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Crl.A(MD)Nos.79, 84 and 108 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	28/10/2024
Date of Pronounced	29/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)Nos.79, 84 and 108 of 2020

(1)Crl.A(MD)No.79 of 2020:-

Pattu @ John Pet : Appellant/A2

Vs.

The State Rep. by
The Inspector of Police,
Seidunganallur Police Station,
Thoothukudi District.
(Crime No.120 of 2016)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records pertaining to the conviction and sentence passed in SC No.19 of 2018 on the file of the II Additional District and Sessions Judge, Thoothukudi, dated 03/02/2020 and set aside the same as illegal and acquit the appellant.

For Appellant : Mr.B.N.Raja Mohamed

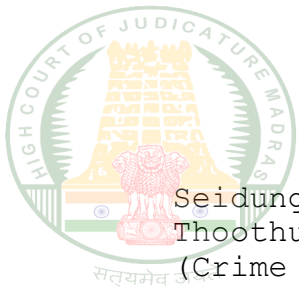
For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

(2)Crl.A(MD)No.84 of 2020:-

Selvaraj : Appellant/A1

Vs.

The State Rep. by
The Inspector of Police,



Crl.A(MD)Nos.79, 84 and 108 of 2020

Seidunganallur Police Station,
Thoothukudi District.

(Crime No.120 of 2016)

: Respondent/Complainant

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Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the records pertaining to the conviction and sentence passed in SC No.19 of 2018 on the file of the II Additional District and Sessions Judge, Thoothukudi, dated 03/02/2020 and set aside the same as illegal and acquit the appellant.

For Appellant : Mr.B.N.Raja Mohamed

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

(3)Crl.A(MD)No.108 of 2020:-

1.Selvaraj

2.Peter Paulraj

: Appellants/A1 and A2

Vs.

State represented by
The Inspector of Police,
Seidunganallur Police Station,
Seidunganallur,
Thoothukudi District.

(Crime No.119 of 2016)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment and conviction, dated 03/02/2020 passed by the 2nd Additional District and Sessions Judge, Thoothukudi, in SC No.284 of 2017 and acquit the appellants.

For Appellants : Mr.N.Pragalathan

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



COMMON JUDGMENT

CrI.A(MD)Nos.79 and 84 of 2020 have been filed against the judgment conviction and sentence passed in SC No.19 of 2018 on the file of the II Additional District and Sessions Judge, Thoothukudi, dated 03/02/2020, whereas CrI.A(MD)No.108 of 2020 is filed against the judgment of conviction and sentence passed in SC No.284 of 2017 by the II Additional District and Sessions Judge, Thoothukudi.

2.CrI.A(MD)Nos.79 and 80 of 2020:-

The case of the prosecution is that on 03/06/2016 at about 07.30 am, the de-facto complainant was said to have been attacked by using hammer, inflicted bite injuries on his right hand by the accused and abused him in filthy language coupled with damage to his two wheeler bearing registration No.TN-72-BB-3493 by hitting upon it using the Mahindra Van. Upon the occurrence, a case in Crime No.120 of 2016 was registered for the offence under section 294(b), 323, 324 IPC and section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. After completion of the investigation, final report was filed. It was taken on file in SC No.284 of 2017 by the II Additional District and Sessions Judge, Thoothukudi. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-



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(i) On 03/06/2016, PW1 and the accused entered into conspiracy over taking of grand daughter of the complainant to the school; The above school belongs to the PW1's son-in-law; During the course of the occurrence, there was exchange of words between them; at that time, A2 abused the de-facto complainant in filthy language and thereby, A2 committed an offence punishable under section 294(b) IPC;

(ii) In continuation of the above said occurrence, the deceased accused Antony caused assault with hands on the cheek of the de-facto complainant, thereby caused simple injury; at that time, A2 caught hold of the de-facto complainant's hand and assaulted him, thereby caused simple injury, so A2 committed an offence punishable under section 323 IPC;

(iii) In continuation of the above said occurrence the de-facto complainant was said to have been attacked by A1 by using hammer and inflicted bite injuries on his right hand and thereby, A1 committed an offence under section 324 IPC; and



