



Crl.A.No.204 of 2022 & Crl.M.P. No.2581 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2023

DELIVERED ON : 19.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.204 of 2022 &
Crl.M.P. No.2581 of 2022

1. Chinnathambi
2. Ravi
3. Karuppan
4. Chinnayan

... Appellants

Vs.

State Rep. by
Deputy Superintendent of Police
Kallakurichi Division
Villupuram District
(Varajjaram PS Cr.No.124/2015)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment dated 27.08.2019, passed by the learned Sessions Judge, Special Court for Exclusive Trial of case registered under SC/ST (POA) Act, Villupuram, in Spl.S.C. No.38 of 2016.

For Appellants : Mr.K. Balu

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor.



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JUDGMENT

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This criminal appeal is filed against the judgment dated 27.08.2019, passed by the learned Sessions Judge, Special Court for Exclusive Trial of case registered under SC/ST (POA) Act, Villupuram, in Spl.S.C. No.38 of 2016.

2. The Deputy Superintendent of Police (P.W.20), Kallakurichi Sub Division, laid a charge sheet against the 5 accused for the offences under Sections 147, 148, 341, 294(b), 323, 324, 326, 506(i) IPC and Section 3(1) (10) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (herein after referred to as "SC/ST (POA) Act").

3. The facts of the case as presented by the prosecution are briefly narrated below:

3.1. The defacto complainant Balakrishnan (P.W.1) along with Mani (P.W.2) and Sakthivel(P.W.3) are all residents of Pukkaravari Village of Kallakuruchi Taluk and belong to the Scheduled Caste community. According to the complainant P.W.1, on 03.07.2015 at about 9 p.m. when

2/30



the Mariamman temple festival in their colony was happening, the accused were found indulging in taking photographs of the women folk of their colony and also teased them by throwing mud on their dress. When the complainant and others objected to it, the accused went back to the village and enroute had torn the digital banners erected by the complainant and his friends. The complainant and his companions were infuriated due to this act and they went to the village president's house to complain about this act, when they were attacked by the accused and 20 others who were armed with wooden sticks, iron rod, tube lights and bottles. The complainant and many of his companions were injured in the clash. The accused and twenty others also hurled abuses and casteist slur against the complainant and others belonging to the Scheduled Caste community. It turned out to be a group clash between Caste Hindus and Scheduled Caste residents of the same village.

3.2 P.W.1 along with other injured were rushed to the Kallakurichi Government Hospital wherein they were treated as inpatients and Balasubramanian (P.W.18), Special Sub Inspector of Police, Varanjaram



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Police Station received a complaint (Ex.P1) from P.W.1 in the hospital and registered FIR (Ex.P9) in Crime No.124/15 on 04.07.2015 at 11 a.m. against 5 known accused and 20 unnamed accused from Pukkaravari Village, for the offences under Sections 147, 148, 341, 294(b), 323, 324, 506(ii) IPC and 3(1)(10) of SC/ST (POA) Act.

3.3. Initially J.Shankar (P.W.19), Deputy Superintendent of Police, Ulundurpet Sub Division, holding additional charge of Kallakurichi Sub Division, took up investigation, based on the proceedings (Ex.P10) dated 04.07.2015 of Superintendent of Police, Villupuram. He went to the place of occurrence at 12 noon, and prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P11) in the presence of Seenuvasan (P.W.13) and Balamurugan (not examined). Then he examined the witnesses Balakrishnan (P.W.1), Mani (P.W.2), Sakthivel (P.W.3), Sathyaraj (P.W.4), Mayakannan (P.W.5), Seenuvasan (P.W.13) and Balamurugan and recorded their statements. The same day at 2.30 p.m., Chinnathambi (A1) was arrested in front of his house and was remanded to judicial custody. Mathivanan (P.W.20), Deputy Superintendent of Police, Kallakurichi Sub



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Division continued the investigation and arrested Karuppan (A4) on 10.07.2015 at 9.30 a.m. near Pukkaravari lake in the presence of Thirugnanasambandar (P.W.14) and Annamalai (P.W.15). Based on his (A4) confession, one stick (M.O.1) was recovered from him in the presence of the same witnesses under the cover of seizure mahazar (Ex.P4) and sent to the concerned court through Form 95 (Ex.P12). The accused Karuppan was remanded to judicial custody. On 13.07.2015 a letter to know the caste of the complainant and the accused was given to the Tahsildar (P.W.17) and subsequently Murugesan (P.W.6), Ramakrishnan (P.W.7), Manikandan (P.W.8), Sakthivel (P.W.3), Manivannan (P.W.10), Tamilselvan (P.W.11) and Saminathan (P.W.12) were examined and their statements were recorded.

