



WEB COPY

Bail Slip

The Appellants/Accused Nos.1 to 8
Mr.Silva, S/o.Israel
Mr.Alwin Richard, S/o.Israel
Mr.Rajamani, S/o.Chelladurai
Mr.Thennarasas@Thennarasu, S/o.Gnanasikamani
Mr.Koilraj@Dhinakaran Koilraj, S/o.Samuel
M/s.Punitha, W/o Rajamani
Mr.Devanesam, S/o/Aroackiyaraj
M/s.Sharmila, D/o.Israel

have been released on bail as per the order of this court made in
CRL MP(MD)No. 589 & 590 of 2016 in CRL A(MD) No.19 of 2016 dated
11/03/2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **23.08.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.A(MD)No.19 of 2016

- 1.Silva
- 2.Alwin Richard
- 3.Rajamani
- 4.Thennarasas @ Thennarasu
- 5.Koilraj @ Dhinakaran Koilraj
- 6.Punitha
- 7.Devanesam
- 8.Sharmila

: Appellants/Accused Nos.1 to 8

Vs.

State, rep. by
Inspector of Police,
Thaddarmadam Police Station,
Thoothukudi District.
(Cr.No.189 of 2014)

: Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374(2) of the
Code of Criminal Procedure, to set aside the conviction and
sentence, dated 16.12.2015 in S.C.No.319 of 2015, on the file of the
Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court),
Thoothukudi and acquit the appellants.

For appellants : Mr.V.Kathirvelu
Nos.1 to 6 & 8 Senior counsel for Mr.K.Prabhu

For appellant No.7 : Mr.S.R.Anbarasu

For Respondent : Mr.E.Antony Sahaya Prabahar
Government Advocate (Crl.side)



JUDGMENT

The present criminal appeal is directed against the conviction and sentence, dated 16.12.2015, made in S.C.No.319 of 2015, on the file of the Sessions Court, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.

2. The appellants are arrayed as accused Nos.1 to 8 in the above referred case. They stood charged for the offences punishable under Sections 148, 147, 452, 294(b), 324 r/w 149 and 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 3(i) of Tamil Nadu Public Property Damages and Loss Act. All the accused denied the charges as false and opted for trial. Therefore, they were put on trial on the charges.

3. After full-fledged trial, the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, came to the conclusion that the appellants were found guilty for the following offences and accordingly, they were convicted and sentenced as follows:-

Accused	Section	Sentence
A-1 to A5	148 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of one year.
A-6 to A8	147 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of six months.
A1 to A8	452 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for a period of one month.
A1	324 (2 counts) IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of two years for each count and directed to pay a fine of Rs.2,000/- for each count, in default to undergo rigorous imprisonment for two months (the sentences are run concurrently)
A3	324 IPC	Convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for two months.



A2,A4 & A5	324 r/w 149 IPC	Convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- each in default to undergo rigorous imprisonment for two months.
------------	--------------------	--

WEB COPY

Challenging the said conviction and sentence, all the accused are before this Court, by way of filing the 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-Muthukani is residing in Vedhakovil Street, Thattarmadam. She is working as Assistant in Noon Meal Centre. Being the reason both the accused and P.W.1 were residing in the same Village, P.W.1 known to the accused. During the relevant point of time, her son Suresh Jacob was working as a driver in Call Taxi, Tambaram at Chennai. During that time, he developed love affair with one Muthusaral and performed the marriage and the same has been registered. On 24.05.2014, at about 09.00 a.m., on coming to know that the said Muthusaral was in the house of P.W.1, all the accused with an intention to commit an offence, came there and criminally trespassed into the house of P.W.1 with deadly weapons. After entering into the house of P.W.1, all the accused scolded P.W.1 with filthy language, while so, the first accused Silva attacked P.W.1 with Wooden log (உடைமரக்கம்பு) in her right hand. Further, the third accused Rajamani attacked her with Wooden log (உடைமரக்கம்பு) in the left thigh, during that time, the fourth accused Thennarasan gave beatings to P.W.3 Prema, who is the sister of P.W.1, accused Nos.2 & 5 gave beatings to P.W.2 Suresh Jacob. At the same time, the accused Nos.6,7 & 8 scolded them in filthy language and the accused Nos.1 & 3 damaged the Samsung Television, which kept in the occurrence house. In the course of same transaction the accused Nos.2,4 & 5 damaged the bike, which has been parked in the house of P.W.1. Ultimately, after the said occurrence, on the same day, around 10.00 a.m., P.W.1 went to Thattarmadam Police Station and lodged a complaint before P.W.8 under Ex.P1. During the time of lodging the complaint, due to the reason that her hand was swollen, she did not write the complaint herself, but at the same time, her son wrote the complaint and thereafter, P.W.1 affixed her Thumb impression in the complaint.

