



Crl.A.Nos. 376 and 403 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 02.08.2024

Coram :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal Nos. 376 and 403 of 2017

R. Kaliamoorthy .. Appellant in Crl.A.No.376/2017

Chinnadurai .. Appellant in Crl.A.No.403/2017

Versus

State represented by
The Inspector of Police
Arumbavoor Police Station
Perambalur District
Crime No.67 of 2016

.. Respondent in both Appeals.

Criminal Appeals are filed under Section 374 (2) of The Code of Criminal Procedure against the judgment dated 08.06.2017 passed in S.C. No. 1 of 2017 on the file of the learned Sessions Judge, Mahila Court, Perambalur.

For Appellant .. No Appearance
(in Crl.A.No.376 of 2017)

For Appellant .. Mr. K.V. Sridharan
(in Crl.A.No.403 of 2017)

For Respondent .. Ms. G.V. Kasthuri
Additional Public Prosecutor



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COMMON JUDGMENT

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These Criminal Appeals have been filed to set aside the Judgment of conviction and sentence dated 08.06.2017 passed against the Appellants in S.C. No. 1 of 2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Perambalur. By the judgment dated 08.06.2017, the trial court convicted and sentenced the Accused Nos. 1 and 2 herein as follows:-

(i) The first Accused was found guilty of the offence under Section 294 (b) and sentenced to undergo three months simple imprisonment with fine of Rs.1,000/-, in default to undergo one month simple imprisonment. He was also convicted for the offence under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act and sentenced to undergo simple imprisonment for two years with fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of six months.

(ii) The second Accused was found guilty of the offence under Section 294 (b) and sentenced to undergo three months simple imprisonment with fine of Rs.1,000/-, in default to undergo one month simple imprisonment. He was also convicted for the offence under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act and sentenced to undergo simple imprisonment for two years with fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of six months. That apart, the second



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Accused was also found guilty of the offence under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 7 years together with fine of Rs.5,000/-, in default to undergo rigorous imprisonment for a period of one year.

(iii) The sentences imposed against the Accused 1 and 2 were ordered to run concurrently and the period of sentence, if any, undergone by them was directed to be set off as contemplated under Section 428 of the Code of Criminal Procedure.

2. The brief facts which are necessary for proper appreciation of the appeals are as follows:

2.1. The Accused and the witnesses belong to Venganoor village. On 22.03.2016, at about 18.30 hours, P.W-3 was grazing her cattle (Goats) along with her daughters P.W-1 and P.W-2 in the field. At that time, the Accused-1/Appellant in Crl.A.No.376 of 2017 questioned as to why P.W-3 should leave their goats to graze his lands and abused P.W-3 in a filthy language. By hurling such abuse, the first Accused attacked P.W-3 with a plastic pipe and pushed her into the pond nearby. On seeing P.W-3 being attacked by the Accused No.1, P.W-1 and 2 rushed to rescue her. At that time, the Accused No.2/Chinnadurai attacked P.W-1 with a stick and abused her in filthy



language. When P.W-2/Sister of P.W-1 attempted to prevent the assault,

Accused-2 attacked P.W-2/Dhanalaksmi on her head with a Machette by uttering 'Get Lost' (செத்துப் போ). Due to such assault, P.W-2 suffered bleeding injury. Feeling insecure, P.W-1 along with P.W-2 and 3 started running towards their house. At that time, Accused-3/Periyasamy also joined A-1 and A-2 and abused them in filthy language by saying "Where are you going, bitch? On hearing the cries of P.W-1 to 3, the Villagers gathered there and on seeing them the Accused 1 to 3 have fled the spot. As P.W-1 to 3 have suffered injuries, they were sent by ambulance to Government Hospital, Perambalur.

