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**(2014) 12 MAD CK 0370**

**Madras High Court (Madurai Bench)**

**Case No:** Criminal Revision Case (MD) No. 452 of 2009

Rajendran

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Dec. 3, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 323, 324, 427, 452

**Hon'ble Judges:** R. Mala, J

**Bench:** Single Bench

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**Judgement**

@JUDGMENTTAG-ORDER

R. Mala, J.

The Criminal Revision has been filed against the judgment of conviction passed in C.A. No. 59 of 2008 dated 07.09.2009 by the I Additional Sessions Judge (PCR), Thanjavur confirming the judgment of conviction and sentence dated 29.05.2008 made in C.C. No. 50 of 2004 by the District Munsif cum Judicial Magistrate, Papanasam, wherein, the revision petitioners/A1 to A3 were convicted for the offence under Section 452 of I.P.C. and sentenced to undergo rigorous imprisonment for one year each and to pay a fine of Rs. 500/- each in default to undergo simple imprisonment for three months each and the first petitioner/A1 was convicted for the offence under Section 324 of I.P.C. and sentenced to pay a fine of Rs. 500/- in default to undergo simple imprisonment for three months.

2. The case of prosecution briefly is as follows:

(i) P.W. 1 Paramasivam was residing at South Street, Neduncheri. P.W. 2 Mariappan is his father. P.W. 3 Amudha is the wife of P.W. 1. There was money dispute between P.W. 1 and A2 and hence, there was no talking terms between them. On 13/14.09.2003 at about 00.00 hours, in the midnight, while P.W. 1 and 3 were sleeping inside their house and P.W. 2 was sleeping on the front portion of the

house, the revision petitioners/accused, due to previous enmity came there armed with deadly weapons viz., A1 was armed with aruval and A2 was armed with crowbar and A3 was armed with stick and trespassed into the house of P.W. 1 and damaged the household properties and when P.W. 2 intervened, A1 assaulted him with aruval on his head and caused blood injury and when P.Ws. 1 and 3 tried to prevent them, A2 assaulted P.W. 1 with crowbar on his right hand and legs and A1 assaulted P.W. 3 also. They had damaged the properties to the tune of Rs. 30,000/- and fled away from the house. Since the occurrence had taken place in the midnight, P.Ws. 1 to 3 went to the Thanjavur Medical College Hospital in the morning on 14.09.2003 for taking treatment.

(ii) On 14.09.2003, P.W. 6 Dr. Manivannan was initially seen P.W. 2 and gave treatment to him and found a lacerated injury in 3x1/2 cm and bone depth over right frontal region and issued Ex. P3 Accident Register opined that the same in simple in nature.

(iii) P.W. 7 Tmt. Sheela, Sub Inspector of Police, Papanasam Police Station received an intimation from the Thanjavur Medical College Hospital and recorded Ex. P1, complaint from P.W. 1 and registered a case in Cr. No. 254 of 2003 for the offence under Sections 452, 323, 324 and 427 of I.P.C. and prepared Ex. P.4, First Information Report and she took the case for investigation and gone to the scene of occurrence and prepared Ex. P.2, Observation Mahazer and Ex. P.5, Rough Sketch in the presence of P.W. 5 Sivasubramanian and P.W. 5 Panneerselvam and examined them and recorded their statements. She recovered the damaged properties. Thereafter, She arrested the accused and sent them for remand and after due completion of the investigation, she filed charge sheet for the offence under Sections 452, 427, 324, 323 on 05.10.2003.

3. The learned trial Judge, after following the procedures, framed necessary charges against the accused. Since the accused denied the same in toto and pleaded not guilty, to prove the charges, P.Ws. 1 to 7 were examined and Exs. P.1 to 5 were marked on the side of the prosecution. On completion of the examination of witnesses on the side of the prosecution, the accused were questioned under Section 313 of Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and they denied them as false. No witness was examined on the side of the defence.

4. On considering the oral and documentary evidence, the learned Judicial Magistrate found all the accused guilty for the offence under Section 452 of I.P.C. and found A1 guilty for the offence under Section 324 of I.P.C. and convicted and sentenced them as stated above. Aggrieved over by the judgment of the learned Judicial Magistrate, Papanasam, an appeal was preferred by the accused in C.A. No. 59 of 2008 before the learned I Additional Sessions Judge, (PCR), Tanjavur, wherein, the conviction and sentence was confirmed and the appeal was dismissed. Against which, the present revision has been filed.

5. Challenging the conviction and sentence passed by trial Court and confirming by the first appellate Court for the offence under Sections 452 and 324 of I.P.C., the present revision has been preferred. During the pendency of the revision, the third petitioner/A3 has been died and the Investigating Officer has filed an affidavit to that effect along with the death certificate of A3 and hence the charge levelled against A3 is abated and the appeal against the third petitioner/A3 is also dismissed as abetted.

6. Challenging the conviction and sentence passed against the petitioners 1 and 2/A1 and A2, the learned counsel for the petitioners would submit that the alleged occurrence was said to have been taken place on 13/14.09.2003 at about 00.00 hours in the midnight and P.W. 6 doctor had seen the injured initially at 9.00 a.m. on 14.09.2003 and the complaint has been given on 15.09.2003 at 02.00 p.m. and even though the Court buildings is situated in the campus of Police Station, the complaint and the first information has been reached on the same day at 09.00 p.m. and hence, there is a delay in dispatching the first information report and the same has not been properly mentioned.

