



BAIL SLIP

The Petitioners/Accused namely (i) Sheik Altaf, S/o.Sheik Jailani and (ii) V.Ashokumar, S/o.Varagasamy iin CRL A Nos.29 & 39 of 2021 respectively were released on bail as per the order of this court dated 25/01/2021 & 02/02/2021 in Cr1 MP Nos.564 & 878 of 2021 respectively in Cr1 A 29 & 39 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	27.04.2021
Pronounced on	:	26.08.2021

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal Nos.29 and 39 of 2021

Sheik Altaf
S/o.Sheik Jailani ... Appellant in Cr1.A.No.29 of 2021
V.Ashokumar
S/o.Varagasamy ... Appellant in Cr1.A.No.39 of 2021

Vs.

The State Rep. by
The Inspector of Police
Parangipettai Police Station
Cuddalore.
(Crime No.237 of 2012) ... Respondent in both the Appeals

Common Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, praying to call for the records and set-aside the sentence and conviction imposed by the Hon'ble Sessions Judge, Mahila Court, Cuddalore in S.C.No.20 of 2016 dated 23.12.2020.



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For Appellant in CrI.A.No.29 of 2021 : Mr.R.Abdul Mubeen

For Appellant in CrI.A.No.39 of 2021 : Mr.K.Sukumaran

For Respondent in both Appeals : Mr.K.Mathan

Government Advocate (CrI.Side)

COMMON JUDGMENT

The 1st accused in S.C.No.20 of 2015 has filed CrI.A.No.39 of 2021 and the 2nd accused has filed CrI.A.No.29 of 2021. These Criminal Appeals have been filed by the appellants against the conviction and sentence dated 23.12.2020 passed by the learned Sessions Judge, Mahila Court, Cuddalore in S.C.No.20 of 2016.

2. Since, both the appeals are arising out of the same crime, these appeals are heard together and disposed of by this common judgment.

3. The respondent police registered the case against the appellants herein and two others for the offence under Sections 294 (b) and 506(ii) IPC and during inquest, they altered the charges for offences punishable under Sections 294(b), 506(ii), 324 and 307 IPC read with Section 4 of Tamil Nadu prohibition of Women Harassment Act 2002. After completing the investigation, they laid charge sheet before the District Munsif cum Judicial Magistrate, Portonovo, and the learned Magistrate taken up the charge sheet on file in PRC No.47 of 2013 and committed the case to the learned Principal District and Sessions Judge, Cuddalore, since the offences are exclusively triable by the Court of Session. The learned Principal District and Sessions Judge after completing the formalities had taken up the case on file in S.C.No.20 of 2016 and made over the case to Mahila Court, Cuddalore since one of the victim is a female. The learned Special Judge after completing the formalities, framed the charges against the appellants and 2 others. A1 to A3 were charged for offences punishable under Sections 307 read with 34 IPC (Two Counts) and A4 was charged for the offences punishable under Section 307 read with 109 IPC (two counts). Further, A1 was also charged for offence under Sections 294(b), 506(ii) IPC.

4. On the the side of the prosecution, during trial in order to prove the case of the prosecution as many as 16 witnesses were examined as P.W.1 to P.W.16 and 18 documents were marked as Exs.P1 to P18 besides, 7 material objects were marked.



5. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. with reference to incriminating circumstances appeared against them and they denied the same as false and pleaded not guilty.

6. On the side of the defence, one witness was examined as D.W.1 and one document was marked as Ex.D1.

7. On completion of trial and hearing the arguments advanced on either side and considering the materials on record, the trial Court acquitted A3 and A4 from the charges framed against them. A1 was acquitted of the charges under Sections 307 read with 34 (two counts), 294(b) and 506(ii) IPC and A2 was acquitted from the charge under Section 307 read with 34 IPC (Two counts). However, A1 and A2 were convicted for the offences punishable under Section 324 read with 34 IPC on two counts and sentenced to undergo simple imprisonment for a period of 2 years each and to pay a fine of Rs.5,000/- each in default, to undergo a further period of six months simple imprisonment on each count. Challenging the said Judgement of conviction and sentence, the present appeals in CrI.A.No.39 of 2021 CrI.A.No.29 of 2021 have been filed by A1 and A2 respectively.

8. The learned Counsels for the appellants A1 and A2 would submit that the prosecution has failed to establish the case and to prove the charges leveled against the appellants. Thereby, the trial Court rightly acquitted A1 from the charges punishable under Sections 307 read with 34 (two counts), 294(b) and 506(ii) IPC and A2 from the charges punishable under Section 307 read with 34 IPC (Two counts). However, the trial Court wrongly convicted the appellants for the offences punishable under Section 324 read with 34 IPC on two counts.

