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CRL. A. Nos.116-858/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
25.06.2024 & 03.07.2024	04.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NOS. 116 & 858 OF 2022

C.A. NO. 116 OF 2022

1. Ramanathan
2. Kolanji
3. Karpagavalli

.. Appellants

- Vs -

The State, rep. by
The Inspector of Police
All Women Police Station
Vridhachalam.

.. Respondent

C.A. NO.858 OF 2022

C.Bhavani

.. Appellant

- Vs -

1. The State, rep. By
The Inspector of Police



CRL. A. Nos.116-858/2022

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All Women Police Station
Vridhachalam.

2. Velmurugan
3. Suresh

.. Respondents

C.A. No.116 of 2002 filed u/s 374 Cr.P.C. praying to set aside the judgment of conviction imposed in S.C. No.49/2021 dated 10.12.2021 by the learned Sessions Judge, Mahila Court, Cuddalore, insofar as Charge Nos.4 & 5 are concerned.

C.A. No.858 of 2002 filed u/s 372 Cr.P.C. praying to set aside the judgment of acquittal passed by the learned Principal District & Sessions Court, Cuddalore, in Sessions Case No.49/2021 dated 10.12.2021 and convict the 1st accused/2nd respondent for the offence u/s 341, 366,376 and 294 (b) IPC and also convict the 2nd accused/3rd respondent u/s 341 and 366 IPC and allow this appeal.

For Appellants	:	Mr. R.Sankarasubbu in CA 116/2022 Mr. S.Saravanakumar in CA 858/2022
For Respondents	:	Mrs. G.V.Kasthuri, APP for sole respondent in CA 116/2022 & for R-1 in CA 858/2022 No Appearance for RR-2 & 3 in



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COMMON JUDGMENT

While the conviction and sentence imposed on the appellants herein, who were arrayed as A-3, A-4 and A-5 by the learned Sessions Judge, Mahila Court, Cuddalore, is put in issue before this Court by filing C.A. No.116/2022, as against the acquittal recorded against A-2 in toto and against A-1 for the offences u/s 341, 366, 376, 294 (b) IPC, the defacto complainant/P.W.1 has filed C.A. No.858/2022.

2. The 1st accused/2nd appellant in C.A. No.858/2022 had also filed appeal in C.A. No.137/2022, but pending the appeal, as the said appellant passed away, this Court, vide judgment dated 18.06.2024, had dismissed the said appeal as abated. However, as the facts in present appeals and the appeal in C.A. No.137/2022 are intrinsically connected, being common, for the purpose of arriving at a just decision, the case of A-1, who is the appellant in C.A. No.137/2022, which has since been dismissed as abated, is also discussed.

3. Since both the appeals arise out of the same transaction, which culminated in S.C. No.49/2021, both the appeals, though listed on two different dates and heard separately, are being disposed of by this common judgment.



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4. The appellants, along with two other accused, who were arrayed as A-1 and A-2, were charged for the following offences :-

S. No.	Array of Accused	Section of Offence Charged
1	A-1	U/s 341, 366, 376, 294 (b) & 323 IPC U/s 4 of TN Prohibition of Harassment of Woman Act
2	A-2	341 & 366 IPC
3	A-3 to A-5	294 (b) & 323 IPC

5. After trial, the trial court, while acquitted A-2 of all the charges framed against him, however, found A-1 and A-3 to A-5 guilty of the following offences and they were convicted and sentenced as under :-

S. No.	Array of Accused	Section of Offence Charged
1	A-1	Convicted u/s 323 IPC & sentenced to simple imprisonment for a period of four months together with a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of two weeks. Convicted u/s 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and sentenced to simple imprisonment for a period of two years



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		and six months together with a fine of Rs.15,000/-, in default to undergo simple imprisonment for a period of six months.
2	A-3 to A-5	Convicted u/s 323 IPC & sentenced to simple imprisonment for a period of four months together with a fine of Rs.1,000/- each, in default to undergo simple imprisonment for a period of two weeks. Convicted u/s 294 (b) IPC & sentenced to simple imprisonment for a period of three months together with a fine of Rs.2,000/- each, in default to undergo simple imprisonment for a period of two weeks.

6. The sentences were directed to run concurrently and the period of incarceration already undergone by the accused were directed to be set off u/s 428 Cr.P.C. Aggrieved by the said conviction and sentence imposed on A-1 and A-3 to A-5, the present appeal has been filed.

