



Crl.A.No.647 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.647 of 2016

V.Seetharaman

...Appellant/de facto Complainant

-Vs-

1.Nandha Gopal

...Respondent-1/Accused

2.State Represented by

The Inspector of Police,

Thirukazhukuntram Police Station,

Kancheepuram.

...Respondent-2/Complainant

Prayer:- Criminal Appeal filed under Section 372 of the Criminal Procedure Code, 1973, to call for the records and set aside the judgment of acquittal in favour of the 1st Respondent for the charges under Sections 294(b) and 326 of the Indian Penal Code, passed by the learned Principal District and Sessions Judge, Chengalpet in C.A.No.68 of 2010 dated 29.10.2012 and confirm the judgment passed by the Trial Court in C.C.No.22 of 2007 dated 15.10.2010 against the Accused.

For Appellant : Mr.C.Samivel
Legal Aid Counsel

For R1 : Mr.T.R.Ravi

For R2 : M/s.G.V.Kasthuri
Additional Public Prosecutor



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J U D G M E N T

WEB COPY This Criminal Appeal is filed challenging the judgment of acquittal in favour of the 1st Respondent/Accused for the charges under Sections 294(b) and 326 of the IPC passed by the learned Principal District and Sessions Judge, Chengalpet in C.A.No.68 of 2010 dated 29.10.2012.

2. The Trial Court, vide impugned judgment dated 15.10.2010 in C.C.No.22 of 2007, has convicted the Accused as follows : -

Conviction under section	Sentence awarded
294(b) IPC	To pay a fine of Rs.500/- in default to undergo simple imprisonment for three weeks.
326 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.4,500/- and in default to undergo simple imprisonment for four months.

3. The learned Counsel for the Appellant submitted that the Appellant is the de facto Complainant as well as P.W.1 before the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram.

4. It is the submission of the learned Counsel for the Appellant that the Accused in this case was a VAO. On the date of the occurrence, on 01.11.2006, on instructions of the Tahsildar, both the de facto Complainant



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and the Accused were present in the office, and they were directed to proceed to one Sivakumar. At that time, there was a wordy quarrel between the de facto Complainant and the Accused.

5. In the course of the wordy quarrel, it turned out to be a fisticuffs. In the course of the fisticuffs, the Accused is alleged to have got hold of the right hand of the P.W.1 / de facto Complainant bit his middle finger. Also, he had walked holding the hand of P.W.1 in his mouth and biting it strongly. Unable to bear the pain, P.W.1 felt unconscious. There were other people present in the office of the Tahsildar, particularly Revenue Officials. They came to the rescue of P.W.1. By that time, the Accused had spat blood fluid from his mouth. The persons present in the office of the Tahsildar stated that the Complainant, P.W.1, suffered disfiguration in his middle finger. The Accused is alleged to have suffered disfigurement and removed the part of the middle finger. Immediately, the Revenue staffs present in the Tahsildar office informed the Tahsildar, who was away from the office. Also, they took P.W.1 to the nearby private Hospital. In the nearby private Hospital, Doctors administered first aid P.W.1 and informed those accompanied to take them immediately to the Government Stanley Hospital, Chennai. Accordingly, they had taken P.W.1 to the Government



Stanely Hospital, Chennai, where he was admitted as outpatient. The bitten and spat part of the middle finger was taken in a plastic bag along with the ice cubes by the Revenue Officials to the Government Stanely Hospital, Chennai, where Doctors and the Plastic Surgeon of the Hand Reconstruction Surgery attended and treated the P.W.1. According to Doctors at Government Stanely Hospital, Chennai, the part that was detached from the middle finger of P.W.1 had decomposed by the time it reached the hospital. Therefore, it could not be reconstructed. Therefore, the Doctors treated the P.W.1 with a Straight Triangular Flap Cover, FDP excision Mid, Release of Ring finger done, shortening and closure of the right middle finger done by the Department of Plastic Surgery, Government Stanley Hospital, Chennai, as per Ex.P6, medical certificate of the Appellant. He was treated his injuries for 10 days from 01.11.2011 to 10.11.2011 and as an outpatient from 01.11.2006 to 06.11.2006.

6. It is the further submission of the learned Counsel for the Appellant that all the witnesses were Revenue Officials who were present at the Tahsildar office at the time of the occurrence. P.W.2 is also VAO. P.W.3-Thiru.Setu @ Joseph. P.W.4 was the then Tahsildar of Tirukazhukundram. P.W.5 was also a VAO. P.W.6-Dr.Dinakaranmoses,



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who had attended and treated the P.W.1 at the institute of the Government Stanely Hospital, Chennai. P.W.8 is the Head Constable who had recorded the oral statement of the injured P.W.1 from the hospital bed at Government Stanely Hospital, Chennai. P.W.9 is the Sub Inspector of Police, Tirukazhukundram Police Station.

