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Crl.A(MD)No.393 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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|--------------------|------------|
| Date of Reserved   | 29/10/2024 |
| Date of Pronounced | 28/11/2024 |

CORAM

**THE HONOURABLE MR. JUSTICE G.ILANGO VAN**

**Crl.A(MD)No.393 of 2018**

C.Arumugam : Appellant/  
De-facto Complainant  
Vs.  
1.Siva @ Paramasivam : 1<sup>st</sup> Respondent/  
Appellant/Accused  
2.State represented  
by the Inspector of Police,  
Kulithalai P.S.  
Crime No.4 of 2014 : 2<sup>nd</sup> Respondent/  
Respondent/Complainant

**Prayer:** This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment passed by the Additional Sessions Judge, Karur, in Criminal Appeal No.38 of 2017, dated 21/07/2017 by reversing the order of conviction passed by the Additional Sessions Judge, Kulithalai, in SC No.49 of 2014 on 23/02/2017 and pass such further or other orders.

For Appellant : Mr.K.Suresh  
For 1<sup>st</sup> Respondent : Mr.T.J.Ebenezer Charles  
For 2<sup>nd</sup> Respondent : Mr.M.Sakthi Kumar  
Government Advocate  
(Criminal side)



**J U D G M E N T**

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This Criminal Appeal is filed against the judgment of acquittal passed by the Additional Sessions Judge, Karur, in Criminal Appeal No.38 of 2017, dated 21/07/2017 by reversing the order of conviction and sentence passed by the Additional Sessions Judge, Kulithalai, in SC No.49 of 2014, dated 23/02/2017.

**2.The case of the prosecution in brief:-**

On 31/07/2009 at about 12 noon, when PW1 namely the injured along with others talking with each other at Pillaiyar Kovil near Rajendram Bridge area, one Vaiyapuri, Dharman and other four persons were there. At that time, the accused came to that place, asked whether he has spread the news in the village about him. He replied that he did not inform anyone in this regard. He tried to assault him, but he prevented the assault. In spite of that, cut was made, his right hand was amputated. He became unconscious, he was taken to the Government Hospital, Kulithalai and admitted in the Government Hospital, Trichy for further treatment. Since he was unconscious for about 2 days, his friend Babu gave statement. Upon which, a case in Crime No.453 of 2009 was registered for the offence under section 307 IPC. After completing the investigation, final report was filed for the offence under section 307 IPC. It was



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taken cognizance in SC No.49 of 2014 by the Assistant Sessions Judge, Kulithalai, Karur District. After completing 207 Cr.P.C proceedings, framed the charge for the offence punishable under section 307 IPC.

**3.The following charge was framed against the accused:-**

*On 31/07/2009 at about 12 noon near Rajendram Bridge area at Pillaiyar Kovil, when PW1 Arumugam was standing, the accused made criminal intimidation and tried to assault him with aruval on the neck portion, but cut was made on his right hand and it was amputated and thereby the accused committed the offence punishable under section 307 IPC.*

4.To that charge, the accused pleaded not guilty and claimed to be tried.

5.During trial, on the side of the prosecution, 19 witnesses were examined and 9 documents marked. Apart from that one material object was marked. On the side of the accused, no oral and documentary evidence was adduced.



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6.**PW1**-Arumugam is the resident of Periya Andal Street, Kulithalai. On 31/07/2009 at about 12.00 noon, he along with others were talking with each other at Pillaiyar Kovil near Rajendram Bridge area. At that time, one Vaiyapuri, Dharman and other four persons were there. At that time, the accused came to that place, asked whether he is responsible for the spread of news in the village. He replied that he did not inform anyone in this regard. The accused tried to assault him. He tried to prevent the assault. But in spite of that, cut was made, his right hand was amputated. The neighbours gathered and tried to overpower the accused. He became unconscious, he was taken to the Government Hospital, Kulithalai and thereafter, admitted in the Government Hospital, Trichy for further treatment. Since he was unconscious for about 2 days, his friend Babu gave the statement. Upon which, a case in Crime No.453 of 2009 was registered for the offence under section 307 IPC.

