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Crl.A(MD)No.602 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	25/10/2024
Date of Pronounced	27/01/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.602 of 2019

N.Marimuthu : Appellant/A1

Vs.

State, represented by
Inspector of Police,
K.Paramathi Police Station,
(Crime No.52 of 2018) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to set aside the judgment of conviction and sentence passed by the Principal Sessions Judge, Karur, in SC No.88 of 2018, dated 03/12/2019 and pass such further or other orders.

For Appellant : Mr.K.Suresh

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 passed by the Principal Sessions Judge, Karur, in SC No.88 of 2018, dated 03/12/2019.



2.The case of the prosecution in brief:-

There was an enmity between the family of the de-facto complainant and the accused. The de-facto complainant renovated the existing bathroom in his land. On 31/03/2010 at about 08.30 pm, the accused illegally trespassed into the house of the de-facto complainant, scolded in filthy language and questioned how, he could construct the bathroom. The first accused assaulted the de-facto complainant with wooden log on his left wrist. At that time, the wife of the de-facto complainant came there to rescue him. At that time, A2 and A3 said to have scolded her. Thereafter, all the accused damaged the asbestos sheet with wood log and stones and caused damaged to the bathroom and threatened them if the bathroom is again constructed they would be done to death. Upon the complaint given by the de-facto complainant, a case in Crime No.52 of 2018 for the offences punishable under sections 448, 294(b), 323, 326, 506(ii) IPC r/w 4 of the Tamil Nadu Prohibition of Harassment of Women Act and section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act. After completion of the investigation, final report was filed. It was taken on file in SC No.88 of 2018 on the file of the Principal Sessions Judge, Karur. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-



(i) There was an enmity between the family of the de-facto complainant and the accused; The de-facto complainant renovated the existing bathroom in his land; On 31/03/2010 at about 08.30 pm, the accused illegally trespassed into the house of the de-facto complainant and thereby, the accused committed an offence punishable under section 448 IPC;

(ii) In course of the occurrence, the accused scolded the de-facto complainant in filthy language and thereby, the accused committed an offence punishable under section 294(b) IPC;

(iii) In the above said occurrence, the first accused assaulted the de-facto complainant with wooden log on his left wrist and thereby, the first accused committed an offence punishable under section 323 IPC;

(iv) In the above said occurrence, when the wife of the de-facto complainant came there to rescue him, at that time, A2 and A3 said to have scolded her with filthy language and thereby, A2 and A2 committed an offence punishable under section 294(b) IPC;

(v) In continuation of the above said occurrence, when the wife of the de-facto complainant tried to rescue



his husband, the first accused caused severe assault upon her, and thereby, the first accused committed an offence punishable under section 326 IPC;

(v).In continuation of the above said occurrence, all the accused damaged the asbestos sheet with wood log and stones and caused damaged to the bathroom and thereby all the accused committed an offence under section 3 of TNPPDL Act; and

(vi)In furtherance of the above said occurrence, the first accused also threatened them that if the bathroom is again constructed they would be done to death and thereby, the first accused committed an offence under section 506(ii) 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, 9 witnesses were examined and 12 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 and the accused are neighbours. There was some issue with regard to the construction of bath room in between the land belongs to both sides. On 31/03/2018 at about 08.30 pm, A1 came to his house abused in filthy language, criminally intimidated, prevented him from raising ground level and the bathroom. A2 assault her with wooden log on his left wrist region. His wife came out of the house. At that time, she was also assaulted by the accused in the head region. When she was taken to Karur Hospital, the Car was intercepted by A1. He was prevented by witness Chandramathi, his wife was taken to Kovi Medical Centre for treatment. In the meantime, the bathroom was demolished by the accused. He gave statement to the police under Ex.P1.

6.The statement given PW1 was recorded by PW8 who was working as Sub Inspector of Police, Karur Town Police Station. On 01/04/2018 at about 04.00 pm, he registered a case in Crime No.52 of 2018 for the offence under sections 448, 294(b), 324, 506(i) IPC r/w 4 of the Tamil Nadu Prohibition Harassment of Woman Act and submitted the original FIR and other documents to the court and the copies to the concerned higher officials.

