



BAIL SLIP

The Appellants/Accused Nos.1&2 Viz., 1).Sundarapandian S/o.Paraman and 2).Vairamani S/o.Paraman was directed to be released on bail vide order of this Court dated:11.11.2016 made in CrI.M.P (MD)No.11073/2016 in CrI.A(MD)No.430 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
CrI.A. (MD) No. 430 of 2016

1.Sundarapandian
2.Vairamani : Appellants / Accused Nos. 1 & 2

Vs.

1.State Rep. by
The Deputy Superintendent of Police,
Thirupparankundram Division,
Madurai District.

2.State Rep. by
The Sub-Inspector of Police,
Perungudi Police Station,
Perungudi, Madurai District.
(Crime No.175 of 2013) : Respondents / Complainants

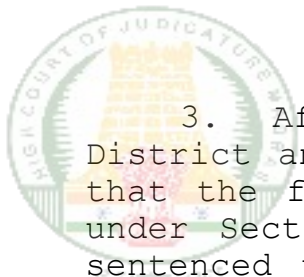
PRAYER: The Criminal Appeal is filed under Section 374(2) r/w 14-A of SC/ST Act, 1989, to set aside the conviction and sentence, dated 17.10.2016 made in S.C.No.19 of 2015 passed by the III-Additional District and Sessions Judge (PCR), Madurai.

For Appellants : Mr.P.Rajendran
For Respondent : Mr.M.Muthumanikkam
Government Advocate (CrI.side)

JUDGMENT

The present Criminal Appeal is directed against the conviction and sentence, dated 17.10.2016, made in S.C.No.19 of 2015, on the file of the learned III-Additional District and Sessions Court (PCR), Madurai.

2. The appellants are arrayed as accused Nos.1 and 2 in the above referred Sessions case. They stood charged for the offences punishable under Sections 323, 324 and 506(ii) of IPC r/w Section 3(1)(x) of SC/ST (POA) Act.



3. After full-fledged trial, the learned III-Additional District and Sessions Judge (PCR), Madurai, came to the conclusion that the first accused was found guilty for an offence punishable under Section 323 of I.P.C and accordingly, he was convicted and sentenced to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for one month. Similarly, the learned III-Additional District and Sessions Judge (PCR), Madurai, concluded that the second accused was found guilty for an offence punishable under Section 324 of I.P.C and accordingly, he was convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for two months. The trial Court acquitted the accused under Section 506(ii) of IPC and Section 3(1)(x) of SC/ST Act. Challenging the said conviction and sentence, the appellants/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-Anbalagan is the resident of Poovarasanpatti and he owned a Water supply lorry. He belongs to Hindu Pallar community, which is recognized as Scheduled Caste. Both the accused residing in the same village and they were running a business by distributing a water to the public through their own lorry. On the date of occurrence, while at the time, the lorry, owned by PW1 was in the queue for taking water, both the accused driven their lorry and parked the same in front of the lorry, which was parked by the driver of PW1. After seeing the same, the said act of the accused was questioned by PW1, for which, the second accused assaulted PW1 on his left chest. Further, after abusing PW1 by mentioning the caste name as Parapayaley, both the accused attacked PW1 on his neck and head. Immediately, PW1 rushed into the police station and lodged a complaint under Ex.P1.

(ii) On receipt of the said complaint, P.W.11-Malarvizhi, the then Sub Inspector of Police, Perungudi Police Station, registered a case in Crime No.175 of 2013, under Sections 323, 324 and 506(ii) of IPC r/w Section 3(1)(x) of SC/ST (POA) Act. The printed First Information Report was marked as Ex.P4. After registration of the case, PW11 handed over the copy of the case records to P.W.13-Pursodhaman, the then Deputy Superintendent of Police, Thirupparankundram Division, for further investigation.

(iii) In the meantime, after lodging the complaint as above, P.W.1 went to the Government Rajaji Hospital, Madurai, wherein, on 06.07.2013 around 8.00 p.m Dr.Alis Fathima examined him and found the following injuries:-

(i) There was an abrasion in the size of 1 x 1 cm in left



(ii) there was a bite mark found in left chest

(iii) he said that there was a pain in left shoulder.

