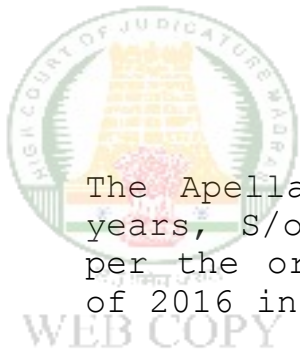




Bail Slip

The Apellant/Sole Accused namely Karuppusamy Nadar male aged 48 years, S/o.Kosalai Nadar, was directed to be released on bail as per the order of this court dated 17/8/2016 in Crl MP(MD)NO.7051 of 2016 in Crl A(MD)No.294 of 2016 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2021
Pronounced on : 02.11.2021

C O R A M

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal (MD) No.294 of 2016

Karuppasamy Nadar ... Appellant / Sole Accused

versus

The State,
Represented by the Deputy Superintendent of Police,
Sathankulam Sub-Division,
Thoothukudi District. ... Respondent / Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment of conviction and sentence dated 22.07.2016, passed in S.C.No.91 of 2014, on the file the II Additional District and Sessions Court (PCR), Tirunelveli.

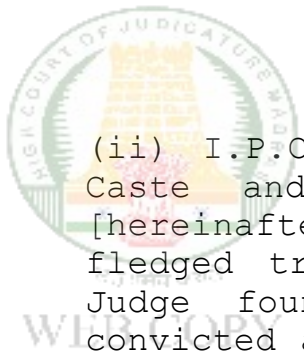
For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.D.Venkatesh

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

J U D G M E N T

The present appeal is directed against the conviction and sentence dated 22.07.2016, made in S.C.No.91 of 2014, on the file of the II Additional District and Sessions Court (PCR), Tirunelveli.

2.The appellant is the sole accused. He stood charged for the offences punishable under Sections 354, 294(b), 307, 324 and 506



(ii) I.P.C. and Sections 3(1)(xi) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act [hereinafter referred to as 'the SC/ST Act']. After full-fledged trial, the learned II Additional District and Sessions Judge found the appellant guilty under Section 326 I.P.C., convicted and sentenced to undergo rigorous imprisonment for three years and directed to pay a sum of Rs.3,50,000/- as compensation to P.W.8 - Vellaichamy. Similarly, the accused has also been convicted under Section 324 I.P.C. and sentenced to undergo rigorous imprisonment for two years and directed to pay Rs.1,50,000/- as compensation to P.W.9 - Natarajan. In respect of other charges framed against the accused, the trial Court acquitted him.

3.Challenging the said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

4.The case of the prosecution is as follows:-

(i) P.W.1 - Murugadurai is the resident of Therkkankulam Colony East Street. He knew P.W.2 - Muthukani, P.W.3 - Vellaiammal, P.W.4 - Marialatha, P.W.5 - Arumuganainar and the accused - Karuppasamy. On 30.04.2013 around 01.30 p.m., when P.W.1 was taking lunch in his house, he heard an alarm from outside, at that point of time, the accused attacked P.W.5 - Arumuganainar. On enquiry by P.W.1, P.W.5 - Arumuganainar informed that the accused himself misbehaved with his wife and also with P.W.4 - Marialatha and the same was condemned by him. While at the time the accused leaving the place had abused “நாலு வீட்டு பறையன்களும் ஊரை காலி செய்துவிட்டு ஓடி போங்கள்”. However, on the same day, around 04.00 to 05.00 p.m., the victims went to the Police Station and requested P.W.17 - Karpagavalli, Sub-Inspector of Police to warn the accused. She has received the said petition and after making assurance that she will take action against the accused, went along with the victims in the Omni Van up to Chettikulam, at that time, she informed to the victims that she had spoken to the Panchayat President and therefore, instructed them to go to their Village without any fear. On the same day around 10.00 p.m. to 11.00 p.m., when P.W.1 and others were speaking in front of P.W.7 - Easkkaiammal's house, his father P.W.8 - Vellaichamy was sleeping in the shrine of one Chinnadurai's house, who is the uncle of P.W.1, at that point of time, the accused came there and had shouted “பறத்தேவடியா மவன்களா நான் எவ்வளவு சொல்லியும் கேட்காமல் காவல் நிலையத்திற்கு போனீங்களா” and attacked P.W.8 - Vellaichamy on the forehead. When P.W.8 - Vellaichamy attempted to resist the same, his left thumb finger was amputated and right thumb finger was also cut-off and hanging and thereby, he sustained injury in the right forearm, at that time, P.W.9 - Natarajan intervened, the accused had also attacked him in the neck, shoulder and in the

