



BAIL SLIP

The Petitioner/Appellant namely muthupandi male, S/o. **Thothodu@Elango** was directed to be released on bail as per order of this court dated 20.04.2016 made in CRL.MP(MD).No. 3217 of 2016 in CRL.A.(MD).No. 123 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.04.2021

DELIVERED ON : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.123 of 2016

Muthupandi : Appellant

Vs.

State represented by the Inspector of Police,
B-14, Sellur Police Station,
Madurai City.
(in Cr.No.215 of 2004)

: Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records in Special S.C.No.64 of 2010 on the file of the III Additional District and Sessions Judge (PCR), Madurai, dated 18.01.2016 and to set aside the same.

For Appellant	:Mr.T.A.Ebenezer
For Respondent	:Mr.K.K.Ramakrishnan
	Additional Public Prosecutor

JUDGMENT

This appeal is filed by accused as against the judgment of conviction and order of sentence passed by the learned III Additional District and Sessions Judge (PCR), Madurai, dated 18.01.2016, in Special S.C.No.64 of 2010.

2.Heard Mr.T.A.Ebenezer, learned Counsel appearing for the appellant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent.

3.The case of the prosecution is that PW-1, Kannan, belongs to Pallar caste under SC/ST Act. He is involved in dairying and selling milk. Some time in the month of January, 2004, the de-facto complainant had warned some youngsters, who were teasing the girls in his neighbourhood. Subsequently, there was wordy quarrel between the said youngsters and Kannan, de-facto complainant. The elders in the village intervened and the matter ended up amicably. With that



incident in mind, the accused, Muthupandi, on 26.02.2004 at around 07.00 pm, when the de-facto complainant had gone to the tea stall belonging to Kumar situated on the street, where the de-facto complainant, Kannan, resides. The accused Muthupandi picked up quarrel with him. Therefore, the de-facto complainant asked him why he unnecessarily picked up quarrel with him. At this, the accused took out a knife that he was hiding in his body and attacked him with the knife.

4.The de-facto complainant tried to ward off the attack, thereby, he suffered injuries on his left thumb and left index finger. He suffered cut injuries and also stab injuries on his thigh. The accused uttered the words, "you fellow belonging to Pallar community; how can you create problems with me; if you make problem with me, I will finish you." The passersby in that place intervened and took the injured/de-facto complainant Kannan to the Government Rajaji Hospital, Madurai. He was admitted as in-patient due to the injuries. The duty Medical Officer informed the police about the attack and the injury suffered by the victim. Therefore, the police officials from Sellur Police Station, went to Ward No.99, Government Rajaji Hospital where the injured Kannan was undergoing treatment and recorded his statement.

5.The oral statement was treated as complaint, under Ex-P1, in which, the police has recorded the statement of de-facto complainant. The de-facto complainant, who was undergoing treatment, had affixed his signature. The same is treated as complaint under Ex-P1 and a case was registered in Cr.No.215 of 2004 of Sellur Police Station, under Ex-P5, under Sections 324 and 506(ii) IPC and Section 3(1)(x) SC/ST(POA) Act, on 27.02.2004 by 01.00 am, by the Sub Inspector of Police, Sellur Police Station, PW-8, Muthuraj.

6.The original complaint and the original FIR under Ex-P5 were forwarded to the learned Judicial Magistrate, Madurai and copy of the same was forwarded to the higher officials in the police department including the Assistant Commissioner of Police, Madurai City, PW-9, Petchi Muthu. On receipt of the FIR under Ex-P5 and the copy of the complaint, under Ex-P1, the Investigation Officer, the Assistant Commissioner of Police, PW-9, had proceeded to the scene of occurrence, Kumar Tea Stall, Ashok Kumar, Bhagyanatha Puram. He prepared the rough sketch under Ex-P7 and observation mahazer under Ex-P6 in the presence of witnesses, Kannan, Baskar, Pandikumar, Ramesh and Arumugam and recorded their statements. He further went to the hospital, where, PW-1, Kannan, was admitted for treatment and recorded his statement. He arrested the accused Muthupandi at Sellur in the presence of witnesses. He voluntarily confessed to the crime and offered to hand over the weapons used in the attack on the defacto complainant. He took PW-9, the Assistant Commissioner of Police to Thathaneri Bharathi Nagar Cemetery and took out the knife used in the attack on the victim, PW-1, Kannan. The same was



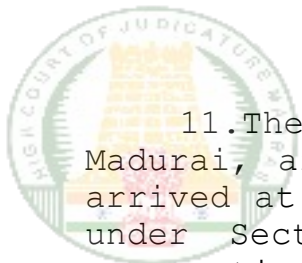
recovered by the Assistant Commissioner of Police, PW-9, Petchi Muthu in the presence of witnesses. He prepared seizure mahazer under Ex-P3 and recorded the confession statement of the accused Muthu Pandi leading to the recovery under Ex-P2.

