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Crl.A.(MD).No.116 of 2017

IN THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.09.2023

PRONOUNCED ON : 20.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

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Muthupandi S/o. Krishnan

... Appellant

Vs.

1. The State represented by:-
The Deputy Superintendent of Police
Oomatchikulam Sub-Division,
Madurai.

2. The State represented by:
The Inspector of Police,
Othakadai Police Station,
Madurai.

[Crime No.411 of 2013]

... Respondents

PRAYER: Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, praying to set aside the Judgment and conviction and the sentence imposed on the appellant in Special S.C. No.94 of 2015 [P.R.C. No.45 of 2013] on the file of the learned III Additional District and



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Sessions Judge (PCR), Madurai dated 17.03.2017 and acquit the accused by allowing this Criminal Appeal.

For Appellant : Mr. D. Ramesh Kumar

For Respondent : Ms. M. Aasha, Government
Advocate (Criminal
Side).

ORDER

This Criminal appeal in Crl. A(MD) No.116 of 2017 has been preferred by the appellant as against the Judgment and conviction passed by the learned III Additional District and Sessions Judge (PCR), Madurai in Special S.C. No.94 of 2015 dated 17.03.2017, wherein before the Trial Court, the accused has been charged for the offences under Sections 448 and 376 r/w 511 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. The Trial Court had acquitted this sole accused / appellant for the offences under Section 376 r/w 511 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The accused was convicted for the offences under Sections 448 and 354 of IPC and sentenced to undergo 6 months of Rigorous Imprisonment and to

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pay a fine amount of Rs.500/- and in default of payment of fine, to undergo

1 month of simple imprisonment for the offence under Section 448 of IPC

and also sentenced to undergo 3 years of Rigorous Imprisonment and also to

pay a fine amount of Rs.2,000/- and in default of payment of fine, to

undergo one month of Simple Imprisonment for the offence under Section

354 of IPC and both the sentences run concurrently. As against the above

said Judgment and conviction, the present appeal has been filed by the sole

accused / appellant.

3. The case of the prosecution is that the victim belongs to Hindu Scheduled Caste community and the accused belongs to Hindu non-Scheduled Caste community and both are residing in the same place. While so, on 17.08.2013 at about 11 a.m., when the victim along with her daughter were sleeping in her house, the accused had trespassed into her house and laid down on the victim. When the victim had shouted, the accused ran away from the place of occurrence and again after some time, the accused came to the house of the victim and abused the victim using filthy language by saying that “உன் கூட படுக்கத் தாண்டி வந்தேன் பறத் தேவடியா”.



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3.1. Thereafter, the victim had narrated about the incident to her husband and after three days, the victim along with her husband went to the police station and gave a complaint, Ex.P.1 and based on the said complaint, PW9 had registered the F.I.R., Ex.P.4 on the file of Madurai Othakadai Police Station in Cr. No.411 of 2013. Thereafter PW10 was appointed as an Investigating Officer and he examined the witnesses and recorded their statements and collected some documents. Thereafter, PW11 had taken over the case as he was appointed as an Investigation Officer to investigate the case further and he filed an alteration report and thereafter he had filed the final report before the Trial Court stating that the accused has committed the offences under Sections 448 and 376 r/w 511 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Then, after furnishing the copies to the accused under Section 207 of Cr.P.C. and after completing the legal formalities, the case was committed to the Special Sessions Court.

3.2. The Special Sessions Court, after hearing both sides, had framed charges under Sections 448 and 376 r/w 511 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.



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The accused had denied the said charges and thereby, the prosecution had examined PW1 to PW11 and marked Ex.P.1 to Ex.P.8. On the side of accused, no witness was examined and no document was marked. After completion of prosecution side evidences, the trial Court had examined the appellant / accused u/S.313(1)(b) of Cr.P.C. with regard to the incriminating evidence adduced against him, during the course of trial and the same was also denied by the accused as false.

3.3. After analysing the entire evidence adduced and upon hearing both sides, the trial Court

3.3.1) convicted the accused as found guilty of offences under Sections 354 and 448 of IPC; and

3.3.2) acquitted the accused as not found guilty of offences under Section 376 r/w 511 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4. Aggrieved upon the above said Judgment and conviction, the present appeal has been filed by the sole accused on the following grounds:-

4(i) The Judgment and conviction of the Trial Court is contrary



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to law, weight of evidence and probabilities of the case.

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4(ii) The Judgment of the Trial Court is based only on presumption, surmises and conjectures, which are not relevant to the facts and circumstances of the case.

