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Crl.A.No.589 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.589 of 2017

1.Senpagavalli
2.Venkatesan
3.Ezhilarasan

...Appellants/Accused No.1 to 3

vs.

The Deputy Superintendent of Police,
Tirupattur Sub – Division,
Tirupattur Taluk Police Station,
(Crime No.729/2012) ...Respondent/Respondent

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure,
to set aside the Judgment passed in Special Sessions Case No.07 of 2014
dated 06.09.2017 on the file of the Court of the Principal Sessions Judge,
Vellore, Vellore District.

For Appellants : Mr.S.Doraisamy
Senior Counsel

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)

Mr.P.Vijay



Crl.A.No.589 of 2017

Legal Aid Counsel for victim

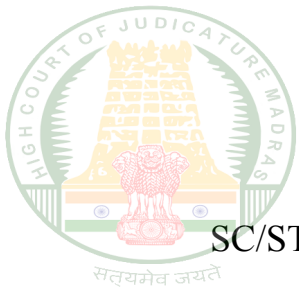
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JUDGMENT

This Criminal Appeal has been filed by Accused Nos. 1 to 3, challenging the conviction and sentence imposed upon them vide Judgment dated 06.09.2017 in Special Sessions Case No.07 of 2014, on the file of the learned Principal Sessions Judge, Vellore, Vellore District.

2(a). The case of the prosecution is that on 28.12.2012, when witnesses/P.W.1 to P.W.3 were inspecting a land, A1 to A3 questioned P.W.1 to P.W.3 as to why they entered the land in possession of A1 to A3, humiliated them by referring to their caste name and also attacked them with stones, sticks and a knife and caused injuries to P.W.1 and P.W.3. The individual *overt acts* attributed to the accused are that A2 had attacked P.W.1/informant with a knife on his wrist and attacked P.W.2 with a knife; and that A3 attacked P.W.3 with a stone.

(b). On the complaint given by P.W.1, an FIR was registered in Crime No.729 of 2012 for the offences under Sections 324, 323 r/w 3(1)(x) of



Crl.A.No.589 of 2017

SC/ST Act, 1989, by the Inspector of Police/P.W.12.

WEB COPY

(c). P.W.13, the then Deputy Superintendent of Police, Tirupattur Sub-Division, was authorized by the Superintendent of Police to conduct the investigation as the allegations attracted the offences under Section 3(1)(x) of SC/ST Act. P.W.13/Deputy Superintendent of Police, conducted an investigation and filed the Final Report against the appellants and two others for the offences under Sections 324, 323 of IPC r/w 3(1)(x) of SC/ST Act before the learned Judicial Magistrate No. III, Tirupattur.

(d). On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with, and the case was committed to the Court of Sessions in [Spl.S.C.No.07](#) of 2014 and was made over to the learned Principal Sessions Judge, Vellore, for trial. Two other accused who were arraigned as A4 and A5 were discharged for want of evidence. The trial Court framed four charges against the appellants. The first appellant/A1 was charged for the offences under Sections 324 of IPC and 3(1)(x) of SC/ST

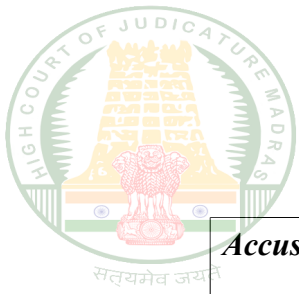


Crl.A.No.589 of 2017

Act. The second appellant/A2 was charged for the offences under Sections 324 of IPC and 3(1)(x) of SC/ST Act and the third appellant/A3 was charged for the offences under Sections 326 (2 counts), 324 of the IPC and 3(1)(x) and 3(2)(v) of SC/ST Act, and when questioned, the accused pleaded 'not guilty.'

(e) To prove the case, the prosecution examined 13 witnesses as P.W.1 to P.W.13, marked 16 documents as Exs.P1 to P16 and four material objects as M.O.1 to M.O.4. When the accused/A1 to A3, were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. On the side of the defence, no oral or documentary evidence was let in.