3.4. Dr. Pazhamalai (P.W.16), who treated the injured and, the Tahsildar Syed Khader (P.W.17) who issued the Community Certificate were also examined and their statements were recorded. An alteration report was prepared (Ex.P13) in which only 5 accused were specified and 20 other accused were deleted by another report (Ex.P14) and on



completion of the investigation, the final report was filed by P.W.20, the Investigation Officer under Sections 147, 148, 294(b), 323, 324, 326, 506(ii) IPC r/w 3(1)(10) SC/ST (POA) Act, 1989, against the five accused before the Sessions Judge, Special Court for Exclusive Trial of Case registered under SC/ST (POA) Act, Villupuram. The trial court framed charges against the accused under Sections 147, 148, 294(b), 341, 326, 324, 506(ii) IPC r/w 3(1)(r)(s) SC/ST (POA) Act, 2015. Since the accused pleaded not guilty, the case was posted for trial.

3.5. In order to bring home the guilt of the accused, the prosecution examined 20 witnesses (P.W.1 to P.W.20) and adduced 14 exhibits (Ex.P1 to Ex.P14) on their side. One material object in the form of one 105 cm stick (which was recovered from A4), (MO-1) was adduced.

3.6. P.W.1 is the defacto complainant. In his deposition he stated that he is a resident of Pukkaravari colony and that the five accused were in the crowd that witnessed the dance programme by kids and since they were found taking photos of the ladies in the crowd they were prevented from



doing so. They left the crowd and on their way home tore the digital banners erected by P.W.1 and his friends, When P.W.1 and his companions went to complain to the Village President, they were attacked by the accused and 20 others. They were armed with wooden stick, tube light, bottles and iron rod. They abused the complainant P.W.1 and his companions using casteist slur against them. He also deposed that the accused Chinnathambi (A1) attacked him with a billhook (aruval) on his left side of head while the accused Ravi (A2) hit Mani (P.W.2) with an iron rod on his head and Marimuthu (A3) threw a beer bottle on the right ear of Sakthivel (P.W.3) causing bleeding injuries. They took shelter in the temple premises till the ambulance arrived that shifted them to Kallakurichi Government Hospital. On information from the hospital, police arrived the next day and took a complaint (Ex.P1) from him (P.W.1).

3.7. Mani (P.W.2) is another injured eyewitness who had deposed that he is a resident of Pukkaravari Village and that he was a witness to the misbehaviour of the accused with the ladies in the village when the dance programme of children was in progress in the festival of Mariamman temple



of their village. On their way back the accused tore the digital banners erected by P.W.1 and others. When he along with P.W.1 and others went to complain about this act to Kesavan, the Village President, the accused along with 25 others unleashed violence on them and also abused them with casteist remarks. He has deposed that Ravi (A2) had hit him on his head with an iron rod, while Marimuthu (A3) attacked Sakthivel (P.W.3) with a beer bottle and Chinnathambi (A1) attacked Balakrishnan (P.W.1) with a billhook. An ambulance was called for and all the three of them were taken to Kallakurichi Government Hospital for treatment.

3.8. Sakthivel (P.W.3) has deposed on similar lines. Sathiaraj (P.W.4), another eyewitness has deposed that he was a witness to all the incidents from the objections to taking photos to the brutal attack on P.W.1 to P.W.3. by the accused. He also corroborated with the other injured witnesses. Mayakannan (P.W.5) also narrated the sequence of events leading to the attack on P.W.1 to P.W.3 by the accused 1 to 5. Murugesan (P.W.6) deposed that the accused had taken photos of the womenfolk in the crowd in the temple festival and when objected, they tore the digital



banners. 10 of the residents of the colony went to the Village President's house to air their grievance when they were attacked by the accused with beer bottle, iron rod, stick and billhook causing injuries to P.W.1 to P.W.3. They also abused them on their caste and threatened them of dire consequences brandishing the stick.

