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Crl.A.No.251 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM :

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

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Mr.Ahamadulla

... Appellant

**Versus**

1.Mr.Koteeswaran  
Inspector of Police.

2.Mr.Senthil Vinayagam  
Sub-Inspector of Police,  
Kattumannar Koil Police Station,  
Cuddalore District.

... Respondents

**Prayer:** Criminal Appeal is filed under Section 378(1) of Cr.P.C., against the Judgment of acquittal passed by the District Munsif cum Judicial Magistrate, Kattumannarkoil in C.C.No.51 of 2012 dated 16.02.2015.

For Appellant : No Appearance

For Respondents : Mr.S.Saravana Kumar



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### **JUDGMENT**

The complainant in a private complaint filed under Section 294(b), 323 and 324 has filed this appeal aggrieved by the acquittal of the respondents 1 and 2 by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil by judgment dated 16.02.2015.

2. The gist of the allegations leading to the filing of this appeal is that:

On 07.10.2009, there was bye-election for the Ward No.3 of Lalpet Panchayat. On the day of elections, there has been clashes between the persons belonging to two political parties, namely, National League and Manidhaneya Makkal Katchi. The complainant belongs to the National League. Whiles, during the entire process, the 1<sup>st</sup> respondent who was the then Inspector of Police and the 2<sup>nd</sup> respondent who was the Sub-Inspector of Police in Kattumannarkoil Police Station, conducted themselves in a biased manner in favour of people belonging to Manidhaneya Makkal Katchi and did not take any action whatsoever on the erring members of the Manidhaneya Makkal Katchi. After the



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elections were over, in the evening, illegally the respondents raided the houses and misbehaved with the womenfolk in the house by using unparliamentary and abusive languages and threatened them. Thereafter pulled out the complainant and the other witnesses subjected them to physical torture before remanding them. At the time of remand itself the injuries on the persons namely PW1 and other witnesses were noted by the learned Magistrate. Hence, the private complaint.

3. Upon being questioned, the respondents/accused denied the charges and stood trial.

4. The complainant in order to bring home the charges examined himself as PW1 and one Ansari, who was again an injured witness, was examined as PW2 and one Mr.Tamizudeen was examined as PW3 and one Smt.Samshath Banu was examined as PW4, Dr. Tamil Selvan as PW5 and the Jail Superintendent, Central Prison, Cuddalore, Mr.Shanmughasundaram was examined as PW6. On behalf of the complainant, Exs.A1 to A7 were also marked. Thereafter, upon being questioned about the material evidences and on incriminating



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circumstances on record, the respondents/accused denied the same as false. Subsequently, no witnesses were examined on behalf of the respondents/accused. However, during the cross-examination, Exs.D1 to D3 were marked.

5. The trial Court, thereafter proceeded to consider the case of the parties and by a judgment dated 16.02.2015 found that even as per the allegation of PW1, the respondents/accused entered into the house of PW1 and other witnesses and abused the womenfolks with unparliamentary, abusive language.

6. The trial Court therefore considered the fact that firstly, the occurrence was held was not a public place and secondly, it was not proved by examining and further corroborative witnesses, acquitted the respondents/accused of the charges, under Section 294(b) of IPC.

7. The trial Court further found that as far as the charges under Sections 323 and 324, are concerned eventhough PWs 1 to 5 have spoken thereto and their evidence is also corroborated by the notice at the



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time of remand, however, held that PW1 and the other witnesses in the box while deposing totally denied of any injury in the clashes, whereas, in their own complaint which is marked as Ex.D2, have alleged the other group of persons having attacked them and that may have suffered injuries. Therefore, the trial Court found that even though the injuries have been proved, it is doubtful whether it has been inflicted by the respondents/accused or whether the injuries have occurred during the clashes. On the said ground, the trial Court extended the benefit of doubt and acquitted the respondents/accused of the charges. Aggrieved by the same, the present appeal is filed.

