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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	31.01.2025
Pronounced on	:	15.05.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).Nos.462 of 2016

Balamurugan

-- Appellant

--Vs--

The State Rep by

1. The Assistant Superintendent of Police,
Mayiladuthurai Sub Division,
Nagapattinam District.
(Crime No.114 of 2015)

2. Kalaimagal

-- Respondents

(*Suo motu impleaded as per order dated 05.08.2024*)

PRAYER: Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to call for the entire records and set aside the judgment passed by the I Additional District and Sessions Judge, (PCR) Thanjavur in Spl.S.C.No. 85 of 2015, dated 04.11.2016, and allow this appeal and acquit the appellant/accused.

For appellant : Mr. B.Jameel Arasu

For respondent : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)
(For 1st Respondent)



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JUDGMENT

The appellant/Sole Accused in Spl.S.C.No.85 of 2015 on the file of the I Additional District and Sessions Judge, (PCR) Thanjavur has file this appeal, challenging the conviction and following sentence of imprisonment imposed against him by virtue of judgment on 04.11.2016, under Sections 354-C IPC Section 66 E of Information Technology Act and Section 3(1)(xi) of SC/ST (PoA) Act .

Offence	Sentence of imprisonment	Fine with default sentence
354-C IPC	One year Rigorous Imprisonment	Rs.1000/- with default sentence of 3 months simple imprisonment
Section 66 E of Information Technology Act	One year Rigorous Imprisonment	Rs.5000/- with default sentence of 3 months simple imprisonment
Section 3(1)(xi) of SC/ST (PoA) Act	Three years Rigorous Imprisonment	Rs.5000/- with default sentence of 6 months simple imprisonment

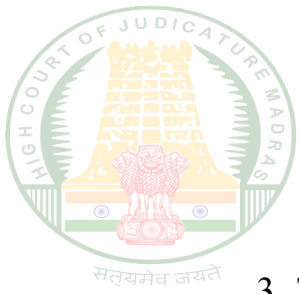
2.The brief facts of the case are as follows:

On 03.04.2015 at about 9.30 a.m, when the victim was taking bath in the bathroom, she found that accused had fixed his android mobile to capture the bathing scene of the victim and she noticed that and took the mobile and filed the



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complaint before the respondent police on 04.04.2015 and PW7 received the information and registered the case in Cr.No. 114 of 2015 for offence under section 354 C, 509 of IPC and 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002. PW7 took custody of the mobile, Simcard, and Memory Card from PW1 and entrusted to PW8/Inspector of Police. PW8 continued the investigation by examining the witnesses and arrested the accused and during the course of investigation he came to know that victim belonged to the schedule caste and hence he altered the offence into relevant provision of the Schedule Caste/Schedule Tribes Prevention of Atrocities Act. Thereafter PW9/Deputy Superintendent of Police continued the investigation and filed the final report under section 354 C IPC, 66E of the Information Technology Act, Section 3(1) (Xi) of SC/ST (POA) Act 1989 and section 4 Tamilnadu Prohibition of Harassment of Women Act before the 1st Additional District and Sessions Judge, (PCR) Thanjavur and the same was taken on file in the Spl.S.C. No. 85 of 2015 and summons were issued to the accused and on his appearance, copies under section 207 of Cr.P.C. Were served upon him and proper charges were framed and was questioned and he pleaded not guilty and stood for trial.



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3. The prosecution to prove the case examined PW1 to PW9 and marked Ex.P1 to Ex.P11 and exhibited MO 1 to MO 3. The learned Trial Judge after recording the prosecution evidence, examined the accused under section 313 Cr.P.C. by putting incriminating material available against him and he denied them as false and no witness was examined on his side and marked Ex.D.1 and Ex.D2. The learned Trial Judge convicted the appellant under section 354 C, 66 E of Information Technology Act, and section 3(1)(Xi) of SC/ST (POA) Act 1989 and acquitted under section 4 Tamilnadu Prohibition of Harassment of Women Act vide impugned judgment and imposed sentence as stated above.

4. Challenging the conviction and sentence, appellant has preferred this appeal.

4.1. The learned counsel for the appellant would submit that P.W.1 made a false complaint against the appellant in order to save her skin. There was a prohibition case registered against the complainant's father in law and he was convicted. Further on the date of the occurrence, there was a scuffle between the PW1's family members and appellant relating to the theft of the cell phone of the appellant. Therefore before he could make a complaint about the theft of the cell



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phone, she preferred a false complaint. In the said circumstances delay in preferring the complaint is fatal to the prosecution.