(ii) P.W.8-Jeyaseelan Franklin, the then Head Constable, on receipt of the complaint given by P.W.1, registered a case in Cr.No.189 of 2014 for the offences punishable under Sections 147, 148, 323, 452, 506(ii) of IPC and Section 3 of TNPPDL Act and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The printed copy of the FIR was marked as Ex.P8. After registration of the case, he referred the injured to the hospital for taking



treatment. Further, he handed over the case records to P.W.9-Paul Issac, the then Sub-Inspector of Police, for investigation.

(iii) P.W.9-Paul Issac on receipt of the FIR, on the same day around 11.45 a.m., visited the scene of occurrence and in the presence of P.W.4-Aaseer Thomas and Vedamanickam he prepared an Observation Mahazar under Ex.P2. He drawn the rough sketch and the same has been marked as Ex.P9.

(iv) In continuation of investigation, in the presence of same witnesses, he recovered the Samsung Television, Bajaj Pulsar Bike bearing Registration No.TN-69-AW-9425 and 5 Wooden logs (cilkuf;fk;G) under the cover of Mahazar under Ex.P3.

(v) In the meantime, P.W.7-Dr.Aathikumar, attached with Government Hospital, Sathankulam, on 24.05.2014, while he was on duty, examined P.W.2 and found the following injuries:-

"(i) A contusion injury of about 4 x 2 c.m., on both elbows.

(ii) Nail scratch on the left arm.

(iii) A contusion of about 4 x 5 cm below left elbow.

(iv) Complaints of pain. "

According to him, the injuries sustained by P.W.2 was simple in nature. In this regard, he issued an Accident Register under Ex.P5.

(vi) On the same day, he examined P.W.1-Muthukani and found the following injuries:-

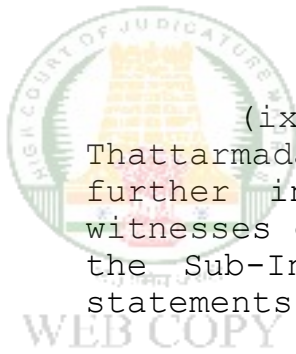
"(I) A big contusion of about 12 x 8 cm over right fore arm.

(ii) Complaints of pain on the back of her left thigh."

After noting down the said injuries, he referred P.W.1 to Tirunelveli Medical College Hospital, Palayamkottai for further treatment. As per the records, the injuries sustained by P.W.1 was simple in nature. In this regard, the Accident Register issued by P.W.7 was marked as Ex.P6.

(vii) Similarly, on the same day, P.W.7 examined P.W.3-Prema and found a contusion injury about 5 x 4 cm., on back right elbow. In respect of the said injury, Accident Register has been issued and the same has been marked as Ex.P7.

(viii) In continuation of investigation, P.W.9 examined the witnesses and recorded their statements. On the same day, around 13.30 hours, he arrested the accused Nos.1 to 3 and sent them to Judicial Custody. On 03.06.2014, he handed over the case records to P.W.10.



(ix) P.W.10-Robinson, the then Inspector of Police, Thattarmadam Police Station, on 03.06.2014, took up the case for further investigation and examined the witnesses. Since the witnesses examined by him are stated the occurrence as stated before the Sub-Inspector of Police, he has not recorded their further statements.

(x) On 09.10.2014 he examined the doctor, who treated P.Ws.1 to 3, and recorded their statement. He obtained the valuation certificate in respect of the damaged Television and vehicle. He altered the section of law from 147, 148, 452, 294(b), 323, 506(ii) and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act to Section 147, 148, 452, 294(b), 323, 506(ii) and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 3 of TNPPDL Act r/w 34 IPC. Alteration report filed before the Magistrate was marked as Ex.P11. After concluding the investigation, he came to the positive conclusion that the appellants are all committed the offence punishable under Sections 147, 148, 452, 294(b), 323, 506(ii) and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 3 of TNPPDL Act r/w 34 IPC and accordingly, he had filed a final report against the appellants.

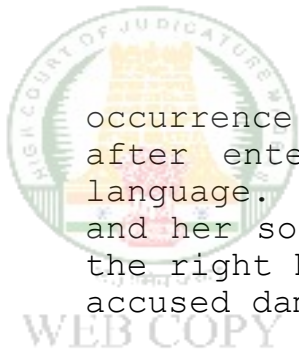
5. Based on the above materials, the trial Court framed the charges against the accused/appellants under Sections 147, 148, 452, 294(b), 323, 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 3 of TNPPDL Act r/w 34 of IPC. All the accused pleaded not guilty and opted for trial. Therefore, the accused were put on trial.

6. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 10 witnesses have been examined as PW1 to PW10 and 11 documents were exhibited as Ex.P1 to Ex.P11, besides, three Material Objects [M.O.1 to M.O.3].

7. Out of the said witnesses, P.W.1-Muthukani, who is the defacto complainant, speaks about the occurrence as during the time of occurrence, all the accused unlawfully entered into her house and abused her by saying filthy language. The first accused Silva with the aid of Udaimarakambu attacked on her right hand and at the same time, the third accused Rajamani with the aid of Udaimarakambu attacked on her left thigh. Further, accused No.1 had attacked on her stomach and the accused No.4 attacked P.W.3-Prema. She has further added that accused Nos.1 & 2 damaged the Samsung TV, Motorbike and other articles found in her house.

(i) P.W.2-Suresh Jacob, who is one of the victim, has not supported the case of the prosecution, hence, with the leave of trial Court, he has treated as hostile witness.

<https://hcservices.ecourts.gov.in/hcservices/> P.W.3-Prema is also one of the victim speaks about the



occurrence as during the relevant point of time all the accused after entering into P.W.1's house abused P.W.1 by saying filthy language. Further, with the aid of Udaimarakambu, attacked P.W.1 and her son and during such time, the first accused attacked her on the right hand elbow. According to him, in the occurrence, all the accused damaged the property of P.W.1.

(iii) P.W.4-Aaseer Thomas is the husband of P.W.1. He was not an occurrence witness. According to him, an Observation Mahazar Ex.P2 was prepared in his presence. Further, the property which damaged during the time of occurrence has also been recovered by the Investigating Officer and in the Muchalika he has signed as a witness.

(iv) P.W.5-Rajan, who is a proprietor of Rajan Electrical Store, gave evidence as for repairing the picture tube of Television, he was estimated the damage worth about Rs.3,000/-. In this regard, he issued a certificate.

(v) Similarly, P.W.6-Michel Raj issued a certificate in respect of the damage caused to the bike.

(vi) P.W.7-Dr.Aathikumar, who is the doctor, treated P.Ws.1 to 3, gave evidence as the injuries sustained by P.Ws.1 to 3 are simple in nature.

(vii) P.W.8-Jeyaseelan Franklin, P.W.9-Paul Issac and P.W.10-Robinson are the police officers speaks about the receipt of complaint, manner of investigation and about the filing of final report.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false. However, they did not chose to examine any witness or mark any document on their side.

9. Having considered all the above, the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi found the appellants guilty and convicted them as stated supra. Aggrieved by the said conviction and sentence, the appellants are before this Court with this appeal.

10. I have heard Mr.V.Kathirvelu, learned Senior Counsel for Mr.K.Prabhu, learned counsel appearing for the appellants 1 to 6 & 8, Mr.S.R.Anbarasu, learned counsel appearing for the 7th appellant and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (Crl.side) appearing for the State. I have also perused the records carefully.

11. The learned counsel appearing for the appellants would <https://hccs.judiciary.gov.in/hccs/serve> evidence given by the injured witnesses are all not



in accordance with the charge framed against the accused. Further, in respect of the weapons used by the accused, the prosecution has not shown the clear picture as the same are deadly weapons. In fact, the weapons used by the accused at the time of occurrence are stick, which cannot be termed as a deadly weapons. He would further contend that in respect of intention having by the accused the witnesses examined on the side of the prosecution have not stated the clear picture as during the time of occurrence, the accused entered into the house of P.W.1 with intention to commit an offence and therefore, the lapses found in the prosecution case is create a doubt whether the alleged occurrence had happened as stated by the prosecution or not. According to him, the conviction and sentence awarded by the trial Court has to be set aside.

12. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent would contend that the story narrated by P.Ws.1 to 3 is sufficient to hold that at the time of occurrence, all the appellants with intend to commit an offence, unlawfully entered into the house of P.W.1 and after abusing P.Ws.1 to 3 attacked them by using the deadly weapons. Further, they damaged the properties, which was found available in the house of P.W.1 and therefore, interference of this Court in the findings arrived at by the Courts below does not require.

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

14. Initially, on go through the charges framed against the accused was under Sections 147, 148, 452, 294(b), 324, 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 3 (1) of TNPPDL Act. After concluding the trial, all the accused were convicted under Section 452 of IPC. Similarly, A1 to A5 were convicted under Sections 148 of IPC and A6 to A8 were convicted under Section 147 of IPC. More than that, the accused No.1 was convicted under Section 324 (2 counts) of IPC, the accused No.3 was convicted under Section 324 of IPC and accused Nos.2,4 & 5 were convicted under Section 324 r/w 149 of IPC.

