



Crl.A.(MD)No.356 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 25.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

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Chinnamal

.. Appellant

Vs.

1.State rep. by the
Inspector of Police,
Ponnamaravathi Police Station,
Pudukkottai District.
(Crime No.202 of 2013).

2.Thangaraj

3.Chelladurai @ Karthikeyan

.. Respondent

Prayer : This Criminal Appeal is filed under Sections 374 of Cr.P.C., to set aside the judgment made in S.C.No.132 of 2014 on the file of the learned Sessions Judge, Mahalir Neethimandram, Pudukottai, Pudukottai District and set aside the judgment dated 20.06.2017 and punish the respondents 2 and 3/accused no.1 and 2 in accordance with law.

For Appellant : Mr.N.Subramani
For 1st Respondent : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)
For Respondents 2 and 3: Mr.N.A.Palaniyandi

JUDGMENT

This appeal has been filed by the appellant to to set aside the judgment and



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conviction passed by the learned Sessions Judge, Mahalir Neethimandram, Pudukottai, Pudukottai District in S.C.No.132 of 2014 dated 20.06.2017 wherein the trial Court acquitted A1 from the charges under Sections 452, 326, 294(b) and 307 of IPC and A2 from the charges under Sections 452, 294(b) and 323 of IPC. As against the acquittal judgment passed by the trial Court, the victim P.W.1 has preferred this appeal.

2.The prosecution case is that on 09.10.2013 at about 08.00 a.m., both the accused criminally trespassed into the house of the appellant and when the same was questioned by the appellant, A1 abused in filthy language and assaulted with bill book (aruval) towards neck and the same was restrained by the second respondent. Thereby, she sustained injury at her right hand and left hand. A2 also abused obscene words and assaulted her below the right eye. Already there was a civil dispute pending between the parties and thereby, the accused developed the enmity with the appellant and assaulted them. Thereafter, the appellant went to the Government hospital through ambulance. Thereafter, the police went to the hospital and obtained complaint, Ex.P1 and thereafter P.W.6 registered FIR, Ex.P7 and thereafter, P.W.7 has taken the case for investigation and examined the witnesses and collected documents. Thereafter, P.W.8 investigated the case and filed final report for the offence under Sections 452, 294(b), 307 of IPC as against A1 and Sections 452,



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294(b), 323, 307 r/w. 34 of IPC as against A2. Thereafter, the learned District Munsif cum Judicial Magistrate, Thirumayam furnished the copies to the accused under Section 207 of Cr.P.C., and then committed the case to the Principal District Court, Pudukottai. The Principal District Judge, Pudukottai made over the case to the learned Sessions Judge, Mahalir Neethimandram, Pudukottai. The trial Court has framed the charges for the offence under Sections 452, 294(b), 307 of IPC as against A1 and under Sections 452, 294(b), 323, 307 r/w. 34 of IPC as against A2. After framing charges, the charges were read over and explained to the accused but the accused denied the charges.

3.The prosecution had examined P.W.1 to P.W.8 and marked Exs.P.1 to P.8 and marked M.O.1. On the side of the accused, no one was examined and no document was marked. After examination of prosecution witnesses, the accused was examined under Section 313(1)(b) of Cr.P.C., in respect of incriminating evidence as against them and they denied the evidences.

4.Upon perusing the oral and documentary evidences, the trial Court acquitted A1 from the charges under Sections 452, 326, 294(b) and 307 of IPC and A2 from the charges under Sections 452, 294(b) and 323 of IPC. As against the acquittal judgment passed by the trial Court, the victim P.W.1 has preferred this



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5. Aggrieved by the said judgment of acquittal, the appellant has preferred this present appeal on the following grounds:-

The judgment of the trial Court is against law, weight of evidence and the probabilities of the case. The trial Court is erred in discarding the case of the prosecution in total by concluding that the evidence of P.W.1 and P.W.2 suffers from various contradictions and improvements. The trial Court failed to take note of the medical evidence and P.W.1 and P.W.2 have deposed about the injuries sustained by the victims and the medical evidence also corroborated the evidence of victim with regard to injuries but the trial Court failed to consider the same. The trial Court failed to note that P.W.1 and P.W.2 are residing in the disputed property and the accused have trespassed into the property and committed the offence. The trial Court has wrongly come to the conclusion that mere wrong mention of the name of the witnesses in the Observation Mahazer could not be the sole reason to discard the entire evidence of the Mahazer witnesses. The trial Court has given much reliance to the minor contradiction which does not affect the material aspect of the case. The trial Court without assigning any valid reason discarded the evidence of P.W.1 and P.W.2 and wrongly acquitted the accused.



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6.The learned counsel appearing for the appellant would contend that the prosecution has examined P.W.1 to P.W.8 and marked documents Ex.P1 to Ex.P8.