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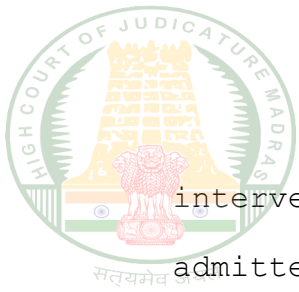
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(iv) In furtherance of the above said occurrence, the deceased accused Antony caused damage to the two wheeler TN-72-BB-3493 by using hammer in collusion with A1, thereby caused damage to the tune of Rs.4,000/-. So A1 committed an offence punishable under section 3 of TNPPDL Act r/w 108 IPC.

3. To that charges, all the accused persons pleaded not guilty and claimed to be tried.

4. During trial, on the side of the prosecution, 5 witnesses were examined and 13 documents marked. Apart from that, 2 material objects were marked. On the side of the accused, no oral evidence was adduced, but three documents were marked.

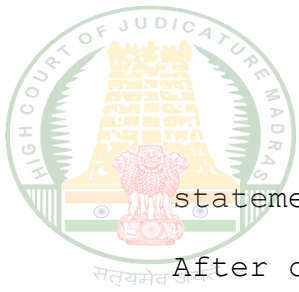
5. **PW1** is the complainant. He has stated that on 03/06/2016, he and accused entered into conspiracy over taking of his grand-daughter to the school. The above said school belongs to the PW1's son-in-law. During the course of the occurrence, there was exchange of blows between them. At that time, the accused Selvaraj and Pattu @ John came to that place. They assaulted him. Selvaraj caused damage to his two wheeler. Pattu @ John bite his hands. Antony Ponraj caused assault with hammer. Neighbours



intervened, he was taken to the hospital. When he was admitted in the hospital, he became unconscious. So, his wife gave statement under Ex.P1.

6.**PW8** went to the Government Hospital, Srivaikundam, on receiving the intimation and recorded the statement of PW1, registered the case in Crime No.120 of 2018 under sections 294(B), 323, 324 IPC and section 3 of TNPPDL Act. He submitted the original records to the concerned court and the copies to the higher authorities.

7.Investigation was taken by **PW9** who was working as Inspector of Police, Manaur Police Station. He visited the place of occurrence at about 03.00 pm in the presence of the witnesses and recovered the damaged articles through athachi, recorded the statement of the witnesses and submitted the recovered articles to the court. On 04/07/2016, he arrested the accused Antony Ponraj at about 12.00 noon, recorded his confession statement. In pursuance of the disclosure statement, he recovered the hammer identified him from the backyard of his house under proper mahazar. The accused were remanded to judicial custody. Recorded the statement of the Medical Officer, who treated the injured, obtained Wound Certificate and later examined A2, who was released on anticipatory bail, he recorded the



statement of the office who issued damage certificate.
After completing the investigation, filed final report.

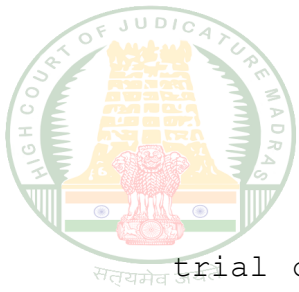
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8.**PW2** is the wife of the PW1. On receiving the information about the occurrence, she went to the place of occurrence and found the damaged two wheeler and PW1 with the injuries, she took PW1 to the hospital. PW3 also came to the place of occurrence. He corroborated with PW2 regarding the occurrence.

9.**PW7** examined PW1 when he was working as Medical Officer attached to the Government Hospital, Srivaigundam. On his examination, he found abrasion on the right head, neck, right little finger, right index finger, he was treated as in-patient. He issued wound certificate opined that it was simple nature.

10.**PW6** issued damage certificate for the two wheeler under Ex.P4. With that, the prosecution side evidence was closed.

11.The accused were questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against them. They denied the evidence of the witnesses as false and stated that a false case has been foisted.