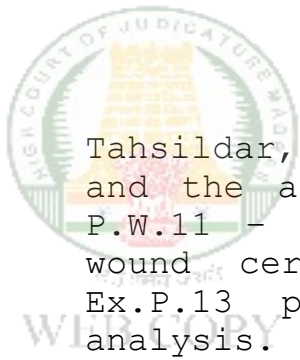


wrist. When P.W.1 and others attempted to catch him, the accused ran away from the place and within 10 minutes, his father P.W.8 - Vellaichamy painted and thereby, they have taken a car and admitted him in Palayamkottai High Ground Hospital. In the meantime, around 03.30 a.m., one Woman Sub-Inspector of Police [P.W.17] came there and enquired about the incident. During the enquiry, P.W.1 narrated the occurrence and the same was reduced into writing under Ex.P.1.

(ii) After receipt of the complaint from P.W.1, P.W.17 - Karpagavalli returned to the Police Station and registered a case against the accused in Crime No.115 of 2013 for the offences under Sections 294(b), 324, 326, 307 and 506(ii) I.P.C. and Sections 3 (1)(x) and 3(2)(v) of the SC/ST Act. The printed F.I.R. was marked as Ex.P.10. The intimation received by P.W.17 from the Hospital authorities was marked as Ex.P.9.

(iii) After registration of the case, P.W.17 forwarded a copy of the F.I.R. to the Deputy Superintendent of Police, for further proceedings. P.W.18 - Rajagopal, the then Deputy Superintendent of Police, Sathankulam Sub-Division on 30.04.2013 received a copy of the F.I.R. and took up the same for investigation. He received an order from the Superintendent of Police under Ex.P.11 for conducting investigation in this case. On 01.05.2013 at 10.00 a.m., he visited the scene of occurrence and in the presence of P.W.10 - Sudalai and one Esakkinathan, he prepared an Observation Mahazar under Ex.P.2. He drew Rough Sketch and the same was marked as Ex.P.12. On the same day, he visited the Hospital, wherein, the injured P.W.8 - Vellaichamy and P.W.9- Natarajan were found as unconscious. He examined the witnesses Murugadurai [P.W.1], Muthukani [P.W.2], Veerammal [P.W.6] and Esakkiammal [P.W.7] and recorded their statements. On 02.05.2013 around 04.00 p.m., he arrested the accused in the road leading to Sathankulam to Nazareth, in front of Tamil Nadu Forest Office, at that time, the accused voluntarily gave confession statement in the presence of P.W.12 - Senthilkumar, the then Village Administrative Officer and one Muthu Ramalingam, the then Village Assistant. Pursuant to the confession statement given by the accused, P.W.18 seized the Aruval [M.O.1], which was hid in a Banana Grove.

(iv) In continuation of investigation, P.W.18 examined P.W.7 - Esakkiammal, at that time, she handed over a blood stained green colour jacket [M.O.7] and on examination of P.W.6 - Veerammal, she had produced a blood stained saree and blood stained grey colour inskirt [M.O.4 and M.O.5] and the same were seized under the cover of Mahazar. On 05.05.2013, he had proceeded to Tirunelveli Government Medical College Hospital and examined the injured [P.W.8 and P.W.9] and recorded their statements. On 20.05.2013, P.W.18 examined one Kumar, the then Tahsildar and Zonal Deputy



Tahsildar, who had issued Community Certificates to the victims and the accused, respectively. On 05.08.2013, he had examined P.W.11 - Dr.Sudhakar and P.W.16 - Dr.Mahalingam and obtained a wound certificate. He had submitted an application under Ex.P.13 praying to send the material objects for chemical analysis.

