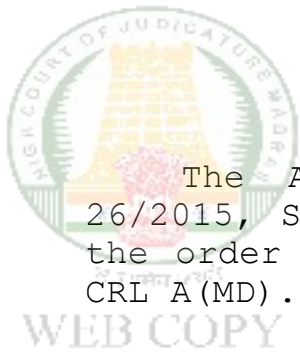




BAIL SLIP

The Appellant/Sole Accused namely Ilavarasan, male, aged 26/2015, S/o.Shanmugam was directed to be released on bail as per the order of this court, dated 01.12.2015 in MP(MD).1 of 2015 in CRL A(MD).336 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2020

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.A. (MD) .No.336 of 2015

Ilavarasan .. Appellant/Accused No.1

Vs.

The Inspector of Police,
Kuzhithalai Police Station,
Karur District.
Crime No.316 of 2012

.. Respondent/Complainant

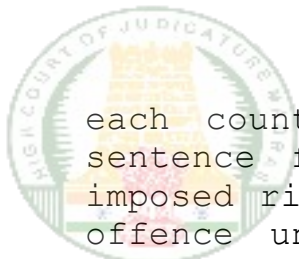
PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment and conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Karur in S.C.No.22 of 2015, dated 15.10.2015.

For Petitioner : Mr.S.Ravi for Mr.A.Hariharan
For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellant in S.C.No.22 of 2015 by the learned Sessions Judge, Fast Track Mahila Court, Karur dated 15.10.2015.

2.This appellant is accused No.1 in S.C.No.22 of 2015, on the file of the Sessions Judge, Fast Track Mahila Court, Karur. The appellant along with his parents one Shanmugam (A2) and Saroja (A3) were tried for the offence under Sections 294(b), 307, 324 and 323 of IPC. The learned trial Judge by Judgment, dated 15.10.2015 found the accused No.2 & 3 not guilty and acquitted them of the charges framed against them. The trial Court also found this appellant not guilty for the offence under Section 294 (b) IPC. But found him guilty under Sections 324 (2 counts) and 307 IPC, convicted and sentenced to undergo rigorous imprisonment for a period of one year for the offence under Section 324 for



each count with a fine of Rs.1,000/- per count, with default sentence for a period of three months simple imprisonment and imposed rigorous imprisonment for a period of seven years for the offence under Section 307 IPC with a fine of Rs.1,000/- with default sentence of three months simple imprisonment. The sentence imposed on the accused No.1 was ordered to run concurrently. As against the conviction and sentence imposed by the trial Court, the appellant/accused No.1 preferred this criminal appeal.

3.The brief facts of the case are as follows:

3.1. P.W.1 to P.W.5 and the accused Nos.2 & 3 are residents of Pudupalayam Village. The appellant / accused No.1 is the son of the accused Nos.2 & 3, residing in his grandmother's house at Pettavaithalai Village. P.W.1 (Sathish @ Sathish Kumar), who is the husband of P.W.5 (Thangamani), is working as a cleaner and also staying in his father-in-law's house. P.W.2 (Mayavan) and P.W.3 (Lakshmi) are the father-in-law and mother-in-law of P.W.1. (Sathish @ Sathish Kumar). P.W.4 (Pavunu) is the daughter of P.W.2's brother.

3.2. Accused Nos.2 & 3 are having one acre of land and they have planted plantains in that land. There was a dispute between accused Nos.2 & 3 and P.W.4 that she had stolen away some plantains. Even on the date of occurrence i.e., on 01.07.2012, in the morning, there was a wordy quarrel between the accused Nos.2 & 3 and P.W.4. On 01.07.2012, at about 1.30 p.m., when P.W.4 was crossing the house of P.W.2, the accused Nos.1 to 3, came with aruvals and stick and this appellant / accused No.1 attacked P.W.4 (Pavunu) with the aruval (M.O.1) on her front and back of the head and also on the right and left hand and caused injuries. On seeing this incident, P.W.2 came out of his house and attempted to prevent the assault and at that time, accused No.2 assaulted the P.W.2 with a brick and thereafter, accused No.2 attacked P.W.3, W/o P.W.2 with aruval on her head. The accused No.3 attacked P.W.1 with a stick (M.O.3) on her shoulder and on her thumb. On seeing this incident, the Villagers gathered and therefore, the accused persons ran away from the place of occurrence. In the said incident, the accused No.1 has also assaulted P.W.1 with aruval M.O.1 on his head.

