



BAIL SLIP

Thiru.Ramu @ Raman aged 35 years, & Kumar, aged 27 years, S/o. Mammurukki, Accused No.1 & 2 are released on bail vide court order of this Court dated 11.03.2016 made in Crl.MP(MD).No. 2188 of 2016 in CRL.A(MD).No. 86 of 2016 and Thiru. Arumugm, aged 32 years, S/o. Veeramalai, Accused No. 3 was released on bail vide order of this Court dated 14.03.2016 made in CRL.MP(MD).No. 2221 of 2016 in CRL.A(MD).No. 87 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
Crl.A (MD)Nos.86 and 87 of 2016

1.Ramu @ Raman	
2.Kumar	...Appellants/Accused No.1 & 2 in Crl.A(MD Nos.86 of 2016
3.Arumugam	... Appellant/Accused No.3 in Crl.A(MD Nos.87 of 2016

Vs.

The Inspector of Police, D2 Perungudi Police Station, Madurai (in Crime No.173 of 2010)	... Respondent/Complainant in CRL.A(MD). No. 86 of 2016
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The Deputy Superintendent of Police, Perungudi Police Station, Madurai district, (Crime no. 173 of 2010)	...Respondent/Complainant in CRL.A(MD). No. 87 of 2016
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COMMON PRAYER: These Criminal Appeals are filed under Section 374(2) of the Code of Criminal Procedure, to admit the appeal on file and to call for the records from III Additional District and Sessions Judge, Madurai in Spl.S.C.No.29 of 2013 and set aside the judgment dated 10.02.2016 made in the above said case.

For Appellants	: Mr.J.Jeyakumaran
in Crl.A(MD) No.86 of 2016	
For Appellant	: Mr.B.Jeyakumar
in Crl.A(MD) No.87 of 2016	
For Respondent	: Mr.M.Muthumanikkam



(in both appeals)

Government Advocate (crl.side)

COMMON JUDGMENT

These present Criminal Appeals are filed against the conviction and sentence dated 10.02.2016 made in Spl.S.C No.29 of 2013 on the file of the III Additional District Judge (PCR), Madurai.

2.Since both the appeals have been arose from the same judgment rendered in Spl.S.C.No.29 of 2013, by the consent of the parties, they are heard together and the following common judgment is passed.

3.The appellants in Crl.A(MD) No.86 of 2016 are arrayed as Accused Nos. 1 and 2 in the above referred case. Similarly, the appellant in Crl.A(MD) No.87 of 2016 is arrayed as third accused in the same case. Before the trial Court, the Accused Nos.1 to 3 were charged for the offence punishable under Sections 341, 324, 324 r/w 34 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred as "SC/ST (POA) Act). After full-fledged trial, the learned III Additional District Judge (PCR), Madurai, came to the conclusion that all the appellants/accused were found guilty under Sections 341, 324 and 324 r/w 34 of IPC and in view of the above, all of them are convicted and sentenced as follows:-

Accused	Section	Sentence
A-1 to A3	341 IPC	Convicted and sentenced to undergo Simple Imprisonment for one month and to pay a fine of Rs.100/-, in default, to undergo simple Imprisonment for seven days
A-3 to A3	324 IPC	Convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.500/-, in default, to undergo simple Imprisonment for three months.
A1 to A3	324 r/w 34 IPC (2 counts)	Convicted and sentenced to undergo Rigorous Imprisonment for one year for each count and to pay a fine of Rs.500/-, for each count, in default, to undergo simple Imprisonment for three months.

The sentences were directed to run concurrently. In respect to the offence under Section 3(1)(x) of SC/ST (POA) Act, the accused were acquitted. Challenging the said conviction and sentence, the appellants are before this Court, by way of filing the present Criminal Appeals.



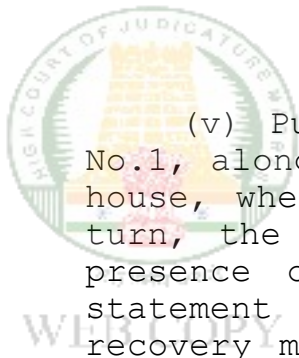
4. The case of the prosecution in brief is as follows:-

(i) PW1-Mahalingam belongs to Hindu Pallar community, which is recognized as Scheduled Caste. The accused are all belonged to Hindu Muppanar community. On 14.12.2010, while at the time PW1 was traveled in a bus, which goes to Samathuvapuram, near Samathuvapuram all the accused herein waylaid the bus and after entering into the same insulted PW1 by mentioning his caste name, the first accused Ramu attacked him on his left shoulder, while at the same time, the third accused Arumugam attacked PW2 Ramakrishnan on his left shoulder. In the said transaction, the second accused Kumar attempted to attack PW3 and the same was restrained by him and as a result of which, P.W.3 sustained injury in his hands and right chest. Immediately, after the occurrence, all the injured went to the Police Station and lodged the complaint under Ex.P1.