7.The investigation was undertaken by PW9. On 01/04/2018 when he was working as Inspector of Police,



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K.Paramathi Police Station, visited the place of occurrence, prepared parvai mahazar and rough sketch in the presence of the witnesses PW10 and PW11. He recovered the wooden log, broken stone pieces, hallow bricks etc., under mahazar Ex.P12. He recorded the statement of the witnesses and on 10/04/2018 recorded the statement of the injured Chandramathi and submitted documents and recovered articles to the court and thereafter, recorded the statement of the Medical Officer, who treated PW1 and other injured persons. After completing the investigation, filed a final report charge sheeting the accused for the offence punishable under sections 448, 294(b), 323, 326 and 506(ii) IPC r/w 4 of Tamil Nadu Prohibition Harassment of Women Act.

8.PW2 is the wife of PW1. She corroborated PW1 with regard to the material particulars, occurrence and the assault made by the accused to her and PW1, damage, etc. facts.

9.PW6 was the Medical Practitioner in Amaravathi Hospital, Karur. According to him, on 31/03/2018 at about 10.15 pm, he admitted PW2, alleged to have been attacked by the unknown persons with wooden log and stones. On his examination, he found lacerated injury measuring about 4 x 1 cm on the forehead region. On further examination by CTC scan, hemorrhage in the head region. He was treated



with first aid and referred to the Kovi Medical Centre.

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10.PW7 was working in Kovi Medical Centre, Covai.

At about 02.15 am, on 01/04/2018 he admitted PW2. He found contusion in forehead region measuring about 4 cm on the frontal region. On further examination, he found that there was fracture in the temporal region. Finding that it is grievous in nature, he issued wound certificate.

11.PW3 went to the hospital to see PW1.

12.PW4 stated to be present when the Investigating Officer visited the place of occurrence, prepared paravi mahazar, recovered articles. He turned hostile, so also PW5. With that, the prosecution side evidence was closed.

13.The accused were questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances available 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.

14.At the conclusion of the trial process, the trial court found the first accused guilty for the offence



punishable under section **325 IPC** and **sentenced him to undergo 1 year Rigorous Imprisonment** and imposed a fine of Rs.500/- in default to undergo three months simple imprisonment. Acquitted the other accused from the charges levelled again them.

15.Against the judgment of conviction and sentence, this criminal appeal is preferred by the first accused as appellant.

16.Heard both sides.

17.The trial court recorded a finding with respect to the offence under section 325 IPC against A1 accepting the case of the prosecution that PW2 suffered grievous injuries because of the assault made by A1. But the weapon alleged to have been used by A1 in the occurrence was not proved to be MO1 produced by the prosecution at the time of trial. On that account, it recorded the above said finding.

18.Now the learned counsel appearing for the appellant would submit that there is a delay in lodging the complaint; even as per the admitted case of the prosecution, the persons who have alleged to have witnessed the occurrence and made obstruction, who had cleared the



obstruction made by the accused were not explained; Blood stained materials, though recovered were not produced by the prosecution; The prosecution has also suppressed the first complaint. So, according to him, when there is a delay in registering FIR and non-production of the material objects, which allegedly used by A1 and suppression of the earlier complaint might have been looked into by the trial court in favour of the accused.

19.Now we will go to the background facts.

20.There is dispute between PW1 and A1 over the putting up of a bathroom. The accused has not cross examined PW1 with regard to the issue over the location of the bathroom. But it is the specific evidence on the side of the prosecution that the issue arose between them because of the construction of the bathroom. But the prosecution failed to establish the guilt of the accused for the offence under section 3 of TNPPDL Act. We need not concentrate much upon that point. But however, it stand established that the issue arose between the parties was the construction of the bathroom. When there is no specific cross examination by the accused on that issue, the above said motive or issue between them can be taken as proved by the prosecution.