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12.At the conclusion of the trial process, the trial court found the first accused guilty for the offence under section 3 of TNPPDL and sentenced him to undergo rigorous imprisonment for 5 years and imposed a fine of Rs. 10,000/- in default to undergo one year. Similarly, A2 was convicted and imposed a fine of Rs.1,000/- in default to undergo simple imprisonment for 3 months; for the offence under section 323 IPC, sentenced him to undergo one year SI and imposed a fine of Rs.1,000/- in default to undergo 3 months SI.

13.Against the judgment of conviction and sentence, Crl.A(MD)Nos.79 and 84 of 2020 are preferred by A1 and A2.

Crl.A.No.108 of 2020:-

14.According to the prosecution, the accused Selvaraj, Peter Paul Raj and the deceased who is the husband of PW1 purchased a property. The original document was with the second accused namely Peter Paul Raj. The deceased demanded the document back, A2 told that it was mortgaged. Because of that, there was issue between them. On 03/06/2016, the deceased was taking the child to the school. At that time, A1 intercepted and prevented the deceased, caused damage to the Van with hammer. A2 namely Peter Raj caused damage with stick worth about Rs.20,000/-.



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Over the above said occurrence, the deceased husband lodged a complaint, which was received by the SSI attached to Seidunganallur Police Station and registered a case in Crime No.119 of 2016 for the offences under sections 294(b), 324, 323, 506(ii) and section 3 of TNPPLD Act. After completion of the investigation, final report was filed. It was taken on file in SC No.19 of 2018 by the II Additional District and Sessions Judge, Thoothukudi. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-

(i)The accused Selvaraj, Peter Paul Raj and the deceased who is the husband of PW1 purchased a property; The original document was with the second accused namely Peter Paul Raj. The deceased demanded the document back, A2 told that it was mortgaged; Because of that, there was issue between them; On 03/06/2016, the deceased was taking the child to the school; all the accused persons abused the de-facto complainant in filthy language and thereby, they have committed an offence under section 294(b) IPC;

(ii)In continuation of the above said occurrence, A1 tried to cause assault by hammer on the head of the de-facto complainant Antony Ponraj, he



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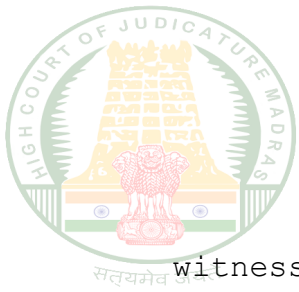
caused hit on his right wrist and thereby, A1 caused injury, so, he has committed an offence under section 324 IPC;

(iii) In the above said occurrence, A2 caused assault with hands on the de-facto complainant Antony Ponraj and thereby, caused simple injury. So, the accused committed an offence punishable under section 323 IPC;

(iv) In the course of the occurrence, when PW3 Perumal and PW4 Mookadi raised alarm, A1 and A2 threatened them with dire consequences, thereby they have committed an offence under section 506(ii) IPC; and

(v) In furtherance of the above said occurrence, the accused 1 and 2 caused damage to the front glass, headlight, side wind-glass of the vehicle TN-69-B-7277 Mahendira Van belongs to the de-facto complainant to the tune of Rs.20,000/- and thereby, A1 and A2 committed an offence under section 3 of TNPPDL Act.

15. To that charges, all the accused persons pleaded not guilty and claimed to be tried.



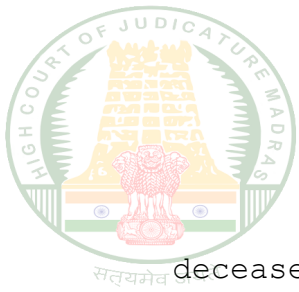
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16. During trial, on the side of the prosecution, 10 witnesses were examined and 15 documents marked. Apart from that, 3 material objects were marked. On the side of the accused, no oral or documentary evidence was adduced.

17. **PW10** took up the investigation and visited the place of occurrence. In the presence of the witness prepared Exs.P11 and P12, recovered the damaged glass pieces, Van parts, etc., under mahazar. He recorded the statement of the witnesses, arrested A1 on 04/07/2016. In pursuance of the confession statement made by A1, he recovered the hammer (MO1) used for damaging the van and stick (MO3) through mahazar under Ex.P4. He submitted the recovered articles to the court and accused were remanded to the judicial custody. A1 was enlarged on anticipatory bail. Obtained wound certificate from the Medical Officer, who treated PW1's husband and recorded his statement, obtained the damage certificate. After completing the investigation filed a final report.

