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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2025

CORAM :

THE HONOURABLE **DR. JUSTICE R.N.MANJULA**

Crl.A.(MD)No.487 of 2017

Mari @ Marimuthu ... Appellant/Sole Accused

versus

State rep., by
1.The Deputy Superintendent of Police,
Samayanallur Sub Division,
Samayanallur, Madurai District.

2.The Inspector of Police,
Samayanallur Police Station,
Madurai District.
Crime No.403 of 2015 ... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records and set aside the order of conviction and sentence passed in Spl.S.C.No.129 of 2016 dated 07.11.2017 by the learned III Additional District and Sessions Judge (PCR Cases), Madurai and allow this appeal and acquit the appellant/accused from the charges leveled against him.

For Appellant : Mr.RL.Dhilipan Pandian
Legal Aid Counsel

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For Respondent : Mr.A. Albert James
Government Advocate (Crl.side)

JUDGMENT

–

This criminal appeal has been preferred as against the judgment of conviction and sentence, dated 07.11.2017 made in Spl.S.C.No.129 of 2016 by the learned III Additional District and Sessions Judge (PCR Cases), Madurai, thereby convicting and sentencing the appellant to undergo one year of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one week of simple imprisonment for the offence under Section 452 of IPC; to undergo 1 year of rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo one year of simple imprisonment for the offence under Section 324 of IPC; to undergo one year of rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo one week of simple imprisonment for the offence under Section 506(ii) of IPC. The sentences were ordered to run concurrently. Set off order under Section 428 of Cr.P.C., was also ordered.

2. The appellant is the sole accused. The case of the prosecution had arisen on the basis of the complaint given by the defacto complainant,

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P.W.1, registered in Crime No. 403 of 2015 at the Samayanallur Police Station, for the offences under Sections 448, 294(b), 323, 324 and 506(i) of IPC r/w Section 3(1)(x) of SC/ST Act, is as follows:

(a) On 11.10.2015, during the night hours, while the defacto complainant, along with his wife and daughter, was sleeping at his residence with the door left open for better ventilation, at around 11:30 PM, the accused unlawfully trespassed into the house of the defacto complainant. Upon hearing a noise, the defacto complainant switched on the light and saw the accused inside the house. When the defacto complainant questioned the accused as to why he had entered the house, especially when women were sleeping inside, the accused abused the defacto complainant in filthy language, made caste-based remarks, and bit the toes of his left foot. On seeing the same, the wife and daughter of the defacto complainant raised an alarm by shouting. At that juncture, the accused pushed the defacto complainant to the ground and fled away from the scene of occurrence saying that he would kill them.

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(b) After completion of investigation, charge sheet has been filed against the accused. Since the offence is triable by the Sessions Court, the case was committed to the Sessions Court. The trial Judge has taken cognizance in Spl.S.C.No.129 of 2016 and after completing the legal mandate of furnishing copies and all other legal formalities, the trial Judge framed charges against the appellant for the offences under Sections 452, 324 and 506(ii) of IPC and Section 3(1)(x) of SC/ST Act. When the accused was questioned, he denied the same and claimed to be tried.

(c) During trial, on the side of the prosecution, P.W.1 to P.W.13 were examined and Ex.P1 to Ex.P8 were marked. On the side of the defence, no oral and documentary evidence was let in.

(d) After completion of trial, based on the oral and documentary evidence, the trial Judge has convicted and sentenced the accused as stated supra. Aggrieved over the same, this appeal has been preferred.

3. The learned counsel appearing for the appellant submitted that the eyewitnesses examined are interested witnesses, being close relatives of the

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defacto complainant. It was contended that no independent witnesses were examined to corroborate the prosecution's case. Furthermore, P.W.2, in her evidence, stated that 4–5 neighbours arrived at the scene after hearing a noise, however, none of them supported the prosecution's version. It is also submitted that the alleged arrest of the accused, as narrated by the Investigating Officer, is not factually correct. These crucial aspects were not properly appreciated or considered by the learned trial Judge,

4. The learned Government Advocate (Crl.side) submitted that the accused is a resident of the same locality, residing at nearby street. Therefore, there was no difficulty for the prosecution witnesses to identify him. It was further submitted that there is no enmity or prior motive between the complainant and the accused, and hence, no reason or necessity for P.W.1 to lodge a false complaint against the accused.