3.9. Ramakrishnan (P.W.7) another resident of the village also narrated the incidents and deposed that the accused had attacked P.W.1 to P.W.3 and injured them. Manikandan (P.W.8) another witness to the incidents also deposed as to how P.W.1 to P.W.3 were injured in the attack by the accused and how they were taken to the Kallakurichi Government Hospital in an ambulance. Sakthivel (P.W.9) another eyewitness also deposed about the sequence of events leading to the violence and the injuries sustained by P.W.1 to P.W.3. Manivannan (P.W.10) also deposed on similar lines. He is also an eyewitness to the attack by the accused on P.W.1 to P.W.3 and also the casteist slur hurled on them by the accused. Saminathan (P.W.12) also an eyewitness, who has deposed about the brutal attack and on the abuses hurled on them by the accused. Seenuvasan



(P.W.13) deposed that he was a witness to the observation mahazar and rough sketch. Thirugnanasambandar (P.W.14), Village Administrative Officer in charge of Pukkaravari Village deposed that he witnessed the arrest of Karuppan (A4) and the confession statement, admissible portion of which is Ex.P3. He also witnessed the recovery of a 105 cm stick under the cover of the seizure mahazar (Ex.P4). Annamalai (P.W.15) is a Village Assistant who along with Village Administrative Officer (P.W.14) was the other witness to the arrest of Karuppan (A4), admissible portion of the confession (Ex.P3) and the recovery of one stick (M.O.1) under the cover of seizure mahazar (Ex.P4).

3.10. Dr. Pazhamalai (P.W.16) is the doctor who treated the injured P.W.1 to P.W.3. He has deposed that in the early hours of 04.07.2015 at about 2.10 a.m., Balakrishnan (P.W.1) had come with the following injuries for treatment.

1. Multiple abrasions noted in the face.
2. Contusion 3 x 2 cm noted in the lower lip.
3. A tooth in the upper right side mouth was found shaking.



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4. Laceration 4 x 2 x 1 cm noted in the left side head.

5. Contusion noted in the left side rib.

P.W.1 had stated to the doctor (P.W.16) that he was attacked by 5 known and 25 unknown persons in his village with stones and hand. He was admitted as an inpatient till 07.07.2015 and then referred to Villupuram Government Hospital wherein he was treated as an inpatient till 12.07.2015. Dr.Pazhamalai based on the scan of report of the 5th injury, certified it as a grievous injury in the wound certificate/Accident Register (Ex.P5). He has also deposed that Mani (P.W.2) also was treated by him for the injuries he had sustained in the attack. He was also admitted as an inpatient for the following injuries.

1. Laceration 4 x 2 x 1 cm noted in the left side head.

2. Laceration 5 x 2 x 1 cm with bleeding noted in the back side of the head.

3. Contusion 4 x 2 cm noted in the upperside left hand.

These injuries were certified as 'simple' vide wound certificate/Accident Register Ex.P6. Similarly, Sakthivel (P.W.3) also was treated by him for a



laceration 4 x 2 x 1 cm with bleeding in the left side ear. The said injury was also certified as simple in the Accident Register (Ex.P7). He was also admitted as an inpatient but discharged at his own request.

3.11. Balasubramanian (P.W.18), Special Sub Inspector of Police Varanjaram Police Station, deposed that he visited the Government Hospital in Kallakurichi, on knowing the admission of three injured persons from Pukkaravari Village for treatment. He received a complaint from Balakrishnan (P.W.1) and registered FIR (Ex.P9) in Crime No.124/2015 on 04.07.2015 at 11 a.m. J.Shankar, Deputy Superintendent of Police (P.W.19) in charge of Kallakurichi deposed that he was additionally holding charge and had initiated the investigation and prepared the observation mahazar and rough sketch and also arrested Chinnathambi (A1) and remanded him to judicial custody. Mathivannan (P.W.20) deposed that he continued the investigation and arrested Karuppan (A4) and recovered one stick from him which was used in the attack as per his confession statement. After altering the charges in the alteration report and also removing 20 accused from the final report, vide alteration report 06.08.2015 (Ex.P14), he filed the final



report before the concerned court.

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3.12. The 5 accused were explained the incriminating evidence against them and when questioned under Section 313 Cr.P.C., they denied of having committed any offence and claimed innocence. They had no witnesses or documents on their behalf.

