

Crl.A(MD)No.208 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 23.06.2025

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.A(MD)No.208 of 2017

N.Perumal

... Appellant / Accused No.1

Vs

1.The Deputy Superintendent of Police,
Samayanallur Division,
Vadipatti Taluk,
Madurai District,
in Crime No.405 of 2013.

2.State through the
Sub Inspector of Police,
Vadipatti Police Station,
Madurai District,
in Crime No.405 of 2013.

... Respondents / Complainants

PRAYER :- This Criminal Appeal is filed under Section 374(3) of Cr.P.C., to set aside the judgment and conviction of life imprisonment passed by the learned III-rd Additional District and Sessions Judge (PCR), Madurai, in Spl.S.C.No.52 of 2015 dated 19.06.2017.

For Appellant : M/s.I.Pinaygash

For Respondents : Mr.K.Gnanasekaran
Government Advocate (Crl.side)



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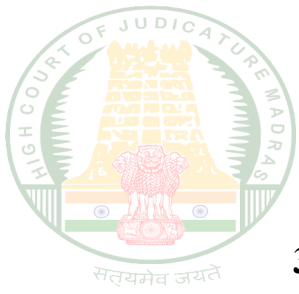


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JUDGMENT

This Criminal Appeal has been filed by the appellant / accused No.1, challenging the order dated 19.06.2017 passed by the learned III Additional District and Sessions Judge (PCR), Madurai, in Spl.S.C.No.52 of 2015.

2. The appellant is the first accused who has been convicted for the offences under Section 324 of IPC by the trial Court. The case of the prosecution is that on 20.10.2013, at about 1.45 p.m., the dog of the complainant has bitten the dog of the accused and this had led to a quarrel between the complainant and the accused. During that course, the accused abused the complainant and his parents in filthy language and made caste remarks and attacked them with the spade and by throwing stones. A case was registered in Crime No.38 of 2014 by the respondent police and it was taken up for investigation. After completing the investigation, charge sheet has been filed against accused Nos.1, 2 and 3. After taking cognizance in Spl.S.C.No.52 of 2015, charges have been framed for the offences under Sections 3(1)(x) of SC/ST (POA) Amendment Act read with Section 294(b), 324, 336 and 506(2) of IPC against the accused persons.



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3. On the side of the prosecution, eleven witnesses have been examined as P.W.1 to P.W.11 and fourteen documents were marked as Ex.P.1 to Ex.P.14. On the side of the accused, one witness has been examined and one document has been marked as Ex.D1. Three material objects have been marked as M.O.1 to M.O.3.

4. On completion of trial and hearing the arguments of both sides and after perusing the materials on record, the trial Judge found the first accused guilty for the following offences and given with the punishments as shown under:

Offences under Sections	Punishment	Fine	Default clause
Section 324 of IPC	to undergo one year rigorous imprisonment	Rs.1,000/-	to undergo one month simple imprisonment

The first accused was acquitted from the other charges and by acquitting the accused 2 and 3 from all the charges framed against them. The first accused who was convicted for the offences under Section 324 of IPC has preferred this appeal.



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5. Learned counsel for the appellant submitted that the evidence of P.W.1 and the allegation given by him in the complaint are contrary in nature. Eventhough the accused are also injured in view of the attack made by the defacto complainant and his family members, no case has been registered on the complaint given by the first accused.

6. On perusal of the complaint it is seen that P.W.1 has stated about the quarrel that arose between the complainant and the accused in view of the dogs' quarrel, where the complainant's dog has bitten the dog of the accused. The accused had come to the complainant's land by questioning them why they were not responsibly grow their dog and allowed it to bite their dog. During that course, it is alleged by P.W.1 in his complaint that he was abused with the name of his caste and first accused had attacked his head with the spade, which resulted on the blood injury over his head. When he prevented it, he also sustained injury over his left middle finger. The accused 2 and 3 are the brothers of the first accused and in view of the second accused throwing the stone, P.W.2 sustained injury on his head and P.W.1 also had blood injury over his shoulder and contusion over his back.



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7. In the evidence of P.W.1 he has stated that he was injured due to throwing of stone by the first accused. But in the complaint, he has stated that he has been attacked with the back of the spade. His evidence has not dealt how his parents, who were examined as P.W.2 and P.W.3 have sustained injuries. However P.W.2 has stated in his evidence that first accused assaulted P.W.1 and P.W.3 with spade and the accused Nos. 1 and 2 have attacked his son, P.W.1 with stones. P.W.3 has stated in her evidence that the first accused had attacked her son and husband P.W.1 and P.W.2 and he also attacked their dog also.

