

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018

PRONOUNCED ON : 28.12.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Crl.A.Nos.688 & 636 of 2015

Meenakshi Sundaram

.. Appellant/Accused-1
in Crl.A.No.688 of 2015

Prabahakaran @ Prabhu

.. Appellant/Accused-2
in Crl.A.No.636 of 2015

Versus

The State rep. by
Station House Officer,
Rishivendhiyam Police Station,
Villupuram District.
Crime No.56 of 2013

.. Respondent/Complainant
in both cases

Criminal Appeal filed under Section 374(2) of Cr.P.C. against
the judgement of conviction and sentence of the learned District-cum-
Sessions Judge, Special Court, Villupuram District, dated 15.09.2015 in

For Appellants
in both Crl.Apls. : Mr.S.Saravana Kumar

For Respondent
in both Crl.Apls. : Mr.T.Shanmuga Rajeshwaran
Govt. Advocate (Crl.side)

COMMON JUDGEMENT

These two Criminal Appeals have been filed against the judgement of conviction and sentence made by the learned District-cum-Sessions Judge, Special Court for SC/ST Cases , Villupuram District, in S.S.C.No.152 of 2015 dated 15.09.2015 .

2. The prosecution case is that, the complainant, P.W.1, one Selvaraj belongs to Schedule Caste and Accused A1 and A2 belongs to Hindu Thulavavellalar Community. On 02.04.2013 at about 22 hrs. (10.00 p.m.), the complainant, P.W.1 and P.W.2, were standing in the Keezhthenur bus stop, at that time, the A1, Meenakshisundaram, came down from the town bus and he demanded match box from P.W.1 and when P.W.1 replied that, he had no match box, suddenly, the A1 abused the P.W.1 by dragging the caste name of P.W.1 and assaulted him with hands on his shoulder and thereafter, the P.W.1

called his brother, the P.W.2 one Praba alias Prabakaran through mobile phone and thereafter, A2 came to the occurrence place and he assaulted by hand on the defacto complainant/P.W.1 on his left cheek. Then, P.W.1 dragged the A1's dhoti and bundled six small stones ([y;yp fw;fs;]) on that dhoti and assaulted the P.W.1, at his left hand, back side head, right side shoulder. Due to the said assault of A1, the complainant, P.W.1 got fracture on his left hand.

3. Thereafter, the P.W.1 was taken to Thirukovilur Hospital, where, after taking first aid, the P.W.1 had been referred to Mundiampakkam (Villupuram) Government Hospital, where, the P.W.1 had been admitted as in patient and had taken treatment for some days. Based on the said occurrence, an FIR was registered on 04.04.2013 at 21.00 hrs. (9.00 p.m.) for the alleged offence under Section 294(b), 323, 324 and Section 3(i)(x) of SC/ST Prevention of Atrocities Act, 1989. Pursuant to the registration of FIR, the P.W.14, Deputy Superintendent of Police had taken the investigation and after having investigated, charge sheet had been filed on 16.08.2013 for the said offences against A1 and A2. The said charge sheet was filed before the learned Judicial Magistrate, Thirukovilur in PRC.No.34 of

2013. Thereafter, the case was committed to the Special Court for

SC/ST Act cases, Villupuram in Spl.S.C.No.152 of 2015.

4. Before the Trial Court, prosecution side had examined 14 witnesses and marked 10 exhibits and also produced two material objects. After having completed the Trial, the Trial Court had come to the conclusion that, A1 was found guilty for the offence punishable under Section 326, 323 of IPC and under Section 3(i)(x) of SC/ST Act and accused/A2 was found guilty for the offence punishable under Section 323 of IPC. A2 was acquitted from the charges for the offence punishable under Section 3(i)(x) of SC/ST Act.

5. The Trial Court, thereafter convicted the A1 and sentenced him for five years rigorous imprisonment with fine of Rs.1,000/- in default to undergo six months imprisonment for offences under Section 326 of IPC. He was also convicted for six months imprisonment for the offences punishable under Section 323 of IPC and he was also convicted and sentenced for one year imprisonment for the offences punishable under Section 3(i) (x) of SC/ST Act and all the three sentences, the A1 have to undergo concurrently. The Trial Court also has convicted A2, for six months imprisonment for the offence punishable under Section 323 of IPC. As against the said

judgement and conviction of the Trial Court dated 15.09.2015, the A1 preferred Crl.A.No.688 of 2015 and the A2 preferred Crl.A.No.636 of 2015 and that is how, both these appeals have come before this Court.