(f) On appreciation of oral and documentary evidence, the trial Court found the appellants/A1 to A3 guilty of all the aforesaid offences and sentenced them as follows:



Crl.A.No.589 of 2017

Accused No.	Offence under Section	Sentence imposed
A1	3(1)(x) of SC/ST Act	To undergo RI for six months and to pay a fine of Rs.1,000/-, in default to undergo SI for three months.
	324 of IPC	To undergo RI for one year and to pay a fine of Rs.1,000/-, in default to undergo SI for three months
A2	3(1)(x) of SC/ST Act	To undergo RI for six months and to pay a fine of Rs.1,000/-, in default to undergo SI for three months.
	324 of IPC	To undergo RI for one year and to pay a fine of Rs.1,000/-, in default to undergo SI for three months
A3	3(1)(x) of SC/ST Act	To undergo RI for six months and to pay a fine of Rs.1,000/-, in default to undergo SI for three months.
	324 of IPC	To undergo RI for one year and to pay a fine of Rs.1,000/-, in default to undergo SI for three months
	326(2 counts)	To undergo RI for five years (each count) and to pay a fine of Rs.1000/- for each count in default to undergo SI for three months (each count).
Sentences were ordered to run concurrently		

3. Mr.S.Doraisamy, the learned Senior Counsel for the appellants/A1 to A3, submitted that the occurrence did not take place in the manner alleged by the prosecution; that the first appellant/A1 had sustained grievous injuries and on her complaint, an FIR in Crime No.730 of 2012 was registered by the respondent, which has been suppressed by the prosecution. He would also submit that the respondent had not filed the



Crl.A.No.589 of 2017

final report in that case and hence had violated Order 566 of the Tamil Nadu

Police Standing Orders.

4(a). Mr.L.Baskaran, the learned Government Advocate (Crl.Side) for the respondent, submitted that the evidence of witnesses cannot be disbelieved merely because the injuries on the first appellant/A1 have not been explained by the prosecution, especially when nothing has been elicited in the cross-examination to disbelieve their version. He pointed out to the evidence of P.W.1 to P.W.3, the injured witnesses, and to the evidence of P.W.4, P.W.5 and P.W.7, who corroborated the evidence of P.W.1 and P.W.2.

(b) On instructions, he further submitted that the respondent had investigated the complaint filed by A1 in Crime No.730 of 2012 and filed the final report, which is yet to be taken on file. He, therefore, submitted that the Judgment of conviction imposed by the trial Court is in accordance with law and sought dismissal of the appeal.



Crl.A.No.589 of 2017

WEB COPY

5. Since the appellants/A1 to A3 were convicted for the offence under Section 3(1) (x) of SC/ST Act, 1989, notice was issued to the victim/P.W.1. Though notice was served, none had entered appearance. Hence, this Court appointed Mr.P.Vijay, as Legal Aid Counsel to represent the victim/P.W.1.

6. Mr.P.Vijay, learned counsel for the victim reiterated the submissions made by the learned Government Advocate (Crl.Side) and submitted that merely because there is a lapse in the investigation, the witnesses cannot be disbelieved; that the evidence of the eye witnesses is cogent and convincing and submitted that the judgment of conviction by the trial Court is in accordance with law.

7. As stated earlier, the prosecution had examined 13 witnesses. P.W.1 to P.W.3 are injured eye witnesses. P.W.4 and P.W.5, are the other eye witnesses to the occurrence. P.W.6 is a hearsay witness. P.W.7 is a mahazar witness. P.W.8 is a Doctor who had treated P.W.1 to P.W.3 and



Crl.A.No.589 of 2017

certified that P.W.1 had sustained grievous injuries; that P.W.2 sustained a simple injury; and that P.W.3 had sustained a grievous injury. P.W.9 is the Tahsildar, who certified that the injured witnesses/P.W.1 to P.W.3, belonged to Scheduled Caste Community and marked Exs.P8 to P10 series. P.W.10/Tahsildar had certified that the appellants/A1 to A3 did not belong to Scheduled Caste Community and marked Exs.P11 to P13 series. P.W.11/Sub-Inspector of police, had recorded the statement of P.W.1 in the hospital. P.W.12/Inspector of Police registered the FIR and P.W.13/Deputy Superintendent of Police conducted the investigation.

8. The prosecution case rests on the evidence of P.W.1 to P.W.5 of which P.W.1 to P.W.3 are said to have been injured. All the witnesses have uniformly deposed that the appellants/A1 to A3 had attacked the witnesses. If these witnesses are believed, then the conviction has to be sustained.