7.**PW13** was working as Inspector Police attached to Chatirakudi Police Station. On 31/07/2009, he received intimation from the Government Hospital, Kulithalai. PW1 admitted in the hospital for treatment. He visited the hospital at about 09.00 pm. PW1 admitted in the ICU. So, he recorded the statement from his friend by name Babu and



registered a case in Crime No.453 of 2009 for the offence punishable under section 307 IPC. He submitted the original documents to the court and copies to the concerned authorities. Took up the investigation on the next day namely on 01/08/2009, at about 07.30 am, visited the place of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses. On the same day itself, he recorded the statement of PW1 and other witnesses. On 03/01/2008, the accused surrendered before the Judicial Magistrate No.5, Trichy. He made a request to take him under police custody for interrogation. On 11/08/2009, the accused voluntarily made a confession and recorded the same in the presence of the witnesses. In pursuance of the disclosure statement, MO1 was recovered from the place identified by the accused under mahazar. Later the accused was remanded to judicial custody and continued his investigation, recorded the statement of further witnesses. Recorded the statement of the Medical Officer, who treated PW1 and in the meantime, he was transferred, further investigation was undertaken by PW14.

8.**PW14** took up the further investigation and verified the statement recorded by PW13 with the same witnesses. They repeated the very same fact. So, he did not record the further statement. After completing the investigation and official formalities, filed the final



report charge sheeting the accused for the offence under section 307 IPC.

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9.**PW2** came to that place after the occurrence and found PW1 with injuries, amputation of the right hand. **PW3** also stated like that.

10.**PW4** on hearing the noise, went to the place of the occurrence and found the accused with aruval, PW1 with injuries. He found the amputated right hand portion of the injured in the floor.

11.**PW5** is the son of PW1. On hearing the information, he went to the Government Hospital where PW1 was admitted.

12.**PW6** is the wife of PW1. She corroborated PW5.

13.**PW8** made arrangement for PW1 for shifting to the hospital. Apart from that, he was also present when the Investigating Officer present in the place of occurrence while preparing parvai mahazar and sketch.

14.**PW9** was working as Village Administrative Officer of Rajendram North Village and in his presence, the



accused gave confession statement and further he corroborated the Investigating Officer in respect of the recovery aspects.

15.**PW11** was working as Medical Officer on 31/07/2009 in ABC Hospital, Trichy. He conducted plastic surgery for the injured. But it failed. On 01/08/2009 hand portion was removed.

16.**PW12** was the Medical Officer, who admitted PW1 on 21/07/2009 at about 01.00 pm. Later PW1 was discharged from the hospital stating that he wants to get admitted in the private hospital.

17.Other witnesses are not material witnesses.

18.After closure of the prosecution evidence, when the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same.

19.At the conclusion of the trial process, the trial court recorded a finding of guilt, convicted the accused and sentenced him to undergo **7 years Rigorous imprisonment** and to pay a fine of Rs.2,000/- in default to



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undergo 6 months Rigorous Imprisonment for the offence under section 307 IPC and also directed the accused to pay Rs.1,00,000/- towards compensation to the injured after the appeal period was over.

20.Against which, appeal was preferred by the accused before the first appellate court namely Additional District and Sessions Judge, Karur, in CA No.38 of 2017. It differed from the judgment of conviction and sentence passed by the trial court, acquitted the accused.

21.Aggrieved over the same, this criminal appeal is preferred by the victim/complainant as appellant.

22.Heard both sides.

23.PW1 is the injured and according to him, on 31/07/2009, he was assaulted by the accused with aruval, amputating his right hand below the knee portion.

24.Corroborating his evidence with regard to the amputation, PW2, PW3 and PW4 were examined on the side of the prosecution to show the place of occurrence namely Pillaiyar Kovil situated in Peepal trees near the Rajendram Bridge area. The above said persons also corroborated regarding the place of occurrence.



