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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.06.2025

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.A(MD)No.325 of 2017

Chinnavan @ Muneeswaran

... Appellant / Sole Accused

Vs

State represented by
The Deputy Superintendent of Police,
Rameswaram Sub Division,
Uchipuli Police Station,
Ramanathapuram District.
(Crime No.234 of 2012).

... Respondent

PRAYER :-

This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records in Special S.C.No.93 of 2015 on the file of the learned Principal District and Sessions Judge, Ramanathapuram and set aside the judgment dated 27.06.2017 and acquit the appellant of the charges framed against him.

For Appellant : M/s.C.Susikumar

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



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JUDGMENT

This Criminal Appeal is preferred against the order of conviction passed in Special S.C.No.93 of 2015 on the file of the learned Principal District and Sessions Judge, Ramanathapuram dated 27.06.2017.

2. The appellant is the sole accused who has been acquitted for the offences under Sections 324(2 Counts) of IPC and under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

3. On 21.07.2012 at about 5.30 p.m., when the P.W.1 was riding in his motorcycle bearing registration number TN 65 P 4539 TVS Sport, coming near one Subbiah Tea Shop, the accused abused him with filthy language, by making caste calling and he stabbed him with rough stone on his left cheek and caused simple injuries and also damaged the left side mirror of his motorcycle. P.W.2- Selvaraj, was also present there along with one Kannan and P.W.3 - Sakthi @ Kali. The accused went in a two wheeler and hit against P.W.2 - Selvaraj and attacked him with the shovel on his right rib and left shoulder and caused simple injury. A case was registered in Crime No.



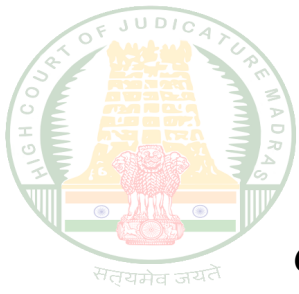
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234 of 2012 by the respondent police and it was taken up for investigation.

After completing the investigation, charge sheet has been filed for the offences under Section 294(b), 324(2 Counts), 427 of IPC and under Section 3(1)(x) of SC/ST (POA) Act. After taking cognizance in Spl.S.C.No.93 of 2015, charges have been framed against him for the offences under Sections 294(b), 324(2 Counts), 427 of IPC and under Section 3(1)(x) of SC/ST (POA) Act. When the accused was questioned, he denied his involvement and claimed to be tried.

4. On the side of the prosecution, eleven(11) witnesses have been examined as P.W.1 to P.W.11 and eleven(11) documents were marked as Ex.P.1 to Ex.P.11. No oral or documentary evidence was let in by the accused, before the trial Court.

5. On completion of trial and hearing the arguments of both sides, after perusing the materials on record, the trial Judge found the accused guilty for the offences under Section 324(2 Counts) of IPC and under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.



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6. The learned trial Judge has convicted and sentenced the accused by imposing the following punishment:

- Undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5,000/- (2500 x 2) - in default to undergo simple imprisonment for a period of 2 months, for the offence under Section 324(2 Counts), of IPC;
- Undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.25,000/- in default to undergo simple imprisonment for a period of 3 month, for the offence Under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act;
- Both the sentence period shall run concurrently, and
- The remand period already undergone is ordered to be set off under Section 428 of Cr.P.C.

7. Aggrieved over that, the appellant/accused has preferred this appeal.

8. Learned counsel for the appellant submitted that the trial Judge has not considered the material contradictions in the evidence of P.W.1 and 2 and he also did not consider the fact that eye witnesses themselves have turned



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hostile. He further submitted that the prosecution evidence did not prove the charges against the accused beyond reasonable doubt.

9. On perusal of the records, it is seen that the prosecution examined eleven witnesses out of whom, P.W.1 and P.W.2 were the injured witnesses, P.W.3 and P.W.9 were the eye witnesses, P.W.4 is the Doctor who registered the Accident Register and treated P.W.1 and P.W.2, P.W.5 and P.W.8 are the Tahsildar who have given community certificate stating that P.W.1 and P.W.2 belong to the Scheduled caste, P.W.6 and P.W.7 are Mahazar witnesses who have turned hostile, P.W.10 is the Sub Inspector of Police who registered the case and P.W.11 is the Investigation Officer.