4(iii) The Trial Court has failed to appreciate the fact that the material witnesses were not supported the case of prosecution.

4(iv) The Trial Court has failed to appreciate the fact that no independent witnesses were examined on the side of the prosecution.

4(v) The Trial Court has failed to appreciate the fact that there is an enormous and unexplained delay in preferring the complaint.

4(vi) The Trial Court has failed to appreciate the fact that the



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prosecution failed to prove the case beyond reasonable doubt and failed to establish the reason for delay in preferring the complaint, which cause serious doubt over the case of the prosecution.

4(vii) The Trial Court has failed to appreciate the fact that there is material contradictions between the prosecution witnesses and exhibits.

4(viii) The Trial Court has failed to appreciate the evidence of prosecution witnesses that there is no cogent and continuity of evidence to bring home the offence as against the appellant, since there are no circumstances and materials were brought before the Court of Law to convict the appellant.

4(ix) There is no circumstantial evidence which implicates the present appellant in this case and hence the Judgment is liable to be set aside.

4(x) The other reasons assigned by the trial Court for convicting the accused are highly unsustainable, improbable



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and liable to be set aside.

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5. The learned counsel appearing for the appellant would contend that the appellant has not committed any offence and he has been falsely implicated in this case. There is a dispute between the husband of the victim and the appellant with regard to the work and hence this false complaint has been lodged by the victim against the appellant. Even according to the complaint, the offences under Section 354 and 448 of IPC are not made out and the Trial Court has failed to consider that there are major contradictions between the evidence of PW1 and the complaint given by her. PW2, who is the eye witness of the occurrence has not stated anything about the alleged attempt to commit rape and she has only stated about the wordy quarrel between the victim and the accused and further the Trial Court has also acquitted the accused for the offences punishable under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 376 r/w 511 of IPC and in order to attract the ingredients of Section 354 of IPC, there is no sufficient evidence adduced on the side of prosecution and hence the evidence adduced by the prosecution witnesses are highly suspicious and the Trial Court has failed to



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consider the same and wrongly convicted the accused and thereby the Judgment and conviction passed by the Trial Court are liable to be set aside and the accused is entitled for acquittal by allowing this appeal.

6. The learned Government Advocate (Criminal Side) appearing for the respondents would contend that, in this case, when the victim was sleeping in her house along with her child, the accused has trespassed into the house of the victim and attempted to commit rape by lying on her and when she shouted, the accused left from the place of occurrence and thereafter, again he came there and abused her using filthy language by saying the caste name and also threatened her, thereby the accused has been charged for the offences punishable under Sections 448 and 376 r/w 511 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

6.1. In order to prove the charges levelled against the accused, the prosecution has examined PW1 to PW11 and marked Ex.P.1 to Ex.P.8. PW1 is the defacto complainant as well as the victim and she has



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categorically deposed about the occurrence and PW2, who is the daughter of the victim has also corroborated the evidence of PW1 and other witnesses have also deposed in support of the prosecution side and thereby, the Trial Court has rightly convicted the accused for the commission of offences punishable under Sections 448 and 354 of IPC and therefore, the present appeal is liable to be dismissed.

7. Heard both sides and perused the entire materials available on record, the Judgment passed by the Trial Court and the grounds of appeal.

8. Now the points for determination in this appeal are:

8(i) whether the prosecution has proved the charges levelled against the accused for the offences punishable U/s.448 and 354 of IPC beyond all reasonable doubts and

8(ii) whether the judgment and conviction passed by the trial Court in Special S.C. No.94 of 2015 are sustainable in law and on facts.



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9. **Points:-** The case of the prosecution is that the accused belongs to

Hindu non-Scheduled Caste community and the victim belongs to Hindu Scheduled Caste community and both are residing in the same place. On 17.08.2023 at about 11 a.m., when the victim along with her daughter were sleeping in her house, the accused had trespassed into her house and laid down on the victim. Immediately when the victim had shouted, the accused had left away the place of occurrence and after some time, again the accused came to the house of the victim and abused the victim using filthy language and by saying her caste name that “உன் கூட படுக்கத் தாண்டி வந்தேன் பறத் தேவடியா”. Thereby, the accused has committed the offences punishable under Sections 448, 376 r/w 511 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

10. In this case, the Trial Court has framed charges for the offences punishable under Sections 448 and 376 r/w 511 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. No charge has been framed for the offence punishable under Section 354 of IPC. However, the trial Court has convicted the accused for the offence under Section 354 of IPC. In order to prove the charges levelled



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against the accused, on the side of prosecution, PW1 to PW11 were examined and Ex.P.1 to Ex.P.8 were marked.

