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Crl.A.No.40 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 07.08.2023**

CORAM:

**The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

**Crl.A.No.40 of 2017**

Palanisamy

...Appellant/Accused No.1

-Vs-

State by,  
The Deputy Superintendent of Police,  
Perundurai Sub-Division,  
Arachalur Police Station,  
Erode, Erode District.  
Crime No.213 of 2015

...Respondent/Complainant

**Prayer:-** Criminal Appeal filed under Section 374 of the Criminal Procedure Code, 1973, to set aside the order of conviction dated 09.12.2016 made in Spl.S.C.No.160 of 2015 on the file of the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode.

For Appellant : Mr.S.Lakshmanasamy  
For Respondent : Mrs.G.V.Kasthuri  
Additional Public Prosecutor

**J U D G M E N T**



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The Appellant is arrayed as Accused No.1 in Spl.S.C.No.160 of 2015 on the file of the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode.

2. The Trial Court, vide impugned judgment dated 09.12.2016, has convicted Appellant/Accused No.1 as follows : -

| Conviction under section                   | Sentence Awarded                                                                                                                           |
|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| Section 307 of the Indian Penal Code, 1860 | To undergo seven years of rigorous imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo six months simple imprisonment. |

3. Brief facts which are necessary for the disposal of this Criminal Appeal, are as follows:-

(a) The Appellant herein, who is the sole Appellant before this Court, the Appellant was tried along with three other Accused. The Three Accused are his own relatives. The father of A1, the mother of A1 and the daughter of A1. The Appellant herein who enjoying agricultural lands of 10 acres. Each 2 acres. The Complainant party is also enjoying some agricultural lands adjacent to the land allotted to the Appellant.



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(b) It is the case of the prosecution that the Appellant herein, as Accused party, had been annexing part of the adjacent land for each cultivating period. Therefore, it is the contention of the prosecution witnesses that their lands had been encroached by the Appellant party. Based on which, the prosecution witnesses had filed the civil suit. After trial, it was decided in favour of the prosecution witnesses.

(c) While so, on the alleged date of occurrence on 22.05.2015. It is the contention of the prosecution witnesses that A1 had let in the cattle to graze on the adjacent land, which was objected to by the prosecution witnesses. When the prosecution witnesses objected the Appellant herein, alleged to have abused them uttering words attracting their caste name and threatened the prosecution witnesses by attacking them with machetes (அருவாள்). Aggrieved by the same, the prosecution witnesses had lodged a complaint under Ex.P1. Based on which, the case was registered.

(d) It is the case of the prosecution that P.W.2, P.W.3 and P.W.4 suffered injuries due to the attack by the A1. The Inspector of Police, Arachalur Police Station, Erode, had on receipt of the complaint



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under Ex.P1, registered the case in Crime No.213 of 2015 for the offences under Section 447 of IPC read with Section 3(2)(va) of SC/ST (POA) Amendment Ordinance, 2014; Section 427 of IPC and Section 3(1)(x) of SC/ST Act, 1989 and 307 of IPC. The Inspector of Police, Arachalur Police Station, Erode, sent copies of the FIR under Ex.P16 to the higher officials. The Superintendent of Police, Erode, had by proceedings under Ex.P17, nominated the Deputy Superintendent of Police, P.W.15-Thiru.M.Baskaran, as the Investigation Officer. He had visited the scene of the occurrence and prepared the observation mahazar under Ex.P2 and rough sketch under Ex.P18 in the presence of witnesses. He had visited the hospital and recorded the statements of the injured witnesses P.W.2 to P.W.4 and obtained statements of the witnesses along with the statements of the doctors P.W.10, P.W.11 and P.W.12, who treated P.W.2 to P.W.4. He had applied to the Tahsildar for caste certificate of the A1 and prosecution witnesses and obtained caste certificates under Exs.P19 to P25 regarding the caste of the A1 and the prosecution witnesses.

(e) After completion of the investigation, P.W-15-Investigation Officer had laid the final report under Section 173 of Cr.P.C. before the



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Court of the learned Judicial Magistrate-II, Erode. The learned Judicial Magistrate-II, Erode, had taken cognizance of the final report on file and numbered it as P.R.C.No.14 of 2015. On appearance of the Accused before the learned Judicial Magistrate-II, Erode, he had furnished copies under Section 207 of Cr.P.C. to the Accused Nos.1 to 4. Since the case is triable by Court of Sessions, the learned Judicial Magistrate-II, Erode had committed the case in P.R.C.No.14 of 2015 to the Court of Sessions under Section 209 of Cr.P.C.

(f) On receipt of P.R.C.No.14 of 2015, the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode, had taken cognizance of the offence and taken the case on file as Spl.S.C.No.160 of 2015.

