



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| Date of Reservation | 17.02.2020 |
| Date of Judgment    | 19.06.2020 |

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Cr1.A(MD)No.25 of 2015**

K.Thirunavukkarasu : Appellant/PW1

Vs.

1.Rajendran  
2.Senthil Kumar : R1 and R2/A1 and A2  
3.Inspector of Police,  
Vathalai Police Station,  
Trichy District.  
(Crime No.211of 2005) : 3<sup>rd</sup> Respondent/Complainant

**Prayer:** Criminal Appeal filed under section 372 of the Criminal Procedure Code, against the order passed in CC No.147 of 2007 by the III Additional District Judge, Trichirappalli, dated 21.03.2014.

For Appellant : Mr.T.Senthil Kumar  
For R1 and R2 : Mr.A.P.Muthupandian  
For 3<sup>rd</sup> Respondent : Mr.V.Neelakandan  
Additional Public Prosecutor

**J U D G M E N T**

This Criminal Appeal is directed against the order passed in CC No.147 of 2007 by the III Additional District Judge, Trichirappalli, dated 21.03.2014.

2.The case of the prosecution is that on 20.08.2005 at about 6.30 pm, one Mathialagan took away the gravel stone heaped for construction of temple and when the appellant/de-facto complainant questioned the same, in order to support the above said Mathialagan, the respondents 1 and 2/A1 and A2 attacked the appellant and his mother namely Chellammal with deadly weapons. The Inspector of Police, attached to Vathalai Police Station has filed a final report under sections 324, 506(2), 323 r/w 34 IPC against the accused persons examining the witnesses.



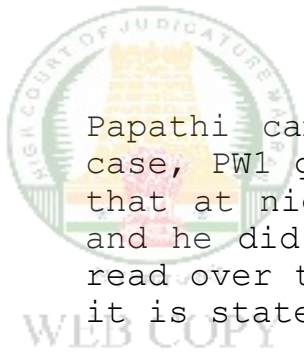
3. The trial court, after careful perusal of the entire materials available on record, acquitted the accused persons from the charges levelled against them. Aggrieved by the judgment of the trial court, the de-facto complainant as appellant is before this court.

4. Heard both sides and perused the materials available on record.

5. The main contention raised on the side of the appellant/de-facto complainant is that the injured eye witnesses supported the case of the prosecution and their presence in the occurrence place cannot be doubted and the evidence of PW1 to PW3 is trustworthy and the prosecution case cannot be thrown out for the simple reason that the Investigating Officer failed to recover the weapon used for committing the offence and there is an error in the judgment passed by the trial court and the judgment passed by the trial court is liable to be set aside and prays that the criminal appeal has to be allowed.

6. PW1 to PW3 are the injured. PW1 gave Ex.P1 complaint in respect of the alleged occurrence. PW1 in his complaint stated that on 20.08.2005 at 6.30 pm, one Mathialagan took away the gravel stone and when it was questioned by them, at that time A1 and A2 came and said that “கல்லு அள்ளினால் உனக்கு என்னடா” and A1 assaulted him with iron rod and further, A1 threatened him. But PW1 during his evidence stated that on 20.08.2005 at about 6.30 pm, after finishing work returned from the field, his father purchased gravel stone for the purpose of construction work for the temple and from the heap, Mathialagan, s/o Mani took away the gravel stone and he uttered, as it is the public property, he took like that only and at that time, the accused Rajendran, Arjunan, Kathirvel, came along with iron rod, uttered filthy language and the Accused Arjunan pulled the hair of PW1's mother and further attacked PW1 with iron rod on his head and attacked PW1's mother on her right shoulder and the Accused Senthil Kumar punched on the chest of PW1's aunt, who came to prevent the incidence and on seeing the occurrence, Vijayalakshmi, Pattangi, Maruthamuthu came there, the accused run away from the place and then he gave statement before the police.

7. PW1 in his complaint stated that Mathialagan only took away the gravel stone. But during his evidence stated that Mathialagan and Senthil Kumar took the gravel stone. PW1 in his complaint stated that A1 assaulted him and also threatened him. But during his evidence stated that A1, Arjunan and Kathirvel came with iron rod, assaulted him on his head and when it was resisted by his mother and his aunt, the accused Arjunan caused injury on the right shoulder of his mother and the accused Senthilkumar pulled the saree of his sister and thereby outrage the modesty of his aunt and punched on the chest of his aunt. The above fact was not stated in the complaint. PW1 in his complaint stated that when Chellammal and



Papathi came, the accused assaulted them. As per the prosecution case, PW1 gave Ex.P1 complaint. But during his evidence, PW1 stated that at night, the police came and he gave statement to the police and he did not know what was received by the police and it was not read over to him and he put his signature. But on perusal of Ex.P1, it is stated as follows:-

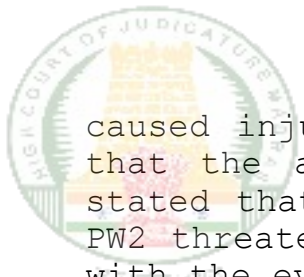
“படிக்க கேட்டேன் நான் சொன்ன மாதிரி இருந்தது.”