7. For brevity, in this judgment, the accused will be referred to in the same order as they were arrayed before the trial court.



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8. Shorn of unnecessary details, the case as put forth by the prosecution is as under :-

P.W.1 is the prosecutrix. P.W.s 2 and 3 are the father and mother of the victim. A-3 and A-4 are the parents of A-1 and A-5 is the sister of A-1. A-1 is alleged to have married P.W.1 forcibly through the help of A-2.

9. It is the case of the prosecution that during the year 2009, when P.W.1 was taking training for attending the VAO exam under A-1, A-1 had physically abused P.W.1 and had sent love letter to P.W.1 through A-2. Thereafter, P.W.1 discontinued her training and, thereafter, she had been working at a Banian factory at Tiruppur. For celebrating Diwali with P.W.s 2 and 3, P.W.1 had come to Ko.Poovanur, during the year 2011. On 6.11.2011 P.W.1 had started from Ko.Poovanur and was seen off by P.W.2 from her village at Ko.Poovanur to Ulundurpet for further travel to Tiruppur, she boarded a bus at Ko.Poovanur and got down at Ulundurpet from where she boarded a bus to Salem. When she got down at Salem, A-1 and A-2, who were waiting for her there, forcibly abducted her from Salem and took her to Tirupathi, where A-1 on 7.11.2011 had tied the nuptial knot and, thereafter, A-1 along with P.W.1 and A-2 had stayed in BANC



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Lodge where against the wishes of P.W.1, A-1 had sexual intercourse with her at about 9.00 a.m. on 7.11.2011. thereafter, at about 9.00 p.m., A-1, A-2 and P.W.1 boarded the bus for return to Ko.Poovanur and reached Ko.Poovanur at about 5.30 a.m. on 8.11.2011 and P.W.1 was staying at the house of A-1.

10. It is the further case of the prosecution that at about 5.30 p.m. on 9.11.2011, A-23 to A-5 abused P.W.1 verbally using obscene words and they also attacked P.W.1 with sticks/wooden logs scolding her that she had not brought any stridhana while marrying A-1 and pushed her out of the house. During the said act of physical and verbal abuse, A-1 also participated in the same and had uttered that he had married P.W.1 only to dishonour her. P.W.1 felt dizzy and fainted. On hearing the noise, P.W.s 2 and 3 the parents of P.W.1 and P.W.4, who was a resident of the same village and was passing by the place, came to the scene of occurrence and finding the fainted P.W.1, took her in an auto to the Government Hospital where she was given treatment by P.W.9, the Civil Assistant Surgeon, Government Headquarters Hospital, Vridhachalam, and issued Ex.P5 the accident register, in which the doctor found the following :-



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“Alleged to have been assaulted by three known persons at 5.30 p.m. on 9.11.11 at her mother-in-laws garden with sticks.

- 1) 2 x 2 cms contusion on the right parietal region;*
- 2) 1 x 1 cm abrasion on the left leg*

11. P.W.1, upon discharge, on 11.11.2011 went to Mangalampettai Police Station and lodged a complaint on which no action was taken and, therefore, she had preferred the private complaint, Ex.P-1, before the Judicial Magistrate, Vridhachalam, which was directed to be registered and investigated.

12. Upon receipt of the complaint from the Court of Judicial Magistrate No.2, Vridhachalam on 12.12.2011, P.W.10, Grade I Police Constable attached to the All Women Police Station, Vridhachalam, registered the case in Crime No.18/2011 for the offences u/s 366, 376 and 323 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and prepared FIR, which were forwarded to the jurisdictional court and also placed before the higher authorities for investigation.



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13. On receipt of Ex.P-6, P.W.11, the Inspector of Police, Vridhachalam Circle, who was in-charge of the All Women Police Station, Vridhachalam, took up investigation on 13.12.2011 at about 7.00 a.m., and went to the scene of occurrence, where he prepared observation mahazar, Ex.P-7 and drew rough sketch, Ex.P-8. He examined P.W.s 2 to 5 and recorded their statements. P.W.1 was sent through a police constable for medical examination.