According to her, the aforesaid injuries sustained by PW1 is simple in nature. In this regard, she issued an Accident Register copy under Ex.P5.

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(iv) At the same time, in respect to investigation, in view of the proceedings issued by Superintendent of Police, Madurai, under Ex.P6 and on receipt of the copy of the FIR from P.W.11, P.W.13 took up the same for investigation. On 07.07.2013 around 9.00 a.m he visited the scene of occurrence and in the presence of P.W.5-Rajendran and one Chinnathambi, he prepared an Observation Mahazar under Ex.P2. He drawn the rough sketch and the same was marked as Ex.P7. He examined the witnesses and recorded their statements. On 09.07.2013, he sent the letter to the Tashildar, Thirumangalam, wherein, he requested to issue Community Certificate to PW1 and to the accused. In the said situation, since P.W.13 got transferred, he handed over the case records to P.W.14 for further investigation.

(v) P.W.14-Sasimohan, the then Deputy Superintendent of Police, Thirupparankundram, on 29.08.2013, received the case records from P.W.13, took the same for further investigation and examined the witnesses. Since the witnesses gave similar statement, which was given before P.W.13, PW14 did not recorded any statement from the occurrence witnesses. He examined the Tashildar and after receipt of the Community Certificate for PW1 and the accused, he concluded the investigation and filed a final report alleging that both the accused are liable to be convicted under Sections 323, 324, 506(ii) of IPC r/w Section 3(1)(x) of SC/ST (POA) Act.

5. Based on the materials available on record, the learned III-Additional District and Sessions Judge (PCR), Madurai, framed the charges for the offences punishable under Sections 323, 324 and 506(ii) of IPC r/w Section 3(1)(x) of SC/ST (POA) Act. The accused denied the charges 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, 14 witnesses have been examined as P.W.1 to P.W.14 and 7 documents were exhibited as Ex.P1 to Ex.P7.

7. Out of the above said witnesses, P.W.1-Anbalagan is the victim in this case. He speaks about the occurrence as during the relevant point of time, the second accused had assaulted on his chest and at the same time, both the accused by using stick assaulted on his neck and head.

(i) PW2-Mayalagan, who is the driver of PW1, being the occurrence witness, did not give any evidence in support of the case of victim or prosecution. Hence, he was treated as a hostile witness.



(ii) P.W.3-Paulchamy, cited as an occurrence witness and he has not given any evidence in support of the case of the prosecution.

(iii) PW4-Solaimalai, who is the father of PW1, gave evidence as after knowing the occurrence, he went to the Hospital and saw the PW1.

(iv) P.W.5-Rajendran states that in his presence the Investigation Officer prepared an Observation Mahazar.

(v) P.W.6-Pandi (Pandiyan), who is the relative of PW1, claims that on 06.07.2013, when at the time, he was standing near to the garden, in which, the lorry drivers were collecting water, the accused herein attacked PW1 and thereafter PW1 went to the police station and lodged a complaint.

(vi) P.W.7-Periyakaruppan, who is the elder brother of P.W.1, gave evidence as during the relevant point of time, somebody had stated about the alleged occurrence.

(vii) P.W.8-Ramachandran is the owner of the garden, in which, the lorry drivers were collecting water, speaks about the occurrence as during the time of occurrence, both the accused quarrelled with P.W.1 and attacked him by using coconut stick.

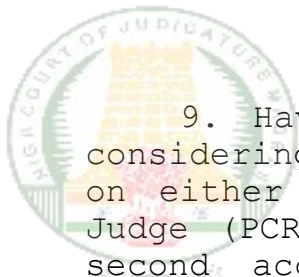
(viii) P.W.9-Alamaprabhu is the son of P.W.8, who is also the occurrence witness, did not give any evidence in support of the case of the prosecution. Hence, he was also treated as a hostile witness.

(ix) P.W.10-Suryakumar, the then Tashildar, gave evidence as in view of the request made by the Investigating Officer, he issued a certificate under Ex.P3 stating that both the accused are belong to Hindu Piramalai Kallar and P.W.1 belongs to Hindu Paraiyar.

