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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.12.2024

Pronounced on : 30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.382 of 2018

1.S.Suriyaprakash

2.Leojoice

3.Joel

... Appellants/Accused Nos.1 to 3

Vs.

The State represented by
The Inspector of Police,
Kumbakonam West Police Station,
Kumbakonam,
Thanjavur District.
(Crime No.141 of 2013)

... Respondent / Complainant

PRAYER: This Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to allow the above appeal and consequently set aside the impugned judgment dated 06.07.2018 made in S.C.No.69 of 2015 on the file of the learned Additional District Session Judge (Fast Track), Kumbakonam, Thanjavur District, forth with.

For Appellants : Mr.S.Palanivelayutham

For Respondent : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)



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JUDGMENT

The appellants/Accused in S.C.No.69 of 2015 on the file of the learned Additional District Session Judge (Fast Track), Kumbakonam, Thanjavur District, have filed this appeal, challenging the conviction and sentence imposed against them on 06.07.2018, under Sections 341, 323, 326 of IPC and also Section 3(1) of Tamil Nadu Prevention of Property Damage and Loss Act.

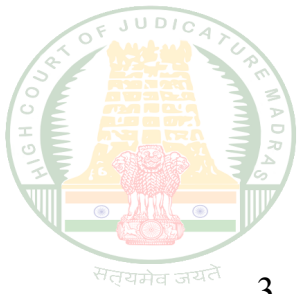
2.The brief facts of the case as follows:

The defacto complainant was working as a Manager in the firm namely, 'Dr.Kanagasabapathi Naturals' and 'Green Trends'. The appellants herein were the customers of the said Beauty Parlour. Due to previous motive between the parties regarding causing disturbance to the other lady customers, on 05.04.2013, at about 11.15 p.m, when the defacto complainant was proceeding towards his house on his bike along with the collected amount of Rs.45,000/- from the above said firm, the first appellant is said to have waylaid and attacked P.W.1 on his left hand with an iron rod. Thereby, P.W.1 fell down and sustained fracture. The second appellant is said to have attacked P.W.1 with an iron rod on the head and the third appellant attacked P.W.1 on the face and back side with hands and caused injuries. Further, they damaged the lap-top and snatched the collected



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amount from him. Because of the alarm made by P.W.1, they escaped from the scene of the occurrence. On hearing the same, one Saravanakumar, who was working as a driver, and one Thenchamy, who was working as a watchman, rushed there and informed the owner of the above said firm namely, Nagulashkumari. Thereafter, they admitted P.W.1 in the Government Hospital, Kumbakonam. Thereafter, shifted him to a private hospital, namely, Sugam Hospital, as inpatient. After taking treatment from 05.04.2013 to 07.04.2013, he was discharged on 07.04.2013. Therefore, the respondent police registered a case in Crime No.141 of 2013 for the offences under Sections 341, 323, 326 of IPC and Section 3(1) of Tamil Nadu Prevention of Property Damage and Loss Act against the appellants. Thereafter, P.W.10 conducted investigation and filed the final report before the learned Additional District Session Judge (Fast Track), Kumbakonam, Thanjavur District, and the same was taken on file in S.C.No.69 of 2015. The learned trial Judge issued summons to the accused and on their appearance, served the copies under Section 207 Cr.P.C. and framed the necessary charges and questioned the accused. The accused pleaded not guilty and stood for trial.



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3. The prosecution, to prove the case examined P.W.1 to P.W.11 and exhibited 16 documents as Ex.P.1 to Ex.P.16 and produced 3 material objects as M.O.1 to M.O.3. The learned trial Judge questioned the accused under Section 313 of Cr.P.C., proceedings by putting the incriminating evidence available from prosecution witnesses and documents. The accused denied the same as false and the case was posted for examination of the defence witnesses. On the side of the appellants, no witness was examined and no document was marked.

