

BAIL SLIP

The petitioner/Appellant namely Devadasan Robert @ Robert, S/o. Sornaraj was directed to be released on bail by the order of this court dated 24.02.2016 and made in Crl.MP.(MD).1691 of 2016 Crl.A.(MD).58 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 10.08.2021

Delivered On: 18.08.2021

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.(MD).No.58 of 2016

Devadasan Robert @ Robert

... Petitioner

Vs.

The State, rep. by,
The Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.
(Cr. No.344/2013)

... Respondent

PRAYER: Criminal Appeal, filed under Section 374(2) of the Criminal Procedure Code, to set aside the Judgment passed in S.C.No.245/2015 Dated 09.02.2016, on the file of the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.

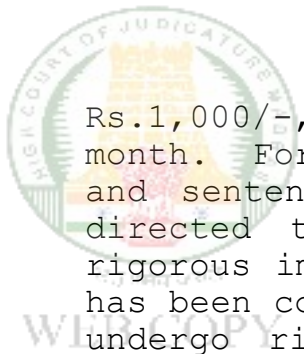
For Appellant : Mr.A.Thiruvadi Kumar
For Respondent : Mr.M.Muthumanikkam
Government Counsel (Crl. Side)

ORDER

This criminal appeal is directed against the conviction and sentence, dated 09.02.2016, in S.C.No.245 of 2015, on the file of the Sessions Judge/Mahalir Neethimandram (Fast Tract Mahila Court), Thoothukudi.

2.The appellant is the sole accused. He stood charged for the offences under Sections 451, 354, 307, 324, 506(ii) IPC. The accused denied the charges and opted for trial. Therefore, he was put on trial on the charges.

3.After full-fledged trial, the learned Sessions Judge found the appellant guilty under Sections 451, 354, 324 (2 counts) of IPC. The accused was acquitted for the remaining charges. After concluding as above, the learned Sessions Judge had convicted the appellant under Section 451 IPC and sentenced to undergo rigorous imprisonment for six months and directed to pay a fine of



Rs.1,000/-, in default, to undergo rigorous imprisonment for one month. For the offence under Section 354 IPC, he has been convicted and sentenced to undergo rigorous imprisonment for one year and directed to pay a fine of Rs.3,000/-, in default, to undergo rigorous imprisonment for six months. Apart from that, the accused has been convicted under Section 324 IPC (2 counts) and sentenced to undergo rigorous imprisonment for one year for each count and directed to pay a fine of Rs.3,000/- for each count, in default, to undergo rigorous imprisonment for two months. The learned trial Judge ordered to run the sentence concurrently and also given set off under Section 428 Cr.P.C.

4.Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

5.The relevant facts of the case, which gave rise to the filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-

5.1.PW1 Seetha is residing in Kalunguvilai. She is known to the accused. On 09.11.2013, at about 12.30 mid-night, while she was alone in the house, the accused came into the house and pulled her hands. At that time, her father, who had gone out to attend a festival, entered into the house. Immediately after entering into the house, her father asked the accused as to what he wants, for which, the accused by using filthy language abused her father, told him that it is better to die than being live and attacked him with an iron rod. After seeing the occurrence, P.W.1 prevented the accused from beating her father, for which, the accused abused her in filthy language and told her to get away or he would kill her also and while saying so, he assaulted her head with iron rod. So, she had about 7 to 8 stitches in her head. Due to the attack made by the accused, the father of P.W.1 fell down and after seeing the same, the accused ran away from the occurrence place. Immediately, P.W.1 informed the incident to the neighbour and with the help of them, her father was admitted in the Government Hospital, Sathankulam.

5.2. In the said hospital, P.W.6 - Doctor Thomas Xavier Paul Singh, while he was on duty around 02.45 a.m. examined P.W.1 and found the following injuries:

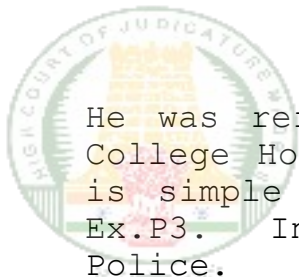
(i) lacerated injury on the left portion of the head.

According to him, the injury sustained by P.W.1 is simple in nature. The Accident Register copy issued by him in respect of P.W.1, was marked as Ex.P2. On the same day, he examined the Thangaiah and found that

(i) there was multiple lacerated injury on the left portion of the head,

(ii) blood was bleeding out from the left ear and

(iii) there was a simple injury on the left hand.



He was referred for further treatment to the Tirunelveli Medical College Hospital. According to him, injury sustained by Thangaiah is simple in nature. He issued an Accident Register copy under Ex.P3. In this regard, he issued intimation to the Jurisdiction Police.

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5.3.P.W.7 Subramaniam, the then Special Sub Inspector, Sathankulam Police Station, had received intimation from the hospital and afterwards, on the same day, around 03.00 a.m., he reached the hospital. In the hospital, he examined the P.W.1 and recorded the statement under Ex.P1. Upon receipt of the statement given by P.W.1, he has registered a case in Crime No.344 of 2013, under Sections 294 (b), 324, 307, 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act. The printed FIR is marked as Ex.P4. After registration of the case, he forwarded the copy of the FIR to the Inspector of Police for investigation.

