

IN THE COURT OF JUDICIAL MAGISTRATE NO. IV: MADURAI.

Present Thiru.R.Sundara Kamesh Marthandan, B.L.
Friday, on this 10th day of July 2020

STC. No. 11 of 2016

State of Tamilnadu,
Represented by Inspector of Police(L & O),
B6 Jaihindpuram Police Station.
Crime No.481 of 2016

...Complainant

-vs-

1. Haji Ali,
son of Shahinsha,
17A/35, Shahinsha Manzil,
Subramaniapuram Main Road,
Madurai-11.

2. M.Basheerdeen
son of Mohamed Hanifa,
Solaiyalagupuram Main Road 4th Cross Street,
Madurai-11.

... Accused.

JUDGEMENT

This case taken on file on 03.03.2016 and after trial, came up for argument before me on 09.07.2020 in the presence of the Mr. M.K.Najmudeen Counsel for the accused and Learned Assistant Public Prosecutor Grade-II, for the State and upon considering the material records and the submissions made on both sides, this Court passes the following Judgement :-

1)The prosecution has filed final report against the accused, alleging commission of offences punishable under Sections U/s 341, 323, IPC. The case of the prosecution is that on 21.6.2013 Morning at 9.30 a.m. The accused came near Solai Azhagupuram 1st Street, Madurai for placing

SDPI Organization's banner in connection with its 5th year inaugural ceremony. During such time, the Defacto complainant and his younger brother have objected for placing the banner. Therefore both the parties have attacked each other with their hands. In the said altercation, the Defacto complainant's younger brother Muthupandi suffered simple injury in his right Index finger. The State had relied on the statement of PW1 K.M. Pandian, who is the Defacto complainant, PW2 K.M. Muthupandi who is the victim and PW3 Majeeth, PW4 Nazar, PW5 Selvam, PW6 Murugesan, PW7 Arumugam, Vijayakumar witnesses to the incident and PW8 Rajendran witness to the observation mahazar prepared by the investigation officer. PW9 is the Medical Officer, who has given initial treatment to P.W.2. and PW10 Mrs. Kannathal, Sub Inspector of Police, who registered FIR and PW11, who conducted initial investigation and PW12, is the Investigation Officer who had concluded investigation and filed final report.

2) Upon taking cognizance of the offences as set out in the final report as well as from the case records. This case taken on file, as summary trial case and summons were issued to the accused. While filing final report, the State has filed final report as against the second accused as absconding accused. However upon issuance of summons to the accused, both the accused appeared before this Court. In compliance of Section 207 Cr. P. C. Copies of material records were furnished to the Accused and they were questioned regarding the final report filed against them by the prosecution. The accused denied the allegation made against them and claimed to be tried. Hence the State was called upon to let in evidence and prove its case.

3) The State has relied on the statement of 14 witnesses. However they examined only 12 out of the said 14 witnesses and marked Ex.P1 to P7 on its side. The accused have not let in any evidence in defense.,

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4) P.W.1, Pandian, in his evidence has deposed that, he is doing Real Estate business and during the occurrence, he was District Secretary of Hindu Munnani Organization and that P.W.2 is his son. During the year 2013 one day morning 6.30 a.m. the second accused Basheerdeen came before his house for erecting SDPI Party flex banner and that PW1 objected the same. Therefore on the same day morning around 9.30 a.m. the second accused came along with the first accused and about 30 persons and claimed to erect, flex banner. During such time, P.W.2 was with P.W.1. Both of them, objected to accused's act. However, the accused claimed that they will erect the flex board. The second accused Basheerdeen had Aruval in his hand and 4 to 5 persons had Rods with them. As they objected, commotion had occurred, the second accused Basheerdeen had attacked P.W.1's brother with Aruval. His younger brother sustained injury, in his right hand Index finger. His younger brother had fell down, When P.W.1. came to defend his brother, he also fell down. Since, all the persons present there, attacked PW1., P.W.1. suffered injuries. The accused and their accomplice, threatened to kill P.W.1 and P.W.2. During such time, Panchavarnam, Karupayee, Lakshmi Subbu have disbursed the crowd and saved them. Thereafter he came to police station and lodged complaint. The complaint lodged by him has been marked as Ex.P1. P.W.1 identified the accused present in the court as the persons attacked him. P.W.1. had further stated that, amongst the thirty persons attached him, no one is available in court.

