



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 29.01.2021
PRONOUNCED ON : 25.03.2021
CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.A(MD).No.245 of 2015

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1.Krishnan
2.Ravi @ Ravichandran .. Appellants/Accused 3 & 4

Vs.

The State by
its Samayanallur Deputy Superintendent of Police,
Through Vadipatti Police Station,
Madurai District.
Crime No.58 of 2006.

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 372 of Cr.P.C, to call for the records relating to the judgment in Special Sessions Case No.63 of 2007, on the file of the III Additional District cum Sessions Judge, Madurai and to set aside the conviction and sentence and allow the above criminal appeal.

For Appellants : Mr.N.Tamil Mani,
Legal Aid Counsel.

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor.

JUDGMENT

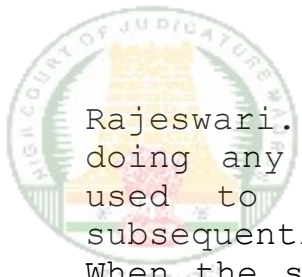
The Criminal Appeal is directed against the judgment of conviction passed in Special Sessions Case. No.63 of 2007, dated 22.07.2015 on the file of the III Additional District and Sessions Judge, Madurai.

2.The Appellants are accused Nos.3 and 4 in Special Sessions case No.63 of 2007 on the file of the III Additional District cum Sessions Judge, Madurai.

3.The case of the prosecution is that the defacto complainant and the injured witnesses are belonging to Hindu Parayar Community; the first accused belongs to Hindu Parayar Community; the second accused belongs to the Christian Parayar Community and the accused Nos.3 and 4 are belonging to the Hindu Agamudayar community.

4.The defacto complainant's daughter Priya had married the first accused 11 years back prior to the occurrence and due to the time passed, they had two daughters by name, Kaleeswari and

<https://hdservicessc.gov.in/hdservicessc/>



Rajeswari. The first accused even from the beginning, without doing any work, was addicted to Alcohol, drugs and gambling and used to demand money very often from his wife Priya and subsequently, there occurred quarrels very often between them. When the said Priya had complained about the conduct of the first accused with her parents, they came to Sembukudipatti and taken a thatched house for rent and started residing therein to help their daughter Priya. On 20.02.2006 at about 08.00 pm, when the said Priya was attending kitchen work, the first accused came and demanded money and when the same was refused, the first accused picked up an Aruval and attacked his wife on her head and caused injury. After getting the information about the said attack, Priya's brother Veluchamy and sister Kaliammal came to Priya's house on 20.02.2006 and warned the first accused. On that day at about 03.30 pm, when the defacto complainant/Priya visited her parents's house and while she was talking with her parents, brother and sister, accused Nos.1 to 4 came to that place and started quarrelling with them. They had abused them in filthy language by using caste name and also attacked with wooden log and stones and caused injuries to all the witnesses. Thereafter, the accused had dragged Priya and her sister Kaliammal to the road and disrobed their saree and made to stand with blouse and in-skirt. Thereafter, all the accused had outraged their modesty. The accused then tied the hands of the victim Kaliammal near the Kaliammal Temple, pinched her breasts and thighs and the fourth accused had inserted his hands inside the blouse of the witness and took away Rs.1,000/-. Thereafter, the Deputy Superintendent of Police, Samayanallur has filed the final report alleging that the first accused had committed the offences under Sections 341, 324, 326, 354 IPC and under Section 4 of Tamil Nadu Women Harassment Act; that the second accused had committed the offences under Sections 341, 324, 354 IPC and under Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act; that the 3rd accused had committed the offences under Sections 341, 323, 294(b) IPC and under Section 3(1)(x) and 3(1) (xi) of SC/ST (Prevention of Atrocities) Act; and the fourth accused had committed the offence under Sections 341, 323, 324, 354 IPC and under Section 3(1)(x) and 3(1)(xi) of SC/ST (Prevention of Atrocities) Act.

