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IN THE HIGH COURT OF JUDICIATURE AT MADRAS

RESERVED ON : 19.04.2022

PRONOUNCED ON : 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A.NOS.591 OF 2021 AND 518 OF 2020

AND

CRL.M.P.NO.12179 OF 2021

Saravanan @ Olai Saravanan,
S/o.Jayabalan

... Appellant / Accused No.1
[in Crl.A.No.591 of 2021]

Harish @ Harieswaran,
S/o.Vellaiyan

... Appellant / Accused No.2
[in Crl.A.No.518 of 2020]

versus

State Rep. by its,
Inspector of Police,
J2, Adayar Police Station,
Chennai - 600 040.
(Crime No.611 of 2016)

... Respondent / Complainant
[in both Crl.As.]

Common Prayer: Criminal Appeals filed under Section 374(3) of the Code of Criminal Procedure, to set aside the judgment of conviction and sentence passed by the learned XVII Additional Sessions Judge, City Civil Court, Chennai dated 15.10.2020 in S.C.No.14 of 2018.

For Appellant : Mr.M.Vijayakumar
[in Crl.A.No.591 of 2021]

For Appellant : Mr.M.Rajavelu
[in Crl.A.No.518 of 2020]

For Respondent : Mr.Leonard Arul Joseph Selvam
[in both Crl.As] Government Advocate
(Crl. Side)



COMMON JUDGMENT

Both these Criminal Appeals have been filed by the appellants to set aside the judgment of conviction and sentence passed by the learned XVII Additional Sessions Judge, City Civil Court, Chennai dated 15.10.2020 in S.C.No.14 of 2018.

2. The appellant in CrI.A.No.591 of 2021 is arrayed as A-1 in S.C.No.14 of 2018 and the appellant in CrI.A.No.518 of 2020 is arrayed as A-2 in the above referred case. Along with other 3 accused, they stood charged for the offences punishable under Sections 147, 148, 341, 294(b) r/w 149, 307 and 506(ii) of IPC. By a judgment dated 15.10.2020, the learned XVII Additional Sessions Judge, City Civil Court, Chennai, found the appellants guilty of the offence under Section 326 of IPC and accordingly, convicted and sentenced them to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/- each, in default to undergo Simple Imprisonment for 3 months. In otherwise, the trial Court acquitted the other accused from the charges.

3. Challenging the said conviction and sentence, both A-1 and A-2 are before this Court, by way of filing these Criminal Appeals.

4. For the sake of convenience, hereinafter, the appellant in CrI.A.No.591 of 2021 is referred as A-1 and the appellant in CrI.A.No.518 of 2020 is referred as A-2.

5. The case of the prosecution, in brief, is as follows;

5.1. P.W.3-Praveenkumar is the victim in the occurrence. P.W.1-Elumalai, is his father. Previous to the occurrence, P.W.1 was working as a driver and the accused herein are his friend. Due to the enmity with one Kathirvel, who is residing in the same locality, A-1 and A-2 are not in talking terms with P.W.3, since the said Kathirvel is the friend of P.W.3. On 25.08.2016, around 11.00p.m., when P.W.3 went to attend the nature call near to the river side, A-1 called him and at the time when P.W.3 refused to go there, A-1 caught hold of his shirt and abused him in filthy language. Later, all the accused joined together and attacked P.W.3 with wooden log. In the same transaction, A-1 after removing the dresses worn by P.W.3 with the help of knife, cut P.W.3's left leg and both wrists. As a result of which, P.W.3 sustained injuries in left leg as well as in both hands and ultimately, he fell down. At that time, P.W.1 came there and came to know the occurrence. However, after seeing the P.W.1, all the accused threatened him with dire consequences and ran away from the spot. Immediately, P.W.2, who is none other the son-in-law of P.W.1 called 108



ambulance and admitted the P.W.3 in the Royapettah Government Hospital for treatment. In the hospital, on the same day, at about 2.50p.m., the police enquired P.W.1 and received the complaint [Ex.P.1] from him. During such time, P.W.1 handed over the blue colour jeans pant [M.O.1] ramar colour trouser (jatty) [M.O.2] to the police.

5.2. On receipt of the statement from P.W.1, P.W.12, Elango, the then Inspector of Police, Adayar Police Station, on the same day, returned to the Police Station, registered F.I.R. in Crime No.611 of 2016 for the offences punishable under Sections 147, 148, 341, 294(b), 324, 307 and 506(ii) of IPC. The printed F.I.R. was marked as Ex.P.13.

5.3. After registering the F.I.R., P.W.12 took up the case for investigation. On the same day, he visited the scene of occurrence at Malligaipoo Nagar and in the presence of witnesses, he prepared an observation mahazar under Ex.P.14. He had drawn the rough sketch under Ex.P.15. He examined the witnesses and recorded their statements.