8. This appeal was originally listed on 13.12.2022, the learned counsel for the respondents alone present and since the learned counsel for the appellant was not present, the case was adjourned to 21.12.2022. Even on the said date, the learned counsel for the appellant was not present and the matter was again adjourned to 19.01.2023 and 27.01.2023. Thereafter, when the matter listed today, there was again no representation on behalf of the appellant. In these circumstances, this Court perused the material records of the case and heard



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Mr.S.Saravanakumar, learned counsel appearing for the respondents 1 and 2 and proceeded to decide the appeal.

9. On perusal of the grounds of appeal filed by the appellant, it is contended that when PW1 and other witnesses have mentioned the bad words / sexually coloured abusive words spoken by the respondents/accused. The trial Court therefore erred in acquitting the accused. Similarly, when the injuries have been recorded by PW5-Doctor under Exs.P5 and P6, when PWs 1 to 5 have spoken about the injuries being inflicted on them by the respondents/accused, the trial Court ought not to have acquitted the respondents/accused.

10. Per contra, Mr.S.Saravana Kumar, the learned counsel for the respondents would submit that to prove the offence under Section 294(b), there must be clear and categorical averments that such abuse happened in public place, which is not the case even as per the evidence of PW1 and other witnesses. He would further submit that at the time of



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performing their official duty when two groups have clashed pursuant to the elections, unnecessarily the respondents 1 and 2 who were the Inspector of Police and the Sub-Inspector of Police on duty in the jurisdictional Police Station have been prosecuted with a vendata just because they performed their duty without fear or favour. This apart, he would submit that PW1 and the other witnesses belonging to their party themselves have given a complaint in which they have alleged that the unknown persons belonging to Manidhaneya Makkal Katchi have caused injuries to them in the clash. Now in the present complaint, and in the deposition, PW1 says that in the clash absolutely there was no injury to him. The same itself causes grave doubt and therefore, the trial Court has rightly extended the benefit of doubt to the respondents/accused.

11. The learned counsel for the respondents also taking this Court through the deposition of PWs 1,2,4 and 5, would submit that there are several discrepancies and inconsistencies in the evidence of the witnesses and therefore, the findings of the trial Court cannot be interfered in this appeal against the acquittal.



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12. I have considered the said submissions and also perused the material records of the case.

13. As rightly contended by the learned counsel for the respondents/accused, the prosecution in this case has not clearly mentioned the place of occurrence as to when and where the abusive words were hurled by the respondents/accused when the ingredients clearly require that sexually coloured abusive language was to be used in public place. In the absence of clear cut evidence regarding the same, no exception whatsoever can be taken in respect of the findings of the trial Court acquitting the accused for the charges under Section 294(b) IPC. As far as the charges under Sections 323 and 324 are concerned, it is true that there has been injuries of the person of PW1 and PW2 in their legs as well as in the palm which *prima-facie* suggest that the injuries are caused by hitting by using canes. But, however, it has to be seen that when the trial Court, considered Ex.D2 and the inconsistency in the evidence of PW1 regarding the factum as to whether or not they suffered injuries during the clash and arrived at a finding extending the benefit of doubt to the respondents/accused, this Court in an appeal against



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acquittal cannot upturn the same unless the same is perverse view or impossible view. The view taken by the trial Court is a possible view and therefore, the same cannot be upturned in an appeal against acquittal. Thus, I find no merits in this appeal.

14. Accordingly, this Criminal Appeal stands dismissed and the Judgment of acquittal passed by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil in C.C.No.51 of 2012 dated 16.02.2015, is confirmed.

**02.02.2023**

Index : Yes / No  
Speaking Order : Yes / No  
ssn

To

1. The District Munsif cum Judicial Magistrate,  
Kattumannarkoil.
2. The Public Prosecutor,  
High Court of Madras.



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**D.BHARATHA CHAKRAVARTHY, J.,**

ssn

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