



Crl.A(MD)No.579 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)Nos.579 of 2022

1.Ramesh @ Suresh
2.Aandavan
3.Gunasekaran
4.Dharmar @ Dharmaraj ... Appellants/Accused No.1 to 4

Vs.

1.The Deputy Superintendent of Police,
Thiruppathur,
Sivagangai District.
2.The Inspector of Police,
Singampunari Police Station,
Sivagangai District.
(Crime No.253 of 2008) ... Respondents 1 & 2/Complainants
3.Ramu ... 3rd Respondent/Defacto Complainant
4.Porutselvi ... 4th Respondents/ Victim

1/13



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PRAYER:- Criminal Appeal is filed under Section 372 of Criminal Procedure Code, to call for the records relating to judgment dated 07.09.2022 in S.C.No.143 of 2009 on the file of the Special Court for Exclusive Trial of Cases under SC/ST (POD) Act, 1989 Sivagangai and to set aside the conviction and sentence, allow the appeal by acquitting the appellants.

For Appellant : Mr.B.Saravanan
Senior Counsel
for Mr.S.Thirupathy
For Respondents : Mr.R.M.Anbunithi, - for R1 & R2
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by G.K.ILANTHIRAIYAN, J.)

This Criminal Appeal has been preferred as against the judgment dated 07.09.2022 made in S.C.No.143 of 2009 by the Special Court for Exclusive Trial of Cases under SC/ST (POD) Act, 1989 Sivagangai, thereby, convicting the appellants/accused No.1 to 4 for the offences punishable under Sections 294(b), 323, 326 r/w.34 IPC r/w.



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Sections 6, 3(2)(v) and 3(1)(x) of Scheduled Caste and Scheduled Tribe
(Prevention of Atrocities) Act, 1989

2. The case of the prosecution is that on 16.10.2008 at about 12 noon, all the accused persons went to the house of the injured and scolded him with the filthy languages by using his caste name and also assaulted him by iron rod and wooden stick. When the wife of P.W.1 attempted to prevent the assault, she also sustained injuries. Based on the complaint, the respondent registered the FIR in Crime No.253 of 2008 for the offences punishable under Sections 294(b), 323, 326 of IPC and Section 3(2)(v) of SC/ST(POA) Act, 1989. After completion of investigation, final report was filed and the same has been taken cognizance by the trial Court.

3. In order to prove the charges, the prosecution had examined P.W.1 to P.W.15 and marked Ex.P1 to Ex.P.19. The prosecution also produced material object M.O.1. On the side of the accused, D.W.1 was examined. They did not mark any documents.



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4. On perusal of oral and documentary evidence, the trial Court convicted the appellants for the offences under Sections 294 (b), 323, 326 r/w.34 IPC and Section 6 and 3(2)(v) of SC/ST(POA) Act, 1989 and sentenced them to Life imprisonment. Aggrieved by the same, the present Criminal Appeal has been filed.

5. The learned Senior Counsel appearing for the appellants submits that though P.W.1 and P.W.2 deposed that the 1st appellant/A1 assaulted him with iron rod and other accused persons attacked with wooden log, they did not even whisper before the Doctor as well as in the complaint about the accused used the iron rod to assault him. Further, the prosecution also failed to recover the iron rod and failed to produce before the trial Court. Therefore, the charge under Section 326 is not proved by the prosecution. At the worst, the appellants can be convicted for the offence punishable under Section 325 of IPC, the maximum punishment shall be 7 years. Therefore, the appellants cannot be sentenced to life imprisonment as contemplated under Section 3(2)(v) of SC/ST(POA) Act, 1989



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6. Per contra, the learned Additional Public Prosecutor would submit that there are specific overt acts as against all the appellants/accused, as per the evidence of P.W.1 and P.W.2. P.W.1 and P.W.2 categorically deposed that the 1st appellant/A1 assaulted P.W.1 with iron rod and other accused 2 to 4 assaulted P.W.1 with wooden sticks. Therefore, the prosecution categorically proved the charge under Section 326 of IPC and the trial Court rightly convicted the appellants/accused, and it does not warrant any interference by this Court.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The complaint lodged by P.W.1 was marked as Ex.P.1. On the strength of the said complaint the respondent police registered FIR which was marked as Ex.P.15. On perusal of both Ex.P.1 and Ex.P.15, it is seen that P.W.1 stated that all the accused persons attacked him by wooden sticks. The injured was examined as P.W.1, who deposed that A1 assaulted him with iron rod and A2 to A4 assaulted him by wooden



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sticks. It is also corroborated by P.W.2. However, the respondent police did not recover any iron rod from the scene of crime. They had recovered only wooden sticks. Therefore, the prosecution failed to prove the charge under Section 326 IPC. The grievous hurt is defined under Section 320 IPC. Further, voluntarily causing grievous hurt is defined under Section 322 IPC. It is relevant to extract the provision under Section 322 IPC :-

“322. Voluntarily causing grievous hurt.—Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt”.