10. Perusal of the evidence of P.W.1, shows lot of contradictions. The occurrence is said to have taken place in the evening between 5.00 p.m. to 5.15 p.m. P.W.1 was working in the ICICI Bank and used to go to his work at 9.00 a.m., and he would return at 9.00 p.m. On the date of occurrence (i.e) on 21.07.2012, which was a working day, P.W.1 has not applied any leave on the alleged date of occurrence and hence he could have returned home from office only at 9 p.m. P.W.1 has not cited any special reason as to how he was available at 5.15 p.m., on 21.07.2012.



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11. P.W.1, in his cross examination stated that at the time of occurrence, Subbiah Tea Stall was closed. But his paternal uncle and villagers were present in the place of occurrence and they were 40 - 50 in numbers. He has stated that his paternal uncle was incidentally present and he used to sweep the roads in his capacity as a Sanitary worker of that area. P.W.1 has also admitted the fact that the sanitary workers report duty at 6.00 a.m., and before lunch they finish their work and return. It is further stated that the occurrence was witnessed by 40 - 50 local people.

12. Despite P.W.3 and P.W.9 have been examined as eye witnesses, they did not support the case of prosecution. P.W.2 is an another injured by name Selvaraj and he was also said to be present at the place of occurrence during the occurrence at the relevant point of time. He has stated that he had arrived to the spot in his cycle. In his cross examination, he has stated that the occurrence had occurred when he was taking Tea in the Tea Stall of Subbiah and during that time 6 to 7 people surrounded him. While P.W.1 has stated that P.W.2 Selvaraj was incidentally present, as he happened to be the sanitary



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worker in the area. P.W.2 has stated that he had just arrived the spot by riding cycle and was taking Shovel for the purpose of his work. But his work hours was only morning hours and during that time he happened to see P.W.2 riding in a cycle with the shovel. Despite the minor contradictions, if the rest of the evidence of the witnesses are acceptable, the prosecution case need not be doubted. P.W.1 has stated that the Subbiah Tea Stall was closed. P.W.2 has stated that he was taking Tea in the shop and the occurrence had taken place only during that time and it was witnessed by 6 to 7 persons. While P.W.1 has stated that 50-60 people were present in the place of occurrence, P.W.2 has stated that only 6-7 persons were there. It is fundamental to the case of the prosecution to prove that the accused 1 and 2 were very much available in the place of occurrence and that the occurrence had occurred only at that relevant point of time.

13. P.W.1 who was working in a Bank, he used to work and return home only at 9 p.m., and P.W.2, sanitary worker used to finish his work by Afternoon. But P.W.2 has alleged to have been present at 5 p.m., to 5.30 p.m., in the place of occurrence, for which no explanation is available in the



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evidence of P.W.1 and P.W.2. They are not only the injured witnesses but also interested witnesses, as they are close relatives. When P.W.1 has stated that the motive for the occurrence is due to the difference arose between P.W.1 and the accused in connection with burial of dog, that was not stated in the evidence of P.W.1 and P.W.2. In fact, P.W.1 has stated in his cross examination that he got no connection with the accused except, for the fact that they belonged to the same village. So there is no evidence available on record to prove the very motive for the occurrence.

14. In this case, the evidence of P.W.1 and P.W.2 are required to be corroborated by the evidence of other witnesses. Those evidence should be sufficient enough to clarify the possibility of P.W.1 and P.W.2 to be present in the place of occurrence at 5.00 p.m., to 5.30 p.m. But no such evidence is available in the prosecution. It affects the root of the prosecution. Even in cases having the initial presumption in favour of the accused, such presumption can be drawn only if the fundamental facts are proved to the satisfaction of the Court.



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15. Unless the prosecution can establish the fundamental fact that P.W.

1 and P.W.2 were present in the place of occurrence between 5.00 p.m. To 5.30 p.m, on the alleged date of occurrence, the presumption about the involvement of the accused cannot be presumed.

