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Crl.A.No.840 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.840 of 2018 &
Crl.M.P. No.17583 of 2018

1. Saranraj
2. Sathiya
3. Anandan
4. Sarath @ Gokulraj

...Appellants

vs.

The Inspector of Police,
Vellore North Law and Order Police Station,
Vellore District,
Crime No.75 of 2014

...Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973, against the judgment and orders dated 29.10.2018 passed in S.C.No.167 of 2016 by the Additional District & Sessions Judge (FTC), Vellore, Vellore District.

For Appellants : Mr. S. Vijaya Raghavan
for Mr.M.Sathish Kumar

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



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JUDGMENT

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This criminal appeal is filed against the judgment and orders dated 29.10.2018 passed in S.C.No.167 of 2016 by the learned Additional District & Sessions Judge (FTC), Vellore, Vellore District.

2. The trial court framed charges against the appellants for the offences punishable under Sections 294(b), 332, 353 and 341 IPC and after full trial, convicted the appellants and sentenced them as detailed hereunder.

<i>Rank of the accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1 to A4	294(b) IPC	Simple Imprisonment for three months and a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for one week.
	332 r/w 34 IPC	Rigorous Imprisonment for three years and a fine of Rs.1,000/-, in default, to undergo Rigorous imprisonment one month.
	353 r/w 34 IPC	Rigorous Imprisonment for one year and a fine of Rs.1,000/-, in default, to undergo Rigorous imprisonment one month.



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<i>Rank of the accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1	341 IPC	Simple Imprisonment for one month and a fine of Rs.500/- in default, to undergo Simple Imprisonment for one week.
The sentences shall run concurrently and the period of sentence already undergone by them shall be set off under Section 428 Cr.P.C.		

3. The case of the prosecution as could be discerned from the oral and documentary evidence is briefly as follows:

3.1. Thiru.D.Karthikeyan (P.W.1) was a Head Constable of Police attached to Vellore North Police Station. On 05.02.2014, he went for routine night rounds along with one Franklin (P.W.2), friends of police, in a two wheeler.

3.2. On 06.02.2014, at about 1.45 hours, P.W.1 and P.W.2 saw a Maruthi Car bearing registration number TN23 R 8989 parked on the middle of the road near Corporation Middle School, CMC road and four persons were standing near the car with a loud music in the car. When P.W.1, questioned them, Saranraj (A1) took a brick stone from the road and hit him on his right forehead and also pushed him down. Similarly



while Sathiya (A2) pelted a stone on him, Anandan (A3) and Sarath (A4) hit him with a brick stone. On seeing an auto coming near the place of occurrence, all the four appellants made good their escape. P.W.1 was immediately rushed to Nalam Hospital (a private hospital), Vellore.

3.3. Dr. Ashok (P.W.7) examined P.W.1 on 06.02.2014 at about 2.39 hours. He found the following injuries on P.W.1.

- i. Laceration "L" shaped Over Left Temporal Region bone depth - 5 x 1.5 cm.
- ii. Laceration Right Side Forehead 1 x 1 cm.

A copy of the Accident Register was marked as Ex.P7.

3.4. P.W.1 thereafter went to Vellore North Police Station and lodged a complaint (Ex.P1) with Tmt.Prema (P.W.8), the then Sub Inspector of Police. She registered an FIR (EX.P8) in Crime No.75/2014 against the appellants for the offences punishable under Sections 294(b), 332, 353 and 307 IPC. She went to the scene of occurrence, prepared an Observation Mahazar (Ex.P3) and a Rough Sketch (Ex.P9) in the presence of the witnesses M. Ramu (P.W.4) and R.Saravanan (not



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examined). A brick stone (M.O.1) discovered from the place of occurrence was seized under the cover of a mahazar (Ex.P10) in the presence of the same witnesses. She recorded the statements of all the witnesses. She then handed over the records to Thiru Veerappan (P.W.10), the then Inspector of Police, Vellore South Police Station, for further investigation. P.W.10 was holding additional charge of the Inspector of Police, North Police Station.

3.5. Thiru. Sivarajan (P.W.9), the regular Inspector of Police took up further investigation in Crime No.75/14. On 10.02.2014 he arrested Anand @ Anandkumar (3rd appellant) in the presence of Prasath and Anandan (both not examined) and recorded his confessional statement. All the other appellants were arrested by the Vellore South Police Station in connection with Crime No.51/2014 for the offences punishable under Sections 392, 394 r/w 397 IPC. In fact, Saranraj (the 1st appellant) had confessed before the police the offences committed by him in Crime number 51/2014 and also the offences in the present crime number 75/14 in the presence of the witnesses Anwar Basha (P.W.5) and Gopinath (P.W.6). The admissible portion of the confession statement was marked as Ex.P11. On 20.02.2014, P.W.9 got a Prisoner Transfer Warrant and



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remanded all the accused in the present Crime No.75/2014. P.W.2 to P.W.7 corroborated the versions of P.W.1.

