



Crl.A.(MD)No.74 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.06.2025

CORAM :

THE HONOURABLE **DR. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.74 of 2017

Thangaraj

... Appellant

versus

State through
The Inspector of Police,
Ganesh Nagar Police Station,
Madurai District.
Crime NO.345 of 2012

... Respondent

Prayer : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected with judgment rendered by the learned Assistant Sessions Judge, Pudukkottai in S.C.No.99 of 2014 dated 29.09.2015 and set aside the same and consequently acquit the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl.side)



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JUDGMENT

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This criminal appeal has been preferred as against the judgment of conviction and sentence, dated 29.09.2015 made in S.C.No.99 of 2014 by the learned Assistant Sessions Judge, Pudukkottai, thereby convicting and sentencing the appellant for the offence under Section 307 of IPC and to pay a fine of Rs.10,000/-, in default to undergo 6 months rigorous imprisonment.

2. The case of the prosecution had arisen on the basis of the complaint, Ex.P8, First Information Report, given by the defacto complainant, P.W.1, registered in Crime No.345 of 2012 at the Ganesh Nagar Police Station, for the offence under Sections 294(b), 324 and 307 of IPC, which is as follows:

(a) The accused is the nephew (brother's son) of P.W.1/defacto complainant. They belonged to different political parties. On 13.08.2012 at about 09.00 pm., when P.W.1 was standing in front of his house, the accused praised high of the DMK party conference that held at Chennai. P.W.1 made teasing remarks, which allegedly provoked and offended the accused. Hence, the accused abused P.W.1 in a filthy language and attacked



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him with Aruval on his right wrist, right elbow, right shoulder and left wrist.

As the accused was about to attack P.W.1 on his head, P.W.1 had moved away and avoided the attack. The injury inflicted on P.W.1 was grievous in nature and that could have even caused his death. After completing investigation, charge sheet has been filed against the appellant for the offences under Sections 294(b) and 307 of IPC before the Judicial Magistrate, Pudukkottai.

(b) Since the offence is triable by the Sessions Court, the case was committed to the Sessions Court. The trial Judge had taken cognizance in S.C.No.99 of 2014 and after completing the legal mandate of furnishing copies and all other legal formalities, the trial Judge framed charges against the accused for the offences under Sections 294(b) and 307 of IPC. When the accused was questioned, he denied the same and claimed to be tried.

3. During trial, on the side of the prosecution, P.W.1 to P.W.13 were examined and Ex.P1 to Ex.P13 were marked. Besides, M.O.1 was marked. On the side of the defence, no oral and documentary evidence was let in.

4. After completion of trial, based on the oral and documentary evidence, the trial Judge acquitted the appellant for the offence under



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Section 294(b) of IPC and has convicted and sentenced the appellant as supra. Aggrieved over the same, this appeal has been preferred.

5. The learned counsel appearing for the appellant submitted that there is no direct eyewitness to establish the guilt of the appellant and that the appellant has been falsely implicated due to previous enmity between P.W.1 and the appellant. The trial Court did not consider the falsity in the evidence of prosecution's witnesses and has convicted the accused only based on the evidence of interested witnesses, despite those witnesses having turned hostile.

6. The learned Additional Public Prosecution submitted that there is no reason to discredit the evidence of injured witness and that the trial Court has rightly placed reliance on the injured witness's testimony, medical evidence and proof of motive and found the accused guilty for the offence under Section 307 of IPC.

7. The relationship between the appellant and P.W.1 is not in dispute. Even in the complaint given by P.W.1, he had stated that the accused is his nephew (brother's son) and that the accused is a strong DMK sympathizer.

Since P.W.1 is an ADMK sympathizer, they used to quarrel. On 13.08.2012



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at about 09.00 pm., the accused was speaking high about DMK party conference held at Chennai. When P.W.1 teased him, the accused got provoked and abused P.W.1 using filthy language and attacked him with Aruval on his right forearm, right wrist and right shoulder and left wrist. The evidence of P.W.1 on this aspect is also very clear and is largely consistent with the contents of the complaint. The cross-examination of P.W.1 is also insufficient to dispel the credibility of the evidence given by P.W.1 in chief. P.W.2, who is the brother of the accused, had taken P.W.1 to the hospital and he has not stated anything incriminating against the accused.