18. **PW2 and PW3** are the occurrence witnesses. PW4 went to the place of occurrence after receiving the information. He is the brother of the deceased.

19. **PW8** issued damage certificate for the damaged van under Ex.P8.

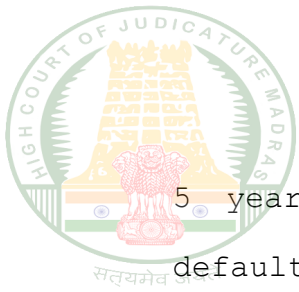


20.**PW9** is the Medical Officer who treated the deceased Anthony Paul Raj and on his examination, he found swelling on the right hand wrist region. On further examination through X-ray, no fracture was found, issued wound certificate as simple in nature.

21.**PW5, PW6 and PW7** turned hostile. They are not material witnesses. With that, the prosecution side evidence was closed.

22.The accused were questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against them. They denied the evidence of the witnesses as false and stated that a false case has been foisted. No witness was examined on the defence side.

23.At the conclusion of the trial process, the trial court found the accused were convicted for the offence under section 294(b) IPC and imposed a fine of Rs.1,000/- each in default to undergo 3 months SI; and convicted for the offence under section 506(ii)IPC and sentenced to undergo 5 years RI and imposed a fine of Rs.1,000/- each in default to undergo 1 years SI; for the offence under section 3 of TNPPDL Act, sentenced to undergo



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5 years RI and imposed a fine of Rs.10,000/- each in default to undergo 1 year SI. Further, A2 was convicted for the offence under section 323 IPC, sentenced him to undergo 1 year simple imprisonment and imposed a fine of Rs.1,000/- in default to undergo 3 months SI.

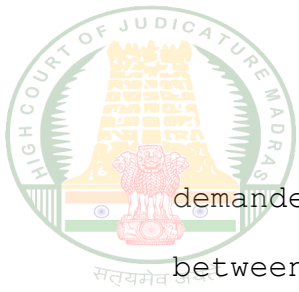
24. Against the judgment of conviction and sentence, this criminal appeal is preferred by A1 and A2 as appellants.

25. Heard both sides.

26. Since both the cases are case and counter, even though tried separately by the trial court in SC No.284 of 2017 and 19 of 2018, for better appreciation of facts and ground, a common judgment is pronounced.

27. Now we will take up the first case in SC No.284 of 2017.

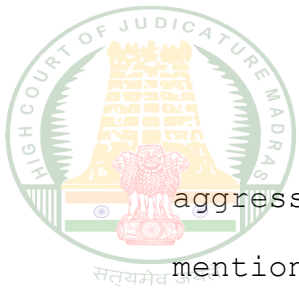
28. The accused mentioned are Selvaraj Raj and Peter Paulraj. The time of the occurrence is noted as 07.15 am on 03/06/2016, where in the motive suggested by the prosecution is that there was land issue between one Antony Ponraj and A2. The documents pertaining to that property was mortgaged by A1. So, the deceased Antony Ponraj



demanded it back with A1. Over that, there was enmity, between them. On the particular date of occurrence, on 03/06/2016 at about 07.15 am, the occurrence said to have taken place.

29.In respect of SC No.19 of 2019, it is stated by the prosecution that at about 07.30 am, on 03/06/2016, the deceased Anthony, due to previous enmity along with the accused Selvaj and another accused Pattu joined together, the deceased Anthony damaged the vehicle belongs to the witness Selvaraj and caused assault.

