



Crl.A.No.311 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.04.2023

PRONOUNCED ON : 02.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.A.No.311 of 2017

M.Kattaiyan

... Appellant / sole accused

-Vs-

State by
Inspector of Police,
Ulundurpet Police Station,
Ulundurpet,
Villupuram District.
(Crime No.442 of 2010)

... Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, praying to set aside the judgment of conviction and sentence imposed by the learned Sessions Judge, Special Court,, Villupuram, made in Special Case No.151 of 2015, dated 19.05.2017, and acquit the appellant / sole accused from the charges.

For Appellant : Mr.S.Saravana Kumar

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



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JUDGMENT

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Convicted sole accused, is the appellant herein. The Criminal Appeal has been filed against the judgment dated 19.05.2017 of the learned Sessions Judge, Special Court, Villupuram in Spl.Case No.151 of 2015, convicting the appellant for offence under Section 3(1)(x) of the SC/ST (POA) Act, 1989 and sentencing him to undergo simple imprisonment for one year and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for three months for the said offence.

2. The case of the prosecution in brief is as follows:

(i) The respondent police filed a final report in PRC No.8 of 2011 (Ulundurpet Police Station in Cr.No.442 of 2010) before the learned Judicial Magistrate No.1, holding that the accused had committed an offence under Section 506(i) IPC and 3(1)(x) of SC/ST Act and the same was taken on file and made over to the learned Sessions Judge, Villupuram, as S.C.No.484 of 2013 and made over to the Special Court, Villupuram.



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(ii).The learned Sessions Judge, Villupuram, has framed charge under Section 506 (i) of the IPC and 3(1)(x) of the SC/ST (POA) Act. The accused denied the charges and claimed to be tried.

(iii) During the trial, the prosecution examined PW1 to PW10 and Ex.P1 to Ex.P9 were marked. On the side of the defence, no oral or documentary evidence, has been let in.

(iv) Based upon the oral and documentary evidence produced before the Sessions Court, more specifically, the oral evidence of PW1, PW4 to PW6, the learned Sessions Judge, has come to the conclusion that the accused had intentionally insulted PW1, PW2 and PW4 to PW6 (as could be seen at paragraph No.11(s) of the judgment) and laid the conviction and sentence as stated supra and hence, the appeal.

3. The learned counsel for the appellant/accused could contend that

(i) FIR is not preferred by PW1 and the author of Ex.P1-



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complaint is not cited as a witness nor examined during the trial.

(ii) except interested witnesses, other witnesses have not supported the case of the prosecution and there is no independent witness for corroborating the evidence of PW1

(iii) there is a material contradiction of the versions of PW1-defacto complainant, PW4-occurrence witness and PW10-Investigation officer.

4. The learned Government Advocate (Crl. Side) made submissions in support of the judgment of the learned Sessions Judge.

5. Heard the learned counsel appearing for the appellant/accused and the learned Government Advocate (Crl. Side) appearing for the respondent police and perused the materials available on record.

6. The points for consideration in this appeal are as follows:

(i) Whether the prosecution has proved the charges in the manner known to law?



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(ii) Whether the conviction passed by the learned Sessions Judge is sustainable in law?

(iii) Whether the sentence passed is in commensurate with the charges.

7. As stated supra, during the trial, the defacto complaint-Sundaramoorthy, was examined as PW1 and one of the occurrence witness PW2-Arun, turned hostile. Attestor of the observation mahazar PW3-Marimuthu, also turned hostile. PW4-Balusamy, PW5-Elumalai and PW6-Jayabal, are projected as occurrence witnesses and the version of those witnesses are discussed infra.

8. PW8-Sivagnanam, is a revenue witness viz., Thasildar, Ulundurpet and he has deposed and filed Ex.P4-caste report with respect of the community of PW1, PW2, PW4 to PW6, the accused viz., Kattaiyan @ Pavadai and one Masilamani.



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9. PW10-Ganesan, the investigation officer has deposed regarding the receipt of Ex.P1-complaint, registration of Ex.P5-FIR, investigation, preparation of Ex.P7-Observation mahazar, Ex.P8-Rough sketch and filing of the special report and the final report.

10. In order to sustain the prosecution under Section 3(1)(x) of SC/ST Act, twin ingredients are ought to be satisfied viz.,

(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.

11 (a). After perusal of the oral evidence of revenue witness-PW5 and Ex.P4, which is to the effect that PW1, PW2, PW4 and PW6 are members of the SC community, while the accused belongs to MBC (Vanniar), which is a non SC community and further there is an allegation of utterance of caste



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word in a public place in a public view. The 2nd ingredient stated above will be discussed infra and hence, the essential ingredients for taking cognizance of the offence, under Special Act is made out.