(v) In turn, the Chemical Examiner received the following six items:-

'Item 1 : A silken saree with black, yellow, orange and blue designs, on which, there were dark brown stains.

Item 2 : A grey skirt, on which, there were profuse dark brown stains.

Item 3 : A torn dhoti with yellow border strips, on which, there were profuse dark brown stains.

Item 4 : A torn lungi with blue, white and black cross stripes, on which, there were profuse dark brown stains.

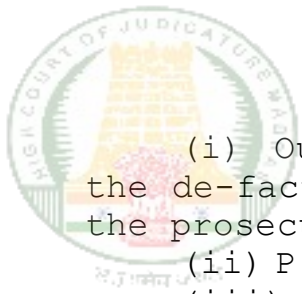
Item 5 : A torn white towel with pink stripes, on which, there were profuse dark brown stains.

Item 6 : A light green silken blouse, on which, there were dark brown stains.'

(vi) On examination, it was found that the blood stains found in the material objects are human blood and the blood stains found in Item Nos.1 to 3 and 6 are belongs to ''O'' Group. In this regard, the report issued by the Chemical Examiner was marked as Ex.P.14.

(vii) In continuation of investigation, P.W.18 after collecting the wound certificate from the Doctor, concluded the investigation and came to the conclusion that the accused herein is liable to be convicted under Sections 294(b), 307, 324, 326 and 506(ii) I.P.C. and Sections 3(1)(x) and 3(2)(v) of the SC/ST Act. He filed a final report accordingly.

5.From the above materials, the trial Court framed charges against the accused under Sections 354, 294(b), 307, 324 and 506 (ii) I.P.C. and Sections 3(1)(xi) and 3(2)(v) of the SC/ST Act. The accused denied the charges and opted for trial. Hence, he was put on trial. In order to prove their case, on the side of the prosecution, 19 witnesses have been examined as P.W.1 to P.W.19 and 16 documents were marked as Exs.P.1 to P.16, besides 9 material objects [M.O.1 to M.O.9].



(i) Out of the said witnesses, P.W.1 - Murugadurai, who is the de-facto complainant, spoke about the occurrence as alleged by the prosecution.

(ii) P.W.2 to P.W.7 are the eyewitnesses to the occurrence.

(iii) P.W.8 - Vellaichamy and P.W.9 - Natarajan are the injured in the alleged occurrence.

(iv) The specific evidence given by P.W.8 - Vellaichamy, who is the injured, is that, during the time of occurrence, the accused with the aid of Aruval [M.O.1] cut his left thumb finger and also cut his right thumb finger and thereby, he sustained injury in the right forearm.

(v) P.W.9 - Natarajan, who is another injured, spoke that the accused attacked him on the neck, shoulder and also in the wrist. In respect of the attack made by the accused, P.W.1 to P.W.7, who are the alleged eyewitnesses to the occurrence, gave evidence in support of the evidence given by P.W.8 and P.W.9. In respect of manner of attack, though the evidence given by them is having some minor contradictions, the same would not affect the case of prosecution in entirety.

(vi) P.W.10 - Sudalai is the resident of the same Village. He spoke about the preparation of Observation Mahazar as the Investigation Officer in this case, has prepared the same in his presence.

(vii) P.W.11 - Dr.Suthakar, who is the Radiologist, working in the Government Medical College Hospital, Tirunelveli, gave evidence in respect of X-ray taken to P.W.8 and P.W.9. It is the specific evidence given by P.W.11 that in view of the images found in the X-ray, either P.W.8 or P.W.9 did not sustain any fracture.

(viii) P.W.12 - Senthilkumar, the then Village Administrative Officer, spoken about the recovery of Aruval as on 02.05.2013 around 04.00 p.m., the Investigation Officer in this case arrested the accused in Sathankulam to Nazareth Road. After the arrest, the appellant/accused gave confession statement, wherein he admitted the commission of offence and afterwards, pursuant to the confession statement given by the accused, the Investigation Officer in this case recovered Aruval [M.O.1] under the cover of Mahazar.