30.So, it is seen that it is a case and counter, took place on the very same place, time and date. But it appears that separate crime numbers were registered and of course correctly. But mistake was committed by the Investigating Officer namely Soman Raj, who was examined as PW9 in SC No.19 of 2019 and PW10 in SC No.284 of 2017 in conducting separate investigation, filed separate final reports even without referring to the counter case. So, this itself is fatal to the prosecution and that is the reason for this court to take up the matter for common judgment. So, the investigation ought to have been conducted in both the crime numbers simultaneously and ought to have found out who are the aggressors and if the investigating officer was not able to identify and fix the



aggressor, then he ought to have filed the final report mentioning the case and counter case.

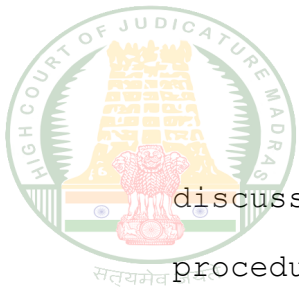
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31.In this context, we will refer to PSO 588A which reads as follows:-

“588A:In a complaint and counter complaint arising out of a same transaction, the Investigation Officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1)to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter-complainant, as the case may be, should be advised about the disposal by a notice in Form 96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case.”

32.This procedure is not followed by the Investigating Officer. This is the basic fatal issue arises in the case of the prosecution in the light of the basic factual issue.

33.Now we will go to the next aspect on record. It is further unfortunate to know that even the trial court has not taken that issue seriously. Absolutely, there is no



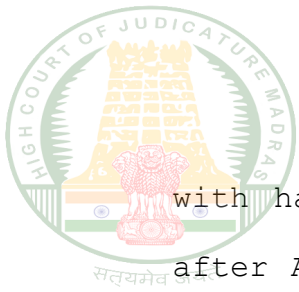
discussion made with regard to the counter case and the procedure to be adopted by the Investigating Officer. It went on discussing the issue separately without referring the other connected occurrence. So, the trial court has also failed in its duty to adopt proper procedure.

34.As mentioned above, let us take up the case in SC No.284 of 2017 for discussion first.

35.PW1 is the wife of the deceased Antony Ponraj. She would say that on 03/06/2016 due to previous enmity, the first accused caused damage to his two wheeler. A2 namely Peter Paulraj caused assault, damaged to the vehicle with stick. But in his evidence, PW1 has not stated anything about offence under section 294(b) IPC and causing assault to the deceased Antony by the accused and criminal intimidation.

36.During the course of the cross examination, she admitted that she was not available in the place of occurrence at that time. But later only, she came to the occurrence spot and in the meantime, her husband was shifted to the hospital.

37.PW2 is the eye witness to the occurrence and he has stated that A1 assaulted the deceased Antony Ponraj



with hammer and with the very same hammer damaged the van after A2 came to the spot. So, his evidence is accusing A1 namely Selvaraj. Even as per the own evidence, A2 came to the spot later.

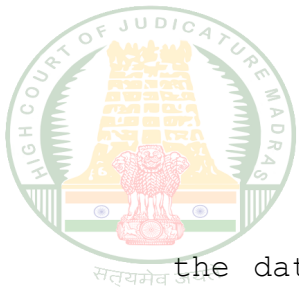
38.During the course of the cross examination, he has stated that in the very same place, time and date, the deceased Antony Ponraj and one Pattu assaulted A1 Selvaraj. He did not witness the occurrence and he has no knowledge about that accused.

39.Reading of the cross examination shows that in half hearted manner, he has given evidence.

40.PW3 is another eye witness. He has also stated in like manner as that of PW2. He would also state that he does not know about the counter case.

41.PW4 is the brother of PW1 and he is the accused in the counter case in SC No.19 of 2018. So, his evidence may not be of any relevancy since he is already an accused in the counter case. Except the above said persons, there are no other eye witnesses to the occurrence.

42.Stopping the discussion for a moment in respect of SC No.284 of 2018, we will go to the evidence available in SC No.19 of 2019.



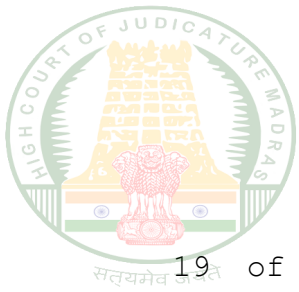
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43.PW1 Selvaraj has stated in his evidence that on the date of the occurrence, quarrel arose between them and the deceased Antony. There was exchange of blows between them. Later the accused Selvaraj and Pattu @ John Peter came to that place and they caused assault. His two wheeler was damaged by the accused Selvaraj. The accused Pattu @ John Peter bite his hands. The deceased Antony Ponraj caused injury with hammer. One Paulraj intervened and separated them.

