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Crl.A.No.879 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.879 of 2024

Senbagavalli

... Appellant

Vs.

The State Represented by its:

1.The Deputy Superintendent of Police,
Villupuram Sub division
(Crime No: 571/2015)

2.The Inspector of Police
Villupuram Taluk
Villupuram.

3.Durairaj

4.Ponraj

... Respondents

Prayer:

Appeal filed under Section 372 of Criminal Procedure Code seeking to call for the records pertaining judgment in Spl.S.C.No.76 of 2017, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Caste and Scheduled Tribes Act, 1989, Villupuram, order dated 30.04.2024 and set aside the said acquittal of accused 1 and 2.

For Appellant : Mr.S.Manoharan

For Respondent : Mrs.G.V.Kasthuri

Additional Public Prosecutor



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J U D G M E N T

The criminal appeal has been filed seeking to set aside the order dated 30.04.2024 passed in Spl.S.C.No.76 of 2017 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Caste and Scheduled Tribes Act, 1989, Villupuram.

2.The appellant is the defacto complainant before the law enforcing agency. The respondents 3 and 4 are the accused and they are arrayed as A1 and A2 in Spl.S.C.No.76 of 2017. The brief case of the prosecution is as follows: The defacto complainant/ P.W.1 lodged a complaint stating that on 22.08.2015 at about 11.00 a.m., the respondents 3 and 4 along with 30 to 40 hooligans removed the roof of their hut, pulled her Mother/ P.W.3 and assaulted her. The accused also removed the articles in the house, opened the beero and taken away Rs.1 Lakh Cash, 5 sovereign gold chain, 4 sovereign bangle. On knowing the same, P.W.1 came to the house and the accused abused her using filthy language. The third respondent said that he would set her ablaze and the fourth respondent assaulted her and thereafter both the accused assaulted her with wooden log and brick. Hence, the



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appellant lodged the complaint before the law enforcing agency on 22.08.2015. The said complaint has been marked as Ex.P1.

3.On the basis of the complaint, P.W.7/ Sub-Inspector of Police Tmt.Saraswathi, registered a case in Crime No.571 of 2015 on 26.08.2015 for the offence under Sections 147, 294(b), 323, 427, 448, 379, 506 (i) of IPC, 3 (1) (x) (xi) (xv) of SC/ST (POA) Amendment Act. The First Information Report prepared by her has been marked as Ex.P5. On 26.08.2015, further investigation was taken up by the Deputy Superintendent of Police Thiru.Suyambu/ P.W.9 who was nominated as Investigation Officer by the Superintendent of Police. The proceedings of the Superintendent of Police dated 26.08.2015 is marked as Ex.P.8.

4.On 26.08.2015, P.W.9 went to the place of occurrence, inspected the same and prepared observation mahazer/ Ex.P9 and drew rough sketch of the place of occurrence under Ex.P10 in the presence of one Kannan and Pazhani. P.W.9 also examined witnesses P.W.1, P.W.3, P.W.4, P.W.6 and recorded their statements and also recorded the statement of one Balasubramanian, Kannan, Pazhani.



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Thereafter, A1 surrendered before the trial Court as per the order of this Court dated 06.12.2017 in Crl.O.P.No.26739 of 2017 and released on bail on 03.05.2018; A2 was remanded to judicial custody on 09.11.2022 and released on bail on 23.11.2022.

5.Further investigation was taken up by P.W.10/ Deputy Superintendent of Police Thiru.J.Sankar. On 12.07.2017, he recorded the statement of P.W.1, P.W.2, P.W.3 and P.W.5/ Tahsildar who gave community report to the victim and the accused. The caste certificate is marked as Ex.P3. He also recorded the statement of Tmt.Geetha who gave treatment to P.W.1 and she produced the Accident Register which is marked as Ex.P7. He also recorded the statement of P.W.8 who gave treatment to P.W.3 and she produced the Accident Register which is marked as Ex.P6. He also recorded the statement of P.W.7/ Sub – Inspector of Police. On 15.09.2017, he recorded the statement of VAO/ P.W.4 who has given the report which was marked as Ex.P2. He also recorded the statement of Tahsildar/ P.W.6 who has given the report which was marked as Ex.P4.

