



Crl.A(MD)No.14 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Muthu @ Sudalai Muthu

... Appellant/Accused No.3

Vs.

1. The Deputy Superintendent of Police,
Srivaikundam Division,
Thoothukudi District.

..1st Respondent/ Complainant

2. The Inspector of Police,
Alwarthirunageri Police Station,
Thoothukudi District.
(Crime No.155 of 2019)

... 2nd Respondent/ Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records and allow this appeal and set aside the judgment and conviction dated 17.11.2021 by the Learned Special Judge for trial of cases under SC/ST (POA) Act, Thoothukudi, in S.C.No.4 of 2021 and acquit the appellant.



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For Appellant : Mr.S.Muthumalai Raja

For Respondents : Mr.M.Muthumanikkam,
Government Advocate(Crl.Side)

JUDGMENT

This appeal is filed to set aside the judgment and conviction dated 17.11.2021 by the Learned Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Thoothukudi, in S.C.No.4 of 2021 and acquit the appellant.

2.The appellant is the sole accused in S.C.No.4 of 2021. P.W.2 and other witnesses were playing kabadi in the old paddy field at Indra colony. At the time, there was some dispute between P.W.2's group and the appellant's group. The appellant belongs to Hindu Yadhavar Community and P.W.2 and other witnesses belong to Hindu Scheduled Caste. At that time, there was some dispute relating to the distribution of the prize leading to a scuffle. During the said scuffle between P.W.2 group and the appellant's group, P.W.1 a leader of one political party intervened and questioned the appellant and other persons, belonging to



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Hindu Yadhavar Community. In the said situation, the appellant and the other accused were said to have assaulted P.W.1. Hence, he made a complaint before the PW.9 and the same was registered in Crime No.155 of 2019 for the alleged offence under Sections 147, 323 and 506(i) of IPC and Section 3(1)(r), 3(1)(s) and 3(2)va of SC/ST (POA) Amendment Act, 2015. Thereafter, P.W.15 conducted the investigation and filed a final report before the learned II Additional Sessions Judge, Tirunelveli. After receipt of the final report, the learned trial Judge has taken cognizance in S.C.No.4 of 2021, on the file of the learned Sessions Judge, Special Court for trial of cases under SC/ST (POA) Act, Thoothukudi.

3.The learned trial Judge after appearance of the accused served the copies under Section 207 Cr.P.C. Then, he framed necessary charges and questioned the accused. The accused denied the charges and plead not guilty and stood for trial.

4.To prove the case, the prosecution examined P.W.1 to P.W.15 and exhibited 15 documents as Ex.P.1 to Ex.P.15. Thereafter, all the accused were questioned under Section 313 Cr.P.C proceedings disclosing the



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incriminating evidence against them and they denied the same as false and thereafter, the case was posted for defence evidence. On the side of the accused, neither witnesses were examined nor documents were marked.

5.After considering the material adduced by the prosecution and also hearing the argument of the appellant and other accused, the trial Court acquitted the accused Nos.1 and 2 for the offence under Sections 147 and 506(i) of IPC and Sections 3(1)(4), 3(1)(s) and 3(2)(va) of SC/ST (POA) Act, and convicted the appellant for the offence under Section 323 of IPC and sentenced them to undergo one week simple imprisonment and directed to pay compensation of Rs.3,000/- (Rupees Three Thousand Only) to P.W.1, in default to undergo one month simple imprisonment. Aggrieved over the same, the present appeal has been filed.

6.The learner counsel appearing for the appellant submitted that the trial judge after acquitting the remaining accused and also acquitting the appellant under various charges, convicted the appellant under 323 of



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IPC which is not maintainable. All the witnesses examined by the prosecution turned hostile, except P.W.1. The trial court also disbelieved the evidence of P.W.1 to certain extent. In the said circumstances, the conviction on the basis of evidence of P.W.1, is not legally sustainable. The evidence of P.W.1 is not corroborated with the material particulars of the either medical evidence or the other evidence adduced on the side of prosecution. In the said circumstances, he relied the judgment of the Hon'ble Supreme Court in the case of *Vadivelu Thevar Vs. State of Madras* reported in *AIR 1957 SC 614* and contented that in this case, the evidence of P.W.1 does not come under the category of “*wholly reliable testimony*” and hence he seeks for acquittal of the appellant.

7.The learned Government Advocate (Crl. Side) on instructions, submitted that even though the prosecution has not preferred appeal against acquittal against the remaining accused, the learned trial Judge on available evidence correctly convicted the appellant under section 323 of IPC. PW.1's evidence is cogent and same was corroborated with the other material document to show that he sustained injury. As a result of the act of the appellant that he pulled him, he sustained injury over the neck. In



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the said circumstances, he seeks for the confirmation of the conviction and sentence imposed against the appellant.

8.This court considered rival submissions made on either side and also perused the record also considered the precedents relied upon by him.

9.Admittedly, in the Kabaddi tournament, P.W.2 and the appellant were participants in the tournament. There was a dispute between the distribution of the prize. Hence, there was some scuffle between P.W.2 group and the appellant's group. In the said circumstances, without any reason P.W.1 intervened in the said scuffle between P.W.2 group and the appellant's group. Even as per the evidence of the P.W.2 and other witnesses and also the evidence of P.W.1, it is clear that 5 persons were involved in the occurrence. Among 5 persons, 3 persons were said to have assaulted P.W.1. Among 3 persons, one person was a juvenile and other persons were adult and arrayed as accused. The court below disbelieved the evidence of P.W.1 relating to the other adult persons when the specific overt act was attributed against the said adult person



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who attacked P.W.1 with the plastic pipe. According to the evidence is concerned, he only pushed P.W.1. In the said circumstances, this Court finds that there is no corresponding injury over the body of P.W.1 to substantiate the allegation against this appellant. Further, this Court finds that the evidence of P.W.1 is not believed by the Court below relating to the allegation of abusing the caste and other aspects.

10. In the said circumstances, as per the following law laid down by the Hon'ble Supreme Court in the case of ***Vadivelu Thevar and other v. State of Madras***, reported in **AIR 1957 SC 614** *this case has to be dealt with ;*

11. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:



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- (1) *Wholly reliable.*
- (2) *Wholly unreliable.*
- (3) *Neither wholly reliable nor wholly unreliable.*

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

11. In this case, applying the above principles, P.W.1 evidence is come under the second category. Even according to the trial Judge, his evidence is partly reliable and partly not reliable. In the said circumstances, without any corroborative material and also considering the presence of P.W.1 in the occurrence place itself is doubtful on the evidence of the PW 2 and other witnesses, this court is inclined to allow the appeal by setting aside the conviction imposed by the Court below against the appellant.



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12. Accordingly, this Criminal Appeal is allowed and the conviction passed in S.C.No.4 of 2021, dated 17.11.2021, by the learned Sessions Judge, Special Court for Trial of cases under SC/ST (POA) Act, Thoothukudi is set aside. Bail bond executed by the appellant is cancelled.

10.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The II Additional Sessions Judge,
Tirunelveli.
2. The Sessions Judge,
Special Court for trial of cases under SC/ST (POA) Act,
Thoothukudi.
3. The Deputy Superintendent of Police,
Srivaikundam Division,
Thoothukudi District.
4. The Inspector of Police,
Alwarthirunageri Police Station,
Thoothukudi District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
6. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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