14. P.W.1, on being produced before P.W.7, the Doctor, was subjected to medical examination and upon examination, P.W.9 issued Ex.P-3, report in respect of P.W.1, wherein the following opinion has been given :-

“PA : Soft PV Vagina admits little finger with difficulty & admits tip of index finger with difficulty. Vagine smear taken with little finger sent for analysis for the presence of semen. Exact size of the uterus not able to be made out with the help of little finger. Hymen partially torn. Advised : USG Pelvis.

Examination :

Opinion:

1. *Her age approximately 21 to 23 years. Exact age estimation to be confirmed by Radiologist with X-rays 10/7077-11/15.12.2011*



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2. *Hymen partially torn. She might have had sexual intercourse.*
3. *She might have had sexual intercourse. No marks of external injury.*
4. *She is not pregnant. Advised USG (Ultra sonogram)*
5. *Hymen partially torn. Since vagina admits little easily and tip of index finger. No signs of external injuries."*

15. P.W.11 gave requisition to the Judicial Magistrate to conduct medical examination on A-1 and on orders, A-1 was sent for medical examination. Upon being produced, P.W.8, the doctor, subjected A-1 for medical examination and issued Ex.P-4, opinion.

16. On 15.12.2011, P.W.11 examined the doctors, P.W.s 7 to 9 and recorded their statements. Upon completion of investigation P.W.11 filed the final report against the accused for the offences aforesaid.



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17. To establish the charges levelled against the accused, the prosecution examined P.W.s 1 to 11 and marked Exs.P-1 to P-8.

18. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence tendered by the prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked.

19. The trial court, on consideration of oral and documentary evidence, while acquitted A-2 of the offences charged, however convicted A-1 and A-3 to A-5 as aforesaid. Aggrieved by the said conviction and sentence, C.A. No.116/2022 has been filed by the accused. Being dissatisfied with the acquittal recorded against A-2 in toto and also against A-1 for the offences u/s 341, 366, 376, 294 (b), the defacto complainant/P.W.1 has filed C.A. No.858/2022.



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20. Learned counsel appearing for the appellants/A-3, A-4 and A-5 in C.A. No.116/2022 submitted that the evidence of P.W.1 bristles with very many contradictions and discrepancies, which has been recorded by the court below. However, after rendering such a finding, the court below has erred in convicting the appellants, which is wholly unsustainable.

21. It is the further submission of the learned counsel that none of the prosecution witnesses, viz., P.W.s 1 to 5, who have spoken about seeing the occurrence have stated as to who uttered the obscene words. All the witnesses in unison have spoken that A-1, A-3 to A-5 had uttered the obscene words and had convicted A-1 u/s 4 of the Tamil Nadu Prohibition of Harassment of Women Act and A-3 to A-5 u/s 294 (b) IPC. It is the submission of the learned counsel that the ingredients as spelt out u/s 294 (b) IPC have not been established and in the absence of the same being fulfilled, no conviction can be recorded u/s 294 (b) IPC.

22. It is the further submission of the learned counsel that even according to the evidence of P.W.1, though A-1 and P.W.1 had come to the house of A-1 on 8.11.2011 at about 5.00 a.m., however, none of the other accused, viz., A-3 to A-5 had spoken harshly with P.W.1. However, out of blue, A-3 to A-5 are alleged to have castigated



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P.W.1 at about 5.30 p.m. on 9.11.2011. It is the further submission of the learned counsel that during the said occurrence, A-3 to A-5 are alleged to have beaten P.W.1 with sticks. Yet the said sticks have not been seized by the prosecution.

23. It is the further submission of the learned counsel that though A-3 to A-5 are alleged to have attacked P.W.1 with sticks, yet Ex.P-5, the accident register, issued by P.W.9 clearly specifies that there is only one contusion on the right parietal region of P.W.1 which would go to show that the attack alleged to have been made upon P.W.1 could not have been carried out by A-3 to A-5. However, without properly appreciating the aforesaid evidence, the court below had convicted A-3 to A-5 of the offence u/s 294 (b) and 323 IPC, which requires interference at the hands of this Court.

24. Learned counsel appearing for the appellant/defacto complainant in C.A. No.858/2022 submitted that P.W.s 1 to 5 have clearly spoken about the abduction caused by A-1 and A-2 and the resultant acts meted out to P.W.1 by A-1 and a-2 with respect to the offences u/s 341, 366, 294 (b) and 376 IPC insofar as A-1 is concerned and u/s 341 and 366 insofar as A-2 is concerned.



