



Crl.A.No.374 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.374 of 2020

Periyasamy

... Appellant

Vs.

The State by
The Inspector of Police,
Deputy Superintendent of Police,
Rasipuram Sub-Division,
Namakkal District.

... Respondent

Prayer:

Criminal Appeal filed under Section 374 of Cr.P.C., to set-aside the conviction and sentence imposed on the appellant by the judgment dated 26.08.2020 passed in S.C.No.104 of 2014 on the file of the Special Court for S.C & S.T (POA) Act cases, Namakkal.

For Appellant : Mr.M.Karthik

For Respondent : Mr.R.Murthi
Government Advocate (Criminal Side)

J U D G M E N T



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This Criminal Appeal has been filed against the judgment dated 26.08.2020 passed in S.C.No.104 of 2014 on the file of the Special Court for S.C & S.T (POA) Act cases, Namakkal.

2. The respondent police registered a case against the appellant and yet another person in Crime No.942 of 2012 for the offence under Sections 294(b), 324 and 506(ii) IPC and also under Section 3(i)(x) of SC/ST(POA) Act. After investigation, laid a charge sheet before the Judicial Magistrate, Rasipuram. The learned Magistrate has taken the charge sheet on file in P.R.C.No.11 of 2014. After completing the formalities under Section 209 Cr.P.C., committed the case to the Principal District and Sessions Court, Namakkal since the offences are triable by the Court of Session and the learned Principal District Sessions Judge has taken the case on file in S.C.No.104 of 2014 and made over the same to the Special Court for SC and ST (POA) Act Cases, Namakkal. The learned Special Judge after completing the formalities, framed the charges against both the accused for the offence under Sections 294(b), 506(ii) IPC and also under Section 3(1)(x) of SC/ST(POA) Act and against the appellant/A1, in addition to the above

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mentioned charges, also framed charge for the offence under Section 324

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3. In order to substantiate the charges against the accused on the side of the prosecution, after framing the charges, during trial, as many as eleven witnesses were examined as P.Ws.1 to 11 and eleven documents were marked as Exs.P1 to P11. No material object was exhibited. On the side of the defence Ex.D1 has been marked.

4. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses were put to the accused by questioning under section 313 Crpc., and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, one documentary evidence was marked as Ex.D1. However, no oral evidence was let in.

5. On conclusion of trial and hearing the arguments advanced on



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either side, considering the entire materials, the trial court found the appellant guilty for the offence under Section 324 IPC and convicted and sentenced him to undergo one year rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo one month simple imprisonment. In addition to the same, directed the appellant to pay compensation of Rs.25,000/- to the victim. However, the trial court acquitted both the accused for the offence under Sections 294(b), 506(ii) IPC and under Section 3(1)(x) of SC/ST(POA) Act. Aggrieved over the judgment of conviction and sentence for the offence under Section 324 IPC as against the first accused, he has filed the present Criminal Appeal before this Court.

6. The specific case of the prosecution is that the defacto complainant and his wife are advocates and wife of the defacto complainant belonged to the Scheduled Tribe community. Appellant and his wife are non-member of the Scheduled Caste / Scheduled Tribe. There is enmity between the appellant and the defacto complainant with regard to the dispute over the pathway in between their houses. On 16.10.2012 at about 8.30 am on seeing the defacto complainant and his father digging a drainage line on the



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eastern side of their house, the appellant developed enmity. Due to that on 16.10.2012, at about 8.30 am, in a path between the houses of defacto complainant and the appellant, on the Rasipuram Athur main road at Koneripatty village in Rasipuram Taluk within the Rasipuram Police Station, limits, the accused abused the defacto complainant with filthy language and also attacked him with spade handle on the right hand of the defacto complainant. Further, the appellant uttered with caste name of the wife of the defacto complainant. Hence the defacto complainant preferred a complaint before the respondent police.

7. Learned counsel for the appellant would submit that the defacto complainant foisted a false case against the appellant and he never uttered with the caste name of the wife of the defacto complainant. There was no such incident said to have taken place as projected by the prosecution and there is no independent witness in this case. Due to previous enmity, they have foisted a false case against the appellant and his wife. P.W.1 who is the defacto complainant has stated in his evidence that the appellant received the spade from his wife and attacked P.W.1, where as, P.W.2 in her



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evidence has stated that the accused directly attacked P.W.1 with spade handle. There are materials contradictions between the evidence of P.W.1 and P.W.2 who are the defacto complainant and his wife. P.W.1 and P.W.2 are husband and wife and they are interested witnesses. No independent witness was examined in this case to corroborate the evidence of P.Ws.1 and 2. The trial court convicted the appellant based on the un-corroborated evidence which is against the fundamental criminal jurisprudence. The prosecution has not established the foundational fact that the appellant humiliated the defacto complainant and his wife by using the caste name and also the appellant attacked the defacto complainant and caused injury. The trial court acquitted the second accused who is the wife of the appellant and also has given findings that the incident has not taken place in a public view and since there was no incident of humiliation has occurred, offence under Section SC/ST(POA) Act would not attract. The appellant and his wife are acquitted for the offence under Section 294(b) and 506(ii) IPC, however, for the very same materials, the trial court erroneously found the appellant alone guilty for the offence under Section 324 IPC. It is a well settled proposition of law that prosecution has to prove the case beyond all