Now for developing the case, PW1 stated that Ex.P1 was not read over to him and he did not know what was written in Ex.P1 complaint. Hence, the evidence of PW1 is not corroborated with the contents found in Ex.P1 complaint.

8.PW1 during his evidence stated that A1 and A2 and Arjunan took iron rod and Arjunan assaulted first his mother and he assaulted with iron rod on his scalp and the accused Rajendran assaulted and caused injury on her right shoulder and Senthilkumar assaulted his aunt and caused injury on her chest and outraged her modesty. But the above fact was not stated in Ex.P1 complaint. PW2 is the mother of PW1 deposed that Mathialagan took away the gravel stones and when it was questioned by PW1, the Accused Rajendran and P.Senthil Kumar with iron rod caused injuries on his scalp and when she and her sister Papathi restrained it, the accused caused injury on the right hand and due to it, her knee dislocated and the accused Senthilkumar assaulted her sister. PW3 also deposed that on 20.08.2005 at 6.30 pm, when Mathialagan took away the gravel stones and when it was questioned by PW1, A1 and A2 came and assaulted PW1 with iron rod and Kathirvel caused injury on the left leg of PW1 and when, she and PW2 tried to restrain it, the accused Rajendran caused injury on the right hand of PW2 and the accused Senthilkumar caused injury on her chest by way of kicking. On careful perusal of the evidence of PW1 to PW3, it reveals that there are lot of contradictions. If really PW2 and PW3 came to the place of occurrence, when they were assaulted by the accused, PW1 will have definitely narrated that now PW2 and PW3 were attacked by the accused. But PW1 failed to narrate that how PW2 and PW3 assaulted by the accused in the occurrence. Hence, it creates doubt about Ex.P1 complaint.

9.PW4 to PW6 are cited as eye witnesses. PW6 turned hostile and did not support the case of the prosecution.

10.PW4 and PW5 are cited as eye witnesses. PW4 and PW5 deposed that on 20.08..2015 at 6.00 pm, Mathilagan took away the gravel stones and when it was questioned by PW1, the accused Rajendran with steel rod caused injury on his scalp and when PW2 and PW3 came and restrained, the accused Rajendran caused injuries on her shoulder and the accused Rajendran threatened Papathi. But PW1 deposed that at the time of occurrence, the accused Rajendran caused injury with iron rod on his scalp and assaulted PW1 and caused injury on her right hand shoulder and the accused Senthilkumar



caused injury on the chest by way of kicking. PW4 has not stated that the accused Senthilkumar assaulted PW2 and PW3. But he has stated that the accused Rajendran caused injury on the shoulder of PW2 threatened PW3. Hence, the evidence of PW1 is not corroborated with the evidence of PW4 and PW5.

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11. PW7 is the Doctor, who gave treatment to PW1 to PW3. PW7 deposed that on 20.08.2005, when he was on duty, PW1 to PW3 came and told him that they were assaulted by some known persons and he found the following injuries on PW1 to PW3:-

*PW1 (Thirunavukkarasu): (i) A laceration for 2 x 2 cm as skin depth on the left frontal region and (ii) Pain on the right frontal region knee.*

*PW2 (Chellammal) : Pain on the right frontal arm.*

*PW3 (Pappathi): Pain on the chest and Pain on the hip*

12. PW1 in his complaint and evidence stated that the accused Rajendran attacked with iron rod on his scalp. But PW7 deposed that PW1 told him that he was assaulted by some known persons with iron rod and iron tube. It is to be noted that PW1 either in his evidence or complaint or in Ex.P1 has not stated that he was assaulted by the accused with iron tube. Further, PW7 found pain on the right side knee of PW1. But PW1 has not stated during his evidence that he sustained injury on his right knee. PW2 told PW7 that she was assaulted by four known persons with iron rod, stick, knife. But during her evidence, she has stated that the accused Rajendran assaulted her with iron rod. She has not stated during her evidence that she was assaulted with iron bar, iron rod and knife. PW7 found only pain on the right shoulder. The pain may be imaginary one. PW3 stated during her evidence that the accused Senthilkumar kicked on her chest. PW7 deposed that PW3 told the complaint of pain on her chest and hip. The complaint of pain may be a fake one. On careful perusal of the evidence of PW1 to PW3, it is not corroborated with the evidence of PW7. Further, there are lot of contradictions in the evidence of PW1 to PW3. Hence, the trial court correctly came to the conclusion that the evidence of PW1 is not trustworthy.

13. In this case, the accused persons were not arrested, no confession was recorded and no weapons were recovered. Hence, the non-recovery of weapons is fatal to the prosecution. The trial court, after proper appreciation of the entire materials available on record, had correctly given a finding, which requires no interference of this court.



14. In the result, this criminal appeal fails and the same is **dismissed.**

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Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To,

1. The III Additional District Judge,  
Tiruchirappalli
2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
3. The Inspector of Police,  
Vathalai Police Station,  
Trichy District.

**Cr1.A. (MD) No.25 of 2015**  
**19.06.2020**

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