

**Bail Slip**

1) Mayandi, S/o.Ucha Kavundar and 2) Sankar @ Jeysankar, S/o.Mayandi, were released on bail by the order of this Court dated 24.04.2008 made in MP(MD).No.1 of 2008 in CrI.A.(MD).No.206/2008.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.07.2019

DELIVERED ON : 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.A.(MD) No.206 of 2008
and
CrI.MP.No.1 of 2008

1.Mayandi
2.Sankar @ JeySankar
Accused 1& 2

.. Appellants /

.. VS ..

The State of Tamil Nadu,
represented by its Inspector of Police,
Ammayanayakkanoor Police Station,
(In Cr.No.405 of 2003),
Dindigul District.

.. Respondent/ Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C.,
pleaded to take this Appeal on file, call for the records from the
lower Court, hear the counsel for the Appellants/Accused, to set
aside the conviction and sentence passed by the learned Additional
Assistant Sessions Judge, Dindigul, in S.C.No.95 of 2004 dated
10.04.2008 and allow this Appeal and grant such other equitable
relief fit under the circumstances of the case.

For Appellants : Mr.B.Karthick, Senior Counsel
for Mr.Babu Rajendran

For Respondent : Mrs.Ananthadevi,
Government Advocate (CrI.Side)

JUDGMENT

The convicted accused viz., A1 and A2 are the appellants
herein and they have preferred this criminal appeal against the
judgment of conviction and sentence passed by the learned Additional
Assistant Sessions Judge, Dindigul, dated 10.04.2008.



2. After hearing either side and considering the evidence on record, the learned Additional Assistant Sessions Judge, by judgment dated 10.04.2008, in S.C.No.95 of 2004, convicted and sentenced both accused Nos.1 and 2/appellants herein as follows:

Accused	Provision under which convicted	Sentence
Mayandi (A1)	Section 326 IPC	Seven years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment.
	Section 307 IPC	Ten years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo one year rigorous imprisonment.
Sankar @ JeySankar (A2)	Section 324 IPC	Three years rigorous imprisonment.
	Section 326 IPC	Seven years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment.
	Section 307 IPC	Ten years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo one year rigorous imprisonment.

The learned Additional Assistant Sessions Judge, Dindigul, ordered to run the above sentences concurrently.

3. The respondent police has filed Charge Sheet in Cr.No.405 of 2003 alleging that there was a land dispute and previous enmity between accused 1 and 2 and the victim party for more than five years; that some branches of Karuvel trees grows in the lands of accused 1 and 2 reclined in the de facto complainant's land; that when the defacto complainant requested the accused to cut the branches, they refused to cut the same. It is the further case of the prosecution that on 15.08.2003 when the de facto complainant party cut the branches of trees reclined within their land, wordy quarrel arose between the first accused and the de faco complainant and the second accused causes cut injury on the head of PW1 with an Aruval; that the first accused also cut the right elbow, left chest and left wrist of PW2 with an Aruval and when PW3 attempted to



prevent the same, the second accused cut the left fingers, except thumb of PW3 and caused injury and thereby, both A.1 and A.2 had committed the offences under Sections 324, 326 and 307 IPC.

4. The matter was taken on file as P.R.C.No.36 of 2003 and re-numbered as S.C.No.95 of 2004. Subsequently, made over to the learned Additional Assistant Sessions Judge, Dindigul. After trial, the first accused was charged for the offences under Sections 326 and 307 IPC and the second accused was charged for the offences under Sections 324, 326 and 307 IPC.

5. In order to prove the case of the prosecution, the prosecution examined PW.1 to PW.15 and marked Exs.P1 to P13 and also produced MO.1 and MO.2-Aruvals. On the side of the defence, the Accident Register of the first accused was marked as Ex.D1 through the Investigating Officer PW.15.

6. On consideration of both oral and documentary evidence, the learned Additional Assistant Sessions Judge, Dindigul, held that charges against accused 1 and 2 are proved beyond reasonable doubt and accordingly, laid the conviction and awarded sentence as already stated supra.

7. Aggrieved against the said judgment of conviction and sentence, accused 1 and 2 have preferred this criminal appeal before this Court. During the pendency of the criminal appeal, the first accused namely, Mayandi, died on 17.05.2009 and the same was recorded based upon the memo along with the death certificate filed by the learned counsel for the appellants herein/accused 1 and 2 and accordingly, this criminal appeal stands abated as against the first accused/first appellant herein. Thus, the scope of the appeal is now confined to the charges framed against A.2, viz., for the alleged offences under Sections 324, 326 and 307 IPC.

