



Crl.A.No.193 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2023

PRONOUNCED ON : 30.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.A.No.193 of 2017

1. Ganesan
2. K.Venkatesan
3. S.Kannan
4. K.Chandra

... Appellants / A1 to A4

-Vs-

State of Tamilnadu,
Rep. by Deputy Superintendent of Police,
Villupuram Sub Division,
Villupuram Taluk Police Station,
Villupuram District.
(Crl.No.410 of 2016)

... Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, praying to call for the records relating to the proceedings in Special S.C.No.90 of 2016 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, Villupuram and set aside the order of conviction dated 28.03.2017 and set the appellant at liberty.



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For Appellant : Mr.M.Devaraj
For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side).

JUDGMENT

Convicted accused are the appellants herein. The Criminal Appeal has been filed against the judgment of conviction and sentence dated 28.03.2017 of the learned Sessions Judge, Special Court, Villupuram in Special Sessions Case No.90 of 2016.

2. The case of the prosecution as could be seen from the witnesses are that PW1 and PW2 were working in the land of one Govinda Ayyer at Kandamanadi Village for monthly salary. The land for the accused persons is situated near the land of Govinda Ayyer. The accused persons were cutting casuarina trees in their lands by using the labourers from other villages for 10 days. The other village labourers let excreta in the land of Govinda Ayyer. PW1 and PW2 were unable to put manure to the casuarina saplings. PW1 and PW2 asked the act of other village persons to the



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accused persons. Hence, there was enmity between PW1 and PW2 and appellants/A1 to A4.

3. With the above previous enmity, on 14.06.2016 at 8.00am, PW1 and PW2 took urea to the land of Govinda Ayyer from the godown. They saw excreta let by the other village labourers in the land. PW1 and PW2 enquired the above matter to the accused persons. A4 scolded PW1 by using filthy language and threatened to kill PW1. A1 scolded PW1 by using the words, “வேட்டைக்கார நாய்” (Vettaikara dog). (It denotes the caste name of PW1) and threatened her. A1 pulled the hand of PW1 and beat in her back. A3 threatened to kill PW1. A3 stamp by the foot in the back of PW1. A1 and A3 beat PW2 by hands. When PW5 was preventing the accused persons A1 to A3 scolded by saying that why you were coming for “வேட்டைக்காரச்சி” (Vettaikara lady) and that they threatened to kill PW5.

4. Therefore, the respondent-Deputy Superintendent of Police, Villupuram Sub Division, Villupuram Taluk Police Station, filed charge



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sheet alleging commission of the offence that A1 committed the offence punishable under Sections 352 and 506(ii) of the Indian Penal Code, 1860 r/w Section 4 of Tamil Nadu Women Harassment Act r/w Section 3(1)(r)(s) of the SC/ST (POA) Amendment Act, 2015; A2 committed the offences punishable under Section 506(ii) of the Indian Penal Code, 1860 r/w Section 3(1)(r)(s) of the SC/ST (POA) Amendment Act, 2015; A3 committed the offences punishable under Sections 352 and 506(ii) of the Indian Penal Code, 1860 r/w Section 3(1)(r)(s) of the SC/ST (POA) Amendment Act, 2015; and A4 committed the offences punishable under Sections 294(b) and 506 (ii) of the Indian Penal Code, 1860 r/w Section 3(1)(r)(s) of the SC/ST (POA) Amendment Act, 2015.

5. The alleged date of occurrence is 14.06.2016. In order to sustain the prosecution under Section 3(1)(x) of SC/ST Act, twin ingredients are ought to be satisfied viz.,



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(a) the accused should be a member of the non SC community, while the defacto complainant should belong to SC/ST community.

(b) The accused ought to have uttered caste word in the public place in a public view.

6. As per the revenue witnesses, Ex.P2-Caste Report issued for PW1 and PW2 by the Revenue Divisional Officer [PW6], PW1 and PW2 belonged to Hindu Irular Community and as per Ex.P3-Caste Report issued by PW7-Vetrivel, Tahsildar, the accused A1 to A4 belongs to Most Backward Community and a non-member of Scheduled Caste community and accordingly, the 1st ingredient to maintain the prosecution case, is satisfied and as per Ex.P6-Proceedings of the Superintendent of Police, Villupuram District for nominating the Investigating officer dated 17.06.2016, the Superintendent of Police of the District has appointed PW10-Suruliraja, the Deputy Superintendent of Police, to investigate the same.