6.After completion of investigation, P.W.10 altered the Sections



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147, 294(b), 323, 427, 448, 379, 506 (i) of IPC, 3 (1) (x) (xi) (xv) of SC/ST (POA) Amendment Act @ 294(b), 323, 427, 506(ii) IPC r/w 4 of TNPHW Act and 3(1) (r), 3 (1) (s) of SC/ST (POA) Amendment Act-2015. The Alteration Report is marked as Ex.P11. P.W.10 laid charge sheet as against the accused for the commission of offence under Sections 294(b), 323, 427, 506(ii) IPC r/w 4 of TNPHW Act and 3(1) (r), 3 (1) (s) of SC/ST (POA) Amendment Act, 2015 before the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Caste and Scheduled Tribes Act, 1989, Villupuram.

7.After furnishing the copies of final report to the accused as required under Section 207 of Cr.P.C.; after the appearance of the accused and on hearing both sides, the Trial Court framed charges under Sections 427, 323, 294(b), 506(ii) IPC r/w 4 of TNPHW Act, 3(1)(r), 3(1)(s), 3(2)(va) of SC/ST (POA) Act, 2015 as against A1; under Sections 427, 323 IPC r/w 4 of TNPHW Act, 3(2)(va) of SC/ST (POA) Act, 2015 as against A2.

8.When the descriptions and the ingredients of the charges were



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explained and questioned, the accused pleaded innocent and claimed to be tried.

9.On the side of the prosecution, 10 witnesses were examined as P.W.1 to P.W.10 and 11 documents were marked as exhibits Ex.P.1 to Ex.P.11. On the side of the accused no witness was examined and no document was marked as exhibit.

10.After elaborate trial, the Trial Court acquitted the accused. Aggrieved by the same, the appellant / defacto complainant/ P.W.1 has filed this appeal before this Court.

11.The learned counsel appearing for the appellant submitted that the accused removed the roof of the hut, threw away the articles from the house. The first accused fisted P.W.3 in the chest and shoulder, abused P.W.1 using filthy language and caste name and threatened her to set her ablaze. The second accused assaulted P.W.1 with hand in the stomach and body. The learned counsel further submitted that the accident reports that have been marked as Ex.P7 and Ex.P6 would substantiate the injuries sustained by P.W.1 and



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P.W.3 and hence, the necessary ingredients required for the alleged offences are made out, however, the trial Court without considering the evidence let in by P.W.1 to P.W.3 acquitted the accused, which is not sustainable one.

12.The learned counsel appearing for the appellant further submitted that P.W.1 in her complaint has clearly stated that the accused/ respondents 3 and 4 came along with 30 to 40 hooligans, however, the law enforcing agency laid charge sheet only as against respondents 3 and 4 and it ended in acquittal.

13.Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor and perused the materials available on record.

14.Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in **Babu Sahebagoada Rudragoudqr & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date – 19.04.2024)**, the Supreme Court had



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captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

37. This Court in the case of Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471) encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded. (2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition



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on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and



strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

38. Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka (2023 (9) SCC 581)** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

"8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view



was also possible; and

8.5. *The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."*

39. *Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-*

(a) *That the judgment of acquittal suffers from patent perversity;*

(b) *That the same is based on a misreading/omission to consider material evidence on record;*

(c) *That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*

40. *The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."*



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(Emphasis Supplied)

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15.Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappreciate the evidence available on record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial Court, considered overall on the materials placed, is just and reasonable that the view taken by the trial court is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.

