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Cr1.A(MD)No.580 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	18/10/2024
Date of Pronounced	10/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Cr1.A(MD)No.580 of 2019

Vadivel : Appellant/Sole Accused

Vs.

The State rep. by
The Inspector of Police,
Jetty Police Station,
Ramanathapuram District.
(Crime No.53 of 2016)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the entire records pertaining to the judgment delivered by the Principal District and Sessions Judge, Ramanathapuram, Ramanathapuram District in SC No.139 of 2017, vide his judgment dated 06/11/2019 and set side the same and consequently, acquit the appellant.

For Appellant : Mr.M.Vivek Kumar

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

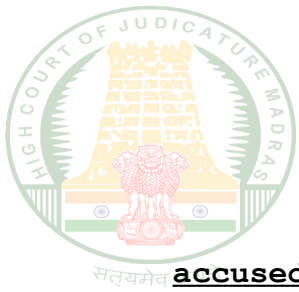
J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence imposed by the Principal District and Sessions Judge, Ramanathapuram, in SC No.139 of 2017, dated 06/11/2019.



2.The case of the prosecution in brief:-

On 20/05/2016 at about 05.30 pm, while the Sub Inspector of Police, attached to Dhanushkodi Police Station along with his subordinates were involving in vehicle check up at Dhanushkodi, near A.T.M.Sea Foods Company, they have intercepted an auto bearing registration No.TN-65-P-8132 for check up. At that time, the accused who is the driver of the said auto scolded the police officials with filthy language and threatened with dire consequences, taken the auto rashly and dashed on the Head Constable Ramkumar, by which he fell down and also dashed the bike of SI Gnanasekaran Bose bearing registration No.TN-63-V-7709 and caused damage to the tune of Rs.6,000/- and ran away from the scene of occurrence. Upon the occurrence, a case in Crime No.53 of 2016 was registered by the respondent for the offences under sections 294(b), 353, 324, 307 IPC and section 4 of TNPPDL Act. After completing the investigation, final report was filed and it was taken on file in SC No.139 of 2017 by the Principal District and Sessions Judge, Ramanathapuram for the offences under sections 294(b), 353, 307 IPC and section 3 of TNPPDL Act and section 37(IV) r/w 177 of the Motor Vehicles Act.



3.The following charges were framed against the
accused persons:-

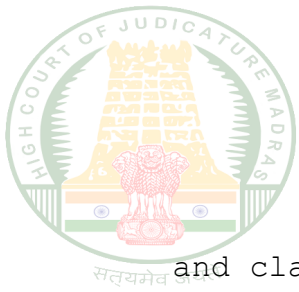
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(1)On 20/05/2016 at about 05.30 pm, while the Sub Inspector of Police, Dhanushkodi Police Station along with his subordinates were involving in vehicle check up at Dhanushkodi, near A.T.M.Sea Foods Company, the accused, who is an auto driver scolded the police officials with filthy language and threatened with dire consequences, thereby committed the offence under section 294(b) of IPC;

(2)In the same incident, the accused has prevented the sub inspector from discharging his duty therefore committing an offence under section 353 of IPC;

(3)In the same incident, the accused has taken the auto rashly and dashed on the Head Constable Ramkumar, by which he fell down and committed an offence under section 307 of IPC; and

(4) In the same incident, the accused has also dashed the bike of SI Gnanasekaran Bose bearing registration No.TN-63-V-7709 and caused damages thereby committed offence under section 4 of TNPPDL Act.



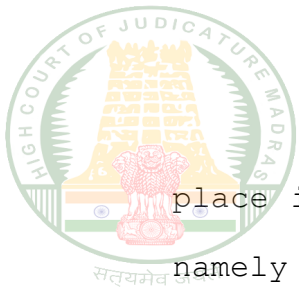
4.To that charges, the accused pleaded not guilty and claimed to be tried.

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5.During the trial process, on the side of the prosecution, 14 witnesses have been examined and 16 documents were marked. Apart from that, MO1 to MO2 were also marked. On the side of the accused, no oral or documentary evidence was adduced.