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7. As per the endorsement found in Ex.P1-Complaint dated 15.06.2016, the FIR [Ex.P5] was registered at 22.00 hours on 17.06.2016 and as per Ex.P6, the Superintendent of Police has issued nomination empowering the investigation officer on the very same night.

8. PW1-Uma and PW2-Nagappan are husband and wife, the alleged victims. PW3-Revathi and PW4-Bharathi are the independent witnesses, alleged to have seen the occurrence and turned hostile. PW5-Vijayakrishnan, is the land owner wherein PW1 and PW2 does the work. PW6-Jeenathbanu and PW7-Vetrivel, are the revenue witnesses, who had issued Ex.P2 and Ex.P3, regarding the caste report of the accused and PW1 and PW2. Attester of the observation mahazar is PW8-Ilayaraja. PW9-Maruthu, is the Sub Inspector of Police, Villupuram Taluk Police Station, who has registered Ex.P5-FIR and PW10-Suruliraja, is the Deputy Superintendent of Police, Villupuram, who has conducted the investigation and filed the charge sheet.



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9. The learned counsel for the appellants/accused could contend that there is an unexplained delay of 2 days. On the complaint given by the accused on 15.06.2016 immediately after the occurrence, only CSR was issued and FIR was registered after three days; the complaint [Ex.P1] was lodged by PW1 in consultation with the Social Rights Activists, Professor Kalyani and hence, it is a motivated complaint and also stated that the scene of occurrence is not a public place or public view and made submissions regarding several material contradictions.

10. The learned Government Advocate (Crl. Side) made submissions in support of the judgment of the trial Court.

11. After hearing the rival submissions and after perusing the typed set of papers and also the judgment and the findings thereon, I find that in the Sessions Case, appreciation of evidence is a necessary part of delivering the judgment. For appreciating the evidence, both the chief and cross examinations have to be taken into consideration and any material



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contradiction elicited from the Investigation Officer has to be taken into consideration.

12. After perusing the judgment passed by the learned Sessions Judge, I find that the learned Sessions Judge has taken note of only the chief examination and converted the same as 313 questioning and also rendered a judgment as per the 313 questioning, without examining the cross examination.

13. The defacto complainants are the PW1 and her husband PW2. They have deposed in the chief examination in support of the charge. To appreciate the evidence of PW1 and PW2, whether they are reliable and trustworthy, the answers elicited in the cross examination have to be looked into and the chief and cross examination of the witnesses have to be read in consonance with each other and thereafter, a conclusion has to be arrived and finding has to be rendered, is the essence of various judgments of the Hon'ble Supreme Court in appreciation of evidence.



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14. The answers elicited in the cross examination of PW1 are as under

“...புகாரை பேராசிரியர் கல்யாணி எழுதிக்கொடுத்தார். அவர் எங்கள் சங்கத்திற்கு தலைவர் ஆவார்.....

.....புகாரில் என்ன எழுதப்பட்டுள்ளது என்று எனக்கு தெரியாது.....

.....சவுக்கு நட்ட நாளில் இருந்து 3 வருடத்தில் அறுவடை செய்யலாம். சம்பவம் நடக்கும்போது சவுக்கு 1 வருஷ பயிராக இருந்தது. அந்த சவுக்கு நிலத்தில் ஒரு ஆள் இருந்தால் தெரியாது. அந்த உயரத்திற்கு இருந்தது.....

.....எதிரிகள் அவர்கள் நிலத்திற்கு வந்தால் அவர்கள் அவர்கள் வேலையை பார்த்துவிட்டு போவார்கள். நாங்கள் எங்கள் நிலத்திற்கு வந்தால் நாங்களும் எங்கள் வேலையை பார்த்துவிட்டு போவோம்.....

.....15ஆம் தேதி அன்று எதிரிகள் எங்கள் மீது ஒரு புகார் கொடுத்த விவரம் தெரிந்துகொண்டோம்....