3.3. All the injured witnesses namely P.W.1 to P.W.4 went to the Government Hospital, Kulithalai, wherein, P.W.10 (Dr.Senthil Kumar), treated P.W.4 on 01.07.2012 at about 1.50 p.m and he examined P.W.4 and recorded the injury in the accident register Ex.P7. The P.W.10 (Dr.Senthil Kumar) has noted down the injuries of P.W.4 in Ex.P7 as follows: i) 10 x 0.5 x 0.5 c.m. cut injury on her left side of the fore head, (ii) 7 x 1 x 1 c.m. cut injury on right side upper arm, (iii) 4 x 1 x 1 c.m. cut injury in the left



side palm with exposure of bone.

3.4. On the same day, at about 02.00 p.m., P.W.1 Sathish @ Sathishkumar was produced for medical examination and the Doctor (P.W.10), examined him and also issued certificate in Ex.P8 and noted down the injuries as follows: (i) 3 x 0.5 x 0.5 c.m. cut injury on his right side forehead and (ii) 3 x 0.5 x 0.5 c.m. cut injury near the ear bone.

3.5. On the same day at about 2.05 p.m. (P.W.10) Dr.Senthil Kumar examined P.W.2 and noted down the injury in the accident register (Ex.P9) as 3 x 1 x 1 c.m cut injury in back side of the head. He also examined P.W.3 - Lakshmi and noted down the injuries in ExP.10 as follows: (i) 2 x 1 c.m. lacerated injury on her forehead and noted pain at right side upper arm. Considering the nature of injuries sustained by the witnesses, P.W.10 referred the injured persons for further treatment to Government Hospital (Annal Gandhi Medical Hospital), Tiruchirappalli.

3.6. P.W.9 - Dr.Uma Kalyani, Assistant Medical Officer, Annal Gandhi Medical Hospital, Tiruchirappalli, attended the victims on 01.07.2012 at about 3.10 p.m. and also referred P.W.3 for CT scan. He also admitted the other injured witnesses P.W.4 and P.W.2 and the accident registers issued by her to P.W.3, P.W.2, P.W.4 and P.W.1 were marked as Ex.P3 to Ex.P6 respectively.

3.7. On the medical intimation received from the Government Hospital, Tiruchirappalli, P.W.13, the Special Sub Inspector of Police, Kulithalai Police Station, Mr.Ponnusamy, went to the Government Hospital, Tiruchirappalli, on 02.07.2012 at about 07.00 a.m. and recorded the statement of P.W.1 Sathish @ Sathish Kumar in Ex.P1 and returned to the Kulithalai Police Station and registered a case in Crime No.316 of 2012 under Sections 294 (b), 323, 324 and 307 IPC in Ex.P14. The printed FIR (Ex.P14), reached the concerned Judicial Magistrate Court on 02.07.2012 at about 3.40 p.m.

3.8. Thereafter, P.W.14 - Mr.Mutharasu, the Inspector of Police, Kulithalai Police Station, took up the Investigation and went to the place of occurrence on 02.07.2012 at about 08.00 a.m., and prepared an observation mahazar and a rough sketch Ex.P2 and Ex.P15 respectively in the presence of P.W.8 one Ramalingam and another. He also went to the Government Hospital, Tiruchirappalli and examined P.W.1 to P.W.4, who were taking treatment as in-patient at Government Hospital, Tiruchirappalli and recorded their statements. He also recorded the statement of P.W.5 to P.W.8. He arrested the accused No.3 at Nachalur Bus Stand on 02.07.2012 at about 10.00 a.m. and sent her for judicial custody.



3.9. After the transfer of P.W.14, the investigation was taken over by P.W.15 one Mr.Mohamed Idhris, Inspector of Police. He recorded the statements of the Doctor and collected the wound certificates Ex.P3 to Ex.P10 and altered the case, by adding the offence under Section 307 IPC and submitted his alteration report. He was also transferred and the investigation was continued by P.W.16, one Mr.Pitchai Pandian, Inspector of Police, Kulithalai Police Station. He arrested the accused No.2 on 27.07.2013 at about 1.30 a.m. and recorded his confession statement. Pursuant to his confession statement, he also recovered the weapons M.O.1 to M.O.3 from his house, under a cover of mahazar Ex.P17 in the presence of P.W.11 one Ponnai. After completing the investigation, he filed a final report as against this appellant and two others. The same was taken on file by the learned Judicial Magistrate No.II, Kulithalai in P.R.C.No.12 of 2014 and was committed to the Court of Sessions and tried in S.C.No.22 of 2015 on the file of the Fast Track Mahila Court, Karur.

