



BAIL SLIP

The Appellant/Sole Accused Murugan was directed to be released on bail vide Order of this Court dated:14.12.2015 and made in MP 1 of 2015 in Crl.A(MD)No.369 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A. (MD) No. 369 of 2015

Murugan : Appellant/Sole Accused
Vs.

The State through,
The Deputy Superintendent of Police,
Kovilpatti,
Kovilpatti East Police Station,
Tirunelveli District.
(Crime No.947 of 2004). : Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the order of conviction and sentence, dated 19.12.2014 made in S.C.No.76 of 2008, on the file of the learned II-Additional District and Sessions Judge, Tirunelveli, and allow this appeal and acquit the appellant/accused from the charge levelled against him.

For Appellant : Mr.M.S.Jeyakarthik
For Respondent : Mr.M.Muthumanikkam
Government Advocate (Crl.side)

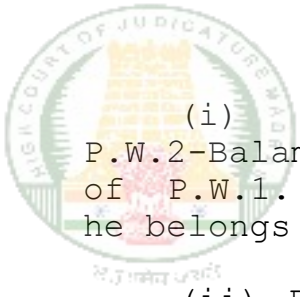
JUDGMENT

The present Criminal Appeal is directed against the conviction and sentence, dated 19.12.2014 made in S.C.No.76 of 2008, on the file of the learned II-Additional District and Sessions Judge, Tirunelveli.

2. The appellant is a sole accused. He stood charged for the offences punishable under Sections 324, 326 and 307 of IPC and Sections 3(1)(x) and 3(2)(v) of SC/ST (POA) Act.

3. After full-fledged trial, the learned II-Additional District and Sessions Judge, Tirunelveli found the appellant guilty under Section 324 (3 counts) of IPC, convicted and sentenced to undergo Rigorous Imprisonment for three years to each count. Challenging the said conviction and sentence, the appellant is before this Court with this present Criminal Appeal.

4. The relevant facts of the case, which gave rise to filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-



(i) P.W.1-Jeyalakshmi is the wife of P.W.3-Veluchamy. P.W.2-Balamurugan is her son. P.W.4-Muthu Irulandi is the relative of P.W.1. P.W.1 belongs to SC community and she know the accused as he belongs to Thevar community.

(ii) P.Ws.2 & 3 are having puncher shop near Srinivasa petrol bunk, Sathur road and near to the same the accused is running the meat stall. Both of them have erected shadow in front of their respective shops. One day prior to the occurrence, due to rain, the shadow erected by the accused was fell down and on the next day, in respect to the same, the accused asked the P.W.1 as what had happened and for that P.W.1 gave answer that due to the rain, the shadow was fell down.

(iii) In the meantime, on 04.12.2004 around 5.00 p.m., when P.W.1 was going to Puncher shop along with P.W.2 and P.W.3, the accused came there in his bicycle and abused the P.W.2 and P.W.3 by mentioning the caste name as "பள்ளக்கூதியுள்ள உன் பந்தல் மட்டும் எப்படி சாயாமல் இருக்கும். என் பந்தல் மட்டும் எப்படி சாயும் நான் உங்களை வெட்டாமல் விட மாட்டேன். இதோடு பள்ளக்கூதியுள்ளே ரோட்டில் கடை வைத்திருக்கக் கூடாது ஒழிந்து போங்கள்" after abusing as above, he assaulted the P.W.2 on his right hand, chest and thigh by using the bill hook (M.O.1). When P.W.3 intervened, the accused assaulted him on his right shoulder, left index finger and in the right wrist. Resultantly, P.W.3 became unconscious and the flesh hang in P.W.2's hand. In the said transaction, the accused assaulted the P.W.4 also. After the occurrence, all the injured were went to the Kovilpatti Government Hospital through auto.

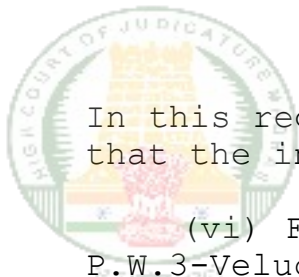
(iv) In the said hospital, P.W.10-Dr.Sankar, who is an Assistant Medical Officer, on the same day around 5.45 p.m., examined the injured (P.W.2) and found the following injuries:-

1. cut injury of 15 x 7 cm x bone depth from right forehand to right wrist.
2. cut injury of 5 x 3 cm x bone depth on left chest
3. cut injury of 5 x 3 cm x bone depth on left upper hand
4. cut injury of 5 x 3 cm x bone depth on left forehand
5. cut injury of 5 x 2 cm x bone depth on left wrist
6. cut injury of 5 x 2 cm x bone depth on left thigh

In this regard, he issued an Accident Register under Ex.P.9 stating that the injury No.1 sustained by P.W.2 was grievous and the other injuries sustained by him are simple in nature.