8. Mr.B.Karthick, learned Senior Counsel representing Mr.Babu Rajendran, learned counsel appearing for the appellants /A.1 and A.2 would submit that the genesis of the occurrence has been suppressed by the prosecution and the first accused has sustained brutal injury in the occurrence and for which, there was no explanation given by the prosecution and the earliest complaint given by the prosecution witnesses was not produced before the Court and first FIR was burked by the prosecution and hence, prayed for acquittal of A.2/second appellant herein.

9. Mrs.M.Ananthadevi, learned Government Advocate (Crl.Side) appearing for the State made submissions in support of the judgment of the Trial Court.

10. points for consideration are,

1)Whether the prosecution has proved the charges

under Sections 324, 326 and 307 IPC against A.2?



2) Whether the order of conviction passed by the Trial Court is sustainable in law?

3) Whether the sentence awarded therefor is excessive?

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11. On a perusal of the prosecution witnesses, it is seen that the private prosecution witnesses viz., PW1, PW2 and PW3, who are the injured witnesses, have deposed in support of the case of the prosecution and further, PW4, who is the alleged eye witness, turned hostile. PW5, who is projected as an eye witness [son of PW3 and another brother of PW1 and PW2] turned hostile, not supported the case of the prosecution. Another witness namely, PW6, who is said to be seen the occurrence, has also turned hostile. Attestors of the Observation Mahazar viz., PW7 to PW10 are all turned hostile. PW11, the Village Assistant had deposed regarding his official duty. In other words, both PW11 and PW12, who are the Assistant to VAO and VAO respectively, have partly turned hostile in respect of the alleged arrest of the accused, alleged confession statement recording and thus, this Court finds that except private prosecution witnesses, namely, PW1 to PW3, other witnesses namely, PW4, PW5 and PW6 said to be the occurrence witnesses, have turned hostile. Furthermore, the brother of the injured witnesses viz., PW1, PW2 and son of PW3, have also turned hostile assumes significance, in the light of previous enmity, as a motive. The official witnesses had deposed regarding preparation of Observation Mahazar, arrest of the accused, recording of confession statement, recovery and seizure mahazar and they have turned hostile on the vital issues and further, while PW13-Dr.Muralidharan, who had issued Ex.P6-Wound Certificate to PW1, Ex.P7-Wound Certificate to PW3 and Ex.P8-Wound Certificate to PW2, had deposed regarding the injuries found at the time of his treatment. The police witnesses viz., PW14 and PW15 deposed regarding discharge of their official duty, in connection with the registration of the complaint, conducting of investigation and filing of the final report.

12. It remains to be stated that when PW15/Investigation Officer was in the witness box during his cross-examination, the document Ex.D1-Accident Register with regard to the injuries sustained by the first accused was marked. On the above factual background, let us consider as to whether the version of the private prosecution witnesses PW1 to PW3 is reliable and trust worthy. Previous enmity on land dispute is projected as motive for the crime.

13. The case of the prosecution, in brief, is that on 15.08.2003 at about 1.00 p.m., when the prosecution witnesses PW1, PW2 and PW3 were at their agricultural land and cutting down the Karuvel bushes, accuses 1 and 2 came to the spot with an intention to murder them with Aruval and caused various injuries to them and as a result of which, all the three witnesses viz., PW1, PW2 and PW3 sustained grievous injuries. Hence, a case in Crime No.405 of 2003



for the offences under Sections 447, 324 and 307 IPC was registered by the respondent police on the same day and FIR was also prepared.

14. In the chief examination of the private prosecution witnesses, the injured witnesses viz., PW1, PW2 and PW3, they have deposed regarding the assault made by A1 and A2 with weapon and causing of injury on their body. However, on a perusal of the cross-examination of PW1, he has categorically admitted that at the time of the occurrence, all the private prosecution witnesses were armed with deadly weapon viz., Sickles and Arulval assumes significance.

15. It is elicited from the evidence of PW2 that his brother viz., PW1/Veluchamy, had an Aruval in his hand with black wooden portion and the occurrence witness PW4-Selvam though turned hostile, however, during his cross-examination, he has admitted that all the private prosecution witnesses PW1, PW2 and PW3 were armed with weapon and cut the Karuvil bushes and hence, this Court finds that the private prosecution witnesses were duly armed at the time of the alleged occurrence and the said position at the time of the occurrence assumes significance in the background of the factual situation of the prosecution case as stated supra.

16. Before proceeding further, from the evidence of the prosecution witness No.3, it is elicited that PW3, who is the mother of PW1 and PW2, had illicit relationship with the first accused and there was a panchayat whereby, both the parties were advised not to live with each other and to leave each other also assumes significance.