11. In this case, PW1 is the victim as well as the defacto complainant. She has deposed before the trial Court that “on 17.08.2013, she along with her daughter, were sleeping by keeping one side of the door opened. By the time around 11 to 11.30 a.m., the accused came into the house and laid down on her. Immediately she shouted. Thereafter her daughter called the neighbour Chitra and shouted. Immediately when the said Chitra shouted, the accused left from the place of occurrence. Again after some time, the accused came there and abused the accused by saying her caste name that “உன் கூட படுக்கத் தாண்டி வந்தேன் பறத் தேவடியா”. Since her husband was went for work, after the arrival of her husband, she narrated the same to him and thereafter they complained about the same before the parents of the accused and thereafter on 21.08.2013, they went to the police station and gave a complaint, Ex.P.1”. On perusal of Ex.P.1, it reveals that “on the date of occurrence ie., on 17.08.2013, when the defacto complainant was sleeping at around 11.00 a.m., the accused laid on her and immediately she shouted. Then he ran away. After some time, again the accused came



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there and abused her by saying her caste name that “உன் கூட படுக்கத் தாண்டி வந்தேன் பறத் தேவடியா”. Immediately, she called her neighbour Chitra, then the accused ran away”. Therefore, there are major contradictions between the evidence of PW1 and her complaint with regard to the manner of occurrence.

12. According to the complaint, the accused came into the house of the victim and laid on her and after her shouting, he left from the place and again he came to the place of occurrence and also abused her by telling her caste name and at that time, she raised alarm and called her neighbour Chitra and immediately, the accused ran away. But according to the evidence of PW1, on the date of occurrence, the accused entered into the house and laid on the victim and she shouted and her daughter also called the neighbour Chitra, immediately the said Chitra came there and shouted and then the accused ran away from the place and again he came to the place of occurrence. Therefore the evidence of PW1 is totally contrary to the complaint given by her with regard to the manner of occurrence. Therefore a reasonable doubt would arise as to whether the occurrence had happened as alleged by PW1. Further Ex.P.1., complaint was not given



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immediately after the occurrence. There is a delay of 4 days in lodging the complaint and there is no proper explanation for the said delay. This also creates a serious doubt over the prosecution case.

13. Further PW2, who is the daughter of the victim and said to be an eye witness of the occurrence, has stated in her evidence that “she along with her mother were sleeping at the time around 11/12 a.m., the accused in a drunken mood, made quarrel and also abused by saying the caste name and using filthy language. Immediately they called the neighbour Chitra and thereafter the accused ran away from the place of occurrence”. The evidence of PW2 is totally contrary to the evidence of PW1 with regard to the manner of occurrence.

14. PW3 is the husband of PW1 and he is not an eye witness and he deposed about the thing that he went along with PW1 to give complaint and apart from that, he has not stated anything about the occurrence. PW4 is an attesting witness in the Observation Mahazar and Rough Sketch. PW5 is the neighbour of the victim and as per the prosecution case, the victim called PW5 at the time of occurrence and she also went there and scolded



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the accused and he ran away. But PW5 in her evidence has stated that “three years ago, at about 10.00 a.m., PW1 called her by stating that the accused had made quarrel with her and immediately, she went to the house of the victim and at that time, the accused was scolding the victim. PW2 also called her. She stated that the accused misbehaved with PW1 and thereby she also shouted the accused. But PW5 herself has not stated about the words spoken by the accused. PW5, in one place, has stated that PW1 shouted by calling her that the accused was scolding. In another place, she has stated that PW1 called her by saying that the accused had misbehaved with her. Therefore, the evidence of PW5 is highly doubtful and it is not sufficient to prove the case of the prosecution.

15. The prosecution case is that the accused had attempted to commit rape on the victim but the available evidence does not disclose that the accused attempted to commit rape on the victim. PW1, in her cross examination, admitted that, on 17.08.2013, there was a quarrel between her husband and the accused while they were working in the Quarry and further she has stated that during the course of occurrence, she along with her daughter were not sleeping. PW2 has also, in her evidence, stated that they



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were not sleeping. Therefore, when PW1 and PW2 were not sleeping at the time of occurrence, how it is possible to commit such an act as alleged by PW1 and also when the daughter of PW1 was along with PW1. Therefore, a reasonable doubt would arise as to whether the occurrence was happened, as alleged by the prosecution. The Trial Court has also acquitted the accused as not found guilty of offences under Sections 376 r/w 511 of IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

16. The Trial Court has convicted the accused as found guilty of offences under Sections 448 and 354 of IPC. In order to find that whether the act of accused attracts the ingredients of Section 354 of IPC, the extracted portion is given hereunder:-

354. Assault or criminal force to woman with intent to outrage her modesty — Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Therefore from bare reading of the Section 354 of IPC, it reveals that



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in order to attract the provisions of Section 354 of IPC, the accused should assault or use criminal force to woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty.