P.W.1 is the injured witness and she only gave complaint Ex.P1. The Doctor P.W.5 who gave treatment to the victim also in his evidence categorically deposed about the admission of P.W.1 in the hospital and the treatment given to her. P.W.2 also deposed about the occurrence and P.W.1, who is injured witness deposed about the assault made by both the accused and she identified the M.O.1 before the trial Court and thereby, the prosecution has proved the case. The Investigating Officer also deposed about the fair investigation. But the trial Court failed to consider the aforesaid aspects and wrongly acquitted the accused for minor discrepancies. Therefore, the judgment of the trial Court is liable to be set aside by allowing this appeal and the accused are liable to be punished in accordance with law.

7.The learned counsel appearing for the respondents 2 and 3 has contended that there is a civil dispute pending between the parties with regard to the house. Thereby, false complaint has been lodged against the respondents 2 and 3. The evidence of P.W.1 and P.W. 2 are not trust worthy and the medical evidence is totally contra to the evidences of P.W.1 and P.W.2. The trial Court has correctly analyzed the evidences of the prosecution side and correctly came to conclusion that the prosecution failed to prove the charges and acquitted the accused from all the



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charges. Thereby, the appeal is liable to be dismissed.

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8.The learned Government Advocate appearing for the first respondent would contend that the accused due to enmity with regard to civil dispute on the date of occurrence entered into the place of occurrence and assaulted the victims with bill hook (aruval) and caused injuries. Thereafter, the victims went to hospital, where the police obtained the complaint statement and then registered FIR and then investigated the case and filed final report. The prosecution have examined P.W.1 to P.W.8 and marked Ex.P1 to Ex.P8 and M.O.1. The injured witnesses have categorically deposed about the injuries sustained by them and P.W.5 Doctor also corroborated the evidences of P.W.1 and P.W.2 with regard to the injuries. The Investigating Officer also stated about the fair investigation and thereby, the prosecution proved the case as against the accused, but the trial Court failed to consider the evidence adduced by the prosecution and wrongly acquitted the accused, hence, this appeal is liable to be allowed by setting aside the judgment of trial Court.

9.Upon hearing both sides and perusing the records, judgment and grounds, the points for determination in this appeal are whether the prosecution has proved the charges against A1 under Sections 452, 326, 294(b) and 307 of IPC and



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against A2 under Sections 452, 294(b) and 323 of IPC beyond reasonable doubt and the judgment passed by the trial Court are sustainable or not.

Point:-

10.The prosecution case is that due to previous enmity between them with regard to house on 09.10.2013 at about 08.00 a.m., both the accused entered into house one Rajeshwari and A1 attempted to cause death of said Rajeshwari by assaulting her with bill hook. At that time, the said assault was blocked by P.W.1 and thereby, she got injures on her both hands. If the assault was not blocked by P.W.1, the said Rajeshwari would died due to the assault made by A1. Further both the accused abused obscene words and A2 assaulted Rajeshwari on her below eye and caused simple injury. A1 was charged for the offence under Section 452, 326, 294(b) and 307 of IPC and A2 was charged for the offence under Sections 452, 294(b) and 323 of IPC .

11.In order to prove the charges levelled against the accused, the prosecution has examined P.W.1 to P.W.8 and marked Ex.P1 to Ex.P8. In this case, P.W.1 is victim and she deposed that Rajeshwari is her sister and there is a civil dispute pending between the sisters and sister husband's brother with regard to land and house. While so on 09.10.2013, at about 08.00 a.m., when she was in the house



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of her sister, the accused came there. At that time, her sister Rajeshwari reprimanded them. For which, the accused Thanjaraj assaulted with bill hook by saying that until you alive the problem would not solve. At that time, P.W.1 restricted and blocked the said assault and thereby, she sustained injuries on her hand. Thereafter, A2 punched on her sisters face. A1 also abused obscene words. On seeing the occurrence, the witness Sujatha came there and called 108 ambulance and they were taken to hospital through the ambulance. Thereafter, since there was crowd, the accused left from the place of occurrence. When she was at hospital for taking treatment at about 09.00 a.m., the police came there and obtained complaint statement and also she identified M.O.1 bill hook and complaint was marked as Ex.P1.