4. During the trial, on the side of the prosecution 16 witnesses were examined and 17 documents were marked, besides 3 material objects.

5. P.W.1, Sathish @ Sathish Kumar, is the son-in-law of P.W.2 and P.W.3. P.W.2 to P.W.4 are the injured eye witnesses and they have stated about the occurrence. P.W.5 is the wife of P.W.1. P.W.6 and P.W.7, who are neighbours and examined as eye witnesses, have turned hostile and P.W.8 is the witness for the Mahazar Ex.P2 and the rough sketch Ex.P15. P.W.10, Dr.Senthil Kumar, is the Doctor, who provided first aid to the witnesses P.W.1 to P.W.4, at Government Hospital, Kulithalai and P.W.9, Dr.Uma Kalyani, is the Doctor, who has given the treatment to P.W.1 to P.W.4 at Government Hospital, Tiruchirappalli. P.W.11 and P.W.12 were examined for the arrest and recovery from the accused No.2, but P.W.11 was treated as hostile. P.W.13 is the Special Sub Inspector of Police, who registered the FIR in Ex.P14 and P.W.14 to P.W.16 are the Investigation Officers in this case.

6. After the prosecution evidence was closed, the incriminating materials were placed before the accused under Section 313 CrPC and the accused had denied the same.

7. On the side of the accused, the accused pleaded not guilty and stated that they have also suffered injuries in that incident and went for treatment to the Government Hospital, Kulithalai, wherein they were referred to the Government Hospital, Tiruchirappalli. The said reference was marked as Ex.D3. The copy of the accident registers in respect of accused No.1 & 2, issued by the Government Hospital, Kulithalai, were marked as



Ex.D1 and D2 through P.W.10 Dr.Senthil Kumar.

8.In conclusion of the trial, the trial Court found the other accused / accused No.2 & 3 not guilty, but found the appellant / accused No.1 guilty, convicted and sentenced as stated supra. As against the conviction and sentence imposed, the appellant has preferred the present Criminal Appeal.

9.Heard Mr.S.Ravi, learned counsel appearing for the appellant / accused No.1 and Mr.A.Robinson, the learned Government Advocate (Crl. Side) for the respondent.

10.Mr.S.Ravi, the learned counsel for the appellant submits that the origin and genesis of the occurrence is suppressed and apart from the complaint (Ex.P1), some other complaints have been lodged and the same were suppressed by the prosecution. In respect of this contention, he referred the evidence of P.W.5, wife of P.W.1 that when they were referred from Kulithalai Government Hospital to the Government Hospital, Tiruchirappalli, before leaving for Tiruchirappalli, her husband P.W.1 went to Kulithalai police station and lodged a complaint. Similarly, P.W.3 in her evidence has also stated that she lodged a separate complaint at Kulithalai Government Hospital. P.W.4 also in his evidence stated that he lodged a separate complaint at Tiruchirappalli Government Hospital. According to P.W.13, the Special Sub Inspector, he recorded the oral statement of P.W.1 in Ex.P1, whereas in column No.4 of the printed FIR, it is referred as if a written complaint was received and registered. He further submits that admittedly accused No.2 and 3 were residing at Pudupalayam Village and this appellant was residing in another Village with his grandmother.

11.The appellant is the son of the accused No.2 and 3 and by referring the delay in registering the FIR and the delay occurred in despatching the FIR, Mr.Ravi, the learned counsel for the appellant submits that there is every possibility of roping in this appellant / accused as the main accused. The occurrence was taken place on 01.07.2012 at about 1.30 p.m. But, the case was registered on the next day at 02.07.2012 at 07.00 a.m and the printed FIR Ex.P14 reached the concerned Judicial Magistrate Court only on 02.07.2012 at about 3.40 p.m. with a delay of eight hours, though the Judicial Magistrate Court, Kulithalai, is situated just opposite to the respondent police station.

