



Crl.A.(MD)No.185 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.08.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. A.(MD)No.185 of 2017

Veeramuthu

.. Appellant

Vs.

1.State

rep. by the Assistant Commissioner,
Tallakulam (L& O) Division,
Madurai City.

2.State,

Rep. by the Inspector of Police,
Koodalpudur Police Station,
Madurai City.

(Crime No.413 of 2015)

.. Respondents

Prayer : This Criminal Appeal is filed under Sections 374 of Cr.P.C., to call for the records of the learned III Additional District and Sessions Judge (PCR), Madurai in Spl.S.C.No.41 of 2016 and to set aside the judgment and conviction dated 14.06.2017 and acquit the appellant.

For Appellant
For Respondents

: Mr.M.Prabhakaran
: Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



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JUDGMENT

WEB COPY This appeal has been filed by the appellant to set aside the judgment and conviction passed in S.C.No.41 of 2016 dated 14.06.2017, on the file of the learned III Additional District and Sessions Judge (PCR), Madurai wherein a case in Crime No.413 of 2015 for the offence under Sections 294(b), 324 of IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was filed as against the appellant. The trial Court convicted the appellant for the offence under 294(b) and 324 of IPC and sentenced him to pay a fine of Rs.500/- in default to undergo seven days simple imprisonment under Section 294(b) of IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs. 1,000/- in default to undergo one month simple imprisonment for the offence under Section 324 of IPC and the appellant was acquitted from the offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, by a judgment, dated 14.06.2017. Aggrieved by the said judgment, this present Criminal Appeal is filed.

2. According to the prosecution case, on 27.06.2015 at about 10.15 p.m., when the defacto complainant standing in front of his friend's house at that time, the appellant shouted and abused the defacto complainant in his caste name and in filthy language and thereby, there was wordy quarrel between them and the accused pelted



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stones towards the defacto complainant and he sustained injury on his forehead and thereby, committed offence under Sections 294(b), 324 and 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. After filing the final report, the copies of records relied on by the prosecution were furnished to the accused under Section 207 of Cr.P.C. After appearance of accused, the case was committed before the III Additional District and Sessions (PCR) Court as per Section 209 of Cr.P.C. The appellant appeared before the trial Court and the trial Court framed charges for the offences under 294(b), 324 and 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. After framing charges, the charges were read over and explained to the accused but the accused denied the charges.

3.The prosecution had examined P.W.1 to P.W.14 and marked Exs.P.1 to P.10 and marked M.O.1. On the side of the accused, no one was examined and no document was marked. After examination of prosecution witnesses, the accused was examined under Section 313(1)(b) of Cr.P.C., and he denied the evidences.

4.Upon perusing the oral and documentary evidences, the trial Court found the appellant guilty for the offence punishable under Sections 294(b) and 324 of IPC. The appellant was convicted under Section 294(b) of IPC and sentenced him to pay a



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fine of Rs.500/- in default to undergo seven days simple imprisonment and the appellant was convicted under Section 324 of IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment and the appellant was acquitted from the offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, by a judgment, dated 14.06.2017.

5. Aggrieved by the said judgment and conviction, the appellant has preferred this present appeal on the following grounds:-

The judgment and conviction of the trial Court is contrary to law, weight of evidence and probabilities of the case. The trial Court failed to appreciate the fact that stone, by which P.W.1 was attacked is not clearly mentioned in the complaint Ex.P1. The trial Court failed to analysis the evidence given by the prosecution witnesses in the proper manner. The trial Court failed to consider that the prosecution failed to register the accident register. There are so many discrepancies in the prosecution case and the same was not considered by the trial Court.

6. The learned counsel appearing for the appellant contended that the date of occurrence is 27.06.2015 and the FIR was registered on the next day. There is a delay and the delay has not been properly explained by the prosecution. There are



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major discrepancies between the prosecution evidences with regard to place of occurrence and recovery of material object and the injury sustained by the appellant.