12.On perusal of complaint, Ex.P1, it appears that on the date of occurrence, A1 attempted to assault P.W.2 Rajeshwari and the same was blocked by P.W.1 and thereby, she sustained injury on her both hands and also A2 assaulted the P.W.2 on her face. But the evidence of P.W.1 shows that on the date of occurrence, she sustained injuries on her right hand only. In this context, P.W.5 Doctor deposed before this Court that on 09.10.2013 at about 09.00 a.m., when he was on duty on Government hospital, one Chinnammal appeared before him for taking treatment and on examination, he found the following injuries:-

(I)9x3x1 cm cut injury on right hand palm



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(ii) 1 cm abrasion on the left hand index finger

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13. He referred her to Pudukottai government hospital but she had taken treatment in the private hospital and as per opinion given by the private doctor, there was fracture on the right hand palm and he gave a AR, Ex.P5 stating that the injuries are grave in nature. On the same date at about 09.15 a.m., one Rajeshwari appeared before him for taking treatment and she sustained injuries on 3x 2 cm swelling on the right side below eye. The AR copy is marked as Ex.P6. Therefore, from the evidence P.W.5 and Ex.P5, the victim P.W.1 sustained grievous injuries. P.W.2 sustained simple injury. But the prosecution has failed to examine the Doctor who has given treatment for the injuries sustained by P.W.1 and P.W.2. The P.W.5 only admitted the victims in the hospital and had given first aid and main treatment was given by another Doctor who was not examined as witness. Medical records also have not been produced before the trial Court with regard to injuries sustained by P.W.1. As per the evidence of P.W.5, there was a fracture on the right hand palm of P.W.1. But no X ray was produced before the trial Court. To prove that the injuries sustained by the victim are grievous in nature, no medical records were produced by the prosecution. In this context, the trial Court also in its judgment clearly observed that there is chance to sustain such injuries by falling in the tin sheet and X ray and medical records were not produced.



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14. According to the prosecution case, there is a dispute pending between the parties with regard to house and in that house only, the occurrence was happened.

It is admitted fact that there was tin sheet door for the aforesaid house and was scuffle between the parties. Therefore, the reasonable doubt arise over the injuries sustained by the victim as to whether injury was sustained as alleged by the prosecution. Therefore, the prosecution has failed to prove the grievous injury sustained by P.W.1.

15. As far as offence committed towards P.W.2 is concerned, P.W.2 during her cross examination admitted that there is civil dispute between the parties and she admitted that when the accused went to the disputed house, P.W.1 and P.W.2 restrained them and thereby, the occurrence was happened and also admitted that there was scuffle between them. Further there is no reference as about weapon whether the accused had brought the weapon or the weapon was found in the place of occurrence. P.W.2 who is also another injured witness has stated that on 09.10.2013, at about 08.00 a.m., when the accused had assaulted her with bill hook M.O.1. At that time, her sister PW.1 blocked the said assault and thereby, she sustained injury at her hand. A2 assaulted her with his hands on her hands. Ex.P5 also stated about the injury sustained by P.W.2 but the evidence of P.W.2 is contradicted to medical evidence and it creates serious doubt over the evidence of



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P.W.2. Further P.W.1 and P.W.2 have identified M.O.1 bill hook before the trial Court but there is no reference in the evidence of P.W.1 and P.W.2 with regard to M.O.1 bill hook whether it was taken by the accused or left in the place of occurrence.

16. In this context, according to the prosecution, the bill hook M.O.1 recovered through the accused based on the confession statement given by him. P.W. 7 Investigating Officer in his evidence stated that on 09.10.2013, at about 15.00 hours, he arrested A1 in the presence of Arulmozhi and Silambarasan and he gave confession statement. Based on the confession statement of accused, he seized the bill hook M.O.1. But the aforesaid attesting witness of recovery Mahazer of the bill hook has been examined as P.W.4. He also deposed about the recovery of material objects M.O.1 from A1. But there is no blood strains found in the M.O.1 and the same was not sent to the forensic lab. P.W.1 and P.W.2 also have not stated about the nature of bill hook. Further there is no reference in the evidence of P.W.4 from where the M.O.1 was recovered. It is vaguely stated that from the house of accused. Therefore, the reasonable doubt would arise about the recovery of M.O.1 as alleged by the prosecution. As far as M.O.1 bill hook is concerned, it is not shown to the Doctor at the time of investigation as to whether the injuries could be happened by using that bill hook.



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17. Though P.W.1 sustained injuries on palm, there is no medical records was produced to show that the injuries is grievous injury. Further it is admitted fact that there is civil dispute pending between the parties on the date of occurrence. There was scuffle between the parties. In the place of occurrence, tin sheet door was fixed in the house and the P.W.5 Doctor also admitted that there is a chance to cause such injuries by falling on the tin sheet. Therefore, the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt.

18. As far as the offence under Section 452 of IPC is concerned, it is admitted that there is dispute pending between the parties with regard to the disputed house and there is nothing to show that the accused made preparation to commit the offence and entered into the house and no evidence that the property exclusively belongs to victims. As far as the offence under Section 294(b) of IPC is concerned, there is no evidence that the accused abused obscene words and the same was caused annoyance. As far as offence under Section 326 of IPC is concerned, the prosecution has failed to produce the medical records from whom the P.W.1 got treatment and X ray was not produced. The evidences of prosecution witnesses were highly doubtful. Thereby, the prosecution failed to prove the offence under Section 326 of IPC. As far as the offence under Section 307 of IPC is concerned, there is no sufficient evidence



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adduced by the prosecution that the A1 attempted to commit murder of P.W.2.