3.13. The trial court after full trial found the 5 accused guilty of the offences and sentenced them as mentioned below.

<i>Conviction</i>	<i>Accused</i>	<i>Sentence</i>
Sections 147 IPC	1 to 5	A fine of Rs.1,000/- each, in default, to undergo simple imprisonment for 3 months.
Section 148 IPC	1 to 5	A fine of Rs.1,000/-each , in default, to undergo simple imprisonment for 3 months.
Section 506(2) IPC	1 to 5	A fine of Rs.1,000/- each, in default, to undergo simple imprisonment for 3 months.
Section 3(1)(r)(s) SC/ST (POA) Act 2015	1 to 5	Rigorous Imprisonment for one year and a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for 3 months.



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<i>Conviction</i>	<i>Accused</i>	<i>Sentence</i>
Section 324 IPC	1 to 3	A fine of Rs.1,000/- each , in default, to undergo simple imprisonment for 3 months.

This appeal is against this conviction and sentence by four of the five accused.

4. The learned counsel for the accused would contend that the prosecution failed to prove the case beyond reasonable doubt. According to him there were serious lacunae in the depositions of the prosecution witnesses and also the investigation itself. He also contended that the Accident Register copies and depositions of P.W.1 to P.W.3 (the injured victims) were all contradictory. He also pointed out that no weapon was seized except for the stick and that the injuries sustained were certified only as simple injuries. There was also no evidence regarding the hurling of casteist slurs as alleged, it was argued. It was pointed out that Mathivannan (P.W.20) was not authorised by the Superintendent of Police to investigate the offences under Section 3(1) (x) of SC/ST (POA) Act. According to him the conviction of the accused is not tenable and liable to be reversed.



5. Per contra, Mr.S.Sugendran, learned Additional Public Prosecutor

contended that this was an incident of violence enacted on a group of Scheduled Caste persons out of which 3 were injured and all the three of them along with another 7 witnesses who were present there during the attack, had identified the accused. He also argued that the nature of injuries and the depositions of the witnesses clearly prove the assault on P.W.1 to P.W.3 by the five accused.

6. On the face of it, it appears to be a clash between two caste groups. The temple festival held in the Mariamman koil, Pukkaravari Colony, where the residents belonged to Scheduled Caste. The Caste Hindus who also attended the festival allegedly tried to misbehave with the women folk present there which was objected to. The Caste Hindu persons who left the place went back to the village. They allegedly tore the digital banners which infuriated the Scheduled Caste residents of the colony who had put up the banners. The latter reportedly went to complain to the Village President about this act of the Caste Hindus when they were allegedly attacked by the accused. The injured victims belonged to Scheduled Caste



community while the assailants were from the Caste Hindus. The accused had also allegedly hurled casteist slur on the Scheduled Caste group.

Though about 25 persons belonging to the Caste Hindu group were allegedly involved in the attack, only 5 of them were named and identified by the complainant and the other prosecution witnesses. The Investigating Officer had dropped the remaining 20 persons allegedly involved in the attack stating that they were not involved in the attack though they were known.

7.Now let us see the prosecution case and what they attempted to prove. All the relevant prosecution witnesses which include the eye witnesses and injured witnesses have deposed about the misbehaviour of the accused. Though most of them stated that a dance programme of children was the one when the photos were taken, in the cross examination it was suggested that it was an 'Adal Padal (dance)' programme meant for adults.



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8.Balakrishnan, PW-1, is the defacto complainant. In his deposition

he made contradictory statements. During the course of his cross examination he has stated thus:

"நாங்கள் 20 பேர்கள் தலைவரை போய் பார்த்தோம். நாங்கள் தலைவரிடம் பேசிக்கொண்டு இருக்கும்போதுதான் எதிரிகளும் மற்றவர்களும் வந்தார்கள். எதிரிகள் 25 பேர்களுடன் வந்தார்கள். சண்டை நடக்கும்போது தெருவில் லைட்டு எரியவில்லை இருட்டாக இருந்தது. எதிரிகள் தரப்பில் 25 பேர்களும், எங்கள் தரப்பில் 20 பேர்களும், ஆகமொத்தம் 45 பேர்கள் சண்டை நடக்கும்போது இருந்தோம். பேனர்களை யார் கிழித்தார்கள் என்ற விவரம் எனக்கு தெரியாது"

This gives an impression that it was a 'free for all'. Only three of the people who went to complain were injured and not anyone else. In his examination in chief, PW-1 deposed that the accused along with 25 persons were armed with Aruval, Bottles, Tubelights and Iron rod. Only a 105 cm long stick (MO-1) was recovered from the accused Karuppan (A-4). The other 'alleged' weapons have not been recovered. It is also pertinent to note that PW-1 also stated that all the 25 persons who accompanied the accused abused him in filthy language mentioning his Caste name. But the Investigation Officer (PW-20) dropped them from the final report retaining only the five accused.