Immediately the appellant went to hospital for taking treatment but the said accident register has not been marked and the same was not seized by the Investigating Officer. Further lodging of complaint itself creates doubt over the prosecution and according to P.W.1 and P.W.13, the complaint was obtained in the hospital and according to P.W.14, the complaint was lodged before the police station. These discrepancies were not taken into consideration by the trial Court. Further the recovery of M.O.1 creates doubt over the prosecution case. According to the complaint, the occurrence took place in front of the gate but in the rough sketch, M.O.1 was recovered in the side gate. Therefore, the prosecution case is highly doubtful. The appellant is entitled for acquittal and the judgment and conviction passed by the trial Court is liable to be set aside by allowing this appeal.

7.The learned Government Advocate appearing for the respondents has submitted that in this case, P.W.1 is victim as well as the defacto complainant and he categorically deposed about the obscene words uttered by the appellant and injury sustained by him and M.O.1 was also recovered from the place of occurrence. P.W.1 also identified the M.O.1 before the Court and the evidence is sufficient to prove the alleged occurrence. The evidence of P.W.1 is reliable and acceptable. The other



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witnesses turned hostile. The Investigating Officer also clearly deposed about the registration of the FIR and proper investigation done by him. M.O.1 also recovered by the Investigating Officer and thereby, the charges under Sections 294(b) and 324 of IPC are clearly proved and the trial Court also after taking into consideration of all the evidences, correctly convicted the appellant and thereby, the appeal is liable to be dismissed.

8.Upon hearing both sides and perusing the records and grounds, the points for determination in this appeal is whether the prosecution has proved the charges against the appellant under Sections 294(b) and 324 of IPC beyond reasonable doubt and the judgment and conviction passed by the trial Court are sustainable in law and facts.

Point:-

9.The prosecution case is that the appellant abused the defacto complainant in obscene words and assaulted the defacto complainant with stone and thereby, he sustained injury. In order to prove the injury, the victim P.W.1 was examined and he deposed that P.W.1 in his evidence stated that on 27.06.2015, at about 10.15 p.m., when he along with his friends were talking, the appellant abused him in caste name and pelted stone towards him and thereby, he sustained injury. Thereafter, he was



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admitted in Lakshmi Hospital. Further P.W.12, doctor was examined and he stated before the trial Court that on 27.06.2015, at about 10.45 p.m., one Indira Dhanush Rajan i.e. P.W.1 was admitted in the hospital for the injury sustained by him and he was admitted as in patient' and he sustained contusion on his forehead 5x1 cum lacerated wound on the forehead. Wound certificate, Ex.P5 was also marked. Therefore from the evidence of P.W.1, it reveals that the accused abused in filthy language (பள்ளப் பயல்களே தேவிடியா பயலே) and pelted stone on his forehead and he sustained blood injury and the blood was also found on the earth. According to the petitioner, there was blood strains in his shirt and the same was seen by the Police. But the said blood strained shirt and the blood strained earth from the place of occurrence were not seized by the police.

10.Further the P.W.1 in the cross examination, it is stated that Ex.P1 was written by him and the same was presented before the police. The complaint, Ex.P1 reveals that the petition was received on 23.06.2015 at about 07.15 hours and no reference in the complaint as about the blood strains in the shirt. As per evidence of P.W.1, he gave a written complaint and at that time, his shirt was blood strained and the Police also seen the blood strained shirt. But the complaint was given on the next day and no reference about the shirt and the Investigating Officer also not recovered the alleged blood stained shirt. Further the P.W.1 in his cross examination stated that



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he informed to Police that he sustained injury with 8 sutured wounds, but the medical evidence is contra to the evidence of P.W.1. Ex.P5 and evidence of P.W.12 does not reveal the depth of wound and only mentioned as 5x1 cm lacerated wound. Therefore, the reasonable doubt would arise as to whether the occurrence was happened as alleged by P.W.1.

