



Crl.A(MD)No.78 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated	:	04.12.2024
--------------	----------	-------------------

CORAM

THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

CRL.A.(MD)No.78 of 2019

1.Gnanasekaran

2.Dhanasekaran

3.Rajamani

... Appellants

vs.

State The Deputy Superintendent of Police,
Thiruppathur Sub-Division,
Thirukostiyur Police Station,
Sivagangai District.
(Crime No.39 of 2008)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code to set aside the order passed by the learned Sessions Judge and Special Court for PCR, Sivagangai in S.C.No. 154 of 2009, dated 31.01.2019.

For Appellants :Mr.V.Kannan

For Respondent :Mr.M.Sakthikumar
Government Advocate (Crl.Side)



Crl.A(MD)No.78 of 2019

WEB COPY

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed against the appellants in S.C.No.154 of 2009 dated 31.01.2019, by the learned Sessions Judge and Special Court for PCR Cases, Sivagangai.

2.The accused in S.C.No.154 of 2009, on the file learned Judge, Special Court for PCR Cases, Sivagangai District have filed this Criminal Appeal challenging the following conviction and sentence imposed on them by the impugned judgment dated 31.01.2019 in S.C.No.154 of 2009, by the learned Judge, Special Court for PCR Cases, Sivagangai District.

<i>Sl. No</i>	<i>Accused No.</i>	<i>Offence Punishable under Section</i>	<i>Sentence of Imprisonment and fine</i>
1	A1	323 of IPC	To pay a fine of Rs.1,000/-, in default, to undergo 1 month rigorous imprisonment.



Crl.A(MD)No.78 of 2019

2	A1	354 of IPC	1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.
3	A1	294(b) of IPC	To pay a fine of Rs.1,000/-, in default, to undergo 1 month rigorous imprisonment.
4	A1	506(2) of IPC	1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.
5	A1	3(1)(XI) of POA Act,	1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.
6	A1	3(1)(X)(2) of POA Act,	1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.
7	A2	294(b) of IPC	To pay a fine of Rs.1,000/-, in default, to undergo 1 month rigorous imprisonment.
8	A2	506(2) of IPC	1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.



Crl.A(MD)No.78 of 2019

9	A2	3(1)(X)(2) POA Act,	of 1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.
10	A3	323 of IPC	To pay a fine of Rs.1,000/-, in default, to undergo 1 month rigorous imprisonment.
11	A3	354 of IPC	1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.
12	A3	294(b) of IPC	To pay a fine of Rs.1,000/-, in default, to undergo 1 month rigorous imprisonment.
13	A3	506(2) of IPC	1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.
14	A3	3(1)(XI) of POA Act,	1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.
15	A3	3(1)(X)(2) POA Act,	of 1 year of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.



Crl.A(MD)No.78 of 2019

WEB COPY

3. On 02.06.2008 at about 03.30 p.m., while the *defacto* complainant Nachiyappan/P.W.1 was standing in front of his home, due to the previous enmity, the appellants threatened him and scolded with filthy language by abusing his caste name and attacked him with sickle. Hence a case was registered in Crime No.39 of 2008 on the file of the respondent police for the alleged offences punishable under Sections 323, 354, 294(b), 506(2) of IPC r/w 3(1)(X), 3(1)(Xi) of the SC/ST Act. After investigation, the investigating officer filed a final report before the Special Court for PCR Cases, Sivagangai. The same was taken on file in S.C.No. 154 of 2009.

4. After appearance of the accused, copies of records were furnished to them under Section 207 Cr.P.C. The learned Special Judge, on perusal of records and on hearing both sides and being satisfied that there existed a *prima facie* case against the accused/appellants, framed charges under Sections 323, 354, 294(b), 506(2) of IPC r/w 3(1)(X), 3(1)(Xi) of the SC/ST Act, and



Crl.A(MD)No.78 of 2019

the same were read over and explained to them and on being questioned, the accused/appellants denied the charges and pleaded not guilty and stood for trial.

5. The prosecution, in order to prove its case, had examined 11 witnesses as P.W.1 to P.W.11 and exhibited 10 documents as Ex.P.1 to Ex.P.10 and no material objects were marked. On the side of the appellant no witnesses examined and documents were marked.

6. The learned Trial Judge after completion of the examination of the prosecution witnesses questioned the appellant under Section 313 of Cr.P.C., by putting incriminating materials available against him in the prosecution evidence and the appellant denied as false. The learned trial judge, after considering the same, convicted the appellants as stated above.