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25. It is the further submission of the learned counsel that the evidence of the doctor, P.W.7, coupled with Ex.P-5, the opinion, clearly establish that rape was committed on P.W.1 after P.W.1 was abducted and married forcibly by A-1 with the help of A-2, however, without properly appreciating the same, the court below had erroneously acquitted A-1 of the offences u/s 341, 366, 376 and 294 (b) IPC and A-2 of the offences u/s 341 and 366 IPC, which requires interference at the hands of this Court.

26. It is also submitted by the learned counsel appearing for the appellant in C.A. No.858/2022 that the conviction and sentence recorded as against the appellants in C.A. No.116/2022 does not suffer any infirmity as they are passed based on appreciation of evidence, which is cogent and conclusive and the same also does not require any interference at the hands of this Court.

27. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the respective appellants and perused the materials available on record.



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28. When the matter is taken up for hearing, learned Addl. Public Prosecutor appearing for the 1st respondent/State submitted that pending the appeals, A-1 died and, therefore, the appeal as against A-1 stands abated. The said statement of the learned Addl. Public Prosecutor has not been controverted by the learned counsel appearing for the defacto complainant/appellant in C.A. No.858/2022. Accordingly, the appeal in C.A. No.858//2022 insofar as the 1st respondent therein/A-1 and the conviction and sentence recorded as against A-1, stands abated.

29. Now this Court is left with the task of considering the acquittal of A-2 for the offences u/s 341 and 366 IPC and also the conviction and sentence recorded in respect of A-3 to A-5 for the offences u/s 294 (b) and 323 IPC. This Court will first deal with the acquittal of A-2 for the offences u/s 341 and 366 IPC.

30. It is the specific case of the prosecution that upon P.W.2 seeing off P.W.1 at Ko.Poovanur Village in the bus, P.W.1 alighted at Ulundurpet from where she boarded a bus to Salem to go to Tiruppur. Upon getting down at Salem, it is the case of P.W.1 that she was kidnapped by force and threatening



that she will be killed by A-1 and A-2 and taken to Tirupathi, where A-1 tied the nuptial knot to P.W.1 and had sexual intercourse with her against her consent and all along that time, A-2 had aided A-1 in committing the aforesaid offences.

31. Even a bare perusal of the deposition of P.W.1 in cross reveals that at Salem bus stand A-1 and A-2 are alleged to have kidnapped her. She has also further deposed that she was threatened not to raise her voice by A-2 as otherwise they would kill her. However, it is not the deposition of P.W.1 that either A-1 or A-2 were in possession of any weapons. It is merely the deposition of P.W.1 that A-2 threatened her that they would kill her. It is the deposition of P.W.1 that Salem bus stand was crowded with passengers and such being the case, how P.W.1 was kidnapped by A-1 and A-2 is beyond one's comprehension. It should not be lost sight of, as could be evidenced through the deposition of P.W.1 in cross as also the findings recorded by the court below that though P.W.1 had ample opportunities between Salem and Tirupathi, where even at two places, police were present, who had searched each and every individual, more particularly at Tirupathi, P.W.1 did not inform them about she being kidnapped by A-1 and A-2. Though the mobile phone, which P.W.1 had was alleged to have



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been taken over by A-1, it should not be forgotten that she had ample opportunity in which she could have raised her voice and called for help. However, P.W.1 had, at no point of time, raised her voice and called for help. In fact, from Salem to Tirupathi, A-1 P.W.1 and A-2 are alleged to have travelled by Government bus, in which case, P.W.1 could very well have raised her voice, but she seldom raised her voice, which leads to the only inference that she had volunteered along with A-1 and A-2, if really the incident of marriage, as alleged is said to have taken place.

32. Further, one other stand out aspect, which requires to be pointed out is that P.W.s 2 and 3 are the father and mother of P.W.1 and their house is alleged to be situated diagonally opposite the house of the accused at a distance of about 50 mtrs. It is the specific case of the prosecution, as evidenced through the deposition of P.W.s 1 to 3 that after P.W.1 was seen off by P.W.2 in the bus from Ko.Poovanur, P.W.s 2 and 3 did not take any effort to contact her as to whether she had safely reached Tiruppur. In fact, neither P.W.1 nor P.W.s 2 and 3 had made any effort to contact each other till the time when P.W.s 2 and 3 had alleged to have heard commotion from the house of the accused.