6.The case of the prosecution, as narrated through the prosecution witnesses:-

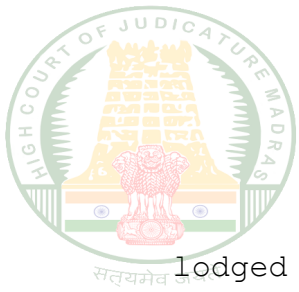
PW4 was working as Head Constable in Danushkodi Police Station. On 20/05/2016 at about 05.30 pm, he along with a team of police officials were on their routine vehicle check up near ATM Dry Fish Company. At that time, an auto bearing registration No.65-P-8232 was driven by its driver namely the accused came in high speed. The police stopped the vehicle. But the accused did not stop the vehicle. By abusing them in filthy language hit the auto speedily on him. As a result of which, he fell down and sustained injuries on his left leg knee portion, right shoulder region. Again, the accused hit the two wheeler bearing registration No.TN65-V-7709 belongs to the Sub Inspector of Police, causing heavy damage. After hitting the vehicle, immediately the accused fled away from that



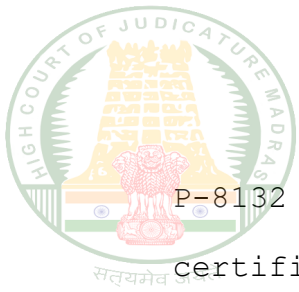
place in the very same auto. He was taken to the hospital namely the Government Hospital Ramanathapuram, took first aid treatment there and thereafter shifted to a private hospital in Ramanathapuram.

7.PW7 was working as Medical Officer in Government Headquarters Hospital, Ramanathapuram. On 20/05/2016 at about 07.15 pm, he admitted Ramkumar in the emergency ward, he was referred to orthopedic for his opinion. The injured told him that on 25/06/2016 at about 05.30 pm near MRP Thope, when he was riding his two wheeler, was hit by an auto coming in the wrong direction. On her examination, she found an abrasion on the left knee portion and movement restrictions in the right shoulder region. He was referred to Orthopedic Doctor. But the injured did not want to admit in the hospital stating he will take treatment in a private hospital. He took treatment in the private hospital. From the records produced by him, it shows that the injury is grievous in nature.

8.PW8 is a practising Doctor in Ramanathapuram. On 20/05/2016, he admitted the injured namely Ramkumar, he complained pain on the right shoulder. On examination under X-ray, he found dislocation of the joint on the right shoulder region.



9. On the basis of the above said occurrence, PW2 lodged a complaint which is marked as Ex.P1. The complaint was received by PW12, who was working as Sub Inspector of Police attached to Rameshwaram Port Police Station. On 20/05/2016 at about 10.00 pm, registered a case in Crime No.51 of 2016 for the offences under sections 294(b), 353, 324, and 307 IPC and section 3 of the TNPPDL Act, submitted the original records to the court and the copies to the concerned higher officials. The investigation was taken by one Amutha Selvi who was working as Inspector of Police. After investigation, she filed final report. She was reported to be dead. So, PW14 was examined on the side of the prosecution and she has given evidence on the basis of the records. The Inspector of Police, Amutha Selvi took up the investigation on 20/05/2016, recorded the statement of the witnesses, visited the place of occurrence, on 25/11/2016 at about 04.00 pm in the presence of the witnesses, she prepared observation mahazar, rough sketch under Exs.P13 and P14 and in the presence of the witnesses, she recovered the damaged two wheeler portions under Ex.P15. The accused surrendered before the Judicial Magistrate, Aruppukottai on 20/05/2016. He was taken under police custody by the Inspector of Police. She examined the accused in the presence of the witnesses and the accused voluntarily gave confession statement. In pursuance of the disclosure statement, auto bearing registration No.TN-65-



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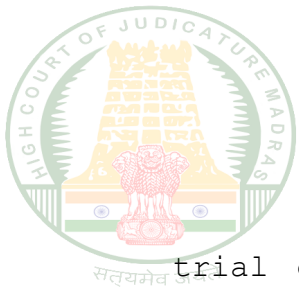
P-8132 was recovered under athachi. She obtained damage certificate from the Manager, Hero Mani Motors. She recorded his statement and obtained wound certificate from the Medical Officer, recorded their statement. After completing the investigation, filed final report.

10.PW1 and PW3 were the other persons of the police station who were on the check up on the particular date. They corroborated Ravikumar and PW1 regarding the material particulars. PW5 is the another eye witness to the occurrence. He also corroborated PW1 and the injured namely Ramkumar.

11.PW6 was present when the Investigating Officer enquired the accused, recording his confession statement and recovery of auto.

12.PW10 was present when the Investigating Officer was present in the place of occurrence, prepared observation mahazar. The other witnesses are not material witnesses. They turned hostile.

13.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. On his side no witness was examined.



