



CRL. A. No.1312/2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
18.06.2024	28.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 1312 OF 2022

Sakthivel

.. Appellant

- Vs -

The State, rep. By

1. The Deputy Superintendent of Police
O/o Deputy Superintendent of Police
Panruti, Cuddalore District.

2. The Inspector of Police
Panruti Police Station
Cuddalore District.

3. Jayavishnu @ Vishnu
4. Vasantharaja
5. Mohanraj @ Kosu
6. Prathapkumar
7. Murugan

.. Respondents

Criminal Appeal filed u/s 378 Cr.P.C. praying to set aside the judgment in

S.C. No.94 of 2019 dated 7.10.2022 passed by the learned Special Judge for



CRL. A. No.1312/2022

Exclusive Trial of SC/ST Act Cases, Cuddalore and convict respondents/A-3 to A-

7.

For Appellant : Mr. R.Thirumoorthy

For Respondents : Ms. G.V.Kasthur, APP
For RR-1 & 2
No Representation for RR-3 to 7

JUDGMENT

Assailing the acquittal of respondents 3 to 7, who were arrayed as A-1 to A-5 in S.C. No.94/2019 by the learned Special Judge, Exclusive Trial of SC/ST Act Cases, vide judgment dated 7.10.2022, the present appeal has been filed by the appellant/defacto complainant.

The appellants stood charged for the following offences :-

S. No.	Array of Accused	Section of Offence Charged
1	A-1 to A-5	148, 452, 506 (ii) IPC
2	A-1, A-3 & A-4	324 IPC
3	A-2 & A-5	323 IPC
4	A-1 to A-5	3 (1) of TNPPD Act
5	A-1 to A-5	3 (1) (r), 3 (1) (s) & 3 (2) (va) of SC/ST Act



WEB COPY

After trial, the Special Court found the accused not guilty of the offence, acquitted the accused aggrieved by which the present appeal has been preferred by the appellant/complainant.

2. The brief facts necessary for the disposal of the present appeal are as under :-

P.W.2 is the son of P.W.1 and both of them belong to Adi Dravidar community. The respondents 3 to 7 who were arrayed as A-1 to 5 belonged to Hindu Vanniyar community.

3. It is the case of the prosecution that on 17.1.2019 at about 8.45 p.m., when P.W.s 1 and 2 were in their house, foul smell emanated at their place because of some persons attending nature's call near their house and, therefore, P.W.1 shouted at them as to why they are not going far away and do the said act and, thereafter, P.W.1 went to sleep in old house nearby. At about 9.00 p.m., A-1 to A-5 armed with knife, iron rod and wooden log, assembled at the house of P.W.1 and knocked the door and upon P.W.2 opening the door, they asked him to call P.W.1. When P.W.2 enquired the purpose, A-1 to A-5 abused him using



WEB COPY

his caste name and, therefore, P.W.2 called P.W.1, who came to his new house and enquired as to why A-1 to A-5 are creating nuisance. A-1 to A-5 abusing P.W.1 using his caste name, A-1 attacked P.W.1 on the front of his head with a knife. A-2 attacked P.W.1 on his right shoulder with a wooden log. A-3 and A-4 attacked P.W.1 on his left hand wrist with an iron rod. A-2 to A-5 also attacked P.W.2 on his head and all parts of the body with a stick. After causing the attack and warning P.W.s 1 and 2, A-1 to A-5 caused damage to the Pulsar and TVS-Victor motorcycles belonging to P.W.s 1 and 2 and left the house of P.W.1.

4. P.W.1 informed the attack over phone to the jurisdictional police station and through 108 Ambulance P.W.s 1 and 2 got admitted at the Cuddalore Government Hospital.