6. Heard Mr.S.Saravanakumar, learned counsel appearing for the appellants and Mr.T.Shanmuga Rajeshwaran, learned Government Advocate (Crl.side) appearing for the respondent/prosecution.

7. Learned counsel for the appellants have pointed out that, there had been lot of contradictions in the evidence adduced by the prosecution witnesses, hence, absolutely, there had been no scope for convicting the A1 for the offence punishable under Section 326 of IPC. In support of this contention, the learned counsel pointed out that, the alleged occurrence claimed to have been taken place on 02.04.2013 at 22.00 hrs. whereas, the FIR claimed to have been registered by the prosecution only on 04.04.2013 at 21.00 hrs.. No plausible or acceptable reason has been given by the prosecution for such a long delay in registering the FIR.

8. Learned counsel would further submit that, even though it was claimed by the prosecution that P.W.1, as an inpatient had

taken treatment for more than two weeks at Government Head Quarters hospital, Mundiapakkam (Villupuram), absolutely, no case summary had been filed and no documents from the said hospital pertaining to the treatment said to have been given to P.W.1 had been filed by the prosecution. In fact, the P.W.14, Investigating Officer has not at all enquired the doctors, who have given treatment to the P.W.1. In the absence of any such documents from the side of the prosecution, the Trial Court merely based on the evidence of P.W.12, Doctor, had convicted the A1 even though Ex.P6 issued by P.W.12 was only based on the alleged discharge summary of P.W.1 from Mundiampakkam Government Hospital. However, no such discharge summary or any other document from Mudiampakkam Government Hospital had been produced by the prosecution. However, the learned Trial Court Judge has heavily relied upon Ex.P.6 and had come to the conclusion that, there had been an injury of grievous nature caused on the P.W.1 and therefore, the learned Judge had come to the conclusion that, A1 is guilty of the offences punishable under Section 326 of IPC and accordingly, five years rigorous imprisonment had been imposed against him which is, thoroughly erroneous without any supporting documents/evidence.

<http://www.judis.nic.in> Therefore, the said punishment is liable to be interfered with, learned

counsel contended.

9. Learned counsel also pointed out that, with regard to the place of occurrence and the time of occurrence itself there had been lot of contradictions, which has been exposed from the deposition of the prosecution witnesses and also the Ex.P9, Rough Sketch of the prosecution side. Learned counsel made a submission that, there had been lot of flaws on the side of the prosecution in completing the investigation. Rule 7 of the SC/ST Prevention of Atrocities Rules, 1995 has been violated and the investigation since has not been completed within 30 days time stipulated therein and the time frame also has not been adhered to by the prosecution side and therefore, this kind of flaws on the side of the prosecution would affect the entire case of the prosecution and in support of this contention, the learned counsel also has cited the decision reported in Periyasamy and another vs. Stae rep. by the Deputy Superintendent of Police, Avinashi Sub-Division, Kovilpalayam Police station, Coimbatore District reported in 2018(2) MWN (Cr.) 628.

10. Per contra, Mr.T.Shanmuga Rajeshwaran, learned

Government Advocate (Crl.side) by relying upon the prosecution case

which, according to him, has been fully supported by the prosecution witnesses and he had submitted that, based on the evidences only, the learned Trial Court Judge has come to the conclusion that, A1 was found guilty for the offence punishable under Sections 326, 323 of IPC as well as Section 3(i)(x) of SC/ST Prevention of Atrocities Act and A2 was found guilty for the offences punishable under Section 323 of IPC, accordingly, the conviction and sentence had been made by the Trial Court. Learned Government Advocate would further submit that, there had been more than half a dozen witnesses, most of them were eye witnesses, had deposed with clarity before the Trial Court about the occurrence where, the overt act on the part of the A1 has been clearly exposed. Therefore, based on such strong evidences only, the Trial Court has come to the conclusion that, the accused were guilty of the offence and accordingly, they were convicted. Therefore, the learned Government Advocate appearing for the prosecution would contend that, the Trial Court judgement which is under appeal, requires no interference from this Court.

11. I have considered the materials placed before this Court by the appellants/defence side as well as the respondent/prosecution side and also have considered the submissions made by both the

learned counsel appearing for the parties.

12. According to the prosecution, the occurrence was taken place on 02.06.2013 at 22.00 hrs. at Keelthenur Bus stop. Immediately at about 11.15 p.m., the P.W.1 reported to the Thirukovilur hospital. Thereafter, he had been referred to Mundiambakkam (Villupuram) Government Hospital where, he had been admitted as inpatient and he had taken treatment for more than two weeks.