17. Mrs.M.Ananthadevi, learned Government Advocate (Crl.Side) appearing for the State would contend that the injuries spoken to by PW1 to PW3 were duly corroborated by the medical evidence of the Doctor PW.13, who had issued the Accident Register and also opined about the injuries found on the body of PW1 to PW3 as stated supra. In respect of the grievous injuries mentioned therein in respect of Item No.2 of PW3 as could be seen from Exs.P6, P7 and P8, this Court also noticed that though PW13-Doctor has opined that certain injuries found on PW3 are grievous in nature, however, no X-ray has been marked before the Court also assumes significance.

18. Mr.B.Karthick, learned Senior Counsel appearing for the appellants/accused 1 and 2, based upon the cross-examination of PW1 and PW4, would contend that the genesis of the case was suppressed by the prosecution. After going through the chief and cross-examination of PW1 coupled with the evidence of PW14-Inspector of Police, who had registered Ex.P9-FIR, based upon Ex.P1-complaint given by PW1, it is seen that the accused have questioned the act of PW1 and PW2 in the course of cutting the trees belonged to them and the same was elicited in the cross-examination of PW1 and further, PW1 also admitted in the cross-examination that based upon the



complaint given by the first accused (who has sustained head injuries), has lodged a complaint with the police and the same was registered in Crime No.406 of 2003 and also stated that he is aware of the complaint given by the first accused for the assault on his head and a case has been registered against PW1 to PW3 and they have also obtained bail also assumes significance.

19. It remains to be stated that the prosecution has not filed the copy of the final report in the counter case. In this regard, the answer elicited in the cross-examination of P14/Sub-Inspector of Police assumes significance as he has admitted that he only registered the case in crime No.406 of 2003, based upon the statement given by the first accused, at Government Hospital, Dindigul and PW1 to PW3 were arrayed as accused and Ex.D1-Accident Register, showing the nature of the injury sustained by the first accused was marked through him. But no final report has been filed by him in the counter case.

20. At this juncture, this Court finds that the answer elicited from the Investigation Officer, who laid the charge sheet, is relevant to the charges framed against both the accused. The Investigation Officer has stated that he has accompanied the Constable to the Government Hospital, Dindigul, where the first accused was found with head injury and he received the complaint and registered a case in Crime No.406 of 2003 and the said case has been referred. However, he has not filed any charge sheet and the same is also admitted by him. Further, in his cross-examination, he could depose that he has received bloodstained cloth from the first accused. However, he has admitted that the first accused had injury on his head and the referred charge sheet was not annexed with the charge sheet filed in this case. Further, it is admitted that Ex.D1 is the Accident Register in respect of the injuries sustained by the first accused. Furthermore, during the investigation of the case in Crime No.406 of 2003, wherein, PW1 to PW3 were arrayed as accused parties, they have stated that only as a self defence, they have attacked the accused 1 and 2/appellants herein. Furthermore, the Investigation Officer has admitted that he has not recovered the alleged weapon of the crime said to have been used by the first accused and he could depose that the complaint given by the first accused was referred. However, he do not know as to whether notice of referred charge sheet was served on the first accused or not? and neither he has not produced the referred charge sheet along with final report filed in this case. In the cross-examination, the Investigation Officer has admitted that he has not examined any independent witnesses or neighboring land owners regarding the action and as per his investigation, previous enmity between the parties is the motive for the assault and he has also admitted that both PW1 and PW2 have cut the seemaa Karuvelam trees with Aruval and Koduval but, the Investigation Officer has failed to recover the weapons, based upon the complaint given by the first accused in Crime No.406 of 2003. Further, he has admitted that the scene of the crime has taken place in the de facto complainant's land



however, the Seema Karuvelam trees were situated in the land of the accused.

21. It is to be stated that no independent witnesses were examined by the prosecution as admitted by the Investigating Officer and even the alleged occurrence witnesses viz., P.Ws.4, 5 and 6 have turned hostile and not supported the case of the prosecution. But it is to be stated that in the matter of injury, the evidence of the victim or the injured cannot be disregarded merely for want of corroboration from independent witnesses, if it is otherwise clear and cogent.

22. In view of the previous enmity, which is admittedly said to have been in existence between the parties as a motive of crime and the same is a double edged weapon and it can be used for the commission of the offence and also be used to falsely implicate the accused due to previous enmity besides exaggeration of the facts or by inflating the scene of the crime and happening of the crime as it is noted in this case cannot be ruled out. P.W.3, in the cross-examination, has admitted that there was an illicit relationship between herself and A.1 also assumes significance on the above factual background and hence, this Court has taken into consideration the said fact for evaluating the version of P.W.1 to P.W.3.