25.The amputation injury sustained by PW1 is not disputed by the accused. What is disputed by him is that he is not involved in the occurrence. PW1 was in intoxicated stage. Out of intoxication, there was quarrel between him and others. One among the others, caused the injuries. Place of occurrence is also disputed by the accused. But, the place of occurrence, as mentioned above, PW1 is corroborated by other witnesses.

26.The Medical Officer, one Dr.Vasudevan treated PW1 and later, he referred him to the Government Hospital, Trichy. In the AR register, it is specifically mentioned that there was amputation on the right hand. PW1 without attending the Government Hospital, Trichy, got himself admitted in a private hospital on 31/07/2009. Later discharged himself without following the Doctor's advise. So, as per the opinion, the injuries are grievous in nature.

27.A plastic surgery was undertaken by PW11, who was working in the private hospital namely ABC hospital, Trichy. According to him, on 31/07/2009, PW1 was admitted for plastic surgery and at that time, his right hand was amputated below the knee. On 31/07/2009, plastic surgery was conducted, but it failed. So, on 01/08/2009, it was removed, discharged on 20/08/2009. The discharge summary is



marked as Ex.P3. So, this medical evidence and the documents produced by the prosecution stand established that PW1 suffered amputation below the knee portion of the right hand.

28.Now we will go to the main issue.

29.As mentioned above, PW1 was very clear in his evidence that the accused caused assault with aruval. No other eye witnesses to the assault, except PW1 himself.

30.PW2 came to that place, after the occurrence, so also PW3. But PW4 saw the accused with aruval in the place of occurrence. Even though, he has not witnessed directly to the assault, as the accused run away from that place. So, the evidence of PW4 corroborating the evidence of PW1 to some extent. When the accused was found with aruval in the place of occurrence, it is for him to explain the same. Absolutely, there is no explanation on his part. Simply he denied his involvement.

31.In the light of the above said evidence of PW1, the question which arises for consideration is anything is brought on record to disbelieve the evidence of PW1.



32.PW1 was cross examined by the accused in a cryptic manner. There is a minor contradiction with regard to the manner of the occurrence. In his chief examination, he has stated that when enquiry was made by the accused regarding the information about the theft, he moved away from that place. At that time, the accused stated that he will not leave him without killing, he caused assault. During his cross examination, he has stated that when he was walking, the assault was made behind. So, except this minor contradiction, no major contradiction was brought on record.

33.The prosecution relied on the confession statement of the accused regarding the weapon used namely M01. According to the prosecution, weapon was used by the accused for the assault. That was recovered from bushes area identified by the accused, in pursuance of the confession statement.

34.The evidence of the Investigating Officer namely PW13 shows that the accused surrendered before the Judicial Magistrate No.5, Trichy, on 03/01/2008. He filed an application CMP No.2429 of 2009 for custodial interrogation. That was allowed on 11/08/2009. He took the accused into his custody and during the course of interrogation, the accused voluntarily made confession



which was recorded in the presence of PW9, who was working as Village Administrative Officer of Rajendram village. He corroborated PW13 regarding the confession statement and subsequent recovery of MO1 from bushes area identified by the accused. But MO1 was not identified by PW1. The prosecution failed to identify MO1 through PW1. Whether any bloodstain was available is not stated by the prosecution and MO1 was not sent for FSL examination; Whether bloodstains were available, whether it was compared with the blood of PW1, with regard to the weapon used by the accused for causing the assault. But the fact remains that PW1 was assaulted by aruval and his right hand was amputated as mentioned above. Causing of assault was made only by the accused also stands established by the evidence of PW1.

35.Now the motive, according to the prosecution, the accused alleged to have entertained suspicion that false implication was made by PW1 regarding a theft. Only on the basis of the false suspicion, he caused assault and this is corroborated by PW1 in his evidence that the accused came to that place, made enquiry with regard to the complaint. This fact was established by the prosecution.



36.As mentioned above, I find that absolutely no circumstance was brought on record to discard the evidence of PW1 regarding the motive and assault.

37.In the light of the above evidence on record, now we will go to the findings recorded by the trial court.