(g) On hearing the prosecution and the defence, the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode, had framed the charges as follows:

| Number of charges | Charges framed                                                                      |
|-------------------|-------------------------------------------------------------------------------------|
| Charge 1          | Criminal Trespass, knowing that such land belongs to a person, who is the member of |



| Number of charges | Charges framed                                                                                                                                                                                                     |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   | Scheduled Caste or a Scheduled Tribe – <b>under Section 447 of IPC and Section 3(2)(va) of SC/ST Act, 1989 – Against A2 to A4.</b>                                                                                 |
| Charge 2          | Criminal Trespass, knowing that such land belongs to a person, who is the member of a Scheduled Caste or a Scheduled Tribe – <b>under Section 447 of IPC and Section 3(2)(va) of SC/ST Act, 1989 – Against A1.</b> |
| Charge 3          | Mischief causing damage to the amount of fifty rupees or upwards – <b>under Section 427 of IPC – Against A1</b>                                                                                                    |
| Charge 4          | Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view – <b>under Section 3(1)(x) of SC/ST Act, 1989 – Against A1</b>    |
| Charge 5          | Attempt to murder – <b>under Section 307 of IPC – Against A1</b>                                                                                                                                                   |

(h) Therefore, the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode, ordered trial.

(i) To prove the charges, the prosecution had examined witnesses 1 to 15 and marked documents Exs.P1 to P27. After closing of the Prosecution Witnesses, A1 to A4 were examined under Section 313 of the Cr.P.C. A1 to A4 denied the incriminating evidence against them. The case was posted for defence witnesses.



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(j) During trial, A1 to A4 had marked documents in cross-examination of prosecution witnesses as Exs.D1 to D5. No witness was examined on the sides of A1 to A4.

(k) On appreciation of the evidence, the learned Trial Judge had acquitted A2 to A4 from all the charges. A1 alone was convicted for the offence under Section 307 of IPC and sentence of rigorous imprisonment of seven years was imposed. He was acquitted from other charges framed by the learned Trial Judge.

(l) Aggrieved by the judgment of conviction passed by the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode, in Spl.S.C.No.160 of 2015 by judgment dated 09.12.2016, A1 had preferred this Appeal.

4. Learned Counsel for the Appellant submitted that the Appellant is A1 in this case. As per the prosecution evidence of P.W.2 to P.W.4 are alleged to have been attacked by A1. The injuries alleged to have been suffered by P.W.2 are not on the vital parts of the body to attract the ingredients of Section 307 of IPC.



5. Learned Counsel for the Appellant further submitted that injured victims 2 to 4 had not been hospitalized for a long time. The accident register copies were marked as Exs.P9 to P11. Therefore, the judgment of conviction recorded by the learned Trial Judge against A1 under Section 307 of IPC is perverse. Therefore, he seeks to set aside the judgment of conviction recorded against A1.

6. In support of his contention, learned Counsel for the Appellant/Accused No.1 relied on the following rulings:

- a) In the reported ruling of this Hon'ble High Court in the case of ***Velu alias Javelu Vs. State*** reported in ***2004 CriLJ 3783***, it held as follows:

*“Indian Penal Code, 1860, Sections 308 and 324 – Attempt to culpable homicide – Hurt – In a sudden flash of anger Accused hit the bow with iron pipe on the head of injured – Not a case of pre-meditation – Conviction under Section 308 Part Indian Penal Code altered to under Section 324 Indian Penal Code – Sentence reduced to period already undergone (154 days).”*

- b) In the reported ruling of this Hon'ble High Court in the case of ***Haji Wappa Vs. Inspector of Police, Nagore Police Station, Nagappattinam District*** reported in ***2013 (3) MLJ (Criminal) 398***, it held as follows:



*“Indian Penal Code, 1860, Section 307 – Accused charged with the allegation that he refused to pay loan and deliberately attacked the victim and caused serious injury to him – Trial Court convicted Accused for offence of attempt to murder under Section 307 Indian Penal Code- Accused being provoked had attacked the victim suddenly with knife without any premeditation – Attack was not premeditated attack – Victim having survived, Accused would not be liable to conviction under Section 307 – Conviction and sentence imposed by Trial Court under Section 307 set aside and convicted under Section 308 of one year R.I. and fine – Criminal Appeal partly allowed.”*

7. Learned Additional Public Prosecutor appearing for the Respondent Police by way of reply objected to the submission of the learned Counsel for the Appellant, stating that there are sufficient materials to convict A1 for the offence under Section 307 of IPC. The A1 is alleged to have uttered words that he would finish them off and had attacked with machetes (அருவாள்).