4.2. The learned counsel for appellants further submits that the appellants' wife also belongs to the victim's community and he married outside his caste with a scheduled caste lady and the appellants' father was running a petty shop and she used to go to the shop to purchase the grocery. She also used the mobile of the appellants to contact her husband whenever he was away from the village. Appellants were differently abled persons and working as drawing masters in the school and the case of the prosecution that, he went to the bathroom of the victim and fixed the cell phone to capture the image improbable one. It is a specific case of the PW1 that one person with blue colour lungi ran away from the place of the occurrence. In the said circumstances without investigation about that person, fixing the accused only on the basis of the recovery of cell phone without any other evidence that appellants fixed the cell phone in her bathroom, conviction under charged offence is not legally maintainable.

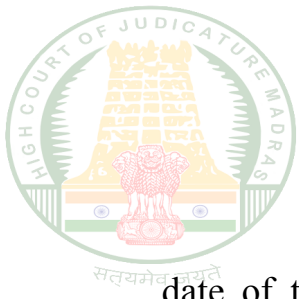
4.3. The counsel for appellants also submitted that, MO1 to MO3 were marked without compliance of Section 64B of the Evidence Act and hence same is inadmissible.



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4.4. The prosecution miserably failed to prove the presence of the appellant in the scene of the occurrence. There are number of material discrepancies between the statement given before the police and 164 statement given before the learned Judicial Magistrate. Even in the statement given before the learned Judicial Magistrate she stated that he was physically challenged person and he can walk only with help of the sticks and his both legs are crippled and hence the case of the victim that he fixed the cell phone in the bathroom of the victim and ran away from the scene of occurrence is unbelievable story. She also admitted that she went to the house of the appellant and assaulted him. Therefore the evidence of the victim is not trustworthy and hence he seeks acquittal.

5.1. Thiru.Sakthi Kumar, learned Government Advocate would submit that the appellant's cell phone was found fixed in the bathroom of the victim and there was no explanation on the side of the appellant in this regard. Therefore there is no need to interfere with the conviction and sentence passed by the learned Trial Judge. The learned Government Advocate further submit that there was no delay in perfering the complaint. Occurrence took place on 03.04.2015 at 9.30 a.m. and the complaint was given on 04.04.2015 at 10.00 a.m. On the



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date of the occurrence and her husband was not available and therefore she approached the police station with some delay. In this case delay is not material since they MO1 was produced at the police station with the offending material.

5.2. The learned Government Advocate would also submit that there was no imbellishment and discrepancy between the statement given to police officer and the learned Judicial Magistrate.

5.3. The learned Government Advocate would also submit that when the original cell phone with memory card was produced, certificate under section 64B is not necessary. The learned Trial Judge appreciated the evidence and correctly convicted under section 354-C IPC Section 66 E of Information Technology Act and Section 3(1)(xi) of SC/ST (PoA) Act.

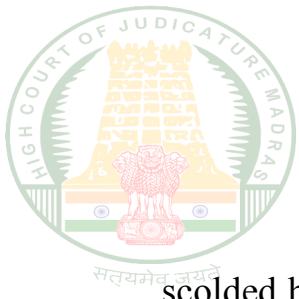
6. This court considered rival submission and perused the records and the precedents relied upon by them.

7. The case of the prosecution is that, appellant is a differently abled person and his both legs are crippled and he cannot walk without stick. He is



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working as drawing teacher. He married outside his caste with schedule caste lady. His father was running a petty shop. M.O.1, cell phone belonged to the appellant. P.W.1 is the neighbour. She used to go to the shop of the appellant's father. She has not only purchased the grocery in the shop but also used the mobile phone of the appellant to contact her husband whenever he was out of the village. Before the occurrence, according to P.W.1, there was a scuffle between P.W.1 and appellant's family. P.W.1 trespassed into the house of the appellant and assaulted him. It is the specific case of P.W.1 that the appellant can not walk without sticks. In the special factual circumstances of the case, the evidence of P.W.1 that the appellant fixed the cell phone in the bathroom and captured the image and on finding of the said cell phone, he ran away from the place of occurrence without taking cell phone is a suspicious circumstance to disbelieve the evidence of P.W.1. She has not deposed about the presence of the appellant in the scene of the occurrence. Her evidence is that the appellant's cell phone was found fixed in the bathroom. But the evidence of the investigating officer is that on going through M.O.3, one person with wearing blue colour lungi was runaway from the scene of the occurrence immediately on pouring water on the cell phone. It is the specific case of the accused that, the cell phone was stealed by the victim and therefore, there was a scuffle and mother of the appellant