5. P.W.9, the Inspector of Police, attached to Panruti Police Station at the relevant point of time, upon information received from Government Hospital, Cuddalore, the Sub Inspector of Police went to the hospital and obtained the complaint and upon returning back to the police station, P.W.9 recorded the same in Crime No.33/2019 for the offences u/s 147, 148, 452, 294 (b), 323, 324,



WEB COPY

506 (ii) IPC and Section 3 of PPDL Act and Section 3 (1) (r) and 3 (1) (s) of SC/ST (PoA) Act against A-1 to A-5 and prepared printed FIR, Ex.P-9. The printed FIR was forwarded to the Court and higher officials and made a requisition to the higher authorities to depute a higher authority for taking up the investigation

6. Accordingly, the Deputy Superintendent of Police, Panruti was appointed as the investigating officer vide Ex.P-10. On 18.1.2019, P.W.9 was examined by the Dy. Superintendent of Police, Neyveli Division, who was holding additional charge of Panruti Division.

7. P.W.10, the Deputy Superintendent of Police, who was appointed as the investigating officer upon the requisition made by P.W.9 to investigate the case in Crime No.33/2019 registered by P.W.9. Taking up investigation on 18.1.2019, P.W.10 went to the scene of occurrence and prepared observation mahazar, Ex.P-11 and drew rough sketch, Ex.P-12. From nearby the scene of occurrence, P.W.10 recovered three wooden logs, one knife and two vehicles, viz., one Pulsar bearing Regn. No.PY-01-CS-9457 and another TVS-Victor bearing Regn. No.TN-31-M-7048 under the cover of mahazar, Ex.P-13. Thereafter, P.W.10 examined



WEB COPY

P.W.s 1 and 2 and other witnesses and recorded their statements. Upon investigation and on coming to know that the occurrence was genuine, P.W.10 continued further investigation and went on the look out for the accused. On 18.1.2019, at about 3.30 p.m., P.W.10 arrested A-1 to A-4 and brought them to the police station and sent them to court for judicial remand. Upon transfer, P.W.10 handed over further investigation to P.W.11.

8. P.W.11, upon taking up further investigation on the same being handed over by P.W.10 examined the witnesses, including P.W.s 1 and 2 who were already examined by P.W.10. P.W.11 examined the doctor, P.W.7, who had examined P.W.s 1 and 2. Upon requisition, P.W.8, the Revenue Divisional Officer issued caste certificates certifying that P.W.s 1 and 2 belong to Hindu Adi Dravidar and A-1 to A-5 belong to Hindu Vanniyar caste. Upon the orders of this Court, as A-5 had surrendered before the court, completing the investigation P.W.11 filed the final report against the accused for the offences aforesaid.

9. To prove the case against A-1 to A-5, the prosecution examined P.W.s 1 to 11 and marked Exs.P-1 to P-15 and M.O.s 1 to 6. The accused were



WEB COPY

questioned u/s 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence tendered by the prosecution witnesses and they denied the same as false. On the side of the accused neither oral evidence nor documentary evidence was adduced. On consideration of the evidence, both oral and documentary, the Special Court acquitted the accused A-1 to A-5 of all the charges framed against them aggrieved by which the present appeal has been filed by the appellant/complainant.

10. Learned counsel appearing for the appellant submits that even before the doctor, at the first instance, P.W.s 1 and 2 have clearly spelt out that they were attacked by 20 known persons in their house and the same has also been recorded in the Accident Register, Ex.P-7 issued in respect of P.W.2. It is the further submission of the learned counsel that what has been spoken to before P.W.7 has been spoken to by P.W.s 1 and 2 in their complaint. Therefore, the veracity and genuineness of the complaint cannot be doubted.

11. It is the further submission of the learned counsel that P.W.s 4 and 5, who were standing in the nearby bus stop have spoken about the attack made on



WEB COPY

P.W.s 1 and 2 and in fact, P.W.4 has clearly spoken that he had seen A-1 to A-5 attacking P.W.s 1 and 2. It is the further submission of the learned counsel that P.w.4, in fact, had spoken about the attack in a detailed manner in which he has even stated that the names of the accused were uttered by the witnesses. P.W.4, though is a distantly related witness, yet is an independent witness, who has no axe to grind against the accused and, therefore, the deposition of P.W.4 corroborates the evidence of P.W.s 1 and 2. It is the further submission of the learned counsel that the evidence of P.W.3, the wife of P.W.1 corroborates the evidence of P.W.s 1 and 2 about the attack perpetrated by the accused. All the three witnesses, P.W.s 1 to 3, in unison, have spoken about the attack and there being no contradiction in their evidence and the same finds corroboration through Exs.P-6 and P-7, the accident registers issued by P.W.7 in respect of P.W.s 1 and 2, the occurrence has been proved, including the complicity of the accused in the commission of the crime. However, without properly appreciating the evidence, the court below has acquitted the accused, which requires interference at the hands of this Court.



