

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****RESERVED ON : 18.12.2018****PRONOUNCED ON : 04.03.2019****CORAM:**

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THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN**CRL.R.C.(MD)Nos.970 of 2008 and 12 of 2010**Crl.R.C.(MD)No.970 of 2008

Chellammal

... Petitioner / Defacto
Complainant (P.W.1)

-Vs-

1.Vasudevan

2.Maru.Arivasan

3.Srinivasan

... Respondents 1 to 3 / Accused 1 to 3

4.State Represented by,

The Sub Inspector of Police,
Thilagar Thidal Police Station,
Madurai, Madurai District.

(Crime No.1509 of 1995)

... 4th Respondent / 4th Respondent
/ ComplainantCrl.R.C.(MD)No.12 of 2010

Chellammal

... Petitioner / Defacto
Complainant (P.W.1)

-Vs-

1.Maru.Arivasan

... 1st Respondent / Accused No.2

2.State Represented by,

The Inspector of Police,
Thilagar Thidal Police Station,
Madurai, Madurai District.

(Crime No.1509 of 1995)

... 2nd Respondent / 2nd Respondent
/ Complainant

PRAYER in Crl.R.C.(MD)No.970 of 2008: Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to call for the records and set aside the judgment passed by the learned Judicial Magistrate No.2, Madurai in C.C.No.676 of 1996, dated 05.09.2008.

PRAYER in Crl.R.C.(MD)No.12 of 2010: Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to call for the records in the judgment of the learned Principal Sessions Judge, Madurai in C.A.No.100 of 2008, dated 19.11.2009.

For Petitioner: Mr.S.Ramasamy

For R1 to R3 : Mr.R.Shunmugaraj

For R4 : Ms.M.Anantha Devi,

Government Advocate (Crl.Side).

(In Crl.R.C.(MD)No.970 of 2008)



For Petitioner: Mr.S.Ramasamy
For R1 : Mr.R.Shunmugaraj
For R2 : Ms.M.Anantha Devi,
Government Advocate (Crl.Side)
(In Crl.R.C. (MD)No.12 of 2010)

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COMMON ORDER

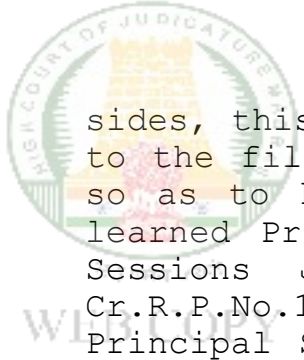
The defacto complainant P.W.1 is the revision petitioner in Crl.R.C.(MD)No.970 of 2008. She has filed the above said revision against the order of acquittal, acquitting the accused 1 and 3 in C.C.No.676 of 1996 on the file of the learned Judicial Magistrate No.2, Madurai. She has also filed Crl.R.C.(MD)No.12 of 2010 against the order of acquittal passed in C.A.No.100 of 2008 by the learned Principal Sessions Judge, Madurai, wherein, the second accused was acquitted.

2.The respondent police has filed charge sheet against the accused, stating that on 18.06.1995 at 09.00 p.m., the accused herein, the deceased accused R.Shanmugam and other accused, who were split up from C.C.No.830 of 2002 viz., Raja Mohamed, Shajahan, Velu and Rajendran formed themselves into an unlawful assembly armed with deadly weapons Aruval and knife with common intention to evict the complainant from her house, went to D.No.72, West Avani Moola Street, Madurai. The second accused assaulted the complainant with the handle of aruval on her mouth. Due to which, her teeth were broken and further damaged the photos and threatened the complainant and her daughter with dire consequences and also looted the television set, tape recorder and marble cutting machine and thereby committed an offence punishable under Sections 147, 148, 452, 326, 427, 506(2) and 380 r/w 149 IPC.

3.In order to prove the charges, the prosecution has examined P.W.1 to P.W.16 and marked Exs.P.1 to P.11 and also M.O.1 to M.O.4.

4.On consideration of both oral and documentary evidence, the trial Court has found the accused 1 and 3 not guilty of the charges under Sections 147, 341, 452, 326, 506(2), 380 r/w 149 IPC. At the same time, the trial Court found the second accused guilty under Section 326 IPC and convicted and sentenced him to undergo imprisonment till raising of the Court and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for six months. However, the second accused was found not guilty of the charges under Sections 148, 341, 452, 506(2) and 380 r/w 149 IPC and was acquitted from the said charges.

