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Crl.A(MD)No.452 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	22/10/2024
Date of Pronounced	22/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.452 of 2019

Periyasamy : Appellant-victim/Nil/
Nil

Vs.

- 1.State rep. by
The Sub Inspector of Police,
Vattathikottai Police Station,
Pattukkottai Taluk,
Thanjavur District.
(Crime No.117/2013) : 1st Respondent/Respondent/
Complainant
- 2.Sundaramoorthi
3.Ramasamy : Respondents 2 and 3/
Appellants/A1 and A2

Prayer: This Criminal Appeal is filed under Section 372 of the Criminal Procedure Code, to set aside the judgment, dated 21/03/2019 made in Crl.A No.65 of 2017 on the file of the 3rd Additional District and Sessions Judge, Thanjavur at Pattukottai, by which modifying the judgment of conviction, dated 23/08/2017 made in CC No.61 of 2014 on the file of the Judicial Magistrate, Pattukkottai and convict the respondent/accused.



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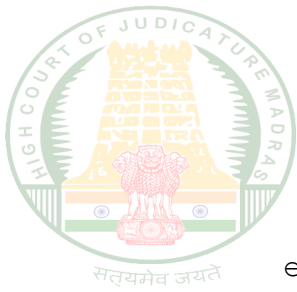
For Appellant : Mr.S.Deenadhayalan
For 1st Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)
For R2 and R3 : Mr.K.Mahendran

J U D G M E N T

This Criminal Appeal is filed against the judgment, dated 21/03/2019 passed in Crl.A No.65 of 2017 by the 3rd Additional District and Sessions Judge, Thanjavur at Pattukkottai.

2.The case of the prosecution in brief:-

On 29/09/2013 at about 04.00 pm in the evening, PW1 was walking on the Neyveli Market Street to his house, due to previous enmity, the accused came there, criminally intimidated, caused injury with wooden log on his left hand. The complaint was lodged by the de-facto complainant, a case in Crime No.117 of 2013 for the offence under sections 294(b), 326 and 506(ii) IPC was registered. After completing the investigation, final report was filed before the Judicial Magistrate, Pattukottai and it was taken on file in CC No.51 of 2014 for the offences punishable under section 294(b), 326 and 506(ii) IPC. After completing 207 Cr.P.C proceedings, the following charges were framed against the accused:-



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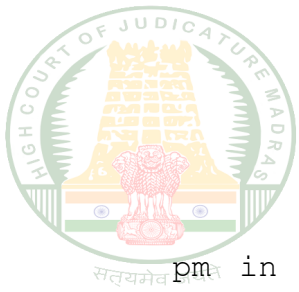
(1)On 29/09/2013 at about 04.00 pm in the evening, PW1 was walking on the Neyveli Market Street to his house, due to previous enmity, the accused came there and abused him in filthy language and thereby the accused committed the offence punishable under section 294(b) IPC;

(2)In the course of the above said occurrence, the accused caused injury with wooden log on the left hand of the complainant and thereby the accused committed the offence punishable under section 326 IPC; and

(3)In the above said occurrence, the accused made criminal intimidation upon the complainant and thereby, they have committed the offence under section 506(ii) IPC.

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

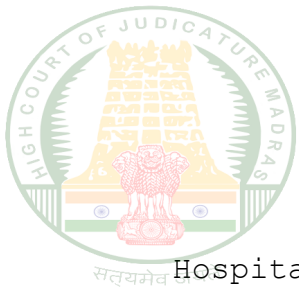
4.During trial, on the side of the prosecution, 11 witnesses were examined and 8 documents marked. Apart from that, 2 material objects were marked. On the side of the accused, no oral and documentary evidence was adduced.



5.PW1 has stated that on 29/09/2013 at about 04.00 pm in the evening, he was walking on the Neyveli Market Street to his house, due to previous enmity, the accused came there, criminally intimidated, caused injury with wooden log on his left hand. He lodged a complaint under Ex.P1. Upon which, the case was registered by PW11 who was working as Sub Inspector of Police, Vattathikottai Police Station, in Crime No.117 of 2013 for the offence under sections 294(b), 326 and 506(ii) IPC. She visited the place of occurrence, at 04.00 pm on 01/10/2013, in the presence of witnesses, he prepared observation mahazar and sketch, recorded the statement of the witnesses. After obtaining wound certificate from the Medical Officer, who treated PW1 recorded his statement, filed alternation report altering the offence under sections 294(b), 326 and 506(ii) IPC.

6.**PW2** is the son of PW1. He corroborated PW1 with regard to material particulars.

7.**PW6** was the Medical Officer, who examined PW1 on 06/10/2013 at about 08.40 pm. On his examination, he found a lacerated injury on his left upper hand region. Apart from that, there was a fracture in the left hand. He issued wound certificate stating that the first injury is minor injury, the second injury is grievous.