8.1 The learned Counsels would further submit that even the defacto complainant P.W.1 has turned hostile and he has not supported the case of the prosecution. P.W.7 is the hearsay witness. Except P.W.2 and P.W.3, all the independent witnesses i.e. P.Ws.5, 6, 8, 9, 10 and 11 have turned hostile and they have not identified the accused and the other witnesses are official witnesses. There is no evidence from the hostile



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witnesses to point out the guilt of the appellants. The Mahazar and observation Mazahar witnesses have also not supported the case of the prosecution. The prosecution had not identified the accused and the appellants have been wrongly convicted.

8.2 The learned Counsels would further contend that though P.W.2 and P.W.3 are injured witnesses, they have not lodged any complaint. The trial Court finding that the intention and motive to kill the witnesses P.W.2 and P.W.3 was not established by the prosecution and none of the independent witnesses had supported the case of the prosecution, had rightly acquitted the appellants of the charges punishable under Sections 307 read with 34, 294(b) and 506(ii) IPC however, wrongly convicted the appellants for the offences under Section 324 read with 34 IPC which warrants interference. Further, the medical report-Ex.P.10 clearly shows that the injury sustained by P.W.3 is a simple injury and therefore, the sentence of two years and fine of Rs.5,000/- is highly disproportionate.

8.3 The learned Counsels would submit that there are material contradictions in the statements between P.W.2 and P.W.3 and also in the statements of the Investigating Officer and P.W.3. The learned trial Judge has ignored to appreciate the material contradictions and also failed to appreciate the evidence of the defence witness-D.W.1 and the documentary evidences and wrongly convicted the appellants.

8.4 The learned Counsel for the appellant in CrI.A.No.29 of 2021 would submit that insofar as the appellant / second accused is concerned, only P.W.2 has stated that he was riding the vehicle whereas, P.W.3 the injured victim had not identified the appellant. Even P.W.12 who is the owner of the vehicle had not identified the appellant. Further, the prosecution has failed to establish the common intention between A1 and A2. Even assuming that A2 had accompanied A1 at the time of commission of offence, mere participation with others cannot make out a common intention of others who involved in the crime. The prosecution has not opposed the objective test to establish the subject element of common intention. Hence, the Judgment of the Sessions Judge is liable to be set aside.

9. The learned Government Advocate (CrI. Side) submitted that the prosecution has clearly established the case beyond



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reasonable doubt. Though P.W.1 the defacto complainant turned hostile, P.W.2 and P.W.3 who are injured witnesses have clearly spoken about the incident and they have identified the main accused/A1. Under the instigation of A4, A3 was watching the movement of the public at the place of occurrence and A1 and A2 with a common intention, had caused injuries to the witnesses P.W.2 and P.W.3. P.W.4 the Scientific Officer of the Chennai Forensic Science Department, has clearly deposed that the sample of material object had contained Acid content. P.W.7 who was working as Assistant Professor in the Annamalai University is the hearsay witness and he has spoken about the incident that he heard. P.W.13, the Chief Civil Surgeon has stated that the Doctor who has examined P.W.2 and P.W.3 has opined that P.W.2 sustained grievous injury and issued Ex.P.9-wound certificate along with accident register and she has also opined that P.W.3 sustained simple injury and the wound certificate-Ex.P.10. Therefore, the medical evidence as well as the expert's evidence corroborated with the evidence of the injured witnesses. Though the independent witnesses not supported the case of the prosecution, the evidence of the injured witnesses are cogent and consistent and the medical evidences also corroborated the same and there is no reason to discard the evidence of the injured witnesses P.W.2 and P.W.3. Further, the report of the Forensic lab also confirmed that the sample sent to them was found to contain acid content. Therefore, the involvement of the A1 and A2 has been proved by the prosecution. Though the offences punishable under section 307 read with 34 not proved, from the evidence of P.W.2 and P.W.3 injured witnesses and the medical evidences, the trial Judge has rightly found guilty of A1 and A2 for the offences punishable under Sections 324 read with Section 34 IPC. Therefore, there is no merit in the appeals and they are liable to be dismissed.

10. Heard the learned Counsels for the appellants and the learned Government Advocate (Cr1. Side) appearing for the respondent and perused the materials on record.