15. As far as the conviction under Section 452 of IPC is concerned, on going through the charge framed against the accused, it was stated that during the time of occurrence, all the accused unlawfully entered into the house of P.W.1 and in otherwise, nothing was stated about the preparation of hurt, assault or wrongful restraint. In fact, every charge under the Code of Criminal Procedure 1973 shall state the offence with which the accused is charged. The motive behind framing of a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of trial. Undoubtedly, it is for the prosecution to prove beyond reasonable doubt that the accused had committed the offence with the requisite *mens rea*. But, here it is a case, the

<https://hcdirectreports.gov.in/heservices/> which is necessary to set up a defence, is not



available particularly, in respect of offence under Section 452 of IPC.

16. Secondly, in respect of the offence under Section 148 of IPC is concerned, it is necessary for the prosecution to prove when at the time of occurrence, the accused are armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death.

17. Here it is a case, the victims, examined on the side of the prosecution, narrated the story that while at the time of occurrence, the accused Nos.1 to 5 are armed with wooden log. In respect of the said evidence, the learned counsel appearing for the appellants would state that there is a stick which would not cause death to any person. Therefore, in the circumstances, it is necessary for the prosecution to prove that the weapon used by the accused at the time of occurrence is a deadly weapon. In this regard, on go through the Ex.P3 seizure mahazar, though it was stated that the recovered material object is having a length around 50 cm, size, width and other things, did not observe in the recovery mahazar. So, in the said circumstances, we cannot go into that the weapon used at the time of occurrence by the accused is a deadly weapon and therefore, the conviction under Section 148 of IPC is also liable to be set aside and the same is set aside.

18. It is the case of the prosecution that during the relevant point of time, all the accused jointly entered into the house of P.W.1 and assaulted P.Ws.1 to 3. In respect of the same, P.W.2 has not stated anything before the trial Court. P.W.1 alone says in his evidence as Al Silva with the aid of wooden log attacked her on the right hand and at the same time, the third accused Rajamani had assaulted on her left thigh. Further, P.W.3 had given evidence as accused Nos.1 & 3 alone had attacked her.

19. Now, on go through the judgment rendered by the trial Court, the learned Sessions Judge, came to the conclusion that the first accused is liable to be convicted under Section 324 (2 counts) of IPC and also convicted with the above terms. In the said circumstances, only P.W.1 has stated in his evidence as the accused Nos.1 & 3 alone had attacked her and caused simple injury. In otherwise, in respect of the attack made on P.W.3, no charge has been framed against the accused and therefore, convicting the first accused under Section 324 (2 counts) IPC is nothing but erroneous and he is liable to be convicted under Section 323 of IPC. In otherwise, the third accused also attacked P.W.1 on her thigh and thereby, he is also liable to be convicted under Section 323 of IPC.

20. In this occasion, it is necessary to see the evidence given by the doctor, who treated the P.Ws.1 to 3, in respect of the injuries sustained by P.W.1, he has clearly stated that P.W.1 sustained a laceration in the right forearm and she complains about



the pain on the left thigh. Therefore, the evidence given by P.W.1 in respect of the assault made by A1 & A3 is in correspondence with the evidence given by P.W.7, who is the doctor treated P.W.1, I am of the firm opinion that the accused Nos.1 & 3 are liable to be convicted under Section 323 of IPC.

WEB COPY

21. In respect to the others, the evidence given by P.Ws.1 to 3 reveals the doubt whether all the accused were assembled together and trespassed into the house of P.W.1 with a view to commit offence. Therefore, the offence under Section 147 and 148 also cannot be maintainable one.

22. In fine, the Criminal Appeal is partly allowed. Except the accused Nos.1 & 3, remaining accused are acquitted from the respective charges framed against them. In respect of the accused Nos.1 & 3 as already observed above, they are liable to be convicted under Section 323 of IPC and therefore, they are convicted under Section 323 of IPC and sentenced to undergo Rigorous Imprisonment for three months and to pay a fine of Rs.500/-, in default to undergo 1 month simple imprisonment. The period of imprisonment already undergone by the revision petitioner shall be set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am

To

- 1.The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Thoothukudi.
- 2.The Inspector of Police,
Thaddarmadam Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.



Copy to

The Principal Sessions Judge,
Mahalir Neethimandram(Fast Track Mahila Court),
Thoothukudi.

WEB COPY

+1 CC to M/s.K.PRABHU, Advocate (SR-27098[F] dated 24/08/2021)

**Crl.A(MD)No.19 of 2016
23.08.2021**

RK (08.09.2021) 10P 8C