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CRL.A(MD).Nos. 132 and 173 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	16.04.2024
Pronounced On	:	25.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).Nos. 132 and 173 of 2024

Crl.A.(MD).No.132 of 2024 :

Raja @ Puraraja

... Petitioner/Accused No.1

Vs.

1. The Deputy Superintendent of Police,
O/o. The Deputy Superintendent of Police,
Thiruchendur,
Thoothukudi District.

2. The State Represented through
Inspector of Police,
Thiruchendur,
Thoothukudi District.

(In Crime No.270 of 2023) ... Respondents/Respondents

3. Pechiammal

... Respondent/Defacto Complainant

Prayer : This Criminal Appeal has been filed under Section 14 (A) (2) of SC/ST (Amendment Act) of 2014, to call for the records pertaining to the order passed by the learned Sessions Judge, Special Court for the Trial of SC and ST Act Cases, Thoothukudi in Cr.M.P.No.1152 of 2023 dated 28.11.2023 and set aside the same and enlarge the Appellants on bail in Crime No.270 of 2023 on the file of the Respondent No.2.



CRL.A(MD).Nos. 132 and 173 of 2024

Crl.A.(MD).No.173 of 2024:

Suresh Gobi

... Appellant/Petitioner/Accused
Rank Not known

Vs.

1. The Deputy Superintendent of Police,
Tiruchendur,
Thoothukudi District.

2. The Inspector of Police,
Tiruchendur,
Thoothukudi District.
(Crime No.270 of 2023)

... Respondents 1 & 2/Complainants

3. Pitchaiammal

... 3rd Respondent/Defacto Complainant

Prayer : This Criminal Appeal has been filed under Section 14 (A) (2) of SC/ST (Amendment Act) of 2014, to call for the records pertaining to the order passed by the learned Sessions Judge, Special Court for the Trial of SC and ST Act Cases, Thoothukudi in Cr.M.P.No.1152 of 2023 dated 28.11.2023 and set aside the same and enlarge the Appellants on bail in Crime No.270 of 2023 on the file of the Respondent No.2.

CRL.A(MD).Nos. 132 and 173 of 2024 :

For Appellant : Mr.S.Prabha in Crl.A.(MD).No.132/2024

: Mr.G.Radhakrishnan
in Crl.A.(MD).No.173/2024

For Respondents : Mr.B.Nambiselvan,
Additional Public Prosecutor for R1 & R2
(in both cases)

: Ms.N.Juliet Latha for R3
(in both cases)



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COMMON JUDGMENT

These appeals in Crl.A.(MD).No.132 of 2024 and Crl.A.(MD).No. 173 of 2024 have been filed by the appellants/A1 and A3 respectively to set aside the order passed by the learned Sessions Judge, Special Court for the Trial of SC and ST Act Cases, Thoothukudi, in Cr.M.P.No.1152 of 2023 and Cr.M.P.No.122 of 2024, dated 28.11.2023 and 31.01.2024 respectively and to enlarge the appellants on bail in Crime No.270 of 2023 on the file of the second respondent.

2.The defacto complainant/third respondent's husband is deceased namely Balakannan. He is working as a cleaner in a private wind Mill at Kalamolzhi. On 07.01.2023, at 5.00 p.m., he went to the job and had not returned to the house and hence the third respondent made a complaint before the second respondent Police on 09.09.2023. The second respondent Police registered a Man Missing case in Crime No.270 of 2023, on 10.09.2023. In the complaint, it is also stated that the deceased had the habit of drinking. The Respondent Police after receiving the photograph of the deceased from the defacto complainant/third respondent, conducted the investigation in the said case. The Respondent Police found that the