8. P.W.3, who is the daughter of P.W.1, has stated in her evidence that on the day of occurrence when she came to house, she saw her father and accused were quarreling with each other by making noise. She asked her father not to shout and thereafter, P.W.1 went to pluck the straw, but the accused abused P.W.1 and attacked him with Aruval over his head, right forearm and shoulder. P.W.4, who is the son-in-law of P.W.1, has stated about the fact of taking P.W.1 to the hospital. P.W.6 and P.W.7, who were examined as independent eyewitnesses, turned hostile. The witnesses of observation mahazar i.e., P.W.8 to P.W.10 have also turned hostile, without supporting the case of the prosecution.



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9. The Doctor, who examined P.W.1, has stated in his evidence that the son of P.W.1's brother had attacked P.W.1 with Aruval. Infact, P.W.1 was brought by the brother of the accused. The evidence of Doctor would reveal that P.W.1 sustained deep cut injury over his right shoulder, right hand and right forearm and she certified that those injuries are grievous in nature. However, the Doctor did not note any injury on the head of P.W.1.

10. Even though the witnesses of seizure and mahazar have turned hostile, there is nothing to suspect the evidence of investigation officer, who has spoken on this aspect. The aruval, which was used for occurrence, was recovered with the confession of the accused and it has been marked as Ex.M.O.1.

11. The learned counsel for the appellant submitted that the bloodstain on the Aruval were not sent to forensic examination. Had it been sent, it could have served only as one more corroborative evidence. However, the absence of such evidence cannot defeat the case of the prosecution, if the evidence of injured witnesses is reliable.



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12. It has been consistently held that an injured witness is not only the victim of the incident, but also an eyewitness to the occurrence. Hence, in cases of this nature, the best evidence is testimony of the injured witness.

13. Except the fact that the accused and P.W.1 belonged to different political party and they were in talking terms, there is no previous enmity between P.W.1 and the accused, in order to prompt the accused to have deep grudges against P.W.1 to the extent of killing him.

14 . Although the injured witness, P.W.1, and the eyewitness, P.W.3, have stated facts confirming the complaint, neither the complaint nor the witnesses' evidence specifies the place from which the accused took the Aruval. Since P.W.1 and the accused were on speaking terms, there was no intention on the part of the accused to kill P.W.1. From the holistic reading of the evidence of the prosecution witnesses, it appears that the accused had secured the weapons from somewhere in P.W.1's house and attacked him due to sudden provocation, as there was neither prior preparation nor intention on the part of the accused to kill P.W.1. As the learned trial judge did not consider the above aspect, this Court takes note of the same, and consequently, finds it appropriate to modify the finding of the guilt of the



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accused for the offence under Section 307 IPC to a lesser charge under Section 326 IPC for causing grievous injury.

15. The evidence on record shows that only ingredients for an offence under Section 326 IPC only are seen to be present. As the incident appears to have occurred due to sudden provocation and the assault was carried out using a deadly weapon, it is appropriate to convict the accused only for a lesser charge under Section 326 of IPC.

16. In the result,

i) This Criminal Appeal is partly allowed;

ii) The impugned judgment of conviction and sentence made in S.C.No.99 of 2014, dated 29.09.2015, passed by the learned Assistant Sessions Judge, Pudukkottai, is modified to the extent that the appellant is convicted for the offence under Section 326 of IPC and sentenced to undergo two years of rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months of rigorous imprisonment;

iii) The period of imprisonment of 22 months already undergone by the accused is ordered to be set off under Section 428 of Cr.P.C., and he shall undergo the remaining period of punishment of imprisonment.



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iv) The trial court is directed to secure the appellant/accused and commit him to undergo the remaining period of sentence.

v) Bail bond executed by the appellant/A1 shall stand cancelled.

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Index : Yes/No

NCC : Yes/No.

Rmk

To

- 1.The Assistant Sessions Judge, Pudukkottai.
2. The learned Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.VR Section.
Madurai Bench of Madras High Court,
Madurai.



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DR.R.N.MANJULA, J.,

Rmk

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