5) P.W.2 Muthupandi in his evidence had stated that P.W.1 is his own elder brother. The first accused is residing in Subramaniapuram. The second Accused is residing in their area. On 21.6.2013 morning 9.30 a.m. When P.W.2 was about to start to office, the present accused and 9 other persons came again and claimed to erect flex board in front of their house. They came to erect flex board for their SDPI organization's 5th year inaugural function. When P.W.1 and P.W.2 requested them to not erect,

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such flex board their occurred commotion. The present accused and the persons came along with them, had weapons. Amongst them, one person, had cut P.W.2's index finger and caused injury. P.W.2's mother Rengarathinam, Sister Karupayee, Virumandi, Subramani, Kasi who were present nearby, have intervened. P.W.1 was not injured. He went along with P.W.1 to Police Station, where P.W.1 lodged complaint. The police gave Medical Memo and sent them to hospital.

6) P.W.3 Majeth has deposed that he is residing at Ramamoorthy Nagar, Solaiialagupuram and doing Ironing work. He has stated that he is not aware of anything about the incident. When he was going to have Tea, police officer came and wrote and that he is not aware of any other thing. The State claimed to treat P.W.3 as hostile and questioned P.W.3 with questions similar to that off cross examination. Even those questions asked by the prosecution was denied by P.W.3.

7) P.W.4 Nazar has deposed that, he is residing at Solaiialagupuram and doing Ironing work. He knows the present Accused as they come in connection with his business. He has stated that he is not aware of anything about the incident. When he was going to have Tea, police officer came and enquired his name and taken note. The State claimed to treat P.W.4 as hostile and questioned P.W.4 with questions similar to that off cross examination. Even those questions asked by the prosecution was denied by P.W.4.

8) P.W.5 Selvam has deposed that, he is residing at Solaiialagupuram. He has stated that he is not aware of anything about the incident. The police asked his name and address. The State claimed to treat P.W.5 as hostile and questioned P.W.5 with questions similar to that off cross examination. Even those questions asked by the prosecution was denied by P.W.5.

9) P.W.6 Murugesan has deposed that, he is residing at Villapuram Housing Board and doing Grill work. He has stated that he is not aware of

anything about the incident. The police had not enquired him. He has deposed that P.W.1. Is residing nearby his Grill Shop. He is not having contact with P.W.1. The State claimed to treat P.W.6 as hostile and questioned P.W.6 with questions similar to that off cross examination. Even those questions asked by the prosecution was denied by P.W.6.

10) PW7 Arumugam has deposed that he is residing at Solaiialagupuram and having work shop in Tirupathi Nagar. He is aware of both P.W.1. and P.W.2 from his childhood. He had further deposed that about 2, 3 years back he came to know about the fight that occurred in Solaiiazagupuram. He is not aware amongst whom the said fight is. He is not aware of anything about the incident. The Police had not enquired him. The State claimed to treat P.W.7 as hostile and questioned P.W.7 with questions similar to that off cross examination. Even those questions asked by the prosecution was denied by P.W.7.

11) P.W.8 Rajendran had deposed that he is residing at Solaiialagupuram 5th cross street and working in a tea shop. P.W.1's house is situate nearer to the Tea shop where he works. The 2nd signature found, in the observation mahazar, is his signature. The first signature in the observation mahazar is that of, Baskaran who earlier resided in electricity board Nagar. He is no-more now. About 5 or 6 years back, they got his signature from his shop. He stated that he is not aware of anything about the fight. He has stated that he is not aware of anything about this case. The State claimed to treat P.W.8 as hostile and questioned P.W.8 with questions similar to that off cross examination. Even those questions asked by the prosecution was denied by P.W.8. During the cross examination by the defense counsel the P.W.8. Had stated that, he is not aware of things written, in the observation mahazar.

12) P.W.9 Dr.Karthikayini, has deposed that she is working as Assistant Medical Officer in Govt. Rajaji Hospital, Madurai. On 21.6.2013

morning at 11.35 a.m. P.W.2 Muthupandi along with sister Karupayee, came to casualty ward for taking treatment. They brought medical memo No.46/ML/B6L X OPS 2013. During such time, P.W.2 has stated that about 12 unknown persons and one known person had attacked him with Aruval near Thirupathy Nagar. On examination, in his right index finger. There was cut injury measuring 2 x .5 x .5 cms. Further he stated that, he has chest pain, he was advised to take treatment as In-patient at ward No.99. However without taking treatment, he had left. Hence P.W.9 had not given wound certificate.