11. The case of the prosecution is that P.W.2 and P.W.3 hailed from West Bengal and they were doing Ph.d in Annamalai University. While so, on 08.06.2012 at about 2.30 p.m. P.W.2 and P.W.3 were coming out of the college campus for lunch and while they were walking near a Murugan temple, somebody pushed P.W.2 due to which, he fell down and P.W.3 felt burning sensation on



her back just below the shoulders. At that time, P.W.2 and P.W.3 saw two persons riding a motorcycle bearing Registration No.TN-31-AU-0181 and A1 aiming the face of P.W.3, threw acid which was filled in a syringe. Luckily, the umbrella which was carried by P.W.3 prevented her from the attack and she did not sustain any injury on her face. However, the umbrella got charred and she sustained injuries on her back of neck, back, shoulder and hair. Immediately P.W.2 and P.W.3 chased A1 and A2 and stopped the motorcycle. P.W.2 pulled both the accused down and caught hold of A1 and when he removed the handkerchief, they identified A1. Since, it was lunch time, many other research scholars and local people gathered at the scene of occurrence. In that situation in order to escape, A1 took a wooden log and gave a blow on the right wrist of P.W.2 due to which, he sustained grievous injuries. When P.W.2 and P.W.3 had asked A1 that why did he do, for which, he uttered the name of A4 and told that A4 only told him to do so. Thereafter, they were taken to hospital. On the same day at about 3.30 A1 went to liquor shop and having entered into an altercation with the salesman of the shop by uttering obscene words and threatened him. Immediately, P.W.1/the salesman lodged a complaint with the Parangipettai police station. On receipt of the same, the respondent police registered a case in Crime No.237 of 2012 for the offences under Sections 294(b) and 506(ii) IPC and went to the scene of occurrence for and prepared observation mahazar and rough sketch. At that time, it was learned that A1 was the one who involved in the incident of pouring acid on two students and he recorded the confession statement voluntarily given by A1 who was brought by P.W.1/the defacto complainant to the police station pursuant to which, A1 took the police party to a place opposite to the Murugan temple at Kodimara Street in Parangipettai from where A1 produced an umbrella, disposable syringes (two units), a pair of gloves, and motorcycle bearing registration NO.TN-31-AU-0181. Thereafter, the motorcycle was identified by P.W.12, its owner who had stated that A1 used to take the vehicle from him. Thereafter, the Special Sub Inspector went to the place where the first incident took place and prepared the observation mahazar and rough sketch and during the course of enquiry, it revealed that the accused had also committed the offences punishable under Sections 324 and 307 IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and thereby, altered the offences. After completing the investigation, the respondent police filed the charge sheet for



14. Out of the 16 witnesses, P.W.1 is the defacto complainant and he has not supported the case of the prosecution. However, P.W.2 and P.W.3 who are the injured witnesses have clearly narrated the incident that they have come from West Bengal and doing their P.hd. at Annamalai University and A4 was their guide. While so, A4 developed enmity with P.W.2 and P.W.3 and used to torture them in many ways. On the date of occurrence, in order to take vengeance of the enmity, A4 with the help of other accused caused injuries to P.W.2 and P.W.3. Though the prosecution failed to establish the common intention among the four accused, the injured witnesses P.W.2 and P.W.3 who are the scholars, have clearly identified A1 and they have stated that when P.W.2 and P.W.3 were walking outside the campus, both A1 and A2 came in a two wheeler and pulled P.W.2. When he fell down, A1 threw acid on P.W.3. Luckily, the umbrella which was carried by P.W.3 prevented the attack of the accused to some extent. Thereafter, P.W.2 and P.W.3 managed to chase A1 and A2 and caught hold of A1 and removed his handkerchief which was tied to hide his face and identified the culprit as A1. Though P.W.3 in her evidence has stated that she is not sure about the identity of the rider of the motorcycle, however P.W.3 has clearly identified that A1 is the person who was seated in the pillion and threw acid on P.W.3 and attacked him with wooden log. Further, P.W.2 has also identified that A2 is the person who was driving the motorcycle. Therefore, the prosecution has established the case in identifying A1 and A2 and there is no dispute in identification of A1 and A2. However, the prosecution has not established any link between A1, A2 with A3 and A4.