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appellant in Crl.A.(MD).No.132 of 2024 and the appellant in Crl.A.(MD).No.173 of 2024 and other accused were consuming alcohol and at that time, the deceased argued with them demanding liquor for him. Thereafter, the deceased threatened them that he would make a complaint against them with false allegations, for not giving the liquor before the second respondent respondent Police stating that that the appellants and others abused him by using his caste name. In the course of the said incident, the appellant in Crl.A.(MD).No.132 of 2024 had some arguments with them. Thereafter, the deceased picked up a quarrel with him and in the said quarrel, the bike of the appellant in Crl.A.(MD).No.132 of 2024 was damaged and thereafter, the deceased again insisted to give liquor. Therefore, all the accused in this case, had taken the deceased to an isolated place and had liquor and during the course of the drinking, the deceased stated that he would make a complaint before the respondent Police. Aggrieved over the same, all the accused kicked the deceased with their leg and the appellant in Crl.A.(MD).No.132 of 2024 caused death to the deceased by stabbing him with a broken beer bottle. Thereafter, all the accused are said to have buried the body and escaped from the scene of the occurrence. Thereafter, during the course of the investigation, the investigation officer arrested one juvenile accused and the juvenile accused



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gave a confession narrating the above events. On the basis of the confession, the body was exhumed and the other accused were arrested including the appellants in the above appeals. After arresting the appellants, the investigation was completed and altered to Sections 364, 365, 302 and 201 of IPC and Section 3(2)(r) of SC/ST (POA) Amendment Act, 2015 and the final report was filed before the Court below. In the said circumstances, the appellants filed the bail petition before the learned Sessions Judge, Special Court for the Trial of SC and ST Act Cases, Thoothukudi, in Cr.M.P.No.1152 of 2023 and the same was dismissed by the learned trial judge on the ground that the investigation was not completed and there was a threat to the life of the witnesses. Further, the appellant in Crl.A.(MD).No.132 of 2024 has number of previous cases and hence, he cited additional reason to that. In the said circumstances, the appellants preferred this appeal challenging the dismissal of the bail petition filed by them.

3.The learned counsel appearing for the appellant in Crl.A.(MD).No. 173 of 2024 would submit that even as per the prosecution evidence and the confession of the co-accused, namely juvenile, the only overtact attributed against him is that he kicked the deceased with leg. The



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appellant in Crl.A.(MD).No.132 of 2024 alone stabbed the deceased with beer bottle. Further, he has no previous antecedent and he is in incarceration from 15.11.2023. The learned trial judge felt that there was a apprehension of the law and order problem. Without any material to the said fact, the learned trial Judge dismissed the bail petition. Hence he seeks to set aside the impugned order passed by the learned trial Judge.

4.The learned counsel appearing for the appellant in Crl.A.(MD).No. 132 of 2024 would submit that the case rests on circumstantial evidence and the body was exhumed, at the instance of the juvenile accused. Only on the basis of the confession of the juvenile accused, the appellant was implicated in the above case. There was no other materials against the appellants/accused No.1 and 3 to sustain the conviction. In order to sustain the conviction on the basis of circumstantial evidence, the prosecution has to establish the guilt of the accused beyond reasonable doubt. In this case, no material was collected by the investigating agency even to frame the charges against the appellant and hence he seeks for allowing the appeals.



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5.The learned Additional Public Prosecutor on instruction, submitted that the appellant in Crl.A.(MD).No.132 of 2024 is having seven previous cases and he furnished the details in this regard. He further submitted that he has a specific overtact that he stabbed the deceased with a beer bottle. Further, if he is released on bail, there is a chance of life threat to the witnesses. In the said circumstances, he seeks for dismissal of the appeal filed by the appellant in Crl.A.(MD).No.132 of 2024.

6.The learned Additional Public Prosecutor submitted that even though the appellant in Crl.A.(MD).No.173 of 2024 has no previous case and has no antecedents, going by the nature of the incident that took place, it has had serious impact on society, ie., there is a possibility of communal tension in the said place. He further submitted that a final report is filed and hence, he seeks for the speedy disposal of the case.