(x) P.W.12-Karthikayini is the Doctor working in Government Rajaji Hospital, Madurai along with Dr.Alis Fathima, who gave treatment to P.W.1. Since the said Doctor i.e., Dr.Alis Fathima was not available, being the reason that she knows the handwriting of the said doctor gave evidence about the injury sustained by P.W.1.

(xi) P.W.11, P.W.13 and P.W.14 are the Police Officers, speaks about the receipt of complaint, investigation, and about the filing of final report.

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



9. Having considered the materials placed before him and on considering the arguments advanced by the learned counsels appearing on either side, the learned III-Additional District and Sessions Judge (PCR), Madurai, came to the conclusion that the first and second accused are guilty under Section 323 and 324 I.P.C respectively, convicted and sentenced them as stated above. Aggrieved over the said conviction and sentence, both the accused are before this Court with this appeal.

10. I have heard Mr.P.Rajendran, learned counsel appearing for the appellants and Mr.M.Muthumanikkam, learned Government Advocate (Crl.side) appearing for the State and also perused the records carefully.

11. The learned counsel appearing for the appellants would contend that in order to prove the case of the prosecution, except P.W.1, none of the witnesses examined on the side of the prosecution as eye witnesses, not supported the case of the prosecution. Further, the evidence given by P.W.1 in respect to the occurrence is having a lot of contradictions. It is the further submission made by the learned counsel for the appellants is that due to previous enmity, P.W1 with the help of police authorities, foisted a false case against the appellants and also he would submit that the FIR which was registered for the alleged occurrence had reached to the Court with the delay of 6 days and therefore, the same is sufficient to hold that the case foisted against the appellant is false one. Accordingly, he prayed to allow this appeal and to set aside the conviction.

12. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent police would contend that the solitary testimony of P.W.1 is sufficient to accept the case of the prosecution. The evidence given by the doctor, who treated the injured, is in support of the evidence given by P.W.1 and therefore, the inconsistency now pointed out by the appellants counsel cannot be taken into account for setting aside the order of conviction. According to him, interference of this Court in the findings arrived at by the trial Court does not require.

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

14. Here it is a case, before the trial Court, in order to prove the occurrence, P.Ws.1 to 4 & 6 were examined as eye witnesses to the occurrence. Unfortunately, except P.Ws.1 & 6, P.W.4 the witness examined on the side of the prosecution as eye witness, has not given any evidence in support of the case of the prosecution. Hence, he was treated as hostile witnesses.

15. It is the case of the prosecution that during the relevant period both the accused had attacked P.W.1 and caused simple



injuries. In respect to the same, P.W.1-Anbalagan, who is the defacto complainant/injured, gave evidence as during the time of occurrence, the second accused bite him on his chest, further, he has stated that both the accused attacked him with the aid of wooden log. In support of the said evidence, P.W.6 Pandi gave evidence as both the accused after attacking P.W.1 bite the P.W.1 on his left chest. In otherwise, as far as the medical evidence is concerned, P.W.12 Dr.Karthikayini, who treated P.W.1 stated in his evidence as P.W.1 sustained the following injuries:-

(I) An aberration of size 1 x 1 c.m., on the left side of the chest.

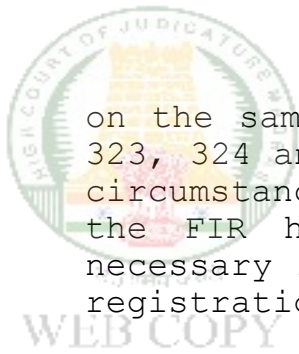
(ii) A bite injury on the left side of the chest

(iii) A complaints of pain on the left shoulder

16. Now, on cull out the above mentioned evidences, it is apparent that the evidence given by P.W.1 is not in accordance with the evidence given by the doctor. It is the evidence given by P.W.1 as while at the time of occurrence, both the accused attacked him on his head and neck. On the other hand, injury Nos.1 and 3 is not in view of the evidence given by P.W.1, further the other eye witness, who supported the case of the prosecution, have not stated the area on which the accused attacked the P.W.1. However, being the reason that, in respect of injury No.2, the evidence given by P.W.12 is found in accordance with the evidence given by P.W.1, I am of the opinion that at the time of occurrence, the second accused bite the P.W.1 and caused simple injury.