(v) Afterwords, on the same day, around 5.50 p.m., he examined P.W.4-Muthu Irulandi and found the following injuries:-

'cut injury of 10 x 5 cm x bone depth from left forehand to wrist'



In this regard, he issued an Accident Register under Ex.P.11 stating that the injuries sustained by P.W.4 was simple injuries.

(vi) Further, on the same day around 6.10 p.m., another injured P.W.3-Veluchamy was appeared before him for treatment, and on such time, he found the following injuries:-

1. cut injury of 7 x 5 cm x bone depth on right shoulder
2. cut injury of 1 x 1/2 cm and left thumb finger was fractured in half
3. left index finger cut and it was fractured in the middle
4. cut injury of 5 x 2 cm x bone depth on right wrist

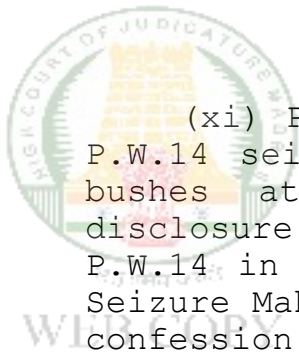
After noting down the said injury, he issued an Accident Register under Ex.P.10 stating that the above referred injuries are grievous in nature. He advised the P.Ws.2 to 4 to go to TVMC Hospital for further treatment.

(vii) In the meantime, after admitting the injured in the hospital, P.W.1 along with her sister-in-law went to the Kovilpatti East Police Station at about 8.00 p.m., and lodged a complaint under Ex.P.1.

(viii) On receipt of the said complaint, P.W.12-Santhosh Kumar, the then Sub-Inspector of Police, Kovilpatti East Police Station, on 04.12.2004 around 20.00 hours registered a case against the accused in Crime No.947 of 2004 under Sections 324 and 307 of IPC. The printed FIR was marked as Ex.P.12. After registering the case as above, P.W.12 forwarded the copy of the FIR to P.W.14 for investigation.

(ix) P.W.14-Rajagopal, the then Inspector of Police, Kovilpatti East Police Station, on receipt of the said FIR, took up the same for investigation. On the same day, around 8.45 p.m., he visited the scene of occurrence and in the presence of witnesses, he prepared an Observation Mahazar under Ex.P.16. He drawn the Rough Sketch and the same was marked as Ex.P.14. In the presence of P.W.6-Rajendran and P.W.7-Kannan around 10.30 p.m., he seized the Green Colour Hercules Cycle (M.O.2), Bloodstained sand (M.O.3) and Ordinary sand (M.O.4) under the cover of Seizure Mahazar (Ex.P.15). He examined the injured and recorded their statements.

(x) In the mean time, he was intimated that the accused was surrendered before the Judicial Magistrate, Srivaikundam and after receipt of the said intimation, on 10.12.2004, he submitted an application before the Judicial Magistrate through which he is praying for the custody of the accused and in turn, the same was ordered in his favour. Thereafter, after taking the accused into the police custody, he examined the accused and recorded the confession statement from him.



(xi) Pursuant to the disclosure statement given by the accused, P.W.14 seized the bill hook (M.O.1) which was hidden under thorn bushes at Eluppaioorani Vilaku, Karuppasamy Kovil. The said disclosure statement and the Seizure Mahazar have been prepared by P.W.14 in the presence of P.W.8-Arulmani and one Alagusubbu. The Seizure Mahazar was marked as Ex.P.7 and the admitted portion of the confession statement given by the accused was marked as Ex.P.6. On 07.01.2005, P.W.14 examined the doctor, who has given treatment to the victims, and obtained wound certificates. Subsequently, on 14.03.2005 after completing the investigation he filed a final report before the Judicial Magistrate and thereafter the case has been committed to the Sessions Court. Wherein charge under Section 324, 326 and 307 of IPC were framed against the accused.

(xii) During the course of trial proceedings, in order to prove the case of the prosecution, as many as 15 witnesses i.e., P.W.1 to P.W.15 were examined on the side of the prosecution and 17 documents were exhibited as Ex.P1 to Ex.P17, besides 4 Material Objects (M.O.1 to M.O.4). The accused denied the charges and opted for trial. Hence the accused was put on trial.

