the injuries sustained by PW.1 does not lend credence to the evidence of PW.1. Further, the evidence of PW.4 is contrary to the evidence of PW.1 with regard to the overtact of A2. Hence, this Court has to necessarily come to a conclusion that the Prosecution has proved the guilty of the Appellant/A1 for the offence under Section 324 of IPC beyond all reasonable doubts and failed to prove the guilt of A2. However, as stated above, since the necessary ingredients of Section 294(b) of IPC are



not made out as against the Appellant/A1, the conviction and sentence under Section 294(b) of IPC cannot be sustained.

31. In so far as the Appellant/A2 is concerned, it is the evidence of PW.5, Village Administrative Officer, that at the time of occurrence, the Appellant/A2 appellant was distributing slips to the villagers in respect of distribution of Free Televisions. The evidence of PWs.1 and 4 is not in corroborative nature and it is also not supported by the medical evidence to sustain conviction of the Appellant/A2. As stated above, the presence of A2 at the scene of occurrence remains doubtful and since his overtact is not supported by oral and medical evidence, this Court has to necessarily come to a conclusion that the offence under Section 324 of IPC is not made out as against the Appellant/A2.

32. In the result, this Criminal Appeal is partly allowed. In so far as the Appellant/A2 is concerned, the impugned judgement of conviction and sentence is set aside and the Appellant/A2 is acquitted of the charges levelled against him and the bail bond if any executed by the Appellant/A2 shall stand cancelled and the fine amount if any paid by the Appellant/A2 shall be refunded to him.

33. In so far as the Appellant/A1 is concerned, the impugned judgement of conviction and sentence is modified to the extent that the conviction and sentence under Section 324 is confirmed and the conviction and sentence under Section 294 (b) of IPC is set aside.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssi/Srcm

To

1. The Principal Sessions Judge, Namakkal.
2. The Inspector of Police, Mohanur Police Station, Namakkal District.

+1cc to M/s.C.D.Johnson , Advocate SR.No. 25863

Crl.A.No.614 of 2010

A.SK(08/08/2019)