8.**PW7** referred PW1 to the Thanjavur Medical College Hospital for further treatment.

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9. Further treatment was given by **PW8** the Medical Officer. On his examination, on the x-ray, he found that there was fracture on the left upper hand. He admitted him in the private hospital and upto 05/10/2013, he was treated, later got himself discharged.

10.**PW9** is the Medical Officer. At that time, he was working in the Radiology Department. He conducted surgery on the PW1's left upper hand region.

11.**PW10** was the another Medical Officer attached to the very same hospital, who referred PW1 for further treatment in the Radiology and Orthopedic Department. On 08/10/2013, PW1 underwent surgery fitted with rods and screws.

12.**PW4** was present when the Investigating Officer visited the place of occurrence, prepared the parvai mahazar and rough sketch. He did not witness the occurrence, but went to see PW1 when he was admitted in the Government Hospital.

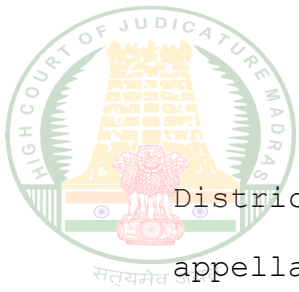


13.PW5 turned hostile. PW3 has stated that he did not witness the occurrence, but went to see PW1 when he was admitted in the Government Hospital.

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

15.At the conclusion of the trial process, the trial court found the guilt of the accused and convicted the first accused for the offence under sections **294(b) and 326** IPC and imposed a fine of Rs.500/- for the offence under section 294(b) IPC, in default to undergo 2 weeks simple imprisonment; and for the offence under section 326 IPC and sentenced him to undergo 1 year Simple Imprisonment and imposed a fine of Rs.2,000/- in default to undergo 4 weeks simple imprisonment. Further convicted the second accused for the offence under section 506 (ii)IPC and sentenced to remain in Court Hall till the raising of Court and imposed a fine of Rs.1,000/- in default to undergo 2 weeks simple imprisonment.

16.Against which, the both accused preferred appeal before the first appellate court namely III Additional



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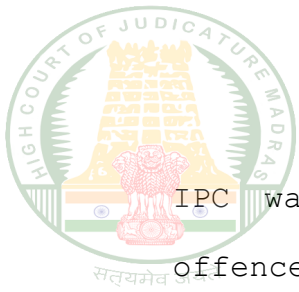
District Court, Madurai in CA No.65 of 2015, the first appellate court, by judgment, dated 21/03/2019 modified the conviction of the 1st accused from section 326 IPC to 324 IPC and imposed a fine of Rs.2,000/- and confirmed the conviction of the 1st accused in respect of section 294(b) IPC. Further the 2nd accused has been acquitted for the offence under section 506(ii) IPC.

17.Against which, this criminal appeal is preferred by the appellant.

18.Heard both sides.

19.The learned counsel appearing for the appellant is short in his submission stating that the offence under section 506(ii) IPC, as indicated by the trial court was established beyond all reasonable doubt and the first appellate court without any proper reason interfered in that portion of conviction and sentence for the offence under section 506(ii) IPC.

20.Similarly in respect of the offence under section 326 IPC, he would submit that the grievous injury was inflicted upon the appellant by the first accused, which fact was also established by examining the medical witness; without any reason the offence under section 326



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IPC was altered to section 324 IPC, which is a minor offence.

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21.It appears that appeal has been preferred by misconception of law. The trial was conducted by the Judicial Magistrate, Pattukkottai, in CC No.61 of 2014. The appeal was preferred before the III Additional District and Sessions Judge, Thanjavur at Pattukottai, wherein as mentioned above, modification was made. Against that, this criminal appeal has been preferred by the victim. Whether such an appeal will lie is a matter for consideration.

22.Section 393 of the Criminal Procedure Code reads as under:-

"393.Finality of judgments and orders on appeal.-Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the cases provided for in Section 377, Section 378, sub-section (4) of Section 384 or Chapter XXX

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits, -

(a)an appeal against acquittal under Section 378, arising out of the same case, or



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(b) an appeal for the enhancement of sentence under Section 377, arising out of the same case."

23. Reading of section 393 Cr.P.C makes the position very clear that the judgments and orders passed by the appellate court shall be final, except the cases provided for in section 377 and 378(4). If at all revision will lie under section 397 Cr.P.C.

24. By misconception of law, it appears that this appeal has been preferred by the victim. So, the appeal is not maintainable. If at all the appellant can resort to section 397 Cr.P.C. If the revision is filed under section 397 Cr.P.C, the time spent in this proceedings may be deducted.

25. With this liberty, this criminal appeal stands **dismissed.**

21/01/2025

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

- 1.The III Additional District and Sessions Judge,
Thanjavur at Pattukkottai.
- 2.The Sub Inspector of Police,
Vattathikottai Police Station,
Pattukkottai Taluk,
Thanjavur 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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