5.The learned Judicial Magistrate No.V, Madurai had taken the case on file in P.R.C.No.78 of 2006 and furnished the copies of records under Section 207 of Cr.P.C on free of costs. The learned Magistrate, finding that the offences under the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act are exclusively triable by the Special Court under SC/ST Act / Court of Sessions, after compliance under Sections 208 and 209 Cr.P.C, had committed the case to the file of the Special Court and the same was taken on file in Special S.C.No.63 of 2007 on the file of the IIIrd Additional District and Sessions Court (PCR Court),



Madurai.

6. After appearance of the accused, the Special Court, on hearing both sides and on perusal of the records, being satisfied that there existed a *prima facie* case against the accused, framed charges under Sections 326, 323, 324 (two counts) 341 IPC and 354 IPC as against the first accused; under Section 324 (two counts) 341 IPC and 354 IPC as against the second accused; and under Sections 323, 341, 354 IPC and under Section 3(1)(x), 3(1)(xi) SC/ST (POA) Act as against the accused 3 and 4 and when the accused were questioned, they denied the charges and pleaded not guilty and claimed to be tried.

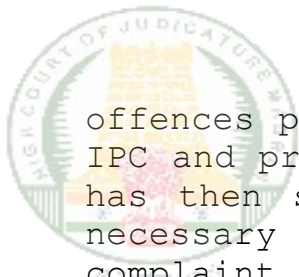
7. The prosecution, in order to prove its case, had examined 23 witnesses as P.W.1 to P.W.23 and exhibited 14 documents as Ex.P1 to Ex.P.14 and two material objects as M.O.1 to M.O.2.

8. The case of the prosecution emerging from the evidence adduced by the prosecution in brief is as follows:

(a) P.W.1 Muniyandi, the defacto complainant, is the husband of P.W.2 Kaliasammal. P.W.3 Priya and P.W.5 Kaliasammal are the daughters and P.W.4 Veluchamy and P.W.6 Thirunavukarasu are the sons of P.W.1 and P.W.2. P.W.1, 2, 4 to 6 are residing at Thamuthanur, in Devakottai Taluk and P.W.3 is residing at Sembukudi.

(b) The first accused Salamon is the husband of P.W.3 Priya and the second accused is the brother of the first accused. The first accused had married the Priya / P.W.3, 10 years prior to the occurrence. P.W.3 used to make complaints to her parents that the first accused, after consuming alcohol and drugs was harassing her. Since the cruel treatment of the first accused was not tolerated, P.W.1 and P.W.2 had taken their daughter Priya and was maintaining her. On the previous day to the occurrence, the first accused had attacked his wife Priya with stones and caused bleeding injury. When the witnesses were in their house, the first accused came to that place with three other persons and started quarrelling and all the accused had attacked the defacto complainant and other witnesses and caused injuries. Thereafter, the accused had dragged P.W.3 and P.W.5 Kaliasammal and at that time P.W.3 had escaped from them. P.W.5 was not able to run away from that place. They had disrobed her saree and outraged her modesty. Subsequently, fourth accused had inserted his hands into her blouse and had taken away Rs.1,000/-.

(c) P.W.1 visited the Vadipatti Police Station and gave a complaint under Ex.P.1 to the Head constable/P.W.21. P.W.21/Head constable received the complaint from P.W.1 and registered a case in Crime No. 58 of 2006 of Vadipatti Police Station, for the



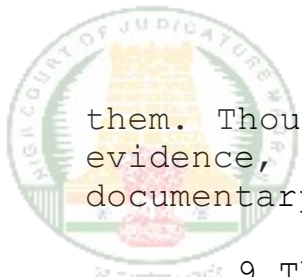
offences punishable under Sections 341, 323, 324, 294(b), 506(ii) IPC and prepared the First Information Report under Ex.P.9. P.W.21 has then sent the injured to the Government Hospital by issuing necessary memos for treatment. P.W.21 has sent the original complaint and FIR to the Court and copies to the higher police official.