12.The learned counsel for the appellant further submits that the accused No.1 and 2 had also sustained injury in the occurrence, but, the same has been suppressed in the complaint Ex.P1 as well as during the trial. The accident registers of Accused No.1 and 2 and the reference of P.W.10 from Government



Hospital, Kulithalai to the Government Hospital, Tiruchirappalli, were marked as Ex.D1 to Ex.D3 respectively. P.W.1 to P.W.4 have admitted in their evidence that the accused No.1 and 2 were also taking treatment at Kulithalai Government Hospital and also referred, along with them, for further treatment to Tiruchirappalli Government Hospital, but, claims that they did not suffer any injury.

13.Though the accused were very much available in the Government Hospital, Kulithalai as well as at Government Hospital, Tiruchirappalli, they were not arrested and the accused No.2 alone was arrested after one year and all the weapons M.O.1 to M.O.3 were recovered, pursuant to his confession statement, whereas P.W.3 in her evidence admitted that M.O.1 to M.O.3 were handed over by them in the police station one week after the occurrence. This evidence of P.W.3 is also corroborated by the evidence of P.W.5, the wife of P.W.1, that her mother P.W.3, one week after the occurrence, has handed over M.O.1 and M.O.3 to the police and therefore, according to the learned counsel for the appellant, there is no recovery from this appellant and the recovery as projected by the prosecution is also disproved by the prosecution witnesses.

14.The learned counsel appearing for the appellant also prayed for extending the benefit of doubt given to the accused No.2 and 3 and submits that P.W.2 and P.W.4 are arracu sellers and P.W.4 is having four cases to her credit. He also relied upon the following Judgments of the Honourable Supreme Court.

- i) (2002) 7 SCC 210 (Subramani and others Vs. State of Tamilnadu)
- ii) (2006) 9 SCC 57 (Nagarathinam and others Vs. State of Tamilnadu)
- iii) (2018) 7 SCC 536 (Kumar Vs. State of Tamilnadu)

15.Per contra, the learned Government Advocate submits that it is not a separate complaint and the witnesses misunderstood the statements recorded by the Investigation Officer under Section 161 Cr.P.C. that they have also lodged separate complaints. With regard to the complaint, he would submit that P.W.5 explained in her evidence that it was pertaining to the morning incident occurrence had taken place. He further submits that the witnesses are rustic villagers and their evidence was also taken after three years and they have also suffered injury and were taking treatment in the hospital and therefore, these small discrepancy in their evidence without understanding the question put by the defence counsel cannot be a ground for disbelieving the case of the prosecution.

16.For the delay, the learned Government Advocate (Crl. Side) submits that the victims were taken to the hospital immediately



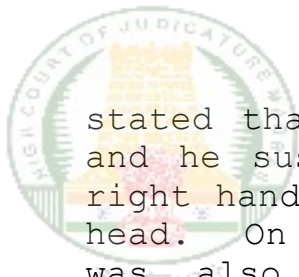
after the occurrence and on seeing the condition, they were referred to the Government Hospital, Tiruchirappalli. After the receipt of medical intimation, P.W.13 went to Tiruchirappalli from Kulithalai, recorded the statement of P.W.1 and returned to Kulithalai and registered the case and therefore, there is a possibility for delay in this case. This delay cannot be a material defect, when there are four injured eye witnesses, who have spoken about the occurrence and the manner in which this appellant / accused assaulted the P.W.4 and P.W.1.

17.The learned Government Advocate (Crl. Side) further submits that the trial Court has extended the benefit of doubt to the co-accused on the ground that the medical evidence does not corroborate with the oral evidence and the X-ray was not marked to substantiate the nature of injury. These minor discrepancies cannot be a ground to disbelieve the evidence of P.W.1 to P.W.4, who are the injured eye witnesses in this case and they have also narrated the occurrence as against this appellant in a cogent and convincing manner and there is no reason to interfere with the orders of the trial Court.

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

19.The occurrence has taken place on 01.07.2012 at about 1.30 p.m. in front of P.W.2's house. When P.W.4 was crossing his house, the accused Nos.1 and 2 with aruval M.O.1 and M.O.2 respectively and accused No.3 with a stick, attacked P.W.4 and caused serious injury. When P.W.2 attempted to prevent the attack, he was also assaulted by them and when P.W.1 and P.W.3 attempted to prevent the attack, they were also assaulted. After the occurrence, they were taken to Government Hospital at Kulithalai and the Doctor (P.W.10), treated them at about 1.50 p.m., recorded their injuries in the accident registers Exs.P7 to P10 respectively and referred them for further treatment to the Government Hospital, Tiruchirappalli. Dr.Uma Kalyani P.W.9 has attended the P.W.1 to P.W.4 at Government Hospital, Tiruchirappalli, on 01.07.2012 at about 3.10p.m. and recorded their injuries in the accident registers Ex.P3 to Ex.P6.