5.4.P.W.8 - Alagudurai, the then Inspector of Police, Sathankulam Police Station, after receipt of the copy of the FIR, took up the case for investigation and on the same day, at about 07.00 a.m., he visited the scene of occurrence and in the presence of P.W.4 - Ramachandran and one Sankar, he prepared the Observation Mahazar under Ex.P5. He draw the Rough Sketch and the same has been marked as Ex.P6. He examined the witnesses Seetha, Thangaiah, Sulaiman, Sudalayandi, Ramachandran, and Sankar and recorded their statements.

5.5.In continuation of investigation, on 13.11.2013, at about 09.00 a.m., he arrested the accused and recorded his confession statement in the presence of P.W.5 - Edward Rajadurai and one Ponraj Prabakar. In the confession statement, the accused admitted the offence and willing to identify the iron rod, which is used for the commission of the offence. Pursuant to the confession statement, the accused brought the Investigating Officer to his house and identify the iron rod which was concealed in his house. Thereafter, the said iron rod was recovered in the presence of same witnesses under Ex.P8 Athatchi. The admissible portion of the disclosure statement is marked as Ex.P7. After recovery as above, he sent the accused for remand. He examined the Doctor and recorded his statements.

5.6.Further, he altered the section of law from 294(b), 324, 307, 506(ii) IPC and 4 of Tamil Nadu Prohibition of Women Harassment Act into Sections 450, 354, 324, 307, 506(ii) IPC and 4 of Tamil Nadu Prohibition of Women Harassment Act. The alteration report prepared by the P.W.8 was marked as Ex.P9. On completion of investigation, he came to a positive conclusion that the appellant / accused herein had committed an offence, which is punishable as above and filed a final report accordingly.

<https://hcservices.courtservice.gov.in/> Based on the above materials, the trial Court framed the



charges under Sections 451, 354, 307, 324, 506(ii) IPC. The accused denied the same.

7.Hence in order to prove their case, on the side of the prosecution 8 witnesses have been examined as P.W.1 to P.W.8 and 9 documents were exhibited as Exs.P1 to P9, besides one Material Object M.O.1.

8.Out of the said witnesses, P.W.1 Seetha is the defacto complainant. She speaks about the occurrence as alleged by the prosecution. P.W.2 Thiru Solomon, a resident of Kalunguvilai claims that, on 09.11.2013, around 12.00 mid-night, while at the time when he was returning from his field, he heard the cue and cry of P.W1 and thereafter, when at the time when he entered into the house of P.W.1, he saw the present accused uses the criminal forces on P.W.1 with intent to outrage her modesty. Further, during such time, by using iron rod, the accused attacked the P.W.1 and her father Thangaiah. Immediately, after seeing as above, he made arrangements for admitting the injured in the hospital.

8.1. P.W.3 - Sudalaimani is also a resident of the same locality. He claims during the relevant point of time, on 08.11.2013, after hearing the occurrence went into the house of P.W.1 and with the help of others admitted the P.W.1 and his father in Sathankulam Government Hospital. He has further stated that due to the attack made by the accused, the injured Thangaiah fell down in an unconscious state and therefore, he was referred from Sathankulam Government Hospital to Tirunelveli Government Medical College Hospital.

8.2. P.W.4 - Ramachandran is an attested witness, who attested as a witness in the Observation Mahazar prepared by the Investigating Officer. However, before the trial Court, he has not supported the case of prosecution, he was treated as a hostile witness. After treating him as a hostile witness, during the time, when he was subjected to cross examination by the Public Prosecutor, he has not supported the case of prosecution. Similarly, P.W.5 - Edward Rajadurai, a witness to the Confession Statement recorded from the accused and to the recovery of the material object, has also not supported the case of prosecution.

8.3. P.W.6 - Dr.Thomas Xavier Paul Sing attached with Government Hospital, Sathankulam, speaks about the treatment given to the P.W.1 and to her father Thangaiah. According to him, the injury sustained by P.W.1 and Thangaiah was simple in nature.

8.4. P.W.7 and P.W.8 are the Police Officers speak about the receipt of the complaint from P.W.1, registration of the cases, examination of witnesses and about the filing of the final report.

<https://hcservices.courts.mil/hcservices/> 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 on his side nor mark any documents.

10.Having considered the materials placed before him and also by considering the arguments advanced by either side, the learned trial Judge came to the conclusion that the appellant is found guilty under Sections 451, 354 and 324 (2 counts) I.P.C., convicted and sentenced supra. Aggrieved over the same, the appellant/accused is before this Court.

11.I have heard Mr.A.Thiruvadi Kumar, learned counsel appearing for the appellant/sole accused and Mr.Muthumanikkam, learned Government Counsel (Crl. Side) appearing for the State and perused the records carefully.