(ix) P.W.13 - Jebastian Kanagaraj, the then Wireman, working in Therkkankulam, gave evidence as on the date of occurrence, there was no power cut in the occurrence Village.

(x) P.W.14 - Kumar, the then Tahsildar, spoke about the issuance of Community Certificate to P.W.8 and P.W.9. According to him, both of them belong to Scheduled Caste Community.

(xi) P.W.15 - Senthur Rajan, the then Tahsildar, spoke about the issuance of Community Certificate to the accused. According to him, the accused belongs to Hindu Nadar Community.



(xii) P.W.16 - Dr.Mahalingam, who is the Doctor attached to Tirunelveli Government Medical College Hospital, spoke about the treatment given to the injured and about the nature of injury sustained by them. According to him, the injury sustained by P.W.8 and P.W.9 are all simple in nature.

(xiii) P.W.17 - Karpagavalli, the then Sub-Inspector Police, Sathankulam Police Station, spoke about the receipt of complaint from P.W.1 and about the registration of the case.

(xiv) P.W.18 - Rajagopal, the then Deputy Superintendent of Police, Sathankulam Sub-Division, spoke about the investigation and about the filing of final report.

(xv) P.W.19 - Dr.Sueshkumar, attached to the same Hospital, spoke about the treatment given to P.W.8 and P.W.9. According to him, both P.W.8 and P.W.9 sustained grievous injuries.

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

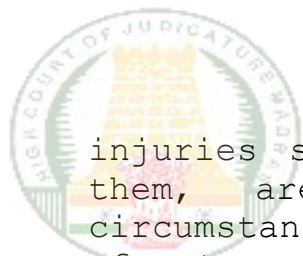
7.Having considered the materials placed before him, and on considering the arguments advanced by the learned counsel on either side, the learned II Additional District and Sessions Judge (PCR), Tirunelveli, found the accused guilty under Sections 326 and 324 I.P.C., convicted and sentenced as stated in Paragraph 2 of this judgment.

8.Aggrrieved over the said findings of the Court below, the appellant is before this Court with this Criminal Appeal.

9.I have heard Mr.V.Kathirvelu, learned Senior Counsel, for Mr.D.Venkatesh, learned counsel for the appellant and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (Criminal Side) appearing for the respondent.

10.It is the submission of the learned Senior Counsel appearing for the appellant that the witnesses examined on the side of prosecution to narrate the occurrence are all belong to the same community and related to the injured, and also residing in neighbouring houses. Due to the said reason only, they have submitted the case of prosecution as they were all present at the time of occurrence. In otherwise, the cross-examination of those witnesses reveals the fact that they have not seen the occurrence as alleged by the prosecution. Accordingly, the evidence given by the said eyewitnesses cannot be accepted in entirety.

11.He would further submit that in respect of the alleged



injuries sustained by P.W.8 and P.W.9, the Doctors, who treated them, are giving inconsistent evidence. In the said circumstances, when two sets of evidence are available in respect of nature of injuries sustained by the injured, it would create a doubt whether the alleged occurrence had happened or not as stated by the prosecution. Further, the story put forth by the occurrence witnesses in respect of earlier occurrence, which alleged to be committed by the accused on the same day, in daylight hours, is fabricated one. Therefore, the inconsistencies found in the evidence given by the prosecution witnesses, create a doubt and thereby, the accused is entitled to the relief of acquittal and prayed for allowing this appeal and set aside the conviction and sentence imposed on the appellant/accused.

12.Per contra, the learned Government Advocate (Criminal side) appearing for the respondent police would contend that though the eyewitnesses, who gave evidence in support of the prosecution case, are all related to the injured, being the reason that the offence committed by the accused in the night hours, it would not possible to see the same by the Public. The non-examination of independent witnesses cannot fatal to the case of prosecution. He would further submit that in respect of injury sustained by the injured, P.W.19 - Dr.Sureshkumar, who is one of the Doctors, treated P.W.8 and P.W.9, gave specific evidence with regard to surgery conducted and therefore, the same is sufficient to accept the case of prosecution as during the time of occurrence, the appellant/accused with the aid of Aruval attacked the injured and thereby, caused grievous injuries and therefore, the findings arrived at by the trial Court are within the ambit of Sections 326 and 324 I.P.C. Accordingly, he prayed for dismissal of the appeal.

