



Bail Slip

The Appellant/Sole Accused namely Vadamalai, aged 36/14, S/o.Vaira Thevar was directed to be enlarged on bail vide order of this Hon'ble Court passed in MP(MD).No.1/2014 in Crl.A.(MD). No.236/2014 dated 18.08.2014.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) NO. 236 of 2014

Vadamalai .. Appellant / Sole Accused

- Vs -

The State
represented by the Inspector of Police,
Othakadai Police Station,
Madurai District.
(Crime No.152 of 2008)

.. Respondent / Complainant

Prayer : Appeal filed u/s 374 (ii) of the Code of Criminal Procedure, to set aside the judgment passed in Spl.S.C.No.02 of 2011, dated 11.06.2014, by the III Additional District Judge (PCR), Madurai.

For Appellant : Mr. M.Solaisamy

For Respondent : Mr.K.Suyambulinga Bharathi
Governement Advocate (Criminal side)

JUDGMENT

This Criminal Appeal has been filed against the judgment passed in Spl.S.C.No.02 of 2011, dated 11.06.2014, by the learned III Additional District Judge (PCR), Madurai.

2. The appellant is the sole accused in this case. He was charged for the offences under Sections 3 (1) (x) of the SC/ST Act, 326 I.P.C. and 506 (ii) I.P.C. The Trial Court had acquitted the appellant for the offences under Sections 506 (ii) I.P.C and 3 (1) (x) of SC/ST (PA) Act, 1989 and found him guilty for the offence under Section 326 I.P.C. and convicted and sentenced him to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1000/- in



default to undergo three months Simple Imprisonment. Against which, the present Appeal has been filed.

3. The facts of the case are briefly stated hereunder:

The case of the prosecution is that the appellant and P.W.1 were friends and both of them were working at Tirupur Banian Company. P.W.1 borrowed a sum of Rs.2,000/- from the appellant herein to meet out his urgent family expenses. Thereafter, due to his ill-health, P.W.1 left out the job and went to his native. The appellant went to P.W.1's house on 20.04.2008 and requested him to repay the money. On that day, the appellant had dinner at P.W.1's house and slept in the nearby stage in the very Village. On the next day, at about 07.00 a.m., he again demanded money from P.W.1. But P.W.1's mother / P.W.2 asked for some time to repay the amount. Thereafter, quarrel arose between them. P.W.3 and P.W.4, are the relatives of P.W.1 had pacified them and stated that money would be given later, the appellant got dejected, suddenly, took aruval and attacked P.W.2 on the right elbow, causing 3x3x3 c.m. grievous injuries to her. Thereafter, P.W.2 was taken to hospital and a complaint was lodged before the Police Station. P.W.7, who is the Sub Inspector of Police, received the complaint, registered First Information Report-Ex.P.4 in Crime No.152 of 2008. P.W.9, who is the Deputy Superintendent of Police had taken up the investigation, visited the scene of occurrence, recorded the statement of the witnesses, prepared Observation Mahazar-Ex.P.2 and Rough Sketch-Ex.P.6 and arrested the appellant herein. P.W.9 obtained Community Certificate of P.W.2-Ex.P.3 and Community Certificate of the appellant-Ex.P.7 from P.W.6-Tahsildar. Thereafter, he completed the investigation and filed a charge sheet against the appellant herein for the offences under Sections 326, 506 (ii) I.P.C r/w 3 (1) (x) of SC/ST (PA) Act, 1989 before the learned III Additional District Judge, (P.C.R), Madurai.

4. In order to prove the case of the prosecution, on the side of the prosecution as many as 9 witnesses were examined as PW.1 to PW.9 and 7 documents were marked as Ex.P.1 to Ex.P.7 and no material objects were marked. On the side of the accused, no witness was examined nor any document was marked.

5. When the appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

6. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid and challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant.

Submissions

7. The learned counsel appearing on behalf of the appellant made the following submissions:

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



- The learned counsel appearing for the appellant submitted that except P.W.5 all other witnesses are relatives, who belong to same group, a false case has been foisted against the appellant.
- It is admitted by P.W.1 and P.W.2 that the appellant had dinner in the house of P.W.1 and stayed in the village that night. He further submitted that in the complaint, there is no mention about the calling their caste names.
- He further submitted that none of the independent witnesses have been examined from the Village.
- He submitted that the alleged weapon used in the occurrence is said to be seized from the appellant and handed over to the respondent Police. But no weapon was produced by the respondent Police before the trial Court. He further submitted that the non seizure of aruval, that is said to be the weapon, used in the occurrence, is fatal to the case of the prosecution. In order to substantiate his submissions, the learned counsel relied upon the judgment in the case of **Raja Vs. State by Sub Inspector of Police, Mahendramangalam Police Station, Dharmapuri District in Crl.R.C.No.772 of 2008**. The relevant portion of the judgment is extracted hereunder:

"7.It is pertinent to point out that the main case of the prosecution is that the accused attacked the complainant with crowbar, but, admittedly, the said weapon was never recorded or produced. There is no evidence produced by the investigating officer as to why, he has not produced the weapon. No explanation has been put forth by the prosecution for the non-production of the material object, namely, crowbar. Merely, because there is a injury, it will not be a ground to convict the petitioner accused for the offence. The non production of material object itself is fatal to this case."