7. The learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram, by judgment in C.C.No.22 of 2007 had convicted the Accused for the charge under Sections 294(b) and 326 of IPC. Aggrieved by the judgment of conviction and sentence of imprisonment awarded by the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram, in C.C.No.22 of 2007 dated 15.10.2010, the Accused had preferred Crl.A.No.68 of 2010.

8. The learned Principal District and Sessions Judge, Chengalpet, by judgment in Crl.A.No.68 of 2010 dated 29.10.2012 had acquitted the Accused. Aggrieved by the same, the de facto Complainant/P.W.1 had approached this Court by filing Crl.A.No.647 of 2016.



9. It is the contention of the learned Counsel for the Appellant/de facto Complainant that the learned Principal District and Sessions Judge, Chengalpet, had acquitted the Accused on the ground that the occurrence is alleged to have taken place on 01.11.2006. Whereas the FIR was registered on 08.11.2006. Further, in the charge framed by the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram, it was not specifically stated that the Accused had bitten the middle finger of the right hand of the P.W.1 victim and severed it, cutting it off. Therefore, on that ground, the offence was not made out.

10. The learned Principal District and Sessions Judge, Chengalpet, relied on the depositions of P.W.1 to P.W.4, who are the Revenue Officials. They had not stated that the middle finger of P.W.1 was cut and bit by the Accused. Also, the offence under Section 294(b) of IPC is not attracted by using abusive words alone. There should be evidence that abusive words caused mental agony to the people present at the place of occurrence. On that ground, both charges were considered by the learned Principal District and Sessions Judge, Chengalpet, are not attracted and therefore acquitted the Accused.



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11. Against the judgment of acquittal, the Appellant/de facto

Complainant has approached this Court by filing this Appeal on the ground that the observation of the learned Principal District and Sessions Judge, Chengalpet, in C.A.No.68 of 2012 dated 29.10.2012 is perverse. Also, he would submit that when the Trial Court had proper appreciation of evidence, had convicted the Accused, the Appellate Court shall not disturb the finding of the learned Trial Judge even when there is a possibility of different conclusions on the same set of offence. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of acquittal passed by the learned Principal District and Sessions Judge, Chengalpet, in C.A.No.68 of 2010 dated 29.10.2012.

12. Learned Counsel for the 1st Respondent submitted that both the Appellant as well as the 1st Respondent were VAOs on the alleged date of occurrence and that there was quarrel of fisticuffs between them.

13. Learned Counsel for the 1st Respondent invited the attention of this Court to the cross-examinations of P.W.1, P.W.2, P.W.4, P.W.5- another VAO and submitted that there is no explanation regarding the delay in lodging the FIR. Also, he invited the attention of this Court to



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judgment of the learned Appellate Judge, in paras 17 to 21. Therefore, the assessment of evidence by the learned Principal District and Sessions Judge, Chengalpet, does not warrant any interference. Further, he would submit that there are reported rulings of this Court that the teeth of a human being are not a dangerous weapon. Therefore, the learned Counsel for the 1st Respondent submitted that the judgment of the learned Appellate Judge is a well-reasoned judgment that does not warrant any interference from this Court and that this Appeal lacks merit and is to be dismissed.

14. Learned Additional Public Prosecutor appearing for the 2nd Respondent also vehemently objected to the arguments of the learned Counsel for the 1st Respondent stating that there are sufficient materials through the evidence of P.W.1, P.W.2, P.W.4 and P.W.6, who treated the injured at the Government Stanely Hospital, Chennai. Even if the evidence of the corroborating witnesses is ignored or rejected, the evidence of the Doctor confirms the offence of 1st Respondent. Therefore, the learned Additional Public Prosecutor would submit that the judgment of the learned Trial Judge is as per the law. The reversal of the judgment is based on technicalities of law. The delay in the FIR is caused only by the alleged actions of the Revenue Department Staffs. P.W.8, Head Constable of



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Tirukazhukundram Police Station, recorded the oral statement of the injured from the hospital bed immediately after his admission in the Government Stanely Hospital, Chennai, is available. Still, the Police were prevented from registering the FIR immediately due to the intervention of the Revenue Department Officials, as the Accused as well as the injured are from the same Department, the Revenue Department. Therefore, argument that the filing of the FIR with delay will not hold good.