5. Heard both sides and perused the materials on record.

6. The defacto complainant, who was examined as P.W.1, stated in his evidence that on 11.10.2015 at about 11:30 p.m., while he was sleeping

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with the door open for ventilation, the accused entered his house. Upon noticing the accused, P.W.1 immediately switched on the light. He further stated that at the time of the incident, he was lying in hall, while his wife and daughter were sleeping in the inner room. When P.W.1 attempted to apprehend the accused, the accused pushed him down, resulting in some altercation. During that course of time, the accused bit P.W.1 on the thumb of his left leg (i.e., the big toe) and threatened him while fleeing from the scene. Upon hearing the noise made by P.W.1, his wife and daughter came out from the inner room and witnessed the occurrence. Their evidence also supports and corroborates the statement of P.W.1.

7. P.W.4, Chinnapandiammal, who is the wife of P.W.1's younger brother and was residing on the ground floor on the same building, and other neighbours rushed to the place of occurrence upon hearing the noise. Though the evidence of P.W.4 is not elaborated in detail, she has stated that the accused trespassed into the house of the defacto complainant on the day of the occurrence and created a ruckus. She further deposed that when she came out of her house, she saw the accused coming out of the defacto complainant's house and while running away, he threatened the defacto complainant. The evidence of P.W.4 is quite natural.

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8. P.W.3, the daughter of P.W.1, has also corroborated the evidence of P.W.1 and P.W.2 in all materials aspects.

9. The doctor, examined as P.W.11, stated that upon examination of P.W.1, he found lacerated injuries on both cheeks and that the nail of P.W.1's left big toe was partially torn. He gave his medical opinion that the injuries sustained by P.W.1 were simple in nature and could have been caused in the manner described by the prosecution.

10. Though the involvement of the accused in trespassing into the house of P.W.1 and causing injury by biting the defacto complainant is proved, there is no evidence that the accused carried any weapon. Therefore, he cannot be convicted under Section 324 of the IPC. Since the accused voluntarily hurt P.W.1 without the use of any weapon, I feel the accused ought to have been convicted for the offence under Section 323 of IPC, instead of 324 of IPC.

11. With regard to the finding of guilt for the offence under Section 506(ii) of the IPC against the accused, it is noted that there was no prior

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motive or enmity between P.W.1 and the accused. A mere verbal threat, without any concrete intention or reasonable apprehension of death, cannot be construed as criminal intimidation punishable under Section 506(ii) of the IPC. Therefore, the finding of guilt and conviction under Section 506(ii) IPC is liable to be set aside.

12. The accused has also been convicted for the offence under Section 452 of the IPC. However, for a conviction under this Section, it must be proved that the accused committed house-trespass, after having made preparation to cause hurt, assault, or wrongful restraint to any person. Mere entry without such preparation does not attract the ingredients of Section 452 of IPC.

13. The manner in which the accused entered the house of P.W.1 at night does not indicate that he had made any preparation to commit murder or assault. It appears more likely that he trespassed into the house of P.W.1 with the intention of either committing theft or misbehaving with the women present. The simple hurt caused to P.W.1 occurred only when the accused was startled and pushed him while trying to escape. Therefore, it

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would have been appropriate to convict the accused for the offence of house-trespass under Section 448 of the IPC, instead of Section 452 of IPC. To this extent, I feel that the judgment of trial Court is liable to be modified.

14. In the result,

(i) This Criminal Appeal is **partly allowed**;

(ii) The impugned judgment passed by the learned III Additional District and Sessions Judge (PCR Cases), Madurai, in Spl.S.C.No.129 of 2016 dated 07.11.2017 is hereby modified as under:

Punishment imposed by trial Court u/s	**Modified by this Court u/s**
452 of IPC - 1 year (R.I), fine of Rs.1,000/-, i/d to undergo one week (S.I)	altered to **448 IPC**, fine **Rs.1,000/-** i/d one week (S.I)
324 of IPC- 1 year (R.I) with fine of Rs.1,000/-, id., to undergo one year (S.I)	altered to **323 IPC**, fine **Rs.20,000/-,** i/d two months (S.I)
506(ii) of IPC -one year (R.I), fine of Rs.500/-, id., one week (S.I)	**Set aside**

(iii) If the fine amount has already been paid by the accused, the same can be adjusted with the fine amount now imposed. Total fine amount of

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Rs.21,000/- shall be paid by the accused and out of the said amount, Rs.20,000/- shall be paid to the defacto complainant/P.W.1, within a period of one week from the date of receipt of a copy of this judgment.

27.06.2025

Index : Yes/No
NCC : Yes/No.
Rmk

To

1.III Additional District and Sessions Judge (PCR Cases), Madurai.
2.The Deputy Superintendent of Police,
Samayanallur Sub Division,
Samayanallur, Madurai District.

3.The Inspector of Police,
Samayanallur Police Station,
Madurai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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DR.R.N.MANJULA, J.,

Rmk

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