(d) P.W.12 Dr.R.Mariammal, Medical Officer while she was on duty at Vadipatti Government Hospital on 22.02.2006, P.W.1 to P.W.5 came to the Hospital for treatment alleging that they have been attacked by two known and unknown persons at Sembukudipatti. P.W.12 had noticed four injuries on P.W.4 Velusamy, and two abrasive injuries on nose and over the chest of P.W.5 Kaliammal, (Though P.W.12 would depose about the nature of the injuries suffered by P.W.2 Kaliammal and P.W.5 Kaliammal, the injuries and the other particulars of P.W.2 Kaliammal were noted as against P.W.5 Kaliammal and similarly the particulars meant for P.W.5 were entered against P.W.2 Kaliammal in accident registers (Ex.P.4 and Ex.P.6) respectively) P.W.12 had treated all the injured witnesses as out patients and gave her opinion that injury suffered by them are all simple in nature under Ex.P.2 to Ex.P.6 respectively.

(e) P.W.22/ Shobana Sub-Inspector of Police had taken up the investigation and visited the occurrence place on 22.02.2006 at 23 hours and after inspecting the scene of occurrence in the presence of P.W.18 Ramamoorthy and one Kumar, prepared the observation mahazar under Ex.P.10 and rough sketch under Ex.P.11. She recovered the wooden logs and stones at the occurrence place in the presence of the same witnesses at 23.45 hours and prepared the seizure mahazar under Ex.P.12. P.W.22 has then visited the hospital and examined the witnesses and recorded their statements. Thereafter, she submitted an alteration report under Ex.P.13. As per the directions of P.W.23/ the Deputy Superintendent of Police, Samayanallur, she arrested the accused 1 to 4 near Karuppasamy Temple, at 12.30 hours and brought to the police station and thereafter, sent to remand.

(f) P.W.23 now retired from service, was working as a Deputy Superintendent of Police, Samayanallur and after receiving the alteration report, he inspected the occurrence place. Thereafter, he examined the witnesses and recorded their statements. He obtained the community certificates of the witnesses and the accused under Ex.P.14 series. Thereafter, he examined the Head Constable and the Sub-Inspector of Police / Shobana and recorded their statements. After completing the investigation, P.W.23 has filed the final report against the accused. With the examination of P.W.23, the prosecution has closed their side evidence.

(g) When the accused were examined under Section 313(1)(b) of Cr.P.C with regard to the incriminating aspects found against them in the evidence adduced by the prosecution, they denied the same as false and stated that a false case was foisted against



them. Though the accused have stated that they are having defence evidence, subsequently, they have adduced neither oral nor documentary evidence.

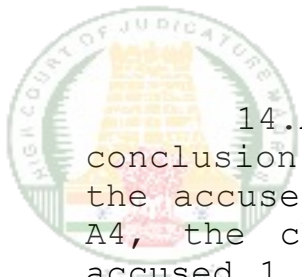
9. The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both sides, has passed the impugned judgment on 22.07.2015, convicting the accused 1 to 3 for the offence under Section 354 IPC and sentenced them to undergo Rigorous Imprisonment for 6 months and to pay a fine amount of Rs.1,000/- each, in default to undergo one month Simple Imprisonment and convicting the 4th accused for the offence under Sections 354 and 323 IPC and sentenced him to undergo six months Rigorous Imprisonment and to pay a fine amount of Rs.1,000/- , in default to undergo one month Simple Imprisonment for the offence under Section 354 IPC and sentenced him to pay a fine of Rs.1,000/- in default to undergo one month Simple imprisonment for the offence under Section 323 IPC and further ordered to set-off the period of detention already undergone under Section 428 of Cr.P.C and acquitted all the accused from the remaining charges. Aggrieved by the judgment of conviction and sentence, 3rd and 4th accused have filed the present appeal.

