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Crl.A(MD) No.3 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

CRIMINAL APPEAL(MD)No.3 of 2017

Raja

.. Appellant

Vs.

1. The Deputy Superintendent of Police
Usilampatti Sub Division
Madurai District

2. The Sub Inspector of Police
T.Ramanathapuram Police Station,
Madurai District

...Respondents

PRAYER : Criminal Appeal is filed under Section 374(2) of Cr.P.C to set aside the judgment and conviction passed by the learned III Additional District and Sessions Judge (PCR Court) Madurai in Spl.S.C.No.84 of 2015 and acquit the appellant.

For Appellant : Mr.S.Mahendrapathy

For Respondents : Mr.M.Sakthikumar
Government Advocate(Crl.Side)



JUDGMENT

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This Criminal Appeal is filed against the judgment and conviction passed by the learned III Additional District and Sessions Judge (PCR Court) Madurai, in Spl.S.C. No.84 of 2015 and set aside the same and allow the criminal appeal.

2. The trial court found the accused guilty for the offences under Sections 326 of IPC and Section 3(1)(x) of SC/ST (PoA) Act and convicted the accused and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs. 2000/- in default to undergo three years simple imprisonment for the offence under Section 3(1)(x) of SC/ST(PoA) Act and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-in default to undergo six months simple imprisonment for the offence under Section 326 of IPC and acquitted the appellant for the offences under Sections 294(b) and 506(ii) of IPC.

3.As against the judgment and conviction of the trial Court the present appeal has been filed by the appellant/accused.

4. According to the prosecution case P.W.1/ victim belongs to S.C community and the accused belongs to non S.C. community. On



22.06.2015 at about 14.30 hrs when P.W.1 was standing at the backside of his house, at that time the accused came there and asked the calf for sale and the same was denied by the defacto complainant for that the accused abused him using his caste name “ஏண்டா பள்ள தேவிடியா மகனே நான் கன்றுக்குட்டியை விலைக்கு கேட்டா தரமாட்டியா”and assaulted with iron bucket and thereby he sustained injuries on his left hand. Hence the accused had committed offences under Sections 294(b),326, 506(ii) of IPC and Section 3(1)(x) of SC/ST(PoA) Act. Thereafter the victim went to the police station and gave a complaint and based on the complaint given by the defacto complainant the First Information Report has been registered in Crime No. 40 of 2015 for the offences under Sections 294(b),326, 506(ii) of IPC and Section 3(1)(x) of SC/ST(PoA) Act. Thereafter the Investigation Officer investigated the case and filed final report. Since the offences are triable by the Special Court the Magistrate has committed the case to the Special Court and the same was taken on file in Spl.S.C. No.84 of 2015.

5. After receipt of case records the trial Court after hearing both sides framed charge as against the accused for the offences under Sections 294(b),326, 506(ii) of IPC and Section 3(1)(x) of SC/ST(PoA) Act and read over to the accused and the accused denied



the charges and claimed to be tried. Hence trial Court has examined P.W.1 to 9 and marked Exhibits.Ex.P.1 to Ex..13 and one material object was marked. On the side of the accused no witnesses were examined none of the documents were marked.

6. After analysing the oral and documentary evidences adduced on either side the trial court had acquitted the accused for the offences under Section 294(b) and 506(ii) of IPC and convicted the accused and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs. 2000/- in default to undergo three years simple imprisonment for the offence under Section 3(1)(x) of SC/ST(PoA) Act and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-in default to undergo six months simple imprisonment for the offence under Section 326 of IPC

7. Aggrieved by the said judgment and conviction the present appeal has been filed on the following grounds:

a) the judgment and conviction of the trial Court is contrary to law, weight of evidence and probabilities of the case.

b) the trial Court has failed to appreciate the fact that the motive for the alleged occurrence has not been properly proved by the prosecution.



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c) the trial Court has failed to consider the fact that P.W,2 is not the eye witness and there are major discrepancies between the prosecution witness and there is a delay in registering the First Information Report.

d) P.W.3 is the hearsay witness. Further P.W.1 does not know the contents of the First Information Report and he is an illiterate and the complaint was written by some other persons and the same was not established by the prosecution who wrote the complaint.

e)mahazhar witnesses stated that 8.00 pm., the mahazhar was prepared but as per P.W. 9, investigation officer he went to the occurrence spot at 10.00 p.m.,

f) the victim was admitted in the hospital only on 27.06.2015 at 11.10 pm., but he failed to mention the name of the accused before the doctor but as per the Accident Register entry the victim got injured on 25.06.2015 at about 2.30 p.m. Therefore the prosecution case is highly doubtful and these aspects have not been considered by the trial Court.