16. In this regard, it is appropriate to cite the Judgement of the Hon'ble Supreme Court in ***Babu Vs State of Kerala***, reported in ***(2010) 9 SCC 189***.

"(IV) *Burden of Proof and Doctrine of Innocence*

27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like Negotiable Instruments act, 1881 ; Prevention of Corruption Act, 1988; and Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for



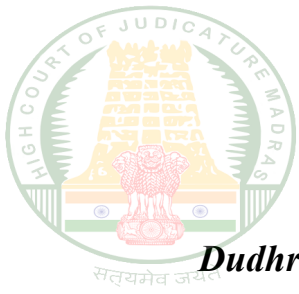
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presumption of guilt if the circumstances provided in those Statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact.

28. However, in cases where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstances, such as those of statutes as referred to hereinabove, that the burden on proof is on the accused. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution. (Vide: Hiten P.Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16; Narendra Singh v. State of M.P., (2004) 10 SCC 699 : AIR 2004 SC 3249; Rajesh Ranjan Yadav v. CBI (2007) 1 SCC 70 : AIR 2007 SC 451; Noor Aga v. State of Punjab, (2008) 16 SCC 417; and Krishna Janardhan Bhat v. Dattatraya G.Hegde, (2008) 4 SCC 54 : AIR 2008 SC 1325)."

17. On the similar concept of presumption against the accused with regard to Section 29 of the POCSO Act, the Supreme Court has held in ***Amol***



Dudhram Barsagade v. State of Maharashtra in Criminal Appeal No.

600/2017, it is held that the statutory presumption would stand activated only if the prosecution proves the fundamental facts. The relevant para of the above said judgment is also worthwhile for reference.

"5. The learned Additional Public Prosecutor Shri S.S.Doifode would strenuously contend that the statutory presumption under Section 29 of the POCSO Act is absolute. The date of birth of the victim 12.10.2001 is duly proved, and is indeed not challenged by the accused, and the victim, therefore, was a child within the meaning of Section 2(d) of the POCSO Act, is the submission. The submission that the statutory presumption under Section 29 of the POCSO Act is absolute, must be rejected, if the suggestion is that even if foundational facts are not established, the prosecution can invoke the statutory presumption. Such an interpretation of Section 29 of the POCSO Act would render the said provision vulnerable to the vice of unconstitutionality. The statutory presumption would stand activated only if the prosecution proves the foundational facts, and then, even if the statutory presumption is activated, the burden on the accused is not to rebut the presumption beyond reasonable doubt. Suffice it if the accused is in a position to create a serious doubt about the veracity of the prosecution case or the accused brings on record material to render the prosecution version highly improbable."

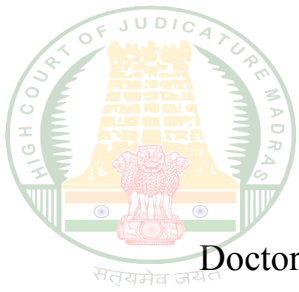


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18. Unless, the foundation of the prosecution is proved, it will not become incumbent on the accused to establish with a negative proof that he has not committed the offence. The principle of having initial presumption in favour of the prosecution in certain exceptional offences, is in view of the seriousness of those offence and the impact it causes on the society. But at the same time such presumption cannot be had in practical, even in the absence of establishment of fundamental facts on which, the case of the prosecution stands.

19. As already pointed out in the instant case, the proof as to the presence of the injured witness or other eye witness in the place of occurrence is very much essential in order to brought a presumption against the accused that he had abused and attacked her as alleged by the prosecution.

20. The trial judge had placed much reliance on the oral evidence of P.W.1 and P.W.2 and the doctor's evidence and arrived at a conclusion that these evidence correlate to each other and acceptable. No doubt P.W.4 -



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Doctor, who had examined P.W.1 and P.W.2, have stated that they told him that they were beaten up by known person with the stone and shovel. The Doctor stated that the injured were brought to him only at about 7.50 p.m. But the Doctor had not noticed any blood injury on the body of P.W.1 and P.W.2., though it is alleged that the accused has stabbed P.W.1 with a rough stone.