.....15.06.2016ஆம் தேதி காலை 8 மணிக்கு எதிரிகளை நான் என் கணவர், மற்றும் நிலத்து சொந்தக்காரர் விஜயகிருஷ்ணன் ஆகியோர் அடித்ததாக ஒரு புகார் காவல் நிலையத்தில் எங்கள் மீது கொடுக்கப்பட்டது....

....சம்பவம் நடந்ததற்கு மறுநாள் காலை 6 மணிக்கு எல்லாம் போலிசார் எங்கள் மீது புகார் இருப்பதாகவும், காவல் நிலையத்திற்கு வருமாறும் சொன்னார்கள். ஆனால் நாங்கள் நேரடியாக காவல் நிலையத்திற்கு போகாமல் அன்றையதினம்



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கல்யாணி சாரிடம் புகார் எழுதிக்கொண்டு காவல் நிலையத்திற்கு போனோம்.....

..... நான் போலீஸ் ஸ்டேசனுக்கு போனேன். எதிரிகள் உங்கள் பேரில் ஒரு புகார் கொடுத்துள்ளார்கள். நீங்கள் என்ன சொல்கிறீர்கள் என்று போலீசார் என்னிடம் கேட்டார்கள். நான் போலீசாரிடம் ஊருக்குள் பேசி சமாதானம் செய்துகொள்கிறோம், எங்களுக்கு நேரம் கொடுங்கள் என்று நான் போலீசாரிடம் சொன்னேன். எதிரிகள் எங்கள் மீது புகார் கொடுத்ததில் முதல் நாள் போலீசார் வரசொன்னதற்கு, முதல்நாள் நாங்கள் போலீஸ் ஸ்டேசனுக்கு போகவில்லை. போலீசாரிடம் எதிரிகள் மீது நாங்களும் ஒரு புகார் கொடுக்க வேண்டும் என்று நாங்கள் சொல்லவில்லை....

....சம்பவம் நடந்த மறுநாள் காலை 6 மணிக்கு போலீசார் என்னை வந்து கூப்பிட்டார்கள். நான் காவல் நிலையத்தில் போய் புகார் கொடுத்த போது உன் மீதும், உனது கணவர் மற்றும் மற்றவர்கள் மீதும் புகார் கொடுக்கப்பட்டுள்ளது நீ என்ன சொல்கிறாய் என்று போலீசார் என்னை கேட்டார்கள்....

ரேவதி மற்றும் பாரதி ஆகியோர்களை போலீசார் விசாரித்தார்கள். எங்கள் சண்டை சம்மந்தமாக அவர்களை போலீசார் விசாரித்தார்கள்...

அவர்கள் தங்களுக்கு சம்பவம் குறித்து தெரியாது என்று போலீசில் சொல்லிவிட்டாகவும், ரேவதியும், பாரதியும் என்னிடம் சொன்னார்கள். அவர்கள் விசாரித்த அன்றே அவர்கள் என்னிடம் கூறிவிட்டார்கள்.....

போலீசார் என்னை விசாரித்தபோது மதியம் சுமார் 3 மணி அளவில் 1வது எதிரி கணேசன் என்னை சாதி சொல்லி



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அசிங்கமாக திட்டி, பாம்பு, பல்லி ஆகியவற்றுடன் என்னை இணைத்து பேசியதாக நான் சொல்லவில்லை. என்னை சாதியை சொல்லி திட்டியதாக நான் போலீசார் விசாரணையில் சொல்லவில்லை....”

15. The answers elicited in the cross examination of PW2 are as under:

“எதிரிகள் போலீஸ் ஸ்டேசனில் ஒரு புகார் கொடுத்திருந்தார்கள். நாங்கள் புகார் கொடுப்பதற்கு முன்பே எதிரிகள் போலீஸ் ஸ்டேசனில் புகார் கொடுத்துவிட்டார்கள்...

....சம்பவம் நடந்து 4 நாட்கள் கழித்துதான் புகார் கொடுத்தோம். புகாரை கல்யாணி சார் எழுதிக்கொடுத்தார்....”

16. The alleged occurrence witnesses Revathi and Bharathi have turned hostile and not supported the case of the prosecution. It remains to be stated that even as per the admission made by PW1 in the witness box, though they have been termed as occurrence witnesses, during the police enquiry they have stated that nothing has happened and so the police have



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also informed PW1 regarding the enquiry report made with the PW3 and PW4, assumes significance.