15. P.W.2 one of the injured witness has clearly stated that A2 was the rider of the two wheeler in which A1 was a pillion rider and they were covering their faces with handkerchief. When A1 pulled P.W.2 the injured witness, P.W.2 fell down. At that time, A1 pressed the syringe which was filled with acid aiming the face of P.W.3. Luckily, P.W.3 was carrying an umbrella which prevented her from the attack of the accused and thereby, she did not sustain any injury on her face. However the umbrella got charred and she sustained injuries on her back side of the neck, back shoulder, hand and hair. Immediately, P.W.2 chased the accused and stopped their motorcycle and pushed both the accused down and caught hold of the first accused and when he removed the handkerchief from the face of A1, he saw his face and identified him and P.W.3 who also chased them, had seen the face of A1. Since the incident had happened during lunch time, many other Research Scholars and local people had gathered and surrounded both A1 and A2 and thereby, in order to escape, A1 took a wooden log and gave a blow on the right wrist of P.W.2 due to which, his hand got numb and he could not feel the pain. However, he managed to caught hold of the shirt of A1 and asked him why did he do that for which, A1 has replied that A4 only told him to do so. Therefore, it is clear that under the instigation of A4, A1 and A2/ the appellants have caused injuries to P.W.2 and P.W.3. However, both the injured witnesses P.W.2 and P.W.3 have not spoken anything about the third accused. Further, it was not proved that only A4 had instigated the other accused. In the absence of cogent evidence against A3 and A4, the trial Court acquitted both A3 and A4 from the charges framed against them. Though, P.W.5,6,8 and 9 had given statements before the police, subsequently they have not supported the case of the prosecution and during examination of witnesses, they turned hostile. Though, the independent witnesses have not supported the case of the prosecution, P.W.2 and P.W.3 who are injured witnesses have clearly narrated the incident. P.W.4 the Scientific Officer has given a report that the material object was found with acid content. P.W.7 Assistant Professor in the Annamalai University has stated that he heard about the incident through his College Dean at about 3 p.m. on 08.06.2012 and as per the instruction of his Dean, he went to police station and saw P.W.1 and P.W.2 in the police station. P.W.13 Chief Civil Surgeon has clearly stated that the Doctor who treated P.W.2 and P.W.3 has opined that the injuries sustained by the P.W.3 is grievous in nature and in order to



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prove the same the wound certificate was marked as Ex.P.9 and further she has opined that the injuries sustained by P.W.2 are simple in nature and in order to prove the same the wound certificate was marked as Ex.P.10.

16. On a combined reading of evidence of P.W.2 and P.W.3 injured witnesses, P.W.4 Scientific Officer, P.W.7 Assistant Professor in Annamalai University, P.W.13 Chief Civil Surgeon, Ex.P.2 Chemical report, and Exs.P.9 and 10 wound certificates, this Court finds that A1 and A2, the appellants herein have committed the offences punishable under Section 324 and read with 34 IPC. On the date of occurrence, A1 and A2 came in a two wheeler and A1 poured acid on P.W.3 and also attacked P.W.2 with wooden log and caused him grievous injuries. Therefore, it is clear that both of them have got common intention and the wound certificates reveal that P.W.2 and P.W.3 sustained injuries due to the attack made by A1 and A2. Therefore, this Court finds that the appellants herein have caused the injuries on P.W.2 and P.W.3 and the chemical report and the wound certificates also strengthens the same.

17. In the opinion of this Court, the trial Court has rightly appreciated the entire evidence and this Court does not find any merit in the appeal. Though the trial Court acquitted all the accused from the other offences, however convicted A1 and A2 for the offences punishable under Sections 324 read with 34 IPC. This court does not find any reason to discard the evidence of the injured witnesses P.W.2 and P.W.3. Though the accused attempted to disprove the case of the prosecution by examining D.W.1 and marking Ex.D1, the Court found that the defence witness would not be helpful to the case of the appellants when particularly P.W.2 and P.W.3 the injured witnesses have clearly spoken about the offences committed by A1 and A2 the appellants herein. Further, the medical evidence also corroborated the same. Therefore, the evidence of P.W.2 and P.W.3 are cogent, consistent and natural which inspires the confidence of this Court. The contradictions pointed out by the learned Counsel for the appellants are not material contradictions which would not affect the case of the prosecution. Therefore, the prosecution has established the case for the offences punishable under Section 324 read with 34 IPC against A1 and A2, the appellants herein and there is no reason to disbelieve the evidence of the injured witnesses P.W.2 and



P.W.3. There is no merit in the appeal and the appeal is liable to be dismissed.

18. In view of the above, the Criminal Appeals stand dismissed confirming the Judgment dated 23.12.2020 passed by the learned Sessions Judge, Mahila Court, Cuddalore in S.C.No.20 of 2016. It is reported that the appellants /accused are on bail since the sentences awarded have been suspended by this Court vide order dated 25.01.2021 and 02.02.2021. Hence, the trial Court is directed to secure the appellants/accused to undergo the remaining period of sentence, if any. The period of incarceration already undergone, shall be given set off.

Sd/-

Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

1. The Sessions Judge, Mahila Court, Cuddalore
2. The Inspector of Police
Parangipettai Police Station,
Cuddalore.
3. The Public Prosecutor Officer, High Court, Madras.

Copy to

The Section Officer, Criminal Section, High Court, Madras.

+1CC to M/s.R.Abdul Mubeen, Advocate, SR.No.43182

+2CCs to M/s.K.Sukumaran, Advocate, SR.No. 43185

Criminal Appeal Nos.29 and 39 of 2021

AJS(CO)

B.VC (12/10/2021)