21.Now we will go to the evidence of PW1 on the occurrence.

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22.PW1 has stated that A1 caused assault with wooden log on his left wrist region. When PW2 and his wife came down from the house, they were also assaulted by A1. But he has stated that MO1 is not the weapon used by A1 for causing the assault. Ex.P1 complaint was given by him when he was admitted in the Amaravathi Hospital, Karur. PW1 is corroborated by PW2 over the occurrence. She would say that A1 assaulted PW1 with wooden log on his hand. He was also assaulted by the same weapon by A1. She sustained grievous injury, fell down unconscious. But she has stated that MO1 was not the weapon used by A1 for causing the assault which quite contra to the evidence of PW1.

23.Now the learned counsel appearing for the appellant would draw the attention of this court to the contradiction between PW1 and PW2 regarding the aspect of the handing over of the material objects.

24.No doubt that PW1 has stated that when he was assaulted by A1, PW2 was inside the house. Later only, she came out of the house and she was also assaulted. But PW2 stated that she was standing behind PW1 at the time of assault. This is the minor contradiction, which need not be given importance at all.



25.Regarding the material objects also, PW2 has stated that all the material objects were handed over by Pw1 to the police. PW1 has stated that he handed over the dress materials of PW2 stained with blood and a stick. Regarding the above said aspect, the Investigating Officer has not stated anything about the recovery of blood stained and other materials. Those material objects were not produced before the trial court.

26.The said discrepancy occurred between PW1 and PW2 does not assume importance at all. Since the core assault point has been established by the prosecution from the evidence of PW1 and PW2. Mere turning of hostile by the independent witness and the persons who cleared the block made by A1 were not examined also do not assume any importance. So, the trial court has rightly accepted the evidence of PW1 and PW2 regarding the occurrence.

27.But as mentioned above, the prosecution failed to establish that dangerous weapon was used by A1 to cause assault. But from the above evidence of PW7, it stands established that PW2 suffered fracture injury on the left temporal region.

28.PW6, as mentioned above, was the Doctor who treated PW2 in the Amaravathi Hospital, Karur. According



to him, CT scan shows hemorrhage in the brain region, because of the lacerated injury found in the temporal region. PW2 was treated, later referred to KMC. From the evidence of the Medical Officer, it stands established that PW2 suffered grievous injury.

29. So the contention on the part of the appellant that the prosecution failed to establish the guilt of the accused beyond all reasonable doubt is not at all acceptable.

30. Regarding the suppression of the earlier complaint also, there is no material.

31. PW8 has stated that he received the complaint from PW1 on 01/04/2008 at about 04.00 pm. Ex.P1 is the complaint written by PW1's daughter. But it has been mentioned as it is a statement. From this alone, it cannot be stated that the first complaint was suppressed by the prosecution. There was no reason for PW1 to suppress the earlier complaint.

32. As mentioned in the preamble portion, the occurrence said to have been taken place on 31/03/2008 at about 08.30 pm. At about 10.15 am, PW2 was admitted in the Amaravathi Hospital, Karur as per the evidence of PW6. But



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on the next day, the case was registered. After getting first aid treatment, she was shifted to KMC. So, the event clearly shows that PW1 was interested in securing the life of PW2. Because of that only, it is seen that there is some delay in lodging the complaint. But that will not assume any importance in view of the above said clear evidence on the side of PW1 and PW2 and the medical evidence to the effect that PW2 suffered grievous injury. So, I find absolutely no reason to interfere into the order passed by the trial court regarding the conviction of A1. Regarding the sentence also, considering the grievous nature of the injuries, no leniency need be shown.

33.In the result, this criminal appeal fails and the same is **dismissed**, confirming the judgment of conviction and sentence passed by the trial court.

27/01/2025

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To,

- 1.The Principal Sessions Judge,
Karur.
- 2.The Inspector of Police,
K.Paramathi Police Station,
Karur 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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