10. Heard Mr N. Tamil Mani, learned counsel for the Appellants and Mr. V. Neelakanadan, learned Additional Public Prosecutor appearing for the respondent and perused the entire records.

11. The relationship not in dispute are that P.W.3 Priya is the wife of the first accused, that P.W.1 is the father, P.W.2 is the mother, P.W.5 is the elder sister and P.W.4 and P.W.6 are the brothers of P.W.3, that the accused 1 and 2 are brothers and that the accused 3 and 4/ appellants herein are the friends of the first accused.

12. According to the prosecution, there were two occurrences, one on 21.02.2006 and the second occurrence on 22.02.2006. The trial Court though observed that the first incident was occurred at about 08.00 pm on 21.02.2006, has recorded a finding that since the weapon with which, P.W.3 was attacked by the first accused was not clear, the charge under Section 326 of IPC was not proved beyond reasonable doubt.

13. Regarding the second and main occurrence allegedly occurred on 22.02.2006, it is the specific case of the prosecution that when the witnesses P.W.1 to P.W.6 were in the house of P.W.1 and P.W.2, the accused 1 to 4 came to that place, started quarrelling with them, abused them in filthy language using caste name and attacked with stones and wooden sticks and that they had outraged the modesty of P.W.5.



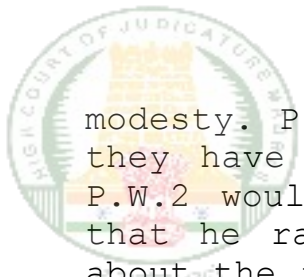
14.As already pointed out, the trial Court has come to the conclusion that the charges under Section 323 of IPC as against the accused 1 to 3 and under Section 341 IPC as against the A1 to A4, the charges under Section 324 (two counts) as against the accused 1 and 2 and that the charges under Section 31(1)(x), 3(1)(xi) of SC/ST (POA) Act as against the accused 3 and 4 were not proved and that the said decision was not at all challenged by the State.

15.Now coming to the charge under Section 323 of IPC levelled against the 4th accused, it is the specific case of the prosecution that the 4th accused had attacked P.W.4 with stones and wooden sticks and caused injuries. As rightly pointed out by the learned Additional Public Prosecutor, the evidence of P.W.3 and P.W.4 are available. P.W.3 and P.W.4 in their evidence before the Court would say that at the time of occurrence, the Accused/Ravi had attacked their brother Veluchamy with a stone on his head and that all the accused had attacked their brother, father and mother with the sticks by dismantling samyana.

16.P.W.4, injured witness would say that the accused 3 and 4 had attacked and beaten him indiscriminately with the help of samyana sticks. P.W.5 would say that the accused 1, 3 and 4 had attacked her brother Veluchamy with sticks, and that the 4th accused had attacked her brother on his left side head. P.W.1 in his evidence would say that all the accused had dismantled the samyana and attacked his son with samyana sticks and also through stones. P.W.12/Medical Officer, who had first seen the injured witnesses and treated them, would say that P.W.4 Veluchamy had a contusion with abrasion 3 cm x 1 cm on the forehead, lacerated wound in the left cheek 2cm x 1cm x 1cm, an abrasion in the right elbow 2 cm x 1cm and a contusion over the left foot 2 cm x 2 cm x 1cm and that she had certified that the injuries suffered by him are simple in nature.

17.Though P.W.1, P.W.3 to P.W.5 were subjected to cross examination, nothing was elicited and that the evidence of the above witnesses that the P.W.4 had sustained injuries on his head stands corroborated by the evidence of P.W.12. Hence, the finding of the trial Court that the 4th accused/2nd appellant is guilty for the offence under Section 323 of IPC cannot be found fault with.

