



BAIL SLIP

The Petitioners / Accused namely, (1) Karuppiah, M/27 years (2014) S/o.Kalimuthu, (2)Pandi, M/37 years (2014), S/o.Kalimuthu, (3) Kannan, M/25 years(2014), S/o.Vellaichamy Accused Nos.1 to 3 respectively was directed to be released on Bail in Order dated 06.01.2014, in MP(MD)No.1 of 2014 in Crl A(MD)No.5/2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.5 of 2014

- 1.Karuppiah
- 2.Pandi
- 3.Kannan

... Appellants/Accused 1 to 3
Vs.

The State represented by
The Inspector of Police,
Aranthangi Police Station,
Pudukkottai District.
(Crime No.460 of 2011)

... Respondent / Complainant

COMMON PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to set aside the judgment and conviction dated 09.12.2013, by the Mahila Court, Pudukkottai in S.C.No.68 of 2012 and acquit the appellants.

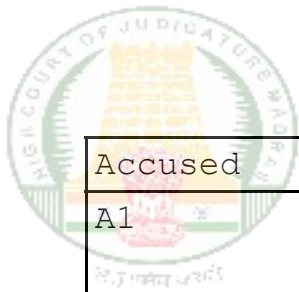
For Appellants : Mr.MA.Karunanithi

For Respondent : Mrs.S.Bharathi,
Criminal Advocate (Crl. Side)

JUDGMENT

This appeal arises arising out of the conviction and sentence imposed against the appellants by the Mahila Court, Pudukottai in S.C.No.68 of 2012 dated 09.12.2013.

2.The learned trial Judge by order dated 09.12.2013, found the appellants guilty for the offences punishable under Sections 294 (b), 324 IPC and Section 3 of TNPPDL Act and convicted and sentenced them as follows:



Accused	Penal Provisions	Punishment
A1	Section 294(b) IPC Section 324 IPC Section 3 of TNPPDL Act	(i)To undergo three months rigorous imprisonment with fine of Rs.500/-, in default to undergo four months simple imprisonment under Section 294(b) IPC. (ii)To undergo three years rigorous imprisonment with fine of Rs.3,000/-, in default to undergo three months simple imprisonment under Section 324 IPC. (iii)To undergo three years rigorous imprisonment with fine of Rs.5,000/-, in default to undergo six months simple imprisonment under Section 3 of TNPPDL Act.
A2	Section 324 IPC Section 3 of TNPPDL Act	(i)To undergo three years rigorous imprisonment with fine of Rs.3,000/-, in default to undergo three months simple imprisonment (ii)To undergo three years rigorous imprisonment with fine of Rs.5,000/-, in default to undergo six months simple imprisonment



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A3	Section 3 of TNPPDL Act	To undergo three years rigorous imprisonment with fine of Rs.5,000/-, in default to undergo six months simple imprisonment under Section 3 of TNPPDL Act.
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Aggrieved by the said conviction and sentence, the appellants have preferred the present appeal.

3.The case of the prosecution in brief is as follows:

On 23.06.2011 at about 10.00 p.m the appellants assembled before the house of P.W.1 and abused P.W.2 in filthy language and when P.W.1 came out of the house, A1 abused her in filthy language and assaulted her with Aruval on her head. At the same time, the accused 2 and 3 assaulted P.W.2 with Aruval and all the accused damaged the TVS Vehicle of the complainant parked in front of the house.

4.P.W.1/Geetha lodged a complaint before P.W.7/the Special Sub-Inspector of Police, Aranthangi Police Station on 24.06.2011 at about 10.00 p.m and the same was recorded in Ex.P4(FIR) as against the appellants in Crime No.460 of 2011 on 24.06.2011 under Section 294(b), 323, 324 and 506(ii) IPC r/w Section 3 of TNPPDL act.

5.On receipt of intimation, the Inspector of Police/P.W.9 went to the place of occurrence around 12.30 p.m. and prepared an observation Mahazar Ex.P7 and Rough Sketch Ex.P8 in the presence of P.W.6. Thereafter, the Inspector of Police/P.W.9 arrested the appellants / Accused No.1 to 3 on 24.06.2011 at about 01.00 p.m., when they were standing near a buzzer. Thereafter, since 9.1.12, the investigation was taken over by P.W.10 who examined the other witnesses and Doctor viz., Punitha Kumar / P.W.8 on 10.01.2012 and recorded their statements. After completing the investigation, P.W.10 filed the final report as against the appellants for the offences under Section 294(b), 323, 324, 326 and 506(ii) r/w Section 3 of TNPPDL Act.