16.1. There is no sufficient evidence to prove that the accused had outraged the modesty of PW1. According to prosecution side, the accused had laid on PW1, but the evidence of PW1 and PW2 are not sufficient to prove the same and that they were not sleeping. While so, how it is possible to commit such act by the accused. Further as per evidence of PW1, the accused laid on her and after she shouted, he ran away, then again the accused came there and abused caste name, but the evidence of PW2 is that the accused with a drunken mood abused the caste name and the evidences are totally contra to the complaint, Ex.P.1, in respect of manner of occurrence. Therefore, there is no evidence that the accused outraged the modesty of PW1 as described under Section 354 of IPC. Thereby, the prosecution has failed to prove the charge levelled against the accused for the offence under Section 354 of IPC.

17. As far as offence under Section 448 of IPC is concerned, Section



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448 of IPC reads as follows:

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448. Punishment for house-trespass — Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or which may extend to one thousand rupees, or with both.

17.1. Section 442 of IPC defines the house trespass as follows:-

— Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house trespass"

17.2. The criminal trespass is defined in Section 441 of IPC.

441. Criminal trespass — Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

17.3. Therefore from the above provisions, it is clear that in order to attract the offence under Section 448 of IPC, the prosecution has to prove the house trespass, as defined under Section 442 of IPC and in order to



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attract the house trespass, the prosecution has to prove the criminal trespass and in order to prove the criminal trespass, the accused has to enter into the property in the possession of another with an intent to commit offence or to intimidate or insult or annoy, but in this case, there is no evidence to prove that the accused had entered into the house of the victim with an intention to commit such criminal offense or intimidate, insult or annoy PW1 with an intent to commit such offence.

17.4. In this context, the PW5 has stated that when she went to the house of the victim, the accused, who was outside in front of the house of the victim, had scolded the victim. While so, a reasonable doubt would arise as to whether the accused had really entered into the house of the victim or not. In order to attract the ingredients of Section 448 of IPC, the prosecution has to prove the house trespass. Once the offence under Section 354 of IPC is not proved, the question of Section 448 of IPC would not attract, because the house trespass will attract entry into the house with intent to commit any offence or intimidate or insult. But the Trial Court, failed to consider the above said aspects and wrongly came to the conclusion that the prosecution has proved the charges levelled against the



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accused for the offences under Sections 448 and 354 of IPC beyond all reasonable doubts.

18. The Trial Court, in its judgment, held that since the victim being a lady, she may hesitate to give complaint with regard to the offence committed by the accused. But at the same time, failed to consider that the said occurrence was known to the neighbour and the husband of the victim also came to know about the occurrence on the same day, inspite of that the complaint was not given on the same day of occurrence. There was a delay of 4 days in lodging the complaint. Therefore, the Trial Court had wrongly came to the conclusion that the accused laid on the victim, but failed to consider that when 9 years old child was along with the victim, how it is possible to commit such offence and further the Trial Court failed to consider that the evidence of PW1 is not cogent and her evidence is contra to the complaint and highly doubtful. Therefore, the Judgment and conviction passed by the Trial Court in Special S.C. No.94 of 2015 are unsustainable and hence the same are liable to be set aside.

19. In the result, this Criminal appeal is allowed and the Judgment and conviction passed by the Trial Court in S.C. No.94 of 2015 dated

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17.03.2017 on the file of the learned III Additional District and Sessions

Judge (PCR), Madurai are hereby set aside and the accused is acquitted from the charges U/s.448 and 354 of IPC and he, be set at liberty subject to other cases, if any. The bail bonds executed by the accused shall stand cancelled. The fine amount, if any paid by the accused, shall be refunded.

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Index : Yes / No

Internet : Yes / No

Neutral Citation Case :Yes/No

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To

1. The III Additional District and Sessions Judge (PCR),
Madurai District.
2. The Deputy Superintendent of Police
Oomatchikulam Sub-Division,
Madurai.
3. The Inspector of Police,
Othakadai Police Station,
Madurai



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