



BAIL SLIP

The appellant/accused nemely Karuppasamy S/o.Kuppusamy was directed to be released on bail in and by the order of this court dated 09.05.2019 and made in CrI.M.P.6510/2019 in CrI.A.No.267/2019 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.267 of 2019
and
CrI.M.P.6510 of 2019

Karuppasamy

... Appellant/Accused

Vs.

State rep. By
Inspector of Police,
Avinasipalayam Police Station,
Avinasipalayam,
Tirupur.
Crime No.70 of 2017

... Respondent/Complainant

PRAYER:

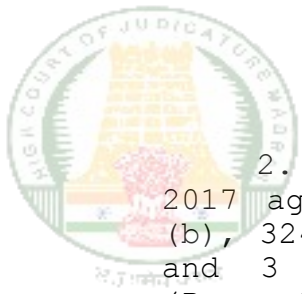
This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the Judgment made in Special S.C. No.9 of 2017 dated 31.01.2019 on the file of the Principal District and Sessions Judge, Tiruppur.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.S.Sugendran
Govt. Advocate (CrI.Side)

J U D G M E N T

The present criminal appeal has been filed to set aside the Judgment made in Special S.C. No.9 of 2017 dated 31.01.2019 on the file of the learned Principal District and Sessions Judge, Tiruppur.



2. The respondent-police registered a case in Crime No.70 of 2017 against the appellant for the offence under Sections 294 (b), 324, and 506(ii) IPC and also Sections 3 (1) (r), 3 (1) (s) and 3 (2) (va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. After investigation, the respondent-police laid charge sheet before the learned Principal District and Sessions Judge, Tiruppur.

3. After completing formalities, the learned Sessions Judge taken the case on file in Spl.S.C.No.09 of 2017 and framed charges against the appellant for the offence under Sections 3 (1) (r), 3 (1) (s) and 3 (2) (va) of SC/ST Act and Sections 294 (b), 324 and 506(ii) IPC.

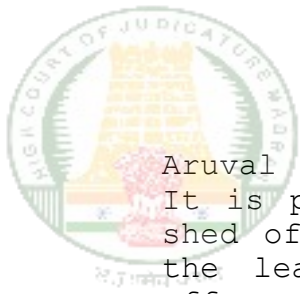
4. After framing charges, during trial, in order to prove the case of the prosecution, as many as 11 witnesses were examined as PW.1 to PW.11 and 12 documents were marked as Ex.P1 to Ex.P12 on the side of the prosecution. Besides one material object was exhibited.

5. After completing examination of prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant by questioning under Section 313(1)(b) Cr.P.C., for which the appellant denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

6. After hearing the arguments advanced on either side and considering the materials, the learned Sessions Judge, found that the appellant was not guilty for the offence under Sections 3 (1) (r), 3 (1) (s) and 3 (2) (va) of SC/ST Act and also Sections 294(b) and 506(ii) IPC and acquitted the appellant from the said charges. Further, learned Sessions Judge found guilt of the appellant for the offence under Section 324 IPC and the appellant was convicted and sentenced to undergo one year simple imprisonment and pay a fine of Rs.1,000/- in default to undergo further period of 3 months simple imprisonment. Challenging the said judgment of conviction and sentence, the appellant/accused has filed the present criminal appeal before this Court.

7. Learned counsel for the appellant would submit that no offence has been made out and the prosecution failed to establish its case beyond reasonable doubt. PW.2 and PW.3 who are said to be the eyewitnesses have not supported the case of the prosecution, and no independent witnesses have supported the case of the prosecution.

8. Even in the cross examination, the Doctor has not stated that it is a fresh injury. Even though the alleged weapon viz.,



Aruval was recovered, it has not been sent to the Forensic Lab. It is proved that the blood stain found in the said Aruval is shed off by the victim. In the absence of supporting evidence, the learned Sessions Judge, acquitted the appellant for the offence under Sections 3 (1) (r), 3 (1) (s) and 3 (2) (va) of SC/ST Act and also under Sections 294(b) and 506(ii) IPC but with the very same evidence, the appellant was convicted only for the offence under Section 324 IPC on the ground of sympathy. Therefore, without any material, the learned Session Judge has come to the conclusion that the appellant has committed the offence under Section 324 IPC, which warrants interference of this Court.

9. Learned Government Advocate (Crl. Side) appearing for the respondent would submit that though PW.2 and PW.3 turned hostile and PW.1 is the injured witness, who has clearly narrated the incident that the appellant attacked him with weapon viz., Aruval, and he was sent to the hospital for treatment. The Doctor, who gave treatment to the victim was examined as PW.7 and he has clearly stated that he made entry in the accident register, which clearly shows that known person has attacked the victim with aruval, which corroborates the evidence of the injured witness/PW.1. Though PW.2 and PW.3 have turned hostile, the injured witness has categorically stated about the incident and the medical evidence supported the case of prosecution and the Doctor evidence corroborated the evidence of the injured witness. Though the Trial Court disbelieved the evidence of the prosecution witnesses and acquitted the accused for the charges framed under Sections 294(b) and 506(ii) IPC and Sections 3 (1) (r), 3 (1) (s) and 3 (2) (va) of SC/ST Act, on the basis of evidences of PW.1, PW.5 and PW.7, the Trial Court rightly convicted the appellant for the offence under Section 324 IPC. Though the appellant caused injury with Aruval, the learned Magistrate only awarded a lenient sentence of one year and therefore, there is no mitigating circumstances to reduce the sentence and appeal is liable to be dismissed.

