



Bail Slip

The Appellant / Accused viz., namely Ponnusamy, S/o. Nachimuthu, was released on bail as per order of this court dated 03.12.2015 made in M.P.(MD)No.1/2015 in CRL A(MD)No.355/2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.A. (MD)No.355 of 2015

Ponnusamy : Appellant

Vs.

State rep. by
The Inspector of Police,
Anna Nagar Police Station,
Madurai.
Crime No.529/2007

: Respondent

PRAYER: Appeal filed under Section 374 of the Criminal Procedure Code to call for the records in connection with the order passed by the III Additional District and Sessions Judge (PCR Court), Madurai, in S.C.No.156 of 2008, dated 04.11.2015 and quash the same.

For Appellant : Mr.N.Mohideen Basha

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal is preferred by the appellant / accused as against the order of conviction passed by the trial Court, namely, III Additional District and Sessions Court (PCR Court), Madurai, in S.C.No.156 of 2008, dated 04.11.2015. The appellant was tried for the offence under Sections 341, 326, 506(i) IPC and Section 3(1)(x) of the SC / ST [POA] Act. The trial Court, in conclusion of the trial, though acquitted the appellant from the offence under Sections 341, 506(i) IPC and Section 3(1)(x) of the SC / ST [POA] Act, has found him guilty for the offence under Section 326 IPC, convicted and sentenced him to undergo rigorous imprisonment for



three years and to pay a fine of Rs.2000/-, i/d to undergo simple imprisonment for three months.

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

2.1. The defacto complainant, namely, Murugan [PW1] is the younger brother of PW2. PW2 and the accused are neighbors and used to do real estate business. There was a dispute between the accused and PW2 owing to some brokerage commission and on 19.09.2007, at about 08.45 pm, there was a quarrel between the parties. PW1, who came to the place of occurrence, at that time, tried to pacify the situation, but the accused abused him in filthy language, using his caste name. The accused also assaulted PW1 and bitten the Thumb of PW1. On seeing the occurrence, PWs.3 & 4 came to the rescue of PW1 and the accused fled away from the place of occurrence.

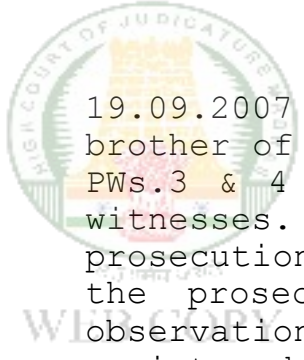
2.2. Immediately after the occurrence, PW1 lodged a complaint [Ex.P1] before the Sub-Inspector of Police [PW6]. PW6 received the complaint and after preliminary investigation, registered the case in Crime No.529 of 2007 under Sections 341, 326, 506(i) IPC and Section 3(1)(x) of the SC / ST [POA] Act, dated 21.09.2007. The Sub-Inspector of Police [PW6] has forwarded the printed First Information Report [Ex.P3] to the concerned Court as well as to the other higher officials.

2.3. In the meantime, PW1 was referred to the Government Rajaji Hospital, Madurai, along with a police memo and Dr.Kannan [PW8], Associate Professor, Government Rajaji Hospital, Madurai, attended PW1 on 19.09.2007 at about 09.40 pm. The Doctor [PW8] gave first aid to PW1 and has recorded in his Accident Register [Ex.P5] that the victim [PW1] was alleged to be bitten by a known person in his right thumb and has sustained injury in the right thumb.

2.4. On receipt of the information as to the registration of the case, the Deputy Superintendent of Police [PW9], Samayanallur, in-charge for Karupayurani sub division, went to the place of occurrence on 21.09.2007, at about 01.15 pm, prepared the observation mahazar [Ex.P2] and the rough sketch [Ex.P6] in the presence of PW5 and another. He has also examined the witnesses and on the same day, around 04.00 pm, he arrested the accused at the Karupayurani Police Station. He also collected the community certificates of PW1 and the accused from the Tahsildar [PW7] and has also examined the Doctor [PW8] who provided treatment to the victim [PW1].

2.5. Tmt.Fathima Devi [PW10], Deputy Superintendent of Police conducted the further investigation in this case and has filed the final report as against the accused.

3. During the course of the trial, the prosecution has examined ten witnesses and marked six documents in support of their case. PW1 is the brother of the accused and he speaks about the incident that took place on



19.09.2007 and the lodging of the complaint. PW2 is the elder brother of the victim [PW1] and he also speaks about the occurrence. PWs.3 & 4 are independent witnesses and they are examined as eye witnesses. Both of them, though supported the case of the prosecution in the chief examination, did not support the case of the prosecution in the cross examination. PW5 is examined as observation mahazar witness. PW6 is the Sub-Inspector Police, who registered the complaint [Ex.P1]. PW7 is the Tahsildar, who issued the community certificate and PW8 is the Doctor, who attended and gave treatment to the victim. PW9 is the investigation officer who conducted the preliminary investigation and PW10 is the investigation officer who conducted the final investigation and filed the final report.

4. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. Though the accused has stated that there are evidence in support of their case, neither oral nor documentary evidence was marked on the side of the accused. The trial Court, in conclusion of the trial, has found the appellant / accused guilty, convicted and sentenced him as stated supra.

5. Heard Mr.N.Mohideen Basha, learned Counsel appearing for the appellant / accused and Mr.A.Robinson, learned Government Advocate (CrI. Side) appearing for the respondent / State.

6. The learned Counsel for the petitioner has raised the following points for the consideration of this Court:

6.1. PWs.1 & 2 are interested witnesses. PWs.3 & 4 are the neighbors and they are examined as independent eye witnesses. But, both of them did not support the case of the prosecution in the cross examination and therefore, the conviction cannot be sustained based on their evidence.

6.2. The prosecution case is that the appellant / accused has bitten the tip of the right thumb of the victim [PW1]. Teeth cannot be termed as a weapon and the injury sustained by PW1 in his right thumb would not fall under the categories enumerated under Section 320 IPC, as such, the conviction under Section 326 IPC could not be sustained.

6.3. PW1 in his cross examination has admitted that he has given a written complaint, based on which, the station writer has prepared the complaint [Ex.P1], as such, the earlier information given by the victim [PW1] was suppressed.

6.4. The Doctor [PW8] in his cross examination has admitted that since it was a disintegrated injury, he opined that it was a teeth bite injury and that there was no bone injury. The prosecution has not marked the x-ray report. The Doctor has admitted that the injury can also be possible if the thumb got in between the doors or



6.5. The investigation officer has not seized any bloodstained cloths from the victim [PW1] or from the appellant / accused. The incident took place around 08.00 pm and the presence of light in the place of occurrence has not been established by the prosecution.

Therefore, he prays for interference.

7. Per contra, the learned Government Advocate (CrI. Side) made his submissions based on the prosecution evidence and would submit that the prosecution had clearly established the guilt against the accused. Therefore, according to the learned Government Advocate (CrI. Side), the conviction and sentence imposed by the trial Court on the accused does not require any interference.

8. This Court has paid it's anxious consideration to the rival submissions and also to the materials placed on record.

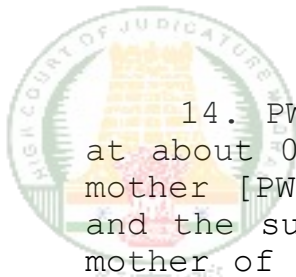
9. The case of the prosecution is that on 19.09.2007 at about 08.45 pm, when PW1 went to the occurrence place to visit his brother [PW2], the appellant / accused was quarrelling with PW2 owing to some brokerage commission. On seeing the incident, PW1 attempted to rescue them and the appellant / accused abused PW1 in filthy language and has bitten the tip of the right hand thumb finger.

10. PW1 is the victim cum injured witness. PW2 is his brother and the incident took place when PW1 attempted to pacify the situation. The learned Counsel for the appellant / accused contended that the evidence of PWs.1 & 2, being interested witnesses, cannot be relied upon. This contention of the learned Counsel lacks merit, for the reason that the law does not lay down any separate parameter for appreciating the evidence of a relative, *vis-a-vis*, the evidence of a person not related to the victim.

11. In **Chakali Maddilety and others, Vs. State of Andhra Pradesh**, reported in **2010 (12) SCC 72**, the Hon'ble Supreme Court has held that the depositions of close relatives cannot be discarded, merely because they are relatives, but, their evidence has to be considered with due care and caution.

12. PW1 is an injured witness and PW2 is his brother. Their evidence corroborates with each other and though they were cross examined in length, the defense could not make out any contradictions that would affect the case of the prosecution.

13. PWs.3 & 4 are the neighbors of PW2 and they are examined as eye witnesses to the occurrence. It is the contention of the learned Counsel for the appellant / accused that though PWs.3 & 4 have supported the case of the prosecution in the chief examination, they spoke otherwise in the cross examination and therefore, their evidence could not be relied upon.



14. PW3 in her chief examination has stated that on 19.09.2007, at about 08.00 pm, when she came out of the house in search of her mother [PW4], she witnessed the quarrel between the accused and PW2 and the subsequent scuffle between the accused and PW1. PW4 is the mother of PW3 and she, in her chief examination, has spoken in line with the case of the prosecution and both PWs.3 & 4 came in rescue of the victim [PW1].