20.P.W.10 Dr. Senthilkumar, has also admitted that on the same day i.e., on 01.07.2012 at about 2.20 p.m., accused No.2 / Shanmugam came to his hospital with injuries and stated to him that he was assaulted by four known persons in his house on 01.07.2012 at about 1.30 p.m. He examined him and found that he suffered a cut injury measuring 4 x 1 x 0.5 c.m. near his left ear upto bone depth and referred him for further treatment to the Government Hospital, Tiruchirappalli. He also attended the accused No.1 on 01.07.2012 at about 2.30 p.m. and the accused No.1 also



stated that he was assaulted by four known persons at 1.30 p.m. and he sustained a cut injury measuring 3 x 1 x 1 c.m. on his right hand and another lacerated injury of 2 x 1 c.m. on his forehead. On seeing the condition of the injuries, the accused No.1 was also referred for further treatment to the Government Hospital, Tiruchirappalli. The accident registers recorded by P.W.10 were marked as Ex.D1 and Ex.D2 through P.W.10. The reference made by him for further treatment to Tiruchirappalli Government Hospital is marked as Ex.P3. He also admitted that the copy of the accident registers and the reference Ex.D1 to Ex.D3 were also handed over to the respondent police and also gave an intimation about the injuries suffered by the accused to the respondent police.

21.The accused No.1 & 2 were attended by P.W.10 Dr.Sethil Kumar, at about 2.30 p.m. and according to him, an intimation was also sent to Kulithalai Police Station. This evidence of P.W.10 is also corroborated by the prosecution witnesses that the accused had also taken treatment at Kulithalai Government Hospital and were also referred to the Government Hospital, Tiruchirappalli along with them. Though this accused suffered injury and a medical intimation was also received that they were taking treatment in the Government Hospital, Tiruchirappalli, they were not arrested by the respondent police. Though the accident registers were recovered, they were not placed before the Court by the prosecution and they were only marked as defence documents. The prosecution witnesses have also suppressed the injury sustained by the accused in the complaint Ex.P1 as well as during their evidence.

22.The Hon'ble Supreme Court in **Lakshmi Singh's** case reported in **(1976) 4 SCC 394**, has dealt with the non-explanation of grievous injuries sustained by the accused by the prosecution, in paragraph No.12, after dealing with the facts of the case, has also taken note of its earlier judgment in **Mohar Ravi Vs State of Bihar**, reported in **AIR (1968) SC 1281**, wherein, it is observed as follows:

"The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W.15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabalised. Under these circumstances the prosecution had a duty to explain those injuries..... In our



judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabalise the plea taken by the appellants."

23.The Hon'ble Supreme Court had also placed reliance upon another judgment in **Puran Singh Vs State of Punjab**, reported in **(1975) 4 SCC 518** and observed in Paragraph No.12 as follows:

"12. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1)that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2)that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3)that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs.1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* [Criminal Appeal No. 67 of 1971 decided on March 19, 1975], there may be cases where the non-explanation of the injuries by the prosecution may not affect the



prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises".

24.P.Ws.13 to 15 did not conduct any investigation as to how the accused nos.1 & 2 sustained grievous injuries and they did not state anything about the injuries sustained by the accused persons. The said fact has been spoken only by P.W.10 Dr.Senthilkumar, coupled with Exs.D1 to D3.

25.According to the accused, the occurrence has taken place in their house and they were assaulted by the prosecution party and in that scuffle, the prosecution witnesses also suffered injury. The prosecution party are five in numbers. The prosecution party and accused No.1 and 2 have also taken treatment at Kulithalai as well as at Tiruchirappalli. But, the respondent police did not record any statement from the accused party, despite the intimation received about their injury from Kulithalai hospital. In all fairness, the respondent police ought to have registered their complaint as a counter complaint and ought to have conducted a fair investigation to find out, as to who is the aggressor in this case. But, the respondent police conducted a biased investigation in favour of the prosecution party, and in fact, the learned counsel for the appellant submitted that P.W.2 and P.W.4 are arracu sellers and P.W.4 is having four previous cases to her credit. The prosecution witnesses admitted the fact that P.W.2 is an arracu seller. Apart from this, the defence has also stated that one Babu, an adjacent land owner, attempted to purchase their one acre land and since the accused persons refused to do so, he created problem through the prosecution party and accordingly, P.W.4 has stolen plaintains from their land and on account of which, there was a wordy quarrel on 01.07.2012 morning. This morning incident has also been admitted by the prosecution parties, whereas, the investigation did not disclose the same.

