



BAIL SLIP

The Appellants, 1. K.Moorthy, 2. M.Balachandar, 3. M.Rajesh Kanna, were released on bail as per the order of this Court dated 14/7/2016, made in Crl MP(MD)No.5640 of 2016 in Crl A(MD)No.261 of 2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.261 of 2016

(Through Video Conference)

- 1) K.Moorthy
- 2) M.Balachandar
- 3) M.Rajeshkanna

... Appellants /
Accused Nos.1 to 3

-Vs-

- 1) The Assistant Commissioner of Police,
(Law and Order),
Thallakulam Range, Madurai.

- 2) The Inspector of Police,
D2 Sellur Police Station,
Madurai.
Crime No.457 of 2013

... Respondents/
Complainant

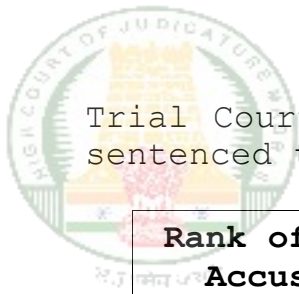
PRAYER: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, praying to call for the records and set aside the order of conviction and sentence passed in Special S.C.No.41 of 2014, dated 14.06.2016, on the file of the III Additional District and Sessions Judge, (PCR cases) Madurai and allow this appeal and acquit the appellants / Accused No.1 to 3 from the charges levelled against them.

For Petitioner : Mr.R.Anand,
For Mr.Saravanan

For Respondents : Mr.T.SenthilKumar,
Government Advocate (Crl. side)

J U D G M E N T

The Appellants / Accused, who are arrayed as A-1 , A-2 and A-3 were charged and tried before the III Additional District and Sessions Judge, (PCR Cases), Madurai in Special S.C.No.41 of 2014 for the offences under Sections 341 & 324 of Indian Penal Code. The



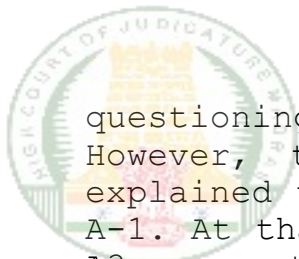
Trial Court vide impugned judgment, dated 14.06.2016, convicted and sentenced the appellants as under :-

Rank of the Accused	Section	Sentence Imposed
A-1	324	Convicted and sentenced to undergo Rigorous Imprisonment for a period of twelve(12) months and to pay a fine of Rs.1000/-, in default, to undergo one month Simple Imprisonment.
A-2 & A-3	341	Convicted and sentenced to undergo one month simple imprisonment and to pay a fine of Rs.500/- each, in default, to undergo imprisonment for a further period of seven days of simple imprisonment.

Rank of the Accused	Section	Sentence
A-2 & A-3	324	Convicted and sentenced to undergo Rigorous Imprisonment for a period of twelve(12) months and to pay a fine of Rs.1000/- each, in default, to undergo one month simple imprisonment * Both the punishments imposed upon A-2 and A-3 shall run concurrently.

2.The brief facts, that are necessary for disposal of this Appeal, are as hereunder:-

2.1. P.W.1/ Sreenivasan is the victim/ *De facto* complainant. P.W.2 is the father of the complainant and P.W.3 is the mother of the complainant. The Appellants / Accused A-2 and A-3 are the sons of A-1.The case of the prosecution is that due to previous enmity that existed between the Appellants / Accused 1 to 3 and the *de facto* complainant, on 29.05.2013 at about 6:30 p.m., when the *de facto* complainant was returning back from his work, near Fathima College, he was wrongfully restrained by the Accused persons A-2 and A-3, wherein, they wantonly scuffled the *de facto* complainant by



questioning him, for the reasons for attacking their father (A-1). However, the *de facto* complainant denied their accusation and explained the accused persons that he did not attack their father / A-1. At that time, the father(A-1) of the accused persons/ A-2 and A3, came to the spot and along with A-2 and A-3, A-1 started to attack the *de facto* complainant using bricks that were lying in the nearby place that were used for construction purpose. A-1 by using a brick, caused grievous blood injury on the *de facto* complainant by hitting him over his head. A-2 by using a wooden stick, attacked the *de facto* complainant over the back side of his head and A-3 attacked the *de facto* complainant by using a brick over his face and caused grievous blood injury. P.W.2 and P.W.3, who were at the scene of occurrence came for the rescue of their son P.W.1 and noticing the gathering of public, the accused persons fled away from the scene of occurrence.

2.2. With the help of Ambulance, the *de facto* complainant/ victim / injured was taken to the Rajaji Government Hospital, Madurai for treatment and he was admitted as inpatient. Based on the intimation given by the *de facto* complainant, the then Sub Inspector of Police, Sellur Police Station (P.W.10) registered a case in Crime No.457 of 2013, on the file of D-2 Sellur Police Station for the offence under Sections 341, 324 and 506(2) of Indian Penal Code and also recorded the statement of the complainant P.W.1 as Ex.P1. On receipt of the said complaint, a case was registered by P.W.10 by preparing an F.I.R., under Ex.P-8. Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was also included in the F.I.R against the accused persons. On 30.05.2013, at about 11:00 A.M., the Assistant Commissioner of Police, Tallakulam (P.W.12) arrested the three accused persons.

3. The accused/appellants herein were furnished with the copies of documents under Section 207 Cr.P.C., and the case was committed to the learned III Additional District and Sessions Judge, (PCR Cases), Madurai in Special S.C.No.41 of 2014 for trial, after framing charges under Sections 324, 341 and 506(2) of Indian Penal Code and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. When questioned, the accused/appellants herein pleaded not guilty.