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33. It is the specific case of the prosecution that P.W.s and A-1 returned at about 5.00 a.m. on 8.11.2011. In spite of the fact that P.W.1 is the daughter of P.W.s 2 and 3 and that her parental house is situated just 50 mtrs. away from the house of the accused, however, she has not made any attempt to contact P.W.s 2 and 3 in spite of the specific allegation that she was kidnapped, forcefully married and raped. What is more striking is that though P.W.1 had come back to the house of the accused on 8.11.2011 at about 5.00 a.m., till 5.30 p.m. on 9.11.2011, P.W.s 2 and 3 claim that they have not seen their daughter at the house of the accused. The said deposition of P.W.s 2 and 3 is far from acceptance and even a layman, bereft of any understanding, would not be carried away by such a submission. Therefore, the deposition of P.W.s 2 and 3 does not inspire the confidence of this Court for accepting their evidence as necessary corroboration for the purpose of finding A-1 and A-2 guilty of the offence u/s 341, 366 and 376 IPC.

34. Once the evidence of P.W.1 is held to be not acceptable, barring the above evidence, the other evidence of P.W.s 2 to 5 in no way furthers the case of



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the prosecution as the said evidence do not speak about the offences u/s 341, 366 and 376 IPC. In the absence of any corroboration and substantiation, the offence u/s 341 nor 366 against A-1 and A-2 does not stand made out and rightly the court below had acquitted A-1 and A-2 of the said offence.

35. Insofar as the offence against A-1 u/s 376 IPC is concerned, once it is conclusively held that the movement of P.W.1 with A-1 and A-2 was her own voluntary act, the ingredients of Section 375 IPC, which alone would constitute an offence u/s 376 IPC would not stand made out as her any act in furtherance of her consent would not fall within the circumference of rape and, therefore, the act of A-1 with P.W.1 in a physical relationship cannot be termed to be rape and, therefore, would not attract the offence u/s 376 IPC. The said aspect has also been rightly appreciated by the court below in acquitting A-1 and, therefore, the said findings does not require any interference.

36. Insofar as the findings recorded with respect of the offence u/s 4 of the Tamil Nadu Prohibition of Harassment against Women Act against A-1 is concerned, in view of the fact that A-1 has since deceased, no occasion arises for



deciding the same, as, as already stated above, the appeal as against A-1 stands abated. The findings rendered insofar as Sections 341, 366 and 376 IPC were warranted for discussion as appeal was filed against the acquittal of A-2, which findings, have been affirmed by this Court in the paragraphs above and only for the limited purpose of deciding the acquittal of A-2, the evidence was discussed above.

37. Insofar as the offence u/s 294 (b) IPC against A-3 to A-5 is concerned, the allegation against the accused is that they used profane and obscene language against P.W.1. Section 294(b) of the IPC talks about the obscene acts and songs. Section 294 of the IPC as a whole reads thus :-

"294. Obscene acts and songs - *Whoever, to the annoyance of others –*

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."



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38. The manner in which an act, which is alleged to be obscene so as to attract the rigours of Section 294(b) IPC, has been considered by the Apex Court in the decision in ***N.S.Madhanagopal & Anr. – Vs – K.Lalitha (2022 Live Law (SC) 844)***, wherein the Apex Court held as under :-

“It is to be noted that the test of obscenity under Section 294(b) of the I.P.C. is whether the tendency of the matter charged as obscenity is to deprave and corrupt 4 those whose minds are open to such immoral influences. The following passage from the judgment authored by Justice K.K. Mathew (as his Lordship then was) reported in P.T. Chacko v. Nainan (1967 KLT 799) explains as follows:

“The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin, [L.R.] 3 Q.B. 360 at 371 Cockburn C.J. Laid down the test of ‘obscenity’ in these words: “..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences” This test has been uniformly followed in India. The Supreme Court has accepted the correctness



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of the test in Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881. In Samuel Roth v. U.S.A., 354 US 476 (1957), Chief Justice Warren said that the test of 'obscenity' is the "substantial tendency to corrupt by arousing lustful desires". Mr. Justice Harlan observed that in order to be 'obscene' the matter must "tend to sexually impure thoughts".

I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are 'obscene' and the utterance would constitute an offence punishable under S. 294(b) IPC". 5 It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the



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absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it cannot be said that the ingredients of the offence under Section 294 (b) of IPC is made out."