15. Learned Additional Public Prosecutor invited the attention of this Court to the evidence of the injured victim before the Court and it is supported with the evidence of the Doctor P.W.6 along with Ex.P1 complaint and Ex.P2 accident register issued by P.W.6. Therefore, the learned Additional Public Prosecutor seeks to allow this Appeal and set aside the judgment of the learned Principal District and Sessions Judge, Chengalpet.

16. **Point for consideration:**

Whether the judgment of the learned Principal District and Sessions Judge, Chengalpet, in C.A.No.68 of 2010 dated 29.10.2012 is to be set aside and the judgment of the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram, in C.C.No.22 of 2007 dated 15.10.2010, is to be restored?



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17. On perusal of the evidence of P.W.1 to P.W.9, evidence of the Accused as D.W.1 and the documents under Exs.P1 to P5, the judgment of the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram, in C.C.No.22 of 2007 dated 15.10.2010 and the judgment of the learned Principal District Sessions Judge, Chengalpet, in C.A.No.68 of 2010 dated 29.10.2012, the reasoning of the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram, is found acceptable in the facts and circumstances of this case as gathered from the records through the depositions of P.W.1 to P.W.9 and Exs.P1 to P5.

18. The judgment of the learned Principal District Sessions Judge, Chengalpet, in C.A.No.68 of 2010 dated 29.10.2012 is found perverse on the ground that he had lost sight of the fact that the evidence of P.W.1/ injured victim itself is sufficient to convict the Accused, as pointed out by the learned Additional Public Prosecutor. Further, P.W.6, Police, who had treated the injured at Government Stanely Hospital, Chennai, also available to corroborate the fact that immediately after the occurrence, the injured was brought to the Government Stanely Hospital, Chennai, and attended P.W.2 to P.W.5 who were the Revenue Officials were available at the scene of occurrence.



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19. On analysis of the evidence before the Trial Court, it is found that they were aware of the actual occurrence. The injured victim as well as the Accused are both VAOs. There is evidence of P.W.1 that the Tahsildar had spoken to the injured victim through his mobile phone when he was in the hospital bed, that he should not disclose that the colleague VAO bit his middle finger and removed it, causing disfigurement on the right hand. It will be a shame on the Revenue Department, for which P.W.1 had responded to the Tahsildar, stating who will protect him and his family. Therefore, it can be presumed by this Court that immediately after the occurrence, the Police went to the hospital and recorded the statement of oral complaint from the injured victim through P.W.8, head constable. Still, the FIR was registered only on 08.11.2006. This is because the Revenue staff have a strong association. On day-to-day administration, and the Police require the support of the Revenue staff as they control the Revenue Department, whose head is the Tahsildar at the Taluk level and District Collector at the District level, acting as Executive Magistrate, whose services are required for Police departments. Therefore, when they requested the Police not to register FIR, they were bound to protect them. That is the only possible reason for the delay in the FIR. The victim was taken to the hospital by his colleague immediately. There is evidence



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through P.W.1, P.W.2, and P.W.5 that the removed part of the middle finger, which was spat by the Accused, was taken in a plastic cover along with ice cubes to protect it so that it could be stitched and joined with the hand in the Plastic Surgery Department. Whereas the Doctors in the Government Stanely Hospital, Chennai, stated that it was already decomposed and could not be attached to the middle finger. It is a peculiar case where all the witnesses are Revenue Officials because the occurrence took place inside the Taluk Office.

20. The observation made by the learned Principal District and Sessions Judge, Chengalpet, in C.A.No.68 of 2010, it is found that the learned Appellate Judge had taken steps to acquit the Accused considering them as Revenue Officials. He had lost sight due to misplaced sympathy for the Accused ignoring the pain and suffering of the victim.

21. As per the judgment of the Hon'ble Supreme Court in the case of ***Ganesan Vs. State Rep by its Inspector of Police*** reported in ***(2020) 10 SCC 573***, and in the case of ***State (Govt. of NCT of Delhi) Vs. Pankaj Chaudhary and Ors.*** reported in ***(2019) 11 SCC 575***, wherein the Hon'ble Supreme Court had stated that the injured victim evidence alone will be



sufficient to convict the Accused when it inspires confidence.

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22. It is to be noted that there has been improvement in the evidence of P.W.1, and the Court cannot reject it. At the same time, there is pressure on Police Officials by the Revenue Officials not to proceed with the investigation. Therefore, there will be shoddy investigation due to pressure from the Revenue Officials. That cannot hold back P.W.1. He is the person who had suffered injury, suffered mental agony, and suffered disfiguration of his middle finger due to the action of the Accused.