8. The first accused who was examined as D.W.1 has stated in his evidence that P.W.1, P.W.2 and P.W.3 also have attacked the accused 1, 2 and 3. According to the evidence of D.W.1, the police had refused to get their complaint and registered a case.

9. D.W.1's evidence would reveal that they have taken treatment in a Government Hospital for seven days. In fact, P.W.11- Investigation Officer, had admitted in his evidence that the second accused had taken treatment at



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Madurai Government Rajaji Hospital. When a quarrel arose in view of between the dogs grown by the complainant and the accused, the appellant and the P.W.1, P.W.2 and P.W.3 were also got injured. The police has registered a case only on the complaint given by P.W.1. There was a reluctance notice to be present in the mind of the investigation officer to register a complaint against the accused persons.

10. Attention was drawn to the judgment of the Hon'ble Full Bench of High Court of Madras, in the case of ***T.Balaji and another Vs State represented by the Inspector of Police***, wherein the Full Bench of this Court has giving the following exhaustive guidelines as to how PSO 566 have to be applied in case in counter.

"Thus, the consistent position was that the case should be tried simultaneously by the same judge but with a different jury/assessors. Jury trials and trials with the aid of assessors were abolished by the Code of Criminal Procedure, 1973. The question is whether the same procedure should be followed in trials under the Cr.P.C.,1973? One of the primary reasons for the rule that a case and counter case should be tried in quick succession by the same judge is to avoid conflicting judgments, which is a distinct possibility if we are to direct that a case and



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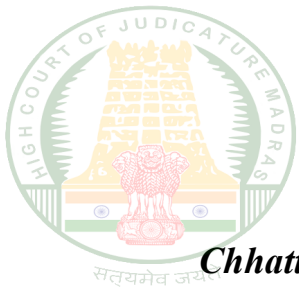
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case in counter be tried by two different Courts. The mere fact that trial with the aid of juries and assessors has now been abolished, need not necessarily compel us to abandon the time-tested rule governing these types of cases, particularly in the absence of other viable alternatives. Assigning these cases to two different Courts may lead to conflict and would be a remedy worse than the disease."

11. In the very beginning of the guidelines itself it is stated that at the stage of registering an FIR, if there is a counter case arising out of the rival version of the same incident, two FIRs should be registered and both the versions of the complaints have to be investigated simultaneously in order to find out who is the aggressor.

12. The investigation officer did not follow the above procedure and had chosen to file the charge sheet against the petitioner and other accused persons.

13. In this regard it is appropriate to extract the judgment of the Hon'ble Supreme Court in the case of *Nand Lal and others Vs. The State of*



Chhattisgarh reported in **2023(10) SCC 470**. In the said case is held as

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under:

26. *We will first consider the issue with regard to non-explanation of injuries sustained by accused No. 11 Naresh Kumar. In the case of **Lakshmi Singh and Others v. State of Bihar (1976) 4 SCC 394**, which case also arose out of a conviction under Section 302 read with Section 149 of the IPC, this Court had an occasion to consider the issue of non-explanation of injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus:*

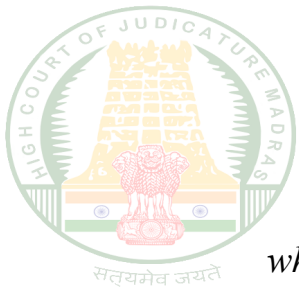
"12.....It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

"(1) that the prosecution has suppressed the genesis and the 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."

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



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where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima [(1975) 2 SCC 7: 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."

14. In this case, the investigation authorities have failed to follow PSO 566 and the guidelines issued by the Courts. The lower Court has also not



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taken serious note of this. As the matter affects the very root of the case and the aggressor was not found out by following due procedure, I feel it is appropriate to set aside the judgment of the trial Court.

15. In the result,

(i) This Criminal Appeal is allowed,

(ii) the conviction and sentence imposed on the appellant/ A1 by the judgment of the learned III Additional District and Sessions Judge (PCR), Madurai, in Spl.S.C.No.52 of 2015 dated 19.06.2017, is set aside and the appellant/A1 is not guilty for the charges under Section 324 of IPC and acquitted.

iii) The bail bond executed by the appellant if any, shall stand terminated and the fine amount, if any paid by the appellant shall be refunded to him.

23.06.2025

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

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To

- 1.The III Additional District and Sessions Judge (PCR), Madurai.
- 2.The Deputy Superintendent of Police, Samayanallur Division,
Vadipatti Taluk, Madurai District, in Crime No.405 of 2013.
- 3.The Sub Inspector of Police, Vadipatti Police Station,
Madurai District, in Crime No.405 of 2013.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.N.MANJULA, J.

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