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

11. The case of the prosecution is that on 12.02.2017 at about 4.00 p.m., when PW.1 was in the coconut grove belonging to one Subramania Gounder in which he was employed as a Gardener, the appellant climbed the coconut tree and plucked tender coconuts which was questioned by PW.1, and when he provoked the appellant, the appellant attacked PW.1 with Aruval. In this regard, PW.1 made a complaint before the respondent-police. After investigation, the respondent-police laid charge sheet before learned Sessions Judge. After completing formalities, the learned Sessions Judge convicted the appellant. Hence, this



appeal.

12. This Court, being an Appellate Court, is the final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding.

13. In this case, totally 5 charges were framed against the appellant and in order to substantiate those charges, totally 11 witnesses were examined and 12 documents were marked on the side of the prosecution. Out of 11 witnesses, the injured witness was examined as PW.1.

14. In the evidence of PW.1, he had clearly narrated the incident that the appellant caused injury on his head by MO1.

15. Though PW.2, who is alleged to be present at the time of occurrence, had turned hostile and not supported the case of the prosecution. However, the Doctor, who admitted the appellant in the hospital, was examined as PW.7. The evidence of PW.7 is very clear that PW.1 sustained injury and as per his opinion, it is a small injury and the copy of the accident register was marked as Ex.P4. Therefore, in cases of this nature, when the evidence of the injured witness is clear, the same has to be considered.

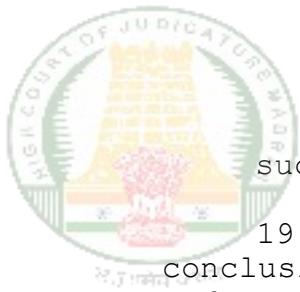
16. In this case, the evidence of the injured witness is cogent, consistent, convincing and trustworthy and there is no reason to discard the same and the evidence of PW.7, corroborate the evidence of PW.1 and Ex.P4, the copy of the accident register also clearly shows that one known person attacked PW.1 with Aruval, which is M.O.1 and he was injured.

17. Though the Doctor opined that the injury is simple in nature, the weapon is deadly and the injury is caused in the vital part of right side of his head. One of the charges was framed under Section 3 (2) (va) of SC/ST Act and Ex.P7 clearly shows that PW.1 belongs to the member of the Scheduled Caste and Ex.P6 clearly shows that the appellant is not being the member of the Scheduled Caste, attacked the victim with a weapon.

18. Section 3(2) (va) of the SC/ST Act, reads as under:-

"3(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:-

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for



such offences and shall also be liable to fine"

19. Therefore once the learned Sessions Court comes to the conclusion that the appellant attacked PW.1 with deadly weapon and caused head injury and convicted him under Section 324 IPC, the learned Sessions Judge ought to have convicted the appellant for the offence under Section 3(2)(va) of SC/ST Act also but by oversight the appellant was not convicted for the said offence. Considering the facts and circumstances of the case, this Court as an Appellate Court independently finds that from the evidence of PW.1, PW.7, and Ex.P4, the appellant has committed the offence under Section 324 IPC and there is no reason to disbelieve the evidence of PW.1, which was corroborated by the evidence of PW.7/Doctor and Ex.P5/Accident Register. Therefore, this Court finds that the appellant has committed the offence under Section 324 IPC and also under Section 3(2)(va) of the SC/ST Act. However, neither the victim nor the State has filed any appeal against that acquittal and the appellant has filed the appeal only against the conviction. Considering the scope of appeal, this Court comes to the conclusion that the appellant has committed the offence under Section 324 IPC.

20. As far as mitigating circumstances on sentence is concerned, the appellant used the deadly weapon/M.O.I and caused injury on head of the injured witness/PW.1 and considering the facts and circumstances of the case, there is no reason to modify the sentence and there is no merit in the appeal and appeal is liable to be dismissed. Accordingly, the criminal appeal is dismissed.

21. Registry is directed to advise the Designated Court to take due care while dealing with the Special Act for the offence of similar nature.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dm

To

1. The Principal District and Sessions Judge,
Tiruppur.



2. The Judicial Magistrate
Palladam, Tiruppur.

3. The Chief Judicial Magistrate
Tiruppur.

4. The Inspector of Police,
Avinasipalayam Police Station,
Avinasipalayam,
Tirupur.

5. The Public Prosecutor,
High Court, Madras.

6. The Superintendent,
Central Prison,
Coimbatore.

Copy To

1. The Registrar (Judicial)
High Court, Madras.

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

Crl.A.No.267 of 2019
and
Crl.M.P.6510 of 2019

KSM(CO)
PM/28/10/2021