(xiii) During the time of trial after recording evidence from P.W.1, the learned trial Judge came to the conclusion that the evidence given by P.W.1 attract the provisions punishable under the SC/ST Act and after came to the said conclusion, instead of framing the additional charge by himself, he transmitted the entire case bundle to the Judicial Magistrate with a direction to order for further investigation. In fact, the said order passed by the trial Judge is nothing but a procedural irregularity. However, being the reason that the same is a procedural irregularity, the same would not vitiate the entire proceedings.

(xiv) Subsequent to that in view of the proceedings issued by the Superintendent of Police, Thoothukudi, P.W.15-Kannan, the then Deputy Superintendent of Police, Kovilpatti, conducted further investigation and after obtaining the community certificate to the injured, he filed a final report along with additional materials. Before the trial Court, the community certificate pertains to the accused was marked as Ex.P.8 and the community certificates relating to P.Ws.1 to 4 were marked as Ex.P.13(s).

5. From the above materials, the learned trial Judge framed the additional charges for the offences punishable under Sections 3(1) (x) and 3(2) (v) of SC/ST (POA) Act.

6. Before the trial Court, P.W.1-Jeyalakshmi spoken about the occurrence as during the relevant point of time the accused after mentioning caste and insulting substandard by using the bill hook attacked on her son's right hand, chest and thighs. When her husband blocked the same, the accused assaulted her husband also on his head and back. Then the accused assaulted her husband on his



left index finger and right wrist. She has further stated that due to the impact of the attack made by the accused, her husband become unconscious and therefore, they were all went to the Kovilpatti Government Hospital through auto.

(ii) P.W.2-Balamurugan, who is one of the injured speaks about the occurrence as on 04.12.2004 around 5.15 p.m., while at the time he was in his shop along with P.W.1 and one Lakshmi, the accused Murugan came there with bill hook and asked about the falling of shadow (பந்தல்). He gave further evidence as after insulting him by saying his caste name, the accused attacked on his right hand, left shoulder and on the chest. Similarly, he attacked the P.W.2's father (P.W.3) on his right shoulder and the left index finger. It is the further evidence that when P.W.4 attempted to intervene the accused attacked him on the left hand and thereafter, he ran away from the scene of occurrence.

(iii) P.W.3-Veluchamy is the another injured spoken about the occurrence as during the time of occurrence, due to the result of wordy quarrel, the accused attacked him on the right wrist and right shoulder. He has also speaks about the attack made by the accused on P.Ws.2 & 4.

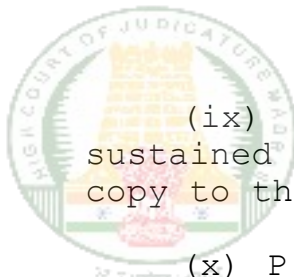
(iv) P.W.4-Muthu Irulandi has stated before the trial Court that during the relevant point of time, the accused by using the bill hook attacked P.Ws.2 & 3 and when at the time, he attempted to prevent the same, the accused attacked him on the left wrist.

(v) P.W.5-Natarajan is the auto driver has stated in his evidence as on 04.12.2004 around 5.00 p.m., he brought the injured to the hospital.

(vi) P.W.6-Rajendran and P.W.7-Kannan are the witnesses attested in the Observation Mahazar and Seizure Mahazar. Before the trial Court, they did not give any evidence in support of the case of the prosecution, therefore, both of them were treated as hostile witnesses.

(vii) P.W.8-Arulmani, the then Village Administrative Officer, gave evidence before the trial Court as 10.12.2004 around 5.30 p.m., in Kovilpatti East Police Station, in his presence, the Inspector of Police examined the accused and recorded the confession statement. Further, in view of the said statement, P.W.14 recovered the bill hook (M.O.1) under the cover of Mahazar.

(viii) P.W.9-Jeganathan, the then Deputy Tashildar, Kovilpatti, gave evidence as during the relevant point of time, in view of the requisition given by P.W.15, he issued a Community Certificate to the accused under Ex.P.8 stating that the accused belongs to the Maravar Community.



(ix) P.W.10-Dr.Sankar gave evidence in respect to the injury sustained by P.Ws.2 to 4 and about the issuance of Accident Register copy to that effect.

(x) P.W.11-Murugan is an eye witness to the occurrence, he did not give any evidence in support of the case of the prosecution. Hence, he was treated as a hostile witness.

(xi) P.W.12-Santhosh Kumar, the then Sub-Inspector of Police, speaks about the receipt of complaint from P.W.1 and about the registration of the case.

(xii) P.W.13-Muthuramakrishnan, the then Tashildar, Kovilpatti, gave evidence in respect to the issuance of Community Certificates to P.Ws. 1 to 4.