13. In this regard, it is to be noted that, the P.W.1 in his evidence has stated that, initially he was referred to Thirukovilur hospital, thereafter, he was referred to Mundiampakkam Government hospital where, police came and obtained statement where, he signed. In this regard, the P.W.13, Sub Inspector of Police had deposed that, on 04.04.2013, when he was working as Rishivandiyam Police Station Sub Inspector, he received information from Mundiampakkam Government Hospital, which he registered as an FIR on 04.04.2013 at 9.00 p.m.

14. It is to be noted that, between 02.04.2013 at about

10.00 p.m. and 04.04.2013 at 9.00 p.m., what had happened has not been properly stated by the prosecution anywhere. The Ex.P6 says date and time of admission of P.W.1 at Mundiapakkam Government Hospital as 03.04.2013 and date of discharge was on 20.04.2013. When P.W.1 says police came to the hospital and enquired and obtained statement where he has signed, the P.W.13 says, he received information from the hospital and accordingly, he registered the FIR that too on the 3rd day, i.e., on 04.04.2013 at 9.00 p.m. This contradiction in registering the FIR very belatedly goes to the route of the matter as to why, the prosecution has not spelt out, at what time they received information from the hospital and at what time the police people went to the hospital, enquired the P.W.1 and obtained the statement from him. In the absence of any of these informations from the side of the prosecution, it creates great suspicion in the minds of this Court.

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15. That apart, the P.W.1, in his deposition has stated that, on 02.04.2013 at about 10.00 p.m., while he was returning after switched on the electrical motor for agricultural pump set, the occurrence was taken place at 10.00 p.m.. He further deposed that,

<http://www.judis.nic.in> the occurrence was taken place at bus stop of Keelthenur. In this

regard, the deposition of P.W.1 is extracted hereunder:

' 10 kzipf;F fuz;L tUk; vd;gjhy; Nkhl;lhh;
NghLtjw;fhf NghNdd;. 10 kzipf;F Nkhl;lhh;
Nghl;Ltpl;L te;jJk; rk;gtk; elej;J. Nuhl;by; ele;J
nfhz;L te;jNghJjhd; rk;gtk; ele;jJ. NghyPrhu;
Kjypy; XU thf;F%yk; thq;fpdhh;fs;. ,uz;lhtJ Kiw
tprhhpj;Jtpl;L kl;Lk; Nghdhh;fs;. g];]lhg;gpy; jhd;
rk;gtk; ele;jJ."

16. Whereas P.W.2, who claimed to be along with P.W.1 at the time of occurrence has deposed at his chief examination as well as cross examination that, at about 9.00 p.m., when they were standing in the bus stop, the occurrence taken place and his deposition in this regard reads thus:

'ehd; fPo;NjD}h; fpuhkj;jpy;
FbapUf;fpNwd;. m.rh.1 vd; Ch;fhuh;. vjphpfSk;
vd; Chpy;jhd; ,Uf;fpwhh;fs;. 2 Mz;LfSf;F Kd;G
fPo;NjD}h; NgUe;J epiyaj;jpy; ,uT 9 kzipf;F
epd;Wnfhz;L ,Ue;Njhk;. ehDk; m.rh.1-k;
epd;Wnfhz;L ,Ue;Njhk;. mg;NghJ 8 vz; g]; te;jJ.
m.rh.1 mth; gf;fj;jpy; cs;s mtu; epyj;jpy; Nkhl;lhh;
Nghl;Ltpl;L te;jjhfh nrhd;dhh;. Ngha;tpl;L te;jJk;
mg;NghJ 1tJ vjpup te;jhh;. 1tJ vjpup m.rh.1lk;

tj;jpg;ngl;b Nfl;lhh;. mjw;F m.rh.1 ,y;iy vd;W
 nrhd;dhh;. cINd 1tJ vjpup giw Njtbah ga;ah vd;W
 mrpq;fkhf nrhy;yp jpl;bdhh;. m.rh.1 Vd;
 jpl;Lfpwha; vd;W Nfl;lhh;. cINd 1tJ vjpup
 m.rh.1-d; fd;dj;jpy; mbj;jhh;."

17. P.W.2 has further stated at his cross examination that, the occurrence was taken place while P.W.1 was going to the field to switch on the motor. He never switched on the motor as before he goes there, this occurrence had taken place. His deposition in this regard at cross examination reads thus:

'm.rh.1 epy;jpw;F Nkhl;lhh; Nghl
 NghFk;NghJ jhd; rk;gtk; ele;jJ. m.rh.1 Nkhl;lhh;
 Nghltpy;iy."