5.Aggrieved by the conviction and sentence passed under Section 326 IPC, the second accused has preferred an appeal in C.A.No.100 of 2008 before the learned Principal Sessions Judge, Madurai. At the same time, the defacto complainant has filed a revision in Crl.R.C. (MD)No.1054 of 2008 before this Court to enhance the sentence imposed against the second accused. After hearing both



sides, this Court has ordered to transfer the said criminal revision to the file of the Principal District and Sessions Court, Madurai, so as to hear the same along with C.A.No.100 of 2008 before the learned Principal Sessions Judge, Madurai. The learned Principal Sessions Judge has taken up the said criminal revision as Cr.R.P.16 of 2009. After perusing the records, the learned Principal Sessions Judge, Madurai has found the second accused not guilty and acquitted the second accused.

6. Aggrieved against the said acquittal order, the defacto complainant has filed these criminal revision petitions.

7. After hearing the rival submissions of both parties, the following points arise for consideration that whether the order of acquittal passed by the learned Judicial Magistrate No.2, Madurai in C.C.No.676 of 1996, acquitting the accused 1 and 3 is sustainable in law and whether the order of acquittal passed by the learned Principal Sessions Judge, Madurai, in C.A.No.100 of 2008, acquitting the second accused is sustainable or not?.

8. The case of the prosecution is that on 18.06.1995 at about 09.00 p.m., the accused persons formed themselves into an unlawful assembly armed with deadly weapons of Aruval and knife, with common intention to evict P.W.1 Chellammal from her house at Door No.72, West Avanimoola Street, Madurai and the second accused Arivasan assaulted P.W.1 Chellammal with the handle of an aruval on her mouth, due to which, her teeth were broken and the accused damaged the photos and looted the articles and put the grinder stone on the leg of P.W.1 Chellammal and thereby caused injury and committed the offences as stated supra.

9. While pending trial, another accused Shanmugam died. Hence, the charge against him was abated. Since the accused Raja Mohamed, Shajahan, Velu and Rajendran were absconding, the case against them were split up as C.C.No.830 of 2002 on 09.10.2002 and the same was ended in acquittal. The charges against the accused 1 and 3 under Sections 147, 341, 452, 326, 506(ii) and 380 r/w Section 149 IPC and against the second accused under Sections 148, 341, 452, 326, 506(ii) and 380 r/w 149 IPC were framed by the trial Court.

10. On perusal of the prosecution evidence, it is seen that P.W.1 Chellammal is the wife of P.W.5 Muruganantham and P.W.2 Muthulakshmi and P.W.6 Muthumari are their daughters and P.W.4 Kumaran is the friend of P.W.6. The relationship between the parties is not in dispute.

11. The case of the prosecution in brief is that due to civil dispute pending in between the accused Nos.1 to 3 and P.W.1 with regard to selling of the house by the husband of P.W.1, on 18.06.1995 at about 09.00 p.m., (night hours), the accused Nos.1 to 3 trespassed into the house of P.W.1 Chellammal with the lethal weapons and damaged the household articles and the second accused attacked P.W.1 on her jaw with hand portion of an aruval and

thereby 4 teeth belongs to P.W.1 were broken and immediately P.W.1 has given a complaint i.e., Ex.P.1.

12. Before the trial Court, the first accused and the third accused were charged for the alleged offences under Sections 147, 341, 452, 326, 506(ii), 380 r/w 149 IPC, while the second accused was charged under Sections 148, 341, 452, 326, 506(ii), 380 r/w 149. As stated supra, the trial Court acquitted the accused 1 and 3 for the above said charges, convicted the second accused for the offence under Section 326 IPC, sentenced him to imprisonment till raising of Court and fine of Rs.5,000/- in default to undergo six months simple imprisonment and in respect of the other offences against the second accused, the trial Court has acquitted him.

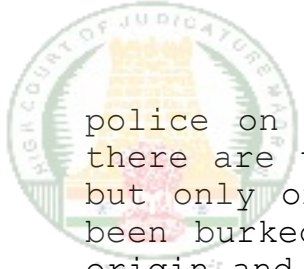
13. After going through the evidence of P.W.1 and P.W.2 and also the exhibits marked by the prosecution, this Court finds that P.W.1 in her complaint stated that four named and 10 unnamed, identifiable persons attacked her on 18.06.1995 at about 09.00 p.m., but in hospital she completely gave different version that she was attacked by four known persons only. In the charge sheet, only 8 persons had been arrayed as the accused. Therefore, there are three versions regarding the number of assailants, who alleged to be participated in the occurrence. It makes the prosecution case doubtful.