(ii) On receipt of the same, PW11, the then Inspector of Police, Thiruparakundram, registered the case in Crime No.173 of 2010 under Sections 341, 324 of IPC and Section 3(1)(x) of SC/ST (POA) Act. The printed FIR was marked as Ex.P1. After registration of the case, PW11 handed over the copy of FIR to PW12 for investigation.

(iii) In the meantime, PW2-Dr.Venkatakrishnan, attached with Government Medical College Hospital, Madurai, on 14.10.2010 around 11.00 a.m examined PW1 and found the lacerated injury in the size of 3x1x1cm on the left scapular region. According to him, the said injury sustained by PW1, is simple in nature. In this regard, he issued wound certificate under Ex.P9. Similarly on the same date around 11.10 am, he examined PW2 and found the lacerated wound in the size of 3x1x1cm over the left shoulder. In this regard, he issued wound certificate under Ex.P10 stating that the said injury sustained by PW2, is a simply in nature. Further, on the same day around 11.40 am, he examined PW3 and found a incised wound in the size of 1x ½ x ½ cm on base of left middle finger. In this regard, he issued wound certificate under Ex.P11 stating that the said injury is also simple in nature.

(iv) After receipt of FIR from PW11, PW13-Ponram the then Deputy Superintendent of Police, Thiruparankuram, took up the case for investigation. He visited the scene of occurrence and prepared an observation mahazar under Ex.P2 and he has drawn the rough sketch under Ex.P3. He examined the witnesses and recorded their statements. On 23.12.2010 around 10.30 am, he arrested the first accused and recorded his confession statement. In the confession statement, the first accused herein confessed as he committed the alleged offence and he would identify the knife, which was used for attacking PW1, if he is brought to his house.



(v) Pursuant to the confession statement given by the accused No.1, along with accused the investigation team, went to the accused house, wherein the first accused identify the knife (M.O.1) and in turn, the same was recovered by the investigation officer in the presence of witnesses. The admitted portion of the confession statement given by the first accused was marked as Ex.P6. The recovery mahazar prepared for the recovery of M.O.1 was marked as Ex.P5.

(vi) In continuation of investigation, he obtained the Community Certificate in respect to PW1 to PW3. He examined the Doctor and recorded his statements. After concluding the investigation, he came to the positive conclusion that the appellants/accused are all liable to be convicted under Sections 341, 324, 324 r/w 34 and Section 3(i)(x) of SC/ST (POA) Act. He filed the final report accordingly.

5. Based on the materials available on record, the trial Court framed the charges for the offences under Sections 341, 324, 324 r/w 34 and Section 3(i)(x) of SC/ST (POA) Act. All the accused denied the charges and opted for trial. Therefore, all 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, 13 witnesses were examined as PW1 to PW13 and 14 documents were exhibited as Ex.P1 to Ex.P14, besides one material object (M.O1).

7.(i) Out of the above said witnesses, PW1, who is the injured, speaks about the occurrence as during the relevant point of time, the first accused in this case by using knife attacked him on his left shoulder. In this regard, he lodged the complaint before the police and in turn, a case has been registered against the accused. PW2-Ramakrishnan, who is also a injured claims that during the time of occurrence, the third accused in this case after made abuse, by using the knife, attacked on his left shoulder.

(ii) PW3-Ramarajan, who is one another injured, speaks about the occurrence as during the time, when he was travelled in a bus along with PW1 and PW2, all the accused herein waylaid the bus and after entering into the bus, the first and third accused attacked PW1 and PW2 on their shoulders and at the same time, the second accused herein attacked him, as a result of which, he sustained injury on his hand and left chest.

(iii) PW4-Arumugam and PW5-Pawnlingam, who are residing in the village in which PW1 to PW3 residing, gave evidence in support of the prosecution as during the relevant point of time, the accused Nos.1 to 3 had attacked PW1 to PW3 as alleged by the prosecution.



(iv) PW6-Murugananthapoopathi and PW7-Ganeshan, who are the alleged eye witnesses, did not give any evidence in support of the prosecution. Hence, after getting leave before the trial Court, they were treated as hostile witnesses.