18. The P.W.1 says, it was happened after 10.00 p.m. because, at 10.00 p.m. he switched on the motor in his field and while he was returning at the bus stop, this occurrence was taken place. Whereas, the P.W.2, who was claimed to have been along with P.W.1 has stated that, at about 9.00 p.m. the occurrence was taken place, that is, before the P.W.1 goes to his field to switch on the motor and he had not switched on the motor on that day. This contradiction

creates yet another suspicion in the minds of this Court as to whether, the occurrence had been taken place as claimed by the prosecution on the strength of the evidences of P.W.1 and P.W.2. In so far as the place of occurrence is concerned, the following contradictions are to be noted.

19. P.W.1 says, 'g];]lhg;gpy; jhd; rk;gtk; ele;jJ."

P.W.3, who is also claimed to be one of the eye witness says that, 'g];]lhg;gpy; rk;gtk; elf;ftpy;iy."

20. Whereas, P.W.4, who also claimed to be the eye witness says that, ' rk;gtk; Nkw;FGw gs;spf;\$I thrypy; ele;jJ."

21. Whereas, P.W.8, who also claimed to be the eye witness has deposed that ' rk;gtk; rz;Kfk; ngl;;bfilf;F Kd;dhy; ele;jJ."

22. While another witnesses i.e., P.W.10 says, 'vd; filf;F vjphpyNa rk;gtk; ele;jJ".

23. With the strength of these deposition of the alleged eye witnesses, according to the prosecution, if we look at the Ex.P9,

Rough Sketch, it discloses that, the scene of crime, according to the investigating officer, was at Keelthenur bus stop, which has been shown in the western side of the road called Madampundi-Thiyagadurgam Thar road (black top road). Whereas, the bunk shop of Shanmugam is located at the eastern side of the road. The P.W.10, by name, Shanmugam states that, in front of his shop, the occurrence was taken place. This was supported by P.W.8, whereas, the P.W.4 says that, the occurrence was taken place in front of the school located on the western side. If we look at the Ex.P9, the school is on the western side of the road where, there are 4 school buildings. One is at the eastern western side and another one is at the north western side and another one is at the south western side and yet another building is shown as eastern northern side. But these places no way connected with the bus stop or the Shanmugam's shop.

24. Whereas, the P.W.1 has made a categorical statement while he deposed before the Trial Court that, the occurrence was taken place only on the bus stop, but, P.W.3 says categorically that, the occurrence was not taken place on the bus stop. These contradictions have clearly exposed the veracity of the evidence adduced by these witnesses, claimed to be the eye witnesses on the

side of the prosecution, as they have no idea about the place of occurrence itself.

25. Since the evidence in this regard of the witnesses about the place of occurrence is completely contradictory to the Ex.P9, Rough Sketch shown by the prosecution, it is hard to believe the evidences on the side of the prosecution in this regard, especially, the place of occurrence. The charge against A1, for the offences punishable under Section 326 of IPC was based on Ex.P6, issued by the P.W.12, Doctors, he has given the following evidence at her cross examination:

'Jzpapy; fy;iy Rw;wp mbf;Fk; NghJ ntl;Lf;fhak; Vw;gl tha;g;G cs;sJ. xU egu; jtwp fPNo tpOk; NghJ ,IJ Nky; ifapy; vYk;G KwpT Vw;gl tha;g;G cs;sJ. 2>3 fhaq;fs; fPNo tpOtjhy; Vw;gl tha;g;G cs;sJ. jpUNfhtpY}u; Kjy; cjtp kl;Lk; nra;Njd;. Kd;bak;ghf;fk; muR kUj;Jtkidapy; mtUf;F vd;d rpfpr;ir toq;fg;gl;IJ vd;gJ vdf;F Neubahf njupahJ. Nghyprhu; toq;fpa brhu;l; itj;J rhd;W toq;fpNdd;. Kd;bak;ghf;fj;jpy; toq;fpa rhd;W itj;J ehd; fUj;J itj;Njd;. vf;];Nu vJTk; ehd; ghu;f;ftpy;iy."

26. In this context, the Ex.P6, can also be taken note of, which says that, on 02.04.2013, P.W.1 visited the Thirukovilur hospital where, after giving treatment, he had been referred to Government Hospital, i.e., Mundiampakkam Government Hospital for further treatment. It further discloses that, he was admitted from 03.04.2013 and was discharged on 20.04.2013. Though it was claimed that, he had been given treatment at Mundiampakkam Government Hospital for more than two weeks, nothing from the said hospital had been obtained and produced by the prosecution. No Doctor had been examined from the said hospital, who allegedly treated the P.W.1. When that being the position, how the prosecution had fully relied upon the Ex.P6 alone, which was claimed to have been given by the P.W.12 based on the discharge summary of the P.W.1 issued by the Government Hospital at Mundiampakkam, whereas, no such discharge summary had been produced or marked by the prosecution side.

