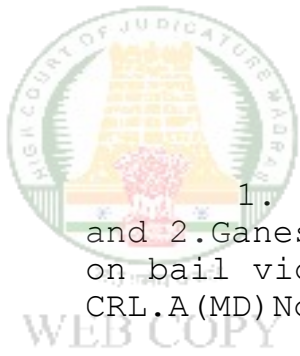




BAIL SLIP

1. Sakthivel, S/o.Bose, (Accused No.1), Male aged about 32/2014 and 2.Ganesan, S/o.Muthu, Male aged about 29/2014 years are released on bail vide Court Order dated 05.02.2014 made in MP(MD)1 of 2014 in CRL.A(MD)No.60 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.10.2019

PRONOUNCED ON : 03.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.A. (MD)No.60 of 2014

1.Sakthivel

2.Ganesan

... Appellants / Accused Nos.1 & 2

Vs.

State through
The Deputy Superintendent of Police,
Oomachikulam Sub Division,
Madurai in Charge.

The Inspector of Police,
P1, Silaiman Police Station,
Madurai District.
[Crime No.294 of 2009]

... Respondent/ Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, Praying to call for the records relating to the judgment in Special Sessions Case No.17 of 2011 dated 23.01.2014 on the file of the III Additional District Judge (PCR), Madurai, and to set aside the same and allow this Criminal Appeal.

For Appellants : Mr.M.Subash Babu

For Respondent : Mrs.S.Bharathi,

Government Advocate (Crl. side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellants by the III Additional District Judge (PCR), Madurai, in Spl.S.C.No.17 of 2011 by judgment dated 23.01.2014.

2.The appellants are the accused and they were tried for the offence under Sections 341 IPC, 354 IPC r/w 3(1) (xi) of SC/ST (PA) Act, 4 of TNWH Act and 323 IPC and the first accused was also tried for the offence under Section 323 IPC for having caused injury to the witness and the trial Court by judgment dated 23.01.2014 convicted and sentenced the appellants as follows:



WEB COPY

Section of Law	Sentence of imprisonment	Fine amount
341	To undergo rigorous imprisonment for one month	Rs.100/- in default to undergo simple imprisonment for seven days
323 IPC	To undergo rigorous imprisonment for three months.	Rs.500/- in default to undergo simple imprisonment for seven days
354 IPC	To undergo rigorous imprisonment for one year.	Rs.500/- in default to undergo simple imprisonment for two months.
4 of TNWH Act	To undergo rigorous imprisonment for one year.	Rs.10,000/- in default to undergo simple imprisonment for two months.

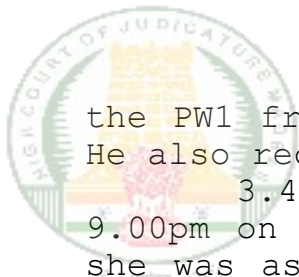
Both the appellants were acquitted from the charge under Section 3 (1) (xi) of SC/ST (POA) Act and the appellant No.1/A1 was acquitted from the charge under Section 323 IPC.

3.The prosecution case in a nutshell is as follows:

3.1. The de facto complaint is PW1, namely, Pothumponnu. On 17.10.2009, at 7.30 pm, when the de facto complainant was returning home after buying cool drinks for her mother, the accused pushed her down. When it was questioned by PW1, the accused assaulted her and her dress was torn off. Both the accused laid on her and pressed her breasts. She immediately went and informed her sisters Shanti (PW3) and Kokila (PW2) about the incident. Thereafter, when both her sisters questioned the accused of their act, they assaulted her sisters. PW1 gave a complaint [Ex.P1] before the respondent Police, wherein, she was given a medical memo and she was sent to the hospital.

3.2.Upon receipt of the complaint [ExP1], the Sub Inspector of Police [PW8] registered a case in Crime No.294 of 2009. The printed First Information Report is marked as Ex.P5 and the same was sent to the jurisdictional Magistrate as well as to the Investigating Officer [PW9].

3.3.On receiving the First Information Report, on 19.10.2009, the Investigating Officer went to the scene of occurrence and prepared the observation mahazar [ExP2] and rough sketch [ExP6] and he also recorded the statements of the witnesses and arrested the accused on the very same day at about 10.30 a.m. He also obtained the community certificate of the accused as well as of



the PW1 from the Tahsildar [PW6], and the same is marked as Ex.P3. He also recorded the statement of Dr.Prabhakaran [PW7].