21. There are contradictions with regard to the presence of the witnesses P.W.1 and P.W.2 at the place of occurrence. The other witnesses examined on the side of the prosecution should have atleast shown to be supportive or clarifying in nature. But those witnesses who said to have witnessed the occurrence and examined as P.W.3 and P.W.9 also did not support the case of the prosecution. The cross examination of P.W.3 and P.W.9 was not exhaustive or indicative but a generalized pack of suggestions and the same was denied by them.

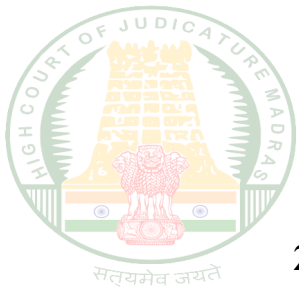
22. However, the learned trial Judge proceeded to rely on the evidence of the hostile witnesses by observing that the evidence of hostile witnesses are also worthy for consideration to the extent of their version is found to be dependable. By the holistic reading of the evidence of P.W.3 to P.W.9, do



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not have any specific admissions or connections to the occurrence. Their evidence does not supply any part or version which can be distinguished in order to consider it dependable or verifiable.

23. None of the villagers was examined despite P.W.1 has stated that 40-50 people were witnessed the occurrence. There are contradictions in the evidences of P.W.1 and P.W.2. P.W.1 and P.W.2 have stated that the occurrence was witnessed by 6-7 people. In this regard, to understand the acceptability of the evidence of the hostile witnesses, it is essential to refer the judgment of the Hon'ble Supreme Court in the case of ***Khujji @ Surendra Tiwari v. State of Madhya Pradesh*** reported in (1991) 3 SCC 627. In the said case, the Hon'ble Supreme Court has held that the evidence of the prosecution witness cannot be rejected in toto merely because the prosecution has chosen to treat him as hostile and cross examined him. It is held that such evidence cannot be treated as effaced or washed off the records altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny.



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24. When P.W.1 was riding in a motorcycle, the accused should have stopped him in order to attack P.W.1. P.W.1 and P.W.2 have not stated that they were stopped by the accused. In that case, the accused could attack P.W.1 and P.W.2 only by throwing stone or any other weapon. But the prosecution case has not stated that the accused had thrown stone or anything on P.W.1 and P.W.2. These contradictions and deficiencies in the evidence of P.W.1 and P.W.2 have not been properly analysed by the trial Court.

25. Eventhough, the Doctor had stated that P.W.1 and P.W.2 have got certain injuries and the possibility of inflicting the injuries with stone and shovel, alone can be considered as sufficient, provided the evidence of the injured witnesses did not leave any room for doubt or did not suffer from any material contradictions. As the evidence of P.W.1 and P.W.2 have not only mutually contradictory but also self contradictory.

26. Though the trial Court has got the responsibility of non exaggerating the omission and contradictions or discrepancies to the level of defeating the comprehensive and holistic evidence proving the case of the prosecution, the contradictions are found to be material and the very root of the prosecution, there need not be any hesitation to give the benefit to the



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accused. Even in the case where burden of rebuttal proof lies on the shoulder of the accused, it is always permissible to infer the weakness and improbabilities of the case of the prosecution as probable rebuttal in favour of the accused. Charges have been omitted to appreciate by taking the consideration of the above essential aspect into consideration.

27. I feel the same has to be rectified by allowing the appeal by setting aside the judgment of the trial Court.

28. In the result,

- *this Criminal Appeal stands allowed.*
- *The judgment of the learned Principal District and Sessions Judge, Ramanathapuram, dated 27.06.2017, is set aside.*

10.06.2025

NCC : Yes / No
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To

- 1.The Principal District and Sessions Judge, Ramanathapuram,
- 2.The Deputy Superintendent of Police,
Rameswaram Sub Division,
Uchipuli Police Station,
Ramanathapuram District.
(Crime No.234 of 2012).



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R.N.MANJULA, J.

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