



Crl.A.No.533 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.533 of 2018

1.Balachander

2.Raja

... Appellants

vs.

STATE OF TAMIL NADU:

Represented by its,
Inspector of Police,
Mannargudi Taluk Police Station,
Thiruvarur District.
(Crime No.:14 of 2011)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment and orders dated 02.08.2018 passed in S.C.No.64 of 2012 by the District and Sessions Judge, Thiruvarur.

For Appellants : Mr.Swami Subramanian

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor.



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J U D G M E N T

This criminal appeal is filed against the judgment and orders dated 02.08.2018 passed in S.C.No.64 of 2012 by the learned District and Sessions Judge, Thiruvarur.

2. The appellants are the Accused 2 and 3 in S.C.No.64 of 2012 and they are convicted and sentenced as detailed hereunder:

<i>Rank</i>	<i>Conviction</i>	<i>Sentence</i>
A2 and A3	323 IPC	Fine of Rs.400/- each, in default, to undergo Simple Imprisonment for one month for each count.
A2 and A3	3(1) of TNPPDL Act	Simple Imprisonment for one year and a fine of Rs.300/- each, in default, to undergo Simple Imprisonment for one month.
The aforesaid sentences shall run concurrently.		
The period of sentence already undergone by 1 st appellant (A2) shall be set off under Section 428 Cr.P.C.		



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3. The case of the prosecution in a condensed form is as follows:

3.1. Thiru.Dharmalingam (P.W.1), is a resident of Vanjiyur Village. The appellants are brothers and 2nd appellant/3rd accused is no more and his death extract has been filed by the respondent/prosecution. The evidence of Thiru.Dharmalingam (P.W.1) is that on 15.01.2011 at about 4.30 p.m., when he was drying paddy straw on the main road, the 1st accused-Ramesh (since deceased) confronted him and also abused him in filthy language. He hit P.W.1 with an Aruval (M.O.1) on his head as a result of which he became unconscious and fell down. His son Kumaran (P.W.2) took him to Government Hospital at Mannargudi. It is also his deposition that all the accused attacked his son Kumaran (P.W.2) and took a standing stone (M.O.2) from the road and damaged his son's two wheeler TVS Star City (M.O.3).

3.2. Tmt.Tamilselvi (P.W.8), Sub Inspector of Police, Mannargudi Taluk Police Station, on receipt of information from the Government Hospital, Mannargudi, went over there and recorded the statement of P.W.1 (Ex.P1) and registered FIR (Ex.P9) in Crime No.14 of 2011 against the appellants for the offences punishable under Sections 294 (b),



323, 307 IPC and Section 3(1) of TNPPDL Act.

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3.3. Dr.Najeema Rani (P.W.5) examined P.W.1 on 15.01.2011 at about 5.30 p.m and found the following injuries:-

“(i) Lacerated wound over parietal – Frontal area size of 4 cm x 0.2 cm.

(ii) Abrasion area (Lt) Thigh - Contusion area (Lt) Thigh size of 5 x 4 cm.”

In the opinion of the Doctor, the injuries sustained by P.W.1 are simple in nature. A copy of the Accident Register was marked as Ex.P5.

3.4. Thiru.Ranjith Singh (P.W.9), the then Inspector of Police, took up investigation in Crime No.14 of 2011 registered by P.W.8 went to the scene of occurrence and prepared an Observation Mahazar (Ex.P11) in the presence of the witnesses Thiru.Iyyappan @ Thiruneelagandan (P.W.3) and Thiru.Balasubramanian (P.W.6) and also a rough sketch (Ex.P10). He arrested the accused on 16.01.2011 near Keelapalam Bus Stop, Mannargudi and recorded his confession statement in the presence of the witnesses Mathiyazhagan (P.W.4) and Nagarajan (not examined). Based on his confession statement, the



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Investigation Officer, recovered the Aruval (M.O.1) from near the house of the Accused No.1. He also discovered the standing stone (M.O.2) allegedly used by the accused to damage the Two Wheeler TVS Star City (M.O.3) belonging to Kumaran (P.W.2) in the presence of very same witnesses.

3.5.Thiru.Kumar (P.W.7), who is working as a Technician in Shri T.V.S. Company, Mannargudi, in his deposition has stated that the headlight of Star City Two Wheeler got totally damaged. He issued a Damage Certificate (Ex.P8). According to him, the estimate for the repair of the vehicle is about Rs.1,650/-.

3.6. P.W.9 examined the witnesses and recorded their statements under Section 161 (3) Cr.P.C. After completing investigation, he laid a final report in P.R.C.No.15 of 2011 before the Judicial Magistrate No.1, Mannargudi against all the three accused for the offences punishable under Sections 294 (b), 323, 307 IPC and Section 3(1) of TNPPDL Act.