14. Even though the occurrence was stated to be occurred on 18.06.1995 at about 09.00 p.m., and reported to the police station at 09.45 p.m., the complaint reached the jurisdictional Magistrate at 10.15 a.m., on 21.06.1995 with inordinate and extraordinary delay of nearly 3 days, which is fatal to the prosecution case in the absence of any acceptable evidence.

15. In the evidence, there is absolutely no reference about the overt act played by the third accused. Further, there is a contradictory version, regarding the overt act of the first accused. P.W.1 at one point of time states that the first accused caused injury by putting grinding stone on her leg but P.W.2 states that it was caused by the second accused. Further, it appears that taking note of the fact that P.W.1 in her statement under Section 161(3) Cr.P.C., has not mentioned anyone specifically in that regard, the trial Court rightly rejected the evidence of P.W.1 and P.W.2 and acquitted the accused 1 and 3. Furthermore, no independent witnesses have supported the case of prosecution.

16. On scanning of other prosecution witness, it is seen that P.W.3 is an independent witness but he turned hostile during trial. P.W.4, who is the friend of P.W.6 is not an eye witness. P.W.5 and 6 are the husband and son of P.W.1 respectively. They are only hearsay witnesses.

17. At this juncture, it is to be stated that P.W.6, who is the son of P.W.1 claimed that he already lodged a complaint with the



police on 18.06.1995 and 19.06.1995. So, it appears that totally there are three complaints, including the complaint lodged by P.W.1 but only one complaint was marked and the other two complaints had been burked by the prosecution. So, it is crystal clear that the origin and genesis of the occurrence as projected by the prosecution is doubtful.

18.Thus, this Court finds that there are material contradiction as to who have caused injury on the leg of P.W.1 and whether P.W.1 has suffered any injury on her teeth while P.W.1 deposed that the first accused has dropped the grinding stone on her leg, P.W.2 deposed that the second accused has dropped the grinding stone over the leg of P.W.1 and thus, this Court finds that P.W.1 has deposed that the second accused assaulted with aruval on her upper jaw, one tooth in the upper jaw and 3 teeth in the lower jaw fell down. In this connection, P.W.12, who had issued Ex.P.6 accident register, had categorically deposed that one tooth in the upper jaw was missing.

19.Thus, this Court finds that with regard to the alleged act of the second accused and with regard to the alleged act of him as to who dropped the grinding stone on the leg of P.W.1, there is a material contradiction and the evidence of P.W.1 and P.W.2 appears to be at a material contradiction as to the alleged missing of tooth and on consideration of above factual position, the Lower Appellate Court has found that there is a material contradiction between the version of P.W.1 and P.W.2 with that of the medical evidence of P.W.12 coupled with Ex.P.6.

20.On the re-appreciation of the evidence, this Court finds that the said finding of the Lower Appellate Court does not warrant any interference by this Court.

21.Yet another point that arise for consideration in this case is that as coming into the existence of Ex.P.1 complaint said to have been lodged by P.W.1, according to P.W.1, she went to the police station and gave the complaint at 9.45 p.m., on 18.06.1995 to P.W.15 Mahadev Singh. The said complaint has reached the Court of Judicial Magistrate No.2, Madurai only on 21.06.1995 at 10.15 a.m. Hence, there is an inordinate delay of 3 days and the same has been remained unexplained by the prosecution.

22.Furthermore, P.W.6 Marimuthu, has lodged a complaint with the police personnel of Thilagar Thidal Police Station on 18.06.1995 and further, he preferred another complaint on 19.06.1995 at the time of interrogation by the investigation officer. So regarding the origin and genesis of the occurrence, 3 complaints are available, but the complaint through P.W.1 was marked, whereas another 2 complaints referred by P.W.6 were suppressed. Hence, in view of the factual position as elicited in cross examination of prosecution witnesses, it cause serious doubt about the case of prosecution.

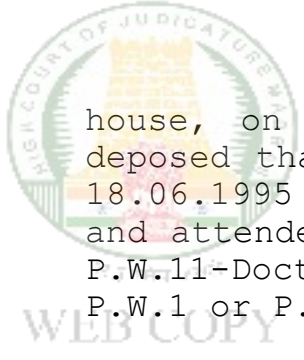


23. Thus, this Court finds that coming into the existence of the First Information Report as given by P.W.1, it is found to be doubtful. The other two complaints said to have been given by P.W.6 to the Thilagar Thidal Police Station on the two different dates is appears to have been burked by the prosecution and therefore, this Court finds that the case of the prosecution is doubtful. Thus, this Court finds that the finding by the learned Judicial Magistrate No.2, Madurai in C.C.No.676 of 1996, acquitting the accused 1 and 3, does not warrant any interference and accordingly, Crl.R.C.(MD) No.970 of 2008 is dismissed.