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9. Another injured eyewitness Mani (PW-2) deposed that he did not

witness the accused ripping the banners"எதிரிகள் பேனர்களை கிழித்ததை

நான் நேரடியாக பார்க்கவில்லை என்றால் சரிதான்". Further he goes on

with the following deposition :

"அன்று கரண்டு ஆப்பாகி இருந்தது".

"அந்த 20 அல்லது 30 பேர்கள் யார் யார் என்று என்னால் குறிப்பிட்டு சொல்ல முடியாது. ஏன் என்றால் கரண்டு இல்லை. இருட்டாக இருந்தது 20 அல்லது 30 பேர்களில் யார் யார் என்ன வார்த்தையால் திட்டினார்கள் என்று என்னால் குறிப்பிட்டு சொல்ல முடியாது அந்த 20 அல்லது 30 பேர்களில் யார் யார் என்ன ஆயுதத்தால் யார் யாரை என்ன ஆயுதத்தால் யார் யாரை தாக்கினார்கள் என்று குறிப்பிட்டு சொல்ல முடியாது என்று சொன்னால் சரிதான்".

PW-2 is an injured witness and not sure about who attacked whom, who tore the banner, who abused them with casteist slur etc.

10. Sakthivel (PW-3) in his deposition stated that he has some doubt with regard to the fact as to who tore the banners and that there is a dispute over a pathway leading to temple between the Caste Hindus and Dalits and the police were posted to avoid any untoward incident for about a month on an earlier occasion. He also stated that he does not know as to to who



committed the crime.

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11.Sathyaraj (PW-4), another eyewitness deposed that he was informed about the ripping of banners by some miscreants and that he does not know as to who were armed with deadly weapons and who hurled abuses and casteist slur.

12.Mayakannan (PW-5) in his deposition feigned ignorance about the taking of photos of women by the accused.

13.Murugesan (PW-6), deposed that on the date of occurrence there was no street light and that he cannot name the persons who accompanied the accused. He also stated that there is a dispute over a passage between the villages.

14.Ramakrishnan (PW-7) another eyewitness deposed that
"பேனர்களை கிழித்து விட்டது சம்பந்தமாக முறையிடுவதற்காக எங்கள் ஊரில் உள்ள ஊராட்சி மன்ற தலைவர் வீட்டிற்கு சென்று கொண்டு இருந்தோம். எம்ஜிஆர் சிலைக்கு சற்று முன்பாக எதிரிகள் கொடுவாள்,



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பீர்பாட்டில், இரும்புகம்பி ஆகியவற்றை எடுத்து வந்து அசிங்கமாக

திட்டி பாலகிருஷ்ணன், மணி, சக்திவேல் ஆகியோரை தாக்கினார்கள்.”

PW.7 is the first one to say that the attack on them occurred on the way to the village president's residence. In his cross examination, he contrasted by stating “யார் யார் என்ன ஆயுதங்கள் எடுத்து வந்தார்கள் யார் யார் யாரை தாக்கினார்கள், என்ன என்ன வார்த்தைகள் சொல்லி திட்டினார்கள் ஆகிய எல்லாமே எனக்கு மற்றவர்கள் சொல்லிதான் தெரியும்.”

15.Manikandan (PW-8) also deposed that the attack took place on the way to the village President's house while the other witnesses from PW-1 to PW-6 deposed that it happened when they met the village President in front of his house. In his cross examination, PW-8 had deposed that he cannot state as to who hurled abuses and casteist slur and also as to who attacked him with weapons.

16.Sakthivel (PW-9) also deposed in a similar fashion stating that they were attacked on the way to the village President house and also that due to the power cut and consequent darkness he could not tell exactly as to who carried what weapon and who attacked whom and who hurled abuse.