3.6. Thiru. Sivarajan (P.W.9), after concluding investigation, laid a final report against the appellants before the Judicial Magistrate Court No.IV, Vellore, in P.R.C.No.10/2016 for the offences punishable under sections 294(b), 332, 353, 341 and 307 IPC. The learned Judicial Magistrate, after furnishing copies of records under Section 207 Cr.P.C., to the appellants, committed the case to the Court of Sessions.

3.7. The learned Principal District and Sessions Judge, Vellore, took the case on file in S.C. No.167/2016 and made over the same to the Additional District and Sessions Court (Fast Track), Vellore.

3.8. In order to bring home the guilt of the accused, the prosecution examined 10 witnesses and marked 11 documents and 2 Material Objects.

3.9. When the appellants were questioned with regard to the incriminating circumstances appearing in evidence against them under



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Section 313 Cr.PC, they denied of having committed any offence.

However, they did not examine any witness on their side.

3.10. The learned trial court judge after analysing the oral and documentary evidence on record, acquitted the appellants for the offence punishable under Section 307 IPC. However, he convicted the appellants for the offences punishable under sections 294(b), 332, 353 and 341 IPC and sentenced them as stated in paragraph number 2.

3.11. Aggrieved over the conviction and sentence passed by the trial court judge, the present criminal appeal is filed.

4. Heard Mr. S. Vijaya Raghavan, learned Counsel appearing for the appellants and Mr.S. Raja kumar, learned Additional Public Prosecutor appearing for the respondent.

5. Mr. S. Vijaya Raghavan, learned counsel for the appellants contended that P.W.1 though had stated that he took treatment in Nalam Hospital at about 2.30 hours on 06.02.2014, the Daily Para Duty Report dated 05.02.2014 (Ex.P2) shows that P.W.1 continued his night rounds



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even after the alleged occurrence and, in fact, he was at Katpadi-Thottapalaym road between 2.30 hours and 3.30 hours. His further contention is that P.W.1 though in his complaint had stated that all the accused attempted to kill him, he had changed his own versions by deposing that the accused pelted stones on him and fled away from the scene of occurrence after seeing an auto coming near the place of occurrence. Though the occurrence took place at 1.45 hours on 06.02.2014, the complaint was given at about 5.00 hours and thus there is a delay in lodging the complaint, is the contention of the counsel. It is his further submission that P.W.1 though had admitted in the cross examination that he did not know the names of the appellants at the time of taking treatment in the hospital, he had mentioned all their names in his complaint Ex.P1. He therefore contended that when there are material contradictions even in the evidence of P.W.1, the trial court was wrong in convicting the appellants for the offences punishable under Sections 294(b), 332, 353 and 341 IPC.

6. Per contra, Mr.S. Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused



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and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

7. It is true that the evidence of P.W.1 does not fit in with his own complaint Ex.P1. The occurrence took place at about 1.50 hours on 06.02.2014. According to P.W.1, he immediately went to Nalam Hospital, where Dr. Ashok (P.W.7) gave him treatment by suitoring his wounds. P.W.7 in his evidence had stated that P.W.1 came down to his hospital at about 2.39 hours and took treatment. However, the Daily Para Duty Report (Ex.P2) clearly shows that P.W.1 continued his night rounds even after the occurrence and was on Katpadi-Thottapalayam Road between 2.30 and 3.30 hours. This glaring discrepancy has been missed out by the trial court. P.W.2 who accompanied P.W.1 did not seem to have prevented the appellants from attacking P.W.1. P.W.1 in his complaint (Ex.P1) had in fact averred that two of the appellants got into the car and two others caught hold of him and all of them attempted to kill him by hitting the car on him. P.W.1 is not a rustic witness and he is a head constable attached to Vellore North Police Station. Therefore, the discrepancies found in Ex.P.1 and in the evidence of P.W.1 cannot be simply brushed aside as exaggerated



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versions. P.W.2 in his deposition had stated that he admitted P.W.1 in Nalam Hospital immediately after the occurrence. As already observed, the Daily Para Duty Report (Ex.P2) is against the evidence of P.W.1 and P.W.2. Moreover, P.W.1, during the course of cross examination admitted that he did not know the names of the appellants when he was taking treatment. However, in his complaint, the names of all the appellants were mentioned.

8.In view of the above reasons, the conviction and sentence passed by the trial court is liable to be set aside.

9. In the result,

- i. The Criminal Appeal is allowed. Consequently connected Criminal Miscellaneous Petition is closed.
- ii. The judgment and orders dated 29.10.2018 passed in S.C.No.167 of 2016 by the Additional District & Sessions Judge (FTC), Vellore, Vellore District, is set aside.



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iii. The appellants (accused in S.C.No.167 of 2016) are acquitted from all the offences, of which they are charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

30.04.2024

bga
Index : yes/no
Speaking /Non speaking Order



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R.HEMALATHA, J.

bga

To

1. The Inspector of Police,
Vellore North Law and Order Police Station,
Vellore District,
Crime No.75 of 2014
2. Additional District & Sessions Judge (FTC), Vellore, Vellore District,
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.

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