6.On the side of the prosecution 10 witnesses were examined and 9 Exhibits were marked.

7.P.W.1/Geetha complainant was examined as eye witness and through her the complaint as well as the photograph of the damage vehicle Ex.P.2 were marked. The other eye witness P.W.2, who is the father of P.W.1 was examined. P.W.3, who is a relative of P.W.1 was also examined as eye witness. P.W.4 and P.W.6 have not supported the case of the prosecution and they were treated as hostile.

8.P.W.8 Doctor Kumar who treated P.W.1 and 2 and issued the accident register Ex.Ps.5 and 6 deposed that on 23.06.2011 at about



11.10 p.m he treated one Jeganathan and noticed the following injuries :-

"1.The torn wound is about 3*2*1 cm on the right of the head.

2.The blood clot is about 2*2 c.m on the left side of near the forehead.

3.Swollen is right elbow."

9.The wound certificate issued by P.W.8 in respect of P.W.2 was marked as Ex.P.6.

10.On the same day at about 11.55p.m, P.W.8 treated P.W.1 Geetha and noted the following injuries and issued Accident Register Ex.P.5.

"1.The torn wound is about 12*4*4 cm to the right of the head.

2.The torn wound is about 5*3*2 cm to the left side of the head."

11.P.W.9 is a private mechanic was examined to speak about the damage caused to the vehicle and P.W.9 / the Inspector of Police , who conducted Preliminary investigation and P.W.10 the Investigation Officer, who conducted further investigation and filed final report were also examined.

12.The incriminating materials from the evidence of the prosecution were put to the accused under Section 313 Cr.P.C and the accused denied the same. No witness was examined on their side. On appreciation of oral and documentary evidence, the trial Court found the accused guilty and convicted and sentenced them as stated above.

13.Heard Mr.MA.Karunanithi, learned counsel appearing for the appellants and Mrs.S.Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent police.

14.Mr.Karunanithi has taken out the following ground in support of his case:

14.1.Though the prosecution has examined 10 witnesses, all the material witnesses have not stated anything connecting the accused with the crime. Hence there was no material connecting the accused with the crime.

14.2.The material documents have been forwarded belatedly, and there is no explanation for the said delay, which is fatal to the prosecution.

14.3.The prosecution has miserably failed to prove the charges against the accused.

<https://hccs.courts.madras.gov.in/hccs/cases>



14.4.The damaged vehicle has not been seized and produced before the trial Court.

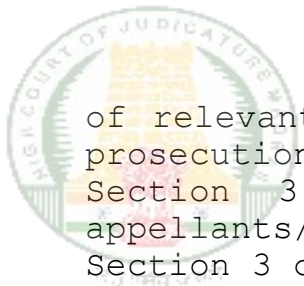
14.5.There are material contradictions between the evidence of P.Ws.1 and 2.

14.6.Medical evidence completely contradicts the evidence of P.Ws.1 and 2.

15.Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police would contend that the prosecution has established the case beyond reasonable doubt and three eye witnesses have been examined in this case out of three eye witnesses two witnesses are injured witnesses and they have specifically stated about the manner in which the occurrence took place on the date of occurrence.

16.The occurrence had taken place on 24.06.2011 at about 11.00 a.m. According to the counsel for the appellant, Ex.P1 has reached the concerned Jurisdictional Court only after a delay of 4 ½ hours and this delay has not been explained by the prosecution through the Constable, who took FIR to the Court and this delay is material defective and the benefit of the same has to enure to the appellant. In this case the occurrence had taken place at 10.00 p.m at the house of P.W.1 wherein P.Ws.1 and 2 have sustained injuries and immediately they have been taken to the Government Hospital, Aranthangi and admitted in the hospital as in patient at 11.00 p.m on the same day. On the intimation from the Government Hospital, P.W.7 went to the Government Hospital and recorded the statement of P.W.2 at about 11.10 p.m and thereafter, he registered the complaint Ex.P.2 immediately after the occurrence. It is seen that the victims were taken to the Hospital from where intimation was given to the police authorities and from that time, within 4 ½ hours, FIR has also reached the Court and therefore, it cannot be inferred that there is inordinate delay in registering the FIR as well as the FIR reaching the Court. Therefore, this contention fails.