(v) PW8-Ayyanar and PW9-Muthu are the witnesses signed in the confession statement and the seizure mahazar, which were prepared by PW13 and they have also not supported the case of the prosecution. Hence, they were treated as hostile witnesses. PW10-Kamalasekaran, the then Tashildar, Madurai South, speaks about the issuance of Community Certificate to PW1 to PW3.

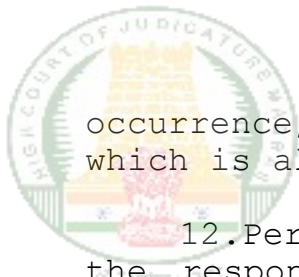
(vi) PW12-Dr.Venkatakrishnan, attached with Government Hospital, Madurai, speaks about the injury sustained by PW1 to PW3. PW11-Purusothaman and PW13-Ponram, who are the police officers speak about the receipt of complaint, registration of the case, investigation and about filing of final report.

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 choose to examine any witness nor mark any document on their side.

9. Having considered all the above and on considering the arguments advanced by the learned counsels appearing on either side, the learned III Additional District and Sessions Judge, Madurai, came to the conclusion that the accused were found guilty for the offences under Sections 341, 324, 324 r/w 34 of IPC and sentenced them as stated in paragraph No.3 of this judgment. Aggrieved by the said conviction and sentence, the appellant/accused are before this Court with these appeals.

10. I have heard Mr.J.Jeyakumaran, learned counsel appearing for the appellants/accused Nos.1 and 2 in Crl.A(MD) No.86 of 2016, Mr.J.Jeyakumaran, learned counsel appearing for the appellant/third accused in Crl.A.(MD) No.87 of 2016 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 due to the previous enmity, PW1 lodged the false complaint against the accused. Further, after registration of the case, the same has not been forwarded to the Court immediately, which causes suspicious circumstances over the case of the prosecution. He would further contend that the injury now stated by PW3 is not in correspondence with the evidence given by the Doctor, who gave treatment to PW3. Yet another submission made by the learned counsel appearing for the appellants is that even after knowing the fact that the alleged incident was happened in a running bus, none of the passengers, who travelled at the time of



occurrence, have not been examined by the Investigation Officer, which is also fatal to the prosecution.

12.Per contra, the learned Government Advocate appearing for the respondent would contend that though PW1 to PW3 are having enmity with the accused, being the reason that previous enmity is the double-edged weapon, it cannot be said that the entire occurrence narrated by the prosecution, is a false one. According to him, the evidence given by PW1 to PW3 is in support of the injury sustained by them and therefore, it is not necessary to examine independent witnesses in support of the case of the prosecution. Hence, interference of this Court in the finding arrived at by the trial Court, does not require.

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

14.Here it is a case, admittedly, PW1 to PW3 are having previous enmity with the accused. In this regard, PW1 to PW3, who are all sustained injury in the alleged occurrence and PW4 and PW5, who are all the witnesses residing in the same village in which the injured was residing, gave evidence as previous to the occurrence in respect to playing of Kabadi, there was a dispute arose between the injured and the accused. However, as rightly pointed out by the learned Government Advocate appearing for the respondent police, being the reason that previous enmity is a double-edged weapon, because of the reason that the accused are having previous enmity with prosecution witnesses, it cannot be held that the entire occurrence narrated by the prosecution is a false one. In the said circumstances, the evidence given by injured have to be scrutinized with care and caution.

15.By following the said observations with the case on hand, it is true that the evidence given by PW12, who is the Doctor issued the certificate in respect to the injury, is in support of the evidence given by PW1 and PW2. On the other hand, in respect to the injury sustained by PW3, the evidence given by PW12 is having contradiction. According to PW3, he sustained injury in his hand and left chest. On the other hand, in the wound certificate issued by PW12, it was stated that the injured sustained injury only in middle finger. However, the said contradiction found in the evidence given by PW3 and PW12 is minor in nature and also for the reason that the evidence given PW1 and PW2 is in correspondence with PW12. We cannot throw away the entire case of the prosecution as there was discrepancy in the evidence given by PW3.