17. PW5 has not supported the case of the prosecution and in the chief examination, he has deposed that

“அதை நான் நேரில் பார்க்கவில்லை....”

18. In the cross examination, PW5 has categorically admitted that during the investigation, the police has not enquired with him and he also admitted that in respect of the purchase of 2½ acres of land belonging to Udayar, which is adjacent to his land, he and the accused have competed with each other and the accused has purchased the Udayar land and therefore, they had enmity and even before filing of the complaint Ex.P1, the PW1, PW2 and PW5 have admitted that the complaint given by accused against PW1 and PW2, is pending with the police and so they have not entered the police station as could be seen from the cross examination, assumes significance.



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that

19. The PW9-Sub Inspector in his cross examination has admitted

“14.06.2016ம் தேதி மதியம் 3 மணிக்கு அய்யர் நிலத்தில் எந்த இடத்தில் தான் வேலை செய்தேன் என்பதையும் எந்த இடத்தில் சம்பவம் நடைபெற்றது என்பதையும் உமா தனது புகாரில் குறிப்பிடவில்லை. மதியம் 3 மணி சம்பவத்தில் எதிரிகள் தன்னை சாதியை சொல்லி திட்டியதாகவோ, தன்னை அடித்ததாகவோ, தன்னை மாணப்பங்கப் படுத்தியதாகவோ உமா தனது புகாரில் கூறவில்லை.....

...உமா தனது புகாரில் 2 முதல் 4 எதிரிகள் சாதி சொல்லி திட்டியதாக உமா தனது புகாரில் குறிப்பிடவில்லை.....”

20. The investigation officer PW10 in the cross examination has admitted that the charge sheet has been filed after 30 days beyond the statutory period and he has not obtained any leave or extension of time for filing the charge sheet. He has also admitted that

“முதல் தகவல் அறிக்கையில் சம்பவம் நடந்த நேரம் காலை 8 மணி முதல் மாலை 3 மணி வரை என்று குறிப்பிடப்பட்டுள்ளது. ஆனால் என்னுடைய விசாரணையில் தொடர்ச்சியாக சம்பவம் நடந்ததாக தெரியவில்லை. என்னுடைய விசாரணையில் சம்பவம் எந்த இடத்தில் நடந்தது என்று குறிப்பாக அசா1 மற்றும் மற்ற சாட்சிகள் கூறவில்லை..”



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and hence, as per the admission made by the police witnesses, PW9 and PW10, the PW1 has not whispered anything in Ex.P1-complaint, regarding the utterance of caste word or caste name or making any statement touching upon the modesty of the women. As per the admission of PW9 in the cross examination, A2 and A4 have not uttered any caste word against the accused in the Ex.P1-complaint. So also as per the admission made by PW10. Even in the Ex.P1-complaint, the first incident was only after the complaint given by the accused against PW1 and in the complaint, the scene of crime was not mentioned. With regard to the scene of crime as extracted supra, the PW1 has categorically admitted that casuarina trees are one year old and it is more than a man's height and if a person stands inside, a person from outside cannot see, also assumes significance.

21. On perusal of Ex.P8-Rough Sketch, I find that if two persons are standing in the casuarina trees it could not be seen from outside as admitted by PW1, assumes significance.



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22. On a comparative analysis of the answers elicited with the chief and cross examination of PW1, I find that there is material contradiction on the material facts, so also the evidence of PW2. On a combined reading of chief examination of PW1 and PW2, I find that the material contradiction on the material fact.

23. On consideration of the version of PW1 and PW2 in the chief examination with the answer elicited with PW9 and PW10, police witnesses, I find that the evidence of PW1 and PW2 suffers from embellishment amounting to material contradiction in respect of material facts, as to the alleged date of occurrence and scene of crime and alleged utterance of caste word was not mentioned either in Ex.P1-complaint or during the investigation by the police.

24. Therefore, I find that the evidence of PW1 and PW2 are totally unreliable and untrustworthy and on a combined reading of evidence of PW1 and PW2 with the police witnesses PW9 and 10, I find that it is totally



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unworthy to rely upon their evidence as they suffers from embellishment amounting to material contradiction on the material particulars and besides their own version in the chief examination is found to be at vital variation in the cross examination.