38.Elaborate argument was advanced by the accused and elaborate discussion was made by the trial court and finding that there was an intention on the part of the accused to cause murder, finding that section 307 IPC was made out; it recorded a finding of guilt and sentence was imposed.

39.Now we will go to the reversal judgment of the first appellate court. It doubted the very initiation of the criminal complaint, by pointing out the evidence of PW11 and PW12, who stated that PW1 was unconscious in the hospital, recording of statement of Babu, who is his friend was not explained by the prosecution. How many days, PW1 was in unconscious stage, according to the first appellate court, there was contradiction. It discarded the evidence of PW12, since he did not treat PW1, there was a delay of 11.30 hours in giving the complaint and there is no corroborative evidence to support PW1.



40. Reading of the judgment of the first appellate court shows that right from the beginning, it adopted the biased attitude. Why the evidence of PW1 was discarded, absolutely, there is no finding by the first appellate court. The question of false implication does not arise here at all.

41. When ample evidence was let in by the prosecution to show that PW1's right hand was amputated below the knee portion, the first appellate court went on recording a finding that medical evidence is not acceptable since they did not directly treat PW1. Which are all matters of insignificance has been given importance.

42. As mentioned above, some minor contradiction in the evidence of PW1 that he was assaulted behind, has been given undue importance. The first appellate court went to the extent of accepting the evidence of PW12 to conclude that there is no possibility for having caused such a grievous assault from behind. Opinion is only an opinion, it cannot part take the character of proof.

43. As mentioned above, the first appellate court has adopted the biased attitude towards the prosecution without any proper reason. Simply because, MO1 is not proved by the prosecution for causing the assault, no other hypothesis possible to explain the motive.



44.The trial court has recorded a finding, after going through the evidence on record and appreciated the same in a proper prospective. So, I find that recording of the finding by the first appellate court is perverse and without any basis.

45.Now coming to the issue, whether the offence under section 307 IPC is made out, the trial court recorded a finding that the accused tried to murder PW1 by aiming the aruval at his neck region. PW1 avoided, the cut fell on his right hand. So, this itself, according to the trial court, indicates the intention on the part of the accused to cause death. PW1 stated in his evidence, as stated above, that the accused while causing the assault stated that he will not spare him and cause assault. Intention can be gathered only from the circumstance and the overtact of the accused.

46.For the offence under section 307 IPC to be attracted, the intention on the part of the accused must be apparent or it can be gathered from the circumstances. As mentioned above, PW1 was not clear in his term as to the manner of the attack. At one point of time, he says that the accused came in front and aimed to cause assault on his neck, at that time, he prevented the attack with his hands and that caused amputation. Another point, he would say



that he was turning away from the accused and walking, he came behind and attacked him. So, whether this contradiction regarding the manner of the occurrence will clearly attract the offence under section 307 IPC is a matter to be considered. There was no big issue between them. The accused was of the view that the appellant is spreading news in the locality about the theft as if the accused is responsible. That was the motive suggested by the prosecution and there is no clear evidence on the side of the appellant that there was intention to cause the death. So if at all only, the offence under section 326 IPC will be made out. So, the judgment of conviction and sentence can be modified to section 326 IPC.

47.For the reasons stated above, inference made by the first appellate court is not proper. Without properly appreciating the evidence on record and forgetting the gruesome manner in which the amputation was made, on flimsy grounds the first appellate court interfered into the judgment of the conviction and sentence.

48.So, the judgment of the appellate court requires to be interfered and accordingly, the judgment of acquittal passed by the appellate court is interfered. The conviction and sentence passed by the trial court is modified to 5 years RI for the offence under section 326 IPC and the fine



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amount is sustained. The accused shall surrender before the concerned authorities to serve the remaining period of sentence.

49.With the above said, this criminal appeal is **allowed.**

**28/11/2024**

Index : Yes/No  
Internet : Yes/No  
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To,

- 1.The Assistant Sessions Judge,  
Kulithalai,  
Karur District.
- 2.The Additional District and Sessions Judge,  
Karur.
- 3.The Inspector of Police,  
Kulithalai Police Station,  
Karur.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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