44.PW1 is the wife of PW2. She is not the eye witness to the occurrence. After the occurrence, she went to that place. That was admitted by her during the course of cross examination.

45.PW3 is the another eye witness. He also did not witness the occurrence directly. The occurrence was over according to him when he arrived at the place. He is the brother of PW1. They are no other eye witnesses to the occurrence.

46.In the light of the above said, as mentioned above it is the duty of the Investigating Officer to find out during the course of the investigation who are the aggressors. As mentioned above, absolutely the investigation is fault in nature.

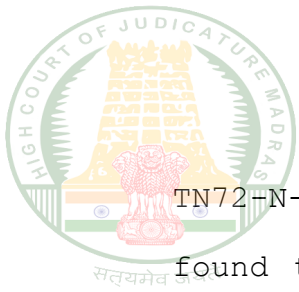


47.Now we will go to the medical evidence in SC No. 19 of 2019. PW7 was the Medical Officer who admitted Selvaraj. According to him, on medical examination of Selvaraj, he found that there was abrasion on the right hand, neck, right hand thumb, right hand thumb region. Those injuries are found to simple in nature. So PW1 suffered simple injury. There are no other injured in SC No.19 of 2019.

48.Now coming to the case in SC No.284 of 2019, PW9 was the Medical Officer, as mentioned above. He has stated that the injured Anthony Ponraj was admitted in the hospital. On his examination, he found a contusion on his right hand region. On X-ray examination, it was found that there was no fracture. So it is seen that it is only a contusion suffered by Antony Paul Raj. There are no other injured in this case. So it appears that both Selvaraj and Antony Paul Raj suffered only simple injuries.

49.As admitted by Selvaraj himself there was exchange of blows between him and the deceased Antony Paul Raj.

50.Coming to the damage to the articles in SC No.19 of 2019, PW6 is the mechanic who was working in Tirunelveli Nellai Agencies. According to him, the damaged vehicle



TN72-N-3493 was produced before him, they repaired and found the front hand bars were damaged. The total cost of damage and repair charge was paid by the owner and issue a damage certificate under Ex.P4. The damage was estimated at Rs.10,290/-.

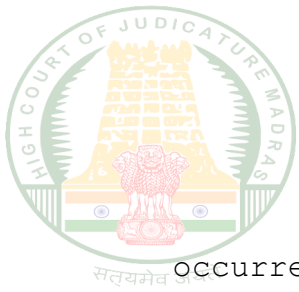
51.Coming to SC No.284 of 2017 PW8 has stated in his evidence that he is running a mechanic work shop in Vannarapetti area. A Mahindara Van No.TN69-B-7233 was produced before him. He made repair work and delivered the same to the owner. According to him, the cost of repair was estimated at Rs.22,800/-.

52.From these two evidences, it stands established that in both cases the vehicles got damaged.

53.So, the combined reading of the evidences in both matters, as mentioned above, both sides suffered injuries damage to vehicles.

54.From the evidence on record also, this court is not in a position to ascertain who are the aggressors.

55.As mentioned above above, the trial court omitted to take notice of this important aspect and recorded a finding of conviction and sentence in both matters.



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56. There are no other eye witness to the occurrence. So, the charges in both cases namely SC No.19 of 2019 and 284 of 2018 are not established. As admitted by Selvaraj as PW1 in SC No.19 of 2019, there was exchange of blows between the parties.

57. So, for all the reasons stated above, these criminal appeals are **allowed**, the judgment of conviction and sentence passed in all cases are set aside. The appellants are acquitted of all charges. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

29/01/2025

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Internet : Yes/No
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To,

1. The II Additional District and Sessions Judge,
Thoothukudi.
2. The Inspector of Police,
Seidunganallur Police Station,
Seidunganallur,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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