(b) As per Ex.P6 coupled with oral evidence of PW10-investigation officer, the Superintendent of Police, Villupuram, has issued necessary proceedings as required under the provisions of the SC/ST Act/Rules, for nominating the investigation officer in respect of the offence alleged to have been committed under the Act. Hence, I find that the investigation carried on by PW10-investigation officer, cannot be found fault with.

12. On perusal of Ex.P1 complaint, I find that an allegation has been made against two persons viz., A1-Sundaramoorthy and A2-Masilamani. A2 is the owner of the land where the occurrence is said to have been happened. A1, the convicted accused viz., Kattaiyan @ Pavadai, is a lessee of the land belongs to the original 2nd accused. After investigation, PW10-Investigation officer has filed a Special Report, deleting the 2nd accused from the final



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report for the reasons stated therein that the alleged involvement of the 2nd accused mentioned in the complaint is not surfaced during the investigation.

Accordingly, he has dropped the name of the 2nd accused in the final report and hence, the sole accused has underwent the trial.

13. The defacto complainant has presented Ex.P1-complaint. In the chief examination, PW1 has deposed that in the land which was taken on lease by the accused, there is a temple and accused has cultivated ragi crops in the said land and due to festival season, the ragi crops were destroyed and lead to the oral altercation and the accused has spoken ill about his caste. PW1 has not whispered about who had witnessed the same. In the cross examination, PW1 has categorically admitted that he has not written the Ex.P1-complaint and someone has written the complaint and further, he has fairly admitted that he had not mentioned in the complaint about the place of occurrence and who had witnessed the occurrence.



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14. PW2, who is projected as an occurrence witness has turned hostile. PW3 one of the attester of the observation mahazar has also turned hostile.

15. PW4 who is also projected as an occurrence witness, in the chief examination on his own motion has admitted that after the celebration of the temple festival, they have thrown the waste materials and the cut banana trees in Well in the land, which was cultivated by the accused and at that time the accused was shouting and questioning as to who had put such dirty materials in the well in his lease land.

16. It remains to be stated that in the chief examination, PW4 has not whispered about the utterance of caste words by the accused against PW1. In the cross examination, he has fairly admitted that PW1 has not mentioned anything in the complaint regarding where PW1, PW5-Elumalai and PW6-Jayabal were sitting and chatting on that day and also not stated where the place of the scene of occurrence i.e., in which place the accused had uttered



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caste words against PW1. He also fairly admitted that the land belongs to Masilamani where the accused has leasehold right and they have asked for special patta of those agricultural lands in favour of the members of their community.

17. PW5 in his evidence has stated that after completion of temple festival on 10.08.2010, they have thrown the dry and waste garlands of the temple and also cut banana trees and other things and dumped in the well of lease land of the accused. In the cross examination, he has stated that PW1, the defacto complainant has written the complaint and given the alleged complaint to the police in writing. It remains to be stated that according to PW5, the time of occurrence is 11.00am.

18. PW6 could depose that on 12.08.2010, during the evening hours in connection with the dumping of the waste pooja flowers and the cut banana trees in the well of the accused, he shouted as to the spoilage committed by the person in the well used for irrigating the land and uttered



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caste words against PW1. In the cross examination he has admitted that while PW1 defacto complainant was narrating the incident, the typist in the police station has typed the complaint and according to PW6, the incident had happened on 12.08.2010 in the evening as elicited in the cross examination, assumes significance.

19. PW9, the Inspector of Police, who had received the complaint and registered the FIR in the cross examination has admitted that the complaint was signed by PW1-Sundaramoorthy, along with village youngsters and in the complaint nothing was whispered as to the place of occurrence. In short,

“அந்த புகாரில் அனுப்புனர் என்ற இடத்தில் சுந்தரமூர்த்தி மற்றும் ஊர் இளைஞர்கள் என்று குறிப்பிடப்பட்டு உள்ளது....

பாண்டூர் காலனியில் எந்த தெருவில் வைத்து சம்பவம் நடந்தது என்று புகாரில் குறிப்பிடப்படவில்லை.

சம்பவத்தை யார் யார் பார்த்தார்கள் என்று சுந்தரமூர்த்தி புகாரில் கூறவில்லை. சம்பவ இடத்தில் இந்து ஆதிதிராவிடர்கள் இருந்ததாகவோ அவர்களை பார்த்து திட்டியதாகவோ புகாரில் குறிப்பிடப்படவில்லை.”