4. To prove the case, the prosecution has examined witnesses P.W.1 to P.W.12 and marked documents Ex.P-1 to Ex.P-14 and M.O.1 to M.O.3. When the appellants/ accused persons were questioned under Section 313 of Cr.P.C., about the incriminating circumstances appearing against them, they denied the same as false. Neither oral nor any documentary evidence was marked on the side of the defence. The Trial Court, after hearing either side and after considering the materials available on record, both oral and documentary, evidence had convicted the accused / appellants, as referred to supra.



Aggrieved over the same, the accused / appellants have filed the present Criminal Appeal.

5. The learned counsel appearing for the *de facto* complainant/P.W.1 submitted that due to previous enmity that existed between the Appellants / Accused 1 to 3 and the *de facto* complainant, on 29.05.2013 at about 6:30 p.m. when the *de facto* complainant was returning back from his work, near Fathima College, P.W.1 was wrongfully restrained by the Accused persons A-2 and A-3, wherein, they questioned the *de facto* complainant the reasons for attacking their father (A-1). The *de facto* complainant explained the accused persons that he did not attack their father (A-1). At that time, the father(A-1) of the accused persons/ A-2 and A3, came to the spot and he along with A-2 and A-3, started to attack the *de facto* complainant using bricks that were kept in the nearby place for construction purpose. A-1 by using a brick, caused grievous blood injury to the *de facto* complainant by hitting him over his head. A-2 by using a wooden stick, attacked the *de facto* complainant over the back side of his head and A-3 attacked the *de facto* complainant using a brick over his face and caused grievous blood injury. Noticing the notorious activities of the accused/ A-1 to A-3, P.W.2 and P.W.3 came for the rescue of their son P.W.1. On seeing this, the accused persons fled away from the scene of occurrence. The Sub-Inspector of Police, Sellur Police Station (P.W.10) registered a case in Crime No.457 of 2013, on the file of D-2 Sellur Police Station for the offence under Sections 341, 324 and 506(2) of Indian Penal Code and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. According to the learned counsel for the *de facto* complainant, the trial Court has rightly convicted the accused/ appellants and imposed with punishment as aforementioned.

6. The learned Government Advocate (Crl.side) fairly concedes that the charge, even though framed under the SC/ ST Prevention Act, there was no evidence produced before the trial Court regarding the charge against Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Therefore, based on the appreciation of evidence, the learned trial Court had convicted the accused only under Sections 324 and 341 of the Indian Penal Code (I.P.C.). For the offence under Section 341 of I.P.C., one month Simple Imprisonment and a fine of Rs.500/- for each of the accused was imposed and under Section 324 of I.P.C., the sentence to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo one month simple imprisonment was imposed. Now, at the stage of the Appeal, the learned Government Advocate (Criminal side) also fairly submits that there had not been any previous cases against all these appellants / accused persons.



7. This Court heard the learned counsel appearing for the appellants / accused No.1 to 3 and the learned Additional Public Prosecutor (crl.side) appearing for the respondent State and perused the materials available on record to which this Court's attention was drawn.

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8. Considering the submission made by the learned Government Advocate (Criminal side) and the submission of the learned counsel for the Appellants/ Accused No.1 to 3 to consider the prayer to set aside the order of imprisonment and to pass appropriate orders, this Court by exercising its power of discretion, passes the following direction, which reads as under:-

(i) Direction to the Appellants/ Accused No.1 to 3 to compensate the *de facto* complainant by paying a sum of Rs.5,000/- (Rupees Five Thousand only) each totalling Rs.15,000/- (Rupees Fifteen Thousand only). Out of this Rs.15,000/-, a sum of Rs.10,000/- to be deposited in the Court of the learned Judicial Magistrate No.II Madurai, to the credit of P.R.C. No.129 of 2013;

(ii) The Appellants/ Accused 1 to 3 are directed to deposit the above mentioned sum of Rs.5,000/- each on the file of P.R.C.No.129 of 2013 within one month from the date of receipt of a copy of this order;

(iii) The Learned III Additional District and Sessions Judge, (PCR Cases), Madurai in Special S.C.No.41 of 2014 is directed to disburse Rs.10,000/- to the victim (P.W.1) Sreenivasan as compensation and Rs.5,000/- towards the Tamil Nadu State Government COVID-19 Relief Fund; and

(iv) The judgment of conviction passed by the learned Sessions Judge is confirmed, and the sentence of punishment imposed on the appellants / accused 1,2 & 3 herein is alone set aside, instead, Compensation Award is being imposed on the Appellants/ Accused 1 to 3 to pay the victim/ P.W.1 and the same is ordered accordingly.

9. It is also made clear that failing to pay the aforesaid Compensation Award will amount to issuance of warrant upon the appellants / Accused 1 to 3 and a direction is issued to the trial Court to proceed with the conviction and sentence imposed in



Special S.C.No.41 of 2014, for the offence under Sections 341 & 324 of Indian Penal Code.

10. With these directions, the Criminal Appeal is disposed of.

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Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

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

2)The Judicial Magistrate No.II, Madurai.

3) The Assistant Commissioner of Police,
(Law and Order), Thallakulam Range, Madurai.

4) The Inspector of Police,
D2 Sellur Police Station,
Madurai. Crime No.457 of 2013

5) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

Judgment made in

CRL.A. (MD) No.261 of 2016

Dated:

18.06.2021

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