3.4. Dr.Prabhakaran examined PW1 on 17.10.2009 at about 9.00pm on the basis of the medical memo and PW1 informed him that she was assaulted by two unknown persons and the accident register is marked as ExP.4.

3.5.The investigating officer after completion of the investigation has filed the final report on 24.11.2009.

4.On the side of the prosecution 9 witnesses were examined and 6 documents were marked.

5.The available prosecution evidence are as follows:

5.1.PW1 is the victim. She speaks about the manner of the occurrence, informing the same to her sisters and lodging of complaint [ExP1].

5.2.PW2 is the 1st elder sister of the victim and she speaks about the occurrence narrated by the victim and when the same was questioned, the accused assaulted them also. She also speaks about the lodging of the complaint. She is an attestor to the complaint.

5.3.PW3 is the 2nd elder sister of the victim and she also speaks about the occurrence narrated by the victim and when the accused were questioned, they attacked her also.

5.4.PW4 is the neighbour of the accused and she speaks about the questioning of the accused about the occurrence by the sisters of the victim and the accused attacking the sisters of the victim.

5.5.PW5 is the witness to the observation mahazar and rough sketch.

5.6.PW6 is the then Deputy Tahsildar, Madurai, who speaks about the issuance of community certificate in respect of the victim and the accused.

5.7.PW7 is the Doctor at Government Rajaji Hospital, Madurai and he speaks about the examination of the victim and issuance of accident register and the nature of injury the victim sustained.

5.8.PW8 is the then Sub Inspector of Police of Silaiman Police Station and she speaks about the registration of the complaint in Crime No.294 of 2009 and sending of the same to the concerned Judicial Magistrate and to the higher officials.

5.9.PW9 is the then Deputy Superintendent of Police, Melur and also the investigating officer and he speaks about statements recorded from the witnesses and preparation of observation mahazar, rough sketch and arrest of the accused and the filing of the final report, before the trial Court.

6.The incriminating materials were put to the accused under Section 313 Cr.P.C. and the same was denied. No witness was examined and no document was marked on the side of the accused.



7. In conclusion of the trial, the trial Court found the appellants guilty and convicted and sentenced them as stated supra.

8. Heard Mr.M.Subash Babu, learned Counsel for the appellants and Mrs.S.Bharathi, learned Government Advocate (Crl. Side) appearing for the State.

9. The learned Counsel for the appellant has raised the following grounds:

9.1. The complaint itself is very doubtful. According to PW1, she went to the Police Station along with his 1st elder sister PW2 and at that time, a woman Constable was present and PW1 prepared the complaint on her own handwriting and lodged it, but, contrary to the same, PW2, the elder sister of PW1, had deposed that they went to the Police Station to lodge complaint and a woman Constable and the Deputy Superintendent of Police were present and she handed over the complaint to the Deputy Superintendent of Police and she is unaware of the author of the complaint and they simply signed in it and the Deputy Superintendent of Police also enquired them at the time of lodging the complaint.

9.2. The occurrence is said to have taken place on 17.10.2009 at 7.30 p.m. and the FIR has been registered on 19.10.2009 at about 8.30 am. There is a delay of 48 hours in registering the FIR from the time of alleged occurrence.

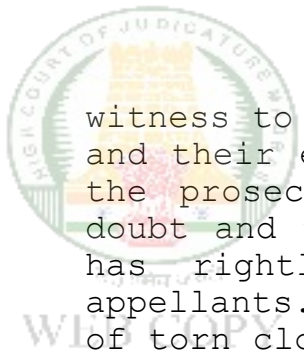
9.3. The person who had received the complaint on 17.10.2009 and had taken the same as petition enquiry in CSR, has not been examined in this case.

9.4. The Doctor PW7 had deposed that on examination of the victim, he found simple injuries and he had issued accident register that the injuries are simple in nature. But, in the accident register [Exp4] the injuries are not noted down.

9.5. No independent witness has been examined in this case.

9.6. PW1 had stated that the cool drinks bottles were broken into pieces and her dress was torn and she had handed over her torn dress to the police, but the investigating officer had stated that there was no broken pieces of bottles found at the place of occurrence and no dress was recovered and therefore, the prosecution has failed to establish its case beyond reasonable doubt and hence, prayed for allowing this criminal appeal.