2.2. On receipt of information from the hospital, P.W-11, Inspector of Police went to the hospital where he recorded the statement of P.W-1. On the basis of such complaint, he registered a case in Crime No. 67 of 2006 for the offences under Sections 294 (b), 307 of Indian Penal Code read with Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act. Ex.P12 is the First Information Report and it was sent to the Court of the Judicial Magistrate, Perambalur. On the next day namely 23.03.2016 at about 12.00 noon P.W-11 proceeded to the occurrence spot and prepared a rough sketch (Ex.P13) in the presence of witnesses Tamilselvan and Periyasamy. He also drew an observation mahazar (Ex.P14). He also enquired the witnesses and



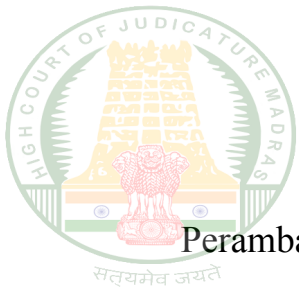
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recorded the statement. Among the witnesses enquired, P.W-16 is the

Assistant Professor of Perambalur Government Head Quarters Hospital from whom he had collected the wound certificate. During his investigation, he also arrested the Accused Nos. 1 and 2. As far as the accuse No.3 is concerned, he had secured anticipatory bail and he could not be arrested. After conclusion of investigation, P.W-11 has filed the final report against the Accused 1 to 3 before the Court of the learned Judicial Magistrate, Perambalur.

2.3. The learned Judicial Magistrate, Perambalur had taken cognizance of the offences and registered the case under P.R.C. No.30 of 2016. Since the offences are triable by the Court of Sessions, the case was committed to the Court of learned Principal Sessions Judge, Perambalur and the Accused were bound over to the learned Principal Sessions Judge, Perambalur. The learned Principal Sessions Judge, Perambalur taken the cognizance of the offence on receipt of records in P.R.C. No. 30 of 2016 and taken it on file as S.C. No. 1 of 2017. Since the alleged offences were committed against women, the case was made over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Perambalur and the Accused were bound over to the said Court.

2.4. The learned Sessions Judge, Fast Track Mahila Court,



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Perambalur on appearance of the Accused framed charges against them but they denied the charges. Therefore, trial in the case commenced during which Prosecution Witnesses 1 to 11 were examined and Exs. P1 to P15 were marked. That apart, Mos 1 to 3 were projected. On behalf of the Accused, neither any witness was examined nor any document marked. After completion of Prosecution evidence, Accused 1 to 3 were examined under Section 313(1) of Cr.P.C. Accused 1 to 3 denied the incriminating evidence.

2.5. The learned Sessions Judge, Fast Track Mahila Court, Perambalur, on appreciation of the oral and documentary evidence, concluded that the charge against the third Accused has not been proved and therefore, he was acquitted. As regards the Accused Nos. 1 and 2, they were convicted and sentenced as mentioned in the preceding paragraph of this judgment.

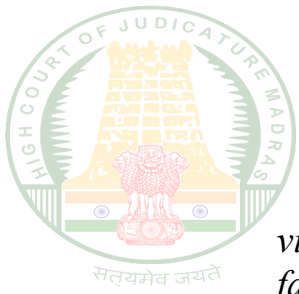
3. The learned Counsel Mr. K.V. Sridharan appearing for the Appellant in Criminal Appeal No. 403 of 2017 submitted the Accused-1 to 3 have alleged to have attacked P.W-1 to 3 and abused them in filthy language. As per the evidence of P.W-1 she was hit with a stick and when P.W-2 attempted to intervene, she was attacked with Aruval causing injury on her head. In this regard, the learned Counsel for the Appellant invited the attention of this Court to the evidence of the Doctor P.W-6, who issued wound



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certificate. As per the evidence of P.W-6, the injuries suffered by P.W-1 and P.W-3 are simple injuries. However, the learned Sessions Judge on assessment of evidence had convicted the Accused No.2 for the offence under Section 307 I.P.C and sentenced to undergo rigorous imprisonment for seven years along with a fine of Rs.5,000/-. It is his submission that the weapon - machette (Aruval) alleged to have been used by the second Accused to attack P.W-2 on her head was not at all identified by the witnesses in the Court. While so, the conviction and sentence for the offence under Section 307 of the IPC as against the second Accused is legally not sustainable and it has to be set aside. The learned Counsel for the Appellants also invited the attention of this Court to the evidence of P.W-1 to 3 in cross examination and also the evidence of Doctor P.W-6. It is his contention that the Material Objects have not been identified by the witnesses and therefore the entire case projected by the prosecution is liable to be interfered with. In this regard, the learned Counsel for the Appellants relied upon the decision of the Hon'ble Supreme Court in the case of **Sarju Prasad -vs- The State of Bihar** reported in **1965 MLJ 446** wherein it was held as under:

"It is true that the witnesses say that the Appellant used a chhura. It is also true that the injury was inflicted on a vital part of the body but the fact remains that no vital organ of the body was injured thereby. Again, we do not know how big the chhura was and, therefore, it cannot be said that it was sufficiently long to penetrate the abdomen deep enough to cause an injury to a



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vital organ which would in the ordinary course of natural be fatal. The chhura could not be recovered but the prosecution should at least have elicited from the witnesses particulars about its size. We are, therefore, unable to say with anything near certainty that the Appellant had does not say that after he released the wrist of Sushil the Appellant inflicted or even tried to inflict any further injury on him".

4. The learned Counsel for the Appellants submitted that the Accused-2 was charged for the offence under Section 307 of I.P.C and the charge itself is not maintainable. The attack made by the second Accused is not within the parameters of Section 307 of IPC. It must be shown that the second Accused had caused the attack with the knowledge that the injury that was likely to be caused on the victim will end up in death. In this case, the doctor P.W-6 has issued wound certificate stating that the injury suffered by the P.W-2 is only a simple injury. Further, the injured had not suffered injury on the vital part of the body, thereby endangering the life of the victim P.W-2. The testimony of P.W-2 is not supported with the medical evidence of P.W-6/Doctor who had issued Ex.P-4 to attract Section 307 of I.P.C. In this regard, the learned Counsel for the Appellant relied on the reported decisions of the Hon'ble Supreme Court in the cases of ***Sarju Prasad -v- The State of Bihar*** reported in ***AIR 1965 SC 843*** and ***Tukaram Gundu Naik -vs- State of Maharashtra*** reported in ***1994 SCC (CRI) 432***, and submitted that the conviction of the Second Accused under Section 307 I.P.C is not legally



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sustainable. If the attack by the Accused No.2 on the head of P.W-2 was with an intention to murder her resulting in P.W-2 suffering unconsciousness or requiring continuous treatment for more than a month, then it can be said to be an injury endangering her life. In this case, as per the wound certificate issued by P.W-6, the injury suffered by P.W-2 is only a simple injury. Therefore the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court under Section 307 of I.P.C against Accused-2 in S.C.No.1 of 2017 is perverse and it is liable to be interfered with.

5. The learned Counsel for the Appellant also submitted that the evidence of Village Administrative Officer (P.W-9) and the Village Assistant (P.W-10) regarding the confession leading to recovery has no evidentiary value inasmuch as no material object was marked before the trial Court. Furthermore, the witness in this case are related to each other and they are all interested witnesses. P.W-1 and P.W-2 are the daughters of P.W-3 and P.W-5. P.W-4 is the independent witness and his evidence is not trust worthy. He is only a hearsay witness. He is not a direct witness. The other witnesses are relatives of the injured witness. The learned Sessions Judge failed to consider those facts.

6. According to the learned Counsel for the Appellants, it is a case



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where P.W-1 to P.W-3 had given exaggerated version. When the witnesses had admitted that there had been dispute between them and their neighbours, Further, the nature of the injury suffered by P.W-s 1 to 3, as stated by the Doctor who treated the patient them has deposed that it is a simple injury, while so it does not warrant conviction under Section 307 of I.P.C. Therefore, the conviction of the Accused-2 by the learned Sessions Judge, Fast Track Mahila Court, convicting the Appellant in Criminal Appeal 403 of 2017, the Accused-2 in S.C.No.1 of 2017 under Section 307 of I.P.C dated 08.06.2017 is perverse and is not in properly appreciated by the trial court.

7. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-6, Dr. Prabhakaran and the wound certificate issued under Ex.P-4. Also, he invited the attention of this Court to the evidence of P.W-2, the injured victim. P.W-2 deposed that MO3 is not the weapon used to attack her. However, it was stated that it was a heavy weapon as she felt the attack and the consequential pain was huge on her. According to the learned Counsel, the weapon used in the alleged attack was marked as M.O-3 during the evidence of the Complainant P.W-1 Tamil Selvi. The doctor who had seen the injured in the Government Hospital and who had treated both P.W-1 and P.W-2 had in his evidence as P.W-6 stated that the injuries



caused on P.W-1 and P.W-2 are simple injuries. In the wound certificate issued by P.W-6, it was stated that the injuries are simple. Therefore, it is submitted that the prosecution has not proved his case against the Appellants.

8. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that evidence of the prosecution witnesses P.W-1 to P.W-11 are cogent. The prosecution evidence not only proved the presence of the Accused 1 to 3 but also the specific overt act attributable as against the Accused 1 and 2. When P.W-3 was attacked by the first Accused, P.W-1 and P.W-2 intervened to rescue her. The evidence of the injured witnesses P.W-1 to 3 is trustworthy and there is nothing to discard their testimony. The evidence of the prosecution witnesses is also supported by the medical evidence of Doctor P.W-6 who issued Ex.P-2 to Ex.P-5. The learned Additional Public Prosecutor further submitted that P.W-5 is the husband of P.W-3 and father of P.W-1 and P.W-2. P.W-7 is the brother of P.W-1 and P.W-2 and son of P.W-3 and P.W-5. The material object in this case have been recovered under Mahazar in the presence of V.A.O/P.W-9 and his Village Assistant under Ex.P-8 to Ex.P-10. That apart, the Accused also given confession admitting to the crime. The admissible portion of their confession also lead to recovery of the material objects in this case and it was marked as

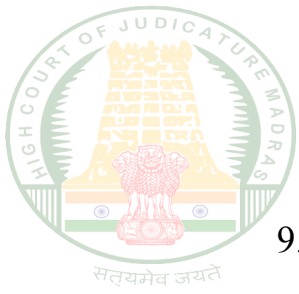


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Ex.P-11. On consideration of the entire materials, the learned Trial Judge had rightly recorded a finding of guilt as against the Accused Nos. 1 and 2. The learned Additional Public Prosecutor also relied on the reported decision of the Hon'ble Supreme Court in the case of ***Bhajan singh -vs- State of Haryana*** reported in ***(2011) 7 SCC 421***. By pointing out the above judgment, the learned Additional Public Prosecutor submitted that the learned Sessions Judge, Fast Track Mahila Court, Perambalur had recorded a well reasoned judgment of conviction against the Accused Nos. 1 and 2. Such a well reasoned judgment of the trial Judge does not warrant any interference by this Court. Accordingly, the learned Additional Public Prosecutor appearing for the respondent prayed for dismissal of this appeal by confirming the judgment of conviction and sentence passed by the trial court.

Point for consideration:

Whether the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Perambalur by judgment dated 08.06.2017 passed in S.C. No. 1 of 2017 is to be set aside as perverse?



9. Heard the learned Counsel for the Appellants and the learned

Additional Public Prosecutor for the respondent. Perused the depositions of the witnesses P.W-1 to P.W-13, documents under Ex.P-1 to Ex.P-15 and the judgment of the learned Sessions Judge Fast Track Mahila Court, Perambalur passed in S.C.No.1 of 2017 convicting the Appellants-Accused 1 and 2 for the offences mentioned supra.

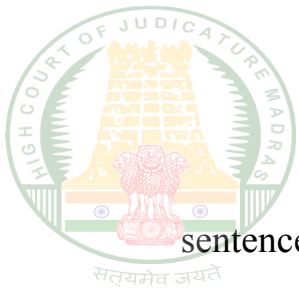
10. It is an admitted fact that there was a dispute between the prosecution witnesses 1 to 3 and the Accused in connection with grazing of the land by their respective cattle. Even prior to the date of occurrence, a similar dispute had surfaced between them. Therefore, on the date of occurrence, when the first Accused noticed that the cattle of the P.W-1 to 3 grazed his land, a controversy and quarrel erupted between them. As a sequel thereof, the first Accused as well as the Accused Nos. 2 and 3 abused the prosecution witnesses 1 to 3. The first and second Accused besides abusing the prosecution witnesses 1 to 3 have also assaulted them. It is alleged that the second Accused suffered bleeding injury when the second Accused attacked her with a machete. Admittedly, for having suffered such injuries, as narrated by the prosecution witnesses 1 to 3, they were admitted in the hospital. During the hospitalisation of P.W-1, a statement was recorded and



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the criminal prosecution was set in motion as against the Accused 1 to 3. It is to be noted that the third Accused was acquitted and as against his acquittal, neither the prosecution nor the defacto complainant has preferred any appeal. This instant appeals are by the Accused Nos. 1 and 2 respectively.