Crl.A(MD)No.78 of 2019

WEB COPY

7.The learned counsel for the appellants made the

following submissions:

7.1.The learned trial Judge has failed to consider the previous enmity between the appellants and the *defacto* complainant's family and erroneously believed the evidence of the *defacto* complainant and her relative to convict them under Section 3(1)(X), 3(1)(Xi) of the SC/ST Act,.

7.2.The learned trial Judge failed to consider the evidence of P.W.2 that there was a scuffle between the appellant Nos.1 and 2 and her family relating to grazing of the bull of P.W.2. In order to escape from the registration of the case on behalf of the appellants, they filed false complaint wielding the influence of the panchayat President who had contested the election against the appellants' group.

7.3.The evidence of the family members of the *defacto* complainant that the appellants scolded the *defacto* complainant by using the caste name is not believable one in view of the strained relationship between them. The third appellant is the



Crl.A(MD)No.78 of 2019

wife of the first appellant was wrongly arrayed as accused. P.W.6 has strong motive against the appellants due to their participation in the election and she deposed that only one occurrence took place at 07.00 pm., and therefore, the entire evidence of the remaining family members of P.W.1 that the occurrence took place at 10.00 "o" clock is false. In view of the said material contradiction, he seeks for acquittal.

8.The learned Additional Public Prosecutor made the following submissions:

P.W.2 clearly deposed about the assault made by the appellants on the date of the occurrence and she also deposed that she sustained injuries and the appellants scolded her using specifically her caste name. The said evidence was corroborated by P.W.1 and an independent witness/P.W.6. Therefore, the learned trial Judge has correctly convicted the appellants. P.W.2 sustained injuries and the same was clearly corroborated by the medical evidence, namely, P.W.8. Therefore, the learned trial



Crl.A(MD)No.78 of 2019

Judge has correctly convicted the appellants under the above stated offences. In the said circumstances, he seeks to confirm the conviction and sentence.

9. This Court considered the rival submissions made by the learned counsel appearing for the appellants and learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and also the precedents relied upon by them.

10. The question in this case is whether the prosecution has established the case beyond reasonable doubt against the appellant and the Learned trial judge's conviction and sentence is sustainable or not?

11. From the evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.6, it is clear that the *defacto* complainant's bull caused damages to the tamarind fruits of the appellants' family resulting in loss. The



Crl.A(MD)No.78 of 2019

same was questioned by the appellant and therefore, there was a scuffle between the family of P.W.1 and the first appellant. There was motive also a between the appellant's family and the *defacto* complainant's family relating to the election dispute. P.W.1 is the husband of P.W.2 who contested in the panchayat election as a Panchayat Ward Member. The appellants' family supported one Sudarmani. P.W.1's family supported one Chinnaiah, who was none other than the uncle (Chithappa) of A1. P.W.1 deposed that he has stated at the time of the medical examination she was assaulted by two male persons. P.W.11/Investigating Officer specifically admitted that there was no specification about the words that had been uttered by each accused. 3 எதிரிகளில் யார் யார் என்னென்ன வார்த்தைகளை பயன்படுத்தி திட்டினார்கள் என்பதற்கு புகார் குறிப்பிட்டு எதுவும் சொல்லவில்லை என்றால் சரி தான். From the above evidence, this Court is unable to accept the evidence of P.W.1, P.W.2 that the appellants had scolded her by using her caste name. Even she admitted that there was a scuffle on the account of the bull belonging to P.W.2 damaging to the tamarind



Crl.A(MD)No.78 of 2019

fruits of the first appellant. They already have strong enmity due to the election dispute. In the said circumstances, this Court holds that the evidence of P.W.1 and P.W.2 and other witnesses that the appellants scolded P.W.2 by using her caste name is false and they embellished the scuffle that took place between the appellant Nos. 1 and 2 and P.W.2 and went to the extent of making the false allegation that the appellants scolded her by using the caste name. Therefore, this Court is unable to concur with the finding of the learned trial Judge in convicting the appellant for the offences punishable under Section 3(1)(X), 3(1)(Xi) of the SC/ST Act. Similarly, the ingredients of Section 354 of IPC also are not found in the evidence of P.W.2. At the cost of repetition, it is the specific case of all the witnesses that there was a scuffle due to the damages caused by the bull of P.W.2 to the tamarind fruits of the appellants. Therefore, the case of the prosecution that the appellants assaulted P.W.2 to outrage the modesty of P.W.2 cannot be accepted. In the said scuffle, the appellants, were said to have assaulted P.W.2 and caused simple injury. Even the said



Crl.A(MD)No.78 of 2019

injury is only a contusion. P.W.2 stated before the doctor at the time of the admission that she was assaulted by the two known male persons. Therefore, the allegation against A3 is nothing but material improvement to rope the family members of A1 and A2 due to the motive existed between them. Therefore, this Court without any hesitation, holds that A3 was falsely roped in this case and hence, the conviction and the sentence imposed against her is liable to be set aside. Further, this Court is inclined to convict the appellant Nos.1 and 2 only for the offences under Sections 323 and 506(ii) of IPC.