10. Per contra, the learned Government Advocate submits that, though the First Information Report was registered after two days, the incident was reported by the victim (P.W.1) immediate to the occurrence and the complaint of P.W.1 was treated as a petition enquiry in C.S.R.No.315 of 2009 and she was referred to the Government Hospital and the Doctor (P.W.7) examined the victim on the same day at about 09.00 p.m., and therefore, there is no delay in reporting the incident. However, the respondent police treated the complaint as a petition enquiry and registered the same after two days. She further submits that the victim (P.W.1) has clearly



witness to the occurrence, have stated about the subsequent incident and their evidence corroborate the evidence of P.W.1 and therefore, the prosecution has established their case beyond any reasonable doubt and the trial Court has also discussed all these grounds and has rightly passed an order of conviction as against these appellants. This small discrepancy with regard to the non-recovery of torn cloth of P.W.1 and glass pieces from the place of occurrence by the Investigation Agency does not affect the case of the prosecution, when P.W.1 has specifically stated about the occurrence.

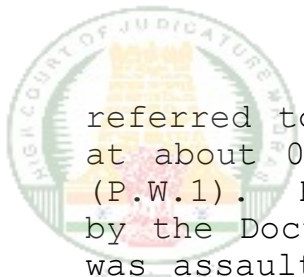
11.This Court paid its anxious consideration to the rival submissions and also perused the available records.

12.The case of the prosecution is that, on 17.10.2009, when P.W.1 returned after buying cool drinks for her mother, these appellants pushed her down, molested her and when she raised alarm, she was also beaten up. P.W.1 informed this incident to her sisters (P.Ws.2 and 3) and all the three went to the appellants' house and questioned their act, where, there was another incident and the appellants/accused assaulted P.W.2 also. Thereafter, a complaint was lodged and with reference from the police, P.W.1 took treatment at Madurai Rajaji Government Hospital from the Doctor (P.W.7) and the Accident Register issued by the Doctor (P.W.7) is marked as Ex.P4.

13.The occurrence took place on 17.10.2009. P.W.1, along with her sister Kokila (P.W.2), lodged a complaint before the respondent police. The statement of P.W.1 is marked as Ex.P1. In her complaint (Ex.P1), P.W.1 has stated that she was studying twelfth standard at Madurai Meenakshi Sundareswarar School and in her evidence, she has stated that she was working in a notebook company. She admits in her evidence that she can read and write, both in English and Tamil, and on the date of occurrence, she gave a written complaint to a women police officer. This written complaint of P.W.1 is not placed before the Court, instead, her statement recorded in the respondent police station is marked as Ex.P1.

14.The First Information Report was registered after two days by the Sub-Inspector of Police (P.W.8) on 19.10.2009 at 08.30 a.m. and the same reached the Court on 19.10.2009 at 05.45 p.m. According to the Sub-Inspector of Police (P.W.8), who registered the case, she enquired into the petition in C.S.R.No.315 of 2019 on 19.10.2009 and registered the same in Silaiman Police Station Crime No.294 of 2009 for the offences under Sections 341, 323 and 354 IPC and Section 4 of the THWH Act, r/w. Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

15.In the complaint (Ex.P1), the word 'chest' is inserted. This complaint (Ex.P1) reached the Court only on 19.10.2009. Though <https://hdsrscourts.gov.in/hdsrscourts> in registering the case, the victim (P.W.1) was

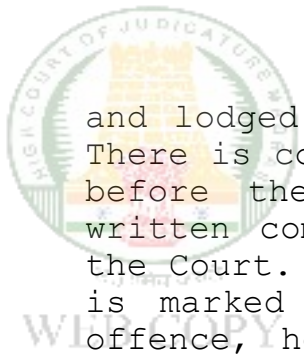


referred to the Madurai Rajaji Government Hospital on the same day at about 09.30 p.m. and the Doctor (P.W.7) has treated the victim (P.W.1). However, in the Accident Register (Ex.P4), it is referred by the Doctor (P.W.7) that she was informed by the victim that she was assaulted by two unknown persons at 07.00 p.m. near her house. Though the Doctor (P.W.7), in his evidence, states that the victim was referred to the hospital from the Silaiman Police Station, there is no reference about the medical memo in the Accident Register (Ex.P4). As per the Accident Register (Ex.P4), the victim was brought to the hospital by one Kalidas, a relative of the victim. The said Kalidas was neither cited as a witness nor examined before the Court. The medical memo, in which the victim was referred to the hospital, was also not placed before the Court and there is no reference about this medical memo in the Accident Register (Ex.P4).