39. In the case on hand, the words as spoken to by A-3 to A-5 though could be brought within the periphery of defamatory, but by no stretch could they be termed to be obscene. Further, what is to be borne in mind is the fact that such obscene words should have been uttered in or near any public place. However, in the case on hand, it is the categorical deposition of P.W.1 that the act had taken place in the garden of her mother-in-law, as could be seen from Ex.P-5, the accident register, issued by P.W.9, which is the earliest document, in which P.W.1 had clearly spoken to the said effect. The place, being a private garden belonging to the mother-in-law of P.W.1, could not be construed to be a public place or near a public place to attract Section 294 (b) IPC. Further, the utterances, even without admitting had taken place in the vicinity of a public place, yet would not be attract Section 294 (b) IPC as there is no deposition to the effect that such acts of A-3 to A-5 had caused annoyance to the public. In the absence of any evidence to the said effect, the offence u/s 294 (b) as against A-3



to A-5 has not been made out and the findings to the contrary rendered by the court below deserve to be set aside.

40. Now the only issue that is left for consideration is with regard to the offence u/s 323 IPC, which is alleged against A-1 and A-3 to A-5. A-1 and A-3 to A-5 are alleged to have beaten P.W.1 with sticks causing injuries on P.W.1. In this regard, the evidence of P.W.9 the doctor, coupled with Ex.P-5 accident register issued by P.W.9 assumes significance. In Ex.P-5, P.W.9 has clearly stated that P.W.1 has suffered one contusion. It is to be pointed out that one contusion injury of 2 x 2 cm, which is opined to be simple in nature, could not be caused by three persons, beating P.W.1 with sticks. Further it is the specific case of the prosecution that A-1 and A-3 to A-5 had caused injuries on P.W.1. However, in Ex.P-5, P.W.1 has stated that she was beaten by three known persons.

41. In this regard, the evidence of P.W.4 assumes significance. P.W.4 is an independent witness, who as a resident of the same village and a passer-by, had witnessed the occurrence and had accompanied P.W.1 to the hospital. In the deposition of P.W.4 in chief, P.W.4 had deposed that A-1 beat P.W.1 four times



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and A-3 to A-5 had beat P.W.1 and pushed her out of the house. There is no specific overt act attributed to A-3 to A-4. There is only a mere generalised statement that A-3 to A-5 beat and pushed P.W.1 out of the house. Ex.P-5, the accident register, which has been issued by P.W.9 does not in any manner support the deposition of P.W.4, as Ex.P-5 only reveals that there was a single contusion on the right parietal region of the head of P.W.1. In the backdrop of the above material, though P.W.4 had stated that A-3 to A-5 had beaten and pushed P.W.1 out of the house, the said fact having not been established and the same does not find corroboration through Ex.P-5, the only inference that could be drawn is that there is no evidence to show that P.W.1 was beaten by A-3 to A-5. There is no iota of evidence to suggest the presence of A-5 at the scene of occurrence and equally there is no material to infer that A-5 had also partaken in the said act. However, out of blue, A-5 had been roped into the offence. In fact, there is no evidence through any of the witnesses to suggest that A-5 was residing in the house along with A-3 and A-4. In the absence of any specific evidence to point out that A-5 was residing along with A-3 and A-4 and there being specific overt act attributed to A-5, roping in of A-5 into the crime is only for the purpose of bringing all the family members and there is no specific



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evidence which supports the said case. Further, it is to be pointed out that while in one place, the witnesses have deposed that wooden log was used, however in another place, they have stated that sticks were used. However, the said sticks or wooden logs have not been seized by the prosecution. The court below had brushed aside the same on the ground that sticks or wooden logs are interchangeable and their seizure would not alter the case as the witnesses have deposed that A-3 to A-5 have attacked P.W.1. However, in the light of Ex.P-5, throwing a different vision with regard to the injuries found on the body of P.W.1, without attributing specific overt act, A-5 cannot be said to have committed an offence u/s 323 IPC. The non-seizure of the sticks/wooden logs materially alters the deposition in favour of A-5 and the findings of the court below that non-seizure of material objects would not affect the prosecution case is wholly flawed.