8. The learned counsel for the appellant would contend that the trial Court has acquitted the accused for the offence under



Sections 294(b) and 506(ii) of IPC and the same benefit has to be extended for other offences also. The prosecution failed to prove the case beyond any reasonable doubts and the evidence of P.W.1 and P.W. 2 are highly doubtful with regard to the manner of occurrence. Admittedly the appellant has not gone to the hospital immediately and there is a delay in lodging the complaint but the said contradictions and delay in lodging the complaint have not been considered by the trial Court, therefore the judgment passed by the trial Court is liable to set aside.

9. The learned Government Advocate(Crl.Side) would contend that P.W.1 is the complainant and P.W.2 is the eye witness to the said occurrence and they have categorically deposed about the manner of occurrence and injuries sustained by P.W.1/victim. The doctor who examined the witness has deposed about the nature of injuries and according to the doctor the injury is grievous in nature and thereby prosecution has established the case as against the accused and thereby the trial Court has rightly convicted the accused. The accused also abused the community name of the victim and also assaulted with iron bucket and thereby the trial Court has correctly convicted the accused and hence the appeal is liable to be dismissed.



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10. Upon hearing both sides and perusing the judgment of the trial Court and grounds of appeal the point for determination in this appeal is :

i) Whether the prosecution proved the charges levelled against the accused for the offence under Sections 326 of IPC and Section 3(1)(x) of SC/ST(PoA) Act beyond any reasonable doubts or not?

ii) the judgment and conviction passed by the trial Court is sustainable in law and facts ?

11. In this case there is no dispute that the victim belongs to S.C.community and the appellant/accused belongs to non-S.C community. The charges levelled against the appellant are for the offences under Sections 294(b), 326, 506(ii) of IPC and Section 3(1)(x) of SC/ST(PoA) Act and the appellant was acquitted for the offences under Sections 294(b) and 506(ii) of IPC and convicted for the offences under Section 326 of IPC and Section 3(1)(x) of SC/ST(PoA) Act. The mandatory provisions under Rule 7(1)(2) of SC/ST(PoA) Act have been properly complied and there is no dispute in that regard.



12. As per the complaint the accused abused P.W.1 victim as

“ஏண்டா தேவிடியா மகனே நீ பள்ள நாய் நான் கேட்டால் நீ தரமாட்ட அவ்வளவு பெரியாளா ” but while deposing before the trial Court the same P.W.1 stated that the accused used the caste name as “பள்ளப்பயலே”. Therefore the specific word uttered by the accused regarding the community are differ. Further P.W.1 in his cross examination admitted that he does not know the contents of the complaint and he accompanied with one Politician Viduthalai Siruthai and he had taken him to Court. Further the alleged occurrence is at 2.30 pm., but the complaint was given only at about 9.00 pm., There is a delay and the same has not been properly explained. The specific words uttered by the accused are also differ between the complaint and evidence of P.W.1. The evidence of P.W.1 creates serious doubts over the alleged occurrence and the lodging of complaint itself creates doubt since the complainant does not know the contents of the complaint whereas the trial court disbelieved the version with regard to the offence under Section 294(b) of IPC and the same benefit has to be extended to other offences also

13. It is admitted fact that the complainant and the victim are known to each other but the evidence shows that there is a



dispute with regard to sale of calf and further the offence under Section 3(1)(x) of SC/ST(Poa) is concerned the specific words uttered by the accused are different and the evidence of P.W.1 is highly doubtful. P.W.2 who is the wife of P.W.1 has deposed before the trial Court that the accused used the caste name as “பள்ளப்பயலே” but in the complaint the word mentioned as “பள்ள நாய் நான் கேட்டால் தரமாட்ட அவ்வளவு பெரியாளா”. Further as per the evidence of P.W.1 the accused uttered the caste name of பள்ளப்பயலே the evidence of P.W.2 in respect of the uttering the words by accused is totally contra to the complainant. Therefore the evidence of P.W.2 also creates serious doubts over the prosecution case, as there is a difference between the complaint and evidence of P.W.2 in respect of the alleged word uttered by the accused.