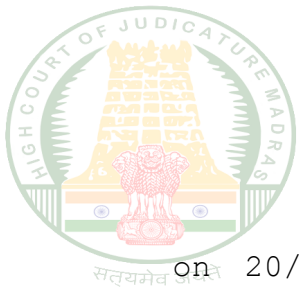
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14.At the conclusion of the trial process, the trial court recorded a finding that the accused used the auto bearing registration No.TN-65-P-8132 as a weapon of assault and caused grievous injury. The offence under section 307 IPC is not made out. But it was altered to **326 IPC, convicted and sentenced him to undergo 3 years RI** and imposed a fine of Rs.1,000/- for the offence under section 326 IPC. Similarly the accused was convicted for the offence under section **294 (b) IPC** and imposed a fine of Rs.500/- in default to undergo simple imprisonment for a period of three months; for the offence under section 353 IPC sentenced to undergo one year simple imprisonment and to pay a fine of Rs.500/- in default to undergo three months simple imprisonment.

15.Against that judgment, this criminal appeal is preferred by the appellant.

16.Heard both sides.

17.Before we go into the argument advanced by the appellant on genuineness of the very occurrence, we will keep in mind the circumstances under which the above said occurrence said to have been take place.



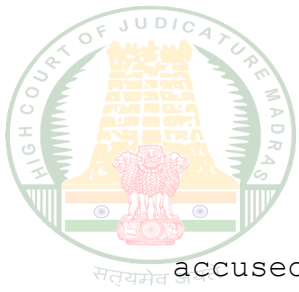
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18.It is the specific case of the prosecution that on 20/05/2016 at about 05.30 pm, when the injured was engaged in vehicle check up, the accused using the auto as a weapon of offence, caused assault.

19.No doubt that the Motor Vehicle can be used for causing grievous hurt or even for murder, there can be no second opinion on that. But the manner of the offence as spoken by the prosecution witnesses requires proper appreciation.

20.PW4 Ramkumar says in a simple term that he was hit by the auto driven by the accused and there is every possibility have been dead, because of the hit had he not been moved away. This is the simple evidence.

21.PW1, PW2 and PW3 were other members of the team who engaged in vehicle check up. PW5 is a private person. He has stated that he was also stopped by the police and the police informed that they are going to charge them for not wearing the helmet. At that time, the auto bearing registration No.TN-65-P-8132 was stopped some 10 metres away. But the accused started the vehicle and hit Ramkumar. So, except PW5, all others who all were comprised in the inspection team are official witnesses.



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22.A suggestion was made to PW5 that when the accused stopped the vehicle at a distance away from that occurrence place and tried to turn the vehicle away and at that time, PW4 Ramkumar chased him in his two wheeler and in that process, he fell down and sustained injuries.

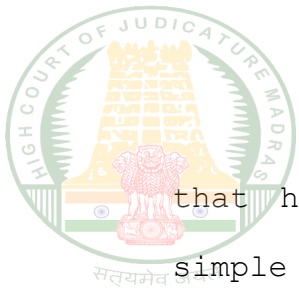
23.So, this is the probable defence taken by the accused at the time of the trial.

24.Now we will go further.

25.PW7 was the Medical Officer attached to the Government Hospital, Ramanathapuram. Before him, PW4 has stated that he sustained injuries in a hit made by an auto coming in the opposite direction.

26.PW13 was working in the Government Hospital. On 20/05/2016 at about 06.05 pm, he admitted PW4. At that time, he was told that he was hit by an auto and assault. At that time, an abrasion on the left knee portion, dislocation of the right shoulder region were seen.

27.As mentioned above, the time of occurrence stated to be 20/05/2016 at about 05.30 pm. PW13 is the Medical Officer who examined PW4 on the very same day at about 06.05 pm. In the earlier statement, he has stated

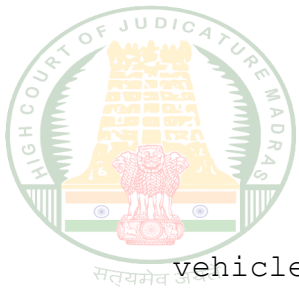


that he was hit by an auto and assault. There was one simple injury and dislocation of joint found to be grievous, later by the follow up Doctor as mentioned above namely PW8. He is a private Doctor. Before him, he has stated that he suffered injury because of the fall.

28.So, it is seen that after getting the first treatment from the Government Hospital, Ramanathapuram, PW4 got himself admitted in a private hospital. So, from the evidence of those Medical Officers, it stands established that PW4 suffered grievous injury due to the dislocation of the bone on the left shoulder region and abrasion. But, as mentioned above, he has stated differently to the Medical Officer the reason for the injury.