8. The learned Additional Public Prosecutor invited the attention of this Court to the evidence of P.W.2, P.W.3, P.W.4, the injured witnesses and the evidence of the doctors, P.W.10, P.W.11 and P.W.12, as well as to the accident register marked as Exs.P9 to P11. The wound certificate issued to P.W.2 under Ex.P12, the wound certificate issued to P.W.3 under Ex.P13 and the wound certificate issued to P.W.4 under Ex.P14. The x-rays were



also marked during the course of the trial as Exs.P6 to P8. It is the submission of the learned Additional Public Prosecutor that all three injured victims had suffered fractures. Also, the learned Additional Public Prosecutor invited the attention of this Court to the discussion made by the learned Trial Judge in para 42 of the judgment. Therefore, it is the contention of the learned Additional Public Prosecutor that the judgment of conviction recorded by the learned Trial Judge is a well-reasoned judgment that does not warrant any interference by this Court.

9. **Point for consideration:**

***Whether the judgment of conviction recorded by the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode, in Spl.S.C.No.160 of 2015 dated 09.12.2016 is perverse, warranting any interference by this Court and is to be set aside?***

10. As per the powers of the Appellate Court, the entire material available before the learned Trial Judge has to be assessed. At the same time, if the judgment of the Trial Court is based on proper appreciation of evidence, the Appellate Court shall not disturb the finding recorded by the learned Trial Judge, even if on the same set of evidence a different view is available to the Appellate Court. This is due to the fact that the learned Trial Judge had the advantage of observing the demeanour of the witnesses,



which is not available to the Appellate Court.

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11. By invoking the very same principle, it is found that as per the evidence of the Doctors and as per the medical certificate under Exs.P9 to P14, the injuries found on the bodies of the victims, P.W.2 to P.W.4 are not found on the vital parts of the body, causing danger to the life of P.W.2 to P.W.4. Therefore, merely uttering the word that he will finish them off and causing harm with machetes was taken as offence under Section 307 of IPC by the learned Trial Judge to arrive at the conclusion.

12. In cases of this nature, while framing charges, there is a possibility of arriving at a different conclusion or convicting the A1 for a lesser offence after completion of trial. Therefore, by framing charges, alternate charges are also framed by the Trial Courts. Here, in this case, the learned Trial Judge had not framed alternate charges to convict the A1 for lesser offences. On perusal of the materials available before the Trial Court it is found that the injuries suffered by the victims, P.W.2 to P.W.4 are on the arms. Therefore, they had been hospitalized not for a long time. They have been treated for a short time. The doctors who treated them were not examined and these materials had to be considered by the learned Trial



Judge with the very same set of facts. **Instead of Section 307 of IPC, this**

**Court convicts the A1 for the offence under Section 326 of IPC.**

13. Section 326 of the Indian Penal Code, 1860, read as follows:

***“326. Voluntarily causing grievous hurt by dangerous weapons or means—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”***

14. In the light of the above discussion, offence under Section 326 of IPC was also attracted for the same punishment as Section 307 of IPC. On consideration of the submission of the learned Counsel for the Appellant that there are no previous cases, the period already undergone in the imprisonment by A1 from 23.05.2015 to 03.07.2015 and 09.12.2016 to 24.03.2017 is treated as period of imprisonment.

15. Accordingly, the Appellant/A1 is ordered to be enlarged on



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**bail under the Probation of Offenders Act, 1958. He shall execute the bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties each for a like sum to the satisfaction of the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode. He shall execute a bond for good behaviour for three years. If he violates the condition, he will be sentenced to three years in prison for another three years. The Appellant/Accused No.1 shall surrender within fifteen days from the date of receipt of a copy of this order. Since the Appellant/Accused No.1 was only convicted for IPC offence and the Appellant as well as prosecution witnesses are beneficiaries of assigned lands as per the prosecution case, compensation cannot be invoked from the Appellant for the injuries suffered by the victims. Therefore, the Legal Services Authority, Erode, shall conduct enquiry and pay compensation to the victims – P.W.2 to P.W.4 who suffered injuries as per the prosecution case. Each victim shall be paid not less than Rs.1,00,000/- from the Victim Compensation Fund within a reasonable period of three months from the date of receipt of copy of this order. The Respondent Police, Arachalur, shall assist the Legal Services Authority, Erode, to identify the victims and for payment of compensation under the Victim**



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**Compensation Act.**

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16. With the above direction, the Appeal stands **disposed of**.

**07.08.2023**

cda

Index : Yes/No

Speaking/Non-speaking order

To

- 1.The Principal Sessions Judge,  
Special Court for Scheduled Castes and Scheduled Tribes  
(Prevention of Atrocities) Act, 1989,  
Erode.
- 2.The Deputy Superintendent of Police,  
Perundurai Sub-Division,  
Arachalur Police Station,  
Erode, Erode District.
- 3.The Legal Services Authority,  
Erode.
- 4.The Public Prosecutor,  
High Court, Madras.



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**SATHI KUMAR SUKUMARA KURUP, J.,**

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