16.The Doctor (P.W.7) has not noted down any injury on the victim (P.W.1), not even a complaint of pain was referred in the Accident Register (Ex.P4). However, it is recorded in the Accident Register that the victim (P.W.1) was assaulted by unknown persons near her house. P.W.1, as well as the accused, were residing in the quarters of Yasin Brick Company and they were also neighbours. In the complaint (Ex.P1), the name of the accused are mentioned as Sakthivel, Son of Bose and Ganesan, Son of Muthu. While so, in the Accident Register (Ex.P4), it is recorded that the victim was assaulted by two unknown persons. P.W.1, in her evidence, admits that she used to talk with the accused Ganesan on her way to school and that was not liked by her mother and in this regard, there was a quarrel between her mother and the parents of the accused Ganesan. She further admits that even before the occurrence, enmity prevailed between the mother of the accused and her mother.

17.Except the evidence of P.W.1, there is no other witness to the occurrence. Even the evidence of P.W.1 is not trustworthy. Though in her earlier complaint, she has stated the name of the accused and that the accused were also known to her very well, it was reported before the Doctor (P.W.7) that she was assaulted by two unknown persons.

18.It is the case of the prosecution that the occurrence took place while P.W.1 was returning, after purchasing cool drinks. It is mentioned in the complaint (Ex.P1) that she returned with five bottles of cool drinks and in the scuffle, the bottles were broken. The Investigation Officer visited the place of occurrence only on 19.10.2009, i.e. after two days. Even then, he did not recover any broken glass piece from the place of occurrence. Similarly, according to P.W.1, in the incident, her cloth was torn and she also gave the torn cloth to the police, however, the same was not produced before the Court. P.Ws.2 and 3 are said to have questioned the accused after the occurrence. While so, there was another incident that took place in the house of the accused, in which, P.W.2 was also assaulted. But, according to P.W.2, she did not



and lodged a complaint before the Deputy Superintendent of Police. There is conflicting evidence that P.W.2 lodged a separate complaint before the Deputy Superintendent of Police and P.W.1 lodged a written complaint and both these complaints are not placed before the Court. However, the statement recorded from P.W.1 on 19.10.2009 is marked as Ex.P1. The complaint (Ex.P1) discloses cognizable offence, however, the same was treated as petition enquiry. The victim (P.W.1) is said to have been referred to the hospital from the police station, but, the medical memo was not placed before the Court and there is no reference about the medical memo in the Accident Register (Ex.P4) and in the Accident Register, it is mentioned that P.W.1 informed the Doctor (P.W.7) that she was assaulted by unknown persons.

19.It is not the duty of the Doctor to record whether the victim was assaulted by known or unknown persons. But he has to record the nature of injuries, seat of injuries, length and breadth of injuries, in the Accident Register. Though the victim was said to be pushed down by the accused and also molested and beaten up, no injury is mentioned in the Accident Register (Ex.P4). Not even a complaint of pain is referred in the Accident Register (Ex.P4). Moreover, the First Information Report was registered two days after the date of occurrence.

20.In view of the above discrepancies in the case of the prosecution, it is not safe to convict the accused and therefore, the benefit of doubt is given to the accused/appellants and the accused/appellants are acquitted from the charges framed against them.

21.Accordingly, this Criminal Appeal is allowed. The conviction and sentence imposed by the trial Court in Spl.S.C.No.17 of 2011 is set aside.

22.Bail bond executed by the accused/appellants, if any, shall stand cancelled and the fine amount, if any paid by the accused/appellants, shall be refunded to them.

23.Registry is directed to return back the original records to the trial Court, forthwith.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

- 1.The Judicial Magistrate No.II, Madurai.
2. The Chief Judicial Magistrate, Madurai.
- 3.The III Additional District Judge (PCR),
Madurai.
- 4.The Deputy Superintendent of Police,
Oomachikulam Sub Division,
Madurai in Charge.
- 5.The Inspector of Police,
P1, Silaiman Police Station,
Madurai District(Cr.No.294 of 2009.
- 6.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 Mr.M.SUBASH BABU, Advocate (SR-300[F] dated 06/01/2020)

CrI.A. (MD)No.60 of 2014

03.01.2020

VB (24.07.2020) 8P 10C