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19.The learned counsel appearing for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in the case of ***Abdul Sayeed v. State of Madhya Pradesh*** reported in ***(2010) 10 Supreme Court Cases 259***, wherein this Court in para nos.28 and 31 reads as follows:-

“28.The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide Ramlagan Singh & Ors. v. State of Bihar, AIR 1972 SC 2593; Malkhan Singh & Anr. v. State of Uttar Pradesh, AIR 1975 SC 12; Machhi Singh & Ors. v. State of Punjab, AIR 1983 SC 957; Appabhai & Anr. v. State of Gujarat, AIR 1988 SC 696; Bonkya alias Bharat Shivaji Mane & Ors. v. State of Maharashtra, (1995) 6 SCC 447; Bhag Singh & Ors. (supra); Mohar & Anr. v. State of Uttar Pradesh, (2002) 7 SCC 606; Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270; Vishnu & Ors. v. State of Rajasthan, (2009) 10 SCC 477; Annareddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh, AIR 2009 SC 2261; Balraje alias Trimbak v. State of Maharashtra, (2010) 6 SCC 673).

31.Ashfaq (PW.2) had given graphic description of the entire



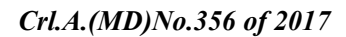
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incident. His presence on the spot cannot be doubted as he was injured in the incident. His deposition must be given due weightage. His deposition also stood fully corroborated by the evidence of Anees (PW.1) and Usma Ali (PW.4). The depositions so made cannot be brushed aside merely because there have been some trivial contradictions or omissions.”

20. On careful perusal of the aforesaid judgment, it is clear that it will not be applicable to the present facts of the case because in this case, the prosecution failed to produce the medical records and to examine the Doctor who gave treatment to the victim.

21. The learned counsel appearing for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in the case of ***Vijay Mohan Singh v. State of Karnataka*** reported in ***(2019) 2 Supreme Court Cases (Cri) 586***, wherein this Court in para nos.32 and 33 reads as follows:-

“12. Considering the aforesaid decisions, it emerges that even in the case where the High Court in an appeal against the order of acquittal interfered with the order of acquittal without specifically considering the reasons arrived at by the learned trial court and without specifically observing that the reasons are perverse, this Court can still maintain the order of conviction passed by the High Court, if this Court is satisfied itself that the approach of the trial



13. On reappreciation of the entire evidence on record and the findings recorded by the learned trial court while acquitting the accused, we are of the opinion that the approach of the trial court was patently erroneous and the conclusions arrived at by it were wholly untenable. Case where two reasonable views on examination of the evidence are possible and so the one which supports the accused should be adopted. The view taken by the trial court can hardly be said to be a view on proper consideration of evidence, much less a reasonable view. The learned trial court, as observed hereinabove, declaration and the other material evidence, discussed hereinabove. Therefore, the interference by the High Court in the appeal against the acquittal of the appellant and recording the finding of his conviction for the offence under Section 302 of the IPC, on consideration of the evidence, is justified. The judgment under appeal does not warrant any interference. “



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22. On careful perusal of the aforesaid judgment, it is clear that it will not be applicable to the present facts of the case. In the case of hand also, there is no dying declaration and the evidence of P.W.1 and P.W.2 are highly doubtful. The prosecution has failed to produce the medical records and thereby, the aforesaid facts and law is not applicable to the present facts and law.

23. As far as the offence under Section 323 of IPC as against A2 is concerned, though P.W.2 deposed about the injury sustained to her. The evidence of P.W.2 is highly doubtful and already there is civil dispute pending between the parties, and scuffle was made between the parties and thereby, the evidence is not sufficient to prove the charges levelled against the accused. The prosecution failed to prove the recovery of M.O.1 through sufficient evidence. Therefore, the trial Court after taking into consideration of all these aspects and after analyzing the evidence correctly came to the conclusion and acquitted the accused from the charges levelled against them. Therefore, there is no infirmity found in the judgment of the trial Court and thereby the appeal has no merits and deserves to be dismissed.



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24.In the result, the Criminal Appeal is dismissed and the judgment and the conviction passed in S.C.No.132 of 2014 dated 20.06.2017 by the learned Sessions Judge, Mahalir Neethimandram, Pudukottai, Pudukottai District is confirmed.

25.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Mrn

To

- 1.The Sessions Judge, Mahalir Neethimandram, Pudukottai District.
- 2.The Inspector of Police,
Ponnamaravathi Police Station,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

Mrn

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