13) P.W. 10 Kannathal had deposed that on 21.6.13 morning 10.45 a.m. When she was in charge of Jaihindpuram Police Station. She has received the complaint lodged by PW1 and registered FIR in Crime No.481/13, Under Sections 147, 148, 323, 324, 307 IPC. The FIR registered by her has been marked as Ex. P4 and thereafter she has submitted the papers to the Inspector of Police for further investigation. During her cross examination it was suggested that the accused have also lodged complaint against P.W.1. However, as PW1 came along with more than 30 persons and lodged the complaint and that he is a political persons, P.W.10 had registered P.W.1's complaint first. The said suggestion was denied by P.W. 10.

14) P.W. 11 has deposed that, on 21.6.13 he was working as Inspector of police, Jaihindpuram police station (L&O) upon receipt of the FIR from P.W.10, he had visited place of occurrence at 12.15 p.m. and in the presence of witness Baskaran and Rajendiran prepared Rough Sketch(Ex. P5) and observation Mahazar (Ex.P6), He further stated that he had recorded statement of witnesses Pandian, Muthupandi. Thereafter he stated to have arrested Accused Rajan at 2 p.m. and produced him, before the Court for judicial custody. On the same day he had enquired witnesses Parthiban, Majeeth, Arumugam, Nazar, Vijayakumar, Selvam, Murugesan and Sub Inspector Kannthal and recorded their statement. Thereafter he

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has altered the sections by deleting Sections 147, 148, 324, 307 and by adding 341 I.P.C. Alteration report filed by him is Ex.P7. On 25.1.14 he was transferred. He had handed over the case papers to his successors in office.

15) P.W. 12 Vairam has deposed that he has taken up the file and thereafter visited place of occurrence and examined the witnesses as they stated similar to the statement given by them to P.W.11, he has not recorded their statement again. Thereafter he has enquired P.W.9 Dr.Karthiyayini who has given treatment to PW2 and recorded her statement and obtained wound certificate. Since the second accused was absconding, he filed final report against him as absconding accused. The first accused was enlarged on bail.

16) After the completion of the prosecution side witnesses, the accused were questioned as to the incriminating evidence let in against them. The accused denied the evidences as false evidence. The accused have not let in any evidence in defense.

17) In the given facts and circumstances, it has to be decided whether the State has proved it's case beyond all reasonable doubts.

18) On perusal of Ex. P1 the complaint given by P.W.1 to P.W.8, it could be seen that about 30 other persons have accompanied the Accused and threatened P.W.1 and P.W.2 on 21.6.13 morning 9.30 a.m. P.W.2. at Solaiialagupuram first street. He has further deposed that the second accused Basheerdeen had inflicted cut injury to P.W.2's right index finger. He had further deposed that he and P.W.2 had fallen down and that about 10 persons had hit on his chest. On the same day at 9.45 a.m., the complaint was received by P.W.8. and Ex.P4 FIR was registered in crime No.481/13. In the said FIR the names of A1 and A2 have been mentioned and it was stated that information has been given that 30 other persons were also involved in the said occurrence.

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19) The accident register dated 21.6.13 at 11.35 a.m., issued by P.W.9 Dr. Karthiyayini reveals that there was cut injury measuring 2 x 0.5 x 0.5 cms in P.W.2's Right Index Finger. Further P.W.9 had also deposed the said fact in her evidence. In Ex.A3 Accident Register, it could be seen that the victim namely P.W.2 had informed P.W.9 that the said injury was inflicted by 12 unknown persons and one known person at Thirupathy Nagar on 21.6.13 at 9 a.m. with Aruval.

20) Since the place of occurrence has been mentioned as Thirupathy Nagar in Ex. P3 Accident Register and as Solaiialagupuram first street in Ex. P1 complaint, it has be ascertained whether there is contradiction as to the Place of occurrence. Perusal of Rough Sketh would disclose that Thirupathy Nagar 1st Street is running East to West and Solaiialagupuram first street is running North to South crossing each other. Even in the observation mahazar it has been mentioned that Thirupathy Nagar is situate to the south of P.W.1's house. Hence it could be positively concluded that the Place of Occurrence as stated in Ex.P1 Complaint and Ex. P3 accident register are one and the same.

