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Crl.A.No.335 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.03.2023

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**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**Crl.A.No.335 of 2020**

T.Eswaramoorthy

.. Appellant

/versus/

State rep. by Deputy Superintendent of Police,  
Karumathampattu Sub Division,  
Coimbatore District.  
Crime No.176 of 2015

.. Respondent

**Prayer :** Criminal Appeal has been filed under Section 374(2) of Crl.P.C., to allow the appeal and set aside the judgment passed against the appellant on 24.07.2020 in Spl.S.C.No.19 of 2016 on the file of the learned Principal District and Sessions Judge, Coimbatore and acquit him from the charge.

For Appellant :Mr.A.Thiyagarajan

For Respondents : Mr.R.Kishore Kumar  
Government Advocate(crl.side)

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## **JUDGMENT**

This appeal against the order of conviction is preferred by the sole accused, who was found guilty and sentenced him to undergo one year SI and to pay a fine of Rs.10,000/-, in default, to undergo 3 months SI for the offence punishable under Section 325 of IPC.

2.The case of the prosecution is that, on 14.09.2015 at 05.30 p.m., while Nagaraj (PW1) was grazing cattle in the field of Nataraj Gounder of Mamballi village, the accused and his six years old son came in a two wheeler and stopped at the place, where Nagaraj (PW1) was grazing the cattle. The accused used abusive language and questioned him, why he has not come for work in his field, but grazing the cattle in his field. Then, he took a wooden stick and started beating Nagaraj on the right wrist and forehead. Also kicked him over chest by his legs, causing pain and injury. Thereafter, the accused threatened the injured witness saying if he comes to his land again, he will be killed. The injured witness belonged to the scheduled caste. For having abuse him by using caste name, hitting him with stick and kicked on his chest, the prosecution has registered a case in



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Crime No.176 of 2015 under Sections 294(b), 324, 506(i) r/w 3(1)(s) of SC/ST Act, 2015. On completion of investigation, based on the materials, the trial Court framed charges as found in the Final Report.

3. To prove the charges, the prosecution has examined 10 witnesses, marked 11 exhibits and two material objects. The trial Court found that, the prosecution has proved that the fractured injury at the left hand sustained by PW-1 was caused by the accused using M.O.1 (Wooden Stick). As far as the other charges are concerned, the trial Court found that the prosecution failed to prove the case beyond reasonable doubt. For the proved charge, the Trial Court has convicted the accused for the offence under Section 325 of IPC and sentenced him to undergo 1 year SI and to pay a fine of Rs.10,000/- in default, to undergo 3 months SI.

4. The learned counsel appearing for the appellant submitted that there is an inordinate delay in registering the First Information Report by more than 24 hours and another 24 hours in forwarding the First Information Report to the Magistrate. The Accident Report (Ex.P6), which is the contemporaneous document recorded soon after the incident clearly



state that, PW-1 was assaulted by an unknown person. The intimation to the police had been sent immediately after admitting PW-1. While so, the First Information Report registered almost 24 hours after the occurrence says that, the accused is the assailant, who caused the injury. This First Information Report is based on the complaint (Ex.P-1) alleged to have been given by the defacto complainant (PW-1) 24 hours after the occurrence.

5. As far as the veracity of this complaint, the learned counsel appearing for the appellant submitted that, the complaint(Ex.P1) contains LTI of the complainant. It is supposed to have been registered on 15.09.2015 at about 16.30 hours. Whereas, PW-1 in his chief examination has stated that, he was taken to the hospital in an ambulance by his son and his brother Manickam. He informed the person in the ambulance about the identity of the assailant. On the next day, at about 10.00 a.m., the police came and enquired him. Whereas, contrary to PW-1 evidence, Nandhakumar (PW-2), S/o Eswaramoorthy (PW-1) has deposed that he and his uncle Manickam took the defacto complainant (PW-1) in the ambulance and admitted him in the hospital. On the same day night, the



police came to the hospital and enquired. On the next day, the police came at 10.00 a.m., and enquired his father (PW-1). Manickam (PW-3) also had deposed concurring the testimony of PW-1 and PW-2 about the presence of police on 14.09.2015 at 10.00 p.m in the hospital. Further, they claimed that they went to the spot soon after they heard from PW-1 about the occurrence. But, the prosecution has not produced any document to prove that the victim (PW-1) called his son over phone and informed the occurrence. Further more, the defacto complainant (PW-1) in his cross examination, has categorically, stated that he called only his daughter Nandhini Anjali and not to his son Nadhakumar (PW-2).