13.I have considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

14.First of all, on going through the evidence of P.W.1 to P.W.7, it appears that they are all admitted in their chief-examination itself that the injured P.W.7 and P.W.8 are their relatives. However, the evidence given by them is that in the occurrence street, only five to six houses are there and also the occurrence had happened in the night hours. In respect of the said evidence, there was no denial on the side of the accused that apart from P.W.1 to P.W.9, others are also residing in the same street. Therefore, in the said circumstances, it would not be possible to see the occurrence by others, particularly, those who do not belong to the community of P.W.1 to P.W.9. Being the reason that P.W.1 to P.W.9 belong to the same community, this Court cannot throw away the entire prosecution case as false one.



In the said occasion, it is necessary for this Court to scrutinize their evidence with much care and caution.

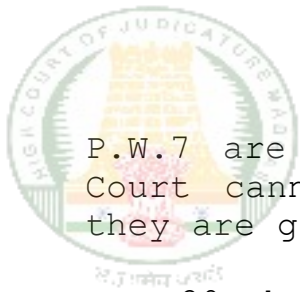
15.Now, on analysing the evidence given by those witnesses, it would appear that P.W.3 and P.W.5 in their chief-examination, narrated the entire occurrence as they saw the occurrence. On the other hand, in their cross-examination, they have stated that during the time of occurrence, they were not present in the occurrence place. Therefore, the said evidence given by P.W.3 and P.W.5 reveals the fact that they gave false evidence before the trial Court as they were also present in the occurrence place at the time of occurrence. In the said occasion, even assuming that P.W.3 and P.W.5 are not eyewitnesses, the other witnesses examined on the side of the prosecution, viz., P.W.1, P.W.2, P.W.4, P.W.6 and P.W.7 are all gave evidence in support of the case of prosecution. Though their evidence is having some minor contradictions, being the reason that they are giving evidence after two years from the date of occurrence, it would be possible for them to give evidence with some minor contradictions. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments and confronted by such difficult situation, the Court has to scrutinize vigilantly the evidence placed by it and try to separate the grain from the chaff as best as it can.

16.In the matter of appreciating evidence, petty details which befog the real issue and minor contradictions in the evidence, which are inevitable when a story is narrated under the stress of a grave crime, ought not to be permitted to tilt the scales of justice.

17.In a case of **Jagasidh Vs. State of M.P.** reported in **AIR 1981 SC 1167**, our Hon'ble Apex Court has held that in criminal trial, slight discrepancies even in the evidence of eyewitnesses is not material.

18.Applying the ratio laid down in the above referred judgment with case on hand, here it is a case, in respect of attack made by the accused, the evidence given by P.W.1 to P.W.7 are fully in support of the evidence given by the injured.

19.Further, in respect of relationship between the witnesses, in the case of **K.B.Singh Vs. H Mathur** reported in **AIR 1972 All 369** and in the case of **Dinkar Bandhu Vs. State of Maharashtra** reported in **AIR 1970 Bom. 438**, both the Courts held that rejection of evidence given by the prosecution witness, on the ground that all the witnesses are belonging to same class and community of the victim is improper. On that score, being the reason that P.W.1 to



P.W.7 are belonging to the same community of the injured, this Court cannot discard the evidence given by the eyewitnesses as they are giving false evidence.

20.The next submission of the appellant's counsel is that there was a discrepancy between the direct and medical evidence. In general, the discrepancy between medical evidence and ocular testimony is not fatal. However, a glaring inconsistency is fatal to the prosecution case. When there is a conflict between the evidence of prosecution witnesses and medical evidence, benefit of doubt must go to the accused. Here, it is the case, in Paragraph 51 of the judgment, the learned II Additional District and Sessions Judge (PCR), Tirunelveli, has stated that P.W.11 - Dr.Suthakar, who is the Radiologist and P.W.16 - Dr.Mahalingam., who initially treated the injured, issued a false certificate and therefore, they have committed willful dereliction of duty and ultimately, the trial Court recommended to initiate departmental action against them.