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.”.

9. The punishment for voluntary causing grievous hurt is



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defined under Section 325 of IPC. Whereas voluntarily causing hurt by dangerous weapon is defined under Section 324 IPC. It is punishable under Section 326 of IPC. Since the prosecution failed to recover the dangerous weapon allegedly used by the appellants/accused, the prosecution failed to prove the charge under Section 326 of IPC.

10. In this regard, the learned Senior Counsel relied upon the judgment reported in **2014(12) SCC 666** in the case of ***Dasan Vs. State of Kerala and another***, in which, paragraph Nos.10 and 11 read as follows :

“10. We, however, find some substance in the submission of the appellant’s counsel that on the basis of the evidence adduced in this case, it cannot be said with certainty that the appellant used an iron rod to hit PW-2 Uddesh. Though at the trial, the witnesses stated that the appellant used an iron rod to assault PW-2 Uddesh, admittedly the iron rod is not recovered and what is recovered is MO1, a wooden stick. We notice from the judgment of the Sessions Court that the case of the prosecution was that the appellant struck a blow on PW-2 Uddesh with a wooden stick causing injury to his left eye.



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This story appears to have been not accepted by the courts below because the witnesses improved the story in the Court that an iron rod was used. It has also come on record that PW-2 Uddesh filed a civil suit against the appellant for compensation and in that suit, he alleged that the appellant beat him with a wooden stick. The Sessions Court has referred to this suit and particularly the plaint [Ex- D1] which contains the statement that PW-2 was beaten with a wooden stick by the appellant. In our opinion, in the circumstances, it cannot be said with certainty that the appellant used an iron rod to beat the appellant. In such a situation, we are inclined to accept the version which is favourable to the appellant.

11. In the circumstances, in our opinion, the appellant's conviction under Section 326 of the Penal Code needs to be converted into one under Section 325 of the Penal Code. We accordingly, convert the conviction of the appellant from one under Section 326 of the Penal Code to one under Section 325 of the Penal Code. Offence under Section 325 of the Penal Code is compoundable by the person to whom the hurt is caused with the permission of the court. The question is whether in this case, permission to compound the offence should be granted because PW-2 Uddesh to whom the hurt is caused has made a request to



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this Court that offence be compounded.”

11. The above case is squarely applicable to the case on hand and even as per the evidence of P.W.1 and P.W.2, the prosecution failed to prove the charge under Section 326 of IPC. As rightly pointed out by the learned Senior Counsel appearing for the appellants, the appellants are liable to be punished for the offence under Section 325 IPC. Therefore, if they are convicted under Section 325 of IPC, it is compoundable in nature.

12. Now the appellants and the legal heirs of P.W.1 and P.W.2 entered into a compromise and filed a memo of compromise before this court. The second victim/P.W.2 is also one of the injured during the occurrence present before this Court and deposed that she voluntarily settled the issue between her family members and the appellants/accused herein and she has no objection to compound the offence against the appellants herein.



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13. Since P.W.1, the first injured died, his legal heirs two sons are also present before this Court. They also deposed before this Court that they voluntarily compromised the issue between their family and the appellants. They have no objection to compound the offence against the appellants. After recording their statements, the conviction and sentence imposed against the appellants for the offence under Section 325 of IPC is hereby compounded and the conviction passed by the trial Court is set aside.

14. Accordingly, this Criminal Appeal is allowed and the Judgment dated 07.09.2022 passed in S.C.No.143 of 2009 on the file of the Special Court for Exclusive Trial of Cases under SC/ST (POD) Act, 1989 Sivagangai, is hereby set aside. The memo of compromise dated 23.01.2026 shall form part and parcel of this judgment.

15. At this juncture, the learned Additional Public Prosecutor submitted that after filing the final report, the Government has paid a



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sum of Rs.1,18,000/- (Rupees One Lakh Eighteen Thousand only) to P.W.1 and P.W.2 under the head of victims' compensation. The appellants/accused are ready and willing to refund the same to the Government.

16. In view of the above, the appellants are directed to refund the sum of Rs.1,18,000/- (Rupees One Lakh Eighteen Thousand only) by way of deposit to the Treasury within a period of four weeks from the date of receipt of a copy of this order.

**[G.K.I.J.,] & [R.P.J.,]
23.01.2026**

NCC :Yes/No
Index :Yes/No
Internet :Yes
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- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under SC/ST (POD) Act, 1989,
Sivagangai,
- 2.The Deputy Superintendent of Police,
Thiruppathur,
Sivagangai District.
- 3.The Inspector of Police,
Singampunari Police Station,
Sivagangai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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AND

R. POORNIMA, J.

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