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20. The investigation officer in his cross examination has admitted that

“5 நாட்கள் காலதாமதமாக புகார் கொடுத்துள்ளார்..
..புகாரில் எதிரி சுந்தரமூர்த்தியை பார்த்து குறிப்பாக சாதியை
சொல்லி திட்டியதாக இல்லை....எனது விசாரணையிலும்
புகார்தாரர் கூறவில்லை....சாட்சிகளும் என்னுடைய விசாரணையில்
சுந்தரமூர்த்தியை எதிரி சாதியை சொல்லி திட்டியதாக
கூறவில்லை....”

21.(a) After going through the evidence of PW2, though he is projected as occurrence witnesses, it seems he has turned hostile. However, the learned Sessions Judge has observed that from the evidence of PW1, PW4 to PW6, the accused had intentionally insulted PW1, PW2, PW4, PW5 and PW6 by uttering the caste words. It remains to be stated that PW2 himself has not uttered anything against the accused. Furthermore, the charge is with regard to utterance of caste words by the accused against PW1 and not against PW4 to PW6, assumes significance.



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(b) It also remains to be stated that even as per the evidence of PW2, there is no whisper against the accused and he has also turned hostile. However, in view of the above discussions, there is a material contradiction between the evidence of PW1 and PW4 to PW6 as against the accused with regard to the charge, assumes significance.

22. That apart, as stated supra, PW1 has stated that the police has written the complaint, while PW5 has stated that the complaint was written by PW1 himself and the scene of occurrence projected by PW4 is near the land where the accused is said to have scolded the people in general as to how the people have dumped the pooja materials along with cut banana trees in his well used for irrigation of his cultivating lands.

23. According to the version of PW5 and PW6, the scene of occurrence is inside the colony at the morning of 11.00am on 12.08.2010, while as per the police version, FIR is registered at 8.00am on 12.08.2010. So also the evidence of PW6, which refers to evening hours on 12.08.2020



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in the colony. As per the final report, the incident is said to have taken place in the Pandur Colony and hence, I find that the version of PW1 defacto complainant is found to be of material contradiction with the evidence of PW5 and PW6. Further, with regard to the time of happening of the alleged offence, there is a total inconsistency between the above two witnesses, while one witness deposed that it happened in the evening and the other person deposed and that it happened in the morning. Further, PW10 investigation officer filed final report referring to 8.00am and hence, I find that the alleged time of occurrence is found to be of material contradiction with the private prosecution witnesses viz., PW1, PW4, PW5 and PW6 with that of PW10-investigation officer and creates a very serious doubt as to the happening of the said event. At this juncture, the suggestive case of the defence, assumes significance.

24. The suggestive case of the defence as stated supra is that the land belongs to one Masilamani and the persons belonging to Pandur Colony has sought the assignment of the land owned by Masilamani for the Scheduled



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Caste people. After revenue investigation, it is found that it is the cultivating and patta land of private individual and the request was rejected by the revenue authorities and hence, there is previous enmity between the private prosecution witnesses and the accused and in order to wreck vengeance, they have given a false case.

25. PW1, PW4, PW5 and PW6 have categorically admitted in the cross examination about the factum that they demanded for assignment of land wherein the accused is cultivating crops in the land by obtaining leasehold right from one Mr.Masilamani and also admitted in their cross examination that there is previous enmity between those private prosecution witnesses and the accused. The evidence of PW10-investigation officer in this regard, assumes significance.

26. As extracted supra, PW10-Investigation Officer has admitted that during the investigation, none of the witnesses have deposed regarding utterance of caste word by the accused against PW1, assumes significance.



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So also the time of occurrence as spoken to by PW5-Elumalai and PW6-Jayabal, does not match with the case of the prosecution and hence, I find that the suggestive case is more probable.

27. Accordingly, I come to the conclusion that there is a material contradiction with regard to the date of occurrence, time of occurrence, place of occurrence, between the private prosecution witnesses and the investigation officer and in view of the admission of the previous enmity between the accused and the private prosecution witnesses, in their respective cross examinations in connection with assignment of lands now being cultivated by the accused, for the prosecution witnesses has been negated by the revenue authorities and hence, I find that the version of PW4, PW5 and PW6 are unreliable and untrustworthy and the suggestive case of the defence appears to be more probable than the prosecution case.

28. Hence, I find that the prosecution has failed to prove the charges framed against the Accused beyond reasonable doubt and giving the benefit



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of doubt, the appellant/accused is acquitted of all the charges.

Consequently, the conviction and sentence passed by the learned Sessions Judge, Special Court, Villupuram, in Special Case No.151 of 2015, dated 19.05.2017, as against the accused/appellant herein is set aside. Fine amount is ordered to be refunded. Bail bond stands cancelled. The Criminal Appeal is allowed.

02.06.2023

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

1. The Sessions Judge, Special Court,
Villupuram.
2. The Inspector of Police,
Ulundurpet Police Station,
Ulundurpet,
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
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