21) The P.W.1 has stated in his deposition that second accused Basheerdeen had cut P.W.2, and P.W.2 suffered injury in his right index finger. The same has been stated by him in his complaint also, in his complaint he has stated there was about 30 persons apart from accused person. The relevant portion of the evidence of P.W.1. is as follows: “ பின்னர் அதே நாள் காலை சுமார் 9.30 மணிக்கு 1வது எதிரி மற்றும் சுமார் 30 பேருடன் வந்த 2வது எதிரி பசீர் மீண்டும் பிளக்ஸ் போர்டு கட்டுவோம் என்று ப்ளக்ஸ் போர்டுடன் வந்தார்கள். அப்போது என்னுடன் சாட்சி முத்துப்பாண்டியும் இருந்தார். நாங்கள் இருவரும் போர்டு வைக்கக்கூடாது என்று தடுத்தோம். ஆனால் அவர்கள் அவ்வாறுதான் வைப்போம் என்று 1,2 எதிரிகள் சொல்லி 2வது எதிரி பசீர் கையில் அருவாளும், அடையாளம் தெரிந்த ஒரு நபர் சுமார் 4,5 பேர் கம்பி வைத்திருந்தார்கள். ப்ளக்ஸ் போர்டு கட்டக்கூடாது என்று நான் தடுத்தபோது தகராறு ஏற்பட்டு கைகலப்பானது தம்பி முத்துப்பாண்டியை எதிரி பசீர் அருவாளால் என் தம்பியை வெட்ட அவருக்கு கையில் வலது ஆட்காட்டி விரலில் காயம் ஏற்பட்டது. அவர் தடுமாறி கீழே விழுந்துவிட்டார்”

22) Though P.W.1. had given consistent statement against 2nd Accused Basheer, the victim namely P.W.2 has not supported P.W.1's version. While giving statement before P.W.9,P.W.2 has stated that there were 13 persons in the scene of occurrence. The same is reflected in Ex. P3 Accident Register. However while deposing before this Court, he has deposed as if three were nine persons along with the present Accused. The number of persons alleged by P.W.1 is present accused and 30 others. There was great difference in between both the version. Further it has been alleged that the occurrence had occurred on day light. In such case the huge difference in numbers could not be easily ignored.

23) The relevant portion of the P.W.2's evidence is as follows: “
அதேநாள் காலை 9.30 மணிக்கு நான் வேலைக்கு செல்ல தயாராகியபோது மீண்டும் வந்த ஆஜர் எதிரிகள் மற்றும் சுமார் 9 பேர் மீண்டும் அந்த இடத்தில் ப்ளக்ஸ் போர்டு கட்டித்தான் ஆக வேண்டும் என்று சொன்னார்கள். முஸ்லிம் அமைப்பான எஸ்.டி.பி.ஐ 5வது துவக்க விழாவுக்காக ப்ளக்ஸ் போர்டு கட்ட வந்தார்கள். நானும் என் அண்ணனும் அவ்வாறு இங்கு கட்டக்கூடாது என்று கேட்டுக்கொண்டதற்கு அந்த பேச்சில் கைகலப்பானது. கைகலப்பில் ஆஜர் எதிரிகளும் அவர்களுடன் வந்தவர்களும் ஆயுதங்களுடன் வந்திருந்ததால் அவர்களின் யாரோ எனது வலது கை ஆள்காட்டி விரலில் ஆயுதத்தால் வெட்டி காயப்படுத்திவிட்டார்கள்.

24) In spite of the fact that the injury had occurred in Right index finger, P.W.2 had not come out in categorical terms as to who among the persons present there had inflicted injury on his Right Index finger. In his evidence he has not stated a person who had inflicted the cut injury. In such case, this court is of the opinion that the evidence of P.W.1 alone will not suffice to fix 2nd Accused. Further while cross examining P.W.1. P.W.1. has admitted that, in the counter case lodged against them by accused, they have admitted their guilt and paid fine.

25) The other independent witnesses namely P.W.3 to P.W.8 turned hostile and that they have not supported the case of the prosecution. Through P.W.9 doctor, Accident Register alone was marked. P.W.9 had deposed that she could not issue Wound Certificate as because P.W.2. had left the hospital against medical advise. The relevant portion of P.W.9's deposition is as follows: “ அரசு ராஜாஜி மருத்துவமனையில் 21.6.13 அன்று காலையில் 11.35 மணியளவில் திரு.முத்துப்பாண்டி 37 வயது ஆண் கருப்பாயி தங்கை அவருடன் போலீஸ்