15. The chief examination of PWs.3 & 4 were made on 24.09.2010 and the cross examination was closed as 'no cross'. Later, based on an application moved by the defense, they were called and cross examined in the month of April, 2014, ie., nearly after 3 ½ years. In the cross examination, PW3 has stated that only after the scuffle, she came out of the house and that she only heard about the incident. PW4 in the cross examination has stated that there was a scuffle between the accused and PW1, but, since it was night time, she did not witness the occurrence and after some time, she heard that the accused has bitten the tip of right thumb of the victim [PW1].

16. Both PWs.1 & 2, though in their chief examination, have deposed that they have witnessed the occurrence, in the cross examination, they have deposed that they did not actually witness the occurrence and that they only heard about the incident. But, it is clear from their evidence that there was a quarrel on that date between the accused and PW2 and at that time, PW1 came there and there was a scuffle among the parties.

17. In the scuffle, the accused has bitten the tip of the right thumb of the victim [PW1] and in this regard, PW1 has lodged the complaint [Ex.P1]. PW1 has also underwent treatment at the Government Rajaji Hospital, Madurai, along with a police memo and before the Doctor [PW8], the victim [PW1] has stated that a known person has bitten his right thumb. The Accident Register [Ex.P5] issued by the Doctor shows that PW1 took treatment as in-patient from 19.09.2007 to 06.10.2007. The Doctor has noted down 'avulsion injury on the thumb of right hand with loss of pulp and nail' on the victim [PW1]. The Doctor, based on the opinion of the Ward Medical Officer, gave his final opinion that the injuries are grievous in nature. In his evidence, the Doctor [PW8] has deposed that it is a grievous injury due to amputation of tip of right thumb and that it appears to be because of a teeth bite. This evidence of the Doctor [PW8], coupled with the evidence of PWs.1 & 2, would prove the case of the prosecution beyond any reasonable doubt.

18. The learned Counsel for the appellant / accused took a defense that teeth cannot be termed as a weapon. From the evidence of the Doctor [PW8] and the Accident Register [Ex.P5], it is clear that the victim [PW1] has sustained an avulsion injury in the thumb of right hand with loss of pulp and nail and it is a grievous injury due to amputation of tip of thumb. Thumb is a very important part of



the body. Amputating a part of the body, no doubt, is a grievous one, but, the offence has been committed by biting.

19. Though several High Courts around the Country took different stand as to the definition of 'instrument' to attract the offence under Sections 324 and / or 326 IPC, the Hon'ble Supreme Court in **Shakeel Ahmed v. State, Delhi**, reported in (2004) 10 SCC 103, has held as follows:

"2. The appellant stands convicted under Section 326 read with Section 34 of the Penal Code, 1860. Injuries, no doubt, are grievous as the phalanx of the index finger has been snipped off. But the allegation is that the assailant had bitten the index finger and caused the said injury. Teeth of a human being cannot be considered as deadly weapon as per the description of deadly weapon enumerated under Section 326 IPC. Hence the offence cannot escalate to Section 326. It can best remain only at Section 325 IPC. We, therefore, alter the conviction to Section 325 IPC read with Section 34 IPC."

20. In view of the aforesaid pronouncement, irrespective of the nature of injury, ie., simple and grievous, tooth of a human being cannot be considered as deadly weapon, as such, the injury caused by human tooth cannot attract Sections 324 and / or 326 IPC, but, attract Sections 323 and / or 325 IPC.

21. Therefore, in the facts and circumstances of this case and considering the nature of injury, the appellant / accused stands convicted for the offence under Section 325 IPC and not under Section 326 IPC.

22. At this juncture, the learned Counsel for the appellant / accused intervened and submitted that the appellant is aged about 63 years and is suffering from several ailments and therefore, sought indulgence of this Court to reduce the sentence of imprisonment.

23. Considering the submission made by the learned Counsel for the appellant / accused and the manner in which the occurrence took place, as the victim came there in a causal manner and on seeing the quarrel, attempted to pacify the situation and at that moment, the offence was committed, this Court is inclined to modify the sentence to two years, instead of three years, as ordered by the trial Court.

24. Accordingly, the appellant / accused stands convicted for the offence under Section 325 IPC and the sentence of imprisonment is modified to two years rigorous imprisonment. The fine amount and the default clause, as ordered by the trial Court, remain unaltered. The trial Court is directed to secure the appellant / accused and commit him to prison to undergo the remaining period of sentence. Bail bonds, if any, executed shall stand terminated.



25. With the above modification, this Criminal Appeal stands partly allowed.

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Sd/-

Assistant Registrar (CS-III)

/ /2020

Sub Assistant Registrar (CS)

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 III Additional District and Sessions Judge,
PCR Court, Madurai.
2. Do Through The Principal District and Sessions Judge,
Madurai District.
3. The Judicial Magistrate No.3, Madurai.
4. Do Through The Chief Judicial Magistrate, Madurai District.
5. The Inspector of Police,
Anna Nagar Police Station, Madurai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

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

Crl.A. (MD) No. 355 of 2015
13.08.2020