11. In the backdrop of the above facts, it is an admitted fact that the Accused Nos. 1 and 2 have abused the prosecution witnesses in filthy language attracting the provisions of Section 294 (b) of the Indian Penal Code. P.W-s 1 to 3 are women and as against them, the Accused 1 to 3 have used filthy language which cannot be recognised under law, attracting the provisions of The Prohibition of Harassment of Women Act. Admittedly, there is no contra evidence to disprove the testimony of the prosecution witnesses to the effect that they were abused and assaulted by the Accused Nos. 1 and 2. Even though it is contended that the prosecution witnesses are interested witnesses, the fact remains that P.W-s 1 to 3 are injured victims and there is nothing to show that their evidence has to be discarded. Therefore, this Court is of the view that the conviction imposed by the trial court against the first Accused for the offence under Sections 294 (b) and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act does not call for any interference by this Court but they are only to be confirmed. However, the



sentence of 2 years against the first Accused is liable to be interfered with.

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Having regard to the nature of the offence, this Court is of the view that instead of sentencing the first Accused, he shall be released on probation on executing a bond for Rs.10,000/- with two sureties for a like sum to the satisfaction of the learned Sessions Judge.

12. As far as the second Accused is concerned, it is alleged that he has not only abused the prosecution witnesses, but attacked the P.W-2 with a weapon and caused bleeding injuries to P.W-2 on her head. The trial court, therefore convicted the second Accused for the offences under Section 294 (b), Section 4 of The Prohibition of Harassment of Women Act as well as Section 307 of IPC. For the offence alleged against the second Accused under Section 307 of IPC, he was sentenced to undergo 7 years of rigorous imprisonment with fine. On examining as to whether the offence under Section 307 of IPC is proved against the second Accused, it is clear that the prosecution failed to prove the said offence. P.W-6 Doctor has issued wound certificate and deposed that the injury suffered by P.W-2 is only a simple injury. Thus, it is evidently clear that the so called injury suffered by P.W-2 is not likely to cause her death or grievous injury. In such circumstance, the charge as against the second Accused for the offence under Section 307 of



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IPC itself is not proper. Further, the ocular testimony of P.W-s 1 to 3 in respect of the offence under Section 307 of IPC as against the second Accused is not supported by the medical evidence. The deposition of prosecution witnesses appears to be exaggerated and not natural. Therefore, the conviction and sentence imposed as against the second Accused is liable to be set aside.

13. To attract the ingredients of Section 307, the injured victim should have suffered grievous injury on vital part of the body. Here, the injury is on the vital part of the body, Head. But it is not grievous injury. It is a simple injury. Had P.W-2 suffered fits or suffered unconscious after the attack and had undergone treatment for a period of months under the care of a Neurosurgeon, then it will surely attract the ingredients of 306 of I.P.C as well as the 307 of I.P.C. It is only simple injury. During cross examination by the learned Counsel for the Accused, P.W-6/Dr.Prabhakaran had stated that it might have been caused by a fall by the victim. Also, P.W.1 to P.W-3 had in their cross examination admitted that there had been animosity between them and their neighbours/Accused-1 to Accused-3. If it is considered, it can be concluded that this is a case where P.W-1 to P.W-3 had given exaggerated version. When the witnesses had admitted that there had been dispute between



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them and their neighbours/Accused-1 to 3, the suggestion of the learned Counsel for the Defence that the false case had been foisted has to be accepted. Further, most of the witnesses in this case are related to each other. Under those circumstances, the benefit of doubt regarding the weapon and the nature of the injury suffered by P.W--2 has to be considered. When it is a simple injury, it does not warrant conviction for the offence under Section 307 of I.P.C. Therefore, the conviction of the Accused-2 by the learned Sessions Judge, Fast Track Mahila Court, under Section 307 of I.P.C is perverse.