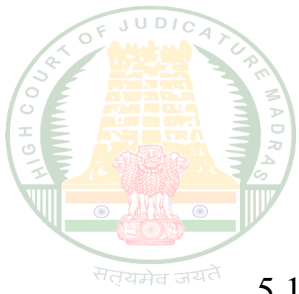
4. The learned trial Judge after considering the oral and documentary evidence, convicted the first appellant/A1 for the offence under Sections 341 and 326 of IPC and Section 3(1) of Tamil Nadu Prevention of Property Damage and Loss Act, and convicted the second appellant/A2 for the offence under Sections 341 and 324 of IPC and Section 3(1) of Tamil Nadu Prevention of Property Damage and Loss Act, and convicted the third appellant/A3, for the offence under Sections 341 and 323 of IPC and sentenced the first appellant/A1 to undergo 1 month Simple Imprisonment for the offence under Section 341 of IPC and sentenced him to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), in default to undergo 3 months Rigorous Imprisonment for the offence under Sections 326 of IPC and sentenced



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him to undergo 1 year Rigorous Imprisonment and to pay a fine of R.2,000/- (Rupees Two Thousand only), in default to undergo 3 months Rigorous Imprisonment for the offence under Section 3(1) of Tamil Nadu Prevention of Property Damage and Loss Act, and sentenced the second appellant/A2 to undergo 1 month Simple Imprisonment for the offence under Section 341 of IPC and sentenced him to undergo 6 months Rigorous Imprisonment for the offence under Sections 324 of IPC and sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of R.2,000/- (Rupees Two Thousand only), in default to undergo 3 months Rigorous Imprisonment for the offence under Section 3(1) of Tamil Nadu Prevention of Property Damage and Loss Act, and sentenced the third appellant/A3 to undergo 1 month Simple Imprisonment for the offence under Section 341 of IPC and sentenced him to undergo 6 months Rigorous Imprisonment for the offence under Sections 323 of IPC and the sentences were directed to run concurrently.

5. The learned trial Judge, on considering the oral and documentary evidences, convicted and sentenced the appellants for the offence as stated supra. Aggrieved over the same, the appellants have preferred this appeal.



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5.1. The learned counsel for the appellants submitted that there is a delay in registration of the case. The evidence of P.W.1, the injured witness is unbelievable, and the same was not corroborated by the medical evidence. The case of the prosecution that the appellants damaged the vehicle of P.W.1 is not proved in accordance with law.

5.2. He further submitted that in AR copy, P.W.1 stated that some unknown persons attacked him. But, in the evidence before the Court below, he stated that the appellants alone attacked him. There is no identification parrade in this regard.

5.3. He further submitted that there are number of infirmities and inconsistencies in the evidence of P.W.1 and the other remaining witnesses. Therefore, he seeks acquittal for the appellants.

6.1. The learned Government Advocate (Crl.Side) on instructions and also upon perusal of the evidence of the document and the impugned judgment submitted that P.W.1 is the injured witness. His evidence is cogent and trustworthy, and his case is supported by the medical evidence, and the other



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remaining evidence, and the circumstances of the case. Hence, the learned trial Judge rightly believed the evidence of P.W.1 and passed the conviction against the appellants under the above charged offences. Therefore, he prayed for dismissal of the appeal.

6.2. He further submitted that there was no delay in the registration of the case as argued by the learned counsel for the appellants. After the occurrence, P.W.1, the injured was admitted in the hospital as inpatient and thereafter, the said complaint was made. The infirmities and inconsistencies is not a matter to disbelieve the evidence of P.W.1. Therefore, he seeks to confirm the conviction and sentence imposed by the Court below.

7. This Court considered the rival submission and also perused the records and the impugned judgment and the precedents relied upon by the appellants.