27. When the very basic document had not been produced before the Trial Court, it is not known on what basis, the trial Court has taken the Ex.P6 alone, as the sole evidence for coming to the conclusion that, the injury caused on P.W.1 was grievous in nature

and therefore, the A1 can be found guilty for the said offence of 326 IPC and accordingly, can be convicted and sentenced to undergo 5 years Rigorous imprisonment.

28. With reference to the credibility of the witnesses is concerned, the following deposition of P.W.1 in his cross examination makes it abundantly clear that those witnesses are their family members or the relatives of P.W.1. Therefore, they can be considered to be interested witnesses. In order to appreciate the same, the following deposition of P.W.1, in his cross examination is extracted hereunder:

'rk;gtk; ele;j Njip khjk; njupahJ. 2013y;
ele;jJ. rk;gtk; ele;j NghJ ,uT Rkhh; 9.30 kzp
,Uf;Fk;. rhl;rp nry;tk; vd; jk;gp kfd;. tPud; vd;
kr;rh; kfd;. rhl;rp uhkr;re;jpud; vd; mz;zd; kfd;. rhl;rp Rg;gpukzp vd; gq;fhsp. rhl;rp re;jpud; vd; kfd;. rhl;rp Fkhu; vd;Dila xd;Dtpl;l mz;zd; Kiw. rhl;rp ee;jd; ,we;Jtpl;lhu;. mth; vd; khkd;."

29. On analysing all these evidences, there is a strong

suspicion with regard to the date and time of the occurrence as well as the place of the occurrence. Between 02.04.2013 at 10.00 p.m. and 04.04.2013 at 9.00 p.m. why both the hospitals had not registered the medico legal case at the time of admission of P.W.1. If at all, the P.W.1 had been immediately referred at Thiruvokilur hospital as per the statement of P.W.12 and had been admitted immediately at Mundiampakkam Government hospital, certainly a Medico Legal case could have been registered and the said issue could have been referred immediately to the out post police station at the Government Head quarters hospital, through whom, the information could have been immediately reached the respondent police station. However, the P.W.13, Sub Inspector of Police only claim that, on receipt of information from the Government hospital, FIR was registered at 9.00 p.m. on 04.06.2013.

30. This delay in filing the FIR, which has not at all been explained by the prosecution, makes the entire prosecution theory into a questionable one.

31. In this context, the defence theory projected before the Trial Court during the cross examination of witnesses especially, the

P.W.14, the investigating officer in his deposition, can be taken note of. He has stated the following:

' 04.05.2013k; Njip kUj;Jtiu tprhhpj;J fha
rhd;W ngw;W thf;FKyk; gjpT nra;Njd;. nfhLq;fhak;
vd;W kUj;Jt rhd;wpy; Fwpg;gpl;L ,Ue;jjhy; ,e;j
toq;fpd; rl;lg; gpupit 294gp 323 326 cld; ,ize;j 3(1)
(10) v];rp> v];b rl;lg;gb gpupT khw;wk; nra;J gpupT
khw;W mwpf;if mDg;gpNdd;."

'rk;gtk; ele;J 2 ehl;fs; fopj;Jjhd; Kjy; jfty;
mwpf;if gjpT nra;ag;gl;J. Kjy; jfty; mwpf;ifapy; jfty;
nfhLj;jtUf;F efy; toq;fpajw;fhd Xg;gk; viaAk;
ngwg;gltpy;iy. gl;bay; rhl;rpfs; 3 Kjy; 7 rk;gtk; ,lj;jpy;
,Ue;jjhf Gfhhy; nrhy;yg;gl tpy;iy."

'jpUNfhtpY}u; muR kUj;Jtkidapy; rpfpr;ir mspj;j
kUj;Jtu; ,lk; thf;FKyk; vijAk; ngwg;gltpy;iy.
tpOg;Guk; muR kUj;Jtkidapy; ,Ue;J m.rh.1 rpfpr;ir
ngw;wjw;fhd Mtzk; ngw;W jhf;fy; nra;atpy;iy."

'vd;dplk; rhl;rpfs; NgUe;J epWj;jk;
mUNfjhd; rk;gtk; ele;jjhf nrhy;yp cs;shu;fs;."

'm.rh.1 4 nkhop Ntl;b fl;b ,Ue;jhf
ePjpkd;w tprhuizapy; nrhy;yp cs;sJ vdf;F njupahJ."