CRL. A. No.1312/2022

WEB COPY

12. On the above contentions, this Court heard the learned Addl. Public Prosecutor appearing for the respondents, who submitted that the evidence, both oral and documentary have been properly appreciated by the court below while coming to a fair and just decision and the same does not require any interference at the hands of this Court.

13. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the appellant 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 Sahebagouda Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date – 19.04.2024)***, the Supreme Court had 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 :-



WEB COPY



CRL. A. No.1312/2022

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, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition 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”,



WEB COPY



CRL. A. No.1312/2022

“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



WEB COPY

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."

(Emphasis Supplied)

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 reappraise the evidence available on record to render a finding. However, in reappraising 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



WEB COPY

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 light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find out whether the view arrived at by the trial court is based on the materials available on record.

17. There is no quarrel with the fact that the evidence of P.W.s 1 to 3 are identical and they have spoken about the manner in which the offence was committed by the accused. In fact, the manner in which the injuries were inflicted by each of the accused is spoken to by P.W.s 1 to 3. However, P.W.s 1 to 3 are related to each other and, therefore, it would not be safe to rely only upon their evidence to hold that the accused have committed the crime, more so, when caste angle is involved in the present case. The whole case is premised on the caste afflictions of the appellant and the accused.



WEB COPY

18. The substance of the allegations against the accused is that they had uttered the caste of P.W.s 1 to 3 and had caused the injuries on them and had warned P.W.s 1 and 2 that they will be done away with if they interfered with the higher caste persons. However, one important aspect which needs to be pointed out here is the fact that no motive, except for the caste angle, has been attributed. In fact, the evidence of P.W.s 1 to 3 is silent as to the motive for the accused to come as a group and commit the offence.

19. In this backdrop, the evidence of P.W.s 4 and 5 assumes significance. P.W.3 is a witness, who claims that he was standing in the bus stop, which was situate about $\frac{1}{4}$ of a kilometre away from the house of P.W.s 1 and 2. It is the deposition of P.W.4 in chief that he along with P.W.5 went to the house of P.W.s 1 and 2 upon hearing the noise and found the A-1 to A-5 attacking P.W.s 1 and 2. P.W.4 further deposed that the family members of P.W.1 had called the police.

20. In cross examination, P.W.4 had deposed that he has problem with his eye sight and that he was standing by the tree beside the bus stop. P.W.4 further deposed that he was not in the habit of wearing glasses and that he has a vision



WEB COPY

upto a distance of 100 feet. It is the further deposition of P.W.4 that no street light was available near the house of P.W.1 and that there was street light near the bus stop where he was standing. Further, it is the categorical submission of P.W.4 that he cannot see objects which are at a distance. When it is the specific deposition of P.W.4 that he can see objects only which are close by at a distance of 100 feet and that he cannot see distant objects, this Court is at a loss as to how P.W.4 could have seen the attack, which is alleged to have been carried out in the house of P.W.1, which is at a distance of $\frac{1}{4}$ of a kilometre, more importantly there being no street light near the house of P.W.1. Further, it is not the case of the prosecution that the occurrence had happened outside the street. Such being the case, placing reliance upon the deposition of P.W.4 to say that there is corroboration for the deposition of P.W.s 1 to 3 is wholly unsustainable. Further, P.W.4, though is projected to be an independent witness, but in cross, it is his specific deposition that P.W.s 1 to 3 are related to him. Therefore, his evidence cannot be the basis to construe that the occurrence had indeed happened.



