



Crl.A.No.420 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.420 of 2021

1. Vaiyapuri
2. Ganesan
3. Velmurugan
4. Vaikuntham

... Appellants

Vs.

State of Tamilnadu,
rep. by the Inspector of police,
Indur Police Station,
Dharmapuri District.

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. to call for the records and set aside the conviction and sentence dated 19.08.2021 awarded by the Principal District and Sessions Judge, Dharmapuri in S.C.No.107 of 2017 and acquit the appellants.

For Appellants	: Mr.Prakash Goklaney
For Respondent	: Mr.C.C.Pratap(Govt. Advocate)
	Crl.Side



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ORDER

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence passed by the Principal District and Sessions Judge, Dharmapuri in S.C.No.107 of 2017 dated 19.08.2021 and acquit the appellants.

2. The case of the prosecution is that on 18.01.2016 at about 8.00 p.m., the de-facto complainant namely Muniappan was returning to his house on his two wheeler, after dropping PW2 namely Sakkarai at his house. While the de-facto complainant was nearing the main road of Indoor-Coolikottai Road, four named persons, due to previous enmity, abused him in filthy language and assaulted him and caused injuries to him. They also set fire to his two wheeler, bearing registration No.TN-29-BC-2656 (Hero Passion) worth about Rs.78,000/-. Therefore, the respondent police prosecuted the case against the accused persons/ appellants for the offences punishable under Sections 294(b), 324, 435 IPC r/w Section 30 F PPD L Act.



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3. The Trial Court, framed charges against the appellants under Section 294(b), 324 IPC and Section 4 of TNPPDL Act and Sec. 4 of TNPPDL Act r/w 34 of IPC. Before the Trial Court, on the side of the prosecution, 12 witnesses were examined as PW1 to PW12 and 10 documents were marked as Ex.P1 to Ex.P10 and 3 material objects were marked as M.O.1 to M.O.3. On the side of the accused persons, no oral and documentary evidence was adduced. After perusing the oral and documentary evidence, the Trial Court, vide judgment dated 19.08.2021, has convicted and sentenced the appellants/ accused persons as extracted hereunder.

<i>Rank of the accused</i>	<i>Section under which convicted</i>	<i>sentence</i>
A1 to A3	Sec.323 IPC instead of Sec.324 IPC	3 months simple imprisonment each
A4	Sec.435 IPC instead of Sec.4 of TNPPDL Act	5 years simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months simple imprisonment
A1 to A3	Sec.435 r/w 34 IPC instead of Sec.4 of TNPPDL Act r/w Section 34 IPC	5 years simple imprisonment each and to pay a fine of Rs.5,000/-, each, in default, to undergo 6 months simple imprisonment each
The Trial Court acquitted A1 to A4 from the offence under Section 294(b) IPC		



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Aggrieved by the above judgment of conviction and sentence, the appellants have filed the present Criminal Appeal.

4. The learned counsel for the appellants submitted that the prosecution has failed to prove the charges framed against the appellants/accused persons. Further, the Trial Court has failed to consider the inconsistency evidence of the de-facto complainant namely Muniappan, while deposing evidence as PW1 before the Trial Court and before Dr.Gopi(PW11). He further submitted that PW1 in his evidence has specifically stated that the accused Vaiyapuri assaulted him on his forehead; accused Ganesan assaulted him on his left shoulder by throwing stone; another accused assaulted him on his right shoulder; and four persons, who assaulted PW1, set fire to his two wheeler. But, before PW11, Dr. Gopi, PW1 Muniappan stated that four unknown persons assaulted him and caused injuries to him.



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5. The learned counsel further submitted that, Dr.Gopi (PW11), who treated the de-facto complainant/ (PW1) had deposed that, on examination of PW1, he found only one injury measuring 2 x 0.5 x 0.25 c.m. on his left forehead and he was admitted as inpatient for treatment. But, in the complaint Ex.P1, the de-facto complainant/(PW1) has specifically mentioned the names of the accused persons. Further, in the observation Mahazar Ex.P9, the investigating officer(PW12), did not mention about the nearby residents of the alleged witnesses, who signed in Ex.P9 and Ex.P10. However, they may not be witnesses to the occurrence.

6. It is the allegation that the injured de-facto complainant had illicit contact with PW3 Kamatchi, and PW2 to PW5 all are coming from one family and hence, their evidence cannot be taken into consideration for proving the charges against the accused persons. Further, it is contended that the first statement of de-facto complainant before the Doctor has not supported the case of the prosecution, because, after being admitted as an inpatient, the de-facto complainant was enquired by the respondent police,



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to whom, he made some improvisation leveling allegations against the accused persons, in view of prior enmity between them.