12.The learned counsel appearing for the appellant would contend that prior to the occurrence, due to the Panchayat election, the injured Thangaiah and the accused are having previous enmity. Hence, in view of the same, P.W.1 lodged a false case against the accused. He would further state that with regard to the occurrence, the evidence given by P.W.1 is not duly corroborated with the evidence given by P.W.2. Therefore, it can be held that due to the previous enmity, P.W.1 lodged a false case against the petitioner and the same has not been properly investigated. According to him, the accused has not committed any offence as alleged and accordingly, he prayed to set aside the conviction and sentence.

13.Per contra, the learned Additional Public Prosecutor appearing for the respondent police would contend that P.W.1 and P.W.2 being illiterate Rural people, naturally there may be a possibility to give evidence with minor contradictions. In otherwise, in respect of the conduct and other things committed by the accused, the evidence given by P.W.1 and P.W.2 is sufficient to hold that the accused herein had entered into the commission of offence as alleged by the prosecution.

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

15.The earliest document for the alleged occurrence is the complaint given by the victim Seetha, which was marked before the trial Court as Ex.P1. Upon going through the averments found in the complaint, it reveals the fact that while at the time of occurrence, the accused herein had unlawfully entered into the house of P.W.1, pulled her hand and at the time, when the same was questioned by her father, by using the iron rod, the accused attacked the P.W.1 and her father. After made allegation as above, while at the time of giving evidence P.W.1, he has narrated the occurrence as stated in the complaint. The said evidence given by P.W.1 was duly
https://hcrs.courts.gov.in/cases/15



16.Though it was submitted on the side of the accused that the injured Thangaiah and the accused is having the previous enmity due to the Panchayat Election, in order to substantiate the same, the accused has not produced any relevant documents to show that they are having the previous enmity. Further, the evidence given by the prosecution witnesses including the Investigating Officer denied the suggestion that both are having previous enmity. Therefore, the submission in respect of the previous enmity is not at all having any much relevance to the case in hand.

17.In view of the evidence given by P.W.1 and P.W.2, it is upto the understanding that during the time of occurrence, the accused by using the iron rod attacked P.W.1 and her father. In this regard, the Doctor, who had given treatment to the injured gave evidence as during the time of Medical examination, it was found that P.W.1 sustained contusion on her left skull, similarly, Thangaiah sustained multiple aberrations and contusion on the left side of the skull, further blood was oozed from his left ear. In this aspect, though the said Thangaiah was referred to the Government Medical College Hospital, Tirunelveli, without collecting the details in respect to the further treatment, P.W.6 Thomas Xavier Paul Singh, issued a Certificate that the said Thangaiah also sustained a simple injury. It shows that the said Doctor had mechanically issued the certificate without understanding the pain and sufferings of the injured. However, on this ground, the evidence given by P.W.6 is in corroboration with the evidence given by the injured, eye witnesses.

18.In general, in the deposition of witnesses, there are always a normal discrepancies, however, honest and truthful they may be. These are due to normal error of observation normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and the like. Material discrepancies are those which are not normal and not expected of normal person. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ from individuals. Cross-examination is an unequal duel between a rustic and refined Lawyer. In appreciating the evidence of a witness, the approach must be whether the evidence of witness read as a whole appears to have a ring of truth. If that appears to have the exhibits the simple variations or only minor discrepancies, which cannot go-by the basic evidence. The said rule is confirmed by our Honourable Apex Court in a case of State of U.P Vs. M.K.Anthoni, reported in AIR 1985 SC 48.

19.Therefore, even assuming that the evidence given by P.W.1 and P.W.2 are having some minor contradictions in respect of the damage caused to the barrier and in respect to the entering of injured Thangaiah, the same should be treated as a minor discrepancy and therefore, much importance cannot be given to the



said contradictions.

20. Before the trial Court, the person who brought the injured to the hospital was examined as P.W.3 and while at the time of giving evidence, he has stated that only after hearing the occurrence, he came to the occurrence place, wherein, P.W.2 Solomon was found present. The said evidence is also in corroboration with the evidence given by P.W.2. Further, on considering the whole circumstances, there is no necessity for the accused to go to the house of P.W.1 in the mid-night. So the conduct of the accused prove the fact only with an intention to commit the offence, he tress-passed into the P.W.1's house and therefore, the findings arrived at by the trial Court is fully within the law established.

21. Accordingly, in the light of the above submissions, I am of the opinion that the findings arrived at by the trial Court is found correct and therefore, interference of this Court is not necessary.

22. This criminal appeal is dismissed and the conviction and sentence imposed by the trial Court in S.C.No.245 of 2015 in respect of this appellant is hereby confirmed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi.
2. The Judicial Magistrate, Sathankulam.
3. The Chief Judicial Magistrate, Thoothukudi.
4. The Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.



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

Copy to

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

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-25865[F] dated
11/08/2021)

Crl.A.(MD) .No.58 of 2016
18.08.2021

PS (CO)

KB(26.08.2021) 8P 9C