23. Mr.B.Karthick, learned Senior Counsel appearing for the appellants, touching upon the defects in the prosecution case, would contend that the genesis of the prosecution that the earlier complaint given by P.W.1 was burked by the prosecution. He has further contended that after receipt of the complaint from the first accused regarding the injuries sustained by him on his head attacked by P.W.1 and P.W.2, a case was registered and according to facts of that case, subsequently, there was a reshaping of the present complaint-Ex.P.1. The learned Senior Counsel also drawn my attention to the complaint under Ex.P.1. After perusing the complaint-Ex.P.1, this Court is of the considered view that merely because that there was an endorsement made regarding the time of the receipt of the complaint on the margin of the second page of the complaint and that will not cause serious doubt and on that score alone, the complaint cannot be termed as fabricated one.

24. Though the learned Senior Counsel contended that the earlier complaint said to have been given by P.W.1 at Government Hospital, Dindigul was marked as Ex.P.1, another complaint was given by very same P.W.1 at the earlier point of time, when he was taking treatment at private hospital. He drew my attention to the evidence of P.W.4 in this regard. However, on a perusal of the complaint-Ex.P.1 and Ex.P.9-FIR and also the evidence of P.Ws.1 to 3 coupled with the evidence of the Doctor-P.W.13, this Court is of the considered view that the Sub-Inspector of Police-P.W.14 has not deposited about the coming into existence of the complaint as from the record and in view of the corroborative nature of the above said



document, namely, Ex.P.1-Complaint and Ex.P.9-FIR coupled with the oral evidence of P.Ws.1 to 3, this Court is of the considered view that there is no burking of previous complaint by the police as projected by the appellants herein and accordingly, this point stands negatived.

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25. On a perusal of the documents Exs.P.6, P.7, P.8, Wound Certificates relating to P.Ws.1 to 3, it is seen that P.Ws.1 to 3 were taken treatment in a private hospital viz., City Hospital, Dindigul. Thus, this Court holds that the contention put forth by the learned Senior Counsel appearing for the appellants that in the absence of any independent corroboration with regard to the injury and to speak about the alleged assault by the second accused on the body of P.Ws.1, 2 and 3, it does not hold to ground on the factual situation of this case as discussed infra.

26. It remains to be stated that all the three prosecution witnesses viz., P.Ws.1 to 3 have deposed regarding the assault of the second accused on their body and causing injury on them and the same has been duly reflected under Exs.P.6, 7 and 8, Wound Certificates issued to P.Ws.1 to 3 by P.W.13-Doctor. At this juncture, it is to be stated that when the Doctor-P.W.13 had issued the Wound Certificates Exs.P.6 to P.8, there was no cross-examination in respect of the offence under Section 326 IPC also assumes significance.

27. Taking into consideration the evidence of the victims viz., P.Ws.1 to 3 coupled with the medical evidence of Doctor-P.W.13 and the documentary evidence Exs.P.6, P.7 and P.8 and also taking note of the fact that in respect of recovery of the weapon used by P.W.2 viz., M.O.2-Aruval, the Revenue Authorities had deposed regarding the alleged seizure however to that extent, they have supported the case of the prosecution and with regard to the other aspects, they turned hostile also assumes significance. The weapon of crime was identified by P.Ws.1, 2 and 3 during the course of trial and hence, this Court is of the considered view that the version of the victims P.Ws.1 to 3 regarding assault on their body by A.2 was duly corroborated by the evidence of the Doctor-P.W.13 and the Wound Certificates-Exs.P.6 to P.8 and the weapon has also been seized and the same has been proved in the manner known to law and also identified by the accused during trial and hence, this Court is of the considered view that to the limited extent as indicated above, the version of P.Ws.1 to 3 is found to be clear, cogent and duly corroborated by the medical evidence and hence, this Court is of the view that the version of P.Ws.1 to 3 can be believed in respect of charge under Section 324 IPC and accordingly, I have no hesitation to hold that the prosecution has proved the case beyond reasonable doubt in respect of the charge under Section 324 IPC causing injury. Hence, the similar finding given by the learned Additional Assistant Sessions Judge, Dindigul, on different analysis of the matter, convicting the second appellant herein/A.2 for the offence under Section 324 IPC is hereby confirmed.



28. Taking into consideration the medical evidence of the Doctor-P.W.13 coupled with the documentary evidence of Exs.P.6, P.7 and P.8, this Court finds that the conviction under Section 324 IPC as against A.2/second appellant herein for causing injury on P.W.2 is sustained. However, the sentence has to be reduced to two years rigorous imprisonment from three years rigorous imprisonment.