5.4. In the meantime, after admitting P.W.3 in the Hospital, P.W.10-Dr.Syed Abdul Kadhar attached with Royapettah Government Hospital examined P.W.3 and found the following injuries;

- "1.deep laceration at right hand and left hand,
- 2.deep laceration at left wrist,
- 3.deep laceration in left foot."

5.5. After giving first aid, he issued Accident Register copy under Ex.P.11. Later, P.W.11-Dr.Hemathkumar attached with the same Hospital, on 26.08.2016 examined P.W.3 and found that the victim sustained fractures of both wrists and also got fracture on left leg foot for which he issued a wound certificate under Ex.P.12 stating that the injuries sustained by P.W.3 are grievous in nature.

5.6. In continuation of the investigation, P.W.12, on 27.08.2016, at about 4.30a.m., arrested the accused nos.1 to 3 near Adayar old bridge and recorded the voluntary confession statements given by them. He has recorded the said confession statements in the presence of P.W.8-Pachaiyappan and P.W.9-Arumugam.

5.7. On the basis of the confession statement given by A-1, P.W.12 recovered the knife [M.O.5], which was hidden near Adayar old bridge under the cover of seizure mahazar [Ex.P.19]. Similarly, based upon the confession statement given by A-2, P.W.12 recovered the knife [M.O.6] under the cover of seizure



mahazar [Ex.P.20]. Further, based upon the confession statement given by other accused Arun @ Arunkumar, he recovered the wooden logs [M.O.3] under the cover of Mahazar [Ex.P.21]. The admitted portion of the confession statements given by those accused were marked as Ex.P.16 to Ex.P.18. After made recovery as above, P.W.12 brought the accused to the police station and sent them to judicial custody.

5.8. Thereafter, PW12 examined the Doctors, who gave treatment to P.W.3 and received a copy of the Accident Register and wound certificate. Later, after concluding the investigation, he came to the positive conclusion that all the accused A-1 to A-5 committed the offences punishable under Sections 147, 148, 341, 294(b) r/w 149, 326, 307 and 506(ii) of IPC. Accordingly, he prepared the alteration report under Ex.P.28. Further, he filed the Final Report.

6. Based on the above materials, the trial Court framed charges under Sections 147, 148, 341, 294(b) r/w 149, 307 and 506(ii) of IPC. All the accused pleaded not guilty. Hence, in order to prove their case, on the side of the prosecution, as many as 12 witnesses were examined as P.W.1 to P.W.12 and 28 documents were exhibited as Exs.P.1 to P.28. Besides, 6 Material Objects, which were marked as M.O.1 to M.O.6. Apart from those exhibits, on the side of the 3rd accused, 2 documents were marked as Ex.D.1 and Ex.D.2.

7. Out of the said witnesses, P.W.1-Elumalai is the father of the victim Praveenkumar. He has spoken about the occurrence as on 25.08.2016 at about 11.00p.m., when at the time he went to the river bank at Malligaipoo Nagar, all the accused in this case were chatting with his son. While at the time, the other 3 accused in this case attacked his son with wooden logs, A-1 and A-2 with the help of knife, cut wrist and leg. After seeing the same, he rushed to the place of occurrence and at the same time, both A-1 and A-2 criminally intimidated him as they have to cut him also. But in the same time, public gathered and by seeing them, both the accused ran away from the scene of occurrence. Later, with the help of P.W.2, he admitted his son in the Royapettah Government Hospital wherein P.W.12 came and recorded the statement from him.

8. P.W.2-Balamurugan, is the relative of P.W.3. He speaks about the occurrence as on 25.08.2016 at about 11.00p.m., when at the time, he was in his house, he heard the hue and cry of P.W.1. Later, he rushed to the scene of occurrence and found that P.W.3 had fell down in the floor with cut injuries. According to him, both the legs and hands of P.W.3 were amputated.



9. P.W.3-Praveenkumar, is the victim in this case. He has spoken about the occurrence as previous to the occurrence, he is having some enmity with the A-1 and on 25.08.2016 at about 11.00p.m., when at the time he was returning to his house after attending the nature call, A-1 came and abused him and at the same time, the other 3 accused in this case attacked him with wooden logs. In the said transaction, A-1 and A-2 after removing his dresses, with the help of knife, cut his left leg. Further, both A-1 and A-2 cut his wrists. Thereafter, P.W.1 and P.W.2 came there and admitted him in the hospital.

10. P.W.4-Ragupathy and P.W.5-Arunkumar are the eye-witnesses to the occurrence, they did not give evidence before the trial Court in support of the case of the prosecution. Hence, they were treated as hostile witnesses. They gave evidence as during the relevant point of time, after hearing the hue and cry, they rushed to the scene of occurrence wherein P.W.1 informed him that the accused in this case assaulted P.W.3.