17. Now, it is the case of the defence that due to previous enmity, P.W.1 lodged a false complaint against the accused. Now, on considering the said defence with relevant records, P.W.1 in her cross-examination has admitted that he is having an enmity with the accused. Further, the investigating officer, who gave evidence as P.W.13, also stated that due to collection of water P.W.1 and the accused are having previous enmity. Assuming that, the said evidence may be a true one, since previous enmity is a double edged weapon, due to the previous enmity, there may be a chance that the accused had attacked the P.W.1. Therefore, only because of the reason that the accused is having previous enmity with P.W.1, we cannot come to the conclusion that the present case has been falsely foisted against the accused. In the said circumstances, it is the duty of the Court that the evidence given by P.W.1 has to be scrutinised with great care and caution.

18. As rightly pointed out by the learned Government Advocate (Crl.side) that in respect to the causing of bite injury cited by the doctor, the evidence given by P.W.1 is fully in support of the case of the prosecution. On the other hand, in respect of the registration of the case, on going through the contents of the FIR, it would appear that the alleged occurrence had happened on 06.07.2016 at 10.45 hours and thereafter, a case has been registered



on the same day at about 20.00 hours for the offence under Section 323, 324 and 506(ii) I.P.C., r/w 3(i)(x) of SC/ST Act. In the said circumstances, being the reason that the said offence narrated in the FIR has to be tried in the Sessions Court, it should be necessary for the police to send the said FIR immediately after the registration.

19. Here it is the case, after registering the case on 06.07.2013, the same has been forwarded to the Court on 12.07.2013. In respect to the same, P.W.11 Malarvizhi, who is the police officer registered a case, admitted in her cross-examination as the said FIR has been received by the Magistrate only on 12.07.2013. Apart from that, in the FIR, in column provided for mentioning the date in respect to the sending of FIR has not been filled up. In otherwise, in respect to the delay in sending the FIR to the Court, both the officers, who register and investigate the case had not given any explanation as under what circumstances the FIR has not been forwarded to the Court immediately.

20. Normally, if the delay in despatching the FIR has been satisfactorily explained by the prosecution by adducing cogent evidence, the said delay cannot create a doubt in respect to the registration of the case. But, herein it is a case, for the delay occurred in sending the FIR, no flexible explanation is offered from the side of the prosecution.

21. It is a settled law that delay in sending the FIR is not a fatal to the case of the prosecution. However, unexplained inordinate delay in sending the copy of FIR to the Magistrate may affect the prosecution case adversely. An adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations.

22. Hence, in view of the above, being the reason that the medical evidence given by the doctor is varied in respect to the first appellant and also the evidence given by P.W.1 in respect to the attack made by the accused is found inconsistent, the delay in despatching the FIR having much significant and therefore, the same is nothing but fatal to the prosecution. Accordingly, I am of the opinion that the trial Court without considering the said aspect, convicted the appellants under Sections 323 and 324 of IPC is not found correct.

23. In view of the above, I am of the considered opinion that the prosecution has not proved their case beyond reasonable doubt. Hence, this criminal appeal is allowed and the conviction and sentence imposed on the appellants, by the learned III Additional District and Sessions Judge (PCR), Madurai, made in S.C.No.19 of 2015, is set aside and the appellants are acquitted of all the



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charges. The fine amount, if any, paid by them, shall be refunded to them. Bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

cp/am

To:-

- 1.The III Additional District and Sessions Judge (PCR),
Madurai.
- 2.The Deputy Superintendent of Police,
Thirupparankundram Division,
Madurai District.
- 3.The Sub-Inspector of Police,
Perungudi Police Station,
Perungudi,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:-

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

**Crl.A(MD)No.430 of 2016
17.09.2021**

SE (CO)

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