- He further submitted that a copy of the Accident Register report-Ex.P.5, issued by P.W.8, cannot be said to be a wound certificate and it is bereft of facts.
- He submitted that non production of x-ray alleged to have been taken to show the nature of injury sustained by the victim has not been produced and it is fatal to the case of the prosecution. In order to substantiate his submissions, the learned counsel relied upon the judgment of this Court in the case of **Meenakshi Sundaram Vs. State represented by the Inspector of Police, Nagamalai Pudukottai Police Station, Madurai District in Crl.R.C.(MD).No.250 of 2008**. The relevant portion of the judgment is extracted hereunder:



"6. This Court also perused the records and it is also seen that the prosecution has not taken steps to mark the X-Ray of the victim taken at the time of admission at the Hospital, which is also a flaw.

7. Considering the facts and circumstances of this particular case, this Court finds that the delay in registering the F.I.R., could not be taken as a ground for acquitting the accused, however, when the material object had not been produced and marked before the Court below during the trial and when there is no reason or explanation with regard to the same, as per the decision of this Court in Criminal Revision Case No.772 of 2008 [Raja vs. State by Sub Inspector of Police, Mahendramangalam Police Station, Dharmapuri District], the non-production of the material object would be fatal to the prosecution case. Moreover, this Court finds that the non-marking of the X- Ray is also a flaw, which affects the prosecution case. In such circumstances, the conviction and sentence awarded by the Court below are liable to be set aside."

- He further submitted that on the same set of facts and evidence, the trial Court dis-believed the evidence of P.Ws.1 to 4 and acquitted the appellant for the offence under Sections 3 (1) (x) of the SC/St Act, on the contrary, convicted the appellant under Section 326 I.P.C.
- He further submitted that merely because there is a injury, it would not be a ground to convict the appellant.
- He would further relied upon the Judgment of the Hon'ble Supreme Court in the case of **Jitendra and another Vs. State of Madhyapradesh** reported in **2003 Supp (3) SCR 918**.

8. The learned Government Advocate (Criminal side) appearing on behalf of the respondent Police made the following submissions:

- The learned Governement Advocate (Criminal side) appearing for the respondent submitted that the appellant is a friend of P.W.1. P.W.2 is the mother of P.W.1. P.W.3 and P.W.4 are relatives of P.W.1. They are eye-witnesses to the said occurrence. P.W.2 had sustained injuries. She was taken to the Hospital and got treatment in the Hospital. Immediately, P.W.1 preferred a complaint before P.W.7-Sub Inspector of Police and the respondent Police registered a case. P.W.9-Deputy Superintendent of Police has taken up the investigation and visited the scene of occurrence, recorded the statement, prepared Observation Mahazar, Rough Sketch, examined the witnesses, obtained the medical certificate from the Doctor and Community report of P.W.2-Ex.P.3 and the Community Report of



the appellant-Ex.P.7. After completing the investigation, filed a charge sheet before the concerned Court.

- He further submitted that the trial Court had proper appreciation of the evidence and found the appellant guilty for the offence under Section 326 I.P.C., and rightly convicted the appellant.
- He further submitted that the appellant had attacked P.W.2 with Aruval and she had sustained grievous injuries. He submitted that the non seizure of aruval and non production of x-ray and other medical records would not affect the case of the prosecution.
- He further submitted that the appellant was caught red handed and he was handed over to the Police and based on a complaint given by P.W.1, the respondent Police registered the complaint and the trial Court rightly convicted the appellant.
- In the absence of non production of Aruval, which is said to be a weapon used in the occurrence is not fatal to the prosecution case and it is not a ground for acquittal.

9. This Court has carefully considered the submissions made on either side and the entire oral and documentary evidence.

Discussion:-

10. Admittedly, P.W.2 is injured in this case. She was immediately taken to the hospital. The evidence of P.W.1 clearly shows that the appellant was caught in the scene of occurrence and he was taken by P.W.1 and other villagers and handed over to the Police Station. It is averred that in this case though witnesses have stated that the appellant was handed over along with aruval to the Police Station, but the aruval has not been produced in this case as material object. The Medical Certificate has not been produced before the trial Court. Ex.P.5 is only an accident register and it is not a wound certificate. The appellant is now working in a Banian Company. The appellant has no motive to assault the victim, but only in order to collect back his money, he went to P.W.1's home and got infuriated and the said occurrence had taken place. There are exaggerations and embellishments in the evidence of the witnesses. In view of the above, the conviction and sentence imposed on the accused under Section 326 IPC., is not sustainable and the same is set aside, but the appellant is found guilty under Section 323 of IPC., and is liable to be convicted.

Conclusion:-

11. However, taking into consideration the entire facts, there is only one occurrence and the chain of event and evidence are common, the evidence cannot be split up and viewed in isolation, considering the family circumstances of the appellant, appellant is the sole bread winner, having two children to be taken care of,



this Court is inclined to modify the conviction of the appellant in respect of the offence under Section 323 I.P.C., by sentencing him to the period of imprisonment already undergone.

12. With the above modifications, the Criminal Appeal stands partly allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1) The III Additional District Judge (PCR), Madurai.

2) The Inspector of Police,
Othakadai Police Station, Maduarai District.

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

4) The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.SOLAISAMY, Advocate (SR-103301[F] dated 04/12/2019)

JUDGMENT IN
CRL. A. (MD) NO. 236 of 2014
Dated: 03.12.2019

JMN(06.01.2020) 6P : 7C