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scolded her and the appellant also scolded her and therefore she trespassed into the house of the appellant and assaulted the said disabled person. Even though said suggestion of the appellant is not proved in entirety, but it was admitted by P.W.1 that he entered into the house of the appellant and assaulted him. Therefore, this court presumed that the cell phone was missed before the occurrence. P.W.2 was inside the house of the P.W.1 at the time of the bathing. His presence in the house of the P.W.1 in her husband absence and the failure of investigation about the person runaway from the place with wearing blue colour lungi created a doubt over the presence of the appellant in the scene of the occurrence is probable one. At the cost of the repetition, the appellant is walking with only stick and his both legs are crippled and the case of the prosecution is not appellant was weared the blue colour lungi on the date of the occurrence. Only incriminating circumstances against the appellant is that, his cell phone was seized from the bathroom. But he gave the plausible explanation that the cell phone was missed prior to the occurrence and there was scuffle and P.W.1 assaulted him and before the giving complaint he gave the complaint with false allegation. In the said circumstances, the prosecution failed to prove the present of the accused in the scene of the occurrence and captured image by fixing cell phone in bathroom of the P.W.1 beyond reasonable doubt. The prosecution must



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prove the case beyond reasonable doubt. Suspicion, however strong, is not a ground to convict the accused and the same is fortified by the following decisions of the Hon'ble Supreme Court in ***Digamber Vaishnav v. State of Chhattisgarh*** reported in (2019) 4 SCC 522 and ***Sheila Sebastian v. R. Jawaharaj*** reported in (2018) 7 SCC 581.

(2019) 4 SCC 522	(2018) 7 SCC 581
“14. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused.....”	“28. Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the courts to ensure that suspicion does not take place of the legal proof.”

7.1. The Hon'ble three Judge Bench of Supreme Court in the case of ***Bijender v. State of Haryana*** reported in (2022) 1 SCC 92 has reiterated the said principle and held as follows:-

“17. Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the

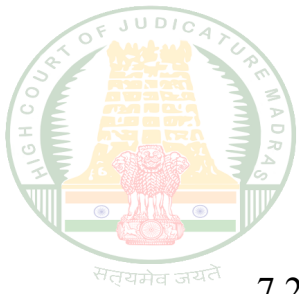


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court ought to stretch the benefit of doubt to the accused. It is nearly three centuries old cardinal principle of criminal jurisprudence that “it is better that ten guilty persons escape, than that one innocent suffer” [W. Blackstone, Commentaries on the Laws of England, Book IV, c. 27 (1897), p. 358. Ed. : see R. v. John Paul Lepage, 1995 SCC OnLine Can SC 19.] . The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that “the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent”.

18. It may not be wise or prudent to convict a person only because there is rampant increase in heinous crimes and victims are often reluctant to speak truth due to fear or other extraneous reasons. The burden to prove the guilt beyond doubt does not shift on the suspect save where the law casts duty on the accused to prove his/her innocence. It is the bounden duty of the prosecution in cases where material witnesses are likely to be slippery, either to get their statements recorded at the earliest under Section 164 CrPC or collect such other cogent evidence that its case does not entirely depend upon oral testimonies.”



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7.2. The learned trial Judge failed to consider the above principle and convicted the appellant without sufficient evidence much less than the strong suspicion. Therefore, this court is inclined to hold that, the prosecution failed to prove the charged offence beyond reasonable doubt and this appeal is liable to be allowed.

8. Accordingly, this appeal is **allowed** in following terms:

8.1.The judgment passed by the I Additional District and Sessions Judge, (PCR) Thanjavur , in Spl.S.C.No.85 of 2015, dated 04.11.2016, is set aside.

8.2.The appellant is acquitted from all the charges in Spl.S.C.No.85 of 2015 , by virtue of the judgment dated 04.11.2016, passed by the I Additional District and Sessions Judge, (PCR) Thanjavur.

8.3.Fine amount paid by the appellant shall be refunded to the appellant forthwith.

8.4.Bail bond executed by the appellant shall stand cancelled.

- Consequently, the connected miscellaneous petitions are closed.

15.05.2025

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

1. The I Additional District and Sessions Judge, (PCR)
Thanjavur
2. The Assistant Superintendent of Police,
Mayiladuthurai Sub Division,
Nagapattinam District.
(Crime No.114 of 2015)
3. The Government Advocate,
Madurai Bench of Madras High Court, Madurai.
4. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.,

dss

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