WEB COPY

21. Turning back to the deposition of P.W.5, who is also stated to be an independent, but is a related witness, even as per his deposition, though in chief, the deposition of P.W.5 corroborates P.W.4, however, in cross, it is the specific deposition of P.W.5 that there was no one near the bus stop. It is the further deposition of P.W.5 that he moved away from the scene of occurrence after seeing the attack on P.W.s 1 and 2 for fear that he may also be attacked. This deposition of P.W.5 runs counter to P.W.4, who has specifically deposed that both P.W.s 4 and 5 went to the house of P.W.s 1 and 2 and found the accused attacking P.W.s 1 and 2. It is the further deposition of P.W.5 that when he went from the occurrence, he saw the Deputy Superintendent of Police coming and upon seeing P.W.5, the police enquired him. However, it is the specific case of P.W.10 that upon information being received from the Government Hospital, police went there and recorded the FIR. However, the deposition of P.W.s 1 to 3 does not speak about any police official coming to their house.

22. On a holistic consideration of the evidence of P.W.s 4 and 5, it could safely be concluded that it is full of contradictions and even if P.W.4 had been near the scene of occurrence at the bus stop, he could not have identified the



WEB COPY

accused, as he was short of sight at that distance. The evidence of P.W.5 is totally in variance with the evidence of P.W.4 and, therefore, this Court is of the considered view that it is wholly unsafe to rely on the evidence of P.W.s 4 and 5 to find the accused guilty.

23. In the backdrop of the aforesaid evidence, which bristles with very many infirmities and inconsistencies, a perusal of the evidence of P.W.7 the doctor shows that only simple injuries were found on the person of P.W.s 1 and 2 of which one is a cut injury on P.W.1 from which blood was coming out. If really the version of P.W.s 1 and 2 that they were attacked by 20 persons, as has been spoken by them to the doctor, P.W.7, which finds place in Ex.P-7 the accident register in respect of P.W.2, the injuries sustained by P.W.s 1 and 2 could not have been simple. One suggestion has been made to P.W.7 in cross that the injuries sustained by P.W.s 1 and 2 could have been sustained in an accident, to which P.W.7 had answered in the affirmative. Thus the evidence of the doctor, coupled with the injuries and the accident register, Ex.P-7, in which it is alleged that 20 persons attacked P.W.s 1 and 2, the occurrence alleged to have taken



WEB COPY

place, as spoken to by P.w.s 1 to 3 has not been proved beyond reasonable doubt, as their deposition is clouded with very many contradictions.

24. It is not the case of the prosecution that no houses were nearby the house of P.W.s 1 and 2 and such being the case, definitely the commotion could have attracted attention and independent witnesses would be available to speak about the occurrence. However, for reasons best known, no independent witnesses have been examined by the prosecution, which casts a serious doubt on the prosecution version.

25. Appreciating all the above, the court below has come to a conclusion that the prosecution has not proved the case against the accused beyond reasonable doubt and had accordingly acquitted the accused.

26. It is always presumed that a person is considered innocent until proven guilty and upon appreciation the court below has come to the conclusion that the guilt of the accused had not been proved, the presumption gets strengthened and unless there are definitive materials, which unerringly point to



CRL. A. No.1312/2022

the guilt of the accused, this Court cannot overturn the verdict of acquittal. The appellant having not pointed out any such material, this Court is of the considered view that it would be unsafe to find the respondents 3 to 7 guilty.

27. In the result, the appeal fails confirming the judgment of acquittal DATED 07.10.2022 recorded by the learned Special Court for Exclusive Trial of SC/ST Act Cases, Cuddalore in S.C. No.94/2019.

28.06.2024

Index : Yes / No

GLN

To

1. The Special Judge
Special Court for Exclusive
Trial of SC/ST Act Cases
Cuddalore.
2. The Deputy Superintendent of Police
O/o Deputy Superintendent of Police
Panruti, Cuddalore District.
3. The Inspector of Police
Panruti Police Station



CRL. A. No.1312/2022

WEB COPY

Cuddalore District.

4. The Public Prosecutor
High Court, Madras.



WEB COPY



CRL. A. No.1312/2022

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
CRL. A. NO. 1312 OF 2022**

Pronounced on



WEB COPY



CRL. A. No.1312/2022

28.06.2024