25. It remains to be stated that the chief examination of PW1 and PW2 and the answer elicited during the cross examination of PW9 and PW10 probalilise the suggestive case in all aspects.

26. The police have not investigated the earliest complaint given by the accused against the PW1 and PW2 and when PW1 and PW2 were called to attend the enquiry on the complaint given by the accused, they were affected and they have consulted the communal leader and thereafter they have drafted a complaint. The scribe of the Ex.P1 complaint was not examined by the police.



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27. Furthermore, the police have also informed the PW1 and PW2 regarding the complaint given by the accused and the same is kept pending. When Ex.P1-Complaint was lodged after a delay of 3 days and Ex.P1 was drafted by community leader of the PW1, I find that it is a consulted complaint. Furthermore, even on the complaint enquiry, the alleged PW3 and PW4, Revathi and Bharathi have categorically stated that no such incidence has taken place and the PW1 herself has admitted in the cross examination that while the police have enquired the PW3 and PW4, Revathi and Bharathi respectively, who also belongs to the very same caste have denied any such happening of the occurrence, probabalise the suggestive case on all spheres.

28. In ***Ramesh Chandra Vaishya Vs. State of Uttar Pradesh and Another***, reported in **2023 SCC Online SC 668**, our Hon'ble Supreme Court has held as follows;

“....Since the utterances, if any, made by the appellant were not “in any place within public view”, the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent. We, therefore, hold that at



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the relevant point of time of the incident (of hurling of caste related abuse at the complainant by the appellant), no member of the public was present.

18. We have noted from the first F.I.R. as well as the charge-sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled...”

29. Therefore, I find that Ex.P1 complaint is a coloured complaint and it is fabricated version and the same is lodged after a delay of three days and there is a deliberation in not registering the complaint given in earlier point of time by the accused and scene of occurrence as shown in Ex.P8-Rough Sketch is not a public place and hence, I find that the basic ingredient of Section 3(1) and 3(1)(x) of Special Act is not made out.

30. Yet another point is with regard to the alleged physical assault.

31. On the contrary in the evidence, PW1 has stated that the appellants armed with wooden stick had bet the complainant with hands



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which is totally in contrary. Further, the same would establish that PW1 is not speaking the truth. PW1 in her cross had admitted that there is no enmity or previous quarrel between the appellants and PW1 and there was no interaction between them while they work and further more, PW1 admits that she had the knowledge of the previous complaint given by the appellant, in the police enquiry has stated that was taking steps to amicably settle the complaint and at that time did not inform the police about the present complaint which shows that the present complaint is only a counter blast for the complaint given by the appellants and not the real incident.

32. Hence, I find that the case of the prosecution is bristled with infirmities and the version of PW1 and PW2 with their respective cross examinations are found to be of vital variation with each other with vital facts and the version of the private prosecution witnesses PW1 and PW2 are found to be on material contradiction with the police witnesses PW9 and PW10, on the essential ingredients touching upon the charge and therefore, I find that the version of PW1 and PW2 are totally unreliable and



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untrustworthy. The suggestive case of the prosecution is more probable based upon the admission of PW1 and PW2.

33. Accordingly, I hold that the prosecution has failed to prove the charges framed against the Accused beyond reasonable doubt and giving the benefit of doubt, the appellants/accused 1 to 4 are acquitted of all the charges. Consequently, the conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases registered under the SC/ST (POA) Act, Villupuram, in Special Case No.90 of 2016, dated 28.03.2017, as against the appellants/accused 1 to 4 herein, is set aside. Fine amount is ordered to be refunded. Bail bond stands cancelled. The Criminal Appeal is allowed.

30.06.2023

Index: Yes / No
Speaking/Non-Speaking order
Neutral Citation: Yes/No.
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To

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1. The Sessions Judge,
Special Court for Exclusive Trial Cases Registered
under the SC & ST (POA) Act,
Villupuram.
2. The Deputy Superintendent of Police,
Villupuram Sub Division,
Villupuram Taluk Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.



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RMT. TEEKAA RAMAN, J.

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Pre-delivery Judgment made in
CRL.A.No.193 of 2017

30.06.2023

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