



Crl.A.No.393 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.393 of 2018

1. Raja
S/o.Devarajan.

2. Devarajan
S/o.Natesan Achari

... Appellants

Vs

State, rep by
Inspector of Police,
Kalambur Police Station,
Tiruvannamalai District.
Crime No.143 of 2014.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, against the Judgment dated 06.06.2018 passed in S.C.No.4 of 2017 on the file of the learned Assistant Sessions Judge, Arni, Tiruvannamalai District, convicting and sentencing the appellants/accused to undergo 3 months simple imprisonment u/s.294(b) read with 34 IPC and one year simple imprisonment u/s.324 read with 34 IPC and 7 years simple imprisonment and pay a fine of Rs.20,000/- each i/d one year simple imprisonment u/s.307 read with 34 IPC.



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For Appellants : Mr.G.Bala

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.side)

JUDGMENT

This Criminal Appeal is directed as against the Judgment passed in S.C.No.4 of 2017 on the file of the Assistant Sessions Judge, Arni, Tiruvannamalai District, thereby convicting the appellant for the offence under Section 294(b) and 324 read with 34 of IPC.

2. The case of the prosecution is that on 07.08.2014, due to previous enmity with regard to land, the accused persons had put some bushes on the land belonging to the victim when it was questioned by the victim, the accused persons attacked the victim by sickle with an intention to murder the victim. The first accused attacked with sickle on the victim, which was prevented by his right hand and thus the blow completely went on his right hand and his right hand was cut. When the second accused attempted on the head of the injured, the injured sustained injuries on his left side head. Immediately he was taken to hospital and a complaint came to be lodged.



3. On receipt of the said complaint, the respondent registered an FIR in Crime No.143 pf 2014 for the offence under Section 294(b), 326, 307 read with 34 of IPC. After completion of the investigation, the respondent filed final report and the same has been taken cognizance by the Trial Court in S.C.No.4 of 2017. In order to bring home the charge, the prosecution had examined P.Ws.1 to 12 and marked Exs.P1 to P9. The prosecution had also produced M.Os.1 and 2.

4. On perusal of the oral and documentary evidence, the Trial Court found both the accused guilty for the offence punishable under Section 294(b), 326, 307 read with 34 of IPC and both were sentenced to undergo three months simple imprisonment for the offence under Section 294(b) read with 34 of IPC and sentenced to undergo one year simple imprisonment for the offence under Section 324 read with 34 of IPC and sentenced to undergo seven years simple imprisonment for the offence under Section 307 of IPC and imposed fine of Rs.20,000/- in default to undergo one year simple imprisonment. Aggrieved by the same, the present appeal.

5. The learned counsel appearing for the appellant would submit that



there are totally two accused. However, pending appeal, the second appellant/father died. Therefore, the entire charges as against the second appellant stands abated. Insofar as the first accused is concerned, the learned counsel appearing for the appellant submitted that P.Ws.1, 5 and 6, who supported the case of the prosecution, are none other than the close relatives of the victim and they are all interested witnesses and their evidence cannot be repellant to convict the appellant. Though other witness turned hostile, the Trial Court, without considering the same, mechanically convicted the appellant. There are huge contradictions in the evidence of the prosecution witnesses and the same is fatal to the case of the prosecution. There is absolutely no evidence to hold the appellant guilty.

6. P.W.1 deposed that both the accused used separate sickle to attack the victim. Whereas, P.W.5, one of the eye witness, deposed that both the accused attacked the victim by the same sickle. However, the prosecution produced two siccal as M.Os.1 and 2. The prosecution failed to examine any independent witness to corroborate the other evidence. Though P.W.1 deposed that the entire right hand upto to the level of forearm below elbow was amputated, it was immediately fixed with stitches and the victim became



alright. Sofar as the injury found on his head is concerned, it was declared as simple in nature. Therefore, he prayed for acquittal of the accused.

7. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent submitted that in order to bring home the charge, the prosecution had examined P.Ws.1 to 12 and marked Exs.P1 to P9 and also produced M.Os.1 and 2. There was a property dispute between both the families. Due to which, the occurrence had taken place on 07.08.2014 at about 1.15 p.m. When both the accused had put some bushes on the land of the victim, the same was questioned by him. At that juncture, the first accused attacked the victim with sickle and it was prevented by the injured by his right hand. Therefore, the entire blow went on his right hand and his right hand was amputated. Though subsequently it was re-joined by proper treatment, the intention of the appellant was clear that only to do away with the life of the victim, he had attacked full blow on the head of the injured. Unfortunately, it was prevented by the victim by his right hand. It is also categorically corroborated by the evidence of P.Ws.1 and 5. Though, there were minor contradictions between them, it would not cause any prejudice to the appellant. Therefore, the Trial Court rightly convicted the appellant and it does not



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warrant any interference by this Court.

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8. Heard, Mr.G.Bala, learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

9. Admittedly, there was a property dispute between both the families. Both the accused are son and father. P.W.1 is the son of the injured, who is one of the eye witness to the occurrence. He deposed that due to property dispute, on 07.08.2014, A1 and A2 had put some bushes in the land belonged to the victim's family. It was questioned by the injured immediately. Both the accused attempted to attack the victim ; the first accused attacked with sickle on his head, it was prevented by the injured using his right hand which was completely amputated. Immediately, the second accused attacked the injured with sickle, due to which, the victim sustained another injury on his left side head. Immediately, the victim was taken to Government Hospital, Arni, Tiruvannamalai District.

10. This incident was clearly corroborated by who is the evidence of



P.W.5. He is also one of the eye witness, who brought the victim to the

hospital. The victim was examined as P.W.9. He also reitratated the same evidence of P.Ws 1 and 5. The Doctor, who examined P.W.1, was examined as P.W.10. On 07.08.2014, P.W.5 had brought the victim and he found that his right hand was amputated and he also sustained injury on his left side head. Thereafter, he was referred to higher treatment. He was admitted to CMC Hospital at Vellore. P.W.10 issued wound certificate, which was marked as Ex.P7. It shows that the victim suffered two grievous injuries i.e., (1) total ambutation of right forearm below elbow (around 6 c.m below) (2) laceration over left side of scalp measuring arund 5 – 6 c.m. Thereafter, he was referred for further treatment. Though, P.W.9, the victim, deposed that his right forearm was stitched properly, the intention of the appellant was very clear that only to do away with the life of P.W.9, both the accused attacked the victim. Therefore, the prosecution has proved its case beyond any doubt and the Trial Court rightly convicted the appellant. However, the learned counsel for the appellant would submit that the victim and the appellant are close relatives and considering the age of the appellant, the sentence may be reduced.

11. Considering the submission made by the learned counsel for the



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appellant, this Court is inclined to reduce the sentence alone. Accordingly, while the conviction imposed on the appellant is hereby confirmed and the sentence imposed on the appellant for the offence punishable under Section 307 of IPC is reduced from seven years to five years.

12. In the result, this Criminal Appeal is partly allowed.

10.11.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non Speaking order
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To

1. The Assistant Sessions Judge,
Arni, Tiruvannamalai.

2. The Inspector of Police,
Kalambur Police Station,
Tiruvannamalai District.

3. The Public Prosecutor,
High Court, Madrs.

G.K.ILANTHIRAIYAN. J,



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