(xiii) P.W.14-Rajagopal and P.W.15-Kannan are Police Officers speaks about the investigation, further investigation and about the filing of final report.

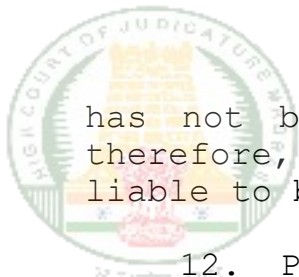
7. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor mark any document on his side.

8. Having considered all the above materials and on considering the arguments advanced by the learned counsels appearing on either side, the trial Court came to the conclusion that the appellant/accused is guilty under Section 324 (3 counts) of IPC, convicted and sentenced as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court with this appeal.

9. I have heard Mr.M.S.Jeyakarthik, learned counsel appearing for the appellant/accused and Mr.M.Muthumanikkam, learned Government Advocate (Crl.side) appearing for the State. I have also perused the records carefully.

10. The learned counsel appearing for the appellant would contend that before the trial Court, P.W.1, who is the wife of P.W.3, gave evidence as after seeing the occurrence she only admitted the P.Ws.2 to 4 in the hospital. On the other hand, the doctor, who issued the Accident Register copy in respect to the injuries sustained by P.Ws.2 to 4, endorsed in the Accident Register copy as the injured were admitted by one Auto driver. Which reveals the fact that P.W.1 gave a false evidence before the trial Court.

11. He would further submit that the evidence given by P.Ws.2 of contradiction, the said evidence given by them



has not been corroborated through the independent witnesses and therefore, the conviction and sentence awarded to the appellant is liable to be set aside.

12. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent police would contend that in respect to the injuries sustained by P.Ws.2 to 4, the evidence given by them was corroborated through the medical evidence and therefore, it cannot be said that the evidence given by the injured witnesses having lot of contradictions. According to him, the trial Court after considering all the aspects, came to the correct conclusion that the appellant is found guilty under Section 324 (3 counts) of IPC and the same does not needs interference. He prays for dismissal of the appeal.

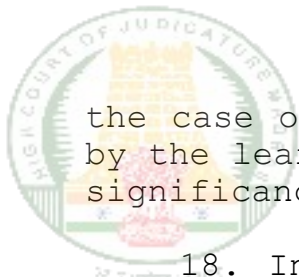
13. I have considered the rival submissions made by the learned counsels appearing on either side.

14. Initially, on going through the evidence given by the doctor, who gave treatment to P.Ws.2 to 4, and in view of the entries made in Ex.Ps.9 to 11 which are all the Accident Register copies issued in respect to injury sustained by P.Ws.2 to 4 the same discloses that P.Ws.2 & 3 sustained grievous injuries.

15. In this occasion, on going through the judgment rendered by the trial Court, the trial Court observed that during the time of occurrence the accused is not having any intention to kill P.W.2, further, it was observed as the X-rays which had taken to identify the nature of injury has not been produced, it cannot be concluded that the offences under Sections 307 and 326 of IPC are proved against the accused beyond reasonable doubt. After observed as above, the trial Court has convicted the accused under Section 324 (3 counts) of IPC.

16. Now, on going through submissions made by the appellant counsel, in the evidence given by P.W.1, she has specifically stated before the trial Court that she only had admitted the injured in the hospital and in otherwise, the entries made in the Accident Register report seems that one Auto driver brought the injured to the hospital and admitted them as a inpatient. In this regard, the evidence given by P.W.1 is having a contradiction and created a doubt whether she has admitted the P.Ws.2 to 4 in the hospital.

17. However, it should be necessary to understand that being the reason that the evidences given by the injured are all corroborated through the evidence given by the medical officer, the said contradiction now narrated as above is not a material one. Even assuming that the evidence given by P.W.1 is a false and she is not an eye witness to the occurrence, considering the fact that the evidence given by the injured is found reliable and inspire the



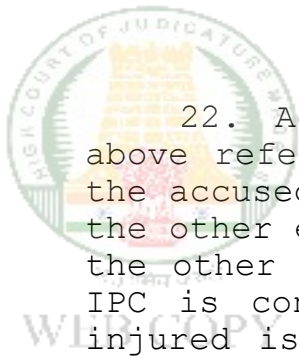
the case of the prosecution. Accordingly, the first submission made by the learned counsel appearing for the appellant is not having any significance.

18. In respect to the another submission, it is true that the evidence given by the injured has not been supported through the independent witnesses. On the other hand, as rightly pointed out by the learned Government Advocate that the said evidence was corroborated through the medical evidence. Therefore, in the said circumstances, it is necessary to find out whether the solicitory testimony of the injured is sufficient to accept the case of the prosecution with entirety.