18.Now coming to the offence under Section 354 of IPC, it is the specific case of the prosecution that all the accused had outraged the modesty of P.W.5. The charges levelled against the accused are very much shocking and disturbing. Except P.W.2 all other witnesses P.W.1, P.W.3 to P.W.5 would depose in clear terms that all the accused had misbehaved with P.W.5 and outraged her



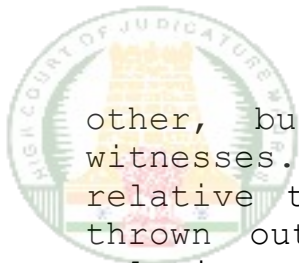
modesty. P.W.2 and P.W.6 in their evidence would fairly admit that they have not witnessed the occurrence involving P.W.5 and that P.W.2 would say that she became unconscious and P.W.6 would say that he ran away from that place and both of them came to know about the incident involving P.W.5 subsequently.

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19.P.W.1 in his evidence would say that when his two daughters were hiding in the neighbour's house, the accused had dragged them to the road, that the second daughter ran away from that place that the first daughter was unable to run from that place, that the accused had tied her hands and disrobed her saree and placed their hands on her breast and outraged her modesty and that they had taken Rs.1,000/- from her blouse. P.W.3 in her evidence would say that the accused had taken P.W.5/Kaliammal to the place nearby temple and tied her, that they had inserted their hands into the blouse of P.W.5 and taken away her money. P.W.4 would also reiterate the same version. Most importantly P.W.5 would say in her evidence that they had disrobed her saree, that the 4th accused torn her blouse, that the 3rd accused has inserted his hands into her blouse and taken away two five hundred rupees notes and that all the accused had misbehaved and outraged her modesty.

20.As rightly contended by the learned Additional Public Prosecutor, the evidence of P.W.1, P.W.3 to P.W.5, despite the cross examination, remained unshaken. More over, P.W.12 / Medical Officer would say that she had noticed abrasions over the chest of P.W.5, apart from another abrasion over nose. As rightly contended by the learned Additional Public Prosecutor, the oral testimony of P.W.1, P.W.3 to P.W.5 stand corroborated by the evidence of P.W.12 and Ex.P.4 accident register. More over, the evidence of P.W.5 stands corroborated by the evidence of P.W.1, P.W.3 and P.W.4. The evidence of P.W.1, P.W.3 to P.W.5 are cogent, credible and trustworthy and that the appellants have not shown any reason or ground to disbelieve the evidence of the above witnesses. Hence, the decision of the trial Court that the prosecution has proved the charge under Section 354 IPC as against the appellants cannot be found fault with.

21.Now let us consider the other contentions raised by the appellants. The learned counsel for the appellants would contend that P.W.1 to P.W.6 are all close relatives and are interested witnesses and that the Sessions Judge ought to have rejected their evidence, since the independent witnesses P.W.7 to P.W.11 and P.W.13 to P.W.17 had turned hostile. No doubt, as rightly pointed out by the appellants' counsel, P.W.7 to P.W.11, P.W.13 to P.W.15 had turned hostile, but that by itself is not a ground to disbelieve or discard the evidence of the other witnesses. As already pointed out, P.W.1 to P.W.6 are close relatives to each



other, but the fact remains that they are all the injured witnesses. It is settled law that merely because the witnesses are relative to the victim or complainant, their evidence cannot be thrown out. There is no bar for accepting the evidence of a relative witness.

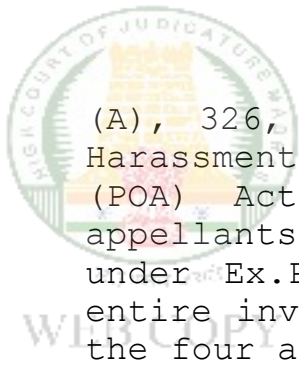
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22. It is well established principle of law that the evidence of witnesses cannot be discarded merely on the ground that he is a relative or interested witnesses. But, no doubt, the evidence of the interested witness is to be scrutinized with care and caution. It is pertinent to note that relative witness cannot be equated with interested witnesses and that a witness may be called interested witnesses only when he derives some benefits from the result of a litigation or in seeing the accused person punished. Hence, it is clear that the evidence cannot be disbelieved merely on the ground that the witnesses are relative to each other or to the complainant and in case, if the evidence is cogent, credible and trust worthy, it can certainly be relied on. Since P.W.1 to P.W.6 being injured witnesses and their evidence being clear, cogent and believable, the same cannot be discarded.