14. So far as section 326 of IPC is concerned as per evidence of P.W.1 the accused made assault with iron bucket but in the complaint stated the accused assaulted with milk can. There is difference between milk can and iron bucket. Milk can means its usage is to store the milk and iron bucket is used for milching the milk from the cows. The complainant, P.W.1 in the complaint stated that “அதற்கு ராஜா என்னை பார்த்து ஏண்டா தேவிடியா மகனே நீ பள்ள நாய் நான் கேட்டால் தரமாட்ட அவ்வளவு பெரியாளா என்று சொல்லி கையில் பால் வைத்திருந்த



பால் கேன் கைத்து எனது இடது கையில் மணிக்கட்டில் மேல் அடித்து வீக்க காயத்தை ஏற்படுத்தி விட்டு உன்னை கொல்லாமல் விடமாட்டேன் என மிரட்டி விட்டு சென்றார் “ but in the evidence the same P.W. 1 stated before the trial Court that நானும் அவனும் சண்டை போட்டோம். அப்போது பள்ளப்பயலே என்று சொல்லி இரும்பு வாளியால் என்னை அடித்தான். According to the complaint the accused had milk can in his hand and assaulted with milk can but evidence of P.W.1 reveals that the accused assaulted with iron bucket. The iron bucket is totally different from milk can which is sued for carrying the milk. Therefore the weapon used by the appellant also differs and this also creates serious doubts over the prosecution case. Though the doctor had given certificate alleging that the victim sustained injuries on left hand the evidence of P.W.1 with regard to the manner of occurrence and weapon used in this case are all creates serious doubts over the prosecution case, thereby the evidence is not sufficient to prove the offence under Section 326 of IPC.

15. Further the mahazhar witness stated before the trial Court that the material object was recovered at about 8.00 pm., but the investigation officer stated in his evidence that the material object was recovered at 10.00 pm. In the observation mahazhar the above said iron bucket has not been mentioned and no reference about the material objects in the rough sketch. Further on perusal of Ex.P.3



recovery mahazhar for material object shows that it was recovered from the place of occurrence on 27.06.2016 at about 22.45 hrs in the presence of witnesses Chellandi and Subramani and no whisper about who identified the material object. According to prosecution case at the time of occurrence the P.W.1 and P.W.2 only present while so how the investigation officer identified the material object has to be explained by the prosecution, but no any explanation to that regard. These creates serious doubts over the recovery of material object and the prosecution case.

16. Further the investigation officer failed to examine any witnesses near the place of occurrence. In this context the P.W.9, investigation officer in his cross examination stated that வழக்கு சம்பவமிடத்தை சுற்றி வீடுகள் உள்ளன. அசா.1,2 சாட்சிகளை தவிர சம்பவமிடத்தில் வேறு சாட்சிகள் விசாரிக்கவில்லை என்றால் சரிதான். Therefore from the evidence of P.W9 he did not examined any witnesses from the place of occurrence except P.W.1 and P.W.2.

17. Without considering the above aspects the trial Court has convicted the accused and with the available evidence it is unsafe to convict the accused for the offences under Section 326 of IPC and Section 3(1)(x) of SC/ST(PoA) Act, therefore the accused is



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entitled for benefit of doubt and thereby the judgment and conviction passed by the trial Court are not sustainable and the same are liable to be set aside.

18. Accordingly this criminal appeal is allowed and the judgment and conviction passed by the III Additional District and Sessions Court (PCR Court), Madurai in Spl.S.C. No.84 of 2015 is set aside and the accused is acquitted from the charges under Sections 326 of IPC and Section 3(1)(x) of SC/ST(PoA) act and he is set at liberty subject to other cases if any. The bail bond, if any, executed by the appellant shall stand cancelled and fine amount, if any, paid by him is ordered to be refunded forthwith.

22.08.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The III Additional District and Sessions Court
(PCR Court), Madurai
2. The Deputy Superintendent of Police
Usilampatti Sub Division
Madurai District



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3. The Sub Inspector of Police
T.Ramanathapuram Police Station,
Madurai District
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai

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