6. Above all, the accident register (Ex.P6) recorded on 14.09.2015 at about 07.45 p.m., indicates that the history of case as assaulted by unknown person using blunt wood object at 05.30 p.m., on 14.09.2015 near Mamballi. Referring the contradictions as well as the delay in First Information Report, the learned counsel appearing for the appellant submitted that, it is the concocted story of the defacto complainant (PW-1) to wreck vengeance to the earlier incident in which, the field of the accused was set to fire and there was animosity between the villagers of the accused and the villagers of the defacto complainant.



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7. The learned Government Advocate (Crl.Side) appearing for the State submitted that the entry in the Accident Register was made based on the information given by the person, who accompanied the injured person, since the injured person was not in a position to talk. The intimation from the hospital though reached on the same day, the statement of the injured was recorded only on the next day, soon after he regained conscious. The reason why the delay in registering the First Information Report and forwarding it to the Judicial Magistrate is explained by the Investigating Officer. Having identified the assailant and the weapon used to attack PW-1 and his evidence being cogent, the entry made in the accident register (Ex.P6) cannot be given much importance.

8. The learned Government Advocate (crl.Side) also submitted that in the statement of the injured, his LTI was obtained because he was not in a position to sign, due to injury in his hand. The witness has also reconciled the fact that Manickam (PW-3) is also known as Rangasamy and therefore, the entry in the accident register that the injured was brought to the hospital by Rangasamy is not an erroneous entry.



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9. It is the case, where the defence has taken a plea of ulterior motive to fix him. No doubt, the defacto complainant(PW-1) has sustained fractured injury and the same has been proved through medical records. However, it is highly doubtful whether the said injury was caused by the appellant. Because it is not the case of the defacto complainant (PW-1) that he and the accused are unknown to each other, but the Accident Register says PW-1 was attacked by unknown person. Next, PW-1 and PW-3 had consistently deposed that the police came to the hospital on 14.09.2015 at 10.00 p.m. If really, the defacto complainant (PW-1) was conscious at that time, they could have recorded his statement. Even otherwise, PW-2 had gone to the spot, receiving information from PW-1 and took PW-1 in the ambulance to the hospital, PW-2 could have given statement about the occurrence for the prosecution to set the criminal law in motion. Those statements providing information about the offence suppressed. Surprisingly, the investigating officer states that he went to the hospital on 15.09.2015 at 15.00 hours and recorded the statement of PW-1 at about 16.30 hours. While the Accident Register (Ex.P6) does not disclose about the identity of the assailant, after 24 hours when the First Information Report registered, A1's name has been fixed as an assailant.



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To add more suspicion to the prosecution case, the First Information Report sent to the Magistrate only on the next day and received by the Magistrate at 12.00 noon on 16.09.2015.

10. Finally, the evidence of the defacto complainant (PW-1) is that while he was grazing the cattle in the field of Nataraj Gounder, the accused came and questioned him how dare he graze the cattle in his field, when he refused to come and work in his field. Whereas, admittedly, the accused was grazing the cattle in the field next to the Nataraj Gounder as seen from the sketch Ex.10. The sketch prepared by PW-10 indicates, the scene of occurrence is in the field of Nataraj Gounder. This contradiction cannot be ignored as the minor contraction, since the person hailing from the place of the defacto complainant and the persons from the accused area had previous animosity and fire accident in the field of the accused is suspected to be the handy work of the villagers of the complainant. The alleged verbal quarrel itself for not coming to his field work but use his field for grazing the cattle. When the prosecution unable to fix the area of scene of occurrence then the reason for quarrel fails.



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11. In the said circumstances, the non-examination of the real person, who admitted the accused to the hospital; failure to collect the details of the the person, who took the accused to the hospital by ambulance; inordinate delay in registering the First Information Report and forwarding the same thereafter to the Magistrate; contradictions in the Accident Register and the evidence of PW-1 regarding the identity of the assailant cumulatively renders the case of the prosecution doubtful. Hence, the conviction and sentence imposed by the trial Court in Spl.S.C.No.19 of 2016 dated 24.07.2020 is hereby set aside.

12. Accordingly, this Criminal Appeal is allowed. The judgment of conviction passed by the learned Principal District Judge, Coimbatore made in Spl.S.C.No.19 of 2016 dated 24.07.2020 is hereby set aside. Fine amount, if any, paid by the accused shall be refunded to him. The accused/appellant is set at liberty to released him forthwith, unless his presence is required in connection with any other case. Bail bond, if any, executed by the accused shall be refunded to him.

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Index:yes/no  
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To:

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- 1.The Principal District and Sessions Judge, Coimbatore.
2. The Deputy Superintendent of Police, Karumathampattu Sub Division, Coimbatore District.
- 3.The Public Prosecutor, High Court, Madras.



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**Dr.G.JAYACHANDRAN, J.**

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