23. The learned counsel for the appellants would further submit that the learned Sessions Judge has held that there is no evidence against the appellants and therefore, they were acquitted from the alleged offences under Sections 294(b), 323, 324, 341 IPC and under Sections 31(1)(x) and 3(1)(xi) of SC/ST (POA) Act and that the said acquittal would only go to show that the appellants did not have any connection with the case.

24. I find absolutely no merit in the said contention. Since because the appellants were acquitted for some of the offences, it cannot be stated that they have no connection with the occurrence and that they are entitled for total acquittal. More over, the doctrine stated in the legal maxim "Falsus in uno, falsus in omnibus" i.e., "false in one, false in all" cannot be applied to the criminal jurisprudence.

25. The learned counsel for the appellants would further submit that the names of the appellants were not found in the FIR, that the prosecution has not conducted test identification parade and that there is no explanation as to how the prosecution witnesses targeted the appellants to implicate in the case. No doubt, the names of the appellants does not find place in the FIR, but apart from the names of the accused 1 and 2, it has been mentioned as two more identifiable persons, totally four persons and after initial investigation, P.W.22/Sub-Inspector of Police has sent the alteration report altering the FIR offences under Sections 341, 323, 324, 294(b), 506(ii) IPC to 341, 323, 324, 498



(A), 326, 294(b), 354, 506(ii) IPC and under Section 4 of Women Harassment Act and under Section 31(1)(x), 3(1)(xi) of SC/ST (POA) Act. It is pertinent to note that the names of the appellants were mentioned specifically, in the alteration report under Ex.P.13. It is further evident that after completing the entire investigation, P.W.23 has laid the charge sheet against all the four accused.

26.The learned counsel for the appellants would further contend that there is no explanation for the delay in registering FIR, but as rightly contended by the learned Additional Public Prosecutor, the trial Court has dealt with that issue elaborately and concluded that the delay was properly explained. More over, it is settled law that the delay in lodging the complaint with the police is not by itself fatal to the case of the prosecution and the defence has to show the prejudice caused to them by the said delay. In the case on hand, the appellants have not shown as to how they were prejudiced by the delay.

27.Considering the above, there are no valid grounds to interfere with the judgment of conviction passed by the trial Court. Regarding the punishment, as already pointed out, the trial Court has imposed 6 months Rigorous Imprisonment for the offence under Section 354 IPC along with fine of Rs.1,000/- and imposed a fine of Rs.1000/- for the offence under Section 323 IPC. Considering the nature and seriousness of the offences, the charges levelled and proved against the accused and the way in which they had outraged the modesty of P.W.5, who is none other than the close relative of the first accused, this Court is of the view that the trial Court has only imposed lesser punishment and as such, there is nothing to interfere with the sentence imposed.

28.In the result, the Criminal Appeal is dismissed and the judgement of conviction and sentence passed in Special Sessions Case No.63 of 2007, on the file of the III Additional District cum Sessions Judge, Madurai, is confirmed. The trial Court is directed to take necessary steps for securing the appellants/accused to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar(CS)



To

1.The III Additional District cum Sessions Judge,
Madurai.

2. The Judicial Magistrate No.IV, Madurai.

3.The Samayanallur Deputy Superintendent of Police,
Through Vadipatti Police Station, Madurai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer,
Criminal Section,

Madurai Bench of Madras High Court, Madurai(2 copies)

+1 CC to M/s.N.TAMILMANI, Advocate (SR-14032[F] dated
26/03/2021)

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