19. Sofaras the criminal cases are concerned as observed by the Supreme Court, the evidence of an ocular witness, if accepted, is sufficient to warrant conviction though in appropriate cases the Court may as a measure a caution seek some confirming circumstances from other sources. But ordinarily, the evidence of a truthful eye witness is sufficient without anything more, to warrant a conviction and cannot, for instance, be made to depend for its acceptance on the truthfulness of other items of evidence such as recovery of weapons etc. at the instance of the accused by the police. The Supreme Court refused to subscribe to the view that testimony of an ocular witness is like "one of the three legs on a tripod" and if one slips the tripod collapses. Evidence of a witness when is neither wholly unacceptable nor wholly impeccable, corroboration is essential.

20. Herein it is a case, during the time of occurrence, the accused by using the bill hook simultaneously attacked 3 persons and caused injury in all over the body and therefore, it is impossible to see the occurrence accurately. Therefore, it is obvious on the part of the witnesses to say about the nature of attack committed by the accused with minor contradictions. In this case, the evidences given by the injured are all in the same way and therefore, the minor discrepancies which occurred in the evidences given by P.Ws.2 to 4 cannot be looked into for resolving the issue raised in this case. The trial Court also took the same view and accept the case of the prosecution. In otherwise, in respect to the minor discrepancies in a case of **Bhognibhai vs. State of Gujarat** reported in **AIR 1983 SC 759** our Hon'ble Apex Court has held that minor discrepancies overmuch importance cannot be attached.

21. Further, in a case of **Boya Ganganna v. State of Andhra Pradesh** reported in **1976 (1) SCC 584**, our Hon'ble Apex Court has held that where illiterate and ignorant women are witnesses, their evidence cannot be rejected for minor contradictions. Further, in a case of **Beti Padia v. State of Orissa** reported in **AIR 1981 SC 1163**, our Hon'ble Apex Court has held that in a case of rustic ladies, minor discrepancies are to be ignored.



22. Accordingly, following the proposition laid down in the above referred judgments, here it is a case, being the reason that the accused was convicted under Section 324 of IPC (3 counts) alone, the other evidences given by the prosecution witnesses in respect of the other offences are to be ignored and insofar as Section 324 of IPC is concerned for the sole reason that the evidence given by injured is found in correspondence with the evidence given by the medical officer. This Court affirmed the findings given by the trial Court.

23. In respect to the quantum of punishment the learned counsel appearing for the appellant would contend that the alleged occurrence had happened in the year of 2004 and thereafter, till now the accused is facing trial. He would further submit that the accused is the only bread winner of his family and therefore, it is necessary to show some leniency in awarding the sentence.

24. Now, on considering the said submission with the relevant records, it is true that the alleged occurrence had happened in the year 2004 and thereafter, for the past 17 years the accused is before the Judicial forum and facing the trial. It is also admitted that both the victims and the accused are all residing in the same village. Further, it was stated that the accused is having two children. Therefore, considering the said aspects, I am of the considered view that if the accused is further convicted it would cause great impact in his family.

25. Accordingly by considering the above aspects, I am of the opinion that it would be appropriate to modify the sentence as follows:-

(I) the accused is convicted under Section 324 IPC (3 counts) and sentenced to undergo rigorous imprisonment for four months and to pay a fine of Rs.10,000/- to each count (Total fine amount of Rs.30,000), in default to undergo simple imprisonment for one month each.

(ii) Out of the total fine amount, the trial Court is directed to disburse the same to P.Ws.2 to 4 each Rs.10,000/-. The period of imprisonment already undergone by the appellant shall be set off under Section 428 of Cr.P.C. The trial Court is directed to take steps to secure the custody of the accused and make him to undergo the remaning period of the sentence, if any.

26. In the result, the Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To:-

- 1.The IInd Additional District & Sessions Judge,
Tirunelveli.
- 2.The Principal District & Sessions Judge,
Tirunelveli.
- 3.The Deputy Superintendent of Police,
Kovilpatti,
Kovilpatti East Police Station,
Tirunelveli District.
- 4.The Superintendent,
Central Prison, Palayamkottai.
- 5.The Judicial Magistrate No-I,
Kovilpatti,
- 6.Do Through The Chief Judicial Magistrate,
Kovilpatti,
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 8.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-29681[F]
dated 20/09/2021)

Cr1.A(MD)No.369 of 2015
20.09.2021

NSM (CO)
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