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Manivannan (PW-10) also deposed that the incident took place on the way

to the village President house. In his cross examination, he said that “அந்த பேனரை யார் கிழித்தார்கள் என்று எனக்கு நேரடியாக தெரியாது”. “இரவு 11 மணிக்கு கரண்டு இல்லாததால், தெருவிளக்கு எதுவும் எரியவில்லை. 20, 30 பேர்களில் யார் யார் யாரை பார்த்து என்ன வார்த்தையால் திட்டினார்கள், யார் யார் என்ன என்ன ஆயுதங்களால் யார் யாரை தாக்கினார்கள் என்று குறிப்பிட்டு என்னால் கூற முடியாது என்று சொன்னால் சரி தான்”.

17.Tamilselvan (PW-11) also stated the same. “அன்று இரவு சுமார் 11 மணிக்கு எதிரிகளின் செயல்களை சொல்வதற்காக எங்கள் ஊர் ஊராட்சி மன்ற தலைவர் வீட்டிற்கு சென்று கொண்டு இருந்தோம். அப்போது எதிரிகள் வழிமறித்து தாக்கினார்கள்”. He also in his cross examination told that he is not aware of who tore the banner and who all were there in violence as there was no street light on that day. Saminathan (PW-12) slightly differed by stating that “நாங்கள் தலைவரை போய் பார்த்தபோது இரவு தலைவர் வீட்டிற்கு அருகில் மின்சாரம் இல்லை. இரவு 11 மணி என்பதால் இருட்டாக இருந்தது. நாங்கள் தலைவரிடம் பேசிக்கொண்டிருந்த போது ஊர்க்காரர்கள் 10 அல்லது 15 பேர்கள் வந்தார்கள். யார் யார் என்ன ஆயுதங்கள் கொண்டு வந்தார்கள் என்று எனக்கு தெரியாது”.

18.All these were eyewitnesses disowning their own statements made



during their examination in chief. Even the injured witnesses were not sure about the people involved in the attack and it is clear that there was no power at the time of the incident and there was total chaos as it was pitch dark. The Investigation, in my opinion, has been poor. No effort was taken to find the culprits. It was a clash between two groups of people belonging to two different communities. No weapon except for a stick was recovered. There was a previous enmity between the two groups on the access road to the local temple. The local temple koil festival incident triggered it further and escalated the tension. The suggestions made by the learned counsel for the accused in the trial court regarding the possibility of getting injured in a fall are all intended to make it appear that there was no attack at all. But this Court believes that there was a clash in which three persons were injured (PW 1 to PW 3). But even the injured witnesses did not or could not identify the accused or describe the incident in sequence as is deciphered from their depositions. The darkness which enveloped the area due to power cut made it impossible for them to establish the identity of their assailants. As already mentioned, no weapon other than a stick was recovered.



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19.Seenuvasan (PW-13) an observation mahazar witness during the course of cross examination admitted that he signed only a blank white paper which clearly shows that he was only a stock witness. Both Annamalai (PW-15) and Thirugnanasambhanthar (PW-14) who are the witnesses for the arrest of Karuppan (A4), his confession statement and recovery of a stick (MO-1) have also admitted that they did not know the place of arrest and also the weapon recovered. They appear to have signed without knowing the contents. This again clearly exposes a sham investigation with no serious intent to identify the culprits and book them.

20.J.Sankar, Deputy Superintendent of Police (PW.19) who did the major part of the investigation has categorically stated that "சேதமான பேனர்களையோ, வழக்கு சம்பவத்தில் பயன்படுத்திய ஆயுதங்களையோ நான் கைப்பற்றவில்லை". Further as regards the identification of the group of persons involved in the attack he states that "பட்டியலில் கண்ட 1 முதல் 5 ஆட்களுடன் வேறு நபர்கள் யார் யார் சென்றார்கள் என்பது என்னுடைய விசாரணையில் பட்டியலில் கண்ட 1 முதல் 5 சாட்சிகள் கூறவில்லை. என்னுடைய விசாரணையிலும் யார் யார் அவர்களுடன் சென்றுள்ளார்கள்



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என்று தெரிய வரவில்லை என்று சொன்னால் சரி தான்.