'1. 2 vjphpfs; rk;gtj;jpw;F 1 khjj;jpw;F
 Kd;g[jhd; me;j CUf;F Fote;jhh;fs; vd;W brhd;dhy;
 bjhpahJ. vjphpfs; b\$aFkhh; vd;dplk; epyk;
 th';fpf;bfhz;L tPLfl;o rk;gtj;jpw;F 1 khjk; Kd;g[
 Fote;jhh;fs; vd;why; rupay;y/ mtu;fs; me;j
 Chpnynajhd; Fo ,Ue;jhh;fs;/ vjphpfs; b\$aFkhh; ,lk;
 epyk; th';fpf;bfhz;L Fote;jJ vdf;F bjhpahJ/
 m/rh/1?f;Fk; b\$aFkhUf;Fk; epyk; rk;ke;jkhf rptpy;
 tHf;F ,Ug;gjhf vdf;F bjhpahJ/ m/rh/1 vd;
 tprhuizapy; mij brhy;ytpy;iy/ m/rh/1f;Fk;
 b\$aFkhUf;Fk; ,ilna gpur;rid ,Ue;j epyj;ijjhd; vjphpfs;
 fpiuak; th';fpf;bfhz;L Fote;jhh;fs; vd;why; bjhpahJ/
 b\$aFkhUf;F Mjuthf rptpy; tHf;F MdJ bjhpahJ/
 b\$aFkhu; ,lk; ,Ue;J vjphpfs; epyj;ij fpiuak;
 th';fpajhYk; m/rh/1f;Fk; b\$aFkhUf;Fk; gpur;rid
 ,Ue;jjhYk; m/rh/1 vjphpfs; kPJ bgha;ahf g[fhh;
 bfhlj;Js;shu; vd;Wk; mij ehd; ruptu tprhuiz
 bra;ahkYk; vjphpfs; kPJ jtw hf Fw;wg;gj;jphpif jhf;fy;
 bra;njd; vd;why; rupay;y/"

32. The P.W.14, Investigating Officer says that, he enquired

the Doctor, on 04.05.2013 and recorded the statement, whereas,

Ex.P7 seems to have been registered only at 9.00 p.m. on 04.05.2013 and thereafter only, initial permission under Rule 7 could have been given to P.W.14, Deputy Superintendent of Police, who could have taken up the investigation. When that being so, he could not have investigated the case and enquired the Doctor, on 04.05.2013 as claimed by him. The P.W.14, Investigating Officer has admitted that, only after two days of the occurrence, the FIR was registered and there has been no mention in the complaint about the eye witnesses and he also did not know whether any information was received by the respondent police from Thirukovilur hospital. He also further deposed that, he did not get any statement from the Doctor at Mundiambakkam Hospital, who treated the P.W.1 and he has also candidly admitted that, he did not produce any evidence before the Trial Court to prove that, the P.W.1 has taken treatment at Mundiampakkam Government Hospital. This flaw on the part of the prosecution has been completely exposed the lack in evidence and lack in proper investigation in this case. That apart, according to the prosecution, there had been two material objects produced. The first M.O. was a dhoti of 8 feet which was used along with M.O.2 stone as a weapon of A1, who inflicted the injury on the P.W.1. In this regard, it

is to be noted that, P.W.1 in his cross examination has admitted as

follows:

'rk;gt rkak; 4 nkho Ntl;b fl;bapUe;Njd;"

33. Whereas, the P.W.14, investigating Officer in his chief examination has deposed as follows:

'gpwF 07.04.2013k; Njip fhiy 7.30
kzpf;F jpahfJu;fk; NgUe;J epWj;Jk; mUNf 1-tJ
vjupia ifJ nra;J mtu; jhdf nfhLj;j xg;Gjy;
thf;F%yj;jpy; rhl;rpfs; mupfpU\;zd; MWKfk;
Kd;dpiyapy; gjpT nra;J mjd; mbg;gilapy; fhiy 9.30
kzpf;F rk;gt ,lk; mUNf 1tJ vjpup M[u; nra;j 8 Ko
nts;is epw Ntl;b 1> 6> xd;wiw [y;yp fWq;fw;fisAk;
kf[u; jahu; nra;J mNj rhl;rp Kd;dpiyapy;
ifg;gw;wpNdd;."

He also deposed in his cross examination which reads thus:

'm.rh.1 4 nkho Ntl;b fl;b ,Ue;jhf
ePjpkd;w tprhuizapy; nrhy;yp cs;sJ vdf;F
njupahJ."