மெமோ நம்பர் 46/ MSP 6 L X OPS.2013 மெமோவுடன் என்னை அவசர சிகிச்சை பிரிவில் மருத்துவம் பார்க்க வந்தார். அவர் தன்னை 12 தெரியாத நபர்கள் ஒரு தெரிந்த நபர் அரிவாளால் திருப்பதி நகர் அருகில் காலை 9 மணியளவில் தாக்கினார்கள் என்று கூறினார். ஆவரை பரிசோதித்ததில் அவரது வலது ஆள்காட்டி விரலில் வெட்டுக்காயம் 2 x 0.5 x 0.5 cm அளவில் இருந்தது மேலும் நெஞ்சு வலித்ததாக கூறினார். அவரை 99 வார்டில் ஊநோயாளியாக அனுமதிக்குமாறு அறிவுரை செய்து மேலும் அவர் தொடர்ந்து சிகிச்சை எடுக்காமல் தன்னிச்சையாக வெளியேறி விட்டதால் அவருக்கு ஏற்பட்ட காயம் குறித்து அறிக்கை வழங்கவில்லை.” The Accident Register issued by P.W.9 has been marked as Ex.P3. During cross examination the defence counsel had suggested that, if any person falls down, there is possibility of getting injured. From the evidence of P.W.9 and Ex. P3 Accident Register, it could be construed that the injury sustained by P.W.2 is simple injury. The evidence of P.W.10 would substantiate registration of F.I.R. on the same day of occurrence.

26) In this case P.W. 11 the initial investigation officer namely Mr. Pethuraj, who investigated the case had filed alteration report Ex. P7 wherein he has deleted sections 147, 148, 324, 307 and added section 341 IPC. In Ex. P7 the investigation officer has stated that in the altercation happened between P.W.1, P.W.2 and the accused the second accused Basheerdeen got injuries in his head and P.W.2 got injured in his right index finger. However in Ex. P7 alteration report it has been stated that P.W.1, in view of political enmity, P.W.1. had magnified and lodged the complaint. Further in Ex.P1 complaint, it was mentioned that Accused had Aruval and with that injury was inflicted on P.W.2. Even in Ex P3 Accident Register, the said fact has been reflected. In Ex. P6 observation Mahajar, it has been stated that there was no material evidence for being recovered. Further the said Aruval allegedly used by accused was also not recovered. Further P.W.12 vairam has deposed as if he had enquired P.W.9 doctor and obtained would certificate. Such deposition of P.W.12 is totally inconsistent with the deposition of P.W.9 doctor. P.W.9 has deposed as the victim P.W.2

had left against Medical Advise, he was not given Wound Certificate. Hence the inconsistent version of P.W.12 makes P.W.12's deposition as totally unacceptable. Moreover as deposed by P.W.12, he has not produced any Wound Certificate before this Court.

27) In so far as the offence alleged under Section 341 IPC, no where in Ex. P1 Complaint or in the evidence of P.W.1 and P.W.2., it could be seen as if the Accused have waylaid them. Without any such evidence, it could not be said as if, the accused had committed offence punishable under Section 341 IPC. In so far as the offence alleged under Section 323 IPC, as observed above the victim P.W.2 had not pointed out the Accused. There is vast difference between P.W.1 and P.W.2. as to the number of persons present in the scene of occurrence. Hence necessarily the benefit of doubt has to be given to the Accused.

In the result, it is held that the Accused not guilty of committing offences under Sections 323 and 341 I.P.C., and they are acquitted under Section 255(1) Cr. P.C. Since no case property is remanded in this case, no order as to property is passed. The Bail Bond executed by the Accused will stand discharged after the expiry of appeal period.

Typed by me directly and corrected and pronounced by me in Chamber in view of COVID-19 Virus, National Lock Out on this 10th day of July 2020.

Judicial Magistrate IV,
Madurai.

PROSECUTION WITNESS:

P.W.1 - Thiru.Pandian
P.W.2 - Thiru.Muthupandi
P.W.3 - Thiru. Majeeth
P.W.4 - Thiru. Nazar

P.W.5 - Thiru. Selvam
P.W.6 - Thiru. Murugesan
P.W.7 - Thiru. Arumugam
P.W.8 - Thiru. Rajendran
P.W.9 - Dr.S.Karthiyayini
P.W.10 - Thirumathy. R.Kannathal
P.W.11 - Thiru. Pethuraj
P.W.12 - Thiru. Vairam

PROSECUTION DOCUMENTS :

EX.P 1 – Complaint
EX.P 2 – 2nd Signature in Observation mahazar
EX.P3 – Accident Register
EX.P 4 - FIR
EX.P5 – Rough Sketch
Ex.P6 – Observation Mahazar
Ex.P7 – Alteration report

MATERIAL OBJECTS: Nil

DEFENCE WITNESS : Nil

DEFENCE DOCUMENTS: Nil

MATERIAL OBJECTS: Nil

Judicial Magistrate IV,
Madurai.