23. It is the submission of the learned Counsel for the 1st Respondent that the human being's teeth are not a dangerous weapon as per the reported ruling of this Court in several judgments will not hold good. The human teeth used by the Accused, who bit the middle finger of the P.W.1 in the spur of anger and the P.W.1 was attracted to attack when there was exchange of blows between the Accused and the P.W.1. As per the evidence of P.W.1, the injured victim, the Accused bit the middle finger, holding it tightly between his teeth. He had walked, causing unbearable pain to the victim P.W.1, who had lost consciousness. The agitated staff, seeing their colleagues, both Accused as well as P.W.1, intervened,



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whereupon the Accused spit. While spitting the part of the middle finger that was full of blood from the mouth of the Accused, the victim became unconscious and was immediately taken to the private hospital by colleagues of the Revenue Department who were present in the Taluk office.

24. The Doctors at the private Hospital immediately attended first aid and requested Revenue Officials to take the victim immediately to the Government Stanley Hospital, Chennai, for reconstruction of the missing part of the middle finger. Under those circumstances, the evidence of P.W.1 as narrated in his deposition as P.W.1 alone will be sufficient to convict the Accused. The Court need not look for any corroboration. This is a specific case where the other witnesses, who are colleagues of the Accused as well as P.W.1, are caught between the two extremes either to support P.W.1 or the Accused. Above all these facts, there is evidence from P.W.1. When he was in the hospital bed, P.W.4 who was the Tahsildar of Tirukazhukundram, had requested on his mobile not to disclose the fact that he was bitten by the Accused, which will cause shame on the Revenue Department. It was the only reason for the delay in lodging the FIR. Therefore, the reversal of the judgment of conviction recorded by



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the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram,

by the learned Principal District and Sessions Judge, Chengalpet, is found

to be against the general principles laid down by the Hon'ble Supreme Court that the finding of the learned Trial Judge shall not be disturbed, if it is found to be based on proper appreciation of evidence. Further, in the same ruling, it is stated that the learned Trial Judge had the advantage of observing the demeanour of the witnesses and the Accused, whereas the learned Appellate Judge does not have that advantage. Therefore, the finding recorded by the learned Trial Judge is based on proper appreciation of evidence and shall not be disturbed by the learned Appellate Judge. This guideline had been ignored and violated by the learned Principal District and Sessions Judge, Chengalpet, and reversed the finding, considering the victim and the Accused as Revenue Department Officials. This is considered as misplaced sympathy by the learned Principal District and Sessions Judge, Chengalpet.

25. Learned Counsel for the 1st Respondent contended that the Accused is aged about 75 years old and has lost memory. Therefore, it will not be fair for this Court to sentence him to imprisonment. He would also submit that he would produce the Accused before this Court. This Court



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does not consider those circumstances.

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26. The recording of the conviction by the learned Trial Judge is restored. The judgment of the learned Principal District and Sessions Judge, Chengalpet, in the appeal acquitting the Accused is set aside. In cases of this nature, considering the circumstances in which both the victim as well as the Accused are VAOs, this Court, exercising its discretion, restores the finding of conviction by the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram, under Section 294(b) and 326 of IPC.

27. Learned Counsel for the Appellant who has been nominated by the Legal Aid Committee is appreciated for highlighting the pain and suffering of the victim of crime.

28. In the result, this Criminal Appeal is allowed on conditions. This Court is of the view that instead of convicting the Accused for two years, he is ordered to be released on probation on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two



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sureties, each for a like sum, to the satisfaction of the learned District

Munsif-cum-Judicial Magistrate, Tirukazhukundram, and on further

conditions that:-

- a) One of the sureties shall be blood relative.**
- b) He shall remain on probation for a period of two years.**
- c) The period of detention already undergone by the Accused/1st Respondent is treated as sentence of imprisonment.**
- d) Apart from that, he has to pay Rs.50,000/- (Rupees Fifty Thousand Only) as compensation under Section 357 of Cr.P.C. within a period of one month from the date of receipt of a copy of this order.**

29. If the first Respondent/Accused fails to maintain good conduct, good behaviour during the period of probation, he is warned that he has to undergo the remaining period of sentence as per the judgment dated 15.10.2010 in C.C.No.22 of 2007 passed by the learned District Munsif-cum-Judicial Magistrate, Tirukazhukundram.

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cda

Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

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To

- 1.The District Munsif-cum-Judicial Magistrate,
Tirukazhukundram.
- 2.The Principal District Sessions Judge,
Chengalpet.
- 3.The Section Officer, VR Records,
High Court, Chennai.

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