29. With regard to the liability of the second accused in respect of the charge under Section 326 IPC, as noted earlier, the learned Senior Counsel has drawn my attention to the effect that no X-ray has been marked to show that the injuries sustained by P.W.3 are grievous in nature and it is also seen that under Ex.P.7-Wound Certificate, X-ray was not marked by the prosecution during the time of the trial. In support of his contention, the learned Senior Counsel has also relied upon the decision of this Court reported in (1993) M.L.J. (Crl.) 6 [Nallasingam and others Vs. State] and also a decision of this Court reported in 2000-2-L.W. (Crl.) 861 [Sampath and two others Vs. State represented by Sub-Inspector of Police, Dusi Police Station]. Hence, the conviction imposed by the learned Additional Assistant Sessions Judge, Dindigul, for the offence under Section 326 IPC against A.2 cannot be sustainable, but however, taking note of the injuries sustained by P.W.2, the charge under Section 326 IPC is hereby modified and scaled down to Section 324 IPC and A.2 is convicted under Section 324 IPC and sentenced to undergo imprisonment as stated infra.

30. On the above factual background, in the case of Ramaswami and another Vs. State in Crl.A.No.282 of 1984, a Division Bench of this Court, at paragraph No.17, has held as follows:-

"17. For the accused to be made liable under S.307 I.P.C., they should have done any act with such intention or knowledge and under such circumstances that, if they by that act caused death, they would be guilty of murder. Here they have not done anything which could cause death. They were only chasing P.W.5."

31. On a close scanning and scrutiny of the evidence of P.Ws.1 to 3 coupled with the answer elicited in the cross-examination and also coupled with the evidence of P.W.13-Doctor, this Court finds that the element of Section 307 IPC charged against A.2 is not made out and hence, in view of the infirm evidence in respect of the charge under Section 307 IPC coupled with the ratio laid down in Ramaswami's case [cited supra], this Court is of the considered view that the conviction laid by the learned Additional Assistant Sessions Judge, Dindigul, in respect of the charge under Section 307 IPC against the second appellant herein/A.2 is not sustainable.

32. As stated supra, as the evidence of P.W.1 and P.W.2 does not go to the extent of satisfying the essential ingredients of Section 307 IPC and taking into consideration the previous enmity



which has been prevailing between the parties, this Court is of the considered view that P.W.1 and P.W.2 are making an exaggeration of version of the incident by blowing out of the proposition and accordingly, the conviction and sentence passed by the learned Additional Assistant Sessions Judge, Dindigul, for the offence under Section 307 IPC against A.2/second appellant herein is held to be not proved in the manner known to law and the portion of the evidence by P.Ws.1 and 2 in support of the said charge is found to be artificial and exaggerated.

33. In the result,

[i] this Criminal Appeal is partly allowed.

[ii] the conviction passed by the learned Additional Assistant Sessions Judge, Dindigul, in S.C.No.95 of 2004 dated 10.04.2008, against the second appellant herein/A.2, for the offence under Section 324 IPC is hereby confirmed and he is sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.2000/-, in default, to undergo two months rigorous imprisonment.

[iii] the conviction imposed by the learned trial Judge against the second appellant herein/A.2, for the offence under Section 326 IPC is set aside and it is modified to one under Section 324 IPC and hence, A.2 is convicted under Section 324 IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.2000/-, in default, to undergo two months rigorous imprisonment.

[iv] the conviction and sentence passed by the learned trial Judge against the second appellant herein/A.2, for the offence under Section 307 IPC are set aside and he is acquitted of the said charge. The fine amount paid for the said offence under Section 307 IPC shall be adjusted, since he is acquitted of the said charge.

[v] The learned trial Judge is directed to take steps to secure the presence of the second appellant herein/A.2 and commit him to jail to undergo the remaining period of sentence.

34. Since the first appellant herein/A.1 died during the pendency of the appeal, the Criminal Appeal stands dismissed as abated as against him.

Sd/-

Assistant Registrar (CS-II)

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To

1. The Judicial Magistrate, Nilakottai
2. Do through The Chief Judicial Magistrate, Dindigul District
3. The Additional Assistant Sessions Judge,
Dindigul.
4. Do through The Principal Sessions Judge, Dindigul
5. The Superintendent, Central Prison, Madurai.
6. The Inspector of Police, The State of Tamil Nadu,
Ammayanayakkanoor Police Station, Dindigul District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Pre-Delivery Judgment made in
CRL.A.(MD) No.206 of 2008
14.08.2019

Jrl/dua

JMN(05.09.2019) 11P : 8C