21.In this regard, on going through the entire judgment rendered by the trial Court, it seems that the trial Court after accepting the evidence given by P.W.19 - Dr.Sureshkumar, who performed surgery to the injured, disbelieved the evidence given by P.W.11 and P.W.16. In fact, according to the evidence given by P.W.11 and P.W.16, the nature of injuries sustained by P.W.8 and P.W.9 are simple in nature. On the other hand, on going through the evidence given by P.W.19, it appears that apart from other things, the left hand thumb finger of P.W.8 - Vellaichamy was stay away and hanging, which is grievous in nature and therefore, it was removed. Hence, according to P.W.19, there was a fracture in the left hand thumb finger limb of P.W.8. In the said circumstances, it the duty of the Court to find out among the evidence given by P.W.11, P.W.16 and P.W.19 Doctors, whose evidence is found to be correct and inspires the confidence of this Court. Initially, on going through the evidence given by P.W.11 - Dr.Suthakar, it appears that while at the time of giving evidence, he has produced 3 X-rays [M.O.8 series] relate to the injury sustained by P.W.8 - Vellaichamy and 2 X-rays [M.O.9 series], relate to the injury sustained by P.W.9 - Natarajan. Only after marking the same as above, P.W.11 and P.W.16 gave evidence as there was no fracture found in the body of P.W.8 and P.W.9 and thereby, the injury sustained by them is simple in nature.

22.In the said circumstances, P.W.19 - Dr.Sureshkumar gave evidence as on the date in which P.W.8 - Vellaichamy was admitted in the Hospital, he has been referred by him for performing plastic surgery. He further says that while at the time of giving



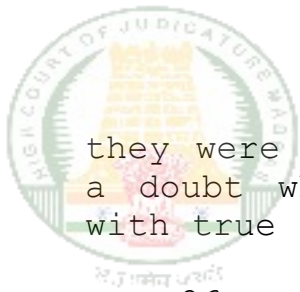
treatment, he found there was a fracture in the left hand thumb finger and only after seeing the said injuries, he issued a certificate under Ex.P.16 stating that the injury sustained by P.W.8 - Vellaichamy is grievous one.

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23. Therefore, the evidence given by both the Doctors appears to be mutually contradictory one. However, the evidence given by P.W.16 is based upon the X-rays taken by P.W.11 - Dr.Suthakar, Radiologist. On the other hand, in respect of fracture stated by P.W.19, no supporting document was produced on the side of the prosecution. Only the treatment summary pertains to P.W.8 - Vellaichamy was marked as Ex.P.16. Now, on going through the contents of Ex.P.16, it appears that in respect of the same, P.W.19 in his cross-examination has stated that in the treatment summary, there was no entry in respect of surgery performed to the injured Vellaichamy, particularly, for amputating the left hand thumb finger. The further evidence given by P.W.19 is that in the consent letter given by P.W.1, there was no date mentioned. Further, in the consent letter, the name and address of the injured persons have not been mentioned. Apart from that, he gave specific evidence as Ex.P.16 is not having any date. Therefore, the evidence given by three Doctors, which relates to the injury sustained by P.W.8 and P.W.9, creates a doubt whether Ex.P.16 is a genuine document or not.

24. Now, on cull out the evidence given by the injured, it is apparent that if really, the left hand thumb finger of P.W.8 - Vellaichamy is amputated, it is for him to bring the same to the knowledge of the trial Court and the same has to be necessarily stated in his deposition. In respect of the same, the Presiding Officer after participating in the trial, did not mention about the amputation of left hand thumb finger of P.W.8 - Vellaichamy, which creates a further doubt over the evidence given by P.W.19. In fact, in his cross-examination, P.W.19 has stated that none of the Police Officers have been examined in respect of treatment given to the injured, which creates another doubt whether the entire story put forth by the prosecution is genuine or not.