12.The *defacto* complainant's bull caused damages to the appellants' tamarind fruits and the same was questioned by the appellant Nos.1 and 2 and during the course, there was a scuffle without any premeditation and intention and hence, this Court is inclined to modify the conviction and sentence by the Court below.



Crl.A(MD)No.78 of 2019

WEB COPY

13. Accordingly, this Criminal Appeal is partly allowed in the following terms:

(i)the conviction and sentence of imprisonment imposed against the appellants for the offences punishable under Sections 323, 354, 294(b), 506(ii) of IPC and Section 3(1)(xi) and 3(1)(x)(2) of the SC/ST Act by the learned Special Judge, Special Court for PCR Cases, Sivagangai, vide judgment dated 31.01.2019, is set aside and the appellant Nos.1 and 2 are acquitted from the charges framed under Sections 354, 294(b) of IPC and Section 3(1)(xi) and 3(1)(x)(2) of the SC/ST Act and the conviction under Sections 323 and 506(ii) of IPC is hereby confirmed, the sentence of imprisonment and the fine amount are modified as here under:

<i>Sl. No</i>	<i>Accused</i>	<i>Conviction passed by the trial Court</i>	<i>Conviction passed by this Court</i>	<i>Remarks</i>
1	A1	323 of IPC To pay a fine of Rs.1,000/-, in default, to undergo 1 month rigorous imprisonment.	To pay a fine of Rs. 6000/- for the offence under Section 323 of IPC	Fine amount enhanced



Crl.A(MD)No.78 of 2019

2	A1	354 of IPC 1 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.	--	Set aside
3	A1	294(b) of IPC To pay a fine of Rs.1,000/-, in default, to undergo 1 month rigorous imprisonment.	----	Set aside
4	A1	506(2) of IPC 1 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.	To undergo (3) <i>three months of rigorous imprisonment</i> for the offence under Section <i>506(ii) of IPC</i>	Sentence of imprisonment reduced
5	A1	3(1)(XI) of POA Act, 1 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.	---	Set aside
6	A1	3(1)(X)(2) of POA Act, 1 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.	----	Set aside
7	A2	294(b) of IPC To pay a fine of Rs.1,000/-, in default, to undergo 1 month rigorous imprisonment.	---	Set aside



Crl.A(MD)No.78 of 2019

8	A2	506(2) of IPC 1 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.	To undergo (3)three months of rigorous imprisonment for the offence under Section 506(ii) of IPC and to pay a fine of Rs.2,000/-	Sentence of imprisonment reduced and the fine amount enhanced
9	A2	3(1)(X)(2) of POA Act, 1 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Rigorous imprisonment.	-----	Set aside

(ii)As far as the *third appellant*, the conviction and sentence imposed by the learned Special Judge, Special Court for PCR Cases, Sivagangai vide judgment dated 31.01.2019 for the offences punishable under Sections 323, 354, 294(b), 506(ii) of IPC and Section 3(1)(xi) and 3(1)(x)(2) of the SC/ST Act is *hereby set aside and she is acquitted from all the charges framed against her*. Fine amount paid by the third appellant shall be refunded to her forthwith.



Crl.A(MD)No.78 of 2019

WEB COPY

(iii) Bail bond executed by the appellant Nos.1 and 2 shall stand terminated. The appellant Nos.1 and 2 is directed to pay their respective fine amount imposed by this Court. Further, the trial Court is hereby directed to secure the appellant Nos.1 and 2 and confine in prison to undergo remaining period of imprisonment.

04.12.2024

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
sbn



Crl.A(MD)No.78 of 2019

To
WEB COPY

- 1.The Special Court PCR Act Cases,
Sivagangai.
- 2.The Deputy Superintendent of Police,
Thiruppathur Sub-Division,
Thirukostiyur Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Record Section (Criminal)
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.A(MD)No.78 of 2019

K.K.RAMAKRISHNAN, J.

sbn

CRL.A.(MD)No.78 of 2019

04.12.2024