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21.In contrast Mathivanan (PW-20) the Deputy Superintendent of Police who filed the final report stated that "சில எதிரிகள் மீது மேற்படி பிரிவுகள் ஈர்க்கப்படவில்லை என்பதால் 20 எதிரிகளில் 5 எதிரிகள் மட்டுமே சம்பவத்தில் ஈடுபட்டதாக முடிவு செய்து எதிரிகள் நீக்கல் அறிக்கை தாக்கல் செய்தேன்" This report Ex.P14 reads as :

"..... 5 எதிரிகள் மட்டும் தான் சம்பவத்தில் ஈடுபட்டுள்ளனர் என்பதால் இவ்வழக்கில் மற்றுமுள்ள அடையாளம் தெரிந்த 20 நபர்களை வழக்கிலிருந்து நீக்கம் செய்துள்ளேன் என்பதை தெரிவித்து கொள்கிறேன்."

This clearly shows that the Investigation Officers had made up their mind as how to weaken the case. Their slipshod work is visible.

22.In the instant case, the prosecution has failed to prove beyond doubt the indulgence of the accused in the violence which erupted in a group clash. Strangely, though there were about 50-60 people who gathered near the scene of occurrence only three were injured. Therefore, the use of weapons as claimed by the prosecution witnesses PW-1 to PW-12 is doubtful. The deposition of Dr.Pazhamalai also vindicates this conclusion.



He has stated that PW-1 had told him that he was attacked with stones and hand. But then who attacked whom is the one question which has no answer. If at all other weapons were used, they were not seized or recovered from the accused.

23.To summarise the deficiencies in the prosecution case,

- a) The alleged incident of photographing/video graphing of women folk in the dance programme which was part of the temple festival has not been established. It appears to be a rumor or may be it was an invented theory. The Investigation Office ought to have probed it further. No mobile was seized or checked for any objectionable content.
- b) The subsequent tearing of the digital banner also remains unproved. If they were torn which itself is not clear, the investigation did not go into this aspect. They ought to have gone into this aspect also because this again was the second trigger point for the attack.



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c) The attack which took place was when the complainant and his companions were on the way to meet the village president or while they were conversing with him is also not clear. Contradicting versions by the prosecution witnesses on this aspect make it more confusing.

d) Five of the many people involved are named even in the police complaint by PW-1. The Investigation Officer has stated that he did not get to know who the others involved are. The prosecution witnesses who were eyewitnesses to the attack (PW-1 to PW-13) also are not sure as to who were all there, who attacked whom, who hurled abuses etc. The Investigating Officers also failed to identify them. Such contradictory statements and incomplete investigation weakens the prosecution theory.

e) If the prosecution witnesses are to be believed that about 50-60 people were present there, then there should have been more injured persons on both sides as it appears to be a 'free for all' which gives



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raise to a doubt whether it was just a physical assault without any arms/weapons.

- f) This theory that there were weapons in the form of iron rods, bottles and tube lights used by the accused is also doubtful because while all the eyewitnesses talk about it in the same language and sequence, the PW-1 in his first statement to Dr.Pazhamalai (PW-16) who treated him, has alleged attack by the accused and many others using stones and hands. The Investigation Officer also did not recover any weapon from the accused except for 105 cm long stick from Karuppan (A4).

In such circumstances and on the face of such glaring infirmities in the prosecution case, only two conclusions emerge :

- a) The prosecution has not made proper investigation.
- b) The incident of violence has been blown out of proportion.

24. In the result, I conclude that the prosecution has failed to investigate properly and prove the charges against the accused beyond



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reasonable doubts. Therefore, this appeal stands allowed. Consequently, connected Criminal Miscellaneous Petition is closed. The judgment dated 27.08.2019, passed by the learned Sessions Judge, Special Court for Exclusive Trial of case registered under SC/ST (POA) Act, Villupuram, in Spl.S.C. No.38 of 2016, is set aside. The appellants (accused 1,2,4 and 5 in Spl.S.C. No.38 of 2016) are acquitted from all the offences, of which they are charged. Bail bonds, if any, shall stand cancelled.

19.09.2023

bga

Index : yes/no

Speaking /Non speaking Order



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To

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1. The Sessions Judge, Special Court for Exclusive Trial of case

registered under SC/ST (POA) Act, Villupuram

2. State Rep. by

Deputy Superintendent of Police

Kallakurichi Division

Villupuram District

(Varajjaram PS Cr.No.124/2015)

3. The Additional Public Prosecutor

High Court, Madras.

4. The Section Officer,

Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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19.09.2023

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