14. The Accused is stated to have used abusive words in a public place in the presence of members of general public to cause mental agony to the victims. In this case, the Accused-1 and 2 are neighbours having agricultural fields adjacent to the agricultural field of the victims P.W-1 to P.W-3. The occurrence had taken place while the victims P.W-1 and P.W-2 ran to the rescue of their mother who was abused by the Accused-1, the Appellant in Criminal Appeal No.376 of 2017. It was not proved by the prosecution by examining any independent witness. The witness adduced by P.W-s 1 to 3 can be construed as interested witnesses. Further, the occurrence in this case had not taken place in a public place in the presence of members of general public. Therefore, the offence under Section 294(b) of I.P.C is not



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15. As per the provisions of Tamil Nadu Prohibition of Harassment of Women Act, 1998, the maximum period of imprisonment is three (3) years. In this case, the Accused-1 and 2 are alleged to have hit the mother and daughters with plastic pipe and stick, M.O-1 and M.O-2 causing pain. They have also hurled abusive words against P.W-1 to 3. Therefore, using abusive words and attacking them had attracted the ingredients of Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. Further the injuries suffered by P.W-1 to 3 is substantiated by examining P.W-6, Doctor and the Wound Certificates issued by him under Ex.P-2/Accident Register copy of P.W-2 and Ex.P-3– Admission Register copy of P.W-1 and P.W-2. Ex.P-4 and Ex.P-5 are the wound certificate of P.W-1 and P.W-2.

16. The learned Additional Public Prosecutor in order to justify the judgment of conviction of the trial court, placed reliance on the decision of ***Bhajan Singh alias Harbhajan Singh and others -vs- State of Haryana*** reported in ***(2011) 7 Supreme Court Cases 421***. In that case, the attack by the Accused concerned in the case has resulted in the death of complainants son and grievous injury to P.W-10. Having regard to the nature of the offence and



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the trustworthy deposition of prosecution witnesses, the Honourable Supreme Court held that the benefit of doubt cannot be given even if there are minor contradictions. This decision cannot be made applicable to the facts and circumstances of the case. In the present case, to sustain the conviction and sentence against the second Accused for the offence under Section 307 of IPC, the oral testimony of the prosecution witnesses is not supported by medical evidence. P.W-6, the Doctor, who treated the prosecution witnesses 1 to 3 and who has issued the Wound Certificate has categorically stated that the injuries sustained by them are simple injuries. It is also an admitted fact that the P.W-s 1 to 3 were discharged soon after their admission in the hospital. It is not the case of the prosecution that P.W-2 had taken treatment for months together or the injury said to have been suffered by her had any adverse effect on her health. Thus, the so called injury suffered by P.W-2 is not likely to cause her death or it can be brought within the parameter of grievous injury or hurt. Therefore, the charge as against the second Accused for the offence under Section 307 of IPC itself is not proper.

In the result, both the **Criminal Appeals are partly allowed.**

(i) The Judgment of conviction dated 08.06.2017, which is impugned in Criminal Appeal No. 376 of 2017 is modified. The first Accused



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is acquitted of the offence under Section 294 (b) of IPC. For the offence under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act, the conviction is confirmed, but the sentence of two years with fine of Rs.10,000/- imposed by the Trial Court is modified to the period of sentence already undergone by him. The fine amount of Rs.10,000/- imposed by the trial court for the offence punishable under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act is confirmed.

(ii) The Judgment of conviction dated 08.06.2017, which is impugned in Criminal Appeal No. 376 of 2017 is modified. The second Accused is acquitted in respect of the offence under Section 294 (b) of IPC as well as Section 306 of IPC. In respect of the conviction and sentence imposed against him for the offence under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act, the conviction is confirmed but the sentence is reduced to the period already undergone by him. The fine amount of Rs.10,000/- imposed for the offence under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act is confirmed.

02.08.2024

Internet : Yes/No
Index: Yes/No
Speaking Order: Yes/No
NCC : Yes / No
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1. The Sessions Judge,
Mahila Court, Perambalur.
2. The Inspector of Police
Arumbavoor Police Station
Perambalur District
3. The Superintendent,
Central Prison, Trichy.
4. The Public Prosecutor,
High Court Madras,
Chennai – 600 104.
5. The Section Officer,
Criminal Section,
High Court of Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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