16.In this occasion, the learned counsel for the appellants would draw the attention of this Court that there was a delay in sending the FIR to the Court. On considering the same, here is the case that the complaint (Ex.P1) pertains to the occurrence has been



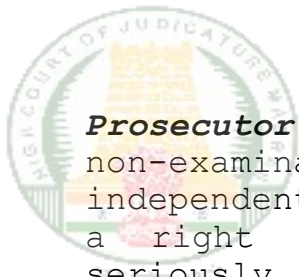
lodged before the Police on the same date of occurrence i.e., on 14.12.2010. In this regard, PW11, who is the Police Officer registered the case has stated in his evidence as on the same date of occurrence i.e., 14.10.2010 the FIR has been registered. Further on going through the contents of the said FIR, the same has been registered under Sections 341, 324 of IPC and Section 3(i)(x) of SC/ST (POA) Act. In the said occasion, being the reason that the said FIR has been registered for the offence triable by the Court of Sessions, it is for the police officer to send original copy of the FIR to the Court immediately after registration. But, in this case the said FIR has been received by the Court on 20.12.2010, that means, the FIR has been sent to the Court with the delay of six days. In respect to the said delay, there was no explanation offered on the side of the prosecution. At this juncture, it would be relevant to see the judgment of this Court reported in **2008(2) MWN (Crl) 4** in the case of **Sivakumar Vs State rep by Inspector of Police, Annur Police Station**, wherein this Court has held as follows:-

When there is such an unexplained delay in lodging complaint as well as despatching the FIR to the Court, the same shall be fatal to the prosecution case, more specifically in cases where there are circumstances giving room for an inference that the said time should have been utilised for some kind of concoction.

By applying the ratio laid down in the above referred case herein also, I am of the considered opinion that sending FIR to the Court with abnormal delay without offering any explanation, is nothing but fatal to the prosecution.

17.The one another suspicious circumstance arises in this case is that the alleged occurrence had happened in a running bus. Therefore, probably a number of persons, who traveled in the said bus would have seen the occurrence. But in this aspect, before the trial Court, none of the passenger travelled at the time of occurrence had not been examined as eyewitnesses. Only PW4 and PW5, who are the inmates of PW1 and PW2 alone were examined as eyewitnesses. Therefore, the said circumstance is created doubt whether the alleged occurrence had happened as narrated by the prosecution.

18.Though there was a decision that the non-examination of independence witness is not fatal to the prosecution and also there was no mandatory rule that the non-examination of independence witness in all circumstances to vitiate the trial, here it is the case, while at the time of occurrence a number of persons, who are all travelled in the bus had seen the occurrence, hence, it is easy for the prosecution to examine those witnesses as eyewitnesses to the occurrence. But the said procedure has not been adopted in this case. Therefore, it assumes much significance. In a similar situation, in the case of **Harijana Thirupala and ors Vs Public**



Prosecutor reported in **AIR 2002 SCC 2821**, it was observed that the non-examination of the independence witnesses, though several independent persons had witnessed the incident, the trial Court took a right view that non-examination of independent witnesses seriously impaired the credibility of the prosecution case. Therefore, it is quite clear that the discrepancy found in the evidence given by the prosecution witnesses lead a necessity to examine the independence witnesses.

19.Yet another circumstances which create a doubt in this case is that after registering the case for the offence punishable under Section 3(i)(x) of SC/ST (POA) Act, PW13, who is the Investigation Officer, without any authorisation from the Superintendent of Police, investigated the case and the same also gives rise suspicious circumstances in the case of prosecution.

20.In view of the above discussions, this Court is of the opinion that the prosecution has failed to prove its case beyond reasonable doubt and the trial Court without proper appreciation of the evidence and materials on record, had erred in convicting the appellants on the basis of the evidence given by PW1 to PW3 and thereby, the appellants are all entitled to the benefit of doubt.

21.In fine, these Criminal Appeals are allowed and the conviction and sentence imposed on the appellants, by the learned III Additional District and Sessions Judge, Madurai, made in Spl.S.C.No.29 of 2013, dated 10.02.2016, is set aside and the appellants are acquitted from all the 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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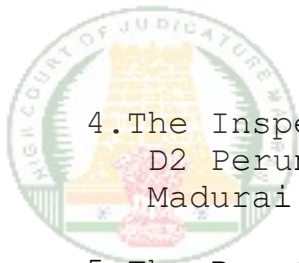
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Sub Assistant Registrar(CS)

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To:-

- 1.The III Additional District and Sessions Judge, Madurai.
- 2.The Judicial Magistrate No VI, Madurai.
- 3.Do through
The chief Judicial Magistrate, Madurai.



- 4.The Inspector of Police,
D2 Perungudi Police Station,
Madurai.
- 5.The Deputy Superintendent of Police,
Perungudi Police Station, Madurai District.
- 6.The Additional Public prosecutor,
Madurai Bench of Madras High Court,
Madurai
- 7.The Director General of Police,
Mylapore, Chennai
- 8.The District Collector, Madurai District.
- 9.The Section Officer, (2C)
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.

Crl.A (MD) Nos.86 and 87 of 2016
13.09.2021

KS (CO)
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