25. Another one thing, which necessarily has to be considered in this case, is that, in view of the evidence given by P.W.19, on the same day of occurrence, immediately, after admitting P.W.8 - Vellaichamy as inpatient in the Hospital, a surgery was performed on 01.05.2013. In this regard, in respect of consciousness of the injured, P.W.19 gave evidence as on 30.04.2013, during the time of treatment, P.W.8 - Vellaichamy was found conscious. On the other hand, P.W.17 - Karpagavalli, who registered the F.I.R., gave evidence as when at the time she visited the Hospital for recording the statement from the injured viz., P.W.8 and P.W.9,



they were found unconscious. The said contradictions also create a doubt whether the prosecution has approached the trial Court with true facts or not.

26. Apart from that, it is the specific evidence given by all the witnesses examined on the side of prosecution that on the date of occurrence, in the daylight hours, the appellant/accused himself misbehaved with P.W.3 - Vellaiammal and P.W.4 - Marialatha, for which, a complaint has been lodged before the respondent Police and after lodging the complaint, the Inspector of Police, who received the said complaint, travelled to the occurrence place and gave an assurance that in future, the accused will not commit any offence. In this regard, in order to prove the same, the particular Sub-Inspector of Police i.e., P.W.17 has not stated anything about the said occurrence. The said lapse creates a doubt whether the occurrence alleged to be happened in the daylight hours is true or not.

27. In the said circumstances, it is the evidence given by Investigation Officer that in view of the confession statement given by the accused, the Aruval [M.O.1], which is alleged to be used for the commission of offence, has been recovered under the cover of Mahazar. Further, the same has been marked as M.O.1. In the said situation, on going through the serology report [Ex.P.14], dated 05.09.2014, issued by the Deputy Director, Regional Forensic Science Laboratory, Madurai, shows that the said petition mentioned Aruval has not been forwarded for chemical examination. In fact, the dresses worn by the witnesses are not at all useful to show that the alleged weapon is used by the accused at the time of commission of the offence.

28. One another circumstance which creates a doubt over the prosecution case is that while at the time of giving evidence as P.W.1, the de-facto complainant in his chief-examination has stated that in the complaint, apart from the story put forth by him in respect of the occurrence, some of the contents are included by the Police themselves. It is the specific evidence given by him that in the complaint, he did not mention about the inebriated mood of the accused. On the other hand, in the complaint, it was stated as during the time of the occurrence, the accused was inebriated mood, which creates a doubt whether the complaint given by P.W.1 is with his conscious and also the same reflects the truth or not.

29. Furthermore, it is the evidence given by P.W.2 - Muthukani, who is one of the occurrence witnesses that in the alleged occurrence, the left hand thumb finger of P.W.8 - Velliachamy was amputated. Further, with respect to the said injury sustained by

the said Vellaichamy, another eyewitness viz., P.W.4 - Marialatha gave evidence as due to the assault made by the accused, the left hand thumb finger was entirely removed. Now, on culling out the said evidence with the story put forth by the prosecution, the same shows that P.W.2 and P.W.4 gave exaggerated version and the same also creates a doubt over the case of prosecution. In otherwise, the said benefit of doubt will always has to go in favour of the accused.

30. Accordingly, in the light of the above discussions after giving benefit of doubt in favour of the accused, this Criminal Appeal is allowed and the conviction and sentence dated 22.07.2016, imposed in S.C.No.91 of 2014, by the learned II Additional District and Sessions Judge (PCR), Tirunelveli, is set aside and the appellant is acquitted from the charges. The fine amount, if any, paid by him shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1.The II Additional District and Sessions Judge (PCR),
Tirunelveli.

2.The Judicial Magistrate, Sathankulam.

3.The Deputy Superintendent of Police,
Sathankulam Sub-Division,
Thoothukudi District.

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

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

+1 CC to M/s.D. VENKATESH, Advocate (SR-33843[F] dated 09/11/2021)
Criminal Appeal (MD) No.294 of 2016

02.11.2021