



Crl.A.No.19 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

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Palaniappan

... Appellant

Vs.

State Represented by
The Inspector of Police,
Kavindapadi Police Station,
Bhavani Taluk, Erode District.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment of conviction and sentence of the accused in S.C.No.122 of 2018 on the file of the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court) Erode dated 20.12.2019 by allowing this Criminal Appeal.

For Appellant : Mr.V.Perarasu
Legal Aid Counsel

For Respondent : Mr. R.Murthi,
Government Advocate (Criminal Side)

J U D G E M E N T

This Criminal Appeal has been filed against the judgment dated 20.12.2019 passed in S.C.No.122 of 2018 on the file of the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court) Erode.

2. The respondent police registered a case against the appellant and



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nine others for the offence under Sections 147, 148, 447, 324, 323, 307 and 506(ii) IPC against eight named persons and others. After investigation, laid a charge sheet before the learned Judicial Magistrate No.II, Gobichettipalayam. The learned Magistrate after completing formalities, taken the charge sheet on file in P.R.C.No.1 of 2018 and committed the case to the Principal District and Sessions Judge, Erode, since the offences are triable by the Court of Session. The Principal District and Sessions Judge, taken the case on file in S.C.No.122 of 2018 and made over the case to Mahila Court, Fast Track Mahila Court, Erode, since some of the accused are women. The Special Court taken the case on file and framed the charges against A1 and A2 for the offence under Sections 148, 447, 324, 307 IPC., against A3 for the offence under Section 148, 447 IPC., against A4 for the offence under Section 147, 447,324,323 IPC., against A5 for the offence under Section 147,447,323 IPC., against A6 for the offence under Section 147, 447, 323 IPC., against A7 for the offence under Section 147, 447, 324 IPC., against A8 for the offence under Section 147, 447,324 IPC., against A9 for the offence under Section 147, 447, 307 IPC.,and against A10 for the offence under Section 147, 447, 307 IPC.,



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3. In order to substantiate the charges framed against all the accused, during trial, on the side of the prosecution, 13 witnesses were examined as P.Ws.1 to 13 and 16 documents were marked as Exs.P1 to P16. Besides, four material objects were also exhibited as M.O.1 to M.O.4. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of prosecution witnesses, put before the accused, by questioning under Section 313 Cr.P.C., and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, five documents were marked as Exs.D1 to D5. On conclusion of trial and hearing the arguments advanced on either side and perused the materials on record, the trial judge found all other accused except the appellant/A1, not guilty for any of the charges and acquitted them from all the charges. However A1 was alone found guilty for the offence under Sections 323 and 325 IPC., A1 was sentenced to pay fine of Rs.1,000/- in default to undergo three months simple imprisonment for the offence under Section 323 IPC. He was also convicted and sentenced to undergo Rigorous Imprisonment for five years and to pay fine of Rs.25,000/-



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in default to undergo six months simple imprisonment for the offence under Section 325 IPC and he was acquitted from all other charges. Challenging the judgment of conviction and sentence passed by the appellate court, A1 has filed appeal.

4. The specific case of the prosecution is that there was a dispute between the appellant's family and defacto complainant's family regarding cart track. On 30.03.2017, the accused trying to close the small pond which was formed by the complainant, to pave a pathway by using JCB. When the complainant prevented the said act of the accused, A1 assaulted him with spade. Due to the same, the defacto complainant sustained injuries. When family members were also tried to prevent the said act of the accused, they also sustained injuries in the same way. Subsequently injured were admitted in hospital. On intimation, the respondent police went to the hospital and recorded statement. Further the respondent police registered the case in Crime No.138 of 2017.

5. Learned counsel for the appellant would submit that main case of



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the prosecution is that the appellant tried to pave pathway by using JCB.

When the victim prevented the said act of the accused, the appellant caused injuries to the victim with spade. But the said JCB was not recovered by the respondent police. Hence the genesis of the case itself doubtful. Counter case has also been registered by the accused/A1 stating that he also sustained injuries during the alleged incident and the same was suppressed by the respondent police. F.I.R. in Crime No.139 of 2017 which is the counter case filed by the appellant was marked as Ex.D3. The investigating Officer has also not given explanation as to why they have not proceeded with the complainant filed by the appellant. There is no incident has taken place as alleged by the prosecution. Since the defacto complainant having man and money power, the prosecution agency took their case and completed the investigation and laid a charge sheet, whereas, counter case filed by the appellant was though registered in Crime No.139 2019 and the same was not proceeded further. It clearly shows that no fair investigation has been conducted in this case. There are material contradictions between the evidence of prosecution witnesses. There is no independent witness in this case and all the witnesses P.Ws.1 to 9 are interested witnesses, which



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will vitiate the case of the prosecution. Even the victim has not cooperated to admit him in hospital, which shows that the victim has not sustained any injuries. Prosecution failed to prove the case of the prosecution. Investigating Officer has also admitted that investigation is not yet completed in the counter case filed by the appellant. Hence the genesis of the complaint itself doubtful. The prosecution has not conducted the investigation in fair and proper manner. Though A1 acquitted from all other charges, for the very same material, he was convicted for the offence under Sections 323 and 325 IPC., which will vitiate the case of the prosecution.

6. Learned Government Advocate (Criminal Side) appearing for the respondent would submit that there was a quarrel between the appellant and defacto complainant regarding cart track. When the appellant tried to pave pathway by using JCB, the victim prevented the said act of the accused. Due to the same, the appellant attacked the victim and caused injuries to the victim with spade. The injured witnesses were examined as P.Ws.1 to 4. They have categorically stated that how they sustained injuries. On



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intimation, the respondent police come to hospital and registered the case.