7. He visited the hospital and recorded the statement of the Medical Officer, Dr. Gayathri, PW-7, who treated the injured PW-1, Kannan. He went to the Madurai North Taluk Tasildar Office and obtained the caste certificate of PW-1, Kannan under Ex-P9 and recorded the statement of Tahsildar, Madurai North. Then, he examined the Sub Inspector of Police, Muthu Raj, PW-8, who registered the case under Ex-P5 and recorded his statement and laid final report under Section 173(4) Cr.P.C., before the Court of the learned Judicial Magistrate.

8. The learned Judicial Magistrate, Madurai, took cognizance of the final report filed by PW-9, Petchi Muthu, the Assistant Commissioner of Police, numbered the case as P.R.C.No.55 of 2004 and sent summons to the accused. On appearance of the accused and on consideration of the materials available from the case records, the learned Judicial Magistrate was of the opinion that this case is triable by the Court of the Sessions. Therefore, the case was committed after furnishing copies to the accused and questioned him regarding his ability to engage a Counsel and defend the case effectively. As the accused answered positively, the case was committed to the Court of Session. The Principal District Sessions Madurai, on receipt of the PRC case records had taken cognizance and numbered the case as Special S.C.No.64 of 2010. On appearance of the accused, the learned Principal Sessions Judge made over the case to the Court of the learned III Additional Sessions Judge (PCR cases), at Madurai.

9. The learned III Additional Sessions Judge (PCR cases), at Madurai, on appearance of the accused, framed charges under Sections 324, 326 and 506(ii) IPC and Section 3(1)(x) SC/ST (POA) Act. The charges were read over to the accused and explained in Tamizh. The accused denied the charges and claimed to be tried. Therefore, the trial was fixed. During trial, the prosecution had examined the witnesses PW-1 to PW-9 and marked documents as Ex-P1 to Ex-P9 and marked MO-1, knife used by the accused to attack PW-1.

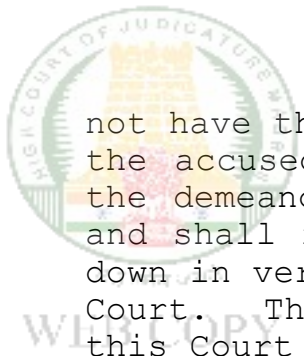
10. After the prosecution evidence was closed, the accused was examined under Section 313(1) Cr.P.C., and he was questioned about the incriminating evidence against him from the evidence of PW-1 to PW-9. The accused denied the incriminating evidence against him and stated that the case was falsely foisted against him. After the proceedings under Section 313(1) Cr.P.C., the accused had not let in evidence. No witnesses were examined as defence witness. The prosecution and defence arguments were heard.



11.The learned III Additional Sessions Judge (PCR cases), at Madurai, after hearing the arguments and on assessment of evidence arrived at a conclusion that the charges framed against the accused under Section 3(1)(x) SC/ST (POA) Act was not proved by the prosecution beyond reasonable doubt. The charges under Sections 326 and 506(ii) IPC also had not been proved. The offence under Section 324 IPC alone was found to be proved. Therefore, the learned Trial Judge, by his judgment, dated 18.01.2016, had found the accused guilty of the charge under Section 324 IPC and convicted the accused to undergo one year rigorous imprisonment and fine of Rs.1,000/- failing which, to undergo three months simple imprisonment. Aggrieved by the conviction and sentence imposed against the accused, the present appeal had been filed.

12.The learned Counsel for the appellant/accused submitted that the case of the prosecution had not been proved beyond reasonable doubt. As per the SC/ST(PoA) Act, when an offence had been reported to the Police Station and FIR is registered. Based on the FIR, the Head of the Police of the District, if it is Commissionerate, the Commissioner has to pass order through his proceedings appointing the Investigation Officer. Likewise, if the Head of the Police is Superintendent of Police, he has to appoint an Officer, not below the rank of Deputy Superintendent of Police, as an Investigation Officer. Therefore, the offences under the provisions of SC/ST (PoA) Act having been included, the investigation by PW-9, the Assistant Commissioner of Police, is without any sanction. Therefore, the investigation itself is not maintainable. During the trial, the occurrence had not been proved by the corroborating witnesses. PW-2 and PW-3 remained hostile. The only charge proved is Section 324 IPC. Therefore, the case of the prosecution had to be thrown out and the accused is to be acquitted and the judgment of the learned III Additional District and Sessions Judge, Madurai, sentencing the accused to undergo one year rigorous imprisonment with fine of Rs.1,000/- is to be set aside.