7.The learned counsel for the third respondent/defacto complainant reiterated the submission of the learned Additional Public Prosecutor and specifically submitted that there was a life threat to the witnesses and the defacto complainant. In the said circumstances, he seeks for dismissal of the appeal.



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8.This Court considered the rival submissions made on either side and perused the records produced by the learned Additional Public Prosecutor and the counter affidavit filed by the learned Additional Public Prosecutor.

9.It is the admitted case of the prosecution that originally Man-Missing case was registered in Crime No.270 of 2023. In the Man-Missing complaint, it is averred that the deceased had a habit of drinking. He was missing from 07.09.2023 onwards. The complaint was given on 09.09.2023. Thereafter, the investigation agency arrested the juvenile accused and conducted the investigation. During the course of investigation, it was found that three juveniles and three adolescent persons were involved in the murder of the deceased. According to the investigating agency, the deceased demanded liquor from the accused. The same was refused by the A1 and other accused. Therefore, the deceased criminally intimidated the appellants and other accused that he would give a complaint to the police with false allegation stating that the appellants and other accused abused him using foul language and caste name. The same was condemned by the appellant in Crl.A.(MD).No.132 of 2024. At



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that time, the deceased caused damage to the bike of the appellant in Crl.A.(MD).No.132 of 2024. Hence, the appellants without any alternative took the deceased to an isolated place and gave liquor. After taking liquor, the deceased murmured that he would make a complaint against the appellants under SC/ST Act. Therefore, even according to the prosecution, all the appellants kicked him and the appellant in Crl.A.(MD).No.132 of 2024 stabbed him with a broken beer bottle. From the above narration of the events, it is clear that there was some wordy altercation, relating to the drinking of alcohol. Therefore, considering the nature of the overtact attributed against the appellant in Crl.A.(MD).No.173 of 2024, that he only kicked the deceased and he has no previous antecedents and the investigation is completed and no material was produced to show that there was a law and order problem and also considering the incarceration from 15.11.2023, this court is inclined to grant bail to the appellant in Crl.A.(MD).No.173 of 2024.

10. Accordingly, the Criminal Appeal in Crl.A.(MD).No.173 of 2024 is allowed and the order dated 31.01.2024 made in Cr.M.P.No.122 of 2024 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (PoA) Act, Thoothukudi is set aside. The appellant



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in Crl.A.(MD).No.173 of 2024 is ordered to be released on bail on his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, for a like sum to the satisfaction of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (PoA) Act, Thoothukudi and on further conditions that:

(a) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Special Court for Trial of Cases Registered under SC/ST (PoA) Act 1989, Thoothukudi, may obtain a copy of their valid identity card to ensure their identity.

(b)The appellant shall report before the second respondent Police daily at 10.30 am, until further orders.

(c) the appellant shall not tamper with evidence or witness either during investigation or trial.

(d) the appellant shall co-operate with the investigation.



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11.1.Among the above previous cases, it is seen that he is involved in number of theft cases. Further, the prosecution case is that he caused the stab injury by using the beer bottle. It is well settled principle that law of parity is not applicable to the present case on the peculiar circumstances of the above stated fact that the appellant in Crl.A.(MD).No.132 of 2024 has number of previous cases and also he is attributed with the major overtact against the deceased. In view of the special circumstances available against him, this court is not inclined to entertain the appeal filed by the appellant in Crl.A.(MD).No.132 of 2024.

12.Accordingly, the appeal in Crl.A.(MD).No.132 of 2024 is dismissed.

25.04.2024

NCC : Yes / No
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To

1. The Learned Sessions Judge,
Special Court for the Trial of SC and ST Act Cases,
Thoothukudi.
2. The Deputy Superintendent of Police,
O/o. The Deputy Superintendent of Police,
Thiruchendur, Thoothukudi District.
3. The Inspector of Police,
Thiruchendur, Thoothukudi District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

vsg

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