7. He would further submit the material objects have not been seized and sent to the Court and there is a motive for the commission of offence and there are contradictions between the oral evidence and the ocular evidence and those factum have not been considered by the trial Court as well as the first appellate Court and hence, he prayed for setting aside the conviction and sentence.

8. Resisting the same, the learned Government Advocate (criminal side) would submit that the alleged occurrence was said to have been taken place on 13/14.09.2003 at 00.00 hours in the midnight and P.W. 2 injured was seen by P.W. 6 Dr. Manivannan at 9.00 a.m. on 14.09.2003, even though the distance between the place of occurrence and the hospital is 8 kms, since during the night hours, there was no transport facility, the injured gone to the hospital in the morning and the delay has been properly explained and that factum has also been proved by the prosecution and hence, the delay is not fatal to the case of prosecution.

9. She would further submit that even though the trial Court framed several charges against the accused, convicted all the accused only for the offence under Sections 452 of I.P.C. and convicted A1 for the offence under Section 324 of I.P.C. and hence, she prayed for the dismissal of the revision.

10. Considering the rival submissions made by both sides and on perusal of the typed set of papers, the alleged occurrence was said to have been taken place on 13/14.09.2003 at 00.00 hours in the midnight. P.W. 2, the injured was first seen by P.W. 6 Dr. Manivannan at 09.00 a.m. on 14.09.2013. Admittedly, as per Ex. P4, first information report, the case has been registered only on 15.09.2003 at 02.00 p.m. and the complaint and the first information report has been reached the Court at 09.00 p.m. on the same day. Even though the distance between the place of

occurrence and the hospital is 8 kilometers, P.W. 6 doctor has seen P.W. 2 injured at 09.00 a.m. and that has been corroborated by P.W. 6 Dr. Manivannan. But, the complaint has been registered only on 15.09.2003 at 14.00 hours.

11. It is appropriate to consider the first information report, wherein, corrections were been made in the date and time. Admittedly, the first information report has been received by the Court only on 15.09.2003 at 09.00 p.m. It is also an admitted fact that the Court buildings is adjacent to the police station and the mother wall is one and the same. In such circumstances, no explanation has been given by P.W. 7, Sub Inspector of Police, who investigated the matter for the delay in dispatching the first information to the Court. Therefore, I am of the view that the delay is played a vital role in deciding the case.

12. It is an admitted fact that A2 has borrowed a sum of Rs. 7,500/- from P.W. 1, which not repaid and hence there was a dispute between both the families and there was no talking terms. But, in the cross examination, P.W. 1 has fairly conceded that his Brother one Singaravelu has misbehaved with a girl belongs to Scheduled Community and in that matter, A1 has taken part to compromise the same and directed him to pay a sum of Rs. 35,000/- and hence, there was enmity between both the families. Therefore, there was a motive for preferring false complaint. But, the motive is a double edged weapon. Here, the case is based on eye witnesses and the motive has not been played a vital role. But, here, in the present case, considering the delay in preferring the complaint and also the corrections made in the first information report and the delay in dispatching the first information report, I am of the view that the delay is played a vital role and hence, the delay in preferring the complaint and dispatching the same to Court is fatal to the case of the prosecution.

13. Even though P.Ws. 1 to 3 have stated in their evidence that they have sustained injuries, except P.W. 1, no one was treated by P.W. 6 Dr. Manivannan and no A.R. copies of P.Ws. 1 and 3 were produced before the Court. Therefore, I am of the view that the evidence of P.W. 2 was not corroborated by P.Ws. 1 and 3. In such circumstances, the document, which set the law in motion is the complaint and first information report. Since the complaint and the first information report are doubtful.

14. Furthermore, it is pertinent to note that P.W. 7, Sub Inspector of Police has fairly conceded that she has seized the materials objects, whereas, she had not sent the same to the Court, which shows that there was defective investigation.

15. At this juncture, the learned Government Advocate (criminal side) would submit that the defective investigation is not a ground for acquittal. But, as already stated, the Ex. P4 first information report itself is doubtful. P.W. 6 Dr. Manivannan has also stated that the injury sustained by P.W. 2 was possible, if he hit on the sharp bamboo stick. In such circumstances, since there is a delay in preferring the

complaint and dispatching the same to the Court for more than a day, I am of the view that the prosecution has not proved the guilt of A1 for the offence under Section 324 of I.P.C. beyond reasonable doubt. Hence, the benefit of doubt shall be given in favour of the petitioners 1 and 2/A1 and 2 and the revision is liable to be allowed and the judgment of conviction and sentence passed by the learned Judicial Magistrate, confirmed by the I Additional Sessions Judge are liable to be set aside.

16. In fine,

❖ The Criminal Revision is allowed.

❖ The judgment of conviction and sentence passed against the petitioners 1 and 2/A1 and A2 in C.A. No. 59 of 2008 dated 07.09.2009 by the I Additional Sessions Judge (PCR), Thanjavur confirming the judgment of conviction and sentence dated 29.05.2008 made in C.C. No. 50 of 2004 by the District Munsif cum Judicial Magistrate, Papanasam are hereby set aside.

❖ The petitioners 1 and 2/A1 and A2 are hereby acquitted from all the charges levelled against them.

❖ The fine amount already paid by the petitioners 1 and 2/A1 and A2, if any, are ordered to be refunded to them.

❖ The bail bonds, if any, executed by the petitioners 1 and 2/A1 and A2 stand cancelled.