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reasonable doubt. The date of occurrence has not been properly mentioned

in Ex.P2. From Ex.P2, it is found that the occurrence said to have taken place on 16.10.2012 at 8.30 am. But as per doctor's evidence, P.W.5, it is found that the defacto complainant was admitted in hospital on 16.10.2012 at 9.30 am, which is highly improbable. The complaint has been registered on 16.10.2012 at 19 hours. There is a delay in filing the complaint and the delay has not been properly explained. There is a delay in sending the F.I.R to the court and the same was also not properly explained. Since the defacto complainant and his wife are advocates, after deliberation, they registered a false case against the appellant and they created a story and have given different statements in different stages. He further submitted that the prosecution has stated that the appellant attacked the defacto complainant with spade handle but the same was not recovered by the prosecution. Though the trial court acquitted the appellant for the offence under Sections 294(b), 506(ii) IPC and Section 3(1)(x) of SC/ST (POA) Act, however, convicted the appellant for the offence under Section 324 IPC, which warrants interference.

8. Learned Additional Public Prosecutor would submit that the



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occurrence said to have taken place on 16.10.2012 and the complaint was given soon after the occurrence and on the same day the injured was admitted in the hospital. P.W.5 is the doctor, who admitted the defacto complainant in the hospital has clearly stated that the defacto complainant sustained injury. Ex.P2-medical record also shows that the defacto complainant sustained injury which is simple in nature. Evidence of P.Ws.1, 2 and P.W.5-doctor, and the medical records, it is found that the appellant caused injury on the defacto complainant. From the evidence of injured witness and medical evidence, the trial court rightly convicted the appellant for the offence under Section 324 IPC and there is no merit in the Criminal Appeal and the same is liable to be dismissed.

9. Specific case of the prosecution is that the appellant and the defacto complainant are neighbours and there is enmity between the appellant and the defacto complainant with regard to the dispute over the pathway in between their houses. On the date of occurrence, the appellant scolded the defacto complainant and his wife with filthy language and humiliated them by telling their caste name and also attacked them. In order



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to substantiate the case of the prosecution, totally 11 witnesses were examined. Out of which, injured witness was examined as P.W.1 who has clearly stated that on 16.10.2012 at about 8.30 am, on seeing P.W.1 and his father were digging a drainage line on the eastern side of their house, the appellant abused and attacked him with spade handle and when he prevented the said act of the appellant, he sustained injury. After hearing the voice of the appellant, when the wife of the defacto complainant/P.W.2 came to the place of occurrence and questioned the abovesaid act of the appellant, the accused humiliated her by using her caste name. Further, the appellant threatened the defacto complainant with dire consequences. Immediately, the injured was admitted in hospital on the same day and he has taken treatment for three days. On intimation, the police registered the case against the accused. Wife of the injured is the eye witness was examined as P.W.2. She has clearly stated that on 16.10.2012 at about 8.30 am, while her husband and father-in-law were doing cleaning work near the drainage in the common lane, the appellant came to the place along with his wife. The appellant tried to attack the defacto complainant by using spade and when the defacto complainant tried to prevent the said act, he sustained



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injuries on his hand. Both the witnesses P.W.1 and P.W.2 have clearly stated that the appellant alone attacked P.W.1 and when he tried to prevent the said act of the appellant, P.W.1 sustained injuries on his hand. The case was registered in the year 2017 and the witnesses were examined in the year 2019. The contradictions pointed out by the learned counsel for the appellant are not material contradictions which would go into the root of the case of the prosecution. From Ex.P2-the accident register along with wound certificate, it is found that the injured was attacked by known person by using hand and by spade.

10. Even there is no corroborative evidence, when the injured witness himself deposed as to how he sustained injuries and the same was corroborated with the medical evidence, in this case, P.W.2 is also one of the eye witnesses and she is the wife of the injured witness, moreover, she is the relative and interested witness, that may not be the sole ground to discard the evidence of the prosecution, when the evidence of the relative witness is natural, cogent and consistent and no reason to discard or disbelieve the evidence of the prosecution. The Court can record the conviction based on



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the relative witness, when the evidence of relative witness inspires the confidence of the Court. From the evidence of P.Ws.1,2,5 and Ex.P2, the trial court found that the prosecution proved the charge for the offence under Section 324 IPC and in this case, the trial court rightly appreciated that other charges are not proved by the prosecution. Since the appellate court is the final court of fact finding, it has to re-appreciate and revisit the entire evidence and give independent finding. This Court also, while re-appreciating the evidence, especially from the evidence of P.Ws.1,2,5 and Ex.P2, do not find any perversity in appreciation of the evidence. Considering the facts and circumstances of the case, while confirming the conviction imposed on the appellant/accused, sentence of six months rigorous imprisonment would meet the ends of justice. Hence, sentence of one year rigorous imprisonment imposed by the trial court, is reduced into six months rigorous imprisonment.



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11. With the abovesaid modification, the Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is closed. Since the petitioner is on bail, the trial court is directed to secure the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set of under Section 428 Cr.P.C.,

15.12.2022

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Index:yes/No

Internet:yes/No



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WEB COPY **To**

1. The Special Judge,
Special Court for S.C & S.T (POA) Act cases,
Namakkal.
2. The Inspector of Police,
Deputy Superintendent of Police,
Rasipuram Sub-Division,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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