34. The aforesaid deposition clearly exposes the lack of prosecution case that the M.O.1, according to the P.W.1, was only 4 feet dhoti (4 nkho Ntl;b) however, the P.W.14, says that, he recovered the M.O.1, which is 8 feet dhoti (8 nkho Ntl;b). This contradictions cannot be easily brushed aside.

35. Moreover, even according to P.W.1, at the time of the alleged derogative words used by A1, dragging the caste name of A1, no one was available except P.W.2 and the very same P.W.2 has deposed that, when P.W.1 goes for his field to switch on the motor, the occurrence was taken place, but this statement has been completely contradicted by P.W.1, who categorically stated that, while he was returning from his field after switch on the motor, it was happened at 10.00 p.m. therefore, the credibility of P.W.2 also cannot be accepted.

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36. As has been stated above, all the other eye witnesses and other witnesses are family members or close relatives of P.W.1, which has been admitted by P.W.1 in his cross examination.

<http://www.judis.nic.in> Therefore, the credibility of those evidences in the eye of law are

highly doubtful and appears to be suspicious in view of the contradictory statements they made, with regard to the time and place of occurrence itself.

37. Further, the long gap nearly about 48 hrs., in registering the FIR, for which, absolutely no reason had been given by the prosecution side, except, some contradictory statements made in the deposition of P.W.14 investigating officer, would go to show that, the prosecution theory has not been cogently projected with acceptable evidence.

38. That apart, if the P.W.1, claimed to have been taken treatment as in patient in Mundiampakkam Government Hospital for more than 15 days, the P.W.14 has stated that, he had not enquired any Doctor at the hospital, nor he had received any document and filed before the Trial Court claiming that the P.W.1 has taken the said treatment with the result, the P.W.12, doctor at Thirukovilur hospital had given Ex.P.6.

39. If P.W.1, taken treatment at Mundiampakkam Government Hospital for 15 days, why the prosecution had chosen the Doctor at Thirukovilur to get Ex.P6, who had not even given treatment except claimed to have referred the P.W.1 to the Mundiampakkam government hospital. If at all the P.W.1 taken treatment at Government Hospital Mundiampakkam, the relevant documents could have very well been filed before the Trial Court by the prosecution, which the prosecution has failed.

40. Thus, the aforesaid aspect would clearly exposes the complete lack in evidence on the side of the prosecution to support the prosecution theory. Whereas, the elaborate defence theory as has been projected by the appellants/defence side as has been stated in the cross examination of P.W.14 and also through some other witnesses, can be taken into account, in the given facts and circumstances of the case. Without appreciating all these aspects in proper perspective, the learned Trial Court Judge, merely based on Ex.P6, has come to the conclusion that, A1 is guilty of the offence under Section 326 of IPC and the learned Judge also had come to the conclusion based on the evidence of these witnesses, who are stated

to have been or claimed to be the family members or relatives of the

P.W.1, decided the guilt of the A1 for the offence under Section 3(x) (i) of SC/ST Act and also decided the offence under Section 323 of IPC against the first and second accused and accordingly, convicted the accused persons.

41. On analysing the evidences on the side of the prosecution and also by taking into account the defence theory, this Court is of the view that, the prosecution has not proved the charge beyond reasonable doubt against the accused persons as there had been a complete lack in cogency in projecting each evidence on the side of the prosecution. This aspect has not been considered in proper perspective by the learned Judge of the Trial Court. With the result, there has been an erroneous decision in the judgement on appeal which, in the considered view of this Court, is liable to be interfered with.

42. Resultantly, the impugned judgement and conviction made against the accused in Spl.S.C.No.152 of 2015 on the file of the Special Court for SC/ST, Sessions Judge, Villupuram, dated 15.09.2015 is hereby set aside. The appellants/accused A1 and A2 are set at liberty. The bail bond if any, executed by the accused/appellants

shall stands discharged and the fine amount if any paid by the appellants shall also be refunded to them. Accordingly, this Criminal Appeal is allowed.