8. P.W.1, in his evidence, clearly deposed about the motive and the subsequent assault on him on 05.04.2013. According to P.W.1, he was working as Manager in the firm namely, 'Dr.Kanagasabapathi Naturals' and 'Green Trends'. The appellants are the customers of the said Firm. One week prior to the



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occurrence, the appellants caused inconvenience to the remaining customers. The same was questioned by P.W.1 as a Manager of the said Firm. Therefore, they have motive to attack him. In pursuance of the said motive, on the same day, they intercepted P.W.1 and attacked him and caused injuries to him and also damaged the lap-top. P.W.1 specifically stated that A1 assaulted him with an iron rod and A2 assaulted him with an iron rod and also A3 assaulted him with hands on the face and back side. The said evidence of P.W.1 is corroborated by the medical evidence of the Doctor, P.W.9. Apart from that, his version is also corroborated by the remaining evidence of the other witness namely, P.W.2.

9. Reliability of the injured/PW.1- witness:-

9.1 Before going into the correctness of findings of the both the Courts below in accepting the evidence of P.W.1/injured witness, the following principles laid down by the Hon'ble Supreme Court have to be borne in mind:

9.1(a) The Hon'ble Three Member Bench of the Supreme Court has held a recent decision in the case of ***Balu Sudam Khalde and Another Vs. State of Maharashtra*** reported in ***2023 SCC Online SC 355***, which is as follows:

26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated



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by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their



presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

9.1(b).Jodhan Vs. State of Madhya Pradesh reported in **2015 11 SCC 52**

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... for there is no rule of evidence that the testimony of the interested witnesses is to be rejected solely because other independent witnesses who have been cited by the prosecution have turned hostile. 29.... the injured witness has been conferred special status in law and the injury sustained by him is an

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inbuilt guarantee of his presence at the place of occurrence.

9.1(c) Baleshwar Matho and another Vs. State of Bihar and another reported in 2017 3 SCC 152: 12. Here, PW 7 is also an injured witness. When the eyewitness is also an injured person, due credence to his version needs to be accorded. 29.... In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon.

(d) Balwan and others Vs. State of Haryana reported in 2014 13 SCC 560 16. It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let the actual assailant go unpunished.

9.2. In this case, P.W.1, in his evidence clearly deposed that the first accused/A1 attacked him with an iron rod on left hand. The second accused/A2 attacked him with an iron rod on the head and the third accused/A3 attacked him with hands on the face and back side. The above evidence of injured witness corroborated with the medical evidence of, PW-9/doctor who clearly deposed about the injuries and also deposed that they might have been caused by the

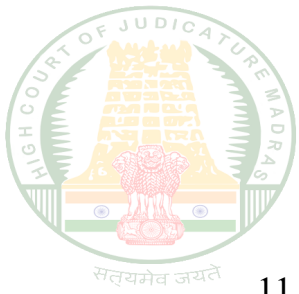


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alleged weapons. Further PW-1 withstood the cross examination and nothing could be elicited to discard his testimony and his evidence is cogent and trustworthy and his evidence inspires the confidence of this Court.

9.3. This Court finds no major contradiction, inconsistency or any infirmities in the evidence of P.W.1 to discredit his evidence. The Courts below clearly analysed the evidence along with medical evidence and comes to the conclusion that the appellants attacked with alleged weapon/ material objects and hence, there is no perversity in the finding of the trial Court.

10. By applying the above said principle, this Court finds no infirmity in the evidence of P.W.1. In his evidence, he clearly mentioned that he was assaulted by the appellants and damage also was caused to his lap-top. In the said circumstances, this Court is not inclined to accept the argument of the learned counsel for the appellants. The further arguemnt of the learned counsel for the appellants that there was a delay in registration of FIR is concerned, according to P.W.1, he was admitted in the hospital as inpatient. Therefore, in the considered opinion of this Court, the prosecution offered plausible explanation and hence, this Court declines to accept the case of the appellants that delay in registration of FIR creates doubt over the prosecution case.



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11. The further submission of the learned counsel for the appellants that no damage was caused to the vehicle of P.W.1 is concerned, according to P.W.1, when he was sitting on the vehicle, the appellants surmounted him and attacked him. Therefore, he fell down from the vehicle. In the said circumstances, the absence of damage to the vehicle is not a material to disbelieve the evidence of P.W.1.