42. However, insofar as the attack by A-1 on P.W.1 is substantiated through the evidence of P.W.1 as also Ex.P-5, the accident register and the said evidence of P.W.1 finds corroboration through the evidence of P.W.4. In Ex.P-5, P.W.1 has clearly stated that three known persons had attacked her and the said



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three known persons could only be A-1, A-3 and A-4 as P.W.1 has specifically stated before P.W.9 that she was attacked in her mother-in-laws's garden by three known persons. In the absence of any evidence clearly pointing out the presence of A-5 at the scene of crime and partaking in the act of beating P.W.1 and causing injuries on P.W.1, it would not be in the interest of justice to convict A-5 and, accordingly, for the reasons aforesaid, the conviction and sentence imposed on A-5 for the offence u/s 323 IPC also deserves to be set aside.

43. However, insofar as the conviction of A-3 and A-4 for the offence u/s 323 IPC, though the same stands established through the evidence of P.W.1 coupled with corroboration through the evidence of P.W.4 and Ex.P-5, wherein, in Ex.P-5, P.W.1 has clearly deposed that three known persons had attacked her. However, a careful perusal of Ex.P-5 reveals that the injuries suffered by P.W.1 are simple in nature. The punishment u/s 323 IPC stands warranted only where the injuries caused are grievous in nature. In the present case, the injuries caused by A-3 and A-4 on P.W.1 are simple in nature. The nature of injuries being simple, the conviction and sentence of A-3 and A-4 for a period of four



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months along with fine for the offence u/s 323 IPC, in the considered opinion of this Court is a bit harsh.

44. On a holistic consideration of the entire case, it transpires that no specific overt act has been attributed to A-3 and A-4 by using the stick on P.W.1. It is the generalised deposition that A-3 and A-4 beat P.W.1 and pushed her. So long as the prosecution has not established that the attack by A-3 and A-4 on P.W.1 had caused grievous injuries on the body of P.W.1, the single injury found on P.W.1 cannot be attributed to be on account of the attack of A-3 and A-4. However, the deposition of the P.W.s 2 to 4 reveal that there was a high decibel quarrel coming from the house of the accused, which prompted P.W.s 2 and 3 to rush out to see the reason for the sound. From the above, it could be concluded that on account of some wordy quarrel, as could be evidenced through the deposition of P.W.s 2 and 3, there being no grievous injuries, which were found on the body of P.W.1, as is evident from Ex.P-5, the attack on P.W.1 by A-3 and A-4, could not be construed to be a grievous attack, but an instantaneous attack on account of some quarrel and as aforesaid, the injuries not being grievous in



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nature, but is simple, necessarily, the sentence imposed on A-3 and A-4 deserves to be modified, also keeping in mind the age of A-3 and A-4.

45. For the reasons aforesaid, while the appeal in C.A. No.858/2022 filed by the defacto complainant against the acquittal of A-1 and A-2 stands dismissed, the appeal filed by the appellants/A-3 to A-5 in C.A. No.116/2022 stands allowed in part by acquitting A-3 to A-5 of the offence u/s 294 (b) IPC and also acquitting A-5 of the offence u/s 323 IPC while confirming the conviction of A-3 and A-4 for the offence u/s 323 IPC. However, the sentence imposed on A-3 and A-4 by the trial court for the offence u/s 323 IPC is modified and they are sentenced to undergo simple imprisonment for a period of one day before this Court, for the offence u/s 323 IPC, which is to be undergone on 18.07.2024 from the time of the sitting of this Court till the raising of this Court on the said day. The appellants/A-2 & A-3 shall appear before the Registrar (Judicial) at 09.45 a.m. on 18.07.2024 to mark their presence and, thereafter, appear before the Court to undergo the sentence imposed on them. If the appellants/A-3 and A-4 fails to appear before the Registrar (Judicial) on 18.07.2024 at 9.45 a.m., their absence shall be marked and necessary steps shall be taken to secure the



CRL. A. Nos.116-858/2022

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presence of the appellants/A-3 and A-4 to serve the sentence imposed on them.

The fine amount imposed on A-3 and A-4 stands confirmed.

04.07.2024

Index : Yes / No

GLN

To

1. The Sessions Judge
Mahila Court, Cuddalore.
2. The Inspector of Police
All Women Police Station
Vridhachalam.
3. The Public Prosecutor
High Court, Madras.



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CRL. A. Nos.116-858/2022

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
CRL. A. NOS. 116 & 858 OF 2022**

Pronounced on



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CRL. A. Nos.116-858/2022

04.07.2024