26.As rightly pointed out by the learned counsel for the appellant, there are so many contradictions with regard to the complaint Ex.P1. According to P.W.13, Ex.P1 complaint was recorded from P.W.1 at Government Hospital, Tiruchirappalli and the case has been registered in Ex.P14, whereas in column No.4 of the



printed FIR, it is mentioned that the case was registered based on a written complaint. P.W.5, the wife of P.W.1 in her evidence stated that before leaving for Tiruchirappalli from Kulithalai, her husband went to the respondent police station and lodged a complaint. Similarly, P.W.3, states that she lodged a separate complaint at Kulithalai Government Hospital and P.W.4 has stated that he lodged a separate complaint at Government Hospital, Tiruchirappalli. The learned Government Advocate (Crl. Side) defends these statements of the prosecution witnesses that they are rustic villagers and they are referring the statement recorded by the Investigation Officer and it is not a separate complaint. But this reply of the learned Government Advocate is not convincing, for the reason that the Inspector of Police examined these witnesses only at the Government Hospital at Tiruchirappalli, under Section 162 of Cr.P.C. If it is a statement as referred to by the learned Government Advocate, there is no necessity for obtaining their thumb impression in the said statement and the witnesses have stated that it was recorded at Kulithalai Government Hospital and has also stated that their thumb impressions were obtained. This part of the evidence of the prosecution witnesses raises a doubt on the complaint Ex.P1 that whether any other complaint exists prior to the same.

27.The delay in registering the FIR and the FIR reaching the Court, strengthen the case of the defence on the possibility of some other complaint prior to Ex.P1. The occurrence has taken place on 01.07.2012 at 1.30 p.m., but on medical intimation, the Ex.P1 was recorded only on the next day at about 7.00 a.m. and the printed FIR had reached the concerned Judicial Magistrate Court with a delay of eight hours. It is pertinent to note that the Kulithalai Judicial Magistrate Court is situated just opposite to the respondent police station. The Constable, who took the printed FIR to the concerned Judicial Magistrate was not examined. Thus the prosecution has not explained the inordinate delay in registering the complaint Ex.P1 and despatching the FIR to the concerned Judicial Magistrate Court. This delay coupled with the possibility of any other complaint prior to Ex.P1 and the non examination about the accused injury are fatal to the prosecution case.

28.In this case, the benefit of doubt was already extended by the trial Court to the accused 2 and 3 and this appellant alone is convicted. The appellant was not arrested and the M.O.1 aruval was also recovered through the confession statement of accused No.2 after one year. Though the accused No.1 and 2 were very much available at the Government Hospital, Kulithalai, as well as at the Government Hospital, Tiruchirappalli, they were not arrested by the respondent Police. Accused No.3, the mother of the appellant, was arrested on the next day and according to this



appellant, when she went to lodge the complaint, she was arrested by the respondent Police. But the accused No.2 was arrested after one year and all the material objects M.O.1 to M.O.3 were recovered from him after one year. But the prosecution witnesses P.W.3 and P.W.5 have stated that these material objects were handed over by P.W.3 to the Police after one week from the date of occurrence.

29.In view of the anomalies on the prosecution case referred above, this Court is of the view that it is not safe to sustain the conviction as against this appellant. Accordingly, the benefit of doubt is extended to this appellant also.

30.In fine, this appeal is allowed. The Conviction and sentence passed in S.C.No.22 of 2015 dated 15.10.2015 by the learned Sessions Judge, Fast Track Mahila Court, Karur is set aside. The appellant is acquitted of the charges. The bail bonds if any are cancelled. The fine amount paid, if any shall be refunded.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District and Sessions Judge, Fast Track Mahila Court, Karur.

2.The Judicial Magistrate No.II, Kuzhithalai, Karur District.

3.do through The Chief Judicial Magistrate, Karur.

4.The Inspector of Police, Kuzhithalai Police Station, Karur District.

5.The Superintendent, Central Prison, Trichy.

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



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

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Crl.A. (MD) .No.336 of 2015
01.10.2020

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