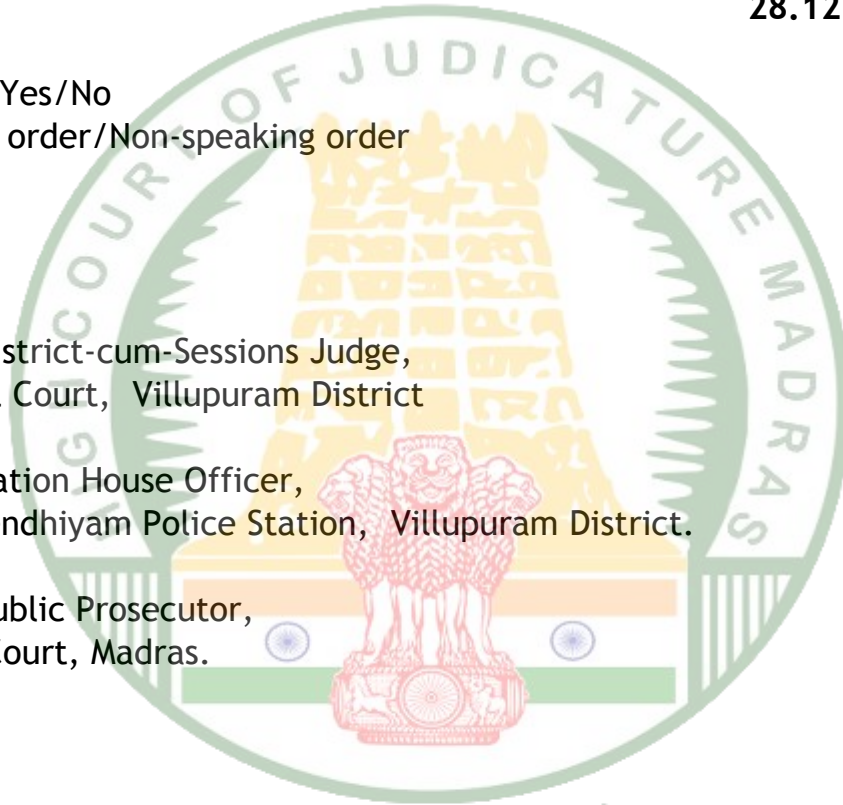
28.12.2018

Index :Yes/No

Speaking order/Non-speaking order
smi

To

- 1.The District-cum-Sessions Judge,
Special Court, Villupuram District
- 2.The Station House Officer,
Rishivendhiyam Police Station, Villupuram District.
3. The Public Prosecutor,
High Court, Madras.

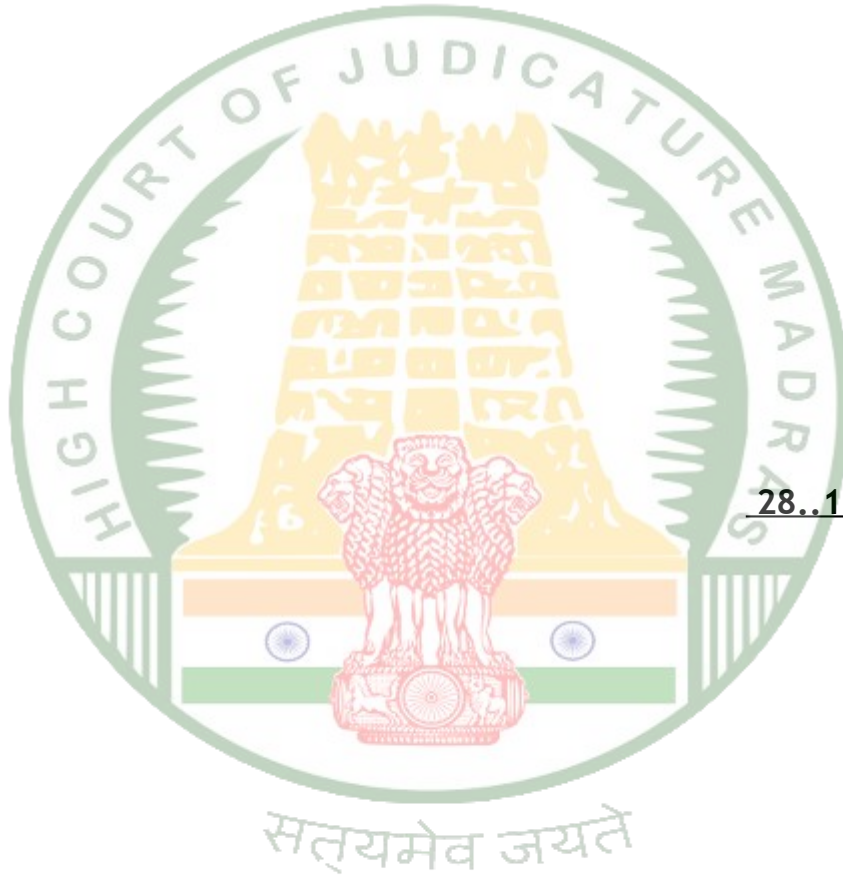


सत्यमेव जयते R.SURESH KUMAR, J.

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**Pre-Delivery Judgement in
Crl.A.Nos.688 & 636 of 2015**



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