11. P.W.6-Dasagiri speaks about the investigation, as on 17.08.2016 at about 11.30a.m., when he was in road side, the police recovered the wooden log under the cover of seizure mahazar.

12. P.W.7-Murugan, is the witness signed in the Observation Mahazar prepared by the Investigating Officer and he has spoken about the occurrence as in his presence, the Investigating Officer prepared the Observation Mahazar. Further, he states that he admitted the P.W.3 in the Royapettah Government Hospital.

13. P.W.8-Pachaiyappan is the witness attested in the confession statement and he does not give evidence in support of the case of the prosecution. Therefore, he was treated as a hostile witness.

14. P.W.10-Dr.Syed Abdul Kadhar and P.W.11-Dr.Hemanthkumar are the Doctors, who medically examined P.W.3 gave evidence as the injuries sustained by P.W.3 is grievous in nature.

15. P.W.12-Elango, the then Inspector of Police, has stated about the receipt of complaint from P.W.1, about the registration of the case, investigation, arrest of the accused, recovery of M.Os and about the filing of the Final Report.

16. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., both the accused herein



denied the same as false. However, none have been examined on their side as defence witness.

17. The learned XVII Additional Sessions Judge, City Civil Court, Chennai, after perusing all the above materials and on considering the arguments advanced by either side, convicted and sentenced the appellants as stated supra. Aggrieved over the said conviction and sentence, the appellants are before this Court with these appeals.

18. I have heard Mr.M.Vijayakumar, learned counsel appearing for the appellant in Crl.A.No.591 of 2021, Mr.M.Rajavelu, learned counsel appearing for the appellant in Crl.A.No.518 of 2020 and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Criminal Side) appearing for the State. I have also perused the records carefully.

19. The learned counsel appearing for the appellants would contend that the evidence given by the prosecution witnesses, is having lot of contradictions. In respect of the nature of injuries sustained by P.W.3, P.W.1 and P.W.2, who are all witnesses for the occurrence gave evidence in an exaggerated manner and therefore, it cannot be said that the story narrated by the prosecution is found correct. According to them, due to previous enmity, P.W.1 foisted a false case against the appellants and others.

20. On the other hand, the learned Government Advocate (Crl. Side) appearing for the respondent police would submit that though the version stated by P.W.1 and P.W.2 is in an exaggerated manner, in respect of the offence under Section 326 of IPC, their evidence is fully in accordance with the injuries sustained by P.W.3. Further, their evidence was corroborated through the evidence of medical officers, who are all examined as P.W.10 and P.W.11 and therefore, the minor contradictions found in the evidence, is not at all a matter to decide the case of the appellants in their favour. Accordingly, he prayed to dismiss these appeals.

21. I have considered the rival submissions made on either side and perused the records carefully.

22. Here, it is a case, the earliest statement given by P.W.1 was marked as Ex.P.1. Now, on going through the averments found in the said statement, P.W.1 has stated about the occurrence as during the relevant point of time, all the accused after waylaid the P.W.3, abused the P.W.3 by using filthy language and proclaimed that "இதோடு செத்து ஒழி" Later,



attacked P.W.3 repeatedly with the help of knife and resultantly, P.W.3 sustained injuries in both wrists and left ankle. Immediately, he made arrangements for admitting P.W.3 in the Hospital. Later, at the time of giving evidence before the trial Court as P.W.1, he has stated the same version as during the relevant point of time, A-1 and A-2 alone attacked P.W.3 with the help of knife and caused injuries in both wrists and left ankle. Therefore, the evidence given by P.W.1 is very clear and the same is in support of the averments found in the F.I.R. as regards to the present appellants, which is the earliest document for the alleged occurrence.

23. The other witness, who spoke about the occurrence is none other than the victim, who sustained injuries in the alleged occurrence. His evidence is very clear as during the relevant point of time, both the accused herein with the help of knife attacked and caused injuries to both wrists and left ankle.

24. In this occasion, the Doctor, who treated P.W.3 gave evidence as P.W.10 that while at the time of seeing the victim, he found that there was a deep laceration at right hand and left hand, deep laceration at left wrist and deep laceration in left foot. Further, in respect to the said injuries, P.W.11 issued a wound certificate stating that the nature of injuries sustained by P.W.3, is grievous in nature. In otherwise, in respect to the nature of injuries sustained, there is no denial on the side of P.W.3 as he has not sustained injury as stated by the Doctors.