13.The learned Additional Public Prosecutor replied to the arguments of the learned Counsel for the appellant and submitted that the charge under Section 324 of IPC had been proved through the evidence of PW-1, Kannan and the Doctor, who had issued the wound certificate under Ex.P-4 and the evidence of PW-6, Dr.Kannappan and PW-7, Dr.Gayathri, who had treated the PW-1. Therefore, the charges against the accused under Section 324 IPC had been proved through medical evidence. The findings arrived at by the learned Trial Judge are based on assessment of evidence as per the Indian Evidence Act. Therefore, the finding arrived at by the learned Trial Judge is not perverse. When the judgment arrived at by the learned Trial Judge is based on proper appreciation of evidence, the Appellate Court, even though comes to a different conclusion on the same set of evidence, the conclusion arrived at by the Appellate Court shall not be imposed on the Trial Court. Also, the Appellate Court does



not have the benefit of observing the demeanour of the witnesses and the accused. Therefore, the findings of the Trial Court based on the demeanour of the witnesses and the accused, has more weightage and shall not be disturbed lightly by the Appellate Court, as laid down in very many decisions of the Honourable Supreme Court and High Court. Therefore, the learned Additional Public Prosecutor prayed this Court that the appeal filed by the accused has no merits and is to be dismissed. If at all, the Court considers the case leniently, the sentence imposed under Section 324 of IPC may be modified and the accused cannot be acquitted.

14.The learned Additional Public Prosecutor further submitted that the word Latin *Maxim falsus in uno, falsus in omnibus* also cannot be accepted in all circumstances and the learned Additional Public Prosecutor relied on the reported Ruling of Honourable Supreme Court reported in **2019 (5) SCC 67**, in the case of **Mahendran vs State of Tamil Nadu** it has been held as under:

"A. Penal Code, 1860 - S.302 r/w S.149 - Common object to murder - Determination of - Out of 24 persons charged, A-1 to A-9 (A-1 to A-7 being the appellants herein) armed with stones and sickles alleged to have come to deceased's house; A-1 thereafter poured kerosene while A-2 set fire to roof; deceased when trying to flee assaulted deceased with sickles and stones resulting in his death - Presence of other accused at time of occurrence as part of crowd who lynched deceased, proved - Conviction of appellants for murder with aid of S. 149, confirmed."

15.The learned Counsel for the appellant/accused relied upon a ruling of the Hon'ble Supreme Court in **Ugar Ahir and others -vs- State of Bihar** reported in **AIR 1965 SC 277**. As there is medical evidence in support of the evidence of P.W.1, the reliance placed by the learned Counsel for the appellant/accused on the above said ruling will not apply to this case. The injured witness will not implicate a false person in spite of the person who caused injuries on him. Therefore, the presumption under Section 114 of the Indian Evidence Act is in favour of P.W.1-the injured. His evidence had been corroborated through the evidence of P.W.6-Dr.Kannappan and P.W.7-Dr.Gayathri.

16.The learned trial Judge had properly analysed and assessed the evidence and arrived at a just conclusion. Considering the fact that the injured P.W.1 had not suffered disfigurement or dismemberment, the conviction for offence under Section 324 of IPC warranting imprisonment for one year alone could be modified by retaining the fine imposed. The appellant/accused had already been imposed with a fine of Rs.1,000/- and he had paid the same. Therefore, the sentence of imprisonment alone is modified from one year to the period already undergone by the appellant/accused.



In the result, this appeal is partly allowed. The judgment of conviction is confirmed. The sentence of imprisonment alone is modified.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

To

1.The III Additional District and Sessions Judge (PCR),
Madurai.

2.Do thro,
The Pricipal Sessions judge,Madurai

3.The Inspector of Police,
B-14, Sellur Police Station,
Madurai City.

4.The Judicial Magistrate II Madurai.

5.Do Thro
The Chief Judicial Magistrate, Madurai.

6.The Superintendent, Central Prison,
Madurai.

7. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

Copy to

The Section Officer,Criminal Section(2C)
Madurai Bench of Madras High Court, Madurai

CRL.A. (MD) No.123 of 2016
03.09.2021

SR(CO)
KB(30.09.2021) 6P 10C