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Crl. Appeal No. 71 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2023

Coram:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 71 of 2017

1.Andi

2.Paramasivam

3.Palanivel

.. Appellants

Vs

The State rep. by
The Inspector of Police,
Erumaipatty Police Station,
Namakkal District.
Crime No.253 of 2014.

.. Respondent

Criminal Appeal filed under Section 374 of Cr.P.C., seeking to set aside the judgment of conviction and sentence of imprisonment imposed upon the Appellants herein by the learned Sessions Judge, Fast Track Mahila Court, Namakkal in S.C.No.92 of 2015, dated 10.01.2017 and acquit the Appellants herein.

For Appellants
For Respondent

.. Mr.R.Karthikeyan
.. Mrs.G.V.Kashthuri
Addl. Public Prosecutor

JUDGMENT



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WEB COPY The Appellants have preferred this Criminal Appeal as against the judgment dated 10.01.2017 in S.C.No.92 of 2015 passed by the learned Sessions Judge, Fast Track Mahila Court, Namakkal.

2. The learned Counsel for the Appellants invited the attention of this Court to the charges framed by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, as against the Accused 1 to 3. As against the first Accused, the charges were framed for the offence under Sections 294(b), 354 and 307 of IPC. As against the second Accused, the charges were framed for the offence under Sections 294(b), 354, 324 (one count) of IPC and as against the third Accused charges were framed for the offence under Sections 294(b), 354 and 324 of IPC. However, it is found that the Appellants 1 and 2 were convicted for the offence under Section 324 of IPC sentencing them to undergo Rigorous Imprisonment for two years and the third Appellant was convicted for the offence under Section 323 of IPC imposing with a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment. To prove the charges, the Prosecution had examined 12 witnesses P.W-1 to P.W-12 and marked 13 documents Ex.P-1 to Ex.P-13.



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3. Further, the learned Counsel for the Appellants submitted that as per the complaint under Ex.P-1, the occurrence took place on 03.09.2014 around 2.00 p.m, whereas, the complaint was given only on 04.09.2014 by 14.30 hours. Further, the learned Counsel for the Appellants submitted that as per the evidence of P.W-1, immediately after the occurrence, the Accused were taken to the Government Hospital where P.W-8 and P.W-10 had attended the injured who are P.Ws-1, 2, 3 & 4 in the hospital. P.W-9 is alleged to have registered the FIR under Ex.P-8.

4. The learned Counsel for the Appellants invited the attention of this Court to the evidence of P.W-1 and the cross examination of P.W-1, who is the main witness in this case. In the cross-examination, he admits that there was a civil dispute between the Accused and the injured persons. It is the further submission of the learned Counsel for the Appellants that the learned Sessions Judge, on assessment of evidence, had acquitted the Accused from the charges under Sections 307 and 354 of IPC, but had convicted the Accused 1 & 2 for the offence under Section 324 of IPC under the Doctors



opinion were in conclusive.

5. The learned Counsel for the Appellants invited the attention of this Court to the evidence of Doctors/P.W-8 and P.W-10. Particularly P.W-10, who had stated that he is unable to read the jottings that he had recorded under Ex.P-10. Also, he had stated that the Prosecution Witnesses Pws-1, 2, 3 & 4 were advised to take xerox copies, instead of taking xerox, they insisted for the discharge certificate, therefore, opinion was not given. In spite of specific evidence of P.W-8 and P.W-10, the learned Sessions Judge had convicted the Accused 1 and 2 for the offence under Section 324 of IPC imposing a punishment of two years Rigorous Imprisonment.

6. It is the contention of the learned Counsel for the Appellants that the Complaint itself was given after a delay of 24 hours. Added to that, the injured had discharged from the hospital against medical advice. Further, the learned Counsel for the Appellants submitted that the wife of A-1 also suffered injuries due to the attack caused by the Prosecution witnesses which was put to P.W-1 in cross examination, but he denied it. The Doctor/P.W-8



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in his evidence stated that the wife of A-1 also admitted in the hospital on the same day stating that she was attacked by known persons.

7. Further, the learned Counsel for the Appellants invited the attention of this Court, to the recovery mahazar and the admitted portion of the confession statement. As per the Prosecution case, A-1 is alleged to have caused attack on P.W-1 with sharp edged knife, whereas M.O-1 was recovered from the house of A-2 and it was not subjected to medical examination with the Doctors who treated the injured or subjected to the forensic examination whether it contained blood or not.

8. The learned Counsel for the Appellants invited the attention of this Court to the cross examination of the Investigation Officer. Rough Sketch prepared by the Investigation Officer was not as per the evidence of P.W-1. When P.W-1 stated that the attack took place in his land, the Investigation Officer had prepared the rough sketch near the house of Ponnabalam. Therefore, the Investigation Officer right from the registration of the case, there had been deliberations and delay in lodging the FIR. Therefore, the



Prosecution had miserably failed to produce all the relevant materials fairly when the wife of A-1 was injured and she had been admitted in the hospital and the same was suppressed. Based on the deliberations by the Prosecution witness, complaint under Ex.P-1 and FIR under Ex.P-8 was registered. Therefore, the learned Counsel for the Appellants submitted that the judgment of the learned Sessions Judge had ignored those materials and convicted the Accused for offence under Section 324 of IPC which is perverse and it is to be set aside.