11.Further P.W.13 who received the complaint, in his evidence stated that on 23.06.2015 at about 07.15 a.m., when he was incharge of the station, at that time, P.W.1 lodged a complaint. In the cross examination, the Investigating Officer P.W. 14 stated that during his investigation, P.W.13 stated that he went to hospital and obtained the complaint. In this context, the P.W.14 in his cross examination stated that வழக்கை பதிவு செய்த உதவி ஆய்வாளர்.... மருத்துவமனை சென்று புகார், பெற்றதாக சார்பு ஆய்வாளர் கூறினார். Therefore, the lodging of the complaint itself creates serious doubt over the prosecution case.

12.According to the prosecution, M.O.1 was recovered by the Investigating Officer. But there is no reference either in the evidence of P.W.14 or recovery of mahazer as to how the M.O.1 was identified. This also creates serious doubt over recovery of M.O.1.



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13. Further according to P.W.14, the P.W.1 during his investigation stated that he was assaulted with brick but in the complaint and chief examination stated that he was assaulted with stone. As per evidence of P.W.1 and FIR, there is no reference about the kind and nature of stone. Therefore, there are major discrepancies over the prosecution case. Further even according to the complaint and evidence of P.W.1, there is reference about the community name and abuse of obscene words. But the trial Court disbelieved the version and acquitted the accused under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. But unfortunately convicted the accused for the offence under Sections 294(b) and 324 of IPC. Once the appellant is acquitted from the charges under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the trial Court ought to have extended the benefit of doubt to other offences also. The prosecution has failed to seize the medical records i.e., AR copy from the concerned hospital and the concerned hospital authority also did not inform to the police about the admission of victim in the hospital, when the defacto complainant sustained injury. The concerned medical authority who failed to inform the case to the police would arise serious doubt over the prosecution case.

14. As far as offences under Sections 294(b) and 324 of IPC are concerned, the lodging of complaint itself creates a serious doubt and there is a delay of one day



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in lodging complaint and the obscene words mentioned in the complaint are differ from the evidence of P.W.1. Further as per evidence of P.W.1, he sustained blood injury and his shirt was also blood strained and the blood strained shirt was also seen by the police but the police have not seized the said shirt. The Investigating Officer seized the M.O.1 from the place of occurrence but no evidence as to how the Investigating Officer identified the stone. According to complaint, the occurrence took place near to the front gate, but as per Ex.P8, the occurrence took place at back side gate and M.O.1 was also seized from the backside gate. These are all creates serious doubt over the prosecution case, but the trial Court failed to consider the said major discrepancies and wrongly came to conclusion that the charges levelled against the accused under Sections 294(b) and 324 of IPC were proved. Therefore, with the available evidence, it is unsafe to convict the accused. The prosecution failed to prove the charges levelled against the accused beyond reasonable doubt. Thereby, the appellant is entitled for acquittal by giving benefit of doubt. Therefore, the judgment and conviction imposed by the III Additional District and Sessions Judge (PCR), Madurai for the offences under Sections 294(b) and 324 of IPC are not legally sustainable and are liable to be set aside.

15.In the result, the Criminal Appeal is allowed and the judgment and the conviction passed as against the appellant in S.C.No.41 of 2016 dated 14.06.2017 by



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the learned III Additional District and Sessions Judge (PCR), Madurai is set aside and the appellant is acquitted from the charge under Sections 294(b) and 324 of IPC and he be set at liberty subject to other cases if any. The bail bond if any executed by the appellant shall stand cancelled. The fine amount if any paid by the appellant to be returned.

02.08.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Mrn

To

- 1.The III Additional District and Session Judge, Madurai.
- 2.The Assistant Commissioner,
Tallakulam (L& O) Division,
Madurai City.
- 3.The Inspector of Police,
Koodalpudur Police Station,
Madurai City.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

Mrn

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