24. It appears from the records that the second accused Arivasan was convicted by the learned Judicial Magistrate No.II, Madurai on 05.09.2008 under Section 326 IPC and sentenced to pay a fine of Rs.5000/- and to undergo imprisonment till raising of the Court. Against which, the second accused preferred a criminal appeal in C.A.No.100 of 2008 before the Lower Appellate Court. The defacto complainant preferred Crl.R.C.(MD)No.1054 of 2008 before this Court and this Court has remanded the matter back to the Principal District Court, Madurai to try along with the criminal appal in C.A.No.100 of 2008. Subsequently, Crl.R.C.(MD)No.1054 of 2008 was renumbered as Crl.R.P.No.16 of 2009 before principal District Court, Madurai, and by a common judgment, the said Crl.R.P.No.16 of 2009 was dismissed and the above said C.A.No.100 of 2008 (by accused) was allowed and the second accused was acquitted. Against which the present Crl.R.C.(MD)No.12 of 2010 was filed by the defacto complainant.

25. After hearing both sides and also the prosecution evidence, it is seen that on behalf of the second accused plea of alibi was raised that he was the post graduate student in MS Orthopedics of Madurai Medical College and was posted to the Unit in the special posting General Surgery and he has attended ward duty on 18.06.1995 from 10.00 a.m., to 10.00 p.m. It remains to be stated that as per prosecution theory, the occurrence was said to have happened on 18.06.1995 at 09.00 p.m. At this juncture, the version of P.W.11-Doctor assumes significance. The said factum of posting and was on duty, of accused No.2 was spoken by P.W.11 Dr.C.Somasundaram. In this regard, Ex.P.5 letter dated 30.12.1995 was written by P.W.11 to the Professor and Head of the Department of Surgery, Government Rajaji Hospital, Madurai-625 020, stating that "Dr.R.Arivasan MS Post Graduate student in Orthopedics, who was posted to this unit in special posting of General Surgery had attended ward duty on 18.06.1995 upto 10.00 p.m.". Thus, this Court finds that the prosecution has let in two sets of evidence through its witnesses, which contradict with each other.

26. Thus, this Court finds that while on the prosecution side, the private prosecution witnesses P.W.1 and P.W.2 deposed that the second accused was present in the scene of crime i.e., at their



house, on the contrary P.W.11 medical college Doctor has clearly deposed that at the relevant point of time, i.e., at 9.00 p.m., on 18.06.1995 the second accused was present in the Government Hospital and attended ward duty. Thus, this Court finds that the version of P.W.11-Doctor is more probable, who has no grudge to grind against P.W.1 or P.W.2.

27.It remains to be stated that the motive for the alleged assault is the civil dispute between P.W.5 on the one side and the second accused on the other side. Since the second accused has obtained a civil decree in respect of the civil dispute for delivering possession of property from P.W.1 and furthermore, it is the specific evidence of P.W.1 and P.W.2 that pursuant to the above said civil decree while taking delivery of possession of the property they have been attacked also assumes significance.

28.In view of the positive evidence of P.W.11, doctor, whose version appears to be more probable and reasonable and in view of the pre-existing civil dispute between the parties, the false implication of the second accused cannot be ruled out. In view of the decision laid down by the Hon'ble Supreme Court reported in **1973 SCC (Crl) 962 (Harchand Singh and another Vs. State of Haryana)**, this Court holds that the conclusion in accepting the evidence of P.W.11 by the Courts below does not warrant any interference and accordingly, the order of acquittal passed by the learned Principal Sessions Judge, Madurai, is hereby confirmed, on different reasons, as discussed supra.

29.In the result, Crl.R.C.(MD)No.12 of 2010 is devoid of merits and accordingly, it is dismissed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

Myr

To

1.The Principal Sessions Judge,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The Judicial Magistrate No.2,
Madurai.



3.The Inspector of Police,
Thilagar Thidal Police Station,
Madurai, Madurai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

1 CC to M/s.K.MUTHUMALAI, Advocate (SR-52022[F] dated 06/03/2019)

Order Made in
CRL.R.C. (MD) Nos.970 of 2008
and 12 of 2010

04.03.2019

DS/ /SAR- (05.04.2019) 8P 8C