12. Another submission of the learned counsel for the appellants that in AR copy, P.W.1 stated that some unknown 6 persons attacked him and hence, the evidence of P.W.1 is not believable. The said submission of the learned counsel for the appellants is not accepted for the reason that there was a clear statement for the attack by the three persons/appellants and P.W.1 also identified them before the Court below. Further, during cross examination, he gave an explanation that he was under stress at the time of administration and hence, he was not aware about what he has stated before the Doctor, P.W.9. In the said circumstances, the said entry can no way be used to reject the evidence of P.W.1, the injured witness. In another way, the entry made in AR copy is not a ground to acquit the appellants.



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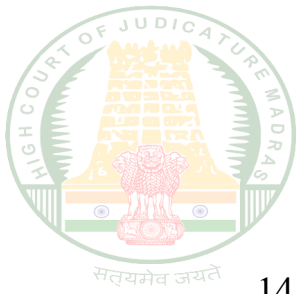
13.1. The Madras Medical Code (Vol.I) Section 10 Paragraph -622 gives guidelines or instructions to the doctor as to how the columns in wound certificate are to be filled up. Paragraph 622 (vi) reads:

“Medical Officer should ascertain and incorporate in the certificate only the alleged cause as to the manner in which the injuries were inflicted, the weapon used and the time”.

13.1.1. Therefore, it is settled principle that an entry in AR copy is only confined as to how he received injury and the evidence of doctor who recorded the statement in the accident registered copy can neither be used for contradiction or nor for any other purpose.

13.2. The purpose of the Accident Register copy is clearly stated by the Hon'ble Supreme Court in the following cases:

P. Babu v. State of A.P., (1994) 1 SCC 388	B. Bhadriah v. State of A.P., 1995 Supp (1) SCC 262
6. .. It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc	5. .. The casual way of filling up the column in the medical certificate does not in any manner amount to recording a statement of the injured witness.



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14. In all aspects, this Court finds no merit in the appeal and the appeal is liable to be dismissed.

15. However, insofar as the third appellant/A3 is concerned, considering the allegation against him that he assaulted P.W.1 on the face and back side only with his hands and also considering the fact that he has no previous antecedent, this Court is inclined to reduce the sentence for the offence under Section 323 of IPC alone.

16. Insofar as the appellants 1 & 2/A1 & A2 are concerned, considering the allegation against them, this Court is inclined to confirm the conviction and sentence imposed by the learned trial Judge.

17. Accordingly, this criminal Appeal is partly allowed with the following modification of sentence of imprisonment:-

i) The conviction and sentence imposed against the appellants 1 & 2/A1 & A2, by the Additional District Session Judge (Fast Track), Kumbakonam, Thanjavur District, in S.C.No.69 of 2015 dated 06.07.2018, is hereby confirmed.



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ii) The conviction imposed against the appellant/A3 passed by the learned Additional District Session Judge (Fast Track), Kumbakonam, Thanjavur District, in S.C.No.69 of 2015 dated 06.07.2018 for the offence under Sections 341 and 323 of IPC is confirmed and sentence to undergo 1 month Simple Imprisonment for the offence under Section 341 of IPC is also hereby, confirmed and the sentence imposed against him under Section 323 of IPC alone is **reduced to 2 months Rigorous Imprisonment from 6 months Rigorous Imprisonment**. The substantive sentence of imprisonment shall run concurrently.

ii) The judgment of the Special Court in other aspects is confirmed.

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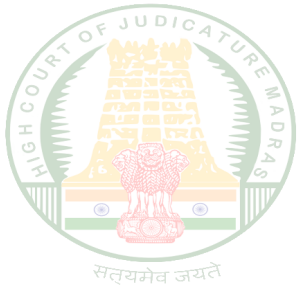
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To

1. The Additional District Session Judge (Fast Track), Kumbakonam,
Thanjavur District.
2. The Inspector of Police,
Kumbakonam West Police Station,
Kumbakonam, Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

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judgment made in
CRL.A(MD).No.382 of 2018

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