9. However, it is seen that the prosecution had suppressed the fact



Crl.A.No.589 of 2017

WEB COPY

that a complaint was given by the first appellant/A1 against P.W.1 and P.W.2 in Crime No.730 of 2012, for the offence under Section 326 of the IPC and other allied offences and the fact that A1 had sustained a grievous injury in the same occurrence. The defence had elicited the said fact in the cross-examination of P.W.1. In fact, P.W.1 also admitted that he was arrested and was in custody for nearly 11 days for the said offence. P.W.13/the Investigating Officer also admitted that the first appellant had sustained a grievous injury and on her complaint, an FIR was registered in Crime No.730 of 2012 and the Inspector had conducted the investigation.

10. Neither the prosecution nor the defence had elicited any other information with regard to whether the said crime number was investigated and the final report was filed, though the Government Advocate (Crl.Side) now on instructions, would state that the final report was infact filed in the said FIR.

11. Be that as it may. The fact that the first appellant had sustained



Crl.A.No.589 of 2017

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grievous injuries has now been admitted by both P.W.1 and P.W.13. The fact that an FIR was registered against P.W.1 on the complaint of the first appellant in Crime No.730 of 2012 is also not disputed. It is also not in dispute that the first appellant had sustained said grievous injury in the very same occurrence. However, none of the witnesses has stated as to how the first appellant had sustained a grievous injury in the said occurrence. It is well settled that where the injuries on the accused which is grievous in nature have not been explained, the version of the witnesses and the prosecution case becomes doubtful. The Hon'ble Supreme Court in ***Lakshmi Singh and others vs. State of Bihar*** reported in (1976) 4 SCC 394 held as follows:

“.... It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is very important circumstance from which the Court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.



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Crl.A.No.589 of 2017

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.”

This decision was followed by the Hon'ble Supreme Court in several other decisions including in ***Nand Lal and others vs. State of Chhattisgarh*** reported in **(2023) 10 SCC 470**. The fact that the injury sustained by the first appellant/A1 and the FIR lodged by her were sought to be suppressed would show that the prosecution and the witnesses had suppressed the genesis and origin of the occurrence.

12. The Hon'ble Supreme Court in ***Marudanal Augusti vs State Of Kerala*** reported in **(1980) 4 SCC 425**, held that if the genesis and origin of the occurrence are suppressed, the witnesses cannot be believed and a conviction cannot be based on the deposition of such witnesses. The relevant portion reads as follows.

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the F.I.R. is held to be fabricated or brought into existence



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Crl.A.No.589 of 2017

long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.”

13. Further, strangely in this case, the prosecution has not chosen to adhere to the direction in Order 566 of the Tamil Nadu Police Standing Orders. It is well settled that this direction is mandatory. It is also not known why the respondent had not taken any steps to pursue their final report, which, according to them, has now been filed before the Jurisdictional Magistrate. In the facts and circumstances of the case, the failure to adhere to Order 566-A of Tamil Nadu Police Standing Orders has caused miscarriage of justice and grave prejudice to the accused.

14. In the light of the above facts, the witnesses cannot be believed and hence the conviction and sentence imposed on the appellants/A1 to A3 by the trial Court are liable to be set aside and are accordingly set aside.

15. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed upon the appellants/accused in Special Sessions Case



Crl.A.No.589 of 2017

No.07 of 2014 dated 06.09.2017, on the file of the learned Principal Sessions Judge, Vellore, Vellore District, are set aside. The appellants/accused are acquitted of the charges. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

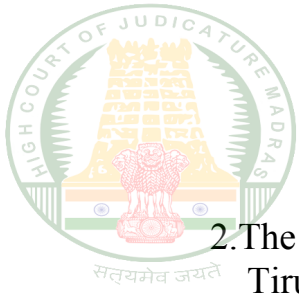
16. The High Court Legal Services Committee, Chennai, is directed to pay the scheduled fee to Mr.P.Vijay, the learned legal aid counsel, who appeared for the victim.

04.07.2025

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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Copy to:

1.The Principal Sessions Judge,
Vellore,
Vellore District.



Crl.A.No.589 of 2017

2. The Deputy Superintendent of Police,
Tirupattur Sub – Division,
Tirupattur Taluk Police Station,

3. The Public Prosecutor,
High Court, Madras.



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Crl.A.No.589 of 2017

SUNDER MOHAN,J.

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Crl.A.No.589 of 2017

04.07.2025