29.Now in this context, the learned counsel for the appellant would heavily rely upon the evidence of another person one Manikandan, who was examined as PW9. He has stated that on the date of the occurrence, he found PW4 Ramkumar lying on the road side with injuries. He lifted him. He was treated hostile by the prosecution.

30.In the light of the above said hostile evidence, now we will go the prosecution witnesses to see whether the occurrence spoken by them is believable.



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31.PW1 has admitted that the accused stopped the vehicle, but later only, he started it and caused hit. PW2 has stated that the accused stopped the vehicle on seeing the signal. But did not off the engine, suddenly he started it and caused hit. PW3 was not cross examined as to whether the accused stopped the vehicle on seeing the signal of the police. PW4 injured has given different story. After hitting him and causing damage to the vehicle TN-65-V-7709, the accused turned the vehicle and fled away from that place. During the cross examination, he has stated that the accused stopped the vehicle when they asked him to stop, but picked up quarrel when he demanded licence, etc.

32.A suggestion was made to him that the accused tried to go away from that place in his vehicle, at that time, he took the vehicle, chase the accused and in that process, he fell down and sustained injury.

33.So, the combined reading of the evidence on record, and the circumstance under which the above said occurrence said to have been taken place clearly indicates that it is nothing, but a case of rash and negligent driving on the part of the accused. But for the reason that the injured is a police official, the case has been foisted as if the accused abused the police official in filthy language and prevented them from discharging the



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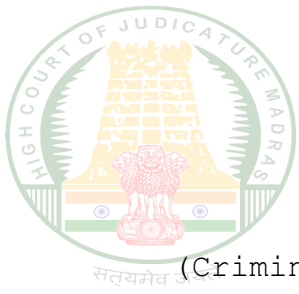
official duty and tried to cause murder. It is nothing, but
ex-aggregated version on the part of the prosecution.

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34.In the light of the above, now we will go the
argument advanced by the learned counsel on record for the
appellant.

35.According to him, there is no evidence on record
to show that the particular place of occurrence lies within
the jurisdiction of PW4 and others for checking up.

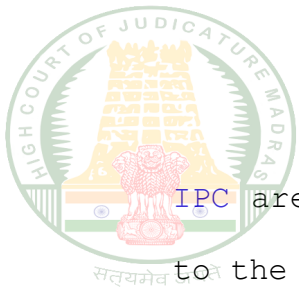
36.As mentioned above, there is contradiction with
regard to the manner of the injury sustained by PW4 in view
of the statement made by him before the Medical Officers.
Only simple injury was noticed, for which he was admitted
in the private hospital, later it was changed to grievous
injury; X-ray was not produced by the prosecution. Without
production of the X-ray, the finding of the trial court
that the offence under section 326 IPC is made out is not
legal. He would rely upon the judgment of this Court
reported in ***Gopal @ Gopalakrishnan Vs. State Rep. by The
Inspector of Police, Lalgudi Police Station [(2017)4 MLJ
(Cr1) 746]***.



37. Even though the learned Government Advocate (Criminal side) tries to support the finding of the trial court, but this court is not convinced or satisfied with regard to the manner of the occurrence projected by the prosecution.

38. As mentioned above, since it is nothing, but a case of rash and negligence on the part of the accused, if at all the accused can be found guilty for the offence under sections 279 and 338 IPC.

39. Regarding the offence under sections 294(b) and 353 IPC, as stated above, this court is not convinced that both penal offences are attracted. So, he is entitled for acquittal for the offences under section 294(B) and 353 IPC. The offence under section 326 IPC is modified to sections **279 and 338** IPC. Accordingly, the accused is acquitted from the charges under sections 294(b) and 353 IPC. The accused is convicted for the offences under sections 279 and 338 IPC instead of 326 IPC. The fine amount imposed for the offence under section 326 IPC is treated as fine for the offences under sections 279 and 338 IPC. The fine amount paid by the appellant for the offences under sections 294(b) and 353 IPC may be refunded to the appellant. So far as offence under [Section 279 and 338 of](#)



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IPC are concerned, the sentence of imprisonment is modified
to the **sentence** already **undergone** by him.

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40.With the above said modification, this criminal
appeal stands **allowed**.

10/01/2025

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To,

- 1.The Principal District and Sessions Judge,
Ramanathapuram.
- 2.The Inspector of Police,
Jetty Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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