7. Therefore, in the absence of any independent witness to the occurrence and also in view of the serious inconsistent evidence of PW1 before the Doctor and before the respondent police while recording the complaint, the Trial Court ought to have come to the conclusion that the prosecution has not proved its case beyond reasonable doubts. But, the Trial Court, without appreciating the evidence properly, has erred in finding the accused persons guilty of the offences, as stated supra. Hence, the judgment of conviction and sentence passed against the appellants/accused persons by the Trial Court is liable to be set aside and the appellants may be acquitted.

8. The learned Government Advocate (Crl.Side) appearing for the respondent police supported the judgment passed by the Trial Court. He further submitted that PW2, PW3 and PW4 have clearly stated about the



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injuries sustained by the defacto complainant/PW1 and also stated about setting fire to the two wheeler belonging to the de-facto complainant by the accused persons. Therefore, there is no reason to disbelieve the evidences of the eye witnesses to the occurrence and it corroborates the witness of de-facto complainant/PW1. Hence, the Trial Court has rightly found the accused persons guilty of the offences and has rightly convicted and sentenced the accused persons/appellants. Hence, the Appeal is liable to be dismissed.

9. Heard the learned counsel for the appellants and the learned Government Advocate (Crl.Side) and I have perused the materials on record.

10. The case of the prosecution is that on 18.01.2016 at about 8.00 p.m., while PW1 Muniappan was returning back to his house, after letting PW2 in his house, on his two wheeler, four named persons, due to prior enmity, abused him in filthy language and assaulted him and caused injuries



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and they also set fire to his two wheeler worth about Rs.78,000/-. Hence, the respondent police prosecuted the case against the accused persons/ appellants. The Trial Court, vide judgment dated 19.08.2021, has convicted and sentenced the appellants/ accused persons as stated above. Aggrieved by the same, the appellants are before this Court.

11. Among the prosecution witnesses Pw1 to Pw12, PW1 (Muniappan), PW2 (Sakkarai), PW3 (Kamatchi), PW4 Hari and PW6 Rathinavel are stated to be the eyewitnesses to the occurrence and PW11- Dr.Gopi, treated the injured person viz. PW1 Muniappan. The PW1 Muniappan in his evidence deposed that the accused Vaiyapuri assaulted him on his left forehead with stone; the accused Ganesan assaulted him on his left shoulder with stone; and another accused assaulted him on his right shoulder. Thus, the de-facto complainant namely, Muniappan(PW1) deposed that three persons assaulted him and caused injury to him. However, Dr.Gopi(PW11) in his evidence deposed that on examination of the injured, he saw only one injury on his right forehead and issued the



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wound certificate Ex.P6. Thus, there is a clear inconsistency between the oral evidence of PW1 Muniappan and PW11 Dr.Gopi and Ex.P6 wound certificate. Apart from this, the evidence of the above said eye witnesses namely, PW1 (Muniappan), PW2 (Sakkarai), PW3 (Kamatchi), PW4 Hari and PW6 Rathinavel are also not consistence. Further, on verification of the rough sketch (Ex.P6) and observation Mahazar (Ex.P9), it is seen that the eyewitnesses are not having nearby residence to the place of occurrence. In such circumstances, they have not satisfactorily stated, as to how they came to the place of occurrence.

12. In assigning and evaluating the evidence of the eyewitnesses, two important circumstances are

(i) Whether in the circumstances of the case, it was possible for the eyewitnesses to be present at the scene or the explanation for their presence at the scene can be accepted.

(ii) Whether there is any improbability or unreasonableness in the evidence of the so-called eye witnesses?



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13. The evidence of PWs 2 to 6, who claim to have witnessed the assault, is not consistent with the injury found by PW11- Dr.Gopi. Further, there is no explanation for their presence at the scene of occurrence at the time of accident. In such circumstances, it is not safe to place reliance upon the evidence of these witnesses. Further, entire evidence of PW1- Muniappan is also not reliable, since his evidence is not supported by the medical evidence of PW11-Dr.Gopi. The prosecution must give satisfactory proof that the offence has been committed by the accused persons. But in this case, the prosecution has failed.

14. Therefore, in view of the above discussion, this Court is of the view that the Trial Court has not properly appreciated the evidence of the prosecution witnesses. Further, the prosecution witnesses have not supported the case of the prosecution and the prosecution has not made out the case against appellants/accused beyond reasonable doubts. In this case, there arise genuine doubts about the case of the prosecution. Hence the accused are entitled to get the benefit of doubt and are entitled to get



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acquittal.

15. Accordingly, the conviction and sentence imposed by the trial Court dated 19.08.2021 in S.C.No.107/2017 are hereby set aside and the Criminal Appeal is allowed. Bail bonds executed by the accused are hereby cancelled.

24.01.2023

Index: Yes/No
Internet: Yes/No
mst

To

1. The Principal District and Sessions Judge, Dharmapuri.
2. The Inspector of police, Indur Police Station,
Dharmapuri District.
3. The Public Prosecutor, Madras High Court.



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