25. Here, it is a case, the Investigating Officer while at the time of giving evidence as P.W.12 gave evidence before the trial Court as only upon the confession statement given by the accused, material objects such as wooden logs, 2 knives are recovered under the cover of mahazar. In this regard, in order to substantiate the said evidence, he has examined P.W.6 to P.W.8 as they are the witnesses, who had attested in the confession statement and seizure mahazar, which were prepared during the time of recovering the material objects. Now, on going through the evidence given by the said witnesses, the said evidence, is not in order. In fact, in respect to the recording of confession statement, none of the witnesses examined on the side of the prosecution have stated as in their presence, the confession was recorded. Accordingly, it would clear that in respect to the recording of confession and recovery, the prosecution fails in its attempt to prove the case as material objects were recovered only as per the version stated by the Investigating Officer.



26. However, it is a settled law that, the solitary testimony of the single witness is sufficient to accept the case of the prosecution subject to the condition that the said evidence is wholly reliable. Here, it is a case, in respect to the occurrence, P.W.1 and P.W.3 gave a categorical evidence as only A-1 and A-2 with the help of dangerous weapon, attacked P.W.3 and as a result of which, he sustained grievous injuries. In otherwise, they have not stated about the motive having by the accused and also about the intention having by them in killing P.W.3.

27. The trial Court have observed those contradictions in a perspective manner and then only came to the conclusion that the accused were found not guilty under Section 307 of IPC and further convicted them for the offence under Section 326 of IPC. Though there was a contradictory evidence in respect to the recovery of material objects there was no suggestion on the side of the accused that the material objects produced before the trial Court are not the weapons used at the time of occurrence.

28. Therefore, I am of the firm opinion that the story put forth by the prosecution that only by using the knife, A-1 and A-2 attacked P.W.3 is proved and therefore, the contradictory evidence given by the prosecution witness in respect to the recovery of material objects are no way relevant for allowing these appeals. Perhaps, the evidence given by the Doctor, is fully concerned with the evidence given by P.W.3. Therefore, the evidence given by P.W.3 is corroborated through the evidence of medical officers and the same is also sufficient to accept the case of prosecution.

29. Further, in the judgment of our Hon'ble Apex Court in SACHIN KUMAR SINGHRAHA vs. STATE OF MADHYA PRADESH reported in (2019) 8 SCC 371, it has been held that minor contradiction found in the evidence given by the prosecution witnesses is immaterial to accept the case of the prosecution.

30. Herein also, as rightly pointed out by the learned Government Advocate (Crl. Side) appearing for the respondent police that the minor contradiction found in the evidence given by the P.W.1 and P.W.3 is immaterial to accept the case of the prosecution, being the reason that their evidence was corroborated through the evidence of medical officers, it would not be necessary to consider the evidence given by other prosecution witnesses deeply for allowing these appeals. The trial Court has held that after analysing all the factors found the appellants guilty under Section 326 of IPC and the said offence is within the legal frame work.



31. Now, coming to the quantum of sentence, the learned counsels appearing for the appellants would submit that the appellants are in the judicial custody for the past 2 years and due to the same, their families suffer like anything. According to them, awarding Rigorous Imprisonment for 10 years for the offence punishable under Section 326 of IPC is an excessive one and therefore, they prayed for some leniency.

32. Now, on considering the said submissions with the relevant records, though it was stated by P.W.1 to P.W.3 as during the relevant point of time, both the wrists and left ankle were amputated, the said evidence given by them was already declared as the same is an exaggerated one. According to the Doctors, the injury sustained by P.W.3 is a lacerated injury. Though it was stated by P.W.11 as there was a fracture, in order to substantiate the same, the x-ray taken for the injury has not been produced before this Court. However, P.W.3 sustained grievous injury and therefore, it would be sufficient to award Rigorous Imprisonment for 2 years to meet the ends of justice.

33. Accordingly, these Criminal Appeals are partly allowed. The conviction and sentence imposed upon the appellants / A-1 & A-2 by the learned XVII Additional Sessions Judge, City Civil Court, Chennai dated 15.10.2020 in S.C.No.14 of 2018, is modified and the appellants were sentenced to undergo two years Rigorous Imprisonment for the offence under Section 326 of IPC. It is also directed that the period of sentence already undergone by the appellants shall be given set off, as required under Section 428 Cr.P.C. Since the appellants/A-1 and A-2 are in jail, they shall undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

sri

To

1. The XVII Additional Sessions Judge,
City Civil Court, Chennai.
2. The Inspector of Police,
J2, Adayar Police Station,
Chennai - 600 040.



3. The Superintendent,
Central Prison,
Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Vijayakumar, Advocate, S.R.No.29616

+1cc to Mr.M.Rajavelu, Advocate, S.R.No.29448

Crl.A.Nos.591 of 2021 and 518 of 2020
and Crl.M.P.No.12179 of 2021

MG(CO)
RLP(28/04/2022)