16.In the present case, perusal of complaint reveal that on 22.08.2015 at about 11.00 a.m., the respondents 3 and 4/ accused along with 30 to 40 hooligans removed the roof of their hut, pulled her Mother/ P.W.3 and assaulted her. The accused also removed the articles in the house, opened the beero and taken away Rs.1 Lakh Cash, 5 sovereign gold chain, 4 sovereign bangle. On knowing the



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same, P.W.1 came to the house and the accused abused her using filthy language. The third respondent said that he would set her ablaze and the fourth respondent assaulted her and thereafter both the accused assaulted her with wooden log and brick. Initially, P.W.1 informed about the occurrence to the SP Office and she was advised to give complaint in the police station and thereafter, she lodged the complaint before the law enforcing agency. The said complaint has been marked as Ex.P1.

17. Thereafter, C.S.R.No.484 of 2015 was assigned to the complaint on 23.08.2015 and on 26.08.2015, P.W.7/ Sub-Inspector of Police Tmt.Saraswathi, registered a case in Crime No.571 of 2015 for the offence under Sections 147, 294(b), 323, 427, 448, 379, 506 (i) of IPC, 3 (1) (x) (xi) (xv) of SC/ST (POA) Amendment Act. The First Information Report prepared by her has been marked as Ex.P5. On 26.08.2015, further investigation was taken up by the Deputy Superintendent of Police Thiru.Suyambu/ P.W.9 who was nominated as Investigation Officer by the Superintendent of Police. The proceedings of the Superintendent of Police dated 26.08.2015 is marked as Ex.P.8.

18. On 26.08.2015, P.W.9 went to the place of occurrence,



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inspected the same and prepared observation mahazer/ Ex.P9 and drew rough sketch of the place of occurrence under Ex.P10 in the presence of one Kannan and Pazhani. Thereafter, A1 surrendered before the trial Court as per the order of this Court dated 06.12.2017 in Crl.O.P.No.26739 of 2017 and released on bail on 03.05.2018; A2 was remanded to judicial custody on 09.11.2022 and released on bail on 23.11.2022. Further investigation was taken up by P.W.10/ Deputy Superintendent of Police Thiru.J.Sankar.

19.Though the prosecution examined as many as ten witnesses, the crucial witnesses are P.W.1 to P.W.3 and they are eye witnesses. It is the case of prosecution that A1 abused P.W.1 by calling her caste name in public place in public view, however, the occurrence place is surrounded by a wall and it has iron gate and there are traces of removal of newly built hut. It is not a public place, the land is surrounded by walls on all four sides. P.W.1 and P.W.3 belong to Scheduled Caste as revealed from the evidence of P.W.5 and Ex.P3.

20.P.W.1 in her evidence has stated that 40 to 50 persons had come and assaulted her with stone and wooden log and she was abused by saying her caste name. P.W.2/ daughter of P.W.1 in her



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evidence has stated that the accused came into the house and assaulted her grand mother and her mother was abused by calling the

caste name. P.W.3 in her evidence has stated that 100 persons had come and assaulted her and abused her by stating the caste name. The evidence let in by P.W.1 to P.W.3 reveal that the occurrence had taken place in P.W.1s house and not in a public place within public view. Further P.W.2 is silent as to the number of persons who came to the house. In view of the contradictory statement, the trial Court arrived at a conclusion that the necessary ingredients required for the alleged offences are not made out at acquitted the accused, which warrants no interference.

21.The criminal appeal is dismissed. The order dated 30.04.2024 passed in Spl.S.C.No.76 of 2017 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Caste and Scheduled Tribes Act, 1989, Villupuram, is confirmed.

09.07.2024

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Speaking Order: Yes/ No
NCC: Yes/ No

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To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases registered under the
Scheduled Caste and Scheduled Tribes Act, 1989,
Villupuram.
- 2.The Deputy Superintendent of Police,
Villupuram Sub division
(Crime No: 571/2015)
- 3.The Inspector of Police
Villupuram Taluk
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