3.7. The learned Judicial Magistrate No.1, Mannargudi after furnishing copies of the records to the accused under Section 207



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Cr.P.C., committed the case to the Court of Sessions. The District and Sessions Judge, Thiruvarur took up case on file in S.C.No.64 of 2012 and framed the following charges against the accused:-

<i>Sl. No.</i>	<i>Name of the Accused</i>	<i>Charges</i>
1	Ramesh (A1) (Since Deceased)	Section 294 (b), 307 IPC and Section 3(1) of TNPPDL Act.
2	Balachander (A2)	Section 294 (b), 307 r/w 34, 323 IPC and Section 3(1) of TNPPDL Act.
3	Raja (A3) (Since Deceased)	Section 294 (b), 307 r/w 34, 323 IPC and Section 3(1) of TNPPDL Act.

3.8. In order to bring home the guilt of the accused, the prosecution examined 9 witnesses and marked 14 documents, 3 material objects.

3.9. When the appellants were questioned with regard to the incriminating circumstances appearing in evidence against them under Section 313(1)(b) of Cr.P.C., they denied of having committed any offence. However, they did not not examine any witness on their side.



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3.10. The learned Trial Court Judge after analysing the oral and documentary evidence on record, convicted and sentenced the accused 2 and 3 as stated paragraph number 2, accused 1 (since deceased) was also convicted and sentenced as under:-

<i>Rank</i>	<i>Conviction</i>	<i>Sentence</i>
A1	294(b) IPC	Fine of Rs.300/-, in default, to undergo Simple Imprisonment for two weeks for each count.
A1	324 IPC	Fine of Rs.700/-, in default, to undergo Simple Imprisonment for three months for each count.

3.11. Aggrieved over the conviction and sentence dated 02.08.2018 passed by the Trial Court, the present appeal is filed by accused 2 and 3. Accused 1 died prior to filing of the appeal and accused 3 died during the pendency of the appeal. The charge against accused 1 and 3 is abated.

4. Mr.Swami Subramanian, learned counsel appearing for the appellants would contend that the evidence of P.W.1 does not fit in with



his own complaint (Ex.P1). It is also his contention that though the prosecution has claimed that the confession statement of the 1st accused was recorded immediately after his arrest, no date or time is indicated in the confession statement. He also pointed out the glaring discrepancies in the evidence of PW.1 and PW.2. It is his contention that when PW.1 had deposed that his son was also attacked by the appellants, PW.2 did not go to the hospital for taking treatment and the vehicle, which was allegedly damaged on 15.01.2011 was sent for repair only on 21.02.2011. He therefore, prayed for acquittal of Appellant No.2.

5. Per contra, Mr.S.Rajakumar, learned Additional Public Prosecutor appearing for the respondent would contend that the trial Court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

6. It is seen from the records that Thiru.Dharmalingam (P.W.1) was taken to the hospital by his son on 15.01.2011 at about 5.30 p.m. P.W.1 claimed that he immediately fell unconscious after the 1st accused attacked him with an Aruval (M.O.1) on his head and was taken to the



hospital by his son. However, in his complaint (Ex.P1), he had stated that his son Kumaran (P.W.2) was also attacked by all the three accused after he was attacked. The injuries sustained by P.W.1 was simple in nature. Moreover, the Weapon (M.O.I) allegedly used by A1 for attacking P.W.1 was not shown to the doctor – Najeema Rani (P.W.5) either during the course of investigation or at the time of trial.

7. As rightly pointed out by the learned counsel appearing for the appellants there are glaring discrepancies in the evidence of PW.1 and P.W.2 and the evidence of P.W.1 does not fit in with his own complaint (Ex.P1) given before the Police.

8. The next aspect is that the photograph of the Two Wheeler was marked as M.O.3 in the instant case and Investigation Officer (P.W.9) had clearly stated that there is no damage to the vehicle. This is totally in contradiction to the case of the prosecution. The evidence of PW.7 is that the headlight of the vehicle got damaged totally. It is not the case of the prosecution that photograph of the Two Wheeler was taken after it was repaired.



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9. It is also pertinent to note that in the confession statement of A1, the date and time of occurrence have not been mentioned by the Investigation Officer, which would suggest that the confession statement was not recorded on the date and time alleged by the prosecution. Thus, there are various contradictions in the case of the prosecution and therefore, the conviction and sentence passed by the Trial Court cannot be sustained.

10. **In the result,**

- (i) This Criminal Appeal is allowed.
- (ii) The judgment and orders dated 02.08.2018 passed in S.C.No.64 of 2012 by the District and Sessions Judge, Thiruvavur, is set aside.
- (iii) The 1st appellant (2nd accused in S.C.No.64 of 2012) is acquitted from all the offences, of which he is charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

06.06.2024

Index : yes/no
Speaking /Non speaking Order
Neutral Citation : yes / no
dm



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To

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1. The District and Sessions Judge,
Thiruvarur.
2. The Inspector of Police,
Mannargudi Taluk Police Station,
Thiruvarur District.
3. The Additional Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court, Madras.



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R.HEMALATHA, J.

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