17.The learned counsel appearing for the appellants has also pointed out that there is no material in so far for the offence under Section 3 of TNPPDL Act. No expert witness has been examined to establish the extent of damage caused to the vehicle on the date of occurrence. To support the case, only a photograph was taken of the damaged vehicle and that was marked through P.W.1. Apart from that it was not placed before the concerned RTO or any other authority concerned. The RTO has only stated about the condition of the vehicle. Only a private mechanic has been examined as P.W.5 to establish the damage caused to the vehicle. The contention of the counsel for the appellants in this regard merits acceptance, as in



of relevant certificate from the competent persons is fatal to the prosecution. Therefore, the conviction of the appellants under Section 3 of TNPDDL cannot be sustained. Accordingly the appellants/ Accused No.1 to 3 are acquitted of the offences under Section 3 of TNPPDL Act.

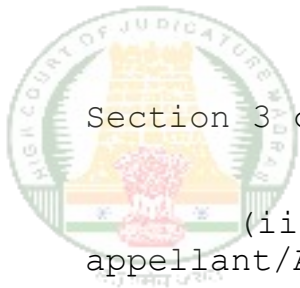
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18.In so far as for the offences under Section 324 IPC is concerned, the victim / P.W.2 sustained grievous injuries on head and no X-ray report has been marked. In this case to establish that the injury is grave in nature, wound certificate is marked, but no X-ray has been marked. The Doctor/P.W.8 has deposed that based on the X-ray report, Wound-5 is grievous in nature. However, the X-ray report, which was taken at a private Hospital has not been marked in this case and there is no explanation from the Doctor as well as Investigation Officer as to why the X-ray which has been taken has not been marked. In the absence of the X-ray report it is not safe to convict the appellants for the offence under Section 324 IPC. However, the evidence of P.Ws.1 and 2 and the evidence of the P.W.8/ Doctor establish the case of the prosecution that there was an incident, which took place on the date of occurrence and the victims have been assaulted by the appellants and they have sustained injuries on account of that incident and therefore, the conviction and sentenced imposed upon the appellants for the offences punishable under Section 324 IPC deserves to be modified to Section 323 IPC. Accordingly, the appellants are found guilty of the offence u/s 324 IPC for which they are convicted and sentenced to undergo rigorous imprisonment for a period of five months.

19.In so far as the conviction u/s 294(b) IPC is concerned, the accused are said to have abused the complainant on the night hours at 11.30 p.m and it is not a case of the complainant that the public were also present at the time of occurrence who have witnessed the occurrence. Apart from the evidence of P.Ws.1 to 3 there is no other witnesses to substantiate the case of the prosecution that it was the accused, who uttered obscene words in the presence of the public which caused annoyance to the victim. However, P.W.1 and P.W.3 have stated specifically that the accused abused them from the street and thereafter on hearing the noise they came out of the house and they were thereafter abused in filthy words. However, no worthwhile contradiction in the evidence of P.W.s 1 to 3 have been pointed out to assail the conviction u/s 294 (b) IPC. Accordingly, the conviction and sentence u/s 294(b) imposed on A-1 is confirmed.

20.In the result, this Criminal Appeal is partly allowed in the following terms;

(i)The conviction and sentence imposed on the appellants under Section 3 of TNPPDL Act, is set aside and they are acquitted of the said charge. The fine amount imposed on the appellants under



Section 3 of TNPPDL Act., shall be refunded to them.

(ii)The conviction and sentence imposed on the first appellant/Accused No.1 under Section 294(b) IPC is confirmed.

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(iii)The conviction and sentenced imposed on the appellants 1 and 2 / Accused 1 and 2 for offence under Section 324 I.P.C., is modified into Section 323 IPC and instead they are sentenced to undergo five months rigorous imprisonment and to pay a fine of Rs.3,000/- in default to undergo three months simple imprisonment.

(iv)The above sentences imposed on appellants/accused 1 to 3 are directed to run concurrently.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

vsg

To

1.The Mahila Court,
Pudukkottai

2.The Judicial Magistrate,
Aranthangi.

3.The District Sessions Judge, Pudukkottai.

4.The Inspector of Police,
Aranthangi Police Station,
Pudukkottai District.

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

6.The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

Copy to:

The Superintendent of Police,
Pudukkottai

Crl.A(MD)No.5 of 2014
18.09.2019