



BAIL SLIP

The Appellant/Sole Accused namely G.Shopana, female, W/o.Ganesan, was directed to be released on bail as per the order of this Court dated 15.03.2017 in CRL MP(MD).603 of 2017 in CRL RC (MD)No.59 of 2017 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2021

Pronounced on : 15.04.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.59 of 2017

G.Shopana : Petitioner/Appellant/Accused
Vs.

The State represented by
The Inspector of Police,
Tallakulam Police Station, Madurai.
Crime No.11 of 2003. : Respondent / Respondent /Complainant

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records relating to the case in Crl.A.No.41 of 2012 on the file of the VI Additional Sessions Court, Madurai and allowing this Revision petition by setting aside the conviction and sentence imposed against this revision petitioner by the learned Judicial Magistrate No.II, Madurai in C.C.No.462 of 2003, dated 25.07.2012 confirmed in Crl.A.No.41 of 2012 dated 30.09.2016 on the file of the VI Additional Sessions Court, Madurai.

For Petitioner : Mr.G.Karuppasamy Pandian,
for Mr.P.Saravanan.

For Respondent : Mrs.S.E.Veronica Vincent,
Government Advocate (Criminal Side)

ORDER

The Criminal Revision Case is directed against the concurrent judgments of conviction passed in Criminal Appeal No.41 of 2012, dated 30.09.2016 on the file of the VIth Additional District and Sessions Court, Madurai, confirming the judgment passed in C.C.No.462 of 2003, dated 25.07.2012, on the file of the Court of the Judicial Magistrate No.II, Madurai.

2.The revision petitioner is the accused in C.C.No.462 of 2003 on the file of the Court of the Judicial Magistrate No.II,



3.The case of the prosecution is that there existed dispute between the complainant and the accused, who are neighbors in Krishnapuram Colony, Madurai, with respect to taking of water and throwing of waste, that on 02.10.2003 at about 11.00 am, when the complainant was standing in front portion of her house, the accused started abusing her and when the same was questioned, the accused had way-laid the complainant and attacked her with the instrument using for grinding dal i.e., dal smasher (பருப்பு, மத்து) on her left shoulder and caused grievous injury. After completion of investigation, the respondent police has laid the final report against the accused for the offence punishable under Sections 341 and 325 IPC and the case was taken on file in C.C.No.462 of 2003 on the file of the Court of the Judicial magistrate No.II, Madurai. After appearance of the accused, the copies of the records were furnished to her under Section 207 of Cr.P.C on free of costs. The learned Magistrate, on perusing the records and on hearing both sides, after satisfying that there existed a *prima facie* case against the accused, has framed the charges under Sections 341 and 325 IPC and the accused had denied the charges and pleaded not guilty.

4.During trial, the prosecution in order to prove its case, has examined six witnesses as P.W.1 to P.W.6 and exhibited 6 documents as Ex.P.1 to Ex.P.6. After completion of prosecution side evidence, when the accused was questioned under Section 313 (1) (b) Cr.P.C with regard to the incriminating evidence found against her, she denied the prosecution side evidence as false and stated that a false case has been foisted against her. Though the accused has stated that she is having defence evidence, she has not let in any evidence subsequently.

5.The learned Judicial Magistrate, upon considering the evidence adduced and on hearing the arguments of both sides, passed the judgment on 25.07.2012, acquitting the accused for the offence under Section 341 IPC and convicting the accused for the offence under Section 325 IPC and sentenced her to undergo 6 months simple imprisonment and to pay fine of Rs.1,000/- in default to undergo 3 months simple imprisonment. Aggrieved by the said judgment of conviction, the accused has preferred an appeal in C.A.No.41 of 2012 and the learned VI Additional District and Sessions Judge, Madurai, upon considering the evidence and on hearing both the sides, has passed the impugned judgment on 30.09.2016, dismissing the appeal and thereby confirming the judgment of conviction passed in C.C.No.462 of 2003, dated 25.07.2012 by the Court of the Judicial Magistrate No.II, Madurai. Aggrieved by the dismissal of the appeal, the accused has come forward with the present revision.



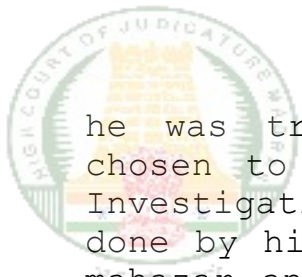
6. Whether the concurrent judgments of conviction passed in Crl.A.No.41 of 2012, dated 30.09.2016 on the file of the VI Additional District and Sessions Court, Madurai, confirming the judgment made in C.C.No.462 of 2003 dated 25.07.2012 on the file of the Court of the Judicial Magistrate No.II, Madurai, is liable to be set aside ? is the point for consideration.

7.P.W.1 Murugeswari, the defacto complainant is the daughter of P.W.4 Tmt.Annakodi. P.W.1, P.W.4 and the accused are residing in Krishnapuram Colony. Admittedly there existed disputes and previous enmity between the P.W.1's family and the accused with respect to fetching of water and throwing of waste.

8.It is the case of the prosecution that on 02.10.2003 at about 11.00 am, when the accused was throwing waste in front of the complainant's house, the same was questioned and the accused had attacked P.W.1 with dal smasher on her left shoulder and caused grievous injury. P.W.1 in her evidence would say that two years prior to her deposition, when she was questioning the accused for throwing waste in front of her house, the accused had attacked with dal smasher (பருப்பு, மத்து) on her left hand, that she sustained bone injury, that her mother had taken her to the Government Hospital, that she had preferred a complaint under Ex.P.1 and that after the attack, the accused ran away with that instrument. P.W.4, mother of P.W.1 in her evidence would say that there were frequent quarrels between P.W.1 and the accused and that the accused had attacked her daughter P.W.1 with wooden log and caused injury on her left shoulder.

9.P.W.1 and P.W.4 in their cross examination would reiterate the same version and that though they were subjected to cross examination at length, nothing was elicited by the defence in their favour. No doubt, P.W.2 neighbor of P.W.1, by not supporting the case of the prosecution, has turned hostile. P.W.5 Medical officer would say that, he had examined P.W.1 and found a contusion injury on her left shoulder with measurement 3 x 3 cm and that he issued a wound certificate under Ex.P.3 stating that the injuries suffered by P.W.1 is grievous in nature.

10.It is the specific case of the prosecution that P.W.6 after registering FIR, had visited the occurrence place and inspected the scene of occurrence in the presence of P.W.3 Ganesan and one Ayyanar and prepared the observation mahazar under Ex.P.2 and rough sketch under Ex.P.5 and also recovered the dal smasher - (பருப்பு, மத்து) through seizure mahazar under Ex.P.6. But, as rightly contended by the defence, P.W.3 alleged to be the witness for the preparation of observation mahazar and for recovering dal smasher, he did not supported the case of the prosecution and hence,



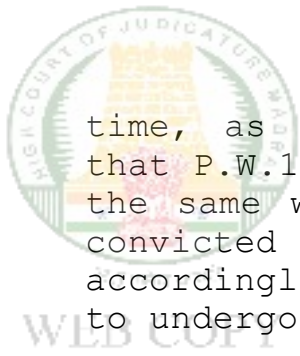
he was treated as hostile. Moreover, the prosecution has not chosen to examine another witness Ayyanar. Whatever it is, the Investigation Officer P.W.6 would depose about the investigation done by him and more particularly, preparation of the observation mahazar and rough sketch at the scene of occurrence and recovery of dal smasher through seizure mahazar. Though P.W.6 was subjected to cross examination, the defence has not elicited anything.

11.As already pointed out, the trial Court as well as the Appellate Court had found the accused guilty for the offence under Section 325 IPC, which prescribes the punishment for voluntarily causing grievous hurt. In order to convict a person under Section 325 IPC, the prosecution must show that the accused caused grievous hurt to the victim. Eight categories of hurts are designated as 'grievous hurt' under Section 320 of IPC, and in order to make out the offence under Section 325 IPC, there must be some specific hurt, voluntarily inflicted and coming within some of the eight kinds enumerated under Section 320 of IPC and Section 322 of IPC defines what is voluntarily causing grievous hurt. It is necessary to comply with Section 320 and then Section 322 of IPC, before convicting the accused under Section 325 IPC.

12. In the case on hand, as already pointed out, the prosecution has simply stated that P.W.1 sustained grievous injury, P.W.1 in her evidence would say that she suffered fracture of bone on her left hand. In Ex.P.3 Accident Register copy, it has been mentioned in the front page that X-ray of left shoulder was taken and in back side, the Doctor has recorded his opinion "Dislocation (LT) Shoulder- Grievous". According to the prosecution, since there was dislocation of shoulder, the injury suffered by P.W.1 was shown as grievous.

13. It is pertinent to mention that the Doctor, who had attended P.W.1 would say that as per accident register copy, the injury suffered by P.W.1 was certified as grievous. P.W.5 Medical Officer, in his evidence has nowhere whispered that P.W.1 sustained bone fracture or dislocation of shoulder joint. Admittedly, X-ray was not produced. As already pointed out, though X-ray was shown to be taken, the prosecution has neither produced the same nor taken any steps to summon the same.

14.As rightly contended by the defence, the prosecution has neither furnished any particulars nor produced any materials to show that the injury sustained by P.W.1 was grievous in nature. As already pointed out, the prosecution has not produced the X-ray nor assigned any reason for non production of the same. In the absence of any evidence to show that the accused had caused grievous injury on P.W.1, the conviction under Section 325 IPC caused by the Courts below cannot be sustained. But at the same



time, as already pointed out, since the prosecution has proved that P.W.1 suffered contusion injury on her left shoulder and that the same was caused by the accused, the accused is liable to be convicted for the offence under Section 323 IPC and is convicted accordingly and sentenced to pay a fine of Rs.1,000/- in default to undergo two months imprisonment.

15.In the result, the Criminal Revision is partly allowed that the conviction of the accused for the offence under Section 325 IPC and sentencing her to undergo six months simple imprisonment is set aside and the accused is convicted for the offence under Section 323 IPC and is sentenced to pay a fine of Rs.1,000/- in default to undergo two months simple imprisonment. The fine, if already paid, shall be treated as fine for the offence under Section 323 of IPC.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar(CS)

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To

1. The Principal Sessions Judge, Madurai.
2. The Chief Judicial Magistrate, Madurai.
3. The Judicial Magistrate No.II, Madurai.
- 4.The VI Additional Sessions Judge, Madurai.

5.The Inspector of Police,
Tallakulam Police Station, Madurai.

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

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

+1 CC to M/s.P.SARAVANAN, Advocate (SR-16202[F] dated
17/04/2021)

CRL.R.C. (MD) .No.59 of 2017
15.04.2021

na (CO)

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