P.W.10 is the doctor who gave further treatment to the victim, has clearly stated that P.W.1 to 4 sustained injuries and also stated that the appellant is the one who caused injuries on them. Ex.P4 and Ex.P5 are wound certificates issued by P.W.10 to the victim P.W.2 and 4. P.Ws.1 to 4 are injured witnesses. P.W.5, P.W.7 and P.W. 8 are independent witnesses, they have clearly stated about the incident. P.W.9 who stated about the arrest of the accused. P.Ws.10 and 11 are doctors who have given treatment to the injured. Medical evidence was not corroborated with the oral and documentary evidence of P.Ws.1 to 4. P.Ws.1 to 4 have categorically stated that appellant is the one who attacked them with spade and due to that they sustained injuries. Wound certificates Exs.P4 to 6 have clearly proved that P.Ws.1 to 4 sustained injuries, which also corroborated the evidence of P.Ws.1 to 4. Therefore, prosecution proved its case beyond all reasonable doubt. The trial court also rightly appreciated the evidence. There is no merit in the appeal and the same is liable to be dismissed.

7. Heard the learned counsel appearing for the appellant and learned



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Government Advocate (Criminal Side) appearing for the respondent.

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8. Admittedly, there was a pathway dispute between the appellant and the defacto complainant. On 30.03.2017, the accused trying to close the small pond which was formed by the complainant to pave a pathway by using JCB. When P.W.1 prevented the said act of the accused, A1 assaulted him with spade. Hence, he sustained injuries. During the incident, P.W.2, P.W.3 and P.W.4 were also sustained injuries in the same way. Exs.P4, 5 and 6 are wound certificates issued to P.Ws.4, 2 and 3 respectively by P.W.10 doctor. Exs.P7 to P8 are the copies of Accident Register issued by P.W.11 doctor for P.Ws.2,1,4 and 3 respectively. The injured witnesses have categorically stated during the chief examination as witnesses, that the appellant is the one who attacked them with spade and caused injuries. Exs.P4 to P6-wound certificates and Exs.P7 to 10- copies of the Accident Register have clearly proved that the victim sustained injuries. While the victim admitted in hospital, they have stated that known person attacked with spade. Intimation memos given to the police were also marked as Ex.P11 and Ex.P.12. The doctor who examined the victims were



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examined as P.W.10 and P.W.11 and the wound certificates and copies of accident register issued by them are marked as Exs.P4 to P10. P.W.5 is the independent witness has clearly stated that though he has not seen the incident but he has seen that the victim sustained injuries and admitted in hospital. P.W.6 is the wife of P.W.1 has clearly stated that the appellant is the one who caused injuries to P.W.1 and others. Though P.W.7 and 8 were declared as hostile witnesses, they have also stated about the incident and the injuries sustained by the victim and also they stated that they did not know other accused. From the evidence of P.Ws.1 to 8, it is found that there was an occurrence on 30.03.2017. From the evidence of P.Ws.1 to 6, it is found that the appellant is the one who caused injuries to P.Ws.1 to 4. Evidence of doctors P.W.10 and P.W.11 and copies of Accident Register and wound certificates were also corroborated the same. The investigating officer has also admitted that there is a counter case in Crime No.139 of 2017. However, mere defect in investigation may not be the sole ground to acquit the appellant. P.W.9 clearly stated about the arrest of the accused. Though prosecution framed the charge for the offence under Section 307 IPC, considering the nature of injuries sustained by the victim, the trial court



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altered the section 307 IPC to 325 IPC and sentenced the appellant to undergo five years Rigorous Imprisonment and to pay fine of Rs.25,000/- in default to undergo six months simple imprisonment. Though the trial court found the appellant guilty for the offence under Section 324 IPC, however, altered into Section 323 IPC, sentenced to pay fine of Rs.1000/- in default to undergo three months simple imprisonment.

9. Considering the facts and circumstances of the case, when the injured witnesses have clearly deposed about the injuries sustained by them and the medical evidence also corroborated the same, whether the witnesses are relatives or interested witnesses, that may not be the sole ground to disbelieve the evidence of the victim. From the copies of Accident Register, wound certificates and also the deposition of P.Ws.1 to 4 have categorically stated that the appellant is the one who caused injures on them. Therefore, prosecution proved its case through injured witnesses and medical evidence that the appellant is the one who caused injuries to the victim. From the injured witness and the medical evidence, prosecution proved its case beyond reasonable doubt. Therefore, the Trial Court rightly appreciated the



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evidence and this Court finds that there is no merit in the Appeal and the appeal is liable to be dismissed. Trial Court is directed to secure the custody of the appellant to undergo the remaining period of sentence. The period of imprisonment already undergone by the appellant shall be set off under Section 428 Cr.P.C.,

10. Accordingly, the Criminal Appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

11. The counsel who argued the appeal for the appellant was appointed by the Legal Services Authority from the Legal Aid Panel, hence he is entitled for the fees as per rule.

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Index:yes/No
Speaking order: Yes/No

P.VELMURUGAN, J.

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To

1. The Sessions Judge,
Magalir Neethi Mandram,
(Fast Track Mahila Court),
Erode.
2. The Inspector of Police,
Kavindapadi Police Station,
Bhavani Taluk, Erode District.
2. The Public Prosecutor,
High Court, Chennai.

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