9. The learned Additional Public Prosecutor objected to the submissions of the learned Counsel for the Appellants and submitted that P.Ws-1, 2, 3 & 4 were injured witnesses. They had fairly deposed evidence regarding the nature of the injuries. Further P.W-1 had identified M.O-1 recovered under Ex.P-12 from the residence of A-2. The Doctors/P.W-8 and P.W-10 also stated that the injury might have been caused by sharp edged weapons . Further, the learned Additional Public Prosecutor submitted that P.W-9 in his deposition stated that he had gone to the Government hospital and examined P.W-1. Based on the oral statement of P.W-1, he had recorded



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the complaint under Ex.P-1 and after coming back to the police station, he had registered the FIR under Ex.P-8 and forwarded the copy to the higher officials including P.W-11 and P.W-12. P.W-11 had earlier conducted investigation, later on the Inspector of Police took up the investigation and filed the final report. P.W-1 had identified the M.O-1. Therefore, the evidence of Prosecution Witnesses had proved the charges against the Accused-1, 2 and 3 through P.Ws-1, 2, 3 & 4 and also through the evidence of the Doctors P.W-8 and P.W-10. It is the further contention of the learned Additional Public Prosecutor that even though the injured witnesses have been discharged, there is an endorsement on the Accident Register copy that the injury suffered by them are only simple injury. Therefore, it is the sufficient material from which the learned Sessions Judge have convicted the Accused.

10. The learned Additional Public Prosecutor further submitted that the learned Sessions Judge had discussed the evidence available before the learned Sessions Judge in the judgment in paragraph Nos. 72 to 74. Therefore, the learned Additional Public Prosecutor submitted that the



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judgment of conviction passed by the learned Sessions Judge is a well reasoned judgment which does not warrant interference by this Court. Therefore, the Appeal is to be dismissed and further, the judgment of conviction passed by the learned Sessions Judge is to be confirmed.

Points for consideration:

Whether the judgment of the conviction recorded by the learned Sessions Judge in S.C.No.92 of 2015 dated 10.01.2017 is to be set aside?

11.Heard the learned Counsel for the Appellants and the learned Additional Public Prosecutor. Perused the evidence of Prosecution Witnesses P.W-1 to P.W-12, documents marked under Ex.P-1 to P-13 and the judgment of the learned Sessions Judge.

12.On perusal of the evidence of the Prosecution Witnesses P.W-1 to P.W-4, it is found that they had suffered only minor injuries. P.W-8 the Doctor who had admitted them and had treated them at Government Hospital, Namakkal, stated that the injured (1) Maheswaran, S/o.Selvam, (2) Annapoorani, W/o.Thangaraj and (3) Jayakodi, W/o.Selvaraj were alleged to have been attacked by the Accused. There was civil dispute between them.



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On evidence in cross examination of the Doctor P.W-8 had clearly deposed that there is no visible injury. There was visible injury to P.W-1 Maheswaran. He had discharged himself from Hospital against medical advice. Therefore, they are unable to give opinion regarding nature of injury whether simple or grievous. In the light of the evidence of P.W-8 and P.W-10 Doctors who had treated the Prosecution Witnesses P.W-1 to P.W-4, it is found that the witnesses P.W-1 to P.W-4 have suffered simple injuries. In the cross-examination, P.W-8 Doctor deposed that even without any injury in the body one can say that he had been injured. On examination by P.W-8 Doctor, P.W-1 to P.W-3 were found to be having no visible injury on their body. Still they were advised to get admitted in the hospital. Accordingly, they were admitted in the hospital for three to four days. As per the evidence of P.W-8 Doctor, P.W-1 to P.W-3 had not suffered grievous injuries, only simple injuries. There is no visible injury. Therefore, the evidence of P.W-1 to P.W-4 indicates they had not suffered any grievous hurt or simple hurt attracting Section 324 of IPC. The evidence of Doctor P.W-8 and P.W-10 will not be helpful to the case of the Prosecution regarding the alleged occurrence. Therefore, the conviction of Appellant A-1 to A-3 by the learned Sessions



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Judge, Fast Track Mahila Court, Namakkal is perverse warranting interference by this Court. The submission of the learned Additional Public Prosecutor for the State that the appeal lacks merit and is to be dismissed, is rejected.

13. In the light of the above discussion, the point for consideration is answered in favour of the Appellants and against the Respondent. The Appellants are found not guilty to the charges. The judgment of the conviction recorded by the learned Sessions Judge in S.C.No.92 of 2015 dated 10.01.2017 is to be set aside.

In the result, **the Appeal is allowed.** The judgment of conviction and sentence of imprisonment imposed upon the Appellants herein by the learned Sessions Judge, Fast Track Mahila Court, Namakkal in S.C.No.92 of 2015, dated 10.01.2017 is set aside. The Appellants are acquitted from all the charges. The bail bond executed by them before the trial Court shall stand cancelled and the fine amount paid is to be refunded to them.

31.07.2023

drl/srm



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To

1. The Sessions Judge,